

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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Tuesday, July 15, 2008

Volume 14

INQUIRY PROCEEDINGS

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1 TUESDAY, JULY 15, 2008

2 UPON COMMENCING AT 9:30 A.M.

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

5 THE COMMISSIONER: Good morning.

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

8 At the close of yesterday's
9 questioning, phone records had been referred to
10 the witness's attention, yet not entered as
11 exhibits. I think the first order of business
12 should be to do that. The documents can be found
13 in tab P-3.87.2, P-3.87.2.

14 THE CLERK: 147.

15 MR. PACIOCCO: That would be Exhibit
16 147.

17 (EXHIBIT 147: P-3.87.2, Correspondence
18 from Fillmore & Riley dated April 2,
19 2008 - Cell Phone Call Records of East
20 St. Paul Police Service)

21 MR. PACIOCCO: Good morning,
22 Mr. Bakema.

23 THE WITNESS: Good morning.

24 BY MR. PACIOCCO:

25 Q Sir, you were testifying yesterday

1 about the conversation you had with Constable
2 Woychuk when you brought Mr. Harvey-Zenk to that
3 vehicle, sir?

4 A That's correct.

5 Q And you described how you told
6 Mr. Woychuk to put him in the back of the vehicle,
7 or you said I'm going to put him in the back of
8 the vehicle, and you said to Mr. Woychuk, if you
9 can smell something on him, you directed him that
10 it might be warmer in there and he should see
11 whether he can detect anything. Do you recall
12 that line of questioning, sir?

13 A Yes, that's correct.

14 Q And so essentially, you were bringing
15 him to the vehicle and putting him in there for
16 the purpose of allowing Constable Woychuk to
17 investigate whether alcohol was a factor in the
18 accident; is that fair?

19 A Part of it, yes.

20 Q Okay. Sir, I have looked at your
21 incident reports and your notes. Nowhere in there
22 do you mention, sir, that you put Mr. Harvey-Zenk
23 in the vehicle for the purpose of having that type
24 of investigation done, or that you asked Constable
25 Woychuk to smell for the presence of alcohol.

1 Sir, do you agree that that's not in your notes or
2 your incident report?

3 A It's not in my notes or the incident,
4 but it was submitted to you through my lawyer
5 afterwards as well.

6 Q Yes. It did come to us almost three
7 and a half years after the fact, sir. Any
8 explanation for why?

9 A I have no idea why it didn't get in
10 there.

11 Q Sir, it's not just that it's omitted.
12 The fact is that the explanations you give in your
13 notes and your incident reports for putting
14 Mr. Harvey-Zenk in the vehicle differ from that
15 explanation.

16 Can I take you, sir, please, to
17 Exhibit 87, which would be your notes found at tab
18 E-1.22.a?

19 A Are we talking the first or second set
20 of notes?

21 Q If you can look at the first set of
22 notes, please? The ones with the times actually,
23 they would be your final set of notes, sir. I may
24 have mislead you by saying first. Do you see at
25 7:40, sir?

1 A Just one moment, sir.

2 Q Do you have your duty notes in front
3 of you, sir?

4 A Yes, I do, sir.

5 Q Take a look, please, at your page 83
6 and 82, the time of 7:40?

7 A Yes.

8 Q Do you see at page 83, in that last
9 entry you have on page 83 that runs about seven
10 lines.

11 "I then escorted him to RM2 due to the
12 cold weather and his state of mind."
13 Do you see that, sir?

14 A Yes, I do.

15 Q The reasons you express in your
16 duty-book notes for taking him there are the cold
17 weather and his state of mind, sir; correct?

18 A That is part of it.

19 Q That's what you express in your notes,
20 sir?

21 A Yes.

22 Q But you don't include any indication
23 that it was for investigative purposes, sir?

24 A I did indicate, like as I said to
25 Woychuk what I was looking for.

1 Q Sir, I'm telling you about your notes
2 right now.

3 A It's not there, sir.

4 Q No, it's not.

5 If you could take a look, please, at
6 the incident report that was prepared by you.
7 It's at tab E-1.22.c for the lawyers, and you'll
8 find it, sir, in Exhibit 145. If you can turn to
9 the third page of the incident report, sir, and
10 you should look at the first paragraph. That
11 paragraph begins with the words "bound lanes." Do
12 you see that paragraph, sir?

13 A Yes, sir.

14 Q I'm going to take you to the bottom,
15 last three lines:

16 "This male appeared quite distraught.
17 Writer then escorted male to RM2 where
18 Constable Woychuk remained with this
19 male as he appeared quite disturbed
20 over the incident."

21 Accurate reading, sir?

22 A That's what it says, sir.

23 Q So you're saying there that you
24 brought him over to the vehicle because he seemed
25 quite disturbed over the incident, sir?

1 A That's correct.

2 Q And no reference there to bringing him
3 there so that Constable Woychuk could investigate
4 this man for the smell of alcohol?

5 A Not here, but that is what I did tell
6 him.

7 Q But it's not in your notes, sir?

8 A That is correct.

9 Q You would agree with me, sir, that
10 your notes are compiled primarily to assist in
11 connection with an investigation?

12 A That's correct.

13 Q And so the most important point of
14 information relating to investigation is omitted
15 from your notes, yet you have other explanations
16 contained in them; is that fair, sir?

17 A There could be more there. There
18 should have been more information there.

19 Q You agree with me that the attempt to
20 try and detect the odour of alcohol on this man is
21 the most important investigative fact in
22 connection with you putting him in the vehicle?

23 A I didn't say alcohol, sir.

24 Q You didn't say alcohol?

25 A See if you could detect anything is

1 what I indicated to him.

2 Q Well, what were you looking for, sir?

3 A I don't know what it could have been,
4 sir. It could have been alcohol, it could have
5 been anything.

6 Q It could have been Axe Effect cologne
7 or something, sir?

8 A I beg your pardon?

9 Q Sir, you brought him there because you
10 wanted to see whether or not he had been drinking,
11 and you put him in the car was your testimony, as
12 I understood it?

13 A In a more confined area.

14 Q Yes?

15 A To see if he could detect anything.

16 Q Well, sir, why wouldn't you use the
17 word "alcohol" in talking to Woychuk?

18 A That's how I said it, I didn't say
19 alcohol because I didn't know anything about
20 alcohol.

21 Q Sir, you were looking for alcohol,
22 were you not?

23 A There's a possibility, there had to be
24 a reason for the accident.

25 Q Sure, so you were looking for alcohol,

1 were you not?

2 A I was looking for some reason for the
3 accident, sir.

4 Q Including alcohol?

5 A It is a possibility, yes.

6 Q And you never said the word alcohol?

7 A It's not in here at this time.

8 Q Not at all, sir --

9 A That's correct.

10 Q -- according to your evidence that you
11 just gave now.

12 You are aware, of course, from
13 listening to Constable Woychuk's testimony that he
14 gives quite a different account of the
15 conversation at the car?

16 A Yes, I do.

17 Q He does agree with you that you told
18 him that Harvey-Zenk was a police officer?

19 A That's correct.

20 Q He says that he believes you said he
21 was a Winnipeg Police service member?

22 A I did.

23 Q He agrees with you that you advised
24 him that Constable Woychuk was the driver of the
25 truck?

1 A That's correct.

2 Q And he says when you turned him over,
3 you told him that this gentleman was either
4 impaired or could possibly be impaired. That was
5 his testimony?

6 A No, I did not, sir.

7 Q And you heard the testimony of
8 Sergeant Carter that Constable Woychuk made
9 earlier disclosure to him, which Sergeant Carter
10 noted in his notebook, where he says that Woychuk
11 told him that when you put Mr. Harvey-Zenk in the
12 car, you told him Harvey-Zenk was pissed. How do
13 you respond to that, sir?

14 A I did not.

15 Q So you never used the word "impaired"
16 at all in your conversation with Constable
17 Woychuk?

18 A I did not.

19 Q He also testifies that you said don't
20 do anything, I'm going to get Sergeant Carter to
21 come out?

22 A I didn't indicate to him not to do
23 anything, sir.

24 Q How about --

25 A I did tell him I was having Sergeant

1 Carter to come out.

2 Q So you told him you had Sergeant
3 Carter coming out, I presume to the accident
4 scene, sir?

5 A I beg your pardon?

6 Q You did tell him that you were having
7 Sergeant Carter come out, I presume, sir, to the
8 accident scene?

9 A I told him I was having Sergeant
10 Carter called out.

11 Q Okay. And the implication was he was
12 coming out to the accident scene?

13 A Possibly, but he never arrived at the
14 accident scene because he was too late, by the
15 time we got a hold of him it was getting late
16 already, and we had Woychuk go into the office.

17 Q Okay. So your memory has been
18 refreshed since yesterday, can I take that to be
19 the case, sir?

20 A No.

21 Q I misunderstood you then, sir. I
22 thought your evidence yesterday was you had called
23 Constable Carter to go to the office?

24 A You showed me a form here indicating
25 that I had made a phone call to him.

1 Q Yes?

2 A I had also called dispatch to call
3 him. And I know for a fact that there was more
4 than one call made to Mr. Carter.

5 Q All right. So even though the phone
6 records don't disclose that, you think that maybe
7 you also got on the radio?

8 A That's possible.

9 Q But you don't know that, sir?

10 A I don't.

11 Q And so the phone records only show --

12 A I know I made more than one call to
13 him.

14 Q To him personally or to the dispatch?

15 A Probably through dispatch -- through
16 dispatch, definitely.

17 Q Because you saw that he had received a
18 call within one minute of your initial call,
19 according to the records I showed you?

20 A That's what you're showing me on that,
21 yes.

22 Q Yes. Sir, so let's take a look at the
23 comment from Mr. Woychuk, through his testimony,
24 that he said that this man was, according to you,
25 impaired or possibly impaired or pissed. You are

1 aware of the testimony that Cecil Sveinson gave
2 here, sir?

3 A Yes, I am.

4 Q He said that he attended the accident
5 scene to perform a spiritual ceremony for his
6 deceased cousin. Do you recall him having
7 testified to that effect?

8 A I do.

9 Q You weren't here at the time?

10 A No, but I'm aware of it.

11 Q He said you were reluctant to let him
12 on the scene because you were trying to protect
13 the accident scene so you put him in the car?

14 A Yes.

15 Q Got in the car with him. Is that
16 true, sir?

17 A That's true.

18 Q And he says that you told him that the
19 driver of the car that killed Mrs. Taman was a
20 Winnipeg cop?

21 A I may have.

22 Q So you have no reason to dispute his
23 account on that?

24 A I'm not disputing that.

25 Q You just don't have a recollection of

1 saying it, sir?

2 A I may have made that comment to him.

3 Q You don't have a recollection of
4 saying it then, sir?

5 A I can't recall, sir.

6 Q And then he recounted this. He said:

7 "I said, is he?"

8 And then he attributes this comment to you,

9 "Pissed? Oh yes. We had to get him
10 out of here right away."

11 That was his testimony under oath on July 3rd,
12 sir.

13 A Um-hum.

14 Q Did you say that to him?

15 A I did not. I did not say he was
16 pissed, first of all. And to get him out of there
17 quickly? He was not out of there quickly, sir.

18 Q Sir, we can talk about that when we
19 make our submissions at the end. But basically
20 his position is that that's what you said. The
21 term "pissed" here of course is the same term that
22 Woychuk apparently, according to Sergeant Carter's
23 testimony, relayed to Sergeant Carter that you
24 said he was pissed. So both gentlemen are using
25 the same term. You are denying you used it?

1 A I did not say "pissed," sir.

2 Q And the explanation that was given by
3 Mr. Sveinson, we had to get him out of here right
4 away, sir, you realize that a similar explanation
5 appears in the first incident report prepared by
6 Mr. Woychuk. Did you catch that when we were
7 questioning Mr. Woychuk?

8 A I didn't see that, no.

9 Q Sir, it's at Exhibit 98. And it's at
10 tab E-2.25.b.

11 A Whereabouts, sir? This is Constable
12 Graham's you gave me here.

13 THE CLERK: Exhibit 98.

14 MR. PACIOCCO: It should be Constable
15 Woychuk's. I may have given the wrong exhibit
16 number.

17 THE WITNESS: I've got Constable
18 Graham's here, sir.

19 THE COMMISSIONER: Eighty-eight,
20 there's the duty-book notes at 88 of Woychuk,
21 incident narrative at 89.

22 MR. PACIOCCO: It's 89. Right?

23 Actually, sir, what I'm going to have
24 to do, and I do apologize, that was the latest
25 version of Constable Woychuk's description. I'm

1 going to put in front of you exhibit 96. Exhibit
2 96 is not in the book, it was an additional
3 exhibit filed by me with highlighting on notes
4 provided by Constable Woychuk.

5 What you have in front of you, sir, is
6 the first version of the incident report prepared
7 by Constable Woychuk.

8 THE WITNESS: Okay.

9 BY MR. PACIOCCO:

10 Q And you will notice, sir, that on the
11 last page of that particular exhibit at 8:08, he
12 records:

13 "At 8:08 hours, writer transported
14 Harvey-Zenk to the East St. Paul
15 office to get him away from the
16 accident scene."

17 Do you see that, sir?

18 A Yes, I see that line.

19 Q And you see the similarity between
20 that line and what was being said by Cecil
21 Sveinson, we had to get him out of here right
22 away?

23 A I did not say that, sir.

24 Q So both of those gentleman's records
25 would be inaccurate relative to the reason, sir?

1 A I did not say to get him away from the
2 scene.

3 Q And you know that Constable Woychuk's
4 explanation is later removed from the incident
5 report, and it is replaced with an explanation
6 that he brought Mr. Harvey-Zenk in to do a traffic
7 accident report. You are aware of that, sir?

8 A I'm aware that there was a change
9 made.

10 Q Yes.

11 A Not myself.

12 Q Yes, you are aware that he attributes
13 that change to you, sir?

14 A No, sir.

15 Q All right. We will get to that later,
16 sir. But you do not contest, I take it, that the
17 traffic accident report explanation was a false
18 explanation?

19 A I never indicated anything about
20 taking an accident report. That's the last thing
21 we are going to worry about in the situation that
22 day.

23 Q So you don't accept that's why he was
24 brought in then, sir?

25 A For an accident report?

1 Q Yes?

2 A No.

3 Q Sir, you recall that there were
4 paramedics at the scene, sir?

5 A Yes, there were.

6 Q And do you have any recollection of
7 paramedics attending at Constable Woychuk's
8 vehicle with Mr. Derek Harvey-Zenk?

9 A Once I had put him in the back seat
10 and I was walking away, I believe the paramedics
11 did pull up, or walk up to the vehicle.

12 Q Do you remember that now, sir?

13 A I believe so.

14 Q Because when you testified under oath
15 with Mr. Clifford, you said, I don't recall that.
16 Do you remember not recalling it back then?

17 A I've been thinking about it, but I
18 believe they were walking up just after I had left
19 them there.

20 Q Sir, when did you become aware of the
21 position of Constable Woychuk that one of them
22 indicated to him, by either a sign or words, that
23 this man was drinking, Mr. Harvey-Zenk?

24 A I was never made aware of that
25 comment.

1 Q Sir, when you say never, there had to
2 be some point in time when you were told this?

3 A I don't recall exactly. I'd have to
4 find out where I found it again. Before, somebody
5 must have relayed it to me later, but not at the
6 scene there.

7 Q You didn't find it out at the scene.
8 Did you go back to the Woychuk vehicle after you
9 put Mr. Harvey-Zenk in the vehicle, at any time,
10 sir, before Mr. Woychuk left?

11 A No.

12 Q You understand that he says that he
13 had several conversations with you after you put
14 Mr. Harvey-Zenk in his vehicle. He testified that
15 he asked you a number of times what he was
16 supposed to do. Do you recall his testimony to
17 that effect?

18 A I don't recall him asking me that,
19 sir.

20 Q Are you saying he didn't or are you
21 saying --

22 A I don't recall him saying that to me.

23 Q Okay. So you're not denying that he
24 might have, you just don't recall any
25 conversations with him after you put Mr. --

1 A Might have been wondering how long we
2 were waiting for Mr. Carter maybe.

3 Q Yes. So he may have had conversations
4 with you, sir?

5 A I was outside the whole time and he
6 was basically sitting in his vehicle most of the
7 time there.

8 Q I need to understand your answer, sir.
9 Are you saying that you did not have conversations
10 with him?

11 A I may have had some conversation with
12 him.

13 Q Okay. So -- and he was in his vehicle
14 the whole time, according to your answer. You
15 must have gone back to his vehicle?

16 A I don't recall that, sir, I don't
17 recall going back to his vehicle after that,
18 unless I walked up to his door at one point and
19 talked to him slightly, that might have been --

20 Q Do you recall learning that Derek
21 Harvey-Zenk had refused medical treatment from the
22 paramedics?

23 A No, I was not told that.

24 Q You understand that Constable Graham
25 testified to having a conversation with you at the

1 accident scene where you told him that?

2 A That?

3 Q That Derek Harvey-Zenk had refused
4 medical treatment?

5 A I wasn't aware of that. No, I don't
6 recall that comment at all. You're saying
7 Constable Graham told you that?

8 Q Yes. Yes, he did.

9 A I am not aware of that.

10 Q You're not aware that he told us that
11 or you are not aware of --

12 A No, I'm not aware of that comment.

13 Q Okay.

14 A You're saying that Constable Graham
15 told me --

16 Q No, Constable Graham testified that
17 you told him that Harry Zenk had refused medical
18 treatment?

19 A No.

20 Q So he's mistaken?

21 A I don't recall saying that to
22 Constable Graham. I may have, I don't recall
23 that, because I don't recall ever being told that
24 he refused medical attention.

25 Q Sir, of course, it's not in your notes

1 so you have no ability to look back at those to
2 refresh your memory, sir?

3 A Sir, I left him in the vehicle with
4 another officer and I went off to another end.

5 Q All right. Sir, well, your position
6 then, I take it, is that it didn't happen? I need
7 to understand your position?

8 A On?

9 Q The conversation, you never went back
10 to the vehicle, that's your testimony?

11 A I was never told, that I'm aware of,
12 that Mr. Zenk refused medical attention.

13 Q Sir, you had put Mr. Zenk in the
14 vehicle. Were you not concerned enough about his
15 condition to go back and check on him?

16 A Well, we have a constable in the
17 vehicle with him, and I assume that the constable
18 would advise me if there was any concerns.

19 Q All right. Sir, and his testimony, of
20 course, was that he did, and you disagree with
21 that, sir?

22 A I don't recall him telling me that,
23 sir.

24 Q All right. Sir, Woychuk's notes
25 indicate that he left for the office at 8:08 in

1 the morning?

2 A Okay.

3 Q You don't take any issue with his
4 departure time, sir?

5 A He may have, because he was there
6 right off the bat, because he had been working
7 nights so he didn't have to get changed.

8 Q No, 8:08 is when he left the accident
9 scene with Mr. Harvey-Zenk in his vehicle?

10 A Oh, he left the accident scene, I'm
11 sorry.

12 Q Do you take any issue with that time,
13 sir?

14 A I don't know the exact time he left,
15 sir. All I know, I was at the scene and I believe
16 I was doing something else at the time and I had
17 turned around and he was gone.

18 Q Okay. Well, we'll get to that in a
19 moment, sir. He says you ultimately told him to
20 take Mr. Harvey-Zenk to the police station, and
21 that that was a change in his direction?

22 A I had told him that when Norm Carter
23 comes into the office, to take him into the
24 station.

25 Q Okay. So your position then was, when

1 you had the conversation with him, it wasn't just
2 Norm Carter is coming out, you actually said to
3 him, Norm is coming to the office and when he gets
4 here, you bring him in? Is that your evidence,
5 sir?

6 A Could you repeat that, please?

7 Q Your evidence is when you had your
8 conversation with Mr. Woychuk --

9 A Yes.

10 Q -- you didn't just say, Sergeant
11 Carter is coming out, which was your earlier
12 testimony, you're now saying you actually said to
13 him, Sergeant Carter is coming out to the office
14 and when he gets here, you bring this guy in?

15 A No. Sorry, I'm going to have to
16 correct you on that.

17 Q Thank you.

18 A I said to him that when Carter comes
19 in, I want you to go to the station.

20 Q Why would you want him to go to the
21 station when Carter comes in, sir?

22 A Well, he's got a gentleman in his back
23 seat of his car. As you indicated earlier, he was
24 a very young officer and I wanted to have somebody
25 a little senior there with him that could help

1 him.

2 Q Sir, I understand your concerns
3 expressed now about the fact he was a new officer
4 and he needs somebody a bit more senior, but do
5 you recall speaking to Mr. Clifford about the
6 competence of Jason Woychuk?

7 A Yes.

8 Q Do you recall what you said to him,
9 sir?

10 A In relation to the members?

11 Q The competence of Mr. Woychuk?

12 A Well, we're talking about East St.
13 Paul Police.

14 Q Yes, sir. Please continue.

15 A I probably indicated that Mr. Woychuk
16 is probably one of the better officers in East St.
17 Paul, even though he had very little service, his
18 eagerness and everything else was much better.
19 Most of the officers there are not very interested
20 in doing any work.

21 Q So you had the view that he was a good
22 officer?

23 A From my observations of him and his
24 eagerness, yes, and he was making an effort, and
25 he had done some work in another department.

1 when Carter comes in, he can take the
2 gentleman into the station because we
3 were all tied up at the scene."

4 Do you see that, sir?

5 A That's right.

6 Q The explanation you are giving here is
7 you were having him go in because you were all
8 tied up at the scene?

9 A We were.

10 Q Well, sir, you are effectively taking
11 Constable Woychuk, who testified he was directing
12 traffic at the time that he had Harvey-Zenk in his
13 vehicle?

14 A Mr. Woychuk should not have been
15 directing traffic when he had somebody in the back
16 of his vehicle.

17 Q His testimony was he felt that was
18 necessary to block off that intersection and
19 direct traffic, sir.

20 A Well --

21 Q Your evidence was that this scene is
22 chaotic and you have to maintain control over it,
23 correct?

24 A Yes, sir.

25 Q And you were short-staffed, correct?

1 A Definitely.

2 Q And so you are sending Constable
3 Woychuk to the station with Mr. Harvey-Zenk, and
4 the explanation you give here is because we are
5 all tied up at the scene?

6 A That's why I'm sending him in?

7 Q Yes?

8 A No, because he already has this person
9 in his vehicle.

10 Q All right, sir. I'm just trying to
11 get an understanding of what you meant when you
12 said because we are all tied up at the scene?

13 A Well, we were all, everybody else was
14 tied up at the scene, definitely. And he's got
15 the person in the vehicle. Why are we going to
16 move him from one to another?

17 Q So I think you were explaining why it
18 was Woychuk that had the assignment rather than
19 somebody else, sir?

20 A No, that's not the reason Woychuk had
21 the assignment. Woychuk happened to be there at
22 the spot when I came up with Zenk, that's why he
23 ended up in Woychuk's vehicle.

24 Q If you can turn to page 28, please, of
25 your interview? Here is the answer you provide on

1 page 28 at line 17 for the reason for transport.

2 At line 17:

3 "Well, he also has no transportation
4 back to the office and everything
5 else. We have a person here who has
6 no vehicle."

7 And I think by that you must be referring to
8 Harvey-Zenk having no vehicle.

9 "So if he has..."

10 And this time you are referring to Woychuk,

11 "So if he has detected something on
12 him, fine. If he hasn't, that person
13 still has to get out of there."

14 A That's correct.

15 Q All right. Sir, so you were
16 effectively concerned about providing
17 transportation to Mr. Harvey-Zenk as one of your
18 reasons, sir?

19 A For?

20 Q For getting him out of there with
21 Woychuk?

22 A Well, we couldn't leave him standing
23 there on the highway in 20 below temperatures.

24 Q Well, sir, you were short-staffed at
25 that scene, sir?

1 A That's correct.

2 Q Why didn't you call the Winnipeg
3 Police and tell them that one of their officers is
4 on scene and is in trouble?

5 A I don't know.

6 Q You know that when Sergeant Isaak
7 found out that he was there, the wellness officer
8 for the Winnipeg Police, he was at the East St.
9 Paul Station in a manner of minutes?

10 A Okay.

11 Q Would it not have made more sense to
12 get somebody from the Winnipeg Police out there to
13 take him away, if you felt there was nothing to
14 investigate further?

15 A We don't know that, did we?

16 Q Sir --

17 A We're still -- we still don't know
18 what we've got. I haven't heard anything from
19 Woychuk as to whether he detected anything.

20 Q So then this really wasn't about
21 transporting Mr. Harvey-Zenk anywhere, sending him
22 out?

23 A Harvey-Zenk, if we didn't have
24 anything on him, we're still not going to let him
25 go walking, we're going to get him somewhere out

1 of there.

2 Q Sure you are. And you also gave a
3 reason on page 54, sir, of the transcript?

4 A Fifty-four?

5 Q Fifty-four.

6 A Which line, sir?

7 Q Actually page 55, line 20, start at
8 line 18:

9 "What was the reason that you were
10 giving Officer Woychuk to take him to
11 the station?

12 There was no reason really, except the
13 fact that we have this person out
14 there, he is totally distraught.

15 That's all I had seen at that point,
16 that he is totally distraught and he
17 had been in an accident, a fatal
18 accident, and that he has no vehicle
19 either. So..."

20 And then the topic gets changed, sir.

21 A I'm sorry?

22 Q And then the topic gets changed in the
23 next question.

24 A Okay.

25 Q So your explanation here, when you are

1 asked the direct question about why Officer
2 Woychuk was told to take him to the station, was
3 he was distraught and he has no vehicle. Do you
4 see that, sir?

5 A That was one of the reasons, but there
6 was other reasons as well.

7 Q And none of the other reasons, sir,
8 are mentioned in your interview, are they? Other
9 than you are tied up at the scene and he's got no
10 transportation?

11 A I beg your pardon?

12 Q I say none of those other reasons are
13 in the transcript, other than you are tied up at
14 the scene and he's got no transportation?

15 A And we still don't know, I still don't
16 know whether Woychuk has detected anything as
17 well, sir.

18 Q All right.

19 A Understand that, I don't know that.
20 He's never related anything to me, if he did smell
21 anything.

22 Q Okay. So you and he differ on that.

23 With Woychuk, you say that he
24 basically took off on you. You indicate he left
25 without any direction from you, sir?

1 A I didn't realize he had gone. I
2 understood that if somebody, if Carter came to the
3 office, he would have let me know that he was
4 going to the office.

5 Q What you said to Mr. Clifford was you
6 were shocked?

7 A I was, because I didn't realize he was
8 gone.

9 Q Why would you be shocked, sir, if he
10 leaves at 8:08?

11 A I beg your pardon?

12 Q He left at 8:08, sir, why would you be
13 shocked?

14 A I was surprised because I didn't know
15 he had left.

16 Q Well, sir, according to your evidence,
17 your direction to him was, when Carter comes in,
18 you go?

19 A Yes, but I thought he would have told
20 me he was going back to the office as well so I
21 would know that he has departed the scene, and we
22 would have to watch the area where he was
23 initially as well.

24 Q Okay. So your evidence isn't that you
25 were shocked because he was gone, which is what

1 you told Mr. Clifford. Your evidence is you were
2 shocked because he didn't tell you before he went.
3 Is that it?

4 A That's yes.

5 Q He, of course, says that you directed
6 him to go, sir?

7 A No, I did not, sir. If I did, I would
8 have known he had left.

9 Q Sir, did you not want to check up and
10 see why he had left, sir?

11 A I beg your pardon?

12 Q Did you not want to check up with him
13 and see why he left?

14 A I wanted to, but I never had time at
15 that point, and I thought he might give me a call
16 on it, and I never got a chance to call him, sir.

17 Q Sir, you indicated that you made a
18 number of calls to check on Sergeant Carter and
19 where he was?

20 A That's correct, at one point.

21 Q So you had time to make a number of
22 calls, according to your testimony?

23 A Yes, sir.

24 Q Why didn't you have time to call
25 Constable Woychuk?

1 A Because by that point I believe, I'm
2 not sure what point we are in here, because we did
3 have the analysts coming out as well, and we were
4 now short one person at the scene, so I had to be
5 directing traffic as well.

6 Q Okay. The analyst came out at 9:02,
7 sir, just for the record, and it was 8:08 when
8 Woychuk left. You had your cell phone with you,
9 sir?

10 A I don't recall if I had the cell phone
11 or if this was in the car. I have no idea, sir.

12 Q Do you carry a radio with you when you
13 move around, sir?

14 A I don't recall if I grabbed the radio
15 when we left the station, sir. We left very
16 quickly.

17 Q When did you learn that Sergeant
18 Carter had arrested Harvey-Zenk?

19 A When I came back in for a washroom
20 break later on that morning.

21 Q That was around 12:30?

22 A Could have been. I don't know the
23 exact time.

24 Q Sir, you spoke to Carter between the
25 time that Constable Woychuk left and the time that

1 you went back for the washroom break, didn't you?

2 A I don't recall talking to Carter
3 between then.

4 Q Didn't you feel it was important to
5 talk to Carter, in case he arrested Harvey-Zenk,
6 to give him the details on the accident, sir?

7 A Well, I thought he would have called
8 me, and I hadn't received anything, like I said,
9 and we were tied up dealing with the scene.

10 Q Sir, if your phone and radio might
11 have been in the car, then how could you expect
12 him to call you?

13 A I beg your pardon?

14 Q If your phone and radio might have
15 been in the car, as you testified a moment ago,
16 how could you expect him to call you? Why
17 wouldn't you take the initiative and call him?

18 A I don't know.

19 Q Sir, you spoke to him at 9:24 in the
20 morning. Would you take a look, please, at
21 Exhibit 115?

22 A To who, sir?

23 Q To Mr. Carter.

24 THE COMMISSIONER: What number is that
25 again?

1 MR. PACIOCCO: E-1.23.b.

2 THE COMMISSIONER: Which page?

3 MR. PACIOCCO: Page 420, it would be
4 at 9:24 in Sergeant Carter's notes. Exhibit
5 number, sir, should be 115.

6 THE WITNESS: Page number again?

7 MR. PACIOCCO: That would be at the
8 time 9:24, it's at page 420 at the document that
9 we are all working from. It would be page 121 of
10 the notes.

11 BY MR. PACIOCCO:

12 Q "Chief Bakema called. He..."

13 it looks like will or wishes,

14 "...have Krawchuk attend the scene."

15 Something,

16 "...calls as they will be tied up at
17 scene for approximately five hours
18 with analyst."

19 Do you see that, sir?

20 A Yes, I do.

21 Q Sir, does that jog your memory about
22 speaking --

23 A I may have made that, yes.

24 Q And sir, if you spoke to him, doesn't
25 common sense suggest that he would have told you

1 or you would have had some conversation about the
2 man in the car, Harvey-Zenk?

3 A I don't -- I don't recall having that,
4 no.

5 Q Well, sir, you had sent Harvey-Zenk
6 into the station with Woychuk. You were surprised
7 he was gone, and you're not checking up to see
8 what the status is?

9 A I'm assuming that Mr. Carter would let
10 me know once I got in there. And we were trying
11 to get somebody to come out, so we could get in
12 there.

13 Q So you don't ask the question that you
14 expect an answer to, because you think if there's
15 an answer, he's going to give it to you. Is that
16 your evidence?

17 A I thought he would give me the
18 information.

19 Q Why didn't you ask him, if he didn't
20 give you any information about it, sir, before you
21 hung up?

22 A I don't know, sir. I probably should
23 have.

24 Q Sir, at the end of last day, the
25 question I had posed to you was your familiarity

1 with the policies and procedures of East St. Paul
2 relating to impaired driving investigations, what
3 I called the protocol?

4 A Yes.

5 Q Do you remember that, sir? That's
6 Exhibit 93, you can find it at P-2.85.1. Do you
7 have it in front of you, policy instruction
8 manual, sir?

