

INQUIRY INTO THE INVESTIGATION AND  
PROSECUTION OF DEREK HARVEY-ZENK

The Honourable Roger Salhany, Q.C., Commissioner

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

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Tuesday, July 29, 2008

Volume 22

INQUIRY PROCEEDINGS

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1 TUESDAY, JULY 29, 2008

2 UPON COMMENCING AT 8:59 A.M.

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

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

8 THE COMMISSIONER: Good morning.

9 MR. PACIOCCO: We're going to proceed  
10 immediately with the first witness we're calling  
11 today, and the only witness we're calling today,  
12 Mr. Martin Minuk.

13 THE COMMISSIONER: Good morning.

14 THE WITNESS: Good morning.

15 MARTIN MINUK, having been first duly  
16 sworn, testified as follows:

17 THE WITNESS: Good morning,  
18 Mr. Commissioner, counsel.

19 MR. PACIOCCO: Good morning,  
20 Mr. Minuk.

21 BY MR. PACIOCCO:

22 Q Sir, you are a very experienced  
23 lawyer, I understand?

24 A I have some experience. Others might  
25 agree with you, but I'd be a little bit more

1 modest.

2 Q I didn't mean to test your humility, I  
3 was trying to get a shortcut through your  
4 credentials.

5 A All right, yes.

6 Q You graduated from law school, I  
7 understand, in 1978?

8 A That's correct, sir.

9 Q You are now a lawyer with Aikins  
10 MacAulay and Thorvaldson?

11 A Yes, sir.

12 Q You began your career, I understand,  
13 as a Legal Aid lawyer?

14 A That's right.

15 Q And you have been in private practice  
16 since with -- certainly in the early years, the  
17 majority of your practice as a criminal defence  
18 lawyer?

19 A That's correct.

20 Q You have worked as well as counsel for  
21 the Federal Department of Justice as a special  
22 prosecutor, sir?

23 A That's correct.

24 Q And then after awhile, you began  
25 working for Manitoba Justice as an independent

1 prosecutor?

2 A Yes, sir.

3 Q And you now work as an independent  
4 lawyer who provides legal services from time to  
5 time to the Government of Manitoba?

6 A Yes.

7 Q You can qualify any of this, sir. You  
8 seemed to hesitate a little bit on the last point?

9 A Well, I thought that throughout this  
10 period of time, I would have said that while I was  
11 in private practice, I was always providing these  
12 services to the Federal Government and the  
13 Province.

14 Q Okay. All right. So you have had, I  
15 think you would agree with me, even allowing for  
16 the self-effacing description, that you have  
17 tremendous experience including as an independent  
18 prosecutor, sir?

19 A We agree on that.

20 Q Yes, sir. You had been doing this  
21 prosecution work for slightly more than a decade?

22 A I think so, that was my count.

23 Q You ultimately, we all know, came to  
24 prosecute Mr. Derek Harvey-Zenk in connection with  
25 the tragedy that so sadly took the life of Crystal



1 Taman?

2 A That's right, sir.

3 Q I'm going to begin, because the  
4 Commissioner will be interested in the way the  
5 independent prosecution works, and I'm going to  
6 take some steps in some detail in going through  
7 the way the retainers are set up with you, sir.  
8 I'm going to be having the clerk provide you with  
9 relevant documentation from time to time.

10 A Okay.

11 Q We're going to begin with a document  
12 that is found in book G-43. It was made Exhibit  
13 54 earlier on when we were looking at the victims'  
14 issues?

15 THE COMMISSIONER: G?

16 MR. PACIOCCO: G as in Gordon, 43.a.

17 THE WITNESS: I'm familiar with that  
18 letter, sir.

19 BY MR. PACIOCCO:

20 Q All right, sir. And this, I hope that  
21 the letter that was put in front of you is dated  
22 August 26th, 2004?

23 A The back letter is August 26th, and  
24 there is a front cover for it.

25 Q Let's start with the back letter.

1           A     All right.

2           Q     The back letter, sir, I understand is  
3     the retainer document that is executed between the  
4     Government of Manitoba and independent  
5     prosecutors. Certainly that was done in your  
6     case, sir?

7           A     Yes. It's a standard letter, I  
8     believe, that would be sent to all.

9           Q     And the understanding I have from the  
10    letter is that you are retained for a period, in  
11    this case from July 1st, 2004 to March 31st, 2005  
12    inclusive, to be available to provide counsel to  
13    the Government of Manitoba, sir?

14          A     Yes.

15          Q     And I understand that's the practice,  
16    that independent counsel are put under general  
17    retainer for one year at a time?

18          A     Yes, sir.

19          Q     Sir, it also indicates that should a  
20    case come your way that's of such magnitude as to  
21    make the global retainer provided for in this  
22    letter unreasonable, you can notify the province  
23    and then basically negotiate for a special  
24    retainer in connection with a large case?

25          A     Yes. And from time to time, it might

1 be that the case would be of such magnitude, it  
2 would be appreciated by the government when you  
3 are contacted, so they may tell you that without  
4 having to ask.

5 Q Okay. So the nature of your  
6 arrangement is you have a general retainer for  
7 more mundane matters, but larger matters, there  
8 are special arrangements made with independent  
9 prosecutors, sir?

10 A Yes.

11 Q We have also received information that  
12 at the time of the Taman tragedy, there were  
13 basically four people who held the kind of  
14 contract relationships you did with the  
15 government. Are you familiar with that, sir?

16 A I would say three -- there may be  
17 four, but three off the top of my head I would  
18 know right away. Four, that could be correct,  
19 yes. Yeah.

20 Q Did any other documents accompany this  
21 letter, sir, that you can recall?

22 A I can't recall today. I can't really  
23 tell you, sir.

24 Q Did you receive copies of any protocol  
25 documents prepared by the Ministry?

1           A     I know that I would have received at  
2     some point in time the general protocols of the  
3     department, and from time to time we may receive  
4     mailings of protocols.

