

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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Monday, July 14, 2008

Volume 13

INQUIRY PROCEEDINGS

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Mr. M. Green and  
Ms. K. Dixon For Mr. Marty Minuk  
Mr. J. Prober and  
Mr. B. King For Derek Harvey-Zenk  
Mr. R. McDonald and  
Ms. B. Bowley For R.M. of East St. Paul  
Mr. H. Weinstein and  
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Mr. G. McFetridge and  
Mr. S. Boyd For the Province of Manitoba  
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1 MONDAY, JULY 14, 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. PACIOCCO: Good morning,  
7 Mr. Commissioner. Simply, before Mr. Prober gets  
8 up and continues his examination of Chief Carter,  
9 I want to announce the witnesses for this week  
10 that we anticipate being called.

11 Today, probably early this morning  
12 we'll be hearing from Harry Bakema. Tomorrow  
13 we'll certainly be continuing with Mr. Bakema. It  
14 is our hope that we can at least begin, if not  
15 complete, Chelsea O'Halloran tomorrow. She is a  
16 waitress from Branigan's. In addition, Darcy  
17 Gerardy, who was a duty bartender and manager at  
18 Branigan's on the evening of the alleged shift  
19 party will be testifying, probably on Wednesday.  
20 We will also be hearing at that time from Rodrigo  
21 Bravo, and time allowing, we will begin, or hear  
22 from Sergeant Sean Black of the Winnipeg Police.

23 On Thursday, we will probably be  
24 completing Sergeant Black. We will be hearing as  
25 well from Ken Azaransky, and time permitting from

1 Constable David Harding.

2 THE COMMISSIONER: Mr. Prober.

3 MR. PROBER: Thank you. Good morning,  
4 Mr. Commissioner.

5 THE COMMISSIONER: Good morning.

6 MR. PROBER: Good morning, Chief.

7 THE WITNESS: Good morning.

8 BY MR. PROBER:

9 Q I noted when you testified that you  
10 said that when Derek Harvey-Zenk was brought back  
11 to the station, you went outside. You opened the  
12 door --

13 A Yes, I did.

14 Q -- to the car, sir?

15 A Yes, I did, sir.

16 Q You were about one foot away from him?

17 A Yes.

18 Q And it was at that point, you said in  
19 your evidence, that you detected a strong odour of  
20 liquor?

21 A That's correct, sir.

22 Q All right. And just so as I have this  
23 straight, this is out at the car?

24 A This is at the vehicle, yes, sir.

25 Q At the vehicle. And I have looked in

1 your rough notes, and I welcome you to do the  
2 same. Where is there a note that you detected a  
3 strong odour of liquor when you were out at the  
4 car?

5 A I did not have a note of that, sir.

6 Q You recall that but you didn't make a  
7 note of that?

8 A I recall that, sir.

9 Q I don't need to take you there then.  
10 Well, where in your clean notes is there a note  
11 that you had this strong odour of liquor at the  
12 car?

13 A May I refer to my --

14 Q Absolutely.

15 A What --

16 Q Your duty notes, right. You have  
17 referred to them as your clean notes or your duty  
18 notes?

19 A Yes, sir.

20 Q Well, you want direction as to where  
21 they are?

22 A Yeah.

23 Q I am sorry. They are found at E-1.  
24 Have you got E-1?

25 A No, I don't.

1           Q     It might be there, it's sort of a  
2     thicker book. I'll tell you what exact number  
3     that is, if that helps?

4           A     Yes.

5           Q     Exhibit 115 I have noted as the  
6     exhibit number.

7           A     I've got it here.

8           Q     All right. So tell me where in your  
9     notes then it refers to the strong odour of liquor  
10    at the car?

11          A     I did not put that in my notes, sir.

12          Q     You didn't put that in your notes?

13          A     No.

14          Q     So we don't have it in your rough  
15    notes, we don't have it in your duty notes. Well,  
16    let's check the narrative, Exhibit 114. Where in  
17    the narrative do we find that reference to an  
18    odour of liquor at the car?

19          A     I don't have that noted at that time,  
20    sir, at the car.

21          Q     So you don't have it noted in your  
22    rough notes, you don't have it noted in your duty  
23    notes, you don't have it noted in the narrative.  
24    Maybe you didn't note, or observe a strong odour  
25    of liquor at the car?

1           A     Yes, I did, sir.

2           Q     Well, it's rather important, isn't it,  
3     in the whole scheme of this matter, isn't it  
4     important?

5           A     Yes, it is, sir.

6           Q     Well, why in the world would you not  
7     make a note of it?

8           A     I can't answer that, sir. I do have  
9     recollection.

10          Q     When did that recollection come to  
11     you, what year are we talking about?

12          A     That recollection was at the time,  
13     sir.

14          Q     At the time?

15          A     Yeah.

16          Q     No, no, but when did the recollection  
17     that this existed at the time come to you?  
18     Because it's not in your notes, it's not in your  
19     narrative. And I'm going to show you the RCMP  
20     statement in a moment. It's not there either. So  
21     when did it come to you?

22          A     I've had that recollection since the  
23     time of the incident, sir.

24          Q     Well, let's go to the RCMP statement,  
25     your RCMP statement, which I do not have the

1 exhibit number -- oh, I might have the exhibit  
2 number, pardon me, Exhibit 117. And again, for  
3 those who aren't going by exhibit number, I should  
4 have maybe referred to the tab number, it's  
5 E-1.23.r, Mr. Commissioner, E-1.23.r. It's  
6 Exhibit 117. Are you there?

7 A I've got it, sir.

8 Q Okay. And I'm going to refer you to  
9 the bottom of page 14, the top of page 15. Have  
10 you got that?

11 A I've got that, sir.

12 Q All right. Your response at the  
13 bottom of page 14 is as follows:

14 "Okay. I attended back to the car  
15 with him. I identified myself to a  
16 male in the back of our RM2, which is  
17 our Ford explorer, to a male  
18 identified as Derek Harveymordenzenk.  
19 I, um, we escorted him back into the  
20 interview room, interview room one,  
21 placed him there, where I detected a  
22 strong smell of liquor on his breath."

23 In the interview room, right?

24 A Yes, sir.

25 Q Not at the car?

1           A     No, at the car, sir.

2           Q     No, no, no, no, but you're saying  
3 here --

4           A     That's what I'm saying there, sir, I  
5 detected the odour of liquor at the car, sir.

6           Q     "Well, escorted him back to the  
7 interview room one, placed him there  
8 where I detected a strong smell of  
9 liquor on his breath."

10 My suggestion to you is, the where refers to the  
11 interview room one, not the car? I mean, look at  
12 it. That's the only interpretation one could  
13 have, is it not?

14          A     Sir, I noted a strong smell of liquor  
15 when I opened the car door.

16          Q     Well, why didn't you put it in your  
17 notes? Why didn't you tell the RCMP that when you  
18 opened the car door, there was a strong smell of  
19 liquor?

20          A     I don't know, sir.

21          Q     Don't know. I suggest to you, sir,  
22 there was no strong smell of liquor at the car and  
23 that's why you didn't note it?

24          A     That is incorrect, sir.

25          Q     I suggest to you, sir, that you are

1 mistaken, that there was no strong odour of liquor  
2 at any time, the car or the interview room?

3 A That is incorrect, sir.

4 Q I'm suggesting to you, it's the same  
5 kind of mistake as you put in your notes when you  
6 referred to blood sample, not once, not twice, but  
7 three times. You were mistaken there, right?

8 A I made an error --

9 Q Yes?

10 A -- I wrote blood sample, sir.

11 Q Why couldn't you be mistaken here?

12 A I'm not mistaken, sir.

13 Q All right. You referred to Derek  
14 Harvey-Zenk as being unsteady, right?

15 A That is correct, sir.

16 Q And I believe Mr. Clifford confirmed  
17 with you that you didn't indicate how he was  
18 unsteady, right?

19 A No, I did not, sir.

20 Q No. And in fact, let's confirm a  
21 couple of things. He wasn't falling down, was he?

22 A He was not falling down, no, sir.

23 Q He wasn't being held up by you or  
24 Woychuk, was he?

25 A No, sir, he was not.

1 Q No. He walked of his own accord,  
2 correct?

3 A He walked of his own accord, sir.

4 Q Didn't need any assistance in walking?

5 A No, sir.

6 Q No. Did you know Derek Harvey-Zenk at  
7 all?

8 A I had no idea who he was, sir.

9 Q You never knew what he looked like?

10 A No, sir.

11 Q No. So when you refer to further  
12 signs of impairment, being a flushed face, you  
13 wouldn't know whether his flushed face was always  
14 like that or that was a special occasion, would  
15 you?

16 A No, I would not, no, sir.

17 Q No. And when you referred to his  
18 glassy bloodshot eyes, you wouldn't know whether  
19 they were always like that or not, would you?

20 A No, sir, I wouldn't.

21 Q And you wouldn't know whether they  
22 were caused by being tired or not, would you?

23 A No, I would not, sir.

24 Q No. You can refer to your notes again  
25 if you like, but we confirmed, at least

1 Mr. Clifford confirmed with you, that your notes  
2 and narrative referred to the refusal demand at  
3 9:08. And again, the notes are Exhibit 115,  
4 Mr. Commissioner. They are found at E-1.23.b.  
5 E-1.23.b, Exhibit 115 for you, Chief Carter. You  
6 refer to the 908, as I have it noted, that you  
7 refer to the refusal demand; right?

8 A That's correct, sir.

9 Q All right. And there's no such thing,  
10 right, as a refusal demand?

11 A It's just what we call, sir, refusal  
12 caution.

13 Q Refusal caution?

14 A Yes.

15 Q Refusal warning?

16 A Yes.

17 Q Not a refusal demand?

18 A Not a refusal demand, sir.

19 Q No. And let me point you again to the  
20 narrative, where I think you use the same  
21 language, Exhibit 117, Mr. Commissioner, and I'll  
22 give you the tab number when you're ready.  
23 E-1.23.k, E-1.23.k, Exhibit 114. Did I say 117, I  
24 meant 114.

25 And again at 9:08, I have noted that

1 you have the words again "refusal demand"?

2 A Yes, sir.

3 Q Right. All right. So we've got in  
4 your duty notes and in the narrative "refusal  
5 demand" which is, which is not accurate. We have  
6 agreed on that, right?

7 A Yes, sir.

8 Q All right. But then go back to your  
9 rough notes, and the rough notes are Exhibit 116  
10 for you, Chief Carter, and the reference in the  
11 binder E-1 is E-1.23.a, E-1.23.a, Exhibit 116. If  
12 you look at 9:08, now, hopefully you can read your  
13 writing better than I can, but it looks like at  
14 9:08 there's a breath demand referred to there,  
15 not refusal demand; right?

16 A That's correct, sir.

17 Q Different than your notes and the  
18 narrative, right?

19 A Yes.

20 Q I want to confirm something with you,  
21 if I can. And that is Derek Harvey-Zenk never  
22 asked for any special favours, did he?

23 A No, sir.

24 Q He didn't ask for any special  
25 treatment, did he?

1           A     No, sir.

2           Q     No.  And you were kind enough to allow  
3     him to call his wife and/or the police  
4     association; correct?

5           A     That's correct, sir.

6           Q     I didn't note from your evidence  
7     whether, and I couldn't see it in your notes  
8     actually, whether he actually made the calls or  
9     not, or do you know?

10          A     I don't know, sir.

11          Q     Because there's no note of whether he  
12     took you up on that offer or not, is there?

13          A     No, sir, there was a phone provided in  
14     the interview room.

15          Q     Okay.

16          A     Yeah.

17          Q     My understanding is that the only  
18     legal obligation you have would be to advise a  
19     prisoner at that point, or an accused, his right  
20     to counsel, or if it was a young offender -- I  
21     mean, legal obligation to advise him of his right  
22     to counsel, allow him to call a lawyer?

23          A     That's correct, sir.

24          Q     Or in the case of a young offender,  
25     his parent, right?

1           A     That's correct, sir.

2           Q     Is it not true, sir, that police  
3 officers generally have discretion to allow  
4 accused persons or persons in their custody to  
5 make other calls to their father, their mother,  
6 despite the fact they are not young offenders, or  
7 their wife; is there not a discretion to do that?

8           A     This has been done, sir, yes.

9           Q     Yes. Not just in this case, I mean,  
10 in other cases?

11          A     It's been done in other cases, sir.

12          Q     Right. You were taken by Commission  
13 Counsel to the Highway Traffic Accident Report  
14 that Derek Harvey-Zenk came to fill out, I believe  
15 on March 30th '05, right? And I could tell you  
16 that's Exhibit 70. I don't intend to spend too  
17 much time on this, but it's found,  
18 Mr. Commissioner, at tab E-1.23.n, E-1.23.n, as in  
19 Norman. And do you recall that, sir?

20          A     I recall that.

21          Q     It's not the first Highway Traffic  
22 Accident Report, but it's the second one there,  
23 correct?

24          A     That is correct, sir.

25          Q     All right. And you said that he

1 didn't answer, or want to answer certain  
2 questions; correct?

3 A That is correct, sir.

4 Q All right. Now, we don't see any of  
5 those questions when we look at this Highway  
6 Traffic Accident Report, do we?

7 A No, sir.

8 Q In fact, the answers to the questions  
9 are in the little boxes on the left and right-hand  
10 side; correct?

11 A That's the scoring, sir, yes.

12 Q And that's for statistical purposes,  
13 correct?

14 A That's for statistical purposes.

15 Q Right. And I note these little boxes  
16 have been completed.

17 A That's correct, sir.

18 Q And I take it they were completed by  
19 you.

20 A Yes, sir, I believe so.

21 Q Okay. By you or another officer?

22 A Yes.

23 Q It's not of moment who completed them.

24 A Yes.

25 Q The point is, the boxes were filled

1 in, which means the questions were answered;  
2 right?

3 A Yes.

4 Q And most of those questions I'm going  
5 to suggest to you, if not all, that are found in  
6 this, if we can call it the template, right?

7 A That's correct.

8 Q You put the template on top of the  
9 Highway Traffic Accident Report, or you put it  
10 beside it?

11 A You put it on top, sir.

12 Q On top, okay. But most of those  
13 questions, road conditions, weather conditions,  
14 and that sort of thing, can all be answered from  
15 other material such as the police report; correct?

16 A Yes, sir.

17 Q And that's how they got answered here?

18 A Yes, sir.

19 Q Okay. I have noted that I believe it  
20 was in February '06, when Woychuk was driving you  
21 back from a meeting at Minuk's office, and then  
22 again in April of '06, you testified that when  
23 Woychuk was driving you back, that Woychuk told  
24 you on one or two occasions, I believe two  
25 occasions, that Bakema had told him that Derek

1 Harvey-Zenk was "pissed"?

2 A That's right, sir.

3 Q And you told us, at least I have noted  
4 that when you were testifying and Mr. Clifford was  
5 asking you the questions, that you were sure that  
6 these were his -- this was his exact wording,  
7 "pissed," or maybe I'm mistaken. Is that what you  
8 said?

9 A That's what I said, sir. I believe I  
10 put it in quotations.

11 Q Okay. But you told Mr. Clifford that  
12 this -- these were -- this was Woychuk's exact  
13 word?

14 A Yes, sir.

15 Q Because during the interview of  
16 Commission Counsel, and do you have that?

17 A Yes, sir.

18 Q Which was on March 20th, '08, and I'm  
19 going to refer you to page 46, starting at line 5.  
20 Do you have 46 there? Chief, have you got 46  
21 there, page 46?

22 A I've got it, sir, yes.

23 Q I see you're reading it, at least I  
24 think you're reading it. Well, line 5, the  
25 previous question, you can look at, it starts at

1 line 2.

2 "On April 10th, I had Constable  
3 Woychuk attend my office. Again asked  
4 him what occurred at the  
5 Harveymordenzenk scene. Constable  
6 Woychuk again confirmed that Bakema  
7 told him that Harveymordenzenk was  
8 pissed. And I further directed him at  
9 the station how he should write his  
10 notes."

11 And questioned by, I believe Mr. Clifford:

12 "I want to be specific with you here,  
13 sir. Is this the impression you were  
14 taking from or forming from what  
15 Constable Woychuk is saying to you?  
16 Are you saying these are his exact  
17 words?"

18 A They will not be his exact words,  
19 but this is what Woychuk told me."

20 So here in, March '08, you're saying they are not  
21 his exact words, but you come and testify again  
22 under oath, because that was under oath, that  
23 these are his exact words. So which was it?

24 A I was referring to the rest of his  
25 conversation, sir, as to how he explained how

1 Mr. Bakema had told him to, to work with his  
2 notes.

3 Q Well, but that doesn't make sense,  
4 because that's not what's referred to in the  
5 answer, is it? There is nothing there about  
6 Bakema notes and so on. Not that I can see. Oh,  
7 I see what you're saying, that I further -- no, it  
8 says, "I further directed him at the station."  
9 That's you, right, not Bakema, that's you, right?

10 A No, that's not me.

11 Q Well, it says, well, I had Constable  
12 Woychuk attend my offices and I again asked him  
13 what occurred at the Harveymordenzenk scene, and  
14 Constable Woychuk again confirmed that Bakema told  
15 him, right, Woychuk, that Harveymordenzenk was  
16 pissed, and I further directed him at the station.  
17 So you're saying that's wrong, that transcript is  
18 wrong?

19 A I am not certain on the clarification  
20 of that, sir.

21 Q You don't know what that means?

22 A I'm not exactly certain what that is,  
23 sir.

24 Q All right. But you did say that those  
25 were not his exact words, did you not, in answer

1 to the question?

2 A In regard to what Mr. Bakema -- what  
3 Jason Woychuk who told me as far as what  
4 Mr. Bakema said to him.

5 Q But you didn't qualify that in your  
6 answer?

7 A No, I didn't qualify that.

8 Q Not until now?

9 A I didn't qualify that, sir.

10 Q I'm not going to take you through all  
11 the changes to the narratives. We know there were  
12 changes. We know there were changes made after  
13 February 25th, I think 26th, 27th, whatever?

14 A Yes, sir.

15 Q But the copy that the Crown gets, and  
16 ultimately the defence gets, is still dated  
17 February 25th; right?

18 A Yes, that's the most recent version  
19 that comes up on the computer, sir.

20 Q Well, no, no, no, no, but the version  
21 the Crown gets is dated February 25th. Your  
22 narrative is dated February 25th?

23 A Yes.

24 Q Yes. They don't get the changes that  
25 were made after that, the Crown, the prosecutor

1 doesn't, or do they?

2 A Yes, they do, sir.

3 Q You give them the changes as well.

4 Are you saying --

5 A May I qualify that?

6 Q Sure.

7 A They don't get all the changes. At  
8 that point in time, we did not submit all the  
9 revisions every time there's a revision to report.

10 Q Right?

11 A When you open up the computer, open up  
12 a specific incident number, the latest version is  
13 the one that comes up.

14 Q Okay. Fair enough. But the Crown  
15 gets the one dated February 25th, right, with all  
16 the changes in it?

17 A They would get the one with all the  
18 changes in it, yes.

19 Q Dated February 25th, the date of the  
20 accident, right?

21 A Yes.

22 Q Okay. And in the version they get are  
23 the changes highlighted in any way?

24 A No, sir.

25 MR. PROBER: Thank you, sir, those are

1 my questions.

2 THE WITNESS: Thank you.

3 THE COMMISSIONER: Mr. Green -- I  
4 apologize, I thought it was Mr. Green coming up  
5 but I'm glad you're here.

6 BY MS. DIXON:

7 Q Sir, you were asked some questions  
8 last week about the fact that Mr. Zenk was  
9 released on a promise to appear?

10 A That is correct.

11 Q Do you recall? And in fact, you were  
12 asked questions about the attachment of conditions  
13 and the fact that no conditions were attached to  
14 his release?

15 A That's correct.

16 Q And you were asked whether a condition  
17 that he abstain from alcohol is something that had  
18 to be imposed, as I recall the discussion last  
19 week?

20 A Yes, I was asked that, yes.

21 Q Sir, you would agree with me that the  
22 decision whether to attach any conditions to  
23 someone's release is a discretionary one?

24 A That is correct, yes.

25 Q It's not set in stone one way or

1 another whether conditions have to be attached?

2 A No.

3 Q Correct? And in fact, sir, in your  
4 experience, in impaired driving situations,  
5 accused people were typically released without any  
6 condition that they abstain from alcohol, correct?

7 A Typically, yes.

8 Q All right. And so there was nothing  
9 unusual about the fact that Mr. Zenk was released  
10 on a promise to appear without such a condition,  
11 correct?

12 A Yes, typically we don't release on  
13 conditions to abstain, yes.

14 Q And so that's why it wasn't something  
15 that you raised with the Crown, correct?

16 A That's correct, yes.

17 Q And when you were asked questions last  
18 week by Commission Counsel, my note of your  
19 evidence-in-chief was that you said that this was  
20 something, that the release of Mr. Zenk was  
21 something that was discussed with Mr. Minuk;  
22 correct?

23 A That is correct, yes.

24 Q And that during that discussion,  
25 Mr. Minuk would have been told that there were no

1 priors of this nature, in the case of Mr. Zenk,  
2 correct?

3 A I believe so, yes.

4 Q I just want to follow up a little bit  
5 on the questions you have been asked about the  
6 demand for blood or breath; okay?

7 A Yes.

8 Q You'll agree with me, sir, that there  
9 was no proper basis upon which to demand a blood  
10 sample in this case?

11 A There is no proper basis in which to  
12 demand a blood sample, yes.

13 Q Right. And so if a blood demand would  
14 have been read to Mr. Zenk, that would have been  
15 an error?

16 A That would have been an error, yes.

17 THE COMMISSIONER: Just give me a  
18 moment because I'm going to ask some questions,  
19 and then I would have given you an opportunity to  
20 respond to certain of the questions I want to put.

21 MS. DIXON: Sure.

22 THE COMMISSIONER: I'm looking at your  
23 rough notes, if I could find them here, page 409.  
24 It would be, yes, your rough notes, 9:07. Do you  
25 have the time?

1 THE WITNESS: I have the time, sir.

2 THE COMMISSIONER: Yes. And you say  
3 will you make a, I'm sorry, will you give, or  
4 whatever that word is.

5 THE WITNESS: Provide.

6 THE COMMISSIONER: Provide a breath  
7 sample to us. You used the word breath sample.  
8 Now go to your narrative, 9:07.

9 THE WITNESS: I have that, sir.

10 THE COMMISSIONER: Yes. You say if  
11 you would provide samples, you never use the word  
12 breath samples.

13 THE WITNESS: On my rough notes, no, I  
14 didn't, sir.

15 THE COMMISSIONER: No, in your rough  
16 notes you did, but in your narrative, look at your  
17 narrative, if I have it correctly.

18 THE WITNESS: Oh, I'm sorry.

19 THE COMMISSIONER: Yes. Your  
20 narrative says:

21 "Writer attended to the interview room  
22 and asked the subject if he would  
23 provide samples."

24 THE WITNESS: Yes, I didn't write the  
25 word "breath" in there, sir.

1 THE COMMISSIONER: So it was obvious  
2 when you took your notes, your rough notes, that  
3 you were talking about breath samples.

4 THE WITNESS: That's correct, sir.

5 THE COMMISSIONER: Yeah. Why would  
6 you not have put in "breath" before provide --  
7 before the words, before the word "samples" in  
8 your narrative, where you say if he would provide  
9 samples, why didn't you use the word breath there?

10 THE WITNESS: I don't -- I can't  
11 answer that answer, sir, I don't know.

12 THE COMMISSIONER: But you're  
13 satisfied in your own mind that it was breath?

14 THE WITNESS: Yes, sir.

15 THE COMMISSIONER: Now, Mr. Minuk  
16 would get this narrative. Would he get your rough  
17 notes?

18 THE WITNESS: Yes.

19 THE COMMISSIONER: Would he get your  
20 duty notes?

21 THE WITNESS: Yes, he would.

22 THE COMMISSIONER: I haven't looked at  
23 your duty notes to compare them. Did you ever  
24 draw to his attention that you were in error in  
25 failing to put in breath samples in your

1 narrative?

2 THE WITNESS: He never spoke to me  
3 about that at all, sir.

4 THE COMMISSIONER: Did he ever ask you  
5 about it?

6 THE WITNESS: No, sir.

7 THE COMMISSIONER: Okay. Go ahead.

8 MS. DIXON: If I could just have one  
9 minute, sir?

10 THE COMMISSIONER: Yes, go ahead.

11 MS. DIXON: Thank you.

12 THE COMMISSIONER: Yes.

13 BY MS. DIXON:

14 Q So, sir, your rough notes clearly  
15 record that a blood demand was made at 8:21,  
16 right?

17 THE COMMISSIONER: No, a breath.

18 MS. DIXON: A blood demand.

19 THE COMMISSIONER: Breath samples.

20 MS. DIXON: His rough notes at 8:21?

21 THE COMMISSIONER: I'm talking about  
22 9:07.

23 BY MS. DIXON:

24 Q Yes, I'm talking about the initial  
25 demand; right?

1           A     That's correct.

2           Q     Okay. So your rough notes show a  
3 blood demand at 8:21. And then they note a second  
4 demand at 9:08, and that's recorded as a breath  
5 demand, right?

6           A     That's correct, yes.

7           Q     All right. And am I correct in  
8 understanding your recent answer that those rough  
9 notes would have been supplied to Mr. Minuk?

10          A     Yes.

11          Q     And can you tell us when they were  
12 supplied and in what fashion?

13          A     They would have been supplied as  
14 photocopied notes in the package to Mr. Minuk that  
15 was sent to the Crown on March 1st.

16          Q     And --

17                THE COMMISSIONER: Excuse me a second,  
18 just looking at your duty notes, 9:07.

19                "Will you provide a breath sample to  
20 us."

21 So you had them in your rough notes, you had them  
22 in your duty notes, but when it got to the  
23 narrative, you just talked about samples and a  
24 refusal, without specifically referring to a  
25 breath sample.

1 THE WITNESS: Yes, sir.

2 THE COMMISSIONER: Don't know why you  
3 did that?

4 THE WITNESS: I don't know why I did  
5 that, sir.

6 THE COMMISSIONER: Go ahead, sorry.

7 MS. DIXON: Thank you.

8 BY MS. DIXON:

9 Q All right. And the duty-book notes  
10 were made when, sir?

11 A They would have been made on the 27th,  
12 I believe.

13 Q All right. So a couple of days after  
14 the rough notes?

15 A Yes, yes.

16 Q And they contain a little bit more  
17 information?

18 A Yes.

19 Q A little bit more detail. And they  
20 record that a blood demand was made at 8:21;  
21 right?

22 A They do record that, yes.

23 Q Okay. And then your incident  
24 narrative was created when, sir?

25 A That would have been created, I

1 believe, on the 27th.

2 Q And it contains even more information?

3 A Yes.

4 Q Like it's not a direct copy of your  
5 notes, it's a report or --

6 A It's a report, yes.

7 Q -- a full report. And it records that  
8 a blood demand was made at 8:21; right?

9 A That's correct.

10 Q And so all of those documents, you're  
11 saying, would have been supplied to the Crown as  
12 part of your disclosure?

13 A That's correct.

14 Q And so your understanding is then that  
15 that information would have been provided to the  
16 defence?

17 A Well, I don't know what was provided  
18 to the defence, I provided it to the Crown.

19 Q No, but that would be your  
20 intention --

21 A Yes.

22 Q -- in terms of that disclosure, right?

23 A Yes.

24 Q And so that the documentary evidence  
25 then, that would have been disclosed, shows that

1 a -- that the demand that was made was a mistake,  
2 the 9:08 demand, or the 8:21 demand; right? It  
3 shows that at 8:21 a demand was made for blood  
4 samples?

5 A That's correct, yes.

6 Q And that was never corrected by you in  
7 terms of issuing a supplementary report or a  
8 letter or anything like that?

9 A No. I had advised the Chief.

10 Q Right. But it wasn't corrected. You  
11 didn't issue a supplementary report?

12 A No, I didn't.

13 Q Or a letter or anything correcting --

14 A No.

15 Q -- that evidence that would be part of  
16 the disclosure?

17 A No.

18 Q All right. So you'll agree with me  
19 then that anyone looking at the documentary  
20 evidence would conclude that the initial demand  
21 was a mistake, was a demand for blood sample,  
22 right? I mean, that's what it says?

23 A Yes.

24 Q Right? And I'm sorry, in answer to a  
25 question that was just put to you, did you confirm

1 that you had never told Mr. Minuk, you never had a  
2 discussion with Mr. Minuk about that error; is  
3 that correct?

4 A Other than my first meeting with him.

5 Q All right. Well, you've told us about  
6 your first meeting with Mr. Minuk.

7 A Yes.

8 Q It was February 24th, '06?

9 A Yes.

10 Q Right. And you said that really at  
11 the forefront of your mind at that point was the  
12 delay in charge and caution?

13 A That is correct.

14 Q That's what you recall to be the focus  
15 of your discussion; right?

16 A That's correct.

17 Q So you're not able to say with any  
18 certainty that you would have told Mr. Minuk at  
19 that meeting about the blood issue?

20 A No. What I believe I said is that's  
21 where I would have discussed it.

22 Q You might have?

23 A Where I would have discussed it. I  
24 don't recall whether we actually had that  
25 conversation or not.

1           Q     Okay.  So I'm correct then, that it's  
2     something that you might have discussed and you  
3     might not have?

4           A     I believe I did.

5           Q     But you're not certain?

6           A     I'm not -- I cannot testify with  
7     certainty.

8           Q     Okay.  But what you can say for  
9     certain is that the information was never  
10    corrected in terms of the disclosure?

11          A     Yes.

12          Q     Okay.  Right.  Just one moment.  All  
13    right.  Sir.  And just so that the record is  
14    clear, I asked you whether anyone looking at the  
15    documentary disclosure would conclude that the  
16    initial demand that was made was for blood, right?

17          A     When you're looking at that entry,  
18    yes.

19          Q     Right.  And so you would recognize,  
20    sir, that that's something that defence counsel  
21    could work with; correct?

22          A     Yes.

23          Q     It would look like an error.

24          A     Yes.

25                 MS. DIXON:  Okay.  Thank you.  Those

1 are my questions, sir.

2 THE COMMISSIONER: Thank you.

3 BY MR. McFETRIDGE:

4 Q Chief Carter, I just want to clarify  
5 something. You had indicated that your duty-book  
6 notes and your narrative were prepared two days  
7 after the 25th; is that correct?

8 A That's correct, yes.

9 Q Which were prepared first, your  
10 narrative or your duty-book notes?

11 A The initial narrative was prepared  
12 first from my rough notes and then my duty-book  
13 notes after that.

14 Q So you did your narrative first, typed  
15 that in, and then you handwrote your duty-book  
16 notes after that?

17 A That's correct, yes.

18 Q So did you base -- your duty-book  
19 notes are based on what you put in your narrative?  
20 Is that the process you used?

21 A I would have based it on my rough  
22 notes and my narrative, yes.

23 Q In that time they were prepared, would  
24 that have been about the approximate time in the  
25 morning when you came in, on the 27th, or you did

1 it throughout the day?

2 A When I first came in, and then it  
3 would have been throughout the day, yes, I would  
4 have been working on my -- on the file throughout  
5 the day, sir.

6 Q When you were doing your narrative,  
7 were you talking to Constable Woychuk on the 27th  
8 about what may have happened, or what --

9 A I did speak with Constable Woychuk,  
10 yes.

11 Q Okay. Now, was it on the 27th that  
12 Constable Woychuk sort of told you what this  
13 accident was all about in terms of, Mr. Zenk was  
14 the driver of a vehicle that had run into another  
15 car? Is that when you first found that out?

16 A No, no.

17 Q Now, your evidence was, it was in your  
18 examination by Mr. Clifford as to what knowledge  
19 you had of the actual accident and how it had been  
20 caused. And he was asking you questions as to why  
21 you felt you had reasonable and probable cause --  
22 probable grounds to lay the charge of impaired  
23 driving causing death or harm. And you have  
24 indicated that you were told that Mr. Zenk was  
25 responsible. What evidence had Mr. Woychuk given

1 to you to support that statement? Were you  
2 advised that Mr. Zenk was a driver of a truck that  
3 had run into another vehicle? Were you advised of  
4 that?

5 A Yes, I believe so.

6 Q And what words did Mr. Woychuk  
7 indicate to you in that regard?

8 A I don't recall the exact words, sir.

9 Q Certainly, there's nothing noted in  
10 your narrative, your duty-book notes, your rough  
11 notes, about the circumstances of the accident?

12 A No, sir.

13 Q What evidence did you have that  
14 Mr. Zenk had care and control of a vehicle that,  
15 in fact, was involved in the accident?

16 A By what Mr. Woychuk told me, sir.

17 Q And can you recall exactly what he  
18 told you about that?

19 A I cannot recall exactly what he told  
20 me about that, sir.

21 Q Did Mr. Woychuk tell you that he, in  
22 fact, when he arrived at the scene, the first  
23 thing that happened basically was, after he had  
24 stopped, next thing he knew constable, or Chief  
25 Bakema had simply brought Mr. Zenk to the vehicle

1 and asked Mr. Woychuk, or Constable Woychuk, to  
2 place him in the vehicle?

3 A No, he did not relate that to me, sir.

4 Q Did he ever, at any time, indicate to  
5 you that he had ever seen where the various  
6 vehicles were located, which vehicle hit which  
7 vehicle, or anything of that nature?

8 A No, he did not give me a scene  
9 description, sir.

10 Q Would it be fair to say that once he  
11 had told you that he had smelled a slight odour of  
12 alcohol, and which you had noticed a strong odour  
13 of alcohol, whether it was in the interview room  
14 or at the car, you made the assumption or the  
15 hunch that, in fact, this driver had been involved  
16 and was responsible for the accident?

