



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 38

Commissioner: Honourable Justice Leo Barry

Wednesday

8 March 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good morning.

Okay, we have a lot of work to do today.

Mr. Kennedy, the – I got an email from you yesterday where you sounded surprised hearing that we were going to deal with both Mr. Massine and Mr. – Dr. Coleman and Sergeant Massine. You were here when we decided that and you agreed on the two hours would be sufficient for your –

MR. KENNEDY: Well, the two hours is still–

THE COMMISSIONER: – examination.

MR. KENNEDY: Two hours is still sufficient. I'm not – but I am surprised. I'm surprised that both witnesses are testifying at the same time.

THE COMMISSIONER: It's not uncommon. It was done at the Cameron inquiry for example, and they have discreet portions of their reports that they can refer you to. What is the problem with –?

MR. KENNEDY: They're separate witnesses, Commissioner, with separate areas of expertise. What we have is a situation where we've talked – throughout this inquiry you've talked about the principles that govern the inquiry such as fairness and proportionality. Well, these are expert reports which are very critical of my client.

THE COMMISSIONER: Well, we'll deal with that and I have – before we get into that, let me have some preliminary remarks I wasn't finished with. But if – I'm dealing now with your surprise that there's – both of them are going to be dealt with at the same time. You shouldn't be surprised; you were here when we set the schedule. Anyhow –

MR. KENNEDY: I'm not saying – I was here, I agreed with the two hours. I'm saying still that two hours is sufficient for me but maybe I misinterpreted it.

THE COMMISSIONER: Now, the – first of all, with respect to how we're going to proceed, Constable Smyth has requested that the report of Dr. Coleman be excluded from evidence on the grounds that he lacks qualifications and lacks objectivity in that: (a) he allegedly demonstrates, through pejorative language used, a bias against Constable Smyth; (b) he allegedly comments negatively on Constable Smyth's credibility, which it suggests is a role for the trier of fact, and unduly denigrates his professional training and experience; (c) he allegedly ventures significantly into an area outside Dr. Coleman's expertise, as it relates to the conducting of a threat assessment in the context of the protection of public officials; (d) he allegedly used inflammatory and prejudicial language of the type that should not be contained in the report of an independent, objective and impartial expert; and (e) that he submitted a report allegedly replete with speculation.

Now, Mr. Kennedy, counsel for Constable Smyth relies upon White Burgess at paragraphs 40 and 45 which held that independence and impartiality bear not just on the weight but also on the admissibility of the evidence in certain cases. Counsel, Mr. Kennedy, notes in passing the Saguenay case at paragraph 106.

Mr. Kennedy omitted to refer to paragraphs 46 and 49 of White Burgess where the Supreme Court of Canada held that, generally, it will be sufficient for a proposed expert to attest that he or she is able and willing to comply with the expert's duties to the court. This is sufficient to meet the admissibility threshold. If there's a challenge, the burden shifts to the party opposing admission to establish a realistic concern that this expert is unable or unwilling to comply with the duty. I refer you there specifically to paragraph 46 of White Burgess.

At paragraph 49, the Supreme Court of Canada noted that the threshold requirement is not – in their words – particularly onerous and exclusions should occur only in – again their words – very clear cases and will likely be – their words again – quite rare. And this approach has been followed, for example, in our courts in the case of Anderson v. Canada. That approach was applied.

I'm intervening at this point in today's hearing making these comments because I have the same concerns as those expressed by Cresswell J. who was quoted by Justice Cromwell at paragraph 27 in White Burgess where Cresswell J. noted that: A misunderstanding of the duties and responsibilities of expert witnesses may unduly contribute to the length of a trial or inquiry. I added the inquiry.

Mr. Coleman – Dr. Coleman has attested to his ability or will be attesting, as I understand, to his ability and his willingness to comply with the duties he owes as expert to this inquiry. And if that confirmation comes from Dr. Coleman, as far as I can see, on the law he has met the test, the threshold test for admissibility.

And I have read your briefs and – both Mr. Kennedy's and Mr. Avis's briefs. Mr. Avis appears to be agreeing significantly with, most anyhow I think, of Mr. Kennedy's and it seems to be a shared workload to some extent. And, again, I'm a little perplexed, as I had mentioned before, about I can see where Constable Smyth may want to take the position, well, we'll exclude certain things in the interest of protecting my own particular interests. But I'm surprised that the RNC would not want to have all the information that can be helpful out there so that – not expecting that it will be admitted, it can be contested.

Your submissions will point out if anything goes to weight, for example, how much weight should be given one witness or another witness or the comments of one witness as opposed to another. But in any event, as far as I can see, Mr. Kennedy, what your – appear to have embarked upon is an attempt to establish what the Supreme Court of Canada has said must be established, which is a realistic concern going to the objectivity and so forth of the expert witness. And you've gone through – and I've mentioned the various concerns that you've allegedly found in the report.

Now, in terms of pejorative language, just because language is critical does not mean that it's pejorative. And in the examples you've given in your brief, I haven't seen anything that would meet the level of what might be considered pejorative. And I'm going to just refer to a few definitions here in a moment, which might see a considerable amount of what you've set out in your brief – it may be dealt with.

MR. KENNEDY: A great opportunity for an argument, Commissioner.

THE COMMISSIONER: Sorry – just one second now. Just one second, you’ll have your opportunity.

I have nothing, as I say, see nothing in what you’ve set out in your briefs. And what I’m – the reason I’m doing this is to indicate to you what you have to do at this stage in order to satisfy the court that there should be a total exclusion of an expert report as opposed to admitting it and questioning the weight of comments that are made in the report.

The – sorry, I have difficulty reading my own writing in here. Yeah, I should also note – I meant to note this at the beginning – in your brief, Mr. Kennedy, you have started off with – sorry – a reference to an earlier ruling where you state that in the decision dated February 13, in my earlier ruling, that I found the two-step test outlining White Burgess applies at a public inquiry.

Now, the approach I’m taking and have been taking and as – one second.

The approach I’m taking is that which is noted in Ratushny but – and I’m sorry, I’m just trying to put my finger on it now. Basically, Professor Ratushny points out that the safe approach when you’re dealing with evidentiary questions is to – in an inquiry, is to stick as close as you can to the body of evidence that’s out there if you’re dealing with hearsay, for example, or opinion or expert evidence. But you’re not completely bound by the, as I see it, in an inquiry in terms of determining what I want to hear what I believe would be helpful for me in understanding the questions I have to deal with. It is not as strict as a situation where you have adversarial litigation.

The other point that should be made is that the Commission is not an advocate for one position or another, so when there’s – nor are the experts that are called by the Commission, which is why I find it a little bit difficult to understand where you get the basis for a bias. And I know you’ve referred to specific comments and we’ll be going through those, but who are the experts biased in favour of and why?

MR. KENNEDY: Biased against, Commissioner.

THE COMMISSIONER: Pardon?

MR. KENNEDY: Biased against.

THE COMMISSIONER: Is there a reason? Is there a particular reason that I’m missing?

MR. KENNEDY: We’d like to explore it.

THE COMMISSIONER: Pardon?

MR. KENNEDY: That’s the reason we’d like to explore with them. Correct.

THE COMMISSIONER: That’s the reason you’d –

MR. KENNEDY: We’d like to cross-examine and ask questions on the (inaudible).

THE COMMISSIONER: Well, you’re going to have the – so I take it you don’t see any reason that I missed, in terms of a prior relationship or something, that would show a bias on their part? You’re relying upon what you’ve set out in your brief and the comments in their reports, are you?

MR. KENNEDY: Well, as outlined, I think it was in Brake-Patten, Commissioner, there's two ways bias can arise: one is in the –

THE COMMISSIONER: Okay. Again, now, these cases that you've cited are to some extent overtaken by White Burgees, are they not?

MR. KENNEDY: If you want to accept that our Court of Appeal, that the cases are overtaken by the Supreme Court of Canada, certainly.

THE COMMISSIONER: Well, some of my colleagues on the Court of Appeal might object to my taking that approach right now, but I think I am entitled to refer to the authority of the Supreme Court of Canada when it comes to, at the inquiry, deciding whether experts have met the test for admissibility.

But just let me, if I could for a moment note, some of your concerns arise from adoption of an interpretation of language which frankly is not one that I believe should be adopted.

Sorry, I got my notes here. I've got a lot of –

MR. KENNEDY: This brief was written in less than 24 hours.

THE COMMISSIONER: Sorry?

MR. KENNEDY: This brief was written in less than 24 hours.

MS. CHAYTOR: Your mic is not on.

MR. KENNEDY: I'm just making the point the brief was written in less than 24 hours.

THE COMMISSIONER: All counsel was trying to do was tell you your mic was not on and that you weren't being picked up, Mr. Kennedy.

The brief was written in 24 hours. Well, that's fine; it was a fairly good job –

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: But it's not – what I'm suggesting to you is that I don't want to see any undue delay in your embarking upon challenges to the qualifications of expert witnesses, when in law, you have not established any basis for taking that approach.

So what I'm suggesting we do is we get into the qualifications which you will be entitled to challenge in a normal way and you'll make your submissions and I'll decide whether or not the expert should be qualified. But if you're going to get – based on their training and experience, but if you are going to get into a lengthy argument on the points that are raised in your brief as a basis for totally excluding the reports at this time, then I don't consider that I should go down that road because it is based upon a misinterpretation of what the Supreme Court of Canada has said.

That is not to say that you will not have the opportunity to challenge or to question individual comments. And what I'm additionally going to suggest is that we take a quick run-through both of the reports and you let me have your areas of concern. And there are several, I think, that could be dealt with almost immediately in terms of you seem to have made valid points. So that would be a quick run-through which would eliminate unnecessary questioning or examination on points where it would no longer be relevant.

Just give me a second now, I haven't found what I wanted to – I don't know if counsel has the definition – oh, here they are. I have too much paper in front of me. Here are two definitions of words that, Mr. Kennedy you rely on strongly in the course of your brief.

Apparently; you've suggested that because the experts have used the term apparently a fair bit in their report, that that somehow is showing a lack of objectivity or a bias. And you're basing it upon a certain interpretation. Here is an appropriate interpretation I believe. Apparent: Used to describe something that appears to be true based on what is known. So it doesn't mean that anyone is being criticized because you're pointing out that it's what appears to be true based on what is known.

Spurious – you suggest that the word “spurious” is somehow improper. The definition of spurious: Of a line of reasoning – when it's applied to that which was, I think, the case in your brief when they refer to a line of reasoning as being spurious – apparently but not actually valid. So there's a bit of overlap in terms of apparently is included in the definition of spurious.

Now, when we get into your brief and look at points you're relying on as being a basis for challenging objectivity or bias, if you use these definitions, a number of them are excluded; it doesn't make any sense. And another thread of logic that seems to flow through your brief is that the experts cannot testify to anything that is critical of Constable Smyth, anything to suggest that he didn't engage a proper police practice, for example, because that somehow goes to the credibility of Constable Smyth. Well – and that's the question of the ultimate issue.

The case law indicates that the ultimate issue is just about out as far as Canadian law is concerned; not totally as in Mohan and I think it might be repeated in White Burgess. They point out that the law appears to be that the closer you – and, remember, this is adversarial litigation, not necessarily as strict in an inquiry – the closer you get to the ultimate issue, the more you should scrutinize what is proposed to go in.

So what I'm going to suggest, and I'll hear from you in a moment, is that we, as I say, take a quick run-through. That word “neglect” that's there in one paragraph, while I don't think it's improper, for greater certainty and to avoid unnecessary argument and examination I'm prepared to have that word, for example, redacted –

MR. KENNEDY: Excuse me, Commissioner, if we're going to talk about – if there's going to be anything redacted and we're talking about it in public, then –

THE COMMISSIONER: Okay, one second now. I forgot. Thank you. I was getting to it but I'll get to it now instead of subsequently.

That's the issue of whether the redaction should be in camera or in public. I have never heard of doing redactions in camera. They're done – if you look at the –

MR. KENNEDY: Do it in voir dire.

THE COMMISSIONER: Sorry?

MR. KENNEDY: It would be done in voir dire.

THE COMMISSIONER: Okay, well, we'll do it in a voir dire but it's in public – it's not – this is a voir dire when you get into consideration of the qualifications of an expert and a decision to admit.

Now, if you want to go through the formal steps, we can say we're now in a voir dire. And then what will happen is the qualifications will be put forward, there will be argument examination and argument on the qualifications and then a decision will be taken.

And then, what do we do? Go back over the same facts that are put forth? No, they'd be adopted in evidence. So we're, you might say, considering a shortcut. But if you want to have it as a formal voir dire, Mr. Kennedy, we can do that.

But I thought the issue was – it wasn't that it be a formal voir dire – and you're shaking your head, I take it, indicating you don't need it. I thought your point was there were certain criticisms of Constable Smyth that you didn't want to be discussed in public. And here is where I don't see that the law supports that position.

As you know, I've already had one submission and we considered it in private because there was an allegation that it would be so prejudicial, if released, that it would harm Constable Smyth, unduly prejudice Constable Smyth. If you wish, I'd ask you to identify what are the specific areas? You could do it by paragraph and line or whatever if you want to.

But, again, from going through the brief I don't see anything that's of such a prejudicial nature as, for example, compared to what we dealt with there a few days ago. So am I missing something there in terms of the in-camera aspect?

MR. KENNEDY: Commissioner, it's been a long two months. We're in the last couple of days

–

THE COMMISSIONER: Yeah, okay, we're in the last few days. Yeah.

MR. KENNEDY: So I'm not interested today – you've obviously, you've read the brief, you know where you're going with your decision. I don't think, Sir – I'm just going to place certain comments on the record, it would be my preference, and we move on and deal with the evidence.

THE COMMISSIONER: That was what I was hoping you would say because I don't see yourself or your client being prejudiced in that – by taking that process. But whatever you want to have put on the record, Sir, go ahead and put it on the record what – sorry, in a moment, I'm just going to give Mr. Avis a chance to see if – go head.

MR. AVIS: Yeah, just to let you know that we are moving in the same – sorry, Commissioner, I should stand up. Forgive me.

You know, we're moving in the same direction. You know, I am understanding what you're saying. You've read the briefs, you know, you don't – I'm not going to belabour any argument. We have limited time and we need to move on.

I will also have some comments but pretty much leave it at that. I do, however, have at least one paragraph that I want to talk to you about excising because I think it's the most damaging.

THE COMMISSIONER: We can do it right now if you wish.

MR. AVIS: Okay, well just give me a second. It is page 13 –

THE COMMISSIONER: Sorry, that's of the report, is it, of ...?

MR. AVIS: Yes, page 13 of the report.

It's in the middle. It's in paragraph 24 of the RNC issues with –

THE COMMISSIONER: Page 13 –

MR. AVIS: Yes, it's in paragraph 24 quoted entirely of the –

THE COMMISSIONER: Wait now.

MR. AVIS: – RNC issues with it.

THE COMMISSIONER: I don't have a paragraph reference.

MR. AVIS: But, no, if you look to my – I'm just saying it's on page 13. It's in paragraph 24 of RNC issues with Coleman-Massine report.

THE COMMISSIONER: Okay.

MR. AVIS: Recorded in full. I'm not going to read it out.

MS. CHAYTOR: (Inaudible.)

MR. AVIS: Right.

THE COMMISSIONER: Sorry, one second now.

Okay, thank you.

MS. CHAYTOR: Yeah.

MR. AVIS: So I would ask –

MS. CHAYTOR: Commissioner, page 13. It's the second paragraph from the bottom.

THE COMMISSIONER: Yeah, okay. Let me see it there now.

MR. AVIS: Beginning with the word "Situations."

THE COMMISSIONER: Situations, yeah I see that.

MR. AVIS: I would ask –

THE COMMISSIONER: Just let me read it for a second.

MR. AVIS: I'd ask you to read it because I'm not going to read it out.

THE COMMISSIONER: That's okay.

All right, if I could speak generally, we're dealing with de-escalation and we have an expert who will indicate qualifications in de-escalation, albeit, as counsel pointed out, often in the context of mental health issues or persons in crisis.

However, I think an accurate view of, from where I see it anyhow, de-escalation is de-escalation. Whether it be in the case of persons in crisis or someone who has no mental health problems,

there are still certain techniques involved in de-escalation which I believe that this expert will be able to address, Mr. Avis.

And, frankly, you've properly noted, it's an important paragraph, but I see it as important as possibly if I accept the expert's opinion over one other expert or another expert that's been put in by one of you. I think it's important for this inquiry to consider whether there is adequate attention paid in training to de-escalation techniques. And this is significantly and thoroughly discussed in I think it's the Iacobucci report, and other recent inquiry reports where the stress is on getting away from the macho type of confrontational approach to a more use of proper communication skills to de-escalate situations.

And nobody is saying that it's easy and, you know, we're not going to be naive. And at certain times de-escalation just doesn't fit into the equation. But I wouldn't want to delete this if it means that we're not going to have the opportunity to have information from the RNC regarding

–
MR. AVIS: Can I cut to the chase, Sir? I don't disagree with –

THE COMMISSIONER: Sorry.

MR. AVIS: I don't disagree with a word you're saying. I'm sorry to interrupt you I'll just cut to the chase.

THE COMMISSIONER: Go ahead.

MR. AVIS: No problem with him testifying on that. As I've indicated in the RNC – might as well understand the RNC in acting took every recommendation from the Reid and Power inquiry and enacted it. The RNC took every recommendation from the Lamer Inquiry and –

THE COMMISSIONER: I know, I was pleased to see that when they did. Yeah.

MR. AVIS: Right and we –

THE COMMISSIONER: And I don't want to have a recommendation –

MR. AVIS: No, but –

THE COMMISSIONER: – going in that's not – doesn't have a firm foundation which –

MR. AVIS: Yes,

THE COMMISSIONER: – the RNC believes, well ignore that –

MR. AVIS: Right.

THE COMMISSIONER: – that's not very good.

MR. AVIS: See, the difficulty is it's like with the definitions you see. Until you question the witness you don't really know what they meant.

THE COMMISSIONER: No, that's fine. We'll –

MR. AVIS: If I'm not – I'm not going to belabour it. I don't know how far I'm going but just to let you know spurious, another definition from the *Shorter Oxford English Dictionary* –

THE COMMISSIONER: What is it?

MR. AVIS: It's the way I pronounce it.

THE COMMISSIONER: Spurious?

MR. AVIS: Spurious, yeah.

THE COMMISSIONER: I understand. You have another definition.

MR. AVIS: Superficially resembling or simulating something but lacking its genuine character or qualities, not true or genuine, false, counterfeit.

THE COMMISSIONER: Yeah.

MR. AVIS: It's like the tweet. Until I question the expert, I don't know what he means. I'm not going to go there.

THE COMMISSIONER: Anyhow –

MR. AVIS: It's the way this is expressed, not his right or our interest in hearing him talk about de-escalation. We're looking forward sincerely to hearing what he has to say with the limitation.

THE COMMISSIONER: Okay.

MR. AVIS: It's just the way it's said. If that's –

THE COMMISSIONER: Well, there's no reason to pick the most negative explanation or definition for spurious. You could have picked a more neutral one that I noted –

MR. AVIS: Well, I –

THE COMMISSIONER: But anyhow, I'm sure the expert will testify as to what he meant by the term.

MR. AVIS: Sure.

THE COMMISSIONER: But –

MR. AVIS: But all I'm saying, Sir, about this paragraph, it's not – we're not in any way, shape or form trying to limit his evidence on this issue.

THE COMMISSIONER: Okay.

MR. AVIS: We're just saying: We object to the way he says it. Does he really have to say it this way? Chop out this paragraph and we're home. It's just one paragraph. It's the one that causes my client the most difficulty. Absolutely, he's just got to express it better.

See, this is going to be a public document. There are two trials here. I have no concern about you being influenced by this at all, none whatsoever really. But I have a problem with it going out into the public and how it's going to be interpreted in the, you know, the other trial that's going on here.

I'll leave it at that. No objections whatsoever to him entering into that area of expertise. And we look forward –

THE COMMISSIONER: Well, again, remember this is the opinion of the expert. It does not mean that I'm adopting it.

MR. AVIS: I have no problem with you, not for one second. You're an experienced Trial Division judge, Court of Appeal judge, counsel.

THE COMMISSIONER: Anyhow leave that with me.

MR. AVIS: That's –

THE COMMISSIONER: I got your point and I'll give it some thought.

MR. AVIS: Exactly and –

THE COMMISSIONER: Mr. Kennedy, just before I finish the –

MR. AVIS: Sorry.

THE COMMISSIONER: In terms of taking a quick run-through and I'm not – don't want to foreclose your opportunity for any legal points that you want to make on my previous comments. I've, as I say, read your briefs several times and it seems to me that the most efficient way of – considering the law in *White Burgees*, the most efficient way to proceed would be to have these individuals who are coming in as experts called, and ask whether they are prepared to comply and able to comply with their duties of the court, and then move on to the setting out their qualifications having you questioned their qualifications.

And in the course of that, you can indicate, if you wish, whether you have suggestions that certain things do not just go to weight but individually should be considered as appropriate for exclusion. And that, as I say, would be done in the course as we got to the particular point rather than proceeding in a vacuum and proceeding on a footing that's not supported by the approach set out in *White Burgess*.

MR. KENNEDY: Commissioner, if there's – I've outlined some of the comments that cause concern.

THE COMMISSIONER: Yeah.

MR. KENNEDY: If there's anything there, I mean you can go through those now. I don't want to waste any time. If you look at them and say that's not something that should be excised or that's something I would consider excising, I'm certainly satisfied with that.

THE COMMISSIONER: Well, I'm – thank you.

MR. KENNEDY: We don't need to go through each one in detail, Sir.

THE COMMISSIONER: Right.

MR. AVIS: I may say, Commissioner, that again, in light of what you're saying, I do feel, because time is of the essence –

THE COMMISSIONER: Right.

MR. AVIS: – that I don't feel if Mr. Kennedy doesn't feel it, we don't either. You've got my submission. You've read it. You know, like they say, 80 per cent of cases are decided on what's filed.

THE COMMISSIONER: Right.

MR. AVIS: You're entitled to do that.

THE COMMISSIONER: Right.

MR. AVIS: There's nothing wrong with this happening. It's the process and it's done in courts all the time. My only – and as for challenging the qualifications and what have you, I only – I've raised one question, I've raised it to you and I leave it with you.

And the objection came up in my email yesterday with more clarity and it's simply this: That cannot see in Dr. Coleman's CV anything that makes him an expert, even in personal risk assessment –

THE COMMISSIONER: That's the other –

MR. AVIS: – any more qualified than all the police officers that have testified. If, indeed, it is based upon his experience, well, a lot of the officers who have testified had the same experience.

THE COMMISSIONER: And some of them you might have been able to call as experts and they might have qualified, and I'm not questioning that, Mr. Avis, but I think when you hear from Sergeant Massine, for example, or from Dr. Coleman, you will – I think you were referring to Sergeant Massine specifically at that time, were you?

MR. AVIS: No –

UNIDENTIFIED FEMALE SPEAKER: Dr. Coleman.

MR. AVIS: No, Dr. –

THE COMMISSIONER: Oh, Dr. Coleman?

MR. AVIS: It's both.

THE COMMISSIONER: Okay. Sorry. You're –

MR. AVIS: We're not challenging Massine's qualification as a use of expert – a use-of-force expert which includes –

THE COMMISSIONER: Right.

MR. AVIS: – personal risk assessment.

THE COMMISSIONER: Yeah.

MR. AVIS: Not challenging him on that.

THE COMMISSIONER: But I frankly didn't – couldn't understand why you were challenging Dr. Coleman as a threat assessor in the context of public officials when he doesn't purport to be

that. I know you refer to a couple of paragraphs where he makes comment on Constable Smyth being involved with the PSU but –

MR. AVIS: Well –

THE COMMISSIONER: – surely you're not saying that, are you, that Dr. Coleman is not entitled to testify regarding what would be appropriate personal risk assessment –

MR. AVIS: No, no.

THE COMMISSIONER: – which is a big part of that?

MR. AVIS: No, I'm not –

THE COMMISSIONER: You suggest that –

MR. AVIS: I'm not challenging that, Sir. That's not what –

THE COMMISSIONER: Yeah, but you've suggested that the whole of paragraph 3.0.a., I think it is, or b., should be –

MR. AVIS: Okay –

THE COMMISSIONER: – should be excluded.

MR. AVIS: You've told me, you've – forgive me.

THE COMMISSIONER: Okay.

MR. AVIS: I'm going with what you're telling me. I'm not – I put it forward, you've made your point, not going to –

THE COMMISSIONER: Okay.

MR. AVIS: Not going to spend any more time.

THE COMMISSIONER: All right.

MR. AVIS: And with respect to the other point – you'll forgive me because I'm going on memory, it's been seven years, seven weeks since we've started – it was my understanding that there was some understanding that we didn't need to qualify every police officer to do this because we were going to ask them.

My concern is that Coleman will be given a special status if his qualifications are based entirely upon his experience as a police officer. And I'll cut to the chase because I'll point it right out in his CV.

THE COMMISSIONER: Right.

MR. AVIS: So we don't spend any more time. If you go to page 6 of Dr. Coleman's CV, recent work – I mean, I've gone through this –

THE COMMISSIONER: Item 6 of what? Go ahead.

MR. AVIS: He just picks recent work, so it appears –

THE COMMISSIONER: Page 6 of –

MR. AVIS: I’m sorry, page 6 of his CV.

THE COMMISSIONER: Right.

MR. AVIS: Bottom left-hand corner: “Recent work also includes.”

THE COMMISSIONER: Oh, I’m sorry –

MR. AVIS: That’s okay.

THE COMMISSIONER: I’m slow this morning. This is Dr. Coleman’s?

MR. AVIS: Correct.

THE COMMISSIONER: And I got page 3, 4, 5 –

MR. AVIS: 6.

THE COMMISSIONER: Page 6 at the top, is –

MR. AVIS: Bottom left. The University of Regina was at the top. Left-hand –

THE COMMISSIONER: Okay, that’s –

MR. AVIS: Go to the –

THE COMMISSIONER: – quite a bit up towards the top of the page.

MR. AVIS: – “Recent work also” –

THE COMMISSIONER: Policing –

MR. AVIS: – “includes.”

THE COMMISSIONER: – the democratic society, and so forth?

MR. AVIS: Yes, if you –

THE COMMISSIONER: Yeah.

MR. AVIS: – go down to the bottom. “Recent work also includes.” The –

THE COMMISSIONER: “Recent work also includes,” okay.

MR. AVIS: Right. He’s – it appears that he has – he’s now working on this area. It appears that he is beginning to, perhaps, develop expertise in this area. But it’s recent. And as I – and, you know, I’m not –

THE COMMISSIONER: And when you –

MR. AVIS: – going to relay this –

THE COMMISSIONER: – say this area, which area?

MR. AVIS: “A systematic review/risk assessment.” Recent work involves reviews and risk assessments of a different kind, albeit.

THE COMMISSIONER: Okay –

MR. AVIS: I’m saying –

THE COMMISSIONER: – that’s on the next page, okay – reviews – yeah, go ahead.

MR. AVIS: It appears that this is recent in his career. That’s – and in looking at the –

THE COMMISSIONER: Well, you know –

MR. AVIS: – rest of this –

THE COMMISSIONER: I suspect it’s fairly recent in a lot of people’s careers because it’s only from reading the Iacobucci report and so forth, it seems like it’s only over the last, I don’t know, maybe 10 years – Dr. Coleman was telling me better – that the focus has begun to shift to de-escalation.

MR. AVIS: This is not about de-escalation; it’s about risk assessments.

THE COMMISSIONER: Okay, sorry, yeah, sorry –

MR. AVIS: Sorry.

THE COMMISSIONER: – about that, yeah.

MR. AVIS: The – again, looking forward –

THE COMMISSIONER: Yeah.

MR. AVIS: – to the de-escalation. I’m going to leave it at that because you can decide – you know, not going to belabour it.

THE COMMISSIONER: Right.

MR. AVIS: And I’m concerned that it’s given him a special status in that regard. All I need to say.

As for going through the report, I think you’re just trying to be, I guess, allowing us to go through it. I think we’d be better to pick what we want to cross-examine upon, rather than go through that process and then find ourselves asking the questions.

THE COMMISSIONER: I’m going to –

MR. AVIS: As much as I appreciate the approach that you’re taking.

THE COMMISSIONER: Yeah, that’s fine.

I'm going to ask Commission counsel to abbreviate the questions that she'll put to have more time for yourself, Mr. Kennedy and other counsel to put their questions on their specific concerns. But, perhaps at this stage, with one further point, we could call the experts.

The other point that I wanted to make in my notes that were made late last night have to do with this notion of comments regarding credibility. There's a difference, as I understand it, between – you know, even keeping in mind that this ultimate-issue rule has been somewhat restricted recently.

There's a difference that's always been recognized, I think, between somebody saying John Smith is guilty and somebody making statements that lead to the inference of guilt. So there's some question of even if you apply the ultimate-issue rule strictly, there's some question about, you know, how it should be applied. And when you get into these inferences, they're drawn from evidence.

For example, as I started off at the beginning of this inquiry indicating, a big issue here, if not the main issue, is testing Constable Smyth's credibility and seeing whether the evidence, the factual forensic evidence and so forth, either supports or refutes the position that he has taken.

Well, it would sort of be illogical to say that witnesses can't be called to challenge statements by Constable Smyth, which may give rise to, ultimately, some question of credibility but – or may relate to credibility several steps or several inferences removed. But I'm not forgetting the burden of proof either, you know. There are rules with respect to the burden of proof of which I have to look at in terms of whether I'm entitled to make a finding of misconduct or whatever.

So I'll leave it at that. So if you – unless other counsel, any – oh, counsel have a brief comment. Go ahead, Mr. Kennedy.

MR. KENNEDY: If what – is there anything there – without going into detail, is there anything there that's outlined in the brief that you are willing to consider redacting? If we're –

THE COMMISSIONER: Just –

MR. KENNEDY: You know, that may save a lot of time if you either say yes or no just –

THE COMMISSIONER: Yeah if –

MR. KENNEDY: – or maybe tell me if you want to deal with it.

THE COMMISSIONER: Yeah, if you like, I'll go through, as I say, that quick run-through that I suggested at the beginning. I'll do that now if you'd –

MR. KENNEDY: Well, I think it would save a lot of time.

THE COMMISSIONER: Yeah, I agree. I agree. That's why I suggested it earlier. So I appreciate your suggestion there. Just let me get this material organized. And I got to find the briefs of counsel. I have some clarification from Mr. – okay just a – I apologize; I just got to get the briefs where I put them.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: I have one. I think I have them now, I have one of them. This is Mr. Kennedy's, so we'll start with that one if you like. Okay, I guess we start over on page 5, Mr. Kennedy, is your examples.

The following are examples of language used in the report that bring into question Dr. Coleman's objectivity. Terms like: it's interesting to note, according to Constable Smyth it's important to note that they're used on numerous occasions thereby implacably questioning Constable Smyth's credibility.

Well, that may be one view of it, Mr. Kennedy and they may not be necessary, and when we're going through the report, you know, you can just point these out and I may or may not be in agreement with you and redact. Some of them, it seemed to me, were redundant and not necessary but in themselves they seem to me to be fairly neutral, you know, there not, I don't think, questioning – necessarily questioning Constable Smyth's credibility even implicitly, but we got – sort of got to look at them in the context of the report, I think.

Specific examples of inappropriate language usually include: not good police practice. I think that that definitely has to stay in because this is in an expert on police practice. These are both – sorry you're looking quizzically?

MR. KENNEDY: An expert on police practice, I thought he was being called to give evidence. He was seeking to be qualified to give evidence in personal risk assessment and de-escalation techniques.

THE COMMISSIONER: And personal risk assessment would involve whether a good practice was followed – a good police practice was followed in a certain situation, isn't it? I don't know, but maybe I'm missing something here but it seems to me, for example, just taking a specific –

MR. KENNEDY: It's written like a grade six essay, Commissioner, as opposed to an objective independent report. I don't agree with everything Gareth Jones wrote in his report, but if you look at the way it's written, it's written in the way that an expert should write a report, that we expect, especially a Commission that's been as professionally conducted as this one, a Commission of Inquiry, that when we see the way that this report is written, it's just indicative of a mindset that indicates bias.

Now that's my argument. You could – we don't need to go through all those examples. What I suggest to you, if there's anything that you're willing to redact, if you let us know that.

THE COMMISSIONER: Yeah, well, as I've already noted the reference to neglect and what I'll do is as I'm going through I will – I have others but it's just going to be, I think, it will be quicker to go to the report and as we go through I'll identify some others. There are some others that would, I think, meet your concerns.

But the reference to police practice, I believe, the expert qualifications, would go directly to that and a title. Now, whether I agree with it or not is something else but, you know, the expert is entitled to his opinion.

So what I'll do, I think we'll stop there and get the qualifications of the two gentlemen before you. So if you could call Dr. Coleman and Sergeant Massine, who may be wondering what's happening here.

MR. KENNEDY: For the record, Commissioner, I do want to place – and I don't want to belabour this point, but this is not something – the procedure being utilized here is not something that I agree with on behalf of Constable Smyth. It's not one that I agree accords with the principles of fairness and proportionality. I just want to have that objection on the record.

THE COMMISSIONER: Well, yeah, Mr. Kennedy, I found that there's a lot you don't agree with and I found that, frankly, I haven't gotten a lot of co-operation in terms of assisting on meeting schedules and so forth. There have been –

MR. KENNEDY: From who, sorry?

THE COMMISSIONER: From you, Sir.

MR. KENNEDY: From me?

THE COMMISSIONER: Yeah.

MR. KENNEDY: And could you give me an example of that?

THE COMMISSIONER: Yeah.

MR. KENNEDY: Yeah.

THE COMMISSIONER: We'll – I'll do that later, yeah. We're going to move on now and we're going to call the two witnesses.

And just for the record, and I'll say again, it's a practice that if you can indicate where there's prejudice caused to your client, Mr. Kennedy, we can modify the seating arrangement. I don't see any prejudice. What is your concern with the seating arrangement?

MR. KENNEDY: These experts have written – I expected that having regard to their expertise there would be two separate reports. I have never seen two witnesses testify together, something as important as this issue to my client.

What we have, Commissioner – and, again, I come back to the principles of fairness and proportionality which have been discussed throughout this inquiry.

THE COMMISSIONER: Uh-huh.

MR. KENNEDY: I really, Sir, consider your earlier comment on scheduling. It's not fair, Commissioner. We have – we received this report on February 26. We then right away attempted to find an expert to deal with what we perceive to be Dr. Coleman's comments on threat assessment. We then come forward, Sir, we're trying everything we can to meet the scheduling that you've put down.

Yesterday, you wanted something in writing; we provided it in writing, Commissioner. So what happens is the timeline here – you've set a timeline, Sir, that we have not seen in other – any other time in this inquiry.

THE COMMISSIONER: Yes, I've set a timeline because it was necessary to get the evidence dealt with in the time that's scheduled. And it's not an unreasonable timeline as you've indicated yourself, I think.

MR. KENNEDY: But these are important witnesses, Commissioner. They are experts on behalf of the Commission which the public will see as being somehow or other giving a, I would suggest, a greater degree of credibility.

So to suggest that we have to deal with all of this or to make us deal with all of this in, Sir, such a short period of time, to have two witnesses testify together, I would suggest to you does not meet

the principle of proportionality whereby you have to look at the importance, I would suggest, of the evidence or the potential importance of the evidence to the impact on the inquiry.

If that's your –

THE COMMISSIONER: Okay. Thank you.

Your remarks are noted. We're going to continue as proposed.

Call the two witnesses, please.

MS. CHAYTOR: Okay.

I'd ask for Dr. Terry Coleman and Sergeant Michael Massine, please. Okay.

MS. O'BRIEN: The mic isn't on.

MS. CHAYTOR: Okay, we need – you need to press the button on your mic when it's red.

UNIDENTIFIED MALE SPEAKER: Yes.

MS. CHAYTOR: And I'm going to ask you to speak into it.

THE COMMISSIONER: When you're – we only have the one mic there so you're going to have to share it. About five or six inches is probably the appropriate distance when your turn comes to speak.

So, counsel, you're going to have to identify which witness you're addressing.

MS. CHAYTOR: Yes. Yes.

THE COMMISSIONER: And we'll have them affirmed individually.

MS. CHAYTOR: And you'll see that there's some overlap in terms of their opinions on de-escalation piece. So this seemed to be the more expeditious way in which to deal with the witnesses and they also did do the one report.

THE COMMISSIONER: Uh-huh.

MS. CHAYTOR: So hopefully this will work.

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

DR. COLEMAN: I do.

MS. SHEEHAN: Please state your full name.

DR. COLEMAN: Terrance George Coleman, C-o-l-e-m-a-n.

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

SGT MASSINE: I do.

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

SGT MASSINE: Michael Timothy Massine, M-a-s-s-i-n-e.

MS. SHEEHAN: Thank you.

MS. CHAYTOR: I'll begin with you, Dr. Coleman.

Do you affirm your duty to the Commission to provide evidence that is independent, impartial and unbiased and that it is only related to your area of expertise?

DR. COLEMAN: I do.

MS. CHAYTOR: Are you able and willing to fulfill this duty?

DR. COLEMAN: I am.

MS. CHAYTOR: Sergeant Massine, 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?

SGT MASSINE: I do.

MS. CHAYTOR: Are you able and willing to fulfill this duty?

SGT MASSINE: Yes, I am.

MS. CHAYTOR: Commissioner, I would ask to have the CVs of the two experts admitted. And that would be P-0771 and P-0772.

THE COMMISSIONER: 0771 and 0772. Okay.

This doesn't mean that the reports are being admitted, it's only the CVs at this stage.

