



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 34

Commissioner: Honourable Justice Leo Barry

Thursday

2 March 2017

MS. SHEEHAN: (Inaudible) this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good morning.

We had a minor technical glitch which took, what, a couple of minutes to resolve. I just thought I should note for the record that over the course of two months we probably haven't lost more than 10 minutes with the new system that has been utilized for the hearing with House of Assembly staff and also the independent contractor who's involved with the equipment.

So I just wanted to note for the record that I'm very pleased with the way the technology worked and that helped to keep us on schedule in a big way.

Okay, so you're ready to go.

MS. CHAYTOR: Yes, good morning, Commissioner.

THE COMMISSIONER: And Ms. Van Driel is here. This is Mr. Oram, is it?

MS. CHAYTOR: This is Mr. Mark Oram, yes.

THE COMMISSIONER: Okay.

MS. CHAYTOR: He's our next witness.

THE COMMISSIONER: So you're acting for Mr. Oram so ...

MS. VAN DRIEL: Yes, Commissioner.

THE COMMISSIONER: Yeah. Thank you.

Okay, you go ahead when you're ready now Ms. –

MS. CHAYTOR: If I could have the witness affirmed, please.

And if you could turn on your mic, please, Mr. Oram.

Thank you.

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. ORAM: I do.

MS. SHEEHAN: Please state your full name.

MR. ORAM: Mark Oram.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: Good morning Mr. Oram.

Commissioner, before we get started there are a few new exhibits I would ask to have entered through this witness. We have: P-0704, 0708, 0765 through to 0768.

THE COMMISSIONER: So ordered.

MS. CHAYTOR: Mr. Oram, I understand that you are a civilian member of the Royal Newfoundland Constabulary?

MR. ORAM: Yes, I am.

MS. CHAYTOR: Yes. And you're in the position of communications specialist?

MR. ORAM: Communications technician.

MS. CHAYTOR: Technician, sorry. And you've held that position since 2009?

MR. ORAM: Correct.

MS. CHAYTOR: Okay. And when we met in January, you had been off for a period of time on parental leave. And are you still off work?

MR. ORAM: I am.

MS. CHAYTOR: Okay. And how long have you been off work? When did your leave commence?

MR. ORAM: I believe it was the end of August, early September.

MS. CHAYTOR: Okay.

And perhaps you could tell the Commissioner what your duties are as a communications technician.

MR. ORAM: As a communications technician, my duties are to primarily answer general complaints from the public, and to see if there is a file that needs to be generated because of that, or there may be some advice to be given is one part of our job.

THE COMMISSIONER: Sorry, could you just tell me again, the leave – what was the leave for? I missed that.

MS. CHAYTOR: Oh, parental leave.

THE COMMISSIONER: Oh, parental leave. Okay.

MS. CHAYTOR: Yeah, so he's been off since around August of 2016.

THE COMMISSIONER: Okay.

MS. CHAYTOR: And he's still off.

THE COMMISSIONER: Good, thank you, Mr. Oram.

So your job is to receive complaints?

MR. ORAM: From the general public and to prioritize and to –

THE COMMISSIONER: To what?

MR. ORAM: To prioritize –

THE COMMISSIONER: Prioritize, yes.

MR. ORAM: – depending on what they’re complaining about.

THE COMMISSIONER: Right.

MR. ORAM: We also have a 911 emergency operation there, so we’re also answering 911 emergency calls at the Communications Centre.

THE COMMISSIONER: Do you respond to those?

MR. ORAM: Well, I answer the phone.

THE COMMISSIONER: You answer the phone, right.

MR. ORAM: And then –

MS. CHAYTOR: And then you triage it, I guess. You answer the phone and direct the person where they need to go?

MR. ORAM: No, when I answer the 911 call, I see what the emergency is; I try to gather as much information as I can and I put all that into our Computer-Aided Dispatch CAD system and have a priority sent to it for maybe a police dispatch.

MS. CHAYTOR: Okay.

MR. ORAM: Yeah.

MS. CHAYTOR: Sorry, go ahead.

MR. ORAM: Also some duties we have there would be to supplement – there is a constable dispatcher at the Communications, it’s a constable’s position, but there’s also times when the civilians may need to fill in for different reasons as a police dispatcher. So some other duties are police dispatching. Some other duties also are to add support for the RNC. And you’re always asked if there’s any requests or any information an officer may call in over the radio or by phone and we are to retrieve that information and relay it to them.

THE COMMISSIONER: Uh-huh.

MR. ORAM: As support staff.

MS. CHAYTOR: Okay.

All right and so that would be similar then to what we’re going to speak to you about today in terms of Constable Smyth’s call to you on April 5, 2015.

MR. ORAM: Yes, that’s correct.

MS. CHAYTOR: Okay.

And what training, then, did you receive when you were first hired and went into your position in 2009 and, specifically, in relation to what's relevant to what we're going to talk to about today. And that would include the meaning of Ten Codes that we've heard about and CPIC checks. So what training when you first were hired did you receive on those issues?

MR. ORAM: Immediately, when I was an employee at the RNC it was on-the-job, job shadowing type of training. That was the training. There was no orientation as such to brief you into your position. So you sat next to somebody and you job shadowed for a period of time.

And you're on a probationary period and under – when you're under a probation period there's people watching over your conduct and to make sure you can or cannot do all the requests that may be asked of you to do.

MS. CHAYTOR: And I take it these would be senior people, people who have been in their jobs for a period –

MR. ORAM: There's not necessarily –

MS. CHAYTOR: – period of time.

MR. ORAM: – a person picked out or designed that specifically says they are a comm tech trainer. And I know personally when I went in to the Communications Centre I found that some people were a little bit warmer to sit next to than others or more willing to help more than others. So if I had an opportunity to pick who I was going to sit with, I'd probably pick someone who I thought was more willing to help me.

MS. CHAYTOR: Okay.

MR. ORAM: Yeah.

MS. CHAYTOR: And did you observe any variation in how the people you job shadowed carried out their duties and, again, specifically referencing requests that would come in for you to conduct various searches.

MR. ORAM: I can't specifically answer that.

MS. CHAYTOR: Okay. All right.

And then afterwards – so that's when you first went there, it was on-the-job training for a six-month period. And then I take it that was a probationary period.

MR. ORAM: Correct.

MS. CHAYTOR: And you were successful, obviously, in completing your probationary period.

MR. ORAM: I was.

MS. CHAYTOR: Okay.

And did you then afterwards receive additional training on CPIC doing CPIC searches or the definitions of Ten Codes after you were hired?

MR. ORAM: I would have done CPIC training. There was a CPIC narrative that you had to do online and it was a prerequisite to a five-day CPIC course that was offered. And you couldn't go to that course unless you completed the online portion.

I had completed the online portion of that and I did do RCMP CPIC training at the RNC Annex Building. Now, I don't know how many days that training was. My memory seems to tell me that it was for three, possibly four days and that the RNC had me away from work for training purposes. So there may have been some in-house training at the end of that week to fill up that week.

THE COMMISSIONER: Sorry, if I understand you correctly, you're saying that it would normally be a five-day course?

MR. ORAM: I don't know what it normally would be, but I was – it was a five-day CPIC course. I know that that's what they were putting me to, but I remember, if my memory is right, that it may have been four days –

THE COMMISSIONER: Right.

MR. ORAM: – or three and a half. And it was at the RNC Annex, the old fisheries college, at that time when I received that training. And that at the end of that week, there was some members within the RNC that had given us some presentations on things that may be relevant for that position.

THE COMMISSIONER: Thank you.

MS. CHAYTOR: Okay. And –

MR. ORAM: And –

MS. CHAYTOR: – sorry, if we can bring up P-0766, and this will appear on the screen in front of you, Mr. Oram. We have here some – your training records which have been provided by the RNC. And on page 1, if I scroll down, there's a CPIC Query Narrative. Now the date's not here, but if I go – oh, I'm sorry, we're just going to wait to bring it up on the bigger screens as well.

And then, over on the second or third page, sorry, there is a certificate awarded to you: CPIC Query Narrative. And the date of that is March 27, 2010. So is that the course that you're referencing?

MR. ORAM: That would be the online portion, I believe. And that seems to be about when I would have done it.

MS. CHAYTOR: Okay.

MR. ORAM: Yeah.

MS. CHAYTOR: And so that's the time period. And that was offered, you say, by the RCMP.

MR. ORAM: I don't know who offered – I think that is an RCMP course, and they sent it to the RNC and it got filtered down to me. But you fill – you could work on that on your own time.

MS. CHAYTOR: Okay, but the people that came in to teach it –

MR. ORAM: That was not taught – that was not taught, that was an online prerequisite –

MS. CHAYTOR: Okay.

MR. ORAM: – course, I think, to this five-day CPIC training.

MS. CHAYTOR: Okay.

And so did the five-day CPIC training happen around then the same time, in March of 2010?

MR. ORAM: No, it didn't.

MS. CHAYTOR: Okay, so when did that happen?

MR. ORAM: I'm not sure. I don't know.

MS. CHAYTOR: Okay.

MR. ORAM: And I believe there was – there's no record of me attending the RCM – there was RCMP, five-day RCMP training that was at RCMP headquarters, and I don't think there was a record of me being there.

MS. CHAYTOR: Okay, but it's your evidence that you did attend?

MR. ORAM: I didn't attend that five-day CPIC training at the RCMP building, but I know that I done an RCMP CPIC training course at the RNC Annex Building.

MS. CHAYTOR: Taught by the RNC?

MR. ORAM: No, there was RCMP members. Two members from the RCMP came in.

MS. CHAYTOR: Okay.

MR. ORAM: And I specifically remember one of their names to be Duane, D-u-a-n-e.

MS. CHAYTOR: Okay.

MR. ORAM: I just thought it stood out because I never heard that name spelled that way before.

MS. CHAYTOR: Okay.

And in terms of what you would have learned through that course, would that have included definitions of Ten Codes?

MR. ORAM: It may – no, it wouldn't have. The CPIC training provided by the RCMP was more of a way to navigate through the software to be aware of how things work on the web because it's a web-based program, CPIC web. So it – and it would also get into some of the definitions and some of the terms that you may come up with. What screens look like and how to enter data onto CPIC was more of the way that course was geared towards.

MS. CHAYTOR: Okay.

And we've been provided at page 4 of this exhibit with a CPIC Query Narrative online course and the date on this was 2007, I believe. So in terms of whether or not, I understand – this provided to us by the RNC, so I understand this would have been what you did or similar at least.

The learning objectives are listed here. And it talks about recognizing “the requirements, procedures and code of conduct necessary to ensure that CPIC is a secure system; Distinguish the different areas of the CPIC screen and the different functionalities that are available; Find resources to maximize use of the system ... how to use CPIC principal messaging functionalities” and it goes on.

And there is one highlighted here in the document we received: “Query persons, the Criminal Name Index (CNI), and a subject’s criminal records.” So in terms of that, what did you understand that portion of the course to be teaching you?

MR. ORAM: I don’t remember specifically, but I would imagine that it is going to tell you that through CPIC these are the types of queries that you can achieve. But in regards to I think what’s necessary, why I’m here today about the Ten Codes; the Ten Code is agency specific, so the RCMP wouldn’t be able to specifically say what to include.

MS. CHAYTOR: Yes, so that’s – Mr. Oram, that’s why I wanted to specifically ask you that question –

MR. ORAM: Sure.

MS. CHAYTOR: – to make sure there wasn’t any confusion that came out of your training that, that you were –

MR. ORAM: In the CPIC training, it’s not any stretch of the imagination that they would tell you and maybe even show you how to query a person, how to query a Criminal Name Index or how to query a criminal record.

MS. CHAYTOR: Okay.

MR. ORAM: Because they are the type of searches in CPIC that we do daily as a communications technician.

MS. CHAYTOR: Okay.

THE COMMISSIONER: So are you saying they would not have trained you or they would have trained you in that?

MR. ORAM: I can’t remember specifically.

THE COMMISSIONER: Right.

MR. ORAM: But if it’s there in the objective –

THE COMMISSIONER: Right.

MR. ORAM: – it would have showed you how to do those queries.

THE COMMISSIONER: Okay.

MS. CHAYTOR: How to do the queries, that’s right.

And I just wanted to be clear, Commissioner, because we do understand that the code definitions from one police agency to another may vary and, in fact, I believe do vary. And so I just wanted

to ensure that there's no confusion. It's not because Mr. Oram was taught a different definition to a Ten Code through any training by the RCMP.

MR. ORAM: Any Ten Code training that I would have had through my job as communications technician at the RNC would have come from the RNC.

MS. CHAYTOR: Okay.

MR. ORAM: Not something from the RCMP.

MS. CHAYTOR: Thank you.

Okay. All right.

And you also, in terms of your training, you did a communications course, RNC Developed & Delivered – Comm Tech Training and that was in October of 2010. And it went on for four days until October 29, from the 25th to the 29th.

MR. ORAM: Correct.

MS. CHAYTOR: And you completed that. And what did that entail? Was that anything of any relevance to what we're speaking about?

MR. ORAM: I can't – I don't remember for sure what was involved in that communications course. And I think the confusion for me is that there is also supposed to be on my training record the completion of the RCMP training.

MS. CHAYTOR: The CPIC training, yes.

MR. ORAM: The CPIC training, and there's no record on my file that says that I had that completed. So I don't specifically know if I had done two weeks of training or that the communications course – I don't know what the components were of this RNC Developed & Delivered communications course.

MS. CHAYTOR: So this may have been the CPIC course that you did. Is that what you're thinking?

MR. ORAM: I don't know. I don't know.

MS. CHAYTOR: Well, do you recall doing a second course around the same time period?

MR. ORAM: It would have – if I did do – if there was a record of the RCMP course that I done and completed at the RNC annex, it would have been between the October date and the March 27 date of the narrative.

MS. CHAYTOR: Okay.

MR. ORAM: But I'm not sure and I don't know exactly what was outlined in the communications course that was delivered by the RNC. I don't know all the components of what was taught.

MS. CHAYTOR: Okay. Well, let's –

MR. ORAM: But it would be an opportunity, I guess – and I know I had seen slides prior to coming here that there was a radio procedures PowerPoint presentation.

MS. CHAYTOR: Yes.

MR. ORAM: That PowerPoint presentation could very well been delivered to me at that time.

MS. CHAYTOR: At this time.

MR. ORAM: Yes.

MS. CHAYTOR: Okay.

That could be part of what you learned at that time.

MR. ORAM: Absolutely.

MS. CHAYTOR: Okay.

So let's zone in, then. What – you say that you did learn the Ten Codes. That was taught through RNC training. And so when were you taught that, did it vary over time or was it always consistent in terms of what various codes meant? And in particular, of course, we're talking about the 10-29.

MR. ORAM: The 10-29 code wouldn't have ever changed since my – when we're talking about RNC training, are we talking about my on-the-job training? Because that's specifically where I would have learned –

MS. CHAYTOR: Okay.

MR. ORAM: – most of what codes the RNC use most of the time.

MS. CHAYTOR: Okay.

Well then, let's talk about your on-the-job training. And what were you trained, and what did you learn in terms of if somebody requested a 10-29, what information would you give them?

MR. ORAM: Well, if I was, if they were giving me, asking for a 10-29, it would indicate that I would just have to do a CPIC query.

MS. CHAYTOR: Okay. So that meant a CPIC query to you.

MR. ORAM: It meant a CPIC query and a 10-29 – a 10-29 on a person is a more popular function of CPIC when an officer mostly asks for a 10-29 on a person. So we mostly associate a 10-29 as a 10-29 on a person. But there's also 10-29s that you can – you can use a 10-29 or CPIC query to get a whole bunch of different results depending on what is relevant to the investigator and what their investigative needs are at that time.

MS. CHAYTOR: Okay.

So a 10-29 is the same as a CPIC search. They're asking you to do a CPIC search.

MR. ORAM: It's essentially a CPIC search. The mainstream 10-29 at the RNC means, you know: What is a 10-29 on a person, and we all know what we're looking for.

MS. CHAYTOR: Okay.

And so was there any documentation posted at your work station or in and around your work station to give you the definitions of the various codes? Because I understand there are quite a number of codes.

MR. ORAM: There are a hundred codes in Ten Code. And the Ten Code would have been possibly posted especially maybe on our patrol channel, which we call channel 1, and our administrative channel, channel 2, because that's where there's most of the radio communications going.

I mean it's not factual that this has to be posted here at all times: please do not remove. There's 25 other people that I work with that come in and out of my space that I work every 12 hours, so some people, for whatever reason, may not want it there. I don't know if it was there or not, but I did have access to a Ten Code through our front line or our shared directory if I needed assistance on a Ten Code.

MS. CHAYTOR: Okay.

And if we could just bring up, please, P-0215, and it's page 2 of that document.

THE COMMISSIONER: What's the number?

MS. CHAYTOR: 0215.

THE COMMISSIONER: Thank you.

MS. CHAYTOR: And this is a document that we were provided by the RNC: 10-29, background checks. And then I also want to look at, please, P-0704. And this one for 10-29 says: Records. I think that's CK?

MR. ORAM: I believe – I don't know, I'm going to say it's a records check.

MS. CHAYTOR: Check. Yes, okay.

MR. ORAM: Yeah.

MS. CHAYTOR: "Person-Vehicle Property – Boats & Motors CNI-CRS File." What does all of that mean to you, Mr. Oram?

MR. ORAM: I mean I guess they are examples of CPIC queries that you can get. It essentially is a records check. There are also many other functions of CPIC or that an officer may ask for a 10-29 for any number of different bits of information.

MS. CHAYTOR: Okay.

Now, I showed you two different documents, both of which have been provided to us by the RNC. And this one says at the top it was revised in February – I think it's February 03-94. Did either or both of those documents look familiar to you in terms of anything that may have been provided to you, either through your course or through the information being disseminated or posted in your work area?

MR. ORAM: Exhibit 0704, the one that's up there is definitely more familiar.

MS. CHAYTOR: Okay.

MR. ORAM: And I'm not aware of the other document –

MS. CHAYTOR: Okay.

MR. ORAM: – that you showed.

MS. CHAYTOR: Okay.

And familiar to you in – are you able to tell us where you would have seen this information?

MR. ORAM: This would have been probably printed off for any new employee to hold onto for learning purposes.

MS. CHAYTOR: Okay.

MR. ORAM: There have been times when this document may have been posted on channel 1 or channel 2; that's our two dispatch centers. There was a time when it was taped on and used as a mouse pad at the channel there.

So if there's any confusion or if you need any kind of clarification on what a code may mean – not specifically the more common ones but the more uncommon ones that as a communication tech, say, for as long as I've been there, you may want to look back on ones that you're not using every day.

MS. CHAYTOR: Okay.

And in terms of common, I take it the 10-29, then, is one of the more common?

MR. ORAM: The 10-27, 10-28 and 10-29 requests are daily occurrences.

MS. CHAYTOR: Okay. And those are the ones that Constable Smyth asked of you that day?

MR. ORAM: Correct.

MS. CHAYTOR: Okay.

And if we could also then – yeah, okay, this channel 1 and channel 2 that you're referring to, are those physical locations? What exactly is that?

MR. ORAM: It's actually physical locations in the Communications Centre. It is laid out in cubicles. On one end of the room there is the patrol channel which we call channel 1. That's where all the officers on patrol are conducting all their work and there's a police dispatcher aiding them in doing all their work. And attached to that channel 1 is our supervisor's desk. So the supervisor is also sitting openly in our room.

In the middle of the room there is a cubicle, and it's a square and it's four spaces in the centre of the room. And then on the far other side of the room is the channel 2 which is our administration or assistant-dispatcher station.

MS. CHAYTOR: Okay. Thank you.

And if we could bring up, please, P-0390, and I'm going to go to page 3 right now of this document. And this is an attachment to a report that Ms. Harding prepared for the Commission.

And this, I understand, is a screenshot of CPIC and PERS query screen.

MR. ORAM: That is correct.

Before we get to this screen –

MS. CHAYTOR: Okay.

MR. ORAM: – we would have opened up CPIC and we would have indicated that this is the screen that I would get to because I would see that PERS+.

MS. CHAYTOR: Yes, right up –

MR. ORAM: I would tell CPIC that I'm doing a query.

MS. CHAYTOR: Right here?

MR. ORAM: And I would also tell CPIC that I'm doing it on a person. And then once I tell the CPIC what that query is doing, this is the screen that I got to fill out.

MS. CHAYTOR: Okay.

So on the day that you did your search for Constable Smyth, this screen would have been the second screen that came up.

MR. ORAM: Yes.

MS. CHAYTOR: Okay.

And we see – and just a couple short questions on this right now, but if we come down, I understand that these are at a default setting. So CNI is defaulted, FIP. So this is the Criminal Name Index and FIP which –

THE COMMISSIONER: Sorry, where is –

MS. CHAYTOR: I'm down here where the mouse is now, Commissioner.

THE COMMISSIONER: Okay.

MS. CHAYTOR: These, from evidence that we've already heard from Ms. Harding is that these are defaulted.

THE COMMISSIONER: So default to CNI.

MS. CHAYTOR: So that the CNI will automatically come up or be delivered.

THE COMMISSIONER: Right.

MR. ORAM: Yeah.

MS. CHAYTOR: FIP and fingerprinting, and that automatically comes.

THE COMMISSIONER: FIP, Okay.

MS. CHAYTOR: Fingerprinting.

And I'm sorry, actually it's hard to see, there is a yes there, though, in the FIP. And then CFRO which I understand to be the firearms registry, that also is defaulted.

MR. ORAM: Uh-huh.

MS. CHAYTOR: Okay.

And so perhaps, then, Mr. Oram, you can tell us when you put the name in for a CPIC check and do that, do you automatically get these three pieces of information?

MR. ORAM: Yes.

MS. CHAYTOR: Okay. All right.

And I'm going to go now then and I'll come back to that in terms of specifics of the conversation that you had with Constable Smyth. And I understand, if we look at P-0136, I'm just going – this is the transcript of your discussion with him. And it's page 6, please, Madam Clerk, of that exhibit.

Okay and it starts off with just introductions of yourselves. And "Joey Smyth here, I'm looking for ah 27, 28 and 29" and some discussions about your badge number.

"I have to do the 27 first ah just to get the, the DOB.

"Okay no problem." And then there's some communication about the name of the person, the fact that it's Mount Carmel.

And if we come down through onto the next page, page 7 – and stop me if there's anything in between that you think I should point you to, please, Mr. Oram. But then the next entry I have here is you're able – you've gotten some information for him and you're able to tell Constable Smyth that he looks like a tractor trailer driver because he's got a one, two, three, four, five, eight, nine. So that's through doing your 10-27, is it?

MR. ORAM: Correct.

When I've completed the 10-27 it appears that he would have had a Class 1 licence, Class 2 licence, Class 3, 4, 5, 8 and 9 licence. So most – your regular person is a valid Class 5 driver unless you have other ...

MS. CHAYTOR: Okay. All right.

And then there's some discussions. He's asking: "... your one is the elder would you see if he got, what vehicles he got registered and what is it showing there ... give any ah street address for Mount Carmel or just PO Box." And you tell him it's just a PO Box, Main Road.

And then you ask him: "Anything in particular you, you're looking for." And he replies: "... looking to see right now if he got any vehicles registered to 'em and ... I need a 29 on him and a CFRO check." And then you reply and tell him about two particular cars.

MR. ORAM: That would have been the 10-28 portion.

MS. CHAYTOR: That's the 10-28 portion, okay, the Honda and the Saturn. And it looks like the Honda; you give him a description of the Honda.

And then over to the top of the next page, page 8 – sorry, I went too far, here we go.

“And it's registered to him,” and then you say: “you said you want a 29 too do ya.

“Yeah please.”

And “What's your rank now.

“... acting Sergeant.”

And then you say: “... ah, error, what, yeah, he's not on file there.”

“Nothing there and no, no CFRO either.”

And then there is a little interruption and you come back to your third recording: “He's not on file there.”

“Nothing there and no, no CFRO either, no firearms registered.”

“Ah, not on file no” and then, “Alright Sir.”

“Good enough.”

“Appreciate your help.”

And that seems to be pretty much the information that got relayed that day. Is that right, Mr. Oram?

MR. ORAM: Correct.

MS. CHAYTOR: Okay. All right.

And what do you mean – first of all, I should ask you what happened here with the error? Your first file you say: error?

MR. ORAM: I'm not really sure but when you're filling out these CPIC forms for your CPIC query they can be very sensitive. So if there was any kind of error on my part or if I had missed a mandatory field, because they have mandatory fields before they will give you any response back, that they may send back an error.

Or I could have just put a space in where his date of birth was supposed to go instead of a number, and it wouldn't recognize that to be a valid date of birth so it would send me back an error.

MS. CHAYTOR: Okay. So then ultimately, though, you're able to correct whatever the particular error was.

MR. ORAM: Well, I know that this is an error and that I need to go back and fully fill out the form properly to get a response back.

MS. CHAYTOR: And then you did do that?

MR. ORAM: And I did do that.

MS. CHAYTOR: And you were able to get a response back?

MR. ORAM: Correct.

MS. CHAYTOR: Okay. All right.

Okay. And so then what do you mean when you say: “He’s not on file there”? And you say that twice: “He’s not on file there.”

What does that mean in terms of relaying information back to an officer?

MR. ORAM: At this time, I guess he’s using an internal telephone line when he’s asking for these requests. This is not over our regular radio traffic. So I guess I’m probably not using the more professional term he – that Don Dunphy’s 10-29 would have been 10-10, that I just told Constable Smyth that he wasn’t on file, but my intention would be –

THE COMMISSIONER: Sorry, what’s the 10-10?

MR. ORAM: The 10-10 means negative.

THE COMMISSIONER: Right.

MS. CHAYTOR: Negative, okay.

And when you say internal telephone line, did you know if he were internal at headquarters or on his cellphone?

MR. ORAM: No, it’s an internal line that I’m using. I don’t know what line he was using.

MS. CHAYTOR: Okay.

MR. ORAM: But he wasn’t on the radio so it was more of a personal conversation as opposed to a proper radio edit over the radio communications.

MS. CHAYTOR: Okay, fair enough.

MR. ORAM: That’s all.

MS. CHAYTOR: And if you’re over the radio, then you use your codes such as 10-10, yes.

MR. ORAM: I would have tried to have been maybe a little more –

THE COMMISSIONER: More formal?

MR. ORAM: More formal.

MS. CHAYTOR: Fair enough. Yes.

MR. ORAM: It was – you know, it was just nine – 11 o’clock in the morning on a Sunday morning on an internal line, so I just tried to make it as personable as I could.

MS. CHAYTOR: Okay.

MR. ORAM: Yeah.

MS. CHAYTOR: And, Mr. Oram, other than what we see here – and there is another conversation later in the day, but other than what we see here in terms of relaying information to Constable Smyth, is that the extent of your communications with him that morning?

MR. ORAM: Correct.

MS. CHAYTOR: Okay. So there was no other communications offline anywhere?

MR. ORAM: Just later.

MS. CHAYTOR: Okay. Later on we're going to speak to that.

Okay. Now, if we could go back, please, to 0390. And this again is Ms. Harding's report that she provided to the Commission.

And it's on the first page. And Ms. Hardy – Ms. Harding, I'm sorry: "I obtained a copy of the archived CPIC response messages which identified Mr. Oram did complete three CPIC searches on Mr. Dunphy. The responses to Mr. Oram's searches indicated that Mr. Dunphy did have a criminal background, however, this information was not passed along to A/Sgt. Smyth by Mr. Oram according to the Communication transcription of their conversation on April 5th, 2015."

And so, Mr. Oram, from what – this issue has arisen at the inquiry because we understand that there was additional information on file for Mr. Dunphy that wasn't relayed to Acting Sergeant Smyth that day, and an audit was carried out. And what that audit showed, and Ms. Harding has provided in her report here, is that there was a fingerprint, FPS, and a series of numbers related to Mr. Dunphy. And what does that normally mean if you get an FPS on a person?

MR. ORAM: The only reason I would be looking for an FPS number is that if Constable Smyth at that time had asked me to do a criminal record check. I know that through the CPIC query that I would need to get a set of fingerprints, so I could obtain the fingerprints through that process.

MS. CHAYTOR: Okay. And so –

THE COMMISSIONER: Sorry, where is the reference to the fingerprints there?

MS. CHAYTOR: Okay, we can come up to page 10 then, please.

THE COMMISSIONER: So you got the CPIC Overview – one second, sorry.

MS. CHAYTOR: We can come to page 10 –

THE COMMISSIONER: Okay.

MS. CHAYTOR: – I'll show you where it says.

THE COMMISSIONER: Right.

MS. CHAYTOR: So this is what shows up. There's an FPS number and a series of, we understand this to be the fingerprints and then –

THE COMMISSIONER: So that's fingerprints. Okay.

MS. CHAYTOR: And then the Caution V code and then CR Query Recommended. What do you understand Caution V and CR Query Recommended to mean?

MR. ORAM: I think it's also worth noting that this exhibit here is the information that would have been under the CNI portion of the Don Dunphy search

MS. CHAYTOR: I understand.

MR. ORAM: Okay.

MS. CHAYTOR: And we'll get to that.

MR. ORAM: Okay.

MS. CHAYTOR: But can you just tell me, based on your knowledge, what does the Caution V mean. And CR Query Recommended, what does that mean?

MR. ORAM: As – when I – if I (inaudible) to open the CNI, if I – I know that this is showing that there is a caution and the V would be violence.

MS. CHAYTOR: Okay.

And the CR Query Recommended?

MR. ORAM: That is not a piece of information that I would be looking for when I conduct my CNI search. All my CNI searches that I've conducted since I've been at the RNC – and I believe that most of the communication technicians follow the same thing – is that if I were to read out this CNI and give that information, the Cautions is information that I would be looking for. And I'd also want to know when the last file was opened. It says 2001 to 2005 and it's for violence and drugs.

MS. CHAYTOR: Okay.

MR. ORAM: So –

THE COMMISSIONER: Sorry, wait now, I'm not following this now. So you would have gotten, you would have seen that –

MS. CHAYTOR: No.

MR. ORAM: I would have never – I never seen that.

MS. CHAYTOR: Let's back up. Yes, let's back up.

MR. ORAM: Yeah, please.

MS. CHAYTOR: Okay, let's backup then.

MR. ORAM: Yes.

MS. CHAYTOR: All right.

Okay, so Mr. Oram let's back up.

So on the day that – and we saw the screen with what would have come up and what you would have inputted. On that day, what happened? When you put in Mr. Dunphy’s name and did your CPIC query, what did you receive back in response and what did you look at?

MR. ORAM: When I filled out that CPIC form that we were just looking at there –

MS. CHAYTOR: Yes.

MR. ORAM: – I would fill out any information that I had obtained of Don Dunphy or Donald Dunphy and I would send that off and –

MS. CHAYTOR: Okay, we could go back to page 3 of this exhibit so the Commissioner can be clear what you’re referring to.

Okay, Mr. Oram, so you would have filled in where it says Person Query.

MR. ORAM: Yes.

MS. CHAYTOR: You would have put in Mr. Dunphy’s name.

MR. ORAM: I would have put, actually in where the cursor or the –

MS. CHAYTOR: Yes, right here.

MR. ORAM: I would put the remarks there that I was doing –

MS. CHAYTOR: Remarks.

MR. ORAM: – this search and who I was doing this search for.

THE COMMISSIONER: So under Person Query –

MS. CHAYTOR: Under Person Query, remark –

THE COMMISSIONER: – you put in the response – there’s a place there for Rem.

MS. CHAYTOR: Rem.

MR. ORAM: Rem. That would be a place for me to identify who I am and who I’m doing this search for.

MS. CHAYTOR: Okay. And then –

THE COMMISSIONER: You would say who –

MR. ORAM: It would have been –

THE COMMISSIONER: The subject matter of your search, is it?

MR. ORAM: No, I would have just identified to CPIC, Mark Oram is doing this investigation –

THE COMMISSIONER: For –

MR. ORAM: – for Constable –

THE COMMISSIONER: – Constable Smyth.

MR. ORAM: – Acting Sergeant Smyth.

THE COMMISSIONER: Okay. Thank you.

MR. ORAM: Or something to that extent.

THE COMMISSIONER: Thank you.

MR. ORAM: Just for identification purposes.

THE COMMISSIONER: Right.

MS. CHAYTOR: Okay.

Continue on then, please.

MR. ORAM: And then that next blue line is – shows a mandatory field and that’s the surname of the subject that I’m querying. So in this instance –

THE COMMISSIONER: Okay. So the –

MR. ORAM: – I would have filled out –

THE COMMISSIONER: – surname. Okay.

MR. ORAM: – Dunphy.

THE COMMISSIONER: All right.

MR. ORAM: And I would have given – I’m not sure, I would have Given 1 of Donald, I don’t know if the Given 2 was given to me but it’s not a mandatory field.

THE COMMISSIONER: Okay.

MS. CHAYTOR: So G1 would –

MR. ORAM: G1 would be Donald.

MS. CHAYTOR: – have been his name. Yes.

MR. ORAM: And then I would put in DOB. See the DOB?

MS. CHAYTOR: Date of birth? Yes, right here.

MR. ORAM: I would put in that date of birth that I obtained from the 27.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Yes.

MR. ORAM: And I – and then the Sex is actually a mandatory field so I would have to indicate that he was male.

MS. CHAYTOR: Okay.

MR. ORAM: And then I would hit Enter.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Okay.

MS. CHAYTOR: And you would just hit Enter and then anything that –

MR. ORAM: The CNI – the Alias, Known, CNI, fingerprints and CFRO are automatically defaulted so I wouldn't have to tick anything off there. And in this instance Constable Smyth had asked for the CFRO and I know that that is already defaulted so I wouldn't have to assign that field to yes, because I'd be getting that response back.

MS. CHAYTOR: Okay.

And so then what did you receive back? And we've heard about VMail; that you would have gotten back three pieces of information

MR. ORAM: So when I went and hit Enter, because I have all this form filled out, up in the top of this box there's a little icon that says VMail. You see it on the top there?

MS. CHAYTOR: Uh-huh, right here?

THE COMMISSIONER: I don't see it there.

MR. ORAM: Right here

MS. CHAYTOR: Right there, Commissioner.

THE COMMISSIONER: Okay, VMail.

MR. ORAM: That's the VMail so that's where – it's essentially an email.

THE COMMISSIONER: Right.

MR. ORAM: Similar to an email if we want to use comparisons. So that's where all those responses would be returned to. So I would have to open that window up there to get to my VMail inbox.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Okay one second now.

Okay. Go ahead.

MS. CHAYTOR: Okay.

MR. ORAM: So once I'm into my inbox of the VMail, I will have three responses back. The three responses would be the query of the person, the CNI and the CFRO. They are three separate messages in my VMail inbox.

THE COMMISSIONER: Okay. So the person, the – what else?

MR. ORAM: The person. The next response in a separate response would be the CNI.

THE COMMISSIONER: The CNI.

MR. ORAM: And then there's also another response that would give you the CFRO information.

THE COMMISSIONER: CFRO. Good, okay.

Thank you.

MS. CHAYTOR: Okay.

And so the query on the person, when that came back, you opened that VMail?

MR. ORAM: I would have opened that VMail first because that would be the 10-29 on Mr. Dunphy which –

THE COMMISSIONER: So the VMail as to the person. You open that first and that'd be the 10-29?

MR. ORAM: Well, that would be what everyone would consider the 10-29 on Donald Dunphy.

MR. COMMISSIONER: Thank you.

MR. ORAM: So that comes back as 10-10. I tell him there's – it's not on file. He's not on file.

MS. CHAYTOR: So that's what you meant by not on file –

MR. ORAM: Yes. I mean – I would have –

MS. CHAYTOR: Negative. Yes.

MR. ORAM: Negative

MS. CHAYTOR: So that –

MR. ORAM: Results.

MS. CHAYTOR: And so you understood that's what a 10-29 – it's that piece.

MR. ORAM: And at that time when Constable Smyth was asking me for a 29 and a CFRO, I understood him to be asking for that 10-29 information, the person queried portion of this search.

MS. CHAYTOR: Okay. And I understand the Person Query portion is if there is anything current on the file like outstanding warrants against the person, is that correct?

MR. ORAM: It's a number of different things that you could be looking for on somebody's 10-29 on a person, but if there was any warrants out for his arrest, if he was any probations, if he was released on any police undertakings, if he was prohibited any firearms or prohibited from driving, this would tell you that. Yeah.

MS. CHAYTOR: Okay. And so that's – he was not on file or that was negative?

MR. ORAM: There was nothing there on his file.

MS. CHAYTOR: Okay. And then you also opened up the CFRO and he had no registered weapons.

MR. ORAM: I opened up the CFRO and found that there was no registered firearms to Donald Dunphy.

MS. CHAYTOR: Okay. And the third piece of information you would have received would have been the CNI.

MR. ORAM: The CNI, I would have received that in my VMail.

MS. CHAYTOR: Yes.

MR. ORAM: But I never opened it because I believe Constable Smyth was asking me for a 29 and a CFRO, so I didn't know if the CNI was something that he was going to be looking for.

MS. CHAYTOR: Okay.

Now so – and the CNI, Commissioner, just to be clear, the CNI, when I took you to page 10 and showed you the FPS number and the Caution V and CR recommended, that's in the CNI.

MR. ORAM: That was, that was what I would see if I were to open the CNI.

MS. CHAYTOR: If you had opened the CNI you would have received that information.

MR. ORAM: I would have seen that.

MS. CHAYTOR: But on this day you did not open the CNI.

MR. ORAM: I didn't see that information because I never opened it. But if I did –

THE COMMISSIONER: But –

MR. ORAM: Oh, sorry.

THE COMMISSIONER: – you thought that Constable Smyth was asking for the CFRO and one other thing?

MR. ORAM: The 10-29.

THE COMMISSIONER: And the 10-29.

MS. CHAYTOR: And you understood the 10-29 only to be the Person Query?

MR. ORAM: Yes.

MS. CHAYTOR: Okay. But earlier when I was asking you about what a 10-29 meant you understood that to be that the officer would be looking for CPIC query on the person.

MR. ORAM: It's CPIC query, yeah.

MS. CHAYTOR: CPIC query?

MR. ORAM: Yes.

MS. CHAYTOR: And is not a CPIC query, according to this, wouldn't that be all three pieces of this information?

MR. ORAM: No, not necessarily.

MS. CHAYTOR: Okay.

And where did you learn that, that the 10-29 does not include or a CPIC query does not include the CNI?

MR. ORAM: I don't know if I had learned that from anyone or anywhere on my learning, on-the-job training at the RNC, but if I'm conducting my job on a daily basis, I get requests at the RNC for 10-29s and CNIs daily.

MS. CHAYTOR: Okay.

MR. ORAM: There are some officers that will ask for a 10-29 and a CNI search. So that indicates to me that they're looking for two bits of information, not one.

MS. CHAYTOR: Okay.

MR. ORAM: On this instance, when Constable Smyth had called in, he asked for a 10-29 and a CFRO, he was looking for two bits of information for his investigation, and I gave him the two bits of information that he was looking for.

MS. CHAYTOR: Okay. All right.

And if you received, though, the three VMail, why not just go in and look at that and give him that information, too? Even if you don't understand him to be specifically asking for it, why not just go in or ask: Do you also want – I have the CNI here, do you want me to look at that?

MR. ORAM: It's not my job as a communications technician to – I have no reason to question Constable Smyth what he needs this information for, nor did he tell me in our conversation what he was looking for this information for.

He had called me, asked me to do four searches for him. I conducted the four searches for him to the best of my ability, relayed that information back to him accurately and said goodbye.

MS. CHAYTOR: Okay.

So are you saying that it was not your practice to give the CNI unless an officer specifically requested it?

MR. ORAM: I would be providing CNIs to the officers when they are asked if they are looking for a CNI. That is my (inaudible).

MS. CHAYTOR: They would specifically have to use the word "CNI" as opposed to 10-29?

MR. ORAM: And that is the practice of officers. I don't know which ones do and which ones don't, but I know that we take requests for 10-29s and CNIs and CFROs. We may get a request of a 10-29 only; we may get a request of a CFRO only. I don't – can't distinguish why any officer would ask it at any particular time. I guess that depends on their investigation.

