



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 15

Commissioner: Honourable Justice Leo Barry

Thursday

2 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good morning.

Okay, no business beforehand? We'll start off then with the next witness, Ms. Chaytor.

MS. CHAYTOR: Good morning, Commissioner.

The next witness is Constable Edward Benoit.

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

CST. BENOIT: I do.

MS. SHEEHAN: Please state your full name.

CST. BENOIT: Edward Benoit.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Good morning, Constable Benoit.

CST. BENOIT: Good morning.

MS. CHAYTOR: Commissioner, there are a few exhibits that I would ask to have entered before we begin with the evidence of Constable Benoit.

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: We have P-0276.

THE COMMISSIONER: Uh-huh.

MS. CHAYTOR: P-0284 through to 0289 inclusive and also P-0391.

THE COMMISSIONER: What, 0276, 0284 –

MS. CHAYTOR: 0284 through to 0289.

THE COMMISSIONER: 0289, okay.

MS. CHAYTOR: And 0391.

THE COMMISSIONER: And 0391.

MS. CHAYTOR: Correct.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Constable Benoit, I'm going to just lead you through a little bit of your background and your training.

CST. BENOIT: Sure.

MS. CHAYTOR: I understand that you've been a member of the RNC since 2006.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

And that you're currently assigned to the Compliance and Enforcement of Orders Unit. And that's where you were working on April 5, 2015.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

I also understand that after Mr. Dunphy's death you were reassigned back to the Protective Services Unit.

CST. BENOIT: That's also correct.

MS. CHAYTOR: Okay. And when I say reassigned back, it's because you had previously worked in the PSU.

CST. BENOIT: Yes.

MS. CHAYTOR: And am I right in the timeline? You were in the PSU between May of 2012 and up to February or March of 2014?

CST. BENOIT: February 2014.

MS. CHAYTOR: February 2014. Okay.

And when you were there in that time period from May of 2012 until February 2014, how many members were in the unit?

CST. BENOIT: When I began in May of 2012, I was the third member that came on; there had been two RNC members prior to my arrival. And roughly two or three weeks after I started, there was a fourth member that was brought on and that was an RCMP member which made it a Joint Forces Operation, JFO.

MS. CHAYTOR: Okay. And that's when it became a joint force, is it?

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And I'm sorry; do you recall around what time that was? Was that 2013?

CST. BENOIT: That would have been 2012 when I started first.

MS. CHAYTOR: 2012. Okay.

CST. BENOIT: I started in May. The RCMP would have started probably towards the end of May or early June.

MS. CHAYTOR: Okay. And so then it was increased at that time to four people.

CST. BENOIT: That's correct.

MS. CHAYTOR: And when you left in February of 2014, why is it that you left the PSU at that time?

CST. BENOIT: The decision was made at that time between the premier's office and, I guess, management within the RNC that there was no further need, I guess. The premiers had changed towards the end of January, I believe, Dunderdale changed into Premier Marshall, and a decision was made at a managerial level that it would be reduced to two members: one RNC and one RCMP.

MS. CHAYTOR: Okay. And then so you were one of the RNC who moved on.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And I take it Acting Sergeant Smyth stayed; he was one of the ones there at that time.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

And while you were with the PSU, who did you report to and did that change over time?

CST. BENOIT: Well, initially, starting off, the four members that had been there were all constables. So I guess technically we reported to the, it would've been the staff sergeant at the time out of the Criminal Intelligence Unit which would have been Joe Gullage; however, Joe Smyth, in the unit itself, was the senior constable there. He had the most experience, I guess, job wide and within that position. So he, where he was the senior member, he was pretty much considered like a liaison between the premier's office staff and our unit.

MS. CHAYTOR: Okay. All right.

So in your day to day you may be reporting to Constable Smyth or Acting Sergeant Smyth and, but overall you also reported in to –

CST. BENOIT: The Criminal Intelligence Unit.

MS. CHAYTOR: Yes. Okay. And that would have been –

CST. BENOIT: So it would have been either the staff sergeant or the inspector at the time there.

MS. CHAYTOR: Okay. And that's Staff Sergeant or Inspector Gullage?

CST. BENOIT: Correct.

MS. CHAYTOR: And did you report, in any event, to – and I’ve been calling him Inspector Gullage, but were you reporting to him in any event on certain tasks? For example, if you had to travel outside the city, things like that.

CST. BENOIT: Back when I started first, there would be certain things – if we did travel outside the city, we were required to present either an operations plan or what was called a travel brief to advise him of upcoming travel. And that would either go to him, but there was also another form that we’ve have to complete, just a journey authorization to cover off costs associated with travel and that would be signed off – at the time Joe was only a staff sergeant, so he wasn’t consider an inspector. That would have to be signed off by a manager. So, usually, for the most part then we’d go to the chief’s office.

MS. CHAYTOR: Okay. And while you were with the PSU, were there any aspects of your job in which you reported to the premier’s office or someone within the premier’s office?

CST. BENOIT: Reported directly to?

MS. CHAYTOR: Yes, on any aspect of your job. Would you provide or take instructions from anyone in the premier’s office?

CST. BENOIT: Usually we’d have dealing with, dealings with the chief of staff at the time, but that wouldn’t be necessarily reporting to.

MS. CHAYTOR: And what would your dealings with the chief of staff be?

CST. BENOIT: In the event that there was, I guess any information that would come in or any, any planned travel or whatnot, usually we’d get that information from the chief of staff.

MS. CHAYTOR: Okay. And if you had any concerns with respect to any information that came in which may pose a security risk to the premier, would that be communicated –

CST. BENOIT: He would be our contact for the premier’s office, yes, that’s right.

MS. CHAYTOR: Okay. So you communicate that through to the chief of staff.

CST. BENOIT: Yes, that’s correct.

MS. CHAYTOR: Okay. And I take it that was the same during both of your stints with the PSU?

CST. BENOIT: Yes, that’s correct.

MS. CHAYTOR: Okay.

After you left the PSU in 2014, I understand there were times, however, where you were seconded back, when required.

CST. BENOIT: That’s correct. I, I guess continued my designation for Protective Services as a secondary duty, so I would be required to fill in for any, I guess, absences in relation to annual leave, sick time. In the event that there were bigger events where additional resources were needed, I would be called upon.

MS. CHAYTOR: Okay. And when you went back in April of 2015, of course, Constable Smyth is not there at that time. So did you take over his position? Did people report in to you?

CST. BENOIT: At that time, when I went there initially, for the first month there was only myself and one RCMP member; roughly about a month.

MS. CHAYTOR: And that was Doug Noel, I understand.

CST. BENOIT: That's correct, Corporal Doug Noel.

MS. CHAYTOR: Corporal Doug Noel, yes, okay.

And when did you leave the PSU?

CST. BENOIT: I stayed there in 2015 then up until the end of the election. So I think as of December 1, 2015, I was gone back to my other duties.

MS. CHAYTOR: Okay. And I understand – and we'll have some more detail on this, but I understand that while you were there, after you got there in April 2015, the unit was expanded again and it became a three-member unit. Is that right?

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And we'll discuss the reasons for that.

Did you have any specialized training to be able to carry out your job, or relevant with respect to your job at the PSU?

CST. BENOIT: I did. I attended a two-week dignitary protection course. That would have been in November of 2012, and that was hosted by the Ontario Provincial Police in Orillia, Ontario.

MS. CHAYTOR: Okay. And so you travelled to Ontario and did a two-week course there.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. Now, we've heard some detail about a managing targeted violence course that Constable Smyth completed. Had you completed such a course or an equivalent course?

CST. BENOIT: No.

MS. CHAYTOR: Okay. And so did you have any training in threat assessments –

CST. BENOIT: No.

MS. CHAYTOR: – beyond what you would get as base training?

CST. BENOIT: No.

MS. CHAYTOR: Okay.

CST. BENOIT: No additional training.

MS. CHAYTOR: Okay. And how well did you know Constable Smyth prior to April of 2015?

CST. BENOIT: I first met Constable Smyth when I joined back in 2006. He was actually a constable on my patrol shift. So I would have had dealings with him then, nothing outside of

work at the time. It was strictly, I guess, professional. But I wouldn't have gotten to know him, I guess, as well as I do now, up until I joined the PSU.

MS. CHAYTOR: Okay. And so did you actually patrol together?

CST. BENOIT: We would have worked, I guess, adjoining areas. I'm sure there probably would have been times when we'd work on the same car together, but it wouldn't have been a permanent thing. I wouldn't be able to give you any kind of a fixed number on the times I've worked with him directly.

MS. CHAYTOR: Okay. And I take it with the PSU there were times when you worked long hours together and travelled together.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. So you got to know him fairly well, I take it.

CST. BENOIT: That's fair.

MS. CHAYTOR: But no other connection, no personal or family connection to him or anyone in his family?

CST. BENOIT: No.

MS. CHAYTOR: And did you have any occasion in the time that you worked with him to be concerned with his performance of his duties or the manner in which he conducted himself in carrying out his duties?

CST. BENOIT: No.

MS. CHAYTOR: Did you ever witness him lose his temper or become ill tempered with anyone?

CST. BENOIT: Never.

MS. CHAYTOR: Did you have occasion to attend a home visit with Constable Smyth?

CST. BENOIT: I did.

MS. CHAYTOR: And do you recall him in that situation effectively de-escalating a situation?

CST. BENOIT: I do.

MS. CHAYTOR: Okay. And perhaps you could tell us, when was this? What time period did this happen?

CST. BENOIT: That would have been during the time when I was re-assigned out of the PSU when it was reduced, but I carried it on as a secondary duty. I would have been gone – if I left in February of 2014, that would have been roughly March or the month after.

MS. CHAYTOR: Okay.

CST. BENOIT: And at that time Joe was looking into an investigation, I believe it was for criminal harassment in relation to emails I believe sent to a minister or one of the dignitaries at

Confederation Building. And he had come in and requested, I guess my assistance to assist him with a home visit. To interview the individual that had been identified in that file.

MS. CHAYTOR: Okay. And so he asked you to go along with him and I take it, was – did he have some safety concerns, do you know?

CST. BENOIT: At that point I believe it was a pre-arranged interview. He had been in contact with the individual, and the individual was aware that he was going to be coming by for an interview in relation to the investigation. It's certainly not uncommon when you're doing an investigation like that and to conduct an interview to have a second person, and that itself was a recorded interview.

MS. CHAYTOR: Okay. So it was recorded.

CST. BENOIT: It was.

MS. CHAYTOR: And do you recall this being, heated comments concerning then Minister Kent?

CST. BENOIT: I can't recall which minister exactly it would have been.

MS. CHAYTOR: Okay.

CST. BENOIT: But there was, there was emails back and forth and I think it was an ongoing basis, a lot of derogatory comments from the individual.

MS. CHAYTOR: Okay. And I think you indicated in your interview that you, that you believed that it was Minister Kent.

CST. BENOIT: It could have been.

MS. CHAYTOR: Okay. And so were there any threatening –

MR. KENNEDY: Excuse me, Commissioner. I thought that Constable Smyth gave evidence on that, that it was either one of the ministers of Child, Youth and Family Services, either Minister Johnson or –

THE COMMISSIONER: Was it only the one –

MR. KENNEDY: In this particular incident, he referred to this incident. I thought it was Child, Youth and Family Services in relation to Minister Johnson. I'm not sure, but –

THE COMMISSIONER: Yeah, we could check, check the transcript.

MS. CHAYTOR: Yeah, I think it might have been – actually, if it's that one, it may have been Davis. I think it was Davis.

MR. KENNEDY: Davis, it could have been Davis.

MS. CHAYTOR: Yeah. I think Constable Smyth's evidence was that it was, that it may have been Davis, but I understood –

CST. BENOIT: Yeah, it was in relation to Child, Youth and Family Services.

MS. CHAYTOR: It was. Okay. All right. And yeah, so you thought at the time it was Kent but it could well have been Davis.

CST. BENOIT: It could have been mistaken, sure.

MS. CHAYTOR: Okay. All right. And were there threatening comments in that email, do you know, or the email exchanges that were happening?

CST. BENOIT: I didn't see any of the emails myself. I was strictly going along just as a secondary for the interview.

MS. CHAYTOR: Okay. Fair enough. All right.

And would it, would it be, would it be – would it be the norm that, it wouldn't necessarily have to be threatening comments to be following up on if there were concerns in any event? Or would you have to have a threat in your experience before you would actually do a home visit?

CST. BENOIT: Not necessarily.

MS. CHAYTOR: Okay. And so, if you could just explain that then, to the Commissioner, in terms of why that would be and what it is that you're doing in following up on comments that aren't threatening and probably not criminally harassing, is that considered to be – for example, we've heard the term here proactive policing in your role as providing Protective Services.

CST. BENOIT: Well, in that particular incident, I believe it was a criminal investigation is my understanding. So it would be a bit different. If you're referring to, we'll say a person of interest files that I looked at specifically when I was in Protective Services, is that what you're asking me?

MS. CHAYTOR: Yeah, I'm just wondering the practice in terms of Protective Services, whether or not, did you see that, did you see the mandate that you were carrying out to be proactive policing?

CST. BENOIT: It was. It was intelligence led, to a certain degree, in relation to files within the PSU that I worked on myself. I didn't do any home visits, we'll say, on my own – on my own regard, for my own investigation. I only conducted two while I was there, and it was to assist other officers at the time.

MS. CHAYTOR: Okay. All right. Fair enough.

So where did this meeting take place? You went to the individual's home?

CST. BENOIT: This would have been at the individual's residence. And, again, I believe it was prearranged.

MS. CHAYTOR: Okay. And it was prearranged, and I think you also said that it was recorded. And was that the norm to record the interviews?

CST. BENOIT: Well, again, I hadn't conducted any formal interviews while I was in Protective Services; however, in other investigative units that is the norm. Members are issued a digital recorder and interviews are generally recorded.

MS. CHAYTOR: Okay. And the PSU itself, did it have recording devices?

CST. BENOIT: Not that I'm aware of, no.

MS. CHAYTOR: Okay. All right. And so how was the person when you arrived? Even though the person knows that you're coming, how was the person when you and Constable Smyth arrived?

CST. BENOIT: If I remember correctly the person was actually a little upset at the point that, or of the fact that two of us had arrived and they actually made issue with the fact that we were bringing side arms into their home.

MS. CHAYTOR: Okay. And tell then the Commissioner what happens from there.

CST. BENOIT: We basically went in. We sat down on – in that occasion, the individual recorded the interview on their own as well, besides us a police force. And they're basically – it was explained why we were there, the reason for us being there. The person basically was given an opportunity to speak I guess their peace on it; what the concern was regarding the emails or the exchange, whatever had been prior to that. And in the end there was, there was no heated debate. I guess for lack of a better term, nothing got really out of hand. There were no charges laid. And by the end of the interview, when I read through the transcript recently, it actually ended with the individual offering us a drink before we left.

MS. CHAYTOR: Okay.

CST. BENOIT: So the demeanour had totally changed.

MS. CHAYTOR: Okay. And when you say the transcript, what are you referring to?

CST. BENOIT: To the file for that individual.

MS. CHAYTOR: Oh, okay. So you reviewed the file recently, did you?

CST. BENOIT: I did.

MS. CHAYTOR: Okay.

CST. BENOIT: Once I was made aware of it.

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

Okay. And how did Constable Smyth conduct himself during that encounter?

CST. BENOIT: Very professional. No different than I'd seen him interact with people in the past.

MS. CHAYTOR: Okay. And I believe you said in your interview that he was empathetic towards the person and the person's concerns?

CST. BENOIT: He was. And like I said, he actually gave the person an opportunity to speak their piece and make it known what the actual issue was. The bigger part of that interview was trying to, I guess, alleviate some of the pressures or find a remedy to what the issue actually was.

MS. CHAYTOR: Okay. And then was there follow-up, then, for the person? After that, was the person directed to –

CST. BENOIT: I'm –

MS. CHAYTOR: – where they could go to get answers to their question?

CST. BENOIT: I'm not aware specifically.

MS. CHAYTOR: Okay.

CST. BENOIT: Again, I wasn't working in the unit at the time.

MS. CHAYTOR: Okay.

CST. BENOIT: And prior to that interview I had no knowledge of that individual.

MS. CHAYTOR: Okay. And I take it, it was Constable Smyth who took the lead and handled that situation.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

Constable Benoit, the Commissioner has already heard evidence and we have – about the mandate of the PSU. And we have into evidence, it's P-0031, Commissioner, the policy, the RNC policy related to the PSU. And that would be the June 9, 2013, policy.

And basically, under section 3 of that policy there's twofold: one is that your duties would include to provide close protection services to the premier or other designated dignitaries; and also, your second function being to gather intelligence. And so again the gathering of the intelligence I take it is a proactive type of policing.

CST. BENOIT: That's correct. And that's strictly for, I guess, our own purposes in providing secure transport and close-body protection for the dignitaries that we're assigned to.

MS. CHAYTOR: Okay.

And perhaps you could just tell us, then, how is it that you would go about gathering intelligence? How would something normally be initiated? Would you do that on your own accord or would there have to be a complaint first levied to you?

CST. BENOIT: It could be either-or depending on – or there's many different ways that an individual or a group or a demonstration could be brought to our attention that we try and get as much information on as possible. And, again, that would be totally proactive to I guess prevent any incidents on the road, any confrontations.

Again, our primary mandate was to provide close-body protection and security for the dignitaries. So anything that could assist us in that role was certainly something that we'd look into.

MS. CHAYTOR: Okay. And we spoke earlier about the number of members in the PSU when you went back in 2015; it was increased to three people. And that was in the aftermath of Mr. Dunphy's shooting. And why is that? Why do you understand that the staff was increased?

CST. BENOIT: When I was contacted following the shooting and advised that I would be returning back to the unit, it was instructed to me by management that given the, I guess, the

heightened level there of security, they wanted two people to attend functions, all public events, with the premier at that time. And given the fact that there were only two of us working at the unit at that time, very demanding on family life. We were working for the first month before the third member was added on, both myself and Corporal Noel were working long hours every day and that just wasn't something that we could maintain.

MS. CHAYTOR: Okay. And I believe you told me in your interview that the decision was to put two people back on bodyguard-type function, close protection services for the premier, due to the outcry over what had happened and the public's reaction to what had happened.

CST. BENOIT: That's correct. And again, that was a preventative measure in the event that, because again it was – the way the media had reported and from I guess the outcry, like you just mentioned, we wanted to prevent any possible confrontations were the premier's office was connected to the incident. We didn't want to leave the premier in any kind of position where his security could be compromised.

MS. CHAYTOR: Okay.

And did that continue up until you left the unit then in December 2014, there were still the three of you there?

CST. BENOIT: There was.

MS. CHAYTOR: Okay.

And I know at one point one member came in and transferred out, but then I understand that Sergeant Hubert Marrie came in; is that right?

CST. BENOIT: That's correct. When I assumed the position first, it was only on a temporary basis. They called for applications and a sergeant was selected and designated to that unit, then I assumed the role of the third member: constable.

MS. CHAYTOR: Okay.

And in fulfilling your mandate, would you have resources available to you, if need be, through the Criminal Intelligence Unit?

CST. BENOIT: Yes.

MS. CHAYTOR: And so they could carry out some of the intelligence gathering or background checks that type of thing for you, if need be.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

Had you ever heard of Donald Dunphy before April 5, 2015?

CST. BENOIT: No.

MS. CHAYTOR: So his name had never surfaced in your assignment to the PSU before?

CST. BENOIT: Never.

MS. CHAYTOR: If you were to receive complaints from the Premier's office, who would those complaints usually come from?

CST. BENOIT: From the Premier's office itself; it could be any one of his staff members. I know that the Premier's office has many different outlets for receiving feedback from the public, whether it be email accounts, open-source media, I guess Facebook or Twitter accounts. There's phone lines.

So depending on I guess who would actually be looking at those individual accounts, there was a number of civilians that work in that office and any one of them had they come across something that was I guess alarming or concerning to them, they were instructed to forward it on to our office.

MS. CHAYTOR: Okay.

And how much interaction – I know that the office at the time was situate on the sixth floor of the Confederation Building.

CST. BENOIT: Our off– the PSU office was on the sixth floor –

MS. CHAYTOR: Yes.

CST. BENOIT: – the Premier's office was on the eighth floor.

MS. CHAYTOR: Yes, okay, and so how much interaction would you have with the Premier's office? Would that be like a daily basis, or ...?

CST. BENOIT: Oh, for sure, yeah.

MS. CHAYTOR: Okay.

So if you received information that you felt required follow-up, just explain the steps that you would take.

CST. BENOIT: Well, as I mentioned earlier, initially for, I guess for my purposes, the only, the files that we would generate– and again, I guess I'm speaking just for myself specifically – is for a person of interest files. So a lot of it was just intelligence for security reasons, for officer safety reasons. So in the event that an individual or a group or some kind of demonstration was to occur, we'd research that and, yeah, that, that would be for us. There'd be no other, I guess, follow-up for it, but are you, you looking for the –

MS. CHAYTOR: Yeah, so how would you research it, though? I'm wondering like –

CST. BENOIT: Okay.

MS. CHAYTOR: – would you do background checks on the person?

CST. BENOIT: So like the databases – of course, yeah. They, they would be considered background investigation more so than anything. So the services that we'd avail of would be our local general occurrence system, which is the ICAN system, Integrated Constabulary Automated Network, and that would be any, I guess, general occurrences, or any local input by police, by the RNC that any individual would have would be located on that.

We'd also check with CPIC, which is the Canadian Police Information Centre. That would be on a criminal level. It's operated by the RCMP. And how that would work is they'd give you an up-to-date status on an individual as to whether or not they had anything outstanding before the courts, if they were accused and waiting disposition, if they're on any court orders, if they were wanted by warrant. It'd also tell the last time that they had any criminal involvement, if there was any violent history there, and it'd also give you an update as to whether or not they had any firearms registered in their name.

MS. CHAYTOR: Okay. And you were able to do both your ICAN and your CPIC search from your office in Confederation Building?

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

Had you ever had occasion in the course of your career to ask the Communications Centre to run the CPIC check for you?

CST. BENOIT: I have. I, I can't say for certain if I've done it while I was in the Protective Services Unit, but as a member of patrol and a member of just general CID I would have numerous times.

MS. CHAYTOR: Okay. And what would you understand you were requesting if you asked the Communications Centre to do a 10-29 for you?

CST. BENOIT: That would be all hits related to the CPIC check, the three that I mentioned.

MS. CHAYTOR: Okay.

CST. BENOIT: So it would be your, your current orders, your, I guess, your history, and your firearms.

MS. CHAYTOR: And would you expect that you would have to say 10-29 plus do a CNI check for me and a criminal records check, or would you expect by just saying 10-29 that you would get all three of the information –?

CST. BENOIT: I have always assumed that 10-29 meant all three, all information.

MS. CHAYTOR: Okay. And you've never have any difficulty with that, I take it.

CST. BENOIT: No.

MS. CHAYTOR: Okay.

Now, we understand that one of the other databases that would be checked or could be checked by the RCMP is PROS. And would you also do that in terms of background checks and, if so, how would you do that?

CST. BENOIT: For individuals that weren't living in the, we will say, I guess the northeast Avalon, Labrador West or Corner Brook which were the, I guess, the designated RNC jurisdictions – if they lived in any of the outport places, we would use PROS. And that is essentially the, the RCMP version of ICAN. It's their local system that logs all of their general occurrences. So if we had someone there, we'd either contact one of our JFO members, if they were available –

MS. CHAYTOR: And you mean, just for clarity, for people listening, that's a joint force officer.

CST. BENOIT: Yes, it would have been the RCMP member working within our unit.

MS. CHAYTOR: Okay. So you could ask, for example, Doug Noel who was working with you to conduct a PROS search.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And in doing those checks, Constable, what's your purpose in doing those checks?

CST. BENOIT: It is just to see a background of an individual, if they've had any police involvement, if there was any weapons related, any, I guess, any mental illness or mental instabilities – yeah, just any prior to give us any kind of information to, I guess, just do a check on a person and know what they're about, what their history is.

MS. CHAYTOR: Okay. So in terms of, I guess it's part of your threat assessment to determine what level this person would be at; is that part of what you're doing?

CST. BENOIT: Yes and no. For each, I guess, person-of-interest file, I guess it would be a threat assessment to a certain degree, but it wouldn't be a full on threat assessment, pages and pages thick.

MS. CHAYTOR: No, no. That would be just part of it, I guess.

CST. BENOIT: Sure, yes.

MS. CHAYTOR: Okay. All right.

CST. BENOIT: We will say like the beginning stages of a threat assessment.

MS. CHAYTOR: Okay, fair enough.

And it's important I guess for you to know whether or not the person has any flags on their file.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. What do you understand a V flag to mean?

CST. BENOIT: V, or commonly known as Victor, would be violence.

MS. CHAYTOR: Okay. And if you saw a V flag or you were informed there was a V flag on somebody's record, would that change how you went about further investigating the issue?

CST. BENOIT: Not necessarily. It would certainly put me more on my guard if I had dealings with that individual, knowing that they did have some, at some point some kind of violence in their background, but it wouldn't cause me to investigate them any further.

MS. CHAYTOR: Okay, fair enough. And again, I understand of course that you, you've have only gone on – and I'll talk about you going on other visits, but you've had limited involvement going on home visits in terms of your PSU.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And so while in the PSU and you've, and doing these types of backgrounds, if you check everything in terms of your person of interest and nothing of concern is noted, is there nonetheless a file generated on the person?

CST. BENOIT: For the person-of-interest files that we did, there were files generated, but they were strictly, again background investigations for our purposes only. So they were administrative more so than anything else. It could be something as simple as there was information that we were – there was going to be a demonstration against Child, Youth and Family Services. There was a person identified as the – I guess in the media as the person who was leading the demonstration.

And in the event that we were going somewhere, and we had to cross through that demonstration, we wanted to know who the individual was, and if there was anything to indicate, or give us any idea of what to expect, should our dignitary make contact or they make contact with the dignitary.

MS. CHAYTOR: Okay. So was it the situation that whoever was identified as a person of interest, a profile or a bio of them was created, and then that was distributed amongst all sworn members to the RNC. Because I think I understood that's –

CST. BENOIT: Right –

MS. CHAYTOR: – what you were saying –

CST. BENOIT: – and I –

MS. CHAYTOR: – in the interview.

CST. BENOIT: – I did mention that before. So I looked into that a bit further after we met the last time, and not the only files that would've been distributed to all members as a FYI or as a, we'll say, like a BOLO we call it – a be on the lookout – would be for officer safety purposes in the event they were called to assist for a certain event. So not necessarily all person-of interest files would have been disseminated to all sworn members.

MS. CHAYTOR: So it would only be with respect to people where you had identified an issue that could be of a safety –

CST. BENOIT: In the event that a patrol –

MS. CHAYTOR: – concern to an officer.

CST. BENOIT: – operations or another officer may attend.

MS. CHAYTOR: Okay. All right.

Okay. And do I understand, though, that a file is generated regardless if it's – if it's an issue that's been brought to your attention and you've done checks on the person, a file is generated for that person of interest.

CST. BENOIT: Yes.

MS. CHAYTOR: Okay. And that happens in your ICAN system?

CST. BENOIT: Yes. That's correct.

MS. CHAYTOR: And what file – at what point is the norm that you would open your file?

CST. BENOIT: I don't quite understand.

MS. CHAYTOR: When would you open a file in ICAN? So you receive, for example, a complaint or something that needs –

CST. BENOIT: Sure.

MS. CHAYTOR: – to be brought to your attention, or is brought to your attention. When do you open your file in ICAN?

CST. BENOIT: In the event that I received information of a person that was identified through the course of that background check – if I did any background checks on anybody for that matter, I would generate a file.

MS. CHAYTOR: And the generation of a file, did that change over the time that you were with –

CST. BENOIT: It did.

MS. CHAYTOR: – the PSU?

CST. BENOIT: It did.

MS. CHAYTOR: Okay. And perhaps you could explain that.

CST. BENOIT: Sure. In the beginning – we'll go back to 2012 when we were, I guess you could say, the Protective Services Unit, or the Premier's Protective Detail, as it was called back then. It was basically in the beginning stages or the very early on stages. It wasn't as structured as it was later on. And file sharing at that time for persons of interest were generated strictly through the Criminal Intelligence Unit. So I, myself, didn't have access to generate those files. We would have to contact someone within that unit and they would generate a special file number for those files.

MS. CHAYTOR: Okay.

All right, and so then perhaps it was with the policy coming in, in June 2013 that –

CST. BENOIT: It would have been within probably a year after I started that unit, yeah, that they changed.

MS. CHAYTOR: Oh, okay. And then it all was generated through the same ICAN system.

CST. BENOIT: Right.

MS. CHAYTOR: Okay.

CST. BENOIT: And I would have had access to generate those file numbers.

MS. CHAYTOR: Did you have any policy, protocol or practice to report back the outcome of an investigation to the person who lodged the complaint or otherwise to notify anyone in the Premier's office?

CST. BENOIT: In the event that somebody did actually bring something forward to us of concern, yes, we certainly would – or I would have made them known what the outcome was.

MS. CHAYTOR: Okay.

CST. BENOIT: No different than any other complaint registered with the RNC.

MS. CHAYTOR: And would that go back directly to the person? And would you also include the chief of staff or the premier or the premier directly?

CST. BENOIT: I guess it could have differed either way. Usually it was the person that lodged the complaint or it would have been the chief of staff and they would have sent it out to whoever.

MS. CHAYTOR: Okay. And I assume if it's determined that the behaviour that you're investigating is such that there are reasonable and probable grounds to lay a charge, I take it a charge would be laid.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

And in the time that you were with the PSU, are you aware of anything having come across your desk that ever resulted in the laying of a criminal charge?

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

MS. CHAYTOR: Okay.

Constable Benoit, is it a situation where a lot of the complaints that were brought to your attention were harsh and unpleasant criticism being levied against political officials.

CST. BENOIT: It would be fair to say that. But when you say a lot, we look at person-of-interest files in the run of a year – generally those files are under 20. They're usually between 15 and 20, from my recollection, for each year that I worked there.

So when you say a lot, I could say a number of them were definitely driven by, we'll say, like politics of the day. That would be –

MS. CHAYTOR: Right, so a majority.

CST. BENOIT: That would be a fair statement, sure.

MS. CHAYTOR: The majority of them. Let's go with that. Okay.

And I believe you told me in your interview, too, that it was your belief that a lot of what got forwarded to the PSU to investigate was probably sent because the unit was in existence in close proximity in the Confederation Building. And if the unit didn't exist perhaps in that format, less complaints would have been forwarded. Is –

CST. BENOIT: That would be fair.

MS. CHAYTOR: Okay.

CST. BENOIT: Now that being said, staff of the premier were also, I guess – it was explained to them that if, of course, anything – came across anything at all that they had to kind of take a second look at or they had any kind of concern that, to forward it on so

MS. CHAYTOR: Yes. And that, of course, would be within the mandate of the PSU.

CST. BENOIT: Sure.

MS. CHAYTOR: Yes. Okay.

And how many persons-of-interest files, during your time there, would be generated on an annual basis?

CST. BENOIT: Again, you're looking at between 15 and 20, I think is what I recall for each – well, we'll say 2012, 2013, from when I was there.

MS. CHAYTOR: Okay. All right. And I think you told me before it was like 12 to 15 so.

CST. BENOIT: It was roughly in that area.

MS. CHAYTOR: Okay. Fair enough. All right.

Now, we have a document that was created, and you're not the author of this document but you are referred to in the letter. So we'll bring it up. It's P-0211, and this was done by Constable Downton. And this is, I believe, this is a document that you would have already seen, Constable Benoit.

This letter is dated December 1, 2017 – but we understand, of course, that to be an error. It should be 2016, the year of the letter. And it's written to Inspector Gullage.

One moment please. My screen is not on yet this morning, so just give me a moment. I'm flying solo.

Okay. Yes, this is it. And so this letter, Constable Downton writes here that there's been some analysis done: The RNC Integrated Constabulary Automated Network, which we're calling ICAN, was queried for related calls for service since 2010. CM Malin Enstrom compiled statistics regarding the calls for service on April 8, 2015. Constable Ed Benoit subsequently provided a list of PSU investigations and related entities. Analysts then cross-referenced this information with the query results. And on June 17, 2015, a list of files responded to by the PSU including persons of interest and associated file numbers was completed. And a copy of the documents are included.

And I'm just going to take you down here; I'm not sure, Constable Benoit, if this is information you provided. I think perhaps – would this be the information that you provided: Files Responded to by Protective Services?

CST. BENOIT: When I provided information to the Intelligence Unit for that purpose –

MS. CHAYTOR: Yes.

CST. BENOIT: – it was at the direction of Acting Inspector Gullage.

MS. CHAYTOR: Okay.

CST. BENOIT: And I gave him a list of files numbers.

MS. CHAYTOR: Okay.

CST. BENOIT: And names associated, I can't say for certain. It wasn't in a chart like that. So I can't say specifically if –

MS. CHAYTOR: Okay.

CST. BENOIT: – every one of those file numbers was provided by myself.

MS. CHAYTOR: Okay. So it wouldn't have been in this format but you provided the list of files. So –

CST. BENOIT: Yes, everything that I had at my disposal, I forwarded on.

MS. CHAYTOR: Okay. And this would be then probably – the Files Responded to by Protective Services, would that be the piece that you provided?

CST. BENOIT: Again, I can't say specifically if all of those files would have been mine or if –

MS. CHAYTOR: Fair enough.

CST. BENOIT: – they've been crossed-referenced with ICAN or –?

MS. CHAYTOR: Okay. And fair enough.

And here it showed just a few for 2012 and many more for 2013. And I understand, even though it's only one file showing here for 2015, I think if we look at this file, this may in fact be the file that is generated April 7 for Mr. Dunphy. But this only goes up I understand to April 2015, so there may have been many more after. So I just want to be clear on that in terms of the date.

I also understand from speaking to your solicitor this morning, that you'd like to clarify 2012, that there's only two files referenced here –

CST. BENOIT: Right.

MS. CHAYTOR: – but this would have been when you were on a different filing system. Is that correct?

CST. BENOIT: That's correct. Yes, there's – when I looked at this document yesterday, there were 16 other files for 2012.

MS. CHAYTOR: Okay. So more like a –

CST. BENOIT: They were in another file under our system.

MS. CHAYTOR: Okay. So 18 for 2012, and then we have quite a number then as well for 2013.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. So that's around the number. And these are person-of-interest files.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And I take it that's not files related to your Protective Services, this is more your intelligence gathering piece.

CST. BENOIT: That's correct. We have two, I guess, categories of file generation. One was strictly just for events, conferences, travel, and one was for persons of interest. So this would be strictly just persons of interest.

MS. CHAYTOR: Okay. And are you able to tell us what – and if you can't, we'll ask Inspector Gullage – other incidents or instances are referenced in the file? Are you able to say what that would be?

CST. BENOIT: I'm not. I don't know what that means.

MS. CHAYTOR: Okay. All right.

And I take it these are the total number of files of persons of interest that were in the ICAN system. Not all of these would have resulted in a home visit. Is that fair?

CST. BENOIT: Yes, that's fair to say.

MS. CHAYTOR: Okay. Now when you went back in 2015, did you carry out any of the intelligence gathering aspect of your job at that point in time?

CST. BENOIT: Very little. When we went back, as I had mentioned, it was incredibly busy trying to just keep two persons with the premier at all times. So there were a number of files that came to our attention, whether it was either through the premier's staff or intelligence through our intelligence unit that came through, that we couldn't follow up on ourselves, and that was all passed over to the intelligence unit to do any follow-ups on.

MS. CHAYTOR: Okay. And other than the occasion that you discussed about going along to do secondary duty to Constable Smyth, after you had come out of the unit, did you have any occasion during your time for you to make a home visit?