MS. CHAYTOR: I will hold – at your direction I will hold on the report until we're through the qualification piece.

THE COMMISSIONER: Thank you.

Okay, so ordered for the CVs.

MS. CHAYTOR: If I could have, please, P-0772. I'll begin with you Dr. Coleman.

And, Dr. Coleman, this is your CV. You are being asked to provide opinion evidence regarding strategies and techniques to be employed by police in situations such as that encountered by Constable Joseph Smyth in his interaction with Donald Dunphy, including appropriate de-escalation and defusing strategies and measures to be taken to ensure officer safety.

DR. COLEMAN: Right.

MS. CHAYTOR: You have provided us with the CV that we have before the Commission and it's on the screen. So this will come up in the screen before you. I also understand you have a hard copy of your CV and report in front of you.

I would ask, please, that you take us through the relevant portions of your CV and highlight for the Commission those that are most relevant to the opinion that you've been asked to provide. And perhaps we can begin here with your academic background. I understand that you have a masters of human resource management, a masters of police studies; and a doctorate in police studies from the University of Regina, Dr. Coleman.

DR. COLEMAN: That's correct. Yes.

MS. CHAYTOR: So I would ask: Please elaborate on how this academic background is of relevance to the opinion that you've been asked to give.

DR. COLEMAN: I've spent many years studying and even writing about in some of the peer-review journals, presenting at professional conferences on this subject. I first got involved directly in the mental health and thus de-escalation piece, because the two go together – although de-escalation is not exclusive to mental health issues – in about 2000, 2001. I've done considerable work for the Mental Health Commission, both sitting on their Mental Health and Law Advisory Committee, as well as contract work for them; in fact I'm completing a contract right now.

MS. CHAYTOR: Okay.

DR. COLEMAN: And some of my publications that are relevant and most of my work in that regard has been with a psychologist, Dr. Dorothy Cotton. She provides the expertise in that area and I provide the policing expertise.

“Reducing Risk and Improving Outcomes of Police Interactions with People with Mental Illness”; that was in the *Journal of Police Crisis Negotiations*.

THE COMMISSIONER: What page are you there?

MS. CHAYTOR: Okay, what page are you on now?

THE COMMISSIONER: Page 1, is it?

DR. COLEMAN: Page 1. Yes, Sir.

THE COMMISSIONER: Okay.

MS. CHAYTOR: Okay? All right.

DR. COLEMAN: “Canadian police agencies and their interactions with persons with a mental illness: a systems approach,” in the *Police Practice and Research: An International Journal*; “Canadian police agencies and their interactions with people with a mental illness: a systems approach,” in another journal – actually, a chapter in a book.

“TEMPO: A contemporary model for police education and training about mental illness,” that's the 2014 version. I was involved in a similar publication and study in 2008 and 2010; 2014 updated the previous ones.

“The Evolution of Police Interactions with People with Mental Health Problems: The Third Generation (Strategic) Approach,” is a chapter in a book this past year.

There's several other not peer-reviewed publications, such as “Contemporary policing guidelines for working with the mental health system”; “Ten Years of Suggestions: A Review of Inquest

Recommendations Related to the Deaths of Mentally Ill” persons, at the hands of police, that is, from 1992 to 2002. That was unpublished research, but was presented at a conference in Paris some years ago.

THE COMMISSIONER: The Iacobucci report, I see you refer to – is it a Ms. Cotton or Mr. Cotton? D. Cotton.

You did some work at the Iacobucci inquiry or you were referred to, I think, by –

DR. COLEMAN: Yeah. Yes.

THE COMMISSIONER: – by that report, were you?

DR. COLEMAN: Yes, Sir.

When Dr. Iacobucci and his staff were embarking upon that particular study, we spent a fair amount of time on the telephone with him and then spent about four hours one afternoon actually meeting with Justice Iacobucci and his staff before that.

THE COMMISSIONER: I think he acknowledged you in his footnotes, two or three places, I believe.

DR. COLEMAN: That’s correct.

THE COMMISSIONER: Right.

MS. CHAYTOR: Yes, Justice – or sorry, Commissioner, I did have that as one of the questions and some of the references they did.

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: It appears at page 143 of Justice Iacobucci’s report under: “The Current Situation,” “Importance and impact of training.” And he writes on that page: “In the course of this Review, my team and I read many academic reports and commentaries on the link between training and police interactions with people in crisis. As two well-known researchers in the field have noted ...” – and in this he’s referring in his footnote to Dr. Coleman and his partner in writing, Dorothy Cotton.

“As two well-known researchers in the field have noted, a training curriculum is only as strong as the people who deliver it and the social context in which it is implemented. Further, they highlight that the lack of standardized data about training programs and outcomes of crisis situations prevent police services and researchers from identifying the components of a curriculum that are most effective in producing positive resolutions of encounters with” persons in crisis.

THE COMMISSIONER: Okay.

MS. CHAYTOR: So that’s one of the references that – and he is quoted elsewhere or cited elsewhere in Justice Iacobucci’s work.

THE COMMISSIONER: Okay. Thank you.

MS. CHAYTOR: I’m sorry. Continue, Dr. Coleman.

DR. COLEMAN: Okay, while we're talking about contributing to other work, we were also consulted by the Ontario Ombudsman, which led to their report, *A Matter of Life and Death*. I didn't actually meet with them in person, but I spent time on the telephone and exchanging documentation with the staff, the investigators, for the Ontario Ombudsman.

MS. CHAYTOR: And I believe also your work has been cited in the *Report of the Fatality Inquiry Regarding the Death of Howard Hyde Halifax, Nova Scotia* in 2010.

DR. COLEMAN: That's correct.

MS. CHAYTOR: By Justice Derrick.

DR. COLEMAN: Yes.

My professional experience, my most recent professional experience is as public safety consultant, bringing together my experience as a police officer and some of my studies that I've completed. I should note that when I say "Recent work also includes," there's numerous work that I've done besides that; I just highlighted some of the more recent work.

I've actually been working in this particular field, including the de-escalation piece, as I said, from about 2000, 2001, and, of course, as a practitioner for many years prior to that.

MS. CHAYTOR: Okay.

And unless there's anything else in your academic or publications that you wish to point to, and if there are, by all means, go ahead, otherwise, I'd like to also review your policing background.

DR. COLEMAN: No, I think, I mean, there are more publications; they're in the documents there. But the ones I've highlighted are probably most pertinent.

MS. CHAYTOR: Okay.

So if, then, we could look at page – if we could have, then, please, page 12 of your – of the CV, Madam Clerk.

Is there an issue? Oh, can't hear me. Okay, thank you.

Okay, thank you.

Okay so, Dr. Coleman, in addition to your academic work, if we scroll down here, I understand that you began your career as a police officer in 1969 with the Calgary Police Service and you remained with the Calgary Police Service until 1996. And at the time you had achieved the rank of inspector.

And, again, I would ask if you could highlight for the Commission your key accomplishments during your time with the Calgary Police Service, which are most relevant to the opinion that you have been asked to provide.

DR. COLEMAN: Yes. I was responsible at various times for police officers that worked for me, whether it was an inspector or staff sergeant, whatever, so I was therefore responsible for ensuring that they followed policies and procedures for their own personal safety.

But in terms of some work that I did, I was inspector of professional standards, sometimes called internal affairs, and again was responsible for investigations related to police officers, some of

which was alleged breaches of the police act and policies and procedures, but also included scrutiny of the things that they did or didn't do in terms of officer safety.

I was involved as a police officer. I was the tactical section commander at one point, sometimes known as SWAT or ERT. While I was working in that role, it was apparent to me that some incidents – many incidents could be resolved without the use of force, and so I established, put together a group, a team of crisis negotiators. Used to be called hostage negotiators, but crisis negotiators is the current terminology. And we worked and prepared ourselves to respond to incidents, not necessarily only when the tactical unit responded, but in particular when the tactical unit responded. We went to incidents large and small in that regard.

Also arranged for what has become an annual learning event in the Calgary Police for crisis negotiators to come together and share experiences and gain additional knowledge and skills in the field.

MS. CHAYTOR: Okay, and Dr. Coleman, is that what you're referring to where I've put the cursor here on the screen: "Initiated and led a team that planned, organized and delivered a Crisis Negotiation Seminar"? And is that what you're referring to?

DR. COLEMAN: Yes, but at the top of page, I think it's 15, I also talk about establishing the team for that.

MS. CHAYTOR: Top of page 15? Okay. And this is where you –

DR. COLEMAN: Right.

MS. CHAYTOR: Yes.

So you established a "team of Crisis Negotiators ... to reduce the need for lethal force," is it? Okay. All right.

DR. COLEMAN: I also completed incident commander training at the Canadian Police College. And one particular incident that stands out that's, I suggest, is relevant to today is that I was the crisis incident commander – crisis negotiation incident commander. For instance, where a person fired a gun – a shotgun actually – at the Workers' Compensation staff in Calgary and held them there until we negotiated a successful resolution to that particular incident.

MS. CHAYTOR: Okay.

Okay, then I understand if there's anything else in your time at Calgary – oops, I'm sorry; we've lost our connection, now. I've lost my connection –

THE COMMISSIONER: Yeah, yeah, I've – I'm missing a connection on the screen, too. I apologize. We haven't had many glitches, but occasionally – oh, here we go; we have a light.

MS. CHAYTOR: I'm back.

THE COMMISSIONER: No, had it for a second. Must be a lose connection, is it? (Inaudible.)

MS. CHAYTOR: And in this background that you've just given to the Commissioner, in terms of your time with Calgary, how does that relate to the personal risk assessment for officer safety?

DR. COLEMAN: Well, not only was it relevant to me when I was a police constable on the street, along with my colleagues, but it was relevant when I was a supervisor and a manager to

ensure that my personnel were taken care of themselves, and had the means to take care of themselves. And then in professional standards, of course, sometimes that required looking at the actions of police officers to the extent that they were keeping themselves safe and making recommendations, and then taking action accordingly.

MS. CHAYTOR: So in your role in professional standards, you would've had opportunities in which you had to review the actions of police officers from a personal safety point of view?

DR. COLEMAN: Correct.

MS. CHAYTOR: And – and, if we could also then bring up – I understand that you went on from 1997 to 2007 to become the chief of police of the Moose Jaw Police Service. And that's page 6, please – or page 8, sorry, of the exhibit.

And you've listed there some – there's quite a number of pages of your key accomplishments while in that role. And I would just ask, please – so it starts here. And at that time you successfully led and managed 100 employees and volunteers through organizational training and restructuring.

And I would ask again if you could review the key accomplishments with a view to what is most pertinent to the work that – or the opinion that you've been asked to give to the Commission.

DR. COLEMAN: Well as chief of police, again, I was ultimately responsible for the safety of police officers, all police staff, in fact, but police officers, and that necessitated making sure they were complying with the policies and procedures and doing things safely. And if they weren't, taking whatever was appropriate action. Often it required immediate – or I chose to talk to them about it and sort of take a remedial approach as opposed to a punitive approach, but it happened on several occasions where I had to do that.

But in the interest of their safety and perhaps based on my experience in Calgary, I instituted a learning-training education for police officers around crisis negotiations such that when they went to a situation in Moose Jaw, which is a city of 37,000 people, so it didn't have the resources that a bigger city might have, that they could at least start some de-escalation procedures with whoever was involved prior to calling for assistance from elsewhere. We didn't have our own SWAT or TAC Unit, so it was a question of containing the situation at best and resolving it, if appropriate.

So I sent those people, many of them, to training at the Canadian Police College; I sent them back to Calgary to the annual seminar and workshops that were held there, but to prepare them to better communicate and resolve these situations without the use of force and without anybody getting hurt.

MS. CHAYTOR: And was that with a view to officer safety, as well as safety of the public?

DR. COLEMAN: Absolutely.

MS. CHAYTOR: And were you also involved in re-writing policies and procedures for the Moose Jaw Police Service, which also focused on officer safety?

DR. COLEMAN: That's right. When I went to Moose Jaw, the policies and procedures were ancient, for want of a better word, and I spent a lot of time bringing them up to date, again using my experience in Calgary in large part because I was involved in re-writing policies and procedures. I chaired a committee in that regard in Calgary. So I applied that when I was in Moose Jaw to improve the circumstances to the Calgary police officers as well.

MS. CHAYTOR: Were you also responsible –

DR. COLEMAN: Moose Jaw police officers, I should say.

MS. CHAYTOR: I'm sorry. Were you also responsible as chief of police for reviewing use-of-force incidents and addressing any issues of officer safety with your officers on a one-on-one or in a larger debriefing situation?

DR. COLEMAN: Correct. All public complaints and some of those involved use of force came across my desk and then internal investigations we might have around improper use of force also came across my desk. So they all came across my desk and I dealt with them, as appropriate.

MS. CHAYTOR: Okay.

And in terms of your current position, from 2009 to the present, I understand that if we look at page 6 of your curriculum vitae we have – page 6, here we go. You are a public safety consultant, teaching and facilitating courses for Dalhousie University College of Continuing Education, University of Alberta – School of Business, University of Regina and Athabasca University. And you've already touched on some of your work that you've done in recent years, including your involvement with Justice Iacobucci. And you've also taken us through your publications and articles.

Perhaps you could just explain for the Commission what your public safety consultant role largely involves and the focus of your work?

DR. COLEMAN: It mostly involves reviews of situations inside organizations. There are somewhat audit focused to identify issues that are occurring in the organization and making recommendations. Most of them around policing, I've done some for corrections and, as you know, I did two for a university as well.

MS. CHAYTOR: Okay.

And in your publications and articles that we reviewed, you have written and published extensively and you've presented extensively and been involved as a consultant on police interactions with persons largely with mental illness. And I understand that that does include de-escalation strategies that can be employed by police in their interactions with persons with mental illness.

And I would ask, though, a substantial piece of that work being focused on the mental health environment, Dr. Coleman, does that work, from a de-escalation perspective, have broader application?

DR. COLEMAN: Very much so. De-escalation is becoming in vogue in terms of the policing world as a result of publications such as – studies such as Justice Iacobucci. But it's not a new phenomenon at all. It's a communication skills to resolve a situation. And customer service reps in retail business, for example, use de-escalation for people that are upset with perhaps a level of – well, the perceived the level of service they received. Neighbours can use de-escalation across the fence if there's something going on that is getting tense and it needs to be resolved peacefully. So it can be applied anywhere.

It so happens that I've been involved in it in connection with the Mental Health Commission, in large part because I've been doing a lot of work with people at the Mental Health Commission and the Canadian Mental Health Association. But it's not unique to situations involving people with mental health problems, far from it.

MS. CHAYTOR: And I note in many of your publications you refer to, it's not necessarily mental health but it's crisis. Could you speak to what is meant in terms of crisis and how broad a situation that that volume of your work or that aspect of your work is intended to cover?

DR. COLEMAN: Well, crisis in the context that we apply under these circumstances is very, very, broad. It certainly doesn't have to be somebody with any sort of mental health problem, but people that are upset, perhaps angry, situations aren't going well, sort of emotional situations that people might be having. It doesn't just have to be just somebody with mental illness, that just happens to be the field that I've done a lot of work in, but de-escalation in general is much broader.

I might add that during my time in Saskatchewan, in Moose Jaw, I actually taught at the Saskatchewan Police College there and taught about de-escalation at the police college.

MS. CHAYTOR: Okay.

Thank you, and unless there's anything else you'd ask to or like to add Dr. Coleman, I think that covers the highlights of your CV.

And, Commissioner, I can pose the question of what I'm asking so that it's clear to counsel perhaps before they –

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: – cross-examine on qualifications.

We're asking that Dr. Coleman be qualified to give opinion evidence regarding strategies and techniques to be employed by police in situations such as that encountered by Constable Smyth in his interaction with Donald Dunphy, including appropriate de-escalation strategies and measures to be taken to ensure the safety of officers – I'm sorry – to be taken to ensure officer safety.

THE COMMISSIONER: Okay.

Counsel, do you have any questions you want to put to Dr. Coleman?

MR. SIMMONDS: We have no questions, Mr. Commissioner.

THE COMMISSIONER: Ms. Rasmussen; Mr. Freeman.

MS. RASMUSSEN: We have no questions.

THE COMMISSIONER: Thank you.

Mr. Avis.

MR. AVIS: Commissioner, my opposition, I think, is before you. I would like to – my main concern is the limited time I have to cross-examine these two gentlemen. I believe our position has been put squarely before you.

THE COMMISSIONER: Right.

MR. AVIS: We've never took issue with the de-escalation – understand that it has multiple applications and so forth. You've heard his evidence on personal risk assessment. I don't see any

value in pursuing that at this time. I would like to, you know, as I say, get to the heart of the matter and what really matters to my client.

Thank you.

THE COMMISSIONER: Okay.

Mr. Drover.

MR. DROVER: I tend to support Mr. Avis's position in this case. And I don't have any questions on Dr. Coleman's qualifications for the limited qualification that he's being sought as an expert.

THE COMMISSIONER: Thank you.

Mr. Kennedy.

MR. KENNEDY: I don't have any questions on his qualifications, but I do have submissions on the extent of (inaudible).

THE COMMISSIONER: Sorry? You have ...?

MR. KENNEDY: I do not have questions – I do not have questions on his qualifications. I have submissions as to the extent of his expertise in terms of the qualification that should follow from the Commissioner.

THE COMMISSIONER: Right. When do you want to –?

MR. KENNEDY: We can do that now.

THE COMMISSIONER: What are you suggesting?

MR. KENNEDY: Well, we can do it now. I'm just – I have no problem, it's obvious that the issue of personal risk assessment is something that police officers do on a daily basis. The de-escalation techniques, even though there's been reference to the mental health crisis, I do accept that de-escalation techniques will be applied in all situations, I guess, involving police.

My concern, Commissioner, is when we start talking about – and I didn't get the exact words down, but strategies and techniques to be employed by police in interaction in such situations as Constable Smyth encountered with Mr. Dunphy. I would suggest that his qualifications should simply be he's qualified to give expert opinion evidence in officer safety and de-escalation.

Strategies and techniques opens it up too wide. And if I could refer you to page 323 of Ratushny, it's also – I've referred to Sekhon and Bingley in the brief that I've filed before you, I'm not going to refer to it, that the qualification of an expert – what Professor Ratushny says: "The factual basis on which the opinion rests should be clearly established." Well, that's for another time.

"The commissioner should take the same precautions as the courts to confine expert opinion to the boundaries of the expertise established and not to be unduly influenced by the 'expertise.'" That same point is outlined in Sekhon and Bingley, Commissioner, and all I'd say –

THE COMMISSIONER: I'm sorry, where is that in the Ratushny? Page 323?

MR. KENNEDY: Ratushny, page 323, the last couple of sentences before Hearsay.

THE COMMISSIONER: Okay, one second now.

Okay, “The commissioner should take the same precautions as the courts” okay “to confine expert opinion to the boundaries of the expertise established and not to be unduly” Okay, that’s fair enough. Yeah.

MR. KENNEDY: Okay.

And then if I look at – if I could just refer you to Bingley, the decision of the Supreme Court of Canada on February 23 at paragraph 17. And again, very quickly, Commissioner. “The expert opinion admissibility analysis cannot be ‘conducted in a vacuum’ “Before applying the two-stage framework, the trial judge must determine the nature and scope of the proposed expert evidence. The boundaries of the proposed expert opinion must be carefully delineated to ensure that” the trial process – “any harm to the trial process is minimalized.”

Considering, again, the principle of proportionality, the time frames we have here, I would suggest that a qualification to give expert opinion evidence in the areas of officer safety and de-escalation would be sufficient without enlarging it to talk about strategies and techniques because some of that will be implicit in the qualification. It just simply restricts the evidence and I would suggest a – it would be helpful in terms of moving this matter along.

THE COMMISSIONER: All right. Do you have – counsel have any comment?

I might – I should note, Mr. Kennedy, is this is the first notice I’ve had, you know, of your concern about the – or suggestion as to what the expertise –

MR. KENNEDY: Not, it’s actually –

THE COMMISSIONER: – might relate to, but I can understand it because you were challenging for other reasons.

MR. KENNEDY: It’s actually in the brief, Commissioner, at page 8, what I –

THE COMMISSIONER: Yeah, no, what I mean when I say just now – I mean, as of last night or whenever –

MR. KENNEDY: Oh yes, yes, that’s fine, yeah.

THE COMMISSIONER: – I went through the brief, yeah.

Thank you.

You’ve heard Mr. Kennedy’s suggestion. Do you have any problems with that?

MS. CHAYTOR: Maybe I could suggest rewording then. Would you like me to suggest a rewording?

THE COMMISSIONER: Just let me –

MS. CHAYTOR: Yes?

THE COMMISSIONER: – hear your suggestion.

MS. CHAYTOR: Okay.

So, I think, if I'm hearing Mr. Kennedy correctly, it's the use of the word including appropriate de-escalation strategies and measures to be taken to ensure officer safety.

So I would suggest that we reword that: Ask that Dr. Coleman be qualified to give opinion evidence regarding de-escalation strategies and measures to be taken to ensure officer safety, employed by police, in situations such as that encountered by Joseph Smyth in his interaction with Donald Dunphy.

THE COMMISSIONER: Mr. Kennedy?

MR. KENNEDY: Again, what I'm not clear on is the de-escalation. Are we talking about expert opinion evidence, de-escalation to ensure officer safety in the situation with Mr. Dunphy and Constable Smyth? Or is it a larger area that we're going to have the officers safety that will go from the time he's – there's – he gets –he decides to go to Mitchells Brook. That's what I understand the qualification that is being sought.

THE COMMISSIONER: I find it difficult to see, Mr. Kennedy, but I understand your point. But I see it difficult to say that, you know, you just – like a limited – there's got to be some general conversation about, you know, general –

MR. KENNEDY: I've got no problem with that.

THE COMMISSIONER: – practices in order to address Constable Smyth's conduct. So it's, you know – I –

MR. KENNEDY: So I guess my question is: Is the expert opinion evidence more specifically or more generally to what takes place in the house with obviously some background information leading up to that? I understand that.

THE COMMISSIONER: I guess I should – I forgot; we got two functions here. One is the terms of de-escalation as addressed by Constable Smyth, but we also have a broader concern about whether there need be some attention paid or more attention paid to de-escalation and officer training –

MR. KENNEDY: Yeah, I have no problem with that.

THE COMMISSIONER: – which is a more general thing. But I don't see why your concern wouldn't be met by that redraft; just read it – could you submit it again?

MS. CHAYTOR: Okay. I'll see if I can remember. Asked that Dr. Coleman be qualified to give an opinion evidence regarding strategies and techniques – actually, there is where I changed it. I did say: appropriate de-escalation strategies and measures to be taken to ensure officer safety to be employed by police in situations such as that encountered by Constable Smyth in his interaction with Donald Dunphy.

THE COMMISSIONER: Right.

MS. CHAYTOR: And yes, it is intended that he would speak from the point of view of officer safety; it would predate what actually happens in the living room. The officer safety piece happens in terms – before he gets there –

THE COMMISSIONER: Meaning in terms of getting appropriate background and so forth?

MS. CHAYTOR: Correct, correct and what he observed before he went there, his first visit – yes, all of that.

THE COMMISSIONER: Mr. Kennedy, you have – this doesn't mean – you can still object, you know, as points are raised but –

MR. KENNEDY: No, I think I'm satisfied whatever you decide, Commissioner, is the qualification.

THE COMMISSIONER: That sounds – the redraft sounds reasonable, so why don't we use that as the –

MS. CHAYTOR: Yes, because I understood the concern being not saying including those that he's not asking for the – he is asking the expert be curtailed to de-escalation and officer safety, and those are the issues that Dr. Coleman is here to address.

THE COMMISSIONER: All right. So unless counsel has – other counsel have any other concerns, my finding is that considering Dr. Coleman's education and experience and training, that he should be qualified as an expert, qualified to give opinion evidence as proposed by Ms. Chaytor.

So we will get that typed up and distributed to counsel so we'll have it in front of us.

MS. CHAYTOR: Yes, absolutely. Thank you.

And I'll move on then with the qualifications, please, of Sergeant Michael Massine, and this would be P-0771. Sergeant Massine, again, I'm going to ask you to take us through the highlights of your CV that are most relevant to the qualifications for the opinion that you're being asked to provide to the Commission. I can give a general overview for the sake of time, Commissioner.

I understand, Sergeant Massine, that you've been employed in law enforcement since 1987. Can I just –

SGT MASSINE: Yes.

MS. CHAYTOR: And that you have held many positions, worked in many positions: patrol, jail operations, plainclothes, undercover operations, community liaison, emergency response teams, major crime and identification. But the focus of your career has been in officer safety training.

SGT MASSINE: That's correct.

MS. CHAYTOR: I understand that you hold a masters of arts degree in leadership and training from Royal Roads University, as well as an advanced certificate in police leadership from Dalhousie University.

SGT MASSINE: That's correct.

MS. CHAYTOR: You are currently employed as the Police Academy use-of-force coordinator at the Justice Institute of British Columbia and you've held that position since December of 2014.

SGT MASSINE: Yes.

MS. CHAYTOR: I understand that in that position you are responsible for curriculum development and delivery of the standardized use-of-force instructor course, fundamentals of police instruction. As well, you act as liaison for the Justice Institute with the government of BC relating to the creation of use-of-force-related standards under the *BC Police Act*.

SGT MASSINE: Yes.

MS. CHAYTOR: You also teach in the Recruit Training program and develop curriculum and deliver training for special projects as they arise.

SGT MASSINE: That's correct.

MS. CHAYTOR: I also understand that you have been previously qualified to provide expert opinion in court on use-of-force issues, including various issues, and excited delirium was another area in which you've been qualified to speak. In 2011, you provided expert evidence at a coroner's inquest into an in-custody death in British Columbia –

SGT MASSINE: Yes.

MS. CHAYTOR: – pertaining to the Victoria Police Department's training program. And that's correct?

SGT MASSINE: That's right.

MS. CHAYTOR: Okay and if we look at page 12, please, of this document.

In 2008, I understand that you testified or presented, I should say, to the Braidwood Commission and that that included an explanation of the National Use of Force Framework. Correct?

SGT MASSINE: Yes.

MS. CHAYTOR: And that since June 2010 you have in fact worked with the BC Ministry of Public Safety and the Solicitor General to develop provincial standard training courses, including crisis intervention and de-escalation techniques and which were mandated as part of the Braidwood Commission.

SGT MASSINE: That's right.

MS. CHAYTOR: On page 13 you've written as well and published several articles on topics related to use of force –

SGT MASSINE: That's right.

MS. CHAYTOR: – and training of police officers.

SGT MASSINE: Yes.

MS. CHAYTOR: And then on page 14, I understand that you are currently the chair of the Province of BC Use of Force Community of Practice which is a panel of 12 use-of-force coordinators from BC municipal police agencies and the mandate I understand of that committee is to research best practices in officer safety training and to develop provincial training standards.

SGT MASSINE: That's correct.

MS. CHAYTOR: And, Sergeant Massine, perhaps you can take us through other parts of your CV that you would like to highlight, and I would also ask, in doing that, that you speak as well specifically to your operational experience.

SGT MASSINE: Very well. I'll start with my operational experience. In hindsight, I actually started policing in 1986 when I was doing my law enforcement diploma program at Lethbridge Community College. I was hired by my hometown police department as a special municipal constable, and that was a uniform position where I took did regular patrols as a summer student, but it was sworn position working on an operational level.

In March of 1987, upon completion of my college diploma, I was hired by Alberta Correctional Services. I worked for almost two years at the Medicine Hat Remand Centre, and that was a unique facility in that we had adult and young offender, male and female, all under one roof and we were responsible for the care and movement of inmates of all types.

Part of my – one of my secondary roles there was as an Emergency Response Team member, more for riot suppression and that sort of thing, non-firearm related, and that included high-risk offender transport. I was also the first aid instructor and that's really where I got more formally versed in developing lesson plans, course training standards to teach first aid to staff members at the facility.

In November of 1988 to September 1996, I worked for the Canadian Forces Military Police. I completed all the basic training for the general military and then my military police training. I was assigned to Canadian Forces base, Kingston, Ontario from 1990 to '95. I worked a short time in patrol – uniform patrol, which was basically domestic policing on the base, and then I was moved to a joint forces operation where I worked with the RCMP, the Ontario Provincial Police of Kingston city police, and Customs and Immigration Canada where we worked an undercover project on tobacco and alcohol smuggling that also branched into narcotics in the military. So there was a military nexus there, but I was a full member of that team for a period of time.

I also worked as a community liaison officer – Crime Stoppers liaison and military police identification, which is not the traditional forensic identification that you've heard testimony from here; it's more about security of military personnel.

In 1995, I was promoted to the rank of master corporal, which is a first-line supervisor, and posted to Canadian Forces Base Esquimalt in BC, Victoria, BC.

My primary function there was uniform patrol and I was a shift supervisor, as there was no sergeant available for the bulk of my time there; and I also provided use-of-force instruction to what's called the Base Auxiliary Security Force. And that's use-of-force instruction on more military-related techniques, if there were protests on the base and forming perimeters, that sort of thing.

In September of 1996 to December of 2003, I was employed by the Saanich Police Department and that's a municipal constable position. I started my career there as a patrol officer working a uniform patrol. I, after a period of time, went to the Detective Division and it was – my primary focus was on youth investigations; however, we were a unique unit in that whenever there was a major crime that occurred, we were basically enveloped into the homicide, for example, or a string of bank robberies. We also did covert surveillance on sexual predators that were released into the community, high-risk sexual predators that were released in the community, so a lot of surveillance operations there.

Early in my time in Saanich, I tried out and was successful in obtaining a position on the emergency response team and that's, as people have said, SWAT. My primary function was – the title I was given was assaulter. Areas of specialization that I had on the team included shield entries, using a ballistic shield. So I was always number one through the door whenever there was a threat, and my primary role was to ensure that the rest of the team got through safely. So if there was gunfire, I was affectionately known as bullet capture. I was a repel master on the team and a use-of-force instructor on the team as well, teaching all aspects of use of force.

In December 2003 to present, I moved over to the Victoria Police Department. A lot of my work with Victoria Police revolved police supervision. So I was in an acting-sergeant role for a lot of my time there, supervising jail operations, patrol operations, high-risk calls on the road, maintaining all the resources and that sort of thing. I was also the use-of-force training coordinator for the police department and that was a full-time/part-time position. When I first got hired by Victoria, it was part time and then, because of the increased training demands, I spent approximately three years in a full-time capacity working on training standards, lesson plans and delivery, that sort of thing.

MS. CHAYTOR: Okay.

SGT MASSINE: Another thing that I should mention with the military police and the emergency response team is, along with the high-risk call response that we did, we also participated in shadow operations and dignitary protection operations in more of a covert fashion, especially with the emergency response team and that we would shadow the Queen, for example, when she came to Victoria. In Kingston, I was involved with Princess Dianna and Prince Charles, that sort of thing. That was more of a background position. We did have more of an overt role at some public venues as far as providing VIP security on occasion.

My present position at the Justice Institute of British Columbia is – it's as the police academy use-of-force coordinator, and as you mentioned, it's sort of a multi-faceted role in that my primary function is as a direct liaison with the provincial government in developing and maintaining the provincial policing standards, which are new subsequent to the Braidwood inquiry.

One of the major ones that I worked on that just took effect January 1 of this year is the use-of-force instructor, standard. So it basically creates standardized training across the province that even the RCMP have to meet the same standard as municipal police when it comes to use-of-force instruction.

MR. AVIS: Commissioner, forgive me for interrupting, but nobody here is challenging Mr. Massine's qualifications and –

THE COMMISSIONER: Okay, do you want to –

MR. AVIS: – I do not want to interfere with whatever feels is necessary to put out publically –

MS. CHAYTOR: No, no. No, that's fine.

MR. AVIS: – but (inaudible).

THE COMMISSIONER: I was about to make the same point, Mr. Avis. I was about to ask the same question. I might have fallen asleep at the switch there, not doing it earlier–

MS. CHAYTOR: Well, that's not good, sorry.

THE COMMISSIONER: So I think you –

MS. CHAYTOR: Commissioner, the reason I asked for some background in his operational experience is that you'll recall when Corporal Knapman testified, in his evidence he made a comment regarding he didn't perceive that Sergeant Massine had much in the way of operational experience. So I just wanted to cover that off as not being of concern.

THE COMMISSIONER: If we have to, could we get from Sergeant Massine his on-the-street experience?

MS. CHAYTOR: That's what he was going through, yes.

THE COMMISSIONER: Totally – you're about just – maybe if you could give us an abbreviated version of the best and the worst of your on-the-street experience?

SGT MASSINE: Well, the best would be being involved in the creation of the CID program in the Province of BC; the worst, if you want to go on a pendulum, would be having the experience of being shot at, having guns pointed at me on more than one occasion, threatened with multiple weapons. In all cases, with the availability of lethal force, being able to resolve those situations without the application of lethal force; however, in one incident, it was a spontaneous assault of an impaired-driving investigation where my actions, non-firearm, resulted in the death of the subject.

So that would be the highs and lows, Your Honour.

THE COMMISSIONER: Thank you.

Okay, and no counsel with questions? What are you seeking to have –?

MS. CHAYTOR: I'm asking, please, to have Sergeant Massine qualified to give expert evidence in use of force, including crisis intervention and de-escalation training and curriculum development design and delivery as it relates to officer safety.

THE COMMISSIONER: Okay, anybody have any suggestions for – regarding that?

MS. CHAYTOR: I will say that again.

UNIDENTIFIED MALE SPEAKER: A little slower?

THE COMMISSIONER: A little slower –

MS. CHAYTOR: Slower.

THE COMMISSIONER: – yeah.

MS. CHAYTOR: Opinion evidence in use of force, including crisis intervention and de-escalation training, and curriculum development design and delivery, as it relates to officer safety.

THE COMMISSIONER: Curriculum development –

MS. CHAYTOR: Is that correct, Sergeant Massine?

SGT MASSINE: Did you mention use of force as well?

MS. CHAYTOR: I said – yes –

SGT MASSINE: Okay.

MS. CHAYTOR: – use of force –

SGT MASSINE: That’s right.

MS. CHAYTOR: – including.

SGT MASSINE: Yes.

MS. CHAYTOR: Yes.

THE COMMISSIONER: Okay, give it to me again, please.

MS. CHAYTOR: Use of force, including crisis intervention.

THE COMMISSIONER: Yep.

MS. CHAYTOR: And de-escalation training.

THE COMMISSIONER: Right.

MS. CHAYTOR: And curriculum development, design and delivery, as it relates to officer safety.

THE COMMISSIONER: Okay.

MS. CHAYTOR: And you’ll hear from Sergeant Massine how he has been involved post-Braidwood with the initiation of CID into the use of force training, and then so that’s why it’s important that we include that in his qualifications.

THE COMMISSIONER: Okay. I’m satisfied, based upon the information submitted regarding Sergeant Massine’s education, training and experience, that’s he’s qualified to give opinion evidence as indicated by counsel.

MS. CHAYTOR: Commissioner, will I keep going, or do you want to take the morning break? I note that it’s past 11 a.m.

THE COMMISSIONER: Yes, it’s after 11 o’clock, so we better take – sorry –

MR. CHAYTOR: And I intend –

THE COMMISSIONER: Time flies when you’re having fun.

Before I leave, Mr. Kennedy, my remark regarding co-operation was not warranted to – I can only blame it on late nights, too much coffee, and how many, eight weeks of hearings? But, okay, I apologize for that.

Thank you.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Now, I'll just mention to counsel before we continue, we're entering the reports provisionally as the – or the report of – joint report of Dr. Coleman and Sergeant Massine provisionally as a confidential document. It's not in camera, obviously, because the public are here and the matters will be discussed in public.

But in case there are, as we go through, obvious redactions that, you know, can be taken, we'll come back and make that a public document after we've finished the examination of the two witnesses.

Any counsel have any problem with that method of proceeding? Okay.

All right. Thank you.

MS. CHAYTOR: I ask then, please, Commissioner, that the report be entered as C-0020.

THE COMMISSIONER: 320?

MS. CHAYTOR: C-0020, yes.

THE COMMISSIONER: C-0020. Okay, sorry.

MS. CHAYTOR: C-0020.

THE COMMISSIONER: C-0020.

So entered.

MS. CHAYTOR: And if I could bring it up, please.

And do you have it? C-0020?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Well – no, no, no, no, you bring it up, please.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Why can't we have it brought up? Well, then we need –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Are we turning off the monitors for this or ...?

THE COMMISSIONER: No, no, there's no need to turn –

MS. CHAYTOR: (Inaudible.)

THE COMMISSIONER: – off the monitors.

MS. CHAYTOR: No.

THE COMMISSIONER: It's just that it's not being widely distributed, you know, by – until we finish the examination of the witnesses.

MS. CHAYTOR: Okay.

I'm just going to quickly and –

MR. SIMMONDS: Could I, could I just ask – so you're just going to recognize at some point that certain parts, maybe a line or whatever you feel is appropriate, would be redacted?

THE COMMISSIONER: Yeah, and I'll consult with you as we go along. And if you have – you see anything, any counsel sees anything that, you know, they could –

MR. SIMMONDS: Because I know my –

THE COMMISSIONER: We'll say a quick –

MR. SIMMONDS: I know –

THE COMMISSIONER: It will be a quick judgment call basically.

MR. SIMMONDS: Because I know that when – if the screens were going to be turned off that would be difficult for my –

MS. CHAYTOR: Yes.

MR. SIMMONDS: – for Meghan to follow on that.

Okay. Thank you.

MS. CHAYTOR: Okay.

