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 13, 2008

Volume 28

INQUIRY PROCEEDINGS

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1 Wednesday, August 13, 2008
2 Upon commencing at 9:01 a.m.
3 THE CLERK: All rise. This Commission
4 of Inquiry is now open. Please be seated.
5 THE COMMISSIONER: This is yours,
6 Mr. Zazelenchuk.
7 MR. ZAZELENCHUK: Yes,
8 Mr. Commissioner. I had my secretary compile some
9 excerpts from transcripts in an effort to save you
10 writer's cramp.
11 THE COMMISSIONER: I developed that a
12 long time ago.
13 MR. ZAZELENCHUK: And I've also had a
14 couple of cases photocopied which I will refer to
15 later on in my submissions, and I've given copies
16 of all of these to all counsel.
17 THE COMMISSIONER: Thank you.
18 MR. ZAZELENCHUK: Having listened
19 yesterday to a very detailed submission prepared
20 by, prepared and presented by each of the
21 Commission Counsel, I don't plan to repeat too
22 many things that have already been placed before
23 the Commission, especially if I happen to agree
24 with them, or if it's my submission that they are
25 the appropriate conclusions that the Commission

1 ought to draw.
2 And I'll begin with Mr. Paciocco's
3 submissions with respect to the East St. Paul
4 Police and their investigation, and I adopt it in
5 its entirety. The only thing that I would add is
6 with respect to Mr. Graham, because I feel it has
7 to be said a second time, if not a third, if that
8 person ever had any credibility, with all respect,
9 he lost it by his fiasco in front of this tribunal
10 on the 8th of July.
11 Moving on to the submissions which are
12 made with respect to the Winnipeg Police and their
13 part in the investigation. Again, Mr. Paciocco
14 analyzed the investigation in considerable detail,
15 very ably. And with respect to the factual
16 analysis, I take no issue with what Mr. Paciocco
17 submitted to the court -- to the tribunal, I'm
18 sorry. I do disagree with Mr. Paciocco on one
19 point, and it is my respectful submission that
20 that investigation was done in bad faith and I
21 would like to --
22 THE COMMISSIONER: It was what?
23 MR. ZAZELENCHUK: That the Winnipeg
24 Police investigation was done in bad faith, and
25 I'd like to give you my submissions on that at

1 this point.
2 I'll begin firstly with something that
3 Mr. Paciocco said at 12:25 yesterday, that in
4 conducting the investigation, the officers failed
5 to observe the obvious. Now, that's not an
6 ordinary kind of a mistake. And I'd like to
7 follow up on that. Because we have the visit to
8 Branigan's on the 7th of March, and the interview
9 with Mr. Zulak, who was never called here, he was
10 the assistant manager, and Mr. Zulak was being
11 cooperative, as citizens very often are with
12 police. Most citizens will cooperate with police
13 when police come by and say, we're investigating
14 something, we'd like to ask you some questions.
15 Mr. Zulak was being cooperative, and no question
16 is asked of him about the records. And it's
17 fresh, it's only a few days.
18 Now, that may be a mistake, but it's a
19 simple mistake. And it's compounded. Because
20 some four or five days later when Chelsea
21 O'Halloran is being interviewed, and that's
22 Exhibit 154, and you can go to that at your
23 convenience, Mr. Commissioner, she tells the
24 investigating officers just before her interview
25 finishes that there are records at Branigan's.

1 One hour later, and that's Exhibit 157, the
2 interview of Darcey Gerardy and Rodrigo Bravo,
3 it's one hour later on the same day, the officers
4 are at Branigan's and they don't get the records.
5 And it's not only that they don't get the records.
6 The protocol is that you tape the interviews, but
7 the questioning about the records is done when the
8 tape-recorder is not playing. Again, it's a
9 mistake, but it's a simple and it's a basic
10 mistake, and in fact it's two mistakes. One
11 mistake is not asking to see the records, and the
12 second mistake is to not have a tape-recording,
13 which you're supposed to have under their terms of
14 reference, of the explanation that Mr. Bravo gives
15 to you.
16 Fourthly, Officer Toews is
17 interviewed. He produces a receipt. He says I've
18 got a receipt here. Nothing is done with it. And
19 the mention of the receipt doesn't even make it
20 into the officer's report.
21 Fifthly, when Officer Roxborough
22 interviews, I believe it's Michalik -- no, it's
23 Mikawoz, he produces a receipt, or he says I have
24 a receipt. That makes it into the report, but
25 it's not followed up.

1 Sixthly, when Chelsea is interviewed,
2 it's Exhibit 154, she tells the police officers
3 very simply that she was serving them 35-cent
4 wings and $2.75 pints, $2.75 pints, and that the
5 average bill was $30. Simple math, very basic
6 simple math will tell you that if you had 20 wings
7 at $7.00, if the bill was $25, that leaves $18.
8 If the pints are $2.75, we're talking about six
9 pints. And I'm going to talk about pints later.
10 It's not that a mistake was made, it's
11 not that two mistakes were made. Everybody is
12 entitled to make a mistake. Everybody makes
13 mistakes. I make mistakes, we all make mistakes.
14 But when a series of mistakes of a very basic
15 nature are made, all around the same issue, that's
16 more than a mistake.
17 Lastly, I want to make one more
18 comment about the police investigation. If we go
19 to page 9(a) of the book of excerpts that I have
20 given you -- incidentally, just before we leave,
21 at page 9 I have reproduced the portion of Exhibit
22 154 where the numbers are given, where she says
23 $2.75 pints, 35-cent wings. And then she says the
24 average bill is $25, $30. And after that, it's
25 just simple math to get an idea of what people

1 were drinking. But if we go to page 9(a), we have
2 the memorandum from the Deputy Chief to Staff
3 Sergeant Poole, and it clearly states out the
4 terms of reference. And that was put to Staff
5 Sergeant Poole by me when he was on the stand and
6 he agreed. And that was put to Sergeant Girard,
7 but Sergeant Girard told me that that's not what
8 his boss instructed him. And in fact, we have at
9 page 9(b) and 9(c), I have the excerpt from
10 Sergeant Girard's evidence where he says, yes, but
11 that's not what I was told. And with all due
12 respect, that just isn't credible.
13 Before I leave the City of Winnipeg
14 Police and move on, I want to deal with an issue
15 which I hope to tie up at the end of my
16 submission, and that was the question of drinking
17 and driving, not intoxication and driving, but
18 drinking and driving and the attitude. And I'm
19 not going to ask you to impute anything to
20 anybody, I'm only going to use people's own words
21 in what I'm about to say.
22 If we go to page 10, and I'm dealing
23 now with the evidence of Mr. Michalik, if we go to
24 page 10, Mr. Michalik was asked, and it's volume
25 19, page 4900:

1 "What time did you get there? 15
2 minutes before midnight."
3 If we go to page 11, it's four pages further in
4 the transcript, page 4904.
5 "And what did you have to drink?
6 A During the evening I had
7 approximately four pints and I had a
8 plate of wings."
9 If we go to page 12, that's page 4906 in the
10 transcript, line 16 and 17:
11 "You were having Labatt's Light?
12 A Yeah."
13 And if we go to page 13, and I didn't highlight
14 it, but down at the bottom of the page, he says
15 that he left 2:00 o'clock, maybe a little bit
16 earlier. He drank four pints of beer in two hours
17 15 minutes and then he drove a motor vehicle.
18 That's 80-ounces of beer. And I'm going to get
19 back to that in a moment. But I'd like to go to
20 Officer Black, and that's at page 14 of the
21 handout that I have given the tribunal, and that's
22 page 4132. And Officer Black indicates at lines
23 12 to 14:
24 "When did you arrive?
25 I arrived, it was roughly around

1 between 11:30 and a quarter to 12:00."
2 If we go to page 15, which is page 4187 down at
3 the bottom.
4 "Q Sir, you said your account was how
5 much, your receipt?
6 A $30 or $33.
7 Q What did it include, sir?
8 A Wings, 25 wings and about four
9 drinks."
10 Over onto the next page:
11 "Q 25 wings and four drinks?
12 A Yes.
13 Q You remember that, sir?
14 A Yes, well, drinks again, that's an
15 approximation, I believe it was.
16 Q What kind of drinks?
17 A Beer.
18 Q All beer?
19 A Yes.
20 Q Pints or bottles?
21 A I believe I was drinking pints but
22 I don't recall. Again, I am pretty
23 sure it was pints."
24 And then the last which wasn't highlighted.
25 "Q Sir, you had four pints of beer

1 at Branigan's between 11:30 and 2:00
2 o'clock when they stopped serving?
3 A Correct."
4 And Officer Black then went and drove a motor
5 vehicle.
6 And if we go to pages 17 and 18, we
7 have Sergeant Anderson, these men's boss, talking
8 about it being responsible. It was a responsible
9 gathering.
10 With all due respect to everybody,
11 Commissioner, it is not responsible to drink 80
12 ounces of beer over a period of two hours and 15
13 minutes and then drive a motor vehicle. 80 ounces
14 of beer, even if the beer is only four per cent,
15 and I'm not giving evidence here, everybody knows
16 what the alcohol content of spirits and beer and
17 wine is, 80-ounces of beer, even if it's only four
18 per cent, is the equivalent of 8-ounces of hard
19 liquor. It's not responsible.
20 I'm going to move on to my comments
21 with respect to the prosecution of this case. And
22 once again, we have had the benefit of
23 Mr. Clifford's very detailed analysis, and I am
24 going to try not to repeat it. But my first
25 problem with the prosecution stems from Exhibit

1 218, which is the bill or the time log of the
2 prosecutor. And it is obvious when you read that
3 time log at pages 3401.30, which I apologize, I
4 haven't reproduced here, to 3401.33, those four
5 pages, it is obvious that between May 5th of 2005,
6 and I believe it's December 16th of 2005, the
7 prosecutor spent almost no time on this file.
8 There is only one entry that's more than a few
9 minutes and that's the entry on October 3. And if
10 we go to pages 19 and 20 in my handout, or my
11 compiling, Mr. Minuk explains at the bottom of
12 page 19 that that three hours wasn't preparatory
13 work, that it was almost entirely to do with
14 meeting with Mr. and Mrs. Sveinson. And I don't
15 fault him for meeting with Mr. and Mrs. Sveinson.
16 It was a humane thing to do. That's not my
17 criticism. My criticism is that a period of seven
18 months went by when there was no work done on the
19 file. And it's my respectful submission that
20 there should have been.
21 Both experts gave evidence, Mr. Peck
22 and Mr. Gover. I've got Mr. Peck's evidence at
23 page 21, and he says down at the bottom of the
24 page,
25 "I think generally the answer to your

1 question is yes, I would review the
2 case fairly quickly upon receipt,
3 depend upon to some extent how far
4 down the case was likely to be coming
5 to court for trial, in the trial."
6 Follow-up question:
7 "Sure, I understand that, but my point
8 is simply, as a general practice, you
9 would review the materials you got
10 from the police sooner rather than
11 later?
12 A Absolutely."
13 Mr. Gover, Mr. Gover's comments in an answer to
14 Commission Counsel are found at page 23 of my
15 handout. And Mr. Clifford asks him, about line
16 six:
17 "I take it from your testimony, your
18 expectation is that the prosecutor
19 will identify deficits in the evidence
20 and, moreover, that they should do, I
21 understand you correctly, direct the
22 police to take further investigative
23 steps?
24 A Yes. I see that as being a part
25 of the role of prosecutor."

1 Now in this particular case, when that
2 bundle of materials arrived in early May, it
3 became very important for two reasons. Firstly,
4 the package contained Exhibit 114, and that's the
5 incident report and various notes from the East
6 St. Paul Police Department. And every East St.
7 Paul Police Officer who testified before this
8 tribunal, who read that report, said that they
9 spotted a charter issue. And it's also apparent
10 on the face of those documents that there was a
11 blood demand and not a breath demand. These are
12 serious issues and they have come back over and
13 over again in the assessment of the case. And
14 it's my respectful submission that if the learned
15 prosecutor was doing his job properly, he would
16 have assessed those things, sometimes in May or
17 June, I'm not saying he has to read it the moment
18 it hits his desk, we're all busy. But you give it
19 to a junior to read, or you book off a day to go
20 through it, or something. This is an important
21 case. It involves the death of a human being.
22 May or June of 2005 is the time for the prosecutor
23 to get on the phone and speak to Chief Bakema and
24 say, I want to talk to you about this
25 investigation. May or June of 2005 is the time to

1 speak to Sergeant Carter, as he then was. It's
2 the time to take a look at this investigation and
3 see where it's going and where it's gone.
4 And secondly, that package contains
5 the Professional Standards Unit investigation,
6 some three and a half or four hours of
7 tape-recording. It doesn't matter if you play it
8 and take notes, or if you have your secretary
9 transcribe it, or if you say to your junior,
10 listen to this and give me a brief of what these
11 interviews are all about. What matters is that at
12 an early stage of the proceedings, you get a
13 handle on those interviews because May or June
14 of 2005 is the time to pick up the phone and say,
15 Sergeant Poole, you know, those interviews your
16 investigators conducted, well, I'd like to talk to
17 you about them.
18 There were comments made, correctly,
19 by I believe Commission Counsel, that Mr. Minuk
20 was dealt a short hand. I don't disagree with
21 that. But being dealt a short hand is not the end
22 of it. Sometimes a hand can grow up, and to
23 follow the analogy through to the end or the
24 similarity through to the end, sometimes a pair of
25 deuces can win.

1 This was the time to be looking at
2 that hand and seeing, can this hand grow up, can
3 this case be fixed, or should I be telling my
4 client that -- let's remember that the client is
5 the Attorney General of Manitoba -- should I be
6 telling my client in May or June or July of 2005,
7 look, I've got a case here that's a nightmare.
8 And it's got nothing to do with independence or
9 anything like that, it's got to do with the
10 professional responsibility that any lawyer has in
11 assessing a case when it comes to him.
12 Just a couple of comments on that.
13 It's clear that, because I asked Mr. Minuk these
14 questions, I asked him if there was such a thing
15 as maximum allowable preparation time when he's
16 representing the Attorney General. He said
17 there's no such thing. And he told me that he's
18 entitled to use juniors and bill their time. And
19 there's a couple of entries from juniors on
20 Exhibit 218. So even giving the file to a junior
21 for a preliminary assessment would have been
22 something.
23 I submit, Mr. Commissioner, that when
24 you file your report, you find that the conduct of
25 the prosecutor in not assessing the case for a

1 period of seven months falls below accepted
2 standards of a barrister or somebody representing,
3 acting as an agent of the Attorney General.
4 I'm going to move on to the question
5 of witnesses. I want to touch on it briefly. I
6 concur with what Mr. Clifford said about
7 witnesses. I draw the tribunal's attention to
8 Mr. Peck's evidence which was given at volume 24,
9 pages 6513 to 14, and I have reproduced that at
10 pages 24 and 25. And I ask him at page 15:
11 "At what stage do you think it is
12 desirable to interview, particularly
13 civilian witnesses who may never have
14 been in a courtroom?
15 A Well, I mean, well in advance of
16 the proceeding, I really, again, I
17 can't give you any definitive but, you
18 know, I mean, you have to sit down
19 with your witnesses, particularly the
20 important, we're talking about the
21 important witnesses in a case. You
22 have to go through their evidence and
23 you have to assess their evidence.
24 And one of the things that happens
25 when you do this with witnesses is

1 they will sometimes give you something
2 different from what is contained in
3 the statement, and that triggers a
4 disclosure obligation on you to advise
5 the defence of this change, or
6 omission, or whatever it is."
7 Two follow-up questions.
8 "Q I can appreciate that.
9 A There are all kinds of reasons
10 why you interview witnesses.
11 Q And something extra can either
12 make your case stronger or weaker?
13 A Yes."
14 And let's remember what actually
15 happened in this case. Ted Rosser had a report, a
16 very valuable piece of evidence. It's a business
17 record. He's under an obligation to make that
18 report. Kathy Beattie was a victim. She was a
19 victim. She wasn't killed, but I concur with
20 Commission Counsel when he says he accepts her
21 evidence that she suffered a life changing injury.
22 She did.
23 Garth Shaw was an eye witness. These
24 are people, with respect, Mr. Commissioner, who
25 should have been interviewed at a very early stage

1 of the proceedings.
2 At page 26 of my handout, I have given
3 you what Mr. Gover had to say, and we have a
4 question at line ten, I believe it's by
5 Mr. Clifford.
6 "What do you have to say, Mr. Gover,
7 with respect to the duty on the Crown
8 to prepare their witnesses?
9 Well, this is fundamental. We have to
10 recognize, though, the exigencies of
11 practice, of course. I practice in
12 Toronto and did not have to prosecute
13 at Old City Hall the way some of my
14 old colleagues had to, or to the
15 extent that they had to, but it can be
16 impossible before the Provincial
17 Courts to interview witnesses. I
18 would think, though, that in cases of
19 seriousness, that interviewing
20 witnesses would be the norm. And
21 certainly in any case I would call a
22 special prosecution, I would expect
23 witnesses to be interviewed."
24 Now, I can only guess what Mr. Gover
25 is talking about when he says practicing at the

1 old Toronto City Hall but --
2 THE COMMISSIONER: I did. I know what
3 it was like, for eight years.
4 MR. ZAZELENCHUK: I didn't, but I was,
5 I did a stint as duty counsel at the Public Safety
6 Building in Winnipeg where I was in three courts
7 at once. And I can understand that. But that's
8 not what we're talking about here. We're talking
9 about a special prosecution, we're talking about
10 the death of a human being.
11 And I submit to you, Mr. Commissioner,
12 that when you file your report, that you make a
13 finding that the conduct of the prosecution with
14 respect to witnesses, and particularly the
15 civilian witnesses, was below the standard
16 expected of a barrister or somebody acting as an
17 agent of the Attorney General. Because with all
18 due respect, you interview your witnesses at an
19 early stage. Some witnesses need a lot of help
20 and some don't. And witnesses need to be made
21 familiar with the courtroom, particularly
22 witnesses who have never been in a courtroom.
23 Now, we walk in and out of courtrooms
24 for 20, 30, 40 years, and I'm as at home in a
25 courtroom as I am in my living-room, I think I

1 spend more time in the courtroom than my
2 living-room. But to a witness, this is an alien
3 territory, and that's why it's important.
4 I'm going to move on. I want to deal
5 with the issue of the Victims' Bill of Rights.
6 Again, we had very detailed analysis of the
7 evidence from Mr. Clifford, and again there's not
8 much, if anything, there that I disagree with. I
9 do want to make a few comments.
10 Firstly, I don't have the same problem
11 with "consult" that other people seem to have, but
12 maybe that's because English is my second
13 language, I don't know. The issue, though, as I
14 read the Victims' Bill of Rights, and I'm going to
15 go through some of the evidence that we had, the
16 issue with respect to the family seems to me to be
17 keeping them informed. And if we look at the
18 evidence of Ms. St. Hill, and that's in volume
19 four of the transcripts at pages 886 to 87, and I
20 have reproduced it at pages 27 and 28. And let's
21 remember that Ms. St. Hill was a line prosecutor
22 for many years, a very good one, and that she's
23 now in administration, she's a senior official.
24 And down at the bottom of page 27, at line 20,
25 we've got this question to her.

1 "Would it be in keeping with the
2 requirements for a prosecutor simply
3 to tell a victim of a decision that's
4 already been reached? Could you in
5 any way describe that as consultation?
6 A No. In fact, on the major cases,
7 the process that unfolds, there may be
8 a lot of discussion going on in terms
9 of possible resolution, but sort of
10 the finalizing of that doesn't usually
11 occur until the family has been
12 offered an opportunity to hear what is
13 going on and offer any comment they
14 might. So it is a balancing, if you
15 will, in terms of, we may know what
16 the right legal decision is, but there
17 is still a need to hear and canvass
18 any concerns before counsel may get
19 back to defence counsel, for example,
20 to say, yes, this is going to be
21 resolved."
22 Clearly, Ms. St. Hill is talking about sitting
23 down and listening to the family. And I think
24 she's also talking about explaining things to the
25 family. And if we go onto the next -- well,

1 that's it for Ms. St. Hill.
2 We also had some valuable insight from
3 Mr. Slough. Again, Mr. Slough, a line prosecutor
4 of more than two decades, now the Assistant Deputy
5 Attorney General. And one other thing, Mr. Slough
6 has experience -- quite frankly, I followed the
7 case in the paper, I don't know how he did it, a
8 dozen inquests with a dozen grieving families who
9 lost babies, all done one after the other over a
10 three year period, incredible, incredible burden.
11 And so Mr. Slough has experience dealing with
12 witnesses. And here is what -- or with victims,
13 and here is what he has to say, down at the bottom
14 of page 29 in my compilation.
15 "I think that's right. And I think
16 maybe one thing we have learned as a
17 crucial thing is not to raise
18 expectations too high. If there's a
19 problem, get to the problems early.
20 Try to just have people understand it.
21 But it's also essential that you make
22 people understand the role of the
23 Crown Attorney vis-a-vis the family,
24 and that's to keep them informed, to
25 try and explain as best you can what

1 you are doing. But they don't direct
2 the prosecution."
3 Then I asked him a question about the fact that if
4 it's explained to most people, once it's explained
5 to them and they understand it, they tend to
6 accept it. And his answer is:
7 "Well, I would agree. The more you
8 can explain and the more you can
9 prepare people for what happens, and
10 very often the worst thing is a
11 surprise, that's where the
12 difficulties often arise, because
13 people are not getting what they are
14 expecting. If they know what the
15 probable outcome is, then it's
16 better."
17 And again, what we're getting from Mr. Slough is
18 an indication that you sit down with the people
19 and you explain things to them.
20 And perhaps the most eloquent
21 statement was made by Mr. Peck, and I realize
22 Mr. Peck wasn't talking about the Manitoba
23 Victims' Bill of Rights, he may not have even read
24 it. But Mr. Peck is an extremely experienced
25 special prosecutor, and he did mention in his

1 evidence that they have Victims' Rights workers in
2 British Columbia, and I didn't check if they have
3 a Victims' Bill of Rights or what it says. But at
4 page 32 of my compilation, and that's at volume
5 24, page 6493, we have Mr. Peck say as follows:
6 "And the same obligation, it seems to
7 me, rests with the prosecutor. I am a
8 special prosecutor in circumstances
9 like this where there are -- you've
10 got an absolute tragedy you are
11 dealing with. You've got people who
12 are in grief, in bereavement, and you
13 are going to make, and I have no idea
14 what happened in this particular case,
15 but if I'm handling it, I want to get
16 those people in. I want to get the
17 family in, I want to say to them here
18 are the problems, whatever it is.
19 Here is it what I think I can do.
20 Here is what I can't do. And here is
21 the way we have got to deal with this.
22 Communicate to them, explain to them
23 the problems, let them know
24 communication is -- I think we are
25 supposed to pride ourselves in our

1 ability to be communicators, but
2 sometimes I think we don't perhaps
3 express ourselves as we should, or as
4 often as we should, or as meaningfully
5 as we should. It takes a little bit
6 of extra time and a little bit of
7 extra work, but it seems to me in most
8 cases it is well worth it."
9 With all due respect, if that's not an eloquent
10 statement of what should be happening in serious
11 cases involving death between the prosecutor and
12 the family, I don't know where to go.
13 At this point I want to make a couple
14 of points about the Taman family position. The
15 Taman family has never suggested that Mr. Minuk,
16 the prosecutor, was in a conflict of interest
17 either because of being co-counsel with Mr. Wolson
18 or because of representing the police some decade
19 earlier. They have never suggested that. I have
20 never pursued that in any of my
21 cross-examinations, and I don't make that
22 submission today. I want to make it clear for the
23 record that that has never been my client's
24 position.
25 And similarly, I want to make very

1 clear what Mr. Taman's position was with respect
2 to the communications with Mr. and Mrs. Sveinson.
3 Mr. Taman was never opposed to the prosecutor
4 talking to Mr. and Mrs. Sveinson. Mr. Taman said,
5 I want you to talk to me first. And he didn't do
6 this out of any kind of self-aggrandizement or
7 grandstanding. He told us very clearly that the
8 reason he wanted to be talked to first is because
9 he wanted to protect his children. He wanted the
10 children to find out what was happening from him
11 and not from a third-hand rumour, and that's all.
12 And I want to make that clear in my submission
13 because it's important to my clients.
14 I'm going to move on,
15 Mr. Commissioner, and I want to discuss a little
16 bit the plea bargain and the removal of alcohol
17 from the equation.
18 The criminal negligence charge, I
19 don't have any difficulty in concurring with the
20 majority of the people that the criminal
21 negligence charge just wasn't there. And if the
22 prosecutor had chosen to withdraw it, or enter a
23 stay of proceedings at the beginning of the
24 Preliminary, there's really no quarrel with him.
25 The definition of criminal negligence, to a lawyer

1 at least, is relatively clear and it just doesn't
2 seem to be there.
3 Similarly, I agree with virtually
4 everybody else that the dangerous driving was,
5 whether you call it a solid case or a good case or
6 a strong case, whichever term you use, it was the
7 case that a prosecutor could expect to win.
8 The impaired driving and the refusal
9 were fraught with difficulties, I don't take any
10 issue with that. And I'm not going to deal with
11 the difficulties. They have been canvassed in the
12 evidence, they have been canvassed in the
13 submissions. And I can say to the tribunal, quite
14 frankly, that if I was the prosecutor, my
15 inclination would have been to run all three of
16 them through the Preliminary Inquiry. But I can't
17 take issue with Mr. Minuk not doing it, because
18 really that's a judgment call. And a barrister
19 has to be given a certain amount of leeway in
20 making judgment calls.
21 Just like I didn't like Mr. Minuk's
22 witness list, that's not the way I'd have put the
23 case in. But again, on reflection, I'd have to
24 say that's a judgment call. I've put in trials
25 and had juniors say to me, I would have never put

1 that case in that way. But, you know, a barrister
2 is given a certain amount of leeway in making
3 certain judgments. I think Rondel and Worsley, we
4 all know the case is clear on that.
5 So those are my comments and those are
6 things that I can't fault Mr. Minuk for, and I
7 don't. And I don't fault Mr. Minuk for staying
8 the breathalyzer and the refusal in return for a
9 guilty plea to the dangerous driving. It's a
10 judgment call and it's really not that bad. But
11 there is a place where I part company with what
12 Mr. Minuk did. And I respectfully submit that the
13 arrangement with respect to sentence and the
14 arrangement to take alcohol out of the equation
15 was at very best ill-advised.
16 Firstly, and this is almost a flippant
17 observation, but commercially it's a bad deal.
18 The Crown gets virtually nothing for tying up its
19 hands and the judge's hands. But that's not the
20 real reason why I respectfully submit that it was
21 a bad deal. I submit it was a bad deal for three
22 reasons. The first reason is it was wrong to take
23 alcohol out of the equation. The second reason is
24 that it did not serve Crystal Taman's family. And
25 the third reason is that it did not serve the

1 people of Manitoba. And I'm going to briefly deal
2 with each of these reasons one at a time.
3 Firstly, my submission that it was
4 wrong. I have given the court two cases --
5 tribunal, I'm sorry. One is R v. Duchominsky, a
6 decision of the Manitoba Court of Appeal, and
7 Mr. Minuk referred to it in his evidence, although
8 he mispronounced it, and the other is R versus
9 Eckert, and it was referred to by Mr. Slough.
10 Both are Manitoba Court of Appeal cases. Both
11 deal with sentencing on dangerous driving. And if
12 we look at the Duchominsky case, in that case it
13 was a defence appeal and the Court of Appeal
14 lowered the sentence, or varied the sentence in
15 favour of the defence. And if we go to page 273,
16 to paragraph 16, about the middle of the
17 paragraph -- and I didn't have time to highlight
18 these, Mr. Commissioner, I apologize -- about the
19 middle of the paragraph, the court says:
20 "On the other hand, there was no
21 alcohol or excessive speed involved."
22 And if we move on to the next page --
23 THE COMMISSIONER: I'm sorry, you said
24 paragraph 15 on page?
25 MR. ZAZELENCHUK: No, paragraph 16.

1 THE COMMISSIONER: Sixteen, I'm sorry.
2 Thank you.
3 MR. ZAZELENCHUK: And about the middle
4 of the page.
5 THE COMMISSIONER: Yes, I have it.
6 MR. ZAZELENCHUK: Yes.
7 THE COMMISSIONER: Yes.
8 MR. ZAZELENCHUK: And then if we turn
9 the page and go to paragraph 21, again the court
10 says:
11 "As noted, there was no excessive
12 speed or alcohol involved in this
13 offence."
14 And at the end of the day, the Court of Appeal
15 changes a custodial sentence to a house arrest
16 sentence. And clearly they consider a number of
17 factors. And I'm not saying that they don't. But
18 one of the factors that they clearly consider is
19 the absence of alcohol.
20 In Eckert, which happens two years
21 later, now Eckert is a Crown appeal and the Crown
22 is asking the court to change a house arrest
23 sentence to a custodial sentence, and the Court of
24 Appeal at the end of the day does. What happens
25 in Eckert is, firstly at paragraph 17, page 406,

1 about the middle of the paragraph, the court says,
2 speaking of the Duchominsky case:
3 "In allowing his appeal and
4 substituting a conditional sentence,
5 this court looked at such factors as
6 the fact that the accused had not been
7 drinking alcohol."
8 Okay. And then when we go onto the next page to
9 paragraph 19, in the third line, they are talking
10 about the facts in the case, the court is talking
11 about the facts in the case. And clearly they
12 consider a number of facts. But at the third
13 line, second sentence:
14 "He consumed at least two beers and
15 one Tequila shooter during the course
16 of the afternoon."
17 With all due respect to everybody
18 concerned, we have two decisions from the Court of
19 Appeal of this province, one in 2003, one in 2005,
20 both of which say that alcohol, short of
21 intoxication, without a causal connection, is a
22 factor that can be considered in sentencing on a
23 dangerous driving. And with all due respect,
24 that's the law in the Province of Manitoba.
25 The second reason that I believe the

1 taking of alcohol out of the equation and tying
2 the judge's hands is that it didn't serve the
3 victim's family. The victim's family wanted the
4 issue of alcohol to come out. When the obituary
5 ran for Mrs. Taman, in lieu of flowers, they asked
6 for donations to Mothers Against Drunk Driving.
7 Taking alcohol out of the equation did not serve
8 the victim's family, did not serve the late
9 Mrs. Taman's family. It was just the wrong thing
10 to do. And with all due respect --
11 THE COMMISSIONER: This is a very
12 problematic issue, isn't it?
13 MR. ZAZELENCHUK: The issue of
14 drinking and driving?
15 THE COMMISSIONER: No.
16 MR. ZAZELENCHUK: The issue of taking
17 alcohol out of the --
18 THE COMMISSIONER: No, the issue of
19 doing something because the family wants it.
20 MR. ZAZELENCHUK: It is.
21 THE COMMISSIONER: It is very
22 problematic, and it's problematic for me. And I'm
23 very sympathetic to the family, everybody is, but
24 it's problematic for a prosecutor to look at that
25 issue as saying that's a determinative issue.

