

INQUIRY INTO THE INVESTIGATION AND
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Thursday, July 10, 2008

Volume 12

INQUIRY PROCEEDINGS

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1 THURSDAY, JULY 10, 2008

2 UPON COMMENCING AT 9:29 A.M.

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

5 THE COMMISSIONER: Good morning.

6 MR. CLIFFORD: Good morning,
7 Mr. Commissioner.

8 BY MR. CLIFFORD:

9 Q Chief Carter, I'd like to recap
10 briefly. As we finished yesterday, you were
11 giving testimony with respect to correspondence
12 you received from Mr. Minuk in connection with the
13 execution of a search warrant at Branigan's. We
14 have referred to correspondence of December 10th,
15 2005, April 10th, 2006, April 20th, 2006, all with
16 respect to the issuance of a search warrant at
17 Branigan's, or the results of such a search.

18 Now, you have indicated, sir, that
19 this was not done and you gave the reason why.
20 Now, looking back on that, sir, and I'm sure
21 you've had some time to reflect on it, certainly
22 since even being interviewed by Commission
23 Counsel. Would I be correct, Chief Carter, in
24 indicating that at this point you would recognize
25 that as an error in the investigation?

1 A As far as not obtaining the search
2 warrant?

3 Q Yes?

4 A I still maintain, sir, that I did not
5 have the grounds to obtain a search warrant.

6 Q And you still maintain that, despite
7 the fact that as of December 10th, 2005,
8 Mr. Minuk, the Crown Attorney, assigned to the
9 case, recognized that most of the transactions
10 were cash transactions?

11 A Mr. Minuk, yes, recognized that most
12 of the transactions were cash transactions.

13 Q So you maintain then that it's not an
14 error, that your approach to this was the correct
15 one and Mr. Minuk's was incorrect?

16 A My approach to that, sir, was that
17 there was no indication of any credit card
18 transactions.

19 Q Now, you had mentioned as well,
20 yesterday, that prior to the meeting of
21 February 24th, 2006, there were rumours going
22 around the East St. Paul Police Service with
23 respect to the potential for a charter challenge
24 in this case?

25 A That is correct, sir, yes.

1 Q And that everybody was aware of the
2 fact that if anybody might be deemed responsible,
3 based on the file, it would have been Jason
4 Woychuk?

5 A The talk was that Jason Woychuk would
6 have been the brunt of any cross-examination in
7 regards to the charter challenge.

8 Q And you mentioned yesterday when you
9 testified that, in fact, you probably would have
10 raised that fact with Mr. Minuk when you met with
11 him on February 24th, 2006?

12 A That's correct, sir, yes.

13 Q All right. So let's go back to the
14 meeting then of February 24th, 2006, your meeting
15 with Mr. Minuk. This is your first meeting, you
16 have told us, with the Crown that has been
17 assigned the case.

18 When you are finished the meeting,
19 sir, do I understand that somebody from East St.
20 Paul picks you up to take you back to the station?

21 A That is correct, sir.

22 Q And who is that?

23 A Constable Jason Woychuk.

24 Q And do you tell Jason Woychuk about
25 what you and Mr. Minuk have been discussing during

1 that meeting?

2 A That's possible, I mean, I told him we
3 were discussing the case. This is the first
4 meeting. So I quite possibly could have said,
5 yes, that we were discussing the issue of the
6 delay in the charter.

7 Q Well, I'm going to suggest to you,
8 Chief Carter, that you most likely would have been
9 discussing that with him. Do you not agree that
10 it makes sense? He's the individual who is
11 responsible, or going to be perhaps held
12 accountable for a charter violation in a serious
13 case. You have just met with Crown counsel. You
14 had been, as you mentioned, probably talking to
15 Crown counsel about that issue and about Jason
16 Woychuk's involvement. One might come to the easy
17 conclusion, sir, that when Jason Woychuk picked
18 you up, it's just you and he in the car, right?

19 A Just him and I in the car, yes.

20 Q You would have talked to him about it,
21 you would have raised that issue with him?

22 A More than likely, yes, sir.

23 Q And what does he tell you?

24 A While we were heading back to East St.
25 Paul, Woychuk tells me that the notes he wrote

1 aren't his. He further tells me that Harry Bakema
2 told him at the scene that Harveymordenzenk was
3 pissed.

4 THE COMMISSIONER: Was what?

5 THE WITNESS: Was pissed. In
6 reference to the notes, he said that the notes
7 were not his and that his notes were -- he was
8 directed to do his notes to coincide with the
9 Chief's notes and Graham's notes.

10 BY MR. CLIFFORD:

11 Q Now, can I conclude from your
12 evidence, sir, that in your view, what is
13 prompting him to raise this issue with you, and I
14 know that you can't speak for Jason Woychuk, and
15 I'm not asking you to do that, but the
16 circumstances were such that you were talking
17 about the charter application with him and the
18 fact that the Crown is aware of it now?

19 A Yes.

20 Q And the Crown is aware of the fact
21 that, look, you may be the person who at least
22 ostensibly is going to be held accountable for
23 this?

24 A That's correct, sir.

25 Q And thereafter, he makes this

1 disclosure to you?

2 A Yes, sir.

3 Q So, if anything was to prompt it, we
4 know precisely from your evidence what it was that
5 you were talking to him about?

6 A Yes, sir, in all likelihood.

7 Q Now, for the sake of completeness, you
8 referred in your correspondence to Mr. Minuk, this
9 is E-1.23.o, E-1.23.0 at page 507, this is Exhibit
10 123. You document this in your correspondence to
11 Mr. Minuk. You indicate to him, and I'm referring
12 to page, or paragraph 4, going down the page, 507.

13 "Upon leaving your office on
14 February 24th, 2006, I had Constable
15 Jason Woychuk pick me up and transport
16 me back to my office in East St. Paul.
17 Woychuk knew through casual
18 conversation I had been at a meeting
19 with you this date in regard to the
20 file."

21 I think we have expanded upon that. This was not
22 a casual conversation you were having with him.
23 You were having a direct conversation with him
24 about the charter difficulties with the case and
25 his role in this issue?

1 A Yes, that came up in conversation,
2 yes.

3 Q "While driving back to East St. Paul.
4 Constable Woychuk disclosed that the
5 notes he made on the incident weren't
6 his notes. This surprised me and when
7 I questioned him about this, Constable
8 Woychuk said that he wrote what the
9 Chief told him to write in order to
10 coincide with the Chief's notes and
11 Constable Graham's notes. Constable
12 Woychuk also disclosed that Chief
13 Bakema told him at the scene that
14 Harveymordenzenk was pissed."

15 Now, you have the word "pissed" in quotation
16 marks?

17 A Yes, sir.

18 Q What does that signify?

19 A Impaired, drunk.

20 Q So that's what you take the meaning of
21 the word to be, but the fact that it's in
22 quotations?

23 A Oh, that was his exact words.

24 Q And are you sure?

25 A Yes, sir.

1 Q What was your reaction, sir?

2 A I was very surprised. I questioned
3 him when he said that, and that's when he said
4 that he was told his notes were to coincide with
5 Chief Bakema's and Graham's. I didn't -- I'm
6 sorry, he said that he should have known better
7 but he was instructed to do it.

8 THE COMMISSIONER: I'm sorry, but
9 what?

10 THE WITNESS: He should have known
11 better but he was instructed to do it.

12 THE COMMISSIONER: Yes.

13 THE WITNESS: I didn't question him
14 any further on that.

15 BY MR. CLIFFORD:

16 Q Okay. This is February 24th, 2006?

17 A That's correct.

18 Q It's almost a year after the event?

19 A That's correct.

20 Q One day shy?

21 A Yes, sir.

22 Q It's two days after Harry Bakema is no
23 longer a member of the East St. Paul Police
24 Service?

25 A That's correct.

1 Q Have I got that right, February 22nd,
2 2006 was the end of his time at the East St. Paul
3 Police?

4 A That's right, sir.

5 Q Did you not challenge Jason Woychuk
6 and say, how could you possibly sit on this
7 information for a year?

8 A No, I did not.

9 Q Why not?

10 A Because this is very significant
11 information, and this was information that
12 surprised me, even shocked me, and that could have
13 some serious repercussions, perhaps criminally.
14 And I didn't want to -- I didn't want to start an
15 investigation on it per se while, you know, on my
16 own officer. I wanted to advise Mr. Minuk first
17 before I did anything else.

18 Q We'll come to that.

19 A Yes.

20 Q But in terms of dealing with Jason
21 Woychuk in the vehicle that day, I understand,
22 sir, that based on that concern, that this was a
23 disclosure that might prompt an investigation of a
24 criminal offence. What would be a better time,
25 sir, to investigate than when this officer is

1 prepared to talk to you about it? He's brought it
2 up. He obviously wants to talk to you about it.

3 Why not pursue it?

4 A For the reasons I just said, sir.

5 Q Do you agree, sir, that looking back,
6 that what you -- what should have happened here is
7 you should have pursued this officer immediately
8 and got as many details from him as you could at
9 the time?

10 A In retrospect, when I look back, sir,
11 yes.

12 Q Now, you have given this advice. You
13 say in your correspondence:

14 I did not question Woychuk any further
15 but did advise him that this would
16 have to be disclosed to you."

17 Now, you have just indicated that this was
18 significant, it was an allegation of criminal
19 misconduct, and that it would have to be brought
20 to the attention of Mr. Minuk, the Crown Attorney?

21 A That's correct, sir.

22 Q And I take it, given the significance
23 of that information, you must have notified
24 Mr. Minuk immediately?

25 A No, I did not, sir.

1 Q Why not?

2 A When I met with Mr. Minuk, it was my
3 understanding that he was leaving to go up north
4 to an inquiry. So I made a decision at that point
5 in time to review the notes and files further, and
6 to speak to Mr. Minuk at a later time when he
7 would be back from the inquiry, and to speak to
8 him personally.

9 Q Okay. You met with him on
10 February 24th. Jason Woychuk makes this
11 disclosure to you just after the meeting. And
12 when did you think Mr. Minuk was going to be at
13 this inquiry up north?

14 A I was under the understanding he was
15 leaving right away.

16 Q And for how long did you think he'd be
17 there?

18 A My understanding was that he was going
19 to be there till mid-April.

20 Q You knew exactly where he was up
21 north, right?

22 A I believe he said Norway House, but
23 I'm not certain.

24 Q Okay. You would have had no
25 difficulty whatsoever, you are a Sergeant with the

1 East St. Paul Police, Mr. Minuk was the Crown
2 assigned to the case. Assuming that that's why
3 you didn't get in touch with him, it wouldn't have
4 been any problem at all for you to find out where
5 he was, send him a fax or give him a telephone
6 call, correspond with him; agreed?

7 A In retrospect, yes, sir.

8 Q I mean, the suggestion that he's
9 somewhere else in the province and, therefore, you
10 would wait -- were you going to wait until he was
11 actually back in the city so you could speak to
12 him?

13 A At that time, that's what I thought,
14 sir.

15 Q You could have communicated with
16 Mr. Minuk, in this day and age, in many, many
17 different ways?

18 A Yes, sir.

19 Q I suggest to you, sir, there was no
20 excuse for waiting, none?

21 A No, in retrospect, there was none,
22 sir, but that was the decision I had made at the
23 time.

24 Q Now, this was an ongoing case in the
25 hands of the Crown. Mr. Minuk had carriage of a

1 prosecution?

2 A That's correct, sir.

3 Q This was a Crown case at this point,
4 sir?

5 A (Witness nodding)

6 Q It was not a police investigation
7 where you are deciding whether charges are going
8 to be laid, or you are deciding whether the Crown
9 is going to take carriage of charges, this was a
10 Crown case at that time. And this was an
11 allegation of criminal wrongdoing by one police
12 officer against another, agreed?

13 A Agreed, sir.

14 Q What Jason Woychuk said to you was
15 that Harry Bakema, for all intents and purposes,
16 counsels him to obstruct justice?

17 A That is correct.

18 Q And moreover, Jason Woychuk admitted
19 to doing it?

20 A That is correct.

21 Q And I would suggest to you, sir, that
22 this is something that Mr. Minuk had to know about
23 immediately, as of February 24th of 2006?

24 A Yes, sir.

25 Q You don't tell him. In fact, you wait

1 until April 21st, 2006, when you next meet with
2 him?

3 A That is correct, sir, yes.

4 Q And during that time, you get a
5 correspondence from him, April 10th, we've covered
6 it. He's asking you to do things, he's asking you
7 about the warrant. You get correspondence again,
8 April 20th. So notwithstanding the fact that he
9 might be away, and we'll come to that, whether he
10 actually was away, wherever he is, he's got enough
11 time to send you these letters to ask you to do
12 things that he wants you to do. He's thinking
13 about the case, right?

14 A Yes, sir.

15 Q But you're sitting on this
16 information. You don't tell him until April 21st,
17 2006, sir. Who do you tell?

18 A On April 21st?

19 Q No, between February 24th and April
20 21st, when you tell Mr. Minuk, who do you bring it
21 up with in that intervening time?

22 A I haven't brought it up with anybody.

23 Q Well, this is a disclosure of a
24 serious criminal offence, the obstruction of
25 justice in the context of a drinking and driving

1 causing death case. How are you investigating it
2 if you're not bringing it up with anyone?

3 A Other than Constable Woychuk came and
4 had a couple conversations with me between that
5 time, and what I was looking at is I was looking
6 at the notes, I was looking at the reports to
7 see -- to compare, to do an analysis on the notes
8 and reports to see what he was referring to.

9 Q Sir, I suggest to you that you didn't
10 do any analysis of notes or reports, or anything
11 of that nature, until after you met with Mr. Minuk
12 on April 21st, 2006?

13 A No, sir, I did look through the file
14 and I did start comparing notes between Graham and
15 Bakema.

16 Q Did you keep an investigative file of
17 the obstruct justice allegation?

18 A No, sir.

19 Q So you do not open a file. You do not
20 create any notes, reports, or any documentation in
21 connection with the obstruct justice allegation?

22 MR. McDONALD: Mr. Commissioner, I
23 feel the need to rise on that.

24 THE COMMISSIONER: Yes.

25 MR. McDONALD: I think, with respect,

1 counsel is being unfair to the witness. He knows
2 that this witness made notes of additional
3 conversations with Constable Woychuk, and he's
4 suggesting to him something that he knows to be
5 inaccurate, and I take exception to that.

6 MR. CLIFFORD: Mr. Commissioner, the
7 notes that Mr. McDonald is referring to are all
8 entered now as exhibits. Mr. Paciocco covered
9 them with Mr. Woychuk. And for the benefit of my
10 colleague, I am also going to refer the witness to
11 those notes.

12 The Commission is aware of the fact
13 that this witness made a note on March 5th of the
14 February 24th disclosure, and he made subsequent
15 handwritten notes. What I'm referring to are
16 additional duty-book notes, a report, anything of
17 that nature. So the witness can't be misled, the
18 Commission can't be misled, because you have this
19 evidence before you. And he will be referred to
20 the specific handwritten notes that he made. What
21 I'm talking about are notes in furtherance of a
22 separate investigation into obstruct justice. So
23 I think there might be a bit of a misapprehension
24 between myself and Mr. McDonald, and I hope that's
25 cleared it up.

1 THE COMMISSIONER: What does he have
2 to say?

3 MR. McDONALD: I simply say,
4 Mr. Commissioner, then let's be fair to the
5 witness and let's put the questions to him
6 accurately. He did not ask him, did you make
7 additional duty-book notes? He did not ask that
8 question. He suggested to him he made no notes,
9 and that's not correct.

10 THE COMMISSIONER: Thank you.

11 MR. CLIFFORD: We can take care of
12 that, Mr. Commissioner.

13 THE COMMISSIONER: Thank you.

14 BY MR. CLIFFORD:

15 Q Sir, with respect to a separate
16 investigation into the obstruct charge, did you
17 create a file?

18 A No, I did not, sir.

19 Q Did you create an incident report?

20 A No, I did not, sir.

21 Q Did you make a note of the disclosure
22 of Jason Woychuk of February 24th, 2006?

23 A I believe I did, sir, yes.

24 Q And did you make that note, sir, on
25 March 5th, 2006?

1 A I --

2 Q If I could have the witness provided
3 with Exhibit 100?

4 A Yes.

5 Q Exhibit 100 is P-2.85.8, 2668. Chief
6 Carter, you have explained that no file was
7 opened, no duty-book notes were recorded, no
8 narrative reports, but you did make a handwritten
9 note, and I'm referring to Exhibit 100. It's
10 already been placed before the Commission. And
11 this is a note, I take it, of the disclosure of
12 Jason Woychuk of February 24th?

13 A That is correct, sir.

14 Q And what he's indicating is, Woychuk
15 picked up -- what you're indicating pardon me:

16 "Woychuk picked up writer at Minuk,
17 disclosed notes not his. Wrote..."

18 Q Could you read that for the Commission, sir?

19 A "...wrote as instructed to match 47
20 and 43."

21 Q And who are they?

22 A Number 47 would be the regiment, or
23 officer number assigned to Chief Bakema. Number
24 43 would be the number assigned to Constable
25 Graham.

1 Q Carry on?

2 A "He said 47 told him Harvey mordenzenk
3 was pissed. Said he was new, taking
4 directions from Chief. Said he should
5 have known better. Writer advised it
6 has to be disclosed."

7 Q And the date of this note?

8 A I made the note on March 5th.

9 Q And this note formed part of the
10 Harvey-Zenk case? It went into the prosecution
11 file or the police file for Derek Harvey-Zenk?

12 A No, it did not go into the police
13 file, sir.

14 Q Where did it go?

15 A I have a file where I kept this in my
16 desk and I did not attach it to the file.

17 Q And did you give it to Mr. Minuk?

18 A Not at that time, no.

19 Q Did you ever give it to anybody, other
20 than the Commission?

21 A I don't recall if I disclosed that,
22 sir, no.

23 Q So you made some notes. And we're
24 going to cover them.

25 A Yes.

1 Q But did you ever make a note that made
2 it into a police file in connection with Derek
3 Harvey-Zenk or an obstruct justice case?

4 A No, I didn't generate a separate file
5 number for that, sir.

6 Q Now, the next question I have, sir,
7 is, why would there be a delay in making this note
8 from February 24th to March 5th?

9 A I can't answer why there was a delay.
10 I realize I didn't make the note on March 5th and
11 that I ought to make it at that time.

12 Q I'll have the witness look at
13 P-2.85.9. This is Exhibit 101. Again, P-2.85.9.
14 You recognize this document, sir?

15 A Yes, I do, sir.

16 Q And this is a note apparently from
17 April 10th, 2006?

18 A That's correct, sir.

19 Q And is it a note of things that
20 occurred on that day?

21 A It's a note on things that occurred in
22 relation to Mr. Woychuk on that day.

23 Q And it's in connection with the
24 disclosure he made about his notes and Harry
25 Bakema?

1 A That is correct, sir.

2 Q And as with the previous document,
3 sir, the handwritten note of March 5th, did this
4 note make it into the Harvey-Zenk file or any
5 other file?

6 A No, that was kept in a separate file
7 in my office.

8 Q And not disclosed to anybody until it
9 was disclosed to the Commission?

10 A Not -- that's correct, sir, I believe
11 not disclosed at that time, no.

12 THE COMMISSIONER: Was it ever
13 disclosed to Mr. Minuk, the note?

14 THE WITNESS: The note, the note
15 itself, I don't recall if that was disclosed to
16 Mr. Minuk.

17 THE COMMISSIONER: Did you ever
18 initiate any investigation or consider laying any
19 charges in this case?

20 THE WITNESS: Not until I spoke with
21 Mr. Minuk.

22 THE COMMISSIONER: And when did you
23 speak with Mr. Minuk?

24 THE WITNESS: On April 21st.

25 THE COMMISSIONER: April 21st?

1 THE WITNESS: Yes.

2 THE COMMISSIONER: You had a
3 discussion with him on April 21st about the
4 possibility of laying an information with respect
5 to obstruct justice?

6 THE WITNESS: No, sir.

7 THE COMMISSIONER: So my question to
8 you is, did you ever consider laying an
9 information, first of all, did you ever consider
10 carrying out an investigation further into whether
11 or not charges should be laid?

12 THE WITNESS: Not at this point, sir,
13 until I'd been able to speak with Mr. Minuk.

14 THE COMMISSIONER: After you spoke to
15 Mr. Minuk, did you consider pursuing an
16 investigation with respect to obstruct justice?

17 THE WITNESS: No, sir. At that point,
18 Mr. Minuk said that he was going to get the RCMP
19 involved.

20 THE COMMISSIONER: He said what?

21 THE WITNESS: He was going to get the
22 RCMP involved in the investigation.

23 THE COMMISSIONER: Thank you.

24 BY MR. CLIFFORD:

25 Q Chief Carter, I bring your attention

1 back to the note that you made of April 10th,
2 2006. And could you, sir, read that into the
3 record? I'm not going to try to do that because
4 I'll get your handwriting wrong, I think. And
5 you've got some number quotes there and those are
6 identification quotes for officers?

7 A That's correct, sir.

8 Q You can indicate who those officers
9 are when you read this in?

10 A Okay.

11 "Requested 45..."

12 which is Constable Woychuk,

13 "...to come to my office. Again

14 Mr. Woychuk said that Chief Bakema

15 told him that Mordenzenk was pissed.

16 He again said that Chief Bakema

17 instructed him how to make notes."

18 Constable Woychuk, which is number 45,

19 "...said he had a cold and could not

20 smell properly, he was stuffed up. He

21 said it was wrong and he shouldn't

22 have done it, but that he was

23 instructed by 47...",

24 which was Bakema.

25 Q Now, you are including the word

1 "pissed" here again. Are these his words?

2 A That's his words, pissed, yeah.

3 Q You have also got a note here that 45
4 said he had a cold and could not smell properly,
5 stuffed up. We have heard that before. When was
6 the first time that he told you this?

7 A I believe on the day of the incident.

8 Q That's right. Because you told us
9 that yesterday?

10 A Yes.

11 Q This is not a revelation of April 10th
12 of 2006, this is something that you told us
13 yesterday he said to you that day, February 25th,
14 2005. Can we conclude, is he telling you this
15 again on April 10th?

16 A Yes, sir.

17 Q Why didn't you note it on
18 February 25th?

19 A I believe I testified that at that
20 time, I had done my rough notes, Mr. Mordenzenk
21 was in the vehicle, and I did not take the time to
22 note specifically those details.

23 Q If it's significant enough to be noted
24 on April 10, 2006, I would suggest to you, sir,
25 that it was certainly significant enough to be

1 noted on February 25th, 2005. That's a suggestion
2 to you, sir?

3 A Yes, sir.

4 Q Do you agree with that?

5 A Yes.

6 Q And what this is, I take it, is you
7 took it as an explanation in terms of Jason
8 Woychuk is telling you why, or trying to explain
9 to you, I take it, on April 10th, why he wouldn't
10 have smelled alcohol until such time as
11 Harvey-Zenk was in the vehicle with him?

12 A I believe so, yes.

13 Q Do you recall a conversation about
14 that or --

15 A From my notes, I recall that, yes.

16 Q Any idea why this is coming up in the
17 context of him coming to see you about the Bakema
18 disclosure?

19 A I suppose just trying to explain
20 himself.

21 Q Did you and he talk about the charter
22 difficulties with the case, how one might approach
23 them, how the Crown might view it, what the
24 defence strategies might be?

25 A I'm sure somewhere along the way we

1 had a conversation, sir.

2 Q With respect to your obligation to
3 disclose this to the Crown, we have covered that,
4 but were you aware of the fact that at that point,
5 the Crown had an obligation to do certain things
6 with this information as well?

7 A I was aware of it, but I probably
8 never thought of it at the time.

9 Q The non-disclosure for something like
10 this for such a period of time, I take it, and
11 this may be the case and it may not, but I take it
12 you were aware of the fact that, as a police
13 officer, that non-disclosure could have a
14 ramification on the outcome of a case?

15 A Yes, sir.

16 Q I'd like to move now, Chief Carter, to
17 the meeting that you had with Mr. Minuk on April
18 21st, 2006. Okay?

19 A That is correct, sir.

20 Q We've gone from December, the
21 correspondence, we've covered the warrant issue,
22 that was a live issue from December through the
23 correspondence in April. We've got the Woychuk
24 disclosure to you, February 24th. Mr. Minuk
25 doesn't know about this until you meet with him on

1 April 21st, 2006?

2 A That is correct, sir.

3 Q I want to discuss this meeting with
4 you, sir, where you make this disclosure to
5 Mr. Minuk. The meeting you have with him is at
6 his office?

7 A It's at his office, sir.

8 Q Okay. And when do you bring this
9 issue up with him, when you first arrive, or you
10 are discussing the case --

11 A When I first arrived.

12 Q -- how does it come about?

13 A When I first arrived.

14 Q And what was Mr. Minuk's reaction?

15 A He was very surprised, shocked, I
16 would guess.

17 Q Can you elaborate on that, sir?

18 A He -- when I told him, he was -- he
19 had a shocked look on his face, he was surprised,
20 and somewhere in there he made a phone call.

21 Q Do you know who he called?

22 A I'm sorry, I don't know who he called.

23 Q Was he upset?

24 A Not pounding his hands upset, no, not
25 pounding his fists upset, no.

1 Q Did he ask you how long you had known
2 about this?

3 A No, I don't recall him asking me that,
4 sir?

5 Q Did he ask you questions about it?

6 A A few questions about it, sir, and I
7 tried to explain as best I could what I knew about
8 it at that time.

9 Q Did you volunteer to him that you had
10 been aware of this and had disclosed it to no one
11 since February 24th?

12 A He knew, I told him I had -- it was
13 disclosed to me on February 24th.

14 Q Okay. So did you tell him that,
15 though, on April 21st, 2006, that you had been
16 carrying this information since February 24th?

