



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 40

Commissioner: Honourable Justice Leo Barry

Friday

10 March 2017

THE COMMISSIONER: Good morning.

Sorry, you can sit down.

MS. SHEEHAN: Commissioner? Commissioner, they're not here now.

THE COMMISSIONER: Oh, okay.

They're not ready yet (inaudible). You say when.

MS. SHEEHAN: (Inaudible) now.

THE COMMISSIONER: I think we have a couple of technical glitches.

MS. SHEEHAN: Okay.

Okay, ready to go now.

THE COMMISSIONER: Ready to go?

MS. SHEEHAN: Yes.

THE COMMISSIONER: Okay.

We have a number of housekeeping matters which I'm going to leave until the end after Mr. Avis finishes with his witness who will be heard by telephone. But unfortunately the laptop that's being used to do the visual aspect appears to have malfunctioned. So we're not in a position to do video but that should not be a problem, I don't think.

We'll have to deal with written submissions and so forth at the end of this witness. So I'll just go right into, Mr. Avis, your questions.

MR. AVIS: Thank you, Commissioner.

MS. O'BRIEN: Sorry, Commissioner, before Mr. Avis begins, I have a list –

THE COMMISSIONER: Oh yeah, we have to put in –

MS. O'BRIEN: – of exhibits.

THE COMMISSIONER: – Mr. Avis's exhibits, yeah.

MS. O'BRIEN: I have the list of your exhibits, Mr. Avis. I understand the exhibits Mr. Avis will require for Patrick Lenehan are P-0784.

THE COMMISSIONER: Sorry, one second now, I get – go ahead. That's 0774?

MS. O'BRIEN: P-0784.

THE COMMISSIONER: 0784.

MS. O'BRIEN: And then P-0807 and P-0808.

THE COMMISSIONER: 0808.

Okay, so ordered.

MS. O'BRIEN: Thank you.

MR. AVIS: And I believe, Commissioner, that (inaudible) had a number. Thank you.

Can you hear me, Sergeant Lenehan?

THE COMMISSIONER: Go again. Try again.

MR. AVIS: Can you hear me Sergeant Lenehan?

Can you hear me Sergeant Lenehan?

THE COMMISSIONER: All right, let's take, hopefully, a very short break. And our technicians are working on the problem hopefully – I guess it's a good thing it was for the last day but, still, we still have one witness to go.

We'll break for five minutes.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now recessed.

Recess

MR. FORAN: Sergeant Lenehan, can you hear me?

SGT LENEHAN: Yes, Sir.

MR. FORAN: Sergeant Lenehan?

SGT LENEHAN: Yes, Sir.

MR. FORAN: Okay, this is Ed. We will put you on hold for a sec and then we'll affirm you and then we'll proceed.

Thank you.

SGT LENEHAN: Thank you.

MR. FORAN: Sergeant Lenehan, your mic is open, so speak only when requested.

Thank you.

SGT LENEHAN: Thank you.

MS. SHEEHAN: (Inaudible) please be seated.

THE COMMISSIONER: Okay. Mr. Avis, let's get at it before we lose our witness again.

MR. AVIS: Thank you.

Can you hear me Sergeant Lenehan?

SGT LENEHAN: I can.

MR. AVIS: Good. I'd like to start by qualifying Sergeant Lenehan, and as indicated –oh, I'm sorry, you need to be affirmed.

MS. SHEEHAN: Sergeant Lenehan, do you affirm that the evidence you shall give will be the truth, the whole truth and nothing but the truth?

SGT LENEHAN: So help me God.

MS. SHEEHAN: Could you please state your full name?

SGT LENEHAN: First name is P-a-t-r-i-c-k and sir name is spelled L-e-n-e-h-a-n.

MS. SHEEHAN: Thank you.

MR. AVIS: I would like to have Sergeant Lenehan qualified in threat assessment, risk assessment, personal risk assessment and because of his experience and in dignitary protection, because he is able to give us some useful information about the current set up and where the PSU might go.

So Sergeant Lenehan, I would like to start out with – and I'm not going to pull the references up very often; I'm just going to go straight to the heart of the matter. Your terms of reference, as I call them, are Exhibit P-0808 and I'm just to read to you the request that was made of you: "We are requesting that you review the materials provided and render an impartial, objective opinion regarding Cst Joe Smyth's threat and risk assessment with respect to Donald Dunphy."

Was that your understanding of what your terms of engagement or reference were?

SGT LENEHAN: Yes.

MR. AVIS: And did you in fact do that?

SGT LENEHAN: Yes.

MR. AVIS: Do you know Constable Joseph Smyth?

SGT LENEHAN: No, I don't.

MR. AVIS: Have you ever taught him or any RNC officer, to your knowledge?

SGT LENEHAN: No.

MR. AVIS: So I would like to start going through your CV. At the top there, your formal education, you have the University of Windsor. I understand you started a degree in criminology and that after two years, you interrupted your degree program to go to the Ontario Police College in order to join the OPP. Is that correct?

SGT LENEHAN: Peel Regional Police was the first police service I started in with.

MR. AVIS: Okay.

SGT LENEHAN: So yes.

MR. AVIS: You have some awards listed there and I'd just like to go through those very briefly. In 2000 you won the Ontario Medal for Police Bravery. And as I understand it, you rescued three elderly women from a burning building, one of whom was in a wheelchair.

SGT LENEHAN: That's correct.

MR. AVIS: On 2008 you were given the OPP Life Saving Award and you – there was a young girl trapped 80 feet, 85 feet down in a well and you rescued her.

SGT LENEHAN: Correct.

MR. AVIS: Then you were given the Haldimand County Police Services Distinguished Service Award in 2008. And that was just – I say just, that was for your services in the criminal investigation division for that year.

SGT LENEHAN: Correct.

MR. AVIS: And finally, you won the St. John Ambulance Life Saving Award in 2011. And I understand that a police officer shot himself on the range and he was bleeding to death, and that the measures you took in first aid saved his life and that's the reason you got that award.

SGT LENEHAN: Correct.

MR. AVIS: Okay, going to go through your policing experience.

What I'm going to focus on, and we focused on, is which of the policing experience applies to personal risk assessment and which of them applies to risk assessment. At the top there you're currently the unit manager of the Justice Officials Protection and Investigation Section, Ontario Provincial Police, Security Bureau. Am I right?

SGT LENEHAN: That's correct – that's correct.

MR. AVIS: And you were prior to that an investigator for the Justice Officials and investigation section. Correct?

SGT LENEHAN: That's correct.

MR. AVIS: And that was from 2013 to 2015. And from 2015 to 2017, the present, you're the unit manager.

SGT LENEHAN: Correct.

MR. AVIS: To go back to your formal education at the Ontario Police College, you would have learned personal risk assessment but not what you call risk assessment while you were at the Ontario Police College?

SGT LENEHAN: That is correct.

MR. AVIS: In these two positions you've held you do both personal risk assessment and risk assessment.

SGT LENEHAN: That is correct.

MR. AVIS: It's safe to say that any of the situations in which you are involved in active policing, you are doing personal risk assessment. Is that correct?

SGT LENEHAN: That is correct.

MR. AVIS: In particular though, as a Use of Force Instructor at the OPP Academy, you would have also dealt with risk assessment as you define it?

SGT LENEHAN: Correct.

MR. AVIS: And if we go over the page, go down to Police Related Training, the fourth item, Dignitary Close Quarter Protection Course, which in 2013 you would have done, again, personal risk assessment but ongoing risk assessment in advance of any of the dignitary close protection you would be doing?

SGT LENEHAN: Correct.

MR. AVIS: As a firearms instructor in the course you took in 2011, you would again do both risk assessment, as you define it, and personal risk assessment?

SGT LENEHAN: Correct.

MR. AVIS: When you do the – down there, 2006 – Advanced Taser Instructor Course, again you would be dealing with risk assessment, as you understand it to be?

SGT LENEHAN: Correct.

MR. AVIS: And personal risk assessment.

At the bottom there Use of Force Instructor Course, again personal risk assessment and risk assessment?

SGT LENEHAN: Correct.

MR. AVIS: Over to page – well, page 3 of the document I have. When you did the Asp Baton Instructor Course, again personal risk assessment and risk assessment?

SGT LENEHAN: Correct.

MR. AVIS: Defensive Tactics Facilitator Course, again personal risk assessment and risk assessment?

SGT LENEHAN: Correct.

MR. AVIS: And finally in 2000, the Crisis Negotiator Course in which you did risk assessment – oh, I'm sorry, wrong one.

Publications and Papers: Develop the Basic Protection Course for Justice Officials Protection and Investigation, and again that would have involved personal risk assessment and risk assessment. Correct?

SGT LENEHAN: Yes, correct.

MR. AVIS: I'd ask you, you have never testified before to give an expert opinion?

SGT LENEHAN: That is correct.

MR. AVIS: I'd ask you, did you have enough information to come to an opinion?

SGT LENEHAN: Yes.

MR. AVIS: And with respect to risk assessment as you define it, you indicated to me that you've done some 197 cases yourself?

SGT LENEHAN: Yes, both either as an investigator or a unit manager in a role of investigative capacity. Yes, 197cases.

MR. AVIS: And as the unit manager, and I'll discuss that at some point, you indicated to me that you have reviewed over 500 risk assessments that they would have done?

SGT LENEHAN: That is correct, for all my officers, constantly reviewing their reports and investigations to ensure that they actually do a thorough risk assessment of each file.

MR. AVIS: And you indicated to me, of course, that where you are the unit manager, you're evaluating your own police officers on a daily basis?

SGT LENEHAN: Correct.

MR. AVIS: Have you ever pulled your service weapon, pointed it or fired it?

SGT LENEHAN: I have drawn my weapon on two separate occasions, yes.

MR. AVIS: Okay.

With respect to training and education, we discussed on-the-job training and what a police officer will learn on the job. Can you make some comments on that, especially with respect to personal risk assessment and, in your unit, what you mean by threat and risk assessment? What I'm getting at is that, you know, you have your training, you have the courses, but tell us a little bit, if you can, about the value of on-the-job training and how you learn on the job.

SGT LENEHAN: Yeah, with regards to personal risk assessment and as a police officer, whether it be on the road or a special unit or otherwise, every case that you deal with is another learning opportunity for personal assessment, risk assessment to yourself. It is based on the officer's perception and their evaluation of the situation in which they're in. So that is a continued learning process for ...

MR. AVIS: Okay. Those are all my questions on his qualifications, Commissioner. I don't know if anyone else has any questions.

THE COMMISSIONER: Thank you, Mr. Avis.

Any counsel have any questions? Mr. Simmonds – no? Ms. Rasmussen – no? Mr. Drover, you have anything? Mr. Kennedy?

Go ahead.

MS. O'BRIEN: Thank you –

THE COMMISSIONER: – Ms. O'Brien.

MS. O'BRIEN: Thank you, Commissioner. Just noting that – I think Mr. Avis is seeking to qualify this expert in the area of personal risk assessment. The application that he made was to call an expert, specifically Sergeant Lenehan, with respect to threat assessment, and –

THE COMMISSIONER: Well, he has –

MS. O'BRIEN: – the materials we have from him is threat assessment. So I'm just bringing –

THE COMMISSIONER: He has –

MS. O'BRIEN: – that to your attention.

THE COMMISSIONER: – I think the qualification he asked for qualifies threat assessment, risk assessment, personal risk assessment and dignitary protection.

MR. AVIS: That's correct. The thing is the word personal risk assessment came up as a different label, so I just added it. I mean, he's as much an expert in that as anyone that's testified (inaudible) –

THE COMMISSIONER: I'm going to have to read the transcripts quite carefully in order to clarify how various individuals are using various terms in this area. There seems –

MR. AVIS: I understand.

THE COMMISSIONER: There seems to be some difference, but I'm sure you'll point it out to me in written submissions, too, what various witnesses have said in attempting to explain the difference.

Go ahead.

MR. AVIS: Thank you.

Okay, there – right there, Sergeant Lenehan, can you – oh sorry, before I get into that, I just want to talk a little bit about your unit. Again, I am referring to here: Exhibit P-0784. I'm just going to highlight a few portions of it. It's at the beginning of his curriculum vitae. I can give you the numbers of the page I'm going to. I'm starting on page 2 of the exhibit. I'm just going to highlight a few portions.

In the JOPIS Background, this just indicates where your unit comes from. And what I want to emphasize, you say that, "In 2009 as a result of an increased influence on the Judicial System from Organized Crime elements, the Ministry of the Attorney General ... the Ministry of Community Safety and Correctional Services ... and the OPP joined together to develop a specialized unit to ensure the safety and protection of the men and women responsible for the administration of justice in Ontario."

The phrase I'm focusing in on is a specialized unit. Is it your opinion that the work you do in what you view as threat and risk assessment is a specialized form of policing?

SGT LENEHAN: Yes, it is.

MR. AVIS: Okay.

If we go over to the top of the next page, I just want to read a line that will come into play and to mention this is the – from the JOPIS unit's website. Am I correct?

SGT LENEHAN: That's correct.

MR. AVIS: So at the top of page 3, one of the roles of JOPIS is to "Respond to any situation that poses a potential threat to the safety and security of Justice Officials."

SGT LENEHAN: Yes.

MR. AVIS: Get to that meaning in a moment.

If we go down a little further, there's a bunch of dots and round dots. I'm looking at "Preventative and best practices: Physical Security Assessments," and you have in brackets there, "(no specific threat)"

SGT LENEHAN: Correct.

