



COMMISSION OF INQUIRY  
RESPECTING THE DEATH OF DONALD DUNPHY

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Transcript

Volume 37

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*Commissioner: Honourable Justice Leo Barry*

Tuesday

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**MS. SHEEHAN:** All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

**THE COMMISSIONER:** Good morning.

Before we start there are a couple of housekeeping items. First of all, I want to remind all of our viewers and listeners that we're having our town hall-type meeting on Thursday starting at 9 o'clock. And the agenda has been posted, I believe, and the public is invited to make written submissions and/or attend. I assume we'll have room to have questions put to various panellists and to, as I say, indicate in writing particular questions that they might have or suggestions for how the inquiry should continue its work, and how I should carry out my responsibility to prepare and present a report. We're in the last few days, so we're almost finished.

I was going – I had something to say to Mr. Avis, but I forgot he's not here until this afternoon so I'll deal with that later.

So we'll start with our witnesses now when they're ready.

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

Our first witness today is Gareth Jones.

And before we begin, Mr. Jones, I'm going to ask that our – Madam Clerk, affirm your evidence.

**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. JONES:** I do.

**MS. SHEEHAN:** Please state your full name.

**MR. JONES:** Gareth Rhys Jones.

**MS. SHEEHAN:** Thank you.

**MS. O'BRIEN:** Good morning, Mr. Jones. Kate O'Brien, one of the Commission co-counsel.

Mr. Jones, do you affirm your duty to the Commission to provide evidence that is independent, impartial and unbiased and that is only related to your area of expertise?

**MR. JONES:** I do.

**MS. O'BRIEN:** And I'm going to bring up your curriculum vitae. P-0769, please, Madam Clerk.

And, Commissioner, I should just say, Mr. Jones has with him in the box both a copy of his CV, this exhibit we've brought in, and the – his report as well.

**THE COMMISSIONER:** Okay. Thank you.

**MS. O'BRIEN:** Before I begin on the CV, I'm just going to have at first Mr. Jones' CV entered, Commissioner. So I'd ask right now to have this Exhibit P-0769 ordered into evidence.

**THE COMMISSIONER:** So ordered.

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

Okay.

Mr. Jones, I know you have a copy of this before you but we have it up on the screen. So I am going to just start with your professional career. I understand that you started your career as a police officer with the Metropolitan Police of London in the UK. Is that right?

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

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

So you were there from '82 until '88.

**MR. JONES:** Correct.

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

And during that time you did street patrol?

**MR. JONES:** Correct.

**MS. O'BRIEN:** And you left as a sergeant supervising street patrol. Am I right?

**MR. JONES:** Correct.

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

So I understand you then immigrated to Canada and you worked as an insurance investigator from approximately '89 to '91.

**MR. JONES:** Yes.

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

And then from 1991 to 2003 you were with the Special Investigations Unit in Ontario. Is that right?

**MR. JONES:** That's correct with the caveat that I was on a secondment for a certain period of time to DND during that period.

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

Can you please explain to the Commissioner what is the SIU or Special Investigations Unit?

**MR. JONES:** The Special Investigations Unit is an agency of the Ministry of the Attorney General of the Government of Ontario. It has a mandate to conduct criminal investigations into any incident involving an on-duty police officer where there's been a death or a serious injury.

**MS. O'BRIEN:** Okay. And –

**THE COMMISSIONER:** I think move closer to the mic –

**MR. JONES:** Okay.

**THE COMMISSIONER:** – and you'll be picked up better.

Thank you.

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

So while you were with the SIU, approximately how many investigations of police involved – of police, involving either death or serious injury, did you undertake during that period?

**MR. JONES:** I was involved in roughly 500.

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

And approximately what percentage or what number of those would you have been involved as the lead investigator?

**MR. JONES:** It depended on the type of investigation. So for police shootings, I would guess at about 35 to 40 of the hundred that I was involved in I was the lead investigator, approximately.

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

And of the approximately 500 investigations that you were involved in, again, what percentage or approximately what number would have been investigations of use of force by police officers under section 25 of the *Criminal Code* such as we're looking at here?

**MR. JONES:** I think section 25 applied to all the investigations that we conducted.

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

Did you undertake any specific training related to investigation of police officers while you were with the SIU?

**MR. JONES:** I did.

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

And in this regard it might help if I go to – Madam Clerk, can we just go to page 15, please, of Mr. Jones' CV. I think, Mr. Jones, this may help you in highlighting for the Commissioner what training you had.

So can you just give the Commissioner an indication on what specific training you had during this period?

**MR. JONES:** Yeah, I attended various courses at the Ontario Police College, including the general investigative techniques course, the advanced sexual assault investigation course and the advanced case management course. I also attended a number of homicide investigative seminars put on by the Toronto Police: the scientific content analysis interviewing course and the Harvard Associates in Police Science homicide investigators course in Baltimore, Maryland.

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

**MR. JONES:** There was also in-house training as well that was done fairly frequently.

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

And then I'm going to go back to page 1 of your CV, please, Madam Clerk. I understand after you left this – the SIU, from 2003 to approximately 2005 you were the director, Special Ombudsman Response Team for the Department of National Defence and the Canadian Forces Ombudsman's office. Is that correct?

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

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

Can you just explain for the Commissioner what did that position entail? And if you could please focus on any aspects of that position that may be relevant to the subject of the opinion report that you've rendered in this case.

**MR. JONES:** The Ombudsman's office does administrative fairness investigations dealing with complaints from military members. My responsibility was running a team of investigators who dealt with underlying systemic issues. So we did major investigations into things such as how the Canadian Forces dealt with post-traumatic stress disorder.

We also, for the purposes of this inquiry, we conducted an investigation that I led into how the Canadian Forces investigated deaths, non-combat fatalities that happened to members; so in primarily training accidents, things of that nature, how they were investigated, the quality of the investigations, how those investigations were reviewed and the decision process as to what should happen in the wake of those incidents.

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

And then from 2005 to present I understand that you have been with and continue to be the director with the Special Ombudsman's Response Team of the Ombudsman of Ontario. Is that right?

**MR. JONES:** That's correct. Yes.

**MS. O'BRIEN:** And, again, can you tell the Commissioner, please, what does this position entail? And, again, if you could focus on any relevant – you know, any aspects of that job relevant to your work in the present case.

**MR. JONES:** Yeah, I think the Ombudsman of Ontario has jurisdiction over agencies, boards, commissions, ministries of the Government of Ontario, as well as municipalities and so on. My job is, again, running the major investigation team, so we do all the major systemic investigations for the offices done.

We've done about 35 to 40 of them since 2005. Some of those investigations have involved policing issues. Most recently, a matter of life and death dealt with how the ministry provides training to Ontario police officers on the topic of de-escalation. We've also done investigations into the Special Investigations Unit and other related policing issues.

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

So in your investigation in the Special Investigations Unit, were you doing – what were you looking at there?

**MR. JONES:** We were looking at insufficiency, the quality of its investigations, its investigative processes, its reporting, its independence, its hiring practices, anything related to the quality and objectivity of their investigative process.

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

And I'm going to go – the Publications section in your CV begins at page 2. And I'm going to ask you in that section of your CV, please, Madam Clerk, can you just go to page 2?

Thank you. And here is the section.

Mr. Jones, can you please highlight any of your publications here that would be relevant to the work you've undertaken in this case?

**MR. JONES:** I think both the books – the *Undertaking Effective Investigations*; although it was done for human rights investigation – investigators from Australia and Southeast Asia or Southern Asia – it dealt with investigating the conduct of police. The primary case study was a very high-profile Australian custody death.

The second book, *Conducting Administrative, Oversight & Ombudsman Investigations* talked about effective investigative practices and included a fairly lengthy chapter on investigating the police.

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

And is that the book that's about to come out with a second edition? Am I correct in that?

**MR. JONES:** When I get ready writing it, yes, it is. Yes.

**MS. O'BRIEN:** Okay. Are you – is that a project you're currently working on?

**MR. JONES:** It's a project I'm currently working on.

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

All right, anything else in the – that you want to highlight in your Publications section?

**MR. JONES:** The chapter in that – in the *Police-Involved Deaths: The Need for Reform* book which is called "The Top Ten Things Not To Do When Setting Up A Police Oversight Agency" I think is probably relevant to some of the issues that you're scrutinizing.

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

That's good there. What I'll do now is move to the Speaking Engagements and Investigations Training section of your report.

And, again, I know you have a hard copy there in front of you, Mr. Jones. In this section of your CV could you please highlight any entries that are relevant to your work in this case and I'll take us to them on the screen.

**MR. JONES:** Sure.

The – all the training focuses on the principles of doing effective and efficient investigations that will withstand scrutiny, but some are directed particularly at police oversight investigations.

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

**MR. JONES:** For example, that half-day course I did for the US National Association of Civilian Oversight of Law Enforcement, the acronym is NACOLE and the International Law Enforcement Auditors Association in Austin in November 2012 and that's on page 5.

**MS. O'BRIEN:** Okay, so I have one here on – sorry, have I highlighted the right one here? It's on page – it says November 2014, is that the one?

**MR. JONES:** That's correct, yeah.

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

**MR. JONES:** Page 5, yeah.

**MS. O'BRIEN:** On page 5? Okay.

**MR. JONES:** I've done some training for the department of War Crimes and Crimes Against Humanity. I've done investigative interviewing sessions as well as a general investigative practice session. And if my memory serves, they work very closely with RCMP officers investigating war crimes. So that may have some nexus.

**MS. O'BRIEN:** Okay. And have I highlighted the correct one there, Mr. Jones, on the screen?

**MR. JONES:** January – yes, that's correct.

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

Thank you.

**MR. JONES:** Again, the NACOLE Annual Conference when I presented on How to Assess the Quality of an Investigation into Police-Involved Deaths, that's on page 7, the third one up.

**MS. O'BRIEN:** Okay. And so that's the one October 2012?

**MR. JONES:** Correct.

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

**MR. JONES:** I did some training for the Police Complaints Authority of Trinidad and Tobago in October 2011 at the bottom of page 8.

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

**MR. JONES:** And that was done in conjunction with the UK Independent Police Complaints Commission which has a similar function to SIU in the UK.

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

**MR. JONES:** Another presentation for NACOLE at the top of the next page, page 9: Investigating Police Pursuits. Again, it involves the investigation of fatalities involving police.

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

**MR. JONES:** At the bottom of that page for CACOLE which is the Canadian equivalent of NACOLE, I presented at their annual conference on How to Assess the Quality of an Investigation.

**MS. O'BRIEN:** And that we don't have – sorry, the date is on the next page but that's May 2011.

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

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

**MR. JONES:** Further down that page, another Department of Justice session, another US NACOLE session on investigative skills. That's September 2010.

**MS. O'BRIEN:** Okay. That would be this one here?

**MR. JONES:** Correct.

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

**MR. JONES:** On the next page, page 11, I did some customized training for the RCMP Complaints Commission.

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

**MR. JONES:** That's top of the page.

**MS. O'BRIEN:** So this was in March 2010?

**MR. JONES:** Correct.

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

**MR. JONES:** Earlier that year in February 2010 a little bit further down the page, I did a – with a colleague, I did the two-day customized session for the Independent Police Review Authority of Chicago which oversees the Chicago Police Department.

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

**THE COMMISSIONER:** I'm just wondering now, does counsel have objections in terms of – just to get a reading on how far Ms. O'Brien should go, are you challenging –

**UNIDENTIFIED MALE SPEAKER:** (Inaudible) is fine.

**THE COMMISSIONER:** – qualifications.

Thank you.

**MR. FREEMAN:** We're not challenging his qualifications but we have a few questions on qualifications.

**THE COMMISSIONER:** Sure. Yeah.



**MS. O'BRIEN:** Okay, in light of that I will –

**THE COMMISSIONER:** Sorry, wait now. Mr. Drover has something.

**MR. DROVER:** I would say I probably have one question on qualifications but I certainly wouldn't be challenging them.

**THE COMMISSIONER:** Okay.

**UNIDENTIFIED FEMALE SPEAKER:** We're not challenging the qualifications either.

**THE COMMISSIONER:** Thank you.

All right, Ms. O'Brien, if there's anything that Mr. Jones would like to highlight before we move on, I think we can move on to the questions by other counsel if there's nothing else you want to deal with there. Any sort of –

**MS. O'BRIEN:** No.

**MR. JONES:** Nothing I can –

**THE COMMISSIONER:** – smoking gun that –

**MR. JONES:** Not that I can't think of.

**THE COMMISSIONER:** – you can point to. Okay.

**MS. O'BRIEN:** No, that's fine, Commissioner.

Before other counsel, I'll just advise that I will be seeking to have Mr. Jones qualified as an expert in the investigation of serious incidents involving police officers.

**THE COMMISSIONER:** Okay.

Counsel, put some questions if you have them.

**MR. FREEMAN:** Good morning Mr. Jones.

**MR. JONES:** Good morning, Sir.

**MR. FREEMAN:** Good morning.

My name is Mark Freeman. I'm one of the counsel with my colleague Ms. Rasmussen for the RCMP.

**MR. JONES:** Correct.

**MR. FREEMAN:** Just a couple of questions about your qualifications and your background. You said that – or your CV says you have seven years of operational police work in London. Is that correct?

**MR. JONES:** It's probably more 6½ years.

**MR. FREEMAN:** Six and a half years. Thank you.

And London, that's a very urban police environment. Would you agree?

**MR. JONES:** Correct.

**MR. FREEMAN:** Okay.

You'd agree that policing in rural Newfoundland would be different from policing in London?

**MR. JONES:** I don't know about policing in rural Newfoundland but I suspect it would be.

**MR. FREEMAN:** And you don't have any operational experience with the rural policing?

**MR. JONES:** As a police officer, no. But I've investigated police forces that have been involved in shootings or deaths in Ontario, that work in rural areas.

**MR. FREEMAN:** And you'd agree the policing cultures and resources in London and St. John's would be very – or sorry, London and in rural Newfoundland would be different.

**MR. JONES:** I can only really speak to the culture in London because I'm familiar with that.

**MR. FREEMAN:** You can only speak to the culture in London you say.

**MR. JONES:** Yes.

**MR. FREEMAN:** You mention in your background and in your experience that you worked with SORT or you currently work with SORT.

**MR. JONES:** That's correct, yes.

**MR. FREEMAN:** And something you did there was you investigated SIU.

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

**MR. FREEMAN:** Okay.

So even SIU can be perceived at times as being not objective or not thorough, is that fair?

**MR. JONES:** There were certainly issues with perceived objectivity, efficiency, thoroughness with SIU investigations, which is why we conducted the two investigations we did conduct.

**MR. FREEMAN:** And so your – SIU is looking at investigations of officers but then SORT is looking at the investigations of the investigators.

**MR. JONES:** That's correct. Yes.

**MR. FREEMAN:** Okay.

Thank you. Those are all my questions on qualifications, Mr. Commissioner.

**THE COMMISSIONER:** Okay.

Mr. Drover.

**MR. DROVER:** Thank you.

Mr. Jones, I'm John Drover, I'm counsel for the Royal Newfoundland Constabulary Association.

And my only question for you is about your current position as Ombudsman of Ontario.

**MR. JONES:** I work for the Ombudsman of Ontario. I'm not the Ombudsman of Ontario.

**MR. DROVER:** Okay.

So in the CV it says that the office directs all high-profile systemic investigations and –

**MR. JONES:** My part of the office directs all high – all high-profile systemic investigations.

**MR. DROVER:** Okay.

And what I would like to ask is what those investigations entail in a sort of general sense, subject areas, I suppose.

**MR. JONES:** The methodology is actually not too dissimilar to what you would use to investigate a fairly – a homicide or a major police incident where you have lead investigators who report directly to me. We have resources from across the office, so if I need more investigators I can get them from other areas of the office.

We plan our investigations, we identify what the issues are, we identify where the evidence is. I work with legal counsel as the process goes on and, ultimately, we assess the evidence we've gathered, and in our case we come up with recommendations.

**MR. DROVER:** Okay.

And the subject areas of those investigations are ...?

**MR. JONES:** Range from – and as I say we've done between 35 and 40 of them – the provision of training to police officers in Ontario about de-escalation is one; services provided to adults with developmental disabilities is another. It's basically areas which are under the control of the provincial government.

**MR. DROVER:** Okay.

So any, I guess, dispute or perceived dispute that a member of the public or a segment of the public feels that they have in the provision of services from the Government of Ontario, these are the things that you as –

**MR. JONES:** These are the things the office investigates; it's not my side of the house. My side of the house is the more in-depth systemic investigations which are usually very high profile in the media and lead to published reports with recommendations.

**MR. DROVER:** Okay.

So when, then, was the last time that you had been involved in the investigation of an officer-involved shooting?

**MR. JONES:** In 2001.

**MR. DROVER:** Thank you.

Those are all my questions.

**THE COMMISSIONER:** Thank you, Mr. Drover.

Just one question relating back to your experience in urban London and Ontario: In Ontario were you involved in urban only, or urban and rural investigations?

**MR. JONES:** Both. I was involved in investigations of incidents that involved, for example, the OPP, which is a primarily rural or small-town policing agency.

**THE COMMISSIONER:** Thank you.

All right, so I understand there are no objections to Mr. Jones being qualified as an expert to give opinion evidence?

So if you could just repeat, Ms. O'Brien, as an expert –

**MS. O'BRIEN:** Investigation –

**THE COMMISSIONER:** The investigation of serious incidents involving police officers. Is that it?

**MS. O'BRIEN:** That's correct. Thank you.

**THE COMMISSIONER:** I have difficulty reading my writing when I write too quickly.

Okay, thank you.

**MS. O'BRIEN:** And then, Commissioner –

**THE COMMISSIONER:** I find Mr. Jones to be so qualified.

Sorry, go ahead.

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

I will now also ask to have the other exhibits entered. So that would be Exhibit P-0770 and P-0775 through to P-0781.

**THE COMMISSIONER:** 0775 to 0781.

Thank you.

So ordered.

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

Madam Clerk, can we please bring up Mr. Jones's report at P-0770.

All right, Mr. Jones, this is a report that you prepared for the current Commission of Inquiry. Is that right?

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

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

I'm not going to take you through every line of the report but we are going to go through it in some detail. You know, some of it is – it's there, it's been put into evidence.

You go through your introduction, your purpose of your report. Then in section 3 is your experience and I'm just going to go right over that section as we've already reviewed that as part of your qualifications.

I'm going to start with –

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

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

So I'm going to get to one section here on Material Reviewed which is at page 6, section 4. I believe this section, Mr. Jones, is fairly self-explanatory; you set out what material you reviewed in coming to this, coming to your report.

I won't jump to it but on page 63 of this report you make – state a caveat that you may have missed material facts, that you haven't reviewed every piece of paper essentially. And that it pointed out to you that might cause you to reassess your opinion and conclusions. Is that ...?

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

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

Have you had the opportunity to watch any of the testimony of witnesses before the inquiry hearings to date?

**MR. JONES:** I have. Yes.

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

And in doing that, have you become aware of any additional facts that have caused you to reassess your opinions or conclusions as set out in this report?

**MR. JONES:** No.

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

All right, then we'll move on to the Analysis and Opinion section.

**MR. SIMMONDS:** Sorry to interrupt, is it possible to just ask – would it be possible to ask the office just which witnesses or generally which witnesses he heard if he watched some of it. That may be helpful.

**MS. O'BRIEN:** Mr. Simmonds is asking you to identify which witnesses whose testimony you have viewed.

**MR. JONES:** I saw some of Ms. Meghan Dunphy's on the first day of the inquiry. I saw a little bit of Acting Sergeant Smyth's testimony. I watched all of Corporal Burke's testimony. I watched all of Constable – Corporal Henstridge's testimony. I watched all of Sergeant Osmond's testimony. I didn't see any – either of the ident officers.

**THE COMMISSIONER:** Sorry, what?

**MR. JONES:** I'm sorry; I didn't see either Sergeant Saunders or Corporal Lee who were the ident officers.

**MS. O'BRIEN:** You did not.

**MR. JONES:** I did not see those.

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

**MR. JONES:** And I watched other testimony and I can't recollect exactly at the moment who, but I made a point of watching the investigator's testimony.

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

Thank you.

Okay, the first section of your report here – I'm at page 6 of your report and, again, I know you have a hard copy at your bench. Your first section is the RCMP investigative process and you do draw some conclusions here. Can you explain your findings with respect to this section to the Commissioner please?

**MR. JONES:** Yes, the RCMP investigation followed the Major Case Management process that the RCMP actually created. And it is followed to some extent by virtually every police force in Canada now. So the command triangle, the structure for conducting the investigation followed established principles.

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

And in this section here I note you say that the progress of the investigation was well documented. But then you make the caveat, "though some relevant information ... should have been inputted into the RCMP case management systems was not."

**MR. JONES:** Correct.

**MS. O'BRIEN:** Do you – the areas where you found information was not inputted, is that covered in other areas of your report?

**MR. JONES:** It is.

**MS. O'BRIEN:** Okay, so we can get to them then.

All right, so then as I understand, your – please correct me if I'm wrong, but what you do is you assess the quality of the investigation with reference to eight questions which you have set out at page 6 and 7 of your report. Is that right?

**MR. JONES:** Correct.

**MS. O'BRIEN:** Okay and we'll go through all those eight questions now and beginning with the first one.

So the first one – and we're on page 7 of your report: How independent and impartial were the investigators assigned to investigate the incident?

Mr. Jones, can you explain, please, to the Commissioner what your findings were with respect to that question?

**MR. JONES:** I found that there was a fundamental issue with impartiality. That, in my view, the investigators perhaps jumped to a conclusion as to whether this had been a “clean shoot” or not. And by clean shoot, that’s police parlance for – at least in Ontario for – a shooting that’s legally justified.

From what I saw, based on the evidence that I saw, they very early on in the investigation appeared to have reached that conclusion, and that, to some degree, had a detrimental effect on the remainder of the investigation, that perhaps bases that should have perhaps been covered weren’t covered. And I set out some of those bases in the rest of the report.

**MS. O’BRIEN:** Okay. With respect to actual conflict, did you find any evidence of actual conflict of interest on behalf of any of the investigative team?

**MR. JONES:** No. There had been some prior contact, as far as I understand it, between Corporal Burke and Acting Sergeant Smyth previously. And that was one of the things that I don’t think was documented – you were referring to earlier but I didn’t find that that was serious enough to warrant Corporal Burke from recusing himself.

And I understand he did verbally tell Sergeant Osmond, the team commander, about his previous dealings with Acting Sergeant Smyth at the very beginning of the investigation –

**MS. O’BRIEN:** Okay.

**MR. JONES:** – which is what he should have done.

**MS. O’BRIEN:** Which is what he should have done?

**MR. JONES:** Yes.

**MS. O’BRIEN:** Is that what you said? Okay.

So you’re – if I just understand you, just to make sure your evidence is clear, you’re saying that disclosure was made by Corporal Burke as it should have been done. It was not found to be serious enough to recuse him from the investigation and you agreed with that.

**MR. JONES:** I agreed with that, yes.

**MS. O’BRIEN:** Okay. But your only point on the issue seems to be that it should have been documented in the file?

**MR. JONES:** I couldn’t find it anywhere either in the daily task log or in the tasking report.

**MS. O’BRIEN:** Okay.

And as you’re going through your report and when you’re pointing out any deficiencies or areas where you felt that the investigation, you know, the quality was not up to the standard you would expect, if you – I’m going to ask you to, each time, give a little, give some indication to the Commissioner as to the seriousness of the deficiency.

**MR. JONES:** Okay.

**MS. O'BRIEN:** Because I'm assuming that some deficiencies might be minor ones and some might be more serious. And so I'll get you – as you go through each one, I'll get you to address that. So in terms of this one not recording in the file the details of, you know the disclosure by Corporal Burke of his prior contact with Constable Smyth, how would you categorize that in terms of –

**MR. JONES:** It's not particularly serious.

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

So I think you've touched on this one. I'm at the bottom of page 8 in your report and this was your – what you wrote here is: "In some respects this investigation did not, at least in my view, meet the standards of impartiality expected in a thorough and objective investigation of an incident of this nature." And is that the same issue you just –

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

**MS. O'BRIEN:** – spoken to us about?

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

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

Can you please explain for the Commissioner, maybe with reference to what evidence or facts that led you to that conclusion?

**MR. JONES:** I think looking at the transcript of the first interview of Acting Sergeant Smyth on, I think, it was April 6 around about 3:30 p.m., it was clear from the attitude of the interviewing officers that – at least in my view – they were extremely empathetic with Acting Sergeant Smyth.

They said things like, to the effect of: you saved your life I seem to remember one being one quote from there, which, the way I interpreted it, is a conclusion as to the justifiability of the shooting. And that happened less than 25 hours after the shooting occurred, way before sufficient evidence was in to allow the officers to reach any kind of conclusion.

And it's unfortunate that that happened because it gives the appearance of a lack of impartiality. And there was other phrasing used during the course of that interviewing that – the use of the word "we" and some in the sense that we're all police officers together. You're RNC; we're RCMP. I think there was a couple of other examples that I set out in my report and that was troubling from an impartiality perspective.

They may have reached the right conclusions, I don't know. But at that stage, that early on in an investigation, I don't think it's appropriate for investigators in a homicide investigation, in a police shooting investigation, to say things like that during the interview.

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

And in terms of, you know, I take it you are categorizing that as a deficiency there is –

**MR. JONES:** Yes, that's –

**MS. O'BRIEN:** And in terms of a deficiency, can you please give the Commissioner an indication of, you know, the level of seriousness of that type of deficiency?



**MR. JONES:** I think it's very serious. You know, investigators are supposed to keep an open mind as they conduct investigations. At the point when they have sufficient, relevant, reliable evidence to reach a conclusion, that's fair enough, you can reach a conclusion. But at this stage of an investigation, this early on, I don't see where the officers had sufficient evidence to appear, at least to me, to reach the conclusion that this was a clean shoot.

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

Some of the sections of your report I won't go over in such detail, and I think they're fairly straightforward. If Madam Clerk can please go to page 10; this is where you address the independent firearms expert. And I'm just going to read from your report here because you say while you have no expertise in this field, had you been the lead investigator, you would have concluded that his report appears comprehensive and balanced.

**MR. JONES:** I think the investigators did a great job as far as – I know Sergeant Osborne in particular, reading from the email traffic, a lot of effort was put into finding somebody who could give an objective, neutral opinion as to the firearms evidence. And that's crucial in this case because it's an unwitnessed shooting where basically you're relying for independent evidence on the forensic evidence.

And getting somebody in with Mr. Barr's kind of expertise and investing the resources to do that and the time, I think was an excellent investigative move. I've read Mr. Barr's report; I saw a little bit of his testimony, unfortunately, I didn't see it all. And had I been the lead investigator in this I would have had no problems with his conclusions.

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

**THE COMMISSIONER:** Sorry, I was taking a note. You say an excellent investigative move. What were you referring to there?

**MR. JONES:** To identifying and retaining Mr. Barr to provide the opinion that he did.

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

And then in the next – at the bottom of page 10, continuing up to page 11, I know you address the –

**THE COMMISSIONER:** I didn't see the reference to Mr. Barr there in that section. Is that in the –

**MS. O'BRIEN:** It's this section here on Independent Firearms Expert, Commissioner, which is –

**THE COMMISSIONER:** Oh yeah, it doesn't mention his name.

**MS. O'BRIEN:** It doesn't mention his name.

**THE COMMISSIONER:** Okay, correct (inaudible).

**MS. O'BRIEN:** But that is who Mr. Jones is referencing.

**THE COMMISSIONER:** Okay.

**MS. O'BRIEN:** It does say he worked for the Calgary Police Service here, so ...

Okay. And then likewise I understand you took no issue with the independent use-of-force expert. Can you explain your conclusion on that one, please?

**MR. JONES:** No, I think it's a good idea to get an outside opinion on the appropriateness of use of force.

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

In the next section of your report you address the ASIRT review. Can you please explain to the Commissioner your findings with respect to that review?

**MR. JONES:** I agree with the two issues that they identified as perhaps deficient: the failing to photograph the unloading of the weapon, I think, or to document it, and failing to photograph Acting Sergeant Smyth at the detachment after the event.

I think the second one is more serious than the first one, particularly as subsequently there may have been an issue as to whether there had been a struggle or not. And it might have been useful to have photographs of Acting Sergeant Smyth to show whether or not there was any injury or any other evidence of a struggle. But as you can see from my report, I go a little bit beyond what ASIRT found in terms of the overall sum of deficiencies in the investigation itself.

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

In this case, this was a step that the RCMP took themselves as part of their investigation. Do you consider this type of review by an external agency – is that necessary to ensure an independent, transparent and thorough investigation or is this a step that goes above and beyond? Or, you know, can you give the Commissioner your thoughts with respect to this type of external review?

**MR. JONES:** Yeah, I think it's a really good idea in the sense that, you know, even though it's the RCMP investigating the RNC, it's still a police force investigating a police force. So the more independence that you can inject into the process, such as by going out to an external review agency, I think the more credibility it gives the ultimate finding of the investigation.

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

Now, I know we will – you say here in your report that you don't and you're not in any way questioning the integrity of the ASIRT review, although your conclusions differ. I understand as we go through your report we will see where your conclusions differ. Is that right?

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

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

And just in terms of those two that you did mention where you agreed with them the failure to do the ammunitions count and the photographing of Constable Smyth at the time of the incident.

**MR. JONES:** Right.

**MS. O'BRIEN:** Again, can you give the Commissioner a sense you know, of how serious you –

**MR. JONES:** As I say, I think the failure to photograph is more serious than the failure to get a count on the bullets. And the other thing I forgot to mention that I agree with, I think ASIRT made a comment as to the sharing of information during that initial interview of Acting Sergeant Smyth. And I think it was quite critical of that and I agree with them on that.

**THE COMMISSIONER:** Again, I missed that, sorry.

**MR. JONES:** I think – and again, correct me if I’m wrong but I think ASIRT made a – in their review made a negative comment about the amount of information that was shared with Acting Sergeant Smyth during the course of that first interview. And as you’ll see when we get later on in the report, I agree with them on that.

**THE COMMISSIONER:** Okay.

**MS. O’BRIEN:** The next section of your report – and we are still under question number 1. It is the most significant question, I think, covered in your report, but we are still under that first question.

You broke in – one of the subtopics you have here is communication between the RCMP investigators and Acting Sergeant Smyth. Can you explain, please, to the Commissioner your finding with respect to these communications?

**MR. JONES:** There was contact between the lead investigator and the subject officer – direct contact. I understand that Corporal Burke gave Acting Sergeant Smyth his cellphone number. That’s out of my comfort zone. And the reason is because I’m used to dealing with subject officers who are represented with counsel, so normally you deal with counsel.

And as far as I can see, there was nothing nefarious about the contact between the two. Though again, I understand that Corporal Burke mentioned in his interview with Commission counsel that he didn’t record all of that contact. So, I don’t understand what the reason why he didn’t record it. Because there was other contact that I mentioned, the contact from Corporal O’Keefe which was, I think everybody acknowledges is totally inappropriate.

**MS. O’BRIEN:** Sorry, your voice goes down sometimes.

**MR. JONES:** Sorry.

**MS. O’BRIEN:** You’re saying that Corporal – you’re saying that there was contact with Corporal O’Keefe that you’re saying is –

**MR. JONES:** Is totally inappropriate, and I think everybody acknowledges that.

**MS. O’BRIEN:** Okay.

Yes. Okay.

With the communications with Constable Smyth, I think your comment just then was that you didn’t see any – that there was – you had noted there was communication between Corporal Burke and Constable Smyth, but you noted that not necessarily all of it had been recorded in Corporal Burke’s file. Is that what you’re saying?

**MR. JONES:** Correct.

**MS. O’BRIEN:** Okay.

And, again, do you consider that to be a deficiency, and if so, how serious?

**MR. JONES:** It’s a deficiency. It could be recorded. It leaves a gap.

And, you know, people may question why there is a gap, what exactly was said, how long did the conversation take: that kind of – those kinds of questions are raised.

**MS. O'BRIEN:** Okay, and, again, in terms of seriousness?

**MR. JONES:** It's not the worst thing in the world to happen but it's unfortunate.

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

The next section of your report – and, please, as I am going through, I am going through fairly quickly, Mr. Jones, and I know other counsel will want to have lots of opportunity to question you. If you do think I've missed anything, though, that is important to highlight –

**MR. JONES:** Sure.

**MS. O'BRIEN:** – please speak up. The next section you have you cover communications with the public. And this is the RCMP's communication with the public during the investigation. And this section of your report you give us some information on how the SIU in Ontario communicates publicly during its investigations.

Now, Commissioner, Mr. Jones will be attending a public session at Phase 2 of our inquiry, specifically on the topic of police communications with the public during serious investigations. And so I'm not going to ask Mr. Jones right now many questions on this part of his report, other counsel may wish to do that, but I will – you do have some interesting information here but I understand we will be hearing that in Phase 2.

For now, though, if you could just identify for the Commissioner if you found any deficiency in terms of the RCMP's investigation as a result of public communications.

**MR. JONES:** I believe based on my reading of the second RCMP press release – which I think was issued on April 7 that seriously prejudiced the investigation – I think there was a very significant amount of information that was released into the public domain that should not have been released at this stage of an investigation of this kind. It was far too early; there was far too much information.

The press release – regurgitated is a harsh word but it repeated what the officers had been told by Acting Sergeant Smyth and put it out there as gospel.

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

**MR. JONES:** As gospel, or at least put it out there as an RCMP official press release. And it had been done prior to – the scene was still, actually, I believe, in possession of the RCMP at that time. Certainly not all of the evidence had been gathered; certainly none of it had been forensically analyzed. And it was very unfortunate that this press release was issued with the amount of detail in it.

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

And you say that that can – I think you said could seriously prejudice. Can you please explain for the Commissioner how could that have prejudiced the investigation?

**MR. JONES:** You're putting a story out there with the imprimatur of the RCMP attached to it, the investigators attached to it, which basically sets out Acting Sergeant Smyth's story that Mr.

Dunphy picked up the gun, the barrel was coming towards him, this is why he fired. And that's just Acting Sergeant Smyth's side of the story.

There were and may well be at this stage of the investigation, other sides of the story which have yet to be found. So to put this amount of information out there is, I believe, a very serious deficiency.

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

And, again, maybe if you could speak – what I'm trying to get out is how could that impact the –

**MR. JONES:** Because it comes out in the public domain. There may be witnesses out there who are wondering whether or not they should come forward and they read this and go: oh, maybe not, they've already resolved it.

And I think – now, I don't want to go too far on this but it comes to a conclusion. Reading between the lines, this shooting was justified and that could – you know, that tells a story and paints a picture far too early on in the investigation process. It may be the right conclusion but it's far too early in the investigative process to have this amount of information out there.

**MS. O'BRIEN:** Okay, at page 18 of your report, maybe if Madam Clerk could just take me there. Thank you.

Towards the bottom of that page you do talk about the role of the independent observer. Now you state here in your report, Mr. Jones, that you have no particular expertise in working directly with an independent observer and you note that you've limited your comments accordingly.

I believe your conclusion here is stated in the last sentence of this section. If you could maybe go right to your conclusion on this aspect, please.

**MR. JONES:** Yeah, as I say, while an independent observer is a valuable step in the right direction, the IO is an independent investigator. I think the RCMP deserve a lot of credit for considering it, particularly as I understand, it had never been done in Eastern Canada before. I think it was the right thing to do. I think it's very much a step in the right direction and in principle they deserve a lot of credit for doing it.

But from what I understand the person appointed was not supposed to investigate or assist in the investigation of what happened, rather it was purely, you know, an observer status. I'm not sure whether it was limited to the independence of the investigation or also included whether the thoroughness and quality of the investigation. But, regardless, it's certainly a step in the right direction.

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

So that ends your section on your first question which just to remind you, Commissioner, was how independent and impartial were the investigators assigned to investigate the incident.

Any further comments on your answer to that question, Mr. Jones?

**MR. JONES:** None.

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

So the next question that you pose and then answer in your report is: Did the investigators have the training and experience necessary to conduct this particular investigation? What was your conclusion for this question?

**MR. JONES:** They did. All three of them had homicide experience.

**MS. O'BRIEN:** Okay. And when you – the three in particular that you're noting here, who would they be?

**MR. JONES:** Sergeant Osmond, Corporal Burke and Corporal Henstridge.

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

So question 2 is, sorry, dealt with a lot more quickly. So we can move right on to question 3.

Question 3 is: Were all potentially relevant issues identified and, where appropriate, pursued? Can you please explain to the Commissioner your conclusion with respect to this question?

