

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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INDEX OF PROCEEDINGS

DESCRIPTION	PAGE
WITNESSES:	
Denise Bukowski	
Direct Examination by Mr. Paciocco	1524
Examination by Mr. Zazelenchuk	1580
Examination by Mr. McDonald	1583
Examination by Mr. Weinstein	1584
Cecil Sveinson	
Direct Examination by Mr. Clifford	1595
Examination by Mr. Zazelenchuk	1627
Examination by Mr. Weinstein	1631
Examination by Mr. Jack	1637
Examination by Mr. Prober	1641
Examination by Mr. McDonald	1645
Re-Examination by Mr. Clifford	1647
Edward Rosser	
Direct Examination by Mr. Paciocco	1649
Examination by Mr. Zazelenchuk	1704
Examination by Mr. Weinstein	1707
Examination by Mr. Prober	1720
Examination by Mr. Paciocco	1726
Rolland Fontaine	
Direct Examination by Mr. Clifford	1728
Examination by Mr. Zazelenchuk	1756
Examination by Mr. McDonald	1757
Examination by Mr. Weinstein	1762
Examination by Mr. Prober	1767
Examination by Mr. Green	1769
Examination by Mr. McFetridge	1773
Examination by Mr. Clifford	1774

INDEX OF EXHIBITS

EXHIBIT NO.		PAGE
75	C.13.a, Denise Bukowski - Statement to E. St. Paul Police - March 7, 2005	1555
76	Denise Bukowski - Statement to R.C.M.P. - May 30, 2006	1580
77	Ted Rosser's ambulance patient care report on Derek Harvey-Zenk	1681
78	D.19.c Edward Rosser, statement to East St. Paul Police, March 24, 2005	1682
79	D.19.d Edward Rosser statement to RCMP, May 25, 2006	1682
80	Rolland Fontaine, statement to East St. Paul Police, March 29, 2005	1748
81	D.19.b, Rolland Fontaine statement to RCMP, may 29, 2006	1756

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.

Cecelia Reid
Official Examiner, Q.B.

A				
ability 1534:5 1564:10 1589:6 1636:12	1725:1,2 adjacent 1551:8 adjourned 1780:20 1780:21	1691:1 1692:11 1693:20 1698:20 1720:14 1726:13 1729:15 1738:3 1738:12,16,17 1740:2 1742:13 1745:7,20 1746:17 1747:12 1747:20,21,22,25 1750:15 1752:6 1761:19	amongst 1576:14 amount 1733:5 analysis 1596:1 analyst 1636:6 anger 1614:14 angle 1536:17 angry 1610:13 another 1531:5 1535:10 1539:21 1547:7 1565:1 1566:21 1602:15 1605:4 1607:9 1608:24 1609:5 1617:15 1625:17 1626:4 1655:14 1744:19 1772:8 1775:7 1780:13	anyone 1530:21 1535:1,4 1537:2,8 1537:14 1542:20 1544:22 1552:21 1557:15 1562:10 1563:20 1564:17 1570:21 1588:9 1647:14 1649:12 1727:12 anyway 1646:24 1688:14 anywhere 1563:9 1674:6 1697:16 1700:19 1701:1 1736:11 apart 1531:2 1533:22 1546:3 1553:2 1557:16 1564:13 1592:25 1597:3,19 1598:20 1737:19 apologize 1523:16 1663:4 apparent 1663:24 1677:5 appear 1587:20 1668:9 1670:4 appearance 1663:17,21 1668:1,15 APPEARANCES 1518:9 appeared 1545:25 1585:22 1592:1,8 1592:10 1635:5 1717:4 appears 1536:4 1561:23 1636:8 applying 1629:3 appointed 1781:5 appreciate 1522:4,5 1613:2 1649:13 appreciated 1780:7 appreciative 1524:22 approach 1522:25 1641:1 1676:5 approached 1565:22 1609:20 1637:17,19 1638:5 1641:7 1739:18 approaching 1529:16 1546:19 1547:6 1639:11 1640:20 appropriate 1681:8 1731:12 1733:22 appropriately
aboriginal 1595:15 1596:6 1597:15	Administrative 1518:4,5,6 adopted 1596:17 advance 1522:6 advantage 1758:23 advise 1645:14 1689:5 advised 1523:2,17 1570:2 1680:23 affect 1544:13,14 affirmed 1595:2 afternoon 1521:19 1556:10 1648:23 1648:24 1649:9 1649:10 1728:2,3 afterwards 1618:25 1634:25 again 1543:21 1559:3 1568:8 1572:4 1577:17 1588:3 1592:13 1592:14 1593:4 1593:19 1606:18 1620:2 1633:23 1644:17 1645:3 1668:2 1710:20 1752:5 1764:4 1780:9 against 1536:4,18 1540:2 age 1544:3 1668:14 1708:19 1737:14 agency 1622:10,15 ago 1580:15,25 agree 1588:6 1589:17 1637:22 1638:4 1718:16 1761:1 1762:12 agreed 1722:19 1777:9 ahead 1523:18,24 1528:11 1536:16 1581:13 1584:17 1668:6 1713:16 1737:15 1740:22 1741:9,13 1779:18 air 1744:10,11 Airway 1680:7 AI 1550:14 alcohol 1625:4 1646:25 1651:24 1683:10,24 1684:5,10,14 1685:24 1687:2	alert 1671:25 1672:17,21,23 1673:1 1677:19 1678:24 1680:13 1712:13,23 Allan 1526:12 1552:15 1553:3 1727:24 allergies 1679:18 allow 1604:16 1726:16 1732:8 1746:6 allowed 1600:2 almost 1539:13 1540:21 1541:14 1573:6 1579:16 1618:1,17 alone 1535:2 along 1521:12 1618:18 1637:9 already 1523:20 1528:17 1646:21 1652:23 1690:23 1707:5 1713:4 1721:25 1741:25 1763:16 although 1666:4 1772:5 alveoli 1747:24 always 1523:17 1534:1 1597:4,20 1597:25 1598:1,3 1599:10 1627:21 1738:1,2,4 1769:11 ambulance 1520:7 1550:11 1650:12 1653:13 1654:10 1655:24 1656:23 1657:5 1658:1,12 1662:5 1673:20 1681:10 1697:3 1698:2 1736:3 1745:24 1753:23 1757:13 1773:10 Ambulated 1679:22 among 1628:18 1630:18	answer 1559:19 1563:6,10 1568:16 1578:25 1581:23 1593:8 1626:10 1644:16 1662:7 1670:18 1673:17 1684:3 1685:12 1687:7 1687:14,18,20 1688:9 1692:13 1699:8 1708:16 1715:24 1721:19 1725:11,12,12,13 1726:4,5,9,9,9 1733:14 1751:18 1752:25 1763:2 1763:11 answered 1671:6 1672:21 1688:2 1709:15 1716:6 1726:5 1737:16 1739:6 1741:4,9 answering 1665:12 1670:14 1673:1 1693:13 1702:6 1731:17,20 1733:25 answers 1561:5 1668:8 1673:4 1688:21 1691:4,8 1693:12 1696:22 1699:1,20 1708:11 anybody 1545:1 1560:12 1643:9 1645:8 1690:24 1704:5 1736:11 1738:14 1739:19 1751:2 1752:13 1756:17,20 anymore 1627:3 1688:10	

1731:17 1733:14 1746:1 approximate 1601:3 approximately 1527:3,21 1558:3 1565:9 1596:4 1608:7 1641:6 1642:3 1644:24 1649:22 1666:5 1730:10 1736:18 1751:12 approximation 1646:18 April 1692:4 area 1528:12 1539:6 1595:22 1595:23 1602:14 1617:16 1647:20 1654:22 1744:1 areas 1774:10 arises 1720:8 around 1525:21 1527:14 1537:23 1539:5 1540:20 1540:25 1545:13 1548:5 1573:12 1590:11,12 1591:2 1598:10 1598:18 1599:7 1600:19 1601:5 1639:17 1651:14 1657:2 1661:23 1666:12 1737:4 1748:24,25 1751:13 1753:25 1754:1 1757:15 1758:10,11 1777:20 arrangement 1554:2 arrangements 1585:14 1707:3 arrest 1733:2 arrival 1583:21 1658:25 1679:20 arrive 1655:20 1734:12 1742:10 1754:20 1758:16 arrived 1525:22 1530:19 1541:9 1551:22 1552:7 1556:9 1562:20 1569:2 1570:17 1584:8 1587:10 1588:18 1600:17 1601:3 1602:18 1612:14 1655:3 1655:22 1656:18	1657:11,12,20 1661:2,9 1665:23 1736:10 1754:19 1754:22 1759:4,7 1768:23 1777:21 arriving 1758:8 1771:24 ascertain 1542:25 1732:3 ascertaining 1746:19 asking 1564:3,5,6 1579:24 1584:18 1587:11,25 1639:17 1690:1 1708:13 1709:15 1713:2 1715:14 1716:23 1717:5 1721:17 1731:21 1735:8 1737:9 1768:1 asks 1701:2 asleep 1576:16 1577:18 aspect 1730:15 aspiration 1523:4 aspirational 1523:10 assented 1576:23 assertion 1774:14 assessing 1662:7 1665:16 assessment 1663:7 1664:5 1665:6 1668:23 1677:21 1725:9 1729:25 1732:6,9 assessments 1663:10 1677:25 assigned 1596:11 assist 1566:1 1575:16 1589:13 assistance 1539:21 1707:1 1748:9 Assistant 1518:6 assisting 1566:7 1777:1 assists 1654:15 Assoc 1518:17 Associate 1518:3 associated 1622:10 assume 1585:15 1604:10 1666:14 1708:14 1714:6 1755:4 1762:7 assumed 1639:1 1760:18 assuming 1580:17 1632:19	assumption 1690:8 athletic 1668:18 atmosphere 1530:18 attempt 1701:24 1734:2 attend 1651:1,11 1654:18 1660:8 1703:12 1705:4 1753:17 attendance 1594:5 1602:5 attendant 1729:24 1730:2 1743:5 1745:13 attended 1540:3,8 1554:18 1612:9 1651:16,20,23 1653:10 1667:20 1706:12 1709:21 1749:4 1762:7 1771:10,14,21 1772:17 attending 1584:3 1654:11,14 1658:5 1683:1 1689:22 1697:5 1737:4 1738:20 1746:22 1779:3 attention 1546:7 1549:13 1561:20 1566:4 1574:25 1664:19 1749:7 1769:19 1770:2 attentive 1665:20 attribute 1606:5 authorities 1748:8 1750:23 Authority 1650:15 1653:4 automatically 1638:13 1711:25 avail 1638:1 available 1578:24 1637:25 1638:7 average 1651:10 1655:11 aware 1631:22 1703:16 1724:2,6 1760:14 away 1538:13 1543:18 1545:14 1545:15 1546:12 1546:14 1562:5 1597:21 1601:18 1603:24 1605:24 1606:15,22 1610:7,8,9,9 1627:5 1646:12	1659:10 1671:10 1684:12 1688:7 1732:19 1734:1 1775:14 awful 1589:12 awkward 1619:23 a.m 1521:2 1594:20 1594:21 1653:14 1768:23 1780:20 <hr/> B <hr/> B 1518:12,13 1625:22,22,24 backed 1550:23 1551:18,21 1659:21 backgrounds 1630:16 badly 1536:7 1537:6 1540:6 bag 1744:10 bags 1744:11 Bakema's 1610:20 1632:15 banging 1743:9 bargain 1575:10 bargaining 1575:9 base 1745:4,24 1757:13 based 1572:15 1592:6 1629:17 1677:24 1709:20 1710:9,14 1718:8 1718:16 basic 1677:22 1696:19 basically 1579:11 1586:15,20 1587:4 1590:5 1625:19 1662:23 1664:11 1669:7 1696:18 1714:11 1714:20 1715:14 1719:9 1742:7 1749:23 Beattie 1572:16 1573:20 1576:11 1582:12,13 1594:5 1623:16 1623:18,22 1645:22,25 1647:8,14 Beattie's 1609:13 1646:13 become 1555:2 1580:3 1608:21 1613:2 1622:19 1629:8 1630:2 1649:19 1650:17 1728:16 1729:5	beer 1712:3,4,5,6 1720:25 1721:2 beers 1720:25 before 1517:13 1521:8 1527:8 1530:10 1541:9 1543:19 1550:16 1553:11 1556:10 1558:7 1567:3 1568:5 1569:2 1581:8 1597:6 1603:23 1609:24 1611:12,25 1612:24 1619:6 1622:2 1629:1,23 1632:12,14 1641:13 1652:2 1656:3 1663:10 1676:10 1694:19 1706:20,21 1713:4 1714:17 1717:19 1724:16 1735:11 1736:19 1739:11 1754:20 1755:18 1769:2 1771:17 1773:2 began 1577:22 1595:20 1673:22 begin 1521:9 1524:25 1682:18 1688:14 beginning 1595:19 1670:24 1754:9 1767:25 begins 1695:10 behalf 1637:10 1779:2 behind 1542:6 1547:11 1548:12 1562:8 1588:21 1637:9 1740:14 being 1522:5 1557:3 1565:22 1566:12 1569:23 1570:3 1589:8 1590:6 1592:3 1610:3,23 1622:22 1623:21 1625:1 1630:18 1631:17 1632:15 1639:5 1641:1,5 1647:23 1657:9 1661:10 1670:13 1678:3,4 1691:23 1692:4 1695:23 1698:7 1701:5 1707:5 1730:15 1734:9 1753:2 1762:6 1775:14
---	--	---	---	---

belief 1599:25	1758:23 1779:18	1707:9 1744:15	calculated 1691:13	capability 1731:13
beliefs 1597:9	Black 1619:3,4	breath 1667:7	1691:16	capable 1665:6
1599:8,11,19	1641:6 1642:16	1711:24 1712:6	calf 1669:6 1677:10	1672:1
bells 1696:9	1642:17	1714:24 1718:24	1679:13 1680:17	capacity 1771:22
below 1750:3	Black's 1620:22	1720:15,15	call 1522:13	card 1671:17,19
belt 1687:17	Blair 1635:24	1726:19,22	1523:12 1524:10	1722:3
bend 1527:14	bleeding 1546:6	1738:15,16	1532:22 1560:5	care 1520:7
1743:16	1669:3 1732:1	1746:21 1761:19	1568:24 1569:8	1597:23 1650:6
beneath 1555:25	blocked 1601:12	breathing 1731:19	1570:7 1579:17	1655:25 1656:11
bent 1677:3	blocking 1550:9	1747:23,25	1597:24 1616:25	1657:9 1673:20
Bergmann 1518:6	1655:23	1748:2	1625:21 1636:21	1681:11 1698:2
beside 1531:6,9	blood 1674:5	breeze 1718:19,25	1652:20 1653:12	1729:25 1730:2
1662:24 1667:7	1677:3 1678:17	1719:4 1763:23	1654:5,17	1730:22,23
1674:21 1681:25	1680:19 1733:21	1764:1,7,21,24	1667:24 1676:1	1731:2,7,17,23
1684:6,10 1716:9	1743:25 1744:1	1765:2,8	1676:14 1685:25	1732:12 1734:2
1718:5	bloodshot 1701:8	bridge 1758:14	1703:17 1730:2,7	1737:10,18
best 1524:8 1534:5	bloody 1663:18	brief 1541:20	1732:8 1743:14	1742:1,13 1746:7
1586:23 1589:6	1718:5	1550:6 1592:24	1745:11 1749:4	1746:12 1750:5
1599:22 1616:24	blowing 1764:8	1658:16 1706:19	1749:17 1753:4,5	1754:19,25,25
1621:16 1670:23	blown 1732:19	1708:11 1774:10	1760:21 1773:25	1755:1,8 1769:19
1734:2 1758:10	blue 1526:17	briefly 1571:17	called 1522:10	1773:10 1777:17
1780:14	1634:23	bright 1744:7	1525:1 1554:2,5	career 1595:18
betrayed 1610:13	blurb 1584:23	1765:6	1566:1,21	1609:6 1616:7
better 1613:9,11	body 1521:11,15	bring 1576:1	1569:11 1598:16	1619:8 1628:7
1616:20 1745:15	1648:25 1732:20	1700:16 1734:11	1619:20 1629:2	1629:12 1651:17
Betty 1776:11	1747:18,22,22	1734:12 1748:7	1630:6 1636:9	1728:12,17,20,23
between 1540:10	1767:11,19,22	1777:9	1689:10 1753:13	careful 1670:13
1553:17 1558:11	book 1558:3 1565:6	broken 1743:24	1753:20 1773:9	carefully 1665:15
1590:22 1633:5	1622:25 1623:6	brother 1621:17,18	1773:25	carriage 1753:10
1647:7 1737:15	1652:16	brothers 1596:19	calling 1521:10	carry 1601:14
1741:12 1751:5	booze 1681:20	1596:23	1532:19	1602:7 1603:18
1771:1	botched 1577:11	brother's 1735:14	calls 1651:10	1651:4 1735:24
Bev 1776:11	both 1548:14	brother-in-law	1709:21 1733:1	1736:24 1738:6
beyond 1639:15	1590:14 1625:11	1549:7	1775:10 1776:15	carrying 1560:15
big 1621:17 1627:6	1625:18,24	brought 1523:15,21	calm 1543:6	cars 1734:8 1735:16
1627:8 1664:9	1631:16 1639:9	1565:5 1597:21	came 1524:18	Carter 1749:11,18
1665:13 1668:10	1734:24 1745:19	1597:22 1707:2	1525:5,18 1527:6	1753:6 1760:4,9
1668:13 1744:15	1746:13 1750:15	1723:1	1527:9 1530:13	1760:10,13,18,21
1757:23 1766:13	bother 1688:10	bruising 1674:10	1531:6 1532:3	1761:8,15,18,24
bigger 1668:12	bothered 1560:19	building 1618:2	1537:10,18	1766:2,17 1770:6
biggest 1669:7	bottom 1535:17	1625:14	1539:6 1540:20	1774:15 1778:9
biologically	1551:4,6,11	Bukowski 1519:4	1540:25 1547:8	1778:11
1596:17	1555:21 1562:3	1520:3,5 1521:10	1547:11 1552:20	case 1522:10 1523:1
bird 1664:9	1583:2,3 1627:13	1521:16 1522:14	1553:9 1561:11	1553:2 1564:21
Birds 1527:14	1635:17 1636:21	1524:11,14,17	1562:8 1567:17	1567:12 1568:8
1600:21 1617:16	1683:15 1705:17	1525:6 1526:12	1571:6,20 1572:1	1574:4 1575:25
1654:22 1753:24	1715:11,13	1535:17 1555:4	1575:20 1576:7	1578:9,21,25
1758:9,15,17,17	1762:23 1763:7	1555:10 1565:8	1590:12 1602:11	1615:21 1647:25
birth 1555:10	1764:12,17	1580:7 1583:16	1612:19 1617:25	1648:1 1658:14
birthday 1549:17	1775:2	1584:2 1588:4	1620:3 1638:25	1663:11 1678:7
bit 1536:5 1541:1	Bowley 1518:13	1593:15	1640:12 1659:13	1710:7 1711:3
1576:2,6 1599:17	box 1719:21	bulk 1666:15	1744:22 1751:15	1746:24 1749:24
1602:19 1603:1	Boyd 1518:18	bump 1630:1	Canad 1619:19	1751:20 1755:23
1635:18 1650:3,7	brain 1733:24	burn 1669:5 1674:8	cancellation	cases 1641:25
1660:15 1663:18	brake 1607:7	1758:10	1686:18	1651:17,23
1670:22 1684:7	Braun 1518:5	bypass 1757:15	cancelled 1568:5	1729:15 1772:12
1685:17 1728:5	brave 1627:16	B.8.a 1535:14,15	1570:4	categorize 1718:12
1728:16 1731:21	bravely 1580:14		cancer 1597:7,12	caught 1627:18
1740:23 1757:4	break 1594:11,14	C	canvassed 1715:25	cause 1698:10
		cab 1588:21		