1 MR. ZAZELENCHUK: And it's not.
2 THE COMMISSIONER: It's an issue that
3 I have to take into account.
4 MR. ZAZELENCHUK: And it's not,
5 Mr. Commissioner. I think, I submit that the most
6 important reason why taking alcohol out was not
7 the victim's family, it was the people of
8 Manitoba.
9 THE COMMISSIONER: Yes, all right,
10 okay.
11 MR. ZAZELENCHUK: And before I get to
12 that, I want to say that drinking and driving is a
13 serious social problem. We have an ongoing
14 national lobby group called Mothers Against Drunk
15 Driving. That shows you just how serious the
16 problem is. And I can't be more eloquent than
17 Mr. Gover was, and I'm not even going to try, but
18 I reproduced what Mr. Gover said in his evidence.
19 And he talked, it's at pages 34 and 35, and it
20 starts at the bottom of page 34, line 24.
21 "That's right. And in reviewing those
22 cases and summaries of them that were
23 provided to me, I was reminded of the
24 approach taken by Provincial Appellate
25 Courts, and one in particular that

1 comes to mind, the Ontario Court of
2 Appeal in a case called McVey in 1985,
3 the result of that attitudinal change
4 effected through, among other means,
5 Attorney General policies about
6 prosecution of impaired driving cases,
7 and they really stand for the
8 proposition that drinking and driving
9 is unacceptable. That's a profound C
10 change that we needed to effect an
11 attitude. And those cases echo the
12 policy of the courts acting on the
13 urging of provincial Attorney
14 General."
15 THE COMMISSIONER: It's a very
16 effective case, I remember.
17 MR. ZAZELENCHUK: For that reason, I
18 say it was wrong to take alcohol out of the
19 equation. Because it's something that all
20 Attorney Generals across the country are concerned
21 about. You don't have to do anything other than
22 pick up a newspaper or an issue of Lawyers Weekly.
23 I'm not going to go further on that, we all know
24 where that is.
25 I'm just about finished,

1 Mr. Commissioner. I want to make a few comments.
2 Learned counsel for the Commission put
3 forth some recommendations yesterday. I find them
4 to be appropriate. I concur in them. I see no
5 problem in those recommendations. I think they
6 would serve the people of this province.
7 And before I close, on behalf of my
8 clients, I want to thank Commission Counsel for
9 their diligence and their hard work. I want to
10 thank you, Mr. Commissioner, for your patience
11 with, among other people, myself, for your
12 diligence and your hard work, and the hard work
13 that you're going to do in the next six weeks.
14 And I want to say this if I can. On
15 Friday I met with my clients and I wanted to ask
16 them what, if anything, they wanted me to say
17 today, if there was something that was really
18 important to them. Kristin said, I want you to
19 tell the Commissioner that I don't think anybody
20 ever fought for my mother. And I asked her
21 yesterday if she still thinks that and she said
22 no. Thank you.
23 THE COMMISSIONER: Thank you very
24 much.
25 MR. McDONALD: May I just take a

1 minute, Mr. Commissioner, to organize my
2 materials? Thank you.
3 THE COMMISSIONER: Yes, certainly.
4 MR. McDONALD: Somebody has some
5 material here, I'm not sure who it is, and I was
6 wondering if I can get it moved so I have some
7 space.
8 Mr. Commissioner, the first order of
9 business that I have to address to you today is to
10 inform you that I have been asked by the current
11 council of the Rural Municipality of East St. Paul
12 to extend to the Taman family and to the Sveinson
13 family a sincere and formal apology for the manner
14 in which certain members of the East St. Paul
15 Police Service, as it was then constituted,
16 conducted the investigation of the accident
17 resulting in the death of Crystal Taman. And I
18 have had that instruction from the council for
19 some time. I don't want anyone thinking that it
20 is being extended as a result of anything that was
21 said yesterday, that is not the case. This is the
22 first opportunity I have had to express it.
23 The fact that an apology is being
24 extended is an acknowledgment that components of
25 the investigation were seriously flawed and

1 substandard. However, that is not an
2 acknowledgment that the conduct amounted to bad
3 faith transgressions, as has been suggested by
4 Mr. Paciocco. And I'll deal obviously more
5 extensively with that in due course.
6 Had the investigation been other than
7 flawed and substandard, we can safely conclude
8 that the segment of this inquiry as it relates to
9 the involvement of the East St. Paul Police
10 Service would not have been necessary.
11 Now yesterday, Mr. Paciocco made
12 reference to your mandate, and I don't propose to
13 review it here, we're all familiar with it. The
14 order-in-council of December 5th, '07, sets it out
15 quite clearly. I simply want to remind you of one
16 component of the order-in-council as you address
17 the issues that you will be addressing. And the
18 point that I wish to make is that the
19 order-in-council says that you must perform your
20 duties without expressing any conclusion or
21 recommendation about the civil or criminal
22 liability of any person or organization. So you
23 are allowed to make recommendations, but you can't
24 make recommendations in respect to findings of
25 civil or criminal liability. And I just ask that

1 you be mindful of that as you discharge your
2 mandate.
3 I have had the benefit of hearing
4 Mr. Paciocco's and Mr. Clifford's submissions as
5 they relate to the East St. Paul Police Service,
6 both with respect to the investigations and the
7 Victims' Bill of Rights. My comments to you will
8 respond to those submissions.
9 As to the investigation conducted by
10 the East St. Paul Police Service, Mr. Paciocco is
11 correct in that the main players whose conduct
12 requires scrutiny are former Chief Bakema, former
13 Constable Graham, former Sergeant and current
14 Chief Carter, Jason Woychuk, and to a
15 significantly lesser degree, Constable Glenda
16 Pedersen.
17 Mr. Paciocco spent considerable time
18 dealing with the conduct of former Chief Bakema
19 and former Constable Graham. I remind you,
20 Mr. Commissioner, that those individuals are no
21 longer members of the East St. Paul Police
22 Service. Bakema's contract was terminated by
23 council on February 22nd, 2006. The evidentiary
24 reference for that, Mr. Commissioner, is Exhibit
25 69, volume Z-1, paragraph 17 at page 5. I don't

1 think there's any need to take you there. It's an
2 undisputed fact.
3 On January 26th, 2006, Constable
4 Graham was relieved from duty pending an internal
5 investigation, and he resigned on March 13th,
6 2006. And the evidentiary reference is also in
7 Exhibit 69 at paragraph 18.
8 As Mr. Paciocco has observed, there
9 were internal problems with the East St. Paul
10 Police Service at the time of the accident giving
11 rise to the tragic death of Mrs. Taman. The
12 details of the problems that were being
13 experienced within the department were not part of
14 the mandate and were not explored in detail. But
15 I think you can proceed on the basis, and it's
16 evident to you, I'm sure, on the evidence, that
17 there were problems to some extent within the East
18 St. Paul Police Service, personality problems
19 dealing with Carter, Bakema, Graham, and to a
20 lesser degree others.
21 This is not -- I am not mentioning
22 this in order to try to justify the flawed
23 investigation, but it does assist in explaining
24 human dynamics being what they are. I do not
25 propose to address in any detail the conduct of

former Chief Bakema. He is represented by Mr. Weinstein, who will address his conduct. Similarly, I do not propose to address in any detail the conduct of former Constable Graham. However, I do endorse Mr. Paciocco's observations that Graham was not a credible witness and that his testimony was fraught with inconsistencies and contradictions. It's my submission that very little, if any, weight should be given to Graham's testimony unless there is independent corroboration of what he had to say.

So on any issues where there's factual issues that you feel need to be addressed and resolved, I urge you to find in favour of the witness whose evidence is opposite to Graham's, unless you can find corroborating evidence to support Graham.

One might ask that given the conduct of Chief Bakema, how did it come to be in the first place that he was appointed to the position of Chief of the East St. Paul Police Service? That his investigation was at best incompetent is, in my opinion, beyond refutation. In defence of the municipality's position, if one is required, is the fact that Bakema was hired only after

1 outside head-hunting firm had screened numerous
2 candidates to fill the position vacated by former
3 Chief Grant. The evidence reference for that,
4 again, sir, is at Exhibit 69, volume Z-1 at pages
5 2 and 3, paragraphs 7 to 12. It seems that the
6 municipality's reliance unfortunately on
7 recommendations of the outside agency worked to
8 its detriment.
9 As to the investigation and its
10 adequacy or otherwise, I will focus my comments,
11 and I intend to do that, on the conduct of Chief
12 Carter, Constable Woychuk and Constable Pedersen.
13 I want to deal firstly with Constable Pedersen.
14 As you know, Mr. Commissioner, her
15 role in the investigation was not significant. It
16 was minor. She was directed to a point north of
17 the accident scene to direct traffic, divert
18 traffic around the accident scene, and she was
19 there for a considerable part of the morning. She
20 was then dispatched to the hospital as part of her
21 role as Victims' Liaison Officer. And I'll come
22 back to the Victims' Liaison Officer issues later
23 in my remarks.
24 The only component of her
25 investigation has drawn any comment so far is the

1 fact that while processing Mr. Zenk under the
2 Identification of Criminals Act at 1:25 in the
3 afternoon of February 25th, she observed signs of
4 intoxication on Mr. Zenk which she failed to
5 record in her notes. That's the criticism that
6 has been levelled at her.
7 She has given explanations as to why
8 she did not record those in her notes. She
9 readily acknowledges that in hindsight, with the
10 benefit of hindsight, she should have made those
11 notes. But she didn't and she was contrite and
12 apologetic for that, and I think you ought to be
13 mindful of that and take that into account. Her
14 reasons, though, do have some sense to them. She
15 was not involved in the criminal investigation
16 herself, she was simply doing traffic and victim's
17 work, she was not involved in the criminal
18 investigation. At the time she was processing
19 Mr. Zenk, she was satisfied that he had been
20 processed in respect to the charges that were
21 being brought against him and he was being
22 released. It was simply an accommodation to
23 process him at that time under the Identification
24 of Criminals Act rather than to have Mr. Zenk
25 return at a later date. His lawyer, Mr. Zenk's

1 lawyer asked if he could be processed rather than
2 coming back, and the East St. Paul Service
3 accommodated that request.
4 Now, those are her reasons. We can, I
5 suppose, with the benefit of hindsight and the
6 wisdom of hindsight say, well, those reasons
7 aren't the best reasons, but nonetheless they are
8 her reasons, and they do have an air of
9 reasonableness about them. After all, she was not
10 involved in the investigation. And as far as she
11 was concerned, the impairment issues were being
12 looked after by someone else.
13 Now, I want to now turn to the conduct
14 of Jason Woychuk. What the evidence discloses is
15 that Jason Woychuk, his conduct was clearly
16 inappropriate. His role in the investigation is
17 significant. The evidence is clear that he was
18 the junior officer with the least amount of
19 experience on the scene. He had been with the
20 East St. Paul Service for approximately four
21 months. He had very minor experience before that
22 with the Dakota Ojibway Police Service. He had
23 never conducted a major crime investigation
24 previously. He had never investigated a fatal
25 accident previously. And he had limited

1 experience with impaired drivers.
2 In addressing and considering
3 Mr. Woychuk's conduct, Mr. Commissioner, I ask
4 that you bear in mind that when he was brought
5 into the involvement of the investigation, he was
6 coming off shift. He had worked the 9:00 o'clock
7 shift commencing the night of February 24th. His
8 shift was scheduled to end at 7:00 a.m. that
9 morning, when the call came in about the accident.
10 And he was asked to participate in scene control,
11 which he agreed to do, even though his shift was
12 at an end. Simply put, the police department was
13 understaffed and needed bodies out to the accident
14 scene and Constable Woychuk agreed to go there.
15 It was recognized immediately there
16 was a serious accident and whatever bodies could
17 be brought out would be, could be utilized.
18 You have heard considerable evidence
19 as to the extent of Woychuk's involvement in the
20 scene investigation. I don't propose to review
21 that in detail, it's been covered, you are
22 familiar with it. Mr. Paciocco outlines the
23 evidence as to Woychuk's involvement in detail in
24 his submission and in his aid to argument. And if
25 you need any assistance in finding the relevant

1 evidence as it relates to Mr. Woychuk, it's there.
2 As to Woychuk, I want to focus on what
3 Mr. Paciocco has described as bad faith
4 transgressions, which lead to the first
5 recommendation that has been made to you, that the
6 Minister of Justice should cause to be undertaken
7 an investigation of the conduct of Woychuk and
8 others as the Attorney General considers
9 advisable.
10 In my submission, Mr. Commissioner,
11 the phrase "bad faith transgression" connotes acts
12 which are deliberate, willful, intentional,
13 wrongful acts which amount in law to obstruction
14 of justice, as described in the Criminal Code. I
15 submit to you that Woychuk's acts, however
16 improper they may have been, do not constitute bad
17 faith transgressions. Rather, I think it's clear
18 from the evidence that Mr. Woychuk exercised very
19 bad judgment in agreeing to do things that Bakema
20 directed him to do. He knew he should not do what
21 he did, but he felt pressured by his Chief. He
22 disclosed his wrongdoings to Carter on
23 February 24, 2006, before he was -- when he was
24 transporting Carter back to the office from
25 Minuk's office. It was difficult for him to do

1 this, but he was not prepared to give false
2 testimony at the Preliminary Inquiry which was
3 scheduled to come up in May. It took courage for
4 him to come forward.
5 And I just pause at this point and ask
6 you, when you're considering the nature of
7 Woychuk's conduct, to bear in mind that his
8 conduct is not dissimilar to the very conduct that
9 we have witnessed from Chelsea O'Halloran. You
10 will recall the evidence, Chelsea O'Halloran was
11 counseled by her employer to downplay the amount
12 of drinking that was taking place at the
13 Branigan's establishment because of the
14 relationship she said that Mr. Bravo had with his
15 customers and friendships with the police and so
16 on. So she said she did downplay that, she did
17 something that she knew to be wrong. Her
18 conscience ultimately got the best of her and she
19 came forward. And she told what she believed had
20 to be told. That is very, very similar to what
21 happened to Woychuk. And to cast Woychuk's
22 conduct in a different light is, I suggest, to
23 cast too much criticism on it and impute too much
24 intent to it.
25 No one for a moment is suggesting that

1 Chelsea O'Halloran ought to be investigated. No
2 one for the moment is suggesting that Rodrigo
3 Bravo ought to be investigated, although he
4 probably has more vulnerability and less sympathy
5 than would Chelsea O'Halloran. But, again, I just
6 draw that analogy and ask you to take that into
7 account when you consider what Woychuk did.
8 With the greatest of respect to
9 Mr. Paciocco, it's my submission that you should
10 decline to make the first recommendation unless
11 you are satisfied that there is evidence of intent
12 and of motive on the part of Woychuk.
13 You will recall that following
14 Woychuk's disclosure, investigations similar to
15 those that you are now being asked to recommend,
16 were undertaken in respect to Chief Bakema. The
17 RCMP investigated potential obstruction charges
18 against Bakema. The results of the investigation
19 were reviewed by Doug Abra, as he then was. His
20 report, I'd ask to be put before you. I'm not
21 sure I gave this reference to the clerk. In fact,
22 I don't have it with me. I'll just retrieve it.
23 It's volume P-3 tab 88.a, pages 2856.1 to 2856.7,
24 it's Exhibit 232. I'll just retrieve my volume,
25 Mr. Commissioner.

1 THE COMMISSIONER: Pages?
2 MR. McDONALD: It's page 2856.1 to
3 2856.7, Exhibit 232.
4 And there you'll see that Mr. Abra
5 does a comprehensive review of the investigation
6 into Bakema's conduct that was conducted by the
7 RCMP. His opinion ultimately was that no charges
8 be brought against Mr. Bakema because there was no
9 evidence of specific intent to conceal evidence or
10 of specific intent to mishandle the investigation.
11 And I direct you in particular to a
12 quote at page 2856.5 where he talks about the
13 importance of motive. He confirms that although
14 motive isn't necessary, strictly speaking, for a
15 successful prosecution, it's something that would
16 greatly assist any prosecution as motive is
17 relative in determining intent, motive is relevant
18 in determining whether someone's conduct is
19 willful or whether someone's conduct fits the
20 description as described by Mr. Paciocco in his
21 recommendation.
22 THE COMMISSIONER: Have you read a
23 recent decision of the Supreme Court of Canada
24 which I think takes issue with your submission,
25 that motive is a relevant consideration.

1 MR. McDONALD: Well, it's --
2 THE COMMISSIONER: One looks at the
3 acts themselves, and if the acts amount to
4 obstruction, that is all the Crown has to prove.
5 MR. McDONALD: But I think with
6 respect, Mr. Commissioner, I think the obstruction
7 definition in the code does require willful.
8 THE COMMISSIONER: Yes, all right.
9 MR. McDONALD: Yes. And I'm saying
10 that before you can properly address willful in
11 the context of obstruction, it's helpful and it's
12 easier to do if there's evidence of motive.
13 THE COMMISSIONER: I might add that
14 the opinion was rendered before the decision of
15 the Supreme Court.
16 MR. McDONALD: Now Mr. Justice Abra
17 will be happy to hear that.
18 THE COMMISSIONER: I'm sure he will
19 when he considers, if he has time or if he has
20 occasion to consider a case, yes.
21 MR. McDONALD: Now, the long and the
22 short of it was that no charges were brought
23 against Mr. Bakema, notwithstanding the
24 egregiousness of his conduct. It's my submission
25 that Woychuk's mistakes in respect to his

1 investigation and his actions are far less
2 egregious than Bakema's. And like Bakema, there
3 is no evidence here, I submit, before you on the
4 record of intent or motive on the part of Jason
5 Woychuk.
6 I now want to look at some of the
7 evidence on intent and motive that is on the
8 record. And I think it's significant to note that
9 nowhere that I observed in Mr. Paciocco's content
10 did he attempt to address intent or motive on the
11 part of Woychuk. He is simply saying, making the
12 recommendation on the basis of the acts
13 themselves.
14 I want to take you, firstly, to the
15 transcript of evidence, firstly, volume 10 at
16 pages 2395 to 98, starting at line 16 on page
17 2395.
18 I don't know, Mr. Commissioner, if you
19 have the volumes of evidence available to you or
20 not.
21 THE COMMISSIONER: I don't. They are
22 at the office. You go ahead and read the
23 passages.
24 MR. McDONALD: I'll read the passages,
25 and I apologize for not having duplicate copies

1 made, but preparation time just didn't permit,
2 plus I have problems with staff at the office at
3 the moment. But in any event, those things do
4 happen.
5 Starting at line 16, and this is under
6 questioning by Mr. Paciocco, questioning of
7 Mr. Woychuk.
8 "Q Okay. Now, sir, I'm going to go
9 suggest to you that the testimony
10 leaves a fairly troubling environment
11 in which you had some memory problems
12 on some pretty key issues, sir?
13 A Yes.
14 Q Concern about what Harry told you
15 about the notes not really being clear
16 and what you told Carter not being
17 really being clear. I'm going to wrap
18 up now, I'm going to wrap up by trying
19 to summarize what I understand your
20 evidence to be. I'm going to make a
21 few observations on what I want you to
22 comment on, okay.
23 A Yes, sir.
24 Q I'm going to suggest that you
25 were uncomfortable at the prospect of

1 being the one who might be perceived
2 to ruin a police officer's career.
3 Would that be a fair statement, sir?"
4 And then my submission, sir, implicit in that
5 question is an attempt to impute a motive and
6 intent to Mr. Woychuk. His answer:
7 "A No, I was. I'd agree that I was
8 uncomfortable with the way the matter
9 was dealt with and the direction that
10 I was given.
11 Q Now, it was not something you
12 relish being put in the position where
13 if anybody was going to make any
14 observations of impairment at the
15 scene, it was going to be you?
16 A I don't think -- if I was given
17 the direction to do a certain task, I
18 would have done it."
19 In other words, had he been asked to do the -- to
20 check Zenk out for alcohol, he would have done it.
21 Question at line 18:
22 "Q Okay. You feel that you were in
23 effect left holding the bag; is that
24 fair, sir?
25 A I guess I felt that it wasn't

1 handled properly, and that neither
2 Harry Bakema nor Ken Graham wanted
3 anything to do with it, so they put it
4 on towards me to in turn put on
5 Sergeant Carter at the time.
6 Q Okay, and basically dumped it on
7 you. I think it was an accurate
8 expression you had used from time to
9 time?
10 A I probably used that, yes.
11 Q And isn't that consistent with
12 you not wanting to be the one who
13 ultimately has to expose any evidence
14 of alcohol, if there is any evidence
15 of alcohol to expose, sir?
16 A No.
17 Q What was being dumped on you?
18 A The fact that Harry made an
19 observation and a comment to me and
20 advised me not to do anything and wait
21 for Sergeant Carter, and then at a
22 later point, told me to deliver him to
23 Sergeant Carter.
24 Q Okay. Now at the scene you are
25 not really sure how to react. You

1 don't like the position you are being
2 put in. You know that Harvey-Zenk is
3 not being investigated properly. Is
4 that fair, sir?
5 A That would be fair.
6 Q There's no real effort being made
7 to determine impairment. Would that
8 be fair, sir?
9 A That would be fair.
10 Q He's being put in a car and you
11 are being directed by the Chief in a
12 way that undermines an investigation.
13 Would that be fair, sir?
14 A That would be fair.
15 Q And this obviously bothers you as
16 you testified?
17 A Yes.
18 Q Troubles you?
19 A Yes.
20 Q And ultimately you are directed
21 to take him to the station and you get
22 to the station, correct?
23 A Yes.
24 Q And you are reasonably new to
25 this police culture. And would it be

1 fair to say you don't really know what
2 to expect when you get into the police
3 station?
4 A That would be fair.
5 Q You had seen what happened on the
6 scene with no one seriously
7 investigating Harvey-Zenk?
8 A Yes."
9 Those are questions, Mr. Commissioner, posed by
10 Mr. Paciocco.
11 I want to go to the next reference
12 which is also in volume 10 at page 2509. And this
13 is Woychuk being questioned by Mr. Weinstein, and
14 the reference that I make is the question starting
15 at line 19.
16 "Q Exactly, and you are sticking to
17 that opinion, correct?
18 A Correct.
19 Q And do you, I am suggesting to
20 you, Jason Woychuk, that you didn't do
21 anything deliberately to try to get
22 Derek Harvey-Zenk out of charges, did
23 you?
24 A No, I didn't."
25 And, again, I submit that that's evidence on the

1 record that negates any suggestion of intent on
2 the part of Woychuk.
3 Continuing with evidentiary references
4 still in volume 10, at page 2520 commencing at
5 line 5, again, under questioning by Mr. Weinstein.
6 "You have already said, sir, in
7 fairness, that there was nothing you
8 deliberately did. Forget about what
9 people may think, I'm asking you,
10 there is nothing that you did to
11 deliberately give Harveymordenzenk a
12 break, was there?
13 A That's correct.
14 Q And let me say to you, when you
15 added things, changed your narratives,
16 it appears perhaps on the instructions
17 of Carter, and I'm not alleging that,
18 I'm suggesting, were you trying to
19 manipulate the case one way or the
20 other?
21 A No, sir."
22 And still in volume 10 at pages 2252 -- that must
23 be a wrong number, bear with me. Yes, it's a
24 wrong reference, my apologies. It's page 2552,
25 starting at line 19, and this is questioning by

1 me.
2 "Q Thank you. Now, Mr. Weinstein
3 asked you some questions along the
4 following line, and I'm just going to
5 ask you one question, and it is about
6 what your intentions were when you
7 made revisions to your MPICs
8 narrative...",
9 in other words your narrative report.
10 "Do you recall that?
11 A I recall just to be through with
12 it.
13 Q All right. I will just take you
14 back. You made your original MPICs
15 report on February 25th, the night
16 when you returned to night shift
17 following the accident?
18 A Yes.
19 Q You made some revisions on the
20 26th and you made some revisions on
21 the 27th. Do you recall that
22 evidence?
23 A Yes, I do, sir.
24 Q And I want to ask you this, did
25 you understate, in the revision to the

1 report made on February 27th, your
2 observations about alcohol and Mr.
3 Harveymordenzenk?
4 A Did I understate?
5 Q Did you understate your
6 observations about alcohol or did you
7 put in there what you recall and what
8 you felt to be complete?
9 A I put in what I recalled.
10 Q And what you felt to be complete?
11 A Yes, sir."
12 And the further evidentiary reference, still in
13 volume 10 at page 2565, commencing at line 20.
14 "Q Now, one further question,
15 Mr. Woychuk, in respect to the
16 additions that you made to your
17 narrative, and this was covered to
18 some degree by Mr. Prober, and if I'm
19 redundant, I apologize, but I want to
20 be sure that this is clear on the
21 record. Were the additions to the
22 narrative that you made intended to
23 deceive anyone or manipulate the
24 outcome of the case?
25 A No.

1 Q Did you do anything or omit to do
2 anything after the accident in
3 question with the intent of attempting
4 either to repair, hide, or conceal
5 what you perceived to be a charter
6 breach?
7 A No, sir.
8 Q Did you do anything or admit to
9 do anything after the accident with
10 the intent of attempting to perfect
11 what you perceived to be in any way a
12 flawed case for the prosecution?
13 A No, sir.
14 Q Did you do anything or fail to do
15 anything in an attempt in any way to
16 protect Mr. Morden-Zenk from
17 prosecution?
18 A No, sir."
19 There has been some suggestion
20 throughout the course of the evidence that a
21 possible motive for Mr. Woychuk to commit acts of
22 the type described by Mr. Paciocco is the fact
23 that he knew Derek Harvey-Morden-Zenk from
24 Brandon, that they both grew up in Brandon and he
25 knew him from his experience in Brandon. Well,

1 the evidence from Mr. Woychuk is quite clear on
2 that, although they were from the same town, he
3 knew of his family, he did not know
4 Mr. Morden-Zenk, he only knew of him, and he did
5 not recognize him at the scene and he had no
6 knowledge of or familiarity with him. And I think
7 that that's an important piece of evidence for you
8 to consider if you are asked to consider whether
9 or not his knowledge of Zenk was a potential
10 motivating factor to cause him to act in the way
11 he did.
12 So, in short, Mr. Commissioner, based
13 on the record of the evidence, I submit that
14 there's no evidence of motive or intent on the
15 part of Mr. Woychuk that would cause one
16 reasonably to conclude that his conduct fits the
17 description of bad faith transgressions.
18 I want to also cover some other
19 miscellaneous points, investigative points that
20 have been raised in respect to Mr. Woychuk. And
21 it goes to the fact that he's quite contrite in
22 recognizing that what he did was wrong. He knew
23 it was wrong. It was inappropriate to do when he
24 was counseled to do it, but yet he felt pressured.
25 There he was being given instructions by his Chief

1 as to what he should do and what he should put in
2 his notes and what he should not put in his notes.
3 He followed, unfortunately, he followed the
4 instructions given to him by his Chief. And he
5 unhesitatingly concedes that it was wrong for him
6 to craft his notes as counseled by Bakema. And
7 I'd just like to direct you to one quote in volume
8 10 at page 2386, actually starting at the bottom
9 of page 2385, my apologies, line 24.
10 "Q And you took the view during your
11 interview..."
12 That's the interview with Commission Counsel.
13 "...although your descriptions of
14 exactly what was said were, I think
15 you would admit inconsistent at times,
16 you continued to take the position
17 that it was Harry Bakema who told you
18 what to put in your notes?
19 A Yes.
20 Q And is that true, sir?
21 A Yes it is.
22 Q Were any of the omissions or
23 falsifications in your notes your own
24 idea?
25 A No.

1 Q But you made the decision to go
2 along with it, sir?
3 A Yes, I did.
4 Q Are you able to explain why?
5 A I guess my only explanation would
6 be that I was a new member to the
7 service and I was under the leadership
8 of someone who I thought that would
9 give me good direction, and I guess I
10 can't deny that I was uncomfortable
11 with it at the time, but I did go
12 along with it.
13 Q Okay.
14 A Something that I shouldn't have
15 done."
16 Coming from his mouth, it's not in response to a
17 suggested question by counsel, it's coming from
18 his mouth, showing true contrition for having
19 acted inappropriately by following the
20 instructions of Chief Bakema.
21 Mr. Paciocco was critical to some
22 degree, and it's not a significant point but I
23 feel compelled to respond to it, about Mr. Woychuk
24 having made additions to his notes. You will
25 recall the "odour alcohol slight" discussion where

1 there is spaces between many of the notes, and
2 then there's the "odour alcohol slight." And
3 Mr. Paciocco said, as a statement of fact, that
4 Mr. Woychuk had indeed changed those notes. That
5 does not accord with all of the evidence. I'll
6 direct you to volume 10 again, page 2537, starting
7 at line 5. This is under questioning, I believe,
8 by Mr. Weinstein.
9 MR. PACIOCCO: Page?
10 MR. McDONALD: Sorry, page 2537, line
11 5.
12 "Q So you're not admitting, are you,
13 or maybe you are, that you added that
14 to your notes after, at some point
15 later when the notes already had
16 already been done, because there was
17 that space there?
18 A I don't.
19 Q Are you admitting that?
20 A No, I'm not.
21 Q No, because if you really wanted
22 to make a good job in your notes,
23 there is a lot of spaces in your
24 notes, right?
25 A Yeah.

1 Q That was pointed out by
2 Commission Counsel, correct?
3 A Correct.
4 Q You could have, you had lots of
5 room to add that he was unsteady, but
6 that's not in your notes, is it?
7 A No, it is not.
8 Q There was lots of room to add
9 slurred speech but that's not in your
10 note, is it?
11 A No, it is not.
12 Q And you also could have put in
13 bloodshot eyes as well, but that's not
14 in your notes, is it?
15 A No, it is not?
16 Q Was that left out on purpose, all
17 of those things?
18 A No, sir.
19 Q No. They weren't there, were
20 they?
21 A Not that I recall, no.
22 Q But you could have, if you really
23 wanted to do a good job on your notes,
24 you could have advised, or you could
25 have added that, there was lots of

1 room, but you didn't do it. Right?
2 A Yes."
3 Now, there has been some suggestion as
4 well, and it was contained in one location, in
5 part of one of the questions that Mr. Weinstein
6 asked, suggesting that Sergeant Carter may have
7 influenced or counseled Mr. Woychuk in making
8 changes to his narrative. On that note, I want to
9 direct you again, still in volume 10, page 2554,
10 commencing at line 12.
11 "Q Thank you. Now, you were also
12 asked questions, and I didn't make a
13 note of who it was, not that it
14 matters much, but one of the lawyers
15 who has already questioned you has
16 asked you about whether you received
17 direction from Sergeant Carter on
18 February 25th or 27th to make changes
19 to your MPICs report. Do you recall
20 that, your MPICs narrative?
21 A Yes, sir, I recall the question.
22 Q Do you have any independent
23 recollection of getting any
24 instructions from Sergeant Carter on
25 either February 26th or February 27th

1 to change your narrative?
2 A No, sir."
3 There was quite an evidentiary
4 discrepancy on the record between Mr. Bakema and
5 Mr. Woychuk about what Mr. Woychuk was told by
6 Mr. Bakema when Mr. Bakema put Mr. Zenk in the
7 back of RM2. Mr. Paciocco covered that point and
8 he has done a careful assessment of the evidence,
9 and has suggested to you, Mr. Commissioner, that
10 Mr. Bakema's contention that he told Woychuk that
11 he was putting him in the back of the vehicle so
12 that Woychuk could check him for the smell of
13 alcohol in a warm and confined space.
14 Mr. Paciocco has said that that evidence should
15 not be accepted, that Woychuk flatly denies it,
16 and that Woychuk's is probably the correct
17 position, and I endorse and adopt that. Woychuk
18 has flatly denied the allegation.
19 I don't want to repeat the details of
20 it, but it first appeared when Mr. Bakema prepared
21 the statement for his lawyer while he was being
22 investigated. It appeared nowhere in his notes or
23 nowhere in his narrative, and it's simply not an
24 accurate account and you ought not to place any
25 weight on that. And you ought not to draw any

1 inference or conclusions about Woychuk's conduct
2 based upon what Bakema had to say on that point.
3 Now, Mr. Commissioner, you will recall
4 that during Mr. Woychuk's evidence I addressed
5 with him many areas of criticism to which he had
6 been exposed to as a result of his role in the
7 investigation. And I now want to go through that
8 evidence with you and highlight it for you, so
9 that when you are considering whether or not
10 investigative errors were made by Woychuk, what
11 his explanations for those are. And those start
12 at page, again in volume 10 at page 2557, starting
13 at line 18.
14 "Q I want to outline to you certain
15 areas that had been covered in detail
16 by counsel to afford you the
17 opportunity to make any comments..."
18 Bear with me, Mr. Commissioner, I'm sorry, I meant
19 to start at line 12, my apologies, at line 12, "
20 "Q Thank you. Now Commission
21 Counsel has pointed out that some
22 people may think that your conduct, be
23 it actions or inaction in this case,
24 may expose to you censure or
25 criticism. You are aware of that?