17 A I believe so, sir, that's when I told
18 him I received the disclosure.

19 Q Now, we know that he -- he asked you
20 for a full report?

21 A That is correct, sir.

22 Q And in fact, that was the basis upon
23 which you completed your report to him and that
24 you furnished to him on April 26th, 2006. That's
25 E-1.23.o. So that was the basis upon which that

1 report was prepared?

2 A That is correct, sir.

3 Q And in that report, I take it, you
4 were attempting to be as thorough as possible in
5 giving Mr. Minuk as many of the details that you
6 could?

7 A I'm trying, sir, yes.

8 Q Now, Mr. Minuk is obviously taking
9 this very seriously. He wants a full and detailed
10 account from you. He instructs you to prepare
11 this report?

12 A That is correct, sir.

13 Q What happens after April 21st insofar
14 as Jason Woychuk is concerned? Now you've made
15 the disclosure to Mr. Minuk. He's asked you to
16 provide him with a full, detailed, written report.
17 Do you go back and talk to Jason Woychuk and let
18 him know that this is where the case is gone now,
19 that this issue has been disclosed, the Crown
20 counsel is on it, he's taking it very seriously
21 and he's looking for a full written report from
22 you?

23 A I'm not sure what date I advised
24 Woychuk, but I did tell him that Mr. Minuk was
25 aware of it now and had been -- it had been

1 disclosed to him.

2 Q Could we provide the witness with
3 document P-3.85.12? That's at page 2776. That is
4 Exhibit 102, again, P-3.85.12, page 2776. If you
5 take a look at that, sir, I think it will refresh
6 your memory on the issue of what occurred on April
7 21st, 2006?

8 A Yes, sir.

9 Q And could you read that in, please?

10 A I wrote:

11 "Advise Woychuk I advised."

12 This was in relation to Mr. Minuk.

13 "Said he had intentions of speaking to
14 me about this. He didn't feel that
15 number 47..."

16 Bakema,

17 "...intentionally tried to cover up."

18 This is what he's telling me.

19 "He said number 47 and number 43..."

20 Bakema and Graham,

21 "...were chicken shit to deal with
22 this because Mordenzenk was a cop and
23 concerned about what other cops would
24 think. I advised 45..."

25 which is Woychuk,

1 "...to tell the truth when speaking to
2 Minuk."

3 Q Now first, sir, did this handwritten
4 note in connection with the Woychuk disclosure go
5 in the same place as the previous two handwritten
6 notes that you referred to?

7 A Yes, it did, sir.

8 Q And this is a separate file kept in
9 your desk?

10 A That's correct, sir.

11 Q Never provided to either the police or
12 the Crown?

13 A No, sir, not at -- no, sir.

14 Q And when was this first disclosed to
15 anybody else after you made it? Did it go along
16 with all of the other documents?

17 A Yes, I think so, yes.

18 Q Now, apart from what's in the note,
19 you had a face-to-face meeting with him that
20 caused you to create this document on April 21st.
21 What was Jason Woychuk's reaction?

22 A As I recall, he seemed -- as I recall,
23 he seemed contrite. It wasn't a huge reaction
24 from him. He's not really a very expressive
25 person.

1 Q You indicated he was contrite. Would
2 it be fair to say that he was also very afraid of
3 what was going to be happening?

4 A That would probably be safe, yeah.

5 Q Now, he's resiling, apparently, to
6 some extent. He's making reference, and you are
7 recording it, presumably, with respect to whether
8 something occurred intentionally or not. Did you
9 pursue this with him?

10 A No, I did not pursue that with him at
11 that time.

12 Q Now, when he is having this discussion
13 with you, you obviously have an opportunity now to
14 question him. You can ask him as many things as
15 you want, presumably. He's come into your office,
16 he wants to -- I don't know if he came into your
17 office actually, I don't know the context of the
18 meeting. Did you go see him --

19 A No.

20 Q -- after you went and spoke to
21 Mr. Minuk?

22 A I'm sorry?

23 Q Did you go to see Jason Woychuk after
24 you spoke with Mr. Minuk, or was it the other way
25 around?

1 A No, I believe he came to my office,
2 sir.

3 Q Did he know that you were going to be
4 meeting with Mr. Minuk?

5 A I don't know if he was meeting -- if
6 he knew I was meeting with Mr. Minuk that day.
7 That I'm not certain of, sir. So I can't tell you
8 that with certainty.

9 Q Do you know --

10 A But he knew I was going to be meeting
11 with him.

12 Q Do you know why he came to see you on
13 April 21st?

14 A I may have summoned him to my office
15 to tell him that I had already advised Minuk.

16 Q Do you have a recollection of doing
17 that?

18 A He had a habit of coming to my office,
19 as most of the other officers do when they report
20 for shift, just to say hello.

21 Q How long was he in there?

22 A Just minutes.

23 Q You didn't, sir, take the opportunity
24 to ask him any further questions, pursue any
25 investigation on the alleged obstruct?

1 A No, sir.

2 Q The reference here said "47, 43
3 chicken shit to deal with this." Where is this
4 terminology coming from?

5 A Jason Woychuk.

6 Q Did you speak to Jason Woychuk again
7 after that day? If the witness could be provided
8 with P-3.85.13, page 2777. That's Exhibit 103,
9 again P-3.85.13, page 2777.

10 Sir, do you recognize that document?

11 A I recognize that, sir.

12 Q It's a document dated April 27th,
13 2006. It's also in connection with the Jason
14 Woychuk disclosure.

15 Sir, did this document go to the same
16 place as the other documents?

17 A Yes, it did, sir.

18 Q So it went into the file in your desk,
19 not into any police file or to the Crown, and not
20 disclosed until the announcement of the Inquiry?

21 A That's correct, sir.

22 Q Could you read it into the record,
23 sir? And I understand that there may be a portion
24 at the bottom, and I'll have you read that too,
25 because I want to find out what that is?

1 A Okay.

2 "Spoke with Jason Woychuk at his

3 request about Harveymordenzenk.

4 Wanted to know..."

5 I'm sorry,

6 "... wanted to know if he should be

7 worried. Writer explained that there

8 is concerns but he should tell the

9 truth. He said he would. Again said

10 he only did what he was told to by

11 Chief Bakema."

12 Q Could you carry on and read the bottom

13 part, sir?

14 A The next one is dated 06/04/28, and

15 that's an unrelated, I don't know why I wrote it

16 on there, it's an unrelated. At 11:00 o'clock he

17 asked me if he could run home during day shift

18 with the police cruiser to check on his dog that

19 had just had an operation. And I granted that

20 request.

21 Q So you have a note from the 27th of

22 April, and the 28th?

23 A Yes.

24 Q The 27th is relating to the Jason

25 Woychuk disclosure?

1 A Yes.

2 Q And 28th is related to Jason Woychuk
3 asking you to go home to check on his dog?

4 A Yes, yes.

5 Q And why is the note about Woychuk's
6 dog on the same page as the disclosure in
7 connection with the Woychuk --

8 A I don't know. For some reason I wrote
9 it on there, and I can't explain that. I just --
10 I wrote it on there.

11 Q Well, if you were keeping a separate
12 file with respect to the Jason Woychuk disclosure,
13 I'm wondering why on the 28th, you are making a
14 note about something completely unrelated to this?

15 A I may have had the file out in front
16 of me and I jotted it down on that piece of paper,
17 sir. I can't explain.

18 Q Was it your intention that at some
19 point that these notes you were making in
20 connection with Jason Woychuk would form part of
21 the police file where they would be provided to
22 someone?

23 A It was my intention to ensure that
24 they were provided to the Crown, who in turn had
25 advised me that they were asking the RCMP to

1 investigate. So these notes would have, upon
2 instruction, gone wherever, wherever I was told to
3 send them.

4 Q Sir, I suggest to you that, with your
5 level of experience, you didn't need to be
6 instructed as to what to do with any notes that
7 you made. You were interviewed by the RCMP?

8 A Yes, I was, sir.

9 Q And do you agree, sir, that you didn't
10 need instruction on what to do with notes that you
11 would have been making?

12 A In retrospect, sir, yes.

13 Q I want to ask you about the follow-up
14 to the April 21st meeting. And I'm going to go
15 back to the search warrant at Branigan's. As of
16 April 20th, Mr. Minuk is asking you in writing
17 about it again?

18 A That is correct, sir.

19 Q And that correspondence has been filed
20 as an exhibit, and we know that April 20th was the
21 third piece of correspondence that he forwarded to
22 you following up on the search warrant at
23 Branigan's. And that's Exhibit 126, R-1.91.14 at
24 page 3149, again Exhibit 126. That's
25 correspondence dated April 20th. You go to this

1 April 21st meeting. We have covered the
2 disclosure, the reaction, your notes, et cetera.
3 But the follow-up to that meeting, you prepared
4 the report that you were asked to, but what about
5 the search warrant at Branigan's? I want to
6 pursue that issue. Does it get done?

7 A No, sir.

8 Q And why doesn't it get done after
9 April 21st?

10 A At that point in time, sir, I'm under
11 the impression that Mr. Minuk is having the RCMP
12 do the investigation. And it was my impression,
13 sir, that if there was going to be any pursuit of
14 a search warrant, Mr. Minuk would have the RCMP
15 look at that now that he had turned the
16 investigation over to them.

17 Q Mr. Minuk never told you not to pursue
18 this search warrant, did he?

19 A Not at that time, sir.

20 Q At any time, did he tell you not to
21 pursue the search warrant at Branigan's?

22 A On my meeting of July, my final
23 meeting, July 12th, I believe.

24 Q You're talking about July 12th of
25 2007?

1 A Yes.

2 Q This was four days before the
3 Preliminary Hearing will start to -- four days
4 before the Prelim was scheduled to begin?

5 A Yes.

6 Q And you are indicating that at that
7 point, he tells you, you don't have to get the
8 search warrant?

9 A That's correct, yes.

10 Q Why is it not being pursued between
11 April 21st and July 12th, 2007?

12 A Sir --

13 Q Let me correct myself.

14 A I'm sorry.

15 Q Why is it not being pursued between
16 April 21st, 2006 and July 12th, 2007?

17 A Because it was my belief, sir, that
18 when Mr. Minuk said he was getting the RCMP
19 involved in this now to do the investigation, that
20 at that point in time, I would not be pursuing the
21 warrant.

22 Q Did ever suggest that to you?

23 A I don't believe in words, sir, he just
24 gave me that impression that the RCMP was taking
25 over.

1 Q What would he have done, sir, to leave
2 you with that impression, that he didn't want you
3 to continue with a job he asked you to do three
4 times in writing?

5 A At that time, at the April 21st
6 meeting, the disclosure that I told him about
7 seemed to be front and centre, and the warrant did
8 not seem to be a huge issue with him at that time.
9 He appeared to be more concerned about the
10 disclosure that I provided to him.

11 Q Sir, in fairness to you, I have asked
12 Mr. Minuk about that during his interview with
13 Commission Counsel, and I'm going to raise that
14 with you, in fairness to you, in terms of what
15 might have been done or what impression might have
16 been left with you. I'm going to refer to a
17 transcript. It's not your transcript, but I want
18 you to listen carefully to what Mr. Minuk said on
19 that issue. I am referring to page 42 of
20 Mr. Minuk's interview with Commission Counsel, May
21 2nd, 2008. Page 42, line five:

22 "Q Okay. I'll follow up on that.
23 But with respect to the avenue of
24 investigation which we understand was
25 very important, it's not being pursued

1 by you subsequent to April 21st in any
2 correspondence or verbally to anyone,
3 is it?"

4 That's a question of Mr. Minuk. He says:

5 "A At this point, no, because I'm
6 waiting now to see the outcome of the
7 RCMP investigation, and they would
8 have been aware that this was one of
9 the issues that had not been done.

10 Q How would they have been aware?

11 A From my conversations with them,
12 I'm briefing them as to where we were
13 in the course of the investigation.

14 Q Okay. What would your reaction be
15 to the suggestion, Mr. Minuk, that
16 there was some suggestion made to
17 Mr. Carter, or Sergeant Carter, that
18 in light of what he told you, that he
19 shouldn't pursue the search warrant?

20 A No, no, absolutely not.

21 Q I'm just asking you if that
22 suggestion were made to you?

23 A No way.

24 Q Not directly, perhaps indirectly,
25 or that the misapprehension could have

1 been created that he was, he didn't
2 follow up on an avenue of
3 investigation that was very important,
4 as a result of any intimidation?

5 A There's two separate things going
6 on here. One, there is an
7 investigation of this incident with
8 Mr. Zenk, and the other is the
9 investigation into the activity of
10 Mr. Bakema and what happened at the
11 scene. Now, I don't think there is
12 any confusion on the two of those, in
13 my mind. Like if someone is
14 suggesting, I would have told him to
15 stop doing his work, no, I reject
16 that.

17 Q You would have -- I take your
18 response that you take serious issue
19 with the suggestion --

20 A Absolutely.

21 Q -- that either directly,
22 indirectly, that you could have
23 communicated or miscommunicated that
24 type of message to a police officer?

25 A Well, if he understood it, or

1 misunderstood it, that's not something
2 that I would have left him an
3 impression with."

4 I put another person's transcript to
5 you, sir, in fairness. You hear what he said
6 about that, that he did not do that?

7 A Yes, I do hear that, yes.

8 Q Your testimony is that you were
9 nevertheless left with that impression?

10 A Yes, sir.

11 Q But the RCMP was responsible for
12 investigating the disclosure, the Woychuk
13 disclosure. You knew that you were not
14 responsible for that?

15 A I knew that I was not responsible for
16 that.

17 Q In fact, that was something that you
18 wouldn't be investigating?

19 A No.

20 Q But that didn't mean that the
21 Harvey-Zenk case went into suspended animation for
22 a while. It's still a case. It was still before
23 the courts. The prosecution was still ongoing?

24 A That's correct, yes.

25 Q And I take it, as a result of that,

1 Mr. Minuk would not have suggested to you to stop
2 working on the case; agreed?

3 A Yeah, I'm not saying he suggested, I'm
4 saying that that's the impression I was left with,
5 sir.

6 Q Now, on the follow-up to the April
7 21st meeting as well, you have told me, and the
8 Commission, about your meeting with Jason Woychuk
9 on April 27th. I understand that you had occasion
10 to meet with him again. And if the witness could
11 be provided with P-3.85.14, that's page 2778.
12 It's in evidence now as Exhibit 104, P-3.85.14,
13 page 2778. It's been identified as a handwritten
14 note of Norm Carter dated May 18th, 2006.

15 First I want to clarify, sir, whether
16 or not this note of May 18th went with the
17 previous notes of the Woychuk disclosure and the
18 conversations you had with him?

19 A Yes, it did.

20 Q It went into the file in your desk?

21 A Yes, it did, sir.

22 Q And followed the same path as the
23 others?

24 A Yes, it did, sir.

25 Q And could you read this into the

1 record, sir?

2 A "Woychuk advised he missed court on
3 May 15th, date mix up. He then asked
4 if Minuk wanted to speak with him. He
5 hasn't heard anything yet. Writer
6 advised it will happen and to tell
7 everything."

8 A little bit later, about an hour and a half later
9 he came to my office and asked what I think would
10 be happening. I advised I didn't know -- I said
11 Minuk is meeting with the RCMP. He asked about
12 this, for what reason? And at this point I
13 advised he was likely to meet with the traffic
14 analyst.

15 Q Sir, I want to ask you about the first
16 line here.

17 "Woychuk advised he missed court on
18 May 15th, date mix up."

19 Did that have anything to do with the Woychuk
20 Bakema disclosure?

21 A No, that was the reason he came to my
22 office.

23 Q Okay. I understand. The second line
24 then is, he's asking you about Mr. Minuk?

25 A Yes, sir.

1 Q And what is his emotional state, sir,
2 when he's in the office with you?

3 A He appears worried.

4 Q He is afraid, is he not?

5 A I would say so, yes?

6 Q And you tell him that you haven't
7 heard anything at all from Mr. Minuk?

8 A That's right.

9 Q Have you been in touch with Mr. Minuk
10 after April 21st?

11 A After April 21st?

12 Q Yeah.

13 A Well, I believe I did have some
14 communication.

15 Q And we'll come to that, sir, and I'm
16 not suggesting by any means that you didn't,
17 because there are notes and we'll come to it. But
18 you are in touch with Mr. Minuk?

19 A Yes.

20 Q You know that the RCMP is involved?

21 A Yes.

22 Q You know they have now been asked to
23 conduct an investigation into Woychuk's
24 allegation?

25 A Yes.

1 Q So there is, at this point, a separate
2 and distinct investigation occurring. And you
3 tell Jason Woychuk that Marty Minuk is meeting
4 with the RCMP. Why do you tell him it's about a
5 traffic analyst?

6 A I didn't know -- I didn't -- I didn't
7 know at that time, or didn't want Woychuk to know
8 at that time that the RCMP may be investigating a
9 specific obstruct charge.

10 Q Well, he would have been a suspect in
11 such an investigation?

12 A Yes.

13 Q Is he asking you again, as he did on
14 April 27th, whether he ought to be worried?

15 A I don't think he said those words,
16 sir. He asked what I think would happen, be
17 happening.

18 MR. CLIFFORD: Mr. Commissioner, I
19 note the time is 10:34. This might be an
20 opportune time for the morning recess in the
21 course of the investigation.

22 THE COMMISSIONER: How much longer do
23 you think you'll be?

24 MR. CLIFFORD: Oh, I'll be another
25 hour with him.

1 THE COMMISSIONER: Fifteen minutes.

2 MR. CLIFFORD: Thank you.

3 THE CLERK: All rise. This Commission
4 of Inquiry is now in recess.

5 (Proceedings recessed at 10:35 a.m.

6 and reconvened at 10:51 a.m.)

7 THE CLERK: All rise, please. This
8 Commission of Inquiry is now reopen.

9 BY MR. CLIFFORD:

10 Q Chief Carter, I want to deal now,
11 before I go any further in your dealings of post
12 April 21st of 2006, I want to go back briefly to
13 the issue of the RCMP investigation and the East
14 St. Paul Police case against Derek Harvey-Zenk. I
15 referred to a passage of Mr. Minuk's transcript
16 where he said, look, these two things, as far as I
17 were concerned, were separate. Your RCMP
18 investigation was into the conduct of Harry Bakema
19 and Jason Woychuk.

20 And that's, I take it, what you
21 understood to be the case, the RCMP would take
22 carriage of that investigation?

23 A Of the Harveymordenzenk investigation,
24 yes.

25 Q Let me clarify this. Your

1 understanding, I take it, mirrored that of
2 Mr. Minuk, that the RCMP would have carriage of
3 the investigation into the Jason Woychuk
4 disclosure of Harry Bakema's conduct?

5 A Initially, it was, again, my
6 impression that the investigation itself was being
7 turned over to the RCMP.

8 Q That's right. So that was something
9 that the RCMP would deal with. And that would be
10 appropriate for the RCMP to be investigating one
11 of the members of your police force. The
12 expectation wasn't that you would conduct the
13 investigation into Harry Bakema and Jason Woychuk.
14 That was your understanding, correct?

15 A Yes, yes.

16 Q But you would carry on with the
17 investigation of the prosecution of Derek
18 Harvey-Zenk?

19 A Yes.

20 Q And of course, you were not asked by
21 Mr. Minuk to investigate the Woychuk disclosure.
22 He made it very clear to you that the RCMP was
23 going to take carriage of that?

24 A The RCMP was going to investigate,
25 yes, or he was going to ask the RCMP to

1 investigate, I'm sorry.

2 Q All right, sir. And sir, I'll also
3 suggest to you, and I take it you understand that
4 your view was that, given the fact that this was a
5 disclosure of one East St. Paul Police member
6 against another member, and you yourself were an
7 East St. Paul Police member, that it wouldn't have
8 been appropriate for you to investigate criminal
9 charges of obstruct?

10 A That is correct, sir.

11 Q Now, let's go back to what's happening
12 after April 21st, 2006, okay?

13 A Sure.

14 Q Could the witness be provided with
15 P-385.15, page 2779? Those have not been entered
16 as an exhibit yet, and I'm going to ask that they
17 be entered, and could we have the next exhibit
18 number?

19 THE CLERK: Exhibit 127.

20 (EXHIBIT 127: P-3.85.15, Miscellaneous
21 notes of N. Carter between May 15 and
22 31 2006)

23 BY MR. CLIFFORD:

24 Q It's Exhibit 127. It's found at
25 P-3.85.15, page 2779.

1 Chief Carter, there are notes
2 contained here, and you recall earlier I mentioned
3 to you that the Commission had notes that
4 suggested that you were in contact with Mr. Minuk
5 after April 21st. And we see here there's a note
6 of May 15th, there's no year on it, but May 18th
7 and thereafter, you've got '06, you received a
8 telephone call from Marty Minuk,

9 "Meeting this afternoon with RCMP."

10 A Yes.

11 Q These are, I take it, the notes that
12 you started to make as of April -- as of May 15th,
13 and they carry on?

14 A That's correct, sir, yeah.

15 Q There's also a note from May 29th,
16 sir, on page 2780. And then we see duty-book
17 notes. This is May 31st, 2006. Is this -- and
18 you've got a notation at 9:30.

19 "Harry called for notes."

20 Is this Harry Bakema calling to get his duty-book
21 notes in May of 2006 for a scheduled Preliminary
22 Hearing?

23 A That's correct, sir, yes.

24 Q And you have further notes of May 31st
25 in that regard?

1 A Yes.

2 Q So these are duty-book notes that are
3 being notes in 2006 at page 2781 and at page 2782?

4 A That's correct, sir.

5 Q And at page 2779 and 80, what type of
6 notes are these, sir, just general --

7 A Just general notes, yes.

8 Q And the notations from May 15th to
9 May 29th, where did these notes go, sir?

10 A They went into the file.

11 Q The file that was in your desk?

12 A Yes, sir.

13 Q And they followed the same path?

14 A That's correct, sir.

15 Q And what about the duty-book notes
16 from May 6th -- May 31st, 2006, at page 2781 and
17 82? I take it they would have stayed? That was
18 part of a duty-book that you were running at that
19 time?

20 A Yes, yes, sir, yeah.

21 Q It would have been separate and
22 apart --

23 A That's correct, sir, yeah.

24 Q -- from the notes in your desk?

25 A Yes, sir.

1 Q Now, sir, what's revealed in the notes
2 at page 2779 is that on May 15th, May 19th, May
3 23rd, you're having some dialogue with Mr. Minuk.
4 There seems to be telephone calls back and forth
5 between the two of you?

6 A That's correct, sir.

7 Q And one of these things is:

8 "May 23rd, '06, received call from
9 Minuk and writer explained about
10 Bakema's new notes."

11 Can you read that into the record, sir, the entry
12 of May 23rd, '06?

13 A Yes.

14 "9:00 a.m. received call from Minuk.
15 Writer explained about Bakema's new
16 notes. Writer to forward a copy.
17 Also wants an update on meeting with
18 RCMP."

19 Q Okay. Sir, I'm going to refer you now
20 to a document, E-1.23.q, page 519. This would be
21 I think the next exhibit.

22 THE CLERK: Exhibit 128.

23 (EXHIBIT 128: E-1.23.q, Fax cover
24 sheet to Marty Minuk re Bakema's
25 second set of notes)

1 MR. CLIFFORD: Exhibit 128, that's
2 E-1.23.q, page 519.

3 BY MR. CLIFFORD:

4 Q Sir, do you recognize that document?

5 A I recognize that document, sir.

6 Q Okay. What you are saying here is:

7 "Further to our conversation on May
8 23rd, 2006, I received Mr. Bakema's
9 police notebooks from the municipal
10 lawyer."

11 You referred to this in your testimony earlier,
12 sir. I take it this is an explanation that you're
13 giving to Mr. Minuk with respect to the second set
14 of notes?

15 A Yes, sir.

16 Q Take a moment, look at that, and
17 explain to the Commission what it is that you're
18 trying to tell Mr. Minuk?

19 A I'm explaining to Mr. Minuk that a
20 second set of notes was found in the notebook,
21 Mr. Bakema's notebook. And I described the pages
22 that I discovered the second set of notes on. And
23 this would be after I received the notebook from
24 the municipal lawyer.

25 Q Okay. So you -- and you mentioned

1 this earlier -- came into possession of a
2 duty-book from Officer Bakema. You are aware of
3 the fact that certain notes were not included in
4 the file, and you are taking steps to address it?

5 A That's right, sir.

6 Q So there was in the case earlier a
7 non-disclosure to the Crown by the East St. Paul
8 Police Force. But here you're taking steps to
9 deal with it?

10 A That is correct, sir, yes.

11 Q And we have covered the subject matter
12 earlier in your testimony. This is with respect
13 to the notes of Harry Bakema?

14 A Yes, sir.

15 Q Now, sir, I want you to take a look at
16 a document, E-1.23.p, page 518. Sir, you
17 recognize that document as a fax from you to Marty
18 Minuk on June 1st, 2006?

19 A I recognize that, sir.

20 Q And you are referencing your
21 conversation with him --

22 A That's correct, sir.

23 Q -- on the 31st of May. Now, I take
24 it, this can be gleaned from your notes from May
25 15th until the end of the month, you have told us

1 that you are in telephone contact with Mr. Minuk.
2 I take it here, sir, you are attempting to deal
3 with the fact that Krawchuk had made notes of his,
4 you describe it as minimal involvement in the
5 incident. And Krawchuk advised you that he gave
6 his notes to Chief Bakema. You told us in your
7 testimony earlier that he assumed Bakema used them
8 to write up his police reports, and they never
9 made it into the Crown file?

