

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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Transcript of Proceedings
before the Commission sitting at
the Winnipeg Convention Centre
Winnipeg, Manitoba

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Wednesday, August 6, 2008

Volume 26

INQUIRY PROCEEDINGS

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1 Tuesday, August 6, 2008

2 Upon commencing at 9:00 a.m.

3 THE CLERK: All rise. This Commission
4 of Inquiry is now open.

5 THE COMMISSIONER: Good morning.

6 MR. CLIFFORD: Good morning,
7 Mr. Commissioner. Mr. Commissioner, our first
8 witness today is Don Slough.

9 THE COMMISSIONER: Yes.

10 DONALD RAYMOND SLOUGH, having been
11 first duly sworn, testified as
12 follows:

13 BY MR. CLIFFORD:

14 Q Mr. Slough, you are the Assistant
15 Deputy Attorney General and I wonder if you could
16 take a few moments, sir, and tell us about your
17 career and how it is you evolved into that
18 position?

19 A Sure. I articulated with Manitoba
20 Justice in 1980. I stayed with them from 1980
21 forward. I was a line Crown Attorney up until
22 1989, when I became the senior Crown in youth
23 court. I was in that position until 1995. I was
24 then on a three-year project, paediatric -- an
25 inquiry -- well, it wasn't an inquiry, it was a

1 bunch of, 12 inquests into heart deaths at a
2 paediatric hospital. That was a three-year
3 project I did with another Crown Attorney, and
4 Justice Murray Sinclair, as he now is. Following
5 that I came back and since that time I was deputy
6 director of -- I was the deputy director and then
7 I became Director of Appeals and Specialized
8 Prosecutions for five years.

9 And I suppose if I might comment on
10 that in a little more depth. As part of the
11 appeals work, I think the bread and butter of our
12 practice was conditional sentences. There is an
13 enormous amount of litigation involving
14 conditional sentences from about 1998 forward. I
15 know our Manitoba Justice was in the Court of
16 Appeal on 70 occasions on those cases, there were
17 more than a 100 decisions from the Court of Appeal
18 if you include Federal cases, and I personally
19 argued about 10 of those, including cases
20 involving conditional sentences on manslaughter,
21 drive dangerous cause death, aggravated assault
22 and sexual assault. So a lot of our time was
23 spent on those cases.

24 Then in 2006, my predecessor,
25 Mr. Finlayson, was appointed to the Provincial

1 Bench. I started to act as the Assistant Deputy
2 Attorney General in May of 2006, and then in 2007,
3 October of 2007 was put in the permanent position
4 and I've held that position since that time.

5 Q We heard from Brian Kaplan yesterday,
6 and I understand that he reports to you?

7 A Yes, he does.

8 Q Okay. And who do you report to?

9 A I report to the Deputy Minister. One
10 of the roles that I have really is, one of the
11 important roles is, I guess I'm responsible for
12 the day-to-day operation of the department, one of
13 my roles is to keep the Deputy Minister informed
14 of controversial cases, things that are going to
15 be of concern to the Attorney General and so on.
16 So, for example, in this case, that was one of my
17 primary roles, was to keep the Deputy Minister
18 informed as to what was going on with this case,
19 and keep him briefed on things as, I guess the
20 interest, public interest in it escalated.

21 Q Sir, what about the Victims' Bill of
22 Rights in Manitoba, what responsibilities fall to
23 you under the Victims' Bill of Rights?

24 A Well, I think certainly I have an
25 overall responsibility, there is a reporting

1 component to it, and it's part of our policies. I
2 must say, because of the way things have
3 developed, I have spent less time working in that
4 area than other areas. Jacqueline St. Hill, I
5 know you called as a witness, in large part,
6 although her responsibilities are really Director
7 of Winnipeg Prosecutions, has done most of the
8 work on that and is much more conversant with it
9 than I am. It's something though, of course, we
10 are always aware of. And whenever we deal with a
11 controversial case, generally our advice to a
12 Crown Attorney is, have you spoken to the family
13 about what you are doing? Because we see that as
14 an important component in how we practice.

15 Q In previous testimony we have dealt
16 with volume G, page 1380, which has been made
17 Exhibit 215. And this is the policy directive
18 with respect to the appointment of independent
19 counsel.

20 A Yes.

21 THE COMMISSIONER: Could you wait a
22 minute, please? All my documents have been put
23 back. G?

24 MR. CLIFFORD: G-44.

25 THE COMMISSIONER: Thank you.

1 MR. CLIFFORD: Where we are,
2 Mr. Commissioner, is 1308.

3 THE COMMISSIONER: Thank you.

4 MR. CLIFFORD: And that's our policy
5 directive for the appointment of independent
6 counsel.

7 BY MR. CLIFFORD:

8 Q Now, we see Mr. Slough in this
9 document, under the heading number 2, General
10 Connection to the Justice System:

11 "In cases where an accused has a
12 general connection to the justice
13 system, the Crown Attorney is expected
14 to refer the case as soon as possible
15 to the Director of Regional
16 Prosecutions and Education, along with
17 a recommendation as to whether
18 independent counsel should be
19 appointed."

20 Now, we heard from the Director of Regional
21 Prosecutions and Education. I take it, are you
22 the person responsible ultimately for your
23 referral process?

24 A Well, I think, as I read the policy, I
25 think it's a delegated responsibility to the

1 Director of Regional Prosecutions, who is
2 Mr. Kaplan. This really has evolved out of the
3 fact, and he probably mentioned this, that he for
4 a time was in the role of Director for
5 Prosecutions. We then reorganized and changed
6 titles and he just kept on with that role. I
7 mean, the ultimate responsibility would be mine.

8 Q Now, I take it, sir, given your role,
9 that most cases that are going through the system
10 do not require your involvement?

11 A That's correct.

12 Q Okay. And what was it about this
13 case, sir, if we can start, that required your
14 involvement apparently in a number of respects?

15 A Well, I think the case got my
16 attention because of the circumstances. It's,
17 again, a driving case involving, you know, the
18 loss of someone, just a person on their way to
19 work. And those kind of cases receive a lot of
20 media attention. There's a very tragic dimension
21 to it that is unusual. And then to top it off, of
22 course, there is the fact that the accused is a
23 member of the Winnipeg Police Service. So that's
24 a case that leaps out at you. You know it's going
25 to be a controversial and difficult case.

1 So almost immediately, although I did
2 not have responsibility for the case in any way, I
3 was aware of the case because of the media
4 coverage. And then Mr. Kaplan and I are
5 colleagues, we talk about cases, and I was aware
6 of things as they developed. And then we received
7 the news that there were very serious problems
8 with the investigation. And of course, your
9 interest and your knowledge of the case heightens
10 because you know this is going to be a difficult
11 and controversial decision of the case.

12 Q Would it be fair to say, Mr. Slough,
13 that potential for you getting involved on a case
14 goes up dramatically when you're dealing with
15 cases that are politically sensitive or high
16 profile controversial matters?

17 A That's absolutely right, and that is
18 because one of my roles is to keep the Deputy
19 Minister briefed on these things. They need to
20 know, as we say in the vernacular across the
21 street, what's going on with these things. And
22 again, for the reasons I've outlined already, you
23 know this is going to be a controversial case. So
24 that's why I would be interested in what's going
25 on with it, to some extent.

1 Q Can you tell us about your first
2 involvement in the Harvey-Zenk case?

3 A Well, other than sharing information
4 and talking about it with Mr. Kaplan, throughout
5 its development, I was aware of the difficulties
6 with the investigation. I had again, I think
7 Mr. Kaplan was suggesting I be involved in getting
8 the RCMP involved in the, in kind of an
9 investigation surrounding the investigation of the
10 case, if I can put it that way. Now, it turned
11 out I was away during the week that the letter was
12 sent to the RCMP, so I didn't have that
13 involvement.

14 Q If we go back to the beginning of the
15 case, sir, did you have any involvement in the
16 appointment of Mr. Minuk as the independent
17 prosecutor?

18 A I don't believe so.

19 Q I take it you would have no knowledge
20 then with respect to how the specific appointment
21 came about? This would have been something that
22 was handled by Mr. Kaplan --

23 A It was handled at that time. I have
24 subsequent --

25 Q -- or his designate, the person on

1 call?

2 A Exactly. So, yeah.

3 Q The Commission has heard testimony
4 that Chief Carter called on the morning and spoke
5 to a duty Crown, Russ Ridd. And he was advised
6 within a half an hour it would be Mr. Minuk who
7 had carriage of the matter. And I take it from
8 your testimony, sir, that you wouldn't have had
9 any involvement with any of the exchanges --

10 A I was not involved at all.

11 Q -- or communications that lead to that
12 happening?

13 A No, I would have been director of
14 appeals at that time, so.

15 Q Let me ask you a more general question
16 then, sir, with respect to the various levels of
17 independence that are defined in the policy or the
18 protocol for independent counsel. Under the
19 nature of appointments at page 1382, various
20 levels of independence are identified in the
21 protocol, and they range from a Crown from outside
22 Winnipeg, appointment of a private practitioner
23 from Manitoba, appointment of a Crown Attorney
24 from another province, appointment of a private
25 practitioner from another province.

1 Who is making the decision, sir, with
2 respect to what level of independence is going to
3 be required to manage a case?

4 A On occasion, I think for routine
5 cases, I would say that Mr. Kaplan would make that
6 decision. Now often, if we do have one of these
7 cases that is controversial, we'll discuss it at
8 our management group, and we'll discuss the best
9 options to follow and so on. And certainly if
10 it's appointment of another Crown -- of a Crown
11 Attorney from another province, I'm often involved
12 in that.

13 Through heads of prosecutions, I meet
14 twice a year with all the people in the position I
15 am in, and I am kind of the personal contact, so I
16 would usually make a phone call to another
17 jurisdiction asking if they could help us.

18 Q And what type of case would it
19 normally take, sir, in order to engage somebody
20 from out of province? And is this the type of
21 case, the Harvey-Zenk type of case, that would
22 have approached that situation?

23 A I would say it isn't a very hard and
24 fast rule. Sometimes it comes down to, we may
25 want someone with very specialized knowledge, for

1 example, if the case in question was one involving
2 a domestic violence and those issues, we might
3 want a prosecutor from another jurisdiction who
4 deals with those cases all the time. So very
5 often it's specific. I don't think you can kind
6 of break it into categories.

7 Here, I mean, I have no question about
8 the decision to retain Mr. Minuk to do this
9 particular case. If we had another one like it, I
10 think we would just have to look at it and decide.
11 But there are no sort of hard and fast rules. I
12 think what we wouldn't do with a case like the
13 case we're dealing with here is go to a prosecutor
14 from Manitoba, from outside. Frankly, that was
15 what we were doing prior to the implementation of
16 this policy and there was some problems with that.

17 Q I take it there was never any
18 discussion, that you are aware of, in connection
19 with this case?

20 A No, I think, as I understand the facts
21 now, Mr. Minuk was asked to be involved in this
22 case very quickly without any lengthy discussion.

23 Q Mr. Kaplan referred yesterday,
24 reluctantly, I think not in substance but more
25 because maybe he was looking for a more eloquent

1 word, to a stable of individuals or a stable of
2 prosecutors. And what can you tell us about your
3 current stable of prosecutors and how they are
4 selected and what qualities --

5 A Okay.

6 Q -- are sought after?

7 A I'm sorry. The policy speaks to that,
8 independence from government, you know, good
9 lawyers, track record of integrity and so on.
10 It's not particularly easy to find lawyers who
11 want to do this sort of work. I'm not sure it's
12 all that remunerative. I probably mispronounced
13 that word but I won't try again.

14 Q Fancy way of saying you're not getting
15 paid very well?

16 A Exactly.

17 Q Oh, I'm well aware of that.

18 A Yes. So sometimes it's difficult to
19 find them. We lost Mr. Abra through a judicial
20 appointment and we retained another one. Quite
21 frankly, I think we would like to expand the group
22 of lawyers. I just think, you know, often you run
23 into situations where they are not available and
24 they are conflicted out. We have a relatively
25 small defence bar in Winnipeg, and sometimes it's

1 hard to get people who are able to take on a case
2 because of conflicts and so on. So I think one of
3 our outcomes of all the difficulties we've had
4 here is we'd like to expand the group of lawyers
5 that we use.

6 Q We heard yesterday, sir, that the
7 independent prosecutors are provided with a
8 retainer?

9 A Yes.

10 Q And there may be some debate about the
11 length of the retainer. We understood it to be a
12 one-year period, from things we were told. But on
13 examination of the retainer, it seems to run for
14 about a seven month period. What's your
15 understanding, sir, of the length of the retainer?

16 A You know, this is something I'm not
17 very knowledgeable about. This is something
18 Mr. Kaplan deals with, and I don't think I'd have
19 much to add to that. I understood it was a year.

20 Q Very well.

21 A I actually don't know what you're
22 talking about on the seven month business.

23 Q I think more importantly the point is,
24 you understand that the individuals that are used
25 on a regular basis are provided with what you

1 understand to be what could be up to a year long
2 retainer?

3 A That's correct.

4 Q So they are not retained on a
5 case-by-case basis?

6 A That's correct.

7 Q And all four of the independent
8 prosecutors would have these yearly retainers, and
9 the expectation would be that they would simply be
10 renewed each year. Is that your understanding?

11 A That's correct. And it seems to each,
12 we renew them. And then I also understood if they
13 are doing a particularly lengthy or difficult
14 case, you know, there's some discussion as to more
15 fees and so on. It depends, you know, if it's out
16 of the ordinary sort of work.

17 Q So what they become is, in a sense,
18 perhaps contractors?

19 A I guess. I am not sure of the
20 implications of that, but, yes, that sounds
21 reasonable.

22 Q When I looked at it, sir, I sort of
23 started to form the impression that these were
24 sort of satellite offices almost of the -- that
25 was the impression I thought one might draw from

1 that. Could you comment on that?

2 A I don't think I like that analogy,
3 because that then again sounds like they simply
4 work for us and take direction from us. That's
5 not the -- I know everyone is well aware, that's
6 not the idea and I don't think that's what's
7 happening. There's certainly independence. I
8 wouldn't say satellite office. It's not like we
9 set up a special group of Crowns. I think in
10 Ontario, they have a special group who prosecute
11 police officers. That's not the model we are
12 seeking to emulate by hiring people from the
13 private bar.

14 Q Are you able to comment, sir, on why
15 it's just simply not done on a case by case as
16 need basis?

17 A Because I would think it's a matter, I
18 suppose the best word I can come up with right now
19 is convenience. I mean, we have a lot of opinions
20 that come in. It's important that we be able to
21 send that work to lawyers and that we don't have
22 to go through an elaborate process in order to get
23 their opinions. Once, you know, if there is a
24 decision to lay a charge, then it becomes sort of
25 a different process because it may involve a very

1 lengthy proceeding, and then we have to look at
2 how they are being paid.

3 Q Sir, we have seen a change and a
4 development in the policy directive with respect
5 to the appointment of independent counsel. There
6 has been a change in the terms and conditions of
7 the appointment section relating specifically to
8 the Victims' Bill of Rights. And I'm wondering,
9 sir, whether you are involved in this process,
10 whether you are aware of it, whether you are
11 capable of commenting on it?

12 A I think I would say I was aware of it
13 without having a great deal of involvement in it.

14 Q If you look at Exhibit 49, which is
15 R-3.92.7 at page 3364?

16 THE COMMISSIONER: R-3?

17 MR. CLIFFORD: R-3.92.7.

18 THE COMMISSIONER: Page?

19 MR. CLIFFORD: 3364.

20 BY MR. CLIFFORD:

21 Q Sir, you had Exhibit 215 earlier, and
22 that was the 2005 version of the policy on the
23 appointment of independent counsel. And now
24 you've been provided, sir, with Exhibit 49, which
25 is the more current policy?

1 A Yes, thank you.

2 Q And you were aware, of course, of the
3 changes that were made?

4 A Yes.

5 Q And if we compare and contrast the
6 two, we see that in 2005 our policy went up to A
7 through F. And of course, with the new policy,
8 there is the addition of G, H and I?

9 A Thank you, yes.

10 Q Now, what we note, sir, is the absence
11 of reference to the Victims' Bill of Rights in
12 2005. And there was obviously some concern with
13 respect to that, and impetus and motivation to
14 improve upon it, and that has taken place. And I
15 wanted to know, sir, whether you were aware of or
16 involved in discussions leading to that?

17 A Well, a lot of what's in here came out
18 of this case, I mean, and the controversy
19 surrounding it.

20 THE COMMISSIONER: This case?

21 THE WITNESS: This case. And we, of
22 course, as you are aware, asked former Justice
23 Krindle to review our policy. And one of the, I
24 guess, points of concern was exactly how much were
25 we telling our independent counsel about policies

1 and so on. So I think really this was a
2 reflection of articulating, you know, what it is
3 their responsibilities are. And again, I don't
4 know what was done in this case, but I'm just
5 saying, I think it's an idea to articulate what it
6 is. And to a great extent, this policy elaborates
7 on the former policy. I don't think it changes
8 much but it elaborates on it. It articulates it
9 so that it it's, you know, very clear as to what
10 the expectations are with respect to, you know,
11 conforming to the Victims' Bill of Rights and then
12 other issues which you'll probably come to.

13 BY MR. CLIFFORD:

14 Q There's also the additional
15 requirement, of course, that the Victims' Bill of
16 Rights itself be provided to the independent
17 counsel. And was that something, sir, that you
18 had any involvement --

19 A You know, I'm aware of this. These
20 policies come through me, I've read them. You
21 know, the development of them, it was not done by
22 myself personally but I'm certainly aware of these
23 and I think I'm aware of, you know, what issues
24 were, what our concerns were.

25 Q Now, with respect to the retainer for

1 Mr. Minuk, which came from Mr. Kaplan, were you
2 aware of his actual retainer, sir, or have any
3 involvement?

4 A I would say no.

5 Q All right. What about with respect to
6 steps taken to familiarize Mr. Minuk with the
7 Victims' Bill of Rights, or steps taken to ensure
8 that he was familiar with it and was implementing
9 it, would you have had any involvement?

10 A No, I wasn't involved in that.

11 Q There was a concern expressed in the
12 media with respect to Mr. Minuk's independence,
13 and allegations that he was not independent and
14 may have been in a conflict as a result of acting
15 for police officers before. And these concerns
16 were not borne out. But did you have any concern
17 yourself, sir, about Mr. Minuk's early practice?

18 A No, I didn't. I knew that it had been
19 a long time since he practised for them. I think
20 the concern that was expressed, I think was based
21 on a fundamental misunderstanding of a lawyer's
22 duty to his client. Certainly, it wouldn't be
23 appropriate for, I wouldn't think, for Mr. Minuk
24 to prosecute a police officer he had acted for.
25 The fact that he had acted for police officers 15

1 years ago, or approximately, it was not a concern
2 of mine.

3 Q There was also a concern expressed
4 publicly through the media about Mr. Minuk acting
5 as a counsel, having a co-accused in a
6 manslaughter trial where Mr. Wolson was acting for
7 one of the other accused.

8 Now, it's been stated many times by
9 Commission Counsel of course that this was a
10 concern that was addressed by the Law Society, and
11 it was found that there was no conflict of
12 interest in this situation. But were you aware of
13 the dynamic that existed with them doing this
14 trial?

15 A No. I was certainly aware of that
16 case. But, again, it goes back to a lawyer's duty
17 to his client. That didn't concern me, you know,
18 that they would in any way impact on Mr. Minuk's
19 obligations to us or the work he would do for us.

20 Q Who was it that advised you of that?

21 A Advised me of which, I'm sorry?

22 Q Of Mr. Minuk working with Mr. Wolson
23 as co-counsel?

24 A Oh, I was aware of that case. Again,
25 that's part of -- I mean, frankly, my day starts

1 at 6:00 o'clock reading the Free Press, I
2 generally know what kind of day I'm going to have
3 at about 6:30. So I follow the media fairly
4 carefully. So I was certainly aware of that case.
5 It involved, I think, bouncers at a nightclub.

6 Q And when you read that story, sir, at
7 6:30, did you have an idea of what kind of a day
8 you were going to have?

9 A You know, at that time, I wouldn't
10 have been particularly concerned. It only came
11 back with the subsequent controversy around
12 Mr. Minuk, and there seemed to be an attempt --
13 well, I state this carefully -- people were
14 looking at every aspect of what Mr. Minuk had
15 done, and that became one of the aspects that was
16 focused on I think. That I didn't think was a
17 legitimate issue.

18 Q Did you have any concerns about the
19 timing, I should say, the perception? I know
20 substantively you are indicating it didn't cause
21 you any problems.

22 A You know, that -- it wasn't great, I
23 think, you know. But my comments about that I
24 think could have been dealt with better. I mean,
25 I think the timing was a little bit problematic,

1 but really I think the point that should be
2 addressed is the fact that a lawyer's obligation
3 to his client, that that is not unusual to act.
4 And I think, you know, the timing wasn't great,
5 but I think there are better ways to explain that
6 situation than just say that this happens, this is
7 what lawyers do, sometimes they are on the same
8 side, sometimes they are on different sides, or
9 sometimes, when they are defence counsel, they are
10 still not on the same sides.

11 Q Mr. Slough, when you started your
12 testimony, and I asked you about your first
13 involvement in the case, you brought yourself up
14 to the point where Mr. Kaplan made you aware of a
15 letter or a report. And I think we are at that
16 point now, sir.

17 A Okay.

18 Q So I'll put the question to you again.
19 Your first sign to you that problems had emerged
20 with the investigation?

21 A Well, that was, again, when I would
22 have had, as a colleague, I would have had a
23 discussion with Mr. Kaplan with respect to the
24 fact that there were very -- well, there are very
25 serious concerns about the way the investigation

1 was conducted. I was aware that the RCMP were
2 going to be involved in that matter, so that's
3 basically where I was at that point.

4 Q We have heard, sir, that on April
5 25th, more or less on the eve of the first date
6 for the Preliminary Inquiry, a report or a letter
7 was given by Sergeant Carter to Mr. Minuk about
8 problems with the investigation. And it's found
9 in our disclosure material at R-1.91.15 at page
10 3152. We'll have to enter it as an exhibit, but
11 this report may have gone in as a -- from another
12 volume.

13 THE COMMISSIONER: Page?

14 MR. CLIFFORD: Pages 3151 is the fax
15 cover sheet.

16 THE CLERK: Exhibit 243.

17 THE WITNESS: Thank you.

18 (EXHIBIT 243: R-1.91.15, Fax from East
19 St. Paul Police dated 2006/04/26
20 attaching letter dated April 25, 2006)

21 MR. CLIFFORD: Okay. That is also
22 Exhibit 123.

23 BY MR. CLIFFORD:

24 Q You might not understand the
25 significance of that, Mr. Slough, but one of our

1 objectives as Commission Counsel is not to file
2 anything twice, and we are at what could easily be
3 the last day of this Commission, and I don't think
4 we have done it yet. So, congratulations, sir,
5 you got Exhibit 243 or 123 in front of you.

6 So, sir, what this is, is a serious
7 report, directed to Mr. Minuk, detailing what had
8 transpired in the case up to that point. And had
9 you been privy to this report, sir? Can you tell
10 me when it was brought to your attention and who
11 would have provided it to you?

12 A Frankly, I don't think I've seen it.
13 And I guess if I could explain that, when this was
14 filed, which would have been in 2006, April -- I
15 don't think I would have been in the position I am
16 currently, I wasn't in the position I am currently
17 in. I don't think I was aware of this report.
18 I'm aware of some of the content but not the
19 detail. When I look at it, and I've only had a
20 few seconds to look at it now, I don't think I've
21 seen it before, but it's been a couple of years so
22 it's possible I'm mistaken in that.

23 Q All right. So not having seen the
24 report, would it be fair to say, Mr. Slough, that
25 you are aware generally of the substantive content

1 in the allegations and what's revealed in the
2 report?

3 A What I was aware of was the suggestion
4 that there may have been some obstruction in the
5 investigation.

6 Q Now, if I could bring your attention
7 to a document found in R-1.91.16. And that is
8 Exhibit 225. So R-1.91.16, page 3167. What you
9 see here, sir, are e-mails. And in fairness to
10 you, there is reference to, one of these e-mails,
11 that you may be out of town for most of the week,
12 but you are cc'd. And it's in reference to a
13 meeting that's being set up with the RCMP on
14 Monday morning to deal with it.

15 And we have heard evidence with
16 respect to Mike Horn being involved in this
17 process, along with Mr. Kaplan, to get the RCMP
18 involved. And what this indicates, sir, is at
19 this point, you are brought into the
20 communication.

21 And does that trigger any
22 recollection, sir?

23 A I'm certainly aware of these
24 documents. This process, it's a little hard to
25 sort out what you knew when, but I'm certainly

1 aware of this process.

2 Q What could you tell us, sir, about
3 Mike Horn's involvement, why he might have been
4 the go to person for this issue?

5 A I think that's sort of a historical
6 anomaly. We often -- my predecessor,
7 Mr. Finlayson, often had Mr. Horn, who is, I think
8 you know his position, he was a former RCMP and
9 CSIS officer. He had regular dealings with the
10 RCMP. And Mr. Finlayson often would liaise
11 through Mr. Horn with the RCMP. And so we
12 would -- it just became a practice to use Mr. Horn
13 in dealings with the RCMP.

14 If I may say so, there's really no
15 reason why I couldn't, a person in my position
16 couldn't contact the RCMP directly. It was just a
17 practice that developed.

18 Q That's what I was wondering, what was
19 his relationship to criminal justice? The
20 criminal justice relationship with prosecution
21 services is just something that developed?

22 A It really was just something that
23 developed and I think, I mean, if I was going to,
24 if something similar happened now, I think I would
25 contact -- I know the commanding officer in the

1 RCMP on a personal basis to some extent, I would
2 contact him. The same way, if there was some
3 issue like this, I would probably get in touch
4 directly with Chief McCaskill. As I say,
5 Mr. Horn's involvement, there's no real, at least
6 I'm not able to articulate any real reason why we
7 would involve him.

8 THE COMMISSIONER: He's with your
9 department.

10 THE WITNESS: He is the ADM of
11 criminal justice. He's responsible for the RCMP
12 policing contract, and he's very responsible for
13 policing. So he has a lot of, he has a great
14 deal, he has more involvement with the police at
15 that level, and I guess he's a former RCMP, former
16 CSIS officer. But as I say, at least I can't
17 think of any reason for doing it in this sort of
18 triangular fashion that we do it. I think the
19 better approach would be just deal with him
20 directly.

21 BY MR. CLIFFORD:

22 Q We see in the e-mail dated May 12th
23 from Mr. Minuk, to both Mr. Kaplan and yourself,
24 that he's going to be meeting with the RCMP on the
25 Monday morning on this matter, which he describes

1 is a very serious matter?

2 A Um-hum.

3 Q What role did you play, sir, in the
4 decision to have the RCMP investigate?

5 A My recollection is that I spoke to
6 Mr. Kaplan about it and we decided that would be
7 the best course of action. I mean, I think it's
8 the only alternative in Manitoba. If you're going
9 to investigate another police force, you would
10 probably ask the RCMP to do it, at least if you're
11 dealing with a small municipal force like East St.
12 Paul.

13 Q The meeting that's referenced in the
14 e-mail at the top, sir, the May 12th e-mail at
15 3:42 p.m. asking about a meeting for the three of
16 us, did you attend that meeting, sir?

17 A No, I don't believe I did. I think I
18 was in Newfoundland that week, I had some
19 prosecutions meeting. That's the reference to Don
20 being out of town.

21 Q Was it your understanding that
22 somebody would have attended on your behalf?

23 A No, I think at that point it would be
24 Mr. Kaplan would be dealing with it.

25 Q What about Mr. Lawlor?

1 A I think Mr. Kaplan brought Mr. Lawlor
2 in. Mr. Lawlor is a general counsel, and he would
3 have, I think, asked Greg to be involved just in
4 his role as general counsel. He wasn't there
5 really as a substitute for myself, just another
6 person to get advice from.

7 Q Were you kept apprised of the meeting
8 and what took place, what was discussed?

9 A Well, my recollection is I was
10 certainly aware the RCMP were going to be
11 investigating the conduct of some members of the
12 East St. Paul Police. I think that would be the
13 extent of my awareness at that point.