17 A No, sir, it was not a hunch.

18 Q Do you have any knowledge at the time  
19 as to the how the collision occurred, as to which  
20 car hit which particular -- or which vehicle hit  
21 which particular vehicle in which sequence?

22 A No, I didn't.

23 Q Did you have any knowledge as to  
24 whether or not anybody else was in the Zenk  
25 vehicle?

1 A No, I did not.

2 Q Did you ever ask those questions?

3 A No, I did not.

4 Q Did you ever ask Constable Woychuk as  
5 to how many other vehicles were involved in the  
6 accident?

7 A No, I did not. I was aware of that  
8 from my original call from dispatch.

9 Q And what did dispatch tell you?

10 A Three vehicle accident I believe.

11 Q And that dispatch call didn't give you  
12 any indication as to which vehicle had hit which  
13 vehicle?

14 A No, sir.

15 Q They never gave you any indication as  
16 to who were in those vehicles?

17 A No, sir.

18 Q Now, we have -- your policy manual has  
19 been marked as Exhibit 93 in this proceeding. And  
20 that can be found at volume, Mr. Commissioner,  
21 P-2.85.1.

22 THE COMMISSIONER: Give me that again?

23 MR. McFETRIDGE: All right. Volume  
24 P-2.85.1, and it's Exhibit 93.

25

1 BY MR. McFETRIDGE:

2 Q I don't know if that's in front of  
3 you, Chief Carter. And at page 2579 of that  
4 manual, your policy has a provision that allows  
5 you to use a roadside screening device if someone  
6 may have grounds that there may be blood alcohol  
7 in someone's body; is that correct?

8 A That's correct, sir.

9 Q How many roadside ASDs does your  
10 police department have and where are they kept?

11 A One, and it is usually kept in the  
12 office, sir.

13 Q And if you get a call to come out to  
14 what appears to be a serious motor vehicle, would  
15 it be your policy to have one of the vehicles that  
16 attends at the scene to take a roadside screening  
17 device?

18 A The -- I just may correct something.  
19 The roadside screening device is kept in the  
20 office and the individual officers who are on  
21 patrol will, or may check out that roadside  
22 screening device to take with them.

23 Q Okay. My question was, if you were  
24 advised, a call comes in and three cars in fact go  
25 out, or three police vehicles go out, would there

1 be practice normally in that circumstance to  
2 attend a serious motor vehicle accident, to take  
3 the roadside screening device in case it may be  
4 needed?

5 A Some may do it, yes.

6 Q Well, would that have been your  
7 practice? You were the most experienced there,  
8 would that be something you would be telling your  
9 officers who report to you, to do that?

10 A No, no, that's not something I would  
11 have instructed the officers to do.

12 Q Okay. When Constable Woychuk said  
13 that he had smelled a slight odour of alcohol  
14 while Mr. Zenk was sitting in the back seat of his  
15 vehicle, would that have been the circumstance  
16 where an officer would then take it upon himself  
17 to make a roadside demand, that there may have  
18 been alcohol in someone's body?

19 A I'm sorry?

20 Q When Constable Woychuk smelled a  
21 slight odour of alcohol in the back, coming from  
22 Mr. Zenk in the back of the police vehicle where  
23 he was being held, would that be a situation where  
24 Constable Woychuk would have made a roadside  
25 demand?

1           A     That may have been a situation, sir,  
2     yes.

3           Q     And if he didn't in fact have the  
4     screening device there, he would have had the  
5     opportunity to phone that in and ask someone to  
6     bring it out to him; is that correct?

7           A     That's correct, sir.

8           Q     And your policy manual indicates that?

9           A     Yes, sir.

10           THE COMMISSIONER:   Excuse me.   Is  
11     there some problem of having an officer who is  
12     dispatched to a serious accident from carrying one  
13     automatically with him?

14           THE WITNESS:   There is no problem,  
15     sir, with that.

16           THE COMMISSIONER:   But your policy  
17     apparently is, you go to the scene, and then if  
18     it's determined that alcohol may be involved,  
19     somebody has to either go back and get the device,  
20     or call in and get somebody else to get the  
21     device.   Don't you think that with the limited  
22     resources of your police department that it might  
23     just be a good policy to always give it to the  
24     officers who go out?

25           THE WITNESS:   I think that would be an

1 excellent policy, sir, yes.

2 BY MR. McFETRIDGE:

3 Q Just dealing with that circumstance,  
4 would that be a circumstance where an officer, in  
5 your mind, would have been entitled to demand a  
6 breath test, he would not have, in those  
7 circumstance, to give a charter because he just  
8 has a sense of alcohol may be involved. Is that  
9 correct?

10 A Yes, sir.

11 Q And Constable Woychuk would have a  
12 radio in the car; correct?

13 A There would be a radio in the car,  
14 yes.

15 Q And he could radio the station to have  
16 someone bring the roadside screening device there;  
17 is that correct?

18 A That would have been possible, yes.

19 Q Do I understand the station, it only  
20 took about four minutes to get from the station to  
21 the scene of the accident?

22 A It was not a long distance, sir.

23 Q Not a long distance. Did you ever ask  
24 Constable Woychuk why he did not do that when he,  
25 in fact, smelled a slight smell of alcohol?

1           A     No, sir.

2                   MR. McFETRIDGE: Those are all the  
3 questions I have, Mr. Commissioner. Thank you.

4                   MR. McDONALD: Mr. Commissioner, it's  
5 going to take me a minute or two to move some  
6 books.

7 BY MR. McDONALD:

8           Q     Chief Carter I have some questions for  
9 you in some areas that I'd like to cover. The  
10 first one that I intend to cover with you has,  
11 believe it or not, not been touched upon by  
12 anybody so far. Could I ask madam clerk to put  
13 before Chief Carter volume N, as in Norman, of the  
14 disclosure, please? It's volume N tab N-78. Do  
15 you have that document, Chief Carter?

16           A     I have that document, sir.

17           Q     And I just ask that you confirm for  
18 this Commission that you are aware and, in fact,  
19 participated in a review of the East St. Paul  
20 Police Service conducted at the request of the  
21 Province of Manitoba after this public inquiry was  
22 announced. Is that correct?

23           A     That is correct, sir.

24           Q     And what you have before you is a  
25 report prepared following that review and

1 assessment; is that correct?

2 A That is correct, sir.

3 Q And I understand that at the request  
4 of the Province of Manitoba, the review was  
5 conducted on November 27th to November 30th, 2007.  
6 Can you confirm that, please?

7 A That is correct, sir.

8 Q And I understand that the terms of the  
9 review are outlined on page 2069 of the  
10 disclosure. Would you have a look at that,  
11 please?

12 A Yes, sir.

13 Q And if I may just read this into the  
14 record. Chief Carter, if you could follow that  
15 please to ensure that I read it accurately.

16 "The Province of Manitoba, through the  
17 Department of Justice, requested that  
18 the RCMP head up the managerial review  
19 of the East St. Paul Police Service  
20 using the following terms of  
21 reference. Structure of Police  
22 Service, patrol units, investigative  
23 units."

24 Next point:

25 "Accountability and disciplinary

1 mechanisms."

2 Next point:

3 "Training and supervision standards.

4 Next point:

5 "Hiring standards."

6 Next point:

7 "Administrative policy manuals and

8 currency."

9 Next point:

10 Operational policy manuals and

11 currency.

12 Next point:

13 "Staffing levels and calls for

14 service."

15 Next point:

16 "Analysis and recommendations

17 regarding the adequacy of the East St.

18 Paul Police Service to police a rural

19 municipality the size of the R.M. of

20 East St. Paul."

21 So I take it that was the terms of reference; is

22 that correct?

23 A That's correct, sir.

24 Q And still the next paragraph on that

25 same page reads:

1 "A combination of RCMP and Brandon  
2 Police Service review audit criteria  
3 was used during the course of the  
4 managerial review to ensure that all  
5 the terms of reference were  
6 addressed."

7 That was your understanding, that they were going  
8 to apply principles and so on that were being  
9 followed by the RCMP and by the Brandon Police  
10 Service, to see how East St. Paul compared?

11 A That's correct, sir.

12 Q And then it continues.

13 "The purpose of a management review is  
14 to assess the adequacy and  
15 effectiveness of the unit management  
16 investigative performance and/or  
17 service delivery performance."

18 Do you see that?

19 A I do, sir.

20 Q And was that, sir, a part of the focus  
21 of the review?

22 A That was part of the focus, sir.

23 Q And sir, if I could take you to page  
24 2086 and have you look at the conclusion that's  
25 stated there. And again, Chief Carter, I'll just

1 read this into the record and ask you to follow to  
2 make sure that I read it correctly.

3 "As previously stated, it is the  
4 opinion of the entire review team that  
5 the East St. Paul Police Service is  
6 providing a good service to the  
7 citizens of the rural municipality of  
8 East St. Paul. They are particularly  
9 strong in the areas of response time  
10 to initial calls for service, police  
11 visibility and traffic enforcement.  
12 Areas that have room for improvement  
13 are in follow up of investigations and  
14 keeping complainants updated on the  
15 progress of the investigation. In  
16 addition, there is a need to update  
17 all of the Police Services'  
18 operational and administrative policy  
19 manuals. It is noted that Chief  
20 Carter has already taken the initial  
21 steps to address these areas of  
22 concern.  
23 The cooperation of Chief Carter and  
24 his entire staff was outstanding.  
25 They provided us with any information

1 or material that was asked for. They  
2 were very open to any suggestions and  
3 advice the review team members had for  
4 improving the force's service  
5 delivery. On behalf of the review  
6 team, I want to thank them for this."  
7 Now, the review team, sir, I take it,  
8 is the review team listed on page 2087. Is that  
9 correct?

10 A That is correct, sir.

11 Q The reviewers included Superintendent  
12 David Roper of the RCMP here in Manitoba; is that  
13 correct?

14 A That is correct, sir.

15 Q Inspector Ian Grant of the Brandon  
16 Police Service; is that correct?

17 A That's correct, sir.

18 Q Mr. Drew Goddard, an official from  
19 Manitoba Justice; is that correct?

20 A That is correct, sir.

21 Q Staff Sergeant David Mancini from the  
22 RCMP detachment in The Pas, Manitoba; is that  
23 correct?

24 A That is correct, sir.

25 Q And for the assistance of the

1 Commissioner and Commission Counsel, The Pas is a  
2 town in the north of Manitoba consisting of some  
3 approximately 7,500 to 10,000 residents. Would  
4 you agree with that?

5 A I'm not sure of the population, sir.

6 Q It's one of the larger centres in  
7 central, or north central, Manitoba?

8 A Yes, sir.

9 Q And also Staff Sergeant Ron Obedzinski  
10 of the RCMP Customs and Excise section was another  
11 member of the review team?

12 A That's correct, sir, yes.

13 Q And also staff Sergeant David Allison  
14 of the RCMP Manitoba West District out of Dauphin,  
15 Manitoba; is that correct?

16 A That is correct, sir.

17 Q And on a review of the report, Chief  
18 Carter, it contains some 11 recommendations that  
19 had been made by the review team. Can you tell  
20 the Commissioner and the people in this room today  
21 what, if anything, you as Chief of Police have  
22 done in respect to implementing the  
23 recommendations made by the review team following  
24 their November 2007 review? Put it this way,  
25 suffice to say, is it fair to say that you have

1 completed some of the recommendations, acted on  
2 them and finished them, and others you are in the  
3 process of completing?

4 A Yes, sir.

5 Q Thank you. Now, Chief Carter, I have  
6 some areas that I would like to cover with you  
7 that have been touched upon earlier. So bear with  
8 me if there's a degree of repetition, I do so only  
9 with a purpose of making sure that we're at the  
10 same point and talking about the same point when I  
11 ask you questions and when you give me answers.  
12 Okay?

13 A Yes, sir.

14 Q Now, there's been some discussion  
15 about the extent of Chief Bakema's involvement in  
16 the investigation. Do you recall that?

17 A That is correct, sir.

18 Q Now, you told us that, from your  
19 perspective, the file was not assigned to an  
20 investigator until March 1st; is that correct?

21 A That's correct, sir.

22 Q And at that point, no one had acted to  
23 assign the file to an investigator. Is that  
24 correct?

25 A That's correct, sir.

1           Q     And as I understand it, ordinarily,  
2     under circumstances such as this, assignment of  
3     the file would have been the responsibility of  
4     Chief Bakema.  Is that correct?

5           A     That's correct, sir, yes.

6           Q     And if I understand your evidence  
7     correctly, because of the fact that the file had  
8     not been assigned, you took it upon yourself to  
9     assign yourself as the lead investigator as of  
10    March 1?

11          A     That's correct, sir.

12          Q     Now, ordinarily, when a chief  
13    investigator or a principal investigator is  
14    assigned, what, other than Chief Bakema, what  
15    would Chief Bakema's role have continued to be  
16    after the file assignment was made?

17          A     His role -- he would not, under normal  
18    circumstance, would not take an active role and  
19    direction or participation in the actual  
20    investigation of the file.

21          Q     That would be the ordinary course?

22          A     Yes.

23          Q     I take it, in this instance, that did  
24    not happen?

25          A     That did not happen, sir.

1           Q     I understand that, notwithstanding the  
2 fact that you assigned the file to yourself as  
3 chief investigator on March 1st, Chief Bakema  
4 continued to be involved in the investigation?

5           A     That's correct, sir.

6           Q     And he took statements from witnesses?

7           A     That's correct, sir.

8           Q     And if I may just assist you, I  
9 understand that he interviewed Kathy Beattie, we  
10 have heard evidence to that effect, and secured a  
11 statement from Kathy Beattie?

12          A     That is correct, sir.

13          Q     And that was on I believe February 26,  
14 2005, before you assigned the file to yourself?

15          A     That's correct, sir.

16          Q     And Mr. Commissioner, that is Exhibit  
17 70, 70 in these proceedings, volume E-1 page 497.

18                 I understand, Chief Carter, that  
19 Mr. Bakema also took a statement from Denise  
20 Bukowski. We have heard evidence of that before  
21 this Commission?

22          A     That's correct, sir.

23          Q     And I understand that that was taken  
24 on March 7th?

25          A     That is correct, sir.

1           Q     And that was six days after you  
2 assigned, or seven days after you assigned the  
3 file to yourself as lead investigator?

4           A     That's correct, sir.

5           Q     Did you ask Chief Bakema to take that  
6 statement?

7           A     No, sir.

8           Q     That statement, Mr. Commissioner,  
9 appears as volume C page 233.

10                   I understand, Chief Carter, that you  
11 also received a statement taken by Mr. Bakema from  
12 Vernon Stevens. Is that correct?

13           A     That's correct, sir.

14           Q     And I understand that it's dated March  
15 3rd, 2005?

16           A     That is correct, sir.

17           Q     Again, sir, taken after you assigned  
18 yourself as chief investigator?

19           A     That's correct, sir.

20           Q     Did you ask Mr. Bakema to take the  
21 statement from Vernon Stevens?

22           A     No, sir.

23                   MR. McDONALD: That, Mr. Commissioner,  
24 is volume C page 281.

25

1 BY MR. McDONALD:

2 Q I also understand that then Chief  
3 Bakema also took a statement from Edward Rosser?

4 A That's correct, sir.

5 Q And that was taken on March 24th?

6 A I believe so, sir.

7 Q Did you ask him to take that  
8 statement?

9 A No, sir.

10 Q And that appears at volume C, page  
11 330. Of course, we know Mr. Rosser to be one of  
12 the Selkirk paramedics who attended the scene?

13 A That's correct, sir.

14 Q Now, you have testified before this  
15 Commission that you received the report from the  
16 Professional Standards Unit of the Winnipeg Police  
17 Service on August 30th, 2005?

18 A That is correct, sir.

19 Q There is an evidentiary reference that  
20 has been made by counsel before me about the fact  
21 that the report from the Winnipeg Police Service  
22 was delivered by a member of the Winnipeg Police  
23 Service to then Chief Bakema on July 13th. And  
24 that, Mr. Commissioner, is the note at page 2943,  
25 volume Q-1.

1 THE COMMISSIONER: I'm sorry, give me  
2 that again?

3 MR. McDONALD: Volume Q-1.

4 THE COMMISSIONER: Page?

5 MR. McDONALD: Page 2943. I'm just  
6 checking to verify that my note is accurate. And  
7 it is also Exhibit 147, Mr. Commissioner. It's a  
8 note produced by the Winnipeg Police Service from,  
9 I believe, it's Sergeant Jim Poole of the Winnipeg  
10 Police Services.

11 THE COMMISSIONER: What exhibit number  
12 is that?

13 MR. McDONALD: Jim Poole.

14 THE COMMISSIONER: No, no, exhibit  
15 number?

16 MR. McDONALD: Exhibit number 137.

17 THE COMMISSIONER: Thank you.

18 BY MR. McDONALD:

19 Q And the note simply reads:

20 "Package on Harvey-Zenk investigation  
21 given to Chief Harry Bakema, East St.  
22 Paul."

23 Now, Chief Carter why is it that you  
24 are able to say that you did not get that report  
25 until August 30th?

1           A     When I got the report, sir, I stamped  
2     the front of the file folder with the date and I  
3     initialed it.

4           Q     Why did you do that?

5           A     To indicate when I received it.

6           Q     What was your reaction when you  
7     received the report, once you realized it had been  
8     prepared much earlier?

9           A     I was surprised why I didn't receive  
10    it earlier, sir.

11          Q     So it surprises you then to learn that  
12    Chief Bakema may have had that report since  
13    July 13th, yet did not give it to you until  
14    August 30th?

15          A     That's correct, sir.

16          Q     Now, Chief Carter, I understand that  
17    you have with you your original file material?

18          A     That's correct, sir.

19          Q     Could you extract from that material,  
20    sir, the note to which you just made reference in  
21    your evidence?

22                   THE COMMISSIONER:  Is it part of the  
23    disclosure?

24                   MR. McDONALD:  No, Mr. Commissioner,  
25    it's not.  It's just the manila folder that

1 contained the file. We were unaware of its  
2 existence. I did alert Commission Counsel to the  
3 fact that when getting ready for the hearing, I  
4 looked at the original file, saw the note, asked  
5 Chief Carter what it was and he explained it.

6 THE COMMISSIONER: Thank you.

7 MR. McDONALD: I don't know that it's  
8 necessary to mark it as an exhibit. But would you  
9 just read it into the record, sir, what you have  
10 on the file folder?

11 THE WITNESS: I have a brown file  
12 folder with -- the front of it is dated with a  
13 date-stamp 30, August, 2005, with my initial.

14 BY MR. McDONALD:

15 Q And is that the folder in which the  
16 report arrived in your possession from then Chief  
17 Bakema?

18 A Yes, it is.

19 Q All right. Thank you. Now, Chief  
20 Carter, Mr. Bakema has yet to testify and you are  
21 testifying before him. So unless you are  
22 re-called, he may say some things to which you  
23 will not get an opportunity to respond. We do  
24 know also that then Chief Bakema was also  
25 interviewed by Commission Counsel and that

1 everybody involved in these proceedings has a  
2 transcript of that interview. I would like to  
3 refer you to one passage in the transcript of the  
4 interview of Chief Bakema by Commission Counsel  
5 and ask you to respond. And that is tab T.4.G.  
6 And the reference appears at page 77 and 78.

7 Now, I direct your attention, Chief  
8 Carter, firstly to the very bottom of page 77. Do  
9 you understand how the pages work on these  
10 transcripts?

11 A Yes, I do, sir.

12 Q All right. Have a look at the bottom  
13 right-hand corner -- sorry, the very bottom of  
14 page 77, and then the top of page 78. The  
15 question at the bottom starting at line 21 reads:

16 "And I understand the system in the  
17 East St. Paul Police Detachment that  
18 existed at the time would allow you to  
19 access anybody's reports as the Chief  
20 of Police, is that correct?"

21 This is Chief Bakema's answer:

22 "Okay, let me explain that one to you.  
23 I know what you are heading towards  
24 here. It is a strange system in that  
25 department. All right. I was finding

1                   Sergeant Carter writing people's  
2                   reports many times in the office, and  
3                   I criticized him for writing reports.  
4                   And I thought, how are you writing  
5                   people's reports for them? Well, they  
6                   are not getting done on time. So I  
7                   would question him on that. And he  
8                   would tell me, well, we have codes  
9                   that we can get into their files and  
10                  write their reports. That's how he  
11                  was writing a report. Anyhow, I don't  
12                  agree with that. I don't write  
13                  anybody's reports and I don't go into  
14                  those files. He told me there are  
15                  codes. You give me a paper with  
16                  numbers on it. It is gone somewhere.  
17                  I misplace things like that left and  
18                  right, and I have never gone into  
19                  people's files.

20                 Q     You have told me about the  
21                 conversation that you had with  
22                 Sergeant Carter about reviewing files  
23                 and codes.

24                 A     Writing reports for constables.

25                 Q     Writing reports for other

1 individuals?

2 A Yes.

3 Q Does that pertain at all to this  
4 case?

5 A No, I never seen it in this  
6 case."

7 Are you with me on that?

8 A Yes, I am, sir.

9 Q What, if anything, do you have to say,  
10 Chief Carter, about the suggestion that you wrote  
11 reports, other reports for other officers?

12 A I have never written reports for other  
13 officers. When an officer is dispatched to a call  
14 such as -- and we'll just use a simple call like  
15 an alarm, I would dispatch a call, an officer to  
16 the alarm. The officer would then report back to  
17 me, for example, that everything was clear,  
18 nothing was wrong. I would then write my report  
19 under my identification to indicate the officer  
20 was dispatched and that everything was fine.  
21 There was no issue there. This way, the officer  
22 stayed on the road. The report was always written  
23 in my name and not as another officer.

24 Q All right. Thank you, Chief.

25 Mr. Clifford, and I think recently

1 Mr. McFetridge also asked you some questions --  
2 no, I think in fairness it was actually Mr. Prober  
3 and Mr. Clifford -- asked you questions about the  
4 absence to a reference in your rough notes or your  
5 duty-book notes to the grounds upon which you  
6 formed your opinion that Mr. Zenk was guilty of  
7 impaired driving. Do you recall that series of  
8 questions?

9 A I recall that, sir.

10 Q Now, you told us that you prepared  
11 your rough notes on the day of the accident as  
12 events were unfolding?

13 A That's correct, sir.

14 Q You told us you were off on the 26th?

15 A That's correct, sir.

16 Q Your next day back at work was the  
17 27th?

18 A That's correct, sir, yes.

19 Q And you told us that on the 27th, you  
20 prepared, firstly, your incident narrative?

21 A That is correct, sir.

22 Q And to do that you relied on your  
23 rough notes. You used those as a guide?

24 A That's correct, sir.

25 Q And then following the completion of

1 the incident narrative, you then prepared your  
2 duty-book notes?

3 A That's correct, sir.

4 Q Now, you reported in your incident  
5 narrative the observations that you made, which  
6 you testified before this Commission gave you  
7 reasonable and probable grounds to make the breath  
8 demand; is that correct?

9 A That's correct, sir.

10 Q And in fact, those grounds appear in  
11 your incident narrative, which you prepared before  
12 your final notes?

13 A That is correct, sir.

14 Q In your judgment, sir, is it necessary  
15 and proper police practice to have to record  
16 things twice?

17 A Not necessarily.

18 Q Your notes are disclosed as part of  
19 the disclosure package, yes?

20 A That's correct, sir.

21 Q Your incident narrative is disclosed  
22 as part of the disclosure package?

23 A That's correct, sir.

24 Q So, as long as you have it in one  
25 place, you're making disclosure?

1           A     That's correct, sir.

2           Q     In an ideal world, perhaps you should  
3     have it everywhere, would you agree?

4           A     That is correct, sir, yes.

5           Q     Listening, as I have, to the evidence  
6     unfold, it seems to me that there's expectations  
7     on the part of some in this room, at least, that  
8     police officers spend their lives making notes?

9           A     That is correct, sir, yes.

10          Q     Would the requirement that you  
11     constantly, continuously make detailed notes, in  
12     addition to narratives, encumber your ability to  
13     discharge your duty?

14          A     It would be -- it would be very  
15     difficult, sir, to discharge my duty.

16          Q     There's only so much time in the day?

17          A     Exactly, sir, yes.

18          Q     And it's up to each individual officer  
19     to decide how he or she spends their time, whether  
20     they do it making notes or making incident  
21     reports, or both?

22          A     That's correct, sir.

23                   THE COMMISSIONER:  You realize the  
24     importance of making notes?

25                   THE WITNESS:  I realize the importance

1 of making notes.

2 THE COMMISSIONER: You may be asked  
3 weeks, months, years down the line to recall an  
4 event in a courtroom, or in an inquiry like this,  
5 isn't that correct?

6 THE WITNESS: That is absolutely  
7 correct, sir.

8 THE COMMISSIONER: And unless you have  
9 your notes to refresh your memory -- you may be  
10 expected to recall events that occurred years  
11 before, while in the interim you have done other  
12 investigations. It's an impossible task without  
13 notes. Do you not agree with that?

14 THE WITNESS: It's very difficult,  
15 yes, sir.

16 THE COMMISSIONER: And that's the  
17 reason why you should make detailed notes,  
18 notwithstanding that it may take up your time, do  
19 you agree with that?

20 THE WITNESS: Yes, sir.

21 THE COMMISSIONER: Thank you. Go  
22 ahead, Mr. McDonald.

23 BY MR. McDONALD:

24 Q And when you are preparing to give  
25 evidence, you, of course, as Mr. Commissioner has

1 pointed out, look to your notes or the documents  
2 you have created to refresh your memory; is that  
3 right?

4 A That's correct, sir.

5 Q And when you are testifying, you are  
6 allowed, by the court, to refer either to your  
7 notes which you made at or about the time of the  
8 event, and/or to your incident narrative, which  
9 you prepared at or about the same time; is that  
10 not correct?

11 A That's correct, sir.

12 Q So if you've got it in your incident  
13 narrative, you can use it to refresh your memory,  
14 would you agree?

15 A I would agree, sir.

16 Q And you had recorded in your incident  
17 narrative the grounds upon which you formed the  
18 opinion that Mr. Zenk had committed the offence of  
19 impaired driving?

20 A That is correct, sir.

21 Q Now, I think this has been covered, I  
22 don't want to spend a lot of time on it, but I  
23 just want to touch upon one issue. You have  
24 agreed that it would have been inappropriate for  
25 you to have undertaken an investigation of

1 obstruction of justice charges against either your  
2 then Chief Bakema and/or Jason Woychuk. Do you  
3 recall that?

4 A Yes, I do, sir.

5 Q You will also recall that  
6 Mr. Commissioner asked you a question, when that  
7 issue was being canvassed, as to whether you, at  
8 any time, considered swearing an information in  
9 respect to obstruction charges. Do you recall  
10 that?

11 THE COMMISSIONER: Did I raise that  
12 question?

13 MR. PACIOCCO: I don't remember the  
14 exact words, but there was a question about an  
15 information.

16 THE COMMISSIONER: Go ahead.

17 BY MR. McDONALD:

18 Q Do you recall that question?

19 A I believe so, sir, yes.

20 Q Do you feel it would have been  
21 appropriate for you, under these circumstances,  
22 sir, to consider swearing out an information of  
23 obstruction of justice charges against anyone?

24 A No, sir.

25 Q As I understand the scenario that

1 unfolded here, you were not an investigator of  
2 that offence, but rather a witness to it?

3 A That's correct, sir.

4 Q All right. Now, could I direct you,  
5 Chief Carter, to volume E-2, tab E-2.25.d as in  
6 Donald -- I'm sorry, it's E-2.25.c as in Charlie  
7 at page 609.

8 And Mr. Commissioner, while the  
9 witness is finding that location, perhaps I could  
10 ask Madam clerk at this point to mark as an  
11 exhibit the review report, which I intended to  
12 have marked and forgot when I was dealing with it.  
13 So we could mark the review report, volume N, tab  
14 N-78, as the next exhibit?

15 THE CLERK: Exhibit 139.

16 (EXHIBIT 139: N.78, RCMP Management  
17 Review Document 2007 11 27 to 2007 11  
18 30)

19 BY MR. McDONALD:

20 Q You have before you the document at  
21 page 609?

22 A Yes, I do.

23 Q And tell us, Chief Carter, what that  
24 document is and how it came into your possession?

25 A That's Winnipeg Police Service

1 identification for Mr. Harvey-Zenk, Derek  
2 Harvey-Zenk, number 2180.

3 Q And it has his name on there as Derek?

4 A It has his name on there as Derek G.

5 Q And his photo?

6 A And his photo, sir.

7 Q And how did you get that?

8 A That was obtained from him when he was  
9 arrested and brought into the -- into the police  
10 station, sir.

11 Q And was that used by you in assisting  
12 in getting the identification information that you  
13 required to process him?

14 A That is correct, sir.

15 Q And can you tell me whether Constable  
16 Woychuk was present when you took that card from  
17 Mr. Zenk?

18 A I believe Constable Woychuk was  
19 present the whole time, sir.

20 Q Thank you. Now, there has been a  
21 considerable amount of evidence elicited from you,  
22 Chief Carter, about the issue of the warrant. And  
23 again, I apologize, because I'm not a criminal  
24 lawyer and it's not something that I deal with  
25 daily in my practice, but I've tried to learn a

1 little bit about it, and I think others should  
2 know at least as much as I do, if not more. In  
3 order to get a warrant, it's my understanding that  
4 if you want to obtain a warrant, you must appear  
5 before a Justice of the Peace; is that correct?

6 A That's correct, sir.

7 Q And you must swear an affidavit under  
8 oath. Is that right?

9 A That is correct, sir, yes.

10 Q And what must that affidavit contain?

11 A That affidavit must contain my belief  
12 that such an article that you are looking for is  
13 on the premises that you are to -- that you are  
14 seeking to search at the time, that you are  
15 seeking to search it.

16 Q And if you can't be that precise, in  
17 your affidavit, is it your expectation that a JP  
18 or a judge, if you are appearing before a judge,  
19 ought to reject the request for a warrant?

20 A That is correct, sir.

21 Q And sir, in this case, at any time did  
22 you have what you consider to be the factual  
23 foundation or underpinning required to permit you  
24 to swear an affidavit in support of a warrant?

25 A I don't believe so, sir.

1           Q     In your learning and in your  
2     experience, is it appropriate for police officers  
3     to use the warrant process for fishing  
4     expeditions?

5           A     It is not appropriate, sir.

6           Q     And you had no information, I take it,  
7     that there was any credit card information of any  
8     kind at Branigan's Restaurant relating to  
9     Mr. Zenk; is that fair?

10          A     That is correct, sir, yes.

11          Q     In fact, Chief Carter, I asked you as  
12     this inquiry was drawing nearer, what resources  
13     you had at your disposal in the East St. Paul  
14     Police Service to give you guidance and  
15     instruction on the issue of when you can and  
16     cannot obtain warrants. Do you recall that?

17          A     Yes, I do, sir.

18          Q     And I'm holding in my hand now a blue  
19     book that you gave me?

20          A     That is correct, sir.

21          Q     And is that a book that you had in  
22     your possession at the time?

23          A     Yes, sir.

24          Q     And is that the printed information  
25     that you followed in assisting you in your

1 determination of when and when you cannot obtain  
2 warrants?

3 A Yes, sir.

4 Q And for the record, I'll just indicate  
5 that it's the eighth edition of a book called the  
6 Police Manual of Arrest Seizure and Interrogation  
7 authored by Mr. Commissioner.

8 THE COMMISSIONER: It's going into its  
9 ninth year.

10 MR. McDONALD: It's going into its  
11 ninth. Thank you. Mr. Commissioner, I'm hearing  
12 things from behind me suggesting it's time for the  
13 morning break. I do have some more questions of  
14 this witness.

15 THE COMMISSIONER: Yes, certainly,  
16 we'll break now.

17 MR. McDONALD: Thank you.

18 THE COMMISSIONER: Fifteen minutes.

19 THE CLERK: All rise. This Commission  
20 of Inquiry is now in recess.

21 (Proceedings recessed at 10:52 a.m.  
22 and reconvened at 11:11 a.m.)

23 THE CLERK: All rise, please. This  
24 Commission of Inquiry is now reopen.

25 THE COMMISSIONER: Mr. McDonald, I

1 have to apologize to you. I did, in fact, ask the  
2 question about whether he thought of pursuing an  
3 investigation or laying an information. But I did  
4 not make a note of it, maybe I should have, then I  
5 would have remembered.

6 MR. McDONALD: Hindsight and scrutiny  
7 is a wonderful thing.

8 THE COMMISSIONER: Thank you.

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

11 BY MR. McDONALD:

12 Q Now, Chief Carter, I want to turn to  
13 another area, and there was a fair bit of time  
14 spent on this issue on the first day you were on  
15 the stand, and I have it noted just before the  
16 lunch break. So if your memory is any good about  
17 what we were talking about then, that's the area  
18 to which I am now heading.

19 You will recall that Mr. Clifford  
20 asked you several questions about changes that you  
21 had made over the course of time to your incident  
22 narrative. Do you recall that?

23 A That is correct, sir.

24 Q And he went over those changes with  
25 you. Do you recall that?

1           A     Yes, sir.

2           Q     And he referred you to exhibits 134  
3     and 135, which were excerpts from your incident  
4     narratives with the progressive changes  
5     highlighted. Do you recall that? You don't need  
6     to look for them, Chief, I'm just putting things  
7     in a timing perspective.

8           A     Yes, I do recall.

9           Q     You recall that. He then suggested to  
10    you that, given the changes that had been made,  
11    that people might conclude that the changes were  
12    made to minimize the charter issues that you  
13    discussed, or to perfect the charter issue. Do  
14    you recall that?