10 A They never made it to the Crown file,
11 sir.

12 Q I take it on this date, sir, that you
13 are attempting to deal with that issue?

14 A That is correct, sir.

15 Q Now, did you speak to Krawchuk? Did
16 you follow up with him and ever ask him, look,
17 what was your actual involvement? What else could
18 you tell me, above and beyond what might be in
19 your notes?

20 A Yeah. When I spoke with Krawchuk, he
21 said his involvement was minimal. He did traffic,
22 and the only other involvement he said he did was,
23 when he was asked to escort Mr. Harveyordenzenk
24 to the washroom on the 25th, on the day in
25 question.

1 Q Now, sir, after June 1st, 2006, did
2 you have any further concern that there had been a
3 lack of disclosure to Crown Counsel?

4 A I don't -- I don't -- any further
5 concern? No, I don't think so. I was certainly
6 hoping that this was the last of any disclosures
7 that needed to go in, in regard to this case.

8 Q Sir, I want to shift focus now and ask
9 you about a different area. If you could, take
10 your mind back to your formulation of reasonable
11 and probable grounds in this case. You gave
12 evidence before the Commission yesterday about the
13 details that Jason Woychuk gave to you when he
14 arrived at the station, odour of alcohol that he
15 detected on the way. And did he give you any
16 details, sir, about the accident?

17 A At that time?

18 Q Yeah?

19 A Other than it was -- there was a
20 fatality. I believe he may have said a rear-end
21 accident, but, again, I'm just going back and
22 assuming that's what he told me. It was a motor
23 vehicle accident, three-vehicle accident.

24 Q Did you have any idea what driver was
25 driving what car?

1 A At that time, no, sir.

2 Q How was it then that you could have
3 arrested Derek Harvey-Zenk for impaired causing
4 bodily harm or death? You had no idea whether he
5 caused the accident or not, or whether he was just
6 merely involved in it?

7 A By what -- by what Mr. Woychuk had
8 told me. Mr. Woychuk said he was the driver of a
9 vehicle. I didn't know what vehicle he was the
10 driver of.

11 Q That's right. He could have been a
12 driver of a vehicle involved in an accident.
13 Derek Harvey-Zenk could have got rear-ended by
14 someone else, and then somebody could have learned
15 he was impaired on the scene and, therefore,
16 charged him with impaired driving. But he
17 wouldn't be responsible for impaired causing
18 bodily harm or death?

19 A I'm --

20 Q I suggest to you, sir, that Jason
21 Woychuk told you a little bit more than what
22 you're telling us?

23 A I'm sorry?

24 Q In order for you to charge him with
25 cause bodily harm or death, you'd have to know a

1 lot more about the accident than what you're
2 telling us?

3 A What I knew about the accident, sir,
4 was that there had been a single vehicle -- sorry
5 a three-vehicle accident. Mr. Harvey Mordenzenk
6 was responsible for it, and that he was impaired,
7 or may have been impaired, sorry, and that
8 Constable Woychuk could smell a slight odour of
9 liquor on him.

10 Q Okay. So are you now indicating that
11 Jason Woychuk gave you that added detail that
12 Harvey-Zenk was responsible for it?

13 A When he said he may be impaired, that
14 would indicate that he was responsible for it.

15 Q Be responsible for impaired driving,
16 but not impaired driving causing death. In order
17 to come to that conclusion, you'd have to get more
18 detail?

19 A I was aware that there was a fatality.

20 Q That's right. We know that.

21 THE COMMISSIONER: The question is,
22 where did you get that information?

23 THE WITNESS: That would have been
24 relayed to me by Constable Woychuk.

25 THE COMMISSIONER: When?

1 THE WITNESS: When he brought

2 Mr. Harveymordenzenk into the station.

3 BY MR. CLIFFORD:

4 Q Jason Woychuk was giving you more
5 information than simply that he had somebody with
6 him, odour of alcohol, anything with respect to
7 impairment, he's giving you additional
8 information? You'd need to know about the
9 sequence of events in order to find someone
10 responsible, or suspect them of being responsible
11 for causing the death. Do you understand what I'm
12 saying? Are you following me?

13 A I'm not, I'm sorry, I'm not following
14 you.

15 Q Hypothetical situation, and this is
16 purely hypothetical, the third vehicle involved in
17 this, Kathy Beattie, for instance, if there was a
18 suspicion that she was impaired, she could have
19 been brought in too. She wouldn't have been
20 responsible for causing anything other than being
21 involved in an accident while she's impaired?

22 A Um-hum.

23 Q So in order to get to cause death,
24 you'd have to have a conversation with an officer
25 about a little bit more than what he's observing

1 about the person. Do you agree on that?

2 A Yes.

3 Q Okay, sir, you have indicated that, I
4 think you understand and you are in agreement, but
5 one of the elements of the offence of the cause
6 death is not simply that you are driving while
7 impaired, but you have to be responsible for
8 causing the death. So you would have to know,
9 sir, where he was in the sequence, how he fit in.
10 You'd need significant detail from Officer
11 Woychuk. Do you understand that, sir?

12 A Yes, I understand what you're saying.

13 Q I'm suggesting to you that Officer
14 Woychuk gave you significant detail when he got to
15 the station?

16 A What I recall, sir, is that he said
17 that there had been an accident -- I'm sorry, I
18 was aware that there was a serious accident when I
19 got the phone call. When I got to the office, he
20 had indicated to me that this person was a police
21 officer, he indicated to me that he was impaired,
22 that he was involved in the accident and that --
23 again, I don't recall -- all I can say is he was
24 involved in the accident and that he was brought
25 in because he may be impaired and he was

1 responsible for the accident. I don't know what
2 to say to that, sir.

3 Q So you are suggesting, sir, that the
4 only information you had with respect to causation
5 was that he may be responsible?

6 A Yes, sir.

7 Q I want to move now to another
8 document, sir, that was prepared by you in this
9 case.

10 Madam clerk, could you provide the
11 witness with P-3.85.19. And can we also make sure
12 that the Krawchuk memo is filed as the next
13 exhibit?

14 THE CLERK: The Krawchuk memo will be
15 Exhibit 130.

16 (EXHIBIT 129: E-1.23.p, Fax Cover
17 Sheet to Marty Minuk re Cst.
18 Krawchuk's notes)

19 MR. CLIFFORD: So Exhibit 130 is
20 E-1.23.p, page 518, June 1st memo prepared by
21 Chief Carter. It's a fax by Chief Carter to Marty
22 Minuk, June 1st.

23 And this document is P-3.85.19, page
24 2790, and the exhibit number, madam clerk?

25 THE CLERK: This one will be 130.

1 (EXHIBIT 130: P-3.85.19, Risk
2 Management notice dated June 12, 2006
3 prepared by Norman D. Carter)
4 MR. CLIFFORD: 130, a little
5 correction here for my colleagues, the Krawchuk
6 memo is Exhibit 129, that's E-1.23.p page 518.
7 And the document found at P-3.85.19 at page 2790
8 is Exhibit 130.

9 BY MR. CLIFFORD:

10 Q Chief Carter, you see that there's a
11 document before you dated June 12th, 2006?

12 A That's correct, sir.

13 Q This was prepared by you and forwarded
14 to who, sir?

15 A J. Mauws, CAO of the R.M. of East St.
16 Paul.

17 Q Sir, the first thing I want to do is
18 just address with you -- at page 2792 in this
19 document, you indicate, just up from the bottom,
20 you see a date on April 12th, 2006, Sergeant
21 Carter spoke with Special Prosecutor Minuk and
22 made the disclosure to him?

23 A Yes.

24 Q I'm just wondering about the date,
25 sir?

1 A That's probably a typo, April 21st.

2 Q Yes, you flip the numbers around and
3 it's the 21st?

4 A Yes.

5 Q And that's what I assumed, but I
6 wanted to confirm that with you, sir, just
7 transposed the two and one?

8 A Just transposed.

9 Q All right. So we'll make that
10 correction. Why is this document being prepared,
11 sir?

12 A I'm required, whenever I feel there is
13 an incident that can put the R.M. at risk, I am
14 required to prepare a risk management document and
15 submit it to the CAO.

16 Q So I wanted to address this with you,
17 because I had asked you questions about notes that
18 were prepared about the Woychuk disclosure, and we
19 have covered the handwritten notes. Did this make
20 it into any police report, or did you give this to
21 the RCMP, or anybody, other than who it's
22 addressed to?

23 A No, it was forwarded to the CAO.

24 Q And that's where it went, and stayed?

25 A Yes, sir.

1 Q And it is an account, essentially, of
2 what you indicated to Mr. Minuk about the
3 circumstances?

4 A That's correct, sir.

5 Q Now, I wanted to ask you, sir, about a
6 reference you made in this risk management
7 document. You referred here -- and it's just up
8 from the April 12th reference:

9 "A comparison of Chief Bakema's and
10 Constable Graham's notes showed the
11 content and wording to be very similar
12 and not normally as it should reflect
13 an independent recollection."

14 Can you elaborate on that, sir?

15 A I compared the notes that were -- I
16 compared the notes that were provided with the
17 file for disclosure, and I found the wording is
18 similar and didn't -- it didn't seem to reflect an
19 independent recollection of each individual
20 officer.

21 Q Did you speak with Constable Graham
22 about it?

23 A Constable Graham was not employed at
24 that time.

25 Q At the time that you were conducting

1 the examination?

2 A Yeah. He was, Constable Graham was
3 not with the department.

4 THE COMMISSIONER: I'm sorry, I'm
5 having difficulty.

6 THE WITNESS: Constable Graham was not
7 with the department.

8 THE COMMISSIONER: He wasn't with the
9 department?

10 BY MR. CLIFFORD:

11 Q Was he with the department as of
12 February 24th, when the disclosure was made?

13 A No, he wasn't.

14 Q Okay. Harry Bakema is gone February
15 22nd, 2006?

16 A Yes.

17 Q And Constable Graham was gone prior to
18 that?

19 A He was off on -- he was off on
20 administrative leave for that period of time. He
21 wasn't back in the department.

22 Q Okay. But in terms of his end date,
23 he was still with the department but he was off on
24 leave, is that what you're telling me?

25 A Yeah. He was off on administrative

1 leave pending -- the municipal lawyers were
2 dealing with Mr. Graham.

3 Q What about Jason Woychuk, did you
4 review his notes in connection with --

5 A Yes, I did.

6 Q -- a comparison to Harry Bakema's or
7 Graham's?

8 A Yes, I did.

9 Q What did you note about that?

10 A I believe I've got that in the letter
11 to Mr. Minuk, the report to Mr. Minuk, if I may
12 refer to that?

13 Q Sure. The witness is referring to the
14 April 26th, 2006 correspondence to Mr. Minuk.
15 That's the report you prepared for Mr. Minuk; is
16 that right, sir?

17 A That's correct, sir. What number is
18 that?

19 Q The exhibit number?

20 A Oh, I've got it here. That's fine,
21 thank you.

22 Q Could you put on the record, sir, the
23 exhibit you are referring to? Just give us the
24 exhibit number?

25 A 123.

1 Q Thank you. The witness is referring
2 to Exhibit 123. And I'll give a tab reference,
3 E-1.23.o, page 502.

4 A The reference I have to here in
5 regards to Constable Woychuk's notes and incident
6 report, I've got,

7 "A comparison of Constable Woychuk's
8 incident report and notes appear to
9 contain the same details and do not
10 differ substantially."

11 THE COMMISSIONER: Where are you
12 reading?

13 THE WITNESS: I'm on page 508, about
14 mid page down.

15 THE COMMISSIONER: Yes. Is that the
16 sentence:

17 "A comparison of Constable Woychuk's
18 incident report and notes appear to
19 contain the same details and do not
20 differ substantially."

21 Is that what you're referring to?

22 THE WITNESS: That's correct, that's
23 what I'm referring to, sir.

24 THE COMMISSIONER: Thank you.

25

1 BY MR. CLIFFORD:

2 Q Now, sir, are you referring to a
3 comparison of Constable Woychuk's incident report,
4 and by that you mean Constable Woychuk's narrative
5 report?

6 A Yes, sir.

7 Q Are you referring to a comparison of
8 his narrative report to the other officers', or
9 did you go through his the development of his
10 narrative report?

11 A No, I didn't go through the
12 development of his narrative report. I compared
13 his narrative report, at the time, to his notes
14 that he had made at that time.

15 Q And you felt that there was some
16 consistency there?

17 A It appeared -- his notes appeared to
18 be consistent with the final report. I didn't go
19 through the revision reports.

20 Q With respect to his notes, sir, did
21 you, when he was in the process of making his
22 notes, did you have a discussion with him?

23 A No.

24 Q Did you ever give him any guidance,
25 sir, on what to include in his notes?

1 A In this incident, no.

2 Q I wanted to ask you, sir, about Jason
3 Woychuk's notes. If the witness could be provided
4 with E-2.25.a, Exhibit 88, E-2.25.a, page 604.

5 Now, you just told us, sir, that when
6 you spoke or corresponded with Mr. Minuk, you said
7 a comparison of Woychuk's incident report and
8 notes appear to contain the same details and do
9 not differ substantially. You have been referred
10 to Exhibit 88, Constable Woychuk's notes. And
11 there is a notation outside the lines. It says:

12 "No mention of alcohol, notes and
13 narrative are different."

14 Whose handwriting is that, sir?

15 A The handwriting to the left here?

16 Q That's right, to the left of the time
17 entry, 7:42?

18 A I don't know whose handwriting that
19 is.

20 Q When notes are submitted, when they
21 are put into, we understand, a basket or a bin or
22 something like that, do they go from there to the
23 Crown?

24 A They go, when notes are submitted,
25 they will go into the file and they will, from the

1 file, will go to the Crown.

2 Q In order to get into the file, where
3 do they go? They are photocopied from the
4 officer's duty notes?

5 A Yeah. And if the officer has the
6 notes, has -- I'm sorry, has the file himself,
7 he'll put the notes in the file. If not, if
8 somebody else has the file, investigating file,
9 they will either put the notes in the read basket,
10 or give it to the investigating officer directly.

11 Q Are the notes ever given back to the
12 officer with --

13 A These things?

14 Q -- a sticky tab on them or anything of
15 that nature?

16 A I have never.

17 Q Is this your handwriting, sir?

18 A No, sir.

19 Q You have no idea who put these notes
20 on that?

21 A I have no -- that is not my printing.
22 I have no idea what this is about.

23 Q So you are not sure where the notes
24 came from on Jason Woychuk's duty-book notes?

25 A Where this sticky note?

1 Q Yeah, where this side entry came from?

2 A I have absolutely no idea, sir.

3 Q Now, the notes go from the author in
4 the duty-book, they get photocopied, they are
5 provided to the police --

6 A Yes.

7 Q -- officer, the investigating officer?

8 A Yes.

9 Q And then they are passed on to the
10 Crown. And we saw that yesterday when you told
11 the Commission about the memorandum to Brian
12 Kaplan, please find enclosed the following
13 material, and you referred to notes and that sort
14 of thing. So the copies go to Crown Counsel and
15 then they get disseminated for disclosure?

16 A Yes.

17 Q So the notes here, there's a number of
18 sources for the origin, in terms of the side notes
19 at 7:42:

20 No mention of alcohol, notes and
21 narrative are different."

22 A Yes.

23 Q It could have been, for instance,
24 Mr. Minuk, or anybody who had an opportunity to
25 review these notes?

1 A That's correct, sir.

2 Q But clearly, what's being expressed
3 here is that it's not consistent with what you
4 have indicated in your report, is it, that the
5 notes and narrative are consistent?

6 A Not with the final report.

7 Q Okay. Not with Jason Woychuk's final
8 report?

9 A No, sir.

10 Q And we'll come to that, sir. I want
11 to ask you about a reference in your report that
12 you've got before you, the risk management report
13 of June 12th, 2006, at page 2793. At paragraph
14 two, you have, you have documented here:

15 "Should the charges laid against the
16 off duty Winnipeg officer as a result
17 of the accident and investigation be
18 dismissed because of the actions of
19 one or more officers involved, then it
20 is likely that civil liability could
21 become a possibility as a result of
22 any lawsuits initiated by the family
23 of the victim."

24 Was this a concern that you harbored on behalf of
25 the East St. Paul Police, that the police force

1 could be open to civil liability if the charges
2 were dismissed?

3 A Part of my job is, when there is
4 anything that can open us up to any sort of civil
5 liability, I am required to submit a risk
6 management report.

7 Q Was there ever any suggestion to you,
8 sir, that the charges would potentially be
9 dismissed?

10 A No, no.

11 Q Was it something that you thought
12 could happen, in view of everything you knew?

13 A That would probably be correct.

14 Q So it's not an unrealistic
15 possibility, as far as you are concerned,
16 otherwise you wouldn't have documented it?

17 A That's correct, sir.

18 Q Were you aware, sir, through dealing
19 with the Winnipeg Police Service Professional
20 Standards Unit, that they obtained evidence that
21 the Winnipeg Police Officers who were present at
22 Branigan's, on their way to Black's residence,
23 stopped at a 7-11 convenience store?

24 A I am not aware of that.

25 Q Are you aware, sir, that 7-11

1 convenience stores in the Province of Manitoba all
2 run video surveillance systems in their stores?

3 A Yes, I'm aware of that, yes.

4 Q And I take it, sir, that if you
5 connect the dots, that had you been advised by the
6 Winnipeg Professional Standards Unit that a stop
7 was made, after leaving a drinking establishment
8 on the way to another officer's house, and the
9 Winnipeg Police Officers learned this that, sir,
10 you would have had the opportunity to go to the
11 7-11 and you could have asked for the videotape.
12 And in the event they didn't give it to you, you
13 could have executed a warrant to get it. You
14 would have had the opportunity presumably to
15 observe any of the officers that went into the
16 7-11?

17 A Yes, I would say so, yes.

18 Q And would you agree, sir, that as a
19 result of a lack of communication between the
20 Winnipeg Professional Standards Unit and the East
21 St. Paul Police Force, that this avenue of
22 investigation was not pursued?

23 A That's correct, sir, yes.

24 Q Individuals who are taken into
25 custody, sir, are required to, by law, submit to

1 the Identification of Criminals Act and have their
2 photographs and fingerprints taken. Is that the
3 case?

4 A That's correct, sir.

5 Q And the Commission noted, and we've
6 heard evidence, that Mr. Harvey-Zenk was
7 fingerprinted and photographed?

8 A That's correct, sir.

9 Q His photograph, taken upon arrest, was
10 not disclosed to the Commission, sir. And we have
11 asked for it. And we have made inquiries, and
12 could you provide the Commission, sir, with an
13 explanation as to the whereabouts of
14 Mr. Harvey-Zenk's photograph upon arrest?

15 A Okay. I responded to the Commission
16 by letter on that, sir.

17 Q If you could, sir, bring us through
18 your explanation, and I can refer you to the
19 document, if you like?

20 A Absolutely.

21 Q Okay. E-1.23.a.

22 MR. PROBER: P as in Peter?

23 MR. CLIFFORD: I'm sorry E, E-1.23.s.

24 BY MR. CLIFFORD:

25 Q Now, sir, I don't know whether it is

1 the practice of the East St. Paul Police Force or
2 not, but when a mug shot or an arrest photo is
3 taken of an individual on an impaired driving
4 charge, do you not agree that that photograph in
5 and of itself can be helpful to the prosecution,
6 because the photograph could illustrate, if it's
7 taken at the time, as this one was, features such
8 as red eyes, a flushed face, the general
9 appearance of the individual?

10 A Yes, sir.

11 Q It is -- it does have some evidentiary
12 value. Do you agree with that?

13 A Yes, sir.

14 Q And I take it that the whereabouts of
15 the photograph are completely unknown?

16 A They are completely unknown, sir.

17 Q And could you provide, sir, you've
18 given a detailed report, but could you give a
19 brief explanation to the Commission?

20 A I was requested by the Commission to
21 provide a photograph of the accused,
22 Mr. Harveymordenzenk, for the Commission purposes.

23 At the time, and still is, it is not
24 our practice to attach a photo mug shot to the
25 actual file. Mug shots are -- I'm sorry, I'll use

1 the term mug shots if you don't mind, that's what
2 we refer them to -- are placed -- accused people,
3 their photos are taken with a digital camera.
4 They are assigned manually in a book a photo
5 number. It's taken on digital camera on a disk.
6 When the disk is full, the member in charge of
7 downloading that disk into our records management
8 system, which is a special folder that holds all
9 identification photos, is he downloads those into
10 the database, he cleans off the disk, and the disk
11 is ready for use again. We have a couple of disks
12 that, you know, make their rounds.

13 In this particular case, when I was
14 asked to locate the photos, I went into the
15 database and I couldn't find it. I spoke with
16 Constable Pedersen, as a matter of fact, as she
17 was responsible for photographing and
18 fingerprinting Mr. Harvey-Zenk, and she maintained
19 she took a photo of him. I then spoke with the
20 officer, actually there are two officers at that
21 time that were downloading photos from the ident
22 camera. I spoke with both of them. They have
23 no -- they had no idea where that photo went.
24 They told me what their process was in
25 downloading. I don't know what the process is in

1 downloading photos to the computer, there's kind
2 of a step by step list on how to do that. I
3 contacted our IT person, who works for the RM, and
4 had him search the database to see if it had been
5 placed somewhere else, in another year, by
6 accident or whatever. He could not locate it. It
7 does not exist.

8 I had received from Constable
9 Drozdowski, who is the -- or who was at that time
10 one of the people responsible, but the prime
11 person responsible for downloading these photos
12 into the ident folder of our records management
13 system. He actually sent me a fairly nasty
14 memorandum in regards to a number of missing
15 photos at the time. It was explained to me, at
16 that time, that Mr. Bakema had wanted to change
17 the way we downloaded photos into the computer.
18 As I say, every time a person got, were
19 photographed, they were assigned a photo number.
20 So if somebody was arrested two weeks later, he
21 got another photo number. He had one person's
22 number from the records management system that was
23 assigned to that person all the time, but every
24 time he was photographed, he had a second photo
25 number.

1 Mr. Bakema was looking at ways to
2 incorporate the photos in the records management
3 system, to attach it directly to the files. And
4 in doing so, it was explained to me by Constable
5 Drozdowski that he wanted to initiate a way of
6 having similar to Winnipeg, I guess, I don't know
7 what Winnipeg does, one photo number. And every
8 time that person is photographed, he receives the
9 same number. I don't know how it works for
10 Winnipeg Police. For our purposes, when we only
11 photograph and fingerprint, and this is just a
12 guess, sir, you know, two to three people a week,
13 it doesn't make sense to change the whole system.

14 Mr. Bakema, I was told, went into the
15 computer system somehow, and this is what I had
16 been told, lost these photographs.

17 Q The end result, sir, is that the East
18 St. Paul Police Service has lost the photograph
19 that was taken of Derek Harvey-Zenk upon his
20 arrest?

21 A That's the end result, sir.

22 Q And it was never, a photograph of
23 Derek Harvey-Zenk upon arrest, was never attached
24 to the file?

25 A That's correct, sir.

1 Q I'd like to ask you now, sir, about
2 questions on the resolution of the case in 2007.
3 I understand that, and the Commission knows, sir,
4 that the matter was adjourned in 2006 as a result
5 of the Woychuk disclosure. And the Preliminary
6 Hearing was scheduled again for July of 2007. It
7 was set to proceed on July 16th, 2007. And I
8 understand that you had a meeting, and you
9 referred to that earlier, of July 12th, 2007, with
10 Mr. Minuk?

11 A Yes, I believe so. I'm not sure if
12 that's the date, though. I have to refer --

13 Q Well, you told me that was the day,
14 and that was the day that he told you not to
15 follow up with a search warrant?

16 A Yes.

17 Q Now, on July 12th, you were meeting
18 with Mr. Minuk, I take it, in preparation for the
19 July 16th Preliminary Hearing?

20 A Yes.

21 Q You have indicated that you recall
22 meeting with him on July 12th, and what was the
23 purpose of the meeting?

24 A I believe I had asked for that
25 meeting, to meet with him. And the purpose of

1 meeting, because it was so close to the court
2 date, the purpose of the meeting was to go over,
3 over the file.

4 Q Do you recall what was being
5 discussed?

6 A At that meeting, yeah, we discussed
7 the various evidence of some of the officers, and
8 my understanding is he dismissed some of the
9 officers at that point in time. He also requested
10 a meeting, I set up a meeting with him and
11 Constable Jason Woychuk.

12 Q Now, sir, in this meeting of
13 July 12th, do you recall bringing a CD containing
14 photographs taken by expert witness, Chris
15 Blandford?

16 A At this time, do I recall?

17 Q Yeah. Do you recall discussing or
18 giving Mr. Minuk a CD --

19 A I may have. I don't know.

20 Q -- containing photographs?

21 A I don't recall that, sir, now.

22 Q In any event, am I correct that what's
23 happening in this meeting, sir, is that there are
24 discussions, and they are in furtherance of the
25 Preliminary Hearing commencing on the day that

1 it's supposed to commence?

2 A That's correct, sir.

3 Q Was there any discussion, sir, about
4 potential resolution as of July 12th?

5 A I don't think there was any discussion
6 at that meeting, sir.

7 Q Are you able to recall, sir, whether
8 at that point, anything was raised with respect to
9 what might be happening the following week?