5           Q     Okay.

6           A     But to the extent that I would be  
7     familiar with, and I know that I've read it and I  
8     can't tell you -- I do look at it, but I can't  
9     tell you today when in the past I would have  
10    received these.

11          Q     Okay. I'm going to be referring to  
12    four in particular today. I'm going to be  
13    referring initially to the appointment of  
14    independent counsel protocol that's found at tab  
15    G.44 of the documents that the lawyers are working  
16    with. And I'm going to ask the clerk if she can  
17    retrieve that and we will make that the next  
18    exhibit.

19                   THE CLERK: Exhibit 215.

20                   (EXHIBIT 215: G.44, Manitoba  
21                   Department of Justice Prosecutions -  
22                   Policy Directive - Subject Appointment  
23                   of Independent Counsel (January 2005))

24    BY MR. PACIOCCO:

25          Q     Now, sir, if you take a look at that

1 document, are you able to indicate whether it is  
2 familiar to you, sir?

3 A The document itself is familiar, sir,  
4 the content is familiar. I don't think that I saw  
5 it in this form. And I see that it's dated  
6 January of '05, so I would have seen it in an  
7 earlier form.

8 Q Okay. But the same basic type of  
9 document?

10 A Yes, sir.

11 Q So is it your evidence or your  
12 recollection that you would not have received an  
13 updated copy in January of 2005, when it was  
14 revised by the government?

15 A I may have. I certainly can't tell  
16 you today and to the -- I can't answer that. I  
17 don't know.

18 Q Fair enough. I'm going to ask you to  
19 turn, if you would, to page 1383. It would be  
20 page 4 of the actual original document.

21 A All right, yeah.

22 Q And you will notice under the heading  
23 at page 1383, Terms and Conditions of Appointment,  
24 at the bottom of the first paragraph it recites:

25 "A copy of this policy statement must

1                   also be provided to the independent  
2                   counsel once retained and made  
3                   available to the public on request."

4                   Do you see that, sir?

5                   A     Yes, sir.

6                   Q     And there are, in fact, terms of  
7                   reference that are provided that, from my reading  
8                   of this document, are intended to be read into or  
9                   understood to be part of the terms of the contract  
10                  of retainer that is given to independent  
11                  contractors. Do you take issue with that  
12                  interpretation, sir?

13                 A     No.

14                 Q     Over at page 1384, term or condition E  
15                  provides that:

16                         "Independent counsel is to be guided  
17                         by the prosecution policies issued on  
18                         behalf of the Attorney General of  
19                         Manitoba which apply to all provincial  
20                         prosecutions throughout the province.  
21                         This includes, for instance, the  
22                         charge approval standard (see Crown  
23                         policy on laying and staying of  
24                         charges) disclosure policies, as well  
25                         as directives from the Attorney

1                   General on the position to be taken in  
2                   cases of gang related crime, violent  
3                   crime, child victims, et cetera."

4       So the indication here, sir, is that independent  
5       Crowns are bound by the general policy statements  
6       issued by the Attorney General of Manitoba, sir.

7                   I take it you are familiar with that  
8       requirement of your terms as a prosecutor?

9                   A     Yes.

10                  Q     We're going to explore some of the  
11       challenges that that might present to an  
12       independent prosecutor later, sir. But just  
13       generally speaking, I take it that's why you have  
14       some familiarity with the policies --

15                  A     Yes.

16                  Q     -- because there are things you are  
17       required to be familiar with.

18                  Sir, your retainer letter which we  
19       just reviewed at G-34, that you have in front of  
20       you, sir, doesn't make reference to the Victims'  
21       Bill of Rights?

22                  A     No, it does not, sir.

23                  Q     And I'm given to understand that there  
24       has been a revision made to the letter as a result  
25       of the Krindle report that occurred subsequent to

1 your involvement in this case, that now includes  
2 recitals, or certainly attachments of the Victims'  
3 Rights policy to the letter. But that was not  
4 done, I understand, at the time you were retained,  
5 sir?

6 A Correct.

7 Q How familiar are you, sir, with the  
8 requirements of the Victims' Bill of Rights?

9 A Well, I would say that because I came  
10 to the work of independent prosecutions as a  
11 defence lawyer, my familiarity would be first from  
12 that side. And to the extent that, in  
13 representing accused persons, I would know the  
14 terms of the Victims' Bill of Rights and I would  
15 be regularly confronted with it, so to speak, in  
16 the day-to-day affairs of prosecutions, and  
17 questions by the court about Victim Impact  
18 Statements, victim participation, and matters of  
19 that sort. So I would know about it in two ways.

20 Q All right, sir. And it is  
21 understandable, given your extensive experience,  
22 that you would have acquired fairly intimate  
23 familiarity, one would think, with the Victims'  
24 Bill of Rights. But from the broader systemic  
25 issues that may interest the Commissioner, as an



1 independent prosecutor, have you ever been  
2 included in any training sessions or participated  
3 in any seminars related to the Victims' Bill of  
4 Rights that may have been held by the Attorney  
5 General's office?

6 A No, sir.

7 Q We have also seen memos addressed to  
8 prosecutors that update individuals on changes to  
9 government policy, including changes in the  
10 administration of the Victims' Bill of Rights.

11 Are you on that memo train, sir? Is this  
12 something that comes across your desk as a general  
13 mailer when there are updates or changes to the  
14 victims' policies within the Attorney General's  
15 office?

16 A If I understand you correctly, you can  
17 correct me if I misunderstand you, but it seems  
18 you are saying that, to those people that work  
19 within what we would call the Crown office itself,  
20 they receive memos dealing with the issues which  
21 you have identified. And if I do understand you  
22 to be saying that, I would say no, it's not my  
23 experience to receive that type of memo. However,  
24 I can tell you that in the recent past, if we  
25 could call it that, and I would say that would be

1 within the last year, yes, we are now receiving by  
2 e-mail various pieces of information that are  
3 distributed in-house.