15          A     I do recall that, sir.

16          Q     And you agreed that you could see that  
17    some people might think that. Do you recall that?

18          A     I do, sir, yes.

19          Q     Mr. Clifford then suggested that all  
20    of the factors were consistent with that position,  
21    and you agreed. Do you recall that?

22          A     Yes, sir.

23          Q     Chief Carter, was it your intent in  
24    making those changes to your incident narratives  
25    to minimize the charter issues or to conceal them

1 in any way?

2 A Absolutely not, sir.

3 Q Was it your intention in making those  
4 changes to assist in any way Mr. Harvey-Zenk in  
5 avoiding a successful prosecution?

6 A Absolutely not, sir.

7 Q Now, those questions, Chief, were  
8 specific to the changes in your incident  
9 narrative. You understand that?

10 A I understand, sir.

11 Q These next questions are general for  
12 you, sir, and I want you to take them in that  
13 context, not in isolation as the previous  
14 questions; all right?

15 A Yes, sir.

16 Q After this accident, did you do  
17 anything, or omit to do anything intending that  
18 your acts or omissions would assist Mr. Zenk in  
19 avoiding successful prosecution?

20 A Absolutely not, sir.

21 Q After the accident, did you do  
22 anything or omit to do anything with the intent of  
23 concealing your view that a charter violation may  
24 have occurred at the scene?

25 A Absolutely not, sir.

1           Q     After the accident, did you do  
2 anything or omit to do anything with the intent of  
3 improving the prosecution's ability to deal with  
4 the charter issue that you knew to exist?

5           A     No, sir.

6           Q     Now, there has been a considerable  
7 amount of questioning, Chief Carter, about the  
8 mistakes in your notes according to your evidence  
9 about the blood demand versus the breath demand.  
10 Do you recall that?

11          A     I recall that, sir.

12          Q     And just by way of recap, I think  
13 you'll acknowledge that you committed that error  
14 on three separate occasions. Is that right?

15          A     That is correct, sir.

16          Q     On your rough notes, you wrote blood  
17 demand when you meant breath demand?

18          A     That is correct, yes.

19          Q     And that was I believe at about 8:19  
20 in the morning, you made the first demand?

21          A     That's correct, sir.

22          Q     And is there any doubt whatsoever in  
23 your mind that the demand made at that time was a  
24 demand for a breath sample?

25          A     No doubt whatsoever, sir.

1           Q     And Constable Woychuk was present with  
2 you when you made that demand?

3           A     That is correct, sir.

4           Q     Ms. Dixon made the suggestion to you  
5 that anyone relying on the documentary record as  
6 evidence of what happened could conclude that an  
7 inappropriate blood demand was made. Is that  
8 right?

9           A     That is correct, yes.

10          Q     Do you recall that?

11          A     Yes, I do.

12          Q     And as I indicated, you made the  
13 mistake firstly in your rough notes, then in your  
14 incident narrative, and then in your duty-book  
15 notes?

16          A     That's correct, sir.

17          Q     I'd like you to have a look, please,  
18 at volume E-2 page 606, which are the notes of  
19 Constable Woychuk at tab E-2.25.a. Chief Carter,  
20 do you have volume E-2 before you there? There's  
21 one big one there.

22          A     No. I'm sorry, I have it with me  
23 here.

24          Q     Okay. And Constable Woychuk's notes,  
25 Mr. Commissioner, for the record have been filed

1 as Exhibit 88 in these proceedings. Go to page  
2 606 of the disclosure, please, Chief Carter. Can  
3 you read Constable Woychuk's notes?

4 A Yes, I can.

5 Q Firstly, will you confirm for me that  
6 Constable Woychuk's notes formed part of the  
7 disclosure package which you sent to Mr. Kaplan on  
8 March 1st?

9 A That is correct.

10 Q The first entry on page 606 is at  
11 8:18 a.m. on the morning of February 25th, 2005.  
12 Do you agree?

13 A Yes, sir.

14 Q What is the note there?

15 A The note says:

16 "Observe Sergeant Carter, arrest,  
17 caution..."

18 I'm not sure what that is, and then

19 "...breath demand Harveymordenzenk."

20 Q And there it says breath demand?

21 A Yes, sir.

22 Q And that is consistent with what you  
23 say is the demand you made?

24 A That is correct, sir, yes.

25 Q And the next entry at 9:05?

1           A     "Sergeant Carter requests  
2                   Harveymordenzenk be brought to breath  
3                   room."

4           Q     So you asked him to be taken to the  
5   breath room?

6           A     That is correct, sir.

7           Q     That is because a breath demand had  
8   been made?

9           A     That is correct, sir.

10          Q     If you had requested, inappropriately  
11   or otherwise, a blood demand, would you ask him to  
12   be taken to the breath room?

13          A     No. He would be asked to be escorted  
14   to the hospital.

15          Q     Exactly. Tell this Commission where  
16   blood samples are taken and how they are taken?

17          A     Blood samples are taken only under the  
18   direction, either by a physician or only under the  
19   direction of a physician by a qualified medical  
20   practitioner or qualified technician, and only in  
21   the cases where a subject is not able to provide a  
22   breath sample, sir.

23          Q     Did you ever ask for a blood demand?

24          A     I never asked for a blood demand.

25          Q     Did you ever consider intentionally,

1 in your mind, a blood demand?

2 A No, sir.

3 Q You know and you knew then that the  
4 conditions for that were inappropriate?

5 A That is correct, sir.

6 Q I would like you to turn to volume P-2  
7 still on this same issue, please, at tab P-2.85.9.

8 THE COMMISSIONER: Page?

9 MR. McDONALD: It's Exhibit 119,  
10 Mr. Commissioner, and I am going to page 2669.3  
11 and 2669.4.

12 THE COMMISSIONER: Thank you.

13 BY MR. McDONALD:

14 Q Do you have that before you, Chief  
15 Carter, page 2669.3 and page 2669.4?

16 A I have that with me, sir.

17 Q You have that now. All right. And as  
18 I understand it, the document there, as reviewed  
19 with you by Mr. Clifford is the actual cover  
20 sheet, front cover sheet of the East St. Paul  
21 Police file. Is that right?

22 A That is correct, sir.

23 Q And in real life, that's a yellow file  
24 cover?

25 A Yellow jacket, sir.

1           Q     Yellow jacket, and it has printing on  
2 both sides, the yellow jacket does?

3           A     The yellow jacket has printing on the  
4 face of it, sir.

5           Q     And on the inside?

6           A     There is things written on the inside.

7           Q     Yes?

8           A     Yes.

9           Q     All right.  Sorry, I stand corrected,  
10 you are quite right.  And you went through this  
11 with Mr. Clifford, and you explained on the inside  
12 of the file folder whose writing was there and who  
13 wrote what.  Do you recall that?

14          A     That is correct, sir.

15          Q     And if I have it correct, all of the  
16 handwriting that appears below Katherine Bueti's  
17 business card and above Tracy Kennett's RCMP card,  
18 all of that writing is then Chief Bakema's, with  
19 the exception of one note.  Is that right?

20          A     Yes, with the exception of -- sorry  
21 two notes there, sir.

22          Q     And you gave evidence-in-chief to  
23 Mr. Clifford that you did have some discussions  
24 about a game plan for the investigation with Chief  
25 Bakema, and he started listing or outlining

1 witnesses that he felt that needed to be  
2 interviewed. Do you recall that?

3 A That's correct, sir.

4 Q And I take it what we see here is a  
5 sort of things to do list prepared by Chief  
6 Bakema?

7 A That is correct, sir.

8 Q And he talks about notes, so notes of  
9 Graham, Bakema, Woychuk, Carter, Pedersen and  
10 Krawchuk. And then there's check marks indicating  
11 presumably they had been secured. Is that what  
12 that means?

13 A That's correct, sir, yes.

14 Q And then there is the RCMP officer's  
15 report. Now, there's no check mark there?

16 A No, sir.

17 Q And then there's witness statements,  
18 and I take it the list of witness statements where  
19 there's a check mark beside the name, that means  
20 they had been done?

21 A I would expect so, sir.

22 Q All right. Look at the third last  
23 entry from the bottom under the heading "Witness  
24 Statements." It says "Carter." Can you read that  
25 for me, please?

1           A     It appears to say:

2                     "Carter to change suppe blood to  
3                     breath."

4           Q     All right.  And what can you tell us  
5     about that?  What, if any, discussion did you have  
6     with Chief Bakema about blood versus breath?

7           A     That would be at the point where I  
8     explained to Mr. Bakema that I had made a mistake  
9     in the word blood versus breath.

10          Q     And that when you wrote blood, you  
11     meant breath?

12          A     That's correct.

13          Q     So Chief Bakema was aware of that?

14          A     He was, sir.

15          Q     And can you tell us, the note isn't  
16     dated, but can you tell us when that was in  
17     relation to the accident?

18          A     I don't have a specific time or date,  
19     sir.  That would have been between the time --  
20     that would have been between the time of the  
21     accident and the 1st of March.

22          Q     So within a few days after the  
23     accident --

24          A     Yes.

25          Q     -- you have that discussion with Chief

1 Bakema?

2 A Yes, sir.

3 Q And it appears he noted that  
4 discussion on the inside of the file folder?

5 A Yes, sir.

6 Q Then there is a note to the right of  
7 that, which I understand to be in your  
8 handwriting?

9 A That is correct, sir.

10 Q And it reads, if I'm reading it  
11 correctly, "I advised Prosecutor Minuk."

12 A That's correct, sir.

13 Q And that is your handwriting?

14 A That is my handwriting.

15 Q And can you -- again, there's no date.  
16 Can you tell us when you made that note?

17 A That would have been, that note would  
18 have been made after my first meeting with  
19 Mr. Minuk.

20 Q And that is because it's your belief  
21 that that may have been discussed during that  
22 meeting?

23 A That is correct, sir.

24 THE COMMISSIONER: Is that your  
25 handwriting, "Carter to change," and what is that

1 word S-U-P-P-E, it looks like S-U-P-P-E?

2 THE WITNESS: Yes.

3 THE COMMISSIONER: What is it?

4 THE WITNESS: I believe that refers to  
5 supplemental.

6 THE COMMISSIONER: Is that your  
7 handwriting?

8 THE WITNESS: No, sir.

9 THE COMMISSIONER: Do you know whose  
10 handwriting that is?

11 THE WITNESS: I believe that to be  
12 former Chief Bakema's handwriting, sir.

13 BY MR. McDONALD:

14 Q Just so I'm clear, as I understand  
15 your evidence, Chief Carter, all of that writing  
16 except for that one note is in the hand of Chief  
17 Bakema?

18 A That's correct, sir, yes.

19 Q Thank you. Well, there's a phone  
20 number down on the right-hand side. Can you tell  
21 us whose handwriting that is?

22 A That appears to be mine, sir, and I  
23 don't know what that's for.

24 Q Okay. Now, you were then asked, Chief  
25 Carter, whether you in fact prepared a

1 supplemental report to correct the error in blood  
2 versus breath. Do you recall that?

3 A That's correct, sir.

4 Q And you indicated that you did not  
5 prepare a supplementary report?

6 A No, I did not.

7 Q You would agree with me now, sir, with  
8 the benefit of hindsight, that's something you  
9 could and should have done?

10 A Yes, it is, sir.

11 Q Were you ever under the belief or  
12 apprehension, prior to the determination -- the  
13 determination of the charges against Harvey-Zenk,  
14 that blood versus breath was an issue?

15 A No, sir.

16 Q Now, you did create other documents  
17 dealing with this case, other than your duty-book  
18 notes, your rough notes, and your incident  
19 narrative where blood was used instead of breath?

20 A That is correct, sir.

21 Q And the documents that you created  
22 form part of the disclosure package to the Crown?

23 A Yes.

24 Q Could you please put Exhibit 4 before  
25 the witness? It is tab G-39.a, page 1344. Do you

1 have that document before you, Chief?

2 A Yes.

3 Q All right. I'll come to it in a  
4 moment. I just want to set the stage for this,  
5 though, before we get there. I'll take you back  
6 to the morning of February 25th.

7 According to Woychuk's notes and your  
8 own testimony, at about 8:18 or 19, you made the  
9 initial breath demand?

10 A That's correct, yes.

11 Q And as I understand your evidence,  
12 Harvey-Zenk initially agreed to provide a sample?

13 A That is correct, sir.

14 Q And at that point, he asked if he  
15 could speak with a lawyer?

16 A That is correct, sir.

17 Q And you facilitated that?

18 A I facilitated that, sir.

19 Q And when that discussion was over,  
20 after he had completed consulting with his lawyer,  
21 you then asked him again, and this is shortly  
22 after 9:00 o'clock now, to make -- to provide his  
23 breath sample; correct?

24 A That is correct, sir.

25 Q And at which time he declined?

1           A     He declined.

2           Q     At which time you warned him that if  
3 he didn't provide the sample, he could be charged  
4 with refusing to provide a sample?

5           A     That is correct, sir.

6           Q     And then we have your notes, you asked  
7 him, do you understand, to which he responded,  
8 yes, I understand and, no, I'm not going to give a  
9 sample. And that's all recorded, we know that?

10          A     That's correct, sir.

11          Q     But the point is, he initially agreed  
12 to provide the sample at about 8:18 or 8:19 a.m.,  
13 a breath sample?

14          A     Yes.

15          Q     Woychuk has it noted at 8:19, I'm  
16 sorry, I don't have your notes in front of me, but  
17 my recollection tells me it's at I think 8:18?

18          A     I believe so, sir, yes.

19          Q     All right. So we have the blood  
20 demand, to which he agrees to provide a sample  
21 made at that time; right?

22          A     Yes. Yes, sir.

23          Q     Somebody said I said blood. Again, I  
24 misspoke, I apologize, it was a breath sample?

25          A     It was a breath sample, I am sorry

1 too.

2 Q Sorry, yeah. So then to get the  
3 wheels of justice in motion, you got to swear an  
4 information? Is that right?

5 A That is correct, sir.

6 Q You've already had some verbal  
7 consultations with Mr. Minuk about the charges  
8 that you were contemplating laying as a result of  
9 the investigation that you had conducted and the  
10 facts that were before you?

11 A That is correct, sir.

12 Q And the information is at page 1344,  
13 and again that's sworn under oath by you?

14 A That is correct, sir.

15 Q And that was part of the prosecution  
16 package that you gave to Mr. Minuk?

17 A Yes, it was, yes, for Mr. Minuk.

18 Q Yes. What's count one?

19 A That count one is a "charge of fail to  
20 comply with a demand made by a peace officer to  
21 provide then or soon thereafter as practicable  
22 samples of his breath."

23 Q Any reference to a blood demand?

24 A No, sir.

25 Q Just a breath demand?

1           A     Just a breath demand.

2           Q     In that same volume, Chief, could I  
3 ask you to turn to page 1369 -- sorry, volume G,  
4 page 1369, tab G-41.

5           A     I don't have a 1369 in here.

6           Q     Oh, there seems to be a bit of the  
7 problem in the index. The index doesn't show tab  
8 G-41. This, Mr. Commissioner, is the prosecutor's  
9 information sheet and it does appear here, but it  
10 appears somewhere else as well?

11                   THE COMMISSIONER: Madam clerk, do you  
12 have a copy?

13                   THE CLERK: Yes, I do.

14                   THE COMMISSIONER: Show it to Chief  
15 Carter. I don't know if it's been made an  
16 exhibit.

17                   MR. McDONALD: No, but I will have it  
18 marked.

19                   THE COMMISSIONER: Yes.

20 BY MR. McDONALD:

21           Q     Do you have the prosecutor's  
22 information sheet before you, Chief Carter?

23           A     Yes, I do, sir.

24                   MR. McDONALD: We'll mark that as the  
25 next exhibit.

1 THE CLERK: Exhibit 140.

2 (EXHIBIT 140: G.41, Prosecutors  
3 Information Sheet)

4 BY MR. McDONALD:

5 Q Who prepares that document, Chief  
6 Carter?

7 A I prepared that document.

8 Q When did you prepare it?

9 A That would have been prepared  
10 March 1st, 2005.

11 Q And for what purpose?

12 A For the purpose of disclosure, sir.

13 Q Disclosure to the Crown?

14 A That's correct, sir.

15 Q Did it form part of the initial Crown  
16 package that you sent to Mr. Kaplan on March 1st?

17 A Yes, it did, sir.

18 Q And the narrative portion of the  
19 prosecutor's information sheet is in your writing?

20 A That is --

21 Q In your typing, sorry?

22 A My typing, yes, sir.

23 Q But it's your work product?

24 A That's correct, sir.

25 Q Read the sentence beginning slightly

1 to the right of the middle of page, from the third  
2 line from the bottom, please, starting with "the  
3 accused"?

4 A "The accused refused to provide  
5 police with a breath sample upon  
6 demand."

7 Q Any reference in that report at all,  
8 Chief Carter, to a blood demand having been made,  
9 or contemplated?

10 A No, sir.

11 Q And this was the prosecutor's  
12 information sheet which you would have expected  
13 Mr. Kaplan to deal with appropriately?

14 A That's correct, sir.

15 MR. McDONALD: Mr. Commissioner, my  
16 apologies, I also overlooked filing one other  
17 document as an exhibit that I intended to, and I  
18 should clear that up right now before moving on.  
19 And that was the police photo identification card  
20 that Chief Carter secured from Mr. Zenk at the  
21 time of his arrest. I have lost the evidentiary  
22 reference, but I think Chief Carter has it in  
23 front of him. Is there a page number on the  
24 bottom right-hand corner?

25 THE WITNESS: 609.

1 MR. McDONALD: E-2.25c, thank you,  
2 Mr. Paciocco.

3 THE CLERK: Exhibit 141.

4 THE COMMISSIONER: 141.

5 THE CLERK: Right.

6 (EXHIBIT 141: E-2.25.c, Winnipeg  
7 Police Service ID - HARVEY-ZENK)

8 BY MR. McDONALD:

9 Q And I have asked you to put before you  
10 volume E-1. Do you have that? I'm sorry if I  
11 didn't, I will now do so, volume E-1 again.

12 THE COMMISSIONER: E-1?

13 MR. McDONALD: It's E-1. I'm sorry, I  
14 keep thinking the witness has the volumes before  
15 him and he doesn't. He just has the exhibits, and  
16 I'll try and keep that in mind when I make my  
17 references. For our purposes, though,  
18 Mr. Commissioner, it's volume E-1, it is tab  
19 E-1.23.o. And that is exhibit, also Exhibit 123.  
20 Do you have that, Chief Carter?

21 THE WITNESS: I have that in front of  
22 me, sir.

23 BY MR. McDONALD:

24 Q And as I understand it, this is the  
25 fax that you sent to Mr. Minuk, at his request,

1 following your meeting with him upon his return  
2 from Norway House on April 21st, 2006?

3 A That is correct, sir.

4 Q You will recall that when you met with  
5 him and made the disclosure about Woychuk,  
6 Mr. Minuk viewed that as a serious matter and he  
7 wanted a full report from you?

8 A That is correct, sir.

9 Q And this is the report that you  
10 prepared in response to his request?

11 A Yes, sir.

12 Q And the letter itself is dated  
13 April 25th, 2006, and it's addressed to Mr. Minuk  
14 at Aikins and was faxed on the 26th. Is that  
15 right?

16 A That is correct, sir.

17 Q I'd like to take you to the second  
18 page of the narrative report at page 504. Read to  
19 me, and into the record, please, the content of  
20 the second last sentence of the paragraph at the  
21 top of page 504?

22 A "The accused (Harveymordenzenk) was  
23 subsequently turned over to me, where  
24 based upon the information provided to  
25 me and my observations, I placed the

1                   accused under arrest and read him his  
2                   rights under the charter, and issued  
3                   the standard police caution along with  
4                   the breath demand, and later refusal  
5                   caution. The accused was later  
6                   released to his lawyer on a PTA."

7                   Q     That was the final sentence, all  
8                   right. So you read the last two sentences.

9                   Now, this was a letter that you sent  
10                  to Mr. Minuk at his specific request?

11                  A     That is correct, sir.

12                  Q     And as far as the form of the letter  
13                  goes, I take it what you were doing on the first  
14                  narrative page, and the top of the second  
15                  narrative page, was giving him a brief synopsis of  
16                  what had happened to date?

17                  A     That is correct, sir, yes.

18                  Q     Was there any reference at all, did  
19                  you ever suggest that a blood demand had been  
20                  made?

21                  A     No, sir.

22                  Q     But you did tell him that a breath  
23                  demand had been made?

24                  A     That is correct, sir, yes.

25                  Q     One moment, Mr. Commissioner.

1 Mr. Commissioner, I'll direct you to volume R-2  
2 and ask the clerk to put before the witness tab  
3 R-2.91.74, at page 3296. Do you have that  
4 document, Chief Carter?

5 A I have that document, sir.

6 Q And it's a memorandum on Aikins'  
7 letterhead or form, to Don Slough, Brian Kaplan  
8 from Martin Minuk dated September 20th, 2007. Is  
9 that the document you have before you?

10 A That's the document I have before me,  
11 sir.

12 Q Now, September 20th, 2007, let's put  
13 that in some perspective. By that time, an  
14 agreement had been made between the Crown and the  
15 defence as to the disposition of the four charges  
16 that you had brought under the information that we  
17 just looked at. Is that correct?

18 A That's my understanding, sir.

19 Q Yes. And the sentencing, as I  
20 understand it, was scheduled for October?

21 A I believe so, sir, yes.

22 Q And do you recall, Chief, that at the  
23 time these events were unfolding, there was a fair  
24 amount of media publicity attended on this case  
25 then?

1           A     Yes, there was, sir.

2           Q     Now, just to put this document in  
3 context, I want to take you back to a few pages in  
4 the same volume at page 3287. It is tab  
5 R-2.91.73. Do you have that document, Chief?

6           A     Yes, I do, sir.

7           Q     And as I understand it, it's a memo to  
8 Mr. Minuk from Mr. Slough of Manitoba Justice, and  
9 it's dated September 19th, 2007, the day before  
10 the document that I just put before you, which is  
11 Mr. Minuk's response to this request. And it  
12 says:

13                   "Hi Marty, further to our conversation  
14 yesterday, I spoke to the deputy and  
15 he suggested that I ask for a written  
16 report on the Zenk matter. The reason  
17 for doing so is to get the most  
18 complete information so I can do a  
19 briefing note for the Premier. I need  
20 to complete the note for Friday. I  
21 have been asked if you could provide  
22 information on the following."

23 And then he lists a series of issues that he would  
24 like Mr. Minuk to address. Do you see that?

25           A     I see that, sir.



1 of the Criminal Code requirements that  
2 Zenk was incapable of blowing when it  
3 was practicable to take breath  
4 samples. The inappropriate demand was  
5 not pursued by Carter who did 44  
6 minutes later read the breath demand.  
7 That fact clearly establishes that the  
8 blood demand was inappropriate in the  
9 circumstances."

10 Q Was any of that discussed by anyone  
11 with you before an agreement was made on the  
12 disposition of the charges?

13 A No, sir.

14 Q And when it says that the breath  
15 demand was made 44 minutes later, that is not  
16 correct, is it?

17 A That's not correct, no.

18 Q The first breath demand was made 44  
19 minutes earlier; isn't that correct?

20 A That is correct, sir.

21 Q Sergeant Carter -- sorry, Chief  
22 Carter, Sergeant Carter throughout the  
23 investigation and Chief here today, my apologies,  
24 I want to just cover one last area with you.

25 You will recall that Commission

1 Counsel has pointed out that some people may think  
2 that your conduct in this case, be it by way of  
3 action or omission, should be subject to censure  
4 and/or criticism. You are aware of that?

5 A Yes, I am, sir.

6 Q Now, we have covered off your  
7 investigation of all aspects of this case in  
8 considerable detail over the last, I suppose  
9 nearly two days now. I am going to go through  
10 some of these perceived areas of potential  
11 criticism with you and I want to give you an  
12 opportunity to say anything else that you haven't  
13 already said that you deem appropriate in response  
14 to the suggested criticisms. Are you with me?

15 A Yes, sir.

16 Q We just covered the issue of the  
17 suggestion that you provided a blood demand  
18 instead of a breath demand to Mr. Harvey-Zenk  
19 after forming the opinion he was impaired, or  
20 alternatively mistakenly recorded in your notes  
21 that you made a blood demand instead of a breath  
22 demand. So we've covered that off. You  
23 acknowledge that you made the error in your notes  
24 on three occasions?

25 A That is correct, sir.

1           Q     We have established that in at least  
2 three documents written subsequently, you  
3 consistently refer to breath demand?

4           A     That's correct, sir.

5           Q     Never a blood demand?

6           A     That's correct, sir.

7           Q     So your position then remains that at  
8 no time did you make a blood demand. You  
9 wrongfully recorded it, and it was in fact a  
10 breath demand?

11          A     That is correct, sir.

12          Q     And you, at least from my perception,  
13 appear to acknowledge without any difficulty or  
14 hesitation that that was a mistake that you ought  
15 not to have made?

16          A     That is correct, sir, yes.

17          Q     Are you prepared to apologize to this  
18 Commission and to those in attendance for that  
19 mistake?

20          A     Absolutely, sir.

21          Q     And you stand by your evidence that at  
22 no time were you ever asked by anyone up the chain  
23 of command from you to explain the apparent  
24 discrepancy?

25          A     No, sir.

1 Q That's correct, is it?

2 A That is correct.

3 Q Is there anything else, Chief Carter,  
4 you would like to add on that issue?

5 A No, sir.

6 Q It's also been suggested that you may  
7 be subject to some criticism in that you failed to  
8 include in the investigation report observations  
9 reported to you by Constable Pedersen related to  
10 signs of impairment exhibited by Mr. Harvey-Zenk.  
11 Do you recall that?

12 A I recall that, sir.

13 Q And your evidence on that point, sir,  
14 is you were not told by Constable Pedersen about  
15 her observations until, I'm sorry, I can't  
16 remember the exact time reference you made, but it  
17 was -- tell us when you got that information from  
18 Constable Pedersen?

19 A I believe that was shortly after the  
20 sentencing and at the time of the announcement of  
21 the review and the inquiry.

22 Q All right. It's been suggested that  
23 you may be subject to criticism because you  
24 permitted Mr. Harvey-Zenk to receive a visitation  
25 from the Winnipeg Police Service wellness officer

1 in his cell. You are aware of that?

2 A Yes, sir.

3 Q Why did you allow the wellness officer  
4 into his cell, tell us that?

5 A At that time, Ms. Bueti was still with  
6 Mr. Zenk in his cell. I had no further questions  
7 or investigation to conduct on Mr. Zenk, other  
8 than the release procedures, and at that point in  
9 time, I permitted the visit.

10 Q And it had been reported to you  
11 previously, I understand, that in the police  
12 station, prior to the wellness officer arriving,  
13 that Mr. Harvey-Zenk was conducting himself in a  
14 rather unusual or abnormal fashion. Is that  
15 correct?

16 A Yes, sir.

17 Q We've heard about banging hands and  
18 banging head on the wall?

19 A That is correct, sir.

20 Q Did that conduct have anything to do  
21 with your decision in allowing a consultation with  
22 the wellness officer?

23 A Yes, sir, to some degree, yes.

24 Q It was a humane thing to do, wasn't  
25 it?

1           A     That's correct, sir.

2           Q     To some, it might seem like  
3 preferential treatment, but to me it seems like  
4 the humane thing to do, would you agree with that?

5           A     I do agree, sir.

6           Q     Thank you. You are aware that some  
7 feel that you should be subject to criticism and  
8 censure because you released Mr. Zenk without  
9 conditions after charging him with four offences,  
10 including criminal negligence causing death and  
11 refusing to provide a breath sample. We have gone  
12 over that in considerable detail. Is there  
13 anything else you would like to add, Chief Carter,  
14 in respect to that suggestion?

15          A     I was instructed by Mr. Minuk on how  
16 to release and on what documents to release, sir.

17          Q     And as you have indicated already,  
18 it's not uncommon for other people, or people  
19 other than police officers, who face those same  
20 charges in Manitoba, to be released on a promise  
21 to appear without conditions?

22          A     That's correct, sir, yes.

23          Q     It's been suggested that you are  
24 deserving of censure because you asked the  
25 Winnipeg Police Service Special Investigation Unit

1 to assist in the criminal investigation by  
2 interviewing the witnesses to Zenk's activities  
3 prior to the accident, even though Zenk was a  
4 member of the Winnipeg Police Service at the time.  
5 I think your response to that criticism is  
6 straightforward in the sense, it's your evidence  
7 you didn't make that request, it was made by then  
8 Chief Bakema?

9 A That is correct.

10 Q Anything else you want to add on that,  
11 Chief Carter?

12 A No, sir.

13 Q It's also been suggested that you may  
14 be subject to some criticism because you permitted  
15 the Winnipeg Police Service Special Investigations  
16 Unit to interview civilian witnesses from  
17 Branigan's who were never interviewed by the East  
18 St. Paul Police Service. What do you have to say  
19 in response to that, Chief?

20 A That was at the same time and same  
21 request by Mr. Bakema.

22 Q It was he that asked that those  
23 witnesses be interviewed, the Branigan's  
24 witnesses?

25 A That is correct, sir.

1           Q     And it's been suggested that you are  
2     deserving of censure or criticism in that you  
3     waited an unreasonable amount of time before  
4     reporting the allegations made by Constable  
5     Woychuk to Mr. Minuk?

6           A     That is correct, sir.

7           Q     And we have covered that off in some  
8     detail as well?

9           A     Yes, sir.

10          Q     I just want to be sure that I  
11     understand your evidence on that.  What did you  
12     do, or what type of review did you undertake,  
13     after the disclosure was made to you by  
14     Mr. Woychuk and prior to contacting Mr. Minuk?

15          A     I went through the report.  I compared  
16     the reports to the notes of the officers involved  
17     at the scene.

18          Q     For what purpose?

19          A     Mr. Woychuk had simply told me that  
20     the notes were not his, that his notes were made  
21     to coincide with Mr. Bakema's and Mr. Graham's,  
22     and I was looking for that -- I was looking at  
23     that, sir, yes.

24          Q     And was the exercise that you were  
25     undertaking something that you were doing because

1 you felt it might assist you in making your  
2 disclosure to Mr. Minuk?

3 A At that point in time, the only  
4 disclosure I had from Mr. Woychuk were the notes  
5 were not his.

6 Q Yes?

7 A I felt I needed to research this a  
8 little bit so I could give Mr. Minuk more  
9 information, sir.

10 Q Thank you. Do you now agree that,  
11 with the benefit of hindsight, that it would have  
12 been better from the perspective of optics, if  
13 nothing else, if you had made the disclosure  
14 sooner?

15 A Absolutely, sir, yes.

16 Q Do you regret now not having made that  
17 disclosure sooner?

18 A I absolutely regret not having made  
19 that disclosure sooner, sir.

20 Q Was there anything sinister about the  
21 amount of time in your judgment that you waited  
22 about making disclosure?

23 A No, sir, the amount of time I waited  
24 was the time that I believed Mr. Minuk would be  
25 back and I would be able to see him personally.

1 Q And you wanted to see him personally  
2 rather than send him an e-mail on something this  
3 significant?

4 A That is correct, sir.

5 Q Or a telephone call or a letter?

6 A That is correct, sir.

7 Q Because in your judgment, it was a  
8 serious disclosure from Woychuk and you wanted to  
9 meet with Mr. Minuk?

10 A That is correct, sir.

11 Q And it's also been suggested that you  
12 could be deserving of censure or criticism in that  
13 you failed to respond to repeated requests by  
14 Mr. Minuk to secure a search warrant to obtain the  
15 records from Branigan's. Now, we have covered  
16 that and even I have covered that with you, sir.  
17 Is there anything else you would like to add on  
18 that that note?

19 A No, sir, other than I should have  
20 contacted and made contact with Mr. Minuk sooner  
21 to discuss it with him.

22 MR. McDONALD: All right.

23 Mr. Commissioner, if I may just have a moment to  
24 check my notes? I omitted to mark as exhibits,  
25 Mr. Commissioner, the Aikins' memorandum to

1 Mr. Slough and the initial memorandum from  
2 Mr. Slough to Mr. Minuk. Perhaps we could mark  
3 them as exhibits, the first one being Mr. Slough's  
4 memo to Mr. Minuk, R-2.91.73.

5 THE CLERK: Exhibit 142.

6 (EXHIBIT 142: R-2.91.73, Hard copy of  
7 email from Don Slough to Martin Minuk  
8 sent 9 12 07 921 am)

9 MR. McDONALD: And Mr. Minuk's  
10 response to Mr. Slough dated September 20th, 2007  
11 R-2.91.74.

12 THE CLERK: Exhibit 143.

13 (EXHIBIT 143: R-2.91.74, Hard copy of  
14 email from Martin Minuk to Don Slough  
15 sent 9 20 07 1112 am with attached  
16 memo dated September 20, 2007)

17 MR. McDONALD: Thank you,  
18 Mr. Commissioner. Thank you, Chief Carter, those  
19 are all the questions I have. Mr. Clifford may  
20 have a few more questions of you, and when he's  
21 done, you are finished. Thank you.

22 THE WITNESS: Thank you, sir.

23 MR. CLIFFORD: Mr. Commissioner, there  
24 was one area that I wanted to address, and that  
25 was the witness referred to a brown file folder.

1 And in his testimony, he had indicated that the  
2 brown file folder was date-stamped and the folder  
3 had been received from Mr. Bakema and that folder  
4 held the Winnipeg Police Professional Standards  
5 Unit material. And I have asked that the brown  
6 file folder cover and first page be copied. I  
7 think it has been referred to by the witness in  
8 testimony and it should be entered as an exhibit.  
9 So I have asked that that be photocopied. And I'm  
10 going to get it in once I receive a copy. It was  
11 specifically referred to in testimony as being  
12 date-stamped 30, August, 2005. So I will do that  
13 prior to the witness leaving the witness box.  
14 Mr. Giasson has copies.