9 A Yes, I do.

10 Q Do you recognize that document?

11 A No, I don't, sir.

12 Q Well, sir --

13 A I don't notice my name on here as
14 well, sir.

15 Q No, you don't notice your name, sir,
16 but you were Chief of Police of the East St. Paul
17 Police Force?

18 A Yes, I was.

19 Q And this has members sign on so they
20 can update themselves on impaired driving
21 investigation protocol?

22 A Okay.

23 Q And you don't know about this
24 document, sir?

25 A Sir, I've never seen this document

1 before.

2 Q If you can look at page 2577? You see
3 a number of things that are meant to be done in
4 the case of an investigation into impaired
5 driving. And you agree, sir, that given the
6 seriousness of this accident, and its unexplained
7 nature, that one of the things you were looking
8 into was the possibility of impaired driving?

9 A Yes.

10 Q All right. Sir, it says:

11 "A suspect shall be observed at all
12 times and the following noted: Manner
13 of walking, whether the suspect was
14 steady."

15 Correct, sir?

16 A Correct.

17 Q You walked with this gentleman from
18 the car to Constable Woychuk's car with your arm
19 around him, sir?

20 A I did, sir.

21 Q Did you ever take the opportunity to
22 stand back and try and observe to see whether he
23 was unsteady on his feet?

24 A No, I did not.

25 Q You are supposed to pay attention to

1 his speech, whether it's slurred, fluid, slow or
2 fast, difficulty in pronouncing certain words.
3 And we have already established that you did not
4 try to engage him in conversation other than
5 asking two questions, sir?

6 A That's correct.

7 Q So you never really tried to determine
8 whether his speech was slurred?

9 A He wasn't really talking, sir.

10 Q Sir, you also are meant to look for
11 any unusual actions, and your evidence was that
12 you never really saw anything suspicious in the
13 fact that he had his head down when he was dealing
14 with the police officer?

15 A Beg your pardon, sir?

16 Q That he had his head down when he was
17 dealing with the police officer?

18 A That's correct.

19 Q And, sir, there's also at the bottom
20 the description of the inspection of a suspect's
21 vehicle. Did you inspect his vehicle?

22 A Did I inspect his vehicle? What are
23 you referring to, sir?

24 Q His truck, did you inspect his truck?

25 A Did I inspect his truck?

1 Q Yes?

2 A I noted where the damage was on his
3 truck.

4 Q Sir, did you go inside the truck?

5 A Constable Graham did, and I was with
6 him at the time.

7 Q Okay. And what happened when you were
8 with Constable Graham when he went to the truck?

9 A He was searching the truck, I'm not
10 sure if it was for ID or something, and he noticed
11 the uniform inside the vehicle.

12 Q Yes, sir. The police uniform?

13 A That's correct.

14 Q What else, sir?

15 A That's all I recall, sir.

16 Q Do you not recall him saying that he
17 smelled alcohol in the vehicle?

18 A Yes, yes, Constable Graham did
19 indicate that.

20 Q Sir, what time --

21 A And I was at the vehicle and I
22 couldn't see or smell anything at that side of the
23 vehicle there.

24 Q At the side of the vehicle?

25 A That's correct.

1 Q Did you go inside the vehicle?

2 A No, I was right at the side where the
3 door opens, because it was a little pickup.

4 Q And you didn't lean forward when he
5 said that, and try out to see whether you could
6 smell anything inside?

7 A I didn't climb inside of the vehicle,
8 no.

9 Q Were you not curious about the very
10 important revelation that had just been made to
11 you by Constable Graham?

12 A I couldn't detect anything when I was
13 there, sir --

14 Q Sir, your evidence was --

15 A -- outside that door.

16 Q Sir, how are you going to detect it
17 from outside the door?

18 A Well, it was kind of hard when you
19 have got a pickup truck and you've got one door
20 there.

21 Q Sir, the pickup had two doors, didn't
22 it?

23 A I don't believe, I don't know if it
24 had a back door or not. It wasn't a four-door, I
25 don't believe. It was a two-door.

1 Q You didn't bother to go around to the
2 other side, or after Constable Graham got out, go
3 in and see for yourself, sir?

4 A No, I didn't, sir.

5 Q There's no indication in your notes or
6 your narrative that you were at this vehicle?

7 A That's correct. Should have been
8 there.

9 Q In fact, look at Exhibit 145, sir.
10 That's the narrative at E-1.22.c?

11 A Which one are we on, sir?

12 Q This would be your narrative, sir, and
13 I'm going to take you to the second page of your
14 narrative, it would be page 3 of the document,
15 including the title page. So the last page of
16 your narrative, Exhibit 145. Do you have that in
17 front of you?

18 A I have it in front of me, sir.

19 Q Open it up, please, to the last page.

20 A Yes.

21 Q I'm going to read to you two passages.
22 And these appear in the last half of the page.

23 "Writer and Constable Graham..."

24 So there's the two of you together, working
25 together on something.

1 "...then close down the intersection
2 to preserve the scene. We further
3 made contact with the RCMP to obtain
4 the services of a traffic accident
5 analyst and arrange with Manitoba
6 Highways Department to safely set up a
7 blockade and set up a detour of this
8 area. Constable Graham attended to
9 vehicle number 3, the Dodge pickup,
10 and observed a uniform on the rear
11 seat of the vehicle."

12 Do you see that, sir?

13 "Constable Graham seized the uniform
14 for safe keeping."

15 You'll note that in the first paragraph I read to
16 you, it talks about writer, being you, and Ken
17 Graham, or Constable Graham closing the
18 intersection?

19 A That's correct.

20 Q But when you get to the part about the
21 vehicle, it just says Constable Graham attended
22 the vehicle. Can you explain why you don't
23 indicate that you were there, sir?

24 A Should have been there, because I was
25 there.

1 Q But you can see how somebody reading
2 that would get the impression you weren't, sir?

3 A Well, I was, sir.

4 Q But you can see how somebody reading
5 that could get the impression you weren't?

6 A They could.

7 Q When did you go to the vehicle?

8 A I don't recall the time, sir. My
9 understanding was that we had gone to it prior to
10 the vehicle having to be towed away, so that the
11 uniform wouldn't get into the wrong hands. That
12 was what our concern was.

13 Q Sir, you went there quite some time
14 before that, because you just had a reference
15 there to calling out the traffic analyst?

16 A That's correct.

17 Q He arrived at 9:08.

18 A Okay.

19 Q I suggest that you went there right
20 after you called the traffic analyst?

21 A That is possible.

22 Q You heard the testimony of Constable
23 Pedersen. You were here for her testimony?

24 A Yes, I was, sir.

25 Q She testified that at 8:29 in the

1 morning, she saw Constable Graham near the truck
2 with the uniform?

3 A I don't recall that time, sir.

4 Q Are you saying that it couldn't have
5 been 8:29 in the morning?

6 A I don't believe it was that early,
7 sir. My understanding, from what I recall, is
8 that we were -- he was seizing the uniform out of
9 there and that was just before we were going to
10 have the vehicles, I believe, towed away.

11 Q And sir, you have had some problems
12 recalling the order of events and the timing. Is
13 it possible that you just might be mistaken in
14 your recollection?

15 A I don't recall it being that early in
16 the morning, sir.

17 Q Sir, if you can take a look at your
18 document, Exhibit 92. This is at P-3.88.

19 A Go ahead, sir.

20 Q What you say on page 2852, for those
21 of us using the paginated number, the second page
22 of your statement, is, and I'm looking in the
23 middle of the page, sir, page 2852?

24 A Go ahead, sir.

25 Q You'll notice in the middle of the

1 page you said:

2 "I instructed Constable Pedersen to
3 attend Concordia Hospital to determine
4 the injuries and condition of the two
5 people taken to hospital."

6 A That's correct.

7 Q "I then..."

8 and the word "then" is yours and it's there,

9 "...attended to the blue pickup truck
10 with Constable Graham who searched the
11 truck and seized a Winnipeg Police
12 uniform from the truck."

13 Do you see that, sir?

14 A Yes, I do.

15 Q Constable Pedersen's testimony she saw
16 Constable Graham at the truck when she was
17 following your instructions to go to Concordia
18 Hospital, and that's the order you have it in
19 here, sir?

20 A I don't recall us going to that truck
21 and having that truck removed. The uniform came
22 out of that truck just before it was going to be
23 removed by the towing company, that is what I
24 recall.

25 Q So you'll agree that that's not what

1 it says in the statement that you prepared for the
2 RCMP?

3 A I agree that's the way I wrote that,
4 yes. It's just the way it is worded, but that is
5 exactly where it was.

6 Q When you prepare --

7 A The uniform was taken out, sir,
8 because we did not want it coming into the towing
9 compound member's hands. We don't want a police
10 uniform in those hands.

11 Q I understand that, sir. You never put
12 in any reference to the uniform in your notes. We
13 have already established that, sir?

14 A Yes, and that's why this was
15 submitted, sir.

16 Q That's why that report was submitted
17 to the RCMP?

18 A Yes.

19 Q But it wasn't something that went to
20 the Crown?

21 A No, sir.

22 Q It wasn't part of the investigation?

23 A No, sir.

24 Q Why wasn't it in your notes?

25 A I don't know, sir, it should have

1 been.

2 Q Do you recall telling Mr. Clifford
3 that you told Graham to seize the uniform and note
4 everything in the report?

5 A Yes, but he didn't write a report.

6 Q No, I know that, sir, but that was
7 your explanation to Mr. Clifford about why you
8 didn't have notes. Do you recall that?

9 A I'm sorry?

10 Q Because you told Graham to put it in
11 the report?

12 A That's correct.

13 Q You are depending on him to take notes
14 of your observation, sir?

15 A He was seizing the uniform. I told
16 him to write a supp, to write a report to indicate
17 what he had done.

18 Q Did you instruct him to put the fact
19 that you were there?

20 A I would assume he would have.

21 Q But you didn't bother to put it in
22 your notes, sir?

23 A No, sir. But I do have it in my
24 report.

25 Q What you have in the report is that

1 Constable Graham seized it, sir?

2 A Yes.

3 Q Without any indication of you being
4 there; is that fair?

5 A That's correct.

6 Q Okay. The uniform was never logged?

7 A That's correct.

8 Q Why is that?

9 A I don't know. I just turned it over,
10 I just wanted to get it out of -- we didn't want
11 to hang onto it. It was basically, we felt that
12 we should turn it over to Winnipeg Police, and
13 that's why we turned it over to the, I believe it
14 was the Professional Standards Unit.

15 Q Yes, you did. You understand that
16 Constable Graham logged golf balls and pens that
17 he took out of the truck in his incident report.
18 Were you here for his testimony about that,
19 logging all the contents of that truck?

20 A I believe so, yes.

21 Q Everything but the uniform, right?

22 A Yes.

23 Q Do you not agree it looks awfully
24 suspicious that you have no notes of Harvey-Zenk
25 being a police officer or a colleague in your

1 notes, no notes on the uniform, and it only shows
2 up later in a narrative report, after you get back
3 to the station and learn that Harvey-Zenk's been
4 charged, sir?

5 A No, sir, I don't understand why.

6 There's no reason for that.

7 Q Sir, you didn't note the alcohol smell
8 either, sir, in your notes?

9 A I beg your pardon?

10 Q You did not note the alcohol smell in
11 the truck in your notes?

12 A Detected by?

13 Q Graham?

14 A No, I did not, sir. He detected that
15 and he was noting it.

16 Q Well, sir, you understand it was not
17 in his notes?

18 A Well, it should have been and I
19 believe I wrote it in my notes.

20 Q No, sir, you didn't?

21 A My report that is.

22 Q You wrote it in your report. And you
23 made the report after you got back to the scene?

24 A That's correct.

25 Q You talked earlier about having a

1 break, going back to the station at one point,
2 Constable Krawchuk came out?

3 A Yes.

4 Q You were there, according to the
5 wellness officer from the Winnipeg Police,
6 Sergeant Isaak, at 12:15?

7 A I beg your pardon?

8 Q According to Sergeant Isaak --

9 A Yes.

10 Q -- the wellness officer for the
11 Winnipeg Police Service, he spoke to you at the
12 station at 12:15?

13 A There was so many people coming in
14 that day, I don't recall. I may have spoken to
15 him. I don't recall.

16 Q And what about the time of 12:15, if
17 he puts that down in his report?

18 A That's a fairly close time period, it
19 would have been around the lunch time period.

20 Q Chief Carter was still there, sir?

21 A I believe he was. I believe he was in
22 his, yeah, I believe he was in his office.

23 Q Do you know who else was there, sir?

24 A No, I don't recall.

25 Q Mr. Derek Harvey-Zenk was there, sir?

1 A He may have been.

2 Q Did you go and see him?

3 A No, I did not, sir.

4 Q No dealings at all with him?

5 A No, I did not, sir, other than at the
6 scene there.

7 Q So this fellow who you said Derek to
8 when you saw him, who was shaken and distraught,
9 who you knew from the Winnipeg Police, you never
10 went to see him or check on him at all?

11 A No, I did not, sir, because I
12 understood when I got into the office that he had
13 been charged, and I knew what the charges were at
14 that time from Mr. Carter.

15 Q Did you have any -- I'm sorry?

16 A Go ahead.

17 Q Did you have any reason to contest
18 Sergeant Carter's observations of Mr. Harvey-Zenk?

19 A No.

20 Q Now, we determined that you had a set
21 of notes that you made at the scene. Those are
22 the rough notes --

23 A That's correct.

24 Q -- in Exhibit 146. They are found in
25 E-1.22.b. And you explain that the notes were

1 sparse because it was cold out. The other notes,
2 sir, that you produced, your duty-book notes,
3 Exhibit 87, when were those notes made, the final
4 set?

5 A The final notes?

6 Q Yes?

7 A It probably would have been the next
8 day.

9 Q Why would you say the next day, sir?

10 A I am assuming, I don't know exactly
11 when I made them. They probably would have been
12 the next day or some that night.

13 Q Well, here's what you said to
14 Mr. Clifford, sir. I'm going to start with your
15 first answers to this question.

16 A Go ahead.

17 Q Transcript at page 64.

18 A Go ahead, sir.

19 Q Line 13:

20 "Where are those notes being made
21 starting from page 76 through to 89?
22 The more detailed?

23 Yes.

24 They would have been made at the scene
25 in the car while I was warming up.

1 That I can recall."

2 Do you see him say that, sir, that answer?

3 A Yes, I believe it was then.

4 Q You believe in the car while you were
5 warming up that you did the final notes?

6 A I don't think I could have made all
7 the notes in the notes -- in the car, but, yes.

8 MR. WEINSTEIN: One moment. Okay.

9 BY MR. PACIOCCO:

10 Q You saw that you gave that answer and
11 you said, I recall, correct?

12 A That's correct.

13 Q And you didn't say some of the notes,
14 sir, you just answered that that's when they were
15 made.

16 And over on to 65:

17 "You have told me that you made
18 duty-book notes from pages 64 to 75 at
19 the scene?"

20 A That's correct.

21 Q "Okay. I'm sure I made them at the
22 scene afterwards, before we left, when
23 this was pretty well over. I don't
24 recall anything else."

25 Do you see those answers, sir?

1 A Just one moment, please. The short
2 notes were made at the scene, and the longer
3 notes, I believe were made later.

4 Q Yes, sir, you say "before we left."
5 That's your answer that you gave him at that time,
6 sir, correct?

7 A It may have been, sir.

8 Q That's the answer you gave him then,
9 sir?

10 A Yes.

11 Q All right. And you seem pretty sure
12 when you gave that answer. I notice by the end of
13 your interview, after Mr. Clifford took a bit of a
14 recess, when he came back in there was a
15 correction put on the record, where you said that
16 they were created at the station once you left the
17 scene. Do you recall that episode where you
18 changed your position on that?

19 A I have -- sir, I believe I did. But
20 the fact is, sir, like I said, I was out there all
21 day, it was freezing cold. I come into the
22 office, I'm trying to get something done, and I
23 also went home for a little bit, and then came
24 back again. So --

25 Q Well, sir --

1 A You're asking me the exact time it was
2 made, I can't tell you what time of the day it was
3 made.

4 Q I'm going to suggest to you they were
5 made at the scene, sir?

6 A They probably were.

7 Q You had plenty of time to make those
8 notes at the scene, didn't you, sir?

9 A No, sir, I was out on the street,
10 myself and Constable Graham were working with the
11 analyst, and we were going in and out relieving
12 each other because it was cold out there, sir.

13 Q So you were going in and out relieving
14 each other?

15 A That's correct.

16 Q You told Mr. Clifford that your notes
17 are in chronological order?

18 A Go ahead, sir.

19 Q Do you agree that that's an accurate
20 description --

21 A Yes.

22 Q -- your photos are in chronological
23 order? Did I hear you say yes, sir?

24 A I believe so, sir.

25 Q All right. Sir, if you go through

1 your notes, you've got 7:42, placing
2 Mr. Harvey-Zenk in the vehicle. And then you've
3 got your interview with Garth Shaw. This is over
4 on page 392, or 84 and 85 of your notes?

5 A Which page are you on now?

6 Q I'm on page 84 and 85 of your notes,
7 sir, or page 392 if you have the same photocopy
8 system as we do?

9 A Okay. Go ahead, sir.

10 Q All right. 7:42, you're placing
11 Harvey-Zenk in the vehicle, according to your
12 notes, and then you speak to Mr. Garth Shaw and
13 you have his interview recorded on the next or
14 three pages; right?

15 A That's correct.

16 Q And then:

17 "Writer and Graham closed down
18 intersection and call out RCMP traffic
19 accident analyst, arranged..."

20 Okay. Now the traffic accident analyst didn't --
21 he was already there by 9:08 in the morning, sir?

22 A Okay.

23 Q So according to your notes, you had
24 already closed down the intersection and arranged
25 for the Highways Department to set up blockades

1 and re-route traffic?

2 A That's correct.

3 Q And then you have analyst Chris
4 Landford attending the scene on the next page and
5 taking photos. Like I said, he arrived at 9:08.
6 And then you've got Dr. Hook coming, and then
7 you've got clearing the scene at 4:00 o'clock. So
8 you really have nothing recorded, from the time
9 when the analyst gets there at 9:08 on that page,
10 until you clear the scene at 4:00 o'clock?

11 A That's correct.

12 Q Other than Dr. Hook attending to tow
13 away the vehicle?

14 A And directing traffic and relieving
15 each other off on that, sir.

16 Q All right, sir, but you are
17 relieving --

18 A Excuse me, sir, we were not directing
19 traffic, we were assisting the analyst in taking
20 measurements.

21 Q Yes, sir, one at a time?

22 A That's correct.

23 Q And I'm suggesting to you, sir, that
24 in that seven-hour window, between the time he
25 arrived and the time he cleared the intersection,

1 you had plenty of time to make your notes in the
2 car, sir?

3 A Well, I don't necessarily agree,
4 because it was very cold and it took awhile to
5 warm up inside the vehicle, too, sir.

6 Q Sir, you heard Constable Maloney
7 testify that he has observed you and Constable
8 Graham collaborating on approximately half a dozen
9 occasions on your note making?

10 A I heard Constable Maloney say that,
11 yes.

12 Q I want to give you the opportunity to
13 respond to that, sir. Do you agree with him?

14 A No, I don't. Constable Maloney, if he
15 sees two people sitting in one room, a large room,
16 and making notes, he'll say that.

17 Q I'm going to suggest to you, sir, that
18 it's pretty clear that you worked on these notes
19 with Constable Graham, that you have in your hand,
20 sir. Do you disagree with that?

21 A These?

22 Q Yes?

23 A We may have used similar times, we
24 would have got probably from dispatch.

25 Q So you think you've got the times from

1 dispatch, sir?

2 A Possibly, yes.

3 Q You were talking yesterday about
4 getting a time from your watch. Are you changing
5 your evidence about that, sir?

6 A No, sir. I could have taken from
7 both, sir, and I don't have a lot of times in
8 here.

9 Q Sir, I'm suggesting that you worked on
10 your notes with Graham or, alternatively, you took
11 Graham's notes to make your own?

12 A No, I did not, sir.

13 MR. PACIOCCO: Mr. Commissioner, I'm
14 going to take a minute. We're progressing much
15 more quickly than I expected. The bad news is
16 I've got to hand out documents to all counsel.

17 Madam clerk, if you could furnish the
18 witness and the Commissioner with the document
19 called coincidental details -- excuse me, Bakema
20 notes, details found in final notes, not found in
21 original on scene notes. If you can do that one
22 first, please, and make that the next exhibit.

23 THE CLERK: It would be Exhibit 148.

24

25

1 (EXHIBIT 148: Bakema notes - details
2 found in final notes not found in
3 original on scene notes)

4 BY MR. PACIOCCO:

5 Q Sir, the document you have in front of
6 you is a copy of your final notes?

7 A Okay.

8 Q And you will notice that the
9 overwhelming majority of the entries contained in
10 that document are highlighted in yellow. Do you
11 notice that, sir?

12 A Yes, sir.

13 Q All of the material highlighted in
14 yellow is material that appears in this set of
15 notes, but is not to be found in your first set of
16 notes, your rough notes. Do you understand what
17 I'm saying to you, sir?

18 A Yes.

19 Q That's all new information that gets
20 into your final notes, sir. You notice that the
21 new information includes an arrival time of 7:16,
22 which was not recorded in your original notes?

23 A Um-hum.

24 Q Your testimony was that you took it
25 off your watch yesterday, sir?

1 A Go ahead, sir.

2 Q Is that correct?

3 A I believe I had.

4 Q That was your testimony. And, sir,
5 you didn't even record it on your rough notes, but
6 it finds its way into these notes, sir. So you
7 would have remembered, when you got around to
8 making these notes, that the time you saw on your
9 watch many hours before was 7:16, sir?

10 A I don't recall that, sir.

11 Q You have here a licence number for the
12 Beattie vehicle. Do you notice that down at the
13 bottom of the page?

14 A Yes.

15 Q BYG 898?

16 A That's correct.

17 Q That's not in your original notes,
18 sir. You didn't remember that off the top of your
19 head, I take it?

20 A I must have found it on something,
21 sir.

22 Q Okay. The next page, you'll notice
23 motor vehicle licence, no plate for the Taman
24 vehicle. No plate on vehicle at time, sir?

25 A Um-hum.

1 Q Your on scene notes give the licence
2 number but they don't record that it's not on the
3 vehicle. Do you accept that, sir?

4 A Could you repeat that, please?

5 Q Your rough notes --

6 A Yes.

7 Q -- actually have the licence number
8 for the Taman vehicle, without any indication that
9 it's not on the vehicle. Do you accept that, sir?

10 A Yes.

11 Q You also have here, on the next page,
12 page 80 of your notes, the year and model of the
13 Harvey-Zenk truck, 1995 Dakota?

14 A Okay.

15 Q Which do not appear in your original
16 notes, sir?

17 A Okay.

18 Q 7:23, you have the East St. Paul First
19 Responders attending the scene, sir?

20 A Yes, sir.

21 Q At that time an episode is not to be
22 found in your original notes, sir, do you accept
23 that?

24 A That's true.

25 Q Over at the next page, 7:39, time of

1 departure for the Winnipeg Fire and Police Service
2 for Concordia, 7:39, with driver of vehicle number
3 2, it would be Ms. Taman. That's not in your
4 original draft notes, sir. Do you accept that?

5 A Yes, sir.

6 Q In addition, the time attended with
7 Harvey Zenk is 7:40. That's not in your original
8 notes, sir?

9 A Just one moment, please. I don't
10 believe it is.

11 Q No. And the time 7:42, placing him in
12 the rear of the vehicle, that's not in your
13 original notes either, sir. Do you accept that?

14 A It's not there, sir.

15 Q And the analyst named Chris Landford,
16 which appears at the top of page 88 of your notes
17 on page 394 of our book, that's not in your
18 original notes either, is it, sir?

19 A No, not on Landford.

20 Q Nor is the 1600 we clear the scene and
21 head back to the station, that's not in your notes
22 either, sir, your original notes; correct?

23 A Correct.

24 Q You agree that these and a lot of the
25 other stuff are matters of detail, licence

1 numbers, times --

2 A That's correct.

3 Q -- names. And they are not in your
4 original notes?

5 A Yes.

6 MR. PACIOCCO: Well, let's take a look
7 at the next exhibit, if we could please? Let's
8 make it Exhibit 149. These would be the
9 coincidental details found in Graham's on scene
10 notes and not found in Bakema's on scene notes,
11 page 395 and 400. That would be Exhibit 149.

12 (EXHIBIT 149: Coincidental details
13 found in Graham's on-scene notes and
14 not found in Bakema's on-scene notes
15 at pages 395-400)

16 BY MR. PACIOCCO:

17 Q You'll notice that there's less
18 highlighting on this document, sir. These are
19 Graham's notes. What I've highlighted, sir, are
20 matters of detail that appear in Graham's notes
21 that are not in your rough notes, but are in your
22 final notes. Do you understand me, sir?

23 A Yes, I do.

24 Q Time 7:16 as your arrival time, not in
25 your rough notes, but it's in your final notes,

1 and it's also in Mr. Graham's notes. The plate
2 number for the Beattie vehicle, BYG 898, not in
3 your rough notes, it's in Graham's notes.

4 The next thing highlighted, the
5 description of the yellow Chevrolet Sprint. He
6 records no plate visible, and your original notes
7 you actually had a plate number, and in your final
8 notes you put no plate visible, or no plate
9 attached.

10 Vehicle number 3, you'll notice that
11 he's recorded 1995 Dakota for this Harvey-Zenk
12 vehicle. That's not in your original notes but it
13 is in your final notes.

14 You'll notice, sir, that the next one
15 is 7:23, Constable Graham has recorded a time for
16 the East St. Paul Fire and First Responders. Not
17 in your original notes, but in Constable Graham's
18 notes.

19 You'll notice next at 7:39, Winnipeg
20 Fire and Police Service depart to Concordia
21 Hospital with driver of vehicle number 2. You'll
22 notice, sir, that that's not in your rough notes
23 but that same entry appears in your final notes.

24 And then you'll notice, sir, on page
25 560, for those of us with the book, he records the

1 name of the RCMP traffic analyst as Chris
2 Landford. You too in your notes have recorded the
3 name of Chris Landford even though it's only in
4 your final notes, and not in your original notes.

5 And then he has 1600, open
6 intersection, clear scene. That's not in your
7 original notes, but it is in your final notes.

8 Do you see the problem, sir, that's
9 causing me to believe that you had used, shared
10 Constable Graham's notes in making your own?

11 A We may have shared some information
12 spellings of names and things like that, and some
13 of the times.

14 Q Sir, you did. Not may, you did,
15 right?

16 A Possible.

17 Q Can you think of any other explanation
18 as to where you might --

19 A No, I can't --

20 Q -- get these details?

21 A -- at this point.

22 Q No, you can't. Sir, the times, all of
23 the times, 7:16, you both have recorded, even
24 though when we went through the evidence we agreed
25 that 7:16 is a very unlikely arrival time. But

1 you both have it recorded?

2 A Um-hum.

3 Q 7:23, you record the East St. Paul
4 Fire Responders arriving and so does he, but the
5 dispatch record shows that they arrived at 7:24.
6 7:39, Winnipeg Fire and Police Service depart to
7 Concordia. You both have 7:39 as the departure
8 time. The ambulance attendants records show they
9 didn't leave until 7:43. So you both got the same
10 time that differs from the ambulance report?

11 A Um-hum.

12 Q And then you both spell Chris
13 Blandford's name as Landford?

14 A Um-hum.

15 Q You both have the same spelling error
16 there. Even appear to have, sir, what appears to
17 be a transcription error in your notes, sir. Take
18 a look at your notes at the bottom of page 81, 390
19 of the materials?

20 A Page what?

21 Q Page 81 in your notes, sir, okay. Do
22 you see at the bottom where you have ambulance
23 conveyed to Concordia Hospital at 7:23?

24 A Where are you looking?

25 Q Your notes, sir?

1 A What are you referring to again?

2 Q The time of 7:23 at page 81 of your
3 notes, sir. Do you see what you have at the
4 bottom, sir?

5 A Go ahead, sir?

6 Q "Ambulance conveyed to Concordia
7 Hospital."

8 You describe how the ambulance has conveyed this
9 woman to Concordia Hospital. Take a look at your
10 next entry?

11 "7:39, Winnipeg Fire and Paramedic
12 Service departs for Concordia Hospital
13 with driver of vehicle number 2."

14 Your notes don't make any sense, sir. At 7:23,
15 you've got the ambulance conveyed, and you used
16 the past tense, to Concordia Hospital. And at
17 7:39 you have another note of the Winnipeg Fire
18 and Paramedic Service departs for Concordia
19 Hospital with driver number 2?

20 A Um-hum.

21 Q Any explanation for that, sir?

22 A No.

23 Q Let's take a look at Constable
24 Graham's notes, if you would? And you can look at
25 Exhibit 149 again? Look at the bottom of page

1 558, for those of us having the paginated system,
2 you'd have to look at page 39 of his notes. The
3 time is 7:23 you're looking for, sir. This is
4 what Graham records at 7:23.

5 "Driver has no signs of life. They
6 are removing with jaws, then escorting
7 to Concordia Hospital."

8 I'd suggest to you, sir, that what happened is
9 when you were copying his notes out, you
10 misunderstood that entry and you put ambulance
11 conveyed to Concordia Hospital, instead of what he
12 had recorded, which was the plan of the first
13 responders to convey her to Concordia Hospital.
14 And that's why you've got her being conveyed
15 twice. Can you comment on that, sir?

16 A No, sir.

17 Q You also notice that the estimate that
18 you give for the vehicle, the truck from the
19 intersection is 100 yards in your notes?

20 A Approximately.

21 Q Yes. But that's the same estimate
22 that's found in Constable Graham's notes, and when
23 you were testifying yesterday, you said that that
24 seems too far. You didn't feel that was an
25 accurate estimate?

1 A Yes.

2 Q And you probably aren't aware that
3 Constable Woychuk, in his incident report,
4 estimated it to be 50 yards?

5 A No, I'm not aware of that.

6 Q Yet both you and Graham have 100 yards
7 as your estimate.

8 What I'm suggesting to you, sir, is
9 not only do you get the same matters of detail
10 that are in Constable Graham's notes, you make the
11 same mistakes.

12 And I'd also suggest to you that you
13 even have the same omissions from your notes.
14 There's no reference to attending the vehicle,
15 seizing the police uniform, smelling alcohol, none
16 of that in the notes; right?

17 A Not in there, sir. In this other
18 there was some.

19 Q Does this not refresh your memory
20 about you and Constable Graham doing your notes
21 together in this case?

22 A I don't recall, but we may have done
23 some of the information together.

24 Q You agree with me it's pretty hard to
25 alter your police notes after they are written?

1 A Definitely.

2 Q Yes. Because they are paginated
3 sequentially?

4 A That's right.

5 Q And you have directions on leaving
6 spaces between entries, and protocols, and there
7 are systems in place, if books are misplaced they
8 have to be reported immediately. It's pretty
9 tough, once the notes are down, to change them,
10 right?

11 A That's correct.

12 Q Not so tough to change details in a
13 subsequent narrative report, is it?

14 A I beg your pardon?

15 Q It's not so tough to change details in
16 the subsequent narrative report, is it?

17 A Shouldn't be, because your narrative
18 report is going to have everything in it in
19 duplicate, is it not, in the computer system, sir?

20 Q Yes, sir. Anything else you'd like to
21 say because I'm about to ask the Commissioner for
22 a break. It's a good time for me to stop.

23 A Go ahead, sir.

24 MR. PACIOCCO: Mr. Commissioner, it's
25 7:43, I'm about to go on to a slightly new topic.

1 THE COMMISSIONER: Thank you.

2 MR. WEINSTEIN: 10:43.

3 MR. PACIOCCO: Good thing
4 Mr. Weinstein's paying attention or we'd all be
5 still in bed.

6 THE COMMISSIONER: Give me a moment
7 here, please. Don't panic, counsel, you'll still
8 get your 15 minutes.

9 THE CLERK: All rise. This Commission
10 is in recess.

11 (Proceedings recessed at 10:44 a.m.
12 and reconvened at 11:00 a.m.)

