

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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Thursday, July 3, 2008

Volume 7

INQUIRY PROCEEDINGS

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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  
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1 THURSDAY, JULY 3, 2008

2 UPON COMMENCING AT 9:30 A.M.

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

5 THE COMMISSIONER: Good morning.

6 MR. PACIOCCO: Good morning,  
7 Mr. Commissioner. We have several witnesses who  
8 have been subpoenaed to be before the Commission  
9 today. We are going to begin in a moment by  
10 calling Ms. Denise Bukowski. We have also  
11 Mr. Cecil Sveinson present in the body of the  
12 hearing room, along with two other witnesses,  
13 Selkirk paramedics, Edward Rosser and Rolland  
14 Fontaine. I would ask the Commissioner to excuse  
15 those witnesses from the body of the Commission  
16 hearing room with the exception of Ms. Bukowski,  
17 given the exclusionary order. And we have  
18 indicated to Mr. Rosser and Mr. Fontaine that  
19 their testimony will be required this afternoon  
20 and they can be excused until then, at your  
21 direction.

22 THE COMMISSIONER: Yes, Mr. Weinstein.

23 MR. WEINSTEIN: Just a small point,  
24 Mr. Commissioner.

25 THE COMMISSIONER: Yes.

1                   MR. WEINSTEIN: I have the revised  
2     schedule, and it shows that Mr. Fontaine was not  
3     due until tomorrow. If there's going to be a  
4     change in scheduling, I know I would appreciate,  
5     and I'm sure other counsel would appreciate being  
6     notified, if we could, in advance, so we can just  
7     sort of review that person's, you know, statements  
8     that he gave to the RCMP. Because it shows  
9     clearly that Mr. Rosser, just from the schedule,  
10    was due to be called back also tomorrow in case he  
11    didn't finish and Mr. Fontaine certainly is not on  
12    until July 4th.

13                  THE COMMISSIONER: Do you plan to call  
14    Denise Bukowski today?

15                  MR. PACIOCCO: Yes.

16                  THE COMMISSIONER: Then Cecil  
17    Sveinson?

18                  MR. PACIOCCO: Then Cecil Sveinson.

19                  THE COMMISSIONER: And Edward Rosser  
20    today?

21                  MR. PACIOCCO: That's correct.

22                  THE COMMISSIONER: Do you think you  
23    would be able to get into Rolland Fontaine?

24                  MR. PACIOCCO: We're not sure. The  
25    approach we have taken is to try to make sure

1 there is a witness on hand in case we have dead  
2 time at the end of the day. Counsel were advised  
3 when the scheduling was set out that it is  
4 provisional, and that's our aspiration. We hope  
5 to be able to maintain that schedule.

6 MR. PROBER: Could my friend go to the  
7 microphone, please, I can't hear him.

8 MR. PACIOCCO: The schedule that was  
9 furnished to my friends was provisional. It's  
10 aspirational, it is what we would like to  
11 accomplish, but we don't want to get into a  
12 situation where we call three witnesses, we're  
13 done at 2:30, and all of a sudden we've got two  
14 hours of valuable time to waste. So we have  
15 brought the additional witness in today. I  
16 apologize if there's any confusion about that.  
17 Counsel should be advised that they should always  
18 be a witness ahead because we really don't want to  
19 maintain a schedule where we are losing valuable  
20 hours in a very cramped schedule already. So  
21 that's why we have brought Mr. Fontaine in today.

22 THE COMMISSIONER: Mr. Weinstein,  
23 isn't it the usual practice for defence counsel to  
24 be three or four witnesses ahead?

25 MR. WEINSTEIN: Not in Manitoba.

1 Usually --

2 THE COMMISSIONER: Not in Manitoba,

3 I'm learning new things here.

4 MR. WEINSTEIN: Thank you,

5 Mr. Commissioner.

6 THE COMMISSIONER: All right. Well,

7 I'm sure Mr. Paciocco will try to cooperate as

8 best as he can. All right. I think the witnesses

9 have been moved.

10 MR. PACIOCCO: Yes, and we would call

11 Denise Bukowski.

12 THE COMMISSIONER: Good morning.

13 THE WITNESS: Good morning.

14 DENISE BUKOWSKI, having been first

15 duly sworn, testified as follows:

16 BY MR. PACIOCCO:

17 Q Ms. Bukowski, I understand that you

18 came in from a holiday in order to be with us

19 today?

20 A I did.

21 Q And we want to be clear that we are

22 very appreciative of your readiness to come

23 forward and provide your evidence in connection

24 with this very important Inquiry.

25 I'm going to begin by taking you back



1 to the heart of the reason why you've been called.  
2 I know it was a very, very difficult day for many,  
3 many people including yourself, and I'm talking,  
4 of course, about February 25th, 2005, when you  
5 came upon the scene of a motor vehicle accident.

6 I understand, Ms. Bukowski, at that  
7 time you worked at the Concordia Hospital?

8 A That's correct.

9 Q Do you still work there?

10 A Yes, I do.

11 Q And I understand that you're not  
12 medically trained, but you work as a director of  
13 volunteers; is that correct?

14 A That's correct, yes.

15 Q And how long have you been doing that?

16 A Eleven years at Concordia.

17 Q And I understand that you were on your  
18 way to that job at the time that you came upon the  
19 accident?

20 A Yes.

21 Q Around what time do you believe you  
22 arrived at the scene of the collision?

23 A It would have been shortly after  
24 7:00 o'clock.

25 Q Okay. And how were you able to

1 pinpoint the time that you have offered to the  
2 Commissioner?

3 A Our daycare opens at a quarter to 7:00  
4 and we are quite prompt in getting the girls to  
5 the daycare at a quarter to 7:00, and then it  
6 takes about 15 minutes from Oakbank to get to that  
7 point.

8 Q Okay. And I understand that you were  
9 travelling that day with your husband?

10 A Yes.

11 Q And what's your husband's name?

12 A Allan Bukowski.

13 Q And who was driving?

14 A He was.

15 Q What kind of vehicle were you  
16 operating that day, do you recall?

17 A It was a blue Sunbird. I'm sorry, I  
18 don't know the year.

19 Q Okay. And you were travelling, I  
20 understand, southbound on Highway 59?

21 A That's correct.

22 Q And you had come through -- what route  
23 did you take to get to 59?

24 A We would have come off of Garven Road,  
25 down 59, and then not going North Perimeter but

1 going straight toward Concordia.

2 Q Okay. So you were coming down 59, you  
3 would have entered approximately how far north of  
4 the accident scene?

5 A I'm not sure what you mean by how far  
6 north, we came upon it.

7 Q Well, when you pulled on to Highway  
8 59, how far did you travel on Highway 59 before  
9 you came to the accident?

10 A About five miles.

11 Q Okay. And when you were coming down  
12 the road, could you describe what observations you  
13 were making?

14 A We had come around the bend from Birds  
15 Hill and everything was fine. And as we got  
16 closer to the lights, I noticed it was green, and  
17 I realized that the traffic wasn't moving.

18 Q Okay. I'm going to stop you for a  
19 second.

20 A Yeah.

21 Q Are you able to tell us approximately  
22 how far you were from the intersection when you  
23 were able to make that observation?

24 A We were close to the weigh station.

25 Q Okay.

1           A     So a quarter of a mile.

2           Q     So you have that line of vision --

3           A     Yes.

4           Q     -- from the weigh station --

5           A     Yes.

6           Q     -- right down to the traffic lights?

7           A     That's correct.

8           Q     And you noticed the light was green  
9     and the traffic wasn't moving.  Could you continue  
10    please?

11          A     I looked ahead, and we were obviously  
12    slowing down because of the speed at that area,  
13    and there is a light there.  So the light was  
14    green, but I noticed that nothing was moving.  So  
15    I said to my husband -- and then we noticed there  
16    was an accident, and I said there is an accident,  
17    you need to stop the car.  And he was already  
18    slowing down, and he proceeded to pull over to the  
19    shoulder.

20          Q     Okay.  And how far were you from the  
21    intersection when you decided that you were going  
22    to stop for that accident?

23          A     We were right on it, you know, and  
24    depending on how fast -- we weren't going very  
25    fast because we were coming up to the light.  But

1 you could not go through.

2 Q Okay. There were vehicles obstructing  
3 your way?

4 A That's right.

5 Q And you pulled over onto the shoulder.  
6 Are you able to indicate to the Commissioner which  
7 side of the road you pulled over on?

8 A Yes.

9 Q And could you do that, please?

10 A It would have been on the passenger  
11 side, so my side of the road.

12 Q All right. So you're sitting in the  
13 passenger side?

14 A Yeah.

15 Q What lane are you travelling in? We  
16 understand it's a two lane road approaching that  
17 intersection?

18 A That's right. We were in the driving,  
19 in the right lane.

20 Q Okay. So there would have been a lane  
21 to your left as you were proceeding towards the  
22 intersection?

23 A That's right.

24 Q And the shoulder that you pulled onto  
25 was on the right-hand side?

1           A     That's right.

2           Q     And are you able to indicate how close  
3 to the intersection you pulled over?

4           A     We were right in -- we would have been  
5 the first car in the intersection.

6           Q     Okay. So you actually made it part  
7 way into the intersection. Would that be a fair  
8 description?

9           A     No, I don't think we made it that  
10 close. We were before the intersection.

11          Q     Okay. All right. And the vehicle  
12 stopped, and what did you notice as the vehicle  
13 came to a halt?

14          A     I noticed that there was a vehicle to  
15 the right, off in the intersection. And that  
16 really was all that I noticed at that point in  
17 time.

18          Q     What was the atmosphere like at the  
19 accident scene when you arrived?

20          A     It was very surreal, there wasn't  
21 anything happening. There wasn't anyone moving.  
22 And I think that's why I yelled at my husband,  
23 like, stop the car, pull over, because there's  
24 been an accident.

25          Q     Did you hear anything?

1 A No.

2 Q Did you see any other vehicles, apart  
3 from the vehicles that you were later able to  
4 determine were involved in the accident?

5 A There was another vehicle that was  
6 beside us when I came back to the vehicle --

7 Q Okay. So this is a --

8 A -- but I didn't notice it at first.

9 Q Okay. And the vehicle that was beside  
10 you, were you able to describe it?

11 A No, I can't.

12 Q Are you able to indicate whether it  
13 was a truck, a car, a van, anything like that?

14 A I'm not sure. I think in the  
15 statement I said it was a van, but at this point  
16 I'm not sure.

17 Q And what statement would that have  
18 been, your first statement or your second  
19 statement, do you recall?

20 A That would have been the first.

21 Q All right. And would your memory have  
22 been fresher then than it is now?

23 A Yes.

24 Q Does that give you any degree of  
25 confidence that it was a van?

1           A     I know it's a vehicle.

2           Q     Okay. Fair enough. What did you do  
3 after the vehicle came to a stop?

4           A     I got out of the car, and the first  
5 thing I did is I ran to the vehicle that was in  
6 front of me on the shoulder, like in the  
7 intersection.

8           Q     All right. I'm going to take you to  
9 that vehicle in a moment.

10          A     All right.

11          Q     What did your husband do?

12          A     He grabbed the cell phone and he was  
13 trying to dial 911.

14          Q     And I noticed you used the term  
15 "trying." I understand he had some difficulty --

16          A     He did.

17          Q     -- with the cell phone?

18          A     Um-hum.

19          Q     We're not going to be calling your  
20 husband as a witness, but I can only imagine that  
21 was an exceedingly frustrating experience for him  
22 to be trying to call 911 and not having the phone  
23 work?

24          A     Right.

25          Q     All right. So you get out of the car



1 and you proceed to the first vehicle. Are you  
2 able to describe how you went to the vehicle, did  
3 you walk?

4 A I ran.

5 Q You ran?

6 A I ran.

7 Q And I can imagine why you ran. What  
8 was the footing like as you ran?

9 A It wasn't slippery or anything like  
10 that.

11 Q Okay. And what did you find when you  
12 got to that first vehicle?

13 A There was a lady in the driver's seat,  
14 she was in her purse trying to find her phone.  
15 And so I just, I asked her, I says, are you okay?  
16 And she said she was.

17 Q And how did you find out or determine  
18 that she was looking for her phone?

19 A Just by observation. She was fiddling  
20 with her purse and just trying to find it.

21 Q Are you able to describe the vehicle  
22 she was in, apart from the fact that we do know it  
23 had sustained fairly heavy damage, what kind of  
24 vehicle was it, or what colour was it?

25 A You know what, in my mind, I have

1 always thought it was a van. I don't think it  
2 was. But it was -- as I said, I know exactly  
3 where it was in relationship to where I was.

4 Q Okay. And could you describe, to the  
5 best of your ability, exactly where it was?

6 A It would have been in front of our  
7 car, to the shoulder, not quite in the middle of  
8 the intersection but about 20 feet farther.

9 Q Okay. So 20 feet south, or past the  
10 intersection?

11 A Right.

12 Q And it's on the same side of the road  
13 that you're on?

14 A That's right.

15 Q Do you recall whether it was on the  
16 road or was it up on the median?

17 A It was on the right. It was more off  
18 of the road.

19 Q Okay. And you asked this woman  
20 whether she was okay?

21 A I did.

22 Q And did she respond to you?

23 A Yes, she did.

24 Q What did she say to you?

25 A She said she was fine, or she wasn't

1 hurt. I asked her if there was anyone else in the  
2 vehicle with her. She said no, she was alone.  
3 And then she said to me, "But I haven't seen  
4 anyone move from that vehicle."

5 Q And when she referred to that vehicle,  
6 was she gesturing or motioning at all?

7 A Yeah, over my shoulder.

8 Q Okay.

9 A And then I looked over my shoulder and  
10 I realized that there was another vehicle  
11 involved.

12 Q Okay. And I'm going to show you a  
13 photograph now, if I could. This would be Exhibit  
14 62, madam clerk. It will be found in tab B.8.a,  
15 counsel, tab B.8.a.

16 And you're going to notice,  
17 Ms. Bukowski, that in the bottom left-hand  
18 corner -- right-hand corner rather of each of  
19 those pages, there's a number. It's hard to pick  
20 up.

21 A I see it.

22 Q You'll see it?

23 A Yeah.

24 Q I'm going to ask you to turn, if you  
25 would, to page 132? Do you have page 132 in front

1 of you?

2 A Yes, I do.

3 Q That depicts a motor vehicle up  
4 against a post, it appears to be off the roadway  
5 up on the shoulder. You'll notice a little bit  
6 farther towards the right-hand side of the  
7 photograph, there's a very badly damaged motor  
8 vehicle?

9 A Um-hum.

10 Q Are you able to recognize those  
11 photographs, what it depicts?

12 A I certainly recognize the vehicle in  
13 the centre, the one that's quite mangled.

14 Q Yes?

15 A This one, not really. In my mind,  
16 this vehicle was farther ahead.

17 Q Okay. You can see from the angle of  
18 the photograph here that the vehicle up against  
19 the post would have been closer to the  
20 intersection?

21 A That's right.

22 Q Which may help explain why it's the  
23 first vehicle you would have gone to?

24 A That makes sense to me.

25 Q All right. And she, the woman at the

1 vehicle has just indicated to you that she hasn't  
2 seen anyone move from the other vehicle?

3 A Right.

4 Q I take it, when you looked over your  
5 shoulder, you were looking at the vehicle that's  
6 so badly damaged in the middle of the road?

7 A That's right.

8 Q Was there anyone else present at that  
9 time?

10 A There was a gentleman that came up to  
11 the vehicle, but I believe that was later.

12 Q Okay.

13 A Because when she had said to me that  
14 she hadn't seen anyone move from that vehicle, I  
15 just, I just felt compelled that I needed to go to  
16 that vehicle next.

17 Q Okay. Well, I'm going to get to the  
18 gentleman who came up to that vehicle in a moment  
19 then. Describe what happened after you were  
20 motioned towards the other vehicle that was in the  
21 middle of the road?

22 A I went -- as I went to the vehicle, I  
23 went around to the passenger side. And because I  
24 have small children, the first thing that I did is  
25 I, actually I looked into the back seat. And just

1 wanted, I don't know why, I just did that first.

2 Q Okay.

3 A And then I --

4 Q We understand that you made some  
5 observations of a person who was in that vehicle,  
6 and you drew the conclusion that there was really  
7 very little you could do for that person?

8 A That's correct, yes.

9 Q And what happened after you made the  
10 observation that you did?

11 A I was somewhat distracted. I saw  
12 something at the corner of my eye, someone that  
13 started coming toward me. So I turned away from  
14 the vehicle, and a gentleman started coming toward  
15 me. So I proceeded to walk up to him and I asked  
16 him if he was okay.

17 Q Okay. I'm going to ask you where you  
18 first noticed this gentleman coming from?

19 A He would have been in front of this  
20 car that was mangled, farther up the road.

21 Q Okay. So he would have been, if you  
22 had --

23 A He would have been south of --

24 Q He would have been south of the yellow  
25 vehicle?

1           A     Yes.

2           Q     Or the small vehicle that you were  
3 standing at?

4           A     Yes.

5           Q     And did you see any vehicles around  
6 the area he came from?

7           A     Yes. There was a vehicle farther down  
8 the road.

9           Q     And can you describe that vehicle and  
10 tell us where it was?

11          A     Just that it was, it was a truck.

12          Q     Okay.

13          A     And it seemed to be almost off of the  
14 road, more toward the shoulder.

15          Q     Okay. Would that be on the left-hand  
16 passing lane side of the road, or the right-hand  
17 driving lane side of the road?

18          A     It would be the -- it would be the  
19 left-hand side of the road.

20          Q     Okay. I'm going to ask you to look at  
21 another photo that may be of some assistance in  
22 orienting you. If you would look at page 124,  
23 please? You'll notice at page 124 a photo that's  
24 taken from some greater distance?

25          A     Right, yeah.

1           Q     And it depicts on the right-hand side  
2 up against a traffic light standard the first  
3 vehicle that I believe you attended at.  Would  
4 that be correct?

5           A     Yes, yeah.

6           Q     Then the very badly damaged vehicle in  
7 the middle of the road, which is just slightly  
8 south of the vehicle that you first attended to.  
9 And then farther down, you'll notice on the left  
10 off into the median, between the two lanes, is a  
11 truck.  And I take it, ma'am, that that would be  
12 the truck that you are describing?

13          A     Right, and it was off of the road.

14          Q     Okay.  Now, you noticed something out  
15 of the corner of your eye that distracted you.  
16 You turned and you saw a man coming?

17          A     Right.

18          Q     Can you describe what happened from  
19 then, please?

20          A     The gentleman came from around the  
21 truck, and he would have met up with me almost at  
22 the road.

23          Q     Okay.  I'm going to slow you down for  
24 a second because I want to get some detail out.  
25 When you say he came around from the truck, could



1 you be a bit more specific?

2 A From the back of the tailgate of the  
3 truck.

4 Q Okay. Am I to understand that it is  
5 your impression that he was on the driver's side  
6 of the truck?

7 A That's my impression, yes.

8 Q Okay. And are you able to tell us how  
9 long after you arrived before this gentleman  
10 started to come across towards you?

11 A I wasn't standing at this vehicle very  
12 long, you know, maybe 20 seconds so -- and I had  
13 no reason just to stand there. So I would say he  
14 was there almost immediately.

15 Q Okay. So the sequence was, you ran  
16 from your vehicle after it was stopped, things  
17 were still, there seemed to be nothing moving?

18 A Right.

19 Q You went up to the vehicle by the  
20 post. You had a brief conversation with a woman  
21 who was digging in her purse?

22 A Right.

23 Q You then were motioned over towards  
24 the other vehicle?

25 A Right.

1           Q     You immediately went over to the other  
2 vehicle?

3           A     Um-hum.

4           Q     You looked inside, and very, very  
5 shortly after, you noticed this gentleman come  
6 from behind the vehicle?

7           A     Right.

8           Q     Is that fair?

9           A     Yes.

10          Q     And how far would he have been from  
11 where you were at the time you first noticed him?

12          A     I'd say about 20 feet.

13          Q     Okay. And were you still next to the  
14 yellow vehicle at that point in time, or did you  
15 move towards him?

16          A     I moved towards him.

17          Q     And what made you move towards him?

18          A     In my mind, I just thought that no one  
19 else needed to see what I saw. And I didn't know  
20 who this gentleman was, or anyone was for that  
21 matter.

22          Q     What was your impression about whether  
23 or not that other vehicle had been involved in the  
24 accident that you had come upon at that time?

25          A     I couldn't ascertain that it was

1 involved in the vehicle. I just, I didn't get the  
2 sense, though, that this person was coming to  
3 help.

4 Q And why did you not get the sense that  
5 he was coming to help?

6 A Because he was very calm. I was  
7 running and this person was walking toward me very  
8 slowly.

9 Q Are you able to describe what his  
10 posture was like as he was walking?

11 A I just recall when he stopped in front  
12 of me, he had his hands in his pockets.

13 Q And you had gone some distance to meet  
14 him and he had gone some way towards where you  
15 were?

16 A Right.

17 Q Are you able to give us any type of  
18 estimate as to how far you would have gone away  
19 from the yellow car before you managed to  
20 intercept him?

21 A Again, 10 or 15 feet.

22 Q And are you able to describe this  
23 gentleman?

24 A He would have been about 5'10", and  
25 clean-cut. He had short hair. And that's all

1 that I really could remember about him. He had a  
2 short jacket.

3 Q And age wise, were you able to gauge  
4 how old he might have been?

5 A I would have guessed 35 to 40.

6 Q Okay. And how close did he get to you  
7 physically?

8 A I would say about three feet.

9 Q And what happened when he got to that  
10 proximity to you?

11 A I asked him if he was okay, if he was  
12 hurt? And he didn't respond to me. He kind of --  
13 he had a very flat affect.

14 Q When you say a flat affect, I take it  
15 you mean no expression?

16 A No expressions whatsoever, just kind  
17 of stared at me.

18 Q Did you sense any emotion from him?

19 A No.

20 Q Did you ask him any other questions?

21 A I think I asked him if there was  
22 anyone with him?

23 Q Did he --

24 A No, he didn't respond.

25 Q And after you asked him if he was

1     okay, and whether there was anybody else with him,  
2     did you say anything else to him?

3             A     No, I didn't.

4             Q     You talked about how you felt nobody  
5     needed to go and see that. Did you communicate  
6     that to him at any point in time?

7             A     I did.

8             Q     Do you remember what you said?

9             A     I know I just said to him, you don't  
10    need to go there.

11            Q     And did that provoke any type of  
12    reaction from him?

13            A     He turned around and then he walked  
14    away from me.

15            Q     He walked away from you?

16            A     From me.

17            Q     And what was your impression at the  
18    time that you had this exchange with him? Did you  
19    form any impression about him?

20            A     Not at all. I just didn't get the  
21    sense that it was, you know, someone who stopped  
22    at the accident to help. He just sort of wandered  
23    off.

24            Q     And did you make any observations  
25    about whether he appeared to be injured?

1           A     He looked fine.

2           Q     Were you able to make any observations  
3 about the way he moved, apart from the fact that  
4 you described it as slow?

5           A     No. I just -- he just did not look  
6 hurt and he wasn't bleeding or anything like that.

7           Q     And how much attention were you paying  
8 to his condition and his situation, ma'am, at that  
9 point?

10          A     Not a lot. I was thinking more about  
11 the lady in the car.

12          Q     And as he turned away from you, what  
13 did you do?

14          A     I turned away from him and I started  
15 to go back to the vehicle, the yellow vehicle, and  
16 then I noticed the lady that was in the first  
17 vehicle, she was now either getting out of her  
18 vehicle or she was out of her vehicle.

19          Q     Okay. As you are approaching her  
20 vehicle, do you see where the gentleman who you  
21 had that little contact with had gone?

22          A     No, I don't -- I did not.

23          Q     Okay. Now, you see her either getting  
24 out of the vehicle or she's out of the vehicle.  
25 What happens then?

1           A     I went back up to her, and then she  
2     asked me if the person in the vehicle, or if they  
3     were okay. She said she/he/they, and I said no, I  
4     don't think there's anything we can do for her.

5           Q     Okay. And you had mentioned earlier  
6     about a gentleman approaching that woman?

7           A     Yes. There was another gentleman that  
8     either came to the car at the same time, or was  
9     with that woman.

10          Q     Okay. Would this be the same  
11     gentleman who came from behind the truck --

12          A     No.

13          Q     -- or a different gentleman?

14          A     No, it was a different person.

15          Q     And this woman at the green car, did  
16     she make any observations about the accident or  
17     anything of that nature to you?

18          A     She -- I don't know who asked the  
19     question, if it was the gentleman or if it was  
20     myself, but she did say that she was at the light,  
21     it turned green, and then all of a sudden she felt  
22     that she was propelled.

23          Q     Okay. What happened after you had  
24     that conversation with her?

25          A     I noticed someone coming from where my

1 vehicle was parked, coming toward the yellow  
2 vehicle that was mangled. So I proceeded, I left  
3 her with the other gentleman.

4 Q Okay.

5 A And then I proceeded to go around the  
6 car and meet up with the gentleman that was coming  
7 to the car.

8 Q So this would be a third gentleman, I  
9 understand?

10 A Yes.

11 Q Okay. And what happened then?

12 A I walked from behind the trunk of the  
13 car to the passenger side and I met up with him.  
14 And we both were at the driver's side at the same  
15 time. And I said to him, I don't think there's  
16 anything that we can do for her. And he just  
17 looked at me and then he leaned over and he shut  
18 off the car.

19 Q Did he say anything or gesture in any  
20 way?

21 A He shook his head, and he just, he  
22 just did that, he just shook his head in  
23 acknowledgment that there wasn't anything that we  
24 could do.

25 Q Did you know who this gentleman was?



1           A     I thought at that time that he looked  
2 very familiar to me, but I wasn't entirely sure  
3 until a week and a half later, when I realized  
4 that I did know him.

5           Q     And who was it?

6           A     His name is Dale Kasper and he is my  
7 sister's brother-in-law.

8           Q     And how did it occur to you that  
9 that's who it was who turned the vehicle off?

10          A     Well, just trying to piece together  
11 who I saw and who was at the scene, I was working  
12 through everything. And Dale had on his jacket an  
13 emblem. So with the media attention, I knew that  
14 I probably had some contact with the police  
15 officer, but I didn't know who he was, one of the  
16 three gentleman that I had spoken with. And then  
17 we had a family birthday party, and Dale's wife,  
18 Ila, was present. And I said to her, I said, you  
19 know, like we were talking about the accident and  
20 I said, was Dale at the accident? And she said,  
21 yes, he turned off the car. And then the pieces  
22 started to fit for me.

23          Q     All right. And you had referred to  
24 your speculation that perhaps it was a police  
25 officer. Was Dale, in fact, a police officer?

1           A     No, he's a paramedic.

2           Q     And I understand he works with the  
3     Winnipeg Fire Service?

4           A     Yes.

5           Q     All right. What happens after you had  
6     this brief and very difficult meeting with Dale  
7     Kasper at the vehicle?

8           A     I could hear the sirens coming, and  
9     then I realized that we were parked and blocking  
10    traffic. And all I could think of is, we have to  
11    get out of here because, you know, the ambulance  
12    won't be able to come to the scene of the  
13    accident. So I left and I went to the car, and I  
14    told my husband, Al, we've got to move.

15          Q     Do you have any idea how long you  
16    would have been at the accident scene before you  
17    decided that you were going to leave?

18          A     I don't think we were there more than  
19    10 minutes.

20          Q     What was the condition of the roads at  
21    the time you left, in terms of traffic flow or  
22    volume?

23          A     Everything was backed up. You could  
24    see traffic all the way underneath the overpass on  
25    the other side.

1           Q     Okay. I don't know if you can orient  
2 yourself on the diagram, but you will notice that  
3 there are two roads running from the top to the  
4 bottom of the diagram. That would be Highway 59.  
5 And on the left-hand side, the road running from  
6 the top to bottom is the southbound road that you  
7 would have been travelling on. The other road  
8 adjacent to it, to the right, is the northbound  
9 Highway 59. You referred to the overpass. I take  
10 it, you're talking about the overpass that's  
11 depicted at the bottom of that photograph?

12           A     I'm sorry, but I'm terrible with maps.

13           Q     Many of us are. I've had to rehearse  
14 this many times.

15           A     I'm talking about the North Perimeter  
16 overpass.

17           Q     All right. The North Perimeter  
18 overpass, so the traffic is backed up a long way,  
19 essentially?

20           A     It's underneath, yeah.

21           Q     And it wasn't backed up, I take it,  
22 when you first arrived?

23           A     No.

24           Q     All right. So all of that congestion  
25 had developed in the time that you were there?

1           A     That's correct.

2           Q     All right.  And you did leave and you  
3     went on to your place of work, I understand, which  
4     was the Concordia Hospital?

5           A     Yes.

6           Q     Are you able to give us an indication  
7     as to when you arrived there?

8           A     It took a few minutes, because we had  
9     to go down the North Perimeter and then come back  
10    up off of Henderson.  So I would say probably  
11    about a quarter to 8:00.

12          Q     Okay.  And what happened when you got  
13    to the hospital?

14          A     I met security in the hallway, and I  
15    was quite shaken up.  And I had asked Allan, I  
16    said, you know, has -- do we know if the  
17    individual that was in the car is someone from  
18    Concordia?  And he, at that time, couldn't tell me  
19    anything, but he said he would let me know.  And  
20    then he came back to see me and he said no,  
21    Denise, it wasn't anyone from the hospital.  And  
22    then I asked him, I said, did she end up in  
23    emergency?  And he told me that she had died at  
24    the scene.

25          Q     I know that was a very, very difficult

1 morning for you. I understand that your next  
2 contact with the case, apart from having some  
3 conversations with, of course, Allan, your husband  
4 and others about your terrible experience, would  
5 have been a contact with the East St. Paul Police  
6 the following week?

