



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 32

Commissioner: Honourable Justice Leo Barry

Tuesday

28 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding

Please be seated.

THE COMMISSIONER: Good morning.

Before we hear our first witness this morning, we received – I just saw it this morning, I think it came in last night – a notice in application for disclosure from Mr. Avis on behalf of the RNC. I have to say this is surprising and quite serious in terms of whether or not this inquiry will complete its work within the scheduled time.

We have a notice in application for so-called disclosure, the first portion of which I don't have much problem with, as I indicated yesterday. It's contemplated that all counsel will have the opportunity to test the qualifications of the proposed experts of the inquiry before testimony is heard.

And I specifically referred to, in addition to their qualifications, that I'd be scrutinizing very carefully whether issues deal with ultimate issues such as credibility which I reserve, as I'm instructed in law to do, for myself to decide or determine.

It is the extensive series of comments regarding the right of counsel, and specifically here the RNC, to have disclosure of all communications between the Commission and the proposed experts, which would bring us into a process of disclosure which would not be completed very quickly and which would lead to a serious disruption of this inquiry, and a serious delay in its completion and serious cost to the public Treasury as a result.

First of all, I should note there seems to be misapprehension on Mr. Avis's part with respect to the role of Commission counsel and with respect to the manner in which the Commission might interact with the proposed experts. And one particular example of what I take to be a misunderstanding is the reference to there being something unusual about Commission counsel communicating with the experts for the purpose of preparing questions to be put to witnesses, whether other experts or not.

We have – and I'm looking for my copy, a redacted copy, but I think counsel would be able to supply that – the letter of retention for the experts. The second paragraph 2(b) sets out they're being retained: To provide advice regarding such other matters within their expertise that may be identified by the Commission from time to time.

And if somebody thinks that this inquiry or any inquiry can identify appropriate questions to put to experts without discussing this with the experts, they're under a misapprehension, at least in an inquiry like this. There's never been a time when counsel was not aware, as far as I know, since back in December anyhow, that this would be done and was being done.

There was a case management meeting in January, but I think before that there were other meetings where the proposed experts were identified. And I know on December 7 Commission counsel notified all counsel of the retention, or proposed retention of Gareth Jones and Dr. Coleman, and subsequently on December 28 Sergeant Massine and counsel were requested for feedback. And from my recollection, and as far as Commission counsel on the short notice that we've had can recall, the feedback was along the lines of that which was received on January 4,

2017, at a case management meeting when counsel agreed that there had been fruitful discussions on the retention of experts.

Now, I would hope that this would have continued, this co-operative approach would have continued, to the end of the inquiry, but we see here with this application a radical shift in what I understand to be the position of the RNC. And I want, Mr. Avis, you to indicate, either now or after a brief break for you to consult with Chief Janes or whomever else you need to consult with – up to now, the RNC has been co-operating, as has the RCMP, not only co-operating, they've been very helpful in the Commission getting before it the information required not just to determine the circumstances of Constable Smyth's interaction with Mr. Dunphy, which was first phase generally of the Commission, but helpful, very helpful and co-operative with regard to our obtaining the information we need for Phase 2.

So I want you, Mr. Alyward – Mr. Avis, to indicate publicly to the Commission, has the Royal Newfoundland Constabulary decided to abandon this co-operative approach and to put roadblocks in the way of the Commission obtaining the information necessary for the Commission to fulfill its mandate of making recommendations regarding appropriate changes that might be made, if any, to the practices, policies, procedures, protocols and training of the RNC.

And I see that notice, whether intentional or not, as being, as I said, a significant break from that co-operative attitude. And as I'll mention in a moment, I'll see the comments regarding the right of disclosure from the Commission and the request or demand for disclosure, as having serious misapprehensions of the role of the Commission as opposed to the disclosure process which would be appropriate in a litigation proceeding which Mr. Avis refers to.

So that's one significant question that I have because, frankly, I am surprised. To say it mildly, I find it almost unbelievable that at this stage after, I think, virtually every witness we've had from the Royal Newfoundland Constabulary, particularly at the management side, have been open and transparent and helpful and co-operative and prepared, as far as I could see, to listen to opinions that might lead to change or opinions that might lead to recommendations that would lead to change.

Now we have, and just this morning – and this is why I'm addressing this before Chief Janes is called. His testimony is to commence this morning. I'm not sure if Chief James realizes the significance. If he does – the significance of the demand for disclosure and the consequences that might result, including, for example, waste of money or loss of money involved in having these individuals come to St. John's from other parts of Canada, and what's been spent in terms of their time in preparing their reports and so forth.

If these reports in their entirety are to be rejected, which seems to be the approach being taken here, everyone, including Chief Janes, should appreciate the cost to the public Treasury that will result, should appreciate the delay that's going to result, and I underline significant delay. And I don't know and maybe you have discussed this with Chief Janes and explained the full consequences, but just in case you haven't, Mr. Avis, I'm making that clear this morning.

And I want to know whether also – yeah, well, the questions that I'm putting here now have to do with: Is the RNC seeking to prevent the Commission from making recommendations that the terms of reference anticipate it hearing as a result of Phase 2 of this Commission?

The other point has to do with what I have been regarding as, or seeing as apparent co-operation between the RNC and counsel for Constable Smyth. And, Mr. Kennedy, I'm going to state this and I'll apologize in advance if I'm incorrect on it, but there seems to be a co-operative approach which would go to the benefit of Constable Smyth here if this Commission is barred from

hearing testimony, keeping in mind that that would be only after they're qualified to give that opinion, if they are qualified.

Is the RNC taking a path where they've decided they will co-operate with Constable Smyth in preventing the Commission from getting all the information which it seeks to get regarding his interaction with Mr. Dunphy? Because rightly or wrongly, from where I've been sitting and watching the interaction of counsel, you'll – and I think you've – Mr. Avis anyhow, I don't know if Mr. Kennedy is, I think Mr. Kennedy may have orally said this but it's apparent from the written applications that we had yesterday that there has been a bit of a co-operation.

And I'm not criticizing sharing of workload just in terms of if you have an issue which both of you would appear to have an interest in, I can see you sharing your workload. But I'm a big perplexed as to whether the RNC has decided to provide assistance to Constable Smyth's strategy – and, again, I apologize if in fact this is not the strategy – of taking steps to prevent everything coming out that should come out in this inquiry.

So that's, again, a somewhat surprising matter that's developed over several days rather than just overnight. But if I'm wrong, I'll hear from either Mr. Avis or Mr. Kennedy, I'm sure, in that respect.

Now, I'm almost my finished my remarks here. I repeat I'd like to know whether the RNC has now decided to change its approach from the co-operative approach which has been taken up to now, and if so, why is it. Has a conscious decision been made or is this the unrealized consequence of – because I think it is a consequence that will flow from the application for disclosure.

The only other point I think that I'd stress here is that, Mr. Avis, your remarks in the second part of your letter may be applicable to litigation but they're not applicable, as I see, to how this Commission is operating, particularly in light of the letters of – retainer letters that counsel were aware of, the notice that was given counsel – by the way – the notice that was given to counsel in terms of who was proposed as experts.

And you seem to be factually incorrect in terms of saying: Normally, such reports are provided in advance of litigation – well, I guess you're correct for litigation, again – along with the terms of engagement. Well, you had the terms of engagement and you had the reports, although, granted, with some unexpected delay but not considerable.

But when you say that normally they are supplied to the parties as though this was litigation, in a Commission setting, you're incorrect, I believe. The Cameron inquiry, for example, did not have expert reports filed before the experts were called. If you want to check that – I haven't had a lot of time to check it, but we do have the advantage of having one counsel who worked on that inquiry.

And then again you go on to say, you talk about the: It is apparent that the Massine-Coleman report has been evolving over the course of the hearings as a result of additional information provided, which is a most unusual approach to expert reports. Well, I'm sorry, I do not see how that can be an unusual approach to expert reports in an inquiry.

And I won't go back over it, but there has to be – the Commission has to obtain information through discussions, communication with the experts in order to fully appreciate what they may bring to the hearing with respect to particular issues, and in terms of the information they may provide regarding appropriate questions or lines of questions that might be taken. So set out as though there's something wrong with it, that experts might have been involved in assisting

inquiry counsel with their questions: that's wide open. It's been one of the terms of the retainer letters.

So do you wish to –?

MR. AVIS: No –

THE COMMISSIONER: – because I'll be putting questions regarding this to Chief Janes when he's called, so if you want a break, a brief break to consult with Chief Janes.

I'm particularly, and I don't know how strongly to stress this, I'm amazed – not just surprised, amazed is probably stronger – that we have this change from a co-operative approach to what appears to be a confrontational and inhibiting approach.

MR. AVIS: Well, I'll certainly like an opportunity to speak to Chief Janes. All I can say is I can assure you that there was no intention to delay or – well, anything –

THE COMMISSIONER: You'd have to be deaf, blind, and lame, Mr. Avis, not to realize this would result in a delay.

MR. AVIS: With respect, I don't appreciate that I would be deaf or blind or lame in any –

THE COMMISSIONER: No, I'm saying this generally as you know in the metaphor.

MR. AVIS: Yeah, well, I need to speak to Chief Janes because – yes, I need to speak to Chief Janes.

THE COMMISSIONER: Yeah, and I must –

MR. AVIS: I can say there is no – I can assure you there is no change in the co-operative attitude of –

THE COMMISSIONER: I don't see that. I don't see that here, Mr. Avis.

MR. AVIS: And my reference, the only benchmark we had to go by – like my only – the only concern we have, and I had no idea that – there's nothing wrong, for example, with as you say, with counsel in litigation or inquiry being assisted by their experts in arriving at the questions. I'm not saying – and if I've misstated it, that's an error.

Our only concern is, is that ordinarily – and this is all I'm trying to get to – when, in litigation you have the report first, after which the experts – of course they help you with questions, of course their opinion may vary so that they can sit in and hear evidence. My concern is, is that when that's the case, we have a report first so we know where they stand before they hear the evidence or, shall we say, become more involved in the process. And I'm concerned that it has – I'm not questioning anything on the part of inquiry counsel –

THE COMMISSIONER: Well, you are. But go ahead.

MR. AVIS: I mean – no, no.

THE COMMISSIONER: I'll mention that in a moment. Go ahead.

MR. AVIS: Only to the extent that the process is different than the regular litigation process. And there are reasons that we have that. The reasons in the litigation process are to safeguard

concerns such as tainting or – it's the experts I'm concerned about, taking their opinion and trying to mould it into what is happening. That's the concern there.

THE COMMISSIONER: Mould it into what is happening.

MR. AVIS: Yes.

THE COMMISSIONER: Well, that seems to be the same objection that's been taken by Mr. Kennedy. Is Mr. Kennedy not here today?

MR. AVIS: Mr. Kennedy unfortunately isn't here.

UNIDENTIFIED FEMALE SPEAKER: No, Commissioner, I'm here on his behalf today.

THE COMMISSIONER: All right. Okay. I'll take that into consideration.

MR. AVIS: (Inaudible.)

THE COMMISSIONER: I'm sorry, I didn't realize it before but –

MR. AVIS: I think – if I can –

THE COMMISSIONER: Sorry, go ahead.

MR. AVIS: I'd just like to speak to the chief.

THE COMMISSIONER: Yeah, I understand.

MR. AVIS: I regret that there seems to be a, you know –

THE COMMISSIONER: This is not a minor, this is not a minor issue. This is of major concern to myself as Commissioner –

MR. AVIS: Yeah.

THE COMMISSIONER: – in terms of whether I'm going to be able to complete my mandate within the time allocated. And don't forget to consult with the chief regarding whether there's been a decision on this.

I'm not meaning this in any way critical of Constable Smyth in terms of what might result from – for him in this inquiry, but has the RNC decided to go arm in arm with counsel and the strategy of Constable Smyth, correct though it may be. Because that, to me, seems to be the other – it may be unintended but the other consequence –

MR. AVIS: Well –

THE COMMISSIONER: – of the approach you're suggesting.

MR. AVIS: For what it – as I recall, in terms of the concern expressed there, I believe I expressed that to Mr. Kennedy as a concern that I had before he may have expressed anything like that to me. And these are concerns –

THE COMMISSIONER: Well, it seems like you've come together in a happy partnership, have you?

MR. AVIS: I really don't think that's a fair –

THE COMMISSIONER: All right, I'm –

MR. AVIS: I –

THE COMMISSIONER: I'm stressing –

MR. AVIS: I'm –

THE COMMISSIONER: I'm using terms such as this just to express my concern so that the chief, who I guess is here this morning, is it?

MR. AVIS: Yes.

THE COMMISSIONER: So that he hears directly from me –

MR. AVIS: Can I make –

THE COMMISSIONER: – the concerns that I have. Sorry, go ahead.

MR. AVIS: Can I make a suggestion to save time?

THE COMMISSIONER: Go ahead.

MR. AVIS: Can the chief be called to testify and I be allowed to discuss this with him at lunchtime and then you raise it then? Rather than delay the proceedings.

THE COMMISSIONER: Well –

MR. AVIS: And I may have an opportunity – it may – the break may be sufficient (inaudible).

THE COMMISSIONER: Well, that's – we can do that but I'm going to have to know upfront, I think – and you may as well consult with him unleashed on this. I want to know upfront has there been a decision made to change this co-operative attitude, approach that we've had.

MR. AVIS: Well, I can very briefly address that, but I can assure you that that's not the case. But, please, if that's what you want me to do, I'll address that with the chief right now.

THE COMMISSIONER: I think you should. And the other – briefly, and the other thing Mr. – sorry, I didn't mean to cut you off.

MR. AVIS: No, no go ahead, Sir. Go ahead.

THE COMMISSIONER: The other thing I want to stress is that you're treating this as though – when you talk about moulding the opinion to something, whether the facts or whatever, that is not the role of Commission counsel.

Commission counsel is supposed to be there and, yes, is leading witnesses and, yes, it may be – and this seems to be a concern that maybe Mr. Kennedy has raised it showing, I think, again, a misapprehension about how the inquiry process is to go. Because he's suggested I think, Ms. Chaytor, a number of times, has supposedly been trying to bring a witness around to a particular position when, as I see it, Commission counsel is entitled to do a form of cross examination.

They call their witness but they are entitled to put the questions that in fairness should be of interest to counsel from both sides or parties on either side, so that in this case, counsel, rather than trying to mould to a particular position, is putting questions that would be put, for example, in by Mr. Simmonds or Ms. Breen if it weren't put by Commission counsel. But it is quicker, more expeditious to have that out there by the time it gets to Mr. Simmonds and Ms. Breen.

MR. AVIS: Well –

THE COMMISSIONER: I'm thinking about some of the issues where it's been raised now. It could be the other way where, you know, it's you or Mr. Kennedy who might be wanting to cross-examine.

MR. AVIS: Again, if I – I do not believe I've made a single such suggestion about inquiry counsel, nor am I making –

THE COMMISSIONER: No, but I'm –

MR. AVIS: Nor am I making – please – nor am I making any such suggestion now because I have a good idea of what there are – you know, I understand.

THE COMMISSIONER: Well, the moulding though, when you make the reference –

MR. AVIS: Not them – sorry, Sir. It's what I'm talking about is in my experience with experts, they are easily tainted, not necessarily by any specific act of counsel, even in litigation. It's a concern I've had for years about experts wanting to say what you want them to say. Not that you were asking them to do that.

THE COMMISSIONER: But, again, the –

MR. AVIS: Anyway, that's just the perspective of –

THE COMMISSIONER: You'll be able to, you know, raise questions about the independence so-called, which I think is what you're referring to, or the possible lack of objectivity. But again, where you have an inquiry and where a lot of it has to do with the policy side of things, getting – not totally because those use-of-force opinions regarding the specific conduct of Constable Smyth.

But, anyhow –

MR. AVIS: Yeah, and –

THE COMMISSIONER: Why don't we just take a –

MR. AVIS: Sure.

THE COMMISSIONER: – brief break, five, 10 minutes. You can finish, if you had something else to say –

MR. AVIS: Well –

THE COMMISSIONER: – but take a brief –

MR. AVIS: No, let's –

THE COMMISSIONER: – break. Have your –

MR. AVIS: Let's go to –

THE COMMISSIONER: – consultation with –

MR. AVIS: – your issue.

THE COMMISSIONER: – with the chief.

MR. AVIS: Okay.

THE COMMISSIONER: And then I'm going to want to hear –

MR. AVIS: Absolutely.

THE COMMISSIONER: – up front, you know –

MR. AVIS: Absolutely.

THE COMMISSIONER: – whether we're going on confrontation or co-operation. And –

MR. AVIS: Well –

THE COMMISSIONER: – whether, as I say, your link to Constable Smyth's approach.

MR. AVIS: Well –

THE COMMISSIONER: And not that there's anything wrong with Constable Smyth or Mr. Kennedy's approach.

MR. AVIS: The confrontation, if I may say, is not with the commission or counsel, it's with the experts. And if it's come out the wrong way, that's my –

THE COMMISSIONER: How – well – you'll be heard with respect to if you have concerns about the qualifications of the experts, or you'll be heard if you feel they're going beyond their qualifications in dealing with an issue such as a comment on the credibility of Constable Smyth or any witness. That's not a problem. It's – you've gone much further in this application.

Anyhow, let's break for five minutes to 10 minutes and let me know if you need a bit more time, Mr. Avis.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

The Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Okay. Where do we stand?

MR. AVIS: Yes, I'd like to thank you, Commissioner, for giving us the opportunity to confer with the chief. I just try to indicate this: When I requested this I had absolutely no idea whatsoever that it would be as extensive as you suggest. And I have to say that with all – I mean how could I know?

More often the case is it's just a – you know, there's a letter of engagement and a few other things. You have to understand that in terms of your concern about trying to bring it to an end, I simply thought that, okay, you might not want to give us – you know, there is some – you know, there is still privilege, you're not bound by those provisions. But I had no idea that it would be that extensive – absolutely no idea.

THE COMMISSIONER: That extensive but that's what's there.

MR. AVIS: No, but I – the disclosure I'm requesting, like, for example, when I retain – I mean I also have a very strict view, personally, about the objectivity of my experts. For example, in a family case, I often don't want them to know which parent I'm representing because I want the child, any report on a child, not to be biased by the fact that I might even be paying the person.

When I was at the Lamer Inquiry I realized the reports are different; we weren't looking at some ultimate issue. I filed a letter of engagement, a follow-up correspondence and filed that with the reports. I had no idea, absolutely no idea, that it would be that extensive or cause that much trouble. That was not the intention and more than open to discuss another way – you know, is there some way to deal with it.

More importantly, just at this stage, you know, we want to be – I don't want to, if I may get into further argument about the matter, we've discussed the issue of concern that you have with the chief.

What I would like to say is this though: The chief has not seen either the reports or this application. We met Sunday and we were working over his testimony, you know, which is a lot of stuff to remember, you know what I mean. He's got all these policies, we were working on that. And when I got the report, I mentioned it to the chief and we discussed and he felt, look, I've got to get working on my testimony.

The reason I filed this right now is we are looking at the Massine report but it's going to take several, I got to say, evenings, late evenings, because I don't have any time. My only purpose of putting this in now is if I waited until we've had a chance to digest everything, it could be Friday which would be – I just wanted to get it out there.

But in terms of the questions you have for the chief, we're prepared to deal with those. And I think it would be useful for counsel and everyone to consider this before we have any further discussion on the application.

THE COMMISSIONER: Mr. Avis, that's not good enough. I want that withdrawn or else I've got to take a serious look at where we're going and scheduling and so forth, which is going to result in delay.

I want that application for disclosure withdrawn. You can replace it with a more specific or precise request for information if you are so inclined at the appropriate time when you might consider that to be necessary. But if we are embarking upon a confrontational approach on this matter, I have no choice but to consider where this thing is going in terms of scheduling and delay and so forth.

Because as far as I can see, there will inevitably be delay and plus we're getting into the problem of we have these experts who are in various parts of Western Canada. Are they all in Western Canada? I think, yeah.

MS. CHAYTOR: Yes, Alberta and BC.

THE COMMISSIONER: And they're scheduled to come on this coming week. So, you know, there's problems in that regard so ...

MR. AVIS: Well –

THE COMMISSIONER: It would seem to me that you should be open to having that withdrawn with leave to replace it if you still have concerns after you've thoroughly studied the Coleman report.

By the way, it should be kept in mind that because the inquiry has obtained a report from an expert does not mean that the inquiry is adopting the opinions or recommendations that are set out there. This is information which can be countered or qualified by information received from other sources, including your own, whether it be from the chief or from the members of the RNC that already testified.

The RCMP expert will be coming, is it tomorrow? Knapman?

UNIDENTIFIED FEMALE SPEAKER: Thursday.

THE COMMISSIONER: Thursday, Corporal Knapman. To some extent, his testimony relates to issues of use of force as does the Coleman-Massine. So I'm – I don't see how there would be any prejudice to the RNC from taking that approach, particularly if it's interested in receiving recommendations that might assist in improving its practices and so forth. And –

MR. AVIS: The RNC – you know, that's the nature of an inquiry process, Commissioner. I think the RNC has shown, both in the Reid and Power –

THE COMMISSIONER: Up to now, up to now it has.

MR. AVIS: You know, in the Reid and Power and in their approach to the Lamer Inquiry and in their approach to this. And I'm going to have to leave it up to the chief but our approach hasn't changed, we seem to have, you know –

THE COMMISSIONER: Well, I'm somewhat surprised that this sort of application would be made by the RNC without your having the instructions from the RNC to do it, you know. But I'll leave that between yourself and your client.

This is a major disrupting element which I thought I had made clear this morning. Now –

MR. AVIS: Well, I'm going to have to take –

THE COMMISSIONER: How do we – I thought that's what you were off, you were out to discuss with the chief?

MR. AVIS: I wasn't there – I was there to discuss the idea of co-operating with the Commission. You've put to him the notion that the co-operation is over and he's prepared (inaudible).

THE COMMISSIONER: Well, you know, words are fine. I want to see it in action.

Co-operation from the RNC with respect to this would be a provisional withdrawing with leave to put in a further application. We don't even know if you're going to conclude that you're going to need it, but if in fact you do need further disclosure once you've seen the – or seen it, once you've had a chance to study more closely the Coleman and Massine report.

MR. AVIS: Well, I've read that three times, I've been doing nothing but study it since I've received it.

THE COMMISSIONER: Right.

MR. AVIS: I'm going to have to take your – you know, I appreciate your position. I'm going to have to consider – I'll just have to consider that. I'm not –

THE COMMISSIONER: Well, how much time are you going to need? Because I don't see how – the chief is going to be the next witness. And, you know, I take it from what you said, the chief is going to indicate that the RNC wants to co-operate with this Commission.

The way we co-operate with this Commission on this issue is to – and without prejudice to yourself that I can see or to your client – is to withdraw it with leave to refile, should it become necessary.

Now, if you wanted a bit more time to consider that, we can do that. I'm sorry – we have another counsel.

MR. AVIS: Sorry.

MS. BUIS: Thank you, Commissioner.

I should note that I was speaking to Mr. Kennedy during the break. He intends to be here this afternoon and to have an opportunity to speak to your concerns raised this morning.

THE COMMISSIONER: Well, he may not be speaking to these concerns; this afternoon we have a witness scheduled. But I take it that he'll be here.

MS. BUIS: Yes, he will be.

THE COMMISSIONER: Yeah. The – thank you.

Do –

MR. AVIS: You know, at that stage without further, you know, responding and stuff, the only thing I might suggest is, is that, you know, the matter hasn't been set down and –

THE COMMISSIONER: Mr. – sorry, go ahead.

MR. AVIS: Just to say, what I need time to do is maybe consider leave to amend it. Because, you know, for example, original terms of engagement; with respect, I haven't seen them. And I've canvassed counsel; it's not on kiteworks and counsel here don't remember.

THE COMMISSIONER: There was to be a redaction.

MR. AVIS: (Inaudible.)

THE COMMISSIONER: I don't know if you have it there now. It was sent out, Mr. –

MR. AVIS: Well, I –

MS. O'BRIEN: It's – it is being redacted and it will be posted to all counsel, the engagement letter.

THE COMMISSIONER: Right.

And, well, if we have a copy to give them now or if we can get a redacted copy to give them quickly, the – I read out the salient portion, Mr. –

MR. AVIS: That may be so, Commissioner, I'm just saying I put that there. Now, I'm not the best with computers so when you told me it wasn't there, I thought, okay, I must have missed it, but I didn't. It's not on kiteworks and I understand no one's seen it.

Be that as it may, at this stage I don't know – you know I just need to consider this. I really do, to just –

THE COMMISSIONER: Well, I don't know how much more time you're going to need to consider it but we're going to break until you do. You let me know how much more time you need.

MR. AVIS: Well, I'll advise you as soon as I can.

THE COMMISSIONER: Sorry?

MR. AVIS: I need to meet with counsel and I'll advise you as soon as I can.

THE COMMISSIONER: Yeah, because I have to take certain steps in terms of, as you say, decisions regarding the scheduling and so forth, and I want to know what I'm proceeding under, under what's got to be dealt with, how much time it's going to take and so forth.

So we're – it's quarter to 11. Again, I don't see how there's prejudice in terms of, where you have leave to reapply, to have this thing removed as a barrier to our proceeding in a co-operative fashion on this inquiry. So I'd suggest that if we come back at 11:30, that should give you sufficient time to consider what's being suggested here.

MR. AVIS: Absolutely, Sir.

THE COMMISSIONER: Right?

MR. AVIS: Absolutely.

THE COMMISSIONER: And keep in mind that the – there's clearly leave to reapply, if you need leave to reapply. But I've made it clear for a long time now that it's no problem in terms of challenging the qualification of witnesses, if there's any misunderstanding about that.

I've made it clear that I'm going to be reserving decision as to the creditability of Constable Smyth or any other witness and it's not going to be experts that are going to be drawing that determination. And if you have anything further you want to specifically indicate that where assistance could be given, in terms of matters relating to this, then I'll hear from you. But –

MR. AVIS: With respect to the issue of, you know, our position with Constable Smyth, you know, the report begins with a critique of what he did and ends with saying he wasn't trained properly. That's the connection here for –

THE COMMISSIONER: Well, that's the opinion. That's the opinion of that –

MR. AVIS: Well, I understand, but that's the –

THE COMMISSIONER: That's not –

MR. AVIS: – connection in the report. You're saying we're here supporting –

THE COMMISSIONER: But that should be of interest to your client rather than having it blocked, shouldn't it? Shouldn't it be of interest to your client to hear what someone else who's had some – assuming the qualifications stand up, as I understand it – has had some considerable experience in the field, how he viewed it.