10 A Other than dismissal of some
11 witnesses, no, sir.

12 Q Do you recall when it was, sir, that
13 you have learned that the case was going to
14 resolve?

15 A I do have notes on that, I believe.

16 Q If I could have the witness provided
17 with P-3.85.21 -- just one moment, Madam clerk,
18 P-3.85.24, page 2798. What exhibit would that be,
19 Madam clerk?

20 THE CLERK: That's Exhibit 131.

21 (EXHIBIT 131: P-3.85.24, Handwritten
22 note of N. Carter dated July 15, 2007
23 re call from M. Minuk)

24 BY MR. CLIFFORD:

25 Q So Exhibit 131, P-3.85.24, page 2798,

1 sir, do you recognize that document?

2 A I do, sir.

3 Q What can you tell the Commission about
4 it?

5 A That was on July 15, 2007 at 6:00 p.m.
6 I received -- I was at the office, actually, I
7 received a call from Martin Minuk. He said he had
8 been meeting with Wolson and they will be pleading
9 to dangerous cause death, and will ask for an
10 adjournment for one day to room 406, where Chief
11 Judge Wyant is sitting I guess. Zenk wants to
12 deal right away, but Wolson wanted a pre-sentence
13 report. Writer also -- I also received
14 instructions to cancel.

15 Q Sir, could I just ask you to read that
16 last line in verbatim?

17 A Okay.

18 "Minuk also..."

19 I'm having a tough time reading my own writing
20 here, sir.

21 Q I don't blame you. "Minuk also
22 asked"?

23 A "Minuk also asked writer to cancel
24 Bakema and..."

25 Q Graham?

1 A "Graham," I believe that's it. And I
2 advised I would e-mail them.

3 Q Now, having an opportunity to look at
4 that document, sir, does this refresh your memory,
5 or assist you in responding to this question, sir,
6 when did you learn that the case was going to
7 resolve?

8 A On this day.

9 Q Prior to that, had you been involved
10 in any discussion suggesting a resolution of the
11 case?

12 A No, sir, not that I recall.

13 Q I'd like you now to turn to another
14 document. Madam clerk, could we provide the
15 witness with P-3.85.25, page 2799?

16 MR. PROBER: Was this last one marked
17 as an exhibit, please?

18 MR. CLIFFORD: Yes, it was,
19 Mr. Prober, it was Exhibit 131.

20 MR. PROBER: Thank you.

21 MR. CLIFFORD: That will be the next
22 exhibit, Madam clerk.

23 THE CLERK: Exhibit 132.

24

25

1 (EXHIBIT 132: P-3.85.25, Handwritten
2 note of N. Carter (undated) re Jason
3 Woychuk meeting with M. Minuk)
4 MR. CLIFFORD: 132, P-3.85.25, page
5 2799.

6 BY MR. CLIFFORD:

7 Q Could you tell us what this is
8 pertaining to, sir?

9 A That is pertaining to a note that
10 Jason Woychuk was advised, at 1900 hours, that he
11 is to meet Martin Minuk at 360 Main Street,
12 Winnipeg at 1:00 p.m.

13 Q Okay. Let's identify for the record,
14 this is a handwritten note made by you?

15 A Yes.

16 Q On what day?

17 A I don't have a date on that.

18 Q What --

19 A That would have been, that would have
20 been after my meeting of July 12th with Mr. Minuk.

21 Q We have heard evidence from
22 Mr. Woychuk, or Constable Woychuk, sir, that he
23 went to meet with Mr. Minuk, and he waited in the
24 lobby of his office building for a period of time.
25 And he was unable to meet with Mr. Minuk and he

1 left. Do you know what day that meeting was
2 scheduled for?

3 A I believe that meeting was scheduled
4 for the Sunday.

5 Q So it was scheduled for the Sunday,
6 which was the 15th of July?

7 A I believe so, yes.

8 Q The same day that you filled out the
9 note that forms Exhibit 131?

10 A Yes, sir.

11 Q And that note, 131 was created at 1800
12 hours, so 6:00 o'clock you got the word that there
13 was a resolution. And do I take it, it's your
14 understanding that Jason Woychuk was there at
15 Mr. Minuk's office that Sunday to meet with him?

16 A That's my understanding, yes.

17 Q And you say in this note, sir, in
18 Exhibit 132 that he advised, at 1900 hours, that
19 he is to meet Marty Minuk at 360 Main Street -- I
20 don't know what it is -- at 1:00 p.m.?

21 A That's right.

22 Q So this is, I take it, some suggestion
23 here that the meeting was for Sunday afternoon at
24 1:00 o'clock?

25 A That's correct, yes.

1 Q And did you have conversation with him
2 thereafter about whether he had the opportunity to
3 meet with Mr. Minuk?

4 A Yeah, I did have a conversation with
5 him. I believe he phoned me and said that he
6 couldn't get in, or he tried calling and then he
7 couldn't get to Mr. Minuk.

8 Q Now, sir, do these documents reflect,
9 sir, the timing, as you knew it, of the
10 resolution? Had you been party to any
11 discussions, prior to July 15th, that the case
12 might in fact resolve?

13 A Not that I can recall, sir, no.

14 Q Did you -- you told us that you met
15 with Mr. Minuk about certain aspects of the case
16 on July 12th?

17 A That's correct.

18 Q Did you ever have a meeting with him
19 with respect to preparing you to testify, as the
20 arresting officer?

21 A Not, no, not in particular, no.
22 July 12th is a meeting that I had requested.

23 Q Why did you request it?

24 A Because we were close on to the court
25 date and I wanted to meet with him.

1 Q And for what purpose?

2 A To discuss the case and see where
3 we're going with the case.

4 Q Did you think it was necessary to meet
5 with him, given the fact that it was July 12th and
6 the case was coming up on the 16th?

7 A Yes.

8 Q And was there ever a discussion about
9 taking time to prepare you to testify, as the
10 arresting officer?

11 A I wasn't prepared in that -- I wasn't
12 prepped in that way, sir.

13 Q What about to deal with the potential
14 issues in the case that might be explored at the
15 Preliminary Hearing?

16 A No, sir.

17 Q Did you have any concern about that?

18 A Mr. Minuk was handling it and I was --
19 he was handling it. And he would, I assume he
20 would guide us through.

21 Q I understand, sir, that he had
22 carriage of the prosecution. But just with
23 respect to taking some time to sit down with you,
24 as a witness, to go over what might be anticipated
25 from you in your testimony, did that occur?

1 A No, it did not.

2 Q And did you have a concern about that
3 occurring?

4 A To some degree, he -- like I say, I
5 wasn't prepped like I had been prepped in other
6 cases.

7 Q So you weren't prepped like you were
8 prepped in other cases. And I want you to explain
9 that further?

10 A Well, in some cases the Crown may ask,
11 okay, I'm going to, I'm going to be discussing
12 this particular issue in regards to whatever areas
13 we are dealing with, and what would be your
14 response to that, you know. I didn't -- I wasn't
15 prepped in that way.

16 Q Okay. We're talking about preparation
17 for testifying?

18 A Yes.

19 Q Okay. And in this case, you had no
20 preparation for testifying; is that right?

21 A Pretty well none.

22 Q And in other cases, you have had
23 preparation for testifying?

24 A That's right, sir.

25 Q And I take it that when that occurs,

1 it's more often than not in connection with the
2 serious case?

3 A Not necessarily. It can be it can be,
4 you know, a less serious criminal case.

5 Oftentimes a Crown will bring us into a room to
6 prep us right before the case.

7 Q I take it you would characterize this
8 as a major case?

9 A Yes.

10 Q This was a serious case, as far as you
11 are concerned?

12 A Yes, sir.

13 Q Had you ever had no preparation at all
14 before going into the Preliminary Hearing of a
15 serious case?

16 A Just to the extent I have spoken to
17 you, sir.

18 Q No. My question to you is, prior to
19 July of 2007 --

20 A Prior, okay.

21 Q -- had you ever been involved in a
22 serious case, where there was a fatality involved,
23 where you had no time with the Crown to prepare
24 you as a witness?

25 A No.

1 Q And how many serious cases would you
2 have done, where you testified as the
3 investigating officer where a fatality was
4 involved prior to July of 2007?

5 A Prior to July of 2007, well, in 2007,
6 I believe I testified in one.

7 Q So up to 2007, in your career, you had
8 only testified --

9 A Oh, no, no, I've testified, I've
10 testified half a dozen times in my career. I
11 haven't -- that's just a guess, sir.

12 Q Let's back up here and we'll just go
13 step-by-step. The number of times that you had
14 testified as a police officer in your career, in a
15 criminal case, give me an approximation?

16 A In a criminal case, any criminal case,
17 it's just a guess, sir, 50, 60 times.

18 Q And the number of times, sir, that
19 you've testified in a criminal case that you would
20 characterize, obviously, as a major or serious
21 case where there was a fatality involved?

22 A Two to three times, sir.

23 Q And in those cases, sir, were you
24 prepared by Crown Counsel to testify?

25 A Yes, I was.

1 Q Sir, I want to ask you about your
2 reports. And I'm not referring to the incident
3 report, sir, I'm referring to your narrative
4 report?

5 A Yes.

6 Q So, sir, this is found at again
7 E-1.23.k at page 456.

8 THE COMMISSIONER: Sergeant, or Chief,
9 we have heard there's a difference between an
10 incident report and an incident narrative report?

11 THE WITNESS: That's correct, sir.

12 THE COMMISSIONER: I may be confused,
13 but you can assist me, this is called an incident
14 narrative?

15 THE WITNESS: Yes.

16 THE COMMISSIONER: What is different
17 between an incident narrative and an incident
18 report?

19 THE WITNESS: An incident report is
20 the main body of the report. That report contains
21 information of who is assigned, diary dates, and
22 also the main incident report is the only report
23 that generates a file number.

24 THE COMMISSIONER: I see, okay. Thank
25 you.

1 BY MR. CLIFFORD:

2 Q Okay. And the exhibit reference is
3 Exhibit 114?

4 A Yes.

5 Q E-1.23.k, page 456. Now, the
6 Commissioner has just asked you about the
7 difference between a narrative report and the
8 incident report, and I think you have covered
9 that. But the narrative report is the individual
10 officer's report. This is something that you
11 develop as you go along, and you have covered it
12 in testimony yesterday and again now, it's your
13 account?

14 A That's correct, sir.

15 Q And if you put something in your
16 narrative report, and you are referring to
17 something said by another person, I take it you
18 have to be accurate about what you are putting
19 into your report?

20 A As accurate as possible, sir, yes.

21 Q You can't take liberty with what other
22 people are telling you when you are making an
23 account of it in your narrative report?

24 A Yes, sir.

25 Q You can't switch it around to suit any

1 set of circumstances, can you?

2 A No, sir.

3 Q You can't put anything in the
4 narrative report to make the case stronger, or to
5 address certain problems that you think might
6 exist in the case?

7 A That's correct, sir.

8 Q Looking at the time, sir, of 8:12 in
9 your report, you have indicated at 8:12 hours:
10 "Constable Woychuk attended to the
11 station and advised that he had male
12 subject in the rear of RM2 who was
13 involved in the accident that has
14 resulted in one fatality of a female.
15 Subject declined medical attention at
16 the scene and was being transported
17 back to complete a TAR. Information
18 received from Constable Woychuk was
19 that he had detected a slight odour of
20 liquor from the subject en route to
21 the station."

22 A That's correct, sir.

23 Q So I take it, sir, based on what you
24 have told me, that this is quite simply based on
25 what, and reflective of what Jason Woychuk said to

1 you?

2 A This is reflective of what Jason
3 Woychuk told me, not at the time, told me a couple
4 days later when I confirmed -- this is the
5 corrected report. When we generate a report, it's
6 always the latest report that comes out, not
7 anything that's in the revision reports.

8 Q You have told the Commission, sir,
9 that at 8:12 hours, this is what Jason Woychuk
10 said to you? Apart from what's -- apart from the
11 report, your evidence is that at 8:12 hours, this
12 is what he told you?

13 A Yes.

14 Q And I take it, as a result of that,
15 your position is that you accurately reflected it
16 in the report?

17 A This was reflected in the -- this was
18 reflected in the report when I corrected the
19 report on the 28th.

20 Q Sir, I'd like you to take a look at
21 exhibits before the Commission, 96, 97, 98 and 99.
22 I'd like you to, sir, refer to Exhibit 96 at page
23 2213?

24 THE COMMISSIONER: Excuse me a moment,
25 please? They are in my chambers.

1 MR. CLIFFORD: I can wait,

2 Mr. Commissioner, while you get those documents.

3 THE COMMISSIONER: I am sure they are
4 in there. Yes, go ahead.

5 BY MR. CLIFFORD:

6 Q Thank you, sir. Chief Carter, if you
7 could look at Exhibit 96, page 2213, please?
8 These have been entered into evidence. They are
9 the notes, or pardon me, it is the incident
10 narrative of Jason Woychuk. It's a February 26th
11 version of his incident report. Look at the time,
12 sir, of 8:08 and 8:12?

13 A Yes.

14 Q Okay. You can see he's making an
15 entry at 8:08, describing the transport of
16 Harvey-Zenk to the station. And at 8:12, he's
17 referring to meeting with you. And he says that
18 Harvey-Zenk was a driver involved in the collision
19 and he was distraught. And that you brought him
20 into the office and put him into interview one,
21 interview room one?

22 A Yes.

23 Q Sir, could you now look at Exhibit 97?
24 This is the February 27th version of Jason
25 Woychuk's incident report. We see, sir, at 808

1 hours, at page 2210, it should be highlighted?

2 A It is, yes.

3 Q Harvey-Zenk, he is indicating at 808
4 hours he transported Harvey-Zenk to the East St.
5 Paul Police office to process an accident report.

6 He adds,

7 "En route to East St. Paul office,
8 writer detected a slight odour of
9 liquor coming from Harvey-Zenk."

10 You see further at 8:12, he makes reference to
11 being met by you at the rear door, advising you
12 that Harvey-Zenk was the driver involved in the
13 collision, that he was distraught. And he adds,
14 sir:

15 "Writer also advised Sergeant Carter
16 that a slight odour of liquor was
17 detected from him."

18 And he also adds, sir, that after indicating that
19 you brought Harvey-Zenk into the office, that he
20 noted that Harvey-Zenk was walking into the
21 office, he appeared to be unsteady on his feet.
22 Do you see those additions --

23 A Yes.

24 Q -- of Jason Woychuk, February 26th to
25 27th?

1 A Yes.

2 Q Do you have any explanation for those,
3 sir?

4 A I have no explanation for his
5 additions, sir.

6 Q Did you counsel him on those, sir?

7 A No, sir.

8 Q You see, sir, he's developing his
9 incident narrative, he's adding information, with
10 respect, the reason for transporting?

11 A Yes.

12 Q And he is also indicating that en
13 route he detects a slight odour of alcohol?

14 A Yes.

15 Q Sir, I am asking that you be provided
16 with your incident narrative report of
17 February 27th, 2005.

18 Madam clerk, I provided copies, and
19 what I'm going to do now is enter a series of
20 three exhibits. The first would be P-2.83, the
21 whole exhibit.

22 THE COMMISSIONER: What is that again?

23 MR. CLIFFORD: P-2.83, page 2443.

24 That's the next exhibit, Madam clerk, what is it?

25 THE CLERK: 133.

1 (EXHIBIT 133: P-2.83, (page
2 2443-2482) Incident Report and
3 Development Log cont'd; (Pages
4 2483-2522 Incident Report and
5 Development Log cont'd; (Pages
6 2523-2568) Incident Report and
7 Development Log cont'd)

8 MR. CLIFFORD: 133. Could you now
9 provide the witness with --

10 MR. PROBER: One moment, we're all
11 sort of looking for that. I know you provided us
12 with two separate documents. We don't seem to
13 have a third, unless it's in the book itself.

14 MR. CLIFFORD: Mr. Prober, it is in
15 the book. And what I'm doing is, I'll put in the
16 first one, which is the entire document, and the
17 following two are --

18 MR. PROBER: Are the excerpts?

19 MR. CLIFFORD: Those are the excerpts,
20 and I've highlighted them for the ease of counsel.

21 MR. PROBER: Thank you.

22 MR. CLIFFORD: So we've got the full
23 version in. Madam clerk, could we now give the
24 witness and the Commissioner copies of excerpts
25 from February 27th and March 1st, and have them

1 both entered as exhibits in that order.

2 THE CLERK: So February 27 will be
3 Exhibit 134 and March 1st will be Exhibit 135.

4 THE COMMISSIONER: February 27th is
5 134.

6 THE CLERK: Correct, yeah.

7 THE COMMISSIONER: And March 1st is
8 135.

9 (EXHIBIT 134: P-2.83, Pages 2564-2568
10 N. Carter - Incident Report - Feb. 27,
11 2005)

12 (EXHIBIT 135: P-2.83 pages 2552-2557
13 N. Carter - Incident Report - March 1,
14 2005)

15 BY MR. CLIFFORD:

16 Q Sir, I'm going to ask you to look at
17 your incident narrative version, February 27th,
18 2005. It's now Exhibit 134. And if you could,
19 sir, turn to the time entry of 8:12.

20 At 8:12 you recorded, on
21 February 25th, sir, at 9:47 a.m.:

22 "812 hours Constable Woychuk attended
23 the station and advised that he had a
24 male subject in the rear of RM2 who
25 was involved in the accident that has

1 Are you the author of that, sir?

2 A I'm the author of that.

3 Q Sir, you have changed your incident
4 narrative from February 27th to March 1st?

5 A That is correct, sir.

6 Q And you have changed it, dramatically?

7 A That is correct, sir.

8 Q And in fact, what happens on
9 March 1st, sir, is that your incident narrative
10 report is now in line and consistent with Jason
11 Woychuk's incident narrative report of
12 February 27th, when he made the addition of
13 detecting a slight odour of alcohol and giving the
14 reason for the transport to be the TAR?

15 A That is correct, sir.

16 Q Is that a mere coincidence, sir, or
17 are you discussing and doing this in conjunction
18 with Jason Woychuk?

19 A No. Mr. Woychuk, I spoke with
20 Mr. Woychuk on the 27th to clarify his -- to
21 clarify the reason for the delay. And at that
22 point in time, and on two occasions, he said that
23 it was -- he smelled a slight odour of liquor and
24 that he had brought Mr. Mordenzenk to the office
25 to do a TAR. I asked him to clarify that twice.

1 And when he clarified that twice, at that point in
2 time, I corrected the report to reflect what he
3 was telling me.

4 Q Sir, we opened this avenue of
5 examination by me putting questions to you, and
6 you agreed. If you put something in your incident
7 narrative report and you are referring to
8 something said by another person, you would be
9 accurate about it. You wouldn't switch it around
10 to suit circumstances, to make the case stronger
11 or otherwise.

12 On February 27th, sir, this is not
13 confusing, this is not lengthy or complex, you
14 simply stated Constable Woychuk was -- that this
15 subject had been drinking and was believed to be
16 impaired and that he had refused medical
17 attention. Where was the ambiguity in that, sir,
18 that you had to go back to talk to Jason Woychuk?
19 It's very clear, is it?

20 A Yes, that's clear, yes.

21 Q And I suggest to you that's what he
22 said?

23 A I'm sorry?

24 Q I suggest to you, sir, that is what
25 Jason Woychuk said to you?

1 A That is what Jason Woychuk said to me,
2 yes.

3 Q And that, in fact, was the case?

4 A Pardon me?

5 Q And that, in fact, was the case,
6 that's what you observed?

7 A That was the case at that time, yes.

8 THE COMMISSIONER: Just a second.

9 MR. McDONALD: I'm sorry,
10 Mr. Commissioner, I don't want to interrupt
11 unduly.

12 THE COMMISSIONER: No, no, no.

13 MR. McDONALD: But what Sergeant
14 Carter said, and what Mr. Clifford has not put to
15 him in that scenario is that he said he approached
16 Constable Woychuk to discuss the delay issue.
17 That's what initiated the discussions. And again,
18 he didn't put his evidence to him completely.

19 THE COMMISSIONER: Well, Sergeant
20 Carter can respond. He's an experienced police
21 officer. He knows how to respond to questions by
22 counsel. Go ahead.

23 BY MR. CLIFFORD:

24 Q Your personal incident narrative
25 report was created accurately and it records your

1 reflection?

2 A Yes, sir.

3 Q First thing you ever put down, your
4 notes, your rough notes, reports, this is the
5 first thing you record about the state of Derek
6 Harvey-Zenk in this case; is it not?

7 A That's correct, sir, yes.

8 Q Now, you knew what the charter
9 problems were in this case, didn't you?

10 A Yes, I did, yes.

11 Q The delay?

12 A Yes.

13 Q Now, sir, you would agree with me that
14 on the version of your narrative report of
15 February 27th, you have a considerable charter
16 problem, don't you?

17 A Yes.

18 Q And you would agree with me, sir, that
19 on your version of March 1st, 2005, that problem
20 is ameliorated, is taken care of, isn't it?

21 A I'm not certain what you're saying,
22 sir?

23 Q What I'm saying, sir, is that your
24 version of March 1st, 2005, you don't have as much
25 of a charter problem here, because he's telling --

1 you're recording now that there's a slight odour
2 of alcohol detected en route, and that the reason
3 he was going there was for a TAR?

4 A That's what I'm recording what
5 Constable Woychuk told me.

6 Q And the reality of that fact, sir, is
7 that on those facts, you don't have a serious a
8 charter problem, do you?

9 A On the facts there, no, sir.

10 Q I want to ask you something, sir. One
11 of the first things you asked Jason Woychuk when
12 he spoke to you was, and you told me this at the
13 beginning of your examination, you asked Jason
14 Woychuk, did you caution or charter him?

15 A That's right.

16 Q Why would you ask him that, sir, if
17 Jason Woychuk hadn't told you that he was
18 impaired?

19 A Jason Woychuk did tell me he was
20 impaired.

21 Q And that's what you put in, in your
22 first report?

23 A That's in my original notes, yes, my
24 original report, yes.

25 Q So there's no doubt about it, he told

1 you that he believed that he was impaired?

2 A That's correct, yes.

3 Q Now, sir, you are giving as a possible
4 explanation to this, that you talked to Jason
5 Woychuk -- and your counsel got up and, in fact,
6 raised a concern with the Commissioner that you
7 have given this explanation that you talked to
8 Jason Woychuk between the 27th and March 1st, and
9 it's not put to you, it should be put to you that
10 as a result of those conversations with him, you
11 changed your report?

12 A That's correct, yes.

13 Q If that's the case, assuming it is,
14 it's not proper for you to do that, is it?

15 A No. In retrospect, no.

16 Q No. Because what you recorded is what
17 he said to you. If he comes in and says, by the
18 way, you shouldn't have that I told you I believed
19 he was impaired, you should have in your report
20 that I detected a slight odour of alcohol, your
21 report on March 1st should say, Jason Woychuk came
22 to me and said he wanted to change his position on
23 whether the individual was impaired?

24 A That is correct, sir, that's what
25 should have happened.

1 Q And it didn't?

2 A No, it didn't, sir.

3 Q I take it, sir, that you realize that
4 many people in connection with this case may
5 suspect, sir, that the changes were made in order
6 to address potential delay issues that you were
7 aware of at the very beginning of the case?

8 A I suspect that's what may be believed,
9 sir.

10 Q And certainly, sir, when you look at
11 all the factors, all of them are consistent with
12 that, do you agree?

13 A Yes.

14 MR. CLIFFORD: Sir, those are the
15 questions I have for you. I know other counsel
16 will have questions.

17 THE COMMISSIONER: We're at 12:25.
18 Would you prefer to adjourn at this time and we'll
19 come back at, I'd like to get through this, how
20 about ten to 2:00? Is that convenient? Thank
21 you.

22 THE CLERK: All rise. This Commission
23 of Inquiry is adjourned until 2:00.

24 (Proceedings recessed at 12:25 and
25 reconvened at 1:52 p.m.)

1 THE CLERK: All rise, please. This
2 Commission of Inquiry is now reopen.

3 MR. CLIFFORD: Good afternoon,
4 Mr. Commissioner. Sir, with your permission, I'd
5 like to ask the witness a further question to
6 clarify the last three exhibits that went in, 133,
7 134 and 135. Those are from volume P-2. 133 is
8 the entire revision log of this witness's
9 narrative report. And 134 and 135 were the
10 excerpts.

11 THE COMMISSIONER: Go ahead.

12 BY MR. CLIFFORD:

13 Q Chief Carter, with respect to those
14 three exhibits, I am correct in confirming, sir,
15 that the revision logs are not provided to Crown
16 Counsel?

17 A The revision logs are not provided to
18 Crown Counsel, no.

19 Q And therefore they do not form part of
20 the disclosure --

21 A No.

22 Q -- in the case?

23 A That has not been the practice.

24 Q And they are kept at the East St. Paul
25 Police Service office?

1 A That's correct, sir.

2 Q And were disclosed only in relation to
3 the Commission?

4 A That's correct, sir, yes.

5 Q Final point, Mr. Commissioner, is that
6 I had Chief Carter refer to a document E-1.23.s,
7 page 533. And that was correspondence dated
8 January 24th, 2008 to the Commission. And it was
9 in respect of the ident photograph of Derek
10 Harvey-Zenk. And sir, we didn't enter that as an
11 exhibit and I'd like to do that at this time.