7 A That's correct.

8 Q Could you tell the Commissioner how  
9 that contact came about?

10 A It took about, according to my  
11 statement, it took 10 days before I actually made  
12 it into the East St. Paul detachment. And one of  
13 the factors, because of that, was because this  
14 accident happened on the Friday, and then on the  
15 Sunday, the mother and her four-year-old son from  
16 our daycare were killed in a car accident. And  
17 between the two accidents, it was kind of hard to  
18 take. So it took me a little while, once we got  
19 through the prayers and the funeral for  
20 Christopher and Trudy, then I started putting into  
21 perspective what I was actually dealing with from  
22 the Friday. And it wasn't until later on in the  
23 week that I believe I had heard on the radio that  
24 they were looking for witnesses. And I thought, I  
25 didn't see the accident, but maybe I should come

1     forth and at least make a statement.  So it was at  
2     that time that I called and made an arrangement to  
3     come in.  And I believe it was on the Monday or  
4     the Tuesday right after the weekend.

5             Q     Okay.  So you called the East St. Paul  
6     Police --

7             A     I did.

8             Q     -- on your own initiative and you  
9     offered to come in and make a statement?

10            A     Yes.

11            Q     When you phoned, did you indicate that  
12    that was your intent, to come in and be  
13    interviewed in connection with the accident?

14            A     Yes, I did.

15            Q     All right.  And we understand from the  
16    document that we have received, indicating that it  
17    is your statement, that it was on March 7th, 2005,  
18    that you attended at the East St. Paul Police  
19    Station?

20            A     Yeah, that's correct.

21            Q     I'm going to show you a document, and  
22    I know you have a document with you because it has  
23    been furnished to you.  It's found at tab C.13.a,  
24    and if that could be made the next exhibit,  
25    please?

1 THE CLERK: Exhibit 75.

2 MR. PACIOCCO: That will become

3 Exhibit 75, C.13.a.

4 (EXHIBIT 75: C.13.a, Denise Bukowski

5 - Statement to E. St. Paul Police -

6 March 7, 2005)

7 BY MR. PACIOCCO:

8 Q Now, ma'am, you have in front of you a

9 statement with your name at the top, Denise

10 Deborah Bukowski, with your date of birth, and it

11 indicates the date above, right-hand side, of the

12 7th day of March, 2005, and a time of 1630, which

13 of course would be 4:30 p.m. Does that correspond

14 with your recollection --

15 A Yes, it does.

16 Q -- as to when you went in?

17 A Um-hum.

18 Q And you'll notice that the statement

19 records a finishing time 17 minutes later of 1647.

20 You also notice that on the second page, page 234,

21 at the very bottom of the statement, is your

22 signature. And I take it that is your signature,

23 ma'am?

24 A Yes, it is.

25 Q And beneath that, it is written,

1 "Taken by A. Bakema number 47," correct?

2 A Um-hum.

3 Q And do you know who A. Bakema is?

4 A At the time he was the Chief of  
5 Police, I believe.

6 Q Was he known to you?

7 A No.

8 Q Okay. Could you tell us about the  
9 interview, when you arrived at 4:30 in the  
10 afternoon for the purposes of, or shortly before  
11 for the purposes of providing your statement?

12 A Mr. Bakema took us into a room, my  
13 husband and I, and then he proceeded to ask me  
14 what had happened.

15 Q Ma'am, did he ask you in front of your  
16 husband?

17 A Yes.

18 Q Did your husband remain in the room  
19 throughout the interview?

20 A Yes.

21 Q And your husband had also been at the  
22 accident scene?

23 A Yes, he had.

24 Q Do you know whether your husband was  
25 asked to give a separate statement?



1           A     At that time, no.

2           Q     Okay. And what happens when you are  
3 being interviewed?

4           A     He just asked me what I saw and  
5 documented what I had said.

6           Q     So you say, "documented what I had  
7 said"?

8           A     Um-hum.

9           Q     Are you suggesting that this is not  
10 your handwriting?

11          A     No, this isn't my handwriting.

12          Q     Okay. So, I take it then that Chief  
13 Bakema wrote this statement?

14          A     Yes.

15          Q     Was there anyone else in the room,  
16 apart from Chief Bakema and your husband and  
17 yourself?

18          A     No.

19          Q     Okay. Please continue?

20          A     He took my statement. I'm not sure  
21 what else I can add.

22          Q     Okay. Well, I'm going to ask you some  
23 more specific questions.

24          A     Sure.

25          Q     This statement is about a page and a

1 half handwritten, and we also have a typed version  
2 that you may or may not have with you, at page 235  
3 of the book, that shows that it's approximately  
4 less than half a typed page in length.

5           The first question I'm going to ask  
6 you is whether or not you had an opportunity to  
7 read that statement before you signed it?

8           A     I did, yes.

9           Q     The second question I'm going to ask  
10 you is whether this statement contains everything  
11 that was exchanged between you and Chief Bakema  
12 during the interview?

13          A     The piece that's missing is, I did  
14 draw a diagram to explain where I thought the  
15 vehicles were. I was having difficulty  
16 identifying the colours of the vehicles, or the  
17 makes, so it was just easier for me to draw that.

18          Q     Okay.

19          A     And that isn't here.

20          Q     Okay.

21          A     And I also, at the conclusion of our,  
22 after I had signed this statement, I had asked him  
23 if I could ask a few questions. And he said  
24 certainly. And I proceeded to ask him a few  
25 questions.

1           Q     What kind of questions did you ask  
2     him?

3           A     I, again, trying to piece together  
4     what happened, I wanted to know if I had any  
5     contact with the police officer.

6           Q     Okay. And I take it you had heard  
7     through the media that the driver of the truck, or  
8     the vehicle that was supposed to have caused this  
9     collision was a police officer?

10          A     That's correct.

11          Q     And you were curious as to whether you  
12     had contact with him?

13          A     Right.

14          Q     And I take it, from the nature of the  
15     context you had, you were imaging that it was the  
16     person from the truck that may have been the  
17     police officer?

18          A     That's correct, yes.

19          Q     And did Chief Bakema answer your  
20     question?

21          A     Yes, he did.

22          Q     And what did he say?

23          A     He said that the gentleman from the  
24     truck was the officer.

25          Q     Did you have any other questions of

1 him?

2 A Um --

3 Q I know, ma'am, from your statement  
4 that it was weighing on your mind as to whether  
5 you had made the right call at the scene, that  
6 there was nothing that could be done for this  
7 woman?

8 A Yeah, that's correct. I did ask him  
9 if she had indeed died at the scene or did she die  
10 at the hospital? And he had said to me that, no,  
11 there wasn't anything that, you know, you could  
12 have done, or anybody for that matter could have  
13 done to help her.

14 Q And that was something you were  
15 carrying with you --

16 A Yes.

17 Q -- and it was causing you a great deal  
18 of emotional difficulty?

19 A What bothered me was that I didn't  
20 even check to see if she had any vital signs.

21 Q Okay. And you're not a trained  
22 medical person?

23 A I'm not, but it just seemed like  
24 that's what we should have done.

25 Q Okay. Let's get back to the statement

1     itself.  You had questions of him.  Do you know  
2     whether he asked you questions?

3             A     He did, yes.

4             Q     And I note there are no questions  
5     recorded on that statement, and no answers  
6     recorded on that statement.  Are there any  
7     questions that you can think of that he asked you  
8     that are not recorded?  Take your time, if you  
9     wish, to read through it.

10            A     I know he asked me if I could describe  
11    the gentleman that came from the truck.

12            Q     Okay.  And were you able to give him  
13    the kind of description that you furnished to the  
14    Commissioner today?

15            A     I thought I had.

16            Q     But do you see it recorded in the  
17    statement?

18            A     I don't see it, no.

19            Q     Okay.  I'm going to direct your  
20    attention to the parts of your statement that deal  
21    with the man in the truck.  And correct me if I'm  
22    wrong, you just read the statement, but everything  
23    that I see about the man in the truck appears on  
24    the first page of that written statement.  And it  
25    starts about two-thirds of the way down, and I'm

1 going to read to you everything that I see in  
2 there that pertains to the man in the truck.  
3 Starting about 10 or 12 lines up from the bottom  
4 of the page in the middle of the sentence:

5 "As I turned away from her, I noticed  
6 a truck on the shoulder in the middle,  
7 on the passing lane shoulder. Then  
8 this man came up from behind this  
9 vehicle, and I asked him if he was  
10 okay and if he had anyone with him,  
11 and he didn't say anything. Then I  
12 went back to the car."

13 A Um-hum.

14 Q So it is that little five line or six  
15 line description that is contained in the  
16 statement, and nothing else? Would that be an  
17 accurate description on my part?

18 A That's correct, yes.

19 Q Did Chief Bakema ask you how long  
20 after you arrived that this took place?

21 A I don't recall.

22 Q Did he ask you how far you would have  
23 seen this man walk?

24 A No.

25 Q Did he ask you where you were standing

1 when this man walked towards you?

2 A No.

3 Q Did he ask you how close you got to  
4 this man?

5 A Yes.

6 Q And did you furnish an answer to him  
7 to that question?

8 A I would think that I had.

9 Q And do you see it recorded anywhere in  
10 this statement, this answer?

11 A No.

12 Q Did he ask you whether you had made  
13 any observations as to whether this man was  
14 injured?

15 A No.

16 Q Did he ask you whether you engaged in  
17 any conversation with him?

18 A Yes, he did, yes.

19 Q And you have recorded here that you  
20 asked him if he was okay and if he had anyone with  
21 him, and he didn't say anything?

22 A That's right.

23 Q Did he ask you whether there was any  
24 further conversation?

25 A He did not.

1           Q     Did he pursue, in any way, your  
2     observation that the man didn't say anything by  
3     asking you about his demeanour at the time or his  
4     emotional state?

5           A     Are you asking me if he prompted me?

6           Q     I'm asking whether he asked for  
7     elaboration on that in any way?

8           A     No, no.

9           Q     Did he ask you whether you made any  
10    observations of this man's ability to walk?

11          A     No, he didn't.

12          Q     Did he ask you whether you had any  
13    other contact with him, apart from that described  
14    in this passage?

15          A     No.

16          Q     Did he ask you whether you saw this  
17    man deal with anyone else at the accident scene?

18          A     No, he didn't.

19          Q     Ma'am, I understand that you were  
20    interviewed one later time in connection with this  
21    case?

22          A     Yes, I was.

23          Q     And who was that by? Are you able to  
24    tell us?

25          A     It was someone from the RCMP.



1           Q     We have another interview sheet with  
2     you. I'm going to enter it as an exhibit now. It  
3     will be found at tab C.13.b. And at tab C.13.b  
4     you'll find the typewritten version of statement  
5     that you brought with you this morning. It's at  
6     page 236 of the book that everyone is working  
7     from. It is headlined "statement of Denise  
8     Bukowski," date 2006/05/30, so that would have  
9     been May 30th of 2006, approximately 14 months  
10    after the accident, time 9:41 hours. RCMP member  
11    present, Corporal Todd Doyle.

12                   Now, I understand you've had an  
13    opportunity to review that statement?

14           A     I have, yes.

15           Q     It is a transcription, without  
16    signature on your part. But do you recall that  
17    interview and can you identify that as the  
18    interview you gave?

19           A     Yes, I can.

20           Q     And could you indicate to the  
21    Commissioner the circumstances, as you understood  
22    them, in connection with you being approached to  
23    give this interview a little more than a year  
24    after the events you observed?

25           A     It was my understanding that the RCMP

1 were called in to either assist or take over the  
2 investigation.

3 Q Okay. And I'm going to draw your  
4 attention, if you would, to the first page of the  
5 interview, the second part where it says "Doyle"  
6 in the top quarter of the page:

7 "Um, Denise, I'm assisting in the  
8 continuing investigation of a fatal  
9 motor vehicle accident."

10 Do you see that?

11 A Um-hum.

12 Q Do you remember being told that?

13 A Yes.

14 Q And so the information you received  
15 was that this was in connection with the accident  
16 investigation?

17 A Yes.

18 Q What was your impression about what  
19 the focus of the interview was?

20 A I guess I was surprised that I was  
21 called back to give another statement 14 months,  
22 16 months later.

23 Q Yes. And what kind of questions were  
24 you asked? Were they the kind of questions that  
25 you expected to be asked if you were going to be

1 interviewed in an accident investigation?

2 A I don't know. I've never been  
3 interviewed before.

4 Q All right. And were you asked  
5 questions about the investigation or about the  
6 accident?

7 A I was asked -- no, I wasn't asked  
8 anything about the investigation, I was asked  
9 about the accident.

10 Q Okay. I understand that you had some  
11 subsequent involvement with the prosecutor in this  
12 case?

13 A Yes.

14 Q And who would that have been, ma'am?

15 A That would have been Mr. Minuk.

16 Q And could you tell the Commissioner  
17 how that involvement with Mr. Minuk first came  
18 about? What was your first connection with  
19 Mr. Minuk?

20 A I would have received something in the  
21 mail, or maybe it was the subpoena.

22 Q Okay?

23 A And the question that I had was, am I  
24 a witness to the prosecution or to the defence?

25 Q Okay. And when would this have been?

1 Would this have been in 2006 or in 2007?

2 A It would have been 2007.

3 Q Okay. And we know that there had been  
4 a preliminary inquiry date scheduled for 2006,  
5 which was ultimately cancelled before the  
6 investigation took place that you were just  
7 interviewed in connection with. And then there  
8 was a scheduled date again in 2007, where the case  
9 was ultimately resolved. I'm going to ask you  
10 about that in a moment.

11 Thinking back, are you confident as to  
12 when the conversation with Mr. Minuk was, the  
13 first time you had a conversation with him? Was  
14 it in connection with the first scheduled dates or  
15 the second scheduled dates?

16 A I would have to change my answer and  
17 I'd have to go back to 2006.

18 Q Okay. And you got subpoenaed in  
19 connection with the 2006 Preliminary Hearing?

20 A That's correct, yes.

21 Q And what happened when you received  
22 the subpoena?

23 A That's when I would have made my first  
24 initial call to Mr. Minuk, to find out what this  
25 meant and what my role would be.

1 Q Can I take it that you had no contact  
2 with Mr. Minuk before the subpoena arrived?

3 A That's correct, yes.

4 Q How did you know to contact him?

5 A I'm not sure.

6 Q I understand in one of your statements  
7 you indicated that there was a number on the  
8 subpoena to call?

9 A If that's where it was, then that's  
10 how I would have tracked it back, yes.

11 Q And he called you back after you  
12 phoned that number?

13 A Yes.

14 Q And what took place when he spoke to  
15 you, ma'am?

16 A He just explained that there would be  
17 a Preliminary Hearing and that I would -- I may or  
18 may not need to be present to review my statement.

19 Q Okay. Was there any discussion of  
20 what was in your statement?

21 A No.

22 Q Did you get the impression that you  
23 were being interviewed for the purposes of  
24 providing your testimony?

25 A No.

1           Q     And I take it that you were  
2     subsequently advised that it was unnecessary for  
3     you to come in 2006, that the subpoena was being  
4     cancelled?

5           A     That's correct, yes.

6           Q     And did you receive any further  
7     contact from Mr. Minuk after that phone call?

8           A     No.

9           Q     I take it that you responded to the  
10    second subpoena?

11          A     Yes.

12          Q     And you and your husband went to  
13    court. Did he go with you?

14          A     Yes.

15          Q     And what happened when you went to  
16    court?

17          A     When we arrived, we were -- we  
18    reported to the room that we were supposed to be  
19    at, and we waited. We were there for, we were  
20    told to be there for 9:00 o'clock, which we were.

21          Q     Had anyone met you there?

22          A     No.

23          Q     And this room you were to report to,  
24    was it a courtroom or a waiting room of some kind?

25          A     It was some type of a waiting room.

1 Q Okay. And so you went there. You  
2 reported for 9:00 o'clock, I take it?

3 A Right.

4 Q And what happened? Then you waited?

5 A And we waited maybe 15 minutes or so,  
6 and then Mr. Minuk came in and introduced himself  
7 and told us that we would just have to wait and  
8 that he would be back.

9 Q All right. And you say "us," how many  
10 people were in the room, can you recall?

11 A In that room there must have been  
12 about 15 people.

13 Q And who was he speaking to?

14 A My husband and I.

15 Q Okay. And he was with you for how  
16 long?

17 A He was there just very briefly.

18 Q Okay. And what happened next?

19 A He left the room, and then about an  
20 hour later, he came back and he said that there  
21 were some type of developments that were occurring  
22 and that we would just have to sit tight and wait,  
23 and that he would be back to come and see us.

24 Q Okay. And what happened next?

25 A Then he did come back, and I'm sorry,

1 I don't know what time it was, but he came back  
2 and he asked us if we wouldn't mind stepping out  
3 into the hallway.

4 Q Is it, again, you and your husband?

5 A My husband and I and two other  
6 individuals that I met for the first time.

7 Q And are you able to give us any  
8 indication as to who they might have been?

9 A Yes. It was the lady that was in the  
10 first vehicle that I spoke to.

11 Q All right.

12 A And it was the gentleman who had to  
13 move his vehicle out of the way.

14 Q Okay. So you are with those two  
15 people, and based on your description, we know  
16 them to be Ms. Beattie and Mr. Shaw. What  
17 happened when you were asked to step outside with  
18 these individuals and your husband and Mr. Minuk?

19 A He -- we were in the hallway, and he  
20 proceeded to introduce us to each other because we  
21 didn't know each other. And he seemed surprised  
22 that we didn't know each other. And then he said,  
23 you know, you're not going to believe this but  
24 it's over. He pleaded guilty, something to that  
25 effect. Like very -- he looked as surprised as we



1 were to hear that news.

2 Q Okay. Did he express any surprise?

3 A Yes.

4 Q What did he say?

5 A It was just in the tone of his voice  
6 and his hands. He was almost theatrical. It's  
7 hard to explain, but he says, you're not going to  
8 believe this, but it's over.

9 Q Okay.

10 A And we were shocked, or I was shocked.

11 Q Okay. What kind of conversation took  
12 place around that information?

13 A Well, it was at that time that we  
14 started to debrief and --

15 Q Was Mr. Minuk present?

16 A Yes, he was.

17 Q Please continue.

18 A Trying to put the pieces together.  
19 When Mr. Minuk had said that I had -- I was on the  
20 scene, the lady, Mrs. Beattie --

21 Q Yes?

22 A -- she had said that she didn't recall  
23 me even coming up to her vehicle, which I did.

24 Q Okay.

25 A We talked about how Mr. Zenk had

1     pleaded guilty.

2             Q     Yes?

3             A     And there was some discussion about  
4     the case.

5             Q     Was there any discussion about the  
6     sentence?

7             A     Yes. We asked, and I'm not sure if it  
8     was myself or if it was the gentleman who said,  
9     well, what does that mean, you know, that he's  
10    pleaded guilty? And Mr. Minuk had said, well,  
11    it's now in the hands of the courts to decide what  
12    type of a sentence he'll be given.

13            Q     And was there any indication as to  
14    what his expectation was with respect to the kind  
15    of sentence that this man would receive?

16            A     He just commented and said that it  
17    wasn't in his -- it wasn't in his hands to decide,  
18    it was up to the courts.

19            Q     Okay. I'm going to take to you the  
20    transcript. Do you have the transcript with you?  
21    And you recall giving responses to Mr. Clifford on  
22    the 26th of March, 2008 --

23            A     Um-hum.

24            Q     -- when you were asked similar kinds  
25    of questions. I'm going to take your attention,

1 please, to page 41, to see whether or not the  
2 response you gave to Mr. Clifford refreshes your  
3 memory in any way. I'm going to take you to line  
4 10 on page 41. You'll notice that there are four  
5 pages per page, so I'm looking at the numbers on  
6 the small page. And at line 10 it says:

7 "I know one of the questions was,  
8 well, how is it that he was plea  
9 bargaining? There was discussion  
10 about the plea bargain and what will  
11 he get. You know, will he get a year,  
12 two years, you know, how does that  
13 work? And he said it's really up to  
14 the courts now to decide how to be  
15 sentenced."

16 Does that assist you at all in discussing whether  
17 or not there was any observation about the range  
18 of sentencing?

19 A I'm not sure who said one year, two  
20 years, but that came up in the discussion.

21 Q Okay.

22 A And I do recall Mr. Minuk, he did say  
23 that it was up to the courts now to decide.

24 Q Okay. And was there any discussion  
25 about the strength of the case that Mr. Minuk had

1 to bring to court?

2 A There was actually quite a bit of  
3 discussion about that.

4 Q Would you share that with the  
5 Commissioner, please?

6 A We talked a little bit about -- what  
7 came up was the skid marks, the fact that there  
8 weren't any skid marks at the scene. We talked  
9 about how Mr. Zenk had just finished working a  
10 number of double shifts. And I believe it was  
11 Ms. Beattie who made the comment that there is a  
12 term that police officers use when they work a  
13 number of double shifts. And there was some  
14 speculation amongst the three of us and Mr. Minuk  
15 that, you know, it very well could have happened  
16 that he had fallen asleep at the wheel, and that  
17 would explain why there were no skid marks. And  
18 that, you know, perhaps he wasn't drinking.

19 Q Did Mr. Minuk make that comment or  
20 share in that conversation?

21 A Yes, he was a part of it.

22 Q And are you able to indicate whether  
23 he expressed that view or whether he just assented  
24 to it?

25 A I -- if I go back to my statement, I

1 know he had said that that there were a number of  
2 holes in the investigation.

3 Q All right.

4 A And he did say that Mr. Zenk was  
5 doing -- he said, you know, this gentleman had  
6 perhaps a conscience and that he was perhaps doing  
7 the right thing. Because of the holes in the  
8 investigation, he could very well -- it could very  
9 well have gone to trial and he would have got off  
10 completely.

11 Q Okay. And you used the term "botched"  
12 in your statement. Is that your term, ma'am, or  
13 is that a term that might have been used during  
14 the conversation, or are you able to say?

15 A I believe it was a term that Mr. Minuk  
16 used.

17 Q And again, with respect to the falling  
18 asleep at the wheel, is there anything in your  
19 statement that does refresh your memory about who  
20 might have made that comment?

21 A That would have been Mr. Minuk.

22 Q And I know when you began your  
23 testimony on this point, you weren't sure whether  
24 he made that comment, and in your statement here  
25 you indicate that he did?

1           A     Um-hum.

2           Q     Today, what is your position on  
3 whether that statement was made by him? Are you  
4 able to express with any confidence whether he  
5 made that statement or whether he was simply  
6 present when it was made?

7           A     No, I believe he said that.

8           Q     Ma'am, were you left with any  
9 impression about the way the case was dealt with  
10 by the prosecutor?

11          A     I guess, given the seriousness of what  
12 actually happened, I was surprised right from the  
13 onset of it that I wasn't contacted. Even for  
14 someone just to tell me that, you know, what I saw  
15 or what I did, et cetera, had some value or  
16 didn't. But I didn't find that I had a lot of  
17 clear direction as to what to expect. And I just  
18 felt that I had to take the initiative to find out  
19 where I stood and where I needed to be, yeah.

20          Q     Okay. Mr. Minuk did take the time to  
21 come down and meet with you after the case was  
22 over, and explain to you what had taken place?

23          A     He did in the hallway, yes.

24          Q     And he made himself available to  
25 answer any questions you might have about the case

1     itself, and he responded to those questions?

2             A     Yes, he did.

3             Q     And were you satisfied with the way he  
4     interacted with you at that point in time?

5             A     I guess personally, no, because I  
6     found him to be, I don't know, somewhat  
7     insensitive to the three of us, you know, after  
8     what we had gone through. That's my own personal  
9     opinion, though.

10            Q     Are you able to elaborate in any way  
11    on that, or is that basically just a general  
12    impression that you had?

13            A     It was an impression that I had, and  
14    it was also -- he made a comment as to whether or  
15    not we wanted to be present at the sentencing.  
16    And it was almost like, well, if you'd like to be  
17    at the sentencing, just give me a call and I'll  
18    put you on the list. And that I found was, I  
19    don't know, just kind of insensitive.

20            MR. PACIOCCO: Okay, ma'am. I want to  
21    thank you for your testimony today. There are  
22    other lawyers who are probably going to have  
23    questions for you, but those are the questions  
24    that I am going to be asking you. You can just  
25    remain there.

1                   The statement should be put in as an  
2     exhibit, the RCMP statement, and that should  
3     become Exhibit 74?

4                   THE CLERK:   76.

5                   MR. PACIOCCO:  Seventy-six, excuse me.  
6     That would be found at tab C.13.b, Exhibit 76.

7                   (EXHIBIT 76:  Denise Bukowski -  
8     Statement to R.C.M.P. - May 30, 2006)

9                   MR. PACIOCCO:  Thank you very much,  
10    ma'am, if you could just remain there.

11    BY MR. ZAZELENCHUK:

12                  Q     Ma'am, I am counsel for the Taman  
13    family, and my clients have asked me to please  
14    convey to you their thanks for very bravely coming  
15    forward three and a half years ago as a witness.  
16    It meant a lot to my clients.

17                   Am I right in assuming that prior to  
18    witnessing this tragic collision, you had had no  
19    experience with the court system?

20                  A     None whatsoever.

21                  Q     Never been inside a courtroom?

22                  A     I have, yes.

23                  Q     Prior to the accident?

24                  A     Maintenance enforcement, many, many  
25    years ago.



1           Q     Okay.  Never had anything to do with  
2     the criminal law as a witness or anything like  
3     that?

4           A     No.

5           Q     Okay.  And when you were subpoenaed to  
6     come to court the first time and the second time,  
7     I imagine you were, to a certain extent, nervous,  
8     or it's something you hadn't done before, it's  
9     disorientating?

10          A     That's correct.

11          Q     Yes.  And you would have found it  
12     helpful if you had been able to meet with somebody  
13     ahead of time to explain the process to you, and  
14     to explain what was expected of you, and to tell  
15     you what kind of procedure you can expect?

16          A     Yes.

17          Q     Yes?

18          A     That's correct.

19          Q     Just like when you met with Commission  
20     Counsel, you found that very helpful, preparing  
21     you for today?

22          A     Um-hum.

23          Q     Could you answer yes or no, please,  
24     because we have a transcript.

25          A     Yes.

1           Q     I don't mean to be rude, we all make  
2     that mistake.

3                     Just a couple more points. The  
4     subject of, if we could move forward to July of  
5     last year, and after you have been told that  
6     Mr. Harvey-Zenk is pleading guilty, we had some  
7     comments about double shifts. Can you tell us who  
8     was the first person to mention double shifts?

9           A     It would have been either Mr. Zenk  
10    or -- sorry, Mr. Minuk, or it was the police  
11    officer's wife.

12          Q     Mrs. Beattie?

13          A     Mrs. Beattie, yes.

14          Q     And then there was some discussion  
15    about double shifts?

16          A     There was.

17          Q     Yes. And was the tenor of the  
18    discussion that he might have been working double  
19    shifts or that he was working double shifts?

20          A     It was my understanding from the  
21    discussion that he had just finished working a  
22    number of shifts in a row.

23          Q     I see. Okay. I wonder if madam clerk  
24    would be good enough to show you Exhibit 74?

25                     Your Honour, that's F-3.37 at page

1 313. If you could just turn to the second page,  
2 ma'am, it should have 313 written at the bottom --  
3 or 1313, sorry, bottom right-hand corner?

4 A 1313, yes.

5 Q Yes. Okay. And there's a picture up  
6 at the top of the page. Do you recognize that  
7 picture?

8 A No.

9 Q You don't?

10 A Sorry, no.

11 Q Okay. And you are looking at page  
12 1313?

13 A Yes.

14 MR. ZAZELENCHUK: Thank you very much.

15 BY MR. McDONALD:

16 Q Ms. Bukowski, my name is McDonald. I  
17 represent the Rural Municipality of East St. Paul.

18 I just wanted to clarify for the  
19 record that all of your testimony about the events  
20 that you observed related to events that occurred  
21 prior to the arrival of the East St. Paul Police  
22 Service at the accident scene; is that fair?

23 A That's correct, yes.

24 MR. McDONALD: Thank you.

25

1 BY MR. WEINSTEIN:

2 Q Ms. Bukowski, I'm going to ask you  
3 some questions about you attending for your  
4 statement, and then I'll go back, reverse, and ask  
5 you about observations at the scene. All right?

6 A Sure.

7 Q Now, were you there when the East St.  
8 Paul Police arrived?

9 A No.

10 Q So you had left the scene?

11 A That's correct.

12 Q Okay. So there was, at that stage  
13 there was no way of the East St. Paul Police  
14 Department knowing you were at the scene; correct?

15 A That's right.

16 Q All right. The next thing, we'll jump  
17 ahead, and the next thing is you heard on the  
18 radio a notice, the East St. Paul asking for  
19 witnesses who might have witnessed something at  
20 the scene; correct?

21 A That's correct.

22 Q All right. And as a result of the  
23 notice that they put out, or the radio blurb they  
24 put out, you contacted the East St. Paul Police;  
25 correct?

1 A That's correct.

2 Q I mean, there was no way they could  
3 contact you because they didn't know you were  
4 there?

5 A That's right.

6 Q Right. And this was after a week or  
7 after 10 days after the accident? I'm not going  
8 to go --

9 A Yes.

10 Q You were going through a very  
11 traumatic time --

12 A Um-hum.

13 Q -- because of two incidents? All  
14 right. So you made arrangements to go in. All  
15 right. And I assume, and you correct me if I'm  
16 wrong, it was reassuring to have your husband with  
17 you, correct, sitting with you --

18 A Yes, yes.

19 Q -- at the police station. All right.  
20 And you dealt with Chief Bakema, correct?

21 A Yes.

22 Q And he appeared to be compassionate  
23 with you; would that be correct?

24 A Yes, he was.

25 Q All right. And in fact, you indicated

1 that what was troubling in your mind was really,  
2 could you have done anything at the scene, right?