1 A Yes.
2 Q I want to outline to you certain
3 areas that have been covered in detail
4 by counsel to afford you the
5 opportunity to make any comments you
6 may wish to make to this Commission in
7 respect to the various areas of
8 criticism. Do you understand what I'm
9 going to do now?
10 A Yes, sir.
11 Q All right. And I'm going to take
12 you through them point by point. The
13 first one is, it's been suggested that
14 you may be vulnerable to criticism
15 because you received information that
16 Mr. Harvey-Zenk had consumed alcohol
17 but did not relay it to your superior
18 officer, Chief Bakema, who was on the
19 site. Firstly, do you remember
20 whether you told Chief Bakema about
21 the information that you received from
22 Mr. Rosser?
23 A No, I don't.
24 Q All right. If you didn't, is
25 there any reason why you wouldn't have

1 that you can think of?
2 A Either that I hadn't spoken to
3 him..."
4 him being Bakema,
5 "...or because he had already relayed
6 some more information to me.
7 Q That being Chief Bakema had
8 already relayed information of
9 impairment to you?
10 A That's correct.
11 Q So Bakema already knew about the
12 fact that Mr. Zenk may be impaired or
13 was impaired?
14 A Yes, sir."
15 So the reason he didn't relay it to him at the
16 scene is because he knew already that Chief
17 Bakema, based on what he had told him, was aware
18 that Mr. Zenk might be impaired.
19 The second point:
20 "It has been suggested that you may be
21 subject to criticism and that you
22 received information that Mr.
23 Harvey-Zenk had consumed alcohol or
24 was impaired, but then failed to make
25 either a demand for a roadside

1 screening test or a breathalyzer test.
2 Now, we've already talked about the
3 roadside screening test, the approved
4 testing device, right?
5 A That's correct.
6 Q And your reason for not using that
7 or following that route, sir, was --
8 sir, again, please?
9 A That I don't think I can use an
10 ASD for a collision. They need to
11 be -- you need to find them operating
12 or in the care and control of a
13 vehicle.
14 Q Before you can administer a
15 roadside screening test, the code
16 requirements are such that you must
17 find the person either driving an
18 automobile or in the care and control
19 of an automobile, is that your
20 understanding?
21 A Yes, it is.
22 Q And it must be made forthwith, as
23 you've already said?
24 A That's correct.
25 Q And did those conditions exist

1 upon your arrival at the scene, sir?
2 A No, they didn't.
3 Q What about a breathalyzer test?
4 Why do you feel you ought not to be
5 subject to criticism for not asking
6 for a breathalyzer test at the scene?
7 A I didn't form an opinion of
8 impairment.
9 Q As I understand the law again,
10 sir, the code, and forgive me, I'm not
11 a criminal lawyer, if I misspeak I'll
12 be corrected by many people in the
13 room who are indeed experts on the
14 subject. As I understand it, you
15 cannot make a demand, you have no
16 lawful right to make a demand for a
17 breathalyzer test unless you have
18 reasonable and probable grounds to
19 believe that the subject in question
20 has committed the offense of impaired
21 driving. Is that correct?
22 A That's correct, sir.
23 Q Did you have that basis or
24 justification, sir, at the scene to
25 make such a demand?

1 A No, I did not."
2 The third point, Mr. Commissioner:
3 "There has been some discussion that
4 you may be open to criticism in that
5 you held Mr. Harvey-Zenk in the back
6 of the police vehicle without
7 providing him with any right to
8 counsel warnings. Can you give this
9 Commission an explanation as to why
10 you did what you did?
11 A I was directed to do that by the
12 Chief of Police at the time who I
13 believed would give me proper
14 direction.
15 Q And were you following orders?
16 A I was following orders.
17 Q Even though you believed it not
18 necessarily to be appropriate?
19 A That's correct."
20 Fourth point:
21 "It has been suggested, sir, that you
22 may be subject to some criticism and
23 that either at the scene or en route
24 you detected a smell of alcohol on Mr.
25 Harvey-Zenk without making a demand

1 for a roadside screening test, or
2 attempting to administer a sobriety
3 test, or alternatively that you had
4 reasonable grounds to believe that
5 Mr. Zenk was impaired by alcohol but
6 failed to make a breathalyzer demand.
7 Now, we have covered those, the
8 failure to make the breathalyzer
9 demand at the scene. Did you have any
10 reasonable and probable grounds, sir,
11 to make a demand en route?
12 A No, sir.
13 Q Had you formed an opinion that
14 Mr. Zenk had committed the offence of
15 impaired driving?
16 A No, I had not.
17 Q And similarly a roadside
18 screening devise demand would have
19 been entirely inappropriate at that
20 stage; isn't that correct?
21 A Yes, sir.
22 Q And what about not attempting to
23 administer sobriety tests, sir? What
24 is all that about from the perspective
25 of a police officer?

1 A It would be something that you
2 required special training for to do
3 that.
4 Q And what, if any, training did
5 you have that would enable you perform
6 a sobriety test, sir?
7 A I didn't have any."
8 The fifth point:
9 "It's been suggested that you may be
10 open to criticism or censure in that
11 you left Mr. Harvey-Zenk alone in a
12 police cruiser when you arrived at the
13 police station while notifying
14 Sergeant Carter that you had a
15 Winnipeg Police Service Officer in
16 your vehicle. What, if any,
17 explanation do you have for that, sir?
18 A That I believe I went up to see if
19 Sergeant Carter was in the hallway
20 waiting. I had the doors locked on
21 the vehicle.
22 Q Were you concerned at all about
23 leaving Mr. Zenk unattended in the
24 back of your cruiser car, your police
25 SUV, with the doors locked in the

1 sense that he could not get out while
2 you went to get Sergeant Carter?
3 A No, sir, I was not concerned.
4 Q All right. Had you seen or
5 observed any conduct while you had
6 been in the presence of Mr. Zenk that
7 should have or could have caused you
8 to have concern about leaving him
9 alone?
10 A No, sir."
11 Sixth point:
12 "Now, it has also been suggested that
13 you may be subject to censure or
14 criticism in that you omitted
15 information from your notes at the
16 direction or advice of Chief Bakema,
17 and/or included inaccurate information
18 in your notes at the direction or
19 advice of Chief Bakema. We have
20 covered that.
21 A Yes.
22 Q And you, sir, acknowledge that as
23 a police officer, that was
24 inappropriate and wrong conduct on
25 your part?

1 A Yes, I do.
2 Q You acknowledge, sir, openly and
3 freely that you ought not to have done
4 what you did?
5 A Yes.
6 Q Do you feel, sir, any remorse as
7 a result of what you did?
8 A Yes, I do.
9 Q Please describe your feelings, if
10 you can, for the Commission on that
11 note.
12 A I feel that what I did was wrong
13 by not putting stuff in my notes and
14 omitting stuff from my notes, and at
15 the time I had minimal service and I
16 believed Chief Bakema was someone who
17 I could -- who was a leader and would
18 not give me bad direction. And I
19 guess I could apologize for my actions
20 now, but I do feel remorse for it.
21 Q And if faced with a similar
22 situation today, even coming from a
23 superior or indeed from a Chief of
24 Police, sir, would you act differently
25 or the same?

1 A I would act differently, sir."
2 The seventh point...
3 THE COMMISSIONER: Just, we'll stop
4 here. It's almost break time, and I think the
5 reporter would like you to just slow down for a
6 bit.
7 MR. McDONALD: Sorry.
8 THE COMMISSIONER: She's is doing a
9 magnificent job getting it all down.
10 MR. McDONALD: She is very skilled.
11 THE COMMISSIONER: Let's take 15
12 minutes.
13 MR. McDONALD: Thank you.
14 THE CLERK: Order. All rise. This
15 court is in recess.
16 (Proceedings recessed at 10:44 a.m.
17 and reconvened at 10:59 a.m.)
18 THE CLERK: All rise. This Commission
19 of Inquiry is reopened. Please be seated.
20 THE COMMISSIONER: Mr. McDonald,
21 before we continue, if you're going to be reading
22 passages of the evidence, it would be much better
23 if you could just give me the reference. I can
24 assure you, I will read it all. And just tell me
25 what lines you want me to read and I will read

1 them and we can go from there. We have a lot to
2 do. We have to -- and I'll say the same to other
3 counsel, rather than to read passages of evidence,
4 I know it may be difficult for some of you to do,
5 as Commission Counsel have done, to provide with
6 transcripts, but just tell me, and I assure you I
7 will read them. We have to be finished by
8 tomorrow, and I don't want to continue in the
9 parking lot on Friday.
10 MR. McDONALD: Mr. Commissioner, I
11 will not be long.
12 THE COMMISSIONER: Okay. Rather than
13 read it, just tell me the areas, and I can assure
14 you I have 40 years of experience of reading
15 transcripts.
16 MR. McDONALD: I accept your assurance
17 on that, and I just add this, that it's important
18 from the perspective of the witnesses whose
19 evidence I am making reference to, that you be
20 aware of that evidence. And I accept your
21 assurance that you will do that, and I will give
22 that assurance to the witnesses involved, because
23 I was going to do somewhat similar to Sergeant
24 Carter, who obviously has an interest in the
25 outcome --

1 THE COMMISSIONER: Of course.
2 MR. McDONALD: -- of this. So subject
3 to that, and I appreciate your caveat,
4 Mr. Commissioner, and I will minimize that as best
5 I can.
6 The last area of criticism with
7 Constable Woychuk is in respect to that he
8 unreasonably delayed reporting to Carter that he
9 had falsified his notes at the direction of chief
10 Bakema, and that he delayed in coming forward in
11 making that disclosure and should have done it
12 sooner. The evidentiary reference for his
13 response to that, Mr. Commissioner, is at page
14 2564 commencing at line 21, continuing on page
15 2565 to line 19. And on that note about the
16 delay, Constable Woychuk clearly acknowledges that
17 he should have come forward sooner. He admits
18 that without hesitation. He says it was a
19 difficult thing for him to do, to come forward,
20 and that's understandable. There was no looming
21 emergency date by which he had to address it, and
22 it's the type of thing that some people just put
23 out of their mind until they have to deal with it.
24 And unfortunately, it appears that that's what
25 Woychuk did in this instance. His conscience

1 ultimately got the best of him, with the
2 Preliminary Inquiry date drawing near, and he made
3 the disclosure to Sergeant Carter. And he clearly
4 acknowledges that he should have done that sooner.
5 But on that point, I will just remind
6 you of the evidence of Mr. Minuk when I was
7 questioning Mr. Minuk, that he confirmed that the
8 delay in the reporting did not seriously or
9 materially prejudice the prosecution of the case
10 because of Mr. Wolson's unavailability for
11 extended periods of time in any event.
12 In other words, Mr. Minuk was not
13 critical of Mr. Woychuk simply because of the
14 amount of time it took for him to come forward and
15 be contrite, and forward.
16 The other point I wish to make in
17 respect to Woychuk is still in respect to the
18 roadside screening device. He's been subject to
19 some criticism in that regard. I just pause to
20 refer you to the evidentiary reference in volume 9
21 at page 2235, where Constable Woychuk confirmed
22 that he did not have one in the vehicle. So even
23 if he wanted to, he couldn't have used one, he
24 didn't have one, and there is no evidence that
25 there was one at the scene.

1 Now, I now turn to discuss the
2 evidence of current Chief Carter. And as
3 Mr. Paciocco indicated at the outset of his
4 comments, yours is a serious task, this is a
5 serious inquiry. It has serious ramifications for
6 those who are involved. And no one, I submit, can
7 be more adversely affected by the outcome of this
8 inquiry than Chief Carter. He is a career police
9 officer, he is the current Chief of the East St.
10 Paul Police Service. He has had that position for
11 a number of years. He's been with the department
12 for many, many years. The allegations that are
13 being made against him are indeed serious and he
14 recognizes that.
15 And for the same reasons that I
16 recommend that you not recommend to the Attorney
17 General further investigation of Constable
18 Woychuk, I rely on those same grounds in respect
19 to not making a recommendation for further
20 investigation of current Chief Carter. There is
21 simply, in the case of Chief Carter, no evidence
22 of motive or intent to commit any bad faith
23 transgressions of the type described by
24 Mr. Paciocco. And as far as Chief Carter is
25 concerned, Mr. Paciocco has not pointed to any

1 evidence of intent or motive. He says simply that
2 Chief Carter changed his narrative to match with
3 Woychuk to overcome the charter breaches facing
4 Woychuk. That's the only bad faith allegation
5 that I can see that is being levelled at Chief
6 Carter.
7 Now, in considering that issue, just
8 ask yourself this question; why would Carter do
9 that? Why would he do as has been suggested,
10 change his report to mesh with Woychuk's in order
11 to minimize the charter issue? We're dealing with
12 a career police officer with a clean record. What
13 did Carter stand to gain by doing that? He stood,
14 nothing personally to gain by this, but yet he
15 stands to lose everything.
16 What Mr. Paciocco with respect, is
17 doing here, is drawing an inference from the
18 evidence without there being actual factual
19 evidence to support the conclusion he is asking
20 you to arrive at. We all know the difference
21 between drawing an inference from other facts
22 proven in evidence and speculation. Speculation,
23 by any trier of fact, is inappropriate, drawing
24 reasonable legal inferences is appropriate. I
25 submit what you're being asked to do here with

1 respect, Mr. Commissioner, is to speculate and
2 conclude that Chief Carter acted in bad faith when
3 he changed his report.
4 Now, that conclusion simply does not
5 accord with the evidence. Bear in mind the
6 allegation is that the effect of the change made
7 by Carter was to make the case charter proof.
8 That's Mr. Paciocco's allegation. The change we
9 know was made on March 1st. Ask yourself this
10 question; can anyone conducting a sensible study
11 of this case, as it existed on March 1st, come to
12 the conclusion that the case is charter proof?
13 Absolutely not.
14 It was patently obvious to all
15 involved from the outset that there were serious
16 charter issues on the record as it existed. The
17 record as it existed included the amended report
18 of Carter. To suggest that that charter proofed
19 the case is entirely inaccurate.
20 Bear in mind that when Mr. Minuk got
21 the Crown package, including Carter's March 1st
22 report which is prepared, the Crown package is
23 prepared the same day he makes the amendment to
24 his report. Minuk recognized, he said, from the
25 outset that there were charter problems existed.

1 So if Mr. Paciocco is suggesting his motive was to
2 charter proof the case, that's just not accurate.
3 It was never charter proofed. In fact, we know
4 the charter violations were material in
5 Mr. Minuk's mind when he ultimately agreed to stay
6 the charges. He was acutely aware, in fact,
7 painfully aware of the charter issues. And to
8 suggest that Carter covered them up and charter
9 proofed the case is just not consistent with the
10 facts.
11 And again, I want to make a reference
12 again to the evidence, and mindful of your caveat,
13 but this evidence is important and I'm going to
14 make you -- I'll give you the references and I'll
15 be as brief as I can on it. I want to -- the
16 first evidentiary reference I'm going to make is
17 to the reason why Carter made the change. And you
18 will recall that it was his evidence in response
19 to questions that he made the change to reflect
20 what he had been told in discussion by Jason
21 Woychuk, who, unknown to Carter, was changing his
22 narratives to reflect what he had been told by
23 Bakema. Carter said that he made the change in
24 his March 1st report because of what he was told
25 by Jason Woychuk. He, therefore, changed his

1 narrative to reflect what he had been told by
2 Jason Woychuk. Should he have done that? In
3 hindsight, he readily acknowledges, no, he should
4 not have done it, but he did it. He openly
5 admitted he did it. He did not attempt to hide
6 it.
7 Mr. Paciocco made a reference
8 yesterday that it was only -- they only discovered
9 this because of the fact they went behind the
10 record disclosed to the Crown. And I don't mean
11 to be critical of Mr. Paciocco, but sitting where
12 I sat, it sounded to me as if he was implying
13 something sinister on the part of the East St.
14 Paul Police Service. And I want to be careful
15 where I go here, because I was instrumental in
16 securing those records and giving them to
17 Commission Counsel. It's not as if they ferreted
18 those records out. Those were produced
19 voluntarily and willingly and at my suggestion.
20 So it's not as if they did a great investigative
21 job and ferreted this evidence out. I volunteered
22 it, asked Mr. Clifford if they wanted it. He said
23 they'd think about it and let me know. They got
24 back to me and said, can you get us the records?
25 I said certainly, as part of our disclosure

1 obligation. I contacted Chief Carter, because we
2 had evidence at that point from the interview of
3 Glenda Pedersen that she had read Woychuk's report
4 one time, and read it again, and saw changes. She
5 was questioned about the changes, which lead me to
6 ask questions of the East St. Paul, are there
7 other versions of the report and so on? So these
8 records were produced voluntarily and no attempt
9 to hide anything at all. There was full
10 disclosure made on behalf of the East St. Paul
11 Police Service.
12 The evidentiary reference that I want
13 to make in respect to why Sergeant Carter made the
14 change are in volume 12, pages 2943 to 44, and
15 page 2948, lines 3 to 15. And then I ask you to
16 turn to page 2949, on the same issue, and examine
17 follow-up questions put by Mr. Clifford commencing
18 at line 3. And these are important questions and
19 I will take you to them. You will recall this
20 series of questions asked by Mr. Clifford, and I'm
21 just going to refer to two of them and they are on
22 page 2949. And I ask you to look at the
23 forthrightness of the response of Chief Carter in
24 response to these questions. These are the
25 questions asked by Mr. Clifford, starting at line

1 3.
2 Q I take it, sir, that you realize
3 that many people in connection with
4 this case may suspect, sir, that the
5 changes were made in order to address
6 potential delay issues that you were
7 aware of at the very beginning of the
8 case?
9 A I suspect that's what may be
10 believed, yes, sir.
11 Q And certainly, sir, when you look
12 at all the factors, all of them are
13 consistent with that, do you agree?
14 A Yes."
15 Now, I submit what is significant is the questions
16 that were not asked by way of follow-up by
17 Mr. Clifford after he received those responses.
18 And those questions, of course, go to the issue of
19 intent and motive, of which I have spent time
20 discussing already.
21 And those questions were asked of
22 Chief Carter subsequently by other counsel.
23 Firstly, by Mr. Weinstein, in volume 12 at page
24 3053. And let me -- and again, I'm mindful of
25 your caveat, I do feel this is important,

1 Mr. Commissioner, I'll read it. These are
2 responses to questions put by Mr. Weinstein,
3 starting on line 1 at the top of page 3053.
4 "Sir, you did not intentionally change
5 your narrative, you know, that
6 Mr. Clifford showed you near the end
7 of his exam, you did not intentionally
8 change your narrative to obstruct
9 justice, correct?
10 A No, sir.
11 Q Okay. I mean, some people might
12 think you did it, but I don't, and I'm
13 not interested in what people might
14 think, but some people might because,
15 as Mr. Clifford pointed out to you
16 that, hey, what's changed sort of
17 helps bolster the case, bolster the
18 case as far as any possible breach.
19 Do you remember him asking you that?
20 A I remember him saying that, yes.
21 Q So some people might think that
22 that's a reason you did it, and I
23 don't care what people think, but some
24 people might think that, correct?
25 A That is correct, sir.

1 Q And some people could carry on
2 and think a little bit further that,
3 hey, he's doing that, he's obstructing
4 justice, correct?
5 A Correct, sir.
6 Q Yeah. And you weren't willfully
7 doing that, were you?
8 A That was never my intention,
9 sir."
10 And then I covered the very same issues with Chief
11 Carter quite thoroughly and comprehensively, and
12 those questions and answers appear in volume 13,
13 page 3138, commencing at line 19 and continuing
14 through to page 3140. And again, I won't read it
15 because it's a lengthy passage, but I commend it
16 to you to read carefully when you consider this
17 issue, because there Carter refutes absolutely and
18 unequivocally any improper motive or intent in
19 respect to the changes made to his narrative
20 report. And those passages of evidence are
21 evidence directly on point. No inference required
22 to be drawn. In fact, I would submit it would be
23 inappropriate for you to draw any inference of the
24 type suggested by Mr. Paciocco, unless you are
25 prepared to hold as incredible the evidence of

1 Chief Carter.
2 Chief Carter has stated under oath his
3 position in respect to it. And I ask you to
4 analyze, in addressing that issue, I ask you to
5 assess the overall credibility of Chief Carter,
6 who was on the stand for an extreme length of
7 time. He was subjected to intense questioning by
8 Commission Counsel. He endured it throughout. In
9 my view, he presented as a credible witness. He
10 was one who was willing to admit his mistakes. He
11 was one who willingly recognized that, yes, he
12 could have done things differently. He was not
13 defensive. He did not try to sugar coat anything.
14 Chief Carter was a believable and credible
15 witness, and you ought not lightly reject his
16 sworn testimony that he did not do the very thing
17 that Mr. Paciocco is accusing him of having done.
18 Now, I just pause to observe this,
19 Mr. Commissioner. I can't think of a single
20 instance in my career, which spans some 38 years
21 now, where anyone's work product has been exposed
22 to the degree of scrutiny as has been the work
23 product of the police officers who investigated
24 this case. And this is being done with the
25 benefit of hindsight, with the benefit of a

1 magnifying "retrospectoscope."
2 It's easy to say with the benefit of
3 hindsight what should have been done differently.
4 Nobody is perfect, as Mr. Zazelenchuk has stated.
5 People make errors. Sergeant Carter readily
6 admits to having made errors. His investigation,
7 although I submit the best of the bad lot, was
8 none that -- was still not by any means perfect.
9 However, Sergeant Carter, when he came on the
10 scene, at least things started heading in the
11 right direction. He took custody of Mr. Zenk, he
12 chartered him, he cautioned him, he formed the
13 opinion that he was impaired.
14 He was criticized slightly because he
15 didn't -- one that really stands out in my mind,
16 and with respect to Commission Counsel, I think
17 they went beyond what was necessary. They were
18 very critical of Sergeant Carter for not having
19 recorded in his final notes the grounds for making
20 his arrest and demanding the breathalyzer. Yet
21 the evidence clearly disclosed that his rough
22 notes were made on the 25th of February. His
23 incident narrative, which contained the grounds
24 for making his arrest, was prepared on the 27th,
25 which was his next day back at work, following

1 which his final notes were prepared.
2 Now, he put the grounds in the report
3 that he prepared before he prepared his final
4 notes. Why be critical of him for not having done
5 it again? We all know that officers are allowed
6 to refresh their memory while testifying by using
7 notes made contemporaneously or shortly after the
8 event. We all know that if they can demonstrate
9 and satisfy the judge that the narrative report
10 meets the same criteria, and it's their report,
11 they can use that to refresh their memory.
12 So there's poor Sergeant Carter being
13 subjected to what I was considering silently to
14 myself bordering on harassment for not being
15 perfect in his notes. Well, he didn't need to
16 make his notes. He had done it in his incident
17 report already. And it was an unfair suggestion,
18 I think, coming from Commission Counsel, who is
19 supposed to be neutral in this case. And he was
20 unfairly criticized on that note.
21 Also, Mr. Commissioner, in addressing
22 the allegation of bad faith against Chief Carter,
23 in respect to the change in his incident
24 narrative, I want you to be mindful of the content
25 of exhibit 251, which is a statement from Jerome

1 Mauws, the chief administrative officer of the
2 Rural Municipality of East St. Paul, that was
3 filed at the end of the proceedings by consent.
4 It was filed in specific response to this
5 suggestion that Chief Carter had acted in bad
6 faith by changing his incident narrative report to
7 reflect Woychuk's discussions, and his report.
8 You will note that Mr. Mauws says that
9 he's read Exhibit 69 in the proceedings, which is
10 the Agreed Statement of Facts particularly
11 referable to the RM of East St. Paul, where we set
12 out the history. I'm not going to bore you with
13 it. I commend you to read that so you can put the
14 rest of the statement in context. He's also read
15 Exhibit 236 in the proceedings, being a letter
16 from Fillmore Riley to Commission Counsel dated
17 February 28, 2008, which attaches excerpts from a
18 report dated March 29th, 2006, authored by Robert
19 Tramley and his assistant, Robert Wass. You'll
20 recall, Mr. Commissioner, that Messrs Tramley and
21 Wass were the policing services consultants who
22 were bought in to assist the East St. Paul Police
23 Department in dealing with their internal problems
24 and improving the overall performance of the
25 police force, independent of anything done right

1 or wrong in respect to the unfortunate Taman
2 accident.
3 You'll see that Mr. Mauws says that he
4 specifically requested, well, the Statement of
5 Agreed Facts actually says that Mr. Mauws
6 specifically requested that Messrs Tramley and
7 Wass review the East St. Paul Police file on the
8 Zenk case because of concerns expressed by
9 Sergeant Carter, then Chief Carter. It was Chief
10 Carter who asked Mr. Mauws to undertake the
11 review.
12 Now, if Chief Carter had committed the
13 acts of which he's being accused, why on earth
14 would he draw attention to the file and ask that
15 it be reviewed by an outside auditor, when his
16 expressed concerns were in respect to the conduct
17 of the members of the East St. Paul Police Service
18 at the accident scene. But a complete review of
19 the file was requested. The entire file was made
20 available to Messrs Tramley and Wass. And in
21 Exhibit 236, the segments from the Tramley report,
22 record their observations of the manner in which
23 the file was handled.
24 Now, surely it's a stretch that
25 Sergeant Carter, Chief Carter, would, on the one

1 hand, try to manipulate the case, has been
2 suggested, by changing his report, and then invite
3 an external review agency to conduct a detailed
4 review and audit of the file. That just does not
5 make sense. Mr. Paciocco tried to explain that
6 away, and I'm not going to belabour the point,
7 it's in his aids to argument where he says that he
8 does make reference to the statement, but
9 dismisses it. I submit that you cannot dismiss it
10 summarily. It's cogent evidence of the fact that
11 Chief Carter had nothing whatsoever to hide. The
12 auditors were given full access to it. They too
13 could have retrieved whatever they wanted off the
14 computer system. And Chief Carter proceeded, as
15 would a man who had nothing to hide and nothing to
16 fear.
17 So in summary on the bad faith
18 allegations, Mr. Commissioner, as they relate to
19 Sergeant Carter and to Mr. Woychuk, I submit that
20 you ought not to make the recommendations that
21 have been urged upon you by Commission Counsel,
22 because the overwhelming preponderance of evidence
23 confirms that neither Woychuk nor Carter had the
24 necessary intent or motive to commit acts of the
25 nature described by Mr. Paciocco. And I urge you

1 to confine the content of your report to an
2 examination of the other investigative issues
3 which have been raised, and frankly raised
4 properly as I have acknowledged at the outset.
5 Mr. Paciocco was quite critical of
6 Chief Carter over the error repeated in his notes
7 on the blood/breath issue. He said that -- and
8 deservedly so, to a degree, I mean, Chief Carter
9 does not dispute that, he readily acknowledges
10 that it was a recording error, he should have made
11 a supplementary report, he should have corrected
12 it. He readily acknowledges that. But it's not
13 an allegation of bad faith, but it's an
14 investigative error which Mr. Paciocco urged you
15 to find was material to the failure of the
16 prosecution.
17 Now, there has been considerable
18 testimony before you about the effect of that
19 recording error. What is significant, I think, is
20 that there's no doubt that Mr. Carter told Minuk
21 about the error. Carter's recollection is that he
22 did it when he met with him, his best
23 recollection, and he certainly couldn't be
24 positive, was he raised it with him when he met
25 with him on February 24th, 2006, immediately

1 before the Woychuk disclosure, in other words, at
2 his first meeting with Minuk. Minuk acknowledges
3 that he was aware of it, but he thought he was
4 told at the April 21st meeting with Carter when
5 Carter came to make the Woychuk disclosure. It
6 doesn't matter when Minuk became aware. The fact
7 of the matter is that Mr. Minuk did become aware
8 of the recording error. And it's my submission
9 that any reasonable and concerted review of that
10 file would disclose it was a recording error,
11 without anybody having to be told that. You don't
12 take someone to the breath room after you have
13 made a blood demand. Woychuk recorded a breath
14 demand. Carter records making a second breath
15 demand after there's been a change in Mr. Zenk's
16 position. There's no doubt, and Mr. Paciocco is
17 not urging you to find that Carter, in fact, did
18 make a blood demand. He's acknowledging that it
19 was a recording error and the demand that was in
20 fact made was a breath demand.
21 Now, that was an unfortunate error and
22 Chief Carter readily acknowledges that, and he
23 should have made a corrective report, but he
24 didn't. But I don't necessarily accept that that
25 ought to have been fatal to the case. Some say it

1 is, but everybody has differing opinions. People
2 can have different opinions on the same set of
3 circumstances. If Chief Carter was called to the
4 stand, he could have testified that that was an
5 error, he could have had a meeting with Mr. Minuk
6 and, in fact, prepared a corrective report if that
7 was a concern to Mr. Minuk. But that issue was
8 never raised with him. Never raised with him
9 after he made the disclosure, so he didn't do
10 anything.
11 So is there any justification for
12 Chief Carter not having done that? I think there
13 is in the sense he was not asked to do it. He
14 should have done it of his own volition, but had
15 he been asked, or had the issue been raised and
16 discussed with him, there's no doubt he would have
17 done that. I still, as I say, have difficulty
18 accepting that the mere recording of the word
19 blood versus breath would be fatal to the
20 prosecution.
21 And I just make the evidentiary
22 reference for you again to show Carter's
23 willingness to readily acknowledge his error that
24 should have done something sooner. That's at
25 volume 13, page 3151.