CST. BENOIT: I did. There's one other situation where I actually went and did a home visit. It would have been the one that I referenced to you earlier but, again, after we met I went back and reviewed the file and it was a little bit different than what I had recalled.

MS. CHAYTOR: Okay.

CST. BENOIT: So in that situation, that was a, it was very similar to a regular person-of-interest file. There were comments that were made against a minister through Twitter. It was brought forward by I believe it was the minister's executive assistant at the time. Acting Sergeant Smyth would have been the one to generate the file and it was forwarded on to the intelligence unit for follow up. So Constable Dante Orion would have been the one that was designated through the intelligence unit to conduct a follow up for that file. And once the individual was identified, it was tasked out to me to go and make contact with that individual.

MS. CHAYTOR: Okay. And so this would have been during your first stint, obviously?

CST. BENOIT: This would have been in 2013.

MS. CHAYTOR: 2013?

CST. BENOIT: May of 2013.

MS. CHAYTOR: Okay, and so you've had occasion to go back and review the file –

CST. BENOIT: Yes.

MS. CHAYTOR: – before coming here today. Okay. And without naming the person or providing any identifying information, is this the – what else changed, I guess, in terms of the information that you provided to me? What I understood you to tell me on that, during your interview is that this was an individual in Carbonear and that you requested another person from patrol services to go along with you.

CST. BENOIT: Yeah. Actually, I made two attempts to go to that the individual's residence. It wasn't Carbonear, but it was somewhere in that vicinity; it was close by. The first day that I went out to try and make contact, we had very limited information in relation to the address. I don't know if there were civics or whatnot. We had difficulty finding the house. So on that day I took an individual from patrol services with me as a second. And –

MS. CHAYTOR: And why did you do that?

CST. BENOIT: Pardon me?

MS. CHAYTOR: Why did you do that? Had you run background checks and determined there was some risk for your safety?

CST. BENOIT: I did. At that time the person did not have a criminal record; however, they did have a hit which would have been their CNI for violence from back in 2004.

MS. CHAYTOR: Okay. All right. And this is, again, you're going to visit in RCMP jurisdiction. Did that matter?

CST. BENOIT: I made contact, actually, with – I believe it was a Constable Jefferies of Jaffers at the time of the Harbor Grace detachment. I made them aware that we were going to be out doing a house – a visit and check.

MS. CHAYTOR: And the person that went along with you from patrol services, I take it that would have been a uniformed officer?

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

CST. BENOIT: So on that occasion we did not locate the individual. We could not locate the house. So it took me – there was a second attempt the following day in which Constable Shannon McEntegart of our unit assisted me.

MS. CHAYTOR: Okay.

CST. BENOIT: And we actually made contact with the individual.

MS. CHAYTOR: Okay. And so both of you then met with the individual.

CST. BENOIT: That's correct.

MS. CHAYTOR: And in that situation was there anything threatening in the messages that you were following up on?

CST. BENOIT: It was. The messages were derogatory towards one of the ministers at the time and the comments in the message were: I know where you are. They identified a specific location, and they said several times: I'm coming to get ya.

MS. CHAYTOR: Okay. All right. So that's a little bit different than what you recall –

CST. BENOIT: Sure.

MS. CHAYTOR: Yeah. 'Cause I think you thought at the time it was a grey area –

CST. BENOIT: Right.

MS. CHAYTOR: – and not necessarily threatening at the time we met. Okay. All right. So in this particular case it was much more direct, potential threat –

CST. BENOIT: Correct. It was still not criminal, but it – yeah.

MS. CHAYTOR: Okay. But I take it again, in terms of the perspective of doing proactive policing, when you told me about this back in doing your interview a month or two ago it wouldn't be necessarily necessary – it wouldn't have been necessary for it to be a direct threat for you to follow up on it.

CST. BENOIT: Again, I don't quite understand.

MS. CHAYTOR: No, I don't blame you.

So what I'm trying to say to you is that at the time that, at the time when we spoke, you, your recollection had been that it wasn't necessarily something threatening, it was a grey area, and you still felt it was appropriate that you would go and speak with the person –

CST. BENOIT: I believed that it was something that still needed clarification.

MS. CHAYTOR: Right. Okay. So my point being, in terms of doing proactive policing, it didn't necessarily have to be something that was imminent, or that there was a direct threat. If it was something that you thought needed to be clarified, if there was any ambiguity, you would still take it upon yourself that that needed to be followed up and potentially a visit paid to clarify what the individual meant by –

CST. BENOIT: That would be fair.

MS. CHAYTOR: – his or her comments.

CST. BENOIT: But again, I never, myself, ever found myself in one of those positions.

MS. CHAYTOR: Okay. And having been in the PSU, are you aware, though, that that was the practice?

CST. BENOIT: There were – I can't recall specifically, but there were situations where people had been visited on other occasions. Aside from saying that any of the other members in the unit could have done them, I wouldn't even be able to identify who would have visited or when or why. But I do believe that some home visits did occur.

MS. CHAYTOR: Okay.

Okay. And how did you keep track then, or how did the unit keep track of persons of interest that were identified, and how was it communicated within the PSU? I know you have your ICAN system. Was there also a shared directory?

CST. BENOIT: There was. So within the RNC we have a shared directory, usually for the most part each unit has their own specific folder that can only be accessed by members of that specific unit. So for us, it was practice that, just as a quick reference for each year, we'd have a folder and for persons of interest every file that was generated and the intel or the bulletin or the bio would be added into that particular folder for each year.

MS. CHAYTOR: Okay. And in deciding whether or not a home visit was warranted, would, was there any particular protocol that you were following? Like was there a checklist of factors as to –

CST. BENOIT: Not that I'm aware of, no.

MS. CHAYTOR: Okay. And in terms of determining then what circumstances warranted a home visit in the case that you decided you needed to go, is that just based on what you would do in any other role as a police officer?

CST. BENOIT: That's correct. It would be based on just other experiences, any other criminal investigation. But again, in that home visit that I conducted, it was tasked out to me by the investigator.

MS. CHAYTOR: Okay. Fair enough.

So you would use your own best judgement as to whether or not that's the best appropriate step.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay.

And also, we've heard that – was there any particular protocol with respect to how many officers should attend, or was that also left to your best judgement?

CST. BENOIT: It was left to each officer's discretion. Generally speaking, in the event that you were making like – just for background in other units, in the event that you're making an arrest or you have some kind of information available to you to suggest that there's weapons present or that there's going to be violence, something to, I guess, to caution you. There'll be many times, both in patrol and within CID that members would meet with people by themselves.

MS. CHAYTOR: Okay.

Did you have any incident during your time in the PSU where you had to use force?

CST. BENOIT: No.

MS. CHAYTOR: Okay.

And to your knowledge did you ever see any other member or know of any other member in the unit having to use force prior to April 5, 2015?

CST. BENOIT: No.

MS. CHAYTOR: Okay.

When and how did you hear about Mr. Dunphy's shooting?

CST. BENOIT: That would have – well, it was Easter Sunday; it was just after a family dinner. And from what I recall, I first heard about it once it broke to the news, it was on the media, whether it was one of the news sites.

MS. CHAYTOR: Okay

And if we could bring up P-0285, please. I understand that you had some communication with Constable Smyth shortly after –

CST. BENOIT: I did.

MS. CHAYTOR: – the incident. And you had heard it, you say, through the media and so that you reached out thinking it might be him.

So here we have – and this is 6:42 p.m., which I think is around 4:12 p.m. because this UTC time. So it's about 4:12 Newfoundland time, where you're saying you just heard of an incident, that you were out that way, and that you're out that way not looking for details, but are you all right? He says: Yep, I'm good, thanks. And then he says: POI file; he pulled gun on me.

And you say: Wow. I wouldn't have expected that today. As long as you're fine is the main thing. Anything I can do for you? If you need anything, let me know, type of comment there.

Okay. Did you have other discussions with him that day?

CST. BENOIT: Not that I can remember. I would have been reassigned to that unit, it was either later that evening or the next day, and I would have seen him in person back and forth to the office a few times. But over and above that, there was nothing that I can recall.

MS. CHAYTOR: Okay. All right.

And I understand that – or at least when we met before, you thought that you had gone in, or you had been asked to obtain some information regarding Mr. Dunphy, whatever information you could, and that you undertook some searches in the ICAN system.

CST. BENOIT: That's correct. And it wasn't so much the ICAN system; I had been instructed by Superintendent Jason Sheppard at that time –

MS. CHAYTOR: Yes.

CST. BENOIT: – later in the evening, just for the mere fact that I was probably one of only a few people that had access to the Protective Services Unit office at Confederation Building, to go in and to try and locate a file in relation to Mr. Dunphy or any information that had been, I guess, received prior to the incident.

MS. CHAYTOR: Okay and if we could bring up P-0391 there, please. And this is an email from you back to Superintendent Sheppard April 5, 2015, at 8:39 p.m. And if we could just make that a bit larger.

When you're saying that at approximately 1900 hours, I attended the Protective Services Unit office as requested in search of any information in relation to Don Dunphy. In completing a

search of both the office and the PSU folder – and I’m just going to stop you there. What’s the PSU folder?

CST. BENOIT: Protective Services Unit folder.

MS. CHAYTOR: Okay, and what would that be, though?

CST. BENOIT: That would be just a document folder, a shared folder within the shared directory on the computer.

MS. CHAYTOR: Okay. And you cannot locate any files associated with him. And then in speaking with Constable Doug Noel of the PSU, he advised that information regarding Dunphy had only become available as of Friday – and I think the date would be wrong there – and that he had forwarded all relevant emails pertaining to Dunphy to your attention.

And then you continue to say: In relation to Premier Davis, you’ve notified Sergeant Brian Gosse of Patrol Services and Sergeant Bernie Jesso of the Communications Centre of his whereabouts should anything occur. I’ve also advised Premier Davis of Crowe/Power being posted to his home address and that can be available should anything come up. Premier Davis advised there’s no need to have anyone posted at a location, a certain location at that time.

So I take it this is, this paragraph here is about the increased security –

CST. BENOIT: In security.

MS. CHAYTOR: – that’s being assigned to the premier –

CST. BENOIT: That’s correct.

MS. CHAYTOR: – the evening of the shooting.

Okay. All right.

And the decision making for that I take it wasn’t yours. That’s –

CST. BENOIT: No, that would have been from the superintendent.

MS. CHAYTOR: Okay. And you were just tasked with letting the premier know who’s been assigned.

CST. BENOIT: That’s right, ensuring that everything was in place.

MS. CHAYTOR: Okay.

And – okay. I just want to be clear on the file folder within the RNC shared directory. So you checked both ICAN and found nothing on Mr. Dunphy. Is that correct?

CST. BENOIT: I don’t believe I checked ICAN. I think I just did an actual physical search of the office –

MS. CHAYTOR: Okay.

CST. BENOIT: – to see if there was any hard-copy file folder.

MS. CHAYTOR: Okay.

CST. BENOIT: Because they would have had access to searching ICAN themselves, but they didn't have access to the office. So I did a physical search of the office and I did a search of the shared directory of the electronic copy, to see if there was any electronic copy.

MS. CHAYTOR: Okay.

CST. BENOIT: That wouldn't have been on ICAN.

MS. CHAYTOR: So you would have a hard, you would have a hard copy of your file as well?

CST. BENOIT: That's correct.

MS. CHAYTOR: As well as an electronic copy?

CST. BENOIT: That's correct.

MS. CHAYTOR: And what colour were your file folders in the office?

CST. BENOIT: That's a great question. They could've been blue. They could've been yellow. I know we use different colours for travel versus person-of-interest files.

MS. CHAYTOR: So it's not unusual to have a yellow file folder.

CST. BENOIT: No.

MS. CHAYTOR: Okay.

Okay, if we could go back then, please, to P-0285. I'm just going to take you through some other – these are the, these are the phone records, by the way, of Constable Smyth, and I'm just going to take you through a few other messages that you had with him.

CST. BENOIT: Sure.

MS. CHAYTOR: So the top of page 2, please, Madam Clerk.

Okay. And so we'll see here that it's the next day now at approximately 3 o'clock UTC time. So I guess it's 1:37 Newfoundland time, if I do my math right. And you're telling him the lobby is clear. And he's asking you if you have an office key because he had left his in the Yukon. And then there's some communication. You tell him there's media in the lobby. And I take it you're talking about the lobby of the Confederation Building, is that right?

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. So I take it that Joe Smyth is coming in to the office on April 6.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And did you meet with him or talk to him during that visit that day? I take it you let him in.

CST. BENOIT: Yeah, and I'm sure I would've spoken to him in some aspect. I wouldn't be able to say specifically what we spoke about. I don't believe we spoke about anything in relation to the actual incident itself.

MS. CHAYTOR: Okay. So he didn't give you any further information about the shooting or anything –

CST. BENOIT: Not that I can recall.

MS. CHAYTOR: Okay. And, well, that's something I think you would recall, though, if you talked about it. Wouldn't you Constable Benoit?

CST. BENOIT: We spoke several times throughout the, the days following that incident. The way that the offices are set up in the Confederation Building, is Joe's office – Joe had his own office and Corporal Noel had his own office. So there were a lot of personal effects belonging to Joe in that office. That was the office that I moved into. So he was back a number of times, but, no, nothing specific.

And at this point, I can't recall because I've read a lot of reports now and I've heard a lot of stuff come out over the last two years. There was nothing that I can recall specifically that that we discussed about the incident.

MS. CHAYTOR: Okay. All right.

And if we just continue on then down towards more the middle of this page; I understand that you're talking here about you've gone to pick up the vehicle.

CST. BENOIT: That's correct.

MS. CHAYTOR: So did you attend in Mitchells Brook to get the vehicle?

CST. BENOIT: I did.

MS. CHAYTOR: Okay. And who went along with you to do that?

CST. BENOIT: Myself and Corporal Noel.

MS. CHAYTOR: Corporal Noel, okay.

Were you asked to retrieve anything from the vehicle?

CST. BENOIT: No.

MS. CHAYTOR: Okay. And were you involved at all in cleaning out the vehicle after having retrieved it?

CST. BENOIT: No.

MS. CHAYTOR: Okay. So did you check for any files that may have been in the vehicle?

CST. BENOIT: No.

MS. CHAYTOR: Okay. And did you see any files in the vehicle when you picked it up?

CST. BENOIT: No.

MS. CHAYTOR: Okay. Did you find personal items though belonging to Constable Smyth?

CST. BENOIT: Again, it was a vehicle that was strictly used only by Constable Smyth. As where there was only two, Corporal Noel would have had the other vehicle. So there were some personal effects in the vehicle, in the console and whatnot, but nothing out of the ordinary.

MS. CHAYTOR: Okay. And we don't need to read through every line of this exchange, but in terms of any files in the vehicle, if there had been files in the vehicle belonging to the PSU, I would take it they would have been brought back.

CST. BENOIT: They would've been refiled, that's correct.

MS. CHAYTOR: It would be brought back to the unit. And you stepped into the shoes of Joe Smyth immediately after this. Were you aware of any files having been retrieved from the vehicle and brought back to the PSU?

CST. BENOIT: No.

MS. CHAYTOR: And looking through some of the things that were there and some of your exchange, there's a reference to Red Bull, and I think he tells you, you can have his Red Bull. Do you recall –?

CST. BENOIT: Right. There was an unopened can of Red Bull in the vehicle.

MS. CHAYTOR: Okay, so it was unopened.

CST. BENOIT: Yeah.

MS. CHAYTOR: Okay. Were there any alcoholic beverages in the vehicle?

CST. BENOIT: No, I'm sure I would have recalled that.

MS. CHAYTOR: Or any empty bottles? You'd remember that, okay.

Okay. And so to get the vehicle, did you have to attend at the RCMP to retrieve the keys?

CST. BENOIT: We did. We had been instructed by one of the managers at the time, our managers, that the vehicle was free to be picked up because, again, due to two of us having to work at all times, working with one vehicle was counterproductive, we needed two. So they made contact and the RCMP advised that the vehicle had been released from the scene.

I was under the assumption that we were to go out and retrieve it from the RCMP headquarters –

MS. CHAYTOR: Okay.

CST. BENOIT: – but upon us showing up at, and I believe that was the Holyrood detachment. Upon us showing up at the detachment, we were advised that the vehicle was still in Mitchells Brook.

MS. CHAYTOR: Okay. And so when you went to the Holyrood detachment, did you have any discussions with any of the officers there?

CST. BENOIT: Yeah, there were a number of officers there. We weren't there very long. It was just general, general chitchat really. But they did make comments in relation to just, I guess, the overall feeling of the incident in Mitchells Brook.

MS. CHAYTOR: Okay. And this is April 7 that you're picking up the vehicle. According to your exchange, you've told Joe Smyth here that you just picked the vehicle up. So it's April 7. Does that seem about right to you?

CST. BENOIT: Yep.

MS. CHAYTOR: Okay. And so what were the comments by the RCMP in terms of the feeling regarding the shooting?

CST. BENOIT: I can't remember again specifically what was said because we're talking two years ago, but they just said that there was – there appeared to be no animosity towards the officer in relation to the incident –

MS. CHAYTOR: Okay, and –

CST. BENOIT: – and that they had spoken to, I believe it was the mayor or family, or someone there, and I guess the overall consensus is that the media – there was a lot of hype at the time, and just not to kind of buy into it more or less.

MS. CHAYTOR: Okay. And so if we scroll down here, there are a couple of comments that you relay back to Joe Smyth the same day. So I guess it would have been fresher in your mind then.

CST. BENOIT: Sure.

MS. CHAYTOR: And you tell him: "For what it's worth, RCMP said that the locals are showing no animosity towards police or officer involved. Said that the mayor and family were fine to deal with."

So I take it that would have been a fairly accurate –

CST. BENOIT: Sure it would.

MS. CHAYTOR: – account of what the RCMP told you.

CST. BENOIT: Yes.

MS. CHAYTOR: Do you recall; who were the RCMP officers that you spoke to that day?

CST. BENOIT: They would have been just general uniformed officers. I wouldn't be able to – I wouldn't know any of them. I wouldn't know their names or –

MS. CHAYTOR: And I take it Doug Noel would know?

CST. BENOIT: There's a good chance.

MS. CHAYTOR: Okay. And were there, was this all the same officer saying this or was this a couple –?

CST. BENOIT: That I don't know. I know there were a number of officers there, and like going into any police station, you kind of chitchat with going in and out. So it was a full detachment. I

don't even know how many people work at that detachment but I know that there were several officers to and from our vehicle.

MS. CHAYTOR: Okay. And then we have: As well, the town manager that was speaking out is MHA. Is that what that says?

CST. BENOIT: That's what it says.

MS. CHAYTOR: Okay.

She claimed that she was friendly with – that he was friendly, sorry – with police and knew them all, would invite them in all the time. RCMP were not familiar with the guy at all. Boys said that nobody would even know him to see him – exclamation point. So again, I take it that what you're referring to here by the "boys" that's the officers you spoke to that day?

CST. BENOIT: The RCMP, that's correct.

MS. CHAYTOR: Okay. And that, that would be an accurate representation of what they told you?

CST. BENOIT: Yes, that's correct.

MS. CHAYTOR: Did you then – I'm sorry, if we could just continue on then down here because you continue – you continue with texting to, or messaging Constable Smyth. And at the top of page 3, which we have here, it looks like he has asked you to retrieve some personal items, his glasses for him.

CST. BENOIT: That's correct.

MS. CHAYTOR: And you're trying to just discuss, I guess, about when you can meet up to give him his glasses, he's headed to Florida.

CST. BENOIT: Sure.

MS. CHAYTOR: And so do you recall, did you meet with him again then? And again, this is still April 7?

CST. BENOIT: I would have met with him at some point for him to retrieve his glasses. I can't say if it was at the office. I don't remember him stopping by my house or anything, and I was working again every day. So I'm assuming he would have swung into the office. It could have been something as simple as I left them on the desk for him to come in and get.

MS. CHAYTOR: Okay.

CST. BENOIT: But I don't recall anything specific.

MS. CHAYTOR: Okay, you don't recall any more specific details with him about the incident –

CST. BENOIT: No.

MS. CHAYTOR: – two days later.

CST. BENOIT: No.

MS. CHAYTOR: Okay. And on April 8 if we – also on page 12, there’s a reference on April 8: I’m guessing you don’t keep the attendance in the shared folder anymore. I guess I’ll just make up for that period.

What are you referring to there?

CST. BENOIT: Again, the shared folder; back prior to, I guess, my first stint there, any attendance – and that’s strictly just for payroll purposes just a schedule of the hours worked by the officer weekly. So in that situation I guess things had changed since I had been there previously and he was – there was probably no purpose for him to keep it there in that shared directory.

MS. CHAYTOR: Okay. So did you then input Constable Smyth’s attendance at work for a period of time?

CST. BENOIT: Yes, I would have had to fill that out and provide it to Acting Inspector Gullage.

MS. CHAYTOR: Okay. And so did Constable Smyth give you any guidance as to how many hours? Or you did as you said here; you’ll just make it up for that period.

CST. BENOIT: No, that was strictly like a work on, work off, just the regular scheduled hours of work. I wouldn’t be responsible for overtime or anything like that for that.

MS. CHAYTOR: Okay. So you would have inputted his regular shift hours.

CST. BENOIT: Yes, just to provide to Acting Inspector Gullage.

MS. CHAYTOR: And that would have been for the weekend, I take it, of April 3 for –

CST. BENOIT: Prior to me starting. I guess whichever one was next due to the inspector.

MS. CHAYTOR: Okay.

CST. BENOIT: And again, I can’t recall if I would have filled it out myself or if I would have just given that to the inspector to deal with.

MS. CHAYTOR: Okay. All right.

And if we could just continue on then, there’s another exchange with you on April 9. And you’re talking about – he says – well, actually this is now, yes, the next day. There doesn’t appear to be a response to your April 8, but April 9 Joe Smyth to Ed Benoit: Should get the summer rims and tires put on the Yukon ASAP. Take the look off it and Gullage said they would change the plate, is what you’re telling him. Good call; they mentioned the plate change at a meeting yesterday. And I’ll touch base with Tobin; perfect time to drop off tomorrow once he leaves. Definitely.

What’s this about? And then there’s also discussion, any mention of a rental vehicle.

CST. BENOIT: There –

MS. CHAYTOR: So what’s the concern?

CST. BENOIT: The concern there is that the premier’s vehicle that we used all the time to transport the premier around was captioned in a number of photographs and news clippings in

relation to the Mitchells Brook incident. And they didn't want, I guess, the premier to be seen out in public and in a situation where he was linked to the same vehicle, the exact vehicle that was used by Acting Sergeant Smyth at the time.

MS. CHAYTOR: Okay. And you attended a meeting in which that was discussed.

CST. BENOIT: Yeah.

MS. CHAYTOR: And who was in that meeting?

CST. BENOIT: That would have been the inspector, Acting Inspector Gullage at the time. I can't say for certain whether or not the superintendent, Jason Sheppard, would have been there. And I believe that Constable Noel, or Corporal Noel would have been there as well.

MS. CHAYTOR: Okay. So it's all police officers.

CST. BENOIT: Yes.

MS. CHAYTOR: There's nobody from the Premier's office making these decisions.

CST. BENOIT: No, it's strictly in-house for us.

MS. CHAYTOR: Okay.

CST. BENOIT: And that would have been at the RNC headquarters.

MS. CHAYTOR: Okay.

So other than that meeting that you referred to – or I guess I should ask you about that meeting. Was there anything else discussed at that meeting besides changing the look of the vehicle or –

CST. BENOIT: Not that I can recall. The big issue with that was more so for staffing, the staffing issue with that, at that point.

MS. CHAYTOR: Okay. All right.

And did you attend any other meetings then in the aftermath of the incident where the incident itself was discussed or steps were discussed in terms of taking additional measures from a security point of view?

CST. BENOIT: No. From that point forward every other meeting that I had would have been in relation to the operation of the unit – all administrative.

MS. CHAYTOR: All right. And if we could look next please at P-0276.

And my line of questioning for you here, Constable Benoit, is in the aftermath of the incident, was there an increase of the types of messages, the hostile messaging, that you were dealing with. Was there an increase in those types of messages being forwarded to the unit?

CST. BENOIT: There was an increase from the norm of what you would see. However, as I mentioned to you before in our interview, it didn't seem to be outside of the norm of any other political-incident type thing, whether it be a bad budget that was released and there were layoffs or like a DarkNL type situation. It didn't seem outside the norm.

MS. CHAYTOR: Okay.

And on this particular one that we have here, this is a week later, or thereabouts, April 13, and this originates with Janice Cave, and she's the constituency assistant for the hon. Paul Davis. And it's a Facebook message and Joe asks that I send this along to you as well. I have provided him with a copy too.

And that Joe, I take – is that Joe Gullage?

CST. BENOIT: I'm not sure who that would be, if it was Smyth or Gullage.

MS. CHAYTOR: Okay.

And then this is the Facebook post the premier mentioned to me. So this is Doug Noel saying this now to you. So it looks like it's Facebook post that the premier himself has brought to his attention, and he's wondering whether CIU is already doing a workup on the individual; if not, could you pass it on to them? And it looks like Doug Noel and the premier are having a discussion about it. Is he physically threatening or political – I'm sorry; I shouldn't assume that – it says we were talking about it.

In my opinion, at first glance, it sounds like blackmail. Either way; do this or else. And then you send that on to Joe Gullage. Please see the attached.

So if – you seem to alerting Joe Gullage to adhere. So would the Joe down here, do you know whether or not then that might be Joe Smyth?

CST. BENOIT: Again, I don't know. It could be, but I don't know for certain.

MS. CHAYTOR: Okay. And then Joe Gullage instructs that a file be opened and a threat assessment conducted. Okay. And are, and we don't have the actual messaging here but are the – was this, do you recall, similar to what you had dealt with previously and similar to what you deal with in the immediate aftermath?

CST. BENOIT: I would assume it was similar. I don't know specifically without having it in front of me, but I would assume it was all similar.

MS. CHAYTOR: And again, here you write to Joe Gullage, due to current resources I am unable to look into this on my own. And at this point in time I take it there's only the two of you –

CST. BENOIT: That's correct.

MS. CHAYTOR: – you haven't had your third person assigned.

CST. BENOIT: That's correct. And as Doug had mentioned in the message to me, it had already been discussed that anything that came in, we were too busy to deal with, that CIU was going to – the understanding was they were going to look into everything. So that's why he was asking me that.

MS. CHAYTOR: Okay. And then did you have any further follow-up in this particular incident?

CST. BENOIT: No.

MS. CHAYTOR: Okay. So was there a change in the type of complaints that you were investigating in the aftermath or that were coming into your unit to have investigated, either directly or sent on to the CIU, from what you were accustomed to investigating?

CST. BENOIT: No, it was similar. It was either messages or phone calls or whatnot. It was just more so just related to the Mitchells Brook incident.

MS. CHAYTOR: So there were a lot related to Mr. Dunphy's shooting.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And if we could bring up then, please, P-0286, and this is a quarterly report that you completed for the end of the second quarter of 2015. So I take it this would have been the first time you were in a position to do a quarterly report.

CST. BENOIT: That's correct.

MS. CHAYTOR: So this is to the end of June. And I understand this would have went to Inspector Gullage. Is that right?

CST. BENOIT: That's correct.

MS. CHAYTOR: And if we could just look at – I think it's page three of – sorry, do you want to do page three?

UNIDENTIFIED MALE SPEAKER: Page 3?

MS. CHAYTOR: Yes, please. And if we could just make that a bit bigger.

And so the overview paragraph that we have here, you're saying that it was a busy period and due to an unforeseen incident that resulted in a fatal shooting on 2015-04-05, the unit seen a change of personnel and an increase in security measures being taken surrounding the protection of Premier Paul Davis. And to maintain the increased level of security, the unit has also the addition of a new constable position which proved to be a positive addition.

So, again, this is the additional security that's put in place in the aftermath of Mr. Dunphy's shooting.

CST. BENOIT: That's correct.

MS. CHAYTOR: Okay. And then I think you just talk about some of the changes in your personnel. And then if we could turn over, please, Madam Clerk, to page 4 of the exhibit.

Okay. Here you say: "Since the fatal shooting in April 2015, the PSU had implemented that all public appearances involving by the Premier be made with the utilization of 2 members. In such cases, the first member would advance the location to perform a cursory check and ensure the site was clear for the Premier's arrival while the second member would carry out duties as both driver and body guard." And you continue on with some scheduling there.

Constable Benoit, did that remain the case throughout the time that you were there until you left in the end of 2015?

CST. BENOIT: I believe it did. That summer, July and August, we actually were host to two major conferences involving all Canadian premiers and New England governors. So for both of

those – again, I think one was July and one was August. And for both of those events, there was a large number of security officers that were actually pulled into from all over the RNC, as well as visiting dignitaries had their own security.

And then by the time those finished, we pretty much rolled right into the campaign, campaigning for the upcoming election. So that was also a busy time, a lot of travelling and whatnot. So for the most part, yeah, we maintained two members working until I left after the election.

MS. CHAYTOR: Okay. And up to the end of June when you're writing this report, the main increase would have been because of the public backlash or outcry following Mr. Dunphy's shooting.

CST. BENOIT: That's correct.

MS. CHAYTOR: And here we talk about the numbers of files generated. In this paragraph you write about files being generated. And you say: During this quarter, the unit has seen 21 files generated, and 12 are for persons of interest and nine for travel. So if you were looking at 15 to 20 in a year, I take it there's an increase in the number of your person-of-interest files that are generated after the incident involving Mr. Dunphy.

CST. BENOIT: That's correct.

MS. CHAYTOR: And then you continue to say: Due to the media hype surrounding the fatal shooting involving a member of the Protective Services Unit, a number of individuals reached out to the premier via various mediums to show their frustration in a somewhat threatening manner. And with the assistance of the CIU, several files were identified persons of interest. Although no criminal charges have been laid, one person was identified and was detained under the *Mental Health Care and Treatment Act* for comments made on social media. And also outside of the unit, the RCMP had laid charges against a person for uttering threats.

Okay. And that had something to do with the sign on somebody's front lawn?

CST. BENOIT: Correct.

MS. CHAYTOR: Okay. And was it your understanding then that all the increase in the number of files generated for persons of interest all, or certainly the vast majority, were in relation to people speaking out in the aftermath of Mr. Dunphy's shooting.

CST. BENOIT: I wouldn't say that all of them were, but I would say it would be fair to say the vast majority in that situation were.

MS. CHAYTOR: Okay. And you say here: In a somewhat threatening manner. Are you aware of any threats having been laid against the premier or government officials by individuals expressing concern about Mr. Dunphy's shooting?

CST. BENOIT: No, not that I'm aware.

MS. CHAYTOR: And if we could have page 6, please. And you refer here to Additional Protective Duties. There were several occasions during the second quarter where members of Protective Services were assigned additional protective duties, all of which were related to the same persons and events. And due to your schedules conflicting with two of them, additional staff then were obtained from the GIU. And there's reference here to Minister Steve Kent at the time had requested members attend three separate mental health seminars.

So what was the concern with respect to the mental health seminars?

CST. BENOIT: That was a request that actually came down to our office from above through either the inspector's level or the superintendent's level. And it was something that they inquired about us to try and cover but, again, due to our staffing limitations, we had no dealings with that whatsoever. So I can't – I wouldn't even be able to begin to tell you what the issue was with that.

MS. CHAYTOR: Okay. And if we look over, then, to page 7, Communication Systems: Your BlackBerrys adequately cover off the PSU's communication needs for the majority of the time when you're in the RNC jurisdiction.

And I take it were there issues when you're outside the RNC jurisdiction with your BlackBerrys working or having coverage?

CST. BENOIT: No. In relation to this quarterly report, as you mentioned, this was the first one that I'd ever done in that position. And it was strictly a template that I had located on the server that I just modified to suit my own needs with my own information.

MS. CHAYTOR: Okay. So what is this in reference to then?

CST. BENOIT: I don't know. That probably would have been there on the older, the version. There's no known issues with the BlackBerrys that I know.

MS. CHAYTOR: Okay. And there's reference to the PSU having access to the RCMP VIP bank of radios.

CST. BENOIT: That's true. So those radios we would use in a bigger setting such as a conference where we had multiple security officers there, but those, they're fairly limited in their range. They're essentially line-of-sight radios. So if you're all at one venue, you can use them; however, they wouldn't be the same as our mobile radios that you'd see, like a police vehicle that go off repeaters and could go long distances.

MS. CHAYTOR: Okay. And then I have just one other question on the end then of the document under Priorities.

You're looking for addition of a fourth member to unit to offset overtime, leave and added strains due to increased security and upcoming election campaigning.

So at this point in time you are suggesting a fourth member be added to your unit, so I take it you're still –

CST. BENOIT: That's right. To go back to how we operated when I was there originally.

MS. CHAYTOR: Right.

Okay, and did you get that fourth member?

CST. BENOIT: No.

MS. CHAYTOR: Constable Benoit, those are the questions that I intended to ask of you. Unless there's anything I haven't covered –

CST. BENOIT: No.

MS. CHAYTOR: Okay. And there's no other information you have for the Commissioner that may be relevant?

CST. BENOIT: Nothing that I know of right now.

MS. CHAYTOR: Okay.

I'm sure some of my learned friends may have questions, as well as the Commissioner.

CST. BENOIT: Sure.

MS. CHAYTOR: Thank you.

MS. BREEN: Good morning, Constable Benoit. Erin Breen for Meghan Dunphy.

Constable, I just want to start off, just with a general question about your work while you were at the PSU. Is it fair to say that when the premier was off – when I mean off, taking a rest day or a holiday – and didn't require physical security from the PSU, that would be time when the officers in your unit would be able to work on your paper files or your person-of-interest files or any other kind of paperwork you had to do. I understand you had to do a lot of planning, scheduling, that kind of thing.

Is that fair to say that's when you would get to do that work?

CST. BENOIT: Depending on the premier of the day. When I worked there first, we actually did a lot of travel. Even in downtime, we were still required with the premier.

MS. BREEN: Yes, and I think it's become clear that the needs and, you know, the manpower or the person power that was required did vary drastically from premier to premier. In the time frame that you were there, you worked under different premiers.

CST. BENOIT: That's correct.

MS. BREEN: Right.

So let's say – and we understand that in one particular period when Premier Dunderdale was premier, there was a lot more hours spent on physical security.

CST. BENOIT: Correct.

MS. BREEN: And then when the next premier came in – I believe it was Premier Marshall, is that correct?

CST. BENOIT: It would have been Premier Marshall, yes.

MS. BREEN: That that was reduced.

CST. BENOIT: It was, but that's when I left the unit.

MS. BREEN: Okay.

CST. BENOIT: So I wouldn't have any dealings with that.

MS. BREEN: Okay.

Now, what you've described to us today, and in your interview, is basically your practice as a member of the unit from 2012 to 2014 is when you left, and then again after you left the unit – or sorry, after you came back to the unit in 2015. And so the information that you are giving us is based on your practice at that time?

CST. BENOIT: That's correct.

MS. BREEN: Okay. And what I understand – and I know that some of the information you provided in the interview, you've gone back now and that's reasonable to do. You've checked into it. And I saw in your interview how you said: Look, I don't recall, I need to go back, I need to look at issues. And obviously you've done that, to give us more specifics. So some of the information is different than what you gave to Commission counsel because you've had a chance now –

CST. BENOIT: Sure.

MS. BREEN: – to go back and read the files. Unfortunately, I don't have that information to refine my questions but if I've put something to you that is based on the interview that you gave, please just notify me, okay.

CST. BENOIT: Okay.

MS. BREEN: My understanding is that your practice in 2012 to 2014 is that basically a person or a communication would be flagged to you in some way. Whether it be by a member of the premier's staff, whether you noticed it yourself. And as you said, it could be, you know, as simple as a demonstration is coming up. Is that correct?

CST. BENOIT: That's correct.