MR. AVIS: Absolutely. I mean, again, you know –

THE COMMISSIONER: But this –

MR. AVIS: I'll be back.

THE COMMISSIONER: But the –

MR. AVIS: Give me the time, Sir.

THE COMMISSIONER: You know, the –

MR. AVIS: We'll be back.

THE COMMISSIONER: As I'm reading your application, if successful, it would have the effect of the expert reports not becoming available and the RNC not having the benefit of whatever opinions or recommendations are out there from other somewhat qualified people anyhow.

And I don't – I'm at a loss to understand why the RNC would want that. It would seem to me they'd want all perspectives in information and viewpoints so they could be sure that any amendments to their procedures and so forth would be appropriate. So it seems to me they should be seeking more rather than less but the effect of this would be, if you're successful on it, the report would not be available to the RNC, they'd be and we'd be proceeding without the benefit of that opinion and/or information depending upon what report you're speaking about.

MR. AVIS: (Inaudible.)

THE COMMISSIONER: Anyhow I'll leave it with you.

MR. AVIS: Thank you.

THE COMMISSIONER: So 11:50 – 11:30, is that ...?

MR. AVIS: I guess –

THE COMMISSIONER: I am right, am I? It's 10:50 now I think –

MR. AVIS: That would be plenty of time.

THE COMMISSIONER: – roughly.

MR. AVIS: Thank you.

THE COMMISSIONER: Okay. Thank you.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now recessed.

Recess

MS SHEEHAN: All rise.

Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Go ahead when you're ready.

MR. AVIS: Thank you, Commissioner.

With the understanding, as you say not sure that we need leave, that we can reapply at any time, and we do not want to bring the hearings to a standstill, certainly, so my instructions are that we will withdraw it at this time and reconsider applying later.

THE COMMISSIONER: Okay.

Mr. Kennedy, you weren't here and I don't want to go through all those arguments again, but go ahead.

MR. KENNEDY: Yeah, I'd just indicate, Commissioner, I'd like to put Constable Smyth's position on the record.

I was aware that Mr. Avis was filing a document, the document that you have before you. I didn't know that it was going to be heard today; I would have been out here to deal with it.

But what I would suggest, Commissioner, is that we have no – not suggest, I'll put forward Constable Smyth's position. We have no interest in delaying the hearings; that the expert witnesses can be dealt with the same way that they would normally be dealt with.

You've indicated, Commissioner, on a number of occasions, yesterday and I understand again today, that the weight to be given to the expert's opinion will be for you and you alone to decide. That the normal criteria that would go into deciding the weight to be given to an expert's opinion is clear and it's outlined. And the issue of bias or – I use that term very loosely, Commissioner – is one that can be –

THE COMMISSIONER: Lack of objectivity.

MR. KENNEDY: Sorry?

THE COMMISSIONER: Lack of objectivity.

MR. KENNEDY: Lack of objectivity, better word, Sir. Thank you.

So, basically, at this point we have no intention of trying to slow the proceedings down so Constable Smyth, from Constable Smyth's position, we continue. As Mr. Avis has indicated, if there's any need to file an application – but I think there can be some further discussions with Commission counsel, too, that may obligate the need for that.

THE COMMISSIONER: They will be available and have been available. And, frankly, we were surprised that that hadn't happened here before the application. But in any event, thank you. I understand your position.

MR. KENNEDY: One last point, Commissioner.

THE COMMISSIONER: Okay.

MR. KENNEDY: I will indicate, though, so you're aware, that I am – there will be our – there may be an application to call an expert witness in terms of Dr. Coleman's report.

THE COMMISSIONER: Right. Okay, I'll –

MR. KENNEDY: But that –

THE COMMISSIONER: I'll consider that when I see it. But –

MR. KENNEDY: I just wanted to let you know that is something I am working on.

THE COMMISSIONER: Right. Just keep in mind now that – and I'm not sure what the issues are and I don't want to get into it now or put you on the spot regarding them, but I'm approaching it from the perspective that more information is better than less information when it comes to making recommendations as to the adequacy of training, whether there should be modifications in policy and so forth.

I understand your perspective. It might be somewhat different than other –

MR. KENNEDY: That's (inaudible).

THE COMMISSIONER: – parties because Constable Smyth, as you've pointed out, might disagree as to what he might be at risk of being classified as in terms of misconduct.

MR. KENNEDY: Yeah.

THE COMMISSIONER: But there is a risk for him because of the very nature of the procedure that he has a somewhat unique position and he's entitled to utilize the rules of evidence and the law generally in terms of protecting his position. But I've also understood him, and up to now, I think, it's generally been the approach that he's been co-operative in terms of getting information out, and with some qualification on that which I won't go into in terms of we have to consider some issues related to the phone records and so forth, but, generally, I have been proceeding on the basis that all parties are seeking to have the air cleared, the information out there for all to see and nobody, it is not going to help anybody if there is a black hole in terms of information that could have been received and hasn't been, so that's my only comments (inaudible).

MR. KENNEDY: Yeah, the issue, and again I won't go into great detail, but one of the issues I have with Dr. Coleman's report or some of the comments he makes and some of the conclusions

he reached is in relation to Constable Smyth's credibility which is the ultimate issue to determine (inaudible).

THE COMMISSIONER: Which again I won't – as you're aware and as I've stated this morning and previously, the inquiry is not bound to accept or to believe or to act upon anything that's presented by an expert. Just because an expert is called by the inquiry or by the Commission doesn't mean it's the Commission's expert and that everything that is in that report is the Commission's view point.

MR. KENNEDY: Yeah.

THE COMMISSIONER: In that regard, I'll just briefly say, a number of times you've referred to and I don't want to – I'm not saying this critically, I just explain it in context, you've noted that Commission counsel in your opinion was trying to bring a witness –

MR. KENNEDY: I have said that, yes.

THE COMMISSIONER: – to a particular position. And I will just refer you back, you know where the law's to be found, just refer you back to the notion that Commission counsel, while they call witnesses, I believe they are entitled to test the witness to some extent for the benefit of other parties who may not need it but in some cases you do, because there might be a party who is inadequately represented or not represented at all in certain situations and inquiries.

But the reason this many have happened at times is because the witness is testing – sorry, Commission counsel is testing the witness before passing him over to other counsel who will finish the questioning, if it's inadequate. So, and not all of them, we may have some disagreement in terms of how that applies here, but I would just say, I've been approaching it from a perspective that what's being set out by the Commission of Inquiry is not for the purpose of bringing them around to get a point of view, but to test them in terms of whether they considered A, B, or C or why their position differed at the interview with Commission counsel which is usually been the case, I think, when Commission counsel has tried to bring him back to a point.

And, you know, some people look at a glass and see it half full. Some see it half empty. I'm sure you and Commission counsel, and probably you and I, will at times look at the same thing and be seeing something different; read something different in terms –

MR. KENNEDY: I can indicate, Commissioner, that I've had no – or my client – we've had no great problems with the way this, or problems with the way this inquiry has been conducted. If so, I would be on my feet telling you that.

THE COMMISSIONER: Right.

MR. KENNEDY: You've made is clear, Commissioner, from day one, we've all operated under the basis that there are timelines to be met, that there are terms of reference that you have to write a report. The issue of the role of counsel is one that's dealt with fully in Ratushny and there's discussion that bifurcated counsel. We don't need to get into that today.

THE COMMISSIONER: Right.

MR. KENNEDY: My point is, Commissioner, here today is that there are reports there that we will deal with in the normal course of events.

THE COMMISSIONER: Right.

MR. KENNEDY: That the schedule can continue as far as Constable Smyth is concerned. The schedule will continue as you've indicated. And that I don't see any problem with the witnesses being called. I will discuss with other counsel as to whether or not – or to what approach will be taken.

But I will take – in fairness to Mr. Avis, Commissioner, if there's an application to be made of the sort that – I'm not trying to take the heat off Mr. Avis, but if there's an application to be made of the sort that's been filed, I will file that on behalf of Constable Smyth, if necessary.

THE COMMISSIONER: Uh-huh.

MR. KENNEDY: There's a – at this point, I think it's more important that we continue with the hearings and that we – the evidence – I can assure you, Commissioner, that what's in those reports, I'm not concerned. I will deal with, in the cross-examination, with some of the comments made by this expert and I will question his qualifications and his approach.

THE COMMISSIONER: Uh-huh.

MR. KENNEDY: Absolutely no problem with that.

So I guess I just wanted to come out and indicate that from our perspective, from Constable Smyth's perspective, we are not attempting to slow the hearing down. I wasn't back at my office working on a judicial review application, I can assure you, Commissioner. I was simply – didn't realize that we were – and to be fair, I don't like missing – when there's a good argument – I don't like missing it anyway, Commissioner, so –

THE COMMISSIONER: We suspected that might've been the case.

MR. KENNEDY: Yeah, so basically, I just wanted to reassure you, Sir, that we're ready and willing and want to proceed, as you've said.

THE COMMISSIONER: All right. I think, Mr. Kennedy, on that basis –

MR. KENNEDY: Yeah, I'm now going to depart again, Commissioner, if –

THE COMMISSIONER: No, that's fine.

MR. KENNEDY: – you don't have a problem and Ms. Buis with fill in.

THE COMMISSIONER: That's fine. We're going to call Chief Janes now in a moment.

Thank you.

And Mr. Avis, we have the terms that you've indicated that you'll be withdrawing the, as I understand, the application and deciding whether you need to reapply at some point.

MR. AVIS: That's correct, Sir.

Thank you.

THE COMMISSIONER: Okay.

All right, if we can go ahead now with Chief Bill Janes.

MS. CHAYTOR: Yes. Chief Bill Janes, please.

THE COMMISSIONER: Well, it's a long wait, Chief, to get on this morning. We apologize for the delay but as you might have noted there are a few issues that required resolution.

Okay. Go ahead.

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

CHIEF JANES: I do.

MS. SHEEHAN: Please state your full name.

CHIEF JANES: William Janes, St. John's, Newfoundland.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Good morning, Chief Janes.

CHIEF JANES: Good morning.

MS. CHAYTOR: Or afternoon. Still morning, okay.

Just a few exhibits please, Commissioner, to have entered through this witness. We have P-0027, P-0028, P-0709 through to P-0737, P-0740 through to P-0743 and also P-0748.

THE COMMISSIONER: So ordered.

MS. CHAYTOR: Thank you.

Chief, I understand you've been a member of the RNC since 1981?

CHIEF JANES: 1985, Ma'am.

MS. CHAYTOR: 1985.

CHIEF JANES: Should I respond to you or to the Commissioner?

THE COMMISSIONER: Oh, that's all right. It's easier to answer I think to the Commissioner – to the counsel when they're asking the questions.

CHIEF JANES: Yes, Sir.

MS. CHAYTOR: Okay. I'm just going to lead you –

THE COMMISSIONER: I fine I have that problem with the media too.

Go ahead.

MS. CHAYTOR: Okay.

Sorry, 1985 and that you have been chief since March 1, 2014, so almost three years ago now?

CHIEF JANES: Correct.

MS. CHAYTOR: Okay.

And perhaps you could tell the Commissioner then what it means to be Chief of the RNC?

CHIEF JANES: I guess it's a dual role. It's a managerial role and a leadership role. From the managerial perspective I have a team of people who report in to me and then there's people who report to them dealing with labor relations issues and human resource management issues, financial matters. So it's the management side to the business.

And then as chief there's a leadership side as well. In terms of setting some goals and objectives for the organization, bringing the team together to try and achieve those goals and objectives. We do that through a corporate plan and that corporate plan is in line with the Department of Justice plan as well, so I would describe it as a dual role.

MS. CHAYTOR: Okay.

And who reports directly into you?

CHIEF JANES: There's two deputy chiefs, one that looks after information management and CID. There's another deputy chief who looks after Corner Brook region and Labrador West patrol and operational support in other branches, then there's an executive director, she reports in to me. She looks after a lot of the business side of the organization, then there is media relations, defence co-ordinator, legal staff. I think that's everything.

MS. CHAYTOR: Okay. And as of April 2015, did any members of the PSU report to you?

CHIEF JANES: No.

MS. CHAYTOR: The Commissioner has heard some evidence on certain items. There was a dotted line of reporting from Constable Smyth or Acting Sergeant Smyth to you?

CHIEF JANES: On an organizational chart?

MS. CHAYTOR: It's not on the chart but there's been some evidence that there were certain things that he would or the member of the PSU, and that happened to be Constable Smyth at that time, would report to you on.

CHIEF JANES: Well, typically the person in PSU, the Protective Services Unit being, for example, Acting Sergeant Smyth at the time, he would be interacting with the Premier and the Premier's staff. So what I saw in my role as chief was is that in preliminary meetings that I would interact with, and if something significant came up in terms of the structure, if the Premier wanted, in preliminary meetings that I would attend and be part of the discussions with the Premier in terms of what the goals and the expectations were of the Protective Services Unit.

In the same way, if my staff were going to be meeting with the CEO of Eastern Health or the President of the University, I'd attend that meeting as the heads of organizations to be involved in preliminary discussions, but on the day-to-day operations of the Protective Services Unit, in terms of, you know, our human resources and financial matters and the running of the unit, there'd be no reason for them to report to me.

MS. CHAYTOR: Okay. And as chief then of the RNC, who do you report to?

CHIEF JANES: I report to the minister by legislation.

MS. CHAYTOR: And that would be the Minister of Justice and Public Safety?

CHIEF JANES: Correct.

MS. CHAYTOR: Okay. And that's on administrative matters?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

In the course of your employment with the RNC, have you or did you work with Paul Davis?

CHIEF JANES: Yes.

MS. CHAYTOR: And in what capacity did you work together?

CHIEF JANES: We worked together in the same CID office in the early 1990s. It was break and entries and property offences and those types of things. We worked in the same office but we were not partners.

MS. CHAYTOR: Okay. And around how long did you overlap in the same office?

CHIEF JANES: Two years maybe, one to two years.

MS. CHAYTOR: Do you have anything other than a professional relationship with him? Is he connected to you in any other way?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

And in the course of your employment with the RNC did you also work with Joe Browne or under Joe Browne?

CHIEF JANES: I was an inspector in operational support when he was chief of police.

MS. CHAYTOR: Okay.

And do you have anything other than a professional or a colleague relationship with him?

CHIEF JANES: No.

MS. CHAYTOR: As chief of police, do you have contact with the premier's office, other than what you've already described in terms of the PSU and meetings, along those lines?

CHIEF JANES: I can say by reviewing the disclosure to arrive here today that on occasion we would share information with them, as it relates to media relations issues, so that they would be aware information would be going out to the media.

MS. CHAYTOR: Okay.

CHIEF JANES: In the same way, it would happen more often that I would share that information with the Department of Justice media relations office.

MS. CHAYTOR: Yes, would that be the normal chain of communication in through the Department of Justice and Public Safety or would it be directly into the premier's office?

CHIEF JANES: I can think of two occasions we sent information. And it would typically go to both at the same time, simultaneously.

MS. CHAYTOR: Okay.

CHIEF JANES: Otherwise, it would be all Justice.

THE COMMISSIONER: So you say twice you sent information over what period, Chief?

CHIEF JANES: On my time as chief, three years.

THE COMMISSIONER: For your whole time, just twice?

CHIEF JANES: Yes, Sir.

MS. CHAYTOR: Okay.

And one of those occasions was dealing with the Dunphy shooting, Mr. Dunphy's shooting.

CHIEF JANES: Correct.

MS. CHAYTOR: Okay. And the other occasion would have been something dealing with the premier's office or with –

CHIEF JANES: It was a media request as to how many risk assessments or threat assessments, whatever the terminology being used now is. It was a request from the media as to how many of those have been done in a block of time. We gathered the information and shared it with the media. Typically, we'll do that if it's something that they would be successful in an ATIPP request anyway, so it's just being –

MS. CHAYTOR: Okay.

CHIEF JANES: – just trying to keep the flow of information going. And when we shared it with the media, we advised the premier's office that we had, through their media person, Heather MacLean maybe – we advised them that we had shared it because it was, I guess, risk assessments in relation to the people in that office. So it would be reasonable for them to know the media have the information.

MS. CHAYTOR: Okay, so both of those –

THE COMMISSIONER: Sorry, when the –

MS. CHAYTOR: That's in, that's in –

THE COMMISSIONER: The second time was when? Before or after Mr. Dunphy's shooting?

CHIEF JANES: After.

MS. CHAYTOR: That's also in relation to Mr. Dunphy, I understand. And that's in the immediate few days afterwards, that was a CBC request, I understand.

CHIEF JANES: I don't know the timing, but it was a request as to how many risk assessments or threat assessments that had been done or how many – no, how many threats had been received, how many threats had been received in relation to it, I think.

MS. CHAYTOR: That's right.

CHIEF JANES: Something along those words. It's in the email.

MS. CHAYTOR: So the only two times were both in the immediate aftermath of Mr. Dunphy's shooting and in relation to that matter or arose due to circumstances surrounding that matter.

CHIEF JANES: It arose – I guess, logically, the media are linking the two. It's all a story. I can't tell you the timing of the second request; I'd have to look that up.

MS. CHAYTOR: Okay.

Was the level, type and frequency of the executive office of the RNC's contact with the premier's office the same throughout the various provincial governments under your time in executive office?

CHIEF JANES: Yes.

MS. CHAYTOR: And how many administrations would that be now?

CHIEF JANES: Well, I've been with the executive team for seven years, so I guess it would be – by administrations I guess you probably mean premiers.

MS. CHAYTOR: Yeah, premiers.

CHIEF JANES: Approximately five, I guess.

MS. CHAYTOR: Okay. All right.

So in terms of any suggestion that there was more contact, or a more substantial relationship between the RNC executive and the premier's office while Paul Davis was premier, how would you respond to that?

CHIEF JANES: There was no extra communications between the chief's office and the premier's office; it was the same as previous premiers.

MS. CHAYTOR: Okay.

How well did you know Constable Smyth prior to April of 2015?

CHIEF JANES: I think we had worked one shift together on patrol many, many years ago – I'm sure of it. And I'd served as part of the Historical Society's executive committee. He served there with the Historical Society, so we went to some board meetings together.

MS. CHAYTOR: And so you were both on the RNC Historical Society, is it?

CHIEF JANES: Yes, that's correct.

MS. CHAYTOR: Okay. And you'd have no connection to him, family connection, of – anything outside the RNC, no family connection or a personal connection?

CHIEF JANES: That's correct.

MS. CHAYTOR: Okay. And what was your overall understanding or impression of his reputation as a police officer or one of your members.

CHIEF JANES: He was very intelligent, hard-working, a lot of initiative. He had a reputation for being a person who would be an organizer, in terms of helping less fortunate people. From his early days until now, he would be on a regular basis somebody who would organize people to – or be a leader in terms of helping charities.

And he would be a type of person who would be able to articulate himself well in a report and, if he was given a task, it would be completed. He was dependable.

MS. CHAYTOR: Okay, thank you.

Okay, I'm going to turn now to the history and some background on the Royal Newfoundland Constabulary. And we have –

THE COMMISSIONER: Sorry, just to finish that –

MS. CHAYTOR: I'm sorry, before you leave, then.

THE COMMISSIONER: – if I might, yeah. Ever see any incidents of short temper with Constable Smyth in the course of his policing duties?

CHIEF JANES: No, Sir.

THE COMMISSIONER: So he maintained a professional approach, as far as you are aware, in his conduct as a police officer?

CHIEF JANES: Yes, Sir.

THE COMMISSIONER: Thank you.

MS. CHAYTOR: Thank you, Commissioner.

Okay, so I'll turn then to the history and background of the Royal Newfoundland Constabulary. And if we could have, please, P-0709. This is a document – thank you, Chief – that you prepared, which is helpful in answering some of the questions that we pose.

And right now, I'm going to look at questions – your answers to question 1 and 2. Even though it has my name on it, this is not my – I'm not the author. These are questions that I had posed in anticipation of your evidence that I didn't get a chance to canvas with you in your interview.

So in terms of an overview of the RNC's history, you've given a number of bullet points here. Perhaps you could take the Commissioner through this, please.

CHIEF JANES: Of course, I'll be quick. In 1729, Governor Orsborne appointed magistrates and constables in seven different districts throughout the province; and in 1871, with the departure of the regiment – or sorry, the military, the RNC was – or the Constabulary was formally established in the province.

In 1949, the Confederation brought the Royal Canadian Mounted Police to Newfoundland and Labrador, and instead of policing the province, the Royal Newfoundland Constabulary patrolled St. John's. In 1982, '84 and '86, there were three expansions of the Royal Newfoundland Constabulary into additional geographic areas, and there's been no change in our geographic area since 1986.

MS. CHAYTOR: Okay.

And then under question 2 here, the growth in numbers of your members up to current, so from 1994 you had – in January 1994, there were 336 officers and as of February 2017, 418. And perhaps you could just speak to the four bullet points that you have here.

CHIEF JANES: Oh, we're down to 417; a fellow came in and retired yesterday.

But in terms of these four bullet points, what that explains is some of the areas where the additional officers went into video analysis, crime analysis, surveillance teams and drug enforcement organized crime. As the number of officers increased, some of it was because of the demands in policing and the specialization of policing. And these are just four examples of the types of areas of police work that didn't exist in 1994 that we now have police officers doing that work now.

MS. CHAYTOR: Okay.

Changing-with-the-times type of work, yes?

Okay, and in terms of a date the RNC members beared side arms, June 14, 1998.

CHIEF JANES: Yes, Ma'am.

MS. CHAYTOR: Okay.

And question number 3 here is statistics on crime patterns or trends in the province, and in particular violent crime including homicides. And perhaps you could just, please, speak to the information that you have there.

CHIEF JANES: Yes, so the first bullet indicates that we – if you go back the last six or seven years we're averaging approximately four homicides per year in Newfoundland and Labrador. And in the year of 2014, as compared to 2015 – the 2016 stats would be only preliminary now, so I dealt with that year – violent crime in St. John's had increased by 12 per cent year over year; violent crime in Newfoundland increased by 9 per cent; and violent crime in Canada increased by 2 per cent, year over year.

MS. CHAYTOR: Okay. And is that from 2014 to 2015?

CHIEF JANES: Correct.

MS. CHAYTOR: Okay. And do we know, is that a trend or was this an abnormal year? In terms of St. John's, in particular, and the Island or the province certainly seems to be up in terms of violent crime across Canada. So I am just wondering was this just an anomaly that year or has that been a trend?

CHIEF JANES: Well, the increases wouldn't necessarily be as dramatic, but it is an increase in violent crime. And I would say not just an increase in violent crime, but the severity of the crime incidents are increasing as well. So it is part of an ongoing pattern, yes.

MS. CHAYTOR: It's an ongoing pattern.

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. So this wasn't just a peak or a spike for one particular year. You've been seeing it climb steadily for the past few years.

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

And in terms of violent crime, then, you list under – there's three here that you list: sexual assaults, robbery and increase in firearms. So perhaps you could speak to the statistics that you've provided there.

CHIEF JANES: So we see an increase there in sexual assault is up by 35 per cent year over year, and I don't think that's because there are more sexual assaults occurring. I think it's the relationships that we've been able to build with groups like the Sexual Assault Crisis and Prevention Centre, the sexual-assault nurse examiner at the hospitals –

THE COMMISSIONER: Sorry, I can't hear you.

MS. CHAYTOR: You need to lean in a little, please.

THE COMMISSIONER: Thank you.

CHIEF JANES: No trouble.

So I'll start again. It is not because I think there are more sexual assaults, or we believe there are more sexual assaults; it's because we've reached out to different stakeholders in the community, such as the Sexual Assault Crisis and Prevention Centre, the sexual-assault nurse examiners, women's shelters, and I think it's to some degree a change in the attitudes in our community that more people are willing to come forward and file their complaints and seek help from the RNC.

In terms of the robberies being up 14 per cent, that is gradually increasing every year. It's being driven by drug addiction for the most part, and it is either people are committing the crime so that they can buy drugs or they are committing the crime because they are impaired by drugs.

And in terms of the firearms use, it's dealing with armed robberies, it's dealing with home invasions and it's dealing with drug offences that we are seeing more of.

THE COMMISSIONER: How much are the firearms up, did you say?

CHIEF JANES: There is no percentage that I have in terms of it being up, and I don't have that because it is spread out of over three different areas. The first area being in terms of the armed robberies, I know that last year there were 20 armed robberies where a firearm was used. And in terms of home invasions, we are seeing firearms being used, and as well in terms of people who are involved in drug trafficking, we are seeing an increase in the use of firearms there.

MS. CHAYTOR: Okay.

And your first point where you say Newfoundland and Labrador reaches approximately four homicides per year, how long has that been an average?

CHIEF JANES: Oh, for many years.

MS. CHAYTOR: For many years. And when you say an average, I take it you took a number of years and, you know, so ...

CHIEF JANES: I looked at the chart and I looked back over six or seven years, and it would average out to about four a year over six or seven years.

MS. CHAYTOR: Okay. So it's not so much an increase in homicides.

CHIEF JANES: No.

MS. CHAYTOR: It's been fairly steady at around four a year for a number of years.

CHIEF JANES: Correct.

MS. CHAYTOR: Okay. All right.

If we could bring up, then, 0743, please, and this is also a document that you put together for us and it's measures taken by the Royal Newfoundland Constabulary in the aftermath of Judge Luther inquiry to address some of the recommendations that came out of that inquiry. So thank you again for putting this together.

Okay. And so the first recommendation was to – for the RNC to make available a “digital cell phone for each police car being used on patrol.” And that was implemented. And I take it, since then, the use of cellphones – in fact, I understand your officers have their own cellphones. Isn't that correct?

CHIEF JANES: Depending on what division you work in. Patrol they would be assigned to the vehicle; CID they'd be assigned to the person.

MS. CHAYTOR: Okay. And Recommendation 30, it was recommended the RNC replace the long batons, and that was implemented with the collapsible batons.

Thirty-two recommended “the RNC training program for dealing with mentally ill persons be fully developed and put in place no later than June 30, 2004 and that the necessary time and resources be made available to the person responsible for its development to complete this work.”

And perhaps you could speak to what exactly is here and what the RNC has done in terms of implemented, and then you say the current standards. So what are the current standards on this issue?

CHIEF JANES: So the current standards would be the training that's provided to our officers. The first two are provided during the cadet training program.

