

INQUIRY INTO THE INVESTIGATION AND  
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Monday, July 21, 2008

Volume 17

INQUIRY PROCEEDINGS

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1 MONDAY, JULY 21, 2008

2 UPON COMMENCING AT 9:30 A.M.

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

5 THE COMMISSIONER: Good morning.

6 MR. PACIOCCO: Good morning,  
7 Mr. Commissioner. As is customary, I will begin  
8 by indicating the witnesses that will be called  
9 this week.

10 THE COMMISSIONER: Yes.

11 MR. PACIOCCO: We have a very  
12 ambitious week scheduled. We hope to finish  
13 Sergeant Black this morning. I'd like to hear  
14 from Constable Ken Azaransky today. We have --  
15 counsel has agreed to adjourn today at 3:00  
16 o'clock to permit further investigation that's  
17 arisen, to occur. Tomorrow we expect to hear from  
18 Constable David Harding, Sergeant James Anderson,  
19 Constable -- it will be Sergeant Chris Humniski  
20 and Constable McLure.

21 The following day, we expect to hear  
22 from Constable Michalik, Constable Nolet,  
23 Constable Spruyt, and pick up whatever may be left  
24 from Constable McLure.

25 We're going to be calling, we hope on

1 Thursday, Inspector James Poole and Detective  
2 Sergeant Girard.

3                   This is a very ambitious schedule, and  
4 one of the reasons for that ambition, and we're  
5 certainly not going to short change the Commission  
6 in terms of the relevant information that needs to  
7 be before you, but we have certain expert  
8 witnesses scheduled over the course of the next  
9 weeks. Those dates for the testimony of the  
10 experts are firm. We have to complete Mr. Minuk  
11 before those experts show up, and his testimony is  
12 going to certainly be, I imagine, a couple of  
13 days, maybe even a bit longer than that. So we  
14 really do want to try and keep to this schedule.

15                   What I'm going to suggest, and I have  
16 not canvassed this with counsel, I'm going to  
17 suggest, if it suits the Commissioner, that if we  
18 could start at 9:00 o'clock in the morning this  
19 week, that will certainly assist us in making up  
20 lost time. I'm going to go further. I am going  
21 to suggest that instead of the usual lunch break,  
22 if we were to come back at 1:45 instead of  
23 2:00 o'clock, and maybe even sit 15 minutes later  
24 until 4:45. If we do those three things, we pick  
25 up an extra hour a day and it is almost a full day

1 of hearings that we can put in the next few days.  
2 That wouldn't extend to today in terms of the 4:45  
3 adjournment. But what I am suggesting is that, if  
4 everyone can possibly make it, that we start at  
5 9:00, come back after lunch at 1:45 and maybe sit  
6 till 4:45 each day.

7 THE COMMISSIONER: Any counsel have  
8 difficulty with these suggestions? Mr. Prober,  
9 yes.

10 MR. PROBER: I seem to be the official  
11 timekeeper so I may as well continue. I have a  
12 pre-trial today at 1:00 o'clock, for example  
13 before Mr. Justice Sinclair of our Court of  
14 Queen's Bench. So it would be difficult for me to  
15 return at 1:45. I also have at the end of the day  
16 some clients booked for most days, but I have  
17 Mr. King who is assisting me, and I know he can't  
18 be here tomorrow, but we will certainly try, apart  
19 from today. I'm just looking at my diary, I could  
20 accommodate my learned friend's request except  
21 for, as I say, today, because I have this  
22 pre-trial.

23 THE COMMISSIONER: Anybody have any  
24 problems with 9:00 o'clock? Well, we can start at  
25 9:00 and we'll break for lunch today, and we'll

1 accommodate Mr. Prober by, excuse me, we'll

2 accommodate Mr. Prober today.

3 MR. PROBER: Thank you.

4 THE COMMISSIONER: Anybody need more  
5 than an hour and 15 minutes for lunch? I guess we  
6 can do that and we'll see how the day goes whether  
7 we finish at 4:30. I'd like to, if a witness is  
8 in the witness stand, I'm sure they'd like to  
9 complete their testimony, and we may extend it a  
10 little longer as the day goes. Thank you.

11 MR. PACIOCCO: Thank you,  
12 Mr. Commissioner.

13 BY MR. PACIOCCO:

14 Q Good morning, Sergeant Black.

15 A Good morning.

16 Q Sir, when we finished our testimony  
17 last day, we were talking about events at your  
18 place. We had discussed the fact that you had  
19 made alcohol available to your guests, sir. You  
20 testified that you made available a bottle of rye  
21 and some Bailey's. I put to you the transcript  
22 reference to the heel of rye that was put out in  
23 addition to that with Mr. Clifford, and you  
24 confirmed that. I suggested to you that that was  
25 inconsistent with the position you took in your

1 insurance adjuster's statement. You were asked  
2 what people consumed and you said, I would  
3 estimate that it may have been perhaps two bottles  
4 of rye and part of a Bailey's. And even though  
5 the question had to do with what was consumed, you  
6 took the position in your testimony that you were  
7 simply referring to the heel when you referred to  
8 the second bottle, and we had some discussion  
9 about that.

10                   You also indicated that you noticed  
11 the one bottle of rye that you put out other than  
12 the heel to be empty in the morning when you  
13 cleaned up. You cleaned up and made that  
14 observation around 6:00 o'clock in the morning,  
15 didn't you, sir?

16                   A     That's correct.

17                   Q     Sir, I also gave you some homework to  
18 do and I don't know whether you've had an  
19 opportunity to diagram out your kitchen. Is that  
20 something you managed, sir?

21                   A     I did.

22                   Q     Do you have it with you, sir?

23                   A     I do.

24                   Q     Could I perhaps take a look at that,  
25 please?

1           A       Absolutely.

2                   MR. PACIOCCO: Mr. Commissioner, may I  
3 approach the witness to obtain that?

4                   THE COMMISSIONER: Yes.

5                   THE WITNESS: Sir, just so you know,  
6 that's the dimensions I gave you as well.

7                   MR. PACIOCCO: Mr. Commissioner, the  
8 witness has provided me with a drawing showing  
9 north, south, east and west, with south to the top  
10 of the drawing. He has diagrammed out the kitchen  
11 area showing a distance between a counter and the  
12 south wall of the kitchen of 113 inches, where  
13 there would be a table. He also has drawn a  
14 counter which varies in height. At one point, it  
15 is 42 inches in height, and he has indicated the  
16 depth of the counter at its broadest at the south  
17 end, it's approximately 40 inches. It is shaped  
18 in a C shape, a backwards C shape. He shows an  
19 entrance into that room. The distance from the  
20 entrance into the room to the far side of the  
21 counter to the south is 152 inches. And the  
22 width, including the fridge, of the kitchen is  
23 139 inches in the preparation area.

24                   Thank you very much for doing this.  
25 I'm going to give this document back to you. I'm

1 going to have it made an exhibit, but I want you  
2 to mark a couple things on it if you would. Do  
3 you have a pen?

4 THE WITNESS: I don't.

5 THE COMMISSIONER: Exhibit 165, is  
6 that it?

7 THE CLERK: Yes.

8 (EXHIBIT 165: Hand-drawn diagram of  
9 Sean Black's kitchen)

10 THE COMMISSIONER: Would you give him  
11 a pen?

12 THE WITNESS: Thank you.

13 BY MR. PACIOCCO:

14 Q I'm going to ask you to put a "P"  
15 where you believe that you repaired the popcorn  
16 machine, and I'm going to ask you to put a "B"  
17 where you believe you put out the bottles. I'm  
18 going to collect the diagram from you again, sir,  
19 so that I can read those locations into the  
20 record.

21 The witness has placed the "P" for the  
22 popcorn machine towards the north end of the  
23 kitchen, adjacent to the oven on the backwards C  
24 counter that I described earlier. The bottles  
25 were put on the south end of the cabinet -- of the

1 countertop, rather, closest to the table. So  
2 approximately 113 inches from the far wall. And  
3 that would have been the table area. And they are  
4 put to the far left-hand side of the countertop  
5 where people would walk by to get access from one  
6 part of the kitchen to the other.

7                   You can obviously observe this,  
8 Mr. Commissioner. We will arrange for copies to  
9 be made.

10                   Sergeant Black, what did you have to  
11 drink at your place.

12                   A     Rye, rye and Coke.

13                   Q     How many rye and Coke did you have,  
14 sir?

15                   A     I had a couple of drinks that night.

16                   Q     When you say a couple, are you able to  
17 give any precision to that or is that just the  
18 generic couple?

19                   A     Generic.

20                   Q     Sir, you indicated in your interview  
21 with Mr. Clifford that you were not drinking heavy  
22 at your place?

23                   A     Correct.

24                   Q     You gave a reason for that?

25                   A     Correct.

1 Q What was your reason, sir?

2 A The next, going back to duty, going  
3 back to work, I knew I was going back to work.

4 Q Okay. You knew you were going back to  
5 work the next day. You were on an overlap,  
6 correct?

7 A That's correct.

8 Q And you told Mr. Clifford that you had  
9 an overlap project the next day?

10 A Correct.

11 Q Do you remember what that overlap  
12 project was?

13 A It, I believe, was either cleaning up  
14 some files, some investigations, or potentially  
15 taking some files that existed already and  
16 assisting the back office with those files.

17 Q All right. So I think you'd agree  
18 with me, sir, that the day you had in front of you  
19 was not going to be a terribly arduous one?

20 A Correct.

21 Q And in fact, sir, I understand that  
22 there was a cake and coffee function for a  
23 retiring member that you were also going to  
24 attend?

25 A I -- yes, there was.

1 Q And that was during your working hours  
2 that that occurred, sir?

3 A That's correct.

4 Q So you basically knew that you had an  
5 office day, and you were going to be going in and  
6 part of it was going to be the attendance at this  
7 reception, sir?

8 A Correct.

9 Q And sir, do you recall what time it  
10 was that you went into work the next day?

11 A I believe around noon.

12 Q Yes, sir. And I can indicate from the  
13 schedule we have that, indeed, you were in at  
14 around noon. And do you recall what time you  
15 left, sir?

16 A That night?

17 Q Yes?

18 A The same day, I'm sorry?

19 Q Yes?

20 A I am not too sure.

21 Q The information we have is that you  
22 left at 7:00 o'clock and that you took some  
23 statutory credit leave?

24 A Okay.

25 Q So that your ordinary shift would have

1 ended at 10:00 but you were able to leave at 7:00  
2 when it suited you, sir; is that correct?

3 A Correct.

4 Q So you would agree with me that it  
5 wasn't going to be an arduous day that you were  
6 going to go in for, sir?

7 A In police work anything can happen, of  
8 course, but in terms of -- it wasn't a routine day  
9 for me to get into a cruiser car to take calls for  
10 service.

11 Q And you weren't so concerned about  
12 what you had ahead of you that day that you didn't  
13 invite 10 people over to your house and have them  
14 there until the wee hours of the morning, sir?

15 A It was an opportunity, like I said  
16 earlier, it was an opportunity for me to get to  
17 know people and as well continue on to do that.

18 Q Okay. So you had only caught a couple  
19 of hours sleep, I take it?

20 A I would assume that I slept at about  
21 7:00 to about 11:00.

22 Q Okay. Now, tell us about the people  
23 leaving your place, sir? Do you recall who the  
24 first to leave was?

25 A I'm not too sure whether it would be

1 Chris Humniski or T.J. Spruyt, I'm not too sure if  
2 those two were the first.

3 Q Yes. We have information that Chris  
4 Humniski left between 3:30 and 4:00 o'clock in the  
5 morning, sir?

6 A Okay.

7 Q And I understand that he lived  
8 basically in the same neighbourhood, he had to get  
9 past your place to get to his place?

10 A I am not sure where he lives.

11 Q And T.J. Spruyt, you indicate that  
12 your recollection is that he left by himself  
13 approximately the same time or perhaps a little  
14 bit after?

15 A Again, I'm not too sure what the order  
16 is or what time it was.

17 Q All right. What about Tracy Fudge?

18 A Tracy Fudge was with three other  
19 people accompanying Dave Harding.

20 Q And who were those other people, sir?

21 A That was Kelly McLure, Jim Anderson  
22 and Dave Harding.

23 Q Okay. And they were the next to  
24 leave, sir?

25 A I'm not exactly 100 per cent on that.

1 I can only assume that it would have been them.

2 Q Okay. So, you know that they left  
3 ahead of Norbert Bauer and Jay Nolet?

4 A Yes.

5 Q Yes. And you don't recall what time  
6 it was that they left?

7 A No.

8 Q And so you and Norbert Bauer, Ken  
9 Azaransky, Jay Nolet and Derek Harvey-Zenk  
10 remained after all of those other guests had  
11 departed, sir?

12 A Correct.

13 Q And you indicated that you stayed  
14 together and socialized for some time?

15 A Yes. We basically congregated in the  
16 kitchen area.

17 Q And I understand that Norbert Bauer  
18 and Jay Nolet were pretty much the next ones to  
19 leave, sir?

20 A That's correct.

21 Q Do you recall what time it was they  
22 left, sir?

23 A It was after 6:00 or it was around  
24 6:00, 6:30, that I recall the time being, because  
25 people were starting to receive phone calls or

1 they were phoning back, and I recall someone  
2 saying that time.

3 Q And that's what you indicated, both to  
4 the insurance adjuster and to Mr. Clifford, that  
5 you believed it was 6:00 to 6:30. That time  
6 sticks in your mind because there were phone calls  
7 being exchanged and people realized it was time to  
8 get going?

9 A Yeah.

10 Q Were people still drinking when it  
11 came down to Norbert Bauer, Ken Azaransky, Jay  
12 Nolet, Derek Harvey-Zenk and yourself?

13 A I don't recall if they were still  
14 drinking at that point. I know I started to clean  
15 up at that point and I was focusing on the cleanup  
16 at that point.

17 Q And sir, you also testified in your  
18 various interviews that you extended invitations  
19 to people to stay the night?

20 A I did.

21 Q Why did you do that, sir?

22 A I was concerned. I, although I don't  
23 live far outside the city, I do live -- I still do  
24 live outside the city, so I was concerned that  
25 people would be fatigued because we had a -- it

1 was a long week and we wanted to, or I wanted to  
2 for sure, make sure that if they did want to stay,  
3 that they felt welcome to.

4 Q Did you extend that invitation to  
5 everybody, sir?

6 A Pretty much, yeah, that I remember.  
7 And I said it, I said it over the evening there at  
8 my residence.

9 Q Okay. We do have information from  
10 Sergeant Humniski that he only heard you extend  
11 the invitation to Mr. Harding by the time that he  
12 left, and I think your evidence is that he left  
13 first, so you wouldn't take issue with his  
14 suggestion that he himself, for example, wasn't  
15 offered the opportunity to stay at your place?

16 A No.

17 Q Sir, you indicated that it was out of  
18 concern for fatigue that you extended this  
19 invitation?

20 A Yes.

21 Q Now, sir, you had been at a bar with  
22 all of these people --

23 A Yes.

24 Q -- until it closed. And there was  
25 alcohol being served there?

1           A     Yes.

2           Q     And then you came to your place where  
3     there was alcohol available?

4           A     Correct.

5           Q     And your testimony to date has been  
6     that you do not know what people were drinking, or  
7     whether they were drinking, or how much?

8           A     Well, I said to you that people --  
9     there was consumption in the lounge. I don't know  
10    how much people consumed, and I told you that,  
11    again, yes, people had been drinking, but I  
12    can't -- to put a drink into somebody's hands is  
13    very difficult two and a half years later.

14          Q     You weren't able to identify who in  
15    particular was drinking, you knew there was  
16    consumption because your bottle was gone. Is that  
17    a fair summary of your evidence?

18          A     That's correct. That's correct.

19          Q     Sir, I'm just wondering why your  
20    concern would be about fatigue when you had  
21    individuals who had effectively been around  
22    alcohol all night. Wasn't your concern about the  
23    possibility that these individuals had consumed  
24    too much alcohol to be driving?

25          A     Well, my observations were based on

1 behaviour, and the behaviour that I noticed that  
2 was obscure and abnormal was behaviour that was  
3 shown and expressed by Dave Harding. That was --  
4 I was definitively concerned about his sobriety.  
5 But for everybody else, there were no other signs.  
6 And for me to allow people to stay and welcome  
7 people to stay, it was based on fatigue only.

8 Q Well, sir, you are certainly a police  
9 officer and you are familiar with the laws related  
10 to drinking and driving?

11 A I am.

12 Q And you understand that it is a  
13 criminal offence to drive with more than  
14 80 milligrams of alcohol in your blood, in 100  
15 milliliters of blood, whether you're impaired or  
16 not, sir?

17 A Correct.

18 Q And sir, whether you can observe signs  
19 on individuals or not, you would understand that  
20 individuals who have been drinking may not be in a  
21 position where they should be driving?

22 A My concern, and my observations were  
23 based on behaviour and how I see people acting in  
24 accordance with that. The bottle was a 26 bottle  
25 of rye and a portion of the Bailey's. I knew

1 there was a lot of people that were there. I was  
2 busy throughout the evening also socializing with  
3 my guests, and at times not focusing in on the  
4 amount of alcohol that was consumed as well. So  
5 my focus throughout the whole evening was to host,  
6 to be the host, and also to get to know my shift  
7 mates better.

8 Q Sir, you testified that you don't know  
9 what these people consumed at Branigan's?

10 A Correct.

11 Q And you certainly don't know --

12 A I can only assume what they consumed,  
13 sir.

14 Q And you do not know who consumed  
15 alcohol at your place, or how much they had?

16 A Correct.

17 Q And so your evidence is going to be  
18 that when you extend an offer to these people to  
19 stay over at your place, it's only about fatigue  
20 and it's totally unrelated to alcohol?

21 A Fatigue. The only concern I had was  
22 with Dave Harding.

23 Q Sir, you only live 15 minutes from  
24 Branigan's?

25 A Yes, approximately.

1           Q     And so it's not a huge drive for these  
2 individuals, it's not as though they have to set  
3 out on a four hour trek or anything like that,  
4 sir?

5           A     To return to Branigan's?

6           Q     To return to Branigan's, or to get  
7 back into the city?

8           A     The City of Winnipeg, I know that  
9 there are people that live within all parts of the  
10 City of Winnipeg. Although it is a small,  
11 relatively small city, from the north Perimeter to  
12 the south Perimeter is quite a drive.

13          Q     Pretty easy to get around, especially  
14 that time of the day, sir?

15          A     It could be.

16          Q     Were you not concerned about fatigue  
17 at 2:45 when you had a convoy of police officers  
18 coming back to your place, sir?

19          A     No, because we basically were working  
20 the evening shift that week. And when I do work  
21 any particular shift, back in uniform, if I could  
22 just describe what it is like, an evening shift or  
23 a day shift consists of a ten-hour period. That  
24 particular week we had worked from 4:30 to 2:30.  
25 So from 4:30 to 11:30 or midnight, in essence, we

1 are still basically working. And certainly our  
2 sleep is fixed at that point. If you work a four  
3 or five day stretch in a row, and then you have  
4 four days off to recuperate, then you would just  
5 adjust to your next shift. So there's an  
6 adjustment period of sleep. On that particular  
7 night, we're off at midnight, basically off at,  
8 and then back to my place at 2:30, like you said.  
9 But, in essence, that's the end of the day for a  
10 normal 9:00 to 5:00.

11 Q What time did you start extending the  
12 invitations to stay over?

13 A I don't recall what time that would  
14 have been.

15 Q And sir, what was your concern about  
16 these people leaving when they are fatigued?

17 A That they are, that they -- anything  
18 could happen when you're tired.

19 Q So, sir, you're telling me that you  
20 effectively had some concern about the safety of  
21 these individuals getting on the road because of  
22 their fatigue?

23 A Sure.

24 Q And none about them getting on the  
25 road after consuming alcohol?

1           A     There was no one there that was  
2     showing any signs.

3           Q     Sir, what signs of fatigue were they  
4     showing?

5           A     I was tired, and the signs of fatigue  
6     that I felt was I was just, I was wanting to get  
7     to bed at one point. Did I observe signs of  
8     fatigue on anybody else? I noticed it on  
9     Harvey-Zenk when I talked to him. He looked tired  
10    to me. But for everybody else, everybody else  
11    seemed to be fine.

12          Q     Sir, so your testimony is you now  
13    remember seeing signs of fatigue on Derek  
14    Harvey-Zenk?

15          A     He looked tired to me, yes.

16          Q     And that was pretty clear to you, sir?

17          A     Well, it's again, not clear, but I  
18    know I was certainly tired. It was at the point  
19    where it was at the end.

20          Q     All right, sir. I'm going to bring  
21    you, if you would please, to your interview with  
22    the Professional Standards Unit. This document is  
23    Exhibit 164 in front of you. It is found at tab  
24    F1.35.c.

25                     Sir, your memory probably would have

1     been a bit fresher back when you gave this  
2     interview on the 11th of March, 2005?

3             A     Correct.

4             Q     Do you agree with that?

5             A     Pardon me?

6             Q     Your memory probably would have been  
7     fresher when you gave this interview back on the  
8     11th of March, 2005? Do you agree with that?

9             A     I agree.

10            Q     Would you turn to page 912, please?

11     Sergeant Pearson is asking questions and he's  
12     asking you about Harvey Zenk. He just finished on  
13     the prior page asking you about physical  
14     appearance, and you ask:

15                     "To mine?"

16     And he goes:

17                     "Yeah. Did he look like he was  
18                     fatigued? I understand there was a  
19                     lot of over time.

20                     Constable Black: I think that's very  
21                     tough to ask, tough to say. You know,  
22                     he wasn't sleeping by any -- or  
23                     falling asleep or anything. It wasn't  
24                     that obvious."