MS. BREEN: And that what you've described is a process of doing background checks and other work to obtain as much information as possible about that person, that communication, whatever it is.

CST. BENOIT: That's correct.

MS. BREEN: What you said in your interview, your earlier interview, is that as part of getting that information at that time, 2012-2014, you would certainly involve your RCMP counterpart if you needed to do the PROS check. You had no problem telling them you needed their help. Is that right?

CST. BENOIT: That's correct.

MS. BREEN: Okay. That you would also involve other – the CIU if you needed to get, for example, motor vehicle photograph. You've talked about in the interview you like to have a photograph of a person because you like to know who it was you were going to see.

CST. BENOIT: That we're looking for, that we – yeah, absolutely.

MS. BREEN: And that you had different ways to do that. You could either go to what you call open sources, get a picture from Facebook, or if that wasn't there you could go to, get the information from the CIU from motor vehicle or you could actually get a mug shot. What we call a mug shot, which is a photograph taken of a person when they're charged with a criminal offence.

CST. BENOIT: That's correct

MS. BREEN: And that in order to do that though you would have to go – basically you didn't have access, or did you, to all of that in your own office.

CST. BENOIT: I would have had access with our mug shot system and I would have access for Motor Registration Division, but not for the photos for the Motor Registration Division.

MS. BREEN: Okay. And to get a photo from Motor Vehicle, I understand you'd have to involve CIU.

CST. BENOIT: That's correct.

MS. BREEN: Okay. So getting a photograph would be an important part of your gathering of information.

CST. BENOIT: That's correct.

MS. BREEN: Okay, because you were – sometimes didn't know who the person was, you were going down and you had no idea what the person looked like. And that makes sense.

And that also you described in your interview that, then, a bio would be basically produced –

CST. BENOIT: Correct.

MS. BREEN: – with the photograph, with all the background information. And then you talked about once that biography was put together, then the notification would go out to your other members. And I understand today you've refined that now to say that that would only happen in certain events that you'd actually notify people.

But with the biography and the information gathering and the documentation of the information gathering, that would appear to me to be an important part of your work, would it?

CST. BENOIT: The bio itself?

MS. BREEN: Yes.

CST. BENOIT: Or the person of interest files?

MS. BREEN: Yes.

CST. BENOIT: Yeah. That would be one of our duties, for sure.

MS. BREEN: Okay.

And then what I understood you to say in your interview, Constable Benoit, maybe you can clarify, is that in that information gathering, if something arose that would warrant an actual meeting in person – okay? So you would do your information gathering, you would put together your biography before you made a decision as to what response or what would be warranted in the circumstances. Is that right?

CST. BENOIT: That's correct.

MS. BREEN: And that you also indicated in your interview that, you know, this process, it wasn't an immediate process that –

CST. BENOIT: It wasn't time sensitive, no.

MS. BREEN: No. And you would gather your information, put this information together. Sometimes that could take a few days.

CST. BENOIT: Depending on our schedule, yes.

MS. BREEN: Okay. And if it was urgent or immediate, then you would certainly contact, you said, front-line officers to attend.

CST. BENOIT: That's correct.

MS. BREEN: Okay.

And based on your assessment of the information that you had gathered, then you would determine what kind of follow-up was necessary. Is that right?

CST. BENOIT: If any.

MS. BREEN: If any, okay. And I saw in one place in your interview that you mentioned that there were times when you would determine that you would just monitor social media or you would monitor open lines for the person's communications. Is that correct?

CST. BENOIT: Not necessarily.

MS. BREEN: Okay.

Can you just explain that to me? I saw it at page 18, for the benefit of counsel, lines 14 to 22 of your interview. If it was the norm for them to comment on social media or in different aspects on *Open Line*, we would monitor for those, for particular people.

CST. BENOIT: Not on an ongoing basis –

MS. BREEN: Okay.

CST. BENOIT: – but I meant that we would look into the social media to see what, I guess, their history was.

MS. BREEN: Okay, so if you knew they had a history, you'd look at that. If you knew they were calling in to *Open Line*, you'd try to look for those things? Transcripts –

CST. BENOIT: No, this would be after the fact. Like, we wouldn't specifically sit down and view to see what the new comments would be or what the new, I guess, call-in would be.

MS. BREEN: Right. But you would go back and try to look at some of their calls or get transcripts – I understand there was availability of transcripts.

CST. BENOIT: Right, we would go back and research, yeah, after the fact.

MS. BREEN: Okay, fair enough.

And sometimes based on what you had, you would determine that file could just simply be closed and no further action would be warranted; is that right?

CST. BENOIT: Well, a lot of those, as I mentioned again, were strictly just administrative or our purposes; they didn't go anywhere. It was basically just a bio for us to be aware of the person in our day-to-day duties being out in the community with the premier.

MS. BREEN: And other times actions such as, you could notify Confederation Building security, send down their photograph, basically an FYI, in case this person comes around. Obviously you would have a concern about the physical security of the premier or any other member – is that right?

CST. BENOIT: That's correct.

MS. BREEN: And I had understood you say in your interview, Constable Benoit, that home visits in your practice or in your experience were rare, relatively rare.

CST. BENOIT: This is true.

MS. BREEN: Okay.

And that this was basically a decision done on a case-by-case basis.

CST. BENOIT: That's correct.

MS. BREEN: Okay.

You also explained that the practice in 2012, 2013, is that at that time, the officers in the PSU would do the workup but if it required a follow-up of a home visit, then you would be contacting CIU to do that.

CST. BENOIT: Not necessarily.

MS. BREEN: Okay.

I understood – and, Constable, this is based on your testimony in the interview at page 69, lines 2 to 7, and lines 15 to 17, that patrol and CIU would follow-up for you when there was four people on the unit.

Did I misunderstand that? Please explain, if – I thought there had been some change that back then when it was a four-person unit and you were so busy providing physical security that, oftentimes, what would happen is that CIU would do the follow-up in terms of if a visit was necessary.

CST. BENOIT: There are, I guess, instances where that would have been the case, stuff would have been forwarded to CIU, no different than when I returned in 2015.

MS. BREEN: Okay. So you're saying there was no real change?

CST. BENOIT: It was much the same, yeah, as past practice.

MS. BREEN: Okay.

And you also said that – and I believe you said this in your direct today – you could ask a patrol officer to assist you if you felt it necessary.

CST. BENOIT: Correct.

MS. BREEN: And that, you've also said that really there was no protocol in place as to when to do a home visit, when that would be appropriate.

CST. BENOIT: That's correct.

MS. BREEN: Case-by-case basis of – and it would depend how they first came on your radar.

CST. BENOIT: Correct. Now, just to clarify those comments.

MS. BREEN: Sure.

CST. BENOIT: In relation to the asking a patrol officer to assist us, I'd, I have done files where people have made comments in relation to self-harm and whatnot where we forward it directly on to patrol and they've gone and made contact. But in, in relation to the situation where I did a home visit and I took a patrol member with me, that was, that was a rare occurrence as well. That's usually not the norm.

MS. BREEN: Right.

CST. BENOIT: In that situation, there was nobody else within CID that was available that could go.

MS. BREEN: Right. And it appears from your experience in the, in the PSU, the home visit, you've said this repeatedly in your interview, it was rare.

CST. BENOIT: Very rare.

MS. BREEN: And when Ms. Chaytor interviewed you, you could only really remember two home visits that you had participated in.

CST. BENOIT: Right. And they were on behalf of somebody else.

THE COMMISSIONER: Ms. Breen, we're pushing 11 o'clock. Do you know – how long do you think –

MS. BREEN: I, I will be about, probably another 15 minutes, Mr. Commissioner.

THE COMMISSIONER: Okay. So we'll take our mid-morning break now for 15 minutes.

MS. SHEEHAN: All rise.

The Commission of Inquiry is 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. Breen.

MS. BREEN: Thank you, Mr. Commissioner.

Constable Benoit, when we left off I was asking you about some of the statements you had made in your interview. And I understand when you're working on these person-of-interest files, you had explained to Ms. Chaytor that basically it was very common for the person of interest to have been upset with government, for whatever reason. That was a common theme. And that, you know they would've had some kind of history with government that they were upset about. Normally that was the case. Is that correct?

CST. BENOIT: Correct.

MS. BREEN: Okay. And the example that you gave here today, you talked about in one of your cases specifically, there was an issue with a suicide concern. And in that case, what you decided to do right away was notify patrol services and there was actually an arrest made under the mental health act. Is that correct?

CST. BENOIT: (Inaudible) is correct.

MS. BREEN: Okay. But you did explain to Ms. Chaytor that, you know, there was a range there. Suicide, I guess, example being at one end. But also, you confirmed that oftentimes you had people who were, kind of, politically ranting.

CST. BENOIT: Correct.

MS. BREEN: Fair to say?

CST. BENOIT: That's fair.

MS. BREEN: Okay.

Now, in your description of the two home visits that you could recall, okay, we have one that I understand you did in the Carbonear area. And that's while you were still with the PSU.

CST. BENOIT: That's correct.

MS. BREEN: And Constable Smyth would have been your supervisor at that time?

CST. BENOIT: That's correct.

MS. BREEN: The second, where you had left the unit and that you had been requested by Constable Smyth to accompany him, at that time you were no longer with the unit then.

CST. BENOIT: That's correct.

MS. BREEN: And that was the Southlands visit, is it – is that right?

CST. BENOIT: That's correct.

MS. BREEN: Okay.

Now, when you were doing these home visits, were you – and I understand what you're saying. On both of these files I think you said they were not your files, you had been asked to accompany the officer. But I presume there would have been some discussion as to the purpose of going to the home, what you were going to do there, what you were hoping to accomplish by the visit. Is that correct?

CST. BENOIT: That's correct.

MS. BREEN: Okay. And what we've heard is that the goal would be to garner some information from that person. Is that fair?

CST. BENOIT: That's correct.

MS. BREEN: And so we've heard that it's important to try and build some rapport with that person, I guess to make the visit go smoothly and in order to obtain the information that you go down there to get.

CST. BENOIT: That would be fair.

MS. BREEN: Okay. Now, you would only be in that person's home with their consent. Is that right?

CST. BENOIT: That's correct.

MS. BREEN: Okay. So it's not a situation where you had a warrant to enter. You would actually have to have the person consent to let you come into their home.

CST. BENOIT: Strictly voluntary on their part. Correct.

MS. BREEN: Okay. And this would have to be an informed consent, do you agree? The person would have to know who you are, what you were doing, why you were there in order to allow you to come into their home. I mean it would have to be an informed decision, would it not?

CST. BENOIT: That would be fair to say.

MS. BREEN: Okay. So I presume that that would require an introduction before you enter the house.

CST. BENOIT: Correct.

MS. BREEN: Okay. And that would be to ensure that the person fully knew who you were.

CST. BENOIT: That's correct.

MS. BREEN: Okay. And I saw a description in your interview where you talked about introducing yourself. And you said that you would introduce yourself. You would say your name, the fact that you're a police officer and also that you were a member of the Protective Services Unit.

CST. BENOIT: That's correct, and the purpose of my visit.

MS. BREEN: And the purpose of your visit. So the person would clearly understand you were there, both as a police officer but also as part of a specialized unit which related to the protection of elected officials.

CST. BENOIT: Correct. But I would do that in whichever department I worked. It wasn't just unique to that PSU.

MS. BREEN: Right.

CST. BENOIT: Yeah.

MS. BREEN: And particularly when you're entering someone's home, it would be important for them to understand that. Do you agree?

CST. BENOIT: I agree.

MS. BREEN: Okay.

Now, I just want to confirm a couple of points about the Southlands visit. And I understand some of the information has changed as a result of your going back to review your files. You were requested to go along as a second officer and I believe you had said that the nature of the issue were heated emails. Now today you say you think it may have been Paul Davis, not Steve Kent.

CST. BENOIT: Yeah, it would have been Child, Youth and Family Services, if I remember correctly.

MS. BREEN: Okay. And the emails that were – the subject of the visit were heated emails that had gotten to a point where someone was concerned.

CST. BENOIT: That's correct.

MS. BREEN: But not necessarily a threat as such.

CST. BENOIT: Not a threat, it was more so harassment of that (inaudible).

MS. BREEN: Okay. So would it be fair to say that this is one of those situations that was somewhat in the grey zone, it's not quite – you're not down there responding to a threat per se but comments on social media.

CST. BENOIT: That particular incident was a full-fledged criminal investigation.

MS. BREEN: Okay.

CST. BENOIT: For that meeting, the individual was actually given their rights and caution.

MS. BREEN: Okay. So this –

THE COMMISSIONER: Is this the Carbonear one you're referring to?

CST. BENOIT: No, this would have been the one in St. John's.

THE COMMISSIONER: The one in –

MS. BREEN: Southlands, yeah.

Okay, so this is a bit different. You say in this one there was a prior appointment made with the individual.

CST. BENOIT: That's correct.

MS. BREEN: Okay. And when you say the person was given rights and caution, did that occur prior to your involvement or did that occur when you arrived?

CST. BENOIT: Prior to the interview.

MS. BREEN: Okay. So they were aware that they were a suspect in a criminal offence, appointment was made and this occurred.

CST. BENOIT: That's correct.

MS. BREEN: Okay.

Now, Constable Benoit, I presume in your line of work going into any person's home is potentially risky, is it not?

CST. BENOIT: Yes, correct.

MS. BREEN: Okay, and that as a police officer you have to be prepared for physical danger to yourself.

CST. BENOIT: That's true.

MS. BREEN: Now, in both of the visits that you have described for us there was, you were the second officer who was going along to go into the home.

CST. BENOIT: In the Carbonear area visit I, we were – there was two of us.

MS. BREEN: Yes.

CST. BENOIT: I had been tasked by a member that didn't attend.

MS. BREEN: Right.

CST. BENOIT: So you could consider me, I guess, the primary there but.

MS. BREEN: Okay. Fair enough.

And would you agree that when you're by yourself alone you're even more vulnerable?

CST. BENOIT: I would agree.

MS. BREEN: Okay. And that when you're by yourself and you're going into a person's house who you don't know, you don't know the house, both your basic police training and your OPP specialized training that you've talked to us about would teach you to be hyper-vigilant.

CST. BENOIT: That would be a fair statement.

MS. BREEN: Okay. And that going into someone's house, this is the unknown and as you said you're vulnerable, particularly when you're alone. So would you be trained to plan and act, keeping in mind the fact that you are in a position of vulnerability?

CST. BENOIT: It should be something that you should be cognizant of. Yes, of course.

MS. BREEN: Okay. And I have heard police officers say that you know this kind of training and the hyper-vigilance becomes so instinctual that even in their daily lives it can kick in.

CST. BENOIT: That's true.

MS. BREEN: Okay.

So, for example, you go into a house, you're by yourself, you don't know the house, you don't know the person. Would it be fair to say your training would teach you, first of all, to make sure that you always had an easy or a quick exit?

CST. BENOIT: It should, yes.

MS. BREEN: Would you also be trained, Constable Benoit, to constantly be reassessing the situation as it unfolds?

CST. BENOIT: It should be something to keep in mind.

MS. BREEN: And that if something changes, that you would act or react accordingly?

CST. BENOIT: That would be fair.

MS. BREEN: Okay.

And so, for example, if you are in a house that you don't know and you get new information, or you see new hazards that you did not originally anticipate, that your actions should change to deal with that.

CST. BENOIT: That's correct.

MS. BREEN: Okay. So in other words, if your level of risk to yourself changes or your, you know, your feeling of that risk level, you should react to that?

CST. BENOIT: You should.

MS. BREEN: Okay.

Constable, if you suspect that a person has mental health issues, or if you have reason to believe they may have mental health issues, do you become even a little more vigilant?

CST. BENOIT: I guess it's a case-by-case basis, mental health issues is certainly such a broad term.

MS. BREEN: Okay. Certainly you would be looking for weapons if you entered a house to speak with someone?

CST. BENOIT: It would be something you would certainly keep an eye on, yes.

MS. BREEN: Okay. And if you saw a weapon, or you knew there was a potential for a weapon – I think in your direct you said that would be a caution to you.

CST. BENOIT: Sure.

MS. BREEN: Okay. And if a person is getting increasingly and obviously upset and agitated with your presence there, that would be another caution would it, another red flag?

CST. BENOIT: It would.

MS. BREEN: Okay. So does your training tell you that when you are alone in a situation like that and your risk level gets high, that you can simply retreat? That you can just leave?

CST. BENOIT: It's possible. But, again, it's certainly a case-by-case basis.

MS. BREEN: Okay.

CST. BENOIT: There's no black and white to that.

MS. BREEN: And putting aside a physical risk to yourself, don't you also always have to be prepared for the fact that when you're alone with another individual as a police officer, that there's the potential that the person could make an allegation of some kind of wrongdoing against you?

CST. BENOIT: That is a possibility.

MS. BREEN: And that you would plan to deal with that in some way.

CST. BENOIT: I don't quite understand the –

MS. BREEN: Okay. It's like as you explained in your interview, you talked about the fact that the prior visit you had done with Constable Smyth, the interview was recorded.

CST. BENOIT: Uh-huh, that's correct.

MS. BREEN: And I understand what you're saying, that this was a bit different because it was a criminal investigation. But you did explain as well that, you know, when a conversation occurs with a person it's very easy for the police officer, if they're just making notes, okay, that there could be a missed – something could get misconstrued.

CST. BENOIT: Sure.

MS. BREEN: You know, a person could say I didn't really say that. And it's very problematic, isn't it?

CST. BENOIT: Absolutely.

MS. BREEN: Okay. So recording an interaction is really the best way to demonstrate, look, this is what happened, this is what this person said. And if you don't do that, you are putting yourself somewhat at risk that later someone may make an allegation that something untoward happened.

CST. BENOIT: There is a possibility, yes.

MS. BREEN: Now, at that time I understand it was not the norm to record.

CST. BENOIT: Not within the Protective Services Unit.

MS. BREEN: No.

CST. BENOIT: I had not seen that prior to that. However –

MS. BREEN: And – sorry.

CST. BENOIT: – I was working within the General Investigation Unit at the time, and it was the norm. Different units operate differently.

MS. BREEN: Yes. And you said that, that time that Constable Smyth did record was the first time you'd ever seen someone with the PSU record an interview. Is that correct?

CST. BENOIT: That's correct.

MS. BREEN: Okay.

Now, just briefly in relation to your second visit to Carbonear area, and today again we have more details, are a little different than what you told Ms. Chaytor, but these were Twitter comments made in May of 2013 that were specifically, I guess, targeted at a minister. Is that right?

CST. BENOIT: That's correct, yeah.

MS. BREEN: So there was a, almost if you wanted to interpret it as a direct threat: I'm coming to get you – or something to that nature, and the person was, it was directed to them.

CST. BENOIT: That's correct.

MS. BREEN: Okay. And at that time a uniformed patrol officer was with you.

CST. BENOIT: The first attempt that I made to locate him, there was a uniformed officer with me.

MS. BREEN: Right.

CST. BENOIT: However, when I made contact, it was two plainclothes officers.

MS. BREEN: Okay. And at that time as well, you would have introduced yourself as a member of the Protective Services Unit before you entered into any house?

CST. BENOIT: That's correct.

MS. BREEN: Okay.

CST. BENOIT: In that situation, I can't even recall if I went inside of the home.

MS. BREEN: You don't know if you went inside the home.

CST. BENOIT: Yeah, I can't recall. No, I don't know. That could have been just a meeting. It was very casual. That could have been a meeting out in the driveway in front of a house.

MS. BREEN: Okay. You didn't – when you went back to review certain information, you didn't review that file, did you?

CST. BENOIT: No, I did review that file but it wasn't indicated in my notes.

MS. BREEN: Okay. So you're not sure if you even entered the house.

CST. BENOIT: If the meeting took place inside the house. It wasn't as formal as the other meeting, we'll say.

MS. BREEN: Okay.

Now Constable, the last issue I want to just raise with you – if Madam Clerk could put up Exhibit-0403 for me.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. BREEN: It's an email chain, I believe, or a BBM train between Constable Benoit and Constable Smyth. Is it 0403?

THE COMMISSIONER: 0403?

UNIDENTIFIED FEMALE SPEAKER: 0403.

MS. BREEN: I thought that was the exhibit number on the – no, I'm sorry. It's 0285, is it?

UNIDENTIFIED FEMALE SPEAKER: 0285.

MS. BREEN: 0285, my apologies.

UNIDENTIFIED FEMALE SPEAKER: It's on text messages?

MS. BREEN: Yes.

UNIDENTIFIED FEMALE SPEAKER: 0285.

THE COMMISSIONER: You were close.

MS. BREEN: I'll get a hang of it at some point.

And it would be page 2 of that exhibit.

And if we could scroll down, Madam Clerk, just to – about a quarter way from the bottom of the page. And it relates to the comments, Constable Benoit, what you said the RCMP had told you when you went out to get the Yukon. So at that time, Constable Benoit, this was in the Holyrood detachment, was it? That this –

CST. BENOIT: I believe so.

MS. BREEN: Okay. And a number of the RCMP were there.

CST. BENOIT: That's correct.

MS. BREEN: And they were the local RCMP at Holyrood.

CST. BENOIT: The uniformed officers, yes.

MS. BREEN: Okay. And if I said the names of John Galway and Rod Tiller, would that mean anything to you?

CST. BENOIT: No.

MS. BREEN: Okay. But at that time, I understand they made a point of telling you that the town reaction, basically, to the incident was being exaggerated by the media?

CST. BENOIT: Yeah, that there was no animosity towards the police in general, or I guess the officer involved.

MS. BREEN: Right. And then you go on to mention a second piece of information, “As well, ‘the town manager’” – that piece of information. Now, you’ve had a chance to review that, have you?

CST. BENOIT: Yes.

MS. BREEN: Okay. And, Constable Benoit, do you recall that this related to stories on both the CBC and in *The Telegram* on April 7?

CST. BENOIT: Yes.

MS. BREEN: Where a female from the community spoke to the media and said that the residents of Mitchells Brook were raising concerns and questions about the incident?

CST. BENOIT: Yes.

MS. BREEN: Okay. And they were questioning, basically, why a police officer would go into someone’s home, in the manner that happened. At that time the RCMP are the ones, I assume, who gave you this information, that the town manager was MHA. Is that right?

CST. BENOIT: No, they didn’t say that she was MHA. They had made comments in relation to the – I’m just trying to read my message here now – that contradicted, basically, what she had said, or what was put out in the media that she had said.

MS. BREEN: Okay. So when you say, “As well, the ‘town manager’ that has been speaking out is MHA.” MHA, tell us what that means, Constable. Is it mental health act?

CST. BENOIT: In that context it is.

MS. BREEN: Okay. Where did that information come from?

CST. BENOIT: That was strictly my own words that I used in that message, which is common slang – however inappropriate it may have been – to basically say that what was being said was not accurate.

MS. BREEN: Okay. So you’re saying that you didn’t get that – that’s not something the –

CST. BENOIT: No.

MS. BREEN: – local RCMP said to you.

CST. BENOIT: No.

MS. BREEN: How – where did you get the information about, “She claimed that he was friendly with police and knew them all/ would invite them in all the time. Rcmp were not familiar with the guy at all. Boys said that nobody would even know him to see him!”

CST. BENOIT: That was information that I had taken myself, the comments that she had made through the media. But it would have been one of the RCMP officers that said that they were not familiar with him.

MS. BREEN: Okay. So –

CST. BENOIT: And that they wouldn't know him to see him.

MS. BREEN: So the conversation about this did come up at the RCMP while you were getting the Yukon? The fact that she had made these statements, that the RCMP knew about Don Dunphy.

CST. BENOIT: No, no, no. I will just clarify again. They didn't make any mention of this individual. They just mentioned that they were not familiar with him and that they wouldn't know him to see him. And I made my own inference to say that that was contradictory to what she was saying that he was friendly with the police, that they knew 'em all and that he would invite them in all the time.

MS. BREEN: Constable Benoit, it would seem to be an unusual slang to use for a person that you really, you had no idea who they were. I'm presuming she would have been known in the community of Mitchells Brook and to the RCMP that might have generally known who she was. Are you certain that this is your slang and not something RCMP told you?

CST. BENOIT: No, this would be my slang. Again, inappropriate as it was, it certainly wasn't meant to be in any way disrespectful or offensive to the individual. It wasn't fair of me to say. I don't know the individual. I honestly wouldn't know the individual to see them.

THE COMMISSIONER: But you're saying she's off the wall, basically?

CST. BENOIT: Basically, yes. It was just in shorthand and it was – the purpose of the message itself was just to alleviate some of the pressure or give support to Constable Smyth.

MS. BREEN: And I – when you read the chain, all right the – I guess the assumption would be that this is information that the RCMP gave you at the time.

CST. BENOIT: Sure.

MS. BREEN: Because it's all coming together –

CST. BENOIT: Yep, I could understand that.

MS. BREEN: Just after you got the Yukon and she would have been known out there.

CST. BENOIT: I can understand that.

MS. BREEN: Thank you very much.

Those are all my questions.

THE COMMISSIONER: Counsel, Mr. Kennedy, you going next?

MR. KENNEDY: Yes, thank you.

Constable Benoit, you have been a police officer since 2006, have you?

CST. BENOIT: That's correct.

MR. KENNEDY: You've known Joe Smyth since that time.

CST. BENOIT: That's correct.

MR. KENNEDY: You were asked by Commission counsel how you would describe Constable Smyth especially in your dealings with him in the Protective Services Unit; do you remember how you described him?

CST. BENOIT: I do.

MR. KENNEDY: And what would that be, Sir?

CST. BENOIT: Very professional, very smart, very articulate, very accommodating as a supervisor.

MR. KENNEDY: Because one of the issues here and it might have been alleviated somewhat with a four-man unit, but with a two-man unit it's very difficult to run the Protective Services Unit, isn't it?

CST. BENOIT: That's correct. It would be a fair statement.

MR. KENNEDY: Because the close protection duties can be quite time consuming.

CST. BENOIT: Absolutely.

MR. KENNEDY: Then there's other intelligence work and file work that has to be done. So is that correct?

CST. BENOIT: That's correct.

MR. KENNEDY: So even when there was four you there though, there were always these scheduling issues and there'd be a need for accommodation. Is that correct?

CST. BENOIT: Correct.

MR. KENNEDY: And you found Constable Smyth to be very good in that respect, did you?

CST. BENOIT: That's true. Yes.

MR. KENNEDY: Now, I think you'd indicated that things could change under different premiers, that with Premier Dunderdale you spent all your time doing close protection.

CST. BENOIT: That's correct.

MR. KENNEDY: It was essentially protection 24 hours a day.

CST. BENOIT: That's correct.

MR. KENNEDY: Then when it came to Premier Marshall, the unit was reduced to two.

CST. BENOIT: That's correct.

MR. KENNEDY: Now did that mean that work that would normally have been done or could have been done by two members was now being done by one?

CST. BENOIT: Yes, I guess. Yeah, that would make sense.

MR. KENNEDY: Because burnout would –

CST. BENOIT: There'd be one working at a time.

MR. KENNEDY: Sorry?

CST. BENOIT: There would be one working at a time then, yes.

MR. KENNEDY: As opposed to two working at a time.

CST. BENOIT: That's correct.

MR. KENNEDY: And burnout is certainly something that you had to consider in that unit, did you not?

CST. BENOIT: Sure. Yes.

MR. KENNEDY: In fact, the third member, one of the members that joined you in 2015, he left the unit after a short time as a result of an inability to be able to accommodate family needs and things like that, right?

CST. BENOIT: That's correct. Yes.

MR. KENNEDY: You've also indicated that your days could be long. They could be, if the premier was travelling, they could be 12-, 14-hour days at times I would assume.

CST. BENOIT: That's correct.

MR. KENNEDY: And these meetings – and you could sometimes go out in advance and you'd have to look at the – see what was happening, meet with other security officials.

CST. BENOIT: That's correct.

MR. KENNEDY: Okay.

Now, did you ever see Constable Smyth at any time lose his temper or get mad at anyone?

CST. BENOIT: No.

MR. KENNEDY: In fact, I think you indicated that in your interview with Commission counsel, and I'm quoting here, you can't imagine him doing anything not to de-escalate a situation.

CST. BENOIT: That's correct.

MR. KENNEDY: Do you remember saying that exact term?

CST. BENOIT: I do. I do.

MR. KENNEDY: And what did you mean by that?

CST. BENOIT: As I had mentioned earlier, Joe is a very, very good speaker. He's very professional; he's very well respected, very well liked, even amongst the Premier's office staff. So, again, no, there's no way that I could picture him not doing anything but de-escalating a situation.

MR. KENNEDY: Did you ever hear him raise his voice?

CST. BENOIT: No.

MR. KENNEDY: So when you went to work, so 2012 is the first time – your first stint is 2012 to 2014.

CST. BENOIT: That's correct.

MR. KENNEDY: Were you aware at that point that Constable Smyth had worked in the Criminal Intelligence Unit for a period of years prior to doing –

CST. BENOIT: I was.

MR. KENNEDY: – doing the Protective Services Unit?

CST. BENOIT: Yes.

MR. KENNEDY: Were you aware that he had had specialized training in the Managing Targeted Violence course which was put off here in St. John's by a member of the –

CST. BENOIT: No, I was not aware of that.

MR. KENNEDY: Oh, so you weren't aware of the Managing Targeted Violence course.

CST. BENOIT: I wasn't aware. No.

MR. KENNEDY: Do you know if anyone else had done that particular course?

CST. BENOIT: No.

MR. KENNEDY: Okay.

Were you aware that what Constable Smyth would have been doing in the CIU or the Criminal Intelligence Unit, would have been intelligence-led policing, proactive policing, that kind of thing?

CST. BENOIT: That's correct.

MR. KENNEDY: Yeah.

CST. BENOIT: Yes.

MR. KENNEDY: Had you had any previous experience in doing that kind of work prior to going to the Protective Services Unit?

CST. BENOIT: No.

MR. KENNEDY: So, Sir, would you have relied on Constable Smyth's experience, in terms of making some, or taking direction from him?

CST. BENOIT: Yes, that would be fair.

MR. KENNEDY: And when we hear about the Southlands incidents, my understanding, Sir, that rights and caution were given.

CST. BENOIT: That's correct.

MR. KENNEDY: It was a recorded interview.

CST. BENOIT: That's correct.

MR. KENNEDY: And, in fact, reasonable grounds existed to lay a charge of criminal harassment.

CST. BENOIT: That could have been the case.

MR. KENNEDY: Yep. So in those circumstances it would certainly be more appropriate for Constable Smyth to assume the lead duties in that area, correct?

CST. BENOIT: That's correct, yes.

MR. KENNEDY: Now, when you got out there and you indicated that the individual made an issue as to whether or not – or bringing firearms into a house – do you remember giving us that testimony –

CST. BENOIT: Pardon me?

MR. KENNEDY: That the individual in the Southlands incident made an issue of taking firearms into the house.

CST. BENOIT: Yes.

MR. KENNEDY: Did Constable Smyth, at that time, indicate well, we can go away if you like and set up another interview?

CST. BENOIT: I can't remember specifically if that would have been mentioned.

MR. KENNEDY: Yep. Now, one difference today and I don't know if it's a difference or perhaps just the question, the way the question was phrased, but in your evidence to examination by Commission counsel, page 47 on the date of your interview, you indicated that the person was very, very verbally combative when they went there.

CST. BENOIT: Yeah, and that's what I meant. We were met in the porch and they had issues with the fact that there was two officers as opposed to one, and then they had issues with the fact that we were bringing side arms into the house, which is not usually the norm when you go to deal with somebody.

MR. KENNEDY: So this particular individual didn't like the fact that there were two officers there, but was expecting one.

CST. BENOIT: That's correct.

MR. KENNEDY: Okay.

And to you it would have made sense that there were two officers where rights and caution where being given and there was an actual investigation going on.

CST. BENOIT: It wasn't uncommon. That's correct.

MR. KENNEDY: You testified, Sir, that – oh, excuse me, testified – you gave evidence with Commission counsel that Joe did a phenomenal job of de-escalating the situation. Do you remember saying that?

CST. BENOIT: I do.

MR. KENNEDY: And those were your words?

CST. BENOIT: Those were my words.

MR. KENNEDY: Perhaps you could outline for the Commissioner – elaborate a little bit what you meant by the phenomenal job he did in de-escalating the situation.

CST. BENOIT: Well as I'd mentioned earlier, it started off from the individual questioning two officers' firearms to the interview ending. It didn't end abruptly, it ended as we had planned, and the individual offering us drinks. So a total change in demeanour there.

MR. KENNEDY: Drinks in terms of alcohol?

CST. BENOIT: Drinks as in water or whatnot.

MR. KENNEDY: Okay.

So in terms of – did you hear – how long did that interview go on for?

CST. BENOIT: I can't recall specifically.

MR. KENNEDY: Did you at any time hear Constable Smyth raise his voice?

CST. BENOIT: No.

MR. KENNEDY: Did he display empathy towards the individual?

CST. BENOIT: He did.

MR. KENNEDY: Perhaps you could outline how he did that, or what you saw.

CST. BENOIT: Again, he gave the individual an opportunity to explain, I guess, his situation, his side of the issue at hand, the reason for the emails at that time. And they tried to discuss alternate routes to alleviate the problem or some other remedies.

MR. KENNEDY: Okay. So Constable Smyth indicated to him that this is the concern we have, do you –

CST. BENOIT: Yes.

MR. KENNEDY: – can you – these are the emails you sent, can you explain them, can you offer an explanation.

CST. BENOIT: Yes.

MR. KENNEDY: Then he looked at a, whether there was an alternate remedy or is there something that could be done to address the situation.

CST. BENOIT: That's correct, right.

MR. KENNEDY: Okay.

Sir, in terms of the PSU mandate, then, to gather intelligence, it seems to me that in your first stint, at least until whenever it is that Premier Dunderdale left, that you wouldn't have had a whole lot of time to be gathering intelligence in terms of doing intelligence-led policing.

CST. BENOIT: That's correct.

MR. KENNEDY: Okay. And you've indicated, Sir, that there were a number of files per year that – and we've seen that reference that those would have actually been files that were open. Correct?

CST. BENOIT: Correct, generated in there.

MR. KENNEDY: Would there also be investigations, for lack of a better term, preliminary or cursory investigations where no file would be opened?

CST. BENOIT: No, if – again, from what I said, if there was anything that came across the desk that I was aware of, a file was generated.

MR. KENNEDY: Okay. So, Sir, in terms of the two home visits that you were involved in, you've indicated that there was no protocol or policy in place, but it's decided on a case-by-case basis. Is that correct?

CST. BENOIT: That's correct.

MR. KENNEDY: You do know that other members of the unit, while you were there, did home visits.

CST. BENOIT: Yes.

MR. KENNEDY: And were you aware, Sir, that Constable Smyth, as the – either the senior officer or the acting sergeant, took a lot of us upon himself?

CST. BENOIT: No. No, I can't say specifically.

MR. KENNEDY: Okay, so you wouldn't have been aware of that. Were you aware, Sir – were you there at all when Corporal Lindsay Anstey of the RCMP was there?

CST. BENOIT: I would have been there for – I think he came over probably three months before I left.

MR. KENNEDY: Okay.

CST. BENOIT: He would have been the remaining RCMP officer when I left the unit.

MR. KENNEDY: Sir, were you aware of whether or not Corporal Anstey had ever done any home visits?

CST. BENOIT: I wouldn't be able to say.

MR. KENNEDY: Okay.

Were you aware of whether Corporal Doug Noel had ever done any home visits by themselves?

CST. BENOIT: I wouldn't be able to say.

MR. KENNEDY: Okay. So you've talked about the database checks and I'm not going to go through this in detail because we've heard Constable Smyth talk about ICAN, CPIC, MRD, getting an RCMP officer to do PROS, et cetera. Correct?

CST. BENOIT: Sure.