The first is called Changing Minds. It's a program of the Canadian Mental Health Association and it provides tools to recipients to help recognize mental-health issues.

The second program provided to our cadets in training is the Applied Suicide Intervention Skills Training. It's provided to significantly reduce incidence of suicide. The ASIST provides intervention skills and help to build a community suicide prevention network.

MS. CHAYTOR: And, again, that's done in the cadet training?

CHIEF JANES: Correct.

MS. CHAYTOR: Okay. Yes.

CHIEF JANES: The next one is the Mental Health First Aid. We received funding from a source and put the training off for our staff. It assists officers in recognizing various mental-health issues, to provide strategies to reduce further harm and provide the initial assistance towards wellness. I guess it would be similar in principle to your traditional first aid, and this is mental-health first aid.

The R2MR is the Road to Mental Readiness, and it's a program that we've provided to our staff and it's designed to reduce stigma and building resistance to stress for employees.

And our work in terms of mental health has been part of our Corporate Plan for the last three years, and in terms of that Corporate Plan, we've put off the Mental Health First Aid and the R2MR training I mentioned. We've been liaising with community stakeholders on mental-health issues. We've been researching our call for service, mental-health calls services that we receive, and we're receiving approximately 2,000 per year that would be defined as primarily mental-health calls, but in addition to that there are other calls that are mental-health issues are underlying the call.

We shared information with the health authority and they were able to increase the hours for their mental-health crisis response unit from 40 to 84 hours based on our research. And we've also presented to the All-Party Committee on Mental Health and Addictions, and that was on the topic of having a police officer and a mental-health professional responding to mental-health crisis or responding to crisis together, and its notice to (inaudible) this model.

MS. CHAYTOR: Okay, and is there currently any training program that's mandatory for all officers every so many years to deal with these types of issues?

CHIEF JANES: No. We have a committee put together that's working on the mental-health issue and they are going to be putting together a plan in terms of how we move forward. We've taken a lot of steps out of this part of our Corporate Plan, but we have a committee put together to look at the road forward in terms of mental health for our own employees and interacting with people in the community with mental-health challenges.

MS. CHAYTOR: Okay, and sometimes the term mental health gets used, and I understand a lot of the situations that police officers would encounter certainly deal with people who may have mental-health issues, but also vulnerable individuals.

Is there anything comparable for dealing with vulnerable people, whether it's due to mental-health issues or otherwise?

CHIEF JANES: We have the regular training day that happens with our patrol officers, and there are people from many different groups who come in who would be classed as special-needs persons or vulnerable groups, and they provide presentations to our front-line staff, helping to recognize somebody who is in that group and the appropriate way to interact with them once we come in contact with them. So there have been a number of presentations from specialty interest groups or people who represent vulnerable groups.

MS. CHAYTOR: Yes, and I'm also thinking about people who may be in some form of crisis for whatever reason, whether it be economically disadvantaged, disenfranchised with government systems or disillusioned, I guess, or people who are in crisis because of abusive relationships, that type of thing.

Is there anything more broad that is done in terms of any training of the officers?

CHIEF JANES: I can't think of something that would fit into your criteria right now, but it may come to me.

MS. CHAYTOR: And it may be that my question is too broad, but I'm just trying to think of other ways in which people may be in crisis and if there is any training other than mental-health type of training. Okay, recommendation, then we can move on, and if you think of something, Chief, by all means it's –

CHIEF JANES: Thank you.

MS. CHAYTOR: – you can let us know.

And Recommendation #33: "It is hereby recommended that the RNC acquire a minimum number of Tasers" Okay, and that was implemented. "... RNC awaited the outcome of Braidwood Inquiry" and that situation.

Thirty-four "hereby recommended that the RNC, within 12 months of the release of this report, provide a one day seminar to all its members," including the following, and that was to speak specifically to the report: "A minimum one hour presentation highlighting the most recently developed RNC training on mental illness and appropriate police response; ... Current Mental Health Act issues; ... The status of all RNC agreements with various health boards in the province pertaining to the apprehension and transport of mentally ill persons; and ... Updates in Taser training and deployment."

And I understand that that seminar did take place. And from what you're telling me, there hasn't been a similar training or a seminar, though mandatory for all officers since.

CHIEF JANES: Well, this would overlap with the Mental Health First Aid training in terms of this was in relation to current mental-health issues and – but I'll have to give your question some thought.

MS. CHAYTOR: Okay. Thank you.

And then Recommendation 35 "recommended that the RNC amend its policy and procedure manual to ensure that in major incidents, such as police shooting, that; Incident officers are clearly identified"

What did that mean, Chief, for the officers to be clearly identified? Identified within the organization or identified more broadly than that?

CHIEF JANES: Identified at the time of the incident.

MS. CHAYTOR: Okay. Identified to whom?

CHIEF JANES: To those who would be responding to the incident.

MS. CHAYTOR: Okay. All right.

THE COMMISSIONER: Sorry, I couldn't hear that.

MS. CHAYTOR: To those who would be responding to the incident. So I take it you mean the investigators?

CHIEF JANES: Correct.

MS. CHAYTOR: Okay.

“Incident officers are removed from the scene as soon as possible ... Incident officers are provided with all necessary counselling and reasonable time away from active duty”

And I understand your policy covers this. And there’s a three-day mandatory leave for officers involved. And in terms of counselling, there’s your EAP program and your Critical Incident Stress Debriefing.

“Incident officers not be alone together until full statements are taken, unless in the presence of a third party such as a counsellor or member of the clergy” And this is also included in your policy, your current policy in your firearms policy.

And what would be the importance of that, Chief, that the –? So this would contemplate, obviously, a situation where more than one officer would have been involved in a shooting-related incident. And why would it be important that they not be alone together until full statements were taken.

CHIEF JANES: I’m not familiar with the full details of the report, but it would seem to me that it would be appropriate that they would speak to the person who is going to interview them first rather than each other, so that people are not sharing information that one is aware of that the other is not. Two people can be in the same situation. Somebody sees something and then the other person doesn’t, and I guess it would give it a truer version of their recollection of the matter if they were done separately.

MS. CHAYTOR: Okay, so to avoid any potential contamination of their versions by talking about the matter together?

CHIEF JANES: Correct.

MS. CHAYTOR: Yes.

And “... An incident officer never be the person required to notify family members”

Okay, and these are covered in your firearms policy, and you’ve listed the sections here under 21. And that’s the 2016 policy, but I can confirm or you can confirm for the Commissioner, but these sections were also similar in your earlier firearms policy, which the date, I believe, is maybe 2010, 2012 was your earlier policy.

CHIEF JANES: Yes, Ma’am.

MS. CHAYTOR: Yes.

And then Recommendation 36 recommended “the RNC develop an organized comprehensive database, consistent with principles of patient confidentiality ...” – okay – “... when dealing with mentally ill persons who are dangerous.” And that’s “Covered in CPIC under ‘special interest police’ for persons with behaviour which may pose danger or cause concern for safety of others or found not criminally responsible in a case due to mental disorder.”

And I take it there’s a flag placed on file so that police officers would be alerted to that being the case.

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. And when I say files, I mean in a CPIC system, I guess.

CHIEF JANES: Yes.

MS. CHAYTOR: And then “It is hereby recommended ... the RNC actively participate in future consultations in relation to a ... Mental Health Act and the provision of mental health services throughout the Province and ... the Minister ... invite them to do so.” And that was accomplished and there was a liaison person put in place.

Okay. And is that liaison person – is that role still in place for any ongoing discussions in terms of any amendments that may be required?

CHIEF JANES: I think it’s six to 12 months ago since I discussed it with someone, but as far as I know, yes. I haven’t had a recent discussion on it.

MS. CHAYTOR: Okay.

All right, unless you have any questions on that, Commissioner, I’m going to move on.

THE COMMISSIONER: Sorry, the last comment, was do you have a person who is now a liaison or –?

CHIEF JANES: To the best of my knowledge. It’s been six months since I discussed it with anyone –

THE COMMISSIONER: Right.

CHIEF JANES: – but to the best of my knowledge we do.

Deputy Chief Singleton did it for over a decade and he passed it on to someone. And I haven’t had any recent discussions on it, but to the best of my knowledge, we do, yes.

THE COMMISSIONER: All right. Thank you.

MS. CHAYTOR: Then in terms, Chief, of your connections or contacts with the RCMP, have you ever been on any joint operation or task force with a member or members of the RCMP?

CHIEF JANES: Yes, I have.

MS. CHAYTOR: Okay, and perhaps you can tell the Commissioner when that would have been and how often that happened in the course of your career.

CHIEF JANES: There were two occasions. I worked in joint forces drug operations out of the RCMP building for about a year and a half. And on another occasion I worked on a file, Operation Remedy, and there was one RCMP officer who worked on that with our team. They were the times that I worked in a joint operation with the RCMP.

MS. CHAYTOR: And when did that happen, what time period?

CHIEF JANES: If I looked up my CV, I’d be able to tell you.

MS. CHAYTOR: Okay.

That's fine. If you wish to look, that's fine, but can you give us a –?

CHIEF JANES: This contains documents that I released to you and that you released to me.

MS. CHAYTOR: That's fine.

And so that would have been, I take it, some time ago, though?

CHIEF JANES: Yes, in both – in the first case –

MS. CHAYTOR: And for the record, that's P-0710, is the CV of Chief William Janes.

CHIEF JANES: So Operation Remedy was from February 2004 to October 2005. And the RCMP/RNC Drug Section, the joint forces Drug Section, was from August 2001 until February of 2003.

MS. CHAYTOR: Okay. Thank you.

In this province, is there a particularly close working relationship between the RNC and RCMP?

CHIEF JANES: We have many joint operations doing different functions.

MS. CHAYTOR: Okay.

In terms of the individuals who were involved in the investigation in this matter, we had the lead or primary investigator being Corporal Steve Burke. Did you know him prior to the incident?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

And we also have Kent Osmond, I believe, Sergeant Kent Osmond. Did you know him or have any dealings with him prior to?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

Did you know any of the other individuals who were taking the lead on behalf of the RCMP in the investigation?

CHIEF JANES: Not to the best of my knowledge, no. I don't know what their full team was, but not that I know of.

MS. CHAYTOR: And I understand that you, as chief, also sit on a couple of provincial executive committees along with other management of the RNC and, of course, there would also be your counterparts; your counterpart from the RCMP, the assistant commander, would also sit on that committee as well as other members of management of the RCMP.

So in terms of those committees, I believe there are two, is that correct?

CHIEF JANES: Yes, there's the Criminal Intelligence Service of Newfoundland and Labrador that deals with the intelligence side of organized crime. We meet once to twice per year and we

discuss the administrative issues around the running of the Criminal Intelligence Service that reports into a national body as well.

And there's the Combined Forces Special Enforcement Unit, which is the operational side of dealing with organized crime in our province. We probably only meet once a year as a group on that, and myself and the commanding officer of the RCMP would be at those meetings.

MS. CHAYTOR: Okay.

Is there anything else, Chief, that I haven't covered in terms of the nature and the frequency of your contacts with the RCMP?

CHIEF JANES: We would periodically discuss an issue that would overlap our two organizations. It would be something that we would both be using the same service; for instance, a radio service. They run the radio service and we are users as well.

MS. CHAYTOR: Okay.

All right, I am going to move on now then in terms of – and speak to you a bit about the investigation of serious incidents which involve one of your officers.

So how currently are serious incidents involving RNC officers investigated if it were to happen within the RNC jurisdiction? We know of course, in Mr. Dunphy's case, that was RCMP jurisdiction, but if there's a serious incident involving one of your officers happening in the RNC jurisdiction, how are those matters currently investigated?

CHIEF JANES: Well, there's a new discipline policy that was issued a year and a half, two years ago and there's a committee that comes together to look at an incident. I mean, we're going to make the assumption now that this is a serious incident of a criminal nature. We have an MOU in place with the Ontario Provincial Police to investigate RNC officers who there's an allegation or an issue in relation to serious criminal matters.

And, but there is a committee that comes together and has a discussion to determine whether the matter will be investigated by the RNC, investigated by the RNCA and reviewed by an outside agency, or investigated by an outside agency.

MS. CHAYTOR: Okay.

And if we could bring up, please, P-0033, and this is your Use of Force Policy and Procedure which was in place as of December 2012, which I understand would have been in place – and I am going to need page 10, please, of this document, on the bottom of the page. This would have been in place at the time of the incident with Mr. Dunphy and – okay, section 12 is what I need so here we go.

All right, section 12. Here we go: Use of Force Investigations: "In accordance with the provisions of the Memorandum of Understanding, the Chief of Police may request the services of the Ontario Provincial Police, Criminal Investigation Bureau, Major Case Management Section to act as investigators in circumstances where serious occurrences have taken place involving the actions of one or more police officers of the RNC, including instances of serious injury or death."

And then if we could have – oh, I'm sorry, then 12.2: "If a police officer is involved in a discharge of firearm or any other Use of Force resulting in injury or death outside his/her jurisdiction, whether on or off-duty, the police agency responsible for that jurisdiction shall

conduct the investigation of the incident. However; the Chief of Police may designate the RNC Professional Standards Section to conduct an internal” investigation, I guess that should be, “to ensure compliance with the RNC Act or any other relevant statutes.”

So in terms of what happened with respect to Mr. Dunphy’s shooting, I understand 12.2 would have come into play.

CHIEF JANES: Yes, Sir.

MS. CHAYTOR: Okay.

And in terms of you appointing a designate of the RNC Professional Standards Section to do an internal investigation, would that be, in this case, the internal investigation that Sergeant Grant Little of Saskatoon completed?

CHIEF JANES: That’s correct.

MS. CHAYTOR: Okay. And if we could have P-0034, please.

And I just want to – this is your updated Use of Force Policy. And I’ll go to page 16, please, Madam Clerk, section 16 in case my dates or pages are wrong. And can you make it a little bigger for me? Thank you.

I’m just going to scroll down to section 16. So we’ll see that it’s similar but: “In accordance with the provisions afforded under a *Memorandum of Understanding and/or Letter of Agreement* the Chief of Police may request the services of an outside policing agency to act as investigators”

And the changing in words here, you don’t specifically refer to Ontario OPP anymore, even though I know and we’ll look at your current MOU, but I know that you did renew your MOU with Ontario Police – Provincial Police. And now it says that you will – may request the services of an outside policing agency.

What is intended by outside policing agency? Does that mean that it would have to be a force outside of the province or are you contemplating that the RCMP could be considered for situations that happen within the RNC’s jurisdiction?

CHIEF JANES: That would be reflective of other occasions in the last couple of years where we used other police services from other parts of Canada to do a criminal investigation for us. So when this was updated it was reflective of the fact that we had not just used the OPP but other police services from Ontario to do investigations for us.

MS. CHAYTOR: Okay, so the outside police agency is intended to mean outside the province?

CHIEF JANES: We have as well had the RCMP conduct criminal investigations for us, but they would not necessarily be of a serious nature as this inquiry addresses.

MS. CHAYTOR: Okay.

THE COMMISSIONER: So you mean the RCMP within the province that would investigate?

CHIEF JANES: That’s correct, yes.

They’ve done other criminal investigations of police officers, but I don’t think they would hit the threshold of a serious nature but something that we would want an independent investigation for.

MS. CHAYTOR: Okay.

And so what types of criminal investigations have they carried out for you?

CHIEF JANES: It would be conduct issues that would be significant and that we would want an outside set of eyes to. And it could include something along the lines of uttering a forged document or something like that.

MS. CHAYTOR: Okay so – but what you’re saying is that in terms of a serious sexual assault or a use of firearms incident, something like that, a shooting incident, you would not use the RCMP.

CHIEF JANES: That would not be our first choice, no.

MS. CHAYTOR: Okay and why is that?

CHIEF JANES: We would reach out to other outside police services, as it had been our practice for 10 to 20 years. I mean, when the MOU was put in place with the OPP, it was done for a reason. And it’s about trying to, I guess, do things that are consistent with previous inquiry recommendations that had said an outside agency should be used.

And so it’s a situation that we’re in now that’s a little unenviable, I guess might be the right word. Is that we have to meet as a team in our boardroom; I have senior officers and legal staff who meet with me. And we have an allegation of misconduct by a police officer and we have to determine, you know, whether we’re going to investigate it ourselves, investigate it ourselves and then have somebody outside review it, or if we are going to reach out to somebody to do the investigation for us. And you don’t want to be constantly burdening the same organization over and over again; they’re trying to police their own jurisdiction.

So it’s a real balancing act for us right now, without a serious incident response team to cut to the chase, in terms of trying to make sure that we do things in the best way possible.

MS. CHAYTOR: Okay and I will ask you some more questions about your views on a serious incident response team, but I just want to move on to – I brought you to, under P-0033, the 2012 version of your Use of Force Policy, section 12.2 where it indicated that the RCMP – if this had happened in the RCMP territory or jurisdiction that they would be the responding force.

Did you have in that – with respect to the Dunphy shooting, did you have any reservations with respect to the RCMP conducting the investigation?

CHIEF JANES: No, I did not.

MS. CHAYTOR: Okay

So your concerns in terms of when it’s within RNC jurisdiction in going to outside the province if it’s a serious incident, or serious of the nature of a firearm offence or a serious sexual assault, how would that be different if the incident occurred outside of RNC jurisdiction? Why wouldn’t you have the same reservations?

CHIEF JANES: Well, it’s not that I have reservations; it’s that the previous inquiry had recommended an agreement with an outside agency. So you want to follow the recommendations from previous inquiries.

The wording was changed here because we've used other police services from other parts of Canada in addition to the OPP, so it's a matter of I don't have any reservations about the RCMP conducting any criminal investigation.

MS. CHAYTOR: Of one of your members?

CHIEF JANES: Correct.

MS. CHAYTOR: Regardless if it happens within RNC territory or RCMP jurisdiction?

CHIEF JANES: Correct.

MS. CHAYTOR: Okay.

Did you have any input into the RCMP's decision to continue on with, to take on the investigation of Constable Smyth and to continue with the investigation?

CHIEF JANES: On the day of the shooting, I was contacted by the commanding officer, and she and I had a discussion in relation to the investigation moving forward. She brought up the idea of the Ontario Provincial Police conducting the investigation. I indicated to her that I was satisfied with her organization doing the work and that it was their jurisdiction.

And at the time I had – I guess the best way to describe it is I had my police hat on and I was looking at it from the perspective of them being able to front-load the investigation. In the early 48 to 72 hours of an investigation evidence can be lost, weather can wash evidence away, video at a nearby gas bar can be taped over, witnesses can talk to each other and their evidence be influenced in some way. So when I spoke to her that day my initial thought was that the best response would be for them to continue with the investigation.

MS. CHAYTOR: Okay.

And I understand that was Commanding Commissioner Tracy Hardy that you had that discussion with?

CHIEF JANES: That's correct.

MS. CHAYTOR: And did you – you got the impression that she was consulting with you or having the discussion at least with you on the potential for the OPP coming in. Did you feel that if you had felt strongly that you would go with the OPP, did you feel that that would have been respected by Commanding Commissioner Tracy Hardy?

CHIEF JANES: I don't know what her response would have been. I mean it's a – I guess, in her case, she was fairly new to the province, been here a year or two. You know, in my initial discussions with Deputy Chief Singleton, it was within the first 10 seconds that we said to each other this is an RCMP investigation and it was their jurisdiction. It would be in keeping with past practice.

You know, reflecting later, not that day, but reflecting later it was in keeping with past practice. There had been a shooting incident on the Canadian Tire parking lot on Elizabeth Avenue, an RCMP officer had discharged their firearm numerous times, and that was investigated by the RNC because it was our jurisdiction.

And so it's similar here in terms of past practice. I guess, he and I immediately knew this is an RCMP investigation and the RCMP are in charge because it's their jurisdiction, as you indicated

earlier, in keeping with our policy. And I guess for her it was: okay, I'm in this situation now, how does this fit together, based on her career or having – being in different parts of Canada. So I guess it was her trying to problem solve and get her head wrapped around who is in charge and why.

MS. CHAYTOR: Okay.

CHIEF JANES: And I explained it, you know, it was their jurisdiction and I was satisfied with them doing the investigation.

MS. CHAYTOR: Your concern regarding front-loading the investigation – evidence could be lost, you know, statements not taken, you know, timely, that type of thing – how is that handled when you do bring the OPP in?

CHIEF JANES: We'll do our best to try and gather it ourselves and protect it ourselves where appropriate. It depends on which case it is. But it's –

MS. CHAYTOR: So I guess what could have happened or an option that could have happened in this situation would be for the RCMP to do that, the front-loading piece, until another agency, such as the OPP, could have arrived in the province.

CHIEF JANES: That would be an option for them, yes.

MS. CHAYTOR: Okay. All right.

I'm just going to bring up P-0567, please.

And this is a briefing note. You're not involved in this communication but this is on April 5, 2015, 8:36 p.m. And Tracy Hardy, the commanding commissioner of the RCMP, distributed this to the provincial Department of Justice.

And I'm just going to look down through; I believe it's the second page of the document. If we could just scroll down, please, Madam Clerk. Yes, here we go.

So under Strategic Considerations: "Any consideration for an Independent External Investigation or Review related to this police officer involved shooting will be at the discretion of the Chief of the Royal Newfoundland Constabulary or his delegate."

And what did you understand that to mean? I realize you're not the author of this, but in your discussions with Tracy Hardy, which would have happened I take it earlier that day because this is 8:36 p.m. on April 5, what did – was there any discussion on this or is this referring to independent external investigation or review? Is that referring to the actual criminal investigation?

CHIEF JANES: We did not have any discussion in relation to that, so I guess it's either the wording of the sentence or her interpretation of the situation. But when we finished talking to each other it was very clear in my mind that the RCMP were in charge of the criminal investigation.

Now maybe, it's very difficult to interpret what somebody else has transmitted in terms of information. I guess the best I can explain it is that in the end, the RCMP contracted Mr. Riche, which would have been similar to an independent external investigation or review. And in the end, the RCMP, again, independent from us, had ASIRT do the review.

MS. CHAYTOR: Okay and that's –

CHIEF JANES: So her statement doesn't seem to be consistent with what actually happened.

MS. CHAYTOR: Okay, right.

And so you weren't consulted on either of those two decisions I take it?

CHIEF JANES: That's correct.

MS. CHAYTOR: Okay.

Did you have then, throughout the investigation, any further communications with Commanding –

CHIEF JANES: Tracy Hardy.

MS. CHAYTOR: – Commanding Commissioner Tracy Hardy?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

In terms of the progression of the investigation, at any point in time did any concerns arise for you during the investigation, either in terms of the length of the investigation or the manner in which it was unfolding?

CHIEF JANES: No.

MS. CHAYTOR: And you mentioned in answering my questions a few minutes ago that there are times when the RNC do similar investigations for the RCMP, such as the Canadian Tire incident that you described. I believe the Commissioner has also heard that there was at least one investigation that the RNC was engaged in with or for the RCMP with respect to one of its members at the same time that the RCMP was carrying out this investigation. Is that correct?

CHIEF JANES: That's correct. We investigated; I believe it was a shooting in Labrador.

MS. CHAYTOR: And were there any – I'm sorry.

CHIEF JANES: It was a shooting in Labrador that we investigated. It was a shooting by an RCMP officer.

MS. CHAYTOR: Okay.

And were there any other investigations that overlapped where one police force was doing an investigation for the other? During the time, of course, that the –

CHIEF JANES: Not that I can recall.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Sorry, what period was that you're talking about there?

MS. CHAYTOR: That's during while the investigation – so from April of 2015 while the investigation of Constable Smyth is happening –

THE COMMISSIONER: Right.

MS. CHAYTOR: – from April 2015 up to, I guess it wasn't concluded until September of 2016.

CHIEF JANES: Correct, I think.

MS. CHAYTOR: Okay.

So there was one investigation in that time period that you can recall where, the incident in Labrador where the RNC was investigating the actions of an RCMP member.

CHIEF JANES: Correct.

MS. CHAYTOR: Okay.

If we could bring up 0741, please; and, Chief, this is the MOU that's currently in place with the Ontario Provincial Police. It's dated February 3, 2015, and it's signed by you. It is – effective date is from September 1, 2014. And it's still in effect and in fact remains in effect until August 31, 2019, I guess, unless some other provision would come into play. So it's the MOU and I understand this was a renewal of a previous MOU that had been in place for over a decade, your previous MOU.

CHIEF JANES: Correct.

MS. CHAYTOR: Okay.

And if I can just scroll down to – I think, Madam Clerk, I'm going to look at clause, the very first clause. The RNC has a – expressed the desire to utilize members of the OPP – oh sorry, no, we're good. No, we're good.

Sorry, Madam Clerk. I'll do it. Thank you. Sorry, let me go back.

Okay. The RNC has expressed the desire – so it's between the Ontario Police, Provincial Police force, the Royal Newfoundland Constabulary: Whereas the RNC has expressed the desire to utilize members of the OPP Criminal Investigation Branch to act as investigators in circumstances where serious occurrences have taken place involving the actions of one or more of the RNC members, including instances of serious injury or death.

And then it's at the request of the chief of police, RNC, the OPP will supply an adequate number of experienced investigators, and at least one has to be a commissioned officer. So it's at your discretion as to whether or not you call in the OPP.

CHIEF JANES: Correct.

MS. CHAYTOR: Okay.

And I think you've already explained some of the circumstance in which you would tend to do that. And I take it do you sit with your other management and then decide as to whether or not the circumstances warrant bringing in OPP?

CHIEF JANES: Yeah, there's a group of incidents that we classify as serious. That would be death, serious bodily harm, domestic violence, sexual assault or something that would have significant public interest. So if things hit that threshold, then we start to look outside to have someone do the investigation.

MS. CHAYTOR: Okay.

And since the MOU has come into effect, and we'll go back to the first MOU with OPP, are you able to tell the Commissioner how often has the OPP been engaged to carry on an investigation for the RNC?

CHIEF JANES: Since the very first?

MS. CHAYTOR: Yes.

CHIEF JANES: I don't know.

MS. CHAYTOR: Don't know?

Let's bring up P-0709, please. You have put together some statistics in terms of number of police-related serious incidents within the RNC, and there are some time frames there. I think it's question number five: "Statistics on police-related serious incidents and time frames around this." And you say: "Serious incidents where outside agencies sought." So I take it this may have been the RCMP or the OPP or some other forces.

CHIEF JANES: Agreed.

MS. CHAYTOR: Okay, so not all OPP.