MS. CHAYTOR: Have you helped train other communication technicians?

MR. ORAM: I would have.

MS. CHAYTOR: Okay. And they have job shadowed you?

MR. ORAM: I mean as a more senior communications technician down there, considering how many people work down there, I fit somewhere on the second half of the seniority. And I would feel the need to help anybody who needed help.

MS. CHAYTOR: So, yes, you have had people job shadow you?

MR. ORAM: I have volunteered myself to have people to sit next to me and job shadow my job, yes.

MS. CHAYTOR: And they have done that?

MR. ORAM: Yes.

MS. CHAYTOR: Okay.

And in doing that, what have you taught them? When they're doing a CPIC query, what have you taught them that they have to relay in terms of the information?

MR. ORAM: I don't have a definitive answer for that. There is no definition, clear definition, of what information is to be relayed.

THE COMMISSIONER: I think specifically referring to whether you've taught them anything regarding the –

MS. CHAYTOR: A 10-29.

THE COMMISSIONER: – 10-29.

MS. CHAYTOR: Yes, a 10-29.

MR. ORAM: And if I was to – they would have sat next to me and watched the way that I have conducted my 10-29s. They would have learned, seen which way I do it. I would try to explain it to the best of my ability for when they had an opportunity to do it their self, that they could achieve that.

MS. CHAYTOR: Okay.

There was an email that went out. I realize that you're on leave, but December 23 there was an email that went out reminding – as a reminder. We can bring that up then perhaps. It's P –

THE COMMISSIONER: Just to that page I asked about, that came up.

MS. CHAYTOR: We can go back, page 10.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: That would have been the information in the CNI.

THE COMMISSIONER: The information. Okay.

MS. CHAYTOR: And what Mr. Oram is saying is that he did not open the VMail –

THE COMMISSIONER: Just one second now.

I understand that he didn't open the –

MS. CHAYTOR: VMail.

THE COMMISSIONER: – the VMail. Where the response came in regarding CNI and the VMail, you did not open that.

MR. ORAM: Correct. That's correct,

MS. CHAYTOR: Because he didn't understand that to be what Constable Smyth was asking for in asking for a 10-29.

THE COMMISSIONER: Right.

MS. CHAYTOR: And this is in front of you now, Commissioner. This is the information that –

THE COMMISSIONER: Right.

MS. CHAYTOR: – he would have had to have gone into the CNI to get that information.

So I'm just going to look quickly at an email. I realize that you probably didn't receive this email. It's P-0467 and it went out on December 23, I believe, in the aftermath of this issue coming to light. And it was distributed – it's going to be page 65 of that document, please.

And this is attached to a report that was put into evidence by Barry Constantine. And in this – this is an email that went out from Superintendent Boland: "When completing a 10-29 ensure that all CPIC response messages including the PERS, CNI, CR and any additional information is disclosed to a member." Okay?

And then –

THE COMMISSIONER: Sorry, just go back there again for a second. I know I have an earlier transcript dealing with this from Mr. Constantine –

MS. CHAYTOR: That's right, yes.

THE COMMISSIONER: – so I want to get this right.

MS. CHAYTOR: It's P-0467, Commissioner.

THE COMMISSIONER: Okay, thank you.

MS. CHAYTOR: Okay.

And then Danielle Green seeks some clarification. And is Danielle Green one of your co-workers?

MR. ORAM: She is a co-worker.

MS. CHAYTOR: Okay.

And she asked, “Just for clarification. The CR is not done automatically. You have to get the FPS # from the CNI, if it’s positive. Do you mean PERS, CNI, and CFRO? CFRO is done automatically with PERS and CNI.”

And, Mr. Oram, I just wanted to give you an opportunity to speak to that because Ms. Green seems to saying that she understood that a 10-29 is PERS, CNI, and CFRO.

MR. ORAM: I think what she’s referring to there is that – remember when we were talking about the defaults –

MS. CHAYTOR: Yes.

MR. ORAM: – when it comes back automatically? She’s just basically saying that the CR is not defaulted when we do the search. And she believes that maybe Joe Boland is getting that tangled up with the CFRO because –

MS. CHAYTOR: I think you’re right, she’s correcting that, about the CR not coming back automatically.

MR. ORAM: Yes.

MS. CHAYTOR: But you can see he’s saying: When completing a 10-29 ensure all CPIC response messages including those. And then she says: For clarification, it’s not done automatically. You have to get the FPS number from CNI.

MR. ORAM: Exactly, that’s not – the CR you can’t default. You have to retrieve the FPS number, go back and do a separate search to get the criminal record. So she’s – just some confusion there as to which ones he’s looking for.

MS. CHAYTOR: Okay. All right.

So is it your understanding then that your coworkers also were interpreting a 10-29 the same way that you interpreted it and that you wouldn’t provide the CNI unless specifically requested?

MR. ORAM: I can’t speak for anyone else.

MS. CHAYTOR: Okay. All right.

Then I’d like to move on, then, if that’s sufficient Commissioner.

MR. ORAM: I also – like, seeing we’re on this email –

MS. CHAYTOR: Yes, okay.

MR. ORAM: – and you go back to the original email –

MS. CHAYTOR: Right here?

MR. ORAM: – is that any additional information – I don’t –

MS. CHAYTOR: Oh yes, and any additional –

MR. ORAM: Really, I don't know what that is supposed to entail either.

MS. CHAYTOR: Okay, so to you this is still not clear.

MR. ORAM: It's not very –

THE COMMISSIONER: What exhibit that is?

MS. CHAYTOR: This is 0467

THE COMMISSIONER: Is that still 0467?

MS. CHAYTOR: This is 0467 on page 66, Commissioner.

THE COMMISSIONER: Okay. Okay.

MS. CHAYTOR: Okay, so the message here from Superintendent Boland: "When completing a 10-29 ensure that all CPIC response messages including the PERS, CNI, CR and any additional information is disclosed to a member." And what you're saying is that you don't – that's not clear to you.

MR. ORAM: Any additional information, I don't really know what is being applied –

MS. CHAYTOR: What that could be?

MR. ORAM: – by what information is he talking about. And, furthermore, about the Danielle Green, I basically think that Danielle Green, if we go back to Joe's email, the original one, I think that she's just saying: Do you mean PERS, CNI and CFRO?

MS. CHAYTOR: Right, instead of CR.

MR. ORAM: I think that Superintendent Boland may have got the CR and the CFRO confused.

MS. CHAYTOR: Okay.

MR. ORAM: I'm not sure but ...

MS. CHAYTOR: And then he does clarify or there is a clarification of that: "... that's correct. I am referring to all checks that come back from a 10-29, (PERS, CNI and CFRO) I am not asking for the Criminal Records check."

MR. ORAM: Right. Yeah right.

MS. CHAYTOR: Okay.

All right and I want to go back then to P-0136, and this is the second conversation that you had with Constable Smyth. Unless there's anything else, Mr. Oram, on that, and there may be some questions from my learned friends as well for you on it.

P-0136, page 10, please, and this is the second call that you had with Constable Smyth on April 5, 2015. And this call is received by you at 2:30 p.m. And I'm just going to quickly take you through a couple of things in this conversation.

And it's the fifth recording. He phones and says: "... Joe Smyth here. Can you hear me."

“Go ahead sir.”

“Listen I’m at a house out in Mount Carmel...” and “... I got shots fired here.”

“You got.”

Yeah, “... a male individual who I’ve shot multiple times ... I’ve notified the RCMP, they got paramedics and ... officers on the way ... so, as I know...” what – “... were going to call you guys but I need you to ... notify ... the on-call duty officer.”

“... As I know they were going to call you,” sorry.

And you ask him: “Where are you to in Mount Carmel.”

“... They’re on their way here, I’m in the Main Road and it’s actually Mitchell’s Brook which is just beyond Mount Carmel.”

And he asks you – you ask his badge number. And then you seem to be speaking to someone else because you say: “I got Joey on the line there now. Okay, I will ah get a hold of the on-call duty officer.”

And he says: “You’ll have him call me.”

“Yeah.”

“Thank you.”

And that’s the end of your conversation.

My questions for you on this, Mr. Oram, is that you had spoken a couple of hours before with Constable Smyth and you had provided him the information for a gentleman in Mount Carmel. Did it occur to you at this point in time that this could be related to your earlier discussion with him?

MR. ORAM: Possibly. I mean, it wouldn’t – it was a couple of hours after I was speaking to him, I was doing searches on a subject for him, I had a date of birth and an address of somewhere out in Mount Carmel. I can’t remember, but I would say that I could –

MS. CHAYTOR: It would be a pretty unusual call for you to take, that an officer has shot an individual multiple times.

MR. ORAM: Oh, yeah. Oh, yeah.

MS. CHAYTOR: All right, okay. So that’s a conversation I take it you’d remember and put it –

MR. ORAM: It obviously caught me off guard, yeah.

MS. CHAYTOR: And did you put it together that this is the – that this might be related to –

MR. ORAM: It may be related, but in regards to our conversation, my job was to notify the on-call duty officer at the RNC.

MS. CHAYTOR: And I take it you did that for him.

MR. ORAM: I can't – I would have went and found the on-call duty officer. If my memory serves me right, my sergeant at the time was working that morning. His name is Gerard Ryan. Gerard would have maybe heard my conversation or may have known something, I'm not sure, but he would have heard and I would have told him what we were looking for. And I think that he was aware that Staff Sergeant or Acting Inspector Mike Adams was the on-call duty officer that day. And Gerard had walked down the hall to tell the on-call duty officer to give Joe Smyth a call, there were some shots fired and that he needs to call him immediately.

MS. CHAYTOR: Okay.

And this reference here, "I got Joey on the line there now," do you know who it is that you're saying this to?

MR. ORAM: I don't really know who I'm saying it to. Obviously, Joey's name must have been brought up at work, and I was hearing parts of someone else's conversation.

MS. CHAYTOR: Okay.

And did you then have any communications with either Gerard Ryan, your supervisor, anyone else to discuss the fact that you had spoken to him earlier that day?

MR. ORAM: In what sense?

MS. CHAYTOR: In terms of the information that you had relayed to him and any communication you had with him.

MR. ORAM: Not this – no, not that day and not since that incident. I just continued doing my job as I'd done. And there were calls probably being waiting to be answered that I would have to attend to.

MS. CHAYTOR: And the first time then that this issue gets brought to your attention is in the course of this inquiry?

MR. ORAM: Yes.

MS. CHAYTOR: Okay.

Did you have any further involvement or discussions regarding this matter?

MR. ORAM: No.

MS. CHAYTOR: Okay.

Those are all the questions I have for you, Mr. Oram. Some of the other lawyers may have questions and the Commissioner may have some more questions.

Thank you.

THE COMMISSIONER: Thank you.

Now, do we have anyone volunteering to go first or default order or whatever.

Mr. Kennedy.

MR. KENNEDY: I don't have any questions so ...

THE COMMISSIONER: No questions.

Who has questions? Then we'll decide who goes first.

Ms. Zdebiak, you wish to go first. Okay.

MS. ZDEBIAK: That's fine, sure.

Maybe I could get a podium.

Mr. Oram, good morning, I'm – sorry, I should turn that on.

I just met you briefly outside, but I'm Wendy Zdebiak, counsel for the RNC.

MR. ORAM: Sure.

MS. ZDEBIAK: So I have some questions for you related to this matter this morning.

Madam Clerk, I wonder if you could bring up Exhibit P-0767? And this is a document, Mr. Oram, I think you might be familiar with.

This, as I understand it, is a Position Description Questionnaire, and if we can skip to page 76 or 77 of this exhibit, that's the very last page, we see that this was a document that was submitted to government. There's a number of signatures on page 77. Sorry, if you could just scroll down, we see that your name is on this document.

So this was submitted to government. I guess the last date we see on there is January 22, 2015.

THE COMMISSIONER: Where is his signature?

MS. ZDEBIAK: His signature is – I don't know that that's his actual signature, but if you just scroll down – I'm sorry, number (12) – you'll see that Mr. Oram's name is added to this document.

THE COMMISSIONER: Yeah, it looks like it's not his signature. It looks like it's printed on (inaudible).

MS. ZDEBIAK: Right.

And if you scroll back up, sorry, it says group signatures provided below – list provided below, sorry. And then what we have at the bottom, I believe, is a list of communications technicians who would've been –

THE COMMISSIONER: Everybody else there seems to have signed, but Mr. Oram doesn't and it seems to have been printed.

MS. ZDEBIAK: Actually, there's a number of names if you keep going down a little bit.

THE COMMISSIONER: Some more?

MS. ZDEBIAK: Yeah, you see that there's a number of names listed there. Those are all written and I can – they've been blocked out for privacy reasons, but they are all written in the same hand.

THE COMMISSIONER: Oh, you mean the numbers (13) to (17)?

MS. ZDEBIAK: That's right.

THE COMMISSIONER: Okay.

UNIDENTIFIED MALE SPEAKER: Plus (1) through (11).

MS. ZDEBIAK: Yes, and (1) through (11), Mr. Commissioner.

THE COMMISSIONER: Okay.

MS. ZDEBIAK: Yes, so Mr. Oram's name is added to that list.

THE COMMISSIONER: Okay.

MS. ZDEBIAK: Now, Mr. Oram, are you familiar with this document? It's a pretty lengthy document.

MR. ORAM: It is a very lengthy document.

MS. ZDEBIAK: Yes.

And you are familiar – you nodded your head – you are familiar with this one.

MS. ZDEBIAK: Yes.

This was something that was submitted to government, as I understand it, when the communications technicians were seeking reclassification.

MR. ORAM: No, this was a document that all government positions had an opportunity to fill out.

MS. ZDEBIAK: Okay.

MR. ORAM: Yeah. I think that it was part of this JES – the government thought that a lot of people's jobs may not have reflect the duties that they were doing and subsequently that their pay may not be associated with the duties that they were performing.

MS. ZDEBIAK: I see.

MR. ORAM: So they gave everybody a chance to give a description of their duties, and they could analyze it.

MS. ZDEBIAK: Right.

Okay, very good.

So that's this document. And it's quite a detailed document, isn't it, in terms of expressing what your duties are?

MR. ORAM: Correct.

MS. ZDEBIAK: And you're listed as a signatory, and you're familiar with this document?

MR. ORAM: I am familiar with the document.

MS. ZDEBIAK: And I understand as well, from speaking with Amelia Moss from HR, human resources, that you were actually involved in the process of developing this document.

MR. ORAM: I was partly involved at the early stages of this.

MS. ZDEBIAK: Okay.

Because she said there were several meetings she had with you, Danielle Green and Natalie – no, don't remember her last name.

MR. ORAM: Zamanis.

MS. ZDEBIAK: Zamanis, yes – related to developing this document, putting it together. So I guess it took a fair bit of work. Was it just the three of you working on it?

MR. ORAM: Again, I was only a part of this at the early stages. Once things started to develop, the meat and potatoes of this document, I just was more of a sidelinier.

MS. ZDEBIAK: Okay.

Now, did you have a chance to read this document?

MR. ORAM: At the time of submission, I would have read through the document.

MS. ZDEBIAK: Okay.

And did you agree with the document in terms of how it described your duties?

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

I'm just going to go through just a few things. I'm not going to read the whole document for you, thankfully, this morning. But if I could take you to, I think it was page 10 that talks about – it's one of a number of lists of sort of – it's divided up your duties into a number of things.

And I think page 10, if we could just scroll down on page 10 a little bit, we see there: "Administrative Radio Channel: Retrieving motor vehicle information using ... (MRD) database" And then a little bit further: "Canadian Police Information Centre (national RCMP database - CPIC) criminal records checks for officers."

So that you've said – your group has said that that would take up approximately 20 per cent of the time?

MR. ORAM: Sure everything, everything included there.

MS. ZDEBIAK: Okay, so and it – this is one of your regular activities, in other words?

MR. ORAM: Yes, it is a civilian position to be on – the Administrative Radio Channel is that channel two that I spoke of earlier.

MS. ZDEBIAK: Okay.

MR. ORAM: That is the Administrative Radio Channel and that is a position as a communications tech that we sit at, and it is a mandatory position to be sat at.

MS. ZDEBIAK: And was that the position you were sitting at when you took the call from Joey Smyth? Sorry, (inaudible).

MR. ORAM: It happened – even though we weren't using our radio communications, I believe I was sitting at that station that day.

MS. ZDEBIAK: Okay, okay, and you were –

MS. COMMISSIONER: Sorry, sitting at which station?

MR. ORAM: This is – the Administrative Radio Channel is a station at the workplace and there is a radio channel assigned to administrative duties for police officers, and some of those duties are listed here in this description. And my conversation with Joey Smyth that morning, it just so happened I wasn't using the radio, but I believe I was sitting at this station.

MS. ZDEBIAK: And fulfilling this general function.

MR. ORAM: Yeah, but again, any one of the co-workers that I was working with when Joe Smyth had called in could have picked up that internal line and took those requests.

MS. ZDEBIAK: Oh, sure.

MR. ORAM: This is not – so as a – because I'm sitting at that position doesn't mean that I'm the only one doing these duties, and in the event that happened Sunday, it just so happened that I picked up the phone that morning and it was an officer looking for administrative duties, but any of the communications technicians in the Comms Centre could have picked up that phone on that day.

MS. ZDEBIAK: I understand. That's no issue there.

So that's – but you were fulfilling the function of providing Acting Sergeant Smyth with the CPIC –

MR. ORAM: Yes.

MS. ZDEBIAK: – CPIC records? You did a check for him?

MR. ORAM: I did.

MS. ZDEBIAK: Okay.

Now, if we could go down to page 12 of this document, and if you can scroll down, Madam Clerk, and just a little further. Okay, sorry, a little up.

Again, two percent of your time here is indicated that – that's good, great – that "(CPIC) Maintenance: Adding, removing, and modifying the system ... querying individuals." And it

describes what CPIC is: "... a national database ... contains information on stolen vehicles, wanted persons, accused persons, persons on probation, missing persons and the Canadian Firearms Registry."

So approximately two percent of your time is dealing with this in terms of CPIC maintenance, I guess.

MR. ORAM: Again, I think I'm – I guess CPIC maintenance isn't really ... CPIC maintenance ... I don't – I'm not really sure what they're saying there.

MS. ZDEBIAK: Is that adding information to CPIC?

MR. ORAM: It may be, probably – it says there adding and removing –

MS. ZDEBIAK: Yeah.

MR. ORAM: – as the first part, and that would indicate two per cent would mean that we don't do that a lot.

MS. ZDEBIAK: Okay. But it is listed as a regular activity.

MR. ORAM: It is, I guess, a job duty.

MS. ZDEBIAK: And that's what that course that you took, the CPIC narrative course –

MR. ORAM: Would give us –

MS. ZDEBIAK: –was talking about that.

MR. ORAM: Yes.

MS. ZDEBIAK: With – the one with the RCMP that you did.

MR. ORAM: Yes.

MS. ZDEBIAK: At RNC headquarters.

MR. ORAM: And also, these duties for maintenance is that at the RNC there is also a CPIC office.

MS. ZDEBIAK: Uh-huh.

MR. ORAM: So, it's a duty of the CPIC office to be maintaining all the CPIC requests –

MS. ZDEBIAK: Yeah.

MR. ORAM: – to go on. And then, if there isn't any CPIC – CPIC office isn't open 24-7. So in the event that CPIC officers aren't working, an officer may bring up a request for something to be added to CPIC.

MS. ZDEBIAK: Okay.

MR. ORAM: Yeah.

MS. ZDEBIAK: Excellent.

Now, if we could take you to page 13, also part of your duties, I believe, includes mentoring and instructing. You explained that to Ms. Chaytor in your answers, previously. That's listed here.

THE COMMISSIONER: Activity 1 is – what page is that?

MR. ORAM: That is page 13 –

THE COMMISSIONER: Okay.

MS. ZDEBIAK: – Mr. Commissioner. So that's an important – you agree that's an important part of your duties, as well? Important –

MR. ORAM: All of this –

MS. ZDEBIAK: –part.

MR. ORAM: – is important.

MS. ZDEBIAK: Yes.

MR. ORAM: Yeah.

MS. ZDEBIAK: Okay. It does indicate about two percent of your time.

Page 15; now, we get into a different section here. This part of the document that we just went over was about explaining – describing your regular duties. Now there's different headings in which the duties are sort of expanded upon and, you know, the demands upon comm techs are described in more detail.

So page 15, this is under the factor – or the heading, sorry, Knowledge. Would you agree with me, as a communications technician, you have to have a good deal of knowledge about a good number of things?

MR. ORAM: Yes.

MS. ZDEBIAK: Right. Okay. But I'll refer you to, specifically, to the second part. On the second half of this page, it does indicate where there's a need for knowledge of CPIC and other databases. This is a fairly long paragraph, so I'm not going to read all of it to you, but explain or provide examples of the above, the need for knowledge.

THE COMMISSIONER: Where are you starting, to bring the witness to where it says ICAN and so forth?

MS. ZDEBIAK: If that's the (inaudible). Yes, if we can just see ICAN, MRD, those are databases you have to have knowledge of, but it does also include – other areas of required knowledge include CPIC, *Highway Traffic Act*, *Adult Protection Act*, et cetera.

So that, again, knowledge in that area is specifically noted by yourselves as being important to your job.

MR. ORAM: Yes.

MS. ZDEBIAK: Now, I'll take you down. Again, this is a different heading, Interpersonal Skills under page – that's page 24 of this exhibit.

Okay, are we on page 24? Let's see. Yes, okay, sorry, if you could scroll down a little bit, please. Okay, here, stop there.

Under subsection 5.4, it includes there under Interpersonal Skills that I guess an important skill would be: "Listening to information from other people. Receiving calls from the public for people assistance requires active listening skills to ensure that the proper information is received and recorded."

So do you agree that's an important part of your job, the interaction with other people?

MR. ORAM: Yes.

MS. ZDEBIAK: To understand what their issues are and to try to help them in any way appropriate and within the bounds of your job.

MR. ORAM: Correct.

MS. ZDEBIAK: Okay.

Now, just go to the next section, part two there. It says, also under Interpersonal Skills: "Asking questions to get information. As well as asking pertinent questions in order to obtain as much information as quickly and accurately as possible."

So, again, I guess that forms an important part of your job as well.

MR. ORAM: It does.

MS. ZDEBIAK: You have to be interactive with the person that you're trying to assist.

MR. ORAM: Yes.

MS. ZDEBIAK: Whether that be an officer or a member of the public.

MR. ORAM: I think the context of that question is directed at the public calling.

MS. ZDEBIAK: But that's not what it says there, is it?

MR. ORAM: It's not what it says there, but that point would be indicated to the general public calling that in and asking the pertinent – when it said asking pertinent questions, that would suggest to me that when I'm taking complaints from the public, I'm the one asking the questions; when I'm answering requests from an officer, I am listening to the questions to answer.

MS. ZDEBIAK: That's not what it says here though, is it? It does say: "Asking questions to get information. As well as asking pertinent questions"

So I would suggest to you – you know, obviously you've provided your interpretation of this, but I would suggest to you that that should apply equally in doing a full and complete job to officers.

MR. ORAM: I don't agree with that. I –

MS. ZDEBIAK: Okay. So you don't agree that asking an officer for clarification is an important part of your job?

THE COMMISSIONER: Ms. Zdebiak, to save you time, I'm really not inclined to take an interpretation that goes against what might be a regular normal practice. So you might –

MS. ZDEBIAK: Oh, that's why, Mr. Commissioner –

THE COMMISSIONER: Maybe you can come back to that but you'll –

MS. ZDEBIAK: Yes, that's fine.

MR. COMMISSIONER: You'll be better served if you can point to me something specific rather than laying this on Mr. Oram's shoulders –

MS. ZDEBIAK: No problem.

THE COMMISSIONER: – in terms of very general questions, you know.

MS. ZDEBIAK: Thank you very much, Commissioner.

Now, if we could move to page 33. Okay, so the last paragraph on page 33 that does highlight, "As a dispatcher, the Communications Technician is at all times responsible for the safety of all working officers" So that's a different part of your job as a dispatcher.

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

MR. ORAM: I'm a dispatcher as well as a call taker.

MS. ZDEBIAK: Yes, the – it says that you have to record and monitor officer's whereabouts, status of the call or traffic stop.

"Calls involving weapons or weapon offences require special attention to ensure that attending officers are made aware of the type of weapon involved. Criminal background checks can reveal warnings that a person desires 'Death by Cop,' has a history of violence, or previous convictions of assaulting peace officers or weapons offences."

So you agree with me that in term, in general terms, the information that you get from CPIC or other databases can – you know, I would say CPIC in particular, when you're talking about warnings, violence, a history of violence or previous convictions, that that's an important factor in terms of ensuring officer safety.

MR. ORAM: Sure, but in the context of what this paragraph is written, it is as a dispatcher, not as a call taker. And a dispatcher is an RNCA position, a constable is to sit there. As a communications technician, we are not limited to sit there but there are times where we may have to assume that responsibility.

MS. ZDEBIAK: Okay.

MR. ORAM: So I think that paragraph is talking about when we are dispatchers.

MS. ZDEBIAK: Yes, however, the general statement that it is important – these checks are important for officer safety, that’s the comment –

MR. ORAM: Police checks are important for officer safety.

MS. ZDEBIAK: Yeah. And now if we could go to page 42, on page 42 at section 8.1, just saying that: “All manuals, policies, acts, etc., must be committed to memory as decisions must be immediate.” And included there is the CPIC system.

Do you agree that that’s even – you’ve included that as an important piece to be well familiar with in your job?

MR. ORAM: Yes. Yes.

MS. ZDEBIAK: All right.

And if we could go then to page 49 under the title Impact – okay, and if we could just stop there under – there’s a bullet there: Health and Safety. You can see that just towards the middle of the screen.

“The health and safety of the responding officer, the caller, and the public is always taken into consideration. Everything from noting potential health/safety hazards on a response address” – sorry – “(bedbugs or highly contagious diseases or weapons), to dispatching an ambulance to calls where persons are injured or have the potential to become injured or injure others.”

So again we see here again in this description of your job that health and safety and warnings about issues that might potentially come up is an important aspect of the job.

MR. ORAM: It is part of our duty.

THE COMMISSIONER: Maybe it’d be appropriate to take a break there now, if that’s all right.

MS. ZDEBIAK: Sure.

THE COMMISSIONER: Okay.

MS. ZDEBIAK: Thank you very much.

THE COMMISSIONER: Okay, we’ll take a 15-minute recess.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: The Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Sorry we took a little bit of extra time but I had to try and recall and check on some of the earlier evidence that’s gone on – we got in on this point.

Ms. Zdebiak, I'm concerned where we're going. Do you have something that specifically relates to what a 10-29 request entails? Is it spelled out? You haven't arrived there yet.

MS. ZDEBIAK: Yes, I'm almost there.

THE COMMISSIONER: Exactly, that's what I want you to say. I want you to get there quickly because we have another witness who's –

MS. ZDEBIAK: Yes.

THE COMMISSIONER: – going to take a fair bit of time.

MS. ZDEBIAK: I see. Okay.

THE COMMISSIONER: And this one is taking too much time, frankly, up to now. So I want you to get right to the point as soon as you can.

MS. ZDEBIAK: Okay, Mr. Commissioner. Thank you for your direction on that.

Now, there is some new material that's come up more recently so, you know, I was asked to cover that with this witness so that –

THE COMMISSIONER: New material?

MS. ZDEBIAK: Yes, well, it's new in that it was provided on Monday for the witness. So this was one of exhibits that hadn't been – he hadn't been asked about previously, so I'll –

THE COMMISSIONER: Okay. Well, let's get to it.

MS. ZDEBIAK: Yes, of course.

THE COMMISSIONER: But I hope it's something that's direct on point because I can tell you, as I think I indicated previously before the break, I'm not inclined to start drawing inferences, adverse to a witness from general language.

It may be that a recommendation might be significant in terms of how it might be clarified for the future in terms of, you know, changing the language of a particular section or something.

MS. ZDEBIAK: Sure.

THE COMMISSIONER: I'll hear you on all of that, but in terms of if there's anything going on in terms of potential discipline or anything relating to Mr. Oram, this is not the place for it.

MS. ZDEBIAK: No, of course.

THE COMMISSIONER: And I'm not saying there is anything that points in that regard from what I've seen so far. So I'd ask you just to help me get a feel for what should Mr. Oram have known when he got the request that he got and we'll move on.

MS. ZDEBIAK: Okay. Thank you very much,

Mr. Oram, I'm going to refer you to an exhibit, this is P-0467. This is a training record or there's an indication of a training record on page 76. And this is part of a report – okay, if we could just go to page 76 of this document.

UNIDENTIFIED FEMALE SPEAKER: There is no page 76.

MR. AVIS: There is no page 76.

MS. ZDEBIAK: Oh, dear. Okay, I did get that wrong.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. ZDEBIAK: Okay, maybe it was 66.

It's a training record – at any rate, Mr. Oram, you – no, it's not 66.

UNIDENTIFIED MALE SPEAKER: Page 67.

MS. ZDEBIAK: Sixty-seven. Okay, thank you. Yes, this is it here.

This is a comm tech course –

THE COMMISSIONER: What is that exhibit? Is the number –?

MS. ZDEBIAK: 0467.

THE COMMISSIONER: 0467, okay.

MS. ZDEBIAK: Yes. And this indicates that you attended a training course, it's called the communication technician training in 2010, in October 25 of 2010 to October 29 of 2010. You see that your name listed there amongst other names that have been taken out?

MR. ORAM: Correct.

MS. ZDEBIAK: Okay.

MR. ORAM: That would be the same course the co-counsel had mentioned in my list of training.

MS. ZDEBIAK: Right, right.

MR. ORAM: Yeah.

MS. ZDEBIAK: So you took this training and this was delivered by, I'll suggest to you, Bob Turnbull who was a former comm tech himself. Is that right?

MR. ORAM: I can't remember if – it wouldn't be any exaggeration that Bob would have a piece in a communications course with the RNC.

MS. ZDEBIAK: Uh-huh.

MR. ORAM: I don't avidly remember if Bob did teach me anything in that course at that time.

MS. ZDEBIAK: Okay. Well, that's what we've heard from Inspector Constantine –

MR. ORAM: Yeah.

MS. ZDEBIAK: – that it was Bob Turnbull who taught this course.

MR. ORAM: And it may very well have been.

MS. ZDEBIAK: Okay.

And Inspector Constantine has actually also provided us with the PowerPoint that Bob Turnbull provided to you respecting Ten Codes. Do you agreed that Ten Codes was covered in this course, the definition of Ten Codes?

MR. ORAM: Yes, maybe not the definition of Ten Codes. Bob Turnbull is a radio technician, I believe, with the RNC. His job is to maintain the radios within the organization.

He did, I believe, work as a communications technician at one time, but his job wouldn't be to – in a training purpose. His position at the RNC wouldn't be to define the 10-29s, he would have said to us which Ten Codes at the RNC are more likely to come up or less likely to come up and give a general description of each one. But Bob Turnbull wouldn't be the one who would be defining each Ten Code.

MS. ZDEBIAK: Okay, but he did provide you with a PowerPoint presentation with the definition of the Ten Codes within that?

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

MR. ORAM: Yes.

MS. ZDEBIAK: Now, if we could just flip – now I have it written down as page 48. I hope that's the right page. It's in the same exhibit here.

Okay, that page is right. Now, we see here the list of Ten Codes: 10-27, 10-28 and 10-29. And I believe you've indicated that those are regular Ten Codes used by communication technicians and officers.

MR. ORAM: They would be more of the three more popular ones, and that someone like Bob Turnbull would have commented on those.

MS. ZDEBIAK: Okay.

MR. ORAM: Yeah.

MS. ZDEBIAK: And I'm going to suggest to you that this is part of his PowerPoint presentation that went along with this comm tech course.

MR. ORAM: Sure.

MS. ZDEBIAK: Okay. And so you don't have any – take any issue with that.

MR. ORAM: No.

MS. ZDEBIAK: No. Okay.

And, further, Bob Turnbull advised that he also provided you with a description of these – the more familiar Ten Codes in his course.

MR. ORAM: He would have described probably what we're looking at right there.

MS. ZDEBIAK: Yeah. Okay.

And you see there that the Ten Code definition for 10-29, it says: Records check, person-vehicle property, boats and motors, CNI-CRS.

Okay, so the CNI, I would suggest to you, appears to be included in the definition of 10-29 that was given to you in this course.

MR. ORAM: Yeah. So is vehicle property, boats and motors.

MS. ZDEBIAK: Right. And the CNI relates to the person.

MR. ORAM: It does.

MS. ZDEBIAK: Yeah.

MR. ORAM: Yeah.

MS. ZDEBIAK: Okay.

So when you have a person's check doesn't it make sense, when you look at this definition, that that would include an CNI-CRS.

MR. ORAM: I don't see anywhere in that definition that the CNI is to be included when you do a person's check in that definition.

MS. ZDEBIAK: But it's on –

MR. ORAM: I can – I can use a 10-29 on a person to achieve a CNI. There may be a request for a 10-29 for a CNI only. For me to achieve the CNI file, I would have to fill out the persons section and click off CNI. I don't believe that definition there defines that when I conduct a 10-29 on a person I am also to include the CNI in my response.

MS. ZDEBIAK: But I would suggest it does if you look at it and you see –

THE COMMISSIONER: Now we're going to be into –

MS. ZDEBIAK: Okay.

THE COMMISSIONER: – submissions I think –

MS. ZDEBIAK: Yes, that's fine.

THE COMMISSIONER: – and arguments.

MS. ZDEBIAK: Thank you.

THE COMMISSIONER: And, again, you know, if there's something –

MS. ZDEBIAK: Okay.

THE COMMISSIONER: It seems like there's something that should be clarified by spelling it out exactly and I'll hear you in closing, I'm sure, on that. But is there anything else you have there that's more specific?

MS. ZDEBIAK: Other than that on the 10-29s, I'm going to refer you as well to the code, the 10-29 codes that were – that we understand from Inspector Barry Constantine were posted in the Comm Centre.

MR. ORAM: They may have been. There's not a special postage place for a 10-29 code. There may be people that work on those channels that think it is a good idea to have the codes posted for anyone who may need assistance when they're asked a Ten Code that they don't understand.

MS. ZDEBIAK: Okay.

Could I refer you to Exhibit P-0704, please? Okay, so here we see a definition of Ten Codes; 10-29 is included here. And we see the same definition that we saw on that PowerPoint, don't we?

MR. ORAM: Correct.

MS. ZDEBIAK: Okay. And you have indicated you have a different interpretation of what that means and what I've suggested to you.

MR. ORAM: I mean that really means a number of things but I don't see anywhere where it clearly defines any one of them. That it is really generalized in that a 10-29 could possibly mean any one of those things, but unless I've been requested to query any of those things, I don't know which ones to look for.

MS. ZDEBIAK: All right but your familiarity with the system would indicate that CNI might have relevant – a CNI check might have relevant information for officer-safety purposes, isn't that true?

MR. ORAM: It is. Also – and open sources of information like Facebook, and Instagram and Twitter, could also be important in terms of officer safety when I'm conducting a search. But in the case of the morning of this incident I was clearly asked to define – or not define, but to retrieve a 10-29 and a CFRO, and that is the information that I had retrieved for Constable Smyth.

MS. ZDEBIAK: But when you do a 10-29 check, open sources of information don't come up automatically –

MR. ORAM: It doesn't but I –

MS. ZDEBIAK: – unlike the CNI.

MR. ORAM: Your question – what was the original question? It was about officer safety?

MS. ZDEBIAK: That's right.

MR. ORAM: Right. So –

MS. ZDEBIAK: Yes, wouldn't a CNI – you would know as a comm tech that that would include information that could potentially be important.

MR. ORAM: And I believe that Constable Smyth as an investigator and police officer would also know that information.

MS. ZDEBIAK: All right. Now –

MR. ORAM: And there are other sources of information where I could get things for officer safety. Yes.

MS. ZDEBIAK: Yes, but not that come up automatically with your 10-29 search.

MR. ORAM: No.

MS. ZDEBIAK: Right.

Mr. Oram, we heard that you've – again from Inspector Constantine that in the course of investigation he's undergoing at the present time, he's discovered that other comm techs have – two other comm techs have indicated that they were trained by you to – when they do a 10-29 check for an officer to include a CNI search in that.

THE COMMISSIONER: Sorry, what was that question?

MS. ZDEBIAK: We've heard from Inspector Barry Constantine that in the course –

THE COMMISSIONER: Right.

MS. ZDEBIAK: – he's testified in this inquiry, in the course of the current investigation he's undergoing, he has discovered in doing interviews that two other comm techs who worked with Mr. Oram have indicated that they were trained by Mr. Oram –

THE COMMISSIONER: Do we – is that not hearsay?

UNIDENTIFIED FEMALE SPEAKER: It is.

MS. ZDEBIAK: Yes, it is. I'm not presenting it as evidence; I'm presenting this information to Mr. Oram that came through testimony of Inspector Constantine. And I'm asking, I'm giving him a chance to explain this, otherwise it's sitting out there that he told other people to do these searches otherwise.

THE COMMISSIONER: All right. I'm not sure it's admissible but I'll consider whether it should be admitted. I'll let Mr. Oram deal with it.

MS. ZDEBIAK: I'm not asking for it to be accepted for the truth, I'm asking for it for the purpose of asking this witness a question and give him a chance to explain what we've heard in evidence already from Barry Constantine. Yes.

THE COMMISSIONER: As I say, I'll let the witness answer the question but I'll give some consideration to whether it's admissible subsequently.

MS. ZDEBIAK: Thank you, Mr. Commissioner.

THE COMMISSIONER: Mr. Oram, it's been suggested that you – at least two people who you've been involved with training have said that they understood that the 10-29 would require them to bring up the information from the CRI. Is that what you're saying?

MS. ZDEBIAK: CNI, Mr. Commissioner.

THE COMMISSIONER: CNI, rather.

MS. ZDEBIAK: Yes, thank you.

THE COMMISSIONER: Do you have any comment on that?

MR. ORAM: I can't comment on what anyone else has said to Barry Constantine at any particular time.

THE COMMISSIONER: But do you –

MR. ORAM: As a communications –

THE COMMISSIONER: Do you understand whether you have made that sort of information available?

MR. ORAM: I would say that I have never – as a communication technician there is never a role assigned to you as a trainer.

THE COMMISSIONER: Right.

MR. ORAM: So for two people to definitively come out and say that I trained them would indicate that they were under my supervision while they were under their probation period 100 per cent of the time.

THE COMMISSIONER: Right.

MR. ORAM: But that is not the case and it's not realistic. Again, I may have took the initiative to ask new employees if they needed help and I offered them support and any type of training.

THE COMMISSIONER: Yeah.

MR. ORAM: And at no time have I ever clearly defined to anyone that a 10-29 must be include a – on a person to include a CNI and a CFRO.

THE COMMISSIONER: Right.

I think that's fair. That answers that question.

MS. ZDEBIAK: Okay.

Thank you very much.

THE COMMISSIONER: All right.

MS. ZDEBIAK: All right.

And further along the same lines Mr. – or sorry, Inspector Barry Constantine has testified that in the course of investigation he discovered that every contact that he had interviewed, which was up to 15, had said that their practice – as I understand it, resulting from their training – is to include a CNI, CNI information when asked for a 10-29.

MR. ORAM: I think it's also worth noting that this investigation that was done as a part of this internal was after the fact the superintendent had sent an email indicating what is expected of a 10-29.

MS. ZDEBIAK: Yes, that's fine but the – as I understand it, these individuals referred to their training.

MR. ORAM: And what training is that?

MS. ZDEBIAK: The training for explaining what a 10-29 code includes.

MR. ORAM: And where is that to?

MS. ZDEBIAK: The 10-29 training, as you yourself has received comes from the comm tech training, doesn't it?

MR. ORAM: And so –

MS. ZDEBIAK: And on-the-job training.

MR. ORAM: Are you saying that the definition of the 10-29 was part of the PowerPoint presentation by Bob Turnbull?

MS. ZDEBIAK: Yes, I am.

MR. ORAM: Okay, so we've already went through that definition.