MR. AVIS: And, again, as I say, when I ask you in a moment to discuss the meaning of the word "threat," I'd just like you to pick up on those two points.

At the bottom of page 3 going over to page 4 we get, I guess, what we call the hierarchy or structure of JOPIS. And you are – it says: "Each Sergeant (Sgt.) is considered a Unit Manager." And you are a sergeant and you are a unit manager. Is that correct?

SGT LENEHAN: That is correct, yes.

MR. AVIS: Can you tell us, then, how many people you are responsible for on a daily basis.

SGT LENEHAN: I'm responsible for five unit investigators. Three of them are joint forces operations officers from Ottawa, Hamilton and York and then the remainder are OPP; two are positioned in the eastern region portion of the province, southeastern, and the other two are in the southwestern portion and one in the GTA. And the east region and west region are the two busiest regions for our unit and they take up the bulk of the calls.

MR. AVIS: And if we go over to the top of page 4, just to give some indication of the kind – of the amount of work your unit does, last paragraph – last sentence in the top paragraph: "As of 23FEB17 the JOPIS unit has investigated 2,397 incidents of threats and acts of intimidation toward Justice Officials. In recent years calls for service are more than 400 annually."

Are you telling us there that the situation is getting such that you are getting more and more calls as time goes on?

SGT LENEHAN: That is correct.

MR. AVIS: And now I'd just like to highlight in your report briefly a few conclusions and then go back to the series of questions.

If we go to page 7 of exhibit P-0784, in the last paragraph

MR. KENNEDY: Green number 7 or black number 7?

MR. AVIS: Green number 7; black number 6, "In the case of Sgt. SMYTH" I'm just going to read that one sentence: "In the case of Sgt. SMYTH, I believe he conducted a thorough risk assessment involving the 'tweet of concern.'"

Is that your opinion?

SGT LENEHAN: That is my opinion.

MR. AVIS: Has your opinion changed since you gave us your report?

SGT LENEHAN: No.

MR. AVIS: Notwithstanding all the additional information you have received since then?

SGT LENEHAN: That is correct.

MR. AVIS: Then like to go to –

THE COMMISSIONER: Sorry, Mr. Avis, where was that?

MR. AVIS: I'm sorry. That's page 7 of the exhibit, Commissioner, last paragraph, the first sentence of the last paragraph: "In the case of Sgt. SMYTH, I believe he conducted a thorough risk assessment involving the 'tweet of concern.'"

Could then move to page 9 of the exhibit; it's the second paragraph. Again, I'm only going to read the one sentence: "In Sgt. SMYTH's case, I believe he had gathered all information possible prior to attending DUNPHY's residence."

That was your opinion when you wrote your report?

SGT LENEHAN: Yes, it is.

MR. AVIS: Is that still your opinion today?

SGT LENEHAN: Yes, it is.

MR. AVIS: And, again, notwithstanding all of the information you received since and incorporated, your opinion has not changed. Am I correct?

SGT LENEHAN: That is correct.

MR. AVIS: I would like you to go to page 10 and it's the last paragraph, and I would ask you – I'm sorry.

MR. SIMMONDS: (Inaudible.)

MR. AVIS: The document is page 9; it's one behind, Mr. Simmonds.

MR. SIMMONDS: (Inaudible.)

MR. AVIS: So page 9 of your report, Sergeant Lenehan, and it will be page 10 of the exhibit.

If you would be good enough – that's your, you know, a summary of your opinion. Perhaps you would be good enough to read that into the record, and it begins: "It is in my opinion"

SGT LENEHAN: All right.

"It is in my opinion that Sgt. SMYTH conducted a thorough risk assessment of DUNPHY given the circumstances. Furthermore, that Sgt. SMYTH engaged in the appropriate steps in attempting to develop a detailed background of DUNPHY. When insufficient information was available,

Sgt. SMYTH took appropriate actions to interview DUNPHY to satisfy a thorough risk assessment. With little background information available, it is reasonable and appropriate that an interview to determine the tone and intent of DUNPHY’s tweets was necessary, to evaluate any future risk DUNPHY may pose to others, including the Premier or Minister Collins, and to further determine if a long term monitoring strategy would be warranted.”

MR. AVIS: Again, that was your opinion when you wrote your report. Since you’ve received all the additional information to bring into your opinion, has your opinion changed in any way?

SGT LENEHAN: No, it has not.

MR. AVIS: And having regard to that opinion you have of Sergeant Smyth’s conduct that day, or he would be acting sergeant at the time, what does your conclusion tell you about the training Constable Smyth would have received from the RNC?

SGT LENEHAN: That it would have been appropriate and would have been in conjunction to what he should be doing in order to conduct risk assessments.

MR. AVIS: And I know I haven’t asked you very much about this because it’s not where we looked. In light of the fact that you believe he performed his job that day without any concerns – that meant that his training was appropriate – any thoughts? Or, you know, you evaluate these things on a daily basis. If you were sitting down with Constable Smyth what would you say to him? Is there anything you would say to him about what he did that day?

SGT LENEHAN: No. I think he took the appropriate steps with regards to the lack of other information in different areas from policing records. Really, the only area that he was able to obtain any sort of substance was in social media. And to give a proper risk assessment, the only next logical step was to go and do the home visit. So I believe he did all the right steps that he should have in order to be confident in his risk assessment.

MR. AVIS: Okay, speaking of risk assessment, page 6 of your report, page 7 of the exhibit, top of the page. Before you get into this I’d just like to see, would it be fair to say that in your unit these are the definitions that your unit works with?

SGT LENEHAN: Correct.

MR. AVIS: Right. And it’s more like a term of art. Do you know what I mean by that?

SGT LENEHAN: Yes. I would agree with that.

MR. AVIS: And in some respects it doesn’t matter to you what other – how other people define it, experience and education has resulted in these two definitions, and they’re the ones you work with. So I’m going to leave it at that.

Perhaps you could now enter into the realm of threat assessment, risk assessment and personal risk assessment.

SGT LENEHAN: Okay. With regards to – would you like me to read the two on the page?

MR. AVIS: Well, yes, by all means, start with the definitions, I think –

SGT LENEHAN: Okay, sure.

MR. AVIS: – that would helpful to everyone.

SGT LENEHAN: The first is threat assessment. As we see it, a threat assessment conducted by a trained professional in the field of criminal behaviour analysis. This assessment is based on one person and their propensity for targeted violence towards another specific individual.

MR. AVIS: Okay. And if I could just ask you, in the case of Mr. Dunphy, is that something the Criminal Behaviour Analysis Unit would look at? Would they – would they look at Mr. Dunphy's tweets, for example?

SGT LENEHAN: They would not – well, they would not look at Mr. Dunphy's tweets until the risk assessment had been done by the investigator. The risk assessment has to be done in order to determine whether or not there's certain behaviours present, and if he's considered to be a higher risk, then we would consult with the threat assessors in Criminal Behaviour Analysis.

MR. AVIS: Based on your assessment of Constable Smyth's conduct that day and your view of his risk assessment, at the point he was at – had, you know, and incomplete risk assessment.

SGT LENEHAN: Yeah.

MR. AVIS: Would you have been suggesting or recommending that he move onto a threat assessment as you define it?

SGT LENEHAN: From the initial investigation into the policing documents and just the tweet itself, I would say no. But if he had determined after the home visit that there were other factors involved, it might plot out more things on the pathway to violence. If he discovered those there, then, yes, there would be a threat assessment recommendation at that point. But we just don't know that.

MR. AVIS: Now, as the Commissioner's indicated, and I invite Commissioner, you, to pick up the questioning here, if you wish. I really think that would be helpful. But he's indicated that, you know, we've heard a lot different definitions and ideas about what a risk and threat assessment is. And the Commissioner, of course, is looking for some clarity.

Are you able to tell us, in general terms, perhaps, or specifically, your understanding of the way this language is used from police force to police force, and possibly across the country?

SGT LENEHAN: Sure.

MR. AVIS: Go ahead.

SGT LENEHAN: First with threat assessment, in the world of threat, we only use that with regards to targeted violence. This is from one person having a grievance towards another person. What is their propensity for violence on that particular person? And the threat assessment term is used to develop what sort of threat level they pose for targeted violence on that victim. And the threat assessment is what a trained professional in the Criminal Behaviour Analysis Unit does and they have several tools to determine what the risk level would be. And there's three levels: low, medium and high.

And it takes an enormous amount of training, actually it's 18 months, to actually get to the point of being a Criminal Behaviour Analysis officer and it's an ongoing process as well.

MR. AVIS: Could you just tell us very briefly the qualifications or kind of personnel that you have in your Criminal Behaviour Analysis Unit?

SGT LENEHAN: Well, we have a series of officers in there. They do deal with more than just targeted violence. They also do criminal profiling, forensic psychiatry, polygraph and, obviously, the one, the last one that we're talking about is threat assessment.

MR. AVIS: So that's, in some sense, a specialized unit within a specialized unit or a specialized unit that's used by a number of divisions of the OPP.

SGT LENEHAN: Yeah, the last one. It's a specialized unit utilized by numerous areas within the OPP.

MR. AVIS: Okay.

If you then – anything, again, you – anything you can tell us about – further you can tell us about the risk assessment as you define it there?

SGT LENEHAN: Yeah.

Risk assessment is the initial stages, initial process in which the investigator conducts. And typically, in our role, the JOPIS investigators are trained by the Criminal Behaviour Analysis folks what to look for in a risk assessment, that what they would need to conduct a threat assessment. So risk assessment is essentially to determine: Are there any indicators of targeted violence? And we look to the pathway of violence for that.

So in order to conduct a risk assessment, we'll look into the background of the subject, their entire – any involvement with police, anything open source, meaning on the Internet. We look for: Do they have possession of weapons? Do they have a criminal record? Within their criminal record is there any charges that would lend to violent acts? How is their interaction with police if they've been in custody? Just overall to determine past behaviour because past behaviour is a good indicator of future behaviour.

And when all else fails, typically, we do interview subjects to determine whether or not there is a presence of mental illness, triggers and so on, to build relationships with the actual subject so that, hopefully, we can redirect them. But the risk assessment entails a multitude of different things, and interviewing, detailed backgrounds in order to determine whether or not there is any sort of indication that this person is a high risk for targeted violence.

MR. AVIS: You've indicated, then, when you're talking about the risk assessment that you believe that Constable Smyth did thoroughly, that's the definition you're working from?

SGT LENEHAN: That is, yes.

MR. AVIS: And you had mentioned in discussing Mr. Dunphy, and I guess it will come up again, are home visits common in the risk assessment that you do?

SGT LENEHAN: It really depends on the situation and how much information is available in order to satisfy the investigators. So I would say, yes, they are common, but in our line of work a lot of times a threat is already present so we are way further down the line with regards to target violence in our specific unit. But we do have situations where a threat isn't so clear cut where it does need to have further investigation and in those cases a home visit would be prudent, yes.

MR. AVIS: Okay. And if you could finish now – we've raised the word personal risk assessment. Perhaps you could throw that in the mix for us?

SGT LENEHAN: Yeah. Personal risk assessment always comes from the individual investigator and it depends on the situation that you are either in or going to and, again, you're going to do research on the person that you are going to speak to as a subject. What sort of safety concerns they may be to you, whether or not they have weapons, that they have assault police charges before. You're looking for information like that, that would actually have an effect on your personal safety as an officer.

It's something that you do, not only just, I mean, specialty units, but we've done since we started policing. And these situations are fluid and you always have to constantly be aware of the situation. It's situational awareness.

MR. AVIS: Okay. And this, I guess, what we've heard all the time. This is the kind of risk assessment that officers, in whatever unit they're in, are basically conducting on a daily basis as they do their work?

SGT LENEHAN: Absolutely.

MR. AVIS: Commissioner, those are all the general questions I have about that. I don't know if you have any at this time. You just want me to keep going?

THE COMMISSIONER: No, that's fine.

Thank you, Mr. Avis.

MR. AVIS: Thank you, Commissioner.

So now I'm going to move into what I call the terms of reference; it's Exhibit P-0081, and I just want to go through the questions I just asked you. Give whatever detail as you wish as we go along.

You indicated in your report that the tweet of concern did warrant a threat and risk assessment. Is there anything in particular in that tweet that you can identify that would cause you concern, and why. You were given a copy of it –

SGT LENEHAN: Yeah.

MR. AVIS: I can read to you if you don't have it right there.

SGT LENEHAN: (Inaudible) I'm just getting to the tweet (inaudible) –

MR. AVIS: Sure, I understand, you got to get the paper around there. No, that's not it.

SGT LENEHAN: Are you able to read it to me there?

MR. AVIS: Yes, give me a moment now I get –

THE COMMISSIONER: Is there any reason why we're not bringing these documents up?

MR. AVIS: I don't know; it's not the right document.

THE COMMISSIONER: No, we can get –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. AVIS: Oh, okay, I'm sorry, the tweet of concern.

THE COMMISSIONER: Can we bring up 0081?

UNIDENTIFIED FEMALE SPEAKER: It's 0801?

THE COMMISSIONER: It's 0801, yes.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Oh.

MR. AVIS: Mainly the last one.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. AVIS: Yeah, it's in the list that I gave out.

SGT LENEHAN: I do have it here.

MR. AVIS: P-0009, sorry, I should have kept my list on top here, P-0009. Can you scroll it a little bit, Madam Clerk – back, just the top one; you almost did – keep going, down I mean. No, the other way, please, I want that – perfect.

“... won't mention names this time, 2 prick dead MHAs might have good family members I may hurt ...”

