

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Wednesday, July 9, 2008

Volume 11

INQUIRY PROCEEDINGS

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Mr. M. Green and
Ms. K. Dixon For Mr. Marty Minuk
Mr. J. Prober and
Mr. B. King For Derek Harvey-Zenk
Mr. R. McDonald and
Ms. B. Bowley For R.M. of East St. Paul
Mr. H. Weinstein and
Ms. L. Labossiere For Mr. Harry Bakema
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For Winnipeg Police Assoc.
Mr. G. McFetridge and
Mr. S. Boyd For the Province of Manitoba
Mr. G. Stefanson For Mr. Ken Graham

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1 WEDNESDAY, JULY 9, 2008

2 UPON COMMENCING AT 9:30 A.M.

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

5 THE COMMISSIONER: Good morning.

6 Mr. Maloney is here.

7 Before we start that, I have received
8 a letter from Ms. Edwards with respect to seeking
9 standing as counsel to Mr. Wolson. And I think I
10 should alert counsel here and see whether any of
11 them have any objection to her being given
12 standing, if I come to the conclusion that she is
13 entitled to standing on his behalf.

14 Do you want to make any comments now
15 Mr. Paciocco, or at the end?

16 MR. PACIOCCO: No, thank you.

17 THE COMMISSIONER: All right. What do
18 you say, Mr. Zazelenchuk? She seeks -- I don't
19 know whether you got a copy of this letter?

20 MR. ZAZELENCHUK: I haven't seen the
21 letter. My initial --

22 THE COMMISSIONER: Simply, she says
23 that Mr. Wolson has a substantial interest in the
24 proceedings and --

25 MR. ZAZELENCHUK: I can't --

1 THE COMMISSIONER: -- and should be
2 granted standing in order to -- partial standing.

3 MR. ZAZELENCHUK: I can't take issue
4 with that, Mr. Commissioner. You are not from
5 this city. Winnipeg is a notorious small town in
6 the sense that everybody seems to know everybody.
7 There is a lot of media attention to this Inquiry,
8 as there was to this case, and I can understand
9 Mr. Wolson's position, so I can't take issue with
10 it.

11 THE COMMISSIONER: Is there anybody
12 here who has objection to giving him standing?
13 Nobody? All right. Thank you. I will consider
14 the correspondence and respond in due course.

15 Are you standing, Mr. Weinstein,
16 because you want to make a comment or just to go
17 through your briefcase?

18 MR. WEINSTEIN: Just move my
19 briefcase, thank you.

20 THE COMMISSIONER: Thank you. Let's
21 carry on. Good morning.

22 THE WITNESS: Good morning.

23 THE COMMISSIONER: Mr. Zazelenchuk.

24 BY MR. ZAZELENCHUK:

25 Q Officer Maloney, you returned from

1 your fishing trip to God's Lake and you read the
2 file on the computer, correct?

3 A When I returned to work, correct.

4 Q Yes. And this was a big case, a big
5 file. It was important. It involved the death of
6 a human being. Correct?

7 A Correct.

8 Q Yeah. And I got the impression that
9 the reason you read the file was partly
10 professional curiosity and partly because you
11 wanted to be familiar with it, in case at some
12 point down the line you were asked to do something
13 on the file, like interview a witness or whatever?

14 A Yeah. My practice is when I returned
15 to work, I go through the files. Like some of the
16 simple stuff you don't read through, like if there
17 are just accident reports and stuff like that.

18 Q Sure. And you really did no --
19 nothing active on this file, you took no witness
20 statements or anything like that?

21 A No.

22 Q And that's why you took no notes?

23 A Correct.

24 MR. ZAZELENCHUK: Thank you.

25

1 BY MR. WEINSTEIN:

2 Q Just a few questions for you,
3 Mr. Maloney.

4 Now, you considered yourself a friend
5 with Jason Woychuk?

6 A Yes, I did.

7 Q All right. And I assume, would you
8 socialize outside of the office, that type of
9 thing?

10 A Yes. Since the time he was there.

11 Q Okay.

12 A It is a small office.

13 Q I appreciate that. People help each
14 other out there and things like that?

15 A Yeah. There's only, well, then I
16 think there was only six guys or seven working on
17 the shift.

18 Q On the shift, okay. So you have this
19 conversation with Mr. Woychuk. And again, perhaps
20 I forgot your evidence. How long after the 25th?

21 A Within a few days.

22 Q Within a few days. And did you
23 approach him, did he approach you?

24 A You know what, I can't remember. It
25 was just a conversation.

1 Q Okay. And it was you that raised the
2 charter issue?

3 A When I read the file I thought there
4 was a charter issue, yeah.

5 Q So the first mention, or when you had
6 your first conversation with him, the word
7 "charter" came from your mouth; is that correct?
8 Would that be fair?

9 A Well, I knew there was a charter
10 issue. I can't say as to whether or not I said it
11 first or not.

12 Q All right. But certainly charter was
13 discussed in that first conversation?

14 A Correct.

15 Q And I think you touched on this
16 before, but we'll go through and -- as we know,
17 you were interviewed by the RCMP and we know you
18 were interviewed by Commission Counsel, correct?

19 A Correct.

20 Q Now, do you have your transcript there
21 of your RCMP interview, sir?

22 A Yes, I do.

23 Q All right. Did you make any notes
24 about any of the conversations you had with
25 Mr. Woychuk?

1 A No, I have no notes of anything to do
2 with this file.

3 Q And in your conversation with him, is
4 it correct that he never disclosed any concerns
5 about the notes he had made?

6 A No.

7 Q Isn't that a fact, sir?

8 A Correct.

9 Q Right. And this is -- how many
10 conversations did you have with him, a couple?

11 A You know what, I can't really say for
12 sure.

13 Q Okay. I appreciate you are not
14 sitting there counting, thinking that three years
15 later you're going to be here. But more than one,
16 perhaps; is that fair?

17 A Yes.

18 Q All right. So he expressed no
19 concerns about the notes he had made, correct?

20 A Correct.

21 Q And you make an interesting comment,
22 and I'll tell you about it. This is in your
23 interview by Major Crimes Unit, RCMP. I believe
24 it can be found on page 12. I think you said
25 words to the effect, there's lots of notes from

1 witnesses who knew he was drunk. Do you recall
2 saying that?

3 A I'm just trying to find it here.

4 Q Just hold on and let me turn to your
5 interview for a second. I believe I have it
6 marked as page 12, but I could be wrong.

7 THE COMMISSIONER: The last sentence
8 of the first paragraph.

9 MR. WEINSTEIN: Thank you.

10 BY MR. WEINSTEIN:

11 Q "There's ,there's lots of notes from
12 witnesses who knew he was drunk there
13 anyway."

14 Who are you talking about?

15 A Who am I talking about?

16 Q Yeah?

17 A Just the ambulance attendants and that
18 said they smelt liquor and that on him.

19 Q You used the word drunk. Smell of
20 liquor does not mean drunk, correct?

21 A Correct.

22 Q Okay. So, in fact, your answer should
23 have been, witness smelled liquor?

24 A Correct.

25 Q But you say lots of notes from

1 witnesses who knew he was drunk. Who else? What
2 other witnesses?

3 A Sergeant Carter.

4 Q Okay. Anyone else?

5 A You know what, I'd have to look at the
6 file to go through it.

7 Q Okay. Because does two mean lots to
8 you?

9 A I believe there's more than two in the
10 file. I'd have to look at it.

11 Q But no other name or witness that
12 jumps out at you at this time?

13 A At this time, I haven't looked at it
14 for years.

15 Q Okay. All right. And also page 17, I
16 believe, bottom of 17, I'll let you get to it.
17 Have you got it?

18 A Yes.

19 Q I believe it says, and I'm going just
20 from a summary prepared for myself, that Jason did
21 not mention anything to me about note development.
22 Do you see that? I believe it's bottom of 17?

23 A The question?

24 Q Jason did not mention anything to you
25 about note development; is that correct?

1 A Correct. That's the question asked by
2 Mr. Doyle. I answered it on 18.

3 Q Yeah. And your answer was "no"?

4 A No, he didn't.

5 Q Now, in this particular -- you have
6 dealt with Harry Bakema before, you've been with
7 him before; correct?

8 A I knew him before.

9 Q No, no, I'm talking at East St. Paul,
10 you worked with him?

11 A Correct.

12 Q At no time did he instruct you to take
13 out or put something in your notes, did he?

14 A No.

15 Q And then take a look again at perhaps
16 17, a third of the way down.

17 "Maloney: No, but I know he had some
18 type of conversation when he got back
19 to the office with Norm..."

20 you carry on,

21 "About the guy possibly being drunk."

22 Do you see that?

23 A Correct.

24 Q Possibly being drunk, correct?

25 A Correct.

1 Q That's the word you used under oath
2 naturally, when you were giving your evidence,
3 correct, to the RCMP?

4 A I believe I gave it to the Commission.

5 Q No, I'm looking at your evidence to
6 the RCMP, page 17 of the transcript. I believe
7 that's a transcript of the RCMP. Do you see that?

8 A Okay. Correct.

9 Q Okay. So we know, or you knew that
10 was under oath also, just as your Commission
11 Counsel interview was under oath; correct?

12 A Correct.

13 Q And you said, and you were trying to
14 give the answers to the best of your recollection,
15 to the best of your ability, naturally; correct?

16 A Correct.

17 Q And you talked about the guy, and this
18 is repeating what Jason told you, possibly being
19 drunk; correct?

20 A Correct.

21 Q Now, as you have indicated also, you
22 had an interview with Commission Counsel; correct?

23 A Correct.

24 Q And you have that, sir, in front of
25 you?

1 A Correct.

2 Q Let's take a look at page 10 just to
3 make sure. Yeah, take a look at page 10. You
4 tell me if you're there, sir, page 10, the top of
5 the page. There's four pages --

6 A Okay, yeah.

7 Q -- to a page, okay. And I'm looking
8 at the left-hand side where it says page 10?

9 A Correct.

10 Q Okay, we're together. And I'm looking
11 at line nine. Do you see line nine?

12 A Correct.

13 Q And your answer was:

14 "And then he just, he just stated that
15 he was given the gentleman to take
16 back to the office and that Harry said
17 that the guy may be possibly impaired
18 and told Jason to put him in the car."

19 That was the best of your recollection, under
20 oath, when you had that interview on March 25th,
21 2008; correct?

22 A Correct.

23 Q Yeah. That's page 10. And take a
24 look now at page 12. It's on that same page, just
25 to the right. Take a look at line 16 to 20 and

1 I'll read it out. Do you have it, sir?

2 A Yes, I do.

3 Q "And then he stated that Harry gave
4 him the gentleman to put in the back
5 of the car and stated he is possibly
6 impaired or drunk, and that he gave
7 Jason his directions to take him to
8 the office to Sergeant Carter."

9 Possibly drunk, correct?

10 A Correct.

11 Q And let's go to page 14, sir, in the
12 same interview, line 23, sir? You were asked this
13 question by Commission Counsel:

14 "Did you have any conversation about
15 anything else relating to the case,
16 duty-book notes, preparation of
17 reports, anything of that nature, for
18 instance?"

19 A No."

20 That was your best evidence and recollection at
21 the time?

22 A Correct.

23 Q Correct. And then if you take a look
24 at page 17, you didn't observe anything with
25 respect to note making or report making on this

1 particular case; is that correct?

2 A Correct.

3 Q Even after you came back?

4 A Correct.

5 Q Correct? And we know that the reader
6 is the one that generally looks after and
7 scrutinizes files to make sure things are proper
8 and complete?

9 A Whoever is doing the reviewing of the
10 files.

11 Q Yeah. And that's the reader?

12 A Whoever is doing it, Sergeant --
13 whoever is in charge at the time.

14 Q Isn't it normally the reader that you
15 might get stickies from saying, can you elaborate
16 on this, et cetera, or things like that? Isn't it
17 normally the reader?

18 A Well, we don't have a reader.

19 Q You don't have -- we have heard from
20 other witnesses that you do have a reader?

21 A Well, whoever is being assigned to do
22 the file review is doing it.

23 Q All right. Let's not beat around the
24 bush. The reader, the investigator, the file was
25 Sergeant Carter's; correct?

1 A Whoever is reviewing the files. I
2 don't know who got assigned the file. The file is
3 assigned.

4 Q Okay.

5 A So it should have a number in the top
6 of the corner whoever the file is assigned to.

7 Q And say if the file was assigned to,
8 say if the file was assigned to Sergeant Carter,
9 it would be his file, correct?

10 A Correct.

11 Q And he'd be the one to look it over
12 carefully, naturally, and he is careful; correct?

13 A Correct.

14 Q Okay. And if something was deficient,
15 you'd hear from Carter, correct?

16 A If it was his file or my file you're
17 saying?

18 Q No, his file, and say you have notes
19 on the file and he needed clarification of that,
20 he'd come to you or send you a sticky or something
21 like that?

22 A If I was doing work on his file, yeah,
23 he'd ask me.

24 Q Right. Did you follow up with
25 Mr. Woychuk to determine what, if anything, he had

1 done about the fact that allegedly Harry Bakema
2 told him that Harvey-Zenk was possibly impaired at
3 the scene?

4 A No.

5 Q And that's the same question that you
6 were asked by Commission Counsel on March 25th, at
7 page 19. And your answer today is consistent with
8 what you told Commission Counsel, that you did
9 not; correct? Take a look at page 19 starting at
10 line seven?

11 A Correct.

12 Q And then further on at line 23, still
13 same page:

14 "Did he ever subsequently raise any
15 other issue in connection with the
16 case with you?

17 Not that I recall."

18 A Correct.

19 Q Correct. Now, you talked about Harry
20 working beside Zenk. Have you ever worked with
21 the City of Winnipeg Police?

22 A No, I haven't.

23 Q Are you intimately familiar with the
24 way they schedule shifts?

25 A Yes, I am.

1 Q Okay. Do you know how many members
2 are on a platoon?

3 A No, I don't.

4 Q Okay. Do you know how many sergeants
5 would be assigned to a platoon?

6 A I can -- I believe there's two.
7 There's a Patrol Sergeant and a Sergeant in the
8 office.

9 Q Okay. But the number of bodies on
10 each platoon are -- you don't know?

11 A My ex-girlfriend worked for the city
12 police for about seven years and she worked on the
13 B side. It can fluctuate a bit, so I'm not
14 exactly sure of the numbers.

15 Q All right. And the odd time there is
16 overlap days?

17 A Correct, same as we have now on our
18 schedule.

19 Q I'm not asking about your situation.

20 A Okay.

21 Q About overlap days at the city, are
22 you intimately aware of how often that happens, at
23 the city, not at your place?

24 A No.

25 MR. WEINSTEIN: If I may just have one

1 moment, Commissioner?

2 I believe that's my questions. Thank
3 you very much, sir.

4 THE WITNESS: Thank you.

5 MR. JACK: We have no questions,
6 Mr. Commissioner.

7 THE COMMISSIONER: Yes, Mr. Prober.

8 BY MR. PROBER:

9 Q At page 20 of your interview,
10 Mr. Maloney, with Commission Counsel, you
11 indicate, starting at line 20, that you believe
12 that Jason Woychuk knew Derek Harvey-Zenk. Do you
13 see that, page 20, starting about line 20?

14 A Correct.

15 Q Okay. Did Woychuk ever tell you that?

16 A You know what, I don't recall where I
17 knew it from, but I believe it was from Jason. I
18 can't say 100 per cent, though.

19 Q You're not certain?

20 A No.

21 Q Okay. Now, my final area of
22 questioning relates to this business about what
23 Jason told you that Chief Bakema told him that
24 Derek Harvey-Zenk may be possibly impaired?

25 A Correct.

1 Q Now, you're telling us something that
2 Woychuk told you that he was told by Chief Bakema,
3 right?

4 A Correct.

5 Q You know from your experience that
6 when you pass along information like that, the
7 exact words kind of get mangled, don't they?

8 A Well, I'm just telling you what he
9 told me.

10 Q Yeah, you're telling -- and he told
11 you what he was told by somebody else?

12 A Correct.

13 Q And you know the more people down the
14 road, sort of double, triple hearsay, get maybe
15 inaccurate. Would you agree with that?

16 A I guess it can.

17 MR. PROBER: Thank you.

18 MS. DIXON: No questions.

19 MR. McFETRIDGE: I have no questions.

20 MR. McDONALD: Mr. Commissioner.

21 THE COMMISSIONER: I was pointing to
22 Mr. Graham's counsel.

23 MR. McDONALD: Mr. Stefanson.

24 THE COMMISSIONER: Yes, thank you. I
25 thought maybe he might have some questions. And

1 then I'll call upon you, Mr. McDonald.

2 MR. McDONALD: Thank you.

3 MR. STEFANSON: Thank you,
4 Mr. Commissioner. I just wasn't sure of the
5 order. It hadn't been predetermined, so I was
6 just waiting for your --

7 THE COMMISSIONER: I thought you'd
8 like to get at the end.

9 MR. STEFANSON: Yes. Thank you.

10 THE COMMISSIONER: Almost at the end.

11 MR. STEFANSON: Exactly right. I
12 understand then, in terms of order, we'll hear
13 just finally from Mr. McDonald and then any
14 re-examination?

15 THE COMMISSIONER: Yes. You're first,
16 then. Go ahead.

17 MR. STEFANSON: Thank you.

18 BY MR. STEFANSON:

19 Q Constable Maloney, you knew
20 Mr. Graham, Constable Graham as he then was while
21 he was working at the East St. Paul Police
22 Detachment, you knew him through work; is that
23 fair to say?

24 A Correct.

25 Q In other words, prior to 2003, which

1 is when Mr. Graham started, you didn't know

2 Mr. Graham?

3 A No.

4 Q And I understand that you didn't
5 really socialize with Mr. Graham. Is that fair to
6 say?

7 A Not actively.

8 Q It's a small detachment and sometimes
9 there are social gatherings, but you wouldn't call
10 it a close personal relationship; right?

11 A No.

12 Q Not at any time, right?

13 A No.

14 Q And I understand the Commission has
15 heard evidence that Mr. Graham is no longer a
16 constable with the detachment at East St. Paul;
17 right?

18 A Correct.

19 Q And he hasn't been a constable for a
20 period of time; isn't that right?

21 A I can't say when he left. It was
22 probably a couple years ago already.

23 Q Yeah. I understand, just to assist, I
24 understand he left in and around March of 2006.
25 Is that consistent with your recollection as well?

1 A You know what, I can't say for sure.

2 I know he left.

3 Q And I understand that since the time
4 Mr. Graham left, let's say between the time
5 Mr. Graham left and yesterday, you didn't have any
6 conversations with Mr. Graham at all?

7 A Yes, I have.

8 Q Between when he left in March of 2006
9 and the brief conversation you had yesterday?

10 A Yes, I have.

11 Q Okay.

12 A I have been to his residence to serve
13 him documents.

14 Q Okay.

15 THE COMMISSIONER: I'm sorry?

16 THE WITNESS: I have attended his
17 residence to serve him subpoenas for court.

18 BY MR. STEFANSON:

19 Q So as part of your work duties then,
20 you had an opportunity to serve Mr. Graham with a
21 document?

22 A And I believe he sent e-mails to me at
23 work.

24 Q Okay. And were they work related
25 then?

1 A Police Association e-mails, he was
2 sending, he carbon-copied them to all of us.

3 Q Okay. But other than the work-related
4 duties that you just briefly spoke of, you haven't
5 had cause to speak to Mr. Graham, and he didn't
6 have cause to speak to you, for instance, about
7 this Inquiry?

8 A No.

9 Q And so there have been no such
10 discussions between March of 2006 and today?

11 A No.

12 Q You have given evidence many times
13 before, under oath, I take it, Constable Maloney?

14 A Correct.

15 Q And it can be a stressful experience,
16 can't it?

17 A Not really.

18 Q You don't find it stressful being
19 asked hard questions?

20 A You just answer them to the best of
21 your ability.

22 Q You saw Mr. Graham in the hallway
23 yesterday morning; right?

24 A Correct.

25 Q You were aware that he had already

1 given testimony in the context of this Inquiry;
2 isn't that right?

3 A Correct.

4 Q And you were about to give testimony
5 in the context of this inquiry; right?

6 A Yes, I was sitting outside.

7 Q And you were sitting outside waiting
8 to give testimony; right?

9 A Correct.

10 Q And if I understand your evidence
11 correctly, as Mr. Graham walked towards the door
12 of this room, this inquiry room; right?

13 A He was walking towards me. I was
14 sitting outside.

15 Q You were sitting outside the door?

16 A And he was looking at me.

17 Q Okay. And as he walked in your
18 direction, which is also in the direction of the
19 door to this room that we're in; right?

20 A Correct.

21 Q You then initiated a conversation with
22 him by saying words to the effect of "Mr. Graham";
23 is that right?

24 A I said "Mr. Graham," because he was
25 looking right at me.

1 Q You said words to the effect, are you
2 sure it was just "Mr. Graham" and that it wasn't
3 in fact, "Mr. Graham, how's it going" or something
4 else in addition to "Mr. Graham"?

5 A No, it was "Mr. Graham."

6 Q But, in any event, regardless of
7 whether it was just "Mr. Graham" or additional
8 comment, you were the first one to speak; right?

9 A Correct.

10 Q You indicate, and you indicated in
11 your evidence that Mr. Graham responded firmly,
12 right?

13 A He looked at me and spoke firmly,
14 slightly agitated.

15 Q And you could tell, and it was your
16 opinion certainly afterwards that Mr. Graham
17 appeared to be upset?

18 A Correct.

19 Q And you have indicated in a statement
20 that there was a comment made to the effect of,
21 and I'm not going to repeat it, but there was a
22 one sentence comment that was made in response by
23 Mr. Graham to your words of introduction
24 "Mr. Graham"; right?

25 A Correct.

1 Q And in response to that, in response
2 to Mr. Graham's comment, you indicated that you
3 said, "I wasn't even there."

4 A I said, "Ken, I wasn't even there."

5 Q Right. And you are indicating by that
6 that you weren't even there at the time of this
7 incident that's the subject of this inquiry;
8 correct?

9 A Correct.

10 Q And to that, Mr. Graham simply
11 acknowledged, yes, he knew that?

12 A Correct.

13 Q Or words to that effect?

14 A Words to that effect.

15 Q And then he kept walking?

16 A Walking to the courtroom, yeah.

17 Q He didn't say anything else?

18 A No.

19 Q You didn't say anything else?

20 A No.

21 Q And I understand that you indicated to
22 a representative of the inquiry, Mr. Giasson, that
23 you thought that Mr. Graham was upset?

24 A Correct.

25 Q And that was, that's the context that

1 you raised it in with Mr. Giasson?

2 A Well, just the way he talked to me, he
3 didn't seem -- he seemed agitated and slightly
4 upset.

5 Q And so you mentioned that to
6 Mr. Giasson?

7 A Correct.

8 MR. STEFANSON: I don't have any
9 further questions of this witness. Thank you.

10 I do have one brief comment in terms
11 of procedure. I don't know if it's an appropriate
12 time to make a brief submission in the context of
13 the issue that I have been called in to address,
14 or whether I would just speak to that at some
15 point, just to sum, not necessarily in the
16 presence of the witness, but just a brief
17 opportunity to speak to this narrow issue for two
18 minutes. Whenever you, Mr. Commissioner --

19 THE COMMISSIONER: Well, do you intend
20 to call Mr. Graham?

21 MR. STEFANSON: I don't intend to, no,
22 subject to what I might see from the final
23 cross-examination.

24 THE COMMISSIONER: Well, I think
25 that --

1 MR. CLIFFORD: Mr. Commissioner, it
2 would be my suggestion that Mr. McDonald be given
3 an opportunity to conduct his cross-examination.
4 I would like to then do the redirect. And I think
5 after that would be an appropriate time for any
6 submissions on the narrow issue relating to
7 Constable Maloney.

8 THE COMMISSIONER: And any other
9 counsel who wish to make a submission on that
10 issue.

11 MR. STEFANSON: I think that would be
12 appropriate.

13 THE COMMISSIONER: Thank you.

14 MR. STEFANSON: Thank you.

15 BY MR. McDONALD:

16 Q Constable Maloney, not that much will
17 turn on this, but I think the record requires a
18 correction if I am indeed correct, and
19 Mr. Weinstein was incorrect. During his
20 cross-examination of you, he made reference to the
21 fact that your RCMP statement was given under
22 oath. I have looked at that statement. It
23 commences at page 785 of volume E-2, and I have
24 looked at the others.

25 THE COMMISSIONER: I agree, it's not

1 sworn testimony.

2 MR. McDONALD: I just wanted the
3 record to be clear that that was not sworn
4 testimony. Thank you, Mr. Commissioner.

5 BY MR. McDONALD:

6 Q Now, Mr. Weinstein also had you
7 confirm that, in addition to being a professional
8 colleague of Constable Woychuk, you developed a
9 personal friendship with him after he arrived at
10 the East St. Paul Police Service; is that correct?

11 A Correct.

12 Q You did spend some social time
13 together in addition to your professional exposure
14 to each other?

15 A Correct.

16 Q And based on your knowledge of him,
17 both professionally and personally, is he, in your
18 opinion, the type of person who would deliberately
19 attempt to subvert the administration of justice
20 by colouring evidence or anything like that?

21 A No.

22 Q Do you, based on the discussions that
23 you had with him and your knowledge of him, feel
24 that he did anything in this case to try to assist
25 Mr. Harvey-Zenk to avoid prosecution?

1 A No.

2 THE COMMISSIONER: Isn't that up to me
3 to determine?

4 MR. McDONALD: I'm saying based on
5 this witness's personal experience with him,
6 knowledge of him, discussions with him, that's
7 all.