MS. ZDEBIAK: Yes, your interpretation of it somehow but –

MR. ORAM: My interpretation of that definition.

MS. ZDEBIAK: Yes, yes. But I'll suggest you were trained otherwise.

But okay then, you know, that's fine. So you have no comment on the fact that 15 other comm techs have said that their practice is to include –

MR. ORAM: I cannot comment on what anyone else has said. What I do and can comment on is that the 15 comm techs that were interviewed were interviewed by the inspector and other members of government, and that this interview was conducted after December 27, when the superintendent at the RNC had told all staff what is expected of them when there is a 10-29 search on a person.

MS. ZDEBIAK: Okay.

And – all right, we'll leave that as it is. But I indicated to you that these comm techs related that back to their training, at any rate –

MR. ORAM: But, again, what training are we talking about?

MS. ZDEBIAK: I explained that as well.

MR. ORAM: Okay.

MS. ZDEBIAK: Okay. Thank you.

Now, you indicated in response to questions from Ms. Chaytor, in direct examination or in her questions to you at any rate, when we look at – again, if we could go to Ms. Kim Harding’s exhibit, which I think is P-0709, if I could just pull that up.

THE COMMISSIONER: What point are you dealing with now?

MS. ZDEBIAK: Oh, 0708, I’m sorry.

THE COMMISSIONER: 0708. What’s – where are you going now with this line –

MS. ZDEBIAK: Oh sorry, it’s 0390, 0390.

THE COMMISSIONER: 0390, okay.

MS. ZDEBIAK: 0390, yeah.

THE COMMISSIONER: Is this the same line of questioning?

MS. ZDEBIAK: Yes, but I believe there’s an error in terms of definition, so I just want to –

THE COMMISSIONER: Go ahead.

MS. ZDEBIAK: – bring this to Mr. Oram’s attention.

Mr. Oram, when we look at page 3 of this document, we see the query screen that you’re, I’m sure, well familiar with here.

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

Now on this screen, as we’ve heard, there’s a number of items that come up by default, that’s CNI, FIP and CFRO. Is that correct?

MR. ORAM: Correct.

MS. ZDEBIAK: All right.

Now, you’ve described FIP as fingerprinting.

MR. ORAM: It’s a set of fingerprints. I understand it to be a number, a fingerprint set of numbers associated with a subject.

MS. ZDEBIAK: Okay.

Now, if you just stay – if we look at the line right below this chart, Ms. Harding, who’s management of – you know, information manager at –

MR. ORAM: Yes.

MS. ZDEBIAK: Manager of – now just a second now – director of information services in the RNC.

MR. ORAM: Okay.

MS. ZDEBIAK: Has defined FIP as Firearms Interest to Police.

MR. ORAM: Okay.

THE COMMISSIONER: Firearms?

MS. ZDEBIAK: Interest to Police. You can see this, Mr. Commissioner –

THE COMMISSIONER: Firearms Interest to ...?

MS. ZDEBIAK: Police.

THE COMMISSIONER: Police, okay.

MS. ZDEBIAK: Yes.

THE COMMISSIONER: Go ahead.

MS. ZDEBIAK: Now, I'll take you to – now to a different exhibit in relation to the same term if you could just a give me a moment. That's exhibit 0708 – 0708 and hold on. That doesn't – is that 0708?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. ZDEBIAK: No, that's not it at all.

THE COMMISSIONER: They're the notes of –

MS. ZDEBIAK: 0708.

THE COMMISSIONER: – of Mr. Burke apparently.

MS. ZDEBIAK: I've got an exhibit that's marked P-0708 that was just entered.

MS. O'BRIEN: It does say it's supposed to be a person's response, CFRO response.

MS. CHAYTOR: Yeah, 0708 is supposed to be – yeah, I've got the same thing as that there.

MS. ZDEBIAK: Yeah.

THE COMMISSIONER: So we have a glitch?

MS. CHAYTOR: We have a glitch.

THE COMMISSIONER: Okay, if you could show the exhibit –

MS. ZDEBIAK: Okay, I can show a hard copy of the exhibit.

THE COMMISSIONER: Sure, show a hard copy.

MS. ZDEBIAK: Yeah.

THE COMMISSIONER: We're not going to wait to go find it.

MS. ZDEBIAK: Okay.

THE COMMISSIONER: No, go ahead, Ms. Zdebiak.

MS. ZDEBIAK: Okay.

And I think – oh, this is it. Yes

THE COMMISSIONER: Okay, we have it I think.

MS. ZDEBIAK: Yes, yes.

THE COMMISSIONER: 0708.

MS. ZDEBIAK: Okay if we could go to page 3 of this exhibit we see the same term here. This is, is this not, the PERS response you get on VMail? It is actually the response in relation to Mr. Dunphy that was drawn up.

MR. ORAM: Okay.

MS. ZDEBIAK: That you looked at this screen, didn't you? You opened this –

MR. ORAM: I would have seen this

MS. ZDEBIAK: Yes, yes. Now, we see that same term Firearms Interest Police on this form, don't we?

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

Now, do you agree that, you know, that's the term we're talking about when we say FIP or do you have any change in that –

MR. ORAM: It appears to be that would be the term that we're talking about.

MS. ZDEBIAK: All right.

Okay, I just wanted to clarify that.

Thank you.

THE COMMISSIONER: And the fingerprints would be brought up in the –

MS. ZDEBIAK: FPS is the fingerprints –

MR. ORAM: FPS is not FIP.

THE COMMISSIONER: FTS?

MS. CHAYTOR: And I apologize, Commissioner, because I think I misspoke on that when I –

THE COMMISSIONER: That's all right. That's okay.

MS. CHAYTOR: – was asking the question.

THE COMMISSIONER: But it's FTS, is it, fingerprints, did you say?

MR. ORAM: I'm not sure the acronym for the fingerprints but the FIP would be Firearms Interest Police.

THE COMMISSIONER: FPS probably. Yeah, okay.

MS. ZDEBIAK: Okay.

THE COMMISSIONER: Okay, question mark.

All right, I'll check that out.

MS. ZDEBIAK: All right. Thank you.

So that's what comes up automatically then through your PERS inquiry, your 10-29 inquiry, this information here?

MR. ORAM: Yes.

THE COMMISSIONER: So that's 0708 comes up, Exhibit P-0708?

MS. ZDEBIAK: It's in Exhibit P-0708, page 3.

THE COMMISSIONER: Yeah.

MS. ZDEBIAK: Now, I'm going to take you to another Exhibit P-0765, okay?

Now, Mr. Oram, this is a snapshot, as I understand it, of your undeleted emails – or sorry, VMail, your VMail box.

MR. ORAM: This would be my VMail inbox, yes.

MS. ZDEBIAK: Okay.

And we see – this is what it looks like to you. That's why we thought it was important that, you know, you have a chance to this when you –

MR. ORAM: This is where, after I conducted the CPIC query, I would go retrieve the information from.

MS. ZDEBIAK: Right.

MR. ORAM: Yes.

MS. ZDEBIAK: So you get these series of VMails they're called, they're like emails essentially –

MR. ORAM: Yes.

MS. ZDEBIAK: – from CPIC and that goes into this box.

MR. ORAM: Yes.

MS. ZDEBIAK: All right.

And on the left-hand side of this box, you know, just not the far left where it says folders and that but on the left-hand side, and the cursor just going up and down on that area there, we see unopened letters or icons that look like unopened letters.

MR. ORAM: The ones with the letters indicate that they are not read.

MS. ZDEBIAK: Right.

MR. ORAM: And the one without letters indicates the ones that were read.

MS. ZDEBIAK: Right.

Okay. And these are non-deleted VMails in your account. Now we've taken out the names of anyone, you know, in there.

MR. ORAM: Okay. Yeah.

MS. ZDEBIAK: But that's otherwise a portion at least of your VMail account. Now, I'm going to take you to one line of this. If we look at the line, it's 2015-07-13 12:54.

THE COMMISSIONER: Okay, give me that one again.

MS. ZDEBIAK: Go down a little; the cursor could go down –

THE COMMISSIONER: 2016.

MS. ZDEBIAK: Yeah, 07-13.

THE COMMISSIONER: 07-13.

MS. ZDEBIAK: Yeah, 12:54.

THE COMMISSIONER: 12:54. Okay.

MS. ZDEBIAK: Okay. And we can see that that one is open because the little letter box is not there, right?

MR. ORAM: Correct.

MS. ZDEBIAK: All right.

So this is, I'll suggest to you, a CNI response from CPIC, isn't it?

MR. ORAM: Yes.

MS. ZDEBIAK: And you can tell it is. It says: Respondents 7 for – now we've got a name blocked out there.

MR. ORAM: I believe that that portion of the CPIC persons would be the CNI portion of it.

MS. ZDEBIAK: Yes.

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

MR. ORAM: And when I'm going to go to this inbox –

MS. ZDEBIAK: Uh-huh.

MR. ORAM: – the way the respondents would indicate to me to get to the CNI.

MS. ZDEBIAK: Right.

MR. ORAM: Yeah.

MS. ZDEBIAK: Right, okay.

And so, and that indicates as well there'd be seven response names under that –

MR. ORAM: Possibly, yeah.

MS. ZDEBIAK: – for that query.

MR. ORAM: Possibly.

MS. ZDEBIAK: Okay.

Possibly or likely –

MR. ORAM: I have no idea –

MS. ZDEBIAK: Okay.

MR. ORAM: – but I know there are, these are the keywords that I'm looking for to be able to open the appropriate files.

MS. ZDEBIAK: Right.

MR. ORAM: Yeah.

MS. ZDEBIAK: Now, let's just go to the next page, because we have done up a transcript of the call that you received from an officer relating to that particular search. Okay?

MR. ORAM: Yes.

MS. ZDEBIAK: And, again, we've got the names blocked out. And we've got there: "Officer 377, 281." Now, there's a lot of numbers referred to in here. If we look, he's using, I guess just these terms: "Hotel, November, Juliet"

MR. ORAM: This is all radio. This is a conversation over –

MS. ZDEBIAK: Over radio this time. Okay.

MR. ORAM: – over radio, and I would probably – I would have been sitting at the channel 2 administrative position.

MS. ZDEBIAK: Right, okay.

MR. ORAM: So I would be conducting with the radio edit.

MS. ZDEBIAK: Oh, thank you.

MR. ORAM: Yeah.

MS. ZDEBIAK: Okay, great.

So he's given you some information and then you're looking it up. So it starts with vehicles and then we go down to the second under system, it seems to – when they have recordings, it cuts in once in a while with times and dates and that.

But 10-4, the officer says, also run a 27 please on this person's date of birth. He gives a date of birth. So the 27, that's a vehicle check, isn't it?

MR. ORAM: No, the 27 is a licence check.

MS. ZDEBIAK: Driver's licence. I'm sorry, yeah.

MR. ORAM: And a lot of times you – well, not to mention that they may be looking for information from that particular person.

MS. ZDEBIAK: Uh-huh.

MR. ORAM: Having that person's date of birth may assist you in your further checks.

MS. ZDEBIAK: Very good.

MR. ORAM: So being able to identify a person by their date of birth is helpful information.

MS. ZDEBIAK: Okay.

MR. ORAM: Yeah.

MS. ZDEBIAK: Now, you just go down in this transcript – so you provided that information and you say 10-4. The officer says: “10-4 do you want to run a 29 on him as well please?”

MR. ORAM: So he's asking me to run him a 10-29.

MS. ZDEBIAK: Right. And then you say: “Standby.” And your response is: “10-29's 10-10, over.” And the officer says: Thank you.

MR. ORAM: Yeah.

MS. ZDEBIAK: So we see the only corresponding box on the next page, it relates to the same date and time –

MR. ORAM: Yes.

MS. ZDEBIAK: – the same call. We see the same date of birth there in that line I drew your attention to earlier –

MR. ORAM: Yes.

MS. ZDEBIAK: – in your VMail box.

MR. ORAM: Yes.

MS. ZDEBIAK: That you opened the CNI in this case.

MR. ORAM: It appears I have opened the CNI.

MS. ZDEBIAK: And the officer did not specifically ask you for a CNI in this case.

MR. ORAM: Yeah, I mean I can't tell this inquiry why that box is open at that time. I can suggest or speculate that when I told the officer the 10-29 was 10-10, that I had looked at the queried response portion of that and seen that there was nothing there and I told him it was 10-10.

When I went and jumped back to my VMail, I may have accidentally hit the CNI, opened it up, realized that I opened it in mistake, closed out of it, opened the appropriate box that he was looking for and possibly deleted it when I was finished with it.

MS. ZDEBIAK: Okay, we see you didn't delete it because it's still in your open – this is your non-deleted VMail.

MR. ORAM: So where is the unopened 10-29 portion to that query?

MS. ZDEBIAK: The unopened 10-29 – we just have the CNI here.

MR. ORAM: No, but what I'm saying to you –

MS. ZDEBIAK: Yeah.

MR. ORAM: – is that when I – I must have opened the CNI –

MS. ZDEBIAK: Right.

MR. ORAM: – as a mistake, realized I was looking for a 10-29. So I exited out of the CNI, went into the 10-29, relayed that appropriate information to the officer and I may – must have deleted it when I was finished with it because it's not here in my inbox.

MS. ZDEBIAK: Okay, so you think that you actually opened the CNI by mistake? By just –

MR. ORAM: By my conversation with the officer and by what is showing in my VMail inbox, I can make that (inaudible).

THE COMMISSIONER: You're setting that out a possible explanation.

MR. ORAM: That is a possible explanation, but why I opened the CNI, I have no idea. But by my conversation with the officer at that time, he was given the 10-29 and it came back negative.

The officer never asked for the CNI, and if he had asked for the CNI, I would have acknowledged that there was a positive or negative hit on the CNI portion. So me telling the officer the 10-29 is 10-10, our – both interpretation, I believe, I can't speak for that officer, but he knows that I'm telling him that the queried person that he was – that we were talking about, came back as 10-10.

MS. ZDEBIAK: If I suggest to you that it's possible your practice isn't always to just stick with the officers ask –

MR. ORAM: Well –

MS. ZDEBIAK: – because sometimes you do look at the –

MR. ORAM: – if we're going to draw to those conclusions by that message, I will – can clarify that if you look at the top of this exhibit and the first – the first three are a bunch at 2259.

MS. ZDEBIAK: Uh-huh.

MR. ORAM: And it appears I just opened the 10-29 portion. And if you go to the next three at 0007 minutes, you get the three responses and it appears I only opened the 10-29 portion of that. So that is –

MS. ZDEBIAK: Okay.

MR. ORAM: – just as much of an explanation as what you had said about the CNI portion.

MS. ZDEBIAK: Well, actually, there is another piece of this, that when Barry Constantine put – found this and did this investigation, he discovered that – at least in this material that we're seeing on this page, there was no requests simply for a 10-29 where you open a 10-29 – or you open, I'm sorry, the PERS response only.

MR. ORAM: Pardon?

MS. ZDEBIAK: When Inspector Constantine did this investigation and he looked at – he matched up the phone calls that relate to each of these –

MR. ORAM: Right.

MS. ZDEBIAK: – requests –

MR. ORAM: Right.

MS. ZDEBIAK: – each of these responses –

MS. VAN DRIEL: Excuse me for a moment; I'm not quite sure where this is all going. We don't have that information before us. I haven't heard Mr. Constantine say that. This is all speculation.

THE COMMISSIONER: Mr. Constantine's testimony is available in transcript. He has testified here.

MS. VAN DRIEL: Yeah, he has and I was here for that. Yes.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: We didn't have this as –

THE COMMISSIONER: Didn't have this exhibit.

MS. CHAYTOR: No, he was not asked about it.

THE COMMISSIONER: Yeah.

Ms. Zdebiak, do you only have one example of where he deviated from the practice?

MS. ZDEBIAK: Well, the way it works, Mr. Commissioner, in terms of these VMail responses –

THE COMMISSIONER: Right.

MS. ZDEBIAK: – we can tell what's opened or closed or what's been opened and closed in the undeleted –

THE COMMISSIONER: Right.

MS. ZDEBIAK: – portion of his VMails.

THE COMMISSIONER: Okay.

MS. ZDEBIAK: So in that portion, I understand from Inspector Constantine that this is the only example, yes. And, in fact, there are no examples going the other way as was –

THE COMMISSIONER: I don't recall the – Inspector Constantine, what he said was he asked about whether he's reviewed other individuals and their practice in terms of –

MS. ZDEBIAK: Only in terms of interviewing those employees.

THE COMMISSIONER: Only in terms –

MS. ZDEBIAK: In terms of interviewing those individuals. The reason –

THE COMMISSIONER: I can't hear you. Only in terms of ...?

MS. ZDEBIAK: Interviewing the other individuals.

THE COMMISSIONER: Right.

MS. ZDEBIAK: Yes, to determine what their practices were. That was –

THE COMMISSIONER: So there's – we have no exhibits like this for other individuals showing what their practice was.

MS. ZDEBIAK: I have nothing to show you along those lines.

THE COMMISSIONER: See, I have to say I don't know where we're going here; now, maybe counsel can help me. As far as from Constable Smyth's perspective, I take it, Mr. Kennedy, you don't care why it happened, you're going to be setting out that Constable Smyth did not receive this information from Mr. Oram.

There may still be related evidence from Constable Cox. I don't recall at all now but there's something there about the use of threat –

MR. KENNEDY: Yeah, if I could clarify –

THE COMMISSIONER: – that there might be some understanding by Mr. Smyth, or Constable Smyth, after the conversation with Mr. Cox.

MR. KENNEDY: Yeah, I can clarify, Commissioner.

My understanding, there's lot of testimony, I haven't reviewed – I think I've reviewed four or five days of Constable Smyth's testimony.

MR. COMMISSIONER: Yeah.

MR. KENNEDY: But, initially, when he said that this would have changed his opinion and that he would have brought a second officer, I thought later on his testimony that it would be a factor to consider. I'm not sure if it was an absolute that it would have obviously changed his approach.

THE COMMISSIONER: Oh no.

MR. KENNEDY: Yeah.

THE COMMISSIONER: And, yeah, I'm not talking about that. I'm just talking –

MR. KENNEDY: So from our perspective –

THE COMMISSIONER: From your perspective, he didn't get it.

MR. KENNEDY: He didn't get the information.

THE COMMISSIONER: And so it's not all that relevant.

From the RNC's perspective, it may be you'll suggest that it's perfectly clear, and I'll have to decide that, but it seems to me that for – I don't want to be unfair to your client, you know –

MS. ZDEBIAK: Thank you.

THE COMMISSIONER: – in terms of cutting off this line of questioning, but I don't see what I'm going to get other than – unless I'm missing something – some difference of opinion in terms of your interpretation or the RNC's interpretation generally and Mr. Oram's interpretation.

MS. ZDEBIAK: And, yes, Mr. Commissioner, you may get a difference of opinion and that's what we want to make sure we've drawn the parameters on what the difference of opinion is.

THE COMMISSIONER: Right.

MS. ZDEBIAK: And that's why I am trying to shed some light on Mr. Oram's position in relation to this. And I'm sorry if I am getting into areas that, Mr. Commissioner, you feel are perhaps not relevant but –

THE COMMISSIONER: Well, I'm just wondering, you know, it's a matter of proportionality here –

MS. ZDEBIAK: Sure, certainly.

THE COMMISSIONER: – in terms of how significant this is. And it seems to me that unless I'm missing something, that your client is not going to be unduly prejudiced if, at the end of the day, all I can say is there seems to be some difference of opinion between Mr. Oram and possibly – and I say possibly because I want to go back and look at what Barry Constantine said.

MS. ZDEBIAK: Sure.

THE COMMISSIONER: And Barry Constantine, now, you say this is an example. If you have other, you know, examples –

MS. ZDEBIAK: I have no further examples to show Mr. Oram.

THE COMMISSIONER: Okay, well, that will be noted and considered.

MS. ZDEBIAK: Yes.

THE COMMISSIONER: But it seems to me we've got to move on, you know. This is just, for what's a relatively inconsequential item; we've spent too much time I think.

MS. ZDEBIAK: Thank you, Mr. Commissioner.

THE COMMISSIONER: And this is no – you're trying – you're just doing your job, I understand that,

MS. ZDEBIAK: Thank you.

THE COMMISSIONER: But is there – am I missing something? Is there anything else?

MS. ZDEBIAK: No, I don't think you're missing anything, Commissioner.

THE COMMISSIONER: Okay so –

MS. ZDEBIAK: But there is one more place I wanted to go with Mr. Oram, if that's okay, one more thing I want to explore.

THE COMMISSIONER: What –

MS. ZDEBIAK: And we have an expert – an excerpt, I'm sorry – of the call, the record because I think this might shed light on what Mr. Oram was looking at potentially. And we can recreate the screens he had and just – we were only going to play a small portion of it. I have given everyone a portion of the transcript.

THE COMMISSIONER: Okay, this is what I received this morning when I – just the first time I've seen it is this morning, it was on my desk.

MS. ZDEBIAK: Oh yes. Yes, if we could all have a look at that item.

THE COMMISSIONER: Okay. Well, let's do that quickly and then let's move on.

MS. ZDEBIAK: Yes. And I appreciate your indulgence, Mr. Commissioner, on this, but I think this could be helpful in terms of just shedding some light on what Mr. Oram was looking at when he was conveying the information that he conveyed to Sergeant Smyth.

Now, Mr. Oram, you're looking at –

THE COMMISSIONER: I thought we already – that's already in there, isn't it?

MS. ZDEBIAK: Not in terms of listening to the recording and the timing of it. So we're looking at a portion of the hard copy, here's a portion of Exhibit P-0136.

THE COMMISSIONER: A portion of what is it?

MS. ZDEBIAK: P-0136 which is the transcript.

THE COMMISSIONER: 0136. Okay.

MS. ZDEBIAK: Okay.

And we have it in hard copy, and the part we're zeroing in on is – it would be page 9 of the transcript, I don't know what page it is of the exhibit. Oh, page 9 or page – sorry, it would be page 7 and 8 of the exhibit.

And the reason I've given a hard copy is I'm actually going to ask if we can refer to another exhibit. So we have a hard copy of an exhibit and I was just going to play a recording related to this.

Okay, can we bring up exhibit – the second 0708, the one that Madam Clerk brought up the second time? This is from Mr. Oram's deleted VMail box, but it does contain the queries he actually did on Donald Dunphy. We can see a record of them.

So, Mr. Oram, you're probably familiar with the way this box looks.

MR. ORAM: Yes.

MS. ZDEBIAK: This is essentially your VMail box but we don't see any of those unopened letters on the side because –

MR. ORAM: It is an offline search of my VMail.

MS. ZDEBIAK: Okay.

Now in here, if you look down you can see where it includes the Donald Dunphy queries, can't we?

MR. ORAM: Yes

MS. ZDEBIAK: All right.

And we see that, I think there's seven responses there –

MR. ORAM: Sure.

MS. ZDEBIAK: – that you received.

MR. ORAM: Sure.

MS. ZDEBIAK: Now, let's just go to the next page, page 2. We've taken an excerpt from this so we can just focus on the ones that are relevant to Donald Dunphy. And we've added – that's artificial, we've added the numbers in there: 1, 2, 3, 4, 5, 6, 7 from the bottom up.

All right, so do you agree that these are, in terms of your queries, the responses you received from VMail?

MR. ORAM: I guess.

MS. ZDEBIAK: Okay. Does it look consistent with the queries you did and the responses?

MR. ORAM: The morning of this incident?

MS. ZDEBIAK: Yes.

MR. ORAM: I have no idea.

MS. ZDEBIAK: All right. Well –

MR. ORAM: I mean we can assume that.

MS. ZDEBIAK: What's that?

MR. ORAM: We can assume that to be true.

MS. ZDEBIAK: Just look at the dates and the time.

MR. ORAM: The times-stampings of it –

MS. ZDEBIAK: Yeah.

MR. ORAM: – of those events would lead up to believe that this is ...

MS. ZDEBIAK: Okay.

MR. ORAM: Yes.

MS. ZDEBIAK: Now, I'm just going to play this little portion here.

We do see that you got an error a couple times here on lines 1 and then lines – it doesn't say error but Query Not Completed and I know Ms. Chaytor asked you about those. So you had to re-enter –

MR. ORAM: For whatever reason.

MS. ZDEBIAK: Yeah.

Was that sort of frustrating for you that you basically had to re-enter the information three times?

MR. ORAM: Not necessarily. There's errors that occur on CPIC all the time. I mean you just take it in strides and try to do the best, what they're asking for, the next time you do the query.

MS. ZDEBIAK: Okay.

Okay, now let's – so at one point in time you're looking at, I'll suggest it's line 5 there. You open line 5. Would that be the PERS response?

MR. ORAM: Sure.

MS. ZDEBIAK: Line 5?

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

And then we see below that lines 2, 4 and 6, those are the CNI responses, right?

MR. ORAM: Correct.

MS. ZDEBIAK: Okay.

And those responses indicate: "Respondents 2 for: Donald Dunphy ..." under CNI?

MR. ORAM: Okay.

MS. ZDEBIAK: Is that correct?

MR. ORAM: Yeah, that's what it says.

MS. ZDEBIAK: Okay. So it does look like there's a positive CNI response from looking at this mailbox.

MR. ORAM: Again, like I testified earlier about this, when I'm looking into the VMail I see respondents and that is notifying me that that is where I look for the CNI. The information that would come after respondents, I don't know what it means. And that is not something that I would have looked into while I'm doing these searches.

MS. ZDEBIAK: Okay. But –

MR. ORAM: So, I mean, what was your question, the two indicates what?

MS. ZDEBIAK: Yeah, "Respondents 2 for: Donald Dunphy James ..." and those are lines 2, 4 and 6. It comes up three times under CNI –

MR. ORAM: Because – it comes up three times because the first two I done an error –

MS. ZDEBIAK: Right.

MR. ORAM: – and that the other two would be defaulted so you're going to get a copy of those back as well.

MS. ZDEBIAK: Three times. Yes.

MR. ORAM: Three times.

MS. ZDEBIAK: That makes sense.

MR. ORAM: Yes.

MS. ZDEBIAK: And it does look like it's – he's – his name is hit there three times under CNI.

Now let me just play this for you, and if we can now go to page 3 of this exhibit.

Okay, I knew this was going to happen. I'm having a technical issue here.

Commissioner, unfortunately it's not working. I'm going to have to go to the – I'm going to have to go to our other exhibit. That's the phone call. Is there a way to play that while we're looking at this page? There isn't. Okay.

Well, what I'll do is I'm going to show Mr. Oram this page; I have a hard copy of it.

THE COMMISSIONER: Go ahead. I hope we're almost finished, Ms. Zdebiak.

MS. ZDEBIAK: Yes, we are. This is the very last thing.

Okay, so that's the page we were just looking at.

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

MS. VAN DRIEL: Can I see a copy of that page you just showed Mr. Oram, please?

MS. ZDEBIAK: I have that one copy, I can – that's just the whole exhibit.

Okay, so just to remind everyone, if you look at page 3 there, one last look at page 3. All right, yes, there's page 3, and actually one more page. If we can go down one page, page 4, this is the CFRO response, isn't it?

MR. ORAM: Correct.

MS. ZDEBIAK: Okay. So we see in the – you'd have to open this page specifically, wouldn't you?

MR. ORAM: Yes.

MS. ZDEBIAK: Okay. And this is in terms of firearms, right? It tells you –

MR. ORAM: Yes, it's any registered firearms.

MS. ZDEBIAK: And we have a number of names there under the Donald Dunphy query that come up, that don't match.

MR. ORAM: That don't match.

MS. ZDEBIAK: And it doesn't say on here anywhere: not on file or anything like that. It just (inaudible).

MR. ORAM: Well, I would have said that it came back negative because Donald Dunphy's name never came back in the CFRO search.

MS. ZDEBIAK: Okay. And you see the scores are not matching.

MR. ORAM: Maximum of 100, a score of 80.

MS. ZDEBIAK: If it was 100 and 100 that would match.

MR. ORAM: Presumably.

MS. ZDEBIAK: Okay.

MR. ORAM: I would – I don't know, but I would guess.

MS. ZDEBIAK: All right. But these have 80, 76, 75. None of these matched.

MR. ORAM: None of them matched, so when I done my CFRO check I told them it was not on file because I guess none of the – Donald Dunphy's name never appeared.

MS. ZDEBIAK: Okay. And can we go back up to page 3. And this is the PERS response you got.

MR. ORAM: Yes.

MS. ZDEBIAK: All right.

Now, can we go to the recording of the call itself? The transcript I know is at P-0136. The call itself was also included in Mr. Oram's exhibits, I believe it was the last one in his folder. And I wonder, Madam Clerk, could you bring that up.

MS. SHEEHAN: (Inaudible.)

MS. ZDEBIAK: It's the last one in Mr. Oram's folder with the communications there. No, it's the –

UNIDENTIFIED FEMALE SPEAKER: P-0768.

MS. ZDEBIAK: 0767? Yes.

UNIDENTIFIED FEMALE SPEAKER: 0768.

MS. ZDEBIAK: 0768, I'm sorry.

THE COMMISSIONER: 0768.

UNIDENTIFIED FEMALE SPEAKER: Yes, it's 0768.

MS. ZDEBIAK: Yeah, okay.

Thank you.

THE COMMISSIONER: All right, what are we going to get here? Is this the – what you gave us in hardcopy?

MS. ZDEBIAK: I gave you a hardcopy of the transcript so we can follow along.

THE COMMISSIONER: Right.

MS. ZDEBIAK: And I wonder if we could zero in on this portion of call on the recording we hear.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. ZDEBIAK: Okay. Thank you.

(Audio played.)

April 5, 2015, 11 hours, 14 minutes, 25 seconds.

MR. ORAM: Communications.

CST. SMYTH: How are you doing, Sir?

MR. ORAM: Good.

CST. SMYTH: Joey Smyth here. I'm looking for a 27, 28 and 29.

MR. ORAM: Sure, what's your badge number, Joey?

CST. SMYTH: 610.

I have to do the 27 first, just to get the DOB.

MR. ORAM: Okay, no problem. Who's on?

CST. SMYTH: Don Dunphy. He lives in Mount Carmel. He's around 50. He should be only one on MRD, I believe, there for Mount Carmel.

MR. ORAM: Dunphy, D-U ...?

CST. SMYTH: D-u-n-p-h-y.

MR. ORAM: Yeah, okay.

John, let's see if we got a Mount Carmel?

(Audio paused)

MS. ZDEBIAK: Now, could we skip to the portion that starts right (inaudible) or is that not possible to fast-forward?

THE COMMISSIONER: Starts where?

MS. ZDEBIAK: At the beginning of the excerpt I gave. I wonder if we could start there.

THE COMMISSIONER: Well, I don't know if the Clerk has that – do you –

MS. SHEEHAN: (Inaudible.)

THE COMMISSIONER: It's page 6 of the audio transcript at the bottom.

MS. ZDEBIAK: I'm sorry?

THE COMMISSIONER: It's noted as page 6 –

MS. ZDEBIAK: Yes, it's page 6 on the audio transcript, exactly.

(Audio played.)

MR. ORAM: I don't see nothing there, b'y.

(Audio paused.)

MS. ZDEBIAK: Okay, we'll just continue. That's fine.

(Audio played.)

CST. SMYTH: That's D-u-n, as in November, p-h-y.

MR. ORAM: Yeah, hand on now. Holyrood.

CST. SMYTH: Might be Holyrood.

(Audio paused.)

MS. ZDEBIAK: I believe if you continue to about –

(Audio resumed.)

MR. ORAM: No, b'y, he was born in 1915.

CST. SMYTH: No, not him.

(Audio paused.)

THE COMMISSIONER: Stop the tape.

MS. ZDEBIAK: Okay. Stop, yes.

Okay, can you go to about three quarters of the way? I meant to zero in just on – yeah, if you can go – just fast forward three quarters of the way, maybe just a bit further.

Okay, yeah, that will catch a portion of it.

All right.

(Audio resumed.)

MR. ORAM: (Inaudible.)

Yeah.

He's not on file there.

CST. SMYTH: Nothing there and no CFRO either, no firearms registered?

MR. ORAM: Not on file, no.

UNIDENTIFIED FEMALE SPEAKER: April 5, 2015, 11 hours –

(Audio ended.)

MS. ZDEBIAK: Okay, that's fine.

Now we heard, Mr. Oram, just, you know, a delay there where there was nothing going on. Was that when you were searching for – you know, you were going through the errors that took place?

MR. ORAM: Probably.

MS. ZDEBIAK: Like to –

MR. ORAM: It would indicate that any time lapse between our conversation is that I would be actively working on his requests.

MS. ZDEBIAK: Right.

And we know you opened the PERS page and you see on that PERS page, if we could just bring that one back up again. That was 0708, I believe.

Right, and if we can go down to page 3 of this exhibit.

We know you were looking at this page. And we see on there – you say to Constable Smyth or Acting Sergeant Smyth at the time, not on file, not on file, right? That's how you end the conversation. We hear that.

MR. ORAM: Yes, in the transcript of our conversation.

MS. ZDEBIAK: Right.

MR. ORAM: Right.

MS. ZDEBIAK: And in the phone call.

MR. ORAM: Yes.

MS. ZDEBIAK: Okay.

So I would suggest to you that when you're answering him, you're looking at this page here.

MR. ORAM: And I would have looked at the CFRO page as well because that's the request that he had.

MS. ZDEBIAK: Okay.

MR. ORAM: Yes.

MS. ZDEBIAK: And I'm just wondering, like, the timing of it. You answer – when we hear the transcript, you answer not on file, not on file, twice, quickly. Is it possible that you were answering not on file regarding the CFR from this PERS page?

MR. ORAM: No, if I was looking for the CFRO, I would have looked at that exhibit that didn't have Donald Dunphy's name on it.

MS. ZDEBIAK: That one the next page down.

MR. ORAM: The next page down –

MS. ZDEBIAK: Okay.

MR. ORAM: – is the exhibit that I would have told him was negative.

MS. ZDEBIAK: So did you have – you know, it seems like you did it pretty quickly. Is it possible that you just referred to this page?

MR. ORAM: I mean, it is milliseconds for me to exit out of one window, open up another.

MS. ZDEBIAK: Okay.

MR. ORAM: So, I mean, no.

MS. ZDEBIAK: Okay, so you're saying you looked at what is page 4 on this exhibit, then.

MR. ORAM: Yes.

MS. ZDEBIAK: Yeah, okay.

MR. ORAM: Yes.

MS. ZDEBIAK: All right, that was my only other question.

Thank you very much.

MR. ORAM: You're welcome.

THE COMMISSIONER: A millisecond for the recording – and I don't know how many milliseconds for the listening.

Okay, do we have any questions?

MR. ORAM: I think this is your document.

MS. ZDEBIAK: (Inaudible.)

MR. ORAM: Okay.

THE COMMISSIONER: Anybody have any questions?

Ms. Van Driel.

MS. VAN DRIEL: I'm the last one?

Thank you.

THE COMMISSIONER: Only if they're absolutely necessary, now.

MS. VAN DRIEL: I fully understand, but it is my witness.

A couple of questions here, Mr. Oram.

Do you remember participating in a couple of meetings where Mr. Barry Constantine was present, and this was, I think, part of a start of an internal investigation into your conduct at the RNC?

MR. ORAM: Yes.

MS. VAN DRIEL: Right. And do you remember that a question was asked of Mr. Constantine at the time, at one of the meetings, wherein he was asked what the RNC's expectations are of staff, such as yourself, when answering to a 10-29 query? Do you remember what he answered?

MR. ORAM: I believe that question was posed to Inspector Constantine.

MS. VAN DRIEL: That's correct.

MR. ORAM: Yes. And I don't think he had an answer for myself, my representation and the human resource person, and that it was part of this investigation.

MS. VAN DRIEL: It was part of the investigation to find out –

MR. ORAM: Yes.

MS. VAN DRIEL: – for him.

MR. ORAM: They didn't have a definitive answer to that question.

MS. VAN DRIEL: Right.

Do you remember that when the internal investigation started that you spoke to your staff sergeant, Gerard Ryan?

MR. ORAM: When I was currently under investigation for 'disconduct' of this incident, I had reached out to my sergeant at the time and just expressed to him the things that were going on, yes.

MS. VAN DRIEL: And what did you tell him?

MR. ORAM: I told him the series of events and the conversation that me and Constable Smyth had. I told him what Constable Smyth had requested from me, and I told him – I told him that the – that there was a problem, that there was the CNI information never came back and that he had requested a 29 and a CFRO, and not a CNI. And I posed the question to him whether or not when he was an officer on the street, when he would call in looking for those requests, that he would've asked for a 10-29 and a CNI request.

THE COMMISSIONER: That's your sergeant, you're saying said –

MR. ORAM: That's my direct supervisor.

THE COMMISSIONER: So repeat it again what you said. He said that ...

MR. ORAM: He believed that I gave Constable Smyth the information that he asked for and that I stuck to the facts of what he was asking for and then I asked – I had asked him –

MS. ZDEBIAK: Excuse me, I don't mean to interrupt – well, I do, actually. I'm objecting on the basis that is hearsay, you know, if it's meant to be accepted for the truth of content. I'm just pointing that out.

THE COMMISSIONER: No, that's fine.

MS. ZDEBIAK: Yup, thank you.

MS. VAN DRIEL: We do understand.

THE COMMISSIONER: Yeah, there's a limit to how far we can get into hearsay, so unless we have that confirmed by – I don't remember if it is there or not, Ms. Van Driel, in the – so I'll let you answer the question, but whether or not that goes into evidence, I'll have to check the transcript of –

MS. VAN DRIEL: We understand that.

THE COMMISSIONER: – of –

MS. VAN DRIEL: It's no different than –

THE COMMISSIONER: – Inspector Constantine. Is that all right, Ms. Zdebiak?

MS. ZDEBIAK: That's fine. Thank you.

THE COMMISSIONER: Okay.

MS. VAN DRIEL: No different than any of the questions that – some of the questions that Madam Counsellor asked earlier.

MS. ZDEBIAK: Other than I wasn't trying to put in evidence; I was just asking questions. There's a difference, I think, when it's coming from Mr. Oram, but thank you.

MS. VAN DRIEL: Sorry, I'm just checking my notes here –

THE COMMISSIONER: Take your time.

MS. VAN DRIEL: – Commissioner, so that I don't duplicate –

THE COMMISSIONER: That's fine.

MS. VAN DRIEL: – issues that have already been dealt with.

Mr. Oram, do you remember that in any of the training that you received that there was specifics instructed to you as a trainee in how to answer an officer when requesting a 10-29 search?

MR. ORAM: No.

MS. VAN DRIEL: So how did you learn how to answer a 10-29 search?

MR. ORAM: From my on-the-job training. I would have observed a number of different people and the way they conducted their 10-29s, and once I was off my probation I would just continue on doing my 10-29 searches as I – as they were requested.

MS. VAN DRIEL: Have you ever received criticism or reprimand for the way you have answered 10-29 requests on persons?

MR. ORAM: No.

MS. VAN DRIEL: You know, you told me about quarterly reports that are being done on you and other contacts four times a year.

MR. ORAM: There are quarterly reports and the quarterly reports is the sergeant in the communications is to randomly select four of my calls and for the supervisor to review them for any, we'll call it, constructive criticisms, anything that we're doing that we're not supposed to be doing or anything that we could add to what we were doing, that it could be a good idea to ask for this or maybe you should –

THE COMMISSIONER: So that's a performance evaluation.

MR. ORAM: It's a performance evaluation, yes.

And during my course at the RNC for the last seven years, since November 2009, these quarterly reports have always been a thing and nobody has ever brought that up in my performance.

THE COMMISSIONER: Brought up the way you answered – typed the answer.

MR. ORAM: No one has ever questioned or brought up the way that I would respond to a 10-29 request.

MS. VAN DRIEL: And I take it that these 10-29 requests is – how many have you done do you think?

MR. ORAM: 10-29 requests are very routine calls. They're a daily basis, every single day, day in and day out.

MS. VAN DRIEL: And was this 10-29 request by Sergeant Smyth any different than a routine ...?

MR. ORAM: No, no difference at all.

MS. VAN DRIEL: Okay. Thank you.

That's all the questions I have.

THE COMMISSIONER: Okay. Thank you.