15 BY MR. CLIFFORD:

16 Q In the meantime, sir, one of the areas  
17 that you were asked about was the source of  
18 information regarding behavioural issues, and you  
19 were referred to the issue of the fact that there  
20 was an observation of Derek Harvey Zenk at one  
21 point in the morning banging his head and hands  
22 against the wall in the cell block. And the  
23 question posed to you by my colleague, Mr. Jack,  
24 was whether that behaviour might have been  
25 consistent with the behaviour raised by Sergeant

1 Beattie when you were speaking with him? And I'm  
2 going to ask you, sir, to refer to your duty-book  
3 notes, Exhibit 115. This is volume E-1.23.b.  
4 E-1.23.b, Exhibit 115, and I'm referring to page  
5 422. Are you with me, Chief Carter?

6 A Yes, sir.

7 Q You see at 10:54, you've got an entry  
8 here:

9 "Writer called Chris Beattie at work.  
10 Said wife released. Said there may be  
11 behaviour issues with accused."

12 Now that time entry is at 10:54?

13 A That's correct, sir, yes.

14 Q Now move forward, sir, to page 424 and  
15 look at the time entry at 11:50?

16 A Yes, sir.

17 Q And 11:50, you have a notation here  
18 that Special Constable Olfert said to writer,  
19 words to the effect, and I am having a problem  
20 reading your notes here, long and short of it was  
21 that she observed Derek Harvey-Zenk banging his  
22 hands and his head against the cell block wall?

23 A That is correct, sir.

24 Q So just based on the simple chronology  
25 of your notes, I take it the observation of the

1 banging of the hands and the head on the wall  
2 didn't occur until some time after the telephone  
3 conversation with Sergeant Beattie?

4 A That is correct, sir.

5 Q And therefore, you would agree with  
6 me, sir, that it could not have formed part of the  
7 behavioural discussions you and Sergeant Beattie  
8 were having?

9 A No, sir, that -- no, sir.

10 Q It hadn't happened yet?

11 A The behavioural issues, sir.

12 Q Only happened at 11:50?

13 A That happened at 11:50, sir. The  
14 behavioural issues I am referring to in  
15 Mr. Beattie's thing is what Mr. Beattie had said  
16 to me.

17 Q Okay. During one of the  
18 cross-examinations, it was suggested to you, sir,  
19 that a young person in custody might be given an  
20 opportunity to contact their mother or a parent.  
21 This is in fact the law, is it not, as you  
22 understood it, in 2005, young persons are afforded  
23 that opportunity?

24 A Yes, sir.

25 Q It's not something that an adult

1 individual charged with a criminal offence is  
2 afforded?

3 A No, that's not a right of theirs, sir.

4 Q Now, there has been much said in the  
5 cross-examinations with respect to exact words and  
6 in connection with the word "pissed." I am not  
7 concerned about exact words, but the single word  
8 itself, "pissed," what was the origin of that  
9 word? Who said it to you first that day?

10 A That was first, the word "pissed,"  
11 sir, was first said to me by Mr. Woychuk on  
12 February -- my February discussion with  
13 Mr. Woychuk when he made the disclosure to me,  
14 sir.

15 Q And you put that in quotations?

16 A Yes, sir.

17 Q When you gave your report to  
18 Mr. Minuk?

19 A Yes, sir.

20 Q Why did you put it in quotations?

21 A Because those were the exact words,  
22 sir, or exact word.

23 Q And that was the only word that you  
24 put in quotation?

25 A On the report to Mr. Minuk?

1 Q That's right?

2 A I'm not certain -- I'm going to assume  
3 so, if you say so, sir.

4 Q And in fact, in your subsequent notes  
5 where you record what Jason Woychuk said to you,  
6 you used the word yourself, "pissed," on March 5th  
7 and April 10th?

8 A I believe so, sir, yes.

9 Q And can you express a degree of  
10 confidence, sir, with whether that was the exact  
11 word that Jason Woychuk used?

12 A Yes, sir.

13 Q It was put to you in  
14 cross-examination, sir, that in your experience  
15 dealing with impaired driving charges, that an  
16 individual will typically be released without a no  
17 alcohol condition?

18 A Yes, sir.

19 Q And it was also put to you in  
20 cross-examination, sir, that persons released on  
21 the same charges as Mr. Harvey-Zenk are often  
22 released on a no alcohol condition. Sir, I want  
23 to draw a distinction between someone being  
24 charged with an impaired and over 80, a 253 A and  
25 B charge, and charges of impaired driving causing

1 death, dangerous driving causing death and  
2 criminal negligence causing death. Is it your  
3 testimony, sir, that persons charged with those  
4 serious offences are routinely released by the  
5 East St. Paul Police on a no alcohol condition?

6 A No, sir. Typically, regular impaired  
7 drivers are, sir, as long as they've got no  
8 record.

9 Q This was not a regular impaired  
10 driving case?

11 A No, sir, it was not.

12 Q And with the fact of the impaired  
13 causing death, dangerous driving causing death,  
14 and criminal negligence causing death, was this  
15 the type of case where the East St. Paul Police  
16 would normally release on a no alcohol condition?

17 A Not normally, no, sir.

18 Q Is there any explanation for that,  
19 sir?

20 A Just that Mr. Minuk had directed that  
21 that's how the release is to be, sir.

22 Q What would the standard practice  
23 within East St. Paul be? What was the standard  
24 practice of the East St. Paul Police when you were  
25 dealing with crim neg causing death, dangerous

1 driving death, impaired death?

2 A I would probably suggest that standard  
3 would be to release, sir, with a no alcohol  
4 condition.

5 Q You were asked the question, sir,  
6 about when you raise the issue of the blood versus  
7 the breath demand with Mr. Minuk, and there was a  
8 suggestion, sir, that when you looked at the file  
9 folder that is now entered as an exhibit, you had  
10 indicated in one of the responses to Ms. Dixon, I  
11 understood, that you would have made this  
12 correction -- actually I stand corrected, I think  
13 you mentioned it to your own counsel -- you would  
14 have made this correction within a number of days  
15 to Mr. Minuk?

16 MR. McDONALD: No, that was to Chief  
17 Bakema.

18 BY MR. CLIFFORD:

19 Q To Chief Bakema?

20 A Yes, sir.

21 Q Could the witness be provided with  
22 Exhibit 119, and for my colleagues, that's P-2.

23 THE COMMISSIONER: Page?

24 MR. CLIFFORD: 2669.3.

25

1 BY MR. CLIFFORD:

2 Q Sir, do you have that exhibit before  
3 you now?

4 A Yes, I do, sir.

5 Q And what's found within this exhibit,  
6 sir, is a copy of the East St. Paul Police report.  
7 And I'm going to ask you to go to the second page,  
8 page 2669.4, and I'm attempting to clarify your  
9 evidence, sir, that the correction to Mr. Minuk  
10 occurred -- to Mr. Minuk, Mr. Bakema, or anybody  
11 occurred within days of the accident?

12 A That is correct, sir.

13 Q Now, if you look at the witness -- you  
14 had already testified, sir, that this handwriting  
15 is the handwriting of Officer Bakema's?

16 A Yes, sir.

17 Q And I covered this with you in  
18 examination-in-chief, sir, so we'll redo it and  
19 see if we can clear up this area of confusion.  
20 But you'll see Denise Bukowski is on the witness  
21 list?

22 A That is correct, sir.

23 Q Now, the Commission has heard evidence  
24 from Denise Bukowski herself. She didn't come  
25 forward until a week after the accident. March

1 7th was her testimony, sir, she came forward March  
2 7th, I believe. So it would be hard-pressed to  
3 have her name on the witness list until subsequent  
4 to March 7th. Can we agree on that?

5 A Yes, sir.

6 Q So does that assist you, sir, in  
7 coming to the conclusion that you certainly  
8 wouldn't have advised Mr. Minuk and made a note of  
9 it on this file until subsequent to March 7th?

10 A No, sir, I advised Mr. Minuk on my  
11 first meeting with Mr. Minuk. That's when -- I'm  
12 sorry, my evidence is that's when I would have  
13 advised him, sir, and I would have written this  
14 note after I advised him, sir.

15 Q Okay. So, this note "I advised  
16 Prosecutor Minuk," reflects you doing so some  
17 point subsequent to February 24th, 2006?

18 A That's right, sir, yes.

19 Q And as to the day that you told him,  
20 Ms. Dixon asked you those questions, and I  
21 understand your evidence is you're not sure  
22 whether you told him that day?

23 A That is correct, sir, yes.

24 Q But to clarify your testimony, what we  
25 do know is that it was that day or subsequent?

1 A Yes, sir.

2 Q Your testimony is you hadn't told him  
3 before February 24th, 2006?

4 A No, sir.

5 Q And you certainly would not have told  
6 Chief Bakema any time earlier than March 7th?

7 A Probably not, sir.

8 Q Because there's no way this note could  
9 "I advised Prosecutor Minuk" --

10 A No.

11 Q That note could not be there, we know  
12 that, prior to March 7th --

13 A No.

14 Q -- 2005?

15 A No, sir, that wasn't, no.

16 Q Because Denise Bukowski's name is on  
17 that list?

18 A That's right.

19 MR. CLIFFORD: Those are the questions  
20 I have of you, sir. I'd like to thank you for  
21 attending the Commission and providing evidence.

22 THE WITNESS: Thank you, sir.

23 THE COMMISSIONER: Thank you.

24 THE WITNESS: Thank you,  
25 Mr. Commissioner.

1 THE COMMISSIONER: Do you want to  
2 start now or at --

3 MR. PACIOCCO: It's going to take me  
4 three or four minutes to get my books set up and  
5 it will just be wasted time, so I suggest we start  
6 at 1:45.

7 THE COMMISSIONER: Sorry?

8 MR. PACIOCCO: We start at 1:45 so we  
9 recoup the time.

10 THE COMMISSIONER: 1:45. Thank you.

11 THE CLERK: All rise. This Commission  
12 of Inquiry is adjourned until 1:45.

13 (Proceedings recessed at 12:17 and  
14 reconvened at 1:45 p.m.)

15 THE CLERK: All rise, please. This  
16 Commission of Inquiry is now reopened. Please be  
17 seated.

18 MR. PACIOCCO: Before I call the next  
19 witness, there are two small matters of business  
20 that need to be attended to. The first is the  
21 filing of the document that was being referred to  
22 by Chief Carter, which showed the stamped date on  
23 the folio that had been provided by the Winnipeg  
24 Police, along with the report showing the 30th of  
25 August, 2005 date, along with his initials. We

1 are going to file the two pages which consist of  
2 the cover, including the date stamp. Madam clerk,  
3 that will be the next exhibit, please?

4 THE CLERK: Exhibit 144.

5 THE COMMISSIONER: May I see that,  
6 please.

7 (EXHIBIT 144: First page of N.  
8 Carter's file with date of August 30,  
9 2005, Re: WPS Professional Standards  
10 unit)

11 THE COMMISSIONER: Yes.

12 MR. PACIOCCO: The other matter is  
13 Mr. McDonald's request. And I can indicate to you  
14 that Chief Carter has now testified, he is still  
15 subject technically to a witness exclusion order,  
16 but Mr. McDonald believes that he would like to  
17 have Chief Carter listen to the testimony of  
18 Mr. Bakema to assist Mr. McDonald in his  
19 examination of Mr. Bakema.

20 THE COMMISSIONER: Yes, that's all.

21 MR. PACIOCCO: We have no objection to  
22 that.

23 THE COMMISSIONER: Anybody else have  
24 any objection? No.

25 MR. PACIOCCO: We would then call

1 Harry Bakema to the witness box.

2 AREND HARRY BAKEMA, having first been  
3 duly sworn, testified as follows:

4 BY MR. PACIOCCO:

5 Q Good afternoon, Mr. Bakema.

6 A Good afternoon.

7 Q My name is David Paciocco, and as I'm  
8 sure you are aware, I'm Commission Counsel. You  
9 have had a long career as a police officer prior  
10 to your recent change in occupation, sir?

11 A That's correct.

12 Q Sir, you began I understand in 1971  
13 with the East Kildonan City Police?

14 A That's correct.

15 Q And that was a small city police  
16 department that ultimately was amalgamated and  
17 included in the Winnipeg Police Service?

18 A Yes.

19 Q So you worked almost 32 years as a  
20 police officer between those two postings, sir?

21 A Yes.

22 Q And you had a varied career as a  
23 police officer?

24 A Yes, I did.

25 Q You did everything from sexual assault

1 to qualifying as a breathalyzer technician, sir?

2 A Yes.

3 Q Sir, you also worked in  
4 investigations, I take it?

5 A Child abuse.

6 Q And in that context, you would  
7 investigate files and interview witnesses and --

8 A That's correct.

9 Q -- organize basically the case that  
10 would ultimately go to the Crown?

11 A Yes.

12 Q Sir, you retired on March 22, 2003 at  
13 the rank of Sergeant from the Winnipeg Police  
14 Service?

15 A That's correct.

16 Q And you had been working at the time  
17 of your retirement in platoon B3 at division 13 in  
18 the North End.

19 A Yes, that is.

20 Q And you were a Sergeant, sir?

21 A Yes, I was.

22 Q And what was your function as  
23 Sergeant?

24 A It was managing the shift, every shift  
25 had approximately 20 people on it, I had two

1 street supervisors that were Patrol Sergeants, and  
2 then I ran the office. And my job function there  
3 was basically the managing of the shifts, the  
4 scheduling, and also releasing of accused.

5 Q So, essentially, you were the highest  
6 in command in connection with the B3 platoon?

7 A That's correct.

8 Q Sir, after your retirement, I  
9 understand that you became Chief of Police with  
10 East St. Paul?

11 A Not right after, but a year or so  
12 after, yes.

13 Q April 15, 2004, sir?

14 A That's correct, sir.

15 Q And that was by resolution of council  
16 dated the 16th of June, 2004.

17 A Yes.

18 Q And they selected you, sir, after a  
19 posted job competition?

20 A That's correct, sir.

21 Q And you were in fact recommended by a  
22 head-hunting agency; is that accurate, sir?

23 A A head-hunting agency?

24 Q It is not as ominous as it sounds,  
25 sir. It is an agency that helps people find

1 employees who will fit their needs?

2 A Yes, I was.

3 Q By February 25th, 2005, the event that  
4 we are of course most interested in, you had been  
5 Chief of Police for approximately 10 months?

6 A Approximately, yes.

7 Q And, sir, you have given a number of,  
8 created a number of records, or given a number of  
9 statements in connection with this event, sir?

10 A Yes, to your office.

11 Q Yes. You have police notes, sir, that  
12 were prepared by you at the time?

13 A Yes.

14 Q You also have an incident narrative  
15 that we are going to be looking at, sir?

16 A Yes.

17 Q And in addition, you did offer a  
18 statement to our office which is found in book  
19 P-3, at P-3.88, page 2851 and 2852 of the  
20 Commission disclosure.

21 Sir, this is an undated document which  
22 will be forwarded to you as soon as the clerk is  
23 able to locate it. It is at tab P-3.88, Madam  
24 clerk, page 2851, 2852.

25 THE COMMISSIONER: Can you give me

1 that page again, Mr. Paciocco?

2 MR. PACIOCCO: Apparently it has been  
3 made Exhibit 92.

4 THE COMMISSIONER: Mr. Paciocco, the  
5 page again?

6 MR. PACIOCCO: Yes, it is at page  
7 2851, sir. I do apologize, Madam Clerk.

8 BY MR. PACIOCCO:

9 Q Sir, that statement is undated. Can  
10 you tell us where that statement comes from?

11 A This statement was a statement that I  
12 made. Where it came from, basically I had  
13 received a phone call from the RCMP, Constable  
14 Kennett, who had indicated to me at one point that  
15 she wanted to speak with me about some possible  
16 allegations of obstruct justice.

17 Q Yes, sir?

18 A I indicated to her that I would like  
19 to come down and talk to her, and I went down to  
20 the D division office where I had a meeting with  
21 her, and she explained that it was in relation to  
22 the possible obstruct justice allegations.

23 Q Involving yourself, sir?

24 A That's correct.

25 Q And I understand that that was a bit

1 of a revelation to you? You didn't know that when  
2 you went down to the office?

3 A I wasn't aware of that, no.

4 Q And they were prepared to tape the  
5 interview and do it then and there, sir?

6 A That's right.

7 Q And I understand you chose to consult  
8 counsel rather than to give that interview?

9 A That's correct.

10 Q How did this statement come about?

11 A Well, after I had asked to speak to  
12 counsel, I indicated that I would be willing to  
13 give a statement once I had spoke to counsel. And  
14 I made arrangements to see Mr. Weinstein. And at  
15 that point, Mr. Weinstein's office, he asked me if  
16 I would write out something, exactly what had  
17 occurred in this period.

18 Q You did that to the best of your  
19 ability, sir?

20 A Yes, it is.

21 Q And was that statement ever forwarded  
22 to the RCMP?

23 A We had tried to get ahold of Constable  
24 Kennett, first of all, to give her a statement,  
25 and then we couldn't get ahold of her -- I

1     couldn't get ahold of her. I had also tried  
2     afterwards again and was told that she was on  
3     holidays.

4             Q     So, sir, your evidence is that you  
5     prepared a statement because you wanted to provide  
6     one to the investigation, to RCMP, but it never  
7     happened because you couldn't get ahold of the  
8     investigator, sir?

9             A     That's correct.

10            Q     Sir, I take it you will agree with me  
11    that your efforts were not very substantial in  
12    terms of getting that statement to them?

13            A     I spoke to my lawyer as well, and he  
14    was aware of attempts to get ahold of Constable  
15    Kennett. He also made attempts to contact the  
16    Crown Attorney that was involved in this as well.

17            Q     Sir, you are a career police officer.  
18    Certainly, if you wanted this statement to be  
19    delivered, you had the wherewithal to successfully  
20    do that, sir?

21            A     Probably, yes.

22            Q     And so it was ultimately furnished to  
23    someone for the first time when you did give it to  
24    us as part of the disclosure in connection with  
25    our request for disclosure, sir?

1           A     That's correct.

2           Q     Thank you for that.  Sir, taking you  
3 then to the 25th of February, 2005, it is around  
4 7:00 o'clock in the morning.  We have heard  
5 testimony that you were not yet in uniform, and  
6 that you were at the East St. Paul Police Station,  
7 about to begin a regular shift, sir; is that  
8 correct?

9           A     That is correct.

10          Q     And Constable Graham was there, we  
11 have evidence that Constable Pedersen was there,  
12 and we have evidence that Constable Woychuk was  
13 about to leave shift.  Is all of that consistent  
14 with your recall, sir?

15          A     Yes, it is.

16          Q     And we understand that the call came  
17 in and Constable Graham answered it at  
18 approximately 7:10 a.m.?

19          A     That's correct.

20          Q     And the call had to do with a  
21 multi-vehicle collision that had just recently  
22 occurred, sir, correct?

23          A     That's correct.

24          Q     How did it happen that you ended up  
25 going out on that call, sir?

1           A     Well, we are dealing with, that was  
2     the early morning, 7:00 o'clock. 59 Highway  
3     coming into the city, with everybody living  
4     outside, is just chaotic. We are dealing with the  
5     North Perimeter, we are dealing with 59 Highway,  
6     the amount of traffic, we are talking hundreds of  
7     vehicles coming into that intersection. And  
8     Constable Graham's comment to me was, we need  
9     every body out there we can get. I know I'm the  
10    Chief, but I'm also one that helps the members as  
11    well. And if they need that extra body out there,  
12    I just don't understand that I could just leave  
13    them alone that way and have to go out there and  
14    give them a hand with the situation as well.

15           Q     Fair enough. So it was Constable  
16    Graham's recommendation that you come?

17           A     He had asked me if I wanted to come  
18    along with them because they needed everybody they  
19    could get.

20           Q     And you felt that all four bodies were  
21    absolutely going to be required at this scene?

22           A     Well, he indicated it was a three car  
23    accident, definitely.

24           Q     You have to go get changed?

25           A     That's correct.

1 Q Make your way to the vehicle and make  
2 your way to the scene, sir?

3 A Yes.

4 Q And I understand that you went with  
5 Constable Graham in the same vehicle?

6 A That's correct.

7 Q It has been described to us as RM2,  
8 that's a Crown Vic, a new Crown Vic model?

9 A Yes.

10 Q Sir, and you went with him as opposed  
11 to going with Constable Woychuk or with Constable  
12 Pedersen?

13 A Yes. And the reason for that was the  
14 others were changed already. I was not changed.

15 Q Okay.

16 A And nor was -- I don't think Graham  
17 was changed either.

18 Q I just want to put this to you in  
19 fairness, sir. We have had some comments made  
20 that you and Constable Graham were good friends,  
21 and that you preferred to work with each other  
22 rather than with the others, sir. Do you agree  
23 with that?

24 A Not necessarily. I worked with others  
25 too.

1           Q     But Constable Maloney, for example,  
2     described you as good friends who were always  
3     together. Do you take issue with that  
4     description, sir?

5           A     That's not true.

6           Q     What part is not true, that you were  
7     not good friends, or that you did not tend to work  
8     with him as opposed to others, or more frequently  
9     than others?

10          A     I worked with everyone.

11          Q     Is your evidence that you worked with  
12     everyone with the same frequency?

13          A     If they asked me to, yes.

14          Q     So if he asked you more often, you  
15     would be with him more often?

16          A     I could have.

17          Q     And, sir, what about the good friends  
18     part?

19          A     No.

20          Q     You did not consider that you had any  
21     special kind of relationship with him relative to  
22     the others on the shift, sir?

23          A     Not really.

24          Q     Constable Pedersen saying that you and  
25     he liked to take this new Crown Vic; do you agree

1 with that comment, sir? Again, I put it to you in  
2 fairness?

3 A No.

4 Q So any perception that you had some  
5 close relationship with Constable Graham, your  
6 evidence is, should be discounted, sir?

7 A That's correct.

8 Q I understand you are now working in  
9 the same office, sir?

10 A In the same office?

11 Q Yes?

12 A Yes.

13 Q And he testified that you do have  
14 lunch and coffee from time to time. Was that an  
15 accurate piece of information?

16 A Rarely, but, yes, there is a  
17 possibility of it.

18 Q Sir, it is not a possibility, either  
19 it happened or it didn't, sir. Have you had lunch  
20 with Constable Graham?

21 A Probably had lunch, yeah.

22 Q Are you telling me you don't remember  
23 specifically, sir?

24 A There is 95 agents, I have had lunch  
25 with other agents as well. Like I say, I probably

1 had lunch with him at one time, yes.

2 Q All right. So your evidence is, based  
3 on chance, you think it may have happened but you  
4 are not prepared to --

5 A It is not a regular occurrence.

6 Q Did it happen, sir?

7 A It may have, yes.

8 Q Did you have coffee with him on coffee  
9 breaks?

10 A No.

11 Q So when he described having coffee  
12 with you from time to time, you take issue with  
13 that, sir?

14 A Coffee?

15 Q Yes?

16 A I don't have many coffee breaks.

17 Q Do you have some, sir?

18 A I don't drink coffee there. Their  
19 coffee is terrible.

20 Q Sir, you understand what a break is?

21 A I understand what a break is.

22 Q I am a tea drinker myself, I never  
23 drink coffee either, but I do take breaks.

24 A We both work out of the office, we  
25 just go there and get our paperwork and leave.

1           Q     Okay.  So you don't agree with the  
2     characterization that he gave that he goes for  
3     coffee with you from time to time?

4           A     It could be, yes.

5           Q     Sir, so you have had occasion to have  
6     conversations with Constable Graham from time to  
7     time, since you have left East St. Paul Police?

8           A     That's correct.

9           Q     And, sir, you have had conversations  
10    with him, I take it, since both of you have  
11    departed from the police force, sir?

12          A     I beg your pardon?

13          Q     You have had conversations with him  
14    since both of you have departed from the police  
15    force?

16          A     Yes.

17          Q     You have had conversations with him  
18    since the Woychuk allegations were made to Chief  
19    Carter leading ultimately to the RCMP  
20    investigation?

21          A     I'm sorry, could you repeat that?

22          Q     You have had conversations with former  
23    Constable Graham since the Woychuk allegations  
24    were made to Chief Carter that resulted in the  
25    obstruction of justice investigation?

1           A     I may have.

2           Q     Sir, have you had any conversations  
3 with Constable Graham since this Commission of  
4 Inquiry?

5           A     No.

6           Q     Have you had any conversations with  
7 him since this Commission of Inquiry was  
8 announced?

9           A     I don't -- no, I don't believe so.

10          Q     So you are quite aware that you have  
11 something fairly significant in common, since you  
12 are both implicated in allegations that have been  
13 made against each of you, sir?

14          A     I'm aware of that.

15          Q     You are aware, sir, that both of you  
16 work in the same office, albeit not necessarily as  
17 partners, but you do work in the same office, sir?

18          A     That's true.

19          Q     And you do see each other from time to  
20 time, sir.

21          A     We do, but we are not really friends,  
22 we actually very seldom talk to each other.

23          Q     But you do have that factor in common  
24 that I just described for you, sir?

25          A     Yes, that's true.

1           Q     So your evidence to the Commissioner  
2     is that you have not discussed any of that with  
3     Constable Graham, even though both of you are  
4     caught up in the same basic allegations?

5           A     No, I haven't talked to him about  
6     that.

7           Q     Sir, you go down Highway 59 south I  
8     understand as you are leaving?

9           A     That's correct.

10          Q     And that's a congested artery because  
11     of the accident and because of the normal volume  
12     on that road, sir?

13          A     Right.

14          Q     And you work your way through that  
15     congestion to the accident scene; correct?

16          A     Correct.

17          Q     You realize at some point that you  
18     received misinformation about the location of the  
19     accident?

20          A     I understand that, yes.

21          Q     How long does it take you to drive  
22     that distance in those conditions, sir?

23          A     We didn't make the wrong turn. We  
24     came direct, because we noticed the congestion of  
25     the traffic. So from the station, by the time we

1 got changed, it would have been maybe -- let me  
2 think for a minute -- we had to get changed, so  
3 maybe ten minutes to get changed, 15 minutes,  
4 probably another three or four minutes to get from  
5 the station to the accident scene.

6 Q Okay. Let's start with the three or  
7 four minutes. I know that Constable Woychuk's  
8 testimony was that when he took Mr. Derek  
9 Harvey-Zenk back to the station, he would have  
10 been traveling away from the congestion, because  
11 he would have been going --

12 A That's correct.

13 Q -- away from downtown?

14 A Yeah.

15 Q His evidence was that it took him four  
16 minutes to negotiate that distance, without  
17 congestion, sir?

18 A Um-hum.

19 Q And you are coming down with  
20 congestion, albeit no doubt you are in a terrible  
21 hurry with sirens going, sir?

22 A Um-hum.

23 Q So we can assume that it would take  
24 you approximately four minutes, five minutes,  
25 maybe six minutes to get down there?

1 A That is very possible, yes, sir.

2 Q And you said 10 to 15 minutes to get  
3 into your police clothing, sir?

4 A It probably took ten minutes from,  
5 like getting changed, going downstairs, getting  
6 changed and then coming back up, getting in the  
7 car and going out.

8 Q Okay. Based on that, your evidence  
9 would be that you wouldn't have got to that scene  
10 until, 10 to 15 minutes of changing, and four or  
11 five minutes in the car, maybe six minutes, so --

12 A Approximately.

13 Q Yeah. So you are looking at 15 to 20  
14 minutes, on your estimate, to get there, sir?

15 A More like, probably, I think it was  
16 7:15 or something like that, 7:20, I'm not sure.

17 Q What was 7:15 or 7:20?

18 A The time that we probably would have  
19 got to the scene.

20 Q Sir, the call came in at 7:10.

21 A You are right.

22 Q Based on your assessment --

23 A Probably it would have taken us at  
24 least, like you are saying, six, seven minutes to  
25 get there.

1           Q     All right. Plus the time to change,  
2     sir?

3           A     That's correct.

4           Q     The reason I'm belabouring this point,  
5     sir, is you have an arrival time at the scene of  
6     7:16, shown in your notes. Are you aware of that,  
7     sir?

8           A     Yes, I am.

9           Q     And were you questioned about this by  
10    Commission Counsel, and you yourself expressed  
11    some doubts about whether you really could have  
12    arrived there in the six minutes that your notes  
13    reflected, sir?

14          A     Yes.

15          Q     Do you agree with that?

16          A     Yes, I do.

17          Q     You suggested that the 7:16 time would  
18    depend upon how your watch was running. Do you  
19    remember that, sir?

20          A     That's correct.

21          Q     Your position was that you got the  
22    time for your arrival off of your watch. Is that  
23    a fair --

24          A     I believe it was.

25          Q     That was your testimony under oath,

1 sir?

2 A Yes, sir.

3 Q Where did you get the 7:10 departure  
4 time, sir?

5 A I'm not sure at this point.

6 Q Sir, your notes indicate that the  
7 Winnipeg Paramedic and Fire Service vehicles were  
8 already on scene when you arrived?

9 A That's correct.

10 Q And one was attending to Mrs. Taman,  
11 the yellow vehicle, sir?

12 A There was a vehicle there, yes.

13 Q And you also indicated that when you  
14 approached the green vehicle containing  
15 Ms. Beattie she was also being attended to by  
16 paramedic services, sir?

17 A Yes, she was.

18 Q And, sir, how confident are you that  
19 that those paramedic services were in place when  
20 you arrived?

21 A I recall somebody looking at the  
22 Taman's -- first of all, I did see right off the  
23 bat, and still my recollection is that there was  
24 somebody dealing with the Beattie vehicle, because  
25 when I walked over to the Beattie vehicle, there

1 was somebody attending to her.

2 Q The reason I'm asking this is because  
3 we have times, dispatch times for the paramedic  
4 services that serviced those locations, sir. And  
5 the dispatch time for the vehicle that attended to  
6 Ms. Taman was 7:13:35. And the evidence from the  
7 ambulance attendant was that it would take a good  
8 five minutes to get there. So it would have been  
9 7:18, 7:19, maybe even 7:20, when that unit  
10 arrived at that location, sir. We also have  
11 evidence that the vehicle that attended to  
12 Ms. Beattie, unit 2, did not arrive on scene until  
13 7:25 in the morning.

14 A Okay.

15 Q And so I'm suggesting to you that the  
16 arrival time in your notes of 7:16 is  
17 questionable, or your evidence about ambulances  
18 being there when you arrived is questionable. Are  
19 you able to help us out, sir?

20 A I did see an emergency vehicle dealing  
21 to the Taman vehicle when I was there.

22 Q Yes, sir. You also testified, and I  
23 can take you to it, sir, if you wish, that you  
24 very shortly after arriving went over to the  
25 Beattie vehicle as the first vehicle that you

1 attended at?

2 A That's correct.

3 Q And the ambulance was attending to  
4 Ms. Beattie?

5 A That's what I saw at that time.

6 Q And that's what you remember, sir?

7 A That's right.

8 Q All right. Sir, so getting back to  
9 the question I asked you, it is either the time  
10 that's problematic, 7:16, or your evidence about  
11 those emergency --

12 A I may be out a little.

13 Q Okay. I just wanted to deal with  
14 that, because we heard Constable Graham testify,  
15 and he has the same time, 7:16, that he got it off  
16 the dash clock in the police car, and he was sure  
17 as could be about that. So I just wanted to point  
18 out that there is a coincidental 7:16 time from  
19 two separate sources, both of which seem on the  
20 face of it to be wrong, sir?

21 A Okay.

22 Q Sir, you arrive at this accident scene  
23 and, clearly, you want to attend to business right  
24 away?

25 A Yes.

1           Q     You don't remain in the vehicle and  
2     listen to the dispatches as they are being  
3     provided from other services, emergency services;  
4     sir?

5           A     We don't hear everything coming  
6     through. The odd time we will hear the emergency  
7     dispatch from East St. Paul, but it doesn't come  
8     through our system all of the time.

9           Q     At some point Constable Graham  
10    actually contacts the East St. Paul Fire and First  
11    Responders, sir?

12          A     Okay.

13          Q     Do you recall that, sir, it is in your  
14    notes and it is in his notes?

15          A     I believe he did.

16          Q     And you would have seen the Winnipeg  
17    Fire and Paramedic Service on scene, so there  
18    would be no need to call them, sir, they were  
19    already there.

20          A     Um-hum.

21          Q     Were you aware, sir, of whether or not  
22    a call had been made to the Interlake Paramedic  
23    Service for the purposes of providing additional  
24    paramedic vehicles?

25          A     I wasn't aware of that.

1           Q     Sir, you agree that when you get to an  
2     accident scene like this there is plenty of  
3     responsibilities to discharge?

4           A     That's correct.

5           Q     You have to provide assistance to  
6     injured persons, make sure they are being attended  
7     to?

8           A     That's correct.

9           Q     You have to control traffic to ensure  
10    that the scene is safe?

11          A     Yes.

12          Q     You have to secure the scene for  
13    possible investigation, if you have any basis for  
14    believing that this is a serious enough accident  
15    to potentially involve violations of the traffic  
16    code or the Criminal Code?

17          A     Yes.

18          Q     You have to engage in an investigation  
19    of possible violations, sir, particularly where  
20    there are injuries?

21          A     Beg your pardon?

22          Q     You have to engage in an investigation  
23    of potential violations to the Criminal Code,  
24    particularly where there are injuries, sir?