1733:4 caused 1559:8 1613:23,23 1738:2 causing 1560:17 caveat 1780:4 Cecelia 1518:21 1781:5,14 Cecil 1519:7 1521:11 1522:16 1522:18 1594:25 1595:1 1596:18 1620:6 cell 1532:12,17 cent 1771:6 centimetre 1680:18 centre 1517:13 1536:13 1748:23 ceremony 1597:11 1600:12 1602:21 1603:13 1609:25 1611:5,8 1645:24 certain 1581:7 1621:1 1624:18 1661:19 1733:5 certainly 1522:11 1536:12 1558:24 1635:8 1708:25 1712:8,9 1715:2 1755:16 1764:16 1777:1 CERTIFICATE 1781:1 certification 1651:7 certified 1616:10 certify 1781:7 cetera 1578:15 1734:8 chance 1683:5 change 1522:4 1568:16 1654:2 1711:8 characterization 1685:23 characterize 1673:5 charge 1595:14 1596:6 1623:23 1704:23 charged 1615:12,25 1632:13,20 1633:2,7 1634:5 1642:20 1644:6 1689:13 1734:9 charges 1625:4 1646:24 check 1560:20 1597:24 1638:18 1657:17,21 1664:4 1711:11	checked 1658:9 1667:14 1719:21 1750:7 checking 1657:2 Chevy 1735:17 chief 1518:4 1556:4 1557:12,16 1558:11 1559:19 1562:19 1585:20 1586:24 1602:9 1602:10,10,13 1603:16 1604:19 1604:24 1605:22 1606:5,17 1607:4 1608:21 1609:20 1609:24 1611:21 1611:25 1612:7 1614:1 1615:18 1632:21 1633:5 1645:22 1646:10 1647:3 1679:12 1749:11 1760:4,9 1760:10,13,17 Chiefs 1622:7 child 1638:12 children 1537:24 1596:24 1597:3 1612:22 choice 1665:17 choose 1631:1 1771:1 choosing 1633:24 Chris 1609:13 1623:16,18,22 1624:3 Christopher 1553:20 church 1735:14 chute 1627:8,11 cigarette 1614:23 circle 1754:7 circumstance 1746:3 circumstances 1565:21 1748:25 1749:1,16 1751:13 1755:9 citizen 1690:20 city 1601:7 claimed 1652:3 clarify 1583:18 1775:17 class 1601:17,25 1617:5 1619:5,6,6 1619:18 1622:3 classes 1618:5 classmate 1602:1 classmates 1601:16 cleans 1654:15	clean-cut 1543:25 clear 1524:21 1578:17 1633:10 1689:1 1714:1 1757:3,9 cleared 1777:19 clearly 1522:9 1691:10 1723:25 1778:19 Clearwater 1518:16 clerk 1518:7 1521:3 1535:14 1555:1 1580:4 1582:23 1594:18,22 1648:17,21 1649:5 1652:22 1681:9 1682:13 1705:13 1706:10 1707:11,15 1756:1 1780:19 clients 1580:13,16 Clifford 1518:3 1519:7,10,15,19 1574:21 1575:2 1594:24 1595:5 1622:20 1627:24 1647:19,22 1648:9 1691:24 1692:5,13 1706:25 1707:8 1727:21 1728:1 1748:16,21 1755:13,20,22 1774:9 1778:25 1779:6,21 climbed 1627:8,11 clinical 1678:3 clock 1695:11 close 1527:24 1530:2,10 1544:6 1563:3 1596:24 1597:17 1600:20 1604:12 1612:23 1612:24 1616:22 1625:16 1626:25 1652:13 1660:1 1726:23 1741:11 1742:19 1767:10 1775:20 closed 1660:12 1739:16,23 closer 1527:16 1536:19 1604:6 1613:3 closest 1621:25 closing 1663:1 clothing 1720:22 1726:17	code 1671:22 1679:6 cold 1603:25 collision 1525:22 1559:9 1580:18 1596:1 1622:4,9 1638:12,17 1694:16 1734:19 1736:8 1750:17 colour 1533:24 colours 1558:16 column 1743:23 Coma 1677:18 come 1524:22 1526:22,24 1527:14 1541:10 1542:5,24 1550:12 1552:9 1553:25 1554:3,9 1554:12 1570:3 1571:23,25 1578:21 1581:6 1615:16,19 1618:4 1620:2,10 1644:24 1648:16 1664:25 1665:2 1668:24 1677:23 1685:7 1694:24 1694:25 1703:8 1708:7 1710:14 1724:16 1734:5 1734:10 1742:9 1746:20 1747:3,5 1754:7,8 1758:3 1780:9 comes 1718:9 1730:1,16 1734:1 1747:25 comfortable 1649:12 coming 1527:2,11 1528:25 1538:13 1538:14,18 1540:16 1543:2,5 1547:25 1548:1,6 1550:8 1573:23 1580:14 1588:21 1589:8 1649:13 1652:13 1659:16 1685:2 1686:12 1702:22,23 1720:14,19 1726:14,17,21 1731:23 1739:5 1741:2 1747:12 1747:19 1755:8 commander 1615:18 1624:1 1637:18,24	commence 1706:21 COMMENCING 1521:2 commendations 1628:8 comment 1576:11 1576:19 1577:20 1577:24 1579:14 1608:10 1610:25 1613:5 1615:5 1640:2,4 1741:14 commented 1574:16 1615:9 1765:1 comments 1582:7 1622:24 1623:4 1637:16 1643:8 communicate 1545:5 communicating 1639:23 1737:19 community 1623:23 compassionate 1585:22 1586:8 compelled 1537:15 1599:9 1601:21 competence 1665:17 competently 1665:7 complain 1610:24 complained 1669:6 1680:16 complaint 1669:7 1679:12 complete 1728:23 1732:20 1750:6 completed 1681:2 completely 1577:10 completing 1730:17 component 1648:6 1668:3 comprise 1752:10 conceded 1777:3 1778:20 concept 1678:4 concern 1586:3 1673:24 1703:10 concerned 1604:25 1638:16 1699:25 1718:10 1746:8 1773:17 concert 1618:17 1629:18 concession 1778:22 conclude 1668:11 concluded 1672:24 1678:13 conclusion 1538:6 1558:21 1626:20
--	---	--	---	---

1640:24 1664:18 1664:23 1671:8 1677:23 1691:9 1745:25 1753:21 conclusions 1667:4 1668:24 Concordia 1525:7 1525:16 1527:1 1552:4,18 concussion 1678:21 1723:22 1724:2,5 1724:7 1727:13 1733:13,13 condition 1546:8 1550:20 1665:20 1669:23 conditions 1765:4 1770:25 conduct 1600:12 1603:13,14 1609:25 1645:23 1738:23 conducted 1744:17 1760:25 1761:6 confidence 1531:25 1578:4 confident 1568:11 1775:4 confined 1718:18 1763:19 confirm 1640:13 1641:4 confirmed 1640:23 confused 1712:16 1712:20 confusing 1685:17 confusion 1523:16 1757:4 congestion 1551:24 connection 1524:23 1554:13 1564:20 1565:22 1566:15 1567:18 1568:7 1568:14,19 1608:12 1653:6,9 1676:15 1770:19 1775:1 connections 1641:16 1642:6 conscience 1577:6 consciousness 1677:18 1680:13 consisted 1607:16 consistent 1625:6 1699:15 1750:18 consists 1759:10 constable 1629:8 1630:1 1776:12 constables 1626:8	1626:16 consult 1680:24 consumption 1750:16 contact 1546:21 1549:14 1553:2,5 1553:9 1559:5,12 1564:13 1569:1,4 1570:7 1585:3 1639:25 1688:3 1704:5 1737:18 1741:7 1743:25 1744:15,22 1749:14 1752:14 1780:2 contacted 1578:13 1584:24 1597:8 1637:24 1703:24 1753:10 contain 1677:13 contained 1562:15 contains 1558:10 1676:17 contaminate 1604:10 content 1753:9 contents 1676:17 context 1559:15 1623:5,18 1746:24 continuation 1702:17 continue 1528:9 1557:19 1573:17 1599:13 1677:8 1680:6 1685:20 1729:2 continued 1651:7 1739:17 continuing 1566:8 1650:25 1689:16 1729:4 control 1730:1 1731:2 controversy 1730:9 Convention 1517:13 conversation 1541:20 1547:24 1563:17,24 1568:12,13 1573:11 1576:20 1577:14 1592:24 1604:19 1605:16 1607:3,13 1609:7 1620:12 1623:19 1624:4,6,23 1646:2 1647:7,12 1656:8 1658:16	1670:20,24 1673:9,9 1692:12 1692:14,25 1693:1,7 1699:12 1731:15 1739:2 1745:22 conversations 1553:3 convertible 1735:18 convey 1580:14 conveyed 1606:8 cool 1627:17 cooperate 1524:7 cooperating 1689:17 cooperative 1680:20 coordination 1713:7 copies 1676:10 1681:7 1682:3 1707:4,7 copy 1707:4 copying 1671:20 corner 1535:18,18 1538:12 1540:15 1583:3 1694:10 1696:5 1763:8 Corporal 1565:11 1653:4 1682:24 1682:25 1702:13 1751:11 1763:9 corrected 1587:20 correctly 1620:16 correspond 1555:13 Cory 1627:4 Cory's 1610:10 counsel 1518:2,3 1522:5 1523:2,17 1523:23 1535:15 1580:12 1581:20 1591:24 1592:20 1593:6 1620:25 1628:1 1630:24 1631:8 1634:11 1639:10 1644:15 1652:24 1707:24 1713:25 1714:2 1717:12,15,19 1718:10 1720:13 1722:17 1748:10 1755:15 1760:2 1766:1 1768:1 counsel's 1779:20 counted 1766:14 country 1622:6 couple 1582:3 1629:6 1643:19 1648:13 1650:22	1670:16 1685:9 1704:13 1717:10 1717:20 1753:21 1756:5 course 1525:4 1553:3 1555:13 1616:9 1630:23 1650:19,20 1651:9,17 1656:14 1662:4 1669:18 1689:20 1689:24 1690:4 1720:24 1731:18 courses 1689:15 court 1518:19 1570:13,16 1576:1 1580:19 1581:6 1690:13 1703:8 1753:14 1753:17,19 1756:7 1772:9 courthouse 1772:18 courtroom 1570:24 1580:21 courts 1574:11,18 1575:14,23 cousin 1596:16 1597:12 1598:14 1601:20 1602:21 1605:6 1607:2 1610:7 1622:7,18 1626:23 1628:4 1648:4 cousins 1597:5,7,13 1599:1 cousin's 1605:14 covered 1631:6 1752:2,3 1764:7 covering 1735:7 cracked 1743:23 cramped 1523:20 crash 1598:9,15 1599:6,16,24 1600:12,19,22 1612:24,25 1614:17 1620:15 1622:8 1629:2 1648:3 1652:20 1667:13 cried 1611:13 crime 1682:25 criminal 1581:2 1749:23 cross-examination 1755:18 cross-examine 1631:2 cross-examines 1631:9	cross-examining 1630:24 Crown 1703:22 cruiser 1600:24 1609:24 crying 1605:19 1669:25 Crystal 1589:9 1596:15,16,21,25 1597:4,8,17,21 1598:13,14 1599:10,25 1609:12 1613:3 1627:4,10 1629:2 1634:18 1645:24 1652:4 Crystal's 1598:5 1607:8 1612:22 1648:4 curious 1559:11 current 1596:5 1729:6 custody 1731:3 customary 1623:25 cut 1771:2 C.13.a 1520:3 1554:23 1555:3,4 C.13.b 1565:3,3 1580:6 <hr/> D D 1653:1 1748:10 1774:19 Dakota 1750:8 Dale 1549:6,12,20 1549:25 1550:6 Dale's 1549:17 damage 1533:23 damaged 1536:7 1537:6 1540:6 dash 1743:10,22 1744:14 date 1555:10,11 1565:8 1568:4,8 1596:11 1672:6 1672:20 1694:13 1700:8 dated 1682:23 1765:18 dates 1568:14,15 daughter 1610:9 David 1518:2 day 1523:2 1525:2 1526:9,16 1555:12 1610:14 1613:7 1652:2 1653:25 1654:1 1654:10 1672:6,6 1704:7 1719:3 1724:5 1728:19
---	--	---	--	--

1729:20 1731:1 1734:13 1742:17 1744:22 1751:16 1756:16 1765:6 1769:8 1771:3 1775:6,22 1776:2 1777:2 1778:16 1780:8,13 daycare 1526:3,5 1553:16 days 1553:11 1585:7 1617:23 1625:21,23 1653:25 1769:8 dead 1523:1 1598:14,14 deadly 1633:10 deal 1560:17 1561:20 1564:17 1588:18 1687:13 1712:15 dealing 1553:21 1606:25 1613:15 1613:16,17 1616:20 1635:8 1693:23 1708:1,3 1710:8,21 1718:4 1726:2 1734:7 1741:20 1747:6 dealings 1645:10 deals 1689:16,17 1774:11 dealt 1578:9 1585:20 1628:17 1762:8 death 1598:5 Deborah 1555:10 Debra 1518:20 debrief 1573:14 debriefing 1622:1 decide 1574:11,17 1575:14,23 1687:2 decided 1528:21 1550:17 1755:12 decision 1665:7,11 1731:12 1746:2,3 decisions 1733:24 decline 1742:16 1746:5 declining 1731:8 1732:16 1746:1 defence 1523:23 1567:24 1703:22 defer 1631:2 definite 1760:20 definitely 1775:12 1777:5 degree 1531:24	delay 1659:2 deleted 1715:4 demeanor 1701:17 demeanour 1564:3 1610:21 demonstrate 1614:16 demonstrated 1615:2 denial 1613:13 1614:14 Denise 1519:4 1520:3,5 1521:10 1522:14 1524:11 1524:14 1552:21 1555:4,9 1565:7 1566:7 1580:7 deny 1665:4 departed 1653:17 department 1584:14 1641:17 1716:25 1756:18 departments 1625:20 departure 1665:25 depending 1528:24 1630:23 1654:6 depicted 1551:11 depicts 1536:3,11 1540:1 deployed 1744:11 1744:11 depressed 1750:14 Deputy 1622:6 Derek 1517:1 1518:12 1520:7 1617:12,18 1618:22 1620:18 1621:5 1625:10 1631:16 1681:11 1697:3 1721:4 1767:6 describe 1527:12 1531:10 1533:2 1533:21 1534:4 1537:19 1539:9 1540:18 1543:9 1543:22 1561:10 1596:20 1610:12 1630:17 1657:24 1659:5 1667:19 1667:21 1668:14 1669:12 1670:7 1670:25 1673:4 1681:18 1684:13 1688:18 1691:14 1698:9 1699:14 1726:13,14 1728:17	described 1546:4 1564:13 1599:22 1666:3 1668:23 1677:11 1691:3 1697:4 1698:6 1740:19 1766:17 describing 1540:12 1658:23 description 1519:2 1530:8 1561:13 1562:15,17 1572:15 1668:4 1699:15 1702:3 designated 1653:24 designed 1671:25 desire 1637:17 despite 1640:20 destroyed 1735:3 detachment 1553:12 1682:24 detail 1540:24 1623:12 1659:6 details 1593:7 1615:14 1621:10 1621:19 1626:14 1751:7 detect 1591:20 1691:1 1716:18 1718:17,23 1719:18 1742:12 1763:18 detected 1711:20 1739:2 1746:17 1761:19 detecting 1692:11 1713:21 1745:6 1765:12 determination 1669:11 determine 1531:4 1533:17 1639:17 1671:25 1732:1 1744:4 determined 1600:10 determines 1629:19 develop 1727:13 developed 1551:25 developing 1754:12 development 1728:18 developments 1571:21 device 1616:8,11 diagnosed 1597:7 diagram 1551:2,4 1558:14 dial 1532:13 diaphoretic	1678:16,18 dictate 1696:19 die 1560:9 died 1552:23 1560:9 1598:14 1622:7 difference 1654:8 different 1547:13 1547:14 1641:20 1642:3 1719:21 difficult 1525:2 1550:6 1552:25 1613:6 1617:6 1621:8 1763:22 difficulty 1532:15 1558:15 1560:18 1721:24 digging 1541:21 digit 1671:18 direct 1519:4,7,12 1519:15 1561:19 directed 1736:11,12 1736:20,25 1742:11 1754:21 directing 1600:24 direction 1521:21 1578:17 1759:3 directions 1612:2,8 directly 1608:3,4 1612:11 1637:24 1771:1 director 1525:12 disclosure 1751:10 discuss 1637:19 discussed 1745:19 discussing 1575:16 discussion 1569:19 1574:3,5 1575:9 1575:20,24 1576:3 1582:14 1582:18,21 1622:1 1637:14 1657:13 1745:5 Disheveled 1701:10 dismissed 1641:24 disorientating 1581:9 disoriented 1712:17 dispatch 1653:6 1655:2 1665:24 1700:10 1701:24 dispatched 1654:18 1679:19 displacement 1677:5 displaying 1727:14 distance 1539:24 1543:13 1589:3 1590:5,10,17,21	1590:24 distracted 1538:11 1540:15 distraught 1670:7 District 1625:12 1631:17,19 disturbed 1744:9 Diversity 1595:15 1596:6 division 1595:25 1596:3,11 1608:6 1638:10 divisional 1615:18 1624:1 1637:18 1637:23 Dixon 1518:11 doctor 1674:17,24 1680:24 1704:23 1731:8 1739:6 1741:2 document 1554:16 1554:21,22 1652:23 1675:17 1675:20 1676:13 1676:17 1681:7 1682:20,21 1683:6,12 1686:10 1748:14 documentary 1628:14 documented 1557:5 1557:6 Dodge 1750:8 doing 1525:15 1577:5,6 1596:12 1603:2,3,7,11 1607:20 1608:6,8 1609:22 1611:16 1613:9 1636:1 1638:17,19,20 1640:25 1663:8,9 1665:5 1671:6 1673:13 1679:3 1695:21 1702:17 1725:9 1729:20 1739:8 1746:8 done 1523:13 1560:6,12,13,24 1581:8 1586:2 1593:18 1602:22 1685:19 1689:21 1695:24 1729:7 1745:12 1753:3 doom 1733:6 1754:13 door 1660:11,12,16 1660:19,19 1662:1 1663:2 1737:5,6,12
--	---	--	--	--