So in 2014 there were three, and in the last couple of years eight and seven.

CHIEF JANES: Correct.

MS. CHAYTOR: Okay. And do we know, is the eight and seven, is that becoming more the norm or was the three a little bit of an anomaly?

CHIEF JANES: I haven't looked back far enough to be able to give you a statistical analysis. I only went back three years.

MS. CHAYTOR: Okay.

It might be an important piece to know how often it is that you're having to rely on bringing in an outside agency. So I'm just – perhaps then we can get some more information on that then beyond 2014. But at least seven times in the past two years you've had to call on an outside agency to come in and do an investigation for a serious incident.

CHIEF JANES: That's correct.

MS. CHAYTOR: How is the arrangement with the OPP, your MOU with the OPP? How is that working?

CHIEF JANES: It's good.

MS. CHAYTOR: Okay. No issues?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

Have there been any incidents where the RNC has conducted the investigation of its own officer and then asked an outside agency to review, such as an ASIRT that we saw in this situation?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. And how often does that happen?

CHIEF JANES: That would probably be the least frequent of the three options.

MS. CHAYTOR: Okay. And in terms of –

CHIEF JANES: So it would be less frequently than this.

MS. CHAYTOR: Okay. And so all of these that we see here, the eight in 2015, the seven in 2016, those were strictly sent out –

CHIEF JANES: Agreed.

MS. CHAYTOR: – for investigation. There are also a number of other serious incidents that the RNC would have conducted within the RNC and then brought in or had a review, a peer review as such.

CHIEF JANES: I wouldn't classify them as serious incidents. It would have been criminal allegations –

MS. CHAYTOR: Okay

CHIEF JANES: – that were then reviewed.

MS. CHAYTOR: Okay, along the lines of what you already told me such as uttering a forged document, something like that.

CHIEF JANES: Agreed.

MS. CHAYTOR: Okay.

And are you able to say how often, how many of those incidents you would have had over the same time period?

CHIEF JANES: It would not be very many. It would probably be three or four over a three-year period.

MS. CHAYTOR: Okay.

And are there other incidents of a serious nature that the RNC has investigated strictly itself without any review by any other agency.

CHIEF JANES: Not of a serious nature, no.

MS. CHAYTOR: Okay.

Chief, what are your thoughts on a serious incident response team for this province? What benefits or any issues or challenges can you identify with such an arrangement?

CHIEF JANES: So in terms of a serious incident response team in terms of the public expectation and in order to be able to do it appropriately, you would need civilian oversight. I think –

MS. CHAYTOR: Okay. Let me just stop there and ask you, what do you see, what's the importance of civilian oversight?

CHIEF JANES: It has to do with the public's perception and the public confidence.

MS. CHAYTOR: Okay.

I'm sorry; I didn't mean to cut you off. Then continue.

CHIEF JANES: In terms of the investigators, you're going to have to have people who have the skills and ability to gather evidence such as judicial authorizations, interviews at a level that would be acceptable to the courts. They would have to have knowledge of the science and technology of police work. So your investigators are going to be – need to be very skilled in order to do so. And nobody likes to talk about money but they should be appropriately compensated to attract the right people.

In terms of, it would need to be resourced to a level so that the work could be done in an expedited manner. I think the public has an expectation that things will be done in a timely way. And for the wellness of the employees who are being investigated, it's important that the resources are there so that the investigations can be done in a timely way.

MS. CHAYTOR: Yes, and I guess that's true of the people involved too, as well as the complainants, as well as the subject of the investigation.

CHIEF JANES: Agreed.

MS. CHAYTOR: Yes. Okay.

All right, any other thoughts around that? That –

CHIEF JANES: Well –

MS. CHAYTOR: In terms of where would these investigators come from? How about that? In terms of where would these skilled investigators come from within our province?

CHIEF JANES: Well, I guess an option is to advertise and then look for people, or you could consult with people who would be in the know and then reach out to people who have those skills. I guess one option is to use people who were formerly police officers and another option is to attract quality people and then provide them with the training and the skills in order to be able to meet the challenges of a criminal investigation.

MS. CHAYTOR: Okay.

And for the most part, and perhaps you're not able to answer this, but within our province would you anticipate that largely they would be retired police officers?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

And if we could have P-0023, please. And this is your firearms policy as of March 10, 2010.

CHIEF JANES: Could we go back to serious incident response team for a second?

MS. CHAYTOR: Oh yes, sure.

Yes, you want to go back to the exhibit or you just want to speak to it?

CHIEF JANES: No.

MS. CHAYTOR: Go ahead, please.

CHIEF JANES: So in the system we have now is that we have to meet as an executive, our management team, and make a decision as to who's going to do an investigation. I would be most pleased if the RNC didn't have to do any criminal investigations of its own staff and that 100 per cent of the criminal investigations would go to a serious incident response team or whatever the appropriate name would be.

It's very challenging for officers to be given that task and senior, mature officers understand, well, this is my role and I have to follow through on it. But, ideally, in an ideal world, all criminal allegations could be given to an outside body and let them investigate them.

MS. CHAYTOR: Okay, fair enough.

And so you would limit it to just the definition of serious that you gave me in answering the questions; any of the internal investigations that you've carried out of criminal allegations against your members, those would also – if there were to be a serious incident response team, those would be referred as well to the response team.

CHIEF JANES: That's what I would prefer –

MS. CHAYTOR: Yes.

CHIEF JANES: – is that all criminal investigations of police officers go to this team.

MS. CHAYTOR: Okay. All right.

Okay and that's fine, I don't need this exhibit because I realize I was going to bring you up – and maybe for the Commissioner's benefit it's P-0023. And it's page 11, Firearms and procedure, March 10, 2010, section 13 as it pertains to how shooting incidents are handled.

THE COMMISSIONER: What page?

MS. CHAYTOR: It's at section 13, page 11 of the exhibit.

THE COMMISSIONER: Thank you.

MS. CHAYTOR: And that talks about in the incident where an officer uses a firearm which results in injury or death, there is a protocol that would happen including: A supervisor will ensure the involved officers are separated. And we saw that in my early questioning of the chief.

And for your reference, Commissioner, and for other counsel and others listening, there is a similar section in your new policy, Chief, and that's our Exhibit P-0702.

THE COMMISSIONER: Three?

MS. CHAYTOR: 0702.

THE COMMISSIONER: Oh, 07.

MS. CHAYTOR: And this is the updated policy in 2016. It's page 15 of the exhibit, section 20.

And one change I do note is the title of that section is now: Officer Involved Shooting. And I don't think much really lands on that as opposed to shooting incidents. It specifies that you're clearly talking about officer-involved shootings. Okay?

And, Commissioner, here's the policy here. It's August 30, 2016, and it's at page 15 and section 20. So involved shooting and here is the protocol that happens: "The involved officer will, immediately after the situation is diffused, turns his discharged firearm, which has been proven safe, and ejected ammunition over to supervisor. And, again, Chief, this is when it happens within your RNC jurisdiction.

CHIEF JANES: Correct.

MS. CHAYTOR: The supervising officer then takes possession of the discharging officer's firearm and maintains custody until the outside investigative team is – gives other direction. And a supervisor will ensure the officers involved – this is the one I took you to earlier – separating out in terms of statements. And the supervisor notify the platoon commander or divisional commander and securing the scene until, again, the outside investigative agency comes forward.

Okay. And that's very similar to the policy that was in place at the time of the incident. And, again, that would pertain to when it happens within your own jurisdiction.

Chief, the terms of reference for this inquiry include inquiring into relevant policies, procedures and protocols and manuals in force at the material time by the RNC. And those include: firstly, the security of the premier and Cabinet ministers; secondly, the monitoring of and response to social media; and also your policies, protocols, manuals in force with respect to communications, governing communications by members with the public or the media following serious incidents and during active investigations such as we have in this case.

So I'm going to turn firstly to the secure –

THE COMMISSIONER: You're – it's 25 after 12 –

MS. CHAYTOR: Okay.

THE COMMISSIONER: – so you're getting into –

MS. CHAYTOR: A new area. Yes.

THE COMMISSIONER: – what seems to be a new area. It might be an appropriate place to break.

I'm going to give a brief statement to the media about the significance of this morning's application and the way it was dealt with. It will be fairly brief but they had asked me earlier for

comment and I refused pending resolution of the matter. So if they wish, I'll remain behind after we recess for a few minutes.

So with that, we'll break for lunch until 1:30.

How are you doing in your – just for scheduling purposes?

MS. CHAYTOR: I've got a lot of questions for the chief but – sorry, I had a lot of questions, obviously a lot of territory to cover with the chief and so I think I'm about a quarter, maybe a third of the way there.

THE COMMISSIONER: Right. Okay.

And we have – excuse me –

MS. CHAYTOR: We did have another witness lined up this afternoon but I think it's safe to tell him that tomorrow morning would be the better time for him to come.

THE COMMISSIONER: Okay.

Very good, so we'll recess for lunch now.

MS. CHAYTOR: Thank you.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Go ahead when you're ready.

MS. CHAYTOR: Okay, Chief, good afternoon.

When we left I was about to turn to asking you about the various policies, protocols and manuals of the RNC that are applicable to the Commission's mandate; the first is the security of the premier and Cabinet ministers. And we already have in evidence, as P-0031, a policy pertaining to the Protective Services Unit, June 5, 2013.

And if we could just bring up that quickly because we've seen it here at the Commission before, and this I understand, Chief, was the policy that was in effect at the time. And it has since been updated with some changes and I'll just take you quickly through a couple of those changes. And, of course, we've seen the mandate to provide close protection services, to gather intelligence –

MR. SIMMONDS: I'm sorry to interrupt, Ms. Chaytor, but the monitors –

MS. CHAYTOR: Oh, Okay, I've lost my (inaudible).

THE COMMISSIONER: Sorry.

MS. CHAYTOR: I've lost my buddy. Sorry.

Okay. This one didn't come on. Here we go. Okay.

All right, my apologies.

THE COMMISSIONER: I understand that – I understand that there may be some people finding it cold. I guess it's the wind and the temperature here. It sucks the heat out pretty fast. So anybody wants to put their coat on, feel free.

MR. SIMMONDS: Oh, I'm not cold. (Inaudible) over there.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. SIMMONDS: I don't like the heat.

MS. CHAYTOR: And actually you know what –

THE COMMISSIONER: Or you can move up closer to the heater if you wish.

MS. CHAYTOR: Thank you. Okay.

Thank you. Okay.

All right, so P-0031, which has the mandate in section 3 of the protective service unit, functions and responsibilities of course include: The security of the premier while within the province; security of the premier while outside based on threat assessments and operational requirements; performing daily operation functions as bodyguard, driver and advance as required; “conduct investigations, in conjunction with the applicable unit of the RNC Criminal Investigation Division, into people or groups who pose a potential threat to the Premier, Officer of the Premier or other elected Government Official; e. gather intelligence on persons and groups of interest, demonstrations and” other matter that could potentially cause direct or indirect harm to the premier or the Office of the Premier, or other elected officials and it goes on from there.

And Acting Inspector Gullage was able to give us some evidence on this, Chief, in terms of currently what's happening. He described to the Commissioner that right now, in essence, the unit has been brought back in-house at the – within the Criminal Intelligence Division. Is that correct?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

And in terms of the functions of the mandate, would remain the same. And in terms of what we have here under 4.1 c., d., conduct investigations in conjunction with the applicable unit of the RNC Criminal Investigation Division. So in terms of conducting investigations as opposed to gathering intelligence with the mandate included gathering intelligence, was it your understanding that any investigations of the PSU at the time of this policy would have been carried out in conjunction with the Criminal Investigation Division?

CHIEF JANES: That's what the policy indicates, yes.

MS. CHAYTOR: Okay.

And I think it's similar wording in your revised policy. If we could bring up, please, P-0032. And I'm just going to quickly look at some of the amendments that happened to the policy. The policy was revised May 25, 2016.

And, actually, go back to P – the first one, P-0031. Revisions that happened to the policy in the new policy, I understand and correct if I'm wrong, Chief, but the only changes that happened were 2.3 was deleted: All members in the unit must possess knowledge, skills and abilities to perform all duties in support of the section's mandate. That was deleted.

And 6.1 b. and c., 6.1, Officers being assigned to the protective service unit must be able to pass the PARE test; and c. be able to run a certain amount within a certain amount of time. That was deleted as was 6.2: PSU officers shall successfully complete firearms annual requalifications. These – this was deleted and any other training deemed pertinent to the unit.

Are you able to tell the Commissioner why, in updating the policy, these things were deleted?

CHIEF JANES: So under 2.3, we'll start there?

MS. CHAYTOR: Yes. We'll go there, yes.

CHIEF JANES: So it talks about the person in the position, members of the unit that possess the knowledge, skills and abilities to perform all duties in support of the section's mandate in the previous policy. So, these are the types of things that you would normally assess when you posted for a position through a personnel order. You would have desired attributes which would include the knowledge, skills and abilities to do the job. Hence in the workflow, from a HR perspective, it would be something that you would advertise for and hope to achieve when the people came into the job.

If somebody is in a job and they don't have the knowledge, skills and abilities, then there's a section under the collective agreement where they can be put on probation or removed from the job if they don't have that. And I guess, thirdly, is that it falls – to some degree it starts to go towards policing standards. And when policing standards are put in place, we have to be very cautious in that regard as it can handcuff the person who's trying to run the unit. You might have three people are trained but you need nine, so how do you accomplish that?

And there are different ways for people to develop knowledge, skills and abilities, so it's a case of being consistent with the other policies as well, for other units. They don't talk about the specific credentials or generally the credentials of people who would work in Major Crime or in Forensic Ident, either. These are things that, through our training section, we have a training plan and we do what we can in terms of developing the officers. But sometimes their role is done through a mentoring rather than through a training program.

MS. CHAYTOR: Okay.

There was a review carried out by Inspector Ed Oates following the shooting incident. And his report was May 12, 2015 and he did a policy review. He was tasked, I understand, to find any policies that may have been relevant to the incident and to review and make any recommendations for changes. Is that correct?

CHIEF JANES: That's correct.

MS. CHAYTOR: Okay.

And Inspector Oates did identify that perhaps the – being able to pass a PARE test and the running of the 2.4 kilometres, so that being 6.1 and b. and c., that that would not necessarily – that could be taken out of the policy. But he didn't mention anything in terms of 6.2 or 2.3. Was there another – was there another review taken of this policy?

CHIEF JANES: Yes. When policies are reviewed, it's done in partnership with the policy and planning section of the RNC.

MS. CHAYTOR: Okay.

CHIEF JANES: I believe it was Constable Tim Fowler who was involved in this one. So he'll have a look at the policy and compare it to other pieces of policy that we have and past practice in terms of what the wording in the policy would be.

MS. CHAYTOR: And was there any consideration given to enhancing or augmenting the qualifications and/or training of members who are assigned to the PSU and having that reflected in your policy?

CHIEF JANES: No. Again, that would fall to my earlier comment in terms of policing standards and having to be very cautious about going down that road because there's a job to be done. And if there's a requirement under policy to have certain courses in order to do the job and the job still needs to be done – so it's a case of, well, does the person have the course or are they being supervised by somebody who has the knowledge, skills and ability to help mentor them through it?

Just to go back to 6.1 is – in terms of the PARE test and the run; they were not seen to be bona fide occupational qualifications for that particular position so they were removed. And 6.2 was removed because that's covered another section of policy in terms of firearms re-qualifications.

MS. CHAYTOR: Okay – excuse me.

And I guess in terms of the type of issues that that unit or members in that unit would have to deal with would largely be – or a significant portion would be people who are disgruntled in some fashion with government or officials or policies of the government. Would that be a fair statement, in terms of people who may be making any comments or posing any potential threats to government officials?

CHIEF JANES: So you're talking about the people who work in the Protective Services Unit?

MS. CHAYTOR: The types of issues that they would have to deal with.

CHIEF JANES: It would be issues that they would have to deal with, yes. You know, their function is primarily to ensure the safety of the premier and the officials and, secondly, is to ensure that the premier and the officials feel safe.

MS. CHAYTOR: Okay. All right.

And in terms of any intelligence gathering or investigation of any potential threats to any government officials, is there anything in terms of training or – that they could receive in terms of bringing them up to date on certain issues that might pertain specifically to government officials?

CHIEF JANES: There is some training in terms of assessments and that sort of thing that I believe Joe Smyth and some others received.

MS. CHAYTOR: Threat assessments, yes.

CHIEF JANES: Yes.

MS. CHAYTOR: And managing targeted violence – he spoke to us about that.

CHIEF JANES: Yes, I think that's involved in the title.

MS. CHAYTOR: Yes, so those types of training.

CHIEF JANES: Yes.

MS. CHAYTOR: Yes, okay. All right.

Are you aware of how other police forces or agencies fulfill this function in terms of protective services?

CHIEF JANES: I haven't seen their organizational structures; I haven't seen their policies. My knowledge in that area would be fairly limited.

MS. CHAYTOR: Okay. So you haven't made any inquiries of other chiefs across the country for example as to how they – the structure of their organization or their unit might be?

CHIEF JANES: I think Joe Gullage did a little bit of work in that area, but I did not.

MS. CHAYTOR: Okay.

Do you have any thoughts, as chief, as to the necessity of a protective service unit and, if so, how it could best be structured?

CHIEF JANES: Of primary significance to me is they have the proper leadership to ensure the policies, protocols and day-to-day decisions are done at a management level. We currently have an acting inspector who looks after Intelligence and Organized Crime. At one time Intelligence and Organized Crime and what is now known as science and technology fell under the one umbrella. It was an inspector and two staff sergeants.

The staff sergeant positions were made redundant, which left one inspector trying to look after science and technology, which is very, very broad, be it video analysis, computer forensics, technical services, forensic ident, and then the same inspector trying to run Intelligence and Organized Crime which involves the Protective Services Unit.

So we had – in order to ensure that we were doing the best job possible, (inaudible) a very broad area of policing is that we created a temporary position for an inspector to look after Intelligence and Organized Crime. I feel that in order for that Protective Services Unit to be looked after properly is that that position needs to be maintained in the long term. So now with what I described as management leadership is that decisions need to be made in terms of what the structure of the Protective Services Unit would look like.

I do find, based on my past experience, that it's very fluid. The risk is up; the risk is down. How the premier feels about their own safety moves depending on the person, depending on what's going on in the environment. So what needs to be in place, I don't think it can be necessarily said well it's, it's a sergeant, four constables and they drive two cars. I don't think it's, it's like that. I think it's very fluid.

And I guess the other side of it is in terms of the protection of the premier is that the premier decides on his or her team around them, and they all have different functions: communications, technical support, planning and policy and these different things. So I don't know if, if I'm comfortable in saying that the premier must have this type of a team around them. I think it's challenging to say, to dictate to a premier what their team will look like. But in terms of the Protective Services Unit, I think that – I think it serves a function, an important function in terms of ensuring the safety of people who are high profile and need their safety ensured.

MS. CHAYTOR: Okay.

The other area of policy that the Commissioner is tasked with looking at are the policies, protocols and manuals in force at the material time in the RNC with respect to monitoring of and response to social media. Were there any such policies, protocols or manuals?

CHIEF JANES: Not to the best of my knowledge.

MS. CHAYTOR: And is there – is there anything underway in terms of any initiative to look at this issue in terms of policy, protocols or manuals for the monitoring or response to social media by the RNC?

CHIEF JANES: I think we're in a position now where we're looking forward to seeing what comes from the inquiry. Up until, I guess, recent times is that we had seen information that comes in through social media as being similar to information that would come in through other sources, such as a letter to the editor, or something that somebody would say when they called into a talk show or something that was posted on a bulletin board – they're all very public in terms of the information that's available.

And we saw gathering that information, which is covered over the Protective Services Unit policy, and the Criminal Intelligence Unit policy. They all cover gathering information, gathering intelligence. We saw social media as just being another venue, same as those, in terms of gathering information, but I guess that's here we lie today.

MS. CHAYTOR: Okay

And has there been inquiries made of other police forces across the country in terms of – specific to social media and – because obviously the volume that's happening in social media is a lot more than you would have had with your traditional correspondences or even phone calls in to open line-type programs.

So have there been inquiries made of other police forces across the country in terms of how they might manage it or whether or not they have any policies, protocols in effect in terms of the monitoring or response to social media?

CHIEF JANES: So Inspector Gullage has been doing a jurisdictional scan in relation to the Protective Services units which may or may not include that in that bailiwick. And on the other side it's that we do have an officer who attends a conference known as the SMILE Conference and would involve the role of policing and how it interacts with social media. So he's gathering information as he attends those events. So that would be the best answer I can give in relation to that at this time.

MS. CHAYTOR: Okay.

All right, the third is the public communications following serious incidents and during active investigations. And I understand that the RNC has had in effect and has an updated version of its

Media Relations, Policy and Procedure. And that would be the policy that responds to this particular aspect of the inquiry.

CHIEF JANES: Okay. Yes.

MS. CHAYTOR: Is that correct? Yes.

CHIEF JANES: Yes.

MS. CHAYTOR: If we could have P-0027, please. And in section 1 – this is the policy – Commissioner, this is the policy in effect at the time. It’s July 12, 2012. It was updated on May 25, 2016, and you can find that at P-0028, the updated version.

Section 1.2 seems to recognize the balancing between the public’s right to know, which you’ve referred to, and also an individual’s right to privacy: The policy reflects a balance between the public’s right to know and the individual’s right to policy. From time to time, specific cases will require additional evaluation, as no policy can be developed to meet every situation.

And then under 2.2, media releases: “Every RNC media release reflects on the professionalism of the RNC. RNC media releases must always strike a balance between the public’s right to know and the individual’s right to privacy, and protect police information that forms part of an investigation or that may divulge investigative techniques.”

And then on page 2 we have 3.1: “The Chief of Police is the official spokesperson” So you’re the official spokesperson. And “The Chief may authorize an MRO or other designated person to disseminate information to the public.”

And then we also have – page 7 of the exhibit, please, Madam Clerk, which sets out certain restrictions in terms of information that shall not be released.

And first of all, I think it might be helpful, Chief, if you – in terms of the media releases, how many media releases would the RNC put out each year, average?

CHIEF JANES: Approximately over – a little over a thousand

MS. CHAYTOR: Over a thousand.

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. Right, so it’s no small job.

CHIEF JANES: That’s correct, Ma’am.

MS. CHAYTOR: Okay. All right.

And so here we have under Guidelines for Release of Information, 8.1 Restrictions: “Information shall not be released to the media when release of information could potentially (1) deal with RNC policy or procedure.” So let’s just stop there. What’s the concern with speaking to RNC policy or procedure?

CHIEF JANES: It can impact investigative techniques. In many cases, we are challenged to keep our policies and procedures up-to-date. We have approximately 155 policies.

MS. CHAYTOR: Sorry, 155 policies?

CHIEF JANES: Yes.

MS. CHAYTOR: Yes.

CHIEF JANES: And we're updating about 15 per year. It's a very complex process in terms of updating a policy. It needs to be done right and so, I guess, on one hand, you want to protect any investigative techniques that you have and secondly is that if you're releasing the policies then it needs to be documents that are up-to-date and reliable. And based on the current volume of policies that we have and our ability to update them, we're very challenged in terms of having enough staff in order to be able to meet that challenge.

In order to update a policy, you're looking at things like a consultation with a subject-matter expert, a legal analysis, consultation with other jurisdictions, review of the previous policy. There's several steps in order to update a policy and we're finding it challenging to keep them updated. So it's multifaceted.

MS. CHAYTOR: Okay. And I understand that in terms of trying to keep your policies up-to-date.

In terms of though, this appeared to me to be fairly broad, when you say: Information shall not be released when the release information could even potentially deal with RNC policy or procedure. I understand what you're saying in terms of investigative techniques and that type of thing, but if there are certain parts of your policy or procedure, how you go about doing your important policing functions for the province, if there are certain things that you could communicate to the public, would this provision here be so restrictive that you wouldn't be able to actually speak to anything that could fall under your policies or procedures?

CHIEF JANES: It would be part of the consideration in terms of what would be released. It wouldn't be one item that would be the determining factor in terms of what would or could not be released.

MS. CHAYTOR: Was this one of the restrictions that you felt that applied in dealing with the Don Dunphy shooting?

CHIEF JANES: One of many, yes.

MS. CHAYTOR: Yes, okay.

Number (2): deal with discipline of RNC employees. I take it there was an internal investigation underway so that was another restriction that you felt in terms of being – please, don't take this down. Sorry.

Okay, so that I take it was another restriction?

CHIEF JANES: Agreed.

MS. CHAYTOR: Agree. And, I guess –

CHIEF JANES: Number (4) as well

MS. CHAYTOR: – number (4) as well: interfering with an investigation, of course.

CHIEF JANES: Agreed.

MS. CHAYTOR: And I don't know if there are any others. Those were the three that sort of jumped out at me when I looked through your policy.

CHIEF JANES: There's also another section under Major Case Management.

MS. CHAYTOR: Major Case Management as well in here? Do you know which section that is?

CHIEF JANES: Major Case Management is a different policy.

MS. CHAYTOR: Oh, in the major case managing policies.

CHIEF JANES: Section 19.

MS. CHAYTOR: Okay. And that also deals with an investigation ongoing, is that right?

CHIEF JANES: It does, yes.

MS. CHAYTOR: Yes, that's right. Okay. And I guess to some extent you're also restricted by the RNCA– RNC Act in terms of not being able to – having to preserve secrecy and confidentiality of any information obtained in the course of officers duties?

CHIEF JANES: Yes.

MS. CHAYTOR: I'm going to ask you some questions then specific to the situation and then I'm going to go broader in terms of perhaps looking at a path forward on this issue.

In dealing with Dunphy situation, Mr. Dunphy's shooting, was there a communications protocol or plan that was put in place by the RNC to deal with media and public communications surrounding the incident?

CHIEF JANES: No, there was not.

MS. CHAYTOR: Okay.

And if we could just look at P-0711, I haven't brought this up yet, but this is your handwritten note. And I understand, Chief, this is the only handwritten notes that you have regarding this incident and they're dated April 5, 2015 –

CHIEF JANES: Yes, Ma'am.

MS. CHAYTOR: – at 2:50. And in your interview you discussed that, obviously, it didn't all happen at 2:50. These were things that commenced at 2:50 that day with Deputy Chief Singleton advising you of Joe Smyth being involved in a shooting of Don Dunphy in RCMP jurisdiction and it went on from there.