3 A Yes, that was a concern of mine.

4 Q Right. And that was weighing on your  
5 mind, correct?

6 A Yes.

7 Q And he in his response was  
8 compassionate and reassured you that there was  
9 nothing, absolutely nothing you could do at the  
10 scene?

11 A That's right.

12 Q And you felt somewhat relieved to hear  
13 that?

14 A Yes.

15 Q All right. And basically the format  
16 of the statement was the fact that he asked you to  
17 tell what happened, what you saw; correct?

18 A That's right.

19 Q And that, and in a narrative form,  
20 that's basically what you told him; correct?

21 A That's right.

22 Q And as you were telling him to the  
23 best of your recollection, at the time, is what  
24 was written down, correct, by Chief Bakema;  
25 correct?

1           A     Yes.

2           Q     And you signed it, and as you said in  
3     an interview, you signed it because it was  
4     basically accurate; correct?

5           A     Yes.

6           Q     Now, my learned friend, that's  
7     Mr. Paciocco, asked you a series of questions, did  
8     Mr. Bakema ask you this? One of the things he  
9     asked you is, did Mr. Bakema ask you how long  
10    after you arrived did you see the person from the  
11    truck? Do you remember him asking you that?

12          A     Yes.

13          Q     And you don't think that Mr. Bakema  
14    asked you that?

15          A     I don't believe so, no.

16          Q     Right. And you've read your RCMP  
17    statement also?

18          A     Yes.

19          Q     And as I read it, and I stand  
20    corrected, it doesn't appear that the RCMP asked  
21    you that either?

22          A     No, they didn't.

23          Q     Right. And my learned friend asked  
24    you if Mr. Bakema asked you how far you saw him  
25    walk? Do you remember Mr. Paciocco asking you

1 that?

2 A I do, yes.

3 Q As I read your RCMP statement, again,  
4 Ms. Bukowski, I don't see that the RCMP asked you  
5 that either, like how far you saw him walk? Do  
6 you agree with me?

7 A Right.

8 Q All right. My learned friend also  
9 asked you if you saw Mr. Zenk interact with anyone  
10 else? And you said no, Mr. Bakema didn't ask you  
11 that; correct?

12 A No, he didn't.

13 Q And as I read your RCMP statement, the  
14 RCMP didn't ask you that either?

15 A That's correct, yes.

16 Q And you told -- now I'll jump back to  
17 your observations at the scene, all right. When  
18 you arrived, and I'll just deal with your  
19 observation of Mr. Zenk, who we know now to be  
20 Mr. Zenk, the driver of the truck who you saw  
21 coming from the cab of the truck, behind the  
22 truck?

23 A Right.

24 Q And walking towards the car, and then  
25 ultimately walking back; correct?



1           A     Yes.

2           Q     So since the RCMP didn't ask you what  
3 distance that was, I'm going to ask you. I know  
4 you weren't standing there thinking to yourself,  
5 now he's walking 20 feet or 40, but if you can,  
6 just to the best of your ability, how far in feet,  
7 or yards if you want, it was from his vehicle  
8 coming up to what we know was the vehicle being  
9 operated by Crystal Taman, how far was that?

10          A     From me to that post.

11          Q     Okay. You're going to have to help  
12 me, because I'm awful at -- so if someone can  
13 assist us?

14          A     Do I have to do math?

15          Q     Any idea? I don't want to even guess?

16          A     40 feet from here to the post?

17                 MR. WEINSTEIN: Do people agree with  
18 that?

19                 THE COMMISSIONER: It looks pretty  
20 good.

21 BY MR. WEINSTEIN:

22          Q     Well, if Mr. Commissioner says it's  
23 pretty good, it's pretty good. So we'll leave it  
24 at about 40 feet, even though someone in the back  
25 said more than that, I'll go with

1 Mr. Commissioner.

2 So it's 40 feet one way, and then

3 40 feet back; correct?

4 A (Witness nodding)

5 Q That's basically the distance you saw

6 him walk, he being Mr. Zenk, correct?

7 A No, it wouldn't have been that far.

8 Q Okay.

9 A No, it would have been more like half  
10 of that distance.

11 Q When he turned around?

12 A When he came around from the car --

13 Q Okay.

14 A -- and where we both met --

15 Q Okay.

16 A -- would have been half of that

17 distance.

18 Q Okay. So say 20 feet?

19 A Yeah.

20 Q Okay. And the 40 feet was what?

21 A In my mind, that's the distance  
22 between the car that was mangled and the truck,  
23 and it's probably much more than that, but in my  
24 mind that's the distance.

25 Q Okay. Did you see him walk back to

1 the truck, ma'am?

2 A He just turned around.

3 Q Okay. And you didn't follow him?

4 A I didn't.

5 Q But as you were observing him walking,  
6 there was no staggering, stumbling, nothing like  
7 that?

8 A I didn't observe any of that.

9 Q And no doubt, had you observed it, you  
10 would have at least told the RCMP, or told  
11 Mr. Bakema, or told us today; correct?

12 A Yes, I would have.

13 Q Okay. And so there was really nothing  
14 unusual about his walk. And at one point in time,  
15 and the only point in time, ma'am, is he was three  
16 feet from you; correct?

17 A That's correct, yeah.

18 Q And as you are standing three feet  
19 from him -- now, the RCMP didn't ask you this, and  
20 I'm going to ask you this -- did you detect any  
21 odour of liquor in that three feet?

22 A No, I didn't.

23 Q All right. Now you were asked by  
24 Commission Counsel in your interview of  
25 March 26th, 2008, you said in your interview with

1 him at page 8 of your interview, "It appeared that  
2 he was in shock, like he was in shock."

3 A That being Mr. Zenk?

4 Q Exactly.

5 A Yes.

6 Q That was based on your observation --

7 A Yes.

8 Q -- how he appeared?

9 A Yes.

10 Q He appeared to be in a state of shock,  
11 correct?

12 A Yes.

13 Q Thank you. And again, when you gave  
14 your interview to the RCMP, again, at page 9 of  
15 that interview with the RCMP taken on May 30th,  
16 2006, to use your words, "he looked like he was in  
17 shock." So you reiterated, or first to the RCMP  
18 you gave your observation of how you thought  
19 Mr. Zenk looked, and then you repeated it when you  
20 were speaking to Commission Counsel in that  
21 particular interview?

22 A That's correct, yes.

23 Q So the last time you observed Mr. Zenk  
24 is after your brief conversation with him three  
25 feet apart, and he turned and his back was towards

1 you, and you didn't follow his line of travel at  
2 that particular time?

3 A That's correct.

4 Q And again, just looking at your -- and  
5 I'm sorry to jump back to your statement, ma'am.  
6 You told the Commission Counsel that Mr. Bakema  
7 did ask me details, "He asked me pretty" -- and  
8 I'm reading your answer:

9 "He asked me pretty much what is in  
10 the statement."

11 And that's why you signed it because you felt it  
12 was accurate?

13 A That's right.

14 MR. WEINSTEIN: Thank you very much,  
15 Ms. Bukowski.

16 MR. JACK: We don't have any  
17 questions, Mr. Commissioner.

18 MR. PROBER: Mr. Weinstein has done my  
19 work again, I have no questions. Thank you.

20 THE COMMISSIONER: And very well too.  
21 Who is next?

22 MR. GREEN: I don't have any  
23 questions.

24 MR. McFETRIDGE: No questions.

25 THE COMMISSIONER: Thank you. Any

1 re-examination?

2 MR. PACIOCCO: There will be no  
3 re-examination, Mr. Commissioner.

4 Thank you very much for your  
5 attendance, Ms. Beattie, and for your evidence  
6 today.

7 THE COMMISSIONER: Thank you.

8 THE WITNESS: Thank you.

9 MR. PACIOCCO: Mr. Commissioner, it  
10 looks like an opportune time to take the morning  
11 break. It's 10:56.

12 THE COMMISSIONER: Thank you.

13 MR. PACIOCCO: How long should that  
14 break be, sir?

15 THE COMMISSIONER: Well, if I said 10  
16 minutes, Mr. Prober would object, so we'll make it  
17 15 minutes.

18 THE CLERK: All rise. This Commission  
19 is in recess.

20 (Proceedings recessed at 10:56 a.m.  
21 and reconvened at 11:13 a.m.)

22 THE CLERK: All rise. This Commission  
23 is now reopen. Please be seated.

24 MR. CLIFFORD: Mr. Commissioner, the  
25 next witness is Cecil Sveinson.

1 CECIL SVEINSON, having first duly  
2 affirmed, testified as follows:

3 THE COMMISSIONER: Good morning.

4 THE WITNESS: Good morning.

5 BY MR. CLIFFORD:

6 Q Good morning, Mr. Sveinson. Could you  
7 indicate how old you are, sir?

8 A Thirty-eight years old.

9 Q And where are you employed, sir?

10 A I work for the Winnipeg Police  
11 Service.

12 Q And what is your position with the  
13 Winnipeg Police Service?

14 A I'm a patrol sergeant in charge of the  
15 Aboriginal Diversity Policing section.

16 Q And sir, I'd like to ask you some  
17 questions now about your experience. Could you  
18 tell the Commission about your career path in law  
19 enforcement, and start at the very beginning?

20 A I began as a police officer in 1992.  
21 I started January 13th, and I started policing in  
22 the very area I grew up in, the Elmwood,  
23 Transcona, North Kildonan area. I worked there  
24 for five years. From there I went to the traffic  
25 division, where I worked in the motorcycle unit

1 and the collision analysis unit. From there, I  
2 went back to general patrol for a short period of  
3 time. Then I went to the training division. And  
4 after -- I was there for approximately three  
5 years, and then I went into my current position as  
6 the sergeant in charge of the Aboriginal Diversity  
7 Policing section.

8 Q And where were you working in 2005,  
9 early 2005?

10 A I was, at that time I was still  
11 assigned to the training division, and on the date  
12 that this happened, I was doing driver training at  
13 the Red River Ex park.

14 Q Can you tell the Commission what your  
15 relation is to Crystal Taman?

16 A Crystal is my first cousin, not  
17 biologically, I was adopted into the family. Her  
18 father, Sveinn Sveinson and my father, Cecil  
19 Sveinson, are brothers.

20 Q Could I ask you, sir, to describe your  
21 relationship with Crystal?

22 A We had, Sveinn has, in total, they had  
23 13 brothers and sisters, and they all had their  
24 own children, and we were very close when we were  
25 young. And Crystal kind of, I don't know, she was



1 kind of like a leader back then. So, even as we  
2 got older, as we get older we have our own  
3 children, we kind of drift apart, but it was  
4 always Crystal that was encouraging us, as  
5 cousins, to try to get together. In fact, not  
6 long before this happened, we found out that one  
7 of our cousins was diagnosed with cancer, and  
8 Crystal contacted me because she knows that,  
9 through my beliefs, that I have access to a sweat  
10 lodge, and she encouraged me to follow through  
11 with that, that we have a sweat lodge ceremony for  
12 our cousin with cancer. She thought that would be  
13 a good way for all of the first cousins to  
14 reconnect and that they can learn about the  
15 aboriginal part of themselves.

16 Q It sounds, Mr. Sveinson, as though you  
17 were very close to Crystal?

18 A It's one of those things, as you get  
19 older, you do grow apart, with your own families  
20 but she always made time. When my father passed  
21 away, it was Crystal, she brought food, and it  
22 seems like a little thing, but she brought food to  
23 my house and took care of me and my mom. She  
24 would call me and she'd check up on me, very  
25 personable. She was always like that. And my

1 whole life I have always thought, you know, that's  
2 how a good person is. When I think about how a  
3 good person is, I've always thought of her.

4 Q Can you tell me, sir, where you were  
5 when you learned of Crystal's death?

6 A I was just finishing up my training  
7 session at the Red River Ex park, and my wife  
8 phoned me and she asked me if I had heard about  
9 the crash on Lagimodiere and the North Perimeter?  
10 And I told her, yes, I had actually driven around  
11 it in the morning. And she said, well, I can't  
12 believe I'm the one who has to tell you this, I'm  
13 sorry, but there's no other way, your -- Crystal  
14 is dead, your cousin Crystal is dead, she died in  
15 that crash.

16 Q Do you recall what your wife called  
17 you, sir?

18 A If I had to guess, it would be around  
19 2:30, maybe 3:00 o'clock.

20 Q And apart from what you've indicated,  
21 did she say anything else to you about the  
22 accident?

23 A No, that's all she knew, just where it  
24 was, and she didn't even know where my family was.

25 Q And when you say where your family

1 was, who do you refer to, your cousins?

2 A Yes.

3 Q What did you do as a result of  
4 speaking with your wife?

5 A That morning I had felt a strange  
6 feeling when I had driven by that the crash scene,  
7 I got kind of rerouted around it. But according  
8 to my beliefs, there's something that I have to do  
9 when somebody passes, and I felt compelled to go  
10 back and do that, because Crystal had always  
11 encouraged me about my beliefs. And so I went  
12 back to put down tobacco and to say a prayer for  
13 her so that she could continue on her journey.

14 Q I'd just like to follow up with you on  
15 a point that you just made, and that was that you  
16 felt strange driving by the site of the crash in  
17 the morning. Could you explain that a little bit  
18 further?

19 A It has a lot to do with my beliefs.  
20 It made sense to me earlier why I felt funny  
21 driving by there. I think Kristin and Tara had  
22 described it best when I talked to them later,  
23 there was something funny, a funny feeling that  
24 made them go back to the crash scene. And it was  
25 the same with me. And to my belief, Crystal was

1 stuck there, she needed -- it was too fast and she  
2 needed to be let go, she needed to be allowed to  
3 go home.

4 Q And did you actually drive by the site  
5 in the morning?

6 A Yes.

7 Q Did you notice anything?

8 A Just that it was a mess.

9 Q And as a result of that feeling that  
10 you had, you have indicated that you determined  
11 that you wanted to go back, or go to the scene of  
12 the car crash to conduct a ceremony or to pay  
13 respects in a way that you wanted to?

14 A Yes.

15 Q And then can you tell us, sir, what  
16 happened, how you got there, who you went with,  
17 and what occurred when you arrived?

18 A I went by myself. I drove to the  
19 crash scene. It took a while to get around it, to  
20 get as close as I needed to. I ended up at the  
21 Birds Hill weigh scales, which are just north of  
22 the crash scene, just north of the light. And  
23 there was an East St. Paul officer there, a young  
24 one, in a cruiser, and he was directing traffic,  
25 all of the southbound Lagimodiere traffic onto the

1 North Perimeter.

2 Q Mr. Sveinson, are you able to indicate  
3 the approximate time that you arrived at the weigh  
4 scales?

5 A I'd guess around, it didn't take me  
6 long to get there, I drove straight there from the  
7 other side of the city. So I'd say I probably got  
8 there about 3:30 I guess.

9 Q And do I understand your testimony to  
10 be that you were met by a police officer, and the  
11 road in the vicinity of the intersection was  
12 blocked off?

13 A Yes.

14 Q Carry on from there, sir?

15 A Well, the officer, he recognized me,  
16 we have -- one of my classmates who I went to  
17 recruit class with was friends with this officer.  
18 And he recognized me right away. And I told him,  
19 I said the woman in the car that was killed, she's  
20 my cousin. And I told him what I had to do, or  
21 what I felt compelled to do.

22 Q Who was the person that you spoke to?

23 A I don't remember his name.

24 Q But you recognized him from a recruit  
25 class that he was in, or something to that effect?

1           A     He's a friend of a fellow classmate of  
2     mine.

3           Q     I understand. Okay. So you told him  
4     why you were there, the purpose for your  
5     attendance?

6           A     Yes.

7           Q     Carry on from that point?

8           A     He asked me to wait a moment, and then  
9     he told me that he had to let the Chief know,  
10    Chief Bakema. And a short while later, Chief  
11    Bakema came back to where I was at this officer's  
12    vehicle.

13          Q     And how did Chief Bakema get up to the  
14    area that you were waiting --

15          A     He drove over in another vehicle.

16          Q     Was it in a police vehicle?

17          A     Yes.

18          Q     What happened when he arrived?

19          A     He got out. We talked for a bit. I  
20    told him the same thing, that I wanted to do a  
21    ceremony for my cousin, and I wasn't leaving  
22    until, I would wait until they were done, but I  
23    wasn't leaving until I was able to do it.

24          Q     And what did he say?

25          A     He was, he said it's okay, he said you

1 can do that, you just have to wait a bit. And I  
2 could see that the RCMP were doing the  
3 measurements and so I knew what they were doing.  
4 So I told him that I would wait.

5 Q Now, when you say you could see the  
6 RCMP taking measurements, and you knew what they  
7 were doing, is this because of your experience --

8 A Yes.

9 Q -- as a police officer?

10 A Yes.

11 Q And you knew they were doing an  
12 investigation, and you were prepared to wait in  
13 order to conduct the ceremony that you wanted to  
14 conduct?

15 A Yes.

16 Q And Chief Bakema is with you?

17 A Yes.

18 Q And carry on from that point?

19 A He had got back in his vehicle. He  
20 was talking on the radio. And then a short while  
21 later, he asked me to get into his vehicle with  
22 him, and he said they are going to finish up the  
23 measurements, and then before the tow trucks take  
24 the vehicles away, you'll be able to do what you  
25 need to do. And he, because it was cold out, he

1 said I could wait in his vehicle with him.

2 Q Did you get in the vehicle?

3 A Yes.

4 Q What took place when you got into the  
5 vehicle?

6 A He drove closer up to the  
7 intersection, just off to one side. He actually  
8 went up the -- he went southbound in the  
9 northbound lanes, so we were on the other side, so  
10 that we didn't contaminate the scene. I assume  
11 that's why he did it.

12 Q How close did you get?

13 A We were pretty much parallel with the  
14 intersection, just on the other side of where the  
15 opening is, just to the north of where the opening  
16 is, to allow the northbound Lagimodiere traffic to  
17 turn left to go westbound on the North Perimeter.

18 Q I understand what you're talking  
19 about. And did you have conversation with Chief  
20 Bakema?

21 A Yes.

22 Q Can you tell the Commission about  
23 that?

24 A Initially, I could tell Chief Bakema  
25 was concerned, and I asked him, I said, I guess



1 it's really stressful about what's going on here  
2 with all the traffic? And he said, yeah, well  
3 that -- he said that, and he says plus the fact  
4 that it's another police officer. And that's the  
5 first time that I knew it was a fellow police  
6 officer that killed my cousin.

7 Q And what was your reaction?

8 A I was shocked. And I asked him  
9 Winnipeg? And he said yes. And he was quiet for  
10 a while. I could tell he was -- he didn't know  
11 how much he wanted to tell me, or how much he  
12 could say. And I was just speechless. Here is  
13 somebody that had taken the same oath that I had  
14 taken, had taken my cousin's life. I didn't know  
15 what to think.

16 Q Did you have further conversation with  
17 him?

18 A Yeah. We were quiet for a while. I  
19 was crying. And then he let me -- he just let me  
20 do that, he didn't say anything. And then I asked  
21 him, I said, "Was he --" and I didn't even get it  
22 out. And Chief Bakema said:

23 "Pissed? Oh, yeah, we had to get him  
24 out of here right away."

25 Q So you were going to ask the question

1 "Was he," what would have been the end of the  
2 question?

3 A Drunk.

4 Q And you gave a response which you  
5 attribute to Chief Bakema, and I want to know,  
6 sir, whether those were the exact words that he  
7 used, or whether that was the message that was  
8 conveyed to you?

9 A Those are the words he used.

10 Q And could you repeat what he said to  
11 you?

12 A I said, "Was he --" and he finished my  
13 sentence, and he responded:

14 "Pissed? Oh yeah, we had to get him  
15 out of here right away.

16 Q What was your reaction, sir, to what  
17 Chief Bakema said to you?

18 A Again, I was in shock.

19 Q Did you ask him any further questions?

20 A No. I wish I did. I wish I knew what  
21 he meant by, "We had to get him out of here right  
22 away."

23 Q Did you have an understanding of what  
24 he meant?

25 A At the time I was just dealing with

1 the fact that a fellow WPS member was drunk and  
2 killed my cousin.

3 Q Do you recall any further conversation  
4 with Chief Bakema when you were in the police car?

5 A He had also told me that there was a  
6 witness that saw the truck all over the road and  
7 it didn't stop, it didn't brake, it drove right  
8 into the back of Crystal's vehicle and knocked her  
9 into another vehicle.

10 Q So you are learning some things about  
11 the dynamics of the accident, who drove into who?

12 A Yes.

13 Q Was there any further conversation  
14 that you can recall?

15 A Not really. There was, mostly it  
16 consisted of small talk. After his retirement  
17 from the Winnipeg Police, he went to work for the  
18 Public Trustee where my wife worked at the time.  
19 He had talked to me about that, asked me how she  
20 was doing.

21 Q I'll follow up with you on that point,  
22 sir. When you first encountered Harry Bakema that  
23 morning, did you know who he was?

24 A Yes.

25 Q And how did you know who he was?

1           A     Even though we have 1,300 officers, we  
2     still have an idea of who each other are, even  
3     though we don't work directly together. I never  
4     worked directly for Harry. We see each other's  
5     names on reports. We see each other. And working  
6     at the training division, I had been doing  
7     training for, I guess, approximately 12 years now  
8     I had been doing training, so I get to know a lot  
9     of people on the job.

10          Q     And you made a comment that you knew  
11     him as well through the fact that he had a  
12     connection with your wife?

13          A     Yes.

14          Q     Through an -- did he work in the same  
15     place at one point?

16          A     Yes.

17          Q     Can you expand upon that for me?

18          A     When he retired, he was hired by the  
19     Public Trustee's office and he worked in her  
20     office. She saw him there. And he worked there  
21     until he left that position to go become the Chief  
22     of East St. Paul Police.

23          Q     All right. So when you two were  
24     speaking with one another, this wasn't a situation  
25     where it would be strangers talking?

1 A No.

2 Q How long had you known him at that  
3 point?

4 A I guess you can say that I have known  
5 Harry in one form or another since I started my  
6 career.

7 Q Was there any conversation, or did you  
8 learn about whether the other persons in the  
9 accident were injured?

10 A I had learned that a fellow police  
11 officer's wife was in the lead vehicle, the one  
12 that Crystal was pushed into. I don't know her  
13 name, but it's Chris Beattie's wife.

14 Q Do you know when you learned that?

15 A While we were sitting there.

16 Q Are you able to recall, Mr. Sveinson,  
17 how many police officers you observed when you  
18 were on the scene?

19 A There was the fellow I initially  
20 approached at the weigh scales, there was Chief  
21 Bakema, and I believe two RCMP officers that were  
22 doing the measurements.

23 Q How long were you waiting in the  
24 cruiser before you were given permission by Chief  
25 Bakema to go out and conduct the ceremony?

1           A     I'd say about 15, 20 minutes.

2           Q     What impact did the information have  
3     on you that -- the things that were being told to  
4     you?

5           A     A lot of things. Hurt that somebody  
6     that I probably knew, somebody that I probably  
7     worked with did this to my cousin, took away Tara  
8     and Jordy and Kristin's mom, took away Rob's wife,  
9     took away Sveinn and Vicki's daughter, took away  
10    Cory's sister. This is what I thought of, and I  
11    couldn't believe it.

12          Q     Can you describe your emotional state?

13          A     Hurt, angry, betrayed.

14          Q     Did you make an inquiry that day as to  
15    who the police officer was?

16          A     No, I wasn't ready to hear it at that  
17    time.

18          Q     You have told the Commission about how  
19    you were responding emotionally and the impact  
20    that it had on you. What was Harry Bakema's  
21    demeanour when he was talking to you?

22          A     I'd say he seemed frustrated about me  
23    being there.

24          Q     Did he complain to you about anything?  
25    Did he comment to you about anything?

1           A     No. Just by his mannerisms or -- I  
2     could tell it was an uncomfortable situation for  
3     him and he probably just wanted it to be over.

4           Q     And Mr. Sveinson, I don't mean to pry  
5     into a personal ceremony, but did you want to tell  
6     the Commission what it was that you did when you  
7     went to the intersection, in terms of the  
8     ceremony? And if you do, that's fine. And also  
9     if you don't, that's fine.

10          A     I got out of the vehicle and I went to  
11     where her vehicle was, where she would have --  
12     before she left. And I had put tobacco down, and  
13     I prayed for her, and I cried for her, and I sang  
14     a song for her so that she could go home. And  
15     everybody was really good about that. It was  
16     quiet. Everybody stopped what they were doing and  
17     they let me do that.

18          Q     What did you do, sir, when you  
19     finished?

20          A     I got up, I went back to the vehicle  
21     where Chief Bakema was, and I needed to go be with  
22     Rob and the kids.

23          Q     Did you know where they were?

24          A     I had no idea where they were, but I  
25     had asked Chief Bakema before that, and he made

1 some inquiries to find out where they were. And  
2 he got directions for me, because Rob and the kids  
3 had gone to Rob's parent's place.

4 Q And what happened from that point?

5 A I drove straight out to Oakbank, to  
6 where Rob and the kids were.

7 Q So Chief Bakema gave you the  
8 directions. You knew where to go and you  
9 attended?

10 A Yes.

11 Q Did you go directly there?

12 A Yes.

13 Q And can you tell Commissioner Salhany  
14 what happened when you arrived there?

15 A I got there. There was a lot of  
16 people there. There was most of Rob's family that  
17 was there. The kids were there, and the kids, a  
18 lot of supports, a lot of friends, their friends  
19 were there too. And I came in and I could see  
20 that they were all in shock.

21 Q What was your relationship to the,  
22 like with Crystal's children and her husband?  
23 Were you as close to them?

24 A Not before the crash, not as close as  
25 I would like to have been. The crash, if anything



1 that was learned from it is that you have to  
2 appreciate your family. And we have since become  
3 a lot closer, but that was something that Crystal  
4 helped me to learn.

5 Q Can you comment on their emotional  
6 state? We understand that it was a very difficult  
7 day and each of them were grieving. We have heard  
8 that. But just from your perspective, who might  
9 have been doing marginally better perhaps than the  
10 other?

11 A I don't know about better, but Rob  
12 was -- I was really worried about Rob. He was in  
13 that denial stage. I could tell he was just  
14 waiting for someone to tell him, wake him up, it  
15 was a dream. And then just dealing with a lot of  
16 people dealing with grief, I knew that they are  
17 all dealing with it in their own way.

18 Q Mr. Sveinson, the Commission has heard  
19 evidence that when the Taman family went to Rob's  
20 parent's house, they, at that point, had very  
21 little information about what happened. In fact,  
22 they didn't even understand what occurred in the  
23 accident, who caused it or what caused it. Did  
24 you speak to them about that?

25 A Yes.

1 Q Did you tell them about what Chief  
2 Bakema told you?

3 A Yes.

4 Q Did you try to explain to them your  
5 understanding of what occurred in the accident?

6 A I told them everything that I had  
7 understood and what I had heard, what my  
8 observations were, because they had been told very  
9 little.

10 Q What was their reaction to what you  
11 told them?

12 A That was what woke Rob out of it,  
13 snapped him out of it. He went into that next  
14 phase from the denial into the anger when I told  
15 him that it was a police officer that did it.

16 Q Did you demonstrate to them somehow  
17 the dynamic of the car crash?

18 A Yes.

19 Q Could you explain how you did that?

20 A They had lots of questions and that  
21 was the easiest way to do it. I'm kind of a  
22 visual person, so that was the easiest way for me  
23 to explain. So using cigarette packages, I kind  
24 of played it out, from my observations, what I  
25 thought, what had been explained to me what

1 happened.

2 Q And you demonstrated that to the  
3 family?

4 A Yes.

5 Q Can you comment, sir, on how long you  
6 stayed at Robert's parent's house?

7 A I think I stayed there until about  
8 1:00 or 2:00 in the morning.

9 Q Mr. Sveinson, you have commented on  
10 the fact that you are a police officer and it  
11 upset you that it was a fellow police officer that  
12 was charged. When you went back to work, after  
13 spending that time with the family, were you  
14 looking for further details?

15 A I guess I sort of thought that  
16 somebody would come and talk to me, somebody would  
17 explain something, that our wellness officer, or  
18 the chief, or my divisional commander, or somebody  
19 would come and talk to me about it. And it never  
20 happened.

21 Q Did you learn things about the case  
22 from work or from within the Winnipeg Police  
23 Service?

24 A Yes.

25 Q Did you find out who was charged?

1           A     Yes.

2           Q     Did you know Mr. Harvey-Zenk?

3           A     Yes.

4           Q     And can you tell us how it was that  
5 you knew him?

6           A     I have known Mr. Harvey-Zenk since he  
7 started his career. I was one of his instructors.  
8 I also -- he took the laser speed timing device  
9 course, and I was the one who tested him, did the  
10 field test and certified him in the use of the  
11 device.

12          Q     What other things were you able to  
13 learn from within the Winnipeg Police Service?

14          A     It was -- it was unusual at first, it  
15 was like I felt like I did something wrong.  
16 Nobody -- people who worked in my office, they  
17 didn't really say that much to me. And there was  
18 times I was mad about that. Now I just realized,  
19 they just didn't know what to say to me. Some  
20 people are better at dealing with people who are  
21 grieving than others. It was an unusual  
22 situation. But it was one of my close friends who  
23 started telling me, he sort of started looking  
24 into it for me, I guess, is the best way to  
25 explain it, and he would call and tell me what he

1 knew.