What is it about that language that you feel warrants a risk assessment?

SGT LENEHAN: Well, obviously, there's two names listed above with reference to the minister and the premier. It does go on to say two prick dead MHAs might have good family members may hurt, so it definitely warrants looking into it based on there could be family members at risk, or the actual two people above. So it definitely warrants a risk assessment, for sure.

MR. AVIS: Okay.

I believe you've answered this, but should Constable Smyth have gathered more information before visiting Dunphy?

SGT LENEHAN: No, I believe that he gathered all the information that was necessary based on the tweet.

MR. AVIS: There's consideration, you know, why didn't Constable Smyth just pick up the phone and talk to him; why bother to visit him, if it wasn't that important.

SGT LENEHAN: Well, home visits are important because you can derive a lot more information from the person. You may be able to find out whether or not simply the person has the means or doesn't have the means by a home visit; you wouldn't be able otherwise determine that via phone.

You may come across other information that isn't published or on the Internet, in a police report. Maybe special skills if they have a Marshall Arts background and there's something at the house that would indicate that. You may also find how the person reacts to being questioned, whether

or not there is certain triggers, or there might be – you might be able to determine that there is sort of a mental illness or maybe a physical impairment of some sort that would play into how you deal with the situation.

So there's a multitude of things that can benefit a risk assessor by attending the residence.

MR. AVIS: I would just indicate for everyone on page 7 of the report, 8 of the exhibit, there are five substantial paragraphs dedicated to the value of an interview; I won't have him go through that.

THE COMMISSIONER: Sorry, what is the page?

MR. AVIS: Page 7 of the report, 8 of the exhibit –

THE COMMISSIONER: Okay.

MR. AVIS: – there are four substantial paragraphs dedicated to the benefits of having a home visit, in particular in the case of Mr. Dunphy.

There's been an issue too as why did he do it on Easter Sunday and why didn't Constable Smyth wait.

SGT LENEHAN: Are you looking for me to comment on that?

MR. AVIS: Oh yes, I'm sorry.

SGT LENEHAN: Well, from my perspective, you want to make sure that you can landmark your person subject and it would be safe to say that you could landmark him there on a holiday, so I don't see that being a major issue. I know that the officer did try to phone Mr. Dunphy prior to his arrival, but that wasn't able to happen and then he continued in hopes to get him at the residence.

MR. AVIS: At page 9 of your report, 10 of the exhibit, you opine about the Easter Sunday, you say: "Visiting the Dunphy residence on Easter Sunday would be a judgement on Sgt. SMYTH'S part. In my opinion, from a strategic standpoint, in order to address the investigation more timely, Sgt. SMYTH would wish to locate DUNPHY as soon as possible, and often people can be located at their residence during holidays. Sgt. SMYTH'S decision to attend the DUNPHY residence, on a holiday, should have no bearing on the situation. Police officers work shift work and on holidays."

And again, that's your opinion when you wrote the report. Is that still your opinion today?

SGT LENEHAN: That is still my opinion today.

MR. AVIS: Okay.

Another issue that has arisen and I'll just indicate to everyone, this is on page 8 of Sergeant Lenehan's report, page 9 of the exhibit, third paragraph down, you deal with the idea of one police officer and the fact that PC Cox offered to attend with him. It's also been suggested that well if the uniform and marked car was a problem, then why didn't we have another plainclothes officer? So perhaps you could address that issue and bring into it the – you know, how many people do you use for home visits?

SGT LENEHAN: Okay.

I'd like just to start off in addressing any time when you're going to do a home visit, obviously you are going to evaluate whether or not there is a personal safety issue. I don't see whether or not there really was any issue there given all the searches that Sergeant Smyth did that day; couldn't find anything that would be a concern safety wise. I know there was a flag that was not conveyed to Sergeant Smyth for Victor is violence. I don't know whether or not that would have changed his opinion or not. That would be his own perception in how you would do that. But given the information that he received, I don't know whether or not –

MR. AVIS: Sir, can I interrupt you there? Tell me this –

SGT LENEHAN: Yeah.

MR. AVIS: The v for violence is a CPIC check, correct?

SGT LENEHAN: That is correct.

MR. AVIS: Constable Smyth learnt from two sources that there was an uttering threats charge that was resolved into a peace bond that was 10 years old. The v for Victor in the CPIC, what does it mean, to your knowledge? Would that not be the uttering threats charge?

SGT LENEHAN: It could be. A lot of times that is what is added when there is a charge involving violence of some sort, whether it be threats or physical violence. And if it's 10 years old, dated information, a lot of times, police and courts don't put too much weight into if it's 10 years or older.

MR. AVIS: Okay.

So sorry, continue on with what you were telling us about the visit by one police officer.

SGT LENEHAN: Any time that you're going for a home visit, you have to evaluate your approach, and what I mean by that is you have one chance to make an impression on the person in hopes that you can get all the information you're looking for out of him. So you're going to need to build a relationship with that person.

Taking a uniform car does pose some risk that might influence your ability as a risk assessor and make that initial contact to build a good relationship because a person may take that personal. They may feel embarrassed; you know, why did you bring a uniform car, and it's not necessary and so on. So it's a tactic that needs to be considered by the risk assessor, truly weighing personal safety and their ability to do their job effectively. So that has to be considered prior going there, because you only have one chance to do that.

So as for bringing in an additional officer, I really do believe that that falls on the investigator to determine that.

Now, with regards to our unit, we do have substantial more manpower and generally every region has two officers in it. So it is our best practice that we try to have two officers at every home visit, not just necessarily with the subject, but also with victims as well to ensure that we can properly document and have witnesses so people can't create or say things that we did or didn't say. So we typically have to, albeit there has been times probably over periods where there's extensive holidays and demands on manpower because we do cover the entire province. I can't say that at every call we've had two officers, but it is our best practice.

MR. AVIS: Again, if you wouldn't mind as well, again on page 8 of your report, 9 of the exhibit, you discuss some of the concerns you may have about a uniform presence and a uniform

presence in a small community or actually just – I don't even know if you're limited to a small community.

Could you comment on that, please?

SGT LENEHAN: Sorry, which paragraph was it again?

MR. AVIS: Page 8 of your report: "An offer for a uniform backup"

SGT LENEHAN: Yes.

MR. AVIS: You discuss there some concerns you might have with uniform presence.

SGT LENEHAN: Yes, just like I was commenting on earlier, it may set a more authoritative tone, might interfere with attempting to build that relationship with the subject. Some people become offended by a uniform car in their driveway. Also, uniform presence broadcasts to the neighbours that something is going on and may cause some embarrassment to the subject. So most often a softer approach with your initial approach, a plain-clothes officer is preferred when attempting to build that relationship.

MR. AVIS: Okay.

And again on timing, this is page 9 of your report, page 10 of the exhibit, second paragraph, somewhat related to this, you said: "Given police insufficient ability to determine an accurate background on DUNPHY from all other resources available, the more timely direct contact with DUNPHY occurred, the more timely and more detailed assessment as of his potential ... risk could be completed."

So that is still your opinion, that you felt in order to do it in a timely fashion that Constable Smyth (inaudible) –

SGT LENEHAN: Absolutely. The timely fashion was necessary given the nature of the tweet.

MR. AVIS: Okay.

I'm going to move on now to some other questions. I am leaving – in providing you with the additional information I did after the report, you would have learned, I guess, what I call some of the facts were variations. I'm going to leave that up to counsel to question you on, although I have a few other things to touch upon.

There's evidence came up after your report and I guess you've encountered it in the other reports. Constable Smyth was texting with a friend, Trevor, on the way to visit Mr. Dunphy.

UNIDENTIFIED MALE SPEAKER: The day before

MR. AVIS: I'm sorry, the day before. Yes, forgive me.

And he had indicated that he's looking into or going to see some lunatic who threatened the premier. Now, this was a personal conversation. Constable Smyth has indicated in his testimony, you know, that he does use the word and in fact uses the word to describe his counsel, but what do you think about, you know, the idea of the use of the word "lunatic" who threatened the premier?

SGT LENEHAN: It all depends on how the context is delivered with regards to it.

MR. AVIS: Okay.

What about the fact – okay, well, this is not a professional report. How would you feel if he used such a word in his professional capacity?

SGT LENEHAN: If he used that in a professional capacity, he would obviously had additional information to make that assessment.

MR. AVIS: Now, I'm not talking about the assessment; I'm talking about the language itself –

SGT LENEHAN: The language itself.

MR. AVIS: – the word itself.

SGT LENEHAN: I don't know if it's an appropriate term to be using in a police report.

MR. AVIS: Okay.

He also indicated, when being asked about getting together after he had been out to visit Mr. Dunphy, he said: If I have to arrest him, I'll be late. And one of the suggestions is he had a mindset to arrest him before he went out there. Do you have any comments on that?

SGT LENEHAN: No.

MR. AVIS: In terms of his decision making, and in terms of what may or may not have transpired when he met Mr. Dunphy, do you agree that in your profession and our business things can change quickly, as they did here, and that it is possible that – okay, the decision to arrest, is that something that you may at times have to make in the moment?

SGT LENEHAN: Yes, you would have to evaluate the situation and evidence in front of you. And in a fluid situation, yes, that can happen.

MR. AVIS: Okay.

I'd like to talk to you about notes. Constable Smyth did not have his notebook with him. He didn't take – record his conversations with Dick and Debbie Dunphy, did not recall some of his other information. Do you have any comment about the fact that he didn't have his notebook with him and he did not take notes?

SGT LENEHAN: Yes, the notes he should have had with him. When determining your risk assessment, all the small details are extremely important to document, especially if you're going to move on to the next step in providing a threat assessment. All these small little details may at the time not seem important to document, but over time can really define certain behaviours. So it is crucial at every step of the risk assessment that proper notes are taken, so ...

MR. AVIS: So I think you agree with what everybody else has said.

SGT LENEHAN: Yeah.

MR. AVIS: Another issue arose that, you know, he was on the road doing his checks rather than back at the unit. What do you have to say about that? You know, his CPIC checks and that, they were done on the road when he had already left.

SGT LENEHAN: I don't have an issue as long as they're done before. This may be something he's accustomed to through years on the road. I don't have an issue with that. Obviously, if something came up that would change his approach, hopefully he would do that.

MR. AVIS: Okay, I have one small area to finish and that's just general regarding our Protective Services Unit, policy and previous and current set-up. I did provide you earlier with the Protective Services Unit policy that was in existence at the time, P-0031. You did have an opportunity to review that. Do you have any comments upon that particular policy and procedure that you found there?

SGT LENEHAN: No, I don't.

MR. AVIS: I was struggling to find it last night and, of course, Ms. Blackmore found it for me this morning, the new policy, P-0032 which was only sent to you just before you testified. Did you have any opportunity to have a look at that?

SGT LENEHAN: I have not.

MR. AVIS: Okay. Let's see – I'll just through some questions here. They don't pertain particularly to the policy.

The issues that have arisen are these: Originally – or the Protective Services Unit was in Confederation Building, pretty much on the same floor as the premier's office. Just your views on, I guess we'll call, where the unit should be located, in house or in its own facility?

SGT LENEHAN: There's advantages to both. Being within close proximity if anything were to occur, they're quick to respond. The other advantage of being housed in a separate building, especially back at police headquarters, they have access to all of the other special units to provide support in particular cases, like this one, where intelligence gathering can be conducted, close ties with the criminal investigators, may or may not assist. So there's advantages to both.

MR. AVIS: Another issue that comes up is, for example, in the protective detail the premier – they have different views of how they like that done. They seem to want it to be, you know, not too apparent for media reasons. What's your view on who should get to decide what the protective detail is and how many officers are there?

SGT LENEHAN: I think it should be left up to the experts in the protection field to evaluate the situation. There may be differing threats for differing situations. So the judgement call should come from the ops manager who's in charge of that unit to make that call.

MR. AVIS: Similarly, there appears to be – I don't know if it's political reasons, whatever – that even when, shall we say, tweets of concern or information of concern is evaluated that the Members of our House of Assembly are reluctant to have charges laid. They'd rather have the situation resolved. What is your view on that?

SGT LENEHAN: Well, I believe that the investigating officers who are gathering the evidence, if they have enough evidence to lay the charge, the discretion should be held at their level.

I know that in many cases we do discuss whether or not the charges will be supported by the complainant victim, and those have to be taken into account, but, ultimately, should lie with the police, potentially consultation with the Crown.

MR. AVIS: Another issue that arose is the – in the Dunphy situation, I'll call it the informality of the complaint. It's now suggested that whether it can be done in the moment, a formal

complaint will – written complaint will be taken at the appropriate time. Obviously, if something comes in there may not be time for that. What is your view about the necessity of a more formal complaint system?

SGT LENEHAN: Well, a more complaint system is ideal for a multitude of reasons. It's easy to track your incidents and provide stats through the compilation of that, but also ensuring that the unit obtains all the pertinent information that it needs to action their response, to also evaluate whether or not this actually should be done by them or should be forwarded off to a criminal investigative unit of sorts.

So a formalized intake process is a great idea. I know we have explored different options since our commencement in 2009, and there's a lot of value in making sure that there is a detailed process there in place.

MR. AVIS: Okay.

One last question; it's – you know, there were concerns expressed over the fact that where Constable Smyth was working, I guess, almost on a daily basis, hand in hand with the premier's office, that things were perhaps a little too cozy. And an issue arose where, I believe, if I have the information correct, Donna Ivey, who's the woman who sent the tweet, at one point, or somebody in the premier's office, just after the incident asked him, for example: Does Donald Dunphy have a criminal record?