25          A     Yes.

1 Q Lots of jobs to be done, sir?

2 A That's correct.

3 Q So you would want to approach  
4 vehicles, to assess injuries, and priorities and  
5 offer assistance?

6 A Make sure that everybody was getting  
7 the assistance they needed, yes.

8 Q I take it that would probably be job  
9 one?

10 A Yes.

11 Q You would also ensure that appropriate  
12 emergency services are dispatched, as when the  
13 East St. Paul Fire First Responders were called  
14 in, sir? That's one of the things you do, if  
15 there wasn't enough emergency support, you would  
16 get it there?

17 A Um-hum.

18 Q You would decide where to route the  
19 traffic and block off the collision site;  
20 something else that's very important to be done?

21 A Yes.

22 Q You would get support from other  
23 agencies like highway crews to come in and block  
24 off arteries?

25 A Yes.

1           Q     You would identify and try, if you  
2     could, to interview witnesses or secure those  
3     witnesses for further interview in the future?

4           A     That's correct.

5           Q     You would try and identify, collect  
6     and preserve any evidence that might be on scene,  
7     sir?

8           A     Yes.

9           Q     You agree that it takes a good deal of  
10    organization to handle that type of complex scene?

11          A     Yes, it does.

12          Q     Who was in charge of this accident  
13    investigation on site?

14          A     On site?

15          Q     Yes?

16          A     I guess myself, but when, sometimes  
17    when you are running into a situation like this,  
18    everybody takes a little bit on.

19          Q     Sure, sir, but your response when I  
20    asked who was in charge, you said I guess myself.  
21    Is there uncertainty in your mind about that?

22          A     No, other than Constable Graham did  
23    make a call for an emergency unit out.

24          Q     That was of his own initiative, sir?

25          A     That's right.

1 Q You basically understand that as the  
2 ranking officer on scene, this is your scene?

3 A That's right.

4 Q And you are the one who would  
5 coordinate and give direction to individuals if  
6 coordination were to occur, sir?

7 A Yes.

8 Q Did you ever develop a coherent plan  
9 or strategy for dealing with this chaotic scene,  
10 sir?

11 A Pardon?

12 Q Did you ever develop a coherent plan  
13 or strategy for dealing with this chaotic scene?

14 A I think basically what we were looking  
15 for was to make sure all of the injured parties  
16 were attended to, and then to determine who was  
17 involved in the accident, and the condition of  
18 anybody.

19 Q Did you assign the task of going to  
20 the various vehicles to anyone, sir?

21 A No, I did not.

22 Q Do you know what Constable Graham was  
23 doing on your arrival, sir?

24 A Once we arrived at the accident scene,  
25 Constable Graham went off, was by the car to the

1 left of me. I subsequently went off to the, I  
2 guess you'd call it the right, and I headed over  
3 first to the Beattie vehicle, as I indicated.

4 Q Yes?

5 A All right. And then I walked towards  
6 the --

7 Q The Taman vehicle, and we will go  
8 through all of that in great detail. I don't mean  
9 to cut you off, sir, because I will give you a  
10 chance to describe what happened. But I want to  
11 stay with the theme I'm developing right now,  
12 which is, where was Constable Graham?

13 A My understanding, he had gone off to  
14 the traffic section on the traffic coming north.

15 Q All right, sir. And how do you know  
16 that?

17 A He went off in that direction.

18 Q Okay. So you also heard him testify  
19 to that effect?

20 A I may have, yes. Probably I was here,  
21 sure, of course.

22 Q And he took the vehicle with him up  
23 there, he testified?

24 A I don't understand if he took his  
25 vehicle further away. I don't know that.

1           Q     Well, sir, that was his testimony,  
2     that he took his vehicle right up the Highway 59  
3     southbound artery, in the opposition direction,  
4     then he backed it up there in order to route  
5     traffic -- and I am pointing, if you see me not  
6     looking at you, sir, it is because I'm looking at  
7     the chart -- he is diverting traffic on to Highway  
8     101 at that exit ramp to try to keep it from  
9     coming into the accident scene. That was his  
10    testimony, sir, correct?

11           A     Yes.

12           Q     And so you are saying that he took  
13    that initiative and it was not something that you  
14    had --

15           A     No.

16           Q     -- told him to do? He had testified  
17    that there really wasn't any point in time where  
18    you got together and discussed who would do what.

19           A     No.

20           Q     And, in fact, he directs Pedersen to  
21    come up there. Do you remember him testifying to  
22    that?

23           A     Yes.

24           Q     And Pedersen is a more senior officer  
25    than Constable Graham in term of seniority, sir?

1 A Yes.

2 Q Is that something that typically  
3 happened in your force under your watch, sir?

4 A No. When you are going to an accident  
5 scene everybody sort of has to take something on  
6 right off the bat. I didn't realize that he had  
7 even sent Pedersen to that location until  
8 afterwards, but I had no contention on it because  
9 we needed somebody at that location, and she was  
10 still away from the accident scene to that point.

11 Q So somebody had to look after that,  
12 and you were leaving it to the others to look  
13 after, is that fair, sir?

14 A I wasn't leaving it to them, he made  
15 that decision right off the bat there.

16 Q Yes, sir, and then it just happened  
17 and you weren't involved in that decision, sir, it  
18 was just something that he did?

19 A No, I wasn't involved in that  
20 decision.

21 Q Nor were you involved in him sending  
22 Pedersen up there, you weren't involved in that  
23 decision?

24 A That's the one you are talking about.

25 Q Yes. Sir, Constable Woychuk indicates

1 that he arrives at 7:22 and he actually logs in  
2 through the dispatch system to confirm his arrival  
3 time, sir?

4 A Um-hum.

5 Q And did you go up and have any  
6 conversations with Constable Woychuk upon his  
7 initial arrival to assign any responsibilities to  
8 him?

9 A When Woychuk pulled up, I wasn't  
10 there. I was already -- I had walked over to the  
11 other vehicles.

12 Q Okay.

13 A And I had walked over to, like I said,  
14 the green car and the yellow car, and then I  
15 turned around and I walked up to a gentleman I saw  
16 out next to another vehicle.

17 Q So the answer to my question is, you  
18 didn't have any dealings with him when he pulled  
19 up, sir?

20 A With Woychuk, no.

21 Q Yes. So no job assignment or task  
22 being given to him?

23 A Because he wasn't there when I first  
24 got out and I headed up that direction.

25 Q Still, whatever the reason may be,

1       there was no initial task given to him?

2               A       No.

3               Q       And he basically had to figure out  
4       what he thought needed to be done, sir?

5               A       When I came back to that location, he  
6       was just standing in front of his vehicle.

7               Q       Okay.  So he was basically doing  
8       nothing from the time he arrived until the time  
9       you got back?

10              A       From what I saw at that point.

11              Q       You heard his testimony that he put  
12      out some traffic cones?

13              A       He may have done that, yes.

14              Q       You also heard his testimony that he  
15      sat in his car and looked in the rear view mirror  
16      to watch the traffic.  Do you remember that  
17      testimony, sir?

18              A       I heard him say that, yes.

19              Q       What did you think of that?

20              A       I don't think that was where he had to  
21      be.

22              Q       Yes.  And basically this was a chaotic  
23      situation and he really wasn't much good sitting  
24      in the car.  Is that your position, sir?

25              A       Yes.

1           Q     Meanwhile, Constable Pedersen is up  
2     there and she is the victim liaison officer, as we  
3     have heard through questioning from my friend,  
4     Mr. Zazelenchuk; correct, sir?

5           A     Yes.

6           Q     Sir, did you ever develop a targeted  
7     plan for identifying and interviewing witnesses  
8     who were on scene?

9           A     Well, I just -- I spoke to a witness  
10    myself.

11          Q     Yes?

12          A     I didn't set up a plan for that yet.

13          Q     You didn't assign anybody the task of,  
14    make sure you go around and get the name of  
15    everybody who is here so we can get ahold of them  
16    later?

17          A     All of our members were tied up  
18    dealing just with traffic congestion.

19          Q     I know that you didn't see Woychuk  
20    until later, but he was basically standing beside  
21    his vehicle, I understand, from your testimony.

22          A     When I pulled up -- when I walked up  
23    that is.

24          Q     And do you know what Constable Graham  
25    was doing, when Constable Pedersen got up --

1           A     Beg your pardon?

2           Q     Do you know what Constable Graham was  
3     doing when Constable Pedersen got up to divert the  
4     traffic, as he had originally done?

5           A     I don't recall what he was doing.

6           Q     So you don't necessarily know if he  
7     was engaged in the kind of enterprise that I'm  
8     describing, going out and making sure the names of  
9     witnesses are secured?

10          A     I don't recall that.

11          Q     The reason I'm asking you, sir, is  
12     because there was a Mr. Dale Kasper, an off-duty  
13     paramedic, who featured large in the early moments  
14     of this accident by taking the initiative of  
15     directing traffic. And he was one of the first  
16     persons on the scene, sir. You are aware of that  
17     now?

18          A     I do recall someone but I don't  
19     remember his name.

20          Q     The reason that I am asking is because  
21     Dale Kasper was never identified at the scene, and  
22     his name was only determined from the evidence  
23     we've received, when Ms. Denise Bukowski, who  
24     happened to know him through a family  
25     relationship, came into East St. Paul Police many

1 days later and indicated that she thought that's  
2 who the individual might be. Do you recall that  
3 testimony, sir?

4 A I don't recall that.

5 Q Okay. And I'm going to take you to  
6 the statement she gives you a little while later  
7 and you will see reference to it in there, sir.  
8 But the point I'm making is that this man was at  
9 the scene, and Constable Graham testified he was  
10 there, but nobody took identification from him,  
11 and you were only able to discover this witness  
12 indirectly through another person happening to  
13 know him, who happened to respond to an ad for  
14 witnesses, sir.

15 A Okay.

16 Q So the absence of a targeted plan for  
17 identifying people on scene may have allowed one  
18 witness at least through the net. Do you agree  
19 with that, sir?

20 A It is possible, yes.

21 Q And, sir, I'm not going to get into  
22 all of the details of the criminal investigation  
23 that was undertaken at this point, but I'm going  
24 to be focusing in part on whether there was any  
25 type of targeted, strategic and appropriate

1 criminal investigation that was conducted on that  
2 scene, sir, and whether it was organized in a  
3 coherent way. It is something that we can come  
4 back to. Okay?

5 A Okay.

6 Q Sir, you arrive, and you've described  
7 how Constable Graham and you were in the same  
8 vehicle. Where did the vehicle stop, sir?

9 A I believe we were east of the, of the  
10 southbound lanes, of the -- yes, we were in the  
11 east, by the east lanes I believe, where his  
12 vehicle was.

13 Q And where was it? To the north or  
14 south of the intersection?

15 A I don't recall the exact location of  
16 the vehicle there.

17 Q Do you know that Constable Graham has  
18 given testimony that he didn't want to bring the  
19 vehicle into the intersection for fear that he  
20 would disturb it?

21 A He may have, yes. That's possible.  
22 I'm not sure where his vehicle exactly was. All I  
23 remember is getting out, and we are dealing to the  
24 accident, we are going to the people.

25 Q Yes, I understand that, but I'm just

1     trying to get an idea of where the vehicle is, and  
2     it may be that you can't help us out, but, sir,  
3     would you take issue with the suggestion by  
4     Constable Graham that you don't drive a police  
5     vehicle, if you can help it, through an accident  
6     intersection?

7             A     Definitely.

8             Q     You stop it up above the accident  
9     intersection, and that's where he described the  
10    vehicle being stopped to the north of the  
11    intersection in question. So you don't take any  
12    issue with that statement.

13            A     No, I don't.

14            Q     And you have indicated that Graham  
15    doesn't remain on the scene, sir, he actually goes  
16    back up to help block traffic?

17            A     I believe so, yes.

18            Q     And what is that belief based on, sir?  
19    I don't want to push you if it is a question of  
20    belief.

21            A     I know he had gone off in that  
22    direction. I don't know exactly where he ended up  
23    being either. I know he was at that side.

24            Q     When you say that side, do you mean  
25    the north --

1           A     I mean the east side.

2           Q     All right.  When you say the east  
3 side, sir, can we assume that you are including  
4 the north in that, or has he just gone off --

5           A     He may have gone slightly north.  I  
6 don't know exactly the direction he went from  
7 there.  I know he went off in one direction and I  
8 was in another.

9           Q     Okay.  So you really don't know  
10 whether he went north at all?

11          A     I couldn't say exactly which way.

12          Q     He says that, in his testimony, that  
13 he told you where he was going.  Is that possible,  
14 sir, and you just don't recall?

15          A     I don't recall that.

16          Q     Now, sir, you make observations at the  
17 scene when you get out and you go to the west?

18          A     That's correct.

19          Q     Sir, when you say you go to the west,  
20 the accident scene, from my understanding, is to  
21 the south of the location where you are prepared  
22 to allow that Constable Graham's vehicle was.  
23 When you say you go to the west, are you able to  
24 help me out in terms of situating where you were,  
25 sir, using the exhibit that is posted on the

1 easel?

2 A Where our car was?

3 Q Yes. And when you say you went to the  
4 west, I just want to make sure I understand you.

5 A The vehicle was here. I would have  
6 gone this direction. But I would have gone here  
7 first when I went up, and then gone -- it was the  
8 green car, then to the yellow one, and then after  
9 that I went over to the truck.

10 Q I'm going to help you out a little bit  
11 here, sir, because we have got the advantage of a  
12 number of witnesses and photographs. The vehicles  
13 are actually to the south of that intersection  
14 where your finger is.

15 A Right here?

16 Q Sorry, sir?

17 A This is where the vehicles were.

18 THE COMMISSIONER: Mr. Bakema, could  
19 you move over a bit? I'm having trouble seeing.  
20 That's great.

21 THE WITNESS: This is the turning  
22 lane, the vehicles were -- on here it is hard to  
23 see exactly, but there was -- the Zenk vehicle was  
24 in the centre ditch here.

25

1 BY MR. PACIOCCO:

2 Q Yes, sir.

3 A All right. The Taman vehicle was on  
4 the intersection, it was across, pretty well in  
5 the middle almost.

6 Q You are pointing to the northbound  
7 intersection, sir, are you aware of that?

8 A No, I'm not.

9 Q I am sorry, but you have to orient  
10 yourself. If you look at the diagram, you will  
11 notice that north is at the top.

12 A Right.

13 Q And if you are coming southbound, you  
14 are going to be in the left-hand lane of the two  
15 lanes that are going from the top to the bottom.

16 A That's right.

17 Q So the vehicles would have been  
18 approximately where your finger is.

19 A The Zenk vehicle would have been here,  
20 in the ditch.

21 Q Yes, sir, and you are pointing for the  
22 purposes of the record to the median that's  
23 between the two lanes that bisect the diagram from  
24 top to bottom, and you are just below the Highway  
25 101 turn-off, some general distance, but not a

1 significant distance?

2 A And the green car was -- I believe  
3 there was a lamp standard here.

4 Q Yes?

5 A And the green car was just by the lamp  
6 standard.

7 Q Okay. So you are pointing to the  
8 southwest corner of the intersection when you are  
9 describing the green car?

10 A That's correct. And the yellow  
11 vehicle, of course, as I indicated, was across the  
12 road here.

13 Q Okay. And you are pointing --

14 A It was up a bit from where the truck  
15 was, the truck was further north.

16 Q And our information is it was a little  
17 bit south of where the green vehicle was.

18 A Which was south?

19 Q The yellow vehicle was a little bit  
20 south of the green vehicle?

21 A The yellow vehicle was south of the  
22 green, yes.

23 Q Okay. So your vehicle, sir, would not  
24 have been where you initially pointed, because you  
25 were having trouble orienting yourself on the

1 diagram.

2 A Back this way more.

3 Q All right, sir, if Constable Graham  
4 gave us accurate testimony, it actually would have  
5 been above that intersection that you just pointed  
6 to, sir, approximately where that black line is  
7 that you will see just as you approach the  
8 turn-off on the 101.

9 A This one here?

10 Q No, the other one, sir.

11 A This one here?

12 Q Yes, sir.

13 A That's possible. Like I said, there  
14 is so much traffic around, I couldn't tell you  
15 exactly right on with that. I know where the one  
16 vehicle was, and I know where the Zenk vehicle  
17 was.

18 Q And I have been promising you that you  
19 can now tell us what you did when you got out of  
20 the car. So please feel free to take your seat  
21 and use the microphone, if you can, to describe  
22 that for us.

23 A You want me to go back through all of  
24 the vehicles that I went to or --

25 Q Yes, sir, if you would, so we have a

1 general picture.

2 A I walked over to the green vehicle,  
3 because several people were looking after the  
4 yellow car at that point. So I walked over to the  
5 green vehicle first, which was just next to the  
6 lamp standard, and I believe somebody, I thought  
7 somebody was dealing with her at that point.

8 Q Okay.

9 A But -- so we can't interfere with  
10 that, medical attention is first.

11 Q Okay. So that's a fairly immediate  
12 thing. Medical attention is first. You pop out  
13 of your car, and you are getting there to find out  
14 if anybody is injured and if you can be of any  
15 assistance?

16 A That's correct.

17 Q And you see that the yellow vehicle is  
18 quite well attended to, so you go over to the  
19 green vehicle that is a little bit to your right,  
20 sir, as you go across that intersection?

21 A That's correct.

22 Q What happens when you get there?

23 A To which vehicle, sir?

24 Q The green vehicle, how long do you  
25 stay there?

1           A     Not very long, because she is being  
2     attended to.

3           Q     You indicated to Mr. Clifford, I think  
4     the expression you used were, "I was there only  
5     for a minute, a very short time?"

6           A     Yes.

7           Q     And it would take no time really for  
8     you to have walked from the top of that  
9     intersection, across the intersection to where the  
10    Beattie vehicle was? It is a very close distance  
11    to cross those intersections, sir?

12          A     Yes.

13          Q     And then what did you do after you  
14    went to the green vehicle and saw that this woman  
15    was also being attended to?

16          A     Like I said, I walked over towards the  
17    yellow one first, after that -- and then I noticed  
18    somebody standing by a pickup truck, just south of  
19    that intersection.

20          Q     Okay.

21          A     And I started to walk over to the  
22    pickup truck, and I saw a gentleman, he was  
23    walking on one side, and he would stand there and  
24    look at the back, and then come to the front, he  
25    was walking around the vehicle.

1 Q Okay. I'm going to get to that  
2 gentleman in some detail in a few minutes, sir.

3 Just so that we are clear, you walked from the  
4 green vehicle over to the yellow vehicle --

5 A That's correct.

6 Q -- which would have only been a few  
7 feet?

8 A Yes.

9 Q And that vehicle was being attended to  
10 still, sir?

11 A Yes.

12 Q So you really had no reason to stay  
13 there for any length of time at all, sir?

14 A No.

15 Q And you were able to observe damage to  
16 that vehicle, sir?

17 A Which vehicle are we talking about?

18 Q Let's start with the yellow vehicle?

19 A Yes, I was able to see from the side  
20 that the front and the back were caved in.

21 Q All right. And based on your  
22 experience as a driver, let alone as a police  
23 officer, it was pretty clear that that vehicle had  
24 sustained force from both the front and the back?

25 A Definitely.

1           Q     And the green vehicle, sir, can you  
2 describe the damage that you observed to that  
3 vehicle?

4           A     I believe it was damaged to the rear.  
5 I don't believe there was much to the front  
6 because she had missed the lamp standard. There  
7 was a lamp standard right next to her vehicle in  
8 the snow bank.

9           Q     And that accords with our  
10 understanding. So it was pretty clear that that  
11 vehicle had been rear-ended, sir?

12          A     That's right.

13          Q     Sir, you indicate in your notes, and I  
14 can take you to them if you would like, you will  
15 find them -- they are at exhibit 87, if you could  
16 provide the witness with the notes? They are in  
17 book E-1 at tab 22.a, page 390.

18          A     Sorry?

19                MR. PACIOCCO: This is for the benefit  
20 of those of us working out of books, sir. It is  
21 book E-1, tab 22.a, at page 390.

22                THE WITNESS: What information would  
23 you like?

24 BY MR. PACIOCCO:

25          Q     I'm going to take you there, sir.

1 Just before we get over to the vehicle which will  
2 take most of our time, I just wanted to make the  
3 observation that you record that at 7:23 the East  
4 St. Paul First Responders attended the scene, at  
5 page 390 of your notes, sir?

6 A Yes.

7 Q And they attend to the yellow Sprint,  
8 sir?

9 A That's correct.

10 Q Now, I just want to point out to you,  
11 sir, that you have recorded a time of 7:23 as the  
12 arrival time. Is that a fair interpretation of  
13 your note?

14 A I'm looking here. It would be  
15 approximately -- I don't have the time on here.

16 Q Sorry, sir?

17 A I said I don't have the time on here.

18 Q So you are looking at your final note,  
19 sir? I know you had two sets, and we will come to  
20 that later, sir, but you are looking at the final  
21 set of notes that has times all the way down the  
22 left-hand margin? You should have page 81 of your  
23 notes, sir? You know how the duty books are  
24 paginated, sir?

25 A Yes, I do, sir.

1 Q You have 81?

2 A Yes, I do.

3 Q You will notice that at 7:23, on page  
4 81, East St. Paul First Responders attend the  
5 scene, they attend to the yellow Sprint; correct,  
6 sir?

7 A Yes.

8 Q I'm asking you where you got that  
9 time, 7:23?

10 A I don't recall at this point.

11 Q I'm just asking you, sir, because  
12 again the dispatch records for the East St. Paul  
13 First Responders show an arrival time of 7:24, and  
14 there was that one minute discrepancy that I  
15 wanted to ask you about.

16 A I don't recall where that came from,  
17 sir.

18 Q But obviously you had some confidence  
19 that that was the correct time or you wouldn't  
20 have put it in your notes with such precision?

21 A That's right, sir.

22 Q It is not around 7:25, you have a very  
23 specific minute, 7:23; correct, sir?

24 A Yes, sir.

25 Q Sir, Ray Riddolls is with the East St.

1 Paul Police Fire Responders?

2 A Yes.

3 Q Did you have a conversation with Ray  
4 Riddolls, sir?

5 A I don't recall.

6 Q Sir, could you take a look, please, at  
7 7:23 just below the note that we just looked at  
8 together?

9 A All right.

10 Q Do you see that, sir?

11 A Yes, I did.

12 Q It says:

13 "Fire Chief Ray Riddolls advises no  
14 signs of life."

15 correct, sir?

16 A Yes, sir.

17 Q Do you recall that conversation?

18 A I recall him telling us that, yes.

19 Q Okay. And I ask you that, sir,  
20 because based on the scenario you described, your  
21 arrival time, getting out of the car promptly,  
22 going to the green car by just walking across the  
23 intersection, realizing you are not needed there,  
24 going over to the yellow car, being there for only  
25 a moment, it seems like only a couple of minutes

1 have passed since your arrival by the time you are  
2 at the yellow car, and you began to tell us that  
3 you then had your attention focused on the truck.  
4 Did I misunderstand your evidence?

5 A No.

6 Q Okay. The reason I'm asking is  
7 because the East St. Paul First Responders, on  
8 their dispatch records, didn't get there until  
9 7:24, which would have been eight minutes after  
10 your recorded time of arrival. And in addition,  
11 it unquestionably would have taken them some time,  
12 I'm sure they were moving very quickly, but it  
13 would have taken them some time to get to the  
14 yellow vehicle, to do the necessary inquiries, or  
15 physical tests to determine that Ms. Taman didn't  
16 have any signs of life, sir. And so it just seems  
17 a little inconsistent with the scenario that you  
18 are painting, for you to be a party to that  
19 conversation, sir. Do you understand where I'm  
20 having a bit of difficulty?

21 A I'm just looking here to see if this  
22 is the original or the other one you have here.

23 Q No, sir, that's not the original, this  
24 is the second set of notes.

25 A Okay.

1           Q     The original set of notes, sir, I can  
2     tell you has no reference to that event.  Would  
3     you agree with me that it seems a little difficult  
4     to fit all of that in the way you have described?

5           A     My notes don't jibe on that, no.  They  
6     must be out a bit.

7           Q     Because when Constable Graham was  
8     testifying, his evidence was that you weren't  
9     there for that conversation.  He basically sees  
10    you out of the corner of his eye going off to deal  
11    with the truck, as you describe it?

12          A     I thought -- I'm pretty sure that I  
13    spoke to Mr. Riddolls.

14          Q     Sir, it is in your notes, you wouldn't  
15    have put in your notes if you hadn't, sir?

16          A     That's correct.

17          Q     So either Constable Graham is mistaken  
18    or your notes and recollection are wrong?

19          A     I don't believe mine are, no.

20          Q     It would have been obvious to you,  
21    sir, or any sentient or thinking person that this  
22    was a very serious motor vehicle incident that had  
23    occurred.  It took the life of a woman.  That was  
24    evident immediately, sir, was it not?

25          A     That's right.

1           Q     And it was a three-car collision with  
2     extensive damage, correct?

3           A     Yes, sir.

4           Q     And as an experienced police officer,  
5     you know that this called for a very serious and  
6     vigilant investigation?

7           A     Yes, sir.

8           Q     Now, your transcript indicates that  
9     after you went to the yellow vehicle, you went  
10    back to the green vehicle before you went down to  
11    the truck. Do you recall that, sir?

12          A     I don't recall going back to the green  
13    vehicle twice, no.

14          Q     Okay. I will take you to the  
15    transcript, if you would, sir. This is a  
16    transcript of your interview with Mr. Clifford of  
17    our office, it is at T-4-G in the book of  
18    transcripts, for those of us who are identifying  
19    them in that way.

20          A     Which number are we on, sir?

21          Q     You will notice that these documents  
22    are numbered both at the bottom of the page and  
23    within each page, there are four separate  
24    quadrants and they each have a page number, those  
25    are the numbers I'm going to be referring to. I

1 will ask you to look at page 6, if you would,  
2 please?

3 A Page 6?

4 Q Page 6 you will notice that you are  
5 describing your basic scenario that you have just  
6 given us, where you got out of the car with Graham  
7 and he goes off in one direction, you see the  
8 green car and you go up to it. Are you looking at  
9 the little numbers, sir, there are four pages, you  
10 are basically going to be on the first white page  
11 of the transcript, sir. You notice the first page  
12 is yellow?

13 A That's correct.

14 Q Take a look at the first white page  
15 that's facing you out, sir, upper right-hand  
16 corner?

17 A Yes, sir.

18 Q Go down to about line ten, and you are  
19 going to see a description of basically what you  
20 were just talking about, the yellow car going to  
21 the green car and then going to the yellow car.  
22 And then you will notice on to page 7, sir, at  
23 line 3:

24 "I, at that point, like I said, I  
25 turned around and I walked over to the

1 green vehicle where I had been first,  
2 the small one, I think it was  
3 Mrs. Beattie who had been driving that  
4 one, and she was pushed up, just  
5 missed the lamp standard."

6 So your description to Mr. Clifford appears to  
7 have you going from the green vehicle to the  
8 yellow vehicle back to the green vehicle. Does  
9 that refresh your memory?

10 A I don't recall going back to it twice.

11 Q You wouldn't have testified to  
12 Mr. Clifford --

13 A I realize that, I realize that, sir,  
14 but I don't recall it, I must have gone there  
15 then, yes.

16 Q Unless you were mistaken at the time  
17 you gave this interview, sir?

18 A Like I said, I only recall going to  
19 the green one, I'm thinking about it now it was  
20 once, but it is possible.

21 Q And your notes don't really help you  
22 out on that, sir?

23 A No, sir.

24 Q Did you speak to Mrs. Beattie at all,  
25 sir?

1 A No, I didn't, not at that day.

2 Q Okay. So you didn't really do  
3 anything. I don't mean this in a derogatory  
4 sense, there was nothing constructive that needed  
5 to be done?

6 A No, because she was being attended to.

7 Q So you were not there very long  
8 either?

9 A No.

10 Q And this truck which you described in  
11 the interview to Mr. Clifford as blue, which we  
12 have also seen described as black, is going to  
13 catch your attention next, sir, right?

14 A That's correct.

15 Q Now you describe in the transcript how  
16 you notice this truck when you start to walk back  
17 to your vehicle?

18 A That's correct.

19 Q Is that an accurate description, sir?  
20 You are at the green vehicle or the yellow vehicle  
21 and you are walking back?

22 A You are saying walking back, I had  
23 been at the green vehicle and I'm walking over to  
24 the yellow, and that's when I noticed the truck.

25 Q Okay. So your evidence is a little

1 bit different today than it was when you were at  
2 the interview, sir?

3 A Yeah, maybe, I don't know. I recall  
4 that I had gone to the green vehicle first, and  
5 then I walked towards the yellow, and after that I  
6 walked towards the truck.

7 Q Yes, because what you said in your  
8 interview, and I can again take you to it, is you  
9 started to walk back to where you left your  
10 vehicle?

11 A Which would be -- wouldn't that be in  
12 the direction, I understood it to be in the  
13 direction of the, I guess the yellow car, but  
14 further over.

15 Q So I think you would agree with me  
16 that your recollection of time and place is a  
17 little bit compromised by the time that's passed?

18 A Could be, yes.

19 Q Because when I read that passage about  
20 you noticing the truck, when you were walking back  
21 to your vehicle, knowing the evidence that we have  
22 had, and the photographs that we have been  
23 provided with, I thought, how is he going to see  
24 that over his shoulder, he is going in the  
25 opposite direction?

1 A No.

2 Q But your recollection is, in any  
3 event, you now know for one thing for sure is you  
4 catch the blue vehicle, or the black vehicle, the  
5 truck?

6 A That's correct.

7 Q And that's got your attention, sir,  
8 correct?

9 A Yes, sir.

10 Q And it is pretty obvious to you from  
11 the get go that this truck had been involved in  
12 the accident?

13 A That's correct.

14 Q And you would have based that on what,  
15 sir?

16 A Well, I noticed some, when I -- I  
17 noticed first of all -- excuse me -- not from the  
18 back of the vehicle, there was no damage on the  
19 back of the vehicle, but I noticed this person  
20 walking around the vehicle, and it looked like  
21 some damage on the side, at the front. I walked  
22 from the yellow, and as I was walking over to the  
23 truck, because I saw him walking around the truck,  
24 and then that's when I -- let me think for a  
25 minute here. He was walking around his truck, and

1 I walked up to him, because I didn't check his  
2 vehicle for damage until after.

3 Q Sir, this truck was in the ditch?

4 A It was in the centre ditch, right in  
5 the middle of it.

6 Q And that's not a normal place for a  
7 vehicle to be?

8 A No, definitely not.

9 Q That would probably click for you,  
10 sir, that that vehicle was involved in the  
11 accident?

12 A Yes, sir.

13 Q And you knew the green car didn't rear  
14 end the yellow car?

15 A That's correct, sir.

16 Q And you knew the yellow car had been  
17 itself rear ended?

18 A That's correct.

19 Q So it would have been, I would suggest  
20 to you, you can correct me if I'm wrong, pretty  
21 evident that that vehicle was the vehicle that  
22 started the collision.

23 A Yes, it was.

24 Q Now, you indicate that this gentleman  
25 was walking around the vehicle?

1           A     That's correct, he walked to the front  
2     and then he would walk to the side, and then he  
3     would walk to the front again.

4           Q     What was his posture like?

5           A     He was walking a little stooped  
6     over --

7           Q     I think the expression you used --

8           A     -- shaking his head.

9           Q     -- I think the expression you used in  
10    your interview that you had with Mr. Clifford was  
11    he had his head down?

12          A     That's when I walked with him back.

13          Q     Let me take you to the transcript at  
14    page 7, please. I'm going to take you to line 19  
15    this time.

16          A     Go ahead, sir.

17          Q     It is at page 7, you can follow if you  
18    wish, sir, in case I misquote you. We are going  
19    to start at 18, where you say "so" -- that's at  
20    the end of the line sir:

21                    "So I walked up to him. And at that  
22                    time, he was just walking around  
23                    shaking his head and he had his head  
24                    down..."

25          A     That's correct.

1           Q     "...and I asked him if he was the  
2                    driver of that truck, and he said to  
3                    me, he indicated that he was. He  
4                    never really looked up, he was sort of  
5                    looking down the whole time."

6     Does that refresh your memory, sir?

7           A     Yes, sir.

8           Q     Was there anybody with him?

9           A     No.

10          Q     Anybody attending to him, sir?

11          A     No, sir.

12          Q     The paramedics or first responders  
13     weren't there when you saw him, sir?

14          A     No, sir.

15          Q     You are sure about that?

16          A     Dealing with him, you mean?

17          Q     Yes?

18          A     No.

19          Q     I take it from your no, you mean they  
20     weren't there?

21          A     They weren't dealing with him.

22          Q     And you are sure about that?

23          A     Yes.

24          Q     The reason I ask is because there are  
25     no details in your notes about this encounter, and

1 I know it has been three and a half years, sir,  
2 and I'm just probing to see, given the other  
3 memory challenges that you have experienced,  
4 whether you might not be remembering this  
5 inaccurately, sir?

6 A No, this is embedded in my mind  
7 definitely.

8 Q And I also was wondering because the  
9 first responders had arrived at 7:24?

10 A Um-hum.

11 Q And wouldn't it be one of their  
12 functions to make sure everybody is okay?

13 A May have, but there was nobody dealing  
14 with him when I walked up to him.

15 Q And, sir, obviously you wanted to get  
16 over to that vehicle pretty quickly?

17 A I did.

18 Q And you would have wanted to get over  
19 to that vehicle pretty quickly because you had  
20 somebody who, it was pretty clear to you, was a  
21 driver implicated in this incident, sir?