1739:1,10,12,15 1739:25 1740:4,7 1740:21 1742:12 1742:19 1744:7 1747:8 1767:10 doors 1661:1,5 1686:22 1739:22 dots 1667:11 double 1576:10,13 1582:7,8,15,18,19 1633:24 1634:20 1706:14 doubt 1591:9 1686:7 1760:7 down 1526:25 1527:2,11 1528:6 1528:12,18 1539:7 1540:9,23 1552:9 1561:25 1578:21 1586:24 1599:12 1611:12 1627:12,13 1659:17,24 1660:14 1662:19 1667:10 1668:16 1671:21 1672:17 1680:9 1700:17 1710:11,16 1712:19 1715:25 1720:3 1744:12 1752:21 1777:11 Doyle 1565:11 1566:5 1653:4 1683:1 1702:14 1762:25 1763:9 drank 1738:14 draw 1558:14,17 1566:3 1664:17 1664:23 1691:9 dream 1613:15 drew 1538:6 1671:8 dried 1677:2 1680:19 drift 1597:3 drink 1738:14 drinker 1712:4 1738:13 drinking 1576:18 1617:13 1685:4 1686:6,13 1687:3 1690:2 1712:10 1755:5 drive 1600:4 1654:1 1735:13 driven 1598:10 1599:6 driver 1559:7 1588:20 1596:12 1654:4,13 1710:4	1745:12 1758:24 1773:12,24 drivers 1710:5 driver's 1533:13 1541:5 1548:14 1660:19,21 1671:20 1721:24 1773:16 drives 1654:1 driving 1526:13 1529:18 1539:17 1599:16,21 1632:13 1653:20 1653:21 1667:12 1667:14 1692:21 1693:5 1729:20 1729:21 1737:3 1742:23 1753:23 drop 1749:19 dropped 1634:12 drove 1600:18 1601:6 1602:15 1604:6 1607:7,11 1612:5 drunk 1606:3 1607:1 dry 1680:14 due 1522:3,10 1629:10 duly 1524:15 1595:1 1649:6 1727:25 1781:5 during 1558:12 1577:13 1620:25 1628:7 1699:21 1702:6 duties 1639:6 duty 1622:25 1623:6 1626:11 1652:19 1653:24 dynamic 1614:17 dynamics 1607:11 1729:21 D.19.b 1520:15 1756:2 1774:19 D.19.c 1520:9 1682:4,6,9 1684:21 1694:5 D.19.d 1520:11 1682:14,15 D.19.e 1652:25	1599:20 1617:13 1662:6 1675:8 1681:16 1724:15 1733:15,20 1750:19 early 1596:9 ears 1705:9 easier 1558:17 1697:12 1718:17 1763:17 easiest 1614:21,22 easy 1718:23 edge 1738:1 educated 1728:21 education 1650:25 1651:7 1689:16 1728:16 1729:4 Edward 1519:11 1520:9,11 1521:13 1522:19 1648:24 1649:6 1682:9,15,22 effect 1572:25 1601:25 1646:15 1679:25 1743:12 effects 1732:15 eight 1627:15 1650:20 1697:5 1733:17 either 1546:17,23 1547:8 1566:1 1582:9 1587:21 1588:5,14 1637:18 1703:21 1703:22 1704:16 1708:18 1717:24 1733:2 1752:15 1757:20,25 1772:14 elaborate 1579:10 1669:15 1684:8 1698:10 1708:18 1708:23 1740:23 1754:14 1766:3 elaboration 1564:7 1709:9 elapsed 1655:5 1695:13 1769:1 elders 1638:24 Eleven 1525:16 elite 1630:18 Elmwood 1595:22 eloquently 1633:14 elsewhere 1708:4 embarrass 1628:5 emblem 1549:13 emergency 1552:23 1658:15 1704:20 1704:22 1734:3	1736:5 1739:5 1741:2 emotion 1544:18 1619:24 emotional 1560:18 1564:4 1610:12 1613:5 1620:4 1633:10,16 1634:18 1669:23 1670:11 1741:15 emotionally 1610:19 employed 1595:9 EMS 1734:1 1741:2 1746:6 en 1653:17 1654:25 1730:2 1745:24 enable 1691:8 encountered 1607:22 encouraged 1597:10 1599:11 encouraging 1597:4 end 1523:2 1552:22 1606:1 1625:12 1673:12 1674:25 1687:4 1700:7 1715:8 ended 1600:20 1679:16 1715:7 endorsements 1679:5 ends 1695:11 enforcement 1580:24 1595:19 engaged 1563:16 enough 1532:2 1582:24 1622:4 1691:20 1705:14 1722:6 1725:12 1725:13 1726:5,9 ensure 1732:13 1742:15 enter 1565:2 1755:24 entered 1527:3 1683:24 1748:17 entirely 1549:2 envision 1775:23 equal 1680:15,16 especially 1626:7 1634:25 1763:21 essentially 1551:19 estimate 1543:18 1658:20 1666:4 1666:19 estimates 1727:3,7 et 1578:15 1734:8 even 1560:20	1573:23 1578:13 1589:15,24 1597:1 1598:24 1605:21 1608:1,2 1613:22 1627:6 1637:2 1639:14 1639:17 1640:18 1641:25,25 1715:6 1741:8 1742:6 1763:22 1766:17 evening 1620:19 1639:16 event 1720:7 events 1565:24 1583:19,20 Eventually 1745:3 ever 1619:14 1625:10 1701:20 1727:12 1751:2 1753:9,13 1766:2 1769:17 1774:5 every 1620:1 1651:8 1726:12 everybody 1611:15 1611:16 1779:9 everyone 1565:6 1637:25 1638:19 1640:5 1778:8 everything 1527:15 1549:12 1550:23 1558:10 1561:22 1562:1 1614:6 1636:22 1699:24 1751:25 evidence 1524:23 1594:5 1613:19 1652:24 1661:18 1682:14 1708:14 1738:10 1750:24 1756:7 1757:6 1760:2 1768:1,14 1768:22 1771:9 evident 1724:3,7 1733:13 Ex 1596:13 1598:7 exact 1606:6 1673:14 exactly 1534:2,5 1592:4 1659:8 1661:20 1708:15 1755:11 1776:21 exam 1629:9,11 examination 1519:4 1519:5,5,6,7,8,8,9 1519:9,10,12,12 1519:13,13,14,15 1519:16,16,17,17 1519:18,18,19
	E			
	E 1520:3 1555:5 each 1535:18 1572:20,21,22 1608:2,4,5 1613:7 1619:21 1620:5 1668:3 earlier 1547:5			

1677:12 1706:22 1734:10 1742:14 1744:18 1754:9 examinations 1738:23 examine 1677:1 examined 1669:10 1744:3 Examiner 1781:6 1781:15 EXAMINER'S 1781:1 example 1643:8 1724:4 exceedingly 1532:21 except 1627:10 exception 1521:16 exchange 1545:18 1778:17 exchanged 1558:11 exclusionary 1521:17 excuse 1521:14 1580:5 1634:10 1694:6 1716:19 1764:2 excused 1521:20 exhibit 1520:2 1535:13 1554:24 1555:1,3,4 1565:2 1580:2,3,6,7 1582:24 1652:23 1652:25 1676:11 1681:6,10 1682:8 1682:9,14,15,20 1684:22 1694:5 1705:14 1707:2 1719:2 1748:17 1748:18 1755:19 1755:24 1756:2 1760:24 1770:2 1773:7 1774:17 EXHIBITS 1520:1 expand 1608:17 1741:6 1749:9 expanded 1750:10 expect 1578:17 1581:15 1630:22 1680:23 1779:17 expectation 1574:14 1623:3 1667:15 expected 1566:25 1581:14 1752:24 experience 1532:21 1553:4 1580:19 1595:17 1603:7 1623:2 1626:3,22	1649:22 1655:18 1709:20 1710:9 1710:21,24 1718:16 1728:6 1734:7 1741:16 1747:13,21 1753:18 1754:15 1768:3 1769:18 experienced 1623:6 experiences 1745:13,17 experiencing 1754:13 explain 1536:22 1558:14 1573:7 1576:17 1578:22 1581:13,14 1599:17 1614:4 1614:19,23 1615:17 1616:25 1699:9 explained 1569:16 1614:25 1639:3,7 explanation 1640:11 1695:5 Explorer 1734:22 express 1573:2 1578:4 expressed 1576:23 1633:14 expression 1544:15 expressions 1544:16 extended 1647:7 extent 1581:7 1635:2 1742:15 1769:9 externally 1731:25 extra 1648:13 extremely 1624:9 eye 1538:12 1540:15 1688:3 1731:14 1734:14 1737:18 1741:7 eyes 1701:8 1705:9 1717:1,13,22 1730:3,7 1741:9 1775:20 <hr/> F <hr/> face 1701:5 1710:22 1717:4,14,24 1726:25 faces 1757:4 1776:14 face-to-face 1656:8 facing 1659:14 1736:4,13 fact 1533:22 1546:3 1549:25 1576:7	1585:25 1586:16 1597:5 1605:3 1607:1 1608:11 1613:21 1615:10 1618:18 1635:1 1637:24 1639:23 1640:20 1646:25 1647:2 1719:13 1720:8 1727:13 1742:5 1763:25 1765:17 1769:19 1777:8 1778:22 factor 1665:10 1729:15 1750:16 factors 1553:13 factory 1627:8 facts 1667:11 fair 1530:7 1532:2 1542:8 1583:22 1630:17 1634:22 1639:21 1640:1,3 1651:18 1666:14 1685:23 1690:8 1702:7 1722:6 1765:17 1767:19 fairly 1533:23 1629:10 1665:20 1765:10 fairness 1711:20 faith 1636:17,24 1648:8 fall 1650:14 fallen 1576:16 falling 1577:17 familiar 1549:2 1630:9 1653:9 1696:6 1735:9 familiarity 1625:25 families 1597:19 family 1518:10 1549:17 1580:13 1596:17 1598:24 1598:25 1612:16 1613:2,19 1615:3 1615:13 1618:11 1627:23 1633:11 1634:3,5,23 1638:15 1646:6 far 1527:3,5,8,22 1528:20 1542:10 1543:18 1562:22 1587:24 1588:5 1589:6,9 1590:7 1618:22 1699:25 1722:14 1775:14 farther 1534:8 1536:6,16 1538:20 1539:7 1540:9	fashion 1770:15 fast 1528:24,25 1600:1 fatal 1566:8 1651:20 1729:11 fatalities 1729:14 fatality 1702:18 father 1596:18,18 1597:20 fathers 1627:3 favour 1680:9 February 1525:4 1652:2 1653:7 1700:8 1728:25 1729:10,19 1749:5 1756:16 feel 1631:5 1648:5 1674:11 1732:11 feeling 1599:6,23 1600:9 1640:18 1640:19 1646:6 feels 1638:1 feet 1534:8,9 1542:12 1543:21 1544:8 1589:5,6 1589:16,24 1590:2,3,18,20 1591:16,18,21 1592:25 1659:10 1660:2 1767:16 fellow 1602:1 1605:5 1607:1 1609:10,19 1615:11 1633:20 1634:13 1635:6 1637:3 1656:2 1775:23 felt 1537:15 1545:4 1547:21 1578:18 1586:12 1593:11 1599:5,9,16,20 1601:21 1616:15 1622:17 1636:8 1640:24 1750:15 few 1552:8 1558:23 1558:24 1617:19 1631:15 1637:11 1652:11 1685:19 1720:7 1736:3 1750:3 1757:2 1762:3 1772:22 FIA 1769:14 fiddling 1533:19 field 1616:10 figure 1735:4 figured 1751:24 1753:19 file 1753:11 filed 1707:2 1719:5	fill 1716:7,16 filled 1706:21 fills 1675:10 final 1727:22 find 1533:11,14,17 1533:20 1565:4 1568:24 1578:16 1578:18 1612:1 1615:25 1633:1 1633:20 1652:24 1655:20 1674:15 1684:21 1690:25 1724:4 1733:3,12 1747:14 1768:3 1768:19 1769:8 1769:14,15 1771:15 finding 1639:15 1769:15 findings 1745:14 1746:23 fine 1527:15 1534:25 1546:1 1611:8,9 1669:8 1669:11 1739:7 1741:4 1747:3 finish 1522:11 1603:22 finished 1576:9 1582:21 1606:12 1611:19 1666:7,9 1685:20 1686:25 finishing 1555:19 1598:6 1728:24 fire 1550:3 1655:22 1734:22 fireman 1741:25 fit 1549:22 five 1527:10 1562:14 1595:24 1651:14 1661:21 1697:22 1707:8 1707:10 1730:11 1730:13 flack 1627:20 flat 1544:13,14 fled 1772:15 flip 1778:4 flow 1550:21 flowing 1647:20 flushed 1701:5 1710:24 1711:5 focus 1566:19 follow 1591:3 1593:1 1597:10 1599:14 1607:21 1618:8 1699:1 1701:18 1728:6 1751:2,6 1752:14
---	--	--	---	---

1769:7,13 following 1553:6 1617:24 1618:13 1624:25 follows 1524:15 1595:2 1649:7 1727:25 follow-up 1731:11 Fontaine 1519:15 1520:13,15 1521:14,18 1522:2,11,23 1523:21 1652:8 1653:21,22 1663:3 1693:1,17 1707:19 1708:4,7 1719:12 1727:23 1727:24 1728:2 1734:5 1748:18 1749:22 1756:2 1757:2 1762:4 1763:2 1764:18 1767:5 1773:7,9 1774:14 1775:8 1776:5,19 1777:13 1779:1 food 1597:21,22 footing 1533:8 force 1629:7 1743:17,21 1765:15 forces 1770:18 Ford 1734:21 foregoing 1781:7 forget 1733:15 forgot 1755:21 forgotten 1755:23 form 1545:19 1586:19 1609:5 1622:24 1675:4,9 1675:10 1678:6 1678:10 1679:1,2 1679:3 1680:22 1681:3 1686:18 1697:23 1722:13 1730:17,18,19 1749:22 1750:25 1752:9 formal 1622:1 format 1586:15 formed 1667:4 1748:5 forms 1701:13 forth 1554:1 1735:8 forthcoming 1624:14 forward 1524:23 1580:15 1582:4 1638:25 1741:6	1743:19 forwarded 1765:25 forwards 1743:11 found 1535:14 1554:23 1565:3 1579:6,18 1580:6 1581:11,20 1597:6 1618:6 1634:12 1635:1 1679:20 1694:5 1725:6 1772:18 1774:19 four 1523:24 1575:4 1624:24 1685:1 1730:6 four-year-old 1553:15 fracture 1743:13 frame 1624:22 1661:13 free 1731:1 1732:11 fresher 1531:22 Friday 1553:14,22 friend 1523:6 1587:6,23 1588:8 1602:1 1647:15 1715:11 1716:22 1726:3 1727:2 1766:7 friends 1523:9 1601:17 1612:18 1612:18 1616:22 1621:16 front 1532:6 1534:6 1535:25 1538:19 1543:11 1555:8 1556:15 1620:5 1661:17,17 1665:24 1676:14 1680:9 1684:23 1691:24 1723:3 1748:14 1759:24 1763:3 1773:7 frustrated 1610:22 1624:9 frustrating 1532:21 full 1703:13 1754:7 fuller 1715:24 function 1651:4 1663:5,12 1687:1 1690:7 funeral 1553:19 funny 1599:20,23 1599:23 furnish 1563:6 furnished 1523:9 1554:23 1561:13 further 1563:24 1570:6 1599:18	1605:16 1606:19 1607:3,13 1615:14 1623:12 1641:10 1656:3 1699:11 1704:9 1715:6 1727:16 1731:7,9 1740:24 1741:6 1747:6 1751:7 1752:17 1777:11,11 F-3.37 1582:25 1705:14 <hr/> G G 1518:10,17 Garven 1526:24 gases 1747:24 gather 1646:20 1691:7 gathered 1705:1 gauge 1544:3 gave 1522:8 1565:18 1575:2 1592:13,18 1606:4 1612:7 1634:9 1641:20 1642:3 1644:17 1644:20,25 1682:2 1684:19 1688:15 1691:8 1699:16 1708:21 1709:4,7 1713:17 1714:8 1715:24 1716:24 1724:23 1725:2 1726:4 1741:7 1760:3,4 1760:12 1764:14 1765:9,24 1768:13 1770:1 1777:10 general 1579:11 1596:2 1629:7 1663:16 1664:4 1728:6 1729:17 1730:15 1752:20 1753:22 1768:3 generally 1629:22 1630:14 1641:19 1663:10,19 1714:3 1748:23 gentleman 1537:10 1537:18 1538:14 1538:18 1540:20 1541:9 1542:5,20 1543:23 1546:20 1547:6,7,11,13,19 1548:3,6,8,25 1549:16 1559:23 1561:11 1572:12 1574:8 1577:5	1660:2 1667:5 1698:7 1700:20 1737:8,13,13 1748:1 1777:18 1780:18 gesture 1548:19 gesturing 1535:6 gets 1629:4,19 1672:21 1675:5 getting 1526:4 1546:17,23 1618:16 1624:10 1640:10 1641:15 1655:11 1659:3 1667:14 1681:23 1697:6 1754:19 1771:23 Giasson 1518:4 1707:3 girls 1526:4 give 1531:24 1543:17 1552:6 1556:25 1561:12 1565:23 1566:21 1572:7 1579:17 1622:2 1673:17 1682:5 1694:13 1694:25 1699:15 1707:1 1714:11 1725:13 1726:8 1732:6,8,10 1749:12 1751:18 1753:1 1766:4 1771:4 given 1521:17 1574:12 1578:11 1609:24 1682:7 1688:19 1695:5 1696:22 1752:23 1753:9 1756:6 1770:8 1776:1 1779:18 gives 1709:10 giving 1574:21 1673:5 1683:3 1684:24 1700:8 1730:15 1737:18 1762:19 Glasgow 1677:17 Glenda 1779:20 goal 1663:11 goes 1633:12 gone 1536:23 1543:13,14,18 1546:21 1577:9 1579:8 1612:3 1617:15 1626:10 1632:20 1646:23 good 1521:5,6	1524:12,13 1582:24 1589:20 1589:23,23 1595:3,4,6 1597:13 1598:2,3 1611:15 1629:5 1636:8 1648:23 1649:9,10 1664:21 1668:17 1691:13 1705:13 1728:2,3 1732:11 1732:20 1745:15 grabbed 1532:12 grabbing 1758:14 Graham 1780:7 gravity 1647:8 great 1560:17 greater 1539:24 1631:1 green 1518:11 1519:18 1527:16 1528:8,14 1547:15,21 1593:22 1645:18 1725:20,21 1769:24 1773:4 1779:10,12 grew 1595:22 1627:3 1728:20 grief 1613:16 1670:4 grieving 1613:7 1616:21 grips 1677:19 1680:16 ground 1767:17 grow 1597:19 guess 1566:20 1578:11 1579:5 1589:15 1598:18 1601:5,8 1604:25 1608:7 1609:4 1615:15 1616:24 1619:16,17,19 1621:4 1622:17 1639:1 1652:20 1658:22 1664:20 1670:22 1687:4 1693:20 1705:12 1705:22,24 1775:17 guessed 1544:5 guessing 1620:15 1756:6 guidelines 1752:23 guilty 1572:24 1574:1,10 1582:6 guy 1657:17,21 1692:16,18
---	--	---	---	---