And so, as we've all heard, the report that we have here was co-authored by both of you. And I think for purpose of what we're going to do here it would be helpful for us to say which portions were done by each of you. And under the table of contents that we have here – and correct me if I'm wrong, but I understand that from page 3, from the introduction page, page 3 to page 14, to the top of the page – and if we could just bring up page 14, please. That portion of the report to the top two sentences on this page, those were authored by you, Dr. Coleman?

DR. COLEMAN: That's correct.

MS. CHAYTOR: Okay, the remainder of page 14 – review of Constable Smyth's use of force on to page 44, please, Madam Clerk, to the middle – or sorry, the bottom of the page where we start with diffusing de-escalation up to this page or this section on 44 was authored by Sergeant Massine, is that correct?

SGT MASSINE: That's correct.

MS. CHAYTOR: Okay and then from the bottom of page 44 onwards to page 54 where the conclusion section begins, and again this is all authored by you then, Dr. Coleman, including on to page 58? And all of the conclusion phase – part I understand was authored by you, Dr. Coleman, and there’s one paragraph that we find on page 62 which was authored by you, but it is in relation to the conclusions – Constable Smyth’s use of lethal force, it is you paraphrasing what Sergeant Massine has found in his section of the report – is that correct?

DR. COLEMAN: That’s correct.

MS. CHAYTOR: And then if we come to page 64 where the recommendations appear, I understand that the recommendations – I’ve gone past – 63 and 64, the recommendations start here in section 5. On the bottom of page 62, the recommendations are both of your recommendations and on to page 64, those specific to use-of-force training program on 64 we have several bullet points there – those are, Sergeant Massine?

SGT MASSINE: That’s correct.

MS. CHAYTOR: Thank you.

It is a lengthy report, as we can see here, and I’ve been allotted an hour to examine you and I’m thinking I already cut into my time, so I am not going to spend a lot of time reviewing the details of the report with you. So my plan is to ask each of you to speak to the conclusions that you’ve reached, and the basis for those conclusions, without extensively referring to the report, but you do have your reports in paper form in front of you. So, if at any point in time, you wish to bring up a section of the report, please direct my attention to it. And I want most of my questioning to focus on the forward-thinking aspect of this Commission, and concentrate on the recommendations that you are both putting forward as a way forward here in our province.

So if we could, please – I’m going to start with you, Dr. Coleman. And in being asked to provide the opinion that you were asked to provide on strategies and techniques of de-escalation and measures to be taken to ensure officer safety, your opinion was broken down into two parts. Number one was the risk assessment for officer safety. And I believe in your report, you referred to it as personal risk assessment. And the second component of your opinion is about strategies, such as de-escalation and defusing, that you speak about in the report.

So I’m going to ask if you could then speak, first of all, on the risk assessment for officer safety. And if we could bring up, please, page 54 of the report? And before we get started, Dr. Coleman, I think it would be helpful if you could please explain what you mean by the term “personal risk assessment.”

DR. COLEMAN: Actually, I mean –

MR. KENNEDY: Commissioner, do I understand that if I have an objection to any of the references, or on this particular page, that I can bring that to your attention?

THE COMMISSIONER: If you wish – if you want to suggest, you know, something that’s unnecessary, surplus, improper (inaudible) we can take a quick –

MR. KENNEDY: Well, we can already see in paragraph 1 I have some concerns that I dealt with earlier.

THE COMMISSIONER: The – where are we? What – which one is –

MR. KENNEDY: On page – that page is brought on the screen, you’ll see that in paragraph 1 that that thread, or that comment is repeated on a number of occasions throughout the report. And the interpretation given to the texting with Trevor, there’s one particular –

THE COMMISSIONER: Oh, I’m sorry – I’m just looking at it the first time – where is it? Oh, down in the middle there –

MS. CHAYTOR: The second bullet –

THE COMMISSIONER: – on the 4th of April.

MS. CHAYTOR: – down here, the second last bullet.

THE COMMISSIONER: Right.

MS. CHAYTOR: Is that what you’re talking about?

THE COMMISSIONER: Okay, so, Mr. Kennedy, what is it you’re concerned –

MR. KENNEDY: Yeah, well, what it is, the main reference or the objection to the use of that part of the report is later on, Commissioner, as I outlined on page 6 and 7 of the brief; the mindset which leads to the conclusion then and the terms that are used in – at page 58. But it’s that whole – I don’t object as much – that’s factual what he’s stating there.

THE COMMISSIONER: Right.

MR. KENNEDY: It’s the interpretation that he utilizes later on.

THE COMMISSIONER: Well, then, why don’t we wait for that and you can raise it to my attention and we’ll get through.

Okay. Thank you.

MS. CHAYTOR: Commissioner, there was nothing in the brief indicated to have an objection to page 54. And I understand the reference here is a quote that was in the BBM with Trevor. And I’d just like some direction because I really want to get through this as expeditiously as we can here.

THE COMMISSIONER: No, we’re moving ahead. Go ahead and put your questions. And Mr. Kennedy, when we get – later on, I understand, he might have – express another objection on the same with that in mind.

But, yeah, go ahead.

MS. CHAYTOR: Okay.

My question then, Dr. Coleman, was: What do you mean by the term “personal risk assessment”?

DR. COLEMAN: The safety of the police officer, and thus the public that the police officer deals with. It’s an officer-safety assessment that I’m talking about.

MS. CHAYTOR: Okay.

DR. COLEMAN: Personal to the police officer.

MS. CHAYTOR: Personal to the police officer. Okay.

And if I could bring up, please, P-0794. This is a report by Dr. Stephen Hart and it's page 8 of that document. And you were here yesterday and heard Dr. Hart's evidence.

Okay. And just in this last paragraph of his report before the conclusion he speaks to your use of the word "personal risk assessment." And I want to offer you an opportunity to respond to this.

"It appears that Dr. Coleman judged the appropriateness of Cst. Smyth's violence risk/threat assessment in the context of protection of public figures using standards for 'personal risk assessment' in the context of the UK College of Policing and Police Executive Research Forum models for critical decision making. The latter models were developed to assist uniformed police when making decisions regarding use of force during interactions with people who are not carrying firearms; in my opinion, they are not relevant to the context in which Cst. Smyth interacted with Mr. Dunphy."

So, in terms of your use of the term "personal risk assessment," I'd like to offer you an opportunity to respond to what Dr. Hart has said here.

DR. COLEMAN: Well, personal risk assessment officer safety is relevant to, well, all interactions a police officer has with somebody. It's not unique to investigating public figures, so I wasn't going down that road at all.

MS. CHAYTOR: Okay.

DR. COLEMAN: Yeah.

MS. CHAYTOR: And if we could go back, then, please, to C-0020. And perhaps then, Doctor, you can tell us – and we're on page 54, please – what conclusions you reached in terms of whether or not, in your opinion, Constable Smyth carried out an adequate risk assessment for his own personal safety?

DR. COLEMAN: Well, page 54 and going on to page 55 is a summary based on the information that I'd received and statements, interviews that I read and in the testimony, so at the inquiry, of Constable Smyth. So I constructed what is essentially a summary here of what I considered to be pertinent issues there. And without going through them in detail, I felt that it fell short of a thorough assessment in regard to his personal safety and, of course, if his personal safety hasn't been well attended to, then there's a situation where public safety might be jeopardized, too.

MS. CHAYTOR: Okay, and perhaps, then, you can speak to some of the factors or the key factors that led you to that conclusion, that his personal risk assessment fell short of a thorough assessment.

DR. COLEMAN: Well, he made some initial inquiries when he received the information from, I think it was, Ms. Ivey, basic initiated background intelligence inquires about contact information, and got an address from Tom Mahoney for Mr. Dunphy.

It was quite clear from what I read and heard that his mind was already made up to attend on April 5, and sure enough, he set about to go into Mitchells Brook on the Sunday. And I noticed that he didn't conduct some really important and actually routine checks for most police officers until he was on the road to Mitchells Brook. I would have expected him to have done the CPIC

and the vehicle checks and driver's license checks before he ever set out. He didn't know what sort of information he was going to get, but he was already on the road, which again indicated to me he was determined to go there regardless of what was going on.

He did get information. The information he got – and I understand the issues around the CPIC check, but there was nothing there, and according to the chief firearms registration officer, it was negative in terms of having a registered firearm. It's not unusual for people to have firearms that are not registered, so, but he did check that.

He also talked to Constable Cox, RCMP, to do the PROS checks. He learned about an uttering threats charge. There's no indication in anything I've seen or heard or read that he followed up to get any details on that uttering threats charge to find out if that was something he should be or not be concerned about.

And then he declined an offer for a police officer to accompany him. I think he could easily have accepted that. If he had an issue with going to the door with a uniformed police officer, I see no problem in the second police officer being in close vicinity as backup. But he turned it down. I don't think that was a good decision.

I also understand that, of course, he attended at Mr. Dunphy's house on two occasions, but on both occasions he didn't book out with his dispatcher, which is standard procedure in policing to tell the dispatcher where you are. And it's also standard procedure to arrange with a dispatcher that they check with you after a predetermined amount of time, usually a relatively short time – it might be 10, 15 minutes depending on the circumstances – to see if everything is okay. And, of course, if they don't get a response at that time, there's some concern. They might very well dispatch another police officer to see if everything is okay. He didn't do that. This is very, very basic officer-safety measures.

He walked past a sign that warned that political officials were not welcome at the house. I don't think that would necessarily prevent somebody as a police officer going to the house, but it should be a heads-up that it's something a little unusual. Not everybody's house has those sort of signs on them.

He walked past some CCTV cameras there on the way in that should have – you know, why are these here? He acknowledged that it was an unkempt house, and apparently he tried to phone Mr. Dunphy at some point. I understand he couldn't make contact; there's some question about the reliability of cellphone reception in that area. Again, that should be a flag because that again affects his safety. If he has to call for assistance, how reliable is his cellphone going to be?

He then went to the neighbours. Now, neighbourhood inquiries, quite routine in policing and a good practice. He styled that, stylized that as part of his risk assessment, but he did it after he first approached Mr. Dunphy's house, who happened not to be home. So if it's part of the risk assessment, I don't know why it wasn't done first.

The information he got from there was, to my interpretation, clearly 10 years old. Most of it was, anyway, so not particularly reliable.

He did receive information that Mr. Dunphy had a daughter, apparently, who didn't live far away. He chose not to follow that up. I think that would have been a good source of information. If he had interviewed the daughter and got no information, at least he had checked it, but he didn't.

He did learn, I understand, from Debbie Dunphy about the uttering-threats charge that was resolved by a peace bond, and he learned that Mr. Dunphy didn't always play by the rules.

MS. CHAYTOR: I'm sorry, I –

DR. COLEMAN: Didn't always play by the rules.

MS. CHAYTOR: Okay so –.

DR. COLEMAN: He didn't always comply with the peace bond.

MS. CHAYTOR: Okay, and is that of significance from an officer-safety perspective, in your opinion?

DR. COLEMAN: Well, yes, it – yeah.

MS. CHAYTOR: Okay. All right. I'm sorry, continue.

DR. COLEMAN: Again, when he went back, he didn't book out, same thing with not making arrangements with the dispatcher.

It's unclear how he introduced himself, and I think around officer safety, I think it's important that he was because he was dressed casually – it's been described as casual; it's also been described as business casual – that it was clear that he identify who he was. Apparently he showed his badge from some distance away; I think in his testimony I recall him saying 10 to 20, and then maybe even 30 feet. It was a considerable distance from the house, so I think that could have been much clearer.

And whether he introduces himself as Joe or Sergeant, we're not sure, I'm not sure, but it's important because it's part of the officer presence, if you want. And, again, it comes back to a safety issue that it's quite clear in whoever you're talking to that you are a police officer. Under the circumstances, it might not have been that clear.

MS. CHAYTOR: Okay. I also –

THE COMMISSIONER: It probably didn't make much difference, though, in terms of the – apparently they had a conversation wondering what's the RNC doing in RCMP jurisdiction.

DR. COLEMAN: Right, Mr. Dunphy picked up on that, yes.

MS. CHAYTOR: Yes. Okay.

And I also saw in your report that you notice about the vehicle that was in his driveway, which didn't match the vehicle description for Mr. Dunphy's vehicle. And why is that of concern?

DR. COLEMAN: Well, he didn't know who was going to be in the house. He had information about – I think it was a Honda that Mr. Dunphy drove, and of course, well, the vehicle was there, I believe it was a Jeep. I think most police officers would have at least determined the registered owner of that vehicle to determine who it belonged to –

MR. KENNEDY: Commissioner, I know he can give expert evidence, but to say most, I think that most police officers would have determined, I would suggest to you, is going outside of the realm of expertise.

THE COMMISSIONER: Well, could you rephrase that in another way there, Dr. Coleman?

DR. COLEMAN: Well, in my experience, the common practice would be you'd check the registered owner of the vehicle if there was an unknown vehicle at that location you were going to. It didn't happen. Maybe that didn't – wasn't a pivotal point in this whole business, but it would have been good practice.

MS. CHAYTOR: Okay.

All right and continue on then. Were there any other factors that led you to your conclusion in terms of the inadequacy of a thorough assessment for his personal risk safety?

DR. COLEMAN: I think that sums it up. It was incomplete and a lot of this could have been completed before he even embarked on his journey to Mitchells Brook so he had a better picture of what he might or might not be encountering.

MS. CHAYTOR: Okay.

And what, then, in terms of factors did you consider once he then arrived in the house in his interaction then with Mr. Dunphy? And I notice on this page you refer here to his positioning, deciding not to sit down and positioning himself in a dominant standing position. How are those of relevance?

And I would say to you, Dr. Coleman, in asking you that, the decision not to sit down in the living room when Mr. Dunphy asked him several times to do so, the Commissioner has heard other evidence that perhaps a decision to sit may have in fact put Constable Smyth in further jeopardy.

DR. COLEMAN: Right.

Well, standing is not – particularly when the other person is sitting – is not conducive to good communications and building the connection, the rapport that is necessary for a situation like this. The chesterfield laid on the or sat on the left-hand side of the room as you go through the door into the living room, and the one end of the chesterfield was very close to the door.

I don't see that there was any increase in risk for a police officer or anybody to have sat on the chesterfield. And he could have sat there on the end of the chesterfield closest to the door; a very, very short distance to get out of the room if things had not gone well. So I don't see a good reason for not sitting on the chesterfield.

The reason was given that it was dirty. I wish I had a dollar for every time I'd sat on somebody's dirty chesterfield or chair when I've gone to a house on an investigation. It's just – I don't find that a good reason.

MS. CHAYTOR: Okay.

You also list here items that he didn't notice, including the box-cutter knife on the table and drug paraphernalia, I believe he – he did notice, I'm sorry. He did notice the drug paraphernalia.

And why do you list those as factors in terms of officer safety?

DR. COLEMAN: Well, the box cutter on the table is potentially a weapon, if somebody so chooses to use it. I think it also speaks to observation skills while they are in the room. The pictures that I've seen, that box cutter was fairly easy to see. I realize the house was in somewhat of a jumble and there was all sorts of things laying around, but the picture I saw, the box cutter was very easy to see, particularly if you'd seen the drug paraphernalia.

MS. CHAYTOR: In terms of where he would have – if what you’re suggesting, he could have sat on the end of the chesterfield closest to the door, what about his ability then to be able to observe what’s happening in the room or what other items that may have been in the room?

For example, the Commissioner has heard evidence that the rifle came from the other side of Mr. Dunphy’s chair.

DR. COLEMAN: Well, that’s true, but if he’d sat immediately down on the chesterfield there, he might not have seen something on the other side of the chair; but at the same time, he’d have been close to the door if he had to get out and it would have been a much more comfortable way of having a conversation with Mr. Dunphy.

MS. CHAYTOR: Okay.

And over on page 56, you also continue to say he “failed to keep his hands free by writing, or pretending to write in/on his file folder;” and “was looking down and writing or pretending to write in/on his file folder and, thus, failed to watch Mr. Dunphy’s actions”

So, and those I think are items that have been spoken to by other officers, but from your opinion in terms of personal risk safety, perhaps you might want to speak to those.

DR. COLEMAN: Well, when he was doing that, he wasn’t really paying attention to Mr. Dunphy, and so from an officer-safety point of view he wasn’t watching; but also, I suggest that communicates to Mr. Dunphy possibly a lack of interest. He wasn’t paying attention to what Mr. Dunphy was saying when he was looking down and writing, so ...

MS. CHAYTOR: And, Dr. Coleman, you also – then your last bullet point here says that he “did not appear to consider leaving the house and regrouping.”

Is it your opinion that, based on the items that you have or the factors you have articulated in your report, that that’s what you’re suggesting should have happened in this situation?

DR. COLEMAN: Right.

Constable Smyth describes a deteriorating situation in there. He described it as frothing at the mouth, incoherent. By all accounts it sounds like voice was getting raised, but it was obviously increasing in intensity there. And one of the options was to say: You know, thank you for your time, Mr. Dunphy, maybe we should talk about this another day, and leave and regroup. And whatever that regroup looks like but, you know, it would be something to consider for the future. But there was an opportunity and probably good reason why he could have left and disengaged.

MS. CHAYTOR: You mention throughout your report the issue of Constable Smyth having inadequate notes. What is the significance of that from an officer-safety point of view? Or is there any? Why do you mention that?

DR. COLEMAN: Well, we’re not able to actively learn, without those notes, exactly what took place and when. Even in the typed notes that were prepared post-incident, we didn’t see anything about the CPIC check or CFRO, at least I didn’t.

If something had happened to Constable Smyth when he had been at the house there, it would be difficult to find out what he had done. I mean it could be reconstructed, I suppose, over some time but there would be no record of the steps he had taken that got to the situation that he found himself in.

It's also important to make sure that there's adequate documentation, notes included, so that they can be filed, formally filed, for the benefit of police officers in the future who might have interaction with Mr. Dunphy. They can see what happened in the past, what worked, what didn't work. It's invaluable information for the future.

MS. CHAYTOR: Okay.

If there's – I don't know if you have anything else on the officer safety or the personal risk assessment piece, Dr. Coleman. If not, I'd like to move on to your opinion on de-escalation.

DR. COLEMAN: No, that's it. De-escalation and officer safety are linked so ...

MS. CHAYTOR: Comes in?

DR. COLEMAN: Yeah.

MS. CHAYTOR: Okay.

All right, then we'll continue on. And then perhaps you can tell me your opinion as to what, if any, defusing or de-escalation strategies might have been contemplated or used by Constable Smyth during his interaction with Mr. Dunphy?

DR. COLEMAN: Well, as we're told, the interaction started off relatively cordially but sounds like it deteriorated quite quickly there. When you're talking about de-escalation, you're talking about verbal and non-verbal communication. And a very important part of verbal communication is listening, not necessarily talking.

Unfortunately, there isn't sufficient information to know exactly how that conversation went in the house there, but I suggest that active listening is absolutely critical to understanding and resolving these situations there, and that is listening to what Mr. Dunphy has to say. Sure, at times we understand it was incoherent but it requires patience and it requires time.

MS. CHAYTOR: Okay.

DR. COLEMAN: So active listening, being sensitive to the situation, treating the other party with respect. I'm not suggesting this didn't happen. These are the things that should be happening and it's not clear whether they did or did not.

And, of course, there's trigger words and trigger actions that can escalate a situation. One which obviously triggered Mr. Dunphy was Constable Smyth looking around. He picked up on that, I'll grant him that. He also expressed some concern about Mr. Dunphy's circumstances. There's some ambiguity around that but it sounds like Mr. Dunphy interpreted that as his living conditions that were of concern. Again, that was obviously a trigger.

I don't know the exact words or exchange in that but I know Constable Smyth did talk about telling – or the way I understand it, telling Mr. Dunphy to calm down. That sort of language, if you're trying to de-escalate a situation, is sort of golden rule, no. It's not conducive to de-escalating a situation such as this.

THE COMMISSIONER: So any command – sorry, any command would be non-conducive to de-escalation?

DR. COLEMAN: It would. And calm down would be seen as a command. That's right. And it invites the response – and, again, I'm not saying it happened in this case, but it invites the

response: I don't need to calm down. It doesn't – you don't make any progress in trying to establish this rapport and the communication that you're trying to do.

MS. CHAYTOR: Okay. So in terms of what you write about and what you teach, that's not something that is recommended to say, calm down.

DR. COLEMAN: No, it's one of those golden rules in the game. You don't say things like that.

MS. CHAYTOR: If someone is in an agitated state?

DR. COLEMAN: Yes, right.

MS. CHAYTOR: Okay. All right.

Okay. And if we look at page 62, I think I'm just going to skip over to 62. And you say: "Once Mr. Dunphy produced his rifle, it would be challenging for a person not well versed and confident in the de-escalation to try that approach. Having said that, prior conversation and actions of Cst. Smyth could have had more emphasis on defusing the situation rather than naively dismissing the signs of increased agitation. That is, as a police officer he should have been educated, trained and well versed by means of well structured and repetitive roll plays on how to avoid getting to the point that this incident reached."

And then down under, I understand this –

THE COMMISSIONER: A little bit louder would help I think. Yeah.

MS. CHAYTOR: Oh, a little bit louder. I'm sorry.

And then if we get under c. here, I understand this is your piece: "Defusing/de-escalating: The successful resolution of challenging situations.

"Many coroner's inquests and fatality inquiries make recommendations about the need for more training of police officers." And you quote here Dr. – or sorry, Justice Iacobucci, 2014.

Louder still? Okay, sorry. My mic doesn't seem to be co-operating today. All right.

And you also say that – you mention "in Sec 3.0.c.(i), numerous inquests, studies and reports have emphasized the need for police officers to have superior communication skills and comprehensive training and education on defusing/de-escalating difficult situations. Unfortunately, the RNC has not re-designed and updated its learning program to include the establishment of a strong communications foundation and a program such as the CID learning program to prepare their police personnel for successful *Crisis Resolution*." And Sergeant Massine, I believe, will speak to that as well.

"As Justice Iacobucci (2014) pointed out in his report for the Toronto Police Service, attention is necessary to the hiring of the right people" and you go on from there.

So, Dr. Coleman, what is, to your knowledge, is happening in other jurisdictions in this regard?

DR. COLEMAN: Well, there's been an increased focus on de-escalation. That's not to say de-escalation has never taken place in policing. I can recall numerous situations during my policing career, and including when I was operational, where I or others that I worked with would resolve situations by defusing and de-escalating situations. But it's certainly come to the fore in recent

time as a result of a series of tragedies, not least of which some of those in the Toronto area and, well, British Columbia that led to the Braidwood Commissions.

So it's become very much a priority of concern to all of us police agencies to do a better job in the area of de-escalation to avoid the tragedies that have occurred in various places.

MS. CHAYTOR: Okay.

And when we get to the recommendations, I'm going to ask you to speak a little more about that. But unless there's anything else you want to speak of specifically on this, then I'll go next to Sergeant Massine –

DR. COLEMAN: Right.

MS. CHAYTOR: – and take him through his evidence.

Thank you.

Sergeant Massine, you were asked to undertake three tasks for us and I will only concentrate on the first two of those tasks today. The first was to review and provide an opinion of the RNC use-of-force and firearms training program and secondly, to review and provide opinion of Constable Smyth's actions leading up to the use of lethal force.

The third component, Commissioner, was an assessment and opinion on the Use of Force Review conducted by Corporal Knapman. And I'm not going to speak to that today because the concerns that we had in terms of Corporal Knapman's opinion were based on aspects that he did not give evidence on here in terms of you'll recall the physiological effects and that type of thing. So I don't think it's any need for me to go into that portion of your opinion.

THE COMMISSIONER: Okay.

MS. CHAYTOR: And also on the legal issues that he had spoken to in his report at the time. But my understanding is that Corporal Knapman did not give evidence on that.

So with respect then, if we could bring up or go to page 14, please, of the report which is where, I understand, your section of the report began. The review –

THE COMMISSIONER: Sorry, what page is it?

MS. CHAYTOR: Page 14, Commissioner.

THE COMMISSIONER: Fourteen, yeah.

MS. CHAYTOR: The Review of Constable Smyth's Use of Force and you also then go into the Royal Newfoundland Constabulary's Use of Force and Firearms Training Program.

And there's a section of your report here, Sergeant Massine, where I know when you completed it we were waiting on further information from the RNC as to the model that they were using in their training. And you referenced sections of their training manual that led you to believe that perhaps they were using a linear model, the PPCT.

SGT MASSINE: That's correct.

MS. CHAYTOR: Is that still an issue based on what you have reviewed?

SGT MASSINE: No, I think now it's been resolved and I understand that they are using the National Use of Force model as – and framework in their training.

MS. CHAYTOR: Okay.

And I believe that came from some confusion in the terminology used in their training manual.

SGT MASSINE: That's correct.

The PPCT method of training is a US, United States-based training philosophy and they use more linear models there. And it wasn't clear, initially, whether the instructor training that Sergeant James took actually had the PPCT model or the National Use of Force model.

MS. CHAYTOR: Okay.

All right, so then with respect to the first question, your review and opinion of the RNC use-of-force and firearms training program, what opinion have you reached with respect to their training program? And I'm going to then you ask you to please explain the basis for your opinion.

SGT MASSINE: In a nutshell, the documents that I reviewed are dated; they're dated by many years. Some of the terminology, for example, around double tapping on the range, controlled pairs or dedicated pairs, in my experience, both operationally and as an instructor in British Columbia, those terms were outdated in 1998 and 1999. So to still be using terminology such as that shows that the actual methodology of training delivering a course of fire is outdated.

Also in keeping with best practices around documentation of firearms and use-of-force training, my review, I was provided a very large training manual, 370 pages, which was, in 2004, the Justice Institute of British Columbia police recruit reference manual in use of force and it's being held out as an instructor manual.

And I'm very, very familiar with that manual. It's very outdated. And the limitations to it is that there's no course training standards, so there's no glossary of abbreviations or purpose or goals in the training set out. It doesn't describe what it takes to be an adequately qualified instructor to deliver that. Candidate selection criteria, when you get in to more specialized training, is not spelled out at all. In some cases, if it's a course where somebody has a requisite previous experience and knowledge, maybe there's a challenge for credit, that sort of thing, and the list goes on. There's no certifications. There's no assessment criteria. What's a pass and fail in the training?

When you get down into the lesson plan aspect of it, a lesson plan is set out so that if you have a lead instructor or an instructor on the day and that person calls in sick or can't make the training, a second or, a substitute teacher basically, will be able to come in, take that lesson plan and teach it from start to finish and be able to do it professionally and meet all the learning objectives of that specific training goal, whatever that is. And, again, we don't see any learning objectives. And I have to say from a trainer's standpoint, one of the most important things that should be there are the learning objectives. What information do the instructors wish to pass on to the students of the day and are those objectives met through the actions of the students, if you will, or the officers in that training.

There's no documentation anywhere in there and that's what we call the assessment strategies or the rubrics. So it's an accountability piece and that should be maintained in a member's – police member's training file. So those are the main areas where the training program is lacking is the recentness, the terminology and then the overall structure of the training program by today's modern standards.

MS. CHAYTOR: Okay.

And in terms of what you mentioned about the double tap and control pairs – and I think you referred to this in the REACT training piece, what is the importance of this? Why is that important?

SGT MASSINE: It's especially important today in the level of scrutiny applied to police response and then when you take it back, we would call it like a psychological autopsy where you take it back to the training that the members received. That if you're firing more than one round, it is incumbent upon a police officer or whatever – take the firearm out of the equation, multiple uses of force, there has to be an assessment.

So you're looking for subject behaviour, when you determine in the moment what the subject behaviour is, what an appropriate response is in that very split second and then you apply your use of force. Whatever the chosen use of force is, the response option, there has to be a conscious assessment in the moment of whether or not there's a change in the behaviour. The change could be a positive change, meaning the subject stops the threatening behaviour towards the officer or another person under our care and control which is any member of society.

And once you've done that assessment you have to be able to react and, again, in that moment, as to whether or not you need to repeat your use of force or now begin your de-escalation as the officer transitioning to lower levels of force, maybe engaging more in crisis intervention de-escalation techniques at the time through dialogue and making sure that we're not going one step beyond then as required.

So if you're speaking in terms of specifically double tap, my experience with the term double tap in related to firearms training is that two rounds were fired in every instance as we have in the instinctive course of fire. And the whole premise of double tap is that two rounds sound like one. So it's fast, it's just bang-bang, as fast as you can pull the trigger.

The argument is – back in the day was that is there truly an assessment with those two rounds? And there can't be. It's impossible if you're firing instinctively to fire two rounds in every case. So that's where the term controlled pairs or dedicated pairs came in where it's more of a sequence of firing of bang, bang, so that that momentary pause within the two rounds enables officers to assess whether or not that first round has had the desired result of stopping that lethal force or that grievous bodily harm or death behaviour from the subject.

And I know when you look at it with a layman's eyes you would say, well, is that even possible in the heat of the moment to do? As a trainer, as an experienced operator on many levels, that's what we strive to do in training. So there is an instinctive component to the training which is that initial response. If you need one round, absolutely deliver that round.

And then we have to have the cognitive thought process built in – and this is where my masters research really paid off, is looking at sport models. When you look at high-level athletes, how can they make the decisions they do in a split second on a playing field. It's because they practice a lot.

And the unfortunate thing with police training is we don't get the time to practice a lot and so I equate it to peak performance. When an officer's life or the life of a member of the public is in jeopardy by a subject's actions, we need to be making these instinctive decisions followed up by a cognitive thought process to make sure that we can escalate and de-escalate our level of force, as it's reasonable and appropriate to do, given the totality of the circumstances that that officer is facing.

MS. CHAYTOR: Okay. Thank you.

You also mention on page 21, and you've mentioned in your evidence already, the concern regarding some terminology that is used in what you reviewed, including terms like "bad guy" and "perp" and the negative connotations. And perhaps you can speak to the significance of this beyond just being words.

SGT MASSINE: Right.

I'll put it in context of my current position where I assist in the Recruit Training program, and that being said, I have experienced this in-service training as well. And I'm even guilty as charged of using these terms early in my career as a trainer.

MS. CHAYTOR: Uh-huh.

SGT MASSINE: It creates what's called an implicit bias. And basically that's a learned terminology.

So if, as a trainer, if I'm referring to people that you're going to deal with in a scenario as a bad guy or a perp, there are negative connotations to those and it can't help but affect the culture of the agency where the training is being provided. And we see it with the recruits when we get guest instructors that come in, is we're very conscious as full-time regular instructors what our terminology is in – especially in high-risk scenarios. Because we do full, dynamic scenarios that are called force-on-force scenarios where recruits are being shot at with FX marking cartridges, plastic bullets, if you will, and they're returning fire.

And then when we get guest instructors that come in and they're not 100 per cent up to speed with what our terminology is and the sensitivity around that negative terminology and they say, bad guy, perp, we will hear the recruits in the debrief – which is even more important than the actual scenario itself – we'll hear that terminology come out of the recruit's mouth and they haven't heard it from their regular instructors. So it does create that culture and if you're not in check with it, that can continue in a training environment and ultimately cross over to an operational environment.

MS. CHAYTOR: Thank you.

And on page – on page 22 you start with the Courses of Fire and over on to page 23 you discuss the difference between training and qualification. And I think it would be helpful, Sergeant Massine, if you can explain what the difference is and how this is an important point that you have – from your point of view why this is important.

SGT MASSINE: Absolutely.

There's a lot of misconceptions that police do a lot of training, specifically around firearms. And the truth is we don't do a lot of training. Training involves the passing of knowledge, the development of skill, so there's a teacher-learner interaction.

When we talk about qualification, as is described in the report and the instinctive course of fire, for example, that is not training. Members show up, they know they're going to fire a set amount of rounds in a set pattern and it's the same thing that they use every day – every day of the week, if they're running members through. And all they're doing is simply qualifying to maintain a certification to carry the pistol on the course of their duties. It's not a training environment; it's a qualification. So it's a test in essence. And in order to have a test, there has to be material

provided, study material if you will. And in a real-life application with firearms, there has to be skill development.

So it's great to get police officers to this level, for example, but really what we strive for is to get them higher. So if we're doing the same thing year in and year out, we're not training our members, we're just keeping them qualified. We want to push our members. So as the years progress the training should progress, and with that there should be lesson plans, course training standards, all that documentation and assessment criteria.

MS. CHAYTOR: And I just want to, for the transcript, for the record, when you were giving that answer you used your hands and you said: Get them to hear, meaning high up. And then you went even higher and saying: But we want to get them there.

SGT MASSINE: That's correct.

MS. CHAYTOR: And you raised your arm even higher.

SGT MASSINE: Right.

MS. CHAYTOR: Okay.

All right. Thank you.

And then your opinion then begins – actually, your caption is on the bottom: Opinion: Royal Newfoundland Constabulary Use-of-Force and Firearms Training Program. And I apologize, I know I'm just doing a very cursory review of your report here but others will have questions and perhaps more detail will come out.

SGT MASSINE: Uh-huh.

MS. CHAYTOR: And then “Based on a thorough review of the materials provided, the writer is of the opinion that the RNC Firearms and Use-of-Force Training Program needs a thorough review and overhaul for the following reasons.” And you give five points here, Sergeant.

SGT MASSINE: Yes.

MS. CHAYTOR: And I would just ask, please, if you could take us through those and address what your concerns are and why you believe that it's not up to current standards.

SGT MASSINE: Okay.

I'll start with why I believe it's not up to current standards. I was involved with the Braidwood inquiry in British Columbia basically from day one, so that was a huge learning experience for me as a trainer and a police officer. So it's all about growing your program, meeting the needs of scrutiny for the officers involved. Because at the end of the day, it's the officers that are responding that are going to be the ones in the hot seat, so to speak, articulating their actions and justifying their actions, as it should be.

So the first one is staying away from – in a nutshell, it's staying away from for-profit companies, especially United States based. The interesting thing with police training over the years is a lot of our source for training came from the United States and that was because there really wasn't a company in Canada that was offering adequate training.

In British Columbia, because of the Braidwood inquiry and the standards that have resulted, is we have a provincial certification for use-of-force instructors. It blends over to our Recruit Training program so everything is in-house, if you will, within the province. So there's some ownership on the material and it's done on a demographic survey of what the needs of your – of the people that you serve are, what are the needs for them as far as use of force, officer safety, that sort of thing.

So try to stay away from this – it's what we would call a canned training package meaning – and the confusion that I had in the PPCT manual speaks for itself, because like I didn't know if they were learning the US model of the continuum or the National Use of Force model and framework as they should be. So that confusion often arises.

The reference manual that I spoke of – sorry the RNC Use of Force Training Manual, again, that is a reference manual. My opinion is that manual should go out to every single officer in the department. They should have a copy of it for their reference because it describes in words and in pictures all the different techniques that they must know and complete and what will be good for them in their day-to-day operations.

But what needs to be done is the development around a course training standard, lesson plans and the assessment criteria to make sure it's up to the industry standard of today and the scrutiny of today.

MS. CHAYTOR: And one of the things you noted in the report, and I didn't take you to it, but it was Module 4 being sent out by email.

SGT MASSINE: Right.

I'm a huge fan of online learning; I think it has a great application, especially in policing, especially if you have remote areas, as I understand the RNC does. But the thing is to have – simply have a member respond by email that they received it and read it and understand it, that's not up to today's standard.

There needs to be – if they're going to do it in that format, I might suggest that they simply put a test at the end and they have to log on so there is some accountability where they log on to the computer. They write a test on the end and that is the simplest way to confirm understanding. A simple email back to the lead use-of-force instructor saying, yeah, I read it, I get it, that's not up to the industry standards of the day.

MS. CHAYTOR: Okay.

I'm sorry, you can continue with your points there, please.

SGT MASSINE: Okay.

And then we talked about the terminology around bad guy, perp.

MS. CHAYTOR: Yeah.

SGT MASSINE: Again, that creates the culture of your department and it's often done without malice. You know, you turn on your TV and the cops on TV refer to bad guys and perps and it's all high fives and all that. That's not the reality of policing.

And I think as trainers we have to be very aware of the professional image because as a trainer, whether you're doing recruit training at the ground level or I'm working with an elite SWAT

team doing training, they're going to mimic my behaviour, the terminology that I use. Because as a trainer, for the most part, you are put on a pedestal and you have to set the tone and the culture for the agency or the unit that you're training. And I think it's important that the trainers have the passion and the ability to look at themselves, be very self-critical and analyze their own training programs, just discover where the flaws are and where they can do better because you can always do better.

The scenario-based training, that's – I'm a huge fan of scenario-based training as well, as long as it's – again, it's scripted, there's a purpose. You have to have desired outcomes and the objectives that you're trying to have officers meet when they're going through these. And there's different types of scenarios. They're experiential learning so you don't need an assessment criteria. It's actually a safe place for officers to come and deal with, potentially, a life-or-death situation and make a mistake and maybe they get shot, okay? Or then you have your testing scenario where it's quite simply pass, fail. And at the Police Academy and within the police departments in British Columbia, we use both. And they're done strategically based on what our objectives are.

I didn't see anything in the courses of fire about specific to pistol handling, marksmanship or judgment. And, again, it's because I think the documentation I received was lacking in detail as far as the lesson plan. Because even if you're doing a pistol qualification course of fire there still should be a lesson plan outlining what the day's events are going to be. So if you're doing dry handling, pistol handling skills, magazine changes, if you're doing trigger control drills, dry fire, that sort of thing, that should all be built in there with times that are built in to show the flow of that entire day.

What I saw were simply tests. And, again, they're not training; they're simply qualification to meet the objectives for officers to continue to carry the pistol in the course of their duties.

MS. CHAYTOR: Okay.

And if we could go then to page 42, please, in the document. And, actually, I'm just going to skim down to 43, I believe it might be, if I just find my place.