2 Q Can I ask you who that person was?

3 A His name is Jeremy Harewood.

4 Q Did you work with him?

5 A Yes, we went to class together.

6 Q Okay. I understand this is difficult  
7 for you because he's no longer with us?

8 A That's correct.

9 Q What was he telling you about the  
10 things he learned?

11 A Well, he was the one who had told me  
12 that it was Derek Harvey-Zenk. He also had told  
13 me that he had been at a drinking party earlier  
14 with other people from his shift, and that they  
15 had gone to another location, a home in East St.  
16 Paul or the Birds Hill area. He told me whose  
17 home it was. And he told me that they had tried  
18 to stop -- he had tried -- that Derek Harvey-Zenk  
19 had tried to leave a few times throughout the  
20 night, but some people there had stopped him. And  
21 ultimately somehow he got his keys and left.

22 Q Were you trying to get as much  
23 information as you could in the days, weeks and  
24 months following the accident?

25 A The information that -- there came a

1 point where it was almost information overload. I  
2 still worked in a building where the host of the  
3 party, the people who were at the party, things  
4 like that, they could have come to one of my  
5 classes, and I wasn't ready to know him. After I  
6 found out who the host was, at that time I wasn't  
7 ready at that time to know who the other officers  
8 were who were at the party. So I didn't follow it  
9 up any more after that.

10 Q Were you relaying information that you  
11 were learning to the family?

12 A Yes.

13 Q Were you following the media reports  
14 as well?

15 A Yes. The media reports were, it  
16 seemed to me that I was getting the information  
17 pretty much almost in concert with the media  
18 reports. In fact, I know that along the way, that  
19 some of the stuff we learned was through the  
20 media.

21 Q And do I understand from your  
22 responses thus far that you didn't know who Derek  
23 Harvey-Zenk was with that night?

24 A Other than the homeowner at the party  
25 afterwards.

1           Q     And whose house did you understand it  
2     to be?

3           A     Sean Black.

4           Q     Do you know Sean Black?

5           A     Yes.  He was in the recruit class just  
6     before mine.  Our class -- his class started three  
7     months prior to mine, so I have known him pretty  
8     much since the start of my career.

9           Q     So just in terms of the number of  
10    years that you have known him would be since '92?

11          A     Yes.

12          Q     Thereabouts?

13          A     Yes.

14          Q     Did you ever talk to him about what  
15    happened?

16          A     I hadn't seen him until, I guess it  
17    was, if I had to guess, it would be about a year  
18    later.  There was a recruit class social at the  
19    Windsor Park Inn, Canad Inn Windsor Park I guess  
20    it's called now.  And I was there and I saw him,  
21    and that was the first time that we had seen each  
22    other.  And as soon as he saw me, I could tell it  
23    was awkward for him and he was overcome with  
24    emotion, he was tearing up.  And I was too,  
25    because that took me back to sitting in the car

1 with Harry. Every time something like that  
2 happened, it would all come back to me again. And  
3 he came over, and he didn't really say anything.  
4 We were just kind of standing there, emotional, in  
5 front of each other for a minute. And what he did  
6 say to me was, he said, "Cecil," and he was quiet  
7 for a little while, I didn't say anything, I was  
8 just listening, and he said, "I just want you to  
9 know it wasn't some huge party." And I said,  
10 "Sean, it's all going to come out." And that was  
11 pretty much it.

12 Q Do you recall when this conversation  
13 took place?

14 A I'd have to say about a year after the  
15 crash, and that's just guessing.

16 Q Now, do I understand correctly that  
17 you, until recently, didn't know the other  
18 officers that were with Derek Harvey-Zenk the  
19 evening in question?

20 A That's correct.

21 Q And you didn't know who was at Sean  
22 Black's residence?

23 A That's correct.

24 Q Now, you had been asked by Commission  
25 Counsel during your interview whether you have



1 knowledge of certain officers?

2 A Yes.

3 Q And I take it as a result of that you  
4 have some, I guess, suspicion in terms of who  
5 might have been with Derek Harvey-Zenk that night?

6 A Yes.

7 Q I want to go back to something that I  
8 know is difficult for you, and that is the source  
9 of some of the information that you received, some  
10 of the details that you have provided, and we  
11 understand it was from a Winnipeg Police Officer  
12 who is no longer with us. Who was that person,  
13 sir?

14 A Patrol Sergeant Jeremy Harewood.

15 Q Did you talk to him often?

16 A Jeremy was one of my best friends. I  
17 never had a big brother, but he sure treated me  
18 like one, like I was his little brother.

19 Q And without going into the details,  
20 sir, can you tell us what happened to him?

21 A Jeremy took his own life last year.

22 Q Did you talk to other Winnipeg Police  
23 Officers about information that you received, or  
24 information that you were learning?

25 A I said -- the closest thing that I got

1 to any formal debriefing or discussion or anything  
2 like that is just before I walked in to give a  
3 presentation to the recruit class. This was about  
4 the week after the collision. Oddly enough, the  
5 presentation was about the traffic laws within the  
6 country -- or within Manitoba. One of the Deputy  
7 Chiefs said, I heard it was your cousin that died  
8 in that crash last week. Isn't it strange how  
9 three vehicles involved in one collision can all  
10 be associated to one agency?

11 THE COMMISSIONER: I'm sorry, the last  
12 part?

13 THE WITNESS: Isn't it strange how  
14 three vehicles involved in one incident can all be  
15 related to one agency? That's what I got in the  
16 way of an official, I am sorry, or anything I  
17 guess. And other than that, I don't know, I felt  
18 like a leper for a while. I lose my cousin and I  
19 become a leper. Isn't that strange?

20 BY MR. CLIFFORD:

21 Q Mr. Sveinson, the things that Harry  
22 Bakema said to you about Harvey-Zenk being pissed  
23 and having to get him out of there quickly, was it  
24 your understanding that these comments would form  
25 part of his duty book notes or his reports?

1           A     I would hope so.

2           Q     In your experience as a police  
3 officer, was that a reasonable expectation, that  
4 comments such as those, observations such as those  
5 in the context of an accident like this would make  
6 it into an experienced police officer's duty book  
7 notes and reports?

8           A     Yes.

9           Q     Did you tell other police officers  
10 what Harry Bakema said to you?

11          A     Yes.

12          Q     Can you provide further detail on  
13 that?

14          A     Well, Jeremy was one of the people  
15 that I told what he said to me. The other was  
16 Chris Beattie. His wife was in the lead vehicle.

17          Q     And can you tell me where it was that  
18 you spoke with Chris Beattie and in what context  
19 it was that the conversation occurred?

20          A     I was, shortly after the incident, I  
21 was being transferred, preparing for transfer into  
22 my new position, and Chris Beattie was the Staff  
23 Sergeant who was in charge of the community  
24 relations unit where my section works out of. So  
25 I met with him. It's customary to meet with your

1 new divisional commander prior to going to work  
2 for him. So I met with him and others in the  
3 office. And then after the initial meeting, Chris  
4 and I stayed in his office and had a conversation.

5 Q Could you tell us about the  
6 conversation, how it went?

7 A I asked him what he had heard?  
8 Because in talking with Rob and the kids, they  
9 were extremely frustrated with the lack of  
10 information that they were getting. So I was  
11 wondering if he had heard anything.

12 Q What did he say?

13 A Nothing. He was as surprised as me at  
14 the lack of information that was forthcoming.

15 Q And did you relay to him what Harry  
16 Bakema said to you?

17 A Yes.

18 Q And how certain of that can you be?

19 A I'm sorry?

20 Q Do you know whether you did that?

21 A Yes.

22 Q In terms of the time frame of that  
23 conversation, how long after the accident was it?

24 A I'd say about three to four months.

25 Q Were you following the information

1 that was being reported in the media?

2 A Yes.

3 Q Now, the media had been reporting on  
4 alcohol related charges?

5 A Yes.

6 Q And was that, in your mind, consistent  
7 with what Harry Bakema said to you?

8 A Yes.

9 Q Did you know whether Harry Bakema and  
10 Derek Harvey-Zenk ever worked together?

11 A Yes. My understanding was they both  
12 worked in District 3, in the North End. I don't  
13 think they worked on the same shift, but they did  
14 work in the same building.

15 Q What was your understanding of their  
16 respective shifts or how close they would have  
17 worked with one another?

18 A I believe they were both on the same  
19 side, or platoon. There's basically two police  
20 departments, those who are working and those who  
21 are on days off. So we split them, we call them A  
22 side and B side. When A side is working, B side  
23 is on days off and vice versa. From my  
24 understanding, I believe they were both B side.

25 Q And just with respect to familiarity

1 of officers that may not necessarily work on the  
2 same side or the same shift, but if they were on  
3 shift one after the other, in your experience,  
4 would these individuals know one another?

5 A Yes.

6 Q And why is that?

7 A Especially the shift supervisor, which  
8 Harry would have been, the constables get to know  
9 them because there is a period of time where their  
10 own supervisor is gone and they have to answer to  
11 the other shift supervisor who is on duty. So you  
12 get to know the shift supervisors pretty well.  
13 You get to know what they like to see in reports,  
14 who is the stickler for details, who doesn't want  
15 you to stay and work on overtime, that type of  
16 thing. The constables do get to know the  
17 sergeants pretty well.

18 Q Mr. Sveinson, those are the questions  
19 I have for you. I wanted to ask you, though, sir,  
20 in conclusion, is there anything else that you  
21 wanted to tell this Commission about your  
22 experience, your observations, or about your  
23 cousin?

24 A She is a -- one time when I was really  
25 small, I had told you how we were really close

1 when we were small, and there was a lime quarry  
2 plant near Superior Hill, which isn't a town  
3 anymore, but that's where our fathers grew up.  
4 One time, Crystal, her sister Cory, my sister and  
5 myself -- I was a little one, just sneaking away  
6 with the big kids -- we went to the quarry even  
7 though we weren't supposed to be there. And there  
8 is a factory with this big long chute. We climbed  
9 up in the tower. And I was scared to be up there,  
10 we were all kind of scared except for Crystal.  
11 And she climbed out on the chute, and she kind of  
12 shimmed all the way down, and we went to the  
13 bottom and we were all waiting down there for her.  
14 And I remember looking up at her thinking, and I  
15 was like eight years old, I was thinking like she  
16 was like super woman, she was so brave. And I  
17 thought that was pretty cool. But then we went  
18 back and we got caught, somebody saw us over  
19 there. And because she was the oldest, she kind  
20 of took the flack for all of us. And she's just a  
21 remarkable person, she always was. She was there  
22 for me. And that's why I had to go and be there  
23 for her family when she went on.

24 MR. CLIFFORD: Thank you, sir. Those  
25 are the questions that I have for you. If you

1 remain seated, other counsel will have questions.

2 BY MR. ZAZELENCHUK:

3 Q Sergeant Sveinson, you said your  
4 cousin was a pretty remarkable woman. I don't  
5 mean to embarrass you, but you are a pretty  
6 remarkable person yourself. I understand that  
7 during your career you have received a number of  
8 commendations?

9 A Yes.

10 Q How many?

11 A Three.

12 Q And I was surprised, I think it was  
13 last weekend when I turned the television on and  
14 there was a documentary about you. Is that  
15 correct?

16 A Yes.

17 Q Yes. And it dealt with your work with  
18 young people, among other things, and how you are  
19 a role model for many young people?

20 A I don't see myself as a role model.

21 Q Well, would it surprise you to learn  
22 that Jordan Taman thought of you as a role model?

23 A No.

24 Q And you know he wanted to be a police  
25 officer like you?



1           A     Yeah. About two months before the  
2 crash, Crystal called me and said, don't tell  
3 Jordy I told you, but he's applying, he doesn't  
4 want you to know until he gets in. And I said,  
5 that's good because I'm going to be hard on him.

6           Q     Okay. Just a couple of questions  
7 about the police force in general. What's  
8 required of a constable to become a sergeant?

9           A     You have to pass a written exam and  
10 achieve a fairly high mark. Those who, due to  
11 seniority and their mark on their exam go on to  
12 the next phase, which is preparing a career  
13 synopsis. And then your supervisor writes a  
14 submission about your accomplishments and whether  
15 they think you are suitable for promotion. From  
16 there you go to a panel interview where you make a  
17 presentation. And based on your scoring in that  
18 presentation, in concert with the other results,  
19 determines who gets promoted. The highest marks  
20 get promoted.

21          Q     Okay. Is patrol sergeant a rank above  
22 sergeant generally?

23          A     It's the rank just before. It's the  
24 first --

25          Q     I see.

1 A -- bump after constable.

2 Q Okay. And when did you become a  
3 patrol sergeant, after how many years?

4 A It was after 12 years on the job.

5 Q Okay. And there is a unit in the  
6 Winnipeg Police Service called the Professional  
7 Standards Unit?

8 A Yes.

9 Q Yes. And you are familiar with them,  
10 you're not in that unit but you know people in  
11 that unit; correct?

12 A Yes.

13 Q How does one get into that unit?

14 A Generally, the recently promoted, the  
15 ones who did very well and have investigational  
16 backgrounds go there.

17 Q Is it fair to describe that unit as  
18 being among the elite?

19 A I'd like to believe so.

20 MR. ZAZELENCHUK: Thank you, sir.

21 MR. McDONALD: Mr. Commissioner, I  
22 expect I will have some questions of this witness,  
23 depending of course on what some of the other  
24 cross-examining counsel raise, and there are  
25 others with interests in this witness's testimony

1 greater than mine. And I would choose at this  
2 time to defer my opportunity to cross-examine  
3 until later, on the strict understanding there  
4 will be no repetition by me. I will only raise  
5 points that I feel need to be raised that have not  
6 been covered.

7 THE COMMISSIONER: I don't think other  
8 counsel have any objection. If you do, you can  
9 let me know after he cross-examines. Thank you.

10 MR. McDONALD: Thank you,  
11 Mr. Commissioner.

12 MR. HOEPPNER: We have no questions,  
13 Mr. Commissioner.

14 BY MR. WEINSTEIN:

15 Q Just a few questions for you. You  
16 talked about Mr. Bakema and Derek Harvey-Zenk both  
17 being at District 3; correct?

18 A Yes.

19 Q Were you working at District 3 at the  
20 time, sir?

21 A No.

22 Q Were you aware they weren't on the  
23 same platoon?

24 A Yes.

25 Q All right. And you had been a police

1 officer as of 2005, what's that, 13 years?

2 A 2002.

3 Q 2002?

4 A Or 1992.

5 Q And this unfortunate tragedy happened

6 2005; correct?

7 A Yes.

8 Q You had been a police officer

9 therefore for, we're talking 13 years?

10 A Yes.

11 Q Now, the time of -- we know that, from

12 the information we have before us, we know that

13 Mr. Zenk was charged with impaired driving. We

14 know that he was released before 1:30 p.m. on the

15 25th. Your being in Mr. Bakema's car was after

16 1:30, correct? Was it about 3:00 o'clock you

17 mentioned?

18 A I believe so.

19 Q All right. So assuming I am correct

20 that he is charged and gone an hour and a half

21 previously, Mr. Bakema, officer, or Chief Bakema

22 was on the radio part of the time that you were

23 there; is that correct?

24 A Yes.

25 Q All right. And you can't say that he

1 didn't find out from the officers back at the  
2 station what Harvey-Zenk was charged with?

3 A Can you rephrase the question?

4 Q Yeah. It's possible, because you  
5 don't know, that between 1:30 and 3:00, Chief  
6 Bakema might have been told by the people at the  
7 office what he's charged with?

8 A Yes.

9 Q Correct. Thank you. Now, you have  
10 been very clear, the deadly -- or emotional impact  
11 this had on you losing a member of your family,  
12 correct? It goes without saying, correct?

13 A Yes.

14 Q And you've eloquently expressed that.  
15 It was, and I hope I'm using the right word, it  
16 was an emotional shock when you heard that your  
17 relative had been killed; correct?

18 A Yes.

19 Q Without say. And then at the same  
20 time, you find out it's a fellow police officer,  
21 correct?

22 A Yes.

23 Q Okay. So, again I am hoping I'm  
24 choosing the right word, it was like a double  
25 shock to you, correct?

1           A     Yes.

2           Q     I mean, first of all, you've lost a  
3 member of your family you have spoken very warmly  
4 about; and secondly, it's a member of your other  
5 family, the family of policemen, that's charged;  
6 correct?

7           A     Yes.

8           Q     So, I mean, and you have I've read  
9 your statement that you gave. You were  
10 interviewed on June 8th -- excuse me, June 4th by  
11 Commission Counsel, and you indicated the shock,  
12 and your heart dropped when you found out it's a  
13 fellow police officer; correct?

14          A     Yes.

15          Q     I mean, it would have been -- you  
16 wouldn't have had that second shock had it been a  
17 non police officer, correct? You would have still  
18 had the emotional impact of losing Crystal, but if  
19 it was someone else other than a police officer,  
20 it wouldn't be that double shock; correct?

21          A     Yes.

22          Q     That's fair. Because of, you know,  
23 the family of blue; correct?

24          A     Yes.

25          Q     And especially afterwards when you

1 found out who it was and the fact that you had  
2 trained him to some extent; correct?

3 A Yes.

4 Q Now, so it had an impact on you when  
5 you heard it, correct? And it also appeared to  
6 have an impact with Harry Bakema, a fellow  
7 policeman, correct?

8 A He was certainly dealing with  
9 something there.

10 Q Yeah. Now, you've had an opportunity  
11 to read your statement, or your transcript, sir?

12 A Yes.

13 Q And I just want to read something to  
14 you and then I'll ask you a question. And I'm  
15 referring, Mr. Commissioner --

16 THE COMMISSIONER: Page?

17 MR. WEINSTEIN: Thank you. Bottom of  
18 38 and into a bit of 39, Mr. Commissioner.

19 BY MR. WEINSTEIN:

20 Q Now, I'll just read it back to you,  
21 line 24, page 38:

22 "In my view of East St. Paul, I  
23 thought they were under resourced. So  
24 when I got there and I saw that Blair  
25 from the RCMP, the reconstructionist

1                   was doing the scene, I was kind of  
2                   happy. I knew that, well, he's going  
3                   to do the workout for the scene. I  
4                   was pretty sure that East St. Paul  
5                   didn't have a reconstructionist or  
6                   analyst. So I thought, well, they are  
7                   going to get the help that is needed."

8       So you felt good, it appears, that East St. Paul  
9       Police had called out an RCMP reconstructionist,  
10      correct?

11                A     Yes.

12                Q     That you thought had the ability to do  
13      the reconstruction of the accident scene?

14                A     Yes.

15                Q     And I'll go on.

16                    "And then when this went through, I  
17                    just had faith that with the East St.  
18                    Paul and the RCMP involved and then,  
19                    you know, probably our Professional  
20                    Standards Unit, or what some people  
21                    call internal, would get to the bottom  
22                    of everything that was going on."

23      So at that time when you heard Internal was  
24      involved, you had some faith in them; is that  
25      correct?



1           A     Yes.

2           Q     Even though, Professional Standards or  
3 Internal was looking at a fellow police officer;  
4 correct?

5           A     Yes.

6                     MR. WEINSTEIN: Thank you, sir.

7 BY MR. JACK:

8           Q     Officer Sveinson, my name is Michael  
9 Jack. I, along with Shannon Hanlin seated behind  
10 me, are here on behalf of the Winnipeg Police  
11 Service. I just have relatively few questions for  
12 you.

13                     I just wanted to start with a  
14 discussion of the position of wellness officer  
15 with the Winnipeg Police Service. And you had  
16 some comments respecting whether or not they had  
17 approached you, and your hope or desire that  
18 either your divisional commander or the wellness  
19 officer might have approached you to discuss this  
20 incident and its impact on you; is that correct?

21           A     Yes.

22           Q     Now, would you agree with me that the  
23 wellness officer, whether through the divisional  
24 commander, or whether contacted directly, in fact  
25 is available to everyone within the service who

1 feels the need to avail themselves of the  
2 officer's services?

3 A Yes.

4 Q So would you agree with me, Officer  
5 Sveinson, that had you approached the wellness  
6 officer, it would have been your understanding  
7 that services would have been available through  
8 that officer to you?

9 A Sure. It's just, when I was in the  
10 traffic division, if we had a serious one, to  
11 remove any stigma from it, if there would be a  
12 serious collision, say involving a child or  
13 something like that, they would automatically  
14 get -- and this isn't one where it involved a  
15 police officer or family member, it's just they  
16 were concerned for the shift, the ones who were  
17 doing the collision scene -- the wellness officer  
18 would be involved and check to see how as a shift  
19 we were doing and if everyone on the shift was  
20 doing okay.

21 I was just surprised -- I had my own  
22 supports, I didn't need them. I was just  
23 surprised that nobody -- if I need to talk to  
24 someone, I will go talk to my elders. I was just  
25 surprised that nobody came forward. There was

1 nothing there. I guess I had hoped, or I assumed  
2 that there would have been something in play where  
3 somebody would have explained to me what's going  
4 on, you know, what was going on with his process.  
5 Was he being suspended with pay, without pay,  
6 anything like that, what his duties were. Nobody  
7 explained any of that to me.

8 Q And that's understandable. I believe  
9 from your testimony, both in the interview with  
10 Commission Counsel and today, you had indicated  
11 for us that you were not approaching people at  
12 work about this initially; correct?

13 A No.

14 Q I think you had indicated that, even  
15 in terms of finding out information beyond the  
16 host of the party on the evening in question, that  
17 you weren't even asking around to determine who  
18 else might have been there, that you simply  
19 weren't ready to learn that information?

20 A No.

21 Q So, would it be fair to say that, at  
22 the very least, in the months subsequent to the  
23 accident that, in fact, you weren't communicating  
24 openly to others within the service that you might  
25 have needed that contact, because you did have

1 your own support system? Would that be a fair  
2 comment?

3 A Well, I don't know if that's a fair  
4 comment. Like I said, you go into a room,  
5 everyone is talking and then it's quiet all of a  
6 sudden. I know what it is, they just didn't know  
7 what to say to me, but I can handle things on my  
8 own.

9 Q And you had --

10 A What I'm getting at is, I didn't need  
11 support, I just wanted an explanation, and it  
12 never came.

13 Q Okay. And I just wanted to confirm  
14 that that specifically wasn't requested by you  
15 initially? I recognize that you --

16 A Yeah.

17 Q Okay. Thank you. And you had  
18 indicated the feeling, I believe you even used the  
19 term leper, that you are feeling like that because  
20 people were not approaching you, despite the fact  
21 that you did have a support system of your own?

22 A Um-hum.

23 Q You have also confirmed your  
24 conclusion that you felt the reason they weren't  
25 doing so was because they just didn't know how to

1 approach you, it's not that you were being  
2 outcast, they simply didn't understand; correct?

3 A Yes.

4 Q And yet you did confirm for us, at the  
5 social that was being held at the Windsor Park Inn  
6 approximately a year after, that it was Sean Black  
7 that actually approached you; correct?

8 A Yes.

9 MR. JACK: Officer Sveinson, I don't  
10 have any further questions. Thank you.

11 BY MR. PROBER:

12 Q Mr. Commissioner. Sergeant, we have  
13 met before and you know who I represent. It's my  
14 understanding, and you correct me if I'm wrong,  
15 but you were getting information from what you  
16 refer to as personal connections in the police  
17 department about the accident; is that correct?

18 A Yes.

19 Q All right. Let me ask you generally,  
20 how many different people gave you information  
21 about it?

22 A People would talk to me about what  
23 they had known, but if it wasn't new information  
24 to me, I kind of dismissed it, or they didn't  
25 even, in some cases they didn't even know what

1 happened.

2 Q But my question is, can you tell us  
3 approximately how many different officers gave you  
4 information about the accident?

5 A You mean within Winnipeg Police, my  
6 personal connections, you mean?

7 Q Right?

8 A That was new information to me was  
9 two.

10 Q Was two?

11 A Yeah.

12 Q Two, all right. Jeremy Harewood would  
13 have been one?

14 A Yes.

15 Q And who was the other one?

16 A Sean Black.

17 Q Sean Black?

18 A Yes.

19 Q Well, who told you the name of the  
20 officer that was charged?

21 A I believe it was Jeremy.

22 Q Are you sure about that?

23 A I believe so.

24 Q Okay. Do you know when you were told  
25 that in relation to the accident?

1           A     I can't say for sure.

2           Q     Okay. Did you happen to make a note  
3 of it?

4           A     This was personal to me, it wasn't  
5 police related, so I made no notes about any of  
6 this.

7           Q     All right. Did you report the  
8 comments, for example, that you say Bakema made at  
9 the scene, did you report that to anybody?

10          A     No.

11          Q     Did you make a note of that?

12          A     No.

13          Q     Then you learned that there had been a  
14 shifter that night where the officers got  
15 together. Do you remember who told you that?

16          A     That was Jeremy.

17          Q     Okay. Do you remember when he told  
18 you that?

19          A     Within the first couple of weeks after  
20 the accident.

21          Q     All right. And did you happen to make  
22 a note of that?

23          A     No.

24          Q     Now you say in your interview to the  
25 Commission, somebody had told you --

1 MR. PACIOCCO: Can we have a  
2 reference, Mr. Prober?

3 MR. PROBER: Sure. It's page 29.

4 BY MR. PROBER:

5 Q Somebody told you that the person who  
6 had been charged had tried to leave several times  
7 through the night and had been stopped; correct?

8 A Yes.

9 Q You told us that today?

10 A Yes.

11 Q You said somebody. Who told you that?

12 A That was Jeremy. Since the interview  
13 I have thought about that.

14 Q Oh, okay. So you recall at the  
15 interview you said to Commission Counsel, page 29,  
16 starting at line 18, the answer:

17 "Yes, again, I can't tell you who gave  
18 me this information. I have tried to  
19 remember."

20 So on June 4th, you didn't remember who gave you  
21 the information; correct?

22 A Yes.

23 Q And you're saying within the last  
24 approximately month, it's come to you as to who  
25 gave you that information; is that what you're



1 saying now?

2 A Yes.

3 Q Okay. And again, did you happen to  
4 make a note of it at the time you were told these  
5 things?

6 A No.

7 Q Did you happen to report it to  
8 anybody?

9 A No.

10 Q You have had dealings as a police  
11 officer for some 16 years with numerous  
12 prosecutors; correct?

13 A Yes.

14 Q Did you advise the prosecutor of this?

15 A No.

16 MR. PROBER: Thank you. Those are my  
17 questions.

18 MR. GREEN: No questions.

19 MR. McFETRIDGE: No questions.

20 BY MR. McDONALD:

21 Q Sir, when you mentioned, or informed  
22 Sergeant Beattie of what Chief Bakema had said to  
23 you at the scene, when you went there to conduct  
24 the ceremony for Crystal, what response did you  
25 get from Sergeant Beattie?

1           A     He had said that -- how the  
2 conversation started was I had asked him about the  
3 information he had received.

4           Q     Yes?

5           A     He didn't get as much as I had -- or  
6 as the family had. They were feeling the same  
7 way. And then I had told him what Harry had told  
8 me at the scene.

9           Q     What was his response when you told  
10 him that Chief Bakema had informed you that  
11 Mr. Zenk was pissed and that they had to rush him  
12 from the scene, or get him away quickly? What was  
13 Sergeant Beattie's response to that information?

14          A     Just, he thought somebody would have  
15 told him that, or words to that effect.

16          Q     That's your recollection of what he  
17 said?

18          A     That's an approximation of what he  
19 said.

20          Q     Did you gather from his reaction that  
21 he already had that information or knew that  
22 information?

23          A     It seemed he knew. Well, it had gone  
24 public with what the charges were anyway, so the  
25 fact that alcohol was involved wouldn't have --

1 the public knew that.

2 Q But the fact that you informed him of  
3 what Chief Bakema had told you was significant  
4 information to you, was it not?

5 A Yes.

6 Q And did that not sort of result in  
7 some extended conversation between you and  
8 Sergeant Beattie as to the gravity of that  
9 information and the importance of that  
10 information?

11 A We really didn't have a whole lot of  
12 conversation after that.

13 Q And you didn't pass that information  
14 on to anyone other than Sergeant Beattie and your  
15 friend, Jeremy Harewood?

16 A Yes.

17 MR. McDONALD: Thank you.

18 THE COMMISSIONER: Any re-examination?

19 MR. CLIFFORD: Mr. Commissioner, one  
20 area of re-examination flowing from Mr. Prober's  
21 question.

22 RE-EXAMINATION BY MR. CLIFFORD:

23 Q This is in relation to you being a  
24 police officer, Mr. Sveinson, and your role in  
25 this case. I take it that you understood your

1 role in this case as a personal rather than a  
2 professional role?

3 A I didn't go to that crash scene as a  
4 police officer, I went as Crystal's cousin.

5 Q And did you feel, sir, in any way that  
6 you were responsible for any singular component of  
7 this investigation?

8 A No. I had faith in the system.

9 MR. CLIFFORD: All right. Thank you.

10 THE COMMISSIONER: Thank you very  
11 much.

12 MR. PACIOCCO: I see that it's now  
13 12:28, can we take a couple of extra minutes for  
14 lunch?

15 THE COMMISSIONER: Yes. All right,  
16 we'll come back at 2:00.

17 THE CLERK: All rise. This Commission  
18 is in recess.

19 (Proceedings recessed at 12:28 p.m.  
20 and reconvened at 1:55 p.m.)

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

23 MR. PACIOCCO: Good afternoon. The  
24 first witness of the afternoon will be Mr. Edward  
25 or Ted Rosser, who is in the body of the hearing

1 room.

2 THE COMMISSIONER: Mr. Rosser, please.

3 MR. PACIOCCO: If you could just  
4 remain standing when you get up there. We will  
5 have the clerk sworn you in.

6 EDWARD ROSSER, having first been duly  
7 sworn, testified as follows:

8 BY MR. PACIOCCO:

9 Q Good afternoon, Mr. Rosser.

10 A Good afternoon.

11 Q I know that this is not a very  
12 comfortable thing for anyone to have to get on the  
13 stand, and we appreciate you coming out today to  
14 help the Commission in its very important work.