12 THE CLERK: Exhibit 136.

13 (EXHIBIT 136: E-1.23.s, Correspondence
14 January 24, 2008, Re Identification of
15 Criminal Act Photo of Derek
16 Harvey-Zenk)

17 MR. CLIFFORD: So that will become
18 136. Chief Carter, thank you those are the
19 questions I have.

20 THE WITNESS: Thank you, sir.

21 BY MR. ZAZELENCHUK:

22 Q Chief Carter, on February 25th of
23 2005, you had been a peace officer, by my count,
24 for some 23 years?

25 A That's correct, sir.

1 Q How many impaired drivers had you
2 dealt with in that time?

3 A Roughly speaking, maybe 250.

4 Q Okay.

5 THE COMMISSIONER: I am sorry?

6 THE WITNESS: Roughly speaking, maybe
7 250.

8 BY MR. ZAZELENCHUK:

9 Q And how many times had you given
10 evidence in cases involving impaired driving?

11 A That's -- it would just be a guess,
12 sir, 30 times.

13 Q Okay. Certainly not one or two times,
14 or five or 10?

15 A No, sir.

16 Q Okay. Now, initially at 8:14 in the
17 morning, when you -- and I'm talking about
18 February 25, 2005.

19 A Yes, sir.

20 Q Derek Harvey-Zenk is still in the
21 police vehicle. Are you with me?

22 A I am with you, sir, yes.

23 Q Okay. And you opened the door and you
24 told us you smelled liquor on his breath?

25 A That's correct, sir.

1 Q And then shortly thereafter, within a
2 minute or two, you witnessed him walk, and you
3 told us he was unsteady on his feet?

4 A That's correct, sir.

5 Q Now, learned Commission Counsel
6 suggested to you, and I agree with him, that
7 merely smelling liquor on someone's breath is not
8 conclusive of impairment; correct?

9 A That is correct, sir.

10 Q But there are a couple of other
11 factors that are in play here. You knew, for
12 example, that this man was involved in a very
13 serious motor vehicle collision; correct?

14 A That is correct, sir.

15 Q And you also knew that it was
16 8:00 o'clock in the morning, 8:14?

17 A Yes, sir.

18 Q And you'll agree with me that it's a
19 lot different to smell alcohol, or liquor on
20 someone's breath at 8:15 in the morning than it is
21 at 7:30 in the evening?

22 A I'm not -- I don't understand what
23 you're saying, sir?

24 Q Okay. Let me suggest to you that it's
25 not unusual, you're going up the elevator in your

1 apartment to your suite or whatever, somebody else
2 comes in, it's shortly after supper hour, if you
3 smell alcohol on their breath, that's nothing
4 suspicious?

5 A No, sir.

6 Q No. But 8:15 in the morning, you
7 smell alcohol on somebody's breath, that's not a
8 normal thing?

9 A It's not typical, no.

10 Q No. So in that sense, it's unusual?

11 A Yes, sir.

12 Q Okay. Later on that day you observed,
13 and you told us about that, you observed other
14 signs of impairment, a flushed face and glassy
15 eyes. Do you remember that?

16 A Yes, I do, sir.

17 Q Okay. Let me ask you today, is there
18 any doubt in your mind that at 8:15, or 8:14 on
19 the morning of February 25th, 2005, Derek
20 Harvey-Zenk was impaired?

21 A Sir, at that time, on that day, I
22 formed the opinion that Derek Harvey-Zenk was
23 impaired.

24 Q Okay. And you hold that opinion
25 today?

1 A I hold that opinion today, sir.

2 Q And that's your evidence under oath
3 today?

4 A That's my evidence under oath, sir.

5 Q Okay. Yesterday, during your
6 evidence, at about 12:03, you said, and I tried to
7 get an exact quote:

8 "I knew right from the beginning that
9 there were going to be issues about
10 his charter rights."

11 Do you recall telling us that?

12 A I recall that, sir.

13 Q Yes. And so by right from the
14 beginning, is it fair to say that by 9:00 o'clock
15 in the morning on February 25th, you knew that,
16 you had concluded that?

17 A I concluded that from the time he was
18 brought to me.

19 Q Okay. So certainly by 10:30 in the
20 morning of February 25th, 2005, you had already
21 concluded that there were some charter issues?

22 A Yes, sir.

23 Q Now, your notes disclose that at
24 10:35, you spoke to Special Prosecutor Martin
25 Minuk, and it's Exhibit 115, E-1.23.b at 421?

1 A Yes, sir, I have it.

2 Q And you told us yesterday, when you
3 were describing the conversation with Mr. Minuk,
4 you used the words "I briefed him."

5 A Yes.

6 Q Yes. Did you brief him on your
7 charter concerns?

8 A I don't recall that, sir.

9 Q You don't recall?

10 A No, I don't recall whether I briefed
11 him on the charter concerns.

12 THE COMMISSIONER: Is there a note
13 whether you did or not?

14 THE WITNESS: Pardon me?

15 THE COMMISSIONER: Do you have a note
16 as to whether you did or not?

17 THE WITNESS: No, I don't, sir.

18 THE COMMISSIONER: No.

19 BY MR. ZAZELENCHUK:

20 Q Would there be some reason why you
21 wouldn't have?

22 A Nothing in particular, sir.

23 Q I wonder if you'd -- do you have
24 Exhibit 114 in front of you? That's tab E-1.23.k,
25 page 456?

1 A Yes.

2 Q Okay. Now, that document was
3 forwarded to Crown Counsel at some point in time;
4 is that correct?

5 A That's correct, sir.

6 Q And the exact date doesn't matter, but
7 by May 5 of 2005, it would have been in
8 Mr. Minuk's possession?

9 A Yes.

10 Q Yeah. Okay. Fair enough. It's
11 obvious, from the first two paragraphs of that
12 document, what your charter concerns are, isn't
13 it?

14 A Yes.

15 Q Between May of 2005 and December of
16 2005, when you got the letter from Mr. Minuk, you
17 know the letter I'm talking about?

18 A Yes.

19 Q Yes. Did you have any communications
20 from Mr. Minuk?

21 A Between what date, sir?

22 Q Between May, let's say May of 2005,
23 May 1, and the time you got that letter in early
24 December of 2005?

25 A I don't believe so.

1 Q Okay. And you met with Mr. Minuk on
2 February 24th of 2006?

3 A That's correct, sir.

4 Q And is it your evidence that that's
5 the first time that you discussed the charter
6 issues with Mr. Minuk?

7 A That's right, sir.

8 Q Okay. And you described to us in your
9 evidence that you had the total of three meetings
10 with Mr. Minuk?

11 A That is correct, sir, yes.

12 Q And at any of those meetings, did
13 Mr. Minuk discuss your evidence of impairment with
14 you?

15 A No, sir.

16 Q Okay. Let's go back to February 25th,
17 but on another point, okay. If you look at
18 Exhibit 116, that's E-1.23.a, at page 412, are you
19 with me, Chief?

20 A Yes, I am.

21 Q Okay. Those are your rough notes?

22 A That's correct, sir.

23 Q And at 10:55, you speak to Sergeant
24 Poole?

25 A That's correct, sir, yes.

1 Q Okay. And I believe you told us, when
2 you were giving your direct evidence, when you
3 were answering learned Commission Counsel's
4 questions:

5 "I tell him what I know to that point
6 in time."

7 Do you recall telling us that?

8 A Yes.

9 Q Yes. Did you discuss with Sergeant
10 Poole your charter concerns?

11 A No, I did not.

12 Q Okay. So that was something you
13 didn't tell him?

14 A I didn't discuss that with him.

15 Q Okay. And I notice at the same page
16 there is an entry for 10:54. Do you see that
17 entry?

18 A Yes.

19 Q Would you read it, please?

20 A It says:

21 "Writer called Chris Beattie."

22 Q Okay. Well, let's just stop there. I
23 know there's a second line but we'll get to it.
24 Writer, that's you?

25 A That's me, yes.

1 Q Chris Beattie, that's a City of
2 Winnipeg Police Officer?

3 A That's correct, sir.

4 Q Do you know his rank?

5 A I believe he's a Staff Sergeant.

6 Q Staff Sergeant, okay. That's above
7 Sergeant, right?

8 A That's above Sergeant, yes.

9 Q Yes. Okay. And he's the husband of
10 Kathy Beattie, who is in the third vehicle; is
11 that correct?

12 A That's correct, yes.

13 Q Okay. At 10:54, how did you know how
14 to get ahold of him?

15 A The only other reference I have here
16 to Beattie is at 9:34, when Constable Pedersen
17 called me and had said that Kathy Beattie had been
18 released. I don't recall how, at this point I
19 don't recall -- perhaps I called Chris Beattie to
20 advise him of the accident. I don't know, sir. I
21 don't recall that.

22 Q Do you know how you would have gotten
23 his telephone number?

24 A Well, probably -- well, we would have
25 it on our system in the -- on our computer system

1 in the office.

2 Q Wait a minute. Could you explain that
3 to me?

4 A Oh.

5 Q You're telling me you would have every
6 police officer's --

7 A No, no, no. He lives in East St.
8 Paul, he lives in East St. Paul. So he would
9 likely, his telephone number would likely be in
10 our database.

11 Q His work number?

12 A No, no, no, his home number.

13 Q His home number?

14 A Yes.

15 Q It's your evidence you called him at
16 home?

17 A I don't -- I don't recall that, I
18 don't recall that, sir.

19 Q You see, I'm not trying to trick you.
20 Our evidence is that, or the evidence that we've
21 heard is that Officer Beattie or Sergeant Beattie
22 was at work, and that Mrs. Beattie called him on
23 her cell phone after she was in the accident. And
24 then he came, she told us he came down to the
25 scene and they went to the hospital?

1 A I can't explain that entry. I don't
2 have a recollection of that.

3 Q Okay.

4 A That's my writing, my entry. I
5 don't -- I didn't make a note as to why I called
6 him.

7 Q Okay. Well, we'll move on.

8 A Yeah.

9 Q There is a second line to that entry.
10 Could you read that to us, please?

11 A It says:

12 "Behaviour issues with member."

13 Q Member refers to who?

14 A It would refer to the police officer.

15 Q Who?

16 A It would refer to Harveymordenzenk.

17 Q Okay. So, Staff Sergeant Beattie is
18 telling you that there are behaviour issues with
19 respect to Mr. Mordenzenk?

20 A Yes, so it would appear.

21 Q Or Mr. Harvey-Zenk, sorry.

22 A Yes, so it appears, yes.

23 Q Do you ask him what sort of behaviour
24 issues?

25 A No, I didn't pursue that.

1 Q Why not?

2 A At that point in time, I had all sorts
3 of telephone calls coming in. I just, I didn't
4 pursue it. That was a comment, I suppose it was
5 made and I just didn't pursue it.

6 Q How many times did you talk to
7 Mr. Minuk that morning?

8 A I believe I talked to him -- I believe
9 that I only talked to him once.

10 Q Okay. And that would have been at
11 10:30, or 10:35?

12 A 10:35, yes.

13 Q And at that time, you discussed
14 releasing Harvey-Zenk on a promise to appear?

15 A That's correct, sir.

16 Q So now it's 10:54 or 10:55, and you
17 now discover that Harvey-Zenk has some behaviour
18 issues; correct?

19 A That's correct, yeah.

20 Q Yeah. And that's important because
21 it's not only in your rough notes, it's in your
22 duty notes. And I can take you to them if there
23 is any doubt in your mind as to that point?

24 A Okay. I recall that now, sir. I was
25 just looking off my rough notes. I didn't recall

1 it off that one line.

2 Q Yeah, it's at page 422 --

3 A Yes.

4 Q -- in volume E-1. So that's something
5 important, but you don't pursue what kind of
6 behaviour issues; correct?

7 A No, I didn't.

8 Q And didn't that impact on the question
9 of releasing him on a promise to appear? I mean,
10 after all, you're now dealing with somebody who is
11 potentially responsible for a death, who is
12 impaired, and now you have been told by someone
13 senior to him in the same organization that he has
14 behaviour issues. And you don't follow it up any
15 further?

16 A No, I didn't follow it up further,
17 sir.

18 Q Okay. We'll move to another area.
19 You told us yesterday that Officer Pedersen only
20 told you about her observations of impairment
21 after the sentencing and once the Attorney General
22 had called for this inquiry?

23 A That's correct, yes.

24 Q You are aware that the RCMP conducted
25 interviews with respect to the whole

1 Woychuk/Bakema fiasco?

2 A Yes.

3 Q You were interviewed yourself?

4 A That's correct.

5 Q Officer Pedersen was interviewed?

6 A That's correct.

7 Q Did you read, did you have access to
8 those interviews?

9 A No, I didn't.

10 Q You didn't, okay. Well, perhaps that
11 can explain why you don't know what we know at
12 Exhibit 44, which is E-2.26.c. And I'll just read
13 it to you, at page 723. Officer Kennett asks
14 Officer Pedersen, about the middle of the page:

15 "All right. But you said, you
16 mentioned that he smelled of either
17 stale liquor or...
18 Pedersen: Yeah, I could still smell
19 the stale liquor coming from his
20 breath somewhat and I could still see
21 his eyes were a bit glassy."

22 So Officer Pedersen did communicate that to the
23 RCMP in May of '06, but you have already told us
24 you didn't have access to those interviews,
25 correct?

1 A Correct, yes.

2 Q Okay. So that would explain why you
3 got that wrong, or why your evidence came out like
4 that yesterday?

5 THE COMMISSIONER: Sergeant, there are
6 three issues. I may have asked you this yesterday
7 but I want to get a better answer, if I could.
8 There are three issues that one considers before
9 releasing somebody, and that's the officer in
10 charge has that responsibility. And one of them
11 is whether he'll show up for his trial. The other
12 is to identify him. And the third is whether
13 there will be a repetition of the offence, likely
14 repetition of the offence. He is released on a
15 promise to appear. Were you satisfied when you
16 released him that he was still impaired?

17 THE WITNESS: He was probably still
18 impaired, sir.

19 THE COMMISSIONER: I'm sorry?

20 THE WITNESS: He was probably still
21 impaired, sir.

22 THE COMMISSIONER: And yet there was
23 no concern that he might repeat the offence, get
24 into another vehicle and drive?

25 THE WITNESS: He was released to

1 Katherine Bueti, his lawyer.

2 THE COMMISSIONER: Did you ask her to
3 ensure, and that's the question I wanted to ask
4 you, did you ask her to ensure that he didn't
5 drive?

6 THE WITNESS: I believe so. She was
7 going to ensure that he got home.

8 THE COMMISSIONER: Go ahead, sorry.

9 BY MR. ZAZELENCHUK:

10 Q At some point in the days following
11 February 25th of 2005, I believe your department
12 put out a media call for witnesses to come forward
13 who might have seen the accident, or the
14 collision, or might have been there, or something
15 like that. Do you recall that?

16 A No, I don't.

17 Q You don't recall that?

18 A No, sir.

19 Q The reason I say that is because one
20 of the witnesses we heard earlier, Ms. Bukowski,
21 told us that she came down as a result of hearing,
22 I think on the radio, that your department, your
23 police force was looking for witnesses?

24 A Um-hum.

25 Q You don't have a recollection of that?

1 A No, sir.

2 Q Okay. When did you find out that Tara
3 Taman and Kristin Taman had been present at the
4 scene?

5 A I believe, and I'd have to check
6 the -- it was either through Graham's notes -- it
7 was through Graham's notes and I believe the
8 incident report authored by Bakema.

9 Q Okay. So that tells us where. Let's
10 try and pin down a time. Would it have been
11 within three or four days of the 25th?

12 A Yes. Yes.

13 Q Okay. And you'll agree with me that
14 at no point did anyone take a statement from
15 either girl?

16 A No, sir.

17 Q Did you think of taking a statement
18 from either girl?

19 A There was no indication that they
20 observed anything that would have advanced the
21 prosecution's case. And I just found out through
22 this inquiry that, in fact, they did see somebody,
23 they did see Mr. Mordenzenk.

24 Q Well, you say there was no indication
25 that they saw something. Was there an indication

1 that they didn't see something? I mean, isn't
2 good investigative work going down 50 or 60
3 alleyways, and if you find a nugget at the end of
4 one or two of them, that's great?

5 A Yes.

6 Q So you would agree with me on that,
7 and you agree with me that they were at the scene
8 very close to after the collision happened?

9 A Yes.

10 Q And it's not worth an hour of some
11 officer's time to go interview them?

12 A Oh, it certainly is, it certainly
13 would be, sir. But I just did not have any
14 indication from the reports or the notes given to
15 me that they saw anything, or even saw
16 Mr. Harveymordenzenk. There's just nothing in
17 there that was given to me.

18 Q But you have agreed with me that good
19 investigation is going down 50 blind alleys and
20 hoping you find something at the end of one of
21 them?

22 A Yes.

23 Q In fact, that's how a lot of police
24 work goes, isn't it?

25 A That's correct, sir.

1 Q You interview witness after witness,
2 and nine out of 10 tell you nothing, but one tells
3 you something that's important?

4 A Um-hum.

5 Q Yes?

6 A That's correct, sir.

7 Q Thank you. Exhibit 70 is the traffic
8 accident report, and it can be found at E-1.23.n,
9 for Nathan. I don't know if you have it. That's
10 Exhibit 70?

11 A Yes, I have it.

12 Q Now, that's one document and it's
13 several pages, it's several pages long. But it
14 contains both the statement of Mrs. Beattie and
15 Derek Harvey-Zenk; is that correct?

16 A That's correct, yes.

17 Q Yes. And that document would have
18 been forwarded in its entirety to Mr. Minuk at
19 some point?

20 A That's correct, yes.

21 Q Yes. And the reason for that is
22 because that's really the only statement that
23 existed from Mrs. Beattie?

24 A That's correct, sir.

25 Q Yes. And so in order to give proper

1 disclosure, you've got to get that document over
2 to the Crown so the Crown can get it over to the
3 defence?

4 A That's correct, sir.

5 Q And because you don't want to be
6 accused of doing anything below board, you send
7 the document in its entirety?

8 A That's correct, sir.

9 Q Okay. We're done with that, sir. You
10 can put it down.

11 Now, you talked at length with learned
12 Commission Counsel about changing the narratives?

13 A Yes.

14 Q Now, I take it this is done by
15 computer?

16 A By computer, yes.

17 Q Okay. And you have to forgive me,
18 because I can't work a computer. You told us that
19 a person who writes a narrative can change their
20 own narrative; correct?

21 A That's correct, yes.

22 Q But only you and the Chief have access
23 to everybody's in terms of changing it?

24 A Yes.

25 Q Okay. So you go to the computer, you

1 meaning at that time Sergeant Carter, and you have
2 access to anybody's narrative; correct?

3 A That's correct, yes.

4 Q Well, how does the computer know it's
5 you?

6 A It records my name and ID on the
7 narrative report.

8 Q Okay.

9 A On the revision log, sorry.

10 Q Well, how does it know it's not me
11 sitting at your computer?

12 A It probably doesn't. I've got to --
13 if I go into any report, I've got to log in with
14 my ID.

15 Q Is that like a code?

16 A Yes. Yes.

17 Q I see.

18 A We each have passwords, yes.

19 Q And the passwords are supposed to be
20 kept secret?

21 A Passwords are supposed to be
22 individual to the member, yes.

23 Q Okay. But if I find out your
24 password, by hook or by crook, and I sit at your
25 desk, the computer doesn't know that I'm not you?

1 A No, it doesn't, sir.

2 Q Okay. And I guess if I know your
3 password, and I sit at somebody else's desk and
4 use their computer, the computer might still think
5 it's you?

6 A If you use my password, yes.

7 Q Okay. You were questioned during your
8 direct evidence on a couple of occasions as to why
9 you didn't get a warrant to look for things at
10 Branigan's. Do you remember that?

11 A That's correct, sir.

12 Q And I didn't understand your answer.
13 Could you give it to me again, please?

14 A I believe I said I did not have the
15 grounds.

16 Q Well, why didn't you have the grounds?

17 A In order to obtain a warrant, I need
18 to know, there needs to be three pre-conditions,
19 one of them --

20 Q Pardon me?

21 A There needs to be three
22 pre-conditions, one that a crime has been
23 committed.

24 Q Okay.

25 A Two, that specific evidence you are

1 searching for is on the place that you are asking
2 to search. And three, that that evidence will
3 afford evidence of a commissionable offence.

4 Q Okay. There's no question an offence
5 was committed?

6 A No question an offence was committed.

7 Q Okay. At some point in time,
8 certainly within a week, you knew that Derek
9 Harvey-Zenk and several other Winnipeg Police
10 Officers were drinking, or possibly drinking at
11 Branigan's Restaurant?

12 A That's correct, sir.

13 Q And did you believe that Branigan's
14 kept its records on premise?

15 A Yes.

16 Q Well, why not ask for a warrant to see
17 all the records of the evening of February 24th
18 and the morning of February 25th?

19 A Because Mr. Minuk asked specifically
20 for the records, any credit card records of
21 Mr. Harveymordenzenk.

22 Q Chief Carter, you are an experienced
23 police officer. You've got 20 years on the job.
24 Presumably you use your brain occasionally, and
25 you're not a robot. Did that not occur to you?

1 A That did not occur to me, sir.

2 Q Did it occur to you to go down to
3 Branigan's and say, I'm a police officer
4 investigating a death of a human being, and I
5 think that your records might be of help to me?

6 A That occurred to me, sir, to go and
7 ask them.

8 Q And you know, a lot of ordinary
9 citizens are very willing to help police, without
10 a warrant; isn't that correct?

11 A That is correct, sir, yes.

12 Q Did you do that?

13 A No, I did not.

14 Q Why not?

15 A I was just following up to see if
16 there were grounds to get a warrant. That's my
17 answer, sir.

18 Q A couple more points. You were
19 questioned by learned Commission Counsel for a bit
20 about the notes that you took of your meetings
21 with Constable Woychuk?

22 A That's correct.

23 Q Yeah. And I think you told us that
24 you kept those notes in your desk in a separate
25 file. They weren't on the computer. You were

1 keeping them a secret; is that correct?

2 A They were kept in my office

3 confidentially, yeah.

4 Q Not something you would expect anybody
5 else in the department to know about?

6 A That's correct, sir.

7 Q Okay. Well, then you told us
8 something which I found very peculiar, and you
9 said, these notes would have gone where I was
10 instructed to send them. Do you recall saying
11 that?

12 A Yes, I do.

13 Q Well, who is going to instruct you to
14 send the notes anywhere when they don't know that
15 they exist?

16 A I would expect, sir, that if the RCMP
17 had come back to Mr. Minuk with the recommendation
18 that charges would be laid, those would be
19 disclosed.

20 Q That's not an answer to my question,
21 you know that.

22 A Can you repeat your question, please?

23 Q Sure. The notes were a secret. We
24 have agreed to that. And you told us earlier
25 today, when you are answering my learned friend's

1 questions, that you would have sent -- that the
2 notes would have gone where you were instructed to
3 send them. Do you recall telling us that?

4 A I recall telling you that, sir.

5 Q Okay. If the notes are a secret, how
6 is somebody, anybody, going to instruct you where
7 to send them?

8 A I suppose they are not going to, sir.

9 Q Thank you. When you met with Special
10 Prosecutor Minuk on, I believe it was the 12th of
11 June, 2007, do you recall that meeting?

12 A 12th of July?

13 Q My mistake, thank you, sir. 12th of
14 July, 2007, do you recall that meeting?

15 A Yes.

16 Q You told us that one of the things
17 that you discussed was the dismissal of some
18 witnesses?

19 A Yes.

20 Q Which witnesses were those?

21 A I believe they were two or three
22 constables from our department.

23 Q Do you recall which ones?

24 A Constable, I believe Constable
25 Drozdowski, Constable Soltys, and I think

1 Constable Krawchuk, but I can't say for sure.

2 MR. ZAZELENCHUK: Okay. Thank you.

3 Those are my questions.

4 THE WITNESS: Thank you, sir.

5 THE COMMISSIONER: Do you want to go

6 at the end, Mr. McDonald?

7 MR. McDONALD: Yes, Mr. Commissioner.

8 THE COMMISSIONER: Yes. Mr. Jack.

9 BY MR. JACK:

10 Q Chief Carter, I'd like to begin with
11 the discussion -- I just want to begin by
12 discussing the events on February 25th, 2005, once
13 Constable Woychuk had brought Derek Harvey-Zenk to
14 the East St. Paul Police Station.

15 A Yes, sir.

16 Q It's already well established that
17 you, in fact, were the arresting officer?

18 A Yes, sir.

19 Q You have already indicated numerous
20 times that, at that point in time, you were the
21 investigating officer?

22 A Yes.

23 Q So you were the one that formally
24 placed Derek Harvey-Zenk under arrest; correct?

25 A That's correct, sir.

1 Q One thing I can't determine from your
2 notes is whether or not you conducted any search
3 of Derek Harvey-Zenk's person, and by person, I
4 mean his body, his clothing, any accessories,
5 anything he had on him?

6 A Yes, I did.

7 Q You did. Is that reflected in your
8 notes?

9 A Yes, at 8:22.

10 Q Pardon me, Chief Carter, can you
11 repeat that?

12 A At 8:22, it's in the duty notebook.

13 Q Thank you. Now, can you identify for
14 me the purpose of that search?

15 A Search incident to arrest.

16 Q Thank you. And so by search incident
17 to arrest, you, as an experienced investigator and
18 police officer, are aware there are several
19 reasons or several bases upon which you can
20 perform a search incident to arrest?

