



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 39

Commissioner: Honourable Justice Leo Barry

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THE COMMISSIONER: In order to make the arrangements here this morning they have to disconnect the other microphone. I'm going to be roving around so I'm not going to be confined to a chair the way I have. My purpose here, to be very brief, is to welcome everyone, those of you in the hearing room and those participating by means of our website and listening in, whether it's through your Smart TV or your microphone or your toaster oven or whatever other devices out there to do a little surveillance.

Have any of you heard the news story today about what they found or what they suggested has been found in terms of what the CIA is doing in terms of monitoring. We have a very appropriate topic, I think it's number two on the agenda where – or three – where we'll be looking at the problems involved in preserving freedom of expression while at the same time monitoring, but not to the extent that free expression is subdued or eliminated.

This is a continuation of the Dunphy inquiry but it's not an evidence gathering part of the inquiry. We've set up a symposium and we must remember the Commission of Inquiry is into the death of Donald Dunphy and it came about, to a large extent, because Meghan Dunphy, his daughter, and you, the members of the community and the general public, have demanded answers. And at the same time, Constable Joseph Smyth has requested fairness in the manner in which he is treated while his community, through this inquiry, examines what occurred in order to ensure such a tragic event, tragic for all involved, does not occur again.

Now that we're coming to the end of the evidence – by the way, I'm sorry, I should have said have a seat. You're not used to standing, I know, for the last two months. Now that we've come to the end of the evidence, there's one witness still to come and some other evidence that may be admitted by consent that has to be discussed with counsel, I hope that we've been placed in a position where I may now start to prepare a report which will help provide answers.

Now, I ask you all to respect that this is not a continuation of evidence gathering, rather it's intended as a forward-looking approach, forward-looking opportunity, for you, the public, to offer suggestions. I ask you also to remember that the evidence from our police forces have gone in at the evidence-gathering stage, as they have for other participants, and it is not the intent today to have questioning of the police members who have volunteered to come and help assist in discussing some of these broad public issues. It's not intended to have them questioned or to have experts questioned on the details of Mr. Dunphy's death, although we have referred to those circumstances, to some extent, in order to get a focus, a context, a framework, for some of these larger issues.

So this is an opportunity for you, the general public, to offer suggestions to the inquiry on some broad policy matters. And before I sit down, I want to give a congratulations to the team, the small team that I've had working with me. And I'm not forgetting – the inquiry is not finished yet until I spend a couple of months at least of hard work in preparing a report, but in terms of our scheduling, I set a schedule which would see us finish on the 9th of March. I think it's the 9th today, is it? We haven't finished because we put the symposium in there and we had a snow day, one-and-a-half snow days, actually, but I'm very happy to say that with the dedicated work of my team, we were able to stay basically on schedule and complete the evidence gathering in the two months that was predicted.

So I want to thank Courtney Careen who was in our office staff, Ed Foran our project manager, Patrician Sheehan who you've seen is a very competent clerk and been able to find exhibits a lot faster than I've been able to find them or I would have been able to find them and Kate O'Brien and Sandra Chaytor, Commission counsel. Do I have everybody?

MS. O'BRIEN: Diane.

THE COMMISSIONER: Oh, Diane; the person that the whole thing would have come to a grinding halt on the first day if we didn't have Diane, our administrator.

So I want to note that it's not just a matter of finishing on schedule, we have as an aim, doing a thorough job and to the best of our ability being fair, and nobody is going to agree with me when I say that I've tried to be fair. They'll be ready to point out where I could have done better, here or there. I'll readily admit it's difficult in this type of large project to keep your eye on the ball at all times, but I hope that I've presented through the witnesses that the Commission has called and through the witnesses that participants have suggested be called, I hope that we have a good database for the remaining work which I'll have to do in completing my report.

So that's all I want to say. I'll be interested in listening in, whether directly or remotely to your discussions. And again I urge, give everybody a chance to have their say; don't give the police representatives too difficult a time. They have no need to be here. They have participated and co-operated in my job as Commissioner and I just want to acknowledge the presence of – and I have to make sure I get my – on the first panel we have Assistant Commissioner Peter Clark, who is the commissioner. I don't think we've met before, but thank you for appearing. And we have on the second panel, Chief Bill Janes who's here somewhere I think.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: He's not here yet. Okay. He will be here for the second panel I understand.

So I'll sit back and, with the rest of you, listen to the participants now.

Thank you very much.

MS. O'BRIEN: Thank you, Commissioner.

I'd like to welcome everyone to the first session this morning. The topic we have on right now is: Investigation of Officer-Involved Serious Incidents in Newfoundland and Labrador. It's a topical subject. We know that our provincial government is actively looking at bringing in some type of a civilian led, serious incident response team in this province so it's of great interest to all of us.

Presenting today, we have Gareth Jones, and I'll give you a little bit of background about Mr. Jones.

Gareth is the Director of the Special Ombudsman Response Team and the Office of the Ombudsman of Ontario. He is responsible for directing all major investigations conducted by that office, including systemic investigations into aspects of policing and he's done that for the 2010 G20 in Toronto. He's looked at use of force by corrections officers in Ontario jails and how police services deal with officers with PTSD and most recently, he's looked into de-escalation by police when dealing with emotionally disturbed people.

Prior to that, Mr. Jones was an investigator with the Attorney General of the Province of Ontario in their Special Investigations Unit or SIU, which is their civilian oversight body. SIU has an exclusive mandate to investigate deaths and serious injuries involving police officers. Mr. Jones has conducted about 500 criminal investigations into incidents where police were involved with death or serious injury, including approximately 100 incidents involving the discharge of a firearm.

Prior to that, Mr. Jones was a police officer. He was a police sergeant with the Metropolitan Police Service in London in the UK. He's also the author of *Conducting Administrative*,

Oversight and Ombudsman Investigations and, of great importance to us here today, *The Top Ten Things Not To Do When Setting Up A Police Oversight Agency*. So thank you, Mr. Jones, for coming.

And as the Commissioner also has already mentioned, also on our panel we have Assistant Commissioner Peter Clark. Peter Clark would be the Commanding Officer of the RCMP Newfoundland and Labrador. So he would be the highest ranking RCMP member in this Province. We're happy to have the RCMP participating here today.

Assistant Commissioner Peter Clark joined the RCMP in 1982 from Vancouver, British Columbia and began his RCMP career with postings in Alberta. In June of 2010, Assistant Commissioner Clark was promoted to chief superintendent and became the commanding officer in Yukon Territory. While serving as commanding officer, he co-authored *Sharing Common Ground; a Review of Yukon's Police Force* and he assumed overall responsibility to implement those recommendations pertaining to the delivery of police services across the territory.

In 2016, Assistant Commissioner Clark became the 18th Commanding Officer of the RCMP in Newfoundland and Labrador.

Assistant Commissioner Clark holds a Diploma in Criminology from Douglas College and a Bachelor of Arts with a major in Criminology at Simon Fraser University. He has continued his education in police administration and management through Dalhousie University and the Southern Alberta Institute of Technology.

Assistant Commissioner Peter Clark was granted the Order of Merit of the Police Forces by Governor General Johnson in 2015.

We thank you for coming here today.

Just a little bit of how the format is going to go this morning. I'm going to ask each of our panelists to spend, you know, 10 or 15 minutes or so giving you an overview of their insights into the topic of interest. We then will go to a question and answer stage. We have had many questions submitted by members of the public already through our website which is wonderful. We also have a mic here in the room so anyone in the room who has a question they might like to pose to the panelists, can just approach that mic. When I see you there and we have an appropriate time, I'll indicate that and ask you to ask your question. Please give your name prior to introducing your question.

So I'll thank you all and we can begin with Mr. Jones.

MR. JONES: Okay. Good morning, everybody. Thank you for that kind introduction and thank you for the invite to be here this morning.

Kate mentioned that I currently work for the Ombudsman of Ontario but I'm here in a private capacity, so anything I say is not necessarily the view of the Ombudsman's office. As Kate mentioned, I've kind of been through this. I was hired by the SIU as an investigator when it first began operation in January of 1991 and I was present when we made some fairly serious mistakes. And I'd like to go through some of the lessons that I learned from going through that very difficult processes of setting up a police oversight agency.

The overarching point that I want to make is that, if you're going to do it, do it properly. And these are some of the things that you may want to consider to meet that goal.

First of all, give it a clear mandate. Decide what it is and what it is not investigating. Is it going to be limited purely to police shootings? Is it going to be limited to deaths and serious injuries that involve police? Is it going to be limited to on duty officers or is it going to include off duty officers which will increase the remit considerably because then you may be doing things like drunk driving, domestic violence, so whatever you do, give it a clear mandate.

There are some other issues involved: corruption. Are you going to have the unit deal with allegations of corruption? What happens if an officer is involved in a shooting, discharges a weapon with the intent of hitting somebody but misses, who's going to investigate that? So you have to think about that as you're creating a framework for whatever you decide that you want to put in place.

Make sure that everybody knows what their obligations are. The first few years of SIU were spent fighting chiefs of police; spent fighting police associations because there's a lack of clarity in our governing legislation. Police officers would quote: "had to fully co-operate with the SIU" but there was no definition of what fully co-operate meant.

Co-operation: what protections did the subject officers have or not have? What were the obligations of witness officers? When should SIU be notified because notification is important? Who should be protecting (inaudible)? None of those things were clarified in our legislation or in our standard operating procedures. You have to make sure that everybody knows what their duties and obligations and protections are.

Resource it properly, and that clearly is related to the mandate that you decide to give it. Investigations cost money. It doesn't matter whether the RCMP do them or the RNC do them or the SIU do them or any other bodied person, investigations cost money. And upfront they can be extremely expensive. So you better resource and better have the capacity to resource those investigations properly to ensure that they will withstand subsequent scrutiny.

SIU is a prime example where it all went horribly wrong, where governments thought they could do it on the cheap. I think our initial budget was far less than the dry-cleaning budget of the Toronto Police Service. It was grossly under resourced. We were dealing with the same number of investigations, roughly about 200 investigations a year, 20 police shootings, 20 custody deaths, with a budget of I think it was around about a million dollars. Now SIU deals with the same number of incidents and I think its budget is in the \$6 or \$7 million range.

Don't staff it exclusively with cops or ex-cops. I am – and I'm sure Peter and I will be arguing about this – I am not a big fan of the ASIRT model because it has serving police officers on it, and the bottom line of that is it's still cops investigating cops, whichever way you spin it. Now, I know some of the investigators, including the police officers, at ASIRT and they're extremely competent police investigators. I have no problem with them, their investigative objectivity or their thoroughness. I do have a problem with the perception that they are serving police officers who will go back to their police force in the fullness of time. And I think that is not just a huge hurdle to overcome, but it's an insuperable hurdle to overcome and it kind of undermines the principle of civilian oversight of police, at least in my view.

That doesn't mean – and I guess in theory the same principle applies to ex-cops, such as me, working for police oversight agencies as well. There's a perception hurdle to overcome, perhaps not quite to the same degree.

I would argue to begin with you certainly need police experience. You need somebody or you need a group of people who know how to conduct major criminal investigations and generally that experience is only found in the policing world. I have no problem at all with former police officers assisting in the creation of oversight units and providing the skills and training

necessary, but there must also, at least in my view, be a process whereby you identify a hire, mentor, educate, train and bring on civilians who have investigative skills, and there's plenty of those around.

There are plenty of investigators in the regulatory world. There are plenty of investigators in the compliance world, the health and safety world, who have those skills. Now, they don't have the experience in the criminal investigative world, but you know what? Once you start doing these things, you get that experience very quickly, with a caveat in that I'm speaking about Ontario here, where you got 200 incidents a year, so it may be different in other jurisdictions.

But that's what you do all day: train these people, send them to police college, educate them about police culture. And that can be done extremely successfully, as has been done at SIU.

Eighteen of the 14 full-time investigators have had no experience at all. And in many cases, at least in my observations and having worked with some of them over the years, they are far, far better investigators than some of the ex-police investigators. Some are not as good, but just because you've never been a cop does not mean you can't ever investigate cops.

Don't underestimate the resistance that you may face. Being in the oversight business doesn't make you a lot of friends, whichever field you're in. You know, if you want a friend, get a dog. It's not a profession for people who want to be liked. It can be – there can be friction. There can be friction between those doing the overseeing and those who are being overseen.

I don't mean confrontation, I don't mean loggerheads all the time, but there will be different views and different opinions and there will be resistance. And that resistance may manifest itself in a failure to co-operate, leaks to the media, all sorts of things. There will be resistance.

Don't bend over backwards to create a culture of consensus and conciliation that, you know, we're all in this together. There's too close a connection between the police service that is subject to the oversight and the overseers. And that manifested itself at SIU when senior police officers were allowed to attend post-mortems or where police investigators were allowed to sit in on interviews of subject officers. Now that practice has been stopped, thankfully, but that was the initial practice that was allowed.

Don't judge it by its charge and conviction rates. The charge and conviction rate for SIU, if you look at it mathematically, is abysmal. It's about – charges are laid in about 3 per cent of the time and relatively few of those result in a conviction. That's not the point of a civilian investigative agency.

The point of a civilian investigation agency is to give the public confidence that objective and thorough and independent investigations are being done. That's the test by which an SIU-type agency should be measured, not by its charge rates. As I say, SIU, when I was there, I laid charges in about 3 per cent of the cases or I recommended charges in about 3 per cent of the cases that I was involved in. Judge it on the quality of its investigative process.

Don't let cases fester, and that comes back to resources. It is grossly unfair on everybody involved – families, the public, the media, the officers involved and their families, to have these investigations go on forever.

Now, there may be legitimate reasons why an investigation can't be concluded within a reasonable time – forensic testing, availability of witnesses – but at SIU we introduced a program in 1996 to get most of our cases done within 30 days, and we were reasonably successful doing that. We were triaging cases; we were fast-tracking high-profile cases; we were blitzing cases, which is applying sufficient resources up-front to make sure that the evidence was gathered and

assessed as quickly as possible. You know, if forensic testing wasn't absolutely essential for the outcome to make a decision whether or not the officer had committed an offence, then why wait for it?

There was a case – I wasn't involved in it, it was after my time – where a gentleman with a firearm – I can't remember if it was imitation or real, but it looked like a real firearm – was standing in front of Union Station in Toronto. He grabbed a passerby, from what I remember, a female passerby, and he had that gun up against her head. The Emergency Task Force was called, along with every single TV camera in Toronto, because it was outdoors, outside, who then recorded watching the officer – one of the ETF officers discharged his weapon, hit the man with the weapon in the head and killed him instantly. Now, bearing in mind that was recorded on TV, bearing in mind the totality of the circumstances, it doesn't take a long time to investigate that.

Not every case is going to be like that, obviously, but the more you can do to get a case resolved as quickly as possible, the better. And as I say, that goes back to resources.

And my final point is transparency. Build in the maximum transparency into whatever model you choose to adopt. Not transparency during the course of the investigation, as we're going to talk about, I believe, later this morning, but transparency at the conclusion of the investigation. The more information you can release at that point, the more credibility your process and your investigation will have.

Currently there's been – in Ontario there's a review being done by Justice Tulloch. And one of the issues that he's looking at is the amount of information that SIU releases. Normally, it just issues a press release at an end of an investigation where no charges are laid.

Again, I'm not speaking for the Ombudsman's Office, but we've recommended to Justice Tulloch that SIU release their full report, save and except any information that may cause serious harm.

And I think if you look at what's happened in this inquiry, there's very little information that comes out of a police shooting, ultimately, that may cause serious harm, and I know some exhibits have been redacted, some photographs have not been shown but, generally, it's been completely transparent and open as to the information that has been made public.

So if you can do it in an inquiry two years down the road, why can't SIU do it at the time they release their final report? It gives the public confidence in the quality and the transparency of the process.

And I think I have taken up far more than my 10 minutes, so I apologize, Kate, and I'll hand it over to Peter.

MS. O'BRIEN: Absolutely.

Thank you.

A/COMMR. CLARK: Well, thank you for the opportunity to be here today. I think it's a very important opportunity for me to talk a little bit about how the RCMP, as one of your provincial police forces, responds to these events.

Now, for those of you who may not have seen the post, there is some material that I'm going to refer to on the website under the inquiry that was posted, I believe, yesterday. And I'm going to

go through some of that quickly, but being mindful of the time, I'd like to spend a few minutes responding to Gareth's 10 points. So hopefully that'll move through quickly.

And, Kate, feel free to throw something at me because I know we're watching the time, so that's fair game.

I think, first of all, it's important to recognize that the RCMP has, over many years, advocated and welcomed the opportunity for external bodies to investigate and review those instances in which a serious injury, harm, death or sensitive matters involve a member of our force.

The historical record on police oversight and the RCMP goes back probably until the mid-2000s, if not before, and we've had the benefit of things like the Vancouver airport inquiry, the Braidwood, and others along the way.

So in 2014, the *Royal Canadian Mounted Police Act* was revised by the Parliament of Canada. And many of the issues that we faced and we received feedback on over the decade or so before that are now included in the RCMP Code of Conduct and the RCMP Act under Part VII that talks about how we will respond to serious investigations.

I encourage people who are interested to look through that because you'll see that there is a robust and very firmly-set statute requirement on top of the RCMP response. And there's also policies and flowcharts that describe that process. So if you're interested in the details of that, I believe that's also attached to the Commission's website yesterday.

We know from the RCMP point of view that experience in other Canadian jurisdictions demonstrates that public trust in confidence in policing and the justice system increases, and it is much improved when an independent entity is in place to investigate serious incidents involving police.

I just want to take a moment there to talk about that phrase: serious incidents involving police. Because I think it's very important to use the correct terminology, or at least in my view, what the correct terminology is. That being that this is not an investigation into police wrong doing, police criminality or police misconduct. It may turn out that that is the result, but the purpose of the independent investigative body, as Gareth as alluded to, is to determine the facts thoroughly, impartially with professional people who can arrive at proper conclusions. Without that, the trust and confidence of the public certainly won't be there.

So our guiding principles around this here in this province complied with the RCMP Act and we are very committed and interested to harmonize and align our statutory responsibilities with whatever the province comes forward with, along the lines of legislation or agreements or otherwise. That is part of our contractual agreement that we have is to ensure that the standards and policies of the province are consistently brought to the RCMP officers here in Newfoundland and Labrador.

Now, there are cases when the threshold of serious injuries, sensitive matters are not met. The – when that happens – and this is also reflected in the statue and the flowcharts I referred to a few minutes ago – the RCMP will trigger and its own internal response should an independent body not be available. That internal response goes to processes to contact other investigative bodies outside the Province, including municipal or provincial police forces. In our case, we have turned to the Halifax Regional Police. We have turned to the Ontario Provincial Police, when a body like SIRT or ASIRT is not available.

We seek to distance the RCMP from investigating itself. In the very rare case that we would investigate ourselves in a serious or sensitive matter, we have protocols and requirements to

advise our civilian oversight body, the Civilian Review and Complaints Commission in Ottawa, and they at times are available then to assert their interests including deploying an independent observer to ensure that our investigation of ourselves is thorough, impartial and unbiased.

As an interim measure, since my arrival about nine months ago, we have, we've realized the province is developing a strategy and legislation or a method to bring external investigations to this province. In the interim though, what we have been doing is when a matter comes forward, which is, in my view and the criminal operations officer's view, serious or sensitive, our practice is that we contact the assistant deputy minister, who we believe would be the director of law enforcement equivalent here in the province and we brief that individual immediately.

Sometimes this is done at 4 o'clock in the morning, 5 o'clock in the morning when these incidents happen. And we provide as much information as we have at that time, and request independent external investigations be considered. So we are already reaching outside the RCMP decision model to do that and seeking to have that external agency brought in when serious incidents happen. I believe we're probably numbering four to six in the last few months to follow that practice.

I just want to turn to my personal experience now because as Gareth has indicated I do have a bias. I'm a very strong believer in a model like ASIRT. I say that because as a member of the Alberta Association of Chiefs of Police back in the early 2000s, it was the police who came forward to the Government of Alberta and we asked and lobbied heavily for the province to create what is now ASIRT. Over the times that I was the officer in charge of Fort McMurray, when I was running the Southern part of Alberta as a district commander and then when I became the commanding officer in the Yukon, I used ASIRT extensively.

I'm going to go through the, just some of the examples or the 10 points that Gareth referred to just for your benefit, but I believe that this model is a positive evolution of many of those reports dating back to 2007, 2010, 2012 that are referred to on the website and that may have been discussed earlier during the inquiry. I believe there certainly is room to improve the model. There always will be, and pivotal to that, as Gareth has pointed out, is the concept of cops investigating cops. So let me just turn to that for a moment and I'm just going to go through the 10 points, and I'm watching out of the corner of my eye so ...