15 Sir, how old are you?

16 A I'm 40.

17 Q I understand that you are a paramedic?

18 A That's correct.

19 Q When did you first become a paramedic?

20 A In '93.

21 Q So, as of 2005 you would have had 12  
22 years experience approximately?

23 A Yes.

24 Q And I understand at that time you were  
25 a paramedic level 2?

1 A That's correct.

2 Q Is that still your level, sir?

3 A No, I'm an ICP now, it is a little bit  
4 more.

5 Q And what does an ICP stand for?

6 A Intermediate care paramedic.

7 Q Is it just a little bit more up the  
8 ladder for you?

9 A Yes, it is about the most senior for  
10 us.

11 Q I understand that you were working in  
12 2005 with the Selkirk Ambulance Service?

13 A Yes.

14 Q They fall under the umbrella of the  
15 Interlake Authority, do they?

16 A Yes, they do.

17 Q What did you do to become a paramedic,  
18 what process did you go through?

19 A I did a first responder course which  
20 was a night course, and that took about eight  
21 months. I volunteered at the hospital with our  
22 service. There was a couple of guys on holidays,  
23 and I just got hired on and went from there.

24 Q Sir, I understand as part of your  
25 profession there is continuing education that you

1 are required to attend to?

2 A Yes, that's right.

3 Q You also have a licence, this is a  
4 licensed function that you carry on?

5 A Yep.

6 Q And you have to maintain that with  
7 some continued education and certification?

8 A Yep, every three years, or yearly with  
9 course work.

10 Q And how many calls on average do you  
11 think you might attend to in a year?

12 A I believe lately its been about 300,  
13 but at that time we had less staff on, we had more  
14 on-call, so it was probably up around five, six  
15 hundred a year.

16 Q So you have attended thousands of  
17 cases through the course of your career; would  
18 that be fair to say?

19 A I would say, yeah.

20 Q And you have attended many fatal  
21 accidents, sir?

22 A Yes, quite a number.

23 Q Have you attended many cases involving  
24 alcohol?

25 A Oh, yeah.

1           Q     Sir, I'm going to take you back to the  
2     24th of February, 2005, the day before the  
3     accident that claimed tragically the life of  
4     Crystal Taman. I understand you were working a  
5     night shift?

6           A     Yes.

7           Q     And your partner at that time was?

8           A     Rolland Fontaine.

9           Q     I understand that the two of you had  
10    been partners for some time at that point?

11          A     Quite a few years I think.

12          Q     And, sir, your night shift was just  
13    coming to a close, sir?

14          A     Yes.

15          Q     And could you tell the Commissioner  
16    what happened as you were just about to book off  
17    shift?

18          A     Well, our shift wasn't actually over  
19    for about half an hour, so we were still on duty,  
20    and I guess we got the call for the crash on  
21    Highway 59.

22          Q     I'm going to ask the clerk to provide  
23    you with exhibit 64, a document that we've already  
24    put into evidence, sir. And counsel can find  
25    exhibit 64 at tab D.19.e. At page 347 of volume



1 D, page 347.

2 And at page 347, sir, you will see a  
3 report from the Interlake Regional Health  
4 Authority to Corporal Todd Doyle, who we know to  
5 be an RCMP officer, setting out the times in  
6 connection with the dispatch records on  
7 February 25th, 2005. And I take it, sir, when you  
8 look at those times, are those the times that you  
9 are familiar with in connection with the accident  
10 that you attended to, sir?

11 A Yes, they are.

12 Q And so they show that the call to the  
13 Selkirk Ambulance Service was received at 7:17  
14 hours, or 7:17 a.m.?

15 A Yes.

16 Q And, sir, it shows that the unit, I  
17 take it that you were in, departed en route at  
18 7:20?

19 A That's correct.

20 Q Do you recall whether you were driving  
21 or was Mr. Fontaine driving?

22 A Mr. Fontaine.

23 Q And is there a particular way in which  
24 that duty is designated?

25 A We just switch days, like day one he

1 drives, day two I drive.

2 Q Is there a change in terms of the  
3 responsibility of the non-driver as opposed to the  
4 driver in terms of what you do at an accident  
5 scene or at a call?

6 A Yeah, depending on the skill level  
7 that people have.

8 Q Okay. And what is the difference,  
9 sir? What would your responsibilities have been  
10 that day as the passenger in that ambulance?

11 A I would be attending the patient.

12 Q Okay. And I take it then that the  
13 driver plays a secondary role in terms of  
14 attending the patient?

15 A Yes, assists and cleans up the truck  
16 after type thing.

17 Q Sir, you got that call at 7:17. Do  
18 you recall where you were dispatched to attend?

19 A Where the accident was?

20 Q Yes?

21 A It was at the Perimeter and 59.

22 Q That's up in the Birds Hill area and  
23 East St. Paul, sir?

24 A Yes.

25 Q You were en route by 7:20?

1           A     That's correct.

2           Q     According to this dispatch record, you  
3 arrived at the scene at 7:38?

4           A     That's correct.

5           Q     And that's an elapsed time of 18  
6 minutes?

7           A     Yes.

8           Q     I understand, sir, that's a pretty  
9 quick response from where you were located to this  
10 particular location?

11          A     That's about average for getting out  
12 to East St. Paul.

13          Q     I take it you actually practice and  
14 log times from one location to another so that you  
15 are able to know how long it is going to take to  
16 get to a scene?

17          A     We don't practice, but we do know from  
18 experience.

19          Q     So you managed to get out there in 18  
20 minutes. What do you find when you arrive at  
21 7:38?

22          A     When we arrived we had the fire truck  
23 blocking the other vehicles, the Winnipeg  
24 Ambulance medical supervisor was out. He said  
25 they had taken care of the lady in the car,

1 Mrs. Taman, and the only person to look after was  
2 the fellow in the back, which was Mr. Harvey-Zenk.

3 Q Now, before we go any further with  
4 that, now you are talking to a Winnipeg paramedic?

5 A He is their medical supervisor, he is  
6 like one of the top guys there.

7 Q So he is on scene and you have a  
8 face-to-face conversation with him?

9 A Yes.

10 Q And you indicate that they say that  
11 they have taken care of the woman, and you've  
12 identified her as Mrs. Taman?

13 A Yes.

14 Q Of course, you didn't know her  
15 identity at that point in time?

16 A No, I didn't.

17 Q Was she still on scene at the time  
18 that you arrived?

19 A Yes, she was.

20 Q And where was she, are you able to  
21 tell us?

22 A I believe she was in the back of the  
23 Winnipeg Ambulance, I believe that's what Rolland  
24 told me.

25 Q Sorry?

1           A     I believe that's what Rollie told me.  
2     He had been out and walked around kind of checking  
3     out the scene for us.

4           Q     I take it that you had seen the  
5     ambulance, but you didn't personally see her,  
6     where she was?

7           A     That's right.

8           Q     But you received information from the  
9     paramedic that she was being taken care of?

10          A     Yes.

11          Q     You arrived at 7:38.  What did you do  
12     after you arrived at 7:38?  You had this  
13     discussion with this supervisor?

14          A     Yes.

15          Q     And what happened next?

16          A     After I talked to him and he told me  
17     just to go check out the guy in the truck, that's  
18     where I went.

19          Q     All right.  Sir, how long do you think  
20     it would have taken from the time you arrived at  
21     that scene until you went to check out the guy at  
22     the truck?

23          A     Probably about a minute.

24          Q     Okay.  And are you able to describe  
25     physically the way in which you would get from the

1 ambulance to that location? Would you have  
2 walked, would you have run, rushed, sauntered?

3 A We walked there.

4 Q And was there any sense of urgency in  
5 terms of attending at that truck?

6 A No, not really.

7 Q And why would that have been, sir?

8 A Well, I think the medical supervisor  
9 checked him out. If there was anything serious  
10 they would have sent some people over there, there  
11 would have been first responders looking after  
12 him, somebody from Winnipeg Ambulance Service  
13 there.

14 Q You knew you had to go to a case that  
15 didn't seem to be a terrible emergency, you were  
16 on scene and had that brief conversation?

17 A Yes.

18 Q And you were there?

19 A Yes.

20 Q You estimate it would take you about a  
21 minute to get there?

22 A It is a guess.

23 Q Are you describing this as something  
24 that would have happened in a reasonably short  
25 time after your arrival?

1           A     Yes.

2           Q     And there would have been no delay in  
3 terms of getting over there?

4           A     No.

5           Q     Can you describe the truck in more  
6 detail for us of this -- where is that person you  
7 were supposed to go and see?

8           A     I can't remember exactly where, but I  
9 believe we parked on the side and these guys were,  
10 I would say, less than 50 feet away.

11          Q     When you say you parked on the side,  
12 do you recall what side of the road you parked on,  
13 where you came from?

14          A     We were facing south and we parked on  
15 the west side.

16          Q     Okay. So you would have been coming  
17 down from the north on Highway 59?

18          A     Yes.

19          Q     And you would have had to have been  
20 let through the traffic, because I imagine the  
21 traffic was backed up by that time?

22          A     Yes.

23          Q     You would have used your sirens to get  
24 down there?

25          A     Yes.

1           Q     You got close to the scene, about  
2     50 feet from where this gentleman turned out to  
3     be?

4           A     Yes.

5           Q     The truck he was in, we understand  
6     that was a police truck or marked vehicle?

7           A     Yes.

8           Q     Sir, you attend at that truck. What  
9     happens when you get there?

10          A     When I get there, Rolland was talking  
11     to him from the other side. I opened up my door,  
12     hopped in with him, and Rolland closed his door  
13     and he took off.

14          Q     I'm going to slow you down, because we  
15     want to try and take this a little bit at a time.  
16     So Rolland is at the other door?

17          A     Yes.

18          Q     Do you know if he is at the passenger  
19     door or driver's door?

20          A     Passenger side.

21          Q     So you would be on the driver's side  
22     of the vehicle?

23          A     Yes.

24          Q     This was a police vehicle?

25          A     Yes.



1           Q     Do you know if the doors were open  
2 when you arrived?

3           A     They weren't open.

4           Q     I take it that someone had to open the  
5 doors for you, or were you able to do that  
6 yourself?

7           A     I think I was able to do it myself.

8           Q     Do you know whether there was a police  
9 officer present when you arrived at the vehicle?

10          A     I remember somebody being in the  
11 police truck at one time, or one or two times, but  
12 I can't say when we got there or at what time  
13 frame they were in or out.

14          Q     When you say somebody in the vehicle,  
15 I take it you are referring to a police officer,  
16 sir?

17          A     Yes, in front, sitting in front.

18          Q     So your evidence is that there was  
19 somebody who was in the vehicle at certain times,  
20 but you are not sure exactly when it was?

21          A     I can't say if it was five minutes in  
22 he got out, or ten minutes he got out.

23          Q     So you had Rollie running around to  
24 the passenger side?

25          A     Yes.

1           Q     Do you know whether he opens the door  
2     or not?

3           A     He did, yeah.

4           Q     And you are, of course, the passenger  
5     in the ambulance, and so you have the  
6     responsibility, I understand from your earlier  
7     answer, of assessing the patient?

8           A     Yes.

9           Q     And you go in the other side and you  
10    get right into the vehicle?

11          A     Yes, I do.

12          Q     And where was the patient when you got  
13    in the vehicle?

14          A     He was sitting more in the middle of  
15    the back seat.

16          Q     Okay. So you actually get physically  
17    into the back seat and he is in the middle?

18          A     Yes.

19          Q     And I take it that you sit down when  
20    you get inside? It is pretty hard to do otherwise  
21    when you are in a vehicle?

22          A     Yes, we were side by side.

23          Q     So you were sitting basically right  
24    beside him?

25          A     Yes.

1 Q And you recall Mr. Rosser closing the  
2 door?

3 A Mr. Fontaine, yes.

4 Q Sorry, I apologize. And what was your  
5 function or role when you got in the back of the  
6 police car?

7 A I had to do a patient assessment, see  
8 how he is doing.

9 Q What is involved in doing patient  
10 assessments, just generally, before we talk about  
11 this particular case, what is your goal or  
12 function?

13 A To see if they need medical help.

14 Q So you would go through what steps or  
15 what stages?

16 A Well, our first one is just a general  
17 appearance of the person. We had a little -- he  
18 had a little bit of a bloody nose.

19 Q Just tell me generally, and then I  
20 will go through this particular individual.

21 A You look first at the appearance of  
22 the person.

23 Q Yes. At that point you are looking  
24 for injuries, any apparent injuries?

25 A Yes.

1 Q Next step, sir?

2 A Introductions, then we start up  
3 talking to him, ask him where he is hurt, you  
4 check out what he says and just do a general  
5 assessment on him.

6 Q When you ask this person, you do your  
7 introductions, is there a particular reason for  
8 that?

9 A If he tells me he is big bird or  
10 something like that, I know there is a problem.

11 Q So, basically the way they respond is  
12 what you are interested in?

13 A That's correct.

14 Q And you do ask them if they are  
15 injured?

16 A Yes.

17 Q What happens if you draw the  
18 conclusion that the person really does need  
19 medical attention?

20 A Well, our vital signs, I guess is a  
21 good way to do it, and they are -- just the way  
22 they act.

23 Q And if you draw the conclusion that  
24 they do, what happens?

25 A We ask them to come with us.

1 Q And what happens if they don't want to  
2 come?

3 A They have to be in their proper mind  
4 to deny it.

5 Q Okay. So you are actually doing an  
6 assessment to see whether they are capable of  
7 competently making a decision about their own  
8 health?

9 A Yes.

10 Q And what do you factor in when you  
11 make that decision?

12 A How they are answering questions and  
13 their reasons for not wanting to go are the big  
14 ones.

15 Q And how carefully do you, as a  
16 paramedic, take that role of assessing someone's  
17 competence to make that choice?

18 A It is pretty key.

19 Q And so can we take it that you are  
20 fairly attentive to the health condition of the  
21 patient?

22 A Sure.

23 Q And sir, you arrived at 7:38, and the  
24 dispatch record that's been put in front of you  
25 shows a departure time of 7:56, correct?

1 A Yes.

2 Q You are on scene, according to that  
3 record, a total of 18 minutes. You described how  
4 it took you, although it was an estimate,  
5 approximately a minute to get to the vehicle?

6 A Um-hum.

7 Q What did you do when you finished in  
8 the vehicle?

9 A When I finished, I believe we just  
10 left.

11 Q All right.

12 A We didn't stand around and look or  
13 anything like that, we just took off.

14 Q So is it fair to assume then that the  
15 bulk of that 18 minute period, minus the one  
16 minute that it took to get over there, was spent  
17 in the vehicle?

18 A I would say, yeah.

19 Q So you estimate the time you were in  
20 the vehicle at?

21 A I would say 15 minutes for sure.

22 Q Were you in the back seat of the  
23 vehicle the whole time, sir?

24 A Yes.

25 Q And was the patient with you the whole

1 time, sir?

2 A Yes.

3 Q Sir, by the time you had left to go  
4 back, had you formed any conclusions about why  
5 this gentleman was in the back of the police car?

6 A Oh, I could smell some liquor on his  
7 breath. Like I was sitting right beside him.  
8 Like I know he had been involved in the car  
9 accident, so that's where I leave it.

10 Q Okay. I know you have put down the  
11 facts, can you join the dots for us, sir?

12 A Like, well, if he was impaired driving  
13 and got into a crash, then he should be like  
14 getting checked out for impaired driving, I think.

15 Q And, sir, was that your expectation of  
16 what he was in the vehicle for when you left that  
17 police car?

18 A Yes, pretty much.

19 Q Can you describe the patient who you  
20 attended to?

21 A Can I describe him?

22 Q Yes?

23 A Quiet, I believe I wrote sullen on my  
24 call report.

25 Q I'm going to ask you to start with his

1 appearance in terms of whether you would recognize  
2 him again. What did he look like? We can start  
3 there, and I will take you through each component  
4 of a description.

5 A When we first got there he was  
6 shaking, quiet, just looking straight ahead. I  
7 would ask him questions and he would be very quiet  
8 in his answers and very short.

9 Q Okay. Physically, what did he appear  
10 like? Was he a big man, a little man? What were  
11 you able to conclude by looking at him?

12 A He was probably bigger than I was.  
13 I'm not a very big man so --

14 Q Can you describe his age or  
15 appearance?

16 A I believe I marked him down as 30,  
17 sandy hair, good shape.

18 Q I think you said athletic?

19 A Yes.

20 Q And in terms of whether you were able  
21 to make any observations of any injuries, just  
22 looking at the man, which is one of the things  
23 that you described in your assessment, what  
24 conclusions did you come to from looking at him?

25 A From looking at him, he was pretty



1 worried.

2 Q Did you notice any physical injuries?

3 A Just the bleeding from the nose. He  
4 mentioned pain on his left leg and I did look at  
5 his leg. There was a little burn on his shin and  
6 he complained of pain in the back of his calf, and  
7 that was basically his biggest complaint, and it  
8 seemed fine.

9 Q Okay. I'm going to ask you in a  
10 moment how you examined that or made that  
11 determination that he seemed fine. I interrupted  
12 you and you started to describe the man as quiet  
13 and sullen and worried?

14 A Yes.

15 Q Can you elaborate on why you would use  
16 the term sullen?

17 A That's just the way he looked to me.

18 Q Okay. And you also, of course, used  
19 the term quiet?

20 A Yes.

21 Q And you used the term "worried." Did  
22 you make any other observations about his  
23 emotional condition?

24 A Not really, no.

25 Q Sir, was he crying?

1 A No.

2 Q Was he sobbing?

3 A No.

4 Q Did he appear grief stricken?

5 A Worried.

6 Q Worried. Would you use the word  
7 distraught to describe someone who looked like  
8 that?

9 A Could be, yes.

10 Q And, sir, physically how did he seem  
11 to you in terms of his emotional state?

12 A He seemed to -- I would say he was  
13 being very careful with what he was saying and  
14 what he was answering.

15 Q And why would you say that, sir?

16 A Because there was a couple of  
17 questions that I had asked, I believe, that he  
18 didn't answer.

19 Q And I'm going to get to that in a  
20 second. Sir, how much conversation did you have  
21 with him?

22 A A little bit I guess.

23 Q I'm going to ask you to try your best  
24 to start at the beginning of the conversation that  
25 you had with him, and describe for the

1 Commissioner what you would have said to him and  
2 how he would have responded?

3 A Like right from the start?

4 Q Yes, please?

5 A I would have said hello, how are you  
6 doing. I can't remember what he answered or  
7 anything like that.

8 Q But you drew the conclusion that he  
9 wasn't seriously injured, sir?

10 A Not right away.

11 Q Keep going?

12 A We take some time to get to that.

13 Q Okay.

14 A I believe I introduced myself, got his  
15 name out of him.

16 Q Okay.

17 A I got a health card or something, I  
18 did have his nine digit health number, so I  
19 believe I must have got his health card and his  
20 driver's licence, maybe. As I was copying it  
21 down, I would ask him, is this your name, is this  
22 where you live, postal code, or what is your  
23 wife's name?

24 Q So the what is your wife's name  
25 question would be designed to determine how alert

1 he is and capable of responding?

2 A Yes.

3 Q Were there questions of that kind that  
4 you asked?

5 A Yes. We asked if he knows where he  
6 is, what day it is, what time of day it is. Date,  
7 time and place is a pretty standard question.

8 Q And did you ask those questions of  
9 this man?

10 A Yes, sir.

11 Q And was he able to respond to those  
12 questions?

13 A Yes.

14 Q And did he get the questions right,  
15 sir?

16 A I would say yes, but I have him marked  
17 down as alert and orientated times three, and  
18 those are the three questions we ask.

19 Q What are the three questions, sir?

20 A Date, time and place, and if he  
21 answered that he gets alert and orientated times  
22 three.

23 Q So alert and orientated times three,  
24 so you concluded from his responses to those  
25 questions that he knew where he was and he was

1 alert in terms of answering the questions that  
2 were posed?

3 A Yes.

4 Q Can you describe the kind of answers  
5 that he was giving to you? Can you characterize  
6 them in any way?

7 A Short.

8 Q Do you know whether he initiated any  
9 conversation? Did he start any conversation with  
10 you or say anything that you didn't provoke with a  
11 question?

12 A I think at the end he asked how the  
13 person in the other vehicle was doing.

14 Q Yes, sir, and do you recall the exact  
15 words he would have used?

16 A No, I don't.

17 Q Were you able to give him an answer to  
18 that, sir?

19 A I just told him that Winnipeg  
20 Ambulance had taken care of the patient and I  
21 don't know.

22 Q Now, sir, you began to tell us about  
23 him indicating in response to a question whether  
24 he was injured that he had some concern about his  
25 leg?

1           A     Um-hum.

2           Q     Could you tell the Commissioner about  
3 that, please?

4           A     I asked him where he was hurt, and I  
5 could see the blood on his nose, and I asked  
6 anywhere else, and he told me his leg. So I  
7 lifted up his pant leg or whatever, and had a look  
8 at his shin and seen a little burn on it. And he  
9 said there was some pain to the back, and there  
10 was no bruising or anything like that on the back.

11          Q     Did you palpate or feel the joint?

12          A     Yes, the shin.

13          Q     The shin?

14          A     Yes.

15          Q     And you didn't find anything?

16          A     He said it hurt but he didn't want to  
17 see a doctor about it.

18          Q     So you are actually physically  
19 touching him at that point?

20          A     Yes.

21          Q     And so you are right beside him?

22          A     Yes.

23          Q     And you say that he didn't want to see  
24 a doctor or anything. How do you know that?

25          A     I asked him at the end if he wanted to

1 be taken to the hospital.

2 Q Okay. And how did he respond?

3 A He said no.

4 Q And I understand that there is a form  
5 that gets signed when that happens?

6 A Yes.

7 Q And I think it is referred to as a  
8 1026 in your earlier interviews?

9 A Yes, it is, a patient release form.

10 Q And who fills out that form?

11 A I get him to print his name, sign it,  
12 and then I need a witness. And if there is nobody  
13 there, I just sign it myself.

14 Q And what happened on this occasion?

15 A I believe I signed it myself.

16 Q And do you know whether he printed out  
17 his name on that document?

18 A I can't remember, I believe he did  
19 though.

20 Q You don't happen to have that document  
21 with you, sir?

22 A I don't think I have that part of it.  
23 No, I don't have that part. It is the inside  
24 part.

25 Q Sir, what do you have with you?

1           A     Just my call report.

2           Q     Do you mind if I take a look at that,  
3     sir?

4           A     Sure.

5                     MR. PACIOCCO:  Might I approach the  
6     witness, Mr. Commissioner?

7                     THE COMMISSIONER:  Yes.

8     BY MR. PACIOCCO:

9           Q     Sir, I'm going to ask you if we can  
10    take copies of that before you leave, because we  
11    are going to have to make it an exhibit to the  
12    proceedings.

13                    Sir, the document that you have in  
14    front of you is a call report that we have not yet  
15    seen in connection with these proceedings, sir.  
16    Could you take the Commissioner through the  
17    contents and tell him what the document contains?

18           A     Well, it has our times.  We have  
19    Mr. Zenk's name, address, his wife, that he didn't  
20    want to be transported, patient refusal, treatment  
21    release, where the accident happened, where his  
22    injuries were.

23           Q     And when you have a place there to  
24    record his injuries, sir, did you record his nose?

25           A     Yes, yes.



1 Q Did you examine his nose, sir?

2 A I had a look at it. He had dried  
3 blood on it. It wasn't bent out of shape or  
4 nothing like --

5 Q There was no apparent displacement of  
6 the nose?

7 A No.

8 Q Please continue with the injuries.

9 A I have a laceration on his left shin  
10 and a pain on his left calf.

11 Q Okay. And you have described those  
12 for us, sir, and your examination of them. What  
13 else does the sheet contain?

14 A Set of vitals.

15 Q So I take it then that you did take  
16 his vital statistics, sir?

17 A Yes, just at rest pulse, his Glasgow  
18 Coma scale, which is his level of consciousness,  
19 alert, his skin and pupils and his grips.

20 Q Why do you take that kind of  
21 assessment, sir?

22 A Just to get a basic idea of how he is.

23 Q And what conclusion did you come to  
24 based on the numbers that you recorded when you  
25 took those assessments?

1           A     I would say he is okay.

2           Q     Sir, we have heard people talk about  
3 people being in shock. Is that a clinical  
4 concept, being in shock?

5           A     Yeah, I would say yeah.

6           Q     And sir, did you form any opinion in  
7 this case as to whether this man would have been  
8 in shock?

9           A     No, no.

10          Q     Does that mean that you didn't form an  
11 opinion, or no?

12          A     I didn't think he was, no.

13          Q     And why would you not have concluded  
14 that he was in shock?

15          A     When you are in shock, you are pale,  
16 diaphoretic, your heart rate is racing and your  
17 blood pressure is low.

18          Q     What does diaphoretic mean, sir?

19          A     Sweaty.

20          Q     Did you make any observations of any  
21 signs of concussion?

22          A     No.

23          Q     Is that something that you would have  
24 been alert for, sir?

25          A     For sure.

1           Q     And this form that he signed, the 1026  
2     form, sir, were you satisfied that he understood  
3     what he was doing when he signed that form?

4           A     I would say yeah.

5           Q     You have some endorsements on the back  
6     that are in code, I could read some of the words  
7     but not all of them. Could you translate what  
8     that little summary says for the Commissioner,  
9     please?

10          A     Starting at the top?

11          Q     Please?

12          A     We have got: Chief complaint is pain  
13     to his left calf. Mechanism of injury is a motor  
14     vehicle accident. And I have history of the  
15     accident: Patient involved in a three car MVA,  
16     rear ended, sandwiched vehicle into other car.  
17     Past history nil, medication nil, no known  
18     allergies.

19     And I said that: Unit 24 was dispatched regarding  
20     a MVA. Upon arrival found a 31 year old male  
21     sitting in the rear of a West St. Paul, and that  
22     should be East St. Paul truck. Ambulated after  
23     MVA, which means he walked to the truck himself.

24          Q     And you received information to that  
25     effect because you didn't see it happen?

1           A     I didn't see it happen.

2           Q     Do you know where you got that  
3 information?

4           A     I asked somebody how he got there and  
5 they told me he walked.

6           Q     Please continue.

7           A     Airway was --

8           THE COMMISSIONER:  Would you do me a  
9 favour and there is that mike down in front of  
10 you, if you could use it as much as you can and  
11 speak a little slower, if you can.

12           THE WITNESS:  Okay.  I have level of  
13 consciousness, alert and oriented times three  
14 spheres, his skin was pink, warm and dry, pupils  
15 are PERL, which is equal and reactive to light,  
16 grips were equal and strong, patient complained of  
17 pain to his left calf muscles.  Patient has small  
18 laceration to his left shin, one centimetre long  
19 and dried blood on his nose.  Patient smelled of  
20 liquor.  Patient sullen and cooperative.  
21 Treatment; his vital signs were taken, patient  
22 refused treatment, signs the 1026 form.  And  
23 advised patient to expect stiffness and pain and  
24 consult a doctor if needed.

25

1 BY MR. PACIOCCO:

2 Q Okay. Have you completed reading from  
3 that form, sir?

4 A Yes.

5 MR. PACIOCCO: I'm going to ask that  
6 be made as the next exhibit, please? And we will  
7 make copies and return that document to Mr. Rosser  
8 at an appropriate point.

9 THE CLERK: Number 77.

10 (EXHIBIT 77: Ted Rosser's ambulance  
11 patient care report on Derek  
12 Harvey-Zenk)

13 BY MR. PACIOCCO:

14 Q Sir, you have read from the page that  
15 you had -- that the patient smelled of liquor.  
16 You mentioned earlier that you smelled liquor?

17 A Yes.

18 Q Can you describe what you smelled,  
19 sir?

20 A Just smelled like booze in the back of  
21 the truck.

22 Q And did you notice that when you were  
23 getting into the truck, sir?

24 A I can't remember. I remember sitting  
25 beside him and knowing it, or smelling it.

1           Q     All right, sir. I'm going to ask you  
2     to look at a statement that I know you gave, and I  
3     know you have copies of it with you today. This  
4     would be D.19.c. I'm actually going to put two  
5     statements to you and I'm going to give them to  
6     you in this order, D.19.C, an East St. Paul  
7     statement is going to be given to you, it is going  
8     to be made exhibit 78.

9                     (EXHIBIT 78: D.19.c Edward Rosser,  
10                    statement to East St. Paul Police,  
11                    March 24, 2005)

12           MR. PACIOCCO: And I'm going to ask  
13     the clerk to also put the RCMP interview, which is  
14     at D.19.d into evidence as exhibit 79.

15                    (EXHIBIT 79: D.19.d Edward Rosser  
16                    statement to RCMP, May 25, 2006)

17     BY MR. PACIOCCO:

18           Q     Sir, I'm going to begin with the RCMP  
19     interview. You will notice that it occurred, and  
20     that is the document that was marked exhibit 79,  
21     it is the typed document. You will notice that it  
22     shows that this is the statement of Edward Rosser  
23     dated the 25th of May, 2006, at 1104 hours at the  
24     Selkirk RCMP detachment, Corporal Tracey Kennett  
25     of the Winnipeg major crime unit and Corporal Todd

1 Doyle attending at the station.

2 Sir, do you recall meeting with the  
3 RCMP and giving them a statement?

4 A Yes, I do.

5 Q Sir, have you had a chance to look at  
6 that document? Are you satisfied that's your  
7 interview?

8 A Yeah, yes, sir.

9 Q I asked if you had any recollection of  
10 smelling alcohol when you got into the police  
11 vehicle. And I would ask you to go to page 336 of  
12 the document? Are you at page 336?