4 Q I see.

5 A Historically no, today yes.

6 Q Okay. Thank you for that.

7 We also learned through the testimony  
8 of other individuals working with the Victims'  
9 Services that independent prosecutors do not have  
10 direct access to the PRISM system that full time  
11 prosecutors have access to, sir?

12 A Correct. Two systems, I believe, that  
13 are operated. One is called CANE, I don't really  
14 know what that acronym is; and PRISM, that might  
15 be an acronym as well. But to none of these  
16 systems, so to speak, do we have access to. We  
17 would have access only to the Manitoba Justice  
18 website, that would be publicly available to  
19 anyone who could check on matters which are before  
20 the -- actually only really the Court of Queen's  
21 Bench, because the Provincial Court isn't even on  
22 that system.

23 Q Are you able to say whether your  
24 absence of immediate access to the PRISM system  
25 constitutes a handicap, in any way, in your

1 ability to stay current with the victims' issues  
2 and other administrative matters that ordinary  
3 Crowns would have easy access to?

4 A I will say this to you, without being  
5 disrespectful. Every time you need to make a  
6 phone call to someone else to try to get  
7 information, and then have to wait to get it back  
8 and get it, it's frustrating. If I could get it  
9 myself, or if my assistant could get it directly,  
10 it would be a whole lot easier, a lot faster and  
11 clearly of a benefit.

12 Q Do you have any recommendations that  
13 you might make, given your experience as an  
14 independent prosecutor, to the Commissioner with  
15 respect to access to information and participation  
16 in a system such as PRISM?

17 A Two things I would say. One, PRISM  
18 should be available because -- just as an example  
19 now, Mr. Paciocco, where matters are on remand to  
20 the new courts we have, which are not presided  
21 over by judges, and presided over by magistrates  
22 and assistants, not all Crown Attorneys and  
23 defence lawyers go to these courts, but messages  
24 get sent to what would be the Crown paralegals and  
25 it gets put into PRISM. I can put them in myself

1     instead of having to write an e-mail to somebody  
2     to then put it in, and then wait for an e-mail  
3     back to find out whether or not the instruction  
4     was carried out. So, yes, access to PRISM would  
5     be good.

6                     And on the systemic issue, I would say  
7     that I don't understand why the Provincial Court  
8     does not have access electronically to me and to  
9     the public the way the Court of Queen's Bench  
10    does, where you can go in and look at a file and  
11    see the documents that had been filed, and the  
12    status of the case and matters of that sort. I  
13    would think that it should happen in the  
14    Provincial Court as well.

15                    Q     Okay. Well, thank you for those  
16    observations, sir.

17                    There are two other policy documents  
18    that I will be referring to and I, again, just  
19    want to determine whether you are familiar with  
20    them. One is the policy with respect to laying  
21    and staying of charges from April of 2001, which  
22    is found at G-46 of the materials the lawyers are  
23    working with, G-46.

24                    THE COMMISSIONER: Mr. Paciocco,  
25    before you get into that, I'm interested in what

1 Mr. Minuk has to say about the second  
2 recommendation, talking about the right of access  
3 by the Provincial Court. Now, can you just  
4 explain to me how that would help expedite or  
5 improve the Provincial Court system?

6 THE WITNESS: Well, Mr. Commissioner,  
7 the way I would compare it to is the Queen's Bench  
8 entry system, where when I want to do a search of  
9 a civil matter or a domestic matter or criminal  
10 matter, I can enter the name of the parties or  
11 some other information which will bring up a  
12 number of matters. And if I can identify the  
13 action, then I can click on it and it will bring  
14 down for me the whole of the history of the case  
15 as it is filed in the court.

16 In the Provincial Court, because  
17 matters are on remand, there are now motion court,  
18 there are trial dates and Preliminary Hearing  
19 dates which are being set. If not for me, because  
20 I, in my own files, know from my calender system  
21 when these matters are appearing, the Queen's  
22 Bench access is publicly available. Anybody could  
23 go in the room, or anybody in Manitoba for that  
24 matter, who has access to a computer, or with the  
25 assistance of a friend could find that information

1 out. But the Provincial Court, you don't know  
2 when matters are on remand, you don't know when  
3 matters are set because it's not -- unless you go  
4 to the court and ask, you can't get that  
5 information electronically.

6 THE COMMISSIONER: So you're not  
7 suggesting that it would be of benefit to the  
8 judges, but a benefit to the public?

9 THE WITNESS: To the public, yes.

10 THE COMMISSIONER: I see. Okay.

11 THE WITNESS: Absolutely to the public  
12 and to lawyers who are following matters. And  
13 oftentimes, as you may know, Mr. Commissioner, I  
14 may not be the defence lawyer, I may not be the  
15 Crown Attorney, but I might be the lawyer for the  
16 family that is interested in a proceeding. And  
17 the only way I could find that information out is  
18 if I go to the court house myself, or if I called  
19 the Crown's office and tried to identify who the  
20 Crown is to find out what is going on with the  
21 case. And because people are not familiar with  
22 the court, or they are intimidated by it, they may  
23 call me to do this job, which I am willing to do,  
24 but it's just difficult because, in the day of  
25 electronic dissemination of information, it would

1 be easier for everybody, I think, if we had that  
2 in the Provincial Court.

3 THE COMMISSIONER: Thank you very  
4 much.

5 BY MR. PACIOCCO:

6 Q You should have in front of you  
7 document G-46, which has just been made Exhibit  
8 216 in these proceedings. It is a policy dealing  
9 with laying and staying of charges, including  
10 drawing or forbearing to lay charges dated April  
11 2001. Are you familiar with that policy, sir?