22 A Yes.

23 Q He could be hurt, he was not being  
24 attended to; correct, sir?

25 A That's correct.

1 Q He might have, for all we know, been  
2 destroying evidence, sir?

3 A Possible, yes.

4 Q So you wouldn't leave him alone for 20  
5 minutes?

6 A I beg your pardon?

7 Q You wouldn't leave him alone for 20  
8 minutes, given that you have taken it upon  
9 yourself --

10 A Not when I located him, no.

11 Q Sir, he wasn't really all that hard to  
12 locate, was he, sir?

13 A No, sir, but I was looking at the  
14 other vehicles initially.

15 Q Yes, for a very short time?

16 A Yes.

17 Q You wouldn't have left him there for  
18 20 minutes?

19 A No.

20 Q Checking on him would have been a  
21 priority?

22 A Yes, sir.

23 Q Sir, this is one of the reasons why  
24 I'm having a little difficulty with another time  
25 that you have recorded in your notes, sir. If you

1 take a look, please, and again I'm dealing with  
2 your notes which should still be in front of you,  
3 again at tab E-1.22.a. It is exhibit 87 that you  
4 have in front of you, sir. You have a time shown  
5 on page 391 of our documents, and it would be at  
6 page 82 of your duty notes. Are you able to find  
7 page 82, sir?

8 A Yes, sir.

9 Q "7:40. Writer attended to vehicle  
10 number 3 and noticed male standing."

11 Do you see that, sir?

12 A Yes, I do.

13 Q Where did you get that time from?

14 A I don't recall.

15 Q You know that that's 24 minutes after  
16 the arrival time that you recorded of 7:16?

17 A Yes. I believe my conversation with  
18 the other gentleman indicated that the times were  
19 not very accurate.

20 Q Sir, this would, based on your  
21 description of the event, be quite inaccurate,  
22 would it not, sir? You are describing a lapsed  
23 time of some 24 minutes after your arrival, if  
24 this time is right, and if your 7:16 arrival time  
25 is right. There is no way that it was 24 minutes,

1 sir?

2 A Our arrival time definitely has to be  
3 very accurate, because we were only in the office  
4 for so many minutes to get changed, and then at  
5 the scene.

6 Q You arrival time has to be inaccurate,  
7 did you say?

8 A Sorry?

9 Q I did not hear you, did you say your  
10 arrival time has to be --

11 A I said arrival time should be fairly  
12 accurate because of the short time it would take  
13 to get from the office to the scene, other than  
14 getting changed and maybe a little bit of traffic  
15 congestion to get through.

16 Q Well, I have heard you talk about 10  
17 to 15 minutes to get changed, and another five or  
18 six to get to the scene, sir, which was about 20  
19 minutes.

20 A Yes.

21 Q And you got the call at 7:10, so you  
22 are looking almost at 7:30, based on your time  
23 estimates. Now you are saying it didn't take you  
24 long to get there?

25 A I didn't time the response on that, I

1 am sorry, sir.

2 Q But you did say that you believe you  
3 took it off your watch?

4 A I thought I did, yes.

5 Q Let's get back to 7:40, sir. If your  
6 arrival time is fairly accurate, based on your  
7 description of what took place, this time of 7:40  
8 is pretty inaccurate, would you not agree with  
9 that, sir?

10 A Yes, I do.

11 Q You understand that it doesn't accord  
12 with much of the other evidence that we have heard  
13 in these proceedings, sir, and I will share that  
14 with you. Constable Graham says you were with  
15 Mr. Harvey-Zenk, or off in that direction, when he  
16 was with Chief Riddolls over at the yellow car,  
17 shortly after 7:23. That was his testimony, if I  
18 understood it, some 16, 17 minutes before you  
19 describe being with Mr. Harvey-Zenk here.

20 Another marker, sir, that we have been  
21 given is Ms. Beattie from the green car,  
22 Ms. Beattie describes how she was placed in an  
23 ambulance facing south, and observed -- she may be  
24 incorrect as to the number of police officers or  
25 the character of the individuals there, although

1 she was adamant it was a police officer -- you  
2 know her husband is a police officer?

3 A Yes, I do.

4 Q And she believed that she recognized  
5 the uniform. She testified that she watched an  
6 exchange between a police officer and others who  
7 were standing around and this gentleman, while  
8 sitting in an ambulance, and then she was moved to  
9 another ambulance and ultimately taken away. Sir,  
10 the first ambulance, by deduction, would have had  
11 to be the one that took Crystal Taman to Concordia  
12 Hospital. That ambulance was out of there at 7:42  
13 according to the information that we have. They  
14 would have taken some time to get Ms. Beattie out  
15 and get Ms. Taman into that ambulance. It just  
16 doesn't seem consistent with you being over there  
17 at 7:40, does it, sir?

18 A Like I said, the times may be out a  
19 bit, definitely.

20 Q I will give you another indication  
21 that will support your definite conclusion, sir.  
22 The Selkirk Ambulance attendants who went and  
23 attended with Mr. Harvey-Zenk arrived on scene at  
24 7:38. They went immediately and directly to  
25 Constable Woychuk's vehicle, taking approximately

1 a minute to get there, and Mr. Zenk was in the  
2 vehicle at that time.

3 A Right.

4 Q Sir, I'm going to show you some photos  
5 too. Now, these may not be as crisp in terms of  
6 setting out the time, but you might be able to  
7 assist us with them, they are exhibit 82, and they  
8 are the four photos in the back of tab B-8-A for  
9 everyone else.

10 Sir, I can advise you that those four  
11 photos came in a series, stamped, you will see  
12 numbers at the top, 23, 26, 27 --

13 A I see that, yes.

14 Q -- and 28. And the reason why there  
15 is numbers missing is there were some very  
16 disturbing photographs in there, and we took them  
17 out, out of respect for Crystal Taman. So these  
18 photographs were taken while she was still on  
19 scene.

20 A Okay.

21 Q You will notice that there is a first  
22 responder standing next to the vehicle at photo  
23 23. You will notice photo 26, you have what I  
24 would suggest to you is the truck?

25 A That's correct.

1 Q And we still have emergency vehicles  
2 off in the background by the intersection, sir?

3 A That's correct.

4 Q Another photo of the truck at 27 and  
5 again at 28; correct, sir?

6 A That's correct.

7 Q Do you know how these photos were  
8 taken, who took them? Do you have any idea, sir?

9 A I don't recall.

10 Q Because they did come to us in the  
11 Crown disclosure package. But we have searched  
12 high and low, and there is no notation of anybody  
13 taking any photographs in any documents, sir. Did  
14 you assign anyone to take photographs of the  
15 scene, sir?

16 A No, I did not.

17 Q It would have been something that was  
18 prudent to do? Will you agree with me, sir, that  
19 was something that was prudent to do?

20 A Yes.

21 Q Part of a good investigation?

22 A Yes, sir.

23 Q You were unaware that that had taken  
24 place?

25 A I don't recall.

1           Q     Sir, the reason I'm showing you these  
2 photos is, first of all, to find out if you can  
3 help us on who actually took those photos. And  
4 also, and it may be a bit of a stretch, but I  
5 would assume, and I may be wrong, that these  
6 photos would have been taken at the same time?  
7 Someone is unlikely to take a few photos, go put  
8 the camera away, come back and take a few more.

9           I just wanted to observe, sir, that  
10 Ms. Taman's vehicle is being dealt with here in  
11 photo 23, and there is no sign of anyone around  
12 the truck in any of the three photographs of the  
13 truck. So Mr. Harvey-Zenk is gone from the truck  
14 at that point, I would take it, sir.

15           Would you agree there is nobody around  
16 the truck?

17           A     Yes, I do.

18           Q     Unless he went away and then came  
19 back, these photographs would suggest that, again,  
20 the time of 7:40 in your notes is not right?

21           A     That's probably so.

22           Q     I point it out, sir, because there is  
23 no equivocation in your notes that 7:40, it is  
24 shown there as a time, and you understand, sir,  
25 that you prepare your notes for the purposes

1 potentially of trial testimony?

2 A That's correct.

3 Q And you would come into court and you  
4 would rely on those notes to refresh your memory,  
5 sir? Correct, sir?

6 A Yes, sir.

7 Q And you would probably trust the times  
8 that you have recorded, would you not, sir?

9 A I would trust the time that I have  
10 recorded?

11 Q Yes, sir. If you were testifying and  
12 you pulled out a duty-book three years later, and  
13 nobody was giving you the whole low-down like I am  
14 doing, you would probably trust the times that you  
15 had?

16 A I would try to, as long as where I'm  
17 getting my times from is accurate.

18 Q Well, sir, you picked up these notes  
19 three years later. If you didn't have somebody  
20 like me trying to situate these times to see  
21 whether they were accurate, you probably would  
22 have testified that that happened at 7:40?

23 A Probably, yes, sir.

24 Q Now, you described that when you saw  
25 Mr. Harvey-Zenk he was walking around the truck,

1 you said walking from one side to the other,  
2 around the front?

3 A That's correct.

4 Q And you say that he was walking around  
5 shaking his head?

6 A Yes.

7 Q According to this passage where he has  
8 his head down, sir?

9 A That's right, sir.

10 Q And I know this is going to seem  
11 really trivial to you, but I will explain to you  
12 why I'm doing this in a minute. But there is no  
13 indication in your notes that he was walking  
14 around? Take a look at your notes, sir. Can you  
15 read the entry at 7:40 that we were just looking  
16 at in your final notes, please? It is page 391 of  
17 volume E-1 for everyone, at page 82 of your  
18 duty-book note for you, sir. Do you have the 7:40  
19 in front of you, sir?

20 A Yes, sir.

21 Q Were you looking to see if you had it  
22 recorded somewhere else? Because I don't want to  
23 rush you.

24 A No, I don't, sir.

25 Q Could you read what you describe

1 Mr. Harvey-Zenk doing in your note at 7:40?

2 A Male standing there, male observed.

3 Q Let's read it exactly as it is  
4 written, if you could, please?

5 A I can't read it. "Writer attended to  
6 vehicle number 3 and noticed a male standing..."

7 Q "...on drivers side of..."

8 A "...of a pickup truck."

9 Q "...PU..."

10 A "Male observed to have blood on  
11 his..."

12 Q We will go to the blood in a minute,  
13 but you are basically describing him as standing  
14 on the driver's side, in your notes, sir?

15 A Yes.

16 Q And your incident report, you recall  
17 doing an incident report in connection with this  
18 case?

19 A Yes, sir.

20 Q And if I could have the clerk give  
21 that to you, it is at tab E-1.22.c, if that could  
22 be made the next exhibit, please.

23 (EXHIBIT 145: E-1.22.c, Incident  
24 report created February 25, 2005)

25

1 BY MR. PACIOCCO:

2 Q Exhibit 145. If I could have a  
3 moment, sir, I'm going to record that. Have you  
4 had a chance to look at the top of page 403 of  
5 that document, sir?

6 A I beg your pardon?

7 Q Have you had a chance to look at the  
8 top of page 403 of that document, sir? It has  
9 pagination in pen of number 3 in the upper  
10 right-hand corner?

11 A Yes.

12 Q And you put there:

13 "As writer approached the vehicle  
14 writer observed a lone male standing  
15 on the driver's side of the vehicle."

16 Correct?

17 A That's correct.

18 Q Nothing about him walking around, sir?

19 A Prior to him standing at that  
20 location, he was walking around the vehicle, sir.

21 Q Yes, but in your notes, sir, there is  
22 no record of it?

23 A No, not in here.

24 Q And you try and take as complete a  
25 note as possible when you investigate cases, sir?

1           A     You like to. It is very cold weather  
2 outside as well, at the time, sir.

3           Q     So I take it from that that you made  
4 these notes outside?

5           A     I beg your pardon?

6           Q     I take it from that that you made  
7 these notes outside?

8           A     I designated that I would be going  
9 between the car and outside.

10          Q     Well, are you outside or not when you  
11 are taking this note, sir?

12          A     I don't know when I was writing these,  
13 sir.

14          Q     So your observation about it being  
15 cold out, we shouldn't give too much weight to?

16          A     That's fine, sir.

17          Q     The reason I'm mentioning this, I know  
18 it might seem trivial to many, but I can't see Mr.  
19 Prober looking at you, but he is a very capable  
20 lawyer and I know that he is going to get up, and  
21 if there is a suggestion that Harvey-Zenk is  
22 walking around, he is going to start asking you  
23 whether you observed anything in his walk that  
24 might suggest he was unsteady on his feet, right?  
25 A defence lawyer is going to do that, right?

1           A     Yes.

2           Q     So it could be quite important to  
3 describe the activities of an individual in an  
4 accurate way so that people can try and glean what  
5 there is to be gleaned from the observations that  
6 you have made. Correct, sir?

7           A     Yes, sir.

8           Q     And I think you would agree with me  
9 that it would have been better if your notes had  
10 been more complete about what you had observed,  
11 sir?

12          A     Yes, sir.

13          Q     I can tell you, sir, that Mr. Garth  
14 Shaw, who you do interview, he describes  
15 Mr. Harvey-Zenk leaning against the truck when he  
16 is with you?

17          A     Um-hum.

18          Q     As opposed to standing or walking  
19 around, so we have to try to pin down what the  
20 relevant body positions are, sir.

21                 Now, you described some conversation  
22 that you had with this gentleman, sir, or some  
23 comments that were exchanged. Can you describe  
24 that for the Commission?

25          A     I asked him if he was the driver of

1 the truck.

2 Q Yes, sir?

3 A And he indicated, yes.

4 Q Yes, sir. Did he use the word "yes"?

5 A No, indicating with his head.

6 Q Okay. So when you use the term  
7 indicate, you were suggesting a motion?

8 A Just a motion, a nod.

9 Q And anything equivocal about that nod,  
10 sir, anything unclear about it?

11 A No.

12 Q You were satisfied that that was a  
13 communication, that was an answer to your  
14 question?

15 A Yes.

16 Q Please continue, sir?

17 A He seemed very distraught. I started,  
18 I asked him to come with me.

19 Q Sir, did you say anything else to him,  
20 apart from is he driving?

21 A No, I don't recall that.

22 Q Did you ask him if he was okay?

23 A I may have. I can't say for sure on  
24 that, sir.

25 Q When you are not sure about something

1 when you are testifying, I guess the best place to  
2 go, sir, is to your notes?

3 A All I have, sir --

4 Q Go to 7:40 in your notes, please --  
5 7:40 is the time, 391 is the page.

6 "I asked if he was okay. He said he  
7 was okay."

8 I take it, sir, those being in your notes, are  
9 your words, sir?

10 A Just a moment, please?

11 Q Yeah, sure.

12 A You are talking about my handwritten  
13 notes?

14 Q Yes, sir?

15 A Which page are you talking about, sir?

16 Q Page 82 of your notes, page 391 would  
17 be the big number in the bottom right-hand corner,  
18 if that is what you are using to orient yourself.  
19 The times are, of course, your times, and they are  
20 in the little margin on the left-hand side of the  
21 page. I'm looking at 7:40, and I'm looking at the  
22 second kind of paragraph that you have there.

23 A No, he did indicate, I believe he said  
24 the word "yes" when I asked him that.

25 Q So you do remember now you asked him

1 if he was okay?

2 A Yes, sir.

3 Q And this time he replies verbally, he  
4 says yes; correct?

5 A Yes.

6 Q And you satisfied yourself, based on  
7 that, that he was okay, did you not, sir?

8 A Not totally, that's why I brought him  
9 back to our unit.

10 Q Sir, you never took him to any of the  
11 paramedics that were there?

12 A Not at that point.

13 Q You never took him to any of the first  
14 responders who have paramedic training?

15 A Where I walked him to, sir, was I  
16 walked him to the location where Woychuk's vehicle  
17 was, because that was the closest vehicle to us at  
18 that point.

19 Q Closest relative to the first  
20 responders and relative to the paramedics?

21 A Closest vehicle where I had a vehicle  
22 that I could put him into for a moment.

23 Q You didn't call an ambulance to come  
24 down and check him out or anything like that, sir?

25 A Sir, I made arrangements, I indicated

1 I placed him in the back seat of Constable  
2 Woychuk's vehicle.

3 Q Okay.

4 A If I can clarify that?

5 Q You certainly can, sir.

6 A Okay. Basically, when I was walking  
7 him back, he was bent over as well. And he made a  
8 comment to me, while I was walking him back, where  
9 he said he was a cop. I didn't know anything, so  
10 I looked down at him, because he was walking bent  
11 over again. And I sort of made a comment as I  
12 looked, and then I walked him towards Woychuk's  
13 vehicle. And when I arrived there Constable  
14 Graham and Woychuk were speaking to each other.  
15 And at that time I asked Woychuk, I indicated to  
16 him that I couldn't detect anything on this male,  
17 he was from the truck there, and I wanted to put  
18 him in a warm confined area to see whether maybe  
19 we could detect something on him. I was a little  
20 concerned that he was involved in an accident and  
21 I wanted him to be in this vehicle.

22 Q All right. Sir, I'm going to go  
23 through that in tremendous detail, trust me. But  
24 you didn't really answer the question that I posed  
25 to you, sir, which was, you didn't take him to a

1 paramedic vehicle or call an ambulance?

2 A No, I asked for -- Woychuk indicated  
3 that he would have a paramedic look at him, which  
4 I understand he did afterwards.

5 Q Okay. We will get back to whether  
6 that is consistent with Mr. Woychuk's evidence,  
7 and I'm not suggesting yours is wrong, if it is  
8 inconsistent. But I do want to put any  
9 inconsistencies to you so you will have a chance  
10 to respond to them, sir.

11 I am going to leave the conversation  
12 for a minute now. This reference to the head  
13 being down, it is down when you see him, according  
14 to your interview with Mr. Clifford, and it  
15 refreshed your memory today, and it is down when  
16 you are walking him over. And you said to  
17 Mr. Clifford, in the transcript you said, he never  
18 really looked up, he was sort of looking down the  
19 whole time. Do you remember me reading that to  
20 you, sir?

21 A Yes.

22 Q And in your statement that you  
23 provided to your lawyer, if you could take a look  
24 at that document, which was made an exhibit, and  
25 it would be -- I think it was already an exhibit,

1 was it not? I messed up the number once before.

2 It is exhibit 92, and it is at P-388. Do you have  
3 that document, in front of you, sir?

4 A Yes, sir.

5 Q I notice again in that paragraph that  
6 you have right in the middle of the page there,  
7 you end that paragraph in the middle of the page  
8 with the words:

9 "The male was looking down."

10 Right?

11 A Just one moment, please?

12 Q It is the bottom of the seventh break  
13 in the page.

14 A "Male was looking down," the final  
15 words -- yes.

16 Q Yes. Again, in the next paragraph you  
17 are looking down at him after he makes the comment  
18 to you about being a cop; right?

19 A That's correct.

20 Q Did you find this looking down  
21 business strange behaviour, sir?

22 A Not at that time, no.

23 Q Sir, you were concerned that this guy  
24 could be injured, I think you said that?

25 A Yes.

1           Q     You asked if he was okay. You now  
2     want to get Constable Woychuk to have a paramedic  
3     look at him. Your incident report indicates that  
4     he had blood on his nose. Do you remember that?

5           A     Yes.

6           Q     It indicates it was noted that he had  
7     some minor blood on his nose, and you asked him if  
8     he was okay?

9           A     Yes.

10          Q     Correct? He must have lifted his head  
11     a bit for you to observe the blood on his nose,  
12     sir?

13          A     I bent over to look, when I looked at  
14     him.

15          Q     Okay. So you bent right down?

16          A     He didn't stand upright. He was  
17     walking over, and I look up at him from the front.

18          Q     So you were concerned to check him  
19     out, sir?

20          A     Yes.

21          Q     So you bent down and you look right up  
22     at his face and you could see that blood, sir?

23          A     There wasn't much blood, sir.

24          Q     But you could see it nonetheless, even  
25     though there wasn't much, sir, that was my point.

1 And again, it might seem like a trivial point, but  
2 there is no place in your notes where you talk  
3 about his head being down, or in your incident  
4 report where you talk about his head being done?

5 A I understand that.

6 Q You understand that. And you are  
7 aware that an issue has arisen here as to whether  
8 this man has been drinking?

9 A Um-hum.

10 Q And you are aware that an issue has  
11 arisen here as to whether you know the man and  
12 whether you recognized the man, correct, sir?

13 A Yes.

14 Q And you make a point of highlighting  
15 in your statement to the RCMP that his head is  
16 down?

17 A Yes.

18 Q And although it doesn't get to the  
19 RCMP, that's who you made the statement for, so  
20 forgive me if I'm misleading you with describing  
21 the statement. But the statement you give to your  
22 lawyer, you make a point, you are expecting this  
23 to go to the RCMP, of saying he has his head down?

24 A Yes.

25 Q You did the same thing in your

1 interviews with Mr. Clifford on a couple of  
2 occasions, do you recall that, sir?

3 A Yes.

4 Q You volunteered, he didn't ask you  
5 what his body position was, you talked about his  
6 head being down the whole time; correct?

7 A Yes, sir .

8 Q Do you see how to some that might look  
9 like you are trying to minimize your opportunity  
10 to make observations of the man, either about his  
11 alcohol consumption, or your knowledge of him,  
12 given that this reference wasn't anywhere until an  
13 obstruction of justice investigation started? Do  
14 you see how that might at least cause someone to  
15 wonder why it becomes a feature of your accounts  
16 in these later versions and is not referred to in  
17 your notes, sir?

18 A It may be, but that's exactly how it  
19 was, sir.

20 Q All right. Sir, you were very close  
21 to this man, physically very close to him?

22 A Yes.

23 Q Would you agree with that?

24 A Yes.

25 Q You testified to Commission Counsel

1 that you had your arm around him because he seemed  
2 bent over and he seemed pretty upset.

3 A Yes.

4 Q Does that accord with your  
5 recollection, sir?

6 A Yes.

7 Q So you are basically physically  
8 touching him, you are right on him, you are only  
9 inches apart, is that correct, sir?

10 A Yes, sir.

11 Q You said he was upset. How was that  
12 upset manifesting itself?

13 A How was it manifesting itself?

14 Q Yeah, I know that's a complicated way  
15 to describe it. You will have to forgive me.  
16 Describe how you came to the conclusion that he  
17 was upset? What did you see?

18 A Nothing specific that I could say. He  
19 just seemed to be shaking his head.

20 Q Sir, people can shake their head when  
21 they are mad; correct?

22 A That's true.

23 Q They can shake their head when they  
24 are confused?

25 A Yes.

1           Q     They can shake their head when they  
2     are disagreeing with you?

3           A     Um-hum.

4           Q     What was it about this head shaking  
5     that caused you to conclude that he was upset?

6           A     To me he seemed just distraught that  
7     way, and that's what my concern was, that maybe he  
8     was totally upset from the accident or something,  
9     I don't know.

10          Q     Was he crying?

11          A     I never noticed that, no.

12          Q     He wasn't screaming out in anguish or  
13     anything like that, sir?

14          A     Not when I was there.

15          Q     I understand that you went to the  
16     Sveinson residence on March 1st of 2005 and met  
17     with the Sveinsons and the Tamans?

18          A     Yes, with Norm Carter, yes.

19          Q     And you describe in your interview  
20     with Commission Counsel that the people there were  
21     extremely distraught. That's the term you use.

22          A     I believe so.

23          Q     Can you describe what they were like,  
24     what caused you to conclude they were extremely  
25     distraught?

1           A     They were very upset and there was  
2     tearing, there was no doubt about that.

3           Q     Did you say tearing, sir?

4           A     Yes, I believe they were crying, yes.

5           Q     They were crying, and they would have  
6     been hugging and comforting each other?

7           A     Yes.

8           Q     Had trouble composing themselves?

9           A     Yes.

10          Q     Pretty evident upset, sir, nothing  
11     ambiguous about it, sir?

12          A     That's right.

13          Q     Can you compare their distress with  
14     Mr. Harvey-Zenk's?

15          A     No, I can't. He wasn't like in their  
16     situation, he wasn't behaving that way.

17          Q     I'm just a little intrigued by your  
18     word "distraught" based on a head shake.

19          A     Pardon me?

20          Q     I am just a little intrigued that you  
21     would use the same word, "distraught." I know you  
22     modified it in the case of the Tamans, "extremely  
23     distraught." But what the Tamans were like, that  
24     is what I would think of as somebody being  
25     distraught. I am just wondering about your own

1     lexicon, or your own word choice, and your  
2     decision to use "distraught" for someone who is  
3     shaking their head, sir?

4             A     I don't know, just how I described how  
5     they looked, how he looked.

6             Q     Okay. You say you asked really only  
7     two questions of the man over at the scene?

8             A     Yes.

9             Q     Did you stand there and have a  
10    conversation with him?

11            A     No.

12            Q     Was it anything like a conversation?

13            A     Beg your pardon?

14            Q     Was it anything like a conversation?

15            A     No. Just the part about whether he  
16    was the driver of the vehicle.

17            Q     Okay. And he nodded at that point, he  
18    didn't even say anything?

19            A     No.

20            Q     No lips moving?

21            A     No, sir.

22            Q     The only thing he says to you is, yes,  
23    when you ask him if he is okay, according to your  
24    recollection, sir?

25            A     That's correct.

1           Q     Sir, this man was obviously a witness  
2     to a horrendous motor vehicle accident, with a  
3     front row seat, correct, sir?  Would you agree  
4     with that, sir?

5           A     I beg your pardon?  You are talking  
6     about Mr. Zenk?

7           Q     Yes?

8           A     Yes.

9           Q     And you need to find out what happened  
10    at this collision, sir?

11          A     Yes.

12          Q     Agreed?

13          A     Yes, sir.

14          Q     That's one of your paramount  
15    obligations, or pre-occupations, correct?

16          A     Yes, sir.

17          Q     You didn't try to speak to him to find  
18    out what happened?

19          A     I wanted to put him in a warm area for  
20    himself at this point.  I didn't know what  
21    exactly -- what had happened.  We are still  
22    dealing with the accident scene.  I don't know  
23    what his state of mind is.  I wanted to put him in  
24    a warm vehicle where he could be with an officer  
25    who could keep an eye on him.

1           Q     Sir, wouldn't you have had a better  
2     idea of what his state of mind was by striking up  
3     a conversation with him?

4           A     He wasn't really talking, sir.

5           Q     Sir, did you try?  Because it sounds  
6     to me like you posed two questions and decided to  
7     put him in a warm vehicle.

8           A     I didn't carry on a long conversation  
9     with him, no, sir.

10          Q     Didn't you think that that would be a  
11     good thing for a traffic investigator to do, to  
12     try and see if one of the parties is prepared to  
13     talk about what happened?

14          A     Well, it wasn't happening -- I wasn't  
15     going to let him leave the scene either at that  
16     point either, sir.

17          Q     You weren't going to let him leave the  
18     scene?

19          A     Not at that point.

20          Q     Okay.  But you were, nonetheless, not  
21     trying to spark any conversation with him to try  
22     and get a statement from him, or even to get him  
23     to give you an indication as to what kind of state  
24     he was in, out of his own mouth?

25          A     He wasn't talking.

1           Q     Sir, you gathered that he wouldn't  
2 talk based on the nod and the one word response,  
3 yes?

4           A     I don't recall, sir, if I asked him  
5 any other questions. I may have asked him other  
6 questions that he didn't answer as well.

7           Q     Because I got to tell you, it just  
8 struck me as a little curious that an accident  
9 investigator, going to a car where someone is  
10 obviously the driver, and they are well enough to  
11 respond to you, and they are standing there, you  
12 wouldn't try getting in a conversation with him  
13 just to see really how he was and to see what you  
14 could find out about the accident, sir? You  
15 didn't do that, or you don't remember doing it?

16          A     I don't remember doing that, sir.

17          Q     So any witness who says that they  
18 observed a conversation between you and the man at  
19 the truck would be mistaken, sir?

20          A     I don't recall having a conversation  
21 standing in front of the truck, no, sir, I don't  
22 recall that.

23          Q     You are saying you don't recall it.  
24 Are you allowing for the possibility that you did  
25 have a conversation with the man, sir?

1           A     No, I don't believe I did.

2           Q     So you would say that those witnesses,  
3     and I'm not suggesting that you are saying they  
4     are lying or anything improper like that, you just  
5     would disagree with their interpretation of what  
6     they saw?

7           A     I know I did not have a conversation  
8     with him.

9           Q     Okay. And you remember me telling you  
10    about Kathy Beattie sitting in the ambulance  
11    that's facing south, and looking right at the man  
12    in the truck?

13          A     Um-hum.

14          Q     Now, I know there is some issue as to  
15    how many people she sees involved, but she  
16    describes a conversation with a police officer,  
17    sir.

18          A     Um-hum.

19          Q     Constable Woychuk didn't go to the  
20    truck while you were there, sir?

21          A     No. You are talking about the pickup  
22    truck?

23          Q     Yes, sir?

24          A     No.

25          Q     Constable Graham didn't?

1 A No.

2 Q Constable Pedersen didn't?

3 A No.

4 Q So you are the guy at the truck?

5 A Yes.

6 Q So, if there was a conversation going  
7 on, I take it, it would have been you, sir?

8 A Yes.

9 Q She describes:

10 "It looked like a conversation was  
11 happening and it seemed like a long  
12 time."

13 A No, it was not a long time.

14 Q Garth Shaw, do you remember him, sir?

15 A I do, sir. I went to see him in his  
16 vehicle after I put Mr. Zenk in a vehicle.

17 Q He said that the police officer, he  
18 has one of you there, he doesn't have others  
19 around, but he is saying you seem to be conversing  
20 with the man who is leaning up against the truck,  
21 conversing -- and conversation was the phrase that  
22 I captured out of his testimony, sir?

23 A I don't recall having a lot of  
24 conversation with Mr. Zenk, sir.

25 Q He says that Mr. Zenk was leaning up

1 against the truck at the time and he estimated  
2 five minutes of conversation?

3 A I can't say the time. I don't think  
4 it was five minutes at all.

5 Q Your lawyer questioned him about that,  
6 and he allowed that it might not have been five  
7 minutes. And I asked him, would you describe it  
8 as a short conversation? And he said moderate to  
9 long, is what he said.

10 A No.

11 Q So again, you use the term recall, and  
12 I don't mean to badger you, sir, but are you  
13 saying it --

14 A No, I didn't have a conversation of  
15 any length with him.

16 Q So these witnesses are mistaken?

17 A Well, I don't recall -- like I said, I  
18 know I didn't have a long conversation with him.

19 Q All right. So it is not that you  
20 don't recall, you know it didn't happen?

21 A That's right.

22 Q That's your position. Now, you walk  
23 back to the vehicle with Mr. Harvey-Zenk?

24 A That's correct.

25 Q You estimate that the vehicle was

1 100 yards down the road in your notes. Do you  
2 still feel that's a fair estimate from the  
3 intersection to the Harvey-Zenk vehicle?

4 A No, it is probably a lot shorter than  
5 that.

6 Q Do you accept that your notes say  
7 100 yards?

8 A Yes.

9 Q What route do you take to get to the  
10 vehicle, sir?

11 A To walk to it?

12 Q Yes, can you just show us? Actually,  
13 you know what, it might be helpful if you take a  
14 look at the photograph on page 142 of exhibit 66,  
15 which you may not have in front of you, I think I  
16 just put four photos in front of you.

17 A Which one, sir?

18 Q It is coming your way, sir. There may  
19 be a better photo here, but this is the one  
20 that -- we can look at a couple and see if you can  
21 orient yourself. Did you find page 142, in the  
22 bottom right-hand corner? I know they are not  
23 terribly visible but all of those photos are  
24 paginated. I must have given you the wrong  
25 exhibit number. I'm looking for the thicker book

1 of photographs. When this happens, sir, it is my  
2 mistake, it is not the Clerk's. It would be  
3 exhibit 62.

4 A Thank you.

5 THE COMMISSIONER: Do you know what  
6 page it is, Mr. Paciocco, because there are a lot  
7 of photographs?

8 MR. PACIOCCO: Page 142.

9 THE COMMISSIONER: 142?

10 MR. PACIOCCO: Yes, and I know the  
11 page numbers are a little hard to find, but it is  
12 down the lower right-hand corner and it is fairly  
13 faint.

14 THE COMMISSIONER: Yes, thank you.

15 THE WITNESS: Which picture, sir?

16 BY MR. PACIOCCO:

17 Q 142, sir. Have you got that in front  
18 of you?

19 A Not yet, just one moment. Yes.

20 Q Okay. You can see that it shows the  
21 truck from the north, it is a north view across  
22 the intersection, sir, and you see the horribly  
23 damaged Taman vehicle in the middle, sir?

24 A That's correct, sir.

25 Q Are you able to describe, using that

1 photograph, the route you would have taken to get  
2 to Constable Woychuk's vehicle?

3 A To Constable Woychuk's vehicle?

4 Q Yes, sir. Isn't that where you  
5 brought Mr. Harvey-Zenk?

6 A Yes.

7 Q You can start back at the truck and  
8 describe what you would have done?

9 A I believe Woychuk's vehicle was sort  
10 of turned around in this photo here.

11 Q You are looking from the north down at  
12 the south.

13 A I realize that, I'm trying to  
14 determine, looking from the north down, I believe  
15 Woychuk's vehicle would have been to the east.

16 Q That would be our understanding, off  
17 to the left on that photo, sir?

18 A Woychuk?

19 Q It would actually be to the west.

20 A To the west, okay, I'm sorry, I'm  
21 turned around in the intersection here.

22 Q Yeah, it would be to the left on that  
23 vehicle, sir, or on that photograph.

24 A He probably would have come,  
25 probably --

1           Q     Sorry, that's east, I do apologize,  
2     you are right.

3           A     So it is to the east?

4           Q     Yes.

5           A     That's correct. I don't believe we  
6     came by the Taman vehicle, I believe we walked  
7     through the snow towards RM2.