1 Mr. Paciocco was also critical of
2 Chief Carter for not gathering sufficient facts of
3 the cause of the accident before arresting Zenk
4 and charging him with impaired driving causing
5 death and dangerous driving causing death. You
6 will recall that lengthy exchange about what did
7 you know about the accident by the time you made
8 it, what did Woychuk tell you and so on? I simply
9 direct you to the evidentiary reference that
10 confirms that Woychuk had told Carter before he
11 made the demand and the arrest that Zenk was
12 responsible for the accident, that evidentiary
13 reference is volume 12, page 2901 at line 13.
14 There Carter confirms that Woychuk had told him
15 that Zenk was responsible for the accident. And
16 with that knowledge, he made the arrest and
17 charged and cautioned.
18 Now, the next point that I intended to
19 deal with on Sergeant Carter was similar to the
20 point that I dealt with, with Mr. Woychuk. And
21 those again are the criticisms and his response in
22 respect to the criticisms. And again,
23 Mr. Commissioner, I will not go through them. I
24 urge you to read them because they are important
25 to Chief Carter. They appear in volume 13, pages

1 3164 to 3173, and each area of criticism was
2 covered with Chief Carter and he responded to each
3 one. And again, what I ask you to conclude from
4 your review of that evidence is, again, is the
5 honesty of Chief Carter, his willingness to admit
6 mistakes when made, his willingness to admit, yes,
7 I could have done this better in hindsight. Yes,
8 I agree with you, that could have been done. But,
9 again, it's evidence which I submit is
10 inconsistent with the type of conduct that
11 Commission Counsel is attempting to impute to
12 Sergeant Carter, Chief Carter.
13 Now, I want to move briefly to the
14 Victims' Bill of Rights and Constable Pedersen's
15 involvement. I will be very brief on that.
16 Mr. Clifford I think fairly summarized the
17 evidence involving Constable Pedersen. She made
18 an error which she freely admitted. And that I
19 think was due largely to her inexperience in
20 dealing with Victims' Rights issues, when she was
21 asked whether the person who was responsible for
22 the accident was a police officer, she said she
23 didn't know. That was the wrong thing to do. She
24 acknowledges that. With the benefit of her
25 experience now, she says she would simply say that

1 that's not something that I can tell you now
2 because it's not in the public domain, and I can
3 only tell you that once that information becomes
4 public.
5 So I don't intend to spend any further
6 time on the victims' rights issues. That doesn't
7 seem to be of great concern vis-a-vis the East St.
8 Paul Police Service, at least from what I've
9 heard, so I'm not going to dwell any further on
10 it.
11 I want to now go to recommendation
12 number 2 concerning the East St. Paul Police.
13 Commission Counsel is recommending that you cause
14 further investigation into the investigative
15 training available to and qualifications required
16 of the East St. Paul Police Officers. And in
17 addressing that, Mr. Commissioner, I ask you to
18 ask yourself the question, whether in light of the
19 current circumstances that exist at East St. Paul
20 Police Service, whether that is necessary. And on
21 that note, I refer you to volume N of the
22 disclosure, tab N-78, which is the management
23 review report --
24 THE COMMISSIONER: Yes.
25 MR. McDONALD: -- marked as Exhibit

1 139, that was commissioned at the request of the
2 Government of Manitoba after this Commission of
3 Inquiry was called. The review was conducted in
4 November of 2007 at the specific request of the
5 Province of Manitoba. I went through this report
6 in detail with Chief Carter when I commenced my
7 questioning of him, and I invite you to read the
8 transcript of that evidence, and ask yourself the
9 question: Is that second recommendation
10 necessary? In my submission, it is not. The
11 review conducted by some of the most prestigious
12 law enforcement officials in the province, did a
13 complete review and audit of the performance of
14 the East St. Paul Police Service as of
15 November 2007, and concluded that the East St.
16 Paul Police Service is providing a good service to
17 the citizens of the R.M. of East St. Paul. The
18 opinion is based on extensive client satisfaction
19 review, and citizens, elected officials, and so
20 on, I'm not going to read it to you. But I
21 commend you, when you address that second
22 recommendation, to have a look at the report with
23 particular reference to the quotations that I read
24 into the record in the transcript which talk about
25 the scope of the review, the magnitude of the

1 review, the persons involved in the review.
2 THE COMMISSIONER: What about the
3 investigative training? Administration is not the
4 issue here. It's the training. Now, go to the
5 report and indicate to me where they have reviewed
6 the training of this force and whether they think
7 it's adequate? Because, frankly, I must tell you,
8 I don't think their understanding of the
9 importance of notetaking has been recognized. And
10 you yourself made a comment to Sergeant Carter
11 that it would be, it would take a police officer,
12 he'd have to work after hours to get his notes
13 done. Well, that's just too bad. That's
14 critical. Notes are as critical to an
15 investigation as the exhibits that are found.
16 They are absolutely essential, that police
17 officers understand the importance of making
18 clear, comprehensive and detailed notes of what
19 was done. When you suggested to him that a police
20 officer would have to work after hours or spend
21 all his time making notes as if it was the way it
22 should be, with respect, I think you're wrong.
23 MR. McDONALD: Well, I would readily
24 agree with you that I'm wrong if that's the
25 impression you got from my questioning of Chief

1 Carter, because that was not my intent.
2 THE COMMISSIONER: You put it to him
3 in that sense, you said to him an officer would
4 have to spend all his time making notes. Well,
5 that's too bad. If he has to spend all his time
6 making notes or working after hours, he should.
7 Because weeks, months, and years later, he's going
8 to have to testify about events that occurred.
9 And in the meantime, he's been involved in so many
10 matters, and to suggest that he can remember
11 without those notes, it's just not reasonable.
12 MR. McDONALD: I agree with you,
13 Mr. Commissioner. As I say, I did not intend to
14 create that impression by anything that I asked of
15 Chief Carter. As I recall my questioning of Chief
16 Carter, it was in the context of, do you think it
17 reasonable to have to make more detailed final
18 notes, after you have already done your incident
19 narrative? All of your -- normally, the notes are
20 used to create the incident narrative. Here the
21 narrative was already done and then he did his
22 notes. My question was, do you think it is
23 reasonable that once you have done that, that you
24 have to go make all these detailed notes?
25 Otherwise, if you do, you'd be spending all your

1 time making notes and not investigating, because
2 you've already recorded your observations in the
3 incident narrative. That was the point I was
4 trying to make. And if I wasn't clear on that,
5 Mr. Commissioner, I apologize, but that that was
6 my intent. I do not ever intend to belittle or
7 minimize the importance of accurate and detailed
8 note-taking. That was not my intent.
9 THE COMMISSIONER: Thank you.
10 MR. McDONALD: And on the question of
11 training and supervision standards, yes, that was
12 an issue that was covered by the review team. And
13 I direct you to page 2, where it talks about the
14 objective of the management review, and it cites
15 the terms of reference. The third bullet point
16 from the top is training and supervision
17 standards. Again, I don't want to take up time by
18 going through the report, but I do say that I
19 commend you to reading it when you are addressing
20 that second recommendation, because it is a very
21 comprehensive report of a comprehensive review
22 conducted of the East St. Paul Police service as
23 recently as November 2007. And frankly, they were
24 given a good report.
25 And as Chief Carter indicated in his

1 evidence, the report contained I believe some 11
2 different recommendations. And at the time of his
3 testimony, he said that he had implemented many
4 and was in the process of implementing the rest of
5 them, and working diligently to do that. They
6 were following the recommendations, and I think
7 that's important.
8 And Mr. Commissioner, you'll be happy
9 to know that I don't intend to make any comments
10 in respect to the investigations and prosecutions
11 subsequent to the involvement of the East St. Paul
12 Police Service. And I thank you for your time and
13 attention and your patience. And like other
14 counsel, I'd like to thank you for having had the
15 opportunity to appear before you, and we look
16 forward to your discharging your mandate and
17 receiving your report. Thank you, sir.
18 THE COMMISSIONER: Thank you. And you
19 are next -- the counsel who follows will obviously
20 be making comments about the investigation that
21 was conducted. Are you ready? Do you want to go
22 first?
23 MR. PACIOCCO: Pulling rank.
24 MR. WEINSTEIN: Mr. Paciocco came up
25 with the very good idea, normally Mr. Labossiere

1 would go before I, but Mr. Paciocco suggested I go
2 first so that ends the East St. Paul aspect of all
3 of this.
4 THE COMMISSIONER: Yes.
5 MR. WEINSTEIN: So I need --
6 THE COMMISSIONER: Two minutes to
7 collect your books, maybe even three.
8 MR. WEINSTEIN: Thank you.
9 Mr. Commissioner, you will be relieved
10 to hear I do not have long passages, I have very
11 brief passages that I know will be easy to follow
12 and not take up a lot of time.
13 There is one area where there is
14 longer passages. So, having heard your comments,
15 I will just give you page numbers on that
16 particular area.
17 What I intend to do is firstly just
18 make some general comments, general overview, and
19 then I'll deal specifically with the evidence of
20 some of the witnesses, and not in any huge detail.
21 As we know, when Chief Bakema and
22 others arrived on the scene, which was understood
23 to be a three-car collision on February 25th, it's
24 really undisputed that what they were facing was a
25 chaotic scene, for a couple of reasons. It was a

1 work day, it was peak traffic hours, thousands or
2 hundreds of cars at that intersection which
3 services many communities. And the intersection
4 was being blocked by the traffic. We know it was
5 a cold morning. We have heard minus 20, we know
6 it was 15-degree -- 15 kilometre wind. Four
7 officers we know arrived.
8 The first though, Glenda Pedersen, as
9 we know, didn't stay long at the scene, she
10 departed for the hospital afterwards. So we have
11 three members at the scene to deal with what was a
12 chaotic scene, not only the traffic, not only, as,
13 I believe as Constable Woychuk said, there was
14 even accidents happening as they were there. One
15 of the constables, we know Graham had to deal with
16 the family of Crystal Taman who arrived on the
17 scene shortly thereafter.
18 We know that East St. Paul was
19 understaffed, under-resourced on February 25th,
20 this was apparent because when they all attended
21 at the scene, there was no police officer left at
22 the scene. Ms. Olfert was not a police officer.
23 And I want to make it clear at the
24 beginning, Mr. Commissioner, I do not stand before
25 you to make excuses for what was undoubtedly a

1 flawed and an imperfect investigation. But having
2 said that, it was not done deliberately. It was
3 not done for a sinister motive. It was not done
4 to give Harvey-Morden-Zenk a break at all.
5 Some things were done right with
6 respect to this matter. The scene was preserved
7 in a manner that the RCMP reconstructionist who
8 was called out was able to get measurements and
9 carry out other tasks, and he was called upon by
10 Chief Bakema. Medical attention was given to
11 those who needed it at the scene. Later on, as we
12 heard, and Mr. Paciocco takes no issue with this,
13 he called out the PSU to conduct the investigation
14 of members who were at Branigan's with Mr. Zenk
15 and at the Black house. And he also told them,
16 PSU, to speak to the civilians at Branigan's. And
17 he said to you that in his opinion, we did not
18 have the resources to do it. And he says that
19 because we know, at times on a shift, there's one
20 person in the office and one on the street. And
21 we know that 28 individuals were interviewed by
22 PSU. You know, it may be more suspicious if East
23 St. Paul was trying to cover up, or give Mr. Zenk
24 a break, that they would do it, okay, decide who
25 to interview, who to not interview. But, no, they

1 felt that PSU, true, had more police officers in
2 that particular unit than the whole of East St.
3 Paul. And although, undoubtedly, Chief Bakema
4 made mistakes, they were done with no motive
5 whatsoever to assist Mr. Zenk and not done in bad
6 faith.
7 There's no doubt Mr. Bakema was a
8 Chief, senior officer at the scene, and fine, he's
9 in charge of the scene, fine. But he also said
10 that, you know, with officers, once you got there,
11 they sort of know what they have to do. And we
12 know that Graham went off and directed traffic, or
13 controlled traffic at one particular location. We
14 know that Constable Graham directed Ms. Pedersen,
15 Constable Pedersen where to go. There didn't have
16 to be and there couldn't be, because we're dealing
17 with a chaotic scene. And in hindsight, fine, if
18 someone's going to say, well, when you got there
19 you guys should have sat down and made an
20 organizational plan. Well, with all due respect,
21 you've got three police officers dealing with a
22 chaotic scene. There is not -- maybe it would
23 have been better, but they did not have the time
24 to conduct or make an organizational scene. They
25 had to deal with the traffic, they had to deal

1 with people that were injured. And there is no
2 doubt that Chief Bakema was a line officer at the
3 scene. He was doing things just as the other
4 officers were. It wasn't an ideal situation, but
5 it was a situation that they were faced with.
6 And one of the main thrusts that my
7 learned friend, Mr. Paciocco, makes, that he
8 failed to investigate Harvey-Zenk to properly
9 determine if he was, you know, had been drinking,
10 and that he suppressed information that he
11 observed. And it's really unfair when
12 Mr. Paciocco, with all due respect, and I actually
13 like him, it's really unfair when he says, how
14 come Chief Bakema didn't smell the odour of liquor
15 and other people did? Well, let's not lose sight
16 of the fact that Chief Bakema was outside with
17 Zenk. He was not in a warm confined space.
18 The only people, and I'll go through
19 that later, the only people who smelled liquor
20 were people who were in a confined space, were
21 sitting next to him. As Ed Rosser was, and I'll
22 deal with him later, who says that the odour of
23 liquor was not overpowering in the vehicle, but I
24 smelled liquor as I sat next to him. And there's
25 no doubt that Mr. Bakema dealt with Mr. Zenk at

1 the truck. There is a variance of time, depending
2 on which witness you look at. Ms. Beattie says,
3 in her opinion, 15 to 20 minutes, she believes it
4 to being an ambulance or getting transferred, but
5 it's the same Ms. Beattie that says that there was
6 one -- no, more than one police officer at the
7 truck. That is not the case. The only person
8 that was there at the truck was Mr. Bakema. And
9 other people say that. And I'll deal with that
10 later.
11 And Chief Bakema testified that he did
12 not observe symptoms of impairment, when he dealt
13 with Mr. Zenk for three minutes or five minutes
14 for the conversation that went on. And he is
15 making the same observation that these lay
16 witnesses did, some who were within three feet of
17 Mr. Zenk, who observed him walk to the vehicle, to
18 the detainment of the Taman vehicle, to walk back,
19 observed his manner of walking, and came to the
20 opinion. And I will deal with it again later,
21 that he was not drunk. One said that
22 specifically, but they all said there was nothing
23 unusual in the way he was carrying on, the way he
24 was walking.
25 So the fact that the lay witnesses

1 testified, as Chief Bakema did on this point, it
2 is our respectful submission, this is an anchor of
3 truth and should give Bakema's testimony
4 credibility as far as him not observing symptoms
5 of impairment.
6 Constable Woychuk, it is not only
7 Bakema, Constable Woychuk said that while he was
8 on the scene and he was with Zenk, he didn't
9 observe any symptoms of impairment. And that's
10 even more important, because Woychuk is dealing
11 with Zenk in a confined area, and is with him for
12 certainly a lot longer period of time. And he
13 gave evidence that he didn't observe symptoms of
14 impairment. And as my learned friend has already
15 covered, there was no reason to tell him he was
16 under arrest, there was no basis for making a
17 demand. The only thing he says, he observes or
18 detects an odour of liquor somewhere en route.
19 Bakema places Mr. Zenk in the back of
20 Woychuk's car. Harry Bakema said on the stand
21 that he appeared distraught, he couldn't allow him
22 to walk around the accident scene, it was cold
23 outside. He uses the word "distraught." That
24 word is also used by Mr. Rosser, that I'll come
25 to, and it's also found in Mr. Woychuk's notes,

1 the word "distraught." He wasn't told to put that
2 in by Mr. Bakema.
3 Some people have perhaps raised an
4 issue at this Inquiry that Chief Bakema was in
5 conflict when dealing with Harvey-Morden-Zenk. We
6 know that Harvey-Morden-Zenk and Chief Bakema, for
7 a period of time, worked out of the same building,
8 district 3, Hartford Avenue, different platoons.
9 He testified, yes, he did recognize
10 Harvey-Morden-Zenk after Harvey-Morden-Zenk said
11 he was a cop, at the truck as they were walking
12 back. Harvey-Morden-Zenk, when he testified, told
13 you that, yes, he was at the same station as
14 Bakema, not on the same platoon, didn't have a lot
15 of interaction with him there, didn't socialize
16 with him. When their platoon socialized, Bakema
17 was not there. They did not have any significant
18 relationship either at work or out of work.
19 Chief Bakema instructs Woychuk to
20 eventually turn Harvey-Morden-Zenk to Sergeant
21 Carter, an experienced police officer and
22 perfectly capable in dealing with
23 Harvey-Morden-Zenk. And he was confident in,
24 considering his experience, that he would be
25 probably the best person to look after -- after

1 him the most appropriate. We know, according to
2 Sergeant Carter, that Chief Bakema had never
3 handled an impaired driving file at East St. Paul.
4 We know from Chief Carter, or Chief Bakema that he
5 hadn't been on the street in 16 years. His
6 breathalyzer technician certificate had lapsed
7 years ago. He is instructed to take him out to
8 the police station for Carter to deal with it.
9 There is much I disagree with
10 Mr. Paciocco, but I have to say I do agree with
11 something he said yesterday. He said a factor, I
12 will briefly relate it, a factor that calls into
13 question whether Bakema was attempting to protect
14 Harvey-Zenk is that Bakema was prepared to involve
15 Sergeant Carter from the outset. There is no
16 motive to give Harvey-Zenk a break, to give him
17 any benefit, because he is calling out the most
18 experienced person, who doesn't know Mr. Zenk, to
19 deal with Mr. Zenk and decide whether or not
20 charges are to be laid. What charges, it's up to
21 Sergeant Carter. I'll take it further. If Harry
22 Bakema wanted to give Harvey-Morden-Zenk a break,
23 at least in my fertile mind, it would have made
24 more sense for Harry Bakema to deal with Mr. Zenk,
25 to transport him to the police station, have

1 Mr. Carter come to the scene, and let Harry Bakema
2 deal with Mr. Zenk throughout and at the station.
3 We heard from Constable Graham that
4 Chief Bakema was cognizant of the appearance of
5 conflict that could arise when dealing with
6 Mr. Zenk. And despite this appearance to some,
7 perhaps, of bias, I am submitting that this should
8 not and didn't preclude him from some involvement
9 in the file, primarily interviewing witnesses and
10 I'll come to that later.
11 As Mr. Bakema said he would not throw
12 his career away to give a benefit to
13 Harvey-Morden-Zenk or to protect Zenk. Much has
14 been made, quite rightly so, in the case of
15 Bakema, in the case of Woychuk, Carter, whoever,
16 about the note-taking. At the scene and
17 throughout this investigation, there is no doubt,
18 in my mind that Chief Bakema's notes were
19 incomplete, inadequate, should have contained
20 more, just as other police officer's notes should
21 have contained more, and unacceptable for a police
22 officer. And I know, Mr. Commissioner, you have
23 quite rightly so told us about the importance of
24 note-taking and we know that. We know that notes
25 are important because, as you quite rightly say,

1 they may not be testifying for a year or two
2 years. They can't rely on their memory, they have
3 to rely on their notes. But having said that,
4 having myself criticized Bakema and perhaps others
5 for their lack of proper note-taking, with the
6 greatest respect, that does not afford a benefit
7 to Mr. Harvey-Morden-Zenk, it does not show bad
8 faith. It shows officers who are not doing the
9 job correctly as far as note-taking. This was not
10 done to give Harvey-Morden-Zenk any break.
11 For example, there's an allegation
12 that Chief Bakema failed to record in his notebook
13 that he knew Harvey-Morden-Zenk. However, we
14 heard evidence that Chief Bakema informed officers
15 that he knew Harvey-Morden-Zenk. He told Woychuk
16 that, he told Graham that. He didn't direct any
17 of the officers, hey, don't tell anyone that I
18 know Mr. Zenk.
19 It is alleged and said that Chief
20 Bakema omitted from his notebook the fact that
21 Constable Graham smelled an odour of liquor in
22 Harvey-Morden's vehicle. Absolutely right. It's
23 not in his notebook. But what's equally clear,
24 this is mentioned in his narrative report. And
25 such was certainly not hiding the fact, not

1 trying -- he was not trying to help Mr. Zenk.
2 Sure, should it have been in his notebook, no
3 question. Was it written down somewhere? Yes.
4 Graham didn't write it down, about the odour of
5 liquor from the vehicle, so if Bakema wouldn't
6 have written it down, no one would have known.
7 But Bakema has it in his narrative.
8 It is our submission, and I'll deal
9 with this later, that he did not tell Mr. Woychuk,
10 Constable Woychuk, that Mr. Zenk was impaired,
11 possibly impaired. Woychuk doesn't believe that
12 he used the word "pissed." It makes no sense for
13 a couple of reasons. I'll deal with part of it
14 later. It makes no sense that he would say he's
15 likely impaired when there is no symptoms of
16 impairment observed by him or civilians.
17 So Woychuk says that Bakema says he
18 might be impaired, likely impaired, whatever,
19 okay, which Bakema denies. Woychuk says that
20 Bakema told Woychuk not to include in his notes
21 what Rosser said. There is a major problem with
22 these two things. Number one, Rosser, was very
23 clear in his evidence, he did not tell the police
24 officers at the scene that he had detected liquor.
25 He says, it's not up to me. He was adamant on

1 that.
2 And what's interesting too, you see,
3 if you go along with Woychuk, two things have
4 happened now. He's told, according to Woychuk,
5 that he likely is impaired, could be impaired, and
6 about the conversation about detecting liquor,
7 that Rosser told Woychuk about detecting liquor.
8 What's interesting, we know that Woychuk's going
9 to be taking Zenk to Carter. Bakema never tells
10 him, and Woychuk agrees, Bakema never tells him,
11 hey, don't tell Carter that I said he could be
12 impaired. You know, if he was trying to cover up
13 or actually said it, and didn't want anyone to
14 know about it, why wouldn't he say to Woychuk,
15 don't tell Carter about that, or don't tell Carter
16 that you smelled liquor, or that Rosser told you,
17 Woychuk, that you smelled liquor. Woychuk was
18 free to tell Carter that, he was free to tell him
19 both things. With respect, this makes no sense.
20 And Woychuk says, and there's a bit of dispute
21 between what Carter says and what Woychuk says, I
22 believe Carter said that Woychuk said he could be
23 impaired. He didn't say Harry Bakema said he
24 could be impaired. And he doesn't recall, I
25 believe Carter doesn't recall Woychuk telling him

1 that when he came in, about the ambulance
2 attendant.
3 Then let me just turn briefly to Cecil
4 Sveinson. He says that Chief Bakema told him that
5 he was pissed, this is at 3:00 o'clock, or after
6 3:00 o'clock, he was pissed and had to be whisked
7 away from there quickly. Quite the opposite. The
8 charter breach is not because he was whisked away
9 quickly. Part of the alleged charter breach, he
10 was just sitting in that car for a long period of
11 time before 8:12. He was not whisked away from
12 the scene quickly, quite the opposite, quite the
13 concern about the charter breach.
14 And saying he was pissed, when no one
15 else makes that observation, and quite the
16 contrary. But at 3:00 o'clock, Harry Bakema knew,
17 and we have heard this, by then he already knew
18 what Harvey-Morden-Zenk was being charged with,
19 being charged with impaired. And his evidence was
20 he told him that, that he was charged with
21 impaired.
22 Woychuk alleges that Bakema told him
23 to put in his notes the reason for transport being
24 a TAR, traffic accident report. And one of the
25 reasons, and he repeated this, Woychuk repeated

1 this a couple of times, one of the reasons that
2 Bakema wanted that put in Woychuk's notes, to use
3 his term, "to align with Bakema's notes." And
4 this was put to Woychuk that that makes absolutely
5 no sense because it's not in Bakema's notes. So
6 how do you align the TAR in Woychuk's note to
7 align with Bakema's notes, when Bakema's notes
8 don't have it? And to not mention -- he tells,
9 according to Woychuk, Woychuk tells -- Bakema
10 tells him two things. Put in there the TAR. Hey,
11 there's a problem, it doesn't align with Bakema,
12 and don't put in there about what Rosser said,
13 which Rosser, number one, says he didn't say. And
14 makes no sense because it's Bakema going out to
15 take the statement from Rosser, albeit weeks
16 later, but it's Bakema that goes out and takes the
17 statement from Rosser where Rosser says, yes,
18 there was this odour of liquor. And Bakema says,
19 was it strong? And he says, Rosser says strong
20 but not -- not strong but noticeable. So the
21 first time, you know, if he's trying to suppress
22 and help Zenk, he's, i.e. Bakema is going out to
23 take that statement.
24 Woychuk, waits a year to make these
25 allegations. Later on, when I have credibility

1 problems with Constable Woychuk, you will, I know
2 you will, read Mr. Abra's opinion which has been
3 referred to already, and take a look in there.
4 And I'm not going to go through it, to save time,
5 but take a look at page 5 and 6 of Abra's report
6 where he lists all the reasons he has real
7 credibility problems with Constable Woychuk. I
8 will not read those paragraphs out.
9 Transporting him for a TAR makes no
10 sense. We know it's seven days. In this case, it
11 was I think 30 days. It's interesting, if there
12 was something sinister, if this was said, it's
13 interesting that Sergeant Carter never questioned
14 Woychuk about, why are you bringing him for a TAR?
15 Never questioned Bakema how come he was at the
16 scene that long? If there was something obviously
17 wrong, if this was in fact said, you would think
18 that Sergeant Carter would really question it.
19 According to Woychuk, Bakema told him on
20 February 25th to put in about the TAR, but for
21 some reason it doesn't show up until the 27th in
22 Woychuk's narrative.
23 The theme of my remarks is, it's our
24 respectful submission that Harry Bakema's conduct
25 was not intended, number one, to protect

1 Harvey-Morden-Zenk, or to give him any kind of
2 benefit whatsoever, or to act in bad faith.
3 And as I said before, you don't want
4 to give a person a break by turning him over to
5 the one who is the most experienced dealing with
6 impaired driver. As I said before, it would have
7 made more sense for Bakema to have whisked them
8 away from the scene and have Bakema deal with
9 Morden-Zenk.
10 Commission Counsel spent some time in
11 his evidence, or in questioning of Carter, both
12 Carter and Bakema about whose file this was. And
13 there's a dispute on this. You know, Carter says
14 it was March 1st. But I'll bring to your
15 attention certain comments that he made to the
16 RCMP that flies in the face of that assertion.
17 There's no question that Chief Bakema
18 remained involved in this investigation. He
19 interviewed witnesses. Even accepting for a
20 moment that Carter is in charge of the file on
21 March 1st, witnesses, this is his file now, and
22 we've heard from others he was a reader, and in
23 addition to this, it was his file March 1st, but
24 witnesses have not been interviewed. If he is a
25 reader for this file, you know, why haven't they?

1 And what -- with respect, not a question, you
2 know, whether Bakema still had some contact with
3 this file, he did. He went out and interviewed
4 witnesses who had not been interviewed, beginning
5 with I believe it was Ms. Beattie, who came in, I
6 believe, February 26th, and that's the day and we
7 heard from Carter, he was away. Yes, he did.
8 And with the greatest respect, where
9 is the sinister motive in that? Where is the bad
10 faith? Where is the attempt to give
11 Mr. Harvey-Morden-Zenk a break?
12 Just to give you -- my learned friend
13 Mr. Paciocco went through one document, or went
14 through more than one document, but one I wanted
15 to just touch upon briefly, and that's found at
16 P-1.83. This is the incident or the examination
17 where the old value was, as you recall, was
18 Carter, and then overwritten by Bakema. As you
19 will recall, it's found at P-1.83. That's a
20 document, the old value is Carter. And what does
21 Carter have in that document? He has the driver
22 of the three vehicle, who the drivers were,
23 vehicle one, two, three. And then he puts this
24 in, this is Carter:
25 "Police were dispatched to a three

1 vehicle accident on Highway 59 the
2 Perimeter Highway involving a single
3 fatality. Chief Bakema, Constable
4 Graham, Pedersen and Woychuk responded
5 to the scene. See officer narrative
6 reports."
7 This is the old value. This is what Carter put
8 in, which was overwritten by Bakema.
9 And I don't want, Mr. Commissioner,
10 for you to think, or anyone to think that there
11 was anything sinister about this override, I'll
12 call it an override. Because if you take a look
13 at the new value, what's in there, the three, the
14 vehicles, who the drivers of the vehicles were,
15 and the first two paragraphs talk about who
16 attended at the scene. So what was overwritten in
17 Carter's and put, or replaced in Bakema's, is the
18 same information, other than car number one being
19 such a car and that type of thing. There was
20 nothing of any substance deleted from that.
21 We heard about him making a list of
22 witnesses. We know that certainly after
23 March 1st. This is consistent with him confirming
24 where things are, what needs to be done, who has
25 to be interviewed yet. There is nothing suspect

1 for that list. Where is the bad faith? There is
2 nothing suspect about interviewing people. This
3 does not benefit or give Harvey-Morden-Zenk any
4 break.
5 This might be, because I'm now moving
6 to the area dealing with witnesses evidence, I
7 could start and break, or we could break now and
8 come back say quarter to 2:00, 20 to 2:00,
9 whatever you wish.
10 THE COMMISSIONER: Carry on for a
11 little while.
12 MR. WEINSTEIN: Okay. I knew you'd
13 say that.
14 THE COMMISSIONER: Did you want to
15 break?
16 MR. WEINSTEIN: No, no.
17 THE COMMISSIONER: Just a suggestion.
18 MR. WEINSTEIN: Yeah.
19 THE COMMISSIONER: Thank you.
20 MR. WEINSTEIN: Let me briefly go
21 through, I hope briefly, Kathy Beattie. She
22 observed Mr. Zenk, she observed him walking
23 towards the Taman vehicle. And according to her
24 evidence, when examined by Commission Counsel, he
25 moved towards me, stood straight in front of me,

1 stared, he looked like he was in shock. Nothing
2 unusual about his walk. Her and Zenk were about
3 four feet apart, no odour of liquor detected from
4 four feet apart. She saw him walking back to the
5 truck. Nothing unusual about the walk, no stumble
6 or stagger. He didn't seem to be drunk. She
7 observed him for a period of time off and on.
8 Mr. Shaw sees Zenk get out of the
9 vehicle on the driver's side, walks over to the
10 yellow car, stared at it for about 15 to 30
11 seconds and then walked back to the truck. And he
12 watched him walk. What does he say? Appears to
13 be in a state of shock, no sense of urgency, slow,
14 deliberate walk. He indicated one of the police
15 officer's went to talk to the guy in the truck.
16 When re-examined, at re-examination by Commission
17 Counsel, I don't know whether they want to put
18 more than one there, he was asked whether or not
19 it's possible that there was more than one officer
20 at the truck? He indicated, his best answer,
21 there was one.
22 One of the police officers he says
23 went to talk to the guy in the truck. He says the
24 conversation was approximately five minutes, and
25 then on further questioning, could be less again

1 than five minutes. There was no problem with his
2 walk. Again, he says one police officer went up
3 to the truck, no other police officer approached
4 the driver of the truck. They were not in each
5 other's faces, normal conversation and distance,
6 the driver was a bit ahead of the officer, and
7 doesn't recall seeing any conversation when they
8 are walking back. Nothing unusual about the
9 conversation.
10 Tara Taman says there was not a long
11 conversation at the truck.
12 Denise Bukowski sees what turns out to
13 be Mr. Zenk, calm, walking towards her very
14 slowly. He was about 10 to 15 feet away from the
15 car when they were able to intersect him. She was
16 three feet away from Mr. Zenk. She asked him if
17 he was okay. He didn't respond, had a flat
18 effect, no expression. There was nothing about
19 the way he moved that caught her attention. No
20 one is observing anything unusual about his walk.
21 No one is detecting the odour of liquor.
22 My learned friend, you know, when he
23 was questioning her, he asked whether Mr. Bakema,
24 who took her statement, asked her about, he asked
25 her about his demeanour. He didn't ask about

1 observations of the man's ability to walk, not in
2 the statement. He didn't ask her this. It never
3 was put to her. She was interviewed by the RCMP,
4 they never put any of that to her either. But she
5 says there was nothing unusual. He goes to the
6 police station, she heard on the radio, because
7 she had been at the scene but she left the scene
8 before giving her name, and then heard on the
9 radio that they were looking for witnesses. She
10 went in and spoke and a statement taken by
11 Mr. Bakema. And sure, should her husband, should
12 they have been separated? Yes, no question about
13 it. Okay. But she says it was reassuring to have
14 her husband with her at the police station.
15 Bakema was compassionate with her. She was
16 troubled, and she asked him whether or not there
17 was something more she could have done. And she
18 said, he assured me, reassured me there was
19 nothing I could have done. He asked me to tell
20 what happened and I told him in narrative form.
21 It was written down, I signed it. I signed it
22 because it was accurate. She watched him walk
23 about half of 40 feet, no staggering, no
24 stumbling. And she said, had I observed that, I
25 would have told Bakema or the RCMP. She was three

1 feet away from him and did not detect the odour of
2 liquor. And in her Commission interview, she
3 indicated it appeared he was in shock.
4 Cecil Sveinson, you will recall his
5 evidence, he is there at about 3:00 o'clock. He
6 makes no notes about this. Well, neither does
7 Bakema. And Bakema says, no, he didn't make notes
8 because it wasn't pertinent to "the investigation
9 of Harvey-Morden-Zenk." Bakema let Cecil Sveinson
10 do what he had to do. After 3:00 o'clock, at that
11 time, he knew what he was charged with.
12 Mr. Bakema denies saying we had to whisk him away
13 from the scene, which wasn't the case, quite the
14 contrary. He didn't say he was pissed. Told him
15 about what the charges were. Cecil Sveinson said
16 he felt good that East St. Paul called out a
17 traffic reconstructionist. He had faith that the
18 PSU would get to the bottom of everything, even if
19 they were looking at a fellow officer.
20 I'm just going to briefly deal with
21 Rolland Fontaine and Edward Rosser, and that will
22 be an appropriate time to take the lunch break,
23 because then we get into police officers, so it
24 will be the perfect time.
25 THE COMMISSIONER: Okay.