21 A Yes.

22 Q Can you advise us which of those
23 grounds were apparent in your mind at that time,
24 in performing that search?

25 A To search for safety, for weapons.

1 Q You're searching for weapons?

2 A Yes, and for safety, yes.

3 Q For safety, for your safety obviously?

4 A For my safety and the safety of the
5 office.

6 Q For safety of anyone in the East St.
7 Paul Police Station?

8 A That's correct.

9 Q Was there any other purpose of your
10 search incident to arrest?

11 A No, sir.

12 Q So at that time you weren't performing
13 the search for the purpose of obtaining evidence,
14 for instance, evidence of any offence?

15 A No.

16 Q And would agree with me that there's
17 nothing in your notes confirming why that search
18 was performed, simply that the search was
19 performed; correct?

20 A That's correct, yeah.

21 Q And apart from Derek Harvey-Zenk's
22 person, did you perform any search of Derek
23 Harvey-Zenk's vehicle on the date in question?

24 A I did not, no.

25 Q Did you direct any other officer of

1 the East St. Paul Police Department to perform a
2 search of Derek Harvey-Zenk's vehicle?

3 A On the date in question?

4 Q That's correct?

5 A No, sir.

6 Q When you repeated on the date in
7 question, I take it to mean you may have
8 authorized such a search on a date following
9 February 25, 2005?

10 A That's correct, yes.

11 Q If you can please elaborate upon that?

12 A That would have been, that would have
13 been sometime in -- that would have been in March
14 and it dealt with having Constable Graham attend
15 to the vehicle compound to search the vehicle and
16 remove all the items.

17 THE COMMISSIONER: What date is that
18 again? Do you have the date? If you have, that's
19 fine. If not -- but it was in March?

20 THE WITNESS: I believe it was in
21 March, early March, sir.

22 MR. JACK: Thank you, Mr. Paciocco,
23 for that.

24 BY MR. JACK:

25 Q If I can direct your attention to

1 E-1.24.c? I don't know if you have that document
2 in front of you, Chief Carter. It is an East St.
3 Paul Police incident narrative. The member -- it
4 is an exhibit already -- the member identified is
5 Constable Patrol Graham, indicated as Constable
6 Patrol Graham 043. If that can be provided to the
7 witness. Thank you.

8 THE COMMISSIONER: What page?

9 MR. JACK: It is page 566.

10 THE COMMISSIONER: Thank you.

11 BY MR. JACK:

12 Q You have reviewed that document?

13 A Yes, sir.

14 Q It indicates a date near the top of
15 the page of March 31, 2005. Do you see that?

16 A That's correct, sir, yeah.

17 Q Now, is that the date upon which you
18 are referring to that you advised Constable Graham
19 to go perform a search of the vehicle?

20 A I believe so, sir, yes.

21 Q And you'll agree that there's nothing
22 in Constable Graham's notes that indicate he was
23 performing a search, correct? It simply indicates
24 that he collected belongings out of the vehicle,
25 correct?

1 A That's correct, sir, yeah.

2 Q Is it your recollection that you
3 advised Constable Graham to actually perform a
4 search of the vehicle, as opposed to simply
5 retrieving belongings?

6 A No, it was to retrieve belongings,
7 sir.

8 Q I see. So you weren't directing
9 Constable Graham to perform a search?

10 A No.

11 Q In fact, in directing Constable
12 Graham, you didn't even use the word "search," I
13 assume?

14 A I don't believe so, sir.

15 Q And so this was one date you are
16 referring to. Apart from March 31, 2005, was
17 there any other date upon which you directed any
18 officer of the East St. Paul Police Department to
19 perform a search of Derek Harvey-Zenk's vehicle?

20 A No, sir.

21 Q No, okay. Thank you. Now, if you can
22 put in front of you the transcript from the
23 interview you provided to Commission Counsel on
24 March 20, 2008. It's document T4C?

25 THE COMMISSIONER: Page?

1 MR. JACK: I will be directing the
2 witness to page 19, Mr. Commissioner.

3 THE COMMISSIONER: Thank you.

4 BY MR. JACK:

5 Q And we can begin the question at line
6 23, in fact on page 18. And the part I'm
7 interested in, in fact, doesn't necessarily relate
8 to the question, but it's in the course of the
9 answer that you provide something I'd like to
10 explore. The question beginning at page 18, line
11 23:

12 "Q Okay. So I had interrupted you
13 there, sir, at that point when you
14 made the demand that you were
15 referring to at 8:21 hours. So if I
16 could ask you then to carry on where
17 you had left off, and I think you were
18 at the point where at 8:34 Derek
19 Harvey-Zenk had asked you a question
20 about the demand.

21 A That is correct. He asked me, I
22 am sorry, did you give the demand?
23 And I answered in the affirmative.
24 Constable Woychuk at this time was
25 completing the prisoner log sheet, and

1 Mr. Harvey-Zenk signed for his
2 belongings that were removed from
3 him."

4 So my focus is solely upon the
5 belongings, and not upon any demand that was
6 given.

7 First of all, Chief Carter, do you
8 recall this interview?

9 A Yes, I do, yes.

10 Q Do you recall giving that answer to
11 Commission Counsel?

12 A Can you give me the line again,
13 please?

14 Q Certainly. I began reading from page
15 18, line 23. Some of the confusion may come,
16 Chief Carter, from the way these are numbered.
17 Each of the four quadrants on a page has a page
18 number. I'm not referring to the page numbers at
19 the very bottom of the page.

20 A Okay. Which quadrant?

21 Q Well --

22 A I'm sorry, I can't --

23 Q That's quite all right. I'm referring
24 to the little page 18, which is on page 6 of this
25 document. Does that make sense?

1 THE COMMISSIONER: There are four
2 pages on one page.

3 THE WITNESS: Yes.

4 THE COMMISSIONER: And in the
5 left-hand corner is page 18, and it has line 23.
6 He wants to refer you to line 23. So what you
7 have to do is it to look in the --

8 THE WITNESS: Okay, I've got it.

9 THE COMMISSIONER: -- in the corner.
10 Have you got it?

11 THE WITNESS: I've got it, sir, thank
12 you.

13 THE COMMISSIONER: That's all right.

14 MR. JACK: Thank you, Chief Carter

15 BY MR. JACK:

16 Q So I was starting with the question on
17 page 18 at line 23, just so you're following with
18 me, I will read it again. At page 18, line 123:

19 "Q Okay. So I had interrupted you
20 there, sir, at that point when you had
21 made the demand that you are referring
22 to at 8:21 hours. If I could ask you
23 then to carry on where you had left
24 off, and I think you were at the point
25 where at 8:34, Derek Harvey-Zenk had

1 asked you a question about the demand.

2 A That is correct. He asked me, I'm
3 sorry, did you give the demand? And I
4 answered in the affirmative.

5 Constable Woychuk at this time was
6 completing the prisoner log sheet and
7 Mr. Harvey-Zenk signed for his
8 belongings that were removed from
9 him."

10 So I'll ask you again, do you recall the interview
11 that was performed by Commission Counsel of you on
12 March 20, 2008?

13 A Yes, I do.

14 Q Do you recall giving that answer to
15 that question?

16 A That's correct, yes.

17 Q Okay. Thank you. And again, my focus
18 is simply going to be on the reference you make to
19 the prisoner log sheet and the belongings of
20 Mr. Harvey-Zenk, okay. So you had indicated in
21 the course of your answer that Constable Woychuk
22 was completing a prisoner log sheet. That was
23 correct --

24 A That's correct.

25 Q -- at that time?

1 A Yes.

2 Q And you indicated Mr. Harvey-Zenk
3 signed for his belongings that were being removed
4 from him?

5 A That's correct, yes.

6 Q Okay. I just want you to provide us
7 with some basic explanation of how that process
8 occurred, in terms of actually removing the
9 belongings from Derek Harvey-Zenk? Just
10 procedurally, how that was done, who did it. I
11 recognize Constable Woychuk, according to you, was
12 completing a prisoner log sheet. But if you could
13 just take me through that detail?

14 A Okay. He would be searched. His
15 belongings would be removed from him, put on the
16 cabinet in the, near the booking room, near the
17 interview room. And Constable Woychuk would take
18 a log sheet and fill it out and have him sign for
19 his belongings.

20 Q Thank you. And again, you used the
21 term "searched." Now, are you referring to the
22 search that you indicated you performed searching
23 for weapons?

24 A That's correct, yes.

25 Q So in the course of searching for

1 weapons, any items found would be removed?

2 A That's correct.

3 Q Not just weapons, obviously?

4 A Not just weapons, no.

5 Q Would it be a requirement during your
6 search for weapons to remove absolutely any and
7 all items from Derek Harvey-Zenk's person?

8 A Yeah, if he's a prisoner, everything
9 would be removed from him, yes.

10 Q Other than his clothing, I take it?

11 A Yes. Yes.

12 Q But all his clothing would be
13 searched, I assume?

14 A Pockets, yes.

15 Q What about any of the items within his
16 pockets? For instance, a wallet, if you removed a
17 wallet from Mr. Harvey-Zenk, is it sufficient that
18 you removed it?

19 A No, we would look through it.

20 Q And look through it for what purpose?
21 You had indicated the search was for weapons,
22 correct?

23 A That's correct.

24 Q Do you recall whether you did look
25 through the wallet? And if you have no specific

1 recollection, I don't want you to go out on a
2 limb.

3 A I don't have a specific recollection
4 of looking through the wallet. That's a pretty
5 standard thing we do.

6 Q When you say it's a standard thing we
7 do, you would typically look through a wallet that
8 was removed from a prisoner?

9 A Yes.

10 Q And yet you have confirmed that this
11 search was solely for the purpose of determining
12 whether or not Mr. Harvey-Zenk had any weapons on
13 him; correct?

14 A Weapons, and to remove his belongings
15 because he was a prisoner.

16 Q I understand that. But what would the
17 purpose of searching the wallet be?

18 A If there is money in there, to account
19 for any money.

20 Q To ensure that upon his release, he's
21 not going to suggest that some money has gone
22 missing?

23 A That's correct.

24 Q Okay. And those would be the only
25 purposes?

1 A Yes.

2 Q Okay. Now, I have a few questions for
3 you, Chief Carter, about the involvement of the
4 Professional Standards Unit of the Winnipeg Police
5 Service. You have been asked numerous questions
6 about that?

7 A Yes, sir.

8 Q When I use the term PSU, I'm going to
9 be referring to the Professional Standards Unit of
10 the Winnipeg Police Service. All right?

11 A Yes, sir.

12 Q When I use the term PSU, you are going
13 to understand what I mean, correct?

14 A I'll know what you mean, yes.

15 Q Now, in the examination by
16 Mr. Clifford, you were asked how the PSU became
17 involved in the first place with this
18 investigation. And you indicated to him that it
19 was at the request of Harry Bakema; is that
20 correct?

21 A That's correct, sir.

22 Q Later, you were asked by Mr. Clifford
23 how it was, or how it came to be that the PSU
24 performed interviews of the civilian witnesses
25 that were employed by Branigan's Restaurant. And

1 your response was that that was also at the
2 request of Harvey Bakema. That's correct?

3 A That's correct.

4 Q And during those requests, at all
5 material times, Harry Bakema was the Chief of the
6 East St. Paul Police Department, correct?

7 A He was Chief of the East St. Paul
8 Police.

9 Q So obviously you would confirm, then,
10 that the request for assistance to the PSU was
11 coming from the Chief of a police department, that
12 being the East St. Paul Police Department?

13 A Yeah, I assumed it was coming, yes.

14 Q And during either of those requests,
15 whether before or after or otherwise, you made no
16 comments to the PSU about their involvement
17 indicating whether you approved, disapproved, or
18 otherwise?

19 A No, I didn't.

20 Q And I'm going to suggest to you that
21 it would be reasonable for an agency such as the
22 PSU to assume that a request coming from the Chief
23 of a police department is a request for assistance
24 from a police department. That seems reasonable,
25 doesn't it?

1 A Yes, sir.

2 Q Now, when questioned about whether or
3 not the East St. Paul Police Department could have
4 performed all necessary interviews, you indicated
5 that you believe they could have. You referred to
6 peripheral police officers. And by those, I take
7 it to mean the ones that may have had some
8 evidence regarding Derek Harvey-Zenk's alcohol
9 consumption on the evening of February 24, 2005,
10 or the morning of February 25, 2005; correct?

11 A That's correct, sir.

12 Q You felt that the East St. Paul Police
13 Department could have performed these interviews,
14 although you acknowledged that it might take more
15 time?

16 A That's correct, sir, yes.

17 Q Again, we've heard at length about
18 your significant experience, both as a police
19 officer and an investigator. You would agree with
20 me, at the very least, that when attempting to
21 obtain useful evidence from witnesses, it is
22 always preferable to obtain that evidence sooner
23 rather than later; correct?

24 A That's correct, sir, yeah.

25 Q You would agree with me, with the very

1 basic proposition that, in general, it is human
2 nature that the human memory may fade over time;
3 correct?

4 A That's correct, sir.

5 Q Always as an investigator, if you can,
6 you'll attempt to obtain witness interviews and
7 witness evidence earlier rather than waiting for
8 it; correct?

9 A Yes, sir.

10 Q And also in the discussion about
11 whether or not the East St. Paul Police Department
12 had sufficient resources to carry out all of the
13 necessary investigation, Mr. Clifford put some
14 numbers to you. And with respect to those
15 peripheral officers, it was suggested to you by
16 Mr. Clifford that it wouldn't be more than 15
17 interviews that would be required. Do you recall
18 that question being put to you yesterday?

19 A Yes, I do, yes.

20 Q Do you recall agreeing with that
21 proposition?

22 A Yes, I do.

23 Q Okay. Thank you.

24 MR. CLIFFORD: Excuse me, Mr. Jack.
25 I'm going to raise an objection. I recall the

1 question and the line of questioning that went to
2 the Chief. The suggestion was that if he wanted
3 to interview the officers who were in attendance
4 at Branigan's and thereafter at Officer Black's
5 house, he would have been required to, or the
6 service would have had to perform less than 15
7 interviews. That's the question. And I don't
8 think the characterization of the question is
9 being put to this witness fairly.

10 MR. JACK: Fair enough. I'm not sure
11 how I mischaracterized, but if I did so, I will
12 certainly ensure that I don't.

13 BY MR. JACK:

14 Q So specifically with respect to the
15 interviews of police officers that may have been
16 with Derek Harvey-Zenk, and who may have had some
17 evidence to offer concerning his alcohol
18 consumption, and I hope that's considered a fair
19 characterization of it, it was suggested to you
20 that those interviews would not be more than 15 or
21 so, and you agreed?

22 A Yes.

23 MR. CLIFFORD: I want to make it quite
24 clear, Mr. Commissioner, that the objection was,
25 the number of officers at Branigan's and Officer

1 Black's, to cover those officers, less than 15
2 interviews.

3 THE COMMISSIONER: I think he's put it
4 fairly. Go ahead, Mr. Jack.

5 MR. JACK: Thank you,
6 Mr. Commissioner.

7 BY MR. JACK:

8 Q In any event, I simply want to discuss
9 with you the number of interviews that were
10 performed by PSU, regardless of what was asked
11 about you in terms of the number that you thought
12 at the time. And I'd like to turn you to your
13 narrative, if I could, at volume E-1.23.k.

14 A What exhibit number?

15 Q Allow me one moment, Chief Carter,
16 I'll find the exhibit number for you.

17 THE COMMISSIONER: You're looking at
18 the incident narrative?

19 MR. JACK: Exhibit 114, I'm advised.

20 THE COMMISSIONER: Have you got it
21 there, Exhibit 114?

22 THE WITNESS: Yes.

23 BY MR. JACK:

24 Q Yes. Do you have that document in
25 front of you?

1 A I do.

2 Q And I do note an entry that appears to
3 be attributed to you, with a date that would
4 appear to indicate August 30, 2005. Do you note
5 that entry?

6 THE COMMISSIONER: What page?

7 MR. JACK: We're at page 462. I
8 apologize.

9 THE COMMISSIONER: Thank you.

10 THE WITNESS: Yes, I've got it, sir.

11 BY MR. JACK:

12 Q You have that in front of you? Thank
13 you. And it indicates that the writer, which at
14 the moment I am assuming to be you, received the
15 WPS professional standards reports from Chief
16 Bakema, and the following subjects were
17 interviewed by professional standards. You then
18 proceed to list 28 different names; correct?

19 A That's correct, sir.

20 Q And was that, the reports, does that
21 note mean to indicate that, in fact, they were
22 received by you from Chief Bakema on August 30,
23 2005?

24 A That's correct, sir.

25 Q And all I want you to note simply is

1 that you have listed 28 separate identities there,
2 correct?

3 A That's correct, sir.

4 Q I do note three of those are clearly
5 identified by you as being related to Branigan's,
6 Chelsea Lynn O'Halloran, Darcy Gerardy and Rodrigo
7 Bravo, along with 25 other names you seem to have
8 identified as officers; correct?

9 A Yes.

10 Q So at the very least, you would agree
11 that this list was significantly more than 15 or
12 so?

13 A Yes, sir, it is.

14 Q Now, if I could address one point that
15 Mr. Zazelenchuk just dealt with in his examination
16 of you just moments ago. It had to do with a
17 notation by you in your duty notes, if you could
18 have your duty notes in front of you, please?

19 I have those in my volume at E-1.23.b.
20 I note those to be Exhibit 115. And in
21 particular, I'd like to draw your attention to
22 page 422. Do you have that in front of you?

23 A Yes.

24 Q Thank you. Now, there was some
25 questions from Mr. Zazelenchuk with respect to the

1 entry you appear to have made at 10:54. And once
2 again, if you could simply read out for us what
3 you have made note of at 1054?

4 A I wrote:

5 "Writer called Chris Beattie at work.
6 Said his wife was released. He said
7 there may be behavioural issues with
8 accused. Writer advised Jim Poole
9 called and writer will speak with
10 him."

11 Q Thank you. Now, in reading that to
12 me, I thought I heard you mention on the third
13 line, he said there may be behavioural issues?

14 A Yes.

15 Q You'd agree with me, that at least in
16 terms of reading out what you have written there,
17 the word "he" doesn't appear?

18 A No, it doesn't.

19 Q And in fact, your first line:

20 "Writer called Chris Beattie at work."
21 And then there's a little dot. Can you tell me
22 whether that's a period or comma? Nothing
23 necessarily turns on that, I just simply wonder
24 what that marking would mean by you, the end of a
25 sentence?

1 A Yeah, just probably a period, yes.

2 Q So the next phrase:

3 "Said wife released."

4 That's a comment that would actually be attributed
5 to you, correct?

6 A Yes.

7 Q And you start the next phrase with the
8 same word, "said."

9 "Said there may be behaviour issues
10 with accused."

11 I'm going to suggest to you, Chief Carter, that
12 it's entirely possible that, in fact, what you
13 meant by that line was that you indicated to Chris
14 Beattie there may be behaviour issues with the
15 accused?

16 A No, sir.

17 Q And how can you be sure of that?

18 A I don't -- I don't know the man, I
19 don't know if there's any behaviour issues with
20 him.

21 Q But wasn't it the case during that
22 morning, while he was custody at the East St. Paul
23 Police Department, that he was exhibiting a number
24 of behaviours, including banging his head, crying,
25 definitely acting out, exhibiting some emotion?

1 A Yes.

2 Q You recall that?

3 A Yes.

4 Q I'm going to suggest to you it's at
5 least possible that that's a description of his
6 behaviour that you were making to Chris Beattie?

7 A No, sir.

8 Q But you have no recollection of
9 what -- if it were the fact that Chris Beattie was
10 relaying a behavioural issue to you, you have no
11 further indication of what that behavioural issue
12 might have been?

13 A No, I don't.

14 Q You certainly have no independent
15 recollection of what that behavioural issue might
16 have been?

17 A No, sir.

18 Q In fact, other than reviewing the
19 notes, you have already testified that you didn't
20 have a recollection of that statement?

21 A That's correct, yes.

22 Q Thank you. Madam clerk, if we could
23 put in front of the witness, this is from volume
24 Q-1, and in particular Q-1.89.b.4. And in
25 particular, Chief Carter, I'd like to turn your

1 attention to page 2943 of that document?

2 THE COMMISSIONER: Page?

3 MR. JACK: Page 2943,

4 Mr. Commissioner.

5 THE COMMISSIONER: Thank you.

6 BY MR. JACK:

7 Q Do you have that in front of you,
8 Chief Carter?

9 A Yes, sir.

10 Q Okay. And if you are looking on the
11 same page I am, you'll note that there's not very
12 much on this page?

13 A Yes.

14 Q And only the portions obviously
15 related to this investigation are included on this
16 page. These are from notes maintained by Sergeant
17 Jim Poole of the PSU, as he then was. And in
18 particular, you'll note at the upper left-hand
19 corner, it's what purports to be his date of this
20 note, that being July 13, 2005. The only note he
21 has made on the page, and I've got a rather grainy
22 copy, but I believe it's at 1300 hours, or at
23 least seems to be noted along the left margin.
24 And I'll read what I believe his handwriting to
25 say.

1 "Package on Harvey-Zenk investigation
2 taken to Chief Harvey Bakema, East St.
3 Paul."

4 And that is the conclusion of the note, you would
5 agree?

6 A That's the conclusion of the note,
7 yes.

8 Q So this would appear to be, and of
9 course we are going to hear from Sergeant Poole at
10 a later date, but this would appear to be his
11 indication that on July 13, 2005, the package
12 relating to their portion of the investigation was
13 taken to Harry Bakema on that date?

14 A That's correct.

15 Q Did you have any particular
16 understanding, or knowledge, or witnessing of the
17 receipt of that package from the PSU by Harry
18 Bakema?

19 A No, sir.

20 Q No. And that would seem to accord
21 with your narrative, again, that being Exhibit
22 114. I have already drawn your attention to this
23 particular page, but if I could draw it there once
24 again. This is at E-1.23.k. This is your
25 incident narrative, and I'd like to draw your

1 attention to page 462. Are you there?

2 A Yes.

3 Q So this seems to be the first note you
4 have made of receiving anything from the PSU. And
5 again, your note doesn't appear to indicate that
6 you had received anything directly from the PSU.
7 In fact, your note indicates that the writer, that
8 being you, received the WPS professional standards
9 reports from Chief Bakema?

10 A That's correct, yes.

11 Q And you have already confirmed for me
12 that was the date upon which you first received
13 any PSU material from Chief Bakema, correct?

14 A Yes, sir.

15 Q Apart from what you've listed in your
16 narrative, do you have any particular recollection
17 of the totality of material that you received? In
18 other words, you have listed all the interviewees.
19 But you indicate that you received the
20 professional standard reports from Chief Harry
21 Bakema. Do you happen to recall everything that
22 you received. And if not, I've got one
23 document --

24 A I do have it here, yes.

25 Q You do?

1 A Yes.

2 Q And if I could ask Madam clerk to put
3 volume Q-2 in front of the witness? And in fact,
4 what I'll be referring to is Q-2.89.b.17?

5 THE COMMISSIONER: The page again?

6 MR. JACK: Yes, Mr. Commissioner. The
7 page I will be referring to is page 3012.

8 BY MR. JACK:

9 Q Now, Chief Carter, before I direct
10 your attention to any particular item here, you
11 see even on the cover page, this is a Winnipeg
12 Police Service supplementary report. It's my
13 understanding, this is part of the material you
14 would have received from Chief Bakema on
15 August 30, 2005. Would you agree with that?

16 A I believe so, yes.

17 Q And apart from receiving that
18 material, do you recall what you did with it on
19 August 30, 2005? In other words, did you read all
20 the material end-to-end, review it thoroughly, did
21 you skim it, did you file it away for review
22 later? Do you recall?

23 A Probably skimmed it right at the
24 beginning, sir.

25 Q Okay. Then I will direct your

1 attention to page 3012, right near the bottom, and
2 in particular, the last paragraph. And I quote:

3 You've got abbreviation for,

4 "Patrol Sgt. Anderson got a ride to
5 Constable Black's residence with
6 Constable Fudge (driver), Constable
7 McLure and Constable Harding. A few
8 vehicles followed as they made a stop
9 at a 7-11 store, then went straight to
10 Constable Black's residence. He
11 guessed that they might have arrived
12 at Constable Black's at about 0300
13 hours. Once inside, Anderson gave
14 himself a tour and then proceeded with
15 a low key visit."

16 Do you see that passage?

17 A Yes.

18 Q Do you recall having read that
19 paragraph when you received this material on
20 August 30, 2005?

21 A I don't recall the particular
22 paragraph, but I would have skimmed it, yes.

23 Q Is there a chance you would have read
24 that particular paragraph?

25 A Probably.

1 Q So in terms of some information with
2 respect to a stop at a 7-11 store, you would agree
3 that you had that information in your possession
4 on August 30, 2005?

5 A That's correct, sir, yes.

6 Q And as a result of reading this
7 report, you didn't then attend to the 7-11 to
8 follow-up any investigation in that regard?

9 A No, sir.

10 Q Now, Mr. Commissioner, I see I've been
11 remiss in marking the documents to which I have
12 been referring as exhibits. I think it's
13 appropriate that I do so now. The last one I
14 referred to, that being Q-1.89.b.4, I would ask
15 that that be marked as an exhibit?

16 THE CLERK: Exhibit 137.

17 (EXHIBIT 137: Q-1.89.b.4, Acting
18 Inspector J. Poole (notes))

19 MR. JACK: And the document to which I
20 have just referred, that being volume Q-2.89.b.17,
21 if that could be marked as an exhibit?

