

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, July 2, 2008

Volume 6

INQUIRY PROCEEDINGS

COMMISSION STAFF:

Mr. David M. Paciocco Commission Counsel
Mr. Vincent Clifford Associate Commission Counsel
Mr. R.L. Giasson Chief Administrative Officer
Ms. Melissa Braun Administrative Secretary
Ms. Wendy Bergmann Administrative Assistant
Ms. Sharleen Reid Commission Clerk

APPEARANCES

Mr. G. Zazelenchuk and
Mr. I. Restall For Robert Taman
Mr. M. Green and
Ms. K. Dixon For Mr. Marty Minuk
Mr. J. Prober and
Mr. B. King For Derek Harvey-Zenk
Mr. R. McDonald and
Ms. B. Bowley For R.M. of East St. Paul
Mr. H. Weinstein and
Ms. L. Labossiere For Mr. Harry Bakema
Ms. S. Hanlin and
Mr. M. Jack For Winnipeg Police Service
Ms. K. Clearwater and
Mr. Keith Laboissere For Winnipeg Police Assoc.
Mr. G. McFetridge and
Mr. S. Boyd For the Province of Manitoba

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1 WEDNESDAY, JULY 2, 2008

2 UPON COMMENCING AT 9:30 A.M.

3

4 THE CLERK: All rise. This Commission
5 of Inquiry is now open. Please be seated.

6 THE COMMISSIONER: Good morning.

7 MR. PACIOCCO: Good morning,

8 Mr. Commissioner. As you are aware, we are here

9 today to begin phase two of the Taman Inquiry.

10 The order-in-council that sets out your mandate

11 was filed as an exhibit during the last phase of

12 the proceedings as Exhibit 3. And you, of course,

13 are familiar with it.

14 During the course of the next several

15 weeks, we're going to be following the first two

16 legs of your mandate very closely. The first of

17 those is to inquire into the conduct of the police

18 investigations surrounding the death of Crystal

19 Taman on February 25th, 2005, including, but not

20 limited to the correctness and adequacy of the

21 procedures and practices that were followed by the

22 investigators, and the good faith objectiveness

23 and professional standards with which the

24 procedures and practices were applied and

25 decisions made.

1 The other leg, apart from the
2 investigation, has to do with the prosecution.
3 And your mandate, of course, is to inquire into
4 whether all aspects of the prosecution of Derek
5 Harvey-Zenk, including the Crown's position on
6 sentence, were conducted in accordance with the
7 professional and ethical standards expected of
8 lawyers and agents of the Attorney General.

9 This morning, there are a number of
10 things that are going to take place. There are a
11 couple of housekeeping matters that have to be
12 attended to. Then I'm going to file some exhibits
13 with the Commission in order to facilitate an
14 opening statement that pertains to phase two,
15 matters of investigation and prosecution. And
16 then we expect to hear from three witnesses today.
17 We expect to hear from Kathy Beattie, Garth Shaw
18 and Tara Taman.

19 Before I begin the description of the
20 subpoena process that has to be undertaken today
21 to confirm the attendance of individuals for the
22 hearings, I wanted to advise you,
23 Mr. Commissioner, that there are some counsel
24 present today who have not appeared before you.
25 On behalf of the Government of Manitoba,

1 Mr. McFetridge is joined by Mr. Stanley Nozick.

2 MR. NOZICK: Good morning.

3 MR. PACIOCCO: And there is another
4 gentleman from Mr. McFetridge's office, Mr. Sean
5 Boyd, who I understand will be attending from time
6 to time and will be here this afternoon.

7 Assisting in the representation of
8 Harry Bakema is Lisa Labossiere, who I don't
9 believe has attended yet to appear before you.

10 MS. LABOSSIÈRE: Good morning.

11 MR. PACIOCCO: We expect to hear
12 today, as I say, to hear from three witnesses
13 after the opening statement is made. They have
14 all been subpoenaed and they of course should
15 remain accessible. But Kathy Beattie, Garth Shaw
16 and Tara Taman should be aware of Your Honour's
17 exclusionary order with respect to the attendance
18 of witnesses. They are not entitled to be in the
19 room during the presentation of evidence. We did
20 exclude Tara Taman from that order, but with the
21 agreement of her counsel, the decision was made
22 that she will absent herself during the testimony
23 of Kathy Beattie and Garth Shaw. She certainly
24 will be welcome to and intends to remain during
25 the opening remarks that I provide.

1 For administrative purposes, a number
2 of witnesses have been subpoenaed to attend today
3 and those witnesses will not be called today, so
4 we're going to have to address the subpoenas and
5 ensure their attendance when required.

6 With respect to unrepresented
7 witnesses, there was one witness subpoenaed today
8 who has attended, and that's Mr. Ken Graham.
9 Mr. Graham introduced himself to me this morning
10 and I believe he is in the body of the hearing
11 room. If you could, Mr. Commissioner, direct
12 Mr. Graham to return on July 4th, 2008 at
13 9:00 o'clock a.m., or on such other date and time
14 as may be communicated to you by the Taman
15 Commission. If you could address Mr. Graham and
16 require his attendance under those circumstances,
17 we could release him from his appearance this
18 morning.

19 THE COMMISSIONER: Mr. Graham, have
20 you heard what the Commission Counsel has
21 indicated?

22 MR. GRAHAM: Yes, I have.

23 THE COMMISSIONER: And you will return
24 on July 4th?

25 MR. GRAHAM: Yes, I will.

1 THE COMMISSIONER: At?

2 MR. PACIOCCO: At 9:00 o'clock.

3 THE COMMISSIONER: At 9:00 o'clock.

4 MR. GRAHAM: Yes.

5 THE COMMISSIONER: Thank you. You can
6 leave if you wish.

7 MR. PACIOCCO: Mr. Richard Wolson has
8 also been subpoenaed to attend today, but we did
9 not expect his attendance. He has given us his
10 solicitor's undertaking to attend as required by
11 the Commission and we are content with that.

12 The other witnesses who have been
13 subpoenaed to today's date are all represented by
14 counsel. And as you are aware, Mr. Commissioner,
15 we have set a protocol in place to prevent those
16 witnesses from having to attend unnecessarily
17 today. That protocol requires counsel who is
18 representing the witnesses to confirm that they
19 have notified the witnesses of the subpoena, to
20 confirm that the witness has accepted service of
21 the subpoena, and to confirm that the witness has
22 authorized counsel to communicate the undertaking
23 of the witness to attend before the Commission, as
24 directed by the Commission, through Commission
25 Counsel. There are a number of witnesses that

1 fall into that category today. I'm going to ask
2 each of the counsel involved to communicate to you
3 that those undertakings have been secured and that
4 information has been communicated.

5 I'm going to begin with the Rural
6 Municipality of East St. Paul who, of course, is
7 represented by Mr. Bob McDonald and Bernice
8 Bowley. There are a number of witnesses who have
9 been subpoenaed today who are not required today.
10 They include Glenda Pedersen, constable with East
11 St. Paul Police Force, Constable Jason Woychuk,
12 current Chief Norm Carter, and Constable Brian
13 Maloney. We intend to call Constable Pedersen,
14 according to our projected schedule, on July 4th;
15 Constable Woychuk on July 7th; Chief Norm Carter
16 on July 8th; and Constable Brian Maloney possibly
17 on July 8th. So if we could get the confirmation
18 from counsel for the municipality that those
19 witnesses have been advised of the subpoena, are
20 prepared to accept service and will attend on
21 those dates, then there's no need of course to
22 have expected them to be here this morning.

23 MR. McDONALD: I so confirm,
24 Mr. Commissioner.

25 THE COMMISSIONER: Thank you.

1 MR. PACIOCCO: The next would be
2 Mr. Harry Bakema, who at the time of the incidents
3 that we are inquiring into was the Chief of the
4 East St. Paul Police, and he, of course, is
5 represented by Mr. Hymie Weinstein and Lisa
6 Labossiere. He was subpoenaed to be here today,
7 but again excused on the basis of an undertaking
8 that he would attend on July 10th or as directed
9 by Commission Counsel. If we could have
10 Mr. Weinstein or Ms. Labossiere confirm that the
11 communication of the subpoena has taken place and
12 he is prepared to give that undertaking?

13 MR. WEINSTEIN: I can confirm that,
14 Mr. Commissioner.

15 THE COMMISSIONER: Thank you.

16 MR. PACIOCCO: Next we have the
17 Winnipeg Police Service represented by Ms. Shannon
18 Hanlin and Michael Jack. There are a number of
19 witnesses who have been subpoenaed to attend
20 today, all police officers, and they have been
21 excused on the basis of the same undertaking.
22 Sergeant Sean Black is scheduled to testify, under
23 the current schedule, on the 16th of July;
24 Corporal Ken Azaransky on July 17th; Corporal Dave
25 Harding on July 17th; Sergeant James Anderson on

1 July 21st; Corporal Tracy Fudge on July 21st;
2 Sergeant Chris Humniski on July 21st; Constable
3 Ted Michalik on July 22nd; Constable Jay Nolet on
4 July 22nd; Constable Kelly McClure on July 22nd;
5 Constable Theodore Spruyt on July 23rd; Detective
6 Sergeant Roger Gerard on July 23rd; and Sgt. Poole
7 on July 23rd. If we can get confirmation from
8 Ms. Hanlin or Mr. Jack that those individuals have
9 been advised of the subpoena, accept service and
10 undertake to attend on those designated dates or
11 as directed?

12 MS. HANLIN: I can confirm that,
13 Mr. Commissioner.

14 THE COMMISSIONER: Thank you.

15 MR. PACIOCCO: I should advise,
16 Mr. Commissioner, that the Winnipeg Police
17 Association is represented today by Ms. Karen
18 Clearwater. Ms. Clearwater has, of course,
19 obtained standing on behalf of the Winnipeg Police
20 Association. She has advised me that the Winnipeg
21 Police Association does not anticipate, at this
22 point in time, active participation in the
23 proceedings. They will conduct more of a watching
24 brief and have someone from the association in
25 attendance. If events develop in a way that

1 requires their active participation, they of
2 course reserve their right to participate at that
3 point in time.

4 MS. CLEARWATER: I can so confirm,
5 Mr. Commissioner.

6 THE COMMISSIONER: Thank you.

7 MR. PACIOCCO: Next, we have
8 Mr. Martin Minuk, who we expect to testify on the
9 24th of July. He is represented by Mr. Michael
10 Green and Ms. Kelly Dixon. Again, if we could
11 have confirmation that he has accepted service of
12 the subpoena through his counsel and will attend
13 at that time or as directed?

14 MR. GREEN: Yes, that's confirmed.

15 MR. PACIOCCO: We have the Government
16 of Manitoba, there are two potential witnesses
17 from the Government of Manitoba at this point in
18 time. The Government of Manitoba, of course, is
19 represented by Mr. Glenn McFetridge, Mr. Stanley
20 Nozick and Steven Boyd. Those witnesses are Brian
21 Kaplan and Mr. Donald Slough. They are currently
22 scheduled to testify on the 29th of July and the
23 30th of July, respectively. If we could have
24 confirmation from Mr. McFetridge or one of his
25 co-counsel that these individuals have accepted to

1 attend on those dates or as directed?

2 MR. McFETRIDGE: You have that
3 confirmation.

4 THE COMMISSIONER: Thank you.

5 MR. PACIOCCO: Finally, there's
6 Mr. Derek Harvey-Zenk, who is represented by
7 Mr. Jay Prober and Mr. Bradley King. At present,
8 we anticipate the attendance of Mr. Harvey-Zenk to
9 provide testimony on the 6th of August. If we
10 could have confirmation that he has given the
11 necessary undertakings and will attend on that
12 date, or as directed by Commission Counsel, from
13 either Mr. Prober or Mr. King?

14 MR. PROBER: Yes, I can confirm that.

15 THE COMMISSIONER: Thank you.

16 MR. PACIOCCO: Those are not all the
17 witnesses we will be calling, Mr. Commissioner,
18 others have been subpoenaed to specific dates
19 throughout the hearing.

20 The last order of housekeeping that
21 needs to be attended to before we actually
22 commence getting into the phase itself is to
23 reaffirm the exclusion of witness order that you
24 made on the 2nd of June, 2008, excluding non party
25 witnesses. The party witnesses entitled to

1 remain, of course, are the Taman family, Mr. Harry
2 Bakema, Mr. Martin Minuk and Mr. Derek
3 Harvey-Zenk. You have also exempted from that
4 order of exclusion Sveinn and Victoria Sveinson,
5 and at the time Ms. Suzanne Gervais, who is here
6 to attempt to develop more insight into victims'
7 matters so that she could profit from that
8 experience. Of course, that order remains in
9 effect.

10 I would simply ask you, Mr.
11 Commissioner, to direct counsel who are
12 representing parties who do not have personal
13 standing, direct them that exclusionary order
14 exists, that they are not to attend when other
15 witnesses are testifying, and they are not to
16 discuss their testimony or the testimony of other
17 witnesses with other witnesses. If you can give
18 that direction to counsel, or have them affirm
19 that they understand that, it would be appropriate
20 to deal with at this juncture.

21 THE COMMISSIONER: Do any counsel have
22 any problems with that direction? All right. The
23 order will go.

24 MR. PACIOCCO: I'm going to be
25 providing an opening statement to this phase in

1 order to situate matters. Before I begin that,
2 there are a number of exhibits that I would like
3 to put into evidence at this point.

4 Exhibit 60 can be found in book B, tab
5 6.a, and it will be the forensic accident report.
6 It was prepared in connection with the
7 investigation by Corporal Blandford of the RCMP.

8 THE CLERK: Exhibit 60.

9
10 (EXHIBIT 60: B.6.a, Forensic Accident
11 Report)

12
13 MR. PACIOCCO: Exhibit 61 is also
14 found in book B at tab 7. It is a weather report
15 document showing the weather conditions at various
16 hours throughout the day on the 25th of February,
17 February, 2005. Exhibit 61 will be found at tab
18 B-7.

19 THE CLERK: Sixty-one.

20 (EXHIBIT 61: B.7, Weather Report)

21 MR. PACIOCCO: Exhibit 62 will be
22 photographs taken on the 25th of February, 2005,
23 at the accident scene. Those photographs will be
24 filed collectively. They are found at tab B-8.a.
25 That will be exhibit, tab B-8.a.

1 THE CLERK: Exhibit 62.

2 (EXHIBIT 62: B.8.a, Accident Photos)

3 MR. PACIOCCO: Exhibit 63 is found in
4 book D, it is found at tab 18.a of book D, and it
5 is the East St. Paul Fire Department's arrival
6 time, exhibit 63, tab D-18.a, East St. Paul Fire
7 Department arrival time.

8 THE CLERK: Exhibit 63.

9 (EXHIBIT 63: D.18.a, ESP Fire
10 Department Arrival Time)

11 MR. PACIOCCO: Exhibit 64 is found at
12 tab D-19.e. This is the Interlake Emergency
13 Service Manager times showing the time of
14 attendance and the time of receipt of the call by
15 the Selkirk Ambulance Service. That's tab D-19.e,
16 and that will be Exhibit 64.

17 THE CLERK: Exhibit 64.

18 (EXHIBIT 64: D.19.e, Interlake EMS
19 Manager Times)

20 MR. PACIOCCO: Exhibit 65 is found at
21 tab 20.e of volume D, the same book, tab D-20.e.
22 This is the Winnipeg Fire Paramedic Services time
23 sheet.

24 THE CLERK: Exhibit 65.

25

1 (EXHIBIT 65: D.20.e, WPS Fire
2 Paramedic Services)

3 MR. PACIOCCO: Exhibit 66 can be found
4 in book B again at tab 8.b. Exhibit 66, book B,
5 tab 8.b, is an overhead photograph of the
6 intersection where the accident occurred. You
7 will notice, Mr. Commissioner, to your left a
8 large blowup of that particular exhibit which we
9 will be referring to during the opening statement
10 to help situate the events. You may want to
11 follow along with the diagram in the book. I know
12 that's some distance from where you're sitting,
13 but I'll try my best, with Mr. Clifford's
14 assistance, to point out the areas that need
15 attention.

16 (EXHIBIT 66: B.8.b, Overhead Photo
17 (blow up))

18 MR. PACIOCCO: Exhibit 67 is at the
19 next tab, tab B-8.c. It is a traffic signal
20 service plan for the same intersection, and it
21 also will be referred to in the opening statement.
22 We have a blowup of that diagram as well, and it
23 is behind the document, or the blowup that we have
24 currently. If the clerk will reveal it?

25

1 (EXHIBIT 67: B.8.c, Traffic Signal
2 Surface Plan (Blow Up)
3 MR. PACIOCCO: And those are the
4 exhibits that I will be referring to in the
5 opening statement. I will also be referring to
6 documents found in book J, which of course is the
7 transcript of proceedings. So if counsel have
8 books B, D and J accessible, they will be able to
9 follow all of the references I make during the
10 opening statement.

11 Mr. Commissioner, I'm going to ask
12 Mr. Clifford to attend to the overhead charts.
13 I'm going to get him to point out a couple of the
14 areas that I do refer to in the first few
15 paragraphs of the opening statement.

16 At approximately 7:05 a.m. on
17 February 25th, 2005, Crystal Taman died in a three
18 car collision that occurred in the southbound
19 lanes of Provincial Trunk Highway 59 at the
20 intersection of a turn-off onto Highway 101, the
21 Perimeter Highway.

22 The overhead document is found at tab
23 B-8.b and has since been made Exhibit 67, if you
24 would look at tab B-8.b? As that document
25 depicts, Highway 59 is a divided road that has

1 three lanes as it approaches Highway 101 from the
2 north. Where Mr. Clifford is now pointing there
3 are three traffic lanes. Those three lanes
4 consist of two southbound lanes that are divided
5 by a solid line, and one westbound or right-hand
6 turning lane. The turning lane will approach the
7 area where you see the road veer off to the left
8 on that diagram. That is the exit lane for
9 southbound traffic on Highway 59 wishing to get
10 onto Highway 101.

11 Past that point, the road becomes a
12 two-lane road. To the south of where the turning
13 lane leaves the road, there is a stoplight. That
14 stoplight exists to enable northbound vehicles
15 travelling on the opposite Highway 59, northbound,
16 to cut across the southbound lanes so they can
17 turn west onto Highway 101.

18 Mr. Clifford, if you can show us 59
19 proceeding north, and those vehicles would turn
20 across.

21 The speed limit on the southbound
22 lanes of Provincial Trunk Highway 59 was 80
23 kilometres per hour on the 25th of February, 2005.

24 If you take a look at the photographs
25 that are found in tab B-8.a, you will notice that

1 they are numbered in the lower right-hand corner.
2 At page 124 of tab B-8.a there is a photograph
3 depicting the traffic lights that exist on the
4 south end of Highway 59 south, as it proceeds
5 through the intersection.

6 If we can move, Mr. Clifford, please
7 to the scaled diagram. The scaled diagram that
8 Mr. Clifford is now retrieving is found at tab
9 B-8.c, tab B-8.c. At the time of the collision,
10 the Taman vehicle, a yellow 1991 Chevrolet Sprint
11 convertible was stopped for a red light in the
12 left-hand southbound lane adjacent to the median.
13 Crystal Taman was the only occupant of that
14 vehicle. The vehicle was stopped and
15 approximately 8 metres ahead of the Taman vehicle
16 near the stop line for that intersection was a
17 dark green Hyundai Accent GS2 operated by its lone
18 occupant, Ms. Kathleen D. Beattie.

19 So in order, in the right-hand lane
20 looking at it from this angle, you would have the
21 Beattie vehicle up at the stop line, and
22 approximately 8 metres behind it in that same lane
23 you would have the Taman vehicle. Thank you,
24 Mr. Clifford.

25 Forensic evidence shows that Crystal

1 Taman's vehicle was rammed directly from behind by
2 a 1995 Dodge Dakota pickup, which we now know to
3 have been operated by its lone occupant, Mr. Derek
4 Harvey-Zenk, also known as Derek Harvey-mordenzenk.
5 The Taman vehicle was then carried by the
6 Harvey-Zenk vehicle into the back of the Beattie
7 vehicle, hence the three car collision.

8 RCMP forensic traffic
9 reconstructionist, Constable Chris Blandford, who
10 was called to the accident scene that morning, has
11 offered the opinion that Mr. Harvey-Zenk made no
12 attempt to stop or slow his vehicle as there are
13 no skid marks that, in Constable Blandford's
14 opinion, can be attributed to the Harvey-Zenk
15 vehicle.

16 It was admitted by counsel on
17 Mr. Harvey-Zenk's behalf during the sentencing
18 submissions that Mr. Harvey-Zenk made no effort to
19 stop the vehicle.

20 If you would take a look at the
21 photograph at page 124 of tab B-8.a? The force of
22 the collision dragged the buckling Taman vehicle
23 completely through the intersection before it came
24 to rest in the middle of the southbound lanes,
25 south of the intersection.

1 You will notice in the photograph at
2 tab 124 that there is a vehicle remaining in the
3 middle of the road. That would be the Taman
4 vehicle. The vehicle is pointed with the front
5 end to the left of that photograph, or to the
6 east, with the back end pointing to the west or
7 the right-hand of the photograph.

8 You will see two other vehicles in
9 that photograph. The truck operated by
10 Mr. Harvey-Zenk is in the snowbank to the left of
11 the Taman vehicle. The Hyundai driven by
12 Ms. Kathleen Beattie is resting next to the
13 traffic light standard on the right-hand side of
14 the road in the snow.

15 By the time it came to rest, the Taman
16 vehicle sustained severe contact damage and crush
17 deformation to both the front end and the rear
18 ends, with much greater damage to the rear. You
19 will see a photograph depicting the damage at page
20 112.

21 The length of the car after the
22 collision was approximately 2.35 metres, while an
23 undamaged vehicle of the same make and model is
24 3.71 metres in length. The convertible roof had
25 been displaced. Damage was so extensive that an

1 emergency caller described the vehicle as cut in
2 half.

3 Ms. Taman was tragically pronounced
4 dead immediately upon her arrival at Concordia
5 Hospital after having been extracted from the
6 vehicle by emergency service workers. Witnesses
7 to the accident concluded that she perished at the
8 accident scene.

9 If you would turn, please, to page 130
10 of the photographs, where you will see the Beattie
11 vehicle depicted. The Beattie vehicle sustained
12 what Corporal Blandford described as moderate to
13 severe damage to the rear, with the primary
14 direction of force occurring from the driver's
15 side corner to the middle of the passenger's side.
16 As a result of the collision, the Beattie vehicle
17 was driven southbound coming to rest off of
18 Highway 59 in the snowbank on the southwest corner
19 of the intersection immediately behind the light
20 standard.

21 If you take a look at tab 125 -- page
22 125 rather of tab B-8.a, you will see a view of
23 the Beattie vehicle up against the light standard
24 taken from within the intersection.

25 If you take a look at the prior page,

1 124, you will note that the Beattie vehicle was
2 moderately north of the Taman vehicle, which came
3 to rest slightly closer to the intersection than
4 the Taman vehicle.

5 After the collision, the Harvey-Zenk
6 vehicle took an uneven path, according to Corporal
7 Blandford. After it disengaged from the Taman
8 vehicle, shortly after it passed the traffic light
9 standard situated on the south side of the
10 intersection, the vehicle continued in a
11 southeasterly direction toward the median ditch.

12 If you take a look, please, at the
13 photograph at page 142? You will see a photograph
14 taken from the north, viewing south across the
15 intersection. You will notice the path of debris
16 and the condition of the snowbank adjacent to the
17 light standard, and to the south of that you will
18 see the Harvey-Zenk vehicle.

19 It is Constable Blandford's opinion
20 that prior to leaving the road, Mr. Harvey-Zenk
21 aggressively applied the brakes and skidded for a
22 short distance before continuing into the median
23 ditch between the northbound and southbound lanes
24 of Highway 59. The vehicle then continued south
25 in the median with its undercarriage in contact

1 with the ice that covered the snow surface. You
2 can see in the photograph the displacement of the
3 snow adjacent to the hole.

4 While on this path, the driver's rear
5 fender of the truck, the left side of the truck,
6 the driver's side, sideswiped the traffic light
7 standard in the median, although in Corporal
8 Blandford's opinion, with insufficient force to
9 slow it materially. Either by design or on its
10 own, the Harvey-Zenk vehicle then turned toward
11 the southwest leaving the median.

12 If you look at the photograph on page
13 145, you will see ruts in the snow, some debris
14 showing that the ruts leave the snowbank and enter
15 back onto the roadway.

16 The vehicle returned to the road
17 surface heading then in a southwesterly direction.
18 And in Corporal Blandford's opinion, the vehicle,
19 which then accelerated, was steered abruptly back
20 to the left or east proceeding back into the
21 median. It was then steered abruptly towards the
22 south before coming to a stop some distance past
23 the Taman vehicle.

24 If you take a look at the photograph
25 two pages hence, at page 147, the vehicle had what

1 Corporal Blandford described as moderate to severe
2 contact damage to its entire front end.

3 Corporal Blandford was unable to
4 estimate the speed of the Harvey-Zenk vehicle as,
5 in his opinion, there were too many variables to
6 allow a forensic determination to be made.

7 At the time of the accident there were
8 a number of indicators to alert a southbound
9 driver of the need to stop at the intersection of
10 Highway 101.

11 Madam clerk, if I could please have
12 you remove the large chart so that we can expose
13 the photograph? And again, this chart is found at
14 tab B-8.b at page 162 of the materials.

15 Approximately 294.46 metres to the
16 north of the intersection, there are two traffic
17 signals that you will see, Mr. Commissioner,
18 depicted in bright yellow on the diagram. One on
19 the median that divides Highway 59, so that will
20 be the smaller one that you see to the right.
21 That's actually located in the grassy area that
22 you're looking at between the north and southbound
23 lanes of Highway 59. And another adjacent to it
24 on the west side of Highway 59, that will be the
25 large yellow sign that you see in the rectangle

1 immediately to the left of the road. The east
2 side signal, the smaller one, bears a traffic
3 light symbol, while the west side traffic signal
4 reads, "prepare to stop." Those words that are
5 written at the top of that yellow rectangle,
6 difficult to read from any distance, require you
7 to prepare to stop.

8 Each traffic light symbol is marked by
9 two amber lights -- you'll notice the lights
10 depicted on the diagram -- that were in proper
11 working condition at the time of the accident.
12 Those lights alternate or flash when there is a
13 northbound vehicle stopped at the intersection in
14 one of the two westbound turning lanes. So if you
15 look at the centre of the diagram, the turning
16 lane which is marked PTH 101. Vehicles coming up
17 from the south wanting to make that turn will get
18 into one of the two turning lanes. If that
19 vehicle is stopped at a red light, it will cause
20 the caution lights on the two signs I have just
21 demonstrated to be activated.

22 According to the timing done and the
23 information received by the accident
24 reconstructionist, those lights will operate for
25 approximately 11 seconds when activated. The

1 intersection of Highway 101 is visible ahead from
2 those lights.

3 There were two traffic lights facing
4 southbound traffic, one on the median on the south
5 side of intersection, and the other on the
6 southwest corner of the intersection. We have
7 looked at those traffic lights and photo at page
8 124. You will see green indications on the
9 roadway of Highway 59 south approximately
10 two-thirds, or between two-thirds and a half of
11 the way up in that southbound lane. Those are the
12 traffic lights.

13 That intersection was lined with
14 streetlights on the east side of the northbound
15 lanes. So on that right-hand median as you
16 approach the intersection, there are traffic
17 lights that illuminate the roadway. Those lights
18 were operating properly, and it was light out by
19 the time of the accident.

20 According to Corporal Blandford, the
21 Harvey-Zenk vehicle would have been a minimum of
22 135.29 metres north of the advanced warning lights
23 when the red lights in the intersection were
24 activated. So if you note the location of the
25 yellow signs, they are marked with arrows to

1 indicate where they appear on the diagram.

2 Mr. Harvey-Zenk's vehicle would have been
3 somewhere north of that, at a distance estimated
4 by the accident reconstructionist of 135.29
5 metres.

6 At 80 kilometres per hour, the
7 Harvey-Zenk vehicle would have taken 6.03 seconds
8 to cover the distance to the warning lights after
9 the light at the intersection turned red. So
10 according to the accident reconstructionist, it
11 would have taken a minimum of six seconds
12 approximately for Mr. Harvey-Zenk to get to the
13 warning lights, let alone the intersection.

14 Constable Blandford offered the
15 opinion, given the variables that he was working
16 with, that at the time of the advanced warning
17 lights and the yellow-red light stage is factored
18 into the particular situation, the Harvey-Zenk
19 vehicle would have been a minimum of 467.7 metres
20 north of the advanced warning lights when they
21 were activated.

22 I'm going to take you to the accident
23 report of Mr. Blandford, which you will find at
24 tab B-6.a. It has been filed as Exhibit 60.

25 I'm going to ask you to turn to page

1 29 of that report. I'm going to read from the
2 last paragraph on page 29 onto page 30. I'm doing
3 this in order to illustrate the assumptions, the
4 factual assumptions that were taken into account
5 by the accident reconstructionist when making
6 those estimates.

7 "All traffic lights were functioning
8 properly. Based on the collision
9 scene, evidence and information
10 provided by the investigators, it has
11 been established that vehicle one and
12 vehicle two..."

13 which would be the Taman and Beattie vehicles,

14 "...were stopped at the red traffic
15 lights for southbound traffic.

16 Immediately prior to the collisions,
17 the traffic lights changed from red to
18 green."

19 We expect that you will hear evidence today to the
20 effect that the light had turned green momentarily
21 before the collision.

22 "The driver of V-3 was southbound when
23 the on scene series of events began to
24 unfold."

25 Vehicle three being the Harvey-Zenk vehicle.

1 "It is known that the advance lights
2 are activated 11 seconds prior to the
3 commencement of the yellow cycle for
4 southbound motorists."

5 And I ask you, Mr. Commissioner, to note the 11
6 seconds because I'm going to read you a passage
7 from the submissions to the court shortly and you
8 need to bear that in mind.

9 "The yellow to red stage is four
10 seconds in duration. Therefore, a
11 southbound motorist has a minimum of
12 15 seconds warning before the lights
13 change to red. If a vehicle is
14 travelling the speed limit of 80
15 kilometres per hour at the beginning
16 of this 15 second period, a vehicle
17 would be approximately 333.6 metres
18 north of the intersection. This would
19 obviously place the vehicle well north
20 of the advanced warning lights which
21 were just less than 250 metres north
22 of the intersection.