You write here on page 43 – based on your review of the documentation you say that it's not – that “the RNC firearms use-of-force training program is not in alignment with the best practices of Canadian police education and training. As previously stated” – and you refer to “no Course Training Standard or lesson plans that outline the nature and scope of the training, specifically identifying learning objectives....” And you, again, mention the improper terminology. The manual itself is dated, over 10 years, and is directly copied from a dated recruit training reference manual.

SGT MASSINE: That's correct.

MS. CHAYTOR: And you also speak about “Both courses of fire are tests for proficiency and not an exchange of information.” And if we come down to the last paragraph or second-last paragraph here, you refer to the process of analyzing the situation, ultimately choosing the option is still a cognitive one, and I believe you've already spoke to that and you refer to researcher's control processing.

And controlled processing is in essence the rational evaluation of a situation, the conscious selection of a force option which ultimately assists with the articulation of the decision. And I understand that's based as well – that's – you've given the site for the research and that you've also done some research in this area.

SGT MASSINE: That's right as part of my master's degree.

MS. CHAYTOR: As part of your masters, yes. Okay.

And page 44, we have a paragraph here I wanted to bring you to as well. My reference about the skills development and, again, this is your point here, I think, about: "By using 'Qualification Courses of Fire' as the sole means of firearms 'training', the RNC is not meeting the current best practices of Canadian police education and training."

SGT MASSINE: Uh-huh.

MS. CHAYTOR: And you refer again to ongoing in-service police training should develop as a police officer progresses throughout their career. So I take it this is something on an ongoing basis, it's not just for your recruits. This is –

SGT MASSINE: That's right. It starts at the academy.

And in BC we have the luxury of having recruits hired by individual police departments and they all come to the Police Academy and train. So we train them all to the same standards. That and – it's part and parcel with the standardized use-of-force instructors course. A big part of my portfolio is that we continue that messaging on that instructor-level course for in-service training, so blending it all together so that we have a common approach to training, day one that a recruit is hired to year 35 when they retire. And we're challenging them as they go along. We're not just – we're not just making sure they're competent to carry a firearm, a baton, OC spray or whatever, we're actually challenging them on a yearly basis so that they get better, so their performances can get better based on realistic scenarios that we know have occurred.

MS. CHAYTOR: Okay.

THE COMMISSIONER: How are you doing with your schedule?

MS. CHAYTOR: I'm just going to move on to the second question then and – but if you wish, we can take the lunch break and I can pick it up there.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: Unless there's anything else on this question, I'll move on then when we come back.

SGT MASSINE: I'm fine, Mr. Commissioner.

THE COMMISSIONER: Okay, we're only two minutes away from the normal break.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: So we'll break for lunch for one hour.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: 1:30. 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: Now just before we continue with the questioning of our experts, I have a couple of – a few redactions that might save a few questions anyhow.

Counsel, which was the first page? Page ...?

MS. O'BRIEN: Page 8, Commissioner.

THE COMMISSIONER: Page 8. Okay.

I'll ask for input from other counsel, but I'm proposing that we delete or redact, whatever the difference is, the middle of that or just below the middle of page 8, the paragraph that starts: The timing of Constable Smyth's queries. Everybody have that?

I would leave out the last three lines: Given his planning, down to the end there.

MS. O'BRIEN: Yes, that's fine that last –

THE COMMISSIONER: That's –

MS. O'BRIEN: Yeah.

THE COMMISSIONER: That's speculative. We all engage in it but – everybody okay with that?

MS. O'BRIEN: So from: Given his planning, to the word –

THE COMMISSIONER: Down to the end of the additional –

MS. O'BRIEN: – information.

THE COMMISSIONER: – CPIC information.

MS. O'BRIEN: Yes.

THE COMMISSIONER: Submissions, you know, may still be heard on the point. There will be arguments.

The other – the next one I'd propose would be the top of page 9: In summary, the exchange is disturbing, et cetera, down to Mental Health act. Again, there's a degree of speculation there, with all due respect to our expert. So I propose deleting those first three – first three lines on page 9. Everybody see that?

Any comment? Okay.

MS. O'BRIEN: Page 13.

THE COMMISSIONER: Page 13, the – yeah, that’s the middle of the page in the paragraph that Mr. Avis was concerned about.

Mr. Avis?

MR. AVIS: Again, the situation.

THE COMMISSIONER: Yeah, leave in the first sentence; redact the attempts to read, et cetera – should have been such that the situation did not deteriorate as it did so down to that?

I want to leave the rest in because it’s emphasizing what may have to be emphasized. I don’t know yet but I’ll be considering it in the course of submissions. But it strikes me, from what I’ve seen so far, that some more attention being paid to de-escalation might be a way to go.

That all right, Mr. Avis?

MR. AVIS: We can live with that.

Thank you, Commissioner.

THE COMMISSIONER: All right.

MS. O’BRIEN: Page 57.

THE COMMISSIONER: Page 57? Page 57.

Yes, up on the – on the second paragraph, first full-paragraph: Constable Smyth did not learn about the violent – I’ll say leave that first sentence in there and redact: although he apparently now says that if he had known, et cetera, subject to speculation – just down. Delete it down to speculation.

Now, let’s –

MS. O’BRIEN: Page –

THE COMMISSIONER: Sorry?

MS. O’BRIEN: Sorry, next is page 58.

THE COMMISSIONER: Fifty-eight? Fifty-eight, yeah.

The paragraph commencing: Even without considering the text exchange. See the fourth line down, it starts with complacency. I delete: and, arguably, neglect – just delete that. Leave in – so it now ends in complacency as well as poor judgement.

MS. O’BRIEN: Okay.

THE COMMISSIONER: All of which is subject to argument, of course.

Go ahead, Ms. O’Brien.

MS. O’BRIEN: And page 61, Commissioner.

THE COMMISSIONER: Sixty-one?

MS. O'BRIEN: Sixty-one.

THE COMMISSIONER: Yeah, okay.

There's two on that page. The second paragraph begins with: A question is. Right down at the end there, the last sentence in that paragraph: one is left wondering what was initially, et cetera, to parties. So, just delete that, again, where it's suspected of aspect.

And then the next paragraph – or four paragraphs down, I guess, it begins: According to Constable Smyth. The last sentence in that paragraph: Given the marijuana in his house. Just delete that full sentence.

MS. O'BRIEN: Thank –

THE COMMISSIONER: Now, that's all I could see that I could – that I'm reasonably inclined towards redacting. Mr. Kennedy, I know it doesn't meet all your concerns, but is there anything else that you feel that sticks out as something that should be dealt with?

MR. KENNEDY: Well –

THE COMMISSIONER: I'm not asking you to accept the other things in your brief. I'll read your brief carefully and go over the pages that you identify your concerns.

MR. KENNEDY: Yeah, the last sentence, Commissioner, where you took out the word "neglect." That last sentence in that particular paragraph on page 58, I believe –

THE COMMISSIONER: Yeah, what was that page again?

MR. KENNEDY: Page 58.

THE COMMISSIONER: Fifty-eight?

MR. KENNEDY: Yeah, that's it.

THE COMMISSIONER: When one has a text change – it is not difficult to envision that the interaction with – right.

Yeah, that's speculative but that basically –

MR. SIMMONDS: (Inaudible.)

MR. KENNEDY: Page 58.

THE COMMISSIONER: That's on page 58, Mr. Simmonds. I redacted three words but Mr. – you know, you're going to make those submissions with respect to the language that's used in the tweet so – when one adds the –

MR. SIMMONDS: Because you only deleted: and arguably neglected.

THE COMMISSIONER: So far, yeah. Mr. Kennedy has brought me back to it suggesting that I might consider that last sentence.

Mr. Kennedy, it's really an argument that's being made there and I'm – you know, the burden of proof is going to be of importance when it comes to matters like that at (inaudible).

MR. SIMMONDS: Commissioner, Commissioner –

THE COMMISSIONER: Sorry, go ahead.

MR. SIMMONDS: I believe that the last comments are appropriate there but, you know, I don't have an issue with: and arguably neglect being deleted.

THE COMMISSIONER: Sorry, you don't have an issue with ...?

MR. SIMMONDS: I don't have an issue with that.

THE COMMISSIONER: With what?

MR. SIMMONDS: I don't have an issue with what you have deleted –

THE COMMISSIONER: Right.

MR. SIMMONDS: – to date, but I do have an issue if you intend to delete anymore of the last lines of that paragraph.

THE COMMISSIONER: All right.

MR. KENNEDY: The question, Commissioner, is whether or not they will be appropriate in the context of an expert's report.

THE COMMISSIONER: Whether they would be ...?

MR. KENNEDY: Appropriate in the context of an expert's report. It's not the expert's role, I would suggest, to put forward argument one way or the other as to interpretation; the expert should simply, I would suggest, state the facts and his opinion.

That's not opinion. I mean Mr. Simmonds can certainly argue that, that's my point in that. I would belabour the point. I'll leave it to you but that's my point.

THE COMMISSIONER: I think I've got to leave it in, Mr. Kennedy, and deal with it in submissions. I think that's the best way to do that.

Okay, so if there are no further comments in that regard, I'll have our very competent administrator have that posted.

MR. KENNEDY: Could we –

THE COMMISSIONER: Sorry, go ahead

MR. KENNEDY: Could we wait until we finish cross-examination to see if there's anything else comes up?

THE COMMISSIONER: Oh yes, okay. That will be fine.

I was originally thinking that way. Thank you, Mr. Kennedy.

Okay, we'll hold off our capable administrator who's getting our message, we'll hold off posting until we see what the final result is after questioning.

Thank you. Go ahead.

MS. CHAYTOR: Good afternoon.

SGT MASSINE: Good afternoon.

MS. CHAYTOR: Sergeant Massine, I want to move now to the second aspect of your routine where you were asked to conduct a review and provide your opinion of Constable Smyth's actions leading up to the use of lethal force. Before I ask you what conclusions you reached, if you could bring up, please, let's go back to C-0020 and I'm looking at page 33.

MS. SHEEHAN: (Inaudible.)

THE COMMISSIONER: Sorry, where did you go now to?

MS. CHAYTOR: I'm going to page 33 of the report.

THE COMMISSIONER: Thirty-three.

MS. CHAYTOR: The report right now is still a –

THE COMMISSIONER: Yeah.

MS. CHAYTOR: – confidential exhibit, C-0020.

THE COMMISSIONER: Yeah, we don't –

MS. CHAYTOR: So 33, and this actually – this diagram, I know you're going to be here for Phase 2 tomorrow, Sergeant Massine, so this might be an interesting thing for you to take us through but tomorrow when we have some more time. But perhaps you can just briefly speak to how – what BC has done in terms of the melding of the two models.

SGT MASSINE: As a result of the Braidwood inquiry with the creation of the BC CID, crisis intervention and de-escalation training –

MS. CHAYTOR: I'm going to ask you to lean in a bit.

SGT MASSINE: Sorry.

MS. CHAYTOR: Yeah, thank you.

SGT MASSINE: The CID model was developed and that's the model you see on the right of the National Use of Force Model. And the intent was to put into practice and formalize what police officers have always done, is we have a presence in communication in every encounter. And that's where the CID model ties in, is using the skills involved in the four-step process for crisis intervention and de-escalation in concert with the National Use of Force Framework Model.

MS. CHAYTOR: Okay and we'll hear more from you on that tomorrow.

In terms of this particular incident you gave a synopsis of the incident and then you broke it down into two events: In Event One, in answering the question about your opinion as to Constable Smyth's actions leading up to lethal force, your Event One was his verbal interaction or verbal interaction between Constable Smyth and Mr. Dunphy; and Event Two was the application of lethal force.

And if we look at page 35 then, we have a diagram. If we could just make that a bit smaller, please, Madam Clerk, so that it fits on the page. There we go, a little bit bigger maybe. Okay.

And this is a diagram that you gave with respect to Event One. And perhaps you could just speak to what this diagram is telling us.

SGT MASSINE: Certainly.

Based on my understanding of the situational assessment by Constable Smyth at the time, he was there having this conversation with Mr. Dunphy and the conversation did start out cordial. So when we look at as a subject-behaviour context, that would be a co-operative level of subject behaviour in that they're having a cordial conversation discussing the reason why Constable Smyth was there.

When – that started outside the house with the introduction, moved inside to the house where the conversation continued and at one point it turned less cordial. But what's interesting to note is although from the account of Constable Smyth, Mr. Dunphy's behaviour escalated somewhat, there was direction given to Mr. Dunphy from Constable Smyth about the presence of a stick to the left side of the chair.

And the reason why I've kept it at the co-operative level here is even though there appeared, from the evidence we've heard, to be some escalation of Mr. Dunphy's behaviour, the fact that Mr. Smyth in essence told him to leave the stick in place and it wouldn't become an issue, the behaviour stayed at co-operative throughout that initial contact, although high-risk co-operative. So when there is a known presence of a weapon, one of the premise foundations of crisis intervention and de-escalation is the officer could potentially use what we call a direct confrontation.

So with Mr. – or sorry, with Constable Smyth basically telling Mr. Dunphy to leave the stick in place where it was and it won't be an issue, that's what we would call a direct confrontation. So it's a high-risk, high-gain kind of tactic.

So in this case, up – during the verbal interaction, it was a high risk to say that because it is a confrontation. But the gain was there in that Mr. Dunphy, although became agitated and escalated his voice and started saying statements about puppet of the government and all that sort of thing, he still maintained that co-operative level at a higher level.

MS. CHAYTOR: Okay. All right.

And so what conclusions did you reach with respect to your analysis with respect to Event One, the verbal interaction between the two?

SGT MASSINE: Based on the subject behaviour that was reportedly displayed by Mr. Dunphy and the response by Constable Smyth, I fully support Constable's Smyth's actions as far as how that verbal exchange went.

MS. CHAYTOR: Okay.

And did you note any concerns in you review of Event One, again, the verbal-interaction stage, in terms of his response?

SGT MASSINE: In direct relation to the seven tactical principles that are in the manual, there were some errors that are procedural. In and of themselves they're not critical errors, but when

you have a cluster of multiple errors it could make the situation worse. So in some – to illustrate some of them is the – sorry, the screen keeps jumping around on me here.

MS. CHAYTOR: Sorry. Sorry.

SGT MASSINE: The presence of the sign in the driveway – they speak in the manual, and I'll quote: Not taking foolish risks. So if there's a case of foolish risks coming into play that could be something along the lines of not accepting the offer of a backup officer, that sort of thing, by ignoring the presence of closed-circuit camera TVs, the sign and that sort of thing.

I don't particularly like in police training that terminology: Not taking foolish risks. I think it's maybe an error in judgment or maybe it's an oversight, but the term foolish risks, I do struggle with that being in a training document.

MS. CHAYTOR: Okay.

SGT MASSINE: So the thing you have to remember here is everything is based on the officer's perception at the time, as you've heard earlier by other witnesses. And I'm – I agree with Constable Smyth based on his perception of how he reported that initial verbal interaction as it being cordial escalating to a less cordial and then a direct confrontation about the stick being in place, that it was an appropriate response to that subject behavior.

MS. CHAYTOR: Okay.

And you scroll down in terms of several – just want to ask you first, though: In this portion of the analysis, did you conclude that Constable Smyth hadn't adhered to any aspect of his training?

SGT MASSINE: Yeah, the – again, it comes down to the seven tactical principles that they have in their manual about making sure that you're watching the subject's hands. In itself that, in my opinion, that's a bit of a loaded statement in that sometimes you may not want to see the officer's hands and that could be a purposeful act. In this case, where there was a presence –

MS. CHAYTOR: I'm sorry, the officer's hands or the subject's hands?

SGT MASSINE: The subject's hands.

MS. CHAYTOR: Subject's, okay.

SGT MASSINE: Subject's hands. So this is the officer watching the hands.

MS. CHAYTOR: Okay.

SGT MASSINE: An example I'll give is if I walk into a room to deal with somebody and if they have their hands in their pants pockets and they're seated, I would prefer that they would keep their hands in their pockets because I know where they are and then I can control them coming out if need be. If it's a case of a conversation and the person has their hands out and openly displayed, absolutely, I want to watch what they're doing with their hands. So the fact that Mr. Dunphy was able to access the firearm later on in the conversation says to me at some point that Constable Smyth lost sight of the hands.

Having a plan: The whole premise of the National Use Of Force Framework and model is that assess, plan, act. And that's a continuous, ongoing process so everything has a potential response. So anything that I do when I attend to the scene, I should have a plan of how I'm going to approach it. And that plan is going to be revised based on the responses to the subject of my –

first of all, my presence and communication. And then if the situation escalates after that fact, I'm also going to have to revise my plan on that and avoid having tunnel vision, basically.

So tunnel vision is multifaceted. Tunnel vision could be: I have plan A and I don't change from plan A, no matter what the response is. Or it could be fixating on a certain object in a room and not really paying attention to what could ultimately become a threat to your safety.

Something like that could be illustrated by the – looking down at the folder. The evidence is unclear how long that happened with Constable Smyth looking at the folder, whether or not he was writing in the folder at the time. It's hard to really determine through the evidence how long that was. So I'm speculating, if you will, that it was enough time frame that Constable Smyth had tunnel vision on the folder and wasn't able to pay close attention to Mr. Dunphy's actions at that point.

Complacency is something in policing that we all have to be aware of. And complacency comes through repetition of task is probably the best way to put it. So if you deal with certain calls on a frequent basis, the next call that you deal with, with a similar set of facts and circumstances, you could be more complacent in your approach, meaning your personal risk assessment might not be done as thoroughly or rigorously as it should be.

And I think that's something that we have to keep in mind that we can't have officers – we want to be relaxed, we want to be cordial, we want to be human beings when we're dealing with people, but you always have to have, basically, an edge to you when you're in there because you really don't know the full context of the situation that you're in at any given time.

I know in Dr. Hart's evidence yesterday he talked about the threat assessment with low, moderate and high risk. From a patrol perspective and a personal risk assessment under the National Use of Force Framework, everything is unknown until it's known. So really those are the only two levels of risk that we have is the unknown risk, initially, and I would – in my opinion, there was a lot of unknowns with Constable Smyth standing in the driveway having a conversation with Mr. Dunphy; a lot of unknown risk, a lot of unknown risk when he went into the house, what he was going to be dealing with. And based on the outcome, a lot of those unknown risks never really became clear until the situation was resolved at its conclusion.

MS. CHAYTOR: Okay.

And you also there mentioned to the – some tactics and strategies in the manual such as awareness of surroundings but I'll just move on. That's there for the reading.

I would ask, Dr. Coleman mentioned the issue of telling Mr. Dunphy to calm down. And what is your opinion as to the appropriateness of that utterance?

SGT MASSINE: Again, it is a golden rule as Dr. Coleman said, but it could be – situationally, it could be a high-risk, high-gain tactic, much like the direct confrontation around not touching the stick.

Generally, though, we would want to see officers avoid language such as calm down because it tends to come when the subject that you're dealing with is – their level of agitation has risen. So we tend to try and one up in a conversation, so it becomes like a stair step to see who can have the last word.

So it is – the calm down statement, from my experience and training and how we deliver it in the CID program, is somewhat quite ego based to be honest with you, that you have to have the last word. So by telling someone to calm down in direct terms, that could be read as a direct

challenge from the subject that we're dealing with and have the opposite effect of what we desire.

MS. CHAYTOR: Okay. And I think you address that on page 39 of your report.

And then, I then want to just take you to the four bullet points on the bottom that you say "Cst. Smyth had several other force options available to him, but chose not to use anything beyond 'Presence' and 'Communication.'" This was, in your opinion, a correct decision for the following reasons.

SGT MASSINE: Uh-huh.

MS. CHAYTOR: And Constable Smyth stated he did not feel threatened by Mr. Dunphy.

SGT MASSINE: Right.

MS. CHAYTOR: And you mention about the OC spray, physical – and the other options being Physical Control (Soft/Hard.) And then "Given Mr. Dunphy's behaviour ('Cooperative'), response options beyond 'Presence' and 'Communication' were not appropriate."

SGT MASSINE: Uh-huh.

MS. CHAYTOR: Okay.

SGT MASSINE: The only thing I would add to that is placement in the room is extremely important, even if it's a consensual encounter that is of unknown risk or, in the context of threat assessment, a low risk.

To reiterate what Dr. Coleman talked about sitting on the couch, I know with our recruits at the academy we teach them to shoot from seated positions, so positions of disadvantage, if you will. So seated, laying down where they have to draw their firearm and actually engage with lethal force.

So just because an officer is seated in the couch, they're not reclining back as we would in our armchair watching TV. You're always sitting on the edge; you're always, again, avoiding that complacency, being available to respond to a threat if one does in fact occur. And, again, that's part of a proper training program is to ensure that officers have that experience in their training.

MS. CHAYTOR: Okay. Thank you.

And if we could go to the diagram on 37, I'm going to turn now and ask you what conclusion you reach with respect to Event Two, which was Constable Smyth's application of lethal force. And perhaps we can just make this a bit smaller so you can speak to the diagram here.

SGT MASSINE: Okay.

MS. CHAYTOR: And so what is your opinion as to Constable Smyth's application of lethal force in the situation with which he was faced?

SGT MASSINE: Based on the evidence that I've seen in the documentation I was provided and the evidence after watching Constable Smyth on the stand, my opinion is that he responded appropriately with lethal force when the presence of the firearm became known, and more importantly, was pointed at him. And some of the verbiage that Constable Smyth used in

describing thought processes that he had when he initially saw the rifle were: He was bracing for impact of a round. That, to me, is a very powerful statement. It –

THE COMMISSIONER: Sorry, what was the statement?

SGT MASSINE: He was bracing for the impact of the round from Mr. Dunphy’s rifle.

THE COMMISSIONER: Uh-huh.

SGT MASSINE: So he was aware in that situation, once he did see the rifle levelled towards him, that the consequence of a round fired from the rifle, if one was discharged, would be a painful thing that he’d have to work through. And that does speak to their training with the win mentality.

And then the fact that as he was shooting, he described in detail that even with the last shot, that the rifle was still pointed at him. So that goes back to what I spoke of earlier with assessing between each round. So it says to me that there was an automatic response to a grievous bodily harm or death threat, being the presence of the rifle, but he also had that cognitive ability, as he was leaving the room and using lethal force against Mr. Dunphy, to have the presence of mind to recognize that the rifle was still pointed at him.

MS. CHAYTOR: Okay. Thank you.

And then if we look at page 40 and 41 where you elaborate on that – if we can make it a little bigger there, please, Madam Clerk.

Yeah, so then two starts right here.

SGT MASSINE: Uh-huh.

MS. CHAYTOR: And this is where you describe: “Fearing for his life, Cst. Smyth stated he braced his body for the impact ... and started to respond to the threat he was perceiving.”

And your conclusion: “If a subject continues their actions of pointing a firearm at an officer even while the officer is responding with gunfire, it is reasonable for the officer to continue to fire their weapon if their perception is that the subject’s behavior has not lowered and they still feel the subject is capable of causing ‘Grievous Bodily Harm or Death’ to them or another person.”

SGT MASSINE: That’s right.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Sorry, the first sentence –

MS. CHAYTOR: Right.

THE COMMISSIONER: – on that page is relevant as well.

MS. CHAYTOR: Oh, I’m sorry, yes.

THE COMMISSIONER: Wait now, let’s see the – there’s one there where it spoke of incidents where –

UNIDENTIFIED MALE SPEAKER: Oh.

THE COMMISSIONER: – through his training and experience the writer is familiar with situations where persons have suffered bullet wounds to the head and/or –

MS. CHAYTOR: Yes.

THE COMMISSIONER: – torso and were not incapacitated.

SGT MASSINE: Yes, Mr. Commissioner, there's plenty of documented incidents out there. I quoted one at the bottom – as a footnote there, number 34, it's the Platt and Matix – they were serial bank robbers in Florida. That's the first one on there. And it was a long, drawn out shootout between two suspects who were heavily armed, multiple FBI officers.

And at the end of it, when the autopsies were done on the two subjects, they had both sustained multiple lethal rounds, both to their torso and head, and yet they were still able to continue their activity towards the police of engaging the police in a gun battle, basically.

And then with the North Hollywood incident, that's another well-documented incident where, yes, the two subjects involved were wearing body armour, but they were still receiving multiple rounds through the body armour and in places where they weren't protected. And they were in – they were capable of engaging the police at a very long, very public filmed gun battle in the middle of a North Hollywood street.

So just because you shoot somebody in the head, the whole idea of shooting somebody in the head is to, as I've heard in the testimony, turn off the computer but that doesn't always work. The human body is quite an amazing machine and it's capable of doing things that we just don't anticipate it can do.

MS. CHAYTOR: Thank you.

And if we could just go then, very quickly, to 62 and 63 – because I don't want to cut any more into my colleagues' time in questioning – these are the recommendations. And I will have you both perhaps speak more to this tomorrow in Phase 2, but I would, if you could take a moment to highlight perhaps a couple of the ones that you feel are most important that you would like or what you would recommend to the Commissioner to consider.

SGT MASSINE: I think certainly anything around doing really detailed risk assessments and understanding that just because you have a risk assessment done for your initial contact, that that's going to change as soon as you get there. It's the cause-and-effect theory.

Any training around crisis intervention, de-escalation I have a huge passion for, through my experiences and then being involved with the Braidwood inquiry. It's not softening what we do, even though I think in certain circumstances we could be a lot softer in how we approach people, recognizing that with that training a person in crisis is basically the same as a person suffering from a mental illness that those skills apply across the board. They don't change just because you're dealing with somebody with a diagnosed mental illness or somebody who's having a bad day. They apply in all cases and just really being cognizant of researching best practices in all aspects of police training, especially as it involves use-of-force firearms, any sort of crisis intervention, staying current, staying up with the trends, working with agencies outside the province and stay within Canada.

It's great to outsource and go take courses from other countries, but at the end of the day policing in Canada is unique to the rest to the world. And I've had the opportunity to travel throughout the world, United States and UK, and speak to police officers all over the world. And everybody agrees, that I speak with, that our approach is uniquely Canadian, so make it home grown.

MS. CHAYTOR: Okay.

And oh, before we leave you on that, Sergeant Massine, you did, under the use-of-force training program, you had five bullets here. I just want to ask whether or not bullet one is still of concern given that it appears – or it is that the National Use of Force Framework Model is used in the training of the RNC. Is there still any concern that you've articulated here?

SGT MASSINE: The concern I have is that the foundation of the training is United States based. It is a US – it's a Canadian company delivering US content. If it's somehow brought into the fold of mainstream Canadian training principles, I don't have a problem with that. But that, again, involves revising lesson plans and course training standards.

MS. CHAYTOR: Okay.

THE COMMISSIONER: I thought you had said earlier that we are in fact using the National – the RNC is using the National Use of Force Framework?

SGT MASSINE: As their model for Use of Force, yes, but the actual training piece that I've copied into the report, that's right off the website for the US-based training company. So the content is US based and that was in line with that continuum that I had included that I now know they're not using.

MS. CHAYTOR: Right. Okay.

SGT MASSINE: Yeah.

MS. CHAYTOR: So the continuum is not in use but it appears that their content in their training manual is still US based –

SGT MASSINE: Yes.

MS. CHAYTOR: – in aspects of it.

SGT MASSINE: That's right.

MS. CHAYTOR: Aspects of it.

SGT MASSINE: Yes.

MS. CHAYTOR: Okay. All right.

SGT MASSINE: And I should say it's ultimately impossible to avoid some influence from United States trainers. It's going to happen but the agency needs to make an educated decision on whether or not it's appropriate for their members and the people they police.

MS. CHAYTOR: Okay.

And, Dr. Coleman, any last word in terms of the recommendations? And we'll just take a couple of minutes, please.

DR. COLEMAN: I agree with what Sergeant Massine said. I draw some attention to the third bullet down: Implementation of crisis intervention and de-escalation education and training for police basic training, as well as in-service training actually, for all serving police officers to receive CID in the next whatever time is determined.

You can tie that in with a bullet farther down similar to the British Columbia government where the provincial government mandated this for all police officers, including those who are contracted police officers and the RCMP.

MS. CHAYTOR: Okay, so that's this one here, the Newfoundland and Labrador government mandate?

DR. COLEMAN: Right.

MS. CHAYTOR: Right, CID education.

DR. COLEMAN: You can tie the two together.

MS. CHAYTOR: And that happened in British Columbia.

DR. COLEMAN: That's correct.

Also, that similar to the British Columbia model but reinforced by Justice Iacobucci is that all police officers requalify – not a refresher, but requalify – every year, three years in verbal, non-verbal communications as well as crisis intervention and de-escalation. I think that's important.

MS. CHAYTOR: Okay. I'm sorry, which one was that on your page?

DR. COLEMAN: One, two, three – that's the fourth bullet.

MS. CHAYTOR: Fourth from the top?

DR. COLEMAN: Yeah.

MS. CHAYTOR: Okay. One, two, three, four, okay.

DR. COLEMAN: And then a rather broad recommendation here: That all education and training concerning crisis resolution take a balanced approach, which you would have with the BC model, and that there be a structured selection process for people who are teaching crisis resolution and including the use of force there.

MS. CHAYTOR: Okay.

DR. COLEMAN: I can't speak personally on the RNC situation but it's been somewhat haphazard in many police organizations across the country. And I think it's important to make sure you select the right people for those types of positions, so ...

MS. CHAYTOR: Right.

Thank you very much. I appreciate it.

Those are my questions, Commissioner.

THE COMMISSIONER: Thank you.

Who wishes to go next?

Mr. Avis.

MR. AVIS: Commissioner, as I guess we call it Plan B for myself and Mr. Kennedy, and to try and utilize the time we have left as much as possible, I wish to start with cross-examining or examining Sergeant Massine.

My learned friend, Mr. Kennedy, will then question Dr. Coleman and if there is anything left for me, I'll do it then. It's hoped to be efficient –

THE COMMISSIONER: Thank you.

MR. AVIS: And to indicate, of course, we have some very serious issues with what Sergeant Massine had to say about the RNC training.

Now, Sergeant Massine, your first statement this morning – which is the first time I've ever heard it – was I won't say a surprise. When did you have this revelation that you completely misunderstood the model, use-of-force training model the RNC uses? When did you learn that you were on the wrong track?

SGT MASSINE: I don't think I was ever on the wrong track.

MR. AVIS: I see.

SGT MASSINE: The information I was provided initially did not include the instructor training material that Sergeant James was qualified under. So I was left to my own devices to research out the PPCT model that I know quite well through my training history and also through the Setcan who is the delivering body for that training.

MR. AVIS: So you –

SGT MASSINE: So I was not provided any information on the training until later in the game.

MR. AVIS: So I'm not talking about the training, I'm talking about the manual and the basis upon which the training is done, which is the National Use of Force Framework. When did you come to realize that you were mistaken about the basis upon which the Use of Force Training Manual is put together and their training?

About when did you realize – you came in this morning and you said you realized you were using the wrong model, when did you come to that realization?

SGT MASSINE: I really don't understand your questioning because it's not clear to me that I was ever mistaken based on what I was given.

MR. AVIS: Okay. Well then that's fine, we'll start with that.

I wonder if you could – did you in your approach to this ever look at the Luther report?

SGT MASSINE: No, I didn't.

MR. AVIS: Okay, now here you are coming to Newfoundland and you're examining police training. Don't you think as part of your due diligence it would have been a good idea to read the last commissioned report regarding use of force in Newfoundland and Labrador with both police forces involved, involving people with mental illness since that's what the two of you seem to speak? Don't you think you should have done that?

SGT MASSINE: No, because I was given thousands, literally thousands of pages of documentation to review and provide an opinion on in a short period of time starting at the beginning of January. And I wasn't aware of the Luther report so I was basing my opinions on the material I was provided as part of this specific incident.

MR. AVIS: So in preparing for this you didn't think that you have to do any of your own research or own work?

SGT MASSINE: As I explained to you about finding about the research of Sergeant James's qualifications, I did plenty of my own research; I just didn't do it on that particular topic.

MR. AVIS: But your research went in the wrong direction, didn't it?

SGT MASSINE: That's your opinion, Sir.

MR. AVIS: Okay.

Was any element of the Luther report brought to your attention recently?

SGT MASSINE: No.

MR. AVIS: No. Okay.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. AVIS: Okay.

Okay, I wonder if you could bring up Exhibit P-0798.

Okay, I'm going to read this out. This is a decision of Commissioner Luther who was then the chief judge of the Provincial Court. This was the Luther inquiry into two police shootings; one by each force, both with people who are suffering from a mental illness.

You notice at the top there –

MS. CHAYTOR: Sorry to interrupt but it might be helpful to tell the witness what year.

MR. AVIS: 2003 is the report.

And it begins at the top there, Use of Force Continuum. Is that a phrase you object to?

SGT MASSINE: Continuum, yes. That's the US-based model. If you look in the National Use of Force Framework document, at no point in that document does it say continuum. So there's a confusion of terms on behalf of the RNC as far as what model they're using.

MR. AVIS: But you think they're confused, I'm going to suggest that you're confused.

SGT MASSINE: And I would disagree with you, Sir.

MR. AVIS: Okay.

So you're suggesting that our previous Commission is using the incorrect terminology.

SGT MASSINE: If they were informed it was a continuum, yes, that's incorrect terminology.

MR. AVIS: But why does so much turn on one word? Isn't it more important the substance of what they do? I mean, you seem to place an awful lot of importance on one word.

SGT MASSINE: Well, when it comes down to an officer articulating their actions, especially in a lethal force incident as what we're dealing with today, it is absolutely imperative that in their training they're told the right terminology so they can get on the stand and inform the court just in that manner, an informed manner and speak to the proper terminology.

MR. AVIS: Well, forgive me but I'm not asking you about articulation.

SGT MASSINE: That's what it comes down to, Sir.

MR. AVIS: You begin with this notion that because they didn't use the Use of Force Continuum, somehow you take this quantum leap and do all this research on the American model, and you come to the conclusion that the RNC are not following the National Use of Force Framework. Instead, for some reason, they are following the American one all because of one word.

So I go back to my question: Don't you think it's more important than the word "continuum" as to what they are exactly, specifically taught and the model that they are following?

SGT MASSINE: If the training methodology is up to date and appropriate, then absolutely, I would agree with you. But in the case of my review, the training is outdated almost 20 years.

MR. AVIS: You think that training – so you disagree. I'm going to read to you the Luther report because, Sir, you are directly contradicting the decision of a Commission in this province so I'm going to read it to you.

Use of Force Continuum: "The Inquiry is satisfied that R.N.C. officers, including the incident officers, have been adequately trained in use of force. The present model, 'National Use of Force Model,' was adopted by the R.N.C. in 2001 with the input of academics and leading police trainers, including Inspector James Carroll" who is now one of the deputy chiefs of the RNC. And he was the use-of-force trainer at the time. He was the person who mentored staff, or one of the people who mentored Sergeant James.

"The training programme of the R.N.C. in this subject area is consistent with Ontario, British Columbia, R.C.M.P., etc. It also adheres to the principles set out by the United Nations in its Code of Conduct for Law Enforcement Officials and Use of Force and Firearms by Law Enforcement Officials."

So what you just said flies in the face of a decision by a Commission in our province in 2003.

SGT MASSINE: And today's date is 2017, Sir. That's –

MR. AVIS: Okay, well, 20 years is to – you said it's – forgive me, I'm going to pick you up on your answer. You said it's 20 years out of date. Correct?

SGT MASSINE: Close to 20 years, yes.

MR. AVIS: Well, close to 20 years or 20 years?

SGT MASSINE: Close to 20.

THE COMMISSIONER: He said close to it.

MR. AVIS: It goes on to say: “The expert from the Ontario Police College, Chris Lawrence, did not fault the three incident officers in their response to Darryl Power’s theat.”

Do you know who Chris Lawrence is?

SGT MASSINE: I do.

MR. AVIS: Right. He’s someone that – I forget who references him but he’s a footnote somewhere in the report.

SGT MASSINE: That would be in my report, yes.

MR. AVIS: Right. Okay.

SGT MASSINE: And I don’t see your point in that, Sir.

MR. AVIS: Sorry?

SGT MASSINE: Is there a question around why I would reference –

MR. AVIS: There was a question and I’m just going to suggest to you again – I know you said no – that what you are telling us here today flies in the face of a finding by Commissioner Luther at the Luther inquiry –

SGT MASSINE: In 2013 – or 2003. Correct?

MR. AVIS: Right and that’s 14 year ago.

SGT MASSINE: Right.

MR. AVIS: You just said we’ve been behind for nearly 20.

SGT MASSINE: That was an estimation in time.

MR. AVIS: Well, then give me your estimation now.

SGT MASSINE: Fourteen years.

MR. AVIS: Oh, we’ve been, so –

THE COMMISSIONER: Sorry, just to be clear here, I thought the initial reference was that training – when it said training was out of date around 20 years, that was referring to, was it not –

SGT MASSINE: Double tap.

THE COMMISSIONER: – the 2003 Luther report –

SGT MASSINE: Yeah.

THE COMMISSIONER: – on the fact that it was adopted in – the national model was adopted in 2001. Are those dates correct?

SGT MASSINE: I believe so, Mr. Commissioner.

My point, Sir, is that if you are referring to the standard of 2003, certainly, I'm sure everybody would understand that things have progressed since then. Because I know where I work, if you look at circa 2004 the RNC training manual is our recruit manual from 2004.

We no longer use that; we have proper course training standards, lesson plans. That wasn't in the materials that I reviewed. There was none of that to justify a proper, modern, 2015 approach to training.

MR. AVIS: Okay.

I'd like you to bring up 0797. I'll start reading it:

"On April 8, 9 and 10, the Ontario Police College, the RCMP and the Canadian Police College, in cooperation with the Canadian Association of Chiefs of Police hosted a national use of force workshop at the Ontario Police College. The goal of this workshop was to create a national use of force model for the country. We are pleased to report that the nearly 60 participants who attended were successful in creating and endorsing a single model."