So first and foremost, I believe this is a political, governmental decision and, as I've mentioned, the RCMP is looking forward to working with the province and its police services to bring about independent investigations. With respect to the first point that Gareth has mentioned around not giving it an uncertain mandate, from an RCMP perspective the definition of serious, sensitive, injurious investigations is clearly articulated in the RCMP Act which is a statute of Canada. I think that that definition has been informed and well considered by the many academic and experiential activities that have resulted in that new legislation back in 2014.

So the mandate is clear, from our point of view, in terms of my responsibilities, we do authorize the decision maker in that model to lay charges. We fully cooperate. We provide the information required including making our officers available.

The second point that Gareth mentioned is not to give up control of the investigations. I agree with him here on this one as well. We want to make sure that investigators are trained, they have the skills, they have the authorities and what we also want to do is make available to them any expertise that they may ask of us.

So, for example, if we have a motor vehicle collision involving a police chase and there's a requirement for a reconstructionist or photographs of that scene, it is up to the external body which resources they call upon, be it in this province the Royal Newfoundland Constabulary, the

RCMP or perhaps Halifax Regional. That is the investigative bodies call, but if they turn to the RCMP and say we'd like to have your aircraft fly over and take some pictures, we'd like to have your reconstructionist take some measurements for us, then we would willingly and without hesitation provide that support to them with the direction that that response is not answering to the RCMP chain of command, it answers to the independent body.

With regard to police investigating police, the ASIRT model has evolved. I think the initial contemplation was that you have to have police on the ground investigating the police at the first stages. You have to have that experience, you have to have those credible investigators coming in who understand how to write warrants, how to collect evidence, how to have that material presented to the Crown. I think you need to do those things, but under the ASIRT model, as I understand it, part of their philosophy is indeed to grow your own investigators, to bring in people who have potential and skills, mentor them over the years as they align themselves with the more experienced major crimes or the serious crime investigators, and through that developmental process get to a point someday where you don't rely on secondments or former police officers.

My understanding is, currently, that we do have analysts and people in those chairs. I don't know if Sue Hughson mentioned that when she was here earlier this week, but I think that model is the desirable one.

I think it's also important to recognize that when we get into – and I'm just going to skip to point number five because I agree with the comments around budgets as well – the importance of underestimating resistance, of not underestimating resistance is very important. And, I think, looking at my experience with ASIRT, there's a concern, of course, about police officers investigating police officers but there are practical steps that are taken by the director who is, in our case, about ASIRT. She's a former Crown prosecutor. She's not a police officer. And what she – her practice would be is to ensure that the police officers who respond to an RCMP jurisdiction incident are not RCMP members. You would send the other members of the team who are not members of the RCMP. And as the reports and investigations are compiled they come to her for her consideration and the writing of the final report. So along the way there are checks and balances.

I think the other thing to recognize here in terms of the resistance aspect is that by bringing in secondments these police officers are seen as the best of the best in order to make the SIU or the ASIRT team. They are individuals who others model themselves after and the organizational culture that I know is that police officers are focused and passionate about doing the best they can, being professional and objective. And any kind of deviation from that is perhaps more of an unconscious bias than it is a deliberate one.

So I think the ability – am I running out?

MS. O'BRIEN: Well, I'll just ask you if you could maybe focus on the points where you disagree with Mr. Jones, just so that – we want to just make sure we have time for people to ask questions.

Thank you.

A/COMMR. CLARK: Yeah, no problem.

And this is where I wanted to spend a minute, thanks Kate, is the importance of having police officers who are serving, join in that independent body – proportionately join in – is, I think, very critical because it brings that service expertise and it allows the development of those investigators when they go back to their home units. They spread the word then amongst their

peers about how ASIRT or the model works. They talk about the skills that they developed and how those are transferrable to those careers. So it's very prestigious in Alberta and elsewhere, I think, to have that plaque on the wall or that recognition. So I – we disagree on this one and I think we could go on, but my point is I think that the use of some serving police officers in the model, while you're growing your own and while you're developing that expertise, I think that that's important.

Yeah, I agree with the comments around not judging the program by its charge or conviction rates. I agree about not creating a culture of conciliation or consensus where the police and the independent body do joint news releases. That totally shatters any kind of perception of independence and it creates certainly a lack of confidence. We want to have that friction between the investigative body and the police. We don't want to agree and, in fact, rarely have we completely agreed. But it's all done in the best interest of public trust and confidence and being transparent.

Then final thing that I think is really important is – I'm agreeing with Gareth but I'm done, so one more agreement is the importance of communication. Holding technical briefings and discussions with media, with politicians, with the public so they understand the model and the investigative process before it's activated, before it comes and then when that activation shows and the independent body appears to do an investigation, people understand what their mandate is, what their structure is and how the transparency is guaranteed and the accountabilities in place.

And then when the investigation is done a full disclosure of the investigation and availability to the public, to the family, to the interested parties to explain the investigation and how it unfolded and how the conclusions were reached. I think that is a must. And in my experience it has been very successful to close that loop with the, with the parties involved.

So thanks very much.

MS. O'BRIEN: Thank you.

I'm going to first pose a question to Mr. Jones. Anyone who's been following the inquiry as it unfolded has heard me ask any number of RCMP officers: Did you consider this to be a criminal investigation? And one of the subtopics that we have on our session this morning is: Should these types of investigations be considered criminal until determined otherwise?

So I wanted to put a question to Mr. Jones about that. When we talk about something, you know, being a criminal investigation, a homicide investigation, we heard many of the RCMP officers give evidence that they considered it to be an officer-involved shooting that they were investigating. Are we talking here, Mr. Jones, is this just a matter of semantics or can the words used affect how the investigative mindset and the attitude which the investigators, be they police investigators or civilian investigators, the way they approach incidents of this kind?

MR. JONES: I'll be very brief. These are criminal investigations until the point that a decision is made that there is sufficient, relevant, credible evidence to determine that a crime hasn't been committed by a police officer, and the governing legislation for SIU makes that very clear.

SIUs mandate is to investigate the circumstances of deaths and serious injury where a police officer may have committed a criminal offence. And until you get to the point where you have enough evidence to say that they haven't, they are criminal investigations, end of story.

MS. O'BRIEN: Assistant Commission Clark, do you have any comment?

A/COMMR. CLARK: I think it's more specifically case by case based on that. I think to say every investigation is criminal, I think that you miss the opportunity to recognize the role of the police when we respond to deaths is complicated and the experience of the responding officer, the circumstances, and this is exactly why you'd want to have a specialized response team that brings that credibility and that experience to recognize the path they should be on.

We consider these investigations to be very important and very serious, but we don't automatically call them all criminal because we want to look at the cause and if it becomes suspicious and then moves into that category on the side of suspicious, then, of course, criminality is our primary focus. But many deaths that we attend may be attended on behalf of the medical examiner. Somebody may pass away in hospital following an injury or a fall, we get the information from the medical examiner and we respond to that based on what we've been told and if we see something as being suspicious then it becomes criminal.

MS. O'BRIEN: And we're talking here about specifically officer-involved incidents though. So is your comment any different for those?

A/COMMR. CLARK: No.

MS. O'BRIEN: Thank you.

And I've got one more question to pose now and I'll start with Assistant Commissioner Clark, but if anyone in the audience does have a questions, wants to approach the mic – we've got a technical – oh, thank you – please do.

The next question I have actually comes from a member of the public, Krista Newhook. Ms. Newhook has raised the issue of the cost of a serious incident response team in Newfoundland and Labrador. And she notes that we are in a time of financial restraint in this province and wonders whether the money might be better spent on more intensive and mandatory training for officers to give them better skills for dealing with people in crisis. A better trained and supported police force makes people, both civilians and officers, safer.

So, Assistant Commissioner Clark, can you please address that. And the issue really is: Where is our money best spent in this province?

A/COMMR. CLARK: Well, I guess absolutely we need an independent body. I think that the decision is absolutely vital and it needs to be very soon. The scope of the work and the mandate of that body will regulate and determine the amount of files and the amount of costs that are into it.

I think from an RCMP perspective, we have a very robust and diverse set of training and tools to deal with many of the day-to-day de-escalation, those types of things that are required. But I think that an investment in an independent body to deal with those serious matters that involve police officers on duty, or if it's a sensitive matter, I would take it beyond the scope of being on duty. I think that is absolutely a very important investment to be made.

MS. O'BRIEN: Thank you.

Mr. Jones, do you have any further comment on the allocation of resources between oversight and training?

MR. JONES: I think it's a very good point that that person makes, but all the training in all the world isn't a way – which may well reduce the number of incidents but I don't think it's ever

going to eliminate them. And once you have an incident, then it needs to be investigated properly.

MS. O'BRIEN: Thank you.

The next question that I'll put, as we have no one on the mic in the room, I'll keep going with feedback that we've received from our remote audience, one of the issues that has come up is when –if a civilian oversight agency – there has been some discussion that a civilian oversight agency might be a collaborative effort, say, among the Atlantic provinces or not just necessarily a Newfoundland and Labrador solution.

If we are looking at a collaboration with other S-I-R-T or SIRT forces elsewhere, there is the issue of the time it can take for the investigative officers to arrive on the scene. And even if we have an entirely Newfoundland and Labrador solution, of course, we have very remote parts of this province and you don't always get there at all times of the year as quickly as you might want to.

So I'd like to get some comment, and I'll start with Assistant Commissioner Clark in this regard, about, you know, currently you're saying the RCMP currently brings in other agencies to investigate. Can you please talk about this idea of securing the scene early on, those early steps, how does that work in practice and do you foresee any problems going forward?

A/COMMR. CLARK: Yeah, certainly it's a very good question and the importance of immediate notification and assignment of that investigative body becomes very pivotal here because, you know, I speak to a particular case that I have in mind where the event happened in a very remote part of the jurisdiction. It was a police shooting and the calls came in very quickly and notifying the command chain and across to the director of law enforcement that this had happened within an hour and the decision was made to deploy an external body.

The next call came from the external body right to the scene and direction and information was exchanged about how that was unfolding, what needed to be done right now. Was evidence perishable? Was it being lost? So even though the investigators were not there, they had taken control of what the RCMP was doing on the ground in that jurisdiction. Over time, a number of hours, the independent body investigators arrived and seamlessly slipped into the investigative process at that time.

So it's unusual and not practical that when those things happen everything stops. The investigation does need to proceed, but the clear authority to lead the investigation is shifted from the police of jurisdiction to that investigative command triangle and that investigative body then either direct or actually arrive at the scene and take over that scene in time.

So there are some delays: airplanes and geographic distances, but in my experiences it's not been overly problematic, aside from the time delays.

MS. O'BRIEN: Thank you.

And I'll ask Mr. Jones to comment too on the Ontario experience as well. It's obviously a big province. And too, Mr. Jones, if you could address: In your view, does this affect the fact that the local jurisdiction has to be used, to some extent in the early phases? Does that impact upon independence or the perception of independence?

MR. JONES: No. As you say, Ontario is a fairly big province and the SIU relies on the local police service to secure that scene and it's actually – the police service is required to do under the regulation, to secure that scene and preserve evidence because, as we all know, time is not an

investigative friend. So if you have a shooting in Pickle Lake, it's going to take you a considerable amount of time to get sufficient resources up there to do that.

In terms, I think, of the second part of your question is possible solutions for here, would be to have an entity here which is headquartered here, the police oversight agency's here, with a reasonably small staff who could do that securing, or get to the scene quicker, and then perhaps bring in an agency from outside to conduct the investigation in major cases.

And I haven't spoken to SIU about this, but SIU is located right next Pearson Airport. It could be here within a matter of hours, should you so choose. As could other investigative agencies. So there's a solution to all of these problems and those solutions have been kind of developed over the years in Ontario or in Yukon where you can get people there fairly quickly without compromising the integrity of the investigation.

MS. O'BRIEN: Okay, thank you.

As you were both going through your initial statements, it became clear that there is the – you're on the same page on many of these elements, but I think what I'm hearing is the biggest area that you differ is between what we'll the SIU model and the ASIRT model. And what I understand to be the key difference between those models is that in the ASIRT model – both models use former police officers as investigators, but the difference between the ASIRT model and the SIU model of Ontario seems to be that the SIU model does not use any current actively, active members of any other police force and the ASIRT model does use active members, they get seconded to ASIRT. Have I correctly stated the key difference between the two models?

So, Mr. Jones, I'll ask you to respond to – we heard Assistant Commissioner Clark speak about why he felt the ASIRT model was so important in that regard, and I'll ask you to respond to that please.

MR. JONES: I don't think it's a big difference between Peter and I on the matter of principle, is that the ultimate goal is to have a purely civilian investigative, investigative agency. How you get there is where I think we're different.

I mean, the SIU is the worst form of police oversight in Canada, apart from all the others, in my opinion, because it's the one that has the most (inaudible) of independence and the lack of serving police officers is obviously a very important one. I spoke about that in my monologue, about – it's a huge insuperable hurdle to get over, at least in my view, to sell to family members, affected persons, large segments of the public, that this is a full and complete and independent investigation, if it's cops investigating cops. And I note, and again I want to reemphasize, the people I know in ASIRT are superb investigators. It's just a very, very hard sell.

MS. O'BRIEN: Okay.

And we still have time for a couple more questions. So I'll go to Assistant Commissioner Clark. You're – I know you've only recently come to this province, within the past year or so, but no doubt you've had a chance to settle in and get a view of the lay of the land.

In your opinion, based on your experience, what type of model do you see as working best for this province?

A/COMMR. CLARK: Well, I think it's largely looking at things like what's already here and building on that. So we have across – on the mainland we have the Nova Scotia SIU, which is established. It has some expertise in there and it has come to this province already.

So I think the model that I would look at would be, if we set aside right now this concept or this dialogue around serving versus non-serving, retired versus analyst, and look at how that would work, I would wonder if there was an appetite for the director of the SIU in Nova Scotia to create a sub-office or a branch of that structure that could respond to this province.

Perhaps in this province we would identify a number of appropriate people who, upon the direction of the director over in Nova Scotia, could respond to issues here in this province. And I think as long as we've got a clear mandate and we're not taking on a huge workload, because I think there are other functions that are appropriate, that we don't have to have the full gamut, and then we grow it from there and adjust it as it goes.

But I think the urgency is to do something quickly and it takes time to develop those individuals and mentor them into those investigative roles if they don't come with some already.

MS. O'BRIEN: Thank you.

And I see we have someone at the mic, so please state your name and your question.

MR. HALL: HI, Alan Hall, I'm from Memorial University.

It's about mandate, actually. I'm just wondering, obviously, we have – there are resource issues and the question of whether or not the external agency should just be investigating the criminal aspects of the case versus also making recommendations that go beyond those issues.

So you mentioned sort of the credibility of the process, but also its value. Beyond that is whether or not there are things that can come out of it that might be operationally useful. So that the, you know, an outside source that actually can provide recommendations that are not just about whether something was criminal or not, but rather whether or not there were a number of operational problems.

A/COMMR. CLARK: Thanks for bringing that forward. That's a very important point because when these events happen we have an appetite to look at our training, to look at our code of conduct to see if our officers responded according to our core values. We have requirements to report to Workers' Compensation or Canada Labour, those types of internal reviews and policy evaluations. So those things are very important and the value of an outside agency commenting on those so that we can activate our existing mechanisms, because in the case of the RCMP we do have those existing mechanisms under the labour code and our policy reviews out of headquarters and things like that.

So the sharing of information after the re-investigation is done is we have a huge appetite for that and that's why the relationship sometimes gets a bit abrasive between police and the external body because we're asking for updates. We need that information to make a determination on the kind of conduct investigation or training issue that's pressing, and the investigative body, rightfully so, would be reluctant to give it to us until such time as that criminal investigation has been completed, so we don't want to compromise that. So that is often the rub: I need the information. Well, you can't have it. But I need it because I need my clocks running on some of things. Well, you can't have it because we're not done yet. So we start asking for pieces and that relates to sometimes in difficult conversations.

MR. JONES: Okay, could I just add to that, Kate?

It's a very good question and a very good point, and I agree with everything that Peter said. In Ontario, SIU specifically does not deal with anything other than the criminal aspect which – and the chiefs of police then do a, what they call, a section 11 investigation which looks at internal

discipline issues. So if you didn't reach the threshold of criminality, did it, did the officer's conduct contravene the code of conduct, and then training and policy and procedure issues?

But I think that's, you know, I think that's a waste of resources as well because SIU often comes across training and policy issues that they don't explore when they could easily explore, add value to their investigation. But, of course, the mere fact of doing that would create friction because of loss of control.

MS. O'BRIEN: Thank you.

I think we have time for one last question. I know Tom Williams has indicated – he was counsel – he is counsel for Paul Davis before the inquiry, and he has a question for you.

MR. WILLIAMS: Yes, just a general question to the panel. With the respect to the investigative units, do they work under any timelines in terms of mandating when they have to have the reports filed by? If we look at the matter that us all here today, there was some criticisms and concerns regarding the delays in reports being filed, then I think because of public attention there was the review by ASIRT, then an unfortunate outside incident occurred where there had to be further investigation.

But the delays in filing reports has two-fold. One I know, Mr. Jones, you referred to transparency in the release of information as fast as possible, but of course the Jordan framework in terms of delays is also in the minds of everybody and it leads to a lot of speculation, damage to reputations to individuals involved. You know rumour and innuendo in the community.

I just wonder do any of these investigative units work under strict timelines and what is your opinion with respect to enforcing timelines in this regard?

MR. JONES: As I think I mentioned, SIU introduced a 30-day policy to conclude most of its investigations back when I was there in the late '90's, I don't that that's still in place.

I couldn't agree with you more about the consequences of prolonged investigations, the impact on everybody involved, but as far as I'm aware, there are no requirements to do an investigation in a certain time nor should there be because no two investigations are the same.

But that said, and it comes back to my very original point, resource your investigations to get them done as quickly as possible. If you're going to do an investigation, do it properly.

A/COMMR. CLARK: I would agree with that. I don't think – I think a service standard or a timeline and target maybe helpful. I don't think it's wise to put a mandatory completion date. I think the importance is to do it right. You only get one chance to do it right.

With the case at hand here, there certainly was a longer period than one would have hoped. I think that would likely look back, from my understanding of being new in the arrival, but it relates to the workload of ASIRT back in Alberta and their ability to respond and review the material, which they got I believe after the investigation was done, they were brought in.

So I would not put timelines to these investigations. I don't think that any investigator should be driven by that.

MS. O'BRIEN: All right. Well, I'd like to thank you both very much for your thoughtful comments. It was of great help to us.

We now have a – closer on 10 now, minute break. There is coffee available for anyone in the room. Please help yourself. And then we'll be back for the next session.

Thank you.

Recess

MS. CHAYTOR: Okay?

Okay, so we're back into session. And for those of you who don't know, I am Sandy Chaytor and I am co-counsel to the Commission.

The next topic for discussion is: Police Communications to the Public Following Serious Incidents and During Active Investigations. And it is a balancing act to protect the integrity of the investigation while also trying to address the public's concerns. And while we have indicated that this is meant to be a broad discussion and the broader issues on a go-forward basis, there will be some discussion in this topic on the specifics of how the police communicated, or some would argue, didn't communicate, with respect to Mr. Dunphy's shooting.

And so some of the issues that we've specifically addressed or have come up during the inquiry include: things that the RNC perhaps could have spoken to in terms of proactive policing, the training of their officers in use of force, how common single-officer visits are to people's homes and the role of the protective service unit. So those were some of the issues.

And so for those of you who have been following the inquiry, in the hearing phase, this was certainly a topic that came up with respect to the evidence of several witnesses and it is an issue that is before the Commission in its mandate.

From Constable Smyth's perspective, he certainly felt that the RNC did not say enough. He felt that there were policies and he felt that there were training issues that could have been addressed. He thought the issue of proactive policing could have been addressed publicly.

From Chief Janes's perspective, he was being respectful to the RCMP's investigation and deferred to the RCMP in terms of anything that would be said with respect to the investigation in public communications. And he spoke to the constraints that are put on the RNC in terms of its policies in being able to release certain information regarding their policies and procedures.

And then there was discussion around the RCMP release that went out two days after the shooting and how that caused Megan Dunphy angst in terms of the detail that was put out there, and how she felt that it had adopted Constable Smyth's version of events from the very beginning stages of the investigation.

So I'm very pleased to have with us here today on the panel, Gareth Jones. And I know Gareth Jones has already been identified to most of you here in the room, but there are a few new people who came in. And I'm also very cognizant of the fact that we have people joining us all the time through our web casting. So please bear with me, and, Gareth, I am going to introduce you again.

Gareth is the Director of the Special Ombudsman Response Team at the Office of the Ombudsman of Ontario. He is responsible for directing all major investigations conducted by the office, including systemic investigations into aspects of policing at the 2010 G20 in Toronto, Use of Force by Corrections Officers in Ontario jails, how police services deal with officers with PTSD and, most recently, de-escalation by police when dealing with emotionally disturbed people.