1 MR. WEINSTEIN: Edward Rosser, the
2 person who said he could smell liquor on his
3 breath, was sitting right beside him in a confined
4 space. He said Zenk was not crying, appeared
5 worried. And this is in examination by
6 Mr. Paciocco.
7 "Yes, you could use the word
8 distraught."
9 He was clear, he did not advise police officers of
10 what he observed. Not normally something he would
11 do. Couldn't tell if he was slurring words. He
12 told you that if that person, in his opinion, was
13 impaired, that's something that goes on the sheet.
14 It is not on the sheet. And I'll refer to the
15 sheet in a moment. If the person was impaired,
16 his face would normally be flushed, and that's not
17 checked off. The fact that he detected the odour
18 of liquor does not lead him to the opinion that
19 the person is impaired. He was oriented and
20 alert. Impaired persons, he told you, can be
21 confused and disoriented. This was not the case.
22 This was not the boxes that are checked off.
23 There is no problem with hand/eye coordination.
24 The smell of liquor was not overpowering to fill
25 up the car. And again, he confirms as others did,

1 it's easier to detect the smell of liquor in a
2 confined space. Never detected the slurring of
3 words. Not a lot said, not a lot said by
4 Mr. Zenk. Other witnesses say that. Woychuk said
5 that, that he really didn't talk a lot. Rosser
6 said, didn't talk a lot. Mr. Bakema said, didn't
7 talk a lot.
8 Exhibit 77, you have that. That's the
9 ambulance report, called ambulance patient care
10 report, exhibit 77. Just to put on the record
11 again, under verbal, oriented and alert; under
12 motor, obeys; under eyes, spontaneous; under skin,
13 unremarkable; under pupils, normal. Nothing in
14 his report to indicate symptoms of impairment.
15 You have a smell of liquor in a confined space.
16 Rolland Fontaine, he was asked whether
17 he recalled telling anyone at the scene about the
18 smell of liquor. He has no recollection about
19 whether that occurred. This was when he was being
20 examined by Commission Counsel.
21 As you recall, he sent in a statement
22 addressed to Norm Carter, addressed to Norm. And
23 perhaps Harry Bakema should have asked some more
24 questions in the statements he took. Well, this
25 can apply to Sergeant Carter too, because there

1 wasn't any follow-up to the one-page statement
2 that was sent in.
3 Mr. Fontaine said, other than the
4 smell of liquor, and he indicated this to the
5 court and to the RCMP in his interview at page 17,
6 other than the smell of liquor, no other signs of
7 impairment. And again, he's one of many to say,
8 sure, it's easier to detect an odour of liquor in
9 a confined space. And again he says, can't say
10 under oath today, when he was testifying, if he
11 told an officer about detecting the odour of
12 liquor.
13 This is more than an opportune time,
14 before I get into some of the police witnesses.
15 THE COMMISSIONER: I wonder if it
16 would help if you could ask your assistant to type
17 out the pages that you want me to look at, and
18 then it might cut down in your reference to the
19 pages. Can you do that and give it to me over the
20 lunch hour?
21 MR. WEINSTEIN: The page numbers
22 specifically?
23 THE COMMISSIONER: You are going to
24 ask me to look at page numbers, aren't you?
25 MR. WEINSTEIN: I will come to that.

1 THE COMMISSIONER: Rather than you go
2 through it, maybe she can.
3 MR. WEINSTEIN: The ones I am going to
4 ask you to look at are more specifically with the
5 police evidence that I'm coming to, okay, and some
6 longer passages, or some short passages, I have
7 the page numbers.
8 THE COMMISSIONER: All right. Well, I
9 was going to suggest that, but if you can do it,
10 you can do it quickly. I appreciate, I don't want
11 you people to feel that I'm pressing you, and I
12 don't want to press you. The only thing that is
13 pressing me is the fact that we've got to be out
14 of here tomorrow afternoon. So, as I said, I
15 don't want to be completing this in the
16 parking-lot on Friday.
17 MR. WEINSTEIN: I assure you, when I'm
18 dealing with the rest, we do not have long
19 passages.
20 THE COMMISSIONER: And I hope other
21 counsel will not be reading passages to me, long
22 passages. Thank you. We'll break now for an hour
23 and 15 minutes.
24 MR. WEINSTEIN: Thank you.
25 THE CLERK: Order. All rise. This

1 Commission is in recess.
2 (Proceedings recessed at 12:38 p.m.
3 and reconvened at 1:55 p.m.)
4 THE CLERK: Order, all rise. This
5 Commission of Inquiry is now reopened. Please be
6 seated.
7 MR. WEINSTEIN: Just one or two points
8 on the evidence of Ms. Glenda Pedersen. She
9 indicated -- confirmed he was not whisked away
10 from the scene, he remained there for a long
11 period of time. As you know, there is a
12 contradiction between her claiming that she told
13 Carter that she observed or detected the odour of
14 liquor at 1:25, and Carter indicated in his --
15 Sergeant Carter indicated it was not told to him
16 until the inquiry was basically called.
17 Just in the case of Graham, Ken
18 Graham, he recalls a conversation with Bakema
19 about the driver of the truck being a police
20 officer. He never told me, he, Bakema, never told
21 me, Graham, that he was impaired. He talked about
22 seizing the uniform. He indicated it was Graham's
23 decision to seize the uniform, but it was a joint
24 decision what to do with it afterwards.
25 And let me just digress for one

1 second. Perhaps I stand corrected, but I don't
2 see anything sinister that's being made out, or
3 should be made out about seizing the uniform.
4 Fine, it wasn't logged as it should have been. It
5 was seized. They gave the reason why; they didn't
6 want Dr. Hook to have control of the police
7 uniform. It was subsequently turned over to the
8 Winnipeg Police Service.
9 Also, he indicated that the only
10 police officer at the truck with Mr. Zenk was
11 Mr. Bakema. He indicated he, Graham, was not at
12 the truck, and certainly Woychuk was not at the
13 truck, and that was the only three officers at the
14 scene, because Glenda Pedersen had left already.
15 He indicated, yes, he observed a
16 conversation between Bakema and Zenk at the truck,
17 he indicated it could have been two to three
18 minutes, in his estimation. Again, he talked
19 about nothing alarming about how Zenk was walking.
20 He also indicated, and I'm just referring back to
21 or thinking back to Tara Taman's evidence,
22 Mr. Zenk was not brought to his vehicle. As you
23 recall, Tara Taman gave this evidence that Zenk
24 was standing outside her vehicle, or the vehicle
25 she was in, which was Graham's vehicle, for about

1 15 minutes. Constable Graham said, no, he was
2 taken directly to the Woychuk vehicle. Never
3 heard Bakema use the word pissed, and never told
4 him at the scene that Mr. Zenk was impaired.
5 And under cross-examination by counsel
6 for Mr. Minuk, he indicated, Carter indicated that
7 Bakema explained that he wanted Carter to deal
8 with the situation.
9 Bryan Maloney; Bryan Maloney was a
10 friend, as he indicated, of Jason Woychuk. They
11 socialized outside of the office. His evidence
12 was that he had conversation with Woychuk on a
13 couple of occasions, they talked about the charter
14 breach. And he indicated, and I can give you a
15 reference on this, he indicated that there was no
16 concern or discussion about any "note
17 development." And he talks about this in his
18 Commission Counsel interview at page 14. He
19 confirms that, no, there was no conversation about
20 note development. So my point is, this is a
21 friend, they have discussion, but didn't raise any
22 concern about "note development."
23 Jason Woychuk, and what I'm going to
24 ask, Mr. Commissioner, I will give you page
25 numbers that I will ask you to -- and I know you

1 will refer to them later -- and this is his
2 transcript from the evidence he gave in this
3 inquiry, pages 2480, Mr. Commissioner, to 2518.
4 In those pages, many of the contradictions and
5 things that don't make sense were put to
6 Mr. Woychuk about what Harry Bakema said or didn't
7 say, and didn't tell him that you can't tell
8 Carter this or you can't tell Carter that. And
9 that's canvassed in those pages, Mr. Commissioner.
10 So it saves me having to go through them in any
11 detail at all. Let me just highlight points, not
12 reading transcripts at all.
13 He says in his notes, and this is
14 Woychuk's notes, he says the individual is brought
15 to his vehicle at 7:42. He says, as far as that
16 time, he doesn't know where he got that particular
17 time from. He says, to use his words, there is
18 lack of confidence in that time. He claims, or he
19 says he was eventually told by Mr. Bakema to take
20 him to the station because Carter was now there.
21 He is not sure whether Bakema said Carter is
22 coming to the scene, or Carter is coming to the
23 office, but in any event, he was told to take
24 Mr. Zenk to the office.
25 In Woychuk's opinion he appeared, he

1 being Zenk, appeared to be injured or in shock.
2 And again, as I indicate in my opening summary, he
3 has the word "distraught" in his notes, he being
4 Woychuk's notes. And Bakema never told him to put
5 that in his notes.
6 He also said, and I covered this, that
7 Zenk did not want to talk due to his condition.
8 Not a lot of conversation. And this is consistent
9 with what Mr. Bakema says and consistent with what
10 Mr. Rosser said.
11 He indicated that there were no
12 symptoms of impairment that he observed. And
13 Mr. McDonald has already canvassed that there were
14 no grounds to charge him or place him under arrest
15 for impaired driving. And again, noticed the
16 smell of liquor en route to the police station.
17 In examining him by Commission
18 Counsel, he indicated, yes, he concedes that some
19 of his answers vary between whoever is doing the
20 interview, whether it was Commission Counsel or
21 not.
22 He says, Woychuk says that he did not
23 tell Carter when he got to the station what Rosser
24 had said to him, or made a motion as far as
25 drinking. He doesn't know why he didn't tell

1 Carter that at the station.
2 And again, some of the comments he
3 makes in those pages, he confirms that Mr. Bakema
4 never told him, don't tell Carter any of that,
5 about what Rosser said. Because Mr. Bakema, when
6 he gave evidence, indicated that he never knew at
7 the scene that a paramedic smelled alcohol or
8 liquor on him.
9 Now, the part about Bakema telling him
10 that he may be impaired, or possibly impaired, and
11 whether or not he was told what to do with that,
12 whether to put it in his notes, I will just make a
13 reference to the second interview with the RCMP at
14 page 4. He is not sure whether Bakema asked me
15 not to put in there about being impaired. But
16 more specifically, I'm going to refer to
17 Commission Counsel interview with Mr. Woychuk.
18 And this I will read because it is only a matter
19 of a few sentences.
20 At page 34, Mr. Commissioner, when
21 Woychuk is being examined by Commission Counsel:
22 "Q Did you have any explanation at
23 all that you can provide for the
24 absence of anything in your notes
25 about what Chief Bakema said at the

1 scene to you about Harvey-Zenk?
2 A No, I don't."
3 Again, Commission Counsel, not to give up, again
4 at page 40 and 41:
5 "Q When Chief Bakema told you not to
6 put anything about Ted Rosser smelling
7 alcohol at the scene, at that point
8 you were aware of the fact that Chief
9 Bakema told you he smelled alcohol at
10 the scene?
11 A He never said he smelled it. I
12 don't know how he came to that
13 conclusion.
14 I stand corrected...",
15 Commission Counsel,
16 "...that Chief Bakema indicated that
17 the person was or was possibly
18 impaired.
19 A Yes.
20 Q And there is nothing about that
21 comment in your notes either?
22 A That's right.
23 Q Can you give an explanation for
24 that?
25 A I can't."

1 So that's at page 40 and 41 of Commission
2 Counsel's interview.
3 He also says that at the scene he
4 believes that Bakema told him that Zenk was a
5 police officer. He also said in this inquiry, he
6 is adamant he does not think that Bakema
7 intentionally tried to cover up anything as far as
8 Mr. Zenk, he just didn't -- and this is Woychuk
9 saying, he just didn't want to deal with him.
10 And again he says the TAR doesn't
11 appear in his notes until later, days past the
12 25th, and again he also -- and I said in my
13 opening remarks, it was chaotic at the scene. And
14 as you recall, there was some confusion also in
15 his mind, because at one time he said, as soon as
16 he pulled up Zenk was brought to his vehicle, then
17 he wasn't sure, he thought maybe he put out
18 coloured cones, wasn't sure of the colour, wasn't
19 sure of the number of cones he put out. Did not
20 observe any conditions as far as impairment, no
21 slurring of words, no glassy, bloodshot eyes. "I
22 didn't think he was an impaired person, I thought
23 he was in shock, being in an accident." And the
24 smell of liquor was never overpowering.
25 And again I've asked,

1 Mr. Commissioner, you to review those pages in the
2 transcript. And I also, as I earlier indicated,
3 to save time, Mr. Abra, in his report, in his
4 opinion, pages 5 and 6, goes through the various
5 areas of lack of credibility or problems with the
6 evidence of Mr. Woychuk.
7 Just dealing with Mr. Abra's letter,
8 and I believe my learned friend referred to this,
9 and there was some discussion between you and
10 Mr. McDonald. Mr. Abra was aware that the Crown
11 does not have to prove motive in the charge of
12 obstruction of justice.
13 Mr. Carter, he was told, Sergeant
14 Carter was told that he was brought back -- this
15 is Woychuk apparently telling him -- he was
16 brought back to the station at the request of the
17 Chief because I was more experienced and could
18 handle it.
19 Then there was this whole issue, as
20 you recall, Mr. Commissioner, whose file was it?
21 Okay. I'm not sure what turns on it, but I'll
22 deal with that briefly. As you know, Chief
23 Carter, or Sergeant Carter at the time, indicates
24 that he took over the file. It hadn't been
25 assigned up until March the 1st, and then he took

1 over the file. This, however, is contrary,
2 Mr. Commissioner, and I'm going to draw your
3 attention to his interview by the RCMP.
4 Mr. Commissioner, this is found at E-1.23.r. This
5 is what he said when he was interviewed, and it is
6 very brief. Kennett is the interviewer:
7 "...at that time, ahm, told that this
8 file was going to be your file?
9 Yeah, I was. Yeah, it naturally
10 migrated to me, yes.
11 Kennett: How did that happen though?
12 How did...
13 Carter: Well...
14 Kennett: Were you told or?
15 Carter: Well, yeah, yeah, I was, the
16 file was turned over to me, yes.
17 Kennett: Okay. By whom?
18 Carter: By the Chief.
19 Kennett: All right. And when did
20 that happen? Do you remember?
21 Carter: Ah, well, that same day after
22 the scene was cleared, after I had
23 already dealt with Mr. Morden-Zenk in
24 the office."
25 So quite clearly in a statement to the RCMP, again

1 E-1.23.r, pages -- well, the bottom pages are 528,
2 529. It is clear at that time. When this was put
3 to him on the stand he says, well, yes, I can see
4 my answer today doesn't make sense with what I
5 said. And he said on the stand, well, I assumed
6 it would end up being my file. That's not what he
7 said, clearly, to the RCMP.
8 He says he was in the -- there were no
9 conversations, he says, with Bakema about the
10 roles each would play. And according to the RCMP
11 interview, it was his file right at 4:00 o'clock
12 on February 25th.
13 He says he was in the office when
14 Bakema, and this is jumping ahead, was making that
15 list that we have heard about, he was there and he
16 observed it. And there was nothing, I'm
17 suggesting there was nothing sinister.
18 He was also asked about what was added
19 or overwritten, and he confirms there was nothing
20 substantial taken out from his report. It was
21 re-entered by Mr. Bakema. And surely, I suggest,
22 if there was going to be something sinister about
23 it, surely, Sergeant Carter would have asked
24 Mr. Bakema about that. And at no time -- assume
25 for the moment it is March the 1st -- at no time

1 does Sergeant Carter question Mr. Bakema, Chief
2 Bakema, about why are you doing these interviews?
3 Well, I say the simple answer is, they weren't
4 getting done in any event. But there is nothing
5 sinister about it, whether Carter was doing the
6 interviews or Bakema was doing interviews. They
7 had to get done. They weren't all done in a
8 timely basis, we know that. But eventually they
9 had to get done.
10 And again, he confirms that it was
11 Bakema who directed the Winnipeg Police Service to
12 interview the civilians at Branigan's, not just
13 the police officers, but the civilians at
14 Branigan's. And that's where Chelsea O'Halloran's
15 statement was taken, and then two statements
16 taken.
17 Again, the seizure of the uniform; it
18 was obvious, it was in Bakema's narrative. There
19 was no issue, appears to be no issue with Carter
20 about that, the seizing of the uniform not being
21 logged, nothing was asked about that. As a matter
22 of fact, nothing was asked by Carter to Bakema
23 about why this was done or why that was done, or
24 not done. Similar, Carter did not ask a lot of
25 Mr. Woychuk also.

1 Let me now turn ---two sets of the
2 notes, we heard about that, two sets of notes of
3 Bakema's. He says one set was discovered later.
4 I still have a problem with that, because they are
5 in the same notebook and numbered. But in any
6 event, numbered sequentially, rough set of notes,
7 and then followed the next page with the good set
8 of notes. But for some reason, even if the rough
9 notes weren't there, what is important to remember
10 is what was there was the more thorough good notes
11 that had much more detail.
12 And Sergeant Carter at one point says,
13 yes, he compared the notes, and the times were
14 different. And then it was put to him, the only
15 time that was on the rough notes was 7:10, that
16 was the only time that was put on the rough notes,
17 and that same time was on the good notes, or the
18 more thorough notes. So the times weren't
19 different. The one time on the rough set of notes
20 were on the full set of notes.
21 Mr. Bakema's position, I've covered
22 much of that in my opening comments to you,
23 Mr. Commissioner. He indicates again, or confirms
24 what Sergeant Carter said, that he had never
25 handled an impaired driving file at East St. Paul.

1 And he agreed several times during examination
2 that his notes were inadequate, his notes should
3 have been more complete. What was put, some times
4 what was not put in his notes was put in his
5 narrative, the odour of liquor by the truck and
6 the seizing of the uniform.
7 So, again, I harken back to what I
8 said. If he is trying to minimize Mr. Zenk's
9 consumption of alcohol or anything like that, then
10 why put in his narrative about the odour of liquor
11 at the car. Because we know Graham didn't put it
12 in his. So if Bakema didn't put it in, then no
13 one would have known about that odour of liquor at
14 the vehicle.
15 So, I mean, that to me, with the
16 greatest respect, is a very telling point. When
17 my learned friend tries to say that there is bad
18 faith all over the place, sure, mistakes are made,
19 but mistakes are not necessarily bad faith.
20 He indicates there was only a brief
21 conversation with Mr. Zenk and he says there is no
22 possibility he took Zenk to Graham's vehicle, when
23 he walked him back, he put him right in the
24 Woychuk vehicle. As you know, and I've covered
25 much of this in my opening remarks about what he

1 claims he didn't say, what Woychuk says he did
2 say, and I covered why some of that makes no
3 sense, because he was -- Woychuk was never told
4 not to tell Carter anything.
5 He says no one at the scene told him
6 that one of the paramedics smelled liquor. And
7 that's consistent, with respect, with Mr. Rosser's
8 evidence, that he did not tell anyone at the scene
9 that he smelled liquor.
10 Was he more comfortable if Carter
11 dealt with Mr. Zenk? Absolutely. Absolutely.
12 Bakema says, if I had to, I would, but I didn't
13 want -- and this comes from other -- didn't want
14 any appearance of conflict or bias in me dealing
15 with Mr. Zenk, and his dealings with Mr. Zenk were
16 very brief.
17 He indicates he did not sit with
18 Mr. Woychuk to do his notes. And as far as the
19 list of witnesses that we talked about earlier,
20 Bakema, Mr. Bakema said he did it to see if
21 everything is getting done, like a to do list of
22 people that were there.
23 There is this call to Royal Dodge.
24 Mr. Bakema says he didn't recall making any type
25 of call, no, they didn't call Royal Dodge to get a

1 tow truck. But we know and this came out, I
2 believe through Mr. McDonald's questioning, that
3 Ken Graham had purchased a vehicle at Royal Dodge,
4 and the cell phone of Mr. Bakema was left in the
5 vehicle.
6 Again, he said, I did not detect or
7 observe any signs of impairment, never smelled the
8 odour of liquor, no grounds to arrest when placed
9 in the vehicle.
10 Never told by Carter to go out and
11 re-interview people, and he admits certainly some
12 of the statements he took could have been more
13 thorough.
14 Let me just say this,
15 Mr. Commissioner: It is clear that Chief Bakema
16 could have done things differently. No question.
17 It is also clear there was room for improvement
18 all the way around, not just with Bakema, but
19 others at East St. Paul.
20 In examination by Commission Counsel,
21 you also heard directly from Chief Bakema that he
22 himself would not be satisfied with the
23 investigation that took place if it was his own
24 family. He indicated that he did not choose to
25 let happen what happened, and that he did the best

1 he could. And there was, I submit, no bad faith
2 on his part, nor of any of the others at East St.
3 Paul.
4 It is trite to say this accident was a
5 great tragedy for the Taman/Sveinson families. A
6 young life was taken, a person with wonderful
7 qualities, and I say that because I have read the
8 victim impact statements that is in our material.
9 Again, as Mr. McDonald has said, and I
10 say again, mistakes were made by members of the
11 East St. Paul Police Department, mistakes not
12 intended, and never made to give Mr. Zenk any
13 benefit, nothing done to willfully obstruct
14 justice.
15 I do want to just briefly touch upon
16 the recommendations. And I align myself with what
17 Mr. McDonald said about the first recommendation,
18 and I say, and we know and it has been repeated,
19 Chief Bakema's conduct was reviewed and no
20 charges, and I say with the greatest respect,
21 enough is enough already.
22 The second area I want to address,
23 Mr. Commissioner, is under the Victims' Bill of
24 Rights. I'm looking at the bottom of page 2 in
25 the recommendation. When my learned friend says

1 that the Minister should take steps to promote an
2 amendment to Section 14 of the Victims' Bill of
3 Rights, that would replace the overreaching
4 promise to consult victims on the matters
5 enumerated, and he suggests that there should be
6 this wording, to have their views listened and
7 seriously considered. I would like to just make a
8 comment on that. I have serious concerns about
9 that. And I say with respect, and I'm not talking
10 about the Taman family, I'm not talking about the
11 Sveinson family, but if those words are
12 incorporated, in my respectful submission, there
13 will be some victims and some victims' families
14 who read that in a brochure, Victims' Bill of
15 Rights brochure, when they read the words
16 "seriously considered," some will think that that
17 gives them the right to direct how the prosecution
18 goes. That will happen without a doubt.
19 THE COMMISSIONER: And wouldn't it be
20 worse, and isn't it worse with the word
21 "consulted"?
22 MR. WEINSTEIN: I have got something.
23 THE COMMISSIONER: Okay.
24 MR. WEINSTEIN: Not only will some
25 victims or victims' families think that they have

1 the right to direct the prosecution,
2 unfortunately, there will be some prosecutors, and
3 I know this will happen, who will proceed with a
4 prosecution even though they really don't think
5 they should, but there will be some prosecutors,
6 rightly or wrongly, that no question in my mind
7 will proceed with prosecutions because they feel
8 intimidated by the family. I agree --
9 THE COMMISSIONER: But they will do it
10 whether the words are there or not. They won't
11 look at the Act.
12 MR. WEINSTEIN: No. But then the
13 victims can say, hey, you have to seriously
14 consider what I'm telling you. I'm not saying
15 that the word "consult" is enough, and I haven't
16 given it a lot of thought, but I have --
17 THE COMMISSIONER: I mean, I've heard
18 Ms. St. Hill and the other witnesses indicate that
19 people think consultation means that their views
20 are to be accepted. How do you deal with that?
21 MR. WEINSTEIN: I will tell you how to
22 deal with that, okay, and I don't have the
23 answers, and no doubt you will have time to ponder
24 it. Rather than the word consult, and I submit it
25 is just not enough, you know, based on something

1 that we have heard, some of the facts we have
2 heard today. Perhaps it can be expanded to read,
3 and I did not give this a lot of thought, I can
4 say that, to read "meaningful consultation with
5 victims that includes apprising the victim of the
6 status of the proceedings." All right. It goes a
7 little further, a lot further than consult. Okay.
8 And there should be a sentence in there that makes
9 it clear to victims that it is the Crown that
10 directs the prosecution. You shouldn't leave it
11 up to the Crown to have to individually tell them.
12 I think there is nothing wrong to have a sentence
13 in there about just making the family or the
14 victims aware that, even though they are going to
15 have some input, the final decision has to rest
16 with the Crown. I am just concerned about the
17 "seriously considered."
18 THE COMMISSIONER: What about
19 "listened to and considered," without the
20 seriously?
21 MR. WEINSTEIN: I would be happier
22 with that. See, I knew you would come up with
23 something.
24 You know what, let me assure you one
25 thing, and I don't speak for the government, even

1 if nothing is changed, I can assure you that as a
2 result of this case and the evidence that's come
3 out, there is no doubt in my mind that the Justice
4 Department, the officials there are going to be
5 sending a memo to each of their line Crown
6 attorneys and to the independent Crown telling
7 them how they should deal with families and detail
8 how they should deal with families.
9 THE COMMISSIONER: And that's a good
10 thing.
11 MR. WEINSTEIN: Absolutely. So that's
12 why I'm saying, even if you don't change the
13 wording, I'm confident that the Justice Department
14 will do it as a result of something that's been --
15 or a lot that's been heard today.
16 Just in closing, Mr. Commissioner, I
17 was going to spend the last five or six minutes
18 setting out 12 reasons why I thought you did a
19 wonderful job, but I'm pressed for time. Thank
20 you.
21 THE COMMISSIONER: Yes, Mr. McDonald,
22 you are taking a second shot at it, are you?
23 MR. McDONALD: I'm going to cover a
24 note that I overlooked in my initial submission,
25 Mr. Commissioner, with Mr. Paciocco's permission.

1 I have raised it with him, and I missed a note
2 when I was not looking at the transcripts where I
3 put a note that I wanted to make reference to. It
4 is a very brief point, but it is an important one.
5 THE COMMISSIONER: Before you go,
6 since you are not going to read the 12 reasons,
7 maybe you could send me a letter setting it out?
8 MR. WEINSTEIN: The reasons are better
9 done orally, I'm sorry.
10 MR. McDONALD: Mr. Commissioner, the
11 issue that I wanted to address is Mr. Paciocco's
12 comments in his submission about Chief Carter's
13 evidence being suspect in respect to his claim
14 that he was unaware of the observations of
15 Constable Pedersen about Zenk's impairment until
16 he -- until the Commission was announced and
17 declared in the fall of 2007.
18 Mr. Paciocco observed that Constable
19 Pedersen had informed the RCMP in the statement
20 they took from her, and he said it was, Carter's
21 evidence was somewhat suspect, given that it was
22 in the RCMP statement. The point that I wanted to
23 make is that the evidence is that Sergeant Carter,
24 or now Chief Carter, did not receive the RCMP
25 statements. Those statements were prepared in

1 respect to the investigation of the obstruct
2 justice charges against Bakema. They were never
3 sent to Carter, and he did not get them until
4 after this Inquiry was called, as part of the
5 productions. And so I just wanted to make that
6 evidentiary correction so that there is no adverse
7 interest drawn against Carter with respect to that
8 comment that isn't accurate and in accordance with
9 the evidence.
10 Again, the reference for that comes at
11 the questioning by Mr. Zazelenchuk in volume 12,
12 at page 2964.
13 THE COMMISSIONER: Thank you.
14 MR. McDONALD: Thank you.
15 MR. LABOSSIERE: Thank you,
16 Mr. Commissioner. I don't have with me any
17 written aids. My intention is to provide you with
18 some references to transcripts and exhibits. I
19 don't anticipate having to actually go through any
20 of them with you. I know you have the benefit of
21 a transcript and will be able to get the
22 references off that. If you would prefer, I would
23 be happy to type out my notes and send them to you
24 after the fact.
25 THE COMMISSIONER: No, no, that's

1 fine.
2 MR. LABOSSIERE: Okay. My intention,
3 Mr. Commissioner, is to deal with two issues. The
4 bulk of my submissions will focus on
5 Mr. Paciocco's submissions made in connection with
6 the 20 plus police officers who spent time with
7 Derek Harvey-Zenk the night of the accident. In
8 particular, I will be dealing with the suggestions
9 that some were less than forthright or candid,
10 that they withheld evidence, and that they
11 collectively gave higher regard to their loyalty
12 to each other and to self-preservation than to
13 their solemn oaths.
14 It is our respectful submission, and I
15 hope to convince you of that today, that those
16 submissions are without merit. Before I address
17 that, I do want to say that we are asking you
18 specifically as well to carefully consider whether
19 some of the expressed findings that Commission
20 Counsel has asked you to find, in particular I'm
21 referring to express findings that individual
22 witnesses, in particular Sean Black he mentioned,
23 lack credibility. We would like you to carefully
24 consider whether those types of express findings
25 are within your mandate.