What are your views on the appropriateness of that? And can you tell us anything in general about the kinds of relationships that develop when you're in a protective detail and protecting the same people day in and day out.

SGT LENEHAN: Well, obviously, there is – a relationship is built through trust and so on. There's good and bad. Obviously, there's always the optics of how the public will perceive a good relationship at times, but I would hope that all folks involved, including the people who are being protected and the officers, that they try their best to keep that professional.

With regards to the sharing of information, there's certain information that should be shared if it involves a risk towards victims that would, you know, have bearing on how they act, so that they can get the buy-in from the protectee that they need to do a certain thing at a certain time. Otherwise, if it hasn't, it doesn't pertain to safety or so on, especially when it comes to CPIC, that is confidential information and should be retained by the police.

MR. AVIS: Thank you very much, Sergeant Lenehan.

Those are all my questions.

THE COMMISSIONER: Who is volunteering to go next or does our default kick in?

MR. AVIS: I think we're good.

MR. SIMMONDS: I guess (inaudible).

UNIDENTIFIED MALE SPEAKER: Do you want to go later?

MR. SIMMONDS: Yeah.

UNIDENTIFIED MALE SPEAKER: I don't have any questions.

MR. SIMMONDS: (Inaudible.)

THE COMMISSIONER: Sure.

MR. SIMMONDS: Mr. Commission, is it acceptable if I stay seated?

THE COMMISSIONER: I can't hear you.

MR. SIMMONDS: Is it acceptable if I stay seated?

THE COMMISSIONER: Sure, yeah.

MR. SIMMONDS: Thank you.

Good morning, Sergeant Lenehan.

Bob Simmonds here and I'm counsel for Meghan Dunphy and the Dunphy family.

How do you do today, Sir?

SGT LENEHAN: I'm good.

How are you, Sir?

MR. SIMMONDS: Not too bad.

I've read your report and I've listened intently to your testimony. If I understand it, one of the lines, one of the pieces of information you passed along to us this morning was you do your research, you try and determine past behavior because that's the best indicator of the future. I think that's pretty close to the phrase you used.

SGT LENEHAN: Yes.

MR. SIMMONDS: Okay.

And I think you followed that by saying all else fails, then we do a personal interview. Is that correct?

SGT LENEHAN: Yes.

MR. SIMMONDS: Okay.

In this case, and from your report, the first thing that has to be done is a risk assessment and that's the process where the investigator conducts and determines all the factors to see if indeed there is the necessity to do a threat assessment which is something specific, both to the person making it and to the person to receive the threat.

SGT LENEHAN: That is correct.

MR. SIMMONDS: Would you agree that in conducting the initial risk assessment that you would want to gather as much information as possible, that's reasonably possible?

SGT LENEHAN: That is correct. As you can, yes. If it's available to you, yes.

MR. SIMMONDS: And you've indicated here that the evidence is that Officer Smyth did a number of CPIC checks which can be done through PROS and the other systems that the police officers or the police forces have. But the issue we have, or the concern that was voiced, is that he had already made up his mind at that point in time that he was going to do a home visit. These checks were done on the way to doing the home visit. That, I take it, is not ideally the way this should be done.

SGT LENEHAN: I guess that would have to come from the officer. The only thing I can speak to is if maybe he did look at all the police reports on his home system and through the Police Information Portal where he would be exposed with the same name and date of birth and finding nothing, it would probably be easy to say that there wouldn't really be much on CPIC either.

MR. SIMMONDS: Well, he didn't check those until he was at least halfway to Mitchells Brook. So the point was made by the other people we've heard from, the other experts, is that, you know, this shows that he had likely made his mind up that he was going to conduct a home visit without having this information first. And I take it from what you're saying that you gather as much information as possible.

SGT LENEHAN: That's correct.

MR. SIMMONDS: Okay.

On his – he did know, from talking to Constable Cox at the RCMP detachment, which is the closest one to where this took place, that there had been an uttering threats charge that was dealt with via a peace bond. Would it not be incumbent upon him at that point in time to attempt to get a bit more information about the uttering threats charge, because at least that does give an indication of potential violence?

SGT LENEHAN: Yes, that makes sense.

MR. SIMMONDS: I think you indicated that you felt he called Mr. Dunphy before he went to his home. Unless I'm missing it, that is not the evidence. He went to the home first and then nobody was home. Then he went out and tried to call him and then he went to the next door neighbours, but he initiated a home contact without any telephone call whatsoever. Were you aware of that?

SGT LENEHAN: Okay, I thought that he called before attending.

MR. SIMMONDS: No, he did not. No, he did not.

You indicate that the interview, for a number of reasons, can be a very useful tool. You get to see if the person is rational, you get to make an assessment of their demeanor, and if the personal interview is done at their home, you also can look and see the condition of the home and any artifacts or items that might be in the home that may give you, as a keen investigator, some lead with respect to the person's personality, correct?

SGT LENEHAN: That is correct, yeah.

MR. SIMMONDS: But you would agree that attending an interview with insufficient evidence can indeed be a dangerous process. Would you agree, Officer – Sergeant Lenehan? That attending the home with insufficient information could indeed be a dangerous process.

SGT LENEHAN: It could be, yes.

MR. SIMMONDS: Sergeant Lenehan, in your experience, and you certainly have very vast experience, from what we've seen in your CV, why would the – why would Officer Smyth have not attempted to conduct an interview at the nearby police detachment? I take your points with respect to some of the things you can determine from looking at the house, but you don't need to necessarily go into the house, you could get some assessment.

And then why wouldn't you take the alternative first off, if you don't have enough information, of doing the interview at the – contacting him and having him come to the police detachment? It appears from our evidence that he was always very receptive to the police. Is there any issue there that we're missing?

SGT LENEHAN: No, it really comes down to the officer's choice and what sort of strategy he wants to employ.

MR. SIMMONDS: Okay.

SGT LENEHAN: And being mindful of not trying to offend or make somebody think they are in trouble.

MR. SIMMONDS: Yep.

SGT LENEHAN: So it really comes down to a judgement call and the officer has to take everything into account. And it's their determination.

MR. SIMMONDS: Okay, that's fair.

There's been – this has been raised a number of times, and I do take the point, we've heard from a number of previous witnesses that police officers don't – when they work shifts and police work doesn't recognize holidays, things have to be done sometimes on holidays. But in a situation of this type, where the threat or the tweets were to be, they were classified as tweets of concern, that there certainly wasn't any direct threat to any particular individual, and outside of the checks, Officer Smyth did not have a significant body of information.

Can you comment as to why it would have to do it on a weekend, have to do it on a Sunday, but particularly Easter Sunday, which is a religious holiday, celebrated by many here in Newfoundland, and really at a dinnertime when it would be the most inconvenient time for someone to come to your house if you're having a get-together with your family. I realize those issues can fade to the side, but would that not be something you want to make a judgment call on?

SGT LENEHAN: Well, I think it is a judgment call by the officer. You know, if they attended and they saw, you know, a family gathering, maybe they would have come back at a different time.

MR. SIMMONDS: Uh-huh. Okay.

SGT LENEHAN: I think that on a holiday it is highly likely the person is home.

MR. SIMMONDS: I understand.

SGT LENEHAN: And I think when you're talking about trying to assess risk and the nature of the tweet, that the quicker he could assess what really this person posed, Mr. Dunphy to the people who were –

MR. SIMMONDS: But –

SGT LENEHAN: – names were on the tweet that –

MR. SIMMONDS: Would you agree – I’m sorry, would you agree –

SGT LENEHAN: – it would be prudent. So I think doing it in a timely fashion –

MR. SIMMONDS: Yeah.

SGT LENEHAN: – would be prudent (inaudible).

MR. SIMMONDS: Understand, agree, but would you agree that there’s nothing of major ‘urgency’ that this had to be – from those tweets and from the information he had gathered, there’s nothing of major ‘urgency’ – urgency that required it be done at lunchtime on Easter Sunday – at dinnertime on Easter Sunday.

MR. KENNEDY: I don’t think the evidence discloses it’s dinnertime on Easter Sunday, Commissioner.

MR. SIMMONDS: 2 o’clock.

MR. KENNEDY: Mr. Simmonds has said it a number of times now. It’s 2 o’clock in the day so –

MR. SIMMONDS: Yeah.

THE COMMISSIONER: Yeah, that’s fair enough. It’s a bit after –

MR. SIMMONDS: Bit after dinner.

THE COMMISSIONER: – after lunch. You call it –

MR. SIMMONDS: After lunch. Okay.

THE COMMISSIONER: We call it dinner in Newfoundland; they call it lunch elsewhere probably.

MR. SIMMONDS: But would –

THE COMMISSIONER: And he had been out for brunch so ...

MR. SIMMONDS: Would you agree, Officer Lenehan, that from the facts that you’ve been given, there’s nothing to show a major urgency of 24 hours either way?

SGT LENEHAN: I don’t see it there but I guess if you’re taking it from the victim’s perspective and there’s mention of family within the context of the tweet.

MR. SIMMONDS: I understand.

SGT LENEHAN: If you’re the person on the receiving end of the tweet and the name family is mentioned, that might bring –

MR. SIMMONDS: Uh-huh.

SGT LENEHAN: – another sense of urgency to determining what that tweet meant.

MR. SIMMONDS: Fair enough.

SGT LENEHAN: So I still am of the opinion that the quicker Mr. Smyth dealt with the issue, would be confident in determining actual risk towards the victims.

MR. SIMMONDS: And in dealing with the issue in a manner in a – in a prudent time-frame manner, you've already told us that you would want to gather as much information. So we've gone through that, but would you also agree that, you know, the reason not to take – and you've stated it very clearly in your report – the reason not to take a second officer is the fact that a patrol car at the house may cause embarrassment and that.

Would your evidence be modified if the present deputy chief of police, who's from that very area, says the vehicle that Constable Smyth was driving, a black four-door Yukon, would have been recognized at the head of the bay as a police car, so there was really no saving in that regard. That the vehicle he was driving would be recognized to residents of that community as a police vehicle. That would negate your issue with respect to the marked police car, would it not?

SGT LENEHAN: Yes, I guess if everybody knows that particular car –

MR. SIMMONDS: Yes, that was his evidence.

SGT LENEHAN: – it would, yeah. Yeah, that would make sense. Yes.

MR. SIMMONDS: That was his evidence.

SGT LENEHAN: Yeah.

MR. SIMMONDS: If indeed there was a risk issue for – you know, if you were doing a personal assessment for your concerns and, you know, you don't want to, although there's no indication that a uniformed officer would have set Mr. Dunphy off. We have no basis for that statement although it was made in the – by Officer Smyth. It could –

MR. KENNEDY: No, that's the paraphrasing of Constable Cox, what Constable Smyth said. Constable Cox made it clear during his testimony that he paraphrased what Constable Smyth said. And set him off was his term.

MR. SIMMONDS: Very close to what the officer conveyed in his communications. Is that acceptable?

THE COMMISSIONER: You put, you put – sorry, I didn't get your exact words. I was taking a note –

MR. SIMMONDS: The wording is – the position taken by the expert witness we're hearing from is that had a uniformed police officer gone it may cause an embarrassment. Also, I put to him that the position of Officer Smyth, when asked if he'd like to have a uniformed officer, Constable Cox come with him, he determined, no, I wouldn't because that might possibly set officer – or that might possibly set Mr. Dunphy off.

THE COMMISSIONER: Yeah, that is, that is the – I recall it is the paraphrasing –

MR. SIMMONDS: Of –

THE COMMISSIONER: – of Officer Cox.

MR. SIMMONDS: Cox.

THE COMMISSIONER: So it's –

MR. SIMMONDS: The –

THE COMMISSIONER: I think Constable Smyth's statement would be more along the lines of it would prevent the development of the necessary rapport, or I think as Sergeant Lenehan refers to as building a relationship.

SGT LENEHAN: That's correct.

MR. SIMMONDS: Sergeant, you've heard the comments of the Commissioner.

THE COMMISSIONER: Is that all right, Mr. Kennedy?

SGT LENEHAN: That is absolutely correct, Sir.

MR. SIMMONDS: Okay.

That issue would be greatly decreased if another plainclothes officer came with him. Correct?

SGT LENEHAN: Potentially, yes.

MR. SIMMONDS: Yeah.

And if indeed they were going – if he – if you want to be safe is there any reason why another car could not have come with him and not necessarily go to the house, but be in very close range as to provide a necessary backup should a situation arise where you need it?

SGT LENEHAN: Yes, that's another strategy that could be employed. Yes.

MR. SIMMONDS: Okay.

Sergeant, when he's walking in up the driveway and going into the house he sees a sign on the house right on the very corner in fairly large print, a roughly painted sign, indicating that no political figures are welcome. Would that not be another piece of information that you would want to register as hey, this might be a concern for a police officer?

SGT LENEHAN: It could be, yes.

MR. SIMMONDS: Would you agree that the condition of the house in conjunction with that sign would also possibly be another factor that the officer would want to take into account?

SGT LENEHAN: In his risk assessment? For sure, absolutely.

MR. SIMMONDS: Okay.

Now, if the goal is – and I certainly respect what you're saying, the goal is to get – try and determine past behaviour, get as much information as possible. It turned out that he went to the neighbours after he had tried Mr. Dunphy and he wasn't home, but going to the neighbours was indeed an appropriate move to gather information. Would you agree?

SGT LENEHAN: Without anybody there, yes.