Now, any other questions?

MS. CHAYTOR: I'm sorry; I just would like to clarify one without belabouring things too long.

If we could back up P-0467, please, Madam Clerk, page 48. This is the PowerPoint slide that was shown to you by Ms. Zdebiak.

And, Mr. Oram, this is from the course that you took. And I believe Mr. – I forget his name now, Turnbull maybe?

MR. ORAM: Yeah. Bob Turnbull. I don't distinctively remember Bob.

MS. CHAYTOR: Okay.

MR. ORAM: I vaguely may remember Bob Turnbull –

MS. CHAYTOR: That's fine. I just have one quick question.

MR. ORAM: Okay. Yeah.

MS. CHAYTOR: Sorry to cut you off, but –

MR. ORAM: No problem.

MS. CHAYTOR: – 10-29 here, records check – and you've explain what you understood by this: person, vehicle, property, boats and motors, CNI. What do you understand CRS to be?

MR. ORAM: I don't know.

MS. CHAYTOR: Okay.

MR. ORAM: I don't know.

MS. CHAYTOR: All right.

And if we could bring then, under P-0704, please. And, again, here we have CNI-CRS.

MR. ORAM: I'm not sure what the – 100 per cent sure what the CRS means.

MS. CHAYTOR: Okay. So whether or not that's criminal record or – you're not sure?

MR. ORAM: I don't know what that acronym is.

MS. CHAYTOR: Okay.

MR. ORAM: I just don't know.

MS. CHAYTOR: All right. Okay.

Thank you. Those are my questions.

THE COMMISSIONER: Anything further?

Thank you, Mr. Oram. You may step down.

Yeah, that's fine. Thank you.

I hope you're getting lots of sleep on your parental leave, are you?

Okay, I think we're going to have to break here, and we're going to have to take a look at sharpening our pencil

for the witness this afternoon. But it's a significant witness so we've got to deal with it thoroughly and –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Sorry? Yeah, if we can unless somebody has a problem.

Mr. Kennedy?

MR. KENNEDY: Yeah, I just wanted to – Commissioner, I may be a little bit late this afternoon. But in terms of tomorrow I think – is this Thursday?

THE COMMISSIONER: Don't ask me.

MR. KENNEDY: In terms of tomorrow afternoon, the application to allow evidence from Dr. Hart, I was just going to put forward a very brief letter outlining what I wish to call, with a copy of his resume. Would that suffice for the purposes of what we are doing now? And I will have something from him in the morning.

THE COMMISSIONER: Yeah, the only question I was going to put to you on that was I take it you've seen what the RCMP specialist on the use of force is going to present, have you?

MR. KENNEDY: I'm not dealing with the use of force. Dr. –

THE COMMISSIONER: Oh, sorry, go ahead.

MR. KENNEDY: Yeah, Dr. Hart will be dealing simply with the risk threat assessment.

THE COMMISSIONER: Okay.

MR. KENNEDY: I'm not looking to call an expert on the use of force.

THE COMMISSIONER: Okay.

MR. KENNEDY: So you can actually break that – I see the Coleman-Massine report actually broken into two.

THE COMMISSIONER: The –

MR. KENNEDY: There's the Coleman aspect of the risk threat assessment.

THE COMMISSIONER: Yeah.

MR. KENNEDY: And then the Massine use of force. It's the risk threat assessment that I want to deal with.

THE COMMISSIONER: So that would be Coleman and Massine?

MR. KENNEDY: It would be Coleman, I think. I don't think Massine's involved.

THE COMMISSIONER: Or just is Massine involved in that?

MS. CHAYTOR: Massine.

Mr. Kennedy is right. Mr. Mass – or Sergeant Massine does the use-of-force component of the report is our understanding. Yes.

THE COMMISSIONER: Okay. The –

MS. CHAYTOR: So it's Dr. Coleman's –

THE COMMISSIONER: Yeah and I'm thrown off a bit I guess because the use of force is the – my recollection, I think, from what I've seen is that the threat assessment is contained in the Use of Force manual, is it?

MR. KENNEDY: Correct.

THE COMMISSIONER: Yeah.

MR. KENNEDY: (Inaudible.)

MS. CHAYTOR: Yes, there is some – yes, and use of force also includes de-escalation piece. And Dr. Coleman also does speak to that in his report.

THE COMMISSIONER: Right. Right.

So there's – and who else has given evidence on that or is planned to give evidence on it? We have on – sorry, Mr. –

MR. AVIS: Sergeant Lenehan and –

THE COMMISSIONER: Oh yes, Sergeant Lenehan, that's the other one I want. You've looked at Sergeant Lenehan, I know. I think you've put the point that you want to have – you think your expert or proposed expert has, academically anyhow, better qualifications? Is that what you're asserting?

MR. KENNEDY: Well, what I would look at, how I would describe Sergeant Lenehan, Commissioner, is that he would be – his would be an operational report, how police officers do their work on a daily basis in protective services.

THE COMMISSIONER: Right.

MR. KENNEDY: Whereas Dr. Steven Hart has significant academic qualifications in the area of threat assessment, and so he would be basically looking at things, not only from the academic perspective but also from the practical perspective of it.

THE COMMISSIONER: All right.

Sorry, I think, Mr. Avis, you had – you weren't cut off, were you?

MR. AVIS: No.

THE COMMISSIONER: Okay.

All right, we'll – is there any problem coming back in an hour at 1:15?

MR. KENNEDY: I'll be a little bit late because I have to get materials to Dr. Hart.

THE COMMISSIONER: Okay.

Do you have any problem with our commencing without you?

MR. KENNEDY: No, no, commence without me.

THE COMMISSIONER: Okay, fine.

Anybody else with a problem?

Let's come back at – what time is it now? Come back at 1:15 since we're breaking 15 minutes early.

Thank you.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: And now, I understand Mr. – well, Mr. Kennedy told us he'd be late.

Mr. Drover, is he going to be late as well?

MR. AVIS: Commissioner, I'm not sure. I just had a brief conversation with him and he said: I assume you're going to take care of this. I didn't mean – understand it to mean he wasn't coming in, but that's what he said to me on the way in, so ...

THE COMMISSIONER: All right. Well, we'll –

MS. BREEN: And Mr. Flaherty will be a little bit late, too, as well, Mr. Commissioner. He said to carry on.

THE COMMISSIONER: Right. Okay.

Well, we'll proceed and we'll check with Mr. Drover when he gets in.

Okay, go ahead when you're ready.

MS. O'BRIEN: Thank you.

I'll ask our hearing clerk to swear the witness, Corporal Wayne Knapman.

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

CPL KNAPMAN: Yes, I do.

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

CPL KNAPMAN: My name is Wayne Ronald Knapman. The last name is spelled K-n-a-p-m-a-n.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you, Corporal Knapman. Before we –

THE COMMISSIONER: Probably not the first time you've had to spell it, is it?

CPL KNAPMAN: No, but I hear there's lots of Knapmans in Lower Island Cove, Newfoundland so ...

MS. O'BRIEN: Before we begin with Corporal Knapman's testimony, Commissioner, I'd ask to have the following exhibits entered: P-0744 through to P –

THE COMMISSIONER: Sorry, what was that, 0744?

MS. O'BRIEN: Yes.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: Through to P-0747 inclusive.

THE COMMISSIONER: Okay.

So ordered.

MS. O'BRIEN: Thank you.

The first thing I'm going to do is bring up your CV. Can we bring up P-0744, please, Madam Clerk? And could you go, please, to page 22.

And, Commissioner, I have – this is Corporal Knapman's report and his CV is just a part of that report. I have an extra copy of his report here I'm going to give to him as he may want to refer to it sometimes when we have other exhibits upon the screen.

CPL KNAPMAN: Thank you.

MS. O'BRIEN: All right, Corporal Knapman, I'm going to go through your CV with some – a little, hopefully a little speed and just focusing on the expertise that you have in the area of use of force.

I understand you have been a member of the RCMP since 1990. Is that right?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

And now I understand that in the – sometime in the early 2000s that you became what is designated as a subject matter expert in use of force for the RCMP. Can you explain to the Commissioner what does that mean to be a subject matter expert for the RCMP, particularly in the use of force?

CPL KNAPMAN: Okay.

Based on my experience and the training that I had within the RCMP, I received the qualification through the RCMP as a subject matter expert. And that entails providing opinion reports, expert opinion reports to, not only to the RCMP, but other police forces.

Becoming a subject matter expert was based on my experience as an instructor and the qualifications that I've had in the use of force.

MS. O'BRIEN: Okay. And we can take you through some of those.

I think if we go to – I understand here – and, again, I'm going to go quickly, not through every piece of training and experience you have, but under the section of your CV entitled, Service Background, one of the entries of relevance is that from 2009 to 2013 you were the non-commissioned officer in charge of the H Division Public and Police Safety Training Unit. And this unit is responsible for the delivery of all use-of-force courses for approximately 1,050 members.

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay, so that's some of the relevant experience, training experience you had.

And there's a couple of terms here I just want to clarify. H Division; that's the division of the RCMP in Nova Scotia, is it?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

And you use a couple of terms here just to understand that carbine is an automatic rifle used by the RCMP.

CPL KNAPMAN: It's a semi-automatic high-powered rifle used by the RCMP.

MS. O'BRIEN: Okay.

And conducted energy weapon, we might know it as a taser.

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

And I understand the immediate action rapid deployment, that is an active shooter-type situation?

CPL KNAPMAN: Active shooter or active threat, not necessarily a shooter.

MS. O'BRIEN: Okay, when police intervening when a violent crime is underway.

CPL KNAPMAN: Like a Columbine-type situation.

MS. O'BRIEN: Okay.

And here you speak to specifically about police defensive techniques. And from our pre-hearing interview I understand that would include the baton, OC spray, carotid or chokeholds and handcuffing. That (inaudible)?

CPL KNAPMAN: Yeah, and the carotid is not a chokehold.

MS. O'BRIEN: Carotid, oh.

CPL KNAPMAN: It's a vascular neck restraint. So it's defensive techniques, hand-to-hand combative that police officers use.

THE COMMISSIONER: Is joint manipulation included in that?

CPL KNAPMAN: Sorry?

THE COMMISSIONER: Joint manipulation?

CPL KNAPMAN: Yes. We call it pain compliance but it would be joint manipulation, yes.

THE COMMISSIONER: Right.

MS. O'BRIEN: Okay.

So we are going to get into the National Use of Force Model in a bit more detail but we've seen it already, the circular graphic. I understand these would be some of the soft and physical – the soft and hard physical controls that are referred to on that graphic. Is that right?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

All right, also here on your CV you note from 2013-2015 you were the H Division Criminal Operations reviewer. Can you explain to the Commissioner what you did in that position?

CPL KNAPMAN: In that capacity as a reviewer my main function would be an intermediate between management and the local detachments or units within the division. I would provide guidance on policy and procedures not only in use-of-force matters but also on operational policing matters.

MS. O'BRIEN: Okay but it would include on use-of-force matters?

CPL KNAPMAN: Only specifically because of my training. In the division I am still considered the use-of-force coordinator, but because of my qualifications and it happened to be in the Criminal Operations, I did that as a part of my duties.

MS. O'BRIEN: Okay.

And just down here you have here a member of the National Public and Police Safety Training Committee. And I understand that that is an RCMP committee that develops training standards and analyzes trends for use of force within the RCMP. Is that right?

CPL KNAPMAN: That's correct.

MS. O'BRIEN: Okay.

And I understand you're also on a similar committee at the provincial level for Nova Scotia as the RCMP representative.

CPL KNAPMAN: That is correct.

MS. O'BRIEN: Okay.

Here in your Police Training and Certifications section there is just a few that I understand that are particularly relevant to your use of force and your use-of-force training. And one of the entries that you have here, I think on the next page, is that here: incident management intervention model instructors trainers course that you completed in November of 2009. Is that a teach the teacher-type course?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

And the Incident Management Intervention Model, the IMIM, I understand that's the use-of-force model that's followed by the RCMP, is that correct?

CPL KNAPMAN: That is correct.

MS. O'BRIEN: Okay.

When you are doing the training in the IMIM does that include training in risk assessment?

CPL KNAPMAN: Yes, it does.

MS. O'BRIEN: Okay. So that would include looking for threat cues and that sort of thing?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

Does the IMIM training include de-escalation techniques?

CPL KNAPMAN: It's a part of the IMIM and the training; there is de-escalation within the model as well as it's built into our training for our frontline officers. There are separate de-escalation courses that are in the RCMP, but since the Braidwood inquiry with respect to the conducted energy weapons, de-escalation was brought into that training as well as in a lot of the scenario-based trainings that we'd used during the Incident Management Intervention Model, training that members have to certify every three years in the RCMP, there is de-escalation as well, taught in those courses.

MS. O'BRIEN: Okay.

And you just said that there are separate de-escalation courses within the RCMP, have you taken any of those courses?

CPL KNAPMAN: I just recently did in December. There was a recommendation I know in BC with respect to all police officers in British Columbia had to have their crisis intervention de-escalation model. That is rolling out in the RCMP. It hasn't come across the country yet, but I took –

THE COMMISSIONER: You say you've done a course on de-escalation was it, specifically?

CPL KNAPMAN: Yes, I did the BC course in December of this year.

MS. O'BRIEN: December 2016.

CPL KNAPMAN: Yes.

MS. O'BRIEN: Okay.

And Commissioner this might be of note, we're going to hear more on this de-escalation and crisis intervention model from Michael Massine, who's going to be one of the experts that presents to you.

So I understand, you did not have that course when you did your review of Constable Smyth's work.

CPL KNAPMAN: That is correct.

MS. O'BRIEN: And you did not have it when we interviewed you.

CPL KNAPMAN: That is correct.

MS. O'BRIEN: Okay. All right. So you've had that training since. Okay.

CPL KNAPMAN: I took it upon myself to take it.

MS. O'BRIEN: Okay.

Now, one of the other pieces of training I'd just like you to explain to the Commissioner is this force science analyst course that you mention here having taken in 2011. Can you explain that course to the Commissioner please?

CPL KNAPMAN: So a force science analyst course – Force Science Institute is a private organization that offers courses on behavioural science to both, not only police officers but lawyers, major crime investigators. The course deals with a lot of different topics including the physiological effects of the human body in critical incidence, also biomechanics. There's topics on cognitive interviewing after critical incidents. There's topics on action versus reaction.

A lot of the facilitator, even though it's a private organization, a lot of the facilitators –

THE COMMISSIONER: Sorry, is that the Grossman ...?

CPL KNAPMAN: No, Lieutenant Colonel Grossman has his own program.

THE COMMISSIONER: Okay. Go ahead.

CPL KNAPMAN: Which I've had some of his – I've been present for some of his lectures. But the facilitators on the force science course, for example, Christine Hall who's renowned for her work in Canada on excited delirium, Chris Lawrence who is an instructor at the Ontario Police College, Alexis Artwohl who's a renowned psychologist with respect to the physiological effects on the body, they've had medical doctors come in to speak to us about the physiological effects during a critical incident.

MS. O'BRIEN: Okay.

And Dr. Bill Lewinski is, I think, the major personality behind the Force Science Institute. Is that correct?

CPL KNAPMAN: He is the founder.

MS. O'BRIEN: Yeah.

CPL KNAPMAN: But on the specific course that I was on he did one presentation on biomechanics.

MS. O'BRIEN: Okay.

And has Lieutenant Colonel Grossman taught at the Force Science Institute?

CPL KNAPMAN: Not on the one I have been on but I did attend one of his presentations independent of the Force Science.

MS. O'BRIEN: Okay.

And I understand after you completed – the Force Science, it's an American institute. Is that right?

CPL KNAPMAN: That is correct.

MS. O'BRIEN: Okay.

And it was a five-day course. And after you wrote some exams?

CPL KNAPMAN: You had to complete an – you had to pass an exam as well as you had to do a presentation based on a case study using the principles that you learned that week in your report. And you had to do a presentation to defend your conclusions.

MS. O'BRIEN: Okay.

And so are you aware of any controversy surrounding the Force Science Institute?

CPL KNAPMAN: I know there is controversy. I don't know the specifics, what the controversy is.

MS. O'BRIEN: Okay.

Similarly with Dr. Lewinski, are you aware of any controversy?

CPL KNAPMAN: The same.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Sorry, the first one was with respect to ...?

MS. O'BRIEN: The Force Science Institute itself.

THE COMMISSIONER: Force Science Institute.

MS. O'BRIEN: Yes.

THE COMMISSIONER: Is that the one founded by Dr. Lindsay?

MS. O'BRIEN: Lewinski, yes.

THE COMMISSIONER: Oh, Lewinski, is it?

MS. O'BRIEN: Lewinski.

THE COMMISSIONER: Lewinski. And then you asked was –

MS. O'BRIEN: If he was aware of any controversy around Dr. Lewinski himself.

THE COMMISSIONER: Dr. Lewinski, okay.

I guess the question of whether force science is in fact a science, I think, may still be up in the air a bit, is it?

CPL KNAPMAN: Well, I don't know if, Your Honour, you're questioning if it's a science. I think there's – it's not just a course of one principle. There's several principles and presenters and those change from course to course.

So, for example, Alexis Artwohl, who presented on my course with respect to the physiological effects, she has several papers that have been published and accepted by the science community, you know, the psychology community, that have been supported by other studies; for example, Klinger and those from 2002.

So I think if there is issues then it may be with Dr. Lewinski and not specifically the presenters. For example, Christine Hall, again, she's renowned for her work in the world – a Canadian from Victoria – on her studies with respect to excited delirium so ...

MS. O'BRIEN: Okay.

THE COMMISSIONER: Is that settled now? Have they in fact accepted to the mainstream that there is such a thing as excited delirium?

CPL KNAPMAN: The RCMP – I can only speak to the RCMP and we have, and we've incorporated in our training material that we do call it excited delirium. Other police forces call it acutely agitated delirious, for example, Halifax Regional Police. The bottom line, whatever we call it, it's accepted that is a – I am not a medical doctor, but there is certain –

THE COMMISSIONER: A recognized body of expertise, is ...?

CPL KNAPMAN: Yes, so there's certain traits that if you're dispatched to a call, Sir, and you hear certain things that this person is sweating. They're taking their clothes off. They're smashing glass. These are warning signs for the police officers. And we have a planned approach based on that this is excited delirium.

And number one, this is a medical condition so you call for an ambulance and there's, you know, there's certain protocols and plans in place that we have in our training and in our policies to deal with excited delirium cases.

THE COMMISSIONER: Counsel is going to be angry with me in a moment for taking her off her trail. So you go ahead with your question there.

MS. O'BRIEN: Thank you.

Your training here, Corporal Knapman, the last one you have entered here is in October of 2013. Have you had any training since that date?

I know you just told us about your de-escalation course in December, 2016 so we know about that. And I'll just remind – I understood from our pre-hearing interview that you had said you had – you've been re-certified on a regular basis –

CPL KNAPMAN: Yes.

MS. O'BRIEN: – since that date and you hadn't listed your re-certifications.

CPL KNAPMAN: Yes.

MS. O'BRIEN: Okay.

CPL KNAPMAN: I can't think of any specific courses, but, yes, through recertification in our – we have now IMIM training, block training, so I have had courses but I can't think of any other formal courses right at the moment.

MS. O'BRIEN: Okay.

And do you continue to be involved in the development of the RCMP's Subject Matter Expert Use of Force Program?

CPL KNAPMAN: Yes, I do.

I'm scheduled right now to attend in May of this year to the PRTC, the RCMP's training centre in Vancouver, as a facilitator on – it's going to be a pilot five-day Subject Matter Expert Use of Force course that we're hosting for, what we call, potentials or understudies that are in the Subject Matter Expert Program now.

MS. O'BRIEN: Okay.

And I'm just going to touch here some of your relevant experience as a Subject Matter Expert in use of force. And you note here that you've been doing use of force reviews since 2003, as well as reviewing Subject Behavior Officer Reports. I just want to clarify the difference.

A Use of Force Review, what is that?

CPL KNAPMAN: So a Use of Force Review, again, it's an opinion report. It's a report I prepare. It could be for RCMP senior management with respect to an internal investigation. It could be a part of a criminal investigation, been asked to prepare my opinion report. And, also, it could be for another police department requesting an opinion report on the use of force, if it was reasonable.

MS. O'BRIEN: Okay, so that's what you'd be giving a report on, whether the use of force by a particular officer was reasonable in the circumstances?

CPL KNAPMAN: Correct.

MS. O'BRIEN: And is that the type of review you did here for Constable Smyth?

CPL KNAPMAN: Yeah. That's correct.

MS. O'BRIEN: Okay.

And you just – you noted here, doing Subject Behaviour Officer Reports. How do those differ?

CPL KNAPMAN: So, any time a member of the RCMP uses an intervention which is at least a soft – physical control soft technique where there's injury or higher. So, for example, again, it would have to be a strike or if it was a takedown and there was an injury, or if a taser was used or if a firearm was used.

Our Criminal Operations is mandated to have those opinion reports – or sorry – the Subject Officer Behaviour Reports. The SBOR is reviewed by a subject-matter expert. We have policy that says that every taser deployment or conducted energy weapon must be reviewed by an SME. So part of my role as an SME is to review those to see if the intervention was reasonable, but also to ensure that the articulation – that the member's actions are clearly articulated to support the use of the taser or the other intervention.

MS. O'BRIEN: Okay.

And, Commissioner; I believe we've had evidence of similar reports that are done by the RNC, a use-of-force report that Constable Smyth would have prepared, in this instance, about his own use of force. And that would have gone for review in a similar matter.

Okay –

CPL KNAPMAN: Just, sorry, the only difference, on ours it can contain a narrative and the Royal Newfoundland Constabulary, I think, is just a checkbox. Ours contains a full narrative where they have to articulate their actions.

MS. O'BRIEN: Oh, okay. Thank you for making that distinction for us.

In the next section of your CV you list a number of bullets of specific cases that you've worked on; I'm just going to summarize these. I think there's – if we look at bullets – bullets number two through to eight would be relevant –

CPL KNAPMAN: Right.

MS. O'BRIEN: – you know, similar-type cases that you've worked on. I understand in one of those cases you did give testimony to a jury –

CPL KNAPMAN: Yeah.

MS. O'BRIEN: – on the use of force but you were not qualified as an expert. Is that right? You were a fact witness in that case?

CPL KNAPMAN: That is correct.

MS. O'BRIEN: Okay.

And the rest of the cases that you report there, you were either giving your report to investigators or to senior RCMP management. Is that right?

CPL KNAPMAN: That's correct.

MS. O'BRIEN: So you've never presented a use-of-force review in a court before?

CPL KNAPMAN: None of those went to court.

MS. O'BRIEN: Okay. That's fine.

Based on the foregoing, Commissioner, I will be seeking to qualify Corporal Knapman as an expert in use of force. I am not seeking to qualify him to give opinion evidence on psychological or physiological effects on officers involved in shooting incidents or on a body's reaction to being shot.

Any opinion evidence that would come directly out of his force science training, I believe Corporal Knapman's report is – that's only a very small element of Corporal Knapman's report, so I'm seeking to admit the bulk of his report.

As we're going through, I'll identify the areas that I feel are outside the area I'm seeking to qualify him. Before I ask if other counsel have questions to Corporal Knapman as to his qualifications, I would like to put some more evidence before the court as to Corporal Knapman's experience that may well be relevant on some of these topics.

And, Corporal Knapman, with your permission I'm going to lead you through the testimony.

CPL KNAPMAN: Okay.

MS. O'BRIEN: I understand that in 2003 you were involved as a shooter in a police shooting incident that resulted in a fatality. Is that right?

CPL KNAPMAN: That is correct.

MS. O'BRIEN: Okay.

And who were part of an emergency response team, and you and five other officers were tracking an armed individual and you found him. You commanded that he drop his weapon. He did not comply with your – the commands and rather he levelled his rifle to a ready fire-type position. And in response to that you and the five other officers opened fire and shot at him.

CPL KNAPMAN: We responded to the threat. I wouldn't say we opened fire.

MS. O'BRIEN: Yes, sorry.

CPL KNAPMAN: We responded to the threat.

MS. O'BRIEN: And that's my wording and I should – I know by now that you moved to eliminate the threat.

CPL KNAPMAN: Stop the threat.

MS. O'BRIEN: Stop the threat. Okay.

And as a result, this man was shot multiple times. And after – he was standing at the time that you engaged with him. And after a second or two he did drop to the ground. You attempted some at-the-scene emergency first aid but, ultimately, he did succumb to his injuries.

CPL KNAPMAN: Correct.

MS. O'BRIEN: Is that fair to say?

And your use of force was reviewed after that incident, as was the other officers who were involved, and all your use of force was found to be reasonable. Is that right?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

Other counsel, Commissioner, may have questions as to Corporal Knapman's qualifications, you may have further questions, but I'll stop now and let that happen.

THE COMMISSIONER: Thank you, Ms. O'Brien.

Counsel have questions regarding the qualifications of Corporal Knapman?

MS. BREEN: Mr. Commissioner, I just have one question but it actually relates to a little bit of a different area that's listed in Corporal Knapman's CV. But I do have a question for him, so I don't know if it's appropriate for me to ask him that yet.

THE COMMISSIONER: Well, just tell me what the question is and I'll –

MS. BREEN: The question is with respect to the Sig Sauer – I think that's how you pronounce it – firearm that was utilized –

THE COMMISSIONER: Sig Sauer, yeah.

MS. BREEN: Yeah.

And I understand that Corporal Knapman is an instructor. Is that correct, Corporal, on the training or the use of that weapon?

CPL KNAPMAN: Well, not that specific weapon. Constable Smyth was carrying a .40 calibre.

MS. BREEN: Okay.

CPL KNAPMAN: There are several versions of a Sig Sauer. I'm an instructor in the P226 which is a nine millimetre. And there are several even versions of that and we use a DAK which has a different trigger than most Sig Sauers.

For example, Halifax Regional carries a nine mil Sig Sauer. It is totally different than what we carry so I don't have much expertise in the .40 cal Sig Sauer but I am an instructor in firearms and an instructor in carbine, MP5, Sig Sauer, Smith & Wesson, so ...

MS. BREEN: Okay.

Thank you, Mr. Commissioner.

THE COMMISSIONER: So that's answer your question?

MS. BREEN: That answers my question. And if the corporal feels he shouldn't answer my question or can't answer my question when I do get a chance to question him, if he could just indicate, that would be fine.

THE COMMISSIONER: Okay.

MS. BREEN: Thank you.

THE COMMISSIONER: Sorry, what did you say? When you say when you get a chance to question him – oh yeah, right, we're dealing the qualifications.

Okay. Thank you.

Mr. Flaherty, do you have anything on the qualifications?

MR. FLAHERTY: Good day, Officer Knapman.

My name is Cletus Flaherty; I'm counsel for the Don Dunphy Community Coalition.

With respect to your CV, when you have provided expert opinions with respect to appropriate or any appropriate use of force, either in trials or in disciplinary settings, inquiries, what have you, can you tell me what the ratio has been or the tally has been between times that you've determined a police officer had appropriately used force or had inappropriately used force.

CPL KNAPMAN: So I don't know the total number that I've done in complete but I can tell you that there's been two specific cases where I gave an opinion that the member's actions weren't reasonable.

THE COMMISSIONER: Weren't reasonable?

CPL KNAPMAN: Were not reasonable.

THE COMMISSIONER: All right.

MR. FLAHERTY: Okay.

CPL KNAPMAN: And I can expand on those if you wish.

THE COMMISSIONER: Just one second, we may not have to right now.

MR. FLAHERTY: And how many times have you, you know, a rough estimate – how many times have you said it was reasonable?

CPL KNAPMAN: With respect to opinion reports?

MR. FLAHERTY: Any time you've been asked for opinion as to whether or not an officer has appropriately engaged in use of force.

CPL KNAPMAN: I would think there's been 10, maybe 10 opinion reports. There's been, often with subject behaviour, officer responses where I've sent them back to the officer saying I needed clearer direction or clearer articulation on the actions. I think that there's been a few of those, I can't give you the numbers where I've recommended this member. It's not that it wasn't unreasonable, but there was a training issue that needed to be addressed.

So to answer your question, I have said that – I can't give you a percentage. I know with the opinion reports it's been probably two out of my 10 that I've done that I've said that the member's actions were not reasonable.

MR. FLAHERTY: Right. Thank you.

THE COMMISSIONER: Okay.

Mr. Drover, you have anything?

MR. DROVER: No, Mr. Commissioner.

THE COMMISSIONER: Mr. Avis, nothing?

Mr. Freeman, in terms of qualifications?

So I take it there's nobody objecting to Corporal Knapman being qualified specifically or seeking as a – just read out to me the –

MS. O'BRIEN: Use of force?

THE COMMISSIONER: Just use of force, okay – as an expert qualified to give opinion evidence on the use of force. I guess on what is appropriate use of force or what is inappropriate use of force, whichever.

Thank you.

Is that a fair description of your expertise?

CPL KNAPMAN: Yeah, my only concern, Your Honour, is that I know that some of those topics were covered in the Force Science Institute with respect to physiological effects, but I've also received those through RCMP training and presentations in instructor-level courses, as well as other literature and publications that I've read that speak to that, that was referenced in my report.

THE COMMISSIONER: Yeah.

CPL KNAPMAN: For example, Klinger, Alexis Artwohl.

THE COMMISSIONER: If I could just point out, I don't think we're saying that you're not qualified, but there's been earlier applications for at least one expert where I decided we're not – in this case, we don't need to go into explanation of the why; we'll have evidence on what happened.

And in this case the – well, there's the officer's response to the immediate threat. And it was, you're talking seconds in terms of –

CPL KNAPMAN: Correct.

THE COMMISSIONER: – time to react. And there's the impact on the officer of having been involved in the shooting that –

CPL KNAPMAN: But also, Your Honor, during.

THE COMMISSIONER: Sorry?

CPL KNAPMAN: What he's experiencing just before when he sees the threat?

THE COMMISSIONER: Well that, basically, has been dealt with as far as I can see, but subject to what counsel has to say by evidence of how an officer's training kicks in.

CPL KNAPMAN: Okay.

THE COMMISSIONER: And the officer, as it's been described in a couple of places, goes on autopilot and instinct as a result of training. So we haven't really or I haven't felt that we need to get into the complicated area of the physiological responses and so forth.

And so to be fair to everybody I've decided, because of time constraints and the possible delays and expense and so forth, that we wouldn't be going there. And, therefore, that's why Ms. O'Brien is proposing that she not take you there so ...

CPL KNAPMAN: That's fine, Your Honour.

THE COMMISSIONER: So I wanted to explain that to you just –

CPL KNAPMAN: Okay.

THE COMMISSIONER: I hope I haven't misspoken on that, have I? Any counsel have any problem with what I described there?

MR. FLAHERTY: So just a point of order, I guess, or a point of clarification, Mr. Commissioner. With respect to the doctor – sorry, Officer Knapman's report, should we refrain from asking questions with respect to findings or determinations he may have made with respect to the physiological or psychological experience?

THE COMMISSIONER: Well, I think Ms. O'Brien proposes to describe the areas where she believes she doesn't want to take Corporal Knapman in that regard. But if you have questions that you believe should be put or you want to put, you know, put them forward and I'll consider whether they're appropriate or not.

I'm keeping in mind the – I think it was Mr. Kennedy, not so much you, Mr. Avis, in terms of whether or not I'd hear evidence in that respect, in terms of the physiological impact.

And there were some issues as to the memory distortion or perception distortion which may be argued in terms of why Officer Smyth may have not mentioned something, the argument being that it was probably forgotten because of the impact of the stress and so forth. But by and large, we haven't – I think the effect of my ruling was that I don't see that it's necessary to get into that type of medical evidence in order to, for me to draw conclusions in that area so ...

MR. FLAHERTY: Okay.

I may have some questions that may (inaudible).

THE COMMISSIONER: No, that's fine. You raise them and I'll consider at the time whether they're appropriate.

MR. FLAHERTY: Tell me to sit down if I'm going somewhere inappropriate.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: And I will do my best, as we're going through Corporal Knapman's report, to just identify. And it's not – again, as I said, not a significant amount of his report, areas where I'm not seeking to elicit his opinion.

If Madam Clerk could please bring up P-0747.

Corporal Knapman, I'm hoping when you see this document you're going to be able to identify this as your retainment letter.

Okay. Do you recognize this as your retainment letter?

CPL KNAPMAN: Yes, I do.

MS. O'BRIEN: Okay.

So it's from Corporal Burke who we've heard evidence on and it's on August 5, 2015. I just want to note – now that you've recognized this, I just want you to note here, note for the Commissioner in this exhibit, that Corporal Burke requested “that the SME opinion/review focus on whether the shooting was reasonable and lawful.”

And I'm going to now, having showed you that, Corporal Knapman, I'm going to bring up your own report at P-0744 and ask Madam Clerk to please go to page 4 of that. Because in your report you restate slightly differently what it is you are doing.

Okay. And then – and here we are at page 4 of the exhibit and this is your Scope of Review. And you wrote: “The intent of this review is to determine if the actions of Cst. Smyth of the Royal Newfoundland Constabulary ... were reasonable and necessary with respect to the circumstances surrounding this fatal shooting.”

So we saw the word “lawfulness” in Corporal Burke's letter to you. We do not see the word “lawfulness” here in your report. Do you give opinions with respect to lawfulness?

CPL KNAPMAN: I don't give – I give the opinions with respect to if it was reasonable. I do refer to some law with respect to reasons being there and the authorities for a member to use force, but I think it's the trier of fact that determines if it's lawful. So there is a bit of a crossover but I don't feel I – you know, I can speak to some criminal aspects of –

THE COMMISSIONER: No, that's fine. We get – we've seen your references to section 25 of the *Criminal Code*.

CPL KNAPMAN: Yeah.

THE COMMISSIONER: And in your experience you would have run into –

CPL KNAPMAN: Right.

THE COMMISSIONER: So I'm not – I wouldn't say that necessarily police officers are not entitled to comment at all upon the law but in this respect I appreciate your distinction there.

MS. O'BRIEN: Thank you.

In our pre-hearing interview, Corporal Knapman, you reviewed one of the prior use-of-force review files that you had worked on in some detail. And in that case – and I believe it’s probably one of the ones you just referred to in response to Mr. Flaherty’s question.

And in that case you told us that while you had concluded that the officer had used reasonable force in firing his weapon, there were several factors that led up to the shooting. And your opinion was that the officer had done an improper risk assessment, which in your opinion had led to – and I’m using your words here – officer-imposed jeopardy. Have I got that correct?

CPL KNAPMAN: Yeah. It also can be referred to officer-imposed jeopardy or it’s basically putting the officer, putting himself in undue risk for not following proper procedures and policy, and training.

MS. O’BRIEN: Okay. So though the ultimate act of the shooting was reasonable, you felt that he put himself in a position of undue risk.

In this case, as part of the review that you were looking at for Constable Smyth’s actions leading up to the ultimate shooting incident, were you doing a consideration as to whether or not his risk assessment was appropriate and whether or not there was any element of – again your words – officer-imposed jeopardy here?

CPL KNAPMAN: So, yes, I was looking at his risk assessment, looking for the reasonableness, again, to see if an officer with similar training, cultural background, from the same department – because there’s differences in culture between police forces in geography in Canada. And if – I’m looking at if it would be reasonable if another officer – again, with his perceptions, situational factors that lead to his risk assessment, if it would be reasonable.

MS. O’BRIEN: Okay. And, again, were you also looking for any elements of officer-imposed jeopardy?

CPL KNAPMAN: That’s a part of the risk assessment.

MS. O’BRIEN: Okay. Thank you for clarifying that

And did your assessment include a review of whether Constable Smyth’s actions had adhered to his use-of-force training?

CPL KNAPMAN: I did review the training. I’ve learned that I wasn’t given all the material. I learned that two days ago, but the material that I reviewed, when I prepared the opinion report, I believe that from what I saw, he followed training and what I expected from a similar officer with his service and experience.

MS. O’BRIEN: Okay.

Well, now that you’ve just mentioned that, my next section I was going to review is the material reviewed. And what you’ve just said to me is new information to me, but here in your report you have listed material reviewed and it’s all set out here on page 4 of your report.

The question I had specifically asked – was about to ask you is about whether one of the entries you have here is the RNC Use of Force Continuum training package. And I’m about to bring up a document to confirm whether or not that’s the document you had. I can maybe do that now. It’s P-0624.

And, again, this is only a part of the full document because for reasons – the security of officer reasons, the RNC didn't want us to publish the full document.

Can we make that a little bit smaller please, Madam Clerk, because I'm just trying to get Corporal Knapman to get – even smaller again. I'm not going to ask him to read anything here. He's just ...

So was this – and I know I'm scrolling through fairly quickly, Corporal Knapman, but did you have all this material here?

CPL KNAPMAN: No, I did not. The first time I saw this was yesterday.

MS. O'BRIEN: Okay.

So when you listed that bullet that I'd just gone through in your materials, I was thinking that this was probably the document I had just brought up. So what was the material that you had?

CPL KNAPMAN: So what I was given, to me appears to be a PowerPoint presentation. When – just – so I don't specifically speak to investigators unless I have specific information that I'm looking for, so Corporal Corscadden who works in our criminal operations, she was the co-ordinator of the subject matter experts so all the correspondence – I gave her a list that I wanted all of the training materials.

So when I received that information, it would have been sent from her to the investigators in Newfoundland. I received a binder which I have here today, but, again, what I was given was different, a different version.

I see that this document is 300 and – the total that it's supposed to be, I think, is 370 pages.

MS. O'BRIEN: That's right, yes.

CPL KNAPMAN: I didn't receive 47 or whatever this is, or 370 pages. I received snippets of PowerPoints so when I refer to in my – in the documents, what I refer, to there was a PowerPoint presentation that I received that said Use of Force Continuum but there was not a great deal of narrative material that's in here.

MS. O'BRIEN: Okay.

THE COMMISSIONER: You say you don't speak to investigators. That's to maintain a somewhat objective appearance in terms of your approach?

CPL KNAPMAN: Correct.

THE COMMISSIONER: Okay.

CPL KNAPMAN: Now, you know, if I – I do have a specific example, and in this case I asked that Constable Smyth be re-interviewed on a specific incident –

MS. O'BRIEN: Yes.

CPL KNAPMAN: – just so that I could have the full information, but from what I gathered that was – I asked for all the training materials and I was provided training materials. I didn't know that, that was different from this document.

MS. O'BRIEN: Okay.

THE COMMISSIONER: When you say specific incident, when was that done? Is that the third interview or something that we're ...?

MS. O'BRIEN: Yes, and I'm going to get to that actually in my questioning of Corporal Knapman.

THE COMMISSIONER: Okay.

I'm I just wanted to make sure. Okay.

MS. O'BRIEN: Right now, though, while we're on this topic, how important is it for you when you are doing a Use of Force Review to have the full training materials of the subject officer?

CPL KNAPMAN: It's very important. It's important that I have all material. And I put that a caveat my reports that my opinion can change on basing my opinion on that material that I have.

In this case, what I reviewed from yesterday, the material from that 47-page document, that's not going to change my conclusions.

THE COMMISSIONER: The material – the 40 – you didn't have 47 pages. Is that what you stated?

CPL KNAPMAN: This, Sir or Your Honour, I had a different document that was provided to me than this 47-page document which appears to be a snippet of a 370-page document.

THE COMMISSIONER: Okay.

CPL KNAPMAN: I neither had the 370-page document – I never did see the 370-page document. I got this 47-page document yesterday.

THE COMMISSIONER: Do we have that? Is that the one we have in evidence?

MS. O'BRIEN: That's what's currently up on your screen, Commissioner.

THE COMMISSIONER: It's 47 pages. Okay.

MS. O'BRIEN: It's the 47 pages.

THE COMMISSIONER: That's 0624?

MS. O'BRIEN: Yes, Commissioner. And just to be clear, Commission counsel was provided with the full 370 pages.

THE COMMISSIONER: Right.

MS. O'BRIEN: For various reasons, the RCMP did not want us to make all that material a public exhibit, and that's why we've only exhibited 47 pages of the document.