Prior to that, he was an investigator with the Attorney General of the Province of Ontario, Special Investigations Unit (SIU), has an exclusive mandate to investigate deaths and serious injuries involving police officers. Gareth conducted about 500 criminal investigations into incidents where police were involved in a death or serious injury including approximately 100 incidents involving the discharge of a firearm.

Prior to that, Mr. Jones was a police sergeant with the Metropolitan Police service in London, UK. He is the author of *Conducting Administrative, Oversight and Ombudsman Investigations*, as well as *The Top Ten Things Not To Do When Setting Up A Police Oversight Agency*. And for those of you who listened in to the first topic today, he spoke on that, the 10 top issues.

We also have the privilege of having Chief William (Bill) Janes who is with us. He's the Chief of Police, of course, for the Royal Newfoundland Constabulary. Chief Janes began his career with the RNC in 1985 after graduating from the Atlantic Police Academy. Since that time, he has served in many branches of the RNC including Patrol Services, Operational Support, Criminal Investigation and Joint Forces Drug Enforcement. His service with the RNC has also included serving as a commander of both the Public Order Unit and the Tactics and Rescue Unit.

Chief Janes graduated from Memorial University of Newfoundland with a Bachelor of Arts, majoring in Police Studies with a minor in Business Administration. He has also completed the Supervisory Leadership Program at MUN's Gardiner Institute and a certificate in Business Administration. He has completed a number of police-related programs offered at the Canadian Police College, Ontario Police College and the Canadian Emergency Preparedness College.

Perhaps most importantly, however, he was a rower with numerous crews in the Royal Newfoundland Regatta, including the championship winning crews in 1996 and in 2003. And so for us Newfoundlanders that is very important achievements. He has been awarded the Police Exemplary Service Medal and Queen's Diamond Jubilee Medal and he has served in various community efforts and boards. He's also served on the Canadian Association of Chiefs of Police Aviation Security Committee and is currently the National Police Services National Advisory Committee. So welcome, Chief Janes.

So I'm going to turn it back over then to our panel and ask if you could begin, similar to what we did on the first panel. And perhaps I'll begin with you, Mr. Jones. If you could bring – give us an introduction to the topic and the concerns. We've heard, of course, in your evidence as well and – about the SIU policy of being very restrictive in what gets said during an investigation. So perhaps you could tell us your views on this topic.

MR. JONES: Okay, well, it's nice to be back.

And, again, I just want to emphasize before I start, any views I may express are not the views of, necessarily of the Ontario Ombudsman. And also the – a lot of what I'm going to say comes through bitter experience of being out there in the field, dealing with the media and watching how SIU dealt with the media during those early years and all the very many mistakes that we made.

The basic underlying principle on this topic is: First, do no harm to my investigation. Please don't do that. Say nothing that compromises the integrity of the investigation as it is ongoing. At the end of the investigation, the more you can say, the more you can put out there, the better. But until the investigation is concluded, be very careful what information you let out into the public.

Now, I appreciate you don't always have control, that information will get out there from non-police sources, from non – sometimes police sources, sometimes from SIU sources, very rarely. You have very little control over that, but from an investigator's perspective, as little as possible.

And that's really difficult because it conflicts with a duty to keep the community informed, to deal with rumour and innuendo that spreads like wildfire in cases like this, that you may know is completely scurrilous and untrue, accurate or partially accurate, and it can be very frustrating for parties when evidence isn't disclosed that may be in their favour. But I don't think you have any choice from an investigator's perspective. You have to limit what you say. And I think the SIU after, as I say, many years of making many, many, many mistakes have developed a reasonable, rational policy that has withstood the test of time.

The policy's set out in my report, if anybody is interested in it, and I'll just read one segment of it because it really resonates: "The tension between the need for a government agency such as the SIU to share information with the public and the obligation to keep certain information confidential because of legal and policy restrictions is a constant challenge. This requires a balancing act, as the needs and sensitivities of the media, complainants, the community, police and the SIU all have to be considered within a legislative framework. It is imperative to ensure that the information released is fair, does not prejudice the investigation and does not violate the privacy rights of those involved." And that's the underlining guiding principle for releasing information by SIU during an investigation.

And I give an example in my report. On the 23rd of December last year in London, Ontario, there was an incident where the London Police Service tactical unit went to affect an arrest at a man's house at about 6:30 in the morning.

There was an altercation. There is information in the public domain that came from various sources, not the SIU, that would suggest that the man had a crossbow in his hand. When he came to the door of the premises, that crossbow was fired; a bolt from the crossbow hit a police officer. At some point during that, I'm not sure before, during or afterwards, two police officers opened fire and the gentleman was killed. Fatal police shooting.

SIU released a press release within hours of the incident. The press release read as follows:

"The province's Special Investigations Unit has invoked its mandate and started an investigation into the death of a 35-year-old man who was shot by the London Police Service.

"Preliminary information received from the London Police Service suggests the following: Just after 6:00 a.m. this morning, London Police officers were in a residence on Duchess Avenue near Edward Street. There was a confrontation with a man. The man was shot. He was pronounced dead at the scene. At least one police officer was injured."

And that was it. No mention of a crossbow, no mention of a crossbow bolt, no mention of the man pointing the crossbow at the officer – no detail whatsoever.

The release went on to say that "Five investigators and three forensic investigators have been assigned to investigate this incident," and most importantly from the investigator's perspective, "The SIU is urging anyone who may have information about this investigation to contact the lead investigator," and gives the lead investigator's number.

And that was it for the day. That was it; the only press release that was issued that day. They issued another one three days later, an update. And basically all that did was release the name of the person who was killed, and that was done with the consent of the family, and added that "The SIU has also made a number of designations as part of this investigation," i.e., it had designated who was a subject officer and who was a witness officer. In this case, there were three subject officers and 18 witness officers. And that was it. And as far as I'm aware the investigation is ongoing and they haven't issued any press release since.

Now, you can imagine the media speculation; you can imagine the speculation in the community about this. Apparently the man was on the phone to his counsel when he was shot, and counsel went public and gave statements to the media, so there was all sorts of information out there about what happened, about the circumstances of the shooting coming – and also through family members as well.

But the SIU said nothing. The London Police Service said nothing, to the best of my knowledge. And that must be very frustrating for many members involved, I suspect. But they still said nothing.

And that, I would expect, would be the standard that would apply to any police-shooting investigation. And as I mentioned in my evidence, you know, I had concerns about not the initial RCMP, the initial RCMP press release which just gave some basic information I think on the evening of the shooting, but the more detailed one on April 7. And I'm not going to go through that again, other than, as I've said before, I thought there was far too much information released that – far too early in the investigation prior to the – all sorts of things being done including gathering and analysis of forensic evidence.

And I'm not for a moment suggesting it was done in bad faith, but it could potentially have an adverse impact on the conduct of an investigation, potentially. And I don't think it's fair on anybody involved.

The – and that's really, I mean, that's really it. How you balance those competing interests, how you're fair to everybody involved, how you deal with your frustrations of those parties who feel that their side of the story should be out there, but they're prohibited from saying anything; how you deal with those is very, very difficult. But, again, I come back to the underlying general principle and practice: don't do anything to screw up my investigation.

And, Sandy, I think I'll leave it at that.

MS. CHAYTOR: Okay. Thank you very much.

Then, Chief Janes, if we could have your introductory remarks, please.

CHIEF JANES: Thank you.

So I did prepare something very brief in terms of sort of laying a foundation for the discussion that'll follow and I'll read it for all, to share with all present and listening.

From law enforcement's perspective, it is important to maintain the integrity of any active investigation. With this in mind, the evidence gathered during the course of an investigation is given special protection by the provincial *Access to Information and Protection of Privacy Act* and the federal *Access to Information Act*. Additionally, the release of information to the public during an active investigation is governed by the RNC Media Relations and Major Case Management policies.

The chief of police has a unique role within the RNC and includes the responsibility to administer discipline. The responsibility of the chief to administer discipline to police officers requires that he or she remain and appear to remain impartial when it comes to investigations which may result in discipline to police officers.

The topics of pro-active policing, the role of the Protective Services Unit, single-officer home visits, use of force, use-of-force training would involve discussion of issues which were central to ongoing investigations. Any detail statement on those topics by the RNC during the active

investigations would be interpreted as a statement or an opinion on the actions of the officers involved, which could negatively impact the perceived impartiality of the chief of police and could well influence a witness's testimony during any future proceedings related to the case.

In this case, given that the RCMP and Saskatoon were conducting these investigations, it would be inappropriate for the RNC to comment publicly on matters in relation to the substance of the investigations.

It is worth noting that the RCMP provided a very detailed media release in April of 2015, which did not resolve issues of public perception in relation to the case, and to date, despite the public inquiry process, there are still detractors. It's not realistic to expect that the sharing of information covering these topics, while investigations were ongoing, would have significantly improved the public perception or the investigative process.

Our approach, the RNC approach, to communications during the ongoing investigations reflected the need to preserve the integrity of the investigations, the need for the chief of police to remain impartial and be seen as impartial, and the need to inform the public. All those things were weighed and given consideration as we chose a path forward.

Thank you.

MR. JONES: Sorry, can I say one thing?

MS. CHAYTOR: Absolutely, please.

MR. JONES: Sorry, there's one thing that I forgot to mention.

Quite apart from the principle of the thing, there's also legislation in Ontario. Under the regulation that applies to SIU, police forces are forbidden, involved police forces are forbidden from talking about an incident other than to note, to advise that an incident has occurred and SIU has been notified.

Also, under section 13 of the regulation, SIU are forbidden to talk or to issue a public statement or to discuss in the public anything about the investigation, unless the, the purpose is to preserve the integrity of the investigation. Now, how you interpret that is, I guess, up to, up to you, but SIU interpreted it very, very – currently interprets it very strictly.

And that came about because basically information – in the early '90s when SIU started, police services, involved police services, chiefs were making statements about whether or not use of force was justified or the shooting was justified in the very early stages of the investigation. And then SIU, there was a director at SIU who was very open with the press. That led to issues over what was appropriate to release or not; hence, the creation of the regulation in 1998. So I just wanted to add that, Sandy.

MS. CHAYTOR: Thank you.

I do have a question, then, and perhaps I'll start with you, Mr. Jones, on this because it, it leads into your comments, I think, that you made about the RCMP release on April 7, 2015. This is a question from a member of the public, Danny Tuff and he's asking that the panelists address the issue, not so much of the quantity of the information that's given, but the quality of the information being offered by the police in the wake of such incidents.

And he's says in this case it can be argued that there wasn't so much an issue about the amount of information release, as to the quality of the information release. For example, the RCMP news

release two days following the shooting. The public questions whether the information was perhaps inaccurate, not objective. Was it appropriate? And as opposed to being concerned about the amount that the RCMP put in its release. And he writes that: Yes, the public wanted certain information but they were not looking for a verdict at that stage.

So perhaps Mr. Jones you could speak to that.

MR. JONES: I think I kind of alluded to earlier, and I certainly did during my testimony, that I didn't think it was appropriate at that stage. Regardless of whether or not it was accurate at the end of the day, as I say, it should not have come out at that stage.

And I guess the other thing that I would comment on, I was surprised to see in none of them that there was no request for anybody who have information to come forward, which is kind of the primary – from an investigator's perspective is one of the primary goals of issuing, of contact with the media at this stage of an investigation. So that's a (inaudible).

MR. SIMMONDS: Sandy?

MS. CHAYTOR: Yes.

MR. SIMMONDS: Along that lines – and I spoke to Mr. Jones briefly before – well, during the break, and you saw it during our cross-examination, he talked about the integrity – and I'm sorry, I'm Bob Simmonds and I represent the Dunphy family – he talked about the integrity of the investigation. But that news release had a double whammy in that not only did it perhaps prejudice the future investigation, it left the Dunphy family with a very clear feeling that a decision had been made in this matter, that it was a clean shoot and that all was being followed up now was really detail. And after that took place, it is very, very difficult for the Dunphy family to have got any confidence back in the process that was then ongoing.

MS. CHAYTOR: Did you want to further add to that?

MR. JONES: You know, I've said what I've had to say about that press release and I think I'll leave it at that.

MS. CHAYTOR: Okay.

Chief Janes, is there anything you'd like to weigh in on this question?

CHIEF JANES: I guess in terms of the, his comments about the accuracy and the objectivity –

MS. CHAYTOR: The quality of the information going out as opposed to the amount of information, yes.

CHIEF JANES: I wouldn't be able to offer any comment on that in terms of not having the information before me that they had before them as investigators. I wasn't briefed on that.

MS. CHAYTOR: Okay.

And another question is – and perhaps again we could start with you, Mr. Jones, and how it works in Ontario. But is it the normal practice that during such investigations that the identity of the officer would be released?

MR. JONES: Would be released?

MS. CHAYTOR: Released?

MR. JONES: No, it's not, nor would the identity of the family member or the affected person, without the consent of the affected person or the affected person's family.

If an officer is charged, obviously, their name's released, but if the officer is not charged then generally SIU doesn't release the name. But like anywhere else, the name of the officer is generally in the public domain anyway because it comes out from other sources; through the media, through whatever so – but SIU do not do that as a matter of principle.

MS. CHAYTOR: And then I guess the follow-up question on it is: Is that different than how civilian members are treated in terms of, by the police when then are being investigated for similar incidents?

CHIEF JANES: So our practice in terms of releasing the name of somebody would be after an information is sworn in court. So other than that, it would be released to the public through other sources outside of my control.

MS. CHAYTOR: So then that is consistent?

CHIEF JANES: Yes.

MS. CHAYTOR: Yes, okay.

Are there any questions from anybody in the audience? Okay, Captain Bartlett.

And I understand, Captain Bartlett, that it's difficult for you to stand today, so you are going to sit while you ask your question.

CAPT BARTLETT: Yes, I have to apologize today, I'm not feeling that well.

MS. CHAYTOR: Perhaps you could identify yourself to the panelist.

CAPT BARTLETT: Yes, my name is Wilfred Bartlett. I'm from Green Bay South. And I guess a lot of you people have been seeing this old grey-haired man around these last 2 months. And I guess part of the reason why I'm feeling ill today, after two months in here listening to what's been going on, my brain is just about finished.

First of all, I finally got my day in court, by the way. Thanks a lot.

Commissioner Justice, if you're listening, I hope you are, I have to give you credit for a job well done. I'll reserve my comments for after I read your report. I know you're expecting that.

Ms. Chaytor and Ms. O'Brien, you've done a tremendous job in trying to get at the truth of this matter.

I did not know the Dunphy family, never heard of them until Easter Sunday, April 5, 2005. Does everybody hear me okay because the sound is not that good in this room?

But one of the highlights of my life was meeting Meghan. I always does that. She's been going through a most difficult time since the incident. She has shown great strength. And, Meghan, your dad would have been proud of you today. I just hope when this is over, you will get some closure.

I'm not sure of the process today, what's happening here. It's not like I thought it would be, but I'll go through my notes and that there and I got some questions that I'd like to have answered.

MS. CHAYTOR: Okay, and we want to stick, though, as best we can, Captain Bartlett –

CAPT BARTLETT: Okay.

MS. O'BRIEN: – with the agenda, and the question in front of us at this point in time is about police communications to the public following serious incidents.

CAPT BARTLETT: Yes. Yeah, I'm just trying to explain my reason –

MS. CHAYTOR: So we certainly welcome any question you have for the panelists, and take your time. I know it's –

CAPT BARTLETT: A lot of people is wondering why I spent two months here, not only people in the room, but the people out there in the audience. And I've got a couple of questions for these gentlemen, but most of my questions will be directed at Mr. Jones and the other man there, this evening.

MS. CHAYTOR: Yes, they're coming up in the next session.

CAPT BARTLETT: Yes.

MS. CHAYTOR: Okay.

CAPT BARTLETT: And that I really explained.

I have two – well, probably it's a lot of questions, but two I want to present to the gentlemen. We're into the single-officer home visits and the role of premier's security unit. Now, two of the questions might overlap, but I'm going to ask them anyhow.

My first question: Why did a single police officer go to a lunatic's house who was threatening the premier when a CBS – the town enforcement officer enlisted the help of two RNC officers took to a person's house to deal with a chicken issue? That's the question I'd like to have answered.

MS. CHAYTOR: Okay. I'm not sure, though, Captain Bartlett – I'm not sure if this panel on this topic would answer that question.

CAPT BARTLETT: Well, Mr. Janes I think is with the RNC, right? There was one RNC officer that went to Mr. Dunphy's house on his own. Now, situations in CBS dealing with a chicken, a woman had some chickens back her house, the enforcements officer went to town, enlisted the help of two RNC officers to go and visit that woman. There's a lot of difference in these two issues. I'm wondering why.

CHIEF JANES: I can give you a brief explanation. With the Royal Newfoundland Constabulary, we have a certain number of police officers who travel with a partner. There's three or four. It's laid out in our collective agreement in terms of on a daily or an evening basis that there's a certain number of vehicles which have two persons assigned.

Conception Bay South is one of those areas that two officers are assigned as partners, whereas many other parts of the jurisdiction don't; and officers, sometimes they work with a partner, sometimes not, and there can be many reasons why that's the case. It could be availability of

resources or it could be a particular area they're working in or the particular field that they're working in.

MS. CHAYTOR: Okay, thank you.

CAPT BARTLETT: The other question is: Why did a member of the premier's protective unit go to the house of a person who never sent a threat against the premier and he ended up dead? I understand the sole purpose of this officer was to protect the premier.

MS. CHAYTOR: Okay.

And, Captain Bartlett, you have been here and we've welcomed your presence throughout the past couple of months. And you've heard all the evidence that was given for that explanation and I don't know – I certainly know that Mr. Jones can't add anything to that. And Chief Janes has already given his evidence, so I don't know if there's anything else that can be said at this point, but all the evidence on that point is in. So we have to be careful today that we're not looking to gather any more evidence on the hearing phase. So we want to try and keep it broad and keep on the topics that we have.

Do you have any concerns about the police communications, Sir, anything about what got said, what didn't get said and whether or not you felt that there should have been a different approach taken by the police in this situation? Do you have any opinion on that?

CAPT BARTLETT: I have a lot of concerns about it. In fact, five days after the shooting, I published a letter with a list of 11 questions into it as why this happened, and so far in this investigation I haven't got one question answered. There's been too much beating around the bush.

And I wrote several letters on it, too, during the summer. I questioned one thing, what happened in this case versus what happened out in Botwood with a Mr. Budgell. Somebody invaded his home, he got shot and killed, this man did, and within minutes this man was arrested and took to the police station, and everybody in Newfoundland and Labrador knew the name of the man who did the shooting within minutes. It was all over the news everywhere.

And in this case, there's so much stuff that was kept covered up. We were, what, over a year before we knew who shot Mr. Dunphy and there's very little information coming out. I wrote seven or eight letters on it asking why, why, why, why, on some things. And the public out there, I mean, was doing the same things and did not get answers.

MS. CHAYTOR: Okay.

And we certainly have heard that in the evidence as well and there were concerns raised about how not putting certain information out there may lead to further speculation, so thank you for your points there.

Does anyone else have any questions then on this topic?

MR. AVIS: Excuse me.

Nick Avis, I represent the RNC.

Just to pick up on that gentleman's question in another form, the impact of delay in the information, maybe that could be commented on in general because there was – the investigation

took a long time and I think that impacted the public view. And I'm just guessing that that's where the question came from.

MS. CHAYTOR: Yes, that's right.

Thank you, Mr. Avis.

Any other questions?

MR. AVIS: Yes, that wasn't the question.

MS. CHAYTOR: Oh, I'm sorry.

MR. AVIS: I think they can – I don't know if they've addressed the notion of delay.

MS. CHAYTOR: Oh, okay. Sorry, yes.

MR. AVIS: And its impact on the public perception.

MS. CHAYTOR: I'm sorry, yes.

MR. AVIS: That's all.

MS. CHAYTOR: Yes, please – please, go ahead.

MR. AVIS: I'm just trying to pick something from the gentleman's question I believe they could answer. That's all.

MR. JONES: Yeah, I think as we spoke about earlier this morning, and the sooner you can do an investigation the better for all involved. The sooner you can get the facts out there, the better for all involved because it does have a huge impact on everybody involved.

And we've already said, anything – the only way that you can get around that, again, from an investigator's perspective, is get that investigation done as quickly as possible; get the results out in public.

MS. CHAYTOR: Someone at the mic? Sorry.

MS. RICCIARDELLI: Can you guys hear me at this?

Okay, I'm Rose Ricciardelli, Memorial University associate professor.

My question actually goes to Mr. Jones. And you had mentioned, and this is just more for information – you had mentioned a policy – and I'm sorry I don't know the exact name of it – in Ontario that governs what is disclosed with some pretty rigorous regulations around it. And I'm thinking based on what everyone is talking about, the amount of hurt that seemed to come out of these diverse press releases, perhaps something like that would be useful in Newfoundland.

Now, I'm new to Newfoundland and I'm wondering if we have anything in place like that; and if we do or don't, any recommendations for what that policy should look like?