13 A Yes.

14 Q I will ask you to read three lines up  
15 from the bottom.

16 "Kennett: Um-hum. Did you smell it  
17 for -- initially when you first got  
18 into the police car -- or police  
19 truck?

20 Next page:

21 "Rosser: Yeah, it wasn't very strong  
22 but I remember smelling it."

23 Sir, does that refresh your memory as to whether  
24 you smelled the alcohol when you entered into the  
25 police vehicle?

1           A     Yeah.

2           Q     Are you satisfied that's an accurate  
3 answer?

4           A     I would say yes.

5           Q     You also talked about smelling alcohol  
6 when you were beside him. Can you tell us a  
7 little bit more about that?

8           A     I don't know how to elaborate.

9           Q     Sir, at what point when you were  
10 beside him did you smell the alcohol?

11          A     Well, going by this, I would say right  
12 away.

13          Q     And can you describe how strong the  
14 smell of alcohol was?

15          A     I know I've said strong in my  
16 statements here, but I can't really recall today.

17          Q     Okay. I'm going to take you to the  
18 East St. Paul statement because it was the first  
19 one you gave.

20          A     Okay.

21          Q     And you will find this as tab D.19.c.  
22 For the lawyers involved, it is now exhibit 78 in  
23 front of you.

24                    You will notice when you were giving  
25 that statement you indicated that, in the last



1 three or four lines on page 330:

2 "I noticed a smell of liquor coming  
3 from him and I asked him if he had  
4 been drinking that night or this  
5 morning. He didn't respond to the  
6 question."

7 I am going to come back to that in a minute.

8 "I left the truck."

9 A couple of lines later you see the question:

10 "How strong was the smell of the  
11 liquor?"

12 And you see the answer:

13 "Not strong/ Strong but noticeable."

14 A Um-hum.

15 Q Sir, are you able to recall why you  
16 said, "Not strong/Strong but noticeable", it might  
17 be a bit confusing to most of us?

18 A Reading these transcripts, I see I  
19 done this a few times, I start saying something,  
20 stop and continue with the word I just finished,  
21 and I think that's what just happened here. I  
22 think it should be "not strong but noticeable."

23 Q Is that a fair characterization in  
24 your mind of how strong the smell of alcohol was?  
25 You wouldn't call it strong but you would say it

1 is noticeable, sir?

2 A Yes.

3 Q And how noticeable would you say it to  
4 be?

5 A With me sitting in with him for ten  
6 minutes, I knew for sure he had been drinking.

7 Q Was there any doubt about that in your  
8 mind?

9 A No.

10 Q Sir, in that document that we just  
11 looked at, it said that you noticed the smell of  
12 liquor coming from him and asked him if he had  
13 been drinking that night, or this morning?

14 A Yes.

15 Q Do you recall when you asked him that  
16 question?

17 A I believe it was after I -- he had  
18 signed the cancellation form and I was waiting for  
19 an officer to let me out of the truck.

20 Q Okay. Because you are in the back of  
21 a police car, and I think the lawyers in the room  
22 understand when those doors are shut, you can't  
23 open them from the inside in the back seat?

24 A That's right.

25 Q So you are in there, you finished the

1 function that you are performing, you noticed the  
2 smell of alcohol, and you decide that you are  
3 going to ask him if he has been drinking?

4 A I guess at the end I thought I should  
5 ask.

6 Q How did he respond?

7 A He didn't answer.

8 Q Sir, you asked him a number of other  
9 questions?

10 A Yes.

11 Q Did he respond to those other  
12 questions?

13 A To deal with the car accident, he  
14 really didn't answer questions about it.

15 Q Did you ask him about the car  
16 accident?

17 A Yes. I asked him about the seat belt  
18 and what had happened, and he wouldn't answer.

19 Q And, sir, did he tell you he wouldn't  
20 answer or he just stayed silent?

21 A He stayed silent.

22 Q And I take it the same happened with  
23 respect to this question?

24 A Yes.

25 Q He stayed silent?

1           A     Yes.

2           Q     And when he answered questions for  
3 you, did he make eye contact with you?

4           A     Yes, he did.

5           Q     And what about when you asked this  
6 question?

7           A     He looked away.

8           Q     And how did you react when he didn't  
9 answer this question?

10          A     I didn't bother him anymore.

11          Q     And why is that?

12          A     It seemed, right from the start it  
13 seemed that he really didn't want me in there  
14 anyway to begin with.

15          Q     And what gave you that impression,  
16 Mr. Rosser?

17          A     Just the way he was.

18          Q     And can you describe the way he was  
19 that might have given you that signal?

20          A     All of the sullenness, the quietness,  
21 short answers.

22          Q     Do you know where the police officer  
23 was at the time that you asked this question of  
24 him?

25          A     No.

1           Q     And it is pretty clear that he wasn't  
2     in the vehicle because you were waiting to be let  
3     out?

4           A     That's right.

5           Q     Did you advise any police officers of  
6     what you had observed?

7           A     No, I don't think so.

8           Q     Sir, is that something that you would  
9     normally do?

10          A     No. We get called to car accidents  
11     and see people when they are hurt to help them,  
12     not to sic the police after them or get them  
13     charged.

14          Q     Sir, is there any training that you  
15     get in your upgrading courses or in your  
16     continuing education that deals with matters of  
17     privacy, or that deals with cooperating with  
18     police investigations?

19          A     We did a Personal Health Information  
20     Act course.

21          Q     And had you done that prior to  
22     attending at this scene?

23          A     I believe we did, yes.

24          Q     And what did you learn at that course,  
25     sir?

1           A     That police shouldn't be asking us  
2     questions about their -- whether they are drinking  
3     or not. I remember hearing that specifically out  
4     of that course.

5           Q     Okay. So you had the sense that this  
6     was private information and it really wasn't your  
7     function or your role to speak to the police  
8     officer; is that a fair assumption?

9           A     I would say so, yes.

10          Q     Did you think your observations would  
11     add anything to the investigation?

12          A     I know they could ask me for them in  
13     court, but I wasn't going to volunteer them at the  
14     time, I believe.

15          Q     And if you were prepared to volunteer  
16     that to them, do you think it is something that  
17     they needed to know, sir?

18          A     That they needed to know?

19          Q     Yes.

20          A     Like because -- helping out citizen  
21     point of view or --

22          Q     Point of view of piece of information  
23     that they might not already have?

24          A     No, I think anybody spending any time  
25     with Mr. Harvey-Zenk would find out, or soon

1 detect the smell of alcohol themselves, and they  
2 don't need me to tell them that.

3 Q Sir, you described how Mr. Harvey-Zenk  
4 responded with short answers to the questions you  
5 asked?

6 A Yes.

7 Q Were you able to gather from the  
8 answers he gave, were they sufficient to enable  
9 you to draw a conclusion as to whether he could  
10 speak clearly or whether his speech was slurred or  
11 anything like that?

12 A I would say that his quietness was  
13 calculated. I would say that would be a good way  
14 to describe it.

15 Q And why would you say his quietness  
16 was calculated?

17 A I couldn't tell if he was slurring  
18 words or anything like that.

19 Q And that would be because you didn't  
20 get enough words from him, is that what you are  
21 saying?

22 A At a time, yes.

23 Q And when you were being interviewed by  
24 Mr. Clifford, you have the interview in front of  
25 you?

1           A     Um-hum.

2           Q     I'm going to take you to page 22 of  
3     the transcript, where you were interviewed on  
4     April 1, 2008. Do you recall being interviewed by  
5     Mr. Clifford?

6           A     Yes, I do.

7           Q     You will notice at line 12 on page 22,  
8     line 11, you are just asked the question:

9                     "Well, I need you to tell me about  
10                    that?"

11     And "that" is detecting the odour of alcohol, in  
12     the conversation that you are having with  
13     Mr. Clifford, and your answer at line 11 says:

14                    "I can't remember our conversation  
15                    word for word. We were pretty shocked  
16                    to hear it. I was thinking the guy is  
17                    going to be in trouble type of thing."

18     What did you mean by "the guy is going to be in  
19     trouble type of thing"?

20           A     I thought he was going to be at least  
21     tested for impaired driving, and if there is a  
22     serious accident involved, he is going to be in  
23     trouble.

24           Q     Now, sir, in that same passage you  
25     talk about, "we had a conversation." I take it



1 you had a conversation with Mr. Fontaine?

2 A Yes.

3 Q And this would have been after you  
4 left the scene, sir?

5 A I believe it was driving back, yeah.

6 Q And can you tell us about that  
7 conversation?

8 A Just that on the way home he mentioned  
9 that he was a Winnipeg Police Officer, and that's  
10 when I said, like, you know, I was pretty shocked  
11 to hear that. And to tell you the truth, it made  
12 sense for some of his answers, the way he was  
13 answering too.

14 Q And how is that, sir?

15 A He would know what to say and when to  
16 say it, you know.

17 Q Okay. And, sir, did Mr. Fontaine  
18 share any of his observations with you?

19 A Not really. He said he had smelled  
20 the alcohol as well, the liquor, I guess, yeah.

21 Q All right. Sir, when you were at the  
22 police vehicle with the patient, did you see any  
23 other officers dealing with him? Did any officers  
24 actually have anything to do with Mr. Harvey-Zenk  
25 when you were with him?

1           A     Not really, no.

2           Q     I'm going to take you now to the first  
3 interview that you were handed, and that would be  
4 the East St. Paul interview, sir. It would be  
5 exhibit 78, found at tab D.19.c. This interview,  
6 sir, was taken on March 3rd -- or excuse me, March  
7 24th, 2005?

8           A     Yes.

9           Q     As it shows in the upper right-hand  
10 corner?

11          A     Yes.

12          Q     And I take it this is the interview  
13 that you did give on that date, sir?

14          A     Yes, it is yeah.

15          Q     And this is pretty much a month after  
16 the motor vehicle collision?

17          A     That's correct.

18          Q     Had you been interviewed by the East  
19 St. Paul Police before this actual interview, sir?

20          A     No.

21          Q     Had you been interviewed by any police  
22 service prior to this interview?

23          A     No.

24          Q     How did this interview come about?

25          A     They had phoned me to come up and give

1 a statement and I went up.

2 Q So did you go to the East St. Paul  
3 Police Station?

4 A Yes, I did.

5 Q Were you given any explanation for why  
6 it took a month for them to take the statement  
7 from you?

8 A No.

9 Q And you will note that the interview  
10 begins at 10:00 o'clock, that would be in the  
11 morning, and ends at 10:15 on the 24 hour clock?

12 A Yes.

13 Q So that's an elapsed time of 15  
14 minutes?

15 A Yes.

16 Q Is this your handwriting on the page,  
17 sir?

18 A No, it is not.

19 Q And do you know whose handwriting that  
20 is?

21 A Whoever was doing the interview.

22 Q Sir, do you recall how many people  
23 were in the room when the interview was being  
24 done?

25 A Just me and the other guy.

1           Q     The other guy would be the police  
2 officer?

3           A     Yes.

4           Q     You will notice in page 2, on the  
5 lower left-hand corner, there is not a name that  
6 you would be familiar with, but those of us here  
7 would recognize that as A. Bakema?

8           A     Yes.

9           Q     Does that ring any bells for you?

10          A     Yes.

11          Q     So it was Mr. Bakema who interviewed  
12 you?

13          A     Yes.

14          Q     Do you know him, sir?

15          A     Just to see him once in a while, just  
16 from work.

17          Q     We have read some passages from this  
18 narrative, but you basically in this statement,  
19 sir, you write one basic page, you dictate or read  
20 to him, or talk to him about one page of  
21 information, and he records it. And then there  
22 are a series of questions asked and answers given  
23 on the next page?

24          A     Yes.

25          Q     And on the first page, sir, can you

1 take a look through there and identify the  
2 information you have about what happens when you  
3 get in the back of the ambulance with Mr. Derek  
4 Harvey-Zenk? You have described in the first  
5 seven or eight lines about attending the scene,  
6 getting information from the medical supervisor  
7 and then you hop in the back with him. Can you  
8 read from there, sir, are you able to read his  
9 handwriting?

10 A His handwriting?

11 Q You can do it on the typed statement,  
12 it is probably easier for you.

13 A Where do you want me to start?

14 Q "I hopped in the back with him."

15 A "I hopped in the back with him.  
16 I asked if he was hurt anywhere. I  
17 can't remember where he was hurt but  
18 it was minor and he didn't want to be  
19 treated or transported by us. I got  
20 his personal information from him as  
21 well as his past medical history.  
22 This took about five minutes. He  
23 signed the release, 1026 form. He was  
24 looking pretty upset in the back and  
25 asked about the lady he had hit. And

1 I told him I wasn't sure because  
2 Winnipeg Ambulance was taking care of  
3 her."

4 I get the statement. Then I left the truck.

5 Q I'm going to take you through 245 and  
6 ask you some questions. You described this  
7 gentleman as being sullen, quiet, worried?

8 A Um-hum.

9 Q And here you describe him as pretty  
10 upset. Are you able to elaborate what would cause  
11 you to put on this statement that he was looking  
12 pretty upset?

13 A Upset and sullen are pretty similar,  
14 aren't they?

15 Q You were trying to indicate the same  
16 thing that you are trying to indicate to the  
17 Commissioner today?

18 A Yes.

19 Q You indicated in here that you noticed  
20 the smell of alcohol?

21 A Yes.

22 Q And he didn't respond and you left it  
23 at that?

24 A Yes.

25 Q Now, sir, you see a number of

1 questions and answers that follow?

2 A Yes.

3 Q And the first question is:

4 "Was there an officer in the truck?

5 And you respond to that. The next question was:

6 "How strong was the smell of liquor?"

7 A Yeah.

8 Q And that's where you get that answer

9 that you had to explain to us?

10 A Yes.

11 Q "Q And did you have any further

12 conversation with this male?

13 A No.

14 Q Can you describe the male?"

15 And then you give a description consistent with

16 what you gave us today.

17 "Q Is there anything else?

18 A Not really."

19 Sir, do you know whether this was the sum total of

20 the questions and answers that were posed to you

21 during that interview?

22 A Yeah, I think so, this is what I

23 signed, yeah.

24 Q I take it everything in here was

25 accurate, as far as you were concerned at that

1 time?

2 A I would say yeah.

3 Q Sir, you didn't -- at the time that  
4 you had this interview, did you have your records  
5 with you, sir?

6 A No, I didn't.

7 Q Because I notice you say "at the end  
8 of February" rather than giving a specific date?

9 A Yes.

10 Q And I notice there are no dispatch  
11 times or anything of that nature here?

12 A That's right.

13 Q Do you recall whether he asked you for  
14 that information?

15 A No, he didn't.

16 Q Did he ask you to bring any of that  
17 information down to the interview?

18 A No, he just said just show up.

19 Q Does he ask you anywhere where you  
20 noticed any signs of impairment on this gentleman?

21 A No, just how strong was the smell of  
22 liquor.

23 Q And that was provoked by your  
24 observation that you had smelled liquor?

25 A Yes.



1 Q Is there anywhere in there where he  
2 asks you about his speech, whether his speech was  
3 slurred or anything like that?

4 A No.

5 Q Anything about his face being flushed  
6 or red or anything like that?

7 A No.

8 Q Eyes bloodshot?

9 A No.

10 Q Disheveled?

11 A No.

12 Q Whether he was able to manipulate the  
13 pen when signing the forms, anything like that?

14 A Nothing like that.

15 Q The length of time you were with him?

16 A No.

17 Q What his demeanor was like? Did he  
18 follow up on what upset meant?

19 A No.

20 Q Did he ask you whether you ever  
21 mentioned any of this to a police officer?

22 A Not that I know of, no.

23 Q And you indicated that he made no  
24 attempt to get the records or dispatch notices or  
25 anything like that, sir?

1           A     No, he didn't.

2           Q     And you are together for 15 minutes,  
3 would that be an accurate description, you are  
4 satisfied with the log time he has here?

5           A     Yes.

6           Q     And during that time you are answering  
7 and he is writing; is that fair?

8           A     Yes.

9           Q     Sir, you had that subsequent interview  
10 with the RCMP that we identified on May 25th,  
11 2006?

12          A     Yes, sir.

13          Q     You spoke to Corporal Kennett and  
14 Officer Doyle?

15          A     Yes.

16          Q     They indicated to you, sir, that they  
17 are doing a continuation of the investigation  
18 regarding the fatality?

19          A     Yes.

20          Q     What did you understand about the  
21 nature of that investigation, sir, and why the  
22 RCMP were coming to see you?

23          A     I thought they were coming to talk  
24 about Mr. Harvey-Zenk, but it seemed to be more of  
25 an investigation into the investigation, into the

1 East St. Paul Police.

2 Q And were you surprised by that?

3 A Yes, I was.

4 Q Were you told that's what it was going  
5 to be?

6 A No.

7 Q Sir, you got a subpoena, I understand,  
8 to come and testify in court?

9 A Yes.

10 Q And there was some concern in your  
11 RCMP statement there back in 2006, that you were  
12 worried that you wouldn't be able to attend the  
13 full hearing, you were going to have to go and sit  
14 through the whole thing?

15 A Yeah.

16 Q Are you aware of who was trying to  
17 call you as a witness?

18 A No.

19 Q And what possibilities went through  
20 your head?

21 A Either side.

22 Q Either the Crown or the defence?

23 A Yes.

24 Q Had no one contacted you or spoke to  
25 you, sir?

1 A No.

2 Q And in 2007, when the trial was going  
3 to take place, you got subpoenaed to that?

4 A Yes, I did.

5 Q Did anybody contact you and interview  
6 you, sir?

7 A No, just phoned me one day and told me  
8 I didn't have to go.

9 MR. PACIOCCO: I have no further  
10 questions for you sir, but the other lawyers will,  
11 so if you will just remain there, please?

12 BY MR. ZAZELENCHUK:

13 Q Just a couple of points, sir.

14 A Okay.

15 Q You, as part of your work, pick up  
16 people that are either sick or injured often as  
17 not?

18 A Yes.

19 Q And often as not, take them to the  
20 emergency of the nearest hospital?

21 A Yes, we do.

22 Q And when you get to the emergency, the  
23 doctor in charge or the triage nurse will often as  
24 not ask you questions about your observations of  
25 the patient that you've picked up, and any other

1 information that you may have gathered; isn't that  
2 correct?

3 A That's correct.

4 Q So when you attend on a person to help  
5 them, it is part of your job to make observations  
6 about them?

7 A That's right.

8 Q And you use your senses, you use your  
9 eyes, your ears, your nose; correct?

10 A Yes.

11 Q Something you are trained to do?

12 A I guess so.

13 Q I wonder if Madam clerk would be good  
14 enough to show you exhibit 74, it is F-3.37, Your  
15 Honour, page 1313.

16 If you could just turn to the second  
17 page? Do you see the numbers 1313 at the bottom  
18 of the page?

19 A Yes.

20 Q Okay. There is one photo at the top  
21 of the page. Do you recognize that person?

22 A I guess that would be him. I don't  
23 know. It has been three years.

24 Q You say you guess that would be him,  
25 his name is underneath it?

1 A His name is underneath it.

2 Q But for the name, would you recognize  
3 that?

4 A No, he looks a little more heavier in  
5 this one.

6 Q He looks heavier in the picture than  
7 he actually was?

8 A I think so, yes.

9 MR. ZAZELENCHUK: Okay. Thank you,  
10 sir. Madam clerk will take that back from you.

11 THE COMMISSIONER: How many people  
12 would you have attended in the last three years?

13 THE WITNESS: Myself, probably about  
14 700, with me and my partner, you can double that  
15 to about 1,400.

16 MR. McDONALD: I have no questions,  
17 Mr. Commissioner.

18 MR. WEINSTEIN: Mr. Commissioner, I  
19 have questions, but I request a brief recess to  
20 review that sheet that we haven't seen before that  
21 he filled out, the run sheet, before I commence my  
22 examination.

23 THE COMMISSIONER: All right. Where  
24 is it?

25 MR. CLIFFORD: Mr. Commissioner, I can

1 give you some assistance with that question. Once  
2 it was filed as an exhibit, it was brought to the  
3 back, Mr. Giasson had arrangements to have  
4 somebody copy it, and I understand that copies are  
5 being made or have already been made.

6 THE COMMISSIONER: How long do you  
7 think it will take to make the copies?

8 MR. CLIFFORD: Five minutes.

9 THE COMMISSIONER: Let's take a break  
10 for five minutes.

11 THE CLERK: All rise. This Commission  
12 is in recess.

13 (Proceedings recessed at 2:59 p.m. and  
14 reconvened at 3:13 p.m.)

15 THE CLERK: All rise. This Commission  
16 is now open. Please be seated.

17 BY MR. WEINSTEIN:

18 Q When you got to the scene, Mr. Rosser,  
19 with your partner, Rollie was -- Rolland Fontaine  
20 was just in the car where Mr. Zenk was just for a  
21 second; is that correct?

22 A Yes.

23 Q I say a second because that's what you  
24 told Commission Counsel in your interview. So he  
25 was in there just a second. It was you that was

1 going to be dealing with Mr. Zenk?

2 A That's right.

3 Q And when you were dealing with  
4 Mr. Zenk, Mr. Fontaine was elsewhere?

5 A Yes.

6 Q And whether you were there 10 or 15  
7 minutes, Mr. Fontaine didn't come back into the  
8 car?

9 A No.

10 Q Now, you say that the majority of time  
11 his answers were brief; is that correct?

12 A Yes, they were.

13 Q Okay. The questions you were asking,  
14 I assume, just listening to your evidence,  
15 Mr. Rosser, didn't exactly necessitate a long  
16 answer; am I correct?

17 A No, they didn't, but he didn't  
18 elaborate on any questions either.

19 Q Yeah. I mean, you asked him his age?

20 A Yes.

21 Q So he gave a number?

22 A Yeah.

23 Q Okay. You don't have to elaborate on  
24 that.

25 A No, certainly not.



1 Q Marital status?

2 A Just for next of kin I think I had  
3 asked, yeah.

4 Q And he gave you the name of his wife,  
5 I believe?

6 A Yes.

7 Q Address, he gave you that?

8 A Yes.

9 Q That doesn't need elaboration. He  
10 gives you a suite number and -- something like  
11 that?

12 A Yeah.

13 Q Okay. So, you know, the questions you  
14 asked, am I correct, probably the longest sentence  
15 that he answered was asking about the lady in the  
16 other vehicle?

17 A Pretty much, yes.

18 Q Right. Now, you are a man of, as  
19 you've told us and told the Commissioner, of much  
20 experience based on the number of times you've  
21 attended on calls?

22 A Yes.

23 Q And many of those would be to accident  
24 scenes?

25 A Yes.

1 Q Correct?

2 A Yeah.

3 Q Some where there isn't an impaired  
4 driver, some that there are obviously impaired  
5 drivers; correct?

6 A Yes.

7 Q In this particular case -- or let me  
8 just ask you this. If you are dealing with a  
9 person -- and based on your experience, you've had  
10 much -- who is obviously impaired, is it not  
11 something that you would put down on your sheet?

12 A Yes.

13 Q A person that's obviously impaired to  
14 you, based on your observations, you come to the  
15 opinion he is obviously impaired, you would put  
16 that down on your sheet; correct?

17 A Yes.

18 Q That's not on this sheet; correct?

19 A That's right.

20 Q Now, just going again on your  
21 experience, when you are dealing with a person who  
22 is obviously impaired, their face -- am I not  
23 correct, and you correct me if I'm wrong, you have  
24 had more experience -- is obviously flushed a lot  
25 of times?

1           A     A lot of times, yeah.

2           Q     And I notice the skin in this  
3 particular case is unremarkable; correct?

4           A     Yeah.

5           Q     To me then it is not flushed, correct?

6           A     Yeah. Yeah.

7           Q     Now, when a person is obviously  
8 impaired, does that person's pupils change?

9           A     They get sluggish, yeah.

10          Q     Sluggish. I see under pupils here,  
11 there is a check of, a notation "sluggish, no  
12 reaction or normal." Correct?

13          A     Correct.

14          Q     We have got normal here?

15          A     Okay.

16          Q     So not a symptom of impairment because  
17 we have got pupils that are normal?

18          A     Right.

19          Q     So the only thing you can tell us,  
20 Mr. Rosser, in fairness, is you detected an odour  
21 of liquor; correct?

22          A     That's correct.

23          Q     All right. And just because a person  
24 has an odour of liquor on their breath doesn't  
25 automatically lead you to the opinion that person

1 is impaired; correct?

2 A That's right, yeah.

3 Q Because you might have a beer -- I  
4 don't know if you are a beer drinker, but you  
5 might have a beer, three hours later it still may  
6 smell of beer, your breath?

7 A Possibly, yeah.

8 Q And certainly by the odour of liquor,  
9 you certainly can't tell how much a person has  
10 been drinking, correct? Just by the odour I'm  
11 talking about?

12 A No, no.

13 Q He was oriented and alert; correct?

14 A That's right.

15 Q A lot of times when you deal with an  
16 obviously impaired person, they are confused,  
17 disoriented; is that correct?

18 A That's right.

19 Q And that's why you would put down  
20 under verbal, "confused or inappropriate words"?

21 A That's right.

22 Q But in this one you have got "oriented  
23 and alert"; correct?

24 A That's right.

25 Q Now, did he have occasion to have to

1 pull out his wallet as a result of anything that  
2 you were asking him, sir?

3 A I can't remember whether it was out  
4 already, if the police wanted it before I got  
5 there or not.

6 Q You didn't notice anything in the  
7 vehicle about his hand coordination, nothing that  
8 stands out; is that correct?

9 A That's right.

10 Q Now -- and he did have to hold the pen  
11 and write, correct?

12 A Yeah.

13 Q Because you wanted him to sign the  
14 release; correct?

15 A That's right.

16 Q Now, just jumping ahead to the  
17 statement that you gave to East St. Paul, that you  
18 have had an occasion to read, and I'm not going to  
19 go through all of it. You told the Commissioner  
20 and us that, no, you didn't tell any police  
21 officer at the scene about detecting the odour of  
22 liquor; correct?

23 A I believe that's correct, yeah.

24 Q And that's what you told the  
25 Commission Counsel in their interview. You made

1 it very clear to them, pages 26 to 28 of your  
2 interview with Commission Counsel, you say, no,  
3 you don't generally do that. Correct?

4 A That's right.

5 Q But in the statement, okay, you did  
6 tell -- I assume Mr. Bakema asked you to tell him  
7 what your involvement was, correct, in the  
8 statement, in the statement that you gave at the  
9 police station?

10 A Okay.

11 Q You were asked to basically give your  
12 report, tell what happened?

13 A Yes.

14 Q Okay. And that's what you did?

15 A Yes.

16 Q And you had an opportunity to read it  
17 before you signed it?

18 A Yes.

19 Q Okay. And you were satisfied  
20 basically with the accuracy of your statement,  
21 because you signed it; correct?

22 A Yes.

23 Q Okay. And you told Mr. Bakema that  
24 you smelled the odour of liquor on his breath;  
25 correct?

1           A     Yeah, at the police station, yeah.

2           Q     And that's certainly in here?

3           A     Yeah.

4           Q     It is not deleted, is it?

5           A     Right.

6           Q     And he went further, he even asked you  
7 how strong was the smell of liquor? And you ended  
8 up saying at the end it was noticeable; correct?

9           A     Yes.

10          Q     And just on that point, my learned  
11 friend, Mr. Paciocco, took you to the bottom of  
12 page 4, and this is the interview you had with the  
13 RCMP, he took you to the bottom of page 4.

14          Basically, the police officer is asking you, did  
15 you smell it initially when you first got in the  
16 police car, or the police truck? And he asked  
17 you, or put to you at the top of page 5:

18                   "Yeah. It wasn't very strong but I  
19                   remember smelling it."

20          Do you remember he asked you that? This is your  
21 RCMP interview, sir, top of page 5?

22          A     Yes.

23          Q     Okay. And he left it there, but later  
24 on you gave a more, a fuller answer that wasn't  
25 canvassed with you. You see about halfway down

1 the page, it is Kennett, he is the RCMP officer,  
2 says:

3 "Smell?"

4 Do you see where I'm at, sir?

5 A Yes.

6 Q At page 5, and you answered:

7 "Yeah, yeah. Like it didn't fill up  
8 the truck or nothing like that, you  
9 had to sit pretty much right beside  
10 him to smell it."

11 Okay?

12 A Okay.

13 Q And that's as you recall it, correct?

14 A Yeah.

15 Q It wasn't an overpowering smell in the  
16 truck, it didn't fill up the truck?

17 A Yeah.

18 Q And you were able to detect the odour  
19 of liquor because you were standing -- or excuse  
20 me -- sitting right next to him?

21 A Yes.

22 Q Okay. Now, my learned friend,  
23 Mr. Paciocco, when he was asking you questions  
24 about the statement that you gave to the East St.  
25 Paul Police Department, asked you whether or not



1 Mr. Bakema asked you about how his eyes were, how  
2 he handled the pen, if his words were slurred,  
3 whether you noticed any symptoms of impairment,  
4 whether -- how his face appeared; do you remember  
5 him asking you that?

6 A Yes.

7 Q You've read your Commission interview  
8 statement; correct?

9 A Yes.

10 Q Okay. And so have I, a couple of  
11 times, and those same questions he asked you, you  
12 were never asked by Commission Counsel about his  
13 eyes and how he handled the pen, or slurred, or  
14 any symptoms of impairment, or his face. Those  
15 questions were never asked by Commission Counsel  
16 of you; correct?

17 A That's right.

18 Q And when you were interviewed by the  
19 RCMP, okay, this was before Commission Counsel,  
20 and you've read it, I have read it a couple of  
21 times, nowhere in there, as I've read it, do the  
22 RCMP ask you about his eyes, or how he handled the  
23 pen, or any symptoms of impairment or, you know,  
24 his face, they didn't ask you that either;  
25 correct?