1695:25 1696:1 guys 1650:22 1656:6 1659:9	1621:14 1642:12 1647:15 Harry 1518:14 1607:22 1608:4 1609:5 1610:20 1620:1 1622:21 1623:10 1624:15 1625:7,9 1626:8 1635:6 1646:7	1763:16 hearing 1521:12,16 1568:19 1569:17 1648:25 1690:3 1703:13 hearings 1772:24 1773:2 heart 1525:1 1634:12 1678:16 heavier 1706:4,6 heavy 1533:23 held 1641:5 hello 1671:5 help 1536:22 1543:3,5 1545:22 1560:13 1589:11 1636:7 1649:14 1663:13 1689:11 1705:4 1730:6 1731:22 1739:4 1757:18 1775:17 1776:3 helped 1613:4 helpful 1581:12,20 helping 1690:20 helps 1732:9 Henderson 1552:10 1758:21 her 1533:14,14,15 1533:18,20 1535:1,2 1541:21 1546:17,18,19,23 1547:1,4,24 1548:3,16 1549:18 1553:15 1560:13 1562:5 1573:23 1596:17 1598:3,10 1599:13,13 1607:8 1608:19 1609:12 1611:11 1611:13,13,14 1612:22 1627:4 1627:13,14,23 1656:12,14 1657:5 1698:3 1776:11 1779:25 1779:25 1780:2,4	1758:1,14,21,22 1758:22 1759:10 1771:1 highways 1730:4 Hill 1527:15 1600:21 1617:16 1627:2 1654:22 1753:24 1758:9 1758:15,17,18 himself 1571:6 1578:24 1679:23 1756:22 hired 1608:18 1650:23 history 1679:14,17 1697:21 hit 1697:25 1724:5 1743:11,18,22 hitting 1743:14 hockey 1724:4 Hoeppner 1518:16 1631:12 hold 1713:10 holding 1743:15,17 holes 1577:2,7 holiday 1524:18 holidays 1650:22 home 1600:3 1611:14 1617:15 1617:17 1693:8 1771:24 homeowner 1618:24 honestly 1759:2 1775:9 1777:24 Honour 1582:25 1705:15 Honourable 1517:2 hop 1697:7 1764:19 hope 1523:4 1623:1 1633:15 1637:17 hoped 1639:1 hopefully 1757:3 hoping 1633:23 hopped 1660:12 1697:14,15 1736:22 hopping 1745:3 1764:24 horn 1743:20 hospital 1525:7 1552:4,13,21 1560:10 1650:21 1675:1 1704:20 host 1618:2,6 1639:16 hour 1571:20 1632:20 1652:19 1695:11 1719:4	1724:15 hours 1523:14,20 1565:10 1653:14 1682:23 1712:5 house 1597:23 1613:20 1615:6 1619:1 1735:13 1735:14 hub 1743:20 huge 1620:9 hundred 1651:15 hurt 1535:1 1544:12 1546:6 1610:5,13 1664:3 1674:4,16 1689:11 1697:16 1697:17 1743:9 husband 1526:9 1528:15 1530:22 1532:11,20 1550:14 1553:3 1556:13,16,18,21 1556:24 1557:16 1570:12 1571:14 1572:4,5,18 1585:16 1612:22 husband's 1526:11
<hr/> H <hr/> H 1518:14 hair 1543:25 1668:17 haired 1776:12 half 1549:3 1558:1 1558:4 1580:15 1590:9,16 1632:20 1652:19 1724:15 halfway 1715:25 hallway 1552:14 1572:3,19 1578:23 halt 1530:13 hand 1523:1 1713:7 handed 1694:3 handle 1640:7 handled 1717:2,13 1717:22 hands 1543:12 1573:6 1574:11 1574:17 1737:7 1737:15 1741:12 1743:17 1767:15 handwriting 1557:10,11 1695:16,19 1697:9,10 1752:19 handwritten 1558:1 1748:11 1749:3 hang 1744:12 Hanlin 1518:15 1637:9 happen 1643:2,21 1645:3,7 1675:20 1679:25 1680:1 1746:12 happening 1530:21 1734:16 happens 1546:25 1550:5 1557:2 1660:9 1664:17 1664:24 1665:1 1675:5 1697:2 1736:25 1780:15 happy 1636:2 1733:7 1755:6 hard 1535:19 1553:17 1573:7 1629:5 1662:20 1741:20 1743:16 harder 1733:24 1763:21 Harewood 1617:3	having 1524:14 1532:22 1553:2 1558:15 1595:1 1622:23 1649:6 1692:12 1721:20 1721:23 1727:24 1730:6 1731:18 1741:19 1746:6 1753:8 1754:12 1757:5 1761:18 head 1548:21,22 1703:20 1732:14 1732:17 1733:12 1737:23 1738:18 1743:11 1744:16 1747:9 1767:7,12 1769:2 headlined 1565:7 health 1653:3 1665:8,20 1671:17,18,19 1689:19 hear 1523:7 1530:25 1550:8 1573:1 1586:12 1610:16 1692:16 1693:11 1723:24 1755:18 1766:2 heard 1553:23 1559:6 1584:17 1598:8 1613:7,18 1614:7 1622:7 1624:7,11 1633:16 1635:5 1636:23 1678:2 1729:1,19 1730:8	hearing 1521:12,16 1568:19 1569:17 1648:25 1690:3 1703:13 hearings 1772:24 1773:2 heart 1525:1 1634:12 1678:16 heavier 1706:4,6 heavy 1533:23 held 1641:5 hello 1671:5 help 1536:22 1543:3,5 1545:22 1560:13 1589:11 1636:7 1649:14 1663:13 1689:11 1705:4 1730:6 1731:22 1739:4 1757:18 1775:17 1776:3 helped 1613:4 helpful 1581:12,20 helping 1690:20 helps 1732:9 Henderson 1552:10 1758:21 her 1533:14,14,15 1533:18,20 1535:1,2 1541:21 1546:17,18,19,23 1547:1,4,24 1548:3,16 1549:18 1553:15 1560:13 1562:5 1573:23 1596:17 1598:3,10 1599:13,13 1607:8 1608:19 1609:12 1611:11 1611:13,13,14 1612:22 1627:4 1627:13,14,23 1656:12,14 1657:5 1698:3 1776:11 1779:25 1779:25 1780:2,4 hereinbefore 1781:9 he'll 1574:12 high 1629:10 1747:22 highest 1629:19 highway 1526:20 1527:7,8 1551:4,9 1652:21 1659:17 1734:20,24 1735:10 1757:10	1724:15 hours 1523:14,20 1565:10 1653:14 1682:23 1712:5 house 1597:23 1613:20 1615:6 1619:1 1735:13 1735:14 hub 1743:20 huge 1620:9 hundred 1651:15 hurt 1535:1 1544:12 1546:6 1610:5,13 1664:3 1674:4,16 1689:11 1697:16 1697:17 1743:9 husband 1526:9 1528:15 1530:22 1532:11,20 1550:14 1553:3 1556:13,16,18,21 1556:24 1557:16 1570:12 1571:14 1572:4,5,18 1585:16 1612:22 husband's 1526:11	
			<hr/> I <hr/> ICP 1650:3,5 idea 1550:15 1589:15 1608:2 1611:24 1677:22 1751:23 identified 1656:12 1702:10 identify 1565:17 1697:1 1776:4 identifying 1558:16 identity 1656:15 Ila 1549:18 imagine 1532:20 1533:7 1581:7 1659:20 imaging 1559:15 immediate 1737:5 1740:16 immediately 1541:14 1542:1 1724:3,17 1737:22 1740:2,3 1742:12 1750:4 1752:5 1755:4 1758:21 1759:24 impact 1610:2,19 1633:10 1634:18 1635:4,6 1637:20 1724:17 impacting 1743:24 impaired 1632:13	

1667:12,14 1692:21 1710:3,4 1710:10,13,15,22 1711:8 1712:1,16 1762:8,13,17 impairment 1700:20 1711:16 1717:3,14,23 1762:23 1763:1 1763:13 1764:7 impending 1733:6 importance 1647:9 important 1524:24 1649:14 1732:17 impossible 1766:21 impression 1541:5 1541:7 1542:22 1545:17,19 1566:18 1569:22 1578:9 1579:12 1579:13 1688:15 1748:4,6 inaccurate 1761:23 inappropriate 1712:20 1733:25 inappropriately 1733:14 inches 1726:24,25 incident 1622:14 1623:20 1637:20 incidents 1585:13 1770:19 including 1525:3 incorrect 1761:14 1776:7 indeed 1560:9 INDEX 1519:1 1520:1 indicate 1529:6 1530:2 1531:12 1554:11 1565:20 1576:22 1577:25 1595:7 1601:2 1656:10 1698:15 1698:16 1727:2 1734:15 1746:15 1754:3 1763:25 indicated 1521:18 1537:1 1569:7 1585:25 1598:20 1600:10 1634:11 1639:10,14 1640:18 1684:25 1698:19 1701:23 1702:16 1720:14 1723:21 1726:4 1741:5 1750:1,13 1762:21 indicates 1555:11	1731:6 indicating 1554:16 1673:23 1731:10 indication 1552:6 1572:8 1574:13 1774:16 individual 1552:17 1663:20 1729:21 1737:2 1738:24 1740:9,20 1755:2 1769:9 individuals 1572:6 1572:18 1626:4 1729:15 1754:12 informed 1645:21 1646:10 1647:2 initial 1568:24 1624:3 initially 1604:24 1609:19 1639:12 1640:15 1683:17 1715:15 1742:11 initiated 1673:8 initiative 1554:8 1578:18 injured 1545:25 1563:14 1609:9 1664:15 1671:9 1673:24 1704:16 1742:15 1754:18 injuries 1663:24,24 1668:21 1669:2 1676:22,24 1677:8 1769:9 injury 1679:13 1732:2,4,14,17 1733:12 1741:23 1743:4,7 Inn 1619:19,19 1641:5 inner 1743:20 inquiries 1612:1 inquiry 1517:1,19 1521:4 1524:24 1568:4 1610:14 1648:22 insensitive 1579:7 1579:19 inside 1542:4 1580:21 1662:20 1675:23 1686:23 1737:20,24 1747:8,10 1748:2 1767:8,11 instance 1751:19 instead 1730:7 instructed 1736:14 1736:16 1741:24 instructors 1616:7	intact 1744:14 intended 1755:20 intent 1554:12 intention 1755:21 intents 1750:9 interact 1588:9 interacted 1579:4 interaction 1740:19 1756:17 1773:17 intercept 1543:20 interchange 1757:23 interested 1664:12 1737:9,17 1739:5 1741:1 1755:7 1769:11 interests 1630:25 Interlake 1650:15 1653:3 Intermediate 1650:6 internal 1636:21,23 1637:3 1732:4 interrupted 1669:11 intersection 1527:22 1528:21 1529:17,22 1530:3,5,7,10,15 1532:7 1534:8,10 1536:20 1601:11 1604:7,14 1611:7 1757:17 1758:5 1759:1,16,19 1771:10,14 intersections 1730:4 interviewed 1554:13 1557:3 1564:20 1567:1,3 1568:7 1569:23 1634:10 1691:23 1692:3,4 1694:18 1694:21 1696:11 1717:18 1751:11 1770:17 1777:2 interviews 1766:21 interviewing 1725:10 interviews 1675:8 1719:8,12 introduce 1572:20 introduced 1571:6 1671:14 1751:16 introducing 1737:8 introductions 1664:2,7 investigate 1729:11	investigated 1729:14 investigating 1751:24 investigation 1517:1 1566:2,8 1566:16 1567:1,5 1567:8 1568:6 1577:2,8 1603:12 1648:7 1690:11 1702:17,21,25,25 1750:24 1752:11 investigational 1630:15 investigations 1689:18 involved 1531:4 1535:11 1542:23 1543:1 1622:9,14 1636:18,24 1638:14,18 1646:25 1663:9 1667:8 1679:15 1684:22 1692:22 1734:19 1736:8 1742:21 1744:20 1744:21 1751:20 1754:22 1755:3 1768:17 involvement 1567:11,17 1714:7 1728:18 involving 1638:12 1651:23 1729:13 issue 1730:16 1745:19 1754:8 1766:13 issues 1734:6 1752:3	Jordy 1610:8 1629:3 journey 1599:13 July 1517:16 1521:1 1522:12 1582:4 jump 1584:16 1588:16 1593:5 jumping 1713:16 June 1634:10,10 1644:20
K				
K 1518:11,16,16 Kasper 1549:6 1550:7 keep 1671:11 1729:5 1731:14 1733:19 Kennett 1682:24 1683:16 1702:13 1716:1 1751:11 1775:3,16 1776:17 1778:6 1778:12,15 kept 1741:9 1764:24 1766:20 key 1665:18 keys 1617:21 kids 1611:22 1612:2 1612:6,17,17 1624:8 1627:6 Kildonan 1595:23 killed 1553:16 1601:19 1605:6 1607:2 1633:17 kilometres 1719:4 kin 1709:2 kind 1526:15 1533:23 1544:12 1544:16 1553:17 1559:1 1561:13 1566:23,24 1570:24 1573:11 1574:14 1579:19 1581:15 1596:25 1597:1,3 1599:7 1614:21,23 1620:4 1627:10 1627:11,19 1636:1 1641:24 1657:2 1672:3 1673:4 1677:20 1733:5 1735:4 kinds 1574:24 King 1518:12 knees 1737:16 1741:11,12 1743:10,24 knew 1549:13				

1598:23 1603:3,6 1603:11 1605:5 1606:20 1608:10 1610:6 1612:8 1613:16 1616:5 1617:1 1636:2 1646:21,23 1647:1 1658:14 1672:25 1686:6 1724:22 knocked 1607:8 knowing 1584:14 1681:25 1742:7 knowledge 1621:1 1728:21 1745:15 1747:21 known 1556:6 1609:2,4 1616:6 1619:7,10 1641:23 1679:17 knows 1597:8 1672:5 Kot 1518:20 Kristin 1599:21 Kristin's 1610:8	later 1531:3 1537:11 1549:3 1553:22 1555:19 1564:20 1566:22 1571:20 1599:22 1602:10 1603:21 1619:18 1631:3 1685:9 1712:5 1715:23 1724:5,7 1736:6 1769:8 law 1581:2 1595:18 1756:7 laws 1622:5 lawyers 1579:22 1684:22 1686:21 1704:10 lead 1609:11 1623:16 1711:25 1728:18 1749:2 leader 1597:1 leaned 1548:17 1737:7 leaning 1767:14,19 1767:22 learn 1597:14 1609:8 1613:4 1615:21 1616:13 1628:21 1639:19 1689:24 learned 1587:6,23 1588:8 1598:5 1609:10,14 1613:1 1617:10 1618:19 1643:13 1715:10 1716:22 1766:6 learning 1524:3 1607:10 1618:11 1621:24 least 1554:1 1591:10 1639:22 1692:20 1742:2 leave 1550:17 1552:2 1589:23 1617:19 1644:6 1667:9 1676:10 1731:2,4,4 1742:2 1745:11 leaves 1730:21 leaving 1602:21,23 1730:24 1732:11 1746:10,13 left 1529:21 1540:9 1548:2 1550:13 1550:21 1571:19 1578:8 1584:10 1604:17 1608:21 1611:12 1617:21 1666:10 1667:3	1667:16 1669:4 1677:9,10 1679:13 1680:17 1680:18 1685:8 1693:4 1698:4,22 1715:23 1719:9 1734:22 1746:14 1750:6 1757:24 1777:22 left-hand 1535:17 1539:15,19 1551:5 1696:5 leg 1669:4,5 1673:25 1674:6,7 length 1558:4 1701:15 lengthier 1766:3 lengthy 1760:25 leper 1622:18,19 1640:19 less 1558:4 1651:13 1659:10 1754:6 let 1552:19 1600:2 1602:9 1605:19 1605:19 1611:17 1631:9 1641:19 1659:20 1686:19 1689:2 1710:7 1718:15 1731:15 let's 1560:25 1707:9 1735:21 level 1649:25 1650:2 1654:6 1677:18 1680:12 levels 1747:20,21 licence 1651:3 1671:20 1721:24 licensed 1651:4 life 1598:1 1605:14 1621:21 1652:3 1733:23 lifted 1674:7 light 1528:8,13,13 1528:25 1540:2 1547:20 1600:22 1680:15 1744:7 lights 1527:16 1528:6 lime 1627:1 line 1528:2 1562:14 1562:15 1575:3,6 1593:1 1635:21 1644:16 1692:7,8 1692:13 1723:5 lines 1562:3 1683:14 1685:1,9 1697:5 1750:3 liquor 1591:21 1667:6 1680:20	1681:15,16 1685:2,11 1686:12 1693:20 1699:6 1700:22 1700:24 1711:21 1711:24 1712:8 1713:22 1714:24 1715:7 1716:19 1718:17,24 1720:19 1721:1 1737:23 1746:21 1750:4 1762:12 1762:16 1763:18 1765:13,21 Lisa 1518:20 list 1579:18 listening 1620:8 1708:14 little 1536:5 1538:7 1546:21 1553:18 1562:14 1565:23 1576:6 1597:22 1599:17 1613:21 1614:9 1620:7 1621:18 1627:5 1650:3,7 1660:15 1663:17,18 1668:10 1669:5 1670:22 1674:8 1679:8 1680:11 1684:7 1706:4 1720:10 1728:5 1728:16 1730:21 1731:21 1733:9 1735:2,2,17 1738:5 1740:23 1754:6 1757:5 1758:23 1768:9 live 1671:22 1735:9 located 1655:9 1757:10,15 location 1617:15 1655:10,14 1658:1 Lockport 1758:13 1758:14 lodge 1597:10,11 log 1655:14 1702:4 1727:8 lone 1747:14,16 long 1525:15 1541:9,12 1550:15 1551:18 1562:19 1571:16 1587:9 1594:13 1597:6 1601:6 1609:2,23 1615:5 1624:23 1627:8 1655:15 1657:19	1680:18 1707:6 1708:15 1723:10 1736:18 1753:22 1754:4 1769:1 1780:13 longer 1617:7 1621:12 1764:18 longest 1709:14 look 1539:20,22 1546:5 1653:8 1656:1 1663:21 1666:12 1668:2 1669:4 1674:7 1676:4 1677:2 1682:2 1683:5 1697:1 1722:25 1732:6 1739:13 1741:8 1742:20 1742:21 1743:3 1743:25 1744:8 1762:16 1764:12 looked 1528:11 1535:9 1537:4,25 1542:4 1546:1 1548:17 1549:1 1572:25 1592:16 1592:19 1669:17 1670:7 1686:11 1688:7 1744:14 1775:24 looking 1533:18 1537:5 1553:24 1575:5 1583:11 1593:4 1615:14 1616:23 1627:14 1637:3 1658:11 1663:23 1668:6 1668:11,22,24,25 1697:24 1698:11 1731:25 1736:15 1737:15 1740:15 1741:12 1743:5 1763:5,6 1764:17 1774:20 looks 1589:19 1594:10 1706:4,6 lose 1622:18 losing 1523:19 1633:11 1634:18 lost 1634:2 lot 1546:10 1578:16 1580:16 1599:19 1608:8 1610:5 1612:15,18,18 1613:3,15 1647:11 1710:24 1711:1 1712:15 1732:24,25 1741:17 1743:21
L				
L 1518:14 Labossiere 1518:14 1518:16 laceration 1677:9 1680:18 lack 1624:9,14 ladder 1650:8 lady 1533:13 1546:11,16 1572:9 1573:20 1655:25 1697:25 1709:15 1776:12 Lagimodiere 1598:9 1600:25 1604:16 lane 1529:15,16,19 1529:20 1539:16 1539:17 1562:7 1734:25 1735:1 1736:2 1759:17 lanes 1540:10 1604:9 1759:10 1759:20 large 1734:23 largely 1772:23 laser 1616:8 last 1582:5 1592:23 1621:21 1622:8 1622:11 1628:13 1644:23 1684:25 1706:12 1726:2 1773:11 1779:25 lately 1651:12				

1769:15 1772:21 1776:15 lots 1614:20 low 1678:17 lower 1696:5 1720:9 1774:20 lunch 1648:14 lungs 1747:23	1773:23,24 1779:23 1780:2 makes 1536:24 1558:17 1763:22 making 1527:13 1665:7 1731:12 1756:10 male 1679:20 1699:12,14 1754:5 maligned 1779:13 man 1540:16 1561:21,23 1562:2,8,23 1563:1,4,13 1564:2,17 1574:15 1668:10 1668:10,13,22 1669:12 1672:9 1678:7 1709:18 1739:19 managed 1543:19 1655:19 mangled 1536:13 1538:20 1548:2 1590:22 manipulate 1701:12 Manitoba 1517:14 1518:18 1523:25 1524:2 1622:6 1730:20 1781:6 mannerisms 1611:1 many 1525:2,3 1551:13,14 1571:9 1580:24 1580:24 1609:17 1628:10,19 1630:3 1641:20 1642:3 1651:10 1651:20,23 1695:22 1706:11 1709:23 1729:10 1733:17 1775:10 man's 1564:10 maps 1551:12 March 1520:3,9,14 1554:17 1555:6 1555:12 1574:22 1591:25 1682:11 1694:6,6 1748:12 1748:20 1749:1 1750:2 1751:3,5 1752:18 1760:12 1765:18 marginally 1613:9 Marital 1709:1 mark 1629:10,11 marked 1660:6 1668:16 1672:16	1682:20 1755:19 1760:24 1770:1 marks 1576:7,8,17 1629:19 Marty 1518:11 math 1589:14 matter 1542:21 1560:12 1730:9 1731:10,25 1733:18 matters 1689:16 may 1520:5,12,16 1536:22 1539:21 1558:2,2 1559:16 1565:9 1569:17 1569:18 1580:8 1592:15 1626:1 1682:16,23 1702:10 1705:1 1712:5 1719:15 1720:11 1724:3 1733:3 1734:8 1751:4,5,9 1756:3 1758:19 1762:17 1769:9 1773:25 1775:6,18 1776:1 1777:3 1778:21 1780:9 maybe 1541:12 1553:25 1567:21 1571:5 1598:19 1671:20 1719:17 1754:6 1775:18 ma'am 1540:11 1546:8 1555:8,23 1556:15 1560:3 1564:19 1567:14 1569:15 1577:12 1578:8 1579:20 1580:10,12 1583:2 1591:1,15 1593:5 McDonald 1518:13 1519:5,10,16 1583:15,16,24 1630:21 1631:10 1645:20 1647:17 1706:16 1755:17 1755:23 1757:1 1762:2 1766:7 1774:12 1779:16 1779:22 1780:7 1780:10 McFetridge 1518:17 1519:18 1593:24 1645:19 1725:23 1773:6,8 1774:7 mean 1527:5	1544:15 1574:9 1582:1 1585:2 1611:4 1628:5 1634:2,8,15 1642:5,6 1678:10 1678:18 1692:18 1708:19 meaning 1743:8 means 1679:23 meant 1568:25 1580:16 1606:21 1606:24 1701:18 measurements 1603:3,6,23 1609:22 mechanism 1679:13 1742:22 1743:4,7 1744:2 mechanisms 1739:13 media 1549:13 1559:7 1618:13 1618:15,17,20 1625:1,3 median 1534:16 1540:10 medic 1737:25 medical 1560:22 1655:24 1656:5 1658:8 1663:13 1664:19 1697:6 1697:21 1722:2 1730:16 1731:7,9 1732:16 1737:10 1737:17 1742:13 1746:1 1754:25 1755:7 1769:18 1769:19 1773:17 medically 1525:12 medication 1679:17 meditate 1733:24 meet 1543:13 1548:6 1578:21 1581:12 1623:25 1730:25 1733:1 1749:15 1755:2 meeting 1550:6 1624:3 1683:2 1755:4 Melissa 1518:5 member 1565:10 1607:1 1633:11 1634:3,4 1638:15 1749:10 1765:15 1776:22 1777:16 members 1742:4 1761:1 1770:18 memory 1531:21 1575:3 1577:19	1683:23 1722:24 1764:13,23 1774:24 1777:1 1778:20 mention 1582:8 1774:25 mentioned 1547:5 1632:17 1645:21 1669:4 1681:16 1693:8 1701:21 1733:19 mentioning 1765:15 mess 1600:8 message 1606:7 Messner 1518:16 met 1540:21 1548:13 1552:14 1570:21 1572:6 1581:19 1590:14 1601:10 1623:25 1624:2 1641:13 1724:16 Michael 1637:8 microphone 1523:7 middle 1534:7 1537:6,21 1540:7 1562:4,6 1662:14 1662:17 1750:3 might 1544:4 1572:8 1577:13 1577:20 1578:25 1582:18 1584:19 1613:8 1621:5 1633:6 1637:19 1639:18,24 1651:11 1676:5 1685:16 1688:19 1690:23 1712:3,5 mike 1680:9 1720:9 mile 1528:1 miles 1527:10 1732:21 mind 1533:25 1536:15 1542:18 1560:4 1572:2 1586:1,5 1590:21 1590:24 1625:6 1665:3 1676:2 1685:24 1686:8 1732:19,21 1734:12 1738:1,3 1741:17 1760:7 mind's 1734:14 mine 1586:3 1602:2 1619:6,7 1631:1 1739:16 minor 1697:18 Minuk 1518:11 1567:15,17,19
--	---	---	---	--