23 Based on the survey conducted of the
24 shortest, longest and average length
25 of time the red light is on at the

1 intersection for southbound traffic,
2 motorists could conceivably be
3 approximately 384.75, 680.54 or
4 1000.80 metres north of the
5 intersection when the traffic lights
6 for southbound traffic change to red.
7 In addition, these distances do not
8 take into consideration the timing of
9 the advanced warning lights and the
10 yellow light cycle of 15 seconds. In
11 this case the motorist would have been
12 further away from the intersection.
13 The distance could be longer because
14 information gathered by the
15 investigators determined the driver of
16 V-2 saw the yellow light come on. She
17 slowed down and stopped for the red
18 light. The red light went through an
19 indeterminate amount of time and then
20 changed green. She was about to move
21 when the collision occurred. If this
22 information is accurate, then the
23 driver of V-3..."

24 which would have been Mr. Harvey-Zenk,
25 "...was presented with the activated

1 advanced warning lights and the
2 cycling of the traffic lights from
3 green to yellow to red and finally
4 back to green prior to the collisions.
5 If this part of the investigation is
6 based on the shortest time the red
7 light could have been on, vehicle
8 three was a minimum of 135.29 metres
9 north of the advanced warning lights
10 when the red light is activated. At
11 the speed limit, it would have taken
12 vehicle three 6.0 seconds to cover
13 this distance. If the time of the
14 advanced warning lights and yellow to
15 red lights stage is factored into this
16 particular situation, vehicle three
17 would have been a minimum of 467.70
18 metres north of the advanced warning
19 light when they were activated 21.03
20 seconds times 22.24 metres per second.
21 I'm going to ask you to look, if you
22 would, at what has become Exhibit 9 in these
23 proceedings, book J? And you can find the passage
24 I will read at tab J-62, which are the proceedings
25 before the Honourable Judge Wyant on the 22nd day

1 of August, 2007. And I would take you please to
2 page 1625? You will find at page 1625 submissions
3 of fact being presented by special prosecutor
4 Martin Minuk. I'm going to begin at line 7.

5 "At a technical level, beyond that
6 which you've heard already, the expert
7 concluded that the accused, like other
8 drivers on that road, would have had
9 advanced warning of the red light.
10 The reason for this is because as you
11 approach the intersection, overhead
12 lights activate and remain on for a
13 period of 8 seconds prior to the
14 light, a yellow light being
15 activated."

16 I had you, Mr. Commissioner, harken to the 11
17 second statistic provided by the accident
18 reconstructionist. The submission provided to the
19 court converted 11 to 8. There may well be an
20 explanation for that. There is not one that we
21 are, at this point, aware of.

22 So that as you approach the
23 intersection on a green light, 8 seconds before
24 the yellow light comes on, an overhead sign
25 activates warning drivers that the lights are

1 going to change.

2 "The Court: And I assume stay on
3 until the light turns green again?
4 Mr. Minuk: After the yellow light is
5 activated, a further four seconds
6 passes before the red light activates.
7 So in total then there would be
8 approximately 12 seconds before the
9 light would turn red. So as the
10 accused was approaching the
11 intersection, had he seen the overhead
12 lights, he would have had 12 seconds
13 to apply the brakes and slow down. In
14 this particular case, he would have
15 had the additional visual in front of
16 him, as did the witness, that one car
17 was slowing down, two were already
18 stopped at the red light."

19 So those were the facts that were
20 presented to Chief Judge Wyant and evidently
21 accepted or not objected to by counsel for
22 Mr. Harvey-Zenk. They collapse the 15 seconds in
23 the forensic report to 12 seconds as the time that
24 the vehicle would take to get from the warning
25 lights to the intersection.

1 In Constable Blandford's opinion, the
2 brake lights on the Taman vehicle were activated
3 and at least the passenger tail lamp was
4 activated.

5 Weather is not believed to have been a
6 factor in the accident, according to the accident
7 reconstructionist, as visibility was unrestricted.
8 24.1 kilometres is the indicated visibility. You
9 will find that reference in Exhibit 61 at tab B-7,
10 which is the weather report. 24.1 kilometres.

11 And the road surface on the north side
12 of the southbound lane of Highway 59, where the
13 vehicles were travelling, described by the
14 accident reconstructionist as bare, level and dry
15 with a light layer of frost -- bare, level and dry
16 with a light layer of frost.

17 The accident occurred moments after
18 7:00 o'clock. The weather report discloses that
19 the temperature at that time was 20 degrees.

20 At this time I would like to file an
21 agreed Statement of Facts with the Court as
22 Exhibit 68.

23 (EXHIBIT 68: Background Narrative Of
24 Fact Surrounding The Accident)

25

1 MR. PACIOCCO: The facts that I have
2 just provided to you, other than the transcript
3 reference and the passage that was read from
4 Corporal Blandford's opinion, are contained in an
5 Agreed Statement of Facts, and I would want to
6 thank all counsel for being cooperative in saving
7 us the need, at least at this point, unless
8 controversy arises, of calling the witnesses who
9 would have established those facts that have been
10 laid before you.

11 So those, Mr. Commissioner -- I have
12 just been handed a note. The temperature was
13 minus 20 degrees Celsius. I don't know if I
14 provided inaccurate information in that regard.

15 So those, Mr. Commissioner, are the
16 circumstances in which Crystal Taman died, and
17 that of course is what was being investigated, an
18 unexplained rear-end collision, with no apparent
19 attempt to abate speed, on a clear morning.

20 That investigation, as you are aware,
21 lead to alcohol related charges being laid against
22 Mr. Derek Harvey-Zenk. I won't take you to the
23 information that has been filed as Exhibit 4-A.
24 We are all well aware at this point that
25 Mr. Harvey-Zenk was charged with refusing to

1 provide a sample of his breath. He was charged
2 with impaired driving causing death. He was
3 charged with criminal negligence causing death.
4 And he was charged with dangerous driving causing
5 death.

6 Certainly, the public understands
7 alcohol related driving offences. They seem
8 simple, they seem clear, and there is a very
9 strong public aversion to the waste and tragedy
10 that follows from alcohol related traffic deaths.

11 The other charges are a bit more
12 mysterious. They are more generic, of course,
13 they can apply in cases where there is no alcohol
14 and they can apply in cases where there is
15 alcohol.

16 Without question, those alcohol
17 related charges raised certain expectations. You
18 heard Mr. Sveinson testify and describe how, for
19 the first time when he heard of these charges,
20 things started to make sense. How on a clear day,
21 his daughter could be snatched away in a rear-end
22 collision, on an open stretch of straight highway
23 at 7:00 o'clock in the morning.

24 With the laying of those charges, this
25 case came to be in the public perception, no

1 doubt, about alcohol and impaired driving. And it
2 is clear from the press reports and the reaction
3 of the family that it caused outrage. An off-duty
4 police officer charged with impaired driving in
5 the death of a woman who was just trying to get to
6 work.

7 That prosecution, of course, developed
8 and changed over time. With the staying of those
9 alcohol related offences, the controversial
10 agreement to make a joint position for a
11 conditional sentence, the revelation that the
12 prosecutor attributed is weak case to a botched
13 investigation, and the controversy sparked by
14 Chief Judge Wyant's rebuke of counsel, including
15 Mr. Minuk, for how the case was handled. Those
16 expectations relating to the alcohol related
17 charges and what many would have expected the
18 outcome to be were defeated. A public outcry
19 ensued and, of course, this inquiry has resulted.

20 Today we of course begin phase two of
21 the inquiry, the examination of the investigation
22 and prosecution. Last month, between the 2nd of
23 June and the 11th of June, over five days, we
24 focused on the third leg of the mandate, to
25 inquire into whether the services provided to the

1 family of Crystal Taman were sufficient, having
2 regard to the requirements of the Victim's Bill of
3 Rights.

4 We have now completed phase one of the
5 Taman Inquiry with one very important omission.
6 Mr. Minuk, whose conduct was challenged by some of
7 the witnesses in phase one, was not invited to
8 testify at phase one. He has not had an
9 opportunity to respond, and he will have that
10 opportunity during this phase.

11 Mr. Commissioner, you will recall why
12 we began with your Victims' Bill of Rights
13 mandate. I indicated at the time that we wanted
14 to enable the families to get the chance to have
15 their testimony put behind them. After three and
16 a half years of waiting, they needed a chance to
17 catch their breath and sit back and focus on our
18 work without the apprehension of having to take
19 the stand.

20 Unfortunately, we are going to require
21 the testimony of Tara Taman again, and she will be
22 testifying today, and then she will certainly be
23 done.

24 Perhaps more importantly, we wanted to
25 ensure that this inquiry did not become an

1 abstract inquiry into an investigation or a case.
2 That remains imperative today, Mr. Commissioner,
3 as we start phase two. This exercise will lose
4 its purpose unless we bear in mind that, at
5 bottom, a criminal investigation and a prosecution
6 has an important human dimension. Our system is
7 very cognizant of the human dimension that impacts
8 upon the accused who faces serious and
9 stigmatizing charges and potentially the loss of
10 liberty. But prosecutions and investigations have
11 human dimensions that got beyond the accused.
12 After the victims' phase, that dimension is
13 palpable and up front. You heard a great deal
14 about the woman whose death gave rise to the
15 prosecution, Crystal Taman.

16 While the victim is not a party in
17 Canadian criminal proceedings, it remains true
18 that we investigate and prosecute alleged crimes
19 in large measure out of respect for the bodily
20 integrity and right of safety that a victim is
21 entitled to expect. This investigation and
22 prosecution was or should have been in large
23 measure about her. And you have heard how the
24 family believes it has dishonoured her. That if
25 that prosecution and that investigation wasn't

1 taken seriously or conducted properly, it was an
2 insult to her memory. It trivialized her life.

3 The human dimension in an
4 investigation and prosecution that is so easily
5 forgotten by those of us who administer the
6 system, and get caught up in cases and files that
7 we must be mindful of, goes beyond the immediate
8 victim, Crystal Taman. You have seen how
9 powerfully the Tamans and the Sveinson's have been
10 affected by this horrible nightmare that they have
11 lived in losing a wife, a mother, a daughter, a
12 sister, and how in their view, their sincerely
13 held view, their ability to heal and move on has
14 been undermined by what they perceived to be the
15 failure of justice, both in the investigation and
16 the prosecution.

17 When we undertake our examination of
18 the investigation and prosecution, we have to
19 measure it and judge it using that yard stick.
20 Was the investigation and prosecution taken
21 seriously enough and discharged with sufficient
22 care and commitment to reflect what was at stake,
23 namely, the well-being of all of those implicated,
24 including Mr. Harvey-Zenk who faced tremendously
25 serious charges and deep damage to his reputation

1 and the family, who needed, in their minds,
2 justice in order to heal.

3 When we look at the investigation and
4 prosecution over the next several weeks, we cannot
5 allow it to become an abstract inquiry because it
6 mattered tremendously. And there is the interest
7 of the community at large and the community
8 perception.

9 The community, of course, depends upon
10 the police and its prosecution service to maintain
11 law and ensure that law is respected and justice
12 is achieved. There has been heartfelt and anxious
13 concern expressed by vocal members of the public,
14 perhaps speaking on behalf of a silent majority of
15 the public, or a significant number of members of
16 the public. That justice was not achieved in this
17 case.

18 The perceived failure of justice is
19 always a serious matter, but it takes on
20 particular urgency here. That is because,
21 Mr. Commissioner, the fear that justice was not
22 done in this case is unrelated to the more benign
23 causes of injustice. This case did not cause
24 concern because there was a belief that there just
25 wasn't sufficient evidence about what happened.

1 The fear that there was injustice here is not
2 mainly based on one of the other understandable
3 causes that might lead the public to believe an
4 injustice -- namely, the proper application of
5 what some might think are bad laws. And to be
6 sure, we heard concern about the conditional
7 sentence being inadequate, and about the way we
8 deal with individuals who refuse breath tests or
9 blood sample tests, and those concerns were
10 expressed. But the fear is that justice in this
11 case failed for more disturbing reasons, including
12 incompetence.

13 The perception, whether fair or not,
14 is that there was incompetence in the police
15 investigation. And that perception may have been
16 fuelled by the coincidental and partially related
17 controversy surrounding the East St. Paul Police
18 Force that made the public attention, and with the
19 ultimate resignations or dismissals of two of the
20 three officers who were on the scene, Chief Bakema
21 and Constable Graham. That perception of
22 incompetence was no doubt fuelled by the position
23 taken more subtly by Mr. Minuk, the prosecutor in
24 court, and certainly more openly in the press by
25 unnamed justice officials, that Mr. Minuk had a

1 flawed investigation to work with, flawed enough
2 to require an investigation of the investigation
3 by the RCMP.

4 And then there was concern held by
5 some again, whether fairly or not, that justice
6 failed because of incompetent decisions made by
7 the prosecutor, Mr. Minuk, his decision to agree
8 to drop charges, his decision to agree to a joint
9 position on conditional sentence, his decision not
10 to try to prove alcohol consumption. But far more
11 disturbing than suggestions of bad judgment, poor
12 performance, or even incompetence, is the public
13 fear that injustice may have been wrought as a
14 result of police corruption.

15 There is apprehension by some,
16 expressed again in the media, no doubt held by yet
17 others, that police investigators defeated the
18 promise of the rule of law by intentionally
19 causing this investigation to fail in order to
20 protect one of their own. This is a stinging
21 allegation.

22 Our society is peaceful and respectful
23 because it's built on the rule of law, the sense
24 that law is not dependent on the fiat or power of
25 individuals, that it is a universal right of all

1 of us to be treated the same, regardless of who we
2 are. What gives law its majesty is that the
3 powerful too are either prepared or required to
4 submit to it, just as we all are. It gives us
5 equal value, a sense of worth, a sense of trust, a
6 sense of belonging, a sense that there is a
7 widespread and fundamental commitment by society
8 to fairness and respect for human beings, we all
9 value each other, including the Crystal Tamans of
10 the world, and we care what happens to them.

11 The mere possibility that the police
12 could have put higher value on their commitment to
13 each other than to the rule of law shakes the
14 public confidence in the administration of
15 justice. Hence, this inquiry, and hence the
16 examination of the investigation and prosecution.
17 The public needs to know whether any of these
18 apprehensions are fairly held.

19 Phase two of this inquiry will be
20 conducted in five parts. Part one deals with the
21 accident scene. We are going to begin with the
22 accident scene, a process that commenced this
23 morning when I read the agreed facts surrounding
24 the accident a short time ago. This part we will
25 complete this week.

1 This week we will be calling Kathy
2 Beattie, the driver of the third vehicle in the
3 accident, the Hyundai that ended up against the
4 post; Mr. Garth Shaw. Other than Mr. Harvey-Zenk
5 himself, Mr. Garth Shaw is the only eye witness to
6 the collision with a vantage point that permitted
7 him or anyone to describe what the Harvey-Zenk
8 vehicle was doing. You will hear from Tara Taman
9 who was at the accident scene to describe her
10 observations.

11 Tomorrow we will be calling Denise
12 Bukowski, who had arrived at the accident scene
13 immediately after and made certain observations.
14 We will hear from Cecil Sveinson, a Winnipeg
15 police officer and cousin of Crystal Taman, who,
16 after hearing about the accident, attended the
17 scene and was there when the accident
18 reconstruction was being done. We will hear from
19 two ambulance attendants who attended to
20 Mr. Harvey-Zenk, Mr. Edward Rosser and Mr. Roland
21 Fontaine, both of the Selkirk Ambulance Service.

22 We are calling these witnesses for
23 three reasons, Mr. Commissioner, and there are
24 three focuses that we will try to give the
25 evidence and that we would ask you to harken to.

1 We are going to ask them to share their
2 observations about the activities and condition of
3 Mr. Harvey-Zenk. Secondly, we are going to ask
4 them to share their observations of the
5 interactions of attending police officers with
6 Mr. Derek Harvey-Zenk. Of particular importance,
7 Mr. Commissioner, are their observations of the
8 interaction between Chief Bakema and
9 Mr. Harvey-Zenk. We expect the evidence to show
10 that Chief Bakema did deal with Mr. Harvey-Zenk at
11 the scene, ultimately escorting him to the police
12 vehicle. And based on currently available
13 information, we anticipate that there could be
14 important discrepancies about what took place.

15 Third, we are going to have some of
16 these witnesses offer their testimony about their
17 role in the police investigation and the
18 prosecution that followed. Please be aware when
19 you listen to their evidence that we expect other
20 evidence to show that there were but three
21 officers at the immediate collision scene, all
22 East St. Paul Police Force officers, Chief Bakema,
23 Constable Ken Graham, who you excused this
24 morning, and Constable Jason Woychuk.

25 After we complete part one, part two

1 will focus on the East St. Paul Police
2 investigation, including the interaction of police
3 investigators with the prosecutor, Mr. Martin
4 Minuk. We will be able to begin this second part
5 this week by calling Constable Glenda Pedersen,
6 and we anticipate Constable Ken Graham.

7 You have already heard from Constable
8 Pedersen in the victim's context. This week you
9 will hear her involvement in the investigation,
10 including observations that she made of
11 Mr. Harvey-Zenk at the time of his release from
12 custody, later in the morning or early afternoon
13 of the 25th of February.

14 As for Constable Graham, he was at the
15 scene. He participated in the immediate
16 investigation.

17 As part of this, part of the inquiry,
18 the East St. Paul Police investigation, we will be
19 hearing probably next week from three key
20 witnesses; Constable Jason Woychuk, who we
21 understand transported Mr. Harvey-Zenk to the
22 police station. We will be hearing from current
23 Chief Carter, then a police sergeant, who arrested
24 Mr. Harvey-Zenk after Constable Woychuk brought
25 him to the station. We will also be hearing from

1 Chief Harry Bakema, who was the senior officer at
2 the accident scene. And we may be hearing from
3 Constable Brian Maloney, whose evidence will be
4 much more incidental to that which will be
5 provided by the other three witnesses.

6 During this second part there are many
7 things that you should be alerted to,
8 Mr. Commissioner, many things you should focus on.
9 The first is this: One of the deepest mysteries
10 in this case is that when Mr. Harvey-Zenk was
11 taken to the station, shortly after 8:10 a.m. on
12 the 25th of February, 2005, then Sergeant Carter
13 observed what he considered to be clear evidence
14 of impairment on the part of Mr. Harvey-Zenk. Yet
15 we expect the evidence to show that
16 Mr. Harvey-Zenk was not arrested at the scene.
17 Why not? Was Chief Carter wrong and there was, in
18 fact, no basis for the arrest of Mr. Harvey-Zenk?
19 Was it because there had been no close and
20 competent investigation at the scene, or worse,
21 was it a conscious decision at the scene not to
22 investigate properly?

23 Second, you will want to consider
24 whether Chief Bakema was in a conflict of
25 interest, given that he knew Mr. Harvey-Zenk from

1 a time when they were both police officers at the
2 Winnipeg Police Service. You will want to listen
3 carefully to the evidence about the nature of
4 their knowledge of each other, or their
5 familiarity, and consider the way Chief Bakema
6 dealt with that issue.

7 Third, you will want to attend very
8 closely to the quality of the investigation that
9 took place at the accident scene. Was it an
10 organized criminal investigation, something more
11 akin to free-form chaos, or was it something in
12 between?

13 Was there adequate communication
14 between the officers of relevant observations
15 about a possible criminal cause for this
16 collision? If there was not adequate
17 communication, why not? Was there a basis for a
18 roadside breath demand to be made of
19 Mr. Harvey-Zenk while he was there? And if so,
20 why was it not done? Were there charter
21 violations? And if so, why did they occur? More
22 specifically, was Mr. Harvey-Zenk arbitrarily
23 detained in Constable Woychuk's vehicle? Was he
24 denied his right to counsel at the roadside?

25 Fourth, you will want to consider the

1 quality and integrity of the investigation after
2 Mr. Harvey-Zenk left the crime scene, including
3 (A) after his arrest, was the breath demand that
4 was made mishandled? (B) Was it reasonable in all
5 of the circumstances, after Mr. Harvey-Zenk was
6 processed, to release him on a simple promise to
7 appear, without any conditions? (C) Did Chief
8 Bakema direct or encourage Constable Woychuk to
9 falsify his notes to downplay the evidence of
10 alcohol; and if so, was that done to protect
11 Mr. Harvey-Zenk or to hide a charter violation?
12 (D) Did Chief Carter wait too long before dealing
13 with an allegation he says was made to him by
14 Constable Woychuk, that Chief Bakema directed
15 Constable Woychuk to falsify his notes? (E) Why
16 did Chief Carter fail to respond to repeated
17 requests from Mr. Minuk to secure a search warrant
18 to obtain business records from the location where
19 Mr. Harvey-Zenk had been socializing?

20 Part three of the second phase of the
21 inquiry will focus on the Winnipeg Police Service.
22 We expect that you will hear evidence that in the
23 nine or so hours before Mr. Harvey-Zenk was in the
24 unexplained collision that killed Crystal Taman,
25 that he had been socializing, first at a

1 bar/restaurant, and then at the home of a fellow
2 police officer where alcohol was served.

3 You will hear evidence that the
4 investigation of the activities of
5 Mr. Harvey-Zenk, prior to the collision, was
6 conducted, not by the East St. Paul Police, but by
7 the Winnipeg Police Service Professional Standards
8 Unit.

9 You will want to consider a number of
10 things when we conduct this part of the inquiry.
11 This Commission will be interested to learn
12 whether that was an appropriate choice. To the
13 public, it might appear, as Sveinn Sveinsson
14 suggested, is the police investigating their own,
15 not just the unavoidable spectre of officers
16 investigating officers, but the choice to have
17 officers from a police force whose reputation was
18 at stake investigate other officers from the same
19 force. You will be called to determine whether
20 that was appropriate and how this decision was
21 taken.

22 We also intend to look critically at
23 the adequacy of the investigation that was
24 conducted by the Professional Standards Unit. We
25 will examine the timing of the interviews, the

1 manner in which the investigation was conducted,
2 the range of questions posed to witnesses, and the
3 intensity of the scrutiny that was given by the
4 investigators to the answers those witnesses
5 provided. We will do this so that you will be
6 able to determine whether that investigation was
7 conducted with integrity and competence.

8 You will also hear evidence that there
9 were more than 20 off-duty Winnipeg Police
10 Officers at the restaurant/bar with
11 Mr. Harvey-Zenk. And we anticipate that the
12 evidence will show that none could or would
13 provide helpful information about how much alcohol
14 Mr. Harvey-Zenk consumed. Not just an inventory
15 of precise number of drinks, but whether he drank
16 heavily or not, and in many cases whether he drank
17 at all.

18 Moreover, we expect the evidence to
19 show that there were 10 off-duty Winnipeg Police
20 Officers with him at a private residence following
21 the closure of the restaurant/bar, and that the
22 socializing occurred mainly in the kitchen area of
23 that private dwelling, where alcohol was served.

24 Again, we expect the evidence to show
25 that none of the 10 either could or would provide

1 helpful information about how much alcohol
2 Mr. Harvey-Zenk consumed, if any. Not just
3 numbers of drinks, but whether he drank heavily or
4 not, and in most cases whether he drank at all.

5 We certainly understand that this is
6 not a retrial of Mr. Harvey-Zenk. It's not a
7 retrial of whether he really was impaired at the
8 time that Crystal Taman died, nor is it an inquiry
9 into whether he drank, or how much he drank. But
10 we cannot examine the correctness and adequacy of
11 the procedures and practices, or the good faith
12 objectiveness and professional standards applied
13 in the investigation, without seeing what was
14 there to be seen.

15 We intend to put the key Winnipeg
16 Police Officers under oath and to challenge their
17 memories and the versions of events they provided.

18 To assist you in resolving all of the
19 investigative decisions and their quality, we will
20 be calling a police expert on professional
21 standards, although to accommodate his schedule,
22 we may have to call him out of order.

23 You should be aware, Mr. Commissioner,
24 that counsel for East St. Paul had approached
25 Commission Counsel about evidence that they were

1 considering calling, that is relevant to part
2 three of the inquiry. Together we discussed the
3 information that they wanted to present evidence
4 about, and Commission Counsel indicated that if
5 the facts were agreeable to us, based on what we
6 know, and to those individuals directly affected,
7 we would, Commission Counsel, consent to the
8 simple filing of a narrative.

9 We contacted Chief Bakema through his
10 counsel, and Mr. Graham, and they have agreed. So
11 I would like to file as Exhibit 69 a Statement of
12 Facts pertinent to the Rural Municipality of East
13 St. Paul, agreed to by Commission Counsel. And
14 that document has been furnished to all of the
15 parties, a Statement of Facts pertinent to the
16 Rural Municipality of East St. Paul, agreed to by
17 Commission Counsel. That should be Exhibit 69.

18 THE CLERK: Exhibit 69.

19 (EXHIBIT 69: Z-1, Statement Of Facts
20 Pertinent To The Rural Municipality Of
21 East St. Paul Agreed To By Commission
22 Counsel)

23 MR. PACIOCCO: Now, I know that
24 counsel for East St. Paul wants this to be part of
25 the open public record. I will not read that six

1 page document at this juncture, but I will invite
2 Mr. McDonald or Ms. Bowley to do so at the close
3 of the relevant part of the Commission.

4 Part four of this second phase will
5 focus on the prosecution of Mr. Harvey-Zenk. You
6 are required to look at all aspects of the
7 prosecution to see whether they were conducted in
8 accordance with professional and ethical standards
9 expected of lawyers and agents of the Attorney
10 General. As you are aware, this prosecution was
11 conducted by independent counsel, Mr. Martin
12 Minuk. Some will hold a very highly critical
13 perception of the job he did, and that perception
14 no doubt contributed to the decision to include
15 the prosecution in this inquiry. That perception
16 was ultimately coloured, no doubt, by the result,
17 including a decision to drop three of the four
18 charges, including both of the alcohol related
19 charges, a decision to enter into a joint position
20 for a conditional sentence on the remaining
21 charge, the dangerous driving charge, the decision
22 not to seek to prove that Mr. Harvey-Zenk had
23 alcohol in his body at the time of the collision,
24 something that the presiding chief judge made
25 clear, he would have considered an aggravating

1 circumstance in sentencing.

2 You will recall Chief Judge Wyant
3 remarking that Mr. Minuk cannot be blamed if his
4 deck was short of cards, that he could only play
5 the cards he had. It is during this phase of the
6 hearing that you will hear what cards Mr. Minuk
7 had in his hand, and whether his deck was short,
8 and if it was short, why. That will enable you to
9 decide, one, whether he made an appropriate
10 decision to stay the three charges he did; two,
11 whether he entered into an inappropriate and an
12 improvident resolution by agreeing to a
13 conditional sentence on a dangerous driving plea;
14 and three, whether it was appropriate for him to
15 have elected not to try to prove that
16 Mr. Harvey-Zenk had alcohol in his body at the
17 time of the collision.

18 During this phase, you will also want
19 to consider, four, whether if this case was too
20 weak to parlay into a conviction of all of the
21 charges, he took adequate steps to advise
22 investigating officers on how to address those
23 weaknesses, whether he conducted due diligence
24 before making the decisions he did. Did he or
25 should he have interviewed witnesses? Was he

1 suitably critical, if he should have been at all,
2 of the information placed before him? Did he
3 consider his options as a prosecutor fully?

4 Fifth, you will want to consider
5 whether on August 22nd, he made appropriate
6 disclosure to Chief Judge Wyant about his reasons
7 for resolution. Whether he gave adequate guidance
8 to the court on whether the joint position was a
9 quid pro quo plea bargain or a simple coincidental
10 joint resolution.

11 Sixth, you will want to consider
12 whether he acted, in fact, as an independent
13 prosecutor. You will want to pay careful heed to
14 the evidence of any interactions he may have had
15 with officials from Manitoba Justice throughout
16 the prosecution.

17 Seventh, there have been allegations
18 made that he was in a conflict of interest, given
19 his dealings as a defence lawyer and his work with
20 Mr. Wolson. You will want to pay attention to the
21 nature of that prior contact and decide whether
22 there is anything to those concerns.

23 Eighth, there were also concerns
24 raised during the victims' phase, claims that I'm
25 certain Mr. Minuk is anxious to answer because

1 they allege that he was not forthright with the
2 victims. More specifically, (A) that he provided
3 inaccurate or inconsistent information about the
4 strength of his case. (B) That he was not
5 forthright about the existence of a plea bargain
6 with Mr. Wolson. (C) That he represented that the
7 dangerous driving charges were the most serious of
8 the charges laid. And (D) that there may have
9 been an inaccurate description of the purpose for
10 the RCMP investigation and the need to adjourn the
11 preliminary inquiry in 2006.

12 Ninth, Mr. Commissioner, there was
13 also concern raised by the victims that Mr. Minuk
14 failed to consult with them adequately, contrary
15 to policy guidelines for Manitoba Justice and the
16 victims' bill, and that he may have misrepresented
17 that the Taman family was on side with the
18 position he was taking.

19 Tenth, more generically, claims were
20 made during the victim phase that he failed to
21 treat the victims with dignity and respect. And
22 with respect to these victims' issues, I caution
23 at the time that Mr. Minuk was not given a chance
24 to respond at that stage. When he testifies, he
25 will have an opportunity to do so.

1 During this, the fourth part of the
2 inquiry into the prosecution, you will hear from
3 Mr. Wolson, who defended Mr. Harvey-Zenk, and we
4 will call Mr. Minuk, who we expect to testify at
5 some length. You will also hear from officials
6 from Manitoba Justice and two experts on
7 prosecutorial standards and ethics.

8 Finally, the last part of our phase
9 two will be the testimony of Mr. Harvey-Zenk.

10 Even though this is not a surrogate
11 trial of Mr. Harvey-Zenk, he will be called as a
12 witness. He has relevant evidence to give as a
13 witness and participant in the accident that will
14 assist in deciding whether investigative standards
15 were met.

16 Now that Mr. Harvey-Zenk no longer
17 enjoys a right to silence, we will want to hear
18 from him about his activities prior to the
19 accident, what condition he was in, so that we can
20 measure whether the Winnipeg Police Service
21 Professional Standards Unit got to the bottom of
22 things during their investigation. We will want
23 to hear from him how he was treated at the
24 accident scene by the officers. We will want to
25 hear from him about how the investigation at the

1 police station was conducted. He was a witness to
2 all of that.