8 THE WITNESS: No.

9 THE COMMISSIONER: We have heard the
10 answer. In the end, I have to make that decision.

11 MR. McDONALD: I understand that,
12 Mr. Commissioner.

13 THE COMMISSIONER: Thank you.

14 BY MR. McDONALD:

15 Q Now, Mr. Stefanson asked you about
16 your personal relations with Constable Graham.
17 What, if any, observations have you made about any
18 personal relationship between Chief, then Chief
19 Bakema and Mr. Graham?

20 A They were close friends.

21 Q And why do you say that they were
22 close friends? What observation do you base that
23 conclusion on?

24 A Well, they were always together when
25 they were working and stuff like that. They

1 socialized outside of work.

2 Q What was your opinion, working under
3 Chief Bakema, what was your opinion of him as a
4 Chief of Police and as a police officer?

5 THE COMMISSIONER: Just a second.

6 MR. WEINSTEIN: I'm objecting to this.
7 This is not relevant.

8 THE COMMISSIONER: I know, it's not
9 relevant.

10 MR. McDONALD: Well, there's reference
11 to it in the questions asked by Commission Counsel
12 and I just wanted to clarify that.

13 THE COMMISSIONER: What was asked?

14 MR. McDONALD: Let me just find the
15 page reference here, Mr. Commissioner.

16 MR. WEINSTEIN: While he's looking for
17 the page, even if Commission Counsel might have
18 asked this witness that question, it was
19 irrelevant at the time and still irrelevant now.

20 THE COMMISSIONER: Let's hear what the
21 question was.

22 MR. McDONALD: Sorry, I misspoke,
23 Mr. Commissioner. It was in the interview by the
24 RCMP.

25 THE COMMISSIONER: Yes.

1 MR. McDONALD: And it is at page,
2 which has been filed as Exhibit 113 in the
3 proceedings. And it is at page 11.

4 THE COMMISSIONER: If you wish to
5 point out any specific instances where you, where
6 he has been found to be in derelict of his duty,
7 or did something improper, do so. But I don't
8 think this is an appropriate time to ask for his
9 opinion.

10 MR. McDONALD: I'll leave that subject
11 then, Mr. Commissioner, thank you.

12 That's all I have, Mr. Maloney.

13 THE COMMISSIONER: Thank you.

14 MR. CLIFFORD: Two brief areas in
15 redirect, Mr. Commissioner.

16 RE-DIRECT EXAMINATION BY MR. CLIFFORD:

17 Q Constable Maloney, as I understand
18 your testimony through examination-in-chief and
19 cross-examination, and particularly that of
20 Mr. Weinstein, the evidence that you provided in
21 the course of the interviews and in the hearing,
22 with respect to what Jason Woychuk repeated to you
23 and attributed to Harry Bakema, you indicated to
24 the RCMP that it was most likely impaired, on one
25 occasion, on another occasion most likely the guy

1 was impaired. Chief Bakema thought he was
2 impaired. I indicated to you that you also
3 indicated to the Commission that he was maybe
4 possibly impaired or may be impaired.

5 Mr. Weinstein put that to you in
6 cross-examination.

7 Do you know, sir, as you testify
8 today, what it was that Jason Woychuk attributed
9 to Harry Bakema?

10 A I can't say 100 per cent sure the
11 correct wording.

12 Q But the range was that he was --

13 MR. PROBER: I object now.

14 THE COMMISSIONER: Just a second now.

15 MR. PROBER: Before he goes on.

16 THE COMMISSIONER: You don't even know
17 what the question is and you're going to object?

18 MR. PROBER: Well, I can anticipate
19 the question, with respect, Mr. Commissioner.
20 He's already -- Mr. Clifford has already, on
21 re-examination, raised an area that was not a new
22 area raised on cross-examination, that he himself
23 covered in examination-in-chief. But -- and that
24 is the issue of what was said to him by Woychuk as
25 related to Woychuk by Bakema. And the witness has

1 just said he's not 100 per cent certain.
2 Mr. Clifford then was going to go on, and started
3 to say, well, the range is, I suppose the range of
4 what the comments could be. We already took the
5 witness through that. And I'm objecting to any
6 further re-examination on this issue of what
7 Woychuk related to this witness that Chief Bakema
8 apparently told Woychuk. It was covered in
9 examination-in-chief.

10 THE COMMISSIONER: Don't you think
11 it's appropriate for the Commissioner or any judge
12 to hear the question before he stops it?

13 MR. PROBER: Well, if it's on that
14 same area, yes.

15 THE COMMISSIONER: Yes.

16 MR. PROBER: You have to hear the
17 question, but I can virtually guarantee it's going
18 to be on the same area.

19 THE COMMISSIONER: Is that a
20 guarantee? Come on?

21 MR. PROBER: Virtually guarantee.
22 Let's hear what the question is going to be.

23 THE COMMISSIONER: Yes, all right.
24 Let's hear the question and then I'll rule on it.

25 MR. PROBER: I don't want to stray too

1 far.

2 THE COMMISSIONER: You can go and sit
3 down.

4 MR. CLIFFORD: If I was ever tempted
5 to make up a question.

6 Mr. Commissioner, I think what the
7 appropriate thing for me to do is indicate to you
8 my position on the objection and why the
9 evidence --

10 THE COMMISSIONER: Well, I haven't
11 even heard the question, so how could I hear
12 anybody's position on an objection?

13 MR. CLIFFORD: What I want to do is to
14 conclude this area with the witness by indicating,
15 or putting the question to him, that based on the
16 testimony that we have received so far, that the
17 evidence is that he was advised that the comment
18 attributed to Harry Bakema, passed to Jason
19 Woychuk, and to him, was possibly impaired to most
20 likely impaired, or words to the effect, most
21 likely the guy was impaired. So that's simply so
22 there's no ambiguity with the evidence. That's
23 simply the question. And I think it assists the
24 Commissioner.

25 In dealing with redirect, one of the

1 purposes here is to find an area where there is
2 some ambiguity, where it's not certain. And I
3 understand Mr. Prober's objection. He's, I think,
4 concerned that it will get pinned down in one
5 direction or another that may be unfavorable to
6 him.

7 MR. PROBER: I --

8 THE COMMISSIONER: Just a second.

9 Don't speak while counsel is --

10 MR. PROBER: Well, he's putting words
11 in my mouth and they are not accurate.

12 THE COMMISSIONER: Well, I'll deal
13 with that later.

14 MR. PROBER: Thank you.

15 MR. CLIFFORD: Apart from the concern,
16 what I'm trying to do is delineate what the
17 evidence is. Simply that.

18 THE COMMISSIONER: I have heard what
19 he's had to say and I don't think we need to go
20 any further. Thank you.

21 Yes. Your next question. Do you have
22 any further?

23 MR. CLIFFORD: Yes, I do.

24 THE COMMISSIONER: Go ahead.

25

1 BY MR. CLIFFORD:

2 Q This is just dealing, sir, with the
3 issue of the comment that was made to you by
4 Mr. Graham, and I am not going to touch upon this
5 in any great length, but when you were being asked
6 questions with respect to the comment that was
7 made to you by Mr. Graham yesterday, sir, you
8 recorded that conversation very soon thereafter?

9 A Correct.

10 Q Do you have any doubt at all with
11 respect to the accuracy of what Mr. Graham said to
12 you?

13 A None.

14 Q Do you have any doubt at all with
15 respect to his demeanour or his emotional state
16 when he said it to you?

17 A None.

18 Q And apart from saying to him,
19 Mr. Maloney, as he approached either you or the
20 court door, it doesn't matter, do you have any
21 doubt at all, sir, that the only things you said
22 to him were Mr. Maloney?

23 A I said "Mr. Graham."

24 Q Pardon me, "Mr. Graham"?

25 A And then I said to him, "Ken, I wasn't

1 even there." And then he replied after the fact.

2 MR. CLIFFORD: Thank you, sir.

3 THE COMMISSIONER: Do you wish to make
4 your submissions now?

5 MR. STEFANSON: If that's --

6 THE COMMISSIONER: Yes.

7 You can step down here. Your
8 testimony is finished. Thank you very much.

9 Yes, what do you have to say?

10 MR. STEFANSON: Thank you,
11 Mr. Commissioner. Just very briefly, and then it
12 will conclude my involvement, I think, certainly
13 at least at this point in this Inquiry.

14 THE COMMISSIONER: Before you start, I
15 understand you will not be calling Mr. Graham? He
16 will not be testifying?

17 MR. STEFANSON: That's exactly true.
18 My intention at this point is not to call him.

19 THE COMMISSIONER: Not at this point.

20 MR. STEFANSON: On this issue.

21 THE COMMISSIONER: Are you calling him
22 during the hearing at all?

23 MR. STEFANSON: No.

24 THE COMMISSIONER: Then you can make
25 your submissions.

1 MR. STEFANSON: Thank you.

2 This is a very narrow issue that I've
3 been called upon to address and I will address it
4 very briefly, because I do not want to take up any
5 time unnecessarily. Time is valuable.

6 I think it's very clear that any
7 Inquiry or court hearing is a tense situation for
8 all. It's a difficult situation, especially for
9 witnesses.

10 There was a situation that occurred
11 out in the hallway. There's no denying that a
12 situation did occur. But I think the important
13 elements of the evidence that were, that has been
14 given, in addition to the exchange of words that
15 occurred out in the hallway is as follows. During
16 direct examination, Constable Maloney acknowledged
17 that there was animosity between Constable Graham,
18 or between Mr. Graham and Constable Maloney,
19 before Mr. Graham left in 2006. Constable Maloney
20 confirmed on cross-examination that between 2006,
21 when Mr. Graham left, and yesterday, he had had no
22 conversations about the Inquiry with Mr. Graham.
23 There was no discussion of any sort that occurred
24 during that time frame. So it's not a situation
25 where there had been any ongoing campaign of

1 intimidation or any suggestion of intimidation.
2 And in fact, there's no suggestion of
3 intimidation, or a threat, even in the context of
4 the remark that was made. Because according to
5 Constable Maloney in his statement, and also
6 during his cross-examination, he's confirmed he
7 was concerned by the fact that Mr. Graham appeared
8 to be agitated and upset, legitimately concerned
9 for somebody that has been involved in a difficult
10 situation giving testimony under difficult
11 circumstances.

12 THE COMMISSIONER: Legitimately
13 concerned, what do you mean by that?

14 MR. STEFANSON: I mean, he seemed to
15 be genuinely concerned about -- his comment right
16 in his statement and on cross-examination was he
17 was legitimately concerned about why Mr. Graham
18 was upset. That's his comment. And that's the
19 context that it's raised in.

20 Constable Maloney had a full
21 opportunity to say he felt threatened or felt
22 intimidated. He did not say that, and it should
23 not be inferred that that is the way he felt or
24 the way he interpreted it. The comment was made,
25 I can tell you, in speaking with Mr. Graham, he

1 expresses remorse over the fact he responded.

2 That is the final point I want to
3 make. This is a response by Mr. Graham to
4 Constable Maloney. It's not anything that
5 Mr. Graham initiated, it was responding to an
6 invitation to discuss matters. The matter had an
7 exchange which had an unfortunate element to it,
8 but also I think a couple of revealing elements in
9 the sense that the exchange that followed the
10 initial comment by Mr. Graham was civil. He
11 wasn't there. He acknowledges that and he walks
12 away. It shouldn't be made into something that
13 it's not. It should be taken in its proper
14 context.

15 In speaking with Mr. Graham, he
16 expresses remorse over the fact that he responded
17 to the invitation to talk, and he does not intend
18 to participate further in this Inquiry, unless
19 called upon by Commission Counsel.

20 So subject to any questions you have,
21 Mr. Commissioner, that's our submission.

22 THE COMMISSIONER: I do have a
23 question. He got up and said that he didn't say
24 what Mr. Maloney has testified that he said.

25 MR. STEFANSON: There is a dispute, it

1 seems, and I --

2 THE COMMISSIONER: No, no, no. Just
3 listen.

4 MR. STEFANSON: Sure.

5 THE COMMISSIONER: He got up in the
6 courtroom, or in this Inquiry, this room, and said
7 I didn't say that. And then he gave another
8 version of what he said transpired, or what had,
9 the words that had been exchanged.

10 MR. STEFANSON: Right.

11 THE COMMISSIONER: You have not called
12 him, and there's no suggestion by you, in your
13 submissions, that Constable Maloney's recollection
14 is incorrect. And so I will -- and I have no
15 reason at this stage not to accept it, and so
16 that's the end of the matter. It will be my
17 interpretation of what was said and all of the
18 circumstances that will be in my report. Thank
19 you very much.

20 MR. STEFANSON: Thank you,
21 Mr. Commissioner.

22 THE COMMISSIONER: I don't need to
23 hear from counsel. Thank you.

24 Your next witness?

25 MR. CLIFFORD: Mr. Commissioner, the

1 next witness is Norm Carter.

2 NORMAN DENNIS CARTER, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. CLIFFORD:

5 Q Good morning, sir.

6 A Good morning, sir.

7 Q Could you indicate what your current
8 position is with the East St. Paul Police?

9 A I am currently the Chief of Police for
10 East St. Paul Police Service.

11 Q How long have you been in that
12 position?

13 A I've been in the position since March
14 of 2006, March 15th, I believe.

15 Q How long have you been a police
16 officer, sir?

17 A I have been a police officer since
18 1982.

19 THE COMMISSIONER: I'm sorry, since?

20 THE WITNESS: 1982.

21 BY MR. CLIFFORD:

22 Q And where did you start your training?

23 A I started my Police Service with the
24 Altona Police Service between 1982 and 1986. In
25 the fall of 1986, I started employment with the

1 East St. Paul Police Service.

2 Q And in 1982, did you take career
3 training in order to start your career in law
4 enforcement?

5 A That is correct. I took my recruit
6 training with the Brandon City Police.

7 Q And when you joined the East St. Paul
8 police in 1986, I take it you would have started
9 your career as a constable?

10 A As a constable, that's correct, yes.

11 Q You worked your way up through the
12 ranks?

13 A That's correct, yes.

14 Q Sir, I'm going to bring you back now
15 to February 25th, 2005. Were you scheduled to
16 work that day, sir?

17 A Yes, I was.

18 Q And what time would you normally go
19 in?

20 A I would go into the office between
21 8:30 and 9:00 o'clock.

22 Q And the Commission has heard evidence,
23 sir, that you received a telephone call that day
24 while you were still at home?

25 A That is correct.

1 Q And what can you tell us about that
2 phone call?

3 A I received the telephone call -- may I
4 refer to my report so I can give you the times?

5 THE COMMISSIONER: Yes.

6 BY MR. CLIFFORD:

7 Q And you are referring to your
8 investigative report?

9 A Investigative report, yes.

10 Q Okay. What we're going to do, and I
11 should advise you, Mr. Commissioner, and other
12 counsel that with this witness there will be a
13 great number of exhibits I anticipate being
14 entered through Mr. Carter, or Chief Carter. So
15 and I have given the clerk advance warning. So if
16 we could provide you with your incident narrative
17 report, that will be found at E-1.23.k.

18 And while you're still there, Madam
19 clerk, I take it Chief Carter, you're going to be
20 asking to refer to your duty-book notes as well?

21 A My duty-book notes and my rough notes.

22 Q Okay. The duty-book notes are at
23 E-1.23.b. And if they could be provided to the
24 witness, please, and entered as exhibits?

25 A Thank you.

1 THE CLERK: Exhibits 114 and 115.

2

3 (EXHIBIT 114: E-1.23.k, Incident
4 Narrative - February 27, 2005 (CARTER,
5 NORMAN)

6 (EXHIBIT 115: E-1.23.b, Officer's
7 Notes (CARTER, NORMAN) February 25-May
8 29, 2005)

9 BY MR. CLIFFORD:

10 Q Do you have those documents before
11 you, sir?

12 A I have them before me, sir.

13 Q And you wanted an opportunity to look
14 at your incident narrative report?

15 A That is correct, yes.

16 Q My question was, you received a
17 telephone call at your residence that day?

18 A I received a telephone call at my
19 residence at approximately 7:38 in the morning
20 requesting my attendance, and this is from
21 dispatch, requesting my attendance at a motor
22 vehicle accident that occurred on Highway 59 and
23 the Perimeter. And it was further reported to me
24 that a vehicle, one vehicle had been split in
25 half.

1 Q Now, who is the telephone call from?

2 A Our dispatch operators.

3 Q So who are you actually speaking to, a
4 dispatch operator?

5 A A dispatch operator, yes.

6 Q And do you know at that point who is
7 making the request for you to attend at that
8 location?

9 A I don't specifically know who is
10 making the request. There is not a name attached
11 to who is making the request, just for my
12 attendance at this scene.

13 Q And you understand that it's a serious
14 accident?

15 A I automatically assumed, with the
16 vehicle split in half, it would be a serious
17 accident, yes.

18 Q You obviously would have had the
19 experience at that point to deal with a situation
20 like that?

21 A Yes.

22 Q And what do you do as a result of
23 getting that telephone call?

24 A I got ready, I left, and I attended to
25 the station. And I arrived at the station at

1 approximately 8:00 a.m.

2 Q Now, to put that in perspective, you
3 are being asked to go to the scene, to a serious
4 motor vehicle accident, you are not going to be
5 taking your own personal vehicle there, you've got
6 to get into a police uniform and pick up a police
7 cruiser?

8 A Yeah, it was my intention to pick up a
9 police cruiser and attend the scene.

10 Q What time do you arrive at the
11 station?

12 A I arrive at the station at
13 approximately 8:00 o'clock.

14 Q What do you do upon your arrival
15 there?

16 A Upon my arrival, I went to get the
17 vehicle keys, I advised our clerk, Special
18 Constable Olfert, to let the Chief know -- and at
19 that time, I knew the Chief was at the scene -- to
20 let the chief know that I was en route to the
21 scene.

22 Q So you are speaking to a clerk, a
23 Special Constable Olfert you indicate?

24 A Yes.

25 Q And you want information to get

1 relayed to the Chief?

2 A That I'm on my way.

3 Q Okay. How do you know where the Chief
4 is?

5 A I believe I was told by her, when she
6 had come in, she had been in for 8:00 o'clock in
7 the morning. That's when her shift started, so...

8 Q Now, is it your understanding, sir,
9 that she is going to get in touch with the Chief
10 and communicate on your behalf?

11 A Yes.

12 Q Do you radio to the scene and tell
13 them that you're coming?

14 A I don't radio personally, no.

15 MR. CLIFFORD: Madam clerk, could we
16 provide the witness, please, with a copy of his
17 statement to the RCMP. E-1.23.p. And at E-1.23.p
18 the document is found at page 531. The transcript
19 starts at page 520, and I'll refer the witness to
20 531 for the benefit of counsel.

21 THE CLERK: Did you say E-1?

22 MR. CLIFFORD: E-1.23.r.

23 THE WITNESS: Thank you.

24 BY MR. CLIFFORD:

25 Q Now, sir, we are at the point you are

1 at the station and you're getting prepared to act
2 on the call that you received and go to the scene?

3 A That is correct.

4 Q And I have asked you the question
5 whether you radioed out to the scene or not? And
6 your evidence was that you hadn't?

7 A That's correct, yes.

8 Q And if I could refer you to the RCMP
9 statement that you provided? On May 23rd of 2006,
10 sir, you recall speaking with the members of the
11 RCMP at that time?

12 A That is correct.

13 Q And we'll come back to the interview
14 and the purpose of it, but I wanted to know if I
15 could refresh your memory on a point. And if you
16 could turn to page, upper right-hand corner, 13,
17 page 532 in our page numbering system?

18 So if you look at page 12, just at the
19 bottom, and I'll bring you into page 13. Kennett
20 says at the bottom:

21 "But you were called later when you
22 said you got to the office?

23 Carter: Yeah, when I got to the
24 office...

25 Kennett: Right.

1 Carter: ...I was going to grab a car.

2 Kennett: Right."

3 Top of page 13.

4 "Carter: I radioed that I was coming
5 out to the scene. I was told to wait
6 there and Constable Woychuk would
7 attend.

8 Kennett: And was that Chief Bakema
9 that told you on the radio to stay at
10 the scene?

11 You said "yes." And then Kennett says,

12 "Or to stay at the detachment I should
13 say?"

14 And your response was "yes."

15 Now, sir, the answer to that question
16 with the RCMP is different than your answer today.
17 Are you able to assist us with that?

18 A Absolutely, yes. I delegated Special
19 Constable Olfert to let the Chief know that I
20 would be on the way. I, in my answer to the RCMP,
21 was generic as to what my actions were, not
22 specifically that I actually physically used the
23 radio to speak with them.

24 Q Okay. So that should be corrected
25 then, that you did not personally have any direct

1 communication with Harry Bakema at the scene?

2 A No.

3 Q So there's an intermediary and that is
4 Constable Olfert?

5 A Special Constable Olfert, that's her
6 position. She's a civilian clerk.

7 Q Now, she would have told you then to
8 wait there and Constable Woychuk would attend?

9 A That's correct.

10 Q Did you make any inquiry about what
11 was happening or why he was coming?

12 A Not at all. Matter of fact, I was
13 somewhat, I guess, myself alarmed when that --
14 when that was said to me, simply speaking, because
15 I knew that there had been a serious accident and
16 I do have a sister that travels that area. And I
17 was, for some strange reason I thought for a
18 moment that Constable Woychuk was coming to make a
19 notification to me.

20 Q Sir, you were advised that there was a
21 serious motor vehicle accident, that you were
22 initially asked to go to the scene?

23 A Yes.

24 Q You are at the station, there's some
25 communication. None of it is direct from Harry

1 Bakema. And you are advised to remain at the
2 station?

3 A That is correct.

4 Q And you are indicating that you
5 developed this concern that this could have
6 something to do with your sister?

7 A Whether it was reasonable or
8 unreasonable concern, that's what my thoughts were
9 right at the time.

10 Q Well, apart from whether it was
11 reasonable or unreasonable concern, did you make
12 any inquiries?

13 A Not at all. I waited for Constable
14 Woychuk to attend.

15 Q You didn't follow up and find out,
16 look, why am I being asked to wait here, and
17 moreover, is my sister involved in this?

18 A No, I was told that Constable Woychuk
19 was coming right away.

20 Q Can you give any reason, sir, for not
21 trying to find out why Constable Woychuk was
22 coming to the station?

23 A In a situation like that, you know,
24 when your thought processes are that it may be
25 somebody in your family, you're obviously not

1 thinking, you're not thinking clearly, I guess, at
2 the time. I waited for Constable Woychuk to
3 attend.

4 Q Many people might conclude, sir, that
5 if you thought it was someone in your family, your
6 thought processes would lead you to do whatever
7 you could to find out if that was the case?

8 A That's perhaps so. Constable Woychuk
9 was on the way down and I was waiting for him.

10 Q And do I take it, sir, that you had no
11 idea why he was coming, other than a suspicion
12 that, or a concern that your sister might be
13 involved in something?

14 A I had no idea.

15 Q Now, we heard testimony from Ken
16 Graham, and he indicated that he was at the scene,
17 one of the first responders from the police
18 perspective, and he felt as though you would have
19 the level of experience to manage that type of
20 situation. You clearly thought that you were
21 going to be going to the scene in order to assist?

22 A I believed I was going to the scene to
23 assist.

24 Q Ken Graham also testified that he
25 became very -- he became aware, early in the

1 morning of February 25th, that one of the reasons
2 that you were being called to the scene was to
3 deal or address a potential conflict that Harry
4 Bakema might have with Derek Harvey-Zenk.

5 Was any information of that nature
6 relayed to you that morning?

7 A That was never brought to my
8 attention.

9 Q Are you given any indication as to
10 when Jason Woychuk is going to be coming to the
11 station?

12 A All I was simply said -- told was that
13 Jason Woychuk was on his way to the station.

14 Q Do you receive information that Jason
15 Woychuk is bringing anybody to the station with
16 him?

17 A I have no information to that, to
18 that, no.

19 Q No one radios to tell you that there's
20 somebody with him --

21 A No.

22 Q -- in the back of the car?

23 A No.

24 Q No details at all, sir, that there's
25 been a fatality out at the accident scene?

1 A No.

2 Q No follow-up questions from you, no
3 dispatches, radio calls?

4 A Not until Mr. Woychuk attended to the
5 station, sir.

6 Q Any cell phone calls?

7 A No.

8 Q What time does Jason Woychuk arrive at
9 the station?

10 A I have him in my notes arriving at
11 8:12. He arrives at the station. He indicates he
12 has to speak with me.

13 Q Okay. Now, he arrives at 8:12. He
14 indicates that he has to speak with you. Does he
15 radio you as he's pulling in to the station?

16 A No.

17 Q Where do you first see Jason Woychuk
18 that morning?

19 A When he comes into the hallway that's
20 adjacent to the entrance, to the back entrance of
21 our office.

22 Q So he's inside the building?

23 A He's inside the building, yes.

24 Q And this is at 8:12?

25 A 8:12, yes.

1 Q And you have indicated he's in this
2 hallway. What does he tell you?

3 A He calls me over and he says he needs
4 to speak with me. And we go to the back room, off
5 the back end of our office where we kept our
6 forms, our paperwork, and where the interview
7 rooms were. And we shut the door.

8 Q Okay. So you're in the hallway, meet
9 him, you take him into a private room, just the
10 two of you?

11 A Yeah. It's like a storage room, and
12 it's also the area where our interview room was.

13 Q Did you have any idea at this point,
14 prior to going into that room, what's happening
15 with Jason Woychuk?

16 A Absolutely not, sir.

17 Q Carry on from there?

18 A Okay. We attend to the back room.
19 Jason Woychuk advises me that there's been a
20 fatality, that he has a male subject in the back
21 of the vehicle. He indicates to me that -- excuse
22 me, I'm just losing my spot -- he indicates
23 there's a male in the back of the vehicle, and
24 that he, the male, had declined medical attention.
25 He also told me that the male was a police

1 officer. He made a comment to me at that point in
2 time too that he may be impaired, although I took
3 that more of a comment than an observation. He
4 said that he smelled a slight odour of liquor on
5 the subject, but he couldn't really tell because
6 he was stuffed up. And that he was being
7 transported back to the station at the request of
8 the Chief, who felt that I was more experienced
9 and could handle this.