1568:12,24 1569:2 1570:7 1571:6 1572:18 1573:15,19 1574:10 1575:22 1575:25 1576:14 1576:19 1577:15 1577:21 1578:20 1582:10 minus 1666:15 minute 1620:5 1657:23 1658:21 1666:5,15,16 1685:7 1727:7,9 1732:21 1733:16 1733:20 1736:23 1754:6 1767:23 1769:4 1777:20 minutes 1526:6 1550:19 1552:8 1555:19 1571:5 1594:16,17 1610:1 1648:13 1655:6,20 1661:21,22 1666:3,21 1686:6 1695:14 1697:22 1702:2 1707:8,10 1708:7 1722:19 1722:24 1723:12 1723:14,15,16,18 1727:4 1733:18 1753:25 1777:15 mirrors 1750:18 missing 1558:13 misspoken 1720:11 mistake 1582:2 mixed 1775:7 model 1628:19,20 1628:22 mom 1597:23 1610:8 moment 1521:9 1532:9 1537:18 1568:10 1602:8 1669:10 1719:15 1728:11 1738:18 Momentarily 1756:19 moments 1733:15 mom's 1735:13 Monday 1554:3 month 1644:24 1694:15 1695:6 months 1565:9 1566:21,22 1617:24 1619:7 1624:24 1629:1 1639:22 1650:21	1751:12 more 1534:17 1539:14 1541:1 1546:10 1550:18 1557:23 1565:23 1582:3 1589:25 1590:9,23 1618:9 1650:4,7 1651:13 1659:5 1662:14 1684:7 1702:24 1706:4 1710:24 1715:24 1723:14 1723:18 1724:24 1725:3 1732:10 1738:5 1742:9 1756:7 1763:22 1766:4 1769:6 1777:14 1780:8 morning 1521:5,6 1524:12,13 1553:1 1565:5 1594:10 1595:3,4 1595:6 1598:11 1599:5,17 1600:5 1607:23 1615:8 1685:5 1686:13 1695:11 1744:7 1746:14,16 1779:7,19,24 1780:18 most 1612:16 1650:9 1685:17 1754:6 1777:1,5 mostly 1607:15 1734:20 mother 1553:15 motioned 1537:20 1541:23 motioning 1535:6 motor 1525:5 1536:3,7 1566:9 1679:13 1694:16 1729:11 motorcycle 1595:25 move 1535:4 1537:2 1537:14 1542:15 1542:17 1550:14 1572:13 1582:4 moved 1524:9 1542:16 1546:3 moving 1527:17 1528:9,14 1530:21 1541:17 1737:16 1751:9 much 1546:7 1580:9 1583:14 1590:23 1593:9 1593:14 1594:4 1604:13 1605:11	1605:11 1616:17 1617:22 1618:17 1619:8 1620:11 1646:5 1648:11 1667:18 1670:20 1680:10 1694:15 1709:17,19 1710:10 1712:9 1716:9 1727:19 1731:22 1738:16 1744:10 1769:1 1773:5 1777:14 Municipality 1583:17 muscles 1680:17 must 1571:11 1671:19 mustache 1766:18 1766:23 MVA 1679:15,20 1679:23 myself 1547:20 1574:8 1600:18 1627:5 1628:20 1661:7 1671:14 1675:13,15 1706:13 1771:12 <hr/> N <hr/> name 1526:11 1549:6 1555:9 1583:16 1601:23 1609:13 1617:3 1637:8 1642:19 1671:15,21,23,24 1675:11,17 1676:19 1696:5 1705:25 1706:1,2 1709:4 1721:5,11 1724:23,23 1773:16 1775:18 1775:25 1776:11 1777:23 1778:9 1778:12 names 1608:5 narrative 1586:19 1696:18 1734:15 1752:19 naturally 1762:7 nature 1547:17 1559:14 1700:11 1702:21 near 1627:2 1757:16 1762:23 nearest 1704:20 necessarily 1626:1 1735:9 1762:13 1775:25 necessitate 1708:15 need 1528:17	1545:10 1569:18 1603:25 1631:5 1638:1,22,23 1640:10 1663:13 1664:18 1675:12 1691:2 1692:9 1709:9 1722:24 1743:3 1746:11 needed 1537:15 1542:19 1545:5 1578:19 1600:1,2 1600:2,20 1611:21 1636:7 1639:25 1680:24 1690:17,18 1736:17 1769:20 needs 1734:3 nervous 1581:7 never 1567:2 1580:21 1581:1 1608:3 1615:19 1621:17 1640:12 1717:12,15 1720:15 1772:9 new 1524:3 1623:22 1624:1 1641:23 1642:8 news 1573:1 next 1537:16 1542:13 1553:1 1554:24 1571:18 1571:24 1584:16 1584:17 1593:21 1594:25 1614:13 1629:12 1657:15 1664:1 1681:6 1683:20 1696:23 1699:5 1709:2 1716:20 1727:22 1754:21 1767:9 1769:8 night 1617:20 1618:23 1621:5 1643:14 1644:7 1650:20 1652:5 1652:12 1685:4 1686:13 nightmare 1732:23 nil 1679:17,17 nine 1671:18 1766:14 nineteenth 1728:24 nobody 1545:4 1616:16 1638:23 1638:25 1639:6 1675:12 nodding 1590:4 non 1634:17 None 1580:20	non-driver 1654:3 Norm 1749:7,10 1753:6 1760:13 1760:18,21 1765:18,25 1766:2,2,9,17,21 1766:23,23 1770:2,6 1774:25 1775:1,11 1776:8 1777:24 1778:2,9 1778:11 normal 1711:12,14 1711:17 1774:3 normally 1689:9 north 1526:25 1527:3,6 1551:15 1551:17 1552:9 1595:23 1598:9 1600:21,22 1601:1 1604:15 1604:17 1625:12 1659:17 1736:4 1736:13 1759:15 1759:18,19 northbound 1551:8 1604:9,16 nose 1663:18 1669:3 1674:5 1676:24 1677:1,6 1680:19 1705:9 1718:5 1747:9 notation 1711:11 note 1561:4 1643:2 1643:11,22 1645:4 1695:9 1719:21 1749:3 1762:22,25 1764:8 1773:24 noted 1719:23 1720:13 1737:22 1740:1 1744:8 1773:23 notes 1622:25 1623:7 1643:5 1781:8 nothing 1528:14 1541:17 1560:6 1562:16 1586:9,9 1591:6,13 1624:13 1639:1 1677:4 1701:14 1713:7 1716:8 1765:19 notice 1530:12 1531:8 1535:16 1536:5 1539:23 1540:9 1551:2 1555:18,20 1575:4 1584:18
---	--	---	--	--

1584:23 1600:7 1669:2 1681:22 1682:19,21 1684:24 1692:7 1696:4 1700:7,10 1711:2 1713:6 1732:22 1734:1 1744:13 1773:11 noticeable 1685:13 1685:16,22 1686:1,3 1715:8 1744:5 noticed 1527:16 1528:8,14,15 1530:14,16 1532:14 1538:18 1540:14 1542:5 1542:11 1546:16 1547:25 1562:5 1685:2 1686:11 1687:1 1698:19 1700:20 1717:3 1719:19,20 1726:12 1735:1 1736:7 1744:10 1750:4 notices 1701:24 noticing 1743:25 notified 1522:6 notion 1734:9 nowhere 1717:21 number 1535:19 1556:1 1569:7,12 1576:10,13 1577:1 1582:22 1619:9 1628:7 1651:22 1671:18 1681:9 1687:8 1698:25 1708:21 1709:10,20 1736:1 1756:13 1757:10,16,16,21 1757:22 1758:1,3 1758:11 numbers 1575:5 1677:24 1705:17 1774:20 numerous 1645:11 1735:12,16 1756:14 1762:7 1762:11 1766:12 1766:13 1771:12 1771:19 1772:7 1772:14 nurse 1704:23	1765:11 object 1594:16 objection 1631:8 observation 1527:23 1533:19 1538:10 1564:2 1575:17 1588:19 1592:6,18 1700:24 1718:8 1718:13 1779:22 observations 1527:12 1538:5 1545:24 1546:2 1547:16 1563:13 1564:10 1584:5 1588:17 1614:8 1614:24 1623:4 1626:22 1668:21 1669:22 1678:20 1690:10 1693:18 1704:24 1705:5 1710:14 1737:11 1737:20 1747:7 observe 1591:8 1732:2 observed 1565:24 1583:20 1591:9 1592:23 1609:17 1689:6 1774:1 observing 1591:5 1735:22,25 obstructing 1529:2 obtain 1731:9 obvious 1763:13,19 obviously 1528:11 1710:4,10,13,15 1710:22,24 1711:7 1712:16 1772:9 occasion 1675:14 1712:25 1713:18 1756:8 1770:8 occasions 1727:6 1729:10 1735:17 1762:11 1771:11 1772:6 occupant 1737:5,6 1739:16 1742:22 1743:4 1746:13 1747:14,16 1754:5 1767:9 occupant's 1744:16 occur 1549:8 occurred 1583:20 1600:17 1613:22 1614:5 1623:19 1682:19 1747:1 1759:20 occurring 1571:21	Oddly 1622:4 odour 1591:21 1692:11 1711:20 1711:24 1712:8 1712:10 1713:21 1714:24 1716:18 1718:17 1737:23 1738:11,13 1739:2 1740:1 1742:12 1745:6 1745:20 1746:17 1747:12 1748:3 1750:4 1752:6 1761:19 1762:12 1762:15 1763:18 1765:12,20 off 1526:24 1530:15 1534:17 1536:4 1539:13 1540:10 1540:13 1545:23 1548:18 1549:9 1549:21 1552:10 1577:9 1601:12 1604:7 1625:21 1625:23 1652:16 1660:13 1666:13 1719:21 1730:17 1742:3,5 1747:23 1749:19 1764:3 offered 1526:1 1554:9 office 1608:19,20 1616:16 1624:3,4 1633:7 1749:13 1749:20 officers 1576:12 1608:1 1609:17 1609:21 1618:7 1620:18 1621:1 1621:23 1623:9 1626:1 1633:1 1642:3 1643:14 1689:5 1693:23 1693:23 1740:12 1746:16 officer's 1582:11 1602:11 1609:11 1623:6 1638:2 official 1622:16 1781:1,5,15 often 1621:15 1704:16,19,23 1735:15 Oh 1605:23 1606:14 1644:14 1651:25 1667:6 old 1544:4 1595:7,8 1627:15 1649:15 1679:20 1771:2	older 1597:2,2,19 oldest 1627:19 once 1553:18 1696:15 1707:1 1742:8 ones 1630:15 1638:16 1665:14 ongoing 1749:24 only 1532:20 1591:15 1631:4 1656:1 1711:19 1736:16 1779:22 1780:4 onset 1578:13 onto 1529:5,24 1600:25 on-call 1651:14 open 1521:4 1648:22 1661:1,3 1661:4 1686:23 1707:16 1739:10 1740:4 1757:25 1758:23 opened 1660:11 1737:6 1739:1,12 1739:15,25 1740:6 1747:7 1752:6 opening 1604:15,15 1737:12 1740:20 1742:12 1744:6 openly 1639:24 opens 1526:3 1662:1 operated 1589:9 operating 1526:16 1755:10 opinion 1579:9 1678:6,11 1710:15 1711:25 1741:16 opportune 1594:10 opportunity 1558:6 1565:13 1631:2 1635:10 1714:16 1731:8 opposed 1654:3 1718:18 opposite 1737:6 orally 1753:3 order 1521:17 1524:18 1603:13 1682:6 orient 1551:1 orientated 1672:17 1672:21,23 oriented 1680:13 1712:13,22 orienting 1539:22	others 1553:4 1616:21 1624:2 1630:25 1639:24 otherwise 1662:20 1770:11 1774:16 other's 1608:4 ourselves 1737:9 outcast 1641:2 outdoors 1718:19 outside 1572:17 1718:24 1763:22 1764:21 1765:2 1767:17 over 1528:18 1529:5,7 1530:3 1530:23 1535:7,9 1537:4 1541:23 1542:1 1548:17 1566:1 1572:24 1573:8 1578:22 1602:15 1607:6 1611:3 1620:3 1627:18 1652:18 1658:10 1659:3 1666:16 1728:22 1736:20 1739:13 1742:17 1758:13 1778:4 overcome 1619:23 overload 1618:1 overpass 1550:24 1551:9,10,16,18 overpowering 1716:15 overtime 1626:15 own 1554:8 1579:8 1596:24 1597:2 1597:19 1613:17 1621:21 1626:10 1638:21 1640:1,8 1640:21 1665:7 1731:2 1773:20 1778:20 o'clock 1525:24 1570:20 1571:2 1598:19 1632:16 1695:10 1719:3
<hr/> O <hr/> Oakbank 1526:6 1612:5 oath 1605:13				<hr/> P <hr/> Paciocco 1518:2 1519:4,12,14 1521:6 1522:15 1522:18,21,24 1523:8 1524:7,10 1524:16 1555:2,7 1579:20 1580:5,9 1587:7,25 1594:2 1594:9,13 1644:1 1648:12,23 1649:3,8 1676:5,8

1681:1,5,13 1682:12,17 1704:9 1715:11 1716:23 1726:1 1727:16 1780:6 1780:14 pack 1735:16 packages 1614:23 pages 1535:19 1575:5 1714:1 1781:7 pain 1669:4,6 1674:9 1677:10 1679:12 1680:17 1680:23 pale 1678:15 palpate 1674:11 panel 1629:16 pant 1674:7 paperwork 1750:6 1777:18 paragraph 1764:18 parallel 1604:13 paramedic 1550:1 1649:17,19,25 1650:6,17 1656:4 1657:9 1665:16 1728:9,13,17,23 1729:3,5 1730:15 1738:19,20 1740:6,20 1742:17 1745:1 1746:4 1756:8 1762:6 paramedics 1521:13 parent's 1612:3 1613:20 1615:6 park 1596:13 1598:7 1619:19 1619:19 1641:5 parked 1548:1 1550:9 1659:9,11 1659:12,14 part 1530:6 1562:17 1565:16 1566:5 1576:21 1597:15 1622:12 1622:25 1632:22 1650:24 1675:22 1675:23,24 1704:15 1705:5 1735:7 1752:9 1767:18,21 particular 1592:21 1593:2 1653:23 1655:10 1663:11 1663:20 1664:7 1710:7 1711:3	1771:10 1773:13 partner 1652:7 1706:14 1707:19 1757:7 1770:23 1773:18 partners 1652:10 1730:10 parts 1561:20 1761:5 party 1549:17 1617:13 1618:3,3 1618:8,24 1620:9 1639:16 pass 1629:9 1647:13 1730:5 1747:24 passage 1564:14 1692:24 passages 1696:17 passed 1597:20 passenger 1529:10 1529:13 1537:23 1548:13 1654:10 1660:18,20 1661:24 1662:4 1729:22,24 1730:3 1737:2 1740:7 passes 1599:9 passing 1539:16 1562:7 1765:20 past 1534:9 1679:17 1697:21 1753:18 1762:9 1770:18 path 1595:18 1728:17 patient 1520:7 1654:11,14 1662:7,12 1663:7 1663:9 1665:21 1666:25 1667:19 1673:20 1675:9 1676:20 1679:15 1680:16,17,19,20 1680:21,23 1681:11,15 1693:22 1704:25 1730:1 1732:14 1736:14,15 1746:1,6,11,21 1750:14 1754:21 1771:23 1773:10 1773:18 patient's 1750:8 patrol 1595:14 1596:2 1621:14 1629:21 1630:3 pay 1600:12 1639:5 1639:5	paying 1546:7 peace 1719:7 Pedersen 1779:20 peek 1744:2 pen 1701:13 1713:10 1717:2 1717:13,23 pending 1754:13 people 1525:3 1571:10,12 1572:15 1589:17 1608:9 1612:16 1613:16 1616:16 1616:20,20 1617:14,20 1618:3 1623:14 1628:18,19 1630:10 1633:6 1636:20 1639:11 1640:20 1641:20 1641:22 1654:7 1658:10 1678:2,3 1689:11 1695:22 1704:16 1706:11 1730:22 1732:7,8 1732:22 1733:1 1733:11 1734:7 1754:18 1757:5 1762:8 1766:20 1768:4,16 1769:18 per 1575:5 1771:5 perceive 1757:4 percentage 1771:4 performing 1687:1 perhaps 1549:24 1576:18 1577:6,6 1613:9 1762:16 perimeter 1526:25 1551:15,17 1552:9 1598:9 1601:1 1604:17 1654:21 1742:20 1743:18 1744:23 1757:22 1758:4,4 period 1596:2 1626:9 1666:15 1777:20 PERL 1680:15 permission 1609:24 1755:24 person 1538:5,7 1543:2,7 1547:2 1547:14 1559:16 1560:22 1582:8 1587:10 1598:2,3 1601:22 1614:22 1617:2 1621:12 1627:21 1628:6	1644:5 1656:1 1659:6 1663:17 1663:22 1664:6 1664:18 1673:13 1705:4,21 1710:9 1710:13,21 1711:7,23,25 1712:9,16 1718:4 1718:18 1733:3 1733:21 1743:9 1754:24 1756:21 1762:13,17 1763:18 1776:24 1777:4 personable 1597:25 personal 1579:8 1611:5 1641:16 1642:6 1643:4 1648:1 1689:19 1697:20 personally 1579:5 1657:5 1727:15 persons 1609:8 person's 1522:7 1711:8 1718:24 perspective 1553:21 1613:8 pertains 1562:2 phase 1614:14 1629:12 phone 1532:12,17 1532:22 1533:14 1533:18 1570:7 1749:17 1764:3 phoned 1554:11 1569:12 1598:8 1694:25 1704:7 photo 1539:21,23 1705:20 photograph 1535:13 1536:7 1536:18 1551:11 1757:24 photographs 1536:11 physical 1669:2 1738:23 physically 1544:7 1657:25 1662:16 1668:9 1670:10 1674:18 pick 1535:19 1704:15 picked 1704:25 pick-up 1736:7 picture 1583:5,7 1706:6 1734:13 piece 1549:10 1558:13 1559:3	1690:22 pieces 1549:21 1573:18 pink 1680:14 pinpoint 1526:1 pissed 1605:23 1606:14 1622:22 1646:11 place 1552:3 1562:20 1568:6 1569:14 1573:12 1578:22 1604:4 1608:15 1612:3 1620:13 1672:7 1672:20 1676:23 1704:3 1729:23 1745:23 1773:16 1778:17 1781:9 plan 1522:13 1779:20 planned 1779:8 plant 1627:2 platoon 1625:19 1631:23 play 1639:2 played 1614:24 players 1724:4 plays 1654:13 plea 1575:8,10 pledged 1572:24 1574:1,10 1772:15 pleading 1582:6 please 1521:4 1523:7 1528:10 1529:9 1539:23 1540:19 1554:25 1557:19 1573:17 1575:1 1576:5 1580:13 1581:23 1594:23 1648:22 1649:2 1671:4 1674:3 1677:8 1679:9,11 1680:6 1681:6 1704:11 1707:16 1745:10 1749:19 1768:6 1773:7 plus 1605:3 pockets 1543:12 point 1521:23 1526:7 1530:16 1531:15 1542:14 1545:6 1546:9 1577:23 1579:4 1591:14,15 1599:15 1602:7 1603:18 1607:21 1608:15 1609:3
---	---	--	--	--