This letter is dated May 18, 1999.

"Sgt. Jim Carroll from your organization was one of the participants and we would like to thank you for making his services available and for the contributions he made. Everyone came together in the spirit of cooperation and compromise needed to ensure the success of the workshop and all police will benefit from their efforts."

My question is to you again, you take issue with the training almost completely that the RNC have and the fact that their use-of-force trainer was involved in developing the National Use of Force Framework Model. That doesn't impact your opinion whatsoever?

SGT MASSINE: Not because – when the model was developed, there was no training documentation that came with it. And, again, I believe it's Appendix 2 in our report has the write-up of the original framework document. That's a reference material; that's not training material.

Subsequent to development of the reference document, it's up to the agencies that are going to use that model to develop training standards around it; such as, of course, training standard and lesson plans.

And, again, that PowerPoint presentation that is sent out to the members, by today's standard of training, it doesn't meet the standard in my opinion.

MR. AVIS: Okay.

I'm dealing primarily with, what I'm going to suggest to you, is a very serious error you made at the beginning of your report, and that was a mistake as to which model the RNC training is based upon. Now, do you agree with me that the RNC training is not based upon the American model, yes or no?

SGT MASSINE: I agree now that I know that they use the model, yes. But the material that goes with it is still US based, the PPCT methodology.

MR. AVIS: Okay, let's get to that.

On page – let's go to your report, page 17.

Okay, now is that not the National Use of Force Framework?

SGT MASSINE: Model.

MR. AVIS: Model?

SGT MASSINE: Yes.

MR. AVIS: And does that not appear in bright colours at the front of the RNC Use of Force manual?

SGT MASSINE: With the label continuum, yes.

MR. AVIS: Okay, I see. So you're saying that because that appears with the word, one single word "continuum," that means that it has nothing to do with National Use of Force Framework.

SGT MASSINE: That's not what I've said, Sir.

MR. AVIS: So you're going to have to try me again because you seem to be – this word seems to be so important to you. You're going to have to explain to me how –

SGT MASSINE: I think –

MR. AVIS: – on the basis –

THE COMMISSIONER: Sorry, one second now.

Mr. Avis, I'm not going to foreclose this line of questioning. If you want to continue it, fine. But my purpose is to get information so that I can base recommendations for the future. You're –

MR. AVIS: Well, so am I, Commissioner.

THE COMMISSIONER: It seems to be – I'm just wondering why there is a confrontational approach. You know, you've made your point, if there –

MR. AVIS: I don't –

THE COMMISSIONER: And it'll be considered in terms of whether or not the province is using the national model. And the witness has suggested they may have adopted it but they haven't adopted, in his opinion, in his view, the national content, they're still proceeding on the basis of the US philosophy.

But, whatever it is, shouldn't it be, if I go to the wheel here, a co-operative approach here? I mean, is that –

MR. AVIS: Well, with respect –

THE COMMISSIONER: Aren't well all interested in the same thing?

MR. AVIS: With respect –

THE COMMISSIONER: The RNC should be interested in getting suggestions. And, granted, if suggestions are based upon a factual error, that they definitely are entitled and I'll expect them

to point it out. But this is not a confrontation where, you know – by cross-examining Sergeant Massine into oblivion, if that happens, I suspect it won't, but nobody wins by it.

MR. AVIS: Well, Commissioner, if I may, in looking at what – this report, I'm going to suggest to you an argument and I'm going to be putting – there's nothing balanced about it because, Sergeant Massine – you talk about experts and coming here to help out, he's made a serious mistake that I believe he's not admitting to and it permeates – I mean, there's about 12 pages I'm going to be asking you to excise because they are completely inaccurate because of this mistake he makes. And it follows right through to the recommendations which I believe some of them are seriously in error because instead of, you know –

THE COMMISSIONER: Well, establish that by –

MR. AVIS: That's what I –

THE COMMISSIONER: – I suggest, but you don't have to follow my suggestion, establish it by a non-confrontational approach, you know.

Sergeant Massine has no – what do they say – no dog in this fight. He's got no particular axe to grind other than he believes that the program in this province is out of date. Now, if it's not, I'm sure you're going to show me that it's not.

MR. AVIS: It's not just that it's out of date; it was never a proper form of training. Nothing was right from the beginning is what his report says and that problem has persisted and it's getting worse. And that is the – what I get as the tenor of his report.

I'll take a couple of steps back. No problem.

THE COMMISSIONER: Go ahead. Go ahead.

MR. AVIS: But with respect there are some serious problems here.

So how long did you spend reviewing the PPCT model? You said you didn't have time to do research but you managed to research that but not the Luther inquiry. You said because of the word "continuum" you felt the necessity to go and do some research on the PPCT. I'm just asking you: How much time did you spend on that?

SGT MASSINE: I don't know exactly how many hours. I wasn't under a stopwatch.

MR. AVIS: See, let's go to page – okay, the next page of your report, page 18. Now, is that diagram anywhere in any of the materials that you were provided with from the – about the RNC?

SGT MASSINE: No, and simply because I wasn't provided anything in my initial analysis. I had to ask for the training documentation. That's what I was trying to explain to you, Sir, that I didn't get any training documentation about where Sergeant James received his certification as an instructor.

So the confusion in my mind at the time was he was referring to a continuum. From my training and experience over the last 30 years, continuum is US based, has nothing to do with Canada. So maybe it's an assumption on my part that I assumed he learned this and that's why I made further inquiries.

When I watched his evidence saying that this continuum was not – he actually did say this was part of his learning in his evidence, but that they did focus on the Canadian Use of Force model and framework, then that resolved the issues in my mind but I had already written this report.

MR. AVIS: Okay.

Well then let's look at page 19 of your report which comes next. You know, let's go to this because: "Because of the reference in RNC training material made to the 'Use of Force Continuum,' the writer believes that Sgt. James does not have a clear understanding of the National Use-of-Force Framework/Model and how it relates to Canadian police ... enforcement and especially police officers of the RNC, as opposed to the United States based PPCT training which teaches the PPCT Resistance/Control Continuum."

So are you now telling us that that belief is wrong?

SGT MASSINE: I believe from watching Sergeant James's evidence and reading the transcripts of his initial interview, he's still lacking in understanding of many aspects of use-of-force training, starting with documentation.

MR. AVIS: I'll try again. So you're not going to retract that statement belief and –

SGT MASSINE: Again, that was written at the time, Sir. You have to realize that I didn't amend this report. I didn't have the – well, it was my report that was submitted and then I found out after the fact that when I received the training material. So I didn't have that actual training package at the time I wrote this report.

MR. AVIS: But you see, again, it starts: "Because of the reference in RNC training material made to the 'Use of Force Continuum,'" so based upon the word "continuum," you came to this belief.

SGT MASSINE: Not just that one word, no.

MR. AVIS: Oh, not just that one word.

SGT MASSINE: No. If you look at the total package that I received, and my opinion overall of the training materials used by the RNC and where they are lacking, that's all part of the opinion.

MR. AVIS: I'm sorry, I'm only going to mention it one more. So when I read: "Because of the reference in RNC training material made to the 'Use of Force Continuum,'" that seems to be the basis upon which you have to say in the rest of the paragraph, I'm just not reading it correctly.

SGT MASSINE: At that point in time then, yes, I would have to agree with you that it was my opinion at the time, based on the lack of information that I had, that he didn't have a clear understanding.

MR. AVIS: Right so, again – so the first sentence is incorrect. That's not your reasoning any more.

SGT MASSINE: That's not what I'm saying. I still don't believe he has a full understanding.

MR. AVIS: Let's just talk briefly about PPCT; I really don't want to go into it too much. But don't you agree that it is important for police officers, very important for police officers, who are handcuffing individuals, maybe using baton, what have you, that they know how to do it.

SGT MASSINE: Absolutely.

MR. AVIS: And it's important that they know how to do it because they can seriously injure someone simply by handcuffing them if they're not extremely well trained to do so.

SGT MASSINE: Absolutely.

MR. AVIS: So you would agree with me that it's important that there be a significant focus on the techniques themselves?

SGT MASSINE: Yes.

MR. AVIS: So Sergeant James's evidence is, well, you know, to make sure that's the case he went and did this course so that he could better teach those kinds of techniques. That has nothing to do with his understanding or philosophy of the National Use of Force Framework, does it?

SGT MASSINE: Actually, I disagree. It has everything to do with it, Sir.

MR. AVIS: Everything?

SGT MASSINE: That's right. To be a trainer, it's not just to be a good practitioner and do a demonstration, you have to have the theory and the knowledge to back all that up to pass on to your learners during the training sessions. Otherwise, it becomes strictly a qualification, as I spoke of earlier.

MR. AVIS: That's a generalized statement and I don't – maybe I need to answer my – put my question to you in a better fashion. But you take what I'm going to call a quantum leap, but because of one word you all of a sudden think well, hey, this is American training.

How is it that – like this PPC – Resistance/Control Continuum. That is not in the Use of Force manual, is it?

SGT MASSINE: Not in the one that I read, no.

MR. AVIS: What do you mean not in the one you read?

SGT MASSINE: In the RNC one, is that what you're talking about?

MR. AVIS: Yeah. Sorry, the RNC. It's not in there.

SGT MASSINE: The PPCT one, no.

MR. AVIS: It's not part – you haven't seen it as part of the training materials for the RNC, have you?

SGT MASSINE: At the time I did my initial review, no.

MR. AVIS: Right.

SGT MASSINE: And that's what – I was left to my own devices to discover that.

MR. AVIS: I understand but this is not part of – this particular diagram you have here –

SGT MASSINE: (Inaudible.)

MR. AVIS: – doesn't appear anywhere.

SGT MASSINE: No.

MR. AVIS: The PPCT, can you show me some – do they even give a lecture on PPCT, to your knowledge?

SGT MASSINE: What I was doing, Sir, if I can speak to clarify the issue, is connecting the dots on my own devices. So I was not provided – initially, I had the RNC Training Manual. All that other documentation that came, including the PowerPoint which came later on, I wasn't provided any instructor certification. I know I had to ask for that.

So until I had learned that he actually learned about the National Use of Force Model and framework on the PPCT course, I didn't know that at the time when I wrote the report. The only thing I could find in my research was the PPCT Resistance/Control Continuum.

So, like I said, it's a case of – it's basically doing an investigation and connecting the dots until I found out. So just because they have one graphic in their training, I don't know if he learned about that or what he learned about it because I didn't have any of the documentation at the time.

MR. AVIS: Would you agree with me that the comment I brought to your attention in the Luther report might have stopped you from going in the wrong direction?

SGT MASSINE: Which comment, Sir?

MR. AVIS: The fact that he uses the word Use-of-Force Continuum and that the RNC from 1999 were involved in the development of the National Use-of-Force Framework. Do you think that would have helped you go (inaudible)?

SGT MASSINE: I was aware that the RNC was involved in the creation of it. I know the document intimately, Sir.

MR. AVIS: I see. So that doesn't change anything.

SGT MASSINE: No.

MR. AVIS: Even though you know they were part of creating it.

SGT MASSINE: It comes down to the context of using the words "bad guys" and "perp." That if you're using that terminology in training, it's incorrect terminology and it directly relates to incorrect terminology when it comes to understanding the theory behind use of force.

MR. AVIS: We're dealing with now three words – you've added two – "perp" and "bad guy" and "continuum." Can you show me anywhere in the materials that you have that the words "perp" and "bad guy" are actually referred to in any materials?

SGT MASSINE: In the scenario training they are; the REACT scenarios.

MR. AVIS: The materials? Specifically stated in the materials?

SGT MASSINE: Yes. And then I heard Sergeant James testify and continue to use the word "bad guy" and "perp" on the stand.

MR. AVIS: So if I told you that – no, I can't tell you that.

Let's go to page 20, Royal Newfoundland Constabulary Use-of-Force – oh, sorry, that's the training manual. Let me – let's have a look at the Use-of-Force Training Manual for a moment.

There were – I have my book here which does not have the original exhibit number on it. These were exhibited – Use-of-Force Training Manual, the portions of it that were exhibited a while ago, I have the right page numbers but I don't have the exhibit.

THE COMMISSIONER: The exhibit number? Do you know?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. AVIS: If you can assist me. I apologize. I did try to find it last night.

THE COMMISSIONER: There's the Use of Force Review by Wayne Knapman. Does he refer to it, I wonder?

MR. AVIS: No.

THE COMMISSIONER: That's in this binder.

What is it that you're looking for Mr. –?

MR. AVIS: Oh, it's the Use of Force Training Manual. There's the one I was referring too, yes.

Thank you, whoever found that.

THE COMMISSIONER: There we go.

MR. AVIS: No, that's the use of –

MR. COMMISSIONER: Right.

MR. AVIS: Maybe that's it.

UNIDENTIFIED FEMALE SPEAKER: That's the PowerPoint (inaudible).

MR. AVIS: Yeah, I'm sorry. Thank – I apologize.

That was put in while Constable Smyth was testifying, so I remember that. So I would have put it in at the time Constable Smyth testified.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. AVIS: Yeah, P-0431. Okay.

THE COMMISSIONER: 0431?

MR. AVIS: Try P – it was the 31st of January. There's P-0431. It may be it, I don't know.

Yeah, we've got it.

THE COMMISSIONER: Looks promising?

MR. AVIS: Thank you.

Thank you all concerned. So –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. AVIS: Oh.

MS. CHAYTOR: (Inaudible.)

UNIDENTIFIED MALE SPEAKER: Couldn't that go into –

MS. CHAYTOR: (Inaudible.)

MR. AVIS: (Inaudible.)

MS. CHAYTOR: And they also refer to it in Sergeant James's evidence.

MR. AVIS: Try 0624.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. AVIS: I don't know.

Oh, that looks more hopeful.

THE COMMISSIONER: Here we go.

MR. AVIS: Keep going.

THE COMMISSIONER: 2624, is it?

MR. AVIS: 0624. That looks right.

Okay, so this is the Use of Force Training Manual. And do you agree with me that it starts with the National Use of Force Framework, I'll call it circle. Am I right?

SGT MASSINE: The model?

MR. AVIS: Yes. The Use of Force Model is this round-coloured circular thing.

SGT MASSINE: Yes.

MR. AVIS: Okay. And you say if we call that a continuum we're on the wrong track. Am I right?

SGT MASSINE: In my opinion, yes.

MR. AVIS: Right.

So if we call this little circle a continuum – okay, if you could pull it up a bit more. I'm just going to read to you the principles: "The primary responsibility of a peace officer is to preserve and protect life."

Do you have any issue with that?

SGT MASSINE: Nope.

MR. AVIS: “The primary objective of any use of force is to ensure public safety.” Correct?

SGT MASSINE: Correct.

MR. AVIS: “Law enforcement officer safety is essential to public safety.” Correct?

SGT MASSINE: There are three principles missing in that document.

MR. AVIS: Eh? And what are those two principles?

SGT MASSINE: “The National Use-of-Force Model does not replace or augment the law; the law speaks for itself” That’s principle number four.

Principle number five is: “The National Use-of-Force Model was” conducted – sorry – “constructed in consideration of (federal) statute law and current case law; and; 6. The National Use-of-Force Model is not intended to dictate policy to any agency.”

MR. AVIS: Okay, but does that have any relevance to training?

SGT MASSINE: Yes, it does. It helps officers with a full understanding of the history of the theory and why it was developed, how it was developed, how it’s trained and how it’s implemented in real-life operations.

MR. AVIS: If we go to the next page, there’s a discussion of the – keep going if you would, Madam Clerk – Legal Issues: Use of Force. So is there a problem with them discussing there the Legal Issues: Use of Force?

SGT MASSINE: No, we teach the law surrounding use of force in British Columbia as well.

MR. AVIS: Okay, but – okay, so let’s go to page 10 of the exhibit, Use of Force Factors.

SGT MASSINE: My question, Sir, if I may is: Are they teaching directly from this document? Is that the flow and structure of training?

MR. AVIS: I can’t say specifically that they teach directly from this. If you just give me a moment.

SGT MASSINE: It’s my understanding of Sergeant James’s evidence is this: When they come in on the day, they open the binder to the page they’re teaching, that’s what they teach from. That’s not a lesson plan.

MR. AVIS: Just a sec. Who raised lesson plan? I’m not saying this is a lesson plan, I’m saying –

SGT MASSINE: Sergeant James –

MR. AVIS: I’m saying –

SGT MASSINE: Sergeant James referred to it as not – he didn’t say lesson plan but he said that’s what he teaches to, is the manual.

MR. AVIS: Well, what’s wrong with teaching them what’s in this manual? The fact that – you know, we’ve agreed, the RNC has agreed that there are deficiencies in the documentation, happy

to look at, take your recommendations, happy to endorse them as they go forward. They have conceded that there's inadequate or, you know, can do a better job of documentation.

SGT MASSINE: Uh-huh.

MR. AVIS: But documentation, lack of documentation does not mean that they didn't teach it, does it? It just means –

SGT MASSINE: I don't know what they taught.

MR. AVIS: I understand. So if you don't know what they taught, why are you giving us these opinions on they don't know what they're doing?

SGT MASSINE: Because that's the whole basis of my opinion, is they do not appear to know what they're doing when it comes to teaching, Sir, as far as the curriculum.

MR. AVIS: Okay, so they do not appear to know what –

SGT MASSINE: Well, it's obvious that there's no supporting documentation to the training. This is a reference manual that was in large part created in 2004 in British Columbia.

MR. AVIS: Like –

SGT MASSINE: It's no longer used as a training document.

MR. AVIS: Okay.

So let's go back to that comment because you – finally getting out of you some of the things I want. You have no idea what they teach, do you, really?

SGT MASSINE: If they –

MR. AVIS: You just assumed because you can't find a plan that they don't do it. Is that correct?

SGT MASSINE: That's the basis of my opinion, Sir –

MR. AVIS: Okay. Thank you.

SGT MASSINE: – that I was asked to provide.

MR. AVIS: Thank you. Thank you.

SGT MASSINE: That they don't – they don't teach –

THE COMMISSIONER: Have they told us otherwise?

MR. AVIS: Yes.

THE COMMISSIONER: Who?

MR. AVIS: Sergeant James.

THE COMMISSIONER: I don't – I didn't see any lesson plans from Sergeant James.

MR. AVIS: No, I didn't say they had lesson plans or get lesson plans.

THE COMMISSIONER: Oh, okay.

MR. AVIS: It's his oral testimony. If I can keep going – so let's go to the bottom of page 10.

You say that there's something wrong about teaching here. Delivery – no, I'm sorry, use-of-force factors, sorry, back again.

Keep going. Keep going, please. I – you've lost me here. What happened here? I want to go back to what I understand to be page – use-of-force options. No, I'm not – page before, page before, bottom of it, right there.

One of the first principles that they teach from this manual is: Was there a lower level of force available to gain control. Do you have any problem with them teaching that? And it seems to be one of the first considerations.

SGT MASSINE: As a statement – excuse me, as a statement as part of a training package, no. But as a reference manual, it's not a proper training document. That is my point, Sir.

So the material –

MR. AVIS: And you've made your – if you could –

SGT MASSINE: If I may finish, the material in the manual, a lot of it may be fine, but it's the structure of the training that I take issue with. There is no structure.

MR. AVIS: Well, I think you – I think you – forgive me, but as far as I can see you're sort of jumping around trying to dodge what I'm asking you.

SGT MASSINE: Just answering your questions, Sir.

MR. AVIS: On the one hand, I'm asking you about the framework that they use. We've conceded that you don't have a lesson plan so why do you keep bringing that up?

SGT MASSINE: Only because you keep bringing me back to the scope of my opinion was to examine the training, structure and delivery. That's a big part of my scope.

MR. AVIS: And you assume – you've made assumptions about that. But you're suggesting that they don't – they're not taught de-escalation, they're not taught all the appropriate things.

SGT MASSINE: I didn't see anything beyond a paragraph or two on de-escalation, as I know it in the Province of British Columbia. They talk about subjects – or officers de-escalating to a different force option or a subject behaviour de-escalating, but they don't talk about strategies to help a person in crisis de-escalate. I haven't seen any documentation around that.

MR. AVIS: Okay.

This page – like, again, I don't know what to say.

“3. Did or could you provide the subject(s) the opportunity to de-escalate his/her levels of resistance towards you?”

“There is an onus on the officer, if the situation allows, to provide the subject an opportunity to de-escalate. If the subject de-escalates, the member must de-escalate their use of force.”

Do you have any problem with that principle that they teach?

SGT MASSINE: A question is what are the strategies the principles are using to help the person de-escalate?

MR. AVIS: Do you have any problems with the principle enunciated there that they teach?

SGT MASSINE: Yes, it’s incomplete. There’s no strategies, there’s no training provided on how to de-escalate.

MR. AVIS: If –

SGT MASSINE: And it says you have to give somebody the opportunity to de-escalate. How do you do that? It doesn’t say it.

MR. AVIS: Okay, so again – but, again, so you don’t know what they teach. You assume they’re not doing it. Is this consistent with the PPCT or the NUFF? Tell us that one.

SGT MASSINE: That is inconsistent with – that is consistent, sorry, with Canadian police training. But, again, what –

MR. AVIS: The National Use of Force Model, is the –

SGT MASSINE: But what are the –

THE COMMISSIONER: Once – sorry, let the witness finish his answer.

SGT MASSINE: What are the strategies, Sir? That’s what’s missing here.

Yes – because it says de-escalate in the lesson – in the book, even if it says de-escalate in the lesson plan, which they don’t have, you have to articulate what the steps to de-escalation are.

MR. AVIS: Your evidence was earlier that they teach – you know, you’re concerned because they don’t use the end – the National Use of Force Model and you said that you’re concerned that they use this PCPT. Is this from the National Use of Force Framework or from the PCPT?

SGT MASSINE: There’s no such thing as PCPT.

MR. AVIS: I got the initials incorrect, all right?

SGT MASSINE: PPCT, Sir.

MR. AVIS: Okay. Is it –?

SGT MASSINE: I’ve seen this in Canadian training, so it would be in line with the National Use of Force Framework and Model. But, again, it requires more information as to what the strategies for de-escalation are.

MR. AVIS: We’re going to take a lot longer if you keep repeating the same thing. We’ve accepted, we’ve got past the point.

SGT MASSINE: Then I don't know how to answer your questions any better, Sir. I'm sorry.

MR. AVIS: I'm going to suggest to you that everything in this Training Manual is entirely consistent with the National – at least in principle. What – the principles they state, can you answer that one without going into there's no lesson plan.

SGT MASSINE: It's 370 pages, I can't tell you if every page is absolutely spot on. But, again, I fall back –

MR. AVIS: So you haven't read the whole manual –

SGT MASSINE: Yes, I have. I've gone through it but I haven't memorized the manual.

MR. AVIS: Okay, but you're just saying 370 pages. You're coming here telling us that we don't know how to train anybody, but you've counted the pages. How many of them have you read?

SGT MASSINE: I've read every page, Sir, but I haven't memorized every page.

MR. AVIS: If you can't – I'm trying to speed the process up and to get a pretty straightforward answer from you which is this really is the National Use-of-Force Framework. And even though they may not have lesson plans, which you'd like to see there, the principles that they base their training on are consistent with the National Use-of-Force Framework. Yes or no?

SGT MASSINE: I can't answer that because I haven't seen any proper training documents, such as lesson plans and course training standards. I don't know if this is what they teach because it's not in a proper lesson plan.

MR. AVIS: Okay.

So the fact that on the next page they talk about the importance of communication, dialogue and verbal skills, and how an extremely high percentage of encounters with offenders are resolved at this level, and that's, I guess, a jump-off point for training.

You – again, you – are you ever going to say anything positive about their training? Because I'm going to say to you in reading your report, you do not say a single positive thing about the RNC's training, not one.

SGT MASSINE: Based on the documentation I was provided it left me very little room to say positive things based on today's industry standards for training and accountability after the fact, which is why we're here, Sir.

MR. AVIS: Let's just have another look at a little something here. These are the authorities and responsibilities use of force. I have page 24, I don't know if that's the right one because the – I feel like I'm in a different planet here. They seem to have – in terms of the page numbers.

Okay, look, I'm just going to try and – I don't know where I can find this.

THE COMMISSIONER: What is –

MR. AVIS: This is the RNC – again, it's from their Training Manual: "Officers must avoid using unnecessary force." Is that a principle you have difficulty with?

SGT MASSINE: No.

MR. AVIS: “The privilege to use force is limited.” Would you agree that the use of force is a privilege?

SGT MASSINE: Yes.

MR. AVIS: And that’s told to them in one of the first sections here. And this one in particular: “Use of force situations often does not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves.”

Do you have an issue with that?

SGT MASSINE: Is there somewhere where I can follow –

MR. AVIS: I understand, Sir. I’m –

SGT MASSINE: I’m trying to keep up with you here but it’s –

MR. AVIS: I appreciate that.

Keep going back, there’s something – no, the one plus – hang on a second now. Hang on a second.

Oh, my.

THE COMMISSIONER: Mr. Avis –

MR. AVIS: If you want to go –

THE COMMISSIONER: – we’re pretty well near our time for break. Do you want to –

MR. AVIS: That would probably be a good idea.

THE COMMISSIONER: – just take a look at it.

MR. AVIS: I just need to find this document. I have it –

THE COMMISSIONER: Okay.

MR. AVIS: – at the end of this one.

THE COMMISSIONER: We’ll break for 15 minutes.

MR. KENNEDY: Sir, I dare to raise my head, Sir.

THE COMMISSIONER: Sorry.

Mr. Kennedy, go ahead.

MR. KENNEDY: But the schedule –

THE COMMISSIONER: Sorry?

MR. KENNEDY: Our schedule is off.

THE COMMISSIONER: I know. I know.

MR. KENNEDY: So how do you – I'm just in your hands as to how you wish to proceed, Sir.

THE COMMISSIONER: Well, I don't have anything planned until midnight.

UNIDENTIFIED MALE SPEAKER: That was (inaudible).

THE COMMISSIONER: Some of the rest of you might.

MR. AVIS: I've worked 15 hours a day, (inaudible).

THE COMMISSIONER: Well, we'll discuss during the – well, you'll have, what, an hour and –

MR. KENNEDY: I don't think –

THE COMMISSIONER: – an hour and a half.

MR. KENNEDY: Yeah, I don't think I'm going to need two hours.

THE COMMISSIONER: Right, you'll have an hour and a half when we finish so –

MR. KENNEDY: Yeah, that should be enough.

THE COMMISSIONER: There will be other counsel, unfortunately, so we may have to run over if –

MR. AVIS: (Inaudible.)

THE COMMISSIONER: I know. And really I don't want to force people into that type of situation but we're getting limited in terms of, you know, we either meet our schedule – if we slip, it could be lengthy slip so ...

MR. AVIS: And I do anticipate that Mr. Kennedy is going to cover a lot of my issues with Dr. Coleman so that will –

THE COMMISSIONER: Yeah.

MR. KENNEDY: I'm pretty tired.

MR. AVIS: – I'm assuming that that will substantially reduce any questions I have for him.

THE COMMISSIONER: Okay.

MR. AVIS: And that's (inaudible).

THE COMMISSIONER: We'll take a look during the break as to what you can see there and then we'll see what we can figure out.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now in recess.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry recessed – in session, sorry.

Please be seated.

THE COMMISSIONER: Now, we have a one-page exhibit, do we, Mr. Avis?

MR. AVIS: Yes, thanks to your staff.

I would mention this: The entire manual is on the thing but it's –

THE COMMISSIONER: It's just a matter of tracking it down.

MR. AVIS: It's a consent – it hasn't been released as an exhibit. So that's okay, your staff, as excellent as always, have – we've managed to come up with a quick fix.

THE COMMISSIONER: Okay, just before you start now, Mr. Kennedy, there's one minor problem with respect to holding off until we finish the cross-examinations. Well, if we can finish before 5, I assume it is all right, but we have to get the report out on the kiteworks for tomorrow, you know, so –

MR. KENNEDY: (Inaudible) that's fine. Put it up. If anything else arises, Sir – you can just put it up. If anything else arises during cross-examination, and I don't know if there will, Commissioner, so I don't see –

THE COMMISSIONER: We'll put it up –

MR. KENNEDY: Yeah.

THE COMMISSIONER: – and we can always redact it, you know, for the record.

MR. AVIS: Yeah, we do have a –

THE COMMISSIONER: Okay, so –

MR. AVIS: Sorry.

THE COMMISSIONER: – I'll just pass the message on to our administrator that the report can go out as an exhibit.

MR. AVIS: Understood.

THE COMMISSIONER: So that will change from – what did we have? We had a confidential and –

MS. CHAYTOR: Yes, it was a C – yeah, it was C-0020.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: And I guess the number originally assigned to it was P-0773? Correct, yes.

THE COMMISSIONER: Correct? Okay.

All right, so let's get back to see if we can finish this.

MR. AVIS: Okay.

We now have Exhibit 0801, page 1. So, Sergeant Massine, you have that in front of you, Sir?

SGT MASSINE: Yes.

MR. AVIS: Okay, we went through one.

"1.7 Use of Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves."

Do you have any issue with that as a point of principle?

SGT MASSINE: Point of principle, no.

MR. AVIS: And I got to get the initials right this time. Would you agree with me that that is a principle of the – National Use of Force Framework or model and not the PPCT?

SGT MASSINE: Other than the term, continuum, I would agree.

MR. AVIS: Okay.

"1.8 Disengagement is a reasonable option in consideration of officer safety and the necessity to apprehend immediately. Disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, or calling in specialized units may be an appropriate response to a situation and should be considered."

Do you take any issue with that?

SGT MASSINE: No.

MR. AVIS: "1.9 Force options may be used simultaneously, for instance, combining verbal commands with use of chemical irritant. The officer must exercise proper use of force decision making which ..." requires "the use of reasonable force, including proper tactics, and de-escalation techniques."

Again, as a point of principle, yes or no?

SGT MASSINE: No issues.

MR. AVIS: Two –

THE COMMISSIONER: No meaning, I guess, no problem.

SGT MASSINE: That's right. No issues with it, Commissioner.

MR. AVIS: They talk about reasonableness and it's: "2.3 Although decisions may have to be made instantly, in each case the decision shall be based on a reasonable assessment of the totality of circumstances."

Agree with that in principle?

SGT MASSINE: Absolutely.

MR. AVIS: And if I understood your evidence correctly, when you were pointing to the fact that Constable Smyth, because he perceived the rifle to be following him, he was still using some form of critical judgement throughout and you thought that was important. Am I right there?

SGT MASSINE: Absolutely.

MR. AVIS: And is that his – but his conduct that day is more – is consistent with the National Use of Force Framework, isn't it?

SGT MASSINE: It would be, yes. And that's why I don't have an issue with his response.

MR. AVIS: Okay. I'll write that one down.

MR. KENNEDY: There will be a transcript (inaudible).

MR. AVIS: You might have time to read transcripts.

UNIDENTIFIED FEMALE SPEAKER: Thank you, Mr. Kennedy.

MR. AVIS: I have to rely on my notes.

Okay, let's see.

I'm readjusting, Commissioner, to move on.

THE COMMISSIONER: Thank you.

MR. AVIS: I've got some answers that I'm happy with but, you know, takes a little while to get ahead so I'm just going to bring up a few other points.

You were talking about the dots that come beneath that. What do you call that coloured circle, the national use of framework model?

SGT MASSINE: No, National Use-of-Force Model.

MR. AVIS: National Use of Force –

SGT MASSINE: The framework is the document that describes how to – what's contained in the model.

MR. AVIS: Okay, so that National Use-of-Force Model; you were talking about there's a few points underneath, some that were missing from the manual when I showed it to you.

SGT MASSINE: Yes.

MR. AVIS: Okay. And suggest to you that one of the three additional bullets, which doesn't appear there in the national framework, indicated that the model or framework was built and to be used by police agencies to develop their own use-of-force rules, regulations, training and things to that effect. Is that –?

SGT MASSINE: So you're referring to point 6 where "The National Use-of-Force Model is not intended to dictate policy to any agency."

MR. AVIS: Okay, I just – I was just getting (inaudible). So it was anticipated that each force might move in its own direction somewhat but would stay within the National Use-of-Force Framework. Am I correct?

SGT MASSINE: When developing training, yes, there are certain demographics and geographical situations that make every situation unique.

MR. AVIS: Okay.

And I'm just going to suggest to you, you know, the RCMP called it the IMIM. Do you have a problem with that?

SGT MASSINE: No.

MR. AVIS: So –

THE COMMISSIONER: That's the same model, is it not? Yeah.

SGT MASSINE: It's the same –

MR. AVIS: It's (inaudible).

SGT MASSINE: – same graphic. The only difference between the Incident Management Intervention Model that the RCMP use and the National Use-of-Force Framework model is in translation to French is what I – my understanding.

MR. AVIS: (Inaudible.)

SGT MASSINE: So the verbiage is somewhat different for the RCMP because it's easier to translate for the national standard.

MR. AVIS: Okay.

So with regard to what the RNC ended up calling their National Use-of-Force Model, the fact that they call it a Continuum was just a choice of language. Wouldn't you agree?

SGT MASSINE: I can't say why they chose that word, Sir.

MR. AVIS: Okay.

A couple of things now on the perp and bad guy; this all stands, Commissioner – you know, often your question is as good as the evidence that you're relying on. I don't want to get into a debate; I'm asserting that when one of the things that Sergeant James said about perp and bad guy was that that's what they call the actors. So the actor says: You're the perp, you're the bad guy. Is there something wrong with him telling them that?

SGT MASSINE: Is the actor a police officer?

MR. AVIS: No, they're civilians.

SGT MASSINE: There is still a problem because police officers are – that’s part of the cultural thing that I was attempting to explain. That if you’re using that language anywhere in training it creates a culture of negativity. And –

MR. AVIS: So with a civilian who’s acting it creates a –

SGT MASSINE: Absolutely. And think about the professional view that a civilian may take by being referred to as a bad guy day in and day out. What’s wrong with using subject, a more neutral term?

MR. AVIS: Okay.

SGT MASSINE: It comes down to professionalism, Sir.

MR. AVIS: Okay.

And I’m going to say to you – and I’m going to ask, and if you can’t tell me I’m going to look. We don’t need to spend time but I’m going to suggest to you because we’ve kept – can you tell me where in the materials, the written materials, the words “perp” and “bad guy” are used? If you can’t, I understand, we’ll go looking –

SGT MASSINE: It’s in the REACT training document that was sent to me.

MR. AVIS: Okay.

MS. CHAYTOR: If I could just clarify, that is correct, that’s where it appears. It’s in the scenarios under the REACT Training. We were – RNC asked us not to make that an exhibit.

THE COMMISSIONER: Right.

MS. CHAYTOR: It was one of the things they had a concern from an officer safety. So it’s not in the exhibits before you, Commissioner.

But if Mr. Avis wants to refer to it perhaps we could consider it a confidential exhibit. But that’s where it does appear, you’re right.

MR. AVIS: Right. I asked. I’ve got my answer. I appreciate the answer. I don’t want to take up any more time, that’s all. We’ll go looking for it.

Now I noticed when you testified you called yourself the bullet catcher. Did I get that correct?

SGT MASSINE: That was a term that we use on the Emergency Response Team because I was first through the door.

MR. AVIS: Okay. Do you think it’s a good idea to call police officers bullet catchers?

SGT MASSINE: No.

MR. AVIS: Oh, I’m glad to hear that. Thank you.

Okay, where do I go next?

Let's go to page 27 of your report. I have it in front of me. Does everybody else have it in front of me so I don't have to wait for it to come – okay, I'm sorry. You have page – do you have your hard copy in front of you?

SGT MASSINE: Yes, I do.

MR. AVIS: Okay, you do.

SGT MASSINE: It's on the screen as well.

MR. AVIS: We're good with that. Maybe the public needs to see.

Okay, we're talking about four – it's just about the scenario, the situation that Constable Smyth found him in. And I'm looking at pre-assaultive cues.

SGT MASSINE: Sure.

MR. AVIS: Okay, so ignoring the officer. Was Donald Dunphy ignoring the officer?

SGT MASSINE: No.

MR. AVIS: Repetitious questioning?

SGT MASSINE: Yes.

MR. AVIS: Yes.

Aggressive verbalization?

SGT MASSINE: Yes.

MR. AVIS: Yes.

Emotional venting?

SGT MASSINE: Yes.

MR. AVIS: Yes.

Refusing to comply with lawful requests? I think the answer is, no, to the contrary.

SGT MASSINE: Up to the stick point.

MR. AVIS: Yes, the stick point.

SGT MASSINE: Yeah.

MR. AVIS: Ceasing all movement. He didn't cease all movement did he?

SGT MASSINE: No.

MR. AVIS: He didn't try to invade Constable Smyth's personal space?

SGT MASSINE: No.

MR. AVIS: He did not adopt an aggressive stance did he?

SGT MASSINE: Not standing. I can't – there's really been no articulation about how he was posturing on the chair.

MR. AVIS: Okay.

Once again there's no evidence that you have.

SGT MASSINE: Right.

MR. AVIS: I mean why do you question evidence because it's not there? The evidence we have is that there is no aggressive stance.

SGT MASSINE: But it's based –

MR. AVIS: You haven't –

SGT MASSINE: Sir, the reason for the answer, it's based on the totality of the circumstances where we have an affirmative answer to some of these such as: repetitious questioning, aggressive verbalization, emotional venting. That could lead to posturing so that's why I respond in that manner.

MR. AVIS: The evidence was there was a little while there he seemed to be walking from side to side. Is that an aggressive stance?

SGT MASSINE: It could be, based on some people's perception.

MR. AVIS: Okay so – okay. And would you agree with me that pulling a rifle is adopting an aggressive stance?