**MR. JONES:** Some issues were considered and appropriately pursued. Some issues, I believe, were not appropriately pursued.

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

**MR. JONES:** That's the overview.

**MS. O'BRIEN:** Okay, that's fine.

And maybe you could focus on the most significant issues that you felt should have been pursued that were not.

**MR. JONES:** This ties back into the impartiality stuff; it's the focus of the investigation. The focus of a police shooting investigation generally, not always, but generally is what is going through the shooting officer's head at the moment she or he pulls the trigger, because that feeds into defences available to him under Section 25 of the *Criminal Code*. So that should be the primary, at least in my experience, the primary focus of a police shooting investigation.

I'm not so sure that that was always the case in this particular investigation. There was a lot of focus on Mr. Dunphy and his antecedents. There was a lot of focus on what Mr. Dunphy had done that day. I'm not sure there was the same focus on Acting Sergeant Smyth, and in particular, what his movements had been that day prior to the shooting.

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

And you do note this in your report; you do have a section here on investigation of antecedents as well as efforts to retrace steps. And it's the steps that day I believe you're referring to there.

In terms of any other areas where you think there should have – in your opinion there should have been more investigative effort put in by the investigators?

**MR. JONES:** There was an error here and I think it's come up in the inquiry quite often is: What is the policy and practice for solo visits in this particular set of circumstances. Was this so out of the ordinary as to raise an eyebrow or was this something that was done routinely. I'm not so sure that that was pursued to the degree that it needed to be pursued. But beyond that there was (inaudible).

**MS. O'BRIEN:** And, again, as you're going through, if some are more significant than others –

**MR. JONES:** Yeah.

**MS. O'BRIEN:** – if you can please identify that for the Commissioner.

**MR. JONES:** Yeah, I don't think that that is particular – I mean it's an issue that deserves, I think, exploring.

My big concern with this was the issue of what Acting Sergeant Smyth had done that day, what he'd done that morning, who he'd spoken to, where he'd been, what messages did he send. That wasn't explored.

They went to great efforts with Mr. Dunphy, as far as I understand, to that they were looking for CCTV from a bank he may have been into. I think they even went back and interviewed wait staff at the restaurant where he'd had lunch with his daughter, I believe.

**MS. O'BRIEN:** They did. And I believe this had to do with the glasses, when they found the damaged glasses.

**MR. JONES:** Okay, fair enough.

**MS. O'BRIEN:** Those two steps you just mentioned.

**MR. JONES:** So I would have expected the same kind of effort to have been put into retracing the steps of Acting Sergeant Smyth. Now, to be fair to them they did speak to his wife, but beyond that, I don't – and I stand to be corrected – I don't think they interviewed anybody who may have had contact with him that morning.

**MS. O'BRIEN:** Anybody who may have had –

**MR. JONES:** Have had contact with him that morning –

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

**MR. JONES:** – prior to him meeting with the Dunphys.

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

Anything else that you want to add with respect to that third question: Were all potentially relevant issues identified and, where appropriate, pursued?

**MR. JONES:** No, they did – you know, they considered a polygraph. I think it was good on their part. They spoke to the truth verification people. I think that was a legitimate investigative inquiry. They looked to SIRT for guidelines and guidance in how to investigate police shootings.

**THE COMMISSIONER:** What was the second point you made there after the – you say it was good that they checked concerning the polygraph and you made another point.

**MR. JONES:** That they checked with SIRT, the Nova Scotian Police oversight agency.

**THE COMMISSIONER:** I think it was the one before that but okay.

**MS. O'BRIEN:** He said he checked with the truth verification people, I think it was related to the polygraph.

**MR. JONES:** The polygraph. Sorry, yeah, that was the same thing.

**THE COMMISSIONER:** Yeah.

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

And then if you've done with that, given your evidence with respect to that question, we'll move on to the fourth question.

**MR. JONES:** Sure.

**MS. O'BRIEN:** And that is: Was the investigation sufficiently resourced? And please explain to the Commissioner what your conclusion was with respect to this question.

**MR. JONES:** With the exception of – I don't understand why nobody was posted to the back of the premises. There appear to have been sufficient resources applied to this case from an investigative perspective and from a forensic perspective, so I think it was sufficiently resourced. I think the RCMP did a good job there.

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

The next section, the next question answered in your report is: Was all potentially relevant digital and physical evidence identified, collected and, where necessary, forensically examined? Again, Mr. Jones, can you please explain your opinion to the Commissioner with respect to this section. And I will – this is one that is dealt with in a little more length than some of the other questions we've had.

**MR. JONES:** I've divided it into a number of different segments. Would you like me to go through each one and –

**MS. O'BRIEN:** Absolutely.

**MR. JONES:** Okay.

**MS. O'BRIEN:** And, again, if you could keep your focus on the ones that you consider to be of most significance and if there's ones you have noted there but you consider them to be more minor, if you could please identify that for the Commissioner.

**MR. JONES:** Scene security I already discussed. It was – and that seems to have been done – an entry into the scene seems to be kept controlled. It was documented. It was well done. I think that from what I can see every effort was made to keep the cats out to the extent that you could. That was helpful. Corporal Foote took his photographs. I think that also may be particularly helpful.

The physical processing of the scene, I didn't have any issues, serious issues with that at all. I think both forensic ident officers were well experienced. It was unfortunate what happened to the first video re-enactment, but as ASIRT said, things like this sometimes happen.

My only concern I think, my only worry about the – was, was there information being passed on from the investigators, particularly the fruits of Acting Sergeant Smyth's interview, to the



forensic identification folks so they could factor that information into their processing of the scene. And I didn't see much in the way of documentation of that.

And that could be a serious deficiency in the sense that in my experience, forensic identification officers need information to help them process the scene intelligently; the more information that they have, the more they can focus on areas that may be key to finding out what happened. I'm not sure that it was that communication between the investigators and the forensic folks.

**MS. O'BRIEN:** Okay. And you do address this on – Commissioner, for you notes – on page 25 of Mr. Jones's report.

**THE COMMISSIONER:** Uh-huh.

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

Okay, anything else on that section?

**MR. JONES:** On the forensics or on the digital –?

**MS. O'BRIEN:** No, on the forensics. I think you still have a few more sections here.

**MR. JONES:** Yes, okay.

**MS. O'BRIEN:** So if you – still underneath question number 3 – or sorry, question number 5. Do you want to take us to the next one?

**MR. JONES:** The blood sample?

**MS. O'BRIEN:** Yes, that's the next one you have listed in your report.

**MR. JONES:** Towards the end of my career at SIU, I began asking subject officers to voluntarily provide a sample of blood if they've been involved in a shooting. As far as I'm aware there's no jurisdiction in Canada that requires an officer to do that. There are jurisdictions in the States where officers are required after a serious incident, a driving accident, a shooting, to provide a sample of blood.

The reason that I did that is because I've been involved in shootings where, subsequently, there have been allegations of officers being impaired some way or the other or potentially using steroids that may have impacted into what had happened. So as an investigative avenue, I asked officer's counsel whether their client would be prepared to provide, on a purely volunteer basis, a sample of blood for testing for those purposes.

On not one single occasion did counsel consent to providing the blood.

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

**MR. JONES:** But as an investigative step I think the important thing was asking.

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

Again, you want to just continue through the – your response to this question in your report and highlight anything else again. And, please, if there's something there that you consider more serious or less serious, please identify it.

**MR. JONES:** I think the position of the gun is an issue, a reasonably serious issue that needed resolving. There was conflicting evidence from the start about where the gun was found. I think, if memory serves, Constable Cox records it as where it's actually shown on the photographs. But, Constable O'Keefe, or Corporal O'Keefe, who comes in at the same time – and correct me if I'm wrong – has it lying on the floor. So there's an immediate discrepancy.

Then the EMS people and it wasn't really clear where they saw it, at least from their initial interviews. I think other people record it in various positions, including Corporal Burke who, when he arrives at 7 o'clock or so, records the gun as lying on the floor if my recollection is correct.

**MS. O'BRIEN:** I think maybe the wording, on the floor, is used. So I don't know if the word "lying" is.

**MR. JONES:** Okay, on the floor. So the gun's on the floor. So forgive me.

So there's discrepancies and it's a discrepancy that an investigator would want to resolve because you have that – I mean there may be a perfectly reasonable explanation. It just may be the way that people write words or use language, or maybe it's a bit sloppy on some people's part, but it needs resolving because now you've got a discrepancy and that needs clearing up.

**MS. O'BRIEN:** So how would an investigator resolve that type of discrepancy?

**MR. JONES:** I think by more detailed questioning of Acting Sergeant Smyth; Constable Cox, who I understand was never interviewed, they just went from his notes; the same with O'Keefe.

Can you tell me in a little bit more detail what you observed when you went into the room vis-à-vis the gun? And perhaps that would have – oh, yeah, I said it was lying on the floor in my notes but, yeah, it wasn't quite lying on the – potentially, if you see what I mean. But that investigative avenue wasn't pursued to the degree that it should have been pursued, leaving that up in the air.

**MS. O'BRIEN:** And, again, how would you classify that in terms of seriousness?

**MR. JONES:** It leaves a big question mark, a question mark that could have perhaps been resolved by a slightly more rigorous investigation of that particular issue.

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

And you do discuss that issue on pages 27 to 31 in your report. Unless you have anything further to say on it we can go on to the next item.

**MR. JONES:** No.

**THE COMMISSIONER:** What pages were they?

**MS. O'BRIEN:** Sorry, 27 to 31, Commissioner.

**THE COMMISSIONER:** Okay.

**MR. JONES:** And, again, probably to come back to that, I understand at the inquiry there was some evidence from one of the EMS attendants about the position of the gun and that came out during the process. Had those issues been canvassed at the time by the investigators, then maybe that it would have been clarified at that time as opposed to 18 months down the road.

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

All right. Thank you.

Then the next item you note here is evidence of contact with the mantel.

**MR. JONES:** (Inaudible.)

**MS. O'BRIEN:** And I'm on page 31 of your report.

**MR. JONES:** Yeah. I think at one point during his initial interview, Acting Sergeant Smyth said that he was leaning against the mantel. As far as I'm aware – as far as I'm aware, I may be wrong – but that information was never passed on to the forensic investigators. Because, potentially, there might have been – not saying there was, but potentially there might have been some evidence of contact between Acting Sergeant Smyth's clothing and the mantel, particularly, from what I understand, the house wasn't in a super condition. So if there was dust on there, there may have been an impression. Again, it's –

**THE COMMISSIONER:** Particularly – what did you say? Particularly –

**MR. JONES:** As the house wasn't in a particularly great condition. I'm not saying there would have been but it's something perhaps that came out of the interview that should perhaps been passed on to the forensic investigators so they could look. And if there's nothing there, that's fine.

Again, it all goes to corroborate or not corroborate Acting Sergeant Smyth's account of things.

**MS. O'BRIEN:** Okay. And in terms of a deficiency, how would you classify that in terms of seriousness?

**MR. JONES:** It's something I think that should have been explored and I think a through and objective investigator would have followed up on that, so reasonably serious.

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

**THE COMMISSIONER:** Wait, how –

**MR. JONES:** Reasonably serious.

**THE COMMISSIONER:** Reasonably serious.

**MS. O'BRIEN:** The next – you mention a few, the next item you have listed here is the Folder Drop Test. You have a number of them here and you can probably go over those fairly quickly, I would think, because you don't – you at least haven't written much on each one, but if you could just go over those.

**MR. JONES:** The folder test is, I think, that all credit to the RCMP, I know nothing came out of it. I'm sure some people think it's Mickey Mouse and why bother, but in investigations of this kind you try and do what is reasonable in the circumstances and if it doesn't work, it doesn't work.

I've done cartridge case ejection tests on weapons but I can never replicate the same circumstances that were in, that happened during the actual shooting itself, but that doesn't stop

you from trying because you never know what evidence may actually come out of it. So I think that was a reasonable thing to try. No criticism of that at all.

They obtained the communications tape. They followed up with, I understand Mr. Dunphy's social media, I don't know if they followed up with any social media that Acting Sergeant Smyth may have used, his Facebook, his Twitter, his (inaudible), I don't know. And I don't know if there would be anything of any evidentiary value on there, but the issue is was it followed up or not.

**MS. O'BRIEN:** And are you saying it's something that should have been followed up?

**MR. JONES:** I think that nowadays with the advent of the Internet and using the Internet as an investigative tool, I think it is something that investigators would consider.

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

In terms of seriousness?

**MR. JONES:** Not particularly high.

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

All right. You –

**MR. JONES:** They did a very good job on the cell phones. Sorry, go on.

**MS. O'BRIEN:** No, move along, that's fine. You're talking about the cell phones.

**MR. JONES:** Cell phones, I think they did a very good job with – from what I understand Mr. Dunphy's cell phone was taken. I don't know when it was downloaded but at some point it was downloaded, but it was certainly in the possession of the investigator from the moment it was found on the table in front of him. I believe that's where it was.

On the other hand, that didn't happen with Acting Sergeant Smyth's cell phone.

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

So can you explain that, please?

**MR. JONES:** In this day and age a cell phone is potentially a very, very important piece of evidence. In my view, it should have been seized immediately. Now, I don't know, I assumed – until I heard Acting Sergeant Smyth's evidence yesterday – I assumed that it was the property of the RNC that had been issued to him. They paid the bills. They put the – you know, it was their property so I didn't think there would have been much of an issue seizing it. I could never understand why it wasn't seized.

**MS. O'BRIEN:** I think it was – the evidence is he – it was turned over with Constable Smyth's consent, but it didn't come into the possession of the RCMP until, I believe, April 24.

**MR. JONES:** The 24th, yeah. I understand that. I do not understand the reasons for that gap.

You know, as Acting Sergeant Smyth said yesterday, it could have been dropped in St. John's harbour or he could have lost it when he was on holiday in Florida. I mean, it wasn't in the investigators possession. I think every reasonable effort should have been made to seize it at the

time, the same way they seized his clothing and his firearm. And I don't understand why it was not seized.

**MS. O'BRIEN:** Anything else with respect to the cell phones?

**THE COMMISSIONER:** Sorry, in terms of seriousness, you're going to deal with that.

**MS. O'BRIEN:** Yes, sorry, I will ask him in terms of seriousness. Thank you, Commissioner.

**MR. JONES:** Given the fact that this is an unwitnessed shooting, that you're trying to reconstruct what happened, not just in the room but immediately before and afterwards, plus this electronic utterances on it, I think it's extremely serious.

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

And when you saying electronic utterances, you're referring to statements that Smyth might have been making electronically after the incident, is that what you're saying?

**MR. JONES:** Right, yeah. And some of those are in Acting Sergeant Smyth's favour, I mean he's been consistent with his story from start to finish. It's important evidence regardless of what he says.

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

The next item you cover is the Timeline. And I think just reading, what I understand you are saying here, you don't – you didn't think it would have been of tremendous use as an investigative aid here in any event.

**MR. JONES:** No.

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

**THE COMMISSIONER:** What was that?

**MS. O'BRIEN:** The Timeline. And I'm on page 34, Commissioner.

**THE COMMISSIONER:** Yeah, I have that. Thanks.

**MS. O'BRIEN:** And so why, Mr. Jones, would you not see that as of tremendous use?

**MR. JONES:** I don't understand where Ms. Richards got her timings from in between the 1:39 which was, I think, the phone calls, up until the 2:27 which, I think, was the call to the RCMP. I just – I didn't see where she got those fairly precise times from.

**MS. O'BRIEN:** Sorry, is your evidence that that particular timeline wasn't of tremendous use or are you saying just, like, attempting to recreate a timeline generally wouldn't be of use?

**MR. JONES:** No, I think the fact that they tried is good. The fact that, unfortunately, I don't think there was a lot of concrete evidence that went into the bit between those two times. I don't think that particular portion was particularly useful from an investigative perspective.

**THE COMMISSIONER:** I think we have more evidence, don't we, since Mr. Jones wrote his report on that point?

**MS. O'BRIEN:** Yes, and we have had the evidence of Wanda Richards. It's been acknowledged that the timeline had some errors in the events in it.

Okay. All right. But your testimony – you're not saying the timeline was a bad idea; it's just that particular timeline you did not find it particularly helpful?

**MR. JONES:** Correct.

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

The next item that you touch on – again, we are still under question 5 and this is about the evidence – is Searching A/Sgt. Smyth's vehicle, and this is at the bottom of page 34 and the top of page 35 of your report.

Can you please explain for the Commissioner your conclusions with respect to that?

**MR. JONES:** I believe that Acting Sergeant Smyth's vehicle at the scene was a reasonably obvious source of potential evidence and I don't understand why it wasn't searched thoroughly. I understand that Sergeant Saunders looked through the window of the vehicle. I am not sure if anybody went in it. But there is evidence that obviously Acting Sergeant Smyth was in it before the incident and there is some evidence that I think he went into it at least for a period of time after the incident, if only to pick up a bottle of water or something. But for that reason alone, it should have been searched.

**MS. O'BRIEN:** It should have been searched?

**MR. JONES:** Yes, it should have been searched.

**MS. O'BRIEN:** Okay. And in terms of a deficiency in classifying that in terms of seriousness?

**MR. JONES:** I guess we will never know what might have been found in there, but it should have been searched. It's a reasonably serious deficiency.

**MS. O'BRIEN:** And the last item that you talk about in this section is the Broken glasses.

**THE COMMISSIONER:** Sorry –

**MS. O'BRIEN:** Sorry.

**THE COMMISSIONER:** – just reasonably, I guess, you are using as moderately, are you? Would that be fair?

**MR. JONES:** Moderately, yes, yes, sorry.

**THE COMMISSIONER:** Yeah.

**MS. O'BRIEN:** And the last item in this section that you touch on, Mr. Jones, are the Broken glasses. Can you explain your conclusions with respect to that?

**MR. JONES:** Again, I think, you know, I do – based on what I saw of the scene photographs, based on everything else, I don't have an issue with Corporal Burke not having those glasses seized at the time. I think he did considerable investigative follow-up afterwards.

There was no evidence that I could see of a struggle or no evidence that I'm aware of, of a struggle which – so I think what he did in this respect was reasonable.

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

All right, we're down now at the – unless you have anything further to add with respect to question 5.

**MR. JONES:** No.

**MS. O'BRIEN:** We're at question 6 of your report and that was: Was all potentially relevant documentation gathered and reviewed? And in this section you do list types of what can be relevant documentation to this type of an investigation.

And can you just tell the Commissioner what your conclusion was with respect to this investigation?

**MR. JONES:** I think the officers did a good job of obtaining and reviewing documentation that might be relevant to the issue they were investigating.

**MS. O'BRIEN:** Okay, so no deficiency in this area.

**MR. JONES:** No serious deficiency that I could see.

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

Now, we have had evidence since the inquiry started that not all – I know you talked about they had done a good job with the cellphones and getting the cellphone data. I don't know if you're aware, we've had evidence that not all the BBM messages were retrieved because of an error in the dates or the search dates.

**MR. JONES:** Right.

**MS. O'BRIEN:** And we have testimony that the search date parameters were actually not set by Constable Smyth but they were set by Corporal Burke when he sought Constable Smyth's consent. I know that you didn't have that information, certainly not when you initiated your work on this file. Do you have any comment about that?

**MR. JONES:** Would it be reasonable – would it have been reasonable for Corporal Burke to have obtained the information that the inquiry obtained during the course of his actual investigation? I don't know the answer to that question. But if it would have been, then he should have got it. Does that make sense?

**MS. O'BRIEN:** Maybe not for me, but it's not me you have to worry about.

**MR. JONES:** If –

**MS. O'BRIEN:** But if you could just maybe explain that again.

**MR. JONES:** Is it a legitimate investigative avenue? Should he have dug deep enough into data that could have been retrieved from that BlackBerry at the time of the investigation?

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

**MR. JONES:** Did he know about BBM messages, whatever it may have been.

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

**MR. JONES:** What did he do to pursue them? So what was reasonable? I don't know. I'm not going and saying he didn't do what he should have done, I just don't know.

**MS. O'BRIEN:** Okay. And the evidence is he relied on the extraction report that Corporal Luther had done.

**MR. JONES:** Okay, that's fair enough.

**MS. O'BRIEN:** And – okay.

Going now, unless you have anything with respect, anything further with respect to question 6, I would move on to question number 7.

And question 7 says: Did the investigators identify all persons who may have information relevant to the issue under investigation, did they make justifiable decisions whether or not to interview them and if they did decide to interview them, was that interview thorough and fair?

So I'll break that down and I'll first ask the question: In your opinion, did the investigators properly identify witnesses in this case?

**MR. JONES:** Yes, they did. They identified who they should speak to. Yes, that's correct.

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

And did you find any deficiencies with respect to the interviews of the witnesses?

**MR. JONES:** Yes, I did.

**MS. O'BRIEN:** Okay, so maybe if you can explain those to the Commissioner

**MR. JONES:** In some respects the interviews were not thorough. They were not focused on the issues that were central to this investigation. They didn't deal with issues that should have been explored. And so in that sense, yes, they were deficient.

**MS. O'BRIEN:** Okay. Can you give some examples or an example of that or –

**MR. JONES:** I think the, well, first of all, the interview of Acting Sergeant Smyth on April 6. While it was good from the sense that they asked that broad open-ended question to begin with and Acting Sergeant Smyth gave a very detailed reply, the other issues relating to the events of what had happened in that room were not explored to the extent that they should have been during that interview.

I set out, I think, a list of some of the areas that I think should have been explored in the report later on and that they weren't under the thoroughness thing on page 48.

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

**MR. JONES:** And, unfortunately, those areas, which I think are –

**MS. O'BRIEN:** So you said page 48?



**MR. JONES:** Yes.

**MS. O'BRIEN:** I'll get Madam Clerk to bring you there, please.

**MR. JONES:** Some of those areas were not fully explored during the course of Acting Sergeant Smyth's interview. Now, I appreciate that I have the luxury of looking back over all this material that's come to light since, and the investigators, the interviewers, didn't necessarily have all of that knowledge at that time, but I think they could have reasonably anticipated that these are areas that should have been covered.

And I don't know if you want me to go through them, but they kind of speak for themselves.

**MS. O'BRIEN:** You could just give a few examples, please.

**MR. JONES:** Well, I mean, some of the stuff that starts – some of the stuff that's – be of interest to the inquiry: Acting Sergeant Smyth's training in respect to solo visits, risk assessments, threat assessments; criteria used for visiting, for conducting home visits in circumstances of this kind. That's a discrete question area that could and, I believe, should have been addressed at that time.

A little bit about, you know, Acting Sergeant Smyth's background would have been helpful. Again, had I been doing the interview, these are areas that I would have covered.

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

**MR. JONES:** You know, a lot of attention was paid to Mr. Dunphy's background. Well, let's try and do the same with Acting Sergeant Smyth.

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

**MR. JONES:** I guess I've mentioned two or three times already this morning the – what his movements were that day, who he spoke to, did he stop and speak to anybody, did he use his phone, when did he come on duty, what else was he going to be doing that day? These are all areas I think are relevant background to what happened later on that afternoon.

**MS. O'BRIEN:** So in saying that, are you saying that there was potentially other witnesses who could have been or potentially could have been interviewed? Is that the point?

**MR. JONES:** Potentially, yeah. I mean once you've questioned it, yeah, who did you speak to? Oh yeah, I spoke to my friend Sergeant Buckle. Well, let's go and speak to Sergeant Buckle to see what he was. So yeah, it would – depending on the answers to the questions, that may have created other lines of inquiry.

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

I'm just going to check the time there. Commissioner, we've got a few more minutes before our break time.

Okay –

**THE COMMISSIONER:** How are you doing, by the way?

**MS. O'BRIEN:** I am doing very well. We're on question seven of eight questions.

**THE COMMISSIONER:** Right.

**MS. O'BRIEN:** So I will – I'll probably go past the break, but not too long after the break.

**THE COMMISSIONER:** Well, why don't – do you want to break now or ...?

**MS. O'BRIEN:** Yeah, we can certainly break now.

**THE COMMISSIONER:** Sure.

We'll break for 15 minutes.

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:** Just before we start again with Mr. Jones, there's a possibility, I sense, that we might finish a bit earlier than expected. But I wanted to just – and this only has to do with the scheduling of our witness from London. Do you have an approximate idea, Mr. Simmonds, again, very roughly?

**MR. SIMMONDS:** I can't believe I would be more than a half an hour if that.

**THE COMMISSIONER:** Right.

Okay. I didn't think there'd be too much there that you'd be going into.

Now, Mr. Freeman, I'm not sure about yourself and Mr. Rasmussen.

**MR. FREEMAN:** For the RCMP we may have about a half an hour as well.

**THE COMMISSIONER:** About a half an hour, yeah.

Mr. Drover?

**MR. DROVER:** Ten or 15 minutes. And depending on how the questions go beforehand –

**THE COMMISSIONER:** Yeah.

**MR. DROVER:** – people will probably have covered many of them.

**THE COMMISSIONER:** Yeah.

So, Ms. Buis, what I'm contemplating is subject to the availability of Mr. Kennedy and Mr. Avis, we might be able – right now he's scheduled, Dr. Hart is scheduled for 3 o'clock. We might be

able to move that ahead to 2 o'clock to make sure that – but, again, that's subject to other counsel and subject to Dr. Hart, so it's premature yet.

But we're in the process of getting a grip on that possibility. And that would be better than having it run over at the end if we can avoid that so ...

**MS. BUIS:** Commissioner, I can note that Mr. Kennedy will be available, but I will canvas that idea with him to see if Dr. Hart will be available.

**THE COMMISSIONER:** We have some communication going on now through staff with Dr. Hart. They've already arranged a test Skype with him which apparently worked. So they're trying to confirm with him, subject to Mr. Kennedy's input, yeah.

**MS. BUIS:** Of course. Mr. Kennedy will be available and I did speak with him –

**THE COMMISSIONER:** At 2, do you think?

**MS. BUIS:** Yes.

**THE COMMISSIONER:** Okay.

**MS. BUIS:** Yes.

And I did speak with him during the break. He asked me to advise, Commissioner, that he'll have a brief filed on the Coleman issue by 1 o'clock today.

**THE COMMISSIONER:** All right.

Mr. Simmonds.

**MR. SIMMONDS:** I contacted Ms. Breen over the break as well and she can be here –

**THE COMMISSIONER:** I'm sorry. Who?

**MR. SIMMONDS:** Ms. Breen and she can be here.

**THE COMMISSIONER:** Right.

**MR. SIMMONDS:** She'll be doing Dr. Hart –

**THE COMMISSIONER:** Oh, she'll be here at 2, will she?

**MR. SIMMONDS:** – so she should be able to be here at 2 o'clock.

**THE COMMISSIONER:** Yeah.

Okay. Thank you.

All right, go ahead.

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

Mr. Jones, when we broke we were looking at question 7 of your report and we were approximately at page 37. And I'm just going to take you over a few things in this section.

I understand so this – on page 37, with reference to question 7 – and just to remind you, Commissioner, question 7 was: Did the investigators identify all persons who may have information relevant to the issue under investigation, did they make justifiable decisions whether or not to interview them and if they did decide to interview them, was that interview thorough and fair?

So here I think you've touched on most of the information that you've covered in your report in this section, Mr. Jones. I believe here you note that overall the investigators did a pretty good job of identifying witnesses. You said: "However, they did not interview, at the time, the officers who had contact with A/Sgt. Smyth at the scene."

And I believe – please correct me if I'm wrong – that was your reference to Constable Cox and Corporal O'Keefe that you made earlier that you felt the investigators should have interviewed.

**MR. JONES:** As well as other officers who may have had contact with him as well.

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

Okay and then you go through the interviews and you outline here on page 38 six basic principles of interviewing that, in your opinion, the interviewers should follow and that is: being prepared, do what they reasonable can to establish a rapport with the interviewee, being thorough, objective, keeping control of the interview process and listening actively.

And then as we go through your report, what I see that you're doing is you analyze some of the more significant interviews with respect to these six principles. You've already talked to us a bit about Acting Sergeant Smyth but that is the most significant interview and the one you spend the most time with.

If you could maybe go through – I know you've broken in – your analysis of his interview into a number of sections. Perhaps you could take us, take the Commissioner through those and just highlight what your most significant findings are.

**MR. JONES:** In terms of – I've broken the first one down as the: Obligation to be interviewed.

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

**MR. JONES:** Would you like me to talk about that?

**MS. O'BRIEN:** Sure.

**MR. JONES:** As mentioned, had this happened in Ontario, Acting Sergeant Smyth would have been at no obligation to speak whatsoever. He would have been no – he would have had an obligation to make notes about what happened but he wouldn't have had an obligation to provide those notes to the SIU.

**MS. O'BRIEN:** His notes would not – no obligation.

**MR. JONES:** Without his consent.

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

**MR. JONES:** So, in this instance, Acting –

**THE COMMISSIONER:** Sorry, in terms of utilizing the notes, is it correct that they'd only be utilized or could only be utilized in Ontario for purposes of internal discipline?

**MR. JONES:** If the officer, by consent, provides those notes to the SIU, they can be used for any purpose to the best of my knowledge.

**THE COMMISSIONER:** If they're – okay.

**MR. JONES:** They're provided to the SIU.

**THE COMMISSIONER:** If by consent, but if it's mandatory by statute or regulation or whatever, it could never be by consent in that sense, could it?

**MR. JONES:** Not mandatory – the officer has to give his consent to provide the notes to the SIU. The officer still has to fill in notes to provide to his chief of police. And I don't know what restrictions the chief of police has in terms of those notes.

**THE COMMISSIONER:** Okay. And as far as – there's no obligation to provide notes to the SIU.

**MR. JONES:** Correct.

**THE COMMISSIONER:** But it could be by consent.

**MR. JONES:** It could be by consent.

**THE COMMISSIONER:** But there is an obligation to do notes for the chief of police.

**MR. JONES:** Correct.

**THE COMMISSIONER:** And presumably they can only be utilized for internal discipline, is it?

**MR. JONES:** Presumably.

**THE COMMISSIONER:** As far as you know. Okay.

Thank you.

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

So that's the situation in Ontario, I think the evidence we've had to date is that Constable Smyth was under no obligation to provide an interview to the RCMP in this case.

**MR. JONES:** Okay.

**MS. O'BRIEN:** And we haven't touched on his notes. I don't think we have legislation here in the province, as they do in Ontario, but he did provide his notes.

**THE COMMISSIONER:** I have the recollection – I do not know if I am correct or not – that somewhere in the manuals or protocols or whatever, the obligation of police officers, is something about providing a report at some stage, isn't it?

**MS. CHAYTOR:** At the end of his shift.

**THE COMMISSIONER:** Sorry?

**MS. CHAYTOR:** He was obliged to provide the report –

**THE COMMISSIONER:** At the end of the shift or something –

**MS. CHAYTOR:** – at the end of his shift.

**THE COMMISSIONER:** Yeah. So presumably, there might be some obligation in that sense to –

**MS. O'BRIEN:** Yes, I understand in some of the provinces it's actually addressed in the legislation itself –

**THE COMMISSIONER:** Right.

**MS. O'BRIEN:** – not just an internal police policy. And Ms. Chaytor would probably be better to answer. I know that the evidence is that Constable Smyth had to, you know, prepare a report at the end of his shift, but whether there was an obligation that that be turned over to the RCMP or could that have been turned over to the RCMP without Constable Smyth's consent, I don't know the answer to that. But in this event, Constable Smyth did consent to having his –

**THE COMMISSIONER:** That's right.

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

**THE COMMISSIONER:** Yeah, we may have to get that clarified.

Thank you.

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

Sorry, Mr. Jones.

Okay, so you were talking about the obligation to be interviewed, anything further in your conclusion on that?

**MR. JONES:** No, other than Acting Sergeant Smyth did consent to an interview, ultimately.

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

Then your next section, we've had lots of evidence on it, and this is with respect to the delay in interviewing Constable Smyth. So you have addressed this in some detail in your report and you cover it from page 39 and you go on right up to page 44, so it's quite a lengthy portion of your report.

Can you explain – give the Commissioner an overview of your findings and your opinions as expressed here?

**MR. JONES:** In my view, based on my experience of conducting investigations, the best evidence is the freshest. The sooner that you conduct an interview, the better – the better for all involved.

I don't believe a delay in interviewing helps anybody, ultimately. And so from that premise, I believe that the officers should have persuaded or done whatever they could to have persuaded Acting Sergeant Smyth to consent to an interview straight away.

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

**THE COMMISSIONER:** Do you feel that there is any consensus out there – I have seen differing views. What is the mainline view on this issue?

**MR. JONES:** Like a lot of things in police oversight there seems to be two trenchant positions. On one side there are police management, some police unions who say: Oh well, a 24 hour, 48, 72-hour delay is much better for the process because the officer's memory gets better. On the other side of the debate there are organizations such as the Police Assessment Resource Centre which does a lot of work on policing in the US that says: No, interview the officers straight way. So you have those two sides of the argument.

There is no consensus. Again, it comes back to, in my opinion, the best evidence is the freshest. I do not understand why only police officers are the ones who should wait 24, 48 or 72 hours. That's certainly never been my practice. I've tried to interview them as quickly as possible.

I think, and again I don't understand why there's one standard for one group of people and another standard for another group.

**THE COMMISSIONER:** Could you comment on the practice in certain jurisdictions, I understand and I think we've seen in a quote from a report or a citation of the international or US chiefs of police, where they seem to split the baby by suggesting get a preliminary report and delay, if requested anyhow, delay for 24 hours or so for a full formal report. Would you have any comment on that?

**MR. JONES:** For my understanding of that document, it's – that initial interview, that initial report is very limited. It's limited saying which direction did the bad guy go. It's trying to deal with ongoing – there may be an ongoing event so you can speak to the subject officer to get information that may relate to that and then wait the 24, 48 hours whatever it may be.

So from my perspective, I disagree with that. I think that officers should be interviewed straight away, if they are physically capable of being interviewed. That should subsequently they remember something 48, 72 hours later, there's no barrier to conducting a second interview to cover those areas.

And again it comes back to the fact that just, hypothetically, had Mr. Dunphy survived the shooting, I bet one of the very first things that the investigating officers would have done would have been to try to interview him as quickly as possible. That's certainly what I would have done, if I'd been in their position. So again why is there a different standard for a different group of people from an investigative perspective?

**THE COMMISSIONER:** Thank you.

**MS. O'BRIEN:** And it is covered in, Commissioner, in some more details in Mr. Jones' report.

The next section of your report is at page 44 and you have a brief conclusion there with respect to Notes, which I think we've already addressed, the duty of Constable Smyth to make notes and what not.

The next one though I would like to go is the Caution. And we had – in ASIRT’s report, they had raised a criticism that in their, or stated at least in their opinion, that Constable Smyth should have been cautioned. And reading that report and hearing Sue Hughson yesterday, I understand that they weren’t necessarily saying a formal police caution but the seriousness or potential jeopardy – there should have been some wording given to Constable Smyth to impress upon him that he was under a homicide investigation and he could potentially have jeopardy as a result of that investigation.

You take a different view, I know, is expressed in this portion of your report. Can you please explain that to the Commissioner?

**MR. JONES:** Well, I may have misunderstood Ms. Hughson’s report then because I thought that she was referring to the officer being formally cautioned on every occasion prior to an interview.

You know, you respect to the officer’s being aware of the circumstances. They’re professional police officers they know full well what’s happening. If the investigator does not have reasonable grounds to suspect that the officer has committed an offence then they shouldn’t be cautioning the officer (inaudible).

**MS. O’BRIEN:** Okay. So your voice goes down –

**MR. JONES:** Sorry.

**MS. O’BRIEN:** – sometimes Mr. Jones. So I’ll just remind you to keep it up.

So you’re saying unless there’s reasonable and probable grounds?

**MR. JONES:** To suspect that an officers committed an offence then they should not be cautioned. Should those grounds arise the course of questioning, the interview should be immediately stopped and the officer cautioned.

**MS. O’BRIEN:** Okay.

Then you get into a – starting at page 45 of your report – a little more detail on the first interview of Constable Smyth on April 6, 2015. And the first point that you address is Preparation. Can you please explain that to the Commissioner, your conclusions?

**MR. JONES:** I don’t believe that the officers availed themselves of the time that they had available to them to fully prepare for this interview, to think of a strategy to how they were going to approach this, to decide whether or not they were going to show photographs and video to constable, to Acting Sergeant Smyth. To do all those other things that you may potentially do prior to an interview – such a crucially important interview, the most important interview of this investigation. And I’m not quite so sure they took – they applied a lot of – again, I don’t – and I think by their own admission, reading their interviews with you, I don’t think a lot of effort went into preparing for this interview.