1612:4 1613:20 1618:1 1652:10 1656:15 1663:23 1674:19 1681:8 1684:9 1690:21 1690:22 1715:10 1724:7,20 1726:2 1730:11,12 1734:11,13 1739:9,12 1774:25 1777:3 pointed 1766:7 points 1582:3 1631:5 1704:13 poked 1738:17 policeman 1635:7 policemen 1634:5 policing 1595:15,21 1596:7 portion 1774:23 posed 1673:2 1699:20 position 1578:2 1595:12 1596:5 1608:21 1623:22 1637:14 possibilities 1703:19 possibility 1726:16 1780:16 possible 1633:4 1733:10 1743:4,7 1744:15 1760:15 1760:16 1768:9 1775:6,8 possibly 1712:7 1720:23 1724:19 1735:17 1740:15 1752:1 1758:19 post 1536:4,19 1541:20 1589:10 1589:16 postal 1671:22 posture 1543:10 practice 1523:23 1655:13,17 1729:3 1773:15 1773:22 1774:3 prayed 1611:13 prayer 1599:12 prayers 1553:19 preliminary 1568:4 1568:19 1569:17 1772:24 1773:2 prepare 1770:14 prepared 1603:12 1690:15 1773:19 preparing 1581:20 1623:21 1629:12	present 1521:11 1537:8 1549:18 1565:11 1569:18 1573:15 1578:6 1579:15 1661:9 1744:5 presentation 1622:3 1622:5 1629:17 1629:18 pressure 1678:17 1733:21 pretty 1589:19,23 1589:23 1593:7,9 1604:13 1618:17 1619:7 1620:11 1626:12,17 1627:17 1628:4,5 1636:4 1655:8 1662:20 1665:18 1667:18 1668:25 1672:7 1689:1 1692:15 1693:10 1694:15 1697:24 1698:9,12,13 1709:17 1716:9 1731:22 1735:3 1738:16 previous 1728:4 1763:17 1770:8 1771:11,13 1772:6 previously 1632:21 1730:8 1735:24 1752:3 primarily 1729:25 1754:16 primary 1732:9 print 1675:11 printed 1675:16 prior 1580:17,23 1583:21 1619:7 1624:1 1689:21 1694:22 1729:9 1740:20 1741:21 1745:3 privacy 1689:17 private 1690:6 probably 1549:14 1552:10 1579:22 1590:23 1601:7 1610:6,6 1611:3 1636:19 1651:14 1657:23 1668:12 1697:12 1706:13 1709:14 1736:22 1737:14 Prober 1518:12 1519:9,13,17 1523:6 1593:18	1594:16 1641:11 1644:2,3,4 1645:16 1720:2,4 1720:6 1725:18 1726:3 1767:4 1769:22 Prober's 1647:20 problem 1664:10 1721:5,9,12,15,20 1731:19,20 1746:18,22 problems 1722:13 procedure 1581:15 proceed 1533:1 proceeded 1528:18 1538:15 1548:2,5 1556:13 1558:24 1572:20 proceeding 1529:21 proceedings 1517:12,19 1519:1 1594:20 1648:19 1676:12 1676:15 1707:13 1780:21 process 1581:13 1639:4 1650:18 productions 1761:5 profession 1650:25 professional 1630:6 1636:19 1637:2 1648:2 1771:22 promoted 1629:19 1629:20 1630:14 promotion 1629:15 prompt 1526:4 prompted 1564:5 propelled 1547:22 proper 1665:3 prosecution 1517:1 1567:24 1750:25 1752:11 prosecutor 1567:11 1578:10 1645:14 1753:10 prosecutors 1645:12 provide 1524:23 1623:12 1652:22 1738:10 1747:4 provided 1621:10 1727:3,6,9 1748:8 1750:22 1751:10 1753:8 providing 1556:11 1569:24 1749:2 1751:14 province 1518:18 1730:20 1772:15	1781:6 provisional 1523:4 1523:9 provoke 1545:11 1673:10 provoked 1700:23 proximity 1544:10 pry 1611:4 PU 1750:8 public 1607:18 1608:19 1646:24 1647:1 pull 1528:18 1530:23 1713:1 1734:16 pulled 1527:7 1529:5,7,24 1530:3 Pulling 1734:18 pulse 1677:17 pupils 1677:19 1680:14 1711:8 1711:10,17 purpose 1602:4 1743:1 purposes 1556:10 1556:11 1569:23 1750:9 purse 1533:14,20 1541:21 pursue 1564:1 pushed 1609:12 1743:20 put 1573:18 1579:18 1580:1 1584:23,24 1599:12 1611:12 1652:24 1665:24 1667:10 1682:4 1682:13 1698:11 1710:11,15 1712:19 1715:17 1745:17 1747:23 1749:12 1755:11 1759:9 1767:7 1773:6 1774:14 putting 1553:20 1737:22 p.m 1555:13 1632:14 1648:19 1648:20 1707:13 1707:14 1780:21	1563:7 1567:23 1605:25 1606:2 1620:19 1633:3 1635:14 1639:16 1642:2 1647:21 1671:25 1672:7 1673:11,23 1685:6,9 1686:16 1687:23 1688:6,9 1688:23 1692:8 1699:3,5 1707:1 1719:3 1721:14 1723:5 1725:14 1726:5,10 1728:19 1733:17 1735:5 1739:11 1740:24 1741:3 1751:25 1752:17 1775:16 questioning 1777:7 questionnaire 1730:21 quick 1655:9 1732:6 1744:2 quickly 1622:23 1646:12 1746:5 quiet 1605:9,18 1611:16 1620:6 1640:5 1667:23 1668:6,7 1669:12 1669:19 1698:7 quietness 1688:20 1691:12,15 quite 1526:4 1534:7 1536:13 1552:15 1576:2 1651:22 1652:11 1768:2 Q.B 1781:15 Q.C 1517:2
R				
R 1518:13 racing 1678:16 radio 1553:23 1584:18,23 1603:20 1632:22 raise 1630:24 1631:4 raised 1631:5 1726:3 1734:6 1754:9 ran 1532:5 1533:4,5 1533:6,7,8 1541:15 range 1575:17 rank 1629:21,23 rate 1678:16 rather 1535:18 1648:1 1700:8 react 1688:8 1741:3				
Q				
quarry 1627:1,6 quarter 1526:3,5 1528:1 1552:11 1566:6 question 1547:19 1558:5,9 1559:20				

reaction 1545:12 1605:7 1606:16 1614:10 1646:20 1711:12 reactive 1680:15 read 1558:7 1561:9 1561:22 1562:1 1587:16,19 1588:3,13 1634:8 1635:11,13,20 1679:6 1681:14 1683:14 1696:17 1696:19 1697:8,8 1713:18 1714:16 1717:7,20,20,21 1719:8 1730:21 1766:9 1774:5 readiness 1524:22 reading 1593:8 1681:2 1685:18 ready 1610:16 1618:5,7 1639:19 1780:5 realized 1527:17 1535:10 1549:3 1550:9 1616:18 really 1523:18 1530:16 1536:15 1538:6 1544:1 1575:13 1586:1 1591:13 1605:1 1607:15 1611:15 1613:12 1616:17 1620:3 1626:24 1626:25 1647:11 1658:6 1664:18 1669:24 1684:16 1687:14 1688:13 1690:6 1693:19 1694:1 1699:18 1733:7 1734:23 1735:3 1743:16 rear 1679:16,21 1737:3 reason 1525:1 1541:13 1640:24 1664:7 1772:8 1773:12 1776:20 reasonable 1623:3 reasonably 1658:24 reasons 1665:13 reassured 1586:8 reassuring 1585:16 recap 1742:10 receive 1570:6 1574:15 received 1554:16 1566:14 1567:20 1568:21 1621:9	1621:23 1628:7 1646:3 1653:13 1657:8 1679:24 1741:21 1760:5,8 1760:16 receiving 1760:21 recently 1620:17 1630:14 recess 1594:19 1648:18 1706:19 1707:12 recessed 1594:20 1648:19 1707:13 recognize 1536:10 1536:12 1583:6 1640:15 1668:1 1696:7 1705:21 1706:2 1770:2 recognized 1601:15 1601:18,24 recollected 1753:2 recollection 1555:14 1586:23 1646:16 1683:9 1733:19 1746:25 1749:4 1760:20 1765:4 1766:22 1768:24 reconnect 1597:14 reconstruction 1636:13 reconstructionist 1635:25 1636:5,9 reconvened 1594:21 1648:20 1707:14 record 1583:19 1655:2 1665:24 1666:3 1676:24 1676:24 recorded 1561:5,6,8 1561:16 1563:9 1563:19 1677:24 records 1555:19 1653:6 1696:21 1700:4 1701:24 recruit 1601:17,24 1619:5,18 1622:3 red 1596:13 1598:7 1701:6 1735:2 refer 1599:1 1641:16 1748:10 1764:11 1774:17 reference 1644:2 1777:25 referred 1535:5 1549:23 1551:9 1675:7 1740:22 1765:19	referring 1635:15 1661:15 1750:2 1778:13 refresh 1577:19 1683:23 1722:24 1764:13,23 1774:24 1776:25 1778:19 refreshes 1575:2 refusal 1676:20 1742:3,3,13 refused 1680:22 1742:1,5,8 1750:5 refusing 1730:22 1731:23 1769:18 regarding 1679:19 1702:18 Regional 1653:3 regularly 1735:13 rehearse 1551:13 Reid 1518:7,20,21 1781:5,14 reiterated 1592:17 related 1583:20 1622:15 1625:4 1643:5 1738:4 1775:25 relates 1774:13 relation 1596:15 1642:25 1647:23 relations 1623:24 relationship 1534:3 1596:21 1612:21 relative 1633:17 relatively 1637:11 relay 1624:15 relaying 1618:10 release 1675:9 1676:21 1697:23 1713:14 1722:13 released 1632:14 relevant 1728:8 relieved 1586:12 remain 1556:18 1579:25 1580:10 1628:1 1649:4 1704:11 1755:14 remarkable 1627:21 1628:4,6 remember 1544:1 1545:8 1566:12 1587:11,25 1601:23 1627:14 1643:15,17 1644:19,20 1659:8 1661:10 1671:6 1675:18 1681:24,24 1683:22 1690:3	1692:14 1697:17 1713:3 1715:19 1715:20 1717:4 1722:7,11,14 remove 1638:11 removing 1721:24 reopen 1594:23 repeat 1606:10 1721:17 repeated 1592:19 repetition 1631:4 rephrase 1633:3 report 1520:7 1570:23 1643:7,9 1645:7 1653:3 1667:24 1676:1 1676:14 1681:11 1714:12 1739:14 1743:5 1773:10 1773:14,20,25 1774:5 reported 1570:18 1571:2 1625:1 Reporters 1518:19 reporter's 1764:3 reporting 1625:3 reports 1608:5 1618:13,15,18 1622:25 1623:7 1626:13 1727:8 represent 1583:17 1641:13 request 1706:19 1752:20 1753:3,4 1760:4,8,17 requested 1640:14 1749:5 1770:6,10 required 1521:19 1629:8 1651:1 1753:16 requirements 1729:2,4 rerouted 1599:7 residence 1620:22 resolved 1568:9 resourced 1635:23 respect 1574:14 1577:17 1625:25 1687:23 respecting 1637:16 respective 1625:16 respects 1600:13 respond 1534:22 1544:12,24 1664:11 1672:11 1675:2 1685:5 1687:6,11 1698:22 1699:5 responded 1570:9	1579:1 1606:13 1671:2 1691:4 responder 1650:19 responders 1658:11 responding 1610:19 1672:1 response 1575:2 1586:7 1606:4 1645:24 1646:9 1646:13 1655:9 1673:23 1736:5 1760:4 1776:5,19 1777:10 responses 1574:21 1618:22 1672:24 1777:12 responsibilities 1654:9 responsibility 1654:3 1662:6 1754:24 responsible 1648:6 1730:24 rest 1677:17 Restall 1518:10 result 1584:22 1599:3 1600:9 1621:3 1647:6 1713:1 1738:22 results 1629:18 retired 1608:18 retirement 1607:16 return 1681:7 returned 1749:18 returning 1745:4 1771:24 reverse 1584:4 review 1522:7 1565:13 1569:18 1706:20 1774:23 1778:5 revised 1522:1 re-direct 1774:11 re-examination 1519:10 1594:1,3 1647:18,20,22 1725:24 1774:9 riding 1729:22 right-hand 1529:25 1535:18 1536:6 1539:16 1540:1 1555:11 1583:3 1694:9 1763:7 1764:12 1774:21 rigs 1734:23 rim 1743:19 ring 1696:9 rise 1521:3 1594:18 1594:22 1648:17
--	--	--	---	---

1648:21 1707:11 1707:15 1780:19 River 1596:13 1598:7 road 1526:24 1527:12 1529:7 1529:11,16 1534:12,16,18 1537:6,21 1538:20 1539:8 1539:14,16,17,19 1540:7,13,22 1551:5,6,7 1601:11 1607:6 1659:12 1735:6 1735:13,15 1758:22 roads 1550:20 1551:3 roadway 1536:4 1735:23 Rob 1611:22 1612:2 1612:6 1613:11 1613:12 1614:12 1624:8 Robert 1518:10 Robert's 1615:6 Rob's 1610:8 1612:3,16 1613:19 Roger 1517:2 role 1568:25 1628:19,20,22 1647:24 1648:1,2 1654:13 1663:5 1665:16 1690:7 1742:16 1751:21 Rolland 1519:15 1520:13,15 1521:13 1522:23 1652:8 1656:23 1660:10,12,16 1707:19 1727:23 1727:24 1748:18 1756:2 Rollie 1657:1 1661:23 1707:19 room 1521:12,16 1556:12,18 1557:15 1570:18 1570:23,24,25 1571:10,11,19 1640:4 1649:1 1686:21 1695:23 1734:3 1739:5 1741:2 1751:17 1757:5 Rosser 1519:11 1520:9,11	1521:13,18 1522:9,19 1648:25 1649:2,6 1649:9 1663:1 1681:7 1682:9,15 1682:22 1683:21 1688:16 1707:18 1708:15 1711:20 1729:1 1730:9 1738:20 1739:8 1740:6,20 1742:17 1745:1,6 1746:4 1757:7 1763:17 Rosser's 1520:7 1681:10 roughly 1777:19 route 1526:22 1653:17 1654:25 1730:2 1745:24 1757:6 1758:2,7 1758:19,25 1770:22 1771:3,5 routes 1757:19,25 1771:8 row 1582:22 rude 1582:1 run 1658:2 1706:21 1730:7,19 running 1543:7 1551:3,5 1661:23 Rural 1583:17 rush 1646:11 rushed 1658:2 R.C.M.P 1520:5 1580:8 R.L 1518:4 R.M 1518:13 <hr/> S S 1518:15,16,16,18 sad 1756:16 safe 1730:5 Salhany 1517:2 1612:13 1734:16 1755:25 same 1534:12 1547:8,10 1548:14 1599:25 1602:20 1605:13 1608:14 1625:13 1625:14,18 1626:2,2 1631:23 1633:19 1646:6 1687:22 1692:24 1698:15 1717:11 1733:17 sandwiched 1679:16 sandy 1668:17	sang 1611:13 sat 1720:3 satisfied 1579:3 1679:2 1683:6 1684:2 1702:4 1714:19 1746:13 sauntered 1658:2 saw 1538:11 1540:16 1542:19 1549:11 1557:4 1564:16 1578:14 1586:17 1587:24 1588:5,9,20 1590:5 1607:6 1608:20 1619:20 1619:22 1627:18 1635:24 1775:5 saying 1633:12 1644:23 1645:1 1670:13 1685:19 1691:21 1715:8 1721:16,21 1724:11,13,14 1768:9 1769:12 1775:13 says 1533:15 1566:5 1573:7 1575:6 1589:22 1605:3 1664:4 1679:8 1692:13 1716:2 1749:7 1775:3 1776:17 1778:6 scale 1677:18 scales 1600:21 1601:4 1609:20 scared 1627:9,10 scenes 1709:24 1762:8 schedule 1522:2,9 1523:5,8,19,20 1779:19 scheduled 1568:4,8 1568:14,15 1779:23 scheduling 1522:4 1523:3 school 1729:5 scoring 1629:17 Sean 1619:3,4 1620:10,21 1641:6 1642:16 1642:17 seat 1533:13 1537:25 1662:15 1662:17 1666:22 1686:23 1687:17 1729:22 1737:3,7 1744:13 1767:14 seated 1521:4	1594:23 1628:1 1637:9 1648:22 1707:16 1755:15 second 1527:19 1531:18 1540:24 1555:20 1558:9 1566:5 1568:15 1570:10 1581:6 1583:1 1634:16 1670:20 1705:16 1707:21,23,25 1752:10 1754:16 1754:18 secondary 1654:13 1732:9 secondly 1634:4 1735:10 seconds 1541:12 1733:16,20 Secretary 1518:5 section 1595:15 1596:7 1623:24 security 1552:14 seeing 1739:6 seem 1658:15 1670:10 seemed 1539:13 1541:17 1560:23 1572:21 1610:22 1618:16 1646:23 1669:8,11 1670:12 1688:12 1688:13 1702:24 1744:9 1750:14 seemingly 1741:19 seems 1597:22 1752:18 seen 1535:3 1537:2 1537:14 1562:23 1619:16,21 1657:4 1674:8 1676:15 1706:20 1727:12 1735:10 1735:23 1736:17 1736:17 Selkirk 1521:13 1650:12 1653:13 1682:24 1728:9 1728:20 1757:8 1757:10,16 1758:11,11,16,21 send 1770:10,14 senior 1650:9 seniority 1629:11 sense 1536:24 1543:2,4 1544:18 1545:21 1599:20 1658:4 1690:5 1693:12 1754:12	senses 1705:8 sent 1658:10 sentence 1562:4 1574:6,12,15 1606:13 1709:14 sentenced 1575:15 sentencing 1575:18 1579:15,17 separate 1556:25 1773:20 sequence 1541:15 sergeant 1595:14 1596:6 1621:14 1623:23 1628:3 1629:8,21,22 1630:3 1641:12 1645:22,25 1646:13 1647:8 1647:14 1761:7 1761:15,18,24 sergeants 1626:17 series 1587:7 1696:22 1752:24 serious 1638:10,12 1658:9 1692:22 1771:25 seriously 1671:9 seriousness 1578:11 service 1518:15 1550:3 1583:22 1595:11,13 1615:23 1616:13 1630:6 1637:11 1637:15,25 1639:24 1650:12 1650:22 1653:13 1658:12 1694:22 1728:9,21 1761:8 services 1638:2,7 1731:9 session 1598:7 set 1523:3 1677:14 setting 1653:5 seven 1697:5 Seventy-six 1580:5 several 1521:7 1644:6 shaken 1552:15 1718:10 shaking 1668:6 Shannon 1637:9 shape 1668:17 1677:3 share 1576:4,20 1693:18 Sharleen 1518:7 Shaw 1572:16 sheet 1565:1 1677:13 1706:20
---	--	---	---	--