14 Q What we know from the evidence we have
15 heard thus far is that this report prepared by
16 Mr. Carter, provided to Mr. Minuk, brought to the
17 attention of Mr. Kaplan and others, ultimately
18 lead to an adjournment of a Preliminary Inquiry,
19 and a letter was drafted and sent to Mr. Wolson.
20 And there was some discussion with respect to how
21 best to put this in writing to Mr. Wolson. And
22 you're nodding your head?

23 A Only because I'm aware of this by
24 reviewing the documents. I don't think I was
25 involved in that discussion.

1 Q And what I wanted to know, sir, is it,
2 from your perspective, usual to get senior Crowns
3 from within the office involved in preparing a
4 letter centering on an adjournment possibility
5 that an independent Crown could presumably write
6 on his or her own?

7 A I don't think that's a usual practice.
8 This was a difficult situation, though. I mean,
9 this case, I don't want to use an over-used
10 analogy, but it seemed like every time --
11 everything that could go wrong with this case
12 seemed to go wrong. So it presented difficult
13 issues, and I think Mr. Minuk was seeking someone
14 to talk to about how best to deal with them. But,
15 no, this isn't standard practice.

16 Q No, because this would be something
17 that, in terms of the spectrum in terms of things
18 that are going to go wrong, drafting a letter and
19 sending it to the defence lawyer saying, well, we
20 have to get an adjournment, putting it as
21 eloquently as you want to deal with the issue,
22 would seem to fall into the range of things that
23 Mr. Minuk could have done?

24 A It would. But if your star witness
25 was away or if your star witness was sick, I would

1 certainly expect that Mr. Minuk would send that
2 letter himself. But here, we are dealing with
3 another issue. We are about to investigate the
4 investigating police service, or we, the RCMP are
5 about to launch an investigation. So it's a
6 little different situation. But I certainly agree
7 on a regular -- normally, you wouldn't think that
8 you would need to consult with, you know, a couple
9 of people about sending a letter.

10 Q What was your understanding of what
11 the focus of the investigation would be that the
12 RCMP was conducting?

13 A My understanding, the focus was on
14 charges of obstruction or an investigation of an
15 obstruction.

16 Q So that investigation that the RCMP
17 was conducting was focusing on alleged wrongdoing
18 of East St. Paul Police Officers?

19 A Correct.

20 Q On June 16, sir, a decision was taken
21 to retain Doug Abra for an opinion on Officer
22 Bakema and possible charges. I'm wondering, sir,
23 did you play any role in that?

24 A I was aware of it. I don't remember
25 whether we discussed it. I think, you know, there

1 might have been a discussion about -- that
2 Mr. Minuk should not be the one rendering that
3 opinion.

4 Q That will go without saying, I take
5 it?

6 A Okay.

7 Q Mr. Minuk would not be involved. He
8 had carriage of the Harvey-Zenk prosecution.

9 A Exactly.

10 Q I take it one step further, it would
11 be inappropriate for him, I take it?

12 A Seems to, yes, it wouldn't be a good
13 idea.

14 Q When did you first learn of Doug Abra
15 becoming involved? Can you answer that?

16 A Mr. Kaplan and I would have discussed
17 it, but I certainly couldn't put a date to it or
18 when or the timing. It's just something that I
19 was aware of.

20 Q And in terms of how it came about, was
21 it something that you and Mr. Kaplan would have
22 decided upon?

23 A I don't think I would have been
24 directly involved. And Brian, pardon me,
25 Mr. Kaplan deals with these matters on a

1 day-to-day basis, he has done for many years.
2 Basically, his role would be to make decisions and
3 let me in on them. If they are difficult
4 decisions or he wants to talk to someone about it,
5 sometimes I'd be that person.

6 Q Sir, I'd like to switch focus now and
7 look at the resolution, or the beginning of the
8 resolution in the case. And if I could refer you
9 to conditional sentence policy memo, which is
10 found at G-45, which is Exhibit 217, page 1385.

11 THE COMMISSIONER: What is that
12 exhibit?

13 MR. CLIFFORD: The exhibit reference?

14 THE COMMISSIONER: Yes.

15 MR. CLIFFORD: 217.

16 BY MR. CLIFFORD:

17 Q Sir, this is our exhibit centering on
18 a conditional sentence policy within Manitoba
19 Department of Justice Prosecutions.

20 A Yes.

21 Q And what we see here is that in cases,
22 sir, that involve death, conditional sentences
23 should not be recommended unless in exceptional
24 circumstances, and that a case conference must be
25 held in a case involving death.

1 And I'm wondering, sir, if you can
2 comment generally on the process of the case
3 conference?

4 A Yes. Essentially what occurs is a
5 Crown Attorney will have a case like this. They
6 will come to a point where there's perhaps a
7 proposed resolution of the matter, or
8 alternatively, they may be in the process of
9 deciding not to proceed with it. So if that's the
10 case, then the Crown Attorney is expected to
11 prepare a memorandum outlining the issues in the
12 case and the facts. Then we convene a meeting.
13 It would typically involve a senior Crown Attorney
14 and one or two directors, and sit down and discuss
15 the case in order to reach a decision about that
16 case.

17 I suppose, if I could elaborate
18 slightly, that process is designed so that when --
19 if the Crown Attorney goes forward with a
20 resolution of the case and it's controversial, the
21 idea is that the department is able to speak up
22 for the Crown Attorney to say it was a
23 departmental decision, and frequently try to
24 defend the decision that was made. The other
25 benefit, of course, is that people like me are

1 aware of the case coming up, are able to give some
2 kind of briefing through a controversial issues
3 alert to, across to the Deputy Minister's office,
4 and keep them informed so they are not surprised
5 at 6:00 a.m. in the morning when they read about
6 that case in the paper.

7 Q And we see that, sir, under the
8 procedures section, number 3 at page 1687.

9 "The Assistant Deputy Attorney General
10 must be alerted in advance of the
11 sentencing date."

12 A Correct.

13 Q So these are to take place and,
14 moreover, you are to be advised. And in addition,
15 sir, to keeping you apprised of what's happening,
16 what do you understand to be the purpose within
17 the Crown's office with respect to assisting the
18 Crowns that are involved in the process, for
19 instance, the line Crown that may be faced with
20 the dilemma, what should I do in this case?

21 A Well, it's to get a number of people
22 with experience together. Sometimes, if there are
23 difficult legal issues, we might also involve
24 general counsel who are most experienced lawyers.
25 And they are lawyers who are doing trials. I

1 mean, it's been a while since I have done a trial.
2 So what I bring to it -- I hope I bring something
3 to it, but sometimes in terms of tactical
4 decisions or legal issues, it's more appropriate
5 to bring general counsel into the mix, so that the
6 lawyer has some support. And I can think of one
7 example where a lawyer, on a case, I can't
8 remember if it was a drive dangerous cause death,
9 had real concerns about proceeding. And after
10 going through it with general counsel, we had a
11 strong view as to how to proceed, and then
12 ultimately, though, we decided to assign a more
13 senior Crown to work with the junior Crown on it.
14 So it gives the Crown the confidence, I hope, in
15 their decision. But it also may identify issues,
16 and sometimes it will identify issues where the
17 Crown may not be taking the appropriate approach.

18 Q Mr. Kaplan referred to the old adage,
19 three heads are better than one. And what I'm
20 hearing from you and gathering from his evidence,
21 sir, is that these conferences provide a forum
22 where there can be information sharing, there can
23 be a common understanding, support can be given,
24 there can be distinctions made about why this may
25 be inappropriate or appropriate, and there can

1 just generally be help and a sounding board for
2 the line Crown who is faced with these types of
3 decisions?

4 A Yeah, I would agree with all of that.

5 Q Now, what about the independent
6 prosecutor, sir, when it comes to having an
7 environment such as that? To take the opportunity
8 to engage this type of assistance, we see in the
9 policy that it doesn't exist for the independent
10 prosecutors. And before we get into the nuances
11 of that, do you agree, sir, that generally, if we
12 were to make recommendations at some point that it
13 would be a good idea to put something in place,
14 some type of a conference system for independent
15 Crowns?

16 A I think I would agree with that, and
17 certainly, you know, some of the problems here. I
18 know you're going to ask me about the independence
19 of the independent counsel. I think, you know, if
20 you have those processes articulated, you know how
21 they are to be done, I think you avoid those
22 issues. And I think it would be very useful.
23 Because even someone of the ability or the
24 experience of Mr. Minuk is going to face issues
25 that are very difficult. In this case, these are

1 really difficult issues. And as Mr. Kaplan said,
2 it's really good to have other people you can go
3 to, and a sounding board. And then in other cases
4 you get into very difficult legal issues. And
5 it's good to have someone who has dealt with those
6 issues. For example, charter issues or, you know,
7 kind of specialized issues in prosecutions that
8 might come up in a case.

9 Q Now, if you have a group of four
10 individuals or so that are relied upon, and you
11 feel as though meet the criteria and have the
12 level of experience, what about the notion of
13 these individuals being available to one another,
14 conferencing together?

15 A Well, I think that's, you know, I
16 think that's appropriate, you know, to use
17 those -- I mean, I think I have some awareness
18 that there may be some suggestion that you have
19 kind of independent counsel talking to each other,
20 if that's what you're getting at. I think that's
21 a good idea. I do think we need to expand
22 somewhat. But I also think if that was part of
23 your job as independent counsel, you know, to be
24 involved in this, and you were in effect paid to
25 do that, you know, and you were available, it

1 seems to me that gets you around some of the
2 issues about the appearance of things. It may not
3 work for every issue because, as I say, for
4 example, possess child pornography cases, there
5 are issues in there that relate to technology that
6 most lawyers don't know anything about, so you
7 might have to go to someone in our department who
8 does those cases, or charter issues. And that was
9 a concern that former Justice Krindle expressed, I
10 think, when she did our policy, that we want to be
11 very careful on the position a prosecutor acting
12 on behalf of Manitoba Justice takes on charter
13 issues. That litigation is very complicated.

14 And I know I'm going on, but also
15 within our constitutional law group, there are
16 some very, very skilled lawyers, and I think it
17 would be helpful for many independent prosecutors,
18 no matter how good they are, to have the benefit
19 of that specialized knowledge.

20 Q Perhaps even have the benefit of both,
21 the benefit of one another as a group and the
22 benefit to consult openly with certain members of
23 the Crown's office?

24 A I would agree with that. It sounds
25 like a reasonable proposal.

1 Q Now, sir, let's move forward from the
2 general concept of the case conference and deal
3 with what emerged in our case. And I'd like to
4 bring your attention to a document found at volume
5 R-4, page 3401.22. And the exhibit reference,
6 Mr. Commissioner, is Exhibit 48, R-4 page 3401.22.

7 A I have another exhibit here, 48 B.
8 Should I have that as well? Thank you.

9 Q Do you have that memorandum, sir?

10 A I do.

11 Q Okay. And this is dated July 13,
12 2007, and it is to you from Brian Kaplan?

13 A Correct.

14 Q And can you just take a moment, sir,
15 and explain what took place once you received
16 this?

17 A I would have reviewed it, and as the
18 notation at the top of the file, CIA file, I
19 believe that's my handwriting. I would have been
20 in concern that the -- that CIA, and I think you
21 know what that is.

22 Q I'll get you to put it on the record
23 for us.

24 A Controversial issues alert.

25 Q Thank you.

1 A And essentially that's the process by
2 which we advise the Deputy Minister's office that
3 something is coming up that they need to be aware
4 of. We are asked to try as often as possible to
5 get those across the street the week before the
6 sentencing, or as much in advance of the
7 sentencing, so that the Minister can be briefed.
8 And so that is the purpose of my notation, is that
9 once I reviewed this, that the matter be sent
10 across the street.

11 Q Now, what Mr. Kaplan is indicating to
12 you here is that this is the East St. Paul Police
13 case, which was assigned to Marty Minuk two years
14 ago. You will recall all the issues dealing with
15 the investigation and evidentiary problems. Can
16 we take it from this that there is a basis for
17 your recollection, either through conversation or
18 meetings with him?

19 A As I said, right from the beginning,
20 you know, the case caught my attention just as,
21 just for someone who works for Manitoba Justice.
22 But as we have already discussed, I was aware of
23 the difficulties with the obstruct and so on, or
24 the alleged obstruct, pardon me.

25 Q Did you follow up with Mr. Kaplan and

1 discuss this with him?

2 A You know, I was away on July 13th, it
3 was a Friday, and I wasn't there. And I don't
4 believe I did have any further discussion as to
5 the substance of this memorandum. I don't know if
6 Mr. Kaplan -- I don't know if Mr. Kaplan was
7 around the following week or not.

8 Q What Mr. Kaplan refers to in this
9 meeting is a Friday meeting which allowed a better
10 understanding of the outside counsel's position,
11 and his recommendation that the offer or the
12 resolution he was proposing should be accepted.
13 There's reference to running the background by a
14 couple of senior Crowns for their opinion and
15 gathering together Zane Tessler and John Peden?

16 A Correct.

17 Q This meeting or gathering took the
18 form, I take it, of an ad hoc type of conference?

19 A Yes.

20 Q Was that your impression of what had
21 taken place?

22 A Very much. I think it would have been
23 a matter of getting those people together and just
24 sitting down and talking about it.

25 Q In furtherance of achieving some of

1 the beneficial aspects we talked about earlier
2 that can derive from a case conference?

3 A Correct.

4 Q Had you seen this happening before
5 with independent prosecutors where a meeting,
6 conference, call it whatever you'd like, is taking
7 place?

8 A I don't recall doing this before. I'm
9 not -- I think certainly there would have been
10 discussions between independent counsel and
11 perhaps Mr. Kaplan, but I don't recall this
12 process. Which doesn't mean it didn't happen, I'm
13 just not aware of it.

14 Q Sir, I wanted to ask you whether a
15 document was forwarded to you, and that's at
16 R-2.91.49 at page 3236, and that's Exhibit 227.

17 In these e-mails, sir, there's
18 reference to the plea going in tomorrow,
19 questioning where the pleas are going to be
20 entered. An e-mail from Marty Minuk at page 3236:

21 "Brian, Colleen, I am writing to
22 update you on the Zenk matter which is
23 to start tomorrow."

24 Were these brought to your attention, sir?

25 A This is the difficulty when you review

1 material. I don't think so. I mean, I've seen
2 them now, but I don't believe being brought up to
3 date with that. I don't believe so.

4 Q Who would have been responsible for
5 the controversial issues alert?

6 A It comes out of my, generally it comes
7 out of my office and my assistant would prepare
8 it, but I think sometimes Colleen Ireton, who is
9 Brian Kaplan's assistant, would also prepare it.

10 Q What I'd like to do is refer you to
11 R-2.91.51, page 3240.

12 THE CLERK: This is an exhibit that
13 has not been filed.

14 MR. CLIFFORD: This has not been
15 filed, R-2.91.51, 3239 and 40.

16 THE CLERK: Exhibit 244.

17 (EXHIBIT 244: R-2.91.51, Hard copy of
18 email from Colleen Ireton to Martin
19 Minuk sent 7/16, 2007 9:43 a.m.
20 attaching two page document title
21 Controversial Issues Alert July 16,
22 2007)

23 BY MR. CLIFFORD:

24 Q So that is the controversial issues
25 alert --

1 A It is.

2 Q -- in its form. And does that assist
3 you, sir, in determining whose office it
4 originated from?

5 A Well, yeah, my view is that it
6 probably came out of Brian's office through
7 Colleen. That's my view. I think my reference to
8 CIA in the exhibit referred to earlier, would be
9 my immediate reaction on reading that memo would
10 be to write CIA across and make sure the
11 information got across the street. I think what
12 was happening was a parallel process that
13 Ms. Ireton was handling.

14 THE COMMISSIONER: When you say across
15 the street?

16 THE WITNESS: Deputy Minister's
17 office.

18 THE COMMISSIONER: Okay.

19 THE WITNESS: It's literally across
20 the street.

21 THE COMMISSIONER: Part of your
22 responsibility to keep them informed.

23 THE WITNESS: It is. And when you, in
24 this case, this has got controversy written all
25 over it, so you want to make sure they know about

1 it.

2 THE COMMISSIONER: Thank you.

3 BY MR. CLIFFORD:

4 Q You review the controversial issues
5 alert. I take it, it's going across the street,
6 but, figuratively speaking, it's going up as well?

7 A That would be the normal process, you
8 know, and that's certainly, generally they come
9 through my assistant, but there is a bit of, you
10 know, it's not always kind of a rigid formula.
11 And I think here it looks like Mr. Kaplan took the
12 initiative through Ms. Ireton to make sure that
13 they are aware of this.

14 Q Okay. Would the controversial issues
15 alert be used by individuals like yourself and
16 those that you report to in order to deal with the
17 press, for instance? Or if they had to make a
18 comment, would they rely on the controversial
19 issues alert as being a source of information that
20 could be relied upon?

21 A They would rely on it as a source of
22 information. Frequently, they will ask us for
23 more information if the Deputy Minister or the
24 Minister are going to be involved in those
25 comments. And if I was the one going to be

1 involved in the comments, I might also ask for
2 information. It would really depend on how
3 thorough and complete, and the comfort level you
4 get from reading the CIA as to whether you're in a
5 position to comment.

6 Q Okay. When you read this, sir, and
7 looking at what it indicated:

8 "The opinion of the Crown, Marty
9 Minuk, is that resolving this matter
10 by taking the plea as offered is a
11 very good resolution. The evidence in
12 support of the charge in both the
13 drive impaired and refusal of
14 breathalyzer was very weak."

15 Were you in agreement with that?

16 A Yes, that was my understanding of the
17 facts.

18 Q It's also documented here:

19 "By reason of the shoddy work of the
20 East St. Paul Police, the charge of
21 refuse breathalyzer is bound to fail."

22 A On that issue, at that point, I think
23 I would have been accepting Mr. Minuk's
24 professional opinion on that. I do remember
25 getting a little more information about that

1 subsequent to that and running it by a Crown
2 within our office, who does a lot of these cases.
3 That Crown confirmed the view of Mr. Minuk.

4 Q Okay. It says here:

5 "The Winnipeg Police Service members
6 do not describe Zenk as being
7 impaired, and in speaking to the RCMP
8 expert, his assessment that the plea
9 may in fact be more than what might
10 happen had the matter gone to trial.
11 What is left factually is speed within
12 the posted level, no evidence of
13 impairment, no evidence of erratic
14 driving before the collision."

15 A Um-hum.

16 Q This is language, sir, that we have
17 heard. Who drafts the controversial issues alert?
18 Were you aware of who the drafter was of this
19 document?

20 A I'd be speculating. I suspect
21 Ms. Ireton simply took, in effect, took
22 Mr. Minuk's e-mail and put it into the
23 controversial issues alert. That's what it looks
24 like to me. I think Mr. Kaplan probably reviewed
25 that, but I don't know that -- well, I imagine he

1 did.

2 Q And once it's provided to you and you
3 provide it to others, you are in a position of
4 basically standing by it?

5 A That's right. I mean, I suppose if
6 when I read it, I had questions about it, I would
7 follow up, in the normal course, or if there was
8 information that I, you know, wanted or questions,
9 I would follow up. But it's certainly, you know,
10 once we send this to the Deputy Minister's office,
11 this is what's going to happen. I mean, we're
12 letting them know what decisions have been made.

13 Q Did you have any questions, sir, on
14 the controversial issues alert?

15 A No.

16 Q Any follow-up discussion with Brian
17 Kaplan about it?

18 A Certainly not to going to the
19 substance of the decision. I might have talked to
20 him about it, but I was not -- I mean, I accepted
21 at face value what was in the information conveyed
22 by Mr. Minuk, accepted his opinion.

23 Q We know, sir, that shortly after your
24 discussions in this regard and the issuance of the
25 controversial alert on the 17th, the matter was in

1 court, and there was, for all intents and
2 purposes, a plea, and the matter was put over for
3 further submissions and a sentencing hearing. And
4 that brings us to August 22nd. And I can tell
5 you, sir, that the Commission has received
6 information from Mr. Minuk wherein he advised that
7 he sent his actual submissions to you and
8 Mr. Kaplan for review, for going to court. And
9 what I'll do, sir, is I'll read to you what
10 Mr. Minuk indicated in his interview with
11 Commission Counsel. So, what I'm reading here,
12 sir, is the transcript of my interview with Marty
13 Minuk on May 2nd, 2008.

14 A Thank you.

15 Q "Q Now, when the matter..."

16 MR. NOZICK: What page?

17 MR. CLIFFORD: I apologize,

18 Mr. Nozick, it would be helpful if I gave you the
19 page -- 89, line 5.

20 BY MR. CLIFFORD:

21 Q "Q Now, when the matter is remanded
22 over to the 22nd day of August, this
23 is the day, Mr. Minuk, that you put on
24 record the facts that are actually
25 grounding the plea.

1 A Right. My recollection, sir, is
2 that I would have prepared a written
3 submission. That written submission
4 would have been forwarded over to
5 Mr. Kaplan and Mr. Slough. They would
6 have had an opportunity to read it,
7 and once having read it, then received
8 what I would consider to be, some
9 extent, an approval. I would have
10 gone forward with it and would have
11 made any amendments or changes that
12 they would have asked or suggested
13 that I make.

14 Q So your submission would have been
15 vetted by --

16 A I don't know, I guess that's the
17 word, vetted, but I gave them to them
18 in advance.

19 Q Mr. Kaplan and/or Mr. Slough?

20 A Yes."

21 Now, we don't have any documentation
22 supporting that, and I'll put that to you, sir,
23 but this is what Mr. Minuk indicated. And did you
24 receive his August 22nd submissions?

25 A I do not recall receiving it or

1 reading it.

2 Q I'm going to give you a phrase,
3 "anecdotal historical evidence of alcohol
4 consumption." When did you first hear or read
5 that phrase?

6 A I'm sure -- I'm certainly very aware
7 of that phrase, and I don't know whether I read it
8 in media reports or I read it in the transcript.
9 I think, certainly after August 22nd I became much
10 more aware of this -- I was aware of it, but I
11 became more involved in sort of looking at what
12 was going on, and I started reading -- I read the
13 transcript, so I suspect the first time I heard
14 that was in the transcript.

15 Q Involvement, sir, subsequent to August
16 22nd, can you tell the Commission anything about
17 that?

18 A Well, as soon as the media reports
19 started --

20 THE COMMISSIONER: Put the microphone
21 in front of you.

22 THE WITNESS: As soon as the media
23 reports started, I began to get questions from the
24 Deputy Minister's office about this. I also
25 became, you know, concerned with what was going

1 on. So, again, became -- I guess the best way to
2 find out what went on is to look at the
3 transcript. So I became aware of that, and I was
4 aware that, you know, that the hearing in the
5 sentencing did not go smoothly. And so at that
6 point, I had a heightened interest in trying to
7 find out what was going on and what went on.

8 BY MR. CLIFFORD:

9 Q And can you elaborate on that, sir,
10 what you did as a result of that heightened
11 interest?

12 A Well, I think ultimately there were
13 conversations between myself and Mr. Minuk. I
14 don't remember exactly whether it was a meeting or
15 whether it was a telephone conversation, but I
16 think in speaking to Mr. Minuk, I do recall -- I
17 wasn't expecting to be at this hearing giving this
18 evidence -- suggesting that Mr. Minuk ought not to
19 take a hit for the East St. Paul Police, that he
20 should explain to the extent possible why, what
21 was behind the deal, the arrangement, and that he
22 ought to give the court as much evidence as
23 possible -- as much information, pardon me, as
24 possible with respect to the basis for the plea
25 bargain. That's sort of my involvement with

1 Mr. Minuk. I'm not sure if that's what you were
2 looking for or not.

3 Q All right. Moving forward to the next
4 date, which was the September 12th hearing. We
5 know that Mr. Minuk and Mr. Wolson were required
6 to go back into the sentencing hearing process.
7 Judge Wyant had articulated some concern. And
8 contemporaneous with that, of course, was this
9 media attention that the case was attracting, and
10 you had to deal with that.

11 Going back into court on
12 September 12th, Mr. Minuk had prepared
13 submissions, and Commission Counsel has received
14 them and they had been dealt with. Do you recall
15 reviewing his submissions, going into court --

16 A I'm sorry, I don't recall reviewing
17 them prior to him going into court. And my reason
18 for thinking that is that subsequent to that
19 appearance, Mr. Minuk sent me an excerpt from
20 those submissions dealing with one particular
21 issue by way of e-mail. When I read that, I
22 thought it was, I thought it was probably
23 something that Chief Judge Wyant would have
24 readily understood. I thought, wondered how much
25 the media and family would understand what

1 Mr. Minuk was getting at in that excerpt. And
2 subsequently I read the submission that Mr. Minuk
3 had prepared and saw that Mr. Minuk had been
4 considerably more expansive in his comments and
5 had provided quite a bit of information to the
6 court about the basis for the deal and so on.

7 Q You don't discount the possibility, I
8 take it, that Mr. Minuk's submissions wouldn't
9 have come across your desk prior to going into
10 court?

11 A I'm sorry, I really don't think they
12 did. That's the best I can do.

13 Q Were you aware of whether he had
14 forwarded them to Mr. Kaplan?

15 A I'm aware of it now. When I became
16 aware of that, I'm sorry, I just can't tell you.

17 MR. CLIFFORD: Madam clerk, there was
18 a document that I was going to show the witness,
19 and I may not have given it to you, in fairness,
20 R-2.91.65, page 3266.

21 THE COMMISSIONER: The page again,
22 excuse me?

23 MR. CLIFFORD: Mr. Commissioner, page
24 3266.

25 THE COMMISSIONER: Thank you.

1 THE CLERK: Exhibit number 240.

2 THE WITNESS: Thank you.

3 BY MR. CLIFFORD:

4 Q You have Exhibit 240 before you, sir.

5 A Yes.

6 Q And it's an e-mail here from
7 Mr. Minuk, September 9th, it's a draft. And he's
8 looking at submissions, and he's looking for
9 comments or suggestions. And you see one of the
10 first case references is the Gardiner case?

11 A Yes.

12 Q And this is what I'm interested in,
13 sir. You understood that this was provided to
14 Mr. Kaplan for his review?

15 A Yes, and I was aware of a Gardiner
16 issue.

17 Q And the question that I'm centering on
18 is whether it was provided to you prior to him
19 going into court?

20 A My answer is the same, I don't believe
21 so, because this was the, I think -- no, I don't
22 believe so.

23 Q I asked Mr. Minuk about this as well
24 on May 8th, 2008, when I interviewed him. At page
25 98, the question starts off in the middle of a

1 sentence, not one of my best questions I guess.

2 "Q --of the Commission disclosure
3 through pages 1 to 10, and I'll
4 summarize the submissions of His
5 Honour. He is again expressing his
6 concern to both you and Mr. Wolson,
7 giving some further detail following
8 up on his correspondence of August
9 31st, 2007, that he's got a concern
10 with respect to the fact that the
11 individual is a police officer. He's
12 also articulating to a certain extent
13 that he should give reasons for his
14 concern to counsel and should give
15 counsel the opportunity to come back.
16 And you start your submissions, and
17 you open your submissions with a
18 reference to the Gardiner decision
19 being the duty of the Crown?

20 A Uh-huh.

21 Q Now, I understand, sir, that those
22 submissions were, in fact, vetted or
23 approved by Mr. Kaplan or Mr. Slough?

24 A They were, that's correct.

25 Q One of the things that you

1 indicated in your submissions was that
2 you made it clear to the judge that
3 the charges were stayed -- were not
4 stayed as a result of a plea of guilt
5 to the dangerous driving causing
6 death."

7 Does that assist you, sir, in whether he may or
8 may not have provided you with those submissions
9 for your --

10 A I'm sorry, I really don't remember
11 reading this. You know, and I think I would. It
12 certainly would be unusual for submissions to be
13 provided to us prior to a hearing and I would
14 think I'd remember that. I'm afraid I'm giving
15 you the best answer I can.

16 Q And when you say it would be unusual
17 for someone to provide us, you are being plural
18 there, and I take it the "us" embraces you and
19 Mr. Kaplan?

20 A No, the us would be -- well, I guess
21 that's the us. I was really thinking of Manitoba
22 Justice when I said us. But it's just, it would
23 be unusual.

24 Q I asked earlier about the reasonable
25 expectation that an independent special prosecutor

1 could draft a letter to go to the defence counsel.
2 And you said usually you would expect that. I
3 take it, if I put the suggestion to you that an
4 independent counsel should be drafting their own
5 submissions, and would have the level of
6 experience to draft submissions in response to a
7 clearly articulated concern raised by a judge,
8 that that would be the case?