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

15 BY MR. PACIOCCO:

16 Q I take it, Mr. Bakema, that you agree
17 with the testimony of Sergeant Carter, now Chief
18 Carter, that there's a difference between an
19 incident report and a narrative report?

20 A An incident and a narrative?

21 Q Report.

22 A I believe so, yes.

23 Q Sir, the incident report is for the
24 overall investigation, and the narrative report is
25 the particular officer's summary of their own

1 activities; is that correct, sir?

2 A That's correct.

3 Q You never filed a narrative report in
4 your case, you just filed an incident report, sir?

5 A An incident report?

6 Q Yes?

7 A I believe so.

8 Q Yes. If you take a look at your
9 document --

10 A Number?

11 Q Your document is found at Exhibit 145,
12 I believe. For the rest of us, it's tab E-1.22.c,
13 page 401. Do you have that, sir?

14 A Yes.

15 Q You see it says incident report up
16 top?

17 A That's correct.

18 Q And that's the one that normally is
19 done by the investigator, isn't it, sir?

20 A Whoever is drawing the number.

21 Q What do you mean, whoever is drawing
22 the number?

23 A When a person is entering details, it
24 creates a number, an incident report number.

25 Q Yes, sir.

1 A Go ahead.

2 Q So, whoever is putting their
3 information into the incident report is doing the
4 overall investigation report?

5 A It could be, yes.

6 Q You didn't file a narrative report,
7 which is typically a witness's own observations,
8 correct, sir? You just filed an incident report?

9 A That's correct.

10 Q Yes. And do you notice that Constable
11 Woychuk and Sergeant Carter both filed narrative
12 reports, as opposed to incident reports? Do you
13 accept that, sir?

14 A Yes, that's fine.

15 Q And you have already testified that
16 Graham didn't have a narrative report in this
17 case?

18 A I don't believe he did, no.

19 Q Are you able to explain why, sir?

20 A I don't know, sir.

21 Q Well, his explanation and testimony
22 was, it was all going to be in your report so he
23 didn't have to?

24 A That's not the case, sir, he's got to
25 write his own reports.

1 Q Let's take a look at an answer you
2 gave to Mr. Clifford during the interviews that
3 you had with him. You'll find this at page 79 of
4 the transcript. You'll see the answer on page 79
5 at line 11, following the question at line 11.

6 "And through the days following and
7 weeks following February 25th of 2005,
8 did you access any of the other
9 officers' narrative reports for the
10 purpose of reviewing them?

11 A I did not. Sergeant Carter likes
12 to be in control of everything. He
13 makes sure all of the packages go
14 together, and if there's any problems,
15 he comes to me."

16 Do you remember that answer, sir?

17 A That's correct.

18 Q And do you stand by your position that
19 you did not access narrative reports of any other
20 officers, sir?

21 A No, sir, I did not. I was trying to
22 write a report of my own.

23 Q Sir, you had access to the reports,
24 and that's different than accessing them, I
25 understand, but you could have looked at them, had

1 you wanted to, because you had managerial access
2 to the system, sir?

3 A I am supposed to have, yes.

4 Q So if you wanted to look at them, you
5 could have?

6 A Go ahead.

7 Q But your evidence is you didn't, is
8 that fair?

9 A No, I don't recall looking at it.

10 Q Are you sure you didn't, sir?

11 A I don't recall, sir.

12 Q I am going to show you your report
13 again, sir?

14 A Um-hum.

15 Q At E-1.22?

16 A Just a moment, please?

17 Q And you have it probably still in
18 front of you?

19 A I do.

20 Q When you are doing up your report,
21 what you put in your report on the third page of
22 your report, page 403 for those of us with the
23 book -- third page of your report on page 403 for
24 those of us with a book.

25 A Which report are you looking at, sir?

1 Q Your incident narrative, sir, again
2 Exhibit 145. Do you see page 3 up in the
3 right-hand corner written in ink? Are you with
4 me?

5 A Yes.

6 Q End of the first paragraph:

7 "Constable Woychuk then conveyed the
8 male to the East St. Paul office. See
9 narrative of Constable Woychuk for
10 details."

11 Do you see where you put that, sir?

12 A No, I don't. Which paragraph are we
13 in?

14 Q The bottom of the top paragraph, sir.
15 This is the last typewritten page of your report
16 just above your name, A. Bakema?

17 A You're talking the last page, then?

18 Q Yes, the one that has three written on
19 the upper left-hand corner. Have you got it?

20 A Yes, sir.

21 Q Do you see the first paragraph on that
22 page?

23 A Yes, I do.

24 Q Do you see the last couple of lines
25 that I just read to you?

1 "Constable Woychuk then conveyed this
2 male to the East St. Paul Police
3 Office. See narrative of Constable
4 Woychuk for details."

5 Right?

6 A Just one moment, please. I don't see
7 that here, you're going to have to --

8 THE COMMISSIONER: Just above where
9 you have the name Garth Shaw.

10 THE WITNESS: Yes, okay.

11 THE COMMISSIONER: And then there's a
12 paragraph above that.

13 THE WITNESS: Yes.

14 THE COMMISSIONER: A short two line
15 paragraph.

16 THE WITNESS: That's correct.

17 THE COMMISSIONER: And then above that
18 is the last sentence, last two sentences. It
19 says:

20 "Constable Woychuk then conveyed this
21 male to East St. Paul Police office.
22 See narrative of Constable Woychuk for
23 details."

24 Do you have that?

25 THE WITNESS: Yes. Yes, I do.

1 THE COMMISSIONER: Okay.

2 BY MR. PACIOCCO:

3 Q Okay, sir?

4 A Yes.

5 Q You had testified you don't believe
6 you accessed the narratives of the other officers?

7 A That's correct.

8 Q Did you not look at Constable
9 Woychuk's narrative before putting that in there?

10 A I don't recall.

11 Q Well, surely, you would have, sir. I
12 mean, you are a police officer providing a report
13 that's to give guidance to other people. Surely,
14 you wouldn't reference a document in there that
15 you hadn't even seen?

16 A Well, because everybody has to do
17 their own supplementary or narrative, whatever you
18 want to call it, for their involvement.

19 Q We have already established that
20 Constable Graham did not?

21 A That's correct.

22 Q Surely, you would have checked with
23 Woychuk and saw his report before putting that in
24 your own incident report, sir?

25 A I don't recall that, sir.

1 Q Are you saying it didn't happen, sir?

2 A No, I'm not. He may have, but I don't
3 recall whether I checked to see if he had written
4 his report or not.

5 Q And that follows all the way through
6 until your final version. "See narrative of
7 Constable Woychuk for details." Right? This is
8 your final incident report and it's still in
9 there, that reference to Constable Woychuk's. It
10 was in there from the time you did the first one
11 until the time you finished off, sir?

12 A Okay.

13 Q You testified today you didn't accept
14 Constable Woychuk's explanations for taking
15 Mr. Harvey-Zenk to the East St. Paul Police
16 Station. You didn't accept the first one when he
17 said, Zenk to the East St. Paul office to get him
18 away from the accident scene, and you didn't
19 accept the TAR. And I'm asking you, sir, why you
20 would reference his incident report if you didn't
21 accept the explanations that he gave at the time
22 that he gave each of them?

23 A I don't know, sir. He should have --
24 when he submits it, his report of what he's seen
25 and what his involvement is, that's all I'm going

1 to be looking for.

2 Q You're not even going to be looking at
3 what he's saying, sir, before endorsing it by
4 reference like this?

5 A Well, first of all, sir, I am writing
6 my report, not Constable Woychuk's report. And
7 the reports aren't read by myself, sir, they are
8 read by the reader.

9 Q Well, sir, what you are doing it in is
10 an incident report, and I thought we just
11 established the incident report is normally the
12 overall global report, which might explain why you
13 have Constable Graham's activities in there and
14 not just your own?

15 A I don't know.

16 Q Let's see who controls the things in
17 the early investigation. I'm going to ask you to
18 take a look at document in book P-1.83. It's
19 Exhibit 94. I don't know whether you have that up
20 there. It will be a fairly thick exhibit?

21 A Ninety-three.

22 Q Do you have that in front of you, sir?

23 A Yes, I do.

24 Q What that is, it's a book of
25 progressive developments of the narrative,

1 incident narratives?

2 A Yes.

3 Q And narrative reports?

4 A Yes.

5 Q And it's based on a computer system at
6 East St. Paul. And we have heard evidence about
7 how the original draft is never erased, but it is
8 replaced as the progress of drafts are entered
9 into the computer. Sir, are you familiar with
10 that?

11 A No.

12 Q All right. Well, that's how the
13 computer system at your police department works,
14 sir, if somebody made a change?

15 A I understand the changes are always
16 there.

17 Q Okay. All right. That's what I was
18 trying to explain to you, sir.

19 A Yes, I'm aware of that.

20 Q Very good. Take a look at page 2428?

21 A 2428?

22 Q 2428.

23 A Okay.

24 Q And what you have in front of you,
25 sir, is an incident report being prepared by Norm

1 Carter at 17:02:59, or 5:00 o'clock in the
2 afternoon on February 25th. Correct, sir?

3 A Go ahead.

4 Q And it's just got a little bit of
5 information, including a little paragraph just
6 describing who attended at the fatality scene,
7 sir?

8 A Um-hum.

9 Q Now we're going to follow the progress
10 of that document. If you can turn to page 2425,
11 you will see five hours later at 22:15:11, Harry
12 Bakema working on the same document. The old
13 value, Sergeant Carter --

14 A You're telling me I'm typing over top
15 of Carter?

16 Q That's what that document suggests,
17 doesn't it, sir?

18 A Well, it may. But I'm not typing over
19 top of Carter, I'm looking to write my own report.

20 Q Well, sir, what it suggests here is
21 you replace Sergeant Carter on the incident
22 narrative that is ordinarily done by the
23 investigator, with your name --

24 A The information on these vehicles,
25 Carter did not even have this information on these

1 vehicles. I was the one at the accident scene and
2 I had that information on the vehicles, so how
3 would Carter have had that information to put into
4 the system?

5 Q Well, sir, the information becomes
6 more specific as it goes through, but I suggest to
7 you that Carter would have had access to the
8 investigation at the time he started the incident
9 report. It wouldn't be uncommon for him to have
10 access to other people --

11 A That's right.

12 Q He had managerial status at that time?

13 A Yes.

14 Q People come in with their notes from
15 time to time?

16 A Everybody hands everything in to him.

17 Q Sure. And there are conversations of
18 what have you got on this, for the purposes of
19 doing the report?

20 A That's correct.

21 Q Well, sir, I'm just pointing out that
22 you have overtaken this specific report. Now, I'm
23 going to show you how you change it. I'm not
24 saying you adopted it as your own, I'm saying you
25 put your name into the incident narrative and took

1 his out?

2 A I don't recall taking his out, because
3 when I was going into the computers trying to
4 write my own report -- do you have my report
5 there, sir?

6 Q We're going to get to your report,
7 definitely.

8 A Okay.

9 Q But you'll notice at page 2425 the
10 entry there is you changing Sergeant Carter to
11 Chief of Police Bakema?

12 A Okay.

13 Q Now, you talked a lot about Chief
14 of -- current Chief Carter, then Sergeant Carter,
15 being the reviewer on this file?

16 A That's correct.

17 Q And you have attributed a lot of
18 responsibility to him, through your counsel and
19 through your answers, for the changes that were
20 made to the documents, sir?

21 A Go ahead.

22 Q So take a look at the next document at
23 page 2424. This again takes place at the same
24 time as he's being taken off as the incident
25 reporter. And there is the file name member

1 reviewing, the field name member reviewing. And
2 you have changed Sergeant Carter from being the
3 reviewer to Chief of Police Bakema?

4 A I was not the reviewer.

5 Q Well, sir, can you explain why, using
6 your coding, and you getting into the system, you
7 would replace the name of Sergeant Carter as the
8 reviewer on February 25th, with your own name,
9 sir?

10 A I did not change, I don't know, I
11 don't change Carter away from what he's allowed to
12 do. Carter is the reader. He's the one that's
13 controlling all the reports coming in. I was
14 trying to get into the system, and it's a weird
15 system, to write a report on what I had and the
16 vehicles. And that's the information you'll see
17 that I put in there.

18 Q Sure. I'm not suggesting that you are
19 hiding any information.

20 A No, but I'm getting the impression
21 you're suggesting I'm changing his report and
22 that's not true.

23 Q No, sir, I'm going to suggest you
24 delete the part he had in there, I'm not
25 suggesting there's anything nefarious or wrong

1 about that. The information you take out of his
2 report is mundane.

3 A I recall.

4 Q There's nothing being hidden by that?

5 A No. Sir, I recall trying to get into
6 the computer system and having problems getting
7 into it to write my report.

8 Q All right. Sir, so that might explain
9 why you would replace Sergeant Carter as the
10 member taking the report and put your own name in
11 there, because you managed to get into a file
12 which got you working?

13 A Possible.

14 Q But it doesn't begin to explain, does
15 it, why you would also change the reviewer?

16 A I don't recall changing the reviewer.
17 If I did, I don't know.

18 Q The computer system shows that you
19 did?

20 A You yourself know, sir, that in this
21 investigation, that I have indicated that Carter
22 is the one that likes to control all these things.

23 Q I know you have indicated that.

24 A And he was in control of his file,
25 that was his assigned file. Even though he said I

1 supposedly changed a number or something, or a
2 name to mine, why would I take it over when Carter
3 has got it? I don't want to take it over. That's
4 his file, he's dealing with it.

5 Q Well, sir, I'm not going to engage in
6 theories as to why you would, I am just suggesting
7 to you what this computer evidence shows?

8 A I understand that.

9 Q It replaces Carter as the reviewer
10 with you as the reviewer?

11 A That was not my intent to do
12 whatsoever.

13 Q But it was a change you made?

14 A It may have been in the computer
15 system trying to get to writing a report, but it
16 was not my intent to take that away from Carter.
17 I wanted Carter to be the person in charge of that
18 investigation.

19 Q You'd agree with me that it sure
20 doesn't look like that, based on the computer
21 record?

22 A Well, definitely it was, because like
23 I said, Mr. Carter is the one that was dealing
24 with the main part of it in the office as well,
25 and I wanted him to be handling that case.

1 Q So you basically wanted a hands-off
2 approach and you wanted out of it, and so you
3 don't think this makes any sense?

4 A No, I don't understand how that
5 happened like that, no.

6 Q You would agree with me that you made
7 these changes based on the computer records?

8 A I may have, yes, according to that.

9 Q The incident report you were asking
10 about --

11 A Yes.

12 Q -- is at page 2415, which is your
13 incident report. And that's ultimately going to
14 become the report in this case?

15 THE COMMISSIONER: Sorry, give me that
16 page again?

17 MR. PACIOCCO: 2415.

18 BY MR. PACIOCCO:

19 Q And I'm not suggesting, sir, that the
20 information that was deleted from Carter's
21 original attempt at an incident report and
22 replaced by yours was somehow an attempt to hide
23 anything. Don't misunderstand me. None of this
24 stuff that was removed is important. And it is
25 all --

1 A I understand that.

2 Q -- contained in your document?

3 A But I don't like the look of it.

4 Okay.

5 Q I understand that.

6 A As you can see, I was at the scene, so
7 that's why my report has all this information.
8 Like I said to you earlier, Sergeant Carter also
9 likes to write people's reports. And when I see
10 something like this, he's putting the same
11 information as mine, I'm wondering too.

12 Q Sir, I can understand why you don't
13 like the look of it, because what it looks like,
14 I'll suggest to you, and you respond whether I'm
15 capturing your anxiety correctly?

16 A Go ahead, sir.

17 Q It looks like you want to control the
18 information in connection with this investigation
19 in the early days?

20 A No, not at all.

21 Q Okay. It's not until March 1st that
22 Carter again becomes the reviewer, according to
23 the computer records. You'll notice, sir, if you
24 turn to page 2389 --

25 A Go ahead, sir.

1 for one day, why would he say right away that now
2 he doesn't want anything to do with these files,
3 when that's his attitude all the time, that he
4 wants to deal with all the files that come
5 through, he wants to have control of them all. So
6 why would I take it away from him for one day, by
7 accident maybe, and then he turns around and now
8 says, well, it's not my file anymore, I don't want
9 anything to do with it?

10 Q Sir, it was from the 25th of February
11 to the 1st of March, so it wasn't one day?

12 A But he would have seen it the next day
13 that it had been changed. He never came to me and
14 asked me why he wasn't the person in charge.

15 Q Sir, who was the Chief of Police --

16 A I am.

17 Q -- you or Mr. Carter?

18 A I am.

19 Q So your suggestion that he likes to
20 control things and he doesn't let other people
21 near it, you certainly had the authority to go in
22 and take over this if you wanted to?

23 A If I wanted to, sir, but I'll tell you
24 something, that's not the case. I wasn't hired
25 out there for that, I don't believe. I was hired

1 as just a figure head, because Carter wanted my
2 job in the first place. And Mr. Carter wanted
3 that badly.

4 Q So did you function as a figure head,
5 sir, or as an actual Chief?

6 A Did I function, yes, I did, sir, I
7 attempted to.

8 Q All right. Let's look at Woychuk's
9 notes relative to your notes?

10 A Thank you.

11 Q What activities that day, the 25th of
12 February, on scene, did you and Mr. Woychuk have
13 in common? What activities did you both perform
14 together that day, sir?

15 A We both had contact with the accused,
16 I guess.

17 Q So the only contact you have described
18 is when you put the guy in the car, right?

19 A Correct.

20 Q You heard testimony from Mr. Woychuk
21 that he had received instructions from you as to
22 how to prepare his notes. Do you remember him
23 testifying to that?

24 A I've heard that.

25 Q And he said that that was to

1 accomplish two things. One was to deal with the
2 delay issue, and the other was to align your
3 notes?

4 A First of all, sir, my notes are not
5 the same as his, so they are not going to align.
6 And secondly, sir -- go ahead.

7 Q No, go ahead. I do want to give you
8 an opportunity to explain, sir.

9 A I want to get that first question
10 again, the first part of that?

11 Q I have just suggested to you what his
12 explanation for the goal was, or the directions
13 that he claims he received from you were, was to
14 align the notes. And you just explained that the
15 only thing you had in common that day, doing
16 together, was the placement of Harvey-Zenk into
17 the vehicle; correct?

18 A That's correct.

19 Q Take a look at his notes, E-2.25.a,
20 Woychuk's notes. I believe they are Exhibit 88.
21 Do you have that in front of you, sir?

22 A I don't know, sir. What number is it
23 again?

24 Q It's coming, it's 88. Now, you
25 remember -- Mr. Commissioner, I'm going to be

1 referring to E-2.25.a at page 604.

2 You remember the difficulties that
3 were pointed out with the time of 7:42 --

4 A Right.

5 Q -- as the time that Mr. Harvey-Zenk
6 was placed in the vehicle. And I think we had
7 both agreed that that had to be wrong?

8 A That's correct.

9 Q What time does Constable Woychuk have
10 recorded for putting Mr. Harvey-Zenk into his
11 vehicle?

12 A He has 7:42.

13 Q The same erroneous time that you have,
14 sir; correct?

15 A That's correct.

16 Q His notes on the only issue that the
17 two of you have in common align with yours, do
18 they not, sir?

19 A They do. But I did not sit down with
20 Constable Woychuk to make any notes.

21 Q He said that you told him to make
22 certain changes. He said to leave out any
23 reference to ambulance attendants telling him that
24 they smelled alcohol. Do you remember him
25 testifying to that?

1 A I did not say that, sir.

2 Q You understand, of course, it's not in
3 his report?

4 A Yes.

5 Q He said he was worried about the
6 charter problems and you suggested that he --

7 A I was not even aware of the charter
8 problems.

9 Q I'm going to just tell you what he's
10 saying and give you an opportunity to respond. He
11 says that he was worried about the charter
12 problems, of the delay that he felt was caused by
13 you telling him to wait there, and he approached
14 you and discussed it, and you said put down that
15 you brought him in for a traffic accident report?

16 A No, I did not.

17 Q And you know, of course, that that
18 does end up happening in his notes, his incident
19 report, it's changed?

20 A But I did not tell him to bring him in
21 for an accident report.

22 Q He told the RCMP that you told him not
23 to put anything about your comment about being
24 possibly impaired or impaired that he attributes
25 to you?

1 A My comment?

2 Q That he attributes to you. He told
3 the RCMP that you told him that Mr. Harvey-Zenk
4 was impaired, or possibly impaired, when you put
5 him in the car?

6 A I told him to put him in the back seat
7 and see if he detected anything on him.

8 Q I know that's your testimony, sir, but
9 that's what he claims?

10 A No, not at all, sir.

11 Q I know. But he's claiming also in his
12 RCMP interview that you told him not to make
13 mention of that in his notes?

14 A No. No, sir, not at all. I don't
15 tell anybody what to not write in their reports or
16 what to write in their reports.

17 Q And so his first version of the report
18 doesn't make mention of any alcohol at all, sir.
19 And then it comes in later, and he's saying that
20 that's essentially because of you, and you dispute
21 that?

22 A No, it was not, sir.

23 Q So your position is that you handed
24 the case over to Carter?

25 A Yes.

1 Q Did you actually assign it to Carter
2 or was it just picked up by Carter?

3 A It's not picked up, sir. I don't
4 think you quite understand.

5 Q No, I don't, sir.

6 A Okay. He turns around and handles all
7 investigations coming through the office, and all
8 reports have to go through him. He won't let
9 anybody else touch them. And he was like that
10 before I got there, and he was still like that
11 when I was there.

12 Q So I guess the answer to my question
13 is, you never handed this investigation over to
14 him in any formal way?

15 A I believe I handed him the file.
16 Well, I'm not sure about that even because I think
17 he had his own file going on it already.

18 Q But your view is he was the
19 investigator?

20 A That's correct.

21 Q And we saw how the computer records
22 seem to create a bit of a problem with that?

23 A Showing that it changes one day to the
24 next, but why no conversation about why, why is he
25 not the investigator anymore?

1 Q Um-hum?

2 A I didn't take him off the case.

3 Q Sir, did you continue to investigate
4 this case?

5 A No, I offered to help him by taking
6 some witness statements.

7 Q Did he ask you to do that?

8 A Yes, I believe he did.

9 Q All right. Sir, let's take this one
10 step at a time. Exhibit 69, it's found at book
11 P-2 at page 2669.3. There should be a piece of
12 correspondence followed by two photocopied papers
13 in your hands, sir?

14 A Yes.

15 Q And you will recognize the second last
16 of those to be a basic East St. Paul Police file
17 cover, correct, sir? It's a photocopy of the file
18 itself, second last page?

19 A No, sir. You're talking the file
20 folder cover?

21 Q Yes?

22 A I recall seeing that file folder.
23 It's not here, sir.

24 Q Okay. I'm going to just double check
25 the exhibit number.

1 A Do you have 69 given to me here?

2 MR. McDONALD: 119.

3 MR. PACIOCCO: Exhibit 119, thank you,
4 Mr. McDonald. I apologize for the confusion,
5 Mr. Bakema.

6 THE WITNESS: Thank you, sir. Yes,
7 sir.

8 BY MR. PACIOCCO:

9 Q Now, you have, I hope, a photocopy --

10 A I do.

11 Q -- of the file folder?

12 A That's correct.

13 Q Take a look at the next page, the last
14 page with the card Katherine Bueti stapled to it.
15 Do you see that photocopy of the last page?

16 A Yes.

17 Q Now, sir, we have heard testimony that
18 the writing on that page is, by and large, with a
19 couple of exceptions, your writing. Do you accept
20 that, sir?

21 A That's true.

22 Q And what it appears to be is a
23 checklist of notes for police officers, correct?

24 A Yes.

25 Q And a checklist of witness statements,

1 so a list of things to do really with check-marks
2 beside them as the evidence -- sorry, as the
3 statements are taken, I take it?

4 A That's correct.

5 Q Why would you write out that list if
6 Carter was the investigator?

7 A I would still want to know what's
8 going on, and I believe I did interview some of
9 these people.

10 Q Yes, sir, but it's not just a question
11 of wanting to know --

12 A I don't believe Carter was in the next
13 day, I believe he was off for a day there. So I'm
14 not sure if that's when I made this up or not, I
15 am not sure.

16 Q Well, I can suggest to you that that's
17 not when you made it up, sir, because Denise
18 Bukowski's name appears as the third witness, and
19 she didn't even come to your office until March
20 7th?

21 A All right. Well, that may have been.

22 Q Okay. And Vernon Stevens didn't even
23 come around until March 8th?

24 A Um-hum.

25 Q So this was long after the first day,

1 sir, and Carter was certainly back. And I'm just
2 curious as to why you would make a list of
3 witnesses if you weren't the investigator?

4 A Well, probably just to see if
5 everything was getting done. I don't know. He
6 can't do all interviews himself.

7 Q Sir, it's not about doing interviews,
8 is it? This is a list of things, it is like a
9 to-do list, isn't it?

10 A Sort of, yeah, but it's people that
11 were there.

12 Q And the ones that are there appear to
13 be checked off, right?

14 A That's correct.

15 Q What about the entry, "Carter to
16 change," can you read that to me, please?

17 A "Carter to change suppl blood."

18 Q S-U-P-P-L, does that stand for supply?

19 A Supply, I think it's blood/breath.

20 Q What does the S-U-P-P-L stand for?

21 A Oh, about his suppl, because
22 apparently he had indicated that he had actually
23 given a breath demand, but he was writing blood
24 demand everywhere, and I just made a notation of
25 that for him so he would realize that that's what

1 was going on there.

2 Q What's S-U-P-P-L stand for is what I
3 need to know?

4 A Supplementary report is what it would
5 be.

6 Q Okay. So you wanted him to do a
7 supplementary report from blood to breath, right?

8 A That he should look at that.

9 Q And how did that come to your
10 attention, sir?

11 A I don't recall, sir.

12 Q Sir, I'm going to suggest that you had
13 a phone call from Detective Sergeant Poole of the
14 Winnipeg Police Service, and that he mentioned to
15 you that that was a problem with the file?

16 A I don't recall that. It may have
17 been.

18 Q Now, sir, you said that you conducted
19 some interviews, probably at the request of
20 Carter?

21 A That's correct.

22 Q Did you direct any other officers to
23 do anything in connection with this file?

24 A I don't recall. I don't think so.

25 Q Constable Woychuck testified that you

1 directed him to go and do the interview with Garth
2 Shaw on the evening of the accident?

3 A That may have been. That may have
4 been, sir.

5 Q You'd agree with me that that
6 direction is usually given by the investigator?

7 A That is.

8 Q Constable Woychuk also said that you
9 advised him that he should go and question
10 Mr. Foti, an ambulance attendant with the Winnipeg
11 Fire Service?

12 A Foti.

13 Q A Mr. Foti, F-O-T-I, he interviewed
14 Mr. Foti. And his recollection was it was you who
15 directed him to do that?

16 A I don't even have Mr. Foti on here,
17 sir.

18 Q No, sir, he is not on that list but we
19 do have his name --

20 A I don't recall that name, sir.

21 Q Sir, I'm suggesting to you that
22 Constable Woychuk said that, we know he did that
23 interview, sir, he said that his recollection was
24 you told him to go and do it, sir?

25 A I don't recall doing that, sir.

1 Q Are you saying you did not, sir?

2 A I don't recall, sir.

3 Q All right. But you would agree with
4 me that if his evidence is accurate, that's also
5 something an investigator would typically do, tell
6 somebody, you go and interview this guy?

7 A You'd want to get others to
8 investigate as well.

9 Q You took a statement from Kathy
10 Beattie in the form of a traffic accident report,
11 sir?

12 A That's correct.

13 Q On February 26th, the next day?

14 A Yes.

15 Q And your belief is this was already
16 Sergeant Carter's file?

17 A Yes.

18 Q How did it come about that you chose
19 to go take that traffic accident report?

20 A I don't recall, if it was the next
21 day, it might have been that Carter wasn't there,
22 because he indicated I believe he had taken that
23 next day off, and I might have gone to get a
24 statement from her, because I did know it was
25 required.

1 Q Sir, you also know that you have seven
2 days to fill out that form?

3 A I beg your pardon?

4 Q You also know that people have seven
5 days to fill out the form?

6 A Yes, I understand that.

7 Q So there was no urgency in going out
8 and doing that?

9 A That's correct. I don't even recall
10 if it was the next day, but it could have been.

11 Q Sir, you can find that document at
12 E-1.22.d. I do apologize, that's not the right
13 reference.

14 MR. PROBER: Are you looking for the
15 traffic accident report?

16 MR. PACIOCCO: Yes, sir.

17 MR. PROBER: That would be E-1.23.n as
18 in Norman, that's Exhibit 70.

19 MR. PACIOCCO: Exhibit 70, E-1.23.n.
20 Thank you, Mr. Prober.

21 MR. PROBER: You're welcome.

22 BY MR. PACIOCCO:

23 Q You will see, sir, on the second page
24 of that document that the traffic accident report
25 is taken on February 26th, 2005; correct?

1 A Yes.

2 Q Did you tell her that you were there
3 in connection with a criminal investigation, sir?

4 A No, I believe I told her I wanted to
5 get an accident report from her.

6 Q So, even though this was a case where
7 Mr. Harvey-Zenk had already been charged, you
8 didn't engage in any investigation through her in
9 connection with the criminal charges he was
10 facing, sir?

11 A I wasn't that familiar with all of
12 those, and I basically, I believe I did just the
13 accident report at that point. There could have
14 been a follow-up to have another statement taken
15 for the rest.

16 Q But you didn't do that, sir?

17 A I didn't, sir.

18 Q You will accept my word that no one
19 did?

20 A I don't recall that, but, possibly,
21 yes.

22 Q You didn't ask her any of the kinds of
23 questions that would be asked during a criminal
24 investigation, did you, sir?

25 A Not at that point, no.

1 Q In fact, Mr. Minuk ends up sending a
2 letter asking, at that time, Chief Carter to go
3 out and get a statement from Ms. Beattie, because
4 this isn't a statement, it's a traffic accident
5 report.

6 A Okay.

7 Q On March 7th, sir, you took a
8 statement from a Denise Bukowski?

9 A I may have, yes.

10 Q And you recall she came to the station
11 along with her husband, Al Bukowski?

12 A You're asking me to recall that,
13 that's been a long time, but, yeah, I believe I
14 did take another statement. Go ahead.

15 Q And she indicated that she shouldn't
16 have left the accident scene as she wanted to talk
17 to you. You didn't refer the matter to Carter,
18 sir?

19 A The accident report?

20 Q This witness who had come forward, you
21 didn't refer them to Carter, you took the
22 statement?

23 A Which day was that, sir?

24 Q March 7th, sir.

25 A I don't recall. I guess I must have

1 talked to her. Maybe somebody asked me at the
2 counter to do it, if I was at the counter at the
3 time. You say she came into the office?

4 Q Yes, sir. Her statement is Exhibit 75
5 and it can be found in tab C.13.a. Does that
6 refresh your memory, sir?

7 A Yes, it is.

8 Q She says that her and her husband were
9 both at the accident scene together and,
10 therefore, both were witnesses to some degree?

11 A Yes.

12 Q Well, why did you interview them
13 together, sir?

14 A I don't recall interviewing them
15 together. I may have.

16 Q That was her testimony. Do you agree
17 with me that it's not proper for an investigator
18 to interview two witnesses together?