1706:21 1710:11 1710:16,18 1730:20 she'd 1597:24 she/he/they 1547:3 shift 1617:14 1625:13 1626:2,3 1626:7,11,12 1638:16,18,19 1652:5,12,17,18 1729:18 1751:16 shifter 1643:14 shifts 1576:10,13 1582:7,8,15,19,19 1582:22 1625:16 shimmied 1627:12 shin 1669:5 1674:8 1674:12,13 1677:9 1680:18 shock 1592:2,2,10 1592:17 1606:18 1612:20 1633:16 1633:25 1634:11 1634:16,20 1678:3,4,8,14,15 1724:11,15,17 1732:15,18,18 1733:11 shocked 1573:10,10 1605:8 1692:15 1693:10 shook 1548:21,22 short 1543:25 1544:2 1596:2 1602:10 1603:20 1658:24 1668:8 1673:7 1688:21 1691:4 1725:11 shortly 1525:23 1542:5 1556:10 1623:20 1724:18 shoulder 1528:19 1529:5,24 1532:6 1534:7 1535:7,9 1536:5 1537:5 1539:14 1562:6,7 shoulders 1741:18 1747:9 show 1535:12 1554:21 1582:24 1653:12 1700:18 1705:14 shows 1522:2,8 1558:3 1653:16 1665:25 1682:22 1694:9 shut 1548:17 1686:22 sic 1689:12	sick 1704:16 sides 1734:24 sign 1675:11,13 1713:13 1730:23 1731:1 1742:3,5,5 1742:6 signal 1688:19 signature 1555:22 1555:22 1565:16 1773:12 signed 1558:7,22 1587:2,3 1593:11 1675:5,15 1679:1 1679:3 1686:18 1697:23 1699:23 1714:17,21 1773:13 significant 1647:3 signing 1701:13 1722:13 1730:17 signs 1560:20 1664:20 1678:21 1680:21,22 1700:20 1723:22 1742:2 1762:22 1763:1,13 1764:6 silent 1687:20,21,25 similar 1574:24 1698:13 1770:9 1770:19 simply 1578:5 1639:18 1641:2 1731:10,24 1755:21 1770:9 since 1589:2 1609:5 1613:2 1616:6 1619:8,10 1644:12 1725:6 1756:8 1764:14 single 1726:12 singular 1648:6 sirens 1550:8 1659:23 sister 1610:10 1627:4,4 sisters 1596:23 sister's 1549:7 sit 1571:22 1662:19 1703:13 1716:9 1767:9 site 1599:16 1600:4 sitting 1517:13 1529:12 1585:17 1609:15 1619:25 1661:17 1662:14 1662:23 1667:7 1679:21 1681:24 1686:5 1716:20 1718:5 1733:23	1736:3 1737:2,15 1739:19 1741:10 1741:11 1748:1 situation 1523:12 1546:8 1608:24 1611:2 1616:22 1768:20 six 1562:14 1651:14 skid 1576:7,8,17 skill 1654:6 skin 1677:19 1680:14 1711:2 slight 1733:12 slightly 1540:7 slippery 1533:9 slow 1540:23 1546:4 1660:14 slower 1680:11 slowing 1528:12,18 slowly 1543:8 sluggish 1711:9,10 1711:11 slurred 1691:10 1701:3 1717:2,13 slurring 1691:17 1719:18 small 1521:23 1537:24 1539:2 1575:6 1607:16 1626:25 1627:1 1680:17 1744:20 smashed 1743:24 smell 1667:6 1683:16 1684:10 1684:14 1685:2 1685:10,24 1686:11 1687:2 1691:1 1698:20 1699:6 1700:21 1712:6 1715:7,15 1716:3,10,15 1718:24 1720:14 1720:18 1721:1,1 1726:13,18,20 1738:5,6,17 1746:21 1747:25 smelled 1680:19 1681:15,16,18,20 1683:24 1693:19 1700:24 1714:24 1738:8 1752:5 smelling 1681:25 1683:10,22 1684:5 1715:19 1738:15 snapped 1614:13 sneaking 1627:5 sobbing 1670:2 social 1619:18	1641:5 somebody 1581:12 1599:9 1605:13 1610:5,6 1615:16 1615:16,18 1627:18 1639:3 1643:25 1644:5 1644:11 1646:14 1658:12 1661:10 1661:14,19 1680:4 1707:4 1731:6 somehow 1614:16 1617:21 someone 1538:12 1545:21 1547:25 1552:17 1564:25 1578:14 1589:12 1589:24 1613:14 1634:19 1638:24 1661:4 1670:7 someone's 1665:16 something 1538:12 1540:14 1560:14 1567:20 1572:24 1581:8 1584:19 1599:8,23 1601:25 1613:3 1615:17 1616:15 1620:1 1621:7 1635:9,13 1638:13 1639:2 1658:23 1664:10 1671:17 1678:23 1685:19 1689:8 1690:16 1705:11 1709:10 1710:11 1725:5 1737:24 1743:8 1752:21 1770:10 1773:9 sometimes 1742:6 1743:15 1770:25 somewhat 1538:11 1579:6 1586:12 1750:11 somewhere 1723:16 son 1553:15 song 1611:14 soon 1619:22 1690:25 sorry 1526:17 1551:12 1571:25 1582:10 1583:3 1583:10 1593:5 1598:13 1622:11 1622:16 1624:19 1656:25 1663:4 1735:2 1747:2 1756:21 1763:3,6	1779:16 sort 1522:7 1545:22 1615:15 1616:23 1647:6 1718:12 1724:16 1734:13 1768:20 sounds 1597:16 source 1621:8 south 1534:9 1538:23,24 1540:8 1659:14 1734:20 1736:2 1757:21,22 1758:3,18 1759:5 southbound 1526:20 1551:6 1600:25 1604:8 1759:6,11,17,21 space 1718:18 1758:23 1763:19 speak 1613:24 1680:11 1690:7 1691:10 1733:9 1733:10 1742:11 1745:1 1752:14 1761:14 1768:9 1775:21 speaking 1571:13 1592:20 1599:4 1608:24 1754:11 1775:1 1779:25 specific 1541:1 1557:23 1700:8 1734:14 1764:8 specifically 1640:14 1690:3 1762:20 speculating 1725:6 speculation 1549:24 1576:14 speech 1691:10 1701:2,2 speechless 1605:12 speed 1528:12 1616:8 spend 1723:10 1733:8 spending 1615:13 1690:24 1731:21 spent 1666:16 spheres 1680:14 spiderweb 1743:12 split 1625:21 spoke 1569:14 1572:10 1601:22 1623:18 1702:13 1703:24 1751:4 1752:13 1761:7 1774:15 1775:22 1778:8
---	--	---	--	---

spoken 1549:16 1634:3 1776:2	1752:15 1753:8 1770:9	stretch 1735:10	1736:6	1596:19 1597:16
spot 1773:11	stating 1776:7	stricken 1670:4	supervisors	1601:2 1609:16
Sprint 1735:18	station 1527:24	strict 1631:3	1626:12	1611:4 1613:18
staff 1518:1	1528:4 1554:19	strong 1680:16	support 1640:1,11	1615:9 1622:21
1623:22 1651:13	1585:19 1633:2	1683:21 1684:13	1640:21	1626:18 1628:3
stage 1584:12	1683:1 1695:3	1684:15 1685:10	supports 1612:18	1637:8 1638:5
1613:13	1714:9 1715:1	1685:13,13,22,24	1638:22	1641:9 1647:24
stages 1663:15	statistics 1677:16	1685:25 1699:6	supposed 1559:8	sweat 1597:9,11
staggering 1591:6	status 1709:1	1700:21 1715:7	1570:18 1627:7	Sweaty 1678:19
stand 1541:13	stay 1626:15	1715:18	1659:7 1724:24	sweet 1738:12
1587:19 1649:13	1764:20	strong/Strong	1725:2	switch 1653:25
1650:5 1666:12	stayed 1615:6,7	1685:16	sure 1522:5,24,25	sworn 1524:15
1735:19 1744:11	1624:4 1687:20	stuck 1600:1 1769:2	1524:7 1527:5	1649:5,7 1727:25
1756:11 1772:3	1687:21,25	stuff 1618:19	1531:14,16	symptom 1711:16
standard 1540:2	steering 1743:14,16	stumbling 1591:6	1549:2 1557:20	symptoms 1717:3
1672:7	1743:18,22,23	subject 1582:4	1557:24 1569:5	1717:14,23
Standards 1630:7	1744:9	submission 1629:14	1574:7 1575:19	1727:14 1762:16
1636:20 1637:2	Stenotype 1781:8	subpoena 1567:21	1577:23 1584:6	synopsis 1629:13
standing 1539:3	step 1572:17 1664:1	1568:22 1569:2,8	1621:17 1636:4	system 1580:19
1541:11 1562:25	stepping 1572:2	1570:3,10 1703:7	1638:9 1642:22	1640:1,21 1648:8
1589:4 1591:18	steps 1663:14	subpoenaed 1521:8	1643:1 1644:3	
1620:4 1649:4	1732:13	1568:18 1581:5	1661:20 1665:22	T
1716:19	stickler 1626:14	1704:3 1756:12	1666:21 1676:4	tab 1535:14,15
stands 1713:8	sticks 1743:19	1772:5,12 1773:2	1678:25 1686:6	1554:23 1565:3,3
stared 1544:17	stiffness 1680:23	subsequent 1567:11	1698:1 1718:20	1580:6 1652:25
staring 1740:22	stigma 1638:11	1639:22 1702:9	1718:21,22	1684:21 1694:5
1741:5	still 1525:9 1541:17	1778:21	1722:11 1724:9	1748:11 1774:19
start 1595:19	1542:13 1596:10	subsequently	1731:12 1735:20	tailgate 1541:2
1619:8 1637:13	1608:2 1618:2	1570:2	1753:19 1770:22	taken 1522:25
1664:2 1667:25	1634:17 1650:2	sudden 1523:13	1776:23 1780:3	1539:24 1556:1
1668:2 1670:24	1652:19 1656:17	1547:21 1640:6	surprise 1573:2	1578:22 1592:15
1671:3 1673:9	1712:5 1721:1,1	suffered 1769:10	1628:21	1605:13,14,14
1685:19 1688:12	1733:10	suffering 1732:2,14	surprised 1566:20	1655:25 1656:11
1697:13 1764:3	stood 1578:19	1741:22	1572:21,25	1657:9,20
1779:7,9,10,11	stop 1527:18	sufficient 1691:8	1578:12 1624:13	1673:20 1675:1
1780:5,8	1528:17,22	suggested 1722:16	1628:12 1638:21	1680:21 1694:6
started 1538:13,14	1530:23 1532:3	1777:7	1638:23,25	1754:19 1758:20
1541:10 1546:14	1607:7 1617:18	suggesting 1557:9	1703:2 1776:10	1781:8
1549:22 1553:20	1685:20 1759:13	suggestion 1722:20	surreal 1530:20	takes 1526:6
1573:14 1595:21	stopped 1530:12	suit 1779:7	suspended 1639:5	1729:25 1742:17
1595:21 1609:5	1541:16 1543:11	suitable 1629:15	suspicion 1621:4	taking 1524:25
1616:7,23,23	1545:21 1611:16	suite 1709:10	sustained 1533:23	1603:6 1698:2
1619:6 1646:2	1617:20 1644:7	sullen 1667:23	sustaining 1733:22	1732:12 1777:17
1669:12 1728:12	1735:22 1736:22	1669:13,16	SUV 1734:21	1778:17
1737:8	1759:15	1680:20 1698:7	1736:13,20,23,25	talk 1607:16
starting 1562:3	stops 1769:14	1698:13 1718:10	1737:1,2,12,24	1615:16,19
1644:16 1679:10	straight 1527:1	sullenness 1688:20	1738:17 1739:16	1619:14 1621:15
1779:18,19	1601:6 1612:5	sum 1699:19	1739:19 1742:1	1621:22 1638:23
starts 1561:25	1668:6 1737:15	summary 1679:8	1742:19,23	1638:24 1641:22
1755:18 1777:13	1740:22 1741:9	summer 1728:14	1744:25 1745:2	1663:10 1678:2
state 1564:4	1741:12	Sunbird 1526:17	1747:8 1767:10	1692:25 1696:20
1592:10 1610:12	strange 1599:5,16	Sunday 1553:15	1769:3 1775:1,23	1702:23 1732:25
1613:6 1670:11	1622:8,13,19	super 1627:16	1777:19	1733:7 1737:8
1741:15	strangers 1608:25	Superior 1627:2	Sveinn 1596:18,22	1745:13,16
stated 1781:9	strength 1575:25	supervisor 1626:7	1610:9	1764:20 1768:12
statements 1522:7	1738:11	1626:10,11	Sveinson 1519:7	talked 1545:4
1569:6 1682:5	stress 1733:5	1629:13 1655:24	1521:11 1522:17	1573:25 1576:6,8
1684:16 1748:8	stressful 1605:1	1656:5 1657:13	1522:18 1594:25	1599:22 1602:19
		1658:8 1697:6	1595:1,6 1596:18	1607:19 1631:16
				1657:16 1684:5

1733:15 1754:11 1766:9 1775:11 1777:15,22,24 talking 1525:3 1549:19 1551:10 1551:15 1603:20 1604:18 1608:25 1610:21 1624:8 1632:9 1640:5 1656:4 1660:10 1664:3 1712:11 1733:8 1739:9 1766:9,16 1768:13,15 1770:3 1778:2 Taman 1518:10 1580:12 1589:9 1596:15 1613:19 1628:22 1652:4 1656:1,12 Tara 1599:21 1610:7 tearing 1619:24 Ted 1520:7 1648:25 1681:10 1737:4 1739:14 1750:6 1750:15 1777:17 telephone 1749:14 1753:4,5 television 1628:13 telling 1586:22 1616:23 1617:9 1722:22 1746:23 1761:10 1767:13 tells 1664:9 ten 1661:22 1686:5 1723:12,14 1733:17,18 1777:15,20 tenor 1582:17 term 1532:14 1576:12 1577:11 1577:12,13,15 1640:19 1669:16 1669:19,21 terms 1550:21 1611:7 1619:9 1621:4 1624:22 1639:15 1654:2,4 1654:13 1658:5 1659:3 1668:1,20 1670:11 1673:1 1738:11 1745:25 1747:18 terrible 1551:12 1553:4 1658:15 test 1616:10 tested 1616:9 1692:21	testified 1524:15 1595:2 1649:7 1727:25 1772:9 testify 1703:8 1772:13,19 testimony 1521:19 1569:24 1577:23 1579:21 1583:19 1601:9 1630:25 1639:9 1727:10 1740:6 1750:19 thank 1524:4 1579:21 1580:9 1583:14,24 1592:13 1593:14 1593:19,25 1594:4,7,8,12 1627:24 1630:20 1631:9,10 1633:9 1635:17 1637:6 1640:17 1641:10 1645:16 1647:17 1648:9,10 1706:9 1719:24 1720:1 1723:21 1725:18 1725:22 1727:18 1727:20 1755:22 1756:24 1759:23 1760:1 1762:2 1765:10 1766:25 1767:3 1769:22 1774:8 1778:25 1779:2,4,5 1780:10,17 thanked 1720:3 thanking 1720:4 thanks 1580:14 1773:4 theatrical 1573:6 their 1521:19 1580:14 1596:23 1612:18 1613:5 1613:17 1614:10 1625:15 1626:9 1629:11,11 1656:5 1665:3,7 1665:13 1690:2 1710:22 1711:24 1713:25 1730:24 1731:2,19 1732:23 1733:24 1733:25 1738:15 1738:16 1743:10 1743:11,22,24 1745:13 1746:6,7 1747:18 1751:18 1751:21 1753:9 1778:23 themselves 1597:15	1638:1 1691:1 1740:10 1743:9 1751:16 thereabouts 1619:12 1768:25 thing 1532:5 1537:24 1577:7 1584:16,17 1597:22 1602:20 1621:25 1626:16 1649:12 1654:16 1692:17,19 1698:16 1703:14 1711:19 1725:10 1746:9 things 1524:3 1541:16 1587:8 1597:18 1607:10 1610:3,5 1615:21 1616:12 1617:10 1618:3 1622:21 1628:18 1640:7 1645:5 1668:22 1744:4 1772:14 thinking 1546:10 1568:11 1589:4 1627:14,15 1692:16 1724:3 1738:3,4,7 1778:1 third 1548:8 Thirty-eight 1595:8 though 1543:2 1579:9 1589:24 1597:16 1608:1,3 1626:19 1627:7 1637:2 1675:19 thought 1534:1 1542:18 1549:1 1553:24 1558:14 1561:15 1592:18 1597:12 1598:1,3 1610:10 1614:25 1615:15 1627:17 1628:22 1635:23 1636:6,12 1644:13 1646:14 1687:4 1692:20 1702:23 1720:2 1722:17 1723:1 1737:14 1766:16 1768:2 thousands 1651:16 three 1523:12,24 1544:8 1549:16 1576:14 1579:7 1580:15 1591:15 1591:18,21 1592:24 1596:4 1619:6 1622:9,14	1624:24 1628:11 1651:8 1672:17 1672:18,19,22,23 1679:15 1680:13 1683:14 1685:1 1705:23 1706:12 1712:5 1744:21 through 1526:22 1529:1 1549:12 1553:19 1559:7 1561:9 1579:8 1585:10 1597:9 1597:10 1608:11 1608:14 1618:19 1636:16 1637:23 1638:7 1644:7 1650:18 1651:17 1659:20 1663:14 1663:20 1668:3 1676:16 1697:1 1698:5 1703:14 1703:19 1713:19 1722:7,9 1728:21 1730:5 1731:15 1732:23 1736:6 1758:9,13,20 1770:10 1771:2 throughout 1556:19 1617:19 1729:7 Thursday 1517:16 1521:1 tight 1571:22 times 1551:14 1616:18 1617:19 1644:6 1653:5,8,8 1655:14 1661:11 1661:19 1672:17 1672:21,23 1676:18 1680:13 1685:19 1700:11 1709:20 1710:25 1711:1 1712:15 1717:11,21 1726:24 1733:18 1735:12 1756:13 1766:12,13,14 1772:22 1773:15 timing 1616:8 tired 1720:4 tobacco 1599:12 1611:12 today 1521:9 1522:14,20 1523:15,21 1524:19 1561:14 1578:2 1579:21 1581:21 1591:11 1594:6 1639:10 1644:9 1649:13	1682:3 1684:16 1698:17 1699:16 1722:15 1727:9 1727:22 1750:10 1750:19 1763:11 1765:11 1772:2 1774:16 Todd 1565:11 1653:4 1682:25 together 1549:10 1559:3 1573:18 1597:5 1608:3 1617:5 1625:10 1643:15 1702:2 1741:11 1745:14 1745:17 1749:12 1751:17 1755:11 tomorrow 1522:3 1522:10 1779:7 1779:24 1780:2 1780:13,18 tone 1573:5 top 1551:3,6 1555:9 1566:6 1583:6 1656:6 1679:10 1705:20 1715:17 1715:21 1735:3 1763:7 total 1596:22 1666:3 1699:19 1754:5 touch 1732:7 touching 1674:19 tow 1603:23 toward 1527:1 1538:13,14 1539:14 1543:7 1548:1 towards 1529:21 1536:6 1537:20 1541:10,23 1542:15,16,17 1543:14 1563:1 1588:24 1592:25 1737:1 1741:8,8 1764:17 tower 1627:9 town 1627:2 1758:9 1758:15,17,17,20 Tracey 1682:24 1751:11 tracked 1569:10 traffic 1527:17 1528:6,9 1540:2 1550:10,21,24 1551:18 1595:24 1600:24,25 1604:16 1605:2 1622:5 1638:10
--	---	---	---	---