12 A Yes.

13 Q Are you able to indicate to the  
14 Commissioner whether you have actually received a  
15 copy of it in your capacity as independent  
16 counsel?

17 A I believe so. But as I said to you, I  
18 can't tell you when I would have received it. I  
19 am sure that much of the documentation had been  
20 received at an original meeting long ago.

21 Q Do you keep a brief, or a file, or a  
22 binder containing all of the policy statements  
23 that come your way, sir?

24 A I think we do. I am pretty sure we  
25 do. I know that my assistant is in charge of

1 that. I myself personally don't keep that.

2 Q All right. And I would also ask the  
3 clerk to furnish you with a document found at  
4 G.45. This one is a conditional sentence policy  
5 dated April 2005.

6 A I don't know whether or not,  
7 Mr. Paciocco, it's necessary, but on this document  
8 that I received there is no yellow tag. There is  
9 on the other two. I don't know if there's some  
10 reason.

11 MR. PACIOCCO: Okay. It may be that I  
12 didn't ask the clerk to mark it as an exhibit.  
13 The document G.46 which has just been furnished to  
14 the witness, you have G.45?

15 THE WITNESS: This is the laying and  
16 staying of charges, I don't know what it is.

17 MR. PACIOCCO: Was that marked as an  
18 exhibit, Madam Clerk, laying and staying of  
19 charges, G.46, which was just furnished to the  
20 witness moments ago?

21 THE CLERK: 216.

22 (EXHIBIT 216: G.46, Manitoba  
23 Department of Justice Prosecutions -  
24 Policy directive - Subject Laying and  
25 Staying Charges)



1 MR. PACIOCCO: So that is Exhibit 215.

2 THE CLERK: 216.

3 MR. PACIOCCO: 216 rather, the staying  
4 and laying of charges. And the other document is  
5 the conditional laying document, which should be  
6 Exhibit 217.

7 THE CLERK: Exhibit 217.

8 (EXHIBIT 217: G.45, Manitoba  
9 Department of Justice Prosecutions -  
10 Policy Directive - Subject Conditional  
11 Sentencing (April 2005))

12 MR. PACIOCCO: And that is found at  
13 G-45.

14 THE WITNESS: I just didn't want you  
15 to lose the record here, sir.

16 BY MR. PACIOCCO:

17 Q Thank you. The document that's just  
18 been given to you, conditional sentences dated  
19 April of 2005, sir, is dated subsequent to the  
20 date of your retainer. I'm wondering whether you  
21 received that document prior to your resolution  
22 discussions in connection with the Harvey-Zenk  
23 matter?

24 A That I cannot answer, sir, I don't  
25 know.

1           Q     Can you indicate whether you are  
2 familiar with the document, sir?

3           A     Now I am, yes, because I've looked at  
4 it in preparation for coming here today.

5           Q     I see. So your recollection is the  
6 first time that you really noted seeing this  
7 document was in preparation for these Commission  
8 proceedings?

9           A     I don't remember receiving it, but I  
10 can't tell you that I didn't look at it  
11 beforehand. And to the extent that I can -- I  
12 know from recollection that there was a matter  
13 that I appeared on, a similar matter for the  
14 department, when I was called in when there was a  
15 suggestion that should have been handled by or  
16 dealt with by outside counsel, and there was a  
17 similar issue involving the same type of charges,  
18 death as a result of a motor vehicle accident  
19 where a conditional sentence was imposed. It's  
20 very possible that at that particular time, I  
21 would have again reviewed that policy in order to  
22 make an assessment of the position that I was  
23 going to be advancing.

24           Q     Was that before or after the  
25 resolution discussions in connection with the

1 charges against Harvey-Zenk?

2 A Oh, it was before that, sir, yes. I  
3 don't know the name of the accused, but I know the  
4 facts of the case. I'm sure it can be identified  
5 pretty easily.

6 Q Okay. Sir, I'm going to get back to  
7 the contents of that later when we go through the  
8 preparation for the resolution discussions. I  
9 just wanted at this point to determine how  
10 dependable communications are between the Ministry  
11 and independent counsel with respect to the  
12 policies that, according to the independent  
13 counsel policy, are contractually binding on  
14 independent counsel. So thank you for your  
15 assistance in that.

16 I'm going to move now, sir, to the  
17 events that, of course, gave rise to the  
18 Commission. And I'm going to look at your early  
19 involvement in connection with the Harvey-Zenk  
20 matter. I'm going to ultimately get to the point  
21 where I produce the letter of retainer in  
22 connection with this specific case, which formally  
23 retained you, which was the 3rd of March, 2005.  
24 But you had some involvement before we see that  
25 formal retainer occurring?

1           A     Yes.

2           Q     Our information is that on the 25th of  
3     February, within a few hours of that horrible  
4     collision, you received a phone call from Norm  
5     Carter of the East St. Paul Police, sir. Our  
6     information is that he spoke to Russ Ridd, who was  
7     the assigned duty Crown on that morning, and he  
8     spoke to him at 10:05 in the morning. He was  
9     furnished with your phone number, and he spoke to  
10    you at 10:35 in the morning, sir.

11                   I noticed we haven't been provided  
12    with any notes of the conversation occurring at  
13    that time, from you sir. Do you know whether you  
14    took notes when you spoke with Mr. Carter?

15           A     If there are no notes, my file you  
16    have, so I would assume there were none.

17           Q     All right, sir. We have learned  
18    through the testimony of Sergeant Carter that  
19    there were three things that occurred during that  
20    conversation. The first was you gave him advice  
21    to forward the brief to Brian Kaplan at his office  
22    through the care of his assistant, Colleen Ireton.  
23    Does that sound familiar and correct, sir?

24           A     Yes. That would be what I understand  
25    to be the protocol.

1 Q Okay. And I understand that Brian  
2 Kaplan is, and I'm sure I'll get the title wrong,  
3 he's the director of regional prosecutions and  
4 education?