22 THE CLERK: Exhibit 138.

23 (EXHIBIT 138: Q-2.89.b.17, Winnipeg
24 Police Service Supplementary Report,
25 Girard reporting, P.S.U. #05-019)

1 MR. JACK: Thank you, Chief Carter, I
2 have no further questions.

3 THE COMMISSIONER: Thank you, sir.

4 MR. WEINSTEIN: Can we have our
5 afternoon break at this time?

6 THE COMMISSIONER: Fifteen minutes.

7 THE CLERK: All rise. This Commission
8 of inquiry is in recess.

9 (Proceedings recessed at 3:07 p.m. and
10 reconvened at 3:25 p.m.)

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

14 BY MR. WEINSTEIN:

15 Q In February of 2005, how many police
16 officers did East St. Paul have?

17 A It would have been eight.

18 Q Eight. And on a shift, I'm not
19 talking overlap, I'm talking, you know, a non
20 overlap shift, how many policemen would have been
21 on duty?

22 A Usually one officer on duty per shift.

23 Q One officer. Are we talking one
24 officer on the street or --

25 A One patrol officer, yes.

1 Q Right. And someone in the office?

2 A Yes.

3 Q Or two in the office, perhaps?

4 A Well, usually just in the office would
5 have been either the Chief or myself.

6 Q Right. So on many of the shifts, you
7 have one in the office and one on the street?

8 A Yes.

9 Q Correct. You weren't exactly
10 overstaffed in February of 2005, I assume?

11 A No, sir.

12 Q Quite the opposite, understaffed?

13 A Yes, I would say so, yes.

14 Q As a matter of fact, when you got into
15 the office, when you were called in, there wasn't
16 any other police officer there; is that correct?

17 A No, just the clerk.

18 Q Yeah. But no other police officer?

19 A No, sir.

20 Q All right. And you were informed to
21 wait for Constable Woychuk?

22 A That's correct.

23 Q And you have already indicated, it
24 seems days ago, but yesterday, you had no idea
25 why; correct?

1 A At that point, no.

2 Q Right. And you had the thought
3 running about a relative perhaps?

4 A Yes. Yes.

5 Q Did you call Woychuk?

6 A No, I didn't.

7 Q He had a radio?

8 A He would have had a radio in the
9 vehicle, yes.

10 Q Yeah. And you can communicate from
11 the office to the vehicles; correct?

12 A Correct, yes.

13 Q And I'm not being critical, but you
14 didn't think of communicating that way?

15 A No, sir.

16 Q Now, when Woychuk, Constable Woychuk
17 arrives, and we know that's about 8:12 in the
18 morning, one of the things he tells you, that
19 Harry said that you should handle this matter, you
20 have more experience; correct?

21 A That's correct.

22 Q And in fact, in the East St. Paul, you
23 did have more experience, correct?

24 A Yes.

25 Q Handling impaired driving cases,

1 correct?

2 A Yes.

3 Q In fact, I believe from one of your
4 interviews, that Harry had not dealt with an
5 impaired driving file while at East St. Paul,
6 correct?

7 A That's probably correct.

8 Q Right. And between your two incident
9 narratives, at least at one of them, Woychuk
10 mentions to you when he comes into the office
11 about a TAR; correct?

12 A Yes.

13 Q Okay. And did you say to him, why a
14 TAR?

15 A I'm sorry, can I correct that?

16 Q Yeah.

17 A In the -- Woychuk did not tell me that
18 about the TAR at that time, he told me about the
19 TAR on the 28th.

20 Q On the 28th?

21 A Yes.

22 Q Okay. And did you ask him why a TAR?

23 A I didn't ask him why a TAR, I asked
24 him to clarify why he was bringing him in.

25 Q Did you ask anything about a TAR to

1 Bakema?

2 A No, sir.

3 Q So very little information, are you
4 saying, was given to you when Woychuk spoke to you
5 for two minutes, 8:12 to 8:14? 8:14 you are at
6 the car now?

7 A It was a quick conversation, yes.

8 Q Yes, two minutes, correct?

9 A Yes.

10 Q Not a lot of info, depending on which
11 narrative of yours we read?

12 A Yes.

13 Q And you are dealing now with Mr. Zenk
14 at 8:14, according to your narrative?

15 A That's correct, yes.

16 Q Now, no question, we all make
17 mistakes, agreed. That's a given, correct?

18 A That's correct, sir.

19 Q And we learn by our mistakes, correct?

20 A That's correct, sir.

21 Q It seems, though, you sort of had a
22 triple header. You had blood, I think, in three
23 different documents, blood demand?

24 A That's correct, sir.

25 Q Okay. Different documents done at

1 different times, and one thing is at least
2 consistent in those, it's always blood; correct?

3 A That's correct, sir, yes.

4 Q But one thing that struck you
5 immediately, or became a concern of yours very
6 quickly, is the delay and the charter breach, a
7 possible charter breach?

8 A Possible, yes.

9 Q Right. Did you ask Mr. Woychuk,
10 Constable Woychuk, why were you at the scene from
11 this time to this time? Did you ask him about
12 that?

13 A When he came in?

14 Q Yes?

15 A No, sir.

16 Q So you were concerned about delay,
17 correct?

18 A That's correct, yes.

19 Q But yet you didn't ask about it,
20 correct?

21 A I asked if he had been chartered or
22 cautioned.

23 Q Okay. And he replied no?

24 A That's correct, yes.

25 Q Did he tell you Mr. Zenk had been at

1 the scene for some time?

2 A No, he didn't tell me at that time,
3 no.

4 Q Did he tell you at any time?

5 A Yes.

6 Q Is it recorded anywhere in your notes,
7 Woychuk telling you why he was at the scene for
8 that long?

9 A No.

10 Q If this is a concern of yours, okay,
11 you don't ask, it's not your notes, does that make
12 sense, sir, if that was a concern?

13 A It was a concern, but I didn't note
14 it, I didn't ask him and I didn't note it.

15 Q Okay. But one thing is clear, right
16 off the bat, it's weighing on your mind, delay,
17 charter breach; correct?

18 A That's correct, sir.

19 Q Okay. And you don't ask about it,
20 even though it's bothering you, that's fine.
21 That's your answer, correct?

22 A That's correct, yes.

23 Q So, and you have told us, at various
24 times in the morning, when you were dealing with
25 Mr. Zenk, you were being, I think -- not I think,

1 it's your word, hyper-vigilant; correct?

2 A That's correct.

3 Q Do you remember using that word
4 several times yesterday, correct?

5 A Yes, sir.

6 Q You were affording him certain
7 courtesies because "you were being hyper-vigilant"
8 because you were worried that maybe there had been
9 a charter breach; correct?

10 A That's correct, sir, yes.

11 Q And you said that more than once,
12 because more than once you afforded him a certain
13 courtesy. And I'm not being critical of that.
14 But my point is, it's weighing heavily on your
15 mind; correct?

16 A Yes, it is, yeah.

17 Q Right off the bat, correct, and it's
18 continuing through the morning; correct?

19 A That's correct, sir, yes.

20 Q So I don't understand why you don't
21 have a recollection, when you speak to Marty
22 Minuk, when you're giving him the details, why you
23 don't tell him about what's been bothering you all
24 morning, why you've been hyper-vigilant all
25 morning?

1 A No, at that time I didn't tell him,
2 sir.

3 Q Did it not twig that maybe you should,
4 especially when he tells you, perhaps -- not
5 perhaps -- to lay a refused breathalyzer, did it
6 not twig on you to maybe tell him?

7 A Not at that time, sir.

8 Q How long did it take you to tell him?

9 A It was my first meeting with him, sir.

10 Q That's a long time after
11 February 25th?

12 A That is correct, sir.

13 Q Is it a year?

14 A It would be, yeah, close to a year,
15 yes.

16 Q Okay. So you are, I assume, and I'm
17 not being facetious, the concern you had on
18 February 25th appears to have faded. All right.
19 Because you're not alerting the Crown to your
20 concerns for at least a year. You weren't
21 thinking about it. You had other things to do;
22 correct?

23 A That's correct, sir.

24 Q On February 25th, this file was yours;
25 correct?

1 A On February 25th, the file was not
2 assigned.

3 Q Well, let me just -- maybe you can
4 clarify something for me, because your answer
5 doesn't make sense, and I'll tell you why. And
6 I'm referring, Mr. Commissioner, to page 9 of his
7 interview with the RCMP, and I'm referring to page
8 9 at the top, bottom page 528. This is in volume
9 E-1. You remember being interviewed by police
10 officer, RCMP officer by the name -- well, the
11 name is not important, Kennett, it happens to be.
12 And I'm going to read what went on, or what was
13 said in that interview. I'll start with Kennett.

14 "And I think we have kind of covered
15 on this, but the usual course of
16 action of the file responsibility at
17 the scene, um, and then the follow-up,
18 we have covered at the scene I believe
19 pretty much."

20 And you say uh-huh, and there's some ums and yes.

21 "Kennett: The follow-up investigation
22 and involvement, so the follow-up
23 begins basically once the scene is
24 clear. You said that you were..."

25 And you jump in, yes.

1 "Kennett: At this time, told that
2 this file was going to be your file.
3 Yeah, I was. It was naturally
4 migrated to me, yes.

5 Kennett: How did that happen. How
6 did...

7 Well..

8 Were you told or...

9 Well, yeah, I was..."

10 It appears to be, it should be, the file was
11 turned over to me, yes.

12 "Kennett: Okay, by whom?

13 Carter: By the Chief.

14 Kennett: All right. And when did
15 that happen, do you remember?

16 Ah, well, that same day after the
17 scene was cleared, after I had already
18 dealt with Mr. Mordenzenk at the
19 office."

20 The scene was cleared, sir, we know from the
21 material, at 4:00 o'clock. According to your
22 answer, at 4:00 o'clock, that file was yours.
23 That file was yours. Does that refresh your
24 memory, sir?

25 A The interview refreshes my memory,

1 yes.

2 Q And your answer, the file is yours at
3 4:00 o'clock, February 25th. There's no confusion
4 in that answer. It was yours after the scene was
5 cleared, correct?

6 A I don't believe it was mine at the
7 time, sir.

8 Q So why did you tell the police that?

9 A I -- I believe in my interview there,
10 I said the file migrated. There was some
11 confusion. Yeah. That's what I said at the time,
12 I believed the file would end up being mine.

13 Q That's not what you said. The file
14 was turned over --

15 A Yes, I know what I said, sir, but what
16 I'm saying, I knew the file would end up being
17 mine.

18 Q Would you agree your answer today does
19 not jive with that?

20 A It doesn't jive with that, no, sir.

21 Q You see, also, I'm referring
22 Mr. Commissioner to page 36 of his interview with
23 Commission Counsel, do you have that, sir, page 36
24 in the top?

25 It seems to me that yesterday you left

1 the impression that between February 25th and
2 March 1st, you didn't know who the investigating
3 officer was, is that correct? Do you remember
4 that evidence yesterday?

5 A Yes, I do, sir.

6 Q Page 36, line one, question, by
7 Commission Counsel:

8 "Well, you were the investigating
9 officer on February 25th?

10 A Yes."

11 Your answer yesterday makes no sense to what you
12 said under oath to Commission Counsel, does it?
13 Does it? You told him --

14 A Yes.

15 Q Clearly, it wasn't a difficult
16 question. The question was, well, you were the
17 investigating officer on February 25th? Answer,
18 yes. It's simple as that.

19 THE COMMISSIONER: Don't answer the
20 question. Yes.

21 MR. McDONALD: Yes, Mr. Commissioner,
22 I don't like to again interfere, but I think, in
23 fairness, the entire passage, series of questions
24 and answers ought to be put to the witness to see
25 if that refreshes his memory. Because that

1 question in isolation, he acknowledged throughout
2 that he was investigator on the 25th, put the next
3 series of questions to him so it becomes in
4 context, and then ask him the questions. I think,
5 in fairness, the whole series of questions should
6 be put.

7 MR. WEINSTEIN: Fine. I'll keep
8 reading.

9 BY MR. WEINSTEIN:

10 Q "Q So that had some significance?

11 A Yeah.

12 Q What I'm interested in, whose
13 file was it from that point on?"

14 Again, you use that same word.

15 "A That file kind of migrated to me.

16 Q And I would like you to explain
17 how that migration took place?

18 A The file was initially, on that
19 day, was not turned over to me and
20 said -- and there was no words or
21 anywhere said, sir, you are now the
22 investigating officer. Initially Mr.
23 Harvey-Zenk was turned over to me to
24 handle. Mr. Bakema still give
25 direction on the file for short period

1 of time after that.

2 Q For how long after did he give
3 direction on the file?

4 A For a few days anyway."

5 Does that say that there's no investigator, sir?

6 A No, that says that there is no
7 designated investigator.

8 Q Did you not consider yourself, sir,
9 the investigator?

10 A I was an investigator, but I didn't
11 know whether the file was eventually going to wind
12 up with me permanently.

13 THE COMMISSIONER: Did Mr. Bakema ever
14 say to you, I want you to take this file over?

15 THE WITNESS: No, sir.

16 THE COMMISSIONER: Then what made you
17 believe that you were supposed to take the file
18 over?

19 THE WITNESS: Because that's what
20 usually happened in the office, sir.

21 THE COMMISSIONER: Was it the kind of
22 file that nobody wanted to touch?

23 THE WITNESS: This one, this one was.

24 THE COMMISSIONER: Was that because
25 Harvey-Zenk was a police officer?

1 THE WITNESS: That's possible, sir,
2 yes.

3 THE COMMISSIONER: Go ahead.

4 BY MR. WEINSTEIN:

5 Q And Harry Bakema wanted you to handle
6 it because you had more experience with the
7 possible impaired driving; correct?

8 A That's what was told to me by
9 Constable Woychuk.

10 Q Did you have any reason to doubt what
11 Woychuk was telling you?

12 A At that time, no, I just -- I did what
13 was instructed of me.

14 Q Right. But it comes back to the basic
15 question, you had more experience on impaired
16 driving files at East St. Paul than Harry Bakema;
17 correct?

18 A In East St. Paul?

19 Q Yes?

20 A In East St. Paul, yes.

21 Q Because Harry Bakema had zero files of
22 impaired driving, according to your evidence?

23 A That's correct, yes.

24 Q I don't want to harp on this, but
25 counsel asked you, and Mr. Commissioner asked you

1 about the lack of conditions, you know, about
2 Mr. Zenk's release. Okay. And I'm not going to
3 go into a long series of questions. I believe you
4 said yesterday, and correct me if I'm wrong,
5 because I certainly could be, in the back of your
6 mind, I thought you had said that maybe there
7 should be that condition. You thought about it?

8 A I thought about it in the back of my
9 mind.

10 Q Yeah. Did you ever express that to
11 Mr. Minuk, what was in the back of your mind?

12 A No.

13 Q Any reason why not?

14 A No, I let Mr. Minuk make the decision.

15 Q But you were the one handling the
16 accused?

17 A Yes, I was.

18 Q Just a small point. I'm not sure why
19 you served Mr. Zenk with a notice of intention to
20 seek greater punishment?

21 A We do that -- we do that typically for
22 every impaired case that we have, should they --
23 should it come out later that he's got a prior
24 record. That's just typically, we normally do
25 that.

1 Q Hold on. Are you telling me you
2 didn't do a check whether Mr. Zenk had a prior
3 record?

4 A I'm sorry?

5 Q Did you check, you know, fingerprint
6 check, you know, database, did you check whether
7 Mr. Zenk had a prior record?

8 A At that time, no, sir.

9 Q Well, then I don't understand, if
10 you're not checking, why you release him on a
11 promise to appear. You don't know whether he's
12 had 10 previous, no previous?

13 A I didn't check him myself. I don't
14 know if he was checked, sir.

15 Q Did you ask someone, hey, go on the
16 computer, put in his name, you need a name, date
17 of birth; correct?

18 A Yes.

19 Q That's what you need to input, okay?

20 A Um-hum.

21 Q And you certainly had access to his
22 name, correct? You had access to his date of
23 birth, correct?

24 A Yes, I did, yeah.

25 Q Did you just assume, because he was a

1 cop, that he had no prior convictions? And I'm
2 not saying that's wrong. Do you have an answer?

3 A No, I don't.

4 Q Okay. That's fine. I'm not pushing
5 it.

6 Now, Glenda Pedersen conducted the
7 fingerprinting. You have told us that, correct?

8 A That's right.

9 Q There's no dispute about that. We
10 know it takes place about, oh, 1:25 in the
11 afternoon, all right --

12 A Yes.

13 Q -- according to what we have seen and
14 heard. Now, as I recall, forget about what Glenda
15 Pedersen said in any interview, I believe she told
16 this Inquiry that, you know, what symptoms she
17 observed at 1:25, okay, some six hours or so after
18 Mr. -- well, five and a half after he's brought to
19 your, or five after he's brought to your station.
20 She described the symptoms to us and said, within
21 a day or two days, she told you those symptoms,
22 what she observed I should say. You're saying she
23 absolutely did not?

24 A I'm saying she did not, sir.

25 Q Okay. And she then says, and that's

1 fine, she then tells you, what, a couple of years
2 later, after this Inquiry is called, that she in
3 fact did notice these symptoms of impairment?

4 A Yes.

5 Q Was there a discussion going on about
6 this Inquiry with her at the time? What prompted
7 her, do you know what prompted her? You can't
8 read into her mind, do you know what prompted her
9 to come a couple of years later and tell you
10 symptoms that she saw a couple of years back?

11 A Probably just the fact of the
12 announcement of the Inquiry and the verdict.

13 Q Okay. You must have been irate.
14 Like, I can see people in your position saying to
15 her -- excuse my swearing -- why the hell did you
16 not tell me about it February 25th, February 26th,
17 why the hell are you telling this to me two years
18 or plus after the event? Did you not say
19 something? Did you reprimand her?

20 A No, I never reprimanded her. When she
21 told me, I was taken aback.

22 Q I appreciate that. You know, I'm not
23 disputing you were taken aback, you were probably
24 shocked to hear this from one of your officers who
25 observed symptoms of impairment on a person,

1 probably the most tragic case that East St. Paul
2 had, in February -- or in 2005, correct?

3 A Yes.

4 Q This was a very, very tragic case. A
5 young woman lost her life.

6 A Absolutely.

7 Q A peace officer is charged with
8 impaired driving. She's now telling you, two
9 years later, about symptoms. You did nothing
10 about it? You didn't do anything? You didn't
11 reprimand her? You didn't put her on suspension,
12 nothing like that?

13 A No.

14 Q She's the same person that took the
15 fingerprints, and we'll call it a mug shot, of
16 Mr. Zenk, correct?

17 A That's correct, yeah.

18 Q It's that person's responsibility to
19 download the photographs, correct, the photograph?

20 A At the time, there was two officers
21 that were downloading the photographs.

22 Q Who were they?

23 A Constable Drozdowski and Sergeant
24 Chudyk.

25 Q Okay. It wasn't Harry Bakema

1 downloading, correct?

2 A No, no.

3 Q Okay. Do you even know whether or not
4 the photo of Mr. Zenk got downloaded?

5 A That I don't know, sir.

6 Q Okay. So you can't blame anyone for
7 it. If it didn't get downloaded, then no one
8 deleted it, correct?

9 A Yes.

10 Q Okay. So Mr. Bakema or anyone else
11 couldn't have deleted it if it's not downloaded,
12 correct?

13 A If it's not downloaded, then it can't
14 be deleted.

15 Q Right. Now, I'm not going to spend
16 question after question about Mr. Bakema, Chief
17 Bakema asking you about -- or not asking you,
18 asking PSU to handle that investigation. We have
19 gone there, that route. But I harken back to your
20 answer. You said that didn't concern you, but you
21 thought that major crimes should handle it. Is
22 that the answer I think you gave yesterday?

23 A That was similar.

24 Q I'm puzzled by that answer because,
25 and I'll tell you why I'm puzzled and you can

1 respond. PSU, that unit, all they do is
2 investigate police officers. You know that?
3 Don't you know that?

4 A Yes.

5 Q That's their expertise, that's what
6 they focus on, they investigate alleged wrongdoing
7 complaints against police officers. That's their
8 role, that's their function. Would you agree with
9 that?

10 A Yes.

11 Q And in 2005, and we can call evidence
12 on this point, but according to Sergeant Ormiston,
13 and this was not in the material,
14 Mr. Commissioner, and if there's a dispute on it,
15 that's fine. Sergeant Ormiston told me this
16 morning, a phone call, I inquired how many police
17 officers were in PSU in 2005? The answer is nine.
18 All right. You can accept that, that that's what
19 he told me after he checked for an hour going
20 back, okay. They had more police officers in that
21 unit than you had in your whole police department,
22 right? You had eight, they've got nine; correct?

23 A That's correct.

24 Q You've got one constable on the
25 street, maybe one or two in the office, and you

1 thought that you people could handle it? You
2 could handle these interviews, when you don't have
3 the expertise that they do? Does that make any
4 sense? It doesn't make sense, does it? I'm
5 sorry, did you answer?

6 A No, I didn't answer, sir.

7 Q Okay. We'll leave it then that you
8 didn't answer. Would you like to answer?

9 A Certainly, they have the expertise
10 and, certainly, they have the manpower.

11 Q Thank you.

12 A I concede that.

13 Q Now, I'm not going to again flog the
14 search warrant. Mr. Clifford methodically took
15 you through that, and you have been asked, but I'm
16 not clear on one thing. Mr. Minuk asks you,
17 requests that you execute a search warrant at
18 Branigan's, correct? Correct?

19 A Yes, he asked.

20 Q Yeah. And I'm talking the first
21 request. And after that first request, you were
22 of the opinion, and I'm not saying whether you
23 were right or wrong, okay, I'm not saying that,
24 Chief, but you came to the opinion that a
25 magistrate, for want of a better word, would never

1 issue a search warrant; correct?

2 A Yes, sir.

3 Q Okay. What is puzzling me, and I'll
4 put in the form of a question, why then -- or you
5 came to that opinion shortly after he made that
6 first request, correct? After all, he's asking
7 you to do something?

8 A Yes.

9 Q Okay. So you come to that opinion
10 quickly. And again, it might have been the right
11 opinion, okay. But what's puzzling me, why didn't
12 you pick up the phone, or in a letter, call
13 Mr. Minuk and tell him, you know, I don't think we
14 can get a search warrant and here's why? Is there
15 any reason why you wouldn't have done that, sir?

16 A I should have done it, in retrospect I
17 should have done it. I was waiting to speak with
18 him in person on it.

19 Q I'm sorry to interrupt, go on?

20 A In retrospect, I should have made a
21 contact to him prior to that.

22 Q But, I mean, what's the difference in
23 person or on the phone? I mean, you have this
24 opinion, and it could be a valid opinion.
25 Mr. Minuk is waiting to get the results of a

1 possible search warrant, and you are waiting to
2 meet with him in person, correct? Is that your
3 answer?

4 A That's my answer, yes.

5 Q And then he makes a second request.
6 And again, you're still of the same opinion, which
7 could be valid; correct?

8 A Yes.

9 Q Okay. And again, you don't pick up
10 the phone, you don't fax a letter to tell him
11 that, in my opinion, Mr. Minuk, I don't think I
12 can get a search warrant. You didn't do it even
13 the second time, correct?

14 A That's correct, sir, yes.

15 Q He makes a third request, again the
16 same thing; correct?

17 A Yes.

18 Q And my last point on this -- I'll put
19 it to you this way. Had you discussed it with
20 Mr. Minuk, shortly after it happened, he might
21 have given you some legal advice to show perhaps
22 you were wrong. Does that make sense?

23 A That's possible, sir, yes.

24 Q Now, we know in this tragic accident
25 that the RCMP traffic analyst was called out;

1 correct?

2 A That's correct, yes.

3 Q That wasn't done by you, we can assume
4 it was by Chief Bakema or someone on the scene,
5 correct?

6 A Yes.

7 Q Okay. And that was the absolutely the
8 right call; correct?

9 A Yes.

10 Q And again, I'm not being critical,
11 East St. Paul would not have the expertise that
12 the RCMP traffic analyst, reconstructionist,
13 whatever you want to call it, has; correct?

14 A No, not at that time, sir.

15 Q Exactly, and I'm not saying that East
16 St. Paul should have had. So this traffic analyst
17 comes out. And that's important in this type of
18 an accident; correct?

19 A Yes, very important.

20 Q It's super important, because you are
21 relying on this person's expertise, and they are
22 experts, you know that. You've dealt with RCMP
23 reconstructionists or traffic analysts in the
24 past. They are experts in their field; correct?

25 A Yes, sir.

1 Q Okay. And they can determine perhaps
2 speed, and skid marks, were there any efforts to
3 avoid a collision, how long the lights were red,
4 how long they were yellow, how long they were
5 green. That's very important, especially in this
6 type of an accident, correct?

7 A Yes, sir.

8 Q The right call is made by Bakema or
9 Graham -- well, Woychuk is already back. Okay.
10 As a matter of fact, in volume P-2, if I can just
11 have a moment. In volume P-2, Mr. Commissioner,
12 I'm not sure if this has been tendered already,
13 page 2662, Mr. Commissioner, this is a memo dated
14 March 1st, 2005 -- or a fax, I'm not sure -- to
15 Brian Kaplan, Brian Kaplan, Crown. Has it been
16 tendered?

17 THE COMMISSIONER: Yes, I think it has
18 been.

19 MR. WEINSTEIN: Thank you. Do you
20 have that in front of you, Chief? Do you have it,
21 sir.

22 THE WITNESS: Yes.

23 BY MR. WEINSTEIN:

24 Q It's dated March 1st, from you to
25 Brian Kaplan; correct?

1 A That's correct, yes.

2 Q And this is March 1st, 2005. I'll
3 just read into the record the last sentence.

4 "The RCMP traffic analyst's report - a
5 safety inspection report on the
6 accused's vehicle and traffic accident
7 report are pending and will be
8 forwarded as soon as possible."

