



COMMISSION OF INQUIRY  
RESPECTING THE DEATH OF DONALD DUNPHY

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Transcript

Volume 33

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*Commissioner: Honourable Justice Leo Barry*

Wednesday

1 March 2017

**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

**THE COMMISSIONER:** Just before we get back to our witness, a bit of housekeeping.

First of all, Mr. Avis, I think, sent an email saying he wouldn't be here this morning. He's preparing for a witness this afternoon, I think. At least if I didn't dream it I saw that email.

There are number of expert reports and experts that we're trying to schedule. We're in the final phase now of the inquiry. We're still on schedule, with anticipation to finish on the 9th, possibly the 10th.

Mr. Kennedy, I understand you're in the process of finalizing a witness who you believe might be dealt with by teleconference from British Columbia. Is that the situation?

**MR. KENNEDY:** Yes, Commissioner.

**THE COMMISSIONER:** I don't want to commit to anything now but –

**MR. KENNEDY:** No, Commissioner, what's going on, I'm in contact – I've indicated to Commission counsel I've been in contact with a Dr. Stephen Hart from BC. We will be asking to have him called as a witness. He's going to – if the application is allowed, Commissioner, he will be travelling next week. He's from BC but he will actually be in London, England, and so if he's allowed to testify we would either have to do it by some kind of video.

**THE COMMISSIONER:** Skype or ...

**MR. KENNEDY:** Skype, I think, yeah.

**THE COMMISSIONER:** Other counsel have any problems with that? I don't see where it should be a problem.

**MR. SIMMONDS:** Not in the concept –

**THE COMMISSIONER:** Sorry, I forgot, I should have done it, Mr. Simmonds, just to identify more or less precisely what you're going to be calling your witness for.

**MR. KENNEDY:** Yes, Dr. Hart is an expert, among other things, in threat assessment and he would be called specifically to deal with the report of Dr. Coleman.

**THE COMMISSIONER:** So Dr. Coleman –

**MR. KENNEDY:** Again, when I say specifically, general issues in relation to threat assessment, risk assessment but specifically as a result of the Coleman report.

**THE COMMISSIONER:** Right, in terms of whether there was adequate threat assessment performed by Constable Smyth basically, is that the ...?

**MR. KENNEDY:** It's a little bit deeper than that, Commissioner. It's even the question of the qualifications of Dr. Coleman.

**THE COMMISSIONER:** Right, okay.

So, Mr. Simmonds, do you –

**MR. SIMMONDS:** With having the witness testify by some kind of telecommunications, that's no issue whatsoever.

**THE COMMISSIONER:** Right.

**MR. SIMMONDS:** But I would like to see the application that Mr. Kennedy is going to file to call this witness and, you know, we have a date, at least some brief period of time set for the hearing of that application.

**THE COMMISSIONER:** Generally, I can say it strikes me that the issue of the threat assessment is largely a matter of – well, obviously opinion evidence, but I think it's an area where you don't expect experts to agree on all things and all aspects of it. But it strikes me that if Mr. Kennedy establishes somebody with adequate qualifications that it's difficult to see at this stage as to why it shouldn't be admissible. It's just another flow of information which I'd be entitled to consider, along with a number of other individuals who have either provided expert reports or testified regarding aspects of that.

So what sort of objection, Mr. Simmonds, I know we're getting into where we don't have a report yet and we don't – you know, I'm not holding you to anything, but just generally, what, if you could, indicate why you're sort of holding back a bit there.

**MR. SIMMONDS:** Because, if indeed an expert is going to be – if there is an expert being already called, the issue is whether that – and you say it's opinion evidence, that may will be.

**THE COMMISSIONER:** Sorry.

**MR. SIMMONDS:** If there's an expert already being called for that –

**THE COMMISSIONER:** Right.

**MR. SIMMONDS:** – which the Commission is calling.

**THE COMMISSIONER:** Right.

**MR. SIMMONDS:** This would again seem to fall into the category of the psychiatrist to some degree, but I reserve my comments until –

**THE COMMISSIONER:** Sure.

**MR. SIMMONDS:** If I could see a brief, I'm not looking for anything – like a the letter form with something attached to it to give us an idea of the qualifications – go ahead, Ms. Chaytor, you want to say something.

**MS. CHAYTOR:** I'm sorry.

I think Mr. Kennedy indicated to Commission counsel this morning that he hopes to have something Friday, and in talking about our schedule, we thought both Mr. Kennedy's and Mr. Avis's applications could be heard on Friday afternoon.

**THE COMMISSIONER:** This Friday afternoon, two days' time.

**MS. CHAYTOR:** Yes.

**MR. SIMMONDS:** Brutal.

**MS. CHAYTOR:** (Inaudible.)

**MR. SIMMONDS:** You're brutal on the Friday afternoons.

**THE COMMISSIONER:** Mr. Simmonds is losing his time, he though he' be off.

Okay.

**MR. SIMMONDS:** That'll be fine.

**THE COMMISSIONER:** Just to give you a heads-up in terms – the way I'm leaning in that is that it's somewhat different from the psychiatric situation because we already have opinion evidence entered on that, and more to come, on that point. And I, frankly, at this stage, have difficulty seeing why I would not admit it just as another opinion on some of the aspects of threat assessment and other areas, obviously, that they'll be providing opinions on.

Go ahead.

**MR. SIMMONDS:** And it may well be the case that there would be either a minor objection or no objection at all to it but I'd like to see –

**THE COMMISSIONER:** No, I understand.

**MR. SIMMONDS:** But that's the only reservation I'm making at this time. And hopefully we could handle those fairly quickly Friday afternoon, so Friday afternoon would –

**THE COMMISSIONER:** I'm just trying to make sure that there's nothing that I'm missing there.

**MR. SIMMONDS:** No, I don't –

**THE COMMISSIONER:** Yeah. Okay.

If the application is argued on Friday afternoon and leave is given to produce the report on the expert, what day are we looking at as a possible day for setting up this Skype conference call thing?

**MS. CHAYTOR:** There are two things hanging out there that will influence that answer. It may very well be that we wouldn't be able to do this until March 10, the day after our Phase 2 piece. So that will be next Friday and hopefully not the afternoon, Mr. Simmonds. But, so yeah, it would likely next Friday, depending on whether or not there are a couple of other people that have to be scheduled in.

**THE COMMISSIONER:** Okay. So we –

**MS. CHAYTOR:** But I'm thinking right now it looks like next Friday morning.

**THE COMMISSIONER:** Wednesday is not open?

**MS. CHAYTOR:** Wednesday ...

**THE COMMISSIONER:** Anyhow, we'll take a look at that.

**MS. CHAYTOR:** Sorry.

**THE COMMISSIONER:** I don't want to put you on the spot there.

**MS. CHAYTOR:** Yeah. No, fine.

**MR. SIMMONDS:** Wednesday is set for Terry Coleman and –

**MS. CHAYTOR:** No, Wednesday is for, yeah, Mike Massine –

**MR. SIMMONDS:** Mike Massine.

**MS. CHAYTOR:** – and Terry Coleman.

**THE COMMISSIONER:** Coleman, all right.

**MS. CHAYTOR:** It could be possible if they didn't take the whole day. We could do afternoon there.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** Wednesday afternoon. Or Gareth Jones, if Gareth Jones didn't take the whole day on Tuesday –

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** – we could consider that.

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** We've opened up Monday the 1st, but we're looking at there the potential recall of Constable Smyth.

**THE COMMISSIONER:** Right.

**MS. CHAYTOR:** The morning of March 6.

**THE COMMISSIONER:** What day is the 6th?

**MS. CHAYTOR:** The 6th is Monday.

**THE COMMISSIONER:** Right, Monday.

All right, Mr. Simmonds –

**MR. SIMMONDS:** I realize this is probably somewhat of a thorn in your side, Mr. Commissioner, but have we made a decision or is it –

**THE COMMISSIONER:** On what?

**MR. SIMMONDS:** My client asked this, about Debbie Dunphy, and as to whether or not –

**THE COMMISSIONER:** No, that's still there and – sorry, go ahead. Finish your –

**MR. SIMMONDS:** Well I – she was just wondering whether she's going to be called or not. She would be interested in hearing the evidence but I understand there may be health issues that –

**THE COMMISSIONER:** Well, it's unfortunately a bit worse than that in that Ms. Dunphy has not been responding to our attempts to communicate with her. There was a registered letter that was sent that was picked up, but then noted return to sender. And there were – there have been attempts made now.

I see it as my responsibility to protect the integrity of the Commission process, that if we have a subpoenaed witness such as this who just refuses to comply without showing good health reasons – and I mentioned to her on the first occasion, I believe I mentioned to Mr. Dunphy, her husband, to carry back to her a message that what we had in terms of a general note from the doctor was not adequate. But this time, at this stage, we don't have anything for her in terms of recalling her.

So there's two steps; one is what would be an appropriate sanction. And there's a provision, I understand, for a Commission going to Supreme Court and asking that sanctions be applied. In this case it would probably be some sort of fine I suspect, but I'm just thinking out loud. I'd have input from counsel before a final decision.

But the second issue in terms of how do we get the benefit of the information she might have; I believe counsel has started to explore this with – Commission counsel has started to explore it with other counsel. And one way would be to consider admitting the statement that – or statements, the one that she's given to the RCMP and the one that was given to – the information that was given to Constable Smyth.

**MS. CHAYTOR:** No.

**THE COMMISSIONER:** Sorry? Go ahead.

**MS. CHAYTOR:** Sorry. There isn't a statement that she gave Constable Smyth.

**THE COMMISSIONER:** No, there's no statement but the information.

**MS. CHAYTOR:** But the interview, potentially portions of the interview, but not all of her interview transcript is one possibility.

**THE COMMISSIONER:** Right. Okay.

Yeah, I misspoke there. I was thinking of that we had information in written form regarding the visit by Constable Smyth, but it would be the interview that was given to Commission counsel by Ms. Dunphy. And that may be adequate in terms of our moving on without having to call her, but I still have to deal with protecting the process.

So that's what – it's still a live issue and we're just going – I'm sure Commission counsel will be discussing it with you, Mr. Simmonds.

**MR. SIMMONDS:** Thank you.

**THE COMMISSIONER:** Anything else that we – so, Mr. Kennedy, do you have any questions from this discussion, anything? You'll follow through with your proposed expert and let us know when you're ready, okay?

**MR. KENNEDY:** Yes, I will, Commissioner.

**THE COMMISSIONER:** All right.

Go ahead now with our witness this morning.

**MS. CHAYTOR:** Thank you, Commissioner.

Good morning, Mr. Browne.

**MR. BROWNE:** Good morning.

**MS. CHAYTOR:** And I apologize for the interruption in your evidence.

**MR. BROWNE:** No problem.

**MS. CHAYTOR:** But thank you for coming back.

If I could have, please, P-0440. This is a series of BBM messaging between Corporal Noel and Acting Sergeant Smyth on the evening of April 5, 2015. We did not have this in our possession at the time of your interview but I understand you have had an opportunity to review since.

**MR. BROWNE:** Briefly, yes.

**MS. CHAYTOR:** Okay. And there's a few references to you in these messages so I'd like to provide you with an opportunity to speak to this.

If we could have page 10 of the exhibit, please, Madam Clerk. Okay. And we're just going to go to the bottom there, please, Madam Clerk. Okay, the bottom of page 10.

So you'll see your name referenced here. And if we look at the time, although it says April 6 at 12:52 a.m. that's UTC time, so this would be around 10:30, 10:32, I guess. Newfoundland time is the time that this conversation would be happening and –

**MR. BROWNE:** 10:32 on the 5th?

**MS. CHAYTOR:** 10:32 p.m. on the 5th, so the evening of the incident.

**MR. BROWNE:** Right.

**MS. CHAYTOR:** Yes. Okay.

And Corporal Noel wrote: "Joe Browne and P were excellent!"

"Ok good... No concerns on" I think that should be "their end?"

And then if we scroll down it says: “No. No concerns with them.” And then there’s some more communication.

And then on the end, Doug Noel to Joe Smyth: “No. But it does show how we are needed.”

And then if we continue on to the next page, Joe Smyth says: “Fair point.”

“The P” which we understand to be the premier, the premier “is not concerned about that part.”

“That’s good.”

And Joe Smyth says to Doug Noel: “I told him we need to be cautious of potential sympathizers.”

And then Doug Noel replies: “Well that message took! That’s what they were talking about.”  
And they say: “Good.”

So I’m just wondering if you could explain. Were you in the presence of Doug Noel on the evening or sometime on the day of April 5 after the incident, or did you have communications with Doug Noel that could shed light on what’s being discussed in this exchange?

**MR. BROWNE:** No, I’m not entirely sure what is referred to here. I spoke to, as I mentioned when I was here earlier, Doug Noel mid-afternoon following the shooting, 4 o’clock or thereabouts. And that’s the only conversation I had with Corporal Noel. I don’t recall seeing him until sometime on Monday.

**MS. CHAYTOR:** Okay.

**THE COMMISSIONER:** So when did you say you recall speaking with him?

**MR. BROWNE:** Just after the notification on the shooting.

**THE COMMISSIONER:** On the 5th.

**MR. BROWNE:** On the 5th. So I would have been, Commissioner – my phone records would show about 4 o’clock or something on the 5th, just prior to myself, the premier, director of communications and the deputy chief of staff meeting at Confederation Building. So that was between, around 5 o’clock.

So after that meeting I had no conversations with Corporal Noel. I don’t remember seeing him, actually, until he reported for work on the Monday.

**MS. CHAYTOR:** Okay.

And that’s right, we do have in your phone records – and I can get that reference for you, Commissioner – the time of Mr. Browne’s phone records to indicate that he spoke with Doug Browne. So I can certainly get that.

**THE COMMISSIONER:** How did that thread start, that conversation start? What is it again?

**MS. CHAYTOR:** That conversation started, if we go back – okay, they’re talking about security for the premier.

**THE COMMISSIONER:** Who started the call?

**MS. CHAYTOR:** Oh, who started the call or the exchange? Okay. Let's just get to the beginning there, I might have it easier in my notes here.

Okay, Madam Clerk, page 8, please. And it starts towards the bottom of the page, fourth entry up, April 6, 2015, 12:43 a.m. They had been in touch just earlier. Okay, so it starts with: Thanks Doug, been a crazy and busy day will touch base tomorrow." This is page 8, yes page 8, okay.

So they had been in touch – if my recollection serves me right – earlier in the day.

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** Okay. Happy Easter.

**THE COMMISSIONER:** Okay, I have a – I have a general picture.

**MS. CHAYTOR:** Yes, and then it starts on his way to Mount Carmel, haven't seen the P, and then he contacts –

**THE COMMISSIONER:** Yeah, that's okay (inaudible).

**MS. CHAYTOR:** And then the evening begins with – sorry, is that fine? Because the evening exchange then begins with at 11:29 p.m. UTC time with Doug Noel contacting Joe Smyth and saying: "Hey Joe. Just thinking about you. I know you must have lots on your mind. If I can do anything let me know." And Constable Smyth replies: "Thanks Doug, been a crazy day ..." and it goes on from there.

**THE COMMISSIONER:** Okay, thank you.

**MS. CHAYTOR:** You're welcome.

Okay. So, Mr. Browne, in terms of, in particular, the comment: we need to be cautious of potential sympathizers. Did you have any discussion either with Doug Noel or within his earshot with Premier Paul Davis on that particular topic?

**MR. BROWNE:** Not, not specifically, no. Certainly not with Doug Noel, so ...

**MS. CHAYTOR:** Okay. Did you have such a –

**MR. BROWNE:** (Inaudible.)

**MS. CHAYTOR:** – discussion with the premier?

**MR. BROWNE:** A generic discussion around security and safety issues, but sympathize is not a term I would use. It's not something that I recall from that conversation.

**MS. CHAYTOR:** And so perhaps you can just explain what was the concern around security in the aftermath of Mr. Dunphy's shooting that you did discuss?

**MR. BROWNE:** Well, yeah, at that point we were, I mean we were trying to piece together and try to get some understanding of what had occurred. We had very little information, were quite concerned by it all, so it was just the general conversation around what, if anything, needs to happen in that regard. It wasn't a very detailed conversation.

**MS. CHAYTOR:** Okay.

Were you aware of any communication between any members of the staff of the premier's office who reported to you and Joe Smyth in the days immediately following the incident?

**MR. BROWNE:** Sorry, what was that?

**MS. CHAYTOR:** Were you aware of any communications between members of the premier's staff who reported to you and Joe Smyth in the days immediately following the incident?

**MR. BROWNE:** No, not in the immediate days, no.

**MS. CHAYTOR:** Okay.

And we do have another series of BBM communications, P-0581, and these are between Heather MacLean and Joe Smyth on April 7. And I think it's page four on the bottom of that exhibit please. And this is where it begins and it begins with Joe Smyth reaching out on the sixth: Hey, anything I can help you with for the scrum? And then there's some communication she hasn't been able to pick up because the scrum is actually on-going. And then if we continue on to the bottom of page five, Ms. MacLean asks for certain information regarding Mr. Dunphy and she asks in particular whether or not Mr. – oh sorry, Constable Smyth had been able to come across any correspondence from Donald Dunphy. We could look for it here. Sorry. "Did you come across any correspondence from DD when you were looking into him?" And then further down she asks about: "Police record?" Constable Smyth replies: "No record."

Were you aware that Heather MacLean was making these inquiries of Constable Smyth two days after the incident?

**MR. BROWNE:** No, I was not.

**MS. CHAYTOR:** Okay. And do you think that is appropriate?

**MR. BROWNE:** Her contact with ...

**MS. CHAYTOR:** To ask for information regarding Mr. Dunphy. Why would the premier's office be asking for that information? And do you think that's appropriate?

**MR. BROWNE:** Well, from a Comms perspective I guess she was trying to gather as much information as she could, but that information wouldn't be something that we would need, I wouldn't think.

**MS. CHAYTOR:** And who had no knowledge that she was seeking that?

**MR. BROWNE:** No, I don't.

**MS. CHAYTOR:** And in terms of the on-going investigation, and I understand that you say you were cautious in advising the staff to be cautious in terms of what could be released under an ATIPP request?

**MR. BROWNE:** Yes.

**MS. CHAYTOR:** Would this be appropriate communications or information for her to be seeking?

**MR. BROWNE:** It's not information that I think we would have needed, nor do I think it's information that particularly that she would have needed so, I don't know why she would have asked for it, I guess is the only thing I can comment on.

**MS. CHAYTOR:** Okay.

And we have another email from Greg Hicks of the RCMP. It's April 7, 2015 to Heather MacLean and this is forwarded to you and also to Premier Paul Davis amongst others, and he's forwarding along the RCMP release that is intended to be released. Do you recall receiving that?

**MR. BROWNE:** Yeah, I would have received it, I guess, yes.

**MS. CHAYTOR:** Okay. And from your background then as chief of police, was it usual that the premier's office would be sent a police press release in advance?

**MR. BROWNE:** Depending on the circumstance, and I think this would have been, this type of an event would have been one of those circumstances where, yeah, I think, I would have done it. Sure.

**MS. CHAYTOR:** Okay. And what was the circumstance in this case that made this relevant to the premier's office?

**MR. BROWNE:** Well, this is a police-related shooting. This is a rare, fortunately a rare occurrence in this province. It also involved the Protective Services Unit which made it, in this case unique, even from previous police-involved shootings. And it was information that they were about to release to the public anyway so ...

**MS. CHAYTOR:** So on other occasions when there'd been police-related shootings in the province, the premier's office would be provided with a press release?

**MR. BROWNE:** I can't answer that, that's – I wasn't involved in it.

**MS. CHAYTOR:** In your experience?

**MR. BROWNE:** I don't know; I wasn't involved at that level during those events.

**MS. CHAYTOR:** Well, then, other than Mr. Dunphy's matter, during your time, or during your year in the premier's office, did the RCMP send you any other press release on any other matter?

**MR. BROWNE:** No.

**MS. CHAYTOR:** Did you have any conversations with Joe Smyth on April 5, 2015?

**MR. BROWNE:** I did not.

**MS. CHAYTOR:** You did not?

Did you have any communications with him the following day?

**MR. BROWNE:** No, no.

**MS. CHAYTOR:** And –

**MR. BROWNE:** Except there was an email that you showed me that he had offered to share information if we needed it, that's – but we didn't take him up on that offer.

**MS. CHAYTOR:** Okay. If we could look at –

**MR. BROWNE:** I don't know the date of that, though.

**MS. CHAYTOR:** P-0251 – that's the next day.

**MR. BROWNE:** Yup.

**MS. CHAYTOR:** P-0251 and this is an excerpt from his phone records. And I believe we're on page 2 of that document on the bottom, if we could just make it a little bigger, Madam Clerk. And this is between Joe Smyth and Joe Browne.

And he says: "I understand some staff are shook up. I can come in and talk to anybody if you'd like.

"I think they are doing okay. How are you holding up?

"Pretty good, i'm headed into rcmp hq for a statement now.

"Let me know if you want the full details at any point."

And you say: "Okay, hang in there.

"Will do, chat soon. I understand Jason Sheppard and Joe Gullage are dealing with the unit for the time being.

"Thanks."

And Mr. Browne, did you take him up on his offer in terms of obtaining the full details?

**MR. BROWNE:** No.

**MS. CHAYTOR:** Have you ever had any discussion with Constable Smyth as to what happened in his encounter with Mr. Dunphy?

**MR. BROWNE:** No.

**MS. CHAYTOR:** And in terms of the offer to come in and speak to the staff and the premier's office, to your knowledge did that happen?

**MR. BROWNE:** Not to my knowledge.

**MS. CHAYTOR:** And did you want that to happen?

**MR. BROWNE:** I did not.

**MS. CHAYTOR:** And why not?

**MR. BROWNE:** There was an ongoing and active police investigation and that conversation would not have been appropriate.

**MS. CHAYTOR:** Okay.

Did you give that advice to Paul Davis that he shouldn't engage in any communication with Joe Smyth?

**MR. BROWNE:** I – we did not have that conversation. No.

**MS. CHAYTOR:** Were you aware that Paul Davis did speak to Constable Smyth the evening of the incident?

**MR. BROWNE:** I learned of it the following day. Yes.

**MS. CHAYTOR:** Okay, so you didn't know it beforehand?

**MR. BROWNE:** No, I did not. No.

**MS. CHAYTOR:** Other than last day we spoke about your initial communications with Chief Janes, did you have any further communications with Chief Janes or any member of the RNC about this matter while it was under active investigation?

**MR. BROWNE:** No. Nor subsequent to it being –

**MS. CHAYTOR:** Nor subsequent?

**MR. BROWNE:** – concluded, no.

**MS. CHAYTOR:** Okay.

And in terms of other than your phone conversation with Doug Noel, which my notes now tell me happened at 4:14 p.m. –

**MR. BROWNE:** Right.

**MS. CHAYTOR:** – on April 5, did you have any other communications with members of the RCMP about the shooting?

**MR. BROWNE:** None.

**MS. CHAYTOR:** And was the shooting incident discussed within the premier's office other than from the point of view of a communication strategy? Was it –?

**MR. BROWNE:** No.

**MS. CHAYTOR:** Okay.

**MR. BROWNE:** No. Communications was the topic of the conversation, yes.

**MS. CHAYTOR:** Wasn't it? Okay.

So no discussion in, you know, in terms of addressing any potential issue from the government's point of view about the circumstances of Mr. Dunphy?

**MR. BROWNE:** No.

**MS. CHAYTOR:** Okay.

If we could bring up, please, P-0254, and this is an email from Steve Kent, April 6, 2015. And he sends this to both yourself and Joe Smyth. And it's the day after the incident and it's 9:29 a.m. And, of course, Constable Smyth would have been off on three days mandatory leave at this point.

And he's forwarding a phone message and that's attached to the next page, but he's also bringing – in addition to that, he's saying: "The other active files I'm concerned about but to a lesser extent are" and then he names two individuals.

"Sorry to bother you with this today, but I felt I should make you aware."

So my first question on this then, Mr. Browne, is: Why would you and Joe Smyth be the recipients of this from Steve Kent?

**MR. BROWNE:** No idea.

**MS. CHAYTOR:** Were you included in all communications or any other communications directed to the PSU with respect to active files on persons of interest or subjects of –

**MR. BROWNE:** No. No, this the first time I've ever seen anything from Mr. Kent on anything.

**MS. CHAYTOR:** Well, did you reply to Minister Kent –

**MR. BROWNE:** I did not.

**MS. CHAYTOR:** – and ask him what this is about?

**MR. BROWNE:** No, I did not. I took it to be a communication with Acting Sergeant Smyth at the time.

**MS. CHAYTOR:** And you hadn't received similar communications from other members of – other government Members with – raising similar issues?

**MR. BROWNE:** No.

**MS. CHAYTOR:** Okay.

What does it mean active files? What other active files? Can you shed any light on what's being referred to there?

**MR. BROWNE:** I can shed no light. No.

That's correspondence created by Mr. Kent. I have no idea what it relates to actually.