MR. SIMMONDS: Yeah.

SGT LENEHAN: But also you expose yourself to the same type of situation where that might jeopardize your initial –

MR. SIMMONDS: I understand.

SGT LENEHAN: – relationship-building opportunity so ...

MR. SIMMONDS: But that is what he did. He went to the neighbours.

SGT LENEHAN: Yeah.

MR. SIMMONDS: When he interviewed the neighbours, however though, the information he got was ambiguous and to say and to be fair, 10-year old information. That obviously is not the kind of current info that – intelligence you would like. You'd want something more current than 10 years old, would you not?

SGT LENEHAN: That's correct. Like I stated before, any information that's typically on police information databases, we treat 10 years and older not –

MR. SIMMONDS: Yeah.

SGT LENEHAN: – we don't put a lot of weight on it.

MR. SIMMONDS: No, because the information from Dick and Debbie Dunphy, who lived next door, was they really had no contact with him for the past 10 years. So their information would be of limited value considering that it has that time frame on it.

SGT LENEHAN: Yes, I would agree.

THE COMMISSIONER: Sorry, Mr. Kennedy, Mr. Simmonds, just for the sake of scheduling, a rough idea?

MR. SIMMONDS: I have another 20 – I'm only joking, I have another few pages and I'll be finished.

THE COMMISSIONER: Okay.

Mr. Kennedy, you'll have some questions roughly? Sorry?

MR. KENNEDY: Yeah.

THE COMMISSIONER: Ten or 15 minutes. Okay, well in that case we probably should break. But I want to do a little bit of housekeeping or get you thinking about it before we break, if that's an appropriate place?

MR. SIMMONDS: Well, it is. Or if you want to give me another 10 minutes, I would probably be finished, your choice, Commissioner.

THE COMMISSIONER: Well, Mr. Kennedy will still have –

MR. SIMMONDS: Okay.

THE COMMISSIONER: – 10 or so and we all tend to underestimate how long we – so Sergeant Lenehan, we're going to take a break. We know we have you on the telephone; we don't want to keep you any longer than usual. But to be fair to everybody sitting around, we've got to let them up once in a while or they rebel.

SGT LENEHAN: No, that's not a problem. I totally understand.

THE COMMISSIONER: So we'll take a 15-minute break but not yet. Sergeant Lenehan is going to step down for 15 minutes. I just want to deal with a few points, one of which, by the way, is – and probably the first I'll mention is Debbie Dunphy. I wanted to get your input and you can think about it if you like and give it to me after we finish today.

But I have not – Ms. Dunphy has, it would seem, been evading the process server. I haven't – she returned the registered letter and we haven't had any success with getting her to the hearing. I believe that I have to protect the inquiry process for the next inquiry, not to give anybody the impression that they're able to walk away, just ignore the summons, although I think we may be able to deal with Ms. Dunphy – getting Ms. Dunphy's evidence in with – but counsel think about that, whether some or any of it can go in by consent for two – we have a statement to the RCMP and we have an interview with Commission counsel.

So consider whether the evidence should go in and give me your views on whether I should invoke the sanction process which, as I understand it under the act, would mean an application by the Commission to the court asking it pretty much to treat the contempt of the Commission as contempt of court. And I'd be inclined to seek some reasonable sanction. It's not the worst-case scenario but there should be some sanction there, probably in terms of a fine, in order to ensure that people who receive summonses under the Inquiries Act in other cases recognize there are consequences for refusal.

So that's one point. I don't know. If you have any comment you want to make now, feel free.

MS. O'BRIEN: Just to clarify, Commissioner, on the two statements that you refer to of Ms. Dunphy, the statement to the RCMP was entered as a confidential exhibit already.

THE COMMISSIONER: Right.

MS. O'BRIEN: So the issue before counsel is whether we should make that public and, as everyone is aware, the Commission counsel interview has not been entered, although counsel have received a redacted version.

THE COMMISSIONER: Right. Why did we enter it as a confidential exhibit? I've forgotten now.

MS. O'BRIEN: We did it at the time, on the day of, so it could be referred to during the evidence if needed –

THE COMMISSIONER: Right.

MS. O'BRIEN: – but because she was not there and it was not available for cross-examination on it, we kept it confidential. It was the – I think the agreement in the room is to how to move forward on that day.

THE COMMISSIONER: Right.

Mr. Kennedy?

MR. KENNEDY: Yes, Commissioner. It is my request that – whatever you do with Ms. Dunphy, that’s up to you – that her testimony under affirmation given before Commission counsel be entered into evidence. I don’t know if you need to go into any argument or any issue as to why that should be, but obviously the oath of affirmation is a significant –

THE COMMISSIONER: Yeah, only if there’s objection by counsel.

Mr. Simmonds, what’s your point on that?

MR. SIMMONDS: Must be the last day or something, but I agree with Mr. Kennedy for a change.

THE COMMISSIONER: I think that is, yeah, that is a new, noteworthy development.

MR. SIMMONDS: I do have the redacted copy. Ms. Breen spoke to our client last night. She’s not here today because they have an interview with Mr. Barry Fleming. That’s the only reason she’s not here to hear the end of the evidence, but she’s willing for the portion as redacted, 0804 I think you got it called?

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. SIMMONDS: The exhibit number. And the other exhibit which was –

THE COMMISSIONER: So that’s exhibit 0804?

MR. SIMMONDS: P-0804.

THE COMMISSIONER: P-0804 as redacted.

MR. SIMMONDS: And the same with respect to her confidential statement, which was 0099. That right?

MS. O’BRIEN: Yes, that – the confidential statement, now were looking at putting it in as P-0805, so it has been prepared as an exhibit, Commissioner, if you’re prepared to order those two in.

THE COMMISSIONER: 0805?

MS. O’BRIEN: Yes.

THE COMMISSIONER: Mr. Kennedy, you indicated you would agree with entering the interview with Commission counsel. Do you have any problem with the statement to the RCMP going in as well? Moving from a confidential to –

MR. KENNEDY: That’d be fair.

THE COMMISSIONER: – to private? Okay.

All right, so both of – sorry, I want to hear from other counsel. Anybody objecting, I guess is (inaudible).

MR. AVIS: No concerns. We’re fine with what’s happening. Thank you.

THE COMMISSIONER: Okay. Any –?

So no objection? Okay.

So with no objection, the two statements of the RCMP and the interview with Commission counsel are to be entered as private – or, sorry, as public exhibits.

MR. SIMMONDS: (Inaudible.)

THE COMMISSIONER: 0804, is it, and 0805? Is that what we're doing?

MS. O'BRIEN: That's right.

THE COMMISSIONER: Okay.

Now, what about sanctions? Do you have anything you –?

MR. SIMMONDS: I'm in the same position again, unbelievably, with Mr. Kennedy that I'm going to leave it totally in Your Honour – or in your, Mr. Commissioner's –

THE COMMISSIONER: Sorry?

MR. SIMMONDS: I'm going to leave it totally in your decision, Mr. Commissioner.

THE COMMISSIONER: All right.

Okay. Well, you know the way I'm thinking, but I'll probably take a little more time to think about it.

MR. AVIS: No concerns, Commissioner. We're certain she'll be dealt with very fairly.

THE COMMISSIONER: Okay.

Does counsel for the RCMP have any concerns or any ...?

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: No position to take on the – okay.

All right, well, I'll reserve decision on it, but I'll let everybody know in due course.

Okay, now – sorry, I've got a list here of things that I wanted to raise somewhere.

Just for the record, we have a letter from the Town of Mount Carmel-Mitchells Brook signed by the mayor of Mount Carmel, Mr. Sorensen, which I think he says had been sent to Mr. Flaherty on February 6, 2017, concerned about, I guess, some statements made by Constable Benoit on February 2 at the Commission related to Exhibit 0285, page 2. I'm not sure what that is but ...

And he's making some comments about the attitude of the community taking issue with, I guess, some of the statements that were made. But this is not evidence, so what I'm going to suggest is – and I just note it to let counsel see it. And I frankly don't know how we can deal with it other than acknowledge that it's been sent.

The next thing: Mr. Avis, there were some comments made with respect to one of the experts that the Commission called suggesting that certain terminology may lead to a certain attitude and it would be better avoided. And that the specific terms, there may be others, but that I recall, are the use of “perp” and the use of “bad guy” in scenarios. And it’s just recommended that they get away from that.

And in your case, you questioned whether – well, the language was there. Well, if you look at the REACT – I can’t say exhibit because at the request of the RNC we did not put it in as an exhibit. But if you look at the scenarios, there is considerable use of both of those terms. I think it would be easy to say they’re there a dozen times or so in the course of various scenarios.

So, again, a relatively minor point, but modifying attitude is not a minor point. Modifying attitude, if there’s an improper attitude and too much, shall we say, dehumanization of the target, is not – I think it’s important that we give and I give some thought to that in the course of my report. So I just mention that for the record –

MR. AVIS: Well, the fact –

THE COMMISSIONER: – that I think I was left with some question as to whether in fact the language was used by the RCMP in any sort of formal or official document.

MR. AVIS: Yes. The –

THE COMMISSIONER: It is used in the use-of-force manual.

MR. AVIS: Yeah.

I appreciate you bringing that to my attention, Commissioner. All I’d say is, as you may recall, I got the word that he was going to be cross-examined the next day. So I’m glad you brought the information to my attention and I’m sorry that I didn’t pick up on it, but I actually was trying to get ready to –

THE COMMISSIONER: Right.

MR. AVIS: – examine him in less than 24 hours or less than eight hours. But thank you for bringing that to my attention.

THE COMMISSIONER: Now, another more significant thing possibly is back in 2000 and – I had the date there the – oh, yeah, 2012, the Auditor General, in his annual report, looked at the Royal Newfoundland Constabulary Firearms Policy and identified certain deficiencies, as he saw it, and made certain recommendations as to how things could be improved.

And one of the – apart from keeping and making sure you got a proper inventory and proper controls of where firearms are stored and so forth, somewhere here there’s a reference to the Use of Force Reports and paying more attention to those. And there was a specific concern raised that the Use of Force Reports were not being reviewed, or at least not being reviewed in a timely fashion.

So I’m wondering if it might be possible, with the consent of counsel, to avoid any further – I don’t think we need to get into further testimony, but I’d like to know whether the recommendations of the Attorney General were implemented or whether there was any follow-up on this annual report and whether the RNC has taken steps to correct any deficiencies in practice that might be there, do you have – what I – how I think it might be dealt with would be by your just indicating by letter with the consent of counsel that –

MR. AVIS: Well, what I would do, Commissioner, if –

THE COMMISSIONER: (Inaudible.)

MR. AVIS: – there is evidence on this point, though not specifically related to the Auditor General’s –

THE COMMISSIONER: Yeah, but it didn’t seem to note that there were deficiencies, if I recall – now maybe, I’ll have to go back and look at the transcript, but my recollection is that there was no concession that there were improvements that there could obviously be made, you know, and Commission counsel have referred directly to the Use of Force Reports and –

MR. AVIS: (Inaudible.)

THE COMMISSIONER: Sorry, go ahead.

MR. AVIS: There was evidence about how the forms are in the progress of changing and that they have addressed, you know (inaudible) –

THE COMMISSIONER: Oh yeah, sorry, I remember that.

MR. AVIS: But this is, forgive me, in argument, you’ve asked the questions, the first time brought to my attention, will a letter from the chief suffice –

THE COMMISSIONER: Yes, and if I’m wrong and if it has been dealt with in the evidence, let me know, but –

MR. AVIS: Well, that is to be dealt with, I think, in argument –

THE COMMISSIONER: Yeah.

MR. AVIS: – but this is new information. If it’s fine with everybody else, I’ll address this matter with the chief and if a letter will suffice, good enough.

THE COMMISSIONER: Does other counsel have any problems with our proceeding in that fashion – yes, sorry, Ms. O’Brien, I was looking for the page where we have that reference?

MS. O’BRIEN: Thank you.

So it’s on page 29, Commissioner, and an excerpt from the Auditor General’s 2012 report, I’d ask that it now be entered in evidence, Commissioner, as P-0809?

THE COMMISSIONER: Yeah, I have it there as an exhibit now, 0809, was what –

MS. O’BRIEN: Yes, I just had not yet asked for the order, so if I could ask?

THE COMMISSIONER: You what?

MS. O’BRIEN: I had not yet asked for the order.

THE COMMISSIONER: Okay. I will just first, before I do that, I’ll ask counsel is there any problem with that – Mr. Kennedy, do you have any problem?

MR. KENNEDY: No, I don’t.

THE COMMISSIONER: No? Okay. Anybody have any problem with – okay, so I think you can probably – we’ll have the exhibit entered as Exhibit P-0809 and –

MS. O’BRIEN: In particular on page 29, Commissioner –

THE COMMISSIONER: – down at the bottom (inaudible) –

MS. O’BRIEN: No, green number at the top of your exhibit,

THE COMMISSIONER: I have that, yes; that’s what I’m looking at and I’m saying –

MS. O’BRIEN: Okay, so Madam Clerk has just brought it up on the screen and –

THE COMMISSIONER: Is it those recommendations at the bottom?

MS. O’BRIEN: Yes, these Lack of evidence indicating Board review, the two paragraphs there, and I’ll just read the second one: “Given that some of the use of force reports could not be provided and the lack of review of the available reports, the RNC could not demonstrate that the use of force reports were being reviewed by the Firearms and Use of Force Instructors, on behalf of the Board. As a result, the RNC may be missing opportunities to identify inappropriate uses of force.”