**THE COMMISSIONER:** What’d you say by their own admission what?

**MR. JONES:** Their own admission in their interviews to Commission counsel, if I remember correctly, there wasn’t a lot of preparation and planning that went into this interview.

**THE COMMISSIONER:** Right.



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

Yeah, and they did give evidence that they didn't do up sort of a plan.

**MR. JONES:** A formal –

**MS. O'BRIEN:** They hadn't done a formal plan for the interview. Okay.

And you've already reviewed for us some of the possible question areas that you consider the investigators could have gone into. I would like you to discuss one of things you mentioned here, and it's at page 46 you mention it, but you give some discussion of rapport building.

And you've already said earlier in your evidence this morning that you felt the officers were overly empathetic. And we have heard evidence that one of the things that police officers do in interviewing is try to build rapport, as having a good rapport with the subject of the interview can elicit more evidence.

I know you do address this in your report. Can you please explain to the Commissioner where, in your opinion, the line is drawn or how you distinguish between enough and too much?

**MR. JONES:** It goes from being appropriately empathetic. You know, the officer had just gone through a traumatic event. He'd come in for interview voluntarily, he was extremely co-operative.

But it goes then beyond the point where you start sharing information that you should not conceivably share in an investigation of this kind at this time in the interviewing process which, I think, crosses the line. So that's where the rapport building should stop at.

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

One of the other things that you discussed – we've already discussed thoroughness which is your next point, and these were the areas you felt should have been covered in more detail. So I can move ahead here.

One of the notes here should be at page 51. Okay.

**THE COMMISSIONER:** Sorry, to deal with rapport? On page 46, the –

**MS. O'BRIEN:** Yes, that's what I just had Mr. Jones speaking to with respect to the rapport. Perhaps you can just for the Commissioner, again, just highlight your finding in that area, please? Page – which is page 40 –

**THE COMMISSIONER:** That's with the overly friendly –

**MR. JONES:** Yeah.

**THE COMMISSIONER:** – comment.

**MS. O'BRIEN:** Yes, I think he said it was the difference between being appropriately empathetic and being inappropriately –

**THE COMMISSIONER:** Okay, sorry –

**MR. JONES:** Providing information, yeah, crossing that line.

**THE COMMISSIONER:** Okay.

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

Okay and then we discussed thoroughness and you have listed in your report here, you've already indicated a number of areas where you've felt the investigators should have gone into more detail and they're listed at page 48, 49. You include on that list getting into more detail of events at Dick and Debbie Dunphy's house and events at Mr. Dunphy's house itself, and with cellphone usage, what happened after the event and a few other areas that you set out there. I think it's fairly clear in your report and I won't take you through all of those, but at the bottom of page 51 of your report, you do address the undertaking not to discuss information. Can you please explain your findings there for the Commissioner?

**MR. JONES:** It's a normal practice in the investigations that I did with SIU and in current investigations to ask people that we are interviewing not to discuss the content of the interview, not to discuss any information that came out of the interview; indeed, nothing at all about the investigation with any other party until the conclusion of the investigation. And that's to preserve the integrity of the investigative process and we ask them to give that undertaking.

**MS. O'BRIEN:** Okay. And was that done in this case?

**MR. JONES:** I don't believe it was.

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

And in terms of a deficiency, how serious would you consider that?

**MR. JONES:** Again, you don't want people sharing information that's come out of an interview with anybody until you've got all of your witnesses interviewed. So that is a moderately serious deficiency.

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

Okay.

I do note – and looking at page 52, you do note in your report that you noted if I'm reading – at the top of page 52, if I'm reading Ms. Meghan Dunphy's April 8 statement correctly. Sergeant Osmond, at the conclusion of his interview, asks her to keep what she's been told confidential. So you saw it happening in Ms. Dunphy's case, is that ...?

**MR. JONES:** Yes, I did.

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

The next section you cover here under question 7 is objectivity. And I think – I believe you've covered a lot of what you've said in that section already, but if you could just look through and if there is anything that you have not yet highlighted that you think that you would like to highlight for the Commissioner, could you please do that?

**MR. JONES:** No, I already mentioned the focus of the investigation perhaps not being on Acting Sergeant Smyth as much as it should have been. I've talked about information that should not conceivably have been shared, being shared during that initial interview. So, yeah, I think that detracts from the apparent objectivity of the interviewers.

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

The last two points you note here with respect to Constable Smyth's interview, you have: Keep control of the process and active listening. These were two of the six principles that you had identified. Did you see any deficiency with either of those two principles?

**MR. JONES:** No. No. Neither.

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

The next section of your report you do discuss some of the other interviews. You have some information here on Mr. Dick Dunphy's interview, Ms. Debbie Dunphy's interview, and the paramedics and some PSU members as well.

And then, finally, you end with some consideration of follow-up interviews of Constable X and Corporal O'Keefe. I won't get you to go through those sections in any great detail but if you could just go through each one and highlight if there's something of particular importance you think the Commissioner should hear from you today, please say so.

**MR. JONES:** Basically, what I've written is that the interviews of the Dunphys were focused on the brother and brother-in-law, not where I think they should have been which is, you know, their interaction with Acting Sergeant Smyth that day. And unfortunately that didn't happen.

There was the ambiguity, at least in my mind, the discrepancy over what the Dunphys said they told Acting Sergeant Smyth about the potential presence of a firearm in there – in Mr. Donald Dunphy's house and what Acting Sergeant Smyth wrote in his notes or said in his interview. That wasn't explored and an attempt at resolution made.

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

And there you're referring to that he had recorded that they had told him that Mr. Donald Dunphy did not have a gun. And in their interviews they had said words to the effect of: We don't know or I don't know.

**MR. JONES:** Yeah. And I'm not for a moment saying anybody is misleading or not telling the truth, I'm just saying that that issue should have been explored by the investigators to try and resolve it.

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

**MR. JONES:** The EMS people, the paramedics, the issue over – they were there for 90 minutes. They were there within reasonably close proximity, from what I understand, of Acting Sergeant Smyth. So, you know, the focus should have been: Did you hear any utterances, what was he doing, when you medically examined him can you tell me anything about his condition, that kind of stuff. It should have been in, I think, a little bit more depth than there actually was with those two EMS personnel on those particular areas.

**MS. O'BRIEN:** All right and the PSU members?

**MR. JONES:** Again, I guess the issue that – and the RCMP, you know, it was good that they interviewed these people. And, again, I'm critical of the depth the interviews went into on the key issue which is: Tell us about solo visits and circumstances such as this to try and understand the context. Is it normal practice? Is it abnormal? What have you done with Acting Sergeant

Smyth in the past? And, again, it was canvassed. To be fair to Constable Nippard, it was canvassed but perhaps it should have been canvassed in a little bit more depth.

**MS. O'BRIEN:** And then with respect to the follow-up interviews of Constable X and Corporal O'Keefe, which are the last interviews that you canvas in your report.

**MR. JONES:** Again, I mean I think those were done because of concerns that ASIRT brought to the attention of Corporal Burke. Yeah, I haven't heard the recordings but I read the transcript. The three-minute interview of Constable X I don't think dealt with the issue – the issue being, from my perspective is the way he tried to divert Acting Sergeant Smyth from talking about what had happened as they were driving back to the detachment. So I don't think it covered that issue.

**MS. O'BRIEN:** And can you just explain why would you consider that to be an issue that should have been explored with him?

**MR. JONES:** Because I believe it's a deficiency in the process that Constable X should not have done what he did. He wasn't actively questioning Acting Sergeant Smyth and just as Constable Cox, Constable – Corporal Downey, some of the other officers of the scene, recorded utterances; I don't understand why Constable X did not.

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

**MR. JONES:** Or discouraged – actively discouraged.

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

And we have had testimony from Sergeant Osmond and it was also a view expressed, I think, by Sue Hughson of ASIRT yesterday that in at least for those two individuals, they're the two I'm remembering right now, that they considered in the circumstance where this was going to be a major crimes investigation, there was going to be major crimes interviewers interviewing Constable Smyth, that Constable X had done the correct thing by not – by discouraging any discussion from Constable Smyth because he was driving, he had no ability to take notes. He wasn't fully apprised of the situation for those types of circumstances.

What's your view on that?

**MR. JONES:** I mean I respectfully disagree with both of them.

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

**MR. JONES:** Would they have done the same if it wasn't a police officer?

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

**THE COMMISSIONER:** One of the points made by Ms. Hughson of ASIRT was that quite often the officer who ends up transporting subject officer is junior, does not have as much experience in documenting or recalling significant items of conversation and in this case, while driving, wouldn't have the opportunity to document until after. Do you have – do you see any significance in that?

**MR. JONES:** I've never come across that in my experience. I haven't come across, off the top of my head, another case where a transporting officer has diverted the shooting officer's attention away from saying something about the shooting. And I don't think Constable X was a junior, I may be wrong, I don't know if Constable X was a junior officer?

**THE COMMISSIONER:** Yeah, I don't know either, I don't recall. But Ms. Hughson went on to make the point that both as a prosecutor, definitely as a prosecutor, I think it might have been as director of ASIRT as well, she has seen many cases where prosecutions got into difficulty because of the transporting officer ending up getting involved in commenting upon spontaneous utterances of someone who he was transporting. You –

**MR. JONES:** I defer to her experience as a prosecutor from a purely investigative perspective, I would expect the officer to record that when they got back to the detachment. And, quite frankly, I expect the officer not to divert attention away, that's from an investigative perspective.

**THE COMMISSIONER:** Thank you.

**MS. O'BRIEN:** All right, unless there's anything further you have on question 7, any further comment you wish to make on question 7, Mr. Jones, I will take you to question 8 of your report.

**MR. JONES:** Sure.

**MS. O'BRIEN:** Okay, so that's the final question and the question is: Was the analysis of the evidence gathered during the investigation objective and based solely on the facts? And can you please tell the Commissioner what your conclusion was with respect to this question?

**MR. JONES:** I think by and large it was based on the available evidence; I had no major criticisms of the ultimate conclusion. There's are a couple of minor things that I pointed out that maybe potentially weren't dealt with but ...

**MS. O'BRIEN:** And those are the things you've already talked about?

**MR. JONES:** You've already talked about, yeah. The trickle of the blood, the position of the gun, but I didn't have any major criticism of his assessment of the evidence.

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

And then that brings us then to the conclusion section of your report and if you want to just – I'm sure we've already gone over all your individual conclusions as we've gone through your report, but if you could just give the Commissioner the final summary of your report and again just highlighting what you think was the most – what you considered to be the most significant issues.

**MR. JONES:** Well, I think I should start with the premise that I start with in the conclusion is that no investigation is perfect. I've certainly never done one. I've never seen one. And many aspects of this investigation were done well, many aspects were done well. The case management stuff, the getting in the independent observer, the use of the firearms guy, the use of the use-of-force expert, the re-enactment was an excellent idea and I'm sure there's other things that I've mentioned in the report that I've forgotten.

But there were, as I'd mentioned throughout this morning, at least in my views, some fairly serious deficiencies in some aspects of this investigation. From the initial mine sets through to – you know, which created that kind of too early a conclusion in the investigative process, making up your mind too early, to the focus of the investigation. Perhaps not being as focus on Acting Sergeant Smyth as perhaps, it should've been. To the lack of thoroughness in some of the interviews, they didn't cover some of the interviews – the issues in some of the interviews, as I've mentioned. Failure to follow-up with the cell phone as quickly as perhaps they should have. So, yeah, I think there were deficiencies as well.

**MS. O'BRIEN:** Okay. And I don't know if you're able to give an opinion on this or not, but if you are or not, please say so. And that would be an opinion as to whether these aspects that you've highlighted affected the ultimate conclusion of the investigation.

**MR. JONES:** I haven't looked to it and I didn't look at it – I didn't reinvestigate this. Just because there are flaws in an investigation, doesn't mean that the ultimate conclusion, the ultimate outcome is wrong. And that's about as far as I can really go.

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

Those are my questions for you, Mr. Jones. Other counsel may have – other counsel may have questions.

Thank you.

**MR. JONES:** Thank you.

**THE COMMISSIONER:** Thank you.

Now, who's going first? Ms. Buis or who – I'm sorry, I'm going out of the order – right order. Mr. Simmonds, you ...?

**MS. BUIS:** I don't have any questions, Commissioner.

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

Mr. Drover, you have any?

Yeah, Mr. – normally, I think it was Mr. Freeman and Ms. Rasmussen to go last.

**MR. DROVER:** Mr. Jones, thank you for your testimony this morning. I have some questions around your report and your testimony this morning.

And given that it's – that it's the Commissioner's job to come up with recommendations; I may have some questions that are a little prospective in nature.

First of all, in your experience as an SIU investigator, how common was it for you to have a fully co-operative involved officer?

**MR. JONES:** It depends how you measure fully co-operative.

**MR. DROVER:** Okay.

Well, let me give you an example: An officer who gives three or four statements and does two re-enactments without the benefit of legal counsel present or even consulting legal counsel?

**MR. JONES:** I think, to get to the nub of your – Acting Sergeant Smyth was one of the most co-operative officers, certainly be up there in the pantheon of co-operative officers that I ever dealt with at SIU, possibly the top.

**THE COMMISSIONER:** Sort of possibly the what?

**MR. JONES:** At the top, one of the most co-operative officers that I would have met. Now, we did have co-operative officers but –

**MR. DROVER:** Perhaps not to that degree.

**MR. JONES:** Certainly not beyond that degree.

**MR. DROVER:** Was there anything in the policy or the legislation around the SIU that would enable you as an investigator to compel statements or evidence from the involved officer?

**MR. JONES:** Involved or subject?

**MR. DROVER:** Subject officer.

**MR. JONES:** From a subject officer, no.

**MR. DROVER:** Yeah, I'll use them interchangeably.

**MR. JONES:** Okay.

**MR. DROVER:** I think a lot of the American literature that I've been reading on officer-involved shootings called them the involved officer. I'll call them the subject officer.

**MR. JONES:** Yes, subject – from a subject officer, no.

**THE COMMISSIONER:** And that's, for the record, to distinguish them from witness officers I believe. Yes.

**MR. DROVER:** Yes. Yes.

Yeah, I think a lot of the American literature calls it an officer-involved shooting and then refers to the subject officer as the involved officer.

**MR. JONES:** Yes.

**MR. DROVER:** Okay.

You gave some testimony today about, I guess, the importance of the cellphone and having that investigated early on.

**MR. JONES:** Yes.

**MR. DROVER:** Would it surprise you to know that up until the last couple of weeks there's still been data that has been retrieved from that cellphone?

**MR. JONES:** I'm not an expert in cellphone extraction. I would have – as I said before to Ms. O'Brien, the officer should have taken possession of the cellphone really, then extracted whatever data could have been extracted from it that was relevant to the issue being investigated

–

**MR. DROVER:** Because I think –

**MR. JONES:** – as soon as possible.

**MR. DROVER:** Oh sorry. I think that goes to sort of the length of the investigation. In your SIU experience were there timelines in place in terms of your policy or whatever about, I guess, meeting milestones in an investigation, or was it just allowed to play out however it played out?

**MR. JONES:** In the early days of SIU because we were so grossly under resourced, investigations took a long, long time and SIU was very justifiably criticized for investigations that took a year or more.

In 1996, a new SIU director came who imposed a 30-day limit on conducting investigations. So the investigation had to be conducted and the report made within 30 days, save in – save in circumstances where for the testing of forensic evidence was so crucial that it was central to the issue being decided, criminality on the part of the officer, or there was a lack of co-operation from witnesses. But generally, in the vast majority of them, 75 or 80 per cent of cases, we turned around investigations in roundabout 30 days.

**MR. DROVER:** Because having this investigation hanging over the head of the subject officer certainly would have a psychological impact on that officer.

**MR. JONES:** Not just the officer, but the family and the public and everybody else deserve to know what happened as quickly as is reasonably possible.

**MR. DROVER:** In order to do that, did you have any policy around, I guess, forensic labs or crime labs?

**MR. JONES:** We worked very, very closely with the Centre of Forensic Sciences in Toronto to get our testing done, to prioritize our testing. It caused a bit of friction with police services now and then, but by and large we were pretty good at getting priority for important cases, important stuff.

**MR. DROVER:** Because I believe we had some evidence from the RCMP officers that the RCMP crime lab certainly just didn't prioritize the work that was to be done on this case.

**MR. JONES:** And as I think I've noted in the report, all credit to the RCMP investigators for trying to expedite that. It wasn't their fault that they were turned down.

**MR. DROVER:** So it would be possible to have some legislation or some policy to speed up that process? I mean they weren't doing a large amount of forensic work.

**MR. JONES:** Again, I'm not an expert on prioritization at the RCMP lab, but I think in a case where such a high public interest and such a high profile, there should be a mechanism for expediting testing in these cases.

**MR. DROVER:** Now you said that you didn't review any of the information from the Office of the Chief Medical Examiner, is that correct, in preparation for your report?

**MR. JONES:** Yeah, I think that's correct. I saw a little bit of Dr. Avis's testimony and I have recollection of seeing the diagram from the post-mortem.

**MR. DROVER:** And –

**MR. JONES:** But beyond that I didn't even go into the (inaudible).

**MR. DROVER:** Did you, did you hear Dr. Avis's testimony regarding the position of the gun?

**MR. JONES:** No.

**MR. DROVER:** It was his evidence that to him the position of the gun meant nothing because you couldn't account for body movements of the person who'd been shot either while they're



being shot or as they were – I forget what the word – going through the agonal period I believe and, you know –

**MR. JONES:** Yeah.

**MR. DROVER:** – sort of last moments.

**MR. JONES:** Okay.

**MR. DROVER:** So it was his evidence that the position of the gun meant nothing.

**MR. JONES:** Okay.

**MR. DROVER:** Do you agree with that or disagree?

**MR. JONES:** I don't know. I guess my question would be did Corporal Burke know that when he wrote his report or as I think, was it a live issue that had to be dealt with during the course of the investigation.

**MR. DROVER:** I'm just going through my notes here now to see if I have any other questions.

**MR. JONES:** Sure.

**MR. DROVER:** You had discussed that there was a, I guess, that in fact in your report on page 12 you say it was highly unusual during the course of an SIU investigation for there to be direct contact between the lead investigator and the subject officer. Would it also be – would it also be unusual to have that sort of contact with the family of the deceased?

**MR. JONES:** Between the lead investigator and the family of the deceased?

**MR. DROVER:** Yes, between anybody in the MCU triangle and the family of the deceased.

**MR. JONES:** No, that's not unusual at all.

**MR. DROVER:** Not unusual?

**MR. JONES:** The SIU lead investigator generally deals directly with the family of the deceased.

**MR. DROVER:** As –

**MR. JONES:** Unless they're represented by counsel but in which case you would deal with their counsel and get permission to deal with the family directly.

**MR. DROVER:** And is that in a liaison role?

**MR. JONES:** Yes, in a –

**MR. DROVER:** Yeah, sort of a –

**MR. JONES:** Yes.

**MR. DROVER:** – a family liaison role.

**MR. JONES:** Yes.

**MR. DROVER:** And so the same rules about providing information regarding evidence or the investigation would pertain to the family liaison –

**MR. JONES:** Yes.

**MR. DROVER:** – just as it would to communicating with the family officer.

**MR. JONES:** Yes.

**MR. DROVER:** And that would apply with communications go in both directions I assume. I mean there are certain things that you wouldn't want to hear from the subject officer I guess, such as, you know, them directing the investigation in any way.

**MR. JONES:** I'm sorry, I've lost you.

**MR. DROVER:** Okay, so if you're – in the case of dealing with the subject officer –

**MR. JONES:** Okay.

**MR. DROVER:** – you know, there's a two-way communication. In this case, you're talking about information being provided by the lead investigator to the subject officer.

**MR. JONES:** Directly to the subject officer, yes.

**MR. DROVER:** I assume that would also mean that the lead investigator would not want to be getting direction as to how to conduct the investigation from the subject officer.

**MR. JONES:** No.

**MR. DROVER:** Okay.

**MR. JONES:** It would not.

**MR. DROVER:** And that same two-way communication should be limited in terms of the family as well. Is that correct?

**MR. JONES:** I think you would listen; you wouldn't take the directions.

**MR. DROVER:** Well, you'd have no choice but to listen.

**MR. JONES:** That's right, absolutely.

**MR. DROVER:** I suppose if someone is talking and your ears are on –

**MR. JONES:** Fair enough.

**MR. DROVER:** – you're listening.

So you have no experience in dealing with an independent observer. I believe you had said that the SIU –

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

**MR. DROVER:** – had not used –

**MR. JONES:** SIU doesn't use –

**MR. DROVER:** You're –

**MR. JONES:** I've very recently been dealing with an independent observer in a case in Quebec involving sexual assault allegedly committed by a police officer, but that's very limited.

**MR. JONES:** Was it in a First Nations context?

**MR. DROVER:** Yes.

**MR. JONES:** Okay.

So independent observers are more often used in a First Nations context –

**MR. JONES:** Yeah –

**MR. DROVER:** – as opposed to other context?

**MR. JONES:** – I'm getting beyond my comfort level here. I'm not sure the extent of –

**MR. DROVER:** Did you read Justice Riche's report?

**MR. JONES:** I glanced through it.

**MR. DROVER:** In the absence – and I understand your comments about the amount of information that was put out by the RCMP the day after, and that you had many concerns with that. In your opinion, is there an effect, I guess, on the rumor mill, or conspiracy theories within the community, or the public in general when there is a lack of information provided?

**MR. JONES:** It's a very difficult decision. It's a double-edged sword of how much you put out there. And I think we will be talking more about this on Thursday. But, from an investigative perspective, do nothing that harms the integrity of the investigation. And then try and manage information for the public and for the officers and for the families accordingly.

**MR. DROVER:** You pointed out that the RCMP spent a great deal of effort tracing Mr. Dunphy's movements and activities on the day of the shooting, and less so on Constable Smyth.

**MR. JONES:** I believe that's the case.

**MR. DROVER:** Are you aware that a fair amount of that effort put into tracing Mr. Dunphy's movements had to do with the eye glasses?

**MR. JONES:** I – Ms. O'Brien reminded me during my question. But I wasn't aware of that.

**MR. DROVER:** Because I think the evidence from Constable – or, sorry, Corporal Burke was that they dug into this CCTV camera and interviewed the wagers and things, to try to find out the state the glasses were in, or if he was wearing them prior to Meghan Dunphy raising the issue of that the glasses were in a different state.

**MR. JONES:** Right, but they did speak to Mr. Dinn in the initial part of the investigation.

**MR. DROVER:** Yes, they did, yes.

**MR. JONES:** I believe they spoke to the Nolans. I'm not sure how much of a witness canvas that they did, but I accept what you are telling me.

**MR. DROVER:** Okay. So then, if – would you hold the same opinion that there was too much effort put into it if you knew that the majority of that effort related to pursuing an avenue that was not – was not relevant to the investigation, ultimately?

**MR. JONES:** I don't think I said too much effort. I think – proportionally more effort was put into Mr. – finding out Mr. Dunphy's – what he done that day than it was to Acting Sergeant Smyth.

**MR. DROVER:** Right. So if we take out the eye glasses issue, it's quite possible that they were equally proportioned?

**MR. JONES:** I'd have to go back and look at who spoke to what when and let you know.

**MR. DROVER:** In terms of the various police interviews, the last time you were involved, I guess in that type of interviewing, would be your work with the SIU or is this something that's ongoing for you?

**MR. JONES:** Interview a subject officer after a police shooting?

**MR. DROVER:** Yeah.

**MR. JONES:** Yeah, would be 2001.

**MR. DROVER:** I mean you still do investigations so you still do interviews.

**MR. JONES:** And I still teach investigative interviewing and I do a lot of interviews.

**MR. DROVER:** Okay. And so there's been a number of changes I guess in the techniques and process for police interviewing since 2001, is that correct?

**MR. JONES:** There has. There's been the movement away from confrontational types of interviews designed to get confessions, the Reid technique that you may have seen or read about.

I'm moving into the peace process which is the technique from the UK which are much more about building a rapport, (inaudible) from prepare and planning, explain and engage, account, challenge, confront, closing and then evaluation.

But that's the kind of approach that, not only do I teach and have been teaching, but it's the kinds of approach I've used since I began doing this stuff back in 1991. So while there's been evolutionary change, I don't think it's any significant impact on current practices.

**MR. DROVER:** In terms of the blood sample, you said that towards the end of your career it was your practice to request a blood sample, correct?

**MR. JONES:** Correct.

**MR. DROVER:** I think you raised steroid – suspected steroid use as an issue?

**MR. JONES:** It was in one or two of the shootings that I did in Ontario.

**MR. DROVER:** Right. And you've, I think, recently in the past five years or so, had a fairly large scandal in Ontario with police officers trafficking in steroids over the US boarder?

**MR. JONES:** Yeah, I think in the Niagara region there was something.

**MR. DROVER:** Okay.

So in that case you said everybody refused to provide a sample through their counsel?

**MR. JONES:** Oh, yes.

**MR. DROVER:** Right, and really, I'm not very surprised.

I mean if you ask an officer to provide a blood sample and that officer says no, doesn't that add to the conspiracy theories and the rumors?

**MR. JONES:** From an investigative perspective? No –

**MR. DROVER:** No, from a public perception because in many cases your report deals with public perception.

**MR. JONES:** Well –

**MR. DROVER:** The public perception is important.

**MR. JONES:** The public will know that during the course of the investigation, for a start. Now, potentially afterwards, but they certainly will know during the course of the investigation.

**MR. DROVER:** They would certainly know that when we're sitting here in an inquiry –

**MR. JONES:** Potentially.

**MR. DROVER:** – and there has yet to be a fatal shooting in Newfoundland where there hasn't been an inquiry.

**MR. JONES:** Okay. So, okay, it could come out in the public domain after the investigation is over. Does that mean I don't offer an – offer it?

The reason I do this is for the officer's benefit. It's so that they can deal with any subsequent allegations: oh, it must be road rage or he was drunk or he was smoking dope or whatever it may be, that's the reason that I offer it and that was the purpose of it. And of course they're perfectly entitled to say no, and I take no adverse inference from that at all on an investigative (inaudible).

**MR. DROVER:** But have you considered the adverse inference that the public might take from the denial of such a request?

**MR. JONES:** I think the adverse inference the public might take from not doing a thorough investigation, which would include, at least in my view, asking for that sample or it could be equally as damaging.

**MR. DROVER:** So again on the issue of where the rifle was found, your suggestion was that there should have been more detailed and better questioning of the people who had mentioned that rifle or saw that rifle in their interviews. Is that correct?

**MR. JONES:** Yeah, I think, yes, perhaps I could argue that if Mr. Bishop had been questioned at the time by the officers, as opposed to 18 months later about the location of the rifle, that may have been cleared up there and then. That's my only point.

**MR. DROVER:** But you certainly wouldn't suggest that anybody should conduct any experiment to see if you could make that rifle fall in that position and that's it?

**MR. JONES:** That's –

**MR. DROVER:** I mean that would be tougher than the folder experiment.

**MR. JONES:** That's right. Is there a reasonable possibility of that experiment educing evidence that would be of use to the investigation? So I would go and probably talk to somebody who probably knows about this, and I suspect they'd tell me no, but I'd still go and talk to them.

**MR. DROVER:** You would go talk to somebody who –

**MR. JONES:** May know – do you think it's viable to do something that might help us forward this investigation? I suspect the answer would be no. The point is that I went and asked.

**MR. DROVER:** Any idea who you would ask?

**MR. JONES:** Somebody in biology, bio-mechanics at the centre of – I don't know, but I would explore that avenue to the point where I couldn't explore it any further.

**MR. DROVER:** Those are all my questions, Mr. Jones.

Thank you.

**MR. JONES:** Thank you.

**MR. DROVER:** Do you need some more water?

**THE COMMISSIONER:** Go ahead, Mr. Simmonds, when you're ready.

**MR. DROVER:** More water (inaudible).

**MR. JONES:** Thank you.

**MR. SIMMONDS:** Good morning, Mr. Jones.

**MR. JONES:** Good morning, Sir.

**MR. SIMMONDS:** I am Bob Simmonds and I am (inaudible) counsel for Dunphy family.

**MR. JONES:** Good morning.

**MR. SIMMONDS:** Hopefully you can hear me.

**MR. JONES:** I can, I can.

**MR. SIMMONDS:** Mr. Jones, is it fair to say that police investigating police has a very negative perception from the public, and many of these agencies are set up to try and deal with that perception?

**MR. JONES:** I think that's a fair statement.

**MR. SIMMONDS:** And would you agree that when one force is investigating another, that they should make every single possible effort to show that they are being impartial, objective and are not treating the person – the police officer being investigated – different than they would if they were investigating the other citizen?

**MR. JONES:** Yes, and I think the way that I put it in my report is that – and other stuff that I've written – is that it doesn't mean that the police can't investigate police.

**MR. SIMMONDS:** Uh-huh

**MR. JONES:** From an independence and impartiality perspective. It's just – they just better make sure that they follow those principles that I set out in the report in terms of the thoroughness and the objectivity of the investigative process.

**MR. SIMMONDS:** You've been at this – certainly from your resume – for a significant period of time as a police officer and then doing these investigations.

Do you understand how traumatic it is to the family when they perceive the police investigation is not being objective?

**MR. JONES:** Absolutely. I've sat down with many, many bereaved families during my time at SIU, and in many cases where charges haven't been laid –

**MR. SIMMONDS:** Uh-huh.

**MR. JONES:** – and try to explain our investigative process to them. And it's very difficult to do.

**MR. SIMMONDS:** And you've – obviously that's why I asked which witnesses you have seen. If you have seen some of the police officers giving evidence, I think it's fair to say that by and large they weren't willing to acknowledge, outside of the statement, very many deficiencies in their investigation.

**MR. JONES:** I'm reluctant to comment now.

**MR. SIMMONDS:** Fair enough.

**MR. JONES:** I read the Commission counsel statements and there were some admissions in there.

**MR. SIMMONDS:** Impartiality and objectivity are fundamental to this process.

**MR. JONES:** I agree.

**MR. SIMMONDS:** The first thing that the Dunphy family is met with, and you've referenced it in your report, is that they perceived the police officer who was walking around the scene when they drove there that night shortly after the events, seems to be walking around as if there's no issue at all, which was not something I would think you'd normally see if it was an ordinary citizen who was involved.

Would you agree?

**MR. JONES:** I could only talk about police officers at scenes. And most experiences I have is that the officer is taken away from the scene as quickly as possible to the local detachment.

**MR. SIMMONDS:** And that lack of objectivity, I think you phrased, that lack of impartiality, I think was – your phrase was: a very serious deficiency. I would say fundamental deficiency.

**MR. JONES:** Which –

**MR. SIMMONDS:** When you were talking about the perception of lack of objectivity and impartiality, independence.

**MR. JONES:** There's aspects of the – not all of it, but there's aspects of the way that I feel that the officers didn't demonstrate impartiality, and that's serious.

**MR. SIMMONDS:** That's serious and it's fundamental to the process.

**MR. JONES:** It is. I mean, you have to be impartial to do this right, absolutely right.

**MR. SIMMONDS:** Now, I ask you to factor into that – and again, I put this question to numerous RCMP officers – the press release they did within a day or two days, I think it was, in which – I'm, you know – if we need to we can bring it up as an exhibit – but in which they clearly have accepted Officer Smyth's version.

Now, you keep using the phrase that it starts off: To date the police have. So it's to date and we haven't made a final decision. But the perception from the public in reading that, the perception from the Dunphy family in reading that press release, was that they had clearly accepted the version given by Officer Smyth.

**MR. JONES:** I think I said that in my evidence to Ms. O'Brien earlier today.

**MR. SIMMONDS:** That is, again, a fundamental deficiency if you're trying to show objectivity and impartiality. Would you not agree?

**MR. JONES:** I already have agreed. Yeah, I think it's a serious deficiency.

**MR. SIMMONDS:** Ms. Dunphy also feels – and my learned friend Mr. Drover touched on it a minute ago. He said, well, you know, a lot of the RCMP investigation into – a lot of the RCMP investigation into Mr. Dunphy was after the fact because of his glasses issue.

**MR. JONES:** Okay.

**MR. SIMMONDS:** Her feeling is that there was significant investigation or checking of the background of her father versus checking in the background of Officer Smyth. I think you've agreed with that also is a factor in this case.

**MR. JONES:** That was my perception from reading through, and that's in my report.

**MR. SIMMONDS:** Would you agree that that also has a very detrimental effect on the faith of a family involved in this process?

**MR. JONES:** Yes.

**MR. SIMMONDS:** That – and you speak from experience – I think you – I didn't catch it – but you said 30 or 40 families you've – people you've interviewed, sat with them over the years?



**MR. JONES:** Oh, far more than that.

**MR. SIMMONDS:** Far more.

**MR. JONES:** They go beyond shootings to pursuits –

**MR. SIMMONDS:** And that's –

**MR. JONES:** – sole custody deaths, yeah.

**MR. SIMMONDS:** And that's a common feeling when this happens.

**MR. JONES:** It is, yes.

**MR. SIMMONDS:** There was – we maintained when we put questions to the RCMP that there was evidence left unexamined. And I think you have agreed, in some parts, that that is a correct statement.

**MR. JONES:** In some parts, yes.

**MR. SIMMONDS:** You talked about the blood test. You would've asked for that. He could refuse, but you would've asked for it.

**MR. JONES:** Yes.

**MR. SIMMONDS:** You referenced the position of the gun, and so did Mr. Drover. We have an officer who comes out very early on saying it's lying on the floor, or partially on the floor. We have the two paramedics who, again, some months after because the statements were taken from them were very inadequate, placed the gun and Mr. Dunphy's hands in a different position. We have Officer Smyth, in fact, who says on one of your – he doesn't remember the tub there.

How could that issue of such significance, when the whole justification for firing and shooting Mr. Dunphy is the gun that he allegedly pointed, how could a competent investigation let that go by without further checking?

**MR. JONES:** Just to come back, Constable Cox, who was one of the first officers, did place the gun in a certain position.

Again, as I say in my report, that – had I been the investigator that would've been an issue that I would've tried to resolve early on in the investigation.

**MR. SIMMONDS:** And as time passes, memories fade and when they give evidence, even if they are sure, the passage of time does not assist in their evidence.

**MR. JONES:** Exactly.

**MR. SIMMONDS:** The other – one of the other issues that – and again, this has been – I won't say ad nauseam, but it's been referred to consistently throughout, is Mr. Dunphy's phone is seized that night. Why? Because they obviously want to check and see if there was anyone he was talking to immediately before that, which might lend some evidence to the events that took place.

Fair investigative step, agreed?

**MR. JONES:** Yes.

**MR. SIMMONDS:** The only other witness to it is Officer Smyth, who also has a cellphone. Can you possibly explain what would be the thought process of the officer not to have seized that cellphone at that time immediately?

**MR. JONES:** I think that's a question better put to Corporal Burke than –

**MR. SIMMONDS:** I have. Yeah.

Do you agree that that is fundamental, again, in attempting to show impartiality, objectivity, even-handed treatment?

**MR. JONES:** I think I mentioned in our report that I have concerns about the cellphone not being seized immediately.

**MR. SIMMONDS:** And a cellphone in this day and age can reveal or yield very significant evidence, can it not, with respect to a set of events or a crime?

**MR. JONES:** Oh, absolutely. It could be a possible treasure trove of evidence.

**MR. SIMMONDS:** You categorized that as extremely serious.

**MR. JONES:** I think I did, or serious; I forget which one.

**MR. SIMMONDS:** No, I think it was extremely serious, but anyways, yeah.

The other question which, again, was asked to every – or most RCMP officers, and it seems almost to be a throwaway, is the vehicle is parked in the driveway, okay? Now, there is – to be fair to Constable Smyth, there's no allegation that, from anybody, that anything happened in the vehicle which would make it direct evidence of what took place in the living room. I accept that.

But what I don't understand – and I query you, and you've recognized it, I believe, in your report as a shortfall. There could be, for a number of reasons, very significant information, evidence, potential evidence in that Yukon. Would you agree?

**MR. JONES:** Potentially. It's another scene – another potential scene.

**MR. SIMMONDS:** It is a very easy process to search that vehicle. Agreed?

**MR. JONES:** Yeah, I don't think there's any warrant issues, any consent issues. I stand to be corrected on that, but I don't think so.