19 A It would have been better to have them
20 separate.

21 Q And you can't, at this point, give me
22 any explanation as to why you interviewed them
23 together, sir?

24 A No.

25 Q Now, she talks in her statement about

1 seeing a truck on the shoulder, in the middle on
2 the passing lane shoulder. Then this man came up
3 from behind this vehicle, and she asked him if he
4 was okay and if he had anyone with him, and he
5 didn't say anything. That's about two-thirds of
6 the way down the first page, sir.

7 That, sir, is the sum total of the
8 information taken from this witness in that report
9 of her observation of Derek Harvey-Zenk. Did you
10 not follow it up with further questions?

11 A No, we didn't -- I didn't ask any
12 other questions on the end of that.

13 Q You would agree with me that in a very
14 serious criminal investigation, this is a pretty
15 inadequate --

16 A It should have had more information,
17 probably.

18 Q I think, sir, you would agree with me
19 that we don't need to put "probably" on the end of
20 that comment?

21 A Yes.

22 Q You also interviewed Ted Rosser. Do
23 you remember Mr. Ted Rosser?

24 A I believe Mr. Ted Rosser was the
25 ambulance attendant, was it?

1 Q Yes, sir, a pretty important witness,
2 you would agree?

3 A Go ahead, sir.

4 Q You'd agree he was a pretty important
5 witness?

6 A Yes.

7 Q His statement, sir, is at D.19.c, and
8 it would be Exhibit 79 -- or 78?

9 THE CLERK: Seventy-eight.

10 MR. PACIOCCO: Seventy-eight.

11 BY MR. PACIOCCO:

12 Q You have that interview with him on
13 March 24th, correct, sir?

14 A Apparently so, yes.

15 Q I know you haven't seen that statement
16 in a long, long time, sir, but I noted there are
17 no questions asked of him about the arrival time?

18 A Of the medical, you're talking?

19 Q Yes, of the ambulance and the time he
20 got there?

21 A No.

22 Q No questions about how close he got to
23 Mr. Harvey-Zenk?

24 A Just one moment. No, sir.

25 Q No questions about his speech?

1 A No.

2 Q No questions about Mr. Harvey-Zenk's
3 level of comprehension?

4 A No.

5 Q No questions about whether
6 Mr. Harvey-Zenk had any difficulty handling or
7 signing the statement --

8 A No, sir.

9 Q -- rejecting medical care?

10 A No, sir.

11 Q No questions about the condition of
12 his face, eyes, complexion?

13 A No, sir.

14 Q Sir, you never sought any records from
15 the dispatch when you were with him, or any
16 medical records he might have had?

17 A When I was with him?

18 Q Yes, sir?

19 A I don't understand where this was
20 taken even.

21 Q Well, sir, his evidence was he came in
22 to East St. Paul?

23 A That's possible, yes. We do have that
24 comment he made here as well.

25 Q And that comment is, sir?

1 A "I noticed the smell of liquor coming
2 from him."

3 Q Yes. And you wrote what he said, "not
4 strong, strong but noticeable" or "not strong,
5 strong but noticeable," whatever that happens to
6 be, sir?

7 A Just one moment, sir. No, that
8 doesn't say that there.

9 Q You asked him how strong the smell of
10 liquor was, sir, on page 331?

11 A The next page.

12 "How strong was the smell of liquor?
13 Not strong, strong but noticeable."

14 Q So it's not strong, strong but
15 noticeable, is that what that means, sir?

16 A That's how he described it.

17 Q Okay. You didn't follow it up with
18 any further questions about when, or how close he
19 was, or whether it could be smelled in the
20 vehicle, or on his breath, or anything like that,
21 sir?

22 A My understanding is, his only contact
23 with Mr. Zenk would have been in the back of the
24 vehicle, sir.

25 Q Yes, sir. But you didn't try to

1 determine whether he could smell it off the man's
2 breath, or whether he smelled it in the vehicle?

3 A No, sir.

4 Q You'd agree with me, sir, that is
5 again not a very adequate interview of a witness
6 in a serious criminal investigation?

7 A It could have been better I guess.

8 Q Sir, I understand that the Winnipeg
9 Police Service Professional Standards Unit came to
10 see you on February 28th, in the morning, a
11 Detective Sergeant Girard?

12 A I believe so.

13 Q He says you gave him a copy of the
14 report in connection with this case, sir?

15 A A copy of the whole report?

16 Q Sir, you gave him a copy of a report
17 to the Professional Standards Unit?

18 A I don't recall what I gave him, sir.
19 You're asking me to be specific. I can't -- I
20 don't recall that. I know Roger Girard did come
21 to the office, but I don't recall what I gave him.

22 Q All right. Well, he'll be able to
23 give us evidence of that, sir.

24 A That's fine.

25 Q But there was some documentation

1 setting up the background, because they were
2 looking for information --

3 A Yes.

4 Q -- to assist them in their own
5 Professional Standards undertaking?

6 A That's right.

7 Q That's the time when you handed over
8 the uniform?

9 A That's probably so.

10 Q You also spoke to Corrine Scott of the
11 Winnipeg Police Service, Inspector Scott on
12 February 28th, sir?

13 A The day of the accident?

14 Q No, February 28th, sir, three days
15 later?

16 A I don't recall. I may have.

17 Q She has notes of that conversation,
18 sir, indicating that you confirmed that
19 Harvey-Zenk had never given a statement to the
20 East St. Paul Police. Could that be so?

21 A I don't recall saying that, sir, that
22 he had never given a statement.

23 Q Yes, sir?

24 A I don't recall.

25 Q Do you know whether he gave a

1 statement?

2 A I may have, I don't recall, sir.

3 Q Do you know whether he gave a

4 statement?

5 A Do I know whether he gave a statement?

6 Q Yes?

7 A No, I don't. I don't believe he did.

8 I'm not sure. I never dealt with Mr. Zenk.

9 Q You're saying you didn't have enough
10 contact with the file to know?

11 A I don't recall, sir, if he gave a
12 statement.

13 Q You ultimately made a decision to get
14 the Professional Standards Unit involved in this
15 investigation?

16 A That's correct.

17 Q On March 1st, at 4:10 in the
18 afternoon, we have records from the Winnipeg
19 Police Service indicating that that's the point in
20 time when you requested their participation, sir.
21 Is that something you would accept?

22 A Yes. I spoke to them about whether
23 they were doing an investigation.

24 Q Yes, sir. You would have known that
25 they were doing that investigation, based on

1 Detective Sergeant Girard wanting a copy of the
2 report?

3 A Yes.

4 Q And there were some earlier telephone
5 contacts that we'll go through with the Winnipeg
6 Police Service, sir.

7 A Um-hum, go ahead.

8 Q And Deputy Chief of support services,
9 Doug Webster, records that he discussed with you
10 the importance of evidence, of establishing the
11 drinking history of Mr. Harvey-Zenk. Do you
12 remember that conversation?

13 A No, I don't.

14 Q And he indicates in his notes that you
15 told him your resources were limited?

16 A Yes, yes.

17 Q And he ultimately offers to have the
18 Professional Standards Unit assist you?

19 A Yes.

20 Q You want to consider it for some time.
21 And at 4:10 in the afternoon, you ultimately agree
22 to get them involved?

23 A Okay. That's possible, yes.

24 Q Did you not have any concerns about
25 the appearance of conflict of having the Winnipeg

1 Police Service investigate a Winnipeg Police
2 Service Officer in connection with an
3 investigation that was supposed to be done from
4 your office?

5 A I didn't believe that our office had
6 the capability of doing such an investigation,
7 because of the aspect that we only had one man
8 working at any one time. And they just didn't
9 have the manpower. It would take months and
10 months and months, if we would ever get it done.
11 So I believe that, although it's the same
12 department that this other officer is from, it is
13 a special unit there --

14 Q Yes?

15 A -- which is monitored quite closely.
16 And it's a unit that has a lot of members, and
17 they were going to be conducting their
18 investigation. And I found it not the best
19 interest that we were going to try and do the same
20 thing and duplicate the work, especially the fact
21 that their officers would gather much more, better
22 statements than our officers, I believe, could
23 have done.

24 Q Sir, I'm going to ask you a couple of
25 questions arising from that. Why not request the

1 RCMP to help?

2 A I could have done that, and maybe I
3 should have. But at that point I guess I had
4 gotten in contact with Winnipeg because of the
5 uniform, and it just went from there.

6 Q Because, certainly, if the RCMP had
7 been contacted, there would be much less chance of
8 people being concerned?

9 A Exactly. And I agree, I probably
10 should have done it that way, sir.

11 Q And sir, with respect to them doing
12 the investigation anyway, are you aware that it is
13 the practice of the Professional Standards Unit
14 not to step on the toes of a criminal
15 investigation, and there was some concern there
16 about even asking about alcohol consumption
17 without clearing it through you?

18 A I'm sorry?

19 Q I'm suggesting to you, sir, that the
20 Winnipeg Professional Standards Unit had a
21 practice, as we understand, of backing off of an
22 investigation for Professional Standards'
23 purposes, if it involved a criminal case being
24 handled by another force because --

25 A I wasn't aware of that, sir, I wasn't

1 aware of that.

2 Q Now, you agree that whatever kind of
3 investigation is taking place with the Winnipeg
4 Professional Standards Unit, it's important that
5 it be integrated with your own investigation?

6 A Yes.

7 Q Did you ever sit down and do an
8 investigative plan with Detective Sergeant Girard,
9 who ended up conducting this investigation?

10 A No, I had not.

11 Q You are aware that Detective Sergeant
12 Girard not only questioned the Winnipeg Police
13 Officers, who he had authority over under the
14 Professional Standards Unit protocol, he also
15 questioned the civilian witnesses at Branigan's.
16 Were you aware of that, sir?

17 A I am now.

18 Q So this is not --

19 A I wasn't aware that he was doing
20 Branigan's or anything like that.

21 Q So you never organized for him to do
22 that, sir?

23 A I don't recall that, no.

24 Q So you would agree with me that one
25 could have easily fallen through the cracks,

1 because you didn't even know it was going to go
2 on?

3 A I know they were doing a thorough
4 investigation, and they were going to let us know
5 as to what the results were, they were going to
6 give us a copy of their investigation.

7 Q Yes, sir. And so I guess what you're
8 saying to me is if at that point you saw that the
9 Branigan's people hadn't been questioned, you
10 would have gone out and done it?

11 A If I was aware that that's where he
12 came from, yes.

13 Q Sir, he also communicated to you a
14 rumour that was circulating in the Winnipeg Police
15 Service about Mr. Harvey-Zenk being on the cell
16 phone at the time of the collision. Do you recall
17 that?

18 A No, I don't. He may have said
19 something, I don't recall that.

20 Q You don't recall investigating that
21 then, sir?

22 A The cell phone?

23 Q Yes?

24 A I don't think so.

25 Q That would be a pretty important thing

1 to do if you got that kind of information, it
2 would be something you'd want to look at, sir?

3 A If I knew about it, definitely, I
4 would like to know.

5 Q I think he's going to testify --

6 A You'd want to know who he was talking
7 to.

8 Q I think he's going to testify, sir, he
9 was talking to you?

10 A Who? Mr --

11 Q This would be Poole, Detective
12 Sergeant Poole?

13 A Okay. You're saying --

14 Q I said Girard, I mislead you.

15 A You're talking about Zenk, you said.

16 Q I am telling you that Detective
17 Sergeant Poole communicated to you that there was
18 a rumour circulating in the Winnipeg Police
19 Service that Harvey-Zenk was on his cell phone at
20 the time of the accident?

21 A I don't recall that, sir.

22 Q But it's pretty clear you never
23 investigated that?

24 A No, I don't recall that at all.

25 Q Now, you got the report from the

1 Professional Standards Unit on July 13th, 2005, we
2 have heard evidence, sir?

3 A Yes.

4 Q Are you aware that Mr. Minuk got the
5 report several months before that?

6 A I am as I've heard now, yes.

7 Q Do you have any explanation as to why
8 the prosecutor would get that report, rather than
9 the investigating agency? Did you have any role
10 to play in having Winnipeg send it to the
11 prosecutor --

12 A No.

13 Q -- rather than to your investigative
14 agency?

15 A No, I didn't have any role in that.

16 Q Because it kind of looks like you've
17 got two separate police forces, each doing part of
18 the investigation and reporting to the Crown
19 rather than to each other?

20 A No, it's our investigation, it should
21 have come to us. They were supposed to be sending
22 us a copy of the investigation.

23 Q Sir, I understand that Sergeant Carter
24 held onto this report for four months before
25 forwarding it to Mr. Minuk. We heard evidence of

1 that?

2 A That's what I heard, yes.

3 Q And I think you'd agree that the delay
4 he would have had in handing that over to
5 Mr. Minuk is not irrelevant to whether you acted
6 properly in not handing it over to him until
7 August 18th, 2005.

8 Sir, why did it take you more than a
9 month to hand the Winnipeg Police Service
10 Professional Standards Unit report --

11 A I don't -- when I got that report, I
12 think I read it, but then it was passed onto Norm
13 Carter.

14 Q You heard his testimony, sir. He said
15 that -- we know the report came to you on
16 July 13th, 2005?

17 A Yes.

18 Q And he provided us with a date stamped
19 file document --

20 A I understand that.

21 Q -- dated August 18th, saying that that
22 was the first time he saw it, sir?

23 A I don't recall that, sir.

24 MR. McDONALD: August 30th.

25 MR. PACIOCCO: Excuse me, August 30th.

1 BY MR. PACIOCCO:

2 Q So your evidence is?

3 A I don't recall, after reading that
4 file, that I wouldn't have given it to Norm
5 Carter, because Norm Carter is the lead
6 investigator.

7 Q Well, sir, if you don't recall, then I
8 take it you are allowing for the possibility that
9 you didn't give it to him for that period?

10 A I don't, I don't -- no, I don't think
11 I did.

12 Q Now, sir, we've already gone through
13 the critique of the investigation at the scene,
14 where I suggested to you that there were lots of
15 deficiencies in the investigation in terms of
16 attempting to look for signs of impairment on
17 Mr. Harvey-Zenk, putting him in the car with a
18 rookie, not asking him about his drinking, not
19 recording information in your notes. And I've
20 gone through a couple of interviews there that I
21 suggested to you were deficient. You said they
22 certainly could have been better.

23 I'm going to suggest to you that the
24 problems with the investigation may have been even
25 deeper than that, sir.

1 Do you recall how it was you came
2 about to interview Mr. Rosser, the ambulance
3 attendant?

4 A I don't -- I don't recall how, unless
5 I was asked to possibly by Mr. Carter or
6 something. That's all I could understand. Maybe
7 he was -- because I told him if he needed anybody
8 to take statements.

9 Q You know that Mr. Rosser wasn't
10 interviewed until March 24th, 2005?

11 A I wasn't aware of that.

12 Q And you would agree with me that
13 that's pretty much a whole month after the
14 accident?

15 A It should have been closer.

16 Q And certainly that interview should
17 have been closer. It was a pretty pressing matter
18 to get his recollection while it was fresh, right?

19 A Right.

20 Q I mean, your testimony was you didn't
21 really have an opportunity to get close to
22 Mr. Harvey-Zenk. And Mr. Woychuk's testimony is
23 he stays in the front seat. But we have got an
24 ambulance attendant who actually does an
25 examination of the man. You would agree with me

1 that's pretty critical as a source of information?

2 A Yes.

3 Q Well, I'm going to suggest to you,
4 sir, that you didn't go out and take that
5 statement because Norm Carter asked you, nor did
6 you go out and take that statement because it was
7 something you did on your own initiative. You
8 were hounded by the Professional Standards Unit to
9 go out and get that statement, sir?

10 A I don't recall that, sir.
11 Professional Standards asking me to go and get a
12 statement from him?

13 Q Yes, sir. On March 10th, Detective
14 Sergeant Poole spoke to you --

15 A Um-hum.

16 Q -- about the importance of having a
17 statement from the paramedics?

18 A Okay.

19 Q And there was no indication in the
20 materials he received that that had ever been
21 done. And his notes say that you said, we are
22 working on this as we speak, on March 10th. Do
23 you have any recollection of that conversation,
24 sir?

25 A No, I don't. It could have happened,

1 but I don't.

2 Q On March 16th, you are left a phone
3 message about the statements for the paramedics on
4 your voice mail, and Girard does speak to Carter
5 about it?

6 A Um-hum.

7 Q And he's going to testify that
8 Mr. Carter didn't know whether it was being done
9 or whether it had been done.

10 On March 22nd, a suspension hearing
11 for Mr. Derek Harvey-Zenk at the Winnipeg Police
12 Service is coming up. They still haven't received
13 any information from you about the interview with
14 the paramedic.

15 It wasn't until March 24th, two days
16 after Winnipeg did their suspension hearing, that
17 we learn anything from the paramedic, sir. Can
18 you comment on that?

19 A I -- like I said, I don't -- I don't
20 know.

21 Q And you know, sir, that that, again,
22 like many other things looks very suspicious, that
23 this witness who Woychuk says you told him not to
24 include in his report --

25 A That's not true.

1 Q -- is not questioned for a whole
2 month, and only then after the Winnipeg Police
3 Service are pushing for it to be done?

4 A Do we not have a list of all these
5 people on this file that you're showing me here?

6 Q Sir, I don't know when that list was
7 made.

8 A Okay.

9 Q But that interview was done under the
10 circumstances I described to you, sir?

11 A Um-hum.

12 Q With respect to alcohol history, I
13 want to put this to you for your recollection.
14 Detective Sergeant Weber has a memo in his
15 materials, you can find it in tab Q-1.89.b.9. Q
16 as in Queen, 1.89.b.9. The page is 2988.

17 THE COMMISSIONER: 2988?

18 MR. PACIOCCO: Yes.

19 BY MR. PACIOCCO:

20 Q And I'm going to be referring to,
21 those are notes of March 1st from Deputy Chief
22 Webster relative to a morning briefing, 9:00
23 o'clock. Does the witness have that exhibit?

24 A No.

25 Q I may not have telegraphed this one, I

1 apologize to the clerk. Q-1.89.b.9.

2 THE CLERK: Mark that as an exhibit.

3 MR. PACIOCCO: Yes, please.

4 THE CLERK: 150.

5 MR. PACIOCCO: Exhibit 150.

6 (EXHIBIT 150: Q-1.89.b.9, Deputy Chief

7 D. Webster - Notes of Tuesday, March

8 1)

9 BY MR. PACIOCCO:

10 Q You should have in front of you, sir,
11 notes dated Tuesday, March 1st, 9:00 o'clock
12 morning briefing?

13 A That's correct.

14 Q Although it's not identified on the
15 notes, we have information that those belong to
16 Deputy Chief Webster?

17 A Um-hum.

18 Q Turn to page 65 of the notes, please,
19 sir? At the top, it says Corrine, who I take it
20 to be Corrine Scott, inspector with the Winnipeg
21 Police Service, and it records this.

22 "Conversations with Harry Bakema
23 yesterday. Did not seem concerned
24 about establishing drinking history as
25 evidence to drive impaired charge."

1 A How would she determine that?

2 Q Sir, we know that there was a
3 conversation on the 28th of February --

4 A Right.

5 Q -- between Corrine Scott and yourself?

6 A Right.

7 Q Are you in a position to explain what
8 you --

9 A Just can I interrupt you?

10 Q Yes, please.

11 A What date did this happen on?

12 Q February 28th.

13 A The day of the accident?

14 Q No, the day of the accident was
15 February 25th. February 28th would have been the
16 last day of February, unless it was a leap year.

17 A Okay, go ahead, sir.

18 Q This would make sense as a reference
19 to that conversation because it is on March 1st.

20 I'm just asking you whether you recall
21 saying anything to Corrine Scott that might have
22 given her the impression that you weren't
23 interested in the alcohol history of Derek
24 Harvey-Zenk?

25 A I don't -- I don't recall, and I would

1 be concerned about it if there was information out
2 there.

3 Q And so your position is that you were
4 interested in the alcohol history?

5 A I would definitely be.

6 Q Sir, you would agree with me that
7 there were a number of interviews that needed to
8 be conducted in this case that were never
9 conducted?

10 A From what I understand, they weren't.

11 Q You only took a traffic accident
12 report from Ms. Beattie, and she was never
13 interviewed?

14 A Who is this?

15 Q Kathy Beattie?

16 A Yes. I took an accident report,
17 you're right.

18 Q But no interview?

19 A Not -- a criminal statement?

20 Q Yes?

21 A No, I did not.

22 Q Why not interview Robert Taman?

23 A I beg your pardon?

24 Q Why not interview Robert Taman, who
25 was at the accident scene?

1 A I don't know.

2 Q Why not interview Tara Taman, who was
3 at the accident scene?

4 A I don't know, sir.

5 Q Why not interview Kristin Taman, who
6 was at the accident scene?

7 A They all should have been interviewed.

8 Q Mr. Taman indicates that he told you
9 and Sergeant Carter, when you were over at his
10 place, that he had information that the tow truck
11 driver said that the vehicle reeked of alcohol.
12 Do you recall being advised of that?

13 A No, I don't recall that, sir.

14 Q If he had advised you of that,
15 wouldn't that have been something that you would
16 have noted and followed up?

17 A I would have been very concerned about
18 that, yes.

19 Q He was, of course, never interviewed,
20 sir, or tracked down?

21 A Okay.

22 Q Mr. Dale Kasper was never interviewed,
23 even though his name appears on your list, sir?

24 A That's right.

25 Q Let's look at the visit that took

1 place at the Taman residence?

2 A Yes.

3 Q I understand that took place on
4 March 1st, pending a press release that had been
5 prepared?

6 A Yes.

7 Q I didn't see any notes from you in
8 connection with that visit, sir. I take it you
9 didn't take any?

10 A No, sir.

11 Q You are aware now that this interview,
12 or this meeting rather took place at Sveinn
13 Sveinson's house because he lived close to the
14 police station?

15 A I believe it was.

16 Q What was the purpose of that meeting,
17 sir?

18 A The purpose of the meeting was to
19 express our condolences to the family.

20 Q Sir, also to --

21 A And -- go ahead, sir.

22 Q No, I don't want to interrupt you.
23 You can continue explaining --

24 A I've completed my point.

25 Q Also to explain to them that an arrest

1 had been made?

2 A Yes.

3 Q You were about to announce it, and you
4 didn't want them to hear it first in a press
5 release, I take it?

6 A Yes.

7 Q Chief Carter testified that you drove
8 the conversation during that meeting?

9 A No, sir.

10 Q Are you saying that you did not, sir?

11 A I did not.

12 Q Who lead the discussion?

13 A I don't -- I don't recall, but I know
14 for a fact that when we were there, everybody was
15 very upset.

16 Q Yes, sir.

17 A And I was crying as well. I mean, I
18 had teared as well, because I'm very soft when it
19 comes to death, I don't like that. It bothers me.

20 Q Sure. And are you able to tell me who
21 did the talking during the interview, sir?

22 A I don't recall -- I don't believe I
23 was telling them everything, no.

24 Q Because Jordan Taman testified on June
25 3rd?

1 A Um-hum.

2 Q And if anyone wants the transcript
3 reference, it's at 356, line eight, that you did
4 most of the talking during that meeting?

5 A I don't recall that, sir. I may have,
6 I don't recall that.

7 Q Did you discuss the strength of the
8 case with them, with the family?

9 A I wasn't familiar with everything with
10 the case at this point.

11 Q And I think you would agree that it
12 wouldn't be a good idea to discuss the strength of
13 the case with a grieving family?

14 A Definitely.

15 Q It might raise their expectations?

16 A Definitely.

17 Q Do you think it is possible you made
18 comments about the strength of the case, sir?

19 A No, I would not make those comments.

20 Q Because Robert Taman, on June 2nd,
21 page 96, line 11 to 13 of his transcript, said you
22 said, "There's nothing to worry about, we got
23 him"?

24 A I don't recall -- I wouldn't say a
25 comment like that, sir.

1 Q Jordan Taman on June 3rd, page 376 of
2 his interview, line 12, he said the police
3 officers were saying -- remember, he said you did
4 most of the talking -- the police officers were
5 saying he refused a breathalyzer and they had him
6 on that one. They said, "We have him on this one,
7 he's guilty." Those were his words?

8 A No.

9 Q You never made that comment, sir?

10 A No, sir, I wouldn't make those kind of
11 comments.

12 Q Kristin Taman on June 3rd, sitting
13 where you're sitting, said under oath, page 461,
14 line 15,

15 "Chief Bakema said that because Harry
16 Zenk refused the breathalyzer that is
17 automatic guilt."

18 A No, not automatic guilty. If he
19 refuses a breathalyzer, he will be charged yet.

20 Q Robert Taman on June 2nd, page 96 of
21 his testimony, line 21, said you said:

22 "He is going to jail."

23 A No. How can we make that decision?
24 It's all by the court, sir.

25 Q Sir, you're an experienced police

1 officer?

2 A I beg your pardon?

3 Q You're an experienced police officer?

4 A Go ahead, sir, yes.

5 Q You have a sense as to where the cases
6 are likely to go, based on what you know about
7 them, sir?

8 A Somewhat.

9 Q This attributed to you by Kristin
10 Taman on June 3rd, under her testimony, page 461,
11 line 23.

12 "He said that he should receive five
13 years minimum."

14 A I beg your pardon?

15 Q He said that he, Harvey-Zenk, should
16 receive five years minimum?

17 A Who said that comment?

18 Q Kristin Taman attributes it to you,
19 sir?

20 A I don't know how much time anybody is
21 going to get. How can I give a year factor, if
22 they are going to get something?

23 Q So, all four of those witnesses have
24 attributed statements to you that were --

25 A That I made those comments, correct.

1 I'm sorry, sir, no, I wouldn't make comments like
2 that. They are distraught enough, why am I going
3 to say that to them?

4 Q Okay, sir. You didn't file a second
5 set of notes, or the first set of notes that you
6 made with the brief, sir?

7 A The second set?

8 Q The first set you made, what you would
9 call your rough notes?

10 A Um-hum.

11 Q You never disclosed those, sir?

12 A Probably not.

13 Q Why wouldn't you have disclosed them?

14 A Because everything that's in there was
15 in the second part.

16 Q Well, not necessarily, sir. I'm not
17 going to take you through it in detail, but you've
18 got the phone number for Officer Beattie in there,
19 for example, it's not in the other one?

20 A Okay.

21 Q And there's also other things that you
22 can tell from those notes, sir, your rough notes?

23 A Okay.

24 Q If you look, for example, I should
25 take you there, in fairness to you, sir, book E-1,

1 tab 1.22.b. Do you have those notes in front of
2 you, sir?

3 THE CLERK: Exhibit 146.

4 BY MR. PACIOCCO:

5 Q Exhibit 146.

6 A Go ahead, sir.

7 Q Sir, the first thing that you have
8 noted after 7:10, where you indicate that you are
9 called out to Perimeter and Henderson, is the
10 witness name for Garth Shaw; right?

11 A Just one second. Yes.

12 Q And then you get a statement from him
13 that you are kind of recording here, pulling up to
14 light at Perimeter, et cetera, truck flew by him
15 on left. Is that a quote, "flew by him"?

16 A By him on the left, yes.

17 Q And you don't have it in quotation
18 marks, sir?

19 A No, sir.

20 Q And then you start to describe the
21 vehicles, right? You've got the Hyundai Accent, a
22 few details on the Dodge pickup?

23 A Um-hum.

24 Q The yellow vehicle?

25 A Right.

1 Q And then on the next page, page 68,
2 after you describe the vehicles, you have got:

3 "Truck going full speed, 80 for sure."

4 A That's correct.

5 Q That's a statement Garth Shaw would
6 have given you, sir?

7 A That's correct.

8 Q Why is that four pages removed from
9 the rest of the statement of Garth Shaw?

10 A I don't know, but it's in here, so --

11 Q Well, sir, if I was a defence lawyer
12 and you were testifying about what Garth Shaw had
13 said to you, I'd certainly want access to these
14 notes in order to challenge your suggestion that
15 that might be a verbatim quote, given that you
16 didn't seem to record it at the same time that you
17 recorded the interview with him. Do you
18 understand my point, sir?

19 A Yes, sir.

20 Q So I'm going to suggest to you that
21 these notes are not irrelevant. We were able to
22 see that you didn't record any of the times that
23 you purport to have in your final notes by looking
24 at those notes. Do you agree, sir?

25 A That's right.

1 Q They should have been disclosed,
2 shouldn't they?

3 A Yes, sir.

4 Q We also heard testimony about
5 Krawchuk's notes never making it into the file,
6 Constable Krawchuk.

7 A I don't recall getting Krawchuk's
8 notes.

9 Q Well, sir, his role included walking
10 Mr. Harvey-Zenk to the washroom?

11 A Um-hum.

12 Q He made no observations that
13 Mr. Harvey-Zenk had difficulty walking in his
14 notes. You would agree that if you were a defence
15 lawyer, you'd certainly want to have access to
16 that information?

17 A Definitely.

18 Q If you take a look, please, at Exhibit
19 129, tab E-1.23.p. This is a memo from Chief Norm
20 Carter dated June 1, 2006, and it is being sent to
21 Prosecutor Martin Minuk. And I am going to read
22 the first paragraph to you.

23 "Further to our conversation on May
24 31st, '06, here is a faxed copy of
25 Constable Krawchuk's notes that had

1 never been disclosed to you. To
2 recap, I only learned that Constable
3 Krawchuk had made notes of his minimal
4 involvement in the incident on
5 May 29th, '06. On this date Constable
6 Krawchuk advised me that he had given
7 a copy of his notes to then chief
8 Bakema and assumes Bakema used
9 Krawchuk's notes to write up his
10 police report."

11 A First of all, I wouldn't be writing up
12 his police report, he should be writing up his own
13 report. And secondly, I don't recall getting his
14 notes. If I had, they would have gone to the
15 Sergeant reader.

16 Q Okay. If you were doing the
17 investigative report, where you put in the entire
18 investigation, you might have wanted his notes,
19 sir?

20 A I'm sorry?

21 Q If you were doing the investigative
22 report --

23 A Right.

24 Q -- you might have wanted his notes,
25 because it's going to be a description of what

1 everybody did?

2 A True. But he should have had a
3 supplementary in there with all the information on
4 it, what his involvement was.

5 Q Sure. But you did the investigative
6 report in this case, according to the documents we
7 have looked at?

8 A Yeah -- no, I did not.

9 Q Sir, leaving Krawchuk aside, it's
10 pretty obvious that this investigation was botched
11 up by East St. Paul pretty big time, sir. Would
12 you accept that?

13 A There were things definitely could be
14 done differently.

15 Q Would you accept the term botched up?

16 A I don't know about that term, sir.

17 Q Let me ask you this. If it had been a
18 member of your family that was killed in that
19 traffic accident, would you be satisfied with the
20 job the East St. Paul Police did?

21 A There is always room for improvement,
22 definitely. I would want to see improvement.

23 Q I take it you wouldn't be satisfied?

24 A Wouldn't be totally satisfied.

25 Q I take it you wouldn't be satisfied at

1 all?

2 A Probably would want it to be much
3 better.

4 Q You understand that to some, looking
5 at this evidence, it may appear that you chose to
6 let this happen, sir?

7 A I did not, sir.

8 Q And to some, it's going to appear that
9 you either abdicated a role in this investigation,
10 because you didn't want to be involved with
11 another police officer, or you actually set out to
12 protect him?

13 A I did not, sir.

14 Q At the very least, sir, it's going to
15 appear to some that this was a rank failure of
16 leadership. What's your comment to that, sir?

17 A I think I did the best I could do for
18 what I had there and my ability at that time.

19 Q Is there anything else you'd like to
20 say to the Commissioner before I sit down, sir?

21 A No, sir, that's fine.

22 MR. PACIOCCO: Mr. Commissioner, those
23 are the questions I have in chief.

24 BY MR. ZAZELENCHUK:

25 Q Mr. Bakema, I'm going to try not to go

1 over things that learned Commission Counsel has
2 dealt with, just expand on a few points perhaps.
3 You were being asked, or you were asked yesterday
4 about why you didn't bring Sergeant Carter out to
5 the scene. Do you recall that?