MR. JONES: Yeah, the policy, the regulation that applies to the disclosure of information in Ontario was – it was the result of years of getting it all wrong. So, you know, it would go back to what we were talking about on the last panel: if you are considering a model of oversight, that's

one of the issues that you're going to have to deal with. And you may want to look at what didn't work and what is working currently in Ontario and factor that into your – into the mix.

CHIEF JANES: So from the perspective of the Royal Newfoundland Constabulary, there are two relevant policies. The first one is a media relations policy, and the media relations policy indicates guidelines for release of information, restrictions: Information shall not be released to the media when release of information could potentially ... deal with RNC policy or procedure; ... deal with the discipline of RNC employees" and "interfere with an investigation or arrest."

And a very significant piece of policy is in relation to Major Case Management when we're trying to manage cases like this. And it says: "The RNC must maintain a consistent approach when dealing with the media regarding the investigation of major cases Investigations may be impacted by the manner and conduct of relationships with the media. The information released, and the manner by which it is released, can have" negative "consequences on the ongoing investigation and any subsequent prosecution."

So in addition to those policies, we're also governed by the provincial ATIPP Act and the federal ATIP act. And I know, provincially, I know that act better than the federal and there's significant protections there for ongoing investigations in terms of protecting that information in order to protect the integrity of investigations.

MS. RICCIARDELLI: Would it be something that would be of interest to revisit in terms of the speculative – like, the dynamics of that policy in order to maybe strengthen it in some ways as a response to this?

CHIEF JANES: So it is a very recent policy. When our policies are put in place there's jurisdictional scans done. It's looked at from a legal perspective. The former policy is looked at. We consult with subject matter experts. So there's a fair amount of analysis goes into our media relations policy and it is a recently reviewed policy.

MS. CHAYTOR: Yes, please go ahead.

MR. HALL: Hi, Alan Hall.

This is somewhat off the question I suppose in as much as the focus is supposed to be on communications after an incident, but I'm just wondering if either of you have anything to say about what perhaps the police could be doing to communicate more effectively so that when incidents occur, the public understanding of it is a little greater?

I mean part of the issue to me is you have, for example, training, use of force, single-officer home visits. There are a number of policies that are out there that the RNC has, to some extent, trying to explain them after the fact is quite problematic, obviously. And I certainly agree with you, the current policies make a lot of sense in terms of restricting what kinds of information can be put out there and whether or not the chief, for example, should be making any statements. Those are all significant issues, but are there things that the police can be doing that might pre-empt some of these, and prevent some of these, issues because the public has a better understanding of the process, the investigation process, but also what police policies are that might underlie some of these events?

MS. CHAYTOR: Right, so an educational component all along the way and not just trying to deal with it from a communications perspective after an event.

MR. HALL: Yeah, always in a crisis mode kind of approach.

MS. CHAYTOR: Yes, absolutely.

So who would like to start?

CHIEF JANES: I can start with that.

That's a very good point. I thank you, Dr. Hall.

I guess from our perspective, as an organization, we share tremendous amounts of information with the public. We have information through our website. It gives our annual reports, gives a lot of information about what we do as an organization. We have over a 1,000 media release per year that deal with five to 10 inquiries from the media every year. Through our social media accounts we share large amounts of information with the public.

So we're always trying to explain to the public who we are and how we expect to serve them in the best way possible. So that lays the foundation then when incidents occur.

In terms of specific incidents, as I mentioned earlier, you have to be very careful in the – I guess, the underlying principle is protecting the integrity of the investigation. And so that's the underlying principle.

I guess in terms of the sharing of any information during an investigation, it's not the RNC that writes the story that ends up in the evening news. It's the media that writes the story and we're a contributor. So how they take that information and mould it into a story, it falls to the media and the important role that they play in our community.

And again, I guess, another very important point in terms of this, from the Royal Newfoundland Constabulary's perspective, is that this was an investigation done by the RCMP and an investigation being done by Saskatoon Police Service. It's their investigation, not ours. So we have to defer to them in terms of what's appropriate to be discussed. It's not – certainly not appropriate for us to be discussing those things.

So, I guess, one last point on that would be is that, as an organization, we put forward a paper on this topic to the Commissioner. And part of that topic has been about having a professional person who would handle media relations for the RNC in terms of strategic plans, laying out: What is our plan over the next 6 months or 12 months as these goes on?

We currently don't have those resources in our organization, in terms of being able to lay out a strategic plan for the next 12 months, in terms of what's an unfolding issue. And many other government departments have managers or directors of communications. And our jurisdictional scan has shown that over 90 per cent of police services in Canada today have a manager or director who has an education and has a professional background in media relations in order to be able to address these issues and offer professional advice to the chief.

I know in the role that I'm in, if I look in my finance branch, I have a chartered accountant. And when I look over in my HR branch, I have somebody with a masters in human resource management. And we'd like to have that kind of expertise in order to be able to do the best job possible in sharing information with the public as we go forward.

MS. CHAYTOR: Thank you.

Are there any other questions in the room? Any other –?

MR. AVIS: I got a (inaudible) question.

MS. CHAYTOR: Sorry.

MR. AVIS: I think of myself here as a citizen. I have no instructions. I thought I was going to be sitting in the back there. So excuse me.

What do you do if, you know, Chief Janes just brought up the idea that: don't control what the media says. In an investigation, what if what's coming out is really inaccurate? What, if anything, can you do about that?

CHIEF JANES: I think it – it again falls to the underlying principles of: Once you're sharing information, how is that going to impact the investigation that's being done by other agencies? As you share information, it impacts the perception of the chief as being an impartial party when discipline may or may not need to be dealt with in the future.

I guess, in terms of – again, falling back to, as I mentioned earlier, it's not an RNC investigation. It's an investigation being conducted by other police services. And going back, I know we can't express this enough, I think, myself and Mr. Jones, is it's in protecting the integrity of the investigation, and so what's right, what's not right, what information the investigating agencies have in their investigation; you know, even to discuss things like policies when those things are what's core to the investigation, whether it's the use of force by a police officer or the role of the Protective Services Unit. And those things are being looked at by another police service as part of their investigation and guiding them along to speak outside of their investigation as an outside party, as an interested party, because as one of our employees I think would be inappropriate.

MR. JONES: Yeah, exactly what the chief said, unless it's – and I think from an investigative perspective, as I keep on saying again, unless what's coming out is so egregious and has momentum and (inaudible) is being reported as fact, and has an adverse impact on – significant adverse impact on the integrity of the investigative process. I think you just got to suck it up and swallow it and get that investigation done as quickly as possible. That's the primary solution.

MS. CHAYTOR: So the example you gave when we started, Mr. Jones, about the crossbow incident in Ontario and the very limited information that went out, and based on what you said it – how that was received by the public, it didn't – versus in this situation where the RCMP did go out with a lot of detail, and some would argue that wasn't so much how much, as we heard in Mr. Tuff's comments, not so much how much is said but what is said.

So in either situation, is there a solution that can really deal with speculation that might arise in any event?

MR. JONES: There isn't – I'm sure I'm not familiar intimately with what's happening in London, but I bet if you searched Twitter from London you will find somebody alleging that this was an execution and the crossbow was planted and whatever it may be, but going back to what I said before, is it so egregious that it impacts the integrity of the investigation? Then you've got no alternative but to do the investigation as quickly as you can. I sound like a broken record, Sandy.

MS. CHAYTOR: Sorry, Chief Janes, would you like to weigh in?

CHIEF JANES: Yeah, I did mention in my primary testimony that I gave and it's something that I don't think was on anyone's radar two years ago, is that we've seen Minister Bennett, one of our ministers here in the province, address the topic of cyber-bullying of public officials and public persons. Maybe that's something that could be given consideration in the future, is instead of dealing with the policies, instead of dealing with the investigation, is maybe looking at it from that perspective. And certainly she's breaking some new ground in that area in recent months.

MS. CHAYTOR: Okay.

Any other questions in the room? I think we're running a bit ahead of time.

MR. DROVER: Maybe Chief Janes could comment. I know – this sounds really loud today – I know recently the RNC put out a Facebook post explaining the public complaints process and things like that, and that happened not long after your testimony here. So I was wondering if maybe participation here at the inquiry affected maybe your thoughts about what the RNC could do to educate the public on serious incidents involving the RNC.

CHIEF JANES: Yes. Information that we recently released is in terms of what's actually in the legislation that's there for all to view and it explained the process in terms of how a public complaint flows through the system, the decision making for that, and the fact that it's put on hold pending a criminal investigations completion. So the information that we shared is all available through the legislation.

MR. DROVER: Did you receive any feedback from the public on your sharing of the information? Did anyone find it helpful? Were they completely silent on it?

CHIEF JANES: Sorry, I'm not aware of any feedback. That may be tracked by the person who tracks our social media accounts, but he didn't share it with me.

CAPT BARTLETT: I don't know if I'm allowed to get up again or not.

MS. CHAYTOR: You can get up, but just stick to the topic, please.

CAPT BARTLETT: I was wondering if I could ask Mr. Jones about some questions with the crime scene.

MS. CHAYTOR: No. I think that would be evidence, though. I don't know if Mr. Jones would be in a position to answer that. He certainly wasn't involved in that aspect, so I don't think he would be of much assistance, Captain Bartlett.

CAPT BARTLETT: Okay.

Thank you.

MS. CHAYTOR: Sorry.

Anything else?

Okay, so we're running a few minutes ahead, unless there's any other concluding remarks.

I'd like to thank both of our panelists, both have very busy schedules, so for taking the time to come here and offer their thoughts to us.

Our next session is going to start in 10 minutes, so we'll take a quick break in between. And then we'll have use-of-force training for police, including the de-escalation techniques.

Thank you.

Recess

MS. CHAYTOR: Okay, so we're back on.

And the next topic is: Use of Force Training for Police including De-escalation Techniques for Dealing with People in Crisis. And our panellists will be speaking about trends in police training, including an examination of the work that's being carried out in other jurisdictions in the country.

And we have with – I have with me today on our panel, to my far left we have Dr. Terry Coleman. And Dr. Coleman has over 40 years of policing-related experience. He left the Calgary Police Service after over 27 years as an inspector in the Professional Standards and Director of Human Resources. And he went on to become chief of Moose Jaw Police in 1997. From 1998 to 2004, as chief of police, he was chair of the Criminal Intelligence Service in Saskatchewan and he was also the president of the Saskatchewan Chiefs of Police from 2004 to 2007. He is a former director of the Canadian Association of Chiefs of Police.

As a public safety consultant, his current work, he has in large part focused on the interactions of police personnel with persons with mental health issues and vulnerable individuals. His recent work has included reviews of police agencies and colleges regarding their – and other academic institutions – regarding their curricula for preparing police personnel in their interactions with people with mental health issues.

Since 2007, he has worked with the Mental Health Commission of Canada on various projects. Some of which includes the learning necessary for police personnel to de-escalate in difficult situations. He is the co-author of the Mental Health Commission's 2014 *TEMPO* study and report.

He has a Masters of Human Resource Management, a Masters of Police Studies and a Doctorate in Police Studies all from the University of Regina.

So thank you and welcome, Dr. Coleman.

To my immediate left is Sergeant Mike Massine. And Sergeant Massine has been working in law enforcement since 1987, although he has worked in many positions: patrol, jail operations, plain clothes, undercover operations, community liaison, emergency response team, major crime and identification, the focus of his career has been in officer safety training.

Sergeant Massine is currently employed as the Police Academy Use of Force Coordinator at the Justice Institute of British Columbia and is responsible for curriculum development and delivery of Standardized Use of Force Instructors Course, fundamentals of police instruction and is also responsible as a liaison between the Government of British Columbia relating to the creation of use-of-force related standards under the British Columbia *Police Act*. Sergeant Massine also teaches in the Recruit Training Program and develops curriculum and delivers training for special projects as they arise.

His post-secondary education includes studies involving leadership and training. Some of his accomplishments include an Advance Certificate in Police Leadership from Dalhousie University and a Master of Arts in Leadership and Training from Royal Roads University.

So thank you for joining us and welcome.

I'm going to turn the session over then and get some introductory remarks from both of you. And perhaps we'll start with Dr. Coleman on our topic. And so perhaps – you certainly have extensive work in this area, and perhaps then, Dr. Coleman, we could just begin with your thoughts on trends across the country as to where police need to go in terms of educating its members and training its members on de-escalating techniques and, particularly, in dealing with persons who are in crisis.

DR. COLEMAN: Thank you.

We talked a lot, certainly in recent time, about de-escalation. I just want to mention that when we talk about de-escalation, we're also talking about not escalating. They are equally important, but de-escalation is not a new concept. It's probably been around as long as there's been civilization, but it's certainly become very topical recently. It's essential to reaching successful and peaceful solutions. And in simple terms – and you can make it sound simple but there's a little more too it as you well know – it's all about effective communication between people.

It requires a variety of things, and for those not familiar with the concept, but you'll recognize these when I see it – when you see it, it requires active listening. It requires allowing the other party to vent when appropriate. It requires sensitivity. It requires respect of both parties: non-judgmental, non-accusatory, avoid threatening language, threatening actions, discuss other subjects to sort of move, move the building of rapport along rather than focus in on one that is not making any progress for you. It requires patience. This can take hours and hours, and some police officers will tell you they've been at it for days, sometimes. It can take patience, and we need to dedicate the necessary time to this. It's not a rush up and let's move on to the next call.

You don't make any promises. You're not in a position to make promises and you certainly don't make promises that you can't deliver. And overall, it's a problem-solving exercise. Now, it all sounds very simple, but we know when we put that into operation, unless you're well-prepared for it, there's some challenges into actually doing that.

So it's become very topical in the last few years as a result of several tragic incidents. In fact, you could say many, if you include the US, but certainly several in Canada, across Canada. It – I find it important to note that it's actually integral to the whole concept of procedural justice, and that is treating people properly and fairly. Notwithstanding the outcome might not be the most popular outcome, but it's about treating people fairly.

There's been several inquiries and studies in this regard in Canada. And I prefer to use Canadian sources for our information. It's a – we have a slightly different environment here to, for example, the US or somewhat to the UK also. One of which was a report called *People in Crisis*, Justice Iacobucci did that on behalf of the Toronto Police Service after several tragic incidents there.

A more recent is from the Ontario Ombudsman's Office, *A Matter of Life and Death*. And of course the Braidwood Inquiry that resulted from the incident at Vancouver Airport some time ago. I can go into those in more details, but the common thread in all of those, and there was a variety of – well, a large number of recommendations in each case – a common thread through there is that police personnel, police officers should be a position to at least try to de-escalate and not escalate situations.

Now, not all situations, at the end of the day, can be resolved by de-escalation, but we're remiss if we don't try to do that because many can be resolved that way without resorting to, well, not, certainly not a high level of use of force. So all of these have emphasized de-escalation.

Now, some police officers are able to do this naturally. I've worked with people that can do this; they've never had any formal training in this. They're just great communicators and they take the time, they have the patience. That doesn't come quite so easily for some police officers.

For police agencies, then, it's essential that they provide the education, the training, the learning to make police officers competent and proficient in communication skills and de-escalation that we're talking about here today.

It's important to remember that a situation where somebody is very upset, and certainly in some cases where people have severe mental illness, it doesn't matter what you're saying. They can't hear you very well; they're not listening. They may be hearing other voices, but they're certainly upset enough that their focus isn't on what you're saying; the focus is on what concerns them at that particular moment.

So it's not a good time for the traditional command and control that police have used for a long time, and there's times and places for command and control, but under these circumstances we have to take a slightly different approach. So what we require, then, of our police personnel is enhanced communication education, foundational communication education, and include there circumstances that are appropriate to different targets.

One thing to stress is shouting and screaming at the other party is not going to assist any sort of de-escalation. And I think we've seen clips coming out of some other police agencies in Canada, even, where this was happening, and there's no surprise that it didn't resolve, didn't end up in a very good resolution.

So one excellent learning program in this regard, and Sergeant Massine is very familiar with this program, and that is the Crisis Intervention and De-escalation program from British Columbia. It originated in British Columbia, but arose out of the Braidwood Commission, and he might want to talk further about that because he was involved in that so. But it is excellent and some studies that I've completed and some reports that I've completed, I recommend that. I think it's the best we've got at this point in time and I think it works very well and I recommend it.

Of interest is that the Atlantic Police Academy over in Charlottetown bought the licence from this from British Columbia. And they deliver it to the Atlantic Police Academy and have delivered it to some Atlantic police agencies already.

But I recommend it, that all police officers, including new police officers, cadets, whatever you want to call them, should receive this training. And as recommended by Justice Iacobucci and also in the Braidwood Commission, there should be a requalification every three years. Now, three years is a little bit arbitrary, but there's logistics issues in bringing police officers in for education and training.

But the thought is that police officers, rightfully so, have to requalify with their firearms, their OC, their CWs; even the use of their handcuffs, they have to requalify periodically with that. Why wouldn't you ask somebody, or expect somebody, to requalify in the very, very important field of communicating with people?

And as in place now, the Toronto Police Service, a large number of operational police officers are going through the initial training similar to this. They don't call it CID in Ontario, but it's very, very similar. And then, Justice Iacobucci recommended requalification every year and they're trying to do that, but that is a challenge, rotating police officers through the police college every year. But the point is that there should be a requalification so that we keep this current.

And yes, there is a cost and there are logistics issues, particularly in a police agency that's got police officers they need to bring in from remote areas, then they're all concentrated in an urban area. But police officers must be well prepared for the types of incidents that have brought us here today. They must be.

Unfortunately, there is some police agencies across Canada that haven't got to this point yet. There's still lots of room for improvement in many police agencies, and there are some that have been very progressive and have got some good programs in place.

So the bottom line is that de-escalation can improve officer safety as well as public safety. And I think it's just critical to at least try to de-escalate and avoid escalating a situation. If it is not successful, obviously there's maybe a recourse that can be made, but certainly this is important and should be tried.

Thank you.

MS. CHAYTOR: Thank you, Dr. Coleman.

Sergeant Massine.

SGT MASSINE: Thank you very much.

Thank you for taking time out of your day to be here today. Forums like this are extremely important.

And I'll draw your attention to the screens on the side. That's the BC graphic that we've adopted in our training for the National Use of – is it not there? Where is it? National Use of Force Framework and the CID models. And just – I want you to keep that image in your mind as I go through my talk, and please feel free to ask any questions at any point.

I'll start with some context. Michelangelo said I'm always learning, and in my role as a police trainer, it's important that I continue to keep an open mind into the changing trends of how to manage people in crisis. And that could be anybody; it doesn't matter whether you have a mental illness or you're simply having a bad day. We've all had bad days. And the focus is to keep that open mind so that, if there is a new strategy, a new technique, a new training program that we can enhance, as Dr. Coleman said, not just police-officer safety, but public safety as well, I think it's incumbent upon us to embrace those approaches as trainers, as administrators in police organizations, to move everything forward for the safety of everybody.

And as a point to that, I was handed an email this morning by Mr. Commissioner from a gentleman, and I am told I can use his name. He is quite well known in Newfoundland: Andrew Abbass is the name. I don't know the gentleman, but he sent an email for some context and I want you to look at the graphics on your screen as I read a quote from Mr. Abbass's email, and it will go to my point of I'm always learning.

The National Use of Force Framework becomes the wheel that delivers power, and he's talking about a metaphor using that graphic as a bicycle, so the NUFF becomes the wheel that delivers power. The CID wheel does the steering; the officer moves the process forward by engaging communications or peddling.

Creating a use-of-force framework depicted as a bicycle would make a methodology easier to explain to the public, you folks, everybody at home, and present the material in a less threatening manner than something that looks similar to a bull's eye or a target.

My 30 years of policing, I've taught the National Use of Force Framework and Model the entire time. I've never once thought of it as a bull's eye or a target; I now do. And I hope the graphic, and incidentally that came out of the work in British Columbia, can change that.

When I got into my role at the police academy, my boss sat me down over coffee and he said: Mike, what's your vision? Wow, big question, day one on the job, and it was an easy answer, though: My vision is to change the culture of policing in British Columbia and hopefully have an impact elsewhere. Pretty big answer for a big question.

Are we having an impact in British Columbia? I like to think we are. It all stems, as Dr. Coleman said, from the Braidwood Inquiry, a tragic incident at Vancouver International Airport where a Mr. Dziekanski got lost in the airport, a lot of miscommunication, a common theme and subsequently died after an interaction with RCMP members.

I was involved in the Braidwood Inquiry from the beginning, from day one, actually. I did a presentation to the inquiry. And I'm not a horoscope guy but I read my horoscope that morning and my horoscope said, and I remember it vividly is that: A venture that you're engaging on today will have lasting impacts for the rest of your life. Here I am today. Like I said, I'm not a big follower of the horoscopes but there's something in karma I think.