**MR. SIMMONDS:** Can you again comment – does that not also go to the impartiality and the fact that you're treating one type of – if that was ordinary Joe's car in the driveway, I don't think there's any doubt it would have been searched.

**MR. JONES:** I don't know. It certainly goes to the thoroughness. I would ask: Was Mr. Dunphy's car searched? I don't think I saw any evidence of that.

**MR. SIMMONDS:** Mr. Dunphy's car wasn't – there was another car there.

**MR. JONES:** Okay, I think he borrowed it –

**MR. SIMMONDS:** Yeah.

**MR. JONES:** – from his brother-in-law.

**MR. SIMMONDS:** That’s correct.

**MR. JONES:** I don’t know if that was searched, again, but it certainly goes to the thoroughness of the investigation.

**MR. SIMMONDS:** Can you comment as to – well, you have commented. There should have been other witnesses spoken to. There should have been witnesses who had dealings with, either by telecommunications or directly with Officer Smyth, in the day proceeding or the two days proceeding this event. That wasn’t done.

**MR. JONES:** With the exception of Acting Sergeant Smyth’s wife, I believe.

**MR. SIMMONDS:** Yes.

**THE COMMISSIONER:** With the exception of what?

**MR. JONES:** Acting Sergeant Smyth’s wife.

**MR. SIMMONDS:** Acting Sergeant Smyth’s wife.

**THE COMMISSIONER:** Oh.

**MR. SIMMONDS:** And to be fair, Doug Noel, who was –

**MR. JONES:** Okay.

**MR. SIMMONDS:** – the other officer, he was spoken to as well.

**MR. JONES:** Okay.

**MR. SIMMONDS:** Again, an event or a process that would have ‘lended’ impartiality and objectivity.

**MR. JONES:** And thoroughness, I think.

**MR. SIMMONDS:** And thoroughness.

At page 50 of your report, Mr. Jones, on the bottom paragraph: “Nor was A/Sgt. Smyth asked about items he might have seen on any furniture – in particular the cartridge that was subsequently located on a table. Other areas that should have been pursued include whether A/Sgt. Smyth was getting agitated, his exact position and precise movements, why he didn’t see the gun in such a small room – given his line of sight from the mantel and the short distance, which perhaps included the right side of the chair (or parts of it), more detail about the notes and the pen, and so on ....”

We have a rendition that this gun appeared over the right-hand side of the chair. It appeared unannounced. It appeared very quickly. And obviously when a barrel is pointed at you, the police officer maintains he had no choice but to react as he did.

Would it not have been appropriate for them to have asked Sergeant Smyth to do some kind of re-enactment with respect to where the gun he thinks came from, that placed the gun by the sides of the chair, that placed the gun up against the wall to see if it – any kind of, in relation to the chair, to see what kind of realities there were to not seeing it?

**MR. JONES:** I can't remember what was canvassed in the second re-enactment with the video, whether that was canvassed. I certainly agree that more questions could have been asked.

**MR. SIMMONDS:** Would you be surprised – and I don't know if you recall that they – the RCMP did not even have a clear and single photo of the position where Constable Smyth says he was standing when the gun first appeared?

**MR. JONES:** And I noticed that when I was going through the photographs. The closest I got, I think, was 0044 to roughly where he was standing. And I think that may come down to the other issue of communication between the lead investigator or the investigators and the forensic people who are actually taking their photographs.

**MR. SIMMONDS:** What's even more troubling – you referenced it, but what Ms. Dunphy finds more troubling is that they took a statement from Officer Smyth, and he volunteered to give it on the sixth, yet the information was not conveyed to the forensic people. One of the forensic officers went in and said there was no, the morning, report in, no new information and went back out to the scene. Is it not true that the information obtained from Officer Smyth could have been very valuable to the forensic investigators?

**MR. JONES:** As I think I say in my report, my practice, when I was doing this investigation, was to work very closely with my forensic ident people in making sure that they had the information that they could use to process the scene intelligently.

**MR. SIMMONDS:** So another significant deficiency, would you agree?

**MR. JONES:** Yes, I think I've already identified it as a deficiency.

**MR. SIMMONDS:** I'm not going to spend a whole lot of time on the interview because the interview by the two officers, Burke and Henstridge, here has received a fair bit of comment, but you've noted probably six or eight deficiencies – and to the credit of Officer Henstridge, he acknowledged many of those when he gave his evidence.

But that statement was overly familiar with the subject, giving him information that shouldn't have been given, lacked impartiality, saying at the end of it, well, look, all we're concerned about is what's going through – you know, the biggest issue is what's going through Dunphy's mind. When the Dunphy family sees that, they say that doesn't reflect what we would expect in an objective interview by police. Does that surprise you?

**MR. JONES:** Would that have surprised me that the family thought that? No.

**MR. SIMMONDS:** And you've agreed that it is not an objective process?

**MR. JONES:** I had serious concerns with that interview that I've articulated.

**MR. SIMMONDS:** They don't ask Officer Smyth not to repeat it, but Meghan Dunphy is specifically asked not to repeat anything she's told.

**MR. JONES:** That is correct.

**MR. SIMMONDS:** Again, an issue that seems to be different-handed treatment depending on who you are.

**MR. JONES:** That's certainly one way of interpreting it.

**MR. SIMMONDS:** Constable X – what was particularly concerning and we were questioned by the Dunphy family after, Constable X on a question led by one of the lawyers said: Well, I could have been disciplined if I had carried on that conversation. I know of no such discipline – and our questions were up, so we couldn't review it with him again. Would it not be appropriate, even allowing that the officer doesn't have a notepad, that the officer is driving, would it not be appropriate for the officer to make mental note of anything said and then immediately transpose that to written notes when he gets to the detachment?

**MR. JONES:** Yes, I think that is appropriate for an officer to do, but he did write it down at some point, right? That's how we know about it.

**MR. SIMMONDS:** Because they went back and wanted an interview with him.

**MR. JONES:** No, I think wasn't it in his jigger report or some such?

**MR. SIMMONDS:** I think he had one – go ahead.

**MR. FREEMAN:** I'm sorry. I think that's inaccurate. So Constable X did take notes and keep notes of any utterances that he did hear. It was the diverting of the conversation, I think, that was the issue for the expert.

**MR. SIMMONDS:** And to do that and not – and stop what may potentially be a body of evidence, is that a practice that you can in any way see as appropriate?

**MR. JONES:** From an investigative perspective, it's not a practice I would encourage.

**MR. SIMMONDS:** I take your point that because of flaws in an investigation does not mean they did not reach the right result. But the – and you say, indeed, they may indeed have reached the right result even with the flaws. Correct?

**MR. JONES:** Correct, yes.

**MR. SIMMONDS:** But is not also the converse true of that, that because of the flaws they may not have reached the right result?

**MR. JONES:** Potentially, yes.

**MR. SIMMONDS:** No re-enactment of how this gun came up over the chair or where it could have been hidden. Only one witness to this event; the only witness to this event is the police officer, who is receiving what they perceive as different treatment than an ordinary citizen would have with respect to his statement, time of giving his statement, et cetera.

Does that not go to a very fundamental flaw in the investigation at the end of the day?

**MR. JONES:** You have to look that the totality of the evidence that came out in the end and is there any other reasonable explanation for what happened. And, again, I was not – I'm very reluctant to comment on that. What I would do is point you to the forensic evidence, which is what it is. So, you know, I don't want to go into whether or not this was a (inaudible).

**MR. SIMMONDS:** Well, let me put this to you, Mr. Jones: there was a stick that Officer Smyth acknowledges he saw when he entered the room and referenced it. Now, he says it was on the floor; I'm sure you've seen it in the pictures –

**MR. JONES:** Yes, I have.

**MR. SIMMONDS:** – where the stick was to. We've also had very detailed evidence that this was something Mr. Dunphy had in case someone tried to break in and steal his weed. And we also had very definitive evidence as to the location normally of that stick. It was on the other side of the chair.

That stick, one of the scenarios put forward is perhaps that was mistaken for a gun. How do we know unless – there are flaws – how do we know unless all of these things are examined, crucially assessed? How do we know what might have happened?

**MR. JONES:** It certainly makes it more difficult, but at the end of the day I guess it boils down to how much credibility you give to Acting Sergeant Smyth's account of event. He was the only person there who's still alive.

**MR. SIMMONDS:** And that is indeed the issue. Acting Sergeant Smyth is the only witness to this event.

**MR. JONES:** And I would add the evidence of – and, again, without coming to any conclusion about the shooting itself –

**MR. SIMMONDS:** No.

**MR. JONES:** – the evidence of Mr. Barr, which would appear to support –

**MR. SIMMONDS:** Support that shots were fired.

**MR. JONES:** – what Acting Sergeant Smyth is saying.

**MR. SIMMONDS:** But Mr. Barr clearly made the point that he can't say what happened before the shots –

**MR. JONES:** Right.

**MR. SIMMONDS:** – nor can he say what happened in between the shots, nor after the shots.

**MR. JONES:** Okay, all right.

**MR. SIMMONDS:** His are one-point-in-time pieces of information, and a slight movement of the body, a slight difference in where Officer Smyth said, and you could have different scenarios.

**MR. JONES:** Yeah. No, I don't disagree with you on that.

**MR. SIMMONDS:** Isn't the hallmark – the only reason for this process is to ensure the perception and the reality are the same, that it is an objective, impartial, independent investigation and to anyone viewing it, it seemed as an impartial, objective, independent investigation that has therefore come to the right conclusion?

**MR. JONES:** Yeah. That's what an investigation into a police shooting should be.

**MR. SIMMONDS:** Thank you very much, Mr. Jones.

**MR. JONES:** Thank you.

**THE COMMISSIONER:** I'm – again, roughly how much time do you think you're going to need? I don't want to rush you, but we might be able to go through –

**MR. FREEMAN:** Hard to say.

**THE COMMISSIONER:** – delay the lunch a bit.

**MR. FREEMAN:** Do it as quickly as I can, certainly.

**THE COMMISSIONER:** Oh no –

**MR. FREEMAN:** But –

**THE COMMISSIONER:** – roughly anticipate?

**MR. FREEMAN:** I'm thinking a half an hour, 45 minutes, I would hope. Yeah. I don't – I don't want to move up other witnesses.

I don't think Mr. Avis can actually make it. I saw an email to that effect a moment ago. I don't know if that's been dealt with or not. But in terms of moving up the –

**THE COMMISSIONER:** Oh, okay.

**MR. FREEMAN:** – moving up Dr. Hart.

**THE COMMISSIONER:** So we've got the –

**MR. FREEMAN:** – it may not matter.

**THE COMMISSIONER:** All right.

Well, if that's the case then, if we can't move up Dr. Hart, then we might as well take our normal break for lunch. This would be about this time. I'll let you have a complete time for your examination.

If that's all right with counsel, we'll just adjourn now for lunch for one hour.

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is now in recess.

**Recess**

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is now in session.

Please be seated.

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

**MR. FREEMAN:** Thank you, Mr. Commissioner.

Good afternoon, Mr. Jones.

**MR. JONES:** Good afternoon.

**MR. FREEMAN:** I just have some questions for you, of course, about your report. You mentioned this morning that you've not heard all of the evidence here at the inquiry. Correct?

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

**MR. FREEMAN:** And in the event there's evidence at the inquiry that differs from the discovery evidence you've reviewed, those differences would not be reflected in your report.

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

**MR. FREEMAN:** Yesterday, ASIRT gave evidence that they reviewed the full RCMP investigative file. Did you watch ASIRT's evidence?

**MR. JONES:** I didn't. No.

**MR. FREEMAN:** Would you agree it'd be ideal to review the entire RCMP investigative file before giving an opinion on the investigation?

**MR. JONES:** The important thing is to review the key elements of the investigative file. Whether you have to review every email, every photograph, every report – but I will concede that the more you review, probably the better.

**MR. FREEMAN:** It would be ideal but not everything can be perfect.

**MR. JONES:** Not absolutely essential.

**MR. FREEMAN:** So you'd agree it's somewhat of a weakness, then, in your report that you did not review the entire investigative file.

**MR. JONES:** It depends on your definition of somewhat. I mean I would argue that I tried to focus on the evidence that I thought was key. And as I wrote in the report and Ms. O'Brien pointed out, you know, if I missed anything that anybody thought was essential, I'd be very happy to review that, but I haven't been advised of anything essential that I missed.

**MR. FREEMAN:** Okay.

You mentioned one area that you reviewed. You have reviewed the scene photos. Is that right?

**MR. JONES:** I reviewed the scene photographs, yes.

**MR. FREEMAN:** Did you review the scene video taken by FIS?

**MR. JONES:** I don't recall. I viewed one or two videos. Certainly the re-enactment video, I'm not sure about the scene video.

**MR. FREEMAN:** And the reason I –

**THE COMMISSIONER:** Sorry, which one did you refer to, the ...?



**MR. FREEMAN:** There is a – there’s a scene video that was created by Kelly Lee of FIS.

**THE COMMISSIONER:** Right. Yeah.

**MR. FREEMAN:** And I just thought I’d mention that because there has been some comment on there not being a photo taken from a certain vantage point. And I wonder if that FIS video has sightlines and angles that are not necessarily in the photo.

**MR. JONES:** If I did, I couldn’t recall whether it does or not. But I can’t recall that.

**THE COMMISSIONER:** Did we look at that for that purpose? I was trying to – I was trying to think, was that referred to us in the course of anyone’s testimony?

**MS. O’BRIEN:** We did review, Commissioner, looking at the – for the side of the chair and got looking for a view of the side of Mr. Dunphy’s chair.

**THE COMMISSIONER:** Well, I would think we were – we were trying to find –

**MS. O’BRIEN:** Find, yeah.

**THE COMMISSIONER:** – different sightlines for Constable Smyth in that, I believe Mr. Freeman, did we not? I can’t – I can’t recall totally with you.

**MR. FREEMAN:** I don’t believe we went through the scene video at the hearing, Mr. Commissioner. We did go through the re-enactment video and we did go through the – I could be mistaken, Ms. O’Brien, if I am, but ...

**MS. O’BRIEN:** No, sorry, Mr. Freeman, I was referring to a review I did with the Commissioner when the Commissioner and I looked through the scene video for the side of the chair to see what was in the scene video.

**THE COMMISSIONER:** Sorry, you’re referring to when we looked at it?

**MS. O’BRIEN:** We reviewed the scene – that’s what I thought you might be thinking of. We reviewed – you and I reviewed the scene video.

**THE COMMISSIONER:** Looking for the, that exact thing, that vantage point.

**MS. O’BRIEN:** That vantage point –

**THE COMMISSIONER:** Yeah, maybe that’s what I’m thinking about.

**MS. O’BRIEN:** – and that view along that side of the chair.

**THE COMMISSIONER:** Yeah, okay.

All right. Thank you, Mr. Freeman.

**MR. FREEMAN:** I was just establishing you didn’t have a chance to look at that video to see.

**MR. JONES:** Not as far as I can recollect. No.

**MR. FREEMAN:** We've talked, obviously, a lot here about perception and the perception of an investigation being one thing and the reality of problems of an investigation being another. Can you elaborate on that a little bit?

I mean obviously having a perfect investigation from a perception standpoint is one thing; having a perfect investigation from a technical standpoint is another. Do you prefer one over the other?

**MR. JONES:** Do I prefer one? I prefer perfection, but there is no such thing.

An investigation should go as far as it possibly can to cover those fundamental principles that I talked about this morning. And the more it does, technically, the more it would be closer to perfection. So unless I misunderstood your question.

**MR. FREEMAN:** It's somewhat muddled I guess and maybe it's the question's fault so – or my fault 'cause I came up with the question. But we're talking about perception. So sometimes you have a perception versus reality. What's important really at the end of the day is that while perception can be important getting –

**MR. JONES:** Right.

**MR. FREEMAN:** – getting it right is equally important, if not more important.

**MR. JONES:** That's right. But it has to follow a certain number of technical steps to get it right, however imperfect it may be from a perception perspective as well. Again, I'm not sure if that answers your question.

**MR. FREEMAN:** I think that's sufficient for this purpose. Thank you.

**THE COMMISSIONER:** We're losing you a bit with the mic –

**MR. JONES:** Sorry, my apologies.

**THE COMMISSIONER:** At the end of your statements, you tend to die off a little bit, as Ms. O'Brien mentioned.

**MR. FREEMAN:** We've talked a little bit about conflict. So the identification of a couple of occasions of prior contact between Corporal Burke and Constable Smyth – those were identified by Sergeant Osmond. Do you recall that?

**MR. JONES:** Correct.

**MR. FREEMAN:** Okay.

And I think we're okay on that issue at this point, but to say that in your report at page 8 – and we don't need to go there unless you need to. But you talk about there was no conflict here warranting recusal of Corporal Burke?

**MR. JONES:** In my view, yes.

**MR. FREEMAN:** Right.

But you go on to say that it should have been brought up with the family that there was some prior contact.

**MR. JONES:** I think – again, it’s to give the family confidence that the investigation is as impartial or will be as impartial and as thorough and as objective as possible. So when I met with families for the first time after a police shooting, always the first thing I told them: I used to be a police officer. And I’m not on your side and I’m not on the officer’s side; I’m going to try and find out what actually happens. So telling families as much as you can upfront – I know they’ll learn about it somewhere down the line. They’ll learn about it at the end of the investigation, so why not do it upfront so that you can be as honest and as forthcoming as you possibly can.

**MR. FREEMAN:** I just want to play that out a little bit. Like, what happens if when you let the family know that there are no conflicts warranting recusal but there was prior contact, if they then object?

**MR. JONES:** Then you listen to the merits of their objection. Is it based on fact or is it based on pure emotion or conjecture, and then you as the investigator make a decision and articulate how you are going to defend that decision.

**MR. FREEMAN:** So you could somewhat find yourself darned if you do and darned if you don’t in that scenario. Is that fair?

**MR. JONES:** That’s the nature of these police shooting investigations in many respects.

**MR. FREEMAN:** You can’t be put in a position where you’re allowing the family or anyone else to dictate who’s the resourcing (inaudible) –

**MR. JONES:** And I think I’ve finally got the – I’ve finally (inaudible) what Mr. Drover was trying to say to me. Yes, you can’t let anybody dictate. You ultimately have to make the decision yourself. And then defend that decision. Not everybody is going to be happy with that decision.

**MR. FREEMAN:** Okay.

At page 9 and 10 of your report, you talk about and attribute some meaning to something Corporal Burke said. He says, “... because you are trained the same way and things like that.” And this goes to his empathizing with Constable Smyth.

Do you recall that?

**MR. JONES:** Yes, I think the beginning of that is you put yourself in his shoes. Is that correct?

**MR. FREEMAN:** Something to that effect. I think that’s –

**MR. JONES:** Maybe I should have a look at that.

**MR. FREEMAN:** Sure. We’re at page 9 and 10 of your report.

**MR. JONES:** Yeah, “...you could put yourself in his shoes basically because you are trained the same way and things like that.” Yes, I did refer to that.

**MR. FREEMAN:** You seem uncertain about his meaning in the saying that, underneath – below that in your report here, you seem somewhat uncertain about what his meaning was exactly. You’re trying to attribute some meaning to it. Is that right?

**MR. JONES:** Right. I wasn’t 100 per cent clear, and I tried to say I wasn’t 100 per cent clear.

**MR. FREEMAN:** But you go on to sort of attribute it to this, potentially to this therefore, the grace of God – there but for the grace God, go I, mentality?

**MR. JONES:** That's right. My interpretation of what he said – and I stand to be corrected if he said something different – is that he telling me – you know, he's saying that I put myself in the officer's shoes. I put myself in the position that he would've been in at that particular circumstances. And I'm in his shoes.

**MR. FREEMAN:** Couldn't the meaning be something more innocuous, like it allows for Corporal Burke to have a depth of understanding of use of force, of the same – similar training, similar risk assessment, section 25 of the code? Couldn't that be more what Burke means?

**MR. JONES:** Potentially, and which is why I equivocated in that paragraph below about what the meaning was. I tried to be very fair to them on that.

**MR. FREEMAN:** Indeed. Thank you. I appreciate that.

Page 10 you talk about Corporal Henstridge and his enormous empathy for the situation.

**MR. JONES:** That's – I'm using his words.

**MR. FREEMAN:** Yes.

**MR. JONES:** "... I will say I –

**MR. FREEMAN:** Correct.

**MR. JONES:** – have enormous empathy ...."

**MR. FREEMAN:** He said that exactly. Now, in his discovery, and at these hearings, he's expressed great empathy for the situation. And, as he's said in that quote you've cut and pasted there, he said he had empathy for an elderly gentleman who had been killed in his home, who he likened potentially to his own father. He had empathy for Ms. Dunphy, who had lost her father, and he had empathy for Constable Smyth for having done something that no officer would want to do.

I mean, do you – you did watch Corporal Henstridge's evidence –

**MR. JONES:** I did.

**MR. FREEMAN:** – do you recall that?

**MR. JONES:** Yeah, I do recall that.

**MR. FREEMAN:** So his empathy was not solely for Constable Smyth, but for the entire situation that he found in that house.

**MR. JONES:** And that's very often – this was written prior to Corporal Henstridge giving his evidence. But I will point out that he does say: "... and I looked at him and I felt he had been through a lot." He didn't mention anybody else, in that particular extract.

**MR. FREEMAN:** But you would agree then he did express at least some equal empathy for Mr. Smyth and Ms. Dunphy and Mr. Dunphy. It showed some balance at least in the (inaudible).

**MR. JONES:** Certainly in front of the Commission, it did, yes.

**MR. FREEMAN:** Thank you.

The – I want to talk a little bit about – again, on page 10 we talk about the second re-enactment video.

**MR. JONES:** Right.

**MR. FREEMAN:** And it was Chief Superintendent Boland basically high up the chain who decided that that was going to occur. Do you recall that?

**MR. JONES:** Yes, I believe I do.

**MR. FREEMAN:** Doesn't this – this is evidence of the RCMP getting it right, I think.

**MR. JONES:** Absolutely.

**MR. FREEMAN:** So they – Sergeant Osmond thinks maybe not.

**MR. JONES:** Right.

**MR. FREEMAN:** And his superior says, actually, yes, we're going to do that.

**MR. JONES:** Yes.

**THE COMMISSIONER:** Sorry, which one are you referring to now? I missed it.

**MR. FREEMAN:** I'm referring to the second re-enactment that's referred to at page 10.

**THE COMMISSIONER:** Okay. Yeah.

**MR. FREEMAN:** And this is where Sergeant Osmond had originally been of the mindset perhaps that they wouldn't ask for a second re-enactment after the first re-enactment video was lost.

**THE COMMISSIONER:** Yeah.

**MR. FREEMAN:** And Chief Superintendent Boland basically said, yes, you're going to do this and he agreed. And that was all evidenced in the file, recorded.

**MR. JONES:** Yes.

**MR. FREEMAN:** So I mean this is an occasion where they get it right and we're free to criticize the thinking because it is in the file but, really, it was a decision that was ultimately the correct one.

**MR. JONES:** Yes, absolutely.

**MR. FREEMAN:** And do you – did you know, then, that Sergeant Osmond had thought, and he gave evidence to this effect here, that when he was going through this thought process that he thought the first re-enactment video had a backup audio.

**MR. JONES:** I didn't know that.

**MR. FREEMAN:** Okay.

And so if that – that is indeed his evidence. So that would be playing into his decision making if you see what I mean.

**MR. JONES:** Oh, that’s fair enough.

I think Sergeant Osmond gave his evidence here after I wrote this, but I don’t recollect seeing that in any of the documentation that I reviewed.

**MR. FREEMAN:** I believe, I’m almost certain that it is –

**MR. JONES:** Okay.

**MR. FREEMAN:** – that was his evidence.

**MR. JONES:** I’ll take your word for it, absolutely.

**MR. FREEMAN:** You can appreciate that would have been playing into his thought process.

**MR. JONES:** Absolutely.

**MR. FREEMAN:** And he did eventually get it right.

**MR. JONES:** Yeah.

**MR. FREEMAN:** You talked about the – at page 11 – the ballistics and use-of-force experts and you said those were laudable decisions.

**MR. JONES:** Yes.

**MR. FREEMAN:** And you said it showed an open mind. And you said the same about the ballistics and use-of-force experts.

So you do mention there at page 11 that you – you say Corporal Knapman relied heavily on Smyth’s account for the use-of-force analysis.

**MR. JONES:** Sorry, where are we, Sir?

**MR. FREEMAN:** I’m sorry, we’re at page – let me make sure I have – I have you at page 11 and you say –

**THE COMMISSIONER:** Yeah, I don’t see a reference to Knapman.

**MR. FREEMAN:** It may be again –

**THE COMMISSIONER:** Oh yeah, right down in the footnote.

**MR. FREEMAN:** Right, so it is at the top –

**THE COMMISSIONER:** Footnote 15.

**MR. FREEMAN:** The top of page 11, you say: “I would have had no ... almost exclusively upon the account given by A/Sgt. Smyth ....” So Knapman was relying almost entirely on Smyth’s account, you say there.

**MR. JONES:** Yes.

**MR. FREEMAN:** That would make sense, though, in the circumstances, would it not, when, I mean, Constable Smyth’s decisions on use of force really are the ones that are in dispute?

**MR. JONES:** Yeah, absolutely.

**MR. FREEMAN:** At page 11, as well, we talk about the ASIRT review. Are you aware that Chief Superintendent Boland of the RCMP, who actually decided that ASIRT would review the RCMP investigation?

**MR. JONES:** I may have been. I can’t recall.

**MR. FREEMAN:** So I think his evidence is that he was told by ASIRT that the request had to come from the province, but – and so he asked the province to go ahead and write that letter, but it was RCMP that made the decision to call in ASIRT to take a look at this thing.

**MR. JONES:** Good.

**MR. FREEMAN:** So you don’t have a problem with ASIRT or think that they aren’t capable of reviewing an investigation like this?

**MR. JONES:** Absolutely not.

**MR. FREEMAN:** And you would trust that Boland’s decision making on this was sound, in calling in ASIRT?

**MR. JONES:** Very sound.

**MR. FREEMAN:** Now, I stand to be corrected on this, but ASIRT – Ms. Hughson of ASIRT said yesterday, I know you haven’t heard her testimony, but she tells us that SIU has a somewhat adversarial relationship with the police. Do you have a comment on that?

**MR. JONES:** I think like any good oversight agency, there is a friction, a certain amount of friction, between those doing the oversight and those being overseen; and if there isn’t, there may be a bit of a problem.

**MR. FREEMAN:** But you don’t think that ASIRT has that problem necessarily, do you?

**MR. JONES:** I don’t know. I know people who’ve worked at ASIRT who are superb investigators, but I’m not familiar with ASIRT and their relationship with the forces they oversee.

**MR. FREEMAN:** Both the ASIRT model and the SIU model have their strengths and weaknesses, I guess, is a sort of motherhood statement that one would make about the two.

**MR. JONES:** Yeah, I mean, from a personal perspective I far prefer the SIU model because, well, for reasons I articulate in here.

**THE COMMISSIONER:** Just again refresh my memory, in brief, the difference between the ASIRT and SIU model.

**MR. JONES:** The ASIRT model has serving police officers on it.

The ASIRT model has serving police officers on it.

**THE COMMISSIONER:** Right.

**MR. JONES:** It's civilian led.

**MR. FREEMAN:** Some – some.

**MR. JONES:** Some, and I think the vast majority of the remainder are ex-police officers, whereas SIU has no serving police officers, however –

**THE COMMISSIONER:** They did originally, didn't they?

**MR. JONES:** No, no.

**THE COMMISSIONER:** Not from the beginning?

**MR. JONES:** No, I've been there – I was there at the beginning and, no, they didn't. It has ex-police officers, but there's been a conscious movement towards hiring more and more civilians. I think nowadays, out of the 14 full-time investigators, I think eight or nine are of civilian background, never been police officers, and the remainder are former police officers.

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

**MR. FREEMAN:** In this case, the ASIRT review that was conducted, I wonder if you are aware of the – you don't think there is a perception problem here? I mean, I guess at page 11 you talk about –

**MR. JONES:** Yeah.

**MR. FREEMAN:** – how the fact that there were serving police officers, seconded police officers, should have been shared with the parties.

**MR. JONES:** I think it should have been. I think people should be made aware of that.

Now, I've no idea – ASIRT, who did the review, I'm sure it wasn't an – either serving or an ex-RCMP officer. But, I think, you know, when – I guess I say in there, if the purpose of this review by ASIRT was to give the Dunphy family and the public and even Acting Sergeant Smyth, confidence that it is being reviewed by an outside civilian, independent agency, then maybe it should have been – they should also have been advised that this is an agency that has serving RCMP officers on it.

Again, I want to emphasize that I'm in no way critiquing or criticizing the integrity of the ASIRT review.

**MR. FREEMAN:** And the – approaching the parties might lead you to the same independence problem again. If they object and you feel ASIRT is the reasonable way to go, you may have a problem. You may have two parties saying different things: one likes ASIRT; one doesn't.



**MR. JONES:** Then you make the decision as the investigative agency and you justify that decision.

**MR. FREEMAN:** Okay.

And I think you've already said, and I can just confirm for you from Ms. Hughson's evidence, that it was the Edmonton Police here who were the lead investigator and the team commander in investigating this matter.

**MR. JONES:** Fair enough.

**MR. FREEMAN:** And there may have been a retired RCMP officer as the director, but the report went through him to Ms. Hughson, who was a prosecutor.

**MR. JONES:** Okay.

**MR. FREEMAN:** So all of that sounds above board to you in this case?

**MR. JONES:** I mean, I thought anybody who was a former RCMP person may want to recuse themselves for that but, again, I'm not in any way questioning the integrity of the process.

**MR. FREEMAN:** Okay.

At page 12, you talk about the communications between Corporal Burke and Corporal Smyth and the sharing of the cellphone number and some of the emails back and forth between them. You'd agree that there's no evidence that Corporal Burke shared any inappropriate information that would prejudice the investigation with Sergeant Smyth in these communications?

**MR. JONES:** Not at all. And, in fact, I think he didn't respond or told him no when Acting Sergeant Smyth asked for a copy of his own statement.

**MR. FREEMAN:** Right. So it seems like Corporal Burke knew where the line was in terms of information sharing and he abided by that?

**MR. JONES:** As far as I'm aware, yes.

**MR. FREEMAN:** And eventually Corporal Burke actually seems to just stop responding to Sergeant Smyth altogether.

**MR. JONES:** I think that's the case, yes.

**MR. FREEMAN:** So I'll move along to page 13, where we talk about the release of information. And this is a real challenging one and I'm sure you've had lots of experience with it. I mean, in this day and age of instant news, aren't you, again, darned if you do and darned if you don't? You're either over-sharing or you're being too secretive. It just never seems quite right.

**MR. JONES:** I agree with you, which is why I put the SIU model in there, because it's under-sharing to the greatest degree possible. It causes a lot of issues and a lot of problems, but in my view it's far better than going the other way.

**MR. FREEMAN:** Shouldn't the police share more information, if it doesn't prejudice the investigation, when there are rumors spreading like wildfire, as you've said? Shouldn't that lead them to -?

**MR. JONES:** It depends what you're going to release, and the key phrase there is if it doesn't prejudice the investigation. I mean, (inaudible) the information that was released did prejudice the investigation.

**MR. FREEMAN:** Okay and we'll get into that, so on page 14 and 15 by that point.

So Chief Superintendent Boland gave some information about – he described the Ottawa shooting that had occurred and sort of a new world of information sharing he felt we were living in.

Do you agree police forces are expected to share more than ever before, that that's the expectation?

**MR. JONES:** Generally or in police shootings?

**MR. FREEMAN:** Both.

**MR. JONES:** I think generally, yeah, the more open and transparent you can be could better. From an investigative perspective, don't say anything that's going to prejudice the investigation and don't say anything substantive until the investigation is done – from an investigator's perspective, not from a media-relations or corporate-media perspective.

**MR. FREEMAN:** What about a perception perspective, a perception of openness, a perception of transparency?

**MR. JONES:** I agree it's a difficult balance. I think we're going to talk about it on the panel on Thursday. And it can be very frustrating for all involved, including the subject officer, particularly when there's rumors, social media, there's stuff that's clearly untrue. But again, from an investigative perspective, the right thing to do, at least in my opinion, is say as little as possible.

**MR. FREEMAN:** And you do have great issue, obviously, with this press release of April 7. You do recognize, and Mr. Simmonds pointed it out, the RCMP does use the phrase: "To date, the RCMP investigation indicates ...."

**MR. JONES:** Yeah, and then he puts out a whole bunch of information –

**MR. FREEMAN:** Indeed.

**MR. JONES:** – that is far too much.

**MR. FREEMAN:** Do you feel that that could be trying to telegraph an open mind on the part of the RCMP, even if it may be somewhat ham-fisted? Does that resonate with you?

**MR. JONES:** What it telegraphed to me, Sir, was that this was a clean shooting, which Acting Sergeant Smyth was fully justified – that's what it telegraphed to me. That may not have been the intent, but that's what that press release said loud and clear to me.

**MR. FREEMAN:** I mean, numerous officers have given evidence here that that was the intent of those words in that paragraph, to share information but not to the exclusion of all other theories.

**MR. JONES:** Okay.

And, again, you know, if that was the intent, then so be it. But I'd refer you to the SIU press releases in the December shooting, December 2016 shooting, and the complete dearth of information in there, which is SIU practice and I think is the best way to go.

**MR. FREEMAN:** You say that these comments – so they tainted the investigation or they prejudiced the investigation. I mean, I think – do you mean they had the potential to taint it? They had the potential to prejudice it? Really, you don't have tangible evidence.

**MR. JONES:** Yeah, no, I can't say that nobody came forward because they read about this in the paper or they'd heard it on TV but, potentially, that was a consequence of putting that information out there.

**MR. FREEMAN:** But no – you have no tangible evidence.

**MR. JONES:** No, I don't. I can't point to somebody who didn't come forward.

**MR. FREEMAN:** Your evidence here today, then, basically on this communication issue, I think, is to err on the side of secrecy; the less information shared with the public by the RCMP here, the better. Is that fair?

**MR. JONES:** Yeah. Yes, so I mean secrecy has got a certain weight to it. But, yes, it's err on the side of – any secrecy in terms of investigative integrity.

You know, you can talk about process in as much detail as you like: you know, we sent a team of four very experienced RCMP investigators to Mitchells Brook, we have FIS people coming, we are consulting with experts in Ottawa. Whatever else you may be doing from a process perspective, I don't have any problem with at all. It's putting in a version of the story, which may or may not be true, a version of the story, what, 48 hours after the incident occurred?

**MR. FREEMAN:** That could be – potentially can be a problem, a perception problem, at least.

**MR. JONES:** Yes.

**MR. FREEMAN:** Okay.

You mentioned the independent observer at page 19. Would you agree the concept of an independent observer is appealing in a small jurisdiction like Newfoundland where it's – it's not a full-blown SIRT or an SIU, agreed, but it's more cost effective than a full-blown SIRT or SIU.

**MR. JONES:** I certainly think that's an option worthy of consideration.

**MR. FREEMAN:** And really, where there are so few search-worthy incidents in a smaller jurisdiction, it might be something that could be used. If used well, the independent observer is a model that could work.

**MR. JONES:** Yeah, I think the emphasis is on if used well. It's –

**MR. FREEMAN:** Perhaps maybe we shouldn't read too much into one failed attempt as here.

**MR. JONES:** Well, it's your word, "failed," but, yes.

**MR. FREEMAN:** At page 20, you talk about what Corporal Henstridge and what Corporal Burke are saying to Sergeant Smyth – Acting Sergeant Smyth, excuse me; I keep changing his rank.

You'd agree that what the RCMP are saying to Smyth is not necessarily indicative of everything that they're thinking as investigators?

**MR. JONES:** I don't know what else they're thinking. All I have is – I'm sure they're thinking lots of other things, so it may or may not be indicative.

**MR. FREEMAN:** It's not necessarily the be-all, end-all, though. What they're saying to Smyth is not a window into the investigative mind, for sure.

**MR. JONES:** For sure? Again, you'd have to ask Corporal Burke and Corporal Henstridge. But it's a pretty definitive statement to make. The biggest gist of this investigation now is what is going on in, presumably, Mr. Dunphy's head. That's not what the biggest gist of this investigation should (inaudible).

**MR. FREEMAN:** And that's what they're saying to Constable Smyth at the end of his – virtually, at the end of his statement, after what's been, in his head, at least for this occasion, has been gathered.

**MR. JONES:** Okay, fair enough.

**MR. FREEMAN:** And you said we'd have to talk to Corporal Henstridge on that. I mean, he's basically said that they may have had theories or ideas at that point, but not to the exclusion of all others.