9 A I would agree with that, although I
10 think it's important, you know, to have the
11 context. Because as I said before, Mr. Minuk and
12 I had had the discussion about what had happened
13 on August 22nd, and I had said you need -- not
14 said -- I had suggested to him, the more
15 information he can give the court about the basis
16 for the plea, the better.

17 Now, perhaps that triggered this step.
18 But, again, I don't remember getting this.
19 Anyway, I just want to provide that context.
20 Because, you know, normally we don't have those
21 discussions with counsel about how things are
22 going, but this case was going not well.

23 Q Well, one of the things that's --
24 you've had the opportunity to review these
25 submissions?

1 A I have.

2 Q And I take it that you'll agree with
3 me that certainly the concern the judge had was
4 expressed quite clearly. He had a concern with
5 respect to the individual being a police officer
6 being held to a higher duty?

7 A Yes.

8 Q Come back into court, case law
9 requires me to notify you this is the reason, and
10 it requires me to give you an opportunity to
11 address me in furtherance of my deliberation. But
12 a lot of these submissions are designed in
13 centering around Gardiner and the negative media
14 that the case is getting. And I see you
15 chuckling, and I take it you are in agreement with
16 that?

17 A Hardly chuckling, but you are right.

18 Q No, and I don't mean that in a
19 pejorative way, but a lot of the submissions are
20 geared towards something other than what the judge
21 is --

22 A To be honest, I was just going through
23 in my own mind why we are talking about Gardiner
24 at this point, when the Gardiner issue was about
25 to erupt dealing with the issue around previous

1 drinking.

2 Q And one area that I was concerned
3 about and wanted to ask you about, Mr. Slough, is
4 that there is some editing that appears to have
5 taken place. And not only is the draft submission
6 here dealing with the Gardiner issue, but it's
7 also addressing, at page 3 in the document, or at
8 page 3269, the media.

9 "Recently much has been said about
10 this case outside the courtroom which
11 is not evidence. Juries are reminded
12 by judges on a daily basis that what
13 they hear and read outside the
14 courtroom about the case they are
15 trying is not evidence."

16 It goes on further at the bottom of that
17 paragraph:

18 "Further, I am confident that this
19 court and others disregard
20 baseless...",
21 amateur is crossed out,
22 "...yellow journalistic commentary
23 upon the professional integrity of
24 counsel which breeds and fosters
25 disrespect for the court process and

1 Canadian judicial system."

2 Now, these are pretty strong submissions. And
3 they are designed, would you agree, primarily to
4 address the negative publicity that the case is
5 getting?

6 A That would appear to be the case. And
7 I suppose maybe some redress in Mr. Minuk's mind
8 for the treatment he was receiving at the hands of
9 media.

10 Q Okay. And this is something, of
11 course, that falls into the controversial issues
12 alert. This is your bailiwick. If anybody is
13 going to be concerned about how the public is
14 perceiving this case, it's you?

15 A Yes. That's my responsibility. I
16 don't know if you're suggesting that --

17 Q No, what I'm not --

18 A This would have leapt out at me,
19 frankly, when I read this. This is a tough
20 judgment call as to whether you stay these things.
21 You know, I mean, if you take on the media, you
22 generally lose.

23 Q And having had an opportunity, sir, to
24 look at that paragraph, does that trigger any
25 recollection with you in terms of --

1 A It doesn't.

2 Q Now, dealing with the issue of the
3 proof of consumption of alcohol --

4 A Um-hum.

5 Q -- I take it from your involvement in
6 the case and your earlier interview with
7 Commission Counsel, you are very well aware of the
8 significance of that fact and how it played into
9 the case, and the significance of whether it was
10 proven or not?

11 A I'm aware of the -- I mean, it was a
12 factor that played a -- it was something that was
13 important to the judge. I think the issue is how
14 significant was the consumption of alcohol, and
15 that was really the issue.

16 Q We heard from Mr. Minuk in testimony
17 and he advised, sir, that -- we can see very
18 clearly what happened in court on September 12th
19 from the transcript, but we know through evidence
20 that it got to the point where Mr. Minuk was put
21 to the burden of proof?

22 A Yes.

23 Q Gardiner came back?

24 A Yes.

25 Q And he was faced with it. And there

1 was an adjournment, and he told the Commission
2 that he left the courtroom and he went out and he
3 spoke to you and Mr. Kaplan, during a break, after
4 Mr. Wolson disclaimed the admission of alcohol
5 when the judge pressed him. So I wanted to bring
6 to your attention what Mr. Minuk indicated, sir,
7 as well when I interviewed him, at page 112 on May
8 2nd, 2008. So I'll start at page 111.

9 "Q Now, Mr. Wolson indicated to the
10 court that he doesn't agree that
11 alcohol plays any part in the case.
12 And he clearly stated to the court, I
13 should have indicated that alcohol
14 isn't a factor, because he didn't
15 believe that it was. Then, of course,
16 Judge Wyant put you to the test of, or
17 put you to the question of, look, the
18 defence doesn't agree to this --

19 A Yes, I know that.

20 Q --factor. And then he asked you
21 what you were going to do about it,
22 whether you were, whether you would
23 prove that fact?

24 A Right.

25 Q And did you bring this up with

1 anybody?

2 A I spoke with Mr. Slough and
3 Mr. Kaplan about it.

4 Q And could you tell me about that
5 conversation?

6 A The conversation was to, I
7 reported to them with what the judge
8 had said, to see there was some effort
9 on my part to at least secure an
10 adjournment, put that to them,
11 indicated to them what the situation
12 was, and the response that I gave to
13 the judge was as a result of that
14 conversation."

15 We know what the response he gave to
16 the judge was. He went back into court and he
17 said, I'm not going to call any evidence. So can
18 you tell us about the conversation that lead to
19 that response?

20 A As when I spoke to Commission Counsel
21 earlier, I recall I wasn't certain about
22 Mr. Minuk's involvement. I do remember speaking
23 to Mr. Kaplan about it, and certainly, if
24 Mr. Minuk says I was part of that, I would accept
25 that. So that conversation -- and you used the

1 word, I think Mr. Minuk, pardon me, used the word
2 adjournment. I think it was a recess of not a
3 particularly lengthy duration. And so it would
4 have involved Mr. Minuk advising us as to the
5 nature of that evidence. Because at that point, I
6 wouldn't have been particularly familiar with
7 those facts, advising as to what the nature of
8 that evidence was. And then I guess there would
9 be a discussion as to whether or not that evidence
10 should be called, which of course would mean
11 another -- which would mean an adjournment and
12 then, in effect, a trial on that issue.

13 Q What was your role, sir, in terms of
14 that decision? Were you made aware of the
15 evidence that existed at that time in connection
16 with alcohol?

17 A I believe that Mr. Minuk would have --
18 my recollection is that this really dealt in large
19 part with the evidence of the police officers who
20 Mr. Minuk had been spending -- pardon me, the
21 accused had been spending his time with prior to
22 the criminal offence, and then it would have been
23 as to what exactly Mr. Minuk anticipated they
24 would be saying. That would be kind of the gist
25 of the conversation. And then you get into kind

1 of a cost benefit analysis of what you're going to
2 accomplish by leading that evidence.

3 Q And when you say cost benefit, I
4 understand that you refer to the cost benefit
5 analysis of the evidence, what it would contribute
6 to the evidence?

7 A What are you going to end up with?
8 You know, you are aware that the trial judge is
9 asking for that evidence. And certainly when a
10 trial judge or a sentencing judge is asking for
11 information, a Crown should be trying to provide
12 that information where that evidence, it's going
13 to amount to something that's going to be
14 substantive and probative. And that was the
15 dilemma here. That, as I understood it, the
16 evidence was vague, it wasn't specific as to the
17 amount of alcohol, it wasn't specific as to the
18 timing of the consumption of the alcohol. And
19 therefore, what are you left with?

20 Q Were you aware of the fact that the
21 case included evidence of paramedics who attended
22 at the scene, in the morning, and dealt shortly
23 after the accident with Derek Harvey-Zenk. And
24 both paramedics, who had a great deal of
25 experience, both detected an odour of alcoholic

1 beverage emanating from his breath? And in
2 addition to that, police officers indicated the
3 same thing, that they detected an odour of
4 alcoholic beverage emanating from his breath. And
5 in fact, Sergeant Carter's evidence was that he
6 would even go further, and indicated that the
7 individual was impaired. And I don't want to go
8 into the paradigm of comparing impairment to
9 alcohol consumption. That's I think been covered.
10 But there was significant evidence with respect to
11 the presence of alcoholic beverage emanating from
12 his breath?

13 A If I could, again, and it's hard for
14 me to sort out what I knew then, what I know now
15 and what Mr. Minuk told me. But if we assume that
16 I was aware of those factors, I think the dilemma
17 that Mr. Minuk faced, and the dilemma that we are
18 trying to resolve was, you don't get to just read
19 in -- you don't get to just read in those facts to
20 the judge. That's not proof. You call witnesses.
21 And I think Mr. Wolson, who is more than
22 competent, would also be insisting that you call
23 all the evidence on that point. And I think, as I
24 understand it, there were also people who said
25 they didn't smell alcohol, there were also people

1 who said he wasn't impaired. And then you have
2 the very vague, and again I haven't read the
3 transcript, but it's my understanding the evidence
4 of the Winnipeg Police Service Officers was vague
5 as to -- just let me finish. When you put all
6 that together, what have you got? That's the
7 question we are facing. I'm not saying this is an
8 easy decision, but what have you got when you put
9 that all together? And it was our view, or it was
10 based on what Mr. Minuk told us, and it's still my
11 view that what you've got is something that
12 doesn't meet the Gardiner test and is really of
13 little assistance to the judge.

14 Q When you were engaged in this dialogue
15 with Mr. Minuk on the telephone, dealing with this
16 issue, were you in Mr. Kaplan's office, do you
17 recall?

18 A That's how I remember it.

19 Q On the speaker phone?

20 A Yes. I just have this recollection of
21 Brian, of talking to Brian about it, Brian being
22 Mr. Kaplan.

23 Q And I guess, I take it, sir, the
24 discussion was centering on, should this happen or
25 not, should we call evidence?

1 A Yes.

2 Q Was there ever any suggestion made to
3 you that I can't call any evidence on alcoholic
4 consumption, I made a plea bargain, and one of the
5 components of the plea bargain was that I don't
6 tender that evidence. And in fact, Mr. Wolson
7 contacted me days prior to coming into court
8 today, and I sort of told him, look, I'm not going
9 to prove it. Did anything like that come up?

10 A No.

11 Q Did you have the impression at all
12 that Mr. Minuk's hands were tied, that he couldn't
13 call that evidence as a result of a plea bargain
14 arrangement he entered into with Mr. Wolson?

15 A No. It's a very different discussion.

16 Q Did you talk to him about it
17 afterwards? Did you talk to Mr. Minuk afterwards
18 when he came out of court on September 12th?

19 A I think we had a talk about how things
20 went. I believe that's the case. I certainly
21 spoke to Mr. Minuk on a number of occasions after
22 that hearing. By that time, the Deputy Minister's
23 office was very interested in this case. I was
24 getting lots of requests for information. So then
25 I began to speak to Mr. Minuk pretty regularly.

1 Q When you were speaking to him, did you
2 ever ask him about the nature and full extent of
3 the negotiation or the resolution that he came to
4 with Mr. Wolson?

5 A I think, if you are referring again to
6 the undertaking, the first time I heard about that
7 undertaking was last week. I ran into Mr. Wolson
8 on the street, in the course of our conversation,
9 he mentioned it. That is the first time I knew
10 about that.

11 Q I take it --

12 A After he testified.

13 Q Well, you know what his testimony is
14 then. Mr. Wolson indicated that --

15 A He told -- he told me that's what he,
16 that there was an undertaking. I hadn't -- that
17 was news to me.

18 Q Well, I'll summarize what he indicated
19 to the Commission, and I'll do it fairly. And if
20 I don't, I'm sure I'll hear about it. But he said
21 that prior to going back in, he thought this was a
22 concern. He concluded that he may not have
23 handled the issue of alcohol consumption in the
24 best way on the first day in court. He knew that
25 there was potentially an issue. He got in touch

1 with Mr. Minuk and said, alcohol is not a factor
2 in this case and I'm going to clear that up, I'm
3 going to indicate that that's the case. Do you
4 have an issue with this? He said Minuk said that
5 he didn't have an issue with it.

6 It's hard to reconcile that with a
7 telephone call you had, isn't it?

8 A It is. I didn't know that.

9 Q Let me talk to you, sir, and ask you
10 some questions about what happened afterwards.
11 Moving to September 14th of 2007, dealing with
12 R-2.91.71.

13 THE CLERK: It's not been filed.

14 MR. CLIFFORD: It's not been filed as
15 an exhibit. Page 3286.

16 THE CLERK: Exhibit 245.

17 (EXHIBIT 245: R-2.91.71, Hard copy of
18 email from Martin Minuk to Don Slough
19 sent 9/14/07 7:48 a.m.)

20 MR. CLIFFORD: Could we get 32 --
21 R-2.91.72, that's Exhibit 233. They go in
22 sequence.

23 BY MR. CLIFFORD:

24 Q Now what we see here, sir, is an
25 e-mail from Mr. Minuk to you, 9/14/07, cc'd to

1 Brian Kaplan. And what he's referring to here is
2 erroneous reporting of the paper. And what he's
3 doing here is, he says:

4 "I had prepared text for the last
5 appearance and I am copying here what
6 I said for you to read. I hardly
7 think this fails to tell or explain."

8 So, if there is a pattern of Mr. Minuk sending
9 materials to you and Mr. Kaplan, this is again --

10 A This is, of course, post his
11 submissions.

12 Q The aftermath, yeah.

13 A And this, in fact, is the e-mail that
14 made me think I hadn't read his submission,
15 because this -- I referred to that earlier --
16 because I remember reading this thinking, I'm not
17 trying to be critical, but it's very legalese.
18 You know, there is a lot of references to cases
19 and so on, and I just wondered, and I didn't write
20 Mr. Minuk back, of course, wondered in my own mind
21 the extent to which the family and to some extent
22 the media would understand what he's getting at
23 here. The judge would. So that just made me
24 think. You know, and here at this point, Marty is
25 just -- Mr. Minuk, pardon me -- is under sustained

1 relentless attack. And I think, you know, this is
2 part of him responding to that and responding, I
3 guess, to concerns that are being raised.

4 Q Before we move forward into your
5 response and your actions, could I ask you,
6 generally speaking, given your level of experience
7 and your work in the past as a line Crown, I know
8 that the Crowns are reluctant to use the word
9 "plea bargain" or that phrase in court, because,
10 as you have said, it draws some heat. But when,
11 in fact, that is happening, when you are
12 presenting a joint recommendation for sentence
13 that is as a result of a true quid pro quo plea
14 bargain, can you give some general comment on an
15 approach a Crown Attorney might want to do in
16 terms of the extent of the submissions?

17 A My advice to a Crown who is doing
18 that, who has got a controversial case where there
19 is a plea bargain, is to give as much information
20 as possible, explain as much as you can. Because
21 in the past, we've had cases where we're agreeing
22 to what might be -- what might be perceived as a
23 lenient sentence. And when the Crown stands up
24 and explains why we're doing it, often that's
25 reported in the media, and kind of the tone of the

1 controversy is lowered, because people at least
2 understand what we're doing. It doesn't always
3 meet with acceptance, but it understands. So my
4 view is, explain as much as you can in a
5 controversial case. I mean, that's always -- I
6 don't think if you go in and take a guilty plea to
7 two B&E's and stay two break enters with intent
8 you have to go into an elaborate elaboration of
9 what you're doing. But on a controversial case,
10 explain.

11 THE COMMISSIONER: We're going to take
12 a break in a few minutes, but I need your
13 assistance on something. We heard from Mr. Wolson
14 about a procedure that is conducted in the
15 Manitoba Provincial Court. And I know you haven't
16 been a line Crown down in the trenches for some
17 years.

18 THE WITNESS: Yes.

19 THE COMMISSIONER: But he indicated
20 that the procedure when there is a plea of guilty
21 is for the counsel to indicate that no arraignment
22 is necessary, that a plea of guilty is going to be
23 entered into a particular charge, and the judge
24 then makes a finding of guilt, or registers a
25 conviction, at least it appeared from the

1 transcript, as Mr. Nozik reminded me, and then the
2 matter is put over to another day. The judge
3 makes no finding that the facts in support of the
4 plea justify a finding of guilt. And then what
5 happens is on the next day, the Crown gets up and
6 reads the facts in support of the plea, and as in
7 this case, there was some disagreement as to what
8 they had concluded.

9 Is this a usual practice? Is it a
10 practice that the Crowns, the line Crowns do in
11 the Provincial Court?

12 THE WITNESS: I think it's going to
13 vary from judge to judge, because I think there
14 are judges who would not follow that process.
15 They would start inquiring right away when the
16 plea was entered. I think it's going to be a
17 practice -- this isn't a very good answer, but,
18 you know, my feeling, and I certainly was in plea
19 bargaining court, it wasn't called that, it was
20 called screening court, up until maybe three or
21 four years ago. And it would vary depending on
22 the judge. I mean, I think certainly the
23 appropriate procedure is probably to make the
24 inquiries at the time the plea is entered, and be
25 satisfied, and then enter the stays. I think

1 you're more closely in line with probably how
2 things, strictly speaking, should go.

3 THE COMMISSIONER: That would avoid
4 the problem that arose in this case.

5 THE WITNESS: It may well, if they
6 went to that extent, you know, in their
7 arrangement. But it might have avoided it, and
8 then that certainly would have been a good thing.

9 THE COMMISSIONER: We'll take a break
10 now. Fifteen minutes.

11 (Proceedings recessed at 10:40 a.m.
12 and reconvened at 10:55)

13 THE CLERK: All rise. This Commission
14 of Inquiry is now reopened.

15 BY MR. CLIFFORD:

16 Q Mr. Slough, I'd like to turn our
17 attention now to a briefing note to the Premier.
18 And if I could have you examine, please,
19 R-2.91.72, page 3287, which is our Exhibit 233.

20 Do you have that document, sir?

21 A I have it.

22 Q All right. So this is an e-mail,
23 October 19th, '07, from you to Mr. Minuk. And
24 what you are indicating, and you are cc'ing Brian
25 Kaplan as well. And you indicate as follows:

1 "Hi, Marty, further to our
2 conversation yesterday I spoke to the
3 deputy and he suggested I ask for a
4 written report on the Zenk matter.
5 The reason for doing so is to get the
6 most complete information so I can do
7 a briefing note for the Premier."

8 Now, what can you tell us, sir, about
9 this process? Is this something that would
10 normally be undertaken in a controversial issues
11 alert case?

12 A Typically, the controversial issues
13 alert notice would be the end of the line in terms
14 of the information being provided to the Deputy
15 Minister's office. That will usually suffice.
16 This case, on the other hand, had taken on a
17 significant life of its own. It was, I think it
18 would be fair to say a media storm. So,
19 therefore, that of course heightens the awareness
20 of the political level. And through them, the
21 Deputy was asking me for information and
22 discussing a number of issues. For example,
23 Mr. Tramley was a former RCMP officer who suddenly
24 popped up and was expressing opinions about the
25 case and we didn't know who he was. So we were

1 trying to get as much information we could so that
2 the Deputy was in the position to brief both the
3 Premier and the Minister.

4 Q What we see here, sir, is a memorandum
5 to you from Mr. Minuk. It doesn't appear to be
6 dated, sir, but I take it you would have received
7 it sometime shortly thereafter?

8 A Okay. I don't have that yet.

9 Q You don't have the exhibit, 233?

10 A I've got -- I'm sorry, I've got the
11 e-mail 233, I don't have Mr. Minuk's response, I
12 don't believe.

13 MR. NOZICK: Exhibit 142.

14 MR. CLIFFORD: Exhibit 142. Before
15 you go up there, Madam clerk, may I have a look?

16 THE WITNESS: Thank you.

17 BY MR. CLIFFORD:

18 Q This is what you would have received
19 in response, is it not, sir?

20 A Yes, it is.

21 Q This is Exhibit 142. And in this
22 document, sir, your understanding was that this is
23 information that Mr. Minuk is providing to you.
24 Did you have discussion with him about the
25 evidence, or a summary of the evidence of

1 impairment?

2 A Any discussion would be, the
3 discussion would be my e-mail at Exhibit 233,
4 that's the discussion. At least I would believe
5 that's the discussion. I don't think there would
6 have been a further, I don't recall, that would be
7 a better way to answer, any further elaboration of
8 that. So I think this is written in response to
9 this.

10 Now, it would appear I spoke to him
11 prior to sending this e-mail, so there would have
12 been some conversation then.

13 Q Okay. And let's put that on the
14 record. The discussion would have been, if you
15 say your e-mail, would have been as follows, to
16 the effect, Marty, this is great, please send me
17 the revised version so that I can get it across
18 the street?

19 A That is as illustrated in my e-mail,
20 yes.

21 Q Now, I take it, based on that, that
22 your understanding of one component of the case,
23 being the evidence of impairment, is that -- and
24 I'm referring to page 2 under that heading B,
25 Summary of Evidence of Impairment, the third

1 sentence, you had been advised by Mr. Minuk that
2 after reviewing all of the statements, no one
3 officer could recall what it was that Mr. Zenk had
4 to drink.

5 "Some officers themselves reported
6 their impairment was such that they
7 did not remember much of the evening."

8 Now, did you have any follow-up with him on that
9 to determine what he meant by some officers
10 themselves, how many of them would have reported
11 their impairment, words to that extent?

12 A No, I don't believe I did. I think at
13 one point I took the step of reading the RCMP
14 report, or reading maybe the professional
15 standards interviews of those officers. But I
16 don't think I talked to Mr. Minuk any further
17 about it.

18 Q And when you say, Marty, this is
19 great, please send me the revised version, what
20 are you referring to, a revised version?

21 A You know, I really can't help you,
22 short of taking out the -- I'm sorry, I don't know
23 what the revisions referred to. I'm unable to
24 tell you what it was I -- what revisions were
25 being made.

1 Q Well, if we look at R-2.91.74, we
2 could probably get that question answered,
3 R-2.91.74.

4 THE CLERK: It's Exhibit 143.

5 BY MR. CLIFFORD:

6 Q Exhibit 143?

7 A I have Exhibit 143, thank you.

8 Q So that was the revised version --

9 A Yes.

10 Q -- was it, sir? And what we see is
11 parts of the e-mail were taken out?

12 A Yes.

13 Q It's just put in a better form for you
14 to move it up, I take it, to those that you report
15 to?

16 A Yes.

17 Q There was a concern, sir, that emerged
18 with respect to the amount of time that Mr. Minuk
19 spent with the family. You understood that there
20 was a claim by the family that they were not
21 informed with respect to the plea bargain and
22 hadn't been contacted in that regard. And I
23 wanted to refer you to another document on this
24 theme, which is R-2.91.83, and that's Exhibit 221.

25 Now, what we have here, sir, is an

1 e-mail forwarded initially from you to Mr. Minuk,
2 October 29. And then we have a response from
3 Mr. Minuk back to you, and he is cc'ing Ron
4 Perozzo.

5 What can you tell us, sir, about the
6 communications that took place between you,
7 Mr. Perozzo, Mr. Minuk, with regard to the amount
8 of time that was spent with the family and their
9 concern over what they learned about the plea
10 bargain and how they learned about it?

11 A If you follow the e-mail, you will
12 actually see how the process evolved. On the
13 first, on page, I'm referring now to 3319. At the
14 very bottom is a note from Janis Bermel.
15 Ms. Bermel is the executive assistant to the
16 Minister. So she's reading Mr. Brodbeck's column,
17 who makes certain allegations with respect to,
18 statements with respect to contact. And then you
19 can just see the trail following up. And then,
20 ultimately, I am in touch with Mr. Minuk. And,
21 yeah, as I say, Marty, can you respond and copy
22 Ron? And then I asked my assistant to look on
23 PRISM, which is our information system, to see
24 what notations there are about contact. And then,
25 of course, "please copy Marty" so that Mr. Minuk

1 had that information, and then Mr. Minuk produces
2 this document which I forward to Mr. Perozzo, who
3 was then the Deputy Minister.

4 THE COMMISSIONER: Who is Janis
5 Bermel?

6 THE WITNESS: Janis Bermel is the
7 executive assistant to the Attorney General.

8 BY MR. CLIFFORD:

9 Q Sir, I wanted to have your input on
10 another document, which is R-1.19.4.

11 THE CLERK: Exhibit 219.

12 BY MR. CLIFFORD:

13 Q R-1.19.4, Exhibit 219, at page 3115.

14 A I'm sorry, what was the exhibit
15 number?

16 Q 219. Now, we're backing up in time a
17 little bit, sir, but we're staying in the same
18 theme, and that's dealing with the family and how
19 it's being addressed within your office and within
20 the Crown's office and with Mr. Minuk.

21 We see here, sir, that by September
22 21st, 2005, there is correspondence taking place
23 within Manitoba Justice dealing with the fact that
24 Mrs. Sveinson is writing to the Minister of
25 Justice with concerns about the case and the

1 system. And of course, that's what we have here
2 in Exhibit 219. This is her August 31st, 2005
3 letter.

4 Can you tell me, sir, were you aware
5 of this correspondence?

6 A No. I certainly wasn't aware of it at
7 the time. This would have been something that was
8 completely outside my area of responsibility in
9 2005.

10 Q And would it have been something that,
11 in your view, would have fallen to Mr. Kaplan to
12 deal with?

13 A Because it's an outside counsel case.
14 Normally those would go to Mr. Kaplan.

15 Q Now, we have heard, sir, that
16 Mr. Kaplan asked Mr. Minuk to draft a response for
17 Brian Kaplan's signature. Would you have been
18 aware of that protocol or that procedure taking
19 place, where a complaint might be made such as
20 this, and it would go to Justice and then it would
21 actually filter down to the Crown Attorney?

22 A Well, normally it depends on what the
23 substance of it is. If we can obtain the
24 information, by "we" I mean my assistant and I can
25 obtain the information off PRISM, we try to avoid,

1 for lack of a better word, bothering the Crown
2 Attorney with respect to it. When you get
3 something like this, I don't think that's
4 possible. You're going to have to go to a Crown,
5 or at least try to get information from him as to
6 what's going on. So I'm aware of that. That's a
7 long way of saying, I'm aware of the procedure.

8 Q Now, if we factor into the equation
9 that we're dealing with an independent prosecutor,
10 sir, do you think it's appropriate for an
11 independent prosecutor to be asked to prepare a
12 document on behalf of Manitoba Justice dealing
13 with Manitoba Justice issues?

14 A I think the answer would be, it
15 depends. I think you are probably going to need
16 to go to that person to get the information you
17 need. Now, whether they should be drafting the
18 response, you know, particularly when -- I don't
19 know, I haven't read this right now so I don't
20 know if it's attacking Mr. Minuk personally or if
21 it's more general, but those are difficult
22 questions. Usually what you want from the
23 prosecutor is the information so that a response
24 can be put together. Now, I don't mind saying
25 that certainly there have been times and we've

1 asked people to draft responses. It varies. Now,
2 an independent prosecutor, that's a little
3 different. Again, it's just a matter of getting
4 the information.

5 Q Let me deal, sir, with another letter
6 on January 11th, 2006. It was another letter from
7 the Sveinsons to the Ministry. It was forwarded
8 to Mr. Minuk as well. So we would look at
9 R-1.19.9?

10 A I'm sorry, do I have that?

11 Q Okay. Let me get this right for you
12 and for the clerk, who is not going to have any
13 chance of finding 19.9, because it's 91.9.

14 THE COMMISSIONER: 91.29?

15 MR. CLIFFORD: 91.9.

16 THE CLERK: It's not been marked as an
17 exhibit yet.

18 MR. CLIFFORD: All right. Can we do
19 that.

20 THE CLERK: Exhibit 246.

21 (EXHIBIT 246: R-1.91.9, Action Route
22 Slip dated January 13, 2006 with
23 attached letter from Victoria
24 Sveinson)

25

1 BY MR. CLIFFORD:

2 Q Document R-1.91.9 at page 3131 is
3 Exhibit 246. What we see here, sir, is a
4 correspondence directed to the Minister of Justice
5 and the action route slip at page 3131 starts with
6 the date of January 13th, to Ron Perozzo from
7 Janis Bermel.