5 A Correct.

6 Q And part of his function is to liaise  
7 with and assign independent counsel?

8 A Correct.

9 Q The second thing that Sergeant Carter  
10 testified to was that you advised him to contact  
11 Mr. Jim Poole of the Professional Standards Unit?

12 A That I don't believe, sir, to be  
13 correct. I would not have told him to contact the  
14 WPS at all.

15 Q Did you recall whether you gave him  
16 any information about the fact that Harvey-Zenk,  
17 being a police officer, there may be  
18 administrative implications and he should get in  
19 touch with somebody there?

20 A Other than to -- I might have  
21 suggested to him that he alert the police  
22 department, the Winnipeg Police Service, that this  
23 fellow was a police officer and arrested, but  
24 beyond that --

25 Q Did you know Mr. Jim Poole?

1 A Do I know him?

2 Q Did you?

3 A I only know of him that he worked for  
4 Professional Standards.

5 Q Did you know that at that time he was  
6 the acting supervisor, acting inspector?

7 A No.

8 Q Did you know that he had a senior role  
9 in the Professional Standards Unit, sir?

10 A Well, that I knew.

11 Q All right. So you had some  
12 familiarity with the function he might perform in  
13 connection with this case as a result of his role?

14 A I had no idea what function he would  
15 perform, period, in this case, if any whatsoever.  
16 I suspected that if Mr. Zenk would be the subject  
17 of any internal investigation, that it would be,  
18 as a result of his conduct, that that might, it's  
19 a matter that the Winnipeg Police Service would  
20 look into. But I wouldn't know that. I would  
21 have no input in that. And it would be an  
22 assumption on my part, knowing how the Police  
23 Service operates, they would likely want to know  
24 what one of their members was up to.

25 Q Right. And more germane and more

1 central to the matters we are inquiring into is  
2 the third function that he said you performed in  
3 connection with that phone call that morning. He  
4 indicated that you gave him advice with respect to  
5 the charges that should be laid and with respect  
6 to the manner of release of Mr. Derek Harvey-Zenk?

7 A Yes.

8 Q Correct, sir? He indicated that after  
9 discussion with you, the advice he received was  
10 that Mr. Derek Harvey-Zenk should be charged with  
11 refusal, he should be charged with impaired  
12 driving causing death, he should be charged with  
13 dangerous driving causing death, and criminal  
14 negligence causing death. And that he was told to  
15 wait and see whether there was further  
16 identification of bodily harm to the other driver  
17 to determine whether at some future point a charge  
18 of that kind might be added. Is that familiar to  
19 you?

20 A That sounds reasonable.

21 Q And I'm just going to ask you at this  
22 point, did you ever follow up to determine whether  
23 there had been injury to the other driver of the  
24 vehicle, to see whether or not that charge should  
25 be laid, sir?

1           A     I would have only followed up to the  
2 extent that I would have seen the -- waited for  
3 the investigative report. I did not receive an  
4 investigative report that dealt with that issue.  
5 And that ended my concern with that. And I will  
6 tell you that at the time that that issue arose,  
7 when I spoke with Mr. Carter, I would not have  
8 known that I would necessarily receive this file.

9           Q     Yes, sir. But I guess your evidence  
10 is that that wasn't something that you recorded or  
11 followed up on --

12          A     No.

13          Q     -- as something that you took upon  
14 yourself as a responsibility to make sure it was  
15 actually done in the end?

16          A     No.

17          Q     You relied on the investigators --

18          A     Correct.

19          Q     -- to take the investigation where it  
20 needed to go?

21                 Sir, the other thing, the release, he  
22 indicates that he received advice from you to  
23 release Mr. Harvey-Zenk on a promise to appear  
24 without conditions?

25          A     Correct.



1 Q Did you know anything of the collision  
2 before you spoke to Mr. Carter?

3 A Other than what Mr. Carter had told  
4 me, no. I didn't go there. I had to rely on what  
5 he told me.

6 Q So he was the sole source of your  
7 information?

8 A Yes.

9 Q What did he tell you about the  
10 circumstances of the accident, sir?

11 A Well, to the extent that I knew there  
12 was a fatality, I knew that there had been a  
13 serious motor vehicle accident. I knew from  
14 the -- what he had told me that, having heard what  
15 he said, I knew that -- he had indicated to me  
16 that the individual had been given a breath demand  
17 and had refused. And I would infer from that that  
18 he would have assumed his ability to drive a motor  
19 vehicle was impaired and, therefore, made the  
20 demand. Otherwise I would not have made the  
21 demand. And that there was some issue about this,  
22 whether or not the individual was impaired is  
23 where the issues, as I understood them, are from.

24 Q Okay.

25 A And that the accident, of course,

1 happened in the early morning hours at broad  
2 daylight. I knew that.

3 Q I'm more interested in the foundation  
4 that you would have had to support or recommend  
5 charge of causation, dangerous driving causing  
6 death, impaired driving causing death, criminal  
7 negligence causing death. What did you know about  
8 the extent of the responsibility of Derek  
9 Harvey-Zenk for that result, what role he played  
10 in the accident?

11 A My understanding from Carter was that  
12 he was the driver of the vehicle that caused the  
13 collision.

14 Q Did he use that expression, he was the  
15 driver of the vehicle that caused the collision?

16 A My recollection is that's what he told  
17 me, sir.

18 Q Because I'm going to ask you to take a  
19 look at a document that's been made Exhibit 143 in  
20 connection with these proceedings, and it's found  
21 in book R-2.91.74. You will turn please, sir, to  
22 page 3296?

23 And this is a document that you  
24 prepared, I understand, on September 20th, 2007,  
25 to basically brief Don Slough and Brian Kaplan on

1 a number of questions relating to the decisions  
2 that were made in connection with the prosecution  
3 of this case, sir?