6 A I believe so.

7 Q Yes. And do you recall the answer
8 that you gave?

9 A I can't recall right now, sir.

10 Q Well, it seemed to me that you gave
11 the answer that there weren't any vehicles. Do
12 you recall that?

13 A It may have been, yes. We only have
14 so many vehicles. We had at least three down
15 there, if not four.

16 Q Well, you had three vehicles there?

17 A Three vehicles for sure, yes.

18 Q Was that all the vehicles that the
19 police force had?

20 A I don't recall, I think there was a
21 fourth one possibly, yeah.

22 Q In fact, there was a fourth one?

23 A Yeah.

24 Q Because Constable Krawchuk came down?

25 A That's correct.

1 Q Yes. So it wasn't because there
2 weren't enough vehicles --

3 A That?

4 Q -- that you didn't bring Sergeant
5 Carter to the scene?

6 A There was no need to bring Sergeant
7 Carter to the scene. My intent was to have the
8 officer bring the suspect into the office.

9 Q We have agreed that Officer Woychuk
10 was a very junior officer?

11 A That's correct.

12 Q Inexperience is a sin we have all
13 suffered from. But Sergeant Carter, on the other
14 hand, was a very experienced officer; isn't that
15 correct?

16 A That's correct.

17 Q And it would have made more sense to
18 bring Sergeant Carter down to the scene, not only
19 to assist you, but to transport Harvey-Zenk back
20 to the detachment. Don't you agree with me?

21 A It could have been done that way.

22 Q Sure. You worked at the division 13
23 police station for how many years, sir?

24 A Ten years, sir.

25 Q That's in the area of Winnipeg called

1 West Kildonan?

2 A It is called North End, yes.

3 Q It used to be a separate city many,
4 many years ago?

5 A West Kildonan.

6 Q Yes. And the police station is
7 located, I believe, about a block east -- sorry,
8 west of Main Street on Hartford Street?

9 A That's correct.

10 Q In terms of square feet, how big is
11 it?

12 A I don't know, geez.

13 Q I've been there many times, I grew up
14 in West Kildonan.

15 A I don't know the square footage.

16 Q Probably not much bigger than this
17 room?

18 A It's not a huge building.

19 Q I am going to suggest to you that if
20 you take away the garages, the actual police
21 station is not bigger than this room?

22 A That's possible.

23 Q There's a few interview rooms, there
24 is a couple of holding cells, there's a couple of
25 sergeants' offices?

1 A That's correct.

2 Q Okay. Earlier this morning,
3 Commission Counsel asked you about Patrol Sergeant
4 Sveinson attending at the scene?

5 A Yes.

6 Q And you agreed that he attended?

7 A Yes, he did.

8 Q And you agreed that you and he went
9 into a car together?

10 A Yes.

11 Q And then Commission Counsel related a
12 question and answer --

13 A Um-hum.

14 Q -- to you. And the question was,
15 after Officer Sveinson has been told that the
16 suspect is a Winnipeg Police Officer, what was
17 related to you is that Officer Sveinson said, "Was
18 he?" And you then replied, "Pissed, yeah, we had
19 to get out him out of there really quick." And
20 you denied saying that?

21 A First of all, sir, I do not recall
22 saying that he was pissed. I don't use the word
23 pissed. It would be impaired, if anything.
24 Because I was aware already that he had been
25 processed, or charged. And your second question

1 was?

2 Q Well, no. My question, I hadn't asked
3 my question yet, sir. You denied the conversation
4 as learned Commission Counsel suggested it to you
5 this morning?

6 A That's correct.

7 Q Your answer was, I didn't say that,
8 correct?

9 A That's correct.

10 Q What did you say?

11 A I indicated to him I believe that --
12 let me think for a minute -- we're talking about
13 when he came to the car?

14 Q Yes?

15 A What I told him about?

16 Q About Derek Harvey-Zenk?

17 A Right.

18 Q What did you tell him?

19 A I just indicated to him that a
20 Winnipeg Police Officer had been arrested and
21 charged.

22 Q That's it? That's all you told him?

23 A I don't recall, there may have been
24 more yet.

25 Q Did you tell him what he had been

1 charged with?

2 A I probably told him he was being
3 charged with impaired driving.

4 Q Okay. Anything else?

5 A I don't recall, sir. There could have
6 been more charges, I'm not sure.

7 Q Okay. Do you have Exhibit 93 which,
8 Mr. Commissioner, can be found at P-2.85.1,
9 Exhibit 93? Do you have that?

10 A Yes, I do.

11 Q Now, I believe you told us this
12 morning that you had never seen that document
13 before today?

14 A Yes, sir.

15 Q Okay. Do you remember when you became
16 Chief of the East St. Paul Police Force?

17 A Not the exact date but --

18 Q I see. Do you remember the month and
19 the year?

20 A It was, I'm thinking when I retired
21 in -- probably it was in 2005, not sure of the
22 month, sir.

23 Q And how long were you Chief of Police?

24 A About, just short of two years, I
25 guess.

1 Q Okay. If you go to page 2575, the
2 next page, bottom right-hand corner, sir?

3 A 2575 you're saying?

4 Q Yes?

5 A Yes, go ahead.

6 Q You'll notice it says up at the top:
7 "Member shall sign and date this sheet
8 each time they read the policies and
9 procedures contained in this manual."

10 A Yes, sir.

11 Q And I am sure you notice a number of
12 the signatures there?

13 A Yes, sir.

14 Q Okay. For example, five from the
15 bottom, do you recognize Constable Woychuk?

16 A Constable?

17 Q J.T. Woychuk, five from the bottom?

18 A Yes.

19 Q And you recognize the badge number?

20 A Yes, sir.

21 Q Okay. And if we go up a couple more,
22 we've got Constable Graham?

23 A Yes, sir.

24 Q And what's the date by Constable
25 Graham?

1 A Five, I can't read that, something 12.

2 Q It looks to me like 04/01/10?

3 A Constable Graham, no, it's "05".

4 Q Just a second?

5 A And the rest, you can't read other

6 than the 12. But he's in here twice.

7 Q He's in here twice and we were looking

8 at different ones. Let's count from the bottom

9 up, one, two, three, four, five, six, seven?

10 A Yes.

11 Q And you'll agree with me that that

12 identifies Constable Graham and his badge number?

13 A Yes, sir.

14 Q And you'll agree with me that the date

15 is either January 10th or October 1st of '04,

16 depending on how you write it?

17 A Um-hum.

18 Q Could you say yes or no, please, sir?

19 A Yes, sir.

20 Q Okay. And I always get mixed up

21 whether it's day, month or month, day. But in any

22 event, you'll agree with me that that's an '04

23 date?

24 A Yes, sir.

25 Q And then if we look at the other

1 Graham --

2 A Sir, are you looking at the wording
3 behind that, what it says?

4 Q It says "domestic" I think?

5 A That's right, so it's for a different
6 thing again, it's not just -- there's different
7 courses where they get their information.

8 Q This document, the point is that
9 you'll agree with me that's an '04 date?

10 A Yes, sir.

11 Q And if we look at the Graham entry,
12 three from the bottom?

13 A Yes.

14 Q That's 05/12/12?

15 A Could be.

16 Q Well, what else could it be?

17 A Well, I'm just looking at the numbers,
18 sir, I can't see that one number properly. It may
19 be.

20 Q Which number can't you see properly?

21 A It's the middle one.

22 Q Well --

23 A 5/11/12, I can't tell.

24 Q Okay. Fair enough. But you'll agree
25 with me that that's an '05 date?

1 A That's correct.

2 Q And it's either December 12th or
3 November 12th?

4 A Yes, sir.

5 Q And you're telling us today, that
6 although this policy manual was in place when you
7 were Police Chief, you never read it?

8 A No, sir, I have never seen this
9 policy, this manual. Had I seen it, I would have
10 been reading it and I would have signed it too.

11 Q And can you tell us any reason why
12 you, as a Police Chief, wouldn't have seen this
13 policy manual?

14 A No, I can't tell you that. I don't
15 know why. I should have had it.

16 Q Okay. Just a couple more points to
17 cover. You were a police officer for over 30
18 years, you rose to the rank of sergeant, you had
19 considerable investigatory techniques. Is that
20 correct?

21 A Yes, sir.

22 Q You worked the child abuse unit, I
23 think, for what, five or six years?

24 A Six years, sir.

25 Q That's a particularly difficult

1 assignment?

2 A Definitely.

3 Q You worked with a lot of children who
4 are often reluctant to tell you that they have
5 been abused?

6 A Yes.

7 Q Yeah. And you'll agree with me, I'm
8 not a police officer and you're not a lawyer, but
9 you'll agree with me that there are interview
10 techniques that you develop over the years?

11 A Yes.

12 Q Okay. To try and get people talking?

13 A Um-hum.

14 Q Yes?

15 A Yes.

16 Q Okay. So you told us that -- we were
17 back at the scene of the incident now, and it's in
18 the early part, and you go over to the truck and
19 you see Harvey-Zenk. You may or may not know who
20 he is at that point, but he impresses you as being
21 not talkative. Do you recall telling us that?

22 A Not talkative?

23 Q Yes?

24 A I said he didn't say very much.

25 Q No. Well, is that not talkative?

1 A Could be, yes.

2 Q And you were asked why you didn't
3 strike up a conversation with him. Do you recall
4 being asked that earlier?

5 A No, I don't recall being asked that.
6 It could have been, though.

7 Q Yeah. And then you told us -- but
8 you'll agree with me that striking up a
9 conversation with him would have been helpful at
10 that point?

11 A Very difficult with him walking with
12 his head down, and try and have a conversation.

13 Q No, I understand that it might have
14 been difficult, but it certainly would have been
15 helpful if you could get him to talk?

16 A It would have been helpful.

17 Q Sure.

18 A But my concern at this point was to
19 get him from the accident scene into a warm
20 confined area first, because it was pretty cold
21 outside.

22 Q But you have agreed with me, it would
23 have been helpful to your investigation if you
24 could have gotten him to talk?

25 A Everything would be helpful, sir, yes.

1 Q And on the walk from his vehicle to
2 Woychuk's, he says to you, "I am a cop," doesn't
3 he?

4 A Right.

5 Q And why didn't you follow up on that?
6 Why didn't you use that as a starting point for a
7 conversation?

8 A When he said that, I looked down,
9 because he was walking with his head down.

10 Q Yes?

11 A I had to look down to actually see his
12 face, and that's when I recognized who he was.

13 Q Okay. You told us that yesterday.
14 But my question to you wasn't what did you do, my
15 question to you was, you have told us he's not a
16 talkative person, he didn't say much, or at least
17 that's what was happening that day. And all of a
18 sudden he opens up a conversation?

19 A Right.

20 Q Why don't you follow up with him and
21 ask him some questions? Why don't you ask him
22 where? Why don't you ask him, what's this all
23 about?

24 A Well, I know he's involved in an
25 accident because I know he's walking from the

1 vehicle that's smashed up.

2 Q Yes, we all know that. But we've all
3 also agreed that it would have been helpful if you
4 could have gotten him to talk to you?

5 A It may have, yes.

6 Q Yes. And you didn't take any kind of
7 steps like that?

8 A Not to have a conversation, no.

9 Q No. I wonder, do you have exhibit
10 147. That's -- sorry, that's P-3.87.2?

11 THE COMMISSIONER: Exhibit?

12 THE CLERK: 147.

13 THE COMMISSIONER: Thank you.

14 BY MR. ZAZELENCHUK:

15 Q Mr. Bakema, are you with me, sir?

16 A Go ahead, sir.

17 Q Okay. You had, as part of the
18 equipment when you worked for the East St. Paul
19 Police Department, you were issued with a cell
20 phone?

21 A That's correct.

22 Q Yeah.

23 A Not -- wait a minute. I think I did,
24 yeah.

25 Q Yeah. And that only makes sense,

1 because in this day and age, communication is very
2 important; correct?

3 A Yes.

4 Q Okay. And learned Commission Counsel
5 have been extremely diligent, and they were able
6 to obtain for us the cell phone records for your
7 cell phone for February 25th, 2005?

8 A That's correct.

9 Q And let's go to page 2807. Are you
10 with me?

11 A Which page, sir?

12 Q Top page, 2807. Are you there?

13 A Just one moment, please. You're
14 saying 2807?

15 Q Bottom right-hand corner?

16 A Yes.

17 Q Page 2807?

18 A Yes, I'm here.

19 Q Okay. Now, down at the bottom of that
20 page there is a list of -- there is a chart with
21 three columns, time, number called, and party
22 called?

23 A Right.

24 Q Five entries down, 9:45 a.m., number
25 called 661-8999. Do you see that?

1 A 661?

2 Q 8999. Do you see that number?

3 A You're saying 669?

4 Q No.

5 THE COMMISSIONER: 9:44 a.m.

6 THE WITNESS: Okay. Thank you, sir.

7 Yes, go ahead.

8 BY MR. ZAZELENCHUK:

9 Q And then the party called is Royal
10 Dodge Jeep Chrysler?

11 A I don't know.

12 Q Well, that's what's written there?

13 A Yes, I realize that.

14 Q Okay. Is that a Chrysler dealership?

15 A Must be, yes.

16 Q Yes. Why at 9:45 a.m. on
17 February 25th, 2005, would you call a Chrysler
18 Dodge dealership?

19 A I don't know, sir. I have no idea.

20 Q And the fact that Derek Harvey-Zenk
21 was driving a Dodge is a mere coincidence?

22 A No, I -- I have a Chrysler myself, so
23 I don't know.

24 Q Okay. So you might have been --

25 A I don't see why I would be on the

1 phone making inquiries about something when I'm on
2 an accident scene, making inquiries about my
3 vehicle.

4 Q Well, I don't either, sir, which is
5 why I'm asking you the question as to why you made
6 the call?

7 A I have no idea.

8 Q Okay. And let's turn a few pages to
9 2810?

10 THE COMMISSIONER: This is your cell
11 phone that is making these particular calls.

12 THE WITNESS: That's what I
13 understand.

14 THE COMMISSIONER: Yes.

15 THE WITNESS: Yeah, because I
16 indicated that I had tried calling East St. Paul
17 dispatch numerous times, and that was at the very
18 beginning of it.

19 THE COMMISSIONER: And for some
20 reason, at 9:44 a.m. in the midst of this
21 investigation, there is a call to Royal Dodge Jeep
22 Chrysler, and you have no recollection what it was
23 about?

24 THE WITNESS: I have no recollection
25 what it is, but I do have a vehicle, a Chrysler,

1 and I did deal at one time with Royal Dodge. I
2 don't know.

3 THE COMMISSIONER: You called them in
4 the middle of an investigation about your vehicle?

5 THE WITNESS: I really don't think so,
6 sir. I have no idea.

7 BY MR. ZAZELENCHUK:

8 Q Well, let's go to page 2810?

9 A Yes, sir.

10 THE COMMISSIONER: 2810?

11 MR. ZAZELENCHUK: Yes,
12 Mr. Commissioner.

13 THE COMMISSIONER: Thank you.

14 BY MR. ZAZELENCHUK:

15 Q We have the times, not what time they
16 were called but the length of time for the various
17 calls. And the bottom one, it's a little bit
18 difficult to read, but it's 9:44. Okay, do you
19 see that, the bottom entry in the page there?

20 A 9:44?

21 Q Okay.

22 THE COMMISSIONER: It's blacked out.

23 BY MR. ZAZELENCHUK:

24 Q Are you, sir, at page 2810?

25 A Yes, but it's blacked out here, that's

1 why I can't see the numbers on it.

2 Q Fair enough. Madam clerk, would you
3 hand him my book? I have highlighted mine in
4 orange.

5 A Thank you.

6 THE COMMISSIONER: It merely repeats
7 what's on the previous page, or at least on 2807.

8 MR. ZAZELENCHUK: It does, Your
9 Honour, but it gives us more information.

10 THE COMMISSIONER: Yes, all right. Go
11 ahead.

12 BY MR. ZAZELENCHUK:

13 Q Can you see better with mine
14 highlighted in orange?

15 A Yes sir.

16 Q Can you see the length of the call is
17 2.1 minutes?

18 A Yes, sir.

19 Q So it was a rather lengthy call?

20 A It appears so.

21 Q Does that assist you in jogging your
22 memory as to what this call was all about?

23 A I don't recall it, sir.

24 Q No. Okay. I'm going to have to ask
25 for my book back --

1 A Yes, you may, sir.

2 Q -- or I won't be able to ask more
3 questions?

4 THE COMMISSIONER: Are you going to be
5 much longer?

6 MR. ZAZELENCHUK: Five minutes most,
7 Mr. Commissioner.

8 THE COMMISSIONER: I just know how
9 counsel are so anxious to get out of here at the
10 break.

11 MR. WEINSTEIN: I'm prepared to wait
12 five minutes.

13 THE COMMISSIONER: Five more minutes.

14 BY MR. ZAZELENCHUK:

15 Q Let's go back to 2807?

16 A Yes, sir.

17 Q After the call to Royal Dodge Jeep
18 Chrysler, there is a voice mail entry. And then
19 there's an entry, 11:02. Do you see that?

20 A There's an entry?

21 Q 11:02?

22 A Yes.

23 Q And that call is to the sergeant shift
24 supervisor, division 13?

25 A That's correct.

1 Q Hartford police station?

2 A Yes.

3 Q Where Harvey-Zenk worked?

4 A That's correct.

5 Q Where you used to work?

6 A Yes.

7 Q Okay. And there's a second call at
8 11:02 a.m., division commander division 13. Do
9 you see that?

10 A Yes, I believe so, yes.

11 Q Yes, Hartford police station?

12 A Yes.

13 Q Where Harvey-Zenk worked?

14 A That's correct.

15 Q Then there's an entry voice mail
16 11:19, and then there's an entry, 11:19, division
17 commander division 13. Do you see that, sir?

18 A I see that, sir.

19 Q Yeah. Hartford police station, right?

20 A That's correct.

21 Q Yeah. And then 11:20, there's another
22 entry to division commander, division 13. Do you
23 see that?

24 A Yes, sir.

25 Q Okay.

1 A All these calls seem to be one minute
2 apart, sir.

3 Q That's correct. Let's go to 2811,
4 page 2811. Are you there?

5 A Yes, I am, sir.

6 Q Okay. There's some numbers at the
7 extreme left-hand side, start with 19 and then go
8 20, 21. Do you see those, sir?

9 A I see the first 19. Go ahead.

10 Q Okay. Let's go down to 25?

11 A Yes, sir.

12 Q Are you there?

13 A Yes, sir.

14 Q And that's the 11:20 call? It's a
15 little bit hard to read but it's there.

16 A Go ahead.

17 Q You'll agree with me, that's the 11:20
18 call?

19 A It may be, yes.

20 Q And it's to division 13?

21 A I can't tell here.

22 Q Sorry?

23 A I don't know the number that --

24 Q Well, if you flip back --

25 A Yes.

1 Q -- to 2807, and look at the bottom
2 entry, would you do that for me, please? The
3 bottom entry is 11:20, 986-2854, division
4 commander, division 13. Is that not correct?

5 A Just one moment, sir. Yes, it would
6 be.

7 Q Okay. Now, let's go back to 2811,
8 number 25, over about the middle of the line we've
9 got the same number, 986-2854?

10 A Um-hum.

11 Q Do you agree with me?

12 A Yes, I'm seeing that number.

13 Q Yes. So that's the same call?

14 A Same number it's called to, yes.

15 Q Yes, and the same time?

16 A Yes, sir.

17 Q So it might be the same call?

18 A That's possible.

19 Q Okay. And then there's the length of
20 time of the call, it's almost four and a half
21 minutes?

22 A You're talking about number 25, right?

23 Q Yes?

24 A Yes, it is.

25 Q Okay. So tell us, what were you and

1 the division commander of division 13, where
2 Harvey Zenk worked, talking about for four and a
3 half minutes at 11:20 on February 25th, 2005?

4 A You're talking 11:20 in the morning?

5 Q Yes?

6 A Yes. I made a contact to the
7 divisional commander to let him know that Mr. Zenk
8 had been involved in a motor vehicle accident
9 involving a fatality, and that I was concerned
10 that they would have him come into work that
11 night, if he was working that day, and I didn't
12 want to see him coming into work, because I didn't
13 think it was right for them to allow him into work
14 under the situation that he's just gone through.

15 Q And that took you four and a half
16 minutes?

17 A I don't recall why it took that long,
18 but that's what my conversation was with him.

19 Q And that wasn't something that you
20 could leave as a message on your three prior
21 calls?

22 A No, I wanted to make sure that they
23 were aware of it and they got the message, so that
24 they knew, in fact, that had he been in this
25 accident.

1 Q Okay. And that took you four and a
2 half minutes?

3 A I beg your pardon?

4 Q Did that take you --

5 A It may have. I don't know. It's
6 showing that.

7 Q One last point?

8 A Go ahead, sir.

9 Q Let's go to page 2808? Up at the top
10 there's a continuation of the chart?

11 A Yes.

12 Q We've got the last entry, 4:18 p.m.
13 Do you see that?

14 A Deputy chief operations.

15 Q Yeah?

16 A Okay. 4:18 p.m.

17 Q And there is no question that 986 is a
18 Winnipeg Police number?

19 A That's correct, I believe so.

20 Q Okay. Let's go to 2811, page 2811,
21 sir, second entry from the bottom, number 38 on
22 the left-hand side?

23 A Um-hum.

24 Q Do you see that, sir?

25 A Yes, sir.

1 Q Okay. That's the call we are talking
2 about?

3 A That may be, yes.

4 Q Well, it's the same time, correct?

5 A Yes.

6 Q And it's the same number, correct?

7 A It appears so, yes.

8 Q So chances are pretty good it's the
9 same call?

10 A Yes.

11 Q Okay. What's the length of time of
12 that call?

13 A It shows 7 point --

14 Q 7.7 minutes?

15 A Right.

16 Q Now, what were you and the Deputy
17 Chief of Operations talking about for 7.7 minutes?

18 A I just indicated to him what had
19 occurred, to make sure he didn't show up for work.
20 That's all I had discussed with him.

21 Q You just told me that in about 20
22 seconds?

23 A Yes, sir, but --

24 Q What happened to the other --

25 A I wouldn't have spoken as fast, and

1 also he would have probably had some comments to
2 make.

3 Q I'm going to suggest to you, officer,
4 that what you did is you said words to this
5 effect: One of your boys was in a drinking spree,
6 he got involved in an accident. I'll clean up
7 this end, you clean up the other end?

8 A Absolutely not, sir. Absolutely not.

9 MR. ZAZELENCHUK: Thank you.

10 THE COMMISSIONER: Just so I could get
11 this right, 2:15 or 2:13?

12 MR. PACIOCCO: 2:13:17...18...19.

13 THE COMMISSIONER: 2:19, all right.

14 We'll break now.

15 THE CLERK: All rise. This Commission
16 is in recess.

17 (Proceedings recessed at 12:44 p.m.

18 and reconvened at 2:19 p.m.)

19 THE CLERK: All rise. This Commission
20 of Inquiry is now reopened. Please be seated.

21 MR. WEINSTEIN: Mr. Commissioner,
22 prior to the matter proceeding, I wish to raise a
23 matter which I consider serious. I, as other
24 counsel have, have read every page of the
25 disclosure that's been provided to us. I've read,

1 as other counsel have, every page of interviews
2 with the various witnesses, and not one witness
3 has said the outrageous, unsupported, and improper
4 suggestion that my learned friend put to
5 Mr. Bakema saying, "you look after your end and I
6 will look after my end." I'm submitting to you,
7 Mr. Commissioner, that it is totally inappropriate
8 to even put that suggestion that's not supported
9 at all anywhere in this material.

10 I don't know the purpose, why my
11 learned friend did something improper. I hope it
12 is not because he is trying to get a sound bite,
13 but this should never have happened, and I'm
14 asking Mr. Commissioner, you, to deal with this
15 matter.

16 THE COMMISSIONER: Yes.

17 MR. WEINSTEIN: Let me just add in
18 closing, other counsel are of the same view as I
19 am, as to the propriety, or impropriety of that
20 suggestion.

21 THE COMMISSIONER: I am sorry?

22 MS. HANLIN: We would support those
23 comments.

24 THE COMMISSIONER: Yes. Yes. All
25 right.

1 MR. PACIOCCO: Mr. Commissioner, the
2 Supreme Court of Canada's decision in the Crown
3 and Howard requires a lawyer, before putting
4 forward a suggestion to a witness, to have a
5 foundation for it. If there is a challenge to the
6 foundation for the submission, the appropriate
7 thing, according to the Supreme Court, is for the
8 parties to call on, or for the judge to call on
9 the party to indicate whether there is a
10 foundation.

11 We haven't afforded that opportunity
12 yet to Mr. Zazelenchuk, but certainly if the
13 question was without foundation, it should be
14 withdrawn. And if there is a foundation for it, I
15 believe that he is required to share it with you
16 so that you can make an appropriate ruling on
17 whether that question should have been asked.

18 THE COMMISSIONER: Yes. All right.

19 MR. ZAZELENCHUK: May it please the
20 tribunal, we have heard evidence of relationships,
21 we've heard evidence of investigations that aren't
22 properly done, we've even had illusions by
23 Commission Counsel to whether or not the PSU, the
24 Professional Standards Unit, pursued their
25 investigations and their interrogations or

1 questioning of the police officers as forcefully
2 as they should have. We also have an indication
3 that there were calls made of a substantial nature
4 in terms of length of time, at a very early stage
5 in these proceedings, to high officials in the
6 district 13, or division 13 station.

7 With all due respect, I was entitled
8 to put a suggestion to this witness. He is
9 entitled to deny it or answer it. The trier of
10 fact will come to a decision at the end of the
11 day, but with all due respect, there is all sorts
12 of evidence which can act as a foundation for that
13 kind of a suggestion. And unless you have some
14 questions of me, that's my position.

15 MR. WEINSTEIN: My learned friend can
16 raise the points he just raised when he makes his
17 final argument, but to leap from what he just said
18 to put to the witness, alleging he said, "you look
19 after your end, I will look after mine", with the
20 greatest respect, that is not supported anywhere.
21 There is not even an inference that could be drawn
22 that that was even said.

23 THE COMMISSIONER: All right. Thank
24 you. I will, I think that in the circumstances of
25 this hearing, there has been no such allegation,

1 Mr. Zazelenchuk. It ought not to have been
2 suggested to him, and I will tell counsel that I
3 will disregard the suggestion that was put to him.

4 All right. Press on now. Who is
5 next? Mr. McDonald, you are next.

6 MR. McDONALD: It is,
7 Mr. Commissioner, my turn in the established order
8 of proceedings, but with your permission and
9 permission of other counsel, I would like to stand
10 down my cross-examination until second last. I
11 can explain why, if you feel the need to hear it
12 now, but I don't --

13 THE COMMISSIONER: Yes, I do.

14 MR. McDONALD: You want to hear now?

15 THE COMMISSIONER: Yes.

16 MR. McDONALD: Well, I have received
17 some information over the last 24 hours that I'm
18 trying to verify independently, so I can determine
19 whether or not I'm at liberty to use that
20 information in the cross-examination of Chief
21 Bakema. And I do not want to be making
22 suggestions to the witness unless I am satisfied
23 that I have the foundation to do so. And those
24 inquiries are being made on my behalf, as we
25 speak, and I am hoping to have that resolved by

1 the end of the day.

2 THE COMMISSIONER: Thank you. I will
3 let you go second last.

4 MR. McDONALD: Thank you.

5 THE COMMISSIONER: Where are we?
6 Mr. Jack, you are next.

7 BY MR. JACK:

8 Q Mr. Bakema, I would like to start by
9 taking you back to February 25, 2005.

10 A Yes, sir.

11 Q And the moment specifically I would
12 like to refer to is the period of time within
13 which you were in the company of Cecil Sveinson on
14 that day, you recall that?

15 A Yes.

16 Q You were asked by other counsel about
17 that particular portion of the day. You still
18 recall that?

19 A Yes.

20 Q Am I correct in my review of your
21 notes when I suggest that there is absolutely no
22 mention in your notes of any contact with Cecil
23 Sveinson on that date?

24 A That's correct.

25 Q Am I also correct in noting that there

1 is nothing noted by you in the incident report
2 that was completed that makes any mention
3 whatsoever of Cecil Sveinson?

4 A That's correct.

5 Q Am I also correct when I state that at
6 no point did you make any other type of
7 communication to anyone at the Winnipeg Police
8 Service, whether they be in the Professional
9 Standards Unit or otherwise, about the contact you
10 had had with Cecil Sveinson on that date?

11 A No, I had not.

12 Q You did not. And in fact, it would be
13 correct to state at no point since February 25,
14 2005, at no point, period, have you ever mentioned
15 to anyone within the Winnipeg Police Service your
16 contact with Cecil Sveinson on that date; correct?

17 A That's correct.

18 Q Am I also correct in assuming that you
19 did not mention that contact to any other person,
20 whether in the East St. Paul Police Department or
21 otherwise, who may have made that comment on your
22 behalf, in other words, someone who may have
23 communicated that information to Winnipeg Police
24 Service?

25 A No, I did not.

1 Q You did not. Okay. Thank you. The
2 remainder of my questions, Mr. Bakema, are all
3 relating to your interaction and the interaction
4 of the East St. Paul Police Department with the
5 Professional Standards Unit of the Winnipeg Police
6 Service. I'm going to refer to them as the PSU.

7 A Yes.

8 Q And when I do so, you will understand
9 who I'm referring to.

10 Now it is my understanding, and much
11 of this, of course, was canvassed by counsel, I
12 simply want to go over each of the contacts with
13 you. And I note on one occasion, that being
14 February 28, 2005, it is my understanding you had
15 contact from Corrine Scott of the Winnipeg Police
16 Service?

17 A I believe so.

18 Q And do you recall, at that time, the
19 information that she provided to you about some
20 interviews they wanted to perform? Do you recall
21 that information?

22 A I can't recall that, sir.

23 Q It is my understanding that Corrine
24 Scott indicated to you on that date that, in fact,
25 they wanted to, or in fact, officers Humniski and

1 Anderson had come forward wishing to give their
2 version of events as they occurred on the evening
3 of February 24, 2005, and the early morning of
4 February 25, 2005, and Corrine Scott was imparting
5 this information to you?

6 A It is possible. I don't recall it,
7 though, sorry.

8 Q And I know you have nothing in your
9 notes about that conversation?

10 A No.

11 Q So when I suggest to you that it did
12 happen, you have no reason to disagree?

13 A To doubt it, no.

14 Q Okay. Would you also agree, or at
15 least leave open the room for possibility that
16 during the same conversation with Corrine Scott on
17 February 28, 2005, you asked Corrine Scott, in her
18 capacity on behalf of the Winnipeg Police Service,
19 to proceed with those two interviews, because you
20 indicated that the East St. Paul Police Department
21 had no resources at the time to do so.

22 A Because we asked them to do all of the
23 interviews on the other side. We didn't have the
24 staff to do them, there is no doubt about that.

25 Q You would agree, or leave open room

1 for the possibility that you made that comment to
2 Corrine Scott on February 28, 2005?

3 A Yes.

4 Q Thank you. Now, it is also my
5 understanding that on February 28, 2005, you also
6 had occasion to speak with Sergeant Poole of the
7 PSU. Do you recall that conversation?

8 A Was that at my office?

9 Q I don't believe so. I believe this
10 would have been via telephone, if I'm not
11 mistaken.

12 A That could have been, sir, yes.

13 Q Just in an effort to refresh your
14 memory, given that you have not made any note of
15 it, it is not ideal, of course, to put someone
16 else's notes in front of you, but I will need to
17 do so in these circumstances.

18 A That's fine.

19 Q I'm going to be referring to exhibit
20 137, if that could be put in front of the witness,
21 that's Q-1.89.b.4, specifically page 2923.