8 "Subject, Victoria Sveinson. Action,
9 further correspondence please forward
10 to Marty Minuk. Thank you."

11 So this is taking place one level above you?

12 A Yes.

13 Q Would that be an accurate description?

14 A That's certainly how it appears to me.

15 Q And on the way down, does it come
16 across your desk?

17 A It wouldn't have at this time and I'm
18 not -- I don't know if it would at the present.
19 At that time, I don't think so.

20 Q Okay. Well, what we see here, sir, is
21 that this is actually being forwarded out of the
22 Minister of Justice office directly to the
23 independent prosecutor?

24 A Yes.

25 Q And were you aware of the letter, sir,

1 the existence of the correspondence?

2 A No, I'm sorry. I was just trying to
3 go through the chronology in my head. I would
4 still have been the Director of Appeals at that
5 time, so this isn't something I'm going to be
6 involved in. This is outside my area of
7 responsibility.

8 Q And there is a handwritten note on the
9 bottom of this:

10 "Colleen, can you please forward this
11 correspondence on to Marty Minuk.

12 Thank you, Tammy."

13 The names Colleen and Tammy?

14 A Colleen Ireton is Brian Kaplan's
15 assistant. Tammy Padoba would have then been the
16 assistant to the Deputy Attorney General.

17 Q Okay. So this is apparently stopping
18 in Brian Kaplan's office on the way down to
19 Mr. Minuk?

20 A Well, it's also been in the office of
21 the then Assistant Deputy Attorney General,
22 because Tammy is his assistant. So I'm not quite
23 sure how -- it would have come first to Tammy, but
24 then there is a direction on it that -- I know you
25 are not familiar with the document -- but there's

1 a direction on it that it's to go to Marty from
2 either the Minister or the Deputy's office.

3 Q So it goes to the ADAG through
4 Mr. Kaplan's office down to Mr. Minuk?

5 A That would appear to be the process.

6 Q And I take it you would have no idea
7 whether any of these people ever responded to --

8 A I just don't have any knowledge of
9 this whole thing.

10 Q Fair enough. And somewhere I just
11 want to cover one other letter with you, sir.
12 Volume O.81.a.5 at page 2134, which is Exhibit 27.
13 Now, this one, sir, I think you will recognize?

14 A Um-hum, yes, I do.

15 THE COMMISSIONER: Could you wait a
16 minute, please? Thank you.

17 BY MR. CLIFFORD:

18 Q So this is a correspondence dated
19 October 1st, 2007. The Sveinsons are writing to
20 the Minister.

21 A Yes.

22 Q They are upset with your public
23 endorsement of Mr. Minuk's handling of the case?

24 A Yes.

25 Q And this correspondence is forwarded

1 to you?

2 A I don't have the document doing that,
3 but that would seem likely the logical thing to
4 do.

5 Q Okay. And you responded?

6 A I believe so.

7 Q Okay. I'll give you the response,
8 Mr. Slough.

9 A I'd appreciate that.

10 Q O.81.b.2, and that's Exhibit 28.

11 Now, in this correspondence, sir, you
12 are responding to the Sveinsons. And in the
13 second paragraph, you indicate to them that you
14 have asked officials in your department to review
15 the transcript of proceedings of the sentencing in
16 order to attempt to respond to the concerns
17 raised. You indicate further:

18 "I am informed that the hearing on
19 September 12th consisted of a great
20 deal of dialogue between the trial
21 judge and counsel for the accused and
22 the independent prosecutor. It is
23 unfortunate that based on this
24 exchange you feel the prosecutor was
25 not being cooperative with the court."

1 When Mr. Wolson testified, sir, one of
2 the things that he was helpful about was
3 describing the atmosphere in the court. Now, he
4 was there. I take it, given your level of
5 experience, you reviewed the transcript, sir, and
6 you could discern or almost feel from reading
7 those transcripts the position that all counsel
8 and --

9 A Mr. Wolson I think specifically
10 commented, I can't work in this environment, you
11 couldn't tell what had been said at that point,
12 but something had been said, and I think Chief
13 Judge Wyant had cautioned people about outbursts.

14 Q With respect to the entire proceeding,
15 sir, what I'm referring to is the exchange between
16 Judge Wyant and Mr. Minuk, for those who don't go
17 to court on a daily basis, this would not be your
18 typical day in court where this type of exchange
19 would carry on?

20 A No, anything but your typical day in
21 court.

22 Q So for a lay person to sort of see
23 this unfolding and this dialogue back and forth,
24 and the issue of alcohol consumption being dealt
25 with, and then there's an agreement, there's not

1 an agreement, are you going to prove it, we'll
2 take a break. This is about as far away from the
3 normal process, would you agree, that one might
4 want to get as an advocate?

5 A It's further away than one would want
6 to get.

7 Q Now, what the Sveinsons are saying in
8 their letter is, look, they are complaining about
9 that day and it's -- they've got some fertile
10 ground to base their complaint on in terms of
11 trying to understand at least what happened.
12 Would you not agree?

13 A I think that process would be very
14 difficult to understand. I think if you -- and I
15 am relying on media accounts, but I think the
16 Sveinsons were also concerned that counsel
17 referred to each other as their learned friend, or
18 friend. I think there is a real problem here.
19 And I think it's very difficult, I think people,
20 victims, and this is something we run into all the
21 time, see the Crown Attorney as their lawyer. And
22 we tell them they are not, but they see the Crown
23 Attorney should be there advocating for them. And
24 I think when they saw Judge Wyant asking for that
25 information and it's not provided, I think it

1 would be very difficult. And I've said, I agree
2 with the decision not to do that, but I think for
3 a family, that would be very difficult to
4 understand. And then we're talking about a
5 conditional sentence, which is a whole other
6 issue.

7 Q You do indicate in the final
8 paragraph:

9 "It is regrettable that perhaps
10 because of what I am told was a
11 lengthy and at times confusing
12 exchange between the judge and the
13 counsel involved, that you reached the
14 conclusions you have conveyed in your
15 letter."

16 A Yes.

17 Q And I take it that those are heartfelt
18 words that you are conveying to them. It ties
19 into what you said earlier, when you read the
20 draft submissions, that to start off on the
21 Gardiner foot, and I don't know if you used the
22 term "legalese" in your testimony or not, but it
23 also, does it not, tie into the notion of being as
24 clear as you possibly can with the court in terms
25 of this is what happened and this is why?

1 A Okay. Just so I explained, I did say
2 the Gardiner, that that excerpt was in legalese,
3 but I also said when I read Mr. Minuk's full
4 submission, I thought it conveyed a lot of the
5 information. So I think it's important we know
6 that.

7 I think this case, for these people,
8 for the victim's family, is so devastating, so
9 many things have gone wrong. I'm not sure any
10 Crown Attorney or anyone could have done, given
11 them comfort in what was going on. This was, I'm
12 sorry to use a cliché, but just a train wreck.
13 And I think it would be very difficult to explain
14 that. I think, you know, Mr. Minuk tried. The
15 other thing that runs through this whole thing is
16 the fact that the independent prosecutor is
17 recommending a conditional sentence. That is
18 always a problem in these kinds of cases. I think
19 there's very good reasons for making that
20 recommendation on a legal basis, but on an
21 emotional basis for the family, a conditional
22 sentence I think very often doesn't really feel
23 like justice to them.

24 Q With respect to the independence of
25 Mr. Minuk, I note in your correspondence of

1 October 5th, 2007, there's no reference to
2 Mr. Minuk having engaged in any consultation with
3 seniors in the Crown's office?

4 A There isn't, you know, again. But
5 certainly, one thing I do want to say is that this
6 letter was written before Judge Wyant had given
7 his decision. So you have to be, I think, careful
8 in what you convey. I mean, the matter is still
9 pending.

10 Q Very much --

11 A So I'm trying to address those issues,
12 but I am not going to comment on certain things
13 that are still within the purview of the court,
14 for example, a conditional sentence issue. So one
15 has to be kind of circumspect about that.

16 Q I understand, sir.

17 Now, in concluding, sir, your
18 examination in chief, I wanted to put to you
19 generally implications that flow from what we've
20 seen and then your involvement as well.

21 We know that Mr. Minuk has been asked
22 to draft responses to the Sveinsons for the
23 signature of Mr. Kaplan and on behalf of Manitoba
24 Justice. We know that the prosecutor's office was
25 approached with respect to the initial adjournment

1 of the Preliminary Inquiry. He was advised on the
2 strategy for getting the adjournment. The actual
3 wording of the letter was dealt with by an inside
4 Crown. There is an approach on a plea bargain,
5 and I have your evidence on that, sir, that you're
6 not sure whether you received the August 22nd
7 wording, but certainly the suggestion by Mr. Minuk
8 is that that may have happened. We've got Crown's
9 office being approached with respect to the
10 submissions of September 12th, and those are
11 loaded submissions, and Mr. Minuk's suggestion,
12 again, that these would have been vetted, approved
13 and changes or recommendations would have been
14 taken into consideration. We have a telephone
15 call, sir, with respect to alcohol being proven as
16 a factor. We have the involvement of Manitoba
17 Justice on the media issues, he is being involved
18 with the note up to the Premier.

19 I understand, sir, that the policy
20 allows for a consultative process. And I think we
21 are beyond that to a certain stage, in terms of
22 our understanding of that, that these independent
23 prosecutors are not expected to work in a vacuum.
24 But given what we see here, sir, and the extent of
25 it, do you not agree that certainly there is a

1 firm basis here for the perception that Mr. Minuk
2 is not entirely independent?

3 A Well, I guess -- and obviously the
4 Commissioner is going to make his findings on
5 that. My view on that, though, is that what
6 Mr. Minuk was doing was seeking -- he was
7 conveying information, which I think we would --
8 we need from him. He was -- when he had difficult
9 decisions, he had to go somewhere to discuss those
10 decisions. It seems to me, though, that he was
11 ultimately making the decisions. And I think that
12 is the essence of the policy.

13 And in this case, some things were
14 done, as I think I have acknowledged, a little
15 unusual, you know, to the extent that that
16 happened. But in my view, the essence of the
17 policy is that the independent prosecutor makes
18 the critical decisions, and that is what happened
19 here, in my opinion.

20 Q So the response is in disagreement, he
21 was independent, he did make the decisions which
22 he would be required to do. Let me put the
23 question to you another way. Those factors
24 generating the appearance that he may not be
25 independent, not the fact that he was not

1 independent, but the appearance that that may be
2 the case, that he lost his independence?

3 A I don't accept that he lost his
4 independence.

5 Q No, I understand that. That's clear.
6 The appearance of this taking place?

7 A You know, that's -- I guess my
8 perception of it is that that didn't occur. The
9 Commissioner may have a different view, the people
10 in the media may have a different view. But my
11 view is, if you look at each individual
12 transaction, this is not impeding on his
13 independence, it is simply a response to a
14 situation as it arises. And certainly, and I'm
15 not just picking this because it involved me, but
16 when I ask him for information such as the memo
17 for the Premier, he is the one with that
18 information. I can't replicate that in any way,
19 and I have to know what, you know, what is going
20 on, I have to know it quickly. So Mr. Minuk is
21 the only source for that. So, again, I understand
22 your question, I understand the concern, but I
23 think if you look, analyze each transaction, my
24 view is his independence remained, remained.

25 Q And I have your position on that,

1 Mr. Slough. But for those who may feel as though
2 the appearance of his independence was compromised
3 by all of these things, I take it, notwithstanding
4 your view, there is room for improvement in terms
5 of how this particular matter was handled. And if
6 there were, for instance, as you alluded to in the
7 beginning of your testimony, a set protocol in
8 place rather than doing it on an ad hoc basis,
9 that would certainly alleviate any perception of
10 the loss of independence?

11 A I agree.

12 Q Do you agree?

13 A I do agree. And I think in fact our
14 revised independent counsel policy goes some
15 distance towards that. At least there you
16 understand what is supposed to be happening and
17 things aren't left unsaid, so I would agree with
18 that.

19 Q And it could, in fact, perhaps even go
20 a little bit further with respect to creating an
21 independent pool for the consultative process,
22 something akin to the case conference?

23 A If we are able to do that, that would
24 be a positive thing. And you know, hopefully,
25 that's -- yes, I certainly don't dispute that

1 would be a positive thing and may alleviate some
2 of the difficulties that arose in this case.

3 MR. CLIFFORD: Those are the questions
4 I have for you at this time, Mr. Slough. Please
5 remain seated. Other counsel will have questions.

6 BY MR. ZAZELENCHUK:

7 Q Mr. Slough, going back to February of
8 '05, you indicated to us earlier this morning that
9 this case caught your attention very early, and
10 you said it was because it was tragic. It was a
11 younger woman, she was on her way to work, there
12 was a Winnipeg Police Officer involved, and you
13 listed a couple of other factors?

14 A Correct.

15 Q And you'll agree with me that, a few
16 days later, it was also in the press that alcohol
17 was becoming involved, that wasn't there initially
18 but it started coming in, in a few days?

19 A I would be taking your word for it. I
20 don't have that recollection but --

21 Q Okay. And it's not a memory test, and
22 I don't expect it to be, but volume M,
23 Mr. Commissioner, M-76 A and C, they are not
24 entered as exhibits yet, Madam clerk.

25 Just by way of background, sir,

1 Commission Counsel have been very diligent in
2 putting together all sorts of relevant documents,
3 and I'm going to refresh your memory by directing
4 you to a couple of newspaper reports.

5 THE CLERK: M-76.a will be Exhibit 247
6 and M-76.b will be Exhibit 248 -- sorry that's
7 76.c.

8 (EXHIBIT 247: M.76.a, Media Article -
9 Canoe - Cnews dated March 2, 2005 -
10 Cop faces charges)

11 (EXHIBIT 248: M.76.c, Media Article -
12 Canoe - Cnews dated March 3, 2005 -
13 Crash victim)

14 BY MR. ZAZELENCHUK:

15 Q And, sir, just to refresh your memory,
16 if you look at Exhibit 247, that's a report dated
17 March 2, 2005, just a few days after
18 February 25th, and you'll note in the fourth line,
19 or the third line, sorry, it says:

20 "Derek Harvey Zenk, 31, also faces
21 charges for refusing a breathalyzer."

22 Do you see that, sir?

23 A I'm sorry. Yes, we're talking the
24 first paragraph?

25 Q Yes.

1 A Yeah.

2 Q And you'll agree with me that that
3 says to anybody, even a lay person, alcohol is
4 suddenly a factor in this, a charge of refusing
5 breathalyzer?

6 A Yes.

7 Q Okay. And if we look at Exhibit 248,
8 we go five paragraphs from the bottom, we see --
9 and again, this is March 3rd, that would be the
10 next day, Thursday, so that's exactly a week
11 later.

12 "The Constable was allegedly drinking
13 with other officers at a lounge in the
14 Garden City area last Thursday night
15 the source said...",
16 et cetera, et cetera. And again, we're talking
17 about alcohol entering into the equation?

18 A That's correct. Now, I am not
19 disputing that that's in these articles. Whether
20 I was aware of that, I don't -- these are -- I
21 mean, I was probably aware of that issue. I don't
22 necessarily know I read The Sun on those days or
23 anything like that.

24 Q I understand that, sir, I just wanted
25 to draw your attention to the fact that in

1 addition to the other factors you had mentioned
2 why this incident was gathering momentum, alcohol
3 was brought into it. And we did hear evidence
4 from Mr. Taman, two months ago, that the public
5 response to his family was overwhelming in terms
6 of sympathy cards and everything like that. And
7 you'll concur with me that it was becoming a bit
8 of a cause celebre?

9 A This case looked like it was going to
10 be a difficult matter.

11 Q Yeah, okay. I'm not sure -- we're
12 going to move on now and we're going to move onto
13 July 13th of last year. And I'm not sure, from
14 your evidence, if it was your impression that
15 Mr. Minuk actually met with Mr. Tessler and
16 Mr. Peden. And that's found at Exhibit 48, page
17 3401.22?

18 A You said Exhibit 48?

19 Q Yes. And Mr. Commissioner, that's
20 R-4.

21 A Okay. Thank you, yes.

22 Q Yeah.

23 A And 3401.22?

24 Q Yes, sir. Did you mean to imply that
25 that was your understanding, that Mr. Minuk had

1 actually met with Messrs Tessler and Peden?

2 A No. I don't think I did, because as
3 I -- I think what happened was Mr. Kaplan met with
4 Mr. Minuk, and then Mr. Minuk kind of convened the
5 two people, so I may have.

6 Q Mr. Kaplan?

7 A Convened Tessler and Peden, and they
8 discussed it. I think I may have kind of put
9 those things together. When I look at the memo,
10 it seems like that might have been separate.

11 Q And in fact, the reason I asked you,
12 sir, is because my note of Mr. Minuk's evidence
13 from July 29 was that he didn't meet with Tessler
14 and Peden.

15 A I would certainly accept that.

16 Q Okay. Mr. Commissioner, I'm going to
17 go to volume R-2 and, Mr. Slough, if you could
18 look at exhibits 244 and 227?

19 MR. NOZICK: What tab numbers?

20 MR. ZAZELENCHUK: I'll get there,
21 Mr. Nozik.

22 THE WITNESS: I have 244. What was
23 the other one, sir?

24 BY MR. ZAZELENCHUK:

25 Q 227. And for those of us with books,

1 they are both in R-2; 244 is at 3241 and 227 is at
2 3235. They are very close together -- actually
3 3236.

4 A Is that the page you want me to go to?

5 Q Yes, that's Exhibit 227.

6 A Yes.

7 Q Now, the point is very simple, this is
8 a -- page 3236 is an e-mail from Mr. Minuk to
9 Brian/Colleen, and we have his third paragraph
10 from the bottom, and that reads:

11 "In speaking to the RCMP expert, his
12 assessment is that the plea may in
13 fact be more than what might happen
14 had the matter gone to trial."

15 A Yes.

16 Q Okay. And he is talking about the
17 plea to the charge of dangerous driving cause
18 death?

19 A Yes.

20 Q Okay. If we go to page 3241, and
21 that's the next exhibit, sir.

22 A Yes.

23 Q And that's the controversial issues
24 alert?

25 A Yes.

1 Q And the second paragraph from the top
2 is:

3 "In speaking to the RCMP expert, his
4 assessment is that the plea may in
5 fact be more than what might have
6 happened had the matter gone to
7 trial."

8 And aside from changing happen to happened, the
9 sentences are exact; correct?

10 A Yes.

11 Q Okay. Now, the question I have for
12 you, sir, is when I read that sentence, be it in
13 Mr. Minuk's memo or in the controversial issues
14 alert, it doesn't convey to me that the charge of
15 dangerous driving cause death could be called a
16 solid case, or a cold case, or a strong case.
17 Does it have that conveyance to you, sir?

18 A No. It would suggest it was not a
19 sure thing.

20 Q That's fine. That's the point I
21 wanted to make.

22 The Victims' Bill of Rights, it's my
23 last area, the Victims' Bill of Rights is there in
24 part to at least realize that sometimes Crown
25 Attorneys are forced to deal with or have to deal

1 with people who have suffered tragic situations.

2 And you would agree with me on that, sir?

3 A Yes.

4 Q Yes. And you were characteristically
5 modest when you told us about your experiences.

6 You did that three-year multiple inquest which
7 involved at least a dozen babies dying?

8 A Correct.

9 Q And the Winnipeg lawyers know about
10 it, His Honour, and my Ontario, our Ontario
11 colleagues probably don't. That went on for a
12 long time. You dealt with a lot of young parents
13 who had suffered the death of newborn and very
14 young infants?

15 A Yes.

16 Q Yes. And did you find it useful
17 during that, what must have been a difficult
18 period, to meet with the parents, to explain to
19 them what exactly your role is, what then Judge
20 Sinclair's role was, what you could do, what you
21 couldn't do?

22 A It was. I mean, I know we don't want
23 to talk about this at great length, but I know we
24 had initial meeting with the families who were
25 very skeptical of that process. They wanted a

1 public inquiry. And we tried to explain that we'd
2 probably be able to achieve similar results. And
3 then as we called, each of them were called with
4 one exception, each of them were called to give
5 evidence, we tried to explain, you know, what this
6 was about and what we hoped would come out of
7 this.

8 Q And you know, I've said this before,
9 I've never been a prosecutor, I've done my share
10 of plaintiff's work, but I have found, and I'm
11 asking you to agree or disagree with me, that when
12 people are in a tragic situation, it really helps
13 if you establish lines of communication with them
14 and say, look, I'm only a lawyer, I don't have a
15 magic wand, I can't do this and I can't do that,
16 but here is what we can try to accomplish out of
17 this tragedy?

18 A I think that's right. And I think
19 maybe one thing we've learned as a crucial thing
20 is not to raise expectations too high. If there's
21 a problem, get to the problems early, try to just
22 have people understand it. But it's also
23 essential that you make people understand the role
24 of the Crown Attorney vis-a-vis the family, and
25 that's to keep them informed, to try to explain as

1 best you can what you're doing, but they don't
2 direct the prosecution.

3 Q And I accept that, sir. And one last
4 point, asking you to agree or disagree with me,
5 you've never had trouble disagreeing with me in
6 the past, would you agree with me that if -- that
7 most people who have not had a contact with the
8 justice system, civil or criminal, in the past,
9 but most people, if they are, if they have the
10 situation explained to them, if they have the
11 roles explained to them, if they have what can and
12 can't reasonably be expected explained to them,
13 really come away from that with the feeling of
14 acceptance, saying, well, this is the way the
15 system works, this is the way our laws work?

16 A Well, I would agree, the more you can
17 explain and the more you can prepare people for
18 what happens, and very often the worst thing is a
19 surprise, and that's where the difficulties often
20 arise, because people are not getting what they
21 are expecting. If they know what the probable
22 outcome is, then it's better.

23 MR. ZAZELENCHUK: Thank you, sir.

24 BY MR. McDONALD:

25 Q Good morning, Mr. Slough. I just have

1 a few questions for you, and I'd ask you, in
2 preparation for those questions, could you please
3 put before you exhibits 233, 142 and 143. Those
4 exhibits were all referenced to you when
5 Mr. Clifford asked you questions.

6 And Mr. Commissioner, just a slight
7 correction for the record. When Mr. Clifford
8 introduced Exhibit 233 to the witness, he
9 mistakenly referred to the date as October 19th,
10 2007. It should be September 19, 2007. It was
11 just I'm sure an oversight.

12 MR. CLIFFORD: Thank you.

13 BY MR. McDONALD:

14 Q Do you have 233, sir?

15 A Yes.

16 Q That is your memo to Mr. Minuk dated
17 September 19, 2007, setting out the questions that
18 you wanted him to address in order that you could
19 brief the Premier, or the Minister who in turn
20 could brief the Premier?

21 A Correct.

22 Q All right. And then, of course, we
23 have 142, being the draft response that was sent
24 by Mr. Minuk that you discussed with Mr. Minuk?

25 A Yes.

1 Q Are you with me there?

2 A I am.

3 Q Right. And Mr. Clifford mentioned to
4 you that there were some differences in the draft,
5 which is 142, and the final version, which is 143.
6 Do you recall that?

7 A I do recall that.

8 Q And he didn't go into the differences
9 in any detail. And I just want to spend a moment
10 with you on that, if you would, please, to see if
11 you can assist the Commissioner in explaining why
12 those changes were made.

13 Look firstly, please, at Exhibit 142?

14 A Yes.

15 Q On page 3289?

16 A Yes.

17 Q Item 7, the second one from the bottom
18 of the page?

19 A Yes.

20 Q It reads:

21 "At 8:21 Carter read the blood
22 demand."

23 Do you see that?

24 A I do see that.

25 Q Now, go to section 7 in 143, which is

1 at page 3296 --

2 A Yes.

3 Q -- and read number 7 there. Just read
4 it to yourself. It's been read into the record
5 previously. I just ask you to read it to yourself
6 and then I'm going to ask you a question about why
7 the change from the draft number 7 to this number
8 7?

9 A Yes, I see it.

10 Q Do you agree with me that 7 in the
11 final draft is much different and much, and
12 considerably expanded beyond the draft number 7?

13 A Correct.

14 Q What input, sir, if any, did you have
15 in the expansion of the response in item 7?

16 A I believe I had no input. My
17 recollection is that the only time I learned of
18 the blood demand issue, if I can put it that way,
19 was by nature of these proceedings in reading the
20 paper. I wasn't aware of that issue. And to be
21 honest with you, I certainly didn't, I don't
22 think, pick up on it when I read the first version
23 and go "blood demand," you know.

24 Q Do you recall any discussions with
25 Mr. Minuk or with Mr. Kaplan that resulted in item

1 7 in the final version being expanded to the form
2 in which we now see it?

3 A No, I don't.

4 Q So you can't help us out on that?

5 A Sorry, I can't.

6 Q And I take it, when you received the
7 final memo, 143, from Minuk, you understood that
8 to be the recitation of the facts of the case from
9 Mr. Minuk's perspective?

10 A Yes.

11 Q And I take it you understand, or
12 understood at the time, that at 8:21 in the
13 morning, Chief Carter -- the facts were that at
14 8:21 in the morning, Chief Carter had made a blood
15 demand?

16 A Yes.

17 Q And that was a factual underpinning or
18 a fact of the case that you understood to be?

19 A Well, as I say, that issue wasn't in
20 the forefront of my mind, you know. And whether I
21 was aware when I read that if it sort of
22 twigged -- well, I mean, obviously I read it, so
23 I'd be aware of that fact.

24 Q Yeah. And you read it as a fact in
25 the case, I take it, that's the way in which you

1 would interpret from reading that document?

2 A Yes, it would be one more problem with
3 respect to this.

4 Q And then reading the expanded version
5 in the final memorandum on item 7 even further
6 accentuates the importance of the blood demand
7 being read and being inappropriate. Is that
8 correct?

9 A It does.

10 Q Yes. And also, sir, look at item 6 of
11 Exhibit 142 at page 3291 under the heading, "Could
12 you provide a summary of the admissibility
13 problems with the refusal"?

14 A Yes.

15 Q And there read to yourself item 6 --
16 well, I'll read this one into the record because
17 it hasn't been read in before.

18 "In short the failure to make a demand
19 at the scene if there was grounds upon
20 which to make the demand was horribly
21 fatal to any prosecution and severely
22 comprised the alcohol factor. To the
23 disadvantage of the Crown, it assisted
24 in corroborating the WPS officers who
25 stated Mr. Zenk was not impaired."

1 I read that accurately, sir?

2 A Yes.

3 Q All right. Go to the final version
4 now, the equivalent section in the final version
5 if you will, please, which is on --

6 A 3298.

7 Q -- yes, 3298, thank you. And to my
8 reading, the two are identical except for the
9 addition of the words "if it existed at all" in
10 the fourth line -- sorry, the third line?

11 A Yeah, you improved on it slightly, "if
12 it existed all."

13 Q So the draft was changed, the final
14 form was changed to add the words "if it existed
15 at all." What, if anything, can you tell us about
16 the discussions that lead to that amendment?

17 A I don't recall discussions on that
18 point.

19 Q Again, is it your evidence here today,
20 sir, that you played no role or had any input into
21 that change being made?

22 A I don't believe so.

23 Q All right. Can you remember it being
24 discussed at all, sir?

25 A Sorry, I don't.

1 MR. McDONALD: Thank you. Thank you,
2 Mr. Commissioner.

3 THE COMMISSIONER: Thank you.

4 MR. LABOSSIERE: No questions.

5 THE COMMISSIONER: Thank you.

6 MR. WEINSTEIN: No questions.

7 THE COMMISSIONER: Thank you.

8 Mr. Jack, go ahead.

9 MR. JACK: Thank you,
10 Mr. Commissioner.

11 BY MR. JACK:

12 Q Mr. Slough, I just have a few
13 questions for you, and they all relate to the
14 involvement of the Professional Standards Unit of
15 the Winnipeg Police Service or the PSU --

16 A Yes.

17 Q -- in this investigation. You have
18 already testified that you were aware at some
19 point that PSU was assisting East St. Paul in this
20 investigation?

21 A Yes.

22 Q Do you recall approximately when you
23 became aware of that fact?

24 A I think it would be in the summer of
25 '07. I just -- it's hard for me to, as I said a

1 couple times, sort out when I knew things.