10 Q So he's telling you these things,
11 about the individual in the back of the car may be
12 impaired, slight odour of alcohol. He's telling
13 you at that point about his difficulties smelling?

14 A At that point he made a comment to me,
15 I believe, that he had difficulty smelling, yeah.

16 Q And you have confidence, sir, that it
17 was at that time that he expressed that to you?

18 A There were a couple of times that he
19 expressed it to me.

20 Q What are you referring to, sir, in
21 order to refresh your memory?

22 A Okay. I'm referring to my duty
23 notebook, but I think I did ask for my rough notes
24 that I made.

25 Q Okay. You also made a further set of

1 notes, I understand. You have just referred to
2 them as rough notes?

3 A I refer to them as rough notes, yes.

4 MR. CLIFFORD: Madam clerk, could you
5 provide the witness with document E1.23.a?

6 THE WITNESS: Thank you.

7 MR. CLIFFORD: Okay. Just looking at
8 document -- let's put it in as an exhibit, I
9 guess, before we go any further.

10 THE CLERK: Exhibit 116.

11 (EXHIBIT 116: E-1.23.a, Officer's
12 Notes (CARTER, NORMAN) February 25,
13 2005)

14 MR. McFETRIDGE: Did you mark the RCMP
15 notes?

16 THE COMMISSIONER: I'm sorry?

17 MR. McFETRIDGE: I just wanted to know
18 if he had marked the RCMP statement as an exhibit?

19 THE COMMISSIONER: What exhibit are we
20 at?

21 THE CLERK: We're at 116 with these
22 notes.

23 THE COMMISSIONER: 116. No, they were
24 not put in.

25 MR. CLIFFORD: All right. So we

1 should enter those, and I'm hearing voices behind
2 me about entering the RCMP statement as an exhibit
3 as well.

4 THE CLERK: Exhibit 117.

5 THE COMMISSIONER: The RCMP notes.

6 THE CLERK: Right.

7 (EXHIBIT 117: E-1.23.r, Statement to
8 RCMP - May 23, 2006 (Chief Norm
9 CARTER)

10 MR. CLIFFORD: One moment, Chief
11 Carter. We'll have that material for you.

12 THE WITNESS: I've got it.

13 BY MR. CLIFFORD:

14 Q Okay. You've got the rough notes?

15 A Yes, I do, yes.

16 Q You were referring to 8:12?

17 A Yes.

18 Q I see on your rough notes -- do you
19 actually see an entry to 8:12 there?

20 A No, I don't. I see an 8:10 and I
21 don't see an 8:12, no.

22 Q Okay. These would have been the
23 initial notes that you made?

24 A These would have been the quick
25 initial notes I made, yes.

1 Q And these would be made, and certainly
2 cover the time of 8:12 where Jason Woychuk is
3 making this statement to you?

4 A That is correct, yes.

5 Q You would agree that this is probably
6 one of the more critical things that Jason Woychuk
7 says to you through the entire course of this
8 case?

9 A That is correct, yes.

10 Q And there is absolutely no notation of
11 anything happening at 8:12?

12 A No, there is no notation. I'm going
13 by memory.

14 Q Okay. Then if we look at your
15 duty-book notes, which you also have before you,
16 E-1.23.b. These are your actual recorded
17 duty-book notes. We see the same thing, do we
18 not, sir?

19 A We see, yes, at 8:12 that Woychuk
20 attended the station and briefed writer.

21 Q Okay. And once again, as with the
22 rough notes, there is no notation whatsoever about
23 what Jason Woychuk has indicated to you at that
24 time?

25 A No.

1 Q And when are those notes made?

2 A These would have been made within a
3 day or two, so I believe probably February 27th is
4 when I created the clean set of notes.

5 THE COMMISSIONER: Do you want to make
6 those exhibits?

7 MR. CLIFFORD: The notes, yes. I
8 think they are already in.

9 MR. McDONALD: 115.

10 THE COMMISSIONER: I'm sorry. Give me
11 a moment, please. Yes.

12 MR. CLIFFORD: So they would be
13 Exhibit 115, I believe; is that right?

14 THE CLERK: Um-hum.

15 BY MR. CLIFFORD:

16 Q Okay. So looking at Exhibit 115, your
17 duty-book notes, 8:12, you have a brief entry
18 there, it only indicates that Woychuk attends the
19 station and briefed the writer?

20 A That's correct.

21 Q And you are indicating that your
22 recollection is that you would have made that note
23 on February 27th?

24 A February 27th is when I would have
25 made these notes, yes, or I would have, the clean

1 notes, yes.

2 Q And there's nothing in there with
3 respect to slight odour of alcohol, someone may be
4 impaired, or anything of that nature?

5 A No.

6 Q And why is that?

7 A The notes were the clean notes from my
8 rough notes, and my rough notes were made, quite
9 frankly, very quickly. And simply because we
10 had -- Mr. Mordenzenk, from what I understand, was
11 still in the police vehicle by himself and I
12 wanted to get out there right away.

13 Q Now, that explains the rough notes.
14 But on February 27th, you are not under that
15 pressure?

16 A No.

17 Q You have more time to create your
18 duty-book notes?

19 A Yes.

20 Q And I'm wondering why there's no
21 reference at 8:12?

22 A I just made reference that he briefed
23 me and then I created -- I had created my original
24 incident report from that.

25 Q And that's what you have been

1 referring to, to bring you through the chronology
2 of what happened on February 25th?

3 A From this report, yes.

4 Q So you are in this room off the
5 hallway in the East St. Paul Police Station and
6 Jason Woychuk is making this disclosure to you.
7 Is there anything else he said to you that you
8 haven't told the Commission?

9 A I don't recall. I don't believe so,
10 no, sir. It was a very quick conversation.

11 Q I take it, it's not very long into the
12 conversation that you realize that Jason Woychuk
13 has an accused person out in a squad car?

14 A That is correct, yes.

15 Q And what can you tell the Commission
16 about the appropriateness of that, leaving an
17 accused suspect unattended in a police cruiser in
18 the sally port of the police station?

19 A It wasn't in the sally port, it was
20 outside in the parking-lot.

21 Q More over outside in the parking-lot?

22 A Yes. Certainly not appropriate and
23 not within policy or procedure.

24 Q What do you do then as a result of
25 what he's telling you?

1 A At that point in time, I attend out to
2 the police vehicle with him. The police vehicle
3 is a 2002 Ford Explorer, I believe, and I note
4 that there is a male subject in the back of the
5 police cruiser.

6 Q What observations do you make of that
7 individual at that time?

8 A I didn't make any observations prior
9 to opening the door. He was in the rear seat.

10 Q Once you open the door?

11 A Once I opened the door, I saw a male.
12 I identified myself. He -- I was probably about a
13 foot away from him when I opened the door. I
14 identified myself as Sergeant Carter. And at that
15 point in time, I detected a strong odour of liquor
16 from this male.

17 Q Now, before getting into your personal
18 observations of that nature --

19 A Okay.

20 Q -- when you see him in the back seat
21 of the police car, can you describe that?

22 A He's not handcuffed.

23 Q Okay. And I was going to get to that.
24 Can you indicate the appropriateness of that?

25 A Well, if one is transporting a

1 prisoner, it's always appropriate to ensure that
2 the prisoner is handcuffed and secured.

3 Q Particularly so, I would understand,
4 in cases where impaired driving is involved, it
5 would be expected, would it not, in virtually all
6 cases that the individual would be in handcuffs?

7 A Unless there was some physical reason
8 for them not to be in handcuffs, yes, if they are
9 a prisoner, yes.

10 Q Okay. So he is sitting in the car,
11 uncuffed. What's he doing? What's he looking at
12 when you open the door? Does he turn towards you?

13 A He was just looking ahead as soon as I
14 opened the door, and then when I opened the door,
15 he turned towards me, yes, kind of shifted his
16 body actually towards me.

17 Q And carry on, you were just starting
18 to tell the Commission some of the things that you
19 observed?

20 A Well, immediately upon opening the
21 door and approaching him, and like I say, I was
22 probably about a foot away from him, I detected a
23 strong odour of liquor in the car and on him.

24 Q Now, you had indicated that you
25 detected a strong odour of liquor in the car and

1 on him. Can you tell me, where was that odour
2 emanating from?

3 A From the back of the police vehicle.

4 Q And with respect to his person, where
5 was it emanating from?

6 A From him.

7 Q Where?

8 A From his breath, I'm sorry.

9 Q At this point, had Jason Woychuk given
10 you any details about the accident?

11 A Other than it was a fatality.

12 Q Were there any details with respect to
13 the number of cars involved, how it was that the
14 individual he had with him factored into the
15 accident?

16 A No, I didn't get those details at that
17 point in time.

18 Q Did you attempt to?

19 A Well, again, it was just a two-minute
20 conversation I had with Constable Woychuk between
21 8:12 and 8:14. The information I had at that
22 point in time was that there is a fatal accident
23 and somebody was killed. And that -- and I'm
24 sorry, yeah, and I was aware, sorry, that -- and I
25 will correct this -- my notes say that there was a

1 three-vehicle accident at 7:38 when dispatch
2 called me. So, yes, I was aware that there were
3 three vehicles.

4 Q Now, when you were in the room with
5 Jason Woychuk, and he tells you these things about
6 a person who may be impaired and the detection of
7 a slight odour of alcohol, with your level of
8 experience at that time, sir, did you not ask him
9 questions about, well, look, what have you done to
10 follow up on this?

11 A Yes, actually, I did. And I
12 apologize, one of the things I did ask Mr. Woychuk
13 was, had he been chartered and cautioned?

14 Q And do you have any reference to that
15 in your --

16 A No, that's by recollection.

17 Q So once again, this is a critical
18 issue in the course of the early investigation,
19 and there's no notation in your rough or your
20 duty-book notes?

21 A No.

22 Q Okay. But you recognize this, I take
23 it, given your level of experience at that time,
24 that this is a critical issue, whether this
25 individual who is in the back of a police car, in

1 the context of these observations having been
2 made, a fatality, you put the question to him,
3 have you cautioned him or chartered him?

4 A Yeah, I would have said have you
5 chartered and cautioned, just kind of the
6 opposite, but, yes, I did ask him that, yes.

7 Q And why were you asking him that?

8 A Well, I had got the call at 7:38. He
9 was, Woychuk was in the office at 8:12. There was
10 a significant period of time that this individual
11 had been at the scene without being chartered and
12 cautioned.

13 Q So you are aware of this almost
14 instantly, that this case is subject to a question
15 of the delay of the implementation of charter?

16 A Absolutely, yes.

17 Q And before you even go see the
18 accused, is it your evidence, sir, that Jason
19 Woychuk makes that perfectly clear to you in that
20 interview room where there's just the two of you
21 present?

22 A That is correct. He told me that he
23 was to bring this gentleman to me because I had
24 more experience.

25 Q And you asked him, has he been

1 cautioned or chartered?

2 A I asked him that, yes.

3 Q And he responded to you?

4 A No.

5 Q Now, in terms of why he was actually
6 transported to the station, were you making
7 inquiries about that, further inquiries?

8 A I didn't make further inquiries of
9 Mr. Woychuk, you know, in that regard.
10 Mr. Woychuk had told me why he was transporting me
11 to the station.

12 Q So, as you understood it, based on
13 what he's telling you, the sum total of the
14 information of why he's been transported there is
15 because somebody told him to do that?

16 A That's correct.

17 Q Did you ask who?

18 A He told me.

19 Q He told you it was Harry Bakema?

20 A That's correct.

21 Q Did you ask him questions about, well,
22 why did he do that?

23 A No, I did not.

24 Q Do you have any explanation for not
25 investigating or pursuing that?

1 A Yes. We had a fellow in the car that
2 I needed to get to right away.

3 Q Did you ask him any questions about
4 what other people might have noted about him,
5 about what other people might have noticed about
6 Harvey-Zenk at the scene?

7 A At that time, no.

8 Q So you go out to the car, you have
9 opened the door, you detect this odour of alcohol
10 in the vehicle and on his breath. What do you do?

11 A First of all, I identified myself to
12 him as Sergeant Carter. I did not know who he
13 was, I didn't have any identification from him at
14 that time. I asked him to -- I noticed he was not
15 in handcuffs. I asked him to step from the
16 vehicle. He did step from the vehicle, and he was
17 escorted into the station, to interview room
18 number one. At that time, we were under
19 construction, so I believe we only had one
20 interview room available.

21 Q Did you place him in handcuffs before
22 escorting him through the station?

23 A No, at this point in time, I did not
24 place him in handcuffs. Constable Woychuk lead
25 the way and I followed behind.

1 MR. CLIFFORD: Mr. Commissioner, I'm
2 going to deal next with observations as they begin
3 to unfold when Mr. Harvey-Zenk is brought into the
4 station. It would be an opportune time for the
5 morning recess.

6 THE COMMISSIONER: I think so. We'll
7 take our morning break. Fifteen minutes.

8 THE CLERK: All rise. This Commission
9 of Inquiry is in recess.

10 (Proceedings recessed at 10:54 a.m.
11 and reconvened at 11:08 a.m.)

12 THE CLERK: All rise, please. This
13 Commission of Inquiry is now reopened. Please be
14 seated.

15 BY MR. CLIFFORD:

16 Q Chief Carter, we were dealing with the
17 chronology and some of the things that were
18 happening with Officer Woychuk's arrival. And you
19 gave some times to the Commission, and I want to
20 follow along, and follow up on some of those times
21 and recap.

22 At 7:38 you had indicated that you got
23 a call from the dispatch. At 8:00 o'clock, you
24 have indicated that you arrived at the station.
25 At 8:12, you have indicated that is the time of

1 Jason Woychuk's arrival?

2 A (Witness nodding)

3 Q With respect to the time that you
4 attended to the vehicle and met with Derek
5 Harvey-Zenk, do I understand that that was 8:14?

6 A That was 8:14.

7 Q Now, you have indicated that when you
8 have met with him, you have gone through your
9 testimony on that point. And then what happened
10 next was that you took him, and you were telling
11 the Commission just before the break that you
12 escorted him into the station?

13 A That is correct, yes.

14 Q And what time are you escorting him
15 into the station?

16 A 8:15.

17 Q And you have made some observations
18 while at the vehicle. Do you continue to make
19 observations as you are escorting him into the
20 station?

21 A I do continue to make observations. I
22 observed -- I was walking behind him, Constable
23 Woychuk was in the front -- I observed him,
24 Mr. Harveymordenzenk, to be unsteady on his feet.
25 There were three different surfaces that I

1 observed him to walk on; concrete, which is a
2 sidewalk, inside the building there would be tile
3 floor and carpeting.

4 Q What do you do then, sir? Where do
5 you take him, precisely, into the station? Where
6 do you go?

7 A He was taken into the interview room
8 number one, which we only had I believe one at
9 that time that was available.

10 Q And at some point, sir, I understand
11 that you come to the opinion that you are going to
12 place him under arrest?

13 A That is correct, yes.

14 Q And what time do you do that?

15 A I placed Mr. Harveymordenzenk under
16 arrest at 8:18 in the morning, after I formed the
17 opinion that he was impaired.

18 Q So he's been with you for four
19 minutes?

20 A That is correct, sir.

21 Q And at that point, you have gathered
22 reasonable grounds to place him under arrest --

23 A That is correct, sir.

24 Q -- for impaired driving causing death,
25 et cetera?

1 A That's correct, yes.

2 Q And do you make any notation of the
3 grounds for his arrest in your rough notes?

4 A No.

5 Q Exhibit 116?

6 A No, not my rough notes, no.

7 Q Any explanation for that, sir, why you
8 wouldn't have any indication in your rough notes?

9 A Again, my rough notes were quick
10 notes, they were, you might say, done very, very
11 fast. I felt I needed to deal with
12 Mr. Harvey-Zenk right away, and I didn't note, in
13 my rough notes, those particular items.

14 Q Okay. Well, if you look at Exhibit
15 115, your duty-book notes, and particularly look
16 at the time entries, 8:14 to 8:18, when you make
17 these observations during that four-minute period?

18 A Yes.

19 Q Again, sir, do you have any notation
20 in your duty-book notes with respect to the
21 reasonable grounds that you are relying upon to
22 make this arrest?

23 A No, I don't.

24 Q Okay. Now, I take it, you would agree
25 with me, sir, that certainly apart from what you

1 observed, and we'll come back to that, that one of
2 the things that you may be responsible for
3 ultimately in this case, if it proceeded to court,
4 was to articulate or explain to a trier of fact
5 what your reasonable grounds were and how you got
6 them?

7 A Yes.

8 Q And it certainly wouldn't be helpful,
9 sir, for you to have absolutely nothing in your
10 rough notes or in your duty-book with regard to
11 what you observed. Can you agree with that, sir?

12 A Can you, please, repeat that?

13 Q Sure. It wouldn't be helpful for you,
14 sir, from the perspective of going to court, to
15 have absolutely nothing entered in your rough
16 notes or your duty-book notes about your
17 reasonable grounds for arrest?

18 A Yes, in retrospect, yes, it would be
19 very helpful, yes.

20 Q And would you agree, sir, that in
21 retrospect, it was something that should have been
22 done?

23 A Absolutely.

24 Q Now, ultimately you do document your
25 reasonable grounds?

1 A Yes.

2 Q And you do this in your incident
3 narrative report. And I take it you are referring
4 to that, and that's Exhibit 114?

5 A Yes, I've got that here, yes.

6 Q But we know from your rough notes and
7 your duty-book notes that certainly on the 25th or
8 26th, you hadn't documented anything with respect
9 to your reasonable grounds. When do you commence
10 your incident narrative report?

11 A The incident report was originally
12 generated on February 25th, 2005, by myself. The
13 incident report is -- would be the main report
14 that, any time you generate an incident report, an
15 incident number comes up automatically, not on a
16 narrative report, but on the incident report.
17 That was generated, well, the morning of the 25th.
18 And that report in itself, in the narrative
19 portion of that, I simply put that there had been
20 a three-vehicle accident on Highway 59 and 101. I
21 had put in there that Constable Pedersen,
22 Constable Woychuk, Constable Graham and Chief
23 Bakema had been dispatched to that accident. And
24 I put in there, as kind of a postscript, to refer
25 to their narrative reports.

1 Q Okay. You're referring to a report
2 you started on the 25th?

3 A That's correct, sir.

4 Q And we'll come back to that.

5 A Yes.

6 Q But with respect to what you are
7 reviewing now in refreshing your memory on the
8 issue of your reasonable grounds for arrest, you
9 are referring to your incident narrative report,
10 which is filed as Exhibit 114. And for the
11 benefit of counsel, that's E-1.23.k. Do you see
12 it? You have got it before you?

13 A I have got it, yes.

14 Q First page?

15 A Yes.

16 Q Page 456. And we can see that this
17 report, that incident narrative report was created
18 on the 27th?

19 A That is correct, yes.

20 Q At 8:14 a.m.?

21 A That's correct, sir.

22 Q So this would be the first time that
23 you document your reasonable grounds for arresting
24 Derek Harvey-Zenk, February 27th at 8:14 a.m.?

25 A That's correct, when I developed my

1 narrative, yes.

2 Q Two days later is the first time you
3 are recording your reasonable grounds for
4 arresting this individual?

5 A That is correct.

6 Q And is that an acceptable amount of
7 time, in your view as an experienced officer, to
8 wait to record grounds for arrest in a case such
9 as this?

10 A Again, in retrospect, in retrospect I
11 should have recorded those, started my incident
12 narrative that day and continued my incident
13 narrative and made the recordings that day. But,
14 no, I did not on that day. The next day I was
15 off. And on the 27th I came in and did the
16 report.

17 Q And just with respect to the grounds
18 that you have recorded, you detected an odour of
19 liquor on the accused's breath -- and I'm
20 referring to the incident narrative report,
21 Exhibit 114 -- at the time entry of 8:15 hours, a
22 strong smell of liquor on his breath. You have
23 also indicated that he was noted to be unsteady on
24 his feet. He was observed to walk 20 feet on the
25 sidewalk, 10 feet on the carpet, 30 feet on the

1 tile floor. This is from the parking lot out,
2 into the station, right?

3 A That's correct, sir.

4 Q And then you indicated at 8:18 you
5 formed the opinion that he was impaired?

6 A That's correct, sir.

7 Q So what's included in your report
8 initially is a strong smell of liquor on his
9 breath. You will agree with me, sir, that an
10 odour of alcoholic beverage or liquor on someone's
11 breath isn't necessarily indicative of impairment?

12 A No, not in all cases, no.

13 Q What it is indicative of, I would
14 suggest to you, is that there has been consumption
15 of alcoholic beverages?

16 A That is correct, sir.

17 Q And indeed, someone could have an
18 odour of alcoholic beverage on their breath and
19 not be impaired?

20 A That is possible.

21 Q And you have also indicated that,
22 together with that observation of a strong smell
23 of liquor, he was noted to be unsteady on his
24 feet?

25 A That is correct, sir.

1 Q And that is a conclusion that you
2 drew, was it not, that he was unsteady on his
3 feet?

4 A That was my observation.

5 Q But what you don't include in your
6 report, Chief Carter, is what is the underlying
7 basis for that conclusion. And can you tell us
8 what it was? What led you to the conclusion that
9 he was unsteady on his feet?

10 A By the way he walked, by my
11 observations.

12 Q Did you describe it?

13 A No, I didn't describe the manner of
14 him walking, no.

15 Q Is there any reason that you didn't
16 indicate what brought you to the conclusion that
17 he was unsteady?

18 A I'm a little unclear what you're
19 saying?

20 Q Did you ask him, why are you unsteady
21 on your feet?

22 A No, I didn't ask him any questions at
23 that point in time.

24 Q You knew he was in a car accident?

25 A I knew he was in a car accident, yes.

1 Q That could have been an explanation
2 that he might have given you?

3 A That could have been an explanation,
4 yes.

5 Q You didn't bring it up?

6 A No, I didn't speak with him at that
7 point in time.

8 Q So based on your incident narrative
9 report, it looks like the sum total of your
10 reasonable grounds to place him under arrest are a
11 strong odour of alcohol, and you noted him to be
12 unsteady on his feet, and Jason Woychuk's comments
13 to you that he may be impaired and he detected an
14 odour of alcoholic beverage on his breath?

15 A That's correct, yes.

16 Q You're entitled to take that into
17 consideration, but at that point that's all you're
18 operating with, correct?

19 A That's all I'm operating with,
20 correct, yes.

21 Q Why didn't you follow up to pursue it
22 any further?

23 A At that point in time, by my
24 observations, by what was told to me, I formed the
25 opinion, based what I believe on reasonable

1 grounds, that he was impaired. I based that
2 obviously on the subjective and objective tests.

3 Q One thing, I take it, that is hovering
4 in the background at this point is, in fact, as
5 you told us earlier, you know that delay is an
6 issue?

7 A That is correct, yes.

8 Q Did you expedite the investigation in
9 order to counteract that issue, or I should say to
10 counter that issue?

11 A To the degree, yes, that, you know,
12 with my conversation with Constable Woychuk while
13 in the station, I felt I needed to get out there
14 right away, if, in fact, you know, the gentleman
15 in the car was impaired and hadn't been read his
16 rights.

17 Q Well, you're not going to be reading
18 him his rights until you place him under arrest?

19 A That's correct.

20 Q And you do that within four minutes?

21 A That's correct, sir.

22 Q And were you going as fast as you
23 could to come to the conclusion whether he was
24 going to be placed under arrest or not?

25 A I wouldn't say I was going as fast as

1 I could, but what I would say is that my
2 observations of him and the information I
3 received, in my opinion, was sufficient for me to
4 form reasonable and probable grounds.

5 Q And upon forming those grounds, you
6 then give him his charter caution?

7 A That is correct, sir.

8 Q And what time do you do that?

9 A At 8:19.

10 Q So if we keep our times going, at
11 8:15, you have told us you were noting a strong
12 odour. 8:18, you come to the opinion he's
13 impaired, and arrested. 8:19, you give the
14 charter?

15 A That is correct, sir.

16 Q And specifically you are dealing with
17 his section 10 charter rights?

18 A That is correct, yes.

19 Q Right to counsel?

20 A Right to counsel.

21 Q And then at 8:20, you give him a
22 standard police caution?

23 A That is correct, sir.

24 Q And at 8:21, you make a demand?

25 A That is correct, sir.

1 Q Okay. And what demand do you make?

2 A I made the breath demand.

3 Q Okay. Now, you are aware, of course,
4 and it's been raised with you by me, and
5 presumably others, that you have got recorded
6 throughout your documentation that you made a
7 blood demand?

8 A That is correct, sir.

9 Q Now, I take it your position is that
10 that didn't happen?

11 A That didn't happen, sir.

12 Q And are you certain that you made a
13 breath demand?

14 A I am 100 per cent certain I made a
15 breath demand.

16 Q Now, if we look at your rough notes,
17 Exhibit 116, they indicate that you made a form of
18 demand, do they not?

19 A That's correct, yes.

20 Q And what demand did you record at 8:21
21 in your rough notes?

22 A On the rough notes, I wrote blood.

23 Q And then going to your duty-book
24 notes, Exhibit 115, what demand did you record at
25 8:21?

1 A At 8:21 I recorded blood.

2 Q And in your incident narrative report,
3 what do you record with respect to the demand?

4 A The error is carried over and it read
5 blood.

6 Q Now, I understand that your position
7 is very clear that you made the breath as opposed
8 to the blood?

9 A Absolutely.

10 Q However, you are aware as an
11 experienced police officer that a blood demand can
12 only be made in very specific circumstances?