THE COMMISSIONER: Yeah, I think there was concern about revealing investigative, or use-of-force techniques and so forth. But in any event, your last statement was that you have now seen the larger document, have you?

CPL KNAPMAN: Your Honour, I've read this 47-page document. I read it last night. And there's nothing in that document that would change my conclusions or my report.

THE COMMISSIONER: Okay, so you didn't have the larger document when you did your report and you didn't have the 47-page document when you did your report.

CPL KNAPMAN: That's correct.

THE COMMISSIONER: What did you have relating to the content of those two documents? Did you have anything?

CPL KNAPMAN: Well, with respect to what I had, I had some PowerPoint presentations on their Use of Force Continuum; it doesn't get into the detail that is here. But what's in this document is – other than their training modules that they have, a lot of the documentation that's in this is common with respect to the National Use of Force Framework.

THE COMMISSIONER: Right.

CPL KNAPMAN: So there's nothing – I know there's a couple of things in this document that I don't feel are relevant in this case –

THE COMMISSIONER: You say in this document being 47 pages?

CPL KNAPMAN: The 47-page –

THE COMMISSIONER: Right.

CPL KNAPMAN: The excited delirium is not relevant to this case.

THE COMMISSIONER: Right.

CPL KNAPMAN: And also the positional asphyxiation –

THE COMMISSIONER: Right.

CPL KNAPMAN: That's not relevant to this case.

THE COMMISSIONER: I'm always happy when I see things that we don't have to consider, so that's fine.

CPL KNAPMAN: Again, there are things in here that are covered in the PowerPoint; they're just not in the detail. But they're the National Use of Force Framework which was created by the chiefs – association of police; has a lot of this information in it.

THE COMMISSIONER: Right.

CPL KNAPMAN: So there was nothing in here that caused me concern that would change my opinion.

THE COMMISSIONER: Okay.

MS. O'BRIEN: And to be clear, Corporal Knapman, did you have the course of fire material from the RNC? Did you review that?

CPL KNAPMAN: I believe I went – sorry, I believe I went back and asked for that. I was looking for some clarification on what their course of fire was.

MS. O'BRIEN: And I'm not sure that I can see it listed here in your report under your materials reviewed section. Perhaps we'll get your counsel to confirm that on a break.

CPL KNAPMAN: Yeah.

MS. O'BRIEN: Okay, so just to summarize here, you did not have all the materials – all the relevant materials were not provided to you at the time that you did your review; however, as a result of the inquiry process, you did see at least these 47 pages that would be the most relevant material, I think. You reviewed those in the past couple of days, and having reviewed them they don't change your ultimate opinion.

CPL KNAPMAN: Yes, from last night.

MS. O'BRIEN: Okay.

Last night? Okay. All right.

Okay, can we go to page 5 of Corporal Knapman's report, please, and that is P-0744.

THE COMMISSIONER: 0744?

MS. O'BRIEN: P-0744.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: Okay.

In this, starting on page 5 here and it continues through to page 8, Corporal Knapman, from what I see is here you're giving a synopsis of the incident. Is that correct?

CPL KNAPMAN: That's correct.

MS. O'BRIEN: And did you write this synopsis?

CPL KNAPMAN: Yes, I did.

MS. O'BRIEN: Okay.

And was this a summary of the facts that you discerned from your review of all the material that you did review?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

And you've listed the materials that you had there in terms of factual materials there in your report. Your opinion here, the opinions expressed in your report, they would be based on these facts, would they?

CPL KNAPMAN: That's correct, the material.

MS. O'BRIEN: Okay. All right.

And as we get through the parts of your opinion part of your report, we may come back to some of these facts in a little more detail. But I don't intend to review them with you here now, but that's where they are in your report.

I'm going to go now to the next section of your report, which begins at page 8 and it's: Authority for Officers to Use Force. And here in this section, Corporal Knapman, it appears that you are outlining the use-of-force sections of the *Criminal Code*. Can you just briefly explain the relevance of those sections of the Code to your report?

CPL KNAPMAN: Sure. So the National Use of Force Framework or the Incident Management Intervention Model, it's not policy or law, it's a guideline for members to use in training as well as to assist them in decision making and articulation.

As police officers in Canada we're governed by section 25. We have the unique distinction in our job and duties that we have the authority to use reasonable force in the line of our duties, which is different than other members of society. So I'm basically outlining section 25 here.

MS. O'BRIEN: Okay. And that section authorizes just a very bare bones, it authorizes reasonable but not excessive force in the circumstances.

CPL KNAPMAN: That's correct.

MS. O'BRIEN: Okay.

Now, we're going to get to the National Use of Force Framework where you get into some detail here on starting at page 10 of your report. And the first sentence that you've written here in this section is: "Members of the Royal Newfoundland Constabulary (RNC) receive training on the National Use of Force Model" which you have depicted above.

And I'm going to bring up – we have a bit of a better graphic of this model from the RNC's material. And I'm going to ask, Madam Clerk, if you could please bring up P-0625, page 5, please.

So in the RNC's material, as we will see now in just a moment, it's referred to as the Use of Force Model in the document I'm bringing up. Is this identical to the National Use of Force – oh, sorry, sorry, P-0624, page 5.

THE COMMISSIONER: 0624, it's not 0625.

MS. O'BRIEN: Oh. My apologies, Madam Clerk, 0624, page 5, and I'll get you to make it a little smaller because there's a lot of information on this page. Even smaller again, okay.

Corporal Knapman, were you familiar – this is from the RNC's materials. Were you familiar with this model prior to doing your work on this file?

CPL KNAPMAN: Yes, I was.

MS. O'BRIEN: Okay and why is that?

CPL KNAPMAN: It's very similar to the Incident Management Intervention Model. And also, I've done other use of force opinion reports where the National Use of Force Framework and the National Use of Force Model is – I've referred to it.

MS. O'BRIEN: Okay.

So what the RNC uses here, and here it's called the Use of Force Model, is this identical to the National Use of Force Model, or more or less identical?

CPL KNAPMAN: It appears to be the same.

MS. O'BRIEN: Okay.

And have you ever received training specifically on the National Use of Force Framework?

CPL KNAPMAN: Not specifically. But, again, the similarities between the IMIM and the National Use of Force Framework are very similar. I have instructed at the provincial level to other municipal police forces utilizing the National Use of Force Framework.

MS. O'BRIEN: Okay.

And so the IMIM, Commissioner, just to be clear, that's the model that the RCMP uses, and there are some slight differences. But in terms of this incident, Corporal Knapman, and your work on this file, was there any difference between the two models that would have had any impact on your opinion here?

CPL KNAPMAN: No.

MS. O'BRIEN: Okay.

So if Constable Smyth had been trained on the IMIM as opposed to this model, your opinion and conclusions would remain the same?

CPL KNAPMAN: Yes, they would.

MS. O'BRIEN: Okay. All right.

So we have already had some evidence on the Use of Force Model used by the RNC, so we don't need you to go into it in as much detail as you would if we hadn't already received some education. But given that you obviously used this in coming to your conclusions, can you just give a brief description, please, to the Commissioner as to how it works.

And I can leave the graphic up here as you explain it. But in your report I know you explained it at pages 10, 11 and 12 of the exhibit and, for that reason, Corporal Knapman, I have given you a paper copy of your report –

CPL KNAPMAN: Okay.

MS. O'BRIEN: – just in the event that you want to refer to that as you go through your explanation.

CPL KNAPMAN: So the model, the National Use of Force Framework model, is a part of the National Use of Force Framework. It was designed – again, it was based on some principles. Number one principle was that the police officer's duty is to protect and preserve life, is one of the underlying principles with it. Number two is that police's duty is to, in the use of force, is to protect the public. But also police paramount there safety in order to protect the public. Police must be safe.

It's not a – the model or the National Use of Framework, again, it's not law. It's not policy. It was created to assist members in their articulation, decision making and the articulation of why they use force. It was designed and created by the members – subject matter experts from across the country in 1999. It's based on law and based on case law.

If we look at the model, it's a – it was designed to be circular because when we're dealing with incidents, things change rapidly and with the linear model that you don't have that step process.

So starting, we start off in the middle and this is the Situation. This is why the police officer is there. There's several key factors that what we start at and with the situation out of the National Use of Force Framework they talk about Assess, Plan and Act. And the Assess, Plan, and Act is basically that it is the part of the risk assessment that the member or police officer is doing throughout the situation that is ongoing.

Several things make up a member's or a police officer's – excuse me, when I refer to the RCMP, we say members. So with respect to the National Use of Force Framework, there's several factors that work into the member's risk assessment. Number one is the situation. In the RCMP, we call that situational factors. So why is the police officer attending this call?

Within that situation you look at: What is the environment? In this an inside of a house? Is this the outside of the house? Is it night time? Is it dark? Who am I dealing with? What information does the police officer have on the subject that they're dealing with? Does this person have a martial-arts background or are they disabled? What is their age? What is their physical capabilities? Do they have criminal records? Do they have information on the local or – local management system, other information? Do they have mental disorders? So we look at that.

We also look at time and distance. Is this something that can wait or is there an urgency? Is there, when the member arrives there, is there things can use for time and distance to provide them time to think? We also look at, within that situation, we look at potential threat risk. Is there weapons? Is there things in the environment? Is there actions that are – were tweaking the member's threat cues? So that is your situation.

Then we look at perceptions, perceptions of the police officer, and perceptions for a police officer is different from every officer to every officer. And that may differ from, again, policing culture. An officer in Vancouver or Toronto may have different perceptions than a member in small-town Nova Scotia or small-town Newfoundland.

Also, the cultures of the police officer: Are they Aboriginal? What culture do they come from? What is their experience? Have they worked in small plain – small detachments only; have they worked in large detachments? Have they worked in plainclothes? Are they – have special tactics, like being a member of the emergency response team? Those are perceptions. Have they been to a similar call where they've experienced something that was negative? Also, how much did they have to – how much sleep did they have the night before? Those are the person's perceptions.

Now, the perceptions, if you look at the diagram, falls into the Plan, Assess and Act. On the RCMP model, we have –

THE COMMISSIONER: I'm sorry, what did you say there? Perception and what?

MS. O'BRIEN: Perception goes around.

CPL KNAPMAN: So on the National Use of Force Framework, Your Honour, it has Assess, Plan and Act. On the RCMP IMIM, we actually lay out perceptions and tactical considerations.

So I've talked so far about the situation, I've talked about the officer's perceptions, but now I'm going to talk about their tactical considerations. And this all falls under this Assess and Plan and Act; this is the member's assessment process.

So looking at the tactical considerations, again, is tactical considerations are based on the officer's perceptions. It's based on the situation, the environment. They're asking: Do I need one member? Do I need two members? Do I need a specialized unit? What equipment do I need to bring? These are tactical considerations. How do I approach?

And then the last thing that goes into a member's or a police officer's risk assessment is the behaviour of the subject. What behaviour are they displaying? And this is now where we're going to start to work out through the circle, Your Honour.

So if you see within the model of the National Use of Force Framework, you do see on the outer ring the perceptions and tactical considerations. That's two parts of the member's risk assessment. The other part would be the situation and the behaviour, which I'm going to start to speak to about now.

So looking at the behaviour, if you go into the model, again, it's circular; it doesn't say that a person has to go from Cooperative to Passive Resistant. At any point someone can become – who was co-operative can be assaultive. So I'm just going to get into a little bit what I mean by co-operative.

A co-operative person is a person I would describe that, if I tell him to do something, they say: Yes, I will do it. So they're co-operating with your commands. A person that is passive resistant – excuse me, could I get some more water from someone? Thank you. I'm getting a little dry.

Passive resistance is a person that is not listening to your commands. So if I tell them to put their hands behind their back and they tell me to pound sand, there's no physicality but they're passively resisting. They could also be a person that's involved in a protest where they're laying on the floor and not doing anything. That would be a person that's passive resistant.

Thank you.

A person that is Active Resistant is an active-resistant person who's showing some physicality. So I go to place them under arrest, and we talked about a joint lock and they pull their arm away: that would be someone that is actively resisting.

A person that is Assaultive, that would be your punches, your kicks, that type of thing, where there is physicality. There is intent to injure the officer.

The last part of the behaviour that you must consider during risk assessment is Grievous Bodily Harm or Death, and that not necessarily has to be a gun. And, again, these behaviours are not – don't have to be observed; it's the behaviors that the officer perceives.

MS. O'BRIEN: Thank you, Corporal Knapman.

On page 11 of your report, and I'm going to keep up the graphic, please, for now, Madam Clerk, but at page 11 of your report, and if you go there and it's the green numbers at the top of the page I'm referring to, Corporal Knapman. At the last paragraph on that page, and it's technically page 9 of your report, you talk, you say, "A common error is to look only at the subject behavior characterization and the corresponding response options without examining the officer's perceptions and tactical considerations." And then you give an example of an unarmed 90-year-old woman threatening to slap an officer.

Can you just – we don't need very much on it, but just give us a quick explanation of that, what you're referring to as the error, in reference to the graphic before you.

CPL KNAPMAN: So police officers must look at the totality of the circumstances. So if I was dealing with a person that was physically incapable, so again they are 95 years old and they're saying they want to beat me up, although they're displaying behaviour that you can consider assaultive, it would be unreasonable for the police officer to do a taser or physical control hard because that person is not capable of carrying out that threat because of their physical traits. So that goes into the situation.

So what I'm saying –

MS. O'BRIEN: Okay. I'm just going to slow down, so see here Assaultive, if we come out along the – from the – go out towards the exterior of the circle here, we do come under intermediate weapons, which you're saying would include something like a taser, but what you're saying is that would not necessarily be appropriate in this example.

CPL KNAPMAN: Exactly. So, again, there are options. So the options, if you're only to look at behaviour, could be a physical strike by the police officer or a taser, but we can't – again, we have to look at the totality of the situation. We have to look at the situational factors, perceptions, all those. So in the end, if I, being 240 pounds and six-foot-two and a 95-year-old or 110-year-old lady said that she wanted to beat me up –

MS. O'BRIEN: She's getting older every moment. She's 110.

CPL KNAPMAN: Sorry? I missed that.

MS. O'BRIEN: Sorry, she started out 90, then she went 95, then I thought that you said she was 110.

CPL KNAPMAN: She had a great lunch, I guess, so.

MS. O'BRIEN: Yes, okay.

CPL KNAPMAN: So the bottom line is, is that it would be unreasonable, looking at the totality of the circumstances, for me to use that type of intervention or that option, given the totality of the circumstances. So we must look at the whole picture.

MS. O'BRIEN: Okay.

And one of the things, I don't know if you really touch on, we have communication here running around the graphic, and what's the significance of that?

CPL KNAPMAN: Again, communication is key to all incidents and it's a part of our tactical principles and, you know, we – again, if you look at use-of-force incidents, in reality less than one per cent of police interaction with any person or public, less than one per cent involves some type of use of force. So, you know, if we can resolve this through communication, then we're going to do that. Even when you're involved in an intervention, you hope that there will be some communication, but that's not always tactically feasible.

MS. O'BRIEN: Okay.

I'm going to bring back up your report P-0744, and Madam Clerk if you go to page 12. And in this section of your report, Corporal Knapman, what I understand you to be doing – and please

correct me if I'm wrong – is you're really reviewing the training that Constable Smyth would have had and giving some explanation of that training. Is that fair to say?

CPL KNAPMAN: Just reading through here, sorry.

MS. O'BRIEN: It's in the section of your report that's more broadly referred to as – well, it's under the National Use of Force Framework section, and so it was on the, just on the – it's page –

MS. CHAYTOR: (Inaudible.)

MS. O'BRIEN: Yeah, when I keep referring to page numbers, Corporal Knapman, I'll always be referring to the green numbers because it's the exhibit number.

CPL KNAPMAN: Okay.

MS. O'BRIEN: So here, for example, in this paragraph here you say "The officer will consider all these different elements and make a decision on how to respond."

THE COMMISSIONER: I haven't found where that is in the report. Page –

MS. O'BRIEN: Page 12, the first full paragraph, Commissioner, and green number –

THE COMMISSIONER: The green page 12, what is it I'm –

MS. O'BRIEN: On the bottom is page 10.

THE COMMISSIONER: 10, yeah, the seven Tactical Principles. Okay, I have it now.

MS. O'BRIEN: Yes. And it's just above those seven Tactical Principles.

In this paragraph, Corporal Knapman, please – what I understand you to be saying here is when you are giving an opinion as to whether a use of force was reasonable, when you're looking at reasonableness, you are considering what the officer knew at the time, what facts he or she had and what the officer's training and experience was at that time. Is that, is that a fair summary of what you're saying there?

CPL KNAPMAN: That is – that is fair.

MS. O'BRIEN: Okay. And then in the next section, you seem to go a little more into some of Constable Smyth's training. And that's where you get into the seven Tactical Principles.

CPL KNAPMAN: Yeah, that – again, it is into Constable Smyth's training, but also it's accepted principles that police officers – up and above their use of force training model, they're accepted principles that are used in use-of-force incidents and training.

MS. O'BRIEN: Okay, because that was one of my questions because we have seen these seven Tactical Principles in the RNC's use of force training materials. So we've had some information already on these seven Practical Principles, but you're saying that you were familiar with them, otherwise, because they're well known use-of-force principles?

CPL KNAPMAN: They are well known. They have been around for years.

MS. O'BRIEN: Okay. And so again maybe if you could just go through them very quickly; again, we've already have had –

CPL KNAPMAN: Okay.

MS. O'BRIEN: – testimony, so very short is all I need on this please.

CPL KNAPMAN: So the first one is cover. And we consider cover as basically it provides you protection from an assailant's weapon. So if it's a gun, you need something that the bullet's not going to go through versus concealment which is hiding but not providing you protection. So the first one is – we call it cover and concealment.

The second one is threat cues: Is there visual or audible stimuli that should raise an officer's threat awareness? Again, I'll give an example. If you see someone walking and their wearing a full patch, Hell's Angel vest, that would be a threat cue.

MS. O'BRIEN: And I – in the – you note here in yours – and I – we saw it as hands, hands, hands. I think –

CPL KNAPMAN: Yes.

MS. O'BRIEN: – in the RNC's material. Can you just explain under the threat cues principles the –

CPL KNAPMAN: Sure.

MS. O'BRIEN: – significance of the suspect's hands?

CPL KNAPMAN: So the majority of time, a threat is going to come from the hands. So we teach our officers to be cognizant, to always watch the hands because that's where the threat is going to come from.

MS. O'BRIEN: Okay.

CPL KNAPMAN: Time distance ratio: Officers should maintain a barrier. So, again, it's – it gives – allows an officer that's involved in a situation by giving him time and distance, it gives them a reactionary time, time to process the information. So an example is if someone had a knife and my gun was holstered, I need at least 30 feet for that person – so that I can get my gun out of my holster, respond to someone charging. So someone can move with a knife 30 feet before I can get my gun out of my holster. But if I don't have those distance, you look for barriers. Like, can I put a table between myself and the subject? Can I position myself in the room where if the person wants to attack me that they would have to go around, to provide me that time a distance so I can process my response.

MS. O'BRIEN: Okay.

CPL KNAPMAN: The One plus one rule. We teach our officers that always assume that if you find one weapon, that there is another weapon or, for instance, you assume that you – say you're at a break and enter in progress, you find one person in the business, always assume that there is another. So what it is, is not to let your guard down.

MS. O'BRIEN: Okay.

CPL KNAPMAN: Verbal communication. What that means is we teach our officers to take control. Sometimes you have to say take control to show that you have a command voice. It could be: Drop the knife, drop the knife, if you have the tactical opportunity to do that. But we are asking our officers, again, to use verbal communication throughout our incidents to communicate, but sometimes you may have to take control.

The last one is de-escalations.

THE COMMISSIONER: Second last.

CPL KNAPMAN: Sorry.

The second last one is officers are taught to de-escalate a confrontation. You ask yourself: Are you in control of the situation? Is the situation gone to the point where my life's in danger that I need to back out? Or is this situation got to the circumstances where I no longer can handle this? For example, if you are dealing with a person that's barricaded in a house with a firearm, de-escalation may be a knock on the door, you look through the window, you see this guy has a gun, you back off and you call for an emergency response team or a tactical response.

The last one is survival mentality. And basically what this is, is we teach our officers not to give up, even if you're losing the fight, to continue fighting; if you're shot, to continue to fight through the pain. Just to have that mental preparedness that you're going to go through this and win the incident. At the end of the day, it's a job and you're going to go home at the end of the day.

MS. O'BRIEN: Okay.

The next part – thank you very much, Corporal Knapman.

The next part of your report actually gets into your, as you call it here, critical analysis of Constable Smyth's use-of-force encounter.

Before we get into that part, I'm going to ask Madam Clerk to bring up, please, P-0746 and this is an email that you alluded to earlier in your testimony, Corporal Knapman. If, Madam Clerk, when you bring up that email, you could go to page 3 of the exhibit.

In this email you were looking for some additional information, I believe.

CPL KNAPMAN: Correct.

MS. O'BRIEN: And it's Angela Corscadden.

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay. And so she's writing Corporal Burke on your behalf, I take it?

CPL KNAPMAN: That's correct.

MS. O'BRIEN: Okay. And you are looking for some additional material here and most of it is self-explanatory, but the one I wanted you to comment on is: "He" – that would be you – "noted that Cst Smyth never states why he fired two rounds to the body then two round to the head. Furthermore investigators did not explore his avenue. Cpl. Knapman feels this is a crucial factor given the totality of the situation. Could the investigators go back to Cst Smyth and ask for

clarification on what his thought process/reason why he fired two rounds to the body and two to the head. It is important for Cpl. Knapman to have Cst Smyth's articulation on this point."

Can you explain to the Commissioner why it was important for you to have that articulation?

CPL KNAPMAN: So whenever you look at a use-of-force incident, again, looking at the reasonableness of the incident, I know in this case there was four rounds that were fired, three that actually hit Mr. Dunphy. So I was asking the investigators to go back to speak to Constable Smyth to find out what was his mindset.

Did he react this way from – the first two rounds, in my opinion, were to the torso. Although one missed, one hit the torso then the next two rounds were to Mr. Dunphy's head. I was asking the investigators to speak to Constable Smyth with respect to why his decision to go to shoot to the head. Was it because the threat was still there or was it because this is what he's been taught in training? I wanted just a further explanation of why those shots were fired to the head.

MS. O'BRIEN: Constable Smyth was re-interviewed on this point, and I won't bring up the exhibit, Commissioner, but it has been entered into evidence as P-0217. And he was re-interviewed on September 14. From that statement, Corporal Knapman, did you get the additional information that you required?

CPL KNAPMAN: Yes, I did.

MS. O'BRIEN: Okay and then we'll – as we get into your analysis of the event, I'm sure you'll highlight the important parts of what you learned. Before we get in, we'll go back now to your report at P-0744, and so we don't leave everybody in suspense for your entire testimony, I'm going to take you to your conclusion first. And we'll start there and then we'll go back and go through your reasoning.

THE COMMISSIONER: Sorry, what page?

MS. O'BRIEN: P – can we go to page 21 of that exhibit, please?

THE COMMISSIONER: Okay and that's green 21 or ...?

MS. O'BRIEN: Yes.

So this is the last page of your substantive report. Your CV follows. Can you explain to the Commissioner what your ultimate conclusion was on this file?

CPL KNAPMAN: So my ultimate conclusion was that "Cst. Smyth's decision to use lethal force was necessary to defend his life against the imminent threat posed by Donald Dunphy."

MS. O'BRIEN: Okay.

And here you not only used the word "necessary," but you also used the word "reasonable." Was reasonable also part of your conclusion?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

And when we read this paragraph, you write that – you say – note that it was reasonable and necessary. "Donald Dunphy threatened Cst. Smyth with a rifle, he possessed the requisite

weapon, intent and means to cause death or grievous bodily harm to this officer.” And these actions were consistent with “what would be expected from a police officer of similar background and training.”

Your conclusion as stated here in this paragraph, Corporal Knapman, really addressed Constable Smyth’s reaction when he was presented with the rifle.

CPL KNAPMAN: Correct.

MS. O’BRIEN: In your opinion, did Constable Smyth make any tactical errors, or was there any errors in his risk assessment or threat assessment that may have contributed to the situation, to that ultimate situation he found himself in?

CPL KNAPMAN: I don’t think any of his errors that he did resulted in a change of the outcome. I believe that he did make some tactical errors but at the end, his response to the firearm and the reasonableness of that was not changed by the errors that he made or would have changed his risk assessment.

MS. O’BRIEN: Okay.

And I’m going to get you to hold that thought because as we’re going through your evidence, if you could highlight the sections where you consider that there were some tactical errors and we can discuss them at that time.

CPL KNAPMAN: Correct.

MS. O’BRIEN: If we get to the end and we haven’t covered them all, though, I’d like to make sure that we – that, you know, before you finish your testimony we get to them.

THE COMMISSIONER: Just while I think of it, there are three or four places where, Corporal, you’re setting out basically what the law says in terms of excessive force in that, in one case it’s – well, I got it on page 16, that would probably be 18, where you’re talking about reasonable force. That’s one place there.

MS. O’BRIEN: Yes.

THE COMMISSIONER: Right at the end there: “Would otherwise shock the consciousness of the court.” I think this is a formula that’s laid down by the Supreme Court of Canada. They talk about the conscience of the court, shock the consequence – the conscience of the court and/or sometimes they talk about shocking the conscience of the community rather than consciousness. I just note that you might want to – nothing swings on it in this case –

CPL KNAPMAN: Sure.

THE COMMISSIONER: – but you might want to note for your next report.

CPL KNAPMAN: Thank you, Your Honour.

THE COMMISSIONER: And please check it because it’s only – I’m only going on recall but it struck me when I looked at and I read consciousness, it didn’t –

CPL KNAPMAN: I would have to go back and look at it, but I think – again, I know it’s in our training material as well but I will check out your –

THE COMMISSIONER: Got to correct those too.

CPL KNAPMAN: I didn't write them, Your Honour.

MS. O'BRIEN: Okay.

And I had just asked you about tactical errors or errors in risk assessment. Again, I'm going to ask you the same thing or a similar question.

In your opinion, did any of Constable Smyth's actions fail to adhere to his training with respect to the Use of Force Framework and the seven tactical principles?

CPL KNAPMAN: I think there was some tactical errors that he didn't adhere to, to his training. Correct.

MS. O'BRIEN: Okay. And, again, as we go through I'll get you to address those as we come to it.

If we could go to page 5 of this document, and on the last – I believe it's the last sentence here, you note here – and this is in, actually, I believe in the facts sections or the synopsis you did of the facts, Corporal Knapman.

You said: Constable Smyth initiated an intelligence risk "assessment investigation as this was a common occurrence to be notified by the Premier's Office regarding disparaging social media comments, even if they were ambiguous and/or lacked criminality."

Do you have any specific training in regard to intelligence threat assessment?

CPL KNAPMAN: Yes, I do.

I was a member of our divisional criminal analytical section in Nova Scotia. I participated in the national threat assessment as well as the divisional threat assessment with respect to tactical and strategic intelligence.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Just the previous paragraph before the italicized, that there again is a minor typographical error. You say it was in response to a tweet by the premier. I think what's meant there is a tweet to the premier by the Twitter account holder.

MS. O'BRIEN: Yes.

THE COMMISSIONER: Just again, nothing too (inaudible) just a minor thing.

CPL KNAPMAN: Yes.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Go ahead.

MS. O'BRIEN: And as part of your work on this file, speaking of tweets, did you review Mr. Dunphy's tweets? And I don't just mean the one that you had actually quoted here in your report, but did you review his tweets in the full context. That tweet was one of a series of tweets.

CPL KNAPMAN: There was several tweets that I reviewed. I don't know the number but there was some previous ones that were there. I believe that it was a photocopy of what was in Constable Smyth's folder.

THE COMMISSIONER: Uh-huh.

MS. O'BRIEN: Okay.

And when you read those tweets in their full context did you consider them to be a threat?

MR. KENNEDY: I'm not sure this witness is – this is part of the problem we're having with this kind of a proceeding, Commissioner, that risk and threat assessments, those terms are used interchangeably and I don't think they are interchangeable.

THE COMMISSIONER: I'm having a bit of a similar problem and I think we'll get it –

MR. KENNEDY: And that's something that we're trying to get clarified.

THE COMMISSIONER: We'll explore and get it clarified. Yeah, in terms of the way it's used in the training manuals, for example. I agree.

But in this case, I think, I'm not sure you were here when – did we get – we got into that briefly with, early.

MS. O'BRIEN: Which I did ask him just a moment ago if he had any training in intelligence threat assessment, which is what he writes here in his report.

THE COMMISSIONER: Right.

MS. O'BRIEN: So –

THE COMMISSIONER: I seem to remember in one of the reports, upper left-hand corner, we had the definition of –

MS. O'BRIEN: No, you're –

THE COMMISSIONER: That's coming up in –

MS. O'BRIEN: Yes, that's Lenehan.

THE COMMISSIONER: – Sergeant Lenehan's thing.

Mr. Kennedy, your point is fair, but I think Corporal Knapman might be able to help us in terms of understanding.

It seems that in some cases threat assessment or risk assessment, I'm not sure which one, is used in somewhat artificial or specialist manner that wouldn't necessarily be the way an ordinary individual would use them.

CPL KNAPMAN: Well, risk assessment has to do with the officer's acting, planning and assessing. A threat assessment may be in more of a global situation where you have the Prime Minister visiting so you're going to a threat assessment to see if there's any potential threats for that visit.

THE COMMISSIONER: Well, that's – okay, I can see that. That's one example, I think, that was given by a prior witness who talked about risk assessment relating to the officer's personal risk, but I'm not sure which – it was just before the page with the colourful wheel on it. It might have been in the targeting violence –

MS. O'BRIEN: Managing Targeted Violence.

THE COMMISSIONER: – targeted violence manual that we had, on one of those pages. I think I mentioned it as we were going through. This is weeks ago now, so I can't –

CPL KNAPMAN: Because the risk assessment for an officer is – a lot of it the emphasis is on that person's perceptions and experiences, right? Whereas a threat assessment is you're doing – is there potential threats out there to harm a visit or endanger a visit or a function or what so –

THE COMMISSIONER: But if you find that there is what you'd consider a threat out there, do you then proceed to do a risk assessment in terms of what is the likelihood of that, because that's –

CPL KNAPMAN: We call it a threat assessment.

THE COMMISSIONER: Okay, well then –

CPL KNAPMAN: So it would be a global workup, whereas a risk assessment is more of that personal to that officer, that's based on his experiences and that, whereas a threat assessment is more of that global – without having that uniqueness that a risk assessment for an officer would have.

THE COMMISSIONER: Right.

MS. O'BRIEN: And if I – oh, sorry.

THE COMMISSIONER: Sorry, just if I could explore it a little bit more.

CPL KNAPMAN: So we –

THE COMMISSIONER: If you're doing – if you find that there's a risk, you're really finding, aren't you, that there's a likelihood of, or some likelihood of, the threat coming to fruition? Is that fair?

CPL KNAPMAN: It's true. Your risk assessment is continuously you're looking for, yeah, is there a potential threat here? So I guess there is some overlap between a threat assessment.

We did threat assessments on organized crime groups in the division: What is the threat? Is there a threat to national security? Is there a threat to divisional security?

So a threat assessment can be very big, but I think where a risk assessment is, again, that personal thing, it relies on those four factors of situation, the person, the behaviour you're dealing and the big thing is the officer's perceptions. And you don't necessarily look at perceptions when you look at a global threat assessment, but ...

THE COMMISSIONER: So that's four. You're saying the risk you're into is situational –

CPL KNAPMAN: So the risk assessment –

THE COMMISSIONER: – perception or tactical –

CPL KNAPMAN: And behaviour.

THE COMMISSIONER: Hmm?

CPL KNAPMAN: So a police officer’s risk assessment is based on situation, their perceptions, tactical consideration and the person’s behaviour that they’re dealing with.

THE COMMISSIONER: Person’s behaviour, right.

MS. O’BRIEN: And I think you’re – sorry, Corporal Knapman, when you’re describing that, when we look at the Use of Force Model –

CPL KNAPMAN: Yes.

MS. O’BRIEN: – that’s what you’re talking about. When you use the word “risk assessment” –

CPL KNAPMAN: Correct.

MS. O’BRIEN: – what I’m hearing you say is that you’re looking at the officers doing their assess/plan/act portion of the National Use of Force Model, assessing using their own perception, assessing the subject’s behaviour, assessing the tactical considerations and perception tactical considerations, subject and –

CPL KNAPMAN: Situation and behaviour.

MS. O’BRIEN: And the situation, right, and behaviour.

And I think, Commissioner, we may find that different witnesses use a different –

THE COMMISSIONER: That’s part of the problem, really.

MS. O’BRIEN: Yes.

THE COMMISSIONER: They’re using it in different senses.

MS. O’BRIEN: Yes, but I think if we’re clear on how Corporal Knapman is using it. As part of your report here, as part of doing your opinion and your assessment of Constable Smyth’s behaviour and reasonableness of that, did you give any consideration to the reasonableness of Constable Smyth visiting Mr. Dunphy on that day?

CPL KNAPMAN: Yeah, so I think you said Smyth’s behaviour, but it was Smyth’s perception. So he would look at – I did look at the reasonableness of his attendance –

MS. O’BRIEN: Okay.

CPL KNAPMAN: – which would be based on his perceptions, tactical considerations, the situation and what he – at this point, he wouldn’t have knew what the behaviour was.

MS. O’BRIEN: What he would’ve – what Mr. Dunphy’s behaviour was?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

And what was your opinion with respect to the reasonableness of Constable Smyth's attending at Mr. Dunphy's home.

CPL KNAPMAN: I believed it was reasonable based on his experience and his qualifications.

MS. O'BRIEN: Okay.

And if you could just brief –

MR. KENNEDY: Excuse me, Commissioner, I just want to point out I wasn't – my comment of risk and threat assessment was nothing to do with this particular witness; I was just outlining that this is an issue that has been reoccurring throughout and it's one that we're trying – we do need and are trying to get cleared up.

THE COMMISSIONER: Sure, we need some clarification.

MR. KENNEDY: Yup.

THE COMMISSIONER: I am just going to suggest that we might possibly put – it might help if we put the will, say, of Sergeant Lenehan – we are at the top of page 6. I had in my mind's eye on the other page, but the top of page 6 he discusses threat assessment and risk assessment.

Counsel, that throw you off if we just had Corporal Knapman refer to that at this point, if we can show it to him?

MS. O'BRIEN: We can, Commissioner. I don't know – we certainly can. There is no harm in doing that and maybe he can just distinguish what he's referring to as risk assessment might not be what Lenehan is.

THE COMMISSIONER: Well, that is all –

MS. O'BRIEN: Yes.

THE COMMISSIONER: I just wanted to get some – so you can use my hard copy, if you like.

MS. O'BRIEN: I'm just going to approach you here.

CPL KNAPMAN: Sure.

MS. O'BRIEN: So you'll just (inaudible). You'll see there's two definitions on the top of this page, Corporal Knapman, it's only a few lines, one defining a threat assessment and one defining a risk assessment. And the question to you is, particularly with the definition of risk assessment here, is that the same type of risk assessment that you were talking about or is it something different?

CPL KNAPMAN: No, it's something different. This is not – this context that I'm reading on this report, this risk assessment is not dealing with a member's decision making with respect to a use of force.

THE COMMISSIONER: So you'd understand why us poor laypersons would have difficulty.

Thank you.

MS. O'BRIEN: So –

THE COMMISSIONER: That's all right, you have spelled out the – there are three factors, but perception and tactical considerations are sort of combined into one.

CPL KNAPMAN: Correct.

THE COMMISSIONER: So you have the situation, perceptual and tactical and subject behaviour, and that's what you consider to be involved in a risk assessment'

CPL KNAPMAN: That's correct and that's the way we teach it in –

THE COMMISSIONER: And threat assessment would be a broader perspective you're looking at.

CPL KNAPMAN: Yes, like I know within the RCMP we also do threat assessments when we feel that there's a – that a member may be in danger, for whatever reason. But again, that's different than this risk assessment that I am talking about.

THE COMMISSIONER: Right. So if you – your threat assessment would read – my impression is that in the ordinary language of the street, people would say they're checking out what the risk is in Ottawa or the risk is in –

CPL KNAPMAN: Correct.

THE COMMISSIONER: And you would say they are assessing the threat.

CPL KNAPMAN: Right.

THE COMMISSIONER: But it seems to me they're analyzing the risk of having the threat implemented or carried out. So there is a connection there.

CPL KNAPMAN: Correct.

THE COMMISSIONER: Anyhow, I won't push that. We're not into semantics here, but we're, rather, trying to understand what each witness is saying, I think.

Any counsel have any question on that before ...?

MR. KENNEDY: Again, Commissioner, we're going to even fine tune this a little bit more in that there are different kinds of threat assessments and the threat assessment we would be dealing with here is in the protection of public officials.

THE COMMISSIONER: Okay, yeah.

We had a hint from the testimony of Mr. Mahoney of the workers' compensation board who has done a fair bit of work in – I don't know if it's risk or threat assessment we call it. I think he wrote his doctorate, didn't he, on the topic? So he was starting to utilize some of the, I'll say jargon, not pejoratively, but the specialized language.

So there's a whole entire field out there and I'm not sure I want to know everything that's contained in that field, but I just want enough to know how to get through this process of the inquiry.

Okay, thank you.

MS. O'BRIEN: Okay, I'll field that, Commissioner.

THE COMMISSIONER: Sorry?

That was a bit of a plea for help, but not too much.

MS. O'BRIEN: Okay.

So I'm now going back to your report, Corporal Knapman, and we're going to get into your analysis of the use of force encountered here, and I'm on page 13. It starts on page 13 of your report. And again, I'm not going to review every line you've written here in detail, but as I understand it, when you get into your analysis, you start with the situational factors. And here at the beginning of this section you give us a bit of a description of what situational factors are, very much like what you gave to the Commissioner a few minutes ago when you were describing the Use of Force Framework.

And then on the next page, on page 14, you get into your findings, and having read these, I think at the beginning you really summarize some of the facts that you found with respect – relevant to the situational factors. And then in the last section of this, the last sentence of this section, you summarize: "It is the writer's opinion that Cst. Smyth conducted the proper background checks and that there was no indicators that he would be faced with the situation that transpired."

To review this section of your report, Corporal Knapman, what I'm going to do is put some specific situational facts to you and I'm going to ask for each one whether or not your – whether your opinion would be affected or was affected by that particular fact and how. And when I'm asking this, I'm not only asking about your ultimate opinion as to the reasonableness of Constable Smyth responding with lethal force to a rifle, but I'm also going to ask you to consider these factors with respect to Constable Smyth's risk assessment as you have defined risk assessment for us, whether or not he was acting in accordance with his training and whether there was any tactical errors involved on the element.

Some of these facts that I'm going to put to you I believe you already were aware of when you wrote your opinion; some of them might not have been. And so in each one, again, we don't need a lot on each one, but just want to get your – explain to the Commissioner your assessment of these.

CPL KNAPMAN: Okay.

MS. O'BRIEN: So the first one is that Mr. Dunphy had been charged in 2005 with uttering threats. And we know that the charge was withdrawn and ultimately substituted for a peace bond.

Did that fact have any impact on your opinion?

CPL KNAPMAN: No, it didn't. That's a very dated charge that was withdrawn, and I believe Constable Smyth received further information that it involved the sister-in-law and brother. And he had further conversation with them and he asked them if he was – if they were afraid, and I think the response was that they weren't afraid of him, but they felt uneasy. So given the nature that that was an old charge that actually wasn't a conviction, it was withdrawn, that didn't change my opinion.

MS. O'BRIEN: Okay.

What if background checks had revealed that Mr. Dunphy had a caution V or Victor for violence in his Criminal Name Index?

CPL KNAPMAN: Again, that would be – the Criminal Name Index is not a caution. It can lead to – Criminal Name Index, again, is just – it's recording that there was a charge but, again, it would be something that could be withdrawn. If it was a –

MS. O'BRIEN: Sorry, I might not have been clear that there was a flag for violence, a caution – I'm not sure if I'm saying it right, but a flag, a caution flag, Victor for violence.

THE COMMISSIONER: That's the way it was written in the form.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Sorry?