So this was a document done in 2012 and in the course of our examining the RNC witnesses –

THE COMMISSIONER: Right.

MS. O’BRIEN: – the existence of this, the Auditor General’s recommendations and report in 2012 had not come to light. So I think the request would be that if the RNC could provide the Commission with some follow-up in how they dealt with this report in 2012.

THE COMMISSIONER: Yeah, what was striking to me, Mr. Avis, is that there was a note there that there were only 552 out of approximately 1,034 that could be supplied to the Auditor General. And of the 552, there was no evidence that they had been reviewed, or no evidence that the instructors had reviewed any of the reports.

MR. AVIS: Well, Commissioner, I will say this, you know, I appreciate this coming up, but I’ve only just heard it and again this is a matter of argument. As I recall through Inspector Sheppard and/or Deputy Chief Singleton, the forms that we were using and had referred to –

THE COMMISSIONER: They have changed some, yeah –

MR. AVIS: – they were already out of date. So I just made that comment, no problem here. Let me take this to the chief. I believe it’s been addressed. Again, I’ll have to look at that as well, but we’re certainly going to address it in the manner you’ve requested, regardless.

THE COMMISSIONER: Okay. Thank you.

MR. AVIS: Sandy – sorry.

THE COMMISSIONER: All right. Sorry. Let me see now if I have anything else. I think I’m just about finished my list here.

MS. O’BRIEN: There are a few more miscellaneous exhibits, Commissioner, if you wanted to take care of those now.

THE COMMISSIONER: Go ahead.

MS. O'BRIEN: Thank you.

We have these – we've circulated our request to counsel in advance and we haven't heard back that there's any objections to any of these being entered. So what I'd seek to have entered now is P-0799. That was the written synopsis by Corporal Kent Luther about the retrieval of data from the telephone.

MR. KENNEDY: So if you could bring that up, Ms. O'Brien.

MS. O'BRIEN: P-0799. And we had requested counsel that –

MR. KENNEDY: This may not be the one. There was one synopsis that I didn't – I couldn't remember.

MS. O'BRIEN: Okay. So this is one prepared –

MR. KENNEDY: It's not this one.

MS. O'BRIEN: – by Corporal Kent Luther and it details his efforts to get data from Constable Smyth's phone. So if there is no objections to that, Commissioner, I'd seek to have that entered.

THE COMMISSIONER: No objection? Okay, so ordered.

MS. O'BRIEN: The next one is P-0800 and it's in a similar vein. It is the Forensic Data Analysis report prepared by Kevin Ripa who was an expert retained by the Commissioner to take a look at the data extraction from the phone and this is his report. And if there's no objections, I'd seek to have that entered as P-0800.

THE COMMISSIONER: No problem?

Okay, so ordered.

MS. O'BRIEN: Thank you.

The next is a document – it's an RCMP document, it's the Exhibit Continuity Report. Counsel for Meghan Dunphy has asked that it be entered. It was one provided to us by the RCMP. And if there's no objections, we'd ask to have that entered as P-0802.

THE COMMISSIONER: Mr. Kennedy, do you have ...?

MR. KENNEDY: (Inaudible.)

MS. O'BRIEN: We can bring it up, P-0802. It's an Exhibit Continuity Report just from the PROS system.

THE COMMISSIONER: Hmm?

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: That's all right?

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Okay, enter that.

MS. O'BRIEN: The next one is actually an email between counsel for the RCMP, Lori Rasmussen, and Ms. Chaytor and me. It's P-0803 and it is simply an email confirming the measurements of the stick.

The stick was not entered into evidence but it was displayed here in the hearing room. And an officer from the RCMP measured it for us and we'd just like to have those measurements go in.

THE COMMISSIONER: All right.

MS. O'BRIEN: So P-0803.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

And the final exhibit; Commissioner, there has been some discussion in the hearing room of the scene video that was taken by Corporal Lee on April 5 and April 6 of the house. We entered all the scene photographs. We did not – had not entered the scene video.

There's a request now to have that scene video entered. It would be entered as a confidential exhibit C-0021.

THE COMMISSIONER: Exhibit C-0021?

MS. O'BRIEN: Yes.

THE COMMISSIONER: The scene video, okay.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MS. O'BRIEN: I entered 0805, that was – we already did that this morning, Mr. –

THE COMMISSIONER: All right.

So the last point I want to raise with counsel is with respect to closing submissions, final submissions. I believe we discussed earlier having them in writing and I think I suggested March 31 – or 30 days, 31 days in March, I think, whatever.

MS. O'BRIEN: Yes, 31 days.

THE COMMISSIONER: End of March. The – if you need some slightly more time, you know, it might be – the other – I think someone wanted to know whether Commission counsel would be supplying submissions or making submissions.

Subject to what you have to say, I don't think it's appropriate. It's pretty difficult to make submissions without taking a position and Commission counsel should remain neutral on the conclusions to be drawn from the evidence that's brought in. In some cases, they actually split up counsel. They have an – they call it an advocacy counsel who would make submissions and would not have been involved in the obtaining of the evidence. In our case, we – for cost reasons and because I didn't really see that it was necessary, really, we decided just to go with the administrative counsel, as it were. So there'll be no submissions by counsel, other than what

might be suggested in terms of – so far, in terms of the inferences that might be drawn and so forth.

The – yeah, deadline. That’s the – Mr. Avis?

MR. AVIS: One please, Sir, that’s why I went to get my calendar. The 31st is a Friday. And considering what we have to do with our practices, that extra weekend could mean a great deal to us. That’s – if you know what I mean.

THE COMMISSIONER: Oh, yes, okay.

MR. AVIS: The 1st or the 3rd of April is the Monday. Like I say, those few extra days, you know, would make a big difference. I know they would make a big difference for me, if that’s possible.

THE COMMISSIONER: Right.

Mr. Kennedy, do you have suggestions?

MR. KENNEDY: The 31st is fine. I was going to say the 31st or April 1 (inaudible).

THE COMMISSIONER: Right, yeah.

MR. KENNEDY: I really think the one thing I would like, though, is that we finish this – that the date we set – having regard to your task, that we not go into the middle of April or anything like that. Like, March 31 or a couple of days later, but I would prefer not to go beyond that.

THE COMMISSIONER: Yeah, well, I don’t particularly want to get put behind the eight ball and not having enough time, but, you know, a few days here and there I can live with.

Mr. Simmonds, do you –?

MR. SIMMONDS: The April 3, if that’s what Mr. Avis wants –

THE COMMISSIONER: Yeah, that’ll be – that’s fine.

MR. SIMMONDS: –that’s fine. Five o’clock on April 3, something like that.

THE COMMISSIONER: Other counsel have any problems? The 3rd is a Monday, is it?

UNKNOWN SPEAKER: Yes, yeah.

THE COMMISSIONER: Well, yeah, we can say by the end of business on April 3, I guess.

MS. RASMUSSEN: The date is fine with us.

We would have some questions about any parameters to be put on the submissions, like, will there be a page limit? Will you be expecting each reference to evidence to be footnoted and cited to the evidence? And when will the last transcripts be available?

THE COMMISSIONER: The House of Assembly is in session, so we have lost some priority. And that was the understanding when we made the arrangement to, well, make our technology available to the House of Assembly, and utilize House of Assembly personnel. And it’s worked

very well, and I want to thank – before I forget, I want to thank the webcast technicians who are behind the curtains there: Darren Churchill; Cathy Simms has been there; and Kevin McGrath.

And I also should note right now the Commissionaires who have been providing security, Byron Mercer and Rick Matthews and for a time Debbie Rose; and, of course, our cleaner who has kept us all in shape, Sheila Reid. So I want to thank all of these individuals. I didn't want to leave it to the end because I'd probably go off and forget it.

But getting to your – the ideal would be to have proper references to, you know, the pages of the transcript. You have quite a lot of the transcript already, I understand. I don't know how far we are behind. I know Mr. Foran will probably get that information for us and he can probably – when I come back I'll have more evidence on that or I'll know more information on that.

MR. KENNEDY: Mr. Commissioner, can I make one suggestion again today? When we're referring to the page numbers for your assistance, if we refer – if some people refer to the bottom of the page, like the page 8 in black, the page 9, you're going to be going around in circles, Sir. So perhaps if we use the green – everyone refer to the green at the top of the exhibit that might be –

THE COMMISSIONER: That's the safest thing to do, I think. Yeah. That will be fine.

So we'll break now, take our 15-minute break, and I'll try and have more information in terms of the receipt of the transcripts when I get back.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: I declare this Commission of Inquiry now in session.

Please be seated.

THE COMMISSIONER: Now, Ms. Rasmussen, to your question about the – in terms of page limits, I don't think we need to get into that, just be reasonable; and again, footnoting, I'm not too concerned about. We'll be getting it in draft – in electronic versions, I assume, so I can do some cut and pasting when I need to.

But the last date for transcripts is pushing up against the final date that we set for deadline. The last transcripts the House of Assembly are proposing would be in around March 29. Up to now, they've been complying with the arrangement we had, which was when the House was sitting, we would go with a week delay. So should we add a few more days to the ...?

MR. KENNEDY: Could we (inaudible) –

THE COMMISSIONER: Sorry?

MR. KENNEDY: I can't remember the list of witnesses but, from my perspective, Dr. Hart, Dr. Coleman and Sergeant Massine would be transcripts that would be more important to get than some of the other witnesses that have testified.

THE COMMISSIONER: Well, that's a good point to get –

MR. AVIS: I think that's a good idea. It was the first thought, you know, when are we getting those out – I agree with Mr. Kennedy (inaudible) –

MR. KENNEDY: Do we have a list of the witnesses?

THE COMMISSIONER: Well, it seems to me that you're probably going to be able to get a good start on it, but I agree with you that the reports you're pointing to and how we may prioritize some of them, so I'll consult with Mr. Foran on that but can we ...?

MR. KENNEDY: Like, for example, Mark Oram spent two hours on the stand, you know, that's not something – that could be pushed – that's just one that comes to my mind.

THE COMMISSIONER: Right, there's a number like that I can think of. Mr. Avis?

MR. AVIS: I was just going to say, I think the expert reports and I would also like to include the testimony of Sergeant Lenehan if there's going to be a priority –

THE COMMISSIONER: Right.

MR. AVIS: – because I think they form the focus of a lot of our concerns as well as Mr. Kennedy's.

THE COMMISSIONER: Yeah, basically I'll probably look at it in terms of dropping down the list rather than trying to pick the ones that should be brought up. But in any event, I will look at that, but I go back to – are you going to need a bit more time? If we don't get the last of them until March 29, it seems to me you might need – it might be until the following week, you know, rather than the third. Maybe the end of that week would be the seventh, is it, Mr. Kennedy?

Now, I mean, I'm going to be working ahead of time on certain obvious assumptions regarding submissions; I'm not going to be waiting until all your submissions are in before I start my work, but I'm not going to be drawing any conclusions, I'm keeping an open mind on all the issues until I've gotten your submissions, so

MR. KENNEDY: I'm still fine with April. I'm personally fine with April (inaudible) March or April.

THE COMMISSIONER: Right. Okay, any other counsel? Mr. Simmonds, you seem to have the next large submission probably but ...

MR. SIMMONDS: We would. I mean, there's no harm in getting them in earlier if you have it done, but I would feel more comfortable, particularly in light of getting the transcripts because they are important. Would the 7th be a date we could live with?

THE COMMISSIONER: Sorry?

MR. SIMMONDS: Would the 7th of April be a date we could live with, 5 o'clock on that date which is a Friday?

THE COMMISSIONER: I think. I don't think it's going to make much difference in terms of my completion date.

MR. SIMMONDS: Because you're – did you not say you're going to lose two or three weeks because of printing or something?

THE COMMISSIONER: I may – it may be only two weeks but I’ve got to estimate around two weeks, you know, for –

MR. SIMMONDS: But if we could have the 7th that would be good from our position.

THE COMMISSIONER: Yeah, well you don’t have to wait until the 7th, let’s put it that way, but that would be a reasonable drop-dead sort of deadline.

All right, well, we’ll set the deadline for April. What day is the 7th? Is that –

UNIDENTIFIED MALE SPEAKER: Friday.

THE COMMISSIONER: – Friday? Okay, we’ll set it for the end of business on the 7th.

That’s all I think. We’re – one, two – there’s only seven or eight days, you know, that we don’t have the – that we don’t have the transcripts for, so it shouldn’t hold you back. But I will – remind me, Counsel, to look at, when I go back, the priority that we should be looking at getting them transcribed.

Okay, Sergeant Lenehan, are you still there after all that? Can you hear me, Sergeant Lenehan?

SGT LENEHAN: I can, Sir.

THE COMMISSIONER: Okay. Thank you.

Leo Barry, the Commissioner. We’re about to complete your examination and we appreciate your patience in waiting.

And before we finish, by the way, I want to compliment you on the episodes of heroism you’ve got in your career and something you should be proud of.

SGT LENEHAN: Thank you very much, Sir.

THE COMMISSIONER: Go ahead when you’re ready. Who’s –

MR. SIMMONDS: I’m just finishing now.

THE COMMISSIONER: Mr. Simmonds?

MR. SIMMONDS: Sergeant, it’s Bob Simmonds again and I’m very close to finishing my questions. When we had left off I had asked you the sign on the house, and you acknowledged that that could be a piece of information, that it also be a warning to you as part of your risk assessment.