MR. KENNEDY: So if I understand you correctly – and, again, a lot of this comes from a combination of your interview with Commission counsel and what you've testified today – that even sometimes when comments were made or appear to be made in frustration, one of the steps taken or that could be taken by a member of the unit was to discuss with the individual why he or she made those steps or made those comments and let them explain.

CST. BENOIT: That's correct.

MR. KENNEDY: Have a chat with them and say, look, this is not appropriate or you shouldn't be doing this or it can lead to problems.

CST. BENOIT: That's correct.

MR. KENNEDY: In other words, that would be proactive policing, wouldn't it?

CST. BENOIT: Yes, it would.

MR. KENNEDY: You would be trying to prevent something from occurring.

CST. BENOIT: That's correct.

MR. KENNEDY: Yeah.

Now, in terms of your – or your visit to the Carbonear area, I think you've – and there was a, a threat against a minister.

CST. BENOIT: That's correct.

MR. KENNEDY: You indicated that you didn't have the address for the person.

CST. BENOIT: That's correct.

MR. KENNEDY: Had you done your ICAN, CPIC, MRD, have PROS done, do you know?

CST. BENOIT: In that situation it had been another investigator with the Criminal Intelligence Unit that did all those checks, and I was simply just afforded the information of where the individual was.

MR. KENNEDY: But had the checks been done, do you know?

CST. BENOIT: Yes, that's correct.

MR. KENNEDY: Now, in terms of CPIC, it's your understanding if you ask for a 10-29 that would also include a CNI check, which would show up V for Victor or whatever the other –

CST. BENOIT: That's correct.

MR. KENNEDY: – drugs, things like that.

CST. BENOIT: That's correct.

MR. KENNEDY: Okay. And that had been your experience.

CST. BENOIT: Yes.

MR. KENNEDY: How long had you been a member of street patrol, Constable Benoit?

CST. BENOIT: Approximately six years.

MR. KENNEDY: So you were – now, the comments that you referred to, that you went to Carbonear the first time and then you went back the next day, you went back twice.

CST. BENOIT: That's correct.

MR. KENNEDY: And that the comments were fair – or Carbonear area – the comments were fairly hostile and aggressive.

CST. BENOIT: That's fair to say, yes.

MR. KENNEDY: Were they actual threats?

CST. BENOIT: They were threats, but they weren't – they didn't turn out to be criminal, as I'd mentioned earlier. The comments there, there was derogatory – there was name-calling, there was the mention that the individual knew where the minister was, identified the location, and made several comments as, I'm coming to get you.

MR. KENNEDY: Okay.

So you've got comments, they're not – they're threats, but they're not criminal. Perhaps you could explain, is there a difference?

CST. BENOIT: It wasn't direct; there was no direct threat to cause harm. It was fairly ambiguous; I'm coming to get you. When they – we spoke to the individual they, they described that again, they had been made heat of the moment, they had been under the influence at the time, and they clarified that the location that they had mentioned or the location that they said that they believed the minister to be was, in fact, just Confederation Building.

MR. KENNEDY: Okay.

So as a result of the comments made, it was prudent to go visit and get clarification. Once clarification was obtained it – you were satisfied.

CST. BENOIT: That's correct.

MR. KENNEDY: Yeah. Now, in terms of the safety issue, because you had done the CPIC check with the V for violence, you decided to take another officer with you.

CST. BENOIT: That's correct.

MR. KENNEDY: You've said today, and I think you confirmed this basically in your, or you said in your interview with Commission counsel that it wasn't even so much a formal interview, it's just like just explain, can you – this is what I'm here for, this is what you've said, can you explain.

CST. BENOIT: That's correct.

MR. KENNEDY: Yeah.

So you gave the person an opportunity to explain?

CST. BENOIT: That's (inaudible).

MR. KENNEDY: So even though you didn't have any specialized or particular training in threat assessment, that's essentially what you were doing, weren't you?

CST. BENOIT: Yes.

MR. KENNEDY: It was a first part of a threat assessment.

CST. BENOIT: (Inaudible) stages, correct.

MR. KENNEDY: You were determining whether or not the comments made could be construed as a threat.

CST. BENOIT: Correct.

MR. KENNEDY: So do I understand correctly, Sir, that you don't have to determine that comments are threatening before going to someone's house to visit them?

CST. BENOIT: That would be, that would be fair.

MR. KENNEDY: Again, is that the nature of this type of policing that you were doing in the Protective Services Unit?

CST. BENOIT: Again, for me, during my time there, with the exception of those two homes visits, every background investigation that I completed on people, none of those resulted in home visits.

MR. KENNEDY: Okay.

In terms of going by, when a police officer goes by yourself, I think we've indicated that on numerous occasions you've visited houses by yourself.

CST. BENOIT: That's correct.

MR. KENNEDY: Yeah.

These threats or comments – let's use the word comments – that you're trying to determine if there constitutes a threat, do those comments have to indicate direct or imminent harm to an individual?

CST. BENOIT: Not necessarily.

MR. KENNEDY: No. Again, if can get an explanation.

CST. BENOIT: Based on the context of what the comments are. If, we'll say in relation to emails back and forth, derogatory terms, constant, relentless, repeated. It wouldn't necessarily be the fact that someone simply sent a message, sent an email saying they were unsatisfied with what had happened. It would be, have to be something more than that.

MR. KENNEDY: So it wouldn't simply be one comment or one –

CST. BENOIT: No.

MR. KENNEDY: – or one social media comment. There would have to be either a series of comments that could cause concern.

CST. BENOIT: Right. Or depending on, it could be one –

MR. KENNEDY: It could be one comment.

CST. BENOIT: – post, but depending on what's said in it.

MR. KENNEDY: Okay.

These types of threat assessments that you're talking about, these background checks, they're oftentimes done over a couple of days, aren't they?

CST. BENOIT: That's true.

MR. KENNEDY: Because if something comes to your attention from the Premier's office that someone is concerned, then you're going to get to that right away, aren't you?

CST. BENOIT: That's correct, yes.

MR. KENNEDY: You're going to look at that over the period of a couple of days to try to determine what's going on. Correct?

CST. BENOIT: Correct.

MR. KENNEDY: Because also doing your close protection duties, you don't know when you're going to have the opportunity to do it if you don't do it right away. Is that another factor?

CST. BENOIT: Correct, yes.

MR. KENNEDY: The document that was referred to, Sir, as – if we could just bring up Exhibit P-0211. This is a document that appears to have been prepared, it looks like, for the inquiry. The files that are there that have numbers, do you see that?

CST. BENOIT: I guess you're talking about one of the – the next page?

MR. KENNEDY: Yeah. Go to the next page, yeah. You'll see – and then a page after that there's actual file numbers. Do you see that?

CST. BENOIT: Yeah.

MR. KENNEDY: Okay.

Could you go down to the bottom of that page, please? You'll see that the 2015 there's a 15-14595. Do you know if that is the incident involving Mr. Dunphy?

CST. BENOIT: I don't.

MR. KENNEDY: Because we also know that Corporal Doug Noel did a house visit either – and we'll clarify from him – either in late, by himself, in either late 2014 or early 2015. So you don't know if this – which number this one represents.

CST. BENOIT: No, I don't.

MR. KENNEDY: Okay.

So when you went, for example, to review the Southlands file, would that be one of the numbers that are here?

CST. BENOIT: I would not be able to say for certain.

MR. KENNEDY: Or the Carbonear file?

CST. BENOIT: That would have been a 14-dash file.

MR. KENNEDY: So that would have been a 14 dash.

CST. BENOIT: Yeah, so that happened in 2014.

MR. KENNEDY: So the Southlands is a 2014 file, is it?

CST. BENOIT: That's correct. It was just after I left.

MR. KENNEDY: And what about the Carbonear file?

CST. BENOIT: That would have been a 2013 file.

MR. KENNEDY: So 2013. And I think in 2013 there's, there appear to be more files opened and responded to because that's the first time that this filing system has been utilized. Correct?

CST. BENOIT: In 2013?

MR. KENNEDY: Yeah.

CST. BENOIT: Yes. That's correct.

MR. KENNEDY: Yeah and also because it was a time of some public discontent as a result of the 2013 budget.

CST. BENOIT: That's correct.

MR. KENNEDY: And Constable Smyth's already talked about this but there were a lot of very nasty comments made towards the premier.

CST. BENOIT: Correct.

MR. KENNEDY: Okay.

Just one second, Commissioner.

I don't have any further questions. Thank you, Constable.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. AVIS: (Inaudible) thought you might be last.

UNIDENTIFIED MALE SPEAKER: Oh well, I can, I just – because it was next. Your go.

THE COMMISSIONER: Go ahead, Mr. Avis.

MR. AVIS: Good morning, Constable Benoit. I'm Nick Avis, I represent the RNC. Hopefully just have a few questions.

With respect to your training in the PSU and so forth, the question was put to you; you had no training beyond basic. I just want to focus in on threat and risk assessment. That's something that you do throughout your career in just about every position you have; is that correct?

CST. BENOIT: To a certain degree, yes.

MR. AVIS: So it's something that over your, the years you've been there, it's something you've done on a regular basis –

CST. BENOIT: That's correct.

MR. AVIS: – throughout your career?

And while it's a little bit different with the Protective Services Unit, it's fundamentally the same principles; am I right?

CST. BENOIT: That would be fair.

THE COMMISSIONER: Sorry, Mr. Avis, what is the "it" you're referring to? There's something –

MR. AVIS: I'm sorry?

THE COMMISSIONER: What is the "it" that you're referring to? This is something you're –

MR. AVIS: Oh, the threat and risk assessment.

THE COMMISSIONER: Okay.

MR. AVIS: Sorry, Commissioner.

And similarly with home visits, that's something you would do depending upon which unit you were in –

CST. BENOIT: Correct.

MR. AVIS: – on a very regular basis, or somewhat less, correct?

CST. BENOIT: Correct.

MR. AVIS: So whether you're in patrol or CID, a home visit's a home visit, isn't it?

CST. BENOIT: Correct.

MR. AVIS: Same with PSU. It's the, it's the same, same thing.

CST. BENOIT: Correct.

MR. AVIS: Nothing unusual, but the reasons why you take one or two people are always pretty much the same –

CST. BENOIT: Correct.

MR. AVIS: – am I right?

Just to clarify a few points. I think they may have been touched on, to some extent, by Constable Smyth. To your knowledge, does every province have a unit somewhat similar to the Protective Services Unit?

CST. BENOIT: Not every province, no.

MR. AVIS: I'd like to ask you your own opinion as to the necessity of such a unit.

CST. BENOIT: Well, in our situation it was certainly the elected officials and the Premier's office that we represented or elected in that position, and of course with that position comes a number of responsibilities to the people. There was a lot of individuals, as we've seen, and we've dealt with, we've generated files on, that have issues with different parts of government. And I guess they would deserve or they would require a special section or unit, a level of security, we'll say.

MR. AVIS: That's what I mean. I'm going to suggest to you that what this unit does, it provides a level of reassurance, security and comfort so that they don't have to worry about all this other stuff and they can get on with their job, which is trying to lead our province; is that fair to say?

CST. BENOIT: That would be fair.

MR. AVIS: I want to just focus a little bit on former Premier Dunderdale, because there were four people at that time – correct?

CST. BENOIT: That's correct.

MR. AVIS: Now, you've suggested it would be good to have four all the time, but in her situation she was a widower at the time – correct?

CST. BENOIT: That is correct.

MR. AVIS: And I won't get into them because we have heard some of them, but the, some of the tweets or whatever they are that I've heard, they're misogynistic. Do you agree?

CST. BENOIT: I agree.

MR. AVIS: Abusive, sexually harassing – you have to say yes or no.

CST. BENOIT: Correct, yes.

MR. AVIS: And generally vulgar, and disgusting.

CST. BENOIT: That would be correct.

MR. AVIS: Right. Okay, so was that part of the reason why she had four people at that time and two people always travelled with her?

CST. BENOIT: That could be part of the reason, but that would be a decision made by someone other than myself.

MR. AVIS: Also, I just wanted to put – it will come later in more detail, but this whole notion of proactive policing and that just to mention some of its broader context because it's a lot more than the protective service of this unit, correct?

CST. BENOIT: Correct.

MR. AVIS: I just give a few examples we already have. A peace bond, that's been a part of our law for centuries. You don't need an offence for a peace bond, do you?

CST. BENOIT: That's correct.

MR. AVIS: And the objective is to keep people apart and stop them from fighting before it gets out of hand.

CST. BENOIT: Correct.

MR. AVIS: Emergency protection orders in the family law area where you can get basically possession of a home for three months and mortgage paid, all kinds of things, no charges necessary there, is it?

CST. BENOIT: That's correct.

MR. AVIS: And even if a charge is being contemplated or investigated, it's often a stop-gap measure because you might not have the grounds for a charge so you put in an EPO or recommend one while you continue the investigation.

CST. BENOIT: That's correct.

MR. AVIS: Okay.

And just as another example when Mardi Gras is on George Street, you have a greater police presence; is that correct?

CST. BENOIT: That's correct.

MR. AVIS: Okay. And there's – we could go on with examples after that, and this is a very important aspect of contemporary and modern police, isn't it?

CST. BENOIT: Yes.

MR. AVIS: Just on the note, generally, in the recording interviews certainly when you are cautioning somebody and that act could possibly be used in a criminal case, it's essential always to get the best possible evidence, which is a recording, sometimes a videotape.

CST. BENOIT: That's correct.

MR. AVIS: But would it be fair to say that often in your general duties, you're not always recording everything that everybody says in that way; it's just not feasible, is it?

CST. BENOIT: That's true.

MR. AVIS: And secondly, there's still the age old problem sometimes when I started, the officers would bring out their notebook and they would say I'm not saying a word and they'd put the notebook away and they'd chat away – they'd talk to them. Similarly when you would put out a tape, that can be off putting for some people to talk – so you have to say yes.

CST. BENOIT: That would be fair, yes.

MR. AVIS: Thank you.

And those are all my questions.

Thank you, Commissioner. Thank you, Constable Benoit.

You're up next.

THE COMMISSIONER: Mr. Williams, do you have a question?

Mr. Drover.

MR. DROVER: Right. Constable Benoit, you gave a couple of examples of home visits that you have done, one with Constable Smyth to the Southlands and another one with a different officer to the Carbonear area.

CST. BENOIT: Yes.

MR. DROVER: Did you or any of the other officers, have any need to draw your weapon in those instances?

CST. BENOIT: No.

MR. DROVER: And I believe you described the de-escalation of the situation in Southlands. What was the demeanour of the subject in the Carbonear area?

CST. BENOIT: Completely co-operative. There was no –

MR. DROVER: So you didn't find in that situation, in Carbonear, that there was any increased risk to your safety –

CST. BENOIT: No.

MR. DROVER: – or the other officer with you?

CST. BENOIT: No.

MR. DROVER: Ms. Breen asked you about the possibility of a subject that you're dealing with making a complaint against you as a result of your interaction. This is always the case for police officers –

CST. BENOIT: Yes.

MR. DROVER: – is that correct?

CST. BENOIT: That's correct.

MR. DROVER: I mean you could be on traffic and pull someone over and they could make a public complaint against you.

CST. BENOIT: That's correct.

MR. DROVER: And certainly officers who are on traffic control are generally on patrol by themselves.

CST. BENOIT: That's correct, yes.

MR. DROVER: Is it common practice in the RNC that, in fact, the vast majority of patrols, whether traffic or otherwise, are single officer patrols?

CST. BENOIT: For the most part, yes it is.

MR. DROVER: Okay. Can you describe the set up? I mean, I have an understanding of it. Perhaps you can describe if, you know, the set-up for patrols, and how many patrols are out there on a day shift or a night shift, and how many of those are two officers versus one officer.

CST. BENOIT: Okay. It's my understanding that on any given platoon that works patrol, there's 40 to 50 officers, including supervisors. I know that they're currently undergoing a bit of a restructuring of their zones. But from my patrol experience when I worked there, there were typically – I think there were seven areas, we'll say, in the St. John's and north area, down to, we'll say, Torbay, Flatrock, Logy Bay, that area. And on day shifts there was no requirement for units to be doubled up, with the exception of the police van at the time; it was a two-person unit. Other than that, all other units could be just one person.

In the nighttime there was a different designation. And they had designated that the unit that worked, we'll say, the remote area of down Pouch Cove way, that was doubled up in the nighttime. The police van and that one of the units downtown in the, we'll say, the George Street

area was doubled up. Other than that, there was no requirement. And then there were different areas that worked, we'll say, the west district, Mount Pearl and westward.

MR. DROVER: Okay. So there's a lot of officers out on patrol and very, very few two-man patrols or two-person patrols.

MR. BENOIT: That's correct.

MR. DROVER: I believe you touched on this in your interview but I'd like you to tell us this story. When you and Corporal Noel were driving from Holyrood detachment down to Mitchells Brook, you were driving what vehicle?

CST. BENOIT: Corporal Noel would have been driving the RCMP vehicle, which was a black Chev Suburban, similar to the Yukon that was left in Mitchells Brook.

MR. DROVER: And did anybody on that road take notice of the vehicle?

CST. BENOIT: Yeah, there was a media vehicle. I'm not overly familiar with the area myself. We were driving down a main road and as we were driving down, I guess into Mitchells Brook itself, there was a media vehicle, whether it was VOXM or CBC or whoever, passed us going in the opposite direction. And upon passing us they immediately pulled a U-turn behind us and started following us down into the area.

MR. DROVER: And was that because –

CST. BENOIT: I would assume because they had pieced together that we were with that unit and that we were probably going down to visit the scene.

MR. DROVER: Has it been your experience that people recognize big, black SUVs, Suburbans or Yukons with blacked out windows as police or security?

CST. BENOIT: Yes, that would be a fair statement, especially in any VIP setting, dignitary setting.

MR. DROVER: In your statement to the RCMP, this is P-0284, and page 10 of the exhibit. You're being asked about a bunch of different things, including conversations in your office following the shooting. And at line 21 here you say, "... knowing the background of policing as well and everything is under investigation."

So can you comment on that? I believe, like I said –

CST. BENOIT: This was in relation to speaking with Joe about the incident.

MR. DROVER: Right. And so what do you mean when you say that, knowing the background of policing as well, everything is under investigation? What sorts of things are under investigation?

CST. BENOIT: Well, in this situation here it was the incident itself and that it was an active investigation. And I didn't want to, to pry, or I didn't want to become involved in it in any way, to ask questions or put myself or Joe in any kind of vulnerable situation.

MR. DROVER: Is it your experience as a police officer that you, your work and your actions in your job are heavily scrutinized?

CST. BENOIT: Yes.

MR. DROVER: And heavily scrutinized by management, potential for complaints, public complaints, internal investigations?

CST. BENOIT: That would be fair, yes.

MR. DROVER: Okay, and that's what you were commenting on in that –

CST. BENOIT: Yes.

MR. DROVER: – in that statement.

Those are all my questions, Mr. Commissioner.

Thank you.

THE COMMISSIONER: Thank you.

Mr. Williams.

MR. WILLIAMS: Constable, sorry – Constable, my name is Tom Williams. I'm representing Mr. Davis with respect to matters regarding the inquiry.

And as you no doubt aware, part of the Commissioner's task is to provide recommendations with respect to improvements, so some of my questions are more directed along the lines of the operations with the premier's office.

CST. BENOIT: Sure.

MR. WILLIAMS: Before we get to that, I know in some of the cross-examination questions the issue of your training has come up. And I know you indicated you have two, you had had a two-week training program in Ontario. I believe with –

CST. BENOIT: That's correct.

MR. WILLIAMS: And I know in the evidence that was provided by Constable Smyth, and we spent on exhaustive amount of time going through a program he did managing targeted violence. There wasn't, I take it, a base level of training or was there a base level of training or enhanced training for different members within the unit? Because I trust you all share the same responsibilities.

CST. BENOIT: That's correct we did; but, no, there was no base level of training.

The, in relation to dignitary protection, I know for myself, I had been working there several months before I actually got sent away for training, and I had done that course with Joe. And in relation to one of the other officers, they went and did a different course as well. I'm not, I don't know the particulars on the course but it would have been something similar. And RCMP would have been totally separate altogether.

MR. WILLIAMS: Okay. So can you give me a sense of the type – I know you just indicated you don't know the specifics of that course, but are there various courses that are available to train members of protective services units outside of basic training that you'd receive for, you know, your police training?

CST. BENOIT: I'm sure that there are probably courses available, but aside from, well, the dignitary course itself, there was nothing else that was offered that I was aware of.

MR. WILLIAMS: Okay.

CST. BENOIT: While I was there.

MR. WILLIAMS: Would it be fair to say that the levels of training of the four officers that were in the unit at any one time could have been different?

CST. BENOIT: They could have been, yes.

MR. WILLIAMS: Okay.

With respect to workloads, you've given us an impression that at times, particularly when there was only two members assigned to the unit, that the workload was fairly onerous.

CST. BENOIT: I didn't work in the unit when – well, I guess first when I came back there was two of us. So, yes, we were, we were busy.

MR. WILLIAMS: Okay.

And in terms of the nature of your responsibilities, and I know it's hard to give actual percentages, but if you could give estimations in terms of how much of your time is actually spent in what we call close protection work, being attendance with, you know, the premier. How much would be spent with respect to investigation of people, persons of interest?

CST. BENOIT: From my experience there, the vast majority, three quarters or more, would be close protection.

MR. WILLIAMS: And that being the case, does that – and again I'm using rough numbers – you know, that 25 per cent of time that you aren't on close protection, does that avail of enough time to do sufficient time in terms of background work on people of interest that may be, you know, files that cross your desk?

CST. BENOIT: Not necessarily because there would be other paperwork as well that would be – if we were planning on doing travel with a dignitary, we'd have to get the proper authorizations to carry firearms and whatnot. So there was other paperwork that was associated with the position as well.

MR. WILLIAMS: Okay.

And with respect to your direct evidence, you gave some evidence – and correct me if I'm wrong. I may have heard this wrong, but I thought that when we were speaking in regards to the files that had been referred to your – or files had been sent up to the Protective Services Unit from Minister Kent, and it happened on three occasions that time didn't allow for you guys to get to investigate or attend those?

CST. BENOIT: For that we were busy with the premier at the time, so that had to be sent off for another unit to look after.

MR. WILLIAMS: And do you know what the nature of those referrals were? I don't need to get into specifics of individuals, but –

CST. BENOIT: I don't. I know that there was some kind of mental health seminar or something and they were just requesting a presence, someone to be there in the event something should happen. I don't know the background on it, why it was requested.

MR. WILLIAMS: So it would be fair to say, though, that there's matters where a public official, in this instance Minister Kent, had expressed concern regarding a security measure, referred it on to the unit and, because of restricted manpower, nobody could be in attendance at the event that was brought to your unit's attention?

CST. BENOIT: Not in that particular situation. Somebody attended it; it just wasn't one of the members of the PSU.

MR. WILLIAMS: Okay.

So other resources had to be brought in at the time to attend.

CST. BENOIT: That's correct.

MR. WILLIAMS: Okay.

With respect to the actual flow of information back and forth between the premier's office and the unit, was there any, from your knowledge, any instances where members of the premier's office, senior staff, would be sat down and told, okay, here's our role and responsibilities, here's our expectation of what role you play in this, what you expect them to refer on to you for consideration, things of that nature?

CST. BENOIT: Where they would be sat down in a formal setting, you mean, and explained?

MR. WILLIAMS: Yes.

CST. BENOIT: Not that I'm aware of. Not in a formal setting.

MR. WILLIAMS: Did you ever have occasion during your tenure with the Protective Services Unit to ever provide instruction or direction to any senior staff members with respect to what you expected of them in terms of referring yourself?

CST. BENOIT: Yeah, it had been mentioned several times over that if anything had come across their way that raised concerns that they could forward on to us.

MR. WILLIAMS: Okay. And we've had evidence from Ms. Donna Ivey of – are you familiar with Ms. Ivey?

CST. BENOIT: I am.

MR. WILLIAMS: And she indicated that her understanding – and I'm not going to go through all of this, but her understanding was if she came across anything that was "of concern," to send it along.

CST. BENOIT: That would be fair.

MR. WILLIAMS: Would that be fair to say it was clear direction that was provided to all members of the senior staff?

CST. BENOIT: Sure.

MR. WILLIAMS: And do you feel that members of the premier's office had a good appreciation for that in terms of the working relationship that you had with them?

CST. BENOIT: I would say so, yes.

MR. WILLIAMS: In relation to the premier, Premier Davis at the time, and Chief of Staff Joe Browne, what was your relationship with these individuals?

CST. BENOIT: Strictly professional.

MR. WILLIAMS: You didn't have any social or outside interests.

CST. BENOIT: Outside, no.

MR. WILLIAMS: Okay.

And in terms of their dealings on a security basis, did they ever interfere with your operations as a member of the Protective Services Unit?

CST. BENOIT: I – can you restate your question, please?

MR. WILLIAMS: Sorry, maybe that wasn't clear. When you were dealing with – when you were in the unit when Premier Davis and Chief of Staff Browne were there, did they ever interfere in any way with your –

CST. BENOIT: No.

MR. WILLIAMS: – conducting your responsibilities as a member of the unit?

CST. BENOIT: No.

MR. WILLIAMS: In terms of overall responsibilities, how much of your duties would have been – and I think we've referenced the case of the Carbonear case. How many of your files would deal with public officials outside of the premier's office?

CST. BENOIT: It would be hard to put a number on it, but I know that there were on occasions where ministers or certain departments would come forward and look for assistance in relation to security. And, of course, they're all totally politically driven, depending on what was happening at that time.

MR. WILLIAMS: Do you feel that – do you feel that in terms of the information flow as between the PSU and the premier's office, as well as perhaps any public officials in government, could be improved by way of some form of training, information sessions for individuals, who may require the services of the PSU?

CST. BENOIT: That certainly couldn't hurt, I guess. Yeah.

MR. WILLIAMS: Okay.

In relation to the incidence of April of 2015, you indicated that after the Dunphy matter had occurred or immediately proceeding, there was an increased security presence around the premier at the time. Is that correct?

CST. BENOIT: That's correct.

MR. WILLIAMS: And did I understand your evidence to be that this was done at the request of management within the RNC that this –?

CST. BENOIT: That's correct.

MR. WILLIAMS: Okay. So Premier Davis at no time had put out that he particularly wanted any increased security or –

CST. BENOIT: Not to my knowledge, but

MR. WILLIAMS: Okay.

In your experience, Constable, having worked with PSU and I think you date it back, you started at some point in 2012? Am I correct?

CST. BENOIT: That's correct.

MR. WILLIAMS: Have you seen an increase in the amount of what we call files, matters of concern that cross your desk in relation to issues that arise out of social media?

CST. BENOIT: From my time being there again, I thought that they were fairly consistent, but they were all driven by I guess the story of the day, whatever was happening in the news.

MR. WILLIAMS: And so in the time immediately following the April 15 – the April 5 occurrence, you said that there was a significant increase in the number of files that were (inaudible) –

CST. BENOIT: Of contact made by the office, but I wouldn't be able to say specifically from which medium those were received, whether it be Facebook, Twitter, *Open Line*, email, whatnot.

MR. WILLIAMS: Okay. I think in one of the exhibits it showed that your evidence had been that you usually had 15 to 20 files annually and that in that one quarter in the report that was submitted, PSU quarterly report it showed 21 particular files had been opened in just that one quarter.

CST. BENOIT: That's correct; that's what it says.

MR. WILLIAMS: Did you have much involvement in the investigation of any of those files?

CST. BENOIT: No. At that point, we were so busy; everything was forwarded on to the Intelligence Unit for follow-up.

MR. WILLIAMS: So the Criminal Intelligence Unit took over that responsibility basically the PSU, following this incident.

CST. BENOIT: That's correct. Now, in that situation I made reference to, I believe there was an arrest made by the RCMP and there was a detention under the Mental Health Act by RNC out on the West Coast. So those wouldn't have been files generated by the office anyway, so they might have inflated those numbers a little bit.

MR. WILLIAMS: In conclusion, Constable, I know Mr. Davis alluded to one of these questions – do you see a necessity – there's somewhat of a public perception over there that there may be a waste of resources in terms of having, when we had, in some instances, two members of the unit up to four members in the case of Premier Dunderdale. What's your opinion as to the necessity

of this unit and whether or not it is sufficiently staffed now, sufficiently trained now, or do you feel there needs to be any improvement or upgrades with respect to the operation of a Protective Services Unit for public officials?

CST. BENOIT: Well, since December 2015 I've been removed from the unit; with the change in government, I've been totally removed from that whole area. So I'm not sure how they operate right now; I'm not sure how that works. But I can certainly see the necessity for it; especially with travel away, if you go to the bigger conferences, this is the norm, this is the way of the world now, security measures are heightened and this is just a normal thing.

MR. WILLIAMS: Okay. That's all the questions I have, thank you.

THE COMMISSIONER: Ms. Rasmussen, do you have any questions?

MS. RASMUSSEN: I have no questions.

THE COMMISSIONER: No questions, thank you. Anybody else? Ms. Chaytor, do you have anything?

MS. CHAYTOR: (Inaudible) just one point of clarification on the issue of the number of files and whether or not there's a discrepancy in the document that we looked at from Constable Downton.

Constable Benoit, other than these, I understand would have been the ICAN files, and those are the file numbers assigned to ICAN files.

CST. BENOIT: Correct.

MS. CHAYTOR: Other than files found on ICAN, which is where I understood you stored your materials, for example, anything that you had gathered in your intelligence gathering, that would have been put in the ICAN files?

CST. BENOIT: That's correct.

MS. CHAYTOR: Was there any other type of files by the PSU; was there any other filing system?

CST. BENOIT: No. That, that was there – with the exception of the first year where they used the Intelligence Unit file numbers –

MS. CHAYTOR: Yes.

CST. BENOIT: – all those other files would have been generated on that system. In relation of those numbers, what I just made reference to was my quarterly report.

MS. CHAYTOR: Yes.

CST. BENOIT: And where it wasn't, it said that there was a large number of files.

MS. CHAYTOR: Yes.

CST. BENOIT: That document that I've seen there, that, I think that only shows the one file there for 2015, so that's (inaudible).

MS. CHAYTOR: For 2015, and that was to April. Yes, that's right.

CST. BENOIT: Right, and that's what I was trying to clarify.

MS. CHAYTOR: Yes, and I think the 21 files that were open in the quarter that you dealt with, 12 of those were person-of-interest files, the rest were for –

CST. BENOIT: Right.

MS. CHAYTOR: – travel and other duties.

CST. BENOIT: That's correct.

MS. CHAYTOR: That's right.

But I'm just wondering, so there's no other, if you – 'cause I understood your evidence is that if you opened up a – you would open up a file for anything that came across your desk that you had to then –

CST. BENOIT: That's correct.

MS. CHAYTOR: – carry out further investigation on. Okay.

CST. BENOIT: And that could have been researched by any member under the ICAN system, that's where it would be.

MS. CHAYTOR: And have you heard of anything in the PSU called opposition files?

CST. BENOIT: No.

MS. CHAYTOR: Does that ring a bell?

CST. BENOIT: No.

MS. CHAYTOR: No. Okay. Thank you.

THE COMMISSIONER: Okay. No further questions? We'll break now. We have one, one witness after lunch?

MS. CHAYTOR: Yes, I'm sorry, yes, we have one witness at 1:30.

THE COMMISSIONER: 1:30, and we'll probably finish a bit early, I think you mentioned?

MS. CHAYTOR: Yes, I wouldn't expect Sergeant Noel to be as long as Constable Benoit, but close in time. So perhaps a little bit shorter.

THE COMMISSIONER: Just for counsel benefit, yeah.

Okay, thank you.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: We'll recess 'till 1:30.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now recessed.

Recess.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Now, I understand that there's been more information received, another document with a telephone transcript, transcripts plural.

MS. CHAYTOR: Yes, that's correct. Yes, it's an extract from Constable Smyth's phone records that we've just received from the RCMP.

THE COMMISSIONER: Okay.

I'm not sure – Ms. Breen, you indicated you needed some time to read it. We've gone over a few minutes. I don't want to waste any time unless we have to, so what we're going to do is have Ms. Chaytor proceed with cross examination and leave that – questions relating to that by and large towards the end and take a break during the mid-afternoon break if you need more time. If that's

–
MS. BREEN: Oh, that's fine, Mr. Commissioner. I was just – I haven't received the redacted copy yet, hard copy.

THE COMMISSIONER: No, right. They're still working on it.

MS. BREEN: Okay. So it's something I would certainly want to utilize in my questioning, so if we could – we'll see where we are at the break. That's fine.

THE COMMISSIONER: Do you have the –?

MS. BREEN: I have the unredacted copy and I have had a chance to read through it now.

THE COMMISSIONER: Yeah, okay.

MS. BREEN: Thank you.

THE COMMISSIONER: Other counsel have received it?

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Yeah, okay.

So we'll proceed when you're ready, Ms. Chaytor.

MS. CHAYTOR: Thank you, Commissioner.

The next witness is Sergeant Doug Noel.

THE COMMISSIONER: Sergeant, take a seat.

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

SGT NOEL: I do.

MS. SHEEHAN: Please state your full name.

SGT NOEL: Douglas William Noel.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Commissioner, there are a –

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Oh. Please press the button. There we go. Thank you.

Commissioner, there are a few exhibits that I would ask to put in through this witness. They are P-0294 through to P-0299 inclusive, and then we also have P-0301 and by break time we'll have the additional exhibit.

THE COMMISSIONER: Okay, and I forgot to order the admission of the exhibits this morning, so I'll do that now at the same time.

MS. CHAYTOR: I think you did, actually.

THE COMMISSIONER: Hmm?

MS. CHAYTOR: I think you did. I think so.

THE COMMISSIONER: I know you raised it, but I can't remember if I said so ordered or not. But anyhow, these will be admitted. Okay

MS. CHAYTOR: Okay, thank you.

Good afternoon, Sergeant Noel.

SGT NOEL: Good afternoon.

MS. CHAYTOR: I'm just going to lead you through a little bit of your credentials here. I understand that you've been a member of the RCMP for 21 years.

SGT NOEL: That's correct.

MS. CHAYTOR: Correct, and you're currently a sergeant in charge of the Explosive Disposal Unit.

SGT NOEL: That's correct.

MS. CHAYTOR: Okay.

And your position on April 5, 2015, was a position with the Protective Services Unit.

SGT NOEL: That's correct.

MS. CHAYTOR: And I understand that you began with the Protective Services Unit in December 2014?

SGT NOEL: Yes.

MS. CHAYTOR: And you remained there until February 2016?

SGT NOEL: That's right.

MS. CHAYTOR: Okay.

And you're still involved in some capacity in VIP protection in the province, is that correct?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And what exactly is it that you do in that respect?

SGT NOEL: I'm the VIP coordinator for the RCMP for Newfoundland. So when there's a visit of a VIP, such as the prime minister or different visiting ministers or whatnot, I arrange for the planning and the protection of those people. So I may be involved in actually doing the planning or I may delegate it to someone else to do the planning and/or the actual duties.

MS. CHAYTOR: Okay.

And are you involved at all in any intelligence gathering for Protective Services or is it just for arranging bodyguard-type functions?

SGT NOEL: Yeah, I'm not involved so much in the intelligence gathering. There are others who do that.

MS. CHAYTOR: Okay. And when you were in the unit, who did you report to?

SGT NOEL: In the ...?

MS. CHAYTOR: In the PSU, sorry.

SGT NOEL: To Acting Sergeant Smyth.

MS. CHAYTOR: Okay.

And now he wouldn't have been there right up until February of 2016, though.

SGT NOEL: That's right.

MS. CHAYTOR: Okay, and so who did you report to after Joe Smyth?

SGT NOEL: Sergeant Hubert Marrie.

MS. CHAYTOR: Okay.