**MS. CHAYTOR:** Did the premier's office have any – or beyond the premier's office, did the government have active files with respect to subjects of interest?

**MR. BROWNE:** Not to my knowledge, not in the premier's office. But beyond that not to my knowledge; never heard of it anyway.

**MS. CHAYTOR:** Okay.

And you had no follow-up, phone call, communication with Steve Kent to ask him: What are you talking about?

**MR. BROWNE:** I never contacted him in regards to this communication, no.

**MS. CHAYTOR:** Did you contact anyone? Did you have communication with Joe Smyth or anyone else on this?

**MR. BROWNE:** No.

**MS. CHAYTOR:** Okay.

And you would have known, of course, that Joe Smyth is off work so you didn't forward it to Doug Noel or anyone else to follow up on?

**MR. BROWNE:** No. As I said, I assumed this was – I was, for some reason, included on it, but to me this was a communication between Mr. Kent and Constable – or Acting Sergeant Smyth.

**MS. CHAYTOR:** Were you aware that while you were chief of staff for the premier's office that Mr. Kent knew about Mr. Dunphy and his circumstances and had been in communications, or he and his staff in communications with him regarding his grievance?

**MR. BROWNE:** No, I only became aware of that – we were out of government in Opposition. It would have been a year and some months afterwards.

**MS. CHAYTOR:** And how did you then become aware of that?

**MR. BROWNE:** I think it was around the same time that the RCMP had released its findings. So that was in, I think, September of – September past. And we were, I think, just following a caucus meeting that conversation was had. And that's when I learned that he had been interviewed by the RCMP.

**MS. CHAYTOR:** Okay.

Were you interviewed by the RCMP?

**MR. BROWNE:** I was not.

**MS. CHAYTOR:** And did you find that somewhat surprising?

**MR. BROWNE:** No, other than I was copied on the original email from Ms. Ivey. But that's – I would have thought perhaps they would have contacted me in that regard but, otherwise, I would understand why they wouldn't contact me.

**MS. CHAYTOR:** Okay, if we could – we've also had, the Commissioner had brought to his attention, the circumstances regarding a Mr. Andrew Abbass. And if we could bring up, please, P-0223. And this is an email of April 6, 2015, that Corporal Noel forwarded, an email that he had received from Joe Smyth.

It originated in the RNC and then gets passed on to Corporal Noel. And then Corporal Noel forwards it to you and copies Ed Benoit. And he says: "I just received this from Joe. I haven't forwarded it to the Premier as Abbass is in Corner Brook and makes no direct threats beyond bluster. I'll leave it to your discretion if you feel he should be made aware. He is being inundated with this trash and I don't want to duplicate and/or add to the confusion."

So, Mr. Browne, Corporal Noel, who is still with the PSU at this point in time, is leaving it to your discretion as to whether or not you advise the premier. First of all, was that the practice that it would be left to your discretion if there's an issue, as opposed to the PSU determining whether or not the premier should be made aware?

**MR. BROWNE:** No, I was not the filter for this information.

**MS. CHAYTOR:** Okay. And why then, would this been forwarded to you as chief of staff of the premier?

**MR. BROWNE:** I assume that was sent to me because there was – just to make me aware of it. He indicates there's no threats; they're bluster really. I read from this nothing to it so if I chose to mention it to the premier, I could. That's the only reason I can see he sent it to me, FYI, so ...

**MS. CHAYTOR:** I'm sorry, you did – you did mention it to the premier?

**MR. BROWNE:** I don't – no, I don't think – well, that was in the evening, too. We didn't discuss it that evening for sure.

I don't – not specifically this and I know there's an attachment to that. But I believe later, that Monday or maybe it was Tuesday – perhaps it was, yeah, maybe Tuesday – there was an issue that the RNC in Corner Brook were dealing with. And I don't think it was related to this one but with the same individual. So by the time we had a discussion, I think the RNC had taken Mr. Abbass into custody, I believe.

**MS. CHAYTOR:** They had detained him and – that's right. And that –

**MR. BROWNE:** Detention, yes.

**MS. CHAYTOR:** That's right. And that there was a media story on that –

**MR. BROWNE:** Right.

**MS. CHAYTOR:** – on April 7. And that media story was forwarded to you and to Premier Davis by Heather MacLean?

**MR. BROWNE:** Right.

**MS. CHAYTOR:** Do you recall that?

**MR. BROWNE:** Right.

**MS. CHAYTOR:** Okay.

And why would she doing that? Why would she be –?

**MR. BROWNE:** It's her job; communications.

**MS. CHAYTOR:** To keep you advised on what's happening with Mr. Abbass?

**MR. BROWNE:** Well, no, with respect to, I think, the – I think the story indicated the comments that were made by Mr. Abbass which drew the attention of the police. And they had dealt with – they were dealing with government building or the government members or – I don't

know exactly what the wording was now, but it dealt with politicians. Confederation Building, I think was the main –

**MS. CHAYTOR:** I think the word “confederation” may have been there.

**MR. BROWNE:** Right.

**MS. CHAYTOR:** But I don’t know if it said Confederation Building, quite frankly, but ...

**MR. BROWN:** Oh, I don’t know.

**MS. CHAYTOR:** Yeah.

Did you or anyone in the premier’s office have any involvement with the detainment of Mr. Abbass?

**MR. BROWNE:** None.

**MS. CHAYTOR:** I would like, then, to ask you your thoughts on one of the issues that have come up here at the Commission, is how best for investigations of police-related serious incidents to happen in this province. And, obviously, that’s become an issue of some concern.

**MR. BROWNE:** Yes.

**MS. CHAYTOR:** And as former chief of police of the RNC, do you have any thoughts on, for example, a potential suggestion being a serious incident response team or otherwise? How, in your opinion, or do you have any thoughts on that as to how best those incidents can be handled?

**MR. BROWNE:** Right.

I think the idea of a serious incident response team is a good one. They’re in place, I know, in many jurisdictions across Canada. There are some challenges with it that would just have to be considered I guess before, you know, the formation of one.

It’s done mostly, Commissioner, I think to deal with the optics or the perception of police investigating police. I think that’s the reason, for the most part, these civilian-led or over – civilian-led organizations are created with that oversight that is not directly related to police. So that makes sense.

The issue then becomes who do you find as investigators to work in these units, these response teams. So you would need clearly people that have training and experience – not just training but experience – in conducting serious investigations, major crimes, and typically that’s found within the policing community. Now, there are others you could find but by and large, that’s your resource pool, are former police officers.

So the challenge then becomes, it’s civilian led and that makes a lot of sense, but if the investigators –

**MS. CHAYTOR:** I’m sorry, civilian led?

**MR. BROWNE:** Right.

**MS. CHAYTOR:** Yes, okay.

**MR. BROWNE:** But if the investigators then are former police and they're investigating the actions of a police agency, I'm not sure that the optics change a lot, or at least it could be raised as to, well, isn't it still police investigating the police, even if there's some distance between their service or separation from their service.

So sometimes you can deal with that then by not having the investigators being former members of the organization. But in this province that's a little challenging because there are only two police agencies. We don't have any municipal police agencies in Newfoundland; we have the RCMP and the RNC and that's it.

In every other jurisdiction in Canada there are municipal agencies, there are regional police forces, there are provincial police forces too. And then there's the federal presence in most provinces – well, in all provinces. Here we have two. So if we were to set one up here and recruit locally, you would get investigators, very likely, that are former members of the RCMP who remain in Newfoundland and who have worked here, and former members of the RNC. So they would probably be your investigators.

So if they were called in to investigate the actions of an RNC officer or an RCMP officer, you would still have that challenge. You'd have still perhaps to deal with the perception.

If you decided then that that was an issue and the government wished to recruit outside of the province, that could happen, but then you would have to consider making the position attractive enough that somebody would relocate, if the unit was positioned or located in the province.

**MS. CHAYTOR:** Our tourism ads aren't enough?

**MR. BROWNE:** Sorry?

**MS. CHAYTOR:** Our tourism ads aren't enough?

**MR. BROWNE:** The clothesline ads are good but not in this case, I don't think.

So there is – I guess there's – clearly there's a financial aspect to this as well as a practical one.

So the other approach might be to look at a more regional or interprovincial model where – because there is an existing team, I think – well, there is one in Nova Scotia. I'm not sure about New Brunswick. I think PEI has contracted the service from either Nova Scotia or New Brunswick, I don't –

**MS. CHAYTOR:** I think with Halifax.

**MR. BROWNE:** Yeah, I think.

**MS. CHAYTOR:** I don't know that New Brunswick has one.

**MR. BROWNE:** Maybe they don't either, no.

So there could be some thought around some interprovincial co-operation where maybe a team could be struck that would deal with incidents in the Atlantic region.

**MS. CHAYTOR:** Including New Brunswick.

**MR. BROWNE:** Yes.

**MS. CHAYTOR:** Including all the Atlantic provinces.

**MR. BROWNE:** Right.

**MS. CHAYTOR:** Okay.

**MR. BROWNE:** And that would perhaps then be able to deal with not having a retired member of the RNC, for instance, assigned to the particular file if it involved an RNC member.

I know that there was some talk around then what about weather implications, if – you know, how quickly could they get here. But even if the unit was located in St. John's for an example, and the incident took place in Goose Bay or Nain or Port aux Basques, weather would still be a factor in terms of travel. So I'm not sure – it's a consideration but I'm not sure it would mean that it would necessarily have to be located in one province versus another.

So that's generally my thoughts around it.

**MS. CHAYTOR:** Okay.

**MR. BROWNE:** But I think the idea is a sound one.

**MS. CHAYTOR:** Sound idea.

And any other ideas in terms of how else it might be able to be handled?

**MR. BROWNE:** No, I think, you know, the separation between the investigation of a serious matter involving a police officer and the police agencies that are, that work in that jurisdiction is necessary.

**MS. CHAYTOR:** Okay.

**MR. BROWNE:** So I would think the idea of the response team would be sound, bearing in mind all the considerations that I talked about though. It's not a simple matter of just saying we'll open one and we're done with some of the concerns that might arise.

**MS. CHAYTOR:** Okay.

So you're – so it would be your opinion that it's a good idea that the two police forces within Newfoundland and Labrador not be doing this work for one another.

**MR. BROWNE:** I think so from – and it deals – and nothing to do with ability, qualifications, training, none of those issues; it's perception. And so if that is the concern, which is a real concern, then the way you deal with that would be to try to make that separation.

**MS. CHAYTOR:** Okay.

**THE COMMISSIONER:** I think it's fair to note that the Supreme Court of Canada, I think it's in Wood and Schaeffer, is it, they –

**MS. CHAYTOR:** That's right.

**THE COMMISSIONER:** They do recognize, even though it's only a perception, that appearances matter and they expressly –

**MR. BROWNE:** Absolutely.

**THE COMMISSIONER:** – adopt the need to address the public’s concern and possibly suspicion when you have the situation of police investigating police.

**MS. CHAYTOR:** Thank you.

**MR. BROWNE:** Right. And I should add, though, you’re aware obviously that there’s an MOU between the RNC and the OPP.

**MS. CHAYTOR:** Correct. Yes, we heard –

**MR. BROWNE:** And that’s a long-standing arrangement. That was done to deal with the perception as well, but that’s not civilian led, it’s still a police agency.

**MS. CHAYTOR:** Right.

**MR. BROWNE:** So if you want to add that extra element of “independence,” then civilian-led aspect makes more sense.

**THE COMMISSIONER:** Uh-huh.

**MS. CHAYTOR:** Thank you, Mr. Browne.

And some of my colleagues may have questions and the Commissioner may have some more.

**MR. BROWNE:** Thank you.

**MS. CHAYTOR:** Thank you.

**THE COMMISSIONER:** Counsel?

**MR. KENNEDY:** I do, I do. I have some questions, I don’t know (inaudible).

**THE COMMISSIONER:** Who would go first? I’m – I’ve never gotten a grasp on this so-called adopted order.

Go ahead.

**MR. KENNEDY:** Okay.

Thank you, Mr. Browne. In terms of your dealings with Constable Joe Smyth while you were there as chief of staff, how did you find him in terms of his demeanour, professionalism approach to the job, things like that?

**MR. BROWNE:** I would describe Acting Sergeant Smyth as a consummate professional. He impressed me with, each time I met him, with his professionalism. I consider him to have a calm demeanour, absolutely no issues with how he approached his duties in my regard, in that regard.

**MR. KENNEDY:** Did you ever see him get upset or angry at any time or at anyone?

**MR. BROWNE:** Never.

**MR. KENNEDY:** Did you see him, Sir – in your opinion did he do a thorough job in terms of what he was tasked to do?

**MR. BROWNE:** I would say, yes.

**MR. KENNEDY:** Now, Mr. Browne, in your former job as chief of police you would have been familiar with intelligence-led policing, proactive policing, things like that?

**MR. BROWNE:** Yes.

**MR. KENNEDY:** And would that, in your opinion, be the basis upon which a protective services unit has to operate?

**MR. BROWNE:** Yes, that's one of their functions.

**MR. KENNEDY:** Yeah, in terms of the close protection, but in terms of the intelligence gathering, that would be described as proactive or intelligence-led policing.

**MR. BROWNE:** Yes, I can't imagine they would be very effective if they weren't engaged in intelligence gathering.

**MR. KENNEDY:** And we do know, Sir, that you went in with Premier Davis, I think, in – is that around September or October, 2015?

**MR. BROWNE:** Late August, but he was sworn in I think 25th, 26th of September of '14.

**MR. KENNEDY:** And the Protective Services Unit had gone from four members to two.

**MR. BROWNE:** It did.

**MR. KENNEDY:** Somewhere along the line.

**MR. BROWNE:** Yeah, somewhere along the line. There were two there when we arrived.

**MR. KENNEDY:** Yeah.

**MR. BROWNE:** Yes.

**MR. KENNEDY:** Sir, in terms of your former job as chief of police, is it part of the reality of policing in this province, and probably throughout the country, that police officers often times respond to incidents by themselves?

**MR. BROWNE:** Routinely.

**MR. KENNEDY:** Yeah. Is that the choice of police forces or is that just the reality of resources available in terms of – with the police as a chief, or as a police officer, would they rather have two people at every call?

**MR. BROWNE:** Absolutely. But it's a measure of product of resource availability.

**MR. KENNEDY:** Yeah.

So essentially, Sir, you have to – in terms of Constable Smyth and his dealings with the Protective Services Unit, did you see him at any events were there were any – anyone getting mad at politicians, not an unusual occurrence?

**MR. BROWNE:** No, I haven't been to one of those events. I know it occurred, but not in my presence.

**MR. KENNEDY:** Okay, so you never saw if Constable Smyth had to react to anything like that.

**MR. BROWNE:** No.

**MR. KENNEDY:** Okay. Thank you very much.

Those are my questions.

**MR. SIMMONDS:** I don't have any questions, Commissioner.

**THE COMMISSIONER:** Mr. Drover?

**MR. DROVER:** I also don't have any questions.

Thank you.

**MR. FLAHERTY:** No questions, Mr. Commissioner.

Thank you.

**MR. WILLIAMS:** I just have one brief question. I'd like to get your comments, Mr. Browne, and follow up to some of the recommendations Ms. Chaytor had dealt with the ASIRT team.

You were in a very unique position having been a former chief of police and then a chief of staff in the premier's office and there's been much discussion over the course of the last 6-plus weeks with respect to the role of Protective Services Unit. And if I could be presumptuous enough, I think there's a bigger appreciation for the necessity of that unit.

That being said, there's been some items brought to attention through Mr. Davis himself who indicated some reluctance at times to avail of the services of the unit. There's also been evidence with respect to public perceptions with respect to the necessity of having a security detail and what's commonly been referred to as a chauffeur service sometimes, or perceived like that.

From your perspective, both as a police chief and a chief of staff, are there any recommendations that you could see to be made to the operation of the unit itself so as to strengthen the unit and to make it a stronger unit within the, not only the Office of the Premier, but for protection of public officials and try to lessen the public perception that this isn't a service that's required?

**MR. BROWNE:** Right.

I think it's a service that is required but I think the decision needs to be made: Is there going to be one or isn't there going to be one? If there is going to be one then it needs to be resourced adequately. I don't think two members make sense. I think there's too much responsibility. There's too much demands on both to have two people discharge that responsibility. So if it's going to be in place it needs to be properly resourced.

I think you've heard it referred to as depoliticizing. I don't think that's – I wouldn't agree with term because I think the only influence that a premier or Cabinet would have would be: Do we want one or not? And I don't want four, I want two. That would be the extent of it. So the operational side of it is not influenced by the politician if you will.

So the challenge from a policing perspective would be, if they're now told that, yes, we'll have one but we only want two because of whatever reason, the optics as you mentioned, all those considerations. Then that really puts pressure on the policing agency to try to deliver the appropriate operational requirements with two individuals and there are challenges with doing that. So if there's going to be one, properly resource it.

I'd heard somebody mention to me that there was some talk about putting in legislation. I don't think that makes – I don't think you really could legislate it. Maybe a policy though. There could be a policy created whereby that unit is available, it's going to be deployed for any administration and it will be comprised of whatever the appropriate number of resources are. Their duties are clearly articulated, close protection services. If they're going to continue with intelligence gathering, threat assessments, if that's their responsibility, and investigation, then that should be clearly articulated and outlined so that there isn't ...

In terms of public perception, I'm not sure the policing agency can do much about that. But if there was a policy that said: When a new administration comes in, a premier comes in, that's a service that's going to be provided, it's there, then perhaps that would help deal with that.

**THE COMMISSIONER:** I think the suggestion has been that you should bring back the intelligence gathering, as I think is now the case, to the CIU, is it?

**MS. CHAYTOR:** CIU, yes. Yeah.

**MR. WILLIAMS:** Yes.

**THE COMMISSIONER:** And keep the close protection service separate and distinct. Any comment on that?

**MR. BROWNE:** Yeah, that's not a bad idea actually. There will clearly be still some overlap.

**THE COMMISSIONER:** Which is the way it was.

**MR. BROWNE:** That's the way it was, yeah.

There would still be some overlap between the – if officers were dedicated solely for close protection, driving and that kind of thing, they would still have some overlap, clearly, with intelligence –

**THE COMMISSIONER:** You might be able to better resource the unit if it's part of the CIU and you have the additional individuals –

**MR. BROWNE:** I think so.

**THE COMMISSIONER:** – to be called on if needed.

**MR. BROWNE:** I think so. And then I think it might also address some of the concerns around this particular event, unfortunate event, where it was a member of the protective detail, that that was their prime responsibility, conducting an investigation.

**THE COMMISSIONER:** That makes it more complicated

**MR. BROWNE:** So, yeah, so if the investigation still would have been done, likely, but if it was done by another element so it wasn't the Protective Services Unit, then perhaps that would have helped deal with some of the concerns around this.

So that's not a bad approach. But if it's going to remain with the public or the PSU, then they need to be resourced. I guess that's the – my comment on that.

**MR. WILLIAMS:** Do you feel that the public officials in particular, the premier's office, had a good understanding of the operation of the unit. We kind of got a sense that it kind of was an ad hoc procedure that with the exception of a very brief meeting when Mr. Davis first came in. You know, there were no formal protocols in terms of briefing, not only the premier or other public officials or senior staff members on that, and that there's no information sessions or briefing sessions so that they could utilize the service to the degree possible.

Do you think that things need to be strengthened up in terms of protocols? One of the terms used in the terms of reference are manuals, protocols and practices with respect to the operation of the unit.

**MR. BROWNE:** Yes, I think that would be a good idea.

I think part of the challenge in this particular case was that Premier Davis, our administration, came in and in year three or the last year of a four-year term. So while all those things makes sense, the beginning of a term you have time to organize and to sort of slow things down.

We walked into a hot office; I mean the chairs weren't cool. The unit was in place, it had been in place for quite some time. While I know that the staff were briefed by the unit sort of as required or as they came in contact with them, there was no formalized briefing. And I think that was a product of time or time just didn't allow for it, I think, because of where we found ourselves in time.

But I think, yes, Mr. Williams, it would be appropriate that if the unit is going to exist, that there'd be a formal briefing done with all the officials, not just the premier's office, the – you would know, Commissioner, the role extends beyond that, so including Cabinet, so there's a clear understanding of what it is they do and what the expectations are of the unit of the officials that they're attempting to protect.

**MR. WILLIAMS:** That's fine. That's all the questions I have.

Thank you, Mr. Browne.

**MR. BROWNE:** Thank you.

**THE COMMISSIONER:** No further questions?

Okay, thank you, Mr. Browne.

**MR. BROWNE:** You're welcome, Commissioner.

**MS. CHAYTOR:** Thank you, Mr. Browne.

**THE COMMISSIONER:** Now, are we ready to proceed with the next witness?

**MS. CHAYTOR:** Yes, we have Justice Riche next.

**THE COMMISSIONER:** Is Justice Riche available?

**MS. O'BRIEN:** He is available. Ms. Chaytor is just going to go get him.

Commissioner, as we're waiting for Judge Riche to arrive, I can ask to seek to enter the following exhibits: Exhibits P-0707, P-0749 through to P-0756.

**THE COMMISSIONER:** So ordered.

**MS. O'BRIEN:** Thank you.

Judge Riche, before we begin our Commission Clerk will get you to affirm your evidence. And you can have a seat, Sir.

**MR. RICHE:** I beg your pardon.

**MS. O'BRIEN:** You can have a seat.

**MR. RICHE:** Yes. And what did you say before that?

**MS. O'BRIEN:** Oh, before you begin, our Commissioner Clerk, hearing Clerk, will get you to affirm your evidence. Ask you to affirm to tell the truth as you give your evidence.

**MR. RICHE:** Oh, I can swear to tell the truth.

**MS. O'BRIEN:** Yes.

**MR. RICHE:** That's what I'm here for.

**MS. O'BRIEN:** I understand. And our Commission Clerk will –

**MR. RICHE:** I don't know if everybody who came here were of that mind.

**MS. O'BRIEN:** Okay.

**THE COMMISSIONER:** Go ahead.

**MS. SHEEHAN:** Do you solemnly affirm that the evidence –

**MR. RICHE:** Do I take a test (inaudible)?

**THE COMMISSIONER:** No, you're going to be affirmed. Everybody is affirmed, Justice.

**MR. RICHE:** Are they?

**THE COMMISSIONER:** Yeah.

**MR. RICHE:** It covers everybody.

**THE COMMISSIONER:** Statutory, that's right.

**MR. RICHE:** Okay.

**THE COMMISSIONER:** Go ahead.

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

**MR. RICHE:** I do.

**MS. SHEEHAN:** Would you please state your full name?

**MR. RICHE:** My full name is David Riche. However, when I give my evidence, I may come to certain conclusions that I came to from the facts that are found.

**MS. SHEEHAN:** Thank you.

You can have –

**MR. RICHE:** I'm going to try to speak loud enough because when I was here a month or so ago I couldn't hear anything in the back.

**MS. O'BRIEN:** And to help with that, Justice Riche, if you do have a seat there and then if you keep your mouth around, we're finding five or six inches away from the microphone, is the best for picking up the sound. Okay?

**MR. KENNEDY:** Excuse me, Commissioner, perhaps – that comment I find somewhat confusing. Is the retired justice saying he's going to give new evidence?

**THE COMMISSIONER:** Mr. Kennedy, just wait.

**MR. KENNEDY:** There should be, if there's –

**THE COMMISSIONER:** Just one second now, you have nothing to object to yet. Justice Riche understands that the process is there will be questions put to Justice Riche and he will answer the questions put and justice – well, I should comment for the record, that we worked together on the Trial Division of the Supreme Court for seven, eight, nine years, I can't recall, a lengthy period of time and then eventually –

**MR. RICHE:** Without much trouble.

**THE COMMISSIONER:** – eventually, Justice Riche, you retired before you had to, before age 75. I wasn't that smart, I'm continuing, but you understand from your previous experience as trial judge we have to respond to questions and stay on the question that's asked in this context.

Now, Mr. Kennedy, if a problem arises, you're free to get up, when a problem arises, but I don't think you should anticipate or assume there's going to be a problem because of that particular remark by Justice Riche so ...

**MS. CHAYTOR:** Okay. Thank you.

**THE COMMISSIONER:** Sorry.

**MR. RICHE:** Excuse me, Mr. Commissioner, what I was hoping to be able to do was – because I've lived through this –

**THE COMMISSIONER:** Get closer to the mic there now too.

**MR. RICHE:** I've lived through this a thousand times since April, the day after the event, and I want to tell my account of what I was involved with and what I did.

**THE COMMISSIONER:** Yeah, but that's not the way it's going to work. As you know –

**MR. RICHE:** And then people will come and ask me whatever they like.

**THE COMMISSIONER:** No, you understand the process; you've done it enough in trial. You respond to questions that are put to you. It's the same – it's not the same as a trial but it's as though it were a trial in that regard.