And if we come down through we can see here that there's also reference to RNC coordinate, I think it says, yes. Your third bullet up from the bottom: "Coordinate media RNC/RCMP". Now, what's that pertaining to?

CHIEF JANES: It's to keep in touch with each other. It's decided in the immediate minutes after that the RCMP would handle the communications upfront in relations to this matter on the night of the incident and that there were going to be media inquiries coming into the RNC, media inquiries coming into the RCMP and the media people should be in contact with each other.

MS. CHAYTOR: Okay. And I think we have in our records an email of that evening 6:16 p.m. where Greg Hicks, the Media Relation Officer for the RCMP, sent to the RNC media relations person, Steve Curnew, the RCMP media release that was going to be going out that evening. So that's the type of coordination that was happening between the two forces, or intended to happen. Is that correct?

CHIEF JANES: Agreed.

MS. CHAYTOR: Okay. And I understand that you did speak with the media on April 6, 2015, and if we could bring up, please, P-0715. And this is a draft of your comments that day. And, Chief, did you basically follow the script as to what you had decided you were going to say in that press conference?

CHIEF JANES: They're close.

MS. CHAYTOR: Okay. All right.

And so basically you start with offering your condolences to the family of Mr. Dunphy. And then you go on to say, "At approximately 2:30 ... a member of the RNC was in the area of Mitchell's Brook conducting inquiries regarding an investigation." He was "confronted and shots were fired. As a result a 59 year old male Mr. Dunphy was confirmed deceased at the scene. Our officer did not receive physical injuries during the incident. At this time we are ensuring our officer receives the support necessary for his well-being while cooperating with the RCMP."

And there were a number of questions that you also anticipated, I guess, your Q & A sessions here.

CHIEF JANES: Yes.

MS. CHAYTOR: And do you recall, did you get asked many of those questions? I couldn't find a transcript of your – and we couldn't get a transcript of your actual comments that day, but did you get some of those questions, do you recall? For example –

CHIEF JANES: I think I got all of them except the one on mental health. I did not receive that question.

MS. CHAYTOR: Okay. All right.

CHIEF JANES: The other ones, I did.

MS. CHAYTOR: So you did speak to the premier's security detail.

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. And so then you offered that your officer was assigned to PSU, and the nature of his inquiry couldn't be discussed because of the investigation. You were asked a question about ongoing threats, or something along those lines?

CHIEF JANES: Yes.

MS. CHAYTOR: And did you speak to the fact that the RNC does threat assessments as part of the PSU's mandate?

CHIEF JANES: I guess the best way to describe it would be that after I had done the scrum is that I left it and said, while I used all of those speaking points, except I didn't use the one on mental health.

MS. CHAYTOR: Okay.

CHIEF JANES: So that was sort of –

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

CHIEF JANES: – a broad statement that I said to myself afterwards is: I needed all of that.

MS. CHAYTOR: Okay. And one of the other questions then, that has come up from time to time about an explanation was, why was the officer alone? And the answer that was proposed for you to say was, sometimes our officers work alone, other times with a partner, and this will likely form part of the RNC's internal inquiry. So is this something you recall speaking to and giving comments along those lines?

CHIEF JANES: Yes.

MS. CHAYTOR: So those issues, to some degree, were addressed on April 6 by you.

CHIEF JANES: Yes.

In terms of April 6, there were two primary reasons why I spoke. The first was to offer condolences to the family of Mr. Dunphy; and, secondly, whoever is in the role of chief of police, there's an expectation by the community that you speak when there's a significant incident and address the matter in some way, either it's in writing or in person.

MS. CHAYTOR: Okay.

And if we could bring up P-0740, please. This is some information that was forwarded to your media relations person by the RCMP on April 5. So this would have been before you spoke. And basically what it is, it's a checklist for member-involved shooting communication guidelines, and the person from the RCMP is passing it along to Steve Curnew. And if we look at the second page, Member-involved shooting communications guidelines, and then there's a checklist and there's also attached some Q & As of samples of how you could respond in a situation like this.

Were you aware of this? Was this provided to you, and did you use this as a guide?

CHIEF JANES: No. The first time I saw it was when you interviewed me.

MS. CHAYTOR: Okay. All right.

And has the RNC similarly developed, since this incident, a guideline along those lines?

CHIEF JANES: No, but I think there would be a role for a communications person reporting to the chief of police so that these types of things could be built and developed.

MS. CHAYTOR: Okay.

And if we look down through, in terms of – you know, in terms of the checklist, it says: "As any member-involved shooting is automatically referred to external investigation ..." – and it refers to their operations manual. "To demonstrate transparency and full accountability, prepare a

proactive news release that includes non-contestable points and the name of the investigating agency ...”

“The level of information provided in the news release and the hold-back limitations might be determined in consultation with the investigating body ... Depending on the division, the external agency could be a specific independent authority or a separate police department. Follow your division’s approvals”

And it does say: Depending on the nature, an internal message may be required to let people know about their colleague. And a spokesperson should be identified.

So, basically, when I looked down through it appeared that it’s similar to what you did in any event.

CHIEF JANES: Okay.

MS. CHAYTOR: Well, I don’t know if you agree or not –

CHIEF JANES: Okay.

MS. CHAYTOR: – but it seemed to have some caution in there as to what you could and could not say –

CHIEF JANES: Yes.

MS. CHAYTOR: – but it gave a checklist as to, I guess, standard then in terms of dealing with similar situations.

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

And then, we have heard you – if we could bring up P-0713. We have heard that you forwarded a copy of your speaking notes to Heather MacLean, who was the director of communications for the Premier’s office. And I think you spoke to this briefly this morning, that on two occasions, or two instances you’ve had communications with the Premier’s office. And I believe this to be one of them. And you say: Heather, attached is current draft of my speaking notes. And you offer that she can call you if you want to chat.

Now, why were you doing this? Why were you sending along to the premier’s office a copy of your speaking notes in advance?

CHIEF JANES: Luke Joyce, who was the communications person with the Department of Justice, requested I do so.

MS. CHAYTOR: Okay. So the communications person in the Department of Justice asked that you do this?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

All right. And did you speak to Ms. MacLean or Premier Davis following sending this email?

CHIEF JANES: No.

MS. CHAYTOR: Okay. So she didn't take you up on the offer to chat about it?

CHIEF JANES: No.

MS. CHAYTOR: And did you have any knowledge as to what Premier Davis would be saying in his press release?

CHIEF JANES: No. He did not share his notes with me, no.

MS. CHAYTOR: Okay.

And did you receive feedback any other way from the premier's office as to your intended message, either through the Department of Justice or otherwise?

CHIEF JANES: Not that I can recall, no.

MS. CHAYTOR: Okay.

And P-0716, please. Do you recall sending your speaking notes on to anyone else to review prior to the first news conference?

CHIEF JANES: I think I may have had one of the deputy chiefs read it in hardcopy. And I learned in the interview with you that Steve Curnew sent it to Joe Smyth in advance of being released, and I'm not aware ...

MS. CHAYTOR: Yes, okay.

All right. So you weren't aware of that. You didn't know that he had sent it to Joe Smyth?

CHIEF JANES: Not until our interview, no.

MS. CHAYTOR: Okay.

CHIEF JANES: I may have known it but maybe I had forgotten it. That's the best – sorry.

MS. CHAYTOR: Okay.

And did Constable Smyth, to your knowledge, provide any input into your speaking notes on that day?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

Chief, it appears then after doing your piece with the media on April 6, then the decision of the RNC was largely not to respond, or to respond as little as possible to any requests for comment by the media during the investigation. And you did then, ultimately two statements, I think, were released, written statements in September of 2016. And the first one was September 13, 2016 where – basically indicating that you were waiting on the Saskatoon internal review report.

And then on September 21, 2016, after the RCMP released the final report, or – they didn't release the report, but they had concluded that no charges were warranted. There was also a

statement saying that the RNC found that there is no wrong doing on the part of Constable Smyth. You were still awaiting the Saskatoon report but that you were in support, obviously, of your officer and the findings of the RCMP.

then the next time that you spoke publicly yourself was November 28, 2016, after the inquiry had released the reports. And I just want to offer you an opportunity with respect to the silence in between and the reasons for the silence in between when it certainly appeared that there was pressure mounting, and particularly from Constable Smyth's point of view, in terms of the silence.

During my questioning of Deputy Chief Singleton, I reviewed with him a couple of exhibits – and for the record they were P-0486 and P-0491 – which were examples of where the media was looking for certain information. And basically the approach was less said, best said.

And if you take any issue with any of my preamble here, by all means let me know. And in 0491, it was actually pointed out by Deputy Chief that there seemed to be a lot of speculation about what happened and why.

And so my question I guess to you is, Chief, to offer you an opportunity to explain why that was the approach of the RNC in this situation.

CHIEF JANES: So a lot of your preamble – just to correct two things; September 13, 2016, I believe that news release went out after the RCMP had come to their conclusions and stated that there were no charges to be laid.

MS. CHAYTOR: Okay.

CHIEF JANES: And September 21 was the statement that I released after Mr. Riche made his public commentary.

MS. CHAYTOR: Okay.

And perhaps, then, we can look at those.

CHIEF JANES: So we can move on if you want but ...

MS. CHAYTOR: Yes, you can go ahead. That's fine.

And then you spoke on November 28, 2016. Okay, so what about in between? What about the over a year in between in terms of when various issues were coming forward and Constable Smyth in particular reached out to you personally as well looking for the RNC to be more proactive in terms of their public communications. Perhaps you could just discuss why it was decided that the RNC would not or, in fairness, could not speak.

CHIEF JANES: So earlier you pointed out the three sections under our policy in terms of not communicating when it talks about policy or ongoing investigation or may impact an investigation. And I mentioned section 18 of the policy in relation to Major Case Management or maybe 19, section 19.

So I'll read to you the section 19 of the Major Case Management policy which states: "The RNC must maintain a consistent approach when dealing with the media regarding the investigation of major cases ... Investigations may be impacted by the manner and conduct of relationships with the media. The information released, and the manner by which it is released, can have consequences to the ongoing investigation and any subsequent prosecution. The media can be a

valuable assist in an investigation. It is imperative that the RNC maintain a positive relationship with the media.”

So just to go back, because I don’t think I quoted the right section, the sections we had looked at earlier were under 8.1 of the Media Relations policy and that’s the policy dated from 2012.

So I guess from a holistic perspective, I think it would be important for the Commissioner to know that there are sections of our provincial privacy legislation and, as well, federal privacy legislation which protect the contents of criminal investigations and other investigations.

Under section 5(1)(k) of the ATIPP Act it indicates that the Privacy Commissioner does not have the authority to either view or release any information from an RNC criminal investigation, if that investigation is ongoing. And under 31(1)(a) of that same legislation, ATIPPA, is that the contents of an investigation are protected from release. As well under section 16(1)(a)(ii) of the federal *Access to Information Act*, the contents of investigations are protected under that as well.

So there are significant restrictions and protections in place to protect the contents of criminal investigations while they are ongoing under both provincial and federal legislation; federal legislation being of significance here because it was an RCMP investigation.

I think it’s important for the inquiry to recognize that my role is with the Royal Newfoundland Constabulary and this is a Royal Canadian Mounted Police investigation. And it’s an ongoing investigation and I can’t either impact or be seen as impacting, in any way, the investigation of another police agency in any way.

I think in the role that I’m in and the role of senior, people in the RNC, we always need to be seen as being impartial. It’s only appropriate to respond in any way when the investigation is complete and we’d had a chance to review the investigative reports at the end of the investigation.

Normally, in the course of regular business, as the information in an investigation is released through court processes or through disclosure, and that’s normally how any information in relation to any investigation is released, and of course investigations are very live. One piece of information at any time can have a significant impact on the direction and the flow of an investigation. You may say something today that seems fine and, in two weeks’ time, what you said had a negative impact because of the new information that came forward.

I think it’s important that there’s a balance always between the integrity of an investigation and the right of the community to know things, but I think the integrity of the investigation is what has to come first and the long term in terms of what’s right for our community.

I know that in April of 2015, the RCMP gave their very detailed media release, their own reasons for I’ll let them speak to. But I’m wondering – and it’s a case of how much did that impact the public’s perception, and then if you do further releases, what impact will you have if that detailed release had a questionable impact?

When you’re looking at some of the –

MS. CHAYTOR: And can I just stop you there for a minute? And what do you mean in terms of the detail? Was it because of the detail that may have impacted the public perception? Was it because of the detail that was given so soon in their investigation? Is that what you’re thinking may have impacted public perception?

CHIEF JANES: I think their goal was to positively impact public perception and build on the public's confidence in the process. And I'm not sure that it had a very significant impact because those who criticized continued to criticize.

MS. CHAYTOR: Okay.

All right.

Sorry, I didn't mean to cut you off.

CHIEF JANES: No, that's fine.

MS. CHAYTOR: Is there any other points that ...?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

CHIEF JANES: Some of the topics that came up, and I think are specifically named in Phase 2 of the inquiry, are to talk about proactive policing and the role of the Protective Services Unit. Those topics are core to, or central to the piece of the RCMP investigation which led Constable Smyth to the home of Mr. Dunphy.

And any statement about our policies and our practices in those areas would and very likely could be interpreted as commentary on what actually happened. And –

MS. CHAYTOR: I'm sorry, just – let me just ask you a question on that then. But you were prepared in your April 6, in your Q and A that you had prepared – you were prepared to speak to what the role of the PSU would be.

And in terms of coming out and re-emphasizing some of the points that you were prepared to speak to and did speak to on that day, would be the role of protective service, that their mandate is to protect the premier, that they are to look into any potential threats against the premier or government officials and they are to gather intelligence. How, in terms of speaking to the role of the PSU, would that impact the investigation?

CHIEF JANES: So it comes to the separation of what is commentary on policy, versus, you know, in the news scum that I did on the 6th of April it was one sentence. When you get into the details of policies, it can be the blurring of the lines by media in terms of whether you're commenting on the investigation or you're commenting on policies.

I did have a media request; it's in my disclosure package there now from Paddy Daly of VOXM. And I think that media request shows the complexity of trying to speak about policy in the middle of a criminal investigation.

Again, any statement that can be made can be interpreted as an opinion in relation to what's transpiring. And of course, the media takes information from many sources to create their story and what we provide is only a piece of that. So we provide a statement to the media but, in the end, we don't write their stories for them, they do, and it's part of their role as journalists to do so. And we provide information but we don't know what the end result is going to look like.

Also very importantly is in terms of speaking publicly on the matter is that in the end there can be internal consequences for what an officer was involved in. And I need to be seen as being

impartial because quite often it's my role to hear the information and the evidence in relation to some internal matters that may arise from investigations.

I think it's important to maintain the separation between an investigation and the wellness of an employee and, you know, the wellness of an employee is very important to us. I have a great deal of empathy for those who struggle in their lives or as police officers, but I think it's important to separate the two.

And I think it's something that was, we do on a regular basis that we have an officer who's under investigation – is that when we meet as a group and we determine the road for that investigation, it's regular practice for us that we'll assign the threat investigation to go in one direction, and on the other hand we'll have somebody else look after the wellness of the employee and ensure that they have the supports that they need.

MS. CHAYTOR: Okay.

And in answering my question, you did mention the importance of you, as chief, being seen as being impartial. Were you concerned that if you were to come out and make certain statements, that you might be seen as, in essence, taking the officer's side at that point in time prematurely?

CHIEF JANES: Yes. I mean it's very important that I be seen as being impartial because sometimes my role is as an adjudicator in a disciplinary matter. And I mean there are still potentially those today who are critical of everything that transpired. And I'm always questioned whether a news conference by the chief in the middle of an investigation would have had an impact on even the inquiry. There are still critics after that.

MS. CHAYTOR: Yes, okay.

Were you hearing inaccurate information, though, about your officers? How, you know, they're trained to act? And would that, correcting those types of errors – would that have been something that could have gone forward without compromising the investigation?

CHIEF JANES: I think the integrity of the investigation is what had to be paramount. And speaking during an investigation would have been an extreme struggle in terms of trying to get message out without impacting the integrity of the investigation, or my role as being an impartial person and viewed as an impartial person.

MS. CHAYTOR: Okay.

And so I take it then, looking back, Chief – and we've all heard, you know, the beauty of hindsight many days now. I take it, looking back you can't see your point to, or think that there's anywhere that you could have spoken out and that perhaps that could have been a better course of action. Or in the future in terms of looking forward, areas that you might be able to speak to and – or even in terms of amending your policy and procedures so it's not quite so restrictive in terms of what you could speak to, has there been any thought to that?

CHIEF JANES: I do see a role for a communications person for the Royal Newfoundland Constabulary. You just earlier showed me the RCMP and they had a communications plan.

MS. CHAYTOR: Yes.

CHIEF JANES: We didn't have a plan for the 18 months or the two years that we were involved, or that the incident was being investigated and reviewed.

It's, as you mentioned earlier, or I mentioned earlier, we give more than 1,000 news releases per year. We get five to 10 media requests per day; we do two to three media interviews per week. We deal with very significant issues in terms of homicides, fatal car accidents, sexual assaults, armed robberies: matters of significant public interest. And I'd say more than any entity in our province we are often the lead news story.

So it's a big part as well as to how we connect with the community. And I think that's an important point to make in terms of the importance of having a professional in communications and media relations, something that we don't currently have.

We have a – in my finance office I have somebody who's a chartered accountant, and in my HR office I have somebody who has a master's in labour – or human resource management. But in my media office I have a five- or six-year constable who's a fine officer and does a great job, but they don't have a master's degree in communications or journalism, and it's the type of skills that we need connected to the office of the chief of police and whoever is in that role.

Our current officer is trying to do the role of media relations and at the same time help maintain Twitter accounts, and Facebook accounts, and YouTube accounts, and Snapchat accounts, and Instagram and probably some other stuff I don't even know about. And so it's very challenging for one person to try and do that.

If you look out throughout other government departments you'll see managers or directors of communications attached to government departments. And I suggest that we're as busy as or busier than many of those other entities, or even combined in some cases. So we do share very large volumes of information with the community on a daily basis and I think that's an important part of what we do. Sometimes it can be through our website, sometimes through news releases.

So communications with the public is a big piece of what we do. And we have done a jurisdictional scan, more information from which I hope to provide for Phase 2 of the inquiry. But in every case across the country we can only find one other police department that didn't have a communications specialist, a civilian professional person attached to the chief's office.

So it's looking at 95 percent of the ones we found, there was a communications person, a civilian who's professionally trained, attached to the office of chief of police helping with strategies and media relations for the department.

MS. CHAYTOR: Okay and that was going to be my question about that, so that's good. And you're going to have more information for us, I understand, in Phase 2 of the inquiry on that.

CHIEF JANES: Yes, Ma'am.

MS. CHAYTOR: Okay. Thank you.

In this particular case then, did the RNC reach out externally to receive any kind of professional advice on the communications?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

And is that something that the RNC has done from time to time?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

And in – was – and I understand you do have a media officer who's a constable. And did he ever bring to you a news story or a media question and suggest that it was something that he thought you should respond to?

CHIEF JANES: No.

MS. CHAYTOR: I understand, Chief, and I'm just going to move on unless – if that's it for that area. And we'll hear further from the RNC in Phase 2, so thank you.

CHIEF JANES: There was just one last thing –

MS. CHAYTOR: One other point?

Okay, sure. Go ahead.

CHIEF JANES: When I did have the report from the RCMP and I did have the report from ASIRT, and Saskatoon and Mr. Riche, then on that November 28, 2016, I did hold a news conference –

MS. CHAYTOR: That's right.

CHIEF JANES: – and address many of the issues that you've raised here today and offer my full support to our officer indicating there was no evidence of any wrong doing on his part. And I also spoke to his character in terms of being professional and I was very pleased to be able to do so.

MS. CHAYTOR: Yes, okay.

And we could bring that up if you wanted to speak further to it; it's P-0742. And I think it'd be page 3 of this document. Here's the September 13 one I referred to earlier and then the – this is November 28 and these are your speaking notes.

CHIEF JANES: You can go to the last paragraph.

MS. CHAYTOR: Last paragraph? Okay.

And, again, you did mention the Dunphy family. And –

CHIEF JANES: No, the last paragraph, first page. Sorry.

MS. CHAYTOR: Oh, I'm sorry. The last paragraph on that page? Right here?

CHIEF JANES: Yes.

So it states: "Since the date of this tragic loss of life Constable Smyth has been the recipient of criticism from a number of sources. Based on all the information now provided to me I believe this criticism has been unwarranted.

"During the 15 years I have known Constable Smyth I have seen him succeed" in many challenging work environments. "I have always known him to be conscientious and professional.

“In an organization with many selfless officers he is often one of the first to step up and help people in our community who are vulnerable or in need. He is a respected police officer and has provided quality service to the community during his career.

“I have seen no evidence of any wrong doing on the part of our officer and we have confidence in the RCMP and Saskatoon investigations and the ASIRT review conducted.”

MS. CHAYTOR: Okay.

All right. Thank you.

Okay, I’m just going to move on then to the policy review; there were substantive changes. And, again, I mentioned earlier that Inspector Oates had done a policy review in the immediate aftermath.

Subsequently, there were – most of what I understood, though, Inspector Oates to find were probably what you would call housekeeping items. Is that fair?

CHIEF JANES: Agreed.

MS. CHAYTOR: Agreed, yeah.

So no substantive changes were noted to any of your policies.

CHIEF JANES: Agreed.

MS. CHAYTOR: But there were substantive changes ultimately made to your Use of Force and Firearms Policy. And I don’t intend to take you through that, Chief, in any great degree because I’ve gone through it with Sergeant James.

Can you say whether or not though, that – were those changes precipitated by the incident, Mr. Dunphy’s shooting, or were those already in the works prior to the incident?

CHIEF JANES: They are in no way related to Mr. Dunphy’s death.

MS. CHAYTOR: Okay.

And, Commissioner, without going through it, I can tell you that the letter of May 19, 2015, which was written to the chief from Deputy Chief Jim Carroll, forwarding the review carried out by Inspector Oates, is P-0737. And out of your 155 policies – and I think you have more now, but at that point in time it was 155 – Inspector Oates noted that there were 10 policies that he thought were pertinent to the incident in Mitchells Brook.

I guess, Chief, I would ask: Were you satisfied those were the only policies that were relevant? Or were there others subsequently identified?

CHIEF JANES: I haven’t identified anything since.

MS. CHAYTOR: Okay.

Chief, has the RNC implemented any new policies or procedures in the wake of the incident?

CHIEF JANES: No.

MS. CHAYTOR: Is there any policy or protocol that prohibits or place restrictions on an officer from attending a residence or certain situations alone?

CHIEF JANES: There may be somewhere in our policy in terms of responding to high-risk calls like a domestic violence case or an armed robbery. There may be some reference in those policies. I'd have to do some research. I wasn't expecting the question, sorry.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Sorry, what was the question?

MS. CHAYTOR: Whether or not there's any policy or protocol that prohibits or place restrictions on the circumstances in which on officer would attend either residence or a certain situation type of call alone.

THE COMMISSIONER: Alone.

MS. CHAYTOR: Yes, alone – alone.

Has the RNC given any consideration – and we understand. We've heard, you know, about budgetary constraints and what can happen in our jurisdiction, for example, versus perhaps other jurisdictions. But has the RNC given any consideration to a policy and a procedure which would govern such situations?

CHIEF JANES: No.

MS. CHAYTOR: Has the RNC considered the implementation of a policy for, for example, body cameras in situations where an officer has no choice but to respond to a situation alone?

CHIEF JANES: So I attended some meetings over the last couple of years, the Canadian Association of Chiefs of Police, and one of the things discussed was body-worn cameras. And it's being studied by two or three different police departments across Canada. And we're in a position now, we're waiting to see the outcome of those inquiries or those – sorry, those reviews by those police departments and their testing of the equipment.

And I think it's much along the same lines as when we put in the system for conducted energy weapons. We awaited the Braidwood inquiry out of British Columbia before moving ahead. And that inquiry recommended that the police services and the community were best served by having conducted energy weapons.

And we're awaiting the review by I think it's three other police departments in Canada. I did have Deputy Chief Carroll do some research on the topic for me, so we're waiting on the outcome of that research before making a decision.

MS. CHAYTOR: Okay, so it's something that's currently under discussion?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Are there jurisdictions in Canada which have body cameras now?

CHIEF JANES: My understanding is a very small number. It would be two or three, and then there's more that are doing testing and studying and looking at the impacts of that decision, if it were to be made.

THE COMMISSIONER: What do Toronto police do? Do you know?

CHIEF JANES: I don't know for certain, Sir.

THE COMMISSIONER: Don't know. Okay.

Thank you.

MS. CHAYTOR: Okay. All right.

And that's – you know, obviously I'm not an expert in policing by any stretch, but is there anything else that you're discussing as to what might be a solution or something that could be considered in situations where an officer is attending alone? Is there anything else besides body cameras that other police forces maybe using or considering as to a protocol?

CHIEF JANES: Not that I'm aware of, no.

MS. CHAYTOR: Okay. All right.

I'm just going to move on then, another term of reference that the Commissioner is tasked with is inquiring into the facts surround the command, control and implementation of any relevant police operation on the day of Mr. Dunphy's death, the actions of the Royal Newfoundland Constabulary Officer during the operation and the actions of any other Royal Newfoundland Constabulary Officer involved both before and after Mr. Dunphy's death. So my next line of questions is geared more towards the actual circumstances of Mr. Dunphy's death leading up to and following.

I understand from when we looked at your handwritten note a little while ago that you learned of the incident from Deputy Chief Singleton. And what did Deputy Chief Singleton tell you when he called?

CHIEF JANES: He advised me that there had been a shooting and it was in a place called Mitchells Brook and that Joe Smyth was involved. He immediately thought the same as I did, is that we need to make sure that there's only one police agency that will speak to the media tonight and that was the RCMP. And, secondly, he said to me: You know, this is an RCMP file. And I said: Yeah, I know, Ab, it is, yeah. And we both came to that conclusion immediately.

MS. CHAYTOR: Okay. And I think your handwritten note that I brought up as P-0711 a while ago said that: Joe Smyth shooting Don Dunphy in RCMP investigation. So deputy chief had the names of both the officer and the gentleman involved: Don Dunphy.

CHIEF JANES: Okay.

MS. CHAYTOR: Had you ever heard of Mr. Dunphy prior to this?

CHIEF JANES: No.