25     That's the answer you gave him, sir?

1 A Correct.

2 Q Nowhere in that answer do you even say  
3 he looked tired, sir?

4 A Well, then I went on to say that,  
5 "I was tired, yeah, I was tired, I  
6 wanted to go to bed, I had to get to  
7 work the next day."

8 Q You did say that, sir.

9 A And I clarified the answer later by --  
10 and he says:

11 "So I guess it is safe to assume that  
12 Derek was probably feeling the same  
13 thing, you know, he had been up all  
14 night too. He didn't sleep while he  
15 was at your house?

16 No, that's correct."

17 Q Yeah. So that's Sergeant Pearson  
18 making that suggestion to you.

19 A And I agreed with that, correct.

20 Q Yes, but your testimony today was that  
21 he looked tired. You're basically saying in that  
22 interview that, based on how you were feeling, you  
23 assumed he was tired because you were tired?

24 A I was tired.

25 Q But your testimony today was he looked

1 tired, and I'm saying to you that there's nowhere  
2 in that interview where you suggest that Derek  
3 Harvey-Zenk looked tired, even though that  
4 question was directly put to you?

5 A Well, in the interview there is,  
6 because it does say I was tired, like I'm just  
7 repeating myself here, but basically Sergeant  
8 Pearson clears up that same thing, so I agreed  
9 with that.

10 Q All right, sir, I'm not going to beat  
11 a dead horse. You did more than invite  
12 Harvey-Zenk to stay at your place, sir?

13 A I did.

14 Q You suggested he stay at your place?

15 A I said he was welcome to say.

16 Q Sir, you don't agree that you  
17 suggested he stay?

18 A Well, when I was downstairs and then  
19 came back upstairs, I said that he can stay the  
20 night, offered it, I offered that opportunity.

21 Q Sir, what I'm putting to you is, you  
22 not only offered him the opportunity, you  
23 suggested he should say?

24 A I offered the opportunity.

25 Q Are you saying you didn't suggest that

1 he should say?

2 A I offered it.

3 Q All right, sir, I'm going to turn you  
4 please again to the same interview -- or this time  
5 actually I'll take you to the interview you gave  
6 with the insurance adjuster?

7 A Okay.

8 Q This would be Exhibit 162, found at  
9 book Q-2.89.b.25. I'm going to take you to page  
10 3056, please? I'm going to take you to the fourth  
11 line on page 3056.

12 "We looked around the basement for a  
13 while. Afterwards, I suggested that  
14 Derek might want to stay the night  
15 because it was late and again only  
16 because of the fatigue factor."

17 Do you see that, sir?

18 A I do, yeah.

19 Q And there you had no problem using the  
20 word "suggest"?

21 A Again, this is the words chosen by  
22 this particular person that took the interview  
23 here. But, yeah, it says I suggested.

24 Q You signed this, sir?

25 A Yes.

1 Q And you conceded last day that you  
2 read this?

3 A That's correct, yes.

4 Q And you understood that this was a  
5 document being prepared in anticipation of  
6 possible legal action?

7 A It was -- I certainly did sign it,  
8 that's correct.

9 Q And sir, you are not trying to  
10 distance yourself from what it says, are you?

11 A No, I'm not at all.

12 Q You also indicated in here that Ken  
13 suggested that Derek stay. Do you see that?

14 A Where?

15 Q This is in the last paragraph on the  
16 same page in the third line:

17 "I later learned from Ken that he had  
18 also suggested that Derek might want  
19 to stay."

20 A I see that, yes.

21 Q So it was more than an invitation, it  
22 was a suggestion, sir?

23 A Again, it's a matter of semantics at  
24 that point. What I recall in my conversation with  
25 Derek at the time was that he was more than

1 welcome to stay.

2 Q So you are not accepting that it was a  
3 suggestion?

4 A Again, anybody was welcome to stay.  
5 So it was very clear that anyone could stay. It  
6 was free, the home was free for anybody.

7 Q What concerns did Tracy Fudge and  
8 Kelly McLure express that evening, sir?

9 A Well, they were talking about Dave  
10 Harding and about the fact that -- the issue with  
11 him that he was intoxicated.

12 Q What concerns did they express?

13 A They basically said that he was -- she  
14 was concerned about Dave, and clearly I was as  
15 well.

16 Q When you say she, who are you  
17 referring to?

18 A Well, I recall Fudge, I believe,  
19 mentioned that.

20 Q And, sir, when you gave your statement  
21 to the Professional Standards Unit, you understood  
22 that it was in connection with a criminal  
23 investigation?

24 A Yes, I did.

25 Q And you were very, very careful in the

1 words you chose and what you had to say to them,  
2 sir?

3 A You know, it was an interview like  
4 this, and I'm just trying to be absolutely honest  
5 as I can here.

6 Q Yes, sir. And I'm going to show you  
7 what you said at that interview, sir. If you can  
8 turn again, please, to Exhibit 164? This is again  
9 at book F-1 tab 35.c. And I'm going to take you  
10 down to the bottom of page 906.

11 A Yes.

12 Q "Constable Black: I do recall Chris  
13 Humniski leaving but I know he lives  
14 in the area. I remember talking to  
15 him. T.J., the young guy on the  
16 shift, he left pretty early himself.  
17 I do recall the girls leaving and  
18 being concerned about people driving."

19 Do you see it says that, sir?

20 A Yes, sir.

21 Q And what it refers to there is  
22 "people"?

23 A Correct.

24 Q And people is more than one, would you  
25 agree with me, sir?

1           A     That's correct.

2           Q     And so their concern wasn't just about  
3 Dave Harding, it was about people --

4           A     Correct.

5           Q     -- drinking and driving, sir?

6           A     Again, after two and a half years of  
7 saying that, whether it was Dave Harding or  
8 generally just saying the term, I -- Dave Harding  
9 was definitely an issue at my house.

10          Q     Well, sir, you would agree with me  
11 that it wouldn't be a surprise to have concern  
12 about people driving, given that they had been out  
13 all night at a bar and then at your place where  
14 there's alcohol available?

15          A     You know, again, I can't comment after  
16 two years or two and a half years about one  
17 particular word. Whether I meant to say Dave  
18 Harding at the time, or the fact that we were --  
19 that there was a lot of people there, again, I  
20 can't make comment on that. It's over two years  
21 ago.

22          Q     You also say in there, sir, that even  
23 the girls offered to be designated drivers if need  
24 be. Do you remember making that comment, this  
25 time in your insurance statement, sir?

1 A Yes.

2 Q And, sir, so you have a couple of  
3 people offering to be designated drivers?

4 A Again that, from what I recall, is  
5 based on the behaviour of Dave Harding because we  
6 were conversing back and forth in regards to his  
7 behaviour.

8 Q Well, sir, it's just that you again  
9 use plural, the "girls" offered to be designated  
10 "drivers"?

11 A Again, I'm not -- I wasn't sure  
12 whether or not, again --

13 Q What weren't you sure of?

14 A Well, I'm just not sure how that, you  
15 know, after two years, whether I'm saying  
16 something more -- you know, I know the concern was  
17 Dave Harding. And whether I used people here,  
18 that's, to me that's a semantic.

19 Q That's a semantic, sir, as to whether  
20 there is one or more?

21 A I know what I meant. It was concern  
22 for Dave Harding, that's all.

23 Q So even though your memory was better  
24 back then, we are being offered by you to rely on  
25 your statement today about your recollection?

1           A     Again, to me, it's a semantic.

2           Q     Sir, tell us about Harvey-Zenk's  
3     departure.

4           A     We were basically talking in the  
5     kitchen, and the conversation came up that he was  
6     able to do renovation, and actually in particular  
7     he can do some flooring work. And so it was  
8     relatively, I believe, obvious that everyone knew  
9     that I just built a house, and we went downstairs  
10    to go take a look. And on Thursday I disclosed,  
11    and we talked about this, that I went downstairs  
12    with him. And we had a conversation about the  
13    downstairs and about work that possibly he could  
14    do and that he could offer to do.

15                    After some time downstairs, we came  
16    back up, and at that point, basically said, you  
17    know, that's -- you can stay. And Ken Azaransky  
18    was in the living-room at that point, and he was  
19    up. And basically I just went to the bathroom,  
20    because those two guys were close, they were  
21    together I guess. And when I came back out of the  
22    bathroom moments later, Harvey-Zenk was gone.

23           Q     Okay. He just kind of disappeared,  
24    kind of evaporated?

25           A     He was gone.

1 Q Sir, you seem to have a very good  
2 recall of this event, of him leaving like that,  
3 sir?

4 A I do.

5 Q And you, forgive me for saying so,  
6 didn't appear to have much of a memory of a lot of  
7 other things that we talked about, sir?

8 A Well, this was clear because this was  
9 the end of the night.

10 Q And sir, you would agree with me that  
11 if there was concern about Harvey Zenk drinking,  
12 it would give you some comfort to know that you  
13 played no role in his departure, that he just kind  
14 of left without you having an opportunity to do  
15 anything about that, sir?

16 A I had no concern about him leaving. I  
17 went to the bathroom, and when I came back, he was  
18 gone. So there was no control of that, you are  
19 right.

20 Q But it kind of alibis his departure  
21 for you in that sense, sir?

22 A Pardon me?

23 Q It kind alibis his departure for you  
24 in that sense, sir?

25 A I don't understand the question?

1           Q     Well, he just left and you didn't have  
2     any opportunity to do anything about it, to stop  
3     him or anything like that?

4           A     No, it wasn't that at all.

5           Q     Sir, you understand there's a rumour  
6     circulating in the Winnipeg Police, that has been  
7     offered to the Commission, that Harvey-Zenk was  
8     one of those persons who needed to be taken care  
9     of and that arrangements had been put in place,  
10    but somehow he managed to leave your place. You  
11    are aware of that, sir?

12          A     I am.

13          Q     Would you comment on that, please?

14          A     That's misinformation.

15          Q     I'm going to suggest to you, sir, that  
16    that's exactly what happened?

17          A     That's incorrect.

18          Q     Sir, did you ever ask Derek  
19    Harvey-Zenk how much he had to drink?

20          A     I don't recall if I did.

21          Q     Sir, you would agree with me that this  
22    would be one of the things that you would remember  
23    if you had asked him, sir?

24          A     Correct.

25          Q     So I think you're telling us that you

1 didn't ask him?

2 A I don't recall if I asked him that.

3 Q Well, sir, you certainly had reason to  
4 be concerned after there was a fatal accident  
5 involving Derek Harvey-Zenk, the next day, and you  
6 learned that he had refused to provide a sample,  
7 sir?

8 A I later learned, I'm not exactly sure  
9 at what time or point, but I did later learn.

10 Q It wasn't too long after, you would  
11 agree with me, sir?

12 A Yeah, again, I'm not sure of the time,  
13 though.

14 Q And you were aware that he had been  
15 held at the East St. Paul Police Station and that  
16 alcohol was considered to be a factor, sir?

17 A I knew he was in custody at the East  
18 St. Paul Police Station when I was advised by  
19 Sergeant Humniski initially, yes, sir.

20 Q I will go through that with you in a  
21 little more detail with you shortly, sir. The  
22 point is, you certainly would have turned your  
23 mind back, learning those things, to what he might  
24 have had to drink at your place, would you not,  
25 sir?

1           A     You know, I turned my back on -- or  
2     tried to think of a lot of things and tried to  
3     focus in.

4           Q     Yes.  And certainly had you asked him,  
5     what did you have to drink, you would have  
6     remembered it, sir.  It would have been a couple  
7     days later that you would have turned your mind  
8     back?

9           A     You're asking me at two and a half  
10    years after the fact if I recall asking him that.  
11    I don't recall asking him that.

12          Q     But, sir, would you not have had that  
13    come to mind a few days after that as an important  
14    piece of information, given what had happened?

15          A     Again, I don't know if I asked him  
16    that.

17          Q     Sir, I understand that you met with  
18    Mr. Minuk, the prosecutor, on the 11th of July,  
19    2007?

20          A     Yes.

21          Q     How long did that meeting last, sir?

22          A     I have no idea.

23          Q     What took place during the meeting?

24          A     We basically sat in his office and  
25    discussed the up and coming court case.

1 Q Did you go over your expected  
2 testimony, sir?

3 A I don't recall if I did.

4 Q I'm going to read a passage to you  
5 that was submitted to the judge by Mr. Minuk in  
6 court, and I'm going to read that to you because I  
7 want you to comment on the accuracy of the  
8 information contained in that passage. This is  
9 found in volume J at tab 62. It is Exhibit 8.

10 THE COMMISSIONER: J?

11 MR. PACIOCCO: J, tab 62, Exhibit 8,  
12 at page 1623, 1623.

13 BY MR. PACIOCCO:

14 Q Are you ready, sir?

15 A I am.

16 Q This passage is eight lines long,  
17 starting at line 20, this is what was reported to  
18 the court:

19 "All of the people with whom the  
20 accused was with that evening were  
21 interviewed by Professional Standards.

22 The homeowner.."

23 who I take it would be you,

24 "...related that the gathering came to  
25 an end at his residence when he began

1 to clean up and retire for the evening  
2 or early morning, near or just after  
3 4:00 a.m. on February 25th. He told  
4 investigators that some of his  
5 colleagues remained at his home and  
6 when he woke, around 6:30 a.m., those  
7 who had remained were readying to  
8 leave. One of these persons was the  
9 accused."

10 Sir, do you take issue with the  
11 description of events that was provided by  
12 Mr. Minuk to the court on August 22, 2007, in the  
13 passage I just read you?

14 A I take -- I'm sorry, the last part I  
15 missed that?

16 Q Do you take issue --

17 A Oh, I'm sorry, yes, I do.

18 Q -- with what was said?

19 A Absolutely.

20 Q What do you disagree with?

21 A Well, the fact I retired for the  
22 evening. From what it sounded like, I retired at  
23 4:00 a.m. That did not happen.

24 Q It sounds like you went to sleep and  
25 woke up at 6:30, and came out and there were still

1 people at your house?

2 A That's correct, the way it reads,  
3 that's what it sounds like.

4 Q So you're suggesting you never told  
5 him that, sir?

6 A That's misinformation, I did not --  
7 that's misinformation.

8 Q And sir, over on page 1634 of the same  
9 transcript, this time at line 11 on page 1634, the  
10 court asks a question at line five, the judge:

11 "And the gathering sort of came to an  
12 end you said at around 4:00 o'clock in  
13 the morning, but some stayed is --  
14 Mr. Minuk: Yes, it's the owner of the  
15 home couldn't really identify who, how  
16 many stayed, why they stayed."

17 Now, sir, you're shaking your head. Do you  
18 disagree with that as well, sir?

19 A Disagree, yes.

20 Q You have no idea where Mr. Minuk would  
21 have got that information from?

22 A That's misinformation.

23 Q Are you sure that that didn't come  
24 from your interview with him, sir?

25 A That's misinformation.

1 Q And did you ever suggest to Mr. Minuk  
2 that because Harvey-Zenk was not a senior guy,  
3 that you and the other senior guys would not pay  
4 much attention to him?

5 A I don't recall if I did that. I don't  
6 recall if I said that.

7 Q Does that sound like something you  
8 would say, sir?

9 A No, I'm very -- anybody who knows me  
10 as a police officer would know that I'm willing to  
11 talk to anybody.

12 Q Okay. Sir, I'm not suggesting  
13 directly that Mr. Minuk attributes that to you.  
14 It's just a comment he made to the judge, and  
15 we're trying to find out where he might have got  
16 it from?

17 A I don't know where he got that from.

18 Q Now, sir, I'm going to suggest to you  
19 that you did in fact have concerns about how much  
20 Harvey-Zenk had to drink before he left your  
21 place. And I take it, sir, you are not going to  
22 agree with that?

23 A I agree.

24 Q You agree you had concerns?

25 A No, no, I agree -- I disagree with

1 your last comment.

2 Q Sir, you were concerned from the  
3 outset about your exposure, your potential  
4 exposure as a result of the accident. Do you  
5 agree with that, sir?

6 A The exposure?

7 Q The exposure to civil liability?

8 A Again, I had questions that I had to  
9 get answers to, and I didn't know what any  
10 ramifications would be.

11 Q And those questions had to do with  
12 civil liability, sir?

13 A I talked to the insurance company and  
14 then they directed me to another broker again in  
15 regards to that.

16 Q Sir, why did you talk to the insurance  
17 company?

18 A Because I had questions.

19 Q What kind of questions?

20 A I don't recall two and a half years  
21 later exactly what they were, but I wanted  
22 certainly to find out some -- find out exactly how  
23 this would affect me or my family, and I had to  
24 put them into perspective as well.

25 Q Let's say it straight, sir, you were

1 worried about being sued.

2 A I had, you know, again, is that a  
3 possibility? Of course it is. But, you know, I  
4 just wanted to find out exactly what the  
5 ramifications are. I have never been involved in  
6 anything such as this before.

7 Q I'm going to suggest to you, sir,  
8 that's the only possibility, that's the only  
9 reason you'd go and see your insurance company,  
10 you were concerned about being sued?

11 A I had questions.

12 Q Sir, I'm going to take you to your  
13 statement to the insurance company, please. This  
14 again is Exhibit 162 found at tab Q-2.89.b25,  
15 Q-2.89.b.25, page 3053?

16 THE COMMISSIONER: What page is that?

17 MR. PACIOCCO: 3053.

18 THE COMMISSIONER: Thank you.

19 BY MR. PACIOCCO:

20 Q And I'm going to take you right to the  
21 top of the page. It begins like this:

22 "Voluntary statement of Sean Kevin  
23 Black. I allow James Dube Spraggs  
24 Adjusters and Wawanesa Mutual  
25 Insurance to collect, use, or expose

1                   personal information that I possess  
2                   with regard to the possibility of a  
3                   claim arising from an accident on or  
4                   about February 25, 2005."

5   Do you see that, sir?

6           A     Yes, sir.

7           Q     It's pretty clear there that this had  
8   to do with the possibility of a claim, did it not,  
9   sir?

10          A     Correct.  And the way I read the top  
11   portion of that, it certainly was the property of  
12   them, and I didn't -- again, to me, I wanted to  
13   fulfill and get -- or get answers to the  
14   questions.  And when I read that, it was clear to  
15   me that it was their property.  And again, what  
16   happens after that, I couldn't tell you.  Is it a  
17   possibility?  Sure, it is.

18          Q     That's why you went, sir?

19          A     I had a lot of questions to ask.

20          Q     Sir, you even had concerns in your  
21   dealings with the police about your civil  
22   liability?

23          A     I don't recall that.

24          Q     Well, on March 3rd, do you remember at  
25   10:19 p.m., you are expected at the Professional

1 Standards Unit to go and give a statement.  
2 There's a call saying that you, Kelly McLure and  
3 Dave Azaransky are coming. Do you recall that  
4 event, sir?

5 A I do recall having to go down there,  
6 yes.

7 Q This is March 3rd?

8 A Yes.

9 Q Very early on in the --

10 A Correct.

11 Q -- investigation?

12 A Okay.

13 Q And then Sergeant Anderson calls to  
14 the Professional Standards Unit and he says that  
15 you and Azaransky would like to postpone your  
16 interview to consult with the Winnipeg Police  
17 Association. And you, of course, already knew  
18 that you could consult with the Winnipeg Police  
19 Association from the shift briefing that had  
20 occurred the day before on March 2nd; correct?

21 A Correct.

22 Q And so you're going to go to the  
23 interview and then something happens to change  
24 your mind. And at this point you decide you want  
25 to talk to the Winnipeg Police Association. And

1 this is what Sergeant Anderson records to the  
2 Professional Standards Unit.

3 "They are concerned about the impact  
4 their statements may have on civil  
5 litigation and/or the Winnipeg Police  
6 Association regulation matters in this  
7 incident."

8 Do you agree with that, sir?

9 A I don't know what James Anderson said.

10 Q Sir, are you suggesting that he did  
11 not understand why you decided, at the last  
12 minute, to not attend that first meeting?

13 A I recall there being concern in  
14 regards to how we were going to be handled in  
15 terms of being questioned, whether we were going  
16 to be civilian, based on civilian witness, whether  
17 this was going to be a police witness. We had  
18 nothing to hide and we certainly wanted to come  
19 forward with all the information. But at that  
20 point, we wanted to basically make sure that  
21 everything was, you know, we had our own personal  
22 interests.

23 Q Well, his information was that you  
24 were concerned about the impact your statements  
25 would have on your civil liability, sir. And

1 you're telling us you have no idea where he got  
2 that impression?

3 A Again, you know, whether -- where he  
4 got that from, I'm not sure. Whether it was  
5 mentioned or not, I don't know.

6 Q I'm going to suggest, sir, that it  
7 came from you?

8 A Well, again, two and a half years  
9 later, did I have questions about this incident, I  
10 certainly did, and that's why I went to talk to my  
11 insurance about this incident. Did I have  
12 questions about my career as a police officer?  
13 Did I have questions about the impact as a police  
14 or civilian witness? I certainly did. I had a  
15 lot of questions that I wanted to ask. You know,  
16 we came forward with the information, we wanted to  
17 provide the investigators with everything that was  
18 available.

19 Q Sir, you were required to come down to  
20 provide that information, you didn't go forward  
21 with it, sir.

22 A You know what, and we talked about  
23 this, because Jim Anderson contacted me after the  
24 incident and he mentioned that we were going to be  
25 approaching Professional Standards Unit in regard

1 to this. And I thought that was a fantastic idea.