Now that's not to say that there may not be general questions put that will allow you to expand on some of the –

**MR. RICHE:** I want to be able to explain.

**THE COMMISSIONER:** Well, you have to understand, Sir, that this is not about you or in terms of, you know, your need to explain. It is about getting the information out in an orderly fashion by appropriate questions. So – but and again –

**MR. RICHE:** Well, it may take longer that way.

**THE COMMISSIONER:** I know, but as I say – we have to deal with that. But as I said to Mr. Kennedy, probably the same thing applies to yourself, let's wait and see if there's going to be a problem before assuming there's going to be a problem.

I think there will be questions put that will give you the opportunity to get out what you want to get out, but let's have the process start.

**MR. RICHE:** Yeah.

**THE COMMISSIONER:** And if you have a problem with a question, then you can indicate that but –

**MR. RICHE:** I'm not worried about the questions but what I wanted to make sure that what my experience and my involvement in this thing with the RCMP –

**THE COMMISSIONER:** Yeah, I'm –

**MR. RICHE:** I don't know if these people know the questions.

**THE COMMISSIONER:** Well, just wait. You don't know that yet so let's wait and see if that's going to be a problem so ...

**MS. O'BRIEN:** Okay, thank you.

**THE COMMISSIONER:** Ms. O'Brien, commence your questions.

**MS. O'BRIEN:** Thank you.

Justice Riche, I'm going to just start with some quick questions to cover off your background. I understand that you were called to the bar in this province in 1960. Is that right?

**MR. RICHE:** That's right.

**MS. O'BRIEN:** Okay.

And you became a Supreme Court Justice in 1982?

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Okay.

And I understand you retired from the bench in 1999. Is that right?

**MR. RICHE:** Uh-huh.

**MS. O'BRIEN:** Okay.

And when you were in private practice here in St. John's as a lawyer, I understand that you did not practice much in the way of criminal law. But once you became a judge you did a lot of criminal cases while you were on the bench. Is that fair to say?

**MR. RICHE:** That's what I did mostly.

**MS. O'BRIEN:** Mostly criminal cases as a judge. Okay.

Now, Justice –

**MR. RICHE:** Certain people seemed to send them to me.

**MS. O'BRIEN:** Okay.

All right, so we have heard some testimony already, Justice Riche, that you were first contacted with respect to the Donald Dunphy matter on the morning of April 8, which was shortly before the first re-enactment that Constable Smyth did. We had evidence from Chief Superintendent Andrew Boland that he called you on that morning.

Is that correct? Is that your first involvement?

**MR. RICHE:** That's correct.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Actually, I was just sitting in my car and I was asked to call this number. I called them and they said: Can you meet and go down and have a look at this thing? I wasn't sure what it was. We'll come by your place at 2 o'clock and pick you up.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And that's when Sergeant, I believe he's a Sergeant now, Osmond –

**MS. O'BRIEN:** Yes, Sergeant Osmond.

**MR. RICHE:** He came by in a rickety old car and picked me up and drove me down to –

**MS. O'BRIEN:** Mitchells Brook.

**MR. RICHE:** – Mitchells Brook, which I had never been in before.

**MS. O'BRIEN:** Okay.

Okay, so that's very consistent with what we've heard already from both Chief Superintendent Boland and Sergeant Osmond. Had you ever acted as an independent observer before?

**MR. RICHE:** Have I ever what?

**MS. O'BRIEN:** Had you ever acted as an independent observer before this engagement?

**MR. RICHE:** I've never heard of the term before.

**MS. O'BRIEN:** Okay, so you never heard –

**MR. RICHE:** And I don't know if there's ever been one.

**MS. O'BRIEN:** Okay.

And when Chief Superintendent Boland asked you that morning if you would fulfill the role in this case of an independent observer, did you agree to do that?

**MR. RICHE:** I don't think they told me very much at all.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Just asked me would I go down to look at this shooting or –

**MS. O'BRIEN:** Mitchells Brook.

**MR. RICHE:** – whatever it was.

**MS. O'BRIEN:** Did Chief Superintendent Boland explain to you that he want – even in a general way, he wanted you to be an independent observer? Do you recall him using those words?

**MR. RICHE:** No, we didn't talk about it.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And that – I think that may have come up sometime afterwards.

**MS. O'BRIEN:** Okay and we have some documents to show –

**MR. RICHE:** All it was, was: Pick you up at 2. Go down and see what's going to be done at Mitchells Brook.

**MS. O'BRIEN:** Okay and you were agreeable to doing that. You went?

**MR. RICHE:** Well, I just happened to be home in St. John's at the time. I normally – might be away. And they asked me would I? I said: Okay.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And I just finished doing a job for the provincial government.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And had not started the next one, which I was going to do.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And this thing – and I said okay. Had I known – had I known what was involved in this thing, I wouldn't have touched it with a 10-foot pole.

**MS. O'BRIEN:** Okay.

Well, I'm going to ask, Madam Clerk, to bring up P-0577, please. And I'm going to bring up an exhibit, Justice Riche, and it's going to appear on the screen in front of you.

**MR. RICHE:** Oh yeah.

**MS. O'BRIEN:** Okay?

So here's a document that's already been entered into evidence. And it's a letter, it starts off with – it's a – with a letter dated April 9 to you from Chief Superintendent Boland. And attached to it is a terms of reference. And we see down below here, Justice Riche, what looks to be –

**MR. RICHE:** Yeah, I saw it.

**MS. O'BRIEN:** – your signature.

**MR. RICHE:** I see that.

**MS. O'BRIEN:** And then, also, a second letter is attached which has to do with your remuneration rate.

**MR. RICHE:** Yes.

**MS. O'BRIEN:** And your signature's also on that. Do you recognize these documents as your retainment letter and terms of reference for this position?

**MR. RICHE:** Yeah, they look familiar, but I will – okay now –

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I never really knew and I'm still not sure, well, what an independent observer is.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I mean, do they just stand back and –

**THE COMMISSIONER:** Just wait now, we're getting –

**MR. RICHE:** – and just watch what's going on and say nothing and do nothing?

**THE COMMISSIONER:** Justice Riche, you're elaborating a little bit more than you need to –

**MR. RICHE:** Okay, go ahead.

**THE COMMISSIONER:** – in terms of answering the questions. So, go ahead, next question.

**MR. RICHE:** But that was the thing I had some difficulty with.

**THE COMMISSIONER:** I understand.

**MS. O'BRIEN:** Okay.

So this is your signature here on both documents.

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Is that right? That's your signature?

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Okay. And you signed that on April 10, 2015?

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Okay.

Now, did you read these documents before signing them?

**MR. RICHE:** I beg your pardon?

**MS. O'BRIEN:** Did you read the documents before signing them?

**MR. RICHE:** I can't remember.

**MS. O'BRIEN:** Okay.

And Inspector Pat Cahill, whose signature is also on these documents, he has testified before us that he went with you, he met with you on April 10, and he read over the terms of reference with you and that you signed them in his presence.

Do you remember him doing that?

**MR. RICHE:** Yeah, I don't remember.

**MS. O'BRIEN:** You don't remember that. Okay.

So –

**MR. RICHE:** I know Inspector Cahill. I acted for his father when he purchased a house.

**MS. O'BRIEN:** Okay.

I'm just going to bring you to –

**MR. RICHE:** Which he grew up in.

**MS. O'BRIEN:** Okay. I'm going to bring you to a few sentences here in both the letter and the document and just to confirm.

So here's the letter to you from Chief Superintendent Boland. And he is asking you here: As outlined in the attached terms of reference, we are asking you to complete a written report regarding your observations of the independence and thoroughness of the investigation.

Did you understand that to be your role?

**MR. RICHE:** Yes. Yeah.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I completed a report and they were going to complete a report, but they never did.

**MS. O'BRIEN:** Okay, so that's consistent with the role you understood.

And here we have under the Terms of Reference – I'm not going to read through every term of reference, Justice Riche, but I'll take you just through a couple of them.

And they are that you will submit a report "as and when appropriate to the Commanding Officer/delegate to ensure impartiality, fairness and transparency in the investigative process."

**MR. RICHE:** I should point out to you, Counsel, that I didn't get a chance to ask any of these people any questions. All I got were these huge volumes –

**MS. O'BRIEN:** And we're going to get to that in just a moment, Justice Riche.

**MR. RICHE:** – given to me.

**MS. O'BRIEN:** We're going to talk about that in just a moment.

**MR. RICHE:** And that's where I spent a lot of my time going through all that.

**MS. O'BRIEN:** Okay.

But in terms of this term of reference here, did you understand that to be your role?

**MR. RICHE:** What's that?

**MS. O'BRIEN:** The one I just reviewed: To submit a report "to ensure impartiality, fairness and transparency in the investigative process"?

**MR. RICHE:** Yes. Yeah.

**MS. O'BRIEN:** Okay. And that you were to – here in the next one in c. that you will observe –

**MR. RICHE:** Hmm.

**MS. O'BRIEN:** We'll see here, "observe the investigation as directed by the lead investigator in charge of the investigation."

Did you understand that to be your role, to observe the investigation?

**MR. RICHE:** Yeah, again, as I say, they did the investigation and they sent reports to me.

**MS. O'BRIEN:** Right. I understand.

**MR. RICHE:** And then I would look at them. But I never – they didn't say, okay, come on in, Judge Riche, and we'll – we got Mr. Jones and we're going to interview him.

**MS. O'BRIEN:** No, I understand that. But did you understand that you had the ability to observe the investigation as it went on? I know you were not there while they were interviewing, and we will get to that.

**MR. RICHE:** No, they never did.

**MS. O'BRIEN:** Well, okay.

And with respect to monitoring witness statements, the next term of reference, number d. or letter d., said you "May monitor witness interviews with the consent of the lead investigator in charge of the investigation and the written consent of the person being interviewed." And then there's a statement about –

**MR. RICHE:** There were a couple of people who I wanted to speak with, and they allowed me to speak with that person.

**MS. O'BRIEN:** Okay, and we'll get to that.

These terms of reference, Justice Riche, did you understand them to govern your role as the independent observer?

**MR. RICHE:** Yes.

**MS. O'BRIEN:** Okay. All right –

**MR. RICHE:** But I wasn't sure what I was supposed to do.

**MS. O'BRIEN:** Okay, and we'll get to that.

**MR. RICHE:** I still don't know.

**MS. O'BRIEN:** Okay. And –

**MR. RICHE:** I don't think they liked what I did.

**MS. O'BRIEN:** Okay.

We understand, and you just spoke to it a minute ago, Justice Riche, that you received binders full of disclosure, and the testimony that we have had already from Corporal Burke and others is that they delivered to you – they said seven or eight, but I believe you have referred to it as even being up to ten – very thick binders full of paper.

**MR. RICHE:** They filled my car.

**MS. O'BRIEN:** Okay. And so that is how you got the material and then you had – you read through that material. Is that right?

**MR. RICHE:** That's how I picked up some of the important things.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But only – not because they pointed them out to me, but only because I found them.

**MS. O'BRIEN:** As you read through.

**MR. RICHE:** As I read through the things that they had done.

**MS. O'BRIEN:** Okay. And we also have heard testimony –

**MR. RICHE:** But excuse me, and I should also tell you that after I got into it for a while, I was reprimanded for investigating.

**MS. O'BRIEN:** Okay, and we are going to get to that as well.

**MR. RICHE:** And so this is what I say, I'm not sure – what was I supposed to do? To just hang on the wall like a picture?

**MS. O'BRIEN:** Okay.

We've also heard testimony that you had, during the course of your work on the file –

**MR. RICHE:** I beg your pardon?

**MS. O'BRIEN:** Sorry, yes. During the course of your work on the file, we've had testimony from other RCMP officers that you had fairly regular contact with Inspector Pat Cahill, with Corporal Steve Burke –

**MR. RICHE:** Steve Burke, mostly.

**MS. O'BRIEN:** Mostly Steve Burke, okay. And you also had some contact with Sergeant Osmond as well?

**MR. RICHE:** Sergeant Osmond – most of the time he objected to my work.

**MS. O'BRIEN:** Okay.

And you had some contact with Inspector Cahill as well, is that right? Pat Cahill?

**MR. RICHE:** Oh, yes.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But not as much.

**MS. O'BRIEN:** All right.

And we – I understand that you actually visited Mr. Dunphy's house on three different occasions. Is that right?

**MR. RICHE:** I certainly did.

**MS. O'BRIEN:** Okay.

And that you went there two times to watch Constable Smyth's re-enactments.

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Okay.

And once you went there with Corporal Burke when he was going to seize a bullet that Meghan Dunphy found and you visited the house when Meghan was there at the same time. Is that right?

**MR. RICHE:** Yeah, and I wanted to see her and then that's how I got her evidence.

**MS. O'BRIEN:** Okay.

So you did go down there on – to Mr. Dunphy's house that day?

**MR. RICHE:** Oh, for –

**THE COMMISSIONER:** All right, so you're now – there were – we didn't get the previous question finished or answer finished. You said you visited or the – Ms. O'Brien asked if you'd visited Don Dunphy's house three times, once to see the re-enactment by Mr. Smyth –

**MS. O'BRIEN:** Sorry, two times.

**THE COMMISSIONER:** – and once when you went down to – with Steve Burke to seize the bullet and Ms. Dunphy was there. And there was one –

**MR. RICHE:** Yeah, but that was later.

**THE COMMISSIONER:** Yeah, okay and –

**MS. O'BRIEN:** Two re-enactments. He did –

**THE COMMISSIONER:** But you only said –

**MR. RICHE:** But the two re-enactments were one day after the other.

**THE COMMISSIONER:** All right. Okay, so you were at both re-enactments?

**MS. O'BRIEN:** Yes.

**THE COMMISSIONER:** Yeah, okay.

**MS. O'BRIEN:** And actually, Justice Riche, I believe the evidence shows –

**MR. RICHE:** Excuse me, I –

**MS. O'BRIEN:** Just one – let me just clarify this for a moment for you –

**MR. RICHE:** I just want to explain to the Commissioner that the RCMP's cameras weren't working.

**THE COMMISSIONER:** They understand.

**MR. RICHE:** And so they said, well, we got to do it all over again.

**THE COMMISSIONER:** We've heard that. We've heard that evidence.

**MR. RICHE:** Oh, you heard that before.

**MS. O'BRIEN:** Yes.

**THE COMMISSIONER:** Thank you. Yeah.

**MS. O'BRIEN:** We have evidence that the first en-enactment took place on April 8 and that was the one –

**MR. RICHE:** And I went to both.

**MS. O'BRIEN:** And you went to both. And the next one was actually two days later on April 10. Okay.

And, now, when you met Meghan Dunphy, the third time you visited the house, did you put questions to her at that time?

**MR. RICHE:** Oh, yes.

**MS. O'BRIEN:** Okay.

And was Corporal –

**MR. RICHE:** And I looked around.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I looked around because when I was down there first there were policemen everywhere.

**MS. O'BRIEN:** For the re-enactments.

**MR. RICHE:** From the local police and from the RCMP. There were a lot of people there.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** There were almost as many people as there were cats.

**MS. O'BRIEN:** Right. Okay.

When you were there with Meghan Dunphy, was Corporal Burke with you at that time?

**MR. RICHE:** Oh, yes.

**MS. O'BRIEN:** Okay.

And did he tell you at that time that you should not be asking questions to Meghan Dunphy?

**MR. RICHE:** No.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** No. Actually, he was probably the most co-operative of the group.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** It was Osmond, now, who didn't want me asking questions. And I get to a point that if you don't ask it, I'm going to tell you.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Which is very significant.

**MS. O'BRIEN:** Okay.

We've heard evidence from Inspector Pat Cahill, and he's testified and told the Commissioner that on a number of occasions he sought to emphasize with you that your role was not that of an investigator and that he had told you that you should not – you should just observe the investigation – don't actively investigate – and that you should not speculate on the evidence.

Do you recall that being said to you by Inspector Cahill?

**MR. RICHE:** I can't say that I can remember hearing, but generally I knew that they didn't want me to do any investigation because I had found important items that should have been made known.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But they – this observer, as I say, I don't know if they thought I should be a picture on the wall or what, but I looked at all the material they gave me and I made up my mind as to whether or not it was important evidence and should be noted.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But as I say, there was a couple of times when they told me not to be doing it.

**MS. O'BRIEN:** Okay. And do you recall at any time any of the RCMP officers telling you that you should not speculate as to what had happened, not to speculate on the evidence? Do you recall that, anyone saying that to you?

**MR. RICHE:** I don't think so, but I came up with things like – so you take in this particular case, it was the big issue of Mr. Dunphy's .22 rifle.

**MS. O'BRIEN:** Uh-huh.

**MR. RICHE:** And I suppose you spent a month fooling around with that.

**MS. O'BRIEN:** We've heard a lot of evidence about the rifle, yes.

**MR. RICHE:** Now do you want my evidence on it?

**MS. O'BRIEN:** Well, if we just get – in a moment, we're going to take you to your report in just a few minutes –

**MR. RICHE:** No, no, no.

**MS. O'BRIEN:** – Justice Riche.

**MR. RICHE:** Do you want to know? As I've told you, I've been through this a thousand times.

**MS. O'BRIEN:** Yes.

**MR. RICHE:** Do you want to know what the evidence was concerning that rifle?

**MS. O'BRIEN:** So right now, if you could just answer my questions and I'm going to bring you to your report, and then at the end, if there is something you haven't had a chance to say, I'm sure the Commissioner will –

**MR. RICHE:** But I don't think we should lose that point.

**MS. O'BRIEN:** Okay, I'll make a note.

I'm going to ask to bring up Exhibit P-0580, please. And we know that you did submit a written report and I believe – Justice Riche, is this your covering letter for when you submitted your report? It's dated January 12, 2016.

**MR. RICHE:** I think it was the 13th, but that don't matter.

**MS. O'BRIEN:** Okay, and actually it was received – it's stamped here as being received by the RCMP on the 13th. So is that your letter?

**MR. RICHE:** Yeah, that becomes important later on.

**MS. O'BRIEN:** Okay, so that's your letter and that's the letter which you gave your – you submitted your report. Had you circulated a draft of your report prior to submitting this report?

**MR. RICHE:** No.

**MS. O'BRIEN:** Okay, so this was your final report attached to this letter, yes?

**MR. RICHE:** Nine months on this thing.

**MS. O'BRIEN:** Okay, yes, but this – your final report came in under cover of this letter? Is that right?

**MR. RICHE:** I was waiting on things from them all the time.

**MS. O'BRIEN:** Yes, and – yes. We note here we're into January, but am I correct that this letter was the covering letter for your final report?

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Okay, thank you.

And here in your letter, you do note that – you actually state in your letter here, Justice Riche: "In fact, one of your members told me that I should not be investigating but just observing." Is that right?

**MR. RICHE:** This is what I found frustrating is that, I suppose by being a judge, it would give me a chance to get at these witnesses to find out if they were credible.

**MS. O'BRIEN:** Right, okay.

**MR. RICHE:** And you'll see, if you eventually get to it, I suppose, that –

**MS. O'BRIEN:** The report?

**MR. RICHE:** – in relation to that important Dunphy rifle –

**MS. O'BRIEN:** Okay, well we're going to go to the report right now –

**MR. RICHE:** – which –

**MS. O'BRIEN:** – if I can ask you to bring up P-005, please.

**MR. RICHE:** – it had nothing to do with it at all.

**THE COMMISSIONER:** Sorry, I didn't understand what you said there?

**MR. RICHE:** I said that that – the issue of Dunphy's rifle didn't play any part in this at all.

**THE COMMISSIONER:** What, from your perspective or the police perspective?

**MR. RICHE:** Well, I can give the facts that show that I have witnesses and a statement of Mr. Smyth, which show that that rifle never left that sofa.

**MS. O'BRIEN:** Okay.

And I believe you make some statements about the sofa in –

**THE COMMISSIONER:** I don't understand what you said.

**MS. O'BRIEN:** Yes.

**THE COMMISSIONER:** But go ahead, you'll get to that.

**MR. RICHE:** And this is the important –

**MS. O'BRIEN:** I will.

Thank you, Commissioner.

**MR. RICHE:** This is very important because we had Mr. Dinn, I think his name is Dinn –

**MS. O'BRIEN:** Yes, Colin Dinn.

**MR. RICHE:** – and Meghan Dunphy who was there the day before. The other guy was there a few days before. The gun had been over by – now, you know, I shouldn't call it a gun, rifle. Because one time I had a murder trial involving the RCMP and they didn't know the difference between a shotgun and a rifle.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But the – I had military training, so I know something about it. And so what they did, the evidence was that Dunphy’s rifle had been over by the sofa –

**MS. O’BRIEN:** And actually the Commissioner –

**MR. RICHE:** – for many months.

**MS. O’BRIEN:** The Commissioner has already heard evidence from Meghan Dunphy –

**MR. RICHE:** Okay.

**MS. O’BRIEN:** – as to where she last saw the rifle by the sofa. And the Commissioner has also heard evidence from Colin Dinn, and he testified that he’d never seen that rifle.

**MR. RICHE:** No.

**MS. O’BRIEN:** Okay. So –

**MR. RICHE:** And that’s why I said that it wasn’t by the chair.

**MS. O’BRIEN:** Okay, yes. And we’re going to get to that in just a moment.

**MR. RICHE:** However –

**MS. O’BRIEN:** If you could just be patient with me for just a moment, Justice Riche, I’m going to bring you to that in your report. Because what’s on the screen in front of you now –

**MR. RICHE:** Don’t get too hung up on that report.

**MS. O’BRIEN:** No, but I do want to review the report because that’s what you submitted to the RCMP. So here’s your report and it’s been entered into evidence.

And Justice Riche, you and I did have an opportunity to talk about your report prior to today. And I believe when we went through, when you went through your report, there was a bit of duplication in your report.

**MR. RICHE:** Oh, probably was.

**MS. O’BRIEN:** Right, between pages 14 and 15, I think – some duplication, Commissioner, between 14 and 15 and 18 and 19. It’s not exact duplication, but it looks like in the revisions and the drafts that we have some overlap.

**THE COMMISSIONER:** Right.

**MS. O’BRIEN:** Okay.

I’m going to ask you some specific questions here now, Judge Riche, and I’m going to start with on page 2. And I’m not going to take you through every line, but the first one here I want to talk to you about is in the first paragraph.

You said: “Before proceeding with my review of the evidence, my findings and conclusions, I wish to compliment the RCMP for their thorough investigation in this matter.”

Did you consider this to be a thorough investigation by the RCMP?

**MR. RICHE:** Did I what?

**MS. O'BRIEN:** Did you consider this to be a thorough investigation by the RCMP? And I'm just noting here on your report, can you see where I've highlighted in blue? It says: "... I wish to compliment the RCMP for their thorough investigation in this matter."

**MR. RICHE:** Yes.

**MS. O'BRIEN:** So you found it to be a thorough investigation?

**MR. RICHE:** Some of it.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But they made a few mistakes, you see.

**MS. O'BRIEN:** Okay.

So as we go through, the few mistakes that you –

**MR. RICHE:** And they enlightened me on a couple of things.

**MS. O'BRIEN:** Okay.

And if we don't get an – if my questioning doesn't bring out those mistakes, I'll ask you at the end, okay, in case we've missed anything?

The next sentence I wanted to ask you about here is – I'm just highlighting it there, Justice Riche.

**MR. RICHE:** I made my conclusions and my interpretations.

**MS. O'BRIEN:** Yes. "My job as independent observer requires me to review the evidence and to make my conclusions and my interpretations of what has been presented."

**MR. RICHE:** That was important.

**MS. O'BRIEN:** That was – was that consistent – did you see that as consistent with your role as it was set out in your mandate letter, in your terms of reference?

**MR. RICHE:** As I told you, I didn't even know and I still don't know, what is an independent observer? I've never heard of it.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Unless it's somebody who comes in and watches a movie.

**MS. O'BRIEN:** I understand that you're saying you didn't fully understand the role, but you did have a letter from Chief Superintendent Boland and you had terms of reference –

**MR. RICHE:** Yes.

**MS. O'BRIEN:** – that we already reviewed. And my question is: Your statement here in your report, do you see that as consistent with the role that was outlined in those terms of reference and mandate letter?

**MR. RICHE:** I don't know.

**MS. O'BRIEN:** Okay.

**THE COMMISSIONER:** You're saying you don't –

**MR. RICHE:** I wanted to –

**THE COMMISSIONER:** Did you say you don't know? Is that what you said?

**MR. RICHE:** I didn't – it was a review of the evidence and come up with my conclusions. And this is what I was trying to do is based on facts that I found from the material they gave me I came to certain conclusions –

**MS. O'BRIEN:** Okay.

I understand that and I understand that's here. We've had some –

**MR. RICHE:** – that they didn't like.

**MS. O'BRIEN:** Right.

We've had some testimony from RCMP officers who have said that –

**MR. RICHE:** I had a meeting with three of them.

**THE COMMISSIONER:** Just one second now.

Go ahead, Ms. O'Brien, with your question.

**MS. O'BRIEN:** We've had some evidence from RCMP officers that they felt by making conclusions and interpretations on the evidence, that that was outside of your terms of reference. Would you agree with them or disagree with them?

**MR. RICHE:** Well, I felt that it was important for me to get at the truth and to find out – I wanted to know what happened.