1 A Correct.

2 Q So no one asked you that?

3 A Right.

4 Q So you are dealing with a person with  
5 a bloody nose that you are sitting beside;

6 correct?

7 A Yes.

8 Q Who is, based on your observation, and  
9 this comes from your interview with Commission  
10 Counsel, shaken, sullen, concerned?

11 A Yes.

12 Q That's how you sort of categorize your  
13 observation of Mr. Zenk?

14 A Yes.

15 Q Okay. Let me ask you this, and this  
16 is based on your experience; would you not agree,  
17 that it is easier to detect the odour of liquor  
18 when a person is in a confined space as opposed in  
19 the outdoors where there is a breeze?

20 A Yes, for sure.

21 Q For sure?

22 A For sure.

23 Q It is not that easy to detect the  
24 smell of liquor on a person's breath outside when  
25 there is a breeze; correct?

1           A     That's correct.

2           Q     And we know from exhibit 61, on the  
3     day in question, at 7:00 o'clock there was a  
4     breeze of 15 kilometres an hour. Take my word for  
5     it, that's what has been filed with the  
6     Commission.

7                     Now, you didn't know he was a peace  
8     officer, as I have read your interviews, until  
9     basically after you have left the scene?

10          A     That's right.

11          Q     And I think, as I recall your  
12     interviews, it was Mr. Fontaine that told you he,  
13     in fact, was a police officer?

14          A     Yes.

15          Q     Okay. If I may just have a moment,  
16     Mr. Commissioner.

17                     Maybe I asked you this, but at no time  
18     did you detect any slurring of words; correct?

19          A     Not that I noticed, I don't think.

20          Q     And had you noticed, you would have  
21     made a note, or checked off a different box than  
22     you did?

23          A     I would have noted, yes.

24                     MR. WEINSTEIN: Yes. Thank you, sir.

25                     MR. JACK: No questions.

1 THE COMMISSIONER: Thank you. I would  
2 have thought, Mr. Prober, that you would have  
3 thanked Mr. Weinstein and sat down.

4 MR. PROBER: I'm tired of thanking  
5 him.

6 BY MR. PROBER:

7 Q In any event, I do have a few  
8 questions. One of them in fact arises out of what  
9 Mr. Weinstein -- as usual I have to lower the mike  
10 a little -- what Mr. Weinstein asked you, and he  
11 may have misspoken. You at no time in your  
12 statement to the East St. Paul Police, or to the  
13 RCMP, or to Commission Counsel, that I have noted,  
14 indicated there was a smell of alcohol coming from  
15 his breath. You never used the word breath, did  
16 you?

17 A No, I didn't.

18 Q No. You said there was a smell of  
19 liquor coming from him, right?

20 A Yes.

21 Q For all you know, it could have been  
22 from his clothing; correct?

23 A Possibly.

24 Q Yes. And you know, of course, that  
25 whether you have one beer or two beers and that's

1 it, you could still smell of liquor, still smell  
2 the beer; right?

3 A Yes, you can.

4 Q Okay. When you asked Derek  
5 Harvey-Zenk his name, did you have any problem  
6 understanding him?

7 A No, I don't think so.

8 Q When you asked him his address, did  
9 you have any problem understanding him?

10 A No.

11 Q When you asked him his wife's name,  
12 did you have any problem understanding him?

13 A No.

14 Q And when you asked him any question,  
15 did you have any problem understanding what he was  
16 saying?

17 A I can't recall asking him to repeat  
18 anything.

19 Q So the answer would be that you don't  
20 recall having any problem understanding what he  
21 was saying?

22 A Right.

23 Q Okay. Do you recall his having any  
24 difficulty removing his driver's licence?

25 A I can't recall if it was out already

1 or not. I believe it was.

2 Q All right. What about his medical  
3 card?

4 A I believe that was out too.

5 Q That was out as well. All right.  
6 Fair enough.

7 A I don't remember us going through his  
8 wallet.

9 Q Okay. But did he go through his  
10 wallet?

11 A I'm not sure. I don't remember.

12 Q You don't know. All right. Did he  
13 have any problems signing the release form?

14 A As far as I remember, no.

15 Q Okay. Today you said that you were  
16 in -- it was suggested to you actually by  
17 Commission Counsel that you thought you were in  
18 the back of the police truck with Harvey-Zenk for  
19 about 15 minutes, and you agreed with that  
20 suggestion?

21 A Yes.

22 Q Do you recall telling the Commission,  
23 in your interview with them, that it was 10  
24 minutes? And I will refresh your memory if need  
25 be. If you look at the transcript -- which I

1 thought I brought with me, it is right here, I  
2 believe it is at page 14. Do you have that in  
3 front of you?

4 A Yes.

5 Q Yes, page 14 at line 13, this question  
6 is asked -- when you are there?

7 A Okay.

8 Q Are you there?

9 A I think so.

10 Q "How long did you spend in the back  
11 of the car with him?

12 I believe it was about ten minutes."

13 A Yes.

14 Q Which is more accurate? Ten minutes  
15 or 15 minutes?

16 A I have got 5 minutes somewhere else  
17 here too, I have got 5, 10 and 15.

18 Q So the 15 minutes is more accurate  
19 then?

20 A I would say so, yes.

21 Q Okay. Thank you. You indicated that  
22 there were no signs of a concussion; right?

23 A Yes.

24 Q I think you said that. I didn't hear  
25 it clearly but --

1           A     Yes.

2           Q     But you are aware that a concussion  
3     may not be evident immediately? I'm thinking of  
4     hockey players, for example, who find they have a  
5     concussion a day later, after they have been hit.  
6     Did you -- are you aware of that, that a  
7     concussion could be evident at some later point in  
8     time?

9           A     Sure.

10          Q     Um-hum. And you said that you didn't  
11     think he was in shock. You are not saying he  
12     wasn't, you just didn't think that; right?

13          A     I'm saying he wasn't.

14          Q     You are saying he wasn't. Could he  
15     have been in shock earlier, like a half an hour  
16     before you met with him, and then sort of come out  
17     of that shock -- like immediately upon impact and  
18     shortly thereafter?

19          A     Possibly.

20          Q     All right. You said at one point  
21     that -- you said, I think that he, Harvey-Zenk,  
22     knew what to say and when to say it. And when you  
23     asked him his name, he gave you his name; was he  
24     supposed to say anything more than that?

25          A     No.



1           Q     When you asked him his address and he  
2     gave you his address, was he supposed to say  
3     anything more than that?

4           A     No.

5           Q     That's something that you are  
6     speculating about now, since you found out that he  
7     was a police officer at the time?

8           A     No. I say at the time that -- like  
9     when I was doing my assessment on him,  
10    interviewing him type of thing, he would just  
11    answer, just short and that's it.

12          Q     He would answer enough to answer -- he  
13    would give you enough information to answer the  
14    question?

15          A     Yes.

16          Q     Right?

17          A     Yeah.

18                MR. PROBER: Thank you. Those are all  
19    of my questions.

20                THE COMMISSIONER: Mr. Green?

21                MR. GREEN: No, I have no questions.

22                THE COMMISSIONER: Thank you.

23                MR. McFETRIDGE: No questions.

24                THE COMMISSIONER: Re-examination?

25

1 BY MR. PACIOCCO:

2 Q Sir, dealing with the last point  
3 raised by my friend, Mr. Prober, first you  
4 indicated that when he gave you an answer he  
5 answered enough to answer the question; is that  
6 correct, sir?

7 A That's correct.

8 Q I take it, sir, when he didn't give  
9 you an answer, he didn't answer enough to answer  
10 the question?

11 A That's right.

12 Q Sir, I also noticed that every single  
13 time you describe the smell of alcohol, you  
14 describe it as coming from him?

15 A Yes.

16 Q Did you allow for the possibility that  
17 it was coming from his clothing, sir?

18 A Well, I didn't go up and smell his  
19 breath.

20 Q Okay. Where do you think the smell  
21 was coming from, sir?

22 A From his breath.

23 Q And how close were you to him, sir?

24 A Inches at times.

25 Q And were you inches from his face?

1           A     Yeah.

2           Q     Now, my friend also had you indicate  
3     that you had provided estimates of the time in the  
4     vehicle of 5, 10 and 15 minutes, sir?

5           A     Yes.

6           Q     On the occasions when you provided the  
7     5 and 10 minute estimates for the time in the  
8     vehicle, had you used the log reports the way you  
9     did today when you provided the 15 minute  
10    testimony?

11          A     No.  No, I didn't.

12          Q     And, sir, have you ever seen anyone  
13    develop a concussion after the fact without  
14    displaying any symptoms?

15          A     Personally, no.

16                 MR. PACIOCCO:  I have no further  
17    questions, Mr. Commissioner.

18                 THE COMMISSIONER:  Thank you very  
19    much, sir.

20                 THE WITNESS:  Thank you.

21                 MR. CLIFFORD:  Mr. Commissioner, the  
22    next witness and final witness for today is  
23    Rolland Fontaine.

24                 ROLLAND ALLAN FONTAINE, having first  
25    been duly sworn, testified as follows:

1 BY MR. CLIFFORD:

2 Q Good afternoon, Mr. Fontaine.

3 A Good afternoon.

4 Q Sir, our previous witness has told the  
5 Commission a little bit about you and your  
6 experience, but I will follow up with some general  
7 questions about that.

8 At the relevant time, you were a  
9 paramedic with the Selkirk Service?

10 A That's correct.

11 Q And if you could take a moment and  
12 tell us when you started your career as a  
13 paramedic?

14 A Back in, after the summer of 1986.

15 Q And could you tell the Commission a  
16 little bit about your education to become a  
17 paramedic, and describe your career path and  
18 development that lead you up to your involvement  
19 on the day in question?

20 A My career with Selkirk grew, and my  
21 knowledge, I was educated through the service  
22 there over the years, and that has been my whole  
23 and complete career as a paramedic has been there.  
24 I was just finishing my nineteenth year on  
25 February 25th of 2005.

1           Q     And we've heard, sir, from Mr. Rosser  
2     that there are requirements for you to continue in  
3     your practice of a paramedic, that there are  
4     continuing education requirements, you had to go  
5     to school to become a paramedic, you have to keep  
6     yourself current. And I understand that you have  
7     done that throughout the 19 years?

8           A     Yes, that's true.

9           Q     And I understand that prior to  
10    February 25th of 2005, you had many occasions to  
11    investigate fatal motor vehicle accidents?

12          A     Yes.

13          Q     And in addition to accidents involving  
14    fatalities, you had also investigated, or treated  
15    individuals in cases where alcohol was a factor?

16          A     That's true, yes.

17          Q     I would like to ask you some general  
18    questions now about the shift, the  
19    February 24th/25th, 2005. We've heard who was  
20    doing the driving that day. And what is the  
21    dynamics, sir, when one individual is driving and  
22    the other one is riding in the passenger seat,  
23    what will take place?

24          A     Your passenger is the attendant who  
25    primarily does the first assessment and takes care

1 and control of the patient that comes into our  
2 care. En route to the call the attendant on the  
3 passenger side will be my right eyes on the right  
4 side, viewing the highways and intersections that  
5 we pass through. He will tell me if it is safe to  
6 go, when it is not, and help me in having four  
7 eyes instead of two on your run to the call.

8 Q We've heard previously from you and  
9 Mr. Rosser, and it is not a matter of controversy  
10 that you two had been partners for approximately  
11 five years at that point; is that correct?

12 A At that point, yes, I believe it is  
13 about five years.

14 Q I want to ask you about the one other  
15 general aspect of being a paramedic and giving  
16 medical treatment, and that comes to the issue of  
17 signing off or completing a 1026 form. Can you  
18 tell the Commission what a 1026 form is?

19 A A 1026 form is the back of our run  
20 sheet that we get from the Province of Manitoba.  
21 It leaves us a little questionnaire to read to the  
22 people that are refusing our care, that if they  
23 sign this and do not want our care, that they are  
24 leaving us not responsible for their well-being  
25 because of what had happened to make us meet them

1 that day. And when they sign it, that we are free  
2 to leave them in their own care and control or  
3 whoever they are in custody with at that time, and  
4 we leave. We are then able to leave the scene and  
5 not worry about them.

6 Q And if somebody indicates to you that  
7 they don't want further medical care, that they  
8 are declining the opportunity to see a doctor or  
9 obtain further medical services, I take it, it is  
10 not just simply a matter of them indicating that  
11 to you. Do you have some follow-up work to do to  
12 make sure they are making the appropriate decision  
13 and they have the capability to do so?

14 A Yes. We do keep an eye on them  
15 through our conversation, let them know what we  
16 would like to do if we were to take them into our  
17 care, see how they are answering appropriately.  
18 Of course, you see them, if they are having any  
19 problem with their breathing, or if they have any  
20 problem answering the questions that you are  
21 asking them. So spending a little bit of time  
22 with them can pretty much help you to believe that  
23 they are okay by refusing coming into our care.

24 Q And I take it, it is not just simply a  
25 matter as well of looking at them externally to

1 determine whether they are bleeding or they are  
2 suffering from an injury that you can observe, you  
3 have to take some time to ascertain whether there  
4 is an internal injury?

5 A Yes, we have to ask them, can I take a  
6 look at you, give you a quick assessment? Some  
7 people say no, don't touch me, and we don't. Some  
8 people will allow us to give them what we call a  
9 primary and secondary assessment. And that helps  
10 us to get more information, to give us information  
11 where we are free and feel good about leaving them  
12 and not taking them into our care.

13 Q Do you take steps to ensure that a  
14 patient is not suffering from a head injury or  
15 that they are under the effects of shock when  
16 declining medical treatment?

17 A Yeah, that's important. Head injury  
18 and shock is -- shock can be where it is in the  
19 mind, where you are blown away, what is going on?  
20 Your vitals are good, your body is complete and  
21 whole, and your mind is going 100 miles a minute.  
22 We notice that in people that we would think they  
23 are going through their worst nightmare at the  
24 time, so they don't have a lot to say, don't want  
25 to talk about it. And we see that in a lot of



1 people, that when we meet them on calls where the  
2 police say they are either under arrest or they  
3 are in our car, and we find that this person may  
4 have been the cause of the accident, that they  
5 have a certain amount of stress, I could say kind  
6 of like impending doom, where they are not very  
7 happy. They really don't want to talk to you,  
8 don't want to spend any time talking about what  
9 happened. They try and speak as little as  
10 possible, but they still speak.

11           If people are in shock where it is a  
12 head injury, we will find if it is a slight  
13 concussion or an evident concussion, they will  
14 answer you inappropriately, or appropriately,  
15 forget that you just talked moments earlier,  
16 whether it is 30 seconds to a minute. You can  
17 tell them the same question as many as eight, ten  
18 times in a matter of ten minutes, because they can  
19 not keep in recollection what you mentioned to  
20 them 30 seconds or a minute earlier.

21           If a person has a blood pressure  
22 that's not appropriate, and they are sustaining  
23 life, and they are sitting upright, and it is  
24 harder for the brain to meditate, their decisions,  
25 their answering is inappropriate. And when that

1 comes, EMS will notice it right away, and we will  
2 attempt to do our best to get him into our care  
3 and get him to an emergency room where he needs to  
4 be.

5 Q Okay. Mr. Fontaine, I'm going to come  
6 back to one of the issues that you raised, and  
7 that is your experience in dealing with people  
8 that are in police cars, et cetera, and there may  
9 be a notion that they are being charged, but I  
10 will come back to that in your examination, but I  
11 would like now to bring you to the point when you  
12 first arrive on scene. Can you bring your mind to  
13 that point, sort of picture that day and that  
14 specific time in your mind's eye, and just in a  
15 narrative, if you can, indicate to Commissioner  
16 Salhany what is happening when you pull up and  
17 what you do?

18 A Pulling up on the scene, we see the  
19 collision happened and that the vehicles involved  
20 are mostly on the south side of Highway 101 and  
21 59. We see the East St. Paul Police SUV, Ford  
22 Explorer, on my left side. East St. Paul Fire  
23 were on scene. They have some really large rigs.  
24 They were, I believe, on both sides of Highway  
25 101, on my side and on the other lane. Across the

1 lane where all of the vehicles were, I noticed a  
2 little red -- sorry, a little yellow vehicle,  
3 pretty destroyed, no top on it, couldn't really  
4 figure out what kind of a vehicle it was.

5 Q I'm going to ask you a question about  
6 that vehicle. Had you been traveling that road as  
7 part of your work, covering work, going back and  
8 forth from work? I'm not asking you where you  
9 live necessarily, but were you familiar with that  
10 stretch of highway? And secondly, had you seen  
11 that car before?

12 A I did see that car numerous times. I  
13 drive that road regularly to my mom's house, and  
14 to go to church, and to go to my brother's house.  
15 So that was a road that I travelled very often,  
16 and had been in a pack of cars on numerous  
17 occasions with that little yellow possibly Chevy  
18 Sprint convertible.

19 Q Did it stand out?

20 A It sure did.

21 Q Now, let's go back to what you are  
22 observing at the scene. When I stopped you to ask  
23 you about the roadway and whether you had seen the  
24 yellow car previously, carry on, what else were  
25 you observing?

1           A     There was a number of vehicles just on  
2     the south side of 101, in the lane, there was a  
3     Winnipeg Ambulance sitting just a few vehicles in  
4     facing the north. I believe there also was a  
5     Winnipeg emergency response vehicle as well, a  
6     supervisor truck. And later, as I walked through  
7     the scene, I also noticed the pick-up truck that I  
8     understood to have been involved in the collision  
9     as well.

10           Q     Now, when you first arrived, were you  
11     directed to go anywhere by anybody?

12           A     We were directed to the East St. Paul  
13     SUV, which was facing the north. And we were  
14     instructed that there was a patient in that  
15     vehicle, and if we were looking for a patient,  
16     that was the only one that we were instructed that  
17     needed to be seen or should be seen.

18           Q     And how long approximately were you on  
19     scene, are you able to say, before you were  
20     directed over to the SUV?

21           A     I would say from the time that we  
22     stopped the truck and hopped out, we were probably  
23     at the SUV in about a minute.

24           Q     Carry on from there, sir, what do you  
25     do? You are directed to the SUV, what happens?

1           A     I was walking towards the SUV. The  
2 individual sitting in the SUV was on the passenger  
3 side, rear, in the back seat. And I was driving,  
4 Ted was attending. He was going around to the  
5 door immediate to the occupant, and I walked  
6 across, opened the door opposite to the occupant.  
7 And I just leaned in with my hands on the seat and  
8 started to talk with the gentleman, introducing  
9 ourselves, and asking if he is interested in  
10 medical care.

11           Q     Can I ask you about any observations  
12 you made upon opening the door of the SUV?

13           A     That it was a gentleman, a gentleman  
14 probably about my age or younger, I thought. He  
15 was sitting, looking straight ahead, hands between  
16 his knees, not moving about, and answered my  
17 questions of, no, he wasn't interested in medical  
18 care, not giving me any eye contact.

19           Q     And apart from communicating with him,  
20 did you make any other observations inside the  
21 vehicle?

22           A     Yes. I noted, immediately on putting  
23 my head into the vehicle, the liquor odour on the  
24 inside of the SUV. It is something that, as a  
25 medic, when you get on scene of accidents, that is

1 always on the edge of your mind. If the accident  
2 was caused, or has happened, we always are  
3 thinking in our mind, I wonder if it is alcohol  
4 related. So we are always thinking of -- and if  
5 we smell it, we think a little more about it. If  
6 we don't smell it, we just carry on and do our job  
7 without thinking about it.

8 Q You smelled it?

9 A I did.

10 Q And can you provide evidence, sir, in  
11 terms of the strength of the odour?

12 A No, just that it was a sweet alcohol  
13 odour. I'm not a drinker so I don't know, I can't  
14 tell you what type of a drink anybody drank by  
15 just smelling their breath, but I can tell you  
16 that there is pretty much alcohol on their breath.  
17 And I did smell alcohol in the SUV when I poked my  
18 head into it for a moment.

19 Q Now, I understand that Paramedic  
20 Rosser was the attending paramedic?

21 A Yes, he was.

22 Q And as a result of that, did you  
23 conduct any physical examinations of the  
24 individual?

25 A No, I did not.

1           Q     Okay. You said you opened the door,  
2     you detected an odour, you had some conversation  
3     with him?

4           A     I asked him if we could help him, if  
5     he was interested in coming to the emergency room  
6     and seeing a doctor? And he answered no, that he  
7     was fine.

8           Q     And what was Mr. Rosser doing at this  
9     point, when you were talking to him?

10          A     He was just about to open the door on  
11     his side. I asked the question just before he  
12     opened his door. And at that point, I wanted to  
13     be able to go over and look at the mechanisms on  
14     the vehicles, and report that back to Ted. And so  
15     I turned, as he opened the door on the other side  
16     to the occupant of the SUV, I closed mine and  
17     continued on.

18          Q     Now, when you approached the police  
19     SUV that the man was sitting in, was there anybody  
20     in the vehicle with him?

21          A     No, there was not.

22          Q     Okay. And I take it the doors were  
23     closed?

24          A     Yes, they were.

25          Q     Okay. And when you opened the door,

1 can you tell me whether you noted the odour of  
2 alcohol immediately or not?

3 A Yes, it was immediately.

4 Q And then you have got your door open,  
5 you ask these questions. And then do I understand  
6 from your testimony that Paramedic Rosser opened  
7 the other door, the passenger side?

8 A Yes.

9 Q And the individual was in the vehicle  
10 by themselves?

11 A Yes, they were.

12 Q Were there any police officers in the  
13 vicinity of the vehicle?

14 A I believe behind me there was. I  
15 believe looking after possibly traffic.

16 Q What about in the immediate vicinity  
17 of the vehicle?

18 A No.

19 Q You described your interaction with  
20 the individual prior to Paramedic Rosser opening  
21 the door, and I want to go back to that. And you  
22 referred to he was staring straight ahead, and I  
23 want to have you elaborate on that a little bit  
24 further. What was the first question that you  
25 asked him?



1           A     If he was interested in going to see a  
2     doctor and the emergency room, coming with EMS.

3           Q     And how did he react to that question?

4           A     He just answered no, that he was fine.

5           Q     You indicated that he was staring  
6     forward. Can you expand on that further?

7           A     He gave me no eye contact, he didn't  
8     turn towards me, didn't even look towards me, he  
9     kept his eyes straight ahead and just answered me.

10          Q     And how was he sitting?

11          A     He was sitting knees close together,  
12     and hands between his knees, looking straight  
13     ahead.

14          Q     Are you able to comment on his  
15     emotional state?

16          A     In my opinion, from my experience, he  
17     had a lot on his mind. I believe that he had the  
18     weight of what all had happened on his shoulders,  
19     and that he would have been having seemingly a  
20     hard time dealing with it.

21          Q     Had you received any information prior  
22     to going to the vehicle that he was suffering from  
23     any injury?

24          A     I was instructed by, I believe a  
25     fireman from East St. Paul that he had already

1 refused care, and that he was in the SUV. And we  
2 can not leave the scene until he at least signs  
3 off a refusal. And if he does not sign a refusal,  
4 we get a witness, one of the members of the police  
5 will sign off the fact that they refused to sign,  
6 because sometimes they won't even sign. So that's  
7 all we did, basically, went there knowing that he  
8 had refused once and that we were going to try one  
9 more time to see if he will come.

10 Q Okay. So to recap, you arrive, you  
11 are directed there, you speak to him initially by  
12 opening the door, you immediately detect the odour  
13 of alcohol. There is a refusal of medical care.  
14 It is not your job to do the actual examination to  
15 ensure that he is not injured to the extent that  
16 he can't decline, because that's not your role  
17 that day, and Paramedic Rosser takes over. What  
18 do you do?

19 A I close the door to the SUV and make  
20 my way across the 101 Perimeter, and take a look  
21 at the vehicles that were involved, look for a  
22 mechanism on the vehicle that the occupant of the  
23 SUV was driving.

24 Q And do you go to that vehicle?

25 A Yes, I did.

1           Q     And what was the purpose of you going  
2     there?

3           A     We need to take a look at the vehicle  
4     for mechanism of possible injury to the occupant  
5     and report that to the attendant who is looking  
6     after --

7           Q     And by mechanism of possible injury,  
8     are you meaning something in the vehicle that the  
9     person could hurt themselves on, like banging  
10    their knees into the dash?

11          A     They can go forwards, hit their head  
12    on the windshield, you will see a spiderweb effect  
13    on the windshield, fracture of the windshield, we  
14    would call that. As well as hitting the steering  
15    wheel, sometimes if they are holding on to the  
16    steering wheel really hard, they can bend it with  
17    the force of two hands holding on to it. They can  
18    hit the steering wheel, and if the perimeter of  
19    the wheel, or rim of the wheel sticks forward from  
20    the inner hub or the horn, that can be pushed in,  
21    so you can see that there is a lot of force that  
22    they hit the steering wheel. Their dash  
23    underneath the steering column can be cracked,  
24    broken, smashed from their knees impacting  
25    contact. You can look and see blood, noticing

1 blood in and about the area. So that's what you  
2 do when you take a quick peek for a mechanism.

3 Q And when you examined the truck, were  
4 you able to determine whether any of those things  
5 were present or noticeable?

6 A I walked up to the truck, not opening  
7 the door, the light was very bright that morning,  
8 I took a look in the window, and noted that the  
9 steering wheel seemed to have not been disturbed  
10 too much. I don't recall if I noticed the air bag  
11 deployed. Usually air bags deployed stand out  
12 because they are white, and they usually hang down  
13 on to the seat. I didn't notice that. And the  
14 dash looked intact. And the windshield didn't  
15 have a big break from the possible contact with  
16 occupant's head.

17 Q What did you do after you conducted  
18 that examination of the vehicle?

19 A I made my way to another vehicle that  
20 was involved. I walked about the small yellow  
21 car. I believe there was three vehicles involved  
22 that day that came in contact. And after that  
23 made my way across 101 Perimeter, back to the side  
24 where my truck was waiting for us, and the East  
25 St. Paul SUV.

1 Q Did you speak with Paramedic Rosser  
2 when you went back to the SUV?

3 A Eventually, prior to hopping in the  
4 truck and returning to base.

5 Q Did you have any discussion with  
6 Mr. Rosser about your detecting an odour of  
7 alcohol?

8 A Yes, I did.

9 Q And can you tell the Commissioner  
10 about that, please?

11 A When you leave a scene of a call that  
12 you've done, it is not unusual for a driver and  
13 attendant to talk about their experiences on the  
14 scene, findings. And together you can have a  
15 good, you can have a better knowledge of what you  
16 think happened on scene when you talk about and  
17 put together your experiences at that scene.

18 Q And do I understand from that, or take  
19 from that that you both discussed the issue of the  
20 odour of alcohol?

21 A Yes, we did.

22 Q And where did that conversation take  
23 place?

24 A In the ambulance en route to base.

25 Q Now, in terms of the conclusion that

1 the patient was appropriately declining medical  
2 treatment, was that a decision that you would make  
3 in this circumstance, or was it a decision that  
4 Paramedic Rosser would make?

5 A If one was willing to decline quickly  
6 and allow the patient their will of not having EMS  
7 take them into their care, and the other was  
8 worried, and was concerned that they were doing  
9 the wrong thing, one will go to the other and say,  
10 I don't believe we should be leaving with this  
11 patient here, I believe we need to take them into  
12 our care. And that did not happen on scene. We  
13 were both satisfied leaving the occupant with the  
14 East St. Paul Police when we left that morning.

15 Q Did you indicate to any police  
16 officers on the scene that morning that you  
17 detected an odour of alcohol?

18 A I cannot recall, but I have no problem  
19 with ascertaining that information to the police  
20 on scene when they come to me and say, did you  
21 smell any liquor on the breath, or on the patient  
22 that you are attending? I have usually no problem  
23 telling them my findings.

24 Q And in the context of this case, do  
25 you have any recollection of whether that

1 occurred?

2 A No, I'm sorry, I do not.

3 Q That's fine. I will come to your  
4 statement, we know that you actually did provide a  
5 statement to the police and we will come to that.

6 Now, further, dealing with your  
7 observations at the scene, when you opened the  
8 door to the SUV, did you get inside the vehicle?

9 A My nose, my head, my shoulders were  
10 inside the vehicle.

11 Q Okay. And what was your view on where  
12 the odour of alcohol was coming from?

13 A In my experience, it is usually the  
14 lone occupant that I find in the police car.

15 Q And this car, you have told us, had a  
16 lone occupant?

17 A It did.

18 Q And in terms of where on their body it  
19 was coming from, what view did you have?

20 A When alcohol levels, from my  
21 experience and knowledge from when alcohol levels  
22 are high in the body, or in the body, that alcohol  
23 is put off from our breathing, our lungs, the  
24 alveoli, the pass of gases. And when you are  
25 breathing, that's where the alcohol smell comes

1 from. And so unless -- this gentleman was sitting  
2 inside the vehicle breathing, that's where we  
3 usually get the odour from.

4 Q And is that the impression that you  
5 had formed?

6 A That was my impression, yes.

7 Q I would like to bring you now to the  
8 statements that you provided to the authorities.  
9 And first, and for the assistance of the  
10 Commission and Counsel, I will refer to volume D,  
11 tab 19.a, and that's a handwritten statement of  
12 March 29, 2005.

13 Now, sir, I would like to ask you  
14 whether you have that document in front of you?

15 A Yes, I do.

16 MR. CLIFFORD: All right. That's  
17 going to be entered as exhibit 80.

18 (EXHIBIT 80: Rolland Fontaine,  
19 statement to East St. Paul Police,  
20 March 29, 2005)

21 BY MR. CLIFFORD:

22 Q Now, sir, I'm going to ask you some  
23 questions about that. And generally they centre  
24 around the who, what, when and where, and the  
25 circumstances around the statement. We know it is



1 March 29, '05. Can you tell us the circumstances  
2 that lead you to providing it?

3 A This is my handwritten note, or  
4 recollection of the call that I attended on the  
5 25th of February, 2005, requested by East St. Paul  
6 Police.