2 I thought, let's get the ball rolling and assist.

3 Q Sure, sir, because you wanted to be  
4 cleared effectively, because you were concerned  
5 that you could be civilly liable, because a man,  
6 who I'm suggesting to you, you had reason to  
7 believe shouldn't have been drinking -- driving  
8 was allowed to leave your place?

9 A No.

10 Q Sir, you were aware that on  
11 March 2nd --

12 A That's two questions by the way.

13 Q Yes. Go ahead.

14 A Sorry, and if you can just go back to  
15 the same question -- the first question. You said  
16 that I was concerned about his drinking and  
17 driving?

18 Q Yes, sir?

19 A That's not -- there was no concern  
20 about his drinking and driving. The sobriety, as  
21 far as I was concerned, I saw no obscure behaviour  
22 there.

23 Q All right. So you were confident he  
24 wasn't drunk, sir?

25 A Yes.

1 Q And so, sir, why did you feel that you  
2 were exposed to civil liability?

3 A Because I wanted to be open and honest  
4 right from the very beginning and that's -- when I  
5 talked, when James Anderson talked to me about  
6 doing this, I thought it was a great idea.

7 Q Well, sir --

8 A I had no concerns about it.

9 Q -- on March 7th, you received a  
10 telephone message from Sergeant Girard asking to  
11 see you the next day, March 8th; do you recall  
12 that, sir?

13 A No.

14 Q And there was no meeting on March 8th,  
15 sir. In fact, it didn't take place until  
16 March 11th.

17 A Okay.

18 Q And sir, that was two weeks after the  
19 collision?

20 A Yes.

21 Q You agree with me you were a pretty  
22 central witness, a pretty important witness to  
23 this event?

24 A Yes.

25 Q Sir, you understand that in policing,

1 you want to get to your key witnesses as soon as  
2 possible?

3 A Yes.

4 Q And you want to do that so that their  
5 memory is fresh, sir?

6 A Yes.

7 Q And you also want to do it where  
8 there's any possibility that they may consult with  
9 other witnesses who might influence the way they  
10 provide their testimony, sir?

11 A Yes.

12 Q Yet it took two weeks for you to go  
13 and give your statement, sir?

14 A Yes.

15 Q It's very unusual, isn't it?

16 A No. Again, there were questions that  
17 needed to be asked and it certainly didn't -- none  
18 of the evidence from within the two-week period  
19 would have changed. When I went to meet with  
20 Professional Standards Unit, I disclosed and told  
21 my story, I had nothing to hide.

22 Q When your interview began, you were  
23 uncomfortable that it began off the record, sir.  
24 Do you remember that?

25 A Yes. Well, I wasn't sure if we were

1 or if we were not.

2 Q Well, sir, at one point they indicated  
3 to you that they are going on the record, and you  
4 don't remember indicating to them that you would  
5 have preferred it all be on the record?

6 A Yes, I do.

7 Q Why were you concerned that some of  
8 the interview occurred off the record, sir?

9 A You know, I am not even -- at that  
10 point, I wasn't exactly sure what was involved in  
11 Professional Standards, how an interview -- is it  
12 always taken on record or not, you know, if they  
13 tell you if they are doing it, I wasn't sure -- I  
14 was pretty nervous. It was a traumatic incident  
15 as well, and I certainly wanted to disclose my  
16 story and disclose my evidence.

17 Q Why would not having that part of the  
18 interview on the record be of concern to you, sir?

19 A Again, whether I just wanted to  
20 disclose -- I came forward with the information, I  
21 have nothing to hide here.

22 Q Sir, at the end of the interview when  
23 it was all over, this is what you said to Sergeant  
24 Girard, this is at page 915 of your PSU interview,  
25 again, Exhibit 164, page 915. It's at tab

1 F-1.35.c. At the end of that interview, sir, you  
2 said:

3 "Just one question. And this is  
4 something outside of the matter of  
5 here. But like, I'm being kind of  
6 brought here as a police witness or as  
7 a witness?"

8 A Right.

9 Q Do you remember asking that question?

10 A Yes.

11 Q And you were told as a witness.

12 What's the difference, sir, between being a police  
13 witness and being a witness?

14 A You know, again, there was many things  
15 that were running through my mind. This was very  
16 traumatic incident, and I certainly wanted to know  
17 how things impacted me as a police officer, me as  
18 providing information. I wanted to come forward  
19 with the information, but I certainly wanted to  
20 cross the T's and dot the I's, and look after the  
21 interests for my family and for my own -- for my  
22 own sake. I wasn't sure how it would impact me as  
23 a police officer.

24 Q That's it, sir, you were concerned  
25 about your job?

1           A     Some of -- yeah, I had concerns about  
2     that, yes.

3           Q     It certainly would have been very  
4     difficult for you to go in there, had it been the  
5     case, and say, you know what, we were drinking  
6     quite a bit and the guy left and he never should  
7     have left?

8           A     That wasn't going to happen because  
9     that's not what happened.

10          Q     Well, sir, you also indicate at the  
11     end of that interview that you, if you could turn  
12     back the clock, you certainly would?

13          A     I certainly would. Today I would do  
14     the same.

15          Q     What would you do differently?

16          A     I would, you know, there's -- I'd take  
17     it right from the very beginning. And, you know,  
18     whether I go to Branigan's or not, I certainly  
19     wouldn't go there, and I certainly would try and  
20     do something differently, whatever it is. But I  
21     would definitely not have this. There's not a day  
22     that goes by that I don't think about this.

23          Q     I have no doubt that's true, sir. I  
24     am sure everybody here understands --

25          A     Absolutely, and everyone here thinks

1 about this family and everybody. I feel awful for  
2 them.

3 Q All right, sir. And I am suggesting  
4 to you that one of the things you would have done  
5 differently is you wouldn't have let Derek  
6 Harvey-Zenk leave your place?

7 A No.

8 Q Sir, you discussed this matter with  
9 quite a few other people?

10 A Yes.

11 Q You had a discussion with Cecil  
12 Sveinson, we understand?

13 A Yes.

14 Q And he basically talked about seeing  
15 you at a recruit social at the Windsor Park Inn?

16 A I don't think it was a recruit social,  
17 it was more of a benefit association, from what I  
18 remember.

19 Q Tell us about your recollection of  
20 that meeting?

21 A I approached Cecil because I know  
22 Cecil, he was in class after me. We were  
23 relatively at the Academy at the same time. And I  
24 knew that he was a family member, and I just  
25 wanted to go up to him and talk to him and

1 basically shake his hand. And again, it was a  
2 highly emotional thing for me, and I knew the  
3 connection that he had with Crystal. To me, I,  
4 you know, I just wanted to go up to him and talk  
5 to him about it.

6 Q The account he gives, I'm not  
7 suggesting he would rule that out entirely, sir,  
8 but the account he gives was you went up there and  
9 you told him you didn't want him to think it was a  
10 big drinking party?

11 A Yeah, I said something to the effect  
12 of a wild party or something like that. I don't  
13 exactly remember the specifics.

14 Q Part of it, sir, was an attempt on  
15 your part to try and make sure he wasn't blaming  
16 you for the incident?

17 A No. You know, there was a lot of  
18 rumour, innuendo going around throughout,  
19 conversations and anything else. But it was more  
20 a personal thing that I had with him.

21 Q All right. Sir. You also had  
22 conversations with Rodrigo Bravo, your good  
23 friend, about this, sir?

24 A I don't -- I don't recall exactly  
25 specifically. Again, we are not the tightest of

1 friends anymore. We are good friends but we don't  
2 see each other all the time and certainly haven't  
3 talked about this in a long time. And I don't  
4 recall the last time we even did.

5 Q You were seeing him regularly around  
6 the time of incident, sir?

7 A I was talking to him and, yeah, phone  
8 calls and stuff. But that's because he was living  
9 in Winnipeg at the time.

10 Q Yes, sir. But I'm suggesting to you  
11 that it's obvious you would have talked to him  
12 about this incident, sir, in some detail?

13 A Again, I don't recall if I did. If  
14 we -- we certainly haven't done this for a long  
15 time. I, after this incident occurred, I ended  
16 up, a lot of my feelings and emotions, I tried to  
17 keep inside and I didn't want to talk about this  
18 for a long time. I had my supports that I went  
19 to, but I don't recall exactly what I said or if  
20 we had any conversation.

21 Q I'm just going to suggest to you, sir,  
22 that you were at that time good friends, that both  
23 of you had effectively hosted events --

24 A Right.

25 Q -- that would have contributed in the

1 alcohol that Mr. Harvey-Zenk would have had?

2 A Right.

3 Q And that certainly Mr. Bravo would  
4 have been curious about what had happened, and you  
5 might have also been concerned about civil  
6 liability, the two of you both having that same  
7 concern, would have talked about it?

8 A Sir --

9 MS. LABOSSIÈRE: I have an objection.

10 THE COMMISSIONER: Just a second.

11 What's your objection? Come up here, please.

12 MS. LABOSSIÈRE: Mr. Commissioner, I  
13 have sat by through the course of the Inquiry when  
14 my learned friend, Commission Counsel has made  
15 suggestions to the witnesses, including Constable  
16 Black, about matters he has no ability to prove,  
17 in fact, can't prove. And this is yet another  
18 example of it.

19 The first one that occurred today was  
20 when he suggested to Constable Black, or Sergeant  
21 Black, that he had specific concerns about  
22 Harvey-Zenk's impairment, that steps were taken to  
23 ensure that he got a safe ride home and he slipped  
24 away. He acknowledged it was a rumour. He put it  
25 to him as a suggestion, after it was denied. And

1 certainly as a result of that, Commission Counsel  
2 has no ability whatsoever to prove that. Now,  
3 he's asking Sergeant Black about conversations he  
4 had with Rodrigo Bravo.

5           You will remember specifically,  
6 Mr. Commissioner, that when I asked questions of  
7 Mr. Bravo specifically on this area, Mr. Bravo  
8 conceded that, yes, he did ask Sergeant Black  
9 about the incident, and Sergeant Black's response  
10 was, we can't talk about the incident. In the  
11 circumstances, in my view, it's totally unfair to  
12 put a suggestion that is anything other than that  
13 to him.

14           THE COMMISSIONER: I don't think it's  
15 unfair at all. He's entitled to put proper  
16 suggestions to him, and he did so.

17           Go ahead, Mr. Paciocco.

18           MR. PACIOCCO: What's unfair,  
19 Mr. Commissioner, is putting the specific evidence  
20 of other witnesses to this witness before he  
21 answers the question about the nature of the  
22 conversation he had.

23 BY MR. PACIOCCO:

24           Q     So you're saying you don't remember  
25 any conversation with him?

1 A No, sir.

2 Q You had conversations with Sergeant  
3 Humniski?

4 A Yes.

5 Q And in fact, Sergeant Humniski is the  
6 one who told you about this incident, sir?

7 A That's correct.

8 Q He took you out into the parking lot?

9 A Yes, we were in the parking lot.

10 Q And he told you that Mr. Harvey-Zenk  
11 was going to be charged?

12 A He was in custody.

13 Q He told you also that he was going to  
14 be charged, sir?

15 A I knew he was in custody, so I could  
16 only assume that he was being charged. I mean,  
17 you put it together, it kind of makes sense.

18 Q Sure it does.

19 THE COMMISSIONER: Mr. Paciocco,  
20 asides, I will not accept.

21 MR. PACIOCCO: I accept that.

22 BY MR. PACIOCCO:

23 Q Sir, can you turn to your transcript,  
24 please?

25 A I'm sorry, which?

1           Q     This is at page 54 of your transcript  
2     in your interview with Mr. Clifford.

3           A     Okay, yeah.

4           Q     Page 54, line five, Mr. Clifford has  
5     just finished asking you about the conversation  
6     with Sergeant Humniski?

7           A     Yes.

8           Q     "I was advised, I recall I was, our  
9                 conversation was the fact that he was  
10                involved in an accident and that he  
11                was being charged for the accident."  
12     Does that refresh your memory, sir?

13          A     Well, again, after two and a half  
14     years, making the assumption that he's being  
15     charged or in custody, I recall Chris saying that  
16     he was in custody. And after two and a half  
17     years, I can only assume that he's being charged  
18     for it as well.

19          Q     But you were careful in the answers  
20     that you gave to Mr. Clifford?

21          A     Sir, again, after two and a half  
22     years, I'm just making an assumption that being in  
23     custody and being charged are one in the same.

24          Q     You were being careful in the answers  
25     you gave to Mr. Clifford?

1           A     Yes.  Sir, I was being open and honest  
2     with my answers.

3           Q     Yes, sir.  And that's a very specific  
4     reference to what you were told, not to what you  
5     inferred, do you agree with that, sir?

6           A     I would say that I was told he was in  
7     custody in East St. Paul.

8           Q     You also had conversations with  
9     Constable Azaransky about what had transpired,  
10    sir?

11          A     I had talked to Ken about this  
12    incident.

13          Q     You talked about your concern for  
14    civil liability as well with Ken, did you not?

15          A     I don't recall what our conversations  
16    were with Ken in regards to that.

17          Q     Well, sir, I am inferring that because  
18    you were with him on March 3rd, when it was  
19    reported to Professional Standards that you were  
20    on your way down with him?

21          A     Again, my concerns at that point were  
22    the impact of what we, as police officers, were  
23    being involved in this incident and how it  
24    impacted, not only our careers, but as well many  
25    things, you know, whether we were being treated as

1 police, civilian witnesses, that type of thing. I  
2 wasn't sure.

3 Q Are you saying you didn't discuss  
4 civil liability concerns with him?

5 A I don't recall if I did, sir.

6 Q You also had such conversations with  
7 Kelly McLure?

8 A I don't recall having that  
9 conversation with Kelly McLure.

10 Q She was with you on the 3rd of March  
11 when the visit was cancelled, sir?

12 A Again, I'm not sure if she was even  
13 with us, but whether she -- we didn't go down on  
14 that date, from what you're telling me, so I don't  
15 recall where that conversation or anything even  
16 occurred.

17 Q You had conversations with Sergeant  
18 Anderson about this as well, sir?

19 A Well, Sergeant Anderson knew of the, I  
20 guess he was the liaison between us and  
21 Professional Standards, so he was the one who made  
22 the phone call, I can only assume.

23 Q So this was a big topic of  
24 conversation, sir?

25 A The topic of conversation, again, was

1 concerns for -- we had questions and we certainly  
2 wanted to speak with representation beforehand.

3 Q And so everyone was concerned and  
4 aware that you were worried about the implications  
5 this would have for you?

6 A For all of us.

7 MR. PACIOCCO: Sir, I have no further  
8 questions for you at this point at this time.  
9 Other counsel will.

10 THE COMMISSIONER: Mr. Zazelenchuk.

11 MR. ZAZELENCHUK: Thank you.

12 BY MR. ZAZELENCHUK:

13 Q Sir, you went into great detail on  
14 Thursday explaining to us how, when you were at  
15 Branigan's, you were not in the position to  
16 observe Mr. Harvey-Zenk at all. Do you recall  
17 that?

18 A Yes.

19 Q Yes. And both on Thursday and this  
20 morning, it was your evidence that you were  
21 focusing on your popcorn machine and you couldn't  
22 recall who was doing what at the party or  
23 gathering at your home?

24 A I wasn't just standing at the popcorn  
25 machine throughout the evening. I mean, it was a

1 time when I had difficulties with it and I dealt  
2 with it. But I also went out and to socialize  
3 with the other people that were there as well --  
4 there was other things.

5 Q But it's your evidence, both on  
6 Thursday and today, that you really can't tell us  
7 who had what to drink at your home?

8 A Sir, after two and a half years of  
9 trying to look back, I look back at the situation  
10 and the incident and I don't want to say  
11 definitively that somebody was drinking, when I  
12 can't recall if they were or not. I can assume  
13 that people were drinking at my residence, based  
14 on the fact that the bottle was empty at the end  
15 of the night. And I don't want to come here and  
16 tell you that nobody was consuming alcohol,  
17 because that's false information.

18 Q The point, sir -- go ahead?

19 A And people are drinking, but can I  
20 put, can I tell you that specifically someone is  
21 consuming? I know I was, sir, I was drinking.  
22 But to definitively say that somebody else was, I  
23 don't remember what they were drinking, whether  
24 they had a drink in their hand, what it was, I  
25 just don't remember.

1 Q Okay. Fair enough. My point was,  
2 sir, that if we read your statement to the  
3 Professional Standards Unit, which you have read?

4 A Yes.

5 Q And if we read your statement to the  
6 adjuster, which you have read?

7 A Yes.

8 Q That the whole tenor of both  
9 statements is that you can't tell us who had what  
10 to drink at your home. Isn't that correct?

11 A That's correct.

12 Q Okay. So maybe you can explain to me  
13 why you put in a call to the special prosecutor on  
14 May 12th of 2006? Can you tell us why?

15 A I made a call to him?

16 Q Yes?

17 A I don't recall if I made a call. And  
18 we are referring to Marty Minuk?

19 Q Yes?

20 A Um, and the date again is, sorry?

21 Q May 12th of 2006?

22 A Now, if I remember correctly, was  
23 court -- there was going to be a court case in the  
24 spring, or was it the one --

25 Q There was --

1           A     And then they moved it to the fall  
2     time.

3           Q     There was a preliminary scheduled for  
4     that spring, a preliminary inquiry.

5           A     Okay.

6           THE COMMISSIONER: Can you refer him  
7     to a page?

8           MR. ZAZELENCHUK: Certainly,  
9     Mr. Commissioner.

10          THE WITNESS: Is there any record of a  
11     conversation?

12          THE COMMISSIONER: That's what I'm  
13     asking him.

14          MR. ZAZELENCHUK: We will get to that.  
15     If Madam clerk would be good enough to give this  
16     witness Exhibit 48, which is R-4,  
17     Mr. Commissioner.

18          THE COMMISSIONER: I'm sorry?

19          MR. ZAZELENCHUK: R-4.

20          THE WITNESS: Thank you.

21     BY MR. ZAZELENCHUK:

22           Q     That whole book is one exhibit, so if  
23     you could turn to page 3401.35?

24          THE COMMISSIONER: Could I have the  
25     page number again, please?

1 MR. ZAZELENCHUK: 3401.35.

2 THE WITNESS: Sir, mine only goes to  
3 .27.

4 MR. ZAZELENCHUK: That may be my  
5 fault. I think when we got the extra handout, I  
6 had my secretary bind mine together.

7 THE COMMISSIONER: Well, I have it.  
8 The exhibit should be there, it should have it  
9 all.

10 MR. ZAZELENCHUK: Yes. Madam clerk  
11 has the other edition, Mr. Commissioner.

12 THE COMMISSIONER: Thank you.

13 MR. ZAZELENCHUK: Should that then  
14 become an exhibit?

15 THE COMMISSIONER: What exhibit number  
16 was it?

17 MR. ZAZELENCHUK: The booklet was  
18 Exhibit 48.

19 THE COMMISSIONER: Yes.

20 MR. ZAZELENCHUK: But Madam clerk  
21 is -- Madam clerk tells me that Exhibit 48 only  
22 goes as far as 3401.27. So I would ask that this  
23 next document be entered at this point, Your  
24 Honour.

25 THE COMMISSIONER: Thank you.

1 THE CLERK: As the next exhibit or  
2 part of 48?

3 MR. ZAZELENCHUK: Could we make it  
4 48b, and then they could be kept together?

5 THE CLERK: Exhibit 48b.

6 (EXHIBIT 48b: R-4, Additional  
7 Disclosure provided by Glenn  
8 McFetridge at the June 2 Hearings)

9 BY MR. ZAZELENCHUK:

10 Q If you could turn to page 3401.35? Do  
11 you have that, sir?

12 A Yes.

13 Q And if you will notice, the third  
14 entry from the bottom says:

15 "Call from and to Sean Black."

16 A Yes.

17 Q Does that help you at all, sir?

18 A It could very well be. It doesn't  
19 help me at all whether I made that call.

20 Q So you can't tell us why you would  
21 have put in a call to the prosecutor on May 12th  
22 of 2006?

23 A I know there was concern, or I wanted  
24 to get some information about what my involvement  
25 and how I was -- what was expected of me. And I

1 certainly hadn't heard back. Now, I'm not sure if  
2 that was in May, but I know in July or in August,  
3 whenever I met with Marty, and I don't recall the  
4 date, but I had some questions in regards to my  
5 involvement, I do recall that, and when I was  
6 expected, and when was court and, you know, things  
7 like that.

8 Q Let me just follow that up with one  
9 more point, sir. Mr. Minuk was employed by the  
10 government, and people who get paid by the  
11 government are required to log their time.

12 A Correct.

13 Q Lawyers normally log their time in  
14 tenths of an hour. It just makes sense.

15 A Okay.

16 Q And what's interesting is that this  
17 entry says:

18 "Call from and to Sean Black."

19 And the time is three/tenths of an hour. So if  
20 you give one tenth of an hour for just a call and  
21 leaving a message which is, take it from me, a  
22 normal thing to do.

23 A Right.

24 Q That would tell me that the second  
25 call, the call back would have been a substantial

1 call, because we've got a log in there for  
2 two/tenths of an hour, which is 12 minutes.

3 A Yes.

4 Q It's quite a long time, correct?

5 A Yes.

6 Q So can you help us out, does that jog  
7 your memory at all?

8 A It doesn't.

9 Q It doesn't?

10 A I'm sorry, you'll have to speak to Mr.  
11 Minuk in that regard. I don't have any notes on  
12 that or --

13 Q Okay. Let's move on. If we go  
14 forward 10 pages, we come to page 3401.45. Are  
15 you there, sir?

16 A I am.

17 Q And you will note that there is a log  
18 entry or a time entry for July 11th of 2007. Now,  
19 that's just a few days over a year ago, correct?