And so you reported – and I understand Sergeant Marrie was also an RNC officer.

SGT NOEL: That's correct.

MS. CHAYTOR: So even though you are an RCMP, you were reporting directly to an RNC officer?

SGT NOEL: That's right.

MS. CHAYTOR: It's my understanding is this was an RNC unit and you were in essence seconded to the unit. Is that correct?

SGT NOEL: That's correct, yes.

MS. CHAYTOR: Okay.

And I take you also, of course, had a supervisor with the RCMP?

SGT NOEL: Yes.

MS. CHAYTOR: But you would not report to that person with respect to anything to do with the PSU.

SGT NOEL: No, not the direct operations or – no.

MS. CHAYTOR: And that person had no authority or direction over the PSU?

SGT NOEL: No, that's right.

MS. CHAYTOR: Okay.

And we also have heard that Joe Smyth – within the RNC, Joe Gullage would be the person that Joe Smyth would have been reporting to in that time period.

SGT NOEL: That's right.

MS. CHAYTOR: And that continued into your time there up to February 2016?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

So, in fulfilling your duties in the PSU, would you have been following RNC policies and procedures?

SGT NOEL: Yes.

MS. CHAYTOR: And we do have in evidence the policy of the RNC, which was dated June 9th of 2013. That's exhibit P-0031. Were you presented or were you shown that policy when you first started with the unit?

SGT NOEL: I saw that policy when I first started with the unit. It was in the office and I had a chance to read it and look at it.

MS. CHAYTOR: And were you given any other kind of briefing in terms of how to carry out your duties?

SGT NOEL: The person I was taking over from, Corporal Lindsay Anstey with the RCMP, I worked with him a couple of days just to get an idea of the duties involved and he just basically said follow along and do as the unit runs and you'll see how it goes.

MS. CHAYTOR: Okay. Excuse me.

And while you were with the PSU, did you report to or take any instructions from anyone in the premier's office?

SGT NOEL: Report to? No. We worked with the premier's office, obviously the people there, but my reporting was to Acting Sergeant Smyth or to the RCMP for RCMP-related issues.

MS. CHAYTOR: Okay.

Would you take instructions from anyone in the premier's office?

SGT NOEL: I'd receive information at times from people in the premier's office and act on them as I felt best.

MS. CHAYTOR: Okay, and what types of information are you referring to? Do you mean, like, a complaint or something of concern to them that they were asking you to follow up on?

SGT NOEL: There would be times that they would bring to my attention an issue of concern – an email or a Facebook post or some other social media or written correspondence.

MS. CHAYTOR: Okay. And would those come from anyone in particular in the premier's office or it could be just about anyone?

SGT NOEL: It could come from a number of different people within the office. There's a number of executive – assistants attached to the premier's office, as well as the premier or the chief of staff.

MS. CHAYTOR: Okay.

And so you received communications from everyone, premier, the chief of staff, as well as other members, senior members, I take it, in the premier's office?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And was there any practice then, or protocol, if you did receive – for example, if you received something from someone other than the premier or the chief of staff, was the practice or protocol to inform the premier of that communication or the premier's chief of staff?

SGT NOEL: Not always, sometimes, but not necessarily. I would judge it on each individual instance.

MS. CHAYTOR: Okay. If it's something that you were going to follow up on, what was your practice? Would you inform the chief of staff or the premier if you were following up on something?

SGT NOEL: Not always the premier, but generally at least the chief of staff.

MS. CHAYTOR: Okay.

Did you have any specialized training or further education as an RCMP officer, which was particularly relevant to your position in the PSU?

SGT NOEL: I did have VIP training through the RCMP, yes.

MS. CHAYTOR: Okay. And how long was that training and where did you do that?

CPL NOEL: That was in Ottawa at the Canadian Police College. It was approximately three weeks in duration, and it would have been in the fall of 2008, I believe.

MS. CHAYTOR: Okay.

And we've also heard in detail about a course that Joe Smyth did, which was called Managing Targeted Violence. Did you – had you completed a similar course?

SGT NOEL: No.

MS. CHAYTOR: And I think that would have been something for threat assessment. Risk assessment was a large component of that type of course. Had you done something similar or the equivalent?

SGT NOEL: No.

MS. CHAYTOR: So we understand, of course, that the PSU was an integrated unit between the RCMP and RNC. During the course of your career, have you been involved in any other joint operations or integrated units?

SGT NOEL: That was an RNC unit that I was seconded to. I've worked in RCMP units, the drug section, as well as the National Sex Offender Registry that had RNC members seconded to them. So those two units I've worked in.

MS. CHAYTOR: Okay.

So on at least – in at least two of your other assignments, you worked alongside of RNC officers?

SGT NOEL: That's correct.

MS. CHAYTOR: How much did you actually work with Constable Smyth?

SGT NOEL: Actually with him, not a big, big lot because we were on opposite shifts. There was two of us covering on a 12-hour shift rotation, so we weren't scheduled together a lot. There was a lot of flexibility in the unit and if need be, we'd both work together; but, on the whole, we were working independently on opposite shifts.

MS. CHAYTOR: Okay. And so did you have any other kind of relationship with him, a personal relationship other than your professional association?

SGT NOEL: No.

MS. CHAYTOR: And how would you describe him in terms of his demeanour and his temperament?

SGT NOEL: I found him to be very professional, he was articulate, very passionate about his job and interested in doing a good job. He was I think – I've described him as a gentleman. He was very, very professional in how he dealt with the public and the people in the premier's office and I felt – I found him to be someone I can learn from.

MS. CHAYTOR: Okay. And did you ever observe him – and that's an interesting comment because you would have been a much more senior officer than him.

SGT NOEL: I don't know how much service he has. I don't know if I am senior to him or not. But –

MS. CHAYTOR: Well, maybe not more but somewhat more senior.

SGT NOEL: Uh-huh.

MS. CHAYTOR: Okay. But you found he's someone you could learn from in the role that you're in, in the PSU?

SGT NOEL: Yes.

MS. CHAYTOR: Did you ever observe him in the course of working with him to be ill tempered?

SGT NOEL: No.

MS. CHAYTOR: Did you find there were any significant differences in how you approached the work of the PSU compared to that of Joe Smyth?

SGT NOEL: No.

MS. CHAYTOR: And you indicated that you would work alternating shifts, so it was only yourself and Joe Smyth there in the time that you overlapped I understand. And I will talk to you a little bit later about what happens after April 2015 because I understand you stay on there while a third members comes into the unit after the shooting.

SGT NOEL: That's correct.

MS. CHAYTOR: That's correct, okay. All right. So in terms of alternating shifts, what were your normal lengths of shifts?

SGT NOEL: There were 12-hour shifts and on one week you would work Wednesday, Thursday; and on the following week, you would work Friday, Saturday, Sunday and then be off Wednesday, Thursday and work Monday and Tuesday of that week. So it would alternate back and forth. So one week you would be off Wednesday, Thursday and the next week you would work Wednesday, Thursday.

MS. CHAYTOR: And I take it that would be thrown off if there were a special event where you were both expected to work.

SGT NOEL: Yes. If there was a special event where we were both expected to work, we showed a lot of flexibility and we would both come in, or if there was something that went late into the evening, then we'd find a way to work it out between us.

MS. CHAYTOR: Was there ever a time that you got called in by Constable Smyth to do work other than a special event? For example, were you ever called in because he needed assistance in doing an investigation with respect to an individual or visiting an individual, anything like that?

SGT NOEL: No.

MS. CHAYTOR: Okay. When you're working in the PSU, I understand that the filing system would have been RNC files, the files were kept through the ICAN system?

SGT NOEL: That is correct.

MS. CHAYTOR: And would you have had access to those files?

SGT NOEL: No, not direct access.

MS. CHAYTOR: So logistically, how did that work in terms of you being able to, for example your intelligence-gathering piece of your job, that we've heard about from others, how would you go about accumulating that information and then how would it end up in an ICAN file?

SGT NOEL: Anything that I gathered would, I'd provide to Acting Sergeant Smyth, and he would compile it into the format that they wanted in their filing system.

MS. CHAYTOR: And what if there was something that got handed to you while Constable Smyth is off – usually if you are there, he's not there –

SGT NOEL: Yep.

MS. CHAYTOR: So what if you there's something, you initiate a file. How would that work in that situation? You've been alerted to something for example from the premier's office, so what do you do in that situation?

SGT NOEL: I follow up on it and gather as much intelligence on it as I can, through RCMP systems, then I pass it off to Joe to file and file away in their system.

MS. CHAYTOR: Okay, so your file wouldn't actually get opened until Constable Smyth comes back to work and able to open it, is that how that would work?

SGT NOEL: Yes. I never opened any files in the file management system. I didn't open anything.

MS. CHAYTOR: Okay. And that's true I take it for after Constable Smyth is no longer in the unit, that was true up until you left.

SGT NOEL: That's true, yep.

MS. CHAYTOR: Okay.

Other than the ICAN system, did the PSU keep any other files on persons of interest? Was there any other type of filing system?

SGT NOEL: I'm not sure. I'm, not that I'm aware of, no. I don't know if there was any paper files that weren't entered on ICAN, I'm not aware –

MS. CHAYTOR: You're not aware of that and you've never heard of anything called opposition files or anything like that?

SGT NOEL: No. I've never heard that term.

MS. CHAYTOR: Okay. And in terms of if something then did get brought to your attention and Constable Smyth is not working, he's on the opposite shift, how would you know whether or not there may already be a file activated on that person?

SGT NOEL: I probably wouldn't until he came on shift.

MS. CHAYTOR: Okay. So you might be duplicating efforts but you wouldn't know that.

SGT NOEL: That's possible, yes.

MS. CHAYTOR: Okay.

And if a PROS search needed to be carried out, as part of the background searches, you as an RCMP officer could do that.

SGT NOEL: Yes.

MS. CHAYTOR: Were you able to do that from your PSU office?

SGT NOEL: No.

MS. CHAYTOR: Okay, so how would you go about doing that? Would you have to call and ask someone else to do it for you?

SGT NOEL: I could call and ask someone to do it for me at our telecoms centre, or I could go back – if I had the time, go back to the RCMP headquarters where I also had an office and do the PROS query myself.

MS. CHAYTOR: Okay.

All right, so there were occasions, you said, when you would receive information from somebody in the premier's office. Did you also receive information from other members of government?

SGT NOEL: I seem to think that there were a couple of times that incidents were brought to our attention that involved other elected officials, but I can't think of anything specific. But I do remember that there were things outside of the premier's office.

MS. CHAYTOR: Okay. And if somebody brought something to your attention and you carried out your background searches, did whatever it was that you felt you needed to do to investigate the matter, would you then report back to the person who had alerted you to it and let them know the outcome?

SGT NOEL: I would say sometimes but not always. It would depend on the specific situation. There may be times that you'd come across something and not feel the need to report it back to them.

MS. CHAYTOR: Okay. And if it were something that you decided needed further investigation and potentially a visit to the person's home, would that be reported back to the premier's office?

SGT NOEL: Not necessarily back to the premier's office; maybe but maybe not.

MS. CHAYTOR: Well, if it originated with the premier's office would you report that back?

SGT NOEL: Not necessarily. We were working for the premier's office but as they were our client, but we weren't working in an employee-employer relationship.

MS. CHAYTOR: Okay.

SGT NOEL: If that makes sense.

MS. CHAYTOR: So I understand. So when you say you're working for the premier's office you saw them as your client.

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

We have, of course, in evidence an email or an email trail that had begun – it began with Donna Ivey of the premier's office. And that's already in evidence, Commissioner, for your reference, and for other counsel it's P-0078. And that originates on April 3, 2015.

Do you recall getting that email? It went to both yourself and Joe Smyth.

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And how often would that type of information be passed along to you while you were in the PSU?

SGT NOEL: Fairly frequently. I can't give you an everyday or an every week, but there was – that wasn't an unfrequent type of occurrence.

MS. CHAYTOR: Okay. And I believe you said in your interview it was, you probably couldn't say daily but weekly.

SGT NOEL: Yes.

MS. CHAYTOR: That seem about right? Okay.

And it was usually the premier's office that was involved in forwarding that type of information to you?

SGT NOEL: That's correct.

MS. CHAYTOR: Okay. So when you received that – and I understand on April 3 you would have been off.

SGT NOEL: I was.

MS. CHAYTOR: Is that correct?

SGT NOEL: Yes

MS. CHAYTOR: Okay. And we've heard from Constable Smyth that he had taken that as a statutory holiday as well on April 3, but he did reply and follow up. When were you next scheduled to work?

SGT NOEL: Monday.

MS. CHAYTOR: Okay. And when you received that email that day, did you reply in any way?

SGT NOEL: No.

MS. CHAYTOR: Okay. Did you have any telephone conversations with anyone in the premier's office about it?

SGT NOEL: No.

MS. CHAYTOR: Ms. Ivy, Joe Browne, anyone? No.

SGT CHAYTOR: No.

MS. CHAYTOR: Okay. So, you didn't weigh in on that at all?

SGT NOEL: No, I didn't.

MS. CHAYTOR: Okay.

When you receive similar information, tell us what you would do. How would you go about assessing whether or not it is something you needed to follow up on?

SGT NOEL: Try to – I would try to identify the person who has – was making the correspondence. And then if I could identify them, try to determine if they have any other previous interactions with the police, their history, if they had a criminal record. I would look and see what was available on open source, open to the public type of information on the Internet, and just start my inquiries from there.

MS. CHAYTOR: Okay. And do you recall ever having received information from the premier's office that you did not assess to be a concern, or did nothing with it. Can you ever remember an occasion where you would have been provided something by them and, basically, just looked at it and didn't feel it warranted any further investigation?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And did that happen very often?

SGT NOEL: It happened, I wouldn't say as frequently. It wasn't a – it wasn't most of the incidents that came to us. But, sometimes – not infrequently – like you would hear, see things and then think, yeah, I'm not concerned about that.

MS. CHAYTOR: Okay. And in your time with the PSU, did you have occasion to follow up to the point of attending at anybody's home?

SGT NOEL: Yes.

MS. CHAYTOR: And how common was that?

SGT NOEL: I did that once in the time I was there.

MS CHAYTOR: And were – did others do it more frequently, do you know?

SGT NOEL: I don't believe so. I think a couple of times a year would be about average. I'm just thinking about when I was briefed, coming into the unit, that that was about what I was told, that a couple times a year you may have to do that type of thing.

MS. CHAYTOR: Okay.

SGT NOEL: Yep.

MS CHAYTOR: And was there any protocol that you were made aware of as to how to – when to do a home visit and how to go about in terms of doing a home visit. Was there any protocol or such within the unit?

SGT NOEL: Nothing specific, just you would follow your regular police training. And I do recall that when I was being briefed by Corporal Anstey about this type of thing that he talked about being aware of people's right to express their opinion and be unhappy, and that we have to be aware of not putting a chill into their democratic rights to speak and be heard, at the same time doing our job to talk to someone and make sure that we're satisfied that they don't pose a threat.

MS. CHAYTOR: Okay. Fair enough. And so was it also Corporal Anstey who indicated to you that on a rare occasion you may have to do a home visit?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And in terms of then before you go to do a home visit, what, what steps or what did you do?

SGT NOEL: In –

MS. CHAYTOR: Yeah, in –

SGT NOEL: – general. The same steps I just talked about, getting as much background information as I could on the person and their address, obviously, and whether or not they were, in the past, had dealings with the police.

MS. CHAYTOR: And how would you determine whether or not you can do the home visit by yourself or whether or not you should bring somebody else along with you?

SGT NOEL: Looking at the totality of all the information I have in front of me, what type of history they do have, what do I – from what I can gather, what am I getting into.

MS. CHAYTOR: Okay. Fair enough. And were there times, and bearing in mind what you've told us about your advice from Corporal Anstey about people have a right to express themselves

but you also have to balance that with trying to determine if somebody is posing a threat to those that you are charged with protecting, I take it you mean by that.

SGT NOEL: Yes.

MS. CHAYTOR: Yes. And, so where there times when you would, and I think you – did you say you only did one home visit?

SGT NOEL: That's right.

MS. CHAYTOR: Okay. So was that a situation where you determined there was a threat or there was some ambiguity in your trying to determine if in fact there is a threat?

SGT NOEL: There was more ambiguity. The only thing specific I can recall is that there was a statement of back off and they were passionately upset about fracking, but part of the, part of the message involved back off and I just wanted to get a sense of where they were coming from.

MS. CHAYTOR: Okay. And was that brought to your attention by someone in the premier's office?

SGT NOEL: It would have been – I don't remember exactly how it was brought to my attention.

MS. CHAYTOR: Okay. And did you attend the – did you attend upon that person at their home?

SGT NOEL: I did.

MS. CHAYTOR: And did you go there alone?

SGT NOEL: I did.

MS. CHAYTOR: Okay.

And did you make that decision on your own or was that decision made in consultation with Constable Smyth?

Perhaps, I guess I should ask you first was Constable Smyth – when did this happen? Was Constable Smyth still in the unit?

SGT NOEL: Yes, this was prior to Constable Smyth leaving the unit.

MS. CHAYTOR: Okay.

SGT NOEL: And I don't recall having specific conversation with him about it, but I would've in all likelihood had conversation with him. We were in constant communication. Even when one of us was off, if the other was working, where there was only two, there had to be a great deal of flexibility and communication, so I believe he would've been aware.

MS. CHAYTOR: Okay, and I guess it worked the other way, too: sometimes he would consult with you, then, too, in making his decision as to what he would be doing and how he would be going about it.

SGT NOEL: Yes, there was only two of us working, so it was a constant communication.

MS. CHAYTOR: Okay.

And so on this case, the person regarding the fracking issue, you started there on December 2014. Did that happen in your first month there or did that happen into the winter of 2015?

SGT NOEL: I believe it was the winter of 2015. It was after Christmas.

MS. CHAYTOR: Okay, but before Mr. Dunphy?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

All right and so after Christmas could be the last week of December; it could be into January 2015.

SGT NOEL: I think it was January or February, but I don't remember, exactly.

MS. CHAYTOR: Okay, all right.

And so tell us, then, about that situation. Did you phone the person ahead of time or what happened? Did you just show up at their house?

SGT NOEL: I discovered where they lived in CBS and I just showed up at their house. I didn't call ahead. I wanted to find them in their natural state unawares so that they wouldn't be prepared for a police officer coming to the door, but also so that I could get a sense for what their state of mind generally was.

MS. CHAYTOR: And did you do a risk assessment beforehand to determine the risk to your own safety before showing up at their door?

SGT NOEL: Yes.

MS. CHAYTOR: Okay, and what did you do to do that?

SGT NOEL: Well, I checked on the RCMP systems, PROS and CPIC. I don't recall if I had Constable Smyth check on ICAN or not, but I kind of think I would have where it wasn't in the Constabulary area.

MS. CHAYTOR: Right, and CBS would be.

And did the – the fact that it was CBS, did that factor into your risk assessment, the fact that the individual lived in the same town as then Premier Davis?

SGT NOEL: All factors would be taken into account. I would have less of a concern if this individual was writing from Corner Brook or Ontario, so the fact that they were closer to would've increased my feeling that, yeah, I should look into this.

MS. CHAYTOR: Okay, so proximity is a factor that you would take into consideration?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And this would be – of course, CBS is RNC jurisdiction, as you said. So did that matter, though, working in the unit? You're an RCMP officer. Did it matter that you're going into RNC territory to do your home visit?

SGT NOEL: No, we regularly worked in those areas.

MS. CHAYTOR: Okay.

And how did you identify yourself to that individual when you showed up that day?

SGT NOEL: I told him who I was, that I was a member of the RCMP, that I worked with the premier's protective detail, and I would've shown him my badge.

MS. CHAYTOR: Okay.

And is that before he let you in? You identify yourself at the door in that manner?

SGT NOEL: Yeah, when he answered the door I would tell him who I was and why I was there.

MS. CHAYTOR: Okay, and were you invited to come in, then, and have a discussion?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And then how did that go?

SGT NOEL: I remember it was all part of my assessing – the reason I was there was to assess this person and get a feel for them. And I remember looking around: it was a split-entrance home, and I could see four or five steps up to the living room, and I could see children's toys and a high chair or a playpen or something along that nature. And the man was working on home improvements. I think he was laying hardwood.

So all that played into my assessment of him, that he's a family man, interested in his home, working to better it and that he was obviously focussed and working, so he's stable and not – it wasn't just a rental that he could leave and run away from. He was a homeowner.

And we had a conversation. I expressed my concerns and expressed why I was there, being very aware that – and I told him this – that I don't want him to feel that he can't express himself, because he has a right to express himself, but just to be cautious that he articulate his displeasure in such a way that it can't be looked at in any way threatening.

MS. CHAYTOR: Okay, and you specifically made a point to tell him that?

SGT NOEL: Just like that.

MS. CHAYTOR: Okay.

SGT NOEL: Yeah.

MS. CHAYTOR: And how was that received? How did the – how did the meeting conclude?

SGT NOEL: He was – he was very receptive and understanding. I expressed – I don't know if sympathy is the right word, but an understanding of his concerns for the environment, but also

that he had to be cautious in ensuring that his words couldn't be misunderstood in a threatening way. And the meeting concluded well. He was happy enough and I was satisfied that he felt that he could continue to express himself, but – and I was also satisfied that he wasn't a threat.

MS. CHAYTOR: Okay.

And then did you report back the outcome of that visit to anybody?

SGT NOEL: Yes, I would've reported to Constable Smyth.

MS. CHAYTOR: Okay, and how about the person in the premier's office who brought it to your attention? Would you have circled back to them?

SGT NOEL: I think I would've. I don't recall, but I think I would've said, yeah, I spoke to that guy and I'm not concerned now.

MS. CHAYTOR: Okay.

All right, I'm just going to bring up – you did give an RCMP statement, or a statement to the RCMP, sometime after the shooting. I believe it was in May of 2015. Yes, May 14, 2015. If we could have, please, P-0294, and I believe this may reference that particular visit. It's page 5, please.

THE COMMISSIONER: P-0294.

MS. CHAYTOR: At the top of the page there. It should come up in front of you, and it's at the top of the page: "Ah, I know one in particular someone was making, ah, just rambling, vague, vague statements that could have been construed as threatening or not and I just wanted to get a – a feel for what their state of mind were so I attended at their residence and spoke to them, encouraged them to continue their democratic right to express themselves but try to not be threatening."

Is that that visit, Corporal Noel?

SGT NOEL: That's right, yes.

MS. CHAYTOR: That's what you're referring to there?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. All right.

So in that situation it was rambling, vague statements, could have been construed as threatening and that's you're referring to as the statement, I think you said, was: back off.

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

So in that situation you made, in your judgement call, you made the decision that it was something you needed to further investigate and meet with the individual?

SGT NOEL: Yes.

MS. CHAYTOR: As part of a home visit, would you make any inquiry as to whether or not there are firearms in the house?

SGT NOEL: I don't recall specifically checking at this instance. In Newfoundland I generally assume – where there are so many hunters, I generally assume that there are firearms, unless I have reason to believe otherwise.

MS. CHAYTOR: Okay.

Corporal Noel, in your time with the PSU, did you ever have to use force?

SGT NOEL: No.

MS. CHAYTOR: Are you aware of your time there whether or not anyone – other than the April 5, 2015, incident, are you aware of anyone having to have used force?

SGT NOEL: Not during my time, no.

MS. CHAYTOR: I'm just going to turn specifically to, then, the email that you received on April 3, 2015, from Donna Ivey. And perhaps we could bring it up, please. It's P-0078. And if we scroll to the bottom

This went to yourself and Joe Smyth, and copied to Joe Browne.

Do you recall at the time – even though you didn't reply to it, do you recall reading it?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And did you think it was threatening? Or was this something that you would have been concerned about?

SGT NOEL: I would have been concerned about that message, yes.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Which one are we referring to now?

MS. CHAYTOR: We're at – it should be on your screen, Commissioner.

THE COMMISSIONER: Okay.

MS. CHAYTOR: So it's the email, the actual email from Donna Ivey.

THE COMMISSIONER: Okay, yeah. Thank you, yeah.

MS. CHAYTOR: He received it as well, so he said he would have been concerned about it.

SGT NOEL: Yes.

MS. CHAYTOR: Yes. Okay. All right.

And did you at any point in time subsequently read the thread of tweets? This one, we understand, was the last of a thread of tweets. Did you have an opportunity to read it in context?

SGT NOEL: I did.

MS. CHAYTOR: Okay. And did, once you did that was it of the same concern to you?

SGT NOEL: No.

MS. CHAYTOR: And was it something that you would have felt in any event that you needed to follow up on? If you had been the member on duty on April 3, 2015, and received this and were replying, is it something you would have followed up on?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And what steps would you have done following up?

SGT NOEL: I would have done the same checks on the computer, the RCMP and RNC database to see if we have a history with this individual with the police, and like I said attempted to identify, who we now know to be Mr. Dunphy, from the Twitter handle, and just try to figure out who this person was and what information I can gather about them from police sources as well as open sources.

MS. CHAYTOR: Okay.

And part of what we've heard Constable Smyth say he did was look at Mr. Dunphy's Twitter account. This came from a Twitter, and it came from Twitter, and so he read many of Mr. Dunphy's tweets going back, I think he said, approximately a year. So would you have done similar?

SGT NOEL: As I said, the open source, what's available to the public; I would have a look at that to get a broad picture of the type of person I'm looking at.

MS. CHAYTOR: Okay. All right.

And I'm going to come back, this is the part where I'm going to come back to you about any communications that you had with Joe Smyth around this because we have more information now. So I'll leave that but I understand from what you've said that you didn't have any communications with anyone else in the premier's office about this.

SGT NOEL: That's correct.

MS. CHAYTOR: Okay.

And you did, however, have communications with Joe Smyth, is that right? Do you –

SGT NOEL: Yes.

MS. CHAYTOR: Okay. Do you recall that, do you recall –well, maybe we could bring up your statement to the RCMP. And it's at page 12. I'm sorry, P-0294.

THE COMMISSIONER: 0294.

UNIDENTIFIED FEMALE SPEAKER: Page 12?

MS. CHAYTOR: Page 12, please, yes. And it starts actually on the bottom of page 11.

I first heard of it was Ed flip, and then you stop. Oh, Joe flipped me some emails that Friday I believe, Good Friday. Now perhaps you're mistaken there, maybe it was Donna Ivey who wrote you (inaudible) –

SGT NOEL: I was just gonna say that I think the email I'm referring to is the one I got from Donna –

MS. CHAYTOR: Donna.

SGT NOEL: – that I was cc'd in.

MS. CHAYTOR: Okay.

SGT NOEL: Yeah.

MS. CHAYTOR: And it had, just the same ones he got with partial tweets and he said, yeah, just a head's up, this is what we're looking at. And then at some point in time he emailed me that he was gonna go see Dunphy, Mr. Dunphy. And that day I was messaging him on BlackBerry.

SGT NOEL: Right.

MS. CHAYTOR: Okay.

SGT NOEL: So when I say there at some point in time he emailed me, what I was referring to there was the BlackBerry messenger message where I think I initiated it asking him – trying to set up our plans for the following day and asked him about anything more on that Twitter guy.

MS. CHAYTOR: Okay.

And maybe we could bring up P-0187 then and this is part of your BBM messaging with him. And this is actually a document I believe, Corporal Noel, that you prepared afterwards, after the shooting. And you cut and pasted, it looks like, into this email that then gets sent to Superintendent Zettler?

SGT NOEL: That's correct.

MS. CHAYTOR: Okay.

And so you cut and paste in your exchange that day. So we do now have the actual BBM messaging so that will give us the times and some other detail.

SGT NOEL: Right.

MS. CHAYTOR: But that's one of the, that's part of the exhibit that we are working on that we received today. So I'll just take you through though some of this. You say to him: "Happy Easter. How was your weekend?" And you ask him: "Anymore on the Twitter guy?"

SGT NOEL: Yes. So that would have been in reference to the email that I was cc'd in from Donna Ivey, which had the final Twitter line in it. And then the rest of my line there, "Any talk of tomorrow? What about Labrador?" That's generally how we communicated. As we were ending our block of shifts, we would reach out to the person coming on shift, or the person coming on shift would reach out to the person ending their shifts, to determine how or when to

meet the premier the next day and what to – to conduct the handover of responsibility from one block of shifts to the next.

MS. CHAYTOR: Okay.

And so then you continue on and he says to you, “On my way to mt carmel to see him now.”

SGT NOEL: Right. So he’s responding to my questions in order there: “On my way to mt carmel to see him now.” So that’s in relation to where I said: “Anymore on the Twitter guy?” And then my question: “Any talk of tomorrow?” He responds: “I haven’t seen the p,” referring to the Premier. “No word on tomorrow. I think lab may be cancelled.” Because there was a possible trip to Labrador and he says, “Will try and confirm.” Will try and confirm, I’m not sure there if he’s talking about Labrador or if I have to pick up the premier in the morning.

MS. CHAYTOR: Right, okay. And then you say to him: “Okay. Drop me a line after you’re done with buddy. He sounds a bit loose.”

SGT NOEL: Yes.

MS. CHAYTOR: And are you referring to Mr. Dunphy?

SGT NOEL: Yes.

MS. CHAYTOR: And Joe Smyth replies: “Oh yeah!”

And what did you mean by that? He sounds a bit loose, and on what basis are you saying that?

SGT NOEL: Well, I’ve only seen the one – at this point in time, I’ve only seen the one line where he talks about two prick dead MHAs and other family I may hurt. So at that point in time, I don’t know if he’s talking about previously, MHAs who’ve died previously, is he going to make them dead, what’s the, what’s the story there. And he’s talking about family I may hurt. Is he talking about people that he may hurt in addition to the MHAs?

So that’s not – I’m just saying he sounds a bit loose, sounds like he’s a bit agitated. Something on the go there; that’s not your average person just upset about a government decision. So that’s what’s I’m referring to there.

MS. CHAYTOR: Okay. And I think when you were asked that question by Ms. O’Brien in the interview you mentioned, you said you meant just kind of beware.

SGT NOEL: Yes.

MS. CHAYTOR: That’s what you’re saying to Joe Smyth.

SGT NOEL: That’s right.

MS. CHAYTOR: Just kind of beware. Okay.

SGT NOEL: Yes.

MS. CHAYTOR: Nothing of such concern, though, to you that you offered to go along with him?

SGT NOEL: No.

MS. CHAYTOR: Okay.

And you hadn't done any background checks or anything on Mr. Dunphy on behalf of Joe Smyth for, to check him out?

SGT NOEL: No, I was out of town for the weekend.

MS. CHAYTOR: Okay. So you didn't check PROS or anything for him.

SGT NOEL: No.

MS. CHAYTOR: No. Okay.

And he does advise you that he was talking to Holyrood and you understood that to mean the Holyrood detachment?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

All right, then this next piece here: "Income file transfer cancelled. The built-in media storage is full." I take it that's not part of your exchange, there's –

SGT NOEL: No, that's something to do with the BBM. I've seen that before. I don't really, something to do with the storage of memory on the BlackBerry.

MS. CHAYTOR: Okay. Then he gets back to you and says: Was just involved in a shooting. Dunphy is deceased. He pulled a firearm on me, FYI. And you say: Okay. Let me know if there's anything I can do.

And I think I'll leave that there for now because I'm – we're going to get some times as to when all this takes place when we look at the full exhibit that we now have.

THE COMMISSIONER: If you want to take a break, you know, at any time, and then we'll give Ms. Breen and the other counsel a chance to finish reading the material –

MS. CHAYTOR: Yeah, but I think I can keep going probably through our regular break time –

THE COMMISSIONER: – when you're ready.

MS. CHAYTOR: – and I'll just circle back to this because I will have a line of questioning and I'll do the whole exhibit at the one time perhaps.

THE COMMISSIONER: Right.

MS. CHAYTOR: Okay. And the same exhibit, though, if we come down to the bottom of the page, you – at 2:34 p.m., in terms of the times here, are you able to say whether or not that's Newfoundland Time or would that be Eastern Standard Time?

SGT NOEL: I don't know.

MS. CHAYTOR: Okay. So you're writing, you say Ma'am, and you're writing this to Stephanie Sachsse –

SGT NOEL: Sachsse, yes.

MS. CHAYTOR: – and Andrew Boland is copied on it, perhaps you can just tell the Commissioner who those people are.

SGT NOEL: Stephanie Sachsse was the officer in charge of my section, the federal policing officer. And Andrew Boland was the criminal operations officer, so he would have been second in charge for Newfoundland. Now as it happens, Stephanie Sachsse is now in that role, and he's moved on, so.

MS. CHAYTOR: Okay. And so you're notifying them what you've just been told –

SGT NOEL: Yes.

MS. CHAYTOR: –by Joe Smyth by BBM?

SGT NOEL: So I'm notifying my chain of command, my immediate supervisor as well as her supervisor.

MS. CHAYTOR: Right, okay. And then you're instructed, you're instructed to please relay that information to Superintendent Zettler and Staff Sergeant Fitzgerald who will pass it on to the investigation team. And that comes back pretty quickly to you, and then you do – that's why you, you cut and paste your email here, or your BBM messaging to Jamie Zettler.

SGT NOEL: Yes, I think they're just forwarded; but, in any event, how it was drafted, yes.

MS. CHAYTOR: Oh, you think you just forwarded it?

SGT NOEL: I'm not sure there now; I'd have to look at it. Maybe I cut and paste.

MS. CHAYTOR: Okay.

SGT NOEL: In any event, it went to Zettler at that point.

MS. CHAYTOR: Right. Okay. All right.

Okay, Corporal Noel, what did you do after – other than pass along to your superiors the information about the shooting, what else did you do? Did you then go into work in the PSU that evening?

SGT NOEL: No, I didn't. I was out of town, just in Carbonear.

I remember touching base with the premier's office. I think I spoke with the chief of staff, but I'm not 100 per cent sure, to see if there was anything I could do, any assistance or if I was needed to return to work. And I didn't. So I was told, no, I wasn't needed.

MS. CHAYTOR: So do you recall, then, attending any meetings in the premier's office after the shooting in the next day or the days following?

SGT NOEL: I don't recall anything specific. No.

MS. CHAYTOR: Okay. And so then when did you – you were scheduled to go back to work the next morning. So Monday, I take it, you reported for work.

SGT NOEL: That's right.

MS. CHAYTOR: Okay. And how did you know then what's going to happen? What's happening with the organization of the PSU at that point in time?

SGT NOEL: I don't recall exactly who told me what. There would have been communication between myself and the RNC, as well as the premier's office, as well as with the RCMP. So it all got sorted out, but I was just told where to go and what to do and just to continue on. So I'm sure there was a lot of discussions outside my knowledge.

MS. CHAYTOR: Okay.

Corporal Noel, we see how you provided this message in this email of April 5, which included some of your messaging with Constable Smyth. And we see that it's indicated that it will be passed along to the investigation team.

You were interviewed by the investigation team on May 14, 2015, as we've already said. Did anyone at any point in time, during your statement or afterwards within the RCMP, ask you about any other communications you may have had with Constable Smyth regarding this matter?

SGT NOEL: I'm not sure if it's in my statement, if they asked me if there was other communications. I don't recall being asked.

MS. CHAYTOR: Okay. And other – once you passed this along in the format that you passed it along, did anybody come back to you and ask you whether or not you had the actual BBM messages?

SGT NOEL: No.

MS. CHAYTOR: Okay and, again, I'll come back to some of your messaging.

If we could bring now, then, P-0296 – and let's see what page I'm at here. At the bottom of this page, you're writing here about, "The RNC member involved in the incident this afternoon was investigating suspicious Tweets which had been sent to the Premier and MHA Collins. The RNC has increased security on the Premier including his residence and family."

And then, Mr. Collins lives close – and you're giving some information as to where Mr. Collins is. "I believe it would be prudent for our ... members to be made aware that Mr. Collins was named in the threatening Tweets so" that "they can make themselves familiar with his residence and be extra vigilant. If you need anything further please let me know."