3 He also has relevant evidence to give
4 about the decisions taken by his counsel which
5 impacted upon prosecutorial choices that were
6 made.

7 I can only reaffirm that Commission
8 Counsel is mindful that we are not advocates. We
9 do not represent any of the parties. We are not
10 seeking to arrive at a specific outcome. We have
11 but one master, and that master is the pursuit of
12 the truth. We are to be neutral and fair to all
13 of the parties, and we intend to be. We are
14 entirely open to explanations that may be
15 forthcoming for the hard questions that we propose
16 to ask. We cannot forget and have not forgotten
17 about the possibility that the reason the
18 investigation failed to produce sufficient
19 evidence of impairment to convict Mr. Harvey-Zenk
20 of anything more than a lower order version of
21 dangerous driving, resting on an unexplained
22 accident, was that Mr. Harvey-Zenk was not
23 impaired. Not every horrible consequence is a
24 result of a crime. Innocent people do die on our
25 roads at the hands of other innocent people.

1 We cannot forget and have not
2 forgotten that the possibility that the reason the
3 investigation came up short was that there was
4 nothing remarkable to find. We cannot forget and
5 have not forgotten the possibility that the
6 Winnipeg Police Officers who were with
7 Mr. Harvey-Zenk in the hours leading up to the
8 collision did not have anything to offer the
9 investigators, either because there was nothing to
10 see or they had no reason to see it. But our
11 mandate is to seek the truth about why this
12 investigation and prosecution ended as it did.
13 There are many hard questions to be asked, and we
14 intend to ask them and to let the evidence,
15 thoroughly tested, take us where it will.

16 I'd like to begin our examination of
17 information relating to the second phase by
18 focusing on the accident scene, and we are about
19 to call our first witness. But first the
20 chronology of events is somewhat confusing, and to
21 assist you in navigating through it, the parties
22 have been gracious enough to agree to a basic
23 Statement of Facts, which includes information
24 about the chronology of events. It is contained
25 in Exhibit 68, which was filed shortly ago, and I

1 propose to put it on the record commencing at the
2 third page of that document.

3 The earliest attributed estimate of
4 the time of the accident was provided by Mr. Garth
5 Shaw, whose post accident cell phone call to work
6 to advise he would be late was placed at 7:07 a.m.
7 according to information provided by East St. Paul
8 Police. We will be calling Mr. Shaw to provide
9 oral testimony about his involvement in those
10 events.

11 According to available information, it
12 is not clear who was next on the accident scene.
13 Several motorists happened upon the accident in
14 short order. Ms. Denise Bukowski, who will
15 testify tomorrow, observed when she arrived with
16 her husband, nothing was moving.

17 Mr. Dale Kasper, an off-duty Winnipeg
18 fire fighter who was on his way to work, arrived
19 at around the same time and pulled his van in
20 front of the Taman vehicle to protect it from
21 oncoming traffic.

22 Mr. Vernon Stevens believes that as he
23 approached the intersection from approximately
24 one-half a kilometre, he could see movement that
25 he likened to a spinning vehicle. Mr. Kasper,

1 wearing his firefighter's jacket bearing a
2 Winnipeg Fire Service shoulder patch, checked on
3 the vehicles involved in the accident, ultimately
4 turning off the Taman motor vehicle's engine. He
5 took charge in advance of the arrival of Emergency
6 Services by directing traffic.

7 At 7:10, the first confirmed call for
8 emergency assistance was placed by Mr. Ken Ford to
9 the East St. Paul Police Service. At 7:12,
10 Winnipeg Fire and Paramedic Services received a
11 call and shortly after dispatched two ambulances
12 to the scene from different locations, unit 24 and
13 unit two.

14 Now, I filed at tab D-20.e the East
15 St. Paul, or the Winnipeg Fire and Paramedic
16 Services rather, time sheet, showing the departure
17 times and arrival times of the vehicles, unit 24
18 and 2 respectively.

19 At approximately 7:16, East St. Paul
20 Emergency Service received a call, that is
21 confirmed from the document at tab D-18(a).
22 Constable Graham's notes record that he and Chief
23 Bakema, both of the East St. Paul Police, arrived
24 on scene at that time, 7:16 a.m.

25 At 7:17, a call for an ambulance was

1 received by the Selkirk Ambulance Service, and we
2 know that from the document found at tab D-19.e,
3 the Interlake Regional Health Authority record.

4 It appears that at 7:22, approximately
5 the same time that the East St. Paul Emergency
6 Service first responders were arriving, Constable
7 Woychuk of the East St. Paul Police Service
8 reached the accident location.

9 Immediately upon his arrival, first
10 responder Chief Ray Riddolls of the East St. Paul
11 Emergency Service attended to Crystal Taman but
12 found no signs of life. The record at tab D-18(a)
13 shows that that vehicle that Chief Ray Riddolls
14 was in arrived at 7:24.

15 Based on current information, Winnipeg
16 Fire and Paramedic Services unit 24 was the next
17 emergency vehicle to arrive at some undetermined
18 time before 7:25. There is some confusion in the
19 records because the arrival time is recorded by
20 hitting a button. The arrival time for unit 24 is
21 shown on the record as being 7:35. We believe
22 that it arrived before 7:25, because vehicle unit
23 2 arrived at 7:25 and all paramedics involved in
24 those two vehicles agree that unit 24 was there
25 ahead of unit number 2. Unit 24 attended to the

1 more gravely injured, certainly Crystal Taman.

2 Paramedics in that vehicle, Jonathan
3 Hawkes and Don Fotti immediately went to
4 Ms. Taman.

5 At the same time, 7:25, Winnipeg Fire
6 and Paramedic Service unit two arrived at the
7 scene. Paramedic Leonard Pleskacz went to assist
8 at the Taman vehicle, while paramedic Lisa Trochim
9 attended to Ms. Beattie. Together the East St.
10 Paul Emergency Service and other emergency
11 personnel managed to extract Ms. Taman from her
12 vehicle, and resuscitation attempts were
13 commenced.

14 At 7:43, Winnipeg Fire and Paramedic
15 Services ambulance unit 24 departed with Crystal
16 Taman for Concordia Hospital. And two minutes
17 later, at 7:45, unit number 2 followed with
18 Ms. Kathleen Beattie.

19 That is the opening statement that I
20 want to provide the Commission. I think that this
21 is an opportune time for a morning break and we
22 will commence after the break with the testimony
23 of Ms. Kathleen Beattie.

24 THE COMMISSIONER: Ten minutes.

25 MR. PROBER: I would suggest a few

1 more minutes than that.

2 THE COMMISSIONER: We'll give you
3 specifically, Mr. Prober, and all the other
4 counsel 15 minutes.

5 MR. PROBER: Thank you.

6 THE CLERK: Order. All rise. This
7 Commission is in recess.

8 (Proceedings recessed at 11:05 a.m.
9 and reconvened at 11:21 a.m.)

10 THE CLERK: All rise. This Commission
11 of Inquiry is now reopen. Please be seated.

12 MR. CLIFFORD: Good morning, Your
13 Honour. Prior to calling our next witness, which
14 is Kathleen Beattie, I was going to indicate that
15 two counsel wanted to address Your Honour for the
16 purpose of introducing new counsel in the room.

17 THE COMMISSIONER: Yes.

18 MS. CLEARWATER: Mr. Commissioner, I'd
19 just like to introduce you to Mr. Scott Hoepner,
20 who may on occasion be sitting at counsel table
21 for the association. And also you may note that
22 it's not the same person that was sitting with me
23 a few moments ago. I also have today with me one
24 of our summer students, Stephanie Messner. And I
25 just wanted to take the opportunity to introduce

1 them. That's all.

2 THE COMMISSIONER: Thank you.

3 MR. CLIFFORD: Mr. Commissioner, the
4 first witness for today will be Kathleen Beattie.

5

6 KATHLEEN D. BEATTIE, being first duly
7 sworn, testified as follows:

8

9 THE COMMISSIONER: Good morning.

10 THE WITNESS: Good morning.

11 BY MR. CLIFFORD:

12 Q Ms. Beattie, prior to asking you any
13 questions, I'd first like to thank you for
14 attending at the Commission today and assisting
15 us. We have heard about your involvement in
16 Mr. Paciocco's opening statement, and that is
17 where I would like to start is when your vehicle
18 first became involved.

19 And just prior to giving
20 Mr. Commissioner evidence on what happened at the
21 intersection, could you tell us, was this a
22 stretch of road that you travelled on a regular
23 basis?

24 A Every morning, Monday to Friday.

25 Q For about how long were you doing

1 that?

2 A Oh, about 15 years.

3 Q And consequently, could I conclude
4 that you had a great familiarity with the
5 intersection, the lights, et cetera?

6 A Yes.

7 Q Now, we have heard, of course, that
8 you were on your way to work. Did you have a
9 normal time that you were going to work?

10 A Actually, I was going to work a little
11 bit earlier than usual that morning.

12 Q And of course, we understand that you
13 were operating one of the vehicles, and Crystal
14 Taman was operating another vehicle behind you,
15 and the Harvey-Zenk vehicle became involved. We
16 have also understood, and I don't think there's
17 any controversy over this, that you were operating
18 a Hyundai vehicle?

19 A Yes.

20 Q And the model was the Accent?

21 A Yes.

22 Q And are you able to indicate where you
23 were in proximity to the intersection?

24 A I was sitting first, in the first
25 position at the lights on the inside lane.

1 Q And we understand that you were facing
2 south?

3 A Yes, that's correct.

4 Q Was there anybody at all that you
5 could see in front of you?

6 A No, no one in front of me.

7 Q And if you could then describe the
8 sequence of events that occurred leading up to the
9 impact, and including the impact?

10 A I could see the light turning red as I
11 approached the intersection. I stopped, and I was
12 sitting at the lights. The light turned green. I
13 took my foot off the gas and -- or off the brake,
14 and as I was doing that I heard a loud crash. I
15 turned to look behind me. I didn't look in my
16 rear view mirror, but as I was turning to look
17 behind me, before I could see what was happening,
18 my car was moving forward. So then I looked
19 forward, and I could see a light post coming
20 towards me. So I put my brake on the car and
21 tried to miss the light post. I didn't actually
22 see the impact behind me.

23 Q I'm going to back up a little bit,
24 Ms. Beattie, if I may, and bring you to the point
25 where you indicated that the light had just turned

1 green, you took your foot off the brake?

2 A Yes.

3 Q And how much time had gone by when you
4 took your foot off the brake until there was an
5 impact?

6 A I think that it happened at the same
7 time. It was kind of all happening together.

8 Q So you take your foot off the brake.
9 Your evidence is that at more or less the same
10 time you feel an impact in your vehicle, and your
11 vehicle is being --

12 A I heard the crash first.

13 Q You heard the crash?

14 A And as I was turning to look around,
15 my car was then hit.

16 Q When you say you were turning around,
17 I take it you were turning around as a result of
18 the noise factor?

19 A The noise.

20 Q And prior to even getting turned
21 around, is that when your vehicle is hit?

22 A That's right. I was sort of sideways.

23 Q Could you describe for the Commission
24 the movement of your vehicle?

25 A It was almost like it was shot, it was

1 really fast. I felt my body moving backwards as I
2 was going forwards, and it must have been very
3 fast because I moved through the intersection very
4 quickly.

5 Q What evasive action, if any, were you
6 taking to control your vehicle?

7 A I was steering it away from the light
8 post.

9 Q You were able to do that despite the
10 fact that you had sustained this collision from
11 the rear?

12 A I just remember cranking my wheel to
13 the right, extremely, before the post, or my car
14 hit the post.

15 Q Are you able to comment on your
16 braking?

17 A I just remember my foot being on the
18 brake, trying to stop.

19 Q And I understand that this is a
20 tragedy that you are involved in, and the
21 Commission hasn't lost site of the fact,
22 Ms. Beattie, that you were a victim in this car
23 crash. But looking back on it, how long was it
24 before you were able to ascertain what had
25 actually happened?

1 A As to what had actually happened? I
2 don't think anybody went over it with me telling
3 me what happened. I was just recollecting what I
4 remembered happening.

5 Q Let me put the question in perspective
6 for you. Once your vehicle came to rest, did it
7 take you a few seconds just to gather yourself and
8 determine what happened, what it was that
9 propelled you through the intersection?

10 A I remember getting out of my car right
11 away. I remember trying to find my cell phone to
12 phone somebody. And then a man approached me, and
13 he was the only person that I saw, and I asked him
14 if he had seen who had hit me?

15 Q All right. I'll cover those issues
16 with you, we'll deal with the observations that
17 you make post impact. This is once your vehicle
18 comes to rest. Okay. We'll start at that point.
19 You're struck, your car is propelled through the
20 intersection, you are braking, you are taking
21 measures to steer your vehicle to avoid the light
22 standard. We have photographs of your vehicle and
23 where it came to rest. What do you recall doing
24 when your vehicle stops?

25 A Getting out.

1 Q And are you able to provide any
2 evidence on how much time went by before you got
3 out of the vehicle?

4 A Probably seconds. I remember getting
5 out right away, as soon as I could undo my
6 seat-belt and open my door.

7 Q Ms. Beattie, do you recall anyone
8 approaching your vehicle while you were still
9 sitting in it, with your door open, coming up to
10 you, knowing or suspecting that you were involved
11 in the accident and asking you, are you fine, are
12 you okay?

13 A I don't recall that.

14 Q The reason I put that to you is that
15 the Commission has received evidence through the
16 investigative process, from another witness at the
17 scene of the accident, that claims that she
18 approached your vehicle while you were inside it
19 and asked you the question, whether you were okay?

20 A I do remember at the court house,
21 after speaking to Mr. Minuk, when we were called
22 to testify in August -- July, a woman being there
23 and approaching me there, telling me that she
24 spoke to me at the scene of the accident. But I
25 don't remember that.

1 Q Okay. We're going to come back to the
2 scene of the accident, but I'll moved forward a
3 little bit with you to what you just mentioned.
4 You received information in court, in 2007, in
5 July, from a woman who told you personally that
6 she interacted with you at the scene?

7 A Yes.

8 Q Okay. Do you have a personal
9 recollection of that?

10 A I do not.

11 Q Okay. Now, going back then to the
12 scene on the day in question, your recollection is
13 that you got out of your vehicle immediately?

14 A That's right.

15 Q Do you discount the fact that an
16 individual, a woman may have in fact come up to
17 ask you if you were okay?

18 A No. I may not remember that.

19 Q I take it, given the circumstances of
20 what had just taken place and what you
21 experienced, would you agree that it's possible
22 that this individual did come up and interact with
23 you in that manner?

24 A It's possible.

25 Q Your recollection is that the first

1 person that you interact with is a male?

2 A That's true.

3 Q Okay. And if you could tell me and
4 Mr. Commissioner how this communication gets
5 started?

6 A The gentleman walked across the
7 highway from a truck that was parked, that I could
8 see it was a little bit ahead of me and to the
9 left. And he paused at the vehicle that was in
10 the middle of the highway and then proceeded over
11 to me.

12 Q Let me clarify that a little bit
13 further before we move ahead. You saw the male
14 coming from the vicinity of a truck that would
15 have been a little further down the road?

16 A Right.

17 Q South, down the road from you, and
18 walk towards your vehicle, and you have indicated,
19 stopped at the other motor vehicle that was in the
20 middle of the road?

21 A That's right.

22 Q Okay. What can you tell me about what
23 occurred when he walked by the vehicle that was in
24 the middle of the road? Did you make any
25 observation?

1 A Not totally, I don't remember whether
2 or not he stopped for any length of time. I
3 wasn't that curious about him at the time, until
4 he was approaching me. So I wasn't really paying
5 all that much attention. He did pause at the
6 vehicle, though.

7 Q Are you able to provide any evidence
8 on how long he might have paused at the vehicle?

9 A No. I'd be guessing.

10 Q Did you recall seeing anyone else in
11 the vicinity of the vehicle?

12 A Not at that time, no.

13 Q What did the male do then, after he
14 paused at the vehicle, did he move towards you?

15 A Yes.

16 Q And continue from there, please?

17 A He walked towards me. He stood
18 straight in front of me, face-to-face, and he
19 looked at me and didn't say anything. And I asked
20 him if he had seen who had hit me, and he didn't
21 reply to that, he just kept looking at me. And
22 then he turned and walked back to his truck.

23 Q Are you able to tell us how long this
24 exchange might have been?

25 A A few seconds probably, maybe a

1 minute, maybe not even that.

2 Q And I'll break it down a little bit
3 more. From what I understand, this individual
4 didn't communicate with you at all --

5 A No.

6 Q -- verbally?

7 A No.

8 Q But you communicated with him?

9 A Yes.

10 Q You put the question to him?

11 A Yes.

12 Q And what was the question that you
13 asked him? Do you recall exactly what you said to
14 him?

15 A Did you see who hit me?

16 Q And we know there was no verbal
17 response, but was there any physical response, or
18 facial look that you detected?

19 A He just stared at me, and I thought
20 that was kind of odd that he was just looking. He
21 looked shocked, actually, now that I look back is
22 probably his expression. At the time I just
23 thought it was odd that he just stared and said
24 nothing.

25 Q And looking back, you take it now as

1 someone being in a state of shock?

2 A Probably.

3 Q When you saw the individual walking
4 towards you, Ms. Beattie, were you able to
5 determine whether there was any evidence that the
6 person might have been injured in any way?

7 A No. He didn't appear to be to me.

8 Q What about facially?

9 A No.

10 Q Did you repeat the question at all?

11 A I don't recall.

12 Q Tell us what happened then, from that
13 point on?

14 A Then I went back into my vehicle. I
15 was trying to find my cell phone to call my
16 husband, and to call my daughter because it was
17 very cold out there and there was no one coming to
18 help. So I thought that since I lived a few
19 minutes away, she could bring me something warmer
20 to put on. And then I called my husband to see
21 whether he could get some type of emergency
22 vehicles out there to help us, since he works for
23 the Winnipeg City Police.

24 Q Okay. I'm going to pick up at the
25 beginning there when you are trying to call

1 someone on your cell phone. But just prior to
2 that, when the man that you asked the question to,
3 "Did you see who hit me," and there was no
4 response, where did he go?

5 A He went back to his truck.

6 Q He went back to his truck.

7 A And stood by his truck.

8 Q Okay. I'll come back to that. But
9 you're quite clear on that point, are you, that
10 when you finish your communication with him, he
11 goes back to his vehicle?

12 A Yes. Because when I looked at him
13 again, he was standing beside his vehicle.

14 Q Do you know whether he spoke with
15 anyone else?

16 A I don't think so because -- well, now
17 that you tell me, and remind me that there was
18 another woman there, I'm not sure whether he spoke
19 to her, but I did not see him speaking to anyone
20 else.

21 Q Okay. Dealing with the use of the
22 cell phone then, in terms of the other people that
23 may have been present, do you recall any
24 difficulty finding your cell phone or using your
25 cellular telephone?

1 A I had trouble finding it. Everything
2 in my car was strewn about. I remember a
3 gentleman handing me his cell phone, but I didn't
4 actually use it because I couldn't figure out how
5 to turn it on. So I went back in my vehicle again
6 and I found my phone.

7 Q Do you recall when the gentleman who
8 offered you the use of his cell phone came into
9 the picture?

10 A No, I don't remember at what point I
11 first saw him.

12 Q Okay. Do you recall whether the
13 individual with the cell phone, or the woman who
14 may have asked you if you were okay, do you recall
15 at any point being in a group of more than two
16 people? In other words, communicating with more
17 than just the man from the truck?

18 A No.

19 Q Because I'll put it to you,
20 Ms. Beattie, in fairness, that the Commission
21 again has received evidence through the
22 investigative process that there may have been
23 conversations of two or more individuals --

24 A It's possible.

25 Q -- that you were involved in. And I

1 take it, for the same reasons you gave previously,
2 that you would agree that that's possible?

3 A Yes.

4 Q You have told the Commission that you
5 are trying to use your cell phone. I take it you
6 do have an independent recollection of one male
7 offering you a cellular telephone?

8 A Yes, I do.

9 Q This is completely distinct from the
10 individual who approached you and then walked back
11 to his truck?

12 A Yes.

13 Q Another different male?

14 A Another person.

15 Q Okay. And ultimately you did put in a
16 call to your husband?

17 A Yes.

18 Q And you testified that you wanted him
19 to get emergency vehicles on the scene?

20 A Yes.

21 Q At that point had you detected the
22 presence of any emergency vehicles, any police
23 officers?

24 A Not at that point, but while I was on
25 the phone speaking with him, I did see a cruiser

1 car approaching, but it didn't stop.

2 Q Do you recall whether you made
3 inquiries of the woman, or I should say the driver
4 of the yellow vehicle that was in the accident?

5 A To inquire to anyone that was there?

6 Q Yes, any other witness on the scene as
7 to the well-being of the person in the yellow
8 vehicle?

9 A I kind of remember asking the
10 ambulance attendant. I was sitting in an
11 ambulance for a little while. I don't recall that
12 kind of a conversation. My main objective was to
13 get help to come. That was what I was more
14 concerned about at that time.

15 THE COMMISSIONER: Can I understand
16 something? You said you were on the phone to your
17 husband?

18 THE WITNESS: Yes.

19 THE COMMISSIONER: Asking him to
20 arrange to have an emergency vehicle sent?

21 THE WITNESS: Yes.

22 THE COMMISSIONER: You saw a cruiser
23 arrive but continue on?

24 THE WITNESS: Yes.

25 THE COMMISSIONER: It didn't stop?

1 THE WITNESS: It didn't stop.

2 THE COMMISSIONER: Thank you.

3 THE WITNESS: He took the turn-off
4 towards Henderson Highway, on the Perimeter. He
5 was coming towards us, but then took the turn-off.

6 BY MR. CLIFFORD:

7 Q What do you recall after making the
8 telephone call to your husband and seeing the
9 emergency vehicle go by the scene of the accident?
10 What do you recall taking place next?

11 A I'm not sure how much time passed
12 between that and the ambulance arriving. I did
13 see a brown van, and some people standing probably
14 in that vicinity. And then I was put into an
15 ambulance which was facing south, and so I noticed
16 the police arriving, or that they had -- I noticed
17 the police, I don't know exactly when they got
18 there. And there was a police officer standing by
19 the truck. The fire department was by the vehicle
20 and they were attending to Mrs. Taman.

21 MR. WEINSTEIN: I'm sorry, I didn't
22 hear the last --

23 BY MR. CLIFFORD:

24 Q And the fire truck?

25 A The fire department was attending to

1 Mrs. Taman's vehicle.

2 Q I'm going to come back to you being
3 placed in an ambulance and we're going to move
4 forward from there. But before we deal with that
5 issue, I just had a couple more questions for you
6 about the one person that you do recall, a man
7 walking towards you from the truck, the exchange,
8 and then walking back. Are you able to comment on
9 anything about his walking when he was moving
10 towards you? Do you recall?

11 A I remember him coming straight towards
12 me. His truck, in relation to where I was,
13 Mrs. Taman's vehicle was almost in a line, as I
14 recall. So he went sort of in a straight line
15 from the vehicle, his vehicle, past hers to me.
16 And then after he spoke to me, he walked slowly
17 back again.

18 Q Did you notice anything about his
19 walk?

20 A No.

21 Q All right. We're going to pick up at
22 the point when the emergency personnel arrived.
23 There's ambulances on scene, and you have told the
24 Commission that you were placed in an ambulance?

25 A Yes.

1 Q Okay. And I understand that you were,
2 and this is not a matter of controversy, but you
3 were taken out of one ambulance and placed into
4 another?

5 A Yes.

6 Q Okay. While you were in the first
7 ambulance, can you tell us where it was that you
8 were seated or placed in the ambulance?

9 A I was in the passenger seat.

10 Q So you were up in the front of the
11 ambulance?

12 A Yes.

13 Q Sitting in the passenger seat?

14 A Yes.

15 Q Okay. And from that point, are you
16 able to make any observations of the scene and
17 what people are doing?

18 A I noticed the firefighters working on
19 Mrs. Taman's vehicle, and I also noticed the
20 police over by the truck.

21 Q Okay. So the firefighters, you
22 noticed, are working on the Taman vehicle?

23 A Yes.

24 Q And there is the police officers, are
25 at the truck where the male came from?

1 A That's right.

2 Q And returned to?

3 A Yes.

4 Q And what are they doing at the truck?

5 A All I can remember is seeing them
6 standing by the truck with the gentleman.

7 Q And are you able to provide evidence
8 as to how many police officers were present?

9 A No, I don't recall.

10 Q What were the police officers doing
11 with the man beside the truck?

12 A It looked like they were standing
13 talking, or just by him. I couldn't really, I
14 couldn't hear what they were saying, but it looked
15 like conversation was happening.

16 THE COMMISSIONER: I'm sorry, you
17 dropped your voice at the end.

18 THE WITNESS: I'm sorry, I have a
19 cold. Conversation was happening with the police
20 officers.

21 THE COMMISSIONER: The officers were
22 talking to each other or to someone else?

23 THE WITNESS: I'm not sure, but it
24 looked like they were standing around having a
25 conversation, but they were right by the truck

1 where the gentleman was.

2 THE COMMISSIONER: Thank you.

3 BY MR. CLIFFORD:

4 Q Did you see the man talking to the
5 police officers?

6 A No, I didn't really pay too much
7 attention to that. I was more watching the
8 vehicle with the firefighters.

9 Q Okay. Do you know whether the man
10 talked to the police officers or not?

11 A No, I do not.

12 Q But you do recall police officers
13 being with the man?

14 A Yes.

15 Q And for how long were they with him?

16 A I don't recall.

17 Q How close to him were they?

18 A I would be guessing. I would say not
19 too far away. They were in conversation, this
20 distance.

21 Q You're using your arms, Ms. Beattie,
22 in the witness box, and could I use the old
23 expression arm's length?

24 A Probably, yes.

25 Q Would that be a fair way to describe?

1 A That would be fair.

2 Q They were the distance that people
3 might normally be engaged in conversation with one
4 another?

5 A Yes.

6 Q Now let me ask you how close to the
7 truck were they? You have told us how close they
8 were to one another. You told us they were in the
9 vicinity of the truck. How close to the truck
10 were they?

11 A I don't know. I just -- the truck was
12 in my view, I could see them and then the truck.

13 Q Do you know whether anybody looked
14 inside the truck?

15 A No, I don't.

16 Q Now, I have asked you the question how
17 long were they there, and you have indicated that
18 you don't recall?

19 A No, I don't.

20 Q Do you recall how long you were in the
21 front passenger seat of the ambulance?

22 A No, I don't. I don't know the exact
23 amount of time.

24 Q Do you know whether it seemed like a
25 long time or a short time?

1 A It seemed like a very long time, but I
2 don't know the exact.

3 Q But to provide Mr. Commissioner with,
4 I guess, the best evidence that you can, and I
5 understand your evidence is that you don't recall
6 the amount of time, but in terms of delineating it
7 from a short time or a long time, what would it
8 be?

9 A I would say 15 to 20 minutes maybe, in
10 my mind right now. It's a long time ago, so it's
11 really hard to tell.

12 Q We can appreciate that. And in terms
13 of the observations that you were making during
14 that time that you were in the passenger seat of
15 the ambulance, were the police officers there with
16 the man for the entire time, or part of it?

17 A The entire time.

18 Q How were you feeling at that point
19 when you were in the ambulance?

20 A I think the shock was starting to set
21 in, as to what had taken place.

22 Q Were you in pain?

23 A I was sore.

24 Q Did you know whether you were injured
25 at that point?

1 A No, I wasn't sure.

2 Q And when you watched this from the
3 passenger seat of the window, how were the police
4 officers situated with the man beside the truck?

5 A I didn't really take note as to who
6 was where. I just remember uniformed people
7 standing by the truck with the gentleman.

8 Q Do you recall where he might have been
9 in terms of the proximity of the other officers?

10 A No, I don't.

11 Q I just wanted to raise with you a
12 question and answer sequence from your interview
13 with the purpose of perhaps refreshing your memory
14 on that point. And Mr. Commissioner, I'm
15 referring to the interview of April 8, 2008, that
16 was conducted at the Taman Inquiry offices. And
17 what I'll be doing, with your permission, sir, is
18 referring Ms. Beattie to page 18 and 19.

19 Ms. Beattie, I'll read a question and
20 answer to you to determine whether it might
21 refresh your memory on the question I have just
22 put to you. And I am referring to page 18 of your
23 transcript, and then I'll go to page 19.

24 "Q Okay. I can appreciate that and I
25 will ask you then about some of the

1 things that you can see when you were
2 looking at this picture. So put the
3 amount of time that the police
4 officers were with him out of your
5 mind for a moment.

6 A Okay.

7 Q You are sitting in the front seat
8 of the ambulance. What are the police
9 officers doing with the man?

10 A Talking to him. They were just
11 standing around, around him. He was
12 kind of the centre of it all.

13 Q Did you see anything else happen
14 with the -- other than them talking to
15 him.

16 A No."

17 Does that refresh your memory in terms of how he
18 was situated, or how the officers were situated
19 around him?

20 A Yes, it does.

21 Q And could you respond to the question
22 as posed?

23 A I recall a group of police officers
24 standing in front of the truck, with the gentleman
25 closer to the truck. So I guess you could say

1 they were around the gentleman.

2 Q And during your interview your
3 response was, "He was kind of the centre of it
4 all." And does that refresh --

5 A In regards to the fact that he was
6 being focused upon?

7 Q Yes?

8 A Yes.

9 Q What happened once you are taken out
10 of the first ambulance? You told us earlier you
11 went from one ambulance to another. Pick up at
12 that point?

13 A I was taken out of the first ambulance
14 and then put into the back of the second
15 ambulance.

16 Q And from there, what happened?

17 A Then I was taken to the hospital.

18 Q You went to the Concordia Hospital?

19 A That's right.

20 Q And on the Agreed Statement of Facts
21 that's now before the Inquiry, we understand that
22 it was at 7:45 that you left the scene?

23 A Yeah.

24 Q I take it at that point you are
25 certainly not --

1 A I had no idea.

2 Q -- keeping track of time, but that has
3 been recorded.

4 Could you tell the Commission, please,
5 what happened when you arrived at the hospital?

6 A I was taken from the back of the
7 ambulance on a wheeled stretcher, and I was in the
8 admitting area for, I don't remember how long a
9 period of time on the stretcher.