MS. CHAYTOR: Okay. Did Deputy Chief Singleton tell you that he knew of Mr. Dunphy?

CHIEF JANES: I don't know if he told me at that time, but at one point he did, in the very early – that day he did tell me, yes.

MS. CHAYTOR: Okay. And I think we also have an email where he emails saying that: mental health issues could be raised – an email along those lines to you. Do you recall getting that?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. And what did you understand to be Deputy Chief Singleton's knowledge of Mr. Dunphy?

CHIEF JANES: He knew him from his youth and from the community.

MS. CHAYTOR: Okay.

Did you ask Deputy Chief Singleton how he heard of the incident?

CHIEF JANES: He told me that he got it from Mike Adams.

MS. CHAYTOR: Mike Adams? Okay.

CHIEF JANES: Yes.

MS. CHAYTOR: All right. And in terms of other steps that you took upon learning of the shooting, your handwritten note advised – you advise Shawn O'Reilly. And I understand that was from an EAP point of view to assist Constable Smyth, is that correct?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. You also wrote on your handwritten note: "Advised Warren Sullivan RNCA." And did you actually speak to Constable Sullivan?

CHIEF JANES: Yes.

MS. CHAYTOR: And why did you make that contact?

CHIEF JANES: It was a courtesy call. We have a very good relationship with the police association, a good professional relationship, and when significant issues and matters arise, I typically reach out to the president or one of the members so that they're aware, they don't hear it, you know, through the media, about one of their own people that they represent. So it was a courtesy call that I provided to him.

MS. CHAYTOR: Okay. And can we bring up P-0711, please. And did you – did Constable Sullivan mention to you that he was going to go see, then, Constable Smyth?

CHIEF JANES: He called me back later and told me.

MS. CHAYTOR: And did that cause you any concern?

CHIEF JANES: No.

MS. CHAYTOR: And on your note here, and these are your bullet points, you also then say: “Mike Adams/Reg Tilley crisis debriefing.” And is that the same thing as Critical Incident Stress Debriefing? Is that what that’s intended to be?

CHIEF JANES: Well, there’s two things. When I reflect back is that, I think, as an organization the word debriefing is just use too broadly. There’s actually a defusing and a debriefing.

What Mike Adams would be involved would be peer-to-peer support or defusing. The term debriefing is used in our policy; it reflects when you meet with a psychologist and get that kind of a care. So there’s two different phases. Phase one would be the on-the-ground diffuser or peer-to-peer support and phase number two would be with a psychologist a day or two later.

MS. CHAYTOR: Okay. So they weren’t going there pursuant to your firearms policy that we looked at earlier where senior management from the RNC would go to the situation, and I think your policy talks about, you know, taking the firearm. That wasn’t the intention?

CHIEF JANES: No, there’s a section under the EAP policy for diffusing and peer-to-peer support.

MS. CHAYTOR: Okay. And so were you aware then that Mike Adams and Reg Tilley were going to go also and speak with Constable Smyth or offer him support?

CHIEF JANES: Yes, I was.

MS. CHAYTOR: Okay. And did you have any concerns with that in terms of the number of officers then that would be meeting with Constable Smyth either at the scene or eventually at the RCMP detachment?

CHIEF JANES: No.

MS. CHAYTOR: And did you know whether or not at that point in time he had been interviewed by the RCMP?

CHIEF JANES: No.

MS. CHAYTOR: But that wasn’t of concern? You didn’t have any concern with it?

CHIEF JANES: No, never thought of it.

MS. CHAYTOR: Okay.

CHIEF JANES: There’s two things that occur. One is that the investigation is conducted and the second thing is to look after the wellness of the employee.

MS. CHAYTOR: Okay.

Staff Sergeant Mike Adams has given evidence that you called him while he was with Constable Smyth at the RCMP detachment that day. And what was the purpose of your call to Staff Sergeant Adams?

CHIEF JANES: I wanted to check on the wellness of Joe Smyth.

MS. CHAYTOR: Okay.

CHIEF JANES: He advised me that he was doing pretty good. His hands were shaking but his early assessment was that his initial coping was going pretty good.

MS. CHAYTOR: Okay.

And you have written here that you did speak with Joe Smyth. You have a bullet here: "Spoke Joe Smyth offered my support for him and his family. He should accept offers of Sullivan & O'Reilly for assistance."

CHIEF JANES: That's correct.

MS. CHAYTOR: So you spoke with Joe Smyth yourself. And where was Joe Smyth when you had that conversation with him?

CHIEF JANES: Joe Smyth was, I'm not sure where, but it was later in the evening and I believe he was home.

MS. CHAYTOR: Okay.

And I believe in your interview you thought he may have been still at the RCMP detachment when you spoke to him?

CHIEF JANES: I was –

MS. CHAYTOR: Have you had time to reflect on that?

CHIEF JANES: Yes, I have.

MS. CHAYTOR: Okay.

CHIEF JANES: And I was – actually, when I reviewed my statement I think I said to you I'm really struggling to remember this. I've had time to reflect on it since and I can distinctly remember during the day and the early afternoon or late afternoon saying to myself, just wait and let everything calm down.

There's a place under policy for the commissioned officer under psychological care to contact Joe. So I waited and it was later in the evening that I called and I spoke to him then. I wasn't sure when you were interviewing me. Even when I was reflecting on the notes from the interview, I saw you asked me a couple of times was it in the afternoon or the evening. And now I remember more clearly that it was in the evening I spoke to him.

MS. CHAYTOR: Okay.

We do have an interview and it's April 5, 2015, 5:18 p.m. and that's an email from you to Jason Sheppard. And Staff Sergeant Sheppard noted or asked you whether or not you had spoken with Constable Smyth at that point and asked how he was doing. And you reply: Yes, he was doing okay. So by 5:18 that day?

CHIEF JANES: So I don't know if I'm saying, yes, I spoke to him or if I'm saying, yes, he's okay.

MS. CHAYTOR: Okay.

CHIEF JANES: My recollection now is very clear that I called him in the evening. His wife answered the phone and he called me back.

MS. CHAYTOR: Okay.

And it is possible you had more than one conversation with him?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

Did you contact – I’m sorry, I wasn’t done with that exhibit, Madam Clerk, 0711. Did you contact the premier’s office shortly after learning of the shooting?

CHIEF JANES: I spoke to Joe Browne, yes.

MS. CHAYTOR: And what was the purpose of you reaching out to Joe Browne?

CHIEF JANES: I wanted to know if the premier was with Joe Smyth during – at the time of the shooting.

MS. CHAYTOR: Okay.

So Deputy Chief Singleton wasn’t able to give you that information based on what he knew?

CHIEF JANES: No.

THE COMMISSIONER: You were checking to see what?

CHIEF JANES: I was checking to see if the premier was with Joe Smyth at the time of the shooting.

THE COMMISSIONER: Right.

MS. CHAYTOR: Okay. And you have a hand-written note here, half way down through your notes, which says: Joe Browne, was premier present? No. So that’s you asking Joe Browne whether or not the premier was present and he’s telling you no.

CHIEF JANES: He phoned me back and told me no.

MS. CHAYTOR: Okay.

And there is an exhibit that is Joe Browne’s phone records, which indicates that you spoke to him at 3:15 p.m. and again at 3:17 p.m. So there’s two minutes in between. So the initial call to him at 3:15, he made that inquiry, I take it, and called you back a couple minutes later.

CHIEF JANES: Correct.

MS. CHAYTOR: Okay.

Did Constable Sullivan, in speaking to him, did he suggest to you that you call Joe Browne?

CHIEF JANES: No.

MS. CHAYTOR: And the reason I ask that is that we do have a BBM exchange between – I’m saying BBM, I think it’s messaging anyhow – between Constable Sullivan and Smyth where Constable Smyth suggested that you call Joe Browne as he was “aware of the person.”

So there was some communication between Constable Sullivan and Constable Smyth suggesting that you – that he relay that message to you to speak to Joe Browne because he had some awareness of the situation with Mr. Dunphy. That didn’t get passed along to you by –

CHIEF JANES: This is all new to me. I’m not familiar with any of this.

MS. CHAYTOR: Okay. That didn’t get passed along to you by Constable Sullivan?

CHIEF JANES: No, definitely not.

MS. CHAYTOR: Okay.

When you spoke with Joe Browne, was he able to give you any information as to why Constable Smyth may have been visiting Mr. Dunphy that day?

CHIEF JANES: I can’t recall.

MS. CHAYTOR: For example, we know that he was involved in the email exchange on April 3. Was Joe Browne able to piece that together or suggest to you that this may have had something to do with it? He had done some Google searching of Mr. Dunphy that day and had some information on him.

Was there any discussion between you and Joe Browne about Mr. Dunphy and the events that led up, including the email exchange?

CHIEF JANES: I don’t recall any discussion on that, no.

A phone conversation with Joe Browne is typically, I do 80 per cent of the talking and he does 80 per cent of the listening. So he would share very little information. That would be typical.

MS. CHAYTOR: Did you have any other discussions with Joe Browne on April 5?

CHIEF JANES: Yes, he phoned me or I phoned him – I can’t remember which – later in the evening and I provided him with some updates as to what I knew. I didn’t feel there was any restrictions on sharing information with him, as it wasn’t the contents of a criminal investigation, it would be along the lines of the RCMP were doing the investigation. They were dealing with the media tonight. It would be in terms of us supplying employee assistance to Joe and that we were making arrangements in terms of the Protective Services Unit for the premier to be replaced and those types of things. So I would have shared with him pretty much what I knew.

MS. CHAYTOR: Okay. So P-0252 – and we don’t need to bring it up – those are the phone records of Joe Browne and they show that they are the two calls that I already referenced and then at 4:35 p.m. and at 5:34 p.m., there are two other calls between yourself and Joe Browne. Do those seem to be the right date – or times?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

And in terms of your discussions with him either at 4:35 p.m. or 5:34 p.m., do you know whether or not he was in the presence of anyone else?

CHIEF JANES: I have no idea.

MS. CHAYTOR: Whether he was in a meeting or not?

CHIEF JANES: I have no idea.

MS. CHAYTOR: Okay.

THE COMMISSIONER: I'm just wondering how you're doing with your schedule, it might be an appropriate –

MS. CHAYTOR: Now I'm three quarters.

THE COMMISSIONER: Sorry?

MS. CHAYTOR: Three quarters now.

THE COMMISSIONER: Three quarters of the way through, okay.

MS. CHAYTOR: Yes.

THE COMMISSIONER: Perhaps we should take our break, if that's an appropriate place –

MS. CHAYTOR: Sure. Yes, that's fine.

THE COMMISSIONER: Yeah, okay.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: We'll recess for 15 minutes.

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: Okay, go ahead when you're ready.

MS. CHAYTOR: Could I have, please, P-0469?

THE COMMISSIONER: 0469?

MS. CHAYTOR: 0469, please, Madam Clerk.

This is an email, Chief, that you sent to Jason Sheppard and Ab Singleton at 4:45 p.m. on April 5, 2015. And you asked Superintendent Sheppard: “Can you find out if we have a file on Dumphy on the threats. I will need some information from same first thing in AM.”

What did you mean by threats? Who mentioned the word threats?

CHIEF JANES: I don’t know. I think at – is this turned on? Yes.

I don’t know. I think at that point I might have known that there was a tweet, but I don’t know where that term came from.

MS. CHAYTOR: Okay.

What was your understanding as to the reason that Constable Smyth was visiting Mr. Dunphy?

CHIEF JANES: It was – I’m struggling to remember, sorry – an investigation.

MS. CHAYTOR: Okay. Was it an investigation, did you understand, to investigate threats to the premier?

CHIEF JANES: This is two hours after the incident; I’m sorry, I can’t tell you exactly what information I did and didn’t have.

MS. CHAYTOR: Okay. So whatever information you had, you were left with the impression that it involved a file on Dunphy regarding threats?

CHIEF JANES: Right.

MS. CHAYTOR: And this is the email I referred to earlier where Deputy Chief Singleton came back to let you know that he had been known to call open-line shows, caused issues for some family members and, no doubt, mental health would be raised.

Did you have any discussion with Deputy Chief Singleton about what he meant in this email?

CHIEF JANES: He was referring not – over the day, I did, yeah. I guess it was when he referred to mental health, he was referring to Mr. Dunphy. But I don’t know if I spoke to him that evening or it was the next day at work, but that’s what he was talking about.

MS. CHAYTOR: Okay. And what did he tell you in terms of Mr. Dunphy’s mental health?

CHIEF JANES: I think it was two-pronged that he had known Mr. Dunphy and, I guess, he also was reflecting on previous inquiries and mental health had been raised. He mentioned that to me. He said, you know, the last couple of inquiries, mental health was an issue.

MS. CHAYTOR: Okay.

CHIEF JANES: So I think it may have been two-pronged; I’m not sure.

MS. CHAYTOR: Okay. Chief –

THE COMMISSIONER: The prior inquires generally not relating to Mr. Dunphy with the –

CHIEF JANES: Public inquiries.

THE COMMISSIONER: Public inquiries, yeah.

MS. CHAYTOR: Okay. And you mean police-related shooting inquiry specifically –

CHIEF JANES: Yes.

MS. CHAYTOR: – where issues of mental health have been raised?

CHIEF JANES: Yes.

MS. CHAYTOR: Did you have any communications with Paul Davis regarding Mr. Dunphy's shooting?

CHIEF JANES: No, not that I can recall.

MS. CHAYTOR: Okay.

And could we bring up, please, P-0446? And this again is the same day. It's a little bit later; it's 7:34 p.m., April 5, 2015. And it's an email of Superintendent Sheppard to both yourself and deputy chiefs – both Deputy Chief Singleton and Carroll.

And if we come down to the paragraph here that begins with the "Premier's wife." So again, this is Superintendent Sheppard written to you and the two deputy chiefs. "Premier's wife ... is upset as well as family as Premier intimated to you Chief, and also to Ed and Doug."

So this seemed to suggest that you had been or you had some communication with the premier when it uses words like "Premier intimated to you Chief."

Do you recall whether or not you had any communications with Paul Davis on April 5?

CHIEF JANES: It's possible, but I don't recall any, no.

MS. CHAYTOR: Would that be something, though, that you would recall if you'd spoken to the premier?

CHIEF JANES: Most likely, yes. I can't say for sure; it was very busy.

MS. CHAYTOR: And I don't see that in your handwritten note, though, of people that you did communicate that with that day.

CHIEF JANES: No, there's nothing in my notes to indicate I spoke to him.

MS. CHAYTOR: Okay.

The next day, do you recall having any communications on April 6 then with Constable Smyth?

CHIEF JANES: No, I don't recall, but I did see phone records that indicated that he called me that evening. But I –

MS. CHAYTOR: Yes.

CHIEF JANES: – I don't recall the conversation.

MS. CHAYTOR: Okay. Yes, and that is – we don't need to bring it up, but P-0748 there is reference April 6, 2015 of a call to you at 5:23 p.m. from Constable Smyth. You don't recall any conversation with him – this would have been after, depending if that's UTC time. Maybe we do just want to have a quick look at that. I can do it here.

THE COMMISSIONER: What exhibit is that?

MS. CHAYTOR: It's 0748.

THE COMMISSIONER: 0748.

MS. CHAYTOR: I'll have a quick look at my record here if that's UTC time or not. No, that's Newfoundland time. So this would have been after he gave his statement to the RCMP. You don't recall having any discussion with him, checking in and see how his statement went or anything like that?

CHIEF JANES: I never spoke to Constable Smyth about the incident in Mitchells Brook or the RCMP investigation during the time that it was ongoing. There's a lot of things we could have talked about that day. That was also the day of the media release and it was also –

THE COMMISSIONER: I think, wasn't – I'm not sure we're on the same wavelength. You were asking about Chief Browne's possible conversation with the premier. I think you were – are you responding about conversations with Constable Smyth?

MS. CHAYTOR: Yes, I moved on from that, Commissioner.

THE COMMISSIONER: Oh, sorry. I guess I'm the one who's missing things here.

MS. CHAYTOR: No, no, no, I'm probably putting you to sleep. I moved on.

Yes, so my understanding of the evidence is that he couldn't recall that conversation with Paul Davis.

THE COMMISSIONER: Okay.

MS. CHAYTOR: And now there is reference in 0748. The reference for the email that I brought him to –

THE COMMISSIONER: I'm sorry. Yeah, I see it now.

MS. CHAYTOR: That was 0446.

THE COMMISSIONER: It's where you made a note. It was after the –

MS. CHAYTOR: Yes.

THE COMMISSIONER: – Davis statements.

MS. CHAYTOR: Correct. Yes. Yeah. So 0748 is the excerpt from Constable Smyth's phone log.

Okay. And if we can move on, then, to 0455, this is another email and it's now three days later. And in this email, April 9, 2015, it's from you to Inspector Gullage and Staff Sergeant Sheppard

and Deputy Chief Singleton. And at this point in time it's three days are up, the mandatory leave, and it would be the first day for Constable Smyth to come back to work pursuant to the policy.

And Jason Sheppard had responded in the trail here saying that there had already been some communications on the subject. And Jason Sheppard is indicating that placing Constable Smyth in CIU until the conclusion of the investigation. And we've heard from Superintendent Sheppard on that and his reasons for thinking that would be a good idea. And he says here to give him time to recover and keep him out of the limelight for a while.

And I'm just wondering, Chief, did you have any concerns with Constable Smyth returning so soon after the event or the role that was contemplated for him at this point in time?

CHIEF JANES: No, it was – the plan was for it to be an administrative role or a non-operational role with the Criminal Intelligence Unit. The role would have been a good fit for him. He had all the skills to do that work.

MS. CHAYTOR: Okay.

And then you reply and you reply and say: "Agree on all points. He may need a new firearm if he does not have one already."

And did you have any concerns with that in terms of issuing him a new firearm while he remained the subject of an ongoing RCMP investigation involving a shooting?

CHIEF JANES: So in terms of being issued a firearm it's – I see it as separate from being in an operational role. I envisioned that the firearm that was issued to Joe Smyth was going to be an exhibit and wouldn't be coming back for a very, very long time. And, secondly, is that if Constable Smyth were to come back to active duty in the months to come is that this same firearm wouldn't be appropriate for, to be issued to him again.

So I do see it as two separate things, as to whether a firearm is issued to an officer and whether they're in an operational role. I do remember – I think one of the catalysts to me sending this information was that if an officer has another firearm issued to them is they don't feel like they're being prejudged, and it's good for them psychologically that they haven't been prejudged in any way. And so, I guess it's from that perspective was the main driver in terms of –

MS. CHAYTOR: So in terms of his psychological well-being that he's not being prejudged, that he can have another firearm issued to him.

CHIEF JANES: Issued in his name, yes.

MS. CHAYTOR: Issued in his name. Well, did you understand if it's issued in his name that he would have possession of it?

CHIEF JANES: Well, I knew that when you're non-operational is that you don't have it in your possession, but it's issued in your name.

MS. CHAYTOR: Okay. And so I – and I think there you're referring to the firearms policy, and I understood at the time that we met you weren't aware of that particular policy about non-operational positions.

CHIEF JANES: I've looked into it since, but –

MS. CHAYTOR: You looked into it since.

CHIEF JANES: – I’m aware of it now, yeah.

MS. CHAYTOR: Okay, all right.

And so at the time that you were saying that he needed to be issued a new firearm you weren’t – you have 155 policies, so I’m not criticizing, but you weren’t thinking about the issue of your firearms policy and what it says in terms of non-operational positions.

CHIEF JANES: Yeah, I knew that the policy was in terms of taking the firearm, but the practice was taking the key to the firearms locker. But even having a firearm in the armoury or having the key removed, there’s still a firearm in a person’s name. So that’s the principle behind it.

MS. CHAYTOR: And so is that what you anticipate was going to happen, that Constable Smyth’s firearm would be stored and that he would not have access to his key?

CHIEF JANES: Well, either that or the armoury, but there would be one in his name, yes. But, yes, I do agree with that statement, yes.

MS. CHAYTOR: Okay. That he would not have had –

CHIEF JANES: Agreed.

MS. CHAYTOR: – the firearm himself.

CHIEF JANES: Agreed.

MS. CHAYTOR: Access to the firearm, someone else would have the key.

CHIEF JANES: He was in a non-operational role, would not have had a need for it.

MS. CHAYTOR: Okay.

CHIEF JANES: But there would be one in his name.

MS. CHAYTOR: Okay.

And we can quickly bring up, if you wish, P-0023. So we can see what the policy is, and it’s page 5 of the policy. This is the policy that was in effect at the time, March 10, 2010, 3.7(i), and the new policy has similar provision. And it does say that, “... firearms will be stored at the RNC Armory when officers are assigned to non-operational positions and they cannot be assigned operationally.”

But I understand from the letter that was written by Inspector Oates that the practice actually is, as you’re saying, Chief, that the key would be – they could have their firearm left in their locker at the RNC but the key would be assigned to someone else.

CHIEF JANES: Yes, I think that’s how the policy was amended to keep with the practice. I think.

MS. CHAYTOR: Okay.

In answering my question, you did say issuing a new firearm because it wouldn’t be appropriate to issue him the same gun when he – when the gun, I guess, would be released from being an

exhibit. And what was your concern? Why wouldn't that be appropriate for him to have the same gun?

CHIEF JANES: I guess, depending on the person, they may – the firearm may bring them back to the circumstances around the death.

MS. CHAYTOR: So that might be something that could cause him further trauma?

CHIEF JANES: Further anguish, yes.

MS. CHAYTOR: Further anguish.

CHIEF JANES: Of trauma, yeah. Yes, agreed.

MS. CHAYTOR: Okay.

And do you know if the firearms policy, the section that I've showed you here, 3.7(i), do you know if that was actually adhered to in this case and that Constable Smyth did not have access to his firearm?

CHIEF JANES: I don't know.

MS. CHAYTOR: Okay.

And if we could look at P-0200, please. And this is later; this is now October 27, 2015. And this review of email exchange is between Acting Inspector Gullage, Superintendent Sheppard, and copied then to both deputy chiefs and yourself. And this is – Joe Smyth is concerned about certain things that he's reading through Twitter and social media sites.

And in this situation, Inspector Gullage is bringing to the attention of the superintendent and yourself, and the deputy chiefs, that Constable Smyth is very concerned about the developments, moving his wife and child with his in laws, and he may be making a request to be armed at home.

And we've seen other email communications done a few days later on November 2, where Acting Inspector Gullage gave permission for Constable Smyth to be armed at home. Were you aware of that at the time, Chief?

CHIEF JANES: No.

MS. CHAYTOR: Okay.

And if could then go back to P-0023, please. And on page 4 of this document, section 3.7 c. says: "Service firearms will not be taken to an officer's residence while off duty except as authorized by the Chief of Police."

So I take it, Chief, you did not authorize for Constable Smyth to have his firearm at his residence?

CHIEF JANES: I did not.

MS. CHAYTOR: Okay. And Constable Smyth was still under investigation, of course, at this point in time by the RCMP. And your own internal investigation was still ongoing, and that was with respect to, of course, a shooting death.

And would you have had any concern, if this had been brought to your attention, would you have had any concern about Constable Smyth being armed at home?

CHIEF JANES: Well, you showed me the email earlier that it was something that was being considered and that the last part of it indicates that Joe Gullage had somebody doing some research into it to determine what was happening in terms of the information available in terms of the decision making for Constable Smyth.

So in addition to section c. here under 3.7, as I indicated, since our interview I've been looking at it and giving it some thought. And there is another section under 3.7 f. that talks about the chief or his designate.

MS. CHAYTOR: That's in terms of storage, though, I believe of the firearm – f. So this is the only one that I could see about, "Service firearms will not be taken to an officer's residence while off duty except as authorized by the Chief of Police." f. says: "In extenuating circumstances, officers other than those specifically identified in this chapter may be authorized to store their firearm at a location other than an RNC facility by the Chief ... or his designate."

CHIEF JANES: No, another location would be home.

MS. CHAYTOR: Okay.

So you're saying that f. might have allowed it in extenuating circumstances if you or your designate would have allowed that his firearm could be stored at home and that would take preference over the specific provision of c? Is that your interpretation of your policy?

CHIEF JANES: I think the c. may be in relation to long term storage. For instance, if you're working in an office like forensic ident and you're on call, and for the next year you'll have your firearm stored at your residence, and I think that talks about exactly what it says, extenuating circumstances.

MS. CHAYTOR: Well, f. is extenuating circumstances. That's right. And did you designate anyone to make that decision for you?

CHIEF JANES: I did not specifically designate someone to make that decision for me. I have, I think, 27 managers and, you know, I think you just indicated that it was approved, in terms of the firearm being at home. And I guess my thoughts on that is that I have a large team of managers and they make decisions every day; it could be in relation to labour relations, human resource management, financial decisions.

I can have an inspector who's an incident commander and an armed and barricaded person, who has to make life-altering and very significant decisions in terms of people's safety and their lives, and another inspector down the hall who's making decisions in terms of the speed and the flow and the direction of a homicide investigation. So I do designate my managers to make some significant decisions on my behalf, but I did not specifically designate anybody on this particular decision.

MS. CHAYTOR: Yes. And I understand, of course, that you would expect that they would comply, in taking those actions, with any policies and procedures that are in place.

CHIEF JANES: Yes.

MS. CHAYTOR: Superintendent Sheppard has given evidence to the Commission that when he learned about this he was concerned for Constable Smyth. And when he became aware of the

decision he did not allow this to happen and didn't allow Constable Smyth to take his firearm home and, in fact, recommended, at that point in time, that Constable Smyth should consider taking some time off. Were you aware of that?

CHIEF JANES: Well, once it got past this email, to go back at that time and place, I didn't receive any other communication about this topic. But you're telling me that Sheppard became aware of it somehow, which I find very interesting, which means that either through Joe Smyth or Joe Gullage –

MS. CHAYTOR: Through Joe Gullage.

CHIEF JANES: – or somebody.

MS. CHAYTOR: Joe Gullage let him know on November 2 –

CHIEF JANES: So Joe Gullage told Jason Sheppard.

MS. CHAYTOR: – that he had given information – that he had given permission, yes.

CHIEF JANES: So I would see that as being very astute on the part of the inspectors: That I've made a decision and by the way, Boss, this is what I've decided and I'm letting you know about this.

MS. CHAYTOR: Yes.

CHIEF JANES: I think that's very astute of the inspector who made a decision to let his boss know what's going on. And so I think that was a very wise move on his part.