2 Q Certainly.

3 A But I think that was something that
4 really came to my attention as the case sort of
5 started unfolding, or unraveling, depending on
6 what words you want to use, in the courts.

7 Q Now, we have already heard about your
8 extensive experience as a prosecutor. I am
9 wondering whether at any point prior to the summer
10 of 2007, you had been involved in a prosecution
11 file, whether directly or indirectly, in which the
12 PSU was playing some role in the investigation?

13 A I was involved in a particular case
14 where we had some real problems, and I remember
15 reviewing a PSU file.

16 Q And I'm also wondering whether you
17 have any opinion, general or specific, about the
18 PSU involvement in that file?

19 A I thought it was very thorough, even
20 aggressive, in terms of the position they took
21 with respect to their own officers. They were --
22 there was no sign of them giving them an easy time
23 with respect to that file. They were very
24 aggressive.

25 Q Thank you, sir. So giving that

1 opinion, when you first became aware of the PSU's
2 involvement in this investigation, somewhere
3 around the summer of 2007, did you have any
4 particular concerns with the PSU's involvement?

5 A No. In fact, knowing officers that
6 had been in that unit, they are good officers, I
7 was not concerned by that. In fact, maybe a
8 little relieved.

9 Q Relieved. So as we have also heard
10 from Mr. Minuk, the Commission has already heard,
11 it would be fair to say you viewed this
12 positively?

13 A I did. As I say, everything I have
14 seen -- one specific experience, kind of a general
15 understanding is they do a good job and they are
16 thorough. That would be my expectation based on
17 my experience.

18 MR. JACK: Thank you, Mr. Slough. I
19 have no further questions. Thank you,
20 Mr. Commissioner.

21 MR. PROBER: No questions, thank you.

22 MR. GREEN: No questions.

23 BY MR. NOZICK:

24 Q I'm bringing my materials. I'm like a
25 boy scout, you've got to be prepared for

1 everything. Good morning, Mr. Slough.

2 A Yes.

3 Q I only have a few questions for you.

4 A Okay.

5 Q Commission Counsel outlined a number
6 of contacts, I think I numbered them one to eight,
7 that Mr. Minuk had with respect to with the
8 Department of Justice, and he asked you to comment
9 with respect to the implication that may flow from
10 the various contacts. And we have your answer
11 that you were of the view that Mr. Minuk was an
12 independent prosecutor?

13 A That's correct.

14 Q And that his decisions -- or his
15 decisions are final and binding on the department?

16 A That is my evidence.

17 Q Right. And you did not feel that
18 there was any perception, based on any of these
19 contacts, that would lead anyone to believe that
20 he might not be independent?

21 A I think what I was trying to say, that
22 if you looked and analyzed each contact, what was
23 done and how decisions were made, that perception
24 wouldn't arise.

25 Q And ultimately, as you have indicated,

1 it will be a decision of the Commissioner with
2 respect to what the perception may have been.
3 Keeping in mind, I suggest to you, that ultimately
4 the perception is in the eye of the beholder?

5 A Very much so.

6 THE COMMISSIONER: Mr. Slough, the AG
7 is responsible to the Legislature for both the
8 decisions of the line prosecutors and the
9 independent prosecutors.

10 THE WITNESS: Yes.

11 THE COMMISSIONER: Yes. How does one
12 exercise some control over the independent
13 prosecutors to ensure that they don't go off on a
14 tangent --

15 THE WITNESS: I think --

16 THE COMMISSIONER: -- as opposed to
17 line prosecutors, who you can stop?

18 THE WITNESS: Yes. Well, I think
19 that's one of the reasons that we expect the
20 independent prosecutor to tell us what they are
21 doing. So if I can use an analogy. If we are
22 dealing with a different case, there is a case
23 called Eckert which some people might have
24 referred to, it was another drive dangerous cause
25 death. It involved some evidence of alcohol prior

1 to, it involved very dangerous driving, weaving in
2 and out of people, speeds of 160, and then
3 crashing into a woman who is driving on a quiet
4 residential street to get away from traffic. If,
5 let's say that was a police officer who was the
6 driver -- I'm just trying to explain -- if
7 Mr. Minuk or any other independent prosecutor came
8 to us and said, you know, we've got problems with
9 this case and I'm going to take a conditional
10 sentence on this, I think you'd want to ask a lot
11 of questions about why we were getting there and
12 try to figure out exactly how you would approach
13 it. So my experience is where a decision has been
14 made, you ask questions, just to satisfy, in my
15 view, to satisfy yourself as to why a certain
16 decision is being made. And that allows me, when
17 the inevitable -- not inevitable, but questions
18 frequently arise from the Deputy Minister as to
19 what's going on, I can attempt to explain the
20 criteria that have gone into it.

21 THE COMMISSIONER: So, really what you
22 want to do is you want to be kept up to date as to
23 what the independents are doing, just in case they
24 do go off?

25 THE WITNESS: You want to be kept up

1 to date, and you want to understand why they are
2 doing what they are doing in a difficult case like
3 this one.

4 THE COMMISSIONER: Yeah, okay. Thank
5 you.

6 MR. NOZICK: Is that essentially what
7 was taking place in this particular case?

8 THE WITNESS: Yes.

9 BY MR. NOZICK:

10 Q Now, with respect to the two policies,
11 there was a policy in effect, then there was a
12 criminal report that reviewed that policy. You
13 are familiar with that?

14 A Yeah, independent counsel, yes.

15 Q And as a result of the Krindle report,
16 the new policy, which is Exhibit 231 and found in
17 volume X-1 at tab 3 was enacted, or at least
18 drafted?

19 A Okay. Thank you. I thought I had it,
20 yes.

21 Q And the major change with respect to
22 permitting consultations is found in paragraph D
23 at page 99 of volume X-1?

24 A I'm sorry, I'm lost right now. I
25 haven't got the policy in front of me so I'm not

1 sure where to go.

2 Q Have you got tab 3 there, have you got
3 the book?

4 A Tab 3, yeah. Thank you.

5 Q Tab 3 should have the policy, do you
6 see that there?

7 A Yeah, I see the 2005 policy and I have
8 the 2008, thank you.

9 Q Referring to the 2008 policy at page
10 99 of the book --

11 A Yes.

12 Q -- page 5 of the policy, paragraph D
13 is a major amendment to the policy?

14 A Yes.

15 Q And I'm not going to read it because
16 it's been read in a hundred times here. But do
17 you agree with me that that paragraph basically
18 codified the practice that was taking place at the
19 time of this case?

20 A I would agree with that.

21 Q And it basically encourages
22 consultations between the independent prosecutor
23 and members of the Department of Justice?

24 A That's correct. And adds some, I
25 guess, transparency to it. So that when it's

1 occurring. It's sort of endorsed by the policy.

2 Q And will you agree with me that
3 neither yourself nor Mr. Kaplan, to your
4 knowledge, was directing Mr. Minuk on what to do,
5 what decisions to make?

6 A No. We were, I think at some point --
7 I think, I know I provided advice about trying to
8 explain after the first, things didn't go well at
9 the first submission, but we were not directing
10 him. It was his case.

11 Q And the policy says that his decision
12 is final and binding unless he is totally
13 outrageous?

14 A Correct. That's right, and then
15 there's a very specific mechanism involving the
16 involvement of the Deputy to the Attorney General
17 to overrule a decision.

18 Q And you had no concerns with respect
19 to his decision to accept the plea of guilty to
20 the charge of dangerous driving causing death?

21 A No, on the basis of the provable
22 facts, I did not.

23 Q And it was in accordance with the
24 Crown policy at the time?

25 A It was. Because the Crown policy

1 refers to the fact that we're not expected, Crown
2 Attorneys or someone acting on our behalf, are not
3 expected to go into court and argue for something
4 that's clearly contradicted by the case law.

5 Q And it was in accordance with the case
6 law as you knew it at the time?

7 A That's my -- as I said at the very
8 beginning, the conditional sentences are the bread
9 and -- I can't say that, speak anymore -- bread
10 and butter of appellate practice. And we
11 personally were up there many times, and we had a
12 hard time accepting conditional sentences on these
13 offences at first. But ultimately after going to
14 the Court of Appeal again and again and again, and
15 either having incarceratory sentences overturned
16 or endorsed, there came what I would describe as a
17 grudging acceptance and they are -- and I'm
18 speaking as a prosecutor now -- they are prevalent
19 in these cases. Not always. Eckert is a good
20 example where it wasn't imposed. But more often
21 than not, a conditional sentence will be the
22 outcome.

23 Q So the agreement to agree to a
24 conditional sentence as a joint recommendation was
25 according to the Crown policy and according to the

1 law as you understood at the time?

2 A It was, based on the facts that we
3 could prove.

4 Q Have you ever advised Mr. Minuk to
5 make any changes with respect to any of the
6 positions that he was advocating?

7 A No.

8 Q And I take it you had no personal
9 knowledge of Mr. Harvey-Zenk?

10 A No.

11 Q And have you had any dealings with the
12 East St. Paul Police Department?

13 A Not for a very long time.

14 Q One more area, and that deals with the
15 phone call on September 12th.

16 A Yes.

17 Q Do you actually recall being there
18 when Mr. Minuk phoned?

19 A I recall discussing it with
20 Mr. Kaplan. I don't recall Mr. Minuk being there,
21 but if they say I was there, I accept that.

22 Q You were unaware of the agreement that
23 Mr. Wolson attested to that, prior to
24 September 12th, that he had contacted Mr. Minuk
25 indicating that he was concerned with respect to

1 Mr. Minuk's reference to the anecdotal historical
2 evidence of drinking, and indicated he was not
3 accepting that, and that Mr. Minuk agreed with
4 Mr. Wolson that Mr. Minuk would not be calling any
5 evidence?

6 A I was not aware of that.

7 Q And Mr. Minuk actually, before the
8 break on September 12th, and this is in volume J
9 at page 1738.7, it's Exhibit 9, I believe -- yes,
10 Exhibit 9 at tab 63 of volume J -- made this
11 comment when he was asked whether he needed five
12 minutes?

13 A What page are we at?

14 Q Page 1738.7 in the bottom right-hand
15 corner, page 59 of that particular transcript.

16 A Okay. I have it.

17 Q Looking at about line 28, the court
18 said, absolutely. Mr. Minuk said:

19 "And then I'll come back and answer
20 that question..."

21 referring to whether he's going to call any
22 evidence.

23 "I could answer that question now but
24 I think that it might take too long
25 and I prefer to have the five minutes

1 beforehand."

2 A Okay.

3 Q I take it that would be consistent
4 with him having agreed with Mr. Wolson not to call
5 the evidence, that he could answer the question at
6 that time because of that undertaking?

7 A It's consistent with it.

8 MR. NOZICK: Those are my questions,
9 Mr. Commissioner.

10 THE COMMISSIONER: Any re-examination?

11 BY MR. CLIFFORD:

12 Q Just following up on your grudging
13 acceptance of the jurisprudence flowing out of the
14 Manitoba Court of Appeal.

15 A Yes.

16 Q In your policy and in the
17 jurisprudence, it's indicated that each case is
18 decided on a case-by-case basis, and that the
19 facts of each case can take them inside or outside
20 the policy. And of course, courts have stated
21 that on many, many occasions?

22 A Absolutely.

23 Q You go on a case-by-case basis?

24 A You do.

25 Q And on the issue of your reaction to

1 the Professional Standards Unit becoming involved
2 and your testimony that you were relieved to a
3 certain extent to see them parting in the case,
4 when the RCMP was assigned the investigation of
5 the alleged wrongdoings in the East St. Paul
6 police, do I take it, sir, that you had confidence
7 in the RCMP's ability to conduct that
8 investigation and deal with the case?

9 A Yes, I did. Yes, sir.

10 Q Now, on the issue of the Professional
11 Standards Unit conducting the investigation of a
12 Winnipeg Police Officer, we have heard much
13 testimony on that. It's not my intention to deal
14 with it again. But I understand that you were
15 comfortable with that, as an office, that the
16 Winnipeg Police Officers charged with criminal
17 offences could be investigated and dealt with by
18 Professional Standards Unit from within Winnipeg
19 Police?

20 A I was speaking for myself, but I was
21 comfortable with it.

22 Q What about the issue of perceived
23 conflict?

24 A Well, this is a perennial issue. As I
25 say, my experience, and it was only -- might be

1 just one case, but it was a major case, the
2 Professional Standards were really aggressive and
3 were cutting those officers no slack whatsoever.
4 So based on that, I really didn't have a concern
5 with them.

6 Q And with respect to the perception, if
7 the RCMP, who you were comfortable and were
8 willing to rely on to investigate East St. Paul
9 Police, had investigated the Winnipeg Police
10 Officer, it would have eroded entirely any
11 potential for perception?

12 A It did. I understand there may be
13 procedural advantages and disadvantages, which I
14 am not really prepared to talk about, but RCMP are
15 a first class organization.

16 MR. CLIFFORD: Those are the questions
17 I have in redirect.

18 THE COMMISSIONER: Did you ever give
19 up trying to persuade the Court of Appeal --

20 THE WITNESS: You know --

21 THE COMMISSIONER: -- to deal with,
22 not to grant conditional sentences?

23 THE WITNESS: I wouldn't say we gave
24 up. I think we had to pick our cases carefully.
25 I have chosen -- I have talked about Eckert

1 because it was a case I argued so I know the
2 facts. That was one where a conditional sentence
3 was granted. We took an appeal on that, it was
4 fairly recent, and the outcome was a change. But
5 it's not a matter of giving up. But after awhile,
6 you know, you are pounding your head. You know,
7 it's just not going to work unless the facts, it
8 all depends on the facts and the moral
9 blameworthiness of the accused.

10 THE COMMISSIONER: I mentioned that
11 because I am reminded of a case some 40 years ago
12 that I was defending, and I cited to the judge a
13 decision of the Court of Appeal which indicated
14 that he sentenced too harshly on a particular
15 offence. And his response was, my purpose is to
16 rehabilitate the accused not the Court of Appeal.
17 So you continue to argue them?

18 THE WITNESS: We argue them, but we
19 have to, I think we are selective because we know
20 what's going to happen. I mean, we've got a
21 pretty good idea what the outcome will be,
22 depending on the facts.

23 THE COMMISSIONER: Thank you. We will
24 adjourn now until 1:15.

25 THE CLERK: All rise. This Commission

1 of Inquiry will take the luncheon recess.

2 (Proceedings recessed at 12:08 p.m.

3 and reconvened at 1:15 p.m.)

4 THE CLERK: All rise. This Commission
5 of Inquiry is now reopened.

6 MR. PACIOCCO: Good afternoon,
7 Mr. Commissioner. Before we commence with the
8 next witness, I have been asked and Commission
9 Counsel has agreed to file a document by Mr.
10 McDonald, who is representing the Municipality of
11 East St. Paul. I would like to have this filed as
12 an exhibit now to ensure that it gets done.

13 MR. WEINSTEIN: Before we do that, I
14 really haven't had a chance --

15 THE COMMISSIONER: Sorry, can't hear
16 you.

17 MR. WEINSTEIN: Could we hold off on
18 the filing of this document? I have just received
19 it and I really haven't had a chance to digest it,
20 and it relates partially to my client, Mr. Bakema.
21 This is the first time I have seen it.

22 THE COMMISSIONER: Yes.

23 MR. PACIOCCO: As always, we can
24 certainly accommodate my friend.

25 THE COMMISSIONER: Yes.

1 DEREK GRANT HARVEY-MORDEN-ZENK, having
2 first been duly sworn, testified as
3 follows:

4 BY MR. PACIOCCO:

5 Q Good afternoon, sir. My name is David
6 Paciocco, I'm Commission Counsel and I will be
7 asking you questions today. If you respond into
8 the microphone, everybody will be able to hear
9 your answers and the recorder will be able to get
10 down the transcription accurately.

11 A Is this better?

12 Q That is much better, thank you, sir.
13 Sir, how old are you?

14 A I'm 34.

15 Q And I understand that you are
16 originally from Morden and that you did your high
17 school years in Brandon, Manitoba?

18 A I was born in Morden, yes. And
19 finished my elementary, junior high, and high
20 school years in Brandon.

21 Q You went to Vincent Massey High
22 School, I understand?

23 A I did.

24 Q There is a gentleman from Morden, or
25 from Brandon, who testified in these proceedings

1 by the name of Ken Graham, who is the same age
2 that you are, sir. Did you know Ken Graham when
3 you were back in Brandon?

4 A No, I did not.

5 Q Sir, he attended the Cross Plains High
6 School. Does that assist you at all?

7 A I believe it is Crocus Plains High
8 School, and, no, I don't know.

9 Q There is another gentleman who
10 testified in these proceedings, Jason Woychuk, who
11 is also from Brandon, and Mr. Woychuk was at
12 Vincent Massey High School as well, sir. Did you
13 know Mr. Woychuk?

14 A I did not know him personally, no.

15 Q Did you know of him, sir?

16 A I knew of the name. There was a
17 gentleman in my grade named John Woychuk, who I
18 later learned was his older brother, and I'm just
19 familiar with John through different circles of
20 friends.

21 Q Okay. Sir, I don't want to intrude on
22 your privacy, but it is customary to at least
23 invite witnesses to give some background
24 information about themselves in terms of their
25 occupation and family and things like that. So I

1 am just going to leave it up to you. I know you
2 have some security concerns, and I don't want to
3 make you answer questions that you feel might
4 compromise your privacy, but just to give you that
5 opportunity, if you would like to tell the
6 Commissioner a little bit about yourself?

7 A I'm currently 34 years old.

8 THE COMMISSIONER: Could you just
9 speak up?

10 THE WITNESS: I'm currently 34 years
11 old and I reside in Brandon with my wife and two
12 and a half year old child.

13 THE COMMISSIONER: You are living in
14 Brandon with your wife?

15 THE WITNESS: And my two and a half
16 year old child, yes.

17 THE COMMISSIONER: Thank you.

18 THE WITNESS: I'm not sure what else
19 you would like to know about me.

20 THE COMMISSIONER: What grade did you
21 finish?

22 THE WITNESS: I have a university
23 degree.

24 THE COMMISSIONER: University degree?

25 THE WITNESS: Yes, I do, sir, I have a

1 Bachelor of Arts.

2 THE COMMISSIONER: From what
3 university?

4 THE WITNESS: University of Winnipeg.

5 BY MR. PACIOCCO:

6 Q Sir, you began your employment as
7 police officer, I understand, on December 4th,
8 2000?

9 A That's correct.

10 Q And that was with the Winnipeg Police
11 Service?

12 A That's correct.

13 Q And I take it, sir, that was your
14 first time being employed as a police officer?

15 A As a police officer, yes.

16 Q And your degree at Brandon, did that
17 equip you to do police work, sir?

18 A My degree was from Winnipeg, and it
19 was a major in justice and law enforcement, yes.

20 Q Yes, sir. And I understand, sir, that
21 you were a police officer up until the 20th of
22 July, 2007, when you resigned from the Winnipeg
23 Police Service?

24 A That's when I formally resigned, yes.

25 Q And, sir, you were therefore working

1 as a police officer on the 24th and 25th of
2 February, 2005?

3 A That's correct.

4 Q And I understand that you were working
5 with division 13, platoon B-1?

6 A That's correct.

7 Q Sir, you had worked the evening shift
8 on February 24th, 2005?

9 A That's correct, yes.

10 Q And a normal shift, I understand, goes
11 from 1630 hours until 2:30 in the morning, sir?

12 A A normal shift does, yes.

13 Q And we have received the records with
14 respect to your overtime and any leaves that you
15 took during that week, and I'm going to put them
16 in front of you, sir, in order to help refresh
17 your memory about the schedule that you worked in
18 the week leading up to incident in question.

19 A Okay.

20 Q It is exhibit 163, Madam clerk, it is
21 found in F-1.33.c.

22 You should have in front you, sir, a
23 number of sheets?

24 THE COMMISSIONER: Excuse me, 133?

25 MR. PACIOCCO: Yes, F-1.33 beginning

1 at page 832.

2 BY MR. PACIOCCO:

3 Q Sir, you should have in front of you a
4 number of sheets from the Winnipeg Police Service,
5 overtime and time exception sheets?

6 A I have a duty roster sheet, sir.

7 Q Sir, those --

8 A I have one sheet of paper, a duty
9 roster sheet.

10 Q The document at F-1.33.c hasn't been
11 placed in front of the witness. I may have given
12 you the wrong exhibit number, Madam Clerk. It has
13 already been made an exhibit, exhibit 172.

14 Sir, I hope that you now do have in
15 front of you the Winnipeg Police Service overtime
16 and time exception sheets?

17 A Yes, I do.

18 Q There are two of those sheets that
19 pertain to yourself, sir. The first one I want to
20 refer you to is at page 846. Now, there is a
21 stamp over top of that page that says S0649, which
22 may make it hard to read the actual page number.
23 Page 846 should be close to the back of that
24 bundle, sir.

25 A Okay.

1 Q Do you have that in front of you?

2 A Yes, sir.

3 Q And, sir, that is an overtime
4 exception sheet for yourself, indicating that on
5 the 22nd of February, 2005, you started your shift
6 at 1630, you worked your ten-hour shift until
7 2:30 in the morning, and you continued to
8 accumulate 2.5 hours in overtime into the early
9 mornings hours of February 23rd, 2005; correct,
10 sir?

11 A That's what it says, yes.

12 Q The other overtime sheet that we have
13 for you, sir, is actually found at page 839.

14 A Yes, sir.

15 Q And that sheet indicates that you
16 again started your shift on the -- this time on
17 the 24th of February, 2005, this one you began
18 your shift at 1430. Do you recall why you started
19 at 1430 that day, sir, instead of 1630?

20 A We had arranged an early start, as I
21 had an appointment that I had to meet with the
22 principal, and school would have been dismissed
23 and the principal would have been at home by the
24 time we would have started our shift regularly.

25 Q So you effectively started two hours

1 earlier that day because of a need to attend at a
2 school?

3 A Correct.

4 Q Sir, you worked ten hours, and it
5 shows that your shift end time would have been at
6 12:30, it would have taken you into the early
7 mornings hours of the 25th of February, sir, had
8 you worked that complete period?

9 A Correct.

10 Q But you, in fact, received dismissal
11 at 10:30, or 2230 hours, and as a result of that
12 you had effectively taken two hours of leave, sir?

13 A That's correct.

14 Q So according to the records we have,
15 you worked a net overtime during that week of
16 approximately one half hour? You had worked 2.5
17 hours extra on the last day we examined, and you
18 took back two hours of time on this date, sir?

19 A Correct.

20 Q Yes. So it wasn't a week, sir, unless
21 your memory is different from the records that
22 we've received, where you had worked extensive
23 overtime?

24 A Not extensive, no.

25 Q I understand that you booked off those

1 two hours on the 24th of February so you could
2 attend a shift party at Branigan's?

3 A I attended a shift get-together, yes,
4 that's why I took the time.

5 Q And February 25th, the following day,
6 was going to be an overlap day, sir?

7 A I believe so. I can't remember the
8 schedule off the top of my head.

9 Q So you won't be able to help us out if
10 I was to ask you whether or not you had any
11 activities scheduled on that overlap day? The
12 Commissioner has heard evidence that at times
13 police officers --

14 A As a shift working, doing something?

15 Q Yes?

16 A I can't recall, no.

17 Q And it turns out, sir, that that
18 happened to be the last shift that you worked with
19 the Winnipeg Police Service, the 24th of February?

20 A It was.

21 Q Sir, you were working that day with
22 your partner, Constable Nolet?

23 A Correct.

24 Q And you attended at Branigan's after
25 getting off work at 10:30 p.m.?

1 A Correct.

2 Q Around what time did you arrive there,
3 sir?

4 A I don't really recall.

5 Q Are you able, based on memory, to give
6 us any time of general estimate as to what time
7 you arrived?

8 A No, I can't. My memory is very
9 sporadic. I don't believe that I have things in
10 context, nor do I really trust what I remember.
11 I'm not sure if I remember things because people
12 have told me, if I'm remembering different
13 instances or -- and I don't, I have holes in my
14 memory that I don't know where they have gone.

15 Q All right. So I take it that these
16 memory problems relate largely to the events that
17 we are here to testify about today, sir?

18 A I would assume so, yes.

19 Q When did these memory problems begin?

20 A When did my memory problems begin?

21 Q Yes, sir?

22 A Around the course of the incident. I
23 can't give you a specific time frame of a
24 beginning and an end, but my memory is not very
25 good in a portion of time before the incident and

1 a portion of time after the incident.

2 Q Are you able to indicate to the
3 Commissioner when your last clear memory was prior
4 to the accident, sir?

5 A My last clear memory that I distinctly
6 remember would be meeting with the principal.

7 THE COMMISSIONER: Sorry, I missed
8 that?

9 THE WITNESS: Would be meeting with
10 the principal.

11 BY MR. PACIOCCO:

12 Q And when is your next clear memory,
13 sir, after the accident? When do you feel that
14 your memory came back to you, sir?

15 A My next clear memory would have to be,
16 potentially I think like the next day, I remember
17 seeing myself in the mirror. I'm confident that's
18 the actual time span parameter that I have.

19 Q Sir, do you have any information as to
20 the cause of that memory loss?

21 A I have been informed of different
22 things. I have received information from a family
23 member, I don't recall the conversation with the
24 physician when I went and saw them, but my mom
25 told me that she was informed something to the

1 effect, and I'm paraphrasing because she doesn't
2 remember the quotation, that in instances where
3 somebody could have banged their head, there is
4 potential for a concussion. I have also been
5 meeting regularly with a psychologist, and he says
6 a lot of the things that have been happening to me
7 since the accident, night terrors, hallucinations,
8 and sleeping, the fact that I remember snapshots
9 of people's faces and sound bytes and I don't have
10 contextual memory of anything is, he indicated it
11 was a sign of post-traumatic stress, how a body
12 deals with traumatic events and how the body
13 protects itself in a traumatic event.

14 Q Sir, have you been formally diagnosed
15 with post-traumatic stress disorder?

16 A I don't know what my psychologist has
17 written down, but he has informed me that a lot of
18 the things I have been experiencing are things
19 that people with post-traumatic stress experience.

20 Q Sir, have you produced a medical
21 report at all, or sought a medical report with
22 respect to your memory loss?

23 A I see a psychologist regularly.

24 Q Sir, let's explore the prospect of a
25 concussion as a potential explanation for your

1 memory loss. You had your seat belt on at the
2 time of the accident, sir?

3 A I don't distinctly remember having my
4 seat belt on, but it is something that I usually
5 did.

6 Q And I understand that your air bags
7 deployed as well?

8 A Again, I don't specifically remember
9 the air bag deploying, and I'm not sure if that's
10 what somebody told me. I know that afterwards,
11 when I was able to get my vehicle out of the
12 impound, I did notice that the air bag had been
13 deployed.

14 Q All right. Sir, I can indicate to you
15 that the only observation made by individuals in
16 attendance at the time was that you had some
17 slight blood around your nose, or possibly a
18 bleeding nose, sir. Do you have any information
19 as to whether you sustained any other injuries
20 during the collision?

21 A I know that the next day I saw a cut
22 in my mouth and dried blood in my nose.

23 Q All right. Sir, you completed a
24 traffic accident report on the 30th of March,
25 2005?

1 A Yes, sir.

2 Q And this I hope is exhibit 70, it will
3 be found in book E-1.23 at page 500.

4 Sir, you should have your traffic
5 accident report dated the 30th of March, 2005, in
6 front of you, sir?

7 A I do.

8 Q And you will notice that in the
9 statement of the driver that appears on page 501
10 of the materials that all of the lawyers are
11 working from, there is a statement with respect to
12 declaration relating to the accident, sir. And if
13 I can read your writing correctly, and please
14 correct me if I'm wrong, it says:

15 "On February 25th, 2005 at
16 approximately 7:00 a.m. I became
17 involved in a collision at..."

18 Can you read that word for me, sir? Lagimodiere?

19 A It is not my handwriting, sir, but I
20 think it is Lagimodiere.

21 Q Okay. It wasn't fair of me to ask you
22 to read something that wasn't your handwriting, so
23 I can try as well as you and say Lagimodiere.

24 "I was wearing my seat belt at the
25 time my air bag deployed. As a result

1 of the collision, I sustained a bloody
2 nose and a cut to the inside of my
3 lip."

4 Sir, would that be your signature on the signature
5 line, sir?

6 A It is, yes.

7 Q I take it, sir, you would have had to
8 furnish this information to whoever it was who
9 wrote down that information?