**MS. O'BRIEN:** Okay.

But did you see that at the time as going beyond –

**MR. RICHE:** No.

**MS. O'BRIEN:** – what was in your terms of reference?

**MR. RICHE:** No, I did have one meeting, which I should be allowed to explain to you. I asked about certain things, you know: How come you didn't do a polygraph on Smyth? Oh no, we couldn't do that. But they didn't tell me why.

Now, the other thing they said to me at a meeting – three of them.

**MS. O'BRIEN:** Do you recall which officers you were speaking with?

**MR. RICHE:** Oh, yes. There was Boland. Not Boland – Cahill, Osmond and Burke.

**MS. O'BRIEN:** Okay, yes, we've had some testimony.

**MR. RICHE:** Now, the lead person in that seemed to be – I got the impression that Osmond was sort of the overseer over Burke.

**MS. O'BRIEN:** I think that's consistent with what we have heard.

**MR. RICHE:** Yeah. Now. So, you know, this was a terrible thing, this whole event, and I really felt bad about the thing. And I said – so at the meeting I said, look, why didn't the policeman come? I didn't know anything about this tweet thing. I'll tell you about this tweet thing: I thought it was something funny.

But anyway, this tweet thing, I say to them at the meeting, I said: Why didn't the police officer – why didn't he come in, and if he got into the house somehow, why didn't – if there was something criminal going on here, why didn't he just put the cuffs on Dunphy and bring him in?

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And bring him before a judge.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** So a judge could hear whether or not he'd been guilty of an offence. Now. What did they say? And this is what triggered it; this is what gave me the information. Oh, that couldn't be done. Why couldn't it be done? He'd be up for false arrest. So I said to myself – I suppose I was allowed to think – if he could say, well, false arrest, if it was false arrest, what was he doing there anyway?

**MS. O'BRIEN:** And we have heard testimony on that, and we have heard testimony that Constable Smyth didn't believe that he had reasonable and probable grounds to make an arrest.

**MR. RICHE:** Now, if he had grounds to make an arrest, but these three RCMP officers basically said: No, you can't go in and arrest him, false arrest.

**MS. O'BRIEN:** Yes, you need reasonable and probable grounds to arrest. Isn't that right?

**MR. RICHE:** So then I concluded that Smyth shouldn't have been there at all.

**MS. O'BRIEN:** Okay. Okay.

And I'm just going back to your report now, Justice Riche. I'm going to go to page 8 of the report.

**THE COMMISSIONER:** It's 11 o'clock.

**MS. O'BRIEN:** Yes.

**THE COMMISSIONER:** So I think we should take – we'll take our recess now, Justice Riche, and we'll come back in 15 minutes.

**MR. RICHE:** I'm just getting going.

**THE COMMISSIONER:** I understand.

**MS. SHEEHAN:** The Commission of Inquiry is now recessed.

**Recess**

**MS. SHEEHAN:** All Rise.

The Commission of Inquiry is now in session.

Please be seated.

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

**MS. O'BRIEN:** Thank you.

Madam Clerk, can I bring up the exhibit that we had up previously, please, thank you, and if we could go to page 7 of that exhibit.

**THE COMMISSIONER:** What's the number of that one?

**MS. O'BRIEN:** It is exhibit 0005.

**THE COMMISSIONER:** Oh, 0005, okay.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I should've know what an independent observer is.

**MS. O'BRIEN:** Right.

So I'm just going to go through a couple more or a few more examples in your report, Justice Riche. On page 7 here, you said: "Smyth himself said, when giving his statement, that he got mad at Dunphy."

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Now, we've taken a good look at the evidence and we haven't seen that statement, but I'm going to bring you to something that I think might be what you were referring to. If we can bring up, please, Madam Clerk, P-0267 and go to page 8.

And this, Justice Riche, is a statement that was taken of Constable Warren Sullivan, who was of the RNC. He was with the Constabulary, and he made a statement here. Are we on the bottom of page 7? Okay.

Oh, yes, I want the bottom of page 7, page 8. Okay. Yes, just one moment, I'll bring you – oh, 8 and 8, page 8 and 9, sorry. Yeah, he made – okay, here we go.

And this is what Warren Sullivan was saying that Constable Smyth said. He said that he did make a statement: "... he made a comment a little later ... and you know ... I think it's ... natural but, ah, after he ... calmed down pretty good then all of a sudden he said, you know, man, he said, I'm mad at him now. He said I'm mad. He said like ... if I could only shake him

alive now and ... slap him and say, you know, what ... you doin this – what boy – what did you do. What'd you do this for, right? You know what I mean.”

Was that the statement that you were referring to, the evidence that you were referring to, when you made your statement in your report that Smyth said he got mad at Mr. Dunphy?

**MR. RICHE:** No, I knew about this one, but I think that when they were having their confrontation, their argument in the room, that they were quite mad at each other.

**MS. O'BRIEN:** Okay.

But we don't see any record of Smyth saying that he was mad. Would you agree with that?

**MR. RICHE:** Not to a third party, no.

**MS. O'BRIEN:** Okay, not to a third party. Okay.

All right, and if we could go back to P-0005, then, and go to page 9, please.

**MR. RICHE:** See, he made some statements I think during that enactment, like he said he went on automatic.

**MS. O'BRIEN:** Yes.

**MR. RICHE:** Because that's their training, eh?

**MS. O'BRIEN:** Yes, he went on automatic with his training. Right. And so – but that's – he never said he got mad.

**MR. RICHE:** Well, when it's all – this is – you're talking seconds here now.

**MS. O'BRIEN:** Yes.

**MR. RICHE:** And they're arguing and whatnot. And then he then – that's when the shooting starts, but he was upset. Dunphy was throwing all kinds of insults at him.

**MS. O'BRIEN:** Right.

**MR. RICHE:** And as Corporal Burke, lead investigator, said – I think he calls me Columbo. And he says that all Dunphy was trying to do was to get him out of the house.

**MS. O'BRIEN:** Okay.

So we'll get to that, but my point to you here, Justice Riche, is we have not found anywhere in Constable Smyth's statements that he said that he was mad at Mr. Dunphy that day.

**MR. RICHE:** No.

**MS. O'BRIEN:** Okay, you agree with that. All right.

**MR. RICHE:** I agree with that.

**MS. O'BRIEN:** And then on page –

**MR. RICHE:** I'm only – I only concluded that from their interchange, we'll say.

**MS. O'BRIEN:** Okay.

And here on page 9 of your report, you talk – you do say here that “Considering the information about Dunphy and the information about Smyth, even though it is not that extensive, I believe that in Dunphy's house that day there were two angry men facing one another. I can't believe that Smyth did not become upset himself by the shouting and insulting statements made by Dunphy to him. I do not believe that it was in Smyth's character to lay back and just take this stuff on the chin without reaction.”

Justice Riche, what was the evidence that you were basing this conclusion on?

**MR. RICHE:** It was based on the statements by Dunphy and insults that he threw. And of course, I don't know if anybody else know it, but Dunphy had a very violent temper and –

**MS. O'BRIEN:** Mr. Dunphy.

**MR. RICHE:** – they were having this confrontation and even Smyth said that he was frothing at the mouth and what have you.

**MS. O'BRIEN:** Okay. So yes, and I know that Colin Dinn had made a statement that he'd seen Mr. Dunphy get angry before.

**MR. RICHE:** He showed me that insulting statements and I don't think it was – I didn't think it was in Smyth's nature to sit back and, as I said, take it on the chin without reaction.

**THE COMMISSIONER:** But, Justice, you didn't have any evidence for that conclusion, did you?

**MR. RICHE:** No.

**THE COMMISSIONER:** Isn't that just speculation? Sorry?

**MR. RICHE:** No, it was based on what I would call logic.

**THE COMMISSIONER:** Logic, but where does – you got to have a foundation for logic.

**MR. RICHE:** If somebody is insulting, especially a police officer who's used to having control, and is being abused verbally by this other person who he's gone down to see, he probably –

**THE COMMISSIONER:** So are you –

**MR. RICHE:** I would have thought, and from Smyth's own history when in his background he got into some difficulty –

**THE COMMISSIONER:** There was one incident in – when he was on holiday, yeah.

**MR. RICHE:** Yeah, on holiday.

**THE COMMISSIONER:** I heard about –

**MR. RICHE:** He's not the type of guy that would sit back and just say, oh, okay, to take it easy.

**THE COMMISSIONER:** Now, we've had a lot of evidence from other police officers who say they're used to being insulted, that that goes with the job.

**MR. RICHE:** Well, I haven't seen too many.

**THE COMMISSIONER:** Pardon?

**MR. RICHE:** I wouldn't try it.

**MS. O'BRIEN:** Okay.

All right, so –

**MR. RICHE:** Excuse me, as one investigator said to me: Never show a gun in the presence of a policeman; you'd probably get shot.

**THE COMMISSIONER:** Well, there, I think there might be some logic there.

**MS. O'BRIEN:** Yeah.

**MR. RICHE:** And that was said today.

**THE COMMISSIONER:** All right.

**MS. O'BRIEN:** Thank you.

I'm going to go now, Judge Riche, because you've mentioned it earlier about where the gun was, the couch and the chair. This is the issue with – between Constable Smyth using the word couch in his statement. So I'm going to take you to that in your report.

So if we could go to page 12 –

**MR. RICHE:** Yeah, well, see – okay, well –

**MS. O'BRIEN:** Okay. I'm just going to bring you to a sentence in your report and then I'm going to ask you a question, but it's going to be on that topic.

Sorry, page 12, Madam Clerk.

Thank you.

**MR. RICHE:** I don't want you to throw me off my train of thought.

**MS. O'BRIEN:** I apologize; I was just giving you advance notice of the topic I was going to cover.

It says that – you wrote here: “In fact, in one of Smyth's statements he said that the gun was by the couch but then when questioned by the RCMP about this, what I considered to be a statement confirming the location of the gun, Smyth then changed his statement and said that was a mistake and really the gun was first seen by the chair.”

Do you –?

**MR. RICHE:** I'll tell you how that happened.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Okay? Make it simple.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Smyth makes his statement to Henstridge; I think it was Henstridge –

**MS. O'BRIEN:** Yes.

**MR. RICHE:** He gave the statement to Henstridge, right?

**MS. O'BRIEN:** Yes, that's right.

**MR. RICHE:** Several days later, it could be a week, I'm thumbing through the old papers and I see in it: couch. They didn't see it. That came from me. I go and tell Burke and I guess Burke runs down to Henstridge and they fix it up.

**MS. O'BRIEN:** Okay.

But looking at that statement – and if we could please bring up P-0119, please, Madam Clerk, at page 62. And I am going to show you this is the document where you found – Justice Riche, where you found the word “couch.”

**MR. RICHE:** I beg your pardon?

**MS. O'BRIEN:** I'm going to show you the statement that you were looking at when you found the word “couch.” Okay?

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** That's what's going to come up on the screen: P-0119 –

**MR. RICHE:** That's the original statement?

**MS. O'BRIEN:** Yes, that's the typed transcript that you would have seen.

**MR. RICHE:** That's not the fixed one?

**MS. O'BRIEN:** No. It's original one at page 63.

Sorry, okay.

Okay and here it is down here and Smyth says: “Can you say what kind of firearm it was?” Burke says: “We're not really sure yet.” And he says: “Okay. And do you know if it came from couch or the floor? I mean, you'll probably never know.”

Burke says: “There's – we don't know that either and we can only speculate.” And Smyth says: “... it wasn't like a gun holster on the side of the ...” not chair or anything.

So he does say the word “couch” but then he follows it very shortly after by the word “chair.” Is it possible that that was just a mistake by Smyth; he misspoke when he said the word “couch”?

**MR. RICHE:** I don't know.

**MS. O'BRIEN:** Okay. And did you –

**MR. RICHE:** I don't know, but the fact was I had the evidence of Meghan Dunphy and Dinn that that .22 rifle was by the couch.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Okay?

**THE COMMISSIONER:** That was some – a day or so previously.

**MR. RICHE:** Oh –

**MS. O'BRIEN:** It was longer than that even, Commissioner. It was in January.

**MR. RICHE:** Maybe several days.

**THE COMMISSIONER:** Yeah, sorry, when she was vacuuming. The last time she was at the house was the previous day, I think and –

**MR. RICHE:** Yeah, it could be several days.

**THE COMMISSIONER:** So but it doesn't take that long to move a rifle.

**MR. RICHE:** No, no.

**THE COMMISSIONER:** So she –

**MR. RICHE:** So then I came to the conclusion, I said, well, we got the couch in the room. She said the gun was there for months and Dinn confirms he didn't see any gun by the chair. And then this statement comes out and he mentions couch and then I say to myself, why would he – why would he mention couch?

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And then I add to that the fourth factor – now, these are the facts – that gun was open. That wasn't in a position to be – of somebody going to be firing. Any 15-year-old boy in Newfoundland knows or did know that a .22 rifle, how you operate it.

The unfortunate thing in this particular case, I would say, that the police are not familiar with that. They wouldn't (inaudible) wouldn't use them, in the same way as I said in the case I had in Hickman's Harbour. They couldn't tell a shotgun from a rifle.

**THE COMMISSIONER:** So what conclusion do you draw from that?

**MR. RICHE:** I drew from that that I had four factors. I had the statement of Dinn and Meghan –

**THE COMMISSIONER:** That the rifle had been there sometime before.

**MR. RICHE:** – hadn't been moved. I had – and she was there the day before. And then I had this statement and this letter and he mentions couch. And then I have the case of the gun was open. So there's four factors.

**THE COMMISSIONER:** What's –

**MR. RICHE:** Against that, we got one man's statement saying –

**THE COMMISSIONER:** What's the gun being open got to do with anything? What do you draw from that?

**MR. RICHE:** If you were intending to fire it you'd have to close it. You got to close that action.

**THE COMMISSIONER:** Yeah, but do you think that Constable Smyth or anybody seeing the barrel of a rifle coming towards you –

**MR. RICHE:** Oh, I wouldn't expect him –

**THE COMMISSIONER:** – is going to know whether it's able to be fired or not?

**MR. RICHE:** I wouldn't expect it.

**THE COMMISSIONER:** So would you expect him to wait?

**MR. RICHE:** But if –

**THE COMMISSIONER:** Would you expect Constable Smyth to wait and ask can you fire it?

**MR. RICHE:** No, no.

No, what I'm thinking about is Dunphy, if Dunphy was going to do it – and, in fact, he didn't have anything done with the gun to get it in a firing position. And we have the statements of Meghan and Dinn, and we have this statement and the letter. We have these three factors.

Against that we have a man who shot somebody who says: Oh yeah, he came at me with a rifle and kept following me after being shot.

**THE COMMISSIONER:** Uh-huh.

**MR. RICHE:** Now, if anybody looked at a news reel, forget the movies.

**THE COMMISSIONER:** We've heard evidence from Dr. Avis, the chief medical examiner, with respect to that yesterday.

**MR. RICHE:** Oh, I know that but they – if somebody is shot, they're not going around operating ...

**THE COMMISSIONER:** Well, that's not the evidence that's being put forth.

**MR. RICHE:** Oh, I know that, I know that. But I mean –

**THE COMMISSIONER:** We do have to –

**MR. RICHE:** I wouldn't accept everything that a forensic pathologist says either.

**THE COMMISSIONER:** We do have to act on evidence though.

**MR. RICHE:** Hmm?

**THE COMMISSIONER:** You'd accept that we have to act on evidence.

**MR. RICHE:** Oh, yes.

**THE COMMISSIONER:** Right.

**MS. O'BRIEN:** Okay. And –

**MR. RICHE:** But we don't have to believe it.

**MS. O'BRIEN:** Okay.

**THE COMMISSIONER:** But you have to decide on the basis of the evidence.

**MR. RICHE:** Grounds of probabilities.

**THE COMMISSIONER:** Go ahead.

**MS. O'BRIEN:** Thank you.

So, well, just to finish off this point on the word “couch,” I think out of fairness to Constable Smyth, he does use the word “chair” here in a number of other places when referring to where the gun was used. But also, this statement that we're looking at here, Justice Riche, you know that that was videotaped, do you? You know his statement was videotaped?

**MR. RICHE:** No.

**MS. O'BRIEN:** Okay, it was videotaped. So did you every have a chance to review the videotape or see the videotape?

**MR. RICHE:** No.

**MS. O'BRIEN:** Okay, well –

**MR. RICHE:** No, all they gave me was these big books.

**MS. O'BRIEN:** Okay.

So, Commissioner, just to – this statement was shown here in the hearing room.

**THE COMMISSIONER:** At the re-enactment?

**MS. O'BRIEN:** Oh no, this full part, no. And we will get, I will make sure that we get into evidence a clip from this section of the statement. Parts of the statement were put into evidence. I don't know if this particular piece was, but I'll confirm that.

But in view – when you view – when –

**MS. CHAYTOR:** This whole statement is in evidence.

**MS. O'BRIEN:** Yes, but I'm talking about the video. When you reviewed – parts of the video went in. I will ensure that this other clip goes into the evidence, Commissioner, so you get a chance to see it.

But when Smyth is sitting in a chair, as you may recall when he gives this interview, and the chair has arms in it and when he does say the word “couch,” he is reaching over the right arm of

the chair that he's sitting in when he uses that word, Justice Riche. And I appreciate that because you haven't seen that video, you would not be aware of that. Okay?

**MR. RICHE:** The only thing I remember is that – and this will be significant – that Mr. Dunphy had his defensive club, I call it, to keep out intruders and that was there by his chair.

**MS. O'BRIEN:** That was and we've had a lot of evidence on that too. And if we –

**MR. RICHE:** And was probably, and was probably the cause of him being shot.

**MS. O'BRIEN:** Okay.

And in a couple of places in your – a couple of places in your report, Justice Riche – I'll get back to your statement there in just a moment but I just want to finish off with what you were just talking about with the Commissioner, and this is about the evidence of a body moving after it was shot.

And in a couple – the evidence about a body moving after it was shot. And in a couple of places in your report, you say – you express that it was, that it wouldn't have been possible for Mr. Dunphy to continue to hold the gun and follow Constable Smyth after he was shot.

**MR. RICHE:** That's what I said.

**MS. O'BRIEN:** I think the words you used, you say: Extremely unlikely.

**MR. RICHE:** That's what I said.

**MS. O'BRIEN:** Okay.

Now –

**MR. RICHE:** And if the forensic pathologist said otherwise, I say he's wrong.

**MS. O'BRIEN:** Okay.

And we'll just let you know that the forensic pathologist, Dr. Simon Avis, did give us testimony here in this hearing room, and he said that it was possible that even after Mr. Dunphy had sustained the shot to the chest and the shot to his front forehead, that with both shots it was less likely, but it was still possible that he could have –

**MR. RICHE:** Possible but not probable.

**MS. O'BRIEN:** And he expressed it as possibility. That's –

**MR. RICHE:** Anything is possible.

**MS. O'BRIEN:** Okay.

And also in a couple of places in your report you state that when you believe that Mr. Dunphy dropped the gun. Do you recall that?

**MR. RICHE:** No.

**MS. O'BRIEN:** When he dropped it and –

**MR. RICHE:** That's when I thought that the gun may have played a part, but I'm of the opinion that it played no part at all.

**MS. O'BRIEN:** Okay, so we'll get to that in just a moment.

On page 13 of your report you also state that: "We know from the evidence obtained from the forensic pathologist Dr. Avis that the shot to Dunphy's body is what killed him." Do you recall writing that on page –

**MR. RICHE:** Oh yes.

**MS. O'BRIEN:** Okay. Now –

**MR. RICHE:** You see, I went down and interviewed him.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And he said he got shot and the first shot killed him.

**MS. O'BRIEN:** Okay.

And he's given us, he has given us testimony here and he has said that any one of the three shots that Mr. Dunphy sustained could have killed Mr. Dunphy; they were all potentially lethal shots.

**MR. RICHE:** Oh, he described the body one very plainly.

**MS. O'BRIEN:** Right.

**MR. RICHE:** How it went in and, well, it destroyed his insides.

**MS. O'BRIEN:** Okay.

But I don't – Dr. Avis's testimony is he can't tell you what – tell us what order the shots hit Mr. Dunphy –

**MR. RICHE:** Oh I know he don't but –

**MS. O'BRIEN:** – and that any one of them could have been a fatal shot.

**MR. RICHE:** But we know.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** We know from Mr. Smyth.

**MS. O'BRIEN:** Okay.

So other than what you believe you heard from Dr. Avis, did you have another other evidence on which to base your opinion about which shot killed Mr. Dunphy? Where you just got evidence from – you just heard from Dr. Avis.

**MR. RICHE:** Well, either one of them could have.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But the first one which – you see, these people are trained that when they come upon you and they see some danger, they can take their gun and they fire, their policy. Now, I don't know who gives them the authority for this policy but they have a policy which says you fire twice at the body mass. I forget what they call it –

**MS. O'BRIEN:** That's the centre mass.

**MR. RICHE:** Centre mass, that's it.

**MS. O'BRIEN:** Yes.

**MR. RICHE:** You shoot them in the body and then you shoot them twice in the head.

**MS. O'BRIEN:** That's what our evidence has been, yes, about their training.

**MR. RICHE:** That's an automatic thing.

**MS. O'BRIEN:** Okay. So, yes, I think our evidence has been two shots to the body and then one to the head, and then you can continue shooting if there's still a risk –

**MR. RICHE:** Yeah, I thought it was just enough just to – but then you look at the provisions of the Code; the *Criminal Code* says, well, a reasonable amount of force.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But his last shot, you see, he was very close to him and shot him in the side of the head.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** But he was already dead.

**MS. O'BRIEN:** Okay.

And, again, we've had different testimony from Dr. Avis, but we'll leave that point for now, Justice Riche.

On page 14 of your report, you said: "As I said earlier, it does not really matter to the conclusion in this case that the rifle came from the chair or the couch because the shot fired by Smyth took place when he saw the gun which was obviously in the possession of Dunphy and that body shot is what killed him."

So when we read this statement here, were you accepting the fact that Mr. Dunphy was holding the .22 rifle when he was shot by Constable Smyth?

**MR. RICHE:** He never did.

**MS. O'BRIEN:** Okay –

**MR. RICHE:** I was wrong.

**MS. O'BRIEN:** You were wrong in your report, you're saying?

**MR. RICHE:** I was wrong.

**MS. O'BRIEN:** Okay. So at the time you wrote your report, you accepted that. That that was the case –

**MR. RICHE:** At that time.

**MS. O'BRIEN:** – at that time. And you've since –

**MR. RICHE:** We're talking long spaces of time now.

**MS. O'BRIEN:** I understand. So you've since changed your opinion as to what had happened –

**MR. RICHE:** (Inaudible.)

**MS. O'BRIEN:** – but do you have any other facts or evidence that you want to tell the Commissioner about? And again, I don't know if he's – I know the Commissioner is not interested in your theory about what happened, but he would be interested if there's any other facts or evidence that you have.

**MR. RICHE:** I don't know if Dunphy had had possession of that gun at all. As I said, the facts show that that gun never – that rifle never moved from the couch.

**MS. O'BRIEN:** Okay. And that's what you've already told the Commissioner about here today, the four pieces of –

**MR. RICHE:** No. Well, yeah, because what happened was when they got into the confrontation, Dunphy went for his stick and probably went after Smyth and Smyth automatically shot him.

**MS. O'BRIEN:** Okay, but there's no evidence to that. Isn't the right, Justice Riche?

**MR. RICHE:** No.

**MS. O'BRIEN:** No evidence. Okay. Thank you.

And on page 14 –

**MR. RICHE:** But there was, there was evidence of the stick and it – just as much as there was evidence of a gun. There was only one person who said there was a rifle, nobody else.

**THE COMMISSIONER:** Well, there was a rifle found.

**MR. RICHE:** Oh, yes, right by the table.

**THE COMMISSIONER:** And it's not disputed that it was probably Mr. Dunphy's rifle, which he'd inherited from his father.

**MR. RICHE:** It was his rifle.

**THE COMMISSIONER:** And when you say he probably went after Mr. Smyth, the evidence is that Mr. Dunphy was in the chair when he was shot. He was either seated or in a position where he would fall back into the chair. So he wasn't, he wasn't going after Mr. Smyth very far. There's no evidence that the body was moved.

So if he was shot in the chair, how do you explain, you know, your view that he was going after Constable Smyth with the stick?

**MR. RICHE:** I don't think he was always in that chair.

**THE COMMISSIONER:** You think the body was moved?

**MR. RICHE:** I think it was moved.

**THE COMMISSIONER:** There's no evidence of that.

**MR. RICHE:** No, but the only evidence you got is Smyth's evidence.

**MS. O'BRIEN:** We also have photographic evidence of the scene.

**MR. RICHE:** He had half an hour there by himself.

**MS. O'BRIEN:** Okay.

**THE COMMISSIONER:** Well, again, the evidence is that it was much less than that.

Anyhow, go ahead, Ms. O'Brien.

**MS. O'BRIEN:** Thank you.

At page 14 of your report, Justice Riche, you wrote: "No notes were produced" and you underlined this section.