MS. CHAYTOR: Yes, that's right. He emailed and said that he had – it was five days later – he had forgotten to let him know but that he was advising him. And Superintendent Sheppard expressed concern in several places in terms of Constable Smyth being on a front-line position. And I believe you made – you expressed similar concerns yourself, while he was still under the RCMP investigation and hadn't been cleared, about not putting him in a position where he might be called upon to use force. And you shared those concerns I understand.

CHIEF JANES: Yes, one of the key considerations in terms of Constable Smyth being non-operational was we didn't want him to put in a situation where he'd have to make a decision again in relation to use of force.

MS. CHAYTOR: Okay.

I'd like to move now, Chief, to the email that was distributed on April 10, 2015, by Constable Smyth to his RNC colleagues and some others. And that became an issue, I understand, that you had to deal with in the aftermath of the shooting.

And did you discuss that matter with Constable Smyth?

CHIEF JANES: The email?

MS. CHAYTOR: Yes, the fact that he had distributed.

CHIEF JANES: Yes.

MS. CHAYTOR: Okay.

And I understand that email was sent to his colleagues at 7:33 a.m. that day. And his telephone records show there was an outgoing call to you at 11 a.m. on April 10.

CHIEF JANES: Yes.

MS. CHAYTOR: And is that around the time you would have discussed this with him?

CHIEF JANES: No, I think that was the second time. The first time was before I went to work in the morning; I called him from home to make sure he was doing okay. I recognized that the email was very likely some form of trying to cope with the stress of his situation.

And I think the 11 o'clock email was after it became leaked, that he called me and indicated that he was upset that it was leaked, I'm pretty sure.

MS. CHAYTOR: Did you – I understand that you had discussions then with management at the CBC about the email. Perhaps you can speak to what you did in response to that email then being leaked to the media.

CHIEF JANES: I think it was David Cochrane had contacted our media office with the information and then I talked to Peter Gullage of CBC inquiring about whether or not they were going to release the email. And we had a full discussion on it, you know, talked about the impact on Constable Smyth and any other factors which came up in our discussion.

And he indicated that he would be printing it but it would be done in a very respectful way so as not to be – as to be as respectful as possible I guess.

MS. CHAYTOR: Okay and respectful to who?

CHIEF JANES: Joe Smyth.

MS. CHAYTOR: Okay.

And what were your concerns? Why was it that you contacted Peter Gullage about this? What was your concern?

CHIEF JANES: Joe Smyth was upset about it and I was concerned about how it may impact him. I can't remember all the things we discussed but that was one of them.

MS. CHAYTOR: Were you concerned about the impact of the story on the Dunphy family?

CHIEF JANES: No, each time that I spoke to the media I always tried to be respectful of the Dunphy family. I can't remember reflecting on it in this conversation, but in other times when I spoke to the media I was always trying to be respectful, but I can't remember this particular case.

MS. CHAYTOR: If we could bring up P-0721, please.

So you didn't discuss that with Peter Gullage in terms of the impact that it might have on the Dunphy family?

CHIEF JANES: I can't recall. It's possible.

MS. CHAYTOR: Okay.

And this is the email here and then you're reporting that: "The CBC will be putting this story out. After significant discussion I managed to get from Peter Gullage that this will be a story with a 'positive tone' and the officer would not be named.

"We have an internal investigation in place to determine the source."

What did you mean by a positive tone?

CHIEF JANES: Is that it wouldn't be negative is the best I can describe to you. He said he would be respectful of the officer, I think may have been the words, something like that.

MS. CHAYTOR: So positive from the officer's point of view?

CHIEF JANES: Yes.

MS. CHAYTOR: Or the RNC's point of view or both?

CHIEF JANES: Yes.

MS. CHAYTOR: I understand then, you say here that you launched an internal investigation to determine the source. What was the result of that investigation?

CHIEF JANES: We were unable to determine the source of the release of the information.

MS. CHAYTOR: Constable Smyth's telephone records show that he did call you again on April 10, 2015 at 7:53 p.m. Could that be the time that he called you? Did you speak to him three times that day? Could that be the time you spoke to him then again after what you had discussed with Peter Gullage perhaps, and what you had worked out with Peter Gullage?

CHIEF JANES: It's possible.

THE COMMISSIONER: What date are you talking about there?

MS. CHAYTOR: The same date, same date. There's another phone call 7:53 p.m., April 10.

THE COMMISSIONER: The 10th of April.

MS. CHAYTOR: Okay.

Because – okay, so when you say before that it was leaked to the media by 11 a.m., I take it you knew it was in the hands of the CBC by then. As of 2:53 p.m. the story is going to be coming out, so it didn't come out, my understanding is, until later that afternoon, 11 a.m. though you were aware that it had gone to the CBC?

CHIEF JANES: Yes, I got the – when I became aware, I just have to check the emails, but it would be the time that I got the information from our media relations officer.

MS. CHAYTOR: Okay.

CHIEF JANES: I'm looking here and I think it was 10:30 a.m. around that time.

MS. CHAYTOR: Okay, that Steve Curnew became aware that David Cochrane had it because he called looking for a comment on the story.

CHIEF JANES: Yeah.

MS. CHAYTOR: Okay.

CHIEF JANES: According to the emails, David Cochrane contacted him at 9:59 a.m.

MS. CHAYTOR: Okay.

And I understand, Chief, that at least at the time of our pre-hearing interview you weren't aware that Constable Smyth had sent the email along to Corporal Burke of the RCMP.

CHIEF JANES: No, I was not aware of that.

MS. CHAYTOR: Okay.

There are issues that have arisen in the course of the inquiry regarding efforts to retrieve certain information from the cellphone that was issued to Constable Smyth by the RNC at the time of the incident. And the Commission has sought for production of the phone but we've been advised by RNC that it does not have the phone. And Constable Smyth has advised that the phone no longer exists.

Does the RNC have a policy regarding the return of cellular phones that are issued to its officers?

CHIEF JANES: There's no policy at the RNC. Policy in relation to BlackBerries and phones falls under OCIO. They are the people who wipe them for us and there's some policies there I'm not familiar with but we don't have any policies. That would be the only place I think you could find a policy on that.

MS. CHAYTOR: So is there any policy within the RNC policy and procedure to ensure that data that is related to police business is wiped from cellphones when they're no longer issued to an RNC officer?

CHIEF JANES: No. I think, again, that falls to OCIO policy and it's government wide. I'm not really familiar with it but ...

MS. CHAYTOR: Have you or anyone on your behalf made any inquiries regarding this?

CHIEF JANES: Regarding the policy?

MS. CHAYTOR: Regarding the fact that a cellphone is issued to your officer and the phone appears not to have been returned and no longer exists?

CHIEF JANES: I knew that through talking to someone you were trying to find the phone but I don't know if you've received it or not, I don't know.

MS. CHAYTOR: No. I do not have the phone.

And in terms of – do you have any concern in terms of whether or not there may have been any data left on the phone that's related to police business?

CHIEF JANES: Well, the phones that are turned in, you know, based on the information that I got from Cindy Marshall who works in that office, is the phones that are BlackBerries that are turned in, which I assume we're talking about.

MS. CHAYTOR: Yes, it's a BlackBerry.

CHIEF JANES: She arranges for OCIO to wipe them and to remove the data from them. And that's as much as I know.

MS. CHAYTOR: Okay. All right.

Turning now then to the Saskatoon report, the internal investigation, and this is P-0006, the Saskatoon report that you received on September 14, 2016.

First of all, why was Saskatoon police service chosen to do this review?

CHIEF JANES: Well, it was an internal review to be done. Typically, it would be something we would do ourselves. There was some issues around the public perception around the whole – the matter. So we decided that it would be appropriate to reach out to someone outside to do the internal for us. It had been a couple of times before. And we looked at the options that we had and myself and Deputy Singleton both knew Clive Weighill from attending meetings and that sort of thing. And we knew it was somebody that if we reached out to him in Saskatoon, he'd know who we were and he may be willing to do that work for us. So it's – it was a meeting amongst some of the staff in terms of trying to determine the most appropriate agency to reach out to and to keep it as arm's-length as possible.

MS. CHAYTOR: And why wasn't OPP chosen pursuant to your MOU?

CHIEF JANES: It's a – it's an internal investigation, and not a criminal investigation. And the other side of it is, is you don't want to be reaching out to the same organization too many times. And when we were discussing it at the table, we weren't sure if they had provided some training to Joe or if they had been involved in any policy consultations. We didn't know the answers to those questions, so we stayed away from –

MS. CHAYTOR: Okay.

CHIEF JANES: – from that.

MS. CHAYTOR: And the scope of the review I understand was a policy and procedure review, as well as the regulations to the RNC Act. Was there any restrictions put on Sergeant Little as to which policies and procedures that you thought were relevant, or was he given a full range of all 155 polices that he could review to see what he determined might be relevant?

CHIEF JANES: His liaison person was Superintendent Sheppard. He would be the best person to speak to in terms of the interaction with him.

MS. CHAYTOR: Okay.

CHIEF JANES: But I did not put any restrictions on what he could review in terms of policy.

MS. CHAYTOR: Okay. And we do have some evidence from Superintendent Sheppard on that.

So I'll just ask you then, in terms of the result of the review, Sergeant Little did find that Constable Smyth had breached Section 4.6 of the information technology policy. And that was in relation to the April 10 email, the wide-spread distribution. You did not accept that finding, and why is that?

CHIEF JANES: I consulted with the person who had developed that piece of policy, being Kim Harding, and of course there's words on a page and then there's the spirit and intent of what was meant when it was put there.

When I spoke to her, she said: Well, we developed that policy. That was to prevent people from clogging up our email system with things like: I have a basement apartment for rent, and sending it to 500 people. Or I want to sell my boat and motor, and sending it to 500 people and blocking up our system with private matters or personal matters. And so it's – that was the spirit and intent of the policy and we didn't think that this email fit that spirit and intent.

MS. CHAYTOR: Okay.

When we met for your interview, Chief, you mentioned that you had attended a chief's conference and the head of the Atlantic Police Academy had discussed that they had launched a new use-of-force program with de-escalation included, and you were asking within your organization that inquiries be made to determine if the de-escalation component of the RNC's use of force was up-to-date or up to standard with what others were doing across the country. And I'm wondering – you remember that discussion in the interview?

CHIEF JANES: Yes.

MS. CHAYTOR: Okay. What was the outcome of those inquiries?

CHIEF JANES: So I asked Deputy Chief Carroll when I got back from the conference, I said: Can you follow-up with Bill James, our use-of-force team, the Atlantic Police Academy has a new program, was what Mr. MacLeod indicated to me, Edgar MacLeod and I said: It's something we should have a look at and compare it to what we have. That was the direction I gave.

MS. CHAYTOR: Okay. And is there any outcome then at this point or any determination made as to whether or not there is to be any changing of the de-escalation component of your use-of-force training?

CHIEF JANES: I haven't received any response.

MS. CHAYTOR: Okay. So it's still under review?

CHIEF JANES: As far as I know, yes.

MS. CHAYTOR: Okay. Thank you.

Those – sorry? I didn't want to cut you off.

CHIEF JANES: My task (inaudible). Okay.

MS. CHAYTOR: Okay.

Those are my questions. The Commissioner or some of the other counsel may have questions for you.

Thank you so much.

CHIEF JANES: Thank you.

THE COMMISSIONER: Thank you, Chief.

I'll ask counsel, who's going to go first?

Mr. Drover.

MR. DROVER: Chief Janes, thank you.

Of course you know me; I'm John Drover, counsel for the RNCA and I have some questions for you this afternoon.

Earlier, Commission counsel took you through some recommendations from the Luther report?

CHIEF JANES: Yes.

MR. DROVER: And you're familiar with that report?

CHIEF JANES: Only the recommendations.

MR. DROVER: Okay. Are you familiar with recommendation number 38?

Maybe we can bring it up. Do we have the Luther report? I can certainly read it to you, if I can find it. We don't have the Luther report, right?

MS. CHAYTOR: Unless it was on that document, John? Those were the ones that the Chief gave me.

MR. DROVER: Yeah, 38, so I'm going to go from memory with 38.

THE COMMISSIONER: That's fine.

MR. DROVER: It wasn't a recommendation to the RNC, by the way, it was a recommendation to the RCMP. And that recommendation to the RCMP was that they would adopt a policy similar to the RNC's policy of bringing in an outside force.

Are you familiar with the fact that recommendation number 38 was the reason that you have the policy around the OPP?

CHIEF JANES: I guess based on your wording is you're indicating that they would have one similar to ours, which would mean ours was already in existence.

MR. DOVER: Right. And I believe in – I believe the Luther report even commended the RNC for having such a policy.

So can you explain to me when it is that that policy comes into effect?

CHIEF JANES: The policy of bringing in an outside agency for the RCMP or the RNC?

MR. DROVER: For the RNC?

CHIEF JANES: For the RNC?

MR. DROVER: I'm not sure that the RCMP ever –

CHIEF JANES: Okay.

MR. DROVER: – followed the recommendation. I haven't seen any evidence of it.

CHIEF JANES: Yes. So it would be a serious bodily injury or death or a similar matter, and it would be when the incident happens in the RNC's jurisdiction. If Mr. Dunphy had been shot on Lemarchant Road, then we would have contacted the OPP and enacted the memorandum of understanding and had them come in and do the investigation, if they were agreeable.

MR. DROVER: What about if Mr. Dunphy had been shot on Lemarchant Road by the RCMP?

CHIEF JANES: Then we would have done the investigation.

MR. DROVER: And why is it that – why is it then that your – that it's only officer-involved shootings which involve an RNC member that you would do that? I mean, I want you to explain the difference between you investigating the RCMP, you know, someone from the Holyrood detachment versus – I could understand you not wanting to investigate your own, but perhaps you can explain the difference.

CHIEF JANES: It's been past practice – we have actually had shooting incidents. For instance, on Elizabeth Avenue, an RCMP officer discharged their firearm a number of times and we conducted that investigation. So in keeping with past practice and in keeping with the gathering of the information at the early moments of an investigation, when it's the freshest and you haven't lost any information, and keeping with the fact that RNC and the RCMP are not the same organization but they are separate police services, is that the past practice has been that the alleged criminal activity or incident involving the other service can and has been investigated by the police service of jurisdiction.

MR. DROVER: And I believe – well, in St. John's there's been a number of those situations. There was the shooting at Memorial University, I believe, in the winter of 2015?

CHIEF JANES: That's correct.

MR. DROVER: That was investigated by the RCMP?

CHIEF JANES: That's correct.

MR. DROVER: And there was a criminal –

CHIEF JANES: That was at our request.

MR. DROVER: That was at your request?

CHIEF JANES: Yes.

THE COMMISSIONER: The shooting at Memorial is investigated by the –

MR. DROVER: RCMP. It was an RNC –

THE COMMISSIONER: RNC shooting.

MR. DROVER: – officer discharged his weapon, nobody was injured and the RCMP did the investigation.

CHIEF JANES: That's correct.

MR. DROVER: And then you mentioned when the RCMP discharged their weapons at Canadian Tire, which used to be on Elizabeth Avenue, and the RNC investigated that.

CHIEF JANES: Correct.

MR. DROVER: And then I believe there was a criminal complaint of an excessive use of force in the Pipers parking lot, 2015. Mr. Simmonds would know a good deal about that one. I believe that might have been his client who had made that complaint. And that I believe was an RNC officer and the RCMP investigated.

THE COMMISSIONER: What was that one –

MR. DROVER: Do you have the name?

MR. SIMMONDS: The name just fails me at the moment but it was at Pipers parking lot. It was the RNC, four officers involved and it was investigated by the RCMP.

MR. DROVER: I believe that was also 2015?

MR. SIMMONDS: Yes, that would be correct.

MR. DROVER: Are you familiar with that incident?

CHIEF JANES: Yes.

MR. DROVER: So what I want to ask is: As the RCMP say that they're going to investigate an RNC officer in their jurisdiction, did you have any thoughts about how that was going to play out in the following months in the public?

CHIEF JANES: No, not at that time I did not.

MR. DROVER: And so I guess now we're just about two years post incident and we've certainly been able to see how it has played out in the public.

Would you make a different decision as to what your conversation might have been with the RCMP superintendent at that time, given what you know now because part of this inquiry is to be retrospective as we look forward?

CHIEF JANES: So the RNC investigated the RCMP shooting on the parking lot at Canadian Tire and the RCMP investigated the RNC shooting at our request at Memorial University, then there was another investigation by the RCMP on the Pipers parking lot in relation to allegations of excessive force. And in none of those issues did it become a public issue in terms of who would do the investigation or the issues around the appropriateness of who would do them.

It was all accepted by the public at the time, and it seems that this was the first case where it was raised as being an issue in terms of one of our organizations investigating the other. In the previous cases, it wasn't raised as an issue so it wouldn't have raised a flag with me on April 5.

MR. DROVER: Okay.

And let's imagine that tomorrow there's, God forbid, an officer-involved shooting, an RNC member in an RCMP jurisdiction, and the RCMP comes to you and says: This is our jurisdiction;

we got this. The Commissioner hasn't made his report or any recommendations and they decide, well, we can do a good investigation. What would your response be?

It's pure speculation, but I want to get that on the record because this is something that's going to have to be addressed by the Commission in a recommendation.

CHIEF JANES: Well, that's – it brings us back to the discussion around a serious incident response team for Newfoundland and Labrador being where we would like to be. If a similar incident happened tomorrow in relation to an RNC officer in the RCMP's jurisdiction, I guess we'd have to have a discussion between the two police services in terms of the road forward, but the final decision would lie with the RCMP as they're a police service of jurisdiction.

MR. DROVER: But certainly you could voice your concern about that?

CHIEF JANES: If I had a concern.

MR. DROVER: Okay.

And so you still, to this day, wouldn't have a concern with the RCMP investigating an RNC officer-involved shooting in their jurisdiction?

CHIEF JANES: I don't have any issue with the quality of RCMP investigations. I think they're a national police service with tens of thousands of employees. They have access to scientific and technical expertise that no other police service has, unless they reach out to the RCMP through their national police services. So I think many people don't grasp the fact of the resources that they have at hand when they go to do an investigation.

MR. DROVER: I think that's been brought out, certainly, in the ASIRT reports and I'm not here to question the quality of the RCMP investigation. My question centres around the public perception of that happening.

And so having experienced now two years of the public speaking about this shooting, given the public perception, would you still agree with the RCMP's decision to do that?

Purely public perception –

CHIEF JANES: You mean –

MR. DROVER: Not the quality of the investigation or any of that, purely from a public perception point of view.

CHIEF JANES: So we're talking about the Dunphy matter now or hypothetically?

THE COMMISSIONER: I think he's saying – I think Mr. Drover's asking in hindsight, would you not have more concern about the public looking askance at having the RCMP investigating the RNC where the RNC member is in a joint unit with the RCMP. Would that be fair? I say joint unit, I know it's a – is that a fair –

MR. DROVER: Yeah.

THE COMMISSIONER: – statement of the question?

MR. DROVER: Yes. Exactly, yes.

THE COMMISSIONER: In hindsight, wouldn't you be more concerned about public perception?

CHIEF JANES: Well, I had, as Mr. Drover indicated, three incidents where one service investigated the other in some significant allegations or shootings, and it had not arisen as being a public perception issue.

It's challenging to – I think we have to be cautious about putting a 2017 lens on a 2015 issue. And our province is at a point now where I think a serious incident response team would be positive step forward. So in terms of reflecting back and trying to put today's lens on yesterday's decision, I don't – I can't really offer much more insight.

THE COMMISSIONER: Too speculative.

CHIEF JANES: Yes, Sir.

THE COMMISSIONER: I think I've read somewhere one of the concerns expressed when you have this sort of working relationship between the RNC and the RCMP, when you have an exchange as it were of, you know, the RCMP will investigate the RNC under certain circumstances and vice versa, there's a concern that there may be a trade-off that forces may be – and I'm not saying there's a strong argument.

But I've heard it expressed that some people view the situation as: Oh well, the RNC has passed it over to the RCMP knowing that they have previously investigated the RCMP. And over a period of time, whether it's just because it happens once or twice, but if it happens too often there might be this view that they're each scratching each other's back, you know.

CHIEF JANES: I think there's probably been three incidents where they did an investigation of our officers or three or four incidents where they did an investigation of our officers and our officers doing an investigation of theirs. It's not very frequent.

And, certainly, I think that falls to part of the discussion around having a serious incident response team for Newfoundland when, if there's nine other provinces, there's probably six others that have gone down that road ahead of us. So there must have been merit in it for them to make those decisions as well, Sir.

THE COMMISSIONER: Uh-huh.

MR. DROVER: Can we bring up P-0023, Madam Clerk, please? I want to go to page 12, and if you could scroll down to closer to the bottom.

Chief Janes, I want to discuss 13.3, f. of this; so one of the things that you do in a post-shooting incident is to consider reassigning the officers involved to non-operational duties. I assume that you did that in this case.

Can you outline for the Commissioner, please, what sort of considerations, what factors you would take into account in making this decision?

CHIEF JANES: Ninety-five per cent of this decision was made in terms of Constable Smyth because we didn't want him to be put in another use-of-force decision again. Considering reassigning officers to non-operational duties could be very broad. It could be a mental health issue; it could be a physical issue.

I know this falls under after-care officers involved in traumatic incidents shall be in accordance with EAP and it lists f., so it is for officers in traumatic incidents. So it's – when it says consideration to reassigning, I think what that leaves it to is a managerial decision. And we take all the factors into consideration in terms of the wellness of the officer and the appropriateness of trying to find duties for the person.

MR. DROVER: Is it possible to – I mean, are there positions within the RNC which are operational in nature but not front line so the officer would not be in a use-of-force decision situation?

CHIEF JANES: It depends on what's meant by operational. I know when Joe Smyth was looking to be operational again we tried to turn our minds to some operational options for him and, you know, things like Communication Centre or policy office and we did struggle. I mean it's a fairly large organization but we were struggling to find something that he would find meaningful and at the same time not put him in a position where he'd have to make use-of-force decisions again.

MR. DROVER: And Constable Smyth certainly testified while he was on the stand about the negative impact that the decision to make him non-operational had on him. And were you aware of that?

CHIEF JANES: I was aware that he was unhappy with the decision.

MR. DROVER: Were you aware that he took some of his health leave, I think around November 2015?

CHIEF JANES: I knew that he was off on leave. I didn't know the reasons in terms of the medical side of things. I know he was on parental leave for a period of time and sick leave for a period of time.

MR. DROVER: So I mean there are a lot of considerations, obviously, when there's an officer-involved shooting and, certainly, one of them is the well-being of the officer. Correct?

CHIEF JANES: Agreed.

MR. DROVER: So would you also agree then that it's important to have a very clear policy and guidelines around that officer's role when they return to work?

CHIEF JANES: If it's possible to have the guidelines, yes. Sometimes these things are difficult to write a policy on because the circumstances can be so different.

MR. DROVER: And there is a lot of academic research out there on officer-involved shootings. Are you familiar with that?

CHIEF JANES: I will say that in relation to the non-operational duties, we've recently retained a HR person who helps us with accommodations. And if this were to happen today then we'd be able to retain the services of that HR person to assist us with making the decisions around non-operational duties.

MR. DROVER: Does that –

CHIEF JANES: That's come in the last couple of months.

MR. DROVER: Sorry, go ahead.

CHIEF JANES: That's come in the last two or three months.

MR. DROVER: Two or three months.

Does that HR person have any specialized training in regards to officer-involved shootings?

CHIEF JANES: Not that I'm aware of.

MR. DROVER: Would that be something that you would seek out for that officer? And I shouldn't say just officer-involved shootings, but any critical stress incident that officers might face themselves with?

CHIEF JANES: So the challenge or the issue around officers and the stress that they face in terms of shootings, as you mentioned, that would fall to the Employee Assistance Program and to the peer counselling and will also fall to the psychologist who, then, does the debriefing and works with the officer in the days to come with the EAP program.

MR. DROVER: Is it true that the first three weeks that Constable Smyth returned to work he remained in an operational position?

CHIEF JANES: I know the first three days or so he was off duty and then I think he went on holidays. As far as I know, he was non-operational after he came back from holidays, as far as I know.

MR. DROVER: Okay.

CHIEF JANES: I don't know any different.

MR. DROVER: He was also around the same time demoted from acting sergeant because he was no longer with the PSU, is that correct?

CHIEF JANES: He was no longer in a supervisory role.

MR. DROVER: And would it be – would you believe that a demotion at a time like that would have a psychological effect on an officer?

CHIEF JANES: He was in an acting position.

MR. DROVER: Yes.

CHIEF JANES: Which means he had not achieved the position, so I would not consider it a demotion. It was the end of acting role.

MR. DROVER: In terms of recommendations that the Commissioner is going to make, and we've heard from Bill James on the four modules for use of force, and module 4, to my understanding has to do with critical stress incidents.

Would you see any use in having a force-wide training in teaching officers how to deal with each other in officer-involved shootings? There doesn't seem to be any – there seems to be a lot of stuff in there directed towards the involved officer but not towards the officers who deal with the involved officer. Do you understand what I'm saying?

CHIEF JANES: I do. It's how will the other police services employees interact with that person? I had never thought of it until you mentioned it. I don't know if such a thing exists.

MR. DROVER: Would you see any use in it?

CHIEF JANES: Yes. I mean somebody who's involved in a critical incident and they're coming back into the workplace, if people had received some guidance as to how to interact with that person, I could see some benefit in that, yes.

MR. DROVER: Were you able to witness any of other officers interacting with Constable Smyth at the time or any of his supervisors or did you just receive sort of –

CHIEF JANES: I, I –

MR. DROVER: – second-hand information.

CHIEF JANES: I didn't receive any information in terms of how the other officers were interacting with him.

I don't have anything to offer on that, sorry.

MR. DROVER: That's okay.

And you joined the force, I think, in 1985, correct?

CHIEF JANES: Correct.

MR. DROVER: So you would have been constable in 1985 and you've been with them now for 32 years.

CHIEF JANES: Yes.

MR. DROVER: It's – so in 1985, when you joined the force, were there two-man patrols, two-officer patrols?

CHIEF JANES: Yes.

MR. DROVER: Were all patrols two-officer patrols?

CHIEF JANES: At night.

MR. DROVER: During the daytime they were –

CHIEF JANES: Single officer.

MR. DROVER: All of them were single officer?

CHIEF JANES: It would be the police van would have two people and the 4 p.m. to 12 midnight shift would have been two-person patrols and the 12 midnight to 8 a.m. shift would have been two-person patrols, all vehicles.