20 A Yes.

21 Q And you will notice that the time  
22 there is .8 of an hour, 48 minutes.

23 A Yes.

24 Q That's a real long time. Can you tell  
25 us what you and Mr. Minuk discussed for 48

1 minutes?

2 A This is a phone call?

3 Q No, this is a meeting.

4 A Oh, this is the meeting. Again, that  
5 was issues in regards to the up and coming court  
6 case.

7 Q Like what sort of issues?

8 A What I recall in the meeting, and I  
9 didn't necessarily take notes on any of that  
10 meeting, it was just that he was going -- he would  
11 talk about my expectations in the up and coming  
12 court case at that point, and just discussed that,  
13 those details.

14 Q Well, how long does it take some --  
15 how long does it take you to tell someone that you  
16 don't know what Harvey Zenk had to drink at  
17 Branigan's and you don't know what Harvey-Zenk had  
18 to drink in your home?

19 A You know, I don't recall the  
20 conversation I had with Mr. Minuk.

21 Q You see, I can understand that when  
22 you had the party at your house, you were off  
23 duty, you were relaxing after a hard day's work,  
24 you were having a couple of drinks and your mind  
25 wasn't focused --

1 A That's exactly it.

2 Q -- on the thing, on what was going on?

3 A That's right.

4 Q But when you met with Mr. Minuk, you  
5 met in your capacity as a police officer --

6 A Correct.

7 Q -- who was subpoenaed to give  
8 evidence --

9 A Correct.

10 Q -- in a criminal proceeding?

11 A Correct.

12 Q You were there on business?

13 A Yes.

14 Q Your mind wasn't focused on what you  
15 discussed for 48 minutes?

16 A At this point, I don't recall the  
17 conversation.

18 THE COMMISSIONER: You have no notes  
19 of that conversation?

20 THE WITNESS: I do not have any notes,  
21 sir.

22 THE COMMISSIONER: Isn't it customary  
23 for a police officer to make notes of a  
24 conversation with a Crown Attorney where he has  
25 been subpoenaed to testify?

1 THE WITNESS: I meet with Crown  
2 Attorneys and discuss cases and make phone calls  
3 on a variety, a variety of times, and I did not  
4 make any notes on this.

5 BY MR. ZAZELENCHUK:

6 Q Do you recall, during this meeting,  
7 and Mr. Minuk placing a call to a J. Anderson?

8 A I don't.

9 Q No. And the reason I ask you that is  
10 because, if you look at the log, it seems that  
11 your meeting and the phone call are logged as one  
12 entry?

13 A Yes. I saw that, yes.

14 Q Whose idea was this meeting on  
15 July 11th?

16 A Well, again, from memory, I believe  
17 that we were supposed to have a meeting, and  
18 whether it was cancelled or not, I'm not exactly  
19 sure, but this meeting, I believe it was  
20 Mr. Minuk's basic idea for us to get together and  
21 talk about the case.

22 Q Sir, it was Mr. Minuk's idea?

23 A I can only assume so.

24 Q Okay.

25 A Because I met with him at his office.

1 Q Sure. Just one last point. When you  
2 went to work on Friday, the 25th, 2005, February  
3 25th --

4 A Yes.

5 Q -- what route did you take to work?

6 A I don't recall.

7 Q Did you drive past the scene of the  
8 accident?

9 A No.

10 Q So you wouldn't have been able to give  
11 Mr. Minuk any information about the accident  
12 scene?

13 A No.

14 Q Correct?

15 A No.

16 Q Other than you have driven down that  
17 place many times, just like I have?

18 A Yes.

19 Q But the accident, you couldn't give  
20 him any information on?

21 A No.

22 Q And you couldn't give him any  
23 information on Mr. Harvey-Zenk's history of  
24 alcohol consumption?

25 A That's correct.

1 Q No. And you did that during the  
2 course of 48 minutes?

3 A I did what in the course -- I don't  
4 recall the conversation I had with Mr. Minuk.

5 Q Thank you.

6 A You're welcome.

7 THE COMMISSIONER: Mr. McDonald.

8 MR. McDONALD: I have no questions,  
9 Mr. Commissioner.

10 THE COMMISSIONER: Yes. I take it you  
11 want to go at the end, Mr. Labossiere?

12 MS. LABOSSIÈRE: I believe Mr. Jack is  
13 going at the end.

14 MS. HANLIN: We'll be going at the  
15 end.

16 THE COMMISSIONER: Okay.

17 BY MS. LABOSSIÈRE:

18 Q Thank you, Mr. Commissioner.

19 Sergeant Black, you will recall in  
20 your evidence on Thursday, Mr. -- Commission  
21 Counsel asked you some questions about how many  
22 times you recall being at Branigan's in a group  
23 with your shift mates prior to the incident on  
24 February 24th. Do you recall that?

25 A Yes.

1 Q And as I understand the evidence, sir,  
2 your shift mates would, from time to time, go to  
3 Branigan's as a group following a set of evening  
4 shifts; is that right?

5 A Correct.

6 Q And so by that, so that we're clear,  
7 once you worked your four or five days in a row on  
8 evenings, you might, from time to time, get  
9 together as a group and go out for drinks and  
10 snacks at Branigan's?

11 A Correct.

12 Q And as I understand it, sir, you  
13 arrived in District 3 sometime in December of  
14 2004?

15 A Correct.

16 Q And this incident took place in  
17 February of 2005, and so you had about three  
18 months or so of experience working in Division 3;  
19 is that right?

20 A Correct.

21 Q And for those who may not be familiar  
22 with the rotation of shift schedules, how many  
23 sets of evening shifts would there have been  
24 approximately between the time you were there in  
25 December to this incident in February?

1           A     Three to four.

2           Q     When you are working evenings, I  
3     assume there's another set of officers working  
4     days?

5           A     Correct.

6           Q     And there would also be another set of  
7     officers working nights; is that right?

8           A     That's correct.

9           Q     And apart from that, there are two  
10    sides, if you will, to the Police Service, there  
11    are those who work on A side and those who work on  
12    B side?

13          A     Correct.

14          Q     So there are essentially six separate  
15    shifts of officers who would work in Division 3,  
16    like elsewhere?

17          A     That's right.

18          Q     And are you aware, sir, from time to  
19    time do other shifts also get together at the end  
20    of their shifts?

21          A     That's right.

22          Q     Now, my learned friend also asked you  
23    some questions about that statement you made to  
24    the insurer. Do you recall the statement I'm  
25    speaking of?

1 A Yes.

2 Q And as I understand it, the way in  
3 which that statement was developed was that you  
4 went in, you met with the broker, he asked you a  
5 number of questions, you had almost an interview?

6 A Yes.

7 Q And at the end of the day, he prepared  
8 a statement. Is that right?

9 A Correct.

10 Q And so the statement that's at Exhibit  
11 162 isn't something that you wrote out on your  
12 own, with your own words; is that fair?

13 A That's fair.

14 THE COMMISSIONER: But did you sign  
15 it?

16 THE WITNESS: I did.

17 THE COMMISSIONER: And did you read it  
18 before you signed it?

19 THE WITNESS: Sir, when I went to the  
20 insurance company that same day, I was -- I did  
21 read it, and certainly this traumatic incident,  
22 everything was running through my mind, I quickly  
23 read through it and signed it.

24 THE COMMISSIONER: But you are an  
25 experienced police officer. Wouldn't you have

1 been careful to ensure that what somebody else  
2 wrote out was correct?

3 THE WITNESS: To me, it looked, and it  
4 appears absolutely what I said, and in regards to  
5 semantics or anything, yes. And I trust -- and I  
6 agree with what you're saying. I also, I knew I  
7 was going to Professional Standards Unit that day  
8 and I had just an abundance of things going on in  
9 my mind in terms of what was occurring here.

10 BY MS. LABOSSIERE:

11 Q Now, sir, as I understand it, you had  
12 been a police officer for approximately 14 years;  
13 is that right?

14 A At this point, in the accident.

15 Q At the time of the incident?

16 A That's right.

17 Q And as I understand it, sir, when you  
18 are working as a police officer, either  
19 investigating a crime or responding to calls for  
20 service, you carry a notebook with you; is that  
21 right?

22 A I do.

23 Q And I also understand that when doing  
24 those things, you actually take very detailed  
25 notes as to what you are observing, what is said

1 and what you see; is that right?

2 A Correct.

3 Q And as I understand it, sir, police  
4 officers do that so that you can recall with some  
5 precision what occurred; is that correct?

6 A Correct.

7 Q Why is that important, sir?

8 A It's very important to explain, for  
9 court or for anything else, to fulfill  
10 investigation, the report for court purposes. And  
11 it assists me in recall of specific details that I  
12 have seen at particular crime scenes, people that  
13 I speak to and comments that they make, certainly  
14 the notice of arrest, the arrest of the accused or  
15 suspects, or people that I speak to. There's a  
16 variety of things that I take notes that I think  
17 are very important to fulfilling an investigation.

18 Q And, from time to time, when you are  
19 either writing a police report or giving evidence  
20 in court in connection with your duties, do you do  
21 so without the benefit of your notebook?

22 A From time to time, I have done it in  
23 the past, but it would be in a very minor role,  
24 whether I just saw something that -- it may be a  
25 minor thing that I was involved with, but for the

1 most part, I use my notebook for recall.

2 Q And you are entitled to do so, are you  
3 not?

4 A Yes.

5 Q And I take it that if you were  
6 involved in an incident that an arrest that took  
7 place a few years earlier, you wouldn't -- you  
8 wouldn't try and recall with precision any details  
9 of an incident without the benefit of your  
10 notebook?

11 A If I remember it, I would say it. But  
12 if I don't recall it -- I want to speak about the  
13 specifics.

14 Q Has anyone ever suggested to you, sir,  
15 that it was unreasonable for you to have to rely  
16 on your notebook to recall precision details that  
17 occurred years before?

18 A Has anyone ever?

19 Q Ever suggested that was unreasonable?

20 A No.

21 Q Now, at the time of this incident,  
22 that is the time that you had people over at your  
23 house and you spent some time at Branigan's in  
24 February of 2005, I take it you didn't know that  
25 at some point you would be asked to give a

1 statement to the police, or that there would be a  
2 Commission of Inquiry where you would be asked to  
3 give evidence?

4 A Not at all. We went out to, like I  
5 said, to enjoy the evening. The purpose for me is  
6 to get to know people that I had relatively just  
7 met. I had no idea that this would happen. And  
8 when I did go, I basically wanted, like anything  
9 else, at the end of my shift -- I am sorry, I  
10 can't pronounce your last name, sir -- but he  
11 mentioned that it was a time to relax and focus in  
12 on getting to know people. That's what I wanted  
13 to do. So I had no idea that this tragedy would  
14 occur.

15 Q Now, just speaking of notes for one  
16 more second. Mr. Commissioner asked you some  
17 questions about your dealings with Mr. Minuk as  
18 the prosecutor in this case. And I take it, sir,  
19 that over the course of your 16 or 17 years of  
20 service, you have had many occasions to meet with  
21 Crown Attorneys to prepare for trial as a witness?

22 A Yes. Both in their offices, both  
23 before court, whether it's in the hallway, yes, I  
24 have.

25 Q And in those situations when you'd

1 meet with the Crown Attorney as a witness, have  
2 you ever taken notes of the preparations?

3 A I have never.

4 Q Are you aware of any other officer in  
5 Winnipeg that would adopt that practice?

6 A No.

7 Q Now, as I understand it, sir, as a  
8 police officer and someone who is required as a  
9 result to give evidence in a court of law, you are  
10 trained to be as precise as possible?

11 A That's correct.

12 Q You are trained not to guess?

13 A Yes.

14 Q You are trained to try not to make  
15 assumptions. Isn't that fair?

16 A Yes. I want clear and concise facts  
17 so I can present it to the next level.

18 Q Because if you can't say for certain,  
19 it would be unfair to everybody else; isn't that  
20 right?

21 A Absolutely, to everybody else.

22 Q And so if you don't know for sure, you  
23 would say, look, I don't recall or I can't say for  
24 sure?

25 A And in regards to the drinking, I

1 mentioned that this morning, I don't recall, and I  
2 could only guess. And I am not here to guess or  
3 provide assumptions, I am here to provide clear,  
4 concise facts.

5 Q You're not suggesting no one was  
6 drinking, you're just saying, look, I can't say  
7 specifically what individual A or individual B or  
8 individual C was drinking themselves?

9 A That's right.

10 Q Now, you were also asked a series of  
11 questions, Sergeant Black, about your observations  
12 as to the alcohol intake or the effects of  
13 alcohol, if you will, on those who were at your  
14 home on that evening?

15 A Yes.

16 Q And again, sir, I take it because of  
17 your numerous years of experience, you do have a  
18 lot of experience in dealing with or investigating  
19 others for drinking and driving type offences?

20 A I have had my share of experiences,  
21 yes.

22 Q And as a result, sir, you are  
23 experienced in being able to detect when someone  
24 might be under the influence of alcohol?

25 A Yes.

1           Q     And as I understand it, as a result of  
2     that, you were concerned with one officer, Dave  
3     Harding; is that right?

4           A     That's correct.

5           Q     And as I understand it, because of  
6     your concerns that he was under the influence of  
7     alcohol, you did more than suggest that he stay  
8     over or get a ride home, you actually ensured that  
9     he was getting home safely with other officers.  
10    Is that right?

11          A     Not only that, but I actually wanted  
12    to ensure -- initially I took him downstairs, and  
13    I wanted him to stay at my residence. And I took  
14    him downstairs and made him comfortable on the  
15    couch. And that brought me a sense of relief  
16    because I knew his level and his state. So I took  
17    him downstairs, and then at -- I don't recall  
18    exactly, when I went back down, he was still down  
19    there, and again I was relieved that he was taken  
20    care of, he was fine. And then when he appeared,  
21    he came upstairs, he appeared, and I knew he was  
22    going to be taken care of because there was going  
23    to be drivers that were going to be taking him  
24    home.

25          Q     And sir, I suggest that based on that,

1 you would agree with me that it's fair to say that  
2 if you had any other similar concerns with anybody  
3 else at your home that evening, you would have  
4 taken similar steps; is that right?

5 A I would have done the exact same  
6 thing.

7 Q Now, my learned friend, Commission  
8 Counsel, also asked you a series of questions in  
9 connection with, what he was suggesting, you had  
10 some concerns with civil liability. Do you recall  
11 that, those questions?

12 A Yes.

13 Q And as I understand it, sir, and I  
14 understand from your evidence, is that at the end  
15 of the day, you were satisfied that  
16 Mr. Harvey-Zenk was not intoxicated?

17 A Yes.

18 Q You knew that he was not impaired?

19 A Yes.

20 Q But notwithstanding that, immediately  
21 following the incident, there was significant  
22 media coverage which suggested to the contrary;  
23 isn't that fair?

24 A Correct.

25 Q And there was lots of suggestions

1 that, in fact, not only was Mr. Harvey-Zenk  
2 impaired, but he was impaired along with a number  
3 of other officers who attended at your home?

4 A Yes.

5 Q You knew this wasn't true?

6 A Yes.

7 Q But these suggestions were being made?

8 A Yes.

9 Q And is that why you had questions as  
10 to what ramifications there might be on you?

11 A Yes.

12 Q And that included, look, is this  
13 something I can get sued for? Is that one of the  
14 questions you had?

15 A I had questions because there was a  
16 lot of rumour and innuendo going around, and  
17 certainly, yeah, I had questions based on the,  
18 based on those details.

19 Q And beyond that, sir, Chief McCaskill  
20 was called to give evidence, and he made mention  
21 of an incident that was well known within the  
22 Winnipeg Police Service around the time, and that  
23 was an incident involving Kevin Tokarchuk. Are  
24 you aware of that situation, sir?

25 A I know of the name, somewhat the

1 details. But the investigation, I'm not wholly  
2 familiar with.

3 Q But you are aware, sir, that false  
4 allegations had been made against Winnipeg Police  
5 Service Officers, that they could have prevented a  
6 death?

7 A Yes.

8 Q And you are aware that, although it  
9 turns out police did nothing wrong, a number of  
10 officers were put on administrative leave, were  
11 taken out of their jobs, and treated as if they  
12 had done something wrong?

13 A Yes.

14 Q For 18 months?

15 A Yes.

16 Q And was this a concern of yours, that  
17 if you came forward and told the truth as to what  
18 happened, even though you knew you did nothing  
19 wrong, that you might find yourself in a similar  
20 situation?

21 A Absolutely. Again, there was lots of  
22 rumour and everything going on, and with  
23 everything together, I had no idea. That's why I  
24 asked about the police witness, civilian witness,  
25 I had a lot of questions.

1           Q     And I take it, sir, after having an  
2     opportunity to consult with the association and  
3     make your inquiries, you were satisfied that you'd  
4     be treated fairly by the Winnipeg Police Service,  
5     and you provided a full, frank statement as to  
6     what you knew?

7           A     I came forward and wanted to tell  
8     absolutely everything I knew.

9           MS. LABOSSIÈRE: Thank you, Sergeant  
10    Black. Those are my questions.

11          THE WITNESS: You're welcome.

12          MR. WEINSTEIN: I have no questions,  
13    but it's time for the morning break.

14          THE COMMISSIONER: You are right on,  
15    Mr. Weinstein. We'll take a 15 minute break.  
16    Thank you.

17          THE CLERK: All rise. This Commission  
18    of Inquiry will take a 15 minute recess.

19                   (Proceedings recessed at 10:57 a.m.  
20                   and reconvened at 11:13 a.m.)

21          THE CLERK: All rise. This Commission  
22    of Inquiry is now reopen.

23    BY MR. PROBER:

24          Q     Sergeant, in your 17 years as a police  
25    officer, you have undoubtedly met hundreds of

1 times with Crown prosecutors; right?

2 A Yeah.

3 Q And whether it's a drug case you meet  
4 with them about, whether it's a murder case,  
5 whether it's a gang case, whether it's a sexual  
6 assault case, you never make notes of meetings  
7 with Crown Attorneys?

8 A I have never.

9 Q No. And let me suggest to you there's  
10 two reasons for that. One is you don't have to  
11 testify, or don't expect to testify in court about  
12 your meeting with Crown prosecutor; right?

13 A Correct.

14 Q And two, you trust them; right?

15 A Yes.

16 Q Mr. Zazelenchuk tried to make  
17 something of a 48 minute meeting with Mr. Minuk,  
18 but a 48 minute meeting with a Crown prosecutor is  
19 not unusual, is it?

20 A No.

21 Q No. In fact, you could have been  
22 reviewing your statement that you had been given  
23 that you had given to PSU; right?

24 A I don't recall.

25 Q No, but, I mean, that's something that

1 could have happened?

2 A Correct.

3 Q Right. You obviously didn't have any  
4 notes of the incident when you went to Branigan's  
5 and went to your house, you weren't on  
6 surveillance; right?

7 A Correct.

8 Q Right. You were relaxing; correct?

9 A At Branigan's?

10 Q At Branigan's and at your house?

11 A Yes.

12 Q You weren't working, you weren't on  
13 surveillance, you didn't have your notebook with  
14 you; right?

15 A That's correct.

16 Q So you didn't have any notes to review  
17 with Mr. Minuk, but you did have a statement that  
18 you could have gone over with him?

19 A Yes.

20 Q I am not saying that you did, you  
21 can't recall, but -- and when you say you can't  
22 recall, you're talking about sitting here today,  
23 talking about an independent recollection; right?

24 A That's correct.

25 Q Yeah. And I kept hearing you say two

1 and a half years. Did I hear that?

2 A Yes.

3 Q It's three and a half, right?

4 A Okay.

5 Q Since '05.

6 A Yes.

7 Q Just to clarify that.

8 A Okay.

9 Q So it's longer than you thought.

10 A Okay.

11 Q It was probably just an accidental  
12 misstatement in talking about -- well, it's not an  
13 accidental misstatement, but your statement that  
14 you made to your adjuster, it was your adjuster.  
15 Again, when you gave that statement, or when you  
16 told him what happened and he made up a statement,  
17 prepared a statement I should say, the  
18 Commissioner asked you about it, whether you  
19 signed it and you read it. But, again, you  
20 trusted your adjuster, did you not?

21 A Yes.

22 Q Yeah. You trusted that he would  
23 reflect, maybe not word for word what you told  
24 him, but generally what you told him, correct?

25 A Yes.

1           Q     You didn't go through the statement  
2     and examine each word, word by word, did you?

3           A     No.

4           Q     No. You said that after this tragic  
5     event, there were a lot of rumours and innuendo,  
6     right, circulating in the media, in the police  
7     department, right?

8           A     Yes.

9           Q     And was one of those rumours and  
10    innuendo that there were some police officers that  
11    tried to take Derek Harvey-Zenk's keys away from  
12    him that night?

13          A     I don't recall when that came up, just  
14    recently when Cecil mentioned that.

15          Q     Is that the first time you heard it?

16          A     That, I don't -- I don't recall if I  
17    heard it before or not, but when Cecil mentioned  
18    it, obviously it's fresh in my, fresh in my  
19    memory.

20          Q     Isn't that something unusual that  
21    would have stood out in your mind that it  
22    happened?

23          A     That what, the keys?

24          Q     Yeah?

25          A     Yes.

1           Q     That there was some concerted effort  
2     made to take away somebody's keys.  That's  
3     something unusual, is it not?

4           A     Yes.

5           Q     And perhaps that's something that  
6     would stick in your mind even today it had  
7     happened?

8           A     Yes.

9           Q     And you never made mention of anything  
10    like that to your adjuster, right?

11          A     No.

12          Q     To PSU, right?

13          A     No.

14          Q     To the interview that was conducted by  
15    Commission Counsel, right?

16          A     Right.

17          Q     Because it didn't happen, I suggest?

18          A     It did not happen.

19          Q     Derek Harvey-Zenk, as you indicated,  
20    did not exhibit any unusual behaviour that night  
21    that you can recall; correct?