And this is going to Superintendent Zettler, obviously, because he gets back and says, "You will need to provide me with details of the threats so I can pass it on." And you say, "Okay, I'll forward the e-mail I have detailing the tweets. You'll see that they were not direct threats to Mr. Collins. Given that the individual who made the Tweets is now deceased I believe the desire for increased security is more to alleviate fear than protect from a known threat. I understand that some of the concern is that like minded individuals may seize upon this incident."

And then that gets forwarded to Kent Osmond by Superintendent Zettler. And he forwards on, "the tweets Sgt Smyth was following up on and 2nd message coming."

And this does refer to tweets at this point in time, but was it just the one tweet that you were forwarding on or did you have the whole string at this point?

SGT NOEL: I don't know if I had the whole string at that point or not. It does reference tweets, so it's possible, but I'm not 100 per cent sure –

MS. CHAYTOR: Okay.

SGT NOEL: – when I saw the full string.

MS. CHAYTOR: And you indicate that the RNC at this point has increased security on the premier and his, his residence and his family.

SGT NOEL: That's correct.

MS. CHAYTOR: And you're indicating that it's prudent to have members aware of Mr. Collins' whereabouts or his residence because he was named and that – in the, in the tweets, and that they should be extra vigilant; and, of course, then your – Superintendent Zettler asked for more details.

Did you understand anything that Mr. Dunphy said to be a threat to Sandy Collins?

SGT NOEL: Well, he's an MHA, so I wasn't sure what the references were. The string of tweets when they're read in their totality, of course, as we all know, looking back now, look more innocuous than the single tweet by itself, but I didn't think it was a direct threat against Mr. Collins, no.

MS. CHAYTOR: Okay. And did anyone ask you to take those steps to alert the RCMP to be extra vigilant with respect to Mr. Collins?

SGT NOEL: I don't recall being asked. I think there was a general consensus – everyone was kind of in a heightened sense of alertness and tension following this tragedy.

MS. CHAYTOR: And who do you mean by everyone?

SGT NOEL: Well, within the RCMP, within the RNC, within the premier's office, there was a heightened sense of tension, I guess.

MS. CHAYTOR: You do go on to say, of course, you referred to Mr. Dunphy now being deceased and that the desire for increased security is more to alleviate fear than protect from a known threat. And whose fear is it that you're trying to alleviate; what did you mean by that?

SGT NOEL: Well, I would think that Mr. Collins may have fear; that's the fear I'm referring to there.

MS. CHAYTOR: Okay.

So was there a concern being articulated to you and that's what you're referring to?

SGT NOEL: No, just that he was tied into the whole scenario that ended in tragedy and just an overall sense of concern.

MS. CHAYTOR: You also referred to like-minded individuals.

SGT NOEL: Yes.

MS. CHAYTOR: Are you referring to Mr. Dunphy when you say that and, if so, in what respect do you mean like-minded?

SGT NOEL: Yes, I'm referring to Mr. Dunphy and I'm referring to like-minded in that what were his intention – he was someone who pointed a firearm at a police officer. He was agitated about issues directed towards the government. So in this early, early stage this, like-minded individuals, maybe there are others who may now feel anger towards the government or MHAs and in this heightened atmosphere of tension, that was my thoughts there. Others may act out in a similar manner.

THE COMMISSIONER: Sort of a copycat situation?

SGT NOEL: Yes, right.

MS. CHAYTOR: Okay.

SGT NOEL: That's out of an abundance of caution.

MS. CHAYTOR: Okay.

And that's because you've been told by Constable Smyth at this point in time there had been a gun pulled on him.

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

What was the atmosphere like in the PSU in the days and weeks immediately following the shooting?

SGT NOEL: There was a heightened sense of concern for the premier that this person had pulled a firearm. If it had been a different circumstance, not in his living room, was that something that we would have had to face in a public gathering or something like that. There was a concern for the tragedy that had unfolded. That was in people's minds.

There was also a – we were aware of not overreacting to a one-off incident, so we were kind of trying to balance things on both sides of the scale. Being more vigilant, but also being aware of not overreacting that it may not have any more effect. So we were just trying to be – trying to find a middle road.

MS. CHAYTOR: Was there an increased number of complaints that were being received to the PSU from the premier's office and government officials in the immediate days and weeks following?

SGT NOEL: Yes. Social media was lit up with a lot of hateful comments.

MS. CHAYTOR: Okay.

And, if we could have please P-0298.

And this one goes – this goes on for quite some time. This is April 7th, two days afterwards, and it's sent to Paul Davis and Joe Browne, and a number of government members are copied. And this goes on for – I think it's two or three pages. And then that's sent from Paul Davis MHA

account to premier account and to Catherine Evans. And then it goes from premier account to yourself.

Is this the type of communications that you were dealing with in those initial few days – is this the type of thing you’re referring to, Corporal Noel?

SGT NOEL: Yes, it is.

MS. CHAYTOR: Okay. And do you know what, if anything, you did about this?

SGT NOEL: No, I don’t recall anything specific, only adding to situational awareness that there are people out there who feel this way.

MS. CHAYTOR: Do you know whether or not a file was open and an investigation carried out – did you forward it on to anyone else?

SGT NOEL: No, I don’t know if there was anything further done with this one or not. This would have been one of many, many.

MS. CHAYTOR: Okay, then perhaps we’ll look at another one: P-0276. And then this one it’s an email from you to Constable Benoit and you’re referencing a Facebook post that the premier has brought to your attention. And this one is about a week later, April 13, and we don’t have what this actually is here but it’s something that showed up on – it was sent to the premier’s MHA Facebook page.

And do you have any independent recollection of this? You’re wondering if the CIU is already work – doing a workup on the person: “We were talking about it, is it physical threatening or political. In my opinion at first glance it sounds like blackmail either way.”

And when you said we were talking about it, did you mean you and the premier had spoken about it?

SGT NOEL: I believe so. I don’t have any recollection of this email prior to it being presented to me as an exhibit here. But I don’t recall exactly what the specific Facebook post was about.

MS. CHAYTOR: Okay. And then you forwarded it on to Ed Benoit and we can see how Ed Benoit sends it on to Joe Gullage and it –

SGT NOEL: Yes.

MS. CHAYTOR: – a CIU file gets opened on this particular matter.

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

THE COMMISSIONER: But we don’t have the contents of that, do we?

MS. CHAYTOR: I think that there is going to be evidence from Joe Gullage on this particular instance, yes.

MR. WILLIAMS: Mr. Commissioner, I would note just for the record, because there will probably be evidence called, that given the fact that there is reference on some of these emails or exhibits to the premier or to Mr. Davis personally, that it not necessarily be implied that they

were forwarded by him or received by him, given the fact that it could be staff that are involved in these.

MS. CHAYTOR: Right, but this is one that – this is the Facebook post the premier mentioned to me, so I think in this particular one it, in fact, is the premier. I believe, Mr. Williams, the one before that came from the premier account but I saw the name Sylvia signed off on it.

MR. WILLIAMS: And I'm not suggesting that they're not going to these accounts, it's just whether or not they were forwarded or advanced by the premier himself or by members of his staff who might be monitoring the accounts.

MS. CHAYTOR: Okay.

THE COMMISSIONER: That is a reference to Joe Browne asking that it be sent along.

MS. CHAYTOR: Well, I think –

THE COMMISSIONER: Or I assume Joe Browne, maybe it's Joe Smyth.

MS. CHAYTOR: No. Yeah, I should ask you that as well –

THE COMMISSIONER: Yeah.

MS. CHAYTOR: – because you say: “Joe asked that I send this along to you as well.” Is that Joe Smyth or Joe Browne?

SGT NOEL: So that's a message from Janice Cave to me.

MS. CHAYTOR: Right.

SGT NOEL: So I think that would be Joe Browne.

MS. CHAYTOR: Joe Browne, okay. That makes sense, does it?

SGT NOEL: Yeah. Janice would be dealing with Joe Browne.

MS. CHAYTOR: Okay. Yes, all right.

Do you recall in the days shortly following any discussion concerning a gentleman by the name of Andrew Abbass?

SGT NOEL: Yes.

MS. CHAYTOR: And what do you recall about that?

SGT NOEL: I recall that he was in the area of Corner Brook. He was someone who had been making threatening posts and emails, and he had come to the attention of national security because of incidents with the prime minister and now he was making comments and/or social media – I'm not sure what, but he was directing them now towards the provincial government and the premier.

I believe he had been, at some point in time, arrested for some things and he was on the radar on the West Coast for national-security-level issues.

MS. CHAYTOR: Okay.

And did his name also surface in the aftermath of people writing in and commenting on Mr. Dunphy's shooting?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And if we could bring up, please, P-0233, and this is an email that originates with Tim Buckle of the RNC, who would have been in Corner Brook, I understand, at the time, April 6, 2015, and it goes to all staff of the Royal Newfoundland Constabulary. And if we could just make that bigger, please, Madam Clerk.

And if we scroll down to the bottom here, this is where it goes out from Tim Buckle, so it's the day after the shooting and he's giving a caution regarding Andrew Abbass. He's been active on his Twitter account since the death of Don Dunphy in Mitchells Brook yesterday. Members in Corner Brook are probably familiar with him due to complaints filed against the prime minister.

And then we see Joe Smyth forwarding to you and he says: Same thing brother. And then you forward it on to Joe Browne and copy Ed Benoit and you say: Chief. So I take it you're referring to Joe Browne – is that chief of staff?

SGT NOEL: Yeah, that's correct.

MS. CHAYTOR: Okay.

I just received this from Joe – meaning Joe Smyth?

SGT NOEL: Joe Smyth, yes.

MS. CHAYTOR: I haven't forwarded to the premier as Abbass is in Corner Brook and makes no direct threats beyond bluster. I'll leave it to your discretion if you feel he should be made aware. He has been inundated with this trash and I don't want to duplicate and/or add to the confusion.

First of all, you're leaving it to the discretion of the chief of staff as to whether or not to let the premier know. Is that the normal practice that you would do that, send it on to Joe Browne and leave it to his discretion?

SGT NOEL: We would limit direct communication with the premier, so yes.

MS. CHAYTOR: What do you mean: I don't want to duplicate and/or add to the confusion? Who else would be carrying out similar efforts that you're carrying out in terms of duplicating your efforts in the PSU?

SGT NOEL: Well, duplicate meaning duplicate the premier hearing more and more and more about these types of vitriol on social media. There was a lot of stuff on social media. This one came to my attention, so I was passing it on to the chief of staff but – and leave it to his discretion. The premier has to work and do his own job, so leave it to the chief of staff to whether or not he needs to be made aware of this specific person or not. And it's our job to worry about this stuff, not the premier's job to worry about it.

MS. CHAYTOR: Or the chief of staff, I take it. Yeah, not his job to worry about it either. You're going to filter out.

SGT NOEL: Well, he's going to vet it. He's going to filter whether or not he should pass it on to the premier, but, no, it's not the chief of staff's job to worry about it either, but he should be aware.

MS. CHAYTOR: Right. And Joe Browne just replies and says: Thanks, Doug.

What did you interpret Joe Smyth to mean by saying: Thing brother?

SGT NOEL: I'm not sure. I'm not sure by that. I don't know if he means it's another person who's agitated and one more person on the Internet going on with hate or – I'm not sure what he means there.

MS. CHAYTOR: Okay.

THE COMMISSIONER: I think we'll take a break now –

MS. CHAYTOR: Okay. Thank you.

THE COMMISSIONER: – and give you an opportunity to –

MS. CHAYTOR: Thank you, yes.

THE COMMISSIONER: Give everybody an opportunity to read that other report.

Do you think we'll finish with the witness before 5 o'clock?

MS. CHAYTOR: I'll certainly finish. So I only have a couple of other questions, but then I also have to look at the BBM messaging.

THE COMMISSIONER: Right.

MS. CHAYTOR: So I'm thinking I might be, myself, 40 minutes, 45 minutes.

THE COMMISSIONER: You can take the time during the break to sharpen your pencil.

MS. CHAYTOR: Okay.

MR. KENNEDY: Commissioner, could I just raise one issue and it's just simply in relation to – ?

THE COMMISSIONER: Can't hear you, sorry

MR. KENNEDY: Could I just raise one issue in relation to potential scheduling tomorrow?

THE COMMISSIONER: Go ahead.

MR. KENNEDY: We have the two paramedics coming on who could –

THE COMMISSIONER: Right.

MR. KENNEDY: – take most of the morning or they could finish earlier, it's –

THE COMMISSIONER: We're assuming they're going finish early and that we're going to go right into –

MR. KENNEDY: So you'll go right into the –

THE COMMISSIONER: – the application. Yeah, I think we notified some people.

MS. CHAYTOR: Yes, I apologize, because I didn't get back with that when I got sidetracked with my new exhibits, but I apologize.

MR. KENNEDY: Oh yeah, thank you very much.

MS. CHAYTOR: Yes, we're going to try and keep it going. Sorry about that.

THE COMMISSIONER: Okay, thank you.

MR. AVIS: Commissioner, sorry. On that issue –

THE COMMISSIONER: Oh, sorry, Mr. Avis.

MR. AVIS: That's okay.

I have a sentencing tomorrow morning. I wasn't having counsel replace me, only to listen to the – we have no questions for the paramedics.

THE COMMISSIONER: Right.

MR. AVIS: But I did want to be heard on that issue. And I don't know when I finish. I, I just –

THE COMMISSIONER: (Inaudible) what your – what's the concern of the Constabulary? You got a big – does that relate specifically to your client or just generally?

MR. AVIS: Oh, I – it's of great concern to my client that we're going to have, you know, someone, as far as I'm concerned, basically manufacture evidence. It's not even evidence that we have. It's what Mr. Simmonds wants to do, in my view. And, yes, it's important to us that junk science not become part of a process, this process, very much so.

Anyway, I'll give it some thought. I just wanted to –

THE COMMISSIONER: Give it some thought and we'll have a brief chat on it before we close today –

MR. AVIS: Close.

THE COMMISSIONER: – for your benefit because I have a real question as to whether we're talking – where junk science is the issue at all. It sounds like it's a perfectly planned scientific experiment, arguably. The only problem is, or maybe, that there – when the experiment is over, if it's done properly, we still won't have much in the way of probative value, arguably, because there are so many variables. So –

MR. AVIS: Yeah, I'm only saying –

THE COMMISSIONER: – that's different than the junk science.

MR. AVIS: No, forgive me.

THE COMMISSIONER: Sorry?

MR. AVIS: Junk science is the beginning of a list of about a dozen objections. The other – the one you just mentioned there is the main one, from our perspective, but I’ll reconsider it and talk to my associates –

THE COMMISSIONER: All right. And I just mention that to get everybody –

MR. AVIS: Yeah.

THE COMMISSIONER: – starting to think about it for –

MR. AVIS: Thank you, I appreciate that.

THE COMMISSIONER: – tomorrow. I’m not trying to foreclose the issue today, but Ms. Breen and Mr. Simmonds will be having a particular interest in what I have to say but this is all tentative. I just, as I say –

MR. AVIS: I appreciate it.

THE COMMISSIONER: – I’m going to hear your – hear positions tomorrow and then hopefully make a decision on Monday. Well, it’s –

MR. AVIS: As I say, let me speak to my associates and –

THE COMMISSIONER: Sorry, when did you say you have your sentencing?

MR. AVIS: It starts at 10. I –

THE COMMISSIONER: Yeah, well now we did have the – we did have this thing set for 1:30, was it?

MR. AVIS: Yes, originally, and I tried – I originally tried to change the sentencing to the afternoon to be there to the morning and then this came in the afternoon. So I moved it again. But please, Sir, let me –

THE COMMISSIONER: Well, may be –

MR. AVIS: I may be able to accommodate this by –

THE COMMISSIONER: Okay, if you can, if you can accommodate it, if not, we’ll just go back to our 1:30 situation where –

MR. AVIS: An alternative – an alternative is I may be able to send a, sort of a written email with my objections, that’s another possible –

THE COMMISSIONER: That’s fine. We’ll –

MR. AVIS: – to counsel and it can just be presented to you. We’ll work around it.

THE COMMISSIONER: Thank you, Mr. Avis.

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: Okay, we're ready to continue.

MS. CHAYTOR: Thank you, Commissioner.

If I could have, please, P-0299.

Corporal Noel, when the exhibit comes up here, it's the press release by the RCMP on April 7, 2015, and you're sending this to Joe Browne and Paul Davis, and you're saying: "Gentleman I just received this e-mail which is what has been released to the media. Quite detailed."

And I'm wondering in terms of what did you mean by – well, first of all ,why is it that you're sending this to Joe Browne and Paul Davis?

SGT NOEL: Well, once it's been released to the media it's public knowledge, so I just thought I'd pass it on to them so they're aware of what the RCMP has released.

MS. CHAYTOR: Okay, so you saw that as part of your duties at the PSU to keep them informed on this?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And what did you mean by it's quite detailed?

SGT NOEL: Just that: that it is quite detailed. The media release to me seemed to have more detail than I would have expected.

MS. CHAYTOR: Okay, so you were surprised by the amount of detail?

SGT NOEL: Yes.

MS. CHAYTOR: For example, the type of gun, the .22 calibre gun, the fact that it's loaded, how long Joe Smyth was in the house, 15 minutes, for the conversation 15 minutes, and those types of things. The fact that the rifle was pointed at the officer – those type of details?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

So that surprised you.

SGT NOEL: Yes.

MS. CHAYTOR: Yes. Okay.

Did you attend with Ed Benoit to retrieve the vehicle that Constable Smyth was driving at the time of the shooting?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And do you recall speaking to members of the RCMP at the Holyrood detachment on your way to Mitchells Brook to get the vehicle?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And who was it that you spoke with at the Holyrood detachment?

SGT NOEL: I'm not a hundred per cent sure. It may have been Rod Tiller.

MS. CHAYTOR: Okay, now, we saw in Constable Galway's notes a reference that Rod Tiller provided the keys.

SGT NOEL: Okay.

MS. CHAYTOR: So does that sound right to you –

SGT NOEL: Yes, it does.

MS. CHAYTOR: – that it was Rod? It may have been Staff Sergeant Tiller?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And do you recall, was there anyone else there? Was Constable Galway himself there?

SGT NOEL: I don't recall. It's possible, but I don't recall.

MS. CHAYTOR: Okay.

So do you recall it being more than one officer that you spoke with in Holyrood that day?

SGT NOEL: Yes.

MS. CHAYTOR: And you can't recall right now who those would have been?

SGT NOEL: No, I'm not – I can guess, but I don't know. I thought it was Rod Tiller and a couple of others but, like I said, until you confirmed it to me I wasn't a hundred per cent certain.

MS. CHAYTOR: I'm not necessarily confirming it –

SGT NOEL: Okay.

MS. CHAYTOR: – but that’s what – the evidence we have out of Constable Galway’s notes, so ...

SGT NOEL: Sure. Okay, and that’s consistent with my recollection.

MS. CHAYTOR: Okay.

And was Ed – Ed Benoit went inside with you, into the RCMP detachment?

SGT NOEL: Yes, he did.

MS. CHAYTOR: Okay. And what was discussed?

SGT NOEL: I don’t recall exactly; the incident in general terms would have been discussed.

MS. CHAYTOR: The incident meaning the shooting incident?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

SGT NOEL: I recall Rod – Staff Sergeant Tiller – making some comments about the family. I’m trying to think now, make sure my recollection is correct of that conversation.

MS. CHAYTOR: Okay. And the incident itself was mentioned in general terms, you said, so generally the incident was spoken of?

SGT NOEL: Well, they knew why we were there, so we had to mention.

MS. CHAYTOR: Were you given any details of the incident?

SGT NOEL: No.

MS. CHAYTOR: Okay, if we could bring up P-0285, please.

These are – this is a portion of Constable Smyth’s cellphone records, and it’s a messaging back and forth between himself and Constable Benoit, and if we look at the bottom of page two, please.

THE COMMISSIONER: What is the number there?

MS. CHAYTOR: This is P-0285 –

THE COMMISSIONER: Two-eight-five.

MS. CHAYTOR: And the bottom of page two.

So this is – you can see here it’s Constable Ed Benoit to Joe Smyth: “For what it’s worth, Rcmp said that the locals are showing no animosity towards police or officer involved. Said that the mayor and family were fine to deal with.”

And this is – he’s telling him he’s been to Mitchells Brook or Mitchells Cove to get the vehicle. So this is the context in which he’s saying this, and he recalls – or Constable Benoit has told the

Commissioner that he recalls RCMP members saying words to this effect that day, but he wasn't able to identify them.

So do you recall – do you recall this, and this is the type of messaging that was told to you that day by the RCMP member?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

SGT NOEL: I recall that Staff Tiller was referencing – there was some indications that Mr. Dunphy was well known by the police. And my recollection of the conversation was that he wasn't aware of Mr. Dunphy and that the people working for him at that present time weren't aware of Mr. Dunphy, that anyone that was familiar with him would have been in more distant past, not currently.

MS. CHAYTOR: And there is another, second remark: "As well, the 'town manager' that has been speaking out is MHA. She claimed that he was friendly with police and knew them all/would invite them in all the time. Rcmp were not familiar with the guy at all. Boys said that nobody would even know him to see him!"

So is that –

SGT NOEL: Yes.

MS. CHAYTOR: – what you are referring to?

SGT NOEL: That's what I'm referring to.

MS. CHAYTOR: Okay. And how much of this, then, the RCMP – did the RCMP say any of this or what part of this do you recall the member from the RCMP saying?

SGT NOEL: I recall Staff Sergeant Tiller and the conversation. I didn't – this is the first time I've seen this exhibit, but I recall Staff Sergeant Tiller talking about reports that the RCMP were familiar with Mr. Dunphy and he was basically saying he doesn't know where that's coming from. He wasn't familiar with him and he doesn't know of anybody who was.

MS. CHAYTOR: Okay.

And you continued on then down to Mitchells Brook to retrieve the vehicle? You drove Ed Benoit down?

SGT NOEL: That's correct.

MS. CHAYTOR: Okay.

And did you get out of your vehicle in Mitchells Brook?

SGT NOEL: I don't think so. I think I dropped off Ed Benoit and turned around. And he picked up the other vehicle and we left. I don't think I got out.

MS. CHAYTOR: Was there one of your fellow RCMP officers still on the site at that point?

SGT NOEL: Yes.

MS. CHAYTOR: And who was that and did you speak with him?

SGT NOEL: I don't recall who it was.

MS. CHAYTOR: Did you have any discussion with him about the incident?

SGT NOEL: No. I don't recall anything, speaking to him or who it was.

MS. CHAYTOR: And after the Yukon was retrieved, did you carry out any search of the vehicle?

SGT NOEL: No.

MS. CHAYTOR: Did you – do you know whether or not there were any files belonging to the PSU in the vehicle?

SGT NOEL: I don't know.

MS. CHAYTOR: Okay.

If we could have, please, P-0194.

Okay, this is an email that Joe Smyth sent on April 10, 2015, to all staff Royal Newfoundland Constabulary, and he also sent it to yourself and the lead investigator Steve Burke on the same, at the same date at 8:49 a.m.

And he says: "I forwarded the below message this morning to my RNC co-workers. It however has inherent application to my RCMP counterparts. The officers that have been involved in this investigation have been nothing but profoundly professional, and for that I am grateful."

Corporal Noel, did you think this was appropriate for him to send to you and Corporal Burke?

SGT NOEL: No.

MS. CHAYTOR: Okay, and why not?

SGT NOEL: I felt that he was under investigation due to this incident and that it wasn't really an appropriate venue to air his feelings at that time.

MS. CHAYTOR: Okay. And what about the appropriateness of sending it to such a broad audience, did you think that was appropriate?

SGT NOEL: I just didn't think it was wise.

MS. CHAYTOR: And what was your concern in that respect?

SGT NOEL: I felt that it was an indication that Joe was under mental stress and under a lot of stress due to the incident, and that he was emotionally sending an email when it probably wouldn't have been the best thing to do.

MS. CHAYTOR: Okay.

Okay. I'm going to have a look now at the new exhibit that we have which is 0440. This is – I can tell you, Corporal Noel, this is an extract that we've been presented with today from Joe Smyth's cellphone records and your counsel has provided this to us.

We were, we noticed that what you had cut and pasted into the email to Superintendent Zettler, that portion of the messages didn't appear in Joe Smyth's cellphone records, the extraction report that we had from the RCMP. So we were wondering if we could get a copy of that or why it wouldn't be in there.

And so the RCMP has undertaken a further search for us and we've actually now been provided with about 20 pages long of messaging between yourself and Joe Smyth. So I'm going to take you through some pages of that.

And if I could have, please, page 3 of the exhibit. And this begins before the incident. It's the first here is on April 2, 2015, and this is you to Joe Smyth: "Heather and the P hop in, going to CBC." I take this, would this be Heather MacLean and the premier that you're referring to?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

"He asks her, now what am I gonna say if he says I see ya got dropped off by a police officer. They agree he'll respond that this isn't his only stop today. Then as he's getting out he says to me, keep your head down, we don't want them to know you're here. He is so sensitive to everything!"

THE COMMISSIONER: Who's saying this?

MS. CHAYTOR: So who is saying this? Is this the premier saying this?

SGT NOEL: No. This is a message from me to Joe –

MS. CHAYTOR: I understand that, but who is the "he" in what you're saying. He asked her – is that the premier asking Heather MacLean?

SGT NOEL: Yes.

MS. CHAYTOR: Now what am I gonna say if he says I see ya got dropped off by the police officer.

SGT NOEL: That's right, and he's referring there to the person with the CBC who's was going to interview him. If the interviewer says I see you got dropped off by a police officer and then it says they, being Heather and the premier, they agree that he, the premier, will respond that this isn't his only stop today.

Then as he, the premier, is getting out, he says to me, keep your head down; we don't want them to know you're here. And then he, being the premier – that's my, that last sentence, he is so sensitive to everything, is my comment to Joe talking about the premier being sensitive to the police detail.

MS. CHAYTOR: Right.

So was, was Premier Davis reluctant to have police escort, is that what the general messaging –

SGT NOEL: That's the gist of it –

MS. CHAYTOR: – is here?

SGT NOEL: That's the gist of the, of the message, yes.

MS CHAYTOR: He didn't want to be seen with the police, with the PSU detail, the protective service detail.

SGT NOEL: Correct.

MS CHAYTOR: Okay.

And then Joe, well Joe –

SGT NOEL: Joe said –

MS CHAYTOR: – weighs in –

SGT NOEL: Joe expresses some frustration there.

MS CHAYTOR: – he's frustration and he says that –

SGT NOEL: Yeah.

MS CHAYTOR: – drives me mad. So I take it this was a little bit of an ongoing issue for Constable Smyth in his role?

SGT NOEL: Yes.

MS CHAYTOR: Okay. All right.

We can just continue on down. On the top of page 4 there's some more discussion as it continues on down. "He said he was going to take his own car but Heather told him not to. Don't know what else to say to him." And then the top of page 4 he – "Nope. He's wound so tight about the election. We just have to be sensitive and ride it out."

So – and this is you saying that to Joe Smyth, and what did you mean by that?

SGT NOEL: He's wound so tight about the election is my reference to the premier being concerned about the election, obviously. We have to be sensitive to that, meaning that we have to be sensitive to his being concerned about the election and possibly being oversensitive to police presence and we just have to ride it out, just, just deal with it, be professional and continue on.

MS. CHAYTOR: Okay. And we've heard some evidence, and I believe Joe Smyth spoke to the reluctance by some premiers to be, for this to be seen as, you know, almost a political perk or that people might criticize them for having a protective detail. So is that, that's what's being expressed here?

SGT NOEL: Yes.

MS. CHAYTOR: That's Premier Davis's concern?

SGT NOEL: Yes. It shouldn't be political, obviously. It should be as – it should come with the office, the same as a desk does, but that's the sensitivity that is there.

MS. CHAYTOR: Okay.

Okay, and then if we continue on then the top of page 5, and I believe it might be a similar sentiment being expressed here. We'll see here, and again this is now Joe Smyth back to you: "Any more talk of his image concerns?" And is that also about the same issue?

SGT NOEL: Same issue.

MS. CHAYTOR: Okay.

Okay, if we could have then, please, the middle of page 6. And this is the exchange that I took you through, the middle of page 6, but it starts with on the second: "Can you give me a call." So you probably would have been working on the second?

SGT NOEL: Yes.

MS. CHAYTOR: Was that your workday?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And then we have the exchange we went through this morning about the Twitter guy.

And if we turn over to page 7 – actually it's page 8 because I think we did all of page 7 in the other exhibit we had.

But one thing, actually, I should look at, in terms of the timing, that's what I meant to do there, if we could just go back. The timing of those we now have, which we didn't have in the other. So he says he's on his way to Mount Carmel to see him now. And that's at 3:27 p.m., and we understand then that would have been two and a half hours earlier, so this – he's on his way to Mount Carmel to see him now. That's around 1:30 then.

MS. O'BRIEN: 1 o'clock.

MS. CHAYTOR: 1 o'clock, I'm sorry, 1 o'clock. Yes, two and a half hours.

SGT NOEL: Yes.

MS. CHAYTOR: Thankfully that Ms. O'Brien is back with me. I keep messing up my times.

Okay, so that's around 1 o'clock you're having that exchange. And, and then he tells you: Doug, I was just involved in a shooting. And the timing on that is 6:18 p.m., which is two and a half hours earlier. So it's just before 4 o'clock. Correct?

SGT NOEL: Yes.

MS. CHAYTOR: Yes. Okay.

Okay, if we could have page 8 then please of the exhibit, around the middle of the page, this is you to him and it's now April 5 at 1129 p.m. UTC time, so around 9 o'clock that evening. "Hey Joe. Just thinking about you. I know you must have lots on your mind. If I can do anything let

me know.” And he replies back shortly after, “Thanks Doug, been a crazy and busy day but will touch base tomorrow.”

And then you see here, it’s close – well, it’s after midnight UTC time. So it’s later in the night, so about 10:30. You ask him, or Joe says to you, “You set ok for tomorrow?” And you reply – he replies, “I’m gonna be out of commission for a few days now even before Florida. I’ll look for a fill in.”

So is this Joe – this is Joe Smyth that evening –

SGT NOEL: That’s Joe that evening asking me if I’ve been in touch with the premier or am I all good for tomorrow. So do I know where to go and who to pick up or not, or whatever, am I set for tomorrow. And then he continues on, there’s no reply there at that point.

MS. CHAYTOR: Okay.

SGT NOEL: “I’m gonna be out of commission for a few days now even before Florida.” So meaning he’s going to be away from the unit even before he’d planned to for his holidays, and he’ll look for a fill in. But I think at this point it was out of his hands whether – who the fill in would be and that type of thing, I assume.

MS. CHAYTOR: Right. But he’s thinking about someone’s going to have to step in, in his place in –

SGT NOEL: Yes.

MS. CHAYTOR: Yeah. Okay. All right.

The next day then I guess; that’s late at night on the 5th. The next day we have at 12:44 a.m., I guess – no, this is still that night, I guess. “Yup. All set. Just dropped off the P.” That would be the premier?

SGT NOEL: Yes.

MS. CHAYTOR: And that’s you to him. Okay.

And then, “I’m with Ed Benoit in the AM. Gonna have two for a while.” So you know by then that you have Ed Benoit coming with you?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And on the top of page 9 –

SGT NOEL: Right.

MS. CHAYTOR: “Ok, how’s he doing? He called me a few min ago.”

SGT NOEL: Right.

MS. CHAYTOR: Okay. And did you understand that to be the premier?

SGT NOEL: Yes.

MS. CHAYTOR: Yes. Okay.

And if we come down a couple, then it says from you, Doug Noel to Joe Smyth, “He’s okay. She’s rattled.”

SGT NOEL: Yes.

MS. CHAYTOR: And who are you referring to there.

SGT NOEL: The premier’s wife.

MS. CHAYTOR: Okay. So you had been in touch with both of them?

SGT NOEL: I don’t recall but, yes. It looks like I’d been speaking with her as well.

MS. CHAYTOR: Okay. And then you tell him that, “Both concerned about you.”

SGT NOEL: Yes.

MS. CHAYTOR: And then he says, “I’m as good as can be. I don’t question what I did.”

And then the next one would be still the same night, so still the night of the 5th, quarter to one in the morning UTC time, so later that night. “Jason Sheppard seems to be looking after things for now.” – you tell him – “I forwarded him the e-mails about the tweets to brief the chief in the AM.”

And then: “Good! The main thing is that you’re okay!” And then Joe Smyth to you, “Ok, sounds good. I suspect we’ll have the Yukon back tomorrow.”

Now this is the night of the 5th and he’s indicating he expects that the Yukon will be back tomorrow?

SGT NOEL: Yes.

MS. CHAYTOR: And then he also says to you: “Don’t imagine there is any forensic value in it.”

SGT NOEL: Correct.

MS. CHAYTOR: And you reply, “Okay. Good.” And then you also say to him: “No. Once they plot it’s location, should be it.”

SGT NOEL: Right. So I’m agreeing there that given the little I know, that I don’t imagine there’s any forensic benefit to the Yukon and once they either plot or take a picture of where it is, that should be it. It will be released. That’s my assumption at that point in time.

MS. CHAYTOR: Okay. And did you have any concerns about the fact that – you’re still an RCMP officer. I know you’re working for the PSU, but did you have any concerns about the appropriateness of any communication with Constable Smyth regarding any potential evidence?

SGT NOEL: If there was communication regarding evidence, I would have been concerned about it, yes. I didn’t take that to be communication about evidence as such.

MS. CHAYTOR: Okay. All right.

And then you continue on and you tell him, “There is a plainclothes guy outside” – the premier’s residence – “the P’s residence.” And he replies, “Ok good, who took the lead on setting that up?” And he says, “I’m only starting to get my head straight now.” And you tell him I guess who set it up: I don’t know maybe Jason Sheppard.

We continue on down towards the bottom, and this is Joe Smyth to you, “But they’ve been in contact with you I assume.”

SGT NOEL: Meaning the Constabulary to continue operations.

MS. CHAYTOR: Okay. All right.

And then you also say to him, “Joe Brown and the P were excellent!” What did you mean by that?

SGT NOEL: That they were supportive, and I don’t recall exactly but I remember that it was a very – they were concerned about the whole situation, concerned about Joe, concerned about the Dunphy family and what happened to him. And they were just overall concerned but not in any way impeding our – my job, the job I had to do. So they were good. They were concerned about everything but letting me do my work.

MS. CHAYTOR: So they’re being excellent, they’re not constraining you in any way.

SGT NOEL: Right.

MS. CHAYTOR: That’s what you meant by that.

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And then on the top of the next page you say – or I’m sorry, Joe Smyth says: “Ok good ... No concerns on there end?”

And I think there, the next reply to that would be two down: “No concerns with them.” And again meaning Joe Browne and the premier?

SGT NOEL: Correct.

MS. CHAYTOR: And then –

SGT NOEL: I think that, I think that goes back to what we, the initial concerns over being sensitive to police presence and now they’re no longer – there’s no concerns raised in relation to that. No, no concerns with them, everything is good.

MS. CHAYTOR: So was there a change? Were you sensing a change that they’re not reluctant now to have a police presence?

SGT NOEL: Correct.

MS. CHAYTOR: That’s what you mean.

SGT NOEL: Yeah.

MS. CHAYTOR: Okay. All right.

And Joe Smyth to you: “I was worried that unwanted attention getting put on the detail.” And you say: “Lots of attention. It’s gone national on the news btw. They have made the connection with the detail. It’ll all be okay.”

And if we come down towards the bottom, you write to Joe Smyth and you say: “But it does show how we are needed.” And what did you mean by that, Corporal Noel?