9 I've read that correctly?

10 A Yes.

11 Q Okay. So you are telling Mr. Kaplan
12 of the Crown's -- of the Justice Department, that
13 it's basically, as I read it, as soon as you get
14 those documents, you will forward them on?

15 A Yes.

16 Q Especially the traffic analyst's
17 report, that's very, very important; correct?

18 A Yes.

19 Q So then let me take you to your --

20 THE COMMISSIONER: Just before you go
21 on. I recall it being put to the witness, I don't
22 know whether it was made an exhibit.

23 MR. PROBER: I think it's 120.

24 THE COMMISSIONER: 120 -- oh, yes,
25 thank you very much.

1 BY MR. WEINSTEIN:

2 Q Okay. So you tell Mr. Kaplan,
3 March 1st, 2005, that basically as soon as you get
4 it, you're going to pass it on, correct?

5 A That's correct, sir, yeah.

6 Q Because it's important, it's a super
7 important document for the Crown to have in this
8 type of a case?

9 A Yes.

10 Q Dangerous driving causing death,
11 correct?

12 A Yes, sir.

13 Q Or impaired driving causing death. If
14 you take a look at your incident narrative, I
15 believe it's exhibit number 114, E-1.23.k. Have
16 you got your --

17 A I've got it here, sir.

18 Q Yeah. I'm referring to page 462, the
19 same page that had the 28 people being
20 interviewed. Do you see that? Have you got that
21 page, sir?

22 A I've got that.

23 Q 462 at the bottom, numbered, do you
24 have that, sir, 462?

25 A Yes, sir.

1 Q Okay. Take a look at what you have
2 written on August 18th, 2005.

3 "Writer received the traffic analyst's
4 report. The analyst was unable to
5 determine the speed. The analyst
6 found no evidence to support any
7 attempt by Harvey mordenzenk to avoid
8 the collision."

9 Okay. That's -- you have just summarized it very
10 briefly, correct?

11 A Yes.

12 Q You've got it August 18th, 2005. I
13 think we referred to this earlier, this is in P-2
14 2666, this is the letter, December 20th, 2005,
15 from Marty Minuk to you. Okay. Do you have that?
16 You've got it, sir?

17 A Yes.

18 Q December 20th, 2005, four months after
19 August 18th, 2005, he's writing to you.

20 "On review of the disclosure as I now
21 have it in respect of the above-noted
22 matter, I note that I'm not in
23 possession of the following
24 documents."

25 And the first thing he's asking for:

1 "...the report prepared by Chris
2 Blanchard (traffic analyst of the RCMP
3 Headingley detachment)."

4 Four months after you received it, he's asking for
5 it. Why has it not been sent?

6 A I'm not certain.

7 Q Pardon me?

8 A I'm not certain.

9 Q Well, you had it. Why wouldn't it
10 have been sent off? This is a super important
11 document on this type of a case. They are waiting
12 for it, you're supposed to be sending it,
13 according to your words, as soon as possible.
14 Four months have gone by, and you don't send it.
15 Marty Minuk is asking for it. Any idea why? Just
16 an oversight? And if it was, that's fine.

17 A That's possible, sir, I can't --

18 Q You weren't trying to obstruct
19 anything, were you?

20 A Absolutely not.

21 Q Right. Still staying with your
22 narrative that we just referred to, just another
23 point that I noticed, still at page 462, same
24 exhibit, 114. You've got that still that page,
25 sir?

1 A Yes.

2 Q I'm looking towards the top of the
3 page, the second paragraph. I'll read it out.
4 Mr. Sveinson, or perhaps I'll go back. Mr. and
5 Mrs. Sveinson attended at your station that day.
6 This is August 16th, correct? Take a look at the
7 top?

8 A That's correct, yes.

9 Q Okay. And I'm not concerned with the
10 first paragraph in that page.

11 "Mr. Sveinson advised that he was out
12 in Brokenhead Park area, ministering
13 when he came across someone who claims
14 to have witnessed the accident.

15 Mr. Sveinson identified this witness
16 as Fred Shrutwa of lot 17, River Road,
17 Brokenhead Park on highway 44 past
18 Beausejour."

19 So Mr. Sveinson gives you a name, and he goes
20 further, he sort of helped by giving you the
21 address. Did anyone interview this person?

22 A I'm not certain if anyone interviewed
23 this person, sir.

24 Q Well, let me ask you this, okay. You
25 got this information, correct?

1 A I got the information, yes.

2 Q Who was it passed on to, or was it
3 passed on to anyone?

4 A I had spoken with one constable in the
5 office about interviewing, and this is some time
6 later when I had reviewed this, he couldn't
7 remember who he interviewed. He went out of town,
8 but he couldn't -- he didn't make a note of it and
9 he said the person was not -- didn't see the
10 actual accident.

11 Q Can we see something to that effect?

12 A There is nothing to that effect, sir.
13 I just -- it was a verbal conversation I had with
14 the constable.

15 Q Well, why wouldn't you ask the
16 constable to at least, you know, Mr. Sveinson
17 might feel better, you know, if you documented
18 that conversation. Did you ever get back to
19 Mr. Sveinson to say, hey, I instructed someone to
20 go out to speak to this person and here is the
21 results? Did you ever back --

22 A No, I didn't, sir.

23 Q In hindsight, we always do things
24 better in hindsight, we all do, whether you're a
25 Police Chief or a lawyer, in hindsight, you know,

1 you should have; correct?

2 A Absolutely, yes.

3 Q And in hindsight, something should
4 have been documented about what Mr. Shrutwa said;
5 correct?

6 A That's correct, sir.

7 Q Something just struck me about being
8 out of town. You waited a long, long time to tell
9 Mr. Minuk allegedly about what Jason Woychuk told
10 you; correct?

11 A Yes, I waited until the April 21st
12 meeting, yes.

13 Q And I believe you said this morning,
14 and this was, now we're talking 2006; correct?

15 A Yes.

16 Q And you told the Commissioner this
17 morning that Mr. Minuk was out of town; correct?

18 A That's correct, yes.

19 Q And you were asked certain questions.
20 But, surely, if you just take a look again at
21 Mr. Minuk's letter to you of December 20th, 2005,
22 you know, when he's asking for the report of
23 Mr. Blandford. Have you got it in front of you,
24 sir?

25 A I've got it in front of me, sir.

1 Q Yeah, it's on Aikins letterhead. But
2 if you take a look on the left-hand side, halfway
3 down, you know, please reply to Martin S. Minuk.
4 Next line, he's giving you, or contained in this
5 letter is a direct line to Mr. Minuk; correct?

6 A That's correct, sir.

7 Q A direct e-mail to Mr. Minuk; correct?

8 A Yes.

9 Q Next is a direct fax to Mr. Minuk;
10 correct?

11 A Yes.

12 Q And he even gives you the name of his
13 assistant, Andrea Erb. He gives you -- not gives
14 you, I'm sorry, I misspoke. On the letter, even
15 gives you the name of the assistant, the direct
16 line of the assistant, phone number, and he even
17 gives you the e-mail of that assistant; correct?

18 A That's correct, sir.

19 Q Okay. And you didn't communicate
20 before this meeting?

21 A No, I didn't.

22 Q Let me just touch about your visit to
23 the Taman family. You and the Chief went there to
24 express your condolences, correct?

25 A For that reason and to -- because the

1 media release was coming out.

2 Q Okay. Part of the reason why both of
3 you went was both of you wanted to express your
4 condolences; correct?

5 A Yes.

6 Q Yeah. And they were asking questions,
7 correct?

8 A I believe they were asking us some
9 questions, yes.

10 Q And there's conversation going on,
11 correct?

12 A That is correct, yes.

13 Q I sort of got the impression, and I
14 apologize, maybe it was just me, but I sort of got
15 the impression from listening to you yesterday
16 that you were sitting there, like completely mute,
17 that you weren't participating in the conversation
18 at all. You're not suggesting that, sir, are you?

19 A I didn't participate in the
20 conversation very much at all, sir.

21 Q Okay. I am having trouble with that,
22 sir. Why I am having trouble with you sitting in
23 silence is because you were the police officer who
24 observed the symptoms of impairment; correct?

25 A That's correct, sir.

1 Q It wasn't Woychuk, correct? Woychuk
2 told you nothing about symptoms of impairment.
3 Jason Woychuk only told you he smelled liquor,
4 correct? Right?

5 A And he said he may be impaired, yes.

6 Q Jason Woychuk said -- but Jason
7 Woychuk didn't give you any other symptoms of
8 impairment, a slight odour of liquor; correct?

9 A At that time, yes.

10 Q That's it?

11 A Yeah.

12 Q And that's not -- that doesn't mean a
13 person is impaired. We all know that, correct?

14 A Yes, sir.

15 Q So you are the person who observed the
16 symptoms of impairment enough to make a demand,
17 correct?

18 A That's correct, sir.

19 Q You are the officer who served that,
20 you are the one who makes the demand, the one that
21 charged and cautioned him; correct?

22 A That's correct.

23 Q You are the one who hears his refusal,
24 correct?

25 A That's correct.

1 Q You are the one who authorizes, after
2 Mr. Minuk, you arrange for his release after you
3 speak to Minuk; correct?

4 A That's correct.

5 Q And you are sitting there in silence,
6 near silence, I should say?

7 A That's correct.

8 Q Yesterday, I don't know, yesterday,
9 today, I think it was yesterday, you said -- you
10 were talking about the notes of Mr. Bakema,
11 correct?

12 A Yes.

13 Q And you said there was only one set of
14 notes that you discovered, correct, or you
15 discovered another set of notes?

16 A I discovered another set of notes,
17 yes.

18 Q But they were not the more thorough
19 notes, the more complete notes you had; correct?

20 A That's correct, they were not the same
21 set of notes.

22 Q You are saying, because I heard you
23 yesterday, you have discovered a rough set of
24 notes, correct?

25 A Yes, it appeared to be a rough set of

1 notes, yes.

2 Q Yeah. But you had the better set of
3 notes, correct?

4 A With the file, yes, sir.

5 Q Yeah. Just like you make very rough
6 notes at times, I've seen your -- I've seen your
7 handwriting on a rough set of notes.

8 A Yes, sir.

9 Q Okay. Your handwriting is worse than
10 mine, and mine's bad. So, I mean, what you would
11 do is go from your rough set of notes and make a
12 more thorough set of notes, correct? And that's
13 what you did, and it appears that's what's here,
14 correct?

15 A Yes, sir.

16 Q Mr. Bakema's notes. And as a matter
17 of fact, you said, I believe yesterday -- yeah, it
18 was yesterday -- that you found them in different
19 parts of the book; correct?

20 A That's correct sir, yes.

21 Q But the numbers, as I look at it, sir,
22 run one after the other. Can you give the
23 officer, or the Chief, I'm sorry, I've got it
24 marked down. It's found in E-1 tab 22.a and 22.b,
25 page 388. Let's go to the notes, the set, we'll

1 call them the rough set, sir. Okay. Have you got
2 the rough set? It starts at page 54 -- 54 in the
3 notebook, I'm sorry, page 395. Have you got the
4 two sets, sir? Have you got it, sir?

5 A Just can you give me a moment?

6 Q Sure. Have you got them now, sir?

7 A I've got them, sir.

8 Q Okay. If you take a look -- and
9 notebook pages are numbered, correct? Police
10 notebooks are numbered, the pages?

11 A Yes.

12 Q If you take a look at what I'm calling
13 the rough set of notes, because there's not
14 anywhere near as much detail, okay. It runs from
15 page 54 to page 75 -- 75 has a rough diagram. It
16 appears to be where vehicles were. Are you
17 following me? Do you have that? Oh, 64, I'm
18 sorry, it runs 64 to 75. Have you got that? Have
19 you got the last page that shows a diagram?

20 A That's correct, yes.

21 Q Okay. That appears, if you just take
22 a look, to be a rough set of notes, would you
23 agree with me? Because the other set is certainly
24 more complete. There's a lot more detail in it?

25 A Yes, sir.

1 Q Okay. What I don't understand, when
2 you are saying in different parts of the notebook,
3 okay, if you take a look, 75 is the end of the
4 rough notes, 76 is the beginning of the better
5 notes. I don't understand how it can be found in
6 two different parts of the notebook, when they run
7 one after the other? Do you see my point, sir?
8 Do you see what I'm getting at, sir?

9 A Yes, sir.

10 Q Do you have any explanation for your
11 answer yesterday?

12 A Other than I found the second set of
13 notes that hadn't been disclosed, sir.

14 Q But you said you found them in
15 different parts of the notebook, and that makes no
16 sense because they run one after the other. I'll
17 leave that, because I'll ask you another question
18 when you commented on the notes. You told us
19 yesterday that the times were changed. Do you
20 remember telling us that yesterday, the times in
21 the notes were changed? You told us that
22 yesterday, sir?

23 A I'm not certain, sir.

24 Q I stand corrected. When you were
25 talking about his notebooks, you said, you know,

1 you told us rough set not found, and more complete
2 set, and that you noticed the times had been
3 changed. That's my recollection. Let's assume
4 for a moment, just assume for a moment you did say
5 that yesterday, sir. I'd like you to listen to
6 this question. Assume you said the times are
7 changed. If you look at the rough notes, the
8 rough notes, page 64, okay, there is a time of
9 7:10; correct?

10 A Yes, sir.

11 Q Okay. If you look at the rough notes,
12 if you look at the rough notes, there's no other
13 time noted. Take a look. Take your time.

14 A No, there is no time noted there.

15 Q Only time noted is 0710. Do you
16 follow me?

17 A Yes.

18 Q Take a look at page 76? This is the
19 beginning of the good notes, I'll call them the
20 better notes. Do you see that, 76?

21 A Yes.

22 Q Take a look what time is there. On
23 the rough notes it said 0710, Ken receives call,
24 MVA, et cetera. Look what is there at the top of
25 page 76, 0710, Ken receives phone call re motor

1 vehicle at Headingley and 101; correct?

2 THE COMMISSIONER: Yes.

3 MR. McDONALD: Mr. Commissioner, I'm
4 sorry to rise, but I have no recollection, and I
5 checked with my colleague and she has no
6 recollection of this witness testifying yesterday
7 that the times had changed. I have just checked
8 with Mr. Paciocco, who I think is essentially
9 agreeing with me, and he has a note that says,
10 they were not similar as far as time entries are
11 concerned, and that's correct. There's only one
12 on one and a bunch of times on the other. So I
13 don't know where we're going with this, because I
14 don't think he said that.

15 BY MR. WEINSTEIN:

16 Q Let's even take what's just said,
17 times are not similar. 710 and 710 is not
18 similar? To me it sounds quite similar; right?

19 A Yes.

20 Q Pardon me?

21 A Yes.

22 Q I'm almost finished. Okay. I just
23 want to go over a couple of points relating to
24 your evidence. I think you told us, and you told
25 the RCMP, basically, that Woychuk was told to

1 coincide with the Chief and Graham's notes;

2 correct?

3 A That's what Woychuk told me.

4 Q And Woychuk at one point has TAR,

5 right?

6 A That's correct, yes.

7 Q Did you check Bakema's notes? There's

8 no mention of a TAR.

9 A No, there isn't.

10 Q That certainly doesn't coincide, does

11 it; correct?

12 A No, that's right, there's no mention

13 of it in his, of TAR in his notes, yeah.

14 Q You told the RCMP that Zenk said,

15 Bakema told him that Zenk was pissed and also

16 directed him how to make his notes. You went on

17 to say, and I'm referring to page 3, he didn't

18 feel that Bakema intentionally tried to cover up.

19 Remember telling that to it the RCMP, that this is

20 what Woychuk is telling you?

21 A Yes.

22 Q You remember that. He didn't feel

23 that Bakema intentionally tried to cover up --

24 I'll go on -- but Bakema and Graham were chicken

25 shit, too chicken shit to deal with the incident

1 because it was a cop. Sir, you did not
2 intentionally change your narratives, you know,
3 that Mr. Clifford showed you near the end of his
4 exam, you did not intentionally change your
5 narrative to obstruct justice? Correct?

6 A No, sir.

7 Q Okay. I mean, some people might think
8 you did it, but I don't, and I'm not interested in
9 what people might think. But some people might
10 because, as Mr. Clifford pointed out to you that,
11 hey, what's changed sort of helps bolster the
12 case, bolster the case as far as any possible
13 breach. Do you remember him asking you that?

14 A I remember him saying that, yes.

15 Q So some people might think that that's
16 a reason you did it, and I don't care what people
17 think, but some people might think that; correct?

18 A That is correct, sir.

19 Q And some people could carry on and
20 think a little further that, hey, he's doing that,
21 he's obstructing justice; correct?

22 A That's correct, sir.

23 Q Yeah. And you weren't willfully doing
24 that, were you?

25 A That was never my intention, sir.

1 Q Right. As a matter of fact, you don't
2 think anyone willfully obstructed, and that's the
3 definition in the code, in this particular case.
4 You'd agree mistakes are made, correct?

5 A Mistakes are made all the time, sir.

6 Q Yes. And we always do things better
7 in hindsight; correct?

8 A That is correct, sir.

9 Q And again, in your RCMP interview,
10 page 4, you told the RCMP that Jason didn't tell
11 me specific wording what the Chief said to him,
12 okay. Do you remember saying that, sir?

13 A Yes, I do.

14 Q Okay. He said he was -- he did say he
15 was directed on how to write his notes to coincide
16 with Bakema and Graham's, but he didn't go into
17 specifics as far as what he was told to say or any
18 of that. That's also what you told the RCMP,
19 correct?

20 A Yes, sir.

21 Q And again, you told the RCMP, and I
22 believe you told us, you didn't question Woychuk
23 on why he took so long to come forward with his
24 disclosure; correct?

25 A No, I didn't question him, no.

1 Q Then you also had, and I'm almost
2 finished, sir, you then had an interview with
3 Commission Counsel; correct?

4 A That's correct.

5 Q You remember that?

6 A Yes, sir.

7 Q That one was a little different. That
8 one was under oath, as opposed to the RCMP,
9 correct?

10 A I'm sorry?

11 Q That one with the Commission Counsel
12 was under oath; correct?

13 A Yes. Yes.

14 Q I mean, it doesn't matter, you were
15 trying to tell the truth, and I'm not saying
16 otherwise. You tried to tell the truth to the
17 RCMP and to the Commission Counsel, it didn't
18 matter whether you were under oath or not,
19 correct?

20 A Yes, sir, I tried to tell the truth.

21 Q Page 12, I believe in your interview,
22 page 12, I'll read it out, question four:

23 "And if I could just interrupt you
24 there, before we deal with what your
25 impression was, do you recall any of

1 the words that Constable Woychuk was
2 using?

3 A I don't recall specifically. There
4 is a vague recollection that he may
5 have used the word pissed."

6 Do you see your answer then?

7 A Yes, I do.

8 Q He may have used it?

9 THE COMMISSIONER: I am lost.

10 MR. WEINSTEIN: I'm sorry.

11 THE COMMISSIONER: Where are you?

12 MR. WEINSTEIN: Commission Counsel
13 interview, page 12, Mr. Commissioner. I read him
14 lines four to 10.

15 THE COMMISSIONER: Page.

16 MR. WEINSTEIN: Four to 10, lines four
17 to 10.

18 THE COMMISSIONER: On which page?

19 MR. WEINSTEIN: Page 12.

20 THE COMMISSIONER: Thank you.

21 BY MR. WEINSTEIN:

22 Q And again, you told the police that
23 Woychuk felt that Mr. Bakema was intentionally
24 trying to cover up or assist Harveymordenzenk;
25 correct?

1 A I did --

2 Q I'm sorry. And again, you told the
3 Commission Counsel that Woychuk, again, had told
4 you that Bakema was not intentionally trying to
5 cover up or assist Harveymordenzenk?

6 A That's what I said, yes.

7 Q Yeah. Just one last point, I think I
8 said that before, but I mean it now. I think it's
9 Exhibit 94, P-1, Exhibit 94. Do you have that in
10 front of you? Exhibit 94, it's found at page
11 2420, sir, in P-1.

12 THE COMMISSIONER: I don't think so.

13 MR. WEINSTEIN: I believe it's 94, is
14 that correct?

15 MR. PACIOCCO: That's the reference I
16 have.

17 THE COMMISSIONER: I'm sorry.

18 MR. PACIOCCO: P-183 should be Exhibit
19 94.

20 THE COMMISSIONER: P-183.

21 MR. WEINSTEIN: Yeah.

22 THE COMMISSIONER: Thank you.

23 MR. WEINSTEIN: I have it at the
24 bottom page 2420. Do you have that, sir? Chief
25 Carter, do you have that?

1 THE WITNESS: I have that here, sir.

2 BY MR. WEINSTEIN:

3 Q Thank you. Is this -- and I don't
4 recall it clearly -- is that what you say had been
5 inputted by you and then changed by Bakema?

6 A This part of my narrative, yes.

7 Q Okay. So let's take a look at that
8 part of your narrative that got changed, okay, or
9 deleted?

10 MR. McDONALD: No, it wasn't deleted,
11 it was overwritten.

12 MR. WEINSTEIN: Overwritten, okay.

13 BY MR. WEINSTEIN:

14 Q Overwritten. But looking at, because
15 to me yesterday it sounded ominous, but what was
16 overwritten, sir, was your putting in the vehicles
17 one, two, three; correct?

18 A Yes.

19 Q That's what you had inputted, sir?

20 A One, two, three and the short
21 paragraph.

22 Q And the short paragraph?

23 A Yes.

24 Q Okay. And this -- what was done by
25 Bakema, what did you say Bakema did?

1 A Overwrote it.

2 Q Overwrote it being what?

3 A Took this narrative that -- this
4 incident report, sorry, I generated, and used it
5 as his incident report.

6 Q Well, except, as I read it, is the new
7 values his?

8 A The new value is his, yes.

9 Q Right. Because if you take a look, he
10 didn't use yours, because you've got driver number
11 one as Harveyordenzenk, okay. He's got number
12 one as Kathy Beattie. Not the same. Do you see
13 my point?

14 A I'm not exactly sure I see your point.

15 Q I'm just saying that what he
16 overwrote, whatever word you want, okay, it still
17 had to do -- you inputted vehicles; correct?

18 A Yes.

19 Q Okay. And what he's got right off the
20 bat is vehicles, correct, in a different order?

21 A Yes.

22 Q Correct?

23 A Yes.

24 Q Nothing ominous about that, same
25 information, different vehicle numbers, correct?

1 A That's correct, yes.

2 Q Yeah. And then you had a paragraph
3 there near the bottom.

4 "Police were dispatched to three
5 vehicle accident on Highway 59 and
6 Perimeter Highway involving a single
7 fatality. Chief Bakema, Constable
8 Graham, Constable Pedersen, Constable
9 Woychuk responded to scene. See
10 officers' narrative notes."

11 Do you follow me?

12 A Yes.

13 Q Does UI stand for under investigation,
14 do you see that?

15 A That's correct, sir.

16 Q And then your name. Okay. So you
17 talk about there's been an accident and who
18 attended the scene; correct?

19 A That's correct, sir.

20 Q Okay. Take a look at the next page,
21 page 2421. The same information is there. That's
22 dealing with who was at the scene; correct?

23 A That's his report, yes.

24 Q Yeah. And basically, it's the same as
25 yours as to who attended the scene; correct?

1 A Yeah, I don't know all the same --
2 well, some of the same vehicle information, the
3 driver information, certainly.

4 Q Is the same, correct?

5 A Not the paragraph that I had there.

6 Q No, but my point is -- maybe you
7 misunderstood me.

8 A I probably did.

9 Q Your paragraph is basically saying
10 that there had been an accident and which police
11 officers attended at the scene?

12 A That is correct, yes.

13 Q Well, look at what he is saying there
14 in his first, page 2421. He's talking, there has
15 been an accident, correct? Take a look at 2421?

16 A Yeah, I see that, sir.

17 Q The first part underneath driver
18 number three is the fact of motor vehicle
19 accident; correct?

20 A Yes.

21 Q That's the same thing you said in
22 yours, correct, that there had been an accident?

23 A That there had been an accident.

24 Q Right. And the next paragraph, he's
25 got all the policemen that are attending there,

1 correct?

2 A Yes.

3 Q And you've got the same thing,

4 correct?

5 A Yes.

6 Q Okay. So nothing ominous, it's not

7 like a major thing done, it's the same

8 information; correct?

9 A It's the same information.

10 MR. WEINSTEIN: Yeah. Thank you.

11 Those are my questions. Thank you, sir.

12 THE WITNESS: Thank you.

13 THE COMMISSIONER: Thank you.

14 MR. WEINSTEIN: Thank you,

15 Mr. Commissioner.

16 THE COMMISSIONER: I understand you,

17 Commission Counsel, have a plane to catch?

18 MR. PACIOCCO: Yes, we do and it's

19 starting to go down the ramp.

20 THE COMMISSIONER: I'm sure you'll run

21 very quickly. All right. Well, Monday morning,

22 9:15, we'll carry on. 9:30, okay.

23 THE CLERK: All rise. This Commission

24 of the Inquiry is adjourned until Monday at 9:30.

25 (Proceedings adjourned at 4:35 p.m.)

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COURT REPORTERS' CERTIFICATE

Debra Kot, court reporter in the Province of
Manitoba, do hereby certify the foregoing pages
are a true and correct transcript of my Stenotype
notes as taken by me at the time and place
hereinbefore stated.

Debra Kot

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