22          A     Correct.

23          Q     And that's exactly what you told your  
24    adjuster, correct?

25          A     Correct.

1           Q     I think you were asked at the end of  
2     the day on Thursday, last day of sitting last  
3     week, how can you say that no one consumed at a  
4     heavy rate? And I suggest to you, Sergeant, that  
5     you can say that because no one other than Harding  
6     was exhibiting signs of impairment; correct?

7           A     Correct.

8           Q     That's how you can say, as far as you  
9     are concerned, nobody was consuming alcohol at a  
10    heavy rate?

11          A     Based on my observations, yes.

12                   MR. PROBER: Right. Thank you, those  
13    are my questions.

14                   THE WITNESS: You're welcome.

15    BY MR. GREEN:

16          Q     Sergeant Black, my name is Michael  
17    Green. I'm counsel to Mr. Minuk.

18          A     Good morning.

19          Q     I have just a couple of questions for  
20    you.

21                   You met with Mr. Minuk at his office  
22    on July 7th of last year; is that correct?

23          A     I don't know specifically the date.

24          Q     Okay.

25          A     But I did meet with your client, yes.

1           Q     Right.  And that was at Mr. Minuk's  
2 office?

3           A     Correct.

4           Q     In downtown Winnipeg in the Trizac  
5 Building?

6           A     That's correct, sir.

7           Q     It's unusual to meet with Crown  
8 counsel in an office building, I take it, but  
9 Mr. Minuk is in private practice and that's what's  
10 different from your meeting with other Crown  
11 prosecutors; is that correct?

12          A     I've met Crowns in their office,  
13 though, as well.

14          Q     Okay.  Did you know Mr. Minuk before  
15 this meeting?

16          A     I knew of him, not personally, yeah, I  
17 could say because of previous court cases and  
18 stuff like that, I know of him.

19          Q     Okay.  And that would be both as a  
20 defence counsel and as a part-time prosecutor?

21          A     Yes.

22          Q     Okay.  But I do understand your  
23 evidence correctly that you have no specific  
24 recollection of what was discussed at the meeting  
25 with Mr. Minuk?

1 A Correct.

2 Q Okay. But we can probably safely  
3 assume that you went over your involvement in this  
4 matter on February 25th?

5 A Correct.

6 Q And that would involve going over the  
7 time spent at Branigan's and the time spent at  
8 your own residence?

9 A I can only assume.

10 Q Yeah. And at that time, you would  
11 have recognized, or been well aware that Mr. Zenk  
12 had been charged with impaired driving causing  
13 death? Yes?

14 A Yes, sir.

15 Q And it's fair to say that as far as  
16 your evidence, or any evidence that you could give  
17 was concerned, it wouldn't be of assistance to the  
18 prosecution on that charge. Is that fair?

19 A I'm sorry?

20 Q As far as any evidence you could give  
21 on the question of Mr. Zenk being impaired, your  
22 evidence would be of no assistance?

23 A Correct.

24 Q And in fact, your evidence would be of  
25 assistance to the defence, would you agree with

1 that?

2 A I would agree.

3 MR. GREEN: Thank you.

4 MS. HANLIN: Mr. Commissioner.

5 BY MS. HANLIN:

6 Q Sergeant Black, I'd like to discuss  
7 briefly the meeting that you had --

8 THE COMMISSIONER: Could you just put  
9 it in front of you. You and I are having the same  
10 problem. I can't hear.

11 MS. HANLIN: Thank you.

12 BY MS. HANLIN:

13 Q The meeting that you had with  
14 Mr. Minuk, it was put to you by Mr. Paciocco that  
15 you had told Mr. Minuk that you went to sleep and  
16 when you awoke, your guests were leaving?

17 A Yes.

18 Q You disagreed with that suggestion?

19 A Yes.

20 Q Did anyone ever follow up with you  
21 from Professional Standards Unit, or any other  
22 investigators, relative to obtaining a second  
23 statement?

24 A Did anybody from PSU?

25 Q Um-hum?

1 A Professional Standards?

2 Q Or any other investigators ever follow  
3 up with you in regards to what Mr. Minuk purports  
4 that you told him?

5 A No.

6 Q Okay. As an experienced police  
7 officer, you would expect, if a witness gives a  
8 second statement that is quite different from the  
9 first statement, you would expect that an  
10 investigator would follow up with that person?

11 A Yes.

12 Q And that would be in order to disclose  
13 that to defence?

14 A Yes.

15 Q Because the Crown and police have  
16 obligations to disclose information to defence; is  
17 that correct?

18 A Yes.

19 Q Thank you. Now, if you can turn to  
20 Exhibit 164, please, and that is the statement  
21 that you gave to Professional Standards Unit?

22 A Yes.

23 Q And if you can turn to page 894 of  
24 that statement?

25 THE COMMISSIONER: Page, I'm sorry?

1 MS. HANLIN: 894, it's volume

2 F-1.35.c.

3 BY MS. HANLIN:

4 Q At the top of that page, Sergeant  
5 Girard explains to you the purpose of that  
6 interview, that they have been asked by East St.  
7 Paul to assist in determining where Harvey-Zenk  
8 was prior to the accident and who he was with.  
9 Would you agree with that?

10 A Yes.

11 Q And your understanding at the time was  
12 that there were criminal allegations involving  
13 alcohol that Harvey-Zenk was facing?

14 A Correct.

15 Q And you understood that the accident  
16 occurred shortly after Harvey-Zenk had left your  
17 home?

18 A Correct.

19 Q You would agree that your interview  
20 with the Professional Standards Unit had a fairly  
21 narrow focus?

22 A I would agree.

23 Q Where Harvey-Zenk was prior to the  
24 accident and who he was with?

25 A Yes.

1           Q     If you can turn to page 910 of that  
2 statement, please?

3                     Now, you were asked by Sergeant Girard  
4 to explain the circumstances surrounding when  
5 Derek leaves?

6           A     Yes.

7           Q     Can you please tell the Commissioner  
8 what you told Sergeant Girard and Pearson, in  
9 summary? You don't have to read it verbatim.

10          A     I guess this is -- the point here was  
11 when we exited, is that -- this is what you are  
12 referring to here?

13          Q     Page 910.

14          A     Yeah, okay.

15          Q     Do you have that at the bottom?

16          A     This is in regards to when Norbert  
17 Bauer and Jay Nolet had left my residence and we  
18 were inside the kitchen. Derek was talking about  
19 doing the flooring and the renovations in my home,  
20 and basically we both went downstairs to look at  
21 the renovations and he talked about he was able to  
22 do that. So we came back upstairs, and that's  
23 when I met with Ken Azaransky who was sitting in  
24 the living room -- and if it keeps going, I'm not  
25 sure -- but basically I expressed that he could

1 stay and invited him to stay. And that's when I  
2 went to the bathroom. I'm not sure if that  
3 continues on at the next page here.

4 Q It does, but --

5 A Okay. So I went to the bathroom and  
6 when I came back outside -- I came back out to the  
7 same area where I left Azaransky and Harvey-Zenk,  
8 Harvey-Zenk was gone.

9 Q Now, I understand from reading that,  
10 that you and Harvey-Zenk are in the basement --

11 A Yes.

12 Q -- together?

13 A Yes.

14 Q And I understand from reading that,  
15 that you are having a one-on-one conversation with  
16 him?

17 A I am.

18 Q So you are in close proximity; is that  
19 correct?

20 A Yes.

21 Q Normal conversation distance?

22 A Yes.

23 Q If you can turn to page 914 of your  
24 interview, please? And Sergeant Pearson asks you,  
25 and this is in the context of when you last saw

1 Harvey-Zenk at your house, he says:

2 "In your view, did it look like Derek  
3 was impaired?"

4 A Yes.

5 Q What did you say?

6 A I said no.

7 Q Now, your one-on-one conversation with  
8 Harvey-Zenk shortly before he leaves your home,  
9 your observation that he does not look impaired,  
10 is this the most important information that you  
11 had to give Sergeants Girard and Pearson in terms  
12 of where Harvey-Zenk was and who he was with prior  
13 to the accident?

14 A Was this the most important?

15 Q Yes?

16 A It was very important. I think  
17 everything I had to say was very important.

18 Q In terms of where Harvey-Zenk was and  
19 who he was with prior to the accident, relative to  
20 whether or not he was consuming alcohol, is there  
21 anything else that you could have told Sergeants  
22 Girard and Pearson?

23 A No, I disclosed everything.

24 Q And you understand that under the  
25 Winnipeg Police Service regulations that as a

1 witness to a possible criminal offence, you were  
2 obligated to answer questions put to you by  
3 Professional Standards Unit investigators?

4 A I would assume so, yes.

5 Q And you understand that you could be  
6 disciplined if you don't honestly answer those  
7 questions?

8 A Yes.

9 Q And that is an obligation that you  
10 take seriously?

11 A I certainly do.

12 Q And we have also heard your testimony  
13 that you offered your residence to anyone at the  
14 gathering who wanted to stay overnight, with the  
15 possible exception of Chris Humniski?

16 A Yes. With the possible exception?

17 Q Of Humniski?

18 A Yeah, I'm not sure. Well, I believe  
19 it was mentioned earlier that Humniski was offered  
20 as well to stay, but there was a blanket  
21 invitation, yes.

22 Q Ken Azaransky took you up on that  
23 offer?

24 A He did.

25 Q You made the same offer to

1 Harvey-Zenk?

2 A Yes.

3 Q As a peace officer, what do you  
4 consider to be your obligation if you see someone  
5 who has been drinking and is going to drive?

6 A I would do the exact same thing I  
7 would have done with Dave Harding, to ensure that  
8 he would not have left.

9 Q Now, it was put to you by Commission  
10 Counsel that if someone is over--well, not  
11 specifically, but if someone is over .08, one of  
12 your guests for example, but not showing signs of  
13 impairment, would you say that that is an  
14 individual responsibility?

15 A Individual responsibility on myself  
16 or --

17 Q For the individual who may be over .08  
18 when you are not seeing any signs of impairment in  
19 that individual?

20 A My observations that evening, that he  
21 was not showing signs of impairment, and he  
22 appeared to be fine. And again, he left, so if he  
23 consumed that much liquor and he left, it would be  
24 his responsibility to ensure that he doesn't  
25 drive.

1 MS. HANLIN: Thank you, Sergeant  
2 Black. Those are my questions.

3 THE WITNESS: You're welcome.

4 BY MR. PACIOCCO:

5 Q I only have one question, Sergeant  
6 Black, in re-examination. You will remember  
7 Mr. Labossiere asking you about the importance of  
8 taking notes?

9 A Yes, sir.

10 Q And how, during an investigation when  
11 you know that you are going to be testifying,  
12 those notes can be very helpful in remembering  
13 matters of detail?

14 A Yes, sir.

15 Q And in matters of importance, you are  
16 careful to record things that you might have to  
17 testify about, sir?

18 A Yes, sir.

19 Q You discovered very early on that you  
20 could end up being a witness in connection with  
21 this event, did you not, sir?

22 A Yes, sir.

23 Q Why did you not take notes?

24 A Because my understanding was I was  
25 going to be interviewed by Professional Standards,

1 and obviously had been able to utilize these same  
2 reports and same statements for recollection.

3 Q So you counted on being able to  
4 remember points of detail at some point in the  
5 future when you were interviewed, rather than  
6 actually sitting right down and recording  
7 everything you knew about the event, sir?

8 A Yes, sir.

9 MR. PACIOCCO: Thank you. Those are  
10 the questions I have.

11 THE WITNESS: You're welcome.

12 THE COMMISSIONER: Thank you.

13 THE WITNESS: Thank you, sir.

14 THE COMMISSIONER: You can sit in the  
15 back in the body of the court or you can leave.  
16 Thank you very much.

17 THE WITNESS: Thank you.

18 MR. CLIFFORD: Mr. Commissioner, the  
19 next witness is going to be Ken Azaransky. And  
20 counsel for Winnipeg Police is now just  
21 determining whether he's outside.

22 MS. HANLIN: Mr. Commissioner, I don't  
23 see Ken Azaransky outside. If I might just go and  
24 telephone him? I had been of the understanding  
25 from speaking to Commission --

1 THE COMMISSIONER: I'm sorry?

2 MS. HANLIN: I was of the  
3 understanding from speaking with Commission  
4 Counsel earlier that Sergeant Black would take all  
5 of the morning.

6 THE COMMISSIONER: So?

7 MS. HANLIN: So --

8 THE COMMISSIONER: Why isn't he here?

9 MS. HANLIN: He may have anticipated  
10 that it would be at 2:00 o'clock.

11 THE COMMISSIONER: Isn't he required  
12 to be here by subpoena?

13 MS. HANLIN: He is absolutely.

14 THE COMMISSIONER: Mr. Paciocco,  
15 Mr. Clifford, what do you suggest?

16 MS. HANLIN: I have been in regular  
17 contact with him.

18 THE COMMISSIONER: I'm sorry?

19 MS. HANLIN: I have been in regular  
20 contact with him.

21 THE COMMISSIONER: I see. And are you  
22 able to contact him by cell phone?

23 MS. HANLIN: I do have his cell phone  
24 number.

25 THE COMMISSIONER: I'm sorry?

1 MS. HANLIN: I do have his cell phone  
2 number.

3 THE COMMISSIONER: And have you called  
4 him?

5 MS. HANLIN: Not this morning, no.

6 THE COMMISSIONER: Well, maybe you  
7 could do that. Can you do it right away?

8 MS. HANLIN: Yeah, absolutely.

9 THE COMMISSIONER: Go on outside and  
10 call him, and I'll hear what counsel have to say.  
11 Do you have another witness?

12 MR. CLIFFORD: Mr. Commissioner, Ken  
13 Azaransky is the next witness. The witness that  
14 follows is Dave Harding, and I understand from  
15 speaking with counsel for Winnipeg, that we are in  
16 the same position with Officer Harding as well.  
17 Neither of them are here at the moment.

18 THE COMMISSIONER: They are both  
19 subpoenaed to appear here today?

20 MR. CLIFFORD: Yes. And I think we  
21 should make, or counsel should make all efforts  
22 possible to get them here as soon as possible. If  
23 we could stand down maybe for five or 10 minutes  
24 and we can update you, Mr. Commissioner. But it  
25 would be our hope that they could appear here

1 within the next 10 minutes, 15 minutes, and if so  
2 we can use the balance of the morning.

3 MS. HANLIN: Mr. Commissioner, in  
4 regards to Dave Harding, it was my understanding  
5 from speaking to Commission Counsel that he was  
6 not required until tomorrow. I can certainly make  
7 efforts to get him here, but that was his  
8 expectation.

9 MR. PACIOCCO: I can confirm that we  
10 indicated that we didn't expect to get to  
11 Constable Harding today. We certainly did expect  
12 to get to Constable Azaransky, and the prediction  
13 that we might be all morning with Sean Black was  
14 not written in stone. And as the evidence was  
15 unfolding, it was evident we were going to get  
16 this witness finished. It strikes me that he  
17 should have been here and I really regret the loss  
18 of time. So I would ask you to stand the matter  
19 down so that we can get him here ASAP.

20 THE COMMISSIONER: Yes. I saw  
21 Mr. Labossiere went outside. Were you successful?

22 MR. LABOSSIÈRE: I did not see  
23 Mr. Azaransky there.

24 THE COMMISSIONER: I see. Well, we  
25 will take 10 minutes.

1 THE CLERK: All rise. This Commission  
2 of Inquiry will take a 10 minute recess.

3 (Proceedings recessed at 11:36 a.m.  
4 and reconvened at 11:46 a.m.)

5 THE CLERK: All rise. This Commission  
6 of Inquiry is now reopen.

7 MS. HANLIN: Mr. Commissioner, I have  
8 had phone contact with Constable Azaransky. It  
9 was my understanding that Sergeant Black would  
10 take the morning. That was based on my  
11 conversation with Commission Counsel on Friday, I  
12 believe it was. So I advised Constable Azaransky  
13 to be here at 2:00 p.m. I can tell you I have  
14 been in constant contact with these witnesses.  
15 The schedule has been changing, people have been  
16 moving back. They have been cooperative and  
17 reasonable. Constable Azaransky advises me that  
18 he can be here within 45 minutes. He does live  
19 some distance away.

20 THE COMMISSIONER: I'm sorry, he has  
21 what?

22 MS. HANLIN: He does live some  
23 distance away. We do regret the time --

24 THE COMMISSIONER: Well, we have  
25 Mr. Prober who has a pre-trial at 1:45.

1 Mr. Prober?

2 MR. PROBER: No, it's at 1:00 o'clock.

3 THE COMMISSIONER: At 1:00 o'clock.

4 MR. PROBER: But I expect it will be  
5 quick. I should be able to get back by 1:30 if  
6 that helps.

7 THE COMMISSIONER: You indulge in  
8 quick pre-trials, do you?

9 MR. PROBER: In this case, it's going  
10 to be a resolution.

11 THE COMMISSIONER: I see.

12 MR. PROBER: So I think it will be  
13 okay.

14 THE COMMISSIONER: What do you  
15 suggest, Mr. Clifford?

16 MR. CLIFFORD: Commission Counsel also  
17 regrets the loss of time, particularly in this  
18 week where we have so much that we have to  
19 accomplish.

20 THE COMMISSIONER: Yes.

21 MR. CLIFFORD: The reality is, based  
22 on an exchange of information, counsel for  
23 Winnipeg felt as though this officer wouldn't be  
24 here, required until 2:00 o'clock. The other  
25 reality is that in the formal setting like this,

1 you have to plan for a contingency that things  
2 could wind up in a situation like this, where an  
3 hour earlier or two hours earlier a witness should  
4 be required. So I think we'll move on. We'll  
5 wait the time. But for the balance of this week,  
6 it's very important to Commission Counsel and to  
7 all parties involved that these officers be ready,  
8 and that there be some contingency that if we get  
9 an hour or two ahead, if we're lucky enough for  
10 that to happen, that we have a witness ready to go  
11 in the box.

12 THE COMMISSIONER: You should always  
13 have a witness in the wings ready to go.

14 Mr. Prober will be back at 1:30, will you, sir?

15 MR. PROBER: If not, Mr. King will be  
16 here so --

17 THE COMMISSIONER: If we adjourn until  
18 1:30, and you get Mr. Azaransky here.

19 MS. HANLIN: Yes, Mr. Commissioner.

20 THE COMMISSIONER: And do you think  
21 we'll finish Mr. Azaransky by 3:00 o'clock?

22 MR. CLIFFORD: Yes, I do, if we start  
23 him at 1:30.

24 THE COMMISSIONER: I'm just wondering  
25 whether we should have Mr. Harding here, just in

1 case?

2 MR. CLIFFORD: I understand he will be  
3 coming, and I think that would be a good idea.

4 THE COMMISSIONER: Yes.

5 MS. HANLIN: We had spoken to  
6 Constable Harding, Mr. Commissioner, and he is on  
7 his way.

8 THE COMMISSIONER: As well.

9 MS. HANLIN: As well.

10 THE COMMISSIONER: All right. We'll  
11 start at 1:30.

12 MS. HANLIN: Thank you.

13 THE CLERK: All rise. This Commission  
14 of Inquiry will take the luncheon recess.

15 (Proceedings recessed at 11:50 a.m.  
16 and reconvened at 1:30 p.m.)

17 THE CLERK: All rise. This Commission  
18 of Inquiry is now reopened.

19 MR. CLIFFORD: Good afternoon,  
20 Mr. Commissioner.

21 THE COMMISSIONER: Good afternoon.

22 MR. CLIFFORD: The first witness for  
23 this afternoon is Ken Azaransky.

24 KEN AZARANSKY, having first been duly  
25 sworn, testified as follows:

1 BY MR. CLIFFORD:

2 Q Officer Azaransky, what is your  
3 current rank with the Winnipeg Police Service?

4 A Constable.

5 Q And, sir, as of February 2005, how  
6 much experience did you have?

7 A I had approximately four years.

8 Q And I understand, sir, that you knew  
9 Derek Harvey-Zenk prior to your work as a police  
10 officer?

11 A That's correct.

12 Q And when did you meet him, sir?

13 A It was approximately the year 2000.

14 Q And how did you know him?

15 A I met him through Corrections hockey,  
16 that's the government correction officer hockey  
17 league.

18 Q Did you both know one another from  
19 working in Corrections?

20 A No, he worked in Corrections and I was  
21 just filling in as a spare, so that's how I know  
22 him.

23 Q Now, in February of 2005, sir, I  
24 understand that you worked on the same shift as  
25 Derek Harvey-Zenk?

1 A That's correct.

2 Q And for how long had that been the  
3 case?

4 A Well, since I was originally assigned  
5 to District 3, which would have been December of  
6 2001, and then permanently in May 2002.

7 Q Dealing with your attendance at  
8 Branigan's lounge, sir, on February 24th and 25th,  
9 the Commission has heard evidence that members  
10 from the shift had been there on prior occasions.  
11 I take it that that was the case with yourself as  
12 well?

13 A That's correct.

14 Q And you had, in fact, been there with  
15 Derek Harvey-Zenk?

16 A That's correct.

17 Q I would like you to bring your mind  
18 back, please, to the evening of February 24th,  
19 25th, at Branigan's. And sir, can you tell me,  
20 how was it that you arrived at the lounge?