SGT NOEL: Well, going back to what we were talking about earlier about the concern for police presence and the optics and the, my concern over the political – politicization of that, but it shows we’re needed. So it just shows – the fact that there was an incident with someone with a firearm, it just shows what he’s saying there is that it shows we’re needed as the detail.

MS. CHAYTOR: So the fact that Mr. Dunphy had a firearm, that shows that you’re needed, the protective service unit was needed.

SGT NOEL: Yes.

MS. CHAYTOR: Okay. So your concern here is that Mr. Dunphy had a firearm and may have utilized it for some untoward purpose towards the people you have to protect?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And Joe Smyth replies: “Fair point.” And you then say: “The P is not concerned about that part.” What did you mean by that?

SGT NOEL: I think I’m just reiterating again that no one is talking about the detail; everything just seems to be back to – there’s no question about the detail being necessary.

MS. CHAYTOR: Okay.

SGT NOEL: I think.

MS. CHAYTOR: Okay. That’s fine. All right, fair enough. Is there something else? I didn’t want to cut you off.

SGT NOEL: No, no, no.

MS. CHAYTOR: Okay.

All right, and down a little bit further we have Joe Smyth to yourself: “I told him we need to be cautious of potential sympathizers.” And I take it you’re talking about the premier, you’ve told this to the premier?

SGT NOEL: Well, that’s Joe Smyth.

MS. CHAYTOR: Oh, I’m sorry. That’s Joe Smyth to you, I’m sorry.

SGT NOEL: Correct.

MS. CHAYTOR: All right. Did you understand him to be saying the premier?

SGT NOEL: Yes.

MS. CHAYTOR: That he told this to the premier?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And then you to Joe Smyth: “Well that message took! That’s what they were talking about.”

And what do you recall about that? What are you referring to? Who was talking about this?

SGT NOEL: I don’t have a specific recollection of this; I believe, from looking at the context, that I’m talking about the premier and the chief of staff and the premier’s office, but I don’t have a specific recollection of it.

MS. CHAYTOR: What was being discussed in terms of needing to be cautious of potential sympathizers?

SGT NOEL: Pardon?

MS. CHAYTOR: What was being discussed about having to be cautious of potential sympathizers? I take it it means potential sympathizers towards Mr. Dunphy, is that right?

SGT NOEL: Yes.

MS. CHAYTOR: Okay, and that’s what was being discussed between – with the premier, the premier and the chief of staff? Is that your recollection?

SGT NOEL: Yes.

MS. CHAYTOR: Okay. And were you present for that discussion? And again, this is April 6th, now – this is April 5th.

SGT NOEL: Well, I say – well, that message took, that’s what they were talking about, so I wasn’t present during all their conversations, the premier and the chief of staff. I wasn’t –

MS. CHAYTOR: Okay, but this is still the same night, I believe, if I have my time right here. This is still that night? The night of – this is April 5, the night of the shooting.

SGT NOEL: Yes. Yup.

MS. CHAYTOR: Okay.

SGT NOEL: Is it the night of the 5th?

MS. CHAYTOR: Yes, it is, yes, because –

SGT NOEL: Yes, okay, with the time change, yeah. Yeah.

MS. CHAYTOR: Okay. So you’ve been present for discussions with the chief of staff and the premier, that evening at some point or some point that day?

SGT NOEL: That’s on the 5th. I didn’t go to work until the next day.

MS. CHAYTOR: Now, I think it showed here that you picked the premier up from somewhere earlier in the night. You said Joe Brown –

SGT NOEL: Later in the night?

MS. CHAYTOR: Yeah – was back.

SGT NOEL: Yeah, no, you're right.

MS. CHAYTOR: Right?

SGT NOEL: I don't recall that –

MS. CHAYTOR: Okay.

SGT NOEL: – exactly what happened there, but I know I'm referring to discussions that the premier and the chief of staff – I believe that's who I'm talking about there.

MS. CHAYTOR: Okay, and you say we'll chat – or Joe Smyth says to you: "We'll chat tomorrow."

SGT NOEL: Uh-huh.

MS. CHAYTOR: And then if we look at the top of page 13.

Thank you, Kate.

And this is Joe Smyth to yourself, and this is now the next morning, so it's almost 1 o'clock UTC time, so it's late morning.

SGT NOEL: Can I see the previous line –

MS. CHAYTOR: Yes –

SGT NOEL: – for that –

MS. CHAYTOR: – absolutely

SGT NOEL: – please?

MS. CHAYTOR: The one before that, you're asking: "Hey brother. How are you doing?"

SGT NOEL: And that is at ...?

MS. CHAYTOR: That's at almost 1 p.m. UTC, so it's around 10:30.

SGT NOEL: Okay.

MS. CHAYTOR: 10:30 in the morning on April 6th.

Okay?

SGT NOEL: Or is 10:30 at night on April 5th?

MS. CHAYTOR: No, this is p.m. now. April 6th on the bottom, the bottom of the page: "Hey brother. How are you doing?" This is 12:59 p.m. Right? So –

SGT NOEL: Oh, yes, yep –

MS. CHAYTOR: – two and a half hours –

SGT NOEL: – I got ya.

MS. CHAYTOR: – earlier.

SGT NOEL: Right. So it's –

MS. CHAYTOR: Right?

SGT NOEL: – morning of the 6th.

MS. CHAYTOR: It's the morning of the 6th, that's right. So you woke up and you're asking him how he's doing. He replies: "Not bad man, just getting my notes done. You talk?"

SGT NOEL: Right.

MS. CHAYTOR: Okay?

SGT NOEL: He's asking me can you talk, I think.

MS. CHAYTOR: Okay, and he's doing his notes, and we've heard some evidence that he was doing – he had a report that he did up his notes of the incident.

SGT NOEL: Okay.

MS. CHAYTOR: He – you say: "Give me a call. I'm in your office with Ed."

Okay, so he was looking to talk to you. Do you recall if you gave him a call and if you talked to him?

SGT NOEL: Did he call me? I don't – so I'm saying he's asking can I talk, and then I'm saying give me a call –

MS. CHAYTOR: Okay.

SGT NOEL: – I'm in at your office with Ed.

MS. CHAYTOR: And do you recall having a discussion with him?

SGT NOEL: I think, if we continue on down –

MS. CHAYTOR: Yes, and I think we've checked his phone records, and it does appear that there was a call –

SGT NOEL: Uh-huh.

MS. CHAYTOR: – at 10:30 that morning.

SGT NOEL: Right.

MS. CHAYTOR: 10:30 that morning you did have a – according to his phone records, you did have a conversation.

SGT NOEL: So I'm asking him, give me a call, I'm in your office with Ed, then if you want. You know, that's at the same –

MS. CHAYTOR: Okay.

SGT NOEL: – same time.

MS. CHAYTOR: Now, he's asked you whether or not you can talk – you talk, and you're telling him to call –

SGT NOEL: Sure.

MS. CHAYTOR: – into the office. Okay.

SGT NOEL: Yeah.

MS. CHAYTOR: What was discussed?

SGT NOEL: I don't recall that conversation. I don't remember.

MS. CHAYTOR: And, then, if we continue on down a little bit further, you can see just a couple down about – this is, again, Joe Smyth to yourself, and he's saying, "I think we should be with him for the works." And they're talking about the premier going outside the province.

SGT NOEL: Yes. He's –

MS. CHAYTOR: And this is –

SGT NOEL: – he's making a trip to Toronto and Quebec, so I think that's what he's talking about, the works.

MS. CHAYTOR: Okay.

SGT NOEL: The Toronto portion and the Quebec portion.

MS. CHAYTOR: And so Joe Smyth is still involved, at this point in time, anyhow, in giving advice to the PSU about carrying out its duties.

SGT NOEL: Yes.

MS. CHAYTOR: And then it looks like there's some discussion about: "Any media in the lobby?"

"I have to drop into the office."

And second-last one from the bottom here: "He's having a scrum right now where he normally does."

I take it you're referring to the premier?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And were you present for that scrum?

SGT NOEL: Yes.

MS. CHAYTOR: Okay, and is that the scrum where the premier spoke about the shooting?

SGT NOEL: I don't recall. I thought it was the scrum where he spoke about calling Joe, but I may be wrong.

MS. CHAYTOR: Okay.

I think that may have come up in the same media briefing.

SGT NOEL: Okay, right.

MS. CHAYTOR: All right.

And so, then, did you meet or have discussions with Joe Smyth when he came by the office that day?

SGT NOEL: Yes, I believe that's the day that I referred to in my statement where I said I meet him at the office, bumped into him at the office, and he explained. Because I only remember talking to him once.

MS. CHAYTOR: Okay, and he explained to you what happened in the incident?

SGT NOEL: The gist of what happened, yes.

MS. CHAYTOR: Okay, and what did he tell you?

SGT NOEL: He told me he went into the residence and that – he talked about the smell and the dirt, and he talked about not wanting to sit down, and he said it wasn't a great tactical decision or anything like that. It was just he didn't want to sit on the dirty couch.

He said that him looking around was agitating Mr. Dunphy, that was bothering him, so he would focus on his clipboard or his notes to try to reduce that agitation. And he said as he was looking at his notes or his clipboard that he saw the barrel of the gun come up. And as he saw the barrel, he said no or stop. I remember him saying, no, no, no or stop, stop, stop, and putting his hand up and shooting at Mr. Dunphy as he backed out and left the room. And that then he looked back in and Mr. Dunphy had fallen back or sat back down into the chair.

And then we talked about his emotional state. He was concerned. He felt fear that there were other people coming for him, other brothers. He knew rationally this wasn't the case, but his heightened sense of fear and agitation at that time, that's what he felt.

And he said he calmed down then, everything settled down, and from what I understand he called, I think, the RCMP, but I'm not sure.

MS. CHAYTOR: Okay. Fair enough.

And when he was describing the rifle or the gun appearing, did he say where it came from?

SGT NOEL: I understood it was from beside his – beside Mr. Dunphy’s chair. He said that there was a bat beside the chair, but he didn’t see a gun. And the only way it could come was from beside the chair, but it must have been under garbage or other items.

MS. CHAYTOR: Okay. All right.

And if we could just then continue on with the phone records here, and we’re still on page 14. And this is, they are asking and I understand this to be, if we see it here, “They are asking him if he spoke to you, how you are.” And I understand this is – would this be relating to the scrum that’s happening and this is the media asking him that, asking the premier?

SGT NOEL: Correct.

MS. CHAYTOR: And Joe Smyth responds with a curse word, “He probably should not of called.” And then you say to him: Naw he handled it. Said brief conversation. No details.

SGT NOEL: Correct.

MS. CHAYTOR: So you were present and heard what the premier had to say about it?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

And you’re reassuring Joe Smyth that the premier hasn’t given any details about the call; is that what this is?

SGT NOEL: What I’m saying there is that I’m telling him not to worry about things. That premier said it was a brief conversation and that I took from what he said that Joe didn’t – they didn’t talk about details of the incident. That it was just a conversation. How are you, type of a conversation, not an inappropriate detailed conversation.

MS. CHAYTOR: Okay.

And then on the bottom of the page – on the bottom of the page sorry, it says that – this is Joe Smyth to you – “You’re getting put front and center. Sorry I’m out of commission.” And then over on the top of the next page, “Did you try and send me a pic? Send it by e-mail if you can.” And that’s Doug Noel, that’s you to him.

SGT NOEL: Yeah, I can’t receive emails on my BlackBerry, or I couldn’t at that time. So I think I must have thought he tried to send me an email, maybe a message came up that the transfer is full, that type of a message. That would come up sometimes if someone would try to send me a picture, but I don’t remember a picture. I don’t know if he actually did or not.

MS. CHAYTOR: You don’t remember that? And would that be in relation to something to do with the PSU that he’s trying to send you a picture of?

SGT NOEL: I can only imagine. I don’t recall what he would send me a picture of or if he did. And it’s possible it just an error message on my BlackBerry that lead me to believe that he tried, but it wasn’t. There’s no further reference to it, and I don’t have any –

MS. CHAYTOR: And you don’t recall getting anything from him –

SGT NOEL: No.

MS. CHAYTOR: – by email?

SGT NOEL: No, no.

MS. CHAYTOR: Okay. And if we skip down a couple. You say: By the way, I think we need to reiterate to the premier – “p” or premier – or staff about Toronto and Halifax. He should have somebody with him in light of the national attention. And this is Joe Smyth giving, saying that to you. So again he’s, he’s involved giving advice to the PSU.

SGT NOEL: Yes. You can see there I say, “No worries Joe, I’m glad to step up!” That’s a reference to him being out of commission.

MS. CHAYTOR: Right –

SGT NOEL: “Look after you!” I’m basically telling him look after yourself, don’t worry about all this.

MS. CHAYTOR: Uh-huh.

SGT NOEL: Just, everything is fine and –

MS. CHAYTOR: Okay.

SGT NOEL: – then he continues on talking about Toronto and Halifax and being concerned about the unit. And then I try to reassure him it’s all done, the premier asked someone – Joe Gullage or Jason Sheppard, what they thought, and if someone should be with him for both. Then I’m telling him we’ll figure it out, Ed and I will split the travel.

MS. CHAYTOR: Okay. And then he continues on and, and there’s a bit of back and forth about giving you contacts for the OPP it looks like –

SGT NOEL: Yes.

MS. CHAYTOR: – and towards the bottom again he’s weighing in. This is on the, this is on the 7th now. “Can you forward me details for flights in Toronto when you can. I’ll send you to the OPP and cc you so that you can take over any other plans.” So again this is, this is him getting information from you and going to send it on to the OPP.

SGT NOEL: Correct.

MS. CHAYTOR: Okay. And that’s in relation to the premier’s work, the premier’s headed to Toronto, is that it?

SGT NOEL: Correct.

MS. CHAYTOR: All right.

And then on the bottom you say, “Can you call me?”

And his records again show that you did have a call with him on that morning. Do you recall what that’s about?

SGT NOEL: No, I don’t recall the conversation.

MS. CHAYTOR: Would that have been in relation to the work of the PSU?

SGT NOEL: Yes.

MS. CHAYTOR: Yeah, 8:26 a.m. there was a phone call between you. So you –

SGT NOEL: I don't recall, I don't recall much of these messages, only I can see that I sent them.

MS. CHAYTOR: Okay.

All right, now if we look at page 16.

And this is you to Joe Smyth, and you're telling him that you "Just got the latest RCMP news release. Very detailed (guns was 22 and loaded) and positive." What did you mean by that?

SGT NOEL: Well, that's the news release that we talked about a minute ago.

MS. CHAYTOR: Yes, and we talked about it being very detailed.

SGT NOEL: Yes.

MS. CHAYTOR: So I understand what you meant by that, but what –

SGT NOEL: Yep.

MS. CHAYTOR: – did you mean by it was positive?

SGT NOEL: Well, the news release was positive in that it wasn't pointing a negative finger at Joe.

MS. CHAYTOR: Okay.

And he says, "Good to hear... Was just chatting to Monty about it too. And who did you understand Monty to be?"

SGT NOEL: I understood that to be Monty Henstridge with the Major Crime Unit.

MS. CHAYTOR: And he was one of the investigating officers.

SGT NOEL: I don't know his role.

MS. CHAYTOR: Okay.

"Drop me a copy if you can," Joe Smyth asks you.

SGT NOEL: Correct.

MS. CHAYTOR: And then he says what – or you say "What email!" So and then you question: "? Not! Lol."

SGT NOEL: Yeah, because I said what email exclamation point but it should have been a question mark. So I'm just correcting that.

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

SGT NOEL: Yeah.

MS. CHAYTOR: Yeah, okay.

And then: “Drop you a copy at what e-mail?” And so then there’s some exchange and he also gives you his other email as well, personal email. He also says to you at 5:52 p.m., again, this is UTC time: It went okay with Monty – or I’m sorry, you say to him: “It went okay with Monty then yesterday?” And he replies: “Yup, very well.”

And did you understand Monty Henstridge was who was taking his statement the day before.

SGT NOEL: From reading this I understand that, yes.

MS. CHAYTOR: Okay. And then he continues on, he says: “They were great.” And you say: “Perfect.”

Do you know Monty Henstridge very well?

SGT NOEL: I’ve known – I’ve never worked with him; I’ve seen him around the building and chatted with him.

MS. CHAYTOR: Did you have any discussions with him about the investigation?

SGT NOEL: No.

MS. CHAYTOR: And if you come down towards the bottom you ask him: “Were ya talking to Rod Tiller?” You ask Joe Smyth: “Were ya talking to Rod Tiller?” And he replies: “Treated me very well and were complimentary of the process.”

SGT NOEL: So I think there he’s –

MS. CHAYTOR: That goes back to Monty Henstridge, I think –

SGT NOEL: Correct.

MS. CHAYTOR: – taking his statement, right.

“Were ya talking to Rod Tiller?”

SGT NOEL: Right.

MS. CHAYTOR: Then the reply to that is: “Saw Tiller briefly in Holyrood.”

Okay.

SGT NOEL: Correct.

MS. CHAYTOR: And when did you understand that would have happened? That he saw Tiller briefly in Holyrood?

SGT NOEL: I understood that to be immediately after the incident.

MS. CHAYTOR: Okay.

And then you tell Joe Smyth: “We had a good chat today, good positive feed back from the community and his Brother. ‘Whatever happened in that house was Don’s fault.’”

Corporal Noel, what’s that about?

SGT NOEL: That’s me relaying what Staff Sergeant Tiller told me during the conversation we had when I picked up the keys for the vehicle, that the community was, as we talked about, was positive and – what did I say, positive feedback. And Rod told me that his brother had commented whatever happened in that house was Don’s fault.

MS. CHAYTOR: So that’s what Tiller, Staff Sergeant Tiller, told you that his brother had said.

SGT NOEL: Yes.

THE COMMISSIONER: Is that Don Dunphy’s brother, Dick, I take it, is it?

MS. CHAYTOR: Is it Dick Dunphy?

SGT NOEL: I don’t know. I didn’t know he had more than one brother, but I remember the conversation with Rod that he relayed that he was talking to Mr. Dunphy’s brother, whichever one it was, I don’t know, and that he had said whatever happened in that house was Don’s fault.

MS. CHAYTOR: So that’s a quote from his brother?

SGT NOEL: Yes.

MS. CHAYTOR: And, Corporal Noel, did you have any concerns – again, you are an RCMP officer, the RCMP is doing the investigation. Did you have any concerns that you are passing on information to the subject of the investigation that you’re hearing from the RCMP?

SGT NOEL: No. I wasn’t, I was cognizant of that and I didn’t feel I was passing on anything relevant to the investigation at the time.

MS. CHAYTOR: Did you understand that his brother would be a witness to be interviewed by the RCMP?

SGT NOEL: Well, I didn’t know what role his brother had. I wasn’t involved in investigation or didn’t have all the facts of when he was talking to his brother or if he was or whatever.

MS. CHAYTOR: And how do you understand Staff Sergeant Tiller would have any information from his brother?

SGT NOEL: I don’t know. From speaking with him, but when, I don’t know.

MS. CHAYTOR: Okay.

And if continue on then down that page, towards the bottom again: “Tiller said they were very understanding. No animosity at all!” And who did you understand Tiller to be referring to in saying that?

SGT NOEL: Mr. Dunphy’s family.

MS. CHAYTOR: Okay.

Okay. And, and then we have: All the arrangements made of Quebec, do you know? And that's you, that seems to be you asking Joe Smyth. And this is now on the 8th of April. "Are all the arrangements made of Quebec do you know?" And on the top of page 19: "Excellent! Touch base with Paul." And then you to Joe Smyth: "Doing that now. I'm pleased by all that, as you understand. For sure!"

What's going on here?

SGT NOEL: Pleased by all that, as you understand, is that I'm pleased that I'm getting to travel with the premier. There had been an instance in the past where the premier had travelled, and Paul Woodruff had gone with them, and I didn't get the opportunity to go. And I was glad to have the opportunity to travel.

MS. CHAYTOR: Okay. And then if we continue on down through this is now the night of the 10th, it appears to be; it's 1:09 UTC time. And Joe Smyth is expressing that he's had a pretty bad day, and he refers to the RNC as a leaking sieve. And I take it this is in relation to – this would have been the day his email was released to the media?

SGT NOEL: I believe so, that's what makes sense to me, yes.

MS. CHAYTOR: And he also had to redo the re-enactment in Mitchells Brook. If we go down towards the bottom, second last entry on page 19, you say, you reply: "Yeah, that's gross. Brutal day. But the P thinks the cbc article wasn't too bad."

And what's that about?

SGT NOEL: Well, I think the email ended up being leaked to the CBC and then there was an article put about it.

MS. CHAYTOR: Yes. And you had some discussion with the premier about that?

SGT NOEL: I believe so, yes.

MS. CHAYTOR: Okay. And he, and he thought the CBC article wasn't too bad in terms of, from Joe Smyth's perspective?

SGT NOEL: Correct.

MS. CHAYTOR: Okay. And then Joe Smyth says, "Could have been a lot worse."

We are almost done – page 20. And he replies or you reply to him at the top of page 20: "Yes. All you said was fine. But private."

UNIDENTIFIED SPEAKER: (Inaudible.)

MS. CHAYTOR: Yes, that's right. Okay.

And are you – when you say that, all you said was fine, but private, were you meaning the email that he had sent? All you said was fine?

SGT NOEL: Yes.

MS. CHAYTOR: Okay.

So your concern with the email wasn't so much the content of it, but the fact that he distributed it to such a broad audience and then that he sent it to you and Corporal Burke. Is that it?

SGT NOEL: Basically. Like in this context of a texting with someone, I'm not going to get into a broader discussion. Broadly, all he said was fine. I wanted to parse it out and talk about yeah, like I said here earlier in my testimony, I don't think it was a wise email to send –

MS. CHAYTOR: Yes.

SGT NOEL: – but in broad strokes what he said was fine, he expresses concern and different things. But it was private. As I said, in this context, that's about all I could get into, but private meaning it was fine but it was private. If we had a chance to have a bigger discussion, maybe I would have said private to the point of keeping it to yourself, but at this time that's how I replied.

MS. CHAYTOR: Okay.

Corporal Noel, is there any other communications that you had with Joe Smyth, either by way of email or through any other device – is there anything else or do we now have everything?

SGT NOEL: You should have everything here.

MS. CHAYTOR: Okay.

And is there any other information that you have that may be relevant to the Commissioner's mandate?

SGT NOEL: No.

MS. CHAYTOR: And at the time when we interviewed you, a month or so ago, I take it you didn't recall that there were a lot more communications with Joe Smyth. These, of course, only came to light today for us. So we did have the one piece that you had extracted and put in the email to Superintendent Zettler. I take it you didn't recall at that time that there may have been other exchanges?

SGT NOEL: No, I had cut and pasted and provided what I had cut and pasted, but I didn't recall and I still don't really recall much of those – we had so many conversations over different times, but I didn't recall that there was any of these and I see that they're available, so that's good.

MS. CHAYTOR: Okay.

Thank you, those are my questions. Some of the counsel and the Commissioner, no doubt, will have some questions.

SGT NOEL: Sure.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: Okay, counsel Ms. Breen.

MS. BREEN: Okay. Thank you.

Sergeant Noel, Erin Breen for Meghan Dunphy.

Sergeant Noel, I just want to start by asking you – I think it's just important to ask you, now that we have the records, on April 2, you were the person on duty for Premier Davis, were you? According to the phone records, that's how it looks. Do you recall that?

SGT NOEL: That's the Thursday before Good Friday.

MS. BREEN: That's correct.

SGT NOEL: Yes.

MS. BREEN: Okay. And it appears just from a brief review of those messages that you had driven him to CBC and then you said you dropped him at Confederation Building. There was supposed to be an event that evening, but it got cancelled. Do you recall reviewing that?

SGT NOEL: Yes.

MS. BREEN: Okay. And I'm asking this question, on the evening of April 2, were you driving the premier, on the night of April 2?

SGT NOEL: I don't think so.

MS. BREEN: Okay.

The reason why I'm asking that question is that that's when the original tweet was made by Sandy Collins that started the chain of tweets that Mr. Dunphy was responding to.

SGT NOEL: Right.

MS. BREEN: So did you become aware –

SGT NOEL: The first I became aware of the tweet was the email from Ms. Ivey that had the single line of the last line of the tweet.

MS. BREEN: Okay. So it wasn't that you became aware through the premier or through Sandy Collins on the night of April 2.

SGT NOEL: No.

MS. BREEN: Okay. Thank you.

Now, Sergeant Noel, I understand that you – in the various conversations you've described with Constable Smyth, you didn't take any notes of your discussions with him about what he had told you had happened in Mitchells Brook, did you? And I'm talking about conversations you had with him either face to face or on the phone?

SGT NOEL: No.

MS. BREEN: Okay.

Now, I just want to review with you what you did tell the RCMP what Constable Smyth had told you about the incident. And if Madam Clerk could bring up Exhibit P-0294, that's a statement that you gave to Constable Nippard, I believe.

SGT NOEL: Yes.

MS. BREEN: In May of 2015. And if we could go to page 7 of his statement at lines 18 to 24, please.

MR. KENNEDY: I'm sorry, what page was that?

MS. BREEN: Page 7 of his statement. So it's likely page 8 of the exhibit.

Lines 18 to 24 is the reference I'm looking for. Yes, that's it.

Sergeant Noel, I understand this is you recounting to Constable Nippard on May 15 – or, sorry, 14th, 2015, what it is or the details that Constable Smyth had given you about the incident itself. Is that correct?

SGT NOEL: That's correct.

MS. BREEN: And I want to take you down, Sergeant Noel, to line 21 downward, when you're talking about how Constable Smyth had told you that once he was out of the room, and then it says: "And then he looked back in, cause he moved to safety, and then he looked back in and Mr. Dunphy was on the – on the floor I think or – or fell back in the chair, sat back in the – sat back in the chair. And I think he was – felt he was dead then."

So that, on May 14, 2015, was your recollection of what Constable Smyth had told you.

SGT NOEL: Correct.

MS. BREEN: Okay.

Now I want to move on now, Sergeant, to generally talking to you about your practice while you were in the PSU. And I understand that you were in the PSU for really a brief period of time before this incident happened. Is that right?

SGT NOEL: I came – yes, I started in December and this happened in April.

MS. BREEN: Okay. And – sorry – Constable Smyth was your supervisor at that time.

SGT NOEL: Correct.

MS. BREEN: And he had been there for several years before you arrived.

SGT NOEL: Yes.

MS. BREEN: You did not have the Managing Targeted Violence course, did you?

SGT NOEL: No.

MS. BREEN: Okay. You knew that he had that course.

SGT NOEL: No.

MS. BREEN: Oh, you didn't know that? Okay.

I'm assuming he would have been the one to train you in or tell you what the expectations were, how to go about the business of the PSU?

SGT NOEL: As I said, I worked with Corporal Anstey for a shift or two to kind of get the routine and then it would have been Joe after that.

MS. BREEN: Okay. So he was kind of guiding you through as you first started off. Is that fair to say?

SGT NOEL: Yes.

MS. BREEN: Okay.

Now before Mr. Dunphy's death, I understand from what you're saying that the home visits in the unit to your knowledge at that time were rare. Is that correct?

SGT NOEL: Yes.

MS. BREEN: Okay. And you said that you can only recall doing one.

SGT NOEL: Correct.

MS. BREEN: And you did not remember Constable Smyth doing any home visits while you were there, did you?

SGT NOEL: Not in the period of time, no.

MS. BREEN: Okay.

So is it fair to assume, Sergeant, that Constable Smyth would have at least approved of or possibly suggested that you make the home visit in the home visit that you did. You would have run this by him, it being your first home visit in the PSU.

SGT NOEL: We would have talked about it.

MS. BREEN: Okay. And he was your supervisor at that time, is that correct?

SGT NOEL: Correct.

MS. BREEN: Okay.

Now you also indicated in your interview with Commission counsel that when a person-of-interest file arose, if you couldn't reach Constable Smyth for whatever reason, around this time when you were looking at these things, if it wasn't an emergency, if it was something that could wait for a few days, you would simply just wait until you saw him again or talked to him again. It wouldn't be of concern to you to act on something immediately or urgency in this matter like we have here with, you know, an ambiguous tweet or an ambiguous social media comment or something of that nature.

SGT NOEL: I would have to take each instance on its own merit. There would be times I can imagine that I would act immediately. Or if it didn't, if I didn't feel it needed immediate attention, then I would wait.

MS. BREEN: Right. And was there any time in your months there at the PSU that you immediately acted and did a home visit? Can you recall in your home visit whether that was an immediate action taken by you without talking to Constable Smyth?

SGT NOEL: It wasn't – I believe I spoke with Constable Smyth or corresponded with him on BBM, but I don't believe that it was waiting until the next block of shifts.

MS. BREEN: Okay.

SGT NOEL: Because I went, it's the type of thing that would have been done as soon as possible, but –

MS. BREEN: Okay. And you also talked in your interview about the decision on when to do a home visit in the PSU and you were describing that when you looked at social media comments you had to determine, where did the message cross a line? Is that fair to say?

SGT NOEL: Yes.

MS. BREEN: Okay. And that, you know, you were drawing a distinction between someone being unhappy about something or crossing a line and basically leading the PSU to think that some sort of action that's either illegal or dangerous to the premier could potentially happen. Do you recall telling –

SGT NOEL: Yes.

MS. BREEN: – Ms. Chaytor about that? Okay.

SGT NOEL: Yes.

MS. BREEN: So in terms of the practice, okay, once you get that kind of ambiguous, social media commentary, the practice that you have described here today is you would try to get as much information as possible. Is that right?

SGT NOEL: Correct.

MS. BREEN: Okay. Would that include talking to other sources if possible, for example, a family member?

SGT NOEL: I can speculate on possibly, but as I said, I wouldn't necessarily, I wouldn't necessarily call ahead. So I don't know if I'd want to – each individual circumstance –

MS. BREEN: Yes.

SGT NOEL: – it's possible you'd speak with a family member, but it's also possible I wouldn't, because I wouldn't want to make the person aware that I was interested in them.

MS. BREEN: Okay. And as you said, there was no protocol in place of a checklist or how you go about this. You were using, basically, your common sense as well as your basic police training. Is that fair to say?

SGT NOEL: Yes.

MS. BREEN: Okay. We have heard from another officer who talked about a practice in place at the PSU a little earlier than when you arrived whereby there would be, you know, a photo obtained, a bio created, you know, a, a, seemed to be a workup done and then placed into writing. Was that the practice that was described to you or that you were trained on when you first arrived?

SGT NOEL: That's generally, I believe, what I've described. It sounds –

MS. BREEN: Okay.

SGT NOEL: I don't see anything in what you've just said that's different than what I've described.

MS. BREEN: Okay.

SGT NOEL: You've mentioned specifically a photo. I have in the past sought out and found photos.

MS. BREEN: Okay. And I'm getting to the point of when you make the determination to do a home visit, would you have those things done before you make that decision to go?

SGT NOEL: Yes.

MS. BREEN: Okay. And so what I've described about the photo, about the bio, about putting something into writing about the person, that would be done before you make your decision to go down to their home.

SGT NOEL: Each instance would be different. Ideally, yes, but maybe not, it depends on the circumstances.

MS. BREEN: Okay.

And in doing a home visit by yourself, because you did one before, have you – did you do one after or is it only the one that you did –

SGT NOEL: It was just the one.

MS. BREEN: – while in the PSU? Okay.

Sergeant, you would agree that any officer who's going to a house by themselves is potentially vulnerable? If you're entering into a house you've never been in before and don't know the person, there's a vulnerability to that; is there not?

SGT NOEL: Police officers go to people's houses all the time by themselves so

MS. BREEN: Absolutely, and it's a part of the job that is potentially dangerous; is it not?

SGT NOEL: Yes.

MS. BREEN: Okay.

And your training would tell you to be hyper vigilant when you're in that situation; is that correct, when you're going into an environment that you don't know what to expect?

SGT NOEL: You're vigilant, yes.

MS. BREEN: And you described in your interview about the fact that you are constantly doing a risk assessment of your environment?

SGT NOEL: Correct.

MS. BREEN: And that this becomes part of your instinct? It becomes instinctual as a police officer to be doing this?

SGT NOEL: Correct.

MS. BREEN: Okay.

You also mentioned in your interview that on your home visit that you did, you talked about the things that you were taking into consideration as you were arriving at the home. The fact that a man was working on his house; renovating the house; the fact that there looked to be an appearance that he had roots in the community; there was children's things there. Those are the kinds of things you are constantly taking into account; is that true?

SGT NOEL: Right.

MS. BREEN: Okay.

Now you've also said that when you're dealing, when you deal with homes in rural Newfoundland, you always assume that there is a firearm in the house?

SGT NOEL: Correct.

MS. BREEN: You make that assumption. So that would be a piece of basic knowledge that you also take into account when you're doing your risk assessment, if you're doing that in a rural area; is that true?

SGT NOEL: True.

MS. BREEN: Okay.

Now, Sergeant, if you entered into a home and you saw a weapon in the house, would you again be taking that into account in terms of the risk assessment, possible dangers to you?

SGT NOEL: You take the totality of everything you see into your risk assessment.

MS. BREEN: Okay.

And that if a person was to become very agitated with your presence, you would also be taking that into consideration; is that correct?

SGT NOEL: Yes.

MS. BREEN: Okay.

And at a point when you see so many red flags and your risk level is going, increasing, is going up, would your training or your instincts lead you to simply exit?

SGT NOEL: Every situation is different and, at times, you will exit if you feel it's necessary or you may continue on to – you're there to do a job and to finish a job, if you deem that the risk is accessible at this point in time.

MS. BREEN: So you would have to weigh your need to get information versus the risk you feel to your own safety?

SGT NOEL: Yes.

MS. BREEN: Is that fair to say?

SGT NOEL: Yes.

MS. BREEN: Okay. And is it fair to say as a police officer, you would always be planning an exit strategy, if you had to retreat, how you would?

SGT NOEL: You should always be aware of the exits and where you can leave, yes.

MS. BREEN: Okay.

Now, the home visit that you described, I believe it occurred in CBS; is that correct?

SGT NOEL: That's correct.

MS. BREEN: Okay.

And when you showed up, you were there basically about some kind of comments about fracking on social media.

SGT NOEL: Yes.

MS. BREEN: And there was a term "back off" used that you felt was indicating more than just being unhappy.

SGT NOEL: Yes, it had changed the tone of the message from expressing displeasure towards more of an active – to directing energy towards the premier, so that was why I was concerned.

MS. BREEN: Okay.

And so it sounds like in each individual situation, there's an incredible amount of discretion or, you know, you're using your own judgement as to whether or not you should follow up with the home visit; is that fair to say?

SGT NOEL: Yes.

MS. BREEN: Okay.

And on that case, you've described a visit that appears to have been fairly brief. You don't seem to have entered into the home, is that right, just in the porch?

SGT NOEL: I was in the front porch in the landing of a split entrance house.

MS. BREEN: Okay.

And when you arrived, Sergeant, how did you introduce yourself to the person?

SGT NOEL: Would have told him my name, Sergeant Noel, or at that time Corporal Noel, with the RCMP. I work with the premier's office; can I talk to you.

MS. BREEN: Okay.

So you certainly would be aware that the only legal basis you had to enter that house would be with their consent; is that right?

SGT NOEL: Yes.

MS. BREEN: And would you feel that them having, or you're having informed consent would be important? It would be important for them to know who you were.

SGT NOEL: Yes.

THE COMMISSIONER: Ms. Breen, before you move on there, earlier I had a question. What's the significance of informing an individual that you're with the premier's office or the premier's security unit and you're just telling them you're with the RNC or RCMP, whichever?

SGT NOEL: In this particular instance, it would be so that they know why I'm there. I'm going to explain why I'm there.

THE COMMISSIONER: Right.

SGT NOEL: But it would help them to understand why I'm there. I'm not there for a drug investigation. I'm not there for motor vehicles or anything else. I'm there with the premier's security detail and that may tweak them to initially well, yeah, okay, now I understand, even before I explain the details of why I'm there.