1659:20,21 1740:15 1759:11 tragedy 1632:5 tragic 1580:18 tragically 1652:3 trained 1525:12 1560:21 1635:2 1705:11 training 1596:3,11 1596:12 1598:6 1608:6,7,8 1689:14 Transcona 1595:23 transcript 1517:12 1574:20,20 1581:24 1635:11 1692:3 1722:25 1760:25 1761:6 1774:18,24 1781:8 transcription 1565:15 transcripts 1685:18 transfer 1623:21 transferred 1623:21 translate 1679:7 transported 1676:20 1697:19 traumatic 1585:11 travel 1527:8 1593:1 1759:21 1779:24 traveling 1735:6 1759:3 travelled 1735:15 travelling 1526:9 1526:19 1529:15 1551:7 treated 1621:17 1697:19 1729:14 treatment 1676:20 1680:21,22 1730:16 1732:16 1746:2 triage 1704:23 trial 1577:9 1704:2 1772:25 trials 1758:8,10 1772:24 tried 1617:17,18,19 1644:6,18 trouble 1692:17,19 1692:23 1755:6 1757:6 troubling 1586:1 trucks 1603:23 Trudy 1553:20 true 1729:8,16	1772:4 1778:24 1781:7 trunk 1548:12 Trustee 1607:18 Trustee's 1608:19 truth 1693:11 try 1522:25 1524:7 1597:5 1614:4 1660:15 1670:23 1733:9 1742:8 1769:15 1770:25 1775:21,23 trying 1532:13,15 1532:22 1533:14 1533:20 1549:10 1559:3 1573:18 1617:22 1698:15 1698:16 1703:16 Tuesday 1554:4 turn 1535:24 1583:1 1604:17 1705:16 1741:8 turned 1538:13 1540:16 1545:13 1546:12,14 1547:21 1549:9 1549:21 1562:5 1590:11 1591:2 1592:25 1628:13 1660:2 1739:15 two 1521:12 1523:13 1529:16 1540:10 1551:3 1553:17 1572:5 1572:14 1575:12 1575:19 1585:13 1608:23 1609:21 1625:19 1629:1 1642:9,10,12 1652:9 1654:1 1661:11 1682:4 1720:25 1730:7 1730:10 1743:17 1752:15 1757:19 1757:25 1759:10 1759:20 1769:8 1771:7,8 1772:16 1774:10 1776:14 two-thirds 1561:25 type 1543:17 1545:11 1570:25 1571:21 1574:12 1626:15 1654:16 1692:17,19 1725:10 1738:14 typed 1558:1,4 1682:21 1697:11 typewritten 1565:4	uh 1775:7,12 1776:7,12 1777:15,21 ultimately 1568:5,9 1588:25 1617:21 um 1560:2 1566:7 1775:4,11 1776:6 1777:14 umbrella 1650:14 Um-hum 1532:18 1536:9 1542:3 1555:17 1556:2 1557:8 1562:13 1566:11 1574:23 1578:1 1581:22 1585:12 1640:22 1666:6 1674:1 1683:16 1685:14 1692:1 1698:8 1724:10 1774:22 1776:18 uncomfortable 1611:2 under 1635:23 1650:14 1711:10 1712:20 1732:15 1733:2 1765:11 underneath 1550:24 1551:20 1705:25 1706:1 1743:23 understandable 1639:8 understanding 1565:25 1582:20 1606:23 1614:5 1622:24 1625:11 1625:15,24 1631:3 1638:6 1641:14 1721:6,9 1721:12,15,20 1749:21 1750:23 1752:8 1757:6 understood 1565:21 1614:7 1647:25 1679:2 1736:8 unfairly 1779:12 unfortunate 1632:5 unfit 1595:25 1596:1 1623:24 1630:5,7 1630:10,11,13,17 1636:20 1653:16 1679:19 1682:25 unless 1748:1 unnecessary 1570:2 unremarkable 1711:3 until 1521:20 1522:3,12 1549:3	1553:22 1602:22 1602:22,23 1608:21 1615:7 1619:16 1620:17 1629:4 1631:3 1657:21 1719:8 1742:2 1780:20 unusual 1591:14 1616:14,21 1745:12 1755:2 1768:19 upgrading 1689:15 upper 1694:9 1767:18,21 upright 1733:23 upset 1615:11 1697:24 1698:10 1698:12,13 1701:18 urgency 1658:4 use 1576:12 1592:16 1616:10 1669:15 1670:6 1680:10 1705:8,8 1758:1 used 1532:14 1577:11,13,16 1606:7,9 1640:18 1659:23 1669:18 1669:21 1673:15 1720:15 1727:8 1750:24 1752:11 using 1614:23 1633:15 1775:18 usual 1523:23 1720:9 1769:7 usually 1524:1 1744:11,12 1746:22 1747:13 1748:3 1769:13	via 1753:4 vice 1625:23 vicinity 1601:11 1740:13,16 Vicki's 1610:9 view 1576:23 1635:22 1690:21 1690:22 1747:11 1747:19 viewing 1730:4 Vincent 1518:3 vision 1528:2 visual 1614:22 vital 1560:20 1664:20 1677:16 1680:21 vitals 1677:14 1732:20 voice 1573:5 volume 1517:17 1550:22 1652:25 1748:10 1774:19 volunteer 1690:13 1690:15 volunteered 1650:21 volunteers 1525:13
W				
wait 1571:7,22 1602:8,22 1603:1 1603:4,12 1604:1 waited 1570:19 1571:4,5 waiting 1570:24,25 1602:14 1609:23 1613:14 1627:13 1686:18 1689:2 1744:24 wake 1613:14 walk 1533:3 1538:15 1562:23 1564:10 1587:25 1588:5 1590:6,25 1591:14 walked 1545:13,15 1548:12 1563:1 1622:2 1657:2 1658:2,3 1679:23 1680:5 1736:6 1737:5 1744:6,20 walking 1543:7,10 1588:24,25 1589:5 1591:5 1737:1 wallet 1713:1 1722:8,10 wandered 1545:22 want 1523:11,18 1524:21 1540:24				
U				

1579:20 1589:7 1589:15 1606:5 1611:5 1620:8 1621:7 1626:14 1629:4 1635:13 1660:15 1665:1 1674:16,23 1676:20 1688:13 1697:13,18 1730:14,23 1731:7 1732:24 1733:7,8 1740:21 1740:23 1754:25 1768:12 wanted 1538:1 1559:4 1579:15 1583:18 1600:11 1600:13 1602:20 1603:13 1605:11 1611:3 1626:19 1626:21 1628:24 1637:13 1640:11 1640:13 1674:25 1713:4,13 1739:12 wanting 1665:13 warm 1680:14 warmly 1634:3 wasn't 1527:17 1528:9 1530:20 1530:21 1533:9 1534:25 1541:11 1546:6 1548:23 1549:2 1551:21 1552:21 1553:22 1560:11 1567:7 1574:17,17 1576:18 1578:13 1602:21,23 1608:24 1610:16 1618:5,6 1620:9 1640:14 1641:23 1643:4 1652:18 1671:9 1677:3 1683:21 1689:1 1690:6,13 1698:1 1715:18,24 1716:15 1724:12 1724:13,14 1737:17 1753:20 1766:22 1777:14 1778:23 waste 1523:14 way 1525:18 1529:3 1530:7 1543:14 1546:3 1548:20 1550:24 1551:18 1561:25 1564:1,7 1572:13 1575:3	1578:9 1579:3,10 1584:13 1585:2 1590:2 1597:13 1598:13 1600:13 1613:17 1614:21 1614:22 1616:24 1618:18 1622:16 1627:12 1646:7 1648:5 1653:23 1657:25 1664:11 1664:21,21 1669:17 1673:6 1688:17,18 1691:13 1693:8 1693:12 1727:8 1742:20 1744:19 1744:23 1768:3 1775:19 weather 1765:4 week 1549:3 1553:6 1553:23 1585:6 1622:4,8 weekend 1554:4 1628:13 weeks 1617:23 1643:19 weigh 1527:24 1528:4 1600:21 1601:3 1609:20 weighing 1560:4 1586:4 weight 1741:18 Weinstein 1518:14 1519:6,8,13,17 1521:22,23 1522:1 1523:22 1523:25 1524:4 1584:1 1589:17 1589:21 1593:14 1593:18 1631:14 1635:17,19 1637:6 1706:18 1707:17 1719:24 1720:3,9,10 1762:3,5 1764:5 1766:25 1774:13 1777:6 well 1524:6 1527:7 1537:17 1549:10 1557:22 1573:13 1574:9,10 1575:8 1576:15 1577:8,9 1579:16 1589:22 1593:20 1594:15 1598:11 1601:15 1605:2 1608:11 1617:11 1618:14 1623:14 1626:12 1626:17 1628:21	1630:15 1636:2,6 1640:3 1642:19 1646:23 1652:18 1658:8 1663:16 1664:20 1667:12 1676:18 1684:11 1692:9 1693:20 1697:21 1722:5 1726:18 1731:25 1736:5,9 1743:14 1752:9 1770:13 wellness 1615:17 1637:14,18,23 1638:5,17 well-being 1730:24 Wendy 1518:6 went 1533:2 1537:22,22,23 1541:19 1542:1 1547:1 1550:13 1552:3 1555:16 1562:12 1570:12 1570:15 1571:1 1595:24 1596:2,3 1596:5 1599:11 1600:16,18 1601:16 1604:8,8 1607:17 1611:7 1611:10,20 1613:19 1614:13 1615:12 1617:5 1624:6 1627:6,12 1627:17,23 1636:16 1645:23 1648:4 1650:23 1657:18,21 1695:1 1703:19 1715:6 1742:7 1745:2 weren't 1528:24 1576:8 1577:23 1589:4 1627:7 1631:22 1639:17 1639:19,23 1640:24 1661:3 west 1659:15 1679:21 1759:20 westbound 1604:17 we'll 1584:16 1589:23 1594:16 1648:16 we're 1522:24 1523:12 1532:19 1632:9 we've 1523:13 1550:14 1652:23 1729:1,19 1730:8 1763:16 whatsoever	1544:16 1580:20 wheel 1576:16 1577:18 1743:15 1743:16,18,19,19 1743:22 1744:9 while 1553:18 1600:19 1602:10 1603:20 1605:10 1605:18 1609:15 1620:7 1622:18 1696:15 1750:7 1764:14 1777:7 white 1744:12 1765:7 1776:12 whole 1598:1 1647:11 1666:23 1666:25 1703:14 1728:22 1732:21 wife 1549:17 1582:11 1598:7 1598:16 1599:4 1607:18 1608:12 1609:11,13 1610:8 1623:16 1676:19 1709:4 wife's 1671:23,24 1721:11 willing 1746:5 window 1744:8 windshield 1743:12 1743:13,13 1744:14 Windsor 1619:19 1619:19 1641:5 Winnipeg 1517:13 1517:14 1518:15 1518:17 1550:3 1595:10,13 1605:9 1607:17 1615:22 1616:13 1621:11,22 1630:6 1637:10 1637:15 1642:5 1655:23 1656:4 1656:23 1658:12 1673:19 1682:25 1693:9 1698:2 1736:3,5 1771:16 1779:24 winter 1765:6 wise 1544:3 wish 1561:9 1606:20,20 witness 1523:1,15 1523:18 1524:13 1532:20 1567:24 1580:15 1581:2 1590:4 1594:8,25 1595:4 1607:6	1622:13 1630:22 1648:24 1675:12 1676:6 1680:12 1703:17 1706:13 1727:20,22,22 1728:4 1742:4 1749:23 1755:16 1763:17 1779:4 1780:1 witnessed 1584:19 witnesses 1519:3 1521:7,12,15 1523:12,24 1524:8 1553:24 1584:19 witnessing 1580:18 witness's 1630:25 woke 1614:12 woman 1534:19 1536:25 1541:20 1547:6,9,15 1560:7 1601:19 1627:16 1628:4 1656:11 wonder 1582:23 1705:13 1738:3 wondering 1624:11 word 1633:15,24 1670:6 1685:20 1692:15,15 1719:4 1720:15 words 1592:16 1606:6,9 1646:15 1673:15 1679:6 1691:18,20 1712:20 1717:2 1719:18 work 1525:9,12 1532:23 1552:3 1575:13 1576:12 1593:19 1595:10 1607:17 1608:3 1608:14 1615:12 1615:22 1617:4 1624:1 1625:14 1626:1,15 1628:17 1639:12 1649:14 1651:9 1696:16 1704:15 1731:11 1735:7,7 1735:8 1751:15 worked 1525:7 1595:23,25 1607:18 1608:4 1608:19,20 1610:7 1616:16 1618:2 1625:10 1625:12,13,17 working 1549:11
---	--	--	---	---

1565:6 1576:9 1582:18,19,21 1596:8 1608:5 1625:20,22 1631:19 1650:11 1652:4 1751:16 workout 1636:3 works 1550:2 1623:24 worried 1613:12 1669:1,13,21 1670:5,6 1698:7 1703:12 1746:8 worry 1731:5 worst 1732:23 wouldn't 1572:2 1590:7 1634:16 1634:20 1646:25 1685:25 1687:18 1687:19 1703:12 1776:9 WPS 1607:1 write 1696:19 1713:11 1752:21 1773:15 writes 1629:13 writing 1702:7 written 1555:25 1561:24 1583:2 1586:24 1629:9 1769:25 wrong 1561:22 1585:16 1616:15 1641:14 1710:23 1746:9 1775:12 1776:9 1777:4,8 1778:21 wrote 1557:13 1667:23	1729:7 1730:11 1730:13 1762:6 yelled 1530:22 yellow 1538:24 1542:14 1543:19 1546:15 1548:1 1735:2,17,24 1744:20 Yep 1651:5,8 young 1596:25 1600:23 1628:18 1628:19 younger 1737:14	1730:17,18,19 11 1692:8,13 1777:11 11:00 1779:10 11:13 1594:21 1104 1682:23 12 1562:3 1608:7 1630:4 1649:21 1692:7 1777:10 1778:4,5 12:28 1648:13,19 124 1539:22,23 13 1596:23 1632:1,9 1723:5 1778:14 13th 1595:21 1313 1583:3,4,12 1705:15,17 132 1535:25,25 14 1565:9 1566:21 1723:2,5 1751:12 15 1526:6 1543:21 1571:5,12 1594:17 1610:1 1666:21 1695:13 1702:2 1708:6 1719:4 1722:19 1723:15,17,18 1727:4,9 1524 1519:4 1555 1520:3 1580 1519:5 1520:5 1583 1519:5 1584 1519:6 1595 1519:7 16 1566:22 1645:11 1627 1519:8 1630 1555:12 1631 1519:8 1637 1519:9 1641 1519:9 1645 1519:10 1647 1519:10 1555:19 1649 1519:12 1681 1520:7 1682 1520:9,11 17 1555:19 1762:21 1762:24 1763:7 1704 1519:12 1707 1519:13 1720 1519:13 1726 1519:14 1728 1519:15 1748 1520:13 1756 1519:16 1520:15 1757 1519:16 1762 1519:17 1767 1519:17	1769 1519:18 1773 1519:18 1774 1519:19 18 1644:16 1655:5 1655:19 1666:3 1666:15 1753:25 1754:1 19 1729:7 19.a 1748:11 1986 1728:14 1992 1595:20 1632:4	245 1698:5 25 1520:12 1682:16 25th 1525:4 1632:15 1653:7 1682:23 1702:10 1728:25 1729:10 1749:5 1756:16 26 1714:1 26th 1574:22 1591:25 28 1714:1 29 1520:14,16 1644:3,15 1748:12,20 1749:1 1756:3 29th 1750:2 1751:3 1751:4,5,5,9 1752:18 1765:18
Y	Z		2	3
yards 1589:7 year 1526:18 1565:23 1575:11 1575:19 1582:5 1619:17 1620:14 1621:21 1641:6 1651:11,15 1679:20 1728:24 yearly 1651:8 years 1525:16 1575:12,20 1580:15,25 1595:8,24 1596:5 1608:7 1619:10 1627:15 1630:3,4 1632:1,9 1645:11 1649:22 1651:8 1652:11 1705:23 1706:12 1728:22	Zazelenchuk 1518:10 1519:5,8 1519:12,16 1580:11 1583:14 1628:2 1630:20 1704:12 1706:9 1756:4,24 Zenk 1573:25 1576:9 1577:4 1582:9 1588:9,19 1588:20 1590:6 1592:3,19,23 1632:13 1646:11 1707:20 1708:1,4 1718:13 1761:20 Zenk's 1676:19	1769 1519:18 1773 1519:18 1774 1519:19 18 1644:16 1655:5 1655:19 1666:3 1666:15 1753:25 1754:1 19 1729:7 19.a 1748:11 1986 1728:14 1992 1595:20 1632:4	2 2 1649:25 1696:4 2:00 1615:8 1648:16 2:30 1523:13 1598:19 2:59 1707:13 20 1534:8,9 1541:12 1542:12 1589:5 1590:18 1610:1 2002 1632:2,3 2005 1520:4,10,14 1525:4 1554:17 1555:6,12 1596:8 1596:9 1632:1,6 1649:21 1650:12 1652:2 1653:7 1682:11 1694:7 1728:25 1729:10 1729:19 1748:12 1748:20 1749:5 1751:3,5 1756:16 1760:13 2006 1520:5,12,16 1565:9 1568:1,4 1568:17,19 1570:3 1580:8 1592:16 1682:16 1682:23 1702:11 1703:11 1751:4,6 1751:9 1756:3 2006/05/30 1565:8 2007 1568:1,2,8 1704:2 2008 1517:16 1521:1 1574:22 1591:25 1692:4 202 1758:14 1771:2 22 1692:2,7 234 1555:20 235 1558:2 236 1565:6 24 1520:9 1635:21 1679:19 1682:11 1695:11 24th 1652:2 1694:7 24th/25th 1729:19	3 3 1517:16 1521:1 1625:12 1631:17 1631:19 3rd 1694:6 3:00 1598:19 1632:16 1633:5 3:13 1707:14 3:30 1601:8 30 1520:5 1580:8 1668:16 1733:16 1733:20 30th 1565:9 1592:15 300 1651:12 31 1679:20 313 1583:1,2 316 1761:4 317 1761:4 1763:5 1766:7 319 1761:17 1764:12 1766:8 320 1774:19,25 327 1763:6,7 330 1685:1 336 1683:11,12 347 1652:25 1653:1 1653:2 35 1544:5 38 1635:18,21 39 1635:18
	0			4
	1			4 4 1715:12,13 1757:16,21 1758:1 4th 1522:12 1634:10 1644:20 4:30 1555:13 1556:9 4:57 1780:21

<p>40 1544:5 1589:5,16 1589:24 1590:2,3 1590:20 1649:16 41 1575:1,4 47 1556:1</p> <hr/> <p style="text-align: center;">5</p> <p>5 1715:17,21 1716:6 1723:16,17 1727:4,7 5'10 1543:24 50 1659:10 1660:2 509 1758:22 59 1526:20,23,25 1527:2,8,8 1551:4 1551:9 1652:21 1654:21 1659:17 1734:21 1757:21 1758:5,18,18,21 1758:22 1759:1,6 1759:10,16 1771:2,2</p> <hr/> <p style="text-align: center;">6</p> <p>61 1719:2 62 1535:14 64 1652:23,25</p> <hr/> <p style="text-align: center;">7</p> <p>7 1517:17 1520:3 1555:6 7th 1554:17 1555:12 7:00 1525:24 1526:3,5 1719:3 7:17 1653:13,14 1654:17 7:20 1653:18 1654:25 7:30 1768:23 7:38 1655:3,21 1657:11,12 1665:23 7:56 1665:25 700 1706:14 74 1580:3 1582:24 1705:14 75 1520:3 1555:1,3 1555:4 76 1520:5 1580:4,6 1580:7 77 1520:7 1681:9,10 1773:7 78 1520:9 1682:8,9 1684:22 1694:5 79 1520:11 1682:14 1682:15,20</p> <hr/> <p style="text-align: center;">8</p> <p>8 1592:1 1752:4</p>	<p>8th 1634:10 8:00 1552:11 1768:23 80 1520:13 1748:17 1748:18 1770:2 81 1520:15 1756:1,2 1760:24 1774:17</p> <hr/> <p style="text-align: center;">9</p> <p>9 1592:14 1752:4 1757:10,16,22 1758:3,11 9:00 1570:20 1571:2 9:30 1521:2 1779:7 1779:9,11,15 1780:5,18,20 9:41 1565:10 911 1532:13,22 92 1619:10 93 1649:20</p>			
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