**MR. JONES:** Okay.

**MR. FREEMAN:** You wouldn't challenge that evidence?

**MR. JONES:** No, no, no.

**MR. FREEMAN:** You mentioned the incident Constable Smyth had in the British Virgin Islands some ten years ago.

**MR. JONES:** Right.

**MR. FREEMAN:** And you called it in your report what could show "a propensity for violence." Are you familiar with the incident in the British Virgin Islands? Did you read –?

**MR. JONES:** What I read in the – something to do with the criminal damage to the vehicles and a bit of an altercation in the street.

**MR. FREEMAN:** There had been property damage, but propensity for violence just sounded like a bit of an overstatement to me. Is that fair?

**MR. JONES:** I could've, perhaps, phrased it a little – yeah, I could've phrased it differently. I'll give you that.

**MR. FREEMAN:** And we talked about, and we're up to about page 21 now, but the idea of not speaking to individuals who spoke to Constable Smyth that day. The antecedents, I think you called it.

**THE COMMISSIONER:** I couldn't hear you.

**MR. FREEMAN:** I think we're talking about the antecedents, so the things that Corporal Smyth did on the way.

**MR. JONES:** Oh, no, that's the efforts to retrace his steps that –

**MR. FREEMAN:** Retrace his steps, excuse me.

You agree the RCMP did speak to Corporal – did speak to Corporal Noel of PSU, who had some contact with Smyth?

**MR. JONES:** Yes, I am now aware of that.

**MR. FREEMAN:** And they did speak to his – Mr. Smyth's wife.

**MR. JONES:** They did.

**MR. FREEMAN:** And they did speak to Constable Cox, who spoke to Corporal Smyth while he was going –

**MR. JONES:** I don't think they interviewed Constable Cox.

**MR. FREEMAN:** Excuse me, that's correct. They reviewed his notes, but they –

**MR. JONES:** Correct.

**MR. FREEMAN:** – didn't interview him. Thank you. So they did do some background into Smyth's movements that day. They had –

**MR. JONES:** I would argue it's very limited background, but fair enough.

**MR. FREEMAN:** At page 22, and also in your report, you talk a lot about the solo-visit concept. Is it fair to say that the solo visit is important for this inquiry, but is not as important for the criminal investigation?

**MR. JONES:** I agree it's not absolutely crucial, but as an investigator that would be something that I would like to educate myself in, because I know nothing at all about what the appropriate policy and procedure is in a circumstance like this. So for overall context, why he was there that day, why he went on his own. That's beyond nice-to-know stuff; that is the legitimate investigative avenue, as far as the criminal investigation is concerned.

**MR. FREEMAN:** And, see, that's where I am struggling. So Corporal Knapman has said that it's pretty commonplace, especially in rural Newfoundland, to go for door knock alone.

**MR. JONES:** Okay, fair enough, but I as the lead investigator would want to speak to people who work in protective services units and say: Is it fairly commonplace for the Protective Services Unit to do that? And just educate myself. That's simply it.

**MR. FREEMAN:** It would just be an educational purpose?

**MR. JONES:** Yes.

**MR. FREEMAN:** There's no indication here that going to knock on the door alone of this gentleman in this particular circumstance was any kind of officer-induced jeopardy?

**MR. JONES:** I'm not an expert in officer-induced jeopardy.

**MR. FREEMAN:** Fair enough, fair enough.

I mean, what was really important from the perspective of the door knock from the RCMP's perspective was whether he was lawfully allowed to do so, right, from a Section 25 analysis perspective?

**MR. JONES:** Potentially, but another thing, the other thing to come back to is: Is this completely abnormal to do this in these circumstances? Has he ever done this before? Because that may factor in his purpose for going down there. Again, it's – it would be good to know for the overall picture of what happened. Does that make sense?

**MR. FREEMAN:** It's certainly more important for the inquiry than for the criminal investigation.

**MR. JONES:** I think it's a component of the criminal investigation.

**MR. FREEMAN:** Okay.

You talk at 22 about the trickle-of-blood issue. We heard from Dr. Avis on this. He basically said that this was no big deal for him, that it was no red flag for him, and he also said that the RCMP did ask him about it.

You'd defer to Dr. Avis on that?

**MR. JONES:** Oh, absolutely. I mean, again, I just – I'm not for a moment suggesting that there is anything nefarious about the trickle of blood, but it's an investigative avenue that should be to the extent possible pursued and nailed down. I don't think Corporal Burke put it in his final report; it may be in his notes somewhere, that information from Dr. Avis.

**MR. FREEMAN:** I think that's fair, that it may have been a little bit of a hanging sentence there in the report, but I think Dr. Avis may have gotten (inaudible).

**MR. JONES:** Fair enough. All I'm asking is follow that avenue until you get some kind of resolution.

**MR. FREEMAN:** You mention the 18 months here that it took to complete this investigation. I mean, working at SIU, there have been occasions certainly where you've had investigations go that long?

**MR. JONES:** Oh, yes.

**MR. FREEMAN:** This isn't unheard of or shocking?

**MR. JONES:** It's shocking, but it's not unheard of.

**MR. FREEMAN:** It's not unheard of, so it happens, it's unfortunate, more resources would solve the problem?

**MR. JONES:** Absolutely.

**MR. FREEMAN:** Okay.

You talk a little bit about the first responders at the scene –

**MR. JONES:** Okay.

**MR. FREEMAN:** – so we're about page 24 or so of your report there now. Again, I'm not taking you specifically to quotes, but I'm trying to stick very close to the text.

You'd you agree that first responders are somewhat limited in what they can do with the resources they have on the scene when they respond to an incident like this?

**MR. JONES:** It depends on the circumstances. How complex a scene is it? Is it outdoors? Is it indoors? How easy is it to secure? There's a myriad factors that come into it, but – and it depends on how many first responders there are.

**MR. FREEMAN:** The first responders will have to make judgement calls based on the situation?

**MR. JONES:** Absolutely.

**MR. FREEMAN:** And then allocate their resources accordingly.

**MR. JONES:** Yes.

**MR. FREEMAN:** And so here we have an incident that occurred in a rural community, you'd agree?

**MR. JONES:** Correct.

**MR. FREEMAN:** And the back of the house was wooded.

**MR. JONES:** Okay.

**MR. FREEMAN:** And it was at least partially viewable from the road.

**MR. JONES:** The back of the house?

**MR. FREEMAN:** The back of the house was partially viewable from the road.

**MR. JONES:** Okay.

**MR. FREEMAN:** No? You could see up the driveway from the slope of the driveway.

**MR. JONES:** Okay, fair enough.

**MR. FREEMAN:** You'd agree that police tape around the back wouldn't have stopped anyone from coming in the back?

**MR. JONES:** No.

**MR. FREEMAN:** The only option was a guard at the back.

**MR. JONES:** An officer, yeah.

**MR. FREEMAN:** Now, here we have Cox and O’Keefe attending the scene, dealing with Smyth, clearing the house. Do you agree?

**MR. JONES:** Yes.

**MR. FREEMAN:** And securing the scene.

**MR. JONES:** Yes.

**MR. FREEMAN:** And we have X and we have Downey dealing with traffic in two directions and establishing a scene log and taping off the front or securing the front of that residence.

**MR. JONES:** Yes.

**MR. FREEMAN:** Is that fair?

And soon thereafter, we know O’Keefe was meeting with Ms. Dunphy on the scene as well.

**MR. JONES:** Yes.

**MR. FREEMAN:** So can you appreciate how in this circumstances of a rural, wooded area that posting an officer in the back, one of these four officers in the back, might not have been the best use of resources?

**MR. JONES:** For that first few hours, certainly, but the scene was kept for, I think, almost two days, correct? And, again, I am sure you will correct me on this, but I recall reading somewhere that at some point later on that afternoon or evening, officers were sent away because they weren’t required. An officer was on their way, and again, I’m not 100 per cent sure of that, but I think there was some –

**MR. FREEMAN:** I think maybe that by this time Corporal Foote would have been stationed inside the living room, so to protect the living room, if that makes sense?

**MR. JONES:** All right, fair enough. Okay, fair enough.

**MR. FREEMAN:** Not to mention, I guess, the other thing is that you had suggested earlier that Smyth should have been driven away from the scene immediately.

**MR. JONES:** I agree with you, yeah. (Inaudible.)

**MR. FREEMAN:** And so that would have taken X out of the mix as well, so one less person to guard the back.

**MR. JONES:** Yup.

**MR. FREEMAN:** And you don’t have any evidence – there’s no evidence been presented of anything nefarious. Nobody came out of the woods and snuck into the house and moved anything that anyone knows of?

**MR. JONES:** None that I am aware of.

**MR. FREEMAN:** At 24, you mention the presence of cats in the house.

**MR. JONES:** Yes.



**MR. FREEMAN:** I mean, the presence of cats, as far as you know, wasn't the fault of the RCMP.

**MR. JONES:** Oh, good God, no. I don't think I've ever suggested that they were.

**MR. FREEMAN:** And you've heard the expression, it's like herding cats?

**MR. JONES:** Yes, I have.

**MR. FREEMAN:** Yeah, I can't help but think of that.

And Corporal Foote says he took photos of the scene, Corporal Foote who's the one who's basically stationed in the living room to keep the cats out of there.

**MR. JONES:** Yeah, I think I mentioned his photo is somewhere in my report.

**MR. FREEMAN:** And that was a good decision by him, I would say, to make sure that if the cats did disturb anything that it would be captured in his pictures.

**MR. JONES:** I think that was an excellent decision.

**MR. FREEMAN:** And he says that no cats got in there once he was posted. That he was –

**MR. JONES:** Okay.

**MR. FREEMAN:** – shooing them out.

**MR. JONES:** Okay.

**MR. FREEMAN:** Do you agree?

You didn't look at Foote's photos, by chance?

**MR. JONES:** I didn't, no.

**MR. FREEMAN:** Okay.

So you don't know of any damage that was done to the living room by the cats once Corporal Foote was posted there or –?

**MR. JONES:** I'm not aware of any.

**MR. FREEMAN:** You talk about information sharing between FIS and MCU.

**MR. JONES:** Yeah.

**MR. FREEMAN:** I mean, in some cases FIS and MCU share more information than in other cases. Is that fair?

**MR. JONES:** (Inaudible) MCU or FIS, but an SIU with my forensic guys in a police shooting, I can't think of a case where I did not try to share as much information as I possibly could.

**MR. FREEMAN:** You'd agree, though, here that it's based on what you get out of the statements. Like, in terms of going back and talking to FIS and going back and looking for things, it depends on what – it depends on where the evidence leads you. Is that fair?

**MR. JONES:** That's right. It depends on what evidence Acting Sergeant Smyth has offered that may be relevant to the forensic processing of that room as it's underway.

**MR. FREEMAN:** And so – I mean, here, in that case, it really is only the pen that maybe would have come back from the interview, that would have been something FIS could have looked for?

**MR. JONES:** I can't remember. Didn't you mention the mantel as well? I think I – he had contact with the mantel, the pen. I don't remember if he mentioned touching the front window, knocking on the window. That may have been in the re-enactment.

Again, I defer to you on your knowledge of Acting Sergeant Smyth's statement, but I can't think of anything else off the top of my head.

**MR. FREEMAN:** If you're listing them in order of importance, the pen is the first one. Is that fair?

**MR. JONES:** The pen's important, but anything he had contact with, because if it's against the mantel, that may have given us a position of where he was at at least one point.

**MR. FREEMAN:** Do you really think that the dust issue is probative of anything?

**MR. JONES:** It could have been.

**MR. FREEMAN:** I mean, if there's –

**MR. JONES:** I'm not saying – I'm just saying that, well, maybe you should just take a look here. If there's nothing there, there's nothing there.

**MR. FREEMAN:** So if there's no dust on his jacket, it doesn't necessarily mean he didn't do anything to the mantel.

**MR. JONES:** Absolutely, absolutely.

**MR. FREEMAN:** If the mantel is undisturbed or disturbed, it doesn't necessarily –

**MR. JONES:** It doesn't necessarily mean anything, but maybe it is.

**MR. FREEMAN:** You'd agree that the ballistics evidence, though, is fairly solid on where the shots were fired from the –?

**MR. JONES:** I have no issues at all with Mr. Barr's evidence.

**MR. FREEMAN:** Okay.

You talked a little bit about the taking of blood sample. And you said near the end of your career you started doing this. Is it fair to say you have a lot of investigations before that where you didn't do that?

**MR. JONES:** I didn't, that's right.

**MR. FREEMAN:** All right.

There was no objective evidence here of intoxication of Officer Smyth from any of the first responders, but you'd still ask for blood?

**MR. JONES:** Oh, yes.

**MR. FREEMAN:** And if he consents to giving blood in that scenario without being chartered, wouldn't that evidence be of less value?

**MR. JONES:** Oh, yeah, potentially. But from a purely investigative perspective, I want that blood.

**MR. FREEMAN:** So then you have the fruit-of-the-poison tree issue, potentially, if –

**MR. JONES:** Again, I would – I've articulated my reasons why.

**MR. FREEMAN:** We mentioned – you talked about in 27 and 31, thereabouts of your report. We're talking about the positioning of the gun.

**THE COMMISSIONER:** Where are we now? What page?

**MR. FREEMAN:** About – between – up to about 31, Mr. Commissioner.

**THE COMMISSIONER:** Thank you.

**MR. FREEMAN:** I think I have 27 to 31 here. This is one of my least accurate references.

**THE COMMISSIONER:** Contact with the mantel?

**MR. FREEMAN:** I believe what I'm moving on to now is: "The scene photographs show the gun with the muzzle on the ground near" the floor. I just have to find that. I know that Kate is – Ms. O'Brien is scrolling through it there for me.

**THE COMMISSIONER:** That's a prior one, I think. That's on page 29, is where –

**MR. FREEMAN:** Twenty-seven?

**THE COMMISSIONER:** Twenty-seven, in reference to the position of the gun, yeah.

**MR. FREEMAN:** "... scene photographs show the gun ....

So you agree Constable Cox looked in the window and his notes show that he saw the gun in the position that it is found in Foote's photos and in the FIS photos?

**MR. JONES:** Yeah, I think he concealed the gun when he looked in the window, but certainly when he was at the door of the room he describes the position of the gun as it's subsequently shown in the photographs.

**MR. FREEMAN:** And there's some other people's perceptions that don't line up with the photos.

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

**MR. FREEMAN:** And sometimes things are just not resolvable when it comes to perception and memory. I mean, I appreciate you've said that maybe more time could have been devoted to that, but oftentimes perceptions and memories will just not accord with each other.

**MR. JONES:** But my argument is that you should try to the extent that you can.

**MR. FREEMAN:** But here we do have at least the first attending, being Cox, matching up with the Foote photos, matching up with the FIS photos. So you have some sort of at least preponderance of evidence going in that direction that's more objective than just memory?

**MR. JONES:** Yeah, I think you're probably right, but you also have an officer standing next to him who says the gun is on the floor.

**MR. FREEMAN:** And a lot of people say on the floor when they mean leaning, it seems here, and it seems to be –

**MR. JONES:** Well, that's – sorry, go on.

**MR. FREEMAN:** Oh, no. I understand. I think I know where you're going.

**MR. JONES:** Yeah, my point is just go and ask.

**MR. FREEMAN:** It should have been looked into more. Yeah, fair enough.

But you'd agree there was some objective evidence of the position –

**MR. JONES:** Oh, yeah.

**MR. FREEMAN:** – that could be matched up to these various (inaudible).

**MR. JONES:** Absolutely.

**MR. FREEMAN:** So we have some occasions, the folder drop is one, where it seems like reasonable people are disagreeing on the value of things. We have ASIRT saying the folder drop was dubious. You're thinking the folder drop might have been okay, or a good idea. Henstridge obviously thought it was worth a shot.

**MR. JONES:** Yeah, I think it's reasonable to try. It may not have any evidence at the end of the day, but it doesn't take all that long to, as you say, give it a shot.

**MR. FREEMAN:** But reasonable people, though, can disagree on certain investigative steps like this, their value.

**MR. JONES:** Absolutely.

**MR. FREEMAN:** We talked about Constable Smyth's cellphone not being seized at the time and place, and you've acknowledged that it wasn't owned by the RNC, as far as you now know, that it was his phone.

**MR. JONES:** Yeah, I wasn't aware of that until yesterday.

**MR. FREEMAN:** Right.

And you've said the phone could have been requested earlier, but you have no reason to believe any data was actually lost.

**MR. JONES:** I have no idea. No, I don't know of any data being lost.

**MR. FREEMAN:** And as long as the phone was returned on April 24, which it was, all the data could have been and was – or could be retrieved, I guess.

**MR. JONES:** If the data-retrieval expert says it was all retrieved, I have no reason to doubt him.

**MR. FREEMAN:** Not your –

**MR. JONES:** Yeah.

**MR. FREEMAN:** Okay, area.

So I want to sort of take a counter, the other side of this, and see what you think of it.

Isn't leaving the phone with Constable Smyth an interesting investigative avenue, potentially? If you leave the phone with him and he does something inculpatory on it, hypothetically –

**MR. JONES:** Like throwing it in St. John's harbour?

**MR. FREEMAN:** Well, that, or text someone and says something or what have you. I mean, isn't leaving the phone with him and then seizing it later, asking for it later, isn't that a possible – isn't that reasonable?

**MR. JONES:** I don't think there's a shred of evidence that that was the intent of leaving it with him, their cunning plan to do that. I see no evidence of that.

**MR. FREEMAN:** Okay. No, but if – not seizing it immediately could lead to evidence.

**MR. JONES:** Oh, not seizing it immediately is far more likely lead to loss of evidence.

**MR. FREEMAN:** So in that one you would err on the side of asking for it immediately as opposed to –

**MR. JONES:** Yes.

**MR. FREEMAN:** Yeah, so that's fair.

But again, you'd agree here, the phone was not destroyed and, you know, as opposed to perception, in reality the material was found on the phone, that the data was retrievable?

**MR. JONES:** Yeah, fair enough.

**MR. FREEMAN:** You talked about the timeline – I'm conscious of the time here, I don't want to go past 2:30 – errors in the timeline.

Would you agree that there – I think we all agree the timeline had issues. Would you agree that this is partially based on a lack of recall and information by Constable Smyth? So if he forgets a call that he made or pulling over on the side of the road, it doesn't get fed into the timeline.

**MR. JONES:** Well, I think the calls get – because the calls are the calls are the calls. They're recorded on the data retrieval.

**MR. FREEMAN:** Right.

**MR. JONES:** It's the what happened in between the calls –

**MR. FREEMAN:** Right.

**MR. JONES:** – that there may be issues with timing, exactly what happened when.

**MR. FREEMAN:** But if there's something that Constable Smyth innocently forgets, you get a cascading problem in the timeline. You have one event that's misplaced and it can misplace others.

**MR. JONES:** You do, but I would have thought that that – yeah, no, you're absolutely right. Yes, you're absolutely right.

**MR. FREEMAN:** So we talked about at page 35 the searching or non-searching of the vehicle. You'd agree that Sergeant Saunders and Corporal Henstridge did look inside that vehicle? They've given evidence to that effect. They looked for anything that was plainly obviously or suspicious.

**MR. JONES:** I remember Sergeant Saunders's evidence saying: I just walked past and I looked in the vehicle. Didn't sound to me like a scour, walking around all four sides, looking in each and every window. I stand to be corrected on that.

**MR. FREEMAN:** Yeah, Sergeant Saunders may have shone a flashlight in the vehicle.

**MR. JONES:** Fair enough. Fair enough, if that's what happened, that's what happened.

**MR. FREEMAN:** Maybe –

**MR. JONES:** I don't recall what Corporal Henstridge said about looking in the vehicle.

**MR. FREEMAN:** I believe he said he looked in, but not as intensely as perhaps Sergeant Saunders did with his flashlight.

**MR. JONES:** Okay.

I don't see anything stopping them from opening the door and having a proper search of the vehicle.

**MR. FREEMAN:** And you say that because it's an RNC vehicle? Is that the idea or ...?

**MR. JONES:** That's my understanding, yes.

**MR. FREEMAN:** But when there was nothing plainly obvious in there and we know – there was nothing plainly obvious in there for –

**MR. JONES:** For Saunders.

**MR. FREEMAN:** – for Saunders. And we know at this point that the weapon that was used has been seized from Constable Smyth.

**MR. JONES:** Yes, but we don't know what else is in there. Was there another cellphone underneath the seat? Was there – did Acting Sergeant Smyth make a note on the way down that may be relevant to this? I'm not saying for a moment that there was; all I'm saying is that a search of the vehicle would have determined that one way or the other.

**MR. FREEMAN:** The vehicle was held until FIS processed the scene. You'd agree the vehicle was at least left there in front of the house for several – a couple of days.

**MR. JONES:** Yeah, absolutely.

**MR. FREEMAN:** Until the autopsy had been obtained and the statement from Smyth had been obtained, and there was nothing from the statement of Smyth that would lead you immediately to we have to search this vehicle.

**MR. JONES:** But it's (inaudible) an abundance of caution, I think. I would have searched that vehicle every time.

**MR. FREEMAN:** There was nothing – there was no evidence, specific evidence, though, to say at that time to indicate that the scene was beyond the house.

**MR. JONES:** Including the vehicle?

**MR. FREEMAN:** Including – well, no, I would say it wouldn't include the vehicle at that time, but you're saying search it out of an abundance of caution.

**MR. JONES:** Yeah, all I'm saying that the vehicle could potentially be a scene, so search it and establish that one way one way or the other.

**MR. FREEMAN:** But you're not looking for something specific that you've learned from his statements –

**MR. JONES:** No. No.

**MR. FREEMAN:** – you're looking for gloves or something like that. You don't have anything like that; you're just sort of checking.

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

**MR. FREEMAN:** The first responder's notes, they do record relevant utterances by Constable Smyth. You'd agree?

**MR. JONES:** Correct.

**MR. FREEMAN:** And there's been some in – there's been some suggestion that maybe Constable X didn't record the utterances that he heard. But I think you said this morning and agreed that he did in fact record the utterances that he heard; it's just that he did then try to defer the conversation in the car.

**MR. JONES:** Yeah, I understand he recorded them when he got back to the – or in some form electronically, I think.

**MR. FREEMAN:** And he'd made handwritten notes as well.

**MR. JONES:** Okay. Fair enough.

**MR. FREEMAN:** We talked a little bit about whether Constable Smyth had a duty to report to his organization. I guess that's more for the RNC to answer for us at this point, or perhaps we'll get some more information on that, so I won't belabour that with you.

We've talked about, of course, the timing of the interview and waiting 24 to 72 hours. So we're moving into about page 41 or thereabouts of your report.

Is there something to be said for rapport building by acquiescing to the request to wait?

**MR. JONES:** Not in this situation, not from my – not from an investigative perspective. I want this statement as quickly as possible and I've got an extremely co-operating – co-operative officer who, if memory serves, says he wanted to give a statement with every bone in his body. I would have tried to persuade him to give that statement there and then.

**MR. FREEMAN:** Isn't there a possibility that you're pressing him too hard to the point where then he changes his mind? I mean, he's being told in one ear by his colleague don't give the statement and he's being, you know, cajoled to give it.

**MR. JONES:** Potentially. I don't see anybody articulating the reason why they deferred the interview on that basis. But, no, I'd still want to persuade him to give the statement there, and that is for his own protection.

**MR. FREEMAN:** I mean, the idea that you catch more flies with honey, I guess, is the idea that you would try to rapport build. If he wants to wait, then go ahead and wait, and if he talks to people in the interim, then –

**MR. JONES:** From an investigative perspective, the best evidence is the freshest evidence and I would try and persuade him of that.

**MR. FREEMAN:** You don't put any stock, then, in the idea that the police officers – and this may be too scientific for all of us – but that police officers, in carrying out their duties and having to do a shooting, have some sort of different physiological reaction than another person who's been in a critical-stress situation because of the duty part of it? Is it –?

**MR. JONES:** I don't feel qualified to comment on that.

**MR. FREEMAN:** Because that's kind of what Ms. Hughson was alluding to yesterday but, again, I think both of you are sort of talking about things you've heard or read when it comes to this topic.

**MR. JONES:** Yeah, I don't know what her evidentiary basis is for that but – I don't understand it, quite frankly.

**MR. FREEMAN:** Okay.

You're not an FIS investigator, Sir?

**MR. JONES:** Nope.

**MR. FREEMAN:** Okay.

Sergeant Saunders and Corporal Lee have themselves said here that they want very little information when they go into a scene; they want the evidence to speak for itself.



**MR. JONES:** I'm really surprised to hear that because that's the complete antithesis of what my both SIU ident people and when I was working with police ident people wanted.

**MR. FREEMAN:** Now, Saunders and Lee would –

**MS. O'BRIEN:** Sorry, just to be fair there, that they did say that initially, but then Corporal Lee did say she normally had a – would normally meet with the MCU before she finished processing the scene to get more information. But that – I think their evidence was on their initial entry into the scene.

**MR. FREEMAN:** Before entering, yes.

**THE COMMISSIONER:** I think the reference was to permitting the forensic investigators to processing fresh with – sorry, fresh with no preconceptions and that might be gathered from statements of others, but then to utilize everything that's available.

**MR. JONES:** The danger of doing that, and I think any SIU FIS investigator I ever would – you don't know what you're looking for. And by going in there and start doing things in the scene, you may change stuff that ultimately is directly relevant to the issue that you're actually investigating.

So, again, my practice was – and I've never heard any different – was trying to provide the FIS folk as much information as you possibly could before they began the processing of the scene so they didn't destroy bits of evidence that may be important.

**MR. FREEMAN:** So Saunders and Lee here were given the basics of what happened in the house as far as I understand –

**MR. JONES:** Fair enough.

**MR. FREEMAN:** – so they could process it. So there might – is this maybe, again, possibly a disagreement between yourself and FIS, at least this FIS team?

**MR. JONES:** Potentially, yes.

**MR. FREEMAN:** Okay.

At page 44 you talk about "... investigators agreed to postpone the interview ...". I mean, ultimately, it was Constable Smyth's call to walk away and not give an interview.

**MR. JONES:** Absolutely, he did not have to give an interview at any stage. And it's – this investigation would have been very difficult had he chosen not to be interviewed.

**MR. FREEMAN:** And they don't ask – you say at page 44: If they asked him to complete detailed written notes and/or a duty report. This sounds like it may be an SIU issue or an Ontario legislative issue? Is that ...?

**MR. JONES:** Potentially. As we mentioned before, the subject officers in Ontario are not obliged to be interviewed by SIU investigators, but they are obliged to complete full notes before they go off duty. Those notes are not provided to SIU without consent.

**MR. FREEMAN:** So in this scenario, the notes that Constable Smyth would prepare would go to the RNC.

**MR. JONES:** Correct.

**MR. FREEMAN:** It's not really RCMP's place to push him to do his duty with RNC.

**MR. JONES:** I think it probably is in these particular set of circumstances.

**MR. FREEMAN:** Isn't it more – isn't it better to just let it unfold under whatever rules the RNC has and then seize those notes when they're done?

**MR. JONES:** As – no, as – my ideal preference would be to interview him straight away. If I can't do that, for whatever reason, the next best thing is to have the officer write a detailed written account of what happened before he or she goes off duty while it's still fresh in their mind. And as an investigator, I would do whatever I could to ensure that happened, including calling up the RNC and saying: Could you make sure that this happens, please?

**MR. FREEMAN:** So he does in fact do his report here for the RNC and it is eventually provided to the RCMP.

**MR. JONES:** It doesn't – he doesn't do it before he goes off duty.

**MR. FREEMAN:** He does do a use-of-force form.

**MR. JONES:** Does he? Okay, fair enough. I –

**MR. FREEMAN:** I'm not sure if that's before he goes off duty, I could be incorrect on that. Yeah, I may have –

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. FREEMAN:** My apologies. Okay.

**UNIDENTIFIED FEMALE SPEAKER:** The next morning.

**MR. FREEMAN:** The next morning.

Okay. Thank you.

We talked about not chartering Constable Smyth and the rationale for that. And this is another area where it seems you agree with the RCMP, but ASIRT disagrees with you and the RCMP. So, again, these are reasonably educated people who are having difference of opinion.

**MR. JONES:** Yeah.

**MR. FREEMAN:** There's no – there's no real objective reason here to believe that a more Kojak approach to this interview –

**MR. JONES:** Kojak.

**MR. FREEMAN:** – would have been –

**THE COMMISSIONER:** A what kind of approach?

**MR. FREEMAN:** A Kojak approach to this interview would have been a –

**THE COMMISSIONER:** Kojak. Was he better than Colombo?

**MR. FREEMAN:** I think so. He was rougher.

Would have obtained more information from Constable Smyth? There's no way to say one way or the other?

**MR. JONES:** I don't know. I think, you know, my point is asking more questions more often would have obtained more information.

**MR. FREEMAN:** You'd agree, though, the current thinking is this phased-interview approach is to take a different tact; it's not necessarily that aggressive approach.

**MR. JONES:** Yeah, that's right. That's – as I spoke about before.

**MR. FREEMAN:** And if you press a presently co-operative subject too hard, there's a possibility you could lose the co-operation.

**MR. JONES:** There is, potentially. I don't think there was any indication that I saw of in the transcript of the interview that that was likely to happen, but –

**MR. FREEMAN:** It's a judgment call by the investigators.

**MR. JONES:** It's a judgment call, yes.

**MR. FREEMAN:** At page 47 you talk about your concern with the lengths of the interview. And you compare an interview of Constable Smyth with an interview with Ms. Dunphy?

**MR. JONES:** Correct.

**MR. FREEMAN:** It seems a little simplistic, I think you would agree, to compare the length of the pages to talk about the value of the interviews, how quality they are.

**MR. JONES:** Quality, possibly not, but certainly quantity, length of interview, goes to the amount of detail that was covered. And in the circumstances, given Acting Sergeant Smyth's role in this incident, I would have expected his interview to be far longer than any other party's.

**MR. FREEMAN:** You'd agree, though, the quality can't be judged merely by the pages.

**MR. JONES:** I agree, yes.

**MR. FREEMAN:** And it's really dependent on how verbose the interviewer is, how verbose the questioner is, et cetera.

**MR. JONES:** Okay, fair enough.

**MR. FREEMAN:** And really, when you compare Ms. Dunphy's statement to Mr. Smyth's, you're kind of comparing apples to oranges, are you not? You're comparing a bereaved individual who's lost her father to another individual who's the subject of an investigation. It seems like a false comparison to me.

**MR. JONES:** Again, I'm only going based on my experience of doing exactly the same thing, interviewing bereaved parties and interviewing subject officers within reasonably short periods

of time of each other. And in my experience, the interview of the subject officer is far longer and in far more detail than it is of the bereaved family member.

**MR. FREEMAN:** Do you agree those are different scenarios? They lead to different considerations in an interview, don't they?

**MR. JONES:** And I guess it depends on the circumstances.

**MR. FREEMAN:** But it could be even perhaps more consoling and emotional conversation in the bereaved interview than the –

**MR. JONES:** Yeah, potentially. Yes.

**MR. FREEMAN:** What you've talked about at 48 through 55 is a long reference, but we're talking about questions you could have asked.

**MR. JONES:** Right.

**MR. FREEMAN:** When you look back at your own investigations, surely there are – I know it happens with us lawyers all the time: That question I should have asked, that other question I forgot. These things happen in your investigations as well as any investigation.

**MR. JONES:** Oh, absolutely. And as I say in there, I had the luxury of looking at all this material as I was formulating these questions and question areas.

But as I also say, I don't think any of these could not have been anticipated by the interviewing officers at the time and I was surprised that they weren't asked. I was also surprised at the paucity of questions after the very detailed and extensive opening monologue from Acting Sergeant Smyth. I think that's the point I was trying to make.

**MR. FREEMAN:** Perhaps the length of that monologue maybe did reduce the number of questions.

**MR. JONES:** It did, but nothing that I've put in there as a potential question was answered in that opening monologue, other than some information about the – what happened in the house.

**MR. FREEMAN:** You talk about this, the idea that Ms. Dunphy was asked not to speak to others, but Constable Smyth wasn't asked for that undertaking. Do you recall that?

**MR. JONES:** Yes.

**MR. FREEMAN:** Okay.

It seemed to me that the – again, correct me if you think I'm wrong, but Ms. Dunphy was having information shared with her about somebody else's account.

**MR. JONES:** Yes.

**MR. FREEMAN:** Now, maybe the RCMP was going above and beyond, maybe they were saying more than you think they should have, but they were giving her information and they were telling her to keep it to herself. Fair?

**MR. JONES:** Fair enough. Yes.

**MR. FREEMAN:** And that wasn't happening with Constable Smyth. They weren't sharing other witnesses' information with him, so that undertaking does not –

**MR. JONES:** (Inaudible.) Sorry, go on. I should let you finish the question.

**MR. FREEMAN:** No, that undertaking was not as necessary as it was with Ms. Dunphy.

**MR. JONES:** They were sharing a tremendous amount of information. But they –

**MR. FREEMAN:** But not other –

**MR. JONES:** Oh, yeah.

**MR. FREEMAN:** – other people's.

**MR. JONES:** Well, he smoked a lot of pot, the – oh, I guess, the ident people telling that the CCTV cameras didn't work, the gun was loaded, I think stuff about his previous record. I forget; there's a list of questions in there. So they were sharing information.

**MR. FREEMAN:** So wouldn't you agree, though, that when someone has, you know, unfortunately killed another person, asking them not to speak about it with anyone might actually not be the best approach? Perhaps if you let them go ahead and not – warn them not to and they do speak to someone, then you've created witnesses.

**MR. JONES:** Well, that's what happened, right? Like being allowed to speak to the four union reps; they all now have a version of the story and they have to be interviewed. So the best investigative practice is please don't talk to anybody else about this.

That's not saying that you can't go and see a spiritual advisor or a psychologist who – to discuss the process that your body is going through after a traumatic event like this, but please don't talk about what happened in the house.

**MR. FREEMAN:** But what could also occur, I'm just trying to play out the other side of this, is that if you – if the person does go out and talk to people, as you've said, those RNC members then had to be interviewed.

**MR. JONES:** But –

**MR. FREEMAN:** But there could be investigatively useful information that is gathered from these witnesses that are then created by that conversation.

**MR. JONES:** Yeah, but I didn't see any of this. Again, we're not coming back to this cunning investigative plan of giving him information and getting – I didn't see any of that – evidence of that at all. And I don't think it worked in his favour because some of the RCMP members then said, oh yeah, he talked about going down there to deal with a threat, which is not necessarily what his account is.

**MR. FREEMAN:** Yeah, the RNC members, you mean, he said that to, yeah.

**MR. JONES:** Yes, sorry, my apologies.

I don't think it works to his advantage.

**MR. FREEMAN:** It doesn't work to Constable Smyth's advantage, you mean?

**MR. JONES:** Yeah. Or it didn't work to the advantage of the integrity of the investigation.

**MR. FREEMAN:** When we talk about the interview of the Dunphys, Dick Dunphy and Debbie Dunphy, I mean, no matter what the wording is, it's clear that Constable Smyth went to the Dunphy house. His perception was, it seems, that there were no guns.

**MR. JONES:** Yeah.

**MR. FREEMAN:** That's his statement.

**MR. JONES:** Yeah.

**MR. FREEMAN:** And he completed a CFRO check and it was negative. Do you remember that?

**MR. JONES:** Yes.

**MR. FREEMAN:** So being told I don't know if there are guns versus there are no guns would not have changed his risk assessment to the point of officer-induced jeopardy or something like that.

**MR. JONES:** That's what – you'd have to ask them that. You would have to ask him: Had they in fact said and had you understood – and I'm not saying for a moment that he's in any way fabricated anything by saying they didn't have any guns, but had you been told that he may have guns, would you still have gone to the house? And that's only a question that he can answer.

**MR. FREEMAN:** And we've talked – I'm starting to repeat myself a little bit here so, I will wrap up very shortly.

So we've talked about Constable X and diverting the conversation away and that officers like him may be conditioned to do so to keep the investigation clean, as the ASIRT people told us. Is that ...?

**MR. JONES:** I think it's one of those reasonably differ theories.

**MR. FREEMAN:** Yeah, reason – yeah, reason to differ on that.

So if Constable X had proceeded to listen, even, to Constable Smyth, could you not be in a situation where you're muddled as to whether the information could be used and again you're in the fruit-of-the-poison-tree scenario?