10 Q And?

11 A And then they did some tests. I don't
12 recall how long I was actually at the hospital
13 for.

14 Q And apart from the medical personnel,
15 who else did you speak to at the hospital?

16 A I spoke to my husband.

17 Q And can you tell us about that
18 conversation?

19 A I don't remember too much about that
20 conversation. I just remember him asking me how I
21 was, and that's about all.

22 Q Do you recall whether -- and I'm
23 putting this to you as a result of evidence that
24 you have provided to the Commission.

25 A I'm trying to figure out where you

1 want me to go with this.

2 Q Just in terms of your recollection,
3 but whether he asked you whether you had looked at
4 the Taman vehicle, or looked inside it?

5 A Oh, yes, he had asked me if I had
6 looked in the car. And I had said no.

7 Q Okay. And do I understand that to be
8 the case, that you had not at any point looked
9 inside the Taman vehicle?

10 A I had not.

11 Q And do you recall any reason why you
12 wouldn't have looked in the vehicle?

13 A I think because right after the
14 accident had happened, I was trying to find my
15 cell phone to call for help, and then things
16 happened after that.

17 Q Okay.

18 A I was never left alone long enough to
19 wander over.

20 Q Did you know whether your husband
21 attended the scene of the accident?

22 A I believe he did.

23 Q And where did you get that knowledge?

24 A He told me that he went there and
25 arrived just as the ambulance was taking me to the

1 hospital. He was coming to actually see me, but I
2 had left.

3 Q Okay. The exchange that occurred
4 between you and your husband about not seeing the
5 Taman vehicle, could you tell us a little bit more
6 about that?

7 A It was just a quick question, whether
8 or not I had looked in the car. And I had said
9 no. And he had voiced his feelings that it was
10 probably best that I hadn't.

11 Q Did you know whether he saw the Taman
12 vehicle?

13 A I don't recall asking him that
14 question, and I don't recall an answer from him
15 either. I don't know if he did or not.

16 Q But in response to the question, did
17 you look inside of it, I understand that he had
18 indicated to you that it was probably a good thing
19 that you didn't?

20 A Yes.

21 Q All right. How long were you at the
22 hospital?

23 A I don't recall.

24 Q Where did you go from the hospital?

25 A I went home.

1 Q Okay. And at that point, had you
2 determined the full extent of your injuries?

3 A Yes, more or less.

4 Q All right.

5 A No broken bones.

6 Q And a little bit later in your
7 examination, I'll cover the injuries that you had
8 sustained. But just following along
9 chronologically, once you got home, did you hear
10 from anybody, any investigators or police
11 officers, follow-up medical, anything of that
12 nature?

13 A I don't recall if I heard from the
14 police department that afternoon or if it was the
15 following morning that someone was coming to take
16 a statement from me.

17 Q At this point, Mr. Commissioner, with
18 your permission, I would like to provide the
19 witness with a document that will become the next
20 exhibit. And what this is, is a traffic accident
21 report that we know was filled out by Ms. Beattie,
22 apparently on February 26th of 2005, when the
23 police officer attended her residence?

24 THE CLERK: Exhibit 70.

25

1 (EXHIBIT 70: E-1.23.n, Statement By
2 Kathy Beattie Traffic Report)
3 MR. CLIFFORD: Exhibit 70. And again
4 for completeness of the record and to assist
5 counsel, it's volume E.1, tab E.1.23.n, and it's
6 found at page 497 of volume E.1.

7 BY MR. CLIFFORD:

8 Q And with that long introduction,
9 Ms. Beattie, I take it you see a document before
10 you, you have it in your hands. And can you
11 recognize it?

12 A I do.

13 Q I'm going to ask you some questions
14 about this document. And first off, it has some
15 information with respect to you, your vehicle, et
16 cetera, and then at page, the second page of the
17 document there is what's referred to as a
18 statement of driver of vehicle one. It's the date
19 of February 26th, '05, and your signature.

20 Have you had an opportunity to review
21 that, what you wrote?

22 A I have.

23 Q All right. This document was filled
24 out at your residence, we understand?

25 A Yes.

1 Q And it's self-evident here that the
2 officer who attended at your residence was an East
3 St. Paul Police Officer and it was Officer Bakema?

4 A That's right.

5 Q Now, was it you that filled it out?
6 Is that your handwriting?

7 A No, it is not. I dictated. It's
8 probably his handwriting.

9 Q And who was present when it was filled
10 out?

11 A I think it was just the two of us in
12 my kitchen.

13 Q Did you know Harry Bakema at the time?

14 A I had met him previously just as -- he
15 was an acquaintance. I knew who he was. He was
16 not a friend or anything like that.

17 Q And can I ask you about the context in
18 which you would have met him on a prior occasion?

19 A My husband had worked with him
20 previously.

21 Q Would that have been as a Winnipeg
22 Police Officer?

23 A That's right.

24 Q Your husband was a Winnipeg Police
25 Officer at the same time that Harry Bakema was?

1 A That's correct.

2 Q Do you recall whether your husband was
3 present at the time that Harry Bakema was at your
4 house?

5 A I don't remember. I don't recall.

6 Q The statement of the driver comprises
7 two paragraphs. They are both enclosed in these
8 boxes. You can see that in the exhibit that you
9 have before you?

10 A Yes.

11 Q Is this all that you said about what
12 had taken place?

13 A Yes.

14 Q And there is not a lot of detail,
15 Ms. Beattie, that's present in the traffic
16 accident report?

17 A No.

18 Q For instance, in your interview with
19 me at the Commission office, and certainly today
20 in your testimony, you have gone through quite a
21 bit more detail than was provided on
22 February 26th?

23 A These basically were the only
24 questions that were asked of me at the time.

25 Q Okay. So what is here, I take it,

1 would be a reflection of the information that was
2 sought from you, or the questions that were put to
3 you?

4 A That's correct.

5 Q And how long did this process take?

6 A He wasn't there very long, because I
7 recall being uncomfortable sitting at the table
8 and he kept it, the visit short. He took my
9 statement and then he left.

10 Q Was that a request that you made, to
11 keep it short?

12 A I did tell him that I was
13 uncomfortable.

14 Q What was your understanding of what
15 the purpose of him being there was?

16 A It was to give my observation of the
17 traffic accident.

18 Q Was there anything said to you,
19 Ms. Beattie, about the fact that there was a
20 criminal case, that very serious allegations had
21 been laid under the Criminal Code against a police
22 officer?

23 A No, it wasn't discussed.

24 Q Was it discussed that the statement
25 may be used for further purposes, court attendance

1 or anything like that?

2 A No, not at that time. I didn't think
3 anything more at that point would come of this
4 situation.

5 Q Did anybody mention anything about
6 going back to follow up with you?

7 A No.

8 Q Did, in fact, did anybody ever from
9 the East St. Paul Police follow up with you to
10 take a more formal witness statement?

11 A No.

12 Q Now, I understand that through media
13 releases, et cetera, that you became aware of
14 certain details surrounding the accident?

15 A Yes, I did.

16 Q Did you have any expectation that the
17 police might follow up with you further as a
18 witness?

19 A I thought they might, since I was the
20 first person to speak to the gentleman that caused
21 the accident, but I never heard anything from
22 anyone.

23 Q Based on the disclosure that the
24 Commission has, we understand that your next
25 interview with a police officer occurred on May

1 31st of 2006?

2 A That's correct.

3 Q And do you recall that interview
4 taking place?

5 A I do.

6 MR. CLIFFORD: Mr. Commissioner, I am
7 not necessarily going to put that interview to the
8 witness. We know that, of course, the interview
9 with the RCMP occurred on this particular day, but
10 it is our intention to file the transcript of the
11 interview as an exhibit.

12 One of your tasks, of course, is to
13 inquire into the conduct of the police
14 investigations surrounding the death of Crystal
15 Taman, and this is one part of the investigation,
16 a number of questions and circumstances, et
17 cetera, were put to Ms. Beattie. Obviously, her
18 testimony is what we're going to receive here
19 today in the witness box. But for the purpose of
20 assisting you in determining the investigation
21 that was conducted by the RCMP, it would be of
22 assistance, and I would ask that it be made the
23 next exhibit, please.

24 THE CLERK: 71 will be C.11.

25 MR. CLIFFORD: Can you repeat that for

1 me.

2 THE CLERK: C.11 tab, number 71.

3 MR. CLIFFORD: Okay. And the exhibit
4 number is?

5 THE CLERK: Seventy-one.

6 (EXHIBIT 71: C.11, Statement By Kathy
7 Beattie To R.C.M.P.)

8 MR. CLIFFORD: Exhibit 71, and for the
9 assistance of counsel, this can be found at volume
10 C, tab C.11, and it's at page 182 of that volume.

11 Again, it's not my intention to refer
12 to passages of the RCMP statement unless it was
13 necessary to refresh your memory.

14 BY MR. CLIFFORD:

15 Q Now, what was your understanding,
16 Ms. Beattie, of why the RCMP were talking to you
17 about the case?

18 A I thought that they wanted an update
19 or an insight before going to court. I heard that
20 it was going to be going to court later that year.

21 Q Okay. Now, this is May 31st of 2006,
22 and your understanding is that they wanted some
23 form of an update?

24 A Yes.

25 Q Was it your understanding that this

1 was your -- you were getting into the formal
2 witness statement process?

3 A I got that idea, yes.

4 Q I wanted to ask you some questions now
5 about your impression of Harvey-Zenk at the
6 roadside, just prior to getting into the court
7 appearances and the discussions that took place
8 there. What was your impression of Harvey-Zenk,
9 or the man that you talked to? And again, there's
10 no controversy over who this driver of the truck
11 was, but when you were talking to him, what
12 impression, if any, did you have of his state?

13 A I just remember being left with a
14 feeling that it was kind of odd that he didn't
15 reply to me in any way and just stared at me and
16 then turned and walked away.

17 Q Did you --

18 A Sorry. I didn't dwell on that for too
19 long. I didn't think about it, because I was
20 preoccupied. So it was sort of a flashing
21 feeling, I thought, oh, that was kind of odd, and
22 then he left me.

23 Q Did you look back, or did you think
24 back about that encounter in the time that
25 followed?

1 A That day, or you mean any other time?

2 Q After that day?

3 A Yes, I did actually, thinking about --
4 I thought that it was unfortunate that I didn't
5 pay more attention to it at the time.

6 Q Could you elaborate on that?

7 A I didn't pay more attention to
8 everything that was going on around me. After I
9 was asked questions, it was then that I realized
10 that it was probably important that I had. But at
11 the time, I just was just assuming that this was
12 just a car accident, and I just wanted to know who
13 had hit me and didn't think too much of anything
14 else that was going on.

15 Q Did you ever discuss with anybody what
16 you thought was the cause of the accident?

17 A I think, in passing, I made personal
18 comments about my opinion of the situation.

19 Q And what was that?

20 A Just from how it appeared that the
21 vehicles were hit straight on from the back, and
22 noticing afterwards, returning past the site, that
23 there were no skid marks in the area that his
24 truck would have been travelling, I kind of just
25 assumed that perhaps he fell asleep, because it

1 didn't look like he made an effort to avoid or
2 slow down, or that was just my personal opinion.

3 Q And do you have any recollection of
4 when it was in the process between then and now
5 that you might have come to that conclusion?

6 A Probably days after, I would think.

7 Q Okay. Let me ask you about the court
8 appearance that you went to. We understand that
9 you were subpoenaed to attend court?

10 A Yes.

11 Q And I'm not going to file the
12 subpoena, Mr. Commissioner, as an exhibit, but for
13 the benefit of counsel, if anybody wants to see
14 it, it's at volume H of our material, page 1439.

15 Now, you were required to attend court
16 pursuant to that subpoena on July 16th, 2007?

17 A Yes.

18 Q When did you go to court? Did you go
19 to court on the day that you were required to, or
20 did you make arrangements to go at a later time,
21 or do you recall?

22 A I believe I went on the day that I was
23 required to, I think.

24 Q Just with your permission again,
25 Mr. Commissioner, I apologize for the brief delay

1 there, I'll try to refresh the witness's memory,
2 if I may, with the transcript of her interview of
3 April 8, 2008. And I'll ask you just to move
4 forward to page 35 in your transcript,
5 Ms. Beattie?

6 Now, what I'll do is I'll bring you to
7 page 35, line 11, and there's a question and
8 answer, and then there's a question and answer on
9 page 36, I'll put those to you. Question, page
10 35:

11 "Q And as with other areas that we
12 have covered, I'll ask you to bring
13 your mind back to receiving the
14 subpoena, and give me as much detail
15 about everything that occurred after
16 that, including and up to the day you
17 went to court?

18 A I remember phoning the office to
19 speak to somebody to see whether or
20 not they could give me some idea as to
21 what day I would be required to appear
22 in court, as I was on summer holidays
23 and didn't want to take a full week of
24 my summer holidays to sit in court.
25 So I recall there being a few

1 telephone calls made, and finally I
2 got to speak with Mr. Minuk and we had
3 a bit of a conversation.

4 Q Can you tell me about it?

5 A I was just trying to remember what
6 we talked about. We only talked about
7 the fact that I would probably be
8 required towards the end of the week
9 as there was a lot of preliminary, I
10 guess you'd call it interviewing to be
11 done before me. That was all we
12 talked about and he will get back to
13 me. Then I received a call telling me
14 what day specifically to be there. So
15 I went there on that morning, I think
16 it was a morning. I waited in an area
17 for quite some time, maybe 45 minutes.
18 And then a man approached me and asked
19 me my name and asked me to come out
20 into the hall. I stood in the hall
21 with two other gentlemen and woman,
22 who were witnesses, and he told us all
23 that we wouldn't be required to
24 testify."

25 Now, having had the opportunity of reading that

1 and hearing it, in terms of refreshing your memory
2 on the arrangements that were made for you to
3 attend court, does that help?

4 A Yes.

5 Q And do you recall, in fact, having
6 that conversation with Mr. Minuk and somebody
7 getting back in touch with you?

8 A Yes, I do.

9 Q Do you know whether it was the 16th or
10 the 17th that you went to court?

11 A No, I do not.

12 Q Fair enough. When you went to the
13 courthouse, where did you go, first of all? And I
14 don't mean through the front doors, I mean, did
15 you go to a witness interview room or --

16 A I went into a waiting room.

17 Q Okay.

18 A There was a woman sitting behind a
19 desk, and I was asked to wait with a lot of other
20 people, I didn't know who they were.

21 Q Okay. That's what my next question
22 was, whether you recalled who you were waiting
23 with?

24 A No, I didn't know any of the people I
25 was waiting with.

1 Q Did you have any idea who they -- what
2 matter they were connected with?

3 A No.

4 Q Did you have any conversation with any
5 of them?

6 A No, I didn't.

7 Q Okay. And how long was it that you
8 were waiting?

9 A It was anywhere between a half an hour
10 and an hour, I think.

11 Q Okay. And carry on from there, what's
12 the next thing that you recall?

13 A Then after a long wait, a gentleman
14 came into the waiting room and asked myself and
15 some of the other people there to come out into
16 the hallway with him. He introduced himself as
17 Mr. Minuk.

18 Q And what I'll do is I'll pick up on
19 your response there, the part where you said
20 myself and other people, who were the other
21 people?

22 A They were other witnesses to the
23 accident.

24 Q The transcript that we just reviewed,
25 in your response, you indicated:

1 "So I stood in the hall with two other
2 gentlemen and a woman who were
3 witnesses."

4 A Yes.

5 Q Does that refresh your memory on that
6 point?

7 A Yes.

8 Q And carry on from there, what took
9 place?

10 A Then Mr. Minuk told us that we would
11 not be required to testify in court that day, that
12 there had been an agreement, or a settlement, or
13 whatever terminology you would call it. They had
14 come to some sort of an agreement, and it was
15 done, we wouldn't be required.

16 Q And what was the reaction to what
17 Mr. Minuk was saying to you all?

18 A I think everyone was surprised. The
19 lady that I was with was a little agitated by
20 that. We didn't talk too much about it.
21 Mr. Minuk did most of the talking to us about what
22 took place.

23 Q I'm going to follow up with you on the
24 comment you just made that the woman you were with
25 was a little bit agitated by what Mr. Minuk said.

1 Can you expand upon that?

2 A I think she was hoping for closure. I
3 think she was wanting to hear what was to be said
4 in court. I just remember her saying to Mr. Minuk
5 that she was upset that there wasn't closure.

6 Q Can you describe this individual?

7 A She was shorter than myself, probably
8 middle aged I think. She was the lady that had
9 told me that she had spoken to me that I didn't
10 recall seeing.

11 Q Okay. So we have come in a circle
12 now, back to one of the first things you had told
13 me in your examination, that when you were at the
14 court house, a woman approached you and told you
15 that she talked to you at the scene?

16 A That's right.

17 Q And that's the same woman that is
18 saying to Mr. Minuk, in your words, that she was
19 agitated by the fact that she wasn't getting
20 closure?

21 A Right.

22 Q And she tells you that she spoke to
23 you there?

24 A That's right. And I questioned her
25 because I was curious as to why she needed

1 closure, when I knew that she wasn't actually a
2 victim in the accident. I just needed her to
3 explain that a little further. And that's when
4 she told me that she had been there and spoke to
5 me at the time.

6 Q Did you tell her that you had no
7 recollection at all --

8 A I did.

9 Q -- of talking to her?

10 A Yes.

11 Q Did she tell you about the questions
12 that she asked you, the things she did with you?

13 A No.

14 Q Okay. What other information did
15 Mr. Minuk provide to you and the others as he was
16 explaining to you why you wouldn't be testifying?

17 A I don't remember his actual words, but
18 just summed up basically what he was saying to me
19 at the time, and that was that the counsel and the
20 family had come to an agreement that this was how
21 it was going to take place, that Mr. Zenk was --
22 the court case was over and he wasn't going to go
23 to jail, that he probably would have a house
24 arrest.

25 Q So this piece of information was being

1 provided to you just as you were learning that you
2 are not going to be testifying. And was your
3 response that he probably wasn't going to go to
4 jail, or he wasn't going to go to jail?

5 A Probably wasn't.

6 Q And he mentioned house arrest?

7 A He did.

8 Q Now, you have indicated you don't
9 remember Mr. Minuk's exact words --

10 A No.

11 Q -- and I can appreciate that. But in
12 terms of refreshing your memory and trying to
13 recall some of the things he was telling, you and
14 the other witnesses, at this point are you able to
15 recall any of the details?

16 A Not really.

17 Q And with Your Honour's permission,
18 I'll attempt to refresh the witness's recollection
19 on this point by referring to the witness
20 interview conducted April 8th, 2008. And
21 Ms. Beattie, if I could ask you to move forward to
22 page 42?

23 If I could have one moment, please,
24 Mr. Commissioner?

25 Actually, Ms. Beattie, on the issue of

1 the conversation that you were engaged in with
2 Mr. Minuk when he was talking to you and the other
3 witnesses, do you recall whether the other
4 witnesses were asking him questions about what had
5 taken place, looking for details?

6 A Yes, they were. Everyone, you know,
7 joined in the conversation.

8 Q Okay. And perhaps in an attempt to
9 determine whether that will refresh your memory,
10 do you know what questions and details they were
11 looking for -- questions they were asking, pardon
12 me, and details they were looking for?

13 A No, I don't.

14 Q And I put this to you, and again in
15 fairness to you and other counsel, the Commission
16 has received evidence from other witnesses in the
17 interview process that were present during this
18 conversation, and they have told the Commission
19 that Mr. Minuk discussed, with you present and the
20 others, that there were no skid marks, that
21 Harvey-Zenk could very well have fallen asleep,
22 and that Harvey-Zenk had just come off of working
23 a couple of double shifts?

24 A That's true. And I do remember that
25 now, and I do remember saying that I was kind of

1 along the same opinion.

2 MR. PROBER: Could you repeat the last
3 part, I missed it, please?

4 THE WITNESS: That I agreed with
5 Mr. Minuk, and then I said that I was of the same
6 opinion.

7 MR. PROBER: Thank you.

8 BY MR. CLIFFORD:

9 Q And when you indicated that -- when
10 that information was being provided to you, do you
11 recall whether you, in addition to what you have
12 just told us, said anything else about what
13 Mr. Minuk said?

14 A I don't recall.

15 Q Because, again, in fairness to you,
16 one of the witnesses that was present indicated
17 that you commented that, yes, my husband works,
18 has worked those kinds of shifts?

19 A Oh, yes, many times.

20 Q Does that refresh your memory?

21 A I don't remember that at all, but I
22 could have added that into it.

23 Q I take it -- and I appreciate that
24 this is some time ago -- that there's no
25 disagreement from you that these comments could

1 have in fact been made?

2 A That's true.

3 Q And had you talked to your husband
4 about that?

5 A About the conversation, or about the
6 fact that sleep deprivation --

7 Q Yeah, the notion that Harvey-Zenk --

8 A Yes.

9 Q -- might have fallen asleep?

10 A Yeah, I have.

11 Q And did he have any theory on the
12 accident?

13 A No. He didn't voice his opinion. He,
14 basically, just agreed with me, as he usually
15 does, but he never voiced his personal opinion.

16 Q Well, I've got you under oath and I
17 could ask some other questions here, but I'm just
18 going to move on.

19 Dealing generally with your husband,
20 you have told us he's a Winnipeg Police Officer?

21 A That's correct.

22 Q We understand that he's a senior
23 officer?

24 A Yes.

25 Q And you understood clearly that your

1 husband knew Chief Bakema of the East St. Paul
2 Police?

3 A That's right.

4 Q And knew him when he was a Winnipeg
5 Police Officer?

6 A That's right.

7 Q Did he ever speak to you about
8 conversations he had with other police officers
9 about the case?

10 A One time he did mention to me that he
11 had spoken to the police officer's supervisor, and
12 because my husband didn't know him himself, he had
13 spoken to his supervisor, in passing I guess, I
14 don't know if it was a deliberate visit, but in
15 conversation, he did mention to me that he was not
16 a partying type of individual.

17 THE COMMISSIONER: Who?

18 THE WITNESS: Mr. Harvey-Zenk, that it
19 wasn't this type of thing that he did on a regular
20 basis was the impression that I got. And I don't
21 recall how long after the accident that
22 conversation took place.

23 BY MR. CLIFFORD:

24 Q And were there any other conversations
25 that he told you about, that he was involved in

1 with other police officers?

2 A No.

3 Q And was that the extent of the detail
4 that was provided to you?

5 A That was. The only other time he
6 discussed it with me was before it was to come to
7 court in 2006, before the RCMP officers came to
8 speak to me, he mentioned to me that it would be
9 possible that it was going to go to court.

10 Q I'm sorry, could you repeat that,
11 please?

12 A He mentioned that it was possible that
13 the accident would go to court, there would be a
14 court case.

15 Q There was significant media coverage
16 about the case before, during, and after. Did you
17 speak to your husband about the media coverage of
18 the case, things that were being said in the
19 media, for instance?

20 A No, I didn't.

21 Q Now, in conclusion, Ms. Beattie, I'd
22 like to ask you some questions about your role as
23 a victim in the car crash. Could you start by
24 telling us the injuries that you suffered and what
25 impact it had on your life?

1 A I developed back problems. I had to
2 change my lifestyle somewhat. Downhill skiing and
3 those types of things are something that I don't
4 do anymore. I subsequently lost my job because
5 the vehicle that I was driving -- I'm sorry -- the
6 vehicle that I was driving was a company vehicle
7 and they didn't want to replace it, and they
8 wouldn't meet my salary to make up for that part
9 of my income. And then my time off work after the
10 accident, they replaced me. So I still have quite
11 a bit of back problems. I do go to massage
12 therapy and the chiropractor still, but I'm
13 getting on with my life.

14 Q And how did it sit with you,
15 Ms. Beattie, or did it ever occur to you that
16 during the investigation and prosecution that you
17 were not enumerated as a victim in any allegation?

18 A Well, in the beginning I was kind of
19 relieved that I was kind of left out of the
20 picture, because I just wanted to get on with
21 things and not have to deal with it. But then
22 when we started hearing about the Victims'
23 Services and whether or not they conducted
24 themselves properly, I made a phone call to Dave
25 Chomiak's office to let them know that I was a

1 witness in the accident and no one had ever
2 contacted me about that.

3 Q Do you know when it was that you made
4 that call to Mr. Chomiak?

5 A I think it was around the end of 2007,
6 sometime during the winter.

7 Q So this is recently then?

8 A Recently.

9 Q A number of years beyond?

10 A Yes.

11 Q And certainly, we know from your
12 response that it was subsequent to the
13 announcement of the terms of reference --

14 A Yes.

15 Q -- for this Inquiry?

16 A Yes.

17 Q Carry on?

18 A So I spoke to Mr. Chomiak, and then
19 not long after that I received a phone call from
20 the East St. Paul Police Department saying that
21 their Victims' Services people would have liked to
22 have a meeting with me. We played telephone tag
23 for a little bit trying to set up an appointment,
24 and the meeting never happened.

25 Q So this telephone call from Victims'

1 Services came from East St. Paul Police?

2 A That's correct.

3 Q And the officer's name again was?

4 A Randy Chudyk.

5 Q And this was in 2007 or --

6 A Or eight.

7 Q Or even possibly 2008?

8 A Sometime during the winter.

9 Q And the meeting never took place?

10 A No, last call was they would get back
11 to us with a time and a date.

12 Q And was there anything in particular
13 that you wanted to discuss with them? Did you
14 feel as though, given the passage of time, that
15 there would be a benefit in speaking with them, or
16 did you just want to voice your concern that it
17 had been so long and you hadn't heard from
18 anybody?

19 A I think that it was basically that I
20 wanted to have a chance to voice my opinion on, or
21 just let them know how I felt about things.

22 Q And having said that, Ms. Beattie,
23 have you had an opportunity today to give all of
24 the details about your experience that day and
25 subsequently to Mr. Commissioner?

1 A Yes, I have.

2 Q Is there anything that you can think
3 of that I have failed to ask you or I have left
4 out?

5 A No.

6 Q All right. I'm going to ask you to
7 remain seated and other counsel may have some
8 questions for you.

9 A Okay.

10 MR. CLIFFORD: And 12:34,
11 Mr. Commissioner, could I respectfully suggest
12 that we break for lunch at this point?

13 THE COMMISSIONER: Yes. Do you mind
14 coming back after lunch?

15 THE WITNESS: That's fine.

16 THE COMMISSIONER: Thank you. We'll
17 break for an hour and 15 minutes. We'll come back
18 at 1:50. We'll rise now.

19 THE CLERK: Order, all rise. This
20 Commission is now in recess.

21 (Proceedings recessed at 12:35 and
22 reconvened at 1:50 p.m.)

23 THE CLERK: All rise. This Commission
24 of Inquiry is now reopened. Please have a seat.

25 THE COMMISSIONER: Yes. Are we going

1 to go around in a circle, or starting with you,
2 Mr. Zazelenchuk?

3 MR. ZAZELENCHUK: If that's acceptable
4 to everyone else.

5 THE COMMISSIONER: Well, that's fine
6 with me. Go ahead.

7 BY MR. ZAZELENCHUK:

8 Q You'll be happy to know, Ms. Beattie,
9 that I only want to cover three points with you.

10 Am I correct in understanding that the
11 only time you spoke to Mr. Minuk, the prosecutor,
12 before actually attending in court, was that
13 telephone conversation about when exactly your
14 evidence was going to be given?

15 A That's correct.

16 Q Okay. Have you ever been a witness in
17 a proceeding before this?

18 A No, I haven't.

19 Q And like most people, you probably
20 never saw the inside of a courtroom before this
21 either?

22 A No, I haven't.

23 Q Okay. You were involved in a
24 collision which killed a human being and caused
25 considerable injury to yourself, which you are

1 still suffering from. And the person was being
2 charged criminally. You were subpoenaed as a
3 witness. Did you have any concern that you
4 weren't being interviewed immediately before your
5 court proceeding, that you weren't being advised
6 as to what's expected of you in court or anything
7 like that?

8 A Not at the time, no, I didn't --

9 Q No.

10 A -- know what to expect.

11 Q I see. In retrospect, do you have any
12 concerns about that?

13 A Now that I'm involved with it, I'm
14 surprised that I didn't have a meeting with
15 Mr. Minuk.

16 Q Yes. Because you had a meeting with
17 Commission Counsel in this case?

18 A Yes.

19 Q And they not only interviewed you, as
20 we have the transcript, but they advised you as to
21 what to expect today and things like that, isn't
22 that correct?

23 A That's correct.

24 Q Sure. Okay. And moving on, I'd like
25 to take you to the day that you actually go to

1 court. You've told us about you went into this
2 room and you waited there for a long while. And
3 then Mr. Minuk came -- came up to you and some
4 other people; correct?

5 A Yes.

6 Q Okay. Are you there with me?

7 A Yes.

8 Q I tried to take an exact note of what
9 you said. And my note said that Mr. Minuk
10 approached you and the other people and said that
11 counsel and the family had come to an agreement?

12 A I seem to remember there -- him
13 mentioning something about family.

14 Q Okay.

15 A I don't know his exact words.

16 Q No. But you do remember him
17 mentioning something about family?

18 A Something like that.

19 Q Yes. And do you remember him
20 mentioning something about agreement?

21 A That's the idea that I got. Whether
22 he used those exact words or not, I'm not sure.

23 MR. ZAZELENCHUK: Well, that's more
24 than fair. Okay. I wonder, madam clerk, if you'd
25 be good enough to show this witness F-3.37? And

1 that can be found at page 1313, Your Honour.

2 THE CLERK: Sorry, F-3?

3 MR. ZAZELENCHUK: 3.37.

4 THE COMMISSIONER: F?

5 MR. ZAZELENCHUK: 3.37.

6 BY MR. ZAZELENCHUK:

7 Q Just the second page. And remember
8 you were telling us, witness, about a man that
9 appeared to be in a daze and he came to your car,
10 and you asked him about the accident and he didn't
11 say anything. Do you remember telling us about
12 that?

13 A Yes. Yes.

14 Q You are looking at a picture. Is that
15 the man?

16 A I honestly can't say.

17 MR. ZAZELENCHUK: Thank you.

18 THE COMMISSIONER: Mr. McDonald, you
19 are next.

20 MR. McDONALD: I have no questions,
21 Mr. Commissioner.

22 THE COMMISSIONER: Thank you.
23 Mr. Weinstein.

24 BY MR. WEINSTEIN:

25 Q Ms. Beattie, we know you were

1 interviewed by the RCMP on May 31st, 2006?