22 A It is not readable.

23 Q And I do recognize it is likely very
24 similar to the copy we received as well. I will
25 do my best, Mr. Commissioner, I have a slightly

1 darker copy, that I will be following along with.

2 I recognize both Mr. Bakema and quite likely some

3 counsel in the room may have some difficulty

4 reading it. If anyone --

5 THE COMMISSIONER: What is the bottom

6 page number?

7 MR. JACK: I have page 2923,

8 Mr. Commissioner.

9 THE COMMISSIONER: 2923, thank you.

10 BY MR. JACK:

11 Q Again, like I indicated, Mr. Bakema, I

12 will do my best to try and relate to you my

13 interpretation of Sergeant Poole's notes. The

14 best you can do is respond as best you can with

15 your interpretation.

16 A Yes, sir.

17 THE COMMISSIONER: Do you have a clear

18 copy?

19 MR. JACK: I have a darker copy,

20 Mr. Commissioner. It, in fact, is a photocopy

21 derived from the same originals.

22 BY MR. JACK:

23 Q Now, I refer you near the top of the

24 page, Mr. Bakema. I'm going to relay to you what

25 I believe the notes state. Again, please do your

1 best to follow along, if you can.

2 It is my understanding that here
3 Sergeant Poole has noted, at the time on the left
4 margin, my best indication is 12:05, that's my
5 best read of it, Mr. Commissioner. In any event,
6 the content is as follows, Mr. Bakema:

7 "Call to Chief Bakema. Brief him on
8 the two interviews and the fact that I
9 would like to liaise with counsel
10 Marty Minuk. He is fine with that and
11 appreciates our assistance. I advised
12 that I will update him tomorrow when I
13 know more."

14 Do you recall that conversation with Sergeant
15 Poole?

16 A I don't recall it, but I may have had
17 that because I was communicating with Winnipeg.

18 Q And specifically, do you recall the
19 comment from Sergeant Poole requesting that they
20 be entitled to liaise with counsel Marty Minuk?
21 Does that stick in your head at all?

22 A Not really.

23 Q Do you have any reason to doubt that
24 that was the content of your conversation with
25 Sergeant Poole?

1 A It could have been, because they were
2 dealing with Marty Minuk as well so --

3 Q It is also noted, again, several times
4 in the material but certainly right here, that
5 Sergeant Poole has noted that he, referring to
6 you:

7 "He is fine with that and appreciates
8 our assistance."

9 Would that be a fair characterization of the
10 dealings with PSU, that you appreciated their
11 assistance?

12 A Definitely.

13 Q As you've already confirmed, and we
14 also heard from Sergeant Carter, you were the one
15 requesting assistance from the PSU; correct?

16 A That's correct.

17 Q At all times being, at least at all
18 material times throughout the early part of this
19 investigation, you being the Chief of the East St.
20 Paul Police Department?

21 A That's correct.

22 Q You would also agree that it would be
23 reasonable for those on behalf of the Winnipeg
24 Police Service, or the PSU, when dealing with you
25 as the Chief of the East St. Paul Police

1 Department, to assume that a request from you is
2 properly a request on behalf of the East St. Paul
3 Police Department?

4 A That's correct.

5 Q Thank you. Now, the next specific
6 communication I have note of, Mr. Bakema, occurred
7 on March 1, 2005. And in fact, I have note of
8 communication with Deputy Chief Webster on that
9 date. Do you recall that communication?

10 A I had so much communication, I can't
11 recall for sure. I may have had conversation with
12 Doug Webster.

13 Q Thank you. Then I would like to,
14 again, recognizing they aren't your notes, but if
15 I could refresh your memory with the assistance of
16 notes that were taken, I'm going to be referring
17 to, and I don't believe this particular item has
18 been marked as an exhibit, so if it has not, I
19 would like to do so now. It is going to be volume
20 Q-1.89.b.9. Pardon me, I stand corrected, it has
21 already been marked as exhibit 150.

22 If that could be put in front of
23 Mr. Bakema. I believe it is.

24 A Which page are we on now, sir?

25 Q Yes, certainly. The volume to which

1 I'm referring begins at 2988, and I'm actually
2 going to be referring to page 2989.

3 A I have exhibit 137 here. Is that
4 correct?

5 Q I have it marked as exhibit 150.

6 A I have that.

7 Q Thank you. And it is my understanding
8 that these are notes taken by Deputy Chief
9 Webster. It is noted at the top of the first
10 page, that being at the top of page 2988, a date
11 of Tuesday, March 1. And again, as I indicated,
12 I'm going to draw your attention to page 2989,
13 which is the second page of these notes. And just
14 to refresh your memory, I wanted to refer to the
15 two times in the middle of the page referred to by
16 Deputy Chief Webster, that being 10:00 o'clock and
17 16:10.

18 A Um-hum.

19 Q First I would like to refer your
20 attention to, again, almost midway down the page
21 noted at 10:00 o'clock, the comment that appears
22 there is as follows:

23 "Talked to Harry Bakema. Advised that
24 he would let me know this afternoon if
25 he needs our assistance."

1 You recall that conversation with Deputy Chief
2 Webster?

3 A I believe so.

4 Q And immediately below, at 16:10, as
5 noted by Deputy Chief Webster, the comment is as
6 follows:

7 "Harry Bakema asked for assistance
8 from WPA in establishing drinking
9 history."

10 It is my understanding that, in fact, that was
11 merely an inadvertent error and was meant to refer
12 to WPS. Would that be your recollection as well?

13 A Yes, probably.

14 Q Further noted thereunder, noted as
15 number one:

16 "Would like PSU to keep him up to
17 speed on developments."

18 Is that something that you would have requested
19 during that conversation with Deputy Chief
20 Webster?

21 A Definitely.

22 Q And secondly, "sharing of
23 information/evidence" that's also something that
24 you would have discussed with Deputy Chief Webster
25 at that time?

1 A Probably, yes.

2 Q Just moving along the time continuum
3 here, Mr. Bakema, I would like to take you to
4 March 9, 2005. It is my understanding that you
5 had another discussion with Sergeant Poole on that
6 date. Do you recall that discussion?

7 A On March ---

8 Q My note indicates March 9, 2005?

9 A Sergeant Poole?

10 Q That's correct.

11 A I can't say what it was about, I'm not
12 sure, sir.

13 Q That's fine. Once again, if you don't
14 mind, as an aid to your memory, recognizing, of
15 course, that these aren't your notes, I would like
16 to go through the relevant portion of Sergeant
17 Poole's notes with you, if I could?

18 A Sure.

19 Q Again, I recognize you already have
20 exhibit 137 in front of you, that's correct?

21 A Yes, sir.

22 Q And I'm going to be referring to page
23 2933. And once again for anyone that requires the
24 volume number, it is Q-1.89.b.4, and I'm referring
25 to 2933.

1 A Another one that's not readable.

2 Q Yes, Mr. Bakema, I recognize once
3 again, in fact, and the copy that we have as well,
4 at least in terms of the officially bound copy, is
5 quite difficult to read. Once again, I will go
6 through the notes with you, given my best read or
7 review of the copy I have in front of you. Please
8 correct me if you feel I'm misrepresenting
9 anything that's contained on that page.

10 Now, I'm starting near the top of the
11 page. We have a date, second line from the top,
12 from what I can read indicates 05/03/09, with the
13 time of 0730, and the date, Wednesday, noted
14 thereupon. Comments, as I read them, from the
15 notes are as follows:

16 "Call to Chief Bakema of East St. Paul
17 Police. Briefed on interviews thus
18 far along, with what else is taking
19 place, Branigan's."

20 So even just discussing that first comment,
21 Mr. Bakema, it would appear in Sergeant Poole's
22 notes that he seems to be indicating on March 9,
23 2005, during his discussion with you, the issue of
24 Branigan's comes up in the discussion. Do you
25 recall that?

1 A I don't, but it could have.

2 Q So, you allow for the possibility that
3 Branigan's came up in the discussion with you. My
4 suggestion would be that the issue of Branigan's,
5 in fact, would relate to the interviewing of
6 witnesses who worked at the Branigan's?

7 A Yes, that's correct.

8 Q So you would agree that that's at
9 least possible that that was discussed between you
10 and Sergeant Poole on that date?

11 A It may have been.

12 Q So, just a few moments ago when my
13 learned friend, Mr. Paciocco, was examining you,
14 he raised the issue of any discussion that might
15 have taken place concerning the interviewing of
16 Branigan's' witnesses. You indicated that you are
17 aware of that now, but that you weren't aware of
18 that at the time. Do you recall that comment that
19 you made?

20 A I don't recall all of those contacts
21 that they were telling me that were made. I can't
22 say for sure on them. It has been a long time,
23 and I don't have it recorded here as to what that
24 was. I know I had a few contacts initially, and
25 there was some in between that, but word for word,

1 I couldn't tell you exactly what was said at them.

2 Q And I understand that. So at least if
3 I'm suggesting to you that it was communicated to
4 you that some civilian witnesses at Branigan's may
5 have some relevant evidence --

6 A I don't recall that, sir, I really
7 don't.

8 Q That's fine. But you are at least
9 allowing for the possibility that during your
10 discussions with Sergeant Poole, it was discussed
11 that there were some civilian witnesses at
12 Branigan's who may have some relevant evidence to
13 provide. Would you agree with that, that it's at
14 least possible you discussed that?

15 A It is possible.

16 Q But you have no specific recollection?

17 A I don't recall it.

18 Q And those two lines in Sergeant
19 Poole's notes don't refresh your memory to any
20 degree, sir?

21 A No, sir.

22 Q Now, midway down the page, on this
23 very same page, Mr. Bakema, I note further
24 comments made by Sergeant Poole with respect to
25 this investigation, not with respect to

1 Branigan's. But I would like to read, again, my
2 best interpretation of these notes as follows:

3 "I advised Chief Bakema of the 'blood'
4 demand noted in report versus breath.
5 He will check."

6 And again we have heard at length what this, I
7 believe, refers to?

8 A That may have been where possibly we
9 had that file folder with that on it, that may
10 have come from that too, from that call.

11 Q The notation on the file folder may
12 have come from this call?

13 A That may have been from that call. I
14 really don't know.

15 Q Okay. So you are at least
16 acknowledging that it is quite possible that
17 during this conversation Sergeant Poole raised
18 this issue of the blood demand versus the breath
19 demand?

20 A It is possible, yeah, that he did. I
21 don't recall it, though.

22 Q You don't recall it. You have no
23 reason to disbelieve the notes, at least as they
24 appear here?

25 A I think if Sergeant Poole was talking

1 to me, I don't think he -- if he would say he was,
2 I don't think he would say it if he wasn't.

3 Q Thank you. Now, it is my
4 understanding you would have had some discussion
5 with Sergeant Poole the following day on March 10,
6 2005. And I believe you also, at least in some
7 part, already went over this with Mr. Paciocco.
8 But I would like you to focus on March 10, 2005,
9 and once again, a telephone call from Sergeant
10 Poole. Do you happen to recall that?

11 A There had been so many calls, sir.

12 Q Okay. Well, then once again, I would
13 just like to take you through some of Sergeant
14 Poole's notes relating to that conversation and
15 see if that is able to jog your memory at all?

16 A All right, sir.

17 Q Once again, it is likely still in
18 front of you, exhibit 137, which once again is
19 volume Q-1.89.b.4, and this time I am going to be
20 referring to page 2935. Do you have that in front
21 of you, sir?

22 A Yeah.

23 Q And I'm sure I can already anticipate
24 your comment. It is also difficult to read,
25 correct?

1 A Yes.

2 Q Once again, we will do our best, I
3 will do my best to read the copy I have in front
4 of me, and I encourage you to please correct me if
5 you believe I'm misrepresenting anything that's
6 contained on that page. Starting where the
7 writing starts, you are correct if you are noting
8 that the top half of the page is essentially
9 blank, other than the date at the top. And as I
10 read it, that reads 05/03/10, which I take to mean
11 March 10, 2005. I have what I believe is a time
12 of 0730, with the word "Thursday" noted in the
13 centre of the page. So I'm going to begin with
14 the writing that begins on the lower half of the
15 page, as best I can. I note:

16 "Call to Chief Bakema, 612-2338.
17 Advised of our status and that
18 interviews shall be complete by next
19 Tuesday."

20 And then something in parenthesis I can't quite
21 make out.

22 Do you recall that message being
23 imparted to you by Sergeant Poole on March 10,
24 2005?

25 A I don't recall it, sir, I'm sorry.

1 Q And once again, do you at least agree
2 that it is quite possible that he imparted that
3 information to you?

4 A He may have made that call, yes.

5 Q I'm going to go down three lines and
6 continue as best I can.

7 "I questioned Chief Bakema as to
8 entries of report re statements of
9 ambulance/fire, et cetera."

10 Do you recall discussion between you and Sergeant
11 Poole on March 10, 2005, with respect to
12 statements of either ambulance or fire personnel?

13 A I don't recall that, sir, no. I don't
14 recall having that conversation on that at all.

15 Q You don't recall that. Do you
16 disagree with it, or like you indicated, do you
17 assume that if Sergeant Poole put it in here, it
18 must be something that you discussed?

19 A It may have been, but I don't
20 understand why. Because I would have -- if I took
21 a statement from one of them already, I would have
22 taken another statement, if that was the case.

23 Q I don't quite understand?

24 A Who you are talking about on this?

25 Q These are still the notes of Sergeant

1 Poole.

2 A No, the person that he is talking
3 about?

4 Q Well, again, I don't want to put too
5 many words in his mouth. He will be testifying
6 certainly.

7 A That's fine.

8 Q I'm simply noting what he has
9 indicated here. He has indicated statements of
10 ambulance/fire, et cetera. I take that to mean --

11 A Yes.

12 Q -- statements or interviews from
13 ambulance or fire response personnel?

14 A Well, he was written my name here, so
15 he must have talked to me, yes.

16 Q So you agree that's at least possible?

17 A It is possible.

18 Q You don't disagree with the note that
19 he has indicated there?

20 A It is possible.

21 Q Further to that comment he indicates,
22 and I'm now at the third line from the bottom:

23 "Chief Bakema relates that they are
24 working on those as we speak and that
25 other people have called with input."

1 Do you recall making that comment, sir, that you
2 were working on those statements as we speak and
3 that other people have called with input?

4 A I don't recall that. I may have,
5 though.

6 Q Were you working on those statements
7 around March 10, 2005, working on obtaining those
8 statements?

9 A I can't say that for sure at this
10 point.

11 Q Do you have any recollection whether
12 or not --

13 A I'm trying to recall it, sir, I really
14 can't.

15 Q You can't? Do you disagree that you
16 might have made that statement to Sergeant Poole
17 during this conversation?

18 A No, I don't.

19 Q And just further on conversations with
20 Sergeant Poole on this very topic, that being the
21 issue of statements from either ambulance or fire,
22 as it is noted here. I'm going to keep you on the
23 same exhibit, again, Sergeant Poole's notes, as it
24 does appear that most of your conversations with
25 the PSU took place directly with Sergeant Poole.

1 Am I correct in that assumption as well?

2 A I believe so.

3 Q Okay. Then if I can turn your
4 attention, again, to this same volume at page
5 2940?

6 A 2940?

7 Q That's correct. And just to be clear,
8 I will once again, for the record, confirm that
9 this is a very difficult piece of paper to read.
10 I will once again do my best to review it, as best
11 I can, and as faithfully to the document itself.
12 Please correct me if you feel that I'm
13 mischaracterizing or misrepresenting anything
14 that's contained on the page.

15 As far as I can tell, it is a page at
16 the top, in the top left-hand corner where there
17 appears to be a date, and as I read it, that is
18 05/03/22, which I take to mean March 22, 2005, a
19 time beside it of 0730, the day of the week in
20 between, which I believe is Tuesday. And I want
21 to go to the last line that is noted on this page.
22 You will note the entire bottom half of the page
23 appears blank, so I'm looking at the very last
24 line that's contained there. I'm going to read as
25 follows:

1 "Call also to Chief Bakema. No new
2 info from EMS, not interviewed as
3 yet."

4 So that's almost two weeks after the last
5 conversation wherein Sergeant Poole has made note
6 of some discussion with you about emergency
7 personnel.

8 Do you recall having that conversation
9 on March 22, 2005?

10 A No, he could have though.

11 Q He could have. All right. So it is
12 entirely possible. Do you happen to recall
13 whether on March 22, 2005, you still had not yet
14 obtained any new information with respect to EMS
15 personnel? And I recognize Mr. Paciocco has
16 already gone over this with you.

17 A Like I said, I can't say, I don't
18 know.

19 Q Okay. Nothing new had been provided
20 to the PSU by March 22, 2005, in this regard;
21 correct?

22 A I believe that.

23 Q Okay. You can confirm that for me.

24 Would it also be a fair
25 characterization, in my review of the notes, which

1 provide some evidence of discussions you had with
2 the PSU, and vice versa, I don't note any of the
3 contacts or communications that appear to have
4 been initiated by you. Would that be a fair
5 characterization?

6 A I'm sorry?

7 Q In each of the moments or events where
8 there has been some discussion between you and
9 members of the PSU, I don't note anywhere you were
10 the one contacting the PSU? They all appear to be
11 calls initiated by someone at the PSU; is that a
12 fair comment?

13 A Yeah, that's fair.

14 Q And typically Sergeant Poole, as
15 you've already indicated, correct?

16 A Sorry?

17 Q And typically Sergeant Poole, correct?

18 A Yes.

19 Q If you can just allow me one second,
20 Mr. Commissioner?

21 A Yes.

22 MR. JACK: Thank you, Mr. Bakema.
23 Thank you, Mr. Commissioner. I have no further
24 questions.

25 MR. PROBER: Mr. Commissioner.

1 BY MR. PROBER:

2 Q Mr. Bakema, you were referred to a
3 telephone log or reproduction of a telephone log
4 this morning?

5 A That's correct.

6 Q Exhibit 147, if you need to go there,
7 Mr. Commissioner, but there was a call to Royal
8 Dodge Chrysler. Do you recall that?

9 A Yes, I do.

10 Q At 9:44, as I recall?

11 A That's correct.

12 Q Would that have been to get a tow
13 truck? I know it was Dr. Hook that came, but
14 could that have been to get a tow truck or not?

15 A Generally, I don't think we would
16 contact like a car dealership to tow a vehicle
17 away.

18 Q Okay.

19 A Unless somebody else did, but I
20 wouldn't have done that.

21 Q Fair enough.

22 A It should be Autopac towing.

23 Q Now, as you sit here today, I take it
24 that you do have an independent recollection of
25 some of the events on February 25th, '05, the date

1 of the accident?

2 A Yes, sir.

3 Q Yeah. And as you sit here today, do
4 you recall that Derek Harvey-Zenk had any trouble
5 walking?

6 A No, because he wasn't staggering or
7 anything.

8 Q That's what I mean.

9 A He wasn't stumbling.

10 Q Wasn't staggering, wasn't stumbling?

11 A He was walking bent over, but I
12 believe he was pretty upset.

13 Q By the way, I will come back to this
14 in a minute, but when you mentioned bent over,
15 when he said to you "I'm a cop," you bent over at
16 this Inquiry?

17 A That's correct.

18 Q Mr. Paciocco said to you, you are
19 pretty low. Well, you were seated at the time,
20 weren't you?

21 A Sorry?

22 Q When you bent over at the Inquiry
23 here, you were seated at the time?

24 A That's correct.

25 Q When you bent over, when you were

1 walking with him, you were standing, I take it?

2 A Well, what I had --

3 Q You are indicating now.

4 A Arm over him here.

5 Q Indicating your right arm.

6 A And when he indicated he was a cop, I
7 bent down and I looked at his face.

8 Q All right. So you bent down a few
9 inches to look at him?

10 A That's correct.

11 Q Right. Now going back to the
12 accident, you have confirmed that he had no
13 trouble walking in the sense that he wasn't
14 staggering, he wasn't stumbling. Do you recall, I
15 know you didn't speak to him very much, do you
16 recall any slurring at all?

17 A No, I never heard any comments from
18 him other than --

19 Q All right. Do you recall if he had a
20 flushed face?

21 A Not that I saw.

22 Q Do you recall if he had glassy or
23 bloodshot eyes at that time?

24 A I only looked down at his face that
25 one time --

1 Q Momentarily?

2 A -- and I never noted that at all.

3 Q If you had noted, or noticed something
4 unusual in terms of his walking or his speech or
5 his face, or anything like that, his clothing, his
6 being disheveled, I take it you would have made a
7 note of that; right?

8 A Yes, sir.

9 Q Thank you. You were questioned about
10 the use of the word "distraught." If I were to
11 suggest to you that he appeared worried, he
12 appeared upset, would that be fair?

13 A Yes.

14 Q Well, that happens to be the
15 definition in the Oxford English Dictionary, so
16 worried and upset would be a fair synonym for
17 distraught; right?

18 A Yes, sir.

19 Q Now, you didn't say this, but I know
20 you described Derek Harvey-Zenk walking around his
21 vehicle, and I think at one point you said shaking
22 his head. Could he have been in shock?

23 A Definitely, with the accident that
24 took place, could be, definitely.

25 Q Sure. When you had your arm around

1 him, and I was left with not a clear understanding
2 of one of Mr. Paciocco's questions, you said you
3 were comforting him, and then Mr. Paciocco said
4 helping him, and you agreed. But you were not
5 helping him walk, I take it?

6 A No.

7 Q Okay. Thank you, sir, those are my
8 questions.

9 MR. GREEN: I don't have any
10 questions. Thank you, Mr. Commissioner.

11 THE COMMISSIONER: Thank you.

12 BY MR. McFETRIDGE:

13 Q Mr. Bakema, when you brought Mr. Zenk
14 back to the Woychuk vehicle, had you made a
15 determination as to what had happened or how the
16 accident may have happened?

17 A Had I made a determination?

18 Q Yeah.

19 A Well, I had walked by the other
20 vehicles and I realized he had been in an
21 accident, but not as to whether he was the one
22 necessarily that, you know, was the main vehicle
23 involved. I hadn't made that determination.

24 Q Had you made a determination that the
25 Zenk vehicle had rear ended the Taman vehicle?

1 A I did walk -- afterwards I did walk
2 around the vehicle, and there was damage on the
3 front and damage on the back.

4 Q When you talked to Constable Woychuk,
5 did you indicate to him what you had thought had
6 happened and who was responsible for the accident?

7 A No, I did not, but I did indicate to
8 him that he was the driver of the truck.

9 THE COMMISSIONER: Excuse me a second.
10 When you went to the scene, Mr. Bakema, when you
11 went -- you stopped the vehicle, you went in the
12 direction of the collision. To the right, the
13 green vehicle is the Beattie vehicle?

14 THE WITNESS: That's correct, sir.

15 THE COMMISSIONER: There was damage to
16 the back. That was pretty obvious to you?

17 THE WITNESS: Yes, you are right.

18 THE COMMISSIONER: And then you saw
19 the yellow vehicle, the Taman vehicle?

20 THE WITNESS: Yes.

21 THE COMMISSIONER: Damage to the front
22 and to the back?

23 THE WITNESS: Yes.

24 THE COMMISSIONER: And to the left and
25 50 yards up is the Zenk vehicle?

1 THE WITNESS: That's correct.

2 THE COMMISSIONER: And did you see
3 damage to the front of that vehicle?

4 THE WITNESS: Not until later, because
5 the vehicle was in the centre ditch.

6 THE COMMISSIONER: But wouldn't it be
7 obvious to you from the tire tracks, here is a
8 vehicle --

9 THE WITNESS: Yes.

10 THE COMMISSIONER: -- that has gone
11 off the road, it is in the southbound lane, the
12 passing lane, and you see tire tracks on to the
13 median. Wasn't it obvious to you that there was
14 an accident, or it had been involved in an
15 accident?

16 THE WITNESS: Yes, sir.

17 THE COMMISSIONER: But you didn't look
18 to see whether it had any damage to the front?

19 THE WITNESS: Not at that time.

20 THE COMMISSIONER: Okay. Thank you.

21 BY MR. McFETRIDGE:

22 Q When you were talking to Constable
23 Woychuk when you brought Mr. Zenk to the vehicle,
24 how long would you have spoken with Constable
25 Woychuk?

1 A How long have I --

2 Q How long would you have spoken to him?

3 You indicated to --

4 A When I got to the vehicle?

5 Q Yeah, when you put Mr. Zenk in?

6 A When I was walking up with Mr. Zenk,
7 it was basically, at that point, telling him who
8 this gentleman was, that he was the driver of the
9 truck.

10 Q Right?

11 A And then telling him that I needed --
12 I wanted to place him in the rear of the vehicle,
13 in a warm, confined area, and then placed him in
14 the back of his truck.

15 Q And you would have told him nothing
16 then as to what may have happened in this
17 particular accident, which vehicle may have hit
18 which particular vehicle?

19 A At that point, I wasn't totally aware
20 of which vehicle it was.

21 Q Did he ask you any questions of that
22 nature?

23 A No, sir, he did not.

24 MR. MCFETRIDGE: Those are all of the
25 questions that I have. Thank you.

1 THE COMMISSIONER: Have you got your
2 information, Mr. McDonald?

3 MR. McDONALD: I still have that same
4 disability, Mr. Commissioner. It is only in
5 respect to certain aspects of it. I could start
6 now, or else we can do the break now and I could
7 make a call.

8 THE COMMISSIONER: Start, and we will
9 take a break at the end of your cross-examination
10 and you can make your call.

11 MR. McDONALD: Thank you.

12 BY MR. McDONALD:

13 Q Mr. Bakema, I was sitting, listening
14 to the answers to your questions that you were
15 giving to Mr. Jack, who represents the City of
16 Winnipeg Police Department. And I noted and
17 observed that you acknowledged numerous telephone
18 conversations with members of the Winnipeg Police
19 Service involving you in the weeks following the
20 accident; correct?

21 A Yes, there were.

22 Q And you were taking statements, as
23 we've already established, up until the end of
24 March of 2005; is that correct?

25 A I may have taken some.

1 Q Well, we showed you a statement that
2 you took, and I apologize, I don't have it before
3 me, and I think I'm accurate, it was taken from
4 Mr. Rosser right at the end of March?

5 A That's correct.

6 Q Yes. And do you have any explanation
7 for the Commissioner as to why you have no notes
8 of any of those conversations that you had with
9 the Winnipeg Police Service people?

10 A No, I don't. I don't know why. I
11 should have recorded the phone calls and I didn't.

12 Q There is no question that as a
13 seasoned, trained police officer, involved in a
14 significant investigation of a significant
15 fatality, that it was your obligation, sir, and
16 indeed your duty to make notes of those
17 discussions in order to assist in the prosecution
18 of the case. Would you agree?

19 A I should have made more notice of the
20 calls taken, yes.

21 Q And you have no explanation for not
22 doing it; is that your evidence?

23 A Well, I don't know why I didn't.

24 Q Were you lazy?

25 A Beg your pardon?

1 Q Were you lazy?

2 A No, sir, I was doing other things as
3 well, sir.

4 THE COMMISSIONER: Don't raise your
5 voice, please.

6 BY MR. McDONALD:

7 Q Is it your evidence, sir, that you had
8 no time to make those notes?

9 A Not necessarily, but I was very busy
10 with many other things at the same time. It might
11 have been when I was doing something when I ended
12 up taking a phone call and spoke to them, and
13 never recorded it down at that time.

14 Q All right. Did you, at any time after
15 the accident, sir, have any telephone
16 conversations with Special Prosecutor Minuk?

17 A No, I did not have any calls with
18 Mr. Minuk.

19 Q Were you ever asked to meet with
20 Mr. Minuk?

21 A I was never asked to meet with
22 Mr. Minuk.

23 Q Did you ever meet with Mr. Minuk?

24 A I never met with Mr. Minuk.

25 Q Now, getting back to the issue of the

1 call you made to Royal Dodge Chrysler, you recall
2 that?

3 A I recall a phone call on there to
4 Royal Dodge Chrysler.

5 Q Yes. And Mr. Prober asked whether you
6 might have called there to arrange a tow truck,
7 and you thought that that would not be the reason?

8 A Yes.

9 Q Do you recall that?

10 A Yeah. Because, generally, if you are
11 in a motor vehicle accident, we are using tow
12 trucks to take the vehicles to Autopac, and there
13 are set companies that are doing that.

14 Q Do you know anybody personally, or did
15 you know anybody personally at Royal Dodge back
16 then?

17 A No, I don't think so. I don't recall.

18 Q Did you have a relative or a friend at
19 Royal Dodge Chrysler back then?

20 A I can't recall, no, I don't think so.

21 Q You used that dealership as your own
22 auto dealership, did you not?

23 A I beg your pardon?

24 Q Didn't you use that auto dealership
25 for your own purposes, for buying vehicles?

1 A No.

2 Q No?

3 A You mean my own vehicle?

4 Q Yes?

5 A No, I didn't, I didn't buy my vehicle

6 from there.

7 Q Did you assist Constable Graham in
8 arranging to purchase a vehicle from Royal Dodge
9 Chrysler?

10 A We didn't purchase a vehicle from
11 Royal Dodge Chrysler.

12 Q No, but did you assist Constable
13 Graham in his purchasing a vehicle from Royal
14 Dodge Chrysler?

15 A No, I did not. He bought a vehicle
16 from Royal Dodge, yes.

17 Q But that had nothing to do with you is
18 your evidence?

19 A Just one moment. No, I did -- I did
20 know of the service manager there. And that
21 person I did know at Royal Dodge.

22 Q You did know the service manager at
23 Royal Dodge. Sir, what was his name?

24 A Pierre.

25 Q His full name?

1 A I can't think how his last name goes
2 right now.

3 Q Did you introduce Mr. Graham to
4 Pierre, the service manager at Royal Dodge, as a
5 potential customer?

6 A I may have, yes, possibly, yes.

7 Q Well, you recall that, don't you?

8 A I believe I did.

9 Q Yes. Now, I will come back to that a
10 little later, Chief Bakema, but I just want to ask
11 you to identify the name of the individual that
12 you spoke with at the Winnipeg Police Service when
13 you made that seven minute phone call that was
14 referred to in your cellular phone records that
15 morning. You will recall placing --
16 Mr. Zazelenchuk questioned you about, he went
17 through your cell phone records with you, he
18 showed you an entry?

19 A Um-hum.

20 Q I believe it was the last one on the
21 first page.

22 A Um-hum.

23 Q At 11:20 a.m. you called the division
24 commander, division 13, and you had a seven plus
25 minute conversation. You recall that?

1 A I may have, yes.

2 Q Well, is there any doubt that you did?

3 A I probably did.

4 Q Well, did you -- is it probably or do
5 you remember it?

6 A Sir, you are asking me to have that
7 clear in my mind right now. I don't.

8 Q Will you please give us the name of
9 the individual with whom you spoke?

10 A I would have spoke to the divisional
11 commander.

12 Q Do you know his name?

13 A Well, he is the present chief right
14 now, Winnipeg Police Chief.

15 Q That would be Keith McCaskill?

16 A That would have been Keith McCaskill.

17 Q So it was Keith McCaskill that you
18 spoke with for seven minutes plus at 11:20 in the
19 morning of the day of the accident?

20 MS. HANLIN: Mr. Commissioner, I
21 believe the evidence of that conversation was four
22 minutes, four and a half minutes.

23 THE WITNESS: Exactly.

24 THE COMMISSIONER: Let's correct that.

25

1 BY MR. McDONALD:

2 Q I apologize, Mr. Commissioner, that is
3 correct, I have my notes confused. There are two
4 calls, one was four and a half and one was seven
5 plus, and I have the two mixed up. One was at
6 11:20 and one at 4:00 o'clock. So the 11:20 one
7 was with Keith McCaskill; is that correct?