**MR. JONES:** Potentially, but then again, Constable Cox and other officers at the scene recorded his utterances and nobody appears to have any concern over that.

**MR. FREEMAN:** Just in that regard, there were no threads to pull on to follow, I guess. I'm just using a hypothetical.

**MR. JONES:** Okay.

**MR. FREEMAN:** If there had been utterances that hadn't been chartered that were then sort of elicited or not shut down, you can muck up the investigation.

**MR. JONES:** Potentially, but there's a lot of what-ifs in that. From an investigative perspective, if he's talking about what happened, let him talk.

**MR. FREEMAN:** Okay.

And I think I just have one more question. I mean, this is kind of an overarching question about this whole officer-involved shooting investigation. The situation is unique from a *Criminal Code* perspective, you'd agree?

**MR. JONES:** Yes, it is.

**MR. FREEMAN:** And different treatment doesn't necessarily – doesn't necessarily mean preferential treatment. So a police officer may be treated differently, but not preferentially, and it's because of section 25 of the *Code* in some ways.

**MR. JONES:** A police officer has defences available to him that members of the public do not.

**THE COMMISSIONER:** Sorry, I couldn't hear you.

**MR. JONES:** A police officer has defences available to him or her that members of the public generally do not.

**MR. FREEMAN:** And this is indicative of the decision not to charter Constable Smyth. There's no reasonable grounds to believe, at that point, that a criminal offence has been committed because perhaps section 25 of the *Code* is in play. So it's not preferential treatment as much as it is different treatment dictated by law.

**MR. JONES:** Yes, based on the facts as the officers know them at that point.

**MR. FREEMAN:** I'm just going to check with my colleague and see and I may be done.

**MR. JONES:** Okay.

**MR. FREEMAN:** Those are all my questions, Mr. Jones.

Thank you very much for your patience.

**MR. JONES:** Thank you.

**THE COMMISSIONER:** Okay, any further questions?

No further questions? Then we'll adjourn until 3 o'clock for our – I guess we should assemble here a few minutes before, maybe 10 minutes before, five or 10 anyhow.

Thank you, Mr. Jones. You may step down when you're ready.

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is now recessed.

### Recess

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

Commissioner Leo Barry presiding.

Please be seated.

**THE COMMISSIONER:** Okay, we're about to hear a witness from London, England, I think it is, by way of Skype. And we have the technology working so far, but keep your fingers crossed.

My monitor has about a 30-second delay, so if anything gets confused as a result of that, I apologize in advance. But it's like yesterday: I was the only one in Newfoundland, apparently, who wasn't able to see the witness that we were Skyping yesterday. Today, there's a new arrangement where I have a laptop and I should be able to follow Dr. Hart from that.

Dr. Hart, can you hear us?

**DR. HART:** I can hear you.

**THE COMMISSIONER:** Good.

I'm Leo Barry, the Commissioner for the inquiry. And I see in front of me is your counsel, Mr. Kennedy, who has arranged to have you testify. And I believe counsel – Commission counsel, you're going to leave it to Mr. Kennedy to carry on the examination of Dr. Hart. Is that correct?

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

**THE COMMISSIONER:** Okay.

Mr. Kennedy, go ahead when you're ready.

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

We will be seeking to qualify – on behalf of Constable Smyth, I will be seeking to qualify Dr. Hart as an expert, as outlined in his report, as an expert in the area of clinical forensic psychology with a special focus on threat assessment, a field also known as threat management, violent risk assessment and violent risk management.

**THE COMMISSIONER:** Okay.

And where – which –

**MR. KENNEDY:** That –

**THE COMMISSIONER:** That's taken straight from –

**MR. KENNEDY:** Yeah. I should refer you to the exhibits, Commissioner.

I know that Commission counsel, when they began – prior to every examination there's a number of exhibits they've asked to have officially entered into evidence.

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** And the ones that we would be dealing with here would be P-0793.

**THE COMMISSIONER:** 0793.

**MR. KENNEDY:** 0794.

**THE COMMISSIONER:** 0794.



**MR. KENNEDY:** 0795.

**THE COMMISSIONER:** 0795.

**MR. KENNEDY:** And 0796.

**THE COMMISSIONER:** 0796. Okay.

**MR. KENNEDY:** To clarify, Commissioner –

**THE COMMISSIONER:** Okay, so it's ordered that they be admitted into evidence.

Go ahead.

**MR. KENNEDY:** Yeah, to clarify, 0793 is the curriculum vitae of Dr. Hart, 0794 is his report, 0795 is the summary of facts which was sent to Dr. Hart. And just for the sake of completeness, I also provide the letter which I had sent to Dr. Hart on March 2, which is 0796.

**THE COMMISSIONER:** Thank you.

**MR. KENNEDY:** So –

**THE COMMISSIONER:** Now, just in terms of the qualifications –

**MR. KENNEDY:** Yeah.

**THE COMMISSIONER:** – that's in, that's –

**MR. KENNEDY:** That would be in –

**THE COMMISSIONER:** That's found on page 2, right on the bottom of page 2.

**MR. KENNEDY:** Page 2 of his report, Commissioner, under Qualifications, the second sentence.

**THE COMMISSIONER:** Okay.

I'm not sure you're going to have to spend a lot of time going through Dr. Hart's qualifications. I just ask counsel, not that you won't want to go through some of them but, Counsel, do you need any intensive exploration of Dr. Hart's qualifications?

Ms. Breen?

**MS. BREEN:** No, we don't, Mr. Commissioner.

**THE COMMISSIONER:** Okay.

Ms. Rasmussen? No.

Mr. Avis? No.

Mr. Drover? No.

And, okay, that's everybody, I think. So you decide how far you want to go, basically. A summary, I'm sure, will do.

**MR. KENNEDY:** Yes –

**THE COMMISSIONER:** And then you can get to the substance of the report.

**MR. KENNEDY:** Dr. Hart, you've heard the Commissioner's comments and the positions of counsel. Perhaps you could summarize for the Commissioner your qualifications as outlined in page 2 and 3 of your report –

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible.)

**MR. KENNEDY:** Oh sorry, we have –

**DR. HART:** Certainly.

**MR. KENNEDY:** One second, Doctor, we have to have you affirmed.

**THE COMMISSIONER:** We have to affirm him.

Yeah, sorry, that's my fault.

Go ahead, Madam Clerk, when you're ready.

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

**DR. HART:** I do.

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

**DR. HART:** My full name is Stephen with a p-h, David J –

**MS. SHEEHAN:** Thank you.

**MR. KENNEDY:** I don't think we got the end, Dr. Hart. We didn't get the last, we didn't get the Hart.

**DR. HART:** Hart, H-a-r-t.

**MR. KENNEDY:** Thank you.

So, Dr. Hart, I wonder if you could provide a brief summary of your qualifications as outlined in your report at pages 2 and 3 of your report, and also if there's any particular references you want to make to your curriculum vitae.

**DR. HART:** Certainly.

My general qualifications; I'm a clinical forensic psychologist. I have a bachelors, masters and doctoral degree in clinical psychology specializing in forensic psychology which is psychology as it's applied to law. And I hold positions as a professor of psychology at Simon Fraser University, at the University of Bergen in Norway – that's B-e-r-g-e-n – and I also have a private practice.

The focus of my research is on what's often called the threat assessment. And I really spend my time researching, consulting, and training, evaluating and delivering services in the area of threat assessment which is also known as violence risk assessment. And I've worked with a number of agencies around the world. I do training, I do consulting, I do research for these places, I publish; I do all those things that professors normally do including teaching and professional supervision. And for that academic work I've won a number of awards.

And as somebody who also does this consulting and training, I've worked with law enforcement, corrections, national security, mental health, legal and human resources professionals on five different continents. I've done about 150 training workshops for professionals typically lasting between two and eight days. And I've also done work on a number of cases that have required me to give expert evidence throughout Canada in various provinces and in federal court for various – its work including for inquests and judicial reviews.

And I'm professionally active. I serve in the field as a member of and a contributor to threat assessment professional associations. There's four major ones internationally and also four organizations focusing on forensic psychology and forensic mental health.

**MR. KENNEDY:** Thank you, Doctor.

I see at page 2 of your report, if I could just leave briefly to go to some of these – the summary of the qualifications?

**THE COMMISSIONER:** Oh yes. Go ahead.

**MR. KENNEDY:** Yeah.

See, Dr. Hart, that you refer to you've authored more than 200 journal articles and book chapters and authored or edited more than 25 books and conferences. What would those articles, chapters, and books and manuals deal with?

**DR. HART:** They all deal with the general topic of forensic psychology and psychological assessment, and most of them deal more specifically with the topic of violence risk.

**MR. KENNEDY:** And, Sir, have you published specifically in relation to threat assessment or the other terms by which that is known?

**DR. HART:** Yes.

**MR. KENNEDY:** Would you have – do you have any – can you give any estimate to the Commissioner as to how many articles, book chapters or books you've written in that area?

**DR. HART:** I would estimate that about half of the work that I've done focuses on violence, violence risks specifically, and factors associated with violence risk. And about half of it focuses on assessment or of various forms of mental disorder relevant to violence risk.

**MR. KENNEDY:** Sir, we also see that you've consulted with the government agencies and private corporations, including various police forces in Canada: the Royal Canadian Mounted Police, Ontario Provincial Police, Calgary police, et cetera. What is the nature of your consultations? Obviously without getting into any specific detail, what would the nature of your consultations be with these police agencies?

**DR. HART:** Much of it involves training. So I do training for those police services or have done training for those police services. Some I do it on a regular basis. I also have consulted with them

on cases or done cases for them. And some of it just involves providing general expertise for when they have meetings or focused working groups on specific topics.

**MR. KENNEDY:** You also see on top of page 3, Sir, that you've advised the FBI and policing agencies in Japan, Korea, the Netherlands, Norway, Slovakia, South Africa and Sweden. What was the nature of the work that you do in these other countries?

**DR. HART:** The same basic work. So the first part of the paragraph really just deals with Canada and some of it deals with outside Canada.

**MR. KENNEDY:** Sir, we've also seen that you've testified in the next paragraph as a – or you've given expert testimony between – in courts in Canada, Scotland, at least four Canadian provinces and a number of United – a number of the United States. Is that correct?

**DR. HART:** Yes.

**MR. KENNEDY:** Sir, how many of the States – the American States would you have testified in?

**DR. HART:** I'm going to say 10, just to give a rough estimate. I could count it up, I suppose; one, two, three, four, five, six, seven, eight – yeah, 10.

**MR. KENNEDY:** And in it looks to be at least four Canadian provinces.

**DR. HART:** Yes.

**MR. KENNEDY:** Sir, my last – in terms of the qualifications, you see in terms of the professional organizations that you are the editor of the *Journal of Threat Assessment and Management*?

**DR. HART:** That's correct.

**MR. KENNEDY:** Perhaps you could outline for the Commissioner briefly what – where that – is it a Canadian journal, is it an international, American journal and what your – what in – what it deals with.

**DR. HART:** It's an international journal. It's published by the American Psychological Association, but it's also the official journal of the Canadian Association of Threat Assessment Professionals, the US-based Association of Threat Assessment Professionals, the Association of European Threat Assessment Professionals and the Asia Pacific Association of Threat Assessment Professionals. So it's a – got a wide readership that includes people from around the world.

It's a multidisciplinary journal that many of the people that receive the journal and contribute to it are police officers or in national security or people who work as consultants and some of them are researchers, but many are just practitioners. So it focuses specifically on what we would call threat assessment and management broadly, which has to do with assessment and management of violence risk or the risk that individual people might pose for violence.

**MR. KENNEDY:** Sir, when I look at your lengthy curriculum vitae, on page 1 there's a reference that you received the Distinguished Achievement Award from the Association of Threat Assessment Professionals. Is that the same group you just talked about?

**DR. HART:** That's one of those groups, yes.

**MR. KENNEDY:** And what was the – is there any particular relevance to a Distinguished Achievement Award? What does it represent?

**DR. HART:** It was a reflection of, if you want to put it this way, a lifetime or full-profession contributions to the field of threat assessment.

**MR. KENNEDY:** Sir, I'm not going to go through the – it appears to be a 76-page CV. Is there anything else you'd like to outline or highlight for the Commissioner, particularly as it relates to threat assessment and the other terms that are used to describe threat assessment.

**DR. HART:** I don't think so. I think, you know, the key thing for me is that my work, my background as a psychologist is obviously relevant to this, but that the field of threat assessment is very multidisciplinary so the people that I work with have very diverse backgrounds. So in some ways the fact that I'm a psychologist could be irrelevant to the work that I do, but I use my particular background and training to inform and educate the research and the practice that I do.

**MR. KENNEDY:** Commissioner, subject to any questions by yourself or other counsel, I would ask to have Dr. Hart qualified to give expert opinion evidence.

**THE COMMISSIONER:** Okay, does counsel have any questions for Dr. Hart concerning his qualifications?

**MR. AVIS:** No, Commissioner.

**THE COMMISSIONER:** Mr. Avis. Thank you.

**MR. DROVER:** No, Mr. Commissioner. Thank you.

**THE COMMISSIONER:** Mr. Drover. Thank you.

**MS. BREEN:** No, Mr. Commissioner.

**THE COMMISSIONER:** Thank you.

Okay. Thank you.

On the basis of the information supplied by Dr. Hart and his extensive curriculum vitae, works, journals and other work done in the field, I'm satisfied that Dr. Hart should be qualified as an expert, able to give opinion evidence in the field of clinical forensic psychology, with a special focus on threat assessment, a field also known as threat management, violence risk assessment and violence risk management.

**MR. KENNEDY:** Thank you, Commissioner.

Before I start going through the report with Dr. Hart, I will indicate, as I did in an email yesterday, Commissioner, that we will not – I will not be asking Dr. Hart to give any opinion on the qualifications of Dr. Terry Coleman, although I will still ask him to comment on certain aspects of the report.

**THE COMMISSIONER:** Okay.

Just for the record I see Dr. Coleman and Sergeant Massine are here. And we've suggested that they might sit in and listen to the evidence given by Dr. Hart, unless anyone has a problem with that, in which case I'll listen to it. But I think it's –

**MR. KENNEDY:** That's not unusual, Commissioner.

**THE COMMISSIONER:** It's often the practice –

**MR. KENNEDY:** Yeah, it's often, I don't have a problem.

**THE COMMISSIONER:** – to have an expert. If you have some questions that might differ between experts, it's not uncommon for them to listen –

**MR. KENNEDY:** I have no problem.

**THE COMMISSIONER:** – on one another's testimony.

Okay. Thank you.

Go ahead when you're ready.

**MR. KENNEDY:** So, Dr. Hart, I'm going to now in a – commence with a review of your report. But before I get to that, perhaps you could outline for the Commissioner – we understand it's somewhat of a whirlwind involvement, but could you outline for the Commissioner how you got involved in the case, the materials that have been provided to you and the steps you've taken.

**DR. HART:** Certainly.

I had preliminary contact with you on around January 26 when you asked what – if I could send you a copy of my curriculum vitae. And you were waiting to see whether it would be important or relevant to try to retain me in this matter.

You then contacted me a month later around February 27 and asked to speak with me and we spoke briefly over the next two days. And you then sent me a copy of the expert report in this matter prepared by Dr. Coleman. I'm going to call it the Coleman report, even though I recognize there's two authors, because you asked me to focus specifically on the portion of the report prepared by Dr. Coleman.

**THE COMMISSIONER:** Dr. Coleman.

**DR. HART:** And you –

**MR. KENNEDY:** Yeah, so excuse me, Dr. Hart, can you just stop. Yes, Commissioner, what we – I've asked Dr. Hart is to comment on the report of Dr. Coleman.

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** He does not profess to any expertise in use of force, so we will not be commenting on Sergeant Massine's report.

**THE COMMISSIONER:** Okay.

Thank you.

If I interrupt you, Dr. Hart, at any time, I apologize, but I find it difficult to cut in on when I'm on a Skype conversation. I don't know if it's me personally or if it's the nature of the beast.

Also, I'll just point out that my – I've lost my monitor so I can't see you. That might be another reason why I end up interrupting from time to time. But –

**MR. KENNEDY:** Commissioner, I've already indicated to Dr. Hart that you tend to ask probing questions and so he's alert to the fact that you –

**THE COMMISSIONER:** Probably by accident, Mr. Kennedy, but that's all right.

Okay, go ahead when you're ready.

**MR. KENNEDY:** So continue, Dr. Hart. So we – so there's a conversation with me, the Coleman report is provided to you. What takes place after that?

**DR. HART:** I prepared a report. I think I received the materials that you wanted me to review, the subsequent materials and the questions that you wanted me to answer on the morning of last Thursday morning, and I was able to try to prepare a report for you by Friday morning.

**MR. KENNEDY:** Okay.

So just to put things in perspective, on February 26, Commissioner, we received the Coleman report via kiteworks. On March 2 – that is Exhibit –

**THE COMMISSIONER:** Uh-huh.

**MR. KENNEDY:** – P-0 – P-0796, that's the latter dated March 2, Dr. Hart. And then there was a summary of facts contained with that. Is that correct?

**DR. HART:** That's correct.

**MR. KENNEDY:** Okay.

So basically you said March 2 you get that. What were you doing between March 2 and March 3, Sir? I understand you were flying somewhere, Sir.

**DR. HART:** Yes, I was on my way to Ottawa for a meeting. And so I was able to work on the report a little bit on the plane and then finished it later that night after my – on Thursday night after my first meetings were done and before my meetings on Friday.

**MR. KENNEDY:** Sir, you'll see that in the – under Method – perhaps you could outline for the Commissioner under your heading Method what exactly you mean by that. And I'm particularly interested in whether you had enough materials to provide the opinion you gave and have you had an opportunity to review other material since then?

**DR. HART:** Yes. To answer the questions, I actually looked at your – those specific questions and then went through Dr. Coleman's report and his curriculum vitae, which came with it, and then just used my general knowledge of the scientific literature to answer your questions.

You gave me some other materials which I was unable to review in detail prior to completing the report but since then, I have been able to and that was specifically – you listed a number of materials and referred to them by number in your statement of facts, which I also referred to. And then I've also read the excerpts of the transcripts that you referred to in that statement of facts.

**MR. KENNEDY:** Commissioner, for your own information, I'm not sure if you're aware of this, but I've managed to deal with two experts without having to send any paper to them because the Commission website has all of the exhibits.

If you give an exhibit number, the expert can go in and actually get the exhibit number. If you refer them to the date of the testimony, you can actually get the testimony.

**THE COMMISSIONER:** You're on the cutting edge, Mr. Kennedy.

**MS. CHAYTOR:** Yes (inaudible).

**MR. KENNEDY:** Well, if court could work like that it would be wonderful. So in any event –

**THE COMMISSIONER:** (Inaudible.)

**MR. KENNEDY:** – to make sure that we're clear on this, Doctor, there were five questions posed to you in your report. Those are the same questions, Mr. Commissioner, which were outlined in the letter of March 2.

Okay, so you had the summary of facts and the materials referred to. The report that you prepared is dated March 3; we started to go through it. I'm going to take you directly, Sir, to the questions that were put to you and ask for you to outline to the Commissioner your comments.

The first question posed, Sir – and this is, Commissioner, at Page 4 of Exhibit 0794 – is: What is a risk/threat assessment in the context of protection of public officials? What are the qualifications or training you would expect from someone who works in the area of the protection of public officials?

So perhaps – you've outlined in your report, perhaps you could summarize for the Commissioner, Dr. Hart, your answer to – what your understanding of that question was and your answer to that question?

**DR. HART:** Certainly. I'll give an abbreviated one. I tried to give you a comprehensive answer in the report itself but I think I can be much more brief.

Basically, risk assessment and threat assessment are terms that are used in many different fields. And they're used interchangeably at times and they have no clear consensus on exactly which terms should be used or how they should be used, so it gets a little bit confusing. So I'm going to provide you with a definition of risk assessment generally, violence risk assessment or threat assessment, which is trying to understand the nature of the risks posed by one person, or one or more people to one or more people.

So we're just trying to understand and mitigate the risks for violence, but then in the context of the present matter, there are terms that I would like to distinguish. And I'm going to try to define them for you and I'm going to use those terms from this point forward.

One of them is a personal risk assessment. And personal risk assessment came up in Dr. Coleman's report. Personal risk assessment; I'm going to use that term to refer to the evaluation that a law enforcement officer would conduct on a moment-to-moment or day-to-day basis on the job to try to protect his or her own safety and the safety of the public.

And the other one is threat assessment in the context of protection of public officials. And in that particular definition what I'm referring to here is evaluation of the violence risk that might be posed by an individual towards a public official. So it has nothing to do with the protection of the



police officer or threat assessor himself or herself, it really is focusing on the risk posed to a public official.

**MR. KENNEDY:** Sir, in your work and in your study do you know if there are specialized protection units such as the one we have in this case, Protective Services Unit, which exists in Canada?

**DR. HART:** Yes, there's such units in federal government and in provincial and territorial governments. And some of them are police based and some of them are based in the public service itself, so they may be branches of government as opposed to simply units of a police department or a police agency. So there's a number of such units across Canada and I'm also familiar with those in other countries, including the United States, and Norway, and Netherlands and some of the United Kingdom.

**MR. KENNEDY:** Sir –

**THE COMMISSIONER:** Mr. Kennedy, just maybe you were going to get to this but I'm just wondering if the use of the term violence risk assessment – is that common in the discipline or is that your particular category, Doctor?

**DR. HART:** I'm going to say, Commissioner, that these terms are used very widely by different people in an inconsistent manner, which is not a criticism of any – it's just it's an indication that there's some slight preferences that people have in terms of which terms they use. It reflects more training and professional socialization rather than anything substantive.

So the term violence risk assessment, in general, tends to be used more in corrections and in mental health, and the term threat assessment tends to be used more in national security and in policing and in corporate settings. But those are just tendencies, there's no clear division.

**THE COMMISSIONER:** Okay. Thank you.

**MR. KENNEDY:** So, Sir, in terms of you talked about the risk assessment or the personal risk assessment, there was a word missed when you started to give your definition of that, there was a word or two missed. So perhaps if you could repeat that when you're going to use the term personal risk assessment, what does it apply to?

**DR. HART:** It applies to the type of assessment that's undertaken by a police officer on a moment-to-moment and day-to-day basis in the course of their job to try to recognize and mitigate risks to their own personal safety, but also risk to the public that might stem from the officer's own actions.

**MR. KENNEDY:** What would be the difference, then, in terms of a threat assessment as you use that term?

**DR. HART:** So a threat assessment is completely difference because it would focus on the violence risk that's posed to a public official in this particular context. So I'm going to use the term threat assessment to refer to public officials, protection of public officials, and for the sake of this evidence, risk assessment to refer to the personal risk assessment.

**MR. KENNEDY:** Sir –

**DR. HART:** Just so that we can keep language clear.

**MR. KENNEDY:** I'm sorry.

So Sir, in terms of your work in threat assessment in the context of protection of public officials, is that – can you offer any opinion or do you have any knowledge as to whether or not that's a specialized area of policing?

**DR. HART:** Generally, I would consider that to be a specialized area of threat assessment. And much or most, but not all, of the protection of public officials is done by law enforcement agencies. As I indicated, some is done by government agencies that are not law enforcement agencies, but most of it is done in policing. And, yes, within policing specifically, certainly, protection of public officials is considered a specialized area.

**MR. KENNEDY:** Sir, in terms of –

**THE COMMISSIONER:** Sorry, Mr. Kennedy, again, sorry for the interruption.

**MR. KENNEDY:** No problem, Commissioner.

**THE COMMISSIONER:** Is there some overlap, Dr. Hart? I'm trying to get my head around this. I've seen four or five different usages of these terms at least during this hearing. Is there some overlap between personal risk assessment and the threat assessment as you're using it?

It would seem to me, arguably, that a police officer might be doing a personal risk assessment that could – when you say aimed at mitigating threats to the safety of him or herself and others, that the others could include a public official. And therefore a lot of what the police officer would be doing in the course of a non-public-official context would be applicable here. Am I missing something?

**DR. HART:** No. I'm going to say in general terms, of course, they're both forms of what I would call more broadly violence risk assessment. Really, the difference is the focus of them.

The threat assessment in the context of protection of public officials involves some rather specific procedures and is just highly focused or focused exclusively on the protection of those public officials whereas the personal risk assessment is something that anybody who's a law enforcement officer would be expected to engage in on a day-to-day basis. And it's, you know, protecting their own safety and the safety of other people I'm going to say, you know, in the context of interactions with those people.

But threat assessment could be done sitting at one's desk reviewing stuff on the Internet or documents on a computer whereas the personal risk assessment is typically something that's done when planning or carrying out an operation that requires some interaction with the public. So although there's some overlap, threat assessment is a – well, as I'm defining it here in the context of protection of public officials – is quite distinct and involves different kinds of activities and procedures and different kinds of considerations.

**THE COMMISSIONER:** Okay. I'll be interested in hearing that in a moment.

Just one final question and I'll be quiet, then, Mr. Kennedy. Try to, anyhow.

The term threat, does that not incorporate the notion of risk in that, if you're doing a threat assessment, whether it's public officials or otherwise, are you not trying to assess the risk of what may be perceived as a threat becoming reality?

Well, I'll leave it at that. Is that – is the term threat –?

**DR. HART:** Yeah, I think you've –

**THE COMMISSIONER:** Sorry, go ahead.

**DR. HART:** Yeah, I think you've hit the nail on the head that one of the problems here when we talk about the term threat assessment is that people often confuse the meaning of the word "threat" because, of course, the two basic meanings in English. And one of the meanings is to refer to an utterance that communicates intent to harm, and that's not what we're into in the term threat assessment. It's –

**THE COMMISSIONER:** It might include that, but it's not – it might include that, but it's not limited to that. Would that be fair?

**DR. HART:** Sorry, can you repeat that, Commissioner?

**THE COMMISSIONER:** It might include an oral utterance which you might consider a threat, but it wouldn't be limited to those. It could – the threat could arise because of the conduct of an individual. Would that be fair?

**DR. HART:** Absolutely. And, in fact, in some cases we would be evaluating situations themselves.

For example, protection of public officials might involve analyzing the threat in a particular environment that is a public forum where a politician may be speaking. And we may not even have the particular adversary in mind or perpetrator. It would be the threat posed to the public official in a particular physical space as opposed to posed by a specific individual who's identified and named.

**THE COMMISSIONER:** Right.

Okay, thank you.

That's all – that's helpful.

**MR. KENNEDY:** Let me try – let me try to simplify this, then, Dr. Hart. Do you need a threat – or does a person who's involved in the protection of public officials, does he or she need a threat to embark upon a threat assessment?

**DR. HART:** Oh, absolutely not. I mean most people don't make – don't make utterances that indicate or communicate a clear intent to harm people. They don't commit an offence under the *Criminal Code* and they're not investigated for that. In fact, in the context of protection of public officials, almost always what we're dealing with is conduct of concern; inappropriate communications or inappropriate conduct that gives rise to reasonable concern for a threat to the health and safety of public officials.

**MR. KENNEDY:** Sir, is the point that you're referring to there that I've just asked you about, is that stated at page 5 of Exhibit 0794 in that last paragraph before the second question: "One point is worth clarifying here. A common misconception is that threat assessment in the context of the protection of public officials refers to the evaluation of utterances that communicate intent to harm those officials. Instead, threat assessment refers to the evaluation of a situation in which there is potential for harm to public officials, which may or may not involve utterances that communicate intent to harm those officials."

**DR. HART:** That's correct.

**MR. KENNEDY:** Right. Before I move to the next question, Commissioner, do you have any follow-up questions?

**THE COMMISSIONER:** No, that's fine. Thank you.

No, that helped me.

**MR. KENNEDY:** So now let's look at – the second question deals with the risk or threat assessment in other contexts. And we use the example of a criminal investigation, as opposed to the threat assessment in the context of the protection of public officials.

Again, as the Commissioner has indicated there, we've heard different views on all of this, but in terms of that question if you could compare a criminal investigation to a threat assessment in the context of the protection of public officials.

**DR. HART:** Certainly. And so now what I'll deal with is specifically policing because that's going to make it much easier to understand this distinction.

In policing or law enforcement threat assessment, in the context of criminal investigation, is conducted in situations where people believe that past conduct may be repeated or there may be harm done to somebody during the investigation itself.

And that's typically, if I'm going to put it really concretely, it's typically in the context of, say, an intimate partner violence case where a police officer is called to investigate allegations or reports of domestic violence, of an assault against an intimate partner, and the officer becomes concerned that while this is being investigated and while, say, for example, there's a decision being made about whether or not to pursue charges, that another assault may occur. And therefore, they would do a threat assessment, an intimate partner violence threat assessment, and use that to make decisions about police release on promise to appear with an undertaking or requesting that somebody be detained in custody and so forth.

So in that case, in a criminal investigation case, the primary concern is to determine whether or not an offence has occurred. And the possibility that violence may occur is really a secondary concern. And in fact threat assessments are done in a minority of cases where there's an allegation of violence in the past.

In contrast, for looking at threat assessment in the context of protection of public officials, the primary thing is to try to protect those public officials. So we're trying to assess and manage the risk of violence posed against those public officials. And, you know, whether or not an offence may have occurred or might occur in the future is really of – or sorry, in the past, whether it occurred in the past, is of minor concern or secondary concern, and it's something that's pursued in a minority of cases.

So a criminal investigation is past focused and a threat assessment is really only as an adjunct to an add-on to the criminal investigation whereas in protection of public officials, it's all about prevention of violence, and that's why we do a threat assessment in every case. But, really, we'll only do criminal investigations as required or as deemed appropriate.

**MR. KENNEDY:** Sir, at the bottom of page 5 of your report, you state in that last paragraph: "Put simply, protection of public officials focuses on the future; their ultimate success is judged in terms of prevention of violence against public officials, not on the clearance rate for offences that may have been committed."

We've heard the term proactive having been used that time or preventative. Is that the kind of behaviour that we're dealing with here, or do you – activity on the part of the people protecting public officials?

**DR. HART:** Absolutely. And, you know, I can put it really bluntly, and to take another law enforcement agency when – I've done work with the United States Secret Service before and visited their headquarters and they're – really, they're uninterested in whether or not they ever get convictions for anybody who has made threats against the president or one of their 'protectees.' They said, and, you know, say quite bluntly, if we've got 100 per cent success in terms of preventing violence towards our 'protectees,' we're doing great. The investigation of criminal offences is really just a means to an end to help figure out how best to protect those people.

**MR. KENNEDY:** Sir, over the last couple of – it might have been last weekend, I think. The FBI released a report on targeted violence. Is that relevant, or would that be helpful to the Commissioner, in your opinion, in any way in the context of what we're talking about here?

**DR. HART:** Yes, certainly, in the sense that it provides a really nice overview of threat assessment broadly, including in the context of protection of public officials but also in the context of workplace violence, violence at institutions of higher education and so forth. And it talks about general principles of threat assessment and threat management. It's actually a very nice, easy-to-read document.

**MR. KENNEDY:** And if you were to summarize that in terms of the protection of public officials, is there anything that could be of assistance to the Commissioner or to us in this case?

**DR. HART:** I think that perhaps a couple of issues that have arisen in my understanding of what's gone on so far and also in terms of why I've been asked to give evidence, it does provide some definitions of things like risk and threat assessment, but it also describes the process – well, the purpose and the process of it, including some recommendations for steps that people can take during an investigation.

**MR. KENNEDY:** Before I finish with question 2, is there anything else you'd like to add, Dr. Hart? Or, Commissioner, do you have any questions on that issue or that area?

**THE COMMISSIONER:** No, go ahead.

**DR. HART:** There's nothing I need to add.

**MR. KENNEDY:** Okay.

In number three now, I'm going to refer to – and we may need the summary of facts for this, Dr. Hart, the summary of facts that was prepared for you by myself. The third question that's put to you is: Would you consider that Mr. Dunphy's tweets demanded follow-up in the context of the protection of public officials? Attached to the letter which was sent to you on – no, attached to the summary of facts, P-0795, were the string of tweets which came to Constable Smyth's attention.

So, Sir, in terms of the first – the question is: Would you consider that Mr. Dunphy's tweets demanded follow-up in the context of the protection of public officials? Could you offer any comment on that, Sir?

**DR. HART:** Yes, I mean my basic view was that really, any case that's referred to a protective services unit requires some basic threat assessment. As I pointed out, there's usually what we

would call a rapid threat assessment which is – I usually refer to as triage, to avoid confusion of terms. That's the first thing and it appears that that was required in that situation and in fact it was done.

And the second thing is it's my opinion that there was in fact a need to follow up – that is the case ought to have been triaged as positive and as requiring further investigation. And in fact that was what was done.

**MR. KENNEDY:** Sir, when you're looking –

**THE COMMISSIONER:** Mr. Kennedy, excuse me a second. Is there disagreement on that point? Dr. Coleman and or Massine – I guess it would be Dr. Coleman, sorry, would it ...?

**MS. CHAYTOR:** Yeah, Dr. Coleman agreed that it required follow-up.

**THE COMMISSIONER:** Yeah, so there's not –

**MR. KENNEDY:** There's no disagreement, Commissioner, but it's still –

**THE COMMISSIONER:** I'm just saying there's no need to belabour it. I'm not saying –

**MR. KENNEDY:** No, it's just one of the issues that's continuously out there in the public is: Why did Constable Smyth follow up a tweet of concern if it wasn't a threat.

**THE COMMISSIONER:** Right.

**MR. KENNEDY:** I mean that question is still there. So I'm not going to belabour it but –

**THE COMMISSIONER:** Okay, that's fine, for the public information.

**MR. KENNEDY:** Yeah.

So perhaps then, Dr. Hart, you've heard that's a question that's arisen in the public is: Why would Constable Smyth follow up on tweet of concern that he did not consider to be a threat?

**DR. HART:** Well, the basic concern that we have is that not everybody who makes a threat actually poses a threat. That's the way it's usually phrased. And not everybody who poses a threat, the conversely. So whether or not people actually make an overt threat, whether they have that utterance that communicates an intent to harm, is really a matter that's not of sole concern.

What we're really interested in is investigating when it appears that people may be having a movement towards violence or starting to have ideation and be moving towards intent to commit violence. And one of the primary things that we look at there is the extent to which people seem to be concerned with or preoccupied with thoughts of death, self-harm, persecution and risk to themselves, to their own safety.

So any time people make inappropriate comments that are concerned with or over concerned with themes of death and harm, then that's one of the things that would typically trigger further investigation, that that is a positive triage and the need to conduct further investigation.

**MR. KENNEDY:** Sir, did you view Mr. Dunphy's tweets, that string of tweets that was attached to the summary of facts. Did you view that as a threat and if not, how did you view it?

**DR. HART:** No, I did not view it as a threat. In my view there was nothing in the tweets, the various communications that Mr. Dunphy engaged in, that would be considered clearly a threat according to the *Criminal Code* or according to various kinds of occupational health and safety regulations or things like that. They were statements of concern because of the reference to things like death.

So, really, any time somebody sends a strange message where there's even an offhand comment to something like: If this keeps going on I'm going to kill myself or this is the kind of thing that gets people shot or things like that, then we would typically become concerned that there was some need for follow-up.

It doesn't mean that the person poses a risk or has ever made a threat. What it means is more threat assessment is required.

**MR. KENNEDY:** Sir, did it cause you any concern or did you place any significance on the fact, as the evidence indicates, that these tweets were sent by Mr. Dunphy? And I don't know the exact terminology, Commissioner, whether or not they're – but they are sent along or they're –

**UNIDENTIFIED FEMALE SPEAKER:** Posted maybe.

**MR. KENNEDY:** Yeah, they're sent along to the Twitter accounts of the Premier of Newfoundland and Labrador and one of the ministers. I don't think it's tagged, I'm not sure of the exact term, but they're sent to the Premier of Newfoundland and Labrador and one of his ministers. Does that cause you any reason to pause or cause you concern?

**DR. HART:** Yes, the fact that it's a public communication that is, that it's something that's sent to other people and it's not just a – if you want to call this – a silly off-hand comment made by somebody drinking in a bar to a person that they were drinking with. If that was the extent of the communication then often times a triage would be made and it might be determined that it's a low priority to follow-up on, but in this kind of a case then there were indications that this is something that really did deserve follow-up.

**MR. KENNEDY:** Sir, at page 3 of the statement of facts which is at exhibit P-0795, you were referred to the exhibit numbers for some of the tweets that were in the Workplace Newfoundland and Labrador file. Did you have an opportunity to review any of those specific tweets?