2 A That's correct.

3 Q You attended and you answered their
4 questions, correct?

5 A Correct.

6 Q And then you also were interviewed by
7 Commission Counsel approximately two years later.
8 This is now April 8th, 2008?

9 A That's correct.

10 Q All right. Am I correct, and correct
11 me if I'm wrong, in assuming you've had occasion,
12 before you took the stand this morning, to read
13 the transcripts of both interviews?

14 A Yes.

15 Q All right. Let me just deal with your
16 first observation of the gentleman who came up to
17 you. You saw -- did you see him coming from the
18 truck, madam?

19 A I did.

20 Q You see him walking. And from where
21 you were to the truck was approximately how far,
22 Ms. Beattie, approximately?

23 A I have no idea, two lanes of the
24 highway.

25 Q All right. But it wasn't just a

1 matter of a couple of feet?

2 A No.

3 Q Further distance than that?

4 A That's right.

5 Q And there was nothing in his walk that
6 gave you any concern, correct?

7 A No.

8 Q And then he approached you, correct?

9 A Yes.

10 Q And you asked him a question?

11 A Yes.

12 Q Correct? And there was no response
13 from the gentleman?

14 A That's right.

15 Q And according to your interview with
16 the RCMP, you said you were about four feet apart?

17 A That's right.

18 Q All right. When you asked the
19 question, when he just looked at you, there is a
20 distance of four feet apart; correct?

21 A Yes.

22 Q And in that distance of four feet
23 apart, there was no odour of liquor that you
24 detected at all, isn't that correct?

25 A Not that was apparent to me.

1 Q Right. And it's -- you saw him walk
2 back to the truck; correct?

3 A Yes.

4 Q The same distance from you as --

5 A Yes.

6 Q -- as the first time when he
7 approached you?

8 A Yes.

9 Q And he walked back to the truck?

10 A Yes.

11 Q And there was nothing unusual in his
12 walk?

13 A No.

14 Q We are not talking about a person
15 stumbling, staggering, nothing like?

16 A No.

17 Q And when he walked back to the truck,
18 had the paramedics arrived?

19 A No.

20 Q Or what --

21 A No, they were not there yet.

22 Q Did they arrive, and perhaps you can't
23 answer it, and that's fine, did they arrive
24 shortly after that person returned to his truck?

25 A I'm not sure --

1 Q All right.

2 A -- how long that was.

3 Q Ms. Beattie, I've gone through, as you
4 have, your transcript of your RCMP interview. And
5 nowhere in that transcript is there any reference
6 at all, and this is your interview on May 31st,
7 2006, nowhere in there is any mention at all of
8 police officers, or a group, as you subsequently
9 said in your testimony, standing around. Nowhere
10 in that interview on May 31st, 2006, is there any
11 reference to police officers standing around that
12 gentleman?

13 A It's possible. Perhaps, at that
14 point, I wasn't led to think about that situation.

15 Q Okay. Well, what led you to think
16 about that situation on -- two years later on
17 April 8th, 2008?

18 A Conversation.

19 Q With whom?

20 A With Mr. Clifford.

21 Q Okay. And -- well, didn't the RCMP
22 ask you what you observed at various times while
23 you were at the scene, madam?

24 A They did, but I don't really recall as
25 to whether or not it was in depth or if it was a

1 quick conversation or --

2 Q Well, it goes approximately 10, 11
3 pages, okay, typed pages.

4 A M'hm.

5 Q What, in fact, you did say in your
6 Commission -- or, excuse me, your RCMP interview,
7 and you said it on two occasions, that the
8 paramedics or fire department people were, in
9 fact, talking to the person by the truck. And for
10 reference, Mr. Commissioner --

11 THE COMMISSIONER: I'm sorry?

12 MR. WEINSTEIN: For reference, it's
13 found at pages 8 and 10.

14 THE COMMISSIONER: Which volume?

15 MR. WEINSTEIN: It's volume C, I
16 think.

17 MR. PACIOCCO: That would be page 188
18 and 189 of the volume.

19 THE COMMISSIONER: All right. Thank
20 you.

21 MR. WEINSTEIN: Thank you,
22 Mr. Commissioner.

23 BY MR. WEINSTEIN:

24 Q On two occasions, you indicated to the
25 RCMP, under oath, that you:

1 "...saw men from the East St. Paul
2 Fire Department walk over to the
3 truck, before I got into the other
4 ambulance..."

5 All right. And then later on, again:

6 "The fire department was speaking to
7 the fellow at the truck."

8 You've got it very clear in that
9 interview, Ms. Beattie, as I've just read to you,
10 not only were they by the truck where the
11 gentleman was, they were, in fact, speaking to
12 that gentleman; correct?

13 A That, at the time, was what I
14 remembered.

15 Q Right. And that was certainly closer
16 to the incident than your interview with
17 Commission Counsel, which was approximately 23
18 months later. And you made it clear, in your
19 statement to the RCMP, that according to your
20 observation, okay, he seemed -- he was probably
21 very stunned, to use your words?

22 A Yes.

23 Q Stunned?

24 A Odd. Just sort of a blank --

25 Q Okay.

1 A -- look on his face.

2 Q Okay. And you came to the opinion, or
3 at least you were asked, and you commented, and
4 this is at page 41 of your interview with
5 Commission Counsel, you told Commission Counsel:

6 "He didn't seem to be a man who was
7 drunk. That's not the feeling that I
8 got from him when I saw him, not to
9 say that he hadn't been drinking."

10 So your observation, just four feet away, your
11 observation, walking him -- watching him walk on
12 two occasions, no odour of liquor, he didn't seem
13 to be a man who was drunk; correct?

14 A That's the impression I got.

15 Q Yes. And that's based on the things I
16 just mentioned, your observations from four feet
17 away, and watching him walk back and forth from
18 the truck to you and from the -- you back to the
19 truck; correct?

20 A Yes, that's correct.

21 Q Now, on April 8th, in your interview
22 with Commission Counsel, you said there were
23 policemen standing around him; correct?

24 A Correct.

25 Q More than one?

1 A Seems to be.

2 Q Yes. That's why you used, in your
3 evidence this morning, the word "group"?

4 A Yes.

5 Q Correct? Group to me means more than
6 one?

7 A That's right.

8 Q Whether it is two, three or four, am I
9 correct, you are not in a position to state?

10 A No. I don't remember the exact.

11 Q Now, again, did you see the officers
12 go up to him?

13 A No, I did not.

14 Q Okay. When he went back to his
15 truck -- I'm sorry to jump back for a second,
16 Ms. Beattie --

17 A Yes.

18 Q -- when he went back to his truck,
19 when you observed him, he never got back into the
20 truck, did he?

21 A No, not that I saw.

22 Q Right. And you had observed him for
23 some period of time; correct?

24 A Yes.

25 Q Okay.

1 A Off and on.

2 Q Yes. But at no time did that person
3 get into the truck; correct?

4 A Right. Not that I know of.

5 Q At no time did you see, not one, but
6 two police officers having to help him out of the
7 driver's side?

8 A I didn't see that.

9 Q Yes. Is it possible you could have
10 confused police, in their uniform, with paramedics
11 in their uniform?

12 A I don't think so, because the police
13 and paramedic uniforms are very different.

14 Q Okay.

15 A I saw police officers in their dark
16 uniforms.

17 Q Do you recall how many police
18 officers? Forget about standing near the truck,
19 but how many police officers you actually saw on
20 scene?

21 A I don't know that.

22 Q More than two?

23 A I would be guessing.

24 Q Don't guess.

25 A Okay.

1 Q Thank you.

2 MR. WEINSTEIN: If I may just have a
3 moment, Mr. Commissioner.

4 BY MR. WEINSTEIN:

5 Q And when you gave an estimate of time,
6 I'm assuming that's basically what it is, you
7 know, it was 15 minutes?

8 A Definitely an estimate.

9 Q Yes. And naturally, and quite
10 understandably, you had just been involved in an
11 accident which turned out to be a serious
12 accident, not only to you, but certainly to
13 Mrs. Taman, so sometimes what seems like a long
14 time isn't a long time.

15 A That's very true.

16 Q Just because of what's going on and
17 the circumstances?

18 A That's right.

19 Q Thank you, Ms. Beattie.

20 A You're welcome.

21 THE COMMISSIONER: No questions?

22 MR. JACK: We have no questions,
23 Mr. Commissioner.

24 THE COMMISSIONER: Mr. Prober, do you
25 have any questions?

1 MR. GREEN: I don't have any
2 questions.

3 MR. BOYD: I don't have any questions.

4 THE COMMISSIONER: Mr. Prober.

5 BY MR. PROBER:

6 Q Good afternoon, Ms. Beattie. My name
7 is Jay Prober, and I'm counsel for
8 Mr. Harvey-Zenk. Mr. Weinstein asked most of my
9 questions, you'll be happy to know, so I only have
10 a couple left.

11 When Mr. Minuk told you that Derek
12 Harvey-Zenk could have fallen asleep, that was an
13 opinion you had before Mr. Minuk mentioned that to
14 you; is that not correct?

15 A Long before.

16 Q Long before?

17 A Yes.

18 Q Okay. Thank you. Did you notice --
19 and you probably didn't because you haven't said
20 anything about it, did you notice that there was
21 blood coming from Derek Harvey-Zenk's nose?

22 A No, I did not.

23 Q Okay. And finally, you related a
24 conversation you had with your husband, who told
25 you that Mr. Derek Harvey-Zenk's reputation was

1 not that of a partying type of individual; is that
2 correct?

3 A That's correct.

4 Q You, I think, said, and I missed it,
5 who your husband had been talking to. I don't
6 know by name, but by rank?

7 A I don't know the name.

8 Q No?

9 A A supervisor.

10 Q A supervisor?

11 A M'hm.

12 MR. PROBER: Thank you. Those are my
13 questions.

14 THE COMMISSIONER: Any other counsel
15 that I've missed? Yes, any re-examination?

16 MR. CLIFFORD: Mr. Commissioner, there
17 is one question in re-direct, and it arises from a
18 question that was asked by Mr. Weinstein.

19 BY MR. CLIFFORD:

20 Q And it relates to, Ms. Beattie, the
21 question that was put to you whether you saw Derek
22 Harvey-Zenk get back into the truck? And it was
23 put to you in cross-examination that it was
24 something that you didn't see. In fact, you don't
25 know, do I understand correctly, whether he got

1 into the truck or not?

2 A I don't know.

3 Q Right. It is something that you
4 didn't see, but you don't know whether it happened
5 or not?

6 A That's correct.

7 Q Is that the full response?

8 A Yes.

9 Q All right. Thank you.

10 THE COMMISSIONER: Thank you very
11 much.

12 THE WITNESS: Thank you.

13 MR. PACIOCCO: Commission Counsel
14 would like to call Garth Shaw to the stand,
15 please? Mr. Shaw, would you would remain
16 standing, please?

17 GARTH RAYMOND SHAW, having been first
18 duly sworn, testified as follows:

19 THE COMMISSIONER: Mr. Shaw, could you
20 try to use that microphone as much as possible? I
21 know it's annoying, but it's there. Then
22 everybody can hear you.

23 THE WITNESS: Okay.

24 BY MR. PACIOCCO:

25 Q Mr. Shaw, I want to start by thanking

1 you for coming out and taking the time out of
2 your, what I'm sure is a very busy schedule, to
3 assist the Commissioner in his very important
4 work.

5 I understand, sir, that you are 43
6 years of age?

7 A Yes, I am.

8 Q And I also understand, from your
9 interview with Mr. Clifford of our office, that
10 you have been driving since you were 16?

11 A Yes, I have.

12 Q And so it's something that you've been
13 at for quite some time?

14 A Yes, I have.

15 Q And, sir, I also understand you are
16 employed?

17 A Yes, I am.

18 Q And what do you do for a living?

19 A The collision centre manager for
20 Murray Chevrolet Hummer.

21 Q And what are your responsibilities as
22 the collision services manager, sir?

23 A To oversee the collision repairs of
24 the vehicles that come into our hands.

25 Q And, sir, have you ever worked as a

1 collision repair person yourself?

2 A Yes, I have.

3 Q And how long have you been working in
4 this field, sir?

5 A Also since I've been 16.

6 Q Okay. So, I take it, you know a fair
7 amount about collisions and the condition of
8 vehicles?

9 A Yes, I do.

10 Q All right. Sir, we all understand
11 that you had the unfortunate experience of
12 witnessing a horrific accident on February 25th,
13 2005, while driving to work?

14 A That's true.

15 Q And we also understand that this
16 collision occurred on Highway 59 southbound at the
17 intersection leading on to Highway 101 for the
18 northbound Highway 59 traffic?

19 A That's correct.

20 Q I am going to get to you describe, in
21 great detail, what you observed on that day. But
22 before we do, I am going to get some background
23 information so the Commissioner has the entire
24 context.

25 Is there a particular time that you

1 would have left for work in the winter of 2005,
2 sir, from your home?

3 A Approximately 6:30 a.m.

4 Q And I understand that the route you
5 took to work is your usual route?

6 A Yes, it is.

7 Q And it takes you down Highway 59
8 south?

9 A Yes, it does.

10 Q And how long does it generally take to
11 you get from your place to Highway 59 south?

12 A 15 minutes.

13 Q And then from Highway 59 south to the
14 intersection?

15 A A minute.

16 Q Okay. So you're essentially 15 or 16
17 minutes into your route by the time you get to the
18 location where the accident happened?

19 A That's correct.

20 Q And, sir, I understand that when you
21 were interviewed by the East St. Paul Police, you
22 gave a very precise time as to when you felt the
23 accident occurred. Do you recall that?

24 A Yes, I do.

25 Q And do you recall that that time was

1 7:07?

2 A Yes, it is.

3 Q And, sir, how were you able to
4 describe the time of the accident with such
5 precision?

6 A Because I called 911 from my cell
7 phone.

8 Q And I take it from your response that
9 you had a record of that call on your cell phone?

10 A Yes, I did.

11 Q And did you go back and check it to
12 verify the time?

13 A Yes, I did.

14 Q What kind of vehicle were you driving
15 that day?

16 A It was an Uplander van.

17 Q And do you recall the weather
18 conditions that you were driving in?

19 A Normal driving conditions, clear.

20 Q And are you able to describe to the
21 Commissioner what your recollection is of the road
22 conditions at the time that you were driving that
23 morning?

24 A Dry.

25 Q Now, I notice in one of your

1 statements to the East St. Paul Police, you said
2 that you:

3 "...would say they are dry, but a
4 little slick near the intersection."

5 Do you recall saying that?

6 A Yes, I do.

7 Q And are you able to give us a little
8 more detail about that observation, sir?

9 A Just that when there has been a couple
10 of cars that travel through that area, you get
11 that, just that little bit of slick patch right at
12 where the cars stop.

13 Q Okay. Sir, is that something you
14 observed, or is that something that you surmised
15 from the general conditions that day?

16 A Something I observed.

17 Q And did you find that there was a need
18 to drive any more slowly than usual, given the
19 conditions on that day?

20 A No.

21 Q I saw a reference, in your statement,
22 to coming through the Town of Birds Hill on
23 Highway 59. Could you describe for the
24 Commissioner where Birds Hill is?

25 A In reference to?

1 Q In reference to the collision site?

2 A From the collision site, the Town of
3 Birds Hill is between a minute and two minutes
4 away from the actual collision site.

5 Q And I take it, from the direction that
6 you were travelling, that it would be due north?

7 A Yes.

8 Q And is it located also on Highway 59?

9 A No, it's not.

10 Q Okay. So you come through the town
11 and you get on to Highway 59, is that how it
12 works?

13 A That's correct, yes.

14 Q And how far does Highway 59 run from
15 where you enter it, after leaving Birds Hill, to
16 the intersection, in your estimation, sir?

17 A In time-wise?

18 Q Time-wise or distance, whatever you're
19 most comfortable with?

20 A I don't think -- it wouldn't be more
21 than two kilometres.

22 Q Okay. And so when you enter on to the
23 highway off of Birds Hill, do you come off of
24 municipal streets on to a thoroughfare?

25 A You come off -- it is actually called

1 Highway 202, on to 59.

2 Q All right, sir. And how far from the
3 traffic lights where the accident occurred would
4 you have visibility of that intersection? Are you
5 able to help us out in that regard, sir? I notice
6 you are looking at a large blow-up that we have
7 there. Are you able to orient yourself on that
8 blow-up, sir?

9 A Yes, I am.

10 Q You will notice that Highway 59
11 appears in the very center of the diagram from the
12 top to the bottom with the southbound lane being
13 the left lane. And you will notice the off-ramp
14 onto Highway 101 for southbound traffic is
15 approximately one-fifth of the way down from the
16 top. And you'll notice that there's another
17 intersecting road marked "PTH 101" shown on the
18 left side of the diagram, about one-third of the
19 way down?

20 A M'hm.

21 Q And you'll see that there is some
22 green around what appears to be a very broad
23 intersection, which shows the intersection of
24 those two, Highway 59 divided roads and two
25 roadways adjacent to 101, is that correct, sir?

1 A That's correct.

2 Q And I take it, sir, that the collision
3 that you witnessed occurred at that intersection
4 that is pretty much close to the top part of the
5 center of that diagram?

6 A That's correct.

7 Q And, sir, I'm just trying to get a
8 sense as to how far a vehicle coming from the
9 north, in the southbound direction, has visibility
10 towards that intersection?

11 A Well, it would be easy to say that,
12 from the very top of the picture, you'd have
13 clear -- clear sight of that intersection and the
14 flashing lights.

15 Q And why would that be, sir?

16 A Just because of the flashing warning
17 lights, and you would be able to see the lights
18 ahead of you, either green or red, whatever the
19 case may be at that particular time.

20 Q The entire roadway that we can see
21 there of Highway 59 is straight on that diagram?

22 A Yes.

23 Q Is it straight north of that point as
24 well?

25 A Except, until you get into the

1 entrance of Birds Hill, and then the 59 curves off
2 to right.

3 Q Okay. So you --

4 A Around the Town of Birds Hill.

5 Q So you would describe that as about
6 two miles north of this point?

7 A Approximately, yeah. I've never
8 measured it, though.

9 Q Sure. So is it fair to say that you
10 would have a distance of 1 to 2 kilometres of
11 straight road leading up to that intersection?

12 A That would be correct.

13 Q Sir, are there any hills on that road
14 that might impede vision?

15 A No.

16 Q So that's a flat road?

17 A Yes, it is.

18 Q And you described the caution lights.
19 You will notice that superimposed on that
20 photograph there are two yellow signs that are
21 meant to depict certain caution signs that exist
22 in that area. Sir, are those the caution lights
23 that you are referring to?

24 A Yes, I am.

25 Q And you will notice the one on the

1 right has a stoplight configuration in it, in what
2 would be a bit of a square turned on its side, on
3 the other side a rectangle, there is another stop
4 light with words written on them, sir?

5 A Yes.

6 Q And you talked about flashing lights.
7 Are those the flashing lights that you are
8 referring to?

9 A Yes, I am.

10 Q And can you describe what happened
11 that day as you were approaching the roadway? And
12 let's take you to the top of the diagram, and you
13 are coming down Highway 59 southbound. And let's
14 imagine that your car is just entering on to that
15 scene, just somewhat north of those warning signs,
16 sir. Can you describe for the Commissioner what
17 you did, yourself, while you were driving that
18 stretch of road?

19 A Well, typically, when I come out of --
20 I will just back it up a little bit. But
21 typically when I come out of Birds Hill, I go into
22 the passing lane.

23 Q I am going to slow you down from time
24 to time, just so that we have complete clarity.
25 And I take it by "the passing line", you would

1 mean the farthest lane from where you were sitting
2 on Highway 59?

3 A That's correct, that would be the
4 left-hand lane.

5 Q That would be the left-hand driving
6 lane going south, and we will call that the
7 passing lane, and the inside of the two lanes, we
8 call the curb lane?

9 A Sure.

10 Q Okay. So you normally drive on the
11 passing lane, you were about to tell the
12 Commissioner that, so please continue?

13 A So I am driving in the passing lane, I
14 am approaching the intersection now. I can see
15 the flashing yellow lights. I did notice the
16 green car and the yellow car in the passing lane.

17 Q Okay, sir. So you saw the flashing
18 lights. So are you still, at this point, when you
19 see those vehicles, north of the warning lights?

20 A Coming into the picture now.

21 Q Okay. And you see two vehicles.
22 Where are those vehicles, sir?

23 A They're -- they're at the
24 intersection, or approaching the intersection
25 already.

1 Q Okay. Are you able to determine what
2 colour the traffic light is at that point, sir?

3 A Not at that -- not at that particular
4 point, no.

5 Q Okay.

6 A I could just -- I knew that those two
7 cars are in that lane, and I just can't depict.

8 Q Okay. Fair enough. And then what
9 happened, sir?

10 A I -- I did change lanes to -- because
11 I could see nobody was going to be in the curb
12 lane, so --

13 Q Okay. And are you able to help us
14 out, in terms of where you would have changed
15 lanes. On that diagram?

16 A I'm getting very close to the flashing
17 yellow sign now.

18 Q Okay. So you would still be north of
19 the flashing yellow sign, and you are about to
20 move into the curb lane, sir?

21 A At that time, I definitely know the
22 light was red.

23 Q Okay. And how do you know that, sir?

24 A Because the two cars are already
25 stopped by that time.

1 Q Okay. And are you able to tell the
2 Commissioner what sequence they were stopped in,
3 which vehicle was closest to the intersection?

4 A The green car was closest to the
5 intersection.

6 Q Okay. And so you're, at this point,
7 changing lanes into the curb lane. Can you
8 describe the process of changing lanes? What do
9 you do when you change lanes, sir?

10 A Well, being I was in a van at that
11 time, so I just turned on my signal, checked,
12 checked my mirror, and proceeded to change lanes.

13 Q And were you able to make that lane
14 change immediately, sir?

15 A Pretty much.

16 Q Were there any other vehicles around
17 you at that point in time?

18 A Not that I noticed.

19 Q Okay. And, sir, were there any other
20 vehicles ahead of you, other than the two vehicles
21 you have described?

22 A No.

23 Q All right. So you've changed --
24 you've changed lanes. And can you approximate
25 where you may have completed that lane change on

1 that diagram? I know this may not be a fair
2 question, but --

3 A Like, almost at the same time, I was
4 passing by the yellow lights.

5 Q Okay. And what happened then, sir?

6 A And then the truck kind of just
7 went -- like almost as soon as I changed lanes, he
8 went shoo, like straight by me.

9 Q And you made a sound with your mouth,
10 a shoo sound, and you made a motion with your arm,
11 a forward motion, sir. What kind of truck was it,
12 sir, that went by you?

13 A A blue Dodge truck.

14 Q And, sir, had you observed that truck
15 before you changed lanes?

16 A No, I did not.

17 Q And you made a sound, a shoo sound,
18 and you put your hand down as it went by. Can you
19 describe in more detail what observations you made
20 about that vehicle as it went by you, sir?

21 A Compared to my speed, that truck was
22 going fast.

23 Q And, sir, can you give any further
24 description to the -- how fast that vehicle was
25 going or what observations, or what words you

1 might use to describe how that vehicle was
2 travelling?

3 A Well, based on the speed that I was
4 doing, I would have to say he was doing twice the
5 rate of speed of what I was doing. And I was
6 approximately doing about 40 to 50 kilometres an
7 hour.

8 Q And, sir, why would you estimate your
9 own speed at 40 to 50 kilometres an hour?

10 A Because I've gone back there and just
11 checked to see what speed I'm doing as I cross
12 that sign, as I'm slowing down for that light.

13 Q Okay. So this is something you have
14 subsequently paid some attention to, sir?

15 A Yes.

16 Q And why would you draw the conclusion
17 that he is going at least twice as fast as you
18 were going, sir?

19 A It's a hard assumption to make, but it
20 was like -- like right now, he was gone by me,
21 like, in a flash. Like, you know, when somebody
22 passes you, you can basically, if you are doing
23 100, they are passing you around 110, 120 to get
24 by you, this was way faster than that.

25 Q And, sir, are you able to indicate

1 where on that diagram, approximately, you think
2 you would have been when that car passed by you,
3 sir?

4 A Just past, like just past the yellow
5 signs now.

6 Q And what went through your head when
7 you saw that vehicle go by you at that rate of
8 speed?

9 A He's not going to stop.

10 Q Why would you say that?

11 A Because there is not enough room for
12 him to stop at that speed in that short of
13 distance -- in that short of distance.

14 Q Now, sir, I'm going to take you to a
15 statement. Do you recall giving a statement to
16 the East St. Paul Police?

17 A M'hm.

18 Q And that statement is in a book. We
19 have filed books of documents and the clerk will
20 furnish it to you. I am going to be referring to
21 document C.12.a. And the clerk will bring it up
22 to you, sir. If you could show it to the witness,
23 we will enter it, yes.

24 We might as well enter it now. That
25 would be Exhibit 72?

1 THE CLERK: Correct.

2 (EXHIBIT 72: C.12.a, Statement by
3 Garth Shaw to E.S.P.)

4 MR. PACIOCCO: Exhibit 72 will be
5 document found at book C, tab 12.a.

6 BY MR. PACIOCCO:

7 Q And, sir, what is put in front of you
8 is an East St. Paul Police witness statement dated
9 the 25th of February, 2005, sir; is that correct?

10 A Correct.

11 Q And it has the name "Garth Raymond
12 Shaw" at the top. Is that your handwriting on
13 that document, sir?

14 A That's not my handwriting.

15 Q Okay. Fair enough. So this document,
16 do you recognize it?

17 A Yes.

18 Q And if you turn to the bottom of each
19 page, you will see a signature, sir?

20 A Yes, do I.

21 Q And I take it that that's your
22 signature?

23 A Yes, it is.

24 Q And we will come back to this
25 statement later, but it was taken at "10:05", and

1 I would imagine that that was p.m. because the
2 next entry is "2256". And although I'm sure that
3 it wasn't an unpleasant experience, you weren't
4 with that officer for 12 and a half hours?

5 A No, I was not.

6 Q So we can assume that that was 10:05
7 p.m. that that statement would have begun?

8 A Yes.

9 Q Does that basically suit your
10 recollection of when you would have given a
11 written statement to the East St. Paul Police?

12 A Yes, it was.

13 Q Okay. And the reason that I have give
14 you the statement now, sir, is I notice that there
15 is something stroked out and changed in the
16 statement. You will notice that the question is
17 asked:

18 "Q Garth, I understand that you
19 witnessed a motor vehicle collision
20 this morning at Highway 59 at the
21 intersection of Highway 101. Can you
22 tell me about this?

23 A I was driving southbound on
24 Highway 59 at approximately 7:07 a.m.
25 I was approaching the intersection and

1 slowing down for a red light. I was
2 probably around 10 car lengths away
3 from the intersection when I noticed
4 the blue truck."

5 And originally it looks like you had
6 written there "passed me", or whoever took this
7 statement had written there:

8 "...passed me at a high rate of speed
9 compared to my vehicle anyway."

10 And that is stroked out and the words "wasn't
11 slowing down for the stop light" is replaced
12 there. And then we see the initials, which I
13 presume are yours, "JWGS"?

14 A Well, it would be Jason's and myself,
15 yeah.

16 Q Okay. And when you refer to "Jason",
17 you are referring to the officer that took the
18 statement?

19 A Yes, it is.

20 Q And that would be Jason Woychuk, are
21 you aware of that, sir?

22 A Yes, it is.

23 Q I am just going to ask you if you
24 remember how that change or alteration in your
25 statement came about and why it came about?

1 A No, I do not.

2 Q You know that after the statement was
3 written by Constable Woychuk, presumably in
4 response to questions that had been asked of you,
5 you were given an opportunity to read the
6 statement, apparently, at 10:49 p.m.?

7 A Yes, I do.

8 Q And does that help refresh your memory
9 at all about how that change may have occurred?

10 A No. Sorry.

11 Q And, sir, you will notice that on the
12 last question of the statement you were asked,
13 again, only very directly, rather than just in
14 narrative form:

15 "How fast was the blue truck going
16 when he passed you?

17 A Based on my speed of around 40
18 kilometres per hour, I would
19 approximate his speed at around 70 or
20 80 kilometres per hour."

21 Do you see that, sir?

22 A Yes.

23 Q And does any of that cause any
24 insecurity in terms of your testimony about the
25 speed at which this blue vehicle was passing?

1 A No.

2 Q At that point in time, when you gave
3 that statement, had you had the opportunity to
4 check your own speed? You told us earlier that
5 you had checked your speed at which you usually
6 slow down?

7 A No.

8 Q Did that happen subsequent to the
9 giving of this statement, sir?

10 A Yes.

11 Q Did you make any other observations
12 about the way the blue truck was being driven,
13 sir?

14 A Unfortunately, I didn't have time.

15 Q Did you notice whether the vehicle
16 maintained itself in that lane?

17 A Yes, it did.

18 Q And I notice that in one of your
19 statements you indicated that it wasn't swerving
20 over the road or anything like that, is that fair,
21 sir?

22 A That's a fair statement.

23 Q And you said it was basically going
24 straight and fast; is that again a fair statement,
25 sir?

1 A That's a fair statement.

2 Q And how long was that vehicle in your
3 line of sight? For what distance were you able to
4 see that vehicle, sir, before the collision?

5 A Well, basically from the distance of
6 where the flashing lights are, and as we were
7 travelling forward to the collision.

8 Q And based on your answer, I guess
9 common sense would suggest that he got ahead of
10 you?

11 A Yes, he did.

12 Q And, sir, you were looking, I take it,
13 at the back of the vehicle?

14 A Yes, I was.

15 Q All right. Sir, can you tell us,
16 then, about what happened after he got past you?

17 A I didn't -- I did notice the lights
18 were definitely still red, and then the next thing
19 there was the impact.

20 Q Are you able to tell us where you were
21 at the time of the impact?

22 A Approximately about 10 car lengths
23 behind him.

24 Q Were you still moving at that point in
25 time?

1 A Yes, I was.

2 Q And what did you do, sir, when you saw
3 the collision? Yourself, as a driver of the
4 vehicle, what did you do?

5 A I kept driving forward until all of
6 the cars came to their resting points, and I
7 stopped before the intersection.

8 Q You stopped before the intersection?

9 A Yes, I did.

10 Q Now, I know that you are able to
11 orient yourself on that diagram, but you can see
12 that there is going to be some distance for the
13 gallery, but they all have photographs of that,
14 all the lawyers do, and the Commissioner does as
15 well.