8 A It would have been.

9 Q And who was the one, the seven minute
10 one after 4:00 o'clock in the afternoon, who was
11 that with?

12 A I don't know, sir, I couldn't tell you
13 for sure who that would have been.

14 Q It says Deputy Chief of Operations.
15 Do you know who that would be?

16 A Deputy Chief of Operations, they
17 wouldn't work out of district 3.

18 Q The number was 986-5999?

19 A 5999 -- Deputy Chief of Operations?

20 Q Deputy Chief of Operations, and I
21 think you confirmed to Mr. Zazelenchuk that that
22 was within the Winnipeg Police Service?

23 A Yes, but not the North End, Deputy
24 Chief of Operations doesn't work out of the North
25 End, they work out of the main headquarters

1 downtown.

2 Q Well, who did you phone? I want the
3 name of the person you phoned at 4:18 p.m. from
4 your cell phone?

5 A I don't recall, sir. I made one call
6 earlier indicating to the duty inspector in the
7 com centre to make sure that they didn't -- that
8 this person had been in an accident and make sure
9 that he didn't get in to work, because he
10 shouldn't be coming in to work, if he got
11 released.

12 Q Do you know the name of the Deputy
13 Chief of Operations with whom you spoke on
14 February 25th at 4:18 p.m.?

15 A I don't recall, sir.

16 Q All right. Now, you testified, sir,
17 that one of the reasons you wanted Sergeant Carter
18 called was to come in to look after the office,
19 you recall that?

20 A That was part of it, yes, sir. Go
21 ahead, sir.

22 Q And is it not so that Special
23 Constable Olfert's responsibility was to look
24 after the office when there was no regular police
25 officer on duty, or in the office?

1 A To look after the office, yes.

2 Q Yes?

3 A Answer phone calls, yes.

4 Q And she was capable of doing that, was
5 she not?

6 A Yes.

7 Q And so, therefore, given that she was
8 there, there was no need for Sergeant Carter to
9 look after the office, was there?

10 A That's for Carter to come to the
11 office.

12 Q Well, my notes --

13 A And I had told Mr. Woychuk to come
14 into the office when Mr. Carter came in.

15 Q Chief Bakema, my note is that you
16 testified that you wanted Sergeant Carter to come
17 in to look after the office?

18 A That was only part of it, sir, the
19 office end of this.

20 Q But you agree with me, there was no
21 need for him to do that because Special Constable
22 St. John Olfert was there and capable of doing
23 that?

24 A But there was no reason to bring
25 Sergeant Carter into the site if Sergeant Carter

1 could meet him at the office and they could deal
2 with the accused at that point.

3 Q Mr. Bakema, I didn't ask you that
4 question. I asked you whether or not it was
5 necessary to have Sergeant Carter look after the
6 office when Special Constable St. John Olfert was
7 there and capable of doing that?

8 A That's true.

9 Q Thank you. Now, Mr. Bakema, I just
10 want to try and establish one thing, and that is
11 that you are aware of and understand the purposes
12 of this public inquiry?

13 A Yes, I do.

14 Q And sir, what do you understand its
15 purposes to be?

16 A To find out what happened with the
17 situation.

18 Q To find out what really went on in the
19 investigation and prosecution of Derek
20 Harvey-Zenk, correct?

21 A That's correct.

22 Q And do you agree that the
23 Commissioner, in discharging that mandate, must
24 have truthful evidence before him?

25 A That's correct.

1 Q And that witnesses have an obligation
2 to give truthful evidence?

3 A Yes, sir.

4 Q I have a note, sir, that you testified
5 yesterday that you were not a friend of Constable
6 Graham. Do you recall that?

7 A Yes. You are saying a close friend of
8 Constable Graham?

9 Q I said a friend, you said you were not
10 a friend, nobody used the word close friend. You
11 denied a friendship with Constable Graham.

12 A What do you call a friendship, sir?

13 Q Well, what did you mean by the word
14 friendship --

15 A Friendship would mean somebody that
16 you socialize with, sir.

17 Q Mr. Bakema, could you wait until I
18 finish my question before you start answering. It
19 is very difficult for the court reporter and hard
20 for everyone involved. All right.

21 When you denied that a friendship
22 existed with Constable Graham, what did you mean
23 by friendship?

24 A A friendship where we would socialize
25 with each other.

1 Q And is it your evidence then, that at
2 no time did you socialize with Constable Graham,
3 while you were both members of the East St. Paul
4 Police Service?

5 A Not other than at the office, we would
6 go for coffee and that's it.

7 Q That's your evidence under oath?

8 A Well, where else, sir?

9 Q All right. That's your evidence
10 today, is it, and yesterday?

11 A I beg your pardon?

12 Q That was your evidence yesterday, and
13 remains so today?

14 A I don't recall socializing socially
15 with Constable Graham. I held Christmas parties
16 at my house for all of the staff. I would help
17 Graham with something, I would help Woychuk put a
18 roof on his house, I would help other people. I
19 don't call that, just because you are helping
20 people at certain times does not mean that you are
21 close friends.

22 Q Well, I didn't say close friends and I
23 have not used that term. I'm just using your term
24 that you are not his friend in the sense that you
25 did not socialize with him, okay. That was your

1 description, right?

2 A Okay.

3 Q Did you ever have dinner and drinks
4 with Mr. Graham at Earl's Restaurant on Main
5 Street?

6 A I might have once with him and
7 Woychuk, I believe.

8 Q All right. So that's a social event
9 with him outside the police department?

10 A That was a long time ago, sir.

11 Q I just asked you whether you had one,
12 sir. You denied any social contact with him. We
13 have just acknowledged that you had dinner with
14 him at least once at Earl's; correct?

15 A Probably, yes. Yes, sir.

16 Q Did you assist Constable Graham in
17 looking for -- in his looking to purchase a house
18 in Winnipeg?

19 A No.

20 Q You didn't help him at all?

21 A No, I didn't help him find a house. I
22 wasn't a realtor, sir.

23 Q No. My information is that Constable
24 Graham, while a member of the East St. Paul Police
25 Service, bought a house; is that correct?

1 A He did.

2 Q And my information is that you
3 assisted him in looking for and finding a home; is
4 that not correct?

5 A No, sir, I did not.

6 Q Were the two of you, you and Constable
7 Graham, co-subscribers together with a satellite
8 television package?

9 A Yes.

10 Q Yes. And was that because he was your
11 friend?

12 A He is a person I knew, yes, but I
13 wouldn't say close friend, but a friend that way.

14 Q Have you ever been a co-subscriber
15 with anyone else in respect to a satellite TV
16 package?

17 A No, I guess not that way, but I
18 also -- go ahead, sir.

19 Q I have information, or I'm provided
20 with information that you actually went to Ken
21 Graham's house to assist him with his yard work,
22 is that correct, while were you both members of
23 the East St. Paul Police Service?

24 A Yes, I did. Like I indicated to you,
25 sir, I also went to Woychuk's place and I helped

1 Woychuk put a roof on his house, and I helped
2 other members too. I don't just social -- I don't
3 just help one person or two people, I will help
4 anybody that wants help. That doesn't mean that
5 I'm socializing with him, and with him every day.

6 Q Are you familiar, sir, with Jonesy's
7 Restaurant?

8 A Yes.

9 Q That's a restaurant in the Town of
10 Birds Hill, is it not?

11 A That's correct.

12 Q It is quite near the police detachment
13 office; correct?

14 A Yes, sir.

15 Q Just north down the street on the east
16 side?

17 A That's correct.

18 Q I have information suggesting that you
19 would often meet Ken Graham at Jonesy's Restaurant
20 for meals and coffee; is that correct?

21 A No, I would meet everybody from East
22 St. Paul, there was several of us would go for
23 coffee and for lunch and things like that.

24 Q Did you go there with Ken Graham and
25 have coffee and lunch with Ken Graham only, sir?

1 A Just Ken Graham? No, most cases we
2 were going -- I was going with everybody else,
3 there was always a group of people going.

4 Q Did you ever meet Ken Graham at
5 Jonesy's Restaurant, in the evening when you were
6 off duty and he was still on duty?

7 A No, I don't recall that.

8 Q Could that have happened?

9 A I don't recall that at all, sir.

10 Q Do you deny that that happened?

11 A I don't think I ever did, sir.

12 Q Do you deny that it happened?

13 A Do I deny that it happened, that I met
14 him at Jonesy's?

15 Q For coffee after hours when you were
16 off duty and he was on duty?

17 A I don't recall, sir.

18 Q Do you ever recall bringing meals to
19 the police station for Constable Graham, either an
20 evening meal or a breakfast meal?

21 A No, sir, I would bring meals in for
22 everybody that was working at that time.

23 Q Did you bring meals in for Constable
24 Graham while he was on duty, be it breakfast or
25 dinner?

1 A No, sir, I don't recall that at all.

2 Q Did you ever pay for Mr. Graham's
3 meals at a restaurant, when others were present,
4 but pay for his and yours only and not others?

5 A I don't recall that, sir.

6 Q Was it your practice to have daily
7 closed door, private meetings and talks with Ken
8 Graham at the police detachment, sir?

9 A No, it was not, sir.

10 Q Did that happen?

11 A Did that happen?

12 Q Yes?

13 A The odd meeting, but, no, not a
14 regular basis, sir.

15 Q All right. So you do acknowledge that
16 you did have some closed door, private meetings
17 and talks with Ken Graham at the police station;
18 is that correct?

19 A That's correct.

20 Q I understand, sir, that while you were
21 both officers that you hosted two Christmas
22 parties at your home. Is that correct?

23 A That's correct.

24 Q And I'm told that you used to go out
25 of your way to make sure the time and date that

1 you scheduled your Christmas party was a date that
2 Ken Graham was off duty; is that true?

3 A No, sir.

4 Q Did Ken Graham attend both of the
5 Christmas parties at your house?

6 A I don't recall. He could have.

7 Q You don't remember that?

8 A So did many other members, sir.

9 Q Sir, that wasn't my question. My
10 question was, do you recall that Ken Graham
11 attended both of the Christmas parties you hosted
12 at your house?

13 A I don't recall that, sir. He may
14 have, along with other members from the
15 department.

16 Q Yes, I didn't suggest there weren't
17 other members there, sir.

18 A So are you suggesting that I should
19 only have certain people there?

20 Q No, I'm not suggesting that at all,
21 sir. I just wanted to confirm, if you would for
22 me, that Ken Graham attended both of your
23 Christmas parties?

24 A So did many other members.

25 Q So are you admitting then that he did?

1 A He may have. I can't recall anymore,
2 but he may have.

3 Q Is the term "B side Christmas party"
4 of any -- do you recognize that term?

5 A B side?

6 Q B side Christmas party?

7 A No.

8 Q What side of the shift was Constable
9 Graham on? I understand there is an A side and a
10 B side?

11 A I never called it that way, but there
12 may be an A and a B side because there two
13 different sides definitely.

14 Q Were you familiar with the A side, B
15 side principle?

16 A I am.

17 Q And was Constable Graham on the B
18 side?

19 A He may have been.

20 Q Have you ever heard the term before
21 today?

22 A So was Mr. Drozdowski and so was
23 Mr. Krawchuk.

24 Q Well, I understand that there is more
25 than one officer on a side or it wouldn't be a

1 side, I understand that, sir. I just want to
2 confirm, though, you will acknowledge that
3 Constable Graham was on the B side?

4 A I believe he was.

5 Q Have you before today, sir, ever heard
6 the term B side Christmas parties in reference to
7 your house parties?

8 A No, sir.

9 Q All right.

10 A If that was the case, why were there
11 other members from the other side there as well?
12 It was a Christmas party for East St. Paul Police.

13 Q As we know, Mr. Bakema, peace
14 officers, police officers in Manitoba carry
15 pistols, handguns; correct?

16 A Yes, sir.

17 Q And members of your force did that?

18 A Yes, sir.

19 Q And did you that?

20 A Yes, sir.

21 Q And as I understand it, there are some
22 qualification procedures that must be followed in
23 order to keep current and demonstrate fitness and
24 ability to handle a firearm; is that right?

25 A That's correct.

1 Q And for the purpose of maintaining
2 qualifications, there would be shooting sessions;
3 is that correct?

4 A That's correct.

5 Q And I understand that you too were
6 required to maintain your qualification and
7 participate in those shooting exhibitions?

8 A Yes, sir.

9 Q As did your members?

10 A Yes, sir.

11 Q Is there any truth to the suggestion
12 that you always insisted that you be in the same
13 group as Constable Graham?

14 A No, sir.

15 Q And take your qualification training
16 at the same time as Constable Graham?

17 A No, sir.

18 Q That did not happen?

19 A I never said I wasn't there at the
20 same time, but not at all times, sir. There was
21 other officers there as well, sir.

22 Q Were you there at the same time as
23 Constable Graham?

24 A He would be there probably.

25 Q Yes. Did you or any of your officers

1 have to take hearing tests?

2 A Yes, sir.

3 Q And was that part of the routine
4 maintenance of qualifications?

5 A I don't know. They started that, and
6 I remember going for the hearing test.

7 Q Yes. And they were mandatory, were
8 they?

9 A I believe so.

10 Q Yes. And each constable and yourself
11 had to take these hearing tests?

12 A That's correct.

13 Q And did you and Constable Graham go to
14 have your hearing tested at the same time?

15 A I don't recall if we went at the same
16 time, sir, but I did go and get it tested.

17 Q Do you remember verbally chastising
18 Constable Soltys for setting separate dates for
19 you and Constable Graham to attend your hearing
20 test?

21 A No, sir.

22 Q You did not do that?

23 A No, sir.

24 Q You deny that?

25 A Yes, sir.

1 Q I understand that in the police
2 building there are change rooms?

3 A That's correct.

4 Q Lockers?

5 A That's correct.

6 Q And I believe shower facilities?

7 A That's correct.

8 Q And each officer had assigned to him
9 or to her a locker?

10 A That's correct.

11 Q I understand that you ordered -- well
12 let's put it this way, was Bryan Maloney occupying
13 the locker next to you at one time?

14 A I don't recall, sir, where his locker
15 was.

16 Q Do you recall making arrangements to
17 have Bryan Maloney's locker moved so that
18 Constable Graham could have the locker next to
19 you?

20 A No, sir, and he did not have the
21 locker next to me.

22 Q Is there a difference, perhaps I may
23 stand corrected on this, and if I'm interpreting
24 this incorrectly I apologize, sir. Is there a
25 difference between a grocery cupboard and a

1 locker?

2 A A grocery cupboard?

3 Q Yes. Is there such a thing as a
4 grocery cupboard?

5 A No.

6 Q Well, did anybody bring food stuffs
7 to --

8 A What do you mean, grocery cupboard and
9 a locker?

10 Q Well, I have the term locker and
11 grocery cupboard, and I'm not sure which one is
12 accurate.

13 A I'm not sure what you are referring
14 to, sir.

15 Q Did you move Bryan Maloney's cupboard
16 or locker so Ken Graham and you could share one
17 together?

18 A No, sir, not at all.

19 Q No, sir?

20 A No, sir.

21 THE COMMISSIONER: Just a second.

22 MR. PACIOCCO: Mr. Commissioner, these
23 questions are very, very broad ranging, and I
24 understand the objective of the questions, but
25 there has been a long list and I think that the

1 list has gone on long enough.

2 THE COMMISSIONER: Yes, I was about to
3 stop him.

4 MR. McDONALD: Thank you,
5 Mr. Commissioner.

6 THE COMMISSIONER: We will take a
7 break now.

8 MR. McDONALD: Thank you.

9 THE COMMISSIONER: Are you going to be
10 much longer?

11 MR. McDONALD: I will finish for sure.
12 I won't be much longer.

13 THE COMMISSIONER: I know you will
14 finish for sure.

15 MR. McDONALD: Well, I have been wrong
16 before, but I don't expect to be long,
17 Mr. Commissioner.

18 THE COMMISSIONER: I don't want any
19 more lockers and things.

20 MR. McDONALD: I understand.

21 THE COMMISSIONER: All right. We will
22 take a break now for 15 minutes.

23 THE CLERK: All rise. This Commission
24 is in recess.

25 (Proceedings recessed at 3:28 p.m. and

1 reconvened at 3:45 p.m.)

2 THE CLERK: All rise. This Commission
3 is reopened. Please be seated.

4 THE COMMISSIONER: Does your standing
5 there mean that Mr. McDonald is finished?

6 MR. McDONALD: Thank you,
7 Mr. Commissioner.

8 MR. WEINSTEIN: And I will also finish
9 today, and Mr. Paciocco will finish today.

10 BY MR. WEINSTEIN:

11 Q Let me ask you a couple of questions
12 just based on the last questioner. Would you also
13 have, we are talking about closed door meetings,
14 would you also have closed door meetings with
15 other officers, other than Graham, on occasions?

16 A Yes.

17 Q So it wasn't just with Graham that you
18 were having these closed door meetings with?

19 A No, sir.

20 Q I don't want to harp on this, the
21 Christmas parties, but at those Christmas parties,
22 was Sergeant Carter invited?

23 A Yes, he was. He was there.

24 Q And Jason Woychuk, was he invited?

25 A Yes.

1 Q And Mr. Maloney, was he invited?

2 A Yes, he would come as well.

3 Q All right. So, as you indicated, it
4 was for the whole --

5 A Everyone was invited.

6 Q Let me just begin with something my
7 learned friend Mr. Paciocco started with. I'm
8 referring, Mr. Commissioner, to Exhibit 92,
9 P-3.88?

10 THE COMMISSIONER: Exhibit 92.

11 BY MR. WEINSTEIN:

12 Q That's a two-page document,
13 Mr. Commissioner.

14 This is a document you provided to me,
15 the two-page document?

16 A Yes, sir.

17 Q Let me go into this a bit. You told
18 the Inquiry that you received a call from
19 Corporal, or Police Officer Kennett, is that
20 correct, RCMP?

21 A That's correct.

22 Q And you went there without counsel, is
23 that correct?

24 A That's correct.

25 Q And as I understand your evidence to

1 date, after you briefly spoke to her, you decided
2 to seek legal advice?

3 A That's right.

4 Q And we know you came to see me, and
5 you were in my office when I attempted to call
6 Mr. Minuk?

7 A Yes, I was.

8 Q To find out what this was all about?

9 A That's correct.

10 Q And was I successful in finding out on
11 the phone what this was all about?

12 A No, you were not.

13 Q Are you aware that there was more than
14 one phone call made to try and find out what this
15 was all about?

16 A Yes, sir.

17 Q Are you aware, and I will refer to it
18 and I will have it marked, it is R-1, page 3199,
19 Mr. Commissioner, tab 91.30.

20 THE CLERK: Exhibit 151.

21 MR. WEINSTEIN: Exhibit 151.

22 (EXHIBIT 151: R-1.91.30 Letter from
23 H. Weinstein to M. Minuk, June 27,
24 2006)

25

1 BY MR. WEINSTEIN:

2 Q Are you aware that -- and I have it in
3 front of me -- on June 27th, 2006, a letter was
4 faxed to Mr. Minuk by myself? You were aware of
5 this letter, sir?

6 A Yes, I was, sir.

7 Q And I will read it into the record.
8 Addressed to Marty Minuk at Aikins.

9 "Dear sir: Re Harry Bakema, RCMP
10 investigation. Could you please try
11 again to contact Tracey Kennett at
12 983-7037 or 771-4696 to find out what
13 this is about and why they want to
14 speak to Mr. Bakema regarding an
15 obstruction of justice. Yours truly."
16 Were you made aware by me that no response was
17 ever received to my phone calls or letters about
18 what this was all about?

19 A Yes, sir.

20 Q And is it not a fact, it was my
21 decision and not your decision, not to turn
22 anything over to the RCMP as a result of not
23 hearing back from Mr. Minuk?

24 A Yes, sir.

25 Q And the two-page document that's

1 exhibit 92, this came about, sir, is it not, when
2 you attended my office that day in June of 2006,
3 this was prepared on my instructions to type out
4 as much as you recall about the incident?

5 A Yes, sir.

6 Q And this is now in June of 2006?

7 A Yes, sir.

8 Q And this is long before this Inquiry
9 was ever called?

10 A That's correct, sir.

11 Q And long before any disclosure,
12 naturally, long before we knew what any witness
13 was going to say; is that correct?

14 A That's correct, sir.

15 Q I'm not going to go through again the
16 background, being with the City, but perhaps I
17 don't recall, in your tenure at the City as a
18 police officer, you at one time were certified as
19 a breathalyzer technician; is that correct?

20 A Yes, sir.

21 Q And did that lapse while you were
22 still at the City?

23 A Yes, sir, it did.

24 Q Okay. Do you know how long before you
25 left the City it had lapsed?

1 A I hadn't been on the street for over
2 16 years, and it was probably just within that 16
3 year period that I would have had it lapse.
4 Probably at the beginning when I went into --
5 maybe the beginning when I went into district 3,
6 or it could even have been when I was in child
7 abuse yet.

8 Q All right. In any event, it was while
9 you were with the City?

10 A Yes.

11 Q Were you ever recertified while you
12 were at East St. Paul?

13 A No, sir.

14 Q All right. So you were not a
15 certified breath technician at that time?

16 A No, I was not, sir.

17 Q And during the 16 years that you are
18 referring, did you handle many breathalyzers?

19 A Did I handle any breathalyzers? No,
20 sir.

21 Q Any breathalyzer?

22 A No, sir, just did releases and that
23 was it.

24 Q I'm told, and I believe we heard that
25 while you were at East St. Paul, basically you

1 never handled an impaired driving file?

2 A That's correct.

3 Q And would you agree with me that you
4 considered Sergeant Carter a competent police
5 officer, one who had -- you had no doubt, could
6 investigate an impaired driving file?

7 A Yes, sir.

8 Q Okay. You knew he had the experience
9 and the intelligence to handle an impaired driving
10 file?

11 A Yes, he did, sir.

12 Q Now, we won't go through all of your
13 times, and you've indicated that, number one, you
14 are not sure where you got all of the times from,
15 and you I believe indicated that in examination by
16 Mr. Paciocco, that some of the times are
17 definitely out?

18 A Yes, sir.

19 Q And you will still agree with that?

20 A Yes.

21 Q Correct? You were the senior officer
22 now at the scene; is that correct?

23 A Yes, sir.

24 Q Okay. When you arrived at the scene,
25 you are with Graham. I mean, did you have to

1 direct Graham what to do?

2 A No. We know already when we are going
3 to a scene, everybody is just going to
4 automatically get there and take up a point.

5 Q All right.

6 A And then we will see what has to be
7 done from there.

8 Q Okay. So just based on experience by
9 you and by Graham, you didn't have to tell him, or
10 correct me if I'm wrong, "Graham, you go there and
11 I will go here?"

12 A That's correct.

13 Q It was just done automatically?

14 A Yes, sir.

15 Q And it was not you who directed
16 Constable Pedersen to go to a certain location?

17 A No, I did not.

18 Q Okay. Now, I won't go through you
19 going to the cars, et cetera. We will go to, you
20 see who turns out to be Mr. Zenk?

21 A Yes, sir.

22 Q By his truck?

23 A That's correct.

24 Q And I believe in exhibit 92, you
25 indicated he was walking by his truck; correct?

1 A That's correct, sir.

2 Q All right. You approach him; correct?

3 A Yes, sir.

4 Q And now you are walking with him from
5 the truck to Woychuk's vehicle. Correct?

6 A Yes, sir.

7 Q All right. Now, what distance again
8 would that be approximately?

9 A It is difficult to say. I mean, we
10 are dealing going probably -- I don't know, I
11 would be guessing again. I was out on my hundred
12 yards, so obviously I am not going to be on for
13 distance, I am not a great measurer of distance.

14 Q All right. I mean, we are not talking
15 a huge distance?

16 A No, sir.

17 Q We are not talking a distance from the
18 truck, when you start walking with him, to
19 Woychuk's vehicle, you are not talking about a
20 time, a lengthy time; is that correct?

21 A That's correct.

22 Q All right. We know it is a 15
23 kilometre wind, we know it is 20 below, you are
24 walking with Zenk. He indicates to you, I'm a
25 cop; correct?

1 A Yes, sir.

2 Q Well, first you asked him if he was
3 the driver?

4 A Yes.

5 Q And then you, in the conversation, ask
6 him if he is a cop; correct?

7 A Yes, sir.

8 Q And then I won't go through it again,
9 you looked down and you recognize him as someone
10 who had worked in district 3, but not on your
11 platoon, not on your shift?

12 A That's correct, sir.

13 Q All right.

14 A Yes, sir.

15 Q Had you ever -- you know, you were
16 asked about, you know, did you interrogate him?
17 Have you ever interrogated a person in that short
18 distance of time, walking, when it is minus 20 and
19 15 kilometres, have you ever integrated someone
20 like that?

21 A No, sir.

22 Q And we know you didn't interrogate
23 Mr. Zenk, correct?

24 A That's correct.

25 Q And according to your evidence, you --

1 and I will just summarize -- you bring him to
2 Woychuk's vehicle and you tell him, "you put him
3 in the vehicle, see if you can detect anything,"
4 and am I correct, you said --

5 A If you can detect anything in a
6 confined, warm space.

7 Q Fine. And was it at that same time
8 that you told him, wait until Carter gets to the
9 office and then take him into the office?

10 A It may have been, yes.

11 Q Okay. Is there any doubt in your mind
12 that your instructions to Woychuk were clear,
13 number one, see if you can detect anything?

14 A Yes.

15 Q And number two, take him to Carter
16 when he gets in?

17 A Yes, sir.

18 Q All right. I mean, those
19 instructions -- Woychuk was not a senior officer?

20 A No, sir.

21 Q But those instructions to me do not
22 sound overly complex; would you agree, sir?

23 A Yes, sir.

24 Q Now, were you satisfied that Carter
25 was probably the best one to deal with this case

1 as far as -- well, we know what turned out to be
2 an impaired cause death?

3 A Yes, he would have been the best
4 person for it.

5 Q All right. And you had confidence
6 because you wanted Carter in the office, I assume,
7 you had confidence that Sergeant Carter would be
8 able to take over -- well, take care of Mr. Zenk
9 and make his own observations?

10 A Yes, sir.

11 Q Now, we've heard from Mr. Rosser, he
12 is the paramedic, when he gave evidence, and you
13 were not here, and it was put to him that you
14 basically had to sit beside Mr. Zenk to smell the
15 odour of liquor emanating from his breath. So you
16 can accept that as what he said, you weren't here.
17 And this is inside the vehicle. When you were
18 walking with Mr. Zenk, I know there wasn't a huge
19 amount of conversation. Did you ever detect the
20 odour of liquor on his breath?

21 A No, sir.

22 Q And Mr. Prober went through other
23 classic symptoms sometimes observed of impairment,
24 you know, the coordination, the walk, the talk,
25 the glassy eyes, those were not present; correct?

1 A No, sir.

2 Q When you placed him in the vehicle,
3 did you have grounds to arrest him?

4 A No, sir.

5 Q Now, when you brought him to the
6 vehicle -- I'm sorry, I'm going back a step -- was
7 Mr. Zenk ever at Graham's vehicle standing around
8 for 15 minutes?

9 A No, sir.

10 Q I'm sorry, one of the witnesses, I
11 believe Ms. Taman indicated that there was more
12 than one police officer with Mr. Zenk at the
13 truck. Is that correct?

14 A That would have been Woychuk and
15 myself, because Woychuk was standing in front of
16 the truck when I walked up with Mr. Zenk.

17 Q No, I'm talking about Mr. Zenk's
18 truck, not Woychuk's vehicle?

19 A No. No, there was just me.

20 Q Woychuk was never at the truck when
21 you were at the truck with Mr. Zenk?

22 A No, sir.

23 Q And Graham wasn't?

24 A That's correct.

25 Q You brought him directly to the

1 vehicle of Mr. -- of Constable Woychuk?

2 A That's correct.

3 Q So there was no way that Mr. Zenk
4 could have been standing outside the Graham
5 vehicle for 10, 15 minutes, something like that?

6 A No, sir, not at all.

7 Q Did you ever go into the Woychuk
8 vehicle?

9 A No, I did not, sir.

10 Q Now, did you speak to the paramedic,
11 we know it is Mr. Rosser that dealt with Mr. Zenk
12 in the car, did you speak to him at the scene?

13 A No, sir.

14 Q Were you aware at the scene what he
15 detected?

16 A No, sir.

17 Q We've heard from Mr. Rosser, quite
18 clearly, he said he never told any police officer
19 about -- at the scene about what he detected. He
20 never -- you never spoke to him at the scene?

21 A No, sir.

22 Q We know that you took a statement from
23 him, I believe March 24th, where he did at that
24 time advise that he detected an odour of liquor
25 from Mr. Zenk in the vehicle?

1 A Yes, sir.

2 Q And that's what you have recorded in
3 your statement taken by you of Mr. Rosser?

4 A Yes, sir.

5 Q Were you -- I'm not sure -- happy
6 isn't the right word, but were you somewhat
7 relieved, and I'm not sure what was going through
8 your mind, that Carter would be dealing with Zenk
9 and not you?

10 A I guess a little relieved.

11 Q All right. Now, we heard from my
12 learned friend, Mr. McDonald, about -- he asked a
13 fair amount of socializing questions. Let me just
14 ask one. While you were at district 3, and
15 Mr. Zenk, Constable Zenk was at district 3, would
16 you socialize with him outside of the office at
17 all?

18 A No, sir.

19 Q Now, this has been covered. You had
20 told Woychuk, Constable Woychuk, that he is to
21 take Zenk in once he is at the station; is that
22 correct?

23 A Yes, sir.

24 Q Once Carter gets to the station?

25 A Yes, sir.

1 Q And when you left the station, you and
2 the other officers left the station -- I'm sorry
3 for jumping back -- was Special Constable Olfert
4 there?

5 A No, sir, she was not there.

6 Q So, therefore, just so we are clear,
7 when you left the station there was no one there,
8 correct?

9 A No, sir, there wasn't.

10 Q There wasn't a police officer that was
11 there, and there wasn't a special constable there
12 at 7:00, or 7:10, whatever?

13 A No, sir.

14 Q Okay. So, in fact, there is no one
15 there to look after the office?

16 A That's correct.

17 Q Now, you said you were somewhat
18 surprised, or shocked I believe the word was, that
19 Woychuk left without telling you; correct?

20 A Yes. Because I didn't know he had
21 gone yet, and all of a sudden I noticed the
22 vehicle gone.

23 Q All right. But when you noticed the
24 vehicle gone, did it go through your mind that
25 Carter must be at the office --

1 A Yes.

2 Q -- if he is gone. So it wasn't as
3 though you felt that Woychuk was doing --
4 Constable Woychuk was doing something wrong by
5 leaving?

6 A No. No, because he was waiting for
7 Sergeant Carter to come into the station.

8 Q Now, you were asked about statements
9 not being taken from Mr. Robert Taman, who
10 attended the scene, and the two daughters. Were
11 you dealing with them at the scene?

12 A At the scene?

13 Q Yes?

14 A No, I was not.

15 Q Who was dealing with the Taman family?

16 A I believe Constable Graham probably.

17 Q All right. If anyone was to take
18 statements then, who should it have been?

19 A Constable Graham, I guess.

20 Q Were you ever instructed later on by
21 Carter, before March 1st, after March 1st, that
22 someone should take statements from the Taman
23 family?

24 A No, I was not.

25 Q Before I forget, just while we are on

1 the statements, you took statements from I believe
2 three individuals; correct?

3 A Yes, sir.

4 Q Now, these would make it eventually
5 into the court package; is that correct?

6 A They should, sir. I submitted them in
7 to the reader's desk.

8 Q And that goes to the Crown?

9 A Yes, sir.

10 Q Now the statements that you took, and
11 I'm just talking about, sir, your statements that
12 you took, we know one on February 26th, the latest
13 I believe is March 24th, that's the Beattie
14 statement was taken February 26th, and I believe
15 you indicated, and I believe Sergeant Carter
16 confirmed it, that Carter was not there on
17 February 26th?