13 A That is correct, sir.

14 Q And those circumstances didn't exist
15 in this case?

16 A They did not.

17 Q And it would have been an error to
18 make a blood demand.

19 A It would have been an error to make a
20 blood demand.

21 Q You readily concede that?

22 A Yes, sir.

23 Q But you are indicating that you didn't
24 make such a demand?

25 A I did not make such a demand.

1 Q But the error then would be confined
2 to recording your demand inaccurately throughout
3 all of your documentation as a blood demand?

4 A That was my error, yes.

5 Q Now, once you made the demand, as you
6 indicate, for breath samples, what is the response
7 from Derek Harvey-Zenk?

8 A I asked Derek Harvey-Zenk, do you
9 understand? His reply was yes. I then further
10 asked him, will you comply? And his reply was
11 yes.

12 Q Okay. So he is agreeing to provide
13 you with samples of his breath?

14 A That is correct, yes.

15 Q At some point following 8:21, is the
16 issue of the demand raised again?

17 A Yes.

18 Q When is it brought up?

19 A Just give me a moment. At
20 approximately 8:34.

21 Q Okay. Now, before we go to 8:34, I
22 want to raise this evidence for the Commission,
23 for those of us, those who might not be aware that
24 typically, once you make a demand and there's an
25 agreement or not, at some point you've got to

1 facilitate the right to counsel for the accused
2 person. You've got to get on the telephone,
3 you've got to make arrangements. Are you doing
4 that after you make the breath demand?

5 A Yes. At 8:23 --

6 Q Let me just --

7 A I'm sorry.

8 Q I apologize for interrupting you, but
9 I think this will assist you. Let me just suggest
10 to you, sir, without going into the details at
11 this point, that after you make the breath demand
12 up to 8:34, so between 8:21 and 8:34, without
13 going into the details, you're taking steps to
14 facilitate his right to counsel?

15 A That is correct, sir.

16 Q All right. So you're making
17 inquiries, et cetera, with a view to getting him
18 in touch with a lawyer?

19 A That is correct, sir.

20 Q Now, what happens at 8:34, when the
21 issue of the breath demand comes up again?

22 A Mr. Harveymordenzenk then asked me,
23 I'm sorry, did you give the demand?

24 Q So, at this point, he's asking you
25 questions about what's happening?

1 A He asked me the one question.

2 Q Was that the only question he put to
3 you?

4 A A little earlier he asked for a pen
5 and paper so he could make notes.

6 Q But that was the only question with
7 respect to the demand?

8 A Yes.

9 Q So you read the demand at 8:21, and at
10 8:34, he's asking you, did you give me the
11 demand --

12 A That's correct, yes.

13 Q -- or words to that effect. I don't
14 know exactly what he said. Do you recall?

15 A Yes. His words were, "I'm sorry, did
16 you give the demand?"

17 Q And in fact, you have that in quotes
18 in your incident narrative report?

19 A I have that in quotations, sir.

20 Q And between 8:21 and 8:34 when he puts
21 that question to you, do you notice any further
22 indicia of impairment?

23 A Yes. During that time, I noted, I
24 again still noted the strong smell. I noticed he
25 was unsteady on his feet. He was flushed face,

1 glassy bloodshot eyes. He had dried blood on his
2 hand and his nose.

3 Q Now, he's already under arrest at this
4 point, so these additional observations are not
5 going to factor into or form part of your
6 reasonable grounds. Are we agreed on that?

7 A We are agreed, yes.

8 Q We are agreed on that?

9 A Yes, sir.

10 Q But they are noteworthy, in any event,
11 and the additional things that you notice are,
12 according to you, flushed face and glassy,
13 bloodshot eyes?

14 A That's correct, sir.

15 Q And this is sometime between 8:21 and
16 8:34?

17 A That is correct, sir.

18 Q Now, you have indicated that at 8:21
19 he agreed to give you breath samples?

20 A That is correct, sir.

21 Q And at 8:34, he asked you whether you
22 provided him with a demand?

23 A That is correct.

24 Q Did he say anything about not
25 complying with the earlier demand?

1 A At that point, no.

2 Q Now, I understand at 8:34, he is given
3 an opportunity to speak with legal counsel. And,
4 in fact, that opportunity is given to him and then
5 at 8:38, he starts to talk to the lawyer?

6 A That is correct, yes.

7 Q Did you put him into a room where he
8 would be private in order to do that?

9 A Yes, he was in the interview room.

10 Q And did he start that conversation at
11 8:38?

12 A Yes. Yes.

13 Q And what time did he finish the call
14 with the lawyer?

15 A 8:55.

16 Q And at that point, sir, does he ask
17 you any further question?

18 A Yes, he did. At that time, he asked
19 me what time he had made the call to his lawyer,
20 and I provided him with that time.

21 Q So he finished the call with the
22 lawyer at 8:55 in the morning?

23 A That is correct, yes.

24 Q And then he asked you the question,
25 what was the time of the call?

1 A Yeah. May I make a correction there?

2 Q Yes?

3 A At 8:55, I noted he was off the
4 telephone.

5 Q You noticed he was off the telephone.
6 I take it, as a result of that, you go into the
7 room where he was?

8 A That's correct.

9 Q All right. He had a piece of paper or
10 a pad and a pen with him, did he not?

11 A That's correct, yes.

12 Q What do you do with that?

13 A I removed that -- I removed the
14 telephone and the pen from him.

15 Q And what does he ask you at that
16 point?

17 A What time he had made his call to his
18 lawyer.

19 Q Now, times are relevant with respect
20 to issues pertaining to the charter. You clearly
21 understand that and you were aware of it that
22 morning?

23 A Yes.

24 Q And times are also very relevant to
25 the time that a breath test is administered.

1 Would you agree with that?

2 A That is correct, yes.

3 Q And pursuant to the Criminal Code of
4 Canada, there is a certain period of time
5 whereafter, should it elapse, there's no longer a
6 statutory presumption that the Crown can rely
7 on --

8 A That's correct.

9 Q -- in the prosecution?

10 A That is correct, sir.

11 Q Now, can you describe the manner in
12 which Derek Harvey-Zenk put this question to you?

13 A The question about his lawyer?

14 Q What time he made the call?

15 A No, it was just a question.

16 Q Did he appear to be dazed and
17 confused?

18 A Not to me, no.

19 Q Did he put a very direct question to
20 you about something that was happening with him?

21 A Yes.

22 Q And it was the second such question he
23 had put to you?

24 A That's correct, yes.

25 Q And you gave him the time that he

1 called his lawyer?

2 A I provided him the time, yes.

3 Q Okay. And was that something that you
4 would typically do with a person you are dealing
5 with?

6 A Certainly. Sure. Why not?

7 Q What happens after that, sir? What
8 typically would happen and what happened in this
9 case when someone gets off the phone with their
10 lawyer? In an impaired case, you are finished a
11 call with your lawyer; what happens?

12 A In an impaired case, he would then be
13 escorted to the breath room.

14 Q And did you make arrangements for that
15 to happen?

16 A Yes, I asked Constable Woychuk to
17 escort him to the breath room.

18 Q And did he go to the breath room?

19 A He was -- I heard him say to Woychuk
20 that he did not want to provide breath samples.

21 Q So you're asking Constable Woychuk to
22 bring him to the breath room for the purpose of
23 giving the sample, and you can hear him telling
24 Officer Woychuk that that's not going to happen?

25 A That's right.

1 Q And what does he say to Constable
2 Woychuk?

3 A I didn't note the exact words he put
4 down at that point in time, but he said he was not
5 going to provide breath samples.

6 Q Was he taken into the breathalyzer
7 room?

8 A No, he was not.

9 Q So this is a complete change in his
10 position?

11 A Complete change, yes.

12 Q And when you heard him indicate that
13 change in position to Constable Woychuk, was he
14 unequivocal about it? Was he firm, or did he seem
15 as though he was aware of what he was doing and
16 saying to him?

17 A Yes. And may I make another
18 correction here? At 9:06, I heard him tell
19 Woychuk -- I'm sorry, I said I didn't write the
20 exact words down. I did, I have quotations here.
21 The accused told Woychuk, "I don't want to" when
22 told he was, when Woychuk told him he was being
23 escorted to the breath room.

24 Q You are referring to your duty-book
25 notes --

1 A That's correct.

2 Q -- for that entry?

3 A That's correct, sir.

4 Q You've got it in quotes "I don't want
5 to."

6 A That's correct, sir.

7 Q And that's what you heard?

8 A That's what I heard.

9 Q What do you do as a result of this?

10 A I attended to the interview room and
11 asked, will you provide a breath sample to us?

12 Q And what time did you do that?

13 A 9:07.

14 Q So I understood it was at 9:06 that
15 you hear him make this comment?

16 A That is correct.

17 Q To Constable Woychuk. And within a
18 minute, 9:07, you were dealing with him?

19 A Yes.

20 Q Carry on?

21 A He replied "no".

22 Q Did he seem to be under any confusion
23 or misapprehension in terms of what was happening
24 with him?

25 A No.

1 Q I understand that you gave him what's
2 typically referred to as a refusal warning?

3 A That is correct.

4 Q You have referred to it as a refusal
5 demand, but it's one in the same thing?

6 A That's correct.

7 Q It is interchangeable?

8 A Yeah.

9 Q And in fact, as required, you read
10 such a refusal warning to him?

11 A That is correct, sir.

12 Q And what time did you do that?

13 A 9:08.

14 Q E-1.23.c. Now, I don't know if
15 Mr. Prober put that in yesterday as an exhibit. I
16 know he put in a number of the earlier documents
17 in?

18 MR. PROBER: Which one is it?

19 MR. CLIFFORD: E-1.23.c.

20 THE CLERK: No.

21 MR. CLIFFORD: No, it wasn't put in?

22 THE CLERK: No.

23 MR. CLIFFORD: Could we put that to
24 the witness and have it filed as the next exhibit,
25 please?

1 THE CLERK: Exhibit 118.

2 MR. CLIFFORD: The exhibit number?

3 THE CLERK: 118.

4 (EXHIBIT 118: E-1.23.c, Breathalyzer
5 Demand and Refusal Warning Card)

6 BY MR. CLIFFORD:

7 Q Okay. You have that document before
8 you, sir. And without reading it into the record,
9 is this what you complied with?

10 A That is what I read, yes.

11 MR. McDONALD: Mr. Commissioner, there
12 are two documents at that tab, and I'm not sure
13 which document is before the witness. There are
14 two pages to that document, so I don't know which
15 one is being referred to, and perhaps we can
16 clarify that for the record?

17 MR. CLIFFORD: I'll do that. Page 446
18 in that exhibit indicates "refusal - breathalyzer
19 blood." And there's a warning that follows?

20 THE WITNESS: That is correct, yes.

21 BY MR. CLIFFORD:

22 Q All right. Is that the warning that
23 you gave?

24 A That is the warning I gave.

25 Q And at 9:09 in the morning, did you

1 ask him again if he was refusing, after you read
2 that warning to him?

3 A Yes, I did. I, at 9:09, I again gave
4 the -- gave him an opportunity to provide samples
5 and asked, are you refusing to provide samples of
6 your breath?

7 Q Now, when you read the refusal demand
8 to him at 9:08, did you ask him if he understood
9 clearly that he would be charged if he refused?

10 A Yes. I asked him, "Do you understand
11 you will be charged with refusal?" And he
12 replied, "I understand."

13 Q And again, when you asked him if he
14 was refusing, what did he indicate to you at 9:09?

15 A "I am refusing."

16 Q Throughout this exchange with him when
17 he is asking you those two questions, you are
18 giving him these cautions and warnings, and you
19 are asking him, do you understand, did you have
20 any concern at all that he may not have understood
21 what you were saying to him and what was
22 happening?

23 A I had no concern.

24 Q You are aware, of course, at this
25 point, obviously, that you are dealing with a

1 police officer who is charged?

2 A Yes, I was.

3 Q And this takes it out of the normal
4 course, and you have to get in touch with the
5 Crown's office, I understand.

6 A That is correct, sir.

7 Q And do you do that?

8 A Yes, I do.

9 Q And what time do you do that?

10 A At 10:04 I contacted the Crown's
11 office and spoke with the duty Crown, Russ Ridd.

12 Q And what happened in that
13 conversation, sir?

14 A I briefed him on the incident as to
15 what I knew so far, and he advised me that as the
16 accused is a police officer, they will have to get
17 hold of a special prosecutor.

18 Q Did you hear from a special prosecutor
19 thereafter?

20 A Yes, I did. At 10:35, I received a
21 call from Mr. Marty Minuk.

22 Q And in the intervening time between
23 10:04 and 10:35, what's happening with Derek
24 Harvey-Zenk?

25 A I'm sorry, between what times?

1 Q 10:04 and 10:35 in the morning?

2 A I'm sorry, I lost track there.

3 Q That's okay. I'll repeat the question
4 for you.

5 A Yes.

6 Q Between 10:04 in the morning, when you
7 called the Crown's office and you speak with the
8 duty Crown, Russ Ridd, and 10:35, when you hear
9 back from a person who has been assigned the case,
10 I'm just simply wondering whether Derek
11 Harvey-Zenk, for instance, is lodged somewhere in
12 the station during that time?

13 A Yes, he is in the interview room.

14 Q And who is he with?

15 A At that time he's by himself.

16 Q Okay. So at 10:35, you hear from a
17 Crown who is assigned to the case. And I'll have
18 you carry on from there and describe what you
19 learn?

20 A I spoke with Mr. Minuk. I briefed him
21 on what the situation was. He was certainly
22 advised that the gentleman was a police officer.
23 We discussed the charges, and it was decided that
24 the charges of refuse breathalyzer, impaired cause
25 death, dangerous cause death, and criminal

1 negligence cause death, would be the charges that
2 we would be laying. And I was advised to release
3 him on a PTA to court room 302.

4 Q Let's deal with that. First, on the
5 impaired cause death charge, I understand that it
6 was at 9:21 in the morning that you confirmed the
7 identity of the deceased, Crystal Taman?

8 A That's correct.

9 Q So you were clearly aware at that
10 point that it was a fatality?

11 A Yes.

12 Q You are speaking with Mr. Minuk at
13 10:35 and discussing the charges. Are you both
14 having input into what charges would be laid?

15 A Yes. Yes.

16 Q And what details were you aware of in
17 connection with the accident at that point?

18 A That it was a three-vehicle collision,
19 that there was one fatality, that I have formed
20 the opinion that Mr. Harvey-Zenk was impaired,
21 that I informed Mr. Minuk that, you know, he had
22 been advised of his rights, given an opportunity
23 to contact his lawyer. And that I would monitor
24 to see if other people who may have been involved
25 in the accident -- I had not received that

1 information yet -- you know, there may be charges
2 in relation to that such as impaired cause bodily
3 harm.

4 Q Now, you discussed the charges that
5 were going to be laid. And you have indicated
6 that you were advised that the accused could be
7 released on a PTA?

8 A That is correct, sir.

9 Q Did you have any input into what form
10 of release would take place with Mr. Harvey-Zenk?

11 A We discussed the form of release.
12 There was no indication that, certainly that there
13 would be any indication that he would flee the
14 area, not appear for court. There is no -- there
15 was no background as far as any prior charges of
16 this nature. And as such, Mr. Minuk authorized
17 release on a promise to appear, without any
18 further conditions.

19 Q Was there any discussion or
20 contemplation between either you and Mr. Minuk
21 about releasing him on conditions?

22 A Just what I have indicated.

23 Q Did you not think it would have been
24 appropriate to, at the bare minimum, release him
25 on a condition that he not consume alcohol?

1 A I thought of it at the time, but in
2 speaking with Mr. Minuk, he authorized release
3 without any further conditions.

4 Q Apart from your conversation with
5 Mr. Minuk, you have indicated that you considered
6 releasing him on a condition not to consume
7 alcohol at the time?

8 A No, I never considered it. I thought
9 about it, sir.

10 Q Okay. I apologize. You thought about
11 it?

12 A Yes.

13 Q I would suggest to you, sir, that you
14 were thinking about it because it was an
15 appropriate thing to do?

16 A (Witness nodding) Yes.

17 Q You're nodding your head?

18 A Yes, it probably was an appropriate
19 thing to do, sir.

20 Q And in fact, sir, the Criminal Code of
21 Canada allows a peace officer, under section
22 503(2) to do such a thing, to release somebody on
23 such a condition. It gives you the discretion to
24 do that?

25 A It does, sir.

1 Q And that would have nothing to do with
2 a concern about anybody fleeing or not appearing
3 in court. I understand that you had no concern at
4 all with respect to Mr. Harvey-Zenk showing up for
5 his court appearances?

6 A No, there's no concern in that regard.

7 Q But he had been involved in a motor
8 vehicle accident. You were of the view that he
9 caused the accident. You knew there was a
10 fatality and there was alcohol involved?

11 A That's correct, sir.

12 Q So at a bare minimum, that condition
13 should have been put in place before he left the
14 police station?

15 A Yes.

16 Q Are we agreed on that?

17 A Yes.

18 THE COMMISSIONER: Excuse me. One of
19 the conditions of release, or one of the
20 conditions why you won't release is if someone,
21 there's a concern that he may repeat the offence.
22 Were you not concerned, that because of the
23 observations that you had made, that he might go
24 out and get into another vehicle and drive again?
25 Was that a concern? Was it related to Mr. Minuk?

1 Did Mr. Minuk even discuss it with you?

2 THE WITNESS: No, Mr. Minuk didn't
3 discuss that with me.

4 THE COMMISSIONER: Thank you.

5 BY MR. CLIFFORD:

6 Q Did you suggest to Mr. Minuk that he
7 should be released on a no alcohol condition?

8 A No, I did not suggest that to him.

9 Q It's your position that Mr. Minuk
10 advised you to release him on a promise to appear?

11 A That is correct, sir.

12 Q And that you had no input or you
13 didn't make that suggestion to Mr. Minuk?

14 A To release on a promise to appear?

15 Q That's right?

16 A No. I asked him what type of release,
17 can we release on a promise to appear? And he
18 authorized a release on a promise to appear.

19 Q Now, when somebody is released on a
20 promise to appear, they are free to go straight
21 from the police station, they would be free to go
22 from the police station, of course, if they were
23 given an undertaking to a peace officer. At the
24 end of the day, when the individual was released,
25 did you ever get in touch with the deceased's

1 family to let them know that, look, the person who
2 is charged and we consider to be responsible is
3 now back in the community?

4 A I did not personally, no.

5 Q How long is this conversation with
6 Mr. Minuk that takes place at 10:35?

7 A I didn't note the end time of the
8 conversation with Mr. Minuk. I do, the next --

9 Q The next entry you have, I understand,
10 is 10:52?

11 A Is ten what?

12 Q Fifty-two, according to my notes?

13 A 10:50.

14 Q 10:50?

15 A Yes.

16 Q So, I take it you have no recollection
17 of how long you are on the telephone with
18 Mr. Minuk?

19 A No, it wasn't -- it wasn't, it was
20 perhaps, and I'm just estimating right now, it is
21 perhaps 10 minutes, maybe 15 minutes. It wasn't
22 long.

23 Q Long enough to work out what charges
24 are going to be laid and to determine that he's
25 going to be released on a promise to appear?

1 A Yes, sir.

2 Q Now, I understood that you received
3 telephone calls afterwards, people that wanted to
4 get in touch with Derek Harvey-Zenk?

5 A That is correct, yes.

6 Q And what could you tell us about that?

7 A At 10:52, I received a call from
8 Heather Ray of Mr. Wolson's office, who called to
9 ascertain if Mr. Mordenzenk was still in custody.
10 I also received a call from Jim Poole, I believe
11 he is a staff sergeant of the Professional
12 Standards Unit of the Winnipeg Police Force.

13 Q Okay. Now, the time of the call from
14 Jim Poole was when?

15 A I don't know -- I don't know the time
16 he called. I have it as the same time as Heather
17 Ray, of Mr. Wolson's office.

18 Q Can we conclude from your incident
19 report, sir, that you would have received this
20 call from Jim Poole of Winnipeg Police
21 Professional Standards Unit at approximately
22 10:52?

23 A Yes, we can conclude that, yes.

24 Q Now, Jim Poole was ultimately
25 responsible, I understand, for conducting part of

1 the investigation in this case, and we're going to
2 come to that. But this is the first time that you
3 hear from him?

4 A That's correct, yes.

5 Q What does he want to talk to you
6 about?

7 A I returned the call to Mr. Poole at
8 10:55, and gave him details because he needed to
9 brief his executive.

10 Q Carry on, sir, do you recall anything
11 else about the conversation?

12 A I don't recall anything else about the
13 conversation.

14 Q So, in under three hours, from Derek
15 Harvey-Zenk arriving at the station, you get this
16 call from Jim Poole of the Winnipeg Police Service
17 Professional Standards, wanting a briefing on what
18 you know about the case?

19 A That's correct, yes.

20 Q So he can take it to executive
21 members?

22 A His executive.

23 Q And do you tell him everything you
24 know about the case?

25 A I told him what I know up until that

1 point in time, yes.

2 Q Do you tell him everything you know
3 about the case up to that point in time?

4 A Yes.

5 Q Now, I understand, sir, that at 11:14
6 in the morning, you extend an opportunity to Derek
7 Harvey-Zenk. Do you know what that opportunity
8 was?

9 A Yes. I asked him if he wanted to call
10 his wife or the Association.

11 Q And let me ask you this, sir. What --
12 or who else in custody gets an opportunity to call
13 their wife or their work?

14 A Not, not often.

15 Q I would suggest to you almost never?

16 A That's correct.

17 Q It would be a situation where a person
18 in detention would say to you, look, I have a
19 three-year old at home in a highchair and I ran
20 out to get a pack of cigarettes and I got
21 arrested. You've got to call my wife and it's got
22 to be dealt with?

23 A Yes.

24 Q It's an emergency situation where
25 someone gets to call their wife or family member?

1 A That's correct.

2 Q Why was Derek Harvey-Zenk getting this
3 opportunity?

4 A Because -- and I was being, quite
5 frankly, I was being hyper-vigilant.

6 Mr. Harvey-Zenk, in my opinion, had already been
7 denied his rights for a period of time, from the
8 time he was at the scene to the time when I placed
9 him under arrest. I was being hyper-vigilant in
10 that respect, and that's why I allowed him to do
11 that.

12 Q I'm sorry, sir, I'm having some
13 difficulty with your answer, because his wife has
14 absolutely nothing to do with either his
15 constitutional rights or the police investigation?

16 A No, she does not.

17 Q I would suggest to you, sir, that it
18 might make more sense that you're giving him an
19 opportunity to do something because he is a police
20 officer?

21 A No, sir.

22 Q You realize, sir, that others will
23 suggest that to you, or perhaps think that?

24 A Absolutely, sir, that was not my
25 intent.

1 Q But in any event, he was extended an
2 opportunity that is rarely, if ever, extended to a
3 person in custody?

4 A That's correct.

5 Q And the same thing can be said with
6 respect to the opportunity to call somebody at
7 work. The Association means that he was given an
8 opportunity to speak to a police officer who
9 represents other police officers; correct?

10 A That's correct.

11 Q And what would be the purpose of
12 giving him the opportunity to speak to an
13 Association member, a police officer within the
14 Winnipeg Police Service who deals with other
15 police officers?

16 A Again, I repeat my answer to that,
17 sir, I was being hyper-vigilant. He had been
18 denied his rights, and I knew that was going to be
19 a problem, and I did not want any further problems
20 occurring from that point on, so I was being
21 hyper-vigilant. I made that decision.

22 Q But he had no right to call either of
23 those two people, so I don't see what you're being
24 hyper-vigilant about?

25 A Simply because I knew, right from the

1 beginning when he came into my custody, that there
2 was going to be issues in regards to his charter
3 rights. Again, that is my position, that is why I
4 allowed him to do that.

5 Q Do you think from just strictly an
6 investigative point of view, or investigative
7 strategy, that it's a good idea to have an accused
8 person calling their wife, or their work, or
9 people that might have a connection to him? You
10 have no idea what he's going to do when he's on
11 the phone?

12 A I have no idea what he's going to do,
13 sir.

14 Q Now, I understand that his -- somebody
15 from the lawyer's office came down to see him?

16 A That is correct, yes.

17 Q You got a call from the lawyer's
18 office at 11:28, telling you that someone was
19 coming. At 11:48 there was, in fact, counsel at
20 the office?

21 A That is correct.

22 Q Now, of course, he had already
23 exercised his right to speak to legal counsel?

24 A That is correct.

25 Q That was facilitated earlier. You

1 told us that he spoke with legal counsel, Paul
2 Cooper?

3 A That is correct, yes.

4 Q Now, the individual who appears, it's
5 not Paul Cooper, it's someone else?

6 A It's Katherine Bueti.

7 Q And he gets a second opportunity to
8 speak to his counsel?

9 A That's correct, yes.

10 Q Is that something that you normally
11 do?

12 A Yes. Yes. I would allow an accused
13 to speak to his lawyer as much as he needs to
14 speak to his lawyer.

15 Q Was he asking to speak to his lawyer?

16 A No. She had arrived, I don't know
17 what arrangements had been made for her to arrive,
18 but she had arrived.

19 Q Now, I understand that at the time
20 that she arrived, you had a conversation with the
21 cell block constable?

22 A No, that's the clerk, the
23 administrative clerk.

24 Q Oh, the administrative clerk?

25 A Yes. She is a special constable.

1 Q Okay. You had a conversation with a
2 special constable?

3 A Yes.

4 Q And what was included in that
5 conversation?

6 A She advised that Mr. Mordenzenk was
7 banging his hands and his head on the wall in the
8 interview room. So I attended to the interview
9 room, and I found Mr. Mordenzenk to be very upset
10 and he was crying.