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Were you aware that inside the yellow folder that was seized from the scene that there were papers with some notes written on them by Constable Smyth as well as some of his writing on the inside of the file folder?

**MR. RICHE:** I don't know where they came from because I asked for the notes and they said – and I was told there were no notes.

**MS. O'BRIEN:** Okay. All right.

**MR. RICHE:** So I don't know when that folder of notes was made up.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I mean, afterwards you can make up whatever you like.

**MS. O'BRIEN:** Okay.

We do have photographs that were taken from it at the scene. So you weren't aware of that evidence but we do have some evidence here.

**MR. RICHE:** Pardon? What was that?

**MS. O'BRIEN:** You weren't aware of the notes in the folder is what I'm confirming.

**MR. RICHE:** No, no.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I didn't even know, never heard of a folder.

**MS. O'BRIEN:** Okay. And I just –

**MR. RICHE:** He said, Smyth said he had a notebook and he took notes and he was by there. And that's when he saw Dunphy coming at him.

**MS. O'BRIEN:** Okay. And he'd said he had a folder with him at that time, I think his statement –

**MR. RICHE:** He didn't say that to me.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I don't know who he said that to.

**MS. O'BRIEN:** Okay. I think when we look at his statements he does say that he said he had a folder with him.

**MR. RICHE:** Oh, that was to Henstridge.

**MS. O'BRIEN:** To Henstridge when he gave a statement to Henstridge. And, I think, during his re-enactments he also referred to having a folder.

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** So you recall that? Do you recall that?

**MR. RICHE:** I don't remember any folder.

**MS. O'BRIEN:** Okay. That's fine.

**MR. RICHE:** I don't know what went on between him and Henstridge.

**MS. O'BRIEN:** Okay.

Okay, on page 20 of your report here, I just have a couple –

**MR. RICHE:** What I was wondering is why it took so long for him to fix that after I told him that it referred to the couch.

**MS. O'BRIEN:** When they went back – you're referring to how long they went back and interviewed Constable Smyth on the issue of the couch and chair. Is that what you mean?

**MR. RICHE:** Well, I came up with it.

**MS. O'BRIEN:** Yes.

**MR. RICHE:** Now maybe I wasn't supposed to as an independent observer, maybe I was just supposed to look at it.

**MS. O'BRIEN:** Okay.

And Corporal Burke told us that you had identified that, you know you'd seen the word "couch" in the statement and that's –

**MR. RICHE:** And he runs down and gets it fixed.

**MS. O'BRIEN:** And he – well, his evidence was that he went and re-interviewed Constable Smyth on that point.

–  
**MR. RICHE:** Oh sure.

**MS. O'BRIEN:** That was his evidence.

Here on page 20 of your report you state that: "I am satisfied that when the rifle was presented, Smyth had the right to protect himself."

So was that your conclusion here? Were you accepting that once a rifle was presented, that Constable Smyth had the right –?

**MR. RICHE:** That's what I thought at the time but I think I was wrong.

**MS. O'BRIEN:** Okay. And this goes back to the conversation we just had with respect to the –

**MR. RICHE:** But under normal circumstances he would.

**MS. O'BRIEN:** Okay, all right.

And then the last question I just want to ask you with respect to your report is on page 22 –

**MR. RICHE:** But, again, I go back to the provisions in the Code, he has to use reasonable force.

**MS. O'BRIEN:** Yes.

**MR. RICHE:** You just can't go shooting people up.

**MS. O'BRIEN:** That –

**MR. RICHE:** You're – it has to be reasonable depending on the circumstances. I don't know what section it is, 25 or something, is it?

**MS. O'BRIEN:** You're right, 25, yes. And we're going to have some –

**MR. RICHE:** It's been a while since I looked at the book.

**MS. O'BRIEN:** Now, the last question I want to ask you is just with respect to page 22.

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** And I just – I'll just put you to the sentence that I have here. You wrote: "Dunphy was only trying to get Smyth out of the house, he was not trying to hurt him."

And you said something similar on page 15 of your report. Justice Riche, do you recall that?

**MR. RICHE:** I beg your pardon?

**MS. O'BRIEN:** Do you recall that, saying that Dunphy was only trying to get Smyth out of the house, he was not trying to hurt him?

**MR. RICHE:** That's right.

**MS. O'BRIEN:** Okay. And what was your – what evidence were you basing that on?

**MR. RICHE:** Hmm?

**MS. O'BRIEN:** What evidence were you basing that on?

**MR. RICHE:** I was basing that evidence on the remarks that Smyth made to – not Smyth, but Dunphy made to Smyth, and based on the signs he had outside: No government people. And he referred to Dunphy or Smyth as a puppet and he wanted to get him out of the house.

**MS. O'BRIEN:** Okay. So you took from calling him as a puppet that he wanted him out of the house. Is that what you're saying?

**MR. RICHE:** Well, I don't have all the words because the only person who got the words is Smyth –

**MS. O'BRIEN:** Okay.

**MR. RICHE:** – and he's not telling us.

**MS. O'BRIEN:** No, Smyth never – in Smyth's statements he does not say –

**MR. RICHE:** No.

**MS. O'BRIEN:** – that Mr. Dunphy asked or told him to get out of his house.

**MR. RICHE:** No.

**MS. O'BRIEN:** Would you agree with that?

**MR. RICHE:** I don't know.

**MS. O'BRIEN:** In his statements, though, Constable Smyth never –

**MR. RICHE:** Oh, he may have said it in his statement but I wouldn't take that as gospel.

**MS. O'BRIEN:** Okay. One of –

**MR. RICHE:** But if you take all the facts and you put them together and you say, well –

**THE COMMISSIONER:** Well, the burden of proof, who's that – beyond a reasonable doubt. How does that come into play there?

**MR. RICHE:** Yes. Did he want him out of that house?

**THE COMMISSIONER:** And you would say that's proven beyond a reasonable doubt?

**MR. RICHE:** Yeah. He wanted him out.

**MS. O'BRIEN:** Okay.

One of your roles here was to help ensure a transparent investigation. That was one of the things the RCMP had asked you to do. Did you have any concerns – did you get all the information with respect to the, with respect to the RCMP's investigation? In those 10 binders of materials, are you satisfied that they gave you all the material they had?

**MR. RICHE:** Oh, I think they gave me most of the material. In fact, there was probably some they probably didn't want me to have.

**MS. O'BRIEN:** That they did give you, though. Is that what you're saying?

**MR. RICHE:** Oh, yes.

**MS. O'BRIEN:** Okay, so you feel like they gave you everything.

Did you consider their investigation to be a fair investigation?

**MR. RICHE:** I thought generally it was fair but restrictive. That's the word I would use, "restrictive." That they didn't want me to – you see, my attitude on these things, I want to get to the bottom of it. I want to find out what really happened.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And they didn't want me to do that. They wanted me to be, as I said, like a picture on the wall.

**MS. O'BRIEN:** Okay, so they restricted your role. But, generally, did you find them to be fair?

**MR. RICHE:** Oh, yes.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** In fact, as I told you, it was the RCMP officer who said to me: Look, all Dunphy wanted was to get Smyth out of the house.

**MS. O'BRIEN:** And who said that to you?

**MR. RICHE:** Burke.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And I agreed with him.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** We were talking together and we agreed on that point.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** Now, I presume that that could be evidence too.

**MS. O'BRIEN:** Well, I don't – what Burke – if Burke is speculating or thinking, that's not evidence is it?

**MR. RICHE:** He may be speculating too.

**MS. O'BRIEN:** He may be speculating too.

**MR. RICHE:** Everybody is speculating except for the person who's not talking.

**MS. O'BRIEN:** Okay.

**THE COMMISSIONER:** The way we deal with clearing that sort of thing up is looking for the hard facts that are established and drawing inferences from them.

**MR. RICHE:** (Inaudible.)

**THE COMMISSIONER:** So we can't leave it as a speculation up in the air. We got to look around and see what the forensic science is.

**MR. RICHE:** Yeah.

**MS. O'BRIEN:** Did you find any evidence that the RCMP investigation was biased or that it lacked independence or impartiality?

**MR. RICHE:** (Inaudible.)

**MS. O'BRIEN:** Did you find any evidence that the RCMP investigation was biased?

**MR. RICHE:** Oh, I think it was, yeah.

**MS. O'BRIEN:** Okay, and what evidence –

**MR. RICHE:** I thought that they – when I went to the replay I mean, I could tell that – and from then on, there was nothing that they pursued to find out more about what happened in that room –

**MS. O'BRIEN:** Okay.

**MR. RICHE:** – apart from taking their pictures and as I told you about the case where he wouldn't give – that that would have been false arrest (inaudible) and the request for the polygraph, all that. To me, they weren't pursuing this as diligently as I would have thought.

And the same with Henstridge in his taking the statement, just two of them sit down and he just writes out basically what Smyth had said. No evidence of any cross-examination or check on this or check on that, or you're mistaken here or, well, why did you do that? The details as to what took place between the two of them in that room, I don't – I never seen any details other than a few words, what Smyth said.

**MS. O'BRIEN:** Did you find any evidence that anyone was influencing the investigation – sorry, I think my mic turned off there.

Did you find any evidence that anyone was influencing the investigation other than the RCMP? So did you see any evidence of the Royal Newfoundland Constabulary or anyone from government or the premier's office influencing?

**MR. RICHE:** No, nobody from government but I thought that the RCMP and the RNC, I thought they were on a very friendly basis. And, you know, it's like at the start of it, you know,

instead of taking the statement, go home now and think about this for a few days and we'll have a chat later.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** I mean, who does that? And then the RCMP says, well, he didn't have to say anything. Well, he wasn't charged so he didn't have to be cautioned, but as a member of the police force if he was involved in a criminal act, no matter who did it, he still has an obligation to report what happened.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And when the RCMP says, well, he didn't have to say anything.

**MS. O'BRIEN:** Okay.

And the evidence that we –

**MR. RICHE:** But he did have to say something if somebody asked him.

**MS. O'BRIEN:** I think the evidence we've heard that he was not obligated; he actually was not obligated to give a statement to the RCMP. That's the evidence the Commissioner has before him.

**MR. RICHE:** Yeah, but why? He wasn't charged.

**MS. O'BRIEN:** That's right. But a witness is not required to speak to the police if they don't want to, isn't that right?

**MR. RICHE:** If they don't want to –

**MS. O'BRIEN:** If they don't want.

**MR. RICHE:** – but he wasn't asked.

**MS. O'BRIEN:** Okay.

Yes, you can still ask someone. It doesn't mean that they're going to speak to you.

**MR. RICHE:** Well, if I was a superior police – member of the police force and a junior member got into trouble, I'm sure I could haul him in and ask him a few questions as to what happened.

**MS. O'BRIEN:** Okay. And –

**MR. RICHE:** I mean, are these people going around, floating around independent of everybody?

**MS. O'BRIEN:** Okay.

But ultimately Constable Smyth did – Constable Smyth did speak to the RCMP. He did give a statement.

**MR. RICHE:** Yes. Yeah.

**MS. O'BRIEN:** Okay.

Commissioner, those are my questions. I just have a couple of more with respect to some post – some media interviews that Justice Riche gave after his work on the file, I only have a couple of questions on those. But before I move on for that, have I covered the other areas adequately, or is there any other areas you'd like me to ...?

**THE COMMISSIONER:** No, that's fine from my perspective.

Justice, do you have anything that hasn't been brought out that you'd like to ...?

**MR. RICHE:** Yeah, there were a couple of things. Like it was, as you said, not based on any particular fact, but there was something taken up according to Smyth by Dunphy's chair.

**THE COMMISSIONER:** Uh-huh.

**MR. RICHE:** And it was shortly after that, within seconds of a shooting, and I concluded that he, as he always did which was his habit, Dunphy took his stick and went after Smyth to get him out of the house and Smyth reacted, as he's trained to do in the case of danger, and fired his pistol.

I should – I shouldn't bring this up but I will, that a stick can be a weapon. And none of you people were around I guess when the Moss trial took place. I sat right through that. When Joey Smallwood sent out a group of –

**THE COMMISSIONER:** The IWA strike. Yes, I was there.

**MR. RICHE:** The IWA strike and Mr. Moss got hit in the head.

**THE COMMISSIONER:** With a piece of pulpwood.

**MR. RICHE:** Yeah.

**THE COMMISSIONER:** Right.

**MS. O'BRIEN:** Yeah. Okay.

Justice Riche, we know that approximately – on around September 16 of 2016 and within a few days after that but during that period, you gave some interviews to the media. Is that right?

In September, when you got back –

**MR. RICHE:** No (inaudible).

**MS. O'BRIEN:** – I think you just – you were just back from holiday and you gave some –

**MR. RICHE:** Yes, there was some – it was something thing I couldn't understand. My wife and I were over on our anniversary, were over in Europe, and I was only back a couple of days when I was being called by the media and wanted to do interviews. And I asked about it and they said, well, the RCMP had released their report.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** That there would be no charges. No, I didn't realize that the police had the power over (inaudible).

**THE COMMISSIONER:** Who are you saying told you that, that the report had been released?

**MR. RICHE:** It was some reporter. I don't know who.

**THE COMMISSIONER:** Some reporter? Okay.

**MS. O'BRIEN:** And could it be that the reporter was telling you the RCMP had made an announcement that no charges.

**MR. RICHE:** Apparently there was an announcement made –

**MS. O'BRIEN:** Announcement that no charges would be laid.

**MR. RICHE:** – several days before I came home.

**MS. O'BRIEN:** Yes. Okay.

**MR. RICHE:** And then when – then I assumed that my report and their report had been released to the press because I couldn't – I was wondering how – I had my report there with the RCMP from January to September –

**MS. O'BRIEN:** Okay.

**MR. RICHE:** – and no one asked about it, and then suddenly everybody is asking about it. So somebody at that time, either the police or somebody else, leaked that information concerning what took place in this case.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And that's when I started to get all these requests for information.

**MS. O'BRIEN:** Okay. So at that time –

**MR. RICHE:** But before that, for that nine months, no member connected me with it at all.

**MS. O'BRIEN:** Okay.

So at that time you assumed that your report had been released.

**MR. RICHE:** Something had been released.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And who was sending people to me?

**MS. O'BRIEN:** Okay. And –

**MR. RICHE:** And then I got calls from all over the Island saying how good it was, that at last something is being released.

**MS. O'BRIEN:** Okay.

And did you recall when you gave those interviews that there was a confidentiality clause in your terms of reference?

**MR. RICHE:** I knew it was there but I didn't even think of it. I thought that that had been – I thought that my report had been released.

**MS. O'BRIEN:** Okay. And –

**MR. RICHE:** Otherwise, how would anyone know?

**MS. O'BRIEN:** And we heard from Inspector Pat Cahill that he had had trouble getting in touch with you but that he did finally meet with you on October 4. And his testimony to the Commissioner was that he reminded you at that meeting of your confidentiality clause.

**MR. RICHE:** Yes, that's right.

**MS. O'BRIEN:** Do you remember that?

**MR. RICHE:** Oh, yes.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And they didn't try to – if they'd tried hard enough to find me, they would have found me in Europe. And I'll give you a funny example of how easy it is now; a lady who picks blueberries for me phoned me in Paris asking me where would she bring the blueberries.

**MS. O'BRIEN:** It's a small world these days, yeah.

**MR. RICHE:** It's a small world these days but Mr. Cahill didn't find me.

**MS. O'BRIEN:** Okay.

**MR. RICHE:** And I have no evidence that he looked.

**MS. O'BRIEN:** Okay.

Those are all my questions for you, Justice Riche. Thank you for taking the time to answer them. And there may be –

**MR. RICHE:** I got the blueberries.

**MS. O'BRIEN:** Okay, I'm glad to hear that.

Thank you.

**THE COMMISSIONER:** Who is going first?

Mr. Kennedy?

**MR. KENNEDY:** (Inaudible) the order.

**MR. SIMMONDS:** I have no questions, Mr. Commissioner.

**MR. KENNEDY:** Do you want me to start before lunch, Commissioner, or wait until after lunch?

**THE COMMISSIONER:** Well, we have 15 minutes, Mr. Kennedy, so you may as well start.

**MR. KENNEDY:** If we could, Madam Clerk, have brought to the screen, please, P-0577.

These, Justice Riche, are the letter from Chief Superintendent Boland and the terms of reference which were reviewed with you earlier.

**MR. RICHE:** Yes, we just saw that.

**MR. KENNEDY:** If we could go to page 2, please.

**MR. RICHE:** They're moving a bit fast but anyway, go ahead.

**MR. KENNEDY:** Okay, I just want to go through these briefly with you, Sir.

When we go to – we'll see the word in b., we have the words: impartiality, fairness and transparency. This would be what you would – your role in terms of submitting your report. You understood that, did you?

**MR. RICHE:** Yes.

**MR. KENNEDY:** So you've said today on a number of occasions, Justice Riche, that you didn't – no one ever explained to you the role of an independent observer. To this day you don't know what an independent observer is supposed to do. Is that correct?

**MR. RICHE:** I beg your pardon?

**MR. KENNEDY:** You testified today that no one ever explained to you the role of the independent observer and to this day you don't know what an independent observer is.

**MR. RICHE:** I'm still not sure.

**MR. KENNEDY:** Okay, so you would look to your terms of reference to guide you, wouldn't you?

**MR. RICHE:** I beg your pardon?

**MR. KENNEDY:** You would look to your terms or reference to guide you in terms of your task, wouldn't you, Sir?

**MR. RICHE:** Yeah.

**MR. KENNEDY:** You've signed this document.

**MR. RICHE:** Yeah.

**MR. KENNEDY:** And it's also signed, I think, by Inspector Cahill.

Correct?

**MR. RICHE:** Yes.

**MR. KENNEDY:** So you'll see up top: The Independent Observer and then it outlines terms a. to h.

**MR. RICHE:** Just a moment now, just wait a moment I see – would accompany –

**MR. KENNEDY:** Okay, go back to the top please, Madam Clerk.

**MR. RICHE:** Well –

**MR. KENNEDY:** The Independent Observer –

**MR. RICHE:** Will accompany –

**THE COMMISSIONER:** That's c. you're referring to? Will accompany the designated –

**MR. RICHE:** “c. Will accompany the designated contact member within the RCMP to observe the investigation as directed by the lead investigator ....”

**MR. KENNEDY:** Sir –

**MR. RICHE:** I was – that hardly ever happened.

**MR. KENNEDY:** Yeah.

Sir, my point is The Independent Observer and then there's a colon, it outlines from a. to h. the role and duties of the independent observer.

**MR. RICHE:** Yeah.

**MR. KENNEDY:** Correct?

So you signed the document which indicates that you reviewed and understood what you were signing. Is that correct?

**MR. RICHE:** Well, I understood what I was signing, but I didn't know what an independent observer's role was.

**MR. KENNEDY:** The role is described for your there, Sir, in the document under Terms of Reference. It outlines your duties and role.

**MR. RICHE:** Well, it says here, may monitor witnesses' interviews with the consent. I never monitored any witnesses' interviews.

**MR. KENNEDY:** Sir, it says: “May monitor witness interviews ....”

**MR. RICHE:** And none were brought to me.

**MR. KENNEDY:** Says: “May monitor witness interviews with the consent of the lead investigator ....”

**MR. RICHE:** Yeah.

**MR. KENNEDY:** Okay.

**THE COMMISSIONER:** Mr. Kennedy –

**MR. RICHE:** But the lead investigator didn't come to me and say, look, here's somebody and I'm going to now interview them and you – I want you participating in this. I was never involved.

**THE COMMISSIONER:** Mr. Kennedy, you say go to the Terms of Reference to find meaning. Really, arguably, we could start off with the term itself.

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** So the term independent observer is not the term independent investigator.

**MR. RICHE:** No.

**THE COMMISSIONER:** So there's a difference, is there not, between observing –

**MR. RICHE:** I did investigating, which they didn't want me to do.

**THE COMMISSIONER:** Right, because that wasn't in your Terms of Reference as – but I think Mr. Kennedy is suggesting that you should have known what they wanted you to do, either just from, well, looking at the term, independent observer, that's different than independent investigator.

**MR. RICHE:** Yeah.

**THE COMMISSIONER:** But he's going on to say it's spelled out in a bit more detail, which I'm sure he'll point us to, that on the Terms of Reference they didn't expect you – you're right, they didn't expect you to do, carry out your own investigation.

**MR. RICHE:** Well, a lot of these things like as a – like that particular one: an investigation as directed by the lead invest– I wasn't involved in any of that, all I got was paper.

**THE COMMISSIONER:** Right, but that's what you wanted – they wanted you to do, was to, from a. to h., do those items. You say you weren't requested to do any of it?

**MR. RICHE:** Well, like monitor witnesses' interviews and all that kind of stuff, no. All I got was the results of there, like in the case of Smyth, his statement. That's what he gave me.

**THE COMMISSIONER:** Sorry, Mr. Kennedy, you go ahead.

**MR. KENNEDY:** Thank you, e. says, Sir, you will “respect the confidentiality of the investigation, briefings and the identity of the witnesses and suspects.” You understood that?

**MR. RICHE:** Which one is this?

**MR. KENNEDY:** “e. Will respect the confidentiality of the investigations, briefings and the identity of witnesses and suspects.”

You understood that, did you?

**MR. RICHE:** Yes, and I did.

**MR. KENNEDY:** Okay, well, let's go to P-0756, Madam Clerk. This, Justice Riche, is an interview you gave with Fred Hutton of VOICM around the date of the – around the middle of September –

**MR. RICHE:** That was the time when I told you that – I think I was probably a bit blindsided but somebody put the press on to me.

**MR. KENNEDY:** Yeah.

If we could have Exhibit P-0756; if we could open that up please, Madam Clerk, and go to 0420 on the tape.

(Audio played.)

**MR. RICHE:** –out to Alberta for another recourse and I figure mine might have went in the wastebasket, I don't know.

(Audio paused.)

**MR. KENNEDY:** Okay, so one second now, please.

(Audio resumed.)

**MR. HUTTON:** Were you satisfied after you did your report that you had access to all the information you needed to have a completed report?

(Audio paused.)

**MR. KENNEDY:** There should be – if they opened this up –

(Audio difficulty.)

**MR. KENNEDY:** Okay, 0420.

**THE COMMISSIONER:** (Inaudible) it's wonderful.

**MR. KENNEDY:** Okay, go back five seconds, just to give him a copy.

**UNIDENTIFIED MALE SPEAKER:** 0450.

**MR. KENNEDY:** Yeah, just go to 0450.

Okay, just before we start – so, Justice Riche, do you remember giving this interview with Fred Hutton of VOICM?

**MR. RICHE:** I think I must have had an interview with almost everybody who was in the media.

**MR. KENNEDY:** We're going to go through some of those, Sir.

So if we could just play this tape, please.

(Audio resumed.)

**MR. HUTTON:** – in your report or were you – did you sign a confidentiality agreement that said you can't release that information to the public or through the media?

**MR. RICHE:** No, I didn't, but my understanding was that this was like a contract, that I was employed to review their work and to give a report, but the report is to them. They paid me and I gave it to them. So I don't feel free to then start giving this report to everybody in the world, unless –

(Audio ended.)

**MR. KENNEDY:** So if you could just stop it there.

So basically, Mr. Hutton – excuse me – asked you: Did you sign a confidentiality agreement? You said, no, you didn't. Were you mistaken on that?

**MR. RICHE:** If I said that I was wrong.

**MR. KENNEDY:** He asked you – you did say it was like a contract. So you recognize that your agreement with the RCMP was a contractual arrangement?

**MR. RICHE:** Yeah.

**MR. KENNEDY:** That you reported to them and you didn't feel free to start giving the report to everybody in the world.

**MR. RICHE:** No, I only gave one report, and that was to them.

**MR. KENNEDY:** Yeah.

But you gave, Sir, information contained in your report to everybody in Newfoundland and Labrador, didn't you?

**MR. RICHE:** To those people who I assumed had been, I would say, informed by either the RCMP or somebody, that I was the one if they wanted the answers.

**MR. KENNEDY:** If we could go back to Exhibit P-0577, please, if we go to the next page, term f.

So do you agree with me, Sir, that you breached term e. of the confidentiality clause of your contractual arrangement with the RCMP?

**MR. RICHE:** What? Which one are you looking at?

**MR. KENNEDY:** I'm suggesting to you, Sir, that you breached the confidentiality agreement clause of the terms of reference by giving these interviews and providing the information to the media.

**THE COMMISSIONER:** Mr. Kennedy, I'm just wondering, what is the relevance of that for the inquiry, the issues that are before the inquiry?

**MR. KENNEDY:** Yeah.

Well, either the – you're going to see, if you let me continue, Sir. I'm going to show that this witness either makes certain very serious mistakes or –

**MR. RICHE:** No, no, this is the one where –

**THE COMMISSIONER:** Just one second now, Justice Riche, before we go on.

**MR. KENNEDY:** – which will go to his credibility.

**THE COMMISSIONER:** Pardon?

**MR. KENNEDY:** Which will go to his credibility, because he’s going to say that he didn’t know, he thought the reports were released. I can play video clips here which will show that he knew the reports weren’t released and he knew his report wasn’t released. That goes to his credibility.