4 A Yes.

5 Q And at point number 3, describing  
6 Carter, you say:

7 "He had no details of the accident at  
8 all, beyond the fact that the accident  
9 had occurred."

10 A Yes, sir.

11 Q And I'm just wondering how you  
12 reconcile that piece of information being offered  
13 to Mr. Slough and Mr. Kaplan, with the evidence  
14 you have just given to us about what you were told  
15 about the accident by Sergeant Carter?

16 A Sergeant Carter told me that when he  
17 received the call to come into work, that there  
18 had been an accident, but that he had not at that  
19 time received the details. And subsequent to his  
20 arriving at the station, he then received the  
21 details. As I -- reading through this, sir, I am  
22 looking at it, and perhaps it is not set out for  
23 the person who is not possessed of the information  
24 that I have, to read it as I am writing it in a  
25 chronological order. But I read it, as the

1 drafter and the person with the information, to  
2 see that there was an accident at 7:10. At 7:38,  
3 that Carter received a call informing of the  
4 accident and he arrived at 8:00 a.m. And when he  
5 arrived he had no details of the accident, other  
6 than that an accident occurred.

7 Q Okay.

8 A It's not that he had no details of it,  
9 it was when he was called at that time.

10 Q Okay. I understand the notation.  
11 Thank you for that clarification.

12 Sir, with respect to the manner of  
13 release, we know that Derek Harvey-Zenk was  
14 released on a promise to appear?

15 A Yes.

16 Q And no conditions were imposed on him?

17 A Yes, sir.

18 Q What information did you have about  
19 Mr. Harvey-Zenk when you recommended that form of  
20 release?

21 A I knew that he was a member of the  
22 Winnipeg Police Service. To that extent, I would  
23 say that I would therefore know that he was  
24 employed, therefore, and living likely within the  
25 geographic area of the Winnipeg -- of the Winnipeg

1 area. I knew that he had clearly roots in this  
2 community. I knew from that that he was not  
3 likely -- well, first of all, I knew that there  
4 was no problem in identifying who he was.

5 Q Yes?

6 A I knew that there was no likelihood of  
7 him not appearing on this matter, and that I  
8 didn't consider the fellow to be a flight risk.  
9 And to the extent that I'm aware that in Manitoba  
10 the practice is, and I know this from my own  
11 practice, that a person who is released to the  
12 care of one who can take care of them, that this  
13 was a common matter. I knew basically from what  
14 Mr. Carter had told me that the fellow was  
15 arrested at the scene, therefore, he wasn't  
16 arrested on the basis of a warrant. He could be  
17 released by the officer in charge or another  
18 police officer. That what he needed to satisfy  
19 himself with was, could he identify this person,  
20 did he -- was he likely or unlikely to show up in  
21 court. And moreover, was he going to -- would  
22 there be a repetition of the offence, which would  
23 be the crucial issue.

24 And in speaking to Carter, I knew that  
25 his lawyer was coming. I did not know that

1 Mr. Isaak was coming. But, clearly, I would say  
2 to Carter, as I would to any police officer, if  
3 the facts are as they are now, as long as he is  
4 going to be released to someone who is not  
5 impaired, who will look after him and take charge  
6 of him, and will get him to the point where he is  
7 going to be at home, and you are sure that he will  
8 get there, then he can be released from that  
9 fashion. Because I would believe, based on that  
10 approach, that there was some circumstantial  
11 guarantee that the offence won't be repeated by  
12 that offender because he's being taken charge of  
13 by another. And there is no issue as to his  
14 identity and no issue as to the flight risk.

15 So it's a basic -- and I say that  
16 because that even happens before the issue of  
17 involving the court and making a determination of  
18 whether or not the Crown is going to show cause,  
19 or could show cause for the detention of an  
20 individual. When a person is in that situation,  
21 with an officer in charge, they can be released at  
22 that level without even having to get to the next  
23 issue.

24 Q Yes, sir, we understand that. And the  
25 issue really isn't whether he should be detained

1 pending his trial or released, the question has to  
2 do whether he should be released without  
3 conditions, and that's really what I want to focus  
4 on.

5 A Yes, sir.

6 Q I heard you say that you had received  
7 information from Sergeant Carter that the lawyer  
8 was coming down?

9 A Um-hum.

10 Q I know Ms. Bueti didn't arrive there  
11 until 11:48, some appreciable time after, but he  
12 had advised you that that was going to happen?

13 A Yes. And Carter had told me that he  
14 needed to process this person, that he would be  
15 there for a while, and that there was no  
16 suggestion that he was going to be released, as I  
17 heard from Carter, not likely before noon that  
18 day.

19 Q Okay. So you had solid information  
20 and you have a clear recollection of having had a  
21 conversation with him about making sure that  
22 Mr. Harvey-Zenk --

23 A Yes.

24 Q -- would be released into someone's  
25 custody?

1           A     I would not have agreed to any  
2 conditions otherwise.

3           Q     Did you have any information as to  
4 Mr. Harvey-Zenk's recent psychological state or  
5 potential history of alcohol abuse? Not that  
6 there was anything there to find, sir. I'm not  
7 suggesting, and I want to be clear to everybody in  
8 the room there was no foundation for any such  
9 suggestion, but did you check on that before  
10 making your decision?

11          A     No.

12          Q     Was that you felt you should have  
13 looked into before making the decision, given that  
14 your concern would include not only reoffending  
15 that day, but perhaps reoffending over the days  
16 that followed?

17          A     I likely could have inquired into that  
18 from the Winnipeg Police Service, had they chosen  
19 to give me that information, but I would suspect  
20 that that type of information is likely, you know,  
21 privileged and would not readily be available.