11 Q And how did that compare to his
12 emotional state earlier, when he put those
13 questions to you, and he was indicating to you
14 that he understood and made the unequivocal
15 decision to refuse?

16 A It was quite different.

17 Q Now, I understand that you got a
18 further telephone call in connection with someone
19 who wanted to see Derek Harvey-Zenk?

20 A That's correct, yes.

21 Q Now, before we move to that point, you
22 extended the offer to him about his wife and the
23 Association and we have covered that. But did you
24 let him call his wife and the Association?

25 A I believe he called somebody from the

1 Association. I don't know. I forwarded him the
2 phone to make the phone call.

3 Q So you facilitated one of those
4 calls --

5 A Yes.

6 Q -- and you think it was to the
7 Association?

8 A I'm not certain who he made it to. I
9 believe it was to the Association.

10 Q Now, you, going back to the call that
11 you get, the next call that you get to the
12 station?

13 A Sergeant Paul Isaak.

14 Q Who is Sergeant Paul Isaak?

15 A He identified himself as a member of
16 the Winnipeg Police trauma program.

17 Q And what does he want to do?

18 A He is going to be attending to see
19 Mr. Zenk.

20 Q And do you permit that to happen?

21 A I did permit that to happen, yes.

22 Q And again, sir, who else in a
23 situation like that would be permitted the
24 opportunity to speak to a counsellor?

25 A Again, I'm going to attribute that to

1 hyper-vigilance. By that time, I was already done
2 with Mr. Zenk. He was just going to be released
3 on the paperwork.

4 Q Let me follow up with you on that,
5 sir. First, Mr. Zenk was still in custody. He
6 had not been released. He had not been released
7 on any form of release at that point?

8 A That's correct, sir.

9 Q So you were not finished with him,
10 agreed?

11 A Not -- yes.

12 Q He's still in custody?

13 A In that respect, no.

14 Q All right. So you take that out of
15 the equation, that he had been released, because
16 we know he wasn't. He's in police custody. No
17 one in police custody typically would be given the
18 opportunity to speak to a wellness officer or a
19 counsellor, or however you might appropriately
20 describe Paul Isaak. Are we agreed on that?

21 A Under normal circumstances, no.

22 Q And you had given your explanation,
23 and I'm not going to go over it with you, but in a
24 situation where you felt as though someone might
25 be, for instance, so emotional that they were

1 suicidal, the appropriate thing to do would be to
2 have an officer watch them; agreed?

3 A That is correct, yes.

4 Q Now, this person that went to see him
5 was actually somebody who worked in the Winnipeg
6 Police Service?

7 A That's correct, yes.

8 Q Did you understand Paul Isaak to be a
9 police officer or a civilian member?

10 A I understood him to be a Sergeant.

11 Q So in your attempt to be
12 hyper-vigilant, in light of what you thought were
13 potential charter breaches, he's given the
14 opportunity to call his wife, the Police
15 Association, and spend time with a wellness
16 counsellor from the Winnipeg Police?

17 A That is correct, yes.

18 Q What time do you start to make
19 arrangements for Derek Harvey-Zenk to be released
20 from the station?

21 A At 1303.

22 Q So at 1:03 you started to take steps
23 to have him released, and where do you bring him?

24 A I brought him to my office.

25 Q And typically, where do you release

1 people from custody from?

2 A They have been released from the
3 interview room, they had been released from the
4 office.

5 Q Do you have a booking desk?

6 A No.

7 Q Do you typically bring accused people
8 that are being released from custody into your
9 personal office?

10 A It's been done. We were under
11 construction at the time for a new building.

12 Q All right. Fair enough. You are
13 under construction so he's in your office. If you
14 hadn't been under construction, I take it that
15 would be not the normal thing to do?

16 A No, he would have been released from,
17 well, wherever the booking area is, I guess.

18 Q Yeah. Booking is, you get booked in
19 or booked out, you don't get booked out through
20 sergeants' offices, right?

21 A Yeah.

22 Q But he got booked out through your
23 office, and you indicated it's because of
24 construction. And what's taking place, what
25 happens at that time?

1 A During that period of time, I served
2 him, or I explained the promise to appear, he
3 signed it and he was served it. He was in the
4 presence of his lawyer, Katherine Bueti. I served
5 him also the suspension notice, I served him the
6 impound notice, and I served him the forfeiture
7 notice, and explained all those documents to him.

8 Q Did he have any difficulty, in your
9 view, understanding any of the explanations you
10 gave him?

11 A No. And -- no. And I'm sorry, I also
12 served him a notice of seek greater punishment.
13 He signed the prisoner log and consented to having
14 prints, rather than attending later, under the
15 Identification of Criminals Act.

16 Q Before we get to that, can you tell me
17 at this point, or that time, what was his
18 emotional state?

19 A He was quiet.

20 Q You had previously observed him
21 banging his hands -- you were previously told, I
22 should say, to correct myself, that you were
23 advised that he was banging his head and his hands
24 on the wall and crying, and you went to check on
25 him, and he was crying and upset at that time?

1 A That's correct.

2 Q At this point, when arrangements are
3 being made for him to be released and you're
4 serving him with these documents at 1:03, can you
5 tell that he had been crying? Has he changed his
6 emotional state?

7 A At that time, he wasn't crying in my
8 presence, no.

9 Q And who is with him when he's getting
10 booked out?

11 A Katherine Bueti.

12 Q Anybody else?

13 A No, that's it.

14 Q Now, I'd like you to carry on and
15 follow up with us on the fingerprinting and
16 photographing. You had mentioned that he was
17 going to take the opportunity to get that done?

18 A That's correct, sir.

19 Q Can you carry on with that?

20 A I asked Constable Pedersen to escort
21 him to the Ident room and to do that task.

22 Q And I take it, you understood it that
23 she did that?

24 A I understood she did that, yes.

25 Q And were you aware of any observations

1 that she made with respect to alcohol consumption?

2 A No.

3 Q Did she indicate to you, that day,
4 that she made any observations with respect to
5 alcohol consumption or impairment when she was
6 fingerprinting Derek Harvey-Zenk?

7 A No, sir.

8 Q Did she indicate to you, at any point
9 after that day, that she made certain observations
10 about alcohol consumption and impairment?

11 A Yes, she did.

12 Q And when was that?

13 A That was shortly after the verdict and
14 the announcement of the Inquiry and the
15 departmental review.

16 Q So, subsequent to July of -- or
17 subsequent to the fall of 2007?

18 A She had never spoken to me about that.

19 Q Let me correct myself here. She told
20 you about her signs, her observations of signs of
21 consumption and impairment after this inquiry was
22 announced?

23 A That's correct, sir.

24 Q What did she tell you then?

25 A At that point in time, she told me

1 that she had detected, and I'm trying to think
2 back now because I did not note that at that time,
3 that she had -- he did have a strong odour of
4 liquor on him, and that she noted -- she noted
5 signs of impairment. I believe -- I believe it
6 was like bloodshot eyes and unsteady on the feet.
7 I didn't make a note of that, sir.

8 Q You didn't?

9 A Not at that time, no.

10 Q Have you ever made a note of it?

11 A No.

12 THE COMMISSIONER: What did she say
13 about his eyes?

14 THE WITNESS: Bloodshot, I believe it
15 was.

16 BY MR. CLIFFORD:

17 Q Sir, did you make any inquiries, on
18 February 25th, of Constable Pedersen, when she
19 completed the fingerprinting process?

20 A No, I did not.

21 Q At any point in the investigation, did
22 you follow up with her, on her experience with
23 Derek Harvey-Zenk, to determine whether her
24 observations were consistent with the ones you
25 were making?

1 A There was no, at no point in her
2 report or her notes did I see that she had noted
3 any observations.

4 Q Chief Carter, I'm going to ask some
5 questions now with respect to whose case this was,
6 what your role in the case was, and who the actual
7 investigator was in the early stages.

8 As at the arrest and the release of
9 Derek Harvey-Zenk, who was responsible for the
10 investigation?

11 A I'm -- please repeat that, I'm sorry,
12 please repeat that?

13 Q At the time of the release of Derek
14 Harvey-Zenk, February 25th, shortly after 1:00
15 o'clock, whose case was it?

16 A I don't know.

17 Q You were at that point the arresting
18 officer?

19 A I was tasked with dealing with
20 Mr. Harvey-Zenk, yes.

21 Q And you were the arresting officer?

22 A That is correct, sir.

23 Q I take it that didn't necessarily mean
24 that it was going to be your file?

25 A It would not necessarily have meant it

1 was going to be my file.

2 Q But was there any notion or idea as to
3 whose case it was?

4 A Nobody really knew at that time as to
5 whose case it was.

6 Q And was there ever a meeting or some
7 discussion with respect to making the decision
8 about who would have carriage of this serious
9 investigation?

10 A There was no discussion, and at no
11 time -- there was no discussion as to who would --
12 who was going to be assigned the follow-up
13 investigation on that day, to my recollection.
14 And as a matter of fact, when I generated the
15 incident report, the heading of that report where
16 it states "officer assigned" was left blank until
17 such a time as a determination could be made as to
18 who was going to be handling the follow-up
19 investigation.

20 Q And what was your view, sir. Who was
21 going to handle the follow-up investigation?

22 A My own thoughts, it was probably going
23 to end up being me.

24 Q When did you have this conversation
25 with then Chief of Police Bakema about the roles

1 that would be played in the investigation?

2 A I don't think there was ever really a
3 conversation about the roles that would be played
4 in the investigation. Mr. Bakema did not return
5 back to the station until the afternoon at some
6 time, so certainly there would be no conversation
7 until that point in time.

8 Q Do you recall a conversation occurring
9 when he got back to the station?

10 A I'm sure there was a conversation when
11 he got back.

12 Q I think -- carry on?

13 A I don't recall what time it was or
14 what the exact contents of that conversation was,
15 other than perhaps a conversation about the scene.

16 Q If I could ask you to refer to Exhibit
17 117, sir? That's your RCMP statement. And if you
18 turn to page 27 in that interview, it's at page
19 546 of the disclosure. Could you take a moment,
20 sir, just take a look at that, page 27, you will
21 see a question and an answer sequence. Read that
22 over and tell me if it refreshes your memory on
23 whether you had an opportunity to discuss the case
24 with Harry Bakema that day?

25 A Yes, it does recall my memory, the

1 third answer down.

2 Q And in fact, did you have an
3 opportunity to sit down with him and discuss the
4 case?

5 A Yes, we -- it appears that we sat
6 down. He described the scene and what we had to
7 do with the file, and who we have to interview.

8 Q And did you also discuss some of the
9 concerns that you had with the case on the delay
10 issue?

11 A No, I did not.

12 Q Can you give an explanation for that?

13 A I -- I can't -- I don't recall
14 discussing anything specific with the Chief about
15 the delay issue.

16 Q Did you ask the Chief about the
17 observations he made at the scene?

18 A No, I did not.

19 Q Were you not interested in the
20 observations that other officers or other people
21 made at the scene?

22 A I was waiting for him to complete his
23 notes and his report.

24 Q Was there a discussion about who was
25 going to be conducting what interviews?

1 A There was a discussion as to who he
2 wanted interviewed, and he did make a list as to
3 who he wanted interviewed.

4 Q And what about you? Were you
5 participating in that discussion in terms of who
6 was going to be interviewed?

7 A No. I was, I believe I was present in
8 the office when he was writing some of this down.
9 But as far as discussion as to who he wanted
10 interviewed, no, that was his input there.

11 Q So at that point, he was deciding or
12 suggesting who should be interviewed?

13 A That's correct.

14 Q Now, what about an incident narrative
15 report? Did you start an incident narrative
16 report on the 25th?

17 A I started an incident, not a
18 narrative, I started an incident, the main
19 incident report on the 25th.

20 Q Okay. And when we first started your
21 testimony, you referred to your incident narrative
22 report, and then you told me that you started an
23 incident report on the 25th?

24 A That's correct, sir.

25 Q And that's separate and apart from

1 your incident narrative report?

2 A Yes, that is separate.

3 Q This is the main narrative report for
4 the case?

5 A It would have been my report.

6 Q It would have been?

7 A Yes.

8 Q It started off as your report?

9 A It started off as my report, sir.

10 MR. CLIFFORD: Could the witness be
11 provided with P-1.83. That's Exhibit 94, is that
12 correct?

13 THE CLERK: Right.

14 BY MR. CLIFFORD:

15 Q Chief Carter, we have been learning
16 about the development of these reports and how
17 they can be amended and changed, and how they are
18 read, et cetera. But could you explain for me,
19 sir, how the process gets started with respect to
20 preparing an incident report?

21 A Our records management system goes by
22 the acronym of MPICs, and that's Municipal Police
23 Information Centre. When an incident report is
24 generated, sir, the person generating that report,
25 once a report, the header part of the report is

1 generated, a number will automatically be assigned
2 to that report. The person generating any report
3 in MPICs, whether it be the main report or the
4 narrative report, is the only person that can
5 amend or change that report, with the exception of
6 people who have manager status on the computer
7 system. Manager status allows those designated
8 people, which is usually supervisors, they can
9 enter any part of the reports, change, amend,
10 whatever the case is, in that regard. That is
11 used oftentimes for when reports are going out to
12 outside agencies, for spellcheck and that type of
13 situation, where a report is obviously looking
14 pretty bad as far as spelling wise or grammar.

15 No other officer, other than the
16 managers, can enter another officer's report and
17 alter or change it. It will not allow that
18 officer to do so. Any time a report is generated,
19 and if there's been an alteration to it, whether
20 it be a spelling error that's been changed, the
21 new report will be generated, but there will be an
22 old value. In other words, the old report is held
23 in the system for every change, the whole report
24 is held in the system in what's called a revision
25 log.

1 Q And we've seen that, sir. And correct
2 me if I've got this wrong, but what you're telling
3 the Commission is that an officer, a constable,
4 could start an incident narrative report, and they
5 can go back and make amendments to it, they can
6 change things, they can add things, and they are
7 free to do so, but there is always a log kept, the
8 revision log?

9 A Yes, sir.

10 Q And in addition to that, another
11 constable can't log on to someone else's report
12 and make additions or deletions or amendments,
13 they can only do it to their own?

14 A Only to their own, sir.

15 Q But there are certain individuals, and
16 you describe them as people having manager status
17 or designated people, and they can make revisions
18 to anybody's, can they not?

19 A That's correct, sir.

20 Q And who were those people as of
21 February 2005?

22 A Chief Bakema and myself.

23 Q Okay. So constables are creating
24 their own incident narrative reports, and the only
25 people that have access to them would be yourself

1 and Chief Bakema?

2 A That is correct, sir.

3 THE COMMISSIONER: Others could read
4 the report, but they couldn't change it?

5 THE WITNESS: They could read the
6 report, but they could not change it, sir.

7 THE COMMISSIONER: Mr. Clifford, it's
8 12:31.

9 MR. CLIFFORD: This will be as good a
10 time as any, Mr. Commissioner.

11 THE COMMISSIONER: Thank you. We'll
12 break now until 2:00 p.m.

13 THE CLERK: All rise. This Commission
14 of Inquiry is adjourned until 2:00 p.m.

15

16 (Proceedings recessed at 12:31 p.m.
17 and reconvened at 2:00 p.m.)

18 THE CLERK: All rise, please. This
19 Commission of Inquiry is now reopened. Please be
20 seated.

21 MR. CLIFFORD: Good afternoon
22 Mr. Commissioner.

23 THE COMMISSIONER: Good afternoon.

24 BY MR. CLIFFORD:

25 Q Good afternoon, Chief Carter.

1 A Good afternoon, sir.

2 Q Sir, before about the lunch break, we
3 were in the process of reviewing the reports and
4 how they are generated. You told the Commission
5 about who can read them. You told the Commission
6 about who can make changes, additions, amendments
7 and deletions. And I think it was clear that you
8 were explaining to the Commission that there was a
9 difference between an incident report and a
10 narrative report. And that a narrative report
11 would be a single officer's narrative, or
12 observations that they can develop as they go
13 along?

14 A That is correct, sir.

15 Q And an incident report would be a
16 general report that might as well be developed,
17 but it would be attributed to whoever was in
18 charge of generating the incident report?

19 A That is correct, sir.

20 Q Have I got that right?

21 A Yes, sir.

22 Q Now, on the issue of the question of
23 whose case was this at the outset, you explained
24 early in your testimony that, in fact, on
25 February 25th, you started an incident report?

1 A That is correct, sir.

2 Q Completely separate and apart from
3 your narrative report, which you started on
4 February 27th?

5 A It should not have been separate and
6 apart, but it was.

7 Q Very well. But on February 25th, you
8 start this incident report?

9 A Yes, sir.

10 Q And if I could ask you to refer to,
11 and Madam clerk, you may have to provide this to
12 the witness, volume P-1.83?

13 A I have that, sir.

14 Q That's right, it is exhibit 94 in
15 these proceedings. Now, sir, please turn to page
16 2442, it is the last page. And what we see here,
17 sir, is a document that's got a time and a date on
18 the top, it says 2005/02/25, 9:40:54 with your
19 name, Norm Carter?

20 A That's correct, sir.

21 Q And is this the first entry for the
22 incident report?

23 A That would be the first entry.

24 Q Now, if you turn to page 2440, we see
25 it is the same day, 2005, February 25th, the time

1 now is 13:47:54. Do you see that, sir?

2 A Yes, I do, sir.

3 Q And you are still the author of this
4 incident report?

5 A I'm still the author.

6 Q And what you have done at 1347, or
7 1:47, is you have entered the charges relating to
8 the matter?

9 A Yes, we describe those as violation
10 codes.

11 Q And this is consistent with the work
12 that you have done up to that point?

13 A Yes, sir.

14 Q Now, sir, could you go to page 2428?
15 At 2428, sir, we are still dealing with
16 February 25th?

17 A That's correct, yes.

18 Q And what time is this entry being
19 made?

20 A 1702.

21 Q Okay. And who is making the entry?

22 A I'm making the entry.

23 Q So you are still the author of the
24 incident report?

25 A I'm still the author of the incident

1 report, sir.

2 Q And we can see here, sir, that at this
3 point, at 5:02, you still don't have the driver of
4 vehicle number 3, for instance, entered into the
5 report?

6 A That's correct, sir.

7 Q And if I ask you then to turn to page
8 2426, the same day, February 25th, at 1716, so 14
9 minutes later, you are still working on the
10 narrative -- the incident report?

11 A Yes, sir.

12 Q And you are clearly still the author?

13 A Yes, sir.

14 Q And you've got an indication in there
15 at this point, vehicle number 3 is the Hyundai
16 Accent?

17 A Yes, sir.

18 Q So that's at 5:16 on February 25th?

19 A That is correct.

20 Q Go to page 2425? This would be the
21 next entry, or access to the incident report,
22 would it not?

23 A Yes, sir.

24 Q February 25th, and what time is this
25 entry?

1 A 2215.

2 Q And what's happening at that time?

3 A It appears that Mr. Harry Bakema has
4 entered the incident report.

5 Q So you are no longer listed as the
6 author of the incident report, are you?

7 A Not at this point.

8 Q And Harry Bakema's name is at the top?

9 A That's correct, sir.

10 Q If you go to page 2424, we see the
11 same thing?

12 A Same thing, yes.

13 Q Harry Bakema is still the author?

14 A Yes, he is the author of that now,
15 yes.

16 Q Okay. But there is a difference
17 between 2425 and 2424?

18 A That's correct.

19 Q On 2425, where we first see Harry
20 Bakema's name in connection with the incident
21 report, in the row field name it says, "member
22 taking"?

23 A That's correct, yes.

24 Q And then you go to 2424, and in the
25 row where it indicates field name it says "member

1 reviewing"?

2 A That's correct, sir.

3 Q Does that mean he is now reviewing the
4 file?

5 A It appears that he put his name now as
6 the reviewer of the file.

7 Q And what does that mean?

8 A He would be the person responsible for
9 reviewing and assigning the file.

10 Q So does this offer you any guidance,
11 or refresh your memory, or bring you to any
12 conclusion about who, whose case it was as of
13 February 25th?

14 A As far as I'm concerned, sir, as
15 February 25, at 2215, it was Mr. Harry Bakema's
16 case.

17 Q If you look at page 2420, we see it is
18 February 25th, still at the time 2215, there are
19 old values and new values in this revision log.
20 Does this indicate that there were changes made?

21 A It indicates there were changes made
22 to this report.

23 Q And Harry Bakema is still indicated as
24 the author?

25 A Harry Bakema is indicated as the

1 author, sir.

2 Q Does that mean that you could have
3 been making changes?

4 A No, sir. If I was making changes, my
5 name would be as the author.

6 Q If you go to page 2405, we are still
7 looking at the revision log for the incident
8 report, and the date now is what?

9 A The 26th.

10 Q And there is an entry and a name, and
11 who is making the entries on --

12 A Harry Bakema.

13 Q Go to page 2395? This is the 27th of
14 February, sir?

15 THE COMMISSIONER: Sorry, what number
16 is that again?

17 MR. CLIFFORD: 2395.

18 THE COMMISSIONER: 2395, thank you.

19 BY MR. CLIFFORD:

20 Q So we have gone through the 26th, we
21 are now at the 27th. Sir, there is a revision log
22 for that day?

23 A That's correct, sir.

24 Q Who is the author?

25 A Harry Bakema.

1 Q Could I ask you, sir, to please turn
2 to page 2390? We are now moving to February 28th,
3 sir, 2005. There is a revision log for that day,
4 and who is the author?

5 A Harry Bakema.

6 Q Are you accessing the incident report
7 during this period of time, from the 25th to the
8 28th?

9 A It doesn't appear so.

10 Q If you were, would your name come up?

11 A My name would appear at the top, yes.

12 Q And why would it come up?

13 A If I made any revisions.

14 Q You would have to enter it as your
15 name?

16 A I would, yeah, it would be entered
17 under my identification, yes.

18 Q Now, sir, turn to page 2389? This is
19 March 1st, 2005. And what do we see there, sir?

20 A That's a revision I made.

21 Q So at this point you are involved and
22 you start writing the incident report?

23 A No, sir.

24 Q What do you do?

25 A At this point in time, sir, I changed

1 the member reviewing from Harry Bakema's name to
2 my name.

3 Q And why did you do that?

4 A Because by March 1st this
5 investigation had not been assigned out, and I
6 took it upon myself to assign it to myself at that
7 point in time.

8 Q Okay. So I think that answers the
9 question that I was pursuing in terms of whose
10 case was it. Would you say that as of March 1st
11 then, you considered it to be your case?

12 A As of March 1st, yes.

13 Q That's what I indicated to you.

14 A I'm sorry, I didn't hear you. That's
15 correct, sir.

16 Q And, in fact, you remain the author of
17 the incident report until its final version, is
18 that the case?

19 A No, sir.

20 Q Tell me about that?

21 A The incident report that I generated
22 on February 25th, I generated, I believe -- at
23 9:40 in the morning I believe I generated it. And
24 what I did, throughout the course of the days, I
25 made additions to that main incident report. And

1 I included in the narrative portion of the
2 incident report a paragraph that states:

3 "Police were dispatched to a three
4 vehicle accident on Highway 59 and the
5 Perimeter Highway involving a single
6 fatality. Chief Bakema, Constable
7 Graham, Constable Pedersen and
8 Constable Woychuk responded to the
9 scene. See officer narrative
10 reports."

11 Q And can I ask you, sir, what page are
12 you referring to?

13 A I'm sorry, I'm referring to page 24 --
14 excuse me.

15 THE COMMISSIONER: I'm sorry, I missed
16 it. Where are you?

17 THE WITNESS: Okay. I'm referring to
18 page 2433.

19 BY MR. CLIFFORD:

20 Q That's right. And this would be the
21 first description really that you are putting in
22 the incident report?

23 A That is correct, sir.

24 Q All right. And that, we see that
25 description in subsequent generations --

1 A Throughout the day, yes.

2 Q -- throughout the day. And what did
3 you want to tell us, sir, about that passage?

4 A Okay. That was on the 25th. I had
5 just put in a basic paragraph, just explaining
6 what the scene was. When I was going to generate
7 the rest of my report, when I came in on my next
8 shift, I would continue to use this incident
9 report. Anybody else, any other officer involved
10 would generate their own narrative reports. When
11 I came in -- I was off on the 26th, when I came in
12 on the 27th to open up this report, sir, I found
13 that at 2215 hours, as per the revision report, my
14 report had been deleted and re-entered by Harry
15 Bakema.

16 Q Did you speak to anybody about that,
17 sir, about what happened to the paragraph, your
18 first narrative paragraph in the incident report?

19 A No, sir.

20 Q Can you give any reason for that?

21 A I just generated a new -- a narrative
22 report under my name.

23 Q So from that point on, you start on
24 your own narrative report?

25 A I start on my own narrative, yes.

1 Q So according to the incident
2 narrative, between February 25th and March 1st, at
3 least as of 2215 on February 25th to March 1st,
4 your position is that Chief Bakema was the author
5 and had indicated that he was also the file
6 reviewer?

7 A That's correct, yes.

8 Q Now, after March 1st, you take over,
9 and that's indicated. Did anybody else have
10 access to it, to your knowledge, or did anybody
11 else access the incident report?

12 A Which -- my incident report, or the
13 main incident report?

14 Q Yes?

15 A I don't know if anybody else accessed
16 it.

17 Q Well, you would have been keeping
18 track of changes. We can see from March 1st to
19 the final version, there are many generations of
20 changes?

21 A Yes.

22 Q Were you keeping an eye on it?

23 A At that particular time, I wasn't
24 watching it particularly, you know, the changes
25 particularly, other than the fact that my report

1 had been deleted and Harry Bakema rewrote his
2 report on the incident report that I generated.

3 Q And then when he did that, you took
4 over, you took carriage of it on March 1st, did
5 you put your passage back in that you noted was
6 deleted?