**MR. RICHE:** But the report was not released because I kept it nine months. I gave the report to the RCMP in January and nothing came out on this until I was away in September. So who let it out I don’t know.

**THE COMMISSIONER:** Go ahead.

**MR. KENNEDY:** So it goes to his credibility, Commissioner.

**MR. RICHE:** And that’s when the media and everybody around wanted to know what was going on, and why then?

**MR. KENNEDY:** Yeah, we’ll come to that in a second.

**MR. RICHE:** I can’t figure that out.

**MR. KENNEDY:** Did you breach or do you agree with me that you breached term e. of your terms of reference by not respecting the confidentiality of the investigation by giving these media interviews?

**MR. RICHE:** Yes and no. Yes, that it would be breached but it was shown to me that this was out in the public.

**MR. KENNEDY:** We’ll come to that in a second, Sir.

Paragraph f., you “will not disseminate any information or documentation provided during the investigation.” Do you agree with me, Sir, that you breached that term of the term of reference?

**MR. RICHE:** No, I didn’t do that; not during the investigation, there was nothing.

**MR. KENNEDY:** No, what it says, Sir, is that you will not disseminate any information or documentation provided during the investigation. This information was provided to you during the investigation.

**MR. RICHE:** It wasn’t during. During the investigation, I didn’t let anyone know anything.

**MR. KENNEDY:** Sir, it says you will not disseminate any information or documentation provided during the investigation. In other words –

**MR. RICHE:** (Inaudible.)

**MR. KENNEDY:** – the information provided to you during the investigation, you were not to disseminate –

**MR. RICHE:** And I did not.

**MR. KENNEDY:** So, when you disseminated the information in September by talking specifically about the facts of the case, it's your – you maintain you did not breach that condition?

**MR. RICHE:** I beg your pardon?

**MR. KENNEDY:** When you provided specific information about the case in September 2016, it's your position that you did not breach this term of the Terms of Reference?

**MR. RICHE:** Not that term f., no, because –

**THE COMMISSIONER:** I think you may be reading it or interpreting that incorrectly there, Justice Riche. It doesn't say that you will not disseminate information or documentation during the investigation; it says it will not disseminate any information or documentation provided.

**MR. RICHE:** Provided.

**THE COMMISSIONER:** So if it was provided during the investigation, you weren't to disclose it, whether the investigation was finished or not. You weren't supposed –

**MR. RICHE:** And I did not. I did not give out any information, as I said, from the time I gave my report in January to September when I came back from vacation and I got inundated by –

**THE COMMISSIONER:** I know you've said that you've misunderstood and you thought the RCMP had released the report and –

**MR. RICHER:** Well, I think that – I don't know, but I think that the RCMP made some announcement or something during September when I wasn't here.

**THE COMMISSIONER:** They made an announcement that charges would not be laid. But you inferred from that, I take it, that they had released their report and that therefore, without –

**MR. RICHER:** Well, I didn't –

**THE COMMISSIONER:** – looking at this –

**MR. RICHE:** I didn't infer anything. All I did was expect that somebody – they must have referred them to me because why would people come to me?

**THE COMMISSIONER:** Okay.

Sorry, go ahead, Mr. Kennedy.

**MR. KENNEDY:** Thank you, Commissioner.

One last area we can cover before lunch. If I could ask that –

**THE COMMISSIONER:** Just wondering what do you anticipate in terms of –

**MR. KENNEDY:** I won't be that long after lunch, Commissioner.

**THE COMMISSIONER:** You'd only – are you able to finish if we go over a bit?

**MR. KENNEDY:** No, I'm not going to be able to finish. No.

**THE COMMISSIONER:** Okay. Go ahead.

**MR. KENNEDY:** If we could go to Exhibit P-0360, please, and if we could go to page 230 of that exhibit.

**THE COMMISSIONER:** Sorry, what is the number, 0260?

**MR. KENNEDY:** The exhibit, Commissioner, is P-0360.

**THE COMMISSIONER:** 0360

**MR. KENNEDY:** And page 230 of that document.

**THE COMMISSIONER:** Thank you.

**MS. CHAYTOR:** It's a large document, it takes a while.

**THE COMMISSIONER:** Yeah, takes a while to download the larger ones I'm told, Mr. Kennedy.

**MR. KENNEDY:** Okay.

**UNIDENTIFIED MALE SPEAKER:** What page?

**MR. KENNEDY:** Page 230.

Okay, if you look at this document, Justice Riche, you'll see that on September 16, this is a –

**MR. RICHE:** Wait now, wait now, September 16.

**MR. KENNEDY:** This is a summary of a telephone conversation between yourself and Corporal Burke. This is Corporal Burke's summary. I want to ask if you if you –

**MR. RICHE:** Wait now, "Cpl. BURKE received a call ... He advised he was out of the country and had messages from Pat CAHILL to give him a call." Mr. Burke said that he was trying to reach him to update him – now he wasn't quite as good as the blueberry picker – that the RCMP were releasing their findings in the media and that the –

**MR. KENNEDY:** Okay, if I could ask you some –

**MR. RICHE:** Well, that's where it must have come from.

**MR. KENNEDY:** I have to ask you some questions, Sir. Findings in the media, they didn't say they're releasing reports.

Did you make these comments to Corporal Burke: "The RCMP did not release his report because they were not happy with it and he said the investigators did not cross-examine the witnesses."

**MR. RICHE:** I didn't, no.

**MR. KENNEDY:** You didn't make –

**MR. RICHE:** I never got that.

**MR. KENNEDY:** Now you did earlier today refer to the failure to cross-examine witnesses or cross-examine people in statements.

**MR. RICHE:** I beg your pardon?

**MR. KENNEDY:** Earlier this morning you referred to the fact that the RCMP didn't cross-examine people in their statements.

**MR. RICHE:** They didn't do a thorough examination that I would have expected.

**MR. KENNEDY:** You used the word "cross-examination." So you felt that the RCMP, in conducting interviews, should cross-examine people. Is that correct?

**MR. RICHE:** People of interest.

**MR. KENNEDY:** Okay.

But you feel that cross-examination, that's the term I want – is that the term you're using?

**MR. RICHE:** Yeah. But once they give a statement, then they should be subject to being questioned in respect of what they said.

**MR. KENNEDY:** Sir, in the next term –

**MR. RICHE:** And that's what constitutes cross-examination.

**MR. KENNEDY:** The next question is – the comment that's attributed to you – is that, "The RCMP did not want him to investigate or act as 'Colombo'."

**MR. RICHE:** Yeah, they used to call me that.

**MR. KENNEDY:** They called you Colombo, did they, Sir?

**MR. RICHE:** Oh, yeah.

**MR. KENNEDY:** And what did that mean to you when they called you Colombo?

**MR. RICHE:** That meant to me that I was doing a bit of – was getting some evidence that they hadn't gotten.

**MR. KENNEDY:** So you were investigating.

**MR. RICHE:** Oh, yes.

**MR. KENNEDY:** Yeah.

So did you see –?

**MR. RICHE:** Because as I told you right from the beginning, and as you would know from other cases that you were on with me, that I try to get to the bottom of a case –

**MR. KENNEDY:** Yeah.

**MR. RICHE:** – to find out what really happened.

**MR. KENNEDY:** Yeah.

Sir, did you see yourself playing the role of Colombo?

**MR. RICHE:** No. I considered myself as a person who was trying to find out what exactly happened on that Easter Sunday afternoon.

**MR. KENNEDY:** And, Sir, if you look at your report that you finalized and provided to the RCMP, and if I could just bring this up very quickly, P-0005 – and this will be my last question before lunch, Commissioner.

This is your report into the fatal shooting of Donald Dunphy, Justice Riche.

**MR. RICHE:** I beg your pardon?

**MR. KENNEDY:** This is your report into the fatal shooting of Donald Dunphy.

**MR. RICHE:** Yeah.

**MR. KENNEDY:** If we could go to page 2 when it comes up. You see you titled your report: The Decision of Riche, Hon. David Independent Observer.

**MR. RICHE:** Yeah.

**MR. KENNEDY:** So why would you use the word “decision” in terms of describing your report?

**MR. RICHE:** Habit, I guess.

**MR. KENNEDY:** Okay. So you still saw yourself as playing the role of a judge in this case, did you, Sir?

**MR. RICHE:** Well, in fact to tell you the truth, Mr. Kennedy, when they hired me that’s what they wanted.

**MR. KENNEDY:** Uh-huh.

**MR. RICHE:** They wanted a judge.

**MR. KENNEDY:** A retired judge, yeah.

**MR. RICHE:** They didn’t want Jerome Kennedy, they wanted a judge.

**MR. KENNEDY:** Yeah, they wanted a retired judge who would bring credibility and integrity to the investigation. Is that what they told you?

**MR. RICHE:** They told me they wanted a judge.

**MR. KENNEDY:** Okay.

And so the decision of Riche – so basically you saw yourself acting as a judge did you, Sir?

**MR. RICHE:** You know something, after all the years I've spent as a judge I can't separate myself from it.

**MR. KENNEDY:** And so they, when they told you they didn't want you acting as investigator, did they also tell you that they didn't want you acting as a judge?

**MR. RICHE:** I beg your pardon?

**MR. KENNEDY:** When they told you they didn't want you acting as an investigator did they also tell you that they didn't want you acting as a judge?

**MR. RICHE:** I can't remember that.

**MR. KENNEDY:** Okay.

Because there's some – I don't know if it was Chief Superintendent Boland or Inspector Cahill who said that they told you they wanted – they didn't want a judge but an independent observer.

**MR. RICHE:** Well, I don't know why they didn't just tell me, look, what I was doing wasn't what they wanted.

**MR. KENNEDY:** But they did tell you that on a number of occasions, Justice Riche.

**MR. RICHE:** No, no, they never turned around and said: Well, look, this is not what we want; we have to get somebody else.

**MR. KENNEDY:** Okay, we can start with that after lunch, Commissioner.

Thank you.

**THE COMMISSIONER:** Okay, we're going to break now until 1:30, Justice Riche.

**MR. RICHE:** I suppose, Mr. Commissioner, there's a chance that you might get something to eat in the area within that period.

**THE COMMISSIONER:** If you need a few extra minutes, I'm sure we'll wait for you.

**MR. RICHE:** You'll wait for me.

**MS. SHEEHAN:** All rise.

**THE COMMISSIONER:** We don't supply lunch, unfortunately.

**Recess**

**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry in session.

Please be seated.

**THE COMMISSIONER:** Sorry, I didn't realize you weren't in the room there, Mr. Kennedy.

**MR. KENNEDY:** No problem.

Thank you, Commissioner.

There's been some discussion among counsel, and I have one very brief area to explore with Justice Riche and then I'll be finished.

**THE COMMISSIONER:** Okay.

**MR. RICHE:** A question for Mr. Kennedy: Are you understanding me all right, Mr. Kennedy?

**MR. KENNEDY:** Yes, I am. Yeah.

**MR. RICHE:** Because somebody – and maybe your client has written a letter saying that I'm suffering from dementia. And it was in this – having to do with this inquiry.

**THE COMMISSIONER:** Judge, I think we'd better leave that for you outside. It's not something –

**MR. RICHE:** Oh, I'm working on that.

**THE COMMISSIONER:** All right.

**MR. RICHE:** I have counsel who are going to see to that and has advised –

**THE COMMISSIONER:** All right, we'll get back to the inquiry now.

**MR. KENNEDY:** I'm not sure that the witness should be making threats like that here in the inquiry, Commissioner.

**MR. RICHE:** Oh, that's not a threat. That's not a threat.

**THE COMMISSIONER:** All right, okay, I'm going to have –

**MR. KENNEDY:** You're also going to hear from counsel yourself.

**THE COMMISSIONER:** One second now. I'm going to have to exercise my authority here. We're just going to leave that issue for another time and another place, if ever.

So, Mr. Kennedy, go ahead with – I understand you have another series of questions there.

**MR. KENNEDY:** Thank you.

Justice Riche, you indicated, Sir, earlier today that you thought your report had been released when the reporters contacted you in September, 2016. Is that correct?

**MR. RICHE:** That's correct.

**MR. KENNEDY:** If I could have P-0751 brought to the screen, please.

**MR. RICHE:** Actually, to tell you the truth, I didn't know where it came from. I was being inundated by media.

**MR. KENNEDY:** If I could have P-0751 brought to the screen, please, at page 2.

This is a report of CBC dated January 31, 2017. And if I could go to page 2; yeah, it's – just one second, please.

Okay, Madam Clerk, if we could go to the front – the first page. Excuse me, first – yeah, sorry.

**MR. RICHE:** Is it page 1 or 2?

**MR. KENNEDY:** Page 1, Justice Riche.

**MR. RICHE:** Page 1.

**THE COMMISSIONER:** That's coming up here now.

**MR. KENNEDY:** Sorry, up a little bit, Madam Clerk. Okay. Up a little bit more.

My understanding – you're quoted as saying to the CBC reporter: "My understanding was, at that time, that their report had been released and presumably my report had been released as well and so I felt free to talk with [the media]." That's basically what you told CBC.

**MR. RICHE:** Just let me get all of that now. Where are you starting from?

**MR. KENNEDY:** Do you see the quote there in quotation marks: My understanding –

**MR. RICHE:** Oh, "My understanding was, at that time, that their report had been released and presumably my report had been released as well and so I felt free to talk with [the media]."

Yeah.

**MR. KENNEDY:** Yeah so that was your position with CBC and that's your position here today, is it?

**MR. RICHE:** Again, as I said, I don't know where it all came from.

**MR. KENNEDY:** Okay.

Is that quote accurate, Justice Riche? Are those your words?

**MR. RICHE:** That's what I felt at the time.

**MR. KENNEDY:** Okay.

Well, it's in quotation marks there. Are those your words?

**MR. RICHE:** Yeah.

**MR. KENNEDY:** Okay.

If we could go to P-0752, please.

**MR. RICHE:** Yeah, I thought the RCMP had released it. I don't know what this got to do with the shooting of Dunphy, but anyway.

**THE COMMISSIONER:** Just one second now.

Go ahead.

**MR. KENNEDY:** So this is – do you remember seeing this article: What is going on with Justice David Riche? Do you remember seeing that, Sir? It's written by James McLeod of *The Telegram* on February 1, 2017. Did you ever read that, Justice Riche?

**MR. RICHE:** What's that?

**MR. KENNEDY:** Have you ever read that article?

**MR. RICHE:** It doesn't look familiar to me.

**MR. KENNEDY:** Okay.

**MR. RICHE:** A lot of these people who write these articles, they put their own little twist on it and I don't even know –

**MR. KENNEDY:** If we could go to page 2, Madam Clerk.

**MR. RICHE:** But these are not people of authority and they're not people who are giving evidence.

**MR. KENNEDY:** Go to page 2, Madam Clerk.

**MR. RICHE:** This is what we call hearsay.

**THE COMMISSIONER:** Okay.

**MR. KENNEDY:** So if we could go down a little bit further, Madam Clerk. This week – you can see, Justice Riche, the fourth line from the bottom: "This week, Riche told the CBC that he apologizes for doing all those interviews."

**MR. RICHE:** I did.

**MR. KENNEDY:** "My understanding was, at that time, that their report had been released and presumably my report had been released ...." That was the quote I just referred you to, Sir.

**MR. RICHE:** Yeah, the reason I apologized because it was only afterwards you came on TV saying that this was all wrong. And that was the first that I knew that there was any problem with the whole thing.

**MR. KENNEDY:** Okay.

The reporter goes on to state: "This is extremely strange, because at the start of The Telegram's interview back in September, Riche was told his report hadn't yet been released. The audio recording confirms this."

So Mr. McLeod is saying, Justice Riche, that when he spoke to you in September he told you his report – that your report hadn't yet been released. Do you remember that conversation with Mr. McLeod?

**MR. RICHE:** No.

**MR. KENNEDY:** So it was your understanding that your report had been released, was it?

**MR. RICHE:** I thought it was but I really – somebody had connected me with the decision made by the RCMP.

**MR. KENNEDY:** Okay.

Sir, the last one –

**MR. RICHE:** And after nine months nobody contacted me, and suddenly there's about – there's people from all over God's creation phoning me up.

**MR. KENNEDY:** So, Sir, you also, we know, gave interviews with CBC TV, NTV and Global TV.

**MR. RICHE:** Yes.

**MR. KENNEDY:** Okay.

Do you remember telling either of those media outlets that your report had not been released and that they should get your 20-page – 23-page report because that's where the answers were?

**MR. RICHE:** Yes.

**MR. KENNEDY:** So that –

**MR. RICHE:** I may have said that.

**MR. KENNEDY:** Well, you did say it to Global TV at 1:35 on the –

**MR. RICHE:** Oh yeah, I'm not disputing.

**MR. KENNEDY:** So you knew at that point when you spoke to Global TV that your report had not been released. Is that correct?

**MR. RICHE:** I suppose.

**MR. KENNEDY:** Well, what is your position, Justice Riche, that either your reports hadn't been released or that they had been released?

**MR. RICHE:** I didn't release my report to anybody except the RCMP.

**MR. KENNEDY:** Okay. Yeah.

**MR. RICHE:** I didn't give one part of my report to anybody except the RCMP. What they did with it – and they were supposed – that was in January. They were supposed to follow with a report of their own.

**MR. KENNEDY:** Okay.

**MR. RICHE:** I never seen that report.

**MR. KENNEDY:** Was it your understanding, Justice Riche, when you gave these interviews to CBC, NTV, and Global TV, as well as CBC website, news website and *The Telegram*, that the RCMP had released your report?

**MR. RICHE:** I beg your pardon?

Well, I thought that they – I couldn't think of where it came from.

**MR. KENNEDY:** Okay.

My last question for you, Sir: Did you check with the RCMP to see if they had released your report and whether or not your confidentiality agreement would apply?

**MR. RICHE:** Never heard from them after.

**MR. KENNEDY:** Thank you very much.

Those will be my questions, Sir.

**MR. RICHE:** They probably didn't want to hear from me.

**THE COMMISSIONER:** Okay, are there any questions by other counsel?

**MS. RASMUSSEN:** Just a few, Mr. Commissioner.

Justice Riche, my name is Lori Rasmussen. I represent the RCMP.

**MR. RICHE:** Oh, I know who you are. I gave you a drive to the airport in Saint John, New Brunswick.

**MS. RASMUSSEN:** A long, long time ago.

**MR. RICHE:** I don't forget.

**MS. RASMUSSEN:** Justice Riche, Sir –

**MR. RICHE:** Although there have been some suggestions that I may have something wrong with my mind.

**THE COMMISSIONER:** Okay, we're going to stay away from that now.

Go ahead, Ms. Rasmussen.

**MS. RASMUSSEN:** Justice Riche, you were hired by the RCMP to do a job here and the job was as an independent observer. Is that correct?

**MR. RICHE:** That's right, and I still don't know what an independent –

**THE COMMISSIONER:** But now just – we'll stick to the question now. If you'll confirm that's –

**MR. RICHE:** Yes.

**THE COMMISSIONER:** Yeah.

**MS. RASMUSSEN:** And you've said that a number of times, you didn't understand or you still don't understand what an independent observer is. Well, sometimes independent just means independent, I would put to you, and sometimes observer just means observer.

If I gave you a definition of independent that was free from the influence, guidance or control of another or others, would that sound right to you?

**MR. RICHE:** Just hit me again with that.

**MS. RASMUSSEN:** Free from the influence, guidance or control of another or others.

**MR. RICHE:** Yeah, free. Yes, you'd be independent.

**MS. RASMUSSEN:** Right. And I would –

**MR. RICHE:** However, I was under the control of the RCMP all the way through.

**MS. RASMUSSEN:** Well, they gave you access to the 10 binders and all their documents and they asked to observe. That's right?

**MR. RICHE:** They sent documents to me but they never, ever had me interview and deal with any of the witnesses. They just gave me what – just take for example –

**MS. RASMUSSEN:** Well, and that wasn't in your Terms of Reference, was it? It didn't say that you were going to interview witnesses.

**MR. RICHE:** Yeah, like Dunphy's brother next door, they interviewed – Smyth was in with him for 25 minutes. I don't know what they said. All I know –

**MS. RASMUSSEN:** No, but you had access to the transcript of that statement and they asked you if you wanted a computer so that you could listen to audio as well and you declined.

**MR. RICHE:** No, no, never, never.

**MS. RASMUSSEN:** So you say the RCMP did not offer to set you up with a computer?

**MR. RICHE:** Actually, I had so much stuff from them I doubt if we would have got it into the house.

**THE COMMISSIONER:** But now, the question was whether you had an offer of a computer from them –

**MR. RICHE:** No.

**THE COMMISSIONER:** – so that you could listen to the audio.

**MR. RICHE:** No. Never.

**MS. RASMUSSEN:** Okay. I think we've heard evidence that that was offered to you and declined.

**MR. RICHE:** Things seem to be coming up out of the woodwork.

**MS. RASMUSSEN:** Pardon me?

**MR. RICHE:** That's a Newfoundland saying: this stuff is coming out of the woodwork. I never had – I never got any offer of a computer. I don't use one anyway.

**MS. RASMUSSEN:** Okay, but the RCMP would differ with that.

But in any event, if I look to a dictionary definition of observe, I would put it to you from – the Oxford dictionary says: Observe means to watch someone or something carefully and attentively, to watch something.

You'd agree with that?

**MR. RICHE:** Just like somebody in a fashion show; well, we're watching the ladies walking by.

**MS. RASMUSSEN:** And Mr. Kennedy already took you through your Terms of Reference so the term stated at the top of the page, it said: The role of the independent observer.

**MR. RICHE:** Uh-huh.

**MS. RASMUSSEN:** Do you agree with that?

You've already said that you had difficulty kind of stepping out of your judge role that you had for so many years.

**MR. RICHE:** Impossible.

**MS. RASMUSSEN:** Right.

So is it fair to say that having been a judge for so many years and finding it difficult to step out of that role, and wanting to get to the bottom of things, that it was frustrating to you to just be observing an investigation?

**MR. RICHE:** I lived this a thousand days looking for the answers. Every night before I went to bed I went through this, trying to look at every detail.

**MS. RASMUSSEN:** So it was frustrating to be in that role.

**MR. RICHE:** See don't forget we got somebody shot and only one person there, and I got to try to figure out what happened and be fair to everybody in it.

**MS. RASMUSSEN:** But that wasn't in your Terms of Reference. You weren't – you were there to observe the investigation.

I'm asking you: Was it frustrating to be in an observation role when you wanted to get to the bottom of things yourself?

**MR. RICHE:** Well, the thing is this, I went – just say I went out to the scene where they were doing the re-enactment. Well, I went there, said nothing, but nothing could stop me from looking around the place.

**MS. RASMUSSEN:** No, of course not.

**MR. RICHE:** Or look at where the rifle was, or look where the couch was situate, look where his stick was situate, compiling all this in my mind. What do you think I was going to just dismiss all that?

**MS. RASMUSSEN:** Well –

**MR. RICHE:** And I was like a picture on the wall?

**MS. RASMUSSEN:** Well, you were hired to do a certain job.

**MR. RICHE:** I don't know what the job was. I mean it's observing. Observing is to look at.

**MS. RASMUSSEN:** That's right. And make a report.

**MR. RICHE:** Yeah, write a report. Yeah.

I saw a whole pile of paper came my way but I didn't read it or make any opinion on it.

**THE COMMISSIONER:** I think we've pretty well exhausted that, haven't we?

**MS. RASMUSSEN:** I think those are my questions.

Thank you, Mr. Commissioner.

**THE COMMISSIONER:** Okay. Thank you.

Any other counsel have any questions?

Okay, thank you, Justice Riche. That wasn't too painful.

**MR. RICHE:** I can only say to you, Mr. Commissioner, I hope that the weight that has been on my back does not –

**THE COMMISSIONER:** Can be shifted to mine?

**MR. RICHE:** No, I don't want it to go on your back.

**THE COMMISSIONER:** Okay.

**MR. RICHE:** But it's such a terrible thing, it might.

**THE COMMISSIONER:** I agree.

Okay. Thank you.

I know it's a hard thing to do. Thank you very much.

**MR. RICHE:** Okay.

**MR. DROVER:** Mr. Commissioner, can I step out for about three minutes?

**THE COMMISSIONER:** Sure.

**MR. DROVER:** Okay.

By the way, Bill James is here and ready to go.

**THE COMMISSIONER:** So do you want us to wait for you until he comes?

**MR. DROVER:** Yeah, if you could give me three minutes before –

**THE COMMISSIONER:** Sure, take your time.

**MR. DROVER:** – you start because it's direct to cross-examination. Or are you going to do some more direct?

**MS. CHAYTOR:** No, (inaudible).

**THE COMMISSIONER:** We'll wait for you, Mr. Drover.

**MR. DROVER:** Okay. Thank you.

**THE COMMISSIONER:** We'll just be a few minutes there now.

Okay. Everybody here?