CPL KNAPMAN: Yes, 'cause I haven't seen that. I know that when I ask for a want or a 29, if there's something recent like a recent assault and there's violence, then they're going to give you a caution violence, big letters; but if it's a previous charge that's been withdrawn and it's 10 years old, you'll get a small little V next to the FPS or the fingerprint identification number. But to me that's different than a flag saying this person is violent. Criminal Name Index can be 25 years old versus a CPIC hit saying, again, that this person is violent, which would have been entered recently.

MS. O'BRIEN: Okay.

What I'm going to do is I'm going to leave that question for now and on the break I'm going to get you the actual print out that we're referring to. And I apologize, I –

CPL KNAPMAN: Because I believe that Smyth was given that information from Cox that there was a charge that was withdrawn, and that goes hand in hand with a CNI entry.

MS. O'BRIEN: Okay, so I'll show you the document that we're referring to.

What about the fact that Constable Smyth first attempted to visit Mr. Dunphy prior to his visit of Dick and Debbie Dunphy, the neighbour and his brother- and sister-in-law? And this question is: Do you still consider this – because you mentioned the visit to Richard and Debbie Dunphy as part of his background-check section here, when you refer to it. Do you still consider it part of his background checks if he'd actually attempted to visit Mr. Donald Dunphy prior to making that inquiry at the neighbour's house?

CPL KNAPMAN: So I'd still think it would've been reasonable if he did – if he did go there and Mr. Dunphy was there, I think it would be reasonable that he would attend there. He had gathered some information. You know, he had the CFRO check that showed that he did not have any firearms. He spoke to Constable Cox, who checked the local indices to say that there was no entries that he was aware of. There was no entries for – under the *Mental Health Act*.

So there was nothing that would cause me concern. I think it was reasonable even if he – and I've done it myself. It would be reasonable to go there to investigate this matter, you know, just the way it played it out, but I still think it would be reasonable that he would've – he could've went there without going next door.

MS. O'BRIEN: Okay.

What about the fact that Richard and Debbie Dunphy reported that they had not had any contact with Mr. Dunphy for approximately 10 years? Would it still be reasonable for – was it – did you still consider it reasonable for Constable Smyth to rely on the information or to use the information that they gave him as part of his risk assessment?

CPL KNAPMAN: Again, he did gather some information. You know, even though it was dated, he was told that they weren't afraid of him. They made him feel uneasy. I know there was some – what Constable Smyth perceived, and I can only go by his statement, was that they said there was no guns and that he was not a hunter. Again, it's his perceptions that he's utilizing for his risk assessment.

So even though that information was dated, I still think it's – it's still part of the gathering information that he obtained, and I don't think – it's still reasonable that he would still attend.

MS. O'BRIEN: Okay.

And what if the information was not that, as you reported here and just said, that Mr. Dunphy did not have any guns, but rather that Richard and Debbie Dunphy did not know whether or not he had guns?

CPL KNAPMAN: Again, the big difference there, if they would've said that, yes, Mr. Dunphy has five guns, that's a big difference versus we don't know or – he's already done a CFRO check; there's no registered firearms. Again, he's going on the information that he has.

So if they would've said, yes, he had guns, that would – again, that would play into his perceptions and his risk assessment.

MS. O'BRIEN: Okay. So am I understanding correctly, you, in this circumstance, you didn't see any difference –

CPL KNAPMAN: No.

MS. O'BRIEN: – any practical difference in his response between an answer of he has no guns or I don't know if he has guns.

CPL KNAPMAN: Correct.

MS. O'BRIEN: Okay.

What about the presence of a sign on the house that said to the effect of: This is a poverty house; enter at your own risk; political people not welcome unless you're going to fix the workers' compensation system.

CPL KNAPMAN: Again, I have to base my opinion on the experiences of Constable Smyth. In his statement he says that it was quite common, that he saw signs like that. So it wasn't to him – in his perceptions, his risk assessment, it wasn't something that caused him great concern. And I think that's reasonable. Again, I don't work in the PSU unit but I've gone to homes that have had signs and there was nothing there that would've changed my opinion with respect to if it was reasonable for him to go there.

MS. O'BRIEN: Okay.

What about him observing security cameras outside Mr. Dunphy's house?

CPL KNAPMAN: Again, security cameras today with the – they are very reasonable. I have one on my own house. Would it cause – again, there's a difference between risk assessment and awareness. And I don't know – in the material that I have, I don't know if Constable Smyth actually saw those cameras. I don't have any recollection in the material. Would it change his risk assessment?

MS. O'BRIEN: I think, assume that he did see the cameras.

CPL KNAPMAN: Okay. And even if he did, again, I think they're common now. I don't think it would change my opinion on his risk assessment.

MS. O'BRIEN: Okay.

What about that Constable Smyth saw a vehicle in Mr. Dunphy's driveway that he knew was not registered to Mr. Dunphy. Would that change your opinion on whether his actions in visiting the house alone were reasonable?

CPL KNAPMAN: I think they were reasonable.

MS. O'BRIEN: Okay. And I guess to fulfil that thought out – the thought might be that that might lead someone to suspect that there was somebody else in the home.

CPL KNAPMAN: Again, that would be part of his risk assessment with respect to how many people are in that house.

MS. O'BRIEN: Okay.

The next fact I'd ask you to consider is that on April 4, 2015, which was the day before the shooting incident, Constable Smyth text a friend to tell him: Gotta go deal with some lunatic threatening the premier, et cetera. The friend responded with: Cool, we'll have beer waiting for you. Constable Smyth's response soon after that was: If I have to arrest him I'll be late. And later when the friend text him and posed the question: Did you arrest buddy? Constable Smyth responded with: Nope, tomorrow. Would that –

MR. KENNEDY: Mr. Commissioner, the only caution I would put on that, we are going to hear from Constable Smyth in terms of –

THE COMMISSIONER: Sorry?

MR. KENNEDY: The only caution I would put on the utilization of these statements right now is that we're going to hear from Constable Smyth as to what they mean.

THE COMMISSIONER: Right. It'll be in the context, Mr. Kennedy, that – but I am just wondering if there's any problem with putting it to Corporal Knapman, you know. I think, as I understand it, Ms. O'Brien is merely saying what if and then we will have Constable Smyth's testimony in addition to the testimony that we have right now.

Well – yeah, these are the BBMs, aren't they?

MS. O'BRIEN: The BBM messages and I said texting –

THE COMMISSIONER: Yeah, the BlackBerry messenger.

MS. O'BRIEN: – but actually it was BlackBerry messages.

THE COMMISSIONER: They were picked up after Constable Smyth had testified, so we are going to be going back to ask Constable Smyth about it.

MS. O'BRIEN: So my question for –

THE COMMISSIONER: Let me think.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Let's take a break and I'll think about that.

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: Sorry, go ahead first – yeah, go ahead.

MR. KENNEDY: Commissioner, what we have here, we have texts, we have lines without any inflection, without any tone, without any context in terms of the voice and things like that. So it's really, to put it forward as simply standing for what it states there, without that explanation, I think, is a little bit dangerous. But again, I'll leave it to you.

THE COMMISSIONER: Well, it depends. I'm – how do I put it? It's not my first rodeo, is that what they say now? I'll give that careful consideration and I'll think about it a bit more during the break.

How are we doing for ...?

MS. O'BRIEN: I am moving along. I'm probably another hour to an hour and a half from being done.

THE COMMISSIONER: Okay. So we're going to be pushing it with counsel's questions. How are we for tomorrow morning if we don't finish?

MS. O'BRIEN: Yes, I think we have a fair bit of time devoted for Darryl Barr tomorrow. I think he could be shortened a little. So I think if we do not finish with Corporal Knapman today, we could take a little bit of time there. But I will do my best over the break, Commissioner, to tighten us up. We lost the morning. We weren't expecting not to have a morning –

THE COMMISSIONER: Well, we had an unexpected slowdown this morning so it ...

MR. FREEMAN: The preference would be, Mr. Commissioner, if it were possible, to push through later today as opposed to tomorrow morning, if that's possible.

THE COMMISSIONER: All right, we will get counsel to consider that.

MR. FREEMAN: It may not be, so we can talk about it during the break.

THE COMMISSIONER: We're prepared to do it if all counsel have no problems with –

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: Sorry?

MR. KENNEDY: The only problem is there are other things that are being working on to try to get this done.

THE COMMISSIONER: I understand, so we're not –

MR. KENNEDY: It's difficult to sit beyond 5 o'clock.

THE COMMISSIONER: I know. I agree, Mr. Kennedy, but just give it consideration out of how if we can accommodate somebody, we will.

Okay, we'll break for recess, 15 minutes.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Okay, go ahead.

MS. O'BRIEN: Thank you.

Corporal Knapman, when we broke, I had read to you a series of BBMs. Do you need me to reread them, or do you recall?

CPL KNAPMAN: If you would, please.

MS. O'BRIEN: Yes.

On April 4, which was the day before the shooting, Constable Smyth I'm going to say texted a friend to tell him, "Gotta go deal with some lunatic threatening the premier etc."

The friend responded, "Cool, will have a beer waiting for u."

Constable Smyth, soon after that, was, "If I have to arrest him ... i'll be late."

And later, when the same friend texted him, "Did you arrest ... Buddy," Constable Smyth responded with, "Nope, tomorrow."

If you had had that information, which might go to officer perception, I would assume, but if you'd had that information when you did your report, would it have affected your opinion in any way?

CPL KNAPMAN: I guess the big question would be I'd have to consider what Constable Smyth's mindset was. I have an opinion on if that was actually the case of his mindset, or was it just kind of shooting the – texting something that wasn't accurate? I won't say accurate, or he was just talking with his friends. If his sole intention was to go there to arrest, that would change my opinion.

MS. O'BRIEN: Okay.

What about –?

THE COMMISSIONER: Mr. Kennedy, that would be something that would be dealt with in closing argument, I would think, wouldn't it? In terms of the wait 'til I get to that, that's something for you to deal with me on or make your presentation.

MR. KENNEDY: Well, I do think you're going to have to deal with it in Coleman's report because, as opposed to what this officer has said, that he would look at it – you got to look at a couple of different avenues, Coleman looked at one avenue.

THE COMMISSIONER: Right. Oh, yeah, but that's fair game for you to raise in the assessment or the analysis of Dr. Coleman's report.

Yeah, go ahead.

MS. O'BRIEN: Thank you.

I just have three more factors to put to you, Corporal Knapman.

CPL KNAPMAN: Sure.

MS. O'BRIEN: What if Smyth – or that Smyth had reviewed Mr. Dunphy's Twitter feed, like a good portion of it – he said he went back about over a year – and if during that year's period, he had seen some suicidal and violent ideation in Mr. Dunphy's tweets. If you had had that fact, would it have affected your opinion in any way?

CPL KNAPMAN: Yes, it would.

MS. O'BRIEN: Okay. Can you explain how that would affect?

CPL KNAPMAN: So again, if there were indications of mental illness or suicidal tendencies, that would increase his risk assessment. Again, just – what was the time period you said?

MS. O'BRIEN: He said he went back over a period of a year and the texts in question were not – they referred to rightful workers – people on workers' compensation in Newfoundland should have a gun so that they can – I'm paraphrasing here – so that they can shoot themselves because it's better to do that than have to live under the workers' compensation regime in this province. That type of tweets that he had made within the last year, and actually I think it was in the last several months.

Pardon? Within the last one or two months.

CPL KNAPMAN: And just so I'm clear, was it direct? And, sorry, you'll have to repeat your first – the first part of the question because I'm a little ...

MR. DROVER: (Inaudible.) We have a good sampling of them that Mr. Kennedy had put in, I think, through Constable Smyth.

THE COMMISSIONER: Yeah, the tweets are there. The tweets are there somewhere, I think. As a matter –

MR. DROVER: So instead of just describing them as violent and suicidal, it would be nice to be able to actually see them.

THE COMMISSIONER: Yeah, that's fine – that's fine. Look, Mr. Kennedy, you have it there with you?

MR. KENNEDY: I can tell you the references.

THE COMMISSIONER: Sure.

MR. KENNEDY: They are P-0114, P-0115 – that's the one referring to better shoot yourself, injured workers carry a gun.

Sorry.

And then living like wild animals, I don't know if she wants to go back that far.

MS. O'BRIEN: No, just the other two. I think that would be fine for the purpose of my question.

MR. KENNEDY: That would be P-0114 and P-0115.

MS. O'BRIEN: Thank you, Mr. Kennedy.

Can we please bring the first of those up, Madam Clerk?

THE COMMISSIONER: Okay, right there.

MS. O'BRIEN: So here we go: "... its better to shoot yourself if seriously hurt on a job in Newfoundland Canada, cause Whscc in NL will make you u suffer more ... most greedy Newfoundland business ppl rob ppl blind" and they beat up worker on their own jobs "they give order2kill the wounded"

And the next one is P-0115, please, Madam Clerk.

MR. KENNEDY: Or it could be P-0116, I'm not ...

MS. O'BRIEN: Okay, thank you.

Okay.

"Mass murder of injured workers by starvation in Newfoundland Canada ...death penalty was abolished in Canada for murderers, but Govt's kept death penalty in place for injured" workers.

So those were the ones, violence, and the first one being, I think, that had some suicide – you know, better to shoot yourself, that type of ...

So the question is: If you'd been aware that Constable Smyth had seen these in Mr. Dunphy's Twitter tweet within the, you know, previous couple months, would that have affected your opinion in any way?

CPL KNAPMAN: Again, I think that first tweet that I saw, you'd really have to look at the context that was said. Would it change the risk assessment? Again, I think it was a very – and this my opinion – to me, it's not a direct saying that I'm going to commit suicide. It was kind of better off dead than doing something. So you really have – to me, again, it's my opinion – you'd have to look at the context. Now that I saw that, to me that's not huge, what I initially thought, but again, that's something that would play in.

Would I change my opinion? No. But, yes, it would be something I would definitely be considering.

MS. O'BRIEN: Okay.

What about that Constable Smyth was aware there was spotty cellphone coverage in the area, in Mitchells Brook, around Mr. Dunphy's home and he was not carrying a police radio and he did not book out with his comm centre prior to attending Mr. Dunphy's home? Would that fact affect your opinion?

CPL KNAPMAN: Only that my opinion would be that that would be a tactical error. Again, it doesn't affect my opinion, but communications are there for a reason. And in the event that he needed help, without logging in, if he was injured no one would know where he is. So, to me, that's a tactical error.

MS. O'BRIEN: Okay.

What about that another uniformed officer was available to attend the residence with Constable Smyth and had offered to do so?

CPL KNAPMAN: I think I spoke to that in my report. Based on Constable Smyth's perceptions and his previous dealings with these type of investigations, he felt that this was routine and, in fact, that a uniform presence may hinder his rapport building, his intelligence gathering.

Given the fact that I believe that detachment is 45 minutes away, it's not as simple as being in a large city where you have those resources heavily available. But the bottom line is that I think it was reasonable, given his experience, that a uniformed presence may hinder that.

There is a misconception that multiple officers are safer but there's been studies, both in Canada and in the US, that show in fact that's the contrary, that more officers are injured and/or shot and killed when there is multiple officers. The ratio is probably – in the States study, about – I'd have to get the numbers, but I know in Canada the study by the Department of Justice was that, I believe, 54 per cent of multiple officers result when there's an injury or death versus 46 by a single officer. So there is a misconception that having more officers is better.

MS. O'BRIEN: Okay and –

THE COMMISSIONER: As a matter of fact, one of our first – well, recent police homicides back in the '70s, was it, the '60s, the IWA strike. There was a policeman killed in the course of a large number of police officers attending at a riot, I think.

MR. DROVER: That was the '50s, I think.

THE COMMISSIONER: Sorry?

CPL KNAPMAN: We've had recent examples.

THE COMMISSIONER: Yes, I've forgot the exact. Sorry.

CPL KNAPMAN: Like Mayerthorpe, where we had five police officers killed by a single person. Or not five, four actually, and the fifth officer shot that person.

THE COMMISSIONER: It might – you say the '50s, Mr. Drover. It might have been just around the '59, '60.

Yeah, go ahead.

MS. O'BRIEN: In this study you're talking about this Department of Justice. Do you know if an account was taken of the fact that when it's a more serious, you know, a more serious situation, that it's more likely to have a multiple officer response?

CPL KNAPMAN: I think it covers both. It covers different crime types, right from an unknown risk, a vehicle risk stop, which now is the most dangerous thing to deal with, up into dealing with robberies, which is the, actually, the most dangerous. But I think it talks about different events.

There's a study by the Department of Justice in the US, as well as there are stats from Statistics Canada.

MS. O'BRIEN: Okay. Thank you.

I'm going back to one I brought you to earlier and I didn't have an exhibit number. If we could bring up P-0390, Madam Clerk. And this has to do with the caution flag.

CPL KNAPMAN: Okay.

MS. O'BRIEN: If we could try page 6 of this document, please.

Okay, I can probably get the actual one. It's in the appendix, I think. There we go. I think we'll get it here in just – here we go.

So this is, I think, a printout of what was there on Mr. Dunphy's CNI. If you do a CPIC search, we're learning that one of the pieces of information that comes back is a CNI. And here we have here an FPS and it says "Caution V" and then down here it says – there's a note for violence and drugs.

So if you – if Constable Smyth – if the fact was that Constable Smyth had had that information prior to his attending, would that have changed your opinion?

CPL KNAPMAN: I don't know if he had this actual document, but it's my belief that –

MS. O'BRIEN: I can tell you he didn't, so this is –

CPL KNAPMAN: Okay, he didn't.

MS. O'BRIEN: Yes, he did not.

CPL KNAPMAN: But I believe he had that information with respect that he received from Constable Cox saying that there was a withdrawn uttering threats charge. When I look at what we call a Criminal Name Index – and I'll be frank that a lot of police officers are given that information and it's not paid to it attention because it's dealing with a matter that, again, when there was a charge but didn't result in a conviction. So if it was withdrawn, they have to put the weight, you know, did it actually happen? The charge was withdrawn. I know in this case it went to a peace bond.

I believe, in my opinion, that he was aware of that uttering threats charge, which would be indicative of this V, and my opinion would be the same.

My opinion would be different if it was a caution under 29, which would mean that it was very recent. We're dealing with a Criminal Name Index that's 10 years old.

MS. O'BRIEN: When you say a caution under 29, what do you mean?

CPL KNAPMAN: Sorry. So a 29 is what we call under CPIC, or the Canadian Police Information Centre, a person's check. When you ask for a person's check under a 29, you're asking if there's any warrants, any flags. You could have a person on there who is infectious, violent or suicidal. It also covers if there's recent charges and any outstanding warrants.

MS. O'BRIEN: Okay. So you're saying this would not – because it's your understanding that this caution flag would have given Smyth the same information as a withdrawn uttering-threats charge. Is that what you're saying?

CPL KNAPMAN: Correct. Correct, and that this is 10-years dated.

MS. O'BRIEN: Okay. And you understand that this is on the CNI.

CPL KNAPMAN: That is correct.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. O'BRIEN: Okay, yes, and we're getting different testimony, various different evidence on that, but all right. So that's your opinion how that would have affected.

And the evidence we have, to be clear, is that while Constable Smyth had information about uttering threats, that he had not been given information about a violence flag so ...

Okay, I just went through a number of factors, and I know you covered off each one individually and said, you know, no affect and in one case tactical error. When you look at all those factors cumulatively – because of course things, sometimes things – individuals, don't have affect, but when you look at them cumulatively, they may. When you look at those factors cumulatively, could they have had any impact on your ultimate opinion here? And when I say ultimate opinion, I also mean your opinion with regard to officer-imposed jeopardy or any errors in risk assessment.

CPL KNAPMAN: From what we've covered so far, no.

MS. O'BRIEN: Okay.

All right, I'm going to go back to your report, P-0744, and go to page 14. In this section, you cover off perception and tactical considerations.

CPL KNAPMAN: Correct.

MS. O'BRIEN: In this section, Corporal Knapman, you note here that Constable Smyth had seen a large stick on the floor of Mr. Dunphy's home and Mr. Dunphy had told him it was for protection.

Would that stick then be considered a weapon in your opinion?

CPL KNAPMAN: It could be. Again, there's many things in a household that could be used as a weapon, but I think Mr. Dunphy says it was used for protection, so to me that is a weapon.

MS. O'BRIEN: Okay.

And what did Constable Smyth's training tell him to do in the presence of a weapon?

CPL KNAPMAN: Well, there's no hard-and-fast rule on this. Again, in this particular case, we can look at it both ways. Constable Smyth does recognize it and brings it Mr. Dunphy's attention and says, basically: I see the stick; what's it there for? He gets the answer and Constable Smyth comes back and says: As long as it stays there. So he is, in a sense, taking control of the situation. He's recognized it; he's identified it.

You know, he could – and, again, there's no fast, hard rules. Another option may have been to go move it; however, it may have aggravated the situation. Again, there's no fast rules on that, but I think he did identify it, addressed it, said I'm aware of it and it was reasonable what he did.

MS. O'BRIEN: Okay.

And what about with respect to the one-plus-one rule, which was one of the tactical principles you referred to earlier?

CPL KNAPMAN: Yes, so one plus one, again, he should be considering assuming – and I don't like to use that word, but he should assume that there was other weapons. I don't see in any of his statements where he talks about that, not to say that he wasn't thinking it.

MS. O'BRIEN: Okay.

The next section of your report, we'll come back, on page 15, is where you get into the subject's behaviour. And I just want to confirm, when I review your findings in this area, I believe, and please confirm, that you're commenting that the level of resistance of Mr. – you are commenting on the level of resistance of Mr. Dunphy. And in the last sentence here, where you say: "The moment Donald Dunphy pointed a rifle at Cst. Smyth his responding actions were consistent with the criteria required to intervene and use force if necessary in that he was attempting to stop dangerous and/or unlawful behavior and his use of lethal force was necessary to protect his life."

Is here – is what you're saying at this time, you're categorizing Mr. Dunphy's behaviour as grievous bodily harm or death? And I'm referring to the framework.

CPL KNAPMAN: Yes, if you look at the behaviour under the national use of framework, yes.

MS. O'BRIEN: Okay.

And just to remind you, Commissioner, the subject's behaviour goes from Cooperative, Passive Resistance, Active Resistance, Assaultive and Grievous Bodily Harm or Death being –

THE COMMISSIONER: I see that in my sleep now.

MS. O'BRIEN: Okay, yes.

So at this point you're categorizing Mr. Dunphy on the most extreme end of that scale.

CPL KNAPMAN: That's correct.

MS. O'BRIEN: Prior to Mr. Dunphy raising his rifle and presenting in that way, how would you have described his or characterized his behaviour with respect to the Use of Force Model?

And if I go to page 7 of your report, please, Madam Clerk, you – there's some statements that you make there that might help you with your description.

CPL KNAPMAN: So I can – I don't need to see that.

When he initially goes in and they're having the cordial conversation, I consider Mr. Dunphy's behaviour as co-operative. As things start to change a little bit, when Constable Smyth tells him to calm down, to me there is some language coming from Mr. Dunphy that would classify, I would, in my opinion, that he's becoming the passive resistant. He's not adhering to the commands or the requests of Constable Smyth.

MS. O'BRIEN: Okay.

Should Constable Smyth have considered tactically repositioning himself at that time when Mr. Dunphy's behaviour changed to passive resistance? We've had testimony where, in the corner of the room, and we have a map up there of the room, but he was in a corner of the room, a distance from the door. Should he have considered repositioning himself tactically at that time?

CPL KNAPMAN: No, and I'll give my reasons on that.

MS. O'BRIEN: Yes, please.

CPL KNAPMAN: And in fact given the – if we look at the diagram, from my understanding, Constable Smyth was in the area of the mantel. If you look at the table and the actual – the corner of the mantel, I think in his statement he says at one point he's leaning on the mantel. So I put him in that area that's closer to the couch at the end of the mantel.

MS. O'BRIEN: Yes.

CPL KNAPMAN: And if you remember looking back at the initial information on the National Use of Force Framework under Situation, one of the things was time and distance. Okay?

So if we look at time and distance, where Mr. Dunphy is actually seating – is seated, there's almost three barriers in between Constable Smyth's position and where Donald Dunphy is sitting. Also, you have to look at Constable Smyth is in a position – he's standing, he's in a dominant position, versus where Donald Dunphy is sitting.

If he's at the corner of the mantel where we believe, his exit point or his egress point is actually straight through. There's a straight path in the event that he had to and which he eventually does. If we look at it further, if he went further I would have issues, if he went further into the room more towards where the – I think it was a laundry hamper or it's white. If he went in there, he's getting further away from the egress point.

But my opinion is, given the location where he's at, he's created time and distance by having those barriers. He's straight on to Mr. Dunphy, you know, so that he can see his hands, but also there is the position for – the exit point is straight ahead. And if you went further, that chair was basically located at the door jamb, so I think it'd be unreasonable for him to be right next to him. He wouldn't have a straight-on view; there'd be no time and distance.

MS. O'BRIEN: Okay.

What about disengaging, so just leaving Mr. Dunphy's home? In your opinion, was that a viable option at that time for Constable Smyth?

CPL KNAPMAN: At what time are you talking? Sorry.

MS. O'BRIEN: When Mr. Dunphy's behaviour increases to passive resistance, could – do you think it was a viable option at that point for Constable Smyth to look at – one form of de-escalation, I understand, is disengagement – just leaving.

CPL KNAPMAN: Yeah, no.

MS. O'BRIEN: Okay. Can you explain that to the Commissioner, please?

CPL KNAPMAN: Yeah, so, again, I don't think at this point when he's passive resistant that we're to the point where the risk is high. Again, yes, I believe the risk – there's some threat cues that are happening that the risk may be getting a little higher, but I don't think we're to the point where he needed to disengage. There's no indication in any of the reports that I've read that would lead for a total disengagement.

MS. O'BRIEN: I'm going to go, please, Madam Clerk, to page 16 of Corporal Knapman's report. And this – we're moving into the section of your report, Corporal Knapman, which is "Justification for the Use of Force." And your findings – you start with a number 1 here, and you're just saying, when you're looking at whether use of force is justified in law, that you're looking at whether "the officer lawfully placed ... was the ... use of force of intervention necessary?" And "Were the officer's actions objectively reasonable given the totality of the circumstances?"

And here in your "Findings" section you note that: "In this situation Cst. Smyth believed that he could safely attend the residence of Donald Dunphy and interview him regarding the comments he made on Twitter. The situation rapidly deteriorated when Donald Dunphy accessed the firearm and failing to heed commands to stop pointed the firearm at the police officer. Cst. Smyth at this point was reasonably in fear for his life. Donald Dunphy possessed the weapon, intent and delivery to kill or grievously harm the officer. Cst. Smyth had no choice at that time but to defend himself. The use of lethal force was defensive in nature, necessary, reasonable and warranted given the situation. Any police officer placed in the same position inside the residence would respond in a similar fashion – anything less might result in their death."

When you're referring to the situation rapidly deteriorating, I take it you're referring to Mr. Dunphy getting – starting out getting passively resistant and then increasing agitation right up 'til the time that he produced the rifle. Is that what you're referring to?

CPL KNAPMAN: No.

MS. O'BRIEN: Oh, no, okay.

CPL KNAPMAN: So when I say rapidly deteriorating, I'm referring to the firearm being pointed at Constable Smyth.

MS. O'BRIEN: Okay.

Prior to the situation deteriorating to that point, in your opinion were there opportunities for Constable Smyth to de-escalate the situation?

CPL KNAPMAN: I believe he did. Even though I think some of the things that he did were tactical errors, I believe there were instances where he tried his own types of deactivation or – deactivation. Been a long day.

MS. O'BRIEN: We have a number of them around here, so we're all very sympathetic.

CPL KNAPMAN: I'm just having a – I'm not going to say a senior's moment, so ...

MS. O'BRIEN: So, okay, do you think it was – you say he made some tactical errors, but he did make attempts at de-escalation. Is that what you're saying?

CPL KNAPMAN: Correct.

MS. O'BRIEN: Can you explain, what were the tactical errors that you believe he made and what were the attempts at de-escalation in your opinion he made?

CPL KNAPMAN: Okay, so if I look at the tactical errors, I think the first error is that he had – in his hands he had a pen and a paper. To me, that is – my opinion, that's a tactical error because if you have to intervene, now your both hands are tied up. Although it's not a big deal, studies have shown that a quarter of a second is the difference between life and death of a police officer and it just takes that little bit of time to drop those items to access the intervention that you need. So that's number one, the tactical error.

MS. O'BRIEN: Okay.

CPL KNAPMAN: Number two tactical error was – and this kind of ties in to some de-escalation but – and there's actually – actually, there's three tactical errors that I want to talk about. The second one is that, in attempts to de-escalate, he took his eyes off of Mr. Dunphy. He's looking down at the file folder or he's pretending to write notes.

One of the tactical principles is that the threat comes from the hands and by doing so, although it doesn't affect the outcome, again, it's something that may slow down. Maybe he observed the threat sooner, the firearm, but it's a tactical error not to watch the hands.

By doing so, by – and I'll go back to this one, but I'll talk about the third tactical error. The third tactical error, again, although he thought that he could –

MS. O'BRIEN: Maybe – sorry, maybe if you pull back just a little bit. I know it's so hard with these microphones to get it right.

CPL KNAPMAN: Sometimes I don't think I'm broadcasting so ...

MS. O'BRIEN: Yes, there you go.

CPL KNAPMAN: How's that?

MS. O'BRIEN: Try that.

CPL KNAPMAN: That's good?

MS. O'BRIEN: Because we were just getting a little static.

CPL KNAPMAN: Okay.

So the third – although it's not a huge tactical error, we teach our members even when interviewing someone they should be in what we call a fighting stance. It's a non-aggressive fighting stance. But at one point I recall in the statement, Constable Smyth says he's leaning on the mantel and he's doing that for attempts to de-escalate.

So, again, he wasn't in a proper stance to deal with a situation. Although he had time and distance by having the tables for that process of the reactionary gap, I think that, you know, that's not something that we normally teach. Now, those are the tactical errors that I observed.

With respect to what I think he did for de-escalation, number one is I know when he moved his feet around on the carpet and he saw that there was some bugs. Although I believe Mr. Dunphy

took it out of context, I think he was actually trying to de-escalate by showing some empathy for him saying that I have concerns. The concerns were the conditions that he was living in. In Constable Smyth's statement, he believes that Mr. Dunphy believed that he had – he was talking about the tweets, but I really think that was possibly a de-escalation.

The second one that I already talked to, it seemed that Constable Smyth looking around the room, I guess the squalor or the condition of the residence, that seemed to aggravate Mr. Dunphy. So Constable Smyth, to try to alleviate that, looked down at his file folder and pretended to write notes in it in attempts to de-escalate.

The third thing was that he leaned on the fireplace which, again, a lot of times when you look at de-escalation or crisis intervention or de-escalation – again, I don't think there's any indication here we were dealing with someone that was an emotionally disturbed person or what we refer to as an EDP, but I think body language can play a big part into trying to calm things down. So I think by leaning on the mantel, that's what he was doing.

And lastly, even though sometimes if we look back at our tactical principles and we talk about verbalization, sometimes you have to take control. And that means – again, I don't know the context of how it was said, what level the inflection, but at one point he tells him: Calm down, you're not under arrest. And I think he was trying to ease Mr. Dunphy.

Again, I don't know, again, from the statement how that was said, in what context or what the tone was; again, tone of speaking is huge in de-escalation. But I think Constable Smyth was basically trying to say: Listen, I'm not taking you out of your house; I'm just here to speak to you, calm down. So I think that those were the de-escalation that I observed.

MS. O'BRIEN: Okay, so some of the de-escalation – you're saying there was attempts at de-escalation, but you identify them, too, as tactical errors.

CPL KNAPMAN: Yes.

MS. O'BRIEN: Okay.

With respect to the communications from Constable Smyth to Mr. Dunphy to calm down and I have some concerns here, that type of communication, the – I know you said you've recently done the critical intervention training or de-escalation and critical intervention training. Are those the types of effective communications to de-escalate a situation when you have someone getting very agitated?

CPL KNAPMAN: I think there's a difference in that the training is with respect to emotionally disturbed persons and mainly dealing with mental illness. I don't see any indication from the material that I saw that Mr. Dunphy suffered a mental issue. In my opinion, he was agitated; he was angry.

Sometimes you do have to take control and use those verbalization, again, depending on the way it was said. Yeah, sometimes even in the tactical principles, sometimes you have to take control.

MS. O'BRIEN: Okay.

A person can be in crisis without having an underlying mental health disorder though, can't they?

CPL KNAPMAN: We deal with a lot of people that have crises and that's a lot of times why they phone the police, but again I think there's a big difference between someone that is emotionally disturbed or EDP, which the de-escalation training was designed for.

THE COMMISSIONER: What is the abbreviation you're using?

CPL KNAPMAN: Crisis Intervention De-escalation. I believe that's the BC model that came out of the Braidwood Inquiry.

THE COMMISSIONER: Okay.

CPL KNAPMAN: Again, that model, when you go through the material, it speaks to a lot about mental illness and emotionally disturbed persons. In the same as dealing with excited delirium, the way you treat someone that's in a state of excited delirium, which is a medical condition, is totally different than the way you deal with someone that's angry or upset.

It's my opinion, I don't believe from what I read that Mr. Dunphy was suffering any emotionally disturbed characteristics that you classify. I think he was angry.

MS. O'BRIEN: Okay, so just to summarize, just to be clear, you're saying that you thought that type of communication to Mr. Dunphy was appropriate for Constable Smyth to make (inaudible).

CPL KNAPMAN: Yes, it's consistent with a tactical principle to take control.

MS. O'BRIEN: Okay.

Going back to your report now, I'm at the bottom of page 16, and you're talking about justifiable use of force here. I'm just going to summarize, and please correct me if I'm right. I think in this section you're making the point that once Mr. Dunphy presented with a rifle, an intermediate weapon, such as OC spray or a baton or some other intervention technique, was not a reasonable option for Constable Smyth.

Am I correct in that?

CPL KNAPMAN: That is correct.

MS. O'BRIEN: Okay. And on the next page you talk –

THE COMMISSIONER: Okay, what page are you on?

MS. O'BRIEN: That was at the bottom of page –green page 16, Commissioner, actual page of the report page 14.

THE COMMISSIONER: Page 14, all right.

MS. O'BRIEN: Yes.

On the next page, at the top of the page, you specifically address WID: Weapon, Intent and Delivery. And we have seen this in the RNC materials, but if you could briefly explain what it is and why you mention it here in your report.

CPL KNAPMAN: The reason why I mentioned it in this report because it is in the RNC training material that I reviewed. With the RCMP, we used to use AIM, which is Ability, Intent and

Means. We no longer use it. So, again, it just kind of leads into the reasonableness of use of force.

So “Weapon - did the subject have or reasonably appear to have a weapon capable of doing harm ...?” So was that person in possession of the weapon? Did they have the intent? Did they say something like I’m going to shoot you or I’m going to stab you or I’m going to beat you up?

MS. O’BRIEN: Okay.

CPL KNAPMAN: The third thing is: “Delivery - did the subject have the ability to carry out harm to the officer or the person under their protection?” So if I had someone that was a quadriplegic, in a wheelchair and they’re telling me they’re going to shoot me, there’s no delivery system so that the WID is not met.

MS. O’BRIEN: Okay. In this case, your opinion was that the WID were all met. Is that right?

CPL KNAPMAN: Correct.

MS. O’BRIEN: Okay.

And here, just below that in your report, you address actually the fact that the bolt action on the rifle, the .22 rifle, was open and that in this condition the rifle was not capable of being fired.

Did that affect your opinion on WID?

CPL KNAPMAN: No.

MS. O’BRIEN: Okay.

And can you just – well, just give me one moment here. I will note here you also point out that “It is unclear if the bolt became locked back after the rifle fell to the floor or if” it was, you know, in the condition when it was in Mr. Dunphy’s hand.

Then in your – this is one of the instances, Commissioner, where I’m not going to ask –

THE COMMISSIONER: Yeah, I don’t know if Mr. Kennedy was here when Ms. O’Brien explained that she’s not asking this witness to get into the areas that we’ve discussed before, I think, of previous application of medical –

MR. KENNEDY: Is it the intention for Mr. Massine to get into –?

THE COMMISSIONER: Sorry?

MR. KENNEDY: Is it the intention for Mr. Massine to get into those areas?

THE COMMISSIONER: No more than – no, I don’t believe, but ...

Is there something in Mr. Massine’s evidence that –?

MS. O’BRIEN: That Mr. Massine is –

THE COMMISSIONER: Are you thinking specifically, Mr. Kennedy?

MR. KENNEDY: No, I'm just curious as to what would distinguish – if there's anything in Massine's evidence. What would distinguish this officer from Massine?

THE COMMISSIONER: I don't think –

MS. O'BRIEN: No.

THE COMMISSIONER: I don't think any. We were –

MS. O'BRIEN: Yes.

You know, I don't think this is going to be an issue for Sergeant Massine. I don't.

THE COMMISSIONER: Yeah. We –

MS. O'BRIEN: But my –

THE COMMISSIONER: And we were thinking that it was mainly considering the – where we have – in that ruling, I indicated that the why or the how was not that significant in terms of the – once the firearm is raised by Mr. Dunphy and the evidence is that officers are trained to react instinctively, it's not of much significance to get into, as far as I could see, the various things such as perceptual distortion, which might explain why Constable Smyth might not have seen that the bolt was open on the rifle. I mean, we're getting into a pretty fine point there at that stage. But it seems to me that's a favour of your client, Mr. Kennedy, unless I'm missing something.

MS. O'BRIEN: That's fine, and all I was going to point out that that was one of the areas and I was not asking Corporal Knapman to express his opinion, because he does get into this concept of perceptual distortion. But I'm not asking you to give your opinion as to why Constable Smyth might not have noticed the position of the bolt action. He has given testimony that he did not notice that and I understand that in all the circumstances you don't consider that to be unreasonable or questionable in any way.

CPL KNAPMAN: No. He perceived a threat and his life was in danger, so he responded.

MS. O'BRIEN: Okay.

And in the part of the report we just looked at a few minutes ago, and it comes when Mr. Dunphy presents the rifle, you say that Mr. Dunphy did not respond to Constable Smyth's commands.

What commands are you referring to there?

CPL KNAPMAN: So I'm referring to the words: no, no, no. And without going into the physiological reasons why, this is what he said.

MS. O'BRIEN: Okay, so those are the commands that you're saying Mr. Dunphy didn't respond to. Okay.

Page 18 now of your report, we're getting on into reasonable force, and in this section, Corporal Knapman, you are describing, if I'm correct, reasonable force versus excessive force.

Can you explain your conclusion on this aspect to the Commissioner?

CPL KNAPMAN: Yes, so I just –

MS. O'BRIEN: Yes, and you should have a paper copy of your report there, too, and –

CPL KNAPMAN: So what page?

MS. O'BRIEN: It's page –

THE COMMISSIONER: Sixteen on yours, on that hard copy, I believe.

MS. O'BRIEN: Yes. It's green number page 18, your report 16.

THE COMMISSIONER: You have it there, top of the page?

CPL KNAPMAN: Page 18, sorry, at the top?

MS. O'BRIEN: Yes.

THE COMMISSIONER: No, page –

MS. O'BRIEN: Eighteen at the top, 16 on the bottom.

THE COMMISSIONER: Oh, okay.

CPL KNAPMAN: So, again, looking at if it was reasonable force, I looked at – given would another police officer with the same training point – given the same situation, would they respond in the same way? And I believed it was reasonable, and with respect to his training as well as it would be reasonable under section 25 of the Code.

MS. O'BRIEN: And one of the elements I note you say that force will not be reasonable if “It was inspired by malice or over aggression,” is one of the points you make here, Corporal Knapman.

In this case, did you have any evidence that Constable Smyth was inspired by malice or over-aggression?

CPL KNAPMAN: No.

MS. O'BRIEN: Okay.

At the bottom –

MR. KENNEDY: Where was that, Ms. O'Brien?

THE COMMISSIONER: Second line in that –

MR. KENNEDY: (Inaudible.)