16 You will notice that there is, at the
17 very north end of the intersection, a long black
18 line that comes across. Just for the sake of
19 clarity, let's treat that as the stop line as you
20 are proceeding south.

21 I am going to invite you, if you wish,
22 to get off the stand and go over and try to show
23 us where you think your vehicle was at the time
24 that you stopped after the collision?

25 A I was at the stop line.

1 Q Okay. So you would have been at the
2 stop line?

3 A Yes, it was.

4 Q Okay. So that saves you a trip off
5 the stair. And I take it, sir, that you were at
6 the curb lane still at that point in time?

7 A Yes, I was.

8 Q And you came to a complete stop?

9 A Yes, I did.

10 Q All right. Sir, I am going to get
11 back to you and that vehicle. But what we haven't
12 done is we haven't described the collision. So
13 you described the fact that there was a collision.
14 Can you tell us exactly what you saw, sir, from
15 that vantage point of approximately 10 car lengths
16 back?

17 A I saw the impact of the yellow car,
18 the yellow car to the green car, the green car
19 being forced by the impact over into the opposite
20 lane. The blue truck is --

21 Q And when you say "the opposite lane",
22 I take it that you are talking about the vehicle
23 going from the passing lane across the curb lane?

24 A To the curb lane, coming to a rest at
25 the -- that would be the -- I have got to get my

1 head -- that would be the west, the west side of
2 the road now.

3 Q Okay. And do you recall whether the
4 green car rested on the road or off the road, sir?

5 A It would have been off the road.

6 Q Okay. And please continue?

7 A The blue truck -- there was a snow
8 bank, or a build-up of snow by the light
9 standard -- it flew, hit that, launched itself,
10 where it hit the light standard, which caused it
11 to go back on to the southbound lane of 59. But
12 due to the extensive damage of the truck, it made
13 its way back into the median.

14 Q All right. So I take it that we are
15 talking about this car travelling along what would
16 be the passing lane initially into the
17 intersection?

18 A Yes.

19 Q Launching itself on a snow bank that
20 would be on the southeast corner of that
21 intersection, sir?

22 A Yes.

23 Q And clipping or hitting the light
24 standard?

25 A Yes.

1 Q And then being forced back on to the
2 road, or making its way back on to the road, and
3 then ending up again back in the snow bank. Is
4 that a fair description?

5 A That's correct.

6 Q And, sir, you have inferred that that
7 was as the result of the shape that the vehicle
8 was in, sir?

9 A Yes.

10 Q And I think, it probably goes without
11 saying, that you didn't have an opportunity to
12 inspect the mechanical fitness of the vehicle?

13 A No.

14 Q So this is a surmise that you are
15 making, based on your observation of the movement
16 of the vehicle and your experience as a collision
17 repairman?

18 A Yes.

19 Q So it is kind of like a common sense
20 inference that you would draw?

21 A Yes.

22 Q And, sir, we noticed, from your
23 earlier testimony, that there were no vehicles
24 ahead of you. Were there any other vehicles in
25 the intersection, at this time, coming maybe from

1 the northbound lane?

2 A No.

3 Q Sir, after the vehicles came to rest,
4 were any of them moved at all before the police
5 and emergency personnel showed up?

6 A No.

7 Q Now, you indicated that you originally
8 stopped your vehicle at the stoplight in the curb
9 lane. What did you do after you stopped your
10 vehicle and this horrible collision had been
11 unfolding in front of you? After it stopped, what
12 did you do?

13 A Then I did move my vehicle in front of
14 the -- in front of the yellow vehicle, so there
15 would be no further traffic that might come
16 through that intersection.

17 Q That was a very appropriate thing to
18 have done. I am going to ask you, when you first
19 stopped at the stoplight, did you have any trouble
20 bringing your vehicle to a halt?

21 A No.

22 Q You didn't notice anything slippery
23 about the road when you did that?

24 A No.

25 Q How about when you moved your vehicle

1 over to block off the yellow vehicle from further
2 potential collision?

3 A No.

4 Q And, sir, where was this yellow
5 vehicle when you moved your vehicle in front of
6 it? Where did it come to rest?

7 A It was about three or four car lengths
8 into the southbound lane, past the intersection.

9 Q And do you remember where you put your
10 vehicle, sir?

11 A I would be almost right at the
12 intersection.

13 Q You would be, sir, almost?

14 A Almost right at the intersection.

15 Q Okay. Now, it's a fairly broad
16 intersection. Am I to understand, sir -- which
17 end of the intersection are you at? Are you at
18 the northbound or southbound end of the
19 intersection?

20 A Southbound.

21 Q So you've gone through the
22 intersection and you've placed your vehicle -- I
23 would imagine, sir, you see those green markings?

24 A That would be correct.

25 Q Okay. So you are parked, and I take

1 it you parked width-wise across there in order to
2 try to give some protection to that vehicle?

3 A That's correct.

4 Q And, sir, what happened then?

5 A I got out of my van. I went over and
6 looked at the yellow car.

7 Q Okay, sir. What was your footing like
8 when you walked over there?

9 A Fine.

10 Q Do you remember what kind of footwear
11 you might have been wearing?

12 A Just probably my work shoes, rubber
13 gripped soles.

14 Q Okay. And did you make any
15 observations of the road conditions on your feet
16 at that time, sir? I know you had a lot to think
17 about, but I do want to ask you that question?

18 A Well, no, they seemed fine.

19 Q And, sir, I am not going to get you to
20 describe what you saw when you were at the yellow
21 vehicle, but what conclusions did you come to,
22 sir?

23 A There was definitely some serious
24 injuries.

25 Q Was that a surprise to you to find

1 that in that vehicle, sir?

2 A No.

3 Q And why was that not a surprise?

4 A Being the type of car that it was and
5 the amount of impact that it had sustained.

6 Q And, sir, I take it that you're
7 bringing to bear some of your experience with
8 collisions, sir?

9 A Yes.

10 Q When that collision happened, you
11 realized that that was a very, very serious
12 impact?

13 A Yes, it was.

14 Q After you realized there were very
15 serious injuries, sir, what did you do?

16 A I went back to my van.

17 Q And how far were you from the yellow
18 vehicle when you were -- when you were at that
19 van, sir? Can you give us an estimate?

20 A Well, if she was three or four car
21 lengths into it, then I would have been probably
22 two or three from her.

23 Q And, sir, can you tell us how far you
24 would have been from the blue truck?

25 A Probably, I would say, between 10 and

1 12 car lengths.

2 Q So we've heard evidence that it came
3 to rest farther south along the left-hand side in
4 the bank as you've described it. Did you make any
5 observations of movement around that truck from
6 your vantage point in the vehicle?

7 A Nothing at first. I can't give you a
8 time between the time he actually did come out of
9 the truck to the time the actual collision
10 happened.

11 Q It is certainly impossible to give any
12 kind of precise time. Are you able to give us,
13 without just sheer guessing, an estimate of
14 whether we are talking a minute, five minutes, 15
15 minutes?

16 A I would think somewhere around a
17 minute.

18 Q So nothing happens for about a minute,
19 sir. What occurs then?

20 A I am just trying to recall when the
21 first person that arrived on the scene was again.

22 Q Okay. Sir, we can get to the persons
23 who arrived at the scene shortly.

24 A Okay.

25 Q If we can just focus on him for the

1 moment, given that that's where we are.

2 A Then he did come out of his truck, he
3 did walk up to the vehicle.

4 Q Did you see him get out of the truck?

5 A Yes, I did.

6 Q And which side of the truck did he get
7 out of?

8 A Driver's side.

9 Q And were you able to get a sense as to
10 what he looked like as he exited that vehicle?

11 A In terms of injuries or --

12 Q Both injuries and description?

13 A I couldn't see any obvious injuries on
14 him.

15 Q Okay. Can you describe the man who
16 got out of the truck?

17 A He is probably about your height. I
18 don't know how tall you are. 5'11", I think, 6
19 feet?

20 Q Thank you very much.

21 A And weight-wise, 190, I would think.

22 Q Okay. And any observations about his
23 age?

24 A Somewhere, I would think 30s,
25 somewhere around there.

1 Q And anything about his hair style or
2 his dress?

3 A I believe he was wearing jeans.

4 Q And how about his hair? Did you make
5 any observations about his hair?

6 A Not really, no.

7 Q Do you recall telling the East St.
8 Paul Police that you observed that he had a short
9 hairstyle?

10 A A short hairstyle, yeah.

11 Q Is that a fair description?

12 A That's fair, yeah.

13 Q All right. He gets out of his
14 vehicle, and then what happens, sir?

15 A He walked over to the yellow vehicle.
16 He stared at it for about 15 to 30 seconds, and
17 then walked back to his truck again.

18 Q Okay. And did you watch him walk
19 towards the vehicle?

20 A Yes, I did.

21 Q And did you watch him walk back to the
22 vehicle?

23 A Yes, I did.

24 Q Can you describe the way that he
25 moved, sir?

1 A I would say it was in a state of
2 shock.

3 Q Why would you say that?

4 A Because it would -- there was no sense
5 of urgency to it. Like he wasn't racing up there
6 to -- seeing what he had done or what has
7 happened. It was more just a slow deliberate
8 walk.

9 Q Did that strike you as unusual, sir?

10 A Yes and no.

11 Q And can you elaborate on that?

12 A Yes, it does surprise me that after
13 you've been in an accident, such as that, that you
14 would want to see if -- you would want to get up
15 there fast to see what had happened or what he had
16 done. And then, on the other hand, no, because
17 you would be in such a state of shock, you haven't
18 realized what you had done yet.

19 Q Okay. That's fair. Was there anyone
20 else in the truck that you were able to determine?

21 A I didn't see anybody else in the
22 truck.

23 Q As he approached the vehicle, he would
24 have been, of course, closer to you than when he
25 left the truck?

1 A That would be correct.

2 Q And did you make any observations
3 about whether he appeared to be injured at all
4 when he was in that proximity to you?

5 A The only thing that I can recall now
6 is that he may have had a bleeding nose.

7 Q Was there anything in the way he moved
8 that might suggest he had an injured leg or --

9 A No.

10 Q -- or injured back or anything like
11 that?

12 A (No audible response).

13 Q You described him standing by the
14 yellow vehicle for a period of time. I believe
15 you said it was 13 to 15 seconds?

16 A M'hm.

17 Q Were you able to observe what he was
18 doing at that point, sir?

19 A Nothing but staring.

20 Q And how far away from that vehicle was
21 he when you made the observations of him standing
22 and staring?

23 A Five to ten feet.

24 Q Did you get any impression of any
25 emotional state on his part, sir?

1 A No.

2 Q Did he do anything, apart from
3 standing and staring, offer assistance, anything
4 of that nature?

5 A No, he did not.

6 Q Did you approach him at all?

7 A No, I did not.

8 Q I take it, then, that you remained in
9 your vehicle?

10 A Yes, I did.

11 Q Is there a reason why you didn't go
12 out and see whether he was okay or approach him?

13 A I didn't think it would be appropriate
14 if I approached him.

15 THE COMMISSIONER: I'm sorry, I missed
16 that?

17 THE WITNESS: I didn't think it would
18 be appropriate if I approached him.

19 THE COMMISSIONER: Why?

20 THE WITNESS: Because I knew this was
21 a serious accident, and it --

22 BY MR. PACIOCCO:

23 Q Sir, were you angry, or did you want
24 to give him some space, what was it?

25 A I don't think I was angry. I think I

1 was in shock myself.

2 Q Fair enough. Do you recall whether he
3 approached any other thing, or any other person,
4 when he walked up to the yellow vehicle?

5 A Not that I'm aware of.

6 Q We have heard evidence that he walked
7 towards the other vehicle as well, sir. Do you
8 recall whether that happened?

9 A No, I do not.

10 Q And, sir, are you able to say that it
11 didn't or is it just a question of you not
12 knowing?

13 A That I'm not knowing.

14 Q Do you recall seeing another woman, or
15 a woman, around this location, sir?

16 A Yes.

17 Q And who would that have been?

18 A The driver of the green car.

19 Q Did you notice any approach between
20 the driver of the green car and the man who came
21 out of the blue truck, any time when they came
22 together or even got into the same general area?

23 A Not that I recall.

24 Q You described how this man went back
25 to his truck. Do you remember what he did when he

1 got back to the truck?

2 A He leaned up against it.

3 Q And, sir, would he have been leaning
4 on the back of the truck, the side of the truck,
5 the passenger's, the driver's?

6 A I believe it was the passenger side
7 fender door area.

8 Q So towards the inside of the roadway?

9 A M'hm.

10 Q And you would have continued to have a
11 line of sight towards him, sir?

12 A Yes, I would have.

13 Q He didn't disappear behind the truck?

14 A No, he did not.

15 Q Now, you began to tell us about others
16 at the scene when they may have arrived. Can you
17 give us whatever you recall about what happened
18 after the accident occurred in terms of other
19 people coming on site?

20 A Well, definitely the first person that
21 I recall being on the scene was firefighter that
22 came upon the accident.

23 Q Okay. And do you know this
24 firefighter?

25 A I don't, no.

1 Q And do you know who he was?

2 A I do now. I didn't at the time, no.

3 Q And I think you are referring to
4 Mr. Dale Kasper?

5 A Yes, I am.

6 Q And how did you come to know that Dale
7 Kasper was at that scene?

8 A Well, just through the media.

9 Q And, sir, what was Mr. Kasper doing
10 when he arrived at the scene, sir?

11 A He took a quick observation of the
12 damaged vehicle.

13 Q That would be the yellow vehicle?

14 A That would be the yellow vehicle. And
15 then he started to direct traffic away from the
16 accident scene.

17 Q Okay. Now, did you have any
18 interaction with the driver of the green vehicle?

19 A No, I did not.

20 Q Do you recall whether you approached
21 the vehicle at all?

22 A I don't recall that, no.

23 Q I know that you indicated, in one of
24 your statements, that you believe you may have
25 approached the vehicle and you may have offered

1 your business card, but the woman was on the cell
2 phone. Do you recall that?

3 A I remember thinking about that.

4 Q Okay.

5 A But I don't think I ever did it.

6 Q Okay. So you are thinking about it
7 now. This does not ring any bells for you?

8 A Yeah.

9 Q But it is something that you had
10 reported in the past when giving statements. So I
11 take it, given that you had described, at least in
12 general terms, approaching and maybe offering your
13 business card, there is a possibility that you
14 might have done that, sir?

15 A A possibility, but not likely.

16 Q Did you notice any other women at the
17 scene, other than this driver of the green
18 vehicle, that you can recall?

19 A No.

20 Q So after noticing Dale Kasper at the
21 scene, who is the next person that you can recall
22 arriving at the scene, or the next people arriving
23 at the scene?

24 A The paramedics.

25 Q Okay. And what happened when the

1 paramedics arrived?

2 A They immediately started to work on
3 the yellow car.

4 Q Are you able to give us a time
5 estimate as to how long you waited before the
6 paramedics got there?

7 A Probably over five, but less than ten.

8 Q And I take it that this episode that
9 you described, where the driver of the blue truck
10 approached the yellow car, took place before the
11 paramedics arrived?

12 A Definitely.

13 Q And what happened? They went and
14 began working on the yellow vehicle. Where were
15 you parked at this time?

16 A I was parked, actually, just ahead of
17 the stop line on the northbound lane.

18 Q So I take it that you moved your
19 vehicle?

20 A Yes, I did, so they could get access
21 to the yellow car now.

22 Q When you say "they could get access",
23 I take it the paramedics are coming, and you
24 realize that you have done your service, you have
25 protected the vehicle, but you have to get out of

1 the way so the paramedics can get in there?

2 A That's correct.

3 Q Did anyone suggest that to you or was
4 that something you just did that yourself?

5 A I don't recall anybody suggesting that
6 to me.

7 Q Okay. Now I want you again to
8 describe where you put your vehicle?

9 A I put my vehicle in the northeast
10 corner of the intersection.

11 Q Okay. So that would put you, sir, on
12 that diagram, you would have to move to the
13 right-hand side of the intersection, and then at
14 the top of the large square that begins with "PTH
15 101"; is that correct, sir?

16 A I would have been right there.

17 Q Okay. So you are pointing in what
18 would be the curb lane?

19 A Yes.

20 Q So you put your car back basically to
21 where you stopped the first time, sir?

22 A Only on the opposite side.

23 Q "On the opposite side", what do you
24 mean by "opposite side"?

25 A Well, I was in the curb lane before,

1 now I am in the passing lane.

2 Q I've got you, sir. That's what I had
3 understood initially, sir. So you are in the
4 passing lane. Are you back behind the stop line,
5 sir, or are you in front of the stop line for the
6 vehicles?

7 A In front of it.

8 Q Okay.

9 A I was almost parallel with that --
10 with the light standard.

11 Q Okay. All right. Sir, you are in
12 that part of the intersection. What kind of line
13 of vision did you have from there to the truck?

14 A Still clear.

15 Q Was there anything between you and the
16 truck?

17 A Pardon me?

18 Q Was there anything in between you and
19 the truck?

20 A No, there was not.

21 Q So I take it you would have been to
22 the left of the paramedics, sir?

23 A Yes.

24 Q All right. So you can see, from past
25 their left side, you can see your view into the

1 truck?

2 A Yes, sir.

3 Q And, sir, you gave an estimate that
4 the police arrived about 10 minutes after? I
5 think you indicated you called at 7:07, and I
6 think you estimated it was about 10 minutes. Is
7 that still your recollection?

8 A I don't think it would have been that
9 long, no.

10 Q So you think they might have been
11 there more quickly than that?

12 A Yes.

13 Q Do you recall how many police officers
14 came to the scene, that you observed?

15 A I can only recall observing two.

16 Q Sir, are you testifying that there
17 were only two, or is that all that you recall
18 observing?

19 A That's all I observed.

20 Q Did you see them arrive?

21 A No, because they came up from behind
22 me.

23 Q Did you see the police vehicles
24 arrive, sir?

25 A No.

1 Q Do you know whether there was one
2 vehicle, or two, or more?

3 A No. I don't know that.

4 Q And are you able to tell us where the
5 police vehicles would have been left at the time
6 that the police officers came to the intersection?

7 A I knew that they were behind me, but I
8 couldn't tell you their exact locations, no.

9 Q Okay. When they are behind you, I
10 take it, sir, that your vehicle is still facing
11 south?

12 A Yes.

13 Q So they would have been farther to the
14 north of the position that you described?

15 A That's correct.

16 Q Sir, did you see any police officers
17 directing traffic, at any point?

18 A Other than at the -- at the main
19 turn-off where they are directing traffic off of
20 59 on to the 101.

21 Q Okay. When you say "the main
22 turn-off", am I to understand that you are
23 referring to the exit that comes off of Highway 59
24 south and leads on to 101, which would be about
25 one-fifth of the way down?

1 A That's correct.

2 Q Very close to the warning signs?

3 A Yes.

4 Q And, sir, how do you know there were
5 police officers up there?

6 A I could see the flashing lights.

7 Q Okay. And I take it that your
8 conclusion was they were stopping traffic from
9 coming southbound and routing them off that
10 off-ramp?

11 A That's correct.

12 Q And so when you talk about two
13 officers being at the scene, that you recall, I
14 take it you are not including the people up there?

15 A No.

16 Q Because all you see is activity and
17 lights?

18 A Yes.

19 Q Okay. Sir, can you describe what you
20 observed the police officers, who you did see,
21 doing at the scene?

22 A I know they went -- one of the police
23 officers went and talked to the gentleman in the
24 blue truck.

25 Q All right. Sir, can you tell us

1 approximately how long after you had -- after they
2 arrived that that occurred?

3 A I can't put a timeline on that.

4 Q Are you able to give us any type of
5 general parameters that we can work with, sir? I
6 know that people don't take out stopwatches to
7 watch events like this, but is there any way that
8 you can give us any indication to -- well, let me
9 put it this way, did you observe the police
10 officers doing anything other than going and
11 talking to the gentleman at the truck?

12 A No.

13 Q And can you describe what happens when
14 you see the officer going to the truck, sir?

15 A He just approached the gentleman in
16 the truck, and then they seemed to be conversing
17 in a conversation.

18 Q Okay. And I am going to come back to
19 the conversation in a minute. Where did you first
20 observe the police officer who was approaching the
21 truck?

22 A He was walking southbound past my van
23 on 59.

24 Q Okay. And did you do you know whether
25 he passed in front of the driver's side or the

1 passenger side of your van as he was going
2 southbound?

3 A Passenger side.

4 Q Okay. So it would have been on the
5 roadway, and you are parked off to the side?

6 A That's correct.

7 Q And do you have a straight line of
8 vision to him, sir?

9 A Yes, I do.

10 Q And he goes from your van. Does he go
11 directly to the truck?

12 A Yes, he does.

13 Q Sir, what happens when he gets out of
14 the truck?

15 A Again, they seem to be conversing in
16 a -- in a conversation.

17 Q And when you say "they," who are you
18 referring to?

19 A The driver of the truck and the
20 officer.

21 Q Okay. Can you tell us where they were
22 relative to the truck?

23 A He was still leaning up against the
24 truck, so that's where they were having the
25 conversation.

1 Q So, I take it from your earlier
2 answers that that would be on the passenger side?

3 A That's correct.

4 Q Sir, did you notice anything about the
5 conversation that you can share with us? How long
6 was the conversation?

7 A About five minutes.

8 Q And what makes you put a five-minute
9 estimate on that conversation, sir?

10 A Just by the length of it.

11 THE COMMISSIONER: Excuse me, you kept
12 saying he was "leaning up against the truck".
13 What do you mean by "leaning"? Was there a
14 particular way? His back was against the truck?

15 THE WITNESS: Yes.

16 BY MR. PACIOCCO:

17 Q Okay. And the officer who is having a
18 conversation with him, where is he relative to the
19 man who is leaning up against the truck?

20 A In front of him, a little bit off to
21 the side.

22 Q Okay. How close would you put him to
23 the man who is leaning up against the truck?

24 A Probably two -- two feet.

25 Q Do you see any physical contact

1 between the two men?

2 A No, I do not.

3 Q So would this be two people, one
4 leaning and another standing, exchanging some type
5 of words; is that your conclusion?

6 A They were dialoguing.

7 Q And how are you sure of that, sir?

8 A I could see both people's mouths move.

9 Q You could see both people's?

10 A Mouths move.

11 Q Their mouths are moving?

12 A Yes. So I can't hear the dialogue,
13 but there is --

14 Q Now, sir, we've heard evidence that
15 there may have been more than one officer or
16 person in uniform conversing with the gentleman at
17 the truck. Are you able to offer any insight as
18 to whether that happened, sir?

19 A I don't recall seeing two people
20 there -- or three people at least.

21 Q Is it your evidence that it didn't
22 happen, or is it your evidence that you don't
23 recall whether there was more than one officer?

24 A I don't recall if there was more than
25 one officer.

1 Q So, I take it from your answer, sir,
2 and don't let me put words in your mouth, but I
3 take it, from your answer, that you don't think
4 so, but you are not ruling it out?

5 A That would be correct.

6 Q Sir, after they -- they were
7 conversing for this period of time. Does the
8 gentleman that is leaning up against the vehicle,
9 do you recall whether he remains leaning up
10 against the vehicle?

11 A I don't think he remained up against
12 the vehicle for the whole time. Once they started
13 talking, then he stood up.

14 Q And do you recall whether he bent over
15 at any point in time?

16 A No. I don't remember that.

17 Q And, again, sir, you indicated that
18 you don't remember it. Are you indicating that
19 you don't think that happened, or are you just
20 indicating that you don't have a recollection of
21 it?

22 A I don't think that happened.

23 Q So what happens after this five-minute
24 conversation at the vehicle, sir?

25 A They basically escorted him away from

1 the vehicle.

2 Q When you say "they," sir, who are you
3 referring to?

4 A Or them, they would be the police
5 officer and the driver of the truck, being
6 escorted past my van and then out of my sight
7 line.

8 Q Now, you've used the word "escort."
9 What do you mean by that?

10 A They were walking together.

11 Q Are you able to tell us, in any more
12 detail, how they were walking together?

13 A The driver was slightly in front of
14 the police officer.

15 Q Did you notice any contact between
16 them?

17 A No, I did not.

18 Q Are you able to describe the posture
19 of the driver while he was walking? Was he
20 standing as he walked? Was he bent over as he
21 walked, or is there anything --

22 A Standing, normal.

23 Q And did you notice any contact between
24 them?

25 A No, I did not.

1 Q And I take it that they are coming in
2 your direction, at this point?

3 A Yes, they were.

4 Q Did you make any observation of how
5 fast they were walking?

6 A Normal walking pace.

7 Q Was there any assistance being given
8 to the gentleman who was with the police officer?

9 A Not that I recall.

10 Q Did you observe anyone being
11 handcuffed or searched? Did you observe any of
12 that taking place?

13 A No, I did not.

14 Q Now, you indicated they walked past
15 your vehicle. How close did they get to your
16 vehicle?

17 A Within three feet.

18 Q Do you recall whether they were
19 walking on the roadway adjacent to the passenger
20 side of your vehicle --

21 A Yes, they were.

22 Q -- or did they pass by the driver's
23 window?

24 A Passenger side.

25 Q You commented earlier about the

1 possibility that this man, who was driving the
2 truck, may have had a bloody nose. Did you make
3 any observations, at that time, about his physical
4 condition?

5 A No.

6 Q So they went past your vehicle and out
7 of your line of sight, is that fair, sir?

8 A That's correct.

9 Q Do you know where they went after they
10 went past your vehicle?

11 A No, I do not.

12 Q Now, sir, are you able to give us any
13 type of time estimate as to, at what point in time
14 they came by your vehicle relative to when the
15 police arrived?

16 A Not a definite one, no.

17 Q Okay. And you indicate "not a
18 definite one". Is there one that is worth
19 sharing, or would you just be guessing? And we
20 don't want you to.

21 A I would be guessing.

22 Q Thank you for that. Do you recall,
23 after the gentleman went by your truck, seeing
24 anybody approach the truck, any police officers or
25 anyone else?

1 A I don't recall that, no.

2 Q In fairness to you, sir, what were you
3 doing as you were sitting in the vehicle? What
4 were you attending to or watching after the man
5 went by your vehicle?

6 A I was just trying to collect my
7 thoughts at that point in time.

8 Q And do you recall what the condition
9 or the situation was at the yellow vehicle?

10 A In -- sorry, in what terms?

11 Q Well, were the paramedics still there
12 and still working on the vehicle, I guess, is what
13 I'm trying to find out?

14 A I don't believe they were.

15 Q Sir, I'm going to ask you to take a
16 look at another statement, if I can. This is a
17 statement that you gave to the RCMP. Do you
18 recall being interviewed by the RCMP, sir?

19 A Yes, I do.

20 MR. PACIOCCO: And, again, this
21 document, for the record, can be found at tab
22 C.12.b. This is a statement dated May 30, 2006.
23 And that will become exhibit?

24 THE CLERK: 73.

25 MR. PACIOCCO: Exhibit 73.

1 (EXHIBIT 73: C.12.b, Statement by
2 Garth Shaw to RCMP)

3 BY MR. PACIOCCO:

4 Q Sir, you gave a statement to the RCMP?

5 A Yes, I did.

6 Q And do you recall the circumstances in
7 which you gave that statement, why you ended up
8 giving a statement to the RCMP?

9 A No, I don't.

10 Q But they later interviewed you? They
11 re-interviewed you, just the one time, the RCMP.
12 It was after the East St. Paul --

13 A Yes.

14 Q -- and it takes place almost a year
15 later.

16 A Yes.

17 Q And do you recall them telling you why
18 they were re-interviewing you?

19 A To be honest, I don't know if they
20 ever -- if they ever gave me a reason why they
21 were interviewing me.

22 Q Sir, what conclusions did you draw
23 about why you were being re-interviewed?

24 A Other than what I've read in the
25 paper, that I knew that there was issues

1 surrounding the investigations of the --

2 Q Okay. So did you draw a conclusion,
3 based on what you read in the paper, as to why
4 they were there?

5 A Yes.

6 Q And that conclusion was?

7 A There has been some misconduct
8 somewhere.

9 Q Misconduct, or maybe mistakes, or
10 maybe something not done right, and it was now
11 being done by another police force.

12 All right, sir, now getting back to
13 the question of whether or not the paramedics were
14 still there, I am going to ask you to turn, if you
15 would, please, to page 204 of the statement.

16 And you indicate, sir, down in the
17 last quarter of the page, you are being asked
18 questions and you are in somewhat of a narrative
19 here. You are saying that:

20 "Trying to recall if the paramedics
21 went over to see the gentleman in the
22 blue truck but I just -- but I can't
23 recall because I was focused more on
24 that than I was that, but I do
25 remember on the police coming up to

1 the vehicle, them escorting him from
2 his vehicle, past me, and then passing
3 my line of sight more so. I don't, I
4 don't know what happened to him after
5 that. I'm assuming that he went to
6 the police cruiser after that."

7 I will just have a moment, please,
8 sir. Okay. I am going to look for this reference
9 after, Mr. Shaw, I apologize. Thank you for your
10 indulgence.

11 So you are in the vehicle after the
12 police have escorted this gentleman by you. What
13 happens next?

14 A The next thing I do recall is an
15 officer coming up to the van, asking me if he
16 could speak with me, and he gets into the van. We
17 have a discussion, saying that I will have to
18 provide a statement, just not at this time.
19 Somebody will come see me tonight. And just asked
20 me about my general overall health state at that
21 point.

22 Q Okay. I want you to think back, sir,
23 how many times were you approached at the van by
24 the police officers?

25 A Twice.

1 Q Okay. And can you describe the first
2 time you were approached?

3 A The first time I was approached, it
4 was very brief. They just asked me to stay around
5 the accident scene because you will have to
6 provide a statement.

7 Q And how many police officers were
8 present when they asked you to stay around the
9 accident scene because you would have to provide a
10 statement?

11 A Two, that's it.

12 Q At that time there were two officers
13 who approached?

14 A Well, sorry, one approached the van.

15 Q Okay. And so are you able to tell us
16 whether that was the same officer that you saw
17 escorting the man from the blue truck?