21 A I drove there.

22 Q Did you go with anybody in particular?

23 A No, I drove on my own.

24 Q And at that time, sir, who was your  
25 partner officer?

1           A     Sean Black.

2           Q     And when did you learn during the day,  
3     sir, that you would be going to Branigan's?

4           A     It would have been that day. The time  
5     exactly, I don't recall.

6           Q     Now, what I would like to know from  
7     you, Constable, is when you arrived at Branigan's,  
8     we will start with where you were located, in  
9     other words, what the seating arrangement was for  
10    yourself, and then we will deal with some other  
11    officers that were present.

12          A     Okay.

13          Q     So can you tell me, when you first  
14    arrived, where you went to sit down and with whom  
15    you were with?

16          A     Yeah. When I initially arrived, I  
17    attended to the lounge area. There were some  
18    tables that were arranged along the southern edge,  
19    along the window, some larger tables that were  
20    upright. There was already officers there, and  
21    the room was already filling up, or the spaces  
22    that were allotted were already filling up. I  
23    assisted another officer in arranging an  
24    additional table, and when I seen how these tables  
25    were beginning to arrange and the dynamics of

1 where people were sitting, I decided not to sit at  
2 those tables, and I sat at a lower table adjacent  
3 to those, just to the west.

4 Q So you saw that the high-top tables  
5 were full, there was no room for you to sit at  
6 those tables, is that what I understand your  
7 evidence to be?

8 A They were filling up and they were  
9 starting to be, well, as more and more tables were  
10 being arranged, I saw it was going to be difficult  
11 to maneuver around them and I didn't want to be  
12 part of that, so I went and sat at the other  
13 tables.

14 Q Okay. But there would have been a  
15 spot for you to sit at those tables when you  
16 arrived?

17 A Yes.

18 Q But you felt as though that wouldn't  
19 be a place that you would want to sit, and you --  
20 have I got that right?

21 A That's correct.

22 Q And you mentioned, sir, that you  
23 assisted another officer in setting up a table.  
24 Who was the other officer?

25 A Werner Toews.

1 Q So you set up a table with Officer  
2 Toews, and where was your table located?

3 A In relation to those, at the west end  
4 and just north.

5 Q And who were you sitting with?

6 A When I arrived there and sat down, Jay  
7 Nolet and Sean Black.

8 Q So you sat at a table with your  
9 partner and Jay Nolet. And who else was at that  
10 table?

11 A I don't recall. There was quite a few  
12 officers there that evening, and not everybody was  
13 static, it was a dynamic room. It was a lounge  
14 setting, so people were getting up and moving  
15 around.

16 Q And were you doing the same thing?

17 A I actually stayed in that seat for  
18 most of the evening, other than attending to the  
19 washroom or something like that.

20 Q What about Officer Black, did he  
21 remain the same way, static?

22 A Yeah, both Jay and Sean did the same.

23 Q So, there was a lot of people moving  
24 around the room and talking, but neither you nor  
25 Officer Black participated in any of that?

1 A No, we participated in the talking.

2 Q With one another at the same table?

3 A That's correct.

4 Q And you mentioned Officer Nolet was  
5 present. Who else was located at your table?

6 A Beyond the two of them, I don't  
7 recall.

8 Q Do you know how many people were  
9 located at your table?

10 A Well, at our table specifically was  
11 the three of us. But as far as our table being  
12 proximity to other tables -- our table alone,  
13 there was the three of us.

14 Q Okay. There were other chairs at your  
15 table?

16 A Well, there were other chairs in the  
17 area, they are -- well, again being familiar with  
18 the lounge area, there is several tables set up in  
19 the lounge, so whether they are turned towards our  
20 table and declared at our table or not, you know.

21 Q Were there any female officers sitting  
22 where you and Officer Black and Nolet were  
23 sitting?

24 A No, not that I recall.

25 Q Are you able to say, sir, who you

1 arrived at the restaurant with or at the same time  
2 as?

3 A Yeah. I arrived approximately at the  
4 same time as Dave Harding and Gord Schneider,  
5 Christian Guyot, Al Williams and Derek  
6 Harvey-Zenk.

7 Q And did you have conversation with  
8 Derek Harvey-Zenk when you were first arriving?

9 A No, not that I recall.

10 Q And when you say, sir, in your  
11 testimony that you don't recall something, I take  
12 it that what the Commission can conclude from that  
13 is that you are not saying it didn't happen, but  
14 your evidence is going to be that you don't have a  
15 recollection of what I'm asking you about?

16 A That's correct, that I don't recall  
17 the event or whatever you are asking.

18 Q Now, what about your experience  
19 throughout the evening at Branigan's, can you tell  
20 the Commission where Derek Harvey-Zenk was located  
21 within the lounge?

22 A Yeah, I can deem his approximate  
23 location, where he was sitting at the table  
24 anyways. He was sitting along the west end of the  
25 groups of tables, and in relation to me, with his

1 side or back to me.

2 Q Okay. So he was sitting at the west  
3 end of a group of tables?

4 A Right.

5 Q And were these tables high or low  
6 tables?

7 A That was the high tables.

8 Q The high tables, and you chose not to  
9 sit at those tables when you came in, and you sat  
10 at a low table with your partner and Officer  
11 Nolet?

12 A That's correct.

13 Q But you can see where Derek  
14 Harvey-Zenk is sitting, I take it, from the  
15 location that you picked out for yourself?

16 A Yeah, if I chose to look in his  
17 direction, I could have, yes, sir.

18 Q And if you chose to look in his  
19 direction, I understand that what you are  
20 indicating is that you would see his side or his  
21 back?

22 A That's correct.

23 Q Okay. And at any point did you get up  
24 and interact with him? Did you have a  
25 conversation with him or spend some time with him

1 at Branigan's?

2 A No, I didn't spend any significant  
3 time, there may have been one or two words  
4 exchanged, but that would be it.

5 Q And do you know when those words would  
6 have been exchanged?

7 A Throughout the course of the evening.

8 Q Now, when you were at Branigan's and  
9 you are in the location that you are at, you've  
10 described where Derek Harvey-Zenk is. And you  
11 can, from where you are sitting, see his side or  
12 his back. I take it at some point the people that  
13 you are with, you order some drinks, you have some  
14 food and beverages?

15 A Yeah. I think to clarify, that had I  
16 turned to look at him, I would see his side or his  
17 back. We were basically back to back.

18 Q Okay.

19 A Okay.

20 Q And did you turn to look at him at  
21 some point?

22 A I may have.

23 Q All right. So I understand that you  
24 are back to back. If you turn to look at him, you  
25 would see his back or his side. And going back to

1 the question I put to you, sir, I take it people  
2 at your table ordered some beverages and some  
3 food?

4 A That's correct.

5 Q And what do you have?

6 A I was drinking beer that evening.

7 Q Okay. And how many beer did you have?

8 A I would say two or three.

9 Q And when you say "I would say two or  
10 three," sir, are you able to indicate the quantity  
11 of alcohol you consumed at Branigan's?

12 A In my response, I would say it is an  
13 approximate two or three.

14 Q Does that mean that we pick two or  
15 three, or that two or three is an approximation  
16 allowing for more or less consumption?

17 A I would say three would be the  
18 maximum, two would be the minimum.

19 Q What about the people that you are  
20 sitting with, sir, are they consuming alcohol?

21 A I was not the only one getting service  
22 to that table, so I can only assume that they  
23 were.

24 Q Okay. I think I understand what you  
25 are trying to tell me. Other people at the table

1 ordered alcoholic beverages?

2 A That's correct.

3 Q And I asked you whether or not people  
4 you were sitting with consumed alcoholic  
5 beverages. You told me that they ordered them.  
6 Did you see them consuming them?

7 A I would imagine they were consuming  
8 them if they ordered them, yes.

9 Q Okay. The question is, did you see  
10 the people you were sitting with consuming  
11 alcoholic beverages?

12 A Well, I was not watching them drink,  
13 but it is fair to conclude that they were  
14 drinking, yes.

15 Q Now dealing with the individuals that  
16 are at the high-top tables, do I understand from  
17 your testimony, sir, that you have your back to  
18 these individuals throughout the time that you are  
19 sitting down at the lower tables?

20 A Yeah, for the most part.

21 Q Now, were you aware of whether they  
22 were ordering alcoholic beverages and food?

23 A Apart from them having service to  
24 their tables, I would not know.

25 Q Okay. So you are aware of the fact

1 that alcohol is being ordered and it is being  
2 brought out to the tables?

3 A That's correct.

4 Q And did you see anybody consuming an  
5 alcoholic beverage?

6 A Specifically, I don't recall anyone  
7 consuming, like hand-to-mouth, no.

8 Q And how many people were you there  
9 with, sir?

10 A I would have to approximate 15 or so,  
11 give or take.

12 Q You recall approximately 15 people  
13 there. And your testimony, sir, is that you did  
14 not see one person take a pint of beer or a glass  
15 alcoholic beverage and put it to their mouth?

16 A Not here today do I recall that, no.

17 Q You recall where you sat, you recall  
18 to a certain extent who you sat with, you recall  
19 where Derek Harvey-Zenk was located, and your  
20 relatively positioning. What I would like to ask  
21 you now, sir, is who was Derek Harvey-Zenk sitting  
22 with?

23 A I don't know.

24 Q And what is it that allows you to  
25 indicate where he was sitting?

1 A His proximity relative to me.

2 Q And when you look in your mind's eye  
3 at this picture, you have no recollection  
4 whatsoever with respect to who is beside him, at  
5 the same table with him, across from him?

6 A That's correct.

7 Q Now, you said that you had some  
8 interaction with him. Did you go over to the  
9 table and talk to him?

10 A No. Any interaction I would have had  
11 would be from my chair.

12 Q So did he come over to see you then at  
13 your table? Can I conclude that?

14 A No. It is safe to say that he was  
15 probably in his chair and I was in my chair. We  
16 were very close.

17 Q How many feet apart would you have  
18 been?

19 A Three or four.

20 Q So when you say back to back, you mean  
21 pretty much literally back to back?

22 A Yeah.

23 Q Anybody in between you?

24 A I don't believe so.

25 Q And how much contact did you have with

1 him at Branigan's then, if you are that close  
2 together?

3 A Minimal.

4 Q And when you had this contact, when  
5 you turned around to talk to him, who -- were  
6 there other people at the table with him?

7 A Yeah. As I had said earlier, those  
8 tables were all occupied.

9 Q Who were the people that were with him  
10 when you turned around to communicate with him?

11 A I don't recall.

12 Q What did you talk to him about?

13 A It would have been just short clips,  
14 jokes, one liners, so to speak. I was -- I had a  
15 reputation of being a little bit of a joker on the  
16 shift, so when it came to a large room like that,  
17 people would be interacting from their seats  
18 wherever they are, and in my mind's eye, it would  
19 have been just a joke or something, I don't  
20 recall, but usually it was a pretty light  
21 atmosphere there.

22 Q And did you see him with an alcoholic  
23 beverage?

24 A I don't recall.

25 Q Now, you dealt with him. Do you

1 recall Derek Harvey-Zenk interacting with any  
2 other people?

3 A No, not that I recall.

4 Q So the only person that you can  
5 testify about having any contact with Derek  
6 Harvey-Zenk is yourself?

7 A Well, I would assume that he would  
8 have been interacting with the people at his  
9 table, but I can't be certain.

10 Q When you did talk to him, sir, how  
11 long would the exchanges have been?

12 A A couple of words maybe.

13 Q All right. So let me -- you correct  
14 me if I'm wrong about any of this. Okay. I want  
15 to recap what your position is with respect to  
16 your observations of Derek Harvey-Zenk and others,  
17 and alcohol consumption at Branigan's. You know  
18 he arrived there at approximately the same time as  
19 you; correct?

20 A Correct.

21 Q That you chose not to sit at the table  
22 or tables where he was located?

23 A That's correct.

24 Q You sat in a configuration that you  
25 were back to back?

1 A That's correct.

2 Q You cannot indicate, sir, or are not  
3 prepared to indicate whether anybody that you sat  
4 with consumed an alcoholic beverage?

5 A That's correct.

6 Q You are also --

7 A I cannot say for certain, I don't  
8 understand clearly what you stated that I'm not  
9 willing to --

10 Q I said you are not prepared to  
11 indicate that anybody you sat with consumed an  
12 alcoholic beverage?

13 A Okay.

14 Q You observed Derek Harvey-Zenk, and  
15 your evidence is that you have no idea who he sat  
16 with?

17 A That's correct.

18 Q You have no idea who he interacted  
19 with?

20 A That's correct.

21 Q Apart from exchanging a couple of  
22 words, there were no other communications between  
23 you and he, or conversations?

24 A No, that's correct.

25 Q And you cannot provide any evidence

1 with respect to whether Derek Harvey-Zenk consumed  
2 any alcoholic beverage at Branigan's?

3 A That's right.

4 Q And I understand, sir, that you have  
5 indicated a minimum of two beers for yourself,  
6 maximum of three?

7 A That's correct.

8 Q Now, what about the other people that  
9 are present; do I take it, sir, that your evidence  
10 would be the same with respect to anybody else?

11 A As far as?

12 Q Interaction with anybody else, whether  
13 you observed them consuming alcohol?

14 A Yeah, that's safe to say. Obviously,  
15 my observations of others may have varied slightly  
16 from Derek's.

17 Q Did you notice whether anybody  
18 demonstrated any signs of alcohol consumption at  
19 Branigan's?

20 A Are you asking signs of impairment?

21 Q Yes?

22 A No.

23 Q Signs of consumption of alcohol?

24 A Well, I think service of alcoholic  
25 drinks to tables and glasses being taken away is a

1 sign of alcohol consumption.

2 Q But in terms of the behaviour of the  
3 people that you were with, was there any change at  
4 all in the behaviour of group?

5 A No, I never noticed anyone that was  
6 impaired, to myself.

7 Q And how would you describe the group  
8 when you first arrived, when everybody is settled  
9 in? Was it a quiet gathering? What was the  
10 energy level like?

11 A I would consider it to be a typical  
12 lounge setting, people interacting and talking.

13 Q And did it change at all, sir, as the  
14 minutes and the hours went by?

15 A No, it maintained the typical lounge  
16 setting throughout the evening.

17 Q Nobody got louder?

18 A As far as voices periodically being  
19 raised, I'm sure, but it wasn't an entirety that  
20 the lounge became louder and such, no.

21 Q Did you notice whether anybody's  
22 behaviour changed?

23 A No, I did not.

24 Q Were you given any alcoholic beverages  
25 by other officers?

1 A No, not that I recall.

2 Q And were you given any free alcoholic  
3 beverages by the staff at Branigan's?

4 A Again, not that I recall.

5 Q I take it by that conclusion, sir,  
6 that you are not indicating to me, no, these  
7 things didn't happen?

8 A I don't believe they happened.

9 Q How long had you known Constable  
10 Harding at that point?

11 A Well, since he joined our shift and  
12 joined the service, I believe it was a couple of  
13 years. I don't recall.

14 Q Did you talk to him when you were  
15 there?

16 A No.

17 Q Did you know whether he was there?

18 A Yes, he was there.

19 Q You saw him there?

20 A Yes.

21 Q I take it you saw him more than once  
22 throughout the course of the evening?

23 A I definitely seen him when we got  
24 there.

25 Q Okay. And what time did you arrive?

1           A     Approximately quarter to 12:00, again,  
2     that's an approximate guess.

3           Q     And you stayed until approximately  
4     what, 2:30?

5           A     Yes, 2:00 o'clock, 2:30.

6           Q     So you would agree with me, sir, that  
7     it goes without saying, there is no doubt  
8     whatsoever in your mind that you would have  
9     interacted with Dave Harding throughout the  
10    evening?

11          A     I would not agree with that term, or  
12    that statement.

13          Q     Sir, the Commission has seen diagrams  
14    and photographs, et cetera, with respect to the  
15    size of the room that you are all in. Do I  
16    understand from your testimony, sir, that your  
17    position is you didn't engage in any conversation  
18    with him, direct conversation with Dave Harding?

19          A     That is probably more accurate.

20          Q     Well, did he become involved in any  
21    group discussions that you were in?

22          A     Not that I recall.

23          Q     Do you recall anything about him being  
24    there?

25          A     Other than he was there, no.

1 Q Do you know whether he was consuming  
2 alcoholic beverages?

3 A I'm not sure.

4 Q Sir, the Commission has heard evidence  
5 that Dave Harding was, in fact, drinking, he was  
6 consuming alcohol, and there was a concern with  
7 respect to impairment or intoxication. I take it  
8 you have nothing to offer on that point?

9 A That's correct.

10 Q Do you recall who the server was?

11 A No, I don't.

12 Q Do you recall whether it was a male or  
13 a female?

14 A I believe it was a female.

15 Q And do you recall anything about her  
16 description?

17 A Other than being a female, no.

18 Q Had you had any prior contact with the  
19 female server on previous occasions?

20 A I had contact with servers, female  
21 servers at the location, but I can't recall  
22 specifically who was serving us that night.

23 Q So you had some prior contact with  
24 female servers, but you don't recall who was  
25 serving you on the 24th or 25th. Sir, we have

1 heard evidence from Chelsea O'Halloran, who was  
2 the server for the group, and she testified, sir,  
3 that she served you and other officers, and in  
4 fact that you consumed alcohol to the point where  
5 you were intoxicated. And I want to put that to  
6 you, Constable. What is your reaction to that  
7 testimony?

8 A Well, I can't dispute she may have  
9 been the server, but I certainly wasn't  
10 intoxicated.

11 Q Sir, the Commission has heard evidence  
12 from another civilian witness, an individual named  
13 Darcey Gerardy, and Mr. Gerardy indicated that he  
14 observed a number of you lining up to pay your  
15 bills at the end of the night. Do you recall that  
16 part of the evening, sir?

17 A I recall the procedure to pay our  
18 bills, yes.

19 Q And what was the procedure?

20 A Well, I know that some people cleared  
21 their tabs at the table. Others attended to the,  
22 I guess, the cash register area. It was  
23 surrounded by a fireplace and pool table, and  
24 there was sort of a congregation of people  
25 awaiting to settle up their tabs.

1           Q     And do you recall that, sir, that  
2     there was essentially a lineup of people to settle  
3     their tabs at the end of the night?

4           A     Yeah. I wouldn't say that it was a  
5     lineup, like at the supermarket. It was a group  
6     of people standing in a circle, or just standing  
7     in a cluster, so to speak, awaiting to clear up  
8     their tabs, yes.

9           Q     And do you recall the server being  
10    there and she was trying to take care of the  
11    customers?

12          A     Yes.

13          Q     You and fellow officers?

14          A     Yes.

15          Q     And did you have interaction with  
16    Chelsea O'Halloran when you were paying your bill?  
17    She would be the server.

18          A     Well, yeah, I would have cleared my  
19    tab with her.

20                THE COMMISSIONER: Do you recall  
21    paying your tab at the table or at the cash?

22                THE WITNESS: No, I stood up and I was  
23    going to pay at the cash.

24                THE COMMISSIONER: Were you in the  
25    lineup to pay the cash?

1 THE WITNESS: Yes, I was with the  
2 group. Now, to be honest, I don't recall whether  
3 the server or the bartender cleared that tab. I  
4 don't recall specifically.

5 BY MR. CLIFFORD:

6 Q You are talking about your own tab, I  
7 take it?

8 A That's right.

9 Q You don't recall whether the bartender  
10 or the server, but do you recall both of those  
11 individuals being in that area?

12 A Yes.

13 Q Did you know who the bartender was?

14 A Short of attending there and knowing  
15 his first name.

16 Q And what was his first name?

17 A As you just stated, Darcey.

18 Q Okay. The Commission has heard  
19 evidence, sir, that Darcey was working as the  
20 night manager. Did you know this individual,  
21 Darcey?

22 A Just limited to my attendance to  
23 Branigan's.

24 Q Do you recall any of the officers  
25 having any interaction with Chelsea O'Halloran,

1 the server, as everybody was paying their tab?

2 A No, I don't recall.

3 Q What about Dave Harding? Do you  
4 recall him having any interaction with her?

5 A No.

6 Q The Commission has heard evidence from  
7 Chelsea O'Halloran, sir, that certain comments  
8 were being made to her by police officers. Do you  
9 have anything to say about that?

10 A No.

11 Q Did you invite anybody to go anywhere  
12 when Branigan's was closing?

13 A No.

14 Q Do you know whether anybody else  
15 invited anybody from the staff to leave with them?

16 A No.

17 Q Were you talking to anybody? What  
18 were you doing when it was time for you to pay  
19 your bill and leave?

20 A Preparing to pay my bill.

21 Q And who were you with?

22 A Aside from being in amongst the group  
23 of officers that are in attendance, them.

24 Q Well, who was beside you, for  
25 instance, on your right?

1 A I don't recall.

2 Q On your left?

3 A I don't recall.

4 Q So you don't recall anybody that was  
5 around you, other than you were there with the  
6 people that were there?

7 A That's right.

8 Q We've heard testimony from Darcey  
9 Gerardy, the night manager, that he expressed  
10 concern to the group of officers present that  
11 certain individuals ought not to be driving their  
12 vehicles. And do you recall any such exchange  
13 occurring between staff at Branigan's and any  
14 officers, including yourself?

15 A No, I did not hear any such exchange.

16 Q What about a response to the concern  
17 that was being raised by Darcey Gerardy?

18 A I didn't hear any of his concerns or  
19 any responses to his concerns.

20 Q So to recap your testimony, sir, on  
21 the issue of paying now, leaving Branigan's, what  
22 you are telling us, sir, is that you simply recall  
23 being there with the people you went with and  
24 paying your bill?