18 A Correct, sir.

19 Q And you took the Beattie vehicle --

20 A Beattie statement.

21 Q And you also took the Rosser one,
22 March 24th?

23 A Yes, sir.

24 Q Were you ever instructed by Sergeant
25 Carter or anyone -- Sergeant Carter was the

1 reader, is that correct?

2 A Yes, sir.

3 Q All right. And is it the reader who
4 reviews files and makes sure that everything is
5 proper, as best that --

6 A Yes, it is the reader's
7 responsibility, yes.

8 Q All right. Were you ever told by
9 Sergeant Carter or anyone to go out and
10 re-interview or get some more information? Were
11 you asked or told --

12 A No, sir.

13 Q -- that you should?

14 A No.

15 Q Were you ever told that the Rosser
16 statement could be more thorough?

17 A No, sir.

18 Q Were you ever told that the Beattie
19 statement should be a criminal investigation
20 statement?

21 A No, I was not.

22 Q And same thing with Bukowski, were you
23 ever told to re-interview, get more details,
24 anything like that?

25 A No, sir.

1 Q And we know that the second paramedic,
2 Mr. Rosser -- not Rossser -- Mr. Fontaine, you
3 did not take a statement, that was the statement
4 we've heard, and you probably were not here, or
5 maybe you were, when Sergeant Carter was
6 testifying, that statement was addressed to Norm
7 and went directly to Norm; correct?

8 A Yes, sir.

9 Q You didn't have anything to do with
10 the Rosser statement, correct -- excuse me, the
11 Fontaine statement?

12 A Yes, that's true.

13 Q Let me just deal briefly with the
14 uniform. There is no question it is not in your
15 notes as such?

16 A Yes, sir.

17 Q But it is in your incident narrative?

18 A Yes, sir, it is.

19 Q All right. And we know it wasn't
20 cataloged; is that correct?

21 A Yes, sir.

22 Q Okay. And it was taken and then
23 turned over to PSU, was it?

24 A Yes, sir, it was.

25 Q All right. And you already gave the

1 reasons why you felt it should not remain in the
2 vehicle and should be returned; is that correct?

3 A Yes, sir.

4 Q Were you ever told by Sergeant Carter,
5 or anyone that, or asked, why isn't it -- why
6 isn't it logged in? Did anyone ask you or
7 criticize you?

8 A No.

9 Q We know it is not in your notes, but I
10 believe it is in your incident report, is that
11 correct?

12 A Yes, it is, sir.

13 Q And that's where, again, still dealing
14 with the uniform, because you have got Graham at
15 the truck with you when the uniform is seized.
16 Graham tells you that he smelt liquor, an odour of
17 liquor in the vehicle; correct?

18 A That's correct, sir.

19 Q It is not in your notes but it
20 certainly is in --

21 A It is in the supplementary.

22 Q -- your incident report?

23 A Yes.

24 Q It is not as though you didn't record
25 it anywhere, is that correct?

1 A Yes, sir.

2 Q Just on your notes, and my learned
3 friend, Mr. Paciocco, and I know he was trying to
4 be very fair with you, he talked, or gave you --
5 referred you to several pages in your Commission
6 interview where you talked about where you made
7 your notes?

8 A Yes, sir.

9 Q Where you made your rough notes, where
10 you made, we will call it the more complete, clean
11 notes. Okay. And first you thought you made them
12 both at the scene, but then at the end -- page 80,
13 Mr. Commissioner -- after the recess you told
14 Mr. Clifford that the pages 76 through 89, and
15 those, sir, we will call them the good notes, were
16 made -- were created at the station. Okay. Does
17 that refresh your memory --

18 A Yes, sir.

19 Q -- that you had made a mistake before,
20 and then that was corrected still while you were
21 under oath with Commission Counsel?

22 A Yes, sir.

23 Q All right. Now, before I forget, just
24 dealing with some of the evidence, or a bit of the
25 evidence of Constable Pedersen, we know that at

1 1:25, Constable Pedersen takes control of
2 Mr. Zenk, photographed -- slang term, takes the
3 mug shot -- and fingerprints; correct?

4 A Yes, sir.

5 Q You heard that, you were here for that
6 evidence, correct?

7 A Yes, sir.

8 Q In your experience at East St. Paul,
9 if a police officer does the fingerprinting and
10 takes the photograph, who is supposed to be
11 downloading that photograph?

12 A The officer.

13 Q Which officer?

14 A I believe, generally, at most times,
15 it is sometimes the same officer that takes the
16 photo.

17 Q Is it your experience that it is
18 usually the officer who takes the photo that does
19 the downloading?

20 A Yes, that's correct.

21 Q Did you ever see a picture or "a
22 police photo" of Mr. Zenk?

23 A No, I have not.

24 Q Now, we know from your evidence that
25 you were at the station at about 12:15?

1 A Yes.

2 Q For a break, is that correct?

3 A Yes, sir, that's correct.

4 Q And then ultimately you went back to
5 the scene, and we know the scene was cleared at
6 about 4:00 p.m. that afternoon?

7 A That's correct, sir.

8 Q When you were back at the station, did
9 you -- and I think you covered this but I just
10 want to clarify -- were you aware that Mr. Zenk
11 was charged with impaired driving cause death?

12 A Yes, I was.

13 Q Correct? So it is logical -- well,
14 you can assume it was Carter, I suppose, that saw
15 symptoms of impairment to charge him with that;
16 correct?

17 A Yes, sir.

18 Q By 3:00 o'clock you knew, 3:00 that
19 afternoon you knew that Mr. Zenk was deemed to be
20 impaired by one of your more experienced officers,
21 that's Sergeant Carter?

22 A That's correct, sir.

23 Q So I'm going to lead up to the
24 conversation you had with Mr. Sveinson, okay,
25 Constable Sveinson, or Staff Sergeant Sveinson, at

1 about 3:00 o'clock, as we've heard. Were you
2 aggravated that he was in your vehicle?

3 A Not aggravated, but we are dealing
4 with a major scene there, and having somebody else
5 come in and want to talk to us at the same time,
6 it is kind of difficult.

7 Q All right. But you appreciated why he
8 was there?

9 A Yes, he explained what he wanted to
10 do, and I told him that I would make time for
11 that.

12 Q All right. You had no problems
13 allowing him --

14 A No, sir, not at all.

15 Q -- to do what he wanted to do.

16 A It was something that he wanted to do
17 and it meant a lot to the family, so that's why I
18 allowed it.

19 Q All right. Now, he says that you said
20 that we had to get him out of there quickly, he
21 being Zenk; correct?

22 A Yes.

23 Q And as I heard your evidence and
24 evidence of others, it was quite the opposite,
25 Mr. Zenk was not gotten out of there quickly?

1 A That's correct, sir.

2 Q All right. And, you know, some are
3 criticizing that. So it is quite the opposite
4 that he was removed quickly, or gotten out of
5 there quickly, if you look at times and the length
6 of time he was at the scene; correct?

7 A Yes, sir.

8 Q Would there be any reason that you
9 would say to Police Officer Sveinson, we had to
10 get him out of there quickly?

11 A No, sir.

12 Q And at 3:00 o'clock, you knew that
13 Police Officer Zenk was charged with impaired;
14 correct?

15 A Yes, sir.

16 Q Did you tell Mr. Sveinson, not that he
17 was pissed, but that he was charged with impaired?

18 A Yes, sir.

19 Q He is impaired and he is charged with
20 it?

21 A Yes, sir.

22 Q Now, we know you didn't put it in your
23 notes, and you said you probably should have. But
24 dealing with Mr. Sveinson at the scene, did that
25 have anything to do with the investigation?

1 A No, sir.

2 Q It wasn't part of your investigation,
3 this conversation with Sveinson?

4 A No, it was not.

5 Q You put it in your incident report,
6 you weren't hiding it, that Mr. Zenk said he was a
7 cop; correct?

8 A Yes, sir.

9 Q You agree it is not in your notes, and
10 it should have been?

11 A Yes, sir.

12 Q No doubt in your mind that it should
13 have been, and certainly the conversation should
14 have been, albeit a short conversation?

15 A Yes, sir.

16 Q Correct. Just very briefly on
17 Krawchuk. We have heard, and he doesn't appear to
18 be called as a witness, but in any event, one of
19 his things was taking, I think, Mr. Zenk to the
20 washroom?

21 A Which person was doing that, sir?

22 Q I believe Krawchuk --

23 A Yes, sir.

24 Q -- was at the station taking him to
25 the washroom. In all likelihood, Sergeant Carter

1 would have been there; correct?

2 A Yes, sir.

3 Q Not -- I'm not suggesting right in the
4 washroom, but certainly at the police station.

5 Did Krawchuk, again, submit any notes to you?

6 A Beg your pardon?

7 Q Did Krawchuk submit or give you any
8 notes, sir?

9 A No, sir.

10 Q Now, as I understand it, all of the
11 statements go to Sergeant Carter; correct?

12 A That's correct.

13 Q Is there any doubt in your mind whose
14 file this was?

15 A No, sir.

16 Q And I appreciate we have gone through
17 with Mr. Paciocco showing what is on the computer
18 printout and all of that. Sergeant Carter, it was
19 put to him that the file migrated to him,
20 basically it was his file right after the scene,
21 but he said something different after. Let me ask
22 you this: You certainly participated in taking
23 statements, correct --

24 A Yes, I did, sir.

25 Q -- from witnesses. We know that.

1 Were you directing, after February 25th, did you
2 consider yourself that you were directing?

3 A No, sir.

4 Q Even after March 1st, did Carter make
5 inquiries, "why did you take the statement from
6 this witness or that witness?"

7 A No, sir.

8 Q Would I be correct, on March the 1st,
9 when you and Sergeant Carter went to the house
10 to -- I believe you mentioned the Sveinson
11 residence, to offer condolences firstly; is that
12 correct?

13 A Yes.

14 Q And there was talking going on at the
15 house, correct?

16 A That's correct.

17 Q And am I not correct, both you and
18 Carter were talking with the family?

19 A Yes.

20 Q It was not as though one was sitting
21 there mute and the other was doing all of the
22 talking?

23 A No, sir.

24 Q You were asked, and I believe it was
25 the statement from Mr. and Mrs. Bukowski, okay,

1 they attended together?

2 A Yes, sir.

3 Q You have already indicated, you only
4 took the statement from Mrs. Bukowski; is that
5 correct?

6 A Yes, sir.

7 Q And her husband was in the room, you
8 said?

9 A Yes.

10 Q This statement was taken after March
11 the 1st, we know that. Did -- she was the one who
12 contacted the police station --

13 A I believe so, yes.

14 Q -- after there was notice on the radio
15 about possible witnesses?

16 A Um-hum.

17 Q All right. Were you ever told after
18 March 1st, by the person whose file it was, we
19 have got the statement from Mrs. Bukowski, let's
20 get a statement from the husband? Were you ever
21 told that?

22 A No, sir.

23 Q But there is no question in your mind,
24 would you agree, that a statement should have been
25 taken from Mr. Bukowski?

1 A Yes.

2 Q Because he might not have been the
3 driver, but he was certainly in the vehicle and he
4 might have seen something different than his wife?

5 A Yes, sir.

6 Q Now, I'm not going to go through a lot
7 with the PSU, Professional Standards Unit. You
8 were a city policeman for a number of years, we
9 have gone through that again. You know that
10 public -- Professional Standards Unit is just
11 there, that unit is just there and their function
12 is to investigate possible wrongdoing by police
13 officers; correct?

14 A Yes, sir.

15 Q No question you knew that before
16 February 25th, you knew it when you were at the
17 Winnipeg Police Service, that's what they are
18 geared for, that's what they are trained for?

19 A Yes, sir, that's correct.

20 Q All right. So, did you feel that they
21 have the expertise to investigate Mr. Zenk in
22 other matters?

23 A Yes, definitely. There is no way that
24 we could have done, there is no way possible.

25 Q I know that, and did you have any

1 qualms about them not being able to do it?

2 A No, sir, no qualms.

3 Q Okay. No question, I mean, to members
4 of the public, it might look better if the RCMP
5 would have interviewed the witnesses, but as far
6 as expertise, you had the expertise at PSU;
7 correct?

8 A Yes, sir, that's correct.

9 Q I'm not going to get into this social
10 aspect, I think we heard it from Graham, or it was
11 put to Graham. This office, the real estate
12 office, is it correct there is about 95 realtors
13 who work out of that office?

14 A That's correct, sir.

15 Q All right. And as far as realtors,
16 you don't make your money in the office, you make
17 it outside of the office getting listings, getting
18 offers; is that correct?

19 A Yes, sir.

20 Q So would you be out of the office more
21 than you would be in?

22 A Definitely.

23 Q Did you do anything, sir, to give
24 Derek Harveymordenzenk a break in this particular
25 case?

1 A No, I did not, sir.

2 Q Did you do anything to manipulate the
3 case to make it look better or worse?

4 A No, I did not, sir.

5 Q In any way, did you do anything to
6 impede the prosecution of this case?

7 A No, sir.

8 MR. WEINSTEIN: If I may just have a
9 moment?

10 BY MR. WEINSTEIN:

11 Q I'm just going to put some things to
12 you in my wrap-up. There didn't have to be a
13 designation of who was in charge of the scene,
14 because people knew what to do; is that correct?

15 A Yes.

16 Q You didn't have to announce that I'm
17 in charge at the scene, correct?

18 A That's correct, sir.

19 Q Even though Sergeant Carter wasn't at
20 the scene, still he was probably the best to deal
21 with the situation away from the scene; is that
22 not correct?

23 A Yes, sir.

24 Q And although you helped out in
25 interviewing and things like that, and taking

1 statements, were you directing people what to
2 do --

3 A No, sir.

4 Q -- after February 25th?

5 A No, sir.

6 Q You did not form the conclusion or the
7 opinion at the scene that Mr. Zenk was impaired?

8 A No, I did not form that opinion.

9 Q We've gone over this. You received
10 information from Constable Graham that the vehicle
11 operated by Zenk had a smell of liquor. You did
12 not record it in your notes, but it is in your
13 incident report?

14 A It is in the report.

15 Q Correct. You never got an
16 investigation report from Carter, is that
17 correct -- from Graham, excuse me?

18 A From Graham, no, I did not.

19 Q Do you know whether Carter got one
20 from him?

21 A I don't recall, no.

22 Q Before March 1st or after March 1st?

23 A I don't believe he received one.

24 Q We already know you never spoke to the
25 paramedics at the scene?

1 A That's correct.

2 Q Did you ever tell Constable Woychuk,
3 just do nothing?

4 A No, sir. Why would he have been at an
5 accident scene, why would he have gone there then?

6 Q You did have two sets of notes,
7 correct?

8 A Yes, sir.

9 Q Rough notes?

10 A Rough notes.

11 Q And we have heard that other
12 constables, or Sergeant Carter also -- I'm not
13 suggesting there was anything wrong -- there was
14 two sets of notes, a rough set of notes and a
15 better, or at least neater set of notes; is that
16 correct?

17 A Yes, sir.

18 Q Was there any sinister motive for
19 taking that uniform out of the vehicle?

20 A No, sir. The only reason we took it
21 out of the vehicle, we did not want to have it
22 stolen out of the vehicle at the towing compound.
23 We didn't feel that it was right to have a uniform
24 floating around that somebody could use for any
25 other reason.

1 MR. WEINSTEIN: Just a moment, I will
2 check with my capable assistant, Mr. Commissioner.

3 My assistant says I am finished, and I
4 note the time at 4:29:14. Thank you,
5 Mr. Commissioner.

6 THE COMMISSIONER: Thank you.

7 MR. WEINSTEIN: And I assume my
8 learned friend won't go past 4:30.

9 MR. PACIOCCO: I have to now because
10 it just took him 5 seconds to tell me not to go
11 past 4:30.

12 THE COMMISSIONER: I will not ask for
13 that assurance.

14 MR. PACIOCCO: No, and I can't offer
15 it to you, I'm afraid.

16 BY MR. PACIOCCO:

17 Q Mr. Bakema, I'm going to ask to take
18 you to the phone log again, you probably still
19 have it in front of you, P3.87.2?

20 A Sorry, the number again, please?

21 Q 147?

22 A Yes, I do, sorry.

23 Q All right, sir. I just was left a
24 little troubled by some of the answers that I
25 received from you before that phone log was

1 presented to you and the call to the Royal Dodge
2 Jeep Chrysler was identified. You recall telling
3 me that you didn't have time to contact the
4 station to find out whether Woychuk had detected
5 anything?

6 A That's correct.

7 Q And you recall telling me you didn't
8 have time to make your notes at the scene because
9 were you in and out and dealing with matters at
10 the investigation?

11 A That's correct.

12 Q Sir, does the fact that you had time
13 to make some type of personal phone call to Royal
14 Dodge Jeep Chrysler, while you were at the
15 accident scene, chasten you or make you feel any
16 less confident that you didn't have time to do
17 something connected to the investigation?

18 A Sir, I don't know if that was me with
19 the cell phone that made that call.

20 Q Sir, it is your cell phone number, is
21 it not?

22 A It is my cell phone number, yes.

23 Q Your cell phone records, sir?

24 A Yes, sir.

25 Q Are you suggesting that someone lifted

1 it out of your pocket and used it, sir?

2 A These are cell phones in the cars. I
3 don't know if Constable Graham made a phone call
4 to that dealership or not, I have no idea.

5 Q Sir, there are other phone calls on
6 that. Do you know who Stewart Atwood is?

7 A Stewart who?

8 Q Atwood?

9 A No.

10 Q Because there are two calls to Stewart
11 Atwood on the next page at 12:06 and 12:07?

12 A Never heard of the name, sir.

13 Q No one is going to fault you for
14 calling Rosanna Bakema. What about Norm Bosco at
15 2:50?

16 A Norm Bosco?

17 Q Yes, sir.

18 A No, I don't know that name either.

19 Q How about L.M. Hulst?

20 A Just one moment, please? L.M. who?

21 Q L.M., it looks like Hulst, H-U-L-S-T?

22 A I don't know that name, sir.

23 Q All of those people received calls
24 from your phone, sir. You don't know any of them?

25 A They may have, sir, but I don't know

1 those names. The ones I indicated I do know are
2 the ones I know.

3 Q All right, sir. The next point I
4 wanted to raise with you is there were questions
5 about Carter being the reader and never bothering
6 to point out to you that the interviews from
7 Beattie, Bukowski, Rosser may have been
8 incomplete. Do you recall those questions from
9 your lawyer, sir?

10 A Yes.

11 Q Sir, you were the Chief of Police?

12 A Yes, sir.

13 Q You are a police officer with 32 years
14 experience at that time, sir?

15 A Yes, sir.

16 Q You didn't need anybody to come along
17 and tell you whether you conducted a good
18 interview or a bad interview, sir?

19 A Did I need anybody to do that?

20 Q Yes?

21 A I would like to say no, but when you
22 are in a situation like that, we are all hyped up
23 and everything else, and tired, we can make
24 mistakes and forget things.

25 Q Sir, it was over the course of a month

1 that those interviews took place?

2 A Yes.

3 Q It was a tiring month, was it?

4 A I'm sorry?

5 Q It was a tiring month, was it?

6 A I never said a tiring month, sir.

7 Q Sir, you agree that you have to take
8 responsibility for the quality of your own police
9 work and not blame it on the reader?

10 A I'm not doing that, sir.

11 Q Thank you. Sir, my friend,
12 Mr. Prober, asked you some questions about signs
13 of impairment?

14 A Yes, sir.

15 Q You had answered a number of questions
16 that I had posed about things like being unsteady
17 on his feet, and I think your answer to me was
18 that you never took the time to stand back and
19 watch this gentleman walk, and you simply guided
20 him along to the car. Do you remember that, sir?

21 A Yes.

22 Q And you said you never really looked
23 at his face except for that one little time when
24 you --

25 A The one time, yes.

1 Q -- looked at him and you said Derek?

2 And you weren't looking to see whether it was
3 flushed?

4 A That's correct.

5 Q And you never really got him to speak,
6 so you never really heard whether his voice was
7 somehow slurred, his speech was slurred or there
8 was any problems with his diction?

9 A That's true.

10 Q Correct, sir?

11 A Yes, sir.

12 Q And you indicated to me that you
13 didn't have any issue with Sergeant Carter laying
14 the charges he did; correct, sir?

15 A Yes.

16 Q Well, my friend put it to you that
17 those symptoms were not present, those classic
18 symptoms of impairment were not present. Isn't it
19 truer to say that you didn't look for them, sir,
20 and you don't know whether they were present?

21 A I never noted them, sir, I never
22 noticed them at all.

23 Q Okay. But you never looked for them?

24 A I never noticed them.

25 MR. PROBER: I object. He answered it

1 three times. It is not even proper --

2 THE COMMISSIONER: Okay. Okay.

3 BY MR. PACIOCCO:

4 Q Sir, my friend, Mr. Weinstein, put to
5 you that Paramedic Rosser was very clear that he
6 had not communicated the detection of alcohol to
7 anyone at the scene, sir. And it is not my
8 recollection of exactly what the evidence was,
9 sir, but in any event, do you dispute Constable
10 Woychuk's testimony that he was told by a
11 paramedic, or signaled by a paramedic that
12 Mr. Harvey-Zenk smelled of alcohol? Do you take
13 any issue with that?

14 A Could you repeat that, I'm sorry?

15 Q Do you take any issue with Constable
16 Woychuk's testimony that he was told or signaled
17 by one of the paramedics that Mr. Harvey-Zenk
18 smelled of alcohol?

19 A I don't recall.

20 Q Do you dispute that that conversation
21 took place, or that communication took place
22 between Mr. Woychuk and the paramedic?

23 A It may have.

24 Q And, sir, with respect to the question
25 of whether or not there was a comment about having

1 to get Mr. Harvey-Zenk out of there right away,
2 sir, with the Sveinson conversation?

3 A Yes.

4 Q I think we can agree, sir, that he
5 didn't leave right away, at the start of the
6 scene, because he spent some considerable time in
7 the car; correct, sir?

8 A That's correct, sir.

9 Q Sir, do you know how long it was after
10 the paramedic went into the car and smelled
11 alcohol on him before he was taken away?

12 A No, I don't know how long it was.

13 Q Sir, I'm going to suggest to you that
14 it was ten minutes, or right away after, it was
15 apparent that someone had detected the odour of
16 alcohol on this individual?

17 A That's possible.

18 MR. PACIOCCO: I have no further
19 questions, Mr. Commissioner.

20 THE COMMISSIONER: Thank you. Thank
21 you.

22 THE WITNESS: Thank you, sir.

23 THE COMMISSIONER: It is 4:36.

24 MR. PACIOCCO: Yes, there will be no
25 further --

1 THE COMMISSIONER: I'm free for the
2 next 15 minutes, but I don't know that counsel
3 are.

4 MR. PACIOCCO: Well, I'm chastising
5 myself for having released the witness, I could
6 have had seven good minutes of testimony, but we
7 are unfortunately finished for the day.

8 Oh, yes, we do have one other item of
9 business, the East St. Paul Police, East St. Paul
10 representative, Mr. McDonald, and Ms. Bowley are
11 interested in reading into the record the
12 statement that Commission Counsel agreed to.

13 THE COMMISSIONER: Yes.

14 MS. BOWLEY: Thank you,
15 Mr. Commissioner, this is the statement of facts
16 pertinent to the Rural Municipality of --
17 Mr. Bakema, you can step down.

18 THE COMMISSIONER: You can step down,
19 sir. No, that is my duty, I'm supposed to tell
20 him. You are supposed to read into the record.

21 MS. BOWLEY: To continue,
22 Mr. Commissioner, this is the statement of facts
23 pertinent to the Rural Municipality of East St.
24 Paul, agreed to by Commission Counsel and directly
25 affected individuals, those being Mr. Harry

1 Bakema, a party, and Mr. Ken Graham, a witness,
2 and submitted by consent at the request of the
3 Rural Municipality of East St. Paul. And it is
4 found at volume Z-1.

5 THE COMMISSIONER: Give me a moment.

6 MS. BOWLEY: It has, Mr. Commissioner,
7 already been marked as exhibit 69.

8 THE COMMISSIONER: Wait until I get
9 it. Thank you.

10 MS. BOWLEY: Statement of agreed
11 facts, paragraph 1.

12 "The RM of East St. Paul has operated
13 a police service for approximately 50
14 years. Prior to 1995, policing
15 services provided by the East St. Paul
16 Police Service were secondary to
17 police services provided by the Royal
18 Canadian Mounted Police. Since 1995,
19 the East St. Paul Police Service has
20 been the primary provider of policing
21 services to the residents of the RM of
22 East St. Paul.

23 2. David Grant was the Chief of the
24 East St. Paul Police Service from May
25 1, 1994 until October 31, 2003. His

1 contract expired and was not renewed.
2 In January 2003, Council of the RM of
3 East St. Paul retained the services of
4 Robert M. Tramley, policing services
5 consultant, to conduct a managerial
6 and operational review of the East St.
7 Paul Police Service. Mr. Tramley is a
8 retired superintendent from the Royal
9 Canadian Mounted Police. Prior to his
10 retirement, Mr. Tramley was in charge
11 of the RCMP subdivision in Truro, Nova
12 Scotia. He joined the RCMP in 1958.
13 Mr. Tramley retired in 1995.
14 Mr. Tramley has acted as a policing
15 services consultant since his
16 retirement. He has conducted audits
17 of various police forces.
18 Mr. Tramley reported to council in
19 February of 2003. He made 15 formal
20 recommendations, several
21 observations/informal suggestions to
22 council which, in his opinion, if
23 implemented would improve the overall
24 efficiency and performance of the East
25 St. Paul Police Service.

1 Sergeant Norman Carter assumed the
2 position of Acting Chief of Police
3 until a qualified replacement could be
4 hired to replace David Grant. He held
5 the position of Acting Chief from
6 November 5, 2003 until April 4, 2004.
7 After receiving Mr. Tramley's
8 February 2003 report, Council of the
9 RM of East St. Paul took steps to
10 implement Mr. Tramley's
11 recommendations with a view to
12 improving the overall performance of
13 the East St. Paul Police Service.
14 In or about December of 2003, the
15 Council of the RM of East St. Paul
16 retained the Harris Consulting
17 Corporation, referred to hereafter as
18 the consultant, an independent
19 consulting firm, to assist it in
20 locating and hiring a qualified person
21 to replace David Grant as Chief of the
22 East St. Paul Police Service.
23 The consultant advertised the position
24 and solicited applications for the
25 position of Chief of Police for the

1 East St. Paul police Service.
2 The consultant received numerous
3 applications which in its judgment
4 warranted further detailed
5 consideration.
6 The consultant interviewed six
7 candidates who had applied for the
8 position of Chief of Police of the
9 East St. Paul Police Service. One of
10 those candidates was Harry Bakema.
11 Following the consultant's interview
12 of the narrowed list of candidates,
13 Council of the RM of East St. Paul
14 engaged the services of Harry Bakema
15 as Chief of Police of the East St.
16 Paul Police Service.
17 Harry Bakema became Chief of Police of
18 East St. Paul Police Service effective
19 April 15, 2004.
20 Approval of his employment was
21 evidenced by resolution number
22 310/2004 of the Council of the RM of
23 East St. Paul dated June 16, 2004.
24 By late 2005, members of Council of
25 the RM of East St. Paul and its CAO

1 had received information from outside
2 sources which lead Council to
3 undertake a further review of the
4 operation of its police service under
5 the leadership of Chief Harry Bakema.
6 The reasons motivating Council to
7 request the review were completely
8 unrelated to the investigation by the
9 East St. Paul Police Service of the
10 motor vehicle accident involving Derek
11 Harvey-Zenk and Crystal Taman, which
12 lead to the death of Crystal Taman,
13 which had occurred on February 25,
14 2005.

15 In December 2005, the Council of the
16 RM of East St. Paul again engaged the
17 services of Robert M. Tramley to
18 conduct the review. Mr. Tramley
19 reported to council of the RM of East
20 St. Paul in January of 2006. Based on
21 information then available to him,
22 Mr. Tramley declined to make any
23 recommendations regarding Chief
24 Bakema's tenure or continuing
25 employment as Chief of Police.

1 Later in 2006, Robert Tramley
2 conducted a further review of the
3 overall operation of the East St. Paul
4 Police Service. Mr. Tramley was
5 assisted in this undertaking by his
6 associate, Robert Wass. Mr. Wass is a
7 retired Superintendent from the Royal
8 Canadian Mounted Police. Prior to his
9 retirement, Mr. Wass was in charge of
10 the RCMP Calgary subdivision. He
11 joined the RCMP in 1962. He retired
12 in 1997. Mr. Wass has acted as a
13 policing services consultant since his
14 retirement. He has conducted audits
15 of various police forces. His
16 function was to perform an operational
17 audit of the East St. Paul Police
18 Service. Mr. Tramley's function was
19 largely to audit administrative
20 performance of the East St. Paul
21 Police Service.

22 This follow-up 2006 managerial review
23 was commissioned by the RM of East St.
24 Paul due to concerns brought to the
25 attention of the municipality's CAO

1 regarding management of the East St.
2 Paul Police Service by Chief Bakema.
3 As part of the operational review,
4 Mr. Wass reviewed various files. At
5 the specific request of the
6 municipality's CAO, Mr. Wass reviewed
7 the file concerning the charges
8 brought against Derek Harvey-Zenk
9 following the traffic accident which
10 caused the death of Crystal Taman.
11 Mr. Wass reviewed the East St. Paul
12 Police Service file number 2005-00568
13 on January 16, 2006. The notes
14 prepared by Mr. Wass as a result his
15 review are shown on page 21 and 22 of
16 a March 29, 2006 report to Council.
17 The remaining comments on page 22 and
18 23 of the report are authored by
19 Mr. Tramley. Pages 21, 22 and 23 of
20 the report appear in volume P-1.82 at
21 pages 2182, 2183 and 2184 of the
22 documents disclosed to parties granted
23 standing by counsel at the Taman
24 Inquiry.
25 By resolution number 89/2006 dated

1 February 22, 2006, the Council of the
2 RM of East St. Paul formally
3 terminated the employment contract of
4 Chief of Police Harry Bakema.

5 On January 26, 2006, Constable Kenneth
6 Graham was relieved from duty with pay
7 pending an internal investigation of a
8 complaint made against him. The
9 complaint was completely unrelated to
10 his role in the investigation of the
11 Crystal Taman fatal accident.

12 On March 13, 2006, Constable Graham
13 resigned from the East St. Paul Police
14 Service.

15 Municipal elections were held in
16 Manitoba in October of 2002. Phillip
17 Rebeck was elected Reeve of the RM of
18 East St. Paul. Elected Council
19 members were Tom Hallett, Lawrence
20 Morris, David Gara and Brian Sarna.

21 Mr. Sarna's election was declared
22 invalid in January of 2003. In a
23 by-election held in February of 2003,
24 Mr. Michael Wasilyn was elected as a
25 councillor. Municipal elections were

1 held again in Manitoba in
2 October 2006, Reeve Rebeck and
3 Councillor Hallett did not run for
4 re-election in October 2006. As a
5 result of the 2006 municipal election,
6 Lawrence Morris was elected Reeve.
7 The elected councillors were Michael
8 Wasilyn, Doreen Negrich-Lazinski,
9 Rolfe Kajpust and Charles Posthumus.
10 THE COMMISSIONER: Yes.
11 MS. BOWLEY: Thank you,
12 Mr. Commissioner.
13 THE COMMISSIONER: Do you want to make
14 this an exhibit?
15 MS. BOWLEY: It already is,
16 Mr. Commissioner, it is exhibit 69.
17 THE COMMISSIONER: All right. We have
18 witnesses tomorrow, do we?
19 MR. PACIOCCO: Yes, we have several
20 witnesses tomorrow, sir.
21 THE COMMISSIONER: Yes, thank you.
22 9:30.
23 THE CLERK: All rise. This Commission
24 is adjourned until 9:30.
25 (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.

Cecelia Reid

Debra Kot

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