18 A No, it was not.

19 Q It was not him?

20 A No.

21 Q It was another officer that you saw at
22 the scene?

23 A That's correct.

24 Q Okay. And then you talked about
25 another officer approached your vehicle?

1 A Yes.

2 Q And when did that occur?

3 A After -- pretty much after everything
4 was concluded.

5 Q All right. And when you say "pretty
6 much after everything was concluded," what are you
7 describing, sir?

8 A With the driver of the blue truck
9 being taken away, all of the ambulances have
10 already left the scene now.

11 Q Okay. And so the scene is fairly
12 still. You've still got police, of course,
13 blocking off traffic?

14 A Yes. The investigation is still going
15 on, but --

16 Q All right. So you are approached by
17 another officer. And what happens when you are
18 approached by this other officer?

19 A He just asked how I was doing, if I
20 needed anything. And then just a discussion of,
21 that somebody will be coming to see you to get a
22 statement from you later on in the day and --

23 Q Was this the same or a different
24 officer than the one who first approached you to
25 tell you that you would have to stick around?

1 A Different.

2 Q And, sir, are you able to indicate
3 whether this second officer who approached you was
4 the same one that you saw speaking to the man in
5 the blue truck?

6 A Yes, it was.

7 Q So it was the same officer, sir?

8 A Yes, it was.

9 Q And how long did you speak to this
10 officer?

11 A Probably five minutes.

12 Q And did he take a statement from you
13 at that point, sir?

14 A No.

15 Q And you've said that there -- it would
16 be better to have someone come around your place
17 and do it later?

18 A Yes.

19 Q Sir, are you able to identify who this
20 officer was?

21 A I wasn't at the time, but I am now.

22 Q Okay. And how is it that you are able
23 to identify him now?

24 A By the media.

25 Q I'm sorry?

1 A By the media.

2 Q And did you see a picture of this
3 officer?

4 A Yes, I did.

5 Q And that would have been subsequently
6 you saw a photograph?

7 A Yes.

8 Q And who was the officer whose
9 photograph you saw, sir?

10 A The Chief of Police --

11 Q Would that be Chief --

12 A -- at the time.

13 Q Would that be Chief Bakema?

14 A Yes, it was.

15 Q And so he is the gentleman you spoke
16 to at the car?

17 A Yes.

18 Q He is also the one that you saw having
19 a conversation with Mr. Harvey-Zenk?

20 A I believe so, yes.

21 Q And, sir, what happened after you had
22 that conversation with this police officer?

23 A I believe I was allowed to leave the
24 scene.

25 Q Are you able to tell us when you left

1 the scene?

2 A Not exactly, no.

3 Q Are you able to give us a worthwhile
4 estimate or would you just be guessing?

5 A Well, I believe I got -- I did go to
6 work, and I believe I got to work before lunch, so
7 11:30, approximately. So I would be leaving there
8 11:00.

9 Q Okay. So, again, probably a pretty
10 broad timeframe that it could have been?

11 A Yeah.

12 Q But probably no later than 11:00,
13 would that be fair?

14 A I don't think it was later than 11:00.

15 Q Okay. But it could have been
16 somewhere earlier than that, but you just don't
17 know?

18 A I would think it would be somewhere
19 between 10:30 and 11:00.

20 Q And you will notice that we did put a
21 document in front of you that became Exhibit 72,
22 and that was your interview with the East St. Paul
23 Police. That officer that you referred to as
24 Jason, was Jason one of the officers that you
25 personally saw at the scene?

1 A I didn't personally see Jason at the
2 scene.

3 Q So if he was there, you didn't have
4 any contact with him?

5 A No.

6 Q All right. Sir, I'm going to move to
7 2007, the summer of 2007 and the court hearings.
8 Had you had any contact with anyone after you gave
9 the statement to the RCMP, before you went to the
10 court hearings in 2007?

11 A No, I did not.

12 Q Did you ever have any contact with a
13 prosecutor in the case prior to attending court?

14 A No, I did not.

15 Q No phone calls or anything like that?

16 A Other than the subpoena.

17 Q And you did, I understand, go to the
18 Law Courts in connection with this case?

19 A Yes, I did.

20 Q How many times did you attend?

21 A Twice.

22 Q And I understand that would have been,
23 I think on the 16th and 17th of July, 2007?

24 A Yes.

25 Q And what happened when you attended

1 court, sir?

2 A Just checked into the -- into the
3 office at the Law Courts Building, and they asked
4 me to wait, so that's what I did.

5 Q Okay. So you are in an office, and I
6 take it this is an office for witnesses?

7 A The witness office at the Law Courts
8 Building, yes.

9 Q Okay. And what happens then, sir?
10 This is the first day. Let's deal with the first
11 day. Okay. You are waiting and what happens,
12 sir?

13 A Waiting for a fair length of time, I
14 think it was already 10:30 or 11:00, I think, when
15 Marty came in.

16 Q Okay. When you refer to "Marty", I
17 take it you are referring to Mr. Martin Minuk?

18 A That's correct.

19 Q Did you know him before this?

20 A No, I did not.

21 Q Okay. So you met him that day?

22 A Saw him, yeah, I didn't really meet
23 him yet.

24 Q You saw him. And what happened when
25 you saw him, was there any conversation with him?

1 A Very brief, just saying that they
2 might be plea bargaining so they're -- they won't
3 know anything until the next morning.

4 Q Okay. And I take it you were released
5 at that point in time?

6 A Yeah.

7 Q And you came back the next day?

8 A Came back the next day.

9 Q And why did you come back the next
10 day?

11 A Because I wasn't -- there was no,
12 really no conclusion so I didn't know if I was
13 supposed to come back or not come back, but I did
14 come back.

15 Q Okay. And that's because you were
16 subpoenaed for the whole week?

17 A Yes.

18 Q And you hadn't been told you were
19 released?

20 A No.

21 Q Okay. And what happened when you came
22 back the second day?

23 A Basically the same thing again,
24 waited, checked in, waited.

25 Q Checked in at the witness office

1 again?

2 A Yes.

3 Q And you wait, and how long do you wait
4 this day?

5 A Pretty much the same amount of time.

6 Q What happens after your wait is over?

7 A Then Mr. Minuk come and -- comes, and
8 I believe, I can't remember if all three of us
9 were still there, or just the two of us were still
10 there then.

11 Q When you say all three of you or just
12 the two of you, who are you referring to?

13 A The two other witnesses.

14 Q So there were two other witnesses in
15 connection with this case?

16 A Yes.

17 Q Do you know who they are?

18 A I know Kathy.

19 Q Okay. You motioned to Kathy, but --

20 A She is already gone.

21 Q Okay. She was in the body of the
22 court today, so you would be referring to Kathy
23 Bukowski?

24 A Yes.

25 Q And the other witness, are you able to

1 tell us whether that was a man or a woman?

2 A That was a man.

3 Q Okay. And what happened?

4 A He took us out in the hallway and he
5 explained that they had plea bargained.

6 Q And?

7 A And there would be no trial.

8 Q And we have information that one of
9 the other witnesses who was in attendance at that
10 time for the hallway meeting was a Ms. Denise
11 Bukowski, another woman. Does that ring any bells
12 for you?

13 A No.

14 Q And are you able to describe anything
15 beyond what you just have about the conversation
16 about the plea bargain? Can you think back and
17 see if you can remember anything else about that
18 conversation on your own, sir?

19 A Mr. Minuk just said that it was due to
20 a poor investigation that this was probably the
21 best outcome that could be expected from that
22 trial.

23 Q Mr. Minuk said that due to the
24 investigation, this is probably the best outcome?

25 A M'hm.

1 Q Did he describe the outcome for you?

2 A No. He wasn't -- he didn't say what
3 the sentence was going to be.

4 Q Do you recall any conversation about
5 the sentence, or what position was going to be, or
6 what likely the sentence was likely to be?

7 A Likely he said he would probably get
8 some sort of -- some house arrest.

9 Q Okay. Was there any conversation by
10 him in terms of how much evidence he had?

11 A No.

12 Q Do you recall any reference to the
13 three of you being the only witnesses?

14 A No.

15 Q Do you recall whether he expressed any
16 feelings about the fact that this had ended in a
17 plea bargain? His sense of that outcome, do you
18 recall anything like that?

19 A Lack of caring maybe.

20 Q When you say "lack of caring," what do
21 you mean, sir?

22 A Well, no emotion, like just another --
23 just another deal.

24 Q Okay. And why do you say that?

25 A Because it kind of -- it kind of

1 reminds me of the car business a little bit.

2 Q The car business?

3 A It's just another deal, another one in
4 the books.

5 Q You made some reference to the way the
6 investigation was handled. Was there any
7 elaboration on that that you can recall?

8 A I'm not sure.

9 Q So you don't remember any details
10 about how the investigation was handled, or what
11 the problems were, or anything like that?

12 A Oh, from Marty?

13 Q From Mr. Minuk or anyone else present?

14 A No. There wasn't, no.

15 Q Were there any questions being asked
16 by anyone there? Did anyone else participate in
17 the conversation, that you can recall?

18 A I think there was some general
19 discussion. I just can't remember the exact
20 content of it all.

21 Q Do you recall any comments about
22 Mr. Harvey-Zenk choosing to plead guilty?

23 A No.

24 Q Do you recall any discussion about
25 skid marks?

1 A No.

2 Q Do you recall any discussion about
3 whether or not Mr. Harvey-Zenk falling asleep
4 might have been the cause of the accident?

5 A No.

6 Q Do you recall any discussion about
7 fatigue, and working a large number of shifts, or
8 anything like that?

9 A No.

10 Q Are you able to tell us how long the
11 conversation in that group took place?

12 A It wouldn't have been more than five
13 minutes.

14 Q Okay. Are you able to tell us whether
15 you stayed for the whole conversation? Did you
16 walk away while it was still going on, or did it
17 just kind of break up?

18 A No. We all stayed pretty much
19 together until it was --

20 Q Okay. So the conversation you felt
21 was pretty much over when you left?

22 A M'hm.

23 Q Sir, did anyone take any steps to
24 prepare you to testify in the case?

25 A No, they did not.

1 Q How did that strike you, sir?

2 A Odd.

3 Q Why would that have struck you as odd?

4 A Because I think not knowing what to
5 expect would put a lot of pressure on somebody in
6 that kind of a setting.

7 Q So you feel somebody should have
8 spoken to you?

9 A To prepare, just to prepare you for
10 what to expect and --

11 MR. PACIOCCO: Okay.

12 Mr. Commissioner, it's now 3:23. I do
13 have one reference in the transcript that I lost
14 when I was questioning Mr. Shaw, that I may look
15 for, so it would be a good time for me to break,
16 and then if I have no further questions, I will
17 just get up and say that, otherwise I will finish
18 on that point.

19 THE COMMISSIONER: I take it counsel
20 want 15 minutes?

21 THE CLERK: Order. All rise, this
22 session is in recess.

23 (Proceedings recessed at 3:23 p.m. and
24 reconvened at 3:40 p.m.)

25 THE CLERK: All rise. This Commission

1 of Inquiry is now reopened. Please have a seat.

2 MR. PACIOCCO: Thank you,
3 Mr. Commissioner. I don't have any further
4 questions for Mr. Shaw, but I do have a correction
5 to make. Ever since I have been six feet I have
6 trouble with proper names, and I referred to Cathy
7 Bukowski and I should have referred to Kathy
8 Beattie.

9 BY MR. ZAZELENCHUK:

10 Q Just a couple of points to cover with
11 you, sir. Prior to July of 2007, had you ever
12 been a witness in a court proceeding?

13 A No, I have not.

14 Q No. Had you ever seen the inside of a
15 courtroom?

16 A I don't think so, no.

17 Q You met with Commission Counsel on
18 more than one occasion prior to giving your
19 evidence today, isn't that correct? You met with
20 them outside, they interviewed you a few months
21 ago?

22 A Yes.

23 Q And you were prepared for today in
24 terms of being told what is going to happen and
25 everything else?

1 A Yes, I was.

2 Q Do you find that comforting at all?

3 A Yes, I do.

4 Q Moving on, immediately after -- or
5 after the impact that you described to us earlier,
6 the gentleman in the truck got out and he walked
7 about. And when you were asked by Commission
8 Counsel whether you approached him, you said you
9 didn't think it was appropriate to approach him.
10 And when asked by Mr. Commissioner you said that
11 you think you were still a bit shocked yourself?

12 A Yes.

13 Q Could it be that you were afraid to
14 approach this man?

15 A I don't think I was afraid.

16 Q Okay. Fair enough. I wonder if Madam
17 Clerk would be good enough to give you F3.37, page
18 2. You observed the driver of the truck walking
19 about and you observed him with the police
20 officers, and I think you told us when the police
21 were escorting him he came very close to your van
22 so you were able to get a good look at him?

23 A That's true.

24 Q Do you recognize that photo?

25 A Not the facial, no.

1 Q And that's the photo that appears at
2 page 1313 at the bottom of the page, is that the
3 number that's written at the bottom of your page?

4 A Yes, it is.

5 Q Thank you, sir.

6 MR. McDONALD: I have no questions,
7 Mr. Commissioner.

8 THE COMMISSIONER: Thank you.

9 BY MR. WEINSTEIN:

10 Q On May 30th, 2006, you may not
11 remember the date, you gave a statement to the
12 RCMP, correct?

13 A Correct.

14 Q Under oath, do you recall?

15 A I can't remember if they made me take
16 an oath or not.

17 Q All right. And you've read your
18 transcript, have you, before coming here today?

19 A Yes, I have.

20 Q Then on March the 4th, 2008, not Mr.
21 Paciocco, but Mr. Paciocco's taller assistant,
22 Mr. Clifford, did ask you questions; is that
23 correct?

24 A Yes.

25 Q The gentleman over there?

1 A Yes, he did.

2 Q And do you recall at that time you
3 were affirmed by the court reporter, asked whether
4 you wanted to swear on a Bible or be affirmed, and
5 you chose to be affirmed; correct?

6 A Yes.

7 Q And you were asked questions and
8 naturally you did the best of your ability to give
9 correct and accurate answers; correct?

10 A That's correct.

11 Q And you didn't want to guess at
12 answers; correct?

13 A That's true.

14 Q And the answers you gave, generally
15 you wanted to be as definite as possible, correct?

16 A Correct.

17 Q So I will refer to that transcript
18 later, but you noticed the person in the truck
19 now. You had a good line of vision with that
20 truck, with that person, correct?

21 A That's correct.

22 Q Throughout your stay at that accident
23 scene nothing obstructed you, in your view, of
24 that person, of that truck; correct?

25 A That's correct.

1 Q Because you had such a good line of
2 vision you saw the person getting out of the
3 truck; correct?

4 A Correct.

5 Q And no one had to assist him out of
6 the truck, he got out on his own; correct?

7 A That's correct.

8 Q Naturally he got out of the truck on
9 the driver's side, correct?

10 A Correct.

11 Q And one thing, according to your
12 police statement, you noticed he had some bleeding
13 nose. Just to refresh your memory, your police
14 statement taken by Jason Woychuk, "that's when I
15 noticed the gentleman get out of his truck, his
16 nose was bleeding," correct?

17 A As far as I can recall, yes.

18 Q And that's just what I'm asking you to
19 do, try and recall, be as definite as you can, I'm
20 not going to try and put words in your mouth
21 because it is your answers that we are interested
22 in. Now, he gets out and you see him walking,
23 correct?

24 A That's correct.

25 Q He walks first to that yellow car,

1 correct? And you will have to answer yes or no
2 rather than shaking your head.

3 A That's correct.

4 Q And to the best of your ability, he
5 stood there for about 30 seconds?

6 A For a length of time.

7 Q And when you give estimates of time,
8 they are estimates, you are not sitting there
9 looking at your watch; is that fair?

10 A That's a fair statement.

11 Q So when you give an estimate of 30
12 seconds, you could be off, it could be less;
13 correct?

14 A That's correct.

15 Q And when you give an estimate of five
16 minutes that there was this police officer by the
17 car, you could be off, it could be less; correct?

18 A That's correct.

19 Q All right. So you see him walking
20 towards the yellow car. He is standing there for
21 about 30 seconds, and then he walks back to the
22 truck; correct?

23 A Correct.

24 Q And you are watching him walking
25 towards the car, standing there and walking back;

1 correct?

2 A Correct.

3 Q Nothing unusual about his walk,

4 correct?

5 A Correct.

6 Q He is not staggering; correct?

7 A Correct.

8 Q He is not stumbling?

9 A Correct.

10 Q He is walking generally in a straight

11 line to his vehicle, correct?

12 A Correct.

13 Q And you keep watching him, and

14 basically -- not basically -- he is standing by

15 his truck, correct?

16 A Correct.

17 Q And Mr. Commissioner asked you how he

18 was standing and sort of the back -- his back

19 leaning against the truck?

20 A Correct.

21 Q Is that correct? All right. Now fire

22 personnel arrive, paramedics arrive and police

23 arrive; correct?

24 A Correct.

25 Q Now, what you observed was one police

1 officer going up to the person at the truck, one;
2 isn't that correct?

3 A From what I recall, yes.

4 Q Yes. Not two, not three, and not
5 could have been, what you observed was one person
6 going up to the truck; correct?

7 A From what I recall.

8 Q Because -- that's just to refresh your
9 memory just from your commission interview, you
10 said at page 29, one police officer went up there
11 and you could see them having conversation, the
12 conversation was probably about five minutes in
13 length, two of them walk back together. So you
14 are very, very clear that it is one police officer
15 going up and there is the two of them walking
16 back; correct?

17 A Correct.

18 Q That's clear in your mind, correct?

19 A That's clear in my mind.

20 Q And when two walk back, there is one
21 police officer and the person from the truck,
22 right? And as you said at page 30, no other
23 police officer approached the driver of the truck;
24 correct?

25 A From what I recall, yes.

1 Q And that's what you said when you were
2 interviewed by Mr. Clifford under oath because I'm
3 referring to your transcript, sir. One goes up,
4 two come back. Right?

5 A Right.

6 Q We are good so far, no other police
7 officer has approached. There is a brief
8 conversation, five minutes, four minutes, you
9 can't say for certain; correct?

10 A Yes.

11 Q Sorry, again --

12 A That's okay.

13 Q If it is yes or no, you can't nod.

14 A Okay.

15 Q As you told the interviewee they
16 weren't really in each other's space, there was
17 some distance, be it two feet or three feet apart;
18 correct?

19 A Normal conversation distance.

20 Q Yep, and that's why you said in your
21 interview not in their personal space; correct?

22 A Correct.

23 Q Some distance away. And as they were
24 walking back after this brief chat -- oh, by the
25 way, when that police officer approached, the

1 driver was still out of the truck, correct,
2 standing by the truck?

3 A Yes.

4 Q He wasn't inside the truck; correct?

5 A Not that I recall.

6 Q Well, you saw it, correct?

7 A Correct.

8 Q He was still standing by the truck,
9 one police officer approaches, so both are
10 standing; correct?

11 A Correct.

12 Q And to suggest to you that two police
13 officers had to assist him out of the driver's
14 seat, that did not happen; correct?

15 A Not that I recall.

16 Q And you were watching, right? You
17 were watching?

18 A Yes.

19 Q Okay. And as they were walking back,
20 they went by you; correct?

21 A Yes.

22 Q And as they walked by you, I mean they
23 are even closer, it is the guy from the truck and
24 one police officer; correct?

25 A Correct.

1 Q And as they were walking back from the
2 truck, as you told Mr. Clifford, the driver was a
3 bit ahead of the officer, the officer, not a group
4 of officers, not two, "the officer," correct?

5 A Correct.

6 Q And you were asked whether they were
7 still engaged in conversation at that time as they
8 are walking back. You said to Mr. Clifford, "not
9 that I recall." Correct?

10 A Correct.

11 Q All right. Now your statement was
12 taken, as Mr. Paciocco pointed out, some time
13 after 10:00 o'clock that night; correct?

14 A That's correct.

15 Q And you will probably agree with me it
16 was probably better to do it later than at the
17 scene because you were sort of in your own state
18 of shock, correct? Or stunned, whatever?

19 A I don't know if I agree with that
20 but --

21 Q All right. But things were still as
22 clear in your mind at 10:00 o'clock at night as
23 they were at 7:00, 7:30; correct?

24 A I wouldn't say that, no.

25 Q Were things clear in your mind when

1 you gave your statement to the RCMP?

2 A As time goes on it is harder and
3 harder to remember.

4 Q Right. Yeah. I'm just a little
5 confused at one part of your statement to the
6 RCMP. You said two officers arrived -- page 6 of
7 his transcript to the RCMP, volume C, page 1201,
8 page 6. You said.

9 "I believe the gentleman that came to
10 talk to me was definitely RCMP. He
11 wasn't East St. Paul but East St. Paul
12 was there."

13 So according to your statement of
14 May 30, 2006, Mr. Shaw, there was also some RCMP
15 there, correct, according to your statement?

16 A I don't believe at that time there
17 was, now that -- because I kind of, I learned -- I
18 saw the picture of the police officer that talked
19 to me after the fact, even after I made that
20 statement to the RCMP, and that's how I connected
21 the two and two together.

22 Q Did someone tell you after you gave
23 your statement to the RCMP that you were wrong,
24 that there wasn't RCMP there?

25 A No.

1 Q So they showed you a picture; correct?

2 A No, I got the picture from the media.

3 Q You got the picture from the media and
4 you then on your own say, no, it wasn't a RCMP,
5 even though I thought it was an RCMP on May 30th,
6 2006, it wasn't a RCMP. When did you see the
7 picture in the media?

8 A It would be after the statement to the
9 RCMP.

10 Q So you didn't see any picture of that
11 officer until after May 30th, 2006?

12 A That's correct, that I connected the
13 two together.

14 Q Okay. And in that same RCMP
15 interview, you also told them there was nothing
16 unusual about this conversation that was going on,
17 nothing that struck you as unusual. And that's
18 what you told the RCMP?

19 A Between --

20 Q That police officer and the person at
21 the truck?

22 A No, nothing unusual.

23 MR. WEINSTEIN: If I may just have a
24 moment, Mr. Commissioner. Thank you, sir. Thank
25 you, Mr. Commissioner.

1 MR. JACK: We have no questions.

2 THE COMMISSIONER: You are next, Mr.

3 Prober. Any questions?

4 MR. PROBER: I have a few.

5 BY MR. PROBER:

6 Q Mr. Shaw, my name is Jay Prober and I
7 represent Derek Harvey-Zenk. When the vehicles
8 came to rest after the collision, about how far --
9 I'm not quite as tall as Mr. Weinstein or Mr.
10 Paciocco, as it turns out. How far was the truck
11 approximately from the green vehicle?

12 A The green vehicle?

13 Q Yes, after the vehicles came to rest,
14 about how far was the truck from the green
15 vehicle?

16 A Well, it is definitely about 12 car
17 lengths into the intersection, but you have to
18 remember however wide the intersection is on top
19 of that, so what is the intersection? 40 feet,
20 50 feet?

21 Q So you are saying it is 50 feet plus
22 about 12 car lengths, which would be, what,
23 another 12 times 20 feet approximately?

24 A Approximately, yeah.

25 Q So that would be 240 feet plus

1 another -- close to 300 feet between the truck and
2 the green vehicle?

3 A If my --

4 Q Approximately?

5 A If my approximate -- ten car lengths.

6 Q Thank you. The earliest statement
7 that you gave in this matter was to the East St.
8 Paul Police the evening of the accident; correct?

9 A Correct.

10 Q And it was in that statement, and I
11 can take you to it, if necessary, but it was in
12 that statement that you may recall that you
13 referred to the driver of the truck as having a
14 bleeding nose; correct?

15 A Correct.

16 Q And if you want to see that, I can
17 take to you that, but it was also in that
18 statement, and I believe it is exhibit 72,
19 Mr. Commissioner, that you referred to the
20 pavement as being slick at the intersection,
21 correct? Do you have that statement in front of
22 you, if you are having difficulty with that. Do
23 you have the typed version or the written version?

24 A Both.

25 Q Why don't you go to the typed version

1 because it is probably easier to read and you will
2 see at the bottom of page 2 of that statement,
3 which is 199 on the bottom right,
4 Mr. Commissioner, and page 2 of the typed version.
5 You see that?

6 "What were the road conditions at the
7 time of the accident?

8 I would say they were dry, but a
9 little slick near the intersection."

10 Do you see that now?

11 A Yes.

12 Q All right. And that again was the
13 first statement you gave, correct?

14 A That's correct.

15 Q And again in the first statement that
16 you gave, if you turn the page on the typed
17 version, you will see that you estimated the speed
18 of the truck at 70 or 80 kilometres, correct?

19 A Correct.

20 Q Not 100 or 120?

21 A No.

22 Q 70 to 80. Okay. Do you have your
23 interview with you, your interview that is by
24 Commission Counsel?

25 A Yes, I do.

1 Q Thank you. If you could turn,
2 please -- because there is something in an answer
3 you gave I don't understand and perhaps you could
4 help me with it -- to page 45. You see how they
5 are numbered? There is about four pages on each
6 piece of paper or each side of paper, I should
7 say. Have you got that?

8 A Yes.

9 Q Page 45, answer starting at -- well
10 question at line 14:

11 "Describe your concern.

12 A Well, my concern was being as I was
13 probably the only witness that I know
14 of anyway that actually saw the
15 accident happen, I felt that the
16 balance of that family's life was
17 depending on me. It wasn't the most
18 comfortable position to be in."

19 This is what I don't understand. You
20 say then:

21 "As you say before, lawyers can turn
22 stuff in different directions."

23 Who said that before?

24 A I don't recall who said that before.

25 Q Who are you talking about there or you

1 don't know?

2 A I think I'm talking as TV shows in
3 general and what you see on TV shows.

4 Q And that's what you meant by that?

5 A Yes.

6 Q Okay. You were asked towards the end
7 of your examination by Commission Counsel about
8 the contents of a discussion you had or didn't
9 have at the law courts. He asked you about, do
10 you recall any discussion about falling asleep as
11 being the cause of the accident. Do you recall
12 that exchange with Commission Counsel?

13 A Yes, I do.

14 Q Now you are not saying that that
15 conversation didn't occur, you just don't recall
16 it; correct?

17 A I don't remember ever mention of it.

18 Q Right. You are not saying that you
19 were there for all of the conversation between Mr.
20 Minuk and any of the other witnesses, potential
21 witnesses?

22 A That's correct.

23 Q There could have been conversations
24 between Mr. Minuk and Ms. Beattie that you weren't
25 privy to; correct?

1 A That's correct.

2 Q Or conversations between Mr. Minuk and
3 Ms. Bukowski that you weren't privy to?

4 A That's correct.

5 MR. PROBER: Thank you, sir, those are
6 my questions.

7 MR. BOYD: No questions.

8 THE COMMISSIONER: Re-examination?

9 MR. PACIOCCO: Briefly.

10 BY MR. PACIOCCO:

11 Q Sir, you have your transcript in front
12 of you of the interview with Mr. Clifford?

13 A Yes, I do.

14 Q I'm going to ask you to turn to page
15 35. This arises out of a question by my friend,
16 Mr. Weinstein. He was asking you about estimates
17 and whether the time that you saw of five minutes
18 of a conversation could have been four, could have
19 been more. Do you recall that, sir?

20 A Yes, I do.

21 Q And you indicated that it was just an
22 estimate. What was that estimate based on, sir?

23 A The estimate of time?

24 Q Yes?

25 A Just by my own calculation of how long

1 I felt that it was.

2 Q How would you characterize that
3 conversation, sir? Was it short, medium, lengthy?
4 How would you characterize it?

5 A Between the officer and the driver?

6 Q That's correct.

7 A Medium to lengthy.

8 Q Okay. Sir, there was also an exchange
9 with Mr. Weinstein about whether there was one
10 officer or more than one officer; do you recall
11 that?

12 A Yes, I do.

13 Q You recall telling me earlier that you
14 recall one officer, you don't recall whether there
15 was more than one officer, but you didn't exclude
16 the possibility of there being more than one. Do
17 you recall that?

18 A Yes. On scene there was definitely
19 more than one officer.

20 Q Okay, but I mean in dealing with the
21 man at the truck, your recollection was that it
22 was one officer, and I asked you whether it was
23 possible that there may have been more than one,
24 and I think your answer was that it was a
25 possibility. Do you recall that?

1 A I don't recall seeing any other.

2 Q Okay. And what I'm trying to get at
3 is --

4 A Yes, there is always a possibility,
5 but I don't recall.

6 Q So your position is that you don't
7 recall there being more than one, but you are not
8 ruling out the possibility that there may have
9 been more than one?

10 A That's correct.

11 Q And so when you responded to
12 Mr. Weinstein who said you have a definite
13 recollection of one, sir, were you referring to
14 the point in time when you were giving the
15 statement to the RCMP, or are you telling us that
16 you definitely recall there was only one? We just
17 need to be clear on that.

18 A I was focused only on one. If there
19 was others, I don't recall seeing them.

20 Q Okay. It is fair to say that your
21 best position would be there was only one, but you
22 are not going to rule out entirely the possibility
23 that you could be wrong, is that a fair way to put
24 it?

25 A That's a fair statement.

1 MR. PACIOCCO: I have no further
2 questions.

3 THE COMMISSIONER: Thank you very
4 much.

5 THE WITNESS: Thank you.

6 MR. CLIFFORD: Mr. Commissioner, the
7 next witness and the final witness for today, will
8 be Tara Taman.

9 TARA TAMAN, having first been duly
10 sworn, testified as follows:

11 BY MR. CLIFFORD:

12 Q Ms. Taman I would like to again
13 express my sympathy for your loss and suffering,
14 and also to publicly acknowledge that your being
15 here today and your testifying is an emotional and
16 difficult thing for you to do.

17 You have been here previously during
18 the victims' phase, and you have been called back
19 and I want to thank you for assisting the
20 Commission.

21 For those that were not present during
22 the first phase, you had previously testified that
23 you and your sister had the painful experience of
24 actually attending at the location of the car
25 crash where you had lost your mother. And because

1 we were dealing then with victims' issues and
2 related evidence, we didn't ask you about
3 observations you made of certain individuals at
4 the scene of the accident. And the Commission is
5 now interested, Tara, in the observations that you
6 made and I'm going to ask you some questions about
7 that. All right?

8 A Okay.

9 Q Now just to recap, we've heard from
10 you previously that you and your sister were
11 traveling in a vehicle on February 25th in the
12 early morning and you noted there had been an
13 accident?