So the Braidwood Inquiry left us with a lot of unanswered questions. We had to do a lot of reflection. I know myself as a trainer, a lot of internal reflection on how I deliver my training, how I develop my training, how I document my training. And documentation has become a big issue not just here but everywhere. There has to be that accountability piece, and it's on all levels. As a trainer, I have a responsibility to the people I train. I have a responsibility to my organization and I have a responsibility to you, as the members of the public, to ensure that that training can be justified.

In forums such as this, and we've heard a lot about the secondary hearing that's going on in the public, very, very important.

So out of the Braidwood Inquiry, we get provincial policing standards that are developed that fall in to the *BC Police Act*, as was mentioned in my introduction. This is the change in culture that I envisioned being a part of. Training standards are incredibly important, if not only for the fact that every municipal police department and every RCMP officer in the Province of British Columbia is trained to the same standard.

The first standard that came out of the Braidwood Inquiry was the crisis intervention and de-escalation training. And I'll talk a little bit about that. I was involved in the later stages of the creation of that program and I'm still involved in maintaining the curriculum for that program by giving it, every three years we do a refresh of the program to see if we can change anything to it before the officers do their re-certifications which is mandatory every three years.

So that program consists, first and foremost, of a three to four hour online learning program and it's done through the Canadian Police Knowledge Network which is managed out of –

UNIDENTIFIED MALE SPEAKER: PEI.

SGT MASSINE: PEI, thank you.

Through Prince Edward Island, that's mandatory training for every officer in the Province of British Columbia, front-line officers. And to date, when we did our refresh in 2015, there were over 6,000 police officers had taken that training. And we've now done the refresh with a lot of new officers coming into the province. So I'd hazard to guess we're over 7,000 officers have done it.

So that's the first stage of the training. And it's not just sitting down and watching a bunch of videos on your computer and reading a bunch of words on a screen. You actually have to pay attention because there are tests. And you have to get 100 per cent on the test to pass, to move on. Okay?

Then the next phase is a 7 hour, face-to-face component. This is the basic minimum that's required, is the 7 hours face to face. And what that includes is a morning session where there's

more theory on crisis intervention, de-escalation, a lot of discussion around the online training, because even though we have tests and accountability built in, we want to ensure that every officer that comes through there understands the training and what it actually means to employ crisis intervention and de-escalation skills when dealing with persons in crisis. So that's a big part of the morning. There's always a lot of discussion.

Then we transition to actual communication pieces, where we have a panel of speakers from the Deaf and Hard of Hearing Society of BC come in and basically tell us how we should communicate with people that are deaf and hard of hearing. I didn't know how. I was doing everything wrong. And it's amazing to have the first-person impact in our learning.

The next portion, and the final portion to the day that we do not put a time limit on, if it goes until midnight, we let it go, it's a panel of mental health consumers and family members of mental health consumers, and often psychiatrists, psychologists and professionals working in the mental health field. This has a huge impact. Because we hear accounts, first-person accounts, good and bad, of police-public interactions from people that are actually in the system, such as Mr. Abbass. And I'll tell you, it has a huge impact every time.

I've sat in on more panels than I can count, and often it's with the same panel members because, as you can appreciate, it's hard to get people in, and we run our training four days in a row for the recruits. So these people have to be well for four days to come in and participate in this panel. And it always has an impact. Always. And every officer in that room can relate because somebody they know – maybe themselves – has been a person in crisis. And I know I can because I've been there.

The other piece to crisis intervention and de-escalation training is scenario-based training which is where the real learning happens. We script scenarios specifically so that the recruits and the in-service people that come to the training, they experience everything that could involve a use of force, which is any encounter that we have with any person. And believe it or not, every time a police officer talks to you, we are using force. Presence and communication; we are using force at the low end. That's crisis intervention and de-escalation.

These scenarios are staffed by professional actors that we bring in and they are good. There are – we have actors that can cry on cue nine times a day. And we run nine scenarios. Nine stations for the recruits to participate in and it is absolutely amazing to watch the recruits develop. And this is done – we're in a new curriculum design model, and I want to say it's done in about week three of recruit training. And there's a lot of learning going on through experience and that's what's really important.

Some of the other standards that we have that kind of roll along like a wheel is we start our crisis intervention and de-escalation at the recruit level. It's continued on in-service.

One of the portfolios I manage is the Standardized Use of Force Instructor Course. And it's – in its title standardized is very specific because it's under the police standards. And what we do is, yes, we do all the traditional force options, interventions; we teach people all that stuff on how to physically manage people. But more importantly is we've built in a huge component, a more advanced component, for our use-of-force instructors on including the principles of crisis intervention, de-escalation and all their training. So now this translates to the next level which is in-service training for all police.

So the requirements are to recertify every year, but every police department, municipal police department I'll speak to in the Province of BC, does some form of use-of-force training every year. So whether the officers realize it or not, they're getting CID training every year.

And then the scenarios that we use are – there's two types of scenarios. There's experiential learning which, quite frankly, allowed the officers to make mistakes without jeopardy. So they can come into a very difficult situation, not know what to do because it's completely foreign to them and they could make all the mistakes in the world. Then the important part of the debrief comes in where we talk about those mistakes.

We don't talk about it in the perspective of what you did right, what you did wrong. My approach is: How can we do it differently? Because even though I might get a hundred per cent and pass, I can always do things differently and that's a big part of the learning. Again, I'm always learning.

Other scenarios that we use are actual testing scenarios where they are pass/fail. And in the recruit program, if it's a test day and you fail, you get a demerit and if you get a certain amount of demerits in the program, you get sent back to your home department and you might not have a job. So you need to be aware, you need to be doing your homework, you need to be studying and you need to be learning through the whole thing.

At the academy, we have various scenario days, both learning and testing, and every scenario that we do, we build in a component of CID, whether it's at the lowest end or whether you're dealing with somebody that you might potentially have to engage with lethal force or another force option. So it's always there in the background.

The other standard that came out of it, and most recently, is the firearms training standard. And again, it kind of – firearm is just the ultimate use of force. So we often see silos, is how it's referred to in the police training committee: you'll have a use-of-force guy and you'll have a firearms guy. The vision is really to bring it together, because all a firearm is is the ultimate use of force.

And with the firearm standard, though, we've built in more scenario-based training that are pass-fail scenarios and they include, again, the principles of CID to de-escalate. It could be a shoot scenario. It could be a non-shoot scenario. It could be a pepper-spray scenario. It goes the whole gannet. Okay? And again, that's done every three years. And that's the checkbox to pass or fail.

So it crosses over with the online CID training that must be done every three years. And then there's the – excuse me – the component of doing the firearms training, with all the other force options in CID involved that every training – every agency does some level of firearms and use-of-force training, not just qualification every year. Okay?

Documentation. Documentation; the biggest thing I learned out of the Braidwood Inquiry, with my experience as a trainer, is I was doing it all wrong. My documentation, back then, wouldn't stand the scrutiny that's going on today. We realized, as a province, we had to move forward. We had to move forward, and we had to make sure that we could – I'll use the term articulate. As an instructor, if I get called to the stand, I have to be able to articulate exactly what I'm training, why I'm training it, what the objectives are, what the criteria to pass is and it has to be documented. And as part of our instructor standard, every instructor in the province has to have 30 hours of lead-instructor time and it has to be backed up by lesson plans that they write. So they're in the process of developing learning objectives and making sure that they're staying fresh with all their instructional skills. So it's a fairly rigorous yearly recertification for the instructors.

In my opinion, take it for what it's worth, it's the little things that matter. One little thing in itself really doesn't cause a lot of damage. But when you start noticing a lot of little things, I think we all know through our human experiences that the little things are going to add up to big things. And once it gets out of control, you are now in crisis. And that is something we want to avoid.

So by putting careful thought into training programs, by continuing your learning, by having an open mind, I think we can reach the objective that I think everybody wants, and that's to keep the public safe and keep our officers safe.

Thank you.

MS. CHAYTOR: Thank you.

That speaks largely to – and I understand what's happening in terms of training of either new recruits coming in or for officers who are already in the program and now training them further in terms of de-escalation.

In your remarks, Sergeant Massine, you mentioned that some people just seem to have a natural ability, some people just – you can give some people, you know, training and others just seem to be born with it.

And a question – and perhaps I can start with you, Dr. Coleman – a question would be: Do police agencies now or should they be screening or seeking certain skill sets or other criteria to determine if people coming into their agency in fact has appropriate skill sets or perhaps a natural tendency to be able to best de-escalate situations or deal with people through their communication skills?

DR. COLEMAN: Yes, thank you.

The traditional view of what police work is, I think, is learned by many from watching perhaps exciting shows. I don't find them exciting, but the exciting shows on television, at the movies. Policing, some of that is very much the minority of the work that we do.

I presented and lectured to new police officers many times over the years and I get their attention when I explain to them that a police agency is not a law-enforcement agency. In fact, the research will tell us, depending on the jurisdiction and the police agency, the law enforcement part of policing is anywhere from 7 to about 15 per cent. It'll vary a little bit either way, depending where you are.

Police agencies are a social service. And you can just see everybody get their backs stiff when I say that because they equate that with being a social worker. And okay, that's fine, but it is a social service. It's people working with people to improve the lives of people.

And in that regard, we probably should be looking at hiring people differently to what we did in the past. I know from the work that I've done and the experiences I've had that I'm not convinced in many cases that police agencies are hiring the right people to deliver a social service, bearing in mind there's the wide spectrum of services that the police are expected to deliver, including law enforcement and being sort of proficient investigators and the like.

The Police Sector Council, funded by the federal government, did a lot of work with police agencies, the unions, the chiefs, the police officers and many other people in developing competency profiles for positions in police agencies. There's still far too many police agencies that do not use those competency profiles, though are actually pretty sound. But having said that, I think, and I'm familiar with those competency profiles, I think there could be an increased emphasis on competence related to sensitivity, maybe compassion. There are communication skills in there already, verbal communication skills, but I think that could be emphasized even more because, I don't know, it's not a scientific number, but nine-tenths of police work is communicating with other people, whether internally or externally with the public.

I guess that's all to say that I think we could be looking at and should be looking at the criteria we're using to attract and hire police officers to make sure that we have the right ones to deliver the services that the public expect of us. Now, having said that, most police officers or many police officers, for sure, can meet these criteria, but I think we should sort of get a little bit more serious about this in our hiring criteria.

I hope that answers that.

MS. CHAYTOR: Thank you.

Is there anything you wanted to add to that, Sergeant Massine?

SGT MASSINE: No, that about covers it.

MS. CHAYTOR: Okay. Thank you.

This is a related question, so I'll just go into this, and then I see that Captain Bartlett may have a question as well, but this is related and we received this question from a member of the public, who is Marg Curry, and it deals with educational backgrounds for police officers.

She says that I recently watched *Hold Your Fire*, a CBC documentary about how the police are trained in our country and how this has led to an increase in police shooting civilians. It showed how police in the UK are trained in de-escalation and only after much time has been spent trying to establish rapport with the subject would they consider the use of weapons.

She goes on to say that she was a social worker for 20 years and had visited many of the same people that the police interact with. As a social worker we're trained to use our words; we are also trained in rapport building, including listening skills and trying to place ourselves in their shoes.

And her question is: Do you think it's time that the educational requirements for police officers be reconsidered?

DR. COLEMAN: My short answer is yes, but I qualify that. The requirement for police officers pretty much across the country, correct me if I'm incorrect in the case of the RNC, but it is a minimum of grade 12. But in practice –

MR. DROVER: If I could step in, the police training is a university-based course with university education, so it would be the same requirements that you would need to get into a university program is the same requirements that you would need to apply to the RNC.

DR. COLEMAN: Okay. That's good to know. Thank you.

The –regardless of the jurisdictions and that asked for the minimum of grade 12, in practice the majority of the hires these days have undergraduate degrees, certainly college diplomas and some have master's degrees. So there is a large percentage of police officers, and including obviously the RNC, that have paid attention to the education issue already.

There's research out of the United States. Unfortunately, Canada is – doesn't have the amount of research around policing period. That really is – would be helpful. But there is research up from the United States, some from the UK and some from Australia. The indications are, and it's not strong, that the liberal arts degree makes for a better police officer. Well, I could spend a couple of hours explaining that research, but I won't. But it can be looked up. There are some places to follow that up.

But they found that people with a liberal arts degree are less likely to use unnecessary use of force. They don't – their conduct – they don't have as much misconduct situations. They're better communicators and there's several sort of positives of having a liberal arts degree.

So I know police agencies are loathe to change – or many of them are loathe to change the minimum from, for example, grade 12 to an undergraduate degree, but in practice many if not most police officers these days have that qualification anyway.

SGT MASSINE: The only thing I would add to that is, having worked in human resources as a recruiter as well, I think the key is diversity. The job itself is a very diverse job. Some roles you really need the soft skills. There are roles, unfortunately, where more often than not the hard skills will come into play.

So keeping that in mind, I think you have to look at people with a diverse background, diverse education, being able to fit into their communities and actually understand the communities. So maybe more local hires are the answer because I know there's a lot of policing, because of tight budgets, has been sort of a transient hiring. So you'll see people from British Columbia, for example, going to eastern Canada and vice versa, depending on what the economic situation is.

And do those people really understand the culture of they're coming in to police? I'll be frank: I couldn't come here and police in Newfoundland. I could learn, but I would not want to step into an operational role tomorrow and deal with the specific needs of your communities. It would be very difficult.

So I think as recruiters, education is one piece of the pie. And I agree with Dr. Coleman that I think a better educated person becomes a more reasonable person. But don't also – we can't also discount life experience, so there's that informal education as well. So in the agencies that I've worked for, it's not only a formal education that we look at, but it's also the life skills that are learned and entrenched through travel, through experiencing other cultures, going to different parts of the world, that sort of thing.

So you have to really look at the big picture, I think, when you're looking at a candidate individually and avoid the pigeonhole, so to speak, of having a mould of one type of person with one set of qualifications that you want to police your community.

MS. CHAYTOR: Thank you both.

Captain Bartlett.

CAPT. BARTLETT: Do I have to be sworn again?

MS. CHAYTOR: No, just affirmed.

CAPT. BARTLETT: Yes, thank you.

Some of the things I'm bringing up now is very important to the topic and to this Commission; in fact, probably that's why it was put in place.

First, I'd apologize for this morning, not because I got emotional; I always do that, but I feel a bit better now. And I can recall back to the first day I was supposed to go to school. I didn't want to go. I told my mom I was sick, I couldn't go to school, but that didn't work. And this morning I felt the same way, but I thought of my mother.

Good day, Dr. Terry Coleman and Mike Massine. Welcome to our fair Province of Newfoundland.

Just so you can understand where I'm coming from, this last 40 years I've done hundreds of interviews on open-line shows, letters to the editors and all that on different topics. And when I get into what I'm talking about now you can understand why I name this topic of what it is and it's all about what you talked about yesterday.

And Sandy asked a question there, and you answered pretty good, and the answer about the wrong people getting in the service. The answer is, yes, the wrong people do. I've always said there's good carpenters and some bad carpenters – I'm one of the best carpenters around, by the way, and I got a son, he's top of the line, too – and there's some bad carpenters, right? And the same with doctors: good doctors and bad doctors. Well, a lot of us die because we had bad doctors.

So it all relates to the people that's in a certain situation, and how much they're trained and their ability to keep their cool and whatever the case may be. I'm alive today because incensed I should have been dead, but I've always kept my cool. Thank God for that.

First thing I want to bring up is the Robert Dziekański – happened in, I'm not sure of the date now, you're familiar with it I guess, in Vancouver.

SGT MASSINE: 2007, I believe, yeah.

CAPT BARTLETT: Yes, and I wrote two articles on that in 2007, 2009, because it was spread out over a couple of years. And he got tasered to death in a Vancouver airport by four burly police officers, right? While waiting for his mother to come pick him up. And when the investigation, these four officers, which was proven, lied through their teeth about what happened, and only for someone with a camera there we would not have known what had happened.

Then there's – and by the way, when I go back to the people that's in the police force, some should not be in there – there's some out there reacts every time to a knife, take out the gun and shoot somebody; axe, take out a gun and shoot somebody; a stick, take out a gun and shoot somebody; and a stapler, right? All dies for no reason at all. If you look at Norman Reid, come out on the bridge with a tomahawk in his hand, in the presence of three RCMP officers. Five bullets put into him.

MS. CHAYTOR: I just wanted to say to the panel that that incident was part of – you heard reference yesterday to the Luther Inquiry, so that was an incident that was already subjected to a public inquiry.

And I'm just going to ask you if you could focus your question please, Captain Bartlett. So if you could just focus your question because I do have a number of other questions here from other members of the public that we want to make sure we give everybody their fair share of time.

CAPT BARTLETT: The point I'm trying to make is – and I can't make it without going into detail. There's another situation in Corner Brook where a mother phoned the police to come up and take her son down to the hospital because he had a mental problem. Three – I don't know how many police officers went up there, but one of them put three bullets in the man right in front of his mother.

The question, I guess, is why are police trained and licensed to kill? Because all I've heard since I've been here is police are meant to kill in the situation. They don't shoot to disarm somebody, correct? And –

MS. CHAYTOR: Okay.

Yes, so what your question really is, is about the question and what they're taught in their course of fire, to not just disarm the person, yes. So I'm sure – perhaps Sergeant Massine would be the best person to answer that question.

SGT MASSINE: I would start by answer your question with the statement that there is no easy answer to that. The context of where police officers are trained to shoot being centre of mass is, number one, it's a bigger target. That's first and foremost. If somebody has a weapon, whether it be a firearm, an edged weapon, a tomahawk, as you said, in their hand, to actually shoot that thing out of their hand when it's moving around, Dr. Coleman mentioned the Hollywood factor, and there's a lot of research around the use of force and Hollywood factor and the impact that it can have on the public post-incident. So we have, we have to be –

CAPT. BARTLETT: I'm not asking that they shoot the axe out of their hand.

SGT MASSINE: Okay.

CAPT. BARTLETT: They could have walked away, right? He's up on his bridge with an axe in his hand.

SGT MASSINE: Well, Sir, I would be, I would be negligent if I spoke to an incident that I'm not aware of all the circumstances.

CAPT. BARTLETT: Okay.

SGT MASSINE: So I can't give you a specific answer of why they didn't do certain things or why they did.

CAPT. BARTLETT: Okay, fair.

And the other thing, I didn't find out until a few days later, that when Constable Smyth went into Mr. Dunphy's house he had an automatic weapon that was loaded with hollow-point bullets, which we call mushroom bullets. When they hit a solid object, they mushroom, right? Parts of it go all parts of the body. And that to me is an intent to kill. A clean bullet would go through and probably disarm you and you might live, but mushroom bullets going in your body, not many people live.

MS. CHAYTOR: Okay.

SGT MASSINE: Actually, I can address the issue. The ammunition we use on the range is – it doesn't do that. And the reason being it's training ammunition.

CAPT. BARTLETT: Yeah.

SGT MASSINE: If we have ball ammunition, as it's called –

CAPT. BARTLETT: Yeah.

SGT MASSINE: – and it travels through the subject that we're shooting at, we have to be very concerned about people that would be behind – innocent people that we might injure or kill. So the design of the bullet is meant to stay within the threat that is the threat, not the innocent person standing behind.

CAPT. BARTLETT: We would never use mushroom bullets to kill animals because it'd spoil the meat.

MS. CHAYTOR: Okay.

So, I'm sorry, I don't mean to cut you off, Captain Bartlett, but we do have other questions from other members of the public. So I'm just – if I could just go to those, and if we have time at the end, or is there something else then that you can quickly –?

CAPT BARTLETT: Well, I only need another minute, right.

Because what I want to refer to – there's four types of police in this Province: there's the RNC, RCMP, then you got the DFO fishery officers, and you got the people, the game wardens up in the woods. They're all about the same training.

And in the case of wildlife officers, I want to make a comparison between the different ones. They're facing hunters with high-powered rifles in their trucks, in their quads and in their hands, loaded, and I don't hear of anybody getting shot.

Then there's the DFO fishery patrol officers who go aboard sealing vessels out on the ocean where they are hunting seals. These sealers are top of the line hunters. They can take the eye out of a squirrel, no problem. They can hit targets on the water with numerous high-powered rifles and enough ammunition aboard that boat to start a war. I know what I'm talking about. And in these cases, I've never heard of confrontation where anybody's got killed. And this has been going on for a long time.

So what I'm saying, if one group of people or two groups of people can do it and two others can't, there's something wrong in the training or in the type of people that's doing it. That's the thing I think.

MS. CHAYTOR: Perhaps – I don't know if either of our members can speak to it. I don't know if there's any specifics about the number of times, of course, police officers would come into situations in which they are having to deal with use-of-force situations. It may very well be a statistical answer to that, but I don't know if either of us –you can speak to that.

SGT MASSINE: In 2013, Dr. Christine Hall out of Victoria did a six year multi-site study, so not just in British Columbia but all over Canada and I believe one jurisdiction from the United States. Her research gathered statistics around the number of calls for service that these participating policing agencies go to and the incidents of use of force.