8           Q     How confident of that are you, sir,  
9     that you walked through the snow?

10          A     I don't -- I don't think we would  
11     be -- I would be walking him by the actual  
12     accident. There is no way I would be doing that.  
13     So I'm not sure on that, sir, I can't say exactly  
14     which way I walked him, but I did walk him there,  
15     but I didn't go by the Taman vehicle.

16          Q     We went through an awful lot of  
17     photographs and footprints, and we were unable to  
18     find anything that looked like two people walking  
19     together through the snow, sir.

20          A     Maybe it was by this, but I don't  
21     remember going by the Taman vehicle, sir.

22          Q     If you did come by the Taman vehicle,  
23     you would have to do a button hook here when you  
24     got to the intersection, sir, and go to the east.

25          A     Yeah.

1           Q     Yeah.  And you are unable to confirm  
2     that that's the route you took, but you think you  
3     did walk through the snow, sir?

4           A     I thought we had.

5           Q     But you are not sure, sir?

6           A     No, sir.

7           Q     Sir, if you did come up past the Taman  
8     vehicle, and she may have been by that point in  
9     time already in the ambulance, sir, causing you to  
10    have less concern about bringing him that way  
11    possibly, you would have had to make that little  
12    right-hand turn when you got to the intersection;  
13    right?

14          A     Yes, sir.

15          Q     So you would have been going in an  
16    easterly direction rather than a northerly  
17    direction at that time?

18          A     That's correct.

19          Q     Okay.  I know Constable Woychuk, in  
20    fairness to you, wasn't 100 per cent sure where  
21    you came from, but I think the place he arrived at  
22    after the questioning was he saw you from five to  
23    ten feet away in his side view mirror approaching  
24    his vehicle.  And it left many of us with the  
25    impression that you might have come across this

1 intersection, sir.

2 A I don't recall that, sir.

3 Q If you did come across the  
4 intersection, sir, he wouldn't know whether you  
5 were coming from the south or the north, he would  
6 just see you coming across the intersection,  
7 because you have to do that button hook, right?

8 A Yes.

9 MR. PACIOCCO: I think this is a good  
10 time for a break, Mr. Commissioner.

11 THE COMMISSIONER: 15 minutes.

12 THE CLERK: All rise. This Commission  
13 of Inquiry is now in recess.

14 (Proceedings recessed at 3:26 p.m. and  
15 reconvened at 3:40 p.m.)

16 THE CLERK: This Commission of Inquiry  
17 is now re-opened. Please be seated.

18 BY MR. PACIOCCO:

19 Q Thank you, Mr. Commissioner. Can you  
20 describe the way that Mr. Harvey-Zenk walked over  
21 to the Woychuk vehicle?

22 A Basically the only way that I can  
23 describe him, I had my arm around him and he was  
24 just walking slowly.

25 Q And, sir, you were going to say

1 something?

2 A Go ahead.

3 Q So this walk was a slow walk and you  
4 had your arm around him, sir?

5 A Yes.

6 Q Kind of like you would in  
7 commiseration sort of thing?

8 A Sorry?

9 Q In commiseration, somebody is  
10 grieving, or somebody is --

11 A Yes.

12 Q So you are just comforting them, is  
13 that basically what you were trying to do?

14 A I guess you could say that, sure.

15 Q Well, what were you trying to do with  
16 your arm around him?

17 A Just happened because that's the way  
18 he was walking, so I was leading him back to the  
19 car.

20 Q All right. The way you describe it,  
21 would that perhaps leave somebody with the  
22 impression that perhaps you were helping him?

23 A Yeah, definitely.

24 Q And, sir, he was not going to require  
25 a great deal of athleticism or coordination to do

1 that slow walk with your arm around him?

2 A Pardon me?

3 Q It wouldn't take a lot of coordination  
4 to do the slow walk that you described, sir?

5 A I don't believe so.

6 Q You described him making a comment to  
7 you as you were walking him back to the vehicle.

8 A Yes.

9 Q You described how you looked down, he  
10 had his head down and he said something and you  
11 looked down? Sir, could you just tell us about  
12 that?

13 A He said, when I was walking with him  
14 towards the RM2 area, he said -- all of a sudden I  
15 heard him say I'm a cop, and I looked down in the  
16 front to see who it was.

17 Q And what happened next?

18 A I looked at him.

19 Q You are making a motion, for the  
20 record you, are tipping yourself forward --

21 A Tipping myself forward and looking at  
22 him. I looked at him and I recognized him I  
23 thought, and I said the name Derek I believe it  
24 was.

25 Q All right. So basically you showed

1     yourself looking down. I got the impression you  
2     were looking way down, would that be fair, sir?

3             A     He wasn't walking straight up.

4             Q     He is quite hunched over?

5             A     A fair amount, yes.

6             Q     Because again I know that witnesses --

7             A     Not completely over hunched, but  
8     hunched over.

9             Q     Because I know that witnesses do  
10    sometimes see things differently, but Mr. Garth  
11    Shaw described him as walking upright.

12            A     Not when I was walking him to the car  
13    sir, no.

14            Q     Now you recognize him because you are  
15    calling him by his first name, Derek.

16            A     Yes.

17            Q     You had obviously used his first name  
18    before with him?

19            A     Maybe if I met him the odd day here  
20    and there in the north end.

21            Q     You used the name Derek with him  
22    before?

23            A     I believe so, yes.

24            Q     How did you know him?

25            A     How did I know him?

1 Q Yes?

2 A I didn't really know Derek. I worked  
3 in the north end, he worked in the north end. I  
4 had a platoon of 20 members and he was on a  
5 totally different platoon with 20 members.

6 Q Okay. So how did you interact with  
7 him, if you did at all?

8 A The only time I might interact with  
9 him would be if he would be coming in maybe on an  
10 overlap period, for some reason that his  
11 supervisor wasn't there, that I might be releasing  
12 a prisoner for him or something like that. That's  
13 about it.

14 Q So you might have actually conducted  
15 business with him?

16 A There is a chance of it, but not that  
17 great, because we have sergeants and patrol  
18 sergeants on all shifts.

19 Q So you are basically talking about  
20 overlap periods, how often do these overlaps  
21 happen in a schedule?

22 A Well, we have an A and B side. And we  
23 have the overlap shifts of like days, evenings and  
24 nights, you will get so many hours where there is  
25 an overlap of manpower.

1 Q How often would these happen?

2 A That would happen on a daily basis,  
3 but like I said, we had two patrol sergeants on  
4 each shift, and we had a sergeant, and the  
5 sergeant started earlier than everybody and they  
6 went home earlier as well.

7 Q I take it that this north end that you  
8 are working in is one building, you all share it?

9 A Yes, it is.

10 Q And Mr. Derek Harvey-Zenk is working  
11 on the other side, but basically --

12 A He is working on another shift.

13 Q Another shift?

14 A Yes.

15 Q But he had some overlaps with your  
16 crew, sir?

17 A There could be a time period where  
18 there might be an hour overlap or so.

19 Q Sir, are there ever any overlaps where  
20 people from both shifts are scheduled to work the  
21 same shift?

22 A At the same time?

23 Q Yes.

24 A No, because we had an A and B side as  
25 well.

1 Q You are the sergeant, sir?

2 A I was the sergeant, yes, sir.

3 Q And it would be pretty important for  
4 you to know the people who you may have to have  
5 some dealing with within the police force, sir?

6 A You would know your people more than  
7 the others. You would see them the odd time, but  
8 generally they were always dealt with by their  
9 own. We only dealt with our own people mainly.

10 Q But when you are there together you  
11 are sharing the same space?

12 A Yes.

13 Q And you talked about the hypothetical  
14 possibility that you may have had to actually  
15 interact with him in a professional capacity?

16 A There is a possibility the odd time,  
17 but not very often that would happen.

18 Q You knew his name to be Derek.

19 A Only because he had a strange name.

20 Q You remembered the first name, so  
21 there is nothing really strange about the first  
22 name, is there?

23 A No, his whole name, how it worked out.

24 Q Drew a bit of attention to him?

25 A The name, yes.

1 Q So you could look at this guy and  
2 recognize him in the police station as Derek  
3 Harveymordenzenk.

4 A I don't remember seeing him for a long  
5 time before I left.

6 Q Sir, but you saw this guy at the  
7 precinct, you would know who he was?

8 A Yes, I would have recognized him.

9 Q And if you saw him at a social event  
10 you would recognize him and you could say "hi  
11 Derek."

12 A Yeah, possibly, yeah.

13 Q Sir, do you know how long you worked  
14 together in this capacity that you have described?

15 A No, we never worked together, sir.

16 Q Let me put it very precisely, and I do  
17 want to be fair to you. Do you know how long you  
18 worked in the same building with him and his crew  
19 of 20 and your crew of 20?

20 A I couldn't say whether it was a year  
21 or less than that, I'm not sure, because I never  
22 saw him very often at all.

23 Q Sir, you finished on March 22, 2003?

24 A Yes I did.

25 Q And he started on December 4, 2000.

1 A When he did he leave, sir?

2 Q He was still there when you left, sir.

3 A Okay.

4 Q So a little over two years you are  
5 sharing this facility with someone who is on  
6 another shift and who sometimes has overlaps with  
7 your shift, sir?

8 A Okay, sir.

9 Q And you are a sergeant.

10 A Yes, sir.

11 Q And you are on a first name basis with  
12 him, sir?

13 A If you remember their names, yes.

14 Q And you did remember his name?

15 A Only because it was a strange name.

16 Q But you did remember his name.

17 A Yes, I did.

18 Q He is a colleague of yours.

19 A Sorry?

20 Q He is a colleague of yours.

21 A What do you refer as a colleague? A  
22 fellow officer?

23 Q Yes, a fellow police officer. You  
24 describe each other as members, from what I  
25 understand you are all members of the same basic

1 organization.

2 A Yes.

3 Q And it is an organization that has an  
4 esprit de corps morale and you tend to want to  
5 work together, sir?

6 A Not our shift, our shift did our own  
7 things. We did projects and that on overlap days.  
8 We did our own things, not with the other shifts.

9 Q So your shift members never worked  
10 with their shift members?

11 A On an overlap day, sure they did, on  
12 the overlap period.

13 Q You would be supervising someone who  
14 was working with members from the other shift?

15 A Yes, but generally it depends on what  
16 his shift was, sir.

17 Q Yes, but his shift, we know, was on  
18 the other side of your shift, sir?

19 A Yes.

20 Q That the shifts overlapped and they  
21 were together --

22 A But his sergeant would come in as well  
23 and run the shift with my shift overlapping, and  
24 looking after my fellas, and I could go home at  
25 that point.

1 Q Sure. But where you by the same token  
2 could overlook his fellows and he could go home at  
3 some point on an overlap.

4 A I couldn't say that for sure. It  
5 depends. There is three shifts, and some don't  
6 overlap the same way that way.

7 Q Well, sir, but sometimes you are  
8 overlooking his shift. You have to allow --

9 A There is a possibility, yes, sure.

10 Q -- you might even have been  
11 supervising this guy.

12 A I don't recall that.

13 Q Is there any chance that you are  
14 trying to minimize your knowledge of this  
15 gentleman?

16 A No, sir.

17 Q Virtually every officer we have asked  
18 talks about how you would have known the guys on  
19 the other shift.

20 A We had 20 people on my platoon alone,  
21 sir. I didn't know everybody on every platoon and  
22 I didn't remember everything about them.

23 Q I'm sure you don't know their favorite  
24 baseball card, sir, but this is 20 people and 20  
25 people on the other shift, it is 40 people, it is

1 not a huge number, all working together doing the  
2 same dangerous job, sir?

3 A Yeah. You are talking -- yeah.

4 Q How did it strike you that this man  
5 would bother to tell you that he was a cop, what  
6 reaction did you have to that, sir?

7 A I didn't react to that.

8 Q Sir, you indicated that he wasn't a  
9 talker.

10 A That's correct.

11 Q He wasn't making small talk.

12 A That's correct.

13 Q He must have made that point to you  
14 for a reason, sir?

15 A I never even thought of that, sir.

16 Q Never -- never crossed your mind, sir?

17 A I never looked at it any other way,  
18 no, sir.

19 Q You agree with me, sir, he wouldn't be  
20 hunched over and being lead away, and say I'm a  
21 fruit vendor, or I'm insurance agent? Telling you  
22 that he is cop has some significance, doesn't it?

23 A I understand that.

24 Q You are telling me it never dawned on  
25 you to wonder why he is telling you this?

1           A     It may have, I don't recall, though.

2           Q     Well if may have dawned on you, what  
3 would have dawned on you, sir? What is dawning on  
4 you now?

5           A     I guess dealing with a policeman I  
6 would have a little concern that I would rather  
7 not deal with a policeman.

8           Q     Okay. Why would you have concern that  
9 you would rather not deal with a policeman?

10          A     Because I think it would be a little  
11 more neutral to have somebody else deal with him.

12          Q     Neutral to have someone else deal with  
13 him?

14          A     That's correct.

15          Q     Now you are talking about how would  
16 you react to him telling you this. I'm asking if  
17 you had any sense of why he would tell you this?

18               MR. PROBER: I object to that  
19 question.

20               THE COMMISSIONER: Just a second, one  
21 at a time. Mr. Prober, I saw you stand and I  
22 thought you were going to compete with Mr.  
23 Weinstein in your objections.

24               MR. WEINSTEIN: With respect,  
25 Mr. Commissioner --

1 THE COMMISSIONER: I can't hear you.

2 MR. WEINSTEIN: With respect,  
3 Mr. Commissioner it is totally unfair for my  
4 learned friend to ask this witness to read into  
5 the mind of another individual. To ask him why do  
6 you think he said "I'm a cop." It is impossible  
7 for this person to answer what was in the mind of  
8 Mr. Zenk. That's my objection, sir.

9 THE COMMISSIONER: I think he is  
10 trying to get him to speculate on a very important  
11 issue. Why would a police officer who has just  
12 been arrested or been involved in an accident say  
13 to another officer, "I am a cop."

14 MR. WEINSTEIN: Can I answer that?

15 THE COMMISSIONER: Certainly.

16 MR. WEINSTEIN: Mr. Zenk is going to  
17 be testifying. The proper person to ask "why did  
18 you say that" would be Mr. Zenk, as opposed to  
19 having this witness try and speculate on what  
20 Mr. Zenk was saying. You have the best evidence  
21 coming up later this month or beginning of August.

22 THE COMMISSIONER: I agree. But I  
23 want to hear what you have to say.

24 MR. PACIOCCO: Yes, Mr. Commissioner,  
25 my position is that I was asking him whether he

1 had formed any conclusions or impressions from  
2 what was said, because one of the issues in this  
3 case is whether he acts on any impressions that he  
4 may have formed or any interaction about the  
5 identity of Mr. Harvey-Zenk as a police officer.  
6 If -- and I really hesitate to do this in front of  
7 the witness, but I'm mindful of the time -- if  
8 someone gets the impression that someone is  
9 telling them that in order to curry favour, it  
10 could inspire that person to react favourably to  
11 that implicit request. And that's why I posed the  
12 question.

13 THE COMMISSIONER: Yes. Well, I think  
14 that can be put to Mr. Zenk and -- okay, Mr.  
15 Weinstein, I'm not going to allow him to go any  
16 further on that point.

17 MR. WEINSTEIN: Thank you,  
18 Mr. Commissioner.

19 BY MR. PACIOCCO:

20 Q Now you just began to describe how  
21 learning that Mr. Harvey-Zenk was a police officer  
22 would make things a little more difficult for you,  
23 sir.

24 A Uncomfortable maybe, yeah.

25 Q Yes. And you described how it would

1 be a little awkward.

2 A You are saying to me it would be  
3 awkward?

4 Q For you. I mean, you know this guy is  
5 a cop now.

6 A I guess I don't want anybody to  
7 misconstrue anything.

8 Q Yes, sir. And therefore --

9 A Therefore I was wanting to turn him  
10 over to someone else.

11 Q You sensed that there could be a bit  
12 of a conflict for you, sir.

13 A There could be.

14 Q I'm going to take you to the  
15 transcript at page 52, please? Sir, you will see  
16 at page 52, line 10, are you at page 52, sir?

17 A One moment, please. Yes.

18 Q Line 10, the question posed to you  
19 was:

20 "Broadly phrased was whether it  
21 registered any concern with you about  
22 who he was and the role that he had?

23 A No, no, I do not. My feelings are  
24 that policemen, whatever they do out  
25 there is their responsibility, it is

1 not mine. I'm not here to give people  
2 breaks or anything like."

3 Do you recall giving that answer, sir?

4 A Yes, I do.

5 Q I know it goes beyond the conversation  
6 that we are having, but the question put to you  
7 was whether you had any concern, whether this  
8 raised any concern? And I understood your answer  
9 to Mr. Clifford to be that, no, it didn't?

10 A I indicated there that if I had to do  
11 it, I would do it, I'm not going to let somebody  
12 get away with something.

13 Q Sir, you don't see anywhere here where  
14 it says, if I had to do it, I would do it; you  
15 agree with me, sir?

16 A In this answer you are talking about?

17 Q Yes. It doesn't say anywhere there  
18 that if I had to do it, I would do it.

19 A Which one are we looking at again,  
20 sir?

21 Q You are looking, sir, at page 52 and  
22 you are looking at line 6. You talk about not  
23 recognizing him. When you did look at him, you  
24 said:

25 "...Harvey? Because I wasn't sure who

1                   he was. And sorry, your question  
2                   again?  
3                   Broadly phrased was whether it  
4                   registered any concern with you about  
5                   who he was and the role he had?"

6       So that's the second time Mr. Clifford is posing  
7       the question to you about whether his statement  
8       "I'm a cop" triggers any concern for you. And you  
9       say no, right?

10                A     Yes, sir.

11                Q     So that doesn't seem like the same  
12       answer that you are giving today, does it?

13                A     I guess not, sir.

14                Q     And we've heard officers testify that  
15       there are officers out there who wouldn't want to  
16       deal with a case like this because they wouldn't  
17       want to be known as officers who have ruined  
18       another officer's career. It was attributed to  
19       Constable Woychuk from Constable Graham, sir. Do  
20       you remember that testimony?

21                A     Yes, I do.

22                Q     And Constable Graham is alleged to  
23       have basically called a police officer, who was  
24       going to testify in this case, a traitor. Do you  
25       remember that exchange, sir?

1           A     Yes, I do.

2           Q     And Chief Carter told the Commissioner  
3     that no one really wanted this file, you included,  
4     because it involved a police officer. Did you  
5     hear his evidence to that effect, sir?

6           A     Yes, I did.

7           Q     Is that fair, sir, that you really  
8     didn't want this file?

9           A     That's not true. I would have dealt  
10    with the file, but if there was somebody else that  
11    could deal with it, definitely.

12          Q     So you basically felt there was a  
13    conflict and it was best to pass it off, sir?

14          A     No, I wasn't intent that I had to pass  
15    it off, sir. I said if somebody else could look  
16    after it, definitely.

17          Q     We will come back to that in a second.  
18    You know that Constable Pedersen testified in  
19    these proceedings?

20          A     Yes.

21          Q     And she described a conversation that  
22    you had with her with respect to the accident. Do  
23    you remember her testimony about that  
24    conversation?

25          A     No, I don't, sir.

1           Q     Well, she said that you appeared to  
2     have more sympathy for Mr. Harvey-Zenk and the  
3     implications this would have for his career and  
4     his future than did you for Crystal Taman and the  
5     Taman family. How do you respond to that, sir?

6           A     That's not true.

7           Q     She said that you just mentioned it in  
8     passing, you said it was bad for the family too,  
9     but you just seemed to bring this up a couple of  
10    times with her and it made her uncomfortable. Do  
11    you deny that that conversation took place, sir?

12          A     No, what I said was that two families  
13    have been totally destroyed in this situation.

14          Q     So she must have misunderstood you, or  
15    misinterpreted you?

16          A     She may have, sir.

17          Q     Sir, you had a conversation with  
18    Detective Sergeant Poole of the Winnipeg Police  
19    Service, I believe he is a Detective Sergeant, but  
20    I may have his rank wrong, February 28th, 2005,  
21    sir?

22          A     Go ahead, sir.

23          Q     Do you recall having some  
24    conversations with Poole in the early days?

25          A     I don't recall. I may have.

1           Q     And it was with respect to the  
2 Professional Standards Unit wanting to get  
3 information about the case?

4           A     Yes, sir.

5           Q     Do you remember that, sir?

6           A     Yes, I do.

7           Q     And he claims that in his records, and  
8 we will have his testimony in case I'm  
9 misunderstanding it, but as I interpret those, he  
10 says that you were upset that Derek Harvey-Zenk's  
11 occupation as a police officer was in the  
12 newspaper. Do you recall having that conversation  
13 with Detective Sergeant Poole?

14          A     I don't recall that conversation, sir.

15          Q     Is it possible that you had that  
16 conversation, sir?

17          A     I don't recall it. I could have, but  
18 I don't recall that, sir.

19          Q     And if you could have had that  
20 conversation, sir, why are you allowing for that  
21 possibility?

22          A     I don't recall having that  
23 conversation.

24          Q     Well, it must be a conversation that  
25 you would understand yourself as capable of having

1 in order to allow for the possibility that it  
2 could have occurred?

3 A I don't recall, sir.

4 Q Sir, we are going to have to hear from  
5 his testimony, but I want you to understand that  
6 the suggestion being made is that you are quite  
7 protective of the status of this individual as a  
8 police officer?

9 A No, that I am not.

10 Q Can you think of any other reason why,  
11 if you made such a comment, you would have?

12 A I think maybe, if anything, it might  
13 be that somebody getting involved in something  
14 like this, it is a stupid thing, and basically it  
15 leaves a bad mark on everybody that wears a  
16 uniform when you see somebody doing something like  
17 this.

18 Q Sure, it does, and therefore it is  
19 obviously better if it doesn't happen, it is  
20 obviously better if it never happened?

21 A The accident never happened?

22 Q It is just so obvious, correct?

23 A Definitely, everybody would rather not  
24 have it happen and lose a loved one.

25 Q And it would be better for the

1 reputation of the police if this individual was  
2 never blamed?

3 A That's not true, sir.

4 Q I'm not suggesting directly that you  
5 have made a decision not to tag him with this, I'm  
6 suggesting the basic proposition that it would be  
7 better for the reputation of the police if he was  
8 never blamed in connection with this accident.

9 A No, sir.

10 Q So the notoriety of his involvement  
11 would be better than people not knowing, for the  
12 reputation of the police, sir?

13 A No, sir, he made his own bed and he  
14 has to live in it.

15 Q You are aware that Constable Woychuk  
16 believes that you fobbed the subject off on him  
17 because you didn't want to deal with a police  
18 officer. Do you remember that evidence, sir?

19 A I understand that comment, yeah.

20 Q How do you respond to that?

21 A That's not why I had done that. We  
22 have some real problems on our department, or the  
23 department when I was there, with constables not  
24 wanting to take orders from constables. And so we  
25 were having a lot of problems and I felt it was

1 better to have a supervisor there where they  
2 couldn't argue with --

3 Q Who are you referring to when you say  
4 they?

5 A Various constables. They have their  
6 nose out of joint, and they right away think if  
7 somebody is going to ask them to do something or  
8 ask them to go park at a certain location, they  
9 will argue the point.

10 Q What does that have to do with this  
11 situation, sir?

12 A I'm just giving you an example of what  
13 can happen.

14 Q That doesn't really, as I understand  
15 your answer, directly respond to his allegation  
16 that you basically gave him this case because you  
17 didn't want it. You put him in a position where  
18 he had to deal with it because you didn't want to  
19 deal with it because Harvey-Zenk was a police  
20 officer?

21 A No, that's not true.

22 Q So his impression is wrong?

23 A That's correct, sir.

24 Q Sir, you understand how your  
25 involvement in the file would raise concerns about

1 the potential for conflict of interest or bias?

2 A Yes, that is a concern.

3 Q You understand that now, sir?

4 A I beg your pardon?

5 Q You understand that now?

6 A Yes.

7 Q Did you understand it back then?

8 A I believe so.

9 Q Sir, you know a special prosecutor was  
10 assigned to this case, sir?

11 A Yes, sir.

12 Q And that's because they were  
13 concerned, the prosecution service was concerned  
14 about the appearance of having a line Crown who  
15 deals with police officers all of the time handle  
16 the case; right?

17 A Um-hum.

18 Q That line Crown may not even know the  
19 police officer in question, it was just the status  
20 was a concern in terms of the public perception,  
21 do you understand that, sir?

22 A It would be true.

23 Q And it would be the same with a police  
24 officer investigating someone he knew, sir?

25 A That's true.

1           Q     Sir, you are aware that Constable  
2     Graham testified that you told him you knew this  
3     man, and you were getting Carter out because you  
4     were concerned about your ability to maintain  
5     impartiality, or you were concerned about the  
6     appearances of impartiality, he wasn't clear on  
7     that, but he said you were getting Carter out  
8     because you didn't want to deal with this because  
9     you knew the man and it was better to get somebody  
10    else involved. Do you remember him testifying to  
11    that effect?

12           A     I told him that -- no, I don't recall  
13    saying it that way, sir. I recall telling  
14    Constable Graham that I wanted to have Carter  
15    come, I was calling Carter in because I wanted to  
16    have somebody with Woychuk at the office when  
17    Woychuk came in with this gentleman.

18           Q     So, basically, his testimony and his  
19    statement to Mr. Clifford were pretty clear that  
20    you basically said that you knew Mr. Zenk, that  
21    you had had him on the other side and you might  
22    have dealt with him in overlap positions, and you  
23    worked at the office, and you each knew each  
24    other, and that's why you called Sergeant Carter  
25    out to deal with that end of it. That way there

1 is no ambiguity about anything, I think that's the  
2 way he put it, sir.

3 A It can be.

4 Q Did you have that conversation with  
5 him, sir?

6 A I don't recall, but it could have  
7 been.

8 Q You could have had a conversation with  
9 him in which you are talking about concern that  
10 you had about a potential conflict or appearance  
11 of conflict, sir?

12 A I don't recall that one, sir, I'm  
13 sorry.

14 Q Sir, are you allowing again for the  
15 possibility that that conversation took place?

16 A I don't recall having that  
17 conversation.

18 Q Is that a no, or are you saying it  
19 might have, I don't remember?

20 A No, I don't recall having it, sir, no.

21 Q I'm having the same problem, because  
22 there is a difference between not recalling  
23 something that could have happened and denying  
24 that something happened?

25 A I don't recall having the conversation

1 with him, though, sir.

2 Q I know that, sir, but I'm asking

3 you --

4 A You are saying could I have had that

5 conversation?

6 Q That's what I'm saying?

7 A I could have.

8 Q All right. Sir, I'm going to take you

9 to page 53 of the transcript. Now, you remember,

10 sir, you were, of course, testifying under oath

11 when you gave your evidence before the Commission

12 Counsel, sir, on the 13th of March, 2008. You

13 were under oath, sir?

14 A Yes, sir. What line are you on, sir?

15 Q Line 25, sir, on page 52. Could you

16 read that for us, please?

17 A "That you knew who he was, that you

18 knew he was a cop with Winnipeg."

19 Q Please continue?

20 "All I told him is I believe he was a

21 policeman and that he used to work in

22 the north end, and that was it."

23 Q Please go on?

24 A "Did you say anything else with him

25 with respect to concern you had about

1 a conflict?"

2 Q The answer was no, sir. So when you  
3 were testifying before Mr. Clifford, you were sure  
4 that there was no conversation about conflict, and  
5 today you are allowing for the possibility that it  
6 happened, sir?

7 A It was definitely probably going  
8 through my mind, sir.

9 Q Sir, it is about the conversation I'm  
10 asking you right now?

11 A I don't recall that sir, I'm sorry.

12 Q But your answer was decisive then that  
13 it didn't happen, you agree with that?

14 A Yes, it does say that.

15 Q Okay. And today I don't get the  
16 impression, and correct me if I'm wrong, that you  
17 are being decisive about this, you are saying it  
18 could have happened?

19 A There is a possibility, yes.

20 Q So you have basically changed your  
21 position, sir?

22 A I could have -- yes, sir.

23 Q Now, you did call Carter out, sir?

24 A Yes, I did, sir.

25 Q And your evidence was that you called

1 him to the office and not the scene?

2 A I contacted dispatch and asked him to  
3 go to the office, yes.

4 Q And why did you want him at the  
5 office?

6 A Because the time was going by quite  
7 quickly, and I wanted him into the office so I  
8 could send Woychuk into the office.

9 Q Sir, what were you going to send  
10 Woychuk into the office for?

11 A Well, with this gentleman, when I  
12 placed him in the vehicle, I had asked him to stay  
13 in the vehicle with him and see if he could detect  
14 anything in a warm confined area, because I,  
15 outside in the freezing cold, minus 20, couldn't  
16 detect anything. I hadn't heard anything back.

17 Q Yes, sir. And why is Sergeant Carter  
18 being sent to the office, sir?

19 A Well, first of all, there was no cars  
20 to get him to the location. All right. So I was  
21 going to be sending Woychuk into the office with  
22 this gentleman.

23 Q No cars to get who to the location,  
24 sir?

25 A Carter to the accident scene.

1           Q     So there were no cars left at all at  
2     the precinct?

3           A     No, they were all at the accident  
4     scene, sir.

5           Q     And officers never come in their own  
6     cars, sir, for emergency situations like that?

7           A     Not there, sir.

8           Q     Could you have gone to get Carter?  
9     Could you send Woychuk to go get him?

10          A     I was directing traffic as well, sir.

11          Q     I was saying, could you have gotten  
12     Woychuk to go and get him?

13          A     Woychuk has got this gentleman in his  
14     back seat, why would he go and get him then?

15          Q     You put him in another vehicle, sir?

16          A     We were moving all of the vehicles  
17     around, sir.

18          Q     When you were asked this question by  
19     Commission Counsel during the interview, you said  
20     that you needed somebody to run the office?

21          A     Exactly, the office end of this.

22          Q     Okay. So the office end of this, and  
23     not just run the office generally?

24          A     No, sir. There was also a concern in  
25     the office because we had nobody at the office,

1 period.

2 Q Well, you had Special Constable Olfert  
3 there.

4 A I wasn't sure when she got there that  
5 morning, sir.

6 Q What time does she usually start, sir?

7 A I don't know, sir, her hours are  
8 varying according to her.

9 Q We heard she comes in at 8:00 o'clock  
10 in the morning.

11 A Well, you may have heard it, but I  
12 know her hours are varying, she does varying  
13 hours, what she wants to do usually.

14 Q Did you try and contact her?

15 A No, I didn't, sir. I wasn't making  
16 the contacts. I contacted dispatch to call him.

17 Q Okay. Are you aware, from listening  
18 to the testimony, that Constable Woychuk expected  
19 Carter to come to the scene, sir?

20 A He may have.

21 Q And he says you are the source of that  
22 expectation?

23 A I don't recall telling him to have  
24 Woychuk come to the scene.

25 Q And are you aware that Constable

1 Graham testified that he expected Carter to come  
2 to the scene, sir?

3 A I don't recall that, sir.

4 Q And he said that you are the source of  
5 that expectation, sir?

6 A I don't recall asking Carter to come  
7 to the scene, sir.

8 Q Do you recall Woychuk and Graham  
9 testifying to that effect before the Commission?

10 A They may have. I don't recall saying  
11 that, sir.

12 Q And Carter says he was called to the  
13 scene, sir?

14 A That's possible.

15 Q So it is possible that you could  
16 actually have called him to the scene rather than  
17 to the station, sir?

18 A I don't recall telling dispatch to  
19 have him come to the scene, I recall telling  
20 dispatch to come to the office. Now, what they  
21 told Carter when they phoned him, I don't know.

22 Q All right, sir. You phoned Carter?

23 A No. Dispatch did, sir.

24 Q You phoned dispatch?

25 A Yes, sir.

1           Q     And you phoned them on a phone, cell  
2 phone?

3           A     No, I'm not sure if it was over the  
4 radio, I think I might have asked over the radio.  
5 I'm not sure.

6           Q     You are not sure, sir. If you look at  
7 page 24 of the transcript, line 24?

8           A     What page, sir?

9           Q     This is page 24. Again, it is in the  
10 upper right-hand corner of one of the pages that  
11 you will be flipping?

12          A     Yes, sir.

13          Q     Take a look at line 24? Can you read  
14 the answer that you provided at line 24 into the  
15 record, please?

16          A     I may have called dispatch, I thought  
17 it was over the radio, I wasn't sure.

18          Q     Can you read the answer into the  
19 record, please?

20          A     With -- just a minute.

21                     "What I did was phone our dispatch  
22 centre, and they have a call list..."

23          Q     Yes, sir? And?

24          A     "...And they were phoning Carter."

25          Q     Yes?

1           A        "I phoned back to them a few times,  
2                    seeing how they were doing, and they  
3                    couldn't raise him initially."

4           Q        All right.  Sir, do you have a good  
5 memory of all of that, sir?

6           A        That's possible, yes.

7           Q        Do you have a good memory of that?

8           A        That is correct, sir.

9           Q        You used the phone?

10          A        I may have, yes.  I didn't realize  
11 that I had used the phone then.

12          Q        I'm going to take you to some phone  
13 records, please.  You will see them in book P-3,  
14 and I'm going to take to you tab 87.2.  Your cell  
15 phone number at the time, sir, do you still  
16 remember it?