SGT MASSINE: Oh absolutely.

MR. AVIS: And hiding, he didn't try to hide?

SGT MASSINE: No.

MR. AVIS: Correct.

So based upon the answers to that question, I'm going to suggest to you that there were no real pre-assaultive cues for Constable Smyth to be concerned about.

SGT MASSINE: Those were pre-assaultive cues that we just went through.

MR. AVIS: Right, but most of them don't apply.

SGT MASSINE: Quite a few of them do.

MR. AVIS: Well, three.

SGT MASSINE: It's almost – no.

MR. AVIS: Three?

SGT MASSINE: Cluster – if you have a cluster of three, there’s a possibility that it could. Again, it’s everything in totality, Sir.

MR. AVIS: Okay, but see – I understand but we have to go through it piecemeal, don’t we, in our business. But so repetitious questioning is – so you say that these three alone should have been enough of a pre-assaultive cue that he knew an assault was coming?

SGT MASSINE: I didn’t say should have.

MR. AVIS: Okay.

SGT MASSINE: I said could have – could have.

MR. AVIS: Okay.

THE COMMISSIONER: How are you doing, Mr. Avis?

MR. AVIS: I’m doing pretty well, I just want to get to – with respect to the recommendations I’m going to end up in the same dispute so I’m not going to go through them. I’m going to put it in argument, Commissioner. Okay? We’re just same difference of opinion and we’ll leave it up to you as to how you perceive the evidence.

I want to ask you, essentially, why you keep – in your report, as opposed to your testimony, you give I would say what I call a qualified opinion about Constable Smyth and you seem to be wanting to get at something.

On page 14 of your report you state: “In order to put Cst. Smyth’s response to the alleged actions of Mr. Dunphy’s behaviour in context, the writer feels that it is important to conduct an analysis of Cst. Smyth’s response in relation to the use-of-force and firearms training he has received from the RNC.”

What I’m picking up on there, and we won’t go to the dictionary with this one, but the alleged actions of Mr. Dunphy. And you’re speaking to the fact that Constable Smyth is alleging that Mr. Dunphy did certain things? I’m wondering why you’re questioning his evidence.

SGT MASSINE: I’m not questioning.

MR. AVIS: Okay, so that’s a –

SGT MASSINE: So in court you’re innocent until proven guilty. Correct? So the word “alleged” is why I chose that because –

MR. AVIS: I see. So you’re not questioning Constable Smyth’s testimony at all.

SGT MASSINE: I have no reason to. No.

MR. AVIS: Okay.

On page 33 under the heading Synopsis of Incident you say: “It should be noted that the only account of the interaction between Cst. Smyth and Mr. Dunphy, leading to the death of Mr. Dunphy, comes from Cst. Smyth.”

Well, I’m going to suggest to you that everybody in Newfoundland and Labrador knows that. Why should it be noted? What’s the point there?

SGT MASSINE: I don't follow your question, Sir.

MR. AVIS: Okay.

Then you go on to say: "Lacking evidence to the contrary" Why do you use the phrase "the writer's assessment and subsequent opinions are based on the information provided by Cst. Smyth as that is the sole source of information of the interaction between Cst. Smyth and Mr. Dunphy."

Four times in one paragraph you emphasize that everything is based upon Constable Smyth's position. You use the phrase "lacking evidence to the contrary," and I'm saying to you that you are there questioning the veracity of Constable Smyth.

SGT MASSINE: I disagree.

MR. AVIS: You disagree. Okay.

SGT MASSINE: A hundred per cent.

MR. AVIS: A hundred per cent?

SGT MASSINE: Uh-huh.

MR. AVIS: Even though you're telling us –

SGT MASSINE: You have to remember, I supported the response of lethal force.

MR. AVIS: Yes and –

SGT MASSINE: So I don't follow your line of questioning as far as what you're getting at, Sir.

MR. AVIS: Okay, well I've made my point. We'll keep moving.

On page 36 you say: "It is worth mentioning that the writer saw no mention of a pen belonging to Cst. Smyth being recovered by" the investigators.

Why did you tell us that? We all know that. What's the point of raising that? And I suggest to you, you are questioning Constable Smyth's credibility.

SGT MASSINE: That's not the case at all.

MR. AVIS: So why did you mention: It is worth mentioning? Why is it worth mentioning?

SGT MASSINE: Because in –

MR. AVIS: For what purpose?

SGT MASSINE: – in the testimony that I watched of Constable Smyth and the evidence that I read throughout the file, there was some uncertainty in his own mind, from what I read, whether or not he was actually writing or faking that he was writing or just looking down.

So the question is if he's right-handed and his pistol was on the right side that would slow the firearm draw. Because most people, through my training and experience, if they have something

in their hand and they need to acquire a force option, they're going to hang on to that as an instinct rather than go to the force option.

So it's not a question. It's seeking clarification more than anything.

MR. AVIS: Okay.

Well, let's go to the full paragraph: "Cst. Smyth stated that he decided to write in or look at his file folder which he held in his left hand." So that's his evidence. You've stated his evidence.

"He indicated in his second re-enactment that he was holding a pen in his right hand ..." and "he was writing in or on the folder that was in his left hand" which is a correct statement of, I believe, the evidence.

But then you go on to say: "It is worth mentioning that the writer saw no mention of a pen belonging to Cst. Smyth being recovered by investigators." So why do you make – right in the context there, I say to you it's as clear as day, you're questioning his credibility.

SGT MASSINE: I disagree 100 per cent.

MR. AVIS: So please explain to me what –

THE COMMISSIONER: Mr. Avis, I hope you're not planning to go through all of these references that were raised in the –

MR. AVIS: No. No, no, these weren't raised but I think they're – just a few significant ones.

THE COMMISSIONER: Weren't raised in the briefs. They were raised in the briefs and I made a ruling on that, rightly or wrongly. The ruling is there. All of this can be – will be available for you in your submissions and closing arguments.

MR. AVIS: Right.

But I do believe if I'm going to accuse the witness of – not accuse but say he questioned, I have to put it to him, otherwise you don't have an answer.

THE COMMISSIONER: You have to put it to him why?

MR. AVIS: I have to put it to Sergeant –

THE COMMISSIONER: Why do you have to do that? I don't need, I don't need evidence to support a logical inference. If you're going to be standing up and suggesting that Sergeant Massine was not objective or whatever, you got your material there, you can make your argument –

MR. AVIS: That's fine.

THE COMMISSIONER: Sorry?

MR. AVIS: Sorry, Commissioner.

THE COMMISSIONER: I don't need evidence supporting, you know.

MR. AVIS: Then I'll move on, it's just that my understanding is if you're going to – you know, I understand an inquiry is different, I'm merely following the rule in *Browne v. Dunn*, I believe – I'm going to stop now. It's just that I thought –

THE COMMISSIONER: Well, see it doesn't apply. That applies between parties, you know, and you're –

MR. AVIS: I understand, I just consider it –

THE COMMISSIONER: – where if you're going to make an allegation or –

MR. AVIS: I understand.

THE COMMISSIONER: – a submission you got to alert the party ahead of time.

Okay. Go ahead.

MR. AVIS: That's considered an ethical obligation. You don't need it. No problem, I'm not going to go to another one.

THE COMMISSIONER: Good.

MR. AVIS: Okay, that's all I'm doing.

THE COMMISSIONER: Yeah.

MR. AVIS: My other issues Mr. Kennedy indicates he's going to deal with so I'm going to sit down.

THE COMMISSIONER: Thank you, Mr. Avis.

MR. KENNEDY: I assume I'm next, am I, Commissioner?

THE COMMISSIONER: I think so, Mr. Kennedy.

MR. KENNEDY: Okay. Thank you.

Good afternoon, Dr. Coleman, Sergeant Massine. My name is Jerome Kennedy. I'm counsel for Constable Smyth.

I'm going to start with you Dr. Coleman. If I ask a question which is more appropriate for Sergeant Massine, just let me know, please.

DR. COLEMAN: All right.

MR. KENNEDY: And vice versa.

Dr. Coleman, in terms of your involvement in this file I think you got involved somewhere around late November you were contacted or retained by the Commission?

DR. COLEMAN: Right, last week of November. Yeah.

MR. KENNEDY: And your report was prepared – I think Sergeant Massine got involved somewhere, I think he indicated around the 1st of January? I think that's what he said.

SGT MASSINE: It was late December so close to it.

MR. KENNEDY: Okay. Sure.

And I think part of that was the, the use of force, Dr. Coleman. Had you worked with Sergeant Massine before?

DR. COLEMAN: No.

MR. KENNEDY: Is that how you came together in this file?

DR. COLEMAN: No, I knew him by reputation.

MR. KENNEDY: Okay.

DR. COLEMAN: And that's how he got involved.

MR. KENNEDY: Yeah, so you recognize your – I'm not going to say the limits of your expertise, but you knew what your role was to deal with the officer safety and the de-escalation techniques?

DR. COLEMAN: Right.

MR. KENNEDY: Then in terms of the review of the use of force you went to Sergeant Massine?

DR. COLEMAN: Right.

MR. KENNEDY: Sir, again, these first few questions are simply to set the, I guess, the background for my questions.

THE COMMISSIONER: Establish a rapport.

MR. KENNEDY: Sorry?

THE COMMISSIONER: To establish a rapport.

DR. COLEMAN: Yeah.

MR. KENNEDY: I'm not good at that, Commissioner, but I'll try for the first five minutes.

So basically, Dr. Coleman, you understand that the role of the expert is to assist the court.

DR. COLEMAN: Correct.

MR. KENNEDY: I guess the Commission in this case. And you understand the importance of independence and objectivity obviously.

DR. COLEMAN: Right.

MR. KENNEDY: Yeah.

So I'd suggest to you, Sir, that when you gain or you get involved in a file, it's very important to keep an open mind, isn't it?

DR. COLEMAN: Yes.

MR. KENNEDY: Yeah.

Do you feel that you did that, Sir, throughout this – your involvement in this matter?

DR. COLEMAN: Oh, absolutely.

MR. KENNEDY: Did you ever jump to reach any conclusions on Sergeant Smyth's or Acting Sergeant Smyth – Constable Smyth's credibility?

DR. COLEMAN: I based everything on what I had access to, the various statements and some reports and documents and his recollection of what happened, Constable Smyth's.

MR. KENNEDY: What I'm asking though, Sir: Did you reach any conclusions yourself as to whether or not Constable Smyth was telling the truth? Or did you stay away from that kind of conclusion in your assessment of the case?

DR. COLEMAN: I had no evidence one way or the other, actually.

MR. KENNEDY: Oh, you did have evidence. You had evidence from Constable Smyth.

DR. COLEMAN: Right.

MR. KENNEDY: Yeah.

Sir, in terms of preparing your report – and I'm just interested in how yourself and Sergeant Massine, even though you have distinct lines, there's a blurring of the lines somewhere in terms of de-escalation, for example. Did you discuss your conclusions with Sergeant Massine and vice versa prior to writing the report?

DR. COLEMAN: No. I finished a large part of my report before Sergeant Massine even started. He'll tell you he was away on vacation for a while there. And I hadn't seen or discussed it with Sergeant Massine until I got his copy.

MR. KENNEDY: So when did you finish your report?

DR. COLEMAN: Well, I finished an earlier draft of it some time ago, but then there was some changes made to it as we went along.

MR. KENNEDY: Okay.

So the changes that were made, would they have been – it seems to me that you either watched or listened to some of the evidence of this inquiry, did you?

DR. COLEMAN: Right.

MR. KENNEDY: It looks to me that you've watched the evidence of Sergeant Smyth or Constable Smyth, for example.

DR. COLEMAN: That's correct.

MR. KENNEDY: Is there any other evidence that you would have watched? Or read transcripts, for example?

DR. COLEMAN: Well, yes. I can't remember. I watched some of Sergeant James. Who else was there? Oh, I watched some of the RCMP officers. I watched Ms. Dunphy. I can't remember them all but I did watch quite a few, yeah.

MR. KENNEDY: Okay, so you would have watched the – had you written your report or the first draft of your report prior to watching any of the witnesses?

DR. COLEMAN: Some of it, yes, but that – I incorporated some of what I learned by watching some of the webcasts, particularly, some of what Constable Smyth said.

MR. KENNEDY: Yes, so you would have reviewed Constable Smyth's test – or his statements, for example.

DR. COLEMAN: I did.

MR. KENNEDY: You would have watched his testimony. And then, you had to be still watching or provided with materials and, again, I'm not saying there's anything wrong with that, because the text, the Trevor texts, are ones that you referred to.

DR. COLEMAN: Right.

MR. KENNEDY: Okay.

Now, Doctor – Sergeant Massine referred to a type of bias called – I think was it the implicit bias? I can't remember if that was the term. There's a bias he referred to there. Do you remember when he used that term, Doctor?

DR. COLEMAN: I remember him saying it, yeah.

MR. KENNEDY: Do you remember what called – what term – what type of bias he used – he referred to? Not that he used; what type of bias he referred to. Was it implicit? Is that the term he used?

DR. COLEMAN: I think so.

MR. KENNEDY: What does that mean to you, if anything?

DR. COLEMAN: I'm not sure, actually.

MR. KENNEDY: Okay. Good.

Are you familiar with a type of bias, Sir, called confirmatory bias?

THE COMMISSIONER: Sorry, I didn't hear that?

MR. KENNEDY: A type of bias called confirmatory bias?

DR. COLEMAN: No.

MR. KENNEDY: No. Okay.

So if you – I'm referring to a situation, Sir, where an individual, whether consciously or unconsciously, develops an opinion and then the evidence is marshalled and interpreted to reach the opinion already made or the conclusion already made.

DR. COLEMAN: Uh-huh. Okay.

MR. KENNEDY: Are you familiar with that?

DR. COLEMAN: Well, I'm familiar with the concept. That's not what happened here.

MR. KENNEDY: Well, I have some difficulty with it, Doctor. We'll go through it. But, basically, it seems to me that you judged Constable Smyth rather harshly in your report. Would you agree with me on that?

DR. COLEMAN: No.

MR. KENNEDY: Okay.

DR. COLEMAN: Well, I followed the evidence. I followed what the material was, the testimony, the statements. I've been a police officer for a long time. I worked very serious major crimes investigations. I follow the evidence; I don't come to a conclusion at the front and make the end fit it. That's not the case at all.

MR. KENNEDY: Well, I'm suggesting that's exactly what you did here, Sir.

DR. COLEMAN: No.

MR. KENNEDY: No? Okay.

DR. COLEMAN: You're totally wrong.

MR. KENNEDY: Now, in terms of the – in any review and investigation, review of the actions of an individual, you have to be careful of hindsight, don't you?

DR. COLEMAN: I'm not sure what you mean?

MR. KENNEDY: Judging past events, not based on what the individual knew or did at the time, but looking through the lens of hindsight, judging by the standards we have today.

DR. COLEMAN: It requires some caution. Yes, that's right.

MR. KENNEDY: And were you aware, Sir, as you're reviewing the actions of Constable Smyth, whether or not you were looking at it based on what he did on the date in question or through the lens of what he should have done?

DR. COLEMAN: Well, I certainly considered what he should have done.

MR. KENNEDY: Yeah.

DR. COLEMAN: But I weighed it against what he did do.

MR. KENNEDY: Now, you're familiar with Iacobucci report you've indicated.

DR. COLEMAN: Yes.

MR. KENNEDY: And I guess you're familiar with – I don't know if it is in the opening. Shortly in the beginning of the report, Justice Iacobucci talks about placing himself in the, I think, the shoes of the – not only the officer but the other people involved at the time.

DR. COLEMAN: I believe so. I can't remember word for word in that report.

MR. KENNEDY: I think it is, yeah.

DR. COLEMAN: But I recall it.

MR. KENNEDY: So in this particular case, or in any case where you're looking at the actions of an individual and something they did in the past, do you try to put yourself in their shoes as to what they knew and their experience at the time?

DR. COLEMAN: Absolutely, because I've been there and done that.

MR. KENNEDY: We'll come to that in a second now.

Sir, it seems to me from your CV that one of the areas in which you have been involved significantly is the issue of de-escalation in cases involving – it can be – the terms I see are used mental illness, mentally ill, people with, I guess, mental health issues.

DR. COLEMAN: Right.

MR. KENNEDY: Yeah. And that's really – over the last number of years, that's been a key area of focus for you, hasn't it?

DR. COLEMAN: Yes, it has.

MR. KENNEDY: Yeah.

Sir, when you looked at the information that you had in this particular case, you were aware of the living conditions of Mr. Dunphy.

DR. COLEMAN: Yes.

MR. KENNEDY: You had seen pictures of the inside of his house.

DR. COLEMAN: Yes.

MR. KENNEDY: You were familiar with his tweets and the kinds of things he expressed in his tweets.

DR. COLEMAN: Yes.

MR. KENNEDY: Sir, did you have any concerns or did you consider that Constable Smyth was dealing with a person who was mentally ill or suffering in a – from a mental health crisis?

DR. COLEMAN: I didn't come to that conclusion. I didn't have enough evidence for that.

MR. KENNEDY: Uh-huh.

DR. COLEMAN: And, besides which, I'm not a psychologist.

MR. KENNEDY: No, but it seems to me that you can – you've expressed opinions that certainly go into the area of psychology or human nature throughout your report, haven't you?

DR. COLEMAN: For example?

MR. KENNEDY: I'll take you through some of them.

Now, let's talk about, Sir, your training and experience. So you were the police chief in Moose Jaw.

DR. COLEMAN: Correct.

MR. KENNEDY: And how many officers did you have in Moose Jaw at the time, Sir?

DR. COLEMAN: I had 58.

MR. KENNEDY: Did you have a, for example, criminal intelligence unit in Moose Jaw?

DR. COLEMAN: Yes.

MR. KENNEDY: And how many officers would you have had in criminal intelligence?

DR. COLEMAN: It would be one, assisted by other plain-clothes officers when necessary.

MR. KENNEDY: Did you have a protective services unit?

DR. COLEMAN: No.

MR. KENNEDY: No.

Do you have any experience yourself or training working in a protective services unit?

DR. COLEMAN: No.

MR. KENNEDY: Do you have any education or training, Sir, in terms – or excuse me, I should say any training or experience in conducting a threat assessment in the context of the protection of public officials?

DR. COLEMAN: No.

MR. KENNEDY: Sir, the officers in Moose Jaw – when did you finish in Moose Jaw? 2007, was it?

DR. COLEMAN: End of 2007, yeah.

MR. KENNEDY: Okay.

So the officers you had in Moose Jaw at the time, did they visit homes by themselves?

DR. COLEMAN: Not very often because it was in the contract that it's double crew in.

MR. KENNEDY: Okay, so you had a –

THE COMMISSIONER: I'm sorry, I missed that line. What was it?

MR. KENNEDY: I asked him did the officers in Moose Jaw visit homes by themselves and he indicated that there was a contract for – what was the term, Sir?

DR. COLEMAN: Double crew in.

MR. KENNEDY: Yeah.

DR. COLEMAN: And if there weren't two persons in that car, two would attend. So effectively there was two police officers.

MR. KENNEDY: So the Moose Jaw Police force, that would have been a contract with the provincial government, would it?

DR. COLEMAN: No, that's a collective-agreement contract.

MR. KENNEDY: Okay.

Now, we've heard numerous officers testify in this inquiry, Sir, both the Royal Canadian Mounted Police and Royal Newfoundland Constabulary, that they oftentimes and regularly attended homes by themselves, home visits by themselves.

DR. COLEMAN: There might be some occasions where that's practical.

MR. KENNEDY: No, not some occasions, Sir. Officers testified, numerous officers testified, that having regard to resourcing issues and the way policing is conducted in this province that home – that officers regularly conducted home visits and did other police activities by themselves.

DR. COLEMAN: That very well could be the policy of the particular police agency you're talking about.

MR. KENNEDY: Nothing to do with policy, Sir; it's got to do with resourcing, from what I understand.

So when you say that in Moose Jaw there were two people attending – two police officers attending – that's an ideal situation, isn't it?

DR. COLEMAN: That's right and that's usually very often what police unions insist upon.

MR. KENNEDY: Oh, is it now? Okay, well, we got the lawyer from the police union who can ask you about that.

In other provinces in this country, are you aware of policing, whether or not there's a policy of two officers attending, or is it one officer attending? Or do you know?

DR. COLEMAN: Well, I know or I understand there are police agencies like that, particularly between certain hours. But I couldn't recite chapter and verse on it today.

MR. KENNEDY: Okay, so when you were in Calgary, did you have one police officer do home visits, one police officer pull over a car on the highway, or was it always two officers there?

DR. COLEMAN: It depends on the nature of call. Home visits might have been made by one police officer depending on what the circumstances were, depending on what the information was that came in to occasion the call.

MR. KENNEDY: No, my question is, when you were with the Calgary Police force, did police officers in that police service attend home visits or pull over vehicles on the side of the road by themselves?

DR. COLEMAN: Yes, some, they would pull over vehicles by themselves. And the home visit would depend on the nature of the home visit.

MR. KENNEDY: So, in Moose Jaw, there was never a situation – there was always two police officers in –

DR. COLEMAN: Most times, yeah.

MR. KENNEDY: And was that to your understanding, Sir, was that common in Canada or is it – do you have any knowledge of that?

DR. COLEMAN: It's fairly common.

MR. KENNEDY: Is it?

DR. COLEMAN: Yeah.

MR. KENNEDY: Okay, give me – where else does it happen?

DR. COLEMAN: I said I can't cite chapter and verse but –

MR. KENNEDY: One example. Give me one example.

DR. COLEMAN: I think Calgary has it there for after certain hours of the day. And, again, I won't be held to it, but I think places like Toronto also.

MR. KENNEDY: Okay.

So when you offer an opinion here in terms of Constable Smyth and what he did on the date in question – well, forget the nature of the work he's doing for a second – was it your assumption that police officers in Newfoundland and Labrador attend two people to or two officers to a call?

DR. COLEMAN: As a matter of course?

MR. KENNEDY: No, just, what – when you, Sir, were involved in this case, was it your understanding, your review of the case, was it your understanding or did you operate on the assumption that in Newfoundland and Labrador two police officers return – respond to a call, as in Moose Jaw?

DR. COLEMAN: I didn't know one – either way. I just didn't think it was wise to attend –

MR. KENNEDY: If –

DR. COLEMAN: –on his own –

MR. KENNEDY: Okay –

DR. COLEMAN: – on that particular day.

MR. KENNEDY: Forget what you think is wise. Did you check it out?

DR. COLEMAN: How would I have checked that?

MR. KENNEDY: Okay, so, wait now – you’re the expert in police practices. You’re the expert in officer safety. Yet you’re going to come into a province and give an opinion where you don’t know what happens with police on a daily basis? Is that your evidence, Sir?

DR. COLEMAN: I don’t know whether they double crew or not. It’d be unusual if they didn’t.

MR. KENNEDY: It would be unusual if they didn’t?

DR. COLEMAN: Didn’t.

MR. KENNEDY: Did or didn’t?

DR. COLEMAN: Did not.

MR. KENNEDY: Did not. Okay.

Don’t you think, Sir, that a call to the police forces who patrol the province would’ve been of assistance to you, in that respect?

DR. COLEMAN: I didn’t think it was wise to make a direct inquiry of the RNC when I was conducting this report.

MR. KENNEDY: Could – did you ask Commission counsel if they could find that information for you?

DR. COLEMAN: Not that particular piece of information, no.

MR. KENNEDY: So, Sir, we’ve had officers testify in this court, and there’s numerous – and again, Commissioner, I’ll outline them in any final submission – but there’ve been numerous officers testify that they operate in police cars by themselves, single-officer patrols. They respond to home visits by themselves. They do a lot of police work by themselves. Does that surprise you?

DR. COLEMAN: It really depends on the nature of the home visit.

MR. KENNEDY: No. And my question is, that’s the evidence –

DR. COLEMAN: Well, that’s my answer.

MR. KENNEDY: – that’s the evidence that these officers have given at this inquiry. Does that surprise you?

DR. COLEMAN: Oh, I’m sure on occasions, they –

MR. KENNEDY: No, no. That’s not what they said, Sir. The evidence given by the officers at this inquiry is that they regularly do one-person patrols, they regularly do one-person visits and they regularly stop vehicles when they’re in cars by themselves. Does that surprise you?

DR. COLEMAN: If that’s what they said, that’s what it is.

MR. KENNEDY: Does that surprise you?

DR. COLEMAN: Not totally.

MR. KENNEDY: So you're the expert in police practices – police safety. That's not very safe, is it, to have one officer in a car, is it?

DR. COLEMAN: Depending on the situation you're attending to, no.

MR. KENNEDY: Now, Sir, you sat through the evidence of Dr. Stephen Hart yesterday. Do you know Dr. Hart?

DR. COLEMAN: No.

MR. KENNEDY: You listened to his evidence?

DR. COLEMAN: Yes.

MR. KENNEDY: Do you have any particular – he gave evidence in terms of the conducting of a threat assessment in the context of the protection of public officials. Did you – that's what he gave evidence in relation to. Correct?

DR. COLEMAN: Yes.

MR. KENNEDY: Do you have any problems or difficulties with the evidence that he gave?

DR. COLEMAN: That's not my area of expertise. If that's what he said, that's fine.

MR. KENNEDY: You commented on the Managing Targeted Violence manual in your evidence – in your report.

DR. COLEMAN: Yes, I did.

MR. KENNEDY: You said that it didn't appear that Constable Smyth systematically applied that.

DR. COLEMAN: Yes, I did.

MR. KENNEDY: So why would you get into that if it's not your area of expertise?

DR. COLEMAN: It was an observation that there seemed to be a lack of documentation, including notes and reporting about this whole incident. And that was just another example of not relying on any documentation, not even a checklist.

MR. KENNEDY: Yeah.

DR. COLEMAN: The doctor yesterday suggested that even a checklist would have been useful.

MR. KENNEDY: Now, let's come back to your comment that you wouldn't comment on Dr. Hart's evidence because it's not your area of expertise, yet in your report you comment on it. Can you reconcile that for me?

DR. COLEMAN: Yes.

MR. KENNEDY: How?

DR. COLEMAN: Because I was explaining there's an example of not being a structured assessment on his part and a structured investigation on his part. It's an example; I didn't go any further than commenting on it didn't appear that he had used that. That's all.

MR. KENNEDY: I'll take you through that.

Now, you heard Dr. Hart yesterday say that in conducting a threat assessment in the context of the protection of public officials that it would be something that those tweets would demand a follow-up.

DR. COLEMAN: I agree with that.

MR. KENNEDY: In fact, you went further. And at page 3 of your report, if we could have the report brought up, please, it's Exhibit, I think, 0793. Is that the number we have on it? Or 0773, what was the ...?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: 0773; if we could go to page 3, please.

So if we go down a little bit further, please keep going. Stop right here – yeah.

On April 3, 2015, "Cst. Smyth received an email from Donna Ivey of the premier's office advising of a post on the Twitter social media that, although perhaps ambiguous, could be interpreted as a threat to provincial Government officials." So you said it could be interpreted as a threat.

DR. COLEMAN: Could be.

MR. KENNEDY: Yeah.

You commented further in your report on it, didn't you? Referred to it being threatening, do you remember that?

DR. COLEMAN: I don't remember right now.

MR. KENNEDY: We'll come to that shortly.

So Constable – or Dr. Hart said the threat demanded follow up, that the follow-up steps taken by Constable Smyth were appropriate. Do you have any comment on that?

DR. COLEMAN: Well, I do in terms of his personal safety and the officer-safety issue. I don't get into the threat assessment of whether or not Mr. Dunphy made a threat and what follows after that.

MR. KENNEDY: Dr. Hart also testified, Sir, that a next step was a home visit. Do you have any problem with that?

DR. COLEMAN: Under the right circumstances.

MR. KENNEDY: And, Sir, it was appropriate to go by himself in casual clothes in an unmarked vehicle?

DR. COLEMAN: Right.

MR. KENNEDY: Do you have a problem with that?

DR. COLEMAN: Yeah.

MR. KENNEDY: Okay. So you do have a problem with Dr. Hart's testimony?

DR. COLEMAN: Well, I'm coming from this with a different perspective to Dr. Hart. His area of expertise is different to mine and vice versa.

I'm talking about the risk around personal safety in travelling in that way: plain clothes, not necessarily being easily identified as a police officer, an unmarked car. That's what I'm commenting on. I'm not commenting on in connection with whether or not it's a public safety unit situation or not.

MR. KENNEDY: Again that's – I don't really understand your answer so let's try it again.

Dr. Hart gave that evidence and you disagree with it is what you're saying, the evidence on travelling by him – or excuse me, going by himself in casual clothes, in an unmarked vehicle, you disagree with that.

DR. COLEMAN: I do.

MR. KENNEDY: Okay. So even though threat assessment is not your area of expertise you're willing to give an opinion on it.

DR. COLEMAN: I didn't get into threat assessment; I was talking about officer safety, a risk assessment.

MR. KENNEDY: Now, Sir, let's look at some of the steps that were taken by Constable Smyth. So he – we won't go through the ones in terms of the review of the tweets and stuff like that, but let's just look at Sunday morning. He indicated that, or you indicated that he was definitely going to make the visit. He had his mind made up he was going to make the visit to Mr. Dunphy.

DR. COLEMAN: That's what it appeared to be, yes.

MR. KENNEDY: No, he said that.

DR. COLEMAN: Yeah.

MR. KENNEDY: Okay. So he does the – he phones the Comm Centre, the RNC Comm Centre, and asks for a 10-27, 28, 29. Correct?

DR. COLEMAN: Yes.

MR. KENNEDY: Motor vehicle registration – I forget which is the 10-28. And 10-29 would be the information in terms of CPIC, things like that. Correct?

DR. COLEMAN: That's right.

MR. KENNEDY: So he makes the call, asks for a firearms check. Nothing comes up. No criminal record, nothing comes up.

DR. COLEMAN: Right.

MR. KENNEDY: He's already determined, from his review of the tweets, that Mr. Dunphy is low risk. He's made that determination. Correct?

DR. COLEMAN: He did. Yes.

MR. KENNEDY: Yeah, but would you make a – would you say that Mr. Dunphy was more than low risk?

DR. COLEMAN: I would suggest that the investigation, the assessment hadn't gone far enough to really determine that.

MR. KENNEDY: No, no, would you – are you saying, Sir, that Mr. Dunphy was more than low risk?

DR. COLEMAN: No, I'm not saying that. I suggested Constable Smyth didn't have all the information he could have had.

MR. KENNEDY: Sir, when do police officers always have the information they should have?

DR. COLEMAN: Very often they don't, but first responders will get a call to go to X location and between them and the dispatcher, they get as much information as they can. Constable Smyth had the opportunity of several days to gather the information, unlike a first responder.

MR. KENNEDY: But see, you talk about the fact he went on Easter Sunday. That's a big issue to you.

DR. COLEMAN: I'm not sure that it was necessary on that day. At the end of the day it's not a big issue.

MR. KENNEDY: Not what Dr. – Dr. Hart said, low to moderate risk which would require an action over a period of time. Not an emergent situation but something that required attention. That's what he said, didn't he? So you disagree with him on that?

DR. COLEMAN: Say that again?

MR. KENNEDY: Dr. Hart testified, Sir, that the situation was one of low to moderate risk, it wasn't an emergency situation which required immediate attention, but it could be dealt with over a couple of days which Constable Smyth did.

DR. COLEMAN: That's right and I'm suggesting it could have been conducted later in the week.

MR. KENNEDY: But see, now, there you go, you are now telling – disagreeing with Dr. Hart again.

DR. COLEMAN: Only from perspective of the safety of the officer who's attending who hadn't got all the information that he could have got.

MR. KENNEDY: According to you.

DR. COLEMAN: Absolutely.

MR. KENNEDY: Okay.

DR. COLEMAN: And it's according to my experience and with my background and I'm very clear on that.

MR. KENNEDY: So what, Sir, would happen if Constable Smyth had not gone out there and something had happened? What would you do as a police chief or what do you think we'd be doing here today? It would be a different inquiry wouldn't it?

DR. COLEMAN: Possibly.

MR. KENNEDY: Okay.

Wait – no, do you agree with me?

DR. COLEMAN: Well –

THE COMMISSIONER: First of all, Mr. Kennedy, yeah, we don't know there would have been an inquiry so this is fair enough the answers.

MR. KENNEDY: Well, it's – this –

THE COMMISSIONER: Well, you're – if you're going to give him a hypothetical you got to, you know, do the complete hypothetical.

MR. KENNEDY: Okay.

THE COMMISSIONER: Anyhow, I won't – sorry for the interruption.

MR. KENNEDY: Okay, so if you –

THE COMMISSIONER: Carry on.

MR. KENNEDY: As a police chief, if you have an officer who is possessed of certain information and doesn't act on that information and something bad happens, what are you going to do?

DR. COLEMAN: Well, that argument could have been made why didn't he go on the 3rd of April when he first got the information?

MR. KENNEDY: No, I'm asking you a question, Sir. Perhaps you could answer my question: What would you do as a police chief?

DR. COLEMAN: Well, I'd consider all the factors that led to the situation that is currently posed as a hypothetical.

MR. KENNEDY: So in your opinion, he could have gone later in the week. That's your opinion here, is it?

DR. COLEMAN: Could have done?

MR. KENNEDY: Yeah.

DR. COLEMAN: Yes.

MR. KENNEDY: Directly opposite to what Dr. Hart said. Correct?

DR. COLEMAN: Yes, but I'm not looking at it from the threat assessment, I'm looking at it from the officer-safety assessment and gaining all the information that he could have possibly or probably accessed.

MR. KENNEDY: Okay, so Constable Smyth then phones – he's already talked to – had a brief conversation with Workers' Compensation the day before. So he then calls the RCMP and says: I'm coming to your jurisdiction. He speaks to Constable Adrian Cox. He has PROS, or whatever that word is, search done. There's a reference to the uttering threats.

It's not clear, Doctor, if he becomes aware of the uttering threats as a peace bond, and I'm not sure if Commission counsel can help me with that. I think there was some reference in the RCMP file that there might have been more information. But in any event, he becomes aware that there is an uttering threats charge. We know that much.

DR. COLEMAN: Okay.

MR. KENNEDY: We know, Sir, that there are no firearms issues with the RCMP. They don't indicate him of any firearms issues or any firearms concerns.

DR. COLEMAN: There's not one registered.

MR. KENNEDY: Not one registered. Well, what else is Constable Smyth supposed to do? What does any police officer do though, Sir?

DR. COLEMAN: Actually, the register is very useful. It will tell you if there is one registered, but there's no guarantee that there's no firearm present or firearms present. And police officers only know that only too well.

MR. KENNEDY: Constable Smyth said that, Sir. But now let's just look at it, so if he doesn't do the check, you'd be criticizing him for that wouldn't you?

DR. COLEMAN: Oh no, he had to do the check.

MR. KENNEDY: He did the check.

DR. COLEMAN: Yeah.

MR. KENNEDY: So he does the RCMP checks. He does the RNC checks. So he does – RNC would I guess do ICAN, their own local. PROS would be RCMP. So he does the checks. What other checks could he have done at that point? Forget the time or where he did them. What other checks could he have done?

DR. COLEMAN: Not at that particular time, perhaps he could have followed up and found out more about the uttering threats.

MR. KENNEDY: Sir, it's my understanding, again, we'll have to look at the evidence of Constable Cox, that there was discussion with Constable Cox about that, but I'm not sure of the actual detail. So he could have followed up on the uttering threats, okay. Where else – what other checks could he have done at that point? Forget where he did them and when he did them, what other checks could he have done?

DR. COLEMAN: In terms of record database checks probably not any.

MR. KENNEDY: No. So Constable Smyth does what he's supposed to do. Your problem is the time. He shouldn't have done it on his way to Mitchells Brook.

DR. COLEMAN: No. I think he should of done it before he left.

MR. KENNEDY: Why?

DR. COLEMAN: Then he'd had a complete picture of what he was – or hopefully he would have had a better picture before he even hit the road. He was already on the road.

MR. KENNEDY: Yeah. Do you know where Holyrood is, Sir?

DR. COLEMAN: Well, I do from the map.

MR. KENNEDY: Yeah, probably 35 kilometres outside of St. John's. So by the time he gets 35 kilometres outside of St. John's, he knows he's done his check that you've said are appropriate. Correct?

DR. COLEMAN: Yes.

MR. KENNEDY: So what difference does it make whether he did them in St. John's or he did them by Holyrood?

DR. COLEMAN: It's an indication that he was in a hurry to get out there, to me.

MR. KENNEDY: No, it's not – okay, here we go. So now it's an indication that he's in a hurry, as opposed to a man who's doing his job. That's your interpretation, is it?

DR. COLEMAN: Yeah.

MR. KENNEDY: Yeah.

So faced with a situation where there's two interpretations that can be given to the actions of Constable Smyth, you choose the negative interpretation, is that correct?

DR. COLEMAN: That's what it indicated to me.

MR. KENNEDY: Yeah. That's what it indicated to you. And whenever you were faced with a situation which could be interpreted two ways: neutrally or negatively, you always accepted the negative interpretation, didn't you?

DR. COLEMAN: Well, there was a series of things that could've been done differently. It's not just one particular –

MR. KENNEDY: No, let's deal with this now –

DR. COLEMAN: No, I – no – if you have to look at it in a logic context.

MR. KENNEDY: Yeah, well, we're looking at in the context; he's done the searches that you've said are appropriate to do. Your difficulty is the timing of where he did them, not that he didn't do them. Correct?

DR. COLEMAN: That's correct.

MR. KENNEDY: Yeah. He indicated that he was going out there. He said that. Dr. Hart confirms it, yeah, that's appropriate. Your problem is that he shouldn't have left St. John's before doing them. Is that what you're saying?