10 A That is correct.

11 Q Sir, you will agree that the only
12 injuries that are mentioned there are the bloody
13 nose and a cut to the inside of your lip?

14 A Those are the only injuries listed,
15 yes.

16 Q And there is no indication there of
17 any concussion, sir?

18 A It isn't. Like I said, my memory is
19 sporadic, I'm not sure when I had that
20 conversation with my mom. And I had consulted
21 with my lawyer before I made the statement,
22 because it was like second-hand information to me,
23 I didn't know if I needed to put information like
24 that in, nor did I know that I would be sitting
25 here today talking about it.

1 Q Fair enough, sir. You indicate in
2 here that you had your seat belt on at the time?

3 A I did, yeah.

4 Q And you indicated earlier that you
5 didn't have a memory of having your seat belt on?

6 A I believe I said I didn't have a
7 distinct memory of wearing my seat belt, but it is
8 something that I usually do.

9 Q All right. So are you suggesting that
10 you put it down here based on habit and practice
11 rather than based on actual recall, sir?

12 A That would be fair.

13 Q Sir, your explanation for not having
14 mentioned concussion there is at the time that you
15 are not sure that you had the information to
16 suggest you had a concussion?

17 A Like I said, my memory is sporadic. I
18 don't know if information that I considered a
19 memory are things that have been said to me,
20 things that I have read, things that I have heard
21 from other people.

22 Q Sir, would you consider the loss of
23 memory to be an injury?

24 A I'm not a professional. I consider it
25 could be an injury, it could be the stress, it

1 could be dealing with the trauma, it could be a
2 number of things.

3 Q And you didn't feel that that was
4 something that you should put down in your report,
5 sir?

6 A Like I said, I consulted with my
7 attorney beforehand. I informed him what I was
8 going to say, and he indicated what I said --

9 THE COMMISSIONER: Excuse me, I'm
10 having difficulty hearing you. Maybe you can try
11 to speak into that, you have a very low voice.

12 THE WITNESS: I am sorry, sir.

13 THE COMMISSIONER: That's all right.

14 BY MR. PACIOCCO:

15 Q All right, sir, it is not a question
16 that I would have asked you but for the answer
17 that you just provided. Are we to understand that
18 you wrote in here information based on what you
19 were advised by your attorney?

20 A No.

21 MR. PROBER: I object.

22 THE COMMISSIONER: Just a second.

23 MR. PROBER: The objection is that he
24 is asking him to indicate solicitor-client
25 communication, which he has already agreed to both

1 in writing and verbally and put on record here
2 that he would not go to.

3 MR. PACIOCCO: I understand that
4 everybody has trouble hearing the witness given
5 that he was a distance from the microphone, but
6 the answer I heard the witness give was that he
7 had a conversation with his attorney and went in,
8 and that's why he put down what he put down here.
9 Maybe I misheard him.

10 THE COMMISSIONER: I didn't. That's
11 what I heard him say.

12 MR. PACIOCCO: I would not have asked
13 the question, if a witness talks about a
14 conversation they have had with their attorney, it
15 is no longer privileged. I had not asked him for
16 that information, but once it was out, I felt that
17 I was duty bound to clarify the answer and to
18 pursue it.

19 THE COMMISSIONER: Yes.

20 MR. PROBER: The witness said that he
21 gave his Highway Traffic Accident report after he
22 consulted with his attorney. He didn't say that
23 his attorney told him what to say, or that he put
24 down what he put down because of what his lawyer
25 told him. So I maintain my objection, it is

1 solicitor-client privilege and should not be
2 explored by Mr. Paciocco. I can produce the
3 letter that he wrote me.

4 THE COMMISSIONER: I'm aware of the
5 letter.

6 MR. PROBER: And you know what
7 Mr. Clifford said when Mr. Wolson testified,
8 solicitor-client privilege is sacrosanct and we
9 will not go there, and he simply put on the record
10 the transcript of proceedings during the court
11 proceedings.

12 THE COMMISSIONER: I have seen that
13 letter, I think you sent me a copy.

14 MR. PROBER: Well, I would be
15 surprised if you had counsel that I would send you
16 a copy, sir, but --

17 THE COMMISSIONER: In any event,
18 Mr. Paciocco's position is that having said that
19 he consulted with a lawyer, that he has waived
20 privilege. I would like to hear what the answer
21 is. Maybe the reporter could take a minute and
22 let me see what the actual answer is.

23 MR. PACIOCCO: Sir, I was simply
24 trying to understand your evidence.

25 THE COMMISSIONER: Just wait a moment,

1 until I see what response he gave and whether he
2 has in giving that answer waived solicitor-client
3 privilege.

4 MR. PROBER: My friend is arguing by
5 implication that he may have waived
6 solicitor-client privilege, and I say that that is
7 not good enough, but we will wait and hear what
8 the answer is.

9 THE COMMISSIONER: The reporter has
10 noted that the words are:

11 "Like I said, I consulted with my
12 attorney beforehand, I furnished him
13 what I was going to say, and he
14 indicated what I said --"
15 I'm satisfied that's not a breach of
16 solicitor-client privilege. You can go ahead. Be
17 careful now, Mr. Paciocco. Do you want me to make
18 this an exhibit?

19 MR. PACIOCCO: I think it is on the
20 record, Mr. Commissioner, I don't think it is
21 required to be made an exhibit.

22 BY MR. PACIOCCO:

23 Q Sir, I was simply trying to clarify
24 your answer. Did I understand you to intend to
25 communicate that you had passed by your solicitor

1 what you were going to put on this traffic
2 accident report before filling it out, sir, and
3 that's why you wrote what you wrote?

4 A I didn't write the traffic accident
5 report. I consulted with my attorney and then
6 went and provided the statement.

7 Q That is the statement that you
8 provided, sir, as a result of the conversation
9 that you had with your attorney, is that what we
10 are to understand, sir?

11 A Seeking advice from him, yes.

12 Q Sir, I'm going to go on and ask you
13 about having been met by an ambulance attendant by
14 the name of Ted Rosser, when you were sitting in
15 the back of a police vehicle after the collision,
16 sir. Do you recall being in the back of a police
17 vehicle after the collision?

18 A The only thing I really recall is the
19 feeling of sitting down.

20 Q Mr. Rosser notes that he did an
21 assessment of you, sir, and he confirms in that
22 assessment that you had, and I will quote from the
23 testimony given in these proceedings, "a bit of a
24 bloody nose." He noted no complaint by you with
25 respect to any head injuries or blackouts, or even

1 a sore head. The only complaint you provided to
2 him, sir, was you had, as he put it "a little burn
3 on your shin." So there was a complaint about
4 your leg, and not about your head, sir. He was
5 asked whether you exhibited any signs of a
6 concussion, and he indicated no, even though that
7 was something that he would be alert to look for.
8 He found you to be alert, he found you to be
9 oriented as to time and place. He determined that
10 you were competent to reject medical attention.
11 And indeed, you signed a release at that time
12 indicating that you did not want to attend at a
13 hospital for any medical attention.

14 Sir, do you recall any of that?

15 A I don't recall meeting with any
16 paramedic, no.

17 Q So you certainly wouldn't dispute the
18 testimony that Mr. Rosser gave before this
19 Commission?

20 A I don't recall meeting with
21 Mr. Rosser.

22 Q Sir, I think you would agree with me
23 that that account of events shortly after the
24 collision is inconsistent with any suggestion of a
25 concussion?

1 A I don't recall my conversation with
2 Mr. Rosser, so I can't speculate.

3 Q Sir, based on the information that I
4 just gave you, that you had been assessed by a
5 paramedic who specifically was looking into
6 whether you were alert and oriented, and was on
7 the lookout for signs of a concussion and found
8 none, that that is inconsistent with you having
9 sustained a concussion during this incident?

10 A I'm not a medical professional so I
11 can't comment on what he comments on, or
12 observations of.

13 Q Sir, I'm going to suggest to you that
14 your conduct when dealing with the police was also
15 inconsistent with a suggestion of a concussion,
16 and you were able to make discriminating choices
17 in the period shortly after the accident, sir.
18 You furnished Constable Woychuk with your driver's
19 licence. Do you recall that, sir?

20 A I don't recall that.

21 Q When you were at the station, we've
22 heard testimony that you asked Sergeant Carter for
23 a pen and a paper before you went into the room to
24 contact counsel. Do you recall that, sir?

25 A I don't have a specific memory of

1 that, no.

2 Q According to Sergeant Carter, you said
3 at one point, "I'm sorry, did you give me the
4 demand?" Do you recall that, sir?

5 A I don't remember the conversation I
6 had with Sergeant Carter.

7 Q Sir, the evidence was that you did
8 exercise your right to counsel and that you indeed
9 selected a lawyer to contact. Do you recall that,
10 sir?

11 A The only part of my charge and caution
12 that I remember is me making a comment, "excuse
13 me." I have no memory of what Sergeant Carter
14 said to me.

15 Q I am sorry, I didn't understand your
16 answer, sir. Could you please repeat it?

17 A Like I informed you before, my memory
18 is sporadic and I either have snapshots in my
19 mind, or visions, or sound bytes, and I'm not sure
20 of the context, or if I had things in
21 chronological order, nor am I sure of time frame.
22 The only thing I remember about my charge and
23 caution is that I said "excuse me". I don't know
24 what Mr. Carter said to me.

25 Q So you have a recollection of saying

1 excuse me, but you don't understand what it was in
2 response to or what the context was?

3 A Correct.

4 Q According to Sergeant Carter, he also
5 indicated that you asked him when you came out
6 what time you had called your lawyer. Do you have
7 any recollection of that, sir?

8 A Again, I don't have any recollection
9 of talking with Mr. Carter.

10 Q And would you agree with me, sir, that
11 as a police officer, you would be aware of the
12 importance of time in connection with an impaired
13 driving and breathalyzer investigation?

14 A Are you asking me to examine his
15 investigation?

16 Q No, sir. I'm asking you whether you
17 would agree with me, that given that you are a
18 police officer, you would have at that time and
19 probably still today understand the importance of
20 time in connection with the securing of a breath
21 sample from a suspect?

22 A Being able to look at the instance, in
23 retrospect now, I can appreciate the time factor.

24 Q And would you agree with me that
25 asking an officer, who was in the process of

1 making demands and attempting to proceed with an
2 impaired driving investigation, about the time you
3 called your lawyer, could very easily relate to
4 the concerns about the passage of time and whether
5 the sample is one that could benefit from the
6 presumption that's provided in the Criminal Code?

7 A As I don't have a clear recollection
8 of the incident, like I've said, my memory is
9 sporadic, I can't really comment on that. I don't
10 understand what you are trying to ask me.

11 Q Sir, you understand as a police
12 officer that time is important in connection with
13 securing breath samples from suspects?

14 A Correct.

15 Q And that if a suspect is interested in
16 the passage of time and how much time has passed,
17 and that suspect is aware of the importance of the
18 passage of time, that that question could well
19 relate to whether or not the time requirements of
20 the Criminal Code have been respected. Do you
21 agree with that, sir?

22 A Because I don't remember much from the
23 accident scene, you are making me make a
24 conclusion that I would have to have known when
25 the accident happened in relation to asking for

1 what you are saying, asking for a pen and paper.

2 I don't remember much of the accident scene, so I
3 really can't comment.

4 Q Sir, you made a decision not to
5 provide a sample?

6 A Correct.

7 Q And, sir, as a police officer, you
8 would be aware that if you were to provide a
9 sample, it would furnish a reading that would
10 determine and identify the amount of alcohol in
11 your blood?

12 A I'm aware as a former police officer
13 what a breath sample does, yes.

14 Q And if you've refused to provide a
15 sample, you would have been aware that your
16 liability would be for the charge of refusing a
17 sample at most, sir, but by refusing you would not
18 be producing any evidence of alcohol in your body?

19 A I'm aware of what a refusal charge is
20 indicative of, yes.

21 Q And, sir, if you were to have, and I'm
22 going to suggest to you that you probably did, if
23 you were to have made a decision not to provide a
24 sample because you preferred a refusal charge to
25 actually disclosing the alcohol in your body, that

1 would have involved a fairly sophisticated degree
2 of reasoning; would you agree with that, sir?

3 A No, I wouldn't. As I don't remember,
4 and I can't comment because I don't remember. I
5 remember feeling distraught and confused. I don't
6 know why I refused the breath sample.

7 Q Sir, you signed a promise to appear
8 and a prisoner's log before you were released?

9 A I have since seen those, yes.

10 Q And on the promise to appear, the
11 signature confirms that you were undertaking to
12 comply with, and you read and understood the
13 warning, sir?

14 A I don't have a distinct memory of
15 signing the document. That is my signature, as I
16 have seen it subsequently. I have the feeling
17 that I was in the presence of counsel at the time,
18 who I later learned was Kathy Bueti, and I may
19 have received some direction from her, but I'm not
20 sure.

21 Q We have heard evidence that you
22 consented to have your prints done and your photo
23 taken rather than return to East St. Paul at some
24 subsequent point in time to be processed. Are you
25 aware of that, sir?

1 A I'm aware of it because I was told
2 after the fact, but I don't have a distinct
3 memory. The memory that I have of my
4 fingerprinting and photographing is when they were
5 asking me background questions about my person,
6 and giving some descriptives to the person.

7 Q All right, sir, I'm not going to ask
8 you to go on your memory, I'm going to ask you
9 simply this: Based on the description of your
10 activities by those officers in the testimony
11 before us, you would agree that your ability to
12 make discriminating choices and responses to the
13 demands that were made to you indicates that your
14 mind was functioning fine at that time?

15 A Based on their evidence -- you want me
16 to comment on what they said?

17 Q I want you to comment on whether or
18 not that description of your conduct is consistent
19 with a concussion or a malfunctioning mind?

20 A Well, like I said, I'm not a doctor so
21 I don't know the specifics of a concussion.

22 Q Sir, we are also aware that you did
23 attend the hospital that evening with Mr. Paul
24 Isaak, a sergeant who was the wellness officer
25 with the Winnipeg Police Service?

1 A Again, I have been told that. I have
2 no specific memory of attending with Paul.

3 Q And the document that he has furnished
4 through his interview with the Winnipeg Police
5 Service indicates that it was for the purpose of
6 obtaining sleeping pills, and that there was no
7 investigation of any injury at that time. Are you
8 aware of that, sir?

9 A I'm not aware of his statement to the
10 police, no.

11 Q But you would agree with me, sir, that
12 going to the hospital on the same day that the
13 accident occurs, seeking sleeping pills to deal
14 with your emotional trauma but not seeking a
15 physical examination, is inconsistent with you
16 having sustained a concussion?

17 A As I have no memory of going to the
18 hospital, nor speaking with a doctor, I'm not sure
19 what was said. I know that I have had information
20 passed to my from my mother that she had a concern
21 and a question about concussion. And the
22 response, to paraphrase, was in instances like
23 this, there is a potential to sustain a concussion
24 and that watch for some falling signs, dizziness,
25 and vomiting and such, and if I exhibit any of

1 those, to bring me back to the hospital.

2 Q All right. So that conversation that
3 you've received second-hand, do you know when that
4 medical contact took place that lead to your
5 mother having that information?

6 A I'm not sure of the specific time when
7 the doctor spoke to my mother. I don't really
8 remember the hospital visit. I remember sitting
9 in a room. I don't remember getting to the
10 hospital or leaving, or who exactly I was with. I
11 received the information afterwards.

12 Q Are we talking within hours after the
13 accident, or days, or weeks, sir?

14 A I was given the impression that it
15 happened before my release from the hospital that
16 night.

17 Q Sir, Mr. Isaak informed Inspector
18 Stannard that he had been in touch with you,
19 including having breakfast with you in the days
20 after the incident, sir. Do you recall staying in
21 touch with Sergeant Isaak?

22 A I have had contact with Sergeant Isaak
23 after the incident, yes.

24 Q We have a document, sir, and I'm going
25 to ask the clerk to retrieve it, it has not yet

1 been made an exhibit. It is found in book
2 Q-2.89.b.30, and I'm going to ask you to comment
3 on this document in a second, Q-2.89.b.30.

4 THE CLERK: Exhibit 249.

5 (EXHIBIT 249: Q-2.89.b.30 Email from
6 Art Stannard to Doug Webster, Corrine
7 Scott sent March 11, 2005)

8 THE COMMISSIONER: Q-2.

9 MR. PACIOCCO: The page number, Your
10 Honour is 3070, the tab is Q-2.89.b -- excuse me,
11 the page number is 3062, the tab number is
12 Q-2.89.b.30.

13 BY MR. PACIOCCO:

14 Q Sir, you have that document in front
15 of you?

16 A I do.

17 Q It is dated March the 11th, 2005, sir,
18 some two weeks after the collision?

19 A That's correct.

20 Q And it indicates that Paul Isaak has
21 been keeping in touch with you and most recently
22 had breakfast with you. And it indicates you have
23 plenty of family and friends' support, no
24 indication of any hospital treatment. Do you see
25 that, sir?

1 A I see that line, yes, sir.

2 Q Would you agree that that's an
3 accurate description of what happened in the two
4 weeks after the incident, sir?

5 A After the incident -- I would have
6 been told during the incident I was quite
7 distraught. People were concerned for my safety
8 and well-being, and thought that I would hurt
9 myself.

10 Q Yes, sir.

11 A I'm not sure if Paul is referring to
12 that as hospital treatment, as me seeking any
13 other type of medical treatment. I know that
14 after the incident that people were rather
15 concerned, which is why Paul had stayed in contact
16 with me.

17 Q Yes, sir.

18 A Because they were afraid I was going
19 to hurt myself.

20 Q Yes, we have heard that evidence, sir.
21 You would agree with me that, at least according
22 to that note of Inspector Stannard, there is no
23 indication of any hospital treatment having been
24 received by you, sir?

25 A Yeah, but it doesn't say for what

1 though.

2 Q It --

3 A It says no hospital treatment.

4 Q Yes, sir.

5 A Hospital treatment can be many things.

6 Q Yes, sir.

7 A Indicating for concussion or for

8 stress or for the fact that I may have been

9 distraught and wanted to hurt myself.

10 Q Yes, sir, but you would agree with me
11 that no hospital treatment means that you received
12 no treatment for any of those things?

13 A Or he wasn't advised of any.

14 Q You are aware, sir, that no medical
15 reports were filed with the court at the time of
16 your sentencing confirming any concussion or
17 memory loss?

18 A I don't know of any medical reports
19 being filed, no.

20 Q And, sir, in fact, only one medical
21 report was filed and it will be found in book L at
22 tab 54. Excuse me, book I, tab 54.

23 (EXHIBIT 250: I.54 Medical report,
24 letters of reference - written
25 material filed by R. Wolson)

1 BY MR. PACIOCCO:

2 Q Sir, what you have in front of you is
3 a compilation of medical reports and letters of
4 reference that were filed during the sentencing
5 hearing in connection with your guilty plea, sir.

6 A Yes, sir.

7 Q The first document that you see in
8 there is a report from W.L. Davis, PhD, a
9 psychiatrist, sir?

10 A That's correct.

11 Q And is that the doctor who you have
12 been attending with, sir?

13 A No, I had met with Dr. Davis
14 pre-sentencing.

15 Q And, sir, you had conversations and he
16 conducted an evaluation of you and your condition
17 at that time, sir?

18 A Correct.

19 Q I would ask you to take a look at page
20 1557, or page 3 of the document, please?

21 A Yes, sir.

22 Q And you will notice that approximately
23 six or eight lines up from the bottom of the page,
24 his mental status examination of you having been
25 filed with the court concludes as follows, and I'm

1 reading from the end of the line, sir:

2 "This uncontrolled sadness was
3 appropriate, however, to the context
4 of our discussion, and there was no
5 evidence of cognitive impairment,
6 memory loss or psycho motor
7 retardation or agitation."

8 Do you see that, sir?

9 A I do, yes.

10 Q So in the only medical report that was
11 filed with the court --

12 MR. PROBER: I'm going to object.

13 THE COMMISSIONER: Yes, come up.

14 MR. PROBER: I'm looking for the --

15 "This uncontrolled sadness was
16 appropriate, however, to the context
17 of our discussion, there was no
18 evidence of cognitive impairment,
19 memory loss or psycho motor
20 retardation or agitation."

21 That was at the time that he met with Dr. Davis,
22 not at the time of the accident. Unless you want
23 to call Dr. Davis to confirm that, it is not an
24 appropriate question to put to this witness.

25 THE COMMISSIONER: I think it is very

1 appropriate. He is indicating now that he has had
2 memory loss. He has only -- he can only see
3 occasional -- he can only have occasional
4 recollections. Now, that's what -- we are now
5 talking about almost three years. You mean that
6 this has developed since that time, since -- his
7 loss of memory has developed since his meeting
8 with the doctor?

9 MR. PROBER: No, I am concerned about
10 the fact that this report is prepared July 17,
11 2007.

12 THE COMMISSIONER: I see. All right.
13 Yes.

14 MR. PROBER: July 17, 2007, and he is
15 dealing with Derek Harvey-Zenk on July 17, 2007.
16 As long as that's put in its proper context, then
17 I don't have a problem, but if my friend is
18 implying that this goes back to the time of the
19 accident, then he should call Dr. Davis, not put
20 it to this witness.

21 THE COMMISSIONER: No. What he is
22 saying is Dr. Davis, a year ago, does not find any
23 memory loss. Today he says I have memory loss.
24 And that's all he is putting to him.

25 MR. PROBER: Well, whatever, we will

1 wait and see where my friend goes with that.

2 THE COMMISSIONER: Yes, all right. Go
3 ahead.

4 BY MR. PACIOCCO:

5 Q Sir, when you met with Dr. Davis, you
6 discussed events surrounding the accident, sir?

7 A I don't remember the verbatim
8 conversation, but I remember talking with him.

9 Q And the purpose of the examination was
10 to evaluate your condition for the purposes of
11 assisting and advising the court, sir?

12 A That was my impression, yes.

13 Q And he specifically, according to the
14 document in question, conducted what he refers to
15 as a mental status examination, sir.

16 A Okay.

17 Q And you will see nowhere in this
18 report any indication with respect to memory loss
19 actually being something that you had experienced
20 as a result of the accident, sir. In fact, the
21 only indication here is that your uncontrolled
22 sadness was appropriate to the context of the
23 discussion and there was no evidence of cognitive
24 impairment, memory loss or psycho motor
25 retardation or agitation. Do you see that there,

1 sir?

2 A I see that sentence, yes.

3 Q Sir, would you not agree with me that
4 if you were in fact suffering from memory loss
5 that is something that would have been brought up
6 by you in your discussion with him?

7 THE COMMISSIONER: Just a second,
8 don't answer. Are you up or down?

9 MR. PROBER: No.

10 MR. WEINSTEIN: False alarm.

11 THE WITNESS: Can you repeat the
12 question? There was some confusion.

13 BY MR. PACIOCCO:

14 Q Sir, would you agree with me that you
15 would have engaged in a discussion with him about
16 your memory loss had you, in fact, suffered one,
17 sir?

18 A I have been consistent when I talk
19 about the incident and how I talk about the
20 incident, I have often described it the same way.
21 I don't know why he wrote what he wrote, but I
22 have not been changing my story, if you want to
23 use words.

24 Q So you have no explanation why the one
25 medical report that was filed with the court does

1 not make reference to memory loss, but, in fact,
2 says quite the contrary?

3 A I know that in my discussion with
4 Dr. Davis, we briefly talked about the incident.
5 Most of the discussion was based on how I felt and
6 how I was reacting to the incident and my feelings
7 and my -- and how I was coping.

8 Q Sir, you indicate you have sporadic
9 memories with respect to the event?

10 A That's correct.

11 Q What is it that you remember about the
12 event?

13 A I remember snapshots, like still
14 pictures of instances. I remember sound bytes. I
15 remember feelings. I don't have any -- I don't
16 know if I have them in context, and the things
17 that I remember, I'm not sure if I have been told
18 things and have convinced myself to remember them,
19 or if I specifically remember them.

20 Q Sir, I know this is a very hard
21 question and it will be a hard question for the
22 Tamans as well. Do you remember watching
23 Mrs. Taman die, sir?

24 A The only memory I have of the accident
25 scene is a still picture in my mind of Mrs. Taman

1 in her vehicle.

2 Q Sir, I ask you that question because
3 your mother -- I understand her name is Pam Zenk?

4 A That's correct.

5 Q She furnished information to your
6 lawyer, Mr. Wolson?

7 A I'm under the impression that she sent
8 him a letter or an email.

9 Q And, sir, there is a passage at page
10 1662 of a document that's been filed in this case,
11 it is exhibit 8, it is at J-62.

12 A What was the page number again, sir?

13 THE COMMISSIONER: Give me a moment,
14 please?

15 MR. PACIOCCO: I will refer you, sir,
16 first to page 1662 and then we will be going on to
17 page 1663.

18 THE COMMISSIONER: J-62.

19 MR. PACIOCCO: 1662 on to 1663 of
20 volume J, please.

21 THE COMMISSIONER: Thank you.

22 BY MR. PACIOCCO:

23 Q Mr. Wolson is speaking to the judge,
24 and at line 23 he advises the judge:

25 "This is what Pam Zenk sent to me. He

1 told me that the first thought..."
2 and then Mr. Wolson is talking now of Derek.
3 "He told me that the first thought
4 that enters his mind every morning is
5 that he is responsible for the death
6 of another human being, and the last
7 thought he has at night before he
8 falls asleep, that he is responsible
9 for the death of another human being.
10 He saw her die and that image has
11 stayed with him and will for his
12 lifetime."

13 Do you see that, sir?

14 A Yes, sir.

15 Q Is that accurate to what you would
16 have told your mother, sir?

17 A Again, I'm consistent in how I
18 describe what I remember, and what I remember is a
19 still picture in my mind of Mrs. Taman in her
20 vehicle.

21 Q All right, sir, I'm going to continue
22 to ask you questions, and I want you to try your
23 best to answer the questions that I'm putting to
24 you.

25 A Um-hum.

1 Q We are at Branigan's, it is the 24th
2 of February, and you have gone to work with your
3 partner, Constable Nolet. Sir, you recall that
4 one of the attractions of going to Branigan's was
5 that that institution would provide discount beer
6 and wings, sir?

7 A I wasn't aware that we were getting
8 discounts. I know they had a wing special that
9 night.

10 Q And, sir, you had been there before
11 with the shift?

12 A We had gone on other occasions.

13 Q We heard it was approximately a month,
14 once a month you would go there, or typically on
15 the evening before an overlap day. Are you able
16 to assist the Commissioner at all in your
17 recollection about that?

18 A I would be speculating on the
19 frequency. Once a month -- I don't know about
20 once a month, it depended on the rotation through
21 overlaps and whatnot.

22 Q And it included wing eating contests,
23 very informal wing eating contests?

24 A I remember an instant where we did,
25 yes.

1 Q And you, sir, were quite famous,
2 according to your colleagues who testified, for
3 your ability to consume chicken wings?

4 A Apparently I have a hidden talent.

5 Q Sir, you booked off early on the 24th
6 of February, at 10:30 it has been established, and
7 you went off to Branigan's, and you are unable to
8 indicate what time you arrived there, sir?

9 A That's correct.

10 Q Sir, our information is that you
11 stayed until closing at 2:30 in the morning. Do
12 you have any recollection of that, sir?

13 A I don't have a distinct memory, no.

14 Q Our information is that most of the
15 time that you were at Branigan's, you would have
16 been there only with other police officers, sir,
17 that there were no other patrons in the
18 establishment apart from your shift and the people
19 who came along, who were also police officers. Do
20 you have a recollection of that, sir?

21 A I don't have a recollection, no.

22 Q What do you remember from Branigan's?

23 A Again, I'm not sure if I'm getting
24 things confused with other times we have gone. I
25 don't recall what time I got there. I don't

1 recall who was there before me and I don't recall
2 specifically where we were. We usually sat in the
3 lounge area, so I'm assuming that's where we sat
4 again. Specifically in the lounge, I don't know.