7 A Yes, I put my name back as the
8 reviewing officer and assigned it to myself.

9 Q And did you put that passage back in
10 that you had indicated was deleted?

11 A No.

12 Q Why not?

13 A I don't know. I can't answer that.

14 Q So you neither spoke to Harry Bakema
15 about taking it out, as you say, nor did you put
16 it back in?

17 A Nor did I put it back in, no.

18 Q I would like to show you another
19 document, sir, it is P-2.85.8?

20 THE COMMISSIONER: The exhibit list
21 indicates that it is exhibit 100.

22 MR. CLIFFORD: That's right. And I
23 gave him the wrong reference and that's not the
24 document, unfortunately, that I was going to refer
25 to.

1 THE COMMISSIONER: Okay.

2 MR. CLIFFORD: If I could have just a
3 moment.

4 THE COMMISSIONER: Take your time.
5 Can I ask you this, why would you take over on
6 March the 1st, the case?

7 THE WITNESS: I was concerned because
8 there had been no investigator assigned to that.

9 THE COMMISSIONER: So since
10 February 25th, until March the 1st, no one had
11 been assigned to be the investigator?

12 THE WITNESS: No one had been assigned
13 to be the prime investigator, no.

14 THE COMMISSIONER: And you had never
15 discussed that with Mr. Bakema?

16 THE WITNESS: No, I hadn't discussed
17 that with Bakema, as to why no one had been
18 assigned.

19 THE COMMISSIONER: Your experience
20 with the department, you had been there since '83,
21 was it?

22 THE WITNESS: '86, sir.

23 THE COMMISSIONER: '86. Do you know
24 of any occasion where an investigation was just
25 left up in the air like that, without an

1 investigator being assigned?

2 THE WITNESS: I can't particularize
3 any one, anything like that. It is possible, but
4 generally an investigator would be assigned to a
5 case.

6 THE COMMISSIONER: Thank you.

7 MR. CLIFFORD: Mr. Commissioner, I
8 feel some sense of redemption here because I had
9 the right tab, P-2.85.8, but these documents were
10 added later to that tab, and I don't think that
11 they are with the material the clerk has, but it
12 would be page 2669.1.

13 THE COMMISSIONER: 2669.1 is the
14 letter from Mr. McDonald.

15 MR. CLIFFORD: Thank you,
16 Mr. Commissioner.

17 BY MR. CLIFFORD:

18 Q So we found that document, and what
19 I'm interested in putting to the witness is a copy
20 of what appears to be the East St. Paul Police
21 court folder. Take a moment, sir, and review that
22 document.

23 Now, I'm still pursuing the line of
24 questioning here in terms of whose investigation
25 is this, who is actually involved in making the

1 decisions. Do you recognize the document, sir?

2 A I recognize the document.

3 Q What is it?

4 A It is the front file folder of this
5 investigation.

6 Q And if I look at the front file
7 folder, I can see some handwriting?

8 A That's correct, sir.

9 Q Whose handwriting is that, sir?

10 A It is my handwriting, except on the
11 bottom where it says CPIC date, that would be an
12 added, that would be the handwriting of our clerk.

13 Q Now, if you could, sir, turn to page
14 2669.4, the next page? What is that, sir?

15 A There is a list attached to this, sir,
16 along with a card from Katherine Bueti.

17 Q Okay. No, apart from what is on the
18 page, what is the page, is it the other side of
19 the folder?

20 A It is the inside of the file folder.

21 Q So the inside of the front page of the
22 file folder?

23 A The inside cover of the front file
24 folder.

25 Q And there is a list there, or two

1 lists?

2 A Appears to be a couple of lists, yes.

3 Q And whose handwriting is that?

4 A The handwriting is, except for the
5 very last where it says "report to ME's office,"
6 that handwriting is Chief Bakema's.

7 Q So you are saying all of the
8 handwriting on the inside front folder, you can
9 identify it as Harry Bakema's.

10 A That's right, I can identify the
11 handwriting, yes.

12 Q With the exception of a note "report
13 to ME's office"?

14 A And with the exception of a short note
15 beside, "Carter to change supp blood to breath."
16 And there is a little dash, and it says, "I
17 advised Prosecutor Minuk." The words, "I advised
18 the Prosecutor Minuk" is mine.

19 Q Okay. So you can tell what is your
20 handwriting, and I will come back to that, but for
21 the rest of it, you are able to identify it as the
22 handwriting of Harry Bakema?

23 A That is correct, yes.

24 Q And what is quite apparent here, sir,
25 is that on the inside of the front file folder,

1 there is a list, and it has got -- the first list
2 is with respect to notes, the officers', I take
3 it, that are involved?

4 A That's correct, yes.

5 Q Okay. And then under that there is a
6 notation, "RCMP officer's report" and then
7 "witness statements"?

8 A That is correct, sir.

9 Q Garth Shaw, Vernon Stevens, Denise
10 Bukowski, Selkirk ambulance attendant; is that
11 your handwriting, "Ted Rosser"?

12 A No, that's not my handwriting.

13 Q You indicated that on March 1st, you
14 become the reviewer and it is your case.

15 A By my choice at that time.

16 Q Well, Denise Bukowski's name is on
17 this list of witness statements?

18 A Yes.

19 Q And this is Harry Bakema's
20 handwriting?

21 A That's correct.

22 Q And Denise Bukowski told us she didn't
23 come into the police until a week after the
24 accident?

25 A That's correct.

1 Q So if it is your case, why is Harry
2 Bakema making lists of witnesses on the inside of
3 the front folder?

4 A I don't know when he made that list,
5 sir.

6 Q Well, we know that if he is talking
7 about Denise Bukowski, and we will ask him about
8 it, but if he is talking about Denise Bukowski,
9 she didn't come forward until a week after the
10 accident. Safe bet that he made the list
11 March 2nd or thereafter?

12 A Yes, sir.

13 Q So if it is your case, why is Harry
14 Bakema making a list of witnesses on the inside of
15 the front folder?

16 A Mr. Bakema continued to become
17 involved in the case and participating in the
18 case.

19 Q Safe to say, sir, even at that point,
20 when this list is being made, there is still no
21 clear direction as to whose file this is?

22 A It is safe to say, yes.

23 Q You agree with that?

24 A Yes, sir.

25 Q So when you indicated that on

1 March 1st, you took the file over because you saw
2 that there was, it needed work, you will agree
3 with me now, sir, that certainly even as of
4 March 2nd, March 3rd, there is no clear indication
5 as to whose case this was?

6 A No, sir.

7 Q Now, I will follow up with you on the
8 note that you indicated on the front of this
9 folder, that you changed the demand from blood to
10 breath. I can't read the writing, sir, but you
11 advised the prosecutor, Mr. Minuk. Are you
12 indicating here, on the inside of the folder, that
13 at that point you recognized that this is
14 something that needed to be addressed? It goes
15 without saying, you made the note, you obviously
16 recognized that it was something that had to be
17 addressed?

18 A Which part of the note, sir?

19 Q I advised Prosecutor Minuk --

20 A Yes.

21 Q -- with respect to the change?

22 A Yes.

23 Q When did you make that note?

24 A That note would have been made -- that
25 note would have been made after my first meeting

1 with Mr. Minuk.

2 Q You didn't meet with Mr. Minuk until
3 February 24th of 2006?

4 A That's correct.

5 Q Is that one of the things that you
6 told him on February 24th, 2006?

7 A I believe that's one -- that is
8 something that I would have spoken about, yes,
9 sir.

10 Q And these witness statements, Garth
11 Shaw, Vernon Stevens, Denise Bukowski, Kathy
12 Beattie, if this list was made approximately seven
13 days or so after the accident, it is Chief Bakema
14 that's creating this witness list? In fact, we
15 know he went to interview Kathy Beattie?

16 A That's correct, sir.

17 Q Are you making any suggestions in
18 terms of who should be interviewed?

19 A Not at this point in time, sir.

20 Q So the answer to the question, even
21 getting into the beginning of March, as to whose
22 case was it, it was still very much up in the air?

23 A I would tend to agree with that. It
24 was not clear-cut, no.

25 Q And would you not agree with me, sir,

1 given the seriousness of the case, the tragedy
2 involved, the fact that you have got a police
3 officer charged, that that ought not to have been
4 the situation? This case should have been clearly
5 directed to a senior officer to take over and do
6 what had to be done?

7 A Absolutely.

8 Q Who is directing the interviewing of
9 witnesses?

10 A It would have been Harry Bakema.

11 Q How were the resources of the East St.
12 Paul Police at that time? Were they sufficient to
13 conduct these interviews?

14 A The interviews noted on here?

15 Q Yes?

16 A I believe so.

17 Q And apart from conducting an accident
18 reconstruction, a forensic accident reconstruction
19 which would require a technical investigator, did
20 East St. Paul Police have sufficient resources to
21 investigate the case?

22 A I believe so.

23 Q The entire case?

24 A I believe so. There would have been
25 probably some difficulty in interviewing all the

1 peripheral police officers who were with the
2 accused the night before, but I believe we could
3 have done it. It would have taken probably more
4 time but...

5 Q And we know that East St. Paul Police
6 had carriage of the investigation and was
7 responsible for assisting the prosecution?

8 A That's correct, sir.

9 Q It was an East St. Paul Police case.
10 You laid the charges?

11 A That's correct, sir.

12 Q Whoever the investigating officer
13 ultimately was, it was an East St. Paul Police
14 case?

15 A It was an East St. Paul Police case,
16 yes.

17 Q You had the assistance of the RCMP to
18 do the forensic traffic investigation?

19 A That is correct, sir.

20 Q But you also had assistance from the
21 Winnipeg Police Service?

22 A That is correct, sir.

23 Q And the Winnipeg Police Service
24 conducted the interviews of the Winnipeg Police
25 Service members that were with Derek Harvey-Zenk

1 the night before, and the morning of, leading up
2 to the accident?

3 A That is correct, sir.

4 Q Why are they doing this, sir? Why is
5 the Winnipeg Police Service investigating
6 witnesses in a case that East St. Paul Police has
7 carriage of?

8 A That was done at the request of Chief
9 Bakema.

10 Q Were you at all concerned, sir, with
11 respect to the perception of a conflict of
12 interest of the Winnipeg Police investigating one
13 of their own members?

14 A I wasn't concerned regarding a
15 conflict of interest at that time, sir. What I
16 was concerned about is why the Winnipeg Police
17 Professional Standards Unit was called in to
18 investigate this and perhaps not the, you know,
19 major crimes unit of Winnipeg Police, or something
20 to that, you know, detectives, to that effect.
21 That's what my initial concern was.

22 Q Well, you heard from the Winnipeg
23 Police Service Professional Standards Unit in the
24 morning when Harvey-Zenk was at the station, on
25 February 25th?

1 A That's correct, sir.

2 Q We heard earlier that within three
3 hours of him being there, you are getting a call
4 from Winnipeg Police Service Professional
5 Standards Unit?

6 A That's correct, sir.

7 Q And you gave them a full account. You
8 told the Commission earlier today that you told
9 them everything you knew about the case up to that
10 point?

11 A Up to that point, sir.

12 Q And now here they are, you say at the
13 request of Harry Bakema, and they are conducting
14 all of the interviews of the Winnipeg Police
15 Officers that were with Derek Harvey-Zenk?

16 A That's correct.

17 Q And you had no concern with respect to
18 the Winnipeg Police Service investigating itself,
19 other than you thought maybe major crimes should
20 do it?

21 A Initially, yes, that's correct.

22 Q Let me ask you this; why couldn't East
23 St. Paul Police do it?

24 A Quite frankly, I don't know why we
25 couldn't do it.

1 Q Let me put this question to you, sir:

2 Could you have done it?

3 A I believe we could have done it. It
4 may have taken more time because of manpower, but
5 I believe we could have done it.

6 Q Well, we are talking -- we are not
7 talking about a great deal of witness interviews,
8 particularly the Winnipeg Police Officers that
9 were with Derek Harvey-Zenk at the drinking
10 establishment and at the residence of the police
11 officer, you are talking under 15 interviews?

12 A That's correct.

13 Q You certainly would have had the
14 resources, I assume, to do that much?

15 A That's correct.

16 Q A 15 witness case is not going to
17 break the back of the East St. Paul Police
18 Service?

19 A I don't believe, sir.

20 Q Did you follow up with anybody and
21 say, look, why is the Winnipeg Police Service
22 doing interviews that we should do?

23 A I didn't follow that up with the
24 Chief. He made the decision.

25 Q Were you consulted in that decision?

1 A No, sir, I was told what was going to
2 happen.

3 Q Did you read the statements of the
4 Winnipeg Police Officers?

5 A I never got access to the statements
6 of the Winnipeg Police Officers, I got access to
7 the synopsis of the statements.

8 Q In the end, you've agreed that
9 ultimately this became your case?

10 A Ultimately, yes.

11 Q Well, we know that on February 22nd,
12 2006, that Harry Bakema was no longer with the
13 East St. Paul Police?

14 A That's correct, yes.

15 Q So it is your case?

16 A Yes.

17 Q And you never took the opportunity to
18 get the interviews of the Winnipeg Police members
19 and read them?

20 A My understanding is that the
21 interviews of the Winnipeg Police members went
22 directly from the Professional Standards Unit to
23 Mr. Minuk. I obtained the synopsis of the
24 interviews, but I never obtained them until August
25 of '05, when I received them from Mr. Bakema.

1 Q Now, the Winnipeg Police Service
2 didn't interview just the Winnipeg police officers
3 that were with Derek Harvey-Zenk, did they?

4 A No, sir.

5 Q Who else did they interview?

6 A I believe they interviewed the staff
7 at Branigan's.

8 Q Okay. And for further clarity, the
9 staff at Branigan's, you are referring to the
10 civilians who were employed at Branigan's and who
11 were present when Derek Harvey-Zenk and the other
12 officers were there February 24th and
13 February 25th?

14 A That's correct, sir.

15 Q And can you tell the Commission, why
16 did the Winnipeg Police Service interview these
17 civilian witnesses?

18 A At the request of Harry Bakema.

19 Q Were you involved in this process or
20 that decision?

21 A I was told.

22 Q And I take it, sir, that you would
23 clearly agree with me that you had the resources
24 to conduct those civilian interviews?

25 A I believe we could have.

1 Q And there was no reason whatsoever for
2 Winnipeg Police to be interviewing civilian
3 witnesses at the drinking establishment, was
4 there?

5 A No.

6 Q They had no more connection with those
7 people than East St. Paul did?

8 A That is correct, sir.

9 Q What about the ultimate decision of,
10 okay, who is getting on the list to be
11 interviewed, did you participate in that? Did you
12 collaborate with Harry Bakema on that?

13 A No, I didn't collaborate on this list
14 here. This is his list.

15 Q No, but I mean in discussions with
16 him, as the case progressed, you must have perhaps
17 saw that people should be involved, or followed up
18 with. Anything like that happening between you
19 and Harry Bakema?

20 A There wasn't a lot of discussion about
21 it, sir.

22 Q Were there any problems between you
23 and he at the time?

24 A There were problems in the department,
25 sir.

1 Q This Commission is interested, sir,
2 in, amongst other things, the quality of the
3 investigation. And did those problems come to
4 bear on the quality of the investigation and the
5 actions that were taken?

6 A There would probably be some relation
7 to that, sir.

8 Q Those differences were not put aside
9 in order to take the best course of action, do the
10 best things from the investigative perspective?

11 A I don't necessarily believe they were
12 differences per se, sir.

13 Q Was there ever any consideration, from
14 your perspective, to interviewing Tara Taman, who
15 the Commission has heard was actually at the scene
16 of the accident on February 25th?

17 A No, sir.

18 Q Same could be said, I take it, for her
19 sister, Kristin, who was also at the scene?

20 A No, sir.

21 Q Was there ever any consideration from
22 you, or consultation with you, with Harry Bakema,
23 about going out and reinterviewing people,
24 following-up on what were -- what might be
25 described as scant accounts or interviews?

1 A Most of the interviews were, most of
2 the statements were taken by Harry Bakema. So for
3 me to suggest to him at that time that they were
4 not sufficient, I did not suggest that to him.

5 Q Who was responsible for keeping track
6 of exhibits in the case?

7 A That would be the -- well, that would
8 be the investigating officer to keep track of the
9 exhibits. It would be up to the seizing officer
10 to keep continuity of the exhibits.

11 Q So, ultimately, the investigating
12 officer, who is you in the end, you are
13 responsible for the exhibits?

14 A In the end, yes.

15 MR. CLIFFORD: Could you provide the
16 witness with E-1.23.1? Before I get you to read
17 that, I'm just going to take a moment. Madam
18 clerk, I want to take a moment and make sure that
19 I entered as an exhibit the East St. Paul Police
20 file folder, the front and the inside cover,
21 because I know I referred to it quite a bit. I
22 just want to make sure I have got it in as an
23 exhibit.

24 THE COMMISSIONER: We can't proceed
25 without the reporter being ready.

1 MR. CLIFFORD: We are going to enter
2 as an exhibit now, the East St. Paul file folder
3 cover, and the inside of that cover.

4 (EXHIBIT 119: P-2.85.9
5 Correspondence from Fillmore & Riley,
6 May 28, 2005)

7 MR. CLIFFORD: Exhibit 119, and we
8 will give you a tab reference, P-2.85.9.

9 BY MR. CLIFFORD:

10 Q You have another document there in
11 front of you now, E-1.23.1. Take a look at that,
12 sir? And this is the East St. Paul Police exhibit
13 report?

14 A That is correct, sir.

15 Q And that is created March 1st, it
16 looks like 7:34 p.m.?

17 A That's correct, sir.

18 Q You got yourself in there as the
19 investigating officer?

20 A That's correct, sir.

21 Q Page 467, 468, we have got some lists
22 here. These are the items that were taken from
23 Mr. Harvey-Zenk's vehicle?

24 A That is correct, sir.

25 Q And there is an indication here that

1 they were returned to him on May 5th of 2005?

2 A That is correct, sir.

3 Q At 1346 hours?

4 A That is correct, sir.

5 Q Now, you would agree with me that one
6 thing that the police have to do in conducting an
7 investigation is keep track of exhibits. Things
8 that are seized, for instance, from a motor
9 vehicle in a fatality, everything should be
10 documented and treated as an exhibit?

11 A That's correct, sir.

12 Q And that's why we get into the minutia
13 of detail of tagging a golf ball and coffee cup?

14 A That's correct, sir.

15 Q Where is the police uniform in the
16 exhibit list of this case?

17 A It is not on here, sir.

18 Q And whose responsibility is that
19 ultimately to track?

20 A It would be the investigating officer,
21 sir.

22 Q Do you recall any mention, sir, of
23 Mr. Harvey-Zenk having a cell telephone?

24 A I can't recall right now, sir.

25 Q Well, there is nothing logged, sir.

1 So apart from the exhibit log -- I would ask you
2 to consider this carefully -- did the issue of a
3 cell telephone in connection with Derek
4 Harvey-Zenk come up?

5 Sergeant Carter, I don't mean to
6 interrupt your examination of those documents, but
7 I think I can assist you in telling you, sir, that
8 you can spend as much time as you like looking at
9 them, but you are not going to find a reference to
10 a cell telephone in the documents. I'm asking
11 you, on your personal recollection in this case,
12 was that something that was discussed or
13 investigated?

14 A I don't recall, sir.

15 THE COMMISSIONER: Did you ever track
16 down the uniform?

17 THE WITNESS: Yes, I did.

18 THE COMMISSIONER: And was it included
19 as an exhibit?

20 THE WITNESS: It was not included as
21 an exhibit.

22 THE COMMISSIONER: Where did you find
23 it?

24 THE WITNESS: I didn't find it. I was
25 told by Mr. Bakema that he returned it directly to

1 the Professional Standards Unit.

2 THE COMMISSIONER: Sorry?

3 THE WITNESS: I was told by Mr. Bakema
4 that he returned it directly to the Professional
5 Standards Unit, without logging it as an exhibit.

6 BY MR. CLIFFORD:

7 Q Did you learn about the circumstances
8 of the seizure of the police uniform?

9 A Yes, I did.

10 Q Did you question it?

11 A No, because at that time my
12 understanding is that the uniform, what I learned
13 is the uniform shirt, I believe it was, I never
14 saw it, the uniform shirt was found by Constable
15 Graham, who in turn turned it over to Chief
16 Bakema, who in turn returned it to the
17 Professional Standards Unit.

18 Q So, what you knew was that a shirt was
19 siezed by Officer Graham, who gave it to Officer
20 Bakema, who gave it to the Winnipeg Police?

21 A That's correct, sir.

22 Q Did you know anything else about it?

23 A I don't know anything else about it.

24 Q Other than the fact that it was an
25 item that was taken from that truck and should

1 have been listed as an exhibit?

2 A That's correct, sir.

3 Q I'm going to ask you some questions
4 now, sir, about your visit with Harry Bakema to
5 the Sveinson residence. The Commission has heard
6 evidence that on March 1st, 2005, you and Chief
7 Bakema attended the Sveinson residence. And that
8 would be the parents of Crystal Taman. And you
9 spoke with the family to update them, sir, on the
10 progress of the investigation. Do you recall
11 that?

12 A I recall that visit, sir.

13 Q And could you tell the Commissioner
14 about what happened that evening?

15 A I believe that was an afternoon, sir.
16 And the reason was that we wanted to update them
17 on the incident. A press release had been
18 released. That morning I had sworn out the
19 charges against Mr. Mordenzenk, and I advised
20 Mr. Bakema that we should be speaking with the
21 family prior to the media release.

22 Q So you wanted to speak to the family
23 before anything went into the media. And what was
24 the family told?

25 A Mr. Bakema spoke with the family. We

1 brought, I believe we brought the media release
2 along with us. They were advised of the charges.
3 I expressed my condolences to the family. And
4 Mr. Bakema -- Mr. Bakema drove the conversation
5 from there on.

6 Q So, apart from giving them your
7 condolences, is it your position, sir, that you
8 didn't say anything else to them?

9 A I didn't say anything else to them,
10 no, sir, I don't recall saying anything else to
11 them.

12 Q Why would you go? Why would you go
13 see the family?

14 A I accompanied the Chief.

15 Q What was the Chief saying to them?

16 A I believe the Chief, I'm going by
17 recollection here now, I believe the Chief told
18 them who had been charged. I believe the Chief
19 told them what the charges were. I don't recall
20 what else he said.

21 Q Sir, we've heard evidence at this
22 Commission, from the family members, that they
23 certainly recall you being present, and the Chief
24 of Police at the time being present, and talking
25 to them. And they said they had lots of questions

1 for you. Do you recall any questions being put to
2 you and Chief Bakema?

3 A There were probably questions put, but
4 I don't recall questions put to me that I
5 answered.

6 Q Could I conclude from what you are
7 telling me, sir, that you may not recall what was
8 said at the meeting at the Sveinson residence?

9 A I may not recall what exactly was
10 said, no, sir.

11 Q And would you include in that lack of
12 recollection things you yourself said to the
13 Sveinson and Taman families?

14 A I don't recall saying very much to
15 them, sir.

16 Q We've heard evidence, sir, that
17 comments were made to the family, words to the
18 effect like, "we got him"?

19 A That would not be me, sir.

20 Q Words to the effect like, "we got him,
21 he refused," that there was even discussions about
22 what they might expect as potential sentences in
23 this case?

24 A I would not discuss a sentence with
25 them, sir.

1 Q Well, are you indicating that it
2 wasn't said, or raised, or that you don't recall,
3 or that it was somebody else who was saying these
4 things?

5 A I'm suggesting sir, that it was not me
6 that said anything about a sentence.

7 Q What about expressing confidence in
8 the police investigation up to that point?

9 A Only to the effect that the charges
10 had been laid, because I'm the one who laid the
11 charges.

12 Q Well, in your mind, the individual was
13 charged with a refusal?

14 A That is correct, sir.

15 Q You knew that that was a charge, it
16 was in the press release. Did you express to
17 them, look, this is an easy charge to prove? He
18 refused, we got him?

19 A I don't believe I said that, sir.

20 Q What about, look, there is no skid
21 marks, he drove straight into the vehicle, a
22 description of what happened?

23 A I wasn't at the scene, sir, I don't
24 know that.

25 Q But you knew by that point what the

1 theory of the case was?

2 A Basically, yes.

3 Q Because this family has indicated to
4 the Commission, sir, that they learned about this
5 case during that visit, and they felt as though
6 there was an expression of confidence in the
7 strength of the case. And I take it, it is your
8 unequivocal position that you had nothing to do
9 with leaving them with that impression?

10 A I would agree with that, sir, in the
11 sense that I did tell them, or I'm sure I told
12 them, since I laid the charges, and that's an
13 assumption of mine, I don't recall specifically,
14 but I would have told them what the charges are.

15 Q I take it, sir, assuming an expression
16 of confidence is given, that you recognized the
17 potential that that would have to create
18 expectations for this family? You have got the
19 Chief of Police and the second in command from
20 East St. Paul Police in your house days after you
21 have lost a loved one. There is an expression of
22 confidence. Now, I know that you are not going to
23 necessarily agree with that happening, but you
24 will agree with me, sir, that in those
25 circumstances it is going to create an expectation

1 with these people?

2 A I would say so, yes.

3 Q And I take it, you would agree that it
4 would also, if that expectation was not met, sir,
5 or achieved, it would cause them tremendous
6 suffering and confusion, because it is difficult
7 to reconcile what the police are telling you with
8 what you are actually experiencing?

9 A Absolutely.

10 Q So if that happens, sir, and I know
11 that you are not going to necessarily recall or
12 agree with me that you played any role in it, but
13 if it did happen, you would agree with me, it
14 ought not to have happened?

15 A It ought not to have happened.

16 Q Police officers shouldn't go to the
17 residences of persons who are victims in a
18 tragedy, and I'm not saying in all circumstances
19 but generally speaking, they shouldn't go to the
20 residences of persons involved in tragedies that
21 are victims, and start expressing degrees of
22 confidence and discussing potential outcomes in
23 sentences?