22          Q     Sir, did you feel that there was any  
23 need to try and impose conditions on  
24 Mr. Harvey-Zenk that would inhibit any repetition  
25 of the alleged offence by him in the days to



1 follow? I understand you took care of that day,  
2 get him home, or have somebody who is responsible  
3 take charge. But what consideration did you give  
4 to the possibility that there might be a larger  
5 problem here, and that perhaps a day or two down  
6 the road you could have a repetition of that  
7 conduct?

8 A My observation would be that I would  
9 not have, knowing the circumstances of this  
10 incident, the employment of this individual,  
11 considered that there was any reasonable  
12 likelihood of him, even if he was drinking and  
13 driving, going out and doing it again.

14 Q So you based a lot of that on  
15 confidence that as a police officer --

16 A Yes.

17 Q -- he would have additional restraints  
18 of some kind --

19 A Yes.

20 Q -- on him. Is it customary, are you  
21 in a position to tell us whether it's customary in  
22 Manitoba to release someone on a promise to appear  
23 without conditions, alcohol prohibitions --

24 A All the time.

25 Q -- driving prohibitions, in a case

1 where there is a driving fatality, sir?

2 A I've seen it before and I don't think  
3 that it's uncommon in Manitoba. In fact, sir,  
4 many of the individuals are, in fact, released  
5 directly from the police station where they are  
6 arrested, and that would have to do with the  
7 police searching their backgrounds, records, first  
8 offenders, employed, here living in the City of  
9 Winnipeg, I would think that it's not uncommon at  
10 all. Whether or not it's correct or not, that's  
11 for someone else to decide, but it is common.

12 Q Thank you, sir. You, as I indicated,  
13 were formally retained on March 3rd, 2005,  
14 according to a letter that was attached to the  
15 exhibit that we offered you earlier, sir?

16 A Yes.

17 Q And you were retained by Brian Kaplan,  
18 and we have identified him as the director of  
19 regional prosecutions and education who was  
20 responsible for this kind of assignment. Your  
21 retainer, I understand, was as a result of the  
22 concern that Mr. Derek Harvey-Zenk had "Direct  
23 connection to the justice system," one of the  
24 criteria in the independent counsel protocol?

25 A That would be my assumption, sir, on

1 this file.

2 Q Yes. And one of the requirements that  
3 might invoke the use of an independent counsel is  
4 reasonable perception that could be created that  
5 the accused could receive some kind of  
6 differential treatment, and police officers are  
7 specifically listed in there. And that's why you  
8 are brought into this case, sir?

9 A This one, yes.

10 Q And I want to deal with a preliminary  
11 issue that has arisen and give you an opportunity  
12 to respond to it, sir. You know that the media  
13 and some members of the family have expressed  
14 concerns about your own impartiality as a result  
15 of two factors, and I'll just simply list them for  
16 you before inviting you to respond.

17 The first was concern arising out of  
18 the fact alleged that you have acted for police  
19 officers in the past. And there was some concern  
20 expressed that perhaps you were not a fitting  
21 individual to appoint to prosecute a police  
22 officer now. And the other had to do with some  
23 information about your role acting as counsel for  
24 a co-accused in the same case where Mr. Wolson  
25 acted for one of the other accused.

1                   Sir, just before I invite you to  
2    respond to those allegations, I understand that  
3    you acted for a police officer some appreciable  
4    time ago in connection with your practice?

5                   A     My recollection is --

6                   THE COMMISSIONER:   Could you get  
7    closer?

8                   THE WITNESS:   Oh, sorry.   My  
9    recollection, sir, is that it would have been  
10   maybe 15 years ago.

11   BY MR. PACIOCCO:

12                  Q     Okay?

13                  A     In 2005.

14                  Q     And how extensively was your acting  
15    for police officers, what role did you play in  
16    that regard, sir?

17                  A     I can tell you that I was, when I left  
18    Legal Aid, I worked with the now retired Al  
19    McGregor, who did represent the Winnipeg Police  
20    Service at the Aboriginal Justice Inquiry.   We did  
21    the inquest as well.   And thereafter, I did three  
22    cases.   One was a police officer who was charged  
23    with stealing a bike out -- a bicycle out of  
24    stores, a theft.   One was the case of Martin  
25    Shaver, and the fellow that I represented, I don't

1 believe he passed the Preliminary Inquiry. And  
2 the other case was a case of an assault involving  
3 some other officers at the Alexander Docks, long  
4 ago.

5 Q Okay.

6 A And all of the officers were  
7 discharged at that Preliminary.

8 Q So these cases --

9 A And that was it.

10 Q These cases were some appreciable time  
11 ago and didn't form a large part of your practice?

12 A Those are the cases.

13 Q Yes, sir.

14 A Period.

15 Q Yes, sir. You also, as I said, have  
16 been identified for acting for a co-accused of  
17 another accused that Mr. Wolson acted for in  
18 connection with a manslaughter case. When did  
19 that case take place, sir?

20 A When did it -- I didn't hear the  
21 question, sir?

22 Q When did that case take place, when  
23 was that case ongoing?

24 A When did the incident occur?

25 Q The whole ball of wax, how long ago

1 did you act in this case?

2 A What happened was that that case  
3 happened before Mr. Zenk's case. The issue was --

4 THE COMMISSIONER: I don't need the  
5 issue. How long ago was it that you acted as  
6 co-counsel?

7 THE WITNESS: Oh, it would have been  
8 2005, in the month before the Zenk matter.

9 BY MR. PACIOCCO:

10 Q All right. But you had already been  
11 retained in connection with that case before you  
12 were retained for this case?

13 A Yes, sir.

14 Q And, sir, I'm going to invite you now,  
15 if you can give a brief response to the allegation  
16 that you were caught up in a conflict of interest  
17 as a result of these two incidents. And we have  
18 already filed as an exhibit Law Society of  
19 Manitoba response to a complaint, which  
20 essentially found you not to be in a conflict as a  
21 result of these two cases. But if you'd like  
22 briefly to respond to those claims, I'm going to  
23 invite you to do that now.