DR. COLEMAN: Should've completed, what he could, before he left.

MR. KENNEDY: Okay. Well, wait now, he couldn't turn around and come back at any time? Is that your evidence here?

DR. COLEMAN: Could've done but he didn't.

MR. KENNEDY: No, and he didn't pull a firearm on him, did he? Mr. Dunphy pulled a firearm, Sir, didn't he?

DR. COLEMAN: Apparently, yes

MR. KENNEDY: Yeah. Apparently, okay.

So if you look now at – he's at Holyrood. He does his searches. So your big complaint, they should've been done before he left St. John's.

DR. COLEMAN: That's part of it.

MR. KENNEDY: Yeah.

Now, let's keep going, Sir. He gets out there and Mr. Dunphy is not home. So he goes to the side of the road. He makes a couple of calls; doesn't get Mr. Dunphy; goes next door; speaks to Debbie and Dick Dunphy. Correct?

DR. COLEMAN: Correct.

MR. KENNEDY: Now, let's look at your reports, Sir, and what you say – let's go to page 9. Let's look at the middle of the page: The day in question was Easter Sunday, a public holiday. So, again, you consider that's a factor should go against him visiting that day. Is that correct?

DR. COLEMAN: Well, if it wasn't urgent, I don't see why it was necessary to go on that day.

MR. KENNEDY: See.

DR. COLEMAN: But –

MR. KENNEDY: Okay, go ahead, Sir.

DR. COLEMAN: But he chose to so ...

MR. KENNEDY: So was he wrong in that?

DR. COLEMAN: I wouldn't call that a major issue there but it's an observation.

MR. KENNEDY: Yeah.

And numerous police officers have testified before this court that they – when they visit, they don't consider whether it's – what day of the week it is, they have a job to do and they do it. So do you agree with them or do you think they're wrong?

DR. COLEMAN: For follow-up inquiries, very often, it's not conducted on holidays such as Easter Sunday or Christmas Day.

MR. KENNEDY: Uh-huh.

DR. COLEMAN: First responders will call when they're called – will attend when they're called and don't take an issue with that.

MR. KENNEDY: Let's, Sir, look at the next paragraph there: Notwithstanding that (inaudible) "is somewhat ambiguous and could be interpreted as threatening and worthy of investigation" Did you interpret that tweet as threatening?

DR. COLEMAN: I wasn't sure. It was worthy of the investigation. That's what I said.

MR. KENNEDY: Okay.

So you don't disagree that it was worthy of investigation, it's the timing of the investigation that you don't agree with. Is that correct?

DR. COLEMAN: I don't think he was as fully prepared as he could have been when he went out there in terms of his own personal safety.

MR. KENNEDY: Okay.

So what else could he have done before he left St. John's to be better prepared for his own personal safety?

DR. COLEMAN: No, I think he checked the databases that were there to check. I was surprised he hadn't checked it before he left because they're so easy to check.

MR. KENNEDY: He checked them. Okay?

DR. COLEMAN: We acknowledged that.

MR. KENNEDY: Yeah.

So when you say here that basically there's other things he could have done, what could he have done?

DR. COLEMAN: Well, situations that arose later on, after he found out – after he talked to Richard and Debbie Dunphy, I think there was some situations he could have followed up there.

MR. KENNEDY: So basically then we come to the next paragraph: One explanation for Constable Smyth "for not calling his RCMP PSU partner was ... it was an officer's day off and he didn't want to 'burn him out' by depriving him of his day off. This is a spurious argument" See that?

DR. COLEMAN: Yeah.

MR. KENNEDY: Yeah. What's spurious about it?

DR. COLEMAN: Well, I don't think it holds water if we put it that way.

MR. KENNEDY: You don't know anything about how police officers operate in this province. You've already indicated that, Sir.

DR. COLEMAN: I know that police officers, if their assistance is required, you call them, even if it's calling them in off duty.

MR. KENNEDY: There's two – Sir, there's two PSU members at this time. There had been four full time at some point previous. There's two full-time members. One is the RCMP officer who was off duty that day, who we can tell from discussions with Constable Smyth at some point could be going to Labrador or could be going somewhere the next day. So the fact that the two of them are doing close protection duty and intelligence gathering because Constable Smyth, on a low-risk situation with Mr. Dunphy, decides not to call Sergeant Noel to come to work that day, that that's a spurious argument?

DR. COLEMAN: Right, I think he could have called him. He chose not to and that's quite clear.

MR. KENNEDY: It's a low-risk situation. A man with – an uttering threats that was reduced to a peace bond, yet he should have called his partner in from the PSU, he should have called him in that day? Is that what you're saying?

DR. COLEMAN: He had the option to do that.

MR. KENNEDY: Yeah, but you used the word, spurious concern. There's a difference between having an option to do something, and as the Commissioner read the definition of spurious here earlier today.

DR. COLEMAN: Yeah, I'd say I don't think it holds water. He could have been called in or somebody else located to accompany him.

MR. KENNEDY: Sir, we then get the next paragraph which you question where Constable Cox and Constable Smyth admits that Constable Cox offered to assist him and Constable Cox – Constable Smyth said no because, you know, don't want to have a uniformed officer present, it could cause some concern. You don't agree that that's a valid concern do you?

DR. COLEMAN: Well, I think he had the offer of assistance there and he turned it down. I would have personally accepted that offer. Even if the other police officer didn't come in the house with me, he was there for backup and assistance, if that was necessary.

MR. KENNEDY: So you reject Constable Hart – or Dr. Hart's testimony on that issue, that going by himself is the proper – is an appropriate way to deal with things. You reject Dr. Hart on that do you?

DR. COLEMAN: On the basis of officer safety, yes. And he was out in the country. I understand radio and the telephone was unreliable out there.

MR. KENNEDY: You understand that? How do you understand that? What's your basis for that?

DR. COLEMAN: That was information I've –

MR. KENNEDY: Okay, where is that information?

DR. COLEMAN: I think that was based on an inquiry I made to counsel for the Commission.

THE COMMISSIONER: Is there evidence on that, Mr. Kennedy?

MR. KENNEDY: No, no there is – what there is, there's evidence that on the side of the road the calls wouldn't go through. He made calls from the house that were received. This officer – this expert is assuming certain things, Commissioner.

THE COMMISSIONER: Go ahead.

MR. KENNEDY: Okay.

So now let's keep going here. Page 12 – oh wait, before I get to that, Sir, have you ever testified in court before?

DR. COLEMAN: Pardon?

MR. KENNEDY: Have you ever testified in a court as an expert witness?

DR. COLEMAN: No.

MR. KENNEDY: No. So have you ever testified in an inquiry as an expert witness?

DR. COLEMAN: No.

MR. KENNEDY: Do you make your living, Sir, giving reports against police officers?

DR. COLEMAN: No.

MR. KENNEDY: Let's keep going, Sir, to page 12 of your report.

And before – actually, before I get to that – so until he arrives at Mr. Dunphy's house, I interpret – I'm interpreting, please correct me if I'm wrong – from your testimony that there's nothing to indicate that Mr. Dunphy is anything other than low risk. Is that correct?

DR. COLEMAN: He didn't have any information other than that, yes.

MR. KENNEDY: Well, what else – if you don't have information other than that, what are you supposed to do?

DR. COLEMAN: That's what I'm saying, he didn't have that information.

MR. KENNEDY: So by the time he gets to Mr. Dunphy's house, he probably considers him low risk. Correct?

DR. COLEMAN: Apparently.

MR. KENNEDY: No, is that correct? Do you agree with his assessment of that situation?

DR. COLEMAN: He didn't have some of the information that he subsequently could have learned.

MR. KENNEDY: By the time he arrives at Mr. Dunphy's house do you agree with him that Constable – do you agree with Constable Smyth that up – he has no information to indicate otherwise that Mr. Dunphy is a low risk?

DR. COLEMAN: Could be.

MR. KENNEDY: Could be.

Now, Sir, you do engage in some speculation in this – in your report, don't you?

DR. COLEMAN: To wit?

MR. KENNEDY: Well, we already heard a couple of examples earlier today that were redacted, Sir.

DR. COLEMAN: Oh yeah. Yeah, I agree. Yeah.

MR. KENNEDY: All right, so you agree – is that – from your perspective as an expert witness, is it okay to engage in speculation?

DR. COLEMAN: If it's clearly speculation.

MR. KENNEDY: But do you indicate or do you indicate in your report that it's speculation?

DR. COLEMAN: I think so.

MR. KENNEDY: Do you?

DR. COLEMAN: Yeah.

MR. KENNEDY: Okay, give me an example in your report where you clearly outline something identified as speculation.

DR. COLEMAN: Well, I think it was addressed this morning when you were redacting parts of the report. I don't take issue with that.

THE COMMISSIONER: Yeah, there's at least one specific reference to that would be merely speculation. I don't recall the others, Mr. Kennedy.

MR. KENNEDY: Let's look at page 12. In one paragraph here in that second paragraph, we'll see in there at least on two occasions you refer to: According to Constable Smyth.

DR. COLEMAN: Correct.

MR. KENNEDY: It seems to me, Sir, that the terms you used throughout this, such as it was interesting to note, according to Constable Smyth, it is important to note, that you are questioning Constable Smyth's credibility. Is that correct?

DR. COLEMAN: No, I'm pointing out that that's really the only source of information on some of those things.

MR. KENNEDY: Is it? Did you know anything about the forensic evidence in this case?

DR. COLEMAN: Yes.

MR. KENNEDY: Yeah, okay.

So forensic evidence – as a police chief you would know this, a former police chief, forensic evidence can tell a tale about what occurred in a house, can't it?

DR. COLEMAN: Yes.

MR. KENNEDY: Yeah.

So the next paragraph, the last sentence: This suggests that he might have been confused – Mr. Dunphy – and stressed such that he might not have fully understand the situation. See that?

DR. COLEMAN: Yes.

MR. KENNEDY: That's speculation, isn't it?

DR. COLEMAN: It's based on my experience that given the – what Constable Smyth said was occurring in terms of Mr. Dunphy's reaction: increasing agitation, incoherent, I think he might have even used the word "excited" at some point. But there was a series of descriptors that Constable Smyth used. It certainly looked like that he was confused and stressed.

MR. KENNEDY: But the word "confused" is one that you are reading into the situation. You were speculating I suggest to you, Sir.

DR. COLEMAN: No, it's my interpretation.

MR. KENNEDY: Okay, your interpretation.

So now when we keep going here, every time I'm suggesting to you, there is an explanation other than a negative one, you choose the negative, don't you?

DR. COLEMAN: No, I wouldn't say that. I read – I followed the evidence and followed the work that was in front of me to analyze.

MR. KENNEDY: And what was your goal here in terms of your analyzing of your information? What was your ultimate goal?

DR. COLEMAN: To look at what had happened and ultimately make some recommendations to improve things for the future.

MR. KENNEDY: Okay.

Let's now go, Sir, to page – let's move to page 55. We'll jump ahead a bit.

THE COMMISSIONER: You're not allowed to go back, by the way.

UNIDENTIFIED MALE SPEAKER: (Inaudible) in one direction only.

MR. KENNEDY: Let's look at page 55. So this is after Mr. – Constable Smyth speaking to Debbie and Dick Dunphy, who we learned was the brother and sister-in-law.

Ms. Dunphy indicated to him that there was a – there were problems with Mr. – she'd have problems especially, with Mr. Donald Dunphy, but that she didn't think – and, again, please correct me if I'm wrong, counsel or Commissioner, that she didn't think him to be violent.

DR. COLEMAN: She felt uneasy, I think, or some words to that effect.

MR. KENNEDY: Yeah, she said that she didn't think him to be violent. He could – she was – that that was not a term. Do you remember her saying that, you reading that evidence?

DR. COLEMAN: Yeah, I think so.

MR. KENNEDY: Yeah.

DR. COLEMAN: Yeah.

MR. KENNEDY: So then when he asked whether or not – he asked whether or not there's a firearm. Correct?

DR. COLEMAN: Yeah.

MR. KENNEDY: And then when he gets the – at page 55, or maybe I have the wrong number on that page, Sir.

MS. CHAYTOR: Yeah (inaudible).

MR. KENNEDY: Sorry?

MS. CHAYTOR: (Inaudible.)

MR. KENNEDY: Yeah. Thank you.

Thank you, Ms. Chaytor.

That is at page – yeah, that's it, exactly it. So if we look at: "he did not learn about the possibility of a .22 rifle being in the house that used to belong to Mr. Dunphy's father." That begs the question did Constable Smyth ask the right questions?

How can you make that comment as an expert witness who's supposed to be independent and objective?

DR. COLEMAN: Well, it begs the question. That's all.

MR. KENNEDY: Why would you put it in there?

DR. COLEMAN: Because it begs the question.

MR. KENNEDY: It's a gratuitous comment that is meant to be prejudicial; I put it to you, Sir.

DR. COLEMAN: That wasn't the intention.

MR. KENNEDY: So do you make prejudicial comments throughout this that are not meant to be – that are not intentional? Is that your way of writing?

DR. COLEMAN: I didn't see what was prejudicial so ...

MR. KENNEDY: "This begs the question did Cst. Smyth ask the right questions?" You're questioning his experience, his capabilities, his – everything about what he's doing.

DR. COLEMAN: No, it just begs the question, did he ask the right questions?

MR. KENNEDY: (Inaudible.)

DR. COLEMAN: I'm looking forward to see into the future there that maybe a job can be done another time in the future.

MR. KENNEDY: Okay, wait now, we got to try this again. So wait – so you're questioning, I suggest, in that question, Constable Smyth's credibility. You're saying you're not, that it helps improve the future? Is that – I don't understand.

DR. COLEMAN: Well, I don't understand how that's questioning his credibility.

MR. KENNEDY: No, we'll deal with that later.

Now, let's go to page 56 because this is a big one, Sir.

Let's look at the – so Constable Smyth is now doing a threat assessment in the context of the protection of public officials. He's – you've heard Dr. Hart's testimony. He goes and visits the Dunphy house, but you're saying that the CPIC violent caution, which he wasn't told about, the violence caution which he wasn't told about –

DR. COLEMAN: That's right.

MR. KENNEDY: – that he would have reconsidered meeting alone with Mr. Dunphy. That's your interpretation of his evidence. Correct?

DR. COLEMAN: Right.

MR. KENNEDY: Now, I think, Sir, that at a subsequent point in his evidence he'd indicated that if he knew it was a peace bond – or an uttering threats involving a family member and a peace bond, that that would just – the caution V for violence would be one factor to consider.

DR. COLEMAN: Right.

MR. KENNEDY: Do you remember hearing or reading that evidence?

DR. COLEMAN: I think so, but he didn't know that at the time.

MR. KENNEDY: No, he didn't.

DR. COLEMAN: No.

MR. KENNEDY: But you're saying that he should have done – conducted important checks as a concern. He had failed to conduct other import inquires. What would they be?

DR. COLEMAN: Well, I was surprised that if he was conducting inquiries or determining – well, a variety of things, including his own safety that he would go to the neighbours. He didn't know it was a relative's but would go to the neighbours after going to Mr. Dunphy's house.

If Mr. Dunphy had been home he would never have got to the neighbour's house. And if you're making inquiries and sort of setting the scene for what you might or might not encounter, the neighbours are very often a place to make inquiries.

MR. KENNEDY: Yeah, so he indicated the way – my recollection of his evidence is that Mr. Dunphy wasn't home. He made a couple of phone calls. He sat on the side of the road and said:

What's my next move, thought about his next move. So I'll go visit the neighbours, anything illogical about that?

DR. COLEMAN: Well, I would have thought if it was necessary to interview the neighbours, it could have been done before he had first attended at Mr. Dunphy's house. That's the observation.

MR. KENNEDY: Again, Dr. Hart testified that in the context of the threat assessment in the protection of public officials, these steps were reasonable. Do you disagree with that?

DR. COLEMAN: Oh, it's his opinion.

MR. KENNEDY: No, do you disagree with it?

DR. COLEMAN: I think he – if he – Smyth characterized this as a –

MR. KENNEDY: Smyth? Is that the way you refer to him, Sir?

DR. COLEMAN: Constable Smyth? Yeah.

MR. KENNEDY: Okay, continue.

DR. COLEMAN: He characterized it as continuing his risk assessment, I think was his language there.

MR. KENNEDY: "This is also a concern. It is not what is expected of a 14 year police officer."

Did that – you don't see that as a denigrating or derogatory comment?

DR. COLEMAN: Well, if he worked for me, I'd have some concerns.

MR. KENNEDY: Yeah, but he wouldn't be working for you because you didn't have a protective services unit, did you?

DR. COLEMAN: No, I said if he was.

MR. KENNEDY: And he didn't have the luxury, Sir, in this province of two police officers going everywhere as you had in Moose Jaw, did he?

DR. COLEMAN: That's what you say.

MR. KENNEDY: Yeah.

No, that's not what I say, Sir. That's the evidence.

THE COMMISSIONER: Mr. Kennedy, no yelling, please, at the witness.

MR. KENNEDY: Let's continue, Sir.

So you don't consider that comment to be derogatory or unneeded?

DR. COLEMAN: No.

MR. KENNEDY: No? Okay.

Because you judge here – let's just get right to the point here. You concluded early on after your retainer in this matter and review of the documents that you did not believe Constable Joe Smyth. That's what you determined, didn't you?

DR. COLEMAN: I based my analysis, my report, my comments on what was available.

MR. KENNEDY: And I'm putting it to you, Sir, that your report and analysis is based on the fact that you did not believe Constable Joe Smyth's version of events. Is that correct?

DR. COLEMAN: No.

MR. KENNEDY: Now, let's keep going here because this whole issue of whether or not it's Sergeant Joe Smyth or Joe Smyth he introduced himself, that, in your mind, is an important inconsistency. That's what you say, isn't it?

DR. COLEMAN: Right. It speaks to recollection.

MR. KENNEDY: It's an important inconsistency is the term you use.

DR. COLEMAN: Yes.

MR. KENNEDY: So in your mind, that's an important inconsistency.

DR. COLEMAN: Yes.

MR. KENNEDY: Okay.

You indicate – at some point here you say: He apparently introduced himself – or apparently with a badge. I forgot the terminology. Let me just find that, Sir.

I got to be careful I don't go backwards, but in any event – oh my, I got to go back to page 10. I'll only do it once, Commissioner, please.

This is where we're talking about the contact with Donald and Debbie Dunphy – or excuse me, with Richard and Debbie Dunphy. And the information is 10 years old, hardly current information with which to make a current or thorough risk assessment.

In fact, wouldn't 10-year-old information go against concluding anything in terms of a risk assessment? The dated nature of the information is not something that should play into a risk assessment, is it?

DR. COLEMAN: That's right.

MR. KENNEDY: Yeah.

DR. COLEMAN: Yeah.

MR. KENNEDY: So what's your point on that?

DR. COLEMAN: Well, it's dated information. It's a matter of weight that one would apply to that.

MR. KENNEDY: Okay.

I can't find the actual reference here, Sir, but do you remember saying at one point that Constable Smyth apparently had a police badge?

DR. COLEMAN: No, I don't think I said apparently. It's quite clear he had a police badge. In fact he had two police badges, I believe.

MR. KENNEDY: Yeah, one on his hip or somewhere on his hip.

DR. COLEMAN: Right. –

MR. KENNEDY: I'm not sure exactly where he had it.

And how he introduced himself was – you indicated was 10 to 20, 10 to 30 feet away. Correct?

DR. COLEMAN: Right.

MR. KENNEDY: Yeah.

Okay, let's go to the top of that next page, Sir, just turn over the page, page 11; this is about visiting Richard and Debbie Dunphy. You say: "It begs the question: If this was part of his risk assessment, why did he not check with neighbours before he attended Donald's house? Not good police practice.

DR. COLEMAN: Correct.

MR. KENNEDY: Is that the way you write an expert report, Sir?

DR. COLEMAN: No, that's my opinion.

MR. KENNEDY: So basically in terms of the risk assessment, he's doing a threat assessment at this point. What's he doing? Is he doing a threat assessment or a risk assessment?

DR. COLEMAN: There is some overlap between the two.

MR. KENNEDY: Yeah.

And he goes to the neighbor's house and he learns information. If he hadn't gone there you could probably say it's not good police practice, couldn't you?

DR. COLEMAN: I think the better practice would have been to go there before he ever went to Mr. Dunphy's house in the first place.

MR. KENNEDY: Okay.

Let's continue, Sir, page 57. I got to keep moving ahead. Page – yeah, again, Ms. Chaytor asked you this question so perhaps you can explain it to me. There's pages in your report referring to Constable Smyth's lack of note taking, how does that relate to a personal risk assessment or an officer safety assessment?

DR. COLEMAN: Well, it's good police practice to keep –

MR. KENNEDY: No one's denying that.

DR. COLEMAN: – to keep notes.

MR. KENNEDY: How does it relate to officer safety or a personal risk assessment?

DR. COLEMAN: At some point, one would assume – because he didn't get to that stage – that a formal report would be required, and to get some degree of accuracy into that formal report those notes are very useful. They're also, as you would know, well useful in court and hearings such as this.

MR. KENNEDY: No one's questioning the importance of notes. The question put to you by Ms. Chaytor that you didn't answer and the question I'm putting to you – I'm saying you're not answering is: How do the absence of notes relate to officer safety?

MR. COLEMAN: Well, the assessments and the checks that he made were not recorded; some of them were not recorded. But also those notes are useful for the future for forming part of a report for the safety of other police officers if they should be caught in that same situation.

MR. KENNEDY: Yeah, no one denying that.

DR. COLEMAN: Well that's –

MR. KENNEDY: But how does it relate to Constable Joe Smyth's safety or personal risk assessment on the date in question, the fact that he didn't keep good notes in your opinion?

DR. COLEMAN: Well, it depends how you interpret.

MR. KENNEDY: No, these are your words.

DR. COLEMAN: I know they are and that's why I put it in there.

MR. KENNEDY: You spent pages on the lack of notes, how does it relate to officer safety on the date in question?

DR. COLEMAN: To me it showed a lack of paying attention to some detail and some structure.

MR. KENNEDY: And you heard again – if you've heard Constable Smyth – he would say normally, I would, as part – I'm in the preliminary stages of a threat assessment, there's low risk. I've got electronic copies of the, of the various messages and the other checks would be recorded. Normally, he said this would form part of the threat assessment which I would subsequently do.

DR. COLEMAN: I don't understand why he wouldn't keep notes.

MR. KENNEDY: Yeah, okay, but you say it goes to officer safety. He's admitted there's issues with the notes but how does it go to his own safety on that date in question?

DR. COLEMAN: As I say, to me, it demonstrates a lack of paying attention to detail and structure.

MR. KENNEDY: Let's go, Sir, to page – and again I apologize, Commissioner, I do have to jump back at this one because this is a – it's referred to a number of times.

THE COMMISSIONER: Go ahead.

MR. KENNEDY: Let's go to page 8, this is the text with Trevor. You referred to the text with Trevor being important because they indicate a mindset, correct?

DR. COLEMAN: Right.

MR. KENNEDY: Going to visit – got to visit some lunatic threatening the Premier?

DR. COLEMAN: Right.

MR. KENNEDY: Okay.

If I have to arrest, you know, I'll be late if I have to arrest, okay?

DR. COLEMAN: Right.

MR. KENNEDY: So interpret that as showing a mindset on the part of Constable Smyth which could be – indicate aggression or potential aggression?

DR. COLEMAN: No, calling somebody a lunatic is totally inappropriate; calling anybody a lunatic is inappropriate and again it's one of those words that we strongly discourage in policing. There's a tendency to – what you say is what you think which can transfer into behaviour at some point.

MR. KENNEDY: Sir, you give it a negative interpretation reflecting on Constable Smyth's credibility and professionalism, correct?

DR. COLEMAN: Well, with the greatest of respect, Sir, I don't know what connotation you would give to the word "lunatic" other than negative.

MR. KENNEDY: Okay. So if you had, Sir, the explanation that, as two friends in a private conversation making inappropriate comments. Does that context, depending on how the Commissioner sees that, does that change the way you could view those texts?

DR. COLEMAN: Well, I accept that that's his explanation.

MR. KENNEDY: You don't accept it, do you?

DR. COLEMAN: I accept that it's his explanation.

MR. KENNEDY: But you don't accept it being a valid explanation, do you?

DR. COLEMAN: I haven't quite finished.

I still think it's inappropriate language.

MR. KENNEDY: Okay.

That's not what you use it for is it? It's not simply the inappropriateness of the language; you use it to indicate that it indicates aggression and a mindset?

DR. COLEMAN: No, I didn't use the word lunatic to indicate aggression. There was a discussion that there might be a possible arrest which was more aggressive than what we've been led to believe.

MR. KENNEDY: Sergeant Massine said there today, Sir, that I guess one of the things you always – and again I'm paraphrasing. One of the things you always have to be ready for in police work in unpredictability and uncertainty, and again I'm paraphrasing somewhat.

DR. COLEMAN: No, I'd agree with that.

MR. KENNEDY: Yeah.

So what I'm suggesting to you, there is a more neutral interpretation of those texts that you never considered, did you?

DR. COLEMAN: It certainly wasn't put in front of me, was it?

MR. KENNEDY: Well, Sir, did you hear – you've watched everything else, did you see Constable Smyth's recall the other day?

DR. COLEMAN: This report was written before that.

MR. KENNEDY: You could have come in, Sir, and amended it or said I'd like to change anything, but it's not going to make any difference because you're not changing anything, are you?

DR. COLEMAN: No, I still think it's inappropriate language.

MR. KENNEDY: No one's denying that.

DR. COLEMAN: Okay. I'm glad we agree.

MR. KENNEDY: Yeah.

What we don't agree on, Sir, is the way you utilized the language to form a negative opinion that's critical of Constable Smyth without looking at other alternatives or explanations.

DR. COLEMAN: It was my interpretation of what was in front of me.

MR. KENNEDY: Okay.

Sir, having gone through some of the things I've gone through here, do you agree that you lacked objectivity and impartiality in your conduct of your assessment of this case?

DR. COLEMAN: I totally disagree.

MR. KENNEDY: Okay.

Do you agree, Sir, that you were unfair to Constable Smyth in everything that you put in this report?

DR. COLEMAN: I totally disagree.

MR. KENNEDY: Did you read what other officers had to say about Constable Smyth's – their dealing with him as a police officer, how he conducted himself, his demeanour, did you read any of that?

DR. COLEMAN: I'm not sure, but they're entitled to their opinion and –

MR. KENNEDY: They're entitled to their opinion, okay.

DR. COLEMAN: – it would be from their perspective for sure.

MR. KENNEDY: Yeah.

So if you get 10 or 12 or 15 people saying the same thing, you don't pay any attention to that? Is that correct?

DR. COLEMAN: I based everything on what was in front of me to analyze and report about.

MR. KENNEDY: So if you're going to comment on Sergeant Smyth or Constable Smyth's lack of professionalism, wouldn't you think it's incumbent upon you to review other evidence that could be available in this inquiry which could perhaps alter your view somewhat?

DR. COLEMAN: Again, I based it on what I had to analyze.

MR. KENNEDY: Yeah, but why didn't you review the rest of it, Sir? Why didn't you review the testimony of the various police officers who had worked with Constable Smyth, who had worked with him in the Protective Services Unit, who had dealings with him in the RNC? Why didn't you review that?

DR. COLEMAN: That is their opinion. That's their perspective. This was my opinion based on what was in front of me.

MR. KENNEDY: Because you didn't want –

DR. COLEMAN: We obviously have different opinions.

MR. KENNEDY: Yeah, but see you're coming forward to this court, you've been qualified to give expert opinion evidence.

DR. COLEMAN: Right.

MR. KENNEDY: Do you understand the significance and importance of that?

DR. COLEMAN: I certainly do.

MR. KENNEDY: Yeah.

And shouldn't you as an expert consider all available evidence?

DR. COLEMAN: Well, I did to the amount that was in front of me.

MR. KENNEDY: Okay, but you, Sir, you watched certain aspects of the inquiry, you knew – there was a list of witnesses, you knew who was testifying at what point, didn't you? There's transcripts available.

DR. COLEMAN: Uh-huh.

MR. KENNEDY: Did you review any of the other transcripts?

DR. COLEMAN: Well, start – no, transcripts you say. No, I'm thinking about interviews now. No, I didn't.

MR. KENNEDY: Okay.

Sir, in terms of the – at page 58 of your report, you say in that – I guess it's the second full paragraph or – yeah, but you have many concerns about Constable Smyth's preparation, his frame of mind and attitude is perhaps the greatest concern in that he can and possibly did influence his actions before and during the interaction with Mr. Dunphy. That's what your conclusion is, isn't it? That's your opinion.

DR. COLEMAN: Yes, Sir.

MR. KENNEDY: So why wouldn't you, Sir, have gone and reviewed the kind of evidence that I'm told – I'm telling you was available for you to review?

DR. COLEMAN: This was my conclusion based on what I had in front of me.

MR. KENNEDY: So basically if you're – if you didn't consider evidence that could change this conclusion, where did – let me rephrase that, let me try to get this question right.

So if there was other evidence available that reflected on this same conclusion, what do you say to that?

DR. COLEMAN: I was focused on this particular situation and series of events that led up to the situation before us here today. That's what I was analyzing and looking at and that's my opinion.

MR. KENNEDY: Okay, so your opinion. I'm putting it to you, Sir, you were biased in the formation of your opinion. What do you say to that?

DR. COLEMAN: No, you're wrong.

MR. KENNEDY: You lacked objectivity.

DR. COLEMAN: You're wrong.

MR. KENNEDY: That you were not impartial.

DR. COLEMAN: You're wrong.

MR. KENNEDY: That you're a hired gun, Sir, I'm suggesting to you.

DR. COLEMAN: Couldn't be farther from the truth.

MR. KENNEDY: Let's come now, Sir, to the last couple of areas I want to cover with you.

THE COMMISSIONER: Who's –

MR. KENNEDY: Now not – I didn't mean – that shouldn't be a hired gun because no one hired him, not for the Commission or Commission counsel. That's (inaudible).

THE COMMISSIONER: Well, that's what I'm wondering. I mean I'm the hired – I'm –

MR. KENNEDY: No, that was the wrong term. I apologize.

THE COMMISSIONER: I'm obviously the employer there.

MR. KENNEDY: That's wrong term. I forgot. I thought I was in court for a second. That's the wrong term. I apologize for that.

THE COMMISSIONER: Right.

MR. KENNEDY: No, it's nothing to do with – you're just a gun I suppose. So I apologize for that comment, Sir. That's inappropriate.

Let's now come to the last area, a couple of areas, Sir. Twice today I made a note in the conversation with Mr. Dunphy that there was – insufficient information as to how the conversation ensued. Do you remember saying that earlier today?

DR. COLEMAN: I don't remember it precisely, no.

MR. KENNEDY: Yeah.

DR. COLEMAN: But maybe – if I did, I did.

MR. KENNEDY: Yeah.

And you went on a couple of minutes after that and you say it's not clear whether something did or did not happen.

DR. COLEMAN: I don't remember what context –

MR. KENNEDY: In the conversation with Mr. Dunphy.

DR. COLEMAN: I don't remember what context that was in.

MR. KENNEDY: So in other words, whatever Constable Smyth says about what took place, that's not good enough for you. Is that the implication from your testimony?

DR. COLEMAN: What Constable Smyth says is what Constable Smyth says. That's what we have to rely upon.

MR. KENNEDY: Okay.

Sir, at page 62 of your report – now I'm not sure if this is you, Sir, or if this is Sergeant Massine, page 62.

DR. COLEMAN: I don't know.

THE COMMISSIONER: Page 62? We can tell you I think. It's –

MR. KENNEDY: I think it's –

THE COMMISSIONER: Right at the bottom, Suggested Recommendations, that's Dr. Coleman.

MR. KENNEDY: I think it is Dr. Coleman, Commissioner.

THE COMMISSIONER: And above it is Dr. Coleman as well, except that he is – he's quoting or referring to Sergeant Massine in that first paragraph b.

MR. KENNEDY: So in that paragraph: “Once Mr. Dunphy produced the rifle” Is that your paragraph, Dr. Coleman, or is it Sergeant Massine’s?

DR. COLEMAN: Yes, that’s me.

MR. KENNEDY: Okay.

THE COMMISSIONER: Okay, where is that now, the ...?

MR. KENNEDY: That’s at page 62, Commissioner, at the top of the page.

MS. CHAYTOR: (Inaudible.)

THE COMMISSIONER: The very top. Is it the very top or producing the gun, where is that?

MR. KENNEDY: Yeah. Now, am I reading this correctly that “Once Mr. Dunphy produced his rifle, it would be challenging for a person not well versed and confident in de-escalation to try that approach.”

Are you suggesting, Sir, that a police officer, when presented with a gun or someone pointing a rifle at him, should try to de-escalate the situation?

DR. COLEMAN: It’s possible I agree and the circumstance before us here today that – I don’t disagree with the action that was taken by Constable Smyth on that day.

MR. KENNEDY: Okay, just a couple of quick questions on de-escalation.

The evidence – and you’re aware of having watched it and read the statement that Constable Smyth’s evidence is that the first – again, time frames are a little bit difficult, but that the first six to seven minutes, or the first part of the conversation was cordial and polite.

DR. COLEMAN: Yes.

MR. KENNEDY: That Mr. Dunphy – that Constable Smyth then, somewhere along the line, again, I’m not – not all the time frames are clear, brought up the issue of the concern, the reason he was there.

DR. COLEMAN: Right.

MR. KENNEDY: It seemed to be after that the conversation started to go astray.

DR. COLEMAN: Right.

MR. KENNEDY: It was at that point that Constable – that Mr. Dunphy was referring to Constable Smyth as a puppet of the government or an arm of the government, things like that.

DR. COLEMAN: Right.

MR. KENNEDY: Who sent you here? Talking about two dead MHAs.

Now, Sir, at that particular point when Constable Smyth says calm down, or somewhere along the line he used the term calm down, can calm down, even though it shouldn’t be used, are there circumstances where a simple say like just calm down, Mr. Dunphy, I’m not here to arrest you. Is that inappropriate in those circumstances?

DR. COLEMAN: To be clear, if I wasn't there to arrest him, I'd make clear that I wasn't there because that might be something that is aggravating the situation, but I'm not sure I'd preface it with calm down.

MR. KENNEDY: Yeah, okay, but again I could be – there's been a lot of testimony, it's been a long hearing, Doctor Coleman, but at some point Constable Smyth said something like calm down, I'm not here to arrest you. But by putting the two of those together is that necessarily bad in terms of a de-escalation technique?

DR. COLEMAN: I still think calm down is not good words to use under those circumstances or similar circumstances but explaining clearly why he was there and why he was not there, it's good.

MR. KENNEDY: And Constable Smyth has indicated, Sir, whether or not the writing in the folder was perhaps not the best thing, that he was trying to defuse or de-escalate the situation. So at least he's trying. Do you agree with that?

DR. COLEMAN: I acknowledge that.

MR. KENNEDY: Pardon?

DR. COLEMAN: I acknowledge that.

MR. KENNEDY: Okay.

That, Sir, things happened pretty fast after that according to the testimony of Constable Smyth.

DR. COLEMAN: Right.

MR. KENNEDY: So where is the room to de-escalate or to leave the situation, where he's indicated that Mr. Dunphy – he still doesn't consider Mr. Dunphy a threat, he seen the bat, he doesn't consider him a threat. Where is the opportunity to leave the room when the situation hasn't escalated to the point that Constable Smyth is in fear for his personal safety or life?

DR. COLEMAN: Well, I couldn't say precisely when that might be.

MR. KENNEDY: Okay.

DR. COLEMAN: I mean, what we have is not a verbatim record of what was said; it's to the best of Constable Smyth's recollection. So where that point that you're asking about might have been, I can't tell you sitting here.

MR. KENNEDY: Okay. But there could be situations, such as described by Constable Smyth, where situations can turn pretty quick, can't it?

DR. COLEMAN: Yes.

MR. KENNEDY: Yeah.

And so the opportunities for de-escalation may not necessarily exist such as the leaving of the room or leaving the situation?

DR. COLEMAN: That's possible.

MR. KENNEDY: Yeah. That in these circumstances – again, when I talk about in these circumstances, I’m talking about situations like this – an officer can be presented with a situation that can happen in a split second, correct?

DR. COLEMAN: Sometimes, yes.

MR. KENNEDY: So Constable Smyth, whatever you may think of – both of you may think of the RNC policies or training at the time, he can only act with the training that he has, correct?

DR. COLEMAN: That’s right. I think I even made reference to that somewhere in here.

MR. KENNEDY: So I guess I come back to this whole question, Sir, of judging him or his actions on that date in question in hindsight, as opposed to the situation he found himself in that day. Have you clearly delineated in your own mind that distinction?

DR. COLEMAN: I’m sorry.

MR. KENNEDY: Have you clearly delineated in your own mind whether you’re placing yourself in the situation that Constable Smyth found himself in that day or whether you’re looking at it through hindsight?

DR. COLEMAN: Well, I’m obviously looking at it in hindsight.

MR. KENNEDY: Yeah.

And, Sir, you know as police officer – and we’ll get to Sergeant Massine in a second – that police officers oftentimes have to make decisions very fast –

DR. COLEMAN: Yes.

MR. KENNEDY: – and in circumstances that can be of danger to them.

DR. COLEMAN: Yes.

MR. KENNEDY: Yeah.

THE COMMISSIONER: Mr. Kennedy, just roughly for scheduling –

MR. KENNEDY: Oh, I’m –

THE COMMISSIONER: Sorry?

MR. KENNEDY: I’m ready to move to Sergeant Massine.

THE COMMISSIONER: Yeah, do you have any rough idea ...?