MR. DROVER: And when did it – when did the practice change?

CHIEF JANES: I can't give you the date, I don't know for sure. I think it was ...

MR. DROVER: Around '94?

CHIEF JANES: Early '90s would have been my guess, yes.

MR. DROVER: I assume you were still constable in the early '90s?

CHIEF JANES: Yes.

MR. DROVER: You wouldn't have been privy to any of the decision making or reasons around why they would go from two-man to one-man patrols, I would assume.

CHIEF JANES: I was in a union meeting here too, yeah.

MR. DROVER: Okay. And do you know then what the reason for doing that was?

CHIEF JANES: To avoid the layoff of police officers.

MR. DROVER: Okay.

THE COMMISSIONER: So you're saying that at a union meeting you discussed accepting single-officer patrols to avoid layoffs?

CHIEF JANES: That's correct.

MR. DROVER: Are you aware that it's been the, I think ever since the RNCA's position at the last four rounds of bargaining, their opening position is to bring back two-man patrols?

CHIEF JANES: That's possible.

MR. DROVER: What –

CHIEF JANES: I can't say for sure.

MR. DROVER: What is the –

CHIEF JANES: I can – sorry.

MR. DROVER: If you have more to say, go ahead.

CHIEF JANES: It's possible; I can't say for sure.

MR. DROVER: Okay.

What do you see as the benefit in terms of officer safety or operational concerns or what have you for two-officer patrols versus one-officer patrols?

CHIEF JANES: When I reflected on it over the years I always saw significant benefit in the fact that two people would be involved in decision making and they could consult with each other. Even when we were very junior officers with two years' service and your partner may have three years' service; it made a difference in terms of being able to discuss your approach and the response and to have two different perspectives in all of your decision making. I think that was the biggest thing.

MR. DROVER: I'm just looking through my notes to see if I have other questions for you.

One thing we haven't discussed at the Commission, and this would be a form of civilian oversight that we already have, is the Public Complaints Commission. Can you briefly describe the RNC Public Complaints Commission for the Commissioner?

CHIEF JANES: It's an independent organization, and when public complaints are received the information is shared with the Commissioner, subsequently investigations are conducted and the Commissioner oversees the flow of public complaints through the system. And it provides independent civilian oversight of complaints about police officers that are not necessarily criminal in nature. It could be other complaints, and you can also deal with complaints about the policies of the RNC or – as well.

MR. DROVER: And who at the Commission conducts the investigations? Is the RNC involved in any way in those investigations?

CHIEF JANES: The initial investigations are done by Professional Standards section at the Royal Newfoundland Constabulary, and if there's an appeal then Mr. Rorke will assign investigators to do a second investigation.

MR. DROVER: And what you say, the initial investigation is done by your Professional Standards Section because the initial complaint, the first decision on a complaint, is yours to make. Is that correct?

CHIEF JANES: Yes.

MR. DROVER: And so if it's appealed to the Commission, is that a fresh investigation or is it simply rehashing of the RNC investigation?

CHIEF JANES: It's a fresh investigation to the best of my knowledge.

MR. DROVER: In terms of media relations – and you've spoken in quite detail about this already and especially section 8.1 of the Media Relations Policy; P-0027 if anybody wants to make a note. I don't need it brought up, Madam Clerk.

And there are some restrictions mainly speaking about policy and procedure, RNC employee involved or an ongoing investigation. Are these restrictions – I'll wait for you to find it.

CHIEF JANES: Go ahead.

MR. DROVER: Are these restrictions discretionary in any way?

CHIEF JANES: It would depend on which one of the ones you're talking about. There would have to be a line, I guess, as to how far you would speak on a topic. And so it provides a guide in terms of the way forward.

MR. DROVER: The decision – is the decision ultimately yours on what gets communicated and what doesn't? Or do you have some sort of committee structure?

CHIEF JANES: No, the communications, I do that in partnership or with the assistance of the media relations officer, but it's the chief's decision as to what goes out publicly.

MR. DROVER: So as you've said right now, your media relations officer is a constable. Correct?

CHIEF JANES: Correct.

MR. DROVER: And that's constable has how many years' experience?

CHIEF JANES: Approximately five.

MR. DROVER: Five years' experience and you have 32 years' experience?

CHIEF JANES: Correct.

MR. DROVER: So that officer would certainly defer to you on any decisions. Might provide you with some advice on how social media works these days but as far as what information is going to be provided, that would have to be your decision in that case.

CHIEF JANES: It certainly was, yes.

MR. DROVER: Okay.

Did you have any concern that a vacuum in information of any sort was going to fuel conspiracy theories in the public?

CHIEF JANES: I guess it was a reality. In terms of – yeah, I guess it was a reality, is that people had conspiracies. I do find it very interesting now that we're two years later, and I see people like Minister Bennett who are dealing with issues like cyber bullying of public officials and high-profile people.

And I'm very interested in the work that she does and I think it's a very good step forward, something that we certainly didn't envision over the last couple of years or, certainly, I didn't. And so I think that's a worthwhile way in the future to look at some of these things, is there a way to deal with things from a cyber-bullying perspective.

MR. DROVER: Were there any, I guess, pieces of information that you could provide to assist the public? For instance, that all of your patrols are one-officer patrols. I mean, are you revealing anything there that's going to put an officer at risk or the investigation at risk, by letting the public know that the fiscal reality of the province is that you can only afford to have one-person patrols?

CHIEF JANES: So that was a question that was in my speaking notes on the first day after the incident and it was: Why was the officer alone? And my response was: Sometimes our officers work alone, other times with a partner; this will likely form part of any inquiry.

MR. DROVER: Right.

CHIEF JANES: So I did deal with it on the day after the incident.

MR. DROVER: Okay.

So this was something that you could have dealt with continually from the time of the incident until the release of the reports. So it was something you were willing to deal with that day. It was a question that persisted in the public so you could have provided some more detail on it such as the discussion that we've just had, that in the '80s it was two-officer patrols at night, and in the '90s, in order to avoid layoffs, you decided you'd go with one-man patrols.

CHIEF JANES: You just got to be very careful where you draw the line, in terms of any information that you provide, in order to protect the integrity of the ongoing criminal investigation.

MR. DROVER: And I assume this is why you believe it would be useful to your office to have a better-trained or better-educated media relations person to help you, as an experienced police officer, navigate the world of information.

CHIEF JANES: I would like to have that person join the team. I'm very happy with the media relations person that I have, Geoff Higdon, and his predecessors, Steve Curnew and Suzanne Fitzgerald and Talia Murphy. And I was pleased with all of their work but I would like to have a professional join the team.

MR. DROVER: Was the concept of intelligence-led policing or proactive policing something that you could have spoken publicly about without putting officers at risk or the investigation at risk?

CHIEF JANES: Well, again, that falls to speaking about the circumstances that led to Joe Smyth going to the residence of Mr. Dunphy. And it's part of the investigative process that the RCMP is going through and you don't want any statement to be seen as being an interpretation of the events. I need to be seen as being impartial when there's investigations ongoing, and the integrity of the process needs to be protected in every way possible.

And it's – we don't write the stories for the media, we just provide some information and then they create the story, based on other sources as well. So you don't know what the end story will look like.

MR. DROVER: I think everybody who's at this inquiry can spend a day here and go home and read the news at night and wonder whether or not you were actually at the same inquiry as the journalist, so I completely understand that.

In terms of body cameras, I'm going to ask just – you know, in case this is something that is recommended, I'm going to ask for your own personal views on that, and then I'm going to raise some things that might be of concern.

CHIEF JANES: So in terms of body-worn cameras, the first question would be: Is it a necessity? I think in other jurisdictions the discussion is happening because of use-of-force issues. We typically look at seven to eight – between seven and eight issues around excessive use-of-force allegations by police officers. And to put that in context, that would be based on 70,000 calls for service, so one out of every 10,000 calls.

So once you determine if it's a necessity, then you need to determine if it's the right solution to the problem that you have, if you do have a problem. It doesn't – it's not as simple as snapping a camera onto your jacket and going to work.

You're going to have issues in terms of having to review the camera's recordings at the end of your shift for every arrest that you make, and then are you going to have to transcribe the information that's gathered. You're going to have privacy issues because you're going to have matters recorded that don't have anything to do with events. And then you have to make decisions around whether you're going to have it on all the time; turn it on, turn it off, when do you turn it on, when do you turn it off. And then there's a fiscal reality to it as well in terms of buying the equipment, having the storage space, doing the disclosure, doing the necessary work in order to bring the information forward.

So it's a cost-benefit analysis depending on your jurisdiction. My favourite quote in relation to it was from a senior officer from the Halifax area. And he said what's right for Detroit is not necessarily right for Dartmouth.

MR. DROVER: Is there – so at these meetings, is there ever any concern raised about I guess the field of view? I mean it's not a 360-degree camera, so if you can see 45 degrees in front of the officer, you can't see what's going on everywhere else.

CHIEF JANES: I've been there for very full discussions amongst numerous chiefs talking about it and it's being researched by some police services now. But I guess it needs to be put in the perspective of the organization as a whole as well, that we have made technological advancements.

We put computers in our police cars so police officers can do checks and gather information and file their reports in the police car, we've put in the electronic submission of fingerprints to the central agency in Ottawa so that we can instantaneously get fingerprint matches and solve cases while crime is still fresh and there's still exhibits at someone's house and we match a fingerprint. And as well, we've looked at advancements in terms of central recording of the interviewing of victims, witnesses and suspects. And currently we're doing a review of technology as a respect to responding to the Jordan decision and how we can use technology to help us speed up our investigations.

So you can't just look at this from a singular perspective. If you're going to go ahead with one technological advancement, then others need to be put on hold because it's the same team that works on it and you only have limited resources.

MR. DROVER: And I guess I'm going to give you an opportunity because I don't think you've spoken about it yet, but I know that it's probably one of the biggest issues and it will be in terms of implementing any recommendations. What are your thoughts on the current resources allocated to the RNC to be able to do your job properly?

CHIEF JANES: I guess it would be just enough.

MR. DROVER: Just enough.

CHIEF JANES: Just barely.

MR. DROVER: So you best be very frugal with those recommendations for the RNC, Mr. Commissioner.

CHIEF JANES: We have just enough. We can do the job.

MR. DROVER: Those are all the questions I have.

Thank you Chief Janes.

CHIEF JANES: Thank you.

THE COMMISSIONER: There's a mayor in St. John's, actually a deputy mayor, many years ago and he accumulated by, shall we say, being economical with his disclosures on the budget I think – he accumulated, over 10 or 12 years, enough money to build a new city hall.

So I assume you don't have that capability in your organization to tuck away any nest egg for a rainy day or for new advances. So we can sympathize with the position that you find yourself in.

Any other counsel that have any questions to put?

No, I see none?

MR. AVIS: Yeah, I do. I'm just (inaudible).

THE COMMISSIONER: Oh, sorry, Mr. Avis.

MR. AVIS: (Inaudible.)

THE COMMISSIONER: When you're ready. I didn't see any movement in that regard.

MR. SIMMONDS: I'm sorry, Mr. Commissioner, I just had one very brief set of questions and I think the chief has, in part, answered it already.

But, Chief, from Meghan Dunphy and the family's point of view, do you understand the concern and the issue they have when the RCMP is investigating the RNC? I mean, I've put the same question to the RCMP. It would be nice to hear your views, from the senior member of the RNC.

Do you understand why there's the – you referred to it a few minutes ago as conspiracy theory, but do you understand why these doubts and concerns exist?

CHIEF JANES: Their depth and knowledge in terms of the intricacies of the matter would be certainly greater than mine. I have a lot of things on my plate in terms of the work that I do.

MR. SIMMONDS: Yeah.

CHIEF JANES: So it's very difficult for me to understand their perspective on it.

I mean, who am I to be able to understand the thoughts and the responses of a young lady who loses her father. We've had tragedies in our own family and we respond in our own way and cope in our own way.

MR. SIMMONDS: Uh-huh.

CHIEF JANES: And, certainly, my thoughts are always with her and her family and the unfortunate circumstances that happened, but I think it's difficult for me to understand her perspective.

MR. SIMMONDS: But perhaps from the perspective – and I think, I've done some reading on it, but one of the lines was used either in the materials or one of the counsel said it here: It's the thin blue line of one force investigating the other.

And I think the perception or the sensitivity of that greatly increases when you have the RCMP investigating an RNC matter, you know. And the allegations or concerns that Constable Smyth received preferential treatment by not having his statement taken right away, by when Meghan attended at the scene, he was free to walk around; he wasn't even placed in a police car. All of those things led to a very concerned and, I think in reality, a negative perception of the way this was going to be treated and investigated by the RCMP.

Do you understand the concern and the issue there, and do you have any words of advice for the Commissioner that could help? I know you had spoken of ASIRT which may be the solution, if the resources are available for that, but do you have any other suggestions or thoughts on it that the Commissioner may incorporate in it at the end of the day in like situations?

CHIEF JANES: I think you alluded to it yourself is that no doubt this is not the first time this discussion has happened in Canada. And because that discussion has happened in other jurisdictions they have put in a team that's independent of the police services in those

jurisdictions in many, many provinces. I think there's probably only two other left that don't have it. So I think you're bringing up the same discussions that were had in other provinces in the development of serious incident response teams there.

MR. SIMMONDS: And the serious incident response teams, you say we're only one of two or three provinces left that does not have this.

CHIEF JANES: I think it's New Brunswick and Saskatchewan that do not. BC, Alberta, Manitoba, Ontario, Quebec is developing one, Nova Scotia has one and they've had a contract with PEI. So I think it's New Brunswick and Saskatchewan – but I could be corrected – that do not.

MR. SIMMONDS: And these response teams were put in place to deal with just such kind of issues that we have arising in this case.

CHIEF JANES: There was some sort of a catalyst, no doubt, in each case. I think in Manitoba it was an impaired driving case, but in each province no doubt there was some sort of a catalyst; perhaps not every province but, no doubt the same discussions happened.

MR. SIMMONDS: Okay.

Thank you very much, Chief. Those are the only questions I have.

MR. WILLIAMS: Chief, I only have one question and it relates to – there was a discussion earlier in your direct testimony, you were talking about the interaction of the PSU with the premier's office. And correct me if I'm wrong, I'm just looking at my notes, I think when you were describing it at one point you described it as the structure is very fluid and the premier has some input into that issue.

Now, there's been some discussion during the course of the inquiry, and I think your description is probably accurate, of the way things were or are. But as to whether or not the unit should be a complete, separate entity, such that there is no discretion in the hands of the premier or any other public official as to the role and the involvement of the PSU so that its, you know, not up between discussions between the PSU and the premier's office or staff, or it's not up to the premier to dictate when he wants the unit or when he doesn't, that there should be actually a more formalized role so that the decision making – in terms of the operations of the PSU – is solely in the hands of that unit. And without, you know, not citing extremes here but, you know, the American comparison is that understanding that in some of the higher levels of security protection (inaudible) solely within the unit, they dictate to public officials and politicians what the security measures are going to be. There's no interplay.

I'd be interested in hearing your thoughts as to whether or not you think that is where we should be going with this unit, because Mr. Davis, when he gave his testimony he, he readily acknowledged that he had reluctance to sometimes be seen with security detail. And there's other – there was evidence by Constable Smyth as to public perception that it's a waste of resources. And I think we're trying to accomplish something so that we might be able to address this on a go-forward basis. So I apologize for the long preamble, but I'd be interested in hearing your thoughts in that regard.

CHIEF JANES: So I do see it as a balance. The premier determines the full team around the premier, in terms of what it looks like, the skills that they have and the jobs that they do. So on one hand you look at it and you say, well, should we be dictating to the premier who's going to be sitting to them in the vehicle and who's going to be stood by their side as they travel around the community?

And then the other side is if you take it out of the decision making of the premier's office is that, as you alluded to, takes any pressure off in terms of the public perception then that they can be looked after and it's not just the premier's office, but other ministers quite often as well. So I do see a balance there between the two.

And in terms of looking forward in the years and decades to come, which is part of what an inquiry does, I think I would lean towards having the unit in place and, and that premier's office comes in and this is the unit that's there, and it's the same as the last premier and same as the next. So trying to balance between the two, I would lean toward having the unit there.

MR. WILLIAMS: Having the unit there in a similar operational fashion as it currently is, or would you foresee any changes in terms of the operational style of the unit?

CHIEF JANES: Well, it has to accomplish its goal, and there's two goals for the unit. One is for the premier to be safe and the other is for the premier to feel safe. So it would be in terms of having, as you indicated, taking the decision making out of the hands of the premier and leaving it in the hands of the unit.

MR. WILLIAMS: Okay. And do you feel – I guess the last question because we were speaking of resources. Do you feel that or during your tenure dealing with the unit, do you feel they had enough resources to provide the adequate protection that was needed? Or was that ever an issue that we, you know, we can't afford to put any more officers in this unit, or we can't afford to fly you with the premier to Ontario, New Brunswick – did you feel that the unit was stressed for resources?

CHIEF JANES: I felt that the unit always had the resources necessary to keep the premier and the government officials safe; however, having the officers do that, then there were other duties they could not do in terms of serving the community.

MR. WILLIAMS: Okay, that's fine.

Thank you.

THE COMMISSIONER: Mr. Avis?

MR. AVIS: Thank you, Commissioner.

I'd like to just – I think there's only a few points here. Dealing with the Protective Services Unit, Inspector Gullage opined that he thought that if there were legislation put in place to clearly define some of the issues, that might take away the notion that the premier could decide when he or she needs a protective detail and that it may resolve the issue of the politicians feeling that we shouldn't have this because of the bad public perception. I'm just wondering if you've had any opportunity to consider whether that kind of thing would be useful.

CHIEF JANES: Well, if it's going to be taken out of the decision making of the premier's office, then there's going to want to be some authority behind that, whether it's a legislative authority or a recommendation from an inquiry or something that would have some teeth to it.

MR. AVIS: I think that was Inspector Gullage's point. He also felt that it would be important if the unit was back at headquarters because then there's other people available, there's other people to talk to – easier access to resources as opposed to sitting up in Confederation Building. Do you have a view on that?

CHIEF JANES: Headquarters is fairly close to the Confederation Building, so it would only be a loss of quick response if an issue happened inside of the building, rather than thinking protection is only required when you travel, because travel happens within the building. And I'm not sure of all the logistics as well as somebody else who worked in that unit, but if it's practical, it's possible.

MR. AVIS: Okay.

My friend there, Mr. Drover, brought up the notion – in a discussion of body cameras, you said there were privacy issues. Well, I'd like to boil down to the situation here with Mr. Dunphy because it would be my understanding that in order to gain consent to his residence he'd have to have told him that he has a body camera. And if he didn't it could impact privacy issues and possibly the Charter. Is that something that you've considered or is being considered, or am I sort of just raising something almost in argument?

CHIEF JANES: That may be something that's being considered by the other jurisdictions who are doing the pilot projects. I'm not aware of that.

MR. AVIS: Okay.

With respect to two-person units, you know, you indicated earlier in February 17 there were 418 police officers. Does that mean we'd need another 300 if we were to have two-man units? Or I don't know if you can make a guesstimate because I don't know if I thought of this before to discuss with you.

CHIEF JANES: So it depends on the scope. Are you talking about two-unit police cars and patrol cars or are you talking about an expansion of the Criminal Investigation Division as well. But –

MR. AVIS: Well, I guess patrol – I guess the idea is that two people should always go to a house or there should always be two together. Let's take it to that extreme if you like. How many people are we talking of? And I realize it may be a guesstimate.

CHIEF JANES: Yes, you are talking about over 100 people in order to make that practical and then each piece of work that happens, the cost of that work doubles. So I did hear a really good quote at one point that it's not practical for the government, in any way, to be prepared for every eventuality. Whether that's firefighting or police work or any type of response, sometimes it's just not practical.

MR. AVIS: So it's not just double the person power, of course, there's equipment, space, desks. You just keep going, right?

CHIEF JANES: Yes.

MR. AVIS: Okay.

With respect to SIRT, are you able to tell us – like when you have to call in the OPP, how long does it take them to get here?

CHIEF JANES: Twenty-four to 48 hours depending on Newfoundland's weather.

MR. AVIS: Right and I guess depending on the weather, they could be stuck. And you indicated earlier, and I believe other officers have of course, that the first 24 to 48 hours can be a very significant period in the investigation, if not the most significant. Am I right there?

CHIEF JANES: Yes, it's better to gather the information early so it's not tarnished in any way or lost.

MR. AVIS: Right, so I immediately then jump to a SIRT. In your view, where should SIRT or some equivalent be located?

CHIEF JANES: I would say that it would be close to St. John's based on population and travel time, because that's where the population density is and we have the challenges. But still, at the same time, the RCMP do have things that happen in rural Newfoundland. But when you're not depending on air travel, then you can sometimes be almost assured that you'll be able to respond by road as well so it would have to be on – it would have to be, I think, the east end of the province.

MR. AVIS: So implied in your answer of course is they'd have to be in Newfoundland and Labrador. You're suggesting the Avalon, close to St. John's. Am I right?

CHIEF JANES: Well, it's a case where the resources, some of the resources, would want to be here but not necessarily the whole team, depending on the model.

MR. AVIS: With respect to the Luther inquiry recommendations, there was one that you were not able – if I understand it correctly, you were not able to follow and that's Car 87. Perhaps you could mention – I understand that, that was wanted but couldn't be resourced.

THE COMMISSIONER: What one was that?

MR. AVIS: It's called Car, as in C-a-r, 87. Can you explain that to the Commissioner?

CHIEF JANES: So I think that was – I have a note here on it, Recommendation #15.

So what Car 87 is and was referred to in the previous inquiry is a system in place in Vancouver where a police officer and a mental health professional ride in partnership with each other, responding to people in crisis. So here in Newfoundland currently, a majority of the calls for people who are in crisis are responded to by police. We also have here a mental health crisis response team that responds but there's a lot of calls they can't respond to because of the risk level that's involved.

In terms of the research that we've done in this area is that we've done a jurisdictional scan. We've actually visited Halifax where the Memphis model, M-e-m-p-h-i-s, is in place. And it's a model where a police officer and a mental health professional ride together. They have the information from the police computer system in terms of the safety of the people responding. They also have the information from a medical perspective: Has this person kept their doctor's appointments, what is their prescription history and their medical history?

So it provides the ideal response to people in the community who are in crisis in terms of being able to respond to the needs of people in crisis. But it's not just the police and the mental health professionals working together, it's done in partnership with community stakeholders, people who are clients of the mental health system and advocates for the mental health community. And it provides training for everybody, from the front-line police officer to the person who answers the phone at the Communications Centre, to people who are in crisis.

So it was recommended in the previous inquiry. It's something that we're still trying to work towards. We've done some research and determined that there were approximately 2,000 calls per year that were primarily mental health in perspective, and we've shared that and they expanded the hours of the crisis response team. But we see being the ideal model would be a

police officer and a mental health professional riding in partnership with each other, responding to people in crisis.

Right now, 95 per cent of the time when we detain somebody under the *Mental Health Care and Treatment Act* – so 95 per cent of the time when a police officer detains somebody, is that they're released again. Versus when you have a team where a mental health professional responds to the residence, 90 per cent of the time when they're brought to the hospital, they're kept in. So, there's a lot of unnecessary transporting of people to hospital when it could have been dealt with at the home by a mental health professional.

And, you know, as I indicated earlier, the crisis team, there's a lot of calls they can't go to because of safety issues. But if their partner was a police officer, we could cover more hours and respond to more people in crisis.

MR. AVIS: Okay.

Now, just on –

CHIEF JANES: We have presented to the All-Party Committee on Mental Health and Addictions on this topic.

MR. AVIS: Okay.

With respect to policies in general and the ability to keep them, keep up the pace, you've indicated I believe – well, how often are your policies updated? How long does it take you to go through all 150-odd policies to update them?

CHIEF JANES: It would take approximately 10 years. And even in that 10-year period, some of them wouldn't be done because of – it would be prioritized. You know, we'd still have a hundred senior officers in our organization and part of the development of policy is to consult with senior officers. And it's been a priority for us now for five years in terms of really pushing to try and update our policies as part of the legacy we will leave behind. But it's challenging to try and keep up with the policies.

And in terms of the volume of them, with the staffing levels we have now – and when you're here at the inquiry and people bring up policies and quoting sections out of them, I mean we were very fortunate that the policies that we dealt with here were generally strong. But it could have easily been another set of policies, and they would not have been as strong because we hadn't been able to keep up.

I believe the Criminal Intelligence Unit policy that the Commissioner would have been shared with – or, sorry, the Criminal Intelligence Unit policy would be 17 years old now.

THE COMMISSIONER: What's the total – full name you have on it? The health policy? What's the term you have on it?

CHIEF JANES: The Memphis model. In terms of the crisis response team it would be the Memphis model, M-e-m-p-h-i-s.

THE COMMISSIONER: Memphis?

CHIEF JANES: It's in place in a number of jurisdictions across Canada.

THE COMMISSIONER: All right.

CHIEF JANES: Including Halifax.

THE COMMISSIONER: Uh-huh.

MR. AVIS: One last question, or maybe two. In terms of where the RNC is going from here, you've mentioned a couple of times that, you know, you're awaiting, obviously, the outcome of the inquiry and the recommendations. Have there been any early discussions about what you plan to do once the report comes out?

CHIEF JANES: It's been our practice, and I think we've done a very good job, of following the recommendations from a number of different sources.

If you look at the Child and Youth Advocate has made a number of recommendations over the last five years. We've implemented all of those. And when you look at recommendations from previous inquiries, we've followed through on those.

And, you know, it's – we go through an inquiry process and the key goal and objective is to make things better and then be able to provide a better service to the community. So I think that would be our goal, that there were would be recommendations that we could implement and provide a better service.

MR. AVIS: One last question. In my civil and criminal practice, I usually say if anyone asks you, do you have anything else to say, don't say a word, but this an inquiry.

Is there anything else you feel that you would like to add or say that hasn't been said or you haven't been asked at this time?

CHIEF JANES: No.

MR. AVIS: Thank you, Chief.

THE COMMISSIONER: Thank you, Mr. Avis.

Thank you, Chief.

I hope the recommendations live up to your expectations.

CHIEF JANES: Thank you, Sir.

THE COMMISSIONER: All right, so we are finished for the day I take it.

Okay, we'll adjourn until – unless there is something counsel might have to raise, we'll adjourn until 9:30 tomorrow morning.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now closed.