Is Mr. Kennedy gone now? Oh sorry, you had disappeared.

Okay. All right.

Now, who's first for – have we started the examinations, the cross-examination? It was so long ago that I've forgotten. Or the examination by external counsel, I should say.

Mr. Simmonds, you're volunteering?

**MR. SIMMONDS:** It seems that I get – but no, I don't have any questions, Mr. Commissioner.

**THE COMMISSIONER:** Okay. Thank you.

Who is next by default order?

Mr. Kennedy, you want to go?

**MR. AVIS:** (Inaudible.)

**THE COMMISSIONER:** Right.

**MR. AVIS:** Commissioner, I misunderstood. I thought I was to be here at 2 to start. I just misunderstood the information.

Yes, I'm ready to go. Can I just have a second?

**THE COMMISSIONER:** Yeah.

Go ahead, Mr. Avis.

**MR. AVIS:** Thank you.

Good afternoon, Sergeant James.

**SGT JAMES:** Good afternoon.

**MR. AVIS:** As you know I represent the chief.

**SGT JAMES:** Yes.

**MR. AVIS:** I have some questions for you here; the first one is in relation to the National Use of Force Framework. And the first question I have for you is: Do the RNC use the National Use of Force Framework –

**SGT JAMES:** Yes, we do.

**MR. AVIS:** – in situational training?

**SGT JAMES:** Yes, we do.

**MR. AVIS:** Can you explain to us, because there appears to be some confusion over the word, why in RNC policy the word “continuum” is used?

**SGT JAMES:** I believe that originated from when the program started. I think it was back in 1999.

**MR. AVIS:** Uh-huh.

**SGT JAMES:** And my understanding is at that time they were in the process of developing a National Use of Force model, framework, continuum, whichever word you want to use, I guess. And it was based off of the Ontario use-of-force continuum.

I believe it was two years later that it was, I guess, finalized. And the RNC, in fact, had a member of the department on the national board; at the time it was Sergeant Jim Carroll, who’s now deputy chief. And he was part of, I guess, the committee that designed and presented the national framework or model that’s in use today, and it was accepted by the Canadian Association of Chiefs of Police. And that is, in fact, what we teach at the Royal Newfoundland Constabulary.

**MR. AVIS:** Okay, just to fill in some of the details there; so I believe you indicated that the RNC adopted or began to work with the Use of Force Continuum model from Ontario, and that would have been 1999.

**SGT JAMES:** Correct.

**MR. AVIS:** And the National Use of Force Framework was adopted by the RNC in 2001?

**SGT JAMES:** I believe it was, yes.

**MR. AVIS:** And you’ve indicated that – now, the term continuum was in the National Use of Force Framework in 2001. Correct?

**SGT JAMES:** That’s correct.

**MR. AVIS:** And the RNC has since then used the National Use of Force Framework on a go-forward basis since then?

**SGT JAMES:** That’s correct.

**MR. AVIS:** And, as I say, have continued to use the same terminology.

**SGT JAMES:** That’s correct.

**MR. AVIS:** Now, does the RNC use any kind of American model, US model or US continuum?

**SGT JAMES:** No.

**MR. AVIS:** Okay.

I'd like to speak a little bit about de-escalation and de-escalation training.

If we could go to Exhibit P-0624, page 8. If you could move it up a little bit to – sorry the other way, I'm afraid. Sorry, Madam Clerk.

I want: 3. Delivery System at the top, if we could start there. Right there, perfect.

Now, are you familiar with this particular policy that's in front of you?

**SGT JAMES:** Yes.

**MR. AVIS:** Do I have it right that part 3 there on page 8 does deal, in part, with defusing the situation and evaluating the situation?

**SGT JAMES:** Yes.

**MR. AVIS:** Okay, and I'd just like to – and while this is a policy, it is a – sorry, this is not a policy; this is the Use of Force Training Manual. Correct?

**SGT JAMES:** Correct.

**MR. AVIS:** Sorry, I referred to it as policy. And if we go to the points at the bottom there, numbered one to five, I'll just go through it. The first one is: "Was there a lower level of force available to gain control?"

So that's in your Training Manual, and presumably there is training that goes along with that.

**SGT JAMES:** Yes.

**MR. AVIS:** And – so, is it fair to say then, that in your use-of-force training, as I believe you've indicated, you always start with officer presence, lowest level of force possible, and as the circumstances dictate and demand you may go up. Correct?

**SGT JAMES:** That's correct.

**MR. AVIS:** Similarly, if the circumstances change, you can go back down.

**SGT JAMES:** Most certainly.

**MR. AVIS:** And that's a part of the process of continuous evaluation.

**SGT JAMES:** Correct.

**MR. AVIS:** "3. Did or could you provide the subject(s) the opportunity to de-escalate his/her level of resistance towards you?" Says there: A warning.

“There is an onus on the officer” – and this is underlined – “if the situation allows, to provide the subject an opportunity to de-escalate. If the subject de-escalates, the member must de-escalate their use of force.”

And is that what I just referred to in the sense that you go up and down, or should I say, around the continuum.

**SGT JAMES:** Correct.

**MR. AVIS:** Why are the words, if the situation allows, underlined?

**SGT JAMES:** Because it’s important to be cognizant that, you know, you may be in a situation that doesn’t afford you the opportunity to de-escalate.

**MR. AVIS:** For example, when Mr. Dunphy pulled the rifle on Constable Smyth, did that situation allow for verbal de-escalation?

**SGT JAMES:** No.

**MR. AVIS:** Four, did you identify the proper risk before intervening accordingly? The last one, was the top target isolated? What would you hit if you missed the subject? Those are more strategic items. Am I correct? You know –

**SGT JAMES:** Yes.

**MR. AVIS:** – within the room, strategic. One and three pertain to de-escalation. And with respect to three, what kind of training do you do for item three?

**SGT JAMES:** We do scenario training.

**MR. AVIS:** Okay. And if you could just expand on that a little on the kind of scenario training you would do.

**SGT JAMES:** We do scenario training with our cadets and members. Say, it could be like a REACT situation, a Rapid Entry to an Active Criminal Threat, and we’ll give them – we have a script and we’ll give them, you know, the parameters in which they’re responding to. And we have an actor, you know, another officer in the room being a subject. And that’s the officer, or the person that they would have to go in and deal with, and through verbal interaction or weapons, depending on the scenario.

**MR. AVIS:** So once again, during that scenario training, you do de-escalation training?

**SGT JAMES:** Most certainly.

**MR. AVIS:** And would that be, perhaps – what you have an opportunity for in scenario training is dialogue. Am I correct?

**SGT JAMES:** Correct.

**MR. AVIS:** So what you’re doing is, perhaps, dealing with each individual officer while they’re all there to watch. You may have a different issue with a given officer. So if you do, you would discuss with that officer – good grief, I’ve been up too late – officer any concerns you have with the way they approached de-escalation?

**SGT JAMES:** Yes.

**MR. AVIS:** And in talking, having a dialogue with the officer who's in training, all the other officers are present to hear it?

**SGT JAMES:** Correct.

**MR. AVIS:** Am I right? Okay.

**SGT JAMES:** There would be a group, you know, discussion on, you know, the role –

**MR. AVIS:** Yeah.

**SGT JAMES:** – you know, how you faired –

**MR. AVIS:** Right. Are you able to give us any sense of the amount of time that would be spent in de-escalation in these kinds of scenarios?

**SGT JAMES:** Scenarios; we do a week long use of force week with the cadets. We also do week long REACT training with the cadets, and two days of which are role plays or scenarios.

**MR. AVIS:** Okay. And of that time frame, how much would be spent, approximately – a percentage, if you can give us one – for de-escalation?

**SGT JAMES:** It's going to depend on how each member responds to, you know, the subject in the room. It could be 10 minutes unfolding the scenario, and you might spend 10 minutes or 20 minutes, depending on, you know how it went, you know, critiquing their response in the room.

**MR. AVIS:** Okay.

So basically they're given the outline of de-escalation, and then each one of them is – once they do their scenario, depending upon how well they did it, as you say, if they did very well the discussion might not be that long.

**SGT JAMES:** Right.

**MR. AVIS:** If they didn't do a good job, it could be longer than the scenario training itself.

**SGT JAMES:** Right. We'll critique them as to, you know, we'll pose questions to them, like, why did you respond this way as opposed to another way. You know, they'll have to articulate why they did what they did.

**MR. AVIS:** And are you able to tell us the importance or emphasis you put on de-escalation in such circumstances?

**SGT JAMES:** Well, it's experiential training, so that – if you just throw them out on the street with no practical training and they get out there and they don't know how to respond – they respond, you know, inappropriately, you know, it could be to their detriment or to the detriment of whatever it is they're dealing with. So we try and ensure that when you go out on the street that they're well versed in how to handle situations.

**MR. AVIS:** Okay.

Move on to page 18 of that exhibit. Here we're in the, going through the Seven Tactical Principles. These have been (inaudible) to us before. I'm thinking in particular 6: De-Escalation. I notice that the word, "The officers primary concern in any confrontation is the safety of the public and him or her-self."

And they talk about the danger of the situation escalating in control – out of control. "Am I in danger, am I in control? What can I do to lessen the danger to myself and those around me"? The officer can use various strategies to achieve this, whether it is through verbalization, tactical repositioning" or call back. It goes on about the continuous assessment.

So again, as part of the officer's primary concern in any confrontation is for the safety of the public or him or herself, one of those primary concerns is can you lessen the danger through de-escalation and without resulting to force. Am I right?

**SGT JAMES:** Correct.

**MR. AVIS:** And this particular portion, would this be both part of the scenario training and the more formal sitting down – I'll call it classroom training.

**SGT JAMES:** Yes. This is presented in a classroom setting and then when we get into the scenarios, it's driven home about the importance of the seven tactical principles, one of which, as you say, that is de-escalation.

**MR. AVIS:** If we could go to P-0034, Use of Force.

**THE COMMISSIONER:** Mr. Avis, just for scheduling, do you have a rough idea of how long you'll be with your witness or with ...?

**MR. AVIS:** I'll do my best, Sir. I just –

**THE COMMISSIONER:** No, I'm not – I'm not trying to push you.

**MR. AVIS:** No, no, I understand. I actually, you know, I was still writing notes when I got the call, so I haven't really had a time. I think half an hour, 45 at the most.

**THE COMMISSIONER:** Right.

**MR. AVIS:** But that's not an accurate guesstimate.

So if we go to this Use of Force and there is in here 8.0 and 9.0, Dialogue and Communication. And the emphasis here is on gaining voluntary compliance from a non-compliant subject. That's the first thing you go to. Correct?

**SGT JAMES:** Correct.

**MR. AVIS:** So the first thing you teach them with dialogue and communication are verbal skills to allow them to get voluntary compliance over someone who is being non-compliant.

**SGT JAMES:** Correct.

**MR. AVIS:** And 8.2 essentially says if that fails, then the officer has to consider going one step further to possible use-of-force options.

**SGT JAMES:** Correct.

**MR. AVIS:** And 8.3: “Dialogue and communication should be viewed as an option at every use of force incident when appropriate and reasonable to do so.” Right?

**SGT JAMES:** Yes.

**MR. AVIS:** Now, I would mention, Sir, just in case, this is the new Use of Force Policy and the direction. At 9.0 Authorized Force Options. Again, the first one is presence; the second one is dialogue and communication.

**SGT JAMES:** Yes.

**MR. AVIS:** And in all your training in use of force, this, you know, I guess the order in which this occurs, which is the order in which it occurs in the use-of-force continuum, is it – you teach them, I guess, the importance of presence first, dialogue and communication, before any use of force is contemplated.

**SGT JAMES:** If at all possible, yes.

**MR. AVIS:** Right.

Think I’ve made – okay, I thought I’d skipped and I did.

We can go back to P-0624 – thank you, Madam Clerk – page 12. And this just deals with – you’re talking about the areas shown on the Use of Force Continuum in the inner circle. And the inner circle – I don’t think we need to go to it, page 5; I think people have seen it. The inner circle has the word “situation” –

**SGT JAMES:** Situation.

**MR. AVIS:** – in the middle of. So we’re dealing, the officer is now in a situation.

**SGT JAMES:** Correct.

**MR. AVIS:** And the assessment involves looking at the situation, subject behaviours – we’ve heard much of this – and officer’s perception and tactical considerations. Am I right?

**SGT JAMES:** Correct.

**MR. AVIS:** And in considering that, again I presume, the first thing, tactical consideration, is presence?

**SGT JAMES:** Presence. You have to be there, yeah.

**MR. AVIS:** The second tactical consideration is dialogue and communication.

**SGT JAMES:** Correct.

**MR. AVIS:** Now, Chief Janes yesterday went through in some detail – sorry, Commissioner, I don’t have all my yellow stickies everywhere. Sorry for this, it’s slowing me down just a little bit.

Chief Janes yesterday gave an outline of the RNC’s response to the Luther Inquiry, mostly dealing with persons suffering from mental health issues. Is that correct?

**SGT JAMES:** (Inaudible.)

**MR. AVIS:** And he indicated – I’m going to go through one in particular, but he indicated that there are a number of courses or things that have been implemented by the RNC; one is the ASIST, Applied Suicide Intervention Skills Training.

**SGT JAMES:** That’s correct.

**MR. AVIS:** And would it be fair to say that that’s all about de-escalation, isn’t it?

**SGT JAMES:** Yes.

**MR. AVIS:** Do you have any idea how long, how much time is spent with cadets and officers in the ASIST training?

**SGT JAMES:** It’s presented by a – I can’t answer that question. It’s presented by someone else, other than myself.

**MR. AVIS:** Okay. Who’s it presented by?

**SGT JAMES:** I’m not sure.

**MR. AVIS:** A non-police officer?

**SGT JAMES:** I believe it is.

**MR. AVIS:** Right, so it would be someone from the mental health.

**SGT JAMES:** Yes.

**MR. AVIS:** Okay.

So that’s why you’re not familiar with what they do.

**SGT JAMES:** Correct.

**MR. AVIS:** Thank you.

R2MR; this is a program designed to reduce stigma and building resistance to stress for employees. Do you take part in that program?

**SGT JAMES:** I have taken part in it, yes.

**MR. AVIS:** Have you taught that?

**SGT JAMES:** No.

**MR. AVIS:** Can you tell us, having taken part in it, what kinds of things are done that are designed to reduce stigma?

**SGT JAMES:** It’s to ensure that, you know, we are well versed, you know, in the issues of mental health and how it affects people; you know, whether we work with them or the general public. There’s a crossover there.

**MR. AVIS:** Have you any idea how much – in that R2MR course, how long is that course?

**SGT JAMES:** I think it's three days.

**MR. AVIS:** Okay. And, again, I assume it is – do you know who it's taught by?

**SGT JAMES:** It's taught by civilian personnel and we have some of our members who are presenters.

**MR. AVIS:** And the civilian personnel, am I right, would be from some mental health ...?

**SGT JAMES:** Yes.

**MR. AVIS:** Thank you.

And I note that, you know, in describing the course, R2MR, in the Luther recommendations – which for everyone is P-0743. I don't need it Madam Clerk. It says the course is designed to reduce stigma. That's the first four words in the course. Correct?

**SGT JAMES:** Yes.

**MR. AVIS:** Would that be fair to say that's the focus of it throughout?

**SGT JAMES:** Yes.

**MR. AVIS:** Now, then there is crisis intervention. Is that something that you yourself would have taken?

**SGT JAMES:** Yes, I had taken it.

**MR. AVIS:** And, again, do you recall how long that course may have been?

**SGT JAMES:** Not offhand. No.

**MR. AVIS:** Again, do you recall who would have taught it?

**SGT JAMES:** It would have been from an outside agency.

**MR. AVIS:** And, again, would that outside agency be related to what?

**SGT JAMES:** Mental health.

**MR. AVIS:** Now, when the – and would the people in the mental health not only be dealing with stigma but also how to communicate with these people?

**SGT JAMES:** Yes, there's a component.

**MR. AVIS:** The kinds of things to say and not to say?

**SGT JAMES:** Correct.

**MR. AVIS:** And that would – I'll get to that in a moment, but that would also depend upon the circumstances because it's different with a person who is in some strong family crisis compared to someone who is in, shall I say, a suicidal crisis?

**SGT JAMES:** Yes.

**MR. AVIS:** Right.

And so the de-escalation techniques are taught with respect to – I'll use this phrase for now: With respect to each mental health or mental illness.

**SGT JAMES:** Yes, you have to recognize what the issue is and act accordingly.

**MR. AVIS:** And you're also given some basic background in what some of these mental health problems mean to the person's life?

**SGT JAMES:** Yes.

**MR. AVIS:** Okay.

I'm going to go a little bit through the – just through some of the curriculum in the Mental Health First Aid, which is another program that the chief mentioned yesterday that was introduced as a result of the Luther Inquiry, it says here – did you take this?

**SGT JAMES:** Take what?

**MR. AVIS:** The Mental Health First Aid course?

**SGT JAMES:** I can't recall if I did or not.

**MR. AVIS:** Okay, are you familiar with the course and it's outline?

**SGT JAMES:** Not offhand, no.

**MR. AVIS:** Okay. Let me just have a moment.

Are you aware that Ms. Zdebiak teaches a course with elements with de-escalation in it?

**SGT JAMES:** Yes.

**MR. AVIS:** Is that taught to the cadets?

**SGT JAMES:** Yes.

**MR. AVIS:** And she goes through case law and stuff?

**SGT JAMES:** Yes.

**MR. AVIS:** Previous inquiries?

**SGT JAMES:** I believe so.

**MR. AVIS:** I'll be introducing more of that later.

I'd like to now talk a little bit about firearms. Now, just to clarify because your evidence was given a few days ago and there's a little bit of repetition here just to bring everything together. I understand from your evidence the other day, you have four modules. And Modules 1 is the course of fire.

**SGT JAMES:** It's firearms, yes.

**MR. AVIS:** And that's taught every year?

**SGT JAMES:** Every year.

**MR. AVIS:** What is Module 2?

**SGT JAMES:** Module 2 is control tactics which is handcuffing.

**MR. AVIS:** And they are taught every second year along with Module 1?

**SGT JAMES:** Correct.

**MR. AVIS:** What is Module 3?

**SGT JAMES:** Module 3 is REACT.

**MR. AVIS:** Sorry?

**SGT JAMES:** REACT: rapid entry to an active criminal threat.

**MR. AVIS:** Okay, room entrance and going into a small confined space?

**SGT JAMES:** Yes.

**MR. AVIS:** And every third year, Module 1 and 3 are taught? Am I right?

**SGT JAMES:** It's on a rotational basis.

**MR. AVIS:** Yes.

**SGT JAMES:** Like this year, we are doing Module 1 and 3 which is REACT. Next year, we'll do Module 1 and 4 –

**MR. AVIS:** Okay.

**SGT JAMES:** – which is firearms plus the presentation. The year after that would be 1 and 2, so it's every third year that they get the control tactics. Every third year they'll get the REACT. Every third year they'll do Module 4.

**MR. AVIS:** Right.

**SGT JAMES:** Rotational basis every third year.

**MR. AVIS:** Now, in the Module 1 is there an opportunity for training and dialogue which would include how to communicate with the subject and de-escalation?

**SGT JAMES:** Yes.

**MR. AVIS:** Again, how is Module 1 taught?

**SGT JAMES:** Module 1 is taught on the range. It's an actual firearms component. And Module 1 includes an instinctive course of fire, we call it. The second stage is a standard course of fire

which would be – it's a timed event at different stages, like you'd shoot one-handed from three metres, strong hand, non-dominant hand; seven metres you'd shoot both hands; 15 metres you'd shoot from a kneeling and a seated position and –

**MR. AVIS:** Okay, I'm sorry.

**SGT JAMES:** Yeah.

**MR. AVIS:** It's not quite where I was trying to go but that's okay. What – essentially what you're saying is what you're doing there is enhancing firearm skills.

**SGT JAMES:** Right.

**MR. AVIS:** And when you discuss the officer's or cadet's progress in the course of fire, under what circumstances are you there having a dialogue about de-escalation and ultimate uses of force?

**SGT JAMES:** In the first phase, I guess, of Module 1, the instinctive course of fire, they have to shoot from – you know, the target is directly in front of them. They may have to turn to the left and turn and face their target, right turn and face their target, it could be back on to the subject. And we fire two rounds centre mass and if time affords, you know, you can de-escalate. If you fire two rounds and there's no need of firing that third round or the fourth round, it's a form of de-escalation.

**MR. AVIS:** Okay. So the de-escalation possibility, if I could call it that, would come after the first two shots.

**SGT JAMES:** Correct.

**MR. AVIS:** And that would depend whether or not there is sufficient time to deal with it.

**SGT JAMES:** Right.

And in the cadet program we teach them – we do the various drills with them. So we'll say – we'll give them the command of a threat or a suspect and they draw their firearm and they go to the low ready position and they'll say, you know: Police, don't move, which is –

**MR. AVIS:** I see.

**SGT JAMES:** – de-escalation.

**MR. AVIS:** So you're – de-escalation also applies to the officer's use of force as well. He de-escalates from a shooting position to a low ready.

**SGT JAMES:** Right.

**MR. AVIS:** And Module 3, I believe you've indicated is Room Entries. Be fair to say that you're basically training them how to clear a room.

**SGT JAMES:** We teach them how to travel down a hallway in a group of two officers, three officers, four officers. We mix it up so that they get comfortable operating as a group. And then we'll teach them how to stack on a door, enter into the room, clear the room, deal with the situation that they're presented with in the room and then, if need be, how to properly exit the room, reform and move on to the next room or hallway or stairwell.

**MR. AVIS:** Now in this scenario, tell me if I have this correctly because it took me a while to learn how to pronounce this. What they do is they put a training insert in their firearm and they're using –

**SGT JAMES:** Simunition.

**MR. AVIS:** – paint simunition.

**SGT JAMES:** That's correct.

They basically use the same firearm they have –

**MR. AVIS:** Right.

**SGT JAMES:** – when they're out in the field. Only we have a number of guns that are set up so that they can only fire, we'll say, paint ball or simunition.

**MR. AVIS:** Right.

**SGT JAMES:** So the firearm itself won't take a live cartridge. It only takes a simunition round and they get accustomed to entering the room and engaging targets using simunition.

**MR. AVIS:** Okay. And in module 3, it suggested, the most of it is the actual clearing of the room. I know I'm simplifying what you described –

**SGT JAMES:** Yes.

**MR. AVIS:** – but leave it there.

Again, the seven tactical principles come into play?

**SGT JAMES:** Yes.

**MR. AVIS:** And one of those is de-escalation.

**SGT JAMES:** That's correct.

**MR. AVIS:** Both with respect to the subject and themselves. Correct?

**SGT JAMES:** Correct.

**MR. AVIS:** And I believe you said the other day that here they are on the move. Right?

**SGT JAMES:** That's correct.

**MR. AVIS:** So it involves critical decision making while on the move.

**SGT JAMES:** Correct.

**MR. AVIS:** And when you're with a group of others.

**SGT JAMES:** Yes.

**MR. AVIS:** And part of that critical decision making is the possibility to be able to de-escalate.

**SGT JAMES:** Yes.

**MR. AVIS:** Similarly, just while I'm on the subject, just to clarify this training overall when it comes to the use of force, just to reiterate so it's all in one place. The use of force options in the RNC are baton?

**SGT JAMES:** Correct.

**MR. AVIS:** OC spray.

**SGT JAMES:** Yes.

**MR. AVIS:** Tasers.

**SGT JAMES:** Yes.

**MR. AVIS:** And bean bag gun.

**SGT JAMES:** A less lethal shotgun, yes.

**MR. AVIS:** So these are the less lethal – besides soft and hand use.

**SGT JAMES:** Yes.

**MR. AVIS:** Soft and hard hand use.

**SGT JAMES:** Yep.

**MR. AVIS:** These are the other –

**SGT JAMES:** Mechanical.

**MR. AVIS:** – mechanical and one would expect to be non-lethal in most cases.

**SGT JAMES:** We would hope so, yes.

**MR. AVIS:** Right, because a baton can strike you on the head.

**SGT JAMES:** Yes.

**MR. AVIS:** Right.

OC spray, is that ever lethal?

**SGT JAMES:** I've never known it to be, but it's deemed less lethal but –

**MR. AVIS:** Right.

**SGT JAMES:** – it doesn't necessarily mean that it's can't be lethal, depending on, I guess, the subject.

**MR. AVIS:** Okay.

**THE COMMISSIONER:** Is tear gas out of the picture altogether now?

**SGT JAMES:** We use tear gas with the Tactics and Rescue Unit. We haven't had an opportunity or an occasion to deploy it.

**THE COMMISSIONER:** I just – I just recall sleeping through a tear gas attack when I was in the army basic training.

**MR. AVIS:** Sorry, Commissioner, I just need a few moments to find my –

**THE COMMISSIONER:** Take your time.

**MR. AVIS:** – bits and pieces here. There we go.

Now there are – survival stress, of course, is taught.