Her research focused around six million police/public documented interactions over six years. When extrapolated down to the actual application of force beyond soft physical control, so beyond twist locks, arm joints, little pain compliance, to the point of striking is where the threshold for reporting was. The reporting level was 0.9 per cent, so less than 1 per cent.

CAPT BARTLETT: One short comment and I'm gone, okay?

SGT MASSINE: I'm sorry?

CAPT BARTLETT: I said, one short comment –

MS. CHAYTOR: Why don't you let Sergeant Massine finish his remark first?

CAPT BARTLETT: Okay, I thought he was finished. Okay, sorry.

MS. CHAYTOR: And then we are going to move on, I'm sorry, but, Captain Bartlett, I want to be fair to everyone.

CAPT BARTLETT: One more comment?

SGT MASSINE: And I'll just finish with one further statistic that, of that 0.9 per cent, the actual cause of death at the hands of police was, I believe, it's 0.14 of 0.9. So the actual application of force, first and foremost, is very low.

And anecdotally in policing, when I was a trainer early in my career, we used to talk about the 1 per cent. We used to think it was 1 per cent where police officers are using force but it's actually much lower. And then the actual incidents of police causing death is lower than that.

Now, on a human perspective, from the 6 million interactions, there was one death. It is truly one death too many but the unfortunate reality of the job that we work in, Sir, is sometimes it's unavoidable.

MS. CHAYTOR: Okay, thank you.

We have a question from Wayne Murphy. And I'm going to just paraphrase his question. He's – in terms of our two panellists: Are you aware of police agencies in other jurisdictions that have multidisciplinary responses to a person in crisis? So where, for example, another professional would go along with a police officer to respond to a call?

MR. JONES: Yes, that's become – in the last, let's say 10 years, that's become increasingly common. It varies. There was a program in Ottawa, it isn't running anymore, but where an intern psychiatrist would ride with police officers and attend calls that were pertinent to that person's expertise and required police assistance as well. Other cities: Toronto, Durham Regional, Vancouver has had a long standing joint program with mental health professionals and police where they ride and attend together.

Hamilton in Ontario has got an exceptional program in that regard. They work – all these places work closely with the local health authorities.

So the short answer is that there's quite a few places. Now, there's some places where that doesn't work quite so well. For example, in a smaller police community or certainly a remote police community there isn't always the resources available to work with the police officer.

I know in some small communities rather than have somebody attending with the police officer, the good relationship with the mental health and addictions people at the local hospital, who will come out fairly promptly on call if there's a situation.

In my time in Saskatchewan we used that. You know, if somebody was standing on a bridge and threatening to jump and commit suicide and somebody would come out on call, but in other cities somebody would have been with the police officer in the first instance. But multidisciplinary is not uncommon in Canada now. Fortunately, it's good.

MS. CHAYTOR: Okay, thank you very much.

And I have another question here that is framed in terms of starting the rapport with a person, if you have a question that is – that you're looking to just intelligence gather. Oh, I'm sorry, I should say, too, this question comes, and I'm paraphrasing, from Tammy Ostarica or Ostaricha. I'm not sure if I'm pronouncing the last name correctly and I apologize if I haven't.

So in terms of if you're intelligence gathering or need further information from a person, from a de-escalation point of view, would it be preferable to call the person ahead or ask the person to come in to the police headquarters as opposed to attending directly at their residence?

SGT MASSINE: We have a standard answer at the police academy that we give to the recruits and it's simply: It depends. Again, it's not an easy answer. It really does depend on the totality of the circumstances that the officer is undertaking as part of their investigation. In some cases it may be preferable to call in advance and arrange a meeting and in some cases it may not be.

So to give a black-and-white answer to a very grey question is difficult, and I apologize, Tammy, but really it is situationally driven. And, again, that would come and form part of the situational assessment that every officer would do when they undertake an investigation where they're assessing the totality of what they know, what they potentially may have to deal with. They put a plan together and then they put their plan in action, but maintaining the flexibility to be able to change that plan when they actually get involved with the person or people they're dealing with, whether it's face to face, over the phone and that sort of thing.

So sometimes yes, sometimes no really is the best answer I can give you.

MS. CHAYTOR: Okay.

Thank you, Sergeant Massine.

And we have a gentleman at the microphone, if you could please identify yourself.

MR. D. ADAMS: My name is Don Adams. I'm just a concerned citizen. I've been listening to this inquiry for the past couple of months.

I don't know how to put my question to you, but I'll just give you the little surroundings.

Mr. Smyth talked about de-escalation on a big scale for when he was going in to Mr. Dunphy's, but yet when he got into Mr. Dunphy's, everything he said escalated the scene. He – about garbage, about dirt around and feces and everything else; all he done was upset Mr. Dunphy.

Is there anything he could have done different to bring out a better outcome?

MS. CHAYTOR: I think in respect to that, I think that we heard the evidence yesterday of the experts on that. And I'm not sure if you – I believe you were here and you heard their answers to that so ...

But perhaps we can phrase it a little more general in terms of in situations where you're confronted with a person –

MR. D. ADAMS: Yes.

MS. CHAYTOR: – who appears to be becoming more agitated, are there things taught to police officers that might be of assistance in helping to defuse the situation? Maybe we'll just do it in a more general way.

MR. D. ADAMS: Yes.

MS. CHAYTOR: Okay.

Thank you for your question.

MR. D. ADAMS: Thank you.

SGT MASSINE: One of the things that we teach our recruits in BC is remembering that, I'll say the term disengaging, is always an option, so leaving the situation. There's an old expression back when I was in the military, it seems like a hundred years ago, that's to live to fight another day. So – and I don't mean that in the pure sense of the word to come back for another fight, if there's even going to be a fight. But it just simply means that sometimes you need to cut your losses and walk away, if it's reasonable and appropriate to do so based on what you're dealing with at that given moment.

So, again, you'll hear a common theme with me is it's the totality of the circumstances; everything – and, again, it comes back to it depends. Sometimes it might be reasonable for an officer to walk away, maybe gather other resources, take a breather, come back and then re-approach it with a different perspective.

Sometimes if there's an element of personal safety, which we've heard a lot of, or safety to another member of the public – because that's our first responsibility is to the public and that includes the person we're dealing with – we may have to take immediate action. And our best intentions – Dr. Coleman talked about a person on the bridge talking them off. Our best intentions might be to get that person off the bridge. We can't walk away from that, obviously, because they're no threat to us, but we can't leave them so we have to do something. And sometimes our action to maybe physically remove that person from the bridge could and has led to their death, and it's also led to the death of police officers who are trying to do the right thing.

So it really, really, really does depend on what you're dealing with at the time and it's not a question I can give an easy, again, black-and-white answer to. I hope that helps.

MS. CHAYTOR: Dr. Coleman, is there anything you would like to add?

DR. COLEMAN: No, I can't add. That's quite correct.

MS. CHAYTOR: Okay. All right.

Then I'll just see if I have a couple of more questions, I believe, here or see if we've covered most of what we had sent in to us.

There is a question that we've received from Craig Benson. And it's not quite on topic in terms of de-escalation, but I think I will pose it because it is something that I know has been tried in British Columbia and it may be helpful to hear it from you, Sergeant Massine, on the experience in British Columbia. And his question is about the utility of body cameras in situations where officers, as we've seen in our province, often are having to respond alone to situations. So the utility of body cameras in such situations.

SGT MASSINE: Several police agencies in BC have undertaken studies, mine, my – I'm a member of the Victoria Police, still am – the results of body cameras are impressive. They are a wonderful tool. But they come with inherent problems as well. Number one, it's technology. And anybody following the inquiry here will know, at any given time when you least expect it, technology will fail. And it's usually when you –

MS. CHAYTOR: That didn't happen very often.

SGT MASSINE: But it can happen, and it's usually when it's critical to have that technology up and running is when it will fail.

I like the idea of body cams, but as a trainer I obviously have a bias, and I'll identify that up front. Body cameras, I know for a fact, are an expensive venture. Police budgets, I know for a fact, are under a lot of scrutiny and cuts right now. Something needs to give to purchase technology, and in my experience as a trainer, and this is why it's very passionate to me, is the first thing that gets cut in every circumstance when they need to buy a new gadget or gizmo is training.

So the end result, we cut the training budget, we buy a bunch of cameras, a possible end result is we have less training for officers, great technology, so we're setting the officers up for failure and we're setting the public up for failure. So I think it's something we have to be aware of in the big picture, that – where does the money come from? I think it has to be a coordinated approach where we find – and I'll be frank – when there is a tragedy that happens, the money comes for an inquiry.

Where does that money come from? Can that money not be front-loaded from government in the training programs with whatever technology that could be identified? Because this money just didn't appear out of nowhere. It comes from somebody, and it comes from your pockets because you're the taxpayers that are paying for this inquiry.

So my opinion is a coordinated team approach where we're proactive instead of reactive. Unfortunately, the nature of policing is we tend to be very reactive. We don't get called to happy times. We get called to bad times. And then that's where these tragedies happen.

So put some money into the training up front; if you, in your jurisdiction, feel there is a need for body cameras, put money into that, keep it coordinated because with body cameras, it involves training because it has to be a conscious thought for the officer to turn that camera on when they're going into a situation. That involves training.

You think it's simple just to push a button but if something happens quickly, I can guarantee you its most likely not going to happen and then there will be criticism around why the camera wasn't activated, or why the camera broke, or why it fell off, that sort of thing.

So there's all kinds of small things that I spoke of earlier that could potentially lead to big things. So be proactive. As a citizen, if you think it's important, that's where you need to get involved with your local government and help find the answers to all the questions that you have.

MS. CHAYTOR: Is there also any issue from the officer's perspective as to what is captured on a body camera – captured by the body camera versus what the officer might be able to perceive in the environment?

SGT MASSINE: Yeah, depending on the technology, most human beings can see almost 180 degrees peripheral vision without standing, without looking. You'll see it will be grainy out here but you'll pick up movement. That's why we don't get hit by cars when we cross the street because we have this instinct that we know something is coming and we step out of the way. Everybody has that, unless you have a vision problem.

The problem with a body camera, from a humanistic stand point, from the vision stand point, is it doesn't see what the officer sees. Unless it was embedded in the eyes, there's no way to know

exactly what's going on. So to further that opinion is, if I'm dealing with the people in front of me and somebody comes from here, I see them out of my peripheral vision and maybe they have a weapon and I turn and shoot them, but the camera didn't see them. They only see them laying on the ground dead after I've shot them. They don't see what I see. More importantly, the camera doesn't feel what I feel.

Police officers are human beings. We're not robots. We get scared. We cry. Believe it or not – I see some people raising their eyebrows – believe it or not, we feel this in these situations. And I can speak from a personal basis, as I testified to as I testified to yesterday, a lot of stuff goes through your mind in a very short period of time, including am I going home today to my wife and children.

So you have to bear in mind, its technology. And yes, it would help. Absolutely, it would help, but don't look at it as the ultimate solution to a perceived problem. It's part of the puzzle but, again, we have to look at the big picture and as a community come up with all the answers.

MS. CHAYTOR: Thank you.

And perhaps if I could just ask – and if there are no other questions right now in the room, I do have a question. Is it feasible to establish a nationwide standardized model or framework for crisis resolution, including use of force and firearms training? So would it be feasible to look at a nationwide standardize model and framework, similar to what we had with the NUFF?

DR. COLEMAN: Right. I think it's very worthwhile to pursue it. There's some challenges inherent in that. Policing and criminal justice is a provincial responsibility and, in that regard, I think that can be overcome. But there's still some territorial issues.

I know from the times I've been on the board of directors for CACP, and I still sit on a committee, human resources learning committee for the CACP, when the word standardization comes up there's some people in the room sort of get their back up, but it could be with the right, right commitment because right now, although the use of force – selection for use-of-force instructors and use-of-force learning is similar across the country, there's similarities, even notwithstanding the NUFF.

The NUFF came together through the auspices of the Canadian Association of Chiefs of Police. I was on the HR committee at the time and we were sort of the parent body of moving that forward to the board of directors. So that type of thing can be done, but it's not possible to make it compulsory, mandatory, if you wish, it's based on the decisions made by the various police agencies or provincial governments, depending on who takes the lead on that, to implement that. But I think it's worthy of pursuing this.

The human resource and learning committee that parented the NUFF model and framework many years ago is still in existence. I still sit on it. And since those incidents that happened in Ontario, the Canadian Association of Chiefs of Police now has a use-of-force committee. These are committees that answer to the board of directors. I think those two committees could get together and establish working groups and I think some progress could be made. I don't think there's a quick fix to that.

But, you know, somebody who receives police services on one side of the continent should expect the same sort of police services on any other part of the continent, the country. And right now, there are some differences. They're not necessarily, particularly drastic differences but I think there's a case to be made to make them more uniform, if you'll pardon the pun. And I think the CACP, with those committees, could do some work on that. We would engage use-of-force specialists.

And I want to, before we leave that subject, we tend to talk a lot in policing about use of force. We have the use-of-force model. We have the use-of-force framework. We have use-of-force training, all very important, but it presupposes that the end result of a situation is going to be the use of force.

I have an issue with that because it sets the mindset that it's going to end up as use of force, and we have to be prepared for that, I understand that. But I much prefer the term crisis resolution, of which a use of force, whatever level that might be, is one of the options to achieve a resolution if other options don't succeed, such as communication and the de-escalation and making sure you don't escalate a situation.

So I prefer that we talk about crisis resolution rather than just use of force. Use of force is just one part of crisis resolution.

MS. CHAYTOR: Thank you.

Sergeant Massine, do you have anything to add?

SGT MASSINE: I think your province is taking a step in the right direction. BC, as a result of the Braidwood Inquiry, we have crisis intervention, de-escalation training and I'm honoured and flattered that I was asked to come here and provide evidence and speak to what we're doing in BC.

So we've got coast to coast covered, hopefully, if things catch hold here. And I can also say we've got PEI on board, Ontario on board, Alberta is on board, Saskatchewan is on board and Manitoba is on board at different levels. So if we can connect the dots across all the provinces and territories, I think we're well under our way in more of an informal matter. Because I know the politics of policing are slow, so on a level such as this and on a trainers level, so if there's any police administrators in the audience, please have your use-of-force instructors start reaching out to others in the country that maybe are doing things differently then you are and let's connect the dots really, is what it comes down to. Do it on an informal level.

MS. CHAYTOR: Thank you very much.

And I see Captain Bartlett.

CAPT BARTLETT: One short question.

MS. CHAYTOR: Okay, and it's going to be a broad general question and not specific to Mr. Dunphy. Correct?

CAPT BARTLETT: On the topic that he was just talking about, it's a very favourite topic of mine and he more or less answered a question.

In the cases that I represented just now, four or five that were shot by police, there was never an attempt to de-escalate the danger, as you pointed out many times, but to eliminate the problem. All these people had problems and all of a sudden they're under the system, right, because of what police took. And police, in my mind, are acting, in a lot of cases, too much like Billy the Kid.

MS. CHAYTOR: Okay.

All right, well, thank you for that.

Anyone else have any other comments or questions for our panellists?

Oh, I'm sorry, in the back. Yes, Sir, would you be able to come to the microphone, please? And just state your name, please.

MR. W. ADAMS: Yes, my name is Winston Adams.

On the issue of body cameras and surveillance equipment that police might have, I'd like to point out my experience with RCMP officers some years ago.

And I carried something that was – I'm pretty sure was perceived as a weapon by the police. And when they actually found out what it was, the best way I can describe what happened, it was that they went berserk.

Three police officers, Mounties; one in front of me, one on either side, they said cuff him. They grabbed my arms; they pushed me back against the wall. I yelled out for help. I managed to get clear of them and get 12 feet across the floor. And by that time I was by the door and one of the officers was on my back and had me down.

I had a chokehold put on me. I was near going unconscious when I relented and said okay, okay, okay, and then they finished cuffing me. And they took me outside. This all happened in a court building, by the way, in Harbour Grace in the backroom of a court building.

And they led me out through. People who were there wondering what was going on. And they took me in the squad car, took me to the police detachment, stripped me down to my underwear and locked me up and kept me there for four hours until a trial against a pedophile was completed. And during this time they wouldn't let me have a phone call to anyone and eventually they did let me get a phone call.

And afterwards, then, they proceeded, when they did let me go, this was followed up in a couple of weeks with court charges against me pressing charges that I had committed a criminal offence, that they wanted me to consent to that I had committed an offence and I would not consent to it. And they changed the charge two or three times versus initially that I had a weapon, and then that I resisted a police officer, or resisted arrest or something of that nature.

They proceeded over the next two years, probably a dozen cases in court. I sought legal help from a number of lawyers, two of which are sitting here today, Mr. Kennedy and Mr. Simmonds. I thought I would get some of the best help that might be available. I got no help from anyone.

I proceeded on my own; I was eventually convicted of a – and given a conditional discharge. But that saddled me with a criminal record that I have to this day. And one of the conditions that was put on me was the object that I had in the courtroom at that time was that I was never to carry that again in a public forum.

I would like to show you what that object was: a small Sony tape recorder. There's no tape in that now. Before I came in here, I asked the guy outside in security, I guess. He said: Don't bring a phone in here. I said no. I walked towards the door and then I went back, I said I've got this, he said that's okay. I said there's no tape in it. He said that's okay.

The impact of this event on me is much more than the impact of what happened, why that trial was going on that day. Because six months before this I had initiated a complaint that a pedophile had been on the go for the last 30 years. I was a victim in school.

MS. CHAYTOR: Okay, thank you, Mr. Adams.

MR. W. ADAMS: At age 10 years old, and I initiated the court proceedings and this man had carried on for 30 years committing sexual assaults and I got to the point – I had a rapport for 6 months, I had communications with this police officer and it was a pretty good rapport, but it started to go downhill when I asked if I could put in a Victim Impact Statement. And this is when things went downhill.

MS. CHAYTOR: Okay, I'm sorry, but we're running out of time, Mr. Adams, but you know, thank you for sharing your story. I'm not sure if there's a question in any of that for your panelists, but thank you for sharing your story, and –

MR. W. ADAMS: (Inaudible.)

MS. CHAYTOR: Yes, what is your question then, quickly, please?

MR. W. ADAMS: Given those circumstances, what could I have done different or what could the police officers have done different to avoid what followed afterwards, charges against me, the court proceedings and all of this (inaudible), as far as de-escalation?

SGT MASSINE: Mr. Adams, I would just have to say that without knowing all the circumstances I can't give you an answer from my perspective. I don't think it would be fair to you and it wouldn't be fair to the police and the judiciary involved in that situation. So I'm sorry I can't help you, but I just don't have all the details.

MR. ADAMS: (Inaudible.) One more? Just one more?

MS. CHAYTOR: We're gone past our time, so what I can ask you to do, perhaps, Mr. Adams, is we're keeping a whole room of people, so perhaps the gentleman would be happy to speak to you after we conclude our session and be able to decide if they can help you with your question. So that's what I would suggest, but we are gone past our time and we're on a strict schedule here today. But thank you so much for coming forward.

And thank you all for participating and thank you to the panelists, and again we really appreciate your input.

Thank you all and we'll come back at 1:30.

Recess

MS. O'BRIEN: Good afternoon, everyone.

Welcome to our final session of the day. We are here to discuss protecting freedom of expression in an age of social media. And our presenters this afternoon are from an Ad Hoc Coalition for Civil Liberties, which was actually formed in response to the call for this inquiry and this group was given standing by the Commissioner for Phase 2 of our inquiry, which is where we are today.

And for those of you who've had an opportunity to go on our website and look at the suggested reading, you will see that this group has prepared a paper and it's posted there. And I suspect that's much of what they're going to talk about today, and then we're going to get an opportunity to ask some questions, both in the room and from people who have already submitted questions to us through our website.

So I'm first going to introduce our panel, and to my immediate left is Ed Hollett. Ed Hollett is a public policy and public relations consultant based in St. John's. He has worked in the public and private sectors, including seven years as a special assistant to former premiers Clyde Wells and

Brian Tobin. And he's worked six years as reserve public affairs officer in the Canadian Army. Mr. Hollett holds a Bachelor of Arts Honours in history and political science from Memorial University and he attended the War Studies programme at the Royal Military College of Canada.

So thank you for coming, Mr. Hollett.

To Mr. Hollett's left is Will Hiscock, and Will is a lawyer practicing here in St. John's with Budden & Associates. He's been in practice since 2010, and he combines his passion as an advocate for social justice and political issues with his skills in civil litigation.

So thank you very much, Mr. Hiscock, for coming.

And last but not least, to Mr. Hiscock's left, is Allison Conway. Allison is also a lawyer practicing with Budden & Associates. She's fairly new to the profession and was called to the bar in, I think – was it 2016? – 2016, and she's an associate with that firm. And I think she was very instrumental in the writing of the paper.

So I welcome you all.