MR. KENNEDY: Yeah, I will be – I think Sergeant Massine will be 15 minutes. I don’t think him and I will disagree on a whole lot, I’m hoping.

THE COMMISSIONER: About 15 you say.

MR. KENNEDY: Yeah.

THE COMMISSIONER: I don't know, maybe we should take just a five minute comfort break just to let everybody – be fair to everybody.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

The Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: Go ahead, Mr. Kennedy.

MR. KENNEDY: Thank you, Commissioner.

Sergeant Massine, do you know, Sir, or would you have any information on the number of officer-involved shooting deaths in Canada for the year?

SGT MASSINE: Not off the top of my head.

MR. KENNEDY: Do you know anywhere where we would find that information?

SGT MASSINE: Yeah, it's on the Officer Down Memorial Page. You can get it.

MR. KENNEDY: Okay.

And, Sir, do you know the number of officer-involved shootings in BC or deaths in the last year?

SGT MASSINE: We had a spike in shootings, police-involved shootings, I believe it was in 2015 and it was more than usual, so over a couple of dozen, I believe, total.

MR. KENNEDY: Officer-involved shooting deaths?

SGT MASSINE: I believe so, in the entire province, yeah.

THE COMMISSIONER: In one year?

SGT MASSINE: Yes. Yeah, there was – 2015 was a particularly high incidence.

THE COMMISSIONER: Right.

SGT MASSINE: And don't quote me on the numbers, but I know it was a lot higher than normal.

MR. KENNEDY: So do you know on average how many officer-involved shooting deaths there would be in BC in the run – I'm just trying to get a feel for what's happening in the rest of the country.

SGT MASSINE: It's hard to give an average because, like I say, we do get the spikes and then there will be other years where there will be just a handful. It's up and down, so 10 to 12 a year, maybe, on average if you want to throw a number out there.

MR. KENNEDY: Okay.

And we've had, I think, well, since 2003 this would be – if you include Reid and Power, this would be the – there's a couple of incidents I don't think resulted in death, but this would be – yeah.

Sir, have you been involved yourself in any review of officer-involved shootings?

SGT MASSINE: Yes, I have.

MR. KENNEDY: And how many have you been involved in?

SGT MASSINE: Shootings, I've just completed one recently for the IIO.

MR. KENNEDY: What's, sorry, the IIO?

SGT MASSINE: Oh, sorry, the Independent Investigations Office, which is the civilian investigative branch.

MR. KENNEDY: So that's the equivalent of SIU in –

SGT MASSINE: Yes.

MR. KENNEDY: – in Ontario.

SGT MASSINE: Yes, yeah.

So I was reached – they reached out to me and I completed one for their office and that is still in process. Like, the report's done, been submitted, but the investigation is still in process. I completed another a few years ago. It was an RCMP involved, it was a fatal shooting. The first one I spoke of wasn't a fatal shooting.

MR. KENNEDY: Okay.

SGT MASSINE: The second – or the first one with the RCMP member around 2010, that was a fatal officer-involved shooting.

MR. KENNEDY: Okay.

And, Sir, in terms of – I just want to touch on a couple of the points you made earlier today. In terms of unknown risk, that was the term –

SGT MASSINE: Yes.

MR. KENNEDY: – I was trying to remember if it was Dr. Coleman.

SGT MASSINE: Yeah.

MR. KENNEDY: You used the term unknown risk. That's inherent in the job of a police officer, isn't it?

SGT MASSINE: It is, and I'll be honest with you, I struggle with the word "routine," I struggle with the low-risk analysis.

MR. KENNEDY: Yeah.

SGT MASSINE: There's so many unknowns in what we do because the situation is always changing. So there's unknown risk and there's high risk.

MR. KENNEDY: Yeah.

And so in this particular case with Mr. Dunphy, I think you would agree, everyone has described it as low risk in terms of what was known about Mr. Dunphy, his –

SGT MASSINE: See that's where I disagree, actually.

MR. KENNEDY: Okay.

SGT MASSINE: I stick with the unknown because –

MR. KENNEDY: Because anything in your view could be –

SGT MASSINE: That's right, it could change. It could change.

MR. KENNEDY: Yeah.

SGT MASSINE: There's too many variables.

MR. KENNEDY: Okay.

So basically any police officer attending a scene of any kind of investigation in your view could – has inherent unknown risk.

SGT MASSINE: Absolutely.

MR. KENNEDY: Okay.

Now, where did you – in terms of your policing on the street, where would you have done that, Sergeant?

SGT MASSINE: Done what? I'm sorry.

MR. KENNEDY: Yeah, you were a police officer, operational policing in terms of on the street.

SGT MASSINE: Yes.

MR. KENNEDY: Where would that have –?

SGT MASSINE: Okay, well, I started in Redcliff, Alberta which is a small –

MR. KENNEDY: Okay.

SGT MASSINE: – seven-person police department. Then with the military police, which varied, and we would have anywhere from five maximum to maybe two on shift.

Saanich Police Department, we would vary in our shifts anywhere from five to 10 depending on days and hours of the week. And then Victoria Police, we were a bigger police department, and I was operational up until 2014.

And, actually, even in my role now, I still serve in an operational capacity providing security for graduations and such.

MR. KENNEDY: Yeah, and I'm not going to go through this in detail, but I talked again with Constable – with Dr. Coleman. The issue of hindsight is always something you've got to be aware of when –

SGT MASSINE: Absolutely.

MR. KENNEDY: – you're examining –

SGT MASSINE: Absolutely.

MR. KENNEDY: – what other – a situation that's occurred in the past. Correct?

SGT MASSINE: Yes, that's right.

MR. KENNEDY: And is there a way – how do you – is there a way of compartmentalizing the difference between what took place on the date in question versus recommendations for the future from your perspective?

SGT MASSINE: The approach I take – and I know I was, I'll say, critical of Corporal Knapman's report as far as legal matters, but the approach I take is based on a Vancouver court case from the Stanley Cups riots, *Berntt v. Vancouver*. And in that case the judge talked about the doppelganger test, which is very similar to – I can never pronounce it – the Iacobucci report.

MR. KENNEDY: Yes.

SGT MASSINE: So it's basically putting myself in the shoes of the officer, and in this case with Constable Smyth – and that's why I said in my earlier evidence that the testimony that he had about the bracing for the impact of the bullet, that's pretty powerful. So I'm trying to experience what he is as he goes – what he's experiencing as he goes through that incident. So it's in the moment. It's not looking back with the would've, could've; and then the recommendations that move forward are things to improve, because we can always do things better.

MR. KENNEDY: Yeah.

And so when you look at Constable Smyth, when he was bracing for the bullet, that's something in officer-involved shootings, when you talk to officers after the fact, that's a common theme, isn't it?

SGT MASSINE: I don't know if it's common. I know in my experience when I was shot at, it's a scary situation. And you –

MR. KENNEDY: Did you brace for the bullet?

SGT MASSINE: You prepare for the worst, but then you work through it. You work through it, and in my case I was not shot, so.

MR. KENNEDY: Okay.

And also then you've indicated that the following – the rifle following, again, is a powerful statement.

SGT MASSINE: Absolutely.

MR. KENNEDY: And also, you've indicated that you've had numerous cases that – or you're aware of cases, I don't know if you've had numerous – where the person, despite being shot in either the head, in the torso on numerous occasions, continues to move.

SGT MASSINE: Absolutely.

MR. KENNEDY: Okay.

I want to move now, Sir, very quickly into your report because I think – there's just a couple of points. I just think I need to distinguish, or find out what you meant, Officer.

Sergeant, page 38 of this report. And you also appear to be somewhat critical of Constable Smyth going to the home alone, are you?

SGT MASSINE: Again, that's based on my experiences. And just because something is done in policing, meaning officers would work alone, that doesn't necessarily make it best practices or right. At the end of the day – and I'll phrase Corporal Knapman's testimony when he talked about a study from the DOJ where he talked about single officers are a better responsive. And, again, I did some research and I was also aware of a study from the DOJ where a lot of the statistics that Corporal Knapman quoted were the ones from the report I was – and I've got a note of the title in my notes in my binder. But it actually recommended two officers attend. So I

MR. COMMISSIONER: I thought I read – it might be the same footnote. It was my impression that there were more fatalities, police officers, when there were more police officers than when there were fewer.

SGT MASSINE: Well, that was – I believe that's what Corporal Knapman referenced in his evidence, but one of the recommendations, if it is the same report – and again, he wasn't aware of the report title. But it was a 2016 document from the Department of Justice that talked about the number of officers there, and the recommendation was two officers attend.

MR. KENNEDY: Okay. So in terms of – I just want to get clarify because you've heard again Dr. Hart's testimony in terms of the – I guess he referred to somewhat specialized policing of conducting a threat assessment in the context of protection of public officials.

SGT MASSINE: Uh-huh.

MR. KENNEDY: He indicated there's an overlap between personal risk assessment and threat assessment, but on page 38 you talked about going – you say that: As an operational officer with 30 years of experience, you investigated dozens of allegations of threats. Now, were those criminal threats, Sir?

SGT MASSINE: There's all kinds of threats, yeah. There's some criminal threats. There's statements or actions taken or made that would lead an investigator to believe that it needs to be followed up to see if there is criminality.

MR. KENNEDY: And I think a little later on in your report you actually – let’s just jump to that right away. At page 42, again, Sergeant, if I’ve got the right areas, please make sure I’m asking the right question, this is yours.

Yeah, you basically state here: “Absent evidence to the contrary, the writer feels that Cst. Smyth responded to what he perceived as a Lethal Force threat appropriately.” What the writer struggles with “is in what he feels is an appropriate risk assessment and Cst. Smyth’s reasoning for attending Mr. Dunphy’s residence alone when any trained police officers should suspect a tenor of violence for *Criminal Code* investigation of Uttering Threats.”

Constable Smyth wasn’t doing a *Criminal Code* investigation of uttering threats.

SGT MASSINE: See, now, I don’t know that. In my mind I’m not, I’m not 100 per cent –

MR. KENNEDY: Well that’s –

SGT MASSINE: – because there’s a tenor of violence. If it’s a threat, there’s a tenor of violence, so the big part of the investigation is to determine whether or not it falls into the spectrum where you may put a charge forward or it may be written off.

MR. KENNEDY: Yeah, but there’s no evidence here by anyone, Sir, that this was a *Criminal Code* investigation of uttering threats.

SGT MASSINE: Again, I was asked to provide an opinion. That is my opinion –

MR. KENNEDY: Okay.

SGT MASSINE: – based on everything I reviewed.

MR. KENNEDY: So was it your understanding that Constable Smyth was conducting a *Criminal Code* investigation of uttering threats?”

SGT MASSINE: It was my understanding that he was investigating a threat allegation by Mr. Dunphy which could have transitioned to a *Criminal Code* investigation.

MR. KENNEDY: But, again, anything can, as you’ve talked about, there are – the unknown risk that any police visit can result in, or any police stop of a car, can result in a tenor of violence.

SGT MASSINE: Absolutely.

MR. KENNEDY: Yeah.

So what I’m trying to distinguish, Sir, is that when you’re looking at this, and you again heard Dr. Hart testify. Have you had any training, Sir, in threat assessment or in the protection –

SGT MASSINE: Yes, I have actually from Dr. Hart.

MR. KENNEDY: From Dr. Hart.

Okay, so you’re familiar with Dr. Hart?

SGT MASSINE: Yes, I am. And I have to say, reading his manual on threat assessment that Constable Smyth would have taken, and I have my manual here, where it was another course directly related to domestic violence threat assessment. They’re pretty much one in the same.

MR. KENNEDY: Okay, but you – so you're familiar with Dr. Hart.

SGT MASSINE: Yeah.

MR. KENNEDY: Now, the –

SGT MASSINE: From 2009, I believe.

MR. KENNEDY: Yeah.

The – but my point is – so in terms of you had some training in threat assessment. Was that in the context of domestic violence?

SGT MASSINE: Yes.

MR. KENNEDY: Okay.

So do you accept, Sir, that the principles, again, the principles of policing would be the same but in terms of the principles put forward in the investigation or the – a threat assessment of a – in the context of the protection of public officials, that there can be different principles applied.

SGT MASSINE: There can be, absolutely.

MR. KENNEDY: And in fact you heard Dr. Hart testify that you don't even need an utterance which is a threat to commence a threat assessment.

SGT MASSINE: Correct.

MR. KENNEDY: Yeah.

Now, are you aware, Sir, if in – and I don't know –

THE COMMISSIONER: Only the – I take that you're referring – don't mean a verbal threat but there might be a threat by conduct?

MR. KENNEDY: I thought the actual quote in the report, Commissioner –

THE COMMISSIONER: Yeah, I don't recall the exact words.

MR. KENNEDY: – yeah, was that in – one of the common misconceptions that in a threat assessment there had to be an utterance which could be construed as a threat, whereas he said that that's not what's needed. In other words, that the comments made with Mr. Dunphy –

THE COMMISSIONER: That's what I thought he said.

MR. KENNEDY: Yeah.

THE COMMISSIONER: That's fine. Yeah.

MR. KENNEDY: And how did you find Dr. Hart when he was – in terms of teaching the course?

SGT MASSINE: It was a long time and long days, a lot of information.

MR. KENNEDY: Yeah, okay.

Now, do you see any difference then – I'll ask you this – in terms of the conducting of an uttering threats investigation under the *Criminal Code* and a threat assessment in the context of the protection of public officials?

SGT MASSINE: I'm not sure I'm qualified to speak to the threat assessment –

MR. KENNEDY: Okay.

SGT MASSINE: – that aspect of it.

MR. KENNEDY: Okay.

So when you gave – but your opinion you're giving here is based on an uttering threats investigation under the *Criminal Code*?

SGT MASSINE: Yes.

MR. KENNEDY: Okay.

SGT MASSINE: That it could become a criminal investigation.

MR. KENNEDY: Yeah.

Sir, I accept what you're saying that – and I think Constable Smyth said this, in fact, the text with Trevor: If I have to arrest, I'll be late. I mean that's – based on what you're saying, that's not an inaccurate statement, is it?

Do you know the text I'm talking about, the text with the lunatic text?

SGT MASSINE: I do but I didn't put any weight on that because, again, my report was written and submitted. So when I became aware of those secondary – the secondary information, I didn't alter my report.

MR. KENNEDY: But one of the comments is: If I have to be late –

SGT MASSINE: Okay.

MR. KENNEDY: – or if I have to arrest, I'll be late. And Constable Smyth said, well, that's something that can happen in any visit. That's essentially what you're saying the same thing. Correct?

SGT MASSINE: That the shift can be extended. Is that what you mean?

MR. KENNEDY: No, that anything can happen when you visit an individual. Even though it could be a low-risk person or unknown risk –

SGT MASSINE: Right.

MR. KENNEDY: – that you've taken the proper steps, when you're in the house with someone or in a situation something can still happen that can lead to an arrest?

SGT MASSINE: Oh, absolutely.

MR. KENNEDY: Okay.

SGT MASSINE: Yeah. Thank you for clarity.

MR. KENNEDY: One point too, and Corporal Knapman – how did you – so you basically, if I understand you correctly now, Corporal Knapman’s report or testimony, you don’t have a great difficulty –

SGT MASSINE: Not with the facts of the case and the opinion on Constable Smyth’s – on the subject behaviour and then the officer response, no.

MR. KENNEDY: And one of the points I think you make at page 40 or your report – that’s 43, if you go back to page 40 – that you – you watched the re-enactment I think, did you?

SGT MASSINE: Yes, I did.

MR. KENNEDY: Now Corporal Knapman gave us an indication of how quick things happen. The actual drawing of a firearm and the firing of a number of shots that takes place in – pretty quick doesn’t it?

SGT MASSINE: Yes.

MR. KENNEDY: We’re talking – are we talking seconds, are we –

SGT MASSINE: It could be less than a second –

MR. KENNEDY: Yeah.

SGT MASSINE: – depending on the officer.

MR. KENNEDY: Yeah. So when the situation of a person pointed – with a firearm pointed at them, is there – and the pistol is drawn, the firearm is drawn, we’re literally talking seconds –

SGT MASSINE: Uh-huh.

MR. KENNEDY: – before the whole situation is over, correct?

SGT MASSINE: Uh-huh.

MR. KENNEDY: Is that – that’s what I read from your –

SGT MASSINE: Yeah.

MR. KENNEDY: – watching the re-enactment.

ST MASSINE: It’s very quickly, yes.

MR. KENNEDY: Okay.

You also, Sir, said that an officer should avoid terms like calm down but if the term is, as I suggest to Dr. Coleman, is calm down, you know, I’m not here to arrest you.

SGT MASSINE: Like I said in my initial testimony, it is about context. It’s a direct confrontation. It’s high risk, high gain.

MR. KENNEDY: Yeah.

SGT MASSINE: We do caution against that type of language because it turns into somewhat of an ego battle in most cases and that if somebody's yelling and agitated and you say calm down, they tend to escalate, the officer escalates. So –

MR. KENNEDY: But context –

SGT MASSINE: – it's high risk, high gain.

MR. KENNEDY: Context, tone a voice, it's all (inaudible).

SGT MASSINE: Could be appropriate, could be appropriate.

MR. KENNEDY: Yeah, sure. Could be appropriate

SGT MASSINE: Yes.

MR. KENNEDY: And I think one of the things you said here, Sir, and again I'm back into the hindsight versus the situation Constable Smyth found himself in, my note is that everything is based on Constable Smyth's perception at the time?

SGT MASSINE: Yes.

MR. KENNEDY: So that the situation he finds himself in would be based on – he will react based on training.

SGT MASSINE: Uh-huh.

MR. KENNEDY: Experience.

SGT MASSINE: Uh-huh.

MR. KENNEDY: What other factors, Sir?

SGT MASSINE: The other factors would be – to put it in very simple terms, as a trainer, there are some people that just get it quicker than others. And I've been involved in training with other agencies where the training is not particularly good or there's – or if it is good training, there are officers that just seem to perform better than others and it's the human factor that comes in.

MR. KENNEDY: Yeah.

SGT MASSINE: So it's hard to generalize and say that – this is the conundrum I faced in preparing my report is I'm critical of the training, yet I have a good response. And what I'm trying to get to is if Constable Smyth is in the role that he is with the PSU, I heard the terms "elite" several times.

MR. KENNEDY: I –

SGT MASSINE: Through testimony that came up that there was – it's sort of an elite unit.

MR. KENNEDY: That's –

SGT MASSINE: You do more elite training.

MR. KENNEDY: I don't remember that. Yeah.

SGT MASSINE: Well, my recollection is that I heard that and I don't mean elite as far as elitist, like in a negative way. I'm saying that –

MR. KENNEDY: Specialized, I believe.

SGT MASSINE: Specialized. To get to that level there, Constable Smyth obviously had something above others. So some people might respond better to poor training because they have a natural ability to do so for whatever reason.

MR. KENNEDY: Yeah.

So my last point, so whatever the arguments between you and Mr. Avis on the training –

SGT MASSINE: No arguments on my part.

MR. KENNEDY: – the training, Constable Smyth can only react based on the training that he's given at the time.

SGT MASSINE: Not necessarily. No.

MR. KENNEDY: Okay.

SGT MASSINE: That forms a basis for it but, then, like I said, if there is something special about that officer, in this case, Constable Smyth, if he has an ability beyond his training to keep assessing which, when I read it – and again this is the conundrum I face – is that he articulates that the gun is continually pointed at him throughout the course of four rounds.

MR. KENNEDY: Okay.

SGT MASSINE: That says to me that he's responding above how he was trained.

MR. KENNEDY: And by the way, on the pen – my last point. On the pen, Corporal Kelly Lee, one of the forensic scene examiners, testified there was a pen found by the oval table, but whether or not it's the pen, we don't know.

SGT MASSINE: I wasn't aware of that, and thank you.

MR. KENNEDY: Okay.

Thank you very much.

THE COMMISSIONER: Okay, now –

MR. AVIS: No questions of either witness anymore.

THE COMMISSIONER: No questions, Mr. Avis. All right.

MR. FREEMAN: And no questions for RCMP.

Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you, Mr. Freeman.

MR. DROVER: I have some questions but I promise not to be long.

THE COMMISSIONER: There's one in every crowd.

MR. DROVER: Oh, Mr. Simmonds is going to be the one to hold us up last. I'm going to try to be quicker than him even.

MR. SIMMONDS: (Inaudible.)

MR. DROVER: (Inaudible.)

MR. SIMMONDS: (Inaudible.)

MR. DROVER: All right.

Good afternoon, gentlemen. My name is John Drover; I'm counsel for the Royal Newfoundland Constabulary Association.

And I have a few questions, and some of them I'm not sure who might answer them. I'll certainly cut out a lot of the questions which might not be completely relevant.

Sergeant Massine – Massine right?

SGT MASSINE: Massine, yes.

MR. DROVER: Yeah, okay.

In terms of these recent reports you've done into police shootings, I believe you said one for the IIO and I can't remember, one for the RCMP a number of years ago.

SGT MASSINE: It would have been done at the request of the Office of the Police Complaint Commissioner which was before the IIO.

MR. DROVER: Okay.

SGT MASSINE: So there's still two bodies but the IIO investigates any incidents where it leads to injury or death to the subject. The OPCC, Office of the Police Complaint Commissioner, investigates the other more breach of service discipline, that sort of thing; use of force where there's no injuries.

MR. DROVER: And how much access were you given then to training materials, training facilities, trainers in use of force?

SGT MASSINE: I always ask context around the training and sometimes it's made available and sometimes it's not for whatever reason. These things are often done in a compressed time frame so we don't often get everything we've asked for, so we have to deal with what materials we have. And there have been instances where I can't offer an opinion because I don't have enough information and I've documented that.

MR. DROVER: Were there any cases here where you had recognized any gaps and requested further information?

SGT MASSINE: Not gaps but slow coming and maybe it's because something – I acknowledge that my requests may be unusual. I do know working at the Police Academy that we get requests

all the time from the Independent Investigations Office; the OPCC, Office of the Police Complaint Commissioner, for our retraining records back several, several years. So it's not an uncommon occurrence to ask for that by any means. Like I say, no gaps just I got the sense that my requests were unusual.

MR. DROVER: Okay. Because, obviously, and I think Mr. Avis hammered on this a lot earlier but I don't know if he got to the point that, the more information that you're provided the better your expert opinion will be, correct?

SGT MASSINE: In some cases.

MR. DROVER: Well, it would, for instance, prevent you from making wrong assumptions because you're missing a piece of material so therefore you're forced into making an assumption, correct?

SGT MASSINE: And the thing is I wouldn't make an assumption, at least, consciously. If I don't – if I need a specific piece of information and it's not provided, and I'll tell you the recent officer-involved shooting, I don't know how much I can speak to it because, as I said, it's still a matter pending, but there were statements from police officers that I did not get. So I would not render an opinion without those statements because they were critical. So I can't give an opinion on what I don't know.

MR. DROVER: Correct. And, like I said, in this case there could have been some gaps and you're forced into making assumptions such as your assumption over the National Use of Force Framework.?

SGT MASSINE: It's not an assumption, it's a fact. It's an opinion, an opinion, in fact, with me. It's not an assumption that I made.

MR. DROVER: Okay. So you're telling me then your opinion, based on the material that you were provided, was that the Royal Newfoundland Constabulary was using the American continuum model and not the National Use of Force Framework?

SGT MASSINE: That's not what I said, no.

MR. DROVER: Or I'm still a little confused on that?

SGT MASSINE: That's not what I said.

Initially, when we asked for training documents we received the RNC Use of Force Training Manual which had a graphic of the National Use of Force Framework model.

MR. DROVER: Okay.

SGT MASSINE: But then when I asked for Sergeant James's instructor certification, that's when – that information came slowly. And I – in reviewing his transcripts from his initial interview with Commission counsel, he talked about receiving the training from Setcan, named his instructor, who I'm very familiar with. So I did my research with that company and found out, what I believed at the time, to be the training course that Sergeant James took from their website.

MR. DROVER: Right.

SGT MASSINE: Because it seemed to fit with everything that he had said –

MR. DROVER: Yeah.

SGT MASSINE: – in his initial interview.

MR. DROVER: Okay. So that wasn't an assumption; that was a belief based on the information (inaudible)?

SGT MASSINE: And to further – and to further that the training documents didn't – they didn't have – on the Canadian company website that's providing US-based training, that's where it gets convoluted, is all they had was a verbal description of the course. They talked about the continuum in there, and I believe it's in my report. So that led me to believe that – because it is PPCT based, that they are using the PPCT resistance control continuum.

Once I found out for the fact that Sergeant James actually had education in both, and did say in his testimony that they were using the (inaudible) model, I'm fine with that. But I just – the point for me is clarity in your teaching style that if it's a model, it's a model. If it's a continuum, it's a continuum because they are two different things with very, very different approaches, very different outcomes.

MR. DROVER: Right. And very – and quite likely that none of the officers trained by Sergeant James was aware that there was such a thing as this American continuum.

SGT MASSINE: I can't speak to that. I don't know.

MR. DROVER: So on a perspective basis – and God forbid that we should ever be involved in another inquiry here in this province into a police shooting, but in the even that you are called upon to be a use-of-force expert at another inquiry, which is not an adversarial process, as the Commissioner has pointed out to us many times. So in the event that you are called upon to give expert opinion in a non-adversarial context, what sorts of time frames and what sorts of access to materials and people would be the best situation for your opinion?

SGT MASSINE: I think moving forward, if – it's an open-book policy. So if the agency involved had an open-book policy and if they know the inquiry is coming, they just make everything available. If it's this type of set up with a commissioner and commission counsel, that that just automatically comes. And, honestly, I know there's been a lot of talk about tactics and protecting tactics and that sort of thing, but it's not so much a risk of any of that information getting public, because I can Google pretty much anything that we do in policing and find it in five to 10 minutes.

So I don't think there's – for use-of-force training, there's more specialized jobs that of course should be protected, but the things we teach our officers I think should be part of the public record. It's that openness. People understand, I think on a more human plane, why police do what they do when subject behaviour necessitates a more violent response.

MR. DROVER: In this case, I think, if I understand your evidence correctly, that Constable Smyth, based on the training that he did receive, acted appropriately in the circumstances. Is that correct?

SGT MASSINE: But I also think there's something more because, again, it's not – it's that conundrum I talked about where the training, in my opinion, as I've said over and over, is not up to industry standards and yet his response was. So what caused that? Is it something in him? I don't know. I don't know.

So it is a conundrum in my mind. I don't profess to have all the answers. All I know is that his response was appropriate, in my opinion.

MR. DROVER: Then, Dr. Coleman, since Mr. Kennedy laid this – since he laid this at my feet, I believe during Chief Janes' testimony, it was that two-person patrols were routine until about 1991 or 1994, when the RNCA was faced with either massive layoffs or one-person patrols.

And I can tell you that, from my client's perspective, for every contract negotiation since then, their first offer has been two-person patrols. And I can tell you that from my client's perspective, if the Commissioner's recommendation is that they hire another hundred and – or 150 members, that my client will have absolutely no problem with that.

So I just – since it was laid at my feet, I'm just going to provide you with that information.

DR. COLEMAN: Okay.

Thank you for that.

MR. DROVER: So, Sergeant Massine, you said – I should have got you guys two microphones. You said that in your opinion, the current training, training manual and what have you is not up to current industry standards. Have you highlighted everything in your recommendations that you think needs to be updated or changed about that or is there anything that you would like to add?

SGT MASSINE: I think I'm fairly clear in that it's a good reference manual to be the basis for a course training standard, as I've outlined in my report, and then proper lesson plans for each topic that's covered. And I understand the RNC has a curriculum developer on staff now, is that correct?

MR. DROVER: Yes, I believe there's –

SGT MASSINE: That's –

MR. DOVER: – I can't remember who gave that evidence, but I think there's a –

SGT MASSINE: Yeah. That person would know the process in and out and, I don't know if it's appropriate, but if BC can help, because we went through a similar situation with the Braidwood Inquiry and that's what we learned.

MR. DROVER: And the Braidwood Inquiry, I believe, was – had to do with a mental-health aspect at a police shooting and was there two sides to that?

SGT MASSINE: It wasn't a police shooting, no.

MR. DROVER: Okay.

SGT MASSINE: It was death proximal –

MR. DROVER: Taser –

SGT MASSINE: – to a taser. Yeah.

MR. DROVER: That was the Vancouver airport, Mr. –

SGT MASSINE: At the airport, yes. Dziekanski.

MR. DROVER: That's correct.

SGT MASSINE: Yeah

MR. DROVER: And so you teach de-escalation techniques, I assume, in your –

SGT MASSINE: Yes, I'm the lead facilitator –

MR. DROVER: In your training?

SGT MASSINE: – for the province.

MR. DROVER: And do you work with mental-health professionals in British Columbia on that de-escalation?

SGT MASSINE: Yeah, part of the training is it's – there's many parts to it. There's an online component through the Canadian Police Knowledge Network, which is three to four hours, depending on the officer. That's the initial mandatory part, and then the second mandatory part is a seven hour face-to-face session where we go through some theory in the morning.

And then we have two different panels per se. We have – the first comes in are a panel from the Deaf and Hard of Hearing Society. So we learn how to communicate more effectively with people that are deaf and hard of hearing. And then the second one, which I believe – it has the most impact on me and I think it has the most impact on our recruits and in-service officers, is we have a panel in mental-health consumers and family members that come in and – when they're able, because a lot of these people are really not well. They come in and they speak of their experiences, good and bad, with the police. And the family members give some perspective, as well, as how they were treated.

We also have another component to it and it's basically a full day of scenarios. The BCC ID training only calls for one scenario; we actually do nine separate scenarios with the recruits specific to effective communications and crisis intervention de-escalation where we hire professional actors. They're not cops. And these people are good, and they come in and they deal with a gamut of situations where people are in crisis, so not just mental-health issues, but people that have had a bad day. And it has an impact. The recruits really learn a lot and the actors give some very good, pointed feedback from a civilian perspective on how they felt they were treated by the officers.

MR. DROVER: So this sounds similar to – I know that in the Medical Training Program here we have standardized patients and, again, scenario training with people who are actors –

SGT MASSINE: Uh-huh.

MR. DROVER: – who do this sort of thing. So would there be some overlap between those two types of training?

SGT MASSINE: Yeah, we've recently implemented a brand-new curriculum design and it's based on the medical model, actually, because it works. It's less lecture based, more case based. So officers are learning by doing rather than sitting in a classroom and being, you know, inundated with PowerPoint and theories and everything.

They're actually – there's a lot of self-directed learning where they're reading pre-reads for the week, they have to acknowledge learning by writing online exams as I spoke of earlier and then the week progresses – every week at the academy progresses with a new case. And some of them, some of them don't involve force, some of them involve lethal force. It goes right through the gamut.

MR. DROVER: Okay.

I have another question for you around, I guess, medical facilities, medical professionals. Are police in British Columbia called upon to attend at medical facilities, psychiatric wards –

SGT MASSINE: Yes.

MR. DROVER: – psychiatric hospitals?

SGT MASSINE: Yes.

MR. DROVER: And I would like to know in what instances and why, in a facility full of people with decades of training in de-escalation, would it be the police who need to be the last resort?

SGT MASSINE: I think you've answered your own question, actually.

MR. DROVER: I don't know, give me some – give me something more.

SGT MASSINE: Well, we investigate criminal allegations and we also are called to assist with very violent behaviour because you have to realize that in a medical facility, they do have security, but they don't have the same intervention options that we would have as police. They have medical interventions, which are great, but I do know that a lot of the antipsychotic drugs that are administered on a very violent, agitated individual, because I've experienced it, will take 20 minutes to 30 minutes to kick in at high dose.

So we are called in in the extreme cases or if there's a clear case of a criminal assault; for example, a threat, a clear criminal threat, we'll come in to do an investigation and proceed with charges if necessary.

Used to be the – in BC, it wasn't really a desired action to put people suffering mental-health issues, like diagnosed mental-health issues, through the criminal system. But what we found is with forensic psychology and that sort of thing, we actually get some court-imposed positions that – or conditions, sorry, that we can actually hold people to treatment plans. And it's a growing project in the province right now where there's a lot of police involvement with psychiatric nurses, with psychologists, psychiatrists. And it's very much a team approach and it's a growing thing in the province everywhere.

MR. DROVER: So it sounds to me that when you're called to a psychiatric facility, you're not called to use your de-escalation techniques. You're called to –

SGT MASSINE: Every case I'm called to I consider de-escalation. I will say that there are cases, and I'll go back to what I talked about in my CV, my incident, de-escalation was not appropriate. I barely got out of the car and I was being physically assaulted and I had to defend myself with my hands.

MR. DROVER: So this is –

SGT MASSINE: So it's not always appropriate.

MR. DROVER: Right.

SGT MASSINE: But you have to – if you have –

THE COMMISSIONER: Sorry, what's not always appropriate?

SGT MASSINE: Crisis intervention de-escalation.

THE COMMISSIONER: Right.

SGT MASSINE: I may not get a word out of my mouth and I'm in a fight for my life. That's the nature of our job and we accept that. But when there is that moment where you can take a step back possibly, maybe disengage and now you can start that peer de-escalation process as I know it in BC, but that's situationally driven.

MR. DROVER: Right.

And, again, it doesn't always work.

SGT MASSINE: It doesn't always work, no. And we have scenario outcomes where the officers are doing all the right things and bad things happen, so we prepare them for every eventuality. We set them up for success in every case. They don't get killed, but they may have to deal with grievous bodily harm or death and respond with lethal force.

MR. DROVER: You also spoke earlier about the need to – that good training, proper training, will provide the officer with an ability then to articulate the reasons for the use of force, right?

SGT MASSINE: Yes.

MR. DROVER: You said that earlier and that's true?

SGT MASSINE: Yes.

MR. DROVER: We heard some evidence here that Constable Smyth asked a more senior officer who is a friend of his, Staff Sergeant Buckle or Sergeant Buckle, sorry, to review his General Occurrence Report. And Sergeant Buckle's only suggestion was that he include some language around policy to better articulate his use-of-force choice. Would you agree that Sergeant Buckle's advice in that case was appropriate?

SGT MASSINE: I would have to answer that with caution because in British Columbia – I'll put it to my experience in British Columbia – that it used to be judges wanted to hear the technical jargon, policy, technical speak from the police. We have our own language sometimes. But I know recently, the judges, yes, they want to hear that, but they want it augmented with real language.

So it comes down to what the flavour of the jurisdiction is and what the courts here would like to see. So I'd be reluctant to give you an answer on the Newfoundland experience because I'm quite frankly not aware of it. I can speak from BC that, yes, you should have some technical language, but that part of – the big part of the actual articulation is: What does that technical language mean in layman's terms?

MR. DROVER: And I believe – I don't remember the exact words of the suggestion, but I think it was to add something like he was faced with grievous bodily harm, which that language does not –

THE COMMISSIONER: Using the words of the *Criminal Code* basically –

SGT MASSINE: Yeah.

THE COMMISSIONER: – to justify the act.

SGT MASSINE: But then you have to explain what grievous bodily harm means to you as a person.

MR. DROVER: Right and –

SGT MASSINE: That’s the articulation piece.

MR. DROVER: Yeah.

So assuming that the rest of the report included those details and that explanation, then there’s no problem with articulating, based on policy and training, those words.

SGT MASSINE: Certainly, but use your own words, too.

MR. DROVER: Right.

SGT MASSINE: Right?

MR. DROVER: I think those are all my questions. I had lots more if I had a couple of more hours, but I think we had a good discussion.

THE COMMISSIONER: Thank you, Mr. Drover.

I hope it will assist in the next negotiations.

MR. SIMMONDS: No, I don’t need that.

MR. DROVER: Don’t need that.

MR. SIMMONDS: Don’t need that. I’ll be very quick.

MR. DROVER: You’re that quick.

MR. SIMMONDS: Just a couple of – for a change I have the luxury of just having to ask a couple of questions.

Sergeant Massine, is there anything that’s been put to you today, any of the comments, queries, issues that would in any way cause you to substantively change the opinions put forward in your report?

SGT MASSINE: No.

MR. SIMMONDS: Okay.

Dr. Coleman, I ask you the same question: Is there anything that you have been asked or heard today, been referenced or taken to, that would in any way cause you to substantively change your report?

DR. COLEMAN: No.

MR. SIMMONDS: Thank you very much.

THE COMMISSIONER: A good cross-examination.

Okay, I think –

MR. SIMMONDS: I think you're being facetious but ...

THE COMMISSIONER: I think we're ready to – tomorrow it's an early start, but it's a different type of process. The Phase 2 starts – the symposium starts at 9 o'clock, I believe, and those who wish to be involved are invited.

And counsel, I think, has done a good job in getting everything geared up for some interesting discussion. And hopefully it will be of assistance on the Phase 2 report.

Thank you.

MR. KENNEDY: What will be the set-up for this, Commissioner?

THE COMMISSIONER: Sorry?

MR. KENNEDY: What will be the set-up –?

UNIDENTIFIED FEMALE SPEAKER: We'll talk off-line.

MR. KENNEDY: Sorry?

MS. CHAYTOR: We'll talk about it.

MR. KENNEDY: Okay.

THE COMMISSIONER: The what?

MS. CHAYTOR: Mr. Kennedy is wondering about the set-up for tomorrow. We indicated we can talk to him about it when we're concluded.

THE COMMISSIONER: Sure.

MR. KENNEDY: She said to talk off-line as opposed to take it outside, I think. It's –

MS. CHAYTOR: And talk off-line, yes.

And our two witnesses – thank you – they will be available tomorrow as well, if there are others who have questions for them. They're taking part in the symposium.

THE COMMISSIONER: Yeah, and I appreciate the making – you making yourselves available for that as well.

Thank you very much. I will adjourn now until 9 tomorrow morning.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.