5 Q Do you recall sitting at high tables,
6 sir?

7 A No, I don't.

8 Q Do you recall who you were sitting
9 with?

10 A The only thing I remember is a
11 snapshot of the faces of Ted Michalik and Lloyd
12 Swanson.

13 Q And does that snapshot provide any
14 other detail apart from their faces, sir?

15 A No, sir.

16 Q Do you recall who you had been
17 interacting with that evening, sir?

18 A No, I don't.

19 Q Does it refresh your memory to learn
20 that Mr. Schneider was one table over from your
21 table, sir?

22 A I don't know who Mr. Schneider is.

23 Q Do you know Mr. Veldman?

24 A Veldman?

25 Q Yes, sir?

1 A I know the name, yes.

2 Q And Mr. Veldman was sitting in close
3 proximity to you that evening. Do you recall
4 that, sir?

5 A I don't recall.

6 Q How about Constable Buors?

7 A I don't recall.

8 Q Our information is he was sitting
9 beside you, sir. How about Constable Haddad?

10 A I don't recall.

11 Q Our information is you were sitting
12 next to him, sir. Constable Toews indicated that
13 Constable Guyot was with you as well, sir. Do you
14 have any recollection of that?

15 A Specifically, no. The only faces that
16 I remember are Ted's and Lloyd's.

17 Q Do you remember having a conversation
18 with Kelly McLure?

19 A No.

20 Q Do you remember having a conversation
21 with Constable Nechwediuk?

22 A Nechwediuk, no, I don't.

23 Q She was a friend of yours?

24 A Yes.

25 Q You socialized with her along with

1 your wife from time to time?

2 A From time to time.

3 Q Do you recall seeing David Harding
4 there?

5 A Not specifically, no.

6 Q Do you recall any dealings with
7 Christian Guyot?

8 A No, I don't.

9 Q Constable Michalik indicates that he
10 saw you standing and having a conversation with
11 Mr. Guyot and Mr. Harding. You have no
12 recollection of that, sir?

13 A No, I don't.

14 Q How about any dealings with your
15 partner, Jay Nolet?

16 A The only thing I remember specifically
17 from that night is snapshots of Ted and Lloyd's
18 face.

19 Q So you are unable to indicate whether
20 you had any dealings with Sergeant Black?

21 A I don't recall.

22 Q Unable to indicate whether you had any
23 dealings with Sergeant Humniski?

24 A I don't recall.

25 Q Unable to indicate whether you had any

1 dealings with Sergeant Anderson?

2 A I don't have a specific memory, no.

3 Q No memory of what the atmosphere was
4 like there, sir?

5 A No.

6 Q No memory of how heavily people were
7 drinking that evening, sir?

8 A No, I don't.

9 Q No memory of having eaten 60 wings?

10 A Not in that instance. I know that I
11 usually ate wings, I usually started with 40, so
12 60 could be a safe number I guess.

13 Q Do you know what you were washing the
14 wings down with?

15 A Usually we would have a glass of beer.
16 Like a pint I guess is the term.

17 Q All right, sir. And there were
18 witnesses who indicate that they saw beer in front
19 of you, sir. You wouldn't take issue with that?

20 A Again, usually on occasion I have had
21 a couple of beer while we have had wings. I don't
22 specifically recall that night.

23 Q You don't recall how many beer you had
24 that night?

25 A Not specifically, no.

1 Q Do you recall generally?

2 A I wouldn't want to guess. Usually I
3 have a couple.

4 Q Sir, what kind of beer do you drink?

5 A Whatever is on the tap.

6 Q So, the \$2.75 pints that were
7 available to the police officers at Branigan's
8 would have been what you were consuming, sir?

9 A If that's what was available.

10 Q Sir, my information is that there were
11 19 complimentary drinks issued that day. Do you
12 recall whether you had any complimentary drinks,
13 sir?

14 A I don't recall.

15 Q Our information from two witnesses at
16 least is that there were pitchers of beer
17 available as well. Do you recall drinking beer
18 out of pitchers, sir?

19 A I don't recall any pitchers.

20 Q Sir, you ultimately went to Sergeant
21 Black's house, Constable Black at the time?

22 A Okay.

23 Q Do you have a recollection of going
24 there, sir?

25 A I don't have a specific recollection

1 of going there, nor do I know that I remember what
2 Sean Black's house looks like.

3 Q Do you remember lining up to leave
4 Branigan's, sir?

5 A No, I don't.

6 Q Do you remember going up to pay?

7 A No, I don't.

8 Q Do you know how you paid your bill
9 that evening, sir?

10 A Usually I paid either with cash or
11 debit. I don't use a credit card much.

12 Q And, sir, do you hang on to the
13 receipts that you secure when you pay for things
14 with cash or credit?

15 A On occasion I have, but I don't
16 remember that night.

17 Q Did you look for the receipts that you
18 may have had at any point, sir, after that
19 occurred?

20 A I haven't found any.

21 Q Did you look for them, sir?

22 A I haven't looked for them either.

23 Q Do you recall noticing anyone at
24 Branigan's who shouldn't be driving?

25 A I don't recall much of the evening.

1 All I recall at Branigan's is seeing a snapshot of
2 Ted and Lloyd's face.

3 Q Sir, we had evidence from Mr. Gerardy,
4 who was the night manager, that there were a few
5 police officers who he felt should have been cut
6 off, and that he was concerned enough about their
7 state of sobriety that when they went to leave, he
8 spoke up to ensure that these people were not
9 going to drive. Do you have any recollection of
10 overhearing or participating in that conversation,
11 sir?

12 A I don't recall any conversation, no.

13 Q Do you recall how you were feeling
14 when you left Branigan's?

15 A I have no recollection, no.

16 Q Sir, do you have a recollection of
17 going to Sean Black's?

18 A No, sir.

19 Q Do you have a recollection of being at
20 Sean Black's?

21 A Sporadic.

22 Q What do you remember from Sean
23 Black's?

24 A I remember an arm wrestling contest.

25 THE COMMISSIONER: Sorry, what is

1 that?

2 THE WITNESS: I remember an arm
3 wrestling contest.

4 BY MR. PACIOCCO:

5 Q Sir, did you participate in those
6 contests?

7 A I can't be sure. I think I did, but
8 I'm not sure.

9 Q What else do you remember?

10 A I remember seeing a snapshot of a
11 vision of twin beds, but I'm not sure if that's
12 actually in Sean Black's house or not, I'm not
13 sure if that even occurred at Sean's, but that's a
14 snapshot I had in my head.

15 Q Do you recall who else was there, sir?

16 A No, I don't.

17 Q When you see this snapshot of arm
18 wrestling, who is it that you see, sir?

19 A I don't really see anybody, I hear
20 voices of people teasing me for not winning the
21 contest.

22 Q Do you recall seeing alcohol there,
23 sir?

24 A No, I don't.

25 Q You would be unable to tell us, I take

1 it, what you had to consume that evening, sir?

2 A I don't recall even being at Sean
3 Black's, so I have no idea.

4 Q Sir, we have received information that
5 there was rye available to drink, sir. I take it
6 you drink rye?

7 A I have drank rye on occasion.

8 Q And we have some information, sir,
9 from Constable Nolet, that the last time he saw
10 you with a drink was just before the kitchen was
11 cleaned up. Do you have any recollection of
12 drinking there, sir?

13 A The only recollection I have is I
14 remember washing my hands, and I don't know if
15 there was a drink in the glass, but picking up the
16 glass and the glass falling a little bit on to the
17 counter.

18 Q Are you able to situate that event at
19 any point in time in the evening?

20 A I have no conceptual time to that
21 memory, no.

22 Q Do you recall seeing Constable Black
23 at that location, sir?

24 A No, I don't.

25 Q Constable Azaransky?

1 A No, the only -- the only memory I
2 have, distinct memory I have is the arm wrestling.
3 I don't remember seeing somebody, I remember
4 voices teasing me.

5 Q Sir, you understand that you were one
6 of the last three remaining at the end of the
7 evening?

8 A I don't recall.

9 Q Our information is that it came down
10 to five of you, and that Constable Buors and Nolet
11 left shortly before you did at some point between
12 6:00 and 6:30 in the morning, sir. Do you have
13 any recollection of that?

14 A I have no recollection, no.

15 Q So you have no recollection of whether
16 anyone there was under the influence of alcohol?

17 A I have no memory of being at Sean's.

18 Q Constable Black indicates that he
19 offered to have you stay over, and indeed both he
20 and Constable Azaransky, according to the
21 statement Constable Black gave, suggested that you
22 stay over. Do you have any recollection of that,
23 sir?

24 A I have no recollection of the
25 conversation with Constable Black.

1 Q The testimony we have received is that
2 you chose to leave and, in fact, you left at a
3 point in time when Constable Black had gone back
4 into his en-suite bathroom, and while Constable
5 Azaransky was on a couch, you left without saying
6 goodbye, and neither of them expected you to
7 leave, you just disappeared, sir. Do you have any
8 recollect of that?

9 A I have no recollection of that.

10 Q Sir, you won't be able to comment on
11 the truth or falsity of a rumour that your keys
12 had been taken away from you and that people did
13 not want you to leave, sir, but you managed to
14 leave in any event?

15 A I never heard a rumour about that.

16 Q How were you feeling when you left?

17 A I have no recollection.

18 Q Sir, we are aware that you left around
19 7:00 o'clock, because the collision that took the
20 life of Crystal Taman occurred at approximately
21 7:07, that's the best time that we can place on it
22 based on the witnesses who were there at the
23 scene, sir, and it is approximately a five minute
24 drive from Constable Black's. Do you recall
25 travelling to the accident scene?

1 A I don't recall leaving Constable
2 Black's house, no.

3 Q Sir, are you able to explain how the
4 accident happened?

5 A The only memory I have of the accident
6 is feeling an impact and then feeling panic to
7 stop my truck.

8 Q You don't have any recollection, sir,
9 of seeing vehicles ahead of you?

10 A The only memory I have of the accident
11 is feeling impact and then feeling a panic to stop
12 my truck.

13 Q You have no recollection of the
14 overhead warning lights that exist many, many
15 metres away from the scene of the collision, sir?

16 A The only memory I have is feeling an
17 impact and then feeling a panic to stop my truck.

18 Q Sir, there has been some suggestion,
19 including in the report of Dr. Davis and in a
20 document from Paul Isaak, that you fell asleep.
21 Do you know where they would have gained that
22 impression, sir?

23 A I don't know where they would have
24 gained that impression.

25 Q It would not be from you, sir?

1 A I don't have a recollection of the
2 incident.

3 Q So you would not have told them that
4 you fell asleep behind the wheel, sir?

5 A I believe that information has been
6 presented as a theory to me, but I don't have a
7 specific recollection of the incident. All I
8 remember is feeling an impact and feeling panic to
9 stop my truck.

10 Q Sir, have you given any thought to how
11 realistic that theory is?

12 A Which theory is that?

13 Q That you may have fallen asleep?

14 A Given that I was up for a duration, a
15 long duration or period of time, there is a
16 possibility, yes.

17 Q Sir, you are aware that there was an
18 independent witness to the accident, sir, a
19 Mr. Garth Shaw?

20 A I heard information subsequent to the
21 incident, yes.

22 Q And the evidence that he has furnished
23 consistently from the outset is that he saw your
24 vehicle driving in a straight line within its lane
25 into the back of the Taman vehicle, sir.

1 A Okay.

2 Q And that you were not weaving in your
3 lane.

4 A Okay.

5 Q But there was no attempt to brake, and
6 the brake lights did not come on. And it is
7 supported by the fact that there were no skid
8 marks at the time of the collision. Do you accept
9 that, sir?

10 A As I said, I don't have a distinct
11 memory. I would have to assume that what he gave
12 as information is correct to him.

13 Q The information we also have is that
14 the visibility was excellent and the road was
15 straight as a ribbon as you approach that
16 intersection, sir. Are you familiar with that
17 stretch of road?

18 A I'm not familiar with that area, no.

19 Q Sir, the information that we have is
20 that there are warning lights to give you advance
21 notice of an intersection up ahead, and that those
22 lights are quite prominent, sir?

23 A I'm not familiar with the area, nor do
24 I recall the incident, the accident.

25 Q I'm going to ask you to take a look at

1 the chart that is an overhead photograph of the
2 road that you were traveling on at the time. You
3 will notice the two yellow signs that have been
4 drawn on to depict the warning signs that are on
5 the highway, as you travel from the top of the
6 photograph down towards the bottom. So as you
7 proceed in a southerly direction on Highway 59
8 south, you come to those warning lights. And the
9 intersection where the collision occurred, sir,
10 you can see it where PTH 101 intersects with PTH
11 59 South approximately one-third of the way down
12 the diagram. Are you able to follow the
13 directions that I have just given you, sir?

14 A Yes, sir.

15 Q The expert report that's been filed in
16 connection with this matter, I'm going to put it
17 in front of you, sir, it is exhibit 60, it is in
18 book B-6.a.

19 You should have in front you, sir, the
20 RCMP forensic collision analyst's report, sir?

21 A Yes, sir.

22 Q I'm going to ask you to turn to page
23 29, please?

24 A Yes, sir.

25 Q Waiting for the Commissioner to get

1 his documents, sorry. And I'm going to read to
2 you from the report, sir, beginning in the last
3 paragraph on page 29, approximately five lines
4 into the paragraph:

5 "It is known that the advance
6 lights...",

7 and those would be, sir, the two lights with the
8 yellow sign there,

9 "...are activated 11 seconds prior to
10 the commencement of the yellow light
11 cycle for southbound motorists. The
12 yellow to red light stage is four
13 seconds in duration, therefore, a
14 southbound motorist has a minimum of
15 15 seconds warning before the lights
16 change to red."

17 So the indication, sir, is that there is a
18 minimum, given the estimate of speed that was
19 provided in connection with your vehicle, a 15
20 second warning between the time that those lights
21 would have activated to warn drivers that there
22 would be a red light ahead until the time that
23 light actually turns red, sir.

24 In addition, sir, the evidence that's
25 been presented, consistent with the statements

1 that have been given from Mrs. Kathleen Beattie
2 from day one, is that the collision occurred just
3 as the light was turning green. In other words,
4 the entire red light cycle had been completed.
5 The red light cycle was timed by Constable
6 Blandford. It varies depending on the traffic
7 conditions. The minimum period that that light
8 remains red is 15 seconds.

9 As a result of that, sir, driving up
10 to that intersection, the yellow caution lights
11 would have been on approximately 30 seconds before
12 the collision. And if we even discount that and
13 consider 15 seconds, sir, in order for you to be
14 asleep at the wheel, sir, you would have to either
15 ignore, while you are awake, the caution lights,
16 or you would have to be inattentive to the caution
17 lights because of your situation for a period of
18 some 15 seconds.

19 Sir, are you able to see the time on
20 the clock, sir?

21 A Actually there is a jug of water in
22 the way.

23 Q Can you see it now?

24 A Yes, sir.

25 Q All right, sir. When it gets to

1 25:10, I'm going to ask you to start counting down
2 15 seconds from the time that hits 25:20. It is
3 coming up, starting now.

4 A There, sir.

5 Q That would be the amount of time that
6 you would have to maintain your vehicle in its
7 lane, on a straight line, from the time those
8 yellow warnings lights would have come on until
9 you reached the intersection. Do you believe that
10 that's consistent with you having been asleep
11 behind the wheel of a vehicle, that you could keep
12 that vehicle of yours in its lane for that period
13 of time, while you are asleep, sir?

14 A I don't remember the accident.

15 Q But you do remember attempting to gain
16 control of your vehicle immediately at the time of
17 the collision?

18 A I remember feeling an impact and then
19 feeling panicked to have to stop my truck.

20 Q Because the expert report also
21 indicates that you braked aggressively immediately
22 before your vehicle left the other side of the
23 intersection, sir. That would be consistent with
24 your recollection?

25 A I remember the impact and feeling

1 panicked to stop my truck.

2 Q The expert also describes how the
3 vehicle was either steered or forced on to the
4 southwest left median, and then steered abruptly
5 to the left, leaving the highway, and then steered
6 abruptly to the south before coming to a stop. So
7 the expert, based on his analysis, concludes there
8 was both braking and steering immediately after
9 the collision, sir. Do you believe that someone
10 who was asleep at the wheel can regain
11 consciousness and regain the ability to try and
12 steer and brake the vehicle in that split second
13 it would have taken to strike that vehicle, sir?

14 A Again, all I remember from the
15 accident is feeling the impact and panicked to
16 stop the vehicle. I don't know, as you described
17 the steering and braking, how long it would have
18 taken. So I don't know.

19 Q Sir, a cell phone charger was found in
20 your vehicle. Did you have a cell phone with you?

21 A I believe I did, yes.

22 Q And that cell phone was still with
23 you, sir, after you were released from East St.
24 Paul?

25 A I have that cell phone now, yes.

1 Q Was it ever taken from you at the East
2 St. Paul Police station, sir?

3 A I don't remember.

4 Q Do you have any recollection of using
5 that cell phone in the car, sir?

6 A I have no recollection of using it in
7 the car. The only recollection that I have, and
8 I'm not sure if I'm on my cell phone, I believe I
9 was outside because I felt cold, and I remember
10 saying words "I can't talk now." I later learned
11 it was a conversation that I had with my wife.
12 She had called me.

13 Q This is while you were at the scene?

14 A I believe I was outside, yes.

15 Q So the eye witnesses at the scene say
16 that you got out of your truck and stood beside
17 it. Do you recall doing that, sir?

18 A I don't remember leaving my vehicle.
19 I believe I remember being outside because I
20 remember feeling cold.

21 Q Both Ms. Beattie and Mr. Shaw indicate
22 they saw you outside of the vehicle, standing up
23 against it or in the vicinity of it. And Mr. Shaw
24 testified that he saw you get out of it. Do you
25 have any recollection of that, sir?

1 A I have no recollection of leaving my
2 vehicle.

3 Q Both of them, as well as Ms. Bukowski,
4 describe you at some point walking over towards
5 the yellow car that had been driven by Crystal
6 Taman that morning, looking inside, standing there
7 for a period of time, turning and walking away and
8 going back to your truck. Do you remember that,
9 sir?

10 A The only memory I have is a snapshot
11 of Mrs. Taman in her vehicle.

12 Q Ms. Beattie testified that she asked
13 you if you were okay and if anyone was with you,
14 but you had a blank look on your face and just
15 turned and walked away. Do you remember any
16 encounter with a woman at the scene, sir?

17 A I don't remember any encounter, sir.

18 Q Two other witness who were not called
19 before this proceeding who expressed having
20 conversations with you, sir, Mr. Dale Kasper, who
21 was an off-duty paramedic, or firefighter from the
22 City of Winnipeg, asking you if you were all right
23 and whether you wanted any assistance. And you
24 indicated that you didn't. Do you recall that at
25 all, sir?

1 A I don't recall any conversation, no.

2 Q Mr. Vernon Stevens indicates having a
3 similar conversation with you and asking you if
4 you want to come in his truck to warm up. Do you
5 recall that at all, sir?

6 A No, I don't.

7 Q Do you recall the emergency responders
8 and police arriving, sir?

9 A No, I don't.

10 Q Do you recall who you first had
11 contact with?

12 A No, I don't.

13 Q We have evidence that Police Chief,
14 former Police Chief Harry Bakema of the East St.
15 Paul Police Service went over to you while you
16 were at your car. Do you recall that, sir?

17 A No, I don't.

18 Q Do you know Mr. Bakema?

19 A Not personally, no.

20 Q Sir, I understand that you worked in
21 the same division as him, Division 13 in the North
22 End when he was a Winnipeg Police Service Officer?

23 A That is correct.

24 Q You knew who he was, sir?

25 A I knew of him because he was a

1 sergeant on a different platoon than mine.

2 Q But you could recognize him, sir?

3 A I could recognize him and say hello to
4 him.

5 Q Sir, you began your employment as a
6 police officer on December 4th, 2000?

7 A Yes, sir.

8 Q And which division did you begin at,
9 sir?

10 A My first field training assignment was
11 in District 2, and then I was, my second field
12 training assignment was District 3. I graduated
13 in November of 2001, and was stationed in District
14 3.

15 Q Is that Division 13, sir?

16 A Yes, sir.

17 Q So you were there certainly from that
18 time until the time of the accident, sir?

19 A Yes, sir.

20 Q Yes. And former Chief of Police
21 Bakema was a Sergeant at Division 13 until
22 March 22nd, 2003, sir.

23 A Okay.

24 Q So you would have been working at the
25 same place as him for what, 15, 16 months at

1 least, sir?

2 A I can't do the math quickly in my head
3 but I would have to take your word for it.

4 Q And, sir, he was the highest in
5 command in the B-3 platoon, sir?

6 A He was desk sergeant I believe, yes.

7 Q And you would agree with me that
8 Division 13 is a pretty small premises? It is not
9 a huge building?

10 A It is not a huge building, but it has
11 three B side platoons and three A side platoons,
12 so that would be six sergeants and 12 patrol
13 sergeants and 20 constables roughly per shift.

14 Q Sir, you would know all six sergeants?

15 A I know them to say hello to them.

16 Q And, sir, you would be in that little
17 building with him quite frequently, would you not,
18 sir?

19 A Not really. Our shifts never really
20 overlapped an extensive period of time.

21 Q Sir, his shift would be relieved by
22 your shift, would it not?

23 A But the sergeant started an hour ahead
24 of us.

25 Q And they would be there at the same

1 time, sir, as you were there?

2 A I believe the sergeants -- if we were
3 to start a day shift at 7:00, the sergeants would
4 start a day shift at 6:00 a.m. to relieve the
5 transition.

6 Q Yes, sir, and this sergeant would
7 remain in the building, would he not, sir, as a
8 general rule?

9 A I'm not sure what his work habits were
10 after he was relieved of his duty.

11 Q Sir, he was platoon sergeant?

12 A I believe so, yeah.

13 Q And he indicated, sir, that on overlap
14 days it may be necessary for members of your shift
15 to actually report to him, sir?

16 A It would be necessary on some
17 instances when our sergeants would be relieved by
18 the oncoming sergeant, sometimes it would be the
19 following shift which would be B-2, and some
20 occasions the way the shifts worked, it could be
21 an A side sergeant, depending on if we were ending
22 and they were beginning. And we would go to the
23 sergeants to get some somebody released or ask a
24 question, yes.

25 Q Do you ever recall going to Harry

1 Bakema, sir?

2 A I believe I had him sign some promise
3 to appears, yes.

4 Q So I think it is fair to say, sir,
5 while you may not have been a friend of his, you
6 certainly knew the man?

7 A I knew of him, yes.

8 Q Were you able to say whether there
9 were any other police officers with him when he
10 came up to you at your vehicle, sir?

11 A I don't remember, no.

12 Q He says that you had your head down as
13 he approached you and he asked you if you were the
14 driver, and you said you were, but you never
15 really looked up at him. He said your head was
16 down the whole time. He said he had to bend down
17 to look at the blood on your nose. Are you able
18 to comment on the accuracy of that description,
19 sir?

20 A I don't have any memory of the contact
21 with then Chief Bakema, so I don't remember.

22 Q He said that you remained bent over as
23 he walked with you to the police car. And it was
24 put to him that this would suggest a strong desire
25 perhaps on your part not to look him in the face,

1 that it might be evasive and it might be
2 consistent with someone trying to avoid having
3 their alcohol consumption recognized. Are you in
4 a position to comment on that at all, sir?

5 A I don't recall being escorted to the
6 cruiser car, so I can't really comment on my
7 posture.

8 Q Can you comment on how long you were
9 with him, sir, before going to the cruiser car?

10 A I don't remember having any contact
11 with him.

12 Q You don't remember any conversation
13 with him, sir?

14 A No, I don't.

15 Q There were witnesses indicating a
16 conversation between the two of you, that's not
17 something that you have any memory of, sir?

18 A I have no specific memory, no.

19 Q He says that when he was walking back
20 with you and your head was down, you said to him
21 "I'm a cop." Do you have any recollection of
22 that, sir?

23 A I have no specific recollection of any
24 contact with Mr. Bakema.

25 Q He says he tipped forward and he said

1 recognized you and he said "Derek." No
2 recollection of anything like that, sir?

3 A I have no recollection, no.

4 Q No recollection of the manner in which
5 you walked over to the police cruiser, sir?

6 A I have no memory of being escorted to
7 the police cruiser, sir.

8 Q No recollection of which police
9 cruiser or where it was located in the
10 intersection you were taken to, sir?

11 A The only memory I have, I remember
12 sitting in the car and the feeling of motion of
13 when it is moving, and that's all I remember of
14 the police cruiser.

15 Q So when you were sitting in the police
16 car, your recollection is it was a moving vehicle.
17 So you have no recollection, I take it, of
18 anything that would have happened at the scene
19 itself, sir?

20 A No, I don't have a very good aspect of
21 time span. It felt like I was in the cruiser car
22 for five minutes. I later learned that I was in
23 the cruiser car for a substantial more period of
24 time, and all I remember is sitting and the
25 feeling of movement.

1 Q Constable Woychuk indicated that when
2 you were sitting in the vehicle, you just sat
3 there looking straight ahead, sir, not speaking,
4 not really answering questions, very quiet. You
5 have no ability to enlighten us as to whether
6 that's an accurate description, sir?

7 A I don't have any memory of Constable
8 Woychuk.

9 Q Woychuk indicates that you didn't want
10 to talk to him due to your condition, that's what
11 he recorded in his notes. You cannot give us any
12 information as to what condition, or what you
13 might have done to cause him to have that
14 impression, sir?

15 A I have no memory of talking to
16 Constable Woychuk.

17 Q You have no memory of the paramedics
18 being in the motor vehicle, sir?

19 A No, I do not.

20 Q You have no memory of being asked
21 outright if you were drinking, and failing to
22 respond to that question, sir?

23 A I have no memory of having any contact
24 with anybody.

25 Q You have no memory of being asked

1 about the car accident and what happened and not
2 responding, sir?

3 A I don't have a memory of that.

4 Q You have no memory of looking away and
5 not making eye contact when asked those questions,
6 sir?

7 A No, I don't.

8 Q No memory of answering enough
9 questions to enable them to make the assessment
10 that you were not required to be taken to the
11 hospital, sir?

12 A I have no memory of any contact with
13 the paramedics, sir.

14 Q You don't remember another paramedic,
15 Mr. Fontaine, opening the door while you were in
16 there, sir?

17 A I have no memory of that, no.

18 Q He indicates that he asked you whether
19 you wanted to go to the hospital, and you said no,
20 you were fine. No memory of that, sir?

21 A No memory of that. All I remember is
22 just being seated in the car and the feeling of
23 movement.

24 Q Sir, his evidence was that you were
25 sitting with your hands between your knees,

1 staring straight ahead. You have no recollection
2 of that, sir?

3 A I don't.

4 Q Our information is you left the scene
5 at 8:08 in the morning, arriving at East St. Paul
6 Police Station at 8:12. I take it, sir, your
7 snapshot memory of being in a moving vehicle
8 doesn't allow you to assist us in determining the
9 accuracy of that evidence?

10 A I have no concept of time. I have no
11 memory of arriving at the police station, nor
12 going into the police station.

13 Q Do you recall that you were not
14 handcuffed, sir?

15 A I don't recall.

16 Q Do you recall that when you got to
17 East St. Paul, you were left in the back of the
18 police vehicle by yourself while Constable Woychuk
19 went into the station, sir?

20 A I have no memory of that.

21 Q You have no memory of Constable Carter
22 coming out to the vehicle to speak to you, sir?

23 A I have no memory of that.

24 Q Do you have any memory of having been
25 given the demand, sir?

1 A The only thing I remember of my charge
2 and caution is me responding, "excuse me." I have
3 no memory of what he said to me.

4 Q Sir, how do you know that it was
5 related to your charge and caution when you said
6 excuse me, if you don't have any memory of it?

7 A Like I said before, I don't have
8 things in context, that's how I remembered it.
9 I'm not sure it is in relation to my charge and
10 caution. That's all I remember.

11 Q You have no memory of speaking to a
12 lawyer?

13 A I do not.

14 Q You are not going to be able to
15 comment on whether Sergeant Carter's observations
16 of your physical condition, such as the strong
17 smell of alcohol, unsteadiness on your feet and
18 flushed face are accurate or inaccurate, sir?

19 A I have no memory of having contact
20 with Sergeant Carter.

21 Q Do you recall being taken to the
22 interview room at the East St. Paul Police
23 Station, sir?

24 A No, I don't.

25 Q Do you recall refusing to provide a

1 breath sample, sir?