25 A That's right.

1 Q Did you know whether vehicles were  
2 left behind at Branigan's?

3 A No.

4 Q How did you get to Sean Black's?

5 A I drove.

6 Q Did you stop along the way?

7 A I don't believe so.

8 Q Had you been there before?

9 A To Sean's residence?

10 Q Yes?

11 A Yes.

12 Q Had you been there with other police  
13 officers that were going that night?

14 A No, I don't believe so.

15 Q What did you do, sir, when you got to  
16 Officer Black's residence?

17 A Entered it.

18 Q Who was there?

19 A If I can refer to my -- give me a  
20 second, please?

21 THE COMMISSIONER: What page are you  
22 looking at?

23 THE WITNESS: Pardon me?

24 THE COMMISSIONER: What page are you  
25 looking at? There are four pages on one page, can

1 you look at the top right-hand corner of each  
2 quarter and tell me?

3 THE WITNESS: When I find it, I will  
4 let you know.

5 THE COMMISSIONER: Thank you.

6 THE WITNESS: Well, I can't locate it  
7 specifically in here but --

8 THE COMMISSIONER: Were you asked by  
9 Commission Counsel, Mr. Clifford, about who was  
10 there?

11 THE WITNESS: Yes, I was.

12 THE COMMISSIONER: You recall that, do  
13 you?

14 THE WITNESS: Yes.

15 THE COMMISSIONER: And you gave him an  
16 answer, did you?

17 THE WITNESS: Yes.

18 THE COMMISSIONER: But you can't find  
19 the answer in the transcript?

20 THE WITNESS: No. But from memory,  
21 and forgive me if I forget anyone, Chris Humniski,  
22 Jim Anderson, Dave Harding, Sean Black, Tracey  
23 Fudge, Kelly McLure, Jay Nolet. And again, I was  
24 looking and didn't find it, but forgive me if I  
25 missed anybody there.

1 BY MR. CLIFFORD:

2 Q Okay. So you can recall the persons  
3 that were at Sean Black's residence?

4 A That's correct.

5 Q And, sir, I take it you had an  
6 opportunity to review your interview with the  
7 Winnipeg Professional Standards Unit prior to  
8 testifying?

9 A That's correct.

10 Q And you also had an opportunity to  
11 review the transcript of the interview with  
12 Commission Counsel prior to your testimony?

13 A That's correct.

14 Q Now, we've heard, sir, that it was at  
15 Branigan's that you learned about going to  
16 Constable Black's residence?

17 A No, that's not accurate.

18 Q When did you -- you had a conversation  
19 earlier in the day with Constable Black about the  
20 fact that he might invite people back to his home  
21 that night?

22 A Yeah, he had mentioned it earlier in  
23 the day to me that it was a possibility.

24 Q So this was prior to the arrival at  
25 Branigan's?

1 A Yes.

2 Q And did you partake in any discussions  
3 with fellow officers at Branigan's that the group  
4 was going to be there, or that people were invited  
5 back to his residence?

6 A I may have. I don't recall.

7 Q Okay. Let's go to the point, sir,  
8 that you arrived, and you have indicated that  
9 you've entered, you recall certain individuals  
10 being present. What was taking place at Officer  
11 Black's when you went in?

12 A Well, people were just basically  
13 arriving and getting into his house, and sort of  
14 at that time congregating in his kitchen area.

15 Q So in terms of your location, you were  
16 in the kitchen area as well with the others?

17 A That's right.

18 Q And who were you with?

19 A I would have been in a group amongst  
20 the people I mentioned.

21 Q So everybody that you recall being  
22 there, I take it, was in the kitchen when you  
23 arrived?

24 A Yeah, it is -- I don't know how much  
25 discussion you have had with the floor plan of

1 Sean Black's residence, but it is fairly open, so  
2 that area can extend in different directions quite  
3 easily.

4 Q And have I got it right, sir, that all  
5 of the people that you recall being there were in  
6 that area when you first arrived?

7 A Yeah, I believe so.

8 Q And did you consume alcoholic  
9 beverages at Officer Black's?

10 A Yes, I did.

11 Q And what did you have there?

12 A Consumed some Crown Royal Rye and  
13 Coke.

14 Q And how many did you have, sir?

15 A This would be just a guess, a couple  
16 of drinks.

17 Q Why is it, sir, that you are taking a  
18 guess as opposed to telling the Commission how  
19 much you consumed?

20 A Because I cannot recall a specific  
21 number of drinks that I had.

22 Q Where did you get the drink?

23 A I poured it myself. I got the rye  
24 from, like a raised kitchen counter.

25 Q And did somebody offer it to you?

1           A     No, it was just there, and it was my  
2     interpretation of the situation that I could help  
3     myself.

4           Q     Okay. And you would have done that on  
5     more than one occasion, you would have been back  
6     to mix additional drinks, if you had them,  
7     throughout the evening?

8           A     That's correct.

9           Q     And what can you tell me about the  
10    alcohol that was put out?

11          A     Can you clarify?

12          Q     You were drinking, you said a couple  
13    of drinks?

14          A     That's correct.

15          Q     Rye?

16          A     That's right.

17          Q     And what were you mixing it with?

18          A     Coke, now whether it was Pepsi or  
19    Coke, I don't recall, but a cola.

20          Q     And how many bottles were on the  
21    counter?

22          A     Of mix?

23          Q     Of alcohol?

24          A     One.

25          Q     And apart from seeing rye, did you see

1 any other alcohol located in the kitchen?

2 A No, I did not.

3 Q So you saw one bottle, every time you  
4 went back to make a drink?

5 A Yeah, one bottle of rye, that's  
6 correct.

7 Q And what about the mix, where was  
8 that?

9 A I don't recall. It would have been in  
10 the kitchen, kitchen area on the counter, I  
11 believe.

12 Q Now, you were drinking beer at  
13 Branigan's?

14 A That's correct.

15 Q And when you say that you saw  
16 alcoholic beverages being served at Branigan's,  
17 what did you see being served there? Was it all  
18 beer?

19 A You know, specifically, I don't  
20 recall.

21 Q Okay. You were drinking beer at  
22 Branigan's. Did you have any beer when you got to  
23 Officer Black's?

24 A No, I did not.

25 Q Did you see any beer there?

1 A No.

2 Q Now, what about other people at  
3 Officer Black's, were they consuming alcoholic  
4 beverages?

5 A Yeah, I would have to assume there  
6 were other people consuming. I wasn't alone in  
7 drinking.

8 Q And when you say you would have to  
9 assume, as opposed to telling me, yeah, people  
10 were drinking, why are you saying that?

11 A Well, because I wasn't monitoring  
12 people going to the bottle and pouring their  
13 drinks, and I cannot say with any degree of  
14 certainty if people holding glasses with cola in  
15 them had any alcohol in them at all.

16 Q Okay. We will deal with that then,  
17 sir. Do I take it that you didn't observe anybody  
18 pouring an alcoholic drink or making a drink for  
19 themselves?

20 A I may have, but specifically who, I  
21 don't recall.

22 Q So, no specific recollection of  
23 anybody mixing an alcoholic drink for themselves  
24 other than yourself?

25 A That's correct.

1           Q     And with respect to people consuming  
2     beverages, you cannot say whether there was any  
3     alcohol in anything anybody drank there that night  
4     other than yourself? Do I understand that to be  
5     your testimony?

6           A     That's correct.

7           Q     Now, when you made your first drink,  
8     was the bottle full or was it empty?

9           A     Well, it couldn't possibly have been  
10    empty, I poured a drink out of it.

11          Q     Let me rephrase that. Was the bottle  
12    full or had there been some taken out of it? Was  
13    it half full? Was it almost empty? I know you  
14    are not going to make a drink with an empty  
15    bottle.

16          A     I don't recall the level of fullness,  
17    I guess.

18          Q     Did you interact at all with your  
19    host?

20          A     I may have. I don't recall talking to  
21    him specifically until later in the evening.

22          Q     Okay. We will come to that. You did  
23    talk to him later in the evening?

24          A     Um-hum.

25          Q     Because we know that you stayed there

1 and you had a conversation with him later about  
2 Derek Harvey-Zenk's whereabouts. But throughout  
3 the early part of the evening, did you interact  
4 with Sean Black?

5 A You know, I was interacting with  
6 everybody who was in the room. Now, did I  
7 interact any more or less with him, I don't  
8 recall.

9 Q So you interacted with everybody who  
10 was present?

11 A That's correct.

12 Q And what can you tell the Commission  
13 about Derek Harvey-Zenk when you interacted with  
14 him?

15 A As far as?

16 Q Did he have a drink?

17 A I don't recall specifically.

18 Q What did you talk to him about?

19 A I don't recall the subject of our  
20 conversation. It would have just been --

21 Q Who was he with?

22 A He was with the rest of us in the  
23 room.

24 Q And what were you all doing?

25 A Socializing.

1 Q Do you recall people leaving Officer  
2 Black's residence?

3 A Yes.

4 Q Who do you recall leaving first?

5 A I believe Chris Humniski.

6 Q And who do you recall leaving after  
7 Officer Humniski?

8 A If you give me a moment, I will -- I'm  
9 going to refer to my transcript.

10 Q Sir, are you looking at the Winnipeg  
11 Professional Standards Unit interview?

12 A I'm looking at my Commission interview  
13 with yourself.

14 Q Do you have a copy of the Professional  
15 Standards Unit?

16 A Yes, I do.

17 Q Okay. If you want to look at page 13,  
18 sir, in the interview with Professional Standards  
19 Unit, it might refresh your memory on that point?

20 A Okay. Well, I will correct myself.  
21 That T.J. Spruyt, I believe, was first to leave.

22 THE COMMISSIONER: Who was that?

23 THE WITNESS: T.J. Spruyt. And  
24 following that, Chris Humniski and Jim Anderson,  
25 Dave Harding, Kelly McLure and Tracey Fudge, I

1 believe, left in a group. And then I believe  
2 Norbert Bauer was next to go. And following that,  
3 would have been Jay Nolet, then Derek.

4 BY MR. CLIFFORD:

5 Q Now, we will deal with the sequence of  
6 people leaving, but when you were at Officer  
7 Black's residence, sir, I'm interested in whether  
8 you noted any behavioral changes of anybody there  
9 as a result of consuming alcohol?

10 A Yes, I did.

11 Q Okay. And who did you notice?

12 A I noticed that Dave Harding was  
13 exhibiting some behavioral change.

14 Q Well, we have heard, sir, that Dave  
15 Harding was actually brought downstairs and put on  
16 a couch. He was put down to rest or sleep?

17 A That's correct.

18 Q And what about anybody else, sir?

19 A No.

20 Q What about yourself?

21 A No. Was I exhibiting behavioral  
22 change?

23 Q Yes, did the alcohol have any effect  
24 on you? You were consuming, you indicated a  
25 couple of drinks, but not able to give a number.

1 What effect was the alcohol having on you?

2 A I was not impaired.

3 Q Now, I want to discuss with you, sir,  
4 and ask you questions about the circumstances of  
5 Harvey-Zenk leaving. As the night wore on, we  
6 understood, sir, that you actually stayed at  
7 Officer Black's residence?

8 A That's correct.

9 Q In fact, you were the only person that  
10 stayed?

11 A Aside from Sean, that's correct.

12 Q You were the only guest that stayed at  
13 the residence?

14 A Yes.

15 Q Now, tell the Commission, sir, what  
16 took place at the very end of the night when it  
17 got down to you, Officer Black, and Derek  
18 Harvey-Zenk?

19 A Sean and Derek had been on a tour of  
20 Sean's residence. They had returned to the main  
21 floor of the residence. Sean asked Derek if he  
22 was going to stay. And I said the same thing to  
23 Derek, just mentioning that I was spending the  
24 night, if he was going to as well. Derek really  
25 didn't give a reply to that. And as I laid down,

1 he left the area that I was in. Sean, who had  
2 temporarily stepped into his bedroom, returned,  
3 asked where Derek was. I did not know. Shortly  
4 thereafter he determined that he had left.

5 Q I want to clarify something with you,  
6 Constable. When you say that Officer Black and  
7 Derek Harvey-Zenk went on a tour of the house,  
8 looking at the basement, et cetera, it was just  
9 the two of them at that point. Do I understand  
10 correctly, sir, that even prior to them going  
11 downstairs that you were settling down on the  
12 couch, that you were going to be sleeping on the  
13 couch?

14 A Yes, I was arranging to have a place  
15 to sleep on the couch.

16 Q And were you already lying down at  
17 that point, sir, when they went off to do the  
18 tour?

19 A No, I was not.

20 Q What were you doing? Were you just  
21 getting the blankets and pillows, et cetera, set  
22 up?

23 A That's correct.

24 Q So you are still standing up then?

25 A Yeah, I would have been in the area of

1 the couch, you know, preparing it, but, yeah, on  
2 my feet.

3 Q And I take it even prior to them  
4 leaving to go on the tour of the basement, it is  
5 quite apparent, obviously, that you are going to  
6 be spending the night. Do you talk to Derek  
7 Harvey-Zenk at that point about staying the night  
8 as well?

9 A No.

10 Q When they came back from looking at  
11 the basement, I take it you are lying down at this  
12 point? You are actually in your bed for the  
13 night?

14 A Yeah. I don't recall specifically if  
15 I was sitting on the couch at that point or if I  
16 was lying down.

17 Q When they came back from the tour of  
18 the basement, you don't know whether you were  
19 sitting up or lying down?

20 A Well, I was on the couch.

21 Q Where did Officer Black go?

22 A He attended into his bedroom, it was  
23 just adjacent to the livingroom.

24 Q He went to his bedroom, and how long  
25 was he in there?

1           A     Again, this would be a guess, a minute  
2     or two.

3           Q     So at that point it is just you and  
4     Derek Harvey-Zenk?

5           A     That's correct.

6           Q     And are you talking to him?

7           A     Short of advising him that I was  
8     spending the night there, indicating if, are you  
9     going to crash here or what are you going to do,  
10    no, that was the extent of our conversation.

11          Q     What took place after that?

12          A     I laid on the couch and went to bed,  
13    so to speak.

14          Q     What took place after that?

15          A     Sean came out of his room, asked where  
16    Derek was. I didn't know where he was. Sean, at  
17    that time I assume, checked his house and  
18    determined that he left.

19          Q     What could you tell us about the  
20    circumstances of him leaving?

21          A     Can you be more specific?

22          Q     What door did he go out? How did he  
23    get out?

24          A     Again, it is only an assumption. The  
25    couch that I was on was near the patio door. He

1 did not exit out the patio door. And the front  
2 door was in close proximity to me as well, and I  
3 didn't see him leave out either of those doors.

4 Q You were awake, were you not?

5 A Yeah, and I didn't hear those doors  
6 open or close.

7 Q Did you hear him leave, put on his  
8 boots, jacket? It is a winter night?

9 A No.

10 Q So you can provide no evidence  
11 whatsoever with respect to the circumstances  
12 surrounding Derek Harvey-Zenk leaving the  
13 residence?

14 A No.

15 Q Didn't say good night to you, didn't  
16 hear him say thank you to anybody?

17 A No.

18 Q It came as a total shock to you when  
19 Sean Black came out of the bathroom and asked  
20 about his whereabouts?

21 A I wouldn't call it a shock, but it was  
22 unknown to me that he had left up until that  
23 point.

24 Q What was your reaction?

25 A Okay, he is gone.

1 Q Did you talk to Officer Black about  
2 the fact that he is gone?

3 A Not really.

4 Q This was after 6:30 in the morning,  
5 after being at a bar for a good portion of the  
6 night, and then being at Officer Black's residence  
7 for the balance of the night into the morning  
8 hours. Alcohol had been consumed. Did you and  
9 Officer Black have any discussion about whether it  
10 was appropriate for him to be out driving his  
11 motor vehicle?

12 A No, we did not.

13 Q Did you make any suggestion to Derek  
14 Harvey-Zenk that he should stay?

15 A No.

16 Q Did you tell Officer Black that you  
17 had made such a suggestion, that you told Derek,  
18 or suggested to him that he should stay?

19 A No.

20 Q The Commission has heard evidence from  
21 Officer Black, and there has also been filed  
22 before the Commission a statement that was  
23 prepared by an insurance agent for Officer Black,  
24 and what is indicated in the statement, sir, is as  
25 follows -- this is the statement of, the insurance

1 statement of Officer Sean Black. And I want to  
2 ask you whether you agree with this. All right?

3 A Okay.

4 Q It is not your statement, but it is a  
5 statement of someone else that is attributing  
6 words to you. And what we are talking about, just  
7 so you are perfectly clear on this, is  
8 conversation you had with Derek Harvey-Zenk when  
9 he was leaving. And I quote:

10 "Ken was hitting the sack on the couch  
11 in the living room and he said that  
12 Derek had turned away from him, but he  
13 did not know where Derek went. I  
14 later learned from Ken that he had  
15 also suggested that Derek might want  
16 to stay."

17 Did you say that to Officer Black?

18 A Not that I recall. The only  
19 suggestion I made in any way was to advise Derek  
20 that I was staying and he could spend the night if  
21 he wished, it was open. It was open to us all.  
22 So I never made any suggestion as to I think he  
23 should stay, no.

24 Q When did you learn, sir, that the car  
25 crash had occurred and there was a fatality?

1           A     The following day when I had attended  
2     to the District 3 station.

3           Q     And who told you about it?

4           A     My Sergeant at the time, Chris  
5     Humniski.

6           Q     And where did he tell you about, sir?

7           A     It was in the men's locker room.

8           Q     And did you have conversation with him  
9     about alcohol consumption? Was he curious about  
10    what took place at the end of the night when it  
11    was just down to three or four of you?

12          A     No.

13          Q     You are telling me that he wasn't even  
14    curious, didn't ask you any questions about what  
15    took place from 4:30, 5:00, 5:30, 6:00, 6:30?

16          A     No. The context in which he had told  
17    me, we were attending a function which was taking  
18    place in the lunch room of the station. And he  
19    directed me -- sorry, he gave me a signal, I  
20    attended to the men's washroom, or the men's  
21    locker room, pardon me, and that's where he told  
22    me. So this is just a brief, sort of him  
23    informing me, and then we returned back to the  
24    function.

25          Q     Okay. But what you had known, I take

1 it, at that point, was that there was a motor  
2 vehicle accident, there was a fatality, and that  
3 Derek Harvey-Zenk was in custody at East St. Paul?

4 A That's correct.

5 Q And I take it, it wasn't a leap of  
6 faith when you heard that he was in custody at  
7 East St. Paul that it was in connection with a  
8 criminal investigation into drinking and driving?

9 A No, I had no idea that it was in  
10 regards to -- an investigation in regards to  
11 drinking and driving.

12 Q Officer Humniski didn't even tell you  
13 that, that there was an issue with respect to him  
14 being charged with driving-related offences?

15 A Not at that time.

16 Q When did you find out?

17 A I don't recall if I was ever told or I  
18 learned through the media.

19 Q Do you recall having a shift briefing,  
20 sir, in the days following the cake and coffee  
21 function, where Officer Humniski spoke to you?  
22 Did you have a shift briefing on the following  
23 week?

24 A Yes, I did.

25 Q And at that point you would have known

1 that charges were laid?

2 A That's right.

3 Q So, were you being asked by anybody at  
4 the shift briefing, were other officers curious  
5 with respect to what took place at the end of the  
6 night, when it got down to the final three or four  
7 of you?

8 A No, I had no such discussions with  
9 anyone.

10 Q Did you have any concerns of your own,  
11 sir, with respect to any issues of civil  
12 liability?

13 A Not specifically.

14 Q And can you elaborate on that?

15 A In which context?

16 Q Well, you are saying not specifically.  
17 Did you have general concerns about issues of  
18 civil liability?

19 A I really had never been in any  
20 circumstances where something like this had  
21 happened, and I had no real concerns whatsoever  
22 initially.

23 Q And what about subsequently?

24 A Well, following subpoena to  
25 Professional Standards, I had concerns that arose

1 regarding being interviewed by the Professional  
2 Standards Unit and how it may impact my career.

3 Q Did you talk about any concerns that  
4 you had with Officer Black?

5 A I may have had brief discussions about  
6 issues concerning statements that we provided, or  
7 the information that was being sought by  
8 Professional Standards.

9 Q Did Officer Black raise any concerns  
10 that he had with you about potential civil  
11 liability arising from his involvement in hosting  
12 the party?

13 A No. We had no discussions concerning  
14 his own liability. You know, it was safe for me  
15 to assume that, being a host, that he had a  
16 degree, potentially.

17 Q Now, you were originally scheduled,  
18 were you not, to go for your Winnipeg Professional  
19 Standards Unit interview on March 3rd; is that  
20 right?

21 A Yeah, according to the documents that  
22 you -- I wasn't aware of that specific date until  
23 you mentioned it during our interview in April.

24 Q Well, the documentation that the  
25 Commission has and the evidence that we've heard,

1 sir, and I'm referring to volume Q-1.89b.3 at page  
2 2881, is that on March 3rd at 2219, so 19 minutes  
3 after 10:00, Constable McLure called Winnipeg  
4 Police Professional Standards Unit and she  
5 indicated that she -- that she, Constable Black  
6 and Constable Azaransky are coming over to the  
7 Winnipeg Police Professional Standards office. Do  
8 you recall being with her on March 3, 10:20 at  
9 night?

10 A No.

11 Q In the company of Officer Black?

12 A No, I don't recall that.

13 Q Well, we know, sir, that you didn't go  
14 for your interview on March 3rd, did you?

15 A No, I did not.

16 Q It got postponed, right?

17 A That's correct.

18 Q And the note that we have from  
19 Professional Standards, sir, I'm referring to the  
20 same document, is that at 11:00 o'clock, so 41  
21 minutes later, Staff Sergeant Anderson -- now, he  
22 would be your Staff Sergeant, right?