MS. O'BRIEN: It is on page 19 of the exhibit, 17 of the report, second paragraph up from the bottom.

At the bottom, I'm just going to go to the bottom of page 19 here. In this paragraph you write about the effects of gunshots on the human body and, Commissioner, this is another paragraph here, the aspects of this paragraph, where Corporal Knapman opines on the effects of shooting on the body. I'm not asking this evidence to come from him. We've already heard from the chief medical –

THE COMMISSIONER: That's the bottom of page 17, is it, of the report?

MS. O'BRIEN: Page 17, yes, of the report.

THE COMMISSIONER: That's for the CME?

MS. O'BRIEN: Yes.

We've already heard testimony, Corporal Knapman, from the chief medical examiner for this province as to those effects, and so we have opinion evidence on that point.

Likewise, on –

MR. KENNEDY: Excuse me.

Are we saying it can still be utilized or it's not to be utilized at all, Commissioner?

THE COMMISSIONER: No, it's just that this witness is not qualified –

MR. KENNEDY: Okay.

THE COMMISSIONER: – well, I don't mean to say he couldn't be qualified in that respect, but it comes down to a choice between the chief medical examiner for the province and Corporal Knapman. You're probably going to lose, Corporal.

CPL KNAPMAN: That's fine, Your Honour.

THE COMMISSIONER: Pardon?

CPL KNAPMAN: That's fine, Your Honour. That's why he gets paid more than I do.

THE COMMISSIONER: Sorry?

CPL KNAPMAN: That's why he gets paid more than I do.

THE COMMISSIONER: All right.

MS. O'BRIEN: Okay.

And likewise, this is the last area, and page 18 for you, Commissioner, and page 20 of the exhibit. On page 20 here, this first large paragraph here and the first sentence of the next paragraph, Corporal Knapman writes about the – he gets into some detail on the physiological effects of shooting situations. And so, as I previously mentioned, I'm not looking for Corporal Knapman's opinion on this.

We have had testimony from a number of witnesses that Constable Smyth appeared shaken and he was examined by a paramedic who we heard from and who recorded that he had an elevated blood pressure when she examined him.

What I would like to have your opinion on though, Corporal Knapman, is about how Constable Smyth responded to the threat of the rifle and whether that was consistent with his training. And in particular here, I'd like for you to comment on how the shots were fired. So we know that his evidence was there were two shots to the centre mass and then following on two shots to the head.

So can you give the Commissioner your opinion on that?

CPL KNAPMAN: Yeah, again, so when, Your Honour, when Constable Smyth was faced with the weapon, the rifle being pointed at him, he did resort back to his training. He fired first two rounds, which were directed at the torso. It's consistent to one of the stages of the course of fire where they shoot at a silhouette target; however, they're shooting centre mass.

I believe they're also taught to reassess after each shot to see if it is working, and they're trained – most police officers are trained to shoot until the threat stops. Part of their training, we call it a failure-to-incapacitate drill, where it simulates that someone is wearing possibly a soft body armour or haven't got the desired effect, the threat is still there. You then move from shooting to the body to directing your fire at the head. And I believe this was consistent.

Constable Smyth, in his statement, says that at one point he's reassessing and it's not 'til the last shot that he believes the threat is gone.

MS. O'BRIEN: Okay.

So his training was – and I think I've highlighted this part of your report here on the screen before you, but his training was two rounds to centre mass, then one to the head. And you said this is consistent with his actions “as he continued to shoot until he had egressed from the room and the threat had stopped.” So there was a second shot to the head.

CPL KNAPMAN: Yes, and he's also – he's tactically repositioning as well, so he's leaving the room.

MS. O'BRIEN: Okay.

And you do note on this page that “Cst. Smyth re-assessed after each shot was fired ...” is one of the statements you make here, and also, I'll bring it up on the screen. “During the shooting” – sorry, it's the last sentence here.

Now, a couple of pages earlier you – on page 19 of the exhibit, I won't go back – you noted that all four shots, you estimated, were made within one to two seconds. Is that correct? That was your – it was an estimation that you made.

CPL KNAPMAN: Yes. From my experience and, again, training – and my experience and running lots of firearms qualifications under what we call a PACT timer or a shoot timer – it takes about a quarter second to pull a trigger. So to fire four shots you're looking at approximately one second. And to draw from – I believe he was wearing a Level II holster, you're looking in that three-quarters to one second.

MS. O'BRIEN: I don't know what a Level II is.

CPL KNAPMAN: Sorry.

MS. O'BRIEN: But he was wearing a pancake holster is the testimony we have.

CPL KNAPMAN: Yeah, so a pancake holster, but I believe that there was two safety measures in that. We call it a double-threat holster.

MS. O'BRIEN: I think it was just one hasp.

CPL KNAPMAN: Okay, so if it was – my recollection it was two, but if it was one, again, the draw would be faster; again, it may be a half a second. So really it's safe to say that – from the time he drew the pistol and fired, it would be safe to say it would be under two seconds.

MS. O'BRIEN: Okay.

So in that time frame, can you explain what you mean by he reassessed after each shot? I mean, what does reassess mean when we're talking about a time that's potentially less than two seconds?

CPL KNAPMAN: Yeah. So, again, I can speak to what we teach on the range – and, again, not having their full training package, having limited material that I had. We teach that you can do this on a range with what we call a three-inch circle target. And you ask that member to fire into that circle. And if it doesn't – they're staying on their sights, they're staying on the trigger; if that round is not in the target, they have to shoot what's called a follow-up round.

So if you take that – so you're expecting to see one round in the three-inch dot. They fire two, one missed; they've done a follow-up, reassessed and put another round in.

So in this case, Constable Smyth is reassessing after each round. He's seeing: Did it work? Did the threat stop? And in his statement he says that Mr. Smyth continues to follow him with the rifle so –

MS. O'BRIEN: Mr. Dunphy, but yes.

CPL KNAPMAN: Sorry.

MS. O'BRIEN: Yeah.

CPL KNAPMAN: Mr. Dunphy continues to follow, track him with the rifle, so he's reassessing – when I mean reassessing, he's assessing if the shot has stopped the threat.

MS. O'BRIEN: Okay.

Thank you.

Then we get to the conclusion section of your report, which we reviewed right up at the beginning. I just have one further question for you, Corporal Knapman, if we could please bring up P-0745. This is a document entitled "PEER Review."

Can you explain to the Commissioner what this is?

CPL KNAPMAN: Sure.

So whenever a subject-matter expert in use of force in the RCMP authors an opinion report, it's reviewed by what we call another subject-matter expert. Basically, they read through the report to ensure that, number one, there's no huge, blatant grammatical errors or spelling errors, but also to see – for that person to be another set of eyes to read through the report to see if my conclusions are defensible. In other words, is there enough information for a person other than myself to read it and say – he's not authoring a separate opinion, but he's reading the report to ensure that my rationale or my reasoning supports my conclusions.

MS. O'BRIEN: Okay.

So would Corporal Slaunwhite be another senior subject-matter expert in use of force?

CPL KNAPMAN: He's not – he's – I don't know if you want to consider him senior, but he's been doing it for five or six years.

MS. O'BRIEN: Okay.

Thank you.

THE COMMISSIONER: Remember to bring back to him that conscience versus consciousness now, just to show that you've been doing some work for (inaudible).

CPL KNAPMAN: Thank you.

MR. KENNEDY: Conscience of the community, Commissioner, my first recollection would be Justice Lamer in Rothman in the shock the community conscience.

THE COMMISSIONER: That's right.

I think it was – throughout the report here, there's a number of places it refers to consciousness.

MR. KENNEDY: Yeah, I think it was conscience.

MS. O'BRIEN: Yeah.

So those are my questions for Corporal Knapman, Commissioner.

I know other counsel with have some questions for you, Corporal Knapman.

Before I sit down, Commissioner, I have one –

THE COMMISSIONER: You did a very good job in terms of covering the material in the time allotted, so okay.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Sorry, go ahead.

MS. O'BRIEN: I just have one quick housekeeping item.

THE COMMISSIONER: Right.

MS. O'BRIEN: I had, in the course of Judge Riche's testimony yesterday, referred to the statement of Constable Smyth where he used the word "couch." And I just – we didn't play the video there while Justice Riche was on the stand, but just for your information, that statement, the video of that statement, has been entered into evidence at P-0327 and the time-stamp for the area of the tape where the word "couch" is used is at 16:05 –

THE COMMISSIONER: Sorry, 16 –

MS. O'BRIEN: Yes, :05:42.

THE COMMISSIONER: Yeah. 42.

MS. O'BRIEN: And I apologize. I should have done that at the beginning of the session.

THE COMMISSIONER: That's for the chair-versus-couch issue, yeah.

MS. O'BRIEN: Yes.

Thank you.

THE COMMISSIONER: Thank you.

CPL KNAPMAN: If I could get some more water please, sorry.

THE COMMISSIONER: The climate in here is dry. You get used to it after three or four months in here.

Okay, Ms. Breen, you're –

MS. BREEN: Thank you very much.

Corporal Knapman, I didn't introduce myself earlier: I'm Erin Breen. I'm counsel for Meghan Dunphy.

I am going to do my best not to go over any ground that's been covered by Ms. O'Brien, but some may not be – it might be necessary.

Corporal, I want to ask you first what – I picked up on something during your testimony, which is you had said that – because we're all aware that there are these different models of use of force, and I'm taking about the various diagrams that are used in different provinces by the RCMP, and now we have even a newer, I guess, regime coming out of the Province of British Columbia as a result of the Braidwood Inquiry.

Is that correct?

CPL KNAPMAN: I'd say there's really two models in Canada. There's the Incident Management/Intervention Model from the RCMP –

THE COMMISSIONER: You said Madison intervention?

CPL KNAPMAN: Incident Management/Intervention Model, the IMIM.

THE COMMISSIONER: Incident Management, okay.

CPL KNAPMAN: Intervention Model.

The second that's been accepted by the municipal and provincial police forces is the National Use of Force Framework or the National Use of Force Model. The document that you're referring to coming out of BC with the Crisis Intervention De-escalation Model, that is not changing the use-of-force models. Those are the only two that are accepted in Canada.

MS. BREEN: Okay, and my understanding is that the difference between the IMIM and the National Use of Force, there was a slight difference between the two models, and it's the National Use of Force Model that was in play with Constable Smyth from the Royal Newfoundland Constabulary in 2015. Is that right?

CPL KNAPMAN: The National Use of Force Framework or the model was used by the Royal Newfoundland Constabulary. Some spelling – not spelling, but vocabulary is a little different on the models; the principles are pretty much the same.

MS. BREEN: Okay.

And in the IMIM model, my understanding is that one of the differences is that there's an outer ring, and the outer ring would include, I guess, the de-escalation or disengagement or tactical considerations. Is that right?

CPL KNAPMAN: That is correct, and under the National Use of Force Framework, although it's not on the model, in the National Use of Force Framework they talk about disengagement.

MS. BREEN: Yes, and so, in reality, the philosophy between those two, they're inclusive; they're the same de-escalation philosophy, or the philosophy that you should attempt to disengage if it would reduce a potentially violent situation really is included in both models. Is that right?

CPL KNAPMAN: But it is not strictly just a disengagement in the sense that I'm leaving. A disengagement or a tactical repositioning could be after delivering a baton strike moving two feet or three feet, or moving a foot or two in a room. That's not disengagement in the sense of that terminology.

MS. BREEN: Right, and so disengagement would include – could include a number of different actions.

CPL KNAPMAN: Yes.

MS. BREEN: And one of them, though, would include simply exiting.

CPL KNAPMAN: Looking under the model, again, both the IMIM, one of the options is under de-escalation or tactically repositioning, given the situation, it may be, if you want to call it, a disengagement, yes.

MS. BREEN: Okay.

And the other question I had arising from that is you have referenced the fact that RCMP are now receiving some form of training as a result of the Braidwood Inquiry. Some, I believe – is it an online training program that all RCMP officers now have to take? I think it's a three-hour course, something of that nature?

CPL KNAPMAN: Again, it's – I don't believe it's been mandated across the country, but it – I am aware only through my involvement in the use of force program that it will be a mandatory course for all members of the RCMP.

MS. BREEN: And that's fairly recent; that's just in the past couple of months, is that right?

CPL KNAPMAN: Correct.

MS. BREEN: Okay.

THE COMMISSIONER: Is it decided yet, or implemented yet, or is about to be?

CPL KNAPMAN: I think it's been decided; I just don't think it's been implemented.

THE COMMISSIONER: Implemented, yeah, okay.

MS. BREEN: And, Corporal, did you say in your testimony that that training relates only to de-escalation techniques when you're dealing with a person who's mentally ill?

CPL KNAPMAN: I think I testified that the focus of that training is, from what I – the course that I completed, it was – the majority had to deal with emotionally disturbed persons in that course. It goes through modules on recognizing different disorders, like manic depressant to depressant to schizophrenia, and the de-escalation that we speak of in the models is, again – there is de-escalation within the model of the National Use of Force Framework, as well as the IMIM.

MS. BREEN: Okay, and that's what I had understood is that, in reality, the de-escalation philosophy has – is already there. It was there in 2015 in the model that the RNC was using, at least in principles. There was principles that Constable Smyth was supposed to consider in his options, which would have included de-escalation strategies.

CPL KNAPMAN: And it's been present in the seven tactical principles, as well.

MS. BREEN: Okay.

Now, at the outset I wanted to ask you a specific question about the weapon, and I had asked you about that on the question for qualification, as you are a trainer with the use of firearms. You have said to us that a quarter of a second could make the difference between life and death for an officer in this situation. And we also heard just before, when Ms. O'Brien was finishing, you said it would take about, I think you said, 0.5 seconds to unholster or un-hasp a gun from the type of holster that Constable Smyth was using on that date, is that right?

CPL KNAPMAN: I said given – again, not having the holster here and not having tested, I said it'd be fair that four rounds could be fired probably in two seconds. I've done lots of drills on the range where with a Level III holster were able to fire multiple rounds in two seconds. It's accepted in training that's it's basically a quarter second for the time to have a trigger press.

MS. BREEN: And the – but the half a second that you talked about unholstering or un-hasping a weapon in your direct, is that in addition to the one to two seconds you said it would take for the shooting to occur?

CPL KNAPMAN: No, again, to – again, if he's – if Constable Smyth is continuously firing, I think's it reasonable to say that he could fire four rounds in a second, so a quarter second. So whatever time it would take for that particular holster, add that to – you know, again I'm estimating, but I've done lots where it's a second. Could be a second, a quarter, depending, but you're looking at two seconds, maybe a bit longer, but we're not talking 10 seconds.

MS. BREEN: Okay.

So, and the reason I'm asking you this question is because this is a bit of a different situation. This is a situation – Constable Smyth was not – did not have his gun drawn and ready as in a police officer who is executing a warrant or entering into a house with a search warrant, an ERT team who enter into a situation is ready?

CPL KNAPMAN: Yes. The difference there you're talking, if an ERT team is involved, we're talking that the risk assessment would be high. So that's why when I –

THE COMMISSIONER: ERT – Emergency Response Team?

CPL KNAPMAN: Yes. So that Emergency Response Team is the Canadian version of SWAT, Your Honor, and that's what I'm a part of. So, again, a high-risk situation, it would be the member's risk assessment. If he or she believed that the risk assessment was high, they would have – they could have, I'm not saying they would, but they could have their gun out.

If you get, for example, you get dispatched to a break and enter in progress at a business and in your experience then comes into dealing with previous experience, it would be reasonable, not saying the person is going to use their firearm, but if the risk is high they may have their firearm out of their holster.

MS. BREEN: And in this scenario, we know from Constable Smyth's version of the event that he – his hands were engaged at the time: one hand was holding a pen; the other hand was holding a file folder, as you have noted.

CPL KNAPMAN: Correct.

MS. BREEN: And you said – you did point out that that was a tactical error that he made.

As a police officer, if a gun is already pointed at you, and your hands are engaged and you're not ready, what is the police officer trained to do in that situation?

CPL KNAPMAN: If you're not ready? Your training is that, again, not to get into the physiological effects, but it comes down to the only thing on your mind is survival. And not getting into the physiological effects of survival, he is – all he's thinking about and his focus is getting that gun out of the holster and on that person.

MS. BREEN: Okay, and that was my specific question.

So the training is if a weapon is pointed at you and you are not prepared for that, your training is to then go for your gun and draw it as well.

CPL KNAPMAN: I think it's the training, but I think it's an automatic response. It's, again, not getting into the physiological, it's that fight or flight. He has to react.

THE COMMISSIONER: I had – I happened to see – there's been emails coming in to the office. We have several hundred thousand investigators in this inquiry and one of the emails set out that the – it was unreasonable to say that a police officer would move and/or fire once someone had the drop on him, once someone had him in his sights. So I take it you would disagree with that.

CPL KNAPMAN: A hundred per cent.

MS. BREEN: Thank you, and I wanted to ask the question because I did want to know what was the official training.

Now, Corporal Knapman, what did you understand Constable Smyth – when he went to see Mr. Dunphy that day, what did you understand to be his purpose in speaking to him about the tweet?

CPL KNAPMAN: My understanding was that he was doing an assessment of the nature of those tweets as a part of his job as being on the protective unit. My recollection reviewing the policy from the PSU unit, that that was one of their functions, was to look for potential threats against government officials or the premier.

MS. BREEN: Okay.

But did you understand that he was looking for Mr. Dunphy for some kind of information as to what Mr. Dunphy meant by the tweet?

CPL KNAPMAN: I guess he was looking to – again, my understanding from reading Constable Smyth’s, he was doing an intelligence-led investigation where he wanted to know what was the reasoning behind those threats. He was also concerned about – I believe in his statement he talks about the social support systems. So he was going to gather more information with respect to the information, why those tweets, and if there was any potential risk to a government official.

MS. BREEN: Okay.

And in your review of the file, did you receive a copy of the file folder?

CPL KNAPMAN: Did I receive an actual copy of the file –?

MS. BREEN: Yes.

CPL KNAPMAN: I may have received a photocopy of particular information that –

MS. BREEN: Okay.

CPL KNAPMAN: – was written on there.

MS. BREEN: Okay.

So you recall that there was writing on the actual file folder itself. I’m not talking about the two pages that were inside; I’m talking about the actual file folder itself.

CPL KNAPMAN: I would have to – I can’t say 100 per cent. I’d have to see a picture of that.

MS. BREEN: Okay.

Do you recall knowing that in fact Mr. Dunphy had given Constable Smyth the information as to who he was referring to in the tweets?

CPL KNAPMAN: I don’t recall that.

MS. BREEN: Okay.

And the testimony that we have from Constable Smyth, if I could just paraphrase it – and I’m sure Mr. Kennedy will correct me if I’m wrong – is that at a time when the conversation between him and Mr. Dunphy was still cordial, so at the early part of the encounter, Mr. Dunphy gave him the names of two people who had been at Workers’ Compensation, and their names were Gullage and Maynard. And those are the names that are written on the inside of the file folder.

So that information, it appears, from Constable Smyth’s testimony, came early in the encounter. Were you aware of that?

CPL KNAPMAN: No.

MS. BREEN: Now, you have told us that you consider several actions of Constable Smyth to have been attempts at de-escalation. And specifically you refer to: I believe leaning on the mantel was one; writing on the file folder was another. And you talked about also the fact that

some of these actions, while they were attempts by him to de-escalate, were in fact tactical errors that were not in accordance with his training as a police officer. Is that right?

CPL KNAPMAN: Correct.

MS. BREEN: Now, are you aware, Corporal Knapman, as well that when a person or a police officer enters in to someone's home as Constable Smyth did with Mr. Dunphy on that day – are you aware of any kind of general principle that the officer should sit when he's having a conversation with the subject?

CPL KNAPMAN: I would disagree in the sense of from an officer-safety purpose. That puts the police officer at a disadvantage by sitting. I've never taught that we should go in, and actually I would probably be teaching against it. However, there are models – again, if we're dealing with an emotionally disturbed person, one of the things that is talked about is, again, trying to build rapport.

There's lots of police officers, number one, that don't shake hands. And it's not because of tactics; it's because of dirt and filth, I'll be straightforward. I thought it was reasonable, given the pictures that I saw, that Constable Smyth – I know he was asked to sit down. His explanation wasn't that it was from a tactical position; it was because he didn't sit down because of the dirt, and in working in the environment that we do, I think that was reasonable.

MS. BREEN: Okay. So even though you do acknowledge that that – you did refer to that as one of his tactical errors.

CPL KNAPMAN: No, I didn't refer to him sitting as a tactical error.

MS. BREEN: Now, I believe you said standing, being in a standing position, you said he wasn't in the upright – I can't remember the phrase –

CPL KNAPMAN: So he was leaning –

THE COMMISSIONER: (Inaudible) position I think.

CPL KNAPMAN: Yeah, so my testimony was that he was leaning against the mantel. Although it wasn't the preferred fighting stance – or not fighting stance, but interview stance. So again, the sooner that you can react to a threat, he leaned – Constable Smyth leaned on the mantel, in other words, to try to relax – in my opinion to relax, to try to take it off. Although he was not seated, again, I agree that doing that is not something that we teach and in my mind it was a tactical error.

MS. BREEN: Okay.

Now, we also – and this is clear in your report and I don't want to belabour the point, but that these encounters and what happens in these situations, you don't just start looking at this situation from the moment that Mr. Dunphy pointed the gun. That's true, right? You look at the entire encounter because this does not occur in a vacuum. There's an action and a reaction, and this is how the event unfolds. Is that right?

CPL KNAPMAN: I have to look at from, you know, from back when the first initial when Constable Smyth gets involved in, the only reason being I'm doing that if I'm going to speak to his perceptions and, you know, if I'm going to speak to his risk assessment it must take into fact perceptions, tactical considerations. So the answer is, yes, I just don't look at that incident.

Do I speak to a lot of other things that may have happened earlier? No, because I'm speaking to the reasonableness, but I am looking at those factors as they play into his risk assessment.

MS. BREEN: And his risk assessment is supposed to be constantly evolving. Is that right? It's supposed to be he's constantly reassessing and he's constantly reacting.

CPL KNAPMAN: Correct.

MS. BREEN: And a key component of that interaction would be his perception of what is happening.

CPL KNAPMAN: In any incident, the officer's perception plays a huge part of their risk assessment. Again, it's based on experience, it's personal, how much sleep they've had. Have they been in a situation like this before?

MS. BREEN: Okay, and you do note that in your report at page 11, if the officer is fatigued, that is a consideration in terms of how he perceives the event and how he reacts. Is it not?

CPL KNAPMAN: It is just like in any task: if you're tired, then it plays into it.

MS. BREEN: Okay, and you also made a comment on your direct, you were talking about the various factors that will have an impact on an officer's perception of the risk and how he reacts, and you stated: Is this something that can wait or is it an emergency? Were you referring then to the purpose for the interaction with the person? Is that what you were referring to when you said that? It was in response to something that Ms. O'Brien was asking you about the situational factors.

CPL KNAPMAN: So, and I believe it's in – I'd have to go look into the document, exactly where it is, but there is – when you talk about the urgency, if we look at a Columbine situation, sometimes that's the urgency. The police officer has to go in and deal with it. If there is huge media threats where the person has to react immediately, then that plays into their perceptions.

MS. BREEN: And in terms of the situation that we have in this case, the fact that Constable Smyth is there, interacting with Mr. Dunphy and things start to go badly. And when I say things start to go badly, I mean according to Constable Smyth, Mr. Dunphy is getting very agitated. He – Constable Smyth says he sees him or observes him frothing at the mouth; that he becomes incoherent; that he is being repetitious; and that he is not making sense.

So those are the circumstances that Constable Smyth has described to us here, and I assume – did you take those same factors into consideration when you were doing your review?

CPL KNAPMAN: Yes.

MS. BREEN: Okay. So at that point, when those things have happened and there's – Constable Smyth's perception of Mr. Dunphy, it's not just the behaviour that someone else could say they think that's how Mr. Dunphy was reacting. These are Constable Smyth's own words. At that point in time, would Constable Smyth be considering whether or not the real reason he was in that house at that time was an urgent issue that had to be dealt with and that he had to stay, or that he could simply disengage? Does that come into his consideration at that time, or should it?

CPL KNAPMAN: Again, I don't – going through the statements, I don't know how long that these perceptions were happening. So when did Constable Smyth start seeing, observing these things happening? I don't think it got to the point where he needed to disengage. He was recognizing these things were there; he was trying to de-escalate things. We're talking, again,

we're talking that these, this perception of what he's observing, that he's becoming agitated. Was this something that was happening over 30 seconds or was it a minute? I don't think he had – I'm thinking in Constable Smyth's mind, at this point until he was ambushed, he was there, he was going to try to calm him down and he was engaging with him. But I don't believe that he had – there was – this didn't happen over five or 10 minutes. This may have been a short period of time where he's starting to observe these things. Things were cordial and then all of a sudden they start to escalate.

And I agree that the risk assessment, again, is changing, however I don't believe it was to the point where it was high or that he needed to have his firearm out or that he needed to disengage.

MS. BREEN: So the amount of time between when he first noticed the change of demeanour and the time when the firearm was pulled on him is important in considering that, whether or not he should have disengaged or when he disengaged?

CPL KNAPMAN: I think it's considered in any time. You know if – again, I talk about and you talk about disengagement. If you've been there for an hour and obviously things are deteriorating, then you're not getting – you're there to speak to him. Again, it's a different – we're looking at a different story if he was there to arrest, but I believe he was there to interview him. And if it gets to the point where – you know, again, this may change, that all of a sudden if it gets to the point where you think that his mental capacity is a danger to himself, then you may have to intervene; but if you feel that this is going nowhere in the sense that there's been no risk to anyone, it may get to the point after an extended period of time or a period of time that you would disengage.

MS. BREEN: Okay.

And if, for example, you already had the information that you went down to get, that would also be a consideration, would it not?

CPL KNAPMAN: If you had the information. I don't know if he had the information that he was looking for.

MS. BREEN: Okay.

Now, also, the other what I would ask you: Is this a tactical error? In the RNC training guide that I understand you didn't see until yesterday, it's Exhibit 0624 at page 14. The RNC training guide also talks about environmental considerations for the officer and raises the issue of "Proximity of back-up officers" as one of the factors. That would have been an issue in this case, would it not?

CPL KNAPMAN: I wouldn't say it's an issue. Again, it's – we're talking with Constable Smyth's perceptions and his perceptions lead to his tactical considerations. In this instance, if he was going there to speak to him, he articulated he was going there that he felt that a uniformed member or back-up would not aid in his rapport building, and working in a small community, your perception is that or the way public sees you in uniform versus in plain clothes is totally different. So –

MS. BREEN: And I apologize, Corporal. Perhaps I phrased my question wrong, but what I was asking you about was the proximity of the event and the fact that the nearest police officers to the home of Mr. Dunphy were 25 minutes away.

CPL KNAPMAN: So what is your question?

MS. BREEN: And the question is: Is that a tactical consideration for an officer inside a house doing a home visit when there are certain, I guess, alarms starting to go off at least, or things are starting to raise? The fact that you don't have a backup officer for 25 minutes away, and you're aware of that, and you don't have cellphone coverage, don't these factors play into the situation?

CPL KNAPMAN: Sure, it would play into his perceptions and his tactical considerations and his risk assessment.

THE COMMISSIONER: Ms. Breen, can you give me a rough idea, just for scheduling?

MS. BREEN: I do have a few more questions; I'm trying to be as expeditious as I can.

THE COMMISSIONER: Sure, I understand, but – I'm not trying to –

MS. BREEN: So I'll try for 15 – 10 minutes? Ten minutes, Mr. Commissioner?

THE COMMISSIONER: Sorry? Ten minutes? Okay.

MS. BREEN: I'm just trying to go through my notes so that I don't repeat Ms. O'Brien.

THE COMMISSIONER: Thank you. Take your time.

MS. BREEN: Okay.

Corporal Knapman, you also gave, in your report – and this is at page 15 – you did speak about, I guess, legal considerations that come to play when we're dealing with a situation like this. And one of the statements that you make at page 15, you say in this incident the officer "had the legal authority to attend at Donald Dunphy's residence and interview him."

CPL KNAPMAN: So is this page 3?

MS. BREEN: I'm sorry, that would be page 15 of the exhibit, so I think your report is two pages off of the exhibit. I don't know if it's –

THE COMMISSIONER: That'd be page 13.

CPL KNAPMAN: Okay, I found that, yes.

MS. BREEN: Okay. So in your report writing, you considered what the legal authority for Constable Smyth was to visit Mr. Dunphy, did you?

CPL KNAPMAN: Only in the sense that he had – again, not getting into – my expertise is not in the law, but I think after 27 years as a police officer, I know that if we receive a complaint from the public and there's some legitimacy, or receive a complaint from a person or an organization, we have a duty to investigate that. So that allows us to investigate, and in this case Mr. Dunphy, from my understanding, invited him into the residence.

MS. BREEN: Right. So the legal basis for Constable Smyth to be in the residence would be consent, the consent of Mr. Dunphy.

CPL KNAPMAN: Correct.

MS. BREEN: Okay, and you were aware of that?

CPL KNAPMAN: Yes.

MS. BREEN: And you were also aware of the sign that was outside the door?

CPL KNAPMAN: Correct.

MS. BREEN: That Mr. – oh, sorry, Constable Smyth saw on his first approach of the residence?

CPL KNAPMAN: Correct.

MS. BREEN: And were you also aware that Constable Smyth didn't tell Mr. Dunphy that he was a member of the Protective Services Unit before he was invited into the house?

CPL KNAPMAN: Yes, that's correct.

MS. BREEN: Okay.

And were you also aware that Mr. Dunphy further questioned Constable Smyth in the – near the porch to say, you know, why is an RNC officer out here in RCMP jurisdiction?

CPL KNAPMAN: Yes, there was a conversation to that effect.

MS. BREEN: And you're aware that, also, that Constable Smyth at that time didn't tell him: I'm a member of the Protective Services Unit?

CPL KNAPMAN: I believe that's correct.

MS. BREEN: So are you aware of any time that Constable Smyth told Mr. Dunphy that he was bringing a firearm into his house?

CPL KNAPMAN: I don't recall in a specific statement saying that he had a firearm. From my recollection, I believe he showed him his police identification.

MS. BREEN: Okay, and are you aware if Mr. Dunphy would have been able to see Constable Smyth's firearm in the holster?

CPL KNAPMAN: I don't think I can speak to that. I don't know. I didn't see exactly what he was wearing that day.

MS. BREEN: Okay.

CPL KNAPMAN: But I know as a police officer and their policy says is, if they're in plain clothes, they have to have a firearm, an extra magazine and pepper spray.

MS. BREEN: Okay, and you didn't seek out any kind of legal opinion, did you, to assist you in your report about the issue of consent and being in the home?

CPL KNAPMAN: That's not my role.

MS. BREEN: Okay.

Corporal, I did want to ask you a question about one of the items that you said to Ms. O'Brien on your direct. You said that Mr. Dunphy had not followed the verbal command of Constable Smyth when he said no, no, no.

CPL KNAPMAN: Correct.

MS. BREEN: It was my understanding, at least, and perhaps we have a difference in understanding, that the no, no, no was simultaneous with the drawing of the weapon. Is that your understanding?

CPL KNAPMAN: My understanding is that would have happened in the process, but I believe that if we want to talk a half a second or three-quarters of a second for the time it takes to get the gun out of the holster, that no, no, no, again, not getting into the psychological effects, that's a survival mode. And from my experience dealing even in training, dealing with members, a lot of times things come out of their mouth that they don't intend to in a sense that, for example, if we're doing stoppage drills on the range instead of – we're supposed to say stoppage or X-ray is a term that we use. A lot of times what you plan to come out of your mouth in a high-stress situation is a little different.

So my – the command that he, again, dealing with what he was dealing with, was no, no, no, and it's my opinion that came out probably just as he's drawing, but I believe that his gun would – when this command, no, no, no, would have started, the gun would be still in the holster.

MS. BREEN: And, Corporal, at page 16 of your report – I'm sorry, that's of the exhibit – you talk about the issue of whether there was a preclusion opportunity in this case. Are you –?

THE COMMISSIONER: Preclusion of ...?

MS. BREEN: My understanding is the phrase was whether there was a "preclusion opportunity."

THE COMMISSIONER: Oh, preclusion opportunity, okay.

CPL KNAPMAN: And what is that page?

MS. BREEN: I believe it's page 16 of the exhibit, Corporal, and my friends will have to help me with the – where that actually appears. Is it page 14 of the report?

THE COMMISSIONER: Page 16 on the top, page 14 on the bottom, I would say.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Hmm?

MS. BREEN: Do you see it there, Corporal?

CPL KNAPMAN: I see the –

MS. BREEN: I have it there in my notes, so I don't – and I don't have your report right in front of me; I'd have to look at the exhibit.

CPL KNAPMAN: I think I'm on the right page here.

MS. BREEN: Yes, there you go.

"Was there a preclusion opportunity" Can you tell us what you mean by that phrase?

CPL KNAPMAN: So when I talk about preclusion opportunity, I'm talking about was there an opportunity to, at the point that the gun was pointed at him, to disengage without having an intervention. At that point, no, again, he's in the survival, responding to a threat, so there's no preclusion; he has to deal with the threat.

MS. BREEN: Okay, and so this is strictly from the point of view of once the gun is pointed?

CPL KNAPMAN: And, again, yes.

MS. BREEN: Okay.

Do you use the same turn of phrase, preclusion opportunity, if you're looking at the event as a whole, prior to the presentation of the gun?

CPL KNAPMAN: It falls into tactically repositioning. It's just another term, same as tactically repositioning or disengaging, if you want to follow the National Use of Force Framework.

MS. BREEN: Okay. And so in this particular scenario, you're not saying that there wasn't any preclusion opportunity at all?

CPL KNAPMAN: Again, I don't think that this situation got to the point where he needed to leave the residence until the firearm was pointed.

MS. BREEN: But in terms of timing, you are acknowledging that there was at least, time wise, an opportunity for Constable Smyth to leave the residence?

CPL KNAPMAN: Again, I think he was there, he was speaking with him; I don't think that this had got to the point where preclusion was considered. He was, you know, he was trying his de-escalation techniques that he was utilizing. And it was, you know, again, it was a sudden ambush, if you want to call it ambush, with a rifle that he had to respond to.

MS. BREEN: And would it be fair to say, Corporal, or would you acknowledge that Constable Smyth would have at least perceived that Mr. Dunphy was not happy with his presence in his house?

CPL KNAPMAN: I think Mr. Dunphy wasn't happy for many reasons. Number one, again, going back to the tweets, would he be unhappy? I'd say that would be a fair statement, to say that he may not be happy; I don't think many people, given the circumstances, are happy when the police show up at their door.

MS. BREEN: Okay.

And certainly Constable Smyth perceived that Mr. Dunphy was getting agitated because of Constable Smyth looking around and looking around the house, is that right?

CPL KNAPMAN: That was Constable Smyth, in his statement.

MS. BREEN: Now, finally, Corporal, on page 21 of your report, you say Donald Dunphy "possessed the requisite weapon, intent and means to cause death or grievous bodily harm to this officer."

I'm wondering what evidence that you base your conclusion that the intent of Donald Dunphy was to kill Constable Smyth?

CPL KNAPMAN: What his – why I feel that way?

MS. BREEN: Yeah, what was the evidence; not how you feel, but what is the evidence that supports that conclusion?

CPL KNAPMAN: From Constable Smyth's statement that he observed the barrel of a gun being pointed at him.

MS. BREEN: Okay, because the lead investigator, Corporal Steve Burke, has testified here to say that it's his conclusion that Mr. Dunphy did not have the intent to kill Constable Smyth.

Were you aware of that?

CPL KNAPMAN: I wasn't aware of that, but as an instructor, if someone is pointing a rifle at me, again, it's my perceptions, and it would be Constable Smyth's perceptions. If a firearm is being pointed at me, my perception is that this person wants to cause grievous bodily harm or death to me.

MS. BREEN: So when you say at page 21, Donald Dunphy "possessed the requisite weapon, intent and means to cause death or grievous bodily harm to this officer," you're saying that Constable Smyth perceived that? You're not saying that that is your conclusion based on the evidence?

CPL KNAPMAN: No, it's my conclusion based on the evidence. There's evidence from Constable Smyth that a weapon was pointed at him. If a weapon is pointed at you, the intent is to cause bodily harm, or grievous bodily harm or death. You're not going to point a weapon at someone if that's not your intent.

MS. BREEN: Corporal, what if the weapon is unloaded?

CPL KNAPMAN: Again, looking at what you perceive, a weapon – again, you're talking in a split-second decision. I can't get into the mindset of Mr. Dunphy. All I can say from the evidence I have is that a weapon was pointed at Constable Smyth. Regardless if it's empty, loaded or non-functional, same as pointing a pellet gun or a toy gun, we don't have – police officers don't have the time or opportunity to say: Can we have that firearm tested to see if it's functional? You respond to a threat; the threat is a weapon pointed at you. And you respond appropriately, which Constable Smyth did in this case.

MS. BREEN: And I understand that, and I'm going to leave it here, but, again, you're talking about Constable Smyth's perception in that moment. That's what you're referring to when you answered – again, gave your answer. Constable Smyth's perception is that Mr. Dunphy was intending to kill him.

CPL KNAPMAN: From the evidence that I saw, again – and my opinion is, if a weapon is pointed at you, that person is either – again, your risk assessment and the way you react based on the IMIM or the model with respect to this, if a firearm is pointed at you, you're going to respond appropriately. And a firearm being pointed at you is a lethal threat.

MS. BREEN: And with respect, Corporal, I don't believe you've answered my question, but I'm going to sit down now.

Thank you.

CPL KNAPMAN: Thank you.

THE COMMISSIONER: Mr. Drover.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Pardon?

CPL KNAPMAN: Sure. I never thought I'd say it was dry in Newfoundland.

MR. DROVER: I'm going to ask three questions.

THE COMMISSIONER: Three questions after you get the water.

Thank you.

I might even allow you a fourth on that basis.

MR. AVIS: I think he'd answer them more quickly if he didn't have water (inaudible).

CPL KNAPMAN: My tongue might seize up.

MR. DROVER: We have to treat our guests well here at the inquiry.

CPL KNAPMAN: I'll fill that out on the comment card.

MR. DROVER: Corporal Knapman, I think I missed something near the beginning of your testimony and I want to clarify it. You were talking about officer-induced jeopardy.

CPL KNAPMAN: Yes.

MR. DROVER: And I understand what officer-induced jeopardy is. Did you say that in your opinion Constable Smyth did or did not cause himself officer-induced jeopardy?

CPL KNAPMAN: He did not.

MR. DROVER: Thank you.

You wrote – I believe you were commissioned by the RCMP, right, or retained by the RCMP to write this report?

CPL KNAPMAN: I wouldn't say I was retained; I would say that I was asked to. It's –

THE COMMISSIONER: Tasked, I think, is the word they give – the word they use, is it?

MR. DROVER: Tasked.

CPL KNAPMAN: Sorry?

THE COMMISSIONER: Tasked?

CPL KNAPMAN: Tasked – I was voluntold. No, I was tasked. As a part of being a subject-matter expert, it's often common that we get – we do these opinion reports.

MR. DROVER: Okay.

And so you – there was no contact with anybody at the Commission, any Commission counsel or any counsel for any of the parties to, I guess, expand on your report, given that there was more evidence available?

CPL KNAPMAN: No, I was only asked to review some recent documents that I hadn't seen.

MR. DROVER: And one more question on the issue of the BlackBerry messages that Ms. O'Brien read to you and – so I take it from your answer that if it was sort of a literal statement that he was making, then that was – that would be a problem for the risk assessment, but if it was two friends joking around, not so much. Is that correct?

CPL KNAPMAN: Again, yes. If it was a joke, or just comments, then it doesn't play into his risk assessment. The context is if it was literal, then that goes into his risk assessment, which involves different planning and a different risk assessment.

MR. DROVER: Okay.

Those are all my questions, thank you.

THE COMMISSIONER: Thank you, Mr. Drover.

MR. DROVER: Do you – do you want a thing?

MR. AVIS: No, I don't. I'm good.

Just have a few –

THE COMMISSIONER: Mr. Avis?