2 A No, I don't.

3 Q Do you recall filling out the traffic
4 accident report that we looked at before, sir?

5 A On March 30th, yes.

6 Q Yes, sir. And you understand that you
7 had seven days within which to fill out that
8 report?

9 A I'm aware of that, yes.

10 Q And you are aware, sir, that you
11 didn't fill it out within that seven-day period?

12 A Given the dates, yes.

13 Q And, sir, are you aware that your
14 lawyer had requested disclosure from East St. Paul
15 and from Mr. Minuk before you would fill out your
16 traffic accident report, sir? Do you have any
17 knowledge of that?

18 A I don't have any knowledge of that.

19 Q Sergeant Carter described that when
20 you attended to fill out that report, you refused
21 to answer any of the questions that required
22 scoring the accident report. Do you remember
23 having that conversation with him, sir?

24 A I remember having a conversation in
25 regards to the traffic accident report. He had

1 asked me my particulars, which I believe are on
2 the face sheet of the accident report. I provided
3 him with a statement. He then attempted to ask me
4 questions that -- from my experience I knew that
5 usually you place a template over the particulars,
6 and most of those questions are to obtain data to
7 give to the province so they can score where
8 collisions occur. I told him that that
9 information could come from the report and I
10 didn't know some of the answers to it.

11 Q Sir, did you furnish him with the
12 number of your driver's licence or your
13 registration information, sir?

14 A I believe I told him that that
15 information was on the -- in the report. I don't
16 know, I can't remember if I handed in my driver's
17 licence or not, and I didn't have the registration
18 as the vehicle was impounded.

19 Q Did you provide him with any insurance
20 information, sir?

21 A Again, because the vehicle was
22 impounded and the registration would have been
23 with the vehicle.

24 Q His evidence was that you told him
25 that you had done hundreds of these reports, and

1 the questions that you were asking were redundant
2 and that he could get the information from the
3 police report?

4 A In regards to the data entry questions
5 that you use a template to ask if it is a gasoline
6 or diesel engine vehicle, or a van or truck, or if
7 it is an asphalt, gravel or concrete road, I did
8 respond saying that he could get that information
9 from the report, and I didn't know.

10 Q Did you have that information, apart
11 from the insurance and registration particulars?

12 A Would I have known what type of road
13 surface it was? No, I did not know what type of
14 road surface it was.

15 Q Sir, did you have information that you
16 just didn't give him because he could get it off
17 the accident report?

18 A No. Some of the questions that he
19 tried to obtain from their data are the opinion of
20 the police officer, I believe, in regards to what
21 happened in the collision. Some of them are type
22 of vehicles and other things, like road surface
23 and whatnot, that I don't know if I would have
24 known.

25 Q Is it your evidence that you gave him

1 all of the answers that you were capable of giving
2 him, sir?

3 A Yes.

4 Q Sir, I think everybody is aware that
5 this has been a deeply disturbing event, not only
6 for the family, but for yourself as well. I think
7 everybody is aware of the media pressure that you
8 have been under, and that this has been difficult
9 on your family. I'm not going to ask you any
10 further questions, but I do want to give you the
11 opportunity, if you wish to do so, to say whatever
12 you wish to the Commissioner or to anyone else.

13 A No, thank you, sir.

14 MR. PACIOCCO: Those are the questions
15 that I have.

16 THE COMMISSIONER: We will take a 15
17 minute break.

18 THE CLERK: All rise.

19 (Proceedings recessed at 2:45 p.m.
20 and reconvened at 3:00 p.m.)

21 THE CLERK: Order, all rise. This
22 Commission of Inquiry is now reopened.

23 THE COMMISSIONER: You had -- I think
24 Mr. McDonald had a document he wanted to file.

25 MR. PACIOCCO: Yes, we now have --

1 THE COMMISSIONER: Is that all right,
2 Mr. Weinstein?

3 MR. WEINSTEIN: It is all right now.

4 THE COMMISSIONER: It is all right
5 now. It wasn't before.

6 MR. WEINSTEIN: It wasn't.

7 MR. PACIOCCO: I think enough time has
8 passed that he has acclimatized to the reality
9 that this will be filed. This will be the next
10 exhibit. Exhibit 251 is the statement of Jerome
11 Mauws, M-A-U-W-S.

12 (EXHIBIT 251: Statement of Jerome
13 Mauws)

14 MR. PACIOCCO: And always being
15 reluctant to break promises, Mr. Commissioner. I
16 said I was finished. I have one further question
17 that I would like to ask the witness?

18 THE COMMISSIONER: Certainly.

19 BY MR. PACIOCCO:

20 Q One final thing that I should have
21 asked you at the appropriate time; did you ever
22 check your cell phone records to see whether you
23 were on the phone at the time that you collided
24 into the vehicle of Crystal Taman?

25 A No, I did not.

1 MR. PACIOCCO: I have no further
2 questions.

3 THE COMMISSIONER: Thank you.

4 BY MR. ZAZELENCHUK:

5 Q Madam clerk, if you could give this
6 witness exhibit 180, please? And
7 Mr. Commissioner, that's in Q-2, and the tab is
8 89.b.19, page 3037, sir.

9 Witness, that's what we are told is a
10 shift schedule, and in the middle of the page we
11 have Friday, February 25th. Do you see that, sir,
12 it is circled?

13 A Yes, sir.

14 Q And you were working evenings that
15 week; correct?

16 A Correct.

17 Q And that would be what the "E" stands
18 for?

19 A Correct.

20 Q And the 25th that's circled on this
21 shift schedule is an overlap day; correct?

22 A Correct.

23 Q And you could take extra duty leave on
24 that day if you chose to?

25 A If the complement was satisfied for

1 street strength, yes.

2 Q Okay. And had you planned to take
3 extra duty leave that day?

4 A I can't recall. I don't remember what
5 my plans were for the 25th.

6 Q Well, I can appreciate that you told
7 us that you can't recall from the time you met
8 with the principal, which was, I don't know, 3:00
9 o'clock in the afternoon or something, until some
10 time I guess what, the Saturday?

11 A Okay.

12 Q Well, is that what you told us?

13 A I believe so, yeah.

14 Q Okay. My question to you, sir, is did
15 you have any plans prior to meeting with the
16 principal to take your extra duty leave on the
17 Friday?

18 A To leave my shift early, is that what
19 you are asking me, sir?

20 Q To leave your shift early and to not
21 work on the Friday?

22 A I know there was plans scheduled, I'm
23 not sure when, to try to get out of work early on
24 the 24th. I can't recall if I had booked time off
25 on EDL on the 25th or not.

1 Q Okay. So you worked evenings on the
2 24th, correct?

3 A Correct.

4 Q And you worked evenings on the 23rd?

5 A Correct.

6 Q And on the 22nd?

7 A Correct.

8 Q And on the 21st?

9 A Correct.

10 Q Which was your birthday, February 21st
11 is your birthday?

12 A It is my birthday, I believe I may
13 have taken that day off though.

14 Q You are not sure if you worked that
15 day?

16 A I can't recall, no.

17 Q Okay.

18 A I'm assuming I did, though.

19 Q Now, you've told us about this memory
20 loss and we won't get into it, but I can
21 appreciate that memory loss is a terrible thing
22 and it must be very disconcerting. You also
23 indicated to us earlier this afternoon that when
24 Commission Counsel asked you if you looked through
25 your possessions for a receipt from Branigan's,

1 you said you couldn't find one. And then he asked
2 you, did you look, and I believe you told us that
3 you didn't look?

4 A I believe that's what I said, sir,
5 yes.

6 Q Can you tell us why you didn't look?

7 A No, I don't know why I didn't look for
8 it.

9 Q Because you would agree with me that
10 there might be information on that receipt which
11 might jog your memory?

12 A I'm not sure if it would jog any
13 memory. In the coming days and weeks after the
14 accident, I was still quite distraught, so that's
15 why I didn't look for it.

16 Q I understand that, and I'm not saying
17 that it would, I'm just saying it is possible that
18 it might?

19 A I'm not sure it would.

20 Q But you made no attempts to look for
21 your receipt?

22 A I did not, no.

23 Q And we heard about your cell phone,
24 and I'm told -- I don't have a cell phone -- but
25 I'm told with your cell phone you can get records

1 of all of the calls you made?

2 A I believe you can, yes.

3 Q Yeah. And did you make any attempt to
4 get records of any of the calls you made on the
5 24th and 25th of February, 2005?

6 A I wasn't instructed to do so, so, no,
7 I didn't.

8 Q Well, that wasn't my question, sir.
9 My question was --

10 A I believe you asked me if I looked for
11 or got cell phone records, and I said, no, because
12 I wasn't instructed to do so.

13 Q Who were you looking to instruct you?

14 A I'm not sure why I would have to look
15 for my cell phone records.

16 Q Well, you are an adult person, you are
17 college educated.

18 A Yes, sir.

19 Q And again, did it ever enter your mind
20 that maybe your cell phone records might jog a
21 memory? Maybe if you called somebody from
22 Branigan's at 11:39, that might have jogged your
23 memory on something?

24 A I'm not sure that it would.

25 Q I'm not sure that it would either, but

1 are you sure that it wouldn't?

2 A I'm not sure that it would.

3 Q My question is, are you sure that it
4 wouldn't?

5 A And my answer is that I'm not sure
6 that it would.

7 THE COMMISSIONER: You said you were
8 instructed -- you weren't instructed. Who do you
9 mean instructed, what person didn't instruct you?

10 THE WITNESS: Nobody asked me to find
11 any receipt or to --

12 THE COMMISSIONER: You are not
13 referring to any person in particular?

14 THE WITNESS: I'm referring to nobody,
15 nobody asked me for any of that information.

16 THE COMMISSIONER: Thank you.

17 BY MR. ZAZELENCHUK:

18 Q We've heard -- heard is the wrong
19 word -- there is evidence before this tribunal
20 that you attended at the Victoria Hospital late on
21 the 25th of February. And I believe you told us
22 earlier this afternoon you have a sketchy memory
23 of that, if at all?

24 A My memory is sporadic, sir, yes.

25 Q But you know, and you have known for

1 some considerable period of time, regardless of
2 whether you remember it, that you attended at the
3 Victoria Hospital in the evening of the 25th of
4 February, 2005?

5 A I have been provided with that
6 information.

7 Q Sure. And you've also been provided
8 with the information that you saw a doctor?

9 A Yes, sir.

10 Q Okay. Have you made any efforts in
11 the last three and a half years to obtain your
12 medical records from the Victoria Hospital?

13 A No, I haven't. I have in the last
14 three and a half years been speaking with a
15 psychologist.

16 Q So you made no efforts at all in the
17 last three and a half years to obtain your records
18 from the Victoria Hospital?

19 A No.

20 Q Can you tell us why, sir?

21 A No reason. I have been speaking with
22 a psychologist, and that seems to help me with the
23 stress and what I have been going through.

24 Q But you will agree with me that there
25 might be something in those records that might

1 help?

2 A I'm not sure that there would be.

3 Q Are you sure that there wouldn't be?

4 A I'm not sure that there would be. I
5 know that speaking with my psychologist seems to
6 help me, so that's what I have been doing.

7 Q I'm going to ask you again, sir, are
8 you sure there wouldn't be anything in those
9 medical records that would help you?

10 A I'm not sure there would be anything
11 in those medicals records. I know it helps me
12 speaking with my psychologist, and that seems to
13 help me with what I have been going through.

14 Q I'm going to ask you to turn your mind
15 to August 22nd, the day you appeared in court with
16 your counsel, the day the Victim Impact Statements
17 were read, the day you addressed the court. I'm
18 sure it is a day you remember?

19 A Yes, sir.

20 Q I'm going to ask you to turn your mind
21 to the end of the day, the judge has now left the
22 courtroom. Could you tell us, please, how you
23 leave the courtroom, sir?

24 A We waited around the courtroom for a
25 period of time. And then me and the people that I

1 attended court with left the courthouse via the
2 skywalk to the Woodsworth Building.

3 Q You are certain of that?

4 A I'm pretty certain of that, yes, sir.

5 Q Okay. One last point, you indicated
6 that you have discussed your memory loss, I don't
7 know with whom, but you gave us several possible
8 reasons for your memory loss. One was, it could
9 be injury I believe you said?

10 A I believe so, yes.

11 Q Yeah. Who suggested that to you?

12 A I believe I received that information
13 from my mom, and she received it from the doctor
14 at the Victoria Hospital.

15 Q Okay. That's the Victoria Hospital
16 that you went to on the 25th, that you haven't
17 gotten any records from?

18 A My mom spoke to the doctor, and I got
19 that information from her -- if you let me answer
20 the question, I will answer it to you. My mom had
21 spoken to the doctor and provided me with the
22 information. And how I have been coping with this
23 has been seeing a psychologist, so we did not get
24 my records, no.

25 Q I just wanted to confirm that's the

1 same Victoria Hospital that you didn't get the
2 records from?

3 A I don't think there is another one in
4 Winnipeg.

5 Q Okay. You indicated that it could be
6 stress. Where did you get that from?

7 A From talking with my psychologist and
8 conversations with him, that what I have expressed
9 to him and how my memory, the fact that I have had
10 night terrors and I hallucinate at night, that I
11 keep hallucinating at night, that those are all
12 things symptomatic with post-traumatic stress.

13 Q So that came from your psychologist.
14 And then you said it could be dealing with trauma.
15 Is that just a variation of what you have told me?

16 A Sure.

17 Q And where did that come from?

18 A From talking with him and talking with
19 my family doctor.

20 Q Has anybody ever suggested anything
21 else to you?

22 A No.

23 Q Has anybody ever suggested that you
24 might be suffering from a blackout?

25 A No.

1 Q You know what a blackout is?

2 A I believe I'm familiar with the term
3 you are using.

4 Q Yeah. What do you understand it to
5 mean, sir?

6 A If you are implying that someone who
7 has had too much to drink blacks out and doesn't
8 remember.

9 Q That's the way I am using it, sir.

10 A Okay.

11 Q That's the way you understood it?

12 A Then I'm familiar with your term, yes.

13 Q Thank you.

14 MR. McDONALD: No questions.

15 MR. LABOSSIERE: No questions.

16 BY MR. WEINSTEIN:

17 Q Just a few questions for you, sir.

18 And Mr. Paciocco touched upon this, or more than
19 touched upon it, your stay at District 3 at the
20 same time Mr. Bakema was there. You remember
21 those questions and the answers that you gave?

22 A Yes, sir.

23 Q Now, you indicated, I believe, that
24 basically you knew who he was; correct?

25 A Correct, sir.

1 Q And we know from evidence before you
2 took the stand that you were not on the same, part
3 of the same platoon; correct?

4 A That's correct.

5 Q And I assume it would be the same,
6 that you would know some police officers on the
7 other platoon, know them to see them; correct?

8 A Correct, yes.

9 Q But that doesn't mean you would
10 necessarily be working with them or socializing
11 with them; is that correct?

12 A Correct.

13 Q And the times that you might have
14 dealings with Mr. Bakema, would I be correct, we
15 are talking about few and far between; correct?

16 A They would be sporadic, yes.

17 Q Yeah. Certainly nothing on a regular
18 basis, correct?

19 A They would be pretty tertiary.

20 Q And tertiary meaning?

21 A Sporadic, few and far between.

22 Q Okay. Now, I assume that if the
23 platoon was, your platoon was having a
24 get-together say, okay, I assume because Harry
25 Bakema was on the other platoon, he necessarily

1 would not be invited to your platoon get-together;
2 is that correct?

3 A Most of the time it was just our shift
4 that would be getting together, yes.

5 Q All right. So, the bottom line is,
6 you didn't have a lot of dealings with him
7 work-wise, and you certainly didn't have dealings
8 with him socially; correct?

9 A No, no one-on-one stuff, no.

10 Q Pardon me?

11 A No one-on-one where we would go out
12 together.

13 Q Yeah. Now, one other thing; you have
14 no recollection of any contact with Harry Bakema
15 at the scene, and we are talking now the morning
16 of February 25th?

17 A I have no recollection of any
18 conversation, no.

19 Q All right. To the best of your
20 recollection, was your cell phone on you when you
21 got to the East St. Paul Police Station?

22 A I don't specifically remember having
23 my cell phone with me, but as a habit I usually
24 have it in the pocket of my pants.

25 THE COMMISSIONER: Did you ever find

1 it?

2 THE WITNESS: I have it at home now,
3 sir.

4 THE COMMISSIONER: You have it at home
5 now. How did you get it?

6 THE WITNESS: I'm assuming they
7 returned it to me.

8 THE COMMISSIONER: Do you have any
9 idea when they returned it to you?

10 THE WITNESS: When I was released, I
11 would assume. Because it was not part of any
12 property that was returned later on.

13 THE COMMISSIONER: Do you have any
14 specific recollection of the cell phone being
15 returned to you at the time that you were released
16 on a promise to appear?

17 THE WITNESS: No, I don't, sir.

18 THE COMMISSIONER: But it must have
19 been returned to you then?

20 THE WITNESS: I'm assuming that
21 because I have the cell phone now.

22 THE COMMISSIONER: I see. Okay.

23 BY MR. WEINSTEIN:

24 Q Do you remember being searched when
25 you got -- just following along the Commissioner's

1 line of questioning, do you remember being
2 searched, not at the scene, I'm talking now East
3 St. Paul Police Station?

4 A No, sir, I don't recall any of that.

5 Q Did you ever see Harry Bakema after?
6 I know you don't recall February 25th seeing him,
7 but do you ever recall seeing him after
8 February 25th?

9 A I had to return to East St. Paul
10 Police Station to obtain some property that had
11 been left in my vehicle.

12 Q And when was this?

13 A March, April, later March, I don't
14 know the exact dates. We attended to, I guess the
15 common area, and there is like a ring a bell for
16 service. He attended, he just asked us to wait in
17 the waiting chairs. And we just turned around and
18 sat down, and he said somebody will be right with
19 us, and left.

20 Q And that was basically your only
21 contact with him after February 25th?

22 A Correct.

23 Q No real conversation with him as I --

24 A No, he just directed us where to sit.

25 Q And someone else looked after you?

1 A I can't remember the constable's name,
2 but somebody else returned the property.

3 Q So you didn't even have a social type
4 conversation with him, correct?

5 A No. It was very matter of fact.

6 Q It wasn't like, how are you, Derek
7 Harvey-Zenk?

8 A No, he just directed us to the chairs
9 and said somebody will be with us.

10 MR. WEINSTEIN: All right. Thank you,
11 sir.

12 MR. JACK: No questions.

13 BY MR. GREEN:

14 Q Mr. Paciocco and others have asked you
15 about a cell phone?

16 A Yes, sir.

17 Q And you said that the cell phone that
18 you still have is the same one that was in your
19 possession at the time of the accident?

20 A It would be the same, yes.

21 Q And is your cell phone number the
22 same?

23 A No, it would have been a Winnipeg
24 phone number. I have since changed the cell
25 phone, but I still have it, I don't use that cell

1 phone currently and I have a new Brandon phone
2 number.

3 Q Okay. And who was your carrier at the
4 time?

5 A Rogers.

6 Q And you said that nobody asked you to
7 get out your records from Rogers as of
8 February 25?

9 A Nobody has asked me for that
10 information, no.

11 Q And if somebody were to ask you if you
12 would consent to the release of records from
13 Rogers, would you consent?

14 A If I can find them.

15 Q No, but if --

16 A Would I consent to look for them?

17 Q Yeah. If someone were to go to Rogers
18 and say, listen, do you still have records of
19 those phone calls of Mr. Harvey-Zenk on
20 February 25th, '05, you would consent to the
21 release of that information?

22 A I don't see why I wouldn't.

23 MR. GREEN: Thank you, sir.

24 MR. NOZICK: No questions.

25 MR. PROBER: I have three questions,

1 Mr. Commissioner.

2 THE COMMISSIONER: Only three?

3 MR. PROBER: Well, three areas, let me
4 put it that way, but they will be brief.

5 BY MR. PROBER:

6 Q Do you still have Dr. Davis' report in
7 front of you, Mr. Harvey-Zenk, it is exhibit 250?

8 A I do, yes.

9 Q All right. And could you turn to the
10 first page, please? You have it?

11 A Yes, sir.

12 Q Under assessment procedure it says:

13 "I conducted a two and a half hour
14 diagnostic psychological interview
15 with Mr. Zenk..."

16 He can't get the name straight either.

17 "...on July 17, 2007."

18 Do you see that?

19 A Yes, sir.

20 Q So that's the date. Next page,
21 actually two pages in, to page 3, under "mental
22 status examination," which is the paragraph, part
23 of the paragraph Mr. Paciocco quoted to you, first
24 sentence:

25 "Mr. Zenk presented ahead of time and

1 dressed casually, appropriate to a hot
2 July day."

3 Do you see that?

4 A Yes, sir.

5 Q Okay. That's the first area of
6 questioning.

7 Secondly, Mr. Harvey-Zenk, are you
8 using this loss of memory as an easy way out, as a
9 convenient way to avoid answering the questions?

10 A No, sir, it is actually very
11 inconvenient. It is inconvenient for me not to be
12 able to speak decisively on something that
13 happened in my life. It would be more convenient
14 for me to be able to speak decisively.

15 Q You would rather be able to answer the
16 questions; correct?

17 A Yes, sir.

18 Q And your psychologist, Dr. Richert in
19 Brandon, he has advised you what about these
20 sporadic memory flashes? And what does he
21 attribute that to, or may be attribute it to?

22 A When we have spoken about what has
23 been happening with me and how I describe my
24 memory, and what I remember, and the night terrors
25 and the hallucinations, he said that the body

1 copes in certain ways with stress and trauma, and
2 that a lot of the things I describe are symptoms
3 and symptomatology of post-traumatic stress, and
4 it is the body's way of protecting itself
5 sometimes.

6 THE COMMISSIONER: Did you bring along
7 a medical report from this doctor?

8 THE WITNESS: I have been seeing him
9 ongoing, sir.

10 THE COMMISSIONER: I am sorry?

11 THE WITNESS: I see him ongoing, it is
12 just conversations that we have had.

13 THE COMMISSIONER: But have you
14 obtained a report from him for the purpose of this
15 inquiry?

16 THE WITNESS: No.

17 BY MR. PROBER:

18 Q Anybody ask you to obtain a report
19 from him?

20 A No, sir.

21 Q No. And the third area of question;
22 threat. Mr. Zazelenchuk asked you how you left
23 the courthouse on August 22nd. And you said over
24 the skywalk and through the Woodsworth Building?

25 A I'm assuming that's my first court

1 date, August 22nd.

2 Q How about in July?

3 A I plead guilty in July, yes.

4 Q How did you leave the courtroom that
5 day, do you recall? Courthouse I should say?

6 A Through the skywalk.

7 Q Okay. That's a public access way into
8 the court, isn't it? Anybody can use it?

9 A I'm assuming so. There is a metal
10 detector there.

11 Q Yes. Now I understand it was a little
12 different on September 12th because of a threat
13 that had come in, on Mr. Wolson's phone. You are
14 aware of that?

15 A Yes, sir.

16 Q All right. And I'm advised as well,
17 and we heard from Mr. Wolson that major crimes was
18 advised about that?

19 A Yes, sir.

20 Q Now, did you hear the threat at any
21 point?

22 A I think that night that Mr. Wolson
23 reported the threat, I had received a phone call
24 between 11:00 and midnight from a sergeant in
25 major crimes. He indicated -- he advised me of

1 the threat. He asked some information, gave me
2 some of the access code so I could hear the threat
3 to see if I could recognize the voice on the
4 message. So I hung up with him and then called
5 the messaging service and played the threat.

6 Q And can you recall, in general terms,
7 what the threat was?

8 A I would be paraphrasing, but it was an
9 older male voice that said Richard Wolson, or
10 Wolson, re: Harvey-Zenk, watch your wife and kids.

11 Q You recall it was "watch your wife and
12 kids," or "protect your wife and kids," or do you
13 recall?

14 A Something to that effect.

15 Q Something to that effect, all right.

16 THE COMMISSIONER: The threat was
17 directed towards Mr. Wolson?

18 THE WITNESS: At the time it was -- I
19 wasn't sure if it was directed towards Mr. Wolson
20 or directed towards me and my family.

21 THE COMMISSIONER: I understood you to
22 say Mr. Wolson and then the threat.

23 THE WITNESS: It said Mr. Wolson, re:
24 Derek Harvey-Zenk.

25 THE COMMISSIONER: Oh, re: Derek

1 Harvey-Zenk.

2 THE WITNESS: Watch your wife and
3 kids, or protect your wife and kids, or something
4 to that effect.

5 MR. PROBER: That's what I was going
6 to say, Mr. Commissioner, the reference was to
7 Derek Harvey-Zenk.

8 THE COMMISSIONER: Yes.

9 BY MR. PROBER:

10 Q And it was after that threat that
11 apparently you didn't use a public exit from the
12 courthouse, is that correct? That was on
13 September 12th, the only time you didn't use a
14 public exit?

15 A My last two court appearances.

16 Q On September 12th and October?

17 A Yes, sir.

18 MR. PROBER: All right. Thank you.

19 Those are my questions.

20 MR. PACIOCCO: Nothing arises,
21 Mr. Commissioner.

22 THE COMMISSIONER: Thank you. You can
23 step down.

24 THE WITNESS: Thank you, sir.

25 THE COMMISSIONER: Is that the last

1 witness you have for the day?

2 MR. PACIOCCO: That is the last
3 witness we have for the hearings. Whether any of
4 the other counsel are going to pop up with
5 surprise witnesses at the moment or not, I'm
6 feeling a little apprehensive, and I am afraid to
7 canvass the room, but I do believe that that will
8 conclude the evidence.

9 THE COMMISSIONER: I will canvass the
10 room because that's my responsibility.
11 Mr. Zazelenchuk?

12 MR. ZAZELENCHEK: No, sir.

13 THE COMMISSIONER: Mr. McDonald?

14 MR. McDONALD: None.

15 THE COMMISSIONER: Mr. Labossiere?

16 MR. LABOSSIERE: No.

17 THE COMMISSIONER: Mr. Weinstein?

18 MR. WEINSTEIN: No.

19 THE COMMISSIONER: Mr. Jack, Miss
20 Hanlin? Mr. Prober? Mr. Green? Mr. McFetridge?
21 Mr. Nozick?

22 MR. NOZICK: No, sir.

23 THE COMMISSIONER: Thank you.

24 MR. PACIOCCO: I will take that as an
25 indication that all counsel are satisfied that we

1 have fairly canvassed all of the issues,
2 Mr. Commissioner. When we next convene, it will
3 be for the purpose of submissions. And I'm
4 suggesting, subject to your ruling, that we
5 convene next Tuesday to give everyone extra time
6 to prepare the submissions, as opposed to the next
7 scheduled date, which is next Monday. I believe
8 that the submissions can be conveniently finished
9 within the three days that remain after we appear
10 on Tuesday morning. And rather than try and get
11 it over with quickly, let's do it well and take
12 that extra day to prepare.

13 THE COMMISSIONER: Anybody have any
14 comments? Is next Tuesday convenient to
15 everybody? I'm not going to canvass again, I'm
16 just looking across at heads. Next Tuesday at
17 9:00 o'clock? Are we confident we can get it done
18 in two days, possibly three? What I'm going to
19 suggest is that, I'm not going to put you counsel
20 under the gun either, Mr. Paciocco, Mr. Clifford,
21 or any of the other counsel, I'm not putting
22 anybody under the gun. But I would like it if I
23 could get you to concentrate on the issues that
24 are raised. And what I'm going to suggest as well
25 is that if anybody wants to submit a memorandum, I

1 would be pleased to get it.

2 The other thing as well is, after I
3 hear submissions, I may want to ask some of you
4 for assistance, if I discover in preparing my
5 report that I have not had enough information on a
6 particular area, that I may need some assistance.
7 And I will do so through the Commission counsel,
8 and I hope you will oblige.

9 I want to thank all of you. We
10 haven't finish yet, but I'm grateful to all of you
11 for the way you have kept us on time. We have, in
12 fact, completed the examination and
13 cross-examination in accordance with our schedule,
14 and that's a tribute to counsel and to all of you
15 for zeroing in on the issues that we have had to
16 deal with. As I say, I'm grateful to all of you.

17 Tuesday morning, 9:00 o'clock. Thank
18 you.

19 THE CLERK: All rise.

20 (Proceedings adjourned at 3:29 p.m.)

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COURT REPORTERS' CERTIFICATE

Debra Kot and Cecelia Reid, court reporters in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of our Stenotype notes as taken by us at the time and place hereinbefore stated.

Cecelia Reid

Debra Kot

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