And without further ado, I'll turn it over to Mr. Hollett.

MR. HOLLETT: Thank you very much. It's good to be here, and we're very grateful to have the opportunity to discuss these issues with everyone today.

Just as Kate said, a group of people got together when the call for submissions first appeared, and we are lawyers, some were former reporters, some of us, in earlier lives, were political staffers and so on. In my particular case, as Kate has already indicated, I have some different background. So my comments that are going to come shortly are informed by my particular experience with some of the issues related to this.

In general, we weren't concerned with the specific events in April, but rather some broader questions that may come out of it and some broader implications. So our remarks are taken in a much more general sense. And in keeping with this Phase 2 of the inquiry, it's really what we're interested in talking about. The only extent that I am going to say anything related to the evidence (inaudible) in part one is the extent to which it may give us some insight into broader questions or broader issues.

I'm going to make some general remarks about the non-legal parts of this brief, and then I'm going to turn it over to Will and Allison, who will deal with some of the legal issues.

I think the first thing to appreciate is that there is, in fact, a security issue that must be taken seriously for public officials. It's not just the premier: it includes Cabinet ministers; it includes judges, above the provincially and federally appointed courts, and Crown prosecutors. I don't think a serious and very even cursory assessment of the situation will lead you to believe anything but that. And the public policy question that we have to face is: How do we address that? What's the appropriate way to address it?

There's another brief in an earlier session, from the Royal Newfoundland Constabulary, that talks about the permanent establishment of Protective Services Unit. That's an issue worthy of consideration and worthy of discussion, but not specifically in the context of protecting the premier. I think there's a much wider issue that we might need to discuss.

Specifically with the topic that we were asked to look at here, one of the things we did was talk about social media. And from my public relations background, I just wanted to give some insight

into that. I've given some basic demographic data about the Internet, but one of the observations I make is that there is a tendency for us and for a lot of people to imagine that the Internet is something magical, that it induces behavior or creates attitudes that don't otherwise exist, when, in fact, what it is is simply another means of expression. And I've said on a number of occasions that when people talk about what happens on the Internet and the scurrilous comments that are made, they said the same thing about television, they said the same thing about radio and 400 years ago, 500 years ago, they said the same thing about books: they will lead to the corruption of our children and the end of civilization as we know it.

There is a tendency sometimes to read too much into it. But that said, from the standpoint of whether it's what I do for a living or what the police would be doing, it is a vehicle. It is a tool that can be used to identify issues, track public opinion and generally create what's known as a situational awareness, which is an integral part of a number of different activities, including police work. And it certainly is part of what I do, but for a lot less serious and potentially difficult circumstance.

And I think that's the next part of my comment, which was that we need to look at this from an analytical standpoint and from an organizational standpoint to ensure that when decisions are made, they are being done with the broadest amount of information available and that there's a genuine situational awareness. I made some observations in the brief about the potential for skewed perspective. In the analytical world, it's GIGO: garbage in, garbage out. In other words, if your skewed perspectives are coming in, you're not collecting data thoroughly. You may not be able to correctly analyze it.

It's a fairly simple concept. I don't think it needs any great elaboration. And the difficulty you can find in this particular case, and this is the comments we made in the brief, was that, if we were asked did something occur generally in the life of this particular unit that infringed civil liberties, we can't say definitively. But it would be useful exercise to go through an operational analysis to see what exactly the officers were when they went out to visit somebody for a comment made on the Internet. What were the circumstances about? Was there anything – what was the consequence of it? Was there any intentionality or did it actually not really constitute a threat at all, or any kind of intention? Because I think that's one of the possibilities that you have here. And if the organizations are not properly structured, if they're not properly functioning, then you're going to get the potential for misadventure.

Again, I note in the RNC brief that they presented, which suggests this unit identified for a protective service unit, two particular functions, which is similar to the notion that we presented in our brief, and if you look at other protective service units there are two functions: there is the close protection function, which is the physical protection of the principals involved and the physical security of individuals; the other part of it is the analytical part, which is done usually by separate individuals. They're the ones who are actually scanning ahead, collecting information from a variety of sources and conducting the assessments. That's where the actual – as I understand it – proactive part of it comes. Those two functions would be essential in order to correctly identify what is a problem and what isn't a problem, and make an assessment with as many perspectives as possible. I think that's absolutely crucial.

So the separation of functions within the, within the unit itself, I think, would be an essential component of that. I also think there has to be an essential separation of functions between the police unit and the other.

I've had – I'm familiar with both my own experience but also people who came before me and people who came after me. And one of the observations I made, privately, early about this, I'll make now, is that we dealt with many of the same sorts of situations that have been talked about here in the other part of the inquiry, in my particular case in the office.

One of the processes we use though is that we didn't have a direct liaison. I was not in a position as a junior staffer to recall straight to the police. I had to go up to talk to my chief of staff and make a case to him, who then – he then determined what happened next. That had a number of reasons behind it, but one of which was to make sure that there was some filtering of information and that we weren't simply triggering the police to do what the police do very well, which is to investigate things and figure out what's going on. And I learned at the time, and I have a – I have friends who've been in both the police and the special prosecutions unit, who filled me in on a little clue that I didn't get at the beginning which is that when the police get a call from the Premier's office, they don't cut corners. They fill in every check, in every box, regardless, even if there's nothing to it. They're going to look and they're going to look long and hard at it because of where it comes from. The Minister of Justice calls, they're going to look hard at it.

So what – this is really a message now for the – question for the police, but really for the political side is be conscious of what it is that you're triggering. Be aware of the roles and responsibilities and duties, how they function and what the police do. And that will help to avoid those sort of difficulties.

So separation of functions is one thing, but also the separation or understanding that there's something pretty different between the police and the political. And all of that goes together, this business I talked about, about the inputs that generate the subsequent responses.

A last part for me that I'll say is actually coming out of a discussion from earlier today, given my background, which was the discussion about public disclosure. Often times the discussion is about during a particular incident, but one of the things that, I think, an observation – a free observation I'll throw in is you need to consider the need for disclosure well in advance of an event. And that's why you disclose things well in advance of so that when things happen, it's not a surprise.

There was some mystery about this particular unit, and while they don't need to talk about the details of the security arrangements for the Premier and other VIP, sometimes the existence of it is important to acknowledge because it is important for people to know, generally, that if there is such a situation out there that the Premier's life is in danger, if there are threats against certain individuals, that that's the world we live in and that's why the justification for the rest of it. That's what I said earlier, and so a lot of the difficulty that comes, points made by Mr. – by Constable Smyth and Staff Buckle are actually well taken with respect to the public disclosure, and it would avoid a lot of difficulty later on.

That's the extent of my comments. I'll certainly answer questions and we can talk about it later, but I'll turn it over now to Will and Allison to discuss some legal issues.

MR. HISCOCK: Good day, I'm going to leave most of my commentary in response to the questions which I imagine will be coming both – that have been already collected and might come from the audience here.

For those who didn't read the paper, I just want to give a brief highlight as to the basics, the very fundamentals that we were asked to deal with and what our focus has been.

I think most Canadians know that they have a right to freedom of expression, that that's a *Charter* protected right and that our courts have made it very clear that in terms of your rights of expression, your most protected, your most sacred right of freedom of expression is in relation to political discourse. That it's essential for coming to the finding of the truth and it's essential to a functioning democracy. It is a core principle that comes out of our common law and our parliamentary traditions, our democratic traditions, that can be assaulted in a number of ways.

So there can be an outright prohibition against making political commentary, something we don't see in the West, but certainly we are all aware of in other parts of the world and other periods of time.

That's not really what we're talking about here. What we're talking about is the chilling effect. What is the chilling effect? A chilling effect is not when your right to freedom of expression is outlawed, where you're prohibited from speaking, but it's a chilling effect when the state apparatus is able to intimidate people so that they do not want to make those political comments in the first place.

I think that that fundamentally is what has driven our group to be here is, I think, there was a broad concern amongst people with a perspective: a civil rights perspective, a civil liberties perspective, that were concerned when they read the tweet. I saw an angry political tweet. I didn't see a crime and that bothered me that there would be a policeman showing up at somebody's door, knock on their door because there was a concern about a strongly worded, clearly, tweet, but there's no – my understanding of political dialogue is that it needn't be overly concerned with the feelings of those in power above you and that hard comment can be made.

So that's kind of the perspective I've brought to – that I come from originally and that's informed the reason that we're here.

That said, I'm here as counsel for an ad hoc coalition and there is a diverse view within the civil liberties movement on where that balancing occurs between security, on the one side, and freedom of expression on the other.

I think our paper is trying to draw a realistic line that takes concern for the safety of our public officials and their right, complete right, to be able to do their jobs securely without threat of violence against them. But that ensures that not only are people able to make as many nasty comments, frankly, as they want about politicians, so long as they're just nasty. They're not a threat. And so that's, I guess, the key point where we come from. And I'm going to let Ms. Conway speak to the law and what the Supreme Court has said in relation to that.

MS. CONWAY: Like Will, I'm here in the role as counsel to the coalition and my main role in this paper is in section B dealing with the law around this issue. And certainly if there are any questions that arise around the law, we're happy to address them.

The main thing, I think, that arises here is that, obviously, like Will said, you know, we have a fundamental right to freedom of expression enshrined to the *Charter*, but at the same time, we have to remember that the *Charter* came into force in 1981. This sort of mass communication that we see on Facebook, Twitter, was not contemplated at that time. So there are some unique issues that crop up in relation to freedom of expression when we have this new volume of information.

So I'm certainly happy to answer any questions about the paper or the freedom of expression in that regard.

MS. O'BRIEN: Okay. Thank you.

We can start with some questions. Before – I have a number here in front of me and, as always, our mic is open if you're interested in posing a question, please approach the mic and we'll get to you as soon as we can.

I'd like to start though with a clarifying question to Mr. Hollett. When you gave your introduction, Mr. Hollett, you were talking about the PSU and the two functions of the PSU. And

we have had – we've all been educated on that, of course, at Phase 1 of the inquiry and understand there to be a closed protection or bodyguard-type function, as well as this intelligence-gathering function. And in your introduction, I understood you to say you felt those two roles should be separate.

What I need clarification on, or what I'm wondering: Are you suggesting that be separate, different, separate within the police force or are you talking about separate, the police only handle one part and another body handle the other part?

MR. HOLLETT: No, if I understand both the RNC brief and other material that's generally available that describes the way this function works, the protective service consists of two functions within the same unit. One of them is the physical protection, the close protection that's responsible for liaising in advance of an event, attending with the principle, securing the residence and doing those sorts of things. The other unit is actually the one that is doing the analytical work.

So, for example, they would be collecting information from the Internet using in fact tools that were available in 2011 to search for, across the Internet, for information using key words, then assessing that information and passing it on. That's a separate function that's different from – it's related. They're related, but separate organizationally. They may come across information that they will then pass to the close protection unit that would deal with specific issues in close protection and they may also have officers who will carry out investigations and deal with issues separately themselves.

The two things in concert provide the protection for important people, for the dignitaries. And that similar concept of the dual role is also applied in private security as I understand it, but that's really what I'm talking about. There's an analytical function that identifies potential problems and there is a physical close protection, and the two things are not combined. They don't – they are unrelated activities largely because the business of providing upwards of 24-7 is a physically demanding job, in any event, and it requires a particular focus on that and you don't really have the time to do the other things that need to get done at the same time.

MS. O'BRIEN: Okay. Thank you for that clarification.

The first question I have is from – came in from Rich Wheeler, who identifies himself as a retired police officer. I'm not going to read the full of his submission, but I will read portions of it out to you:

As you know, in the world in which we currently live, social media plays a huge role for some people to vent, express their opinion, rally support for their cause, et cetera. It is also used as an avenue for many to express their views, whether anonymously or not.

When a police officer is focused on gathering intelligence, any medium of social media can yield a vast amount of intelligence, information on a specific individual or group, criminal or not. It is open-source information that is basically free for the taking.

As we know, as citizens of this country, we do have a right to free expression, but it is what is contained in that expression which can cause a concern. To restrict a police officer to be able to access social media sites of individuals and groups would be detrimental in focusing on the intelligence-gathering process.

It is only when those that appear to be criminal – and that's when he's talking about social media-type posts and expressions that appear to be criminal – only then does it cause potential public-safety or officer-safety issue and then it catches the attention of the police. It is vitally

important in a proactive policing world and in our current times that police officers not be restricted to access this open-source material and use it prevent any criminal occurrence from happening.

So as I understand Mr. Wheeler's point, he feels that he wants – any limit on the monitoring of social media by police officers would impede them from getting the full breadth of intelligence that's able for them to gather and use to keep both the public and themselves safe.

So please give your comments on that.

MR. HOLLETT: I can say that I agree wholeheartedly. The key thing about it is it's in public; it's not done with an expectation that it's private or secret. And I think most people would suggest that the police would be remiss if they didn't take avail of the information that's readily in front of their face, like a letter to the paper. Why would a police officer not look at the paper to find a letter to the editor that speaks about a specific issue that may be of relevance? It's done on the Internet and it's on Facebook; wherever it happens to occur, it's perfectly legitimate.

I made a reference earlier to surveillance technology, and in fact it's been around for almost 20 years. It's commonplace in the work that I do every day and it's certainly available to the police, as I said, through LexisNexis and other companies since 2009 and 2011, the ability to search Facebook and other parts of the Internet for key words in order to obtain that raw material that then becomes part of the analysis and that eventually turns it up.

So I'm certainly not suggesting and I don't believe any of my colleagues are suggesting that the police should be restricted from looking at publicly accessible information. In fact, quite the opposite: we'd hope that they would look at it and then come to understand it and appreciate it to be able to make that intelligent judgement about what actually constitutes a threat and what's just somebody shooting their mouth off.

MS. O'BRIEN: So the follow-up to that is in part addressed by Krista Newhook, who also submitted, and she writes:

As Newfoundlanders and Labradorians, we are often accommodating and trusting and have generally positive views of law enforcement. Most of us would be eager to help officers who request to speak with us. It was therefore a surprise to me and perhaps to others to discover that police resources had been used to make visits to people's homes to question them about comments made on social media, which constitute neither threats nor criminal harassment.

How can we as citizens protect our rights to freedom of expression, including the right to express anger and other strong emotions, when we may fear that our speech could be labelled by authorities by the broad definition of concerning?

And she poses a second question: Is it wiser to refuse discussion with police unless compelled to by law as a means of holding the line against what is uncomfortably close to censorship?

MR. HOLLETT: Will and Allison may have a comment on this, but the first thing I'd jump in and say is that I think that's the point that he was referring to – what Will referred to earlier about the chilling effect of a visit from a police officer. The difficulty in this instance is that we don't really know what prompted some of those visits and what the circumstances were, so it's difficult to say in the absence of information what actually occurred. But in preparing the brief and looking at the information that we had available to us, there seemed to be some rather loose terminology, and I think in some instances individuals were being – were collecting information or were being aware of things and it wasn't clear what the concern was.

Even subsequently we've seen some definitions of – just, for example, the mention of the word “dead” would be sufficient to trigger a police officer to come to visit. I don't really think that that's a reasonable decision and I don't really think that the person who said it in another context would have agreed with it. There actually has to be some other context applied to it.

When a police officer shows up at your door, there are some legal issues to it, but I think the concerns that the individual expressed is legitimate and that's the concern that we've had, which is if the police officer is there just because of something mean that was said, that would be difficult and there may be a chilling impact on people from just saying something that they feel, even if it's unpleasant or rather strongly worded.

MR. HISCOCK: Yes, and I feel like we're kind of being cornered into legal advice on that one, so I would say that if you're approached by a police officer, generally speaking, you should ask them if you're compelled to speak and ask them to contact a lawyer immediately, as a general rule of thumb I would think would be wise, a wise way of going on that.

MS. CONWAY: I would just also add that, speaking again about the chilling effect, there is a danger in that the second stage of the legal test as to whether or not there's a breach of the freedom of expression, or an infringement, I guess, of the freedom of expression, is that they look at whether the purpose of the government conduct was to limit freedom of expression, but also at the effect. So if the effect is that citizens are afraid to express their constitutionally – they constitutionally have a right to express these views, and if they're afraid to do so, there is a risk of offending section 2(b) of the *Charter* because they in effect are limited in this right.

MR. HISCOCK: I'll make one last point on that, or I'd like to, is I think that there are a lot of people who following this inquiry find the term “concerning” concerning. That is a very nebulous basis upon which to launch police investigations and concerning, I suppose, is a pretty grey term, so that may be something that the Office of the Premier and the RNC want to provide some highlights to the public as to: At what level and what words will you use that will or will not provoke a police investigation? What can you say without the police showing up at your door? I think that's very legitimate for people to know because, if there is a line there, it's pretty unclear where it is right now.

MR. WILLIAMS: If I could just make a comment in response to that because I think you raised a very important point that's come up: the whole discussion between what constitutes a concern and what constitutes a threat. Because in some of the materials that the Commission were kind enough to supply to us, they brought to the attention that when you look at incidents like the Boston Marathon bombing, the churchgoers in Charleston who were shot, many of the school university shootings, when police forces have come in and reviewed profiles, online profiles, the majority of these cases have all indicated that the profiles have showed issues of concerns. There were not direct threats that we are going to set a bomb at the marathon, we are going to go in and shoot up the church.

So there's a balance that obviously has to be struck, and I know one of the articles that has been put out by the Civil Liberties Association brought up a theory called context collapse. And I don't know if you're familiar with that, but context collapse is where online “messages intended for a limited audience become misconstrued for a wider audience once original context is lost.” And the authors there went on to say there's “a limit to what can be extrapolated from social media activity – it only reflects a cross-section of people's lives, and in the absence of physical cues that face-to-face” interactions resulted – messages can be misinterpreted.

So I guess my question is, and I think it's a legitimate point, that you can't read all these in isolation without sometimes further steps, and I don't know if we'll ever be able to come up

with that dictionary of what constitutes a concern or a threat. So how do you see the balance being done in trying to protect public officials as well as allowing for freedom of expression?

CAPT. BARTLETT: Madam Co-ordinator, a point of order. I thought this was a day for us?

MS. O'BRIEN: No, certainly, Mr. Williams –

CAPT. BARTLETT: The b'ys have had two months.

MS. O'BRIEN: Captain Bartlett, Mr. Williams is entitled to ask questions. He is not only a lawyer with standing here, but he's also a member of the public. But I see you're there and in a moment we'll get to your question as well. I anticipate we're going to have lots of time for questions, so I'll let the panel answer Mr. Williams's question.

MR. HOLLETT: It's a very important point, Mr. Williams, and I think contextual collapse is a very real factor. And part of the analytical function, as with any type of analysis, is putting an individual isolated data point, like a particular tweet, in a wider context.

And when I referred to the technical ability to look wider on the Internet, that's actually part of the analytical function that would come, presumably, and as I understand it from the research that I've done, in advance of a police visit. And, in fact, there has to be a series of – there would be a series of triggers determined by the expertise and then a deployment decision made by somebody in authority within the police unit. That's necessary for an officer to go visit that individual for either a check of friends and neighbours to look for other evidence as part of that investigative process.

But you're absolutely right: a single data point doesn't tell you anything. A single tweet doesn't tell you anything. Further work is required, and that's why that analytical function is incredibly important before a visit comes, before something else happens.

MR. HISCOCK: And if I could just add to that, I mean, there is – we are concerned primarily with people's freedom of expression and right to express their opinions. If you have said something that might be concerning to a police officer, there are a lot of steps that they can take before it begins to have a chilling effect. You know, they can do a media monitoring of your publicly available media with no chilling effect because there's no knowledge on your behalf, anyways.

Now, when they start approaching your neighbours and got knocking on your door, well, that raises a much greater chilling effect than the knowledge that, if I post something on Facebook, they might look at what I posted on Facebook for the last three months. That's going to have a much more limited chilling effect.

So, you know, I think we need to say that there are strong guiding posts along that road before you get to a step that is likely to have a significant chilling effect. And an officer showing up at your front door, be it with or without a uniform, or with or without a warrant, is going to have a chilling effect.

I think people can rationally expect that they are going to watch what they say in the future, and watch what they say may be appropriate if it was criminal or threatening in the first instance. But if it's simply unpleasant, well, the government has no right to make people second guess saying unpleasant things about the government.

MS. O'BRIEN: Thank you.

Captain Bartlett, I'm going to go to your question now, but, Ms. Conway, I'm going to ask you after we're done with the next question, not everyone will necessarily have read your paper and I think it would be a good chance for you to give our audience a bit of an education on the legal framework that we are looking at within that section of the *Charter*.

But first, Captain Bartlett, did you have a question for the panel?

CAPT. BARTLETT: I didn't get up here to be first. I got up here to sort my papers. It is very hard today because my head is like a bowl of porridge today, and I hope to get through it, but if there's anybody else who wants to get up, I didn't get up here to be first. If anybody else want to go, they're free to go.

MS. O'BRIEN: Go right ahead, please.