17          A        I don't, sir.

18          Q        (204)612-2338, does that ring any  
19 bells?

20          A        It is possible.  What did you say?

21          Q        612-2338?

22          A        Okay.

23          Q        Sir, you see there is a call at  
24 7:37 a.m.?

25          A        Yes.

1           Q     To East St. Paul dispatch on your  
2 phone, sir?

3           A     That's right.

4           Q     And you see there is a single call  
5 there, sir?

6           A     That's correct.

7           Q     Not numerous calls, but a single call.

8           A     Yes.

9           Q     And so when you testified you phoned  
10 them back a few times, seeing how they were doing,  
11 and they couldn't raise him initially, are you  
12 having any doubts about that after you have  
13 seen --

14          A     I may have asked dispatch over the  
15 radio then, because I know I had to check several  
16 times because he wasn't responding.

17          Q     The evidence you said was phoned?

18          A     That may not have been.

19          Q     All right, sir. And then Sergeant  
20 Carter's record, you take a look at his notes,  
21 sir, I'm going to take you to book E-1.23.b, which  
22 would be 116, exhibit 116 for you, sir?

23                   THE COMMISSIONER: Give me that again,  
24 please?

25                   MR. PACIOCCO: This is page 416 of

1 book E-1, sir. The tab number is E-1.23.b, page  
2 416.

3 THE WITNESS: Which time are we  
4 looking at, sir?

5 BY MR. PACIOCCO:

6 Q We are going to look at 7:38 as soon  
7 as the Commissioner gets the book placed in front  
8 of him. E-1, it is the book that should contain  
9 Mr. Bakema's notes.

10 MR. WEINSTEIN: Bakema or Carter?

11 THE COMMISSIONER: I have it.

12 MR. PACIOCCO: Yes, it contains your  
13 notes as well, book E-1. I know the Commissioner  
14 had it for that purpose.

15 BY MR. PACIOCCO:

16 Q So at 7:38 you see a notation in  
17 Carter's notes for February 25, 2005 at 7:38,  
18 which one minute, sir, after you placed the phone  
19 call?

20 A Just a moment, sir, I can't find it  
21 here yet.

22 Q It should be on the first page of the  
23 notes, sir.

24 A Okay. First time I have on here is  
25 8:14.

1           Q     Do you have the notes for  
2     February 25th, 2005, up at the top, sir? The date  
3     on the notes, sir, that then Sergeant Carter  
4     wrote? Okay, you don't have the right notes, I  
5     must have given the wrong number again.

6           THE COMMISSIONER: You gave him  
7     Carter's numbers.

8     BY MR. PACIOCCO:

9           Q     Would it be -- it would be 115,  
10    exhibit 115?

11          A     Page number, sir?

12          Q     115. The page number is 416, it is at  
13    the top of the first page of the document that you  
14    have just had put in front of you, sir. You see  
15    7:38, sir?

16          A     You are saying on page 115?

17          Q     No, sir. Page 112 of the notes, I was  
18    referring to the exhibit number.

19          A     Okay.

20          Q     It should be the very first page that  
21    he has got notes on, sir. You see the entry for  
22    7:38 in the morning?

23          A     Yes, sir.

24          Q     "Received call..."  
25    it looks like from 3774,

1                    "...to attend motor vehicle collision  
2                    on 59 at 101, three vehicle, one  
3                    vehicle cut in half, per Chief  
4                    Bakema."

5                    Do you see that, sir?

6                    A            Yes, sir.

7                    Q            So then Sergeant Carter recorded that  
8                    he was, at your request, called out to the  
9                    accident scene, sir. Do you agree with that,  
10                   having looked at that note, sir?

11                   A            I'm looking at that, sir. I don't  
12                   recall Carter responding to the first phone call.

13                   Q            Sir, he indicates in his evidence that  
14                   he was preparing to go to the scene as a result of  
15                   that phone call, which would be consistent with  
16                   what Constable Graham said?

17                   A            Yes.

18                   Q            With what Constable Woychuk expected,  
19                   and it is Sergeant Carter's position that you  
20                   called him to the scene?

21                   A            It may have, sir.

22                   Q            Yes. And you will take a look now,  
23                   please, at your transcript at page 24. This time  
24                   look at line 9 on page 24, Mr. Clifford asks you:

25                   "And do I understand that you are

1 making arrangements for Norm Carter to  
2 be either at the scene or at the  
3 detachment in the event that there is  
4 something of concern with the  
5 gentleman?

6 No. I needed somebody, first of all,  
7 in the office as well, to run the  
8 office. And my concern was that if  
9 there was something there that --  
10 because I hadn't talked to Woychuk  
11 again to find out if he had detected  
12 anything on this person at all. Okay.  
13 And I was waiting for Carter to come  
14 in -- and then to get ahold of him, it  
15 took them quite a while."

16 Do you see that response, sir?

17 A Yes.

18 Q You were definite you didn't want him  
19 at the scene, you wanted him at the office  
20 according to your testimony there, sir?

21 A I guess so, sir.

22 Q Now you are again allowing for the  
23 possibility that you in fact requested that he  
24 come to the scene?

25 A Could have been initially.

1 Q So that's inconsistent with the answer  
2 that you gave Mr. Clifford, sir?

3 A Yes, sir.

4 Q Getting back to your knowledge of  
5 Mr. Harvey-Zenk, I looked through your notes, sir,  
6 and nowhere does it indicate in your notes that  
7 you had any acquaintance with this gentleman at  
8 all. Do you agree with that, sir?

9 A Yes, sir.

10 Q Nowhere in your incident report is it  
11 recorded?

12 A That's correct.

13 Q Why not?

14 A That I knew this person?

15 Q Yes?

16 A I don't know.

17 Q Do you not agree that's an important  
18 consideration, sir?

19 A The officers were aware of it.

20 Q Well, sir, it is an important  
21 consideration for anyone who touches this case, do  
22 you not agree with that, sir?

23 A Yes.

24 Q And it should have been in your notes?

25 A Probably.

1           Q     Not probably, sir, I would suggest to  
2     you certainly. Are you not prepared to accept  
3     that it should have been in your notes?

4           A     Yes, sir.

5           Q     As a Chief, if you had an officer who  
6     knew a suspect he was investigating, even casually  
7     from a prior work relationship, you would want him  
8     to come and tell you that, sir; right?

9           A     Yes, sir.

10          Q     You would want him to stay out of it?

11          A     Prefer that.

12          Q     You would want him to stay out of it.  
13     You are not going to tell us that you would want  
14     or allow an officer who has a personal  
15     acquaintance with a suspect participate in the  
16     investigation of that suspect?

17          A     No, exactly.

18          Q     So you, sir, should have had no  
19     participation in this investigation, given your  
20     position with Mr. Derek Harvey-Zenk; correct?

21          A     That's correct.

22          Q     And you should have noted it in your  
23     notes, so that you could explain to the Crown or  
24     anyone else who had concerns about how this man  
25     was dealt with by you, why you did what you did;

1 correct, sir?

2 A Yes, sir.

3 Q And it wasn't in your notes. When you  
4 were walking up to Woychuk's vehicle, where was  
5 Mr. Graham?

6 A When I walked up to Woychuk's vehicle,  
7 Graham and Woychuk were talking to each other.  
8 And as I walked up with Mr. Zenk, Graham all of a  
9 sudden said -- made a comment about a vehicle had  
10 pulled up that he believed to be family. So  
11 Graham took off towards that direction. And at  
12 that point I turned around and I told Woychuk,  
13 this is the driver of the pickup truck, I'm going  
14 to put him in the back of your vehicle in a warm  
15 confined area. I can't detect anything on him  
16 right now, it is freezing cold outside, maybe in a  
17 warm confined area you might be able to detect  
18 something.

19 Q Okay, sir. You basically have  
20 described that you are not exactly sure where the  
21 vehicles are, but you do have Woychuk's vehicle  
22 basically parked in the intersection blocking the  
23 traffic from Highway 59 north, turning onto the  
24 accident scene, sir?

25 A Yes, sir.

1           Q     And we described Constable Graham's  
2     testimony that his vehicle is just above the  
3     intersection blocking the traffic from coming in  
4     at the top, along with Pedersen who is up further,  
5     sir?

6           A     Yes. Go ahead.

7           Q     Those vehicles are in close proximity  
8     to each other, sir?

9           A     I wasn't aware exactly how close they  
10    were, but I guess they are.

11          Q     Yes, sir. And Constable Woychuk and  
12    Graham are pretty much together when you see them?

13          A     They were talking to each other, yes.

14          Q     Yes, sir.

15          A     My understanding is that Graham had  
16    seen them by the highway part, coming across the  
17    highway.

18          Q     We will get to the family in a minute,  
19    sir. But you saw them together, sir? I am going  
20    to suggest to you --

21          A     Yes, saw them together in front of  
22    Woychuk's vehicle.

23          Q     All right. You are 100 per cent sure  
24    it was in front of Woychuk's vehicle, sir?

25          A     Yes, it was, sir.

1           Q     There is no chance that maybe Woychuk  
2     had gone over to Graham's vehicle and you met them  
3     there?

4           A     No, sir, because Woychuk's vehicle was  
5     backed in, I remember that, because I actually  
6     placed Mr. Zenk in the back seat of Woychuk's  
7     vehicle.

8           Q     And there is no prospect that you  
9     might have taken Mr. Zenk over to where those two  
10    police officers were near Mr. Graham's vehicle and  
11    had a conversation with them there, sir?

12          A     No, sir.

13          Q     You are aware that we have heard  
14    testimony to that effect from Ms. Tara Taman.

15          A     I know for a fact, sir, that when I  
16    walked up, they were both standing there. Graham  
17    went running off to the Tamans, and I placed the  
18    male in the back seat, in the passenger rear seat  
19    of RM2, the SUV.

20          Q     Let's deal with the children then.

21          A     Go ahead.

22          Q     Your account has the children arriving  
23    at the same time that you are putting this  
24    gentleman inside the vehicle?

25          A     They are arriving and I am -- no, not

1 actually putting him right in, I'm bringing him up  
2 when Woychuk turns around, or Graham turns around  
3 and says, oh, my God, and then he takes off  
4 running, and then I place the male in the back of  
5 the vehicle.

6 Q Sir, again, coming back to your 7:40  
7 time, as to when you went and talked to  
8 Mr. Woychuk, that evidence calls into question  
9 your 7:42 time in your notes when you say you  
10 brought the gentleman back to the vehicle. That's  
11 your time in the notes. Do you have any doubt  
12 that you recorded 7:42 as the time that you got  
13 back to the vehicle?

14 A I indicated the time may be out a  
15 little bit in time, there is no doubt about that.

16 Q I am going to suggest that they are  
17 out a lot, sir, because the testimony that we  
18 have, and Constable Graham's note showed it was  
19 7:25, when the Taman children arrived.

20 A I believe when I had my first  
21 interview with this other gentleman, we indicated  
22 that as well.

23 Q Sir, it is more than a 15 minute  
24 discrepancy between the times that you had of 7:40  
25 and 7:42, right? They are talking about Graham

1 saying they were there at 7:25, which is  
2 consistent with the evidence that they gave.

3 A Okay.

4 Q And so your times are not accurate,  
5 sir. Do you know where you got the 7:42 time?

6 A I don't recall at this time.

7 Q Sir, you had two sets of notes going  
8 here, didn't you?

9 A Just rough notes initially.

10 Q Okay.

11 A Because it was cold outside, your pens  
12 weren't working very well, and later on I used the  
13 other one.

14 Q So that's --

15 A For further, more detailed notes.

16 Q So your evidence is that you made  
17 rough notes because your pens weren't working very  
18 well?

19 A Because it is very hard to do  
20 anything, you are doing rough stuff and it is a  
21 mess, your notebooks turn out being a mess. I did  
22 a further organized set of notes afterwards.

23 Q Okay. Sir, you didn't interview  
24 Mr. Shaw outside, did you, sir?

25 A Did I interview what?

1           Q     Mr. Shaw, you didn't interview him  
2 outside, did you, sir?

3           A     I spoke to him in his vehicle.

4           Q     I'm going to take you to your notes,  
5 please.

6           A     Page number?

7           Q     I'm going to take you initially to  
8 your notes at E-1.22.b. Have those notes been  
9 made an exhibit yet?

10           THE CLERK: No.

11           MR. PACIOCCO: They are going to come  
12 your way, sir. You don't have them by that  
13 designation, that's for the lawyers. That would  
14 be exhibit 146?

15           THE CLERK: Yes, exhibit 146.

16           (EXHIBIT 146: E-1.22.b Officer's  
17 notes, H. Bakema, pages 64 to 74)

18 BY MR. PACIOCCO:

19           Q     Document at E-1.22.b, we will call  
20 them first notes of Bakema, first notes of Bakema.  
21 Sir, you indicated that you took this set of notes  
22 because the pens weren't working well because it  
23 was cold outside?

24           A     Go ahead.

25           Q     Is that what you said to me, sir?

1           A     That's why I couldn't take very much,  
2     and when I was sitting in a vehicle for a few  
3     minutes I wrote a few other little things in  
4     there, but nothing organized wise.

5           Q     Okay. Because the first reference you  
6     have here is:

7                     "Ken received call motor vehicle  
8                     Perimeter and Henderson, 7:10."

9     You didn't take that outside, sir?

10          A     No.

11          Q     And then you have got "Garth Shaw"  
12     down here?

13          A     That information probably would have  
14     been taken when I was with him, maybe.

15          Q     Sure it would have been. And you  
16     actually take a statement of some sort, we are  
17     going to go through the quality of your notes  
18     shortly, but you take a statement of some sort  
19     from this gentleman, sir.

20          A     Yes.

21          Q     These rough notes, I think you  
22     referred to them before as jottings, is that  
23     possible, or am I mistaken?

24          A     I have never said that.

25          Q     Okay. I apologize, sir. So you are

1 saying you don't usually have two sets of notes?

2 A No.

3 Q But in this case it is because it is  
4 cold out and you are not able to take good notes,  
5 is that your position, sir?

6 A Not just cold. Like I said, there is  
7 a lot of things happening, you are trying to jot  
8 down things here, but you have to get it more  
9 organized.

10 Q You have attended a lot of  
11 investigations, I take it, where there is lots of  
12 things happening?

13 A Yes, some.

14 Q I thought you said you don't normally  
15 take two sets of notes, sir. Did you take two  
16 sets of notes in those cases?

17 A No, sir.

18 Q Normally in these kind of notes you  
19 want to catch the minor details that you have got  
20 to remember later, sir.

21 A Um-hum.

22 Q That is a detail that you are not  
23 likely to recall, sir?

24 A Um-hum.

25 Q Why is there only one time recorded in

1 all of those pages? 7:10, that's the only time  
2 recorded, sir?

3 A I don't know, there should have been  
4 more.

5 Q But there aren't. Flip through them,  
6 and you agree with me, sir?

7 A Beg your pardon?

8 Q I say there aren't. If you flip  
9 through them, there are no other times recorded,  
10 sir?

11 A No, sir.

12 Q The time 7:40 doesn't appear there, or  
13 7:42?

14 A No, 7:10 does.

15 Q That's the only one, sir.

16 A That's correct.

17 Q And 7:40 and 7:42 are not the kinds of  
18 events that would be on any dispatch records or  
19 anything, the time you first went over to  
20 Harvey-Zenk's vehicle and the time you got back,  
21 sir?

22 A Probably not.

23 Q You agree that's a really short time,  
24 you recorded two minutes, 7:40 to 7:42?

25 A Which -- what are you referring to

1     there?

2             Q     I'm referring to your times recorded  
3     in your good notes, sir, of 7:40 and 7:42, being  
4     the time when you first went over to see  
5     Mr. Harvey-Zenk until the time he was in the car.  
6     Correct, sir?

7             A     Yes.

8             Q     You would agree with me that that two  
9     minute window is a very sparse and narrow window,  
10    sir?

11            A     Definitely.

12            Q     And it does not give a dependable time  
13    of when you had your encounter with  
14    Mr. Harvey-Zenk, does it, sir?

15            A     I guess not.

16            Q     And it seems to be insufficient to  
17    really account for the things that you did, sir?  
18    Two minutes, walked to the vehicle --

19            A     Not in two minutes.

20            Q     No, not in two minutes. And sir,  
21    again, I put it to you, sir, that it looks like an  
22    attempt, looking at it, to minimize the amount of  
23    time that you are with the guy; two minute window  
24    recorded in your notes.

25            A     No, sir, not at all.

1           Q     You have 7:40 and 7:42 down there  
2 presented as precise times, and you can't even  
3 tell us today where they came from, correct? You  
4 can't tell us where they came from?

5           A     No, sir.

6           Q     And they are dead wrong, sir. Do you  
7 agree with that?

8           A     They are wrong, the times?

9           Q     Yes?

10          A     They don't seem very accurate, no.

11          Q     So you have been describing this  
12 person who you approach, who has his head down.  
13 You recorded a conversation, or a brief contact  
14 rather of two minutes, and you got it recorded as  
15 happening later in the morning than it must have.  
16 All of that together, you can understand how  
17 somebody would look at that and say, this guy is  
18 trying to minimize his involvement with Derek  
19 Harvey-Zenk that morning?

20          A     No, I wasn't.

21          Q     What happened when you got him to  
22 Woychuk's vehicle? What did you do?

23          A     Beg your pardon?

24          Q     What happened when you got him to  
25 Woychuk's vehicle, what did you do?

1           A     I put him in the back seat and I told  
2     Woychuk to sit in the vehicle with him, that I  
3     couldn't detect anything on him in the cold air  
4     outside, and I wanted him to sit with him in a  
5     warm confined area and see if possibly he could  
6     detect something.

7           Q     You told him more than that, sir,  
8     didn't you? You told him, this is the driver?

9           A     Yes, I did.

10          Q     And according to your transcript with  
11     Mr. Clifford, you said he is a cop.

12          A     Yes, I did.

13          Q     And you said, as did you today, you  
14     told Mr. Clifford that you said, sit in the  
15     vehicle to see if you could detect anything;  
16     right?

17          A     That's correct.

18          Q     Sir, what legal authority did you have  
19     to put Mr. Derek Harvey-Zenk in the back of that  
20     police car?

21          A     He is a driver of a vehicle, he is  
22     involved in an accident, we know it is a fatal  
23     accident.

24          Q     Yes, sir?

25          A     And I'm also concerned about me

1 letting him wander around, the way he seemed very  
2 distraught. If he wandered around and walked over  
3 to the highway where traffic was still going by,  
4 somebody could have hit him with a vehicle as  
5 well.

6 Q Was it your evidence that he seemed  
7 disoriented?

8 A I wouldn't say disoriented, he was  
9 distraught.

10 Q Was he able to respond to your  
11 questions in a way that satisfied you that he knew  
12 what you were asking him?

13 A He just answered the one question that  
14 I asked him.

15 Q He also nodded and you did describe  
16 that as a form of communication?

17 A Yes, I did.

18 Q Correct, sir? That is why I used the  
19 term questions.

20 A Okay, sir.

21 Q You put him in the back of the police  
22 car. Did you have his consent?

23 A No, sir.

24 Q And those doors are locked from the --  
25 they are locked for those on the inside of the

1 back of a police car?

2 A Yes, they are automatically.

3 Q And you said, put him in the police  
4 car, or you put him in the police car, depending  
5 on which version of your account you read, sir?

6 A Yes, sir.

7 Q He was detained?

8 A Yes, sir.

9 Q Do you think you had a legal right to  
10 detain him, sir?

11 A Sir, I have a concern here, we have a  
12 fatal accident, we don't know much about this  
13 person either. We have to find out some  
14 information on this person. We can't just let a  
15 person walk away from a fatal accident scene.  
16 Then we would be looking at much more concerns.

17 Q Did you ask him for his consent to  
18 come with you in the police car?

19 A No, I did not.

20 Q And you have been a police officer  
21 for, at that point you have been a police officer  
22 for almost 31 or 32 years; correct?

23 A Yes, sir.

24 Q 23 of those years there was a Charter  
25 of Rights, almost your whole career you had to

1 deal with the Charter; correct?

2 A Correct.

3 Q And you were actually trained as a  
4 breath tech?

5 A Many years ago.

6 Q But you were trained as a breath tech?

7 A Yes, sir.

8 Q And you know the pitfalls of the  
9 Charter, sir?

10 A But I also know, sir, that I cannot  
11 allow a person to walk away from a fatal car  
12 accident when we may have to conduct some form of  
13 investigation, and I think that's important.

14 Q So, is it your position --

15 A He could have walked off, sir, we  
16 wouldn't have the driver of the vehicle, we  
17 wouldn't know who the person was.

18 Q Fair enough. So it is your position  
19 that you were lawfully detaining him for the  
20 purposes of investigation?

21 A Yes, sir.

22 Q Why didn't you give him his right to  
23 counsel?

24 A I wasn't charging him at this time,  
25 sir.

1 Q So your understanding --

2 A Beg your pardon?

3 Q Go ahead?

4 A I was not charging and cautioning him  
5 at this time, I was just trying to determine his  
6 involvement in the accident.

7 Q All right. Sir, you understand that  
8 the right to be advised of the right to a lawyer  
9 is triggered with detention or arrest. Do you  
10 understand that, sir?

11 A Yes, I am.

12 Q And he, on your own admission, was  
13 detained?

14 A He was detained, yes, sir.

15 Q And you didn't give him the right to  
16 counsel, sir?

17 A Sir, I did not have charges against  
18 him, I did not have any grounds to charge and  
19 caution him with anything at this point.

20 Q I'm not going to debate the law with  
21 you, sir. I understand that's your explanation,  
22 so I'm not going to debate whether that's a  
23 correct legal interpretation or not, sir. Why did  
24 you tell Constable Woychuk that he was a cop?

25 A Why?

1 Q Yeah, why?

2 A I wasn't going to hide it.

3 Q Did you think it was relevant?

4 A No. But I just let him know, that's  
5 all.

6 Q You weren't really there for small  
7 talk, sir?

8 A No, I wasn't, sir.

9 Q You understand the prospect of  
10 somebody perhaps treating him differently because  
11 he is a police officer, another officer, sir?

12 A No, sir.

13 Q You don't think that's a possibility,  
14 sir?

15 A I think it is also a possibility that  
16 the officer might realize that they better deal  
17 with the situation properly so that there isn't  
18 going to be that thought.

19 Q All right. So this is your thinking  
20 at the time?

21 A The option that you don't show, or  
22 don't act, and don't do anything to make it that  
23 way.

24 Q Sir --

25 A Do it properly and do the job.

1           Q     So your position is that Constable  
2     Woychuk would have smartened up by being told this  
3     guy is a cop?

4           A     Yes. I think if he knew he was a  
5     policeman, Constable Woychuk would probably say,  
6     we better make sure we dot our "I's" and cross  
7     our "T's."

8           Q     Is that what you were thinking, sir,  
9     dotting the I's and crossing the T's?

10          A     Sir, I believe that, no matter, what,  
11     you make your own bed if you get into something  
12     like this, and they are going to have to answer  
13     for it. And I don't think there is any policeman  
14     out there that's going to throw their life and  
15     career away on somebody else's stupidity.

16          Q     Is that what you were doing, dotting  
17     the I's and crossing the T's because he was a cop?

18          A     No, I was letting him know who he was  
19     dealing with, not for any favoritism or anything  
20     else, sir.

21          Q     Sir, it is evident that you understood  
22     that this police officer, who you had now  
23     detained, that his breath would be more evident in  
24     the warm confines of a car, sir?

25          A     Yes, if there was anything there that

1 I didn't detect, because in the cold you couldn't?

2 Q And that's something that you  
3 certainly learned in 32 years of policing?

4 A Yes, sir.

5 Q And you especially would have learned  
6 that as a breath tech, sir?

7 A Yes, sir.

8 Q You would have taken courses on  
9 alcohol detection and symptoms of impairment and  
10 arrest, would you not, sir?

11 A Yes, sir.

12 Q And you actually worked in that area,  
13 sir, as a breath tech?

14 A I did very little of that, and it was  
15 many, many years ago.

16 Q You worked in the area, sir?

17 A Yes, sir.

18 Q And I suspect, and tell me if I'm  
19 wrong, that you didn't minimize that experience  
20 when you were applying to become Chief of East St.  
21 Paul Police?

22 A Beg your pardon?

23 Q Correct me if I'm wrong, but I suggest  
24 that you probably didn't minimize the value of  
25 your breath tech credential when you were applying

1 to become Chief of Police?

2 A No, they didn't even ask me if I had  
3 that or not either, sir.

4 Q You didn't even put it in your  
5 application, sir?

6 A No, sir, because I don't have a valid  
7 breathalyzer licence.

8 Q You never set out the experiences you  
9 had over the course of your career when you  
10 applied, sir?

11 A I don't recall if I wrote in there  
12 about the breath tech, sir.

13 Q Wouldn't that be a natural thing to do  
14 when you are trying to sell yourself on a job,  
15 sir?

16 A I don't recall if I did that, sir. I  
17 went through a competition, sir, with a private  
18 company that they had set up to do the job.

19 Q Yes, sir. So you had professional  
20 head hunters, as I used the term, helping you  
21 craft your application?

22 A No, sir.

23 Q What role did they play?

24 A They put me through different tests  
25 that the company did, and decided from that as to

1 who would be the better applicants, and then they  
2 turned around and they had the municipal staff do  
3 interviews.

4 Q All right, sir. So by the time you  
5 are putting this gentleman in Woychuk's vehicle,  
6 you are effectively embarking on an impaired  
7 driving investigation; is that fair, sir?

8 A More of an accident investigation at  
9 this point. Possible impaired, if Woychuk detects  
10 something, yes. If I detected something, I would  
11 have charged and cautioned too for that.

12 Q Your evidence was that you were  
13 specifically trying to find out whether this guy  
14 had alcohol on his breath, sir?

15 A Yes.

16 Q Do you not call that an impaired  
17 driving investigation?

18 A I'm trying to find out if there is any  
19 cause or reason for the accident.

20 Q Sir, and that accident seemed pretty  
21 unexplained in the circumstances, didn't it?

22 A I beg you pardon?

23 Q That accident seemed pretty  
24 unexplained in the circumstances, didn't it?

25 A Yes, it did.

1 Q It was a violent collision on a clear  
2 day.

3 A Yes, it was, sir. Very cold day, sir.

4 Q Yes. And you were instructing Woychuk  
5 to see if he could smell anything?

6 A That's correct, sir.

7 Q Why not get in the truck yourself?

8 A Why not?

9 Q Yes, why didn't you get in the truck  
10 yourself?

11 A Mr. Woychuk was just standing around  
12 the front of his vehicle, and he was the closest  
13 vehicle to me, and I wanted to go back over just  
14 to see the gentleman in that van that I had  
15 spotted there, and have a chance to talk to him.

16 Q Is that your evidence, that you went  
17 straight over to see him?

18 A Beg you pardon?

19 Q You went straight over to see him?

20 A After I had put him in Woychuk's  
21 vehicle, I believe I went over to see Mr. Shaw,  
22 just to get some particulars on him so I would  
23 have the name of a witness and what he saw.

24 Q We can check that out in a minute,  
25 sir. You were a trained breath tech, sir?

1 A I was a number of years ago, yes.

2 Q Sir, it is not something that you  
3 forget, is it, sir, how to deal with an impaired  
4 driving suspect?

5 A No, sir.

6 Q You have got 32 years of experience as  
7 a police officer?

8 A That's correct.

9 Q You have got Woychuk in there who had  
10 how many months, sir?

11 A With our department? I'm not sure if  
12 it was three or four months.

13 Q Three or four months?

14 A With another department --

15 Q A couple of months, is what we  
16 learned. Surely, you knew that when you hired  
17 him?

18 A Yes, I did, sir.

19 Q He was a green kid?

20 A Mr. Woychuk was a very eager  
21 policeman. And Mr. Woychuk, he had more impaired  
22 driving arrests than probably any policeman in  
23 that division.

24 Q How many impaired driving arrests do  
25 you think he had, sir?

1 A Prior to this, or after?

2 Q Prior to this?

3 A He had some prior. I believe he had  
4 some prior and he also had after as well.

5 Q I am talking about prior, sir, because  
6 you are making the decision -- you agree with me  
7 that this is a very serious criminal investigation  
8 that you are conducting at this point.

9 A Um-hum.

10 Q You have actually detained somebody  
11 because you know they can't be gone because this  
12 could be a crime that's occurred?

13 A Right.

14 Q It is going through your head that  
15 this guy may have, in fact, been impaired during  
16 this accident?

17 A Right.

18 Q You spent time with him, but you  
19 haven't ruled out that he is impaired, have you?

20 A Not at this point.

21 Q You put him in the car, and you give  
22 Woychuk instructions to smell to see whether or  
23 not he can detect anything?

24 A That's right, sit in the vehicle with  
25 him and see if he could.

1 Q But the "anything" that you are asking  
2 him to look for is alcohol?

3 A Yes.

4 Q You weren't asking --

5 A But that's going to take time in a  
6 warm confined area to be able to detect that.

7 Q Why not have Jason Woychuk go out and  
8 take the statement from Mr. Shaw?

9 A I don't know. It is just a decision  
10 that I made at that time.

11 Q So you put this guy in with an  
12 inexperienced kid. Did you notice that Jason  
13 Woychuk had a cold, according to his testimony?

14 A I wasn't aware of that.

15 Q He said he was sucking Halls.

16 A I wasn't aware of that, sir, because I  
17 never got to speak to Woychuk, sir, because he was  
18 coming off night shift. I only spoke to him once  
19 we were on the scene, and that was outside.

20 Q So you put this guy in the car, not  
21 really knowing about his capacity to make the  
22 relevant observations, without any real  
23 experience?

24 A I don't ask a Constable before they go  
25 on the road if they have got a cold or anything

1 like that, sir.

2 Q You testified that you asked this  
3 gentleman whether he was the driver?

4 A Yes.

5 Q You understand that there was a need  
6 to investigate whether this was an impaired  
7 driving incident, right?

8 A There is a possibility it could be,  
9 yes.

10 Q Yes, and when did that possibility  
11 come to your mind, sir?

12 A At -- what I was thinking, if we  
13 couldn't detect anything, that maybe we would, so  
14 that possibility wasn't really there, it was just  
15 another thought, because of the fact that when you  
16 are dealing with a fatal accident of that  
17 seriousness, there has to be some form of cause  
18 for it.

19 Q Sure. From the time you walked up to  
20 that car where Mr. Harvey-Zenk was, you were  
21 considering the possibility that this was an  
22 impaired driving incident?

23 A No, sir, because I didn't detect  
24 anything on him at that point.

25 Q Sir, we are talking --

1           A     I was wondering if we might be able  
2     to.

3           Q     Yes.  You were considering the  
4     possibility that this was --

5           A     That's a possibility or a cause.

6           Q     I won't interrupt you, sir.  Please  
7     allow me to ask the questions.

8           A     Yes, sir.

9           Q     You, when you approached that vehicle,  
10    you had in mind the possibility that he might be  
11    impaired?

12          A     There is a possibility, yes.

13          Q     He told you he was the driver?

14          A     Yes, sir.

15          Q     Why didn't you ask him if he had had  
16    anything to drink?

17          A     He wasn't talking really.

18          Q     Sir, how do you know --

19          A     Go ahead, sir.

20          Q     How do you know how he would have  
21    responded to that question without even putting it  
22    to him?

23          A     I didn't ask him that, sir.

24          Q     I know you didn't, sir.  You  
25    basically, on the basis of a nod to a question you

1 gave, and a yes to a question you gave, you  
2 concluded that he wasn't going to talk to you; is  
3 that your evidence, sir?

4 A No, I didn't say that.

5 Q Well, correct me then, sir. You said  
6 he wasn't talking?

7 A That's correct.

8 Q Where are you getting that from when  
9 you are at the scene with him at the vehicle?

10 A That he is not -- when I'm walking him  
11 to the vehicle, because he barely said a word.

12 Q Sir, we will get to that in a second.  
13 I'm talking about at the vehicle.

14 A Yes.

15 Q You have him at the vehicle, you  
16 approach him; correct?

17 A Yes.

18 Q You are in charge of that environment.  
19 If you stand there, he is going to stand there.

20 A That's correct.

21 Q Why didn't you ask him if he had been  
22 drinking when he told you he was driving that  
23 vehicle?

24 A I didn't smell anything on him, that's  
25 why I didn't ask him.

1           Q     Sir, if you had smelled something, you  
2     wouldn't have had to ask him, would you?

3           A     Possibly, I guess, but I might have  
4     wanted to, to find out how much he had had.

5           Q     Sure you would. But this is a serious  
6     case and you want to get to the bottom of it, and  
7     your evidence is that you didn't even ask him if  
8     he was drinking, when you approached him and he  
9     identified himself as the driver? Is that where  
10    your evidence lays, sir?

11          A     Yes, sir.

12          Q     You are aware of the protocol for  
13    impaired driving that is handed out to officers at  
14    East St. Paul?

15          A     No, I'm not.

16          Q     Let's take a look at it. It is in  
17    volume P-2.

18                THE COMMISSIONER: Mr. Paciocco, we  
19    are getting close to the end of the day. It might  
20    be appropriate to break now and you can start in  
21    the morning.

22                   MR. PACIOCCO: Thank you,  
23    Mr. Commissioner.

24                THE COMMISSIONER: 9:15, sorry, 9:30.

25                   MR. PACIOCCO: I like 9:15.

1                   THE COMMISSIONER: I know. So do I,  
2 but I have to deal with the Winnipeg counsel.

3                   MR. PACIOCCO: Not yet time to hit the  
4 panic button, Mr. Commissioner, but we are a day  
5 behind schedule.

6                   THE COMMISSIONER: I'm sure you'll  
7 catch up.

8                   THE CLERK: All rise. This Commission  
9 of Inquiry is adjourned until tomorrow at 9:30.

10                   (Proceedings adjourned at 4:48 p.m.)

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COURT REPORTERS' CERTIFICATE

Debra Kot and Cecelia Reid, court reporters in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of our Stenotype notes as taken by us at the time and place hereinbefore stated.

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Cecelia Reid

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Debra Kot

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