1 Now, when I say that,
2 Mr. Commissioner, obviously we are not suggesting
3 you are not entitled to make assessments of
4 witnesses who came forward and give the
5 appropriate determinations as to the weight that
6 must be placed on that evidence. But in our
7 respectful view, they only should be done as they
8 relate to the specific inquiries within your
9 mandate. And they are listed in exhibit 3, which
10 is the order-in-council. And from my reading they
11 deal with inquiring into the conduct of the police
12 investigations, the correctness and adequacy of
13 procedures and practices, the good faith
14 objectiveness and professional standards with
15 procedures and practice. You will note at the end
16 it makes reference to your findings being on the
17 above matters. In my respectful view, just as
18 this is not a re-trial, for example, of Derek
19 Harvey-Zenk, it ought not to be a trial, so to
20 speak, of individual witnesses. If, of course, in
21 your respectful view, it is important for you and
22 necessary for your determination on areas in your
23 mandate to comment critically on an individual
24 witness, then I don't have that concern. I just
25 would ask that you carefully consider whether in

1 fact it is necessary. In particular, particularly
2 given the prohibition that you have on making
3 statements which ascribe liability, whether
4 criminal or civil, to certain witnesses.
5 Notwithstanding my comments, I will
6 obviously deal with the issues and the merits of
7 the suggestion, as they have been given
8 significant attention, and the reputations of our
9 members are at stake.
10 And secondly, very briefly,
11 Mr. Commissioner, I intend to address the
12 recommendations made by Commission Counsel with
13 respect to so-called special procedural
14 concessions that he says are given to officers in
15 the course of criminal investigations, but that
16 will be a brief portion of my submissions.
17 I don't intend to deal with the
18 adequacy of the Professional Standards Unit
19 investigation, or any systemic issues that arise
20 as a result. I expect that you may be hearing
21 from Ms. Hanlin or Mr. Jack in that regard.
22 Obviously, Mr. Commissioner, I join
23 all of counsel who have indicated before that
24 there is no question the incident that brings all
25 of us here today was a tragedy. I certainly

1 can't, and my clients have asked that I express on
2 the record that they certainly can't even begin to
3 imagine how difficult it is for the families to
4 deal with the tragedy. Moreover, how difficult it
5 must be for those families to have to re-live that
6 horror each and every day during this inquiry,
7 particularly when there are other counsel present,
8 including myself, who may be raising issues which
9 are not welcome. We understand that and we are
10 trying to do it in as respectful and professional
11 way as possible, but do understand how difficult
12 that is.
13 However, you are going to hear from me
14 today, Mr. Commissioner, what makes this tragedy
15 worse, in our respectful view, certainly as it
16 relates to our clients, is the thought that we say
17 has been left by Commission Counsel and others,
18 and I don't say that critically of Commission
19 Counsel, but the thought that somehow the Taman
20 and Sveinson families have been denied justice in
21 part because of some alleged cover-up, conspiracy,
22 withholding of evidence, deception on the part of
23 these Winnipeg Police Association and Service
24 members. It is our respectful submission that
25 nothing could be further from the truth. And I'm

1 hoping over the course of the next short while to
2 convince you of that.
3 Now, Mr. Commissioner, at the outset,
4 as you know, as the plea bargain was struck and
5 the sentence was imposed on Derek Harvey-Zenk
6 controversy ensued. When it was perceived that
7 the officers who were with Derek Harvey-Zenk that
8 night ought to have been able to furnish more
9 information to investigators, and ultimately to
10 the court as to his alcohol consumption, and
11 perfectly understandable, we understand exactly
12 why that's the case. We had an individual who was
13 in an unexplained accident, a fatality occurred,
14 he refused the breathalyzer. We knew, and it was
15 known that he was out the night before at a
16 establishment that was serving alcohol and at a
17 party. He was with officers who are trained in
18 the powers of observation. It is understandable,
19 and we accept and we understand why there was some
20 controversy that ensued.
21 At the time you will recall that Judge
22 Wyant made it absolutely clear, when he was
23 issuing his sentence, that there was no evidence
24 that he was able to properly consider as to
25 alcohol impairment when determining the

1 appropriate sentence. Now, you've had the benefit
2 of what can only be described as an incredibly
3 thorough, intensive, detailed inquiry and
4 investigation into the facts. It is our
5 respectful view that, having done that, nothing
6 has changed. There is still no evidence of
7 alcohol consumption that could have come from the
8 Winnipeg Police Service officers that would have
9 in any way altered the result, or provided the
10 Taman and Sveinson families the justice they so
11 dearly feel they were deprived. However, more
12 importantly, Mr. Commissioner, it is our
13 respectful view that there is certainly no
14 evidence of cover-up, coordination, deception, any
15 thin blue line being in place, no evidence that
16 officers withheld details.
17 We acknowledge there has been
18 suggestions. We acknowledge there has been lots
19 of suggestions, and supposition, and questions
20 being asked. What I'm talking about is evidence.
21 And just as Judge Wyant couldn't assess or
22 consider the appropriate sentence for Harvey-Zenk
23 based on suggestions, or what he called "what
24 people think," obviously neither can you.
25 Now, the reference that I'm making

1 reference to from Judge Wyant, you will find, you
2 can make a note of it, is in exhibit 10, page
3 1749, line 26.
4 THE COMMISSIONER: Sorry, what is that
5 again?
6 MR. LABOSSIERE: 1749, line 26, at
7 exhibit 10, J.64.
8 Now, we know you are not going to do
9 this, and we wanted to just put the backdrop,
10 because much of the thrust of my submissions will
11 be that there have been lots of suggestions, lots
12 of supposition, lots of allegations, but when you
13 boil it all down and really assess the evidence,
14 no evidence that backs up all of those
15 suggestions.
16 So as this argument unfolds, we are
17 going to convince you, we hope, Mr. Commissioner,
18 that the expectations as to the evidence the
19 officers could provide on the night in question
20 was unreasonable. That they did, in fact, provide
21 all of the evidence and information that they
22 could. They were cooperative, forthright and
23 honest. And there are many reasonable reasons for
24 their inability to provide the public and the
25 family what they wanted to hear. But that doesn't

1 change the fact, Mr. Commissioner, that what they
2 did provide was the truth.
3 Now, I just want to make a comment
4 about hindsight. And in making your assessments
5 and determinations of these off-duty officers, in
6 particular, as that's who I'm referring to, we
7 know you are going to ensure that their actions
8 are not judged on what we know today, but what the
9 facts were and what they knew at the time. The
10 reality is, and I will take you through some of
11 this, that we are here three and a half years
12 after the event. Lawyers have had months and
13 months to pour over investigative materials, new
14 information, having the benefit of additional
15 investigations and interviews. We have had the
16 privilege to sit back and reflect and carefully
17 consider what could have been. Frankly, in our
18 respectful submission, although it is easy, it is
19 unfair to judge anyone in these proceedings,
20 including my clients, in hindsight, and be overly
21 critical.
22 What we do know, Mr. Commissioner, is
23 that a number of officers went out after work to
24 an establishment to have drinks and wings,
25 followed by a small get-together at a coworker's

1 place. You heard from Darcey Gerardy that this is
2 not an unusual event at Branigan's, many coworkers
3 or teams would come in, and this was the kind of
4 thing they did. And these officers, in
5 particular, you heard Mr. Gerardy say, were a
6 group of coworkers who came in and had drinks and
7 snacks and acted responsibly, not just on that
8 night, but previously. You can find that
9 reference at volume 15, page 3899, line 18.
10 THE COMMISSIONER: Line?
11 MR. LABOSSIERE: Line 18.
12 Generally speaking, you will have
13 gathered from some of the questions that I asked
14 that it is our respectful submission that it is
15 unfair to expect that those in attendance at this
16 kind of get-together would be monitoring each
17 other's alcohol consumption. We all know, and we
18 will all have to draw on our own experiences, that
19 it is not realistic. No one is focused on others'
20 drinking, and I'm not just talking about numbers
21 of drinks, and I have heard Commission Counsel's
22 concession that he doesn't expect that people can
23 come forward with specific numbers of drinks, but
24 ought to have at least been able to give some
25 evidence as to the type of alcohol and the rate

1 upon which individuals were drinking. But in our
2 respectful view, Mr. Commissioner, that is also
3 unrealistic. Our common sense tells us that you
4 only notice those who make themselves noticed.
5 Sometimes that is somebody who might be
6 intoxicated, who has been drinking heavily, the
7 proverbial guy with the lampshade on his head.
8 Those are the individuals that you remember from
9 these types of events.
10 I've had a lot of time to reflect on
11 this obviously, Mr. Commissioner, as I'm sure
12 everybody has. Everybody in this room has
13 probably had the same kind of conversations that I
14 have had with my family, pointing out that at
15 gatherings that occurred a week earlier, no one
16 could remember who was sitting next to who, who
17 drank what, what they did. To reflect back and be
18 able to do so, in our submission, is unrealistic
19 and, in fact, would be down right suspicious.
20 Now, Mr. Commissioner, Commission
21 Counsel says yes, but this was no ordinary night,
22 this was not just a regular day, it ought to have
23 triggered memories for each of these officers.
24 But the fact is, in our respectful view, that it
25 was uneventful at the time. No one at the time

1 could have predicted the fatal tragedy that would
2 have occurred the next day. Nobody could have
3 predicted the investigation that would have ensued
4 and the inquiry that ultimately they were to
5 attend. And so the fact is, although it became a
6 remarkable event, if you don't have memories from
7 that day, you can't create them simply because it
8 became remarkable after the fact.
9 Now, we know, and you will hear from
10 me more on this, Mr. Commissioner, that, yes, all
11 of these individuals had the opportunity to tell
12 their story relatively contemporaneously; within a
13 month they were all into PSU and gave their
14 versions of events. Now, the reality is, we all
15 are aware that the type of questions that were
16 asked were nowhere near the level of intensity
17 that we saw in this inquiry. Had Mr. Paciocco
18 been doing the investigation at the time, had he
19 asked all of the question, or PSU investigators
20 asked all of the questions that were asked of the
21 officer at that time, it is possible, we don't
22 know, it is possible that it may have jogged
23 memories, triggered memories, provided more
24 details. Certainly, we can all agree that the
25 perception would have been much different. We

1 don't know what the result would have been.
2 Now, my views that I'm expressing as
3 to the realism as to the expectation that
4 individuals will remember are not just my words,
5 Mr. Commissioner. As you recall, Marty Minuk, for
6 example, during the sentencing, and you can find
7 those references at exhibit 8, page 1623, line 6,
8 and 1633 line 7.
9 "Put it this way, in the normal human
10 condition, when people are out for an
11 evening, they are unlikely taking
12 notes of what is going on and not
13 likely paying attention. Large groups
14 there, and none were expecting to be
15 interviewed the following morning or
16 day or days later about an incident
17 which, or an evening which would be
18 otherwise unremarkable. Much like any
19 night out with friends and colleagues,
20 no one paid attention to who ate what,
21 who drank alcohol, who did not."
22 That was his assessment of why it was that
23 officers weren't able to reflect and provide
24 evidence of assistance. He obviously thought it
25 was reasonable. He made those submissions to

1 Judge Wyant.
2 The evidence you have before you in
3 the inquiry is consistent with that, you heard
4 that from a number of officers as to why they
5 couldn't provide the details that others thought
6 they could. You heard that from Humniski, you
7 heard that from Nolet, you heard that from Roger
8 Girard. You will recall, I won't draw you to it,
9 but Roger Girard, volume 21, page 5437 and 38, he
10 outlined, Mr. Commissioner, in his personal
11 experience when you are out with friends, you
12 don't notice those things until someone makes
13 themselves noticed.
14 Darcey Gerardy, volume 15, page 3910
15 made the very same point. In fact, he went
16 further, Mr. Commissioner, and said it would be
17 unreasonable to expect that someone would be able
18 to do so in those circumstances.
19 Mr. Commissioner, you spent the
20 inquiry listening to witnesses only be able to
21 recall facts and conversations and observations
22 that took place some time ago with the benefit of
23 their notes. You yourself pointed out, not just
24 today, but earlier with Sergeant Anderson you will
25 recall, you asking the very legitimate question,

1 what value would you be as an officer to a case if
2 you are expected to give evidence a year down the
3 road without notes? And that's exactly the point.
4 It is unfair to expect someone to be able to do
5 that, to give the kind of evidence with any kind
6 of precision, without guessing, without the
7 benefit of notes.
8 The fact is, Mr. Commissioner, when
9 you heard all of the evidence, and I know you are
10 going to consider all of the evidence, you heard
11 repeatedly the fact that someone did stand out
12 that night. David Harding stood out. And you
13 heard from some of the witnesses why he stood out.
14 He was drinking heavily, he was intoxicated. And
15 they were able to give some evidence as to his
16 rate of alcohol consumption. I have some
17 references here, and I'm not going to put them to
18 you, I'm just going to leave you the references so
19 you can satisfy yourself. Anderson at volume 18,
20 page 4618, he talked about Harding being
21 noticeable, certainly drinking at a heavier rate.
22 McLure, volume 18, page 4751, line 6, she recalled
23 Harding drinking more. Nolet, volume 19, page
24 4984, Harding was the only one hitting the rye
25 hard. Black, volume 16, 4244, Harding was

1 consuming at a heavy rate. There is additional
2 references for Black, volume 16, 4245 and volume
3 17, 4344. So they did notice those who made
4 themselves noticeable, but on the night in
5 question, there was no evidence to suggest that
6 Derek Harvey-Zenk did stand out.
7 Now, we know that the individual that
8 did stand out, Dave Harding, who acknowledged that
9 he was intoxicated, acknowledged that he ought not
10 to be driving a motor vehicle, was somebody that
11 his fellow officers took care of. They took steps
12 to make sure that he got home safely. And we
13 heard, as I mentioned earlier from Gerardy, that's
14 the kind of thing this group did. He knew that he
15 could count on this group in acting responsibly.
16 They always made sure that those who were impaired
17 or intoxicated got home safely.
18 We heard a lot about the officers'
19 inability to place any alcohol, level of alcohol
20 impairment with Derek Harvey-Zenk. And I'm going
21 to ask you to review all of the evidence and
22 consider whether that's a fair statement in the
23 circumstances. Because it is quite clear, as I've
24 just pointed out, that there is no suggestion
25 whatsoever from anybody, including Chelsea

1 O'Halloran, Darcey Gerardy, or any of the
2 witnesses who weren't police officers that night,
3 that Derek Harvey-Zenk did stand out in any way.
4 And that is why I say it is quite reasonable to
5 presume that they would not have been in a
6 position to give any evidence of assistance, or of
7 not assistance to the prosecution.
8 THE COMMISSIONER: There is another
9 reason, they may have all been drinking too
10 heavily that night, as the evidence of alcohol
11 consumption seems to show. And, therefore, they
12 may not have been in a position to assess the
13 alcohol consumption of others because of their own
14 drinking.
15 MR. LABOSSIERE: And you are going to
16 make your assessments, you have heard all of the
17 evidence, and I'm going to take you to some of it
18 as to the individual levels of consumption. The
19 individuals were frank. Some of them acknowledged
20 drinking large amounts. They all did indicate in
21 their view they weren't impaired. Some of them
22 cited their height, their weight and so on, but
23 you will have to make your assessments.
24 THE COMMISSIONER: Very few people who
25 are arrested for impaired driving admit that they

1 are impaired.
2 MR. LABOSSIERE: Well, I can tell you
3 this, Mr. Commissioner, I think it is fair to say
4 that although that is the suggestion that's being
5 made, certainly that's the supposition, that's the
6 theory, there is no evidence whatsoever to
7 corroborate anybody being impaired, other than
8 Chelsea O'Halloran's comments, which I'm going to
9 get to in detail, as you know.
10 Now, again, I understand and I have
11 said it already, but I'm going to say it again, we
12 understand that the public was hoping, expecting,
13 wanting these police officers to confirm their
14 suspicions about Derek Harvey-Zenk. But the
15 reality is, that's all they are, because he may
16 not have exhibited any signs, whether he was
17 impaired or not, he may not have exhibited any
18 signs of impairment. In fact, the evidence seemed
19 to suggest that's exactly what happened. Not just
20 that night at Branigan's, or at Black's, but even
21 at the scene -- I'm not going to take you to it
22 because Mr. Weinstein did already -- there is
23 certainly no consensus on the evidence, if you
24 will, that Harvey-Zenk was exhibiting obvious
25 signs of impairment. No question he was drinking.

1 But I say it is unrealistic to suggest that the
2 officers ought to have been in a position in the
3 circumstances to say how much or at what rate.
4 And if he was showing signs of
5 impairment, it makes absolutely no sense that his
6 fellow officers would have simply sat idly by. We
7 know what they did with Dave Harding, we know what
8 Darcey Gerardy said about these officers. If they
9 thought, and I put it to almost all of them, if
10 they thought for one minute that Derek Harvey-Zenk
11 or anybody else for that matter was impaired,
12 there is no question in my mind, and I submit
13 there ought to be no question in your mind, they
14 would have taken steps to assist him, make sure he
15 got home safely. None of that happened because
16 they didn't have those concerns.
17 You know, Mr. Commissioner, that the
18 officers do learn of the tragic event. You know
19 that they are upset about it. What makes them
20 even more upset, you heard, was the suggestion
21 that was starting to formulate, starting to
22 bubble, was that there was a wild party that
23 occurred the night before and perhaps this had
24 something to do with the accident. You heard from
25 Anderson and Humniski, described by the Chief of

1 Police and others, as men of integrity, respect,
2 character, immediately went up to the chain of
3 command to set the record straight. They were
4 anxious to tell their story, as was the entire
5 shift. And for some reason this eagerness to come
6 forward, to step forward, take responsibility for
7 what happened, is seen as suspicious by Commission
8 Counsel.
9 THE COMMISSIONER: I don't think there
10 was any attempt to accept responsibility. I find
11 that an unusual statement. They came forward to
12 tell the public, not that they were accepting
13 responsibility, but that it wasn't a wild party,
14 everybody was acting responsibly that evening.
15 And yet only one officer made any attempt to stop
16 Harding from -- not Harding, excuse me, but -- and
17 it was a female officer, to take keys away from a
18 particular individual, only one.
19 MR. ZAZELENCHUK: That's Harding.
20 THE COMMISSIONER: It was Harding,
21 yes.
22 MR. LABOSSIERE: And,
23 Mr. Commissioner, I'm going to deal with both of
24 those issues. Let me deal with the first one as
25 to the eagerness. My point, sir, is had Anderson

1 and Humniski not came forward the day they became
2 aware of it, had they not come forward,
3 Professional Standards Unit, East St. Paul mostly
4 likely would have had no idea about Branigan's,
5 about Sean Black's, about who was there, who
6 wasn't there. Alcohol would have played no role.
7 To their credit, and that's the responsibility
8 that I'm saying they owned up to was, we were
9 there that night, we were with him, and we are
10 going to tell you what we can tell you.
11 Now, as to Harding and the keys, I
12 understand your point, I accept what you say, with
13 this proviso. All of the witnesses who expressed
14 a concern about Harding, and they were many, all
15 were very clear, and Jim Anderson said it this
16 way, he was not driving home. McLure said the
17 same thing, he was not driving home. Now, as it
18 turns out when they got to the Branigan's parking
19 lot, Dave Harding, according to Fudge and others,
20 tried to hang on to his keys. It is the scene
21 that we all see in our head. And at that time
22 Tracey Fudge said, yes, I had to wrestle. She
23 softened the word "wrestle" and explained what she
24 did, but there is no question in my mind, and I
25 say there ought to be no question in your mind,

1 that there is no way any of those officers, and it
2 is not just Tracey Fudge, Kelly McLure, Jammy
3 Anderson, all of the individuals who were there
4 were not going to ensure -- were not going to
5 allow him to be driving home.
6 So back to Anderson and Humniski
7 making their approach. Of course they were there
8 to dispel the rumours and innuendo they felt were
9 untrue, and they wanted to ensure that whoever the
10 investigators were going to be got the facts. I
11 say there is nothing wrong with that, in fact, it
12 is commendable for the reasons that I have just
13 outlined.
14 Now, Mr. Paciocco made issue with the
15 appearance at the shift briefing. And I say again
16 there is nothing nefarious with what took place at
17 the shift briefing. I say that a fair assessment
18 of all of the evidence is that you had two
19 Sergeants who took a leadership role and made sure
20 that everyone was clear, that notwithstanding the
21 rumours and innuendo, this needs to go forward, we
22 need to come forward and tell the truth and tell
23 PSU about the events.
24 You heard from Teddy Michalik. "It
25 was obvious to all of us what the questions of us

1 were going to be." You can find that at volume
2 19, page 4943 and 4948. You heard from Michalik
3 that he said, look, they just told us that they
4 wanted us to be open and available. That's at
5 volume 19, 4942, line 24. And he said, sooner the
6 better, let's step up to the plate; 4944, line 19.
7 Now, remember, Anderson and Humniski,
8 although they are police officers, are not
9 investigating the matter. They were finding
10 themselves in this awkward position of being
11 witnesses. They didn't have any inside
12 information as to what the investigation was going
13 to be. They weren't telling anybody what to say.
14 Michalik was clear, all they said was be truthful,
15 that's at volume 19, 4954. He said there was no
16 discussion of the evidence, no coordination of the
17 evidence, no discussion of making sure their
18 evidence was consistent. It was "just be
19 truthful." They didn't wait for PSU to come
20 calling, they didn't bring lawyers or WPA reps,
21 they went to PSU and they answered every question
22 asked. Some of them even brought receipts, as you
23 heard. This is not, in my respectful view,
24 indicative of a lack of cooperation.
25 Were some concerned about the

1 situation and how it might impact them? Of
2 course. I couldn't stand before you and say
3 otherwise. There was a fatal accident, people
4 knew there were alcohol-related charges, they knew
5 they were with him the night before, one of them
6 was a homeowner. They knew they had done nothing
7 wrong, but given the rumours that were flying,
8 they were dealing with the situation, remember at
9 the time, where the membership, as McCaskill told
10 you, felt they weren't being supported by the
11 executive. And you will remember Chief McCaskill
12 talking about that, that's at volume 16, 4037,
13 line 21. There was a feeling amongst the
14 membership, he said, that the executive wasn't
15 supporting them, a feeling that people would be
16 held accountable, even though they didn't do
17 anything wrong. So that's the atmosphere at the
18 time this comes out. And I probed that with some
19 of the officers, including Black and Azaransky,
20 and you can find those both in volume 17, 4336,
21 line 19, and 4423, line 15. And I asked them
22 whether that played a role.
23 If you remember, Mr. Commissioner, at
24 the time there was an allegation surrounding an
25 individual named Tokarchuk, that the police had

1 information that could have prevented his death,
2 he was murdered, and the suggestion was that the
3 police had information about the threat and didn't
4 tell him about it. It turns out that the
5 allegation was without merit. It turns out that
6 every officer involved did all of the right
7 things. But notwithstanding that, sir, the
8 feeling amongst the membership was, the way in
9 which they were treated by the executive once the
10 allegations came out, which included removing them
11 from the workplace, taking them out for 18 months,
12 was punitive. So that was the atmosphere.
13 McCaskill and others were not in any
14 way suggesting that people didn't -- police didn't
15 want to tell the truth. They were afraid to tell
16 the truth is really what he was saying. They were
17 afraid to say anything. Even if they didn't do
18 anything wrong they thought, I'm going to be like
19 the guys in Tokarchuk, I'm going to be sent home
20 and I am going to be away for 18 months and people
21 are going to think I did something wrong.
22 You heard from those officers,
23 particularly Black, who wanted to talk to the
24 Association. He did, he satisfied himself he was
25 going to be dealt with fairly, went in and gave

1 his statement.
2 So let's talk about PSU. No question
3 that PSU's mandate, if you look at the documents,
4 extended beyond simply Derek Harvey-Zenk. Having
5 said that, a careful review of the questions that
6 were asked, it is absolutely crystal clear that
7 that was the focus of all of the questions they
8 asked. And all -- I'm not going to take you to
9 them but I'm just going to give you some
10 references from the PSU interviews. Sean Black,
11 exhibit 164, and it is page 894. Christian Guyot,
12 exhibit 194, page 1224. Marnie Nechwediuk, it is
13 exhibit 196, page 1239. When you look at that, it
14 is clear, as are all of them that, yes, tell us
15 what happened, but all of the questions focused
16 on, generally speaking, Harvey-Zenk; what did he
17 do, could you see, what was he drinking? And
18 individuals casted their mind back at the time,
19 you have heard, but because of the reasons I
20 talked about, Harvey-Zenk being unremarkable, not
21 knowing it was going to be a tragic event, all of
22 those kinds of things, they were unable to provide
23 a lot of detail. And furthermore, making matters
24 worse, is that PSU didn't ask all of the questions
25 they could have, with the benefit of hindsight.

1 And Commission Counsel was very
2 critical of the PSU investigation in this regard,
3 both with respect to their investigative
4 techniques and the level of probing and intensity
5 and so on. To his credit, Roger Girard
6 acknowledged that in hindsight, yes, interviews
7 were not as thorough, as probing as I would have
8 liked. It should have been more direct.
9 THE COMMISSIONER: He said, in
10 fairness to Sergeant Girard, in fairness to him,
11 he said he understood it was only an investigation
12 of Zenk. Whereas in fact his mandate, which he
13 did not get, and had been sent to Poole, was to
14 not only investigate Zenk but to investigate all
15 of the officers who were there that night.
16 MR. LABOSSIERE: Yeah. And that was
17 the point that I made earlier, that although it is
18 clear after the fact that the mandate was wider,
19 when you look at the interviews, and I was going
20 to say Roger Girard himself thought that's what he
21 was doing. I'm not being critical of Roger Girard
22 in the circumstances. But if they had, as I said
23 earlier, asked the kinds of questions or done the
24 kind of detailed probing that we saw at this
25 inquiry, maybe more details would have emerged.

1 The problem is that that didn't happen. And so
2 the reality is, although they were interviewed at
3 the time by PSU, essentially all of the kinds of
4 questions that Commission Counsel is wanting them
5 to answer today is being done three and a half
6 years later, without the benefit of notes, without
7 the benefit of a statement that was given at the
8 time.
9 I keep saying notes, and I'm going to
10 talk about notes because I know you want to hear
11 about it from me.
12 THE COMMISSIONER: I think I have
13 heard enough about notes.
14 MR. LABOSSIERE: Well, let me just
15 deal with it now. In hindsight, these officers
16 ought to have taken notes. Now, I'm going to give
17 you a reason why they didn't, not a justification.
18 THE COMMISSIONER: Notes of the
19 evening?
20 MR. LABOSSIERE: Yes. The reason they
21 didn't, and this is all with the benefit of
22 hindsight, was that they didn't see themselves as
23 investigators when they would normally take notes,
24 they were "witnesses." Having said that, we
25 acknowledge that in hindsight, having gone through

1 this inquiry, having sat through all of the
2 evidence that the officers sat through, they
3 recognized more than anyone, they would have loved
4 to have had the benefit of notes. That didn't
5 happen. It should have happened. And if you find
6 some way in your report, Mr. Commissioner, to
7 issue a recommendation that would provide for
8 policy that would make it clear that officers,
9 even though they are not investigating officers at
10 the time, make notes when it is apparent there is
11 a criminal investigation, that would be welcome by
12 the Winnipeg Police Association.
13 Now, following the interview with the
14 police officers, PSU, as you know, interviewed the
15 Branigan's witnesses. Those witnesses confirmed
16 what Roger Girard called the bottom line for him.
17 That no one was drinking excessively, no one
18 seemed intoxicated, and no concerns about anyone
19 getting into vehicles. PSU had, in their view,
20 some independent witnesses. And this, as you
21 heard Roger Girard say, was a turning point
22 usually for investigations.
23 Now, Commission Counsel suggested that
24 somehow this implies that PSU doesn't trust the
25 information it was getting from police officers.

1 I don't accept that submission. Really, I submit,
2 all he is saying is what we all want in any case
3 is an independent witness. Roger Girard outlined
4 in a very detailed way how concerned he was in
5 PSU, not just on this case but in all cases
6 involving police officers, he is well aware of the
7 perception. So if as an investigator you can find
8 an independent witness, someone who won't be the
9 subject of the accusations that, okay, it is just
10 police officers sticking up for each other, that's
11 helpful to them, that's a turning point in the
12 investigation. And at that time the turning point
13 lead them nowhere, confirmed everything that he
14 had learned.
15 And I'm not glossing over some of the
16 inconsistencies in Roger Girard's statement that
17 Commission Counsel did about certain comments
18 attributed to Gerardy and to O'Halloran, but the
19 bottom line is what Roger Girard was hearing was
20 consistent, the big picture was consistent.
21 In any event, as a result of the fact
22 that Branigan's confirmed, if you will, what the
23 officers told, there was no reason to do anything
24 further and they didn't. And in hindsight, they
25 acknowledge perhaps they should have, but they

1 didn't.
2 As a result, years passed before these
3 officers are asked for specific detailed
4 recollections. And I ask, in the circumstances,
5 that you be very careful not to be too critical of
6 the officers and their lack of recollection in
7 those circumstances. Things could have been much
8 different. They weren't, but that's not the fault
9 of the officers.
10 Now, I notice, Mr. Commissioner, that
11 it is 10 after 3:00, and I know that you are
12 wanting to break sometime before 3:30. Before I
13 embark on the next area, if you are inclined, we
14 can take a break, or I'm prepared to continue on.
15 THE COMMISSIONER: I'm always looking
16 at Mr. Weinstein because --
17 MR. WEINSTEIN: Whenever
18 Mr. Commissioner --
19 THE COMMISSIONER: I just want to make
20 sure he gets his coffee, you see.
21 MR. LABOSSIERE: That was my concern.
22 THE COMMISSIONER: And I'm sure
23 everybody else would like their coffee. We will
24 break now and come back in 15 minutes. I am the
25 only one who doesn't get any.