24 A One ought not to, no.

25 Q But on the other hand, what the police

1 should do is take a compassionate approach and
2 tell the family, look, these are the details that
3 we have that we can disclose to you. Right?

4 A That's correct.

5 Q Because there are times in the course
6 of a police officer's investigation where you just
7 simply can't give all of the information you want.
8 You agree with that, sir?

9 A I do agree, sir.

10 Q That may be as a result of, number
11 one, not having the information to give; right?

12 A That's correct.

13 Q Or number two, having it but not being
14 able to put it into the public realm to protect
15 the case?

16 A That's correct, sir.

17 Q But you should try to be as
18 compassionate as possible, and give the family as
19 much information as you can about what is
20 happening with the case, where you are, what the
21 charges are, et cetera?

22 A That's correct.

23 Q Because it is not up to the police to
24 create a paradigm of it is us and them, we are
25 going to act for you, we have got him, is it?

1 A No. No, it is not.

2 Q Now, sir, I want to ask you about a
3 memo that was sent to Brian Kaplan, P-2.85.5, it
4 is at page 2662. I would like to enter it as an
5 exhibit. And I think you might have a document
6 there that I haven't put in yet.

7 THE CLERK: 120.

8 MR. CLIFFORD: And if the witness has
9 a document that hasn't been entered yet, I will
10 try to keep up.

11 (EXHIBIT 120: E-1.23.o Notice from
12 East St. Paul Police to Brian Kaplan,
13 March 1, 2005)

14 MR. CLIFFORD: Am I current?

15 THE CLERK: Yes.

16 MR. CLIFFORD: Exhibit 120.

17 THE CLERK: The exhibit report will be
18 121.

19 MR. CLIFFORD: That should be 121, the
20 exhibit report, I didn't put it in when I was
21 examining the witness, so it is now exhibit 121.

22 (EXHIBIT 121: E-1.23.1, Exhibit
23 report)

24 BY MR. CLIFFORD:

25 Q Okay. We are current on the exhibits.

1 You have got P-2.85.5, page 2662, which is exhibit
2 120. Take a moment, sir, and examine that
3 document? What is this, sir?

4 A That's a cover letter that goes with
5 the Crown package.

6 Q And the date is?

7 A March 1st, 2005.

8 Q And it is addressed to Brian Kaplan?

9 A That is correct, yes.

10 Q And why are you sending this to Brian
11 Kaplan?

12 A I believe that's who I was originally
13 directed to send it to.

14 Q Did you know why?

15 A I believe he is the Director of
16 Prosecutions.

17 Q And who are you saying directed you to
18 send it to him?

19 A I believe it was -- I believe it was
20 Martin Minuk, when I spoke with him. I'd have to
21 check that.

22 Yes, it was at -- yeah, I was directed
23 to send the -- and this is send this to Brian
24 Kaplan's office, and I have the name Colleen
25 Ireton. I take it that was his assistant.

1 him that you may still have further witnesses to
2 interview in regard to liquor consumption of the
3 accused prior to the collision. Now, we know that
4 it is not the East St. Paul Police that is doing
5 this, it is the Winnipeg Police Service?

6 A That is correct, yes.

7 Q And you tell him that you are also
8 waiting on the RCMP traffic reconstruction or
9 analyst report?

10 A That is correct, sir.

11 Q You are referring to these items
12 because, in general, there is an obligation for
13 the police to provide to the Crown Attorney,
14 notes, reports, memoranda, witness statements, et
15 cetera? You have to disclose this to the Crown
16 Attorney?

17 A That is correct, sir.

18 Q You give the file to the Crown
19 Attorney?

20 A That's correct, sir.

21 Q Because you are aware of the fact, of
22 course, that the Crown Attorney has a requirement
23 that they have to disclose documentation to the
24 accused's counsel, or the accused themselves if
25 they are unrepresented?

1 A That is correct, sir.

2 Q So you provide the Crown with all of
3 the information you can, because you realize that
4 there is a constitutional obligation upon the
5 Crown to disclose the entire case, good, bad or
6 otherwise, to the defence?

7 A That is correct, sir.

8 Q And you don't have the liberty of not
9 putting things in the Crown package?

10 A That is correct, sir.

11 Q So if it is coming at a later stage,
12 it has got to get to the Crown Attorney's office?

13 A That is correct, sir.

14 Q And that responsibility is incumbent
15 upon the investigating officer?

16 A That is correct, sir.

17 Q Because if you are in day three of a
18 trial, and a new disclosure comes out, and it is
19 learned that that disclosure has been in the
20 possession of the police, as opposed to the
21 Crown's office, it falls on your shoulders?

22 A That is correct.

23 Q Now, with respect to notes, there is a
24 requirement that notes be provided to the Crown
25 and, thereafter, furnished to the accused or their

1 counsel?

2 A That is correct, sir.

3 Q Okay. Now, there are some documents
4 that, I take it, you might be of the view have
5 certain privilege, that they don't necessarily go
6 any further than between the police and the Crown?
7 There might be some working product between
8 yourself and the Crown Attorney, your
9 understanding is that either you or the Crown
10 would hold on to that. But generally speaking,
11 all police officer notes, reports, witness notes,
12 reports, et cetera, documents, goes to the Crown
13 for disclosure?

14 A Yes, sir.

15 Q Did that happen in this case?

16 A No, sir.

17 Q Whose notes didn't make it to the
18 Crown?

19 A One set of notes that didn't make it
20 to the Crown was notes of Mike Krawchuk. The
21 other set of notes was a second set of notes that
22 was discovered, and authored by Harry Bakema, that
23 never made it to the Crown.

24 Q Okay. I will deal with Officer
25 Krawchuk's first. What happened to those notes?

1 Why didn't they get to the Crown?

2 A I spoke with Officer Krawchuk.

3 Apparently, when I was going through the file, I
4 noted that his notes were not there. I wanted to
5 check on his involvement. I checked on his
6 involvement. His involvement on the date of the
7 incident was essentially traffic duty. And I had
8 asked him to escort Mr. Harvey-Zenk to the
9 washroom. He indicated to me he had turned his
10 notes over to Harry Bakema and that Harry Bakema
11 used those notes to craft his notes.

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

14 THE WITNESS: That Harry Bakema used
15 Krawchuk's notes to craft some of his notes.

16 BY MR. CLIFFORD:

17 Q So the failure of the notes of Officer
18 Krawchuk to be provided to the Crown, the
19 explanation to you was, from him, was that he
20 provided them to Harry Bakema?

21 A That's correct, sir.

22 Q And do you know what happened to them,
23 from that, apart from the fact that you are saying
24 that Harry Bakema used them for a certain purpose,
25 but what happened to the actual physical notes?

1 A I have no idea, sir.

2 Q Did you ever find them?

3 A No, I never did find them, and I got a
4 new set from Mr. Krawchuk.

5 Q Now, dealing now with the second set
6 of notes that you referred to, you said there was
7 a set of notes of Harry Bakema that didn't make it
8 to the Crown for disclosure?

9 A That's correct, sir.

10 Q And before we get into the
11 circumstances of that, I want to ask you about the
12 mere concept of having a second set of notes.
13 Oftentimes, police officers, you have your
14 duty-book, and you create your duty-book
15 chronologically, there is numbered pages, and you
16 run through it. You will finish your duty-book
17 and then you start another one. In a case, if it
18 is a long case, you might have two sets of notes.
19 You might have duty-book one and duty-book two,
20 and duty-book three. If it is a long case, you
21 may fill up more than one book, or go from one
22 book to the other?

23 A That's correct.

24 Q Is that what you are talking about two
25 sets of notes?

1 A No, sir.

2 Q What do you mean?

3 A Two sets of notes in the same
4 note-book but in different locations.

5 Q For different time entries?

6 A They were not similar in nature as far
7 as time entries.

8 Q Okay. So there is two --

9 A I'm sorry --

10 Q -- two sets?

11 A Two sets of notes.

12 Q Okay. Two entries of Harry Bakema's
13 in a notebook?

14 A Two separate entries in separate areas
15 of the notebook.

16 Q And you determined that only one of
17 them made it to the Crown for disclosure?

18 A That is correct, sir.

19 Q How did you determine that?

20 A When I was going through Harry
21 Bakema's notebook, when he was no longer with our
22 department, actually, he was requested to turn his
23 notebook in to the municipal lawyer. He did. I
24 picked up the notebooks. I started going through
25 the notebook, and noted that there were two --

1 that there was a set of notes that had never been
2 submitted with the file.

3 Q And did you take steps to disclose
4 that to the Crown?

5 A Yes, I did.

6 Q And we will come back to that, sir.

7 A Yes, sir.

8 Q The other thing that the memorandum to
9 Brian Kaplan suggests, sir, is that as of
10 March 1st, 2005, you seem to be presenting
11 yourself to Brian Kaplan as the investigating
12 officer?

13 A Yes.

14 Q Would you agree that you might be
15 creating the expectation, or the impression that
16 you are the investigating officer?

17 A That may have created that expectation
18 or, you know, yes.

19 Q And in fact, as you've indicated
20 earlier, that question was very much up in the air
21 in terms of who should have been doing what they
22 should have been doing?

23 A Yes, sir.

24 Q I want to ask you now, sir, about
25 technical accident reports, TARs, traffic accident

1 reports, pardon me.

2 A Yes.

3 Q When you get involved in a traffic
4 accident in the Province of Manitoba, I take it,
5 in certain circumstances you have got seven days
6 to get in and fill out a traffic accident report?

7 A That is correct, sir.

8 Q And you can fill in that traffic
9 accident report, I take it, in -- is it any police
10 station in the province?

11 A Pretty well any police station in the
12 province, yes, sir.

13 Q Now, we've heard much in this
14 Commission about traffic accident reports, and the
15 reasons for Derek Harvey-Zenk, for being brought
16 to the station. And one of the reasons that was
17 suggested was to do a traffic accident report. I
18 take it you are aware of that?

19 A I'm aware of that, sir.

20 Q In fact, you made reference to it and
21 reviewed it in documentation?

22 A Yes, sir.

23 Q Now, people are not normally taken
24 away from the scene of an accident, and detained
25 in the back of a police car, and taken to the

1 police station for the purpose of preparing a
2 traffic accident report?

3 A Not normally, sir.

4 Q No. You don't have the authority to
5 do that, do you?

6 A No, sir.

7 Q And moreover, it is just not the
8 practice, is it?

9 A No, sir.

10 Q Somebody is at the scene of an
11 accident, and you don't have any reason to detain
12 them, and you say, look, you have got to fill out
13 a traffic accident report, and they say yeah, I
14 will be back in six days to fill it out, where do
15 you want me to go? That's the end of the
16 discussion, right? You can't make them go. You
17 can't take them for the purpose of doing it, can
18 you?

19 A Not against their will, no, sir.

20 Q We've heard that, again, evidence
21 centering on that issue over whether Derek
22 Harvey-Zenk was brought to the East St. Paul
23 Police under the pretext of filling out one of
24 these reports. Ultimately, on February 25th, was
25 it ever filled out?

1 A No, sir.

2 Q Subsequent to February 25th, did it
3 get filled out?

4 A Yes, it did, sir.

5 Q And I want to ask you some questions
6 about that, sir. I understood that you received a
7 telephone call asking some questions about the
8 completion of the traffic accident report?

9 A What -- can you reference me as to
10 what date?

11 Q The information that we have, sir, is
12 that on March 16th, 2005, you received an inquiry
13 about the completion of a traffic accident report
14 by Derek Harvey-Zenk?

15 A That is correct, sir.

16 Q Who calls you, sir?

17 A Katherine Bueti.

18 Q And who is that person?

19 A I believe she works with Gindin,
20 Wolson, Simmonds.

21 Q So you understood her to work for a
22 law firm?

23 A That's correct, sir, yes.

24 Q And what did she want?

25 A She called to advise that, in speaking

1 with Richard Wolson, they would like to have a
2 copy of the police report forwarded to them prior
3 to completing a traffic accident report.

4 Q So you understood that there was a
5 request made for you to furnish the police report
6 to Derek Harvey-Zenk before he filled out the
7 traffic accident report?

8 A For a copy of the police report to
9 the -- to, I believe, Ms. Bueti, not to Derek
10 Harvey-Zenk.

11 Q That was counsel for Derek
12 Harvey-Zenk?

13 A Yes. Yes, sir, that's correct.

14 Q So have I got this right, sir, they
15 wanted a copy of the police report prior to
16 completing the traffic accident report?

17 A That is correct, sir.

18 Q Well, that's not the way it works, is
19 it?

20 A No, sir.

21 Q And what was your response?

22 A I advised that a traffic accident
23 report is required within seven days, and that
24 they could obtain a copy of the police report from
25 Prosecutor Marty Minuk.

1 Q Well, he is beyond the seven days at
2 that point?

3 A Yes, it is beyond the seven days, yes.

4 Q Is it an offence to fail to fill out a
5 traffic accident report in seven days?

6 A It is an offence to fail to fill out a
7 traffic accident report after the seven days.

8 Q Did you lay those charges?

9 A No, I didn't lay those charges, sir.

10 Q Do you ever lay those charges?

11 A Rarely. Rarely. We usually give
12 everybody an opportunity to come in to fill out
13 the traffic accident report before we lay those
14 charges.

15 Q So you responded by indicating to
16 Ms. Bueti that this was supposed to have been done
17 within seven days?

18 A That's correct.

19 Q And what else did you say?

20 A That as far as the police report, she
21 could obtain a copy from Marty Minuk.

22 Q The disclosure process is that you
23 give the file to the Crown, and the Crown
24 discloses it to the defence?

25 A That's correct.

1 Q Am I correct in that?

2 A That's correct, sir.

3 Q It is not the standard, I take it, or
4 accepted practice that the police would give
5 disclosure directly to an accused or their lawyer?

6 A No, sir.

7 Q It is done through the Crown?

8 A It is done through the Crown.

9 Q And careful track is kept of what
10 documents are disclosed, and when?

11 A That's correct, sir.

12 Q Did you give any advice with respect
13 to whether Mr. Harvey-Zenk should get into the
14 East St. Paul Police Station to do what he was
15 supposed to do within seven days?

16 A Other than telling Ms. Bueti that a
17 traffic accident report is required from him, we
18 wanted a traffic accident report.

19 Q Did you follow up with Mr. Minuk about
20 the request that was made?

21 A Yes, I did.

22 Q Now, I would like to give the witness
23 document P-2.85.6?

24 You have got P-2.85.6, found at 2663
25 of our disclosure. It is correspondence, sir.

1 And according to our knowledge, this is a fax, it
2 is from Mr. Minuk, it is dealing with this issue
3 of the traffic accident report. And we understand
4 that you received a copy of this?

5 A That is correct.

6 Q So you raised the issue that there was
7 a request made for Derek Harvey-Zenk to get a copy
8 of the police report before filling out the
9 traffic accident report, with the Crown?

10 A Yes.

11 Q What was Mr. Minuk's reaction to that?

12 A He called me and said they will not be
13 giving disclosure until all of the material was
14 in.

15 Q Okay. So what you understood was that
16 until all of the material from the police is
17 provided to the Crown, there wouldn't be
18 disclosure to the defence?

19 A That's correct.

20 Q In other words, I take it part of that
21 disclosure would be a completed traffic accident
22 report by Derek Harvey-Zenk?

23 A That's correct, sir.

24 Q And we can see in the correspondence
25 that you have with you that, in fact, Mr. Minuk is

1 suggesting to Harvey-Zenk's counsel that he comply
2 with the requirements of the Highway Traffic Act?

3 A That is correct, sir.

4 MR. CLIFFORD: And if that could be
5 entered as the next exhibit?

6 THE CLERK: Exhibit 122.

7 (EXHIBIT 122: P-2.85.6 Letter from
8 Aikins McAulay to Sergeant Carter,
9 March 17, 2005)

10 BY MR. CLIFFORD:

11 Q And in fact, sir, does Derek
12 Harvey-Zenk subsequently come in after this
13 exchange and comply with the Highway Traffic Act?

14 A He does, sir.

15 Q When does he come in, sir?

16 A He comes in on March 30th at 11:20 in
17 the morning.

18 Q Now, if somebody hadn't come in for 35
19 days following an accident, is this typically a
20 period of time that would prompt you to lay a
21 charge under the Highway Traffic Act?

22 A Typically, we didn't lay a charge for
23 anybody under the Highway Traffic Act unless they
24 absolutely refused to come in. We gave just about
25 everybody as much leeway as possible to come in,

1 you know, and fill out a traffic accident report.

2 Q What can you tell me, sir, about the
3 process of taking the traffic accident report from
4 Derek Harvey-Zenk?

5 A A traffic accident report is a
6 preprinted report. There is a -- page 1 contains,
7 you know, fill in the blank information in regards
8 to drivers, vehicles. Page 2 contains statements
9 that drivers will fill out. And then on the edge
10 of the traffic accident report, there is scoring
11 boxes. And these are for statistical purposes for
12 the Province of Manitoba. And we score these
13 things using a -- there is a score card, an
14 overlay score card that we put over top of the
15 accident report to score the accident. This would
16 be accident configurations, location, and so on
17 and so forth. Those would be what is scored.

18 Q And were you asking him questions when
19 he came in to fill out the traffic accident
20 report?

21 A That's correct, yes.

22 Q And would he answer any of the
23 questions that you put to him in order to score
24 the traffic accident report?

25 A Not in order to score them, sir.

1 Q What did he tell you, sir?

2 A He advised -- he refused to answer any
3 questions that required scoring the accident
4 report, and had advised me that he had done
5 hundreds of those reports, and the questions that
6 I was asking -- the scoring questions were
7 redundant and we could get that information from
8 the police report.

9 Q So he told you that he -- sorry,
10 Mr. Commissioner?

11 THE COMMISSIONER: That's the last
12 question, I think we will break whenever you want.

13 MR. CLIFFORD: Okay.

14 THE COMMISSIONER: Would you like to
15 do it now or would you like to finish?

16 MR. CLIFFORD: With your permission,
17 sir, I will finish by putting in the traffic
18 accident report as an exhibit and then move to
19 another line of questioning. Maybe another
20 minute?

21 THE COMMISSIONER: Yes.

22 BY MR. CLIFFORD:

23 Q He is telling you, sir, that he has
24 done hundreds of these reports, and the questions
25 that you are putting to him, in his view, are

1 redundant?

2 A That's correct, sir.

3 Q And if you want the information that
4 you are asking him about, you can get it from your
5 own police reports?

6 A That's correct, sir.

7 Q Did you press him on it?

8 A No. At that point in time he wasn't
9 prepared to give me any answers for the scoring
10 portion of it, and I didn't press him any further
11 for that then.

12 Q I take it, sir, that you had a
13 reasonable expectation that that would be the
14 case, that he wasn't going to be answering too
15 many questions for you?

16 A I -- yes, I did.

17 Q And, sir, we can just conclude before
18 the break, I'm going to ask you, sir, about
19 exhibit 70, if you could be shown that document?
20 If you turn to page 501 in that document, sir, we
21 see boxes filled out, statement of driver of
22 vehicle 3. Is this the statement that Derek
23 Harvey-Zenk gave?

24 A That's correct, sir.

25 Q And what he indicated to you, sir, is

1 that:

2 "On February 25th, 2005, at
3 approximately 7:00 a.m., I became
4 involved in a collision on..."

5 What is this word, sir?

6 A Lagimodiere.

7 Q "...Lagimodiere. I was wearing my
8 seat belt at the time, my air bag
9 deployed. As result of the collision,
10 I sustained a bloody nose and a cut to
11 the inside of my lip."

12 And that is the sum total of the traffic accident
13 report filled out by Derek Harvey-Zenk?

14 A That's correct.

15 Q Did you ask for additional details?

16 A Those are all of the details he would
17 provide to me, sir.

18 Q The details of the vehicle of driver 3
19 is, I became involved in a collision?

20 A That's correct, sir.

21 MR. CLIFFORD: This would be an
22 opportune time to break, Mr. Commissioner.

23 THE COMMISSIONER: Thank you. Would
24 you get me that exhibit and I will look at it?

25 THE CLERK: All rise. This Commission

1 of Inquiry is now recessed.

2 THE COMMISSIONER: 15 minutes.

3 (Proceedings recessed at 3:33 p.m. and
4 reconvened at 3:48 p.m.)

5 THE CLERK: All rise, please. This
6 Commission of Inquiry is now open. Please be
7 seated.

8 BY MR. CLIFFORD:

9 Q Sir, I want to, before asking you just
10 one further question on the traffic accident
11 report, deal quickly with an issue that was raised
12 with me during the break, and that is in relation
13 to the notes of Officer Bakema and Krawchuk that
14 did not go to Crown counsel for disclosure. And I
15 understand, sir, that once you detected that, that
16 you took steps and you did provide it?

17 A Yes, I did, sir.

18 Q And that's in connection with both
19 sets of notes that you furnished, both Officer
20 Bakema's and Krawchuk's notes, once you learned
21 about the fact that the Crown didn't get them?

22 A That is correct, sir.

23 Q Okay. Now, during -- just before the
24 break we looked at the traffic accident report,
25 exhibit 70. And exhibit 70 is described as the --

1 it refers to Kathy Beattie, but, in fact, it is
2 the traffic accident report as well of Derek
3 Harvey-Zenk. Could you go again to page 501? At
4 the bottom of 501, there is a box, police
5 comments. And we see that that box is filled out.
6 Is that your handwriting, sir?

7 A It appears to be, yes.

8 Q And when did you fill that out?

9 A It would have been filled out, I would
10 suggest, on the day, or shortly thereafter, on the
11 day that Mr. Harveymordenzenk attended for his
12 traffic accident report.

13 Q And in terms of the statement of the
14 driver of vehicle 3, is that his handwriting or
15 yours?

16 A That's my handwriting.

17 Q So you record what he indicated to
18 you?

19 A Yes, he dictates and I write it down.

20 Q Did you record it verbatim?

21 A Yes, I believe so.

22 Q Gave him an opportunity to look at it?

23 A Yes.

24 Q And after he had that opportunity, he
25 signed it?

1 A He signed it.

2 Q Moving now from the traffic accident
3 report, sir, I want to ask you about another
4 investigative strategy that police officers will
5 use. And do you agree with me, sir, that
6 oftentimes when police officers deal with
7 witnesses in their interviews with them, they will
8 confront them with information they've received
9 from other witnesses?

10 A Yes.

11 Q So, for instance, if a witness tells
12 you something and it doesn't sit well with you,
13 and you know that you are in possession of
14 information that you can challenge the witness
15 with, you can say, for instance, look, I don't buy
16 that because I learned from so and so that in fact
17 this was the case. And you put it to them.
18 Agreed?

19 A I agree.

20 Q It is an age old police investigative
21 technique?

22 A Yes, sir.

23 Q I'm not going to buy that because
24 Johnny down the hall is talking to officer so and
25 so, and he just told me that you did it. You play

1 off what other people are telling you?

2 A Yes, sir.

3 Q And it can be very effective, can't
4 it?

5 A Sometimes it can be, sir.

6 Q Now, in this case, when did you first
7 make contact with the paramedics who were at the
8 scene?

9 A On March -- on March 23rd at 11:30.

10 Q This is almost a month after the
11 incident occurs?

12 A That's correct, sir.

13 Q Did it not occur to you that the
14 paramedics' information could be very helpful in
15 the examination of the Winnipeg Police Officers
16 who were with Derek Harvey-Zenk the night before
17 or the night of?

18 A Yes, it could be helpful.

19 Q The reason for that is, prior to you
20 dealing with them personally, you were aware of
21 the fact that they indicated that they detected an
22 odour of alcohol at the scene; is that right?

23 A Yes, I believe at some time before
24 that, yes.

25 Q Yeah. Early, I take it, in the

1 investigation, you would have been aware of the
2 fact, would you not, that the paramedics detected
3 an odour of alcohol?

4 A I'm not sure how early in the
5 investigation you may be referring to, sir?

6 Q Within a week?

7 A Probably, yes.

8 Q So if you probably knew that within a
9 week, certainly, I take it within two weeks you
10 would have been aware of the fact that paramedics
11 detected an odour of alcohol?

12 A Um-hum.

13 Q Are we in agreement on that?

14 A Yes.

15 Q What is the delay from February 25th
16 to March 23rd, to follow up with paramedics?

17 A From February 25th to March 1st, I had
18 no idea who was going to take charge of the
19 investigation and the follow-up. From March 1st
20 on, that is when I took it upon myself to do that.
21 So, yes, we had a period of three weeks there,
22 sir.

23 Q You had a period of the whole month,
24 from March 1st to March 29th -- or March 24th, I
25 apologize, sir, just over three weeks?

1 A Yes.

2 Q That's the period where --

3 A Yes.

4 Q -- in March nothing is happening with
5 the issue of the paramedics.

6 Now, are the Winnipeg Police Officers
7 that are in charge of conducting the interviews of
8 the Winnipeg Police Service Officers, are they
9 contacting you and asking you information about
10 the paramedics?

11 A No, I don't believe the Winnipeg
12 Police called me on that.

13 Q Do you know whether they were getting
14 in touch with Harry Bakema and looking for
15 information from the paramedics?

16 A I have no idea, sir.

17 Q Now, you personally deal with Ted
18 Rosser, and you also have contact with Rolland
19 Fontaine?

20 A I don't personally deal with Ted
21 Rosser, sir.

22 Q Just one moment. You've indicated in
23 your report, on March 24th, that you received a
24 witness statement taken by Chief Bakema?

25 A Yes.

1 Q That statement was taken from Ted
2 Rosser, and you reviewed that statement?

3 A Yes.

4 Q All right. So you didn't actually
5 conduct the interview, but as of the 24th, you had
6 it and you reviewed it?

7 A That's correct, sir.

8 Q And, of course, in your review of that
9 statement you learn that, when Rosser was spoken
10 to, he indicated that he dealt with Harvey-Zenk
11 and he detected a strong, but noticeable smell of
12 liquor from the male?