**DR. HART:** I did.

**MR. KENNEDY:** And did any of those, Sir, cause you concern or assist you in any way in your determination of what the tweets of April, I guess April 2 or 3, 2015 meant?

**DR. HART:** Certainly in the second paragraph up on page 3 there's a couple of tweets, then there's references to them I and I would say those are the ones that did concern me.

May I ask you to just hold on for a second, I think I may be able to close a door which may lower the background or ambient noise; just give me 10 seconds.

**THE COMMISSIONER:** Do we have –

**MR. KENNEDY:** When he said close the door, I thought it was going to be on a question.

**THE COMMISSIONER:** Where was the – the second paragraph of page 3 –

**DR. HART:** All right.

**MR. KENNEDY:** Okay, sorry, Commissioner, exhibit P-0795.

**THE COMMISSIONER:** Right, okay.

**MR. KENNEDY:** It's on the screen there now. That's page 3 of the Summary of Facts which was sent to Dr. Hart.

**THE COMMISSIONER:** Okay, go ahead, Dr. Hart.

**MR. KENNEDY:** Go ahead, Doctor.

**DR. HART:** Thank you.

The ones that would have concerned me specifically are, first of all, there's a reference to the fact that politicians should be tarred and feathered. Now, on its own, that's the kind of dramatic statement that might be – occasionally people might make in the throes of anger or it's say 3 or 4 o'clock in the morning and you're the President of the United States, and you might make an off-hand comment like that but if – the next ones that are concerting to me or the statement: "The most dangerous creation of any society is a man who has nothing to lose." That indicates to me the sum of what we might call nihilistic ideation, that is a sense of somebody who started to feel that he's got no connection to the world, he's feeling alienated and really that he has nothing to live for and therefore nothing to lose.

Then the next one is the use of the term murder and shooting. "Now they murder us and it's better to shoot ourselves." I am not interpreting that as a threat to hurt somebody else at all, but anytime somebody starts to make public statements that include dramatic and violence, or dramatic language with themes of violence, that's something you follow-up on. So those would be the things that would've concerned me.

If it was, again, only the first one about tarred and feathered, that wouldn't have been enough on its own to make me very concerned. But the other ones would've indicated to me that this required a follow-up with some priority. What I would call moderate priority.

**MR. KENNEDY:** Sir, when you use the term moderate priority, what do you mean by that?

**DR. HART:** Well, high priority is usually something that we would call an emergency or an urgent situation which means drop everything and go to it. Low priority would usually be something which is: well, let's put it on the back burner and come to it, if and when we have time. You know, we'll let it – wait until there's something that happens that maybe indicates that it needs – necessary to escalate the case. But moderate means: I'm going to get to this and I'm going to put it as a – something that's on the front burner but it's not an emergency. So it's something that we would follow-up on at our earliest convenience.

**MR. KENNEDY:** Sir, the last question on this particular question. Under – you indicate that Constable Smyth should have reviewed and triaged Mr. Dunphy's tweets. And you defined triage as: selection, sorting, prioritization and screening – up top.

My question though is number 2: "Cst. Smyth should have triaged Mr. Dunphy's tweets as positive." Perhaps, you could explain, as you've outlined in that statement there, what you mean by positive and what Constable Smyth, in your opinion, should've done or concluded?

**DR. HART:** Certainly. So that triage or that initial quick assessment, based on limited information, is designed to try to figure out: Are there reasonable grounds to be concerned that



the person may be a risk for violence? That is, is there anything going on that's worrisome, that's reasonably worrisome. And in – so positive means the answer to the question is yes.

So what I'm saying in that answer 3. ii. is that Constable Smyth should have done a quick evaluation to figure out whether there were concerns. He did that. But then more importantly, the content of the tweets indicates to me two things that we would find to be concerning. One of them is violent thoughts; that is he's got violent themes in his communications over a period of time. And then the second thing is the way that those things were communicated may be considered intimidating or fear inducing. That is not overt or explicit threats, but statements that anybody ought reasonably to know might cause somebody to be a little bit freaked out.

So those two things together indicate that there's follow up indicated and because of the violent thoughts, I would have considered it both positive and moderate priority.

**MR. KENNEDY:** So then, Sir, we get into question 4 as you're asked to provide an opinion in the context of protection of public officials on the appropriateness of the follow-up steps taken by Constable Smyth in this present case, including visiting Mr. Dunphy's house.

There's reference to that, Sir, in the Summary of Facts that's provided to you and at the last couple of pages there is a summary from 1 to 7 of steps taken by Constable Smyth. Perhaps you could outline for the Commissioner, Sir, or take him through your opinion on this. Perhaps you could first state your opinion on the appropriateness of the follow-up steps and then outline why you've reached such opinion.

**DR. HART:** Certainly. I mean when I reviewed the steps that he took in follow-up, I thought they were appropriate. That's the short answer.

The justification for that answer is that, first of all, it appeared that Constable Smyth actually did conclude that although follow-up was required, that it wasn't a high-risk situation. That it's not high in terms of likelihood of violence or seriousness of violence or imminence of violence, and therefore that it wasn't an emergency. So he responded to this as a non-emergency situation that required him to complete or to further his investigation, to take more steps at his earliest convenience and that's what he did.

Then when you think of what he actually ought to have done, there were two things that struck me; one of them is one of those steps had to include gathering additional information. And that's one of the first things that Constable Smyth did. And then the second thing is that when he was engaging in that, he ought to have done so at a level of intensity or intrusiveness that was commensurate with the triage. So because Constable Smyth actually triaged this as being a low- to moderate-risk situation, he intervened at low to moderate intensity and intrusiveness and that's what he did.

An emergency situation, we might go in and respond to a case like this with an emergency police response. There might be multiple units. There might be people going in with uniforms on. There might be lights and sirens. It might be even apprehending somebody and taking them to a police station for investigation or further interrogation. But in this case, a home visit was perfectly appropriate and I would typically consider that to be a low- to moderate-intensity and intrusiveness interaction.

It's the typical thing that we do. We go to visit people at their homes, give them a sense of control, try to protect their dignity and then try to gather information. The other thing about a home visit is it gives you a great way to gather information from the state of people's environment itself rather than from the answers to questions.

**MR. KENNEDY:** Sir, that's another one of the questions that's continuously arisen in the public, is why did Constable Smyth visit Mr. Dunphy over this tweet, but why did he go to his home and go alone? Sir, can you offer any comment or opinion in relation to that?

**DR. HART:** Certainly. I would say it's – in my experience and working with law enforcement and other officials in the context of protection of public officials, this is pretty common. We often visit people outside a police station; we go to visit them at their own homes.

Sometimes another strategy would be to invite people out for a coffee and go to a public place. You know, again, that has its own risks, but if we're not concerned about a high-risk case, then we would typically start by using low- to moderate-intensity and intrusiveness interventions.

And a home visit has multiple strategic advantages in terms of making observations of the person him or herself and their living environment, as well as trying to get answers to questions. And it's typically something, when you go plain clothes and visit when they're home, it's something that seems to respect people's dignity.

And, for example, the FBI report that you referred to stresses a lot that investigations, threat assessment investigations, those assessments, should actually be things that as much as possible try to respect people's dignity and not provoke them.

**MR. KENNEDY:** Sir, so are you saying or is it your – do I understand you correctly that a visit to a person's home or a home visit in situations such as the one Constable Smyth found himself is a low to moderate level of intrusiveness or invasiveness?

**UNIDENTIFIED FEMALE SPEAKER:** Uh-oh.

**MR. KENNEDY:** Stumped him, Commissioner.

**THE COMMISSIONER:** Oh, can you hear us, Dr. Hart? We are –

**MR. DROVER:** The feed is frozen. I don't know if you can see it on your screen but we –

**UNIDENTIFIED FEMALE SPEAKER:** We'll reset.

**MR. KENNEDY:** Okay.

**MR. DROVER:** Oh, there it goes.

**MR. KENNEDY:** Did you hear that last question, Dr. Hart?

**DR. HART:** (Inaudible) I've got problems, I think I lost 15 seconds, so can you just repeat the last question for me?

**MR. KENNEDY:** And that's going to be difficult.

Okay, so do I understand correctly, Sir, or is it your opinion that the decision of Constable Smyth to visit Mr. Dunphy at his home would be a low to moderate level of intrusiveness or invasiveness?

**DR. HART:** Yes. If he had either requested or that Mr. Dunphy go down to the police station, if he had driven up in a marked car, if he'd been wearing a uniform and overtly displaying a weapon, those are things that might have provoked somebody in a situation like this, or deemed

to be unnecessary displays of authority or power, then they can actually interfere with your ability to have a polite conversation with somebody.

**MR. KENNEDY:** Do you have any opinion, Sir, as to whether or not the accompaniment of a uniformed police officer in a marked police vehicle, where that would fit in in terms of the level of invasiveness or intrusiveness?

**DR. HART:** Yes, so that would have been a more invasive or more intrusive procedure; again, something that might make somebody feel publicly humiliated or fearful that there was going to be force used by the police in the context of this interaction. So, in general, it's basically a – go low-profile unless it's a high-risk situation.

**MR. KENNEDY:** Sir, can you – and you touched on this briefly – can you offer any opinion whether or not the visiting alone would be – where would that be in terms of the level of invasiveness or intrusiveness?

**DR. HART:** It's actually pretty common for most law enforcement agencies, when resources are scarce, if it's not a high-risk situation; it's quite common to have one officer handling some interviews, including interviews with a person of concern or a subject of the investigation. If it's a high-risk situation, of course, that's less common; we would typically expect that there would be multiple officers present or that there might even be undercover officers backed up by uniformed officers who perhaps might be parked around the corner or out of sight.

And then, the other thing I think that's important here is that, you know, many – well, I'm from British Columbia, and in many of the detachments of the RCMP throughout the province there might be two police officers, only one of whom is on duty at any given time. So it's quite common for people to respond to even emergency situations when they're on their own, when resources are scarce. It's just a matter of who's on duty when a situation happens.

In this case, it wasn't an emergency, the situation wasn't high-risk, there was no indication that it was a high-risk situation and therefore the decision to go alone seemed to be perfectly reasonable.

**MR. KENNEDY:** Sir, in terms, then, of the Question 3, you outline three factors under page 7 of your report. If you haven't already commented on those, could you –

**THE COMMISSIONER:** Section 3 or Section 4?

**MR. KENNEDY:** No, this would be page 7, Commissioner –

**THE COMMISSIONER:** Oh, you're going back to the – sorry.

**MR. KENNEDY:** “In light of the foregoing, as well as my answer to Question 3, it is my opinion that,” and then you outline three factors there. If you haven't already touched upon them, Sir, could you please refer to them? Or if you – is there anything you would like to add in relation to those three statements?

**DR. HART:** No, I think I've covered that.

**MR. KENNEDY:** Sir, we know that the tweet of concern, which was forwarded by the premier's office to Constable Smyth was on Friday, April 3, and that he, two days later, visited Mr. Dunphy on April 5.

In terms of the priorities that you have talked about and the levels of invasiveness and intrusiveness, doing something over a period of two or three days, is that – where would that fit in with what you’ve talked about?

**DR. HART:** I would have said it’s consistent with my view that Constable Smyth saw this as being something that was a low to moderate priority for investigation. He basically did it at his earliest convenience, or when he was next able to, when it seemed like he had the time to do so. But he did not leave it sitting on the back burner for days or weeks or until space became free in his calendar. He basically bumped it up, but he also didn’t treat it as an emergency. He didn’t take any steps that indicated that he viewed this as an emergency situation.

**MR. KENNEDY:** Sir, can you offer any –?

**THE COMMISSIONER:** Sorry, Mr. Kennedy.

I seem to have – I guess it’s an earlier copy. The third item you have there: “Cst. Smyth should have selected assessment tactics of low to moderate intensity and intrusiveness. He did so.” That is not in the copy of the report that I have. I am just wondering how –

**MR. KENNEDY:** There is only one copy of the report, Commissioner.

**THE COMMISSIONER:** It is interesting that – well ...

**MR. KENNEDY:** That is why I signed the document to make sure – or Dr. Hart’s document signed and I sent it along time –

**THE COMMISSIONER:** Yeah, in mine everything is the same, as far as I can see, up to now.

**MR. KENNEDY:** It is in Commission counsel’s.

**THE COMMISSIONER:** Wait now – sorry?

**MR. KENNEDY:** It’s in Commission counsel’s.

**THE COMMISSIONER:** Yeah, I noticed. Okay, don’t worry about it; I’ll get it. I know where to find the exhibit.

**MS. CHAYTOR:** No, maybe it’s the original that got faxed in; this is the original. I have the original. What you do you have, Kate?

**MS. O’BRIEN:** I have the one that is marked as an exhibit and it is as shown on the screen.

**THE COMMISSIONER:** Okay, don’t worry about it.

**MR. DROVER:** And I have a copy of the very first draft that Mr. Kennedy sent around in his first email on this and it’s the same as the one on the screen.

**MS. CHAYTOR:** And that’s what I have, the original.

**MR. KENNEDY:** Okay, in terms –

**THE COMMISSIONER:** The gremlins are around, okay.

**MR. KENNEDY:** In terms of – we have to make sure we are working from the same document, Commissioner.

**THE COMMISSIONER:** Right.

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

**MR. KENNEDY:** In terms of, Dr. Hart, of number iii, "Cst. Smyth should have selected assessment tactics of low to moderate intensity and intrusiveness," have you already discussed that or is there anything you would like to add to that?

**DR. HART:** No, I think I've discussed it. I thought, though, home visit without a marked car and without a uniform is what made it lower intrusiveness or lower intensity. You know, I can't – at some point you have to speak directly to this man. It's much better to get information directly from him and to make observations directly of him.

Getting information from third parties or getting information from records that may be old, out of date, is not the best way to proceed with doing a threat assessment. So you're going to have to speak to him and you might as well get it done as quickly as possible.

**MR. KENNEDY:** What are the benefits, Sir, or the requirements of speaking to him? Why do you say that?

**DR. HART:** Well, I think I mentioned before – so, first of all, there's a bunch of questions you want to ask him, mostly to find out where his head's at and why he's feeling it necessary to make these kinds of dramatic statements, and whether there's actually an escalation of these over time. And so there's a bunch of areas that you could go into that are substantive responses to questions, but then two other things are very important; one of them is the chance to observe him.

In many cases people may make – may use language that seems to be disorganized or erratic or dramatic, but when you speak with them they're much more calm and controlled. And so it can change your interpretation of those statements.

The third thing that I mentioned is the chance to actually see somebody's living situation. For example, if he was living with a common-law partner, if Mr. Dunphy had been living with a common-law partner or had other people in the house, then it might have indicated that his social interactions and his social skills were perhaps superior and that he wasn't isolated and that he may have had some opportunity for what we might call reality testing. So there's really no substitute for going to somebody's house.

**MR. KENNEDY:** So in terms then of going to somebody's house, and from your perspective in terms of the threat assessment in the context of the protection of public officials, does it matter to you whether it's Easter Sunday or Tuesday of any given week?

**DR. HART:** No, not really. I mean of course the one thing I'd say there is that any time that you go to somebody's house unannounced, the first thing is going to be to figure out whether they're willing and able to talk to you at that time.

So going to somebody's house to ask them if you can speak with them is a great idea because, again, it gives you a chance to speak with them, to observe them, to see their residence, and to be polite, and to show your respect and to treat them with dignity. Then you'd ask or see whether they're willing or able to talk then. If not, you can make an appointment for a different time.

So it's my understanding, from reviewing the materials, that Constable Smyth actually had the opportunity to speak with Mr. Dunphy outside the residence, to talk to him. And he was invited in which indicates that he didn't think it was highly intrusive or something that was disrespecting him or something that was inappropriate. He actually invited the constable into his house.

**MR. KENNEDY:** Sir, you go on to state at the bottom of page 7, it's your opinion that "It was reasonable and appropriate, and consistent with standards of practice in the field, for Cst. Smyth to ... visit Mr. Dunphy's house to interview him, and to do so alone."

**DR. HART:** Yes.

**MR. KENNEDY:** In the field, are you referring to in the context of the protection of public officials, threat assessment?

**DR. HART:** Yes, I would have said – and it's true in the field of threat assessment generally and it's also true – it's also true specifically in the context of protection of public officials.

**MR. KENNEDY:** Is there anything else you'd like to add to that, Dr. Hart?

**DR. HART:** No.

**MR. KENNEDY:** The last area I want to cover with you, Sir, is in – we're not going to talk about Dr. Coleman's qualifications, but we're going to – I want to discuss briefly with you his report. And is there anything in particular, Sir, that you would like to point out or talk about in terms of his report and particular areas that you may disagree with?

**THE COMMISSIONER:** So whose report we're talking about? Dr. Coleman's now?

**MR. KENNEDY:** Dr. Coleman's report.

**THE COMMISSIONER:** Okay.

**DR. HART:** Certainly. There are really sort of three things that I think are important. One of them is that it appears that from Dr. Coleman's report that there's some conflation or confusion of the terms risk assessment and threat assessment or, as I've referred to them, some mixing up of the terms personal risk assessment and threat assessment in the context of protection of public officials.

**MR. KENNEDY:** Sir, if I could ask you to – and we don't have – yes, Dr. Coleman's report is not before us. That's right. Yeah.

Can you give us an example from your notes or memory in terms of an example of that that we can refer to later with Dr. Coleman's report?

**DR. HART:** Certainly. I'm going to give you a citation to page 6 of the report. And so Dr. Coleman's report, page 6, and the statement (inaudible) section that in terms of Constable Smyth's risk assessment expertise, police officers –

**MR. KENNEDY:** Sorry, we lost you a little bit, Doctor. Could you repeat that, please?

**DR. HART:** It's on page 6. It's about midway down the page.

It starts: "In terms of Cst. Smyth's risk assessment expertise, police officers often receive risk assessment training during police basic education and training. It is not clear whether Cst. Smyth

completed risk assessment education and training during his basic police training at the APA.” The only RNC record available indicates that he completed any formal risk assessment or educate – is a course, managing targeted violence, in January 2012.

“This course included various tools, templates and worksheets with which to assess and record ... Based on Cst. Smyth’s testimony at the Inquiry, there is little indication that Cst. Smyth systematically applied these during his risk assessment concerning Mr. Dunphy.”

Now, I’m going to say the next sentence in the next paragraph starts off with a reference to risk and threat assessments, though when I analyze that section, the first sentence starting: In terms of Constable Smyth’s risk assessment expertise, that seems to refer specifically to Constable Smyth’s expertise with respect to personal risk assessment. That’s the standard training that the police receive and it’s to protect themselves, and as I’ve indicated, to protect the safety of members of the public when they interact with members of the public.

That’s the training that all police officers receive. Police officers do not, as a matter of course, receive training in threat assessment in the context of protection of public officials.

The second thing though is the second sentence which starts: It is not clear. That sentence starts off by referring to personal risk assessment in the beginning but then it starts to segue into the violence risk assessment in the context of protection of public officials at the end of that sentence and into the third sentence.

**MR. KENNEDY:** Sir, there’s –

**DR. HART:** So –

**MR. KENNEDY:** Sorry, go ahead. Sorry.

**DR. HART:** Yeah. I’ll stop right there.

**MR. KENNEDY:** No, no, go ahead.

I was going to ask you, there’s reference here to a managing targeted violence course. Are you familiar with that course?

**DR. HART:** Yes, I am.

**MR. KENNEDY:** And how are you familiar with that, Sir?

**DR. HART:** I know the trainer, Mark Beaulieu, who’s a member of the sheriffs in BC – BC Sheriffs. He used to be a member of the Integrated Threat Assessment Unit operated by the BC Sheriffs. And he’s somebody who’s attended my training in the past and who I’ve served on the board of the Canadian Association of Threat Assessment Professionals with.

**MR. KENNEDY:** So in terms of – have you reviewed the managing target violence manual recently?

**DR. HART:** Yes.

**MR. KENNEDY:** In terms of a manual to follow or a training manual for the threat assessment, to conducting a threat assessment in the protection of public officials, do you have any comment on its validity or assistance?

**DR. HART:** I think it's a perfectly reasonable and I would consider it to be a standard kind of training program or basic training program for people who would do protection of public officials. It's got the, I guess, the standards of practice in the field captured in the training.

**MR. KENNEDY:** Now, I remember, I seem to remember that somewhere along the lines, some counsel – I think I might have seen this in your CV – referred to a test or HCR-20 test that was in the managing targeted violence.

**DR. HART:** Yes.

**MR. KENNEDY:** Do you know anything about that, Sir.

**DR. HART:** Yes, I'm one of the co-authors of that test and I've been involved in research on it for the last 20-plus years.

**THE COMMISSIONER:** What is the reference? What is the –

**MR. KENNEDY:** In the managing targeted violence –

**THE COMMISSIONER:** Yeah.

**MR. KENNEDY:** – one of the counsel, I remember it coming up on the screen, there was a HCR-20 and –

**THE COMMISSIONER:** HCR-20, okay.

**MR. KENNEDY:** Yeah, somewhere in Dr. Hart's resume, I think I saw reference to a HCR-20. Am I correct on that?

**DR. HART:** That's correct.

**MR. KENNEDY:** So I was asking him is that the same test that he has, he's familiar with. And he's indicated that he developed it. Is that correct?

**DR. HART:** That's correct.

**MR. KENNEDY:** Now, to come back then to what Dr. Coleman is saying, you say he's conflated the concepts. Perhaps you could explain how or what you mean by that statement.

**DR. HART:** There seems to have been a focus initially on personal risk assessment, but then personal risk assessment starts to get used synonymously with the managing targeted violence course which is threat assessment in the context of protection of public officials. And that happens starting in the sentence that says: The only RNC record available. That's the sentence where it starts to conflate the two.

So it starts off talking specifically about personal risk assessment and then suddenly starts to tie in, in the same sentence, of course on a completely different topic, which is protection of public officials.

**MR. KENNEDY:** Sir, could you or do you have any opinion as to whether or not Dr. Coleman was talking about personal risk assessments or threat assessments in the context of the protection of public officials throughout his report?



**DR. HART:** Well, as I've been saying, he starts off saying in the beginning that he's focusing on the personal risk assessment. And under – above, on the same page that we've been discussing on page 6, a little bit above, we have section 3.0.a. and it's entitled: Constable Smyth's Personal Risk Assessment, yet now we're making a segue into talking about protection of public officials and managing targeted violence and so forth which is actually irrelevant to the topic personal risk assessment.

**THE COMMISSIONER:** Yeah, I'm having a little trouble understanding what the significance of it is in terms of wouldn't – and that was what I was sort of trying to get into at the beginning of your testimony. Wouldn't much of what's involved in personal risk assessment, what a police officer would be doing there, wouldn't much of that be relevant to the context of public officials as well?

**DR. HART:** That's a good question, Commissioner, and the simple answer is no. And I'm just going to say, to make that really clear, what I will focus you on is the very, very back of the Coleman report. And one of the things that Dr. Coleman makes reference to is the decision-making models that are used in personal risk assessments.

So these would be on page 76. It makes reference to the UK College of Policing National Decision Model in Appendix 3 and Appendix 4, PERF – so that's P-E-R-F – PERF's Critical Decision-Making Model.

Those are both models that are used for personal risk assessment, but actually if you take a look at the managing targeted violence curriculum, you'll see that they're actually completely different. One's focusing on prevention of violence towards public officials, and the other one is focusing on the ways that police officers can think more clearly about protecting themselves.

**THE COMMISSIONER:** I'm still – okay, I'll take a look at that closely. I'm still somewhat confused, I have to say.

**MR. KENNEDY:** So a threat assessment, is there – in doing a threat assessment in the context of the protection of public officials, is there any element of personal risk assessment in conducting that threat assessment?

**DR. HART:** The only way in that the two directly overlap is that we would expect that anybody involved, any law enforcement officer involved in threat assessment in the context of protection of public officials, would also be, on a day-to-day basis, trying to protect his or her safety –

**THE COMMISSIONER:** Right.

**DR. HART:** – and the safety of citizens by engaging in personal risk assessment. It's kind of like personal risk –

**THE COMMISSIONER:** My point exactly. So, you know, at worst, it seems that what you're saying is Dr. Coleman might have been considering matters beyond which he should have been concerned in terms of public officials. But that doesn't help me in terms of understanding whether Constable Smyth was reasonable in terms of going into the living room, positioning himself where he did and all this sort of stuff, which, you know, we've gone into in detail with the evidence.

**MR. KENNEDY:** But Dr. Hart is not commenting on that.

**THE COMMISSIONER:** That's what I understand. And I'm wondering, Mr. Kennedy, why, you know, nothing – this is not a criticism of Dr. Hart's testimony, I'm just wondering why we

are going there when, as far as I can see, the criticisms in Dr. Coleman's report of Constable Smyth have to do with his approach to personal risk assessment rather than inadequacies in threat assessment for public officials. Am I – what am I missing? You can clarify that. Okay.

**MR. KENNEDY:** Okay.

Dr. Hart would there be a two-step process prior to the home visit? There'd be the threat assessment first in the context of protection of public officials. Correct?

**DR. HART:** And that's ongoing. And that was part of the home visit was for the purpose of the threat assessment.

**MR. KENNEDY:** Then in making the decision to go to the house, would there not be a personal risk assessment engaged in at that time?

**DR. HART:** Absolutely. And so the thing is that that personal risk assessment is part of a police officer's every day job. Every decision that you make is supposed to be within the context of maintaining your safety and the safety of others, but that has nothing to do with protection of public officials.

You'll see that in that decision-making model at the end, there's nothing in there that talks about how we actually go and systemically investigate threats to public officials. And, similarly, in the standards of practice for dealing with – and the training curriculum for dealing with threats to public officials, there's no reference to that decision-making model.

So the problem with conflating the two comes where you try to use the standards for one to evaluate the other. And that's the next concern that I had is that not only are the terms conflated but that it appears that Dr. Coleman actually starts to use the standards for personal risk assessment to judge Constable Smyth's threat, as in the context of protection of public officials and vice versa. So he starts to criticize one type of threat assessment with the rules for the other which leads to some further confusion.

**THE COMMISSIONER:** Well, let's – maybe you can help me by, if we take a specific example of where Constable Smyth's conduct has been questioned, in terms of going on the home visit, with arguably inadequate background research, before he had all of the information that he could have had and should have had, arguably, to ascertain the risk posed by Mr. Dunphy.

Would – is there any difference in terms of what Dr. Coleman is saying should be done and what you would say, Dr. Hart, in terms of the background information he'd need and so forth?

**DR. HART:** Specifically, with respect to the visit to the house, I would have said that in the context of the threat assessment of protection of public officials, then actually going to the house and doing the interviews is something that is actually important to do.

**THE COMMISSIONER:** Right. I've seen that in your report. We just went over that, the significance, the importance of home visits, but wouldn't the person who is going to do that threat assessment, on the context of public officials, wouldn't he or she be concerned about his own safety and arguably would have to do a thorough personal risk assessment?

**DR. HART:** You would expect (inaudible) doing a risk assessment all the time. I'm not going to call it thorough because the personal risk assessment is not necessarily something that's a formal process, it's meant to be something that could be used on the spur of the moment, as well as something that could be a slowed down or more deliberative process. So in this particular case,

based on the information that was available to Constable Smyth, it didn't appear to me that there was anything that was inappropriate in terms of threat to safety of somebody who does threat assessment and who teaches them, I wouldn't have considered going to the house to be something that was a threat to safety or something that was inappropriate.

**THE COMMISSIONER:** Well, for example, the ascertaining whether or not there's a firearm in the home. Wouldn't that be relevant for personal risk assessment and also for a threat assessment regarding public officials?

**DR. HART:** Absolutely, and it was my understanding from (inaudible) that Constable Smyth, in fact, did try to gather information about whether Mr. Dunphy did have a firearms certificate and also had inquired of Dick and Debbie Dunphy whether he had a weapon. So he had been investigating this; there was no indication that there was a (inaudible).

**THE COMMISSIONER:** Okay.

**MR. KENNEDY:** If I can use this example, throughout Dr. Coleman's report, there's reference on numerous occasions to the absence of the use of the notebook. How does the notebook fit in, Sir, to the threat, to a threat assessment conducted in the context of public officials?

**DR. HART:** Whether or not Constable Smyth used a particular notebook or made notes before, during or after his investigation is really irrelevant to standards for judging the adequacy of a threat assessment done in the context of protection of public officials.

There's – people use diverse practices depending on the case. Sometimes we don't make notes at the scene, sometimes we do. Whether or not one wants to make notes for personal risk assessment is a different matter, but it has – the absence of the notebook doesn't mean anything about the adequacy of the threat assessment that Constable Smyth was doing in the context of protection of public officials.

**MR. KENNEDY:** Okay.

Well, let's use a specific example. At pages 60 to 61 of Dr. Coleman's report – and this is stated on more than one occasion: "Cst. Smyth's attendance and 'officer presence' cannot be fully discussed without considering how Cst. Smyth was dressed and how he introduced himself. Although Cst. Smyth stated he showed his police wallet ID and badge, there was no indication on his outer clothing that he was a police officer."

Moreover, his badge and ID were shown at a considerable distance, not clear how he introduced himself, whether Sergeant Smyth or Joe Smyth. "Perhaps most importantly, Cst. Smyth was dressed in casual clothes, operating outside of his usual geographic jurisdiction, driving an unmarked vehicle and calling on Mr. Dunphy on Easter Sunday."

Now, are those considerations for a violent – for a threat assessment in the context of public officials or in a personal risk assessment, in your opinion?

**DR. HART:** The types of considerations that are listed there are things that would be relevant to a threat – well, to a personal risk assessment. In fact, on the one hand they might look like they are questionable in terms of a personal risk assessment or the most difficult decisions, but in the context of protection of public officials, it's exactly the right thing to do. And this is why there's some mismatch in terms of trying to critique one form of risk assessment using the rules that are developed for evaluating the other form of risk assessment.

**MR. KENNEDY:** Sir, we go to the report then – and I don't have the exact page here but the reference to, for example, Constable Smyth learning that Mr. Dunphy did not always comply with the conditions of the peace bond. I'm assuming there Dr. Coleman's referring to the information provided by Dick and Debbie Dunphy of the charge which was withdrawn, the peace bond. How relevant is that to a threat assessment in the context of the protection of public officials?

**DR. HART:** I'm looking, I think I – the section that you're referring to is on page 8, the end of first full paragraph of the Coleman report.

**MR. KENNEDY:** Okay.

So how relevant is that in terms of the threat assessment in the conduct – in the context of the protection of public officials?

**DR. HART:** It's a piece of information that we would use in context but on its own doesn't really have much meaning. It's a report that somebody doesn't comply with the conditions of a peace bond or bail or probation. It's just an allegation, it's something that can be evaluated but it may or may not be relevant to the protection of public officials on its own.

**THE COMMISSIONER:** Is there something that might go to show that here's a person who doesn't play by the rules or prepared to not follow the rules?

**DR. HART:** Certainly. It's one of those things that – but frankly the (inaudible) more important to me than – it's an informal comment that he didn't always comply with the conditions, the peace bond itself indicates that somebody has a history of engaging in behaviour that causes other people to fear of their safety.

**MR. KENNEDY:** Sir, in terms of the personal risk assessment that was conducted by Constable Smyth, that's referred to in the Summary of Facts. Do you have any opinion in terms of the job he was doing that day in the context of the protection of public officials as to whether or not that personal risk assessment was sufficient and appropriate?

**DR. HART:** To me, in the context of conducting a threat assessment, the personal risk assessment, it seemed to be quite appropriate. It was – it would be my assumption that many police officers in the same situation would have ended up doing the same thing.

There was no indication that there was a high risk. There was no indication that the risk was high, either in terms of likelihood or imminence or severity, but there was a need to follow up on and so there was an attempt to try to investigate.

**MR. KENNEDY:** Sir, in terms, then, of the steps taken by Constable Smyth in this case, in terms of the threat assessment in the protection – in the context of the protection of public officials, and the personal risk assessment that goes with that, what is your final opinion? Or what is your opinion to the Commissioner, not your final opinion, your opinion to the Commissioner?

**DR. HART:** My opinion is that in light of the all the circumstances, that the steps taken by Constable Smyth to follow up on the initial reports to him – the tweets that were forwarded to him, the triage that he did, the further investigative steps up to and including going to the home and entering the home – all would have been consistent with the standards of practice in the field or the types of activities that a reasonable police officer would have engaged in given the nature of the job.

**MR. KENNEDY:** Again, when you say in the field you're talking about an investigation in – or, excuse me, you're talking about a threat assessment in the context of the protection of public officials.

**DR. HART:** Yes.

**MR. KENNEDY:** So, Commissioner, those would be my questions for Dr. Hart. I don't know if there's anything else, Doctor, that you'd like to add before I sit down.

**DR. HART:** No.

**THE COMMISSIONER:** Thank you, Mr. Kennedy.

And we'll have some questions from counsel, I suppose.

Do we have, Mr. Drover, any questions?

Mr. Avis?

**MR. AVIS:** Default order. I go after –

**THE COMMISSIONER:** Sorry?

**MR. AVIS:** I go after Ms. Breen.

**THE COMMISSIONER:** Do you? Okay.

**MR. AVIS:** I'm not sure if I have anything.

**THE COMMISSIONER:** All right.

**MR. AVIS:** I am assuming she's going to ask some of the questions I had (inaudible).

**THE COMMISSIONER:** Let me check with Mr. Freeman and Ms. Rasmussen. Do you have any questions there or – I am not sure I'm in the right order now but you can tell me.

**MS. RASMUSSEN:** We'd normally be after Ms. Breen, so we'll re-evaluate.

**THE COMMISSIONER:** So you would be after Ms. Breen.

Okay. Thank you.

**MS. BREEN:** Thank you.

Good afternoon, Dr. Hart; Erin Breen for Meghan Dunphy.

**DR. HART:** Nice to meet you.

**MS. BREEN:** Doctor, I wanted to ask you first – just following up on some of the questions that were just asked – we understand from this case right now, what we've heard in the inquiry is that there is no protocol in place at the Protective Services Unit, or there wasn't in April of 2015, for conducting threat assessments.

You're not aware that there was any standardized protocol in place at that time, are you?

**DR. HART:** No.

**MS. BREEN:** And I understand that there are different types of processes that can be used for a threat assessment in this particular field. Is that correct?

**DR. HART:** Yes.

**MS. BREEN:** And is it fair to say that in the information that you saw that what Constable Smyth was using in April of 2015 would be called unstructured professional judgement?

**DR. HART:** Yes, it's a form of judgement that we would typically refer to in the field of threat assessment as behavioural threat assessment or behaviour-based threat assessment. So it's unstructured in the sense that at least at that point you're not using any particular tool to gather, or weight, or combine information.

**MS. BREEN:** Okay. And this kind of process relies heavily on individual intuition and experience of the officer. Is that right?

**DR. HART:** Yes, training as well, of course. Yes.

**MS. BREEN:** And sometimes the use of this kind of process may lead to criticism that the threat assessment may be unreliable or unaccountable, and sometimes the criticism is that it is impossible to trace how decisions regarding risk are made. Is that fair to say?

**DR. HART:** Yes. Usually what happens is we would figure that those kinds of structured tools would be used towards the end of the assessment process, once you've gathered all of the information that you think would be reasonably necessary to form an opinion. But during the process of the threat assessment, while it's ongoing, then you haven't completed it and so you don't complete the tool.

**MS. BREEN:** Okay. And in terms of a standardized practice for threat assessments in this particular area, is there a standard? Is there a tool that is currently in use?

**DR. HART:** There's not a tool that anybody's developed that's designed specifically for protection of public officials. And, in fact, I think it might be difficult to do that.

There are a number of tools that one could use to do a comprehensive threat assessment; that is once you've finished a full investigation and you're trying to put the information together. But I would say that the standard practice in the field of law enforcement, and especially with respect to protection of public officials, is not to rely on a single tool but, in fact, to rely on a numbers of tools.

**MS. BREEN:** Okay.

And I have reviewed the FBI document that you did reference in your report; I believe it's the same one that I have here. And in that report, certainly, it talks about the: "Standardization of processes from intake through assessment is strongly recommended ...."

**DR. HART:** Yes.

**MS. BREEN:** So the phase that we're looking at here in relation to this case would be from intake to what Constable Smyth has told us that he was starting to do an assessment at that time.

**DR. HART:** That's correct. I would consider it to be intake and then triage and then moving into a more fulsome assessment. That's correct.

**MS. BREEN:** Okay.

And, Dr. Hart, I had seen in one place that you, in fact, have authored an assessment guideline but it relates to stalking. It's the stalking assessment management guidelines.