CAPT. BARTLETT: Go right ahead, okay, thank you.

Good day, Mr. Hollett and William Hiscock and Allison. I guess I got to explain why I'm here in the beginning. My name is Wilfred Bartlett. I've wrote a lot of letters over the years about different subjects and I've been on Open Line, both CBC, NBC or whatever will it be on, right?

And my reason for that is there are a lot of issues the last – especially the last 40 years that have really pissed me off and one was the fact that we lost our fishery, which we shouldn't have lost it in the beginning. I'm here today, on this case – in fact, I've been here most of the winter. When I haven't been here, I'd watch it home on – and because this is a thing that really hit me hard when it happened because this is something that should never have happened.

There have been too many cases in Newfoundland where police have went out and shot people. In the case of in Bonavista, gentleman up on the bridge with an axe and that put five bullets in him, three RCMP officers down there. I mean, no thought whatsoever to try to get the axe out of his hand or whatever; just shoot him and be clear of the problem. And in most of these cases I talked about this morning, people with mental issues. Mr. Dunphy's case he was forced to live in poverty because of his inability to work and because he criticized the system he paid the price.

In all the cases, like I said before, there's never a police officer charged and their agency will protect them all, every one of them, to try to get them off free. I have wrote a lot of letters over the years criticizing the politicians, and rightfully so, because sometimes they cause most of the problems that we have. And since that dang April 5 situation, when that happened, a couple of days after I found out it happened, there was a chill went down my spine. Are they coming for me? That's the big question.

Every time today I see a police car on the road or a white car hauled on the side of the road or whatever, that chilling effect is there. Because when a man can die for the sake of a tweet, there's something wrong with our society. You know, it's got to stop.

MS. O'BRIEN: Thank you, Captain Bartlett.

CAPT. BARTLETT: Just a second now, please.

MS. O'BRIEN: Do you have a question? Maybe you could focus on a question for the panel.

CAPT. BARTLETT: Yeah, okay.

MS. O'BRIEN: Thank you.

CAPT. BARTLETT: I had two of us went to war so I could have freedom, and today we can't have any. Smyth after the incident, he criticized, he came in here and criticized the social media because they're making comments about what he did, as if to say I can kill someone, but don't criticize me for it.

Can you elaborate a little bit on that?

MR. HOLLETT: I'm not sure I can. I understand both your concern and I also understand the difficult situation that Constable Smyth found himself in. And I think if there's one thing that I'd point out is that it is his evidence of how difficult it can be to be on the receiving end of public commentary. Forget anything else you want to talk about, and I really didn't intend to make any observations about that, but I mean if you – it is, divorced from everything else and the reality of how difficult it can be to be on the receiving end of that.

And I can appreciate your perspective, too, that you may have found it somewhat intimidating, but for the most part, you know, I've been subjected to that, too, myself and I have to say you sort of have to pick it up and go on. Or as Mr. Jones said this morning, in discussing the difficulty with remaining silent during an active investigation, sometimes in certain instances it simply is absolutely necessary you have to do that for various reasons. It is very difficult, but it's absolutely necessary. That's about the only thing I can say.

MR. HISCOCK: Well, the only thing I'll add is that, Mr. Bartlett, you are exactly the sort of commentator that the group, our group, the Ad Hoc Coalition, is concerned with. You do speak out and your name was quite familiar to me when you mentioned it.

What you're saying about the fact that it did have a chilling effect on you is exactly the concern that we have, that a police officer showing up at your door is something that is now a concern because you can read those tweets. Everybody has. And, you know, I mean, when we talk about context collapse, unless the fourth tweet is taken out of context of the three that precede it, it's hard to read that and think on my angrier days I haven't said similar. And I think lots of people felt that and wondered, well, there seems to be a new line.

So, I mean, that is a very – that is the concern that has driven this group in the first place to be here, is that people would feel an intimidation after these events. And I don't think that we're at a point yet where people feel comfortable in that they know where that line is, the line of acceptable and then the line of where it is still legal, but it's concerning and you can expect the police to show up at your door.

And that's a real questionable line right now, which is part of why we're here. We want the government, following this inquiry, to address that in a very serious way.

MS. O'BRIEN: I may come back to you on that, Mr. Hiscock, in a moment, but first I think it would be very helpful for us all, as part of the education piece, to hear from Ms. Conway and get a bit of education on our *Charter* rights.

MS. CONWAY: Certainly.

So the freedom of expression that we're talking about here today is protected by section 2(b) of the *Canadian Charter of Rights and Freedoms*, and the *Charter* is referred to as the supreme law of the land. It's the overarching line. The rights that are enshrined there really cannot be trammled. And the Supreme Court – section 2(b) has been examined by the Supreme Court a number of times since the *Charter* came into effect in the early '80s, and they've consistently said the same thing, whether it was early *Charter* cases or more recent cases that concern technology and that kind of thing.

In 1989, Justice Cory said: “It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression.” And that’s, you know, as we address in our paper, that’s constantly been echoed in the time since.

The court says that it’s essential to a democracy to have this and the rationales for the importance of the rights in section 2(b) were outlined by the Supreme Court in a 2009 case. And in that case it was Chief Justice McLachlin who said that the rationales for having this right are that it’s very important to democratic discourse. She refers to the marketplace of ideas: the way that we suss out problems and ideas in our society is to have these kind of competing ideas discussed back and forth, and people need to be free to do that so that we’re ultimately left with truth. And finally, that it’s just –it’s self-fulfilling. It’s important to people to be able to express themselves as a matter of self-fulfillment.

And the legal test, in terms of section 2(b), the first inquiry is to whether or not the government activity that is at issue falls within the protected sphere of conduct. So it’s important for the court to determine whether what’s happening is actually expression and whether that is what’s being limited. And if it is determined to be protected, the court goes on to look at the purpose or effect of the right being limited, and that’s what we were talking about earlier with the chilling effect.

And the court has also said recently, a criminal case called Elliott, actually Twitter was at issue in that case, and it was the Ontario Superior Court in that case that said any limitation on the use of social media, like Twitter, that’s not necessary to prevent criminality is going to limit the right to freedom of expression, so I think that’s relevant to what we’re talking about here today.

CAPT. BARTLETT: I just got one short comment, 30 seconds, and that’s a quote from Ray Guy. When he was asked about should the police have guns, he said: “By all means, give them all the guns they want. But, for the love of God, don’t give them any bullets.”

MS. O’BRIEN: Thank you.

The – one of the issues that has come up in the course of Phase 1 of the inquiry is the effect on people who become subject to social media commentary, and some of that can be very unkind and a lot of it can be anonymous.

So we have a question here from John Murphy, and he writes: What do you see as the public’s right to free expression versus the right of the general public and/or government or police officials to be protected from threats, abuse and other potentially dangerous comments by people who remain anonymous on social media? Should anyone who offers a comment on social media be required to first provide confirmable identification and contact information? In other words, should those who wish to complain or offer much stronger comment be required, at the very least, to stand and identify themselves before being allowed to invoke the freedom of speech provisions of the Constitution or other legal protections? And what do you think would be the general effect of those identification requirements?

MR. HOLLETT: I don’t think it would be practical. We’ve been at this for 20 years and the same argument has been made for 20 years, and nobody yet has suggested any mechanism by which you could reliably enforce free speech.

I know from my own experience on the Internet that it is actually impossible to develop a set of rules and to provide any kind of mechanism by which you can restrain people from making up false identities and saying – making comments on the Internet. Newspapers have found it and all sorts of websites online have found it.

The point Mr. Murphy makes is well taken, and it's a common complaint and it is a reality of life, but it's essentially the same as somebody dropping a letter in the mailbox to you and telling you that you – you know, something nasty. There's no way to prevent that either. It's unfortunately the downside of the unfortunate consequence of having free speech is that some people will not use it well or politely.

With respect to the issues of threats and abuse, we do have laws and we do have courts and we do have police forces. That said, there is one notorious example of one very prominent individual in this province who was subjected for a decade or more to an ongoing campaign of harassment that he was unable to stop.

I don't think there is an easy answer to it, but I don't think there's – I think the problem is there's no mechanism by which you could do it. And the RNC suggested in one of their briefs that there should be a large warning placed on government websites that their people are being monitored. They know they're being monitored. It's just – unfortunately, it's the price you pay. Some people are going to use their free expression to say mean and cruel things. It's unfortunate, it's regrettable, but it's part of the price we pay.

MR. HISCOCK: I'd also add on that that if we're talking about our political leaders, I mean, not your next-door neighbour, but we're focused on political leaders, I think we can legitimately expect them to have a certain thickness of skin. You know, threats are one thing; abuse, though, now we're treading into a slightly different realm there.

Hurt feelings are too bad, that's my perspective on that, and if somebody hurts your feelings online, talk to your counsellor or something, but it's not necessarily a – certainly if you're the premier of the province or if you're a Cabinet minister or an elected official that choose to take on the role of leadership in the province, you're going to have to take the good with the bad. That's my view on that.

So I think there's a real difference between hurt feelings and something like a threat. A threat is criminal; saying nasty things generally isn't. In fact, you know, it's been the basis of a certain element of our politics for a long time. You know, there's a reason the two sides of the floor are two sword lengths apart. Politics isn't always pretty. So that would be my view on that.

MS. CONWAY: I take Mr. Murphy's point, certainly, and I think there's a balancing act in this regard. And it was addressed recently by our Supreme Court here in Newfoundland, again, a case involving Twitter. It was King and Power, and the hon. Justice Goodridge, in that case, talked about some of the benefits of online anonymity and the freedom of expression.

And so I understand anonymity can be a very good thing online. It can be a challenging thing for law enforcement in terms of assessing credibility of a threat and these sorts of things. But one of the things that Justice Goodridge pointed out in that case was that one of – anonymity facilitates the free flow of ideas. There are people who have what may be perhaps an unpopular opinion, an opinion that they feel they can't express due to their personal circumstances using their real name, and this sort of anonymous expression gives them the opportunity to contribute to the public discourse.

MR. HISCOCK: I would just like to add, though, one clear place where that is case and where anonymity is crucial is for people within the civil service who feel that there are issues that are being overlooked by the public, or the public isn't aware of it, to be able to speak on it without losing their jobs or being in, you know, those kind of threats.

So, I mean, I think there are many legitimate uses of anonymity, whether in people's private lives, to be able to speak on issues of the day without necessarily there being repercussions in their personal life. I think that absolutely fills a useful role in terms of freedom of expression.

MS. O'BRIEN: Thank you.

The next question I have is from Andrew Abbass, and this question is particularly interesting because I think it somehow combines our last session of the day with our first session of the day. And our first session of the day was about civilian oversight of police investigations, but Mr. Abbass has taken a good twist to this and he has inquired: Will there be civilian oversight of all government or RNC monitoring of social media to ensure the information gathered isn't misused, as has been done previously?

So I would like to get your comments on this, and this is about really monitoring the monitors.

MR. HISCOCK: I think the expectation we should have is that any particular function of the police would be subjected to external scrutiny by a civilian oversight agency of whatever type. There's been some public discussion in the last few days about the need for a police commission of some kind or some other form of oversight beyond the notions that we were talking about this morning of a special investigations unit that would do it. I think that's about the only way you could do it.

Mr. Abbass may have some particular concerns that are prompting it, but he does ask a good question. Essentially part of what he's getting at, though, is this issue of public confidence in the police and the integrity of other activities. My suggestion would be that the way to do that is what Mr. Jones referred to this morning, which is transparency: transparency prior to an incident and transparency after the fact.

Confidence comes from a demonstrated competence. You understand when people mean what they say when they see you doing it. It's the old axiom that justice must be seen to be done, not only done, and I think ultimately to the extent of Mr. Avis's question is really getting at a question of public confidence in the police and what the police are doing, it's that level of transparency that would help to develop public confidence in the police over a long period of time.

MS. O'BRIEN: All right.

One of the issues – or in your answer to a question previously, Mr. Hiscock, I understood you were expressing a part of your group's advocacy would be requesting the government of the day to address the issue of where the line is between what is the type of comment that is benign and will be just left said and what type of comment may attract a further police visit or investigation. And I'd ask you to please give us a little bit more information on exactly what your group is advocating for.

MR. HISCOCK: Well, I'll let Ed speak to some of the conclusions that he's drawn in the end of our paper there. I mean, I think a lot of people – the reason that I think that it needs clarifying is that prior to this incident I believe many of us were under the mistaken impression that the police only investigated comments if they had a criminal nature to them, that there was a threat against a person or something of that nature. So I think most of us would have assumed if you threaten a public official, the police may be involved.

That appears not to be the line, which raises the question as to: Well, then, where is it? We know where it was in this particular incident. That doesn't provide really any assurance to people that they can make a comment about the premier of the day without having the police knock on their

door. That is a real concern. If at the end of the day Mr. Dunphy's comment was non-criminal and it doesn't – I can't see how you can make a reading of it and suggest it is criminal, and the police were at his door, then we have a question, and it's an open question. And my perspective with that would be that we should be very close, if not on, the criminal line before that occurs, before there is a police officer at your door.

But regardless of where the government of the day draws that line, people need to know. I mean, the chilling effect is not only in the knowledge that the police did show up at somebody's door over a tweet and that a death resulted from that visit. That has a chilling effect, but the chilling effect is obviously much more pervasive when nobody knows where that line is.

So we can say we know one tweet and where that line was there, but is there a point down from that where we were also going to be? I mean, is just the word "dead" in a tweet enough that the police have to investigate? That's – we don't know where that line is, and there needs to be a policy and it needs to be explained to people and so that it can be challenged if people feel that it's overbroad, for one thing, that it's open and challengeable; and secondly, so that people can govern their commentary accordingly so that they can make nasty comments about the government of the day without fear of reprisal.

MR. HOLLETT: Just to pick up on this a bit, the point that I made at the end of the brief as I was drafting it was about this issue of clarity. And then part of the comment I made earlier about the separation of function also refers to the separation of the police function, the police imperative for security from the political issue that may be of the day.

So, for example, earlier today we have a reference by the chief of police to a comment by the Finance minister. Ms. Bennett had talked about some mean things that were said about her in public. The police should respond to police matters. If Ms. Bennett has some comments that were made to her that were much more difficult than something that may have been said to a former Finance minister who did something nasty, then maybe that's what we need.

Part of this issue of transparency that Mr. Jones was talking about earlier today is actually part of this as well. The public actually does have a right to know some of this, and it actually serves the interest of both the police and the politicians to let us know what is being seen, what they are seeing, what they are doing so that the rest of us can then make our own informed judgement, because what happens in the absence of that, of that information, is that speculation takes hold and that's not good for anybody.

So part of this exercise of – as we've said – clarifying what it is you're concerned about is to really get a grip on this and to make it clear that the police are motivated, and the police are driven by police issues, by justice and law enforcement, public safety, public security; and that if they're established, there was a reason and purpose for that based on the evidence of X number of threats, X number of convictions, somebody going over the wall at the premier's house, kicking in the backdoor of her house, jumping into her car, whatever.

I think one of the difficulties that came eventually with this particular unit is that it appeared quickly without any context and there was a great deal of silence about it. So even those of us who are somewhat familiar with the office and somewhat familiar with the issues were quite taken aback that all of a sudden we'd gone from zero full-time police support to, I think, as I understood it, five or seven officers, including attending or who followed one of the premiers, picked her up in the morning and dropped her off that night at her house, went with her all day, something that we hadn't seen since the 1980s. And as well, (inaudible) went on vacation and so on.

If the threat level is that significant, I believe that's just something that generally the public has a right to know, if for no other reason so that when subsequent things happen we'll be aware of it and we'll be conscious of it. It's a legitimate public concern when the premier is either ill or is under that kind of threat. But what happens as a consequence, I would suggest, is that part of what the subsequent reaction was in this instance was that it came as a complete shock to people to find out that this was going on, and therefore all the rest of the context becomes – people start filling in gaps because nobody is talking about it.

In the discussion that went on earlier today about the specifics of (inaudible) an active investigation I think left out the part that there's a great deal of disclosure that has to go on in advance, or separate from that, which is what helps to fill that in.

And so there are – to summarize, there are two issues: there's a political issue that must be dealt with by the government or a non-police issue, and then there's a separate issue that has to be dealt with by the police. And once we see those things, the public sees those things, clearly they'll start to distinguish them.

And as much as I understand why Chief Janes made that comment earlier this morning, I don't think it necessarily helped to make that distinction because the things that Cathy Bennett has been talking about publicly are relatively innocuous, although they may have been difficult for her family. But if there were other things that were said to her that would have prompted police action, frankly, I think the public should know about that, and not just a matter of sympathy but just to understand the extent to which sometimes people say incredibly threatening things, that there are other things that are said that are difficult and distressing and cause undue concern.

I mean, we've been talking about being able to say pretty rough things but, you know, some of the things that get said in public about people are actually very distressing, mostly for the family. We often talk about the politicians, but actually the people who suffer the worst are the spouses and the family who hear these things said sometimes over coffee or, you know, children of politicians in school. This is the sort of thing.

So a little bit more public disclosure actually doesn't hurt; it helps to create understanding. And when people have a context, to go back to Mr. Williams's point earlier about contextual collapse, when people understand the context in which things are happening a lot of understanding comes with that.

MS. O'BRIEN: Thank you.

Any further questions from the room?

Okay.

I have one final question, then, to pose and this has to do with who should be doing the monitoring. And one of the questions put forward is: Would social workers, public health nurses or other employees of government be better placed to assist both in the monitoring and in the contact of individuals who make social media posts which are not criminal, but suggest that the author is strongly aggrieved or angry with the government? So it's really a question about both the monitoring and the contact.

MR. HOLLETT: Unbeknownst to us, lots of people are monitoring what goes on in social media and going on in media generally. And I think what you'll probably find is that a number of people are doing it for different purposes. The police who are responsible for public protection and protection of dignitaries will be doing it for their purpose and they're really the people who should be assessing it for their purpose.

If other individuals have a cause to monitor it, social workers and so on, that might be part of it, but I think, without getting into the complexity of it, part of that analytical function that one would expect to have happen is that as a police officer identifies something that's non-criminal, there may be a protocol that has to be developed to refer a matter to a mental-health worker or to a social worker or some other part of government. And that's – it's a good point. The question raises a good point, but I think different people will be doing different things for different purposes.

One of the expectations I think the public might have is that the police who are doing the analytical part of it would have certain protocols to stream issues different ways. Some things would be of no concern at all, some things would be of police intervention and then, as part of this general discussion that we've been having today, there will be other things in between that need to go to different places, maybe mental health, maybe something else.

MR. HISCOCK: I'd just like to mention that when we're concerned – and I think that question may have arisen particularly out of comments that were made that this particular instance, it was less of a threat assessment and more of a questioning or addressing of grievances that was the motivation behind the visit. That a threat assessment, the police are the people who are properly trained to do that, I think, and should probably be the ones who are making that ultimate call on a threat assessment.

But when we're looking at the monitoring and the investigation that might flow from a comment, we're concerned about chilling effect because that's the primary impact on freedom of expression here. So in that regard, I think almost anybody but a police officer is going to have less of a chilling effect. You know, a police officer in uniform with a rifle, with a pistol on his side, is an extreme authority figure, whereas a public-health nurse or a social worker or a workers' comp agent is an authority figure, certainly, and they represent the state, but much less severe repercussions come from a conversation with them, generally speaking, and they aren't – that same level of intimidation probably doesn't exist.

When we get down to the question of, I mean, the addressing of grievances or whatever, then we're in a very strange world because, frankly, I'm not aware of any powers within the police force to address grievances. So one would think that if the purpose of a meeting is the addressing of grievances, somebody with the connection and the authority to address the grievances would be better placed to do it.

You know, in Mr. Dunphy's case, if the question was can anything be done with his workers' comp claim, one would assume that somebody from workers' comp would be in a better position to address that grievance than a police officer with the RNC. And that's not necessarily the view of the group; that's my own view, anyways, is that when we come to those sorts of issues, there's a much better system to run through before you necessarily end up with a police officer at the door.

If there's a concern over – I mean, social workers are well trained in this, and it's not like they're not used to walking into pretty strange environments, either. I mean, they are well trained in that regard. Foster care situations, child-removal situations and these kinds of things are not uncommon. So we're not talking about untrained people on that side of it, either. So where their skills can be used – and maybe there needs to be a combination in some instances. For the protection of the social worker or whatever, police may need to be present, but maybe it would be useful to have somebody there who can speak with knowledge to the actual grievances.

I think that that's something that, you know, I think it struck a lot of people as odd that a workers' comp issue grievance – that somebody from the RNC would be going down to try and

address grievances on a workers' comp issue, which seemed to have been the suggestion for a while, anyway.

MS. O'BRIEN: All right, thank you.

Any further questions? No?

Well, thank you all for coming out. This is our last panel of today and I thank our panelists very much for participating and putting the work into their paper, which again is available online.

And that concludes our Phase 2.

Thank you.