THE COMMISSIONER: Okay.

Sorry, Ms. Breen; go ahead.

MS. BREEN: Thank you.

THE COMMISSIONER: Thank you.

MS. BREEN: And, Sergeant Noel, you've already, you were careful to explain that when Corporal Anstey was training you, he spent some time with you explaining to you that you should tell people when you arrive basically you're not there to, I think you said, chill their democratic rights or their constitutional rights to speak; you're there for a different reason.

SGT NOEL: Correct.

MS. BREEN: And that's something that you appear to have taken seriously in your training, and you explain that that's what you did on this occasion when you did your home visit.

SGT NOEL: Correct.

MS. BREEN: So it appears that you have placed significant importance on the way you explain this to the person who you are paying the visit to. Is that fair to say?

SGT NOEL: Yes.

MS. BREEN: So you feel that's an important thing for them to know.

SGT NOEL: Yes.

MS. BREEN: And you would be careful in the way that you explain that.

SGT NOEL: I wouldn't want to appear to be a thug or there to intimidate them; I'm there to gather information for a specific purpose.

MS. BREEN: Okay. And you would be careful not to insult or degrade the person who you were there to visit with, I assume.

SGT NOEL: Intentionally, yes.

MS. BREEN: Okay.

Now, I want to ask you, Sergeant Noel, a little bit about some of the messages that are here. The message that I want to ask you about first is you said he sounds a bit loose, when you were talking about Mr. Dunphy to Constable Smyth when he was on his way down to Mitchells Brook; is that right?

SGT NOEL: Yes.

MS. BREEN: And that you've explained that at that time you had only seen the tweet in isolation.

SGT NOEL: Correct.

MS. BREEN: You hadn't seen the full context of the tweet.

SGT NOEL: No.

MS. BREEN: Okay, and to see that in isolation that caused you a concern.

SGT NOEL: Yes.

MS. BREEN: And you understood why Constable Smyth was going down to see the man.

SGT NOEL: Yes.

MS. BREEN: Okay. So, and that appears, if I suggest to you that it appears in the next day or so after this incident occurred, and I'm talking about in the time frame that Premier Davis gave his press conference that we can see referred to in your phone messages, that it appears that people did feel that Premier Davis, or a government official, or the family of Premier Davis were somehow under threat by Mr. Dunphy.

Do you recall that? That there was, there was – I think you alluded to it when you explained one of your text messages.

SGT NOEL: I'm not sure I understand what you're asking.

MS. BREEN: Okay. I'm going to take you to the exhibit that we just received, I'm not sure of the exhibit number, Ms. Chaytor.

MS. CHAYTOR: (Inaudible.)

MS. BREEN: Four-thirty. And, Sergeant Noel, it's the series of text messages where you're talking to Constable Smyth about the press conference and the scrum?

SGT NOEL: Yes?

MS. BREEN: So you were present for the press conference at that time.

SGT NOEL: I was.

MS. BREEN: You were listening to what the premier was saying.

SGT NOEL: I was.

MS. BREEN: Okay. And at that time, do you recall that Premier Davis had made a comment about how his family had not signed on for this. And he was talking about or referring to or implying something about the reason why Constable Smyth had ended up down in Mitchells Brook. Do you recall that?

SGT NOEL: I don't remember – recall that, his family not signed up for this or – I don't' recall that.

MS. BREEN: Okay. Do you recall – and you do say in the text message, you're referring to the premier, you said: He's fine, she's rattled.

SGT NOEL: Yes.

MS. BREEN: And you're talking about the premier's wife.

SGT NOEL: Yes.

MS. BREEN: Okay. It sounds like the premier's wife was frightened or scared and we've seen that in other messages as well. Do you recall that?

SGT NOEL: Yes.

MS. BREEN: Okay.

At this time when this is happening, this was very soon after the event, were people still under the impression that the tweet had been isolated or that was the message that led Constable Smyth down to see Mr. Dunphy?

SGT NOEL: I don't know what people's impressions were about the tweet or series of tweets. I know the overall atmosphere was one of tension and everyone had gone through or had been close to a traumatic event so there was a sense of tension. I'm searching for a better word than tension but that's the best one I can come up with right now.

MS. BREEN: And I understand that there was a fear afterwards that, you know, there would be some kind of retaliation event or a sympathizer would act is, I think, the phrase used in the phone messages. But it appears to me that there may have been some fear caused by the tweet in isolation and that was still hanging over at the point when Premier Davis gave his press conference. Do you know anything about that?

SGT NOEL: No, I think the fear at that point was, as I said, the overall situation. A shooting was involved, someone had pointed a gun at a policeman, the person who pointed the gun was upset with the premier or. So it was more of a totality of the big picture not – it moved beyond the tweet itself.

MS. BREEN: Okay. And when you say the person involved was upset with the premier, where did you, where were you getting that from?

SGT NOEL: From the tweet.

MS. BREEN: From the tweet in isolation?

SGT NOEL: Well, I can't, I don't – looking in hindsight now, there's a whole lot of information coming together there, so I don't know if it was from a tweet in isolation or everything that had happened.

MS. BREEN: But it was your impression at that time that Mr. Dunphy was upset with the premier.

SGT NOEL: Yes.

MS. BREEN: Okay.

Now, Sergeant, after the shooting occurs and you hear from Constable Smyth, you immediately contacted your RCMP supervisors Andrew Boland and – I'm sorry, I can't pronounce her name.

SGT NOEL: It's – yeah, it's Sachsse.

MS. BREEN: Okay. Inspector is it or staff sergeant?

SGT NOEL: Superintendent –

MS. BREEN: (Inaudible.)

SGT NOEL: Chief super now, I'm not sure.

MS. BREEN: Okay.

SGT NOEL: Superintendent maybe.

MS. BREEN: Okay. And then very soon after that you also received an email from Sergeant Kent Osmond. Do you recall that?

SGT NOEL: Yes.

MS. BREEN: Okay. And that, for the benefit of counsel, is a document 80 of the RCMP disclosure. I'm sure we'll be exhibiting that when Sergeant Osmond testifies.

So at that time you were aware that Sergeant Osmond was the head of the Major Crimes Unit.

SGT NOEL: Yes.

MS. BREEN: Okay. And that he was requesting information from you by email about the incident. Do you recall that?

SGT NOEL: Yes.

MS. BREEN: Okay. And he wanted as much information from you as possible, that you had at that time. Do you recall that?

SGT NOEL: Yes.

MS. BREEN: And that you then forwarded him, directly to Sergeant Kent Osmond, you forwarded the messages, the BBM messages between yourself and Constable Smyth.

SGT NOEL: Correct.

MS. BREEN: And you did that on April 5?

SGT NOEL: I don't have the – but I believe so, yes.

MS. BREEN: Okay. You recall that. Okay.

Now, did you receive any kind of follow-up whatsoever from Sergeant Osmond or Corporal Burke after that?

SGT NOEL: No, just that one request which I, I responded to with the attachment and I think, I'd like to see it, but I think I mentioned to him this is all I have.

MS. BREEN: Yes. As of that time.

SGT NOEL: As of that time.

MS. BREEN: And it was quite soon after the event.

SGT NOEL: Yes.

MS. BREEN: Right. But no one contacted you until you did your interview then with Constable Nippard, did they, until May 14?

SGT NOEL: I was out of the country for a couple of weeks prior to that.

MS. BREEN: Okay. So you're not sure when that got set up are you?

SGT NOEL: Right.

MS. BREEN: Okay. Did either Sergeant Osmond or Corporal Burke get back to you, though, for, to say we want you to come in to speak to you or request your records?

SGT NOEL: No, when I, when I requested – when they requested to speak with me, I did, with Nippard.

MS. BREEN: Okay. Now, Sergeant, did you know Constable Nippard?

SGT NOEL: No.

MS. BREEN: So you had never met him before?

SGT NOEL: I can't say I'd never met him. I don't know. I've never worked with him or had conversation with him that I know of.

MS. BREEN: Okay.

Now, I just want to take you – there's a couple of messages I just want – I'm not, I'm trying not to repeat where Commission counsel has already examined you but there are a couple of the new phone messages that I wanted to ask you about.

SGT NOEL: Sure.

MS. BREEN: Okay, Madam Clerk, if we could go to page 16. And if we scroll down, this is the two text messages; one starts from Sergeant Noel to Constable Smyth: Just got the latest RCMP news release.

It's a little more than halfway down the page.

THE COMMISSIONER: Right there.

MS. BREEN: Sergeant Noel, just very briefly, you, you have said that you were surprised by the press release.

SGT NOEL: Yes.

MS. BREEN: Okay. You are – how long have you been a member of the RCMP?

SGT NOEL: 21 years.

MS. BREEN: Okay. And the detail or the amount of information that was being released at this time was surprising to you, wasn't it?

SGT NOEL: Yes.

MS. BREEN: Madam Clerk, if we could next go to page 18. The top of page 18.

And, Sergeant Noel, these are your messages following your interaction with some members in Holyrood to Constable Smyth?

SGT NOEL: Yes.

MS. BREEN: And that would be Staff Sergeant Tiller who was the lead officer out at that detachment, is that correct?

SGT NOEL: Yes.

MS. BREEN: And do you recall Constable John Galway being there as well?

SGT NOEL: I don't remember that.

MS. BREEN: Okay. Do you remember how many officers were there?

SGT NOEL: No. I remember there were a number, but I don't remember who.

MS. BREEN: Okay.

Your text message there, "We had a good chat today, good positive feed back from the community and his Brother. 'Whatever happened in that house was Don's fault.'" So this was a synopsis basically from the conversation that you were having with Staff Sergeant Rod Tiller at that time?

SGT NOEL: Yes.

MS. BREEN: Okay. And you described it as a good chat.

SGT NOEL: With Rod Tiller?

MS. BREEN: Yes.

SGT NOEL: Yes.

MS. BREEN: So is it fair to say that at that time the RCMP were telling you that it was positive, basically this was looking like Constable Smyth had nothing to worry about; this was as his brother said, whatever happened in that house was Don Dunphy's fault?

SGT NOEL: My understanding at that point was that Staff Sergeant Tiller wasn't involved in the investigation. I went there to get the keys and we had a chat about the general feel in the community. That a, this while an unfortunate incident, wasn't a surprise to them. And as Rod relayed to me, his brother said, "Whatever happened in that house was Don's fault."

MS. BREEN: Okay. And so you thought that Staff Sergeant Tiller didn't have anything to do with the ongoing investigation, the major crimes investigation. Is that right?

SGT NOEL: Right. He wasn't with the Major Crimes Unit.

MS. BREEN: Okay.

Now, Sergeant Noel, you are obviously a member of the RCMP and you were working in a two-man unit with Constable Smyth at the time this happened.

SGT NOEL: Yes.

MS. BREEN: And you had to report to both your employer, the RCMP, and then ultimately you had to be interviewed as a witness in this investigation. Is that correct?

SGT NOEL: Yes.

MS. BREEN: And you had to provide information to Sergeant Osmond. On the day this happened he emailed you for it.

SGT NOEL: Yes.

MS. BREEN: Okay.

You had expressed some concern in your interview about when there is a lack of impartiality or even the appearance of a lack of impartiality, it's concerning isn't it? You said that in relation to the email that had been sent from Constable Smyth to both yourself and then Corporal Burke.

SGT NOEL: The interview you're referring to is with Commission counsel.

MR. BREEN: Yes.

SGT NOEL: Yes.

MS. BREEN: And that is always concerning, isn't it, when there's an appearance of a lack of impartiality?

SGT NOEL: The appearance of impartiality is important.

MS. BREEN: And it's terrible for public confidence, isn't it, Sergeant Noel, when there's an appearance of a lack of impartiality?

SGT NOEL: In any instance.

MS. BREEN: It's very bad for public confidence, do you agree?

SGT NOEL: It's important that the public have confidence and that things appear to be impartial and be impartial.

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

THE COMMISSIONER: Thank you.

Counsel?

MR. KENNEDY: Yes, thank you.

THE COMMISSIONER: Mr. Kennedy.

MR. KENNEDY: Sergeant Noel, I'm going to also try not to repeat some of the issues or questions that have been asked of you.

So you went to the premier's security detail in December of 2014, if I understand correctly.

SGT NOEL: Yes.

MR. KENNEDY: Had you have been involved in dignitary protection work before that date?

SGT NOEL: Yes.

MR. KENNEDY: And how and for how long? How were you involved and for how long had you been involved in dignitary protection?

SGT NOEL: In 2008, I got the VIP course. I've been involved in VIP protection. The first instance I can recall was with Prime Minister Martin, just a menial job driving the baggage – luggage van. And after that I had numerous different roles with different dignitaries. I don't know if you need me to detail that or not, but I have driven Prime Minister Harper. I was involved as a bodyguard with Prince Charles. I was involved with Princess Margaret. I oversaw the planning for Princess Anne's visit last summer. I've been involved as a driver with a couple of different Governor Generals. The chief justice, I've served as her security on two occasions when she visited the province. Prime minister of Iceland, I've been involved with security there.

MR. KENNEDY: I guess my point, Sergeant, is that you have previous – prior to joining the Protective Services Unit, you had experience in dignitary protection.

SGT NOEL: Yes.

MR. KENNEDY: And part of that would be threat and risk assessment, correct?

SGT NOEL: Yes.

MR. KENNEDY: Whether or not you'd done an actual course, that's something you're always, as a police officer, when you're involved in dignitary protection, looking for, aren't you?

SGT NOEL: In all areas of police work, yes.

MR. KENNEDY: Yeah.

So, when you went there, you had a meeting with Corporal Lindsay Anstey. Did you know how long Corporal Anstey had been involved with the premier's security or the Protective Services Unit?

SGT NOEL: I believe it was a year or so, but I hadn't kept track of how long he was there.

MR. KENNEDY: And did you know if Corporal Anstey had had previous involvement as in dignitary protection?

SGT NOEL: Yes, I was aware he was a VIP coordinator for Newfoundland and it was he who had sent me on the VIP training.

MR. KENNEDY: Yeah.

So was it one of the reasons that you went to the Protective Services Unit, was because you had previous involvement and training in dignitary protection, do you know?

SGT NOEL: I believe so.

MR. KENNEDY: Yeah. And who would have made that appointment, or did you have to apply?

SGT NOEL: I don't know exactly within the RCMP. I think the CROPS officer at the time, Andrew Boland, had something to do with it.

MR. KENNEDY: Okay.

SGT NOEL: But I'm not sure the exact process that ended me up there.

MR. KENNEDY: So, Sir, in terms of working with Sergeant Smyth, I think you've indicated that he was very professional, a gentleman.

SGT NOEL: Yes, that's my words.

MR. KENNEDY: Was he also very thorough?

SGT NOEL: Yes.

MR. KENNEDY: And did you ever see Constable Smyth in public dealing with the public when the Premier would be out doing whatever he or she was doing?

SGT NOEL: Yes.

MR. KENNEDY: Did you ever see Sergeant Smyth or Acting Sergeant Smyth lose his temper or express impatience, even, with anyone?

SGT NOEL: No.

MR. KENNEDY: So would you agree that one of Sergeant Smyth's – Acting Sergeant Smyth's predominant characteristics would be his coolness and calmness in the face of pressure and stress?

SGT NOEL: I found Acting Sergeant Smyth to be a calm, cool person, and very thorough, and someone who, like I said, someone I could learn from, that his demeanor was always, always as it should be.

MR. KENNEDY: Sir, in terms of when you spoke to Corporal Anstey, he would have indicated you would have to do home visits at times.

SGT NOEL: Yes.

MR. KENNEDY: Did he ever indicate whether or not he had done any home visits by himself?

SGT NOEL: I know he did home visits. I don't know if they were by himself or not.

MR. KENNEDY: So there was one incident, Sir, where you had actually gone to see someone and you went by yourself?

SGT NOEL: Yes.

MR. KENNEDY: Now, the question was put to you whether or not Sergeant Smyth had instructed you to do this. My understanding at that point you were each working separate shifts.

SGT NOEL: That's correct.

MR. KENNEDY: Did you make this decision on your own, to go and visit this person?

SGT NOEL: Our relationship was very collaborative. We both had lots of experience, we both operated in similar manners. I didn't feel directed by him; it was always in conversation and collaboratively.

MR. KENNEDY: And, Sir, in terms of this particular visit, was it a tweet, a Facebook post, an email where the comments were made of back off?

SGT NOEL: I don't know if it was a Facebook post or an email, but it wasn't a tweet.

MR. KENNEDY: Okay.

SGT NOEL: I recall that, but –

MR. KENNEDY: Was it a string of Facebook postings or was it an isolated incident that you're aware of?

SGT NOEL: I believe it was an isolated email. I think it was a single message.

MR. KENNEDY: So you made that decision to go. You did your background checks.

SGT NOEL: Yes.

MR. KENNEDY: So when Ms. Breen referred you to doing or compiling a bio, what you suggested, that's what you're doing anyway.

SGT NOEL: Yes.

MR. KENNEDY: But also, Sir, wouldn't a bio be completed at the end of a threat assessment where you would put a bio and narrative together to explain what had – the steps that had been taken.

SGT NOEL: A file is a living document that grows as information is gathered and added to it. And it may – it may be months or years down the road that more information is added to it.

MR. KENNEDY: And in this particular case, when you went out and visit, you're looking at – you've done your checks, there's low risk to officer safety.

SGT NOEL: Correct.

MR. KENNEDY: Your CPIC is not indicating a V for violence or anything, any firearms.

SGT NOEL: No.

MR. KENNEDY: Did you – do you know if you did a firearms check?

SGT NOEL: I would have done that as part of my CPIC check.

MR. KENNEDY: Okay. So you would've done your checks, so you go out to the house. You're taking now into account the totality of the factors.

SGT NOEL: Correct.

MR. KENNEDY: You see a nice house in a good area.

SGT NOEL: Correct.

MR. KENNEDY: So you take that into account. Does that mean that if you go to a house and you see a house that's in poor condition that you won't go and continue to do your job?

SGT NOEL: No.

MR. KENNEDY: No, so the – it's a factor to be considered, I think, as you've indicated, in the totality of the factors or circumstances.

SGT NOEL: Every factor – every situation you take in the totality. One factor by itself can't be isolated, just to hang your hat on that, unless it's a very, very major factor. But you take into account everything and try to put aside your biases when it comes to a nice house or a not-nice house, and you take in the totality of the situation.

MR. KENNEDY: And you wanted to talk to this person face to face to see what he or she had to say.

SGT NOEL: Yes.

MR. KENNEDY: You explained the situation to the person –

SGT NOEL: Yes.

MR. KENNEDY: – and asked for their input or their – what they had to say about it.

SGT NOEL: Right.

MR. KENNEDY: After that meeting, you decided then that there was – you felt that everything was okay here.

SGT NOEL: I was satisfied that they had an environmental conscience and were upset about something they rightly or wrongly felt was a detriment to the province, but that they weren't meaning to be a threat to the premier or anyone else.

MR. KENNEDY: Was there any history of long-standing grievance here, do you know?

SGT NOEL: Not that I'm aware of.

MR. KENNEDY: Were there comments being directed towards other officials other than one, the one instance you're aware of?

SGT NOEL: Not that I found, no.

MR. KENNEDY: Okay.

Sir, when you then go – there was questions about informed consent. In these circumstances, we've heard that Constable Smyth was driving the GMC or the big – the Yukon or the car that you fellows drive, that big vehicle.

SGT NOEL: Correct.

MR. KENNEDY: Pretty well known in rural Newfoundland to be a police vehicle. Correct?

SGT NOEL: I don't know –

MR. KENNEDY: Okay.

SGT NOEL: – what rural Newfoundland thinks of the Suburban.

MR. KENNEDY: Okay.

So he goes up, he identifies himself as Joe Smyth of the RNC and shows his police badge, says: Can I come in to talk to you?

SGT NOEL: I don't know.

MR. KENNEDY: No, I'm just telling you.

SGT NOEL: Okay.

MR. KENNEDY: This is what the evidence is.

SGT NOEL: Yes.

MR. KENNEDY: So he's then invited in and there's small talk in the porch.

Did you show your badge when you went to see this individual?

SGT NOEL: I believe I did, but it's possible I never.

MR. KENNEDY: So in terms of introducing yourself to an individual, that may be a matter of style, training or what you've learned from doing similar type jobs. Correct?

SGT NOEL: Generally, over the years, I haven't produced my badge unless asked.

MR. KENNEDY: Okay. And so, one of the questions here put to Constable Smyth, why is the RNC out – or why are the Constab out in RCMP jurisdiction? Again, does that sound like a question that would be asked if you're an RNC officer in a police – in an RCMP jurisdiction?

SGT NOEL: Yes.

MR. KENNEDY: Okay.

Sir, in terms of the – again, the situation in CBS, this occurred before the Dunphy situation on April 5.

SGT NOEL: Correct.

MR. KENNEDY: It was the one home visit you did.

SGT NOEL: Yes.

MR. KENNEDY: Now, after April 5, Sir, I would suggest to you that doing home visits either by yourself or with other police officers was going to require extreme circumstances, wasn't it?

SGT NOEL: After this incident, there was more talk of the local police doing – everyone was much more cautious after the incident had happened.

MR. KENNEDY: In terms of the – also, going to CBS, you'd indicated that you wouldn't phone ahead, that you would rather show up, find the person in their own environment and see what he or she has to say.

SGT NOEL: Yes.

MR. KENNEDY: So, again, that's just something –

SGT NOEL: That's personal style.

MR. KENNEDY: Okay. Is there anything that requires you to check with family members or to say that you're coming out?

SGT NOEL: I would suggest that checking with family members where – I wouldn't do that. You may inadvertently divulge information to a family member that, you wouldn't have a right to. It's none of their business.

MR. KENNEDY: Okay. So, basically, you will want to go out and see the person and have a chat with them face to face.

SGT NOEL: Correct.

MR. KENNEDY: Now, Sir, police officers oftentimes visit individuals by themselves in our province. Is that correct?

SGT NOEL: Yes.

MR. KENNEDY: Now, other than your postings in St. John's, have you been posted elsewhere in the province?

SGT NOEL: Yes.

MR. KENNEDY: And where else have you been posted, Sir?

SGT NOEL: Out of training, I was posted to Stephenville, and I was there for two years. And then I was in Bay Roberts for approximately seven years.

MR. KENNEDY: And would you have oftentimes visited individuals by yourselves, go to homes by yourselves in either Bay Roberts or Stephenville?

SGT NOEL: Yes, multiple times a day.

MR. KENNEDY: In fact, police officers do it every day, don't they?

SGT NOEL: Every day.

MR. KENNEDY: Yeah.

Sir, in terms of the timing of your visit to CBS, do you know if this email had been received days before, weeks before? In other words, how long between the receipt of the email and you visiting the individual occurred? How much time elapsed?

SGT NOEL: I believe it happened – I went there as soon as –

MR. KENNEDY: Yeah.

SGT NOEL: – possible when my shifting and when it was – as soon as I was able to go. That's not something I would let sit for a long period of time. If a block of shifts passed and another block, someone would have looked after it long before then.

MR. KENNEDY: In other words, where there's two of you in the unit, you want to do something while it's there and while you are ready to go, correct?

SGT NOEL: Correct.

MR. KENNEDY: Because if you come in or if you don't do it then you leave it for Constable Smyth, then he could have close protection duties and may never get to it.

SGT NOEL: Right, so you do what you can. We did what we could when the opportunities arose, when we had time.

MR. KENNEDY: Did you and Constable Smyth often work together on shifts?

SGT NOEL: Not often, but when it was necessary we would, we'd shift. We had to have a lot of flexibility, so when it was necessary we'd work with two of us.

MR. KENNEDY: Would you agree, Sir, that with two people working in a job like this that at any given moment you could be called by the premier to go out of the province, do close protection within the province and they could be lengthy shifts, long shifts.

SGT NOEL: Yes, that's – the unit required a lot of flexibility and short notice calls and the ability to travel at short notice.

MR. KENNEDY: So were you, or did you and Constable Smyth ever have any discussions about avoiding burn out, in other words not calling the other in unless you had to?

SGT NOEL: No, I don't recall that type of conversation.

MR. KENNEDY: Okay. You knew Constable Smyth was – he told you – he sent you a text saying he was heading to Mount Carmel.

SGT NOEL: Yes.

MR. KENNEDY: Okay. So you knew he was going there.

SGT NOEL: Yes.

MR. KENNEDY: Okay.

Sir, in terms of – you've been asked questions about exit plans when you go into a house. Is there any way, in your experience as a police officer, of protecting against someone who is a low risk to officer safety, suddenly pulling a firearm and pointing it at you?

SGT NOEL: I don't understand the question.

MR. KENNEDY: Okay. So you've been asked, Sir, when you go into a house, do you set yourself up so there's exit plans, or can you get out; if you have a situation where you are in a house of someone who, your background checks shows low risk –

SGT NOEL: Uh-huh.

MR. KENNEDY: – is there any way of protecting against an individual who suddenly points a firearm?

SGT NOEL: You can't foresee every situation. If someone's a low risk, there's still a possibility they're going to do something. So you can't protect yourself in every instance.

MR. KENNEDY: Sir, you've also – it's been suggested while Constable Smyth was looking around, he was doing things, he wasn't vigilant.

Would you agree with me, Sir, if Constable Smyth hadn't been vigilant he might not be here today?

SGT NOEL: I didn't say he wasn't vigilant.

MR. KENNEDY: No, no. I said it's been put to you, it's been suggested that he wasn't vigilant.

SGT NOEL: Oh, wasn't – no, he had to be – if he wasn't vigilant he wouldn't be here today.

MR. KENNEDY: Okay.

The last thing I want to do, Sir, I want to – there's been questions on what Constable Smyth said to you, what you said in your police statement as to Constable Smyth saying.

Do you remember being asked this question in detail by Commission counsel during your interview of December 5?

SGT NOEL: Yes.

MR. KENNEDY: I'm just going to read this to you very quickly, Sir, so that I want you to confirm that this is what you told Commission counsel. And I want – I'd prefer not to read it Commissioner if I could have it put into the record, but my understanding is that the interviews with Commission counsel are not part of the record. Am I correct on that?

THE COMMISSIONER: They're not in as exhibits, that's correct.

MR. KENNEDY: Yeah. Because it would be much easier if I could just take the page and refer to it on the –

THE COMMISSIONER: How, how much is it? Is it just one page?

MR. KENNEDY: It's a fairly lengthy; it's a fairly lengthy quote which you'll see highlighted in yellow.

THE COMMISSIONER: I see no problem with putting it in. It'll be put in, that page will be put in as a –

MR. KENNEDY: There'll have to be two pages put in, it would be –

THE COMMISSIONER: – well, whatever, as a separate –

MR. KENNEDY: Yeah. It would be pages – December 5, 2016 –

THE COMMISSIONER: That's just to speed up the process –

MR. KENNEDY: Yup, pages 87 to 89, and you're describing the situation as to what Constable Smyth told you –

SGT NOEL: Can I see this?

MR. KENNEDY: Pardon?

SGT NOEL: Can I see this?

MR. KENNEDY: Oh yes, certainly.

SGT NOEL: On the screen I mean or, what –

MR. KENNEDY: No, it was – this is not an exhibit.

SGT NOEL: Oh –

MR. KENNEDY: I'll just read you –

THE COMMISSIONER: Well, if it's – well, whatever way you want to do it, Mr. Kennedy.

MR. KENNEDY: Just read this to yourself, Sir –

SGT NOEL: Okay.

MR. KENNEDY: – while I highlight that. That yellow highlighting is mine.

SGT NOEL: Okay.

MR. KENNEDY: I'm showing him, counsel –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: Okay, probably –

THE COMMISSIONER: Okay, we'll keep it simple. Just read it in, otherwise –

MR. KENNEDY: Okay. Thank you.

THE COMMISSIONER: It's quicker to do it the slow way.

MR. KENNEDY: Pages 87 to 89, Ms. O'Brien says to you at page 86: I know you've given a police statement already on this but I'm going to ask you to tell me again what the details of that conversation are to the best of your memory.

Sergeant Noel, answer: Sure, that's no problem. He said he went in, I remember him talking about the state of disrepair in the house and the smell from the animals, urine or feces, and that it was very dirty in the house. I remember him talking about Mr. Dunphy being upset at him looking around, and that he made a point of focusing on his clipboard or file folder to remove that agitation, so that his eyes had somewhere to focus so Mr. Dunphy wasn't agitated by him looking around.

And he told me that he saw out of the corner of his eye the barrel of a firearm coming up towards him. He said he dropped his clipboard and said stop or no, and I remember him saying he put his hand up stop, stop or no, no, no, and he was moving away from the firearm, from what I understand, and he pulled his gun and had to shoot him. That's kind of why I didn't want to see the layout of the floorplan because I don't know how it all fits together. So I don't want to see that.

Ms. O'Brien: Okay. Sergeant Noel: Yeah. Ms. O'Brien: Do you recall what day you had that conversation? Sergeant Noel: No, I don't. I know that he went to Florida shortly after the incident and it was prior to that.

Ms. O'Brien: Okay. Sergeant Noel: He said that the gun came up towards him and he shot as he was leaving the room and then he was kind of out, kind of like, I had to shoot him. Then I was out, and then he looked back in and that Mr. Dunphy had fallen back into his chair. Or I took it that he was kind of starting to get up and then sat back down type of thing, when he was shot, but that may be my assumption.

So your assumption at the end was that, I thought, I took it, that he was kind of starting to get back up and then sat back down, type thing, when he was shot, but that may be my assumption. Correct?

SGT NOEL: Correct.

As Joe was explaining what happened, of course, I'm imagining it in my mind, in my mind he sat back down, fell back down into his chair.

MR. KENNEDY: Yeah.

SGT NOEL: I don't know how it actually unfolded, but that it's how it, I remembered it.

MR. KENNEDY: So what had been put to you by Ms. Breen as to the incident at line, page 7 of the statement, at lines 17 to 21: And then from what I can gather, he was out of room then, and then he looked back in 'cause he moved to safety and then he looked back in and Mr. Dunphy was on the floor, I think, or fell back in the chair, sat back in the, sat back in the chair. I think he was, felt he was dead then.

So do you see – are both of those statements the same or do you see a difference? And if so, which one is accurate?

SGT NOEL: I see them both as the same. I know in one I mentioned the floor and the other I didn't, but I don't know where he ended up. And my recollection is Joe explaining what happened and then he fell back. In my mind's eye, it was sitting, to sit back down. Whether or not that was accurate or not, or whether or not that's what he told me, I don't know, but my recollection is the same.

MR. KENNEDY: Okay.

Then the next page: that he was concerned – this was part of our conversation – he was very concerned that there were other people coming for him and, rationally, he knew the difference that there was no one coming for him but he was very amped up and paranoid then and in shock after the incident.

So he knew rationally that he wasn't, there was no one coming for him, but he still felt that fear and he started to calm down again.

Did Constable Smyth tell you that as outlined in your statement?

SGT NOEL: Yes.

MR. KENNEDY: That's Commission counsel, sorry, the interview with Commission counsel.

Those would be my questions, Commissioner.

Thank you.

THE COMMISSIONER: Thanks, Mr. Kennedy.

MR. AVIS: Just one question; most of them have been dealt with. While I'm on my feet, I'll be sending an email, so go right ahead tomorrow, for the matter to counsel to raise my points.

Just on the training issue. Do you feel that you needed any extra training for the position you had or – you'd been asked do you have any specialized training, for example, in threat and risk assessment. Do you feel that you need extra training in threat and risk assessment?

SGT NOEL: No, I felt that my training that I've received to date, as well as my police experience, have given me all I need, at this point, for that type of a role.

MR. AVIS: And just to emphasize, a home visit is a home visit and if you do a threat assessment or threat and risk assessment before a home visit, it's the same more or less whether you're in patrol, CID, special protection units?

SGT NOEL: Correct.

MR. AVIS: Thank you, Sir.

THE COMMISSIONER: Anybody else have a question?

UNIDENTIFIED MALE SPEAKER: Nothing from me.

THE COMMISSIONER: Thank you.

MR. WILLIAMS: I just have a couple of very quick questions.

With respect to the issue of training, we've touched on that, do you think, feel that the Protective Services Unit could benefit from having a uniform training program for officers? We've had three officers testify; they all seem to have different levels of training. I'm not suggesting that they're inadequate, but it seems to be a difference in the training of the three officers.

SGT NOEL: I know what training I have and I'm satisfied with that. I'm not sure what the others had in their training. I believe consistent training in any area is important.

MR. WILLIAMS: With respect to your involvement and your time at the Protective Services Unit, did you feel there were sufficient human resources to keep up with the workload that you had at the time?

SGT NOEL: No.

MR. WILLIAMS: Okay, and why not?

SGT NOEL: If you want to provide protection to an individual for most days of the week, for the hours during the day and possibly into the evening, you're going to need more than two people, in my opinion. When you have to account for leave and illness and training opportunities and – the desire, ideally, would be to have more than one person for a protective unit; you would want to have at minimum two: a driver and a bodyguard. So the answer is no.

MR. WILLIAMS: Okay.

With respect to the tweet that had been brought up regarding Mr. Dunphy, a very quick question on that. You're aware that Donna Ivey had forwarded that tweet along to you.

Do you feel based on the information that she had at the time, was she justified in forwarding it along to yourself and to Constable Smyth? And was that in pursuit of following up on the directions that she would have had from you?

SGT NOEL: Yes.

MR. WILLIAMS: Okay.

Respect to your dealings with Premier Davis and Chief of Staff Joe Browne –

SGT NOEL: I'm sorry, I missed the first word you said there, Sir.

MR. WILLIAMS: I'm sorry, with respect to your dealings with –

SGT NOEL: Dealings, okay.

MR. WILLIAMS: – Premier Davis and Chief of Staff Joe Browne, at any time did they ever interfere with your operations or give directions with respect to your carrying out your duties?

SGT NOEL: No.

MR. WILLIAMS: And finally, based upon your time with the PSU – obviously the Commissioner is tasked with trying to make recommendations for improvement – anything that you would see as something that could be improved on a go-forward basis with respect to the continued operations of the PSU within the province?

SGT NOEL: I have thoughts.

THE COMMISSIONER: Big question.

MR. WILLIAMS: A big question, I know.

SGT NOEL: It's a big question.

MR. WILLIAMS: And I'm trying to –

THE COMMISSIONER: We could be here after 5, I think.

MR. WILLIAMS: In the interest of time, I don't mean to be throwing that at you, but (inaudible) going to finish up today. Maybe we can leave that for something else if – for other counsel.

THE COMMISSIONER: Well, you'll have other opportunities to have input in that (inaudible).

MR. WILLIAMS: Okay. In the interest of time, I'll let it go at that.

THE COMMISSIONER: Thank you.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Pardon? All right. Any other questions? Ms. Rasmussen, do you have anything?

MS. RASMUSSEN: No, Commissioner.

THE COMMISSIONER: Thanks very much. Okay, no.

All right then, thank you, Sergeant, we'll be recessing in a moment. Did I hear you right, Mr. Avis; it's all right for us to plan to go ahead –

MR. AVIS: Twelve.

THE COMMISSIONER: – tomorrow morning, is that what you said?

MR. AVIS: I'm saying I think, yes, absolutely, I'll just send the email in point form –

THE COMMISSIONER: You'll, you'll get input in another way.

MR. AVIS: Yes. And I'm confident any of my, you know my friends here will be able to deal with any issues that arise, those who are present. Plus I recall I did make at least a 10-minute submission last time, so we're good.

THE COMMISSIONER: Okay, I have that noted, thank you.

All right, it's been a long day but you can all go home and congratulate yourself because we've marked on the schedule that we've just passed the halfway mark, based upon our estimates, so it's all downhill from here, if everything goes right.

Thank you. Until 9:30, tomorrow morning.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.