SGT LENEHAN: I don’t want to get confused with regards to risk assessment. That would – you say a warning to me. That’s definitely something that you would take into account –

MR. SIMMONDS: Okay, poor choice of words.

SGT LENEHAN: – for your risk assessment.

MR. SIMMONDS: Yeah. Thank you.

SGT LENEHAN: Are you getting mixed up with regards to a personal risk assessment for the officer if he saw that?

MR. SIMMONDS: No, if you went up the driveway – yes, well, a personal risk assessment to the officer, but generally a risk assessment to, which goes to your threat assessment, would the sign not be something you would factor in?

SGT LENEHAN: Yes, I think it would factor into both accounts, yes.

MR. SIMMONDS: And I would say the same thing with respect to the fact that there were closed-circuit TV cameras outside the house?

SGT LENEHAN: Correct.

MR. SIMMONDS: You– I think your phrase was, correct me if I'm wrong, you would want to constantly be aware of the situation. I took that to mean that – I think Mr. Avis used the word fluid – it's a dynamic situation that's subject to change when you're doing this and you have to be aware of each thing that comes up and factor it in.

SGT LENEHAN: Correct.

MR. SIMMONDS: Okay.

Would you not agree that, and you have said this, that certainly your goal is to get as much information as reasonably possible in an appropriate time frame to assist you when you're doing your assessments?

SGT LENEHAN: That is correct.

MR. SIMMONDS: When Officer Smyth attended next door and spoke with the neighbors, as we know the information was 10 years old and you've indicated that you would want something more current, two things arose: one, they could not give him a definitive, and there's mixed evidence with respect to this, but there wasn't a definitive answer or we've got different answers to the question as to whether or not Don Dunphy had a firearm. That would be a relevant piece of information you would want to know, correct?

SGT LENEHAN: Yes. The information I had that they said he didn't have firearms, and I based my opinion on it, that he's not a hunter –

MR. SIMMONDS: Right. They did say not a hunter, but I believe in Richard Dunphy's evidence he indicated that he thought he told them he didn't have one, but wasn't sure.

SGT LENEHAN: Okay.

MR. SIMMONDS: They also told him in that situation that Don Dunphy had a daughter who he had regular contact with. That daughter lived – actually, Officer Smyth passed her house in driving to the community, probably 20 minutes' drive away.

In an attempt to be aware of the constantly changing situation and get as much information as possible, would it not been appropriate to maybe meet with the daughter or speak with the daughter first?

SGT LENEHAN: Well, again, I think if comes back to that strategy of, you know, are we going to affect that initial contact –

MR. SIMMONDS: Sure.

SGT LENEHAN: – at this point? You may offend the person you are trying to talk to.

MR. SIMMONDS: Yup.

SGT LENEHAN: You know, just like bring the police car, marked police car there or even talking to the neighbors before you've actually –

MR. SIMMONDS: Sure.

SGT LENEHAN: – talked to the person themselves. So I think that is a judgment call –

MR. SIMMONDS: Yup.

SGT LENEHAN: – for the officer to make. I don't think there's any right or wrong one to it.

MR. SIMMONDS: But would you agree that –?

SGT LENEHAN: The intent here is to build that relationship; I would say it would definitely be prudent afterward to speak to them in detail, for sure.

MR. SIMMONDS: Well, where your information was as scanty as what Officer Smyth had and the information from the neighbour was 10 years old, would it not be certainly up for consideration that you speak to the daughter who could give you current information, could likely provide some insight into the tweets and could advise as to her father's demeanour in general?

SGT LENEHAN: Yes, I suppose that could be consideration for sure.

MR. SIMMONDS: Lastly, and this was a point that I believe Mr. Avis touched on towards the very end, we have from the previous day two messages, BBMs, that Officer Smyth sent to his friend when they were planning an event that evening or a get-together that evening. In those communications, one phrase he used, when asked where he was going, was: I got to deal with some lunatic threatening the premier. And then when the friend asked about what he was going to do when he met with the person, he said: If I have to arrest him, I will be late.

The other experts have indicated, and I put to you for your opinion: Does that language not give an indication of a mindset? Two concerns: number one, a mindset that doesn't seem appropriate for an assessment; and two, a mindset that shows that you've already got your mind made up what you are going to do?

SGT LENEHAN: Hmm. That then all depends on the context of what he was delivered. I don't know if the language is appropriate to use, like I said before, in a policing report, and – I don't know the context in which it was delivered to the officer or, sorry, to the recipient that the officer did, so I don't know.

MR. SIMMONDS: But would you agree that if indeed that did reflect his mindset, that is a problem mindset for the job he was undertaking?

SGT LENEHAN: Can you please rephrase that, Sir?

MR. SIMMONDS: If indeed those comments did reflect his thinking, would you not agree that that's a concern for the kind of assessment he's supposedly undertaking?

SGT LENEHAN: Yes.

MR. SIMMONDS: Those are all the questions I have. Thank you very much for appearing on such short notice, Sergeant.

SGT LENEHAN: No problem.

THE COMMISSIONER: All right, go ahead, Mr. Kennedy.

MR. KENNEDY: Mr. Commissioner, my –

THE COMMISSIONER: Who is it? Do any other counsel have questions?

MR. KENNEDY: Good morning, Sergeant Lenehan.

My name is Jerome Kennedy and I'm the counsel for Constable Joe Smyth here at the inquiry. I do have some questions for you, Sir.

How many members work in your JOPIS unit, the Justice Officials Protection unit, I think?

SGT LENEHAN: Yes.

MR. KENNEDY: How many officers in total work there, Sir?

SGT LENEHAN: There are 12 officers as investigators and then there's two sergeants and one section manager.

MR. KENNEDY: And, Sir, in terms, then – there's a Dignitary Protection unit also, is there?

SGT LENEHAN: There is a Dignitary Protection unit, yes.

MR. KENNEDY: And how many officers would work in that? Do you know that?

SGT LENEHAN: I don't have the exact number in front of me, Sir, but I believe they're between 30 and 35 members.

MR. KENNEDY: Yeah. So JOPIS was formed in 2009. Is that correct?

SGT LENEHAN: That is correct.

MR. KENNEDY: The Dignitary Protection would have been around longer than that.

SGT LENEHAN: Long term, yes.

MR. KENNEDY: Yeah.

So the issue of doing risk assessments and threat assessments, even though JOPIS was only formed in 2009, is not something new to the OPP, is it?

SGT LENEHAN: No.

MR. KENNEDY: No.

You also have a – I think it's a Criminal Behaviour Analysis Unit.

SGT LENEHAN: That is correct.

MR. KENNEDY: How many officers would be in that unit, Sir?

SGT LENEHAN: I believe there's seven to 10.

MR. KENNEDY: And so their work would not be restricted to JOPIS, but would be to different aspects of the work that the OPP do. Is that correct?

SGT LENEHAN: That's correct. They're available to the criminal side. They're available to all the other resources within the OPP.

MR. KENNEDY: Okay.

SGT LENEHAN: They do just more than threat assessment, yes.

MR. KENNEDY: And how long have you been a police officer, Sergeant?

SGT LENEHAN: I'm in my 21st year.

MR. KENNEDY: And how long have you been involved in risk assessment, personal risk – we know you've been involved, I guess, in personal risk assessment since you've been a police officer?

SGT LENEHAN: Correct.

MR. KENNEDY: Something that police officers do on a daily basis.

SGT LENEHAN: Correct.

MR. KENNEDY: In terms of risk assessment and threat assessment, how long have you been doing that work, Sir?

SGT LENEHAN: Risk assessment and threat assessment combined for the past 4½ years within the JOPIS unit.

MR. KENNEDY: Okay, within JOPIS. And –

SGT LENEHAN: And then with, you know, risk assessment in police training and use of force, another 10 years beyond that.

MR. KENNEDY: Now, Sir, you've – and I don't know if this was outlined in the summary of facts that was provided to you but the – we've always had or the evidence has been that there's always been some element of close-protection duty to the premier in Newfoundland and Labrador going back to the 1980s in terms of perhaps an individual officer or officers assigned. That it was on an ad hoc basis up until about 2012 when there was a – the Protective Services Unit was formed, 2012, 2013.

Are you aware of that information, Sir?

SGT LENEHAN: Yes.

MR. KENNEDY: And that in 2012, the evidence is that there were four full-time members in the Protective Services Unit, including, I think at that point, three Royal Newfoundland Constabulary officers and a Royal Canadian Mounted Police Officer.

Are you aware of that?

SGT LENEHAN: Yes.

MR. KENNEDY: By the time we get to April 2015, there are now two members in the unit: Acting Sergeant Smyth was in charge of the unit; and we had an officer from the RCMP, Corporal Doug Noel. Are you – I'm just you giving some background for my question there.

SGT LENEHAN: Yep.

MR. KENNEDY: Are you aware of that?

SGT LENEHAN: Yeah.

MR. KENNEDY: The evidence has also been, Sir, that Constable Smyth, prior to going to the Protective Services Unit, worked in the Criminal Intelligence Unit of the Royal Newfoundland Constabulary for a period of time.

Are you aware of that?

SGT LENEHAN: If it was indicated in his CV, yes.

MR. KENNEDY: And that he had done a criminal intelligence course in – I think in Nova Scotia at – could be 2009, perhaps. He had done close protection course with the OPP, I think in – maybe in, really, in 2010 or '11, '12, something like that. And he had done managing targeted violence course with the BC Institute of Justice in 2012, five days' workshop.

Are you aware of that?

SGT LENEHAN: Yes.

MR. KENNEDY: Okay. So, in terms of the credentials, Sir, that an individual should have, a police officer should have, to work in a Protective Services Unit where there's both close protection and intelligence gathering, did Constable Smyth appear to you to have the qualifications or credentials required to work in that unit?

SGT LENEHAN: Yes.

MR. KENNEDY: Sir, in terms then – by 2015, April 2015, it's a two-man unit. Constable Smyth has testified that one of the reasons he didn't call in his partner that day, Corporal Noel, was that – to avoid burn-out, in that Corporal Noel was scheduled to come on work the next day and could be travelling with the premier.

Did you read that or are you aware of that evidence, Sir?

SGT LENEHAN: Yes.

MR. KENNEDY: So, essentially, when we're looking at the decision made by Constable Smyth to go to Mitchells Brook on that date, he's now – his evidence – again, Commissioner, I'm sure you or other counsel will correct me if I'm wrong – but his evidence is that he was off shift, that

Sunday was his last day of his shift, and then he would be off for a couple of days and Corporal Noel would come on shift.

Are you aware of that?

I'm telling— it's evidence, Sir. So if you're not aware, that's —

SGT LENEHAN: Yep, yes.

MR. KENNEDY: Okay.

So, in that context, Sir, we have the tweet or tweets, and I'm assuming you would've reviewed the full set of six or seven tweets that lead up to the dead MHA tweet, have you?

SGT LENEHAN: Yes.

MR. KENNEDY: Did you also have the opportunity or were you asked to look at any of the other aspects of Mr. Dunphy's Twitter account in the previous months, going back to, say, December 2016?

SGT LENEHAN: No.

MR. KENNEDY: Okay.

SGT LENEHAN: Only the ones that were provided.

MR. KENNEDY: So you look at the ones that are provided and that in your opinion the tweet of April 3 – Friday, April 3, 2015, that tweet by itself demanded follow-up or suggested follow-up. Is that your opinion, Sir?

SGT LENEHAN: Yes, it is.

MR. KENNEDY: That Constable Smyth, or Acting Sergeant Smyth at the time, took the appropriate steps prior to attending at Mr. Dunphy's residence in terms of his personal risk assessment and the risk assessment.

SGT LENEHAN: Yes.

MR. KENNEDY: And when we talk about personal risk assessment, I think that we're – the term that's been used at points in this inquiry, Sir, is his own personal safety or officer safety. Is that what you would refer to—?

SGT LENEHAN: That is correct, yes.

MR. KENNEDY: Now, he, in your opinion, Sir, gathered sufficient information on the Saturday and Sunday prior to going to Mr. Dunphy's home, attending at the home itself.

SGT LENEHAN: Yes, I do.

MR. KENNEDY: So when Mr. Simmonds put it to you, well, he didn't get the information until he was on the road, does it really matter, Sir, from a policing or from a risk-assessment or a personal-risk-assessment perspective, when he gets the information as long as he has it before attending at the residence in question and meeting with the individual?

SGT LENEHAN: No, that's correct.

MR. KENNEDY: So he did the checks that were required, in your opinion, being the motor vehicle registration, the firearms search, criminal records check, things like that. He did all of those.

SGT LENEHAN: That's correct.

MR. KENNEDY: In this particular case, Sir, it's my understanding that your opinion is, is that a home visit was appropriate.

SGT LENEHAN: Yes.

MR. KENNEDY: That you've outlined in your report – and I'm not going to go through them – why a home visit would be appropriate in a case like the present and the types of information that could be gleaned from that home visit. That's in your report. Correct?

SGT LENEHAN: That is correct, yes.

MR. KENNEDY: So prior to the home visit, is it – I think, again, do I understand you correctly, it's your opinion that Constable Smyth took the appropriate and reasonable steps necessary?

SGT LENEHAN: Yes, he did.

MR. KENNEDY: Okay.

That in terms of his attendance alone, you would think that that's a reasonable step in these circumstances.

SGT LENEHAN: I do.

MR. KENNEDY: Yeah.

And the question was put to you by Mr. Simmonds: Well, couldn't he have taken another unit or a marked unit to park down the road? Well, that – what – how does that protect an officer, Sir, in a situation where an individual, who's a low-risk assessment, pulls a gun on a police officer? It doesn't do much, does it?