1 THE CLERK: Order. All rise. This
2 Commission is in recess.
3 (Proceedings recessed at 3:09 p.m.
4 and reconvened at 3:25 p.m.)
5 THE CLERK: Order. All rise. This
6 Commission is re-opened. Please have a seat.
7 MR. LABOSSIERE: Thank you,
8 Mr. Commissioner. Just before I move on to the
9 next area, I just wanted to ensure that I was
10 clear. I don't think I was. I just cited a
11 number of references to the evidence from the
12 Branigan's witnesses at PSU. The references I
13 gave you were from Chelsea O'Halloran's interview
14 with PSU, exhibit 154. I do acknowledge and
15 recognize that even at the PSU interview, Darcey
16 Gerardy did comment that he felt that one or more
17 may have been impaired, but had made arrangements
18 to be driven home.
19 Commission counsel was very critical
20 of what he called the chorus of "I don't remembers
21 and I don't recalls," and I want to make sure it
22 is clear that our view has always been, and the
23 evidence supports this view, that no one was
24 suggesting or trying to suggest or trying to lead
25 anyone to believe that Derek Harvey-Zenk and

1 others weren't drinking that night. But all they
2 did was tried to recall as best they could. When
3 they couldn't recall specifically how many drinks
4 he or others may have had, they didn't guess.
5 They were very clear about that. And I think you
6 have to again look at this in some context. We
7 are dealing with police officers who are witnesses
8 much different than civilians. They are trained
9 to be precise. They are trained not to guess.
10 They are trained to do so because, quite frankly,
11 their evidence has a lot of stake for a lot of
12 different people. Involved in very serious murder
13 trials, for example, you can't be guessing about
14 items, and you don't guess, it is not fair to them
15 and it is not fair to the accused. That's all
16 they were trying to do. And I think a lot has
17 been made of "I don't recalls" and "I don't
18 remembers," but if you look at the totality of the
19 evidence and you look at the explanations of why
20 they can't recall, that essentially is the reason.
21 That's the reason you take notes. And I have
22 addressed that, so I don't have to address it
23 again. But that is the reason, if these officers
24 did have the benefit of notes from the evening, it
25 may have been a much different story.

1 As I noted earlier, the Winnipeg
2 Police Association certainly understands that the
3 public and family want answers to an unexplained
4 tragedy. They want to know how it is that no
5 further information about Derek Harvey-Zenk was
6 available. And again that presupposes that he was
7 impaired and it was obvious. And I said to you
8 earlier there is no evidence that that was the
9 case. There is no evidence that any of the
10 others, other than Dave Harding, were impaired,
11 but for Chelsea O'Halloran. And I'm going to need
12 to deal with her.
13 Came into PSU initially, I have given
14 you the references, I'm not going to go through
15 them again. But she has acknowledged that nothing
16 was said to her by anyone that would have
17 influenced what she might say. She said that to
18 PSU. She acknowledges that's a lie. She told PSU
19 no one was drinking excessively; she now says
20 that's a lie. She says none of them seemed
21 intoxicated; she now says that's a lie. She said
22 no concerns about anybody getting into a vehicle
23 to drive. Again she acknowledges that she says
24 that's now a lie. Three years later she meets
25 with Commission Counsel and tells a completely

1 different story, and she explained, as you know,
2 that the reason she lied was because her manager
3 told her to keep her answers short and brief and
4 not say more than she needed to. She was told to
5 play dumb and pretend you don't remember much.
6 You will recall that Rodrigo Bravo denied that,
7 said it was a bold lie. Interestingly, Darcey
8 Gerardy certainly makes no suggestion that Rodrigo
9 came to him and said look, play dumb, don't tell
10 them that you remembered much. And Chelsea
11 herself, to her credit, acknowledges that Rodrigo
12 never told her to lie.
13 If you review her evidence to PSU in
14 totality, it is my respectful submission that you
15 will come to the conclusion that you couldn't take
16 from that that she was someone who was playing
17 dumb or who didn't remember. She didn't say I
18 don't recall, I don't remember, I'm not sure; she
19 gave pretty specific answers to the questions that
20 were asked of her. It doesn't appear to be
21 someone who was playing dumb.
22 Now she says that the reason she came
23 forward, as you know, was because she followed the
24 investigation and thought that if she gave a
25 complete and honest, truthful account it would

1 give them more to go on. Now she says that, with
2 all due respect, despite the fact that she stopped
3 working at Branigan's shortly after the incident,
4 she was no longer under Mr. Bravo's thumb. She
5 followed the investigation through 2005, 2006,
6 2007, and part of 2008, and it is not until she is
7 approached by Commission Counsel that she changed
8 her story. And she admits to lying. She is the
9 only witness who admits to lying. She admits to
10 giving false information to a police
11 investigation. She admits to committing a
12 criminal offence. Yet she is essentially the only
13 witness that Commission Counsel would have you
14 base your determination on as to the events at
15 Branigan's on that evening. As the only confirmed
16 liar, she is put forward as the only one telling
17 the truth. And with all due respect, we find that
18 a bizarre proposition.
19 Even if you were going to disregard,
20 Mr. Commissioner, the fact that she is an admitted
21 liar, said she deliberately mislead and provided
22 false information to the police, her latest
23 version still lacks, in our respectful view,
24 credibility. And I want to go through some of her
25 evidence.

1 Volume 15, page 3713, line 20. She
2 suggests that most of the 130 beer sales were from
3 the police. Yet later in cross she acknowledges
4 that only the beer at $2.75 were the pints that
5 would have been sold to the police, and that's a
6 much smaller number. Why would she leave the
7 impression that most of the 130 beer were sold to
8 the police?
9 Moreover you heard that she purported
10 to say that at least 15 of the police officers
11 were impaired and had eight or nine pints of beer
12 each. When it was pointed out to her that during
13 the whole day, there were only 130 beer sales and
14 her estimate would exceed that, she confessed that
15 she was only guessing. That's at volume 15, 3814,
16 line 8. Ultimately she acknowledged that she
17 really didn't know how many were intoxicated. So
18 again why leave that impression with the
19 Commission?
20 As to the number of officers who she
21 claims were impaired, stark contradiction with all
22 other evidence before the Commission, including
23 Darcey Gerardy, who I put to specifically if
24 someone was to suggest that 15 officers were
25 impaired, what would you say? He said they would

1 be mistaken. That's at volume 15, page 3905, line
2 8. In his view, he was concerned with only a few.
3 His evidence at volume 15, 3870 line 8 was "not
4 more than three, not less than one." Overall,
5 though, he said they acted responsibly.
6 None of the officers' evidence
7 obviously could be interpreted in any way to
8 accord with Chelsea's. We do know of the
9 witnesses called at least one felt he shouldn't
10 drive and that's Dave Harding. Again all other
11 evidence in contradiction with Chelsea's latest
12 version of actual alcohol impairment.
13 Speaking of impairment, you ought to
14 look at what Chelsea O'Halloran said about
15 impairment, her measuring stick of impairment,
16 which was essentially if you were loud and
17 belligerent. That's it. That's volume 15, 3814,
18 line 15. Although she later admits that, yes, of
19 course, you can be loud and belligerent and not be
20 intoxicated. She acknowledged no one was
21 stumbling or falling over, and then she said a few
22 of them looked drunk and were loud. Not 15, but a
23 few. That is at page 3816, line 1.
24 When asked how you look drunk, you
25 will recall she said she guessed it was just the

1 tone of their voice and what they were doing. Now
2 one of the individuals who she specifically
3 indicated was drunk and was drawn careful
4 attention by Commission Counsel was Sean Black.
5 And her explanation as to why she felt he was
6 drunk was that he was loud. Not belligerent, but
7 just loud. He wasn't stumbling, he wasn't
8 staggering, no particular look on his face. He
9 was just loud. That's the only evidence you have
10 of impairment. And if you can do a review of all
11 of the other evidence, I would say it is in
12 complete contradiction with all other available
13 evidence. And there is no basis for you to make
14 an express finding against Sean Black, for
15 example, on this point on that kind of evidence.
16 In fact, you recall that it was put to
17 Chelsea O'Halloran that the police deny being
18 intoxicated. She didn't deny it. She just had no
19 response. You know she made some assumptions.
20 She made assumptions about Harvey-Zenk. She heard
21 that Harvey-Zenk, from reading the paper, had a
22 pregnant wife. She recalled serving somebody with
23 a pregnant wife and assumed it was Harvey-Zenk.
24 She now acknowledges, no, that wasn't the right
25 guy. She also attributed a certain number of

1 drinks to certain officers; you will recall that
2 evidence. And I say with all due respect it is
3 absolutely suspect to be able to recall numbers of
4 drinks being given to individual officers that far
5 long ago. Now, in fairness, again, when pressed,
6 she acknowledged that she was only guessing.
7 That's at volume 15, line 3819 line 3.
8 What I say is particularly telling,
9 Mr. Commissioner, is that when she was asked --
10 you will recall when she was asked about the so
11 called Super Bowl wing eating guy a couple of
12 weeks before this incident, she was asked how much
13 he would have drank that night, and she said I
14 would have to guess. How is it that she has such
15 a good memory of that evening? I say it is
16 suspect.
17 I say further, Mr. Commissioner, that
18 if the officers were to come before you three and
19 a half years after the fact and were to say, you
20 know what, I do recall specifically Harvey-Zenk
21 had one drink, that's all he had all night,
22 commission Counsel would have a heyday with that.
23 It wouldn't be accepted because it is not
24 reasonable.
25 You also heard from Ms. O'Halloran she

1 had a specific recollection of a woman, an
2 officer, clapping, standing on her seat.
3 Described her as being a heavier set lady, brown
4 hair, engaged. You heard from two of the women
5 that were there, Kelly McLure, Tracey Fudge, none
6 of them fit the description, none of them
7 acknowledged that they were that person, none of
8 them are engaged, as she indicated this individual
9 was. In fact, there is no evidence other than
10 from Chelsea on that point. And that's the case
11 in many of these different respects that
12 Commission Counsel is asking you to accept as
13 gospel, contradiction of all other evidence.
14 With all due respect and for all of
15 these reasons, you can not rely on Chelsea
16 O'Halloran as a foundation of credible evidence in
17 fashioning your finding. I'm not asking you to
18 find that she is not credible, but certainly you
19 can't have the confidence that her evidence is the
20 basis upon which, or a significant basis upon
21 which to find adversarial adverse findings against
22 these police officers.
23 In the absence of her latest evidence,
24 there is no evidence to substantiate any of the
25 allegations that officers were less than candid.

1 And if you accept her evidence, you would be
2 accepting her evidence as the only confirmed liar
3 in the proceedings, to the exclusion of almost
4 every other witness and, with all due respect, in
5 my view that's not a reasonable standard.
6 Now, I recognize that there are
7 certain pieces of evidence from others that
8 Commission Counsel relies on, but you have got to
9 be wary of that approach. You can't pick and
10 choose, even between the police witnesses who he
11 says they are not credible, but he picks this one
12 piece; there must have been a pitcher because
13 Tracey Fudge says she believes there was a
14 pitcher.
15 THE COMMISSIONER: Trial judges tell
16 juries that every day. Are you telling me that
17 juries can't assess part of a witness's evidence?
18 MR. LABOSSIERE: I didn't say can't.
19 You need to be wary, in considering all of the
20 totality of the evidence, you need to be wary of
21 that. And I am saying this very carefully, Mr.
22 Commissioner. Commission Counsel made very
23 serious charges, very specific charges that have
24 very serious and real ramifications for all
25 involved, and in making those, I know that you are

1 going to do this, and I just want to remind you of
2 how difficult these findings are going to be,
3 particularly with the type of evidence that you
4 have.
5 Moreover, to accept Commission
6 Counsel's submission that the officers told, as he
7 said, a tall tale and were not truthful, you are
8 going to have to accept essentially that these
9 officers must have somehow coordinated their
10 evidence; must have somehow intentionally in a
11 coordinated fashion deceived not just PSU but
12 Commission Counsel during the interviews, the
13 Commissioner during this inquiry; you would have
14 to find essentially a 24 person conspiracy. And
15 with the level of analysis of detail, of
16 cross-examination, surely something would have
17 come out, if that was the case. And furthermore,
18 it would mean that all of these officers, these 24
19 officers, are all willing to put their careers on
20 the line for somebody else. They all said they
21 wouldn't do so. And there is no evidence that
22 they would. And common sense dictates it is just
23 not just something that would occur.
24 Commission counsel again suggests
25 that, yeah, but there is a certain bond that

1 officers have that would make them reluctant to
2 give a truthful account of a fellow officer, and
3 he points as a fundamental basis for that point,
4 the evidence of Chief McCaskill, and I'm not going
5 to take you to it, but I'm going to point out the
6 reference. It is tab 12, page 103, and it is in
7 box 4058. And in it, McCaskill was giving his
8 explanation as to why he thought there might be
9 some reluctance on the part of these officers to
10 be truthful. If you go through that, what you
11 need to do though is take all of his evidence in
12 context, because it brings to back to the point
13 that I raised earlier, McCaskill is talking about
14 he wanted to make sure these guys knew, come
15 forward, tell the truth, you will be supported.
16 Don't worry about Tokarchuk, you will be
17 supported. If you look at all of the evidence,
18 you are going to find that. And I'm going to give
19 you some other references. Volume 16, page 4037,
20 line 21, that's the beginning of it. Volume 16,
21 page 4041, line 20. Again, lots of suggestions,
22 lots of supposition, lots of suspicion about the
23 motives of the officers, the evidence that they
24 have given, but still no evidence. I put it to
25 them specifically and bluntly, all of them denied

1 it.
2 Roger Girard, who Commission Counsel
3 urges you to accept as a man of integrity, you
4 ought to accept his evidence, he had no concerns
5 that there was some coordinated effort or any
6 deception on the part of officers that came to see
7 him. Volume 21, page 5463 and 5465.
8 My learned friend also spent a lot of
9 time on the issue of what he calls an intentional
10 understating of alcohol consumption, and he
11 points, and I'm not going to take you to it, but
12 at page 170 of his aids to his argument, the
13 reproduction of the chart of Derek Harvey-Zenk's
14 alcohol consumption and the personal consumption,
15 and I know what you are going to do is you are
16 going to consider all of the evidence, and when
17 you do, you are going to find, number one, the
18 bottle of rye that we are talking about at Sean
19 Black's house, Sean Black says was almost full, we
20 don't know if that's 24 ounces, 25 ounces, 20
21 ounces, it is almost full.
22 THE COMMISSIONER: There were two
23 bottles.
24 MR. LABOSSIERE: There was a second
25 bottle that was a heel and Sean Black was very

1 clear that he had one drink out of it.
2 THE COMMISSIONER: He told the
3 adjuster shortly after he was asked to come and
4 give evidence or give a statement, that there were
5 two bottles.
6 MR. LABOSSIERE: And he explained
7 that.
8 THE COMMISSIONER: And then it
9 changed, so don't tell me there is just one
10 bottle. There is evidence that it goes from two
11 bottles to a single bottle as the matter
12 developed.
13 MR. LABOSSIERE: And of the two
14 bottles, you heard the evidence and the only
15 evidence --
16 THE COMMISSIONER: And they were all
17 gone the next morning.
18 MR. LABOSSIERE: One bottle had one
19 drink in it, the heel.
20 THE COMMISSIONER: No, he said there
21 were two bottles. He didn't say there was a
22 bottle -- one bottle, to the adjuster, a bottle
23 and a heel, he said there were two bottles, I put
24 out two bottles. So assuming they are 26 ounces
25 and then it ends up a bottle with a heel and then

1 it ends up with a bottle, so it gets less and less
2 as he gives his evidence.
3 MR. LABOSSIERE: Again, I recognize
4 there are suspicions, there are suggestions, there
5 are suppositions, but the only evidence you have
6 is when Sean Black is asked about the two bottles
7 that he described for the insurance adjuster, he
8 explained it. And he explained that he had two
9 bottles; one he poured a drink for him, the other
10 he put out that was almost full. That's the
11 evidence that was before you. And when you go
12 through all of them, and I know you will, you are
13 going to see all of them give accounts of how much
14 they drank. Sean Black, for example, says I had a
15 couple of rye and cokes, generic answer he says.
16 He is not sure. Azaransky says I would guess I
17 had a couple of rye and cokes, can't say
18 specifically. Anderson said, not exactly sure but
19 I believe I had a couple of rye and cokes. You go
20 through the list and you see that -- I'm accepting
21 and I'm sure you will accept, these are not
22 definitive answers, and when you add them all up
23 you are left with, okay, then how many ounces are
24 in each of these drinks? And again we don't know
25 that. Once you start playing all of these

1 different variables, there isn't an intentional
2 understating of alcohol. They weren't able to
3 give you specifics. They were candid about that.
4 But they did tell you when someone was noticeable,
5 and they gave you that evidence about Dave
6 Harding. And again had PSU probed them on this in
7 the same way that it was probed today, on the
8 number of drinks, perhaps things would have been
9 different.
10 We have heard about, and I'm calling
11 them, it is my word, "free drinks," these mystery
12 free drinks, and I say mystery free drinks because
13 there is no evidence that 19 free drinks were
14 served that evening. My learned friend didn't
15 spend a lot of time on that. He just sort of
16 threw it out to you saying in addition to the
17 pints we heard about 19 free drinks unexplained.
18 We heard all of these things, but if you look
19 through the evidence you will see it is pretty
20 clear; Chelsea says she never served any free
21 drinks, Darcey says he may have but he doesn't
22 recall serving any free drinks. He says that
23 those free drinks would have been from the entire
24 day. So again we can suspect, we can suggest, but
25 there isn't any evidence that evening that 19 free

1 drinks were there.
2 I want to deal with two points that
3 were put specifically to Anderson and Humniski,
4 and one to Black, and that is the comments that
5 were attributed to them from Marty Minuk. The
6 first is, you will recall, from exhibit 143, Mr.
7 Commissioner, some officers themselves reported
8 their impairment was such that they did not
9 remember much of that evening. You remember that.
10 Interesting, in the morning Commission Counsel,
11 Mr. Paciocco, used that as a basis to be critical
12 of Anderson and Humniski. In the afternoon, Mr.
13 Clifford used that same statement to be critical
14 of Mr. Minuk. I happen on this particular one to
15 side with Mr. Clifford, it won't surprise you. If
16 you look at the evidence in its totality, I
17 suggest that the conclusion that you are going to
18 draw is that Marty Minuk is not sure where that
19 came from, if anywhere. He says it likely came
20 from Anderson or Humniski. He doesn't have a firm
21 recollection. That's at volume 23, page 6235,
22 line 9. And he couldn't say for sure where it
23 came from. What we do know is Anderson and
24 Humniski both denied it firmly. This comment
25 doesn't find its way into any police report, any

1 interview, Mr. Minuk made no note of it, it was
2 not disclosed to defence counsel. It wasn't a
3 part of his submissions to Judge Wyant at any
4 time. And I think it is fair to say that with
5 respect to most of the conversations Mr. Minuk
6 had, his recollection was less than clear. I'm
7 suggesting that he is mistaken.
8 He also attributed to Sean Black
9 information that perhaps Sean Black had fallen
10 asleep; fell asleep at 4:00 a.m., and woke up and
11 people were leaving. I suggested to him that he
12 may have misunderstood, given that we know that
13 Dave Harding had fallen asleep, he conceded it was
14 possible. That's at volume 23, page 6239. Again
15 there is no notation of that, it is not in any
16 report, it is not disclosed to defence. Black
17 denies it, and it is inconsistent with everybody's
18 evidence at Black's. I am again suggesting that
19 he either misunderstood or is simply mistaken.
20 But these are the types of suggestions which are
21 the basis upon which Commission Counsel is asking
22 you to make some adverse findings, and we say they
23 are just not enough.
24 Now obviously when you are looking at
25 all of the evidence of all of the officers and

1 others there is going to be some inconsistencies
2 and there are some inconsistencies. And I say
3 that when you look at evidence under a microscope
4 and isolate individual words that were said and
5 carefully review those and compare them to other
6 exhibits and other statements, you are going to
7 find inconsistencies, you are going to find
8 questionable use of words, and that's what you
9 would expect in any kind of hearing like this. In
10 fact, I will go further and say if that wasn't the
11 case, you may be really suspicious and have reason
12 to be. The fact that one person remembers
13 something, another person doesn't, doesn't mean
14 one of them or both of them are lying. It is a
15 different recollection. The reality is that it
16 comes down to, in our respectful view, what I
17 pointed out at the outset, is that the evidence
18 that's coming from the police officers doesn't
19 accord with what people expect it to be because of
20 the suspicions and suggestions and allegations,
21 but it doesn't mean that it is not the truth.
22 And so at the end of the day we submit
23 that notwithstanding the public, family's,
24 Commission counsel's thirst, if you will, for a
25 different story, there was no evidence that there

1 was any conspiracy of silence or thin blue line
2 that placed members' interests over the truth. In
3 fact, the evidence is clear that the members
4 provided all they could in the circumstances, and
5 those circumstances weren't great, but they were
6 cooperative, forthright and honest. There is no
7 basis, in our respectful view, for an adverse
8 finding, both because we say that you ought to
9 carefully consider your mandate but also on the
10 merits of the submissions as they have been made.
11 And lastly, there certainly couldn't
12 be a more thorough, detailed and complete review
13 of the events, and there is no need to embark on
14 any additional study or investigation or inquiry.
15 Now, I want to touch briefly,
16 Mr. Commissioner, on the recommendation that was
17 made. I don't have the recommendation sheet in
18 front of me, but you will know the one I'm
19 referring to, it is the second with respect to the
20 police service, and it deals with the
21 recommendation that appropriate measures be taken
22 to prevent police investigators in the province
23 from giving police special procedural concessions
24 before they are interviewed in criminal matters,
25 including the right to consult with the

1 Association, the right to have interviews
2 scheduled in shift hours, the right to be warned
3 about the criminal, civil or administrative
4 statements that they give. Now, whether you use
5 the phrase "special" or "different", no question,
6 we acknowledge that police officers hold a
7 different or special place in society. They are
8 entrusted with the obligation to uphold and
9 enforce the law. They are entrusted with the
10 obligation and the powers of arrest, detention,
11 force, including the ability to take away one's
12 life. And with that power and obligations, police
13 officers are held to a much higher standard. And
14 they should be. It is not a complaint, they
15 should be.
16 However, as a result of those special
17 powers bring with them special, if you will,
18 obligations and responsibilities much different
19 than civilians. For example, police officers, as
20 you have heard, have an obligation to speak to
21 police in the course of an investigation whereas
22 civilians don't. Again, it is not a complaint, it
23 is a reality. This is so whether they are being
24 investigated by their own police forces, as is the
25 case in Winnipeg, or with somebody else. If it is

1 conducted by the employer, there is an actual
2 ability to compel them. If it is not, they
3 nevertheless have that same duty. The Chief of
4 Police and others were clear that any attempt to
5 avoid speaking to the police during an
6 investigation would be considered discreditable
7 conduct. And it should be, we agree.
8 But it's a very different and special
9 scenario. It certainly makes police, in our view,
10 special or different. Not only do they have
11 different obligations as to their involvement in
12 an investigation, the fact that they are held to
13 this higher standard also brings in special
14 considerations, whereas normally, Mr.
15 Commissioner, employers don't have the right to
16 discipline employees for off-duty conduct,
17 generally speaking, no question they do for the
18 police. They are held to a higher standard
19 whether they are wearing the uniform or not, and
20 again they should be. As a result of that,
21 information that they provide in the course of
22 investigations is information that will be shared
23 with the employer and potentially used against
24 them in a disciplinary way. This makes them
25 special. So, if a statement is given in a

1 criminal investigation it can be used against that
2 witness in another proceeding, basic principles of
3 fairness and natural justice dictate that the
4 person be notified of such. Furthermore there is
5 a practical reason, Mr. Commissioner, just like in
6 criminal matters and administrative and labour
7 matters, there is a risk if you don't give that
8 caution to the employee, it may not be a statement
9 that the employer can use against them. It is the
10 basic principle of fairness.
11 With respect to the right to consult
12 the Police Association we submit as follows:
13 There are two scenarios when you are a witness in
14 a criminal investigation. You are either
15 compelled to give a statement or not. If you are
16 not compelled, acknowledge that no special
17 procedural protections are needed or required. I
18 agree that it only -- they be treated in the same
19 way as other witnesses, and they should be. But
20 the fact is we know police officers are compelled,
21 unlike a civilian, they are. And there is
22 consequences if they don't follow through with
23 that compulsion. As a result again, basic
24 principles of fairness dictate, that they be given
25 the ability to consult with their association or

1 union. Put another way; if no use could be made
2 of that statement, whether compelled or not,
3 against them in the workplace, we don't need any
4 special or different procedural protections, but
5 so long as they do have this obligation, these are
6 only fair.
7 Lastly, and I will just say it briefly
8 as to the timing of interviews, this is not an
9 issue of hours, it is not an issue of fairness, it
10 is not a situation that the Association has either
11 earned by way of bargaining or otherwise, it is a
12 practical reality that police services investigate
13 and interview individuals who are in their employ
14 while they are working so they don't have to incur
15 overtime or other expenses. We have no concerns,
16 if for some reason the timing of some of these
17 interviews is causing a problem with perception or
18 otherwise.
19 Mr. Commissioner, subject to any
20 questions you have, those are my submissions. I
21 do want to take one moment to thank you, as the
22 other counsel have, for your patience with all of
23 us. I also want to thank Commission Counsel, both
24 of them. Although we don't agree necessarily on
25 the evidence and the facts, they have treated me

1 with nothing but respect and professionalism. I
2 have enjoyed the experience, as harrowing as it
3 has been, from time to time.
4 THE COMMISSIONER: I'm still waiting
5 for the 12 reasons from Mr. Weinstein, but they
6 will come.
7 MR. LABOSSIERE: I will work on him.
8 THE COMMISSIONER: Thank you. Who is
9 going to appear on behalf of the Winnipeg Police
10 Service? Ms. Hanlin.
11 MS. HANLIN: Mr. Commissioner, it is
12 our intention for me to do submissions regarding
13 the members and the evidence that they gave to the
14 Profession Standards Unit and their actions, and
15 for Mr. Jack to follow-up with the Professional
16 Standards Unit investigation.
17 THE COMMISSIONER: Well, I'm going to
18 ensure that you both split your time so that you
19 don't get double time. Okay.
20 MS. HANLIN: My comments will be
21 brief. Mr. Labossiere has covered a lot of them,
22 and I believe you have my written brief?
23 THE COMMISSIONER: Thank you.
24 MS. HANLIN: Most of what I intend to
25 say is covered in that brief. It has references

1 throughout it to members' testimony, volume, page
2 numbers and lines in most cases.
3 I will deal, first of all, with
4 Sergeant Humniski and Patrol Sergeant Anderson and
5 their decision to come forward. They made the
6 decision that they and their shift could have
7 information relevant to the criminal investigation
8 of the motor vehicle accident involving Derek
9 Harvey-Zenk. The reason that Sergeant Humniski
10 and Patrol Sergeant Anderson made this decision to
11 come forward is because they wanted the
12 investigation to have the benefit of what they
13 knew and what the members who were out that
14 evening knew, or what they believed --
15 THE COMMISSIONER: You are not going
16 to read this, are you? Because I'm capable of
17 doing that.
18 MS. HANLIN: I understand. As I said,
19 my comments will be brief. Mr. Labossiere has
20 covered a lot of them.
21 The motor vehicle accident took place
22 on February 25th. By February 28, 2005 they had
23 given their statements to the Professional
24 Standards Unit, including the names of shift
25 members who might also have relevant information.

1 The regular shift briefing, where they informed
2 the members of the decision and the expectation
3 that they would be coming forward with their
4 statements did not take place until March 1st.
5 They didn't know what the shift members would tell
6 Professional Standards Unit. They themselves did
7 not know what took place at Sean Black's after
8 they left. Sergeant Humniski and Patrol Sergeant
9 Anderson would have no reason, furthermore, to
10 downplay Constable Harding's state of sobriety.
11 It was suggested by Mr. Paciocco that they might
12 do this. In fact, Constable Harding and other
13 members told Professional Standards Unit that he
14 had too much to drink that night and that he was
15 intoxicated. It would have been very difficult
16 for them to have attempted to downplay this and
17 keep this information from Professional Standards
18 Unit.
19 They testified that they had never
20 been involved in a situation such as this before.
21 Their determination was, first of all, to go to
22 the divisional commander. At the time they didn't
23 know that East St. Paul had a lack of resources,
24 and that Professional Standards Unit would be
25 doing the background investigation of the members.