**SGT JAMES:** Yes.

**MR. AVIS:** I just want to address – you know, we've heard about memory and stuff like that, but I want to address some of the other issues about survival stress, more to do with the motor skills and the loss of use of motor skills and what have you.

Now – and when it comes to the physiological consequences – you obviously don't have a medical background – this is something that you yourself are trained in.

**SGT JAMES:** Yes.

**MR. AVIS:** Am I right? And this what you're taught and your understanding of the impact of these –

**SGT JAMES:** And experienced it.

**MR. AVIS:** And – oh, and of course, experience, forgive me.

Now, have you – I believe, my notes might not be that great, that inquiry counsel referred you to a person by the name of Bruce Siddle or Siddle.

**SGT JAMES:** Yes.

**MR. AVIS:** Have you heard of that person?

**SGT JAMES:** I have.

**MR. AVIS:** Sorry?

**SGT JAMES:** I have.

**MR. AVIS:** And who is he?

**SGT JAMES:** I believe he's an American.

**MR. AVIS:** Uh-huh.

**SGT JAMES:** And he talks on survival stress.

**MR. AVIS:** Okay.

Is it fair to say he's basically the forerunner who determined these physiological effects? Is that ...?

**SGT JAMES:** I don't know if he's the –

**MR. AVIS:** You don't know.

**SGT JAMES:** – founder or not.

**MR. AVIS:** Okay.

Well, after he came into being, as I understand it, prior to the notion of survival stress and how it impacted what an officer does, it used to be aimed shooting only. Am I right?

**SGT JAMES:** Yes.

**MR. AVIS:** So explain to us what aimed shooting is?

**SGT JAMES:** Aimed shooting is where you actually – it's like target shooting –

**MR. AVIS:** Uh-huh.

**SGT JAMES:** – where you actually close one eye and line up your sights on a target and squeeze the trigger and, you know, put the round in, we'll say, the X or the circle or what have you. It's target shooting or, you know, marksmanship.

**MR. AVIS:** Now, are you aware that one of the concerns and issues around aimed shooting would be that sometimes officers are there unable to reload their guns because of their loss of fine motor movement?

**SGT JAMES:** Yes.

**MR. AVIS:** Which, of course, would be a great danger to them and members of the public?

**SGT JAMES:** Yes.

**MR. AVIS:** Is it fair to say this was a substantial change in the approach to police officers using their firearms?

**SGT JAMES:** Yes.

**THE COMMISSIONER:** I'm sorry, I'm missing something there.

**MR. AVIS:** I'm sorry, Commissioner.

**THE COMMISSIONER:** What were you dealing with there, the –?

**MR. AVIS:** Well, with aimed shooting and –

**THE COMMISSIONER:** Right.

**MR. AVIS:** – survival stress, one of them is the impact on fine motor skills.

**THE COMMISSIONER:** Right.

**MR. AVIS:** And without any training in – without a different form of training, there were situations where the police officers were unable to reload because their fine motor skills had deteriorated so much.

**THE COMMISSIONER:** Okay.

**MR. AVIS:** So perhaps – can you tell us what happens to a person's heart rate when they are confronted with a life-threatening situation, particularly a police officer.

**SGT JAMES:** It's highly elevated.

**MR. AVIS:** What's highly elevated?

**SGT JAMES:** It goes up over, anywhere from 150 beats or higher. Like, optimally –

**MR. AVIS:** That's the heart rate?

**SGT JAMES:** Yeah.

**MR. AVIS:** And how does that affect – do you know, specifically, how that may affect fine motor skills?

**SGT JAMES:** Well, it, it drives the heart and like your pulse is increased. It forces blood from your extremities into the centre – it's going into survival mode and draws the blood from the extremities to the core and –

**MR. AVIS:** Okay. So the blood is drawn from the extremities, such as the hand –

**SGT JAMES:** Correct.

**MR. AVIS:** – and fingers. And what impact does that have on the hand and fingers?

**SGT JAMES:** Well it, obviously, it affects your dexterity, being able to, you know, hit your mag release, or, you know, pull the trigger, essentially.

**MR. AVIS:** What about your ability – like you were talking earlier, targeted shooting – what about your ability to aim when your heart rate is that elevated?

**SGT JAMES:** When your heart rate is elevated like that, in all likelihood you're not going to be able to close one eye, right. You're not going to be able to do that aimed shooting. You're just – it's not going to happen unless you train, and it takes an awful lot of training to get your body, I guess, accustomed to that.

**MS. O'BRIEN:** Sorry to interrupt.

Commissioner, Mr. Avis is leading Officer James here through some evidence with respect to the physiological effects that officers experience with shooting. It is – I just want to draw this to your attention, as it is an issue that has been under consideration for Corporal Wayne Knapman, who'll be testify tomorrow from the RCMP. He was retained by the RCMP. He is an RCMP Officer from Nova Scotia but he was asked by the local RCMP to do a use-of-force report for Constable Smyth.

In his report, he had gotten into some of the physiological effects of shooting. My intention had not to be to qualifying him to give evidence on those physiological effects of shooting. I felt he

could still give his report. He had done some training with Force Science and that's where he had gotten his background and it had mostly just been him reading papers on these things and had written those portions of his paper primarily from those sources.

I'm noting it may be an issue for us now because, obviously, we are getting into some of this type of evidence form a use of force officer. I just wanted to draw it to your attention. I don't know, you know, how much –

**THE COMMISSIONER:** Won't Coleman be – Dr. Coleman be dealing with that or Massine? Does that make sense?

**MS. O'BRIEN:** I can have Ms. Chaytor answer to that. I certainly don't think –

**THE COMMISSIONER:** I don't recall I –

**MS. CHAYTOR:** On physiological effects?

**THE COMMISSIONER:** Well, yes, first of all, I'm not quite sure how relevant it is, Mr. Avis, you know, in terms of – like driving a car. I like to get in a car, turn on the key and drive away but I'm not particularly interested in understanding all the –

**MR. AVIS:** Well, if –

**THE COMMISSIONER:** – all that goes in to allowing me to do that. In the same way, I suppose, there's some – well, what do you see at the relevance?

**MR. AVIS:** Can I speak, Sir?

**THE COMMISSIONER:** Sure go ahead.

**MR. AVIS:** See, I began by stating he doesn't have expertise –

**THE COMMISSIONER:** Right.

**MR. AVIS:** – in this area. This is something he's learned. This is what he teaches and –

**THE COMMISSIONER:** Well, he can testify to how he's experienced the situation.

**MR. AVIS:** Right.

**THE COMMISSIONER:** So we're not going to be too picky on that. But what I'm trying to figure out is what is the relevance –?

**MR. AVIS:** It helps you understand why the RNC training is two to the body, one to the head. Why the change took place and it has to do with the deterioration. Because of this study where there was deterioration –

**THE COMMISSIONER:** Okay. So they moved away from the –

**MR. AVIS:** Right.

**THE COMMISSIONER:** – from the target shooting –

**MR. AVIS:** Instinctive shooting.

**THE COMMISSIONER:** – approach through –

**MR. AVIS:** Why they teach instinctive shooting.

**THE COMMISSIONER:** Sorry?

**MR. AVIS:** Sorry. It's why they teach instinctive shooting.

**THE COMMISSIONER:** Instinctive shooting, yes.

**MR. AVIS:** And that's an issue and I'm just –

**THE COMMISSIONER:** Well, I'm not sure the why is relevant. All I need to know is that that's what their taught, isn't it?

**MR. AVIS:** Well, I believe it – there was a reason –

**THE COMMISSIONER:** I suppose if, if someone is going to suggest that we should move away to the old system. That'll explain why that might not be the way to go. Yeah.

Go ahead. I'm not trying to cut you off.

**MR. AVIS:** It's also why the –

**THE COMMISSIONER:** Sorry?

**MR. AVIS:** You see, it seems to be – I'm at a bit of a loss here as to why it isn't relevant. Neither of the experts called by the inquiry, as far as I know, have the expertise that Dr. Collins would, but he's not here.

**THE COMMISSIONER:** Right. Again, I guess that confirms why I have the question on my mind because I don't – I frankly think that all I'll need to know is that's what people are taught. Their instinct kicks in. They go on autopilot, et cetera, et cetera.

**MR. AVIS:** Well, I would have been finished by now because I've only got a couple of lines left. I would have finished it by now.

**THE COMMISSIONER:** Okay, all right. But I'm – go ahead.

**MR. AVIS:** I do appreciate, Sir, I really – I'm going to be a half an hour to – let me, in argument, tie it together. How's that?

**THE COMMISSIONER:** Sure.

**MR. AVIS:** I have a purpose in my own mind for sure, and it's to show the two – and it helps understand why they don't have much time between the second and third shots because of this deterioration in their motor skills. And if I can finish, you'll see the point.

**THE COMMISSIONER:** Yes, as I said earlier, I'm not trying to cut you off.

**MR. AVIS:** It impacts their ability to use the baton.

**THE COMMISSIONER:** I'm trying to understand, as I listen, I'm trying to understand why I'm hearing this.

Go ahead.

**MR. AVIS:** But their major motor skills, their gross motor skills are impacted which would include the ability to, you know, leap at the subject and tackle him to the ground while they got a gun pointed at them because of their loss of motor skill. And – anyway –

**THE COMMISSIONER:** Sorry, just to get you back in terms of –

**MR. AVIS:** Yes, just me a –

**THE COMMISSIONER:** I've got my notes made, you started off by explaining that there was a change in approach.

**MR. AVIS:** Right.

**THE COMMISSIONER:** And then you'd explain why that is and now you're going to move on to what the approach is.

**MR. AVIS:** Well, a couple more questions and we're finished in this area. And I've only got one more area after this.

**THE COMMISSIONER:** Thank you.

**MR. AVIS:** What is your understanding how it affects gross motor skills?

**SGT JAMES:** Gross motor skills kind of get enhanced so ...

**MR. AVIS:** Okay. And that would be punches, kicks, things of that nature.

**SGT JAMES:** Correct.

**MR. AVIS:** Okay.

**SGT JAMES:** Large muscles.

**THE COMMISSIONER:** They're enhanced?

**SGT JAMES:** They're enhanced; large muscles.

**THE COMMISSIONER:** Right.

**MR. AVIS:** Now, you've testified about – so we've heard it impacts time as well. We don't need to hear you any further on that.

**SGT JAMES:** Uh-huh.

**MR. AVIS:** It can affect your time perception.

**SGT JAMES:** Yes.

**MR. AVIS:** Okay. And so, are you able to explain to us then, with this background, why you moved from aimed shooting to instinctive shooting and why you teach two to the body, one to the head, your understanding of it.

**SGT JAMES:** Essentially, we fire two rounds to the body because it's the largest centre mass –

**MR. AVIS:** Right.

**SGT JAMES:** – as opposed to, you know, shooting them in the hand or shooting them in the knee. It's just – it's not practical. If I shoot you in the knee that doesn't necessarily eliminate the threat if there's a weapon in your hand, right? So we fire two rounds centre mass to hit those larger organs, centre mass.

And if I fire two rounds and my subject is dealt with, that's fine. But if I fire two rounds, I don't know, maybe I did hit him, maybe I missed him or just – I winged him and the threat is still present. So I'm going to go to the head shot and basically it's like eliminating the threat, pulling the plug on a computer. You shut down the computer.

**MR. AVIS:** And, again, I believe the understanding is if you can you're supposed to try and take a controlled breath after the first and second shots.

**SGT JAMES:** If we can, yeah. If time affords it and –

**MR. AVIS:** Sorry?

**SGT JAMES:** If time affords it.

**MR. AVIS:** And the fourth shot – or sorry, the third shot is an attempt at an aimed shot. Am I right?

**SGT JAMES:** If possible, yes.

**MR. AVIS:** Right.

And again you say if possible. Why is that, if possible?

**SGT JAMES:** You may – you take that shot at the head and maybe he's been wearing body armour, right, so the body armour is stopping the rounds. So I can fire as many rounds as I want, essentially, at the body armour, it's going to stop the rounds. So that's why we go to the head shot so it's, you know, eliminate the threat.

**MR. AVIS:** Another reason for doing that.

**SGT JAMES:** Correct.

**MR. AVIS:** Just a few general questions related (inaudible).

Cadet training and cadet selection.

**SGT JAMES:** Yes.

**MR. AVIS:** What can you tell us about cadet selection in the RNC?

**SGT JAMES:** I'm not involved in the selection. It's done through – presently there's an officer that's with the RNC that's on the selection panel as well as a person from the Public Service Commission. And they go into –

**MR. AVIS:** I'm sorry, could you say that again?

**SGT JAMES:** From the Public Service Commission.

**MR. AVIS:** Okay.

**SGT JAMES:** And an officer within the Constabulary that sit on the panel. And they go through the progress or the process of selecting the candidates.

There's criteria there. They have to, you know, obviously have to do university programs. They have to do a peer test. They have to do an interview before the panel. They do a psychological. They do a polygraph. And all these, I guess, different factors are put together and they decide which candidates are best suited for the cadet program. Names are forwarded then to, I guess, the executive with recommendations and then they would be sign off on.

**MR. AVIS:** I might just have a moment; I can't read my own writing.

**SGT JAMES:** There are other – there are a couple of other steps in the process. They have to – obviously have to have a medical, have to pass a medical and they do a background check.

**MR. AVIS:** Okay.

Now, with respect to learning plans and qualified instructors, and particularly with issues like, I guess, with de-escalation, as I understand it there is a person with adult education and a background in adult education who is now assisting in rebuilding the RNC programs. Am I right?

**SGT JAMES:** Yes, there is.

**MR. AVIS:** And do you know – is it your understanding or can you assist us in when that process began. Was that before or after the inquiry?

**SGT JAMES:** I think it commenced prior to the inquiry commencing.

**MR. AVIS:** And there were questions about trainers and their backgrounds. Is it fair to say that the trainers, their principal concern is the physical skills involved in handcuffing, baton and so forth?

**SGT JAMES:** Yes.

**MR. AVIS:** They're not – they are there to teach those skills and that's it and that's all they do.

**SGT JAMES:** That's our primary purpose is to make sure that they're confident in their firearms and in their control tactics, use-of-force options.

**MR. AVIS:** Just like to finish off with a concern here. Would you agree with me that most people, including your cadets, the last thing they ever want to do is kill somebody?

**SGT JAMES:** That's the last thing.

**MR. AVIS:** Okay. And that impacts – that concern impacts the training that they have, doesn't it?

**SGT JAMES:** Correct.

**MR. AVIS:** Essentially, for most of us, our, you know, inner core values, if you want to call that, would not make us want to shoot somebody under any circumstances.

**SGT JAMES:** No.

**MR. AVIS:** And would it be fair to say that most police officers are just like the rest of us? They're not coming there to shoot someone, are they?

**SGT JAMES:** No.

**MR. AVIS:** Right.

And is there a reason why police officers are not trained to kill the subject as opposed to eliminate the threat?

**SGT JAMES:** Why the difference between it?

**MR. AVIS:** Yes.

**SGT JAMES:** We eliminate the threat, to me or an individual that's, you know, in harm's way.

**MR. AVIS:** If you were, say, training them to kill the subject, what concerns might you have over that?

**SGT JAMES:** It just doesn't sound –

**MR. AVIS:** Sorry?

**SGT JAMES:** It sounds like you're an assassin.

**MR. AVIS:** Okay. And do you think that may impact the officer's ability, motivation to shoot?

**SGT JAMES:** I would think, yes.

**MR. AVIS:** I have no further questions.

Thank you, Commissioner.

**THE COMMISSIONER:** Any other questions?

**MR. DROVER:** I'll have a few questions, but would it be appropriate to take a break? I just want to check on some things before we do that?

**THE COMMISSIONER:** Yes, sure. Yeah, we'll take our mid-afternoon break.

We'll break for 15 minutes.

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is now recessed.

**Recess**

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

Please be seated.

**MR. AVIS:** I will quote you on that later.

**THE COMMISSIONER:** What's that?

**MR. DROVER:** Mr. Commissioner, you'll be happy to know that Mr. Avis's late-night homework paid off because I'm going to have very few questions. I thought I'd have half a dozen. I've been urged to get it down to three or possibly two.

**THE COMMISSIONER:** Go ahead when you're ready.

**MR. DROVER:** And I think I actually do have three.

Sergeant James, what is the intent of lethal force?

**SGT JAMES:** The intent of the lethal force is to stop the threat.

**MR. DROVER:** Okay.

And would you say that stopping the threat involves killing the subject, or is that sometimes an unintended consequence?

**SGT JAMES:** To stop the threat.

**MR. DROVER:** Bottom line.

You attended the first re-enactment with Constable Smyth?

**SGT JAMES:** Yes, I did.

**MR. DROVER:** Did you see anything during that re-enactment that was inconsistent with Constable Smyth's training?

**SGT JAMES:** No.

**MR. DROVER:** And my final question – and this is based on a question that you had from Mr. Avis. He asked you whether or not it was – whether or not police officers came to work to kill people.

And my question is simply: In your experience, why do police officers come to work?

**SGT JAMES:** Your Honour, or Mr. Barry, officers come to work – we have thousands and thousands of interactions with the public, you know, throughout the year. Across Canada, there's millions and millions of interactions with the public with, through the police. And that's the last thing that an officer has on his mind is to come to work to actually take someone's life. The last thing they want to do it take someone's life. They're there to help people, right?

**MR. DROVER:** Okay.

**SGT JAMES:** That's why we wear the uniform, to go out and help and assist the public. And, you know, unfortunately, there's circumstances where, you know, you're put in the circumstance where you have no other choice but to take a life, either to defend your own life or the life of

another. And, again, that's the last thing anybody, in my position – in my profession, wants to do.

**MR. DROVER:** Okay.

Those are all the questions I have, Sergeant James.

**THE COMMISSIONER:** Thank you, Mr. Drover.

Any further questions?

Nothing from Mr. Simmonds? Nothing from Ms. Rasmussen? Mr. Freeman?

Sorry, Mr. Kennedy, you're –?

**MR. KENNEDY:** No, I don't have any questions, Commissioner.

**THE COMMISSIONER:** Okay.

**MS. CHAYTOR:** Just a couple of questions I'd like to clarify, please, Sergeant James.

And firstly, it's on the de-escalation piece.

**SGT JAMES:** Uh-huh.

**MS. CHAYTOR:** And we just want to be clear on exactly what it is that the members are taught in terms of de-escalation. And I understand from what you're saying the cadets, certainly, the current cadets –

**SGT JAMES:** Correct.

**MS. CHAYTOR:** – get it in their current training.

**SGT JAMES:** Right.

**MS. CHAYTOR:** Okay and that's since, I guess, sometime since the program was brought to Memorial University.

**SGT JAMES:** Yes, that would have been in the cadet program. Yes.

**MS. CHAYTOR:** Yes. Okay.

And so it continues, of course, in the cadet program.

**SGT JAMES:** Correct.

**MS. CHAYTOR:** Okay.

And has that been revised in any way in the past, say – well, you've been there since 2009 in your position. Have there been any revisions in the de-escalation training?

**SGT JAMES:** Not in the presentation, no, but we do have other options for de-escalation, like Mr. Avis touched on earlier. Like we've enhanced our, I guess, response to those situations by,

you know, we now have tasers for our uniformed officers, we have less lethal shotguns for our uniformed officers. So we are, you know, always looking to enhance –

**MS. CHAYTOR:** So other intermediate weapons, you mean?

**SGT JAMES:** That's correct.

**MS. CHAYTOR:** Yes. Okay.

Yes, but in terms of de-escalation strategies, has there been any change since you've been there in 2009?

**SGT JAMES:** No, we still have the same processes in place.

**MS. CHAYTOR:** Okay. All right.

And the other piece, because I did understand you to say today that then other members – so current members who may have gotten different training or not as much training in de-escalation many years ago, they would get some de-escalation training through REACT, is it?

**SGT JAMES:** They get some –

**MS. CHAYTOR:** Through Module 3 –

**SGT JAMES:** Module 3.

**MS. CHAYTOR:** – when that comes up every three years?

**SGT JAMES:** That's correct.

**MS. CHAYTOR:** Okay. So there would be some through the scenarios.

**SGT JAMES:** Yes.

**MS. CHAYTOR:** And you provided us some of those scenarios but we –

**SGT JAMES:** Correct.

**MS. CHAYTOR:** – you know, didn't put them in evidence for reasons that the RNC articulated.

**SGT JAMES:** Yes.

**MS. CHAYTOR:** In those – I just want to be clear on that, so it would come up every three years –

**SGT JAMES:** Yes.

**MS. CHAYTOR:** – that there would be some de-escalation in that.

**SGT JAMES:** Yes.

**MS. CHAYTOR:** And that would be Room Entries and REACT. So that's in the circumstance of practical training and room-clearing techniques?

**SGT JAMES:** You enter a room, and you're confronted with a subject and you address the subject in the room, yes.

**MS. CHAYTOR:** Okay, so that's for room entries.

**SGT JAMES:** Correct.

**MS. CHAYTOR:** Okay.

So – okay, so that's when you're going there. Because I understood when you explained this to me in your interview, and probably less so in your evidence, but I understood that that's a group scenario?

**SGT JAMES:** Yes.

**MS. CHAYTOR:** Yes.

**SGT JAMES:** You're there as a group of four. You could be there in a group of two, you could be in a group of three, but not everybody goes in the room at the one time. You may go in the room, one, maybe two, and then we'll switch out so that, you know, you're out in the hall and the other officers are going in the room to de-escalate or, you know, deal with the situation in the room.

**MS. CHAYTOR:** Right. And that's the, that's when I think that you had referred to it actually like as an active shooter –

**SGT JAMES:** Active shooter.

**MS. CHAYTOR:** – or an active threat.

**SGT JAMES:** Correct.

**MS. CHAYTOR:** So you've been called to a situation where you know there is an active threat.

**SGT JAMES:** That's correct.

**MS. CHAYTOR:** Okay. All right.

And I also wanted to be clear; did you say today that you do know of Bruce Siddle?

**SGT JAMES:** No, I've heard the name.

**MS. CHAYTOR:** You've heard the name. Okay.

**SGT JAMES:** That's all.

**MS. CHAYTOR:** I just wanted to be clear on that.

**SGT JAMES:** I don't know him personally or anything like that. No.

**MS. CHAYTOR:** No, no, but you've heard of his name.

**SGT JAMES:** Yes.

**MS. CHAYTOR:** Okay. And have you heard of his name since we did our interview on December 15?

**SGT JAMES:** I've seen his name, yes.

**MS. CHAYTOR:** Okay. At that time I asked you about – his name did appear in your training manual, along also with Colonel Grossman's.

**SGT JAMES:** Yes.

**MS. CHAYTOR:** And I asked you at that time about Colonel Dave Grossman and Bruce Siddle were quoted, and are you familiar with these individuals? And you said: Grossman, I'm familiar with Grossman, I'm not familiar with Siddle.

**SGT JAMES:** Correct.

**MS. CHAYTOR:** Okay.

Those are all my questions, Commissioner.

**MR. AVIS:** Commissioner, I just – it may have been my inadequate questioning, but I – there's something I'd like to clarify, if I might.

**THE COMMISSIONER:** Go ahead.

**MR. AVIS:** Obviously, counsel can have an opportunity. It's just one question.

**THE COMMISSIONER:** Go ahead.

**MR. AVIS:** With respect to the question about what the current cadets get, I just wanted to clarify the module, the one week basic use-of-force training, has every member of the RNC received that?

**SGT JAMES:** Yes.

**MR. AVIS:** So not just the cadets, everyone who's presently in the RNC has received that training?

**SGT JAMES:** That's correct, yes.

**MR. AVIS:** Would that include Constable Smyth?

**SGT JAMES:** Yes.

**MR. AVIS:** Thank you.

**THE COMMISSIONER:** When – would that be early on or further in his –

**SGT JAMES:** That would have been early on, yes.

**THE COMMISSIONER:** Pardon?

**SGT JAMES:** Early on.

**THE COMMISSIONER:** Okay.

Has any thought been given to anymore condensed or more intensive refreshing, we'll say, of the de-escalation techniques? Do you feel there's sufficient being done now in the four modules that are rotated?

**SGT JAMES:** If I had the personnel within my unit, –

**THE COMMISSIONER:** Yeah.

**SGT JAMES:** – I would certainly, you know, like to or that would be something that we could certainly look at.

**THE COMMISSIONER:** Right.

**SGT JAMES:** But currently, right now, with the mandate that we have, we just don't have the time or the resources to –

**THE COMMISSIONER:** You don't have the time or the personnel?

**SGT JAMES:** Correct.

**THE COMMISSIONER:** Thank you.

Nothing further? Okay.

Thank you, Sergeant.

We'll finish there for the day.

Thank you.

**MS. SHEEHAN:** All rise.

**THE COMMISSIONER:** Until 9:30, is it, tomorrow morning?

**UNIDENTIFIED FEMALE SPEAKER:** 9:30 tomorrow morning.

**THE COMMISSIONER:** Okay.

Thank you.

**MS. SHEEHAN:** The Commission of Inquiry is now closed.