MR. AVIS: – questions. Thank you, Commissioner.

Good afternoon, Corporal. I'm Nick Avis. I represent the Royal Newfoundland Constabulary. I just have a few questions for you.

With respect to the three tactical errors, you know, his hands holding a pen and paper, took his eyes off, and you said he wasn't in a fighting stance, these tactical errors pertain to officer safety, don't they?

CPL KNAPMAN: Correct.

MR. AVIS: Right. So you're saying that these errors might've resulted in his death, perhaps, if he – if things had gone badly for him. I'm sorry. I'll leave it at that. It's to do with his safety, not what he is doing with respect to Mr. Dunphy.

CPL KNAPMAN: Correct.

MR. AVIS: Okay.

Now, with respect to the sitting-down posture, you did indicate you understood, having regard to the state of the home, that – why he refused to sit down, but what about from an officer-safety position? I understand his weapon would be – I forget what you call it, when it's in the sidearm, here. You know what I mean? Inside the jacket. From terms of officer safety, would there've been any issue if he was sitting down?

CPL KNAPMAN: In any seated position, when you're wearing a firearm, it does take longer to get your weapon out of the holster. It's something that you have to train to do.

MR. AVIS: Okay.

THE COMMISSIONER: Just while I think of it, is the Sig Sauer referred to – is it a pistol?

CPL KNAPMAN: The Sig Sauer is a German company. They make many weapons.

THE COMMISSIONER: Okay, and what is the meaning of pistol as opposed to – is it –?

CPL KNAPMAN: Okay, so a pistol would be something that you hold in your hand, one point or two hands.

THE COMMISSIONER: Small enough to hold in your hand. That'll be –

CPL KNAPMAN: Correct. Versus a rifle or a carbine, which you would hold in your hands, but you also support by your shoulder. And with a carbine, you support with your cheek.

THE COMMISSIONER: Right. I had a bit of basic training. I knew they told us never to call either our FN rifle or our .45 to – never to call it a gun. So I want to be terminologically correct in the report, and that's what – you might be the person to ask. Okay.

MR. AVIS: Sorry –

THE COMMISSIONER: Go ahead, sorry, Mr. Avis.

MR. AVIS: No, no problem. With respect to the sitting down, it also said one of his tactical errors regarding his own safety was he should be in a fighting stance as opposed to leaning. Is the notion of the fighting stance inconsistent with the sitting down, and why?

CPL KNAPMAN: So, and I guess I said fighting stance, but I think I corrected and said an interview stance. They're pretty much one and the same. And the only reason that we even teach officers when interviewing someone to be in an interview stance, so if you want to call it a fighting stance, is because if you have to defend yourself you're already in that fighting stance. So by not being in the fighting stance and leaning up against the fire mantel, it does put himself in a little safety issue.

MR. AVIS: Right

Now, and particularly, for example, when it came to the stick, if I recall the evidence correctly, Constable Smyth felt that, well, if he did anything about the stick, I could get there; I'm bigger than him, I'm younger than him. If he was sitting down, would it impact his ability to get to the stick first?

CPL KNAPMAN: Yes, because he'd have to stand up and move.

MR. AVIS: I'm afraid I lost the thread there –

THE COMMISSIONER: Sorry, I didn't mean to disrupt you there.

MR. AVIS: I'm sorry, go ahead.

THE COMMISSIONER: No, I'm sorry if I interrupted you with my interrogation.

MR. AVIS: No, no.

With respect, I just missed something. Did you see Mr. Dunphy in a state of crisis? Is that – I don't know if you can answer that, but you know what I mean. You have to consider when you go to someone, is there a state of crisis here in your view?

CPL KNAPMAN: In my view, in my opinion, again, only going from the material that I reviewed, I believe that he was agitated and he was angry.

MR. AVIS: Is that – in your view, in your training, would that be a state of crisis?

CPL KNAPMAN: A state of crisis to me, personally, is someone that we may classify as excited delirium. They're in a state of – again, I described the symptoms earlier, but that's a medical crisis, excited delirium. Someone that has mental illness, emotionally disturbed persons, that could be a crisis.

MR. AVIS: Okay.

Now, you asked about Mr. Dunphy being incoherent and not making sense. We understand that he was a user of medical marijuana. Have you ever encountered users of marijuana who are sometimes incoherent and don't make sense?

CPL KNAPMAN: I guess I've dealt with many people that are under intoxication of different substances that could be incoherent. The effect, again, in considering the situation, one of the things that an officer must look at is if that person is under the influence of some type of narcotic or substance.

MR. AVIS: Okay.

And with respect to frothing at the mouth, I believe Constable Smyth's description was more like, you know, not froth coming out of his mouth, but just more to the side of his lips and his mouth. What does that say to you, if anything?

CPL KNAPMAN: Again, it's what I consider a threat cue; his body is reacting to a physiological change. I think in Constable Smyth's statement he talks about the saliva sticking between the teeth, not necessarily a froth. So again, to me that means this person is becoming agitated.

MR. AVIS: Okay.

One last thing: I'm not sure where we are on this issue, but it was suggested by one counsel in cross that Constable Smyth was negligent in taking his eyes off the subject and looking at the folder, and it seemed to be the implication that, had he not done that, he would have seen the gun coming up and might have been able to do something about it.

What's your view on that?

CPL KNAPMAN: There's only one response, regardless if he has his eyes down. The moment that he sees that barrel or even – again, there's been lots of studies versus action versus reaction. The moment that he sees a barrel, regardless of it's coming up towards him or not, there's only one response. The only difference that I – again, if Donald Dunphy chose to point that weapon at him, the only difference between him holding the file folder and the weapon is he probably would have been shot faster.

MR. AVIS: Thank you.

THE COMMISSIONER: Mr. Kennedy, go ahead when you're ready.

MR. KENNEDY: Yes, thank you, Commissioner. I only have one brief area to explore.

Corporal Knapman, when you're reviewing the actions of an officer or anyone in a situation – no, let's stick with an officer. You're reviewing the actions of a police officer in a use-of-force situation. Do you examine it from the perspective of the officer on the date in question in terms of the policy in place at the time, the training, the experience? Or do you examine it from the perspective of hindsight, looking back and saying what he should have done, what he could have done, what he would have done?

CPL KNAPMAN: You have to look at the officer in the moment. There's case file with respect to the hindsight, and you have to deal with the information the officer had that day and what his decision-making was built, based on the information he had that day, and not hindsight.

MR. KENNEDY: We've had it, Sir, and we will see in the case I'll refer to, you'll see comments like hindsight is 20-20 and it's easy to be a Monday-morning quarterback. Does the same apply to your review of another officer's actions in a situation such as the ones we're dealing with here?

CPL KNAPMAN: Yes, you can't armchair quarterback. You have to deal – give an opinion based on the information the officer had that day in the moment, again, making split-second decisions in a stressful situation.

MR. KENNEDY: And, Sir – and I think, I could be wrong – we've heard one officer talk about how long it takes to shoot a number of bullets. But what you're saying here in your report and what you're saying here today, that from the time the drawing of the holster to the firing of four shots could be a couple of seconds.

CPL KNAPMAN: Yes. And, again, it depends on not having the holster and not exactly, you know, demonstrating – I know that for a fact that tests that I've run on the range or drills that I've run with shooters, a quarter of a second is – and you can get the time down pressing the trigger, but a quarter of a second is a good average and there's lots of publications on that.

And, again, so if you're talking four rounds and be a second, you just add the time that it takes. And, again, sometimes a draw can be faster or it could be slower, but we're not dealing with 10 seconds; we're dealing with four rounds, probably most likely in two, maybe a little bit more time.

MR. KENNEDY: Sir, when you put any – in your line of work, if you put any officer's actions under the microscope, then you're inevitably going to find that they're probably – or you're inevitably going to find that not everything is done perfect, aren't you?

CPL KNAPMAN: With any incident or any – for example, in the Emergency Response Team, we always have debriefings after we do an operation because there's always things that you can do better. You make mistakes; you learn from training and operations how to improve things.

MR. KENNEDY: And, Sir, when you – and, again, from your perspective, you're looking at these situations, part of it is to learn from them without using hindsight. Is that correct? And you're using hindsight to judge the officer's actions, excuse me (inaudible).

CPL KNAPMAN: You can't use hindsight to judge the officer's actions on that day, but you can evaluate and make recommendations –

MR. KENNEDY: Yeah.

CPL KNAPMAN: – for how we can improve things. But you can't judge if that decision was – in hindsight, if that decision was unreasonable.

MR. KENNEDY: Thank you very much, Corporal. Those are my questions.

THE COMMISSIONER: Everybody gotten all their questions out?

MS. O'BRIEN: No, I just have a couple on redirect, if there's –

MR. FLAHERTY: I have one.

THE COMMISSIONER: Oh, Mr. –

MS. O'BRIEN: Oh, sorry.

THE COMMISSIONER: Sorry, Mr. Flaherty, I didn't –

MR. FLAHERTY: I'll try to go as fast as I can.

THE COMMISSIONER: I missed you there. I missed you there behind the monitor.

Go ahead.

MR. FLAHERTY: Yeah.

Good evening, Officer Knapman. I'm trying – I'm not going to try to keep you that long.

So you were tasked with writing a report, and your conclusions and your recommendations are based upon a set of facts that you've either, A, been provided and/or, B, have determined for yourself.

CPL KNAPMAN: So in my report I don't give recommendations –

MR. FLAHERTY: Okay.

CPL KNAPMAN: – but my report was based on the information that was provided to me.

MR. FLAHERTY: Then you made conclusions?

CPL KNAPMAN: Correct.

MR. FLAHERTY: Okay.

So I'm going to ask you some questions about what I would think are material facts. When did Constable Smyth first see the bat or club, whatever you wanted to call it? When did he first see that when he walked into Donald Dunphy's residence?

CPL KNAPMAN: Sorry, could you say that again? I didn't hear you.

MR. FLAHERTY: When did Constable Smyth first see the bat that was to the left of Donald Dunphy's chair? When did he first see that?

CPL KNAPMAN: I would have to review exactly his statement when it was.

MR. FLAHERTY: Did you – can you tell me here today whether or not you had determined what the timeline was on that?

CPL KNAPMAN: Only going from Constable Smyth's statement saying at some point in his statement. I'd have to go through it exactly when the bat was discovered. I don't know if it was during – again, I would have to review his statement.

MR. FLAHERTY: If he – would it surprise you if I said he discovered immediately upon walking into –

MR. KENNEDY: That's not correct.

MR. FLAHERTY: That is correct.

THE COMMISSIONER: Well, I have to say –

MR. KENNEDY: Then give me the exact –

THE COMMISSIONER: One second, we can figure it out. I have to say, Mr. Flaherty, I didn't take it to be immediately.

MR. FLAHERTY: Upon entering the room –

THE COMMISSIONER: My impression is that, first – I may be wrong – that he first saw it when he had entered the living room –

MR. FLAHERTY: Yes.

THE COMMISSIONER: – and gone up to the – around the left side of the – the left edge of the mantel.

MR. FLAHERTY: Okay. My –

THE COMMISSIONER: How long after that I don't think is very clear, but go ahead. Just let Mr. Kennedy just check it out.

MR. FLAHERTY: Well, we can wait.

THE COMMISSIONER: Mr. Kennedy just wanted to check something there, in case there is – or you can clarify it, Mr. Kennedy, probably the quickest way to do it, on your questioning. Any problem with that?

MR. KENNEDY: No, that's fine.

THE COMMISSIONER: Go ahead, Mr. Flaherty.

MR. FLAHERTY: So if he had seen that bat early on –

MR. KENNEDY: In fact, Commissioner, on the –

THE COMMISSIONER: Sorry.

MR. KENNEDY: I'll tell you on –

THE COMMISSIONER: Okay. It might save some time, Mr. Flaherty, here.

MR. KENNEDY: On day two of his testimony, January 17, at page 106, his testimony was he doesn't remember when he saw the bat. He didn't have to walk over it to get into the living room. The bat was lying flat on the floor to the left of the chair. The bat never changed position. He was then asked about the one-plus-one rule. That's pages 106-07.

MR. FLAHERTY: That was day two, but in his last day – or, sorry, his second-last day of testimony, I asked him – I started asking him these questions.

THE COMMISSIONER: All right.

MR. FLAHERTY: When did you see the bat?

THE COMMISSIONER: All right.

MR. FLAHERTY: And based on what he said then, and we can –

THE COMMISSIONER: Your recollection is what?

MR. FLAHERTY: My recollection is it was upon entry.

THE COMMISSIONER: Okay.

MR. FLAHERTY: And if not, immediately as he's walking in he saw it.

THE COMMISSIONER: Right. I wasn't clear on that –

MR. FLAHERTY: Because then I –

THE COMMISSIONER: It wouldn't be unusual for that to be the case because the bat does seem to be –

MR. FLAHERTY: It's right in the middle of the doorway (inaudible).

THE COMMISSIONER: – out in the archway, shall we say, or at least near the archway, on the left side of the chair.

MR. FLAHERTY: Because then I asked the question: When did you – did you address the bat once you saw it?

THE COMMISSIONER: Right.

MR. FLAHERTY: There was an answer in the affirmative, but we can go to the record. And then I asked: Well, why didn't you ask for the gun or if there was any firearms present? And he said: I didn't want to agitate him. But based upon what he had said at that time, and now I'm getting it in an argument, it wouldn't have appeared that he was agitated at that point because it was very early on when he walked into the room. So I mean –

THE COMMISSIONER: Well, that'll be a submission, but if you have – put the question whatever, if you wish to put to Corporal Knapman.

MR. FLAHERTY: Okay.

So do you know one way or the other when Constable Smyth first saw that weapon?

CPL KNAPMAN: Only that when he was standing in the living room. I can't say at what point, if it was before he was agitated or not, not without reviewing the statement.

MR. FLAHERTY: And was Donald Dunphy agitated at the point when Constable Smyth said that there'd be no problems if the bat was left on the floor?

CPL KNAPMAN: Again, I'd have to review the statement to see if he was agitated or if it was before.

MR. FLAHERTY: Now, should he not have asked if there was a firearm in the house?

CPL KNAPMAN: He had no indication there was any firearms in the house. It's not routine. If you're investigating something and there's been no indication of any firearms, it's something that you wouldn't ask.

Could you ask? Yes. Is it something that you would normally do? No. If you had information that there may be a weapon in there, then, yes, it would be something reasonable. Just because there's a bat laying on the floor doesn't mean that there's a firearm.

There's also other weapons in that house as well. You go in the kitchen –

MR. FLAHERTY: Should he have asked then if there was a second weapon?

CPL KNAPMAN: Sorry?

MR. FLAHERTY: Should he have asked – Constable Smyth – should he have asked Don Dunphy if there was another weapon?

CPL KNAPMAN: Well, there's lot of weapons. He could have asked: Is there any weapons in your kitchen? You open the drawer and there's lots of knives. There's all kinds of weapons in a house.

MR. FLAHERTY: Then he could have asked that question, couldn't have he?

CPL KNAPMAN: He could have, yes.

MR. FLAHERTY: Okay. And so we do know that there's this policy of one plus one: if there's one weapon visible, there likely or may be another weapon that is not visible at that time.

CPL KNAPMAN: So it isn't a policy; it's a principle.

MR. FLAHERTY: Okay.

CPL KNAPMAN: And it's for the officer, again, to be thinking just because there's one weapon, there may be others. Again, in a residence there's lots of weapons that are not only – not a firearm or a bat. You have all kinds of weapons in a kitchen.

It's to be – it's the principle is – it's a tactical principle, and it's – really, what it comes down to is if you're – again, you can put it in that context, but if you're searching someone and you find one weapon on them, assume that there's another one. You can put it in that context that, okay, I found a bat on the floor; there's a possibility that he has other weapons for protection. What that may be – again, it's something that we teach that you should assume that there's other weapons.

MR. FLAHERTY: So are you saying that it would be unnecessary or unreasonable for Constable Smyth to ascertain whether or not there are other weapons in the house, given in the two contexts: the risk, his own personal risk assessment, am I safe while I do this interview; and two, for the overall threat assessment? I need to see if this man has weapons, which he may use against politicians.

CPL KNAPMAN: Again, it comes down to an officer's perception. Is it a common practice that, you know, I see a bat, would I ask that person? Personally, I haven't seen that. Could it be something that he may have asked, if there is any other weapons? Sure, he could have. Does it say that he has to or if there's policy? No.

MR. FLAHERTY: But, I mean, if you wanted to actually do a thorough threat assessment, would you not want to know how many weapons the person has?

CPL KNAPMAN: Well, I think – again, what are we referring to as weapons? A kitchen has all kinds of weapons.

MR. FLAHERTY: Okay, I'm not talking about butter knives; I'm talking about other clubs, batons, bear spray, firearms, knives, switch blades, swords, axes.

CPL KNAPMAN: When I look at knives, you look at a kitchen, there's all kinds of steak knives and that type of thing. You know, there may be an axe out in his shed or whatever; that is a weapon. Are you going to go down that list? No.

There was a bat. I believe that he recognized it was there. He identified that that was a weapon. He spoke to Mr. Dunphy about it. He was satisfied that, given his physical stature and his location, that it wasn't going to be a problem, and even Mr. Dunphy identified that it was a weapon.

MR. FLAHERTY: Okay.

And so was Mr. Dunphy identifying that the bat was a weapon – is that an important aspect of ascertaining or determining if there were items used as weapons in the house?

CPL KNAPMAN: Sure. He said it was for his protection. You know, again, he could have told Constable Smyth it's none of your business, but he offered to say that it was for my protection.

MR. FLAHERTY: And so he offered up that piece of information, so could he not have been asked and would it actually not be prudent for him to ask: Do you have any other weapons, Mr. Dunphy? Weapons that he subjectively believes are weapons for his protection?

CPL KNAPMAN: I don't think it was prudent that he ask. Could he have asked? Yes.

MR. FLAHERTY: Okay.

How long was the conversation between Constable Joe Smyth and Donald Dunphy once Constable Smyth had entered into the living room?

CPL KNAPMAN: Again, without reviewing his statement, I think the total time – and, again, the total time that he was in the residence, without reviewing his statement, in my recollection, may have been about 15 minutes from the time he enters to the actual –

MR. FLAHERTY: How much of that did you determine was a period of cordial conversation?

CPL KNAPMAN: I would consider that a significant amount from what I read. Again, there was no specifics into a timeline saying that for 10 minutes I built a rapport and then in the next minute or two things became – Mr. Dunphy became agitated. My recollection in the statements were that, you know, they had enough time that Mr. Dunphy told Constable Smyth about his accident and his injury. So I think there was a significant time spent on rapport building.

MR. FLAHERTY: Okay.

And once Mr. Dunphy became to get agitated, would you – would it surprise you that if he was agitated for five minutes before he shot –

CPL KNAPMAN: I don't –

MR. FLAHERTY: – before he was shot?

CPL KNAPMAN: I don't think it was that long at all. I think it was a matter of a minute or two, from what I read.

MR. FLAHERTY: It was a minute or two. But as you said, if he's agitated for a minute as opposed to, say, five or 10 minutes, the longer the agitation goes on, the different tenor that has with respect to, well, how do I assess this situation for risk? Correct?

CPL KNAPMAN: For sure. You would ask yourself – again, your risk assessment would change. And if this thing was proceeding – if it was proceeding for a long period of time and, you know, it was going nowhere, then, yes, you would consider the value of being there.

MR. FLAHERTY: So at what point does or would Joe Smyth, Constable Smyth, realize or should have realized that this was going nowhere? I mean, how long – in your opinion, how long would Donald Dunphy have to be agitated, incoherent and frothing at the mouth before Constable Smyth realized this is over?

CPL KNAPMAN: I don't think I can give a time. Again, I wasn't there. I don't have an exact time of how long Constable Smyth was dealing with it. It's situational.

MR. FLAHERTY: Uh-huh.

CPL KNAPMAN: Again, the – and, you know, the unfortunate part of this was that before we got to that point, Mr. Dunphy pointed a firearm at him, so there was never a chance for Constable Smyth to de-escalate. You know, he was faced with a weapon and –

MR. FLAHERTY: Well, that's absolutely incorrect. I would agree with you that there wasn't much he could do with the weapon –

THE COMMISSIONER: No, we're not going to get argumentative. Just put your questions, Mr. Flaherty.

MR. FLAHERTY: No, but there were attempts at de-escalation, so you can't say that, can you?

CPL KNAPMAN: There were attempts at de-escalation. Maybe the word I should have used was disengagement to actually leave the house. I don't think we got to that point is my opinion.

MR. FLAHERTY: So was there at any point that you would have deemed it reasonable for Constable Smyth to disengage and leave the house?

CPL KNAPMAN: Not – no, not from what I saw.

MR. FLAHERTY: So, if Constable Smyth at any point had left the house, you would say: Constable Smyth, in my expert opinion, that was unreasonable that you left the house? Is that what you're saying?

CPL KNAPMAN: If he would have – I don't know the question that you're looking for. I'm dealing with the circumstances and giving you opinion that, given Donald Dunphy's behaviour, there was no reason to disengage and leave the residence.

THE COMMISSIONER: There's a difference, too, Mr. Flaherty between an abundance of caution doing something and it being unreasonable. You know?

MR. FLAHERTY: No, but – so my question was, and I'll try to articulate it: If you had to review this situation, and Constable Smyth had left once Donald Dunphy had become agitated, would that have been a reasonable or unreasonable action on Constable Smyth's part?

CPL KNAPMAN: Left and come back in? Or –

MR. FLAHERTY: No, just left. Once he had become agitated, he realized he was agitated, and left. Would that be reasonable or unreasonable in your opinion?

CPL KNAPMAN: I think it would be unreasonable, because I don't think any police officer would have left.

MR. FLAHERTY: What was the value in staying when Donald Dunphy was agitated? What, at that point, was Constable Smyth –?

CPL KNAPMAN: His intentions, I believe, were to calm him down. And he was there – initially, they had a cordial exchange. He became agitated. He was trying his attempts to de-escalate and calm the situation down, until a weapon was pointed at him.

MR. FLAHERTY: Okay.

At page 16 of your findings, you stated that Constable Smyth believed he could safely attend Donald Dunphy's residence. Do you recall that?

CPL KNAPMAN: Are you talking page 16 in green, or page ...?

MR. FLAHERTY: Page 16 in green, I believe.

CPL KNAPMAN: Yes, okay.

MR. FLAHERTY: Okay. So when you say safely attend, does that include the fact that Constable Smyth would have had a plan with respect to the safety of Donald Dunphy himself, if he acted out or if he was irrational or if he was disturbed?

CPL KNAPMAN: You have to plan in any event. Again, you could go – one of the things we talk about, you talk about risk assessment, you may go to a cat in a tree, which is a very low-risk situation, but you always have to have heightened awareness. You always have to be prepared to expect the worst outcome. Although it's a routine call, in any situation you go to, no matter if it's a routine low-risk versus high-risk, you have to have – you plan and you rehearse things.

MR. FLAHERTY: When – did Constable Smyth have a plan for what he would do to preserve the safety, the life, the health, the condition of Donald Dunphy if Donald Dunphy was disturbed and violently lashed out? Did you have any evidence that he had a plan for what to do if that was the case?

CPL KNAPMAN: I didn't read that anywhere.

MR. FLAHERTY: Okay, so he didn't have a plan, is what you're saying.

CPL KNAPMAN: I don't know if he had a plan or not, but I can only say what I reviewed, and I did not see a detailed plan, or any testimony, or any statement from Constable Smyth with respect to that.

MR. FLAHERTY: Just one second now.

I'm just going to seek your direction now, Mr. Commissioner. With respect to some of the portions of the report that may be interpreted as providing medical or psychiatric opinion, how is that going to be addressed? Would you want me to address it or will you address it in your own consideration of the report? Because I don't want things to go in uncontroverted and then be used in your report.

THE COMMISSIONER: I'm going to be looking at all the witness and what all of them have said in that regard, where they're qualified to say it, and I'll be drawing common-sense inferences. So it's a little difficult to give you an answer to that without more detail.

What – can you be more specific?

MR. FLAHERTY: Well, we talk about at page 18 Constable Smyth would have been experiencing all these physiological and psychological experiences. Now, I think that would be well within –

THE COMMISSIONER: Sorry –

MR. FLAHERTY: Go to page 18.

THE COMMISSIONER: You've got – you're at page 16 green, is it?

MR. FLAHERTY: No, sorry, page 18.

THE COMMISSIONER: Oh, page 18, so is that the upper number or the lower? Where are we? Just – have you found it there on the –

MS. O'BRIEN: Okay.

So is that the exhibit page number 18?

CPL KNAPMAN: Page 20 of the exhibit.

MR. FLAHERTY: Oh, page 20 of the exhibit, sorry.

THE COMMISSIONER: 20 of the report or 20 –?

No, I'm lost now.

CPL KNAPMAN: Green 20.

THE COMMISSIONER: Okay, "With respect to Cst. Smyth" That paragraph there?

MR. FLAHERTY: Yes.

THE COMMISSIONER: Well, the last part of that we have evidence with respect to training kicking in, going on autopilot, et cetera. Presumably, we don't need Corporal Knapman on that, do we? Is that the area you're talking about?

MS. O'BRIEN: Just for clarity, this is one of the paragraphs that –

THE COMMISSIONER: Although, I should say, some of this –

MR. FLAHERTY: (Inaudible.)

THE COMMISSIONER: Sorry, Mr. Flaherty, some of this may be based upon the experience of Corporal Knapman where he'd be entitled to testify. For example, when he says, "In a shooting situation, people revert to what they have been trained to do." You know, and he's –

MR. FLAHERTY: And no, and that's fair enough. The only part about it we take issue with is that in the middle paragraph, I guess you could say, on the screen it says: "In this situation Cst. Smyth would have been experiencing all these physiological factors and resorted back to his training"

THE COMMISSIONER: Right.

MR. FLAHERTY: So I just have an issue with him saying – with Knapman saying that he did. Are you taking the did or may have been experiencing all these –

THE COMMISSIONER: Well, I'm not – again, he's entitled to say that, I believe, from his experience that Constable Smyth probably reverted back to his training. Is that –?

MR. FLAHERTY: No, once again I understand that, but it's –

THE COMMISSIONER: Right.

MR. FLAHERTY: – the medical opinion of saying that he –

THE COMMISSIONER: The –

MR. FLAHERTY: – would have experienced all of these (inaudible).

THE COMMISSIONER: Well, who – I mean, really, we're getting into now what's the relevance of the question?

MR. FLAHERTY: Well, the only relevance is it goes to the credibility of an expert report. I would argue that when an expert steps outside of his own expertise and starts providing opinion evidence which he is not qualified to do –

THE COMMISSIONER: I'm not saying – I have not said he's not qualified to do; I've been attempting to expedite matters by saying we're not going to go there. But I'm quite sure that if you – if we want to – if you want to submit that Corporal Knapman is not qualified to go there, then we got to get into his experience as a police officer and he may very well be qualified to get there.

MS. O'BRIEN: Thank you – sorry, Commissioner.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

When we had gone through – when I went through my examination in chief, that paragraph that starts with: “With respect to” –

THE COMMISSIONER: Right.

MS. O'BRIEN: – and the first sentence of the next paragraph were two of the areas of the report that I, you know, specifically –

THE COMMISSIONER: I understand (inaudible).

MS. O'BRIEN: – meant to exclude for that very reason. And I did note that the only – in terms of what Constable Smyth had been experiencing, the only evidence we've had was the examination by the paramedic and then what other officers have said they observed in terms of him looking shaken. And that was why I had made those points.

THE COMMISSIONER: So do you wish to pursue any questions relating to these physiological factors, Mr. –

MR. FLAHERTY: I'll leave it there.

THE COMMISSIONER: – Mr. Flaherty. Okay.

MR. FLAHERTY: I'll leave the argument.

I just want to go back to –

MR. KENNEDY: Mr. Commissioner, can I just ask how long we're going? I already indicated earlier today I had certain other things to get done.

THE COMMISSIONER: I didn't – sorry, I never heard that you indicated that.

MR. KENNEDY: Yeah.

THE COMMISSIONER: You were wondering about, you know, how long we're going, I know that, but I didn't realize you had –

MR. KENNEDY: Oh, if it's only a couple of minutes, I just – have you – be a few minutes?

THE COMMISSIONER: Yeah, I don't know. I'll ask Mr. Flaherty there.

MR. FLAHERTY: About – less than five minutes.

THE COMMISSIONER: Okay. Is that all right?

MR. KENNEDY: Oh, that's fine, yeah.

THE COMMISSIONER: Yeah, okay.

MR. FLAHERTY: In your opinion –

THE COMMISSIONER: And so I know the RCMP might have some questions.

MR. FLAHERTY: Okay.

THE COMMISSIONER: But, sorry, go ahead, Mr. Flaherty.

MR. FLAHERTY: In your opinion, did Constable Smyth have enough information when he initially knocked on Donald Dunphy's window in order to have a proper risk assessment made before he went in to the interview?

CPL KNAPMAN: Yes.

MR. FLAHERTY: Was there any – would you not agree that having as much information as possible would lead to a more accurate risk assessment?

CPL KNAPMAN: Having more information does, given that this was a low-risk call. Police officers don't – again, it comes down to capacity and accepted practices. There's a big difference in culture in different policing agencies and with respect to his experience. Do I feel that he had enough information? Yes. Can we always get more information? Yes.

THE COMMISSIONER: More is better.

MR. FLAHERTY: More is better, and from what you know, did he have the opportunity to get more information before he ultimately interviewed Donald Dunphy?

CPL KNAPMAN: He did only in a sense that Donald Dunphy wasn't there and he ended up going to the neighbours, his brother and sister-in-law, which he did receive more information.

MR. FLAHERTY: Most of it was dated information, correct?

CPL KNAPMAN: Correct.

MR. FLAHERTY: Okay.

Do you see a potential issue if an officer going to go build rapport – I mean, the basis for rapport is – well, one of the bases for building a positive rapport is trust, correct?

CPL KNAPMAN: For sure, yes.

MR. FLAHERTY: And so do you not see any issues with Constable Smyth's – and I'm not saying that this was necessarily intentional, but sort of the concealment of what his actual position was? Do you see an issue with that, like that that could breed dis-trust once Donald

Dunphy realized Constable Smyth was actually there as a member of the Protective Services for the premier's office?

CPL KNAPMAN: Again, I think he discussed the tweets with him and I don't know if he specifically – I don't believe there is any evidence to that he specifically said that he was a part of the Royal Newfoundland Constabulary, the protective unit. Would it be an issue of trust? It also looks at reasoning why sometimes you may say I'm Wayne Knapman with the RCMP versus Corporal Wayne Knapman. Again, it becomes to that personal side of it.

Would Mr. Dunphy take that as being dis-trustful? I can't say that he would or not. I think it was clear he was talking about his injury. I believe he had an idea why he was there.

MR. FLAHERTY: And are you aware than Donald Dunphy referred to Constable Smyth as an effing puppet of the government?

CPL KNAPMAN: Yes, it was in Constable Smyth's statement.

MR. FLAHERTY: And do you think that that may have been an indication that Mr. Dunphy saw Constable Smyth as being an agent of the group, of the government, who he had been essentially taking to task on social media?

CPL KNAPMAN: My opinion is, just like I work for the federal government, I took it that he's working for the Royal Newfoundland Constabulary, which is a part of the provincial government, and he took it that that's who he was.

MR. FLAHERTY: Okay. I'm just going to move on now.

I just wanted to go to one last thing. I'm trying to give you a chance to correct your evidence on this, or maybe it's been correct the whole time, but you make the conclusion that Don Dunphy intended to kill Joe Smyth. I take no issue with that if it's in the context of a police officer seeing a gun being pointed at him. It's hard for him to think about or reasonably say, well, there's something else going on here.

So I can understand your conclusion in that context, the perception of Smyth, but is it your evidence that you actually believe Don Dunphy wanted to kill Constable Smyth?

CPL KNAPMAN: I guess my evidence is that his actions, Donald Dunphy's actions, whether it be by pointing a firearm, Constable Smyth, whether his intentions were to kill him or cause grievous bodily harm, is his intentions – there was only one response and that was lethal force by Constable Smyth.

MR. FLAHERTY: Okay.

CPL KNAPMAN: So if someone points a firearm at me, it's my perception, my opinion, that this person wants to kill me or hurt me or they wouldn't point a firearm at me.

MR. FLAHERTY: And that's somewhat reasonable, but just to take a step back because we do know your report is public. We do know that there's family members and friends of Donald Dunphy who see that you say he intended to kill a police officer. He could have just pointed the rifle at him to intimidate him, correct? I mean, this is divorcing yourself from Constable Smyth's actions.

CPL KNAPMAN: So, again, I'm asking if he's – I'm relying on – again, it's hard to say was it a victim-precipitated homicide where you point a weapon at someone asking the police to shoot

you? Again, I can't and maybe that was unclear in my earlier testimony, but the purpose of and the intent – and again, this is something that we do not use anymore in the RCMP, the ability, intent and means.

The Royal Newfoundland Constabulary still use the weapon, intent, delivery system. It's perceptions that Constable Smyth would have perceived is that by a weapon being pointed at him that Mr. Dunphy intends to kill him or cause him grievous bodily harm.

MR. FLAHERTY: Okay. Thank you very much.

MR. DROVER: Mr. Commissioner, I just wanted to give you a reference: January 25 transcript, page 24, is where I believe Mr. Flaherty was referring earlier to –

THE COMMISSIONER: Okay.

MR. DROVER: – Constable Smyth seeing the stick. And his answer to that after Mr. Flaherty said to him: As soon as you walked in the room, basically he had saw it. He said: I addressed it early on in my conversation with him, and that conversation was about 15 minutes.

THE COMMISSIONER: He's saying as soon as he went in the room he saw it?

MR. DROVER: No. Constable Smyth says: "Early on in the conversation I addressed the bat with him."

THE COMMISSIONER: Okay.

MR. DROVER: He doesn't say: I immediately saw it; it's the first thing I saw. He doesn't say anything remotely like that.

THE COMMISSIONER: Okay. Thank you.

Now, Mr. Freeman or –

MR. FREEMAN: Yes, I've –

THE COMMISSIONER: Just – how long do you expect to be?

MR. FREEMAN: It's 5:24 and I will finish by 5:30 or else I'll stop.

THE COMMISSIONER: Okay.

All right. Go ahead, Mr. Freeman.

Thank you.

MR. FREEMAN: Corporal Knapman, very few questions for you. I'm sure you're getting quite tired at this moment.

So you mentioned the acronym EDP, emotionally disturbed persons, earlier.

CPL KNAPMAN: Correct.

MR. FREEMAN: That's something you learned from your recent de-escalation training, is it?

CPL KNAPMAN: I've heard that term before, but the training that I had recently was more in-depth. But that's a term that I'm quite familiar with, but I had more in-depth training with the new package.

MR. FREEMAN: And you didn't have any reason here, based on the evidence you saw, to say that Mr. Dunphy was an emotionally disturbed person at all?

CPL KNAPMAN: No.

MR. FREEMAN: Okay.

You had mentioned that cultural differences amongst forces, police forces, could lead to differences in risk assessments, I believe that's something like what you said.

Can you elaborate on that for the Commissioner, cultural differences?

CPL KNAPMAN: Sure.

Cultural, Your Honour, is part of your perceptions. It's based on members' experience as well as the cultural – the policing culture.

Having the fortunate opportunity to police in the Lower Mainland of Vancouver in a large municipal police detachment and then having the opportunity to police in a small policing detachment of five people in Sheet Harbour, Nova Scotia, there is quite a difference of culture and that's why it's in the perceptions because what – again, if you look at the Royal Newfoundland Constabulary, for example, they did not start carrying guns until 1999.

THE COMMISSIONER: Yeah, they had them in the trunk but –

CPL KNAPMAN: Yeah, so they didn't start – so the difference in culture leads into the risk assessment.

My experience working in Lower Mainland Vancouver, it was a very militant, very – you always had back-up because you had 15 officers working in a small area and you were fortunate enough that you policed – policing was very – I wouldn't say it was aggressive, but it was a different style of policing versus Sheet Harbour, from my experience in a small detachment, which I think is very relevant to some small towns in Newfoundland.

One of the things I recognized in Sheet Harbour was that members of the public did not like a marked uniform car being at their house. I'd often be approached on my time off, days off at my residence, when they would come to the residence because they didn't want to see a person with a marked police vehicle, and furthermore that they would come and speak to me in open public because they didn't want to have a marked car at their house.

So there is a significant culture in policing, again, even in Nova Scotia and Tantallon, which I police, which is a mid-size 30 person detachment, which I would similarly relate to being similar to, say, Corner Brook. There's a different perception from the public and your policing style is quite a bit different.

THE COMMISSIONER: Okay, all right. Think we'll –

MR. FREEMAN: And finally, you had a chance to very quickly review the Coleman-Massine report.

CPL KNAPMAN: Correct.

MR. FREEMAN: Do you want to offer any high-level comment on the qualifications or that report? I know that's a gigantic question at this hour, but anything high-level?

CPL KNAPMAN: Again, the only concern I had with the Massine report – again, I won't get into some of my differences of opinion, but with respect to the CV of Sergeant Massine, there was lots with respect to training background, but there was nothing with respect to his operational background, other than his instructional. I believe there was mention of military police and then correctional, but there was nothing with respect to his operational. Was he in a small detachment? Was he in a large detachment? Was he in a plain-clothes unit? So I've been fortunate that I've worked both plain clothes and operational as well, so ...

MR. FREEMAN: I have no further questions, Mr. Commissioner.

Thank you, Corporal Knapman.

THE COMMISSIONER: Thank you.

Mr. Kennedy?

MR. KENNEDY: No, I've asked my questions.

THE COMMISSIONER: Oh, I'm sorry.

UNIDENTIFIED FEMALE SPEAKER: He wants to go home.

MS. O'BRIEN: Sorry, I'll be very –

THE COMMISSIONER: Yeah, I think it is time to go.

Ms. O'Brien, you're getting –

MR. KENNEDY: When you're asking me to ask questions twice, Commissioner, and you're inviting me –

THE COMMISSIONER: You're ready to go, Ms. O'Brien.

MS. O'BRIEN: Thank you.

Corporal Knapman, when you came and gave your testimony today, you were very clear that you noted some tactical errors with Constable Smyth's actions on that day. Those tactical errors did not appear in your report. Why is that?

CPL KNAPMAN: Because in my report I was asked to not give an opinion with respect to his training or the mistakes he would have made, because those mistakes, even though he made them, did not affect the – actually, my conclusion that it was reasonable. If anything, those tactical errors that he made put himself more at risk than anyone else.

THE COMMISSIONER: They what?

CPL KNAPMAN: Put Constable Smyth at risk.

MS. O'BRIEN: When we – during our interview we asked you about at least one of them, which was the taking – Constable Smyth's taking his eyes off Mr. Dunphy's hands, and I'm referring to page 179 of the transcript. At that point you had just – you would – after some questioning you said you would say it could possibly – it would be possibly a tactical error. You use possibly at the interview. You're saying it was a tactical error now?

CPL KNAPMAN: Sorry. Could you just repeat it, sorry?

MS. O'BRIEN: At the interview when we interviewed you prior to the –

MR. FLAHERTY: Yes.

MS. O'BRIEN: – I had asked you some questions particularly on the issue of Constable Smyth taking his eyes off Mr. Dunphy's hands. Do you recall that?

MR. FLAHERTY: I do now that you're reading the transcript, yes.

MS. O'BRIEN: Okay, and at page 179 of the transcript you said there that that – you would say it would possibly, would be possibly a tactical error. Today –

MR. FLAHERTY: Yeah, I think that might have been just incorrect terminology that I was using. My evidence there and my evidence here today should be that I would consider that a tactical error. There's no possibly; it is or it's not. So, yes, that is a tactical error.

MS. O'BRIEN: Okay. Thank you.

THE COMMISSIONER: Okay. We'll adjourn now until 9:30 tomorrow morning. Or – okay, thank you.

MS. SHEEHAN: All rise. This Commission of Inquiry (inaudible).

THE COMMISSIONER: Thank you, Corporal Knapman.

CPL KNAPMAN: Thank you, Your Honor.