Is that the kind of tool or a similar tool that could be utilized in dealing with cases such as this with public figures?

**DR. HART:** Yes, if the – and, in fact, my assumption is that this is the kind of tool that, in some places where people are trained to use it, that they might actually use this tool at the end of their threat assessment to reach a final opinion regarding the risks posed by somebody and the management steps required.

**MS. BREEN:** Okay.

And that tool has been around since about 2008. Is that correct?

**DR. HART:** That's correct.

**MS. BREEN:** And it can be used by a full range of professionals?

**DR. HART:** Yes.

**MS. BREEN:** And so professionals in both criminal justice, mental health and security could use this tool.

**DR. HART:** Yes.

**MS. BREEN:** And the goal of it, or the purpose of it, is to help the user exercise best judgement. It's not a replacement for professional discretion.

**DR. HART:** That's correct.

**MS. BREEN:** But the benefit of it is that it has the potential to increase consistency, usefulness and transparency of decisions. Is that right?

**DR. HART:** Yes, I think the general view in the field would be that any reliance on tools or structure analytical devices would help to ensure better consistency and decision making.

**MS. BREEN:** And so the name of that is – the acronym is SAM, S-A-M, but it's called the Guidelines for Stalking Assessment and Management?

**DR. HART:** That's correct.

**MS. BREEN:** Okay. And that's also – it's also noted in the FBI report at page 24 that “where a trained and experienced team, following a standardized assessment protocol, becomes an effective tool for managing persons of concern away from targeted violence.” Is that right?

**DR. HART:** That's right.

**MS. BREEN:** Okay.

Now, briefly, you did touch upon the documentation of the threat-assessment process. And here we understand that we have very scant notations of Constable Smyth's – the sources of information that – or the information itself that he received before going to see Mr. Dunphy.

I had understood, Dr. Hart, from the SAM guideline that you have here that you authored, that the documentation of information is critical for the process of completing a threat assessment.

**DR. HART:** Yes, I said that. I'm just going to point out what I said before, which is I wouldn't have expected that anybody would be using the SAM or any other tool to reach a final decision at this stage, and not necessarily making documentation of the final information. This was still something that was in the early stages of investigation, so there really was little to document or little need to document on an urgent or ongoing basis. It was – we're still in the very early stages, so the documentation and the use of those tools is usually something that comes towards the end of the investigation, not that occurs at the beginning.

**MS. BREEN:** No, but in terms of being able to utilize the tool or to come to the findings at the end of the process, I would assume that having an accurate record of the information that you received about the individual in the process would be, as is said here, vital for good service delivery.

**DR. HART:** Yeah, I'm going to assume that Constable Smith would've – or Smyth would've, in fact, made some notes about the investigation that day if in fact the incident had not occurred as it had.

**MS. BREEN:** Okay. So you would've expected that there would've been full notes on the information that he received leading up to the visit of Mr. Dunphy's home?

**DR. HART:** Correct, or that he would've made notes of the information that appeared to be relevant, I guess.

**MS. BREEN:** Okay.

Now, we know that – and as you've said, Constable Smyth did not consider this to be an urgent matter. But once it's determined that the matter should be looked into, is it not the next step that a plan has to be created for the information-gathering process?

**DR. HART:** Well, yes, there's a plan that's typically developed for information gathering, but it's usually staged; that is, it's typically the case that you're going to go and grab some things that are easiest to grab and most relevant to grab first and then start to fill in the gaps. So that's one of the reasons why it was my opinion that it was a good place to start by trying to interview Mr. Dunphy because he had the critical information in his head.

**MS. BREEN:** Okay, but, Dr. Hart, would it also be or isn't it also accepted generally in threat-assessment principles that, before the subject is interviewed, the officer should collect as much information about the subject and his circumstances as is possible?

**DR. HART:** As is possible or also, if you wanted to add the other part of that, as is deemed appropriate or necessary given operational limitations. It's simply when you're doing the early stages of investigation, it's impossible to get all the information to figure out what you're going to do when you go interview somebody.

So in those cases, you might have multiple interviews. So you start off by interviewing them about the information that you do have, and then gather more and go back and continue the interview as you get more information.



**MS. BREEN:** But aren't you also trying to minimize your impact on the subject in this process? So wouldn't you want to have as much information as you could get before you make the decision now I'm going to go see the subject? You don't want to be going back to the subject multiple times if it's unnecessary. You're supposed to be doing this in an efficient way, aren't you?

**DR. HART:** Yeah, but going back to see people on multiple times could actually be a very good strategy if you are developing a good relationship with them. Indeed, we often try to develop a relationship where people of concern phone us on a regular basis, and we can have telephone calls, we can drop by to see them. Again, I mentioned it's quite common in this kind of situation even for an officer to meet somebody socially or buy them a coffee to have an interaction with them, to see what their state of mind is and whether there's any change in their appearance or whether they appear to be becoming physically or mentally ill.

So having routine, repeated contacts with people can actually be a very important strategy.

**MS. BREEN:** Okay, and do you mean that once you get to the management stage or do you mean actually during the assessment you should be meeting with the subject multiple times?

**DR. HART:** Both. It could be – it could depend on the case.

For example, in most of these cases, you cannot wait until the end and the investigation is completed before we implement management strategies. So the assessment itself can have the effect of mitigating risk or, if done improperly, as I pointed out in my report, it could actually provoke risk. So those are the situations where we want to be thinking about what's necessary or appropriate given the circumstances and then devoting resources to it as appropriate and going through in a stage manner.

So operational risk assessments, as they're sometimes called, ones that are occurring in the context of the situation like this, in the context of protection of public officials, are quite different than many of the risk assessments that I would do. I'm usually called in when somebody is in custody. There's no rush, there's no need to run out and gather information. People are going to send it to me in boxes and I'm going to review all of that before I have my interviews to be very (inaudible).

But in the field, when something is unfolding in real time, you don't have the luxury of sitting around and waiting for information to roll in or waiting until somebody has committed violence to see whether or not you think they actually pose a risk.

**MS. BREEN:** Right, but in this particular situation, we understand that there was no urgency as such.

Would it not be fair to say, Dr. Hart, that the information gathering before going to see a subject would help you guide in your questioning of the subject as well as it would help you identify tactics for your own safety?

**DR. HART:** It could do. Again, the time that I would be most concerned about that if there was reasonable grounds to believe that a person actually did pose a risk, a high risk, whereas in this particular case, the priority seemed to be low to moderate.

So, I mean, just to be clear, when I go in to interviews with people, I often go in by myself. I don't have a second person with me, even when somebody is in custody and some of these people have committed acts of severe violence in custody. But unless I actually have reason to

believe that somebody's risk is emergent or urgent, I would be happy to go see them alone because it would help me to establish a rapport.

**MS. BREEN:** Dr. Hart, in threat investigations and assessments, generally, a key concern would be how the person has dealt with unbearable stress in the past. Do you agree with that?

**DR. HART:** Certainly. That's one of the things we look at is how people cope generally, but not just with – I mean generally, to use your phrase, unbearable stress is something that we expect that people aren't going to fare very well or that they're going to cope with well. What's more important to me is how they deal with day-to-day stresses.

**MS. BREEN:** Okay.

And we know that Constable Smyth did speak with Mr. Mahoney from workers' compensation briefly, but it appears that the purpose of the discussion was to identify Mr. Dunphy. And there was a brief discussion about, you know, the issue of workers' compensation having reviewed his risk to them on a corporate risk assessment basis. But the conversation appears to have been very brief at that time and this was before Constable Smyth had gone to see Mr. Dunphy.

Is it fair to say that in a risk assessment process having a liaison with another organization that may have already identified and assessed an individual who may have posed a threat to that organization in the past, would that not be a benefit to the officer at that stage before he has gone to see the person, to have a source of information like that readily available?

**DR. HART:** It could be. I would certainly – I mean, in general, the more information you have the better. Assuming that the information is accurate and relevant, the more information you have the better.

The one thing is – and I think this is important to repeat – that when we have a threat assessment that's in the process of emerging, you don't have the luxury of sitting around and waiting to conduct an investigation before you go and interview somebody. So it's very common to interview people, and in fact multiple contacts with people, during the course of the investigation. It can help you figure out which information you need to get or, if I could paint an alternative outcome for this particular situation, it could've been that by going to interview Mr. Dunphy that Constable Smyth could've actually realized that Dunphy was just in a state of distress, that he wanted help, that he could have taken him to the hospital and it could have been a good outcome. There would have been no need to go gather all this additional information.

So in many of these cases there's going to be multiple routes that you could take. But the investigation is not something that's done at a particular time. It's something that unfolds over time or across time, and so there's going to be many situations where you can't (inaudible) reviewed all the background information before you have contact with somebody.

**MS. BREEN:** And in that conversation with Mr. Mahoney, there was also there a source of information about the long-term grievance that Constable Smyth had seen in the Twitter feed. So that again would have been another readily available source of information to him at that time before he went to see Mr. Dunphy, would it not?

**DR. HART:** Yes.

**MS. BREEN:** Now, Dr. Hart, when we get to the decision to go and interview Mr. Dunphy, and I understand that this is what you have referred to in the past as a knock and talk, is that correct?

**DR. HART:** Yes.

**MS. BREEN:** And like any technique, would you agree that direct contact with the person of concern must always be carefully considered in terms of risks and benefits?

**DR. HART:** Absolutely.

**MS. BREEN:** And that the officer must always be mindful of potentially implementing an action that itself is a precipitating event which propels the person towards violence?

**DR. HART:** Yes. I think the way that I put it in my report and the way that I testified previously was any action or lack of action that you take, or any omission that you make, could have the impact of either increasing risk or reducing risk or mitigating risk. So the way I put it is the difference between poison and medicine is dosage. You have to figure out what you're going to do and how intensely you're going to do it to try to maximize the benefits and minimize potential harm.

**MS. BREEN:** Okay. And we see this is in literature as thinking about potential last straws. You're familiar with that expression: the last straw?

**DR. HART:** Yes.

**MS. BREEN:** And that in considering that risk it would help an officer to try and see the situation from the person of concerns perspective?

**DR. HART:** Yes.

**MS. BREEN:** And it's an aspiration to preserve the subject's dignity is it not, to use a sensitive care-taking approach?

**DR. HART:** Yes.

**MS. BREEN:** Okay.

Dr. Hart, in other general, I guess, threat assessments academia, not specific exactly to the protection of public officials but other, I guess, writers who have included the protection of public officials in a broader field, there is some commentary that encourages threat managers, and in reality that's what Constable Smyth was acting as on that day, to not try and interview a person without a partner present, if possible. So it's encouraged a second person and the justification that I've read about is to allow for one person to focus on security while the other person concentrates on the subject. Is that something that you are aware of?

**DR. HART:** Well, I think it's everybody's preference never to have to work alone in this kind of work. That's a reality is that in many cases we do have to work alone because there are just not enough people for two people to do every interview.

As I've said, I myself get put in the position of having to do this and I don't think I'm foolish or stupid, I do it because if there's no indication the person poses a high risk, and that the person's in a state of emergency or in complete destruction, that it may be much better to establish rapport, for me to sit and talk to somebody alone rather than wait or rather than try to take somebody in who might disturb the rapport building. So those are decisions that we make based on characteristics of the case and available resources and weighing all these kinds of considerations.

**MS. BREEN:** Okay but, generally, you would agree that if it's possible to bring a second person along would certainly be beneficial in terms of the officer's own personal risk assessment.

**DR. HART:** Well, as I say, it's not always the case that we need to bring two people to any kind of an interview because the risk may be deemed to be low enough that it would be an inefficient use of resources. Yes, it might be nice to do that and it might be nice to have everybody to come down to the police station, but those things are just not always possible. And so, you know, you do what you can.

**MS. BREEN:** Right, but if possible, it is preferable.

**DR. HART:** I think, you know, I'll leave at what I've said. I said it would be nice if we had unlimited resources; could do that in every case. It's just the reality is you can't.

**MS. BREEN:** Okay. Now –

**THE COMMISSIONER:** Ms. Breen, just for scheduling purposes, how are we doing?

**MS. BREEN:** I have a few more questions to go. I would say another 20, 25 minutes.

**THE COMMISSIONER:** Yeah, that's –

**MS. BREEN:** I'll try to go as quickly as I can.

**THE COMMISSIONER:** If you could tighten it up a bit, yeah, because we're going to be well over I think.

Go ahead.

**MS. BREEN:** Dr. Hart, you've already testified that the goal of the interview in the threat assessment process with the subject is really to establish a rapport and to get as much information as you possibly can from the person. Is that correct?

**DR. HART:** Yeah. In fact, I think I said three things about the interview at home and I – but I think the – generally what you're saying is gathering information, it's not just from the person in terms of what they say but also from observing them in their surroundings.

**MS. BREEN:** And the observation of the reaction of the person to the interview is also important, is it not?

**DR. HART:** Yeah, absolutely.

**MS. BREEN:** Okay.

And you have talked about several times in your testimony, about the importance of always treating the subject with respect and ensuring dignity. Is that correct?

**DR. HART:** Yes.

**MS. BREEN:** And similarly, I've noticed in your manual or your guideline, the SAM, you had talked in that or what is printed there: It's important that the evaluators respect the rights of the interviewee by obtaining informed consent before an interview.

**DR. HART:** Yes.

**MS. BREEN:** And that appears at page 13 of your manual?

**DR. HART:** Yes.

**MS. BREEN:** Okay. Why is that important, Dr. Hart?

**DR. HART:** Well, it's two reasons. One of them is dignity of the person but the other one is, legally if you get information from somebody and you haven't obtained proper consent, it's not going to be of any evidentiary value.

**MS. BREEN:** Now, Doctor, you've also said – and this is actually in your report: If the risk assessment process is done improperly, it can escalate the risk. Is that right?

**DR. HART:** Yes. Yes.

**MS. BREEN:** And so the approach of the interviewer should be very empathetic and show an eagerness to hear what the subject has to say. Would that be right?

**DR. HART:** Yeah, that sounds reasonable.

**MS. BREEN:** And is it reasonable to say that the interviewer should avoid any acts that appear to be overbearing or threatening the subject?

**DR. HART:** Yes. I mean, in general, that's just not a good thing to do to anybody in an interview. It's –

**MS. BREEN:** Okay. I apologize; sorry, don't want to cut you off.

**DR. HART:** Oh, that's fine. It's just not the way that you establish rapport; it (inaudible) when it's also the way you treat people with dignity.

**MS. BREEN:** Okay, and you've talked about the watching or the monitoring of behaviour of the person who is being interviewed and how that is also very important in the purpose of the interview. So would you agree that if a person reacts emotionally or has an outburst of emotion, if the training of the interviewer is to not to overreact but to listen to the rant or take note of the rant, because it provides insight to the subject's grievance or it could provide insight?

**DR. HART:** Yeah, I'm going to put one caveat on that. I mean, in general, if people start to rant and if they start saying things that are inappropriate, if they start to threaten, if they start to make intimidating statements towards me or anybody else, one of the things that you would always do is to feedback to people that their behaviour is unacceptable because it's not in the interest of your personal safety to let people work themselves up and become ballistic.

So, for example, if somebody was crying, then I might sit back and let them have a cry. If they started to yell and scream at me, I'd say: your behaviour is inappropriate here or, you know, I'd like you to take a breath and calm down for a bit. I'm just here to talk. Would it make you more comfortable if we took a break for a few minutes? Would you like me to leave now? So I'd actually put limits on their behaviour.

**MS. BREEN:** Okay.

So at a point you would disengage if that became apparent from the person's behaviour?

**DR. HART:** I'm not calling that disengaging them; I'm calling it engaging or taking control of the situation.

**MS. BREEN:** Okay, and would you agree, Dr. Hart, that the information that you were seeking or you would be seeking from a subject would be best gathered from them at the beginning in a friendly atmosphere when the rapport is good?

**DR. HART:** Well, just to be clear, you can gather some information best in the beginning and there's other information that's going to require some hard questions that is going to make a person unhappy, but you have to ask those questions. The tough questions are ones that we usually wait to ask because we want to have good rapport first before we start to make somebody feel uncomfortable, but if I leave an interview and the person's not uncomfortable, then I haven't done my job because all I've done is let them say the things they wanted to say rather than trying to pull out of them the things that are actually important, but maybe difficult to discuss.

**MS. BREEN:** Okay.

And so when – would you agree then, though, when you're trying to get the information from the person who you're interviewing, when the atmosphere is friendly, that's when you would have your best chance to obtain from them information; for example, their intention about the communication that they had issued?

**DR. HART:** No, I'm just going to repeat what I just said. If I'm happy talking to them, that's when I'm going to talk to them about their family members or their friends or what they like to do and I'm going to get a sense about their general social adjustment. The minute I start asking somebody, why the hell did you bother making those tweets or what's up with that, I'm going to start to make the interview uncomfortable.

And so it's only when I make somebody uncomfortable that I'm liable to get useful information out of them. In fact, at that point my job is to make people uncomfortable because we're going to be discussing things that they're probably ashamed by or humiliated by or that they're worried that there might be resulting in police contact or somebody might lose their job.

So that is, by definition, not going to be a happy conversation. I make them happy first so that when we get to that part they don't get up and walk out.

**MS. BREEN:** Okay.

And in terms of the key information that the person or the interviewer would be looking for in a threat assessment with a public official, the access to firearms is a key issue, is it not?

**DR. HART:** Well, it's an issue. It's any sort of fascination with weapons or any recent acquisition of weapons or any history of use of weapons, not just firearms, but other kinds of weapons, would be something that's important.

**MS. BREEN:** Yes, and I've seen it described as one of the three main enhancers in the FBI report at page 24, firearms access being the first one.

**DR. HART:** Yeah, I think that's more of an American view of things. It's a less common thing in Canada for us to say that acquisition of firearms or collecting firearms is a bad thing. Most people in Canada, when they have firearms, they have long guns and they're going to be used for hunting purposes, so people have a legitimate reason to have them.

In the United States, the big concern is handguns and those are not something that people use for recreational purposes such as hunting. So that's the big concern. In the US, people will have high-calibre weapons and handguns that are much more likely to be used in a violent confrontation with a police officer than a hunting rifle.

**MS. BREEN:** Okay, but you would expect that an officer trained in risk assessment would be having this on his mind in terms of visiting a subject in his own home as to whether or not they had access to a firearm?

**DR. HART:** Yeah. In fact, you know, again, most of the things that we're talking about here are things that not only are important but things I think that were considered and were dealt with by Constable Smyth.

**MS. BREEN:** And, Dr. Hart, if a warning was to be given to a person during an interview, which I understand can happen in threat assessment in an intake or an information-gathering interview, there can be some warning given to the person that, look, your communication is not appropriate or something of that lines.

That would be done at the end of the interview, would it not, or it would be done after? You wouldn't start off the interview with a warning.

**DR. HART:** Well, we can start off the interview but I'd –

**MS. BREEN:** No.

**DR. HART:** – probably (inaudible) partway through, again, when I talk about the general flow of an interview, we'll usually start off with rapport building and then get rapport so that people are not in a – not terminating interview when they're in a bad state of mind.

So the difficult stuff is usually sandwiched in the middle between a gentle introduction and a somewhat reparatory phase where we try to patch things up and restore their relationship to try to keep a good working relationship. The difficult stuff all comes in the middle.

**MS. BREEN:** And when you're dealing with the difficult stuff, my understanding from the literature generally, in terms of general threat assessment principles, is that it should be done with significant tactical awareness.

**DR. HART:** Well, I mean, I think everything that police officers do (inaudible) with tactical awareness.

**MS. BREEN:** So that would go back to your basic training as an officer as you discussed in your direct, that this is a part of every officer's basic risk assessment.

**DR. HART:** Exactly. And, you know, I'm trying not to intrude on the area of personal risk assessment. My expertise is not on decision making and use of force by police officers, but I can tell you that I would expect that anybody working in the area of threat assessment should consider their own personal safety.

But of course, in many cases, protection of public officials means your life is on the line and you're supposed to be putting yourself in harm's way rather than them. That's the nature of the job.

**MS. BREEN:** Finally, Dr. Hart, in terms of, you know, looking forward, in terms of if there was to be any recommendations in relation to this area about the conduct of threat assessments for a protective services unit, my understanding is that the academia certainly supports, number one, a standardized protocol. Is that correct?

**DR. HART:** Yes. I just want to be really clear, though, the standardized protocol – there's several different protocols you could think of: one of them is for the assessment process and

another one is for the decision making that comes at the end of the assessment process. So something like the SAM that you discussed or other kinds of tools that have been discussed in the – for example, the training curriculum for the Managing Targeted Violence course, these would be things like the path to intended violence or pathway to violence or JACA, J-A-C-A, an acronym, that these types of tools are typically used to help you think about what information to gather, but also at the end to try to summarize the information and reach opinions.

So those tools are typically something that you will see referred to and documented at the end of the assessment process. But the other thing are standardized information-gathering protocols; like, for example, one could have a checklist of the kinds of information that one could gather. So that's just to help investigators to – or threat managers to keep things in mind. Like, for example, have you requested mental health records, have you searched for information about whether the person is on social assistance?

There's all kinds of things that you could put in the list like that. That would be a standardized information-gathering protocol as opposed to a standardized decision-making protocol. But, you know, the way that most people view this in the field is the more structure we have, the better.

**MS. BREEN:** And finally, Dr. Hart – and I guess this would be a bit of a dream, but I understand also that engaging a multidisciplinary team would be, as it's described in the FBI document, the single most important thing a community could do to further prevention. Is that generally the thought?

**DR. HART:** Yes, it would be ideal if every place had access to a multidisciplinary team. I could say the multidisciplinary team probably have (inaudible) people in it. So you could actually roll that into making a recommendation, that for a kind of a public protection office that you probably would require more than a couple of people, three, four, five, six people.

Now, that is probably not realistic in some of the Atlantic provinces given population size; however, there's no good reason why you can't have some ability to access resources that are shared. So, for example, to have a single office where you might share one person among several different law enforcement agencies, or to be able to make use of, just say, for example, RCMP behavioural sciences or OPP behaviour sciences, to have a memorandum of understanding that would allow you to include people in a multidisciplinary team on an ad hoc basis. That would be another interesting recommendation for a situation like this.

**MS. BREEN:** Okay, those are all my questions.

Thank you very much.

**THE COMMISSIONER:** Thank you, Ms. Breen.

Mr. Avis?

**MR. AVIS:** Good afternoon, Dr. Hart. I'm Nick Avis; I represent the Royal Newfoundland Constabulary.

**DR. HART:** I thought I was looking at myself for a minute.

**MR. AVIS:** I'm sorry?

**DR. HART:** I thought I was looking at myself.

**MR. AVIS:** Okay.



I just hopefully have a few questions.

When it comes to the information-gathering process, is there anything in any report, any exhibit that you've read, any question that's been put to you to suggest that there was more information that Constable Smyth could or should have gathered before his visit to Donald Dunphy's residence?

**DR. HART:** There's no – nothing in what I reviewed that makes me think that he should have gathered additional information before he went to the house. He certainly could have but there's nothing that indicated to me that that was something that was necessary in terms of doing a good job of his threat assessment, or even arguably necessary in terms of protecting his personal safety as somebody conducting a threat assessment.

**MR. AVIS:** In particular, I thought Ms. Breen might cover this, there's a suggestion that he should have interviewed Meghan Dunphy first. What is your comment on that?

**DR. HART:** Well, you know, again, this is one of those things. Interviewing family members can actually be something that makes people feel ashamed or humiliated. It makes them feel like their dignity is being attacked because you've actually indicated to other people that they know that there was an investigation ongoing.

So in most cases, I would take the preferred approach of contacting somebody directly. Unless there were strong contraindications to the contrary, I would start by trying by trying to have some contact with that person, you know, rather than having them find out from, you know, his own daughter that she was interviewed by the police. That would make me feel humiliated if I was in – Mr. Dunphy in that case.

**MR. AVIS:** And in respect of the earlier threat, uttering threats charge that was reduced to a peace bond, we know that that was around 10 years old. What, if anything, do you have to say about that?

**DR. HART:** I think it's very consistent with the behaviour that Mr. Dunphy was engaging in. It's something that was right on the border of being problematic. It was clearly bad enough for somebody to consider it to be an 'arrestable' offence in the beginning or something that could be resulted in charge.

But the fact that it was disposed of by peace bond makes me think that people thought that it could be – that the safety of people could be managed by alternative means other than proceeding with a charge and conviction. So – but it's completely consistent with somebody who occasionally says things that make other people intimidated or fearful.

**MR. AVIS:** Are you aware that the uttering threats charge was – involved a family dispute, including property and his sister-in-law?

**DR. HART:** That was my understanding, yes.

**MR. AVIS:** Okay.

One question put to you – surely, the only way to interpret Donald Dunphy's tweet was to speak to him. Am I correct in that?

**DR. HART:** That's what I would have done.

**MR. AVIS:** Okay.

One thing to touch on – I'm not sure if you can assist us here. In your work do you – are you able to give us any kind of general view of the impact on public officials of the kinds of, I don't know, things that are said against them publicly and otherwise? How does it affect a public official? I'm really talking about the importance of this kind of work.

**DR. HART:** Yes, there's a couple of things. One of them is my experience being that many of the public officials in fact are not fearful enough for their own safety. That they tend to view this as something that's more important for protecting the safety of members of their staff or other government officials, and they often minimize the threat to themselves until something happens when they may actually become extremely fearful and they realize that, you know, this is being slowly accumulating this sort of stress.

So the fact is it's under occupational health and safety law in many provinces and under common law in many provinces. We, as employers, have to take reasonable steps to protect the safety and well-being of anybody who's an employee, including public servants and including elected officials. So it's important to have these kinds of units in place, from an occupational health and safety perspective, to try to help them manage the threats to themselves objectively, but also the subjective experience of fear that they might have.

But the other thing is, it's not just about those officials. The people who may pose a threat to public officials that are elected may also pose a threat to many other people on the way to hurt those others. So, for example, as I've just mentioned – well, law enforcement is often in the line of fire here, but also we would have people who work in the offices, administrative assistants and so forth. So it's actually important to protect the safety of a large number of people, not just a couple of elected politicians.

**MR. AVIS:** Would it also be – for example, let's look at the area of justice officials, let's say a judge. It would also be important if a person is making some kind of intimidating or comments towards a judicial officer, one of the concerns would also be the administration of justice is being impacted. Is that fair to say?

**DR. HART:** Absolutely. And many protective services units would deal with judiciary or with other justice officials, Crown and even private bar. And we would have, in many cases, people who would be able to provide protective support to public employees like probation officers, parole officers, child protection workers, victim-serving workers.

So, for example, in British Columbia, the sheriffs – BC Sheriffs Integrated Threat Assessment Unit provides services to a wide range of provincial government employees, including members of Crown corporations and so forth, who are the subject of inappropriate contact and communication from members of the public.

**THE COMMISSIONER:** Mr. Avis, I think we're getting a bit too general in some of these questions. Sorry, you're taking advantage of Dr. Hart's expertise, but I think we need to, you know –

**MR. AVIS:** I –

**THE COMMISSIONER:** The questions we put should be ones that require that expertise.

**MR. AVIS:** Well, no one has commented upon that issue yet about the issue of the importance to the public officials because we haven't had anyone that deals with them.

**THE COMMISSIONER:** Well, it seems to be –

**MR. AVIS:** I'm –

**THE COMMISSIONER:** Frankly, it seems to be a matter of common sense on which I wouldn't need expert evidence.

**MR. AVIS:** Okay, well, I – those were just –

**THE COMMISSIONER:** But I'm not belabouring it, go ahead.

**MR. AVIS:** I just have a couple of general questions. And I intend to move into the area of threats in a moment after one more question.

You indicated that when you yourself are interviewing people or speaking to people in this vein, if they are getting agitated you will, I guess on occasion or if you need to, tell them to calm down. Is that correct?

**DR. HART:** Yeah.

I mean there's, in general, it's best not to tell people what to do, but if people speak very uncontrolled, sometimes it's necessary to say – and usually we might do something like this, put a hand up and just say: Your behaviour is becoming unacceptable, you're raising your voice, let's please try to keep this polite and to give them a firm direction.

**MR. AVIS:** Okay.

Now, I'm going to see if I can delve into this area of threat. First thing, do I understand it correctly that when it comes to a personal risk assessment and a threat assessment in, say, in the protection of public officials, that the same piece of information may inform both assessments?

**DR. HART:** That's correct.

**MR. AVIS:** For example, if someone had said someone should shoot the premier, and you find out the person has a gun, it informs both assessments. Am I right?

**DR. HART:** Absolutely.

**MR. AVIS:** Okay.

So other than factually, is there any other way that these two forms of assessment coincide?

**DR. HART:** Only that I think as we discussed before, on a moment-to-moment basis we would expect that any law enforcement officer in functioning in a protective services unit or in the context of protection of public officials, would also be required to, and as a matter of course, would consider their own personal risk. So you've got two things: you need to get your job done, which is protection of public officials, but you also along the way, need to try to take steps to protect yourself as much as possible.

**MR. AVIS:** Okay.

So I'm now going to venture into the area of threat and I call it threat confusion. On page 3 of the Coleman-Massine report, at the bottom, it's stated that: On 3 April, 2015, Constable Smyth received an email, et cetera advising of a post on social media that, although perhaps ambiguous, could be interpreted as a threat to provincial government officials. You know the tweet: "won't

mention the names this time, 2 prick dead MHAs ... might have good family members I may hurt.”

Do you interpret that as a threat?

**DR. HART:** No. I interpret it as a statement of concern and that indicates that somebody may – there – it’s – we need to see whether somebody may pose a threat to somebody’s safety, but it is not something that I took as being a threat in and of itself that is an utterance that communicates intent to harm.

**THE COMMISSIONER:** Okay, now we’ve had that answer before and we had – it was questioned and answered before. So, again, we’re getting into duplication, Mr. Avis. I don’t want to be unduly restrictive but –

**MR. AVIS:** Well –

**THE COMMISSIONER:** – the idea of the exam is not – the examination is not to go back over what other people have already established.

**MR. AVIS:** Well, we may have gone over the topic.

**THE COMMISSIONER:** Sorry?

**MR. AVIS:** I have a number to put to him. I wasn’t aware that that one in particular had been asked but you were still saying that you have confusion over this issue and I believe if I can identify – I’ve only got like four more examples.

**THE COMMISSIONER:** Go ahead.

**MR. AVIS:** I’m hoping that that may help with the matter.

Now, on page 9 it states that the tweet is somewhat ambiguous and could be interpreted as threatening. Perhaps just a straight answer, do you consider that, the tweet, threatening. Yes or no?

**DR. HART:** Yes.

**MR. AVIS:** Okay.

**DR. HART:** You know, in a vague sense as being threatening, not as being a threat, a clear threat as per the *Criminal Code*. But it’s threatening, yes.

**MR. AVIS:** Okay.

I go to – sorry, page 38 of the report. This, I believe, is Sergeant Massine. He says: “As an operational police officer with 30 years of experience, the writer has investigated dozens of allegations of threats.” Do you consider this an allegation of threat?

**DR. HART:** You know, so I did not consider this to be an investigation of an alleged offence. This was an investigation for the purposes of protection of public officials. So I saw no indication at (inaudible) point that Constable Smyth was interpreting this as an investigation of an alleged offence.

**MR. AVIS:** Okay.

Thank you, Dr. Hart.

**DR. HART:** Thank you.

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

Mr. Freeman, Ms. Rasmussen?

**MS. RASMUSSEN:** We have no questions, Mr. Commissioner.

**THE COMMISSIONER:** No questions.

Is that everybody? It's been a while. I don't know if I've –

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

**THE COMMISSIONER:** Go ahead, Ms. Chaytor.

**MS. CHAYTOR:** Sorry, I won't be long.

Hi, Dr. Hart, I introduced myself earlier. I'm Sandy Chaytor, one of the Commission co-counsel. And thank you for taking the time to be with us today.

**THE COMMISSIONER:** Maybe if put your mic down. Thank you.

**MS. CHAYTOR:** Thank you, sorry. Taller people came before me.

I just have a question on – in your – the point that Mr. Avis asked you about the – basically, what might be an issue in doing – there might be overlap in doing the threat assessment as well as doing a personal risk assessment, that there might be overlap. And one of the things I was wondering about on page 6 of your report, and again, I hope this doesn't muddy the confusion again. But on page 6 of your report you concluded: "... Cst. Smyth should have concluded the tweets indicated Mr. Dunphy was experiencing violent thoughts and were recklessly or deliberately intimidating or fear-inducing utterances, and therefore that there were reasonable grounds to believe that Mr. Dunphy posed a risk of violence towards public officials."

And, my question is then: Would there also then be concern that it could pose a risk of violence to an officer who is tasked with the protection of these officials?

**DR. HART:** Yeah, not necessarily, of course, because it depends on how targeted somebody is. So there was no mention that I saw of any tweets specifically directed at police officers or no mention of that at law enforcement, so it was really at elected officials or people involved in work safe or the Workers' Compensation. So I didn't see any indication from the information available at that time to suggest that Mr. Dunphy might pose a risk to police.

**MS. CHAYTOR:** Okay.

And the idea of – you said it was appropriate to go without a uniform presence and to go in an unmarked vehicle, that that would have been appropriate in this situation, it's a low to moderate risk that's being looked at. I think that's, if I'm paraphrasing, that's what you said. And one of the important things in considering doing that would be not to publicly humiliate the individual.

**DR. HART:** Correct.

**MS. CHAYTOR:** And it's always important to respect their dignity, I think is what I heard you say.

**DR. HART:** Correct.

**MS. CHAYTOR:** And I guess I'm just trying to reconcile that with visiting the neighbours, in a small town visiting the neighbours and speaking to the neighbours about what you're doing.

**DR. HART:** Yes, so – and that's one of those situations where it looked like, based on Constable Smyth's description of what was happening, is that he drove out, tried to make the effort to approach Mr. Dunphy himself directly and was unable to do so. So at that point he's going to decide: Do I go home and try again later and have this delayed another day or another couple of days, or am I going to go view some documents or what am I going to do. And makes the operational decision that given that I'm here, why don't I go and see the neighbours and just see whether they seen Mr. Dunphy.

Doesn't it – at the time he doesn't even have to identify himself as being a law enforcement officer or even to say what the reason for his visit. So there's ways for him to try to figure out whether Mr. Dunphy's at home, for example, that don't involve disclosing information that would otherwise be considered private, but in the course of interacting with the neighbours ends up thinking it's a good opportunity to gather information.

So I think that was a call on the ground or it's an audible call, something that you – a decision that you make spur of the moment in the field and it seemed to me to be an appropriate one. I didn't have a problem with it, but I think what's more important to me was that the original decision to approach Mr. Dunphy directly and to try to get information from him directly was a good one.

**MS. CHAYTOR:** Okay.

And then the point again about without uniform or marked car, and for the purposes of respect and dignity and not publically humiliating, Commissioner, has heard evidence – and I'm not sure if you would have been aware of this – but that this was a very small rural town in Newfoundland and Labrador where vehicle was readily identified as being a police vehicle, in fact, by other neighbours. And I'm not sure how – whether or not you were aware of that fact or not in terms of the consideration of going in a marked car or without somebody with a uniform, if that factored into your opinion.

**DR. HART:** It doesn't really too much. I mean I think probably a good proportion of the citizenry can tell the difference between an unmarked police car and a regular vehicle if it's from the motor pool, because they got different tires and they got a different layout.

**MS. CHAYTOR:** Yes.

**DR. HART:** So it doesn't surprise me that other people might notice if they paid attention to it. I think it's more the going through the motion of trying to show somebody that you're not, and if I can put it this way, outing them.

There are situations where we would go and do a threat assessment deliberately, and provocatively with uniformed members in marked police cars because we might want to – I would think the situation calls for a show of force or a means of demonstrating to somebody that there is a police response that's possible and that could occur if they continue on a path of behaviour. But in other cases, it's just trying to show the people the basic dignity of not making a bid deal of it.

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

Those are my questions.

**THE COMMISSIONER:** Okay, I think we have everybody covered.

Dr. Hart, thank you very much for your assistance in this inquiry. I have to say I was impressed by seeing a report completed in the air. It's not something I tend to do. I tend to be asleep after the first 10 minutes aboard a plane. But we appreciate the fast response time you gave to Mr. Kennedy's request for assistance and we appreciate your testimony.

**DR. HART:** Thanks very much.

**THE COMMISSIONER:** Okay, we'll adjourn now until 9:30 tomorrow morning.

**MS. SHEEHAN:** All rise.

The Commission of Inquiry is now closed.