SGT LENEHAN: No, it doesn't.

MR. KENNEDY: And do you agree with me, Sir, that prior to attending at this residence or it's, again, your opinion that Mr. Dunphy by all the checks appeared to be low risk in terms of a personal, officer-safety assessment?

SGT LENEHAN: Yes, I don't see anything there that would cause anything different.

MR. KENNEDY: So, Sir, in the circumstances, as a police officer and doing the job that you've done for the last 21 years, do you encounter situations where you can't always predict what's going to happen?

SGT LENEHAN: Absolutely.

MR. KENNEDY: That's one of the issues with policing, is it not, the fact that even when you do all your work, you can still find yourself in a situation that you could not have predicated or no one else could have reasonably predicted? Is that correct?

SGT LENEHAN: Absolutely. That's why we carry a multitude of different of use-of-force options.

MR. KENNEDY: Sir, again, Mr. Simmonds asked you: Well, what urgency was there? April 3 is when the tweet of concern comes in; certain steps are taken the next day by Constable Smyth; he does his file checks on April 5. We know he's going off work, his partner's coming on work and there's potential visits with the premier or close-protection duties with the premier in the next day.

In those circumstances, would it not be reasonable for Constable Smyth to take the step that he did to do the home visit on the date in question?

SGT LENEHAN: Absolutely.

MR. KENNEDY: And, Sir, whether it's Easter Sunday or any other day of the year, policing work goes on, doesn't it?

SGT LENEHAN: It does.

MR. KENNEDY: Now, we've heard, Sir, and you can put to you these comments of the – we got to go see some lunatic threatening the premier, and if I have to arrest him, I'll be late. And you've talked about in a police report, obviously, those kind of comments would not be appropriate, correct?

SGT LENEHAN: Correct.

MR. KENNEDY: In a situation, and I don't like to use the locker-room analogy because we've heard that utilized in other contexts over the last however many months, would you see a difference between two friends engaging in what could be considered an inappropriate and immature conversation in a locker-room setting as opposed to a professional setting?

SGT LENEHAN: Yes. That's what I was trying to explain before, in the context, what is the context when he was saying that to his friend, Trevor, yes. So, yeah, I would agree with that.

MR. KENNEDY: And, Sir, we've had numerous officers who've testified before this inquiry as to Constable Smyth's professionalism, his calm demeanour and the way he conducts his work, so that's something you'd also have to look at, would you not, in terms of balancing that against the comment in – to answer the question put to you by Mr. Simmonds?

SGT LENEHAN: That is reasonable, yes.

MR. KENNEDY: So, Sir, your conclusion at the end of this is that – and I'll just read you one sentence: It is my opinion that Constable Smyth – or Sergeant Smyth at that time, Acting Sergeant Smyth – “conducted a thorough risk assessment of DUNPHY given the circumstances. Furthermore, that Sgt. SMYTH engaged in the appropriate steps in attempting to develop a detailed background of DUNPHY.”

So that's your conclusion in this particular case, is it, Sir?

SGT LENEHAN: It is.

MR. KENNEDY: My last question then is in your years now in JOPIS and in your years of involvement in personal risk assessment, risk assessment, threat assessment, there's no way to predict what can happen at any given moment when a police officer is involved with another individual, is there.

SGT LENEHAN: There's no way.

MR. KENNEDY: You take the steps that you can, but you can't ultimately predict what's going to happen, can you?

SGT LENEHAN: Correct.

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

Thank you.

THE COMMISSIONER: Thank you, Mr. Kennedy.

Any other counsel have any questions? No?

Mr. Avis, you look poised.

MR. AVIS: Just a few very briefly on redirect, just as much information.

Sergeant Lenehan, I provided you with a document called: Outline of facts in relation to Constable Joe Smyth's threat and risk assessment. Do you recall that document?

SGT LENEHAN: I do.

MR. AVIS: That's P-0807. And on page 3 – I'm just merely making a reference here. You utilized this document in your opinion. Is that correct?

SGT LENEHAN: I did.

MR. AVIS: On page 2 of the document, 3 of the exhibit, one, two, three, several paragraphs down – I'm not going to have you go through them but in the beginning Smyth did a review of hundreds of Dunphy's tweets. There is information provided to you there, not with the tweets themselves, but giving you the background of some of the more – in my view were some of the more significant tweets that he discovered. And would you have taken that into consideration when you gave your opinion?

SGT LENEHAN: Yes.

MR. AVIS: One question of a general nature. When Mr. Simmonds was asking you about whether or not Constable Smyth had made up his mind and that these other experts were opining that he did, your answer was, well, only the police officer can answer that. As an expert, do you feel you're able to get in the mind of Constable Smyth or he has to speak for himself?

SGT LENEHAN: I think he has to speak for himself but I can only refer to what I would – can also do given the same circumstances and the steps that he took were logical.

MR. AVIS: Okay.

Another thing – maybe I didn't understand the question very well or the answer – going back to this uttering threats charge and peace bond; it's 10 years old. One of the questions Mr. Simmonds asked you was: Shouldn't he have gotten a bit more information? But in the evidence you – or the documents you used before you, we had that he had a discussion with Dick and Debbie Dunphy.

Debbie Dunphy was the victim of the use – was the uttering threats charge. Debbie Dunphy was obviously the person who agreed with the peace bond. It's 10 years old, how much more information would you need than that?

SGT LENEHAN: Well, it's first-hand from the victim so I would suspect he's getting everything that he needed at that point from that occurrence. Yes.

MR. AVIS: Those are all my questions, Commissioner.

SGT LENEHAN: So probably no more. Only if he was ever following up to conduct a threat assessment, then he would need more of the documented evidence. Yeah.

MR. AVIS: Okay.

Again, thank you so much, Sergeant Lenehan. For me, you're a lifesaver.

THE COMMISSIONER: I have some questions.

MR. AVIS: Oh, I'm sorry, Commissioner, I'm merely –

THE COMMISSIONER: I don't want –

MR. AVIS: (Inaudible.)

THE COMMISSIONER: I don't want the sergeant to leave. Just really one –

MR. SIMMONDS: Mr. Commissioner, before could I –

THE COMMISSIONER: Mr. Simmonds.

MR. SIMMONDS: In light of what – in light of the comments that have been put on redirect I do have another couple of questions but –

THE COMMISSIONER: Sorry, I missed the comment that was –

MR. SIMMONDS: In light of some of the comments on redirect I – but I don't want to be labour this but –

THE COMMISSIONER: Can you – what is it you want to address?

MR. SIMMONDS: Well, you know –

THE COMMISSIONER: And keeping in mind that I'm going to occasionally apply a little bit of common sense, you know, in drawing inferences and so forth. But go ahead.

MR. SIMMONDS: Okay. That's fine.

THE COMMISSIONER: All right, Sergeant Lenehan, you've seen the tweet. Did you see the full tweet? Did you go back and the full thread of – I think all that was put to you was the last portion of the thread where it talks about –

SGT LENEHAN: Whatever was sent to me by Nick, Mr. Nick Avis, is all I have. So if Nick – Nick can provide that, that's all I have.

THE COMMISSIONER: If somebody can refer me quickly to – okay, we have it on the screen now.

Just if you take a look at – that's the last one that came in, the “won't mention names this time, 2 prick dead MHAs might have good family members I may hurt.”

Now, if you go back earlier and read them: “... I hope there is a God, I think I c him work on two garbage MHAs who laughed at poor ppl ... he got them before they got to enjoy the pension they didn't deserve, I won't mention ... names this time, 2 prick dead MHAs might have good family members”

Isn't it possible that this is a reference to, when they talk about the family members that Mr. Dunphy is in fact saying he doesn't want to injure family members and, therefore, he is going to conduct himself in a certain way, i.e., he is not going to mention names? In other words if it's regarded as that, is it really a threat, which I think you concluded it was a threat, so I'm interested in your reasoning.

SGT LENEHAN: It's not specifically a threat, but there's the two names at the top and then since there are two names, then there is indication of two prick dead –

THE COMMISSIONER: But they're the –

SGT LENEHAN: – and then they might have good family members I may hurt.

THE COMMISSIONER: Right.

SGT LENEHAN: So who are the family members? Are they ones who are related to the two people up top or are they the two prick dead – is that associated with the two up top?

THE COMMISSIONER: Well, he's talking about the family members of the two dead MHAs.

SGT LENEHAN: Okay.

THE COMMISSIONER: So that wouldn't, as I would read it – wouldn't you read it that way? So he wouldn't be talking about the family members of Sandy Collins or the premier, neither one of whom are dead. So various witnesses have suggested that it's – well, some have said it's ambiguous, others have come down strongly one way or the other and said it's just not a threat or it is a threat because of the reference to dead MHAs and so forth.

How do you analyze it when you – I think your conclusion was – I thought you concluded it a threat, but in any event you considered it of sufficient concern that it would be worth investigating.

SGT LENEHAN: Absolutely.

THE COMMISSIONER: And why would that be?

SGT LENEHAN: Somebody who is making these sorts of comments, you'd want to explore whether or not there are other issues at play. There's – is there any sort of potential mental illness here. You'd want to get to know who and why are they saying this, what is the context behind it.

THE COMMISSIONER: Okay. This relates to a question that was brought up, had been raised earlier, but it was brought up again more recently in the session we had yesterday. And one of the panelists, maybe several, expressed a concern as to what and when should the police officers in this province or in Canada investigate. In other words, what sort of guidelines do police officers have in going out and inquiring into the lives of the average citizen? I think one of the individuals yesterday said he always thought that it would be only when there was a clear threat that had been uttered by him or a certain criminal or near-criminal comment.

Do you have any guidelines? Do you see any concern about the police being too quick to investigate, if there's not really something that's serious enough to consider intimidating or potentially threatening or in some other way?

SGT LENEHAN: Well, I think –

THE COMMISSIONER: Hmm?

SGT LENEHAN: It's a grey area for sure. I think that obviously when there is grounds for a criminal offence, that we get engaged.

And then when you're looking at threat or risk and the potential of it, the only real way to determine whether or not there is something to look at futuristically is to look more into this. I don't think – I think there's enough there that warrants further investigation to determine the intent of it to ensure that there is no risk towards the people, either named or other family members.

So I think you have to err on the side of caution and think from, I guess, from the victim perspective or the potential victim. If you had knowledge of this and you didn't look into it, would we be criticized if something did happen and harm did come to a family member or other people named in the tweet?

So I think it's a fine line and it's very hard to decipher when we should get engaged in this. But I think if we always try to err on the side of safety for the public and who we represent, that should be paramount.

THE COMMISSIONER: Okay. Thank you, Sergeant.

I don't know if there's anything arising out of my comments that counsel might wish to raise.

Mr. Avis?

MR. AVIS: Nothing arising, Commissioner. Just to point out that Sergeant Lenehan was provided with the full tweet, but also I noted to him that Constable Smyth only had the small portion. So that's all.

THE COMMISSIONER: No, he had the full –

MR. AVIS: Okay.

THE COMMISSIONER: Constable Smyth had the full portion.

MR. AVIS: Okay.

THE COMMISSIONER: As a matter of fact, I think he had it in the folder, didn't he? Yeah.

Anything else?

All right, you are the 56th witness, Sergeant Lenehan, and I'm happy to say, nothing personal of course, that you're the last.

Thank you very much for participating.

SGT LENEHAN: Thank you very much, Sir.

THE COMMISSIONER: Okay, I don't know if there's anything formal that I should say. The inquiry is not over yet, but the hearing portion of the inquiry is over. And I think everybody may have some time required to come down from what we've been doing for the last couple of months.

I realize I've been pushing counsel somewhat to get through the hearing, but the way I saw it, it was a sort of – we were dealing with the sorts of things that could – we could have gone on indefinitely. There could have been a good two or three episode. And if I were completely retired maybe I would have taken you up on that, but as it was, I felt – and seriously I felt I had a responsibility to keep the time down so that I kept the expense down, and I hope I've achieved that. The public purse deserves nothing less.

Okay, thank you, counsel.

MR. AVIS: Commissioner, could I – don't want – could I possibly just say very briefly to thank the staff on behalf of the counsel. I'll only be a couple of minutes.

THE COMMISSIONER: Sure.

MR. AVIS: Just this: you know, our observation is it's not possible to run an inquiry like this so well and so efficiently without an extraordinary staff. Speaking for myself, you come in in the morning and the three security guards who you mentioned, Mr. Mercer, Matthew and Rose, always greeted with a smiling face, door open to you. All your staff were always so helpful, calm, polite; I could not possibly have asked for better.

I would have to point out, though, Ms. Blackmore; I just don't know where you found her. And if she ever wants a job, please come to me first. Just extraordinary in my dealings with her.

THE COMMISSIONER: I probably – I probably shouldn't have forgotten to mention her yesterday.

MR. AVIS: No. And from a personal note, I am a bit of a klutz with the machines; actually, I can't get into it anymore because I put in the wrong thing so often. The number of times that she was so patient with me providing stuff, it was marvelous.

And thank you, Sir.

THE COMMISSIONER: Thank you, Mr. Avis. Yeah.

I'm sure the staff are listening.

Nothing further, then? Thank you.

I know a lot of individuals have gone through difficult times and it's been difficult in a number of different ways for different people. So I'm not forgetting the human element, even though at times we tended to get into arcane discussions of evidence and so forth, but in writing my report I'll keep in mind that we're dealing with real people. Thank you.

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry closed.