24 A Well, as you know in this particular  
25 case, Mr. Paciocco, and I don't know if the

1 Commissioner knows, it was as a result of my  
2 receiving the letter of, or report of Chief  
3 Carter, that I went to Mr. Kaplan and suggested to  
4 him that there be an investigation into whether or  
5 not Chief Bakema should or should not be charged  
6 with obstruction of justice. In my view --

7 Q Sir, I'm asking you about --

8 A I'm getting there, sir. And in my  
9 view, that factor, along with the fact that I have  
10 reviewed many opinions for Manitoba Justice  
11 involving police officers where I have recommended  
12 prosecutions, or in some cases not, and that I  
13 would have represented someone 15 years ago, and  
14 that that would even remotely enter into my mind  
15 that I would give some favour for that, or treat  
16 somebody favourably because 15 years ago I was  
17 retained by some individual to represent them in a  
18 criminal matter, therefore, I would give another  
19 person who was employed at the same place a break  
20 is outrageous. It's just beyond my concept of  
21 lawyering that anybody would even make that kind  
22 of allegation.

23 And I just, I could not imagine, in my  
24 case -- and I don't know if you know anything at  
25 all about me, sir, but here in the City of

1 Winnipeg in the profession, the judiciary -- a  
2 more outlandish, outrageous accusation, which is  
3 completely false and baseless.

4 Q Okay. Thank you for that.

5 A And secondly, with respect to the  
6 matter of my dealing with Mr. Wolson in a case  
7 just before this, the sole reason that that  
8 happened was a matter of timing. The Zenk matter  
9 would have, had it not been adjourned at my  
10 request, proceeded before this matter had come to  
11 trial. It had proceeded to trial, that is the  
12 case we were co-counsel on, in the month of June,  
13 because of my scheduling problems. It was  
14 originally scheduled for November. And secondly,  
15 now that you know the dynamic of how it occurred  
16 by reason of calendars, the suggestion that I  
17 would give another lawyer a break on a case for  
18 his client, and ruin my legal career for that,  
19 absolutely not. The allegations are so insulting  
20 that it's beyond belief.

21 Q Okay, sir. You had periodic dealings  
22 with Mr. Don Slough in connection with this  
23 matter, sir?

24 A Yes, sir.

25 Q And you also had fairly extensive



1 dealings with Brian Kaplan in connection with this  
2 matter sir?

3 A Yes, sir.

4 MR. PACIOCCO: And I'm going to put  
5 forward a document which I have distributed to  
6 counsel. It is a copy of the docket sheets that  
7 have been provided to the Commission, commencing  
8 at page 3401.28 through to 3401.51 of volume R-4,  
9 but I'm going to give everybody a new copy of that  
10 document so there's no need to turn to the actual  
11 book document. That document that I furnished to  
12 you, please, Madam Clerk, could be made the next  
13 exhibit?

14 THE CLERK: Exhibit 218.

15 (EXHIBIT 218: Contacts made by Marty  
16 Minuk to D. Slough, B. Kaplan from Feb  
17 25, 2005-Nov 30, 2007)

18 BY MR. PACIOCCO:

19 Q Thank you. 218 would be the colour  
20 coded dockets of Mr. Minuk. This is a photocopy  
21 of the page numbers found at book R-4 at 3401.28  
22 to 3401.51, and I have colour coded the contacts,  
23 Mr. Minuk, between yourself and Mr. Kaplan,  
24 Mr. Slough, and Ms. Colleen Ireton, who we know to  
25 be the administrative assistant of Mr. Kaplan.

1 And I have done that, sir, in order to demonstrate  
2 the frequency of contact that occurred throughout  
3 the file. And I can indicate that there are  
4 approximately 30 docketed contacts with Mr. Kaplan  
5 throughout the time that this file was in your  
6 possession, another seven with Colleen Ireton,  
7 another nine or more with Mr. Don Slough.

8 I understand, sir, that you, when you  
9 do have files as an independent prosecutor, you  
10 have almost daily contact with Mr. Kaplan as a  
11 matter of practice or habit, sir?

12 A That's correct, sir.

13 Q You indicated in questioning from  
14 Commission Counsel, Mr. Clifford, during your  
15 interview that all of the issues in connection  
16 with this case had been discussed with Mr. Slough  
17 and Kaplan for many months leading up to the  
18 ultimate decision, sir?

19 A That's fair.

20 Q And as we will see, you had contact  
21 with them around the time that the resolution  
22 discussions were taking place, sir?

23 A Yes, sir.

24 Q And you also had contact with them  
25 around the time that you were going to make your

1 submissions on August 22nd, on sentence?

2 A Correct.

3 Q And you had contact with them leading  
4 up to the submissions you made on September 12th?

5 A Yes, sir.

6 Q And you had contact with one or more  
7 of these gentlemen, and we'll get to the details  
8 of that later, on September 12th, when the judge  
9 asked you whether you were going to be proving  
10 alcohol consumption on the part of  
11 Mr. Harvey-Zenk?

12 A Yes, sir.

13 Q And in response to questions by  
14 Mr. Clifford, you described how you had vetted the  
15 resolution discussion, and vetted the submissions  
16 that had been prepared in connection with your  
17 appearances, sir. Do you have any observations to  
18 make on the propriety of that degree and that  
19 nature of contact with Mr. Slough and Mr. Kaplan,  
20 who we understand to be high level officials  
21 within the Manitoba Justice Department, given your  
22 role as an independent prosecutor?

23 A I don't think that it's inappropriate.  
24 Of course, there is two issues that I always need  
25 to be mindful of, which is that issue of the fact

1 that I am the independent prosecutor, but I also  
2 perhaps -- and whether this is a function of being  
3 in private practice or not, I don't know -- but I  
4 also perceive this other function or other  
5 contact, that this is the client in some ways, and  
6 I am keeping them informed on a regular basis as  
7 to what