1 Nor did they know that Professional Standards Unit
2 was assigned to do the investigation. In
3 hindsight, given the response of East St. Paul
4 which was the lack of resources, given their
5 decision to follow the chain of command, this was
6 the proper decision. It was one that resulted in
7 the Professional Standards Unit obtaining,
8 relatively quickly, the statements of 21
9 individuals who were with Harvey-Zenk in the hours
10 prior to the accident.
11 Some of Sergeant Anderson's testimony,
12 I will give you a couple of highlights from that,
13 it is found at volume 18, page 4552, page 4553.
14 Sergeant Anderson testified that when they came
15 forward, he and Sergeant Humniski, they presumed
16 that they would be dealing with East St. Paul.
17 But they were then told that they would be dealing
18 with Professional Standards Unit. Sergeant
19 Anderson also stated, and this is found at volume
20 18, page 4555.
21 THE COMMISSIONER: I've asked you
22 twice, you are not reading this, are you? If you
23 are, I'm not going to let you. I can read it. We
24 don't have the time. There are other counsel who
25 want to make submissions. If you have points that

1 you want to make, please make them, but please
2 don't read a document that you have put in front
3 of me, and that's what you are doing. I have
4 asked you twice. I don't want to ask you again.
5 And I'm sorry to be rude about this, but I thought
6 the first time you understood what I was saying.
7 MS. HANLIN: Mr. Commissioner, I'm not
8 reading it straight through.
9 THE COMMISSIONER: I know, but you may
10 miss a word here or there, but you are essentially
11 saying exactly what is in this submission.
12 MS. HANLIN: What I intend to do is to
13 go through it, highlight some of the points for
14 the record.
15 THE COMMISSIONER: How long do you
16 think you are going to be?
17 MS. HANLIN: I would anticipate no
18 more than 20 minutes.
19 THE COMMISSIONER: Mr. Jack, how long
20 do you intend to be?
21 MR. JACK: I would imagine no more
22 than 20 minutes as well, Mr. Commissioner.
23 THE COMMISSIONER: We are going to sit
24 until we finish you people and then I'm going to
25 have Mr. Prober, and I'm going to get as many

1 arguments, if we have to sit until 10:00 o'clock,
2 tonight, because you are asking me -- you are
3 going to read this to me, it is not just in point
4 form, you are reading this to me, and I hope you
5 are not going to do the same and read to me a
6 document. This isn't argument, this is -- it is
7 really an insult to me to sit here and read a
8 document that you put in front of me and say I'm
9 only touching certain points. Go ahead and see
10 how much time we take to do this.
11 MS. HANLIN: Thank you,
12 Mr. Commissioner.
13 Sergeant Humniski, in his testimony,
14 and this is found at volume 19, page 4831, stated
15 that he could not provide Inspector McCaskill with
16 all of the facts because he didn't know all of the
17 facts. He didn't make any inquiries to try and
18 see what all of the facts were. Those are factors
19 that are consistent with them coming forward to
20 tell Professional Standards Unit what they felt to
21 be the truth of the matter. They didn't have all
22 of the facts, they didn't consult with the
23 members, they didn't have knowledge of what took
24 place after they left.
25 Constable Michalik, you heard evidence

1 of what he had to say regarding the shift
2 briefing. He testified that it was a regular
3 shift briefing that usually took place at that
4 time. It was about half an hour. Only a few
5 minutes of that time were devoted to Professional
6 Standards Unit, the aspect that the members would
7 be coming forward.
8 Inspector McCaskill and Superintendent
9 Stannard's notes are supportive of Sergeants
10 Humniski and Anderson in that they came forward to
11 tell what they knew to -- what they knew, that
12 they wanted to give statements relevant and
13 relative to the criminal investigation.
14 Mr. Commissioner, that's all that I will say about
15 Sergeants Humniski and Anderson.
16 Regarding observations of Derek
17 Harvey-Zenk, and in particular evidence regarding
18 Sergeant Black, there are a couple of points that
19 I would like to highlight to you. Sergeant Black
20 testified in dealing with his observations of what
21 took place at Branigan's, that he was unable to
22 see drinks or what was on other tables that were
23 around him. It was put to him by Commission
24 Counsel, or it was submitted by Commission
25 Counsel, that the only assertion he had for why he

1 couldn't see what other people had to drink was
2 because of the angle of the table. In fact, if
3 you were to look at his evidence this is not what
4 Sergeant Black said. He said not only was it the
5 angle of the table and that there were two or
6 three feet height differential, but it was also
7 because of where people were sitting, and because
8 he was focused on his own table, the drinks that
9 people were having at his table, as well as the
10 conversation that was taking place at that table.
11 He also testified that after two and a half years,
12 in fact it was actually three and a half years, of
13 trying to look back, he doesn't want to say
14 definitively that someone was drinking when he
15 couldn't recall if they were or not.
16 He said he could assume that people
17 were drinking at his residence, based on the fact
18 that the bottle was empty at the end of the night,
19 but he stated that it would be false information
20 to say that nobody was consuming alcohol, and he
21 also said that he couldn't say definitively that
22 someone else was drinking, whether or not they had
23 a drink in their hand, and he was not willing to
24 make that assertion.
25 At his home, it was also suggested

1 that he stated that his evening was devoted to his
2 popcorn maker and that's why he wasn't able to
3 make any observations of what people were doing
4 around him. In fact, that's not entirely what he
5 said. He did say that he was dealing with his
6 popcorn maker somewhat, but in addition to that he
7 was getting food ready, he was trying to be a
8 host, he was giving a guided tour of his home, and
9 we know that he made the time to ensure that
10 Constable Harding was comfortable downstairs, and
11 in fact he even went back downstairs to check on
12 him.
13 His statement to his insurance
14 adjuster did contain contradictory evidence in
15 regards to the amount of alcohol that he set out.
16 It stated that he set out two bottles, and he
17 explained that by stating that he set out one
18 bottle, which was a heel, and he consumed that,
19 and what he set out for his guests was the other
20 bottle. That was confirmed by most of the people
21 there. They didn't say that there was two bottles
22 set out, they said there was one bottle set out.
23 I would also point out that his
24 statement to his insurance adjuster, to bring that
25 forward was entirely voluntarily on his part. It

1 wasn't something that anybody else was aware of,
2 that he was ordered to disclose, or asked to
3 disclose. It contains contradictory evidence that
4 it would have been obvious to him that it would
5 not have been to his benefit to disclose that, and
6 that's something that should be to his credit.
7 He also stated there was some
8 implication made that he had a possible motive for
9 fabricating evidence that had to do with potential
10 liability for insurance or civil liability. He
11 attended to his insurance adjuster because he did
12 not know what the implications for he and his
13 family were in terms of liability or insurance.
14 He had never been in that situation before. And
15 that's found in his transcript of his testimony,
16 volume 16, page 4190. This lack of understanding
17 by Sergeant Black of the potential liability that
18 he had, was also shared by Inspector Poole to some
19 extent. Inspector Poole testified that he
20 actually phoned the Crown, Mr. Minuk, about this
21 issue of civil liability because they were not
22 sure if they should be interviewing Sergeant
23 Black. And this is found in the transcript of
24 Inspector Poole's testimony at volume 20, page
25 5232 to 5233. Although it might be difficult for

1 lawyers to understand, issues of insurance and
2 civil liability is not something that's common or
3 understood amongst police officers.
4 Overall, Mr. Commissioner, and I won't
5 go through the evidence, the circumstances are
6 consistent with members that are telling the
7 truth. They were aware of their obligation to
8 honestly answer questions, they were aware of
9 their obligations to people who drive, if they
10 have consumed too much alcohol, to do so safely.
11 Sergeants Humniski and Patrol Sergeant Anderson
12 made the decision that they should give
13 statements, that their shift members might have
14 evidence relevant to the investigation. Constable
15 Harding stood out in members' minds as having too
16 much to drink. Steps were taken to ensure that
17 Constable Harding did not drive.
18 And you noted earlier that only one
19 person reacted in this regard. In fact, Constable
20 Black took steps to ensure that Constable Harding
21 was made comfortable downstairs, Constable Nolet
22 gave Constable Harding a glass of water, and
23 Constable Fudge, McLure and Sergeant Anderson all
24 testified that they assisted Constable Harding in
25 ensuring that he would not be driving home.

1 Furthermore, consistent with the
2 overall situation that members were telling the
3 truth, Sergeant Black offered his home to anyone
4 who wanted to stay overnight. These statements of
5 the members are consistent in this regard. They
6 are not identical. There are some discrepancies
7 and this is to be expected.
8 There is no evidence of motive before
9 you that these members would have put their
10 reputations, their personal, professional, moral
11 obligations behind some motive to mischaracterize
12 or withhold evidence. If you were to look at the
13 evidence before you, Mr. Commissioner, you will
14 not find evidence in support of that.
15 Subject to any questions that you
16 might have, those are my submissions.
17 THE COMMISSIONER: Thank you.
18 Mr. Jack.
19 MR. JACK: Thank you,
20 Mr. Commissioner.
21 THE COMMISSIONER: What are you going
22 to deal with?
23 MR. JACK: I'm going to be dealing
24 with exclusively the PSU, their involvement, their
25 assistance in this investigation. And I will tend

1 to focus my comments, apart from the argument that
2 has already been provided for you, and recognizing
3 fully that you have the opportunity to read it
4 later, and I have no intention of reading it for
5 you. As well as, any associated evidentiary
6 references have been included therein as well. So
7 unless I am asked by you, Mr. Commissioner, I
8 won't be making any specific reference to volume
9 numbers, transcript pages, et cetera.
10 So perhaps to be most direct and
11 useful for the Commission, it would be useful for
12 me to simply focus upon the recommendations as
13 made by Mr. Paciocco, as they pertain to the
14 Winnipeg Police Service.
15 I would like to, simply because it is
16 the order in which it has been presented in this
17 brief, Mr. Commissioner, if I could deal with the
18 second recommendation first, that being with
19 respect to the special procedural concessions
20 referred to by Mr. Paciocco.
21 And I thank Mr. Labossiere, who has
22 very eloquently and in a thorough manner gone over
23 why members in these circumstances are afforded an
24 opportunity to consult with their union, so I
25 don't intend to cover that territory in any

1 significant degree. I simply want to reiterate
2 that, of course, under the regs, and we have
3 provide those at tab 2 to this argument, and I
4 provided an excerpt here, Mr. Commissioner, at
5 page 17, for instance, of our argument, that in
6 fact in circumstances such as these, they are
7 required to be interviewed, and should they choose
8 not to, they are certainly subject to sanction,
9 subject to discipline, and certainly this is not a
10 power of compulsion that either the Winnipeg
11 Police Service or PSU possesses with respect to
12 civilian witnesses. That point has been made
13 quite clearly.
14 However, as has already been stated,
15 nothing also prevents a civilian witness from
16 contacting anyone else when advised that the
17 Winnipeg Police Service wishes to interview them.
18 For instance, any civilian witnesses have the
19 opportunity to contact counsel, any other person
20 that they think would be of use to them, or simply
21 refuse to be interviewed. That's not a power
22 enjoyed by these members. And it is that context
23 within which this recommendation needs to be
24 viewed.
25 Most particularly, I would like to

1 turn the court's attention, I believe it is the
2 first time it has been referred to other than when
3 it was introduced as an exhibit, and that would be
4 exhibit 237. That's the opinion that was offered
5 to the Commission and offered into evidence by
6 Sergeant Paul Lobsinger. And if the court wishes
7 to turn to it, that's fine. And if not, I will
8 simply summarize the salient point from that that
9 relates to this recommendation. It is found in
10 the last two pages of Sergeant Lobsinger's report
11 and, in fact, it is the report addendum. And I
12 believe it is the only comment we have, certainly
13 the only expert opinion that's been adduced at
14 this entire Commission that relates to this
15 specific point, Mr. Commissioner. And it is for
16 that reason that I'm going to suggest it deserves
17 a significant amount of weight. Mainly, because
18 nothing has been offered to attempt to contradict
19 it. In fact, the final paragraph is the most
20 relevant point that Sergeant Lobsinger refers to.
21 First of all, he relates the fact that
22 police units investigating their own officers is
23 typically standard practice, and he refers to his
24 own example with the Toronto Professional
25 Standards officers. So he refers to it as

1 standard practice, without going into much more in
2 term of evaluating it, I believe, he's offering an
3 opinion of approval, but I don't want to read too
4 much into what he is saying. But most
5 importantly, in the last paragraph he refers to
6 the opportunity of police witnesses, that they are
7 given to speak to their counsel or their
8 association representative in an investigation
9 such as this one. He feels that is standard
10 practice and, in fact, goes on to indicate in his
11 report that he believes it would be prudent for
12 the PSU to afford each and every officer the
13 opportunity to consult counsel and/or their
14 association representative. And he feels to not
15 do so would, in fact, leave any perception or
16 suggestion of coercion or suggestion of reprisals.
17 Now, that's the only evidence that we
18 have in terms of expert opinion that's been
19 offered to this Commission. Certainly no comment
20 has been made thus far about that, with the
21 obvious reason that Sergeant Lobsinger has not
22 been here to testify. In any event, I'm going to
23 suggest that is at least expert opinion to be
24 weighed, and to be weighed significantly, given
25 that it has not been contradicted. I believe that

1 speaks directly to the recommendation that
2 Mr. Paciocco has made.
3 Having said that, it is the position
4 of the Winnipeg Police Service that obviously it
5 will accord with whatever procedural or
6 legislative framework is in place, obviously, and
7 any recommendation that this Commission intends to
8 make in that regard will obviously be examined
9 seriously. It is always, and it is the continual
10 and consistent position of the Winnipeg Police
11 Service that it strives to provide the best
12 service possible to its citizens. And it will
13 take any comments from this Commission very
14 seriously in that regard.
15 I would like to move to Mr. Paciocco's
16 first recommendation, that you recommend to the
17 Minister of Justice that he cause a study to be
18 commissioned to identify the suitable alternatives
19 to having the PSU conduct investigations such as
20 these.
21 THE COMMISSIONER: That may only be a
22 modest recommendation as far as the -- for
23 counsel. So I think I would like you to deal with
24 it because I may go further.
25 MR. JACK: I recognize that,

1 Mr. Commissioner. And in fact, I have included
2 some comments in this argument on the
3 understanding, in fact, recognizing that that was
4 only as far as Commission Counsel had gone, and so
5 some comments we have contained herein are in case
6 you feel the need to go further with that
7 particular recommendation.
8 It is of note that Commission Counsel
9 did not make a recommendation of a specific avenue
10 that should be chosen, for instance, whether it be
11 the RCMP, whether it be the example from Ontario
12 of the SIU. I note that it is --
13 THE COMMISSIONER: Even the SIU is
14 having problems these days, if you read the
15 newspapers.
16 MR. JACK: And in fact, I'm aware of
17 that, Mr. Commissioner. In fact, that is the root
18 of some of my concerns and they are expressed in
19 here as well. In fact, we have explained that a
20 body such as the SIU -- let me back up
21 Mr. Commissioner.
22 This is all geared quite obviously to
23 avoiding not only real conflict, but to avoiding
24 the perception of conflict. And Mr. Paciocco made
25 that quite clear. But in terms of the perception

1 of conflict, I think it is also a fair comment
2 that if one were to look at the RCMP option, for
3 instance, those are still police officers, they
4 are still police officers within the province.
5 They may be police officers that have worked with
6 other Winnipeg Police Officers, and there is still
7 going to be those in the public, the potential for
8 the perception that this is still an issue of
9 police officers investigating other police,
10 regardless of the agency. And then one step
11 further, of course, is with an SIU type model
12 where, in fact, you are not even using police
13 officers, but we would respectfully suggest that
14 investigations like this and others, that the most
15 effective investigation is going to be carried out
16 by police officers. They are trained to
17 investigate. We understand the training police
18 officers go through to get where they are. But
19 more importantly than their training, of course,
20 is their experience as police officers that
21 assists them in conducting investigations.
22 We heard, and Commission counsel
23 certainly lauded the character and integrity of
24 Sergeant Girard, for instance. And he quite
25 humbly and honourably noted before this Commission

1 that he still learns every day. He made apologies
2 for where he fell short, where he believes he fell
3 short in this investigation and the assistance
4 that the PSU offered. But someone of his
5 experience is still learning every day. So what
6 I'm going to suggest at the very least is that to
7 suggest any non police officer unit to be called
8 in to perform such investigations would certainly
9 not be something that we would be in agreement
10 with. I recognize that doesn't mean it is not
11 something that the Commission will at least ask to
12 be explored.
13 THE COMMISSIONER: Do you not see some
14 flaw in the present method of investigation? And
15 I'm going to refer you to a comment that Girard
16 made. And I agree with you, he is a very
17 honourable man, and very honest and forthright.
18 But it does create an impression in the manner in
19 which the Professional Standards Unit carry out
20 their mandate, that it may not be the most
21 effective way of investigating police officers.
22 And let me read you a passage of an answer that
23 was at page 5397.
24 "In Professional Standards, it has to
25 be a balance, because one of the

1 things I was told was that we are not,
2 let me just think this -- let me just
3 think about the right way to word
4 this. In order -- we basically had
5 four stakeholders that we were serving
6 in the sense of our duties, that being
7 the citizens of Winnipeg, the City,
8 the Service and our members."
9 And then he goes on,
10 "We had to make sure that there was a
11 balance, that we did the things the
12 right way to maintain credibility with
13 all those groups. It was difficult to
14 do the work if you don't have any
15 credibility."
16 Now, an investigator has no balance in
17 the sense, I am sorry, no four stakeholders, they
18 have to get to the truth. And if you have to
19 conduct an investigation, as he is required to do
20 and as he is trained, considering four
21 stakeholders and trying to maintain this balance,
22 you are immediately at a disadvantage. And that
23 is the concern I say has to be reflected in the
24 recommendation.
25 MR. JACK: And I understand that.

1 THE COMMISSIONER: What is the
2 alternative?
3 MR. JACK: If I could comment on that
4 last point, Mr. Commissioner.
5 THE COMMISSIONER: Yes, sure.
6 MR. JACK: I do understand that point.
7 I would respectfully suggest that even though both
8 Sergeants Poole and Girard were quite clear about
9 the four stakeholder groups, I'm going to suggest
10 that officers in any unit have stakeholder groups,
11 whether they identify them in this manner or not.
12 I'm going to suggest that officers in any unit are
13 accountable to their service, and always have
14 their police service as a stakeholder in what they
15 are doing every day.
16 THE COMMISSIONER: That may be so.
17 But in the normal investigation that's conducted
18 by the police, they go out and they interview
19 witnesses. They don't worry about who they are
20 going to please and try to balance. And that is
21 the problem with the very way this unit conducts
22 its investigation. And that is why there is a
23 perception in the public mind that it is one that
24 is -- that favours the police and protects the
25 police, whether it does so or not.

1 MR. JACK: And I guess what I'm
2 suggesting in response to that, Mr. Commissioner,
3 is that I do believe this balancing goes on with
4 any officer, whether it is stated as such or not.
5 For instance, one of the stakeholder groups that
6 both Sergeants Poole and Girard identified is the
7 citizens. I'm going to suggest in any
8 investigation, forget about an internal,
9 investigating any offence, the citizens of
10 Winnipeg are a stakeholder in that investigation.
11 I'm going to suggest that the city or municipality
12 that that police force serves is always a
13 stakeholder in that investigation. And whether
14 they are expressly serving them, considering them
15 in this four-tiered explanation that you were
16 given, or whether it is simply implicit in the
17 execution of their duties, I'm going to suggest
18 that these stakeholders exist in any police
19 officers -- the execution of their duties.
20 THE COMMISSIONER: But when a police
21 officer questions a witness, the witness isn't a
22 stakeholder. The police officer tries to get the
23 truth from that witness and will spend a great
24 deal of time trying to get the truth. If that
25 police officer has to worry about a balance in so

1 far as that witness is concerned, he will not be,
2 he or she will not be very effective, will they?
3 MR. JACK: And one point I would have
4 in response to that, Mr. Commissioner, would
5 simply be this; as I have been colloquially
6 advised by Winnipeg Police Officers, civilian
7 witnesses can also tell you to go pound sand.
8 THE COMMISSIONER: Yes.
9 MR. JACK: And perhaps this is a
10 recognition of that balance, Mr. Commissioner.
11 The officers have no such liberty to do so. I
12 recognize that, of course, for instance, a
13 civilian witness is not going to identify any
14 stakeholder groups. They may, but they certainly
15 are under no obligation or mindset to need to do
16 so. So, of course, we have got drastically
17 different situations here, but we've got officers
18 being interviewed by compulsion. Certainly, as we
19 have already canvassed, we would hope officers
20 would want to come forward, and in fact they did
21 in these circumstances. But even if they don't,
22 they can be forced to. And that's one significant
23 difference that does not apply to civilian
24 witnesses.
25 Thank you, Mr. Commissioner. I will

1 move along but I definitely have your suggestions
2 on that.
3 Staying with this point, of course,
4 recognizing that you've already indicated the
5 Commission may make any such recommendation,
6 whether it accords with the specific
7 recommendation of Mr. Paciocco or not, we would
8 have our own recommendation to suggest,
9 Mr. Commissioner, and it is included in the
10 written material as well, but given that we
11 haven't referred to it before, I think it is
12 worthy of noting with you now, given that it does
13 relate.
14 We would respectfully suggest that a
15 large --
16 THE COMMISSIONER: Is it here?
17 MR. JACK: It is in here,
18 Mr. Commissioner.
19 THE COMMISSIONER: Can you give me
20 tab?
21 MR. JACK: It begins at page 23 of our
22 argument, so it is not at any of the tabs.
23 THE COMMISSIONER: Thank you.
24 MR. JACK: And it is viewing the same
25 situation from a slightly different perspective,

1 Mr. Commissioner. Recognizing that a large part,
2 and I think all counsel would agree, even any
3 counsel who are suggesting that this investigative
4 function be removed from the PSU, a large part of
5 the motivation to remove such function is, of
6 course, the perception of conflict. That's very
7 clear. Even where counsel are not able to
8 demonstrate any real conflict, which I believe
9 would be the case here, or at least that's simply
10 our submission, the perception of conflict is
11 important. It is going to be important to you as
12 you write your report, and it is certainly
13 important to the Winnipeg Police Service.
14 Again, I need to reiterate, that
15 everything that the Police Service does is aimed
16 at enhancing and bettering the service they
17 provide to its community. That includes an
18 acknowledgment that they are responsible for, in
19 large part, for their perception within the
20 community. To that end the recommendation that we
21 are suggesting and asking the Commission to
22 consider is that the Winnipeg Police Service be
23 allowed, or instructed, or recommended, or
24 required to undertake a series of measures, and I
25 will suggest some, but I don't want to necessarily

1 pin any down, but be required to make significant
2 efforts at focusing on the perception. If we are
3 going to agree that perception is the problem, and
4 I recognize not all counsel are going to agree
5 that it is the only problem, but if the perception
6 of conflict --
7 THE COMMISSIONER: It is not the only
8 problem.
9 MR. JACK: I recognize that,
10 Mr. Commissioner, and I knew I wasn't going to
11 have agreement on that. But if that is a
12 significant problem and if that's one that we are
13 seeking to address, particularly in your
14 recommendations, then I think it is valid to
15 direct the Winnipeg Police Service to undertake
16 any number of measures. And again, what I've
17 indicated is a comprehensive package of
18 communication initiatives to address these issues
19 of perception in the community. I will toss out
20 some examples, but certainly this isn't
21 exhaustive, and I don't purport to have any media
22 relations, public relations or marketing
23 background. But community forums, for instance,
24 information circulars, greater visibility in terms
25 of the publication of what PSU does, its mandate,

1 how it conducts investigations, when it conducts
2 investigations, and certainly the results it gets.
3 We haven't heard a lot of specific
4 evidence about that, as there weren't a lot of
5 witnesses who could probably comment on that from
6 outside the unit. But certainly Mr. Minuk at
7 least indicated approval of the involvement of PSU
8 in this investigation. And the evidence of Don
9 Slough was likely the most supportive, I think
10 that all in the room recognize Don Slough's
11 experience as a prosecutor in this province, and
12 his review, shall we say, I would suggest is quite
13 glowing. In fact, made -- during his testimony
14 indicated that on one investigation he was
15 recalling, he was quite impressed at the
16 incredibly aggressive nature of the officers, in
17 fact, cutting no slack to their own subject
18 officers in the course of that investigation, and
19 he communicated the fact that he was impressed to
20 that degree.
21 THE COMMISSIONER: May I ask something
22 just for the purpose of information?
23 MR. JACK: Certainly.
24 THE COMMISSIONER: Who would have
25 conducted a review if the PSU had not been asked

1 to do so? Is there some other body in the
2 province, the RCMP?
3 MR. JACK: When you say review,
4 Mr. Commissioner, do you mean the assistance that
5 was offered to the East St. Paul?
6 THE COMMISSIONER: Yes.
7 MR. JACK: I imagine that they could
8 have been.
9 THE COMMISSIONER: They could have
10 asked the RCMP to carry out the investigation?
11 MR. JACK: I imagine they could have
12 asked any agency. I have absolutely nothing to
13 offer in terms of evidence what the response would
14 have been.
15 THE COMMISSIONER: Thank you.
16 MR. JACK: And that is a point that I
17 make here in our argument as well,
18 Mr. Commissioner, is that despite the fact that
19 there are all sorts of options that could be
20 considered, I think again we would hope that the
21 Commission would not go as far as Mr. Paciocco's,
22 but if the Commission were considering going
23 farther, then certainly we would like to remind
24 the Commission that we have not had any
25 opportunity to hear any evidence respecting these

1 other potential options. And just, as you've hit
2 the nail on the head in terms of that question,
3 whether the RCMP would be prepared to step in is
4 anyone's guess, and I certainly can't offer any
5 confirmation. And they obviously aren't even
6 parties to this Commission of Inquiry.
7 In terms of using another agent or
8 creating an agency, we have no evidence before the
9 Commission to be weighed about the feasibility or
10 desirability of any of those options, and whether
11 it is possible under existing legislation, et
12 cetera.
13 So, given that we don't have any
14 evidence of other options, I think at the very
15 least, it would not make sense for this Commission
16 to be making any specific agency recommendation,
17 simply because we haven't had any opportunity to
18 analyze such a recommendation.
19 Anyway, as I indicated,
20 Mr. Commissioner, from my client's perspective
21 this is -- and I recognize the significant
22 criticisms that have been directed at this
23 specific assistance in this specific
24 investigation. On that point, I encourage you,
25 Mr. Commissioner, to again go through, which I'm

1 not going to cover the ground, but the reasons why
2 I believe, or the greater context why I don't
3 believe the PSU assistance should be viewed as
4 negatively as some are putting forward during
5 these hearings. But in any event, regardless,
6 from the Police Service perspective, it is a
7 system that currently works with effective
8 results, recognizing the criticisms being levied
9 about this specific instance. It is for that
10 reason that we would be recommending that the
11 focus for any recommendation to the Winnipeg
12 Police Service be upon the cultivation and the
13 proper handling of a perception of conflict that
14 may exist in the community, and the direction or
15 recommendation that significant efforts be taken
16 in that regard.
17 Subject to any questions you may have
18 Mr. Commissioner, that's --
19 THE COMMISSIONER: Thank you very
20 much.
21 MR. JACK: Again, if I may echo
22 counsel previous, I would like to thank you,
23 Mr. Commissioner, and certainly Commission Counsel
24 for the courtesy and respect that we have been
25 shown throughout, and appreciate the opportunity

1 for the Police Service to be here. Thank you very
2 much.
3 THE COMMISSIONER: I hate to call on
4 Mr. Prober at the end of the day, but, Mr. Prober,
5 maybe you would come and give me your submissions.
6 MR. PROBER: Well, I was quite taken
7 aback by Mr. Weinstein's suggestion that he had 12
8 reasons why you had done such a good job and I
9 have wracked --
10 THE COMMISSIONER: Do you have more?
11 MR. PROBER: -- I have wracked my
12 brain and I can only come up with one. I was
13 hoping to have overnight to come up with the other
14 11. But, seriously, the one that I came up with
15 was that you have always convenienced counsel, all
16 of us, in terms of dealing with our various
17 matters.
18 Now, today we have heard from five
19 parties, six counsel, and even Mr. McDonald twice,
20 although briefly. But I believe I speak for those
21 of us in the room who have yet to speak, and those
22 of who have spoken today, we would like to adjourn
23 until tomorrow morning, starting at 9:00.
24 Now, I can tell you that I have
25 canvassed with Mr. Green, and Mr. Nozick and Mr.

1 McFetridge. I expect, based on what they've told
2 me, and how long I expect to be, we will be
3 finished by noontime.
4 THE COMMISSIONER: How long will you
5 be?
6 MR. PROBER: I expect that I will be
7 at the most half an hour, depending on any
8 questions that may or may not happen.
9 THE COMMISSIONER: Mr. Green, how long
10 will you be?
11 MR. GREEN: I will be less long if we
12 adjourn now.
13 THE COMMISSIONER: Can I hold you to
14 an approximate time?
15 MR. GREEN: No, you can't.
16 THE COMMISSIONER: Mr. McFetridge, are
17 you going to argue, or is Mr. Nozick going to
18 argue?
19 MR. McFETRIDGE: We are going to both
20 be making submissions. Mr. Nozick will be dealing
21 with the prosecution issue, I will be dealing with
22 the Victims' Bill of Rights, and I will be also
23 commenting on the recommendations by Commission
24 counsel. And we expect a half hour each, max.
25 THE COMMISSIONER: It was my practice,

1 when counsel spoke too long, was to pin them down
2 to the time that they intended to take and then I
3 would take my watch out, and if they were in the
4 middle of argument, I would say time is up, next.
5 I would like to get done by noon tomorrow. And I
6 don't know how long the reply will be, but we have
7 a deadline.
8 MR. McFETRIDGE: I understand that,
9 and I can indicate from my perspective that there
10 will be very little on the Victims' Bill of
11 Rights. I have a brief to give to you.
12 THE COMMISSIONER: That's helpful.
13 MR. McFETRIDGE: We have been working,
14 and we are thankful to Commission Counsel's
15 recommendations, that they gave them in advance.
16 We do have some comments to make on those and
17 hopefully they will be helpful to the
18 Commissioner, and I will be giving those as well.
19 THE COMMISSIONER: Mr. Paciocco?
20 MR. PACIOCCO: I was just going to say
21 that you are well aware of the tactical problem we
22 have tomorrow, we have to get out of the room. So
23 if we do adjourn now, we are going to have to hold
24 everybody to the time limits that they have
25 undertaken. And if Mr. McFetridge can give us the

1 Victims' Bill brief in advance, it will give
2 Mr. Clifford time to prepare his response to it,
3 rather than us, at the end of the half day, trying
4 to cobble everything together in a hurry. So
5 anything that can be done to furnish that in
6 advance I think might save us time tomorrow.
7 THE COMMISSIONER: Mr. Prober says he
8 is going to be 30 minutes, Mr. Green says he is
9 going to be an hour. Mr. McFetridge and
10 Mr. Nozick, half an hour each, that's two and a
11 half hours. And so we should be out 11:30, or by
12 the break in the morning we will be finished.
13 Mr. Green is smiling. All right. Do
14 have any documents? Mr. Green, do you have a
15 brief you want me to look at?
16 MR. GREEN: No, I don't.
17 THE COMMISSIONER: But you might have
18 one by tomorrow if we adjourn now?
19 MR. GREEN: I will not, I can tell you
20 that you right now. My good assistant is reposing
21 on a beach somewhere, and I don't have the
22 resource to do that, but I will give you the
23 citations as we go along and it will be recorded.
24 I expect that an hour is probably a reasonable
25 estimate, maybe even shorter.

1 THE COMMISSIONER: Thank you. I am
2 sorry?
3 MR. GREEN: Maybe even shorter.
4 THE COMMISSIONER: Well, I will hold
5 you to it. Thank you. And you have something
6 that you want me to look at overnight?
7 MR. McFETRIDGE: Thankfully Mr. Boyd
8 has arrived with the material just as you were
9 making that comment, and I can provide it to
10 counsel and the Commissioner. If it will help, I
11 will just indicate what it is, and you can read it
12 overnight.
13 I have prepared a brief general
14 overview of the Victims' Bill of Rights, and I
15 have noted some evidence, and I'm not going to
16 repeat it tomorrow, and hopefully if it will
17 assist the Commissioner, I will give you your copy
18 now. I'm also providing some authorities, and I
19 will briefly comment on what they are. One is
20 simply dealing with sort of how to deal with
21 victims' impact statements and reference. And it
22 is simply indicating the section in the Criminal
23 Code and then the, I believe, and I'm not sure it
24 is here --
25 THE COMMISSIONER: I asked Mr. Kaplan

1 where the requirements are located. Are they in a
2 regulation?
3 MR. McFETRIDGE: Yes.
4 THE COMMISSIONER: And you will have
5 those for me, will you?
6 MR. McFETRIDGE: Yes.
7 THE COMMISSIONER: Thank you.
8 MR. MCFETRIDGE: That's in here. And
9 I have also, just in respect to the victims'
10 impact statements, I have cited some authorities
11 from the B.C. Court of Appeal, Ontario Court of
12 Appeal, and also the Ontario Supreme Court in
13 respect to the use of victim impact statements and
14 what should not be allowed.
15 THE COMMISSIONER: Nothing from the
16 Newfoundland Court of Appeal?
17 MR. McFETRIDGE: The one I have is --
18 I will give you the date, but I don't know if
19 that's the one you are talking about or not.
20 THE COMMISSIONER: No, I will look at
21 the documents, don't worry.
22 MR. McFETRIDGE: It is at 202, I'm not
23 sure if that's the one you are talking about.
24 That's what the authorities are. And I will
25 provide that to all of the other counsel after you

1 have left.
2 THE COMMISSIONER: Thank you. 9:00
3 o'clock.
4 THE CLERK: Order. All rise. This
5 Commission is in recess.
6 (Proceedings adjourned at 4:41 p.m.)
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2 COURT REPORTERS' CERTIFICATE
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5
6 Debra Kot and Cecelia Reid, court reporters in the
7 Province of Manitoba, do hereby certify the
8 foregoing pages are a true and correct transcript
9 of our Stenotype notes as taken by us at the time
10 and place hereinbefore stated.
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15 Cecelia Reid
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19 Debra Kot
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