14 A That's right.

15 Q And as per your regular routine, I
16 understand, certain things were done. And if I
17 could just ask you to repeat briefly what that
18 routine was for the benefit and for the narrative
19 purposes of putting the rest of your testimony
20 today in context?

21 A Before we leave for work?

22 Q No, when you were on the road and you
23 noticed that there was an accident?

24 A Whenever we saw that there was an
25 accident we made sure that we would always phone

1 anybody that -- anybody in the family that we knew
2 had already been driving, just to make sure
3 everybody was okay. That morning we tried to
4 phone mom and she didn't answer.

5 Q And what did you do as a result of
6 that?

7 A We had initially bypassed the
8 accident. It was really backed up. We knew there
9 was an accident because we saw the volunteer fire
10 department vehicles going towards the fire
11 station. So we initially bypassed the accident.
12 We went up McGregor Farm Road, up to the other
13 side of the perimeter. And when we couldn't get
14 ahold of mom, Kristin said to me, should we turn
15 around and go back and just make sure. And I said
16 we probably should. And we turned around at that
17 point and went back to the accident.

18 Q If you could, do you recall where it
19 was, your location, when you pulled up on the
20 accident scene?

21 A As you turn on to the perimeter, I
22 guess going -- as you are turning off northbound
23 59 on to the perimeter, we stopped in the middle
24 of the intersection just on the shoulder.

25 Q There is a large diagram to your left.

1 And looking at that, does it offer you any
2 assistance in terms of where you would have pulled
3 off with your vehicle?

4 A Yeah. As you are pulling on to the
5 perimeter, we were on the far shoulder, in the
6 middle of the intersection there.

7 Q And if you know the spot, if you
8 wanted to just step down from the witness desk
9 there and indicate where it was?

10 A Right here.

11 Q Mr. Commissioner, can you see that?
12 Can other counsel see? All right. I think it is
13 clear to everybody.

14 Now, knowing how you got there, and
15 where it was that you stopped your vehicle, can
16 you pick up from there, Tara, and tell us what you
17 and your sister did?

18 A We immediately got out of the vehicle.
19 We saw my mom's car there. So we got out of the
20 vehicle and went to run across the intersection,
21 and one of the officers came and stopped us. He
22 asked us which car she was in, because he had
23 initially thought that we were there for the green
24 car that was off to the other side.

25 Q If I could interrupt you at that

1 point. You previously testified that you, and you
2 were personally aware of this, that it was Officer
3 Graham who stopped you?

4 A Yes.

5 Q And you were telling the Commission
6 that initially he was under the view or the
7 opinion that you were running towards a vehicle
8 other than your mother's?

9 A The green vehicle that was in the
10 accident.

11 Q Carry on from there.

12 A When we told him it was the yellow
13 car, he turned us around and told us that we had
14 to go to the other side, back to the other side
15 with him. As we started to walk back across the
16 intersection, I took my phone out to call my dad.
17 All I had a chance really to say to my dad was
18 that mom had been in an accident and then the
19 officer took the phone from me and he started
20 talking to my dad.

21 Q What happened from there?

22 A As soon as he got off the phone with
23 my dad, he gave the phone back to me and told us
24 that we would have to wait in the back of his car.
25 So he put me and Kristin in the back of his car

1 and we were in there until my dad got there.

2 Q And is it from the back seat of the
3 police car that you were able to make observations
4 of the scene?

5 A Yes.

6 Q And are you able to determine or
7 indicate where the police car was located in the
8 intersection?

9 A The police car would have actually
10 been located pretty much right at the point of
11 impact on the accident. It would have been
12 sitting right on top of it. It was right before
13 the stop light.

14 Q And what observations do you make,
15 Tara, when you are in the back of the police car?

16 A I could see his truck. I could see my
17 mom's car. I could see the other car. I could
18 see a van parked on the shoulder across from us.
19 Ambulance, two ambulances, a fire truck.

20 Q Do you remember the colour of the van?

21 A I think it was brown, I think it was
22 brown.

23 Q So you clearly saw, I take it, the
24 three vehicles that were involved in the accident?

25 A Yes.

1 Q You are referring to a brown van and
2 there were some emergency vehicles?

3 A Yes.

4 Q Did you notice any of the -- I know
5 that with respect to your mother's vehicle that
6 you were not allowed to approach it, and we
7 understand from previous testimony and what has
8 been disclosed to the Commission that you didn't
9 get very close to view it. But with respect to
10 the car or the truck, did you see any of the
11 drivers?

12 A I did, I saw the driver of the truck.
13 Two officers, it looked like they were -- I'm not
14 sure if they were helping him or walking with
15 him --

16 Q If I could, and I'm cautious to
17 interrupt you in the middle of a question but I
18 think it would be of benefit to everybody
19 listening to your evidence. Where was this taking
20 place? I just want you to back up a little bit
21 and we will go step-by-step. You were at the
22 point you were saying there were two officers, you
23 can't remember. When was the first time you
24 noticed the driver of the truck?

25 A The officer that was in the vehicle

1 with us was talking to us the whole time and I
2 wasn't really paying attention at that point. I
3 just wanted to watch to see if basically there was
4 any movement from my mom's car. And then I was
5 watching the other vehicle, I was kind of watching
6 everything, looking for anything that I could see
7 at that point. I looked over at the truck and
8 there were two officers at the truck. And then I
9 saw them start walking towards the intersection,
10 almost towards the police car we were in.

11 Q It would be fair to say, would it,
12 Tara that your emotional state at this point is
13 certainly impacted by the fact that you know your
14 mother has been in a serious motor vehicle
15 accident?

16 A Probably.

17 Q And in terms of the view you had of
18 your mother's vehicle, did you come to a
19 conclusion just simply by looking at the vehicle
20 when you unfortunately came upon the scene as to
21 the seriousness of the situation?

22 A I had an idea of how bad it was
23 already. And we just kept asking him if she was
24 still breathing. It got to the point where after
25 we asked him a few times he did tell us she was

1 still breathing.

2 Q Just take a moment. Are you okay?

3 A Yep.

4 Q I want to go back then to your
5 observations of the driver of the truck, and you
6 were referring to a police officer at the truck,
7 was it one police officer or two police officers,
8 can you expand on that?

9 A With him?

10 Q Yes?

11 A There were two police officers walking
12 with him across. They were at his truck, and then
13 they started to walk towards the police car that
14 we were in.

15 Q And before they started to walk
16 towards the police car that you were in, can you
17 say how long they were at the truck?

18 A When I looked up they were there, so
19 I'm not sure how long they were before. They
20 weren't there very long after I started watching.
21 They weren't there very long before they started
22 walking.

23 Q And can you indicate what they were
24 doing when they were at the truck?

25 A It looked like they were kind of

1 helping him a little bit. But when he started
2 walking it didn't look like he needed much help.
3 But right beside the truck, it looked like they
4 were helping him a little.

5 Q And can you describe that a little bit
6 further?

7 A Just helping him. I'm not sure if he
8 was getting out of the truck or if he was shaken
9 up. I don't really -- I'm not exactly sure. It
10 just looked like they were kind of helping him a
11 little bit.

12 Q Let's go then to when they were
13 walking from the truck. Were they walking in the
14 direction towards you where you were sitting?

15 A They were walking towards the police
16 car that we were in.

17 Q And what can you tell the Commissioner
18 about the manner in which the driver of the truck
19 was walking?

20 A He seemed to be walking okay.

21 Q Okay. And were the police officers,
22 where were they located in reference to him?

23 A There was one on both sides of him.

24 Q And was anybody touching him in any
25 way, do you recall?

1 A The one had him by the arm, he was
2 holding his arm, I guess, just by his elbow.

3 Q You had mentioned or provided
4 testimony with respect to whether you thought he
5 was injured. Did you notice anything at all that
6 lead you to the conclusion that he was injured in
7 any way?

8 A Not that I could see.

9 Q So, as I understand it, you see the
10 officers in the vicinity of the truck. They are
11 now walking with the driver in the direction
12 towards the police car that you and your sister
13 are sitting in the back of. What else happens?
14 What else are you seeing when this is occurring?

15 A I didn't watch them walk right across.
16 I saw them come across the intersection, and at
17 that point I think I started talking back to the
18 officer that we were in the car with. So I didn't
19 see them come right across. But when I did look
20 up after, he was standing at the front of the
21 police car that we were in.

22 Q When you say he was standing, you are
23 referring to the driver of the truck?

24 A The driver of the truck.

25 Q Was standing at the front of the

1 police car you were in?

2 A Yes.

3 Q And I'm going to ask you to be a
4 little bit more specific. Was he standing on the
5 passenger side or the driver's side?

6 A The passenger side.

7 Q The passenger side?

8 A Yes.

9 Q At the fender or up on the front
10 bumper?

11 A By the front headlight I guess.

12 Q All right. Are you able to provide
13 evidence as to who he was with?

14 A He was with one of the officers that
15 walked him across the road.

16 Q And I think this is clear from your
17 testimony, but I want to ensure that it is; the
18 officers that were walking with the driver of the
19 truck, these individuals are not Officer Graham?

20 A No.

21 Q Have I got that right?

22 A That's right.

23 Q And Officer Graham, I take it, is in
24 the car with you when this is happening, when you
25 are making these observations of the driver of the

1 truck and the police officers escorting him up to
2 the car that you are sitting in, Officer Graham is
3 located in the car with you?

4 A That is right.

5 Q And you are having conversation with
6 him while you are observing things?

7 A Kristin was talking to him at that
8 point.

9 Q Now, when we get to the point that you
10 told the Commission that the driver of the truck
11 is outside the police car and he is with two other
12 officers?

13 A When he was standing outside the
14 police car he was only with one.

15 Q So one of the officers has departed
16 once you notice him at the police car?

17 A When I looked up and he was outside of
18 the police car there was only one officer there.

19 Q And how is he situated in respect of
20 the police car? Is he standing beside it, is he
21 leaning beside it, is any part of his body
22 touching it?

23 A He was leaning against it.

24 Q And what about the police officer
25 that's with him, what is that person doing?

1 A He was just standing beside him.

2 Q And what are they doing?

3 A They were just standing there. I
4 didn't notice them talking.

5 Q Did Officer Graham remain in the car
6 with you and your sister throughout the whole
7 time?

8 A He did get out, once for sure, and he
9 went around and he talked to the officer that was
10 standing there with him.

11 Q And when you say he would get out and
12 talk to the officer that was standing there with
13 him, you are referring to?

14 A With the driver.

15 Q With the driver of the truck?

16 A Yes.

17 Q And are you able to indicate how many
18 times this happened?

19 A I can remember one for sure. I'm not
20 sure if it happened again. There was one point
21 where the other officer came in the car and talked
22 to Officer Graham.

23 Q So, the officer that was standing
24 outside the police car with the driver of the
25 truck also got into the vehicle with you and your

1 sister and Officer Graham?

2 A Right.

3 Q Do you have any idea who that police
4 officer was?

5 A I'm not sure.

6 Q Now, apart from what you've already
7 told the Commission about the driver of the truck,
8 that being Derek Harvey-Zenk, leaning against the
9 police car, can you provide any other observations
10 about things that you noticed?

11 A They had -- after I noticed him
12 standing there, it was just shortly after they
13 pulled a fire truck in front of his car and my
14 mom's car so we really couldn't see much until we
15 got out of the vehicle.

16 Q But when the driver of the truck is
17 standing there at the police car, and you told us
18 he was leaning on it and the officer was standing
19 beside him, did you make any other observations of
20 him while he was at the police car, things that he
21 was doing, for instance?

22 A Not really, he didn't really move
23 much.

24 Q Now, I would like to try and put some
25 time frames on your observations that you have

1 told us about, and I realize this is a difficult
2 thing to do, and it is made even more so by the
3 fact that you are dealing with the experience of
4 showing up at the car crash and your mother has
5 been involved. But, for instance, taking you back
6 to the point where you see the officers at the
7 truck, and they start to walk back towards the
8 vehicle you are in, how long were they down at the
9 truck before they started to walk? Are you able
10 to indicate that?

11 A Maybe two or three minutes.

12 Q And the walk from the truck up to the
13 car that you are in, do you know how long that
14 took approximately?

15 A Maybe a minute.

16 Q And now dealing with the time frame
17 from when you notice the driver of the truck
18 standing or leaning against the police car you are
19 in, how long was he there?

20 A He was still there when we left for
21 the hospital.

22 Q Okay. And can you put a time frame on
23 that?

24 A I would say between 10 and 15 minutes
25 later we had left.

1 Q Do you recall how many minutes you
2 were in the police car?

3 A Probably 10 to 15. Probably close to
4 10.

5 Q And is it your recollection that he
6 was there for that entire time that you were in
7 the back?

8 A Yeah, pretty much.

9 Q Now, you've indicated previously in
10 your testimony that what lead to you getting out
11 of your -- what lead to you and your sister
12 getting out of the police car was the arrival of
13 your father. And you are nodding your head in the
14 affirmative?

15 A Yes.

16 Q Thank you. When you got out of the
17 police car, was the driver of the truck still
18 leaning against the police car?

19 A Yes.

20 Q And once you got out of the police
21 car, did you see him again?

22 A I don't remember looking back for him.

23 Q Did you know where the other police
24 officer went? You said there were two police
25 officers at the truck, walking back with him, and

1 then when you noticed him leaning against the
2 police car you were in and there was only one
3 police officer with him. Did you know where the
4 other police officer went?

5 A I'm not sure.

6 Q Did you see that other police officer
7 again that morning?

8 A No.

9 Q So can I conclude from your testimony
10 then that you saw three police officers; two at
11 the truck that walked up with him, one of whom
12 wasn't there when you noticed him at the police
13 car, and Officer Graham?

14 A Yes.

15 Q Were you able to make any observations
16 of Mr. Zenk's state, his face, for instance, or
17 anything of that nature?

18 A When he was standing against the car
19 his back was towards us.

20 Q When the police officer that was with
21 the driver of the truck outside the police car you
22 are sitting in, when he got into the police car
23 with Officer Graham, who was with the driver of
24 the truck?

25 A Nobody.

1 Q Was he standing there by himself?

2 A Yes.

3 Q And for how long was that second
4 police officer in the car with you?

5 A Only a minute or two.

6 Q When the second police officer got
7 into the police car, you and your sister are in
8 the back. Did you hear any conversation that was
9 taking place between the two of them?

10 A I don't remember the conversation.

11 Q When Officer Graham got out of the
12 police car to talk to the officer that was with
13 the driver of the truck, do you know whether he
14 talked to the driver of the truck as well?

15 A I don't remember seeing him talk to
16 the driver of the truck.

17 Q Do you remember him talking to the
18 other police officer?

19 A I remember him talking to the other
20 police officer but not the driver of the truck.

21 Q I will just come back to a point that
22 you made a little bit earlier, and I didn't follow
23 up on it. I was asking you about the observations
24 and you said that you saw a fire truck pull up.
25 Once they started to cut the top or work on your

1 mother's car, a fire truck pulled up in front of
2 the police car that you were sitting in. Have I
3 got that right?

4 A Yes, it pulled into the lane that they
5 had already stopped traffic in, because they still
6 had traffic going through the one lane.

7 Q So did that block your --

8 A It blocked the view from the police
9 car.

10 Q View from the police car from the rest
11 of the accident scene?

12 A Yes.

13 Q Ms. Taman, on February 20, 2008, you
14 attended at the office of the Taman Inquiry and
15 you were interviewed. Were you ever questioned by
16 the police or any person in authority about your
17 observations --

18 A No.

19 Q -- at the scene on February 25th?

20 A No.

21 Q This was the first time it was raised
22 with you?

23 A Yes.

24 Q Once your father arrived on scene, we
25 know from your previous testimony that you were

1 released from the police vehicle and that you all
2 made your way to the hospital --

3 A Yes.

4 Q -- the Concordia Hospital, where you
5 received the very tragic news about the loss of
6 your mom, and then the family left and went to
7 your father's parent's place, your grandparents'
8 house?

9 A Right.

10 Q And I take it at that point, even when
11 you are at your grandparents' place, the family
12 still doesn't know what has happened, do they?

13 A No.

14 Q In terms of what took place in the
15 motor vehicle, even the mechanics of the accident?

16 A Right.

17 Q And did you receive any information
18 that day from anybody that could help you put it
19 into perspective?

20 A The first information that I would
21 have received was from my cousin.

22 Q And who is your cousin?

23 A Cecil Sveinson.

24 Q And I know you indicated and testified
25 earlier when you were here on the victims' phase,

1 but your cousin is a Winnipeg Police officer?

2 A That's correct.

3 Q And I understand that he attended at
4 the residence on that day?

5 A Yes.

6 Q And he provided the family with
7 information that he had received?

8 A Yes.

9 Q And you provided testimony on that
10 point previously?

11 A Yes.

12 MR. CLIFFORD: Tara, those are the
13 questions that I have for you. But remain seated,
14 other counsel may have questions.

15 MR. ZAZELENCHUK: I will follow rule
16 24, and wait to the last.

17 THE COMMISSIONER: Mr. McDonald?

18 MR. McDONALD: I have no questions.

19 THE COMMISSIONER: Mr. Weinstein, any
20 questions?

21 BY MR. WEINSTEIN:

22 Q Just a few questions. One of the last
23 questions my learned friend asked you is whether
24 or not you had been contacted by any police about
25 this and you said no; is that correct?

1 the same time as one of the fire
2 trucks, we were there before the
3 ambulances got there. When we first
4 got in to the police car, they were
5 helping remove Harvey-Zenk from the
6 truck."

7 Question by commission counsel:

8 "Did you see that happen?"

9 A Yes, we saw them help him out of
10 the truck.

11 Q Can you describe that?

12 A Basically there were two police
13 officers on the drivers side helping
14 take him out. That's all I remember
15 initially from that."

16 And then you go on to say:

17 "And he got out and he was walking,
18 like he didn't seem injured."

19 So on February 20, 2008, under oath or
20 under affirmation, you are positive that two
21 police officers went up and helped Harvey-Zenk out
22 of the truck; correct?

23 A It looked like they were helping him
24 out of the truck.

25 Q Not looked like, that's what you say

1 happened?

2 A From where I was sitting in the police
3 car, it looked as if they were helping him get out
4 of the vehicle.

5 Q Under oath today is it your best
6 evidence that two police officers were helping him
7 out of the truck?

8 A It looked as if they were helping him
9 out of the truck.

10 Q And they didn't stand around the truck
11 long, according to what I believe you said
12 earlier, just perhaps a minute or two and then
13 they start walking, correct?

14 A Correct.

15 Q There isn't a long conversation going
16 on there; correct?

17 A Correct.

18 Q They get him out and basically they
19 start walking; correct?

20 A Correct.

21 Q The two police officers side by
22 side -- how were they walking? Were they on
23 either side of Harveymordenzenk?

24 A There was one on either side of him.

25 Q Even though there was one on each side

1 of him, it is not as though they were holding him
2 up because he was staggering or anything like
3 that?

4 A There was one that had his hand on his
5 arm. They weren't helping him walk, he was
6 walking.

7 Q And by his arm, you went on to say the
8 best of your recollection was on his elbow?

9 A Right by the elbow, yes.

10 Q It didn't appear that he was offering
11 to hold him up or anything like that?

12 A No.

13 Q Harveymordenzenk was basically walking
14 on his own?

15 A Yes.

16 Q And not staggering all over the place
17 and not falling down or stumbling that you
18 observed?

19 A That I observed, no.

20 Q And it is your evidence also today
21 that Mr. Zenk was brought to the vehicle that you
22 were in, correct?

23 A Yes.

24 Q And Mr. Zenk was outside of your
25 vehicle for a number of minutes, and at one point

1 in time there wasn't one police officer in the
2 vehicle, there were two?

3 A Right.

4 Q Correct?

5 A Yes.

6 Q Both in the front seat?

7 A Yes.

8 Q And was the cage up or not? Was the
9 silent patrolman up or not, or could you see into
10 the front seat?

11 A I could see into the front seat.

12 Q There was no obstructions from hearing
13 anything or seeing anything?

14 A Correct.

15 Q And your evidence today is one got in
16 the front, one was already in the car, one got in
17 the front, there was a conversation; correct?

18 A Yes.

19 Q And you have no idea what the
20 conversation was?

21 A No. He leaned over and he was talking
22 to him. And at that point we are yelling to get
23 out of the car.

24 MR. WEINSTEIN: Thank you, Ms. Taman.

25 THE COMMISSIONER: Thank you.

1 MR. JACK: No questions.

2 THE COMMISSIONER: Mr. Prober?

3 MR. PROBER: Yes, Mr. Commissioner.

4 BY MR. PROBER:

5 Q Ms. Taman, my name is Jay Prober and I
6 represent Derek Harvey-Zenk at this inquiry. I
7 just have a couple of questions. When Commission
8 Counsel was asking you about time frames, I don't
9 think he asked you about the time frame when you
10 first arrived at the scene and you were walking
11 towards your mom's vehicle, and Constable Graham
12 stopped you and asked you where you were going,
13 and then he placed you in the police car. Sort of
14 what time lapse, and I'm just asking you for an
15 approximation, from when you first arrived at the
16 scene to when you were placed in the car, the
17 cruiser car?

18 A Less than two minutes.

19 Q Okay. And so it must have been that
20 the ambulances arrived while you were in the
21 cruiser car?

22 A As we pulled up, the first fire truck
23 had just arrived. And then I remember seeing one
24 ambulance pull up just after.

25 Q Okay. Because you did say that you

1 arrived before the ambulances?

2 A Right.

3 Q You said that in your interview to the
4 Commission, right?

5 A Correct.

6 Q When you started to give your evidence
7 today, you said at one point when my friend,
8 Commission Counsel, interrupted you, you started
9 to say there were two officers with Derek
10 Harvey-Zenk and you are not sure if they were
11 helping him, and then I didn't hear what else you
12 had to say?

13 A I just wasn't -- I'm not sure if they
14 were helping him out of the vehicle. From where
15 we were sitting in the police car it looked as if
16 they had been helping him out of the vehicle.

17 Q Right.

18 A But they weren't helping him walk or
19 anything afterwards.

20 Q I understand that. So, you weren't
21 sure if they were helping him out of the vehicle
22 or not, is that what you started to say?

23 A Right. The way the police car was and
24 the way that his truck was, it looked as if they
25 were.

1 Q You don't know, obviously, if they
2 were arresting him at that point or not, do you?

3 A I had no clue.

4 Q No. And another thing you said, and
5 this could be a problem with leading questions,
6 when Commission Counsel suggested to you when you
7 said you were in the police car for about ten
8 minutes, and Derek Harvey-Zenk was in front of you
9 the whole time, well, that really couldn't be,
10 could it, because there had to be some time --

11 A Well, minus the time he was walking to
12 the car.

13 Q Right, minus the time they were
14 walking to the car.

15 A Right, which I said was about two,
16 three minutes, right.

17 Q And so at most he would have been in
18 front of the police car for about seven minutes or
19 approximately?

20 A Right.

21 MR. PROBER: Thank you. Those are my
22 questions.

23 THE COMMISSIONER: We will see if Mr.
24 Green wants --

25 MR. GREEN: I have no questions.

1 BY MR. MCFETRIDGE:

2 Q Ms. Taman, after the accident you did
3 meet Chief Bakema; is that correct?

4 A Correct.

5 Q Was he one of the officers that you
6 are talking about who removed Mr. Zenk from his
7 truck?

8 A I couldn't tell you. They were by the
9 truck walking across the intersection, that's the
10 last that I saw him.

11 Q The officer that you say entered into
12 the car to talk --

13 A Oh, the one that was talking to him
14 outside the vehicle?

15 Q First of all the officers that removed
16 Mr. Zenk from the truck, was one of those Chief
17 Bakema?

18 A I'm not sure. He was not the one that
19 was standing with the driver beside the car.

20 Q So I take it that Chief Bakema was not
21 the officer who entered the vehicle you were in to
22 talk with Constable Graham?

23 A No.

24 Q Were you ever shown by anybody any
25 photographs of the officers who were in attendance

1 that day as to identify which ones you were
2 talking about?

3 A No.

4 MR. McFETRIDGE: Those are all of my
5 questions. Thank you.

6 THE COMMISSIONER: Now
7 Mr. Zazelenchuk.

8 BY MR. ZAZELENCHUK:

9 Q Tara, I believe you told us that it
10 was Officer Graham who told you and your sister
11 that you would have to sit in the back seat of his
12 car?

13 A Yes.

14 Q A gentleman stood up in court
15 earlier -- sorry, in this hearing room earlier
16 today and identified himself as Kenneth Graham.
17 Were you able to recognize him?

18 A Yes.

19 Q That's the gentleman you were talking
20 about?

21 A Yes.

22 Q Okay. And you will confirm for me
23 that after Mr. Paciocco gave his opening statement
24 you didn't hear any of the evidence today. You
25 were outside?

1 A That's right.

2 Q When you and your sister were told
3 that you had to sit in the back seat of the police
4 vehicle, were you told why?

5 A No.

6 Q Did you think to ask why?

7 A No.

8 Q Because it was a police officer
9 telling you what to do?

10 A Right.

11 Q Sure. You mentioned a few moments ago
12 at that point we were yelling to get out in
13 response to one of the questions.

14 A Yes.

15 Q Were you speaking figuratively or were
16 you --

17 A No, we were yelling at Officer Graham
18 to let us out of the car.

19 Q And how long did that yelling go on?

20 A Until he got out of the car to go talk
21 to my dad.

22 Q And it wasn't until your dad came that
23 you were allowed out of the car?

24 A My dad told him to let us out of the
25 car.

1 Q Yes. And I take it, as with most
2 police cars, you couldn't open the doors from the
3 inside?

4 A No.

5 Q Were you in the passenger side or the
6 driver's side as opposed to your sister?

7 A I was on the passenger side.

8 Q I see. When you got out of the car
9 were you able to get a look at the man who you
10 believed to be the driver of the truck who was
11 leaning up against the car?

12 A I saw him just before we got out and I
13 don't remember seeing him again after we had
14 gotten out.

15 Q I see. I wonder if Madam Clerk would
16 be good enough to give you F3.37, the second page.
17 Do you recognize that photograph?

18 A Um-hum.

19 Q Who is that photograph?

20 A That's Derek Harvey-Zenk.

21 Q And it was the man that was leaning
22 against the truck?

23 A Yes.

24 Q And leaning against the police car?

25 A Yes.

1 MR. ZAZELENCHUK: If that could become
2 an exhibit, Your Honour?

3 THE COMMISSIONER: What exhibit is
4 that?

5 THE CLERK: 74.

6 (EXHIBIT 74: Gallery photo pack shown
7 to Branigan's Waitress, F3,37)

8 MR. ZAZELENCHUK: Thank, you Tara.

9 MR. CLIFFORD: Mr. Commissioner one
10 inquiry in re-direct, and this is flowing from a
11 question asked by Mr. Prober.

12 BY MR. CLIFFORD:

13 Q Miss Taman, you were asked by Mr.
14 Prober a question about the time at the scene, the
15 amount of time that elapsed between your arrival
16 at the scene and when you were placed in the back
17 of a police car. And your response was less than
18 two minutes, and what I would like to do is to see
19 if we can learn a little bit more about the amount
20 of time that that took. When you arrived on
21 scene, did you get out of the vehicle as soon as
22 you arrived?

23 A As soon as we got there. I had to get
24 Kristin to get back in and put it in park.

25 Q And then you indicated in your

1 testimony that you started to run into the
2 intersection?

3 A Yes.

4 Q And how far into the intersection did
5 you get before you were met by a police officer?

6 A We got to about the centre of the two
7 lanes, and he came and stopped us.

8 Q All right. So the amount of time that
9 it would have taken you to get out of your car to
10 run to the middle of the intersection was?

11 A Within seconds.

12 Q And then did you -- what did you tell
13 Officer Graham?

14 A We just said that's my mom's car.

15 Q And what did he do?

16 A He said the green one? And we said
17 no, the yellow one, and he turned us right around.

18 Q Going through this, does it assist you
19 in providing further evidence on the amount of
20 time?

21 A Maybe three or four minutes -- like,
22 it was within minutes that we were in the back of
23 the police car.

24 Q You indicated that you ran into the
25 middle of the intersection?

1 A Um-hum.

2 Q And that would have taken you a matter
3 of seconds, if I understand your testimony?

4 A Right.

5 Q You had a very brief exchange with
6 Officer Graham?

7 A Yes.

8 Q Would that as well have been a matter
9 of seconds?

10 A Yes. Maybe 30 seconds.

11 Q And then you were placed in the police
12 car?

13 A We started walking back towards the
14 police car.

15 Q All right. Was there anything else
16 that took any time?

17 A It was enough time for him to tell my
18 dad to get down to the scene of the accident,
19 because just as I was getting into the police car
20 he gave my phone back to me.

21 Q You had the telephone conversation
22 with your father as well before getting into --

23 A Yes.

24 Q Okay. You ran into the middle of the
25 intersection, you had a brief conversation, you

1 used your telephone to call your dad, you gave the
2 telephone to Officer Graham?

3 A Officer Graham took it from me, yes.

4 Q And then you were placed in the back
5 of the car?

6 A Yes.

7 MR. CLIFFORD: Thank you, Miss Taman,
8 those are all of the questions that I have for
9 you. Again on behalf of the Commission, thank you
10 for assisting us.

11 Mr. Commissioner, that's the evidence
12 that we wanted to call.

13 THE COMMISSIONER: Thank you, very
14 much. Any matters of --

15 MR. CLIFFORD: That's the evidence for
16 today, sir.

17 THE COMMISSIONER: Now tomorrow we
18 have three witnesses.

19 MR. CLIFFORD: That's right, sir.

20 THE COMMISSIONER: And we are
21 scheduled to start at 9:30. Is that convenient to
22 everybody? All right. I'm being told
23 occasionally by the administrator that maybe we
24 should start earlier.

25 MR. PROBER: Actually Mr. Green

1 proposes 11:00 o'clock.

2 THE COMMISSIONER: I know. 9:30,
3 thank you.

4 THE CLERK: Order. This Commission is
5 adjourned until 9:30 a.m.

6 (Proceedings adjourned at 4:49 p.m.)

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OFFICIAL EXAMINER'S CERTIFICATE

I, CECELIA REID, a duly appointed Official
Examiner in the Province of Manitoba, do hereby
certify the foregoing pages are a true and correct
transcript of my Stenotype notes as taken by me at
the time and place hereinbefore stated.

Cecelia Reid
Official Examiner, Q.B.

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