7 Q And it says "attention Norm"?

8 A Yes.

9 Q Can you expand on that?

10 A East St. Paul Police member, Norm  
11 Carter, I believe at the time was Chief when he  
12 asked me to put this together and give it to him,  
13 or the office in East St. Paul.

14 Q Did he contact you by telephone? Did  
15 he meet with you? Do you recall the  
16 circumstances?

17 A I believe it was a phone call that I  
18 returned to Mr. Carter. And then he told me,  
19 asked me to please do this and drop it off at the  
20 office in East St. Paul.

21 Q Okay. Now, was it your understanding,  
22 Mr. Fontaine, that this statement would form  
23 basically your witness statement to a criminal  
24 case that was ongoing?

25 A Yes.

1           Q     And what you had indicated in your  
2     statement of March 29th, '05, and I'm referring to  
3     just a few lines below the middle:

4                     "I noticed a liquor odour immediately,  
5                     and when he verbally refused our care,  
6                     I left Ted to complete the paperwork  
7                     with him while I checked out the  
8                     patient's Dodge Dakota PU truck."

9     And that's for all intents and purposes what you  
10    told Mr. Commissioner today. You expanded on it  
11    somewhat?

12           A     Yes.

13           Q     And you also indicated:

14                     "The patient seemed very depressed on  
15                     scene and both Ted and I felt alcohol  
16                     consumption was a factor in this  
17                     collision."

18    I take it, it mirrors and is consistent with your  
19    testimony today and earlier in your interview with  
20    the Commission?

21           A     That's correct.

22           Q     And you provided this to the  
23    authorities in your understanding that it would be  
24    used in evidence in the investigation and the  
25    prosecution, whatever form it would take?

1           A     Yes, I did.

2           Q     And then did anybody ever follow up  
3 with you, sir, after March 29th, 2005 to -- and I  
4 know that on May 29th, 2006, you spoke to the  
5 RCMP, but between March 29th, 2005 and May 29th,  
6 2006, did any other police officer follow up with  
7 you to get further details?

8           A     No.

9           Q     Moving then to May 29th, 2006, we see  
10 from disclosure provided to us that you are  
11 interviewed by the RCMP, Corporal Tracey Kennett.  
12 This is approximately 14 months after your first  
13 statement. What are the circumstances around your  
14 providing that statement?

15          A     They came to my work where I was  
16 working a day shift, introduced themselves, asked  
17 if we would go to a room together where I could  
18 give a statement and answer their questions.

19          Q     Did they tell you, for instance, why  
20 it was the RCMP that was involved in the case,  
21 what their role was?

22          A     No.

23          Q     Did you have any idea?

24          A     I figured they were investigating the  
25 accident in question and everything that happened

1 possibly on the scene.

2 Q And they asked you, or covered with  
3 you issues that were previously covered. And you  
4 told them, and we see at page 8 and 9 of your  
5 interview, again, that you immediately smelled an  
6 odour of alcohol when you opened the car?

7 A Yes.

8 Q Okay. And was it your understanding  
9 that this as well would form part of your, or  
10 would comprise a second statement that would be  
11 used in the investigation and prosecution?

12 A Yes, I did.

13 Q Did anybody, after the RCMP spoke with  
14 you, follow up and contact you to speak to you  
15 about either of the two statements?

16 A No.

17 Q Just one further question on your  
18 March 29th, '05 statement. This seems to be a  
19 narrative where you are just handwriting this out.  
20 Do I understand that there was a general request  
21 to you to write something down?

22 A Yes.

23 Q Were you given any guidelines, any  
24 series of questions that you were expected to  
25 answer?

1           A     I was asked to just give what I  
2     recollected from the scene and being on scene.

3           Q     And was this request done orally?

4           A     That request was via telephone call.

5           Q     So that's the telephone call you had  
6     with Norm Carter?

7           A     I believe so.

8           Q     Now, having provided these statements,  
9     and given their content, had you ever been  
10    contacted by the prosecutor who had carriage of  
11    the file?

12          A     No, I did not.

13          Q     Did you ever get called to go to  
14    court?

15          A     No.

16          Q     Do you know whether you were required  
17    to attend court?

18          A     From my experience in the past, I  
19    figured for sure I was going to be going to court.  
20    I wasn't called.

21          Q     In conclusion, I have a couple of  
22    general questions for you, sir. How long does it  
23    take you, when you are driving your ambulance, to  
24    get to the scene of the accident from Birds Hill?

25          A     In about, in around 18 minutes.

1 Q Around 18?

2 A I believe so.

3 Q Are you able to indicate, sir, how  
4 long it would have been that you were in the  
5 vehicle in total with the occupant, the male?

6 A At most a minute, maybe a little less.

7 Q Now, I will come full circle with you.  
8 I told you I would come back to an issue that you  
9 raised at the beginning of your examination and I  
10 will do that now.

11 You talked about speaking with  
12 individuals and having, or developing a sense that  
13 they were experiencing pending doom. Can you  
14 elaborate on that?

15 A In my experience, when you go to a  
16 scene, and primarily you are second -- at this  
17 time, we are not first on the scene, but you are  
18 second on scene. The people that are injured are  
19 getting taken care of by a truck that arrived  
20 before you did. When you arrive on scene, you are  
21 directed to where the next patient is who was  
22 involved in the accident that you've arrived at.  
23 And if they are in the back of a police car, my  
24 responsibility is to get that person, and if they  
25 want medical care, then I take them into my care,

1 or we take them into our care. And it is not  
2 unusual to meet an individual, in the back of a  
3 police car at an accident that they were involved  
4 in, that I would assume immediately on meeting  
5 them that they had been drinking, they know they  
6 are in trouble, they are not happy about where  
7 they are, and they are not interested in medical  
8 care or coming with us.

9 Q Were those the circumstances that you  
10 were operating in?

11 A That's exactly what I put together and  
12 had decided that is what was going on.

13 MR. CLIFFORD: Sir, those are the  
14 questions that I have for you. If you remain  
15 seated, other counsel will have questions.

16 THE WITNESS: Certainly.

17 MR. McDONALD: Mr. Commissioner,  
18 before cross-examination starts, I did not hear  
19 where the RCMP statement was marked as an exhibit,  
20 and I don't know if Mr. Clifford intended to do  
21 that and simply forgot, or what his intention was.

22 MR. CLIFFORD: Thank you,  
23 Mr. McDonald, that is the case, I had forgotten to  
24 enter it as an exhibit. And with your permission,  
25 Mr. Salhany, I will ask to do that now.

1 THE CLERK: 81.

2 (EXHIBIT 81: D.19.b, Rolland Fontaine  
3 statement to RCMP, may 29, 2006)

4 BY MR. ZAZELENCHUK:

5 Q Sir, I just have a couple questions  
6 for you. I'm guessing that you have given  
7 evidence in a court of law on more than one  
8 occasion since you have been a paramedic; is that  
9 correct?

10 A This is my first time making it to the  
11 stand, believe it or not.

12 Q Okay. Have you been subpoenaed a  
13 number of times?

14 A Numerous.

15 Q Okay. Did you have any, going to the  
16 scene on that sad day, February 25th, 2005, did  
17 you have any interaction with anybody from the  
18 East St. Paul Police Department?

19 A Momentarily, yes.

20 Q Did anybody tell you that the  
21 accused -- sorry, that the person in the back of  
22 the police car was a police officer himself?

23 A I do not recall.

24 MR. ZAZELENCHUK: Okay. Thank you.

25



1 BY MR. McDONALD:

2 Q Mr. Fontaine, I have a few questions  
3 for you, and hopefully I can clear up what I  
4 perceive to be a bit of confusion on the faces of  
5 some people in the room. I'm having a little  
6 trouble from your evidence understanding the route  
7 that you and your partner, Mr. Rosser, took to get  
8 from Selkirk to the accident scene.

9 Just so it is clear, as I understand  
10 it, Selkirk is located on Highway Number 9, is  
11 that correct?

12 A Yes.

13 Q And that's where your ambulance base  
14 is?

15 A It is located on the bypass around  
16 Selkirk, near the number 4 and number 9  
17 intersection.

18 Q All right. And then help me out then,  
19 you would have two routes that you could take to  
20 get to the accident scene. You could either take  
21 number 4 east to 59 and then south to the accident  
22 scene, or number 9 south to the Perimeter and then  
23 east to the interchange we see in the big  
24 photograph to your left; is that correct? You  
25 would have either of those two routes open to you?

1           A     We would not use number 4 highway  
2 route.

3           Q     So then did you come south on number 9  
4 to the Perimeter and east on the Perimeter and  
5 then to the intersection of 59?

6           A     No.

7           Q     What route did you take?

8           A     I believe the time trials on arriving  
9 at East St. Paul through Birds Hill Town, time  
10 trials are at best time on the bypass around  
11 Selkirk, so it is number 9 around Selkirk.

12          Q     Yes?

13          A     And through Lockport, over the  
14 Lockport bridge, grabbing highway 202, and right  
15 up into Birds Hill Town.

16          Q     So you would arrive then from Selkirk  
17 in the Town of Birds Hill, from the Town of Birds  
18 Hill then to 59, then south on 59?

19          A     Possibly. The other route that we may  
20 have taken would have been through the Town of  
21 Selkirk immediately to Highway 59, Henderson  
22 Highway, Road 509, Highway 59 and then take  
23 advantage of a little bit of open space and go up.

24          Q     Sir, I understand you were the driver.  
25 You tell us what route you actually took to get to

1 the intersection of 101 and 59?

2 A I cannot honestly recall.

3 Q What direction were you traveling when  
4 you arrived at the accident scene?

5 A South.

6 Q You were southbound on 59 when you  
7 arrived at the accident scene?

8 A Correct.

9 Q So that would put -- at the accident  
10 scene, Highway 59 consists of two lanes for  
11 southbound traffic?

12 A Yes.

13 Q And did you stop your vehicle at the  
14 accident scene?

15 A We stopped our vehicle on the north  
16 side of the intersection of 101 and 59, on the  
17 southbound lane.

18 Q All right. So north of the  
19 intersection, north of where the accident  
20 occurred, but on the west side of the two lanes  
21 for southbound travel?

22 A Yes.

23 Q Thank you.

24 A The accident was immediately in front  
25 of us.

1           Q     Thank you.  Now, you said in your  
2     evidence to Commission Counsel that the statement  
3     that you gave to the East St. Paul Police, you  
4     gave to Chief Carter in response to a request  
5     received from him.  Do you recall that?

6           A     Yes.

7           Q     Now, is there any doubt in your mind  
8     as to who you received the request from?  You said  
9     Chief Carter, did you not?

10          A     I said Chief Carter, yes.

11          Q     And it is my information that at the  
12     time that you gave that statement in March of  
13     2005, Norm Carter was not the Chief of East St.  
14     Paul Police.  Are you aware of that?

15          A     That's possible, yes.

16          Q     Is it possible that you received the  
17     request for the statement from the Chief of  
18     Police, who you assumed to be Norm Carter?

19          A     No.

20          Q     You have a definite recollection of  
21     receiving a call from Norm Carter?

22          A     Yes.

23          Q     All right.  Now, your statement to the  
24     RCMP, sir, has been marked as exhibit 81, and it  
25     is a lengthy transcript of an interview conducted

1 with you by members of the RCMP. You agree with  
2 that?

3 A Yes, I do.

4 Q Now, at page 316 and 317 of the  
5 productions, those are parts of the interview,  
6 transcript of the interview conducted by the RCMP.  
7 There, sir, you say that you spoke to Sergeant  
8 Carter of the East St. Paul Police Service at the  
9 scene. Do you recall that?

10 A I recall telling them that, yes.

11 Q Yes, you told that to the RCMP?

12 A That's correct.

13 Q And you will now acknowledge, sir,  
14 that that is incorrect, you did not see or speak  
15 with Sergeant Carter at the accident scene?

16 A That's correct.

17 Q And sir, at page 319 you told the RCMP  
18 that you had told Sergeant Carter about having  
19 detected an odour of alcohol on the breath of  
20 Mr. Zenk. You recall that?

21 A Yes.

22 Q And you will acknowledge now, sir,  
23 that that also is inaccurate, you did not tell  
24 that to Sergeant Carter at the scene?

25 A Right, I did not tell him at the

1 scene.

2 MR. McDONALD: Thank you.

3 MR. WEINSTEIN: Just a few questions  
4 for you, Mr. Fontaine.

5 BY MR. WEINSTEIN:

6 Q In your years of being a paramedic, I  
7 assume you attended naturally numerous accident  
8 scenes where people are impaired? You've dealt  
9 with those in the past?

10 A Yes, I have.

11 Q On numerous occasions. And would you  
12 agree with me that the odour of liquor does not  
13 necessarily make a person impaired; correct?

14 A That's correct.

15 Q All right. All it is, it is an odour  
16 of liquor, and you perhaps look for other symptoms  
17 to say that the person may be impaired; correct?

18 A Yes.

19 Q All right. And when you were giving  
20 your statement to the RCMP, specifically I believe  
21 at page 17, you indicated to the police that there  
22 were -- you did not note any other signs of  
23 impairment. Do you see that near the bottom of  
24 the page? Page 17:

25 "Doyle: So you didn't note any other

1 signs of impairment?"

2 Your answer, Mr. Fontaine, was no. It is your  
3 RCMP statement. Sorry, do you have that in front  
4 of you, sir?

5 A I'm looking at page 317.

6 Q No, I'm looking at 327, I am sorry,  
7 page 17 at the top, page 327, bottom right-hand  
8 corner?

9 A That's what I told Corporal Doyle,  
10 yes.

11 Q And that's your answer today?

12 A Yes.

13 Q No obvious signs of impairment;  
14 correct?

15 A That's correct.

16 Q And we've heard already from the  
17 previous witness, Mr. Rosser, that it is easier to  
18 detect an odour of liquor if the person is in a  
19 confined space. That's obvious, correct?

20 A Very, yes.

21 Q And it is especially harder when it is  
22 outside, and it makes it even more difficult if  
23 there is a breeze; correct?

24 A Yes.

25 Q And in fact you did indicate to the

1 RCMP that there was a breeze?

2 THE COMMISSIONER: Excuse me, but the  
3 reporter's phone is going off. Can you start  
4 again?

5 BY MR. WEINSTEIN:

6 Q All right. No other signs of  
7 impairment, we covered that. There was a breeze  
8 blowing, and you made specific note of that in  
9 your interview with the RCMP?

10 A Okay. I don't recall.

11 Q All right. I will just refer you to  
12 that. Take a look at page 319, bottom right-hand  
13 side. This is just to refresh your memory, sir,  
14 because I know it has been a while since you gave  
15 this statement.

16 A Certainly.

17 Q I'm looking towards the bottom, the  
18 longer paragraph of Fontaine, that's you:

19 "...and I would hop into the vehicle  
20 to talk with him. I didn't stay  
21 outside of the vehicle with the breeze  
22 going by..."

23 Does that refresh your memory that there was a  
24 breeze, that's -- you kept hopping into the  
25 vehicle?



1           A     Yes, I commented there that there was  
2 a breeze outside.

3           Q     All right. And that's your  
4 recollection of the weather conditions at the  
5 time?

6           A     It was a winter day, very bright,  
7 white.

8           Q     And with a breeze?

9           A     That's what I gave them here, yes.

10          Q     Thank you. And you fairly have said  
11 that you can't say under oath today that you did  
12 tell any police officer about detecting an odour  
13 of liquor; correct?

14          A     On the scene, I cannot recall  
15 mentioning it to any member of the police force,  
16 yes.

17          Q     And that's fair. In fact, in your  
18 statement to Norm, dated March 29th, that you have  
19 referred to, there is also nothing in here about  
20 you passing on that information about the odour of  
21 liquor to any police officer? It is not in here,  
22 correct?

23          A     Correct.

24          Q     And after you gave that statement or  
25 forwarded that statement on to Norm, and I think

1 you have been asked this by Commission Counsel,  
2 did you ever hear back from Norm, Norm Carter, to  
3 ask you for a lengthier statement, or to elaborate  
4 or give more of what happened?

5 A No.

6 Q All right. Now, also my learned  
7 friend, Mr. McDonald, pointed out page 317, and I  
8 think 319 of your statement to the RCMP, where you  
9 talked about talking to Norm. And you've read  
10 your RCMP statement, correct?

11 A Yes, I have.

12 Q And there was numerous times, and it  
13 is not a big issue, there were numerous times, I  
14 counted nine times --

15 A Yes.

16 Q -- that you thought you were talking  
17 to Norm Carter. You even described him with a  
18 mustache, correct?

19 A Yes, I did.

20 Q All right. But people kept, or the  
21 interviewers told you that's impossible, Norm  
22 wasn't there. But it was your recollection that  
23 Norm was there, Norm with the mustache; correct?

24 A That's correct.

25 MR. WEINSTEIN: Thank you, sir.

1 MR. JACK: No questions,

2 Mr. Commissioner.

3 THE COMMISSIONER: Thank you.

4 BY MR. PROBER:

5 Q Mr. Fontaine, I don't know whether you  
6 were in the police vehicle with Derek Harvey-Zenk  
7 or not. You just put your head in or were you  
8 actually inside of the vehicle?

9 A I did not sit next to the occupant of  
10 the SUV and close the door.

11 Q So your body was not inside the  
12 vehicle, your head was; is that what you are  
13 telling us?

14 A I was leaning on the seat with my  
15 hands.

16 Q Okay. Your feet were where?

17 A On the ground outside.

18 Q All right. So the upper part of your  
19 body was leaning into the vehicle; is that fair?

20 A Correct.

21 Q And you say the upper part of your  
22 body was leaning into the police vehicle for about  
23 a minute?

24 A Yes.

25 Q All right. At the beginning of your

1 evidence, Commission Counsel was asking you, I  
2 thought and I didn't quite understand it, but in a  
3 general way about your experience when you find  
4 people in the back of a police car at an accident  
5 scene. Do you recall that? You have to say yes  
6 or no, please?

7 A Yes.

8 Q All right. And is that when you were  
9 saying they speak as little as possible, some of  
10 them?

11 A Yes.

12 Q They don't want to talk to us; is that  
13 what you were talking about when you gave that  
14 evidence?

15 A That's what I was talking about.

16 Q People in a police car who were  
17 involved in an accident?

18 A Yes.

19 Q Okay. So it is not unusual to find  
20 that in that sort of a situation?

21 A Yes.

22 Q Okay. I understand from the evidence  
23 that you arrived at 7:30, 8:00 a.m., is that your  
24 recollection?

25 A It would be thereabouts.

1 Q Okay. How long, how much time elapsed  
2 before you actually stuck your head in the police  
3 SUV?

4 A I believe about a minute --

5 Q All right.

6 A -- or more.

7 Q Is it usual for you to follow up the  
8 next day, or two days later, to find out the  
9 extent of the injuries an individual may have  
10 suffered in an accident?

11 A We are always interested.

12 Q I'm not saying you are not, but do you  
13 usually follow up?

14 A Whatever we can find, FIA stops us  
15 from finding out a lot, but we try and find out  
16 what we can, yes.

17 Q Okay. Have you ever had the  
18 experience of some people refusing medical  
19 attention and medical care where, in fact, they  
20 needed it?

21 A Yes.

22 MR. PROBER: Thank you. Those are my  
23 questions.

24 BY MR. GREEN:

25 Q Sir, the written statement that you

1 gave to East St. Paul Police which has been marked  
2 as exhibit 80, "attention Norm," you recognize  
3 what I'm talking about?

4 A Yes, I do.

5 Q That was a statement that you believe  
6 was requested by Norm Carter?

7 A Correct.

8 Q Had you on previous occasion given  
9 similar statements, that's where you simply have  
10 been requested and you send something through  
11 mails or otherwise to the police?

12 A In the mail?

13 Q Well, where you have just been asked  
14 to prepare a statement and send it to the police  
15 in whatever fashion?

16 A Like that, no.

17 Q Okay. Have you been interviewed by  
18 the members of police forces in the past in  
19 connection with similar incidents?

20 A Yes.

21 Q Now, sir, did I understand you to say  
22 that you are not sure of the route that you and  
23 your partner took to get to the scene of the  
24 accident?

25 A Sometimes conditions make you try and

1 choose between whether you go directly to Highway  
2 59, or if you cut through old 59, which is 202.  
3 And on that day I cannot recall which route we  
4 took. I could give you a percentage of which  
5 route I think we took, but I cannot recall 100 per  
6 cent.

7 Q But it is one of two?

8 A It is one of two routes.

9 Q Do I take it from your evidence that  
10 you attended that particular intersection on  
11 previous occasions?

12 A Myself, numerous.

13 Q Had there been previous accidents at  
14 that intersection that you have attended?

15 A We find when we go to that accident  
16 scene, Winnipeg is there first. And yes, there  
17 has been accidents there before. I have been  
18 there.

19 Q Numerous accidents?

20 A Yes.

21 Q That you've attended in your  
22 professional capacity?

23 A Yes, but not getting a patient, just  
24 arriving on scene and then returning home.

25 Q Serious accidents?

1           A     Yes.

2           Q     You said that today is the first time  
3 you made it to the stand?

4           A     Yes, that's true.

5           Q     Although you had been subpoenaed on  
6 previous occasions?

7           A     Numerous.

8           Q     And for one reason or another, you  
9 never actually testified in court obviously?

10          A     That's right.

11          Q     Okay. And what happened to those  
12 cases where you were subpoenaed but didn't  
13 testify, do you know?

14          A     Numerous things. They have either  
15 pleaded out, or fled the province. Those are the  
16 two that I can recall.

17          Q     Okay. Have you actually attended at a  
18 courthouse and found out that you didn't have to  
19 testify?

20          A     Yes.

21          Q     That's happened a lot?

22          A     It has happened a few times.

23          Q     Okay. And would those be largely for  
24 preliminary hearings or would they be for trials?

25          A     I couldn't tell you. I believe trial.



1 Q Okay. Do you know whether you've been  
2 subpoenaed for preliminary hearings before?

3 A No, I don't.

4 MR. GREEN: All right. Thanks very  
5 much.

6 MR. McFETRIDGE: Could you put in  
7 front of Mr. Fontaine, exhibit 77, please?

8 BY MR. McFETRIDGE:

9 Q Mr. Fontaine, this is something called  
10 an ambulance patient care report. And if I take  
11 you to the last page, I notice there is a spot for  
12 the signature of the driver. Is there any reason  
13 why you would not have signed this particular  
14 report?

15 A Yes. It is practice to write at times  
16 your driver's name and place, when you aren't  
17 concerned with any medical interaction that your  
18 partner had with your patient.

19 Q I take it you would not have prepared  
20 your own separate report?

21 A That's correct.

22 Q Would it be your practice, if you had  
23 noted anything at the scene, to make -- and you  
24 were the driver -- to make a note on what is  
25 called the call report, of what you may have

1 observed?

2 A No.

3 Q That is not normal practice?

4 A No.

5 Q Did you ever read this report?

6 A No.

7 MR. MCFETRIDGE: Those are all of my  
8 questions. Thank you.

9 RE-EXAMINATION BY MR. CLIFFORD:

10 Q Mr. Commissioner, two brief areas of  
11 re-direct. The first deals with questions that  
12 were asked by Mr. McDonald, and also  
13 Mr. Weinstein, I believe. And this relates to the  
14 assertion, Mr. Fontaine, that was put to you, that  
15 you told the RCMP that you spoke with Mr. Carter,  
16 and today there was an indication otherwise. And  
17 I would like to refer you to exhibit 81, and that  
18 is the transcript of your RCMP statement, which is  
19 found at volume D, tab D.19.b at page 320.  
20 Looking at the page numbers on the lower  
21 right-hand side, do you see that?

22 A Um-hum.

23 Q And I'm going to review a portion of  
24 this transcript with you to refresh your memory on  
25 this point. At page 320 you mention Norm and

1 speaking to Norm in connection with the SUV. And  
2 at the bottom of the page, the RCMP Officer  
3 Kennett says:

4 "Are you, um, confident that he is the  
5 officer that you saw at the scene that  
6 day or is it possible that you may be,  
7 uh, mixed up with another officer?

8 Fontaine: Yeah, that's possible. I  
9 can't honestly tell you that. There  
10 is so many calls we go with, I know  
11 Norm, I talked with about this, um,  
12 yeah, I would definitely be, uh, wrong  
13 in saying, you know. And the time  
14 being so far away, yeah. Yeah, I  
15 could be.."

16 Question by Officer Kennett:

17 "So I guess to help clarify this and,  
18 and maybe using the name may not be  
19 the right way to go about it, but if  
20 you were to just close your eyes and  
21 try to recall who did you speak to the  
22 day, right you have spoke to the  
23 fellow in the SUV, and try to envision  
24 what he looked like, and not  
25 necessarily related to the name you

1                   have given us but who, who you may  
2                   have spoken to that day. Was there  
3                   anything about him that could help  
4                   identify him to you now?"

5   Fontaine, this is your response:

6                   "Um, if I could, if I could believe  
7                   that, uh, I was incorrect in stating  
8                   that Norm was on scene then, if I was  
9                   wrong on scene, I wouldn't be  
10                  surprised to know that it was, I  
11                  believe her name is Betty or Bev, she  
12                  is a white haired lady, uh, constable  
13                  with East St. Paul Police. That could  
14                  be, you know, those are the two faces  
15                  I see on a lot of calls if we go  
16                  there."

17   Officer Kennett says:

18                  "Um-hum."

19   And your response, Fontaine:

20                  "And that could be the reason why.  
21                  But to, to tell you exactly which  
22                  member of the East St. Paul was on  
23                  scene there, I can't tell you for sure  
24                  to say yes, that person was the one."  
25                  Now, sir, does that refresh your

1 memory in assisting you that most certainly on the  
2 day that you were interviewed by the RCMP, that  
3 you conceded the point that you may have that  
4 person wrong?

5 A Most definitely.

6 Q All right. And Mr. Weinstein in  
7 questioning you said, while it was suggested to  
8 you by the RCMP that you did in fact get it wrong  
9 and you agreed with him. If I could bring you  
10 then to page 12, you gave a response -- or  
11 actually further at page 11, going further down  
12 the page in one of your responses.

13 Fontaine, it starts:

14 "Um, if I was, it wasn't much more  
15 than ten minutes and, uh, if I talked  
16 with a member of the police in East  
17 St. Paul, and Ted was taking care of  
18 paperwork with this gentleman in the  
19 SUV, and we cleared roughly in and  
20 around a ten minute time period from  
21 the time we arrived and ,uh, then we  
22 just left. And whoever I talked with,  
23 which I think his name, I can't  
24 honestly say, Norm, and I talked in  
25 reference to this after that, that

1                   could be why I am thinking..."

2    And then you say it was Norm that I was talking to  
3    on the scene.

4                   Could you go to page 12, flip over?

5    You can see at page 12 when you review, that

6    Officer Kennett then says:

7                   "I can tell you from our information  
8                   and from everyone that we spoke to,  
9                   the name Norm Carter..."

10   You say:

11                   "Norm Carter."

12                   "Kennett: The name that you are  
13                   referring to."

14   And you go on at page 13:

15                   "Kennett: That he was not at the  
16                   scene that day."

17   Do you see that exchange taking place?

18           A     Yes.

19           Q     And does that clearly refresh your  
20   memory, sir, that you conceded on your own that  
21   you may be wrong, and it was subsequent to your  
22   concession that the RCMP told you that, in fact,  
23   their information was that he wasn't there.

24           A     That's true.

25           MR. CLIFFORD: All right. Thank you.

1 Mr. Fontaine, those are the questions for you. On  
2 behalf of the Commission, I would like to thank  
3 you for attending.

4 THE WITNESS: Thank you.

5 THE COMMISSIONER: Thank you.

6 MR. CLIFFORD: Mr. Commissioner, would  
7 it suit you to start tomorrow morning at 9:30?

8 THE COMMISSIONER: I had planned to  
9 start at 9:30, is that all right with everybody?  
10 I know that Mr. Green would like to start at 11:00  
11 but we are going to have to start at 9:30.

12 MR. GREEN: I'm being unfairly  
13 maligned about that.

14 THE COMMISSIONER: I can understand  
15 that. 9:30, and we will have --

16 MR. McDONALD: Sorry,  
17 Mr. Commissioner, I expect that we will be  
18 starting now, given that we are a bit ahead in the  
19 schedule, we will be starting in the morning with  
20 Glenda Pedersen, is that counsel's plan?

21 MR. CLIFFORD: It is.

22 MR. McDONALD: The only observation I  
23 make, Mr. Commissioner, is that she is scheduled  
24 to travel into Winnipeg tomorrow morning. I had  
25 told her in last speaking to her, that she would

1 not be the first witness, but she would be on  
2 tomorrow. I will now have to contact her and make  
3 sure that she is in here on time, so that's the  
4 only caveat. I will do what I can to have her  
5 here ready to start at 9:30.

6 MR. PACIOCCO: That would be  
7 appreciated, Mr. McDonald, because Mr. Graham  
8 could take more than a day. If we start with him,  
9 she may have to come in again.

10 MR. McDONALD: I understand. Thank  
11 you.

12 THE COMMISSIONER: So we are going to  
13 have another long day tomorrow.

14 MR. PACIOCCO: We will do our best not  
15 to see that that happens, but there is a  
16 possibility.

17 THE COMMISSIONER: Thank you,  
18 gentleman. Tomorrow morning, 9:30.

19 THE CLERK: All rise. This Commission  
20 is adjourned until 9:30 a.m.

21 (Proceedings adjourned at 4:57 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.

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Cecelia Reid  
Official Examiner, Q.B.

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