13 A That's correct, sir.

14 Q Now, we've heard from Rolland
15 Fontaine, and he referred to his statement that he
16 provided to the police and it is directed to you.
17 It says, "attention Norm." Do you recall
18 receiving his fax?

19 A Yes.

20 Q And I take it that you spoke to him as
21 well, did you not, in order to get him to send you
22 a fax?

23 A I believe so, yes.

24 Q And he would have told you, and he has
25 told the Commission this, that he gave you the

1 description that upon opening the vehicle door, he
2 immediately noted an odour of liquor?

3 A That is correct.

4 Q Now, these pieces of information are
5 obviously helpful to the case. Do you agree with
6 that, sir?

7 A Yes, I do.

8 Q And certainly they are consistent with
9 the observations that you are making later in
10 that -- later that morning at the police station?

11 A That is correct, sir.

12 Q Now, there is no doubt, sir, I take it
13 you will agree with me, that the information that
14 you had become aware of from the paramedics -- and
15 you've indicated, sir, that you learned about this
16 early in the investigation, you follow up with it
17 and it is confirmed on the 24th, with Rosser, and
18 on the 29th, respectively, with Fontaine, that it
19 is helpful to you in the investigation. But, sir,
20 going back to an investigative strategy, do you
21 not agree, sir, that this information could have
22 been very valuable to the Winnipeg police officers
23 when they were conducting the interviews of the
24 police members?

25 A Yes.

1 Q There is no doubt about that in your
2 mind, is there?

3 A No, that's valuable.

4 Q Because if a police officer was
5 saying, look, I don't know what Derek Harvey-Zenk
6 drank, I didn't see him drinking very much, or if
7 they were suggesting that he was not intoxicated,
8 the Winnipeg Professional Standards Officers could
9 have said, well, look, we have got evidence from
10 paramedics who dealt with him after 7:00 o'clock
11 in the morning and detected a strong, but
12 noticeable smell of liquor from him. We have
13 another paramedic who indicated that upon opening
14 his vehicle door, he immediately noted an odour of
15 alcohol. In other words, you can soften a witness
16 with information that you have. And I'm going to
17 suggest to you, sir, that the Winnipeg Police
18 Service, they were asking the East St. Paul Police
19 for such information?

20 A I don't recall getting a request from
21 them personally for that information.

22 Q Sir, on March 16th, 2005, according to
23 your narrative report, you received a message to
24 contact Roger Girard of the Winnipeg Professional
25 Standards Unit. And according to your narrative

1 report, you actually had a conversation with him
2 on that day?

3 A That is correct, sir, yes.

4 Q Do you not recall whether he raised
5 the issue, sir, of the paramedics at that point?

6 A No, I don't recall whether he raised
7 the issue of paramedics at that point, sir.

8 Q Do you agree with me, sir, that what
9 this demonstrates is that if work is going to be
10 done by an outside police force, whether it is
11 appropriate or not, but if it is going to be done
12 by an outside police force, it needs to be
13 coordinated properly?

14 A I agree, sir.

15 Q There has to be open lines of
16 communication, agreed?

17 A I agree sir, yes.

18 Q There should be a simultaneous
19 approach to dealing with issues, in other words, a
20 multi-layered approach, that if the Winnipeg
21 Police Service is going to interview officers, if
22 you can give them information that will help in
23 those interviews, you should try to get that
24 information and get it to them. And there should
25 be a dialogue or a strategy in place to make sure

1 that happens. Are we agreed on that?

2 A We are in agreement, sir, yes.

3 Q And can we agree that didn't happen,
4 in this case, on this issue?

5 A No, sir, it did not.

6 Q Now, with respect to the paramedics'
7 odour, where did you learn of this, sir? What was
8 the source?

9 A In regard to Rolland Fontaine, from
10 his statement.

11 Q Originally within -- I'm talking about
12 after February 25th, 2005, what was the source of
13 you learning about the odour of alcohol from
14 paramedics? Do you recall?

15 A I don't recall. I don't recall, sir.

16 Q You don't have it noted, sir, in your
17 rough notes, your duty-book notes, or in your
18 investigative or incident report, do you?

19 A No, sir, I don't.

20 Q I take it you agree that that is
21 something that should have been done? It should
22 have been recorded?

23 A Yes. Yes, absolutely.

24 Q Sir, I want to ask you now about a
25 meeting that you had with Mr. Minuk on

1 February 24th, 2006?

2 A Yes, sir.

3 MR. CLIFFORD: Madam clerk, could you
4 pull a document, please, E-1.23.o? If you can
5 show that to the witness, please?

6 BY MR. CLIFFORD:

7 Q Sir, do you recognize this is
8 correspondence dated April 25th, 2006?

9 A Yes, I do.

10 Q Forwarded by you, it is created by you
11 and forwarded by you the day after, April 26th, to
12 Mr. Minuk?

13 A That's correct, sir.

14 Q In that correspondence, sir, you refer
15 to a meeting with Mr. Minuk of February 24th,
16 2006. And I'm going to come back to the
17 correspondence and the reason it was created, et
18 cetera. But just on the meeting of February 24th,
19 2006, why was that meeting planned?

20 A That meeting was to go over the file.
21 It was the first meeting I had with him.

22 Q So, we are at the 24th of February,
23 2006. This is your first face-to-face meeting
24 with Mr. Minuk?

25 A That is correct, sir.

1 Q You had obviously had contact with him
2 prior to that, because you were discussing certain
3 issues, you are dealing with disclosure issues and
4 other matters that would typically be addressed by
5 the investigating officer and the Crown assigned
6 to a case?

7 A Yes, sir.

8 Q And, in fact, you had previously
9 received correspondence from Mr. Minuk, did you
10 not, in December of 2005?

11 A Yes, I believe so.

12 MR. CLIFFORD: And Madam clerk, could
13 you provide the witness, please, with a document
14 R-1, tab 91.7, page 3125?

15 BY MR. CLIFFORD:

16 Q Do you recognize that document, sir,
17 the correspondence addressed to you,
18 December 20th, 2005?

19 A Yes, I do.

20 MR. CLIFFORD: Madam clerk, let's get
21 the April 25th correspondence entered as an
22 exhibit now. And we will put in this December 20,
23 2005 letter as the following exhibit.

24 THE CLERK: So we will go 123.

25 MR. CLIFFORD: 123 and 124.

1 (EXHIBIT 123: E-1.23.o, Report to
2 Marty Minuk and covering letter,
3 including Sergeant Carter's narrative)
4 (EXHIBIT 124: R-1.91.7 Photocopy of
5 letter from Mr. Minuk to Sergeant
6 Carter, December 20, 2005)

7 BY MR. CLIFFORD:

8 Q Looking at exhibit 124, the
9 correspondence of December 20th, 2005, R-1, tab
10 91.7, page 3125. We can see here that Mr. Minuk
11 is corresponding with you and he wants you to
12 address certain issues in the case. Do you see
13 that, sir?

14 A I see that.

15 Q So this is well in advance of your
16 February 24th, 2006 meeting, Mr. Minuk is raising
17 certain issues with you.

18 Now, in this correspondence, sir, of
19 December 20th, 2005, Crown counsel, Mr. Minuk, is
20 following up with you, and he is giving you some
21 very clear advice, I would suggest, or guidance.
22 He wants to know whether a warrant to seize
23 records of Branigan's Restaurant was ever
24 obtained. Do you see that, sir?

25 A I see that, sir.

1 Q He says:
2 "Very clearly, in addition, I do not
3 know whether or not a warrant to seize
4 the records of Branigan's Restaurant
5 for February 25th, 2005, was ever
6 obtained for the purpose of
7 determining whether or not Mr. Zenk
8 did use his credit card for purchases
9 at this restaurant."

10 And he goes on at the bottom of the first page of
11 the correspondence indicating that it would seem
12 the most efficient way to resolve this issue would
13 be by the execution of a search warrant for that
14 record on Branigan's for the date in question,
15 which easily may be identified through their
16 computer system. And he finishes the direction.

17 So, prior to the meeting on
18 February 24th, Mr. Minuk is raising the issue with
19 you on the search warrants. He is also telling
20 you that he wants certain things from you. He
21 wants the report prepared by Chris Blandford, the
22 traffic analyst. Do you see that, sir?

23 A I see that.

24 Q He wants you to give him the paramedic
25 report as well?

1 A That's correct.

2 Q And he wants the statement of the
3 witness, Kathy Beattie?

4 A Yes, sir.

5 Q So what is clear here, I would suggest
6 to you, sir, is that Mr. Minuk is looking at this
7 case from a view to an upcoming meeting, and he is
8 determining, okay, these are the things I need,
9 these are the things that I would like my
10 investigating officer to do. And he is giving you
11 what I would suggest is very clear direction?

12 A Yes, sir.

13 Q Now, you do go to that meeting on
14 February 24th. And our understanding is that
15 there is no further correspondence from Mr. Minuk
16 to you, nor do you correspond back to him, prior
17 to going to the February 24th, 2006 meeting?

18 A I don't believe so, sir.

19 Q Now, while you are at that meeting, I
20 understand, sir, that you met with him and you
21 discussed the case with him?

22 A That's correct, sir.

23 Q And I'm referring to exhibit 123,
24 that's your correspondence of April 25th, 2006.
25 And in fact, at page 507 you give a description, a

1 brief description of what takes place during that
2 meeting. And, sir, one of the things you've
3 indicated in your correspondence to Mr. Minuk,
4 when you describe that meeting, is you say:

5 "On February 24th, 2006, we did meet
6 and discuss the case. At this time I
7 had no knowledge that there were any
8 serious issues in regard to this
9 investigation, other than the time it
10 took from the time of detention of the
11 accused to the time of the arrest and
12 charter, which was brought up by you."

13 MR. McDONALD: To you.

14 MR. CLIFFORD: "...which was brought
15 up to you."

16 BY MR. CLIFFORD:

17 Q And does that, sir, describe that
18 issue accurately, that you and he were discussing
19 the case and Mr. Minuk brought up the charter
20 issue, he raised it to you?

21 A No, I raised it to him.

22 Q Okay. You recognized this issue from
23 the outset?

24 A Yes.

25 Q You raised it in the course of the

1 meeting with him?

2 A Yes.

3 Q I take it he is aware of this issue,
4 without you bringing it up to him?

5 A I don't know.

6 Q Did he say anything to you in the
7 meeting?

8 A We just simply discussed -- he felt,
9 he felt and expressed that the charter issue would
10 be something that he would deal with.

11 Q What do you mean by that? He stressed
12 that the charter issue was --

13 A Not stressed, he said, sorry, did I
14 say stressed?

15 MR. McDONALD: You said expressed.

16 THE WITNESS: Expressed, sorry, that
17 what I felt was a serious charter breach issue, he
18 would deal with.

19 BY MR. CLIFFORD:

20 Q So you are telling the prosecutor that
21 you feel as though there is a serious charter
22 breach issue?

23 A Yes.

24 Q And he is expressing to you that he
25 will deal with it as the case proceeds?

1 A That's correct, sir.

2 Q You also indicated here that you
3 discussed Chief Bakema's role as senior officer on
4 scene. What was that discussion?

5 A That discussion was who was in charge
6 of the scene, who was at the scene, who was doing
7 what.

8 Q Was he concerned about who was doing
9 what at the scene?

10 A We talked about it a little bit. I
11 don't know if he was concerned.

12 Q Now, as of February 22nd, 2006, I
13 understand that Chief Bakema was no longer with
14 the East St. Paul Police?

15 A That's correct, sir.

16 Q Did that come up in your conversation?

17 A I believe it did, sir.

18 Q And can you tell us about that?

19 A There wasn't much conversation in that
20 regard, other than he was no longer with the
21 department and that he was -- he was the senior
22 officer on scene.

23 Q What was your impression in terms of
24 Mr. Minuk's ability to handle the serious charter
25 issue that you discussed with him?

1 A Mr. Minuk had said that he would deal
2 with it as the case progressed. I was -- I didn't
3 really have thoughts about it, other than that was
4 presented to him, and it was now in his hands.

5 Q Did you have general conversation
6 about the strength or weakness of the case?

7 A Usually, my first meeting with any
8 Crown prosecutor, that's what we will discuss,
9 whatever I feel is maybe deficient, or any
10 problems we may have with the case. And this was
11 one of the things I talked about.

12 Q So when you raised what you thought
13 was the serious charter issue, you were, I take
14 it, quite clear with Mr. Minuk that it centred
15 around the issue of the delay that you've told us
16 about already?

17 A Yes, sir.

18 Q And I take it Mr. Minuk was quite
19 attentive to what you were telling him. And did
20 he agree with you, sir, that it was -- it had the
21 potential to be a serious charter violation?

22 A I don't think he made that comment to
23 me, sir. He was certainly attentive to what I was
24 saying, but he didn't make a comment as to any
25 agreement whether it was a serious charter issue.

1 Q Did you discuss with him potential
2 outcomes of the case?

3 A Only -- I asked him one question in
4 regards -- not in regards to the charter issue, I
5 asked him one question in regards to the possible
6 outcome of the case.

7 Q What was the question?

8 A I asked him if Mr. Harveymordenzenk
9 would get jail time.

10 Q And what was the answer?

11 A He said, in cases like this, it is
12 unlikely he would get jail time. That he was, you
13 know, he was a police officer, normally of good
14 character, and it is unlikely that jail time would
15 result as a result of this.

16 Q So, on February 24th, 2006, in your
17 first meeting with Crown counsel, you are being
18 advised, as the investigating officer, that the
19 prosecutor felt that it was unlikely he would get
20 jail time?

21 A That's correct, sir.

22 Q Were there any further discussions
23 about the potential outcome of the case?

24 A No, sir, not that I recall.

25 Q Did you get into detail with him about

1 the serious charter breach?

2 A No, sir.

3 Q Did you discuss who the officers
4 involved were?

5 A Yes, I believe so, yes.

6 Q Did you tell him that Jason Woychuk
7 was the officer that did the transport?

8 A I can't recall that, if I said that to
9 him, sir.

10 Q If you are discussing a potential
11 charter breach, this is you as the investigating
12 officer, and Crown counsel has carriage of the
13 case, I take it you would have tried to determine,
14 in the course of that conversation, who is
15 actually responsible for the breach and how it
16 occurred?

17 A We didn't get that far into the
18 discussion, sir.

19 Q How long was the meeting?

20 A Maybe, and I'm just guessing at this,
21 sir, maybe three quarters of an hour, maybe half
22 an hour. It wasn't a terribly long meeting we
23 had.

24 Q Well, if it is 30 or 45 minutes, you
25 have discussed the potential outcome, you put a

1 question to him and you got the answer. You
2 discussed the charter breach. What else did you
3 discuss?

4 A He spent part of the time making
5 copies, leaving the room and having somebody make
6 copies of, I believe some disks, or his I.T.
7 person, he went to see him for a while to get
8 copies made. And essentially that was the
9 meeting, sir.

10 Q Sir, is it not the case that as of
11 February 24th, 2006, there had been rumours
12 floating around the East St. Paul Police
13 Department that Constable Woychuk was going to
14 take the brunt of the charter violation in court?

15 A Yes.

16 Q Due to the delay in the arrest?

17 A Yes, there was, yes.

18 Q I take it you would have raised that
19 with Mr. Minuk, that even in your own police
20 detachment there, the officers felt that Jason
21 Woychuk was going to take the brunt of it once the
22 thing got to court?

23 A Yeah, that probably would have been
24 raised, yes, sir.

25 Q Now, I note in your report to

1 Mr. Minuk at page 507, you do in fact even state
2 that to him in the report? It is at page 507, the
3 third paragraph down. You are telling him about
4 these rumours floating around the East St. Paul
5 Police Department about Woychuk going to be taking
6 the brunt of it in court on the charter violation,
7 but you indicate further to Mr. Minuk that that is
8 owing to the actions of Chief Bakema and Constable
9 Graham?

10 A Yes.

11 Q Did you raise that with Mr. Minuk?

12 A At that meeting?

13 Q Yes?

14 A I may have. I don't know. I don't
15 recall, sir.

16 Q Did you take any notes at all of your
17 meeting?

18 A I didn't take any notes of that
19 meeting, sir.

20 Q And apart from whether you discussed
21 with Mr. Minuk the actions of Chief Bakema and
22 Constable Graham, you've indicated that you
23 probably would have discussed with Mr. Minuk the
24 fact that the rumours were going around that Jason
25 Woychuk was going to take the brunt of it in

1 court?

2 A I probably would have.

3 Q Now, in that meeting you are going
4 through these things, and as you've identified,
5 and in fact as you've documented back to Mr.
6 Minuk, in that meeting he made certain requests of
7 you, he wants certain items from you and he wants
8 you to go out and do something in connection with
9 the Branigan's records?

10 A That is correct, sir.

11 Q Now, dealing with that issue, the
12 Branigan's records, I take it, sir, you would
13 agree with me that when you are investigating an
14 allegation of drinking and driving, and there is a
15 death involved, and as a police officer, you know
16 that the accused is at a drinking establishment,
17 an establishment that's required to keep records
18 for Provincial sales tax purposes, for GST
19 purposes, and for Revenue Canada purposes, and
20 also for the purpose of maintaining an alcohol
21 licence, and they've got set hours of business, it
22 is an invaluable source of information for you?
23 There is a lot of potential there to gain
24 evidence?

25 A Yes, sir.

1 Q And you, as a police officer, have the
2 ability to resort to the Criminal Code?

3 A That is correct, sir.

4 Q I take it you've -- had you executed a
5 section 47 Criminal Code of Canada warrant before?

6 A Yes, I have, sir.

7 Q You have been through that process?

8 A Yes, I have, sir.

9 Q Did you follow up and pursue those
10 records, sir, as you were asked to do by
11 Mr. Minuk?

12 A No, I did not, sir.

13 MR. CLIFFORD: Could I have the
14 witness provided with R-1.91.13, page 3142. What
15 exhibit would that be?

16 THE CLERK: That will be 125.

17 MR. PACIOCCO: I ask that be entered
18 as the next exhibit.

19 (EXHIBIT 125: R-1.91.13 Photocopy of
20 letter from Martin Minuk to Chief Norm
21 Carter of April 10, 2006, attaching
22 witness list)

23 BY MR. CLIFFORD:

24 Q Now, what this is, sir, is
25 correspondence dated April 10, 2006. It is again

1 from Marty Minuk, agent for the Attorney General.
2 And he is following up with you, he is giving you
3 a draft witness list that he has prepared for the
4 Prelim that's coming up in June. He is asking you
5 for an opinion on the witness list. And he is
6 referring, in the third paragraph, about your
7 meeting of February 24th, where you discussed the
8 service of a search warrant on Branigan's. And he
9 asks you, in the last sentence:

10 "When you have a moment, can you
11 kindly provide to me what, if any,
12 information may have been obtained as
13 a consequence of obtaining and
14 executing the search warrant at
15 Branigan's?"

16 At that point, had you done anything in
17 furtherance of getting that search warrant?

18 A I reviewed the synopsis report of the
19 Winnipeg Police Professional Standards Unit as to
20 their interviews with the individual officers and
21 with the waitresses and staff at Branigan's.

22 Q You reviewed what?

23 A The Winnipeg Police Professional
24 Standards report, their synopsis that they had
25 provided to Chief Bakema in '05, dealing with

1 their interviews of each of the individual
2 officers that had been drinking with
3 Mr. Mordenzenk, and with the waitresses and staff
4 at Branigan's.

5 Q Okay. And did you take steps towards
6 starting an information to obtain the appropriate
7 paperwork to go ahead and follow up with this?

8 A No, sir, I did not.

9 Q And it is quite clear here that as of
10 April 10th, Mr. Minuk, Crown counsel, is putting
11 the second request to you?

12 A That's correct, sir.

13 Q And, in fact, what it looks like is
14 that he is under the apprehension, or I should say
15 misapprehension, that you have already done this?
16 Because he is saying, when you have a moment, can
17 you provide to me what, if any, information might
18 have been obtained. Do you agree with me sir,
19 that's the impression that he is leaving you in
20 this correspondence? He thinks you have done it?

21 A That's correct, sir.

22 Q Did you get in touch with him and tell
23 him, look, I haven't done it?

24 A No, I did not.

25 Q Is there any reason at all that you

1 didn't do it, and you didn't tell the Crown that
2 you didn't do it?

3 A I didn't do it because I didn't have
4 the grounds to get a search warrant.

5 Q Why not?

6 A Part of the grounds in order to get a
7 search warrant is I have to believe that the items
8 sought for are on the premises at the time that
9 the search warrant is being executed. Mr. Minuk
10 was asking me to get a search warrant to obtain
11 credit card receipts. In reviewing the reports of
12 the Winnipeg Police Professional Standards Unit,
13 their synopsis, along with the staff, nobody could
14 say how Mr. Harveymordenzenk purchased, or what --
15 whether he used his credit card at all.

16 That being said, sir, it was my
17 opinion that if I tried to obtain a search
18 warrant, swearing out an affidavit that I believed
19 that the items sought, which would be credit card
20 receipts, were on the premise, I would -- it would
21 be amounting to a fishing expedition, sir.

22 Q Okay. Let me put this to you, sir.
23 December 20th, 2005, let's go back to that letter,
24 the first letter you got on this?

25 A Yes, I have it here.

1 Q Page 3125, Mr. Minuk is saying:
2 "I'm aware when Winnipeg Police
3 Service officers conducted their
4 investigation, the restaurant/bar
5 staff indicated many of the
6 transactions were conducted by way of
7 cash purchase. Nonetheless, it would
8 seem appropriate..."

9 So the reason you are giving me for not doing it,
10 he told you, he is aware of that, December 20th,
11 he told you he is aware of it, but nonetheless,
12 please follow up with it?

13 So, sir, that explanation, it doesn't
14 sit well with the instruction Crown counsel gave
15 you. Do you agree, sir?

16 A Yes.

17 Q The Crown knew -- he knew what people
18 were saying about whether there were cash
19 transactions or not, but he told you to do it.
20 And your evidence is that you thought better?

21 A That's correct, yes.

22 MR. CLIFFORD: Mr. Commissioner, I'm
23 going to be about another two minutes to finish
24 this area. I know that my colleagues behind me
25 were hoping that we could finish at 4:30. I can

1 tell you this, there is no hope of me finishing
2 the examination-in-chief today. If I could take
3 another two or three minutes with the indulgence
4 of my colleagues, and I will get finished as close
5 to 4:30 as possible.

6 THE COMMISSIONER: I see Mr. Prober
7 smiling in approval.

8 MR. PROBER: I think that's very
9 reasonable, yes.

10 MR. CLIFFORD: Could you provide the
11 witness with correspondence dated April 20th,
12 2006, p3 -- I am sorry, R-1.91.14, page 3149.

13 That could be the next exhibit,
14 please. Number, Madam clerk?

15 THE CLERK: 126.

16 (EXHIBIT 126: R-1.91.14, Photocopy of
17 letter from Martin Minuk to Chief Norm
18 Carter, April 20, 2006)

19 BY MR. CLIFFORD:

20 Q It is correspondence dated April 20th,
21 2006, from Mr. Marty Minuk. He is acting as the
22 agent for the AG and he is following up with you
23 ten days later, after the April 10th
24 correspondence. Second paragraph he states:

25 "In particular, we need to discuss the

1 proposed witness list and the warrant
2 on Branigan's Restaurant."

3 Now, this is the third time he has brought this up
4 in writing. Do you do anything as a result of
5 this correspondence?

6 A As a result of this correspondence, I
7 made arrangements to meet with Mr. Minuk on
8 April 21st.

9 Q Well, that's, I would say to you, sir,
10 self-evident, because in the letter he is telling
11 you, I will be back tomorrow, call me to discuss
12 these matters. Right?

13 A That's correct, yes.

14 Q I will therefore be back in my office
15 tomorrow, Friday, February 21st, please call me.
16 So you called him?

17 A I called and made an appointment to
18 meet with him.

19 Q That's what you did as a result of
20 getting the letter?

21 A Yes.

22 Q But what were you doing on the issue
23 of the warrant at Branigan's?

24 A I hadn't done anything on the issue of
25 the warrant at Branigan's.

1 Q For the same reason?

2 A Yes. Yes.

3 THE COMMISSIONER: Did you explain to
4 him why you didn't think you had reasonable cause
5 to obtain a warrant from a JP?

6 THE WITNESS: At that point, I did
7 not, because at that point in time I had the
8 disclosure issue in regards to notes that I wanted
9 to speak to him about, and where I was also going
10 to speak about the warrant. But that kind of took
11 second place to the disclosure issues on some
12 notes.

13 BY MR. CLIFFORD:

14 Q Did it ever occur to you just to go
15 down to Branigan's and ask for the records? Put
16 the warrant aside for the moment.

17 A Yeah. Yes, I suppose it did, yes.

18 Q You obviously didn't do it?

19 A No, I didn't, no.

20 Q Any reason?

21 A Because I was working on the basis of
22 the warrant that Mr. Minuk had asked me to get,
23 and I wanted to discuss it with him some more.

24 MR. CLIFFORD: I think,
25 Mr. Commissioner, this would be a good time, and I

1 can follow up tomorrow morning.

2 THE COMMISSIONER: 9:30 tomorrow
3 morning, start sharp.

4 THE CLERK: All rise. This Commission
5 of Inquiry is adjourned until tomorrow at 9:30.

6 (Proceedings adjourned at 4:37 p.m.)

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COURT REPORTERS' CERTIFICATE

Debra Kot and Cecelia Reid, court reporters in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of our Stenotype notes as taken by us at the time and place hereinbefore stated.

Cecelia Reid

Debra Kot

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