23 A No, that's incorrect.

24 Q He was a Patrol Sergeant?

25 A That's correct.

1           Q     All right. I stand corrected. Patrol  
2     Sergeant Anderson, and he indicated to  
3     Professional Standards that:

4                     "Constables Black and Azaransky would  
5                     like to postpone their interviews in  
6                     order to consult further with the  
7                     Winnipeg Police Association. They are  
8                     concerned re future impact statements  
9                     may have on civil litigation and/or  
10                    Winnipeg Police Association regulation  
11                    matters in this incident."

12                   Now, that's the information we have  
13     received, sir. So there is an expression here  
14     that you had a concern, both you and Officer  
15     Black, about civil litigation. And I want to know  
16     how it was that Patrol Sergeant Anderson would  
17     have become privy to this information, sir, that  
18     you had a concern about civil liability?

19           A     I don't know how he became privy to  
20     that.

21           Q     I take it, sir, that you don't deny  
22     that you had a concern about the impact your  
23     statement would have on civil litigation, do you?

24           A     Well, I had numerous concerns, having  
25     never been in this situation before, I wanted

1 those concerns addressed.

2 Q And, sir, it wasn't until March 11th,  
3 2005, that you actually attended to have your  
4 interview with the Professional Standards Unit?

5 A That's correct.

6 Q And in fact, you went that day with  
7 Constable Black?

8 A That's correct.

9 Q And when you were on your way there,  
10 sir, was there any discussion with respect to the  
11 issue of civil liability?

12 A No.

13 Q Did you know where Officer Black had  
14 been prior to going to the Winnipeg Professional  
15 Standards Unit interview?

16 A No.

17 Q No discussion with respect to  
18 insurance statements or anything of that nature?

19 A None.

20 Q Was there ever a dynamic in your  
21 detachment, or in your squad, or group of officers  
22 that you work with, sir, where there would be a  
23 dynamic where senior officers wouldn't spend time  
24 with junior officers?

25 A No, not really, not that I recall, no.

1 Q Do you recall going to a Super Bowl  
2 party, sir, at Branigan's?

3 A Yes.

4 Q And who was present at that party?

5 A Myself, Christian Guyot and Dave  
6 Harding, as well as our girlfriends or wives at  
7 the time.

8 Q Were there any other male officers  
9 present?

10 A No, there was not.

11 THE COMMISSIONER: Who was that again?

12 THE WITNESS: Myself, Christian Guyot  
13 and David Harding, and our spouses or girlfriends  
14 at the time.

15 BY MR. CLIFFORD:

16 Q And I had asked you, sir, whether  
17 there were other male officers present?

18 A No, there was not.

19 Q And you were certain of that?

20 A Absolutely.

21 Q Now, one final area, sir, that I  
22 wanted to ask you about, and that was with respect  
23 to the Super Bowl party and dealing with staff  
24 members at Branigan's. Did you have any occasion  
25 to have a drink with Chelsea O'Halloran when she

1 was off-duty?

2 A Not that I recall.

3 Q Okay. And I'm not talking about the  
4 24th or 25th, I'm talking about the weeks  
5 preceding the 24th, 25th, where you might have  
6 been with Officer Black, she might have finished a  
7 shift, and you sat down and had a drink?

8 A That's entirely possible but,  
9 specifically, I don't recall.

10 Q Now, we've heard evidence as well, I  
11 certainly have from interviewing various officers,  
12 sir, that there was issues of Bailey's being out,  
13 the liqueur, at Black's residence. Do you recall  
14 that at all?

15 A No, I don't.

16 Q You don't recall seeing a bottle of  
17 Bailey's out in the same vicinity as the rye  
18 bottle?

19 A No.

20 Q Now, what I wanted to do, sir, was to  
21 get exhibits entered through you. You have a copy  
22 of the Winnipeg Police statement dated March 11,  
23 2005, F-1.35.a. Mr. Commissioner, I'm going to  
24 ask that that be made an exhibit.

25 THE CLERK: Exhibit number 166.

1 (EXHIBIT 166: F-1.35.a Transcript  
2 interview of Ken Azaransky, March 11,  
3 2005)

4 MR. CLIFFORD: Those are the exhibits,  
5 Mr. Commissioner, that I wanted to put in through  
6 this witness. There was reference to Officer  
7 Girard's notes where he is attributing comments,  
8 but we are going to be calling that witness, and I  
9 think we will put those notes in through Officer  
10 Girard when he testifies.

11 Constable Azaransky, those are the  
12 questions that I have. Remain seated, other  
13 counsel will have questions.

14 BY MR. ZAZELENCHUK:

15 Q Hopefully not too many questions,  
16 Officer. I notice that your badge number and  
17 Derek Harvey-Zenk's badge number are only 18  
18 digits apart. Were you troop mates?

19 A No.

20 Q And so Derek made it to the force  
21 before you did, because I notice he had a lower  
22 badge number?

23 A That's correct.

24 Q He was a year ahead of you?

25 A Yeah, I don't know the period of time

1 that he was hired before me, but, yeah, within a  
2 year.

3 Q Yeah. Now, when you went to  
4 Branigan's on the evening of the 24th of February,  
5 2005, did you personally order any food for  
6 yourself?

7 A Yeah, I would have had some wings.

8 Q Okay. Do you recall how many?

9 A Well, I think they come in tens, so I  
10 would have had 10 or 20 or so, I don't recall  
11 specifically.

12 Q But it is your evidence that they come  
13 in plates of 10?

14 A Yeah, I believe so.

15 Q And do you recall how you paid for  
16 your bill that night?

17 A No, I don't.

18 Q Do you recall the size of your bill?

19 A No, I don't.

20 Q Do you recall what kind of beer you  
21 were drinking?

22 A I think it is Miller Genuine Draft  
23 which they have on tap.

24 Q I see. You weren't drinking the \$2.75  
25 a pint specials?

1 A MGD was probably part of that.

2 Q You know that we've heard evidence  
3 that when the shift came down for an end of shift,  
4 that regardless of what day it was, Branigan's  
5 would give you the deal on the chicken wings, the  
6 Sunday and Tuesday deal, which was 35 cents a  
7 wing. That's correct?

8 A Yes, typically they would, it didn't  
9 happen every time, but they would.

10 Q And they would also give you the  
11 \$2.75 pints, which was whatever they had for the  
12 \$2.75?

13 A Yes, whatever that included, yeah.

14 MR. ZAZELENCHUK: Sure. Those are my  
15 questions.

16 MR. McDONALD: No questions,  
17 Mr. Commissioner.

18 MR. LABOSSIERE: Thank you,  
19 Mr. Commissioner.

20 BY MR. LABOSSIERE:

21 Q Constable Azaransky, as I understand  
22 your evidence, you've been a police officer for  
23 about six or seven years now?

24 A That's correct.

25 Q And as a result of that, you've given

1 evidence on a number of occasions in the course of  
2 your duties?

3 A Yes, I have.

4 Q And as I understand it, sir, as a  
5 police officer you are trained to be as precise as  
6 possible with your evidence?

7 A Yes.

8 Q And that certainly if you have to  
9 guess, you should say so?

10 A Yes.

11 Q Because to do so otherwise would be  
12 unfair; you agree with that?

13 A I do.

14 Q It may leave a misimpression with the  
15 trier of fact if you do that, if you don't say you  
16 are guessing when in fact you are?

17 A Right.

18 Q And it is fair to say, sir, that's  
19 exactly what you are trying to do today, you are  
20 trying to be as precise as possible?

21 A That's correct.

22 Q You are not trying to leave the  
23 impression with the Commissioner that nobody was  
24 drinking. But when asked specifically who was  
25 drinking what beverage, and in what amounts, you

1 are unable to give an answer with precision; is  
2 that fair?

3 A That's fair.

4 Q That is when you are being asked now,  
5 three and a half years after the event, you don't  
6 have a picture in your mind of a particular  
7 individual drinking a particular brand of liquor?

8 A That's right.

9 Q Now, if you had a specific  
10 recollection, would you have any hesitation in  
11 providing that evidence?

12 A No.

13 Q Now, my learned friend, Commission  
14 Counsel, asked you some questions about arriving  
15 at Sean Black's residence, and he asked you  
16 specifically whether you recalled who arrived with  
17 you or at that time. And you were looking through  
18 one of the statements, because you recalled being  
19 asked that, and you couldn't find that. It is not  
20 really a question, but for Mr. Commissioner, you  
21 can find that in his statement to PSU F-1.35.9 at  
22 page 862.

23 Now, my learned friend also asked you  
24 a series of questions in connection with any  
25 concerns that you might have had with respect to

1 civil liability. And you responded as you did,  
2 and one of the things you said is you wanted to  
3 consider whether there might be any impact on your  
4 career, or words to that effect. Do you recall  
5 that?

6 A Yes.

7 Q And as I understand it, sir, at this  
8 time, that is at the time that you were being  
9 asked to go into the Professional Standards Unit,  
10 there was a well known issue throughout the  
11 Winnipeg Police Service involving an incident  
12 that's been referred to as the Tokarchuk matter.  
13 Do you recall that?

14 A Yes, I do.

15 Q And I take it, sir, you were aware  
16 that the Tokarchuk matter involved a situation  
17 where allegations were being made in the media  
18 that police officers had information which might  
19 have prevented the death of Mr. Tokarchuk. Do you  
20 recall that?

21 A Yes.

22 Q And you will recall that, although  
23 police officers had come forward, given truthful  
24 statements, and it turned out that they did  
25 nothing wrong, they were nevertheless treated in

1 such a way that they were taken out of the work  
2 place for 18 months. You recall that?

3 A Yeah, I was aware of that.

4 Q Was that one of the concerns that you  
5 had at the time?

6 A Absolutely.

7 MR. LABOSSIERE: Those are my  
8 questions. Thank you.

9 THE COMMISSIONER: Thank you.

10 BY MR. PROBER:

11 Q Officer, when you were at the Super  
12 Bowl party, was Derek Harvey-Zenk there?

13 A No.

14 Q And you are certain about that?

15 A Yes.

16 Q Okay. Were any of the spouses or  
17 partners of either Guyot, or Harding, or yourself,  
18 substantially pregnant, noticeably pregnant?

19 A Yes.

20 Q Whose partner was that?

21 A Christian Guyot's.

22 MR. PROBER: Thank you. Those are my  
23 questions.

24 MS. HANLIN: Mr. Commissioner?

25 THE COMMISSIONER: Do you want to go

1 at the end -- I'm sorry. Wait for Mr. McFetridge,  
2 does he have any questions? Mr. Green has shaken  
3 his head, I can't hear, but I can see him.

4 MR. McFETRIDGE: No questions.

5 THE COMMISSIONER: Thank you.

6 MS. HANLIN: Thank you.

7 BY MS. HANLIN:

8 Q Constable Azaransky, have you ever  
9 testified in a public inquiry before?

10 A No, I have not.

11 Q And you are aware that this public  
12 inquiry has garnered a lot of media attention?

13 A Yes.

14 Q In fact, there is a camera just a few  
15 feet away from you?

16 A Yes.

17 Q And this tragedy that the public  
18 inquiry is about is not one that you were  
19 investigating, but one that has a personal  
20 component?

21 A Yes.

22 Q And you understand that your  
23 reputation might be at stake here?

24 A Yes.

25 Q Would you describe this as a somewhat

1 stressful experience for you?

2 A Absolutely.

3 Q I would like you to turn to Exhibit  
4 166, please? And that's the interview that you  
5 gave to Professional Standards.

6 A Okay.

7 Q If you could turn to page 856, please?  
8 Now, Sergeants Girard and Pearson  
9 explained to you in that interview that they are  
10 interviewing you in regards to the events of  
11 February 24th into February 25th. Is that  
12 correct?

13 A That's correct.

14 Q And you understand that that interview  
15 is to be in regards to an accident that  
16 Harvey-Zenk was in shortly after leaving Sean  
17 Black's home on February 25th; is that correct?

18 A That's correct.

19 Q That he is facing criminal allegations  
20 involving alcohol consumption; is that correct?

21 A Yeah, that's correct.

22 Q Now, if you can turn to page 864 of  
23 that interview, please? And you are describing to  
24 Sergeant Girard and Pearson what took place near  
25 the end of the gathering at Sean Black's house;

1 isn't that correct?

2 A Yes.

3 Q There is just a few of you left at  
4 that point?

5 A Right.

6 Q Is that correct? Can you describe to  
7 the Commission what exactly took place at that  
8 point?

9 A As everybody started to leave? Well,  
10 other than people getting up and leaving, I don't  
11 know what you are specifically referring to.

12 Q You are sitting around -- I'm  
13 referring to the part where you said, and then  
14 there was myself, Sean, Jay and Derek sat around  
15 for a while?

16 A Yes.

17 Q What did that involve?

18 A Well, we were just in the kitchen  
19 area, I guess it was the four of us, and we were  
20 just talking about work and carrying on, joking  
21 with each other and, you know, sort of, that was  
22 sort of the concluding part of the evening, so  
23 just talking.

24 Q And I understand from reading that  
25 that you were obviously talking to Derek

1 Harvey-Zenk?

2 A Yes.

3 Q You were observing him; is that  
4 correct?

5 A Yes.

6 Q You were having conversation with him?

7 A Yeah.

8 Q Now, if you can turn to page 866 of  
9 that statement, please? And you are asked to  
10 describe by Sergeant Girard what happened prior to  
11 Derek Harvey-Zenk leaving Sean Black's residence?

12 A Yes.

13 Q Can you tell the Commission what you  
14 told Sergeant Girard and Pearson?

15 THE COMMISSIONER: Well, is it in the  
16 transcript?

17 MS. HANLIN: It is, Mr. Commissioner.

18 THE COMMISSIONER: Do I need him to  
19 tell me what is already there?

20 MS. HANLIN: No, we can --

21 THE COMMISSIONER: Maybe you can  
22 answer it without telling me what is in the  
23 transcript, maybe you can answer it without  
24 reading it?

25 THE WITNESS: Well, other than what I

1 had mentioned earlier, that they concluded a tour  
2 and Derek left shortly thereafter.

3 THE COMMISSIONER: Maybe I didn't  
4 understand you correctly. Did you say there were  
5 four of you left, after everybody was gone?

6 THE WITNESS: The four of us were  
7 there, and then Jay left.

8 THE COMMISSIONER: It was Jay Nolet?

9 THE WITNESS: Jay Nolet was included  
10 in that, and then he left.

11 BY MS. HANLIN:

12 Q And that would have been shortly  
13 before Harvey-Zenk left; is that correct?

14 A Yes.

15 Q Now, at 868 of the interview you were  
16 asked by Sergeant Girard, and this is in the  
17 context of when Derek and Sean were walking around  
18 discussing renovations, whether or not you had any  
19 concerns at all about Derek leaving, as far as his  
20 level of sobriety or fatigue or anything like  
21 that?

22 A Yes.

23 Q What did you tell Professional  
24 Standards Unit?

25 A I indicated that I had no concern

1 regarding his level of sobriety or fatigue, as far  
2 as him leaving.

3 Q And that he seemed normal as far as  
4 sobriety goes?

5 A Yes.

6 Q Now, you related to Professional  
7 Standards Unit how it was that you, Jay Nolet,  
8 Sean Black and Harvey-Zenk were sitting around the  
9 table near the end of the gathering, having a  
10 discussion?

11 A Yes.

12 Q Nolet leaves. You related the  
13 circumstances of Harvey-Zenk leaving, and that you  
14 had no concerns regarding his sobriety; correct?

15 A That's correct.

16 Q In terms of the accident that  
17 Harvey-Zenk was involved in shortly after he left  
18 Sean Black's place, was there any more important  
19 information that you could have given to  
20 Professional Standards Unit?

21 A No, not that I -- I don't believe so.

22 Q You understand that under the Winnipeg  
23 Police Service regulations, that as a witness to a  
24 possible criminal offence, you are obligated to  
25 answer questions put to you by the Professional

1 Standards Unit?

2 A Yes.

3 Q You understand that you can be  
4 disciplined if you don't honestly answer those  
5 questions?

6 A Yes.

7 Q Is that an obligation that you take  
8 seriously?

9 A Yes.

10 Q And what did you understand the  
11 purpose to be in coming forward to the  
12 Professional Standards Unit?

13 A Just to be very open with the  
14 investigation.

15 Q As a peace officer, what do you  
16 consider to be your obligation if you see someone  
17 who has been drinking and is going to drive?

18 A Well, you know, through observation,  
19 determine if I have any concern, and if there is a  
20 concern, not to allow them to drive.

21 Q And what would be a concern to you?

22 A Exhibiting noticeable signs of  
23 impairment.

24 Q And you know what those are through  
25 your experience as a police officer?

1 A Yes, I do.

2 Q And is that an obligation that you  
3 consider yourself to have on or off duty?

4 A Absolutely.

5 Q And in terms of fulfilling this  
6 obligation, is there any reason you wouldn't have  
7 done this for Harvey-Zenk?

8 A No.

9 Q You also drove to Sean Black's house  
10 from Branigan's; is that correct?

11 A That is correct.

12 Q If you had noticed someone who had had  
13 too much to drink at Branigan's, would you have  
14 offered them a ride?

15 A Yeah, I would have offered them a ride  
16 or ensured that they had a safe means of getting  
17 there without driving themselves.

18 Q Now, I understand, during your  
19 questions by Mr. Clifford, you related that you  
20 were on the couch and that Harvey-Zenk left;  
21 correct?

22 A That's right.

23 Q And from the couch, you can see the  
24 patio door; correct?

25 A Well, the patio door would have been

1 behind me, the way I was laying down --

2 Q Okay.

3 A -- further towards my head. And the  
4 front door would have been in view.

5 Q Okay. So the patio door, it is  
6 February, you would have noticed if it had opened?

7 A Absolutely.

8 Q And is there another door?

9 A Yeah, there is a -- well, there is a  
10 front door and then there is a door that leads  
11 into Sean's garage.

12 Q Okay. It is possible that  
13 Mr. Harvey-Zenk left through that door?

14 A Yes.

15 Q When you heard of this incident from  
16 Sergeant Humniski, what was your reaction?

17 A I was concerned. I was concerned  
18 about the fact that this accident occurred and how  
19 Derek was doing and what the circumstances were.

20 MS. HANLIN: Thank you. Those are my  
21 questions.

22 BY MR. CLIFFORD:

23 Q Constable Azaransky, it was suggested  
24 to you that you have been trained not to take a  
25 guess when testifying as a witness officer, and

1 the suggestion was that now we sit here three and  
2 a half years after the event, and you don't want  
3 to guess. Sir, you were interviewed on March 11,  
4 2005, and with respect to alcohol consumption or  
5 location and interaction with Derek Harvey-Zenk,  
6 did you offer anything more precise to the  
7 Winnipeg Professional Standards Unit than you have  
8 today?

9 A Pardon me, can you repeat?

10 Q You didn't give any more information  
11 to the Winnipeg Professional Standards Unit on  
12 March 11, 2005, than you did today, did you?

13 A No, I gave a statement then and I'm  
14 here today.

15 Q So it is not a situation where your  
16 memory has failed you over three and a half years.  
17 On March 11, 2005, you provided no more  
18 significant detail to the Professional Standards  
19 Unit, did you?

20 A Well, I responded to the questions  
21 that they asked.

22 Q Ms. Hanlin asked you questions about  
23 the end of the evening, and she referred you to  
24 page 866 in the transcript, and brought you back  
25 to the point where you were talking with the last

1 three, four officers that night, and you were in  
2 the kitchen. And I understood your testimony to  
3 be, sir, that you were joking around with one  
4 another and talking about work projects and that  
5 sort of thing?

6 A That's correct.

7 Q What was the mood like?

8 A Tough to describe -- normal, I don't  
9 know, non -- you know, positive.

10 Q Positive mood. There is some  
11 camaraderie, I take it, there? You guys are  
12 fellow officers, you have spent the evening  
13 together, you have enjoyed one another's company,  
14 I presume?

15 A That's correct.

16 Q And in light of that, sir, did you  
17 have any concern, or question the abrupt departure  
18 of Derek Harvey-Zenk, as an individual that you  
19 were enjoying time with, spending time with in the  
20 kitchen, when it got down to the last three or  
21 four, it didn't strike you odd that, given the  
22 fact that you were getting along, that it was a  
23 positive mood, that he would leave so abruptly  
24 without even say goodnight or goodbye or  
25 announcing that he was going to leave?

1           A     No, it did not leave any concerns with  
2     me.

3           Q     But you would agree that it is hard to  
4     reconcile that type of behaviour with three, four  
5     guys sitting in the kitchen at the end of the  
6     night, swapping stories about work, upcoming  
7     projects and joking?

8           A     No, I wasn't offended by it.

9           Q     Were you surprised by it?

10          A     No.

11                   MR. CLIFFORD: Those are the questions  
12     that I have, Mr. Commissioner.

13                   THE COMMISSIONER: Thank you. It is  
14     3:04. 9:00 o'clock tomorrow morning. I see by  
15     the smiles on counsel's face that they are anxious  
16     to be here at 9:00, raring it go.

17                   THE CLERK: All rise.

18                   THE COMMISSIONER: You can step down  
19     sir, you are finished.

20                   THE CLERK: This Commission of Inquiry  
21     is now adjourned.

22                             (Proceedings adjourned at 3:05 p.m.)

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COURT REPORTERS' CERTIFICATE

Debra Kot and Cecelia Reid, court reporters in the Province of Manitoba, do hereby certify the foregoing pages are a true and correct transcript of our Stenotype notes as taken by us at the time and place hereinbefore stated.

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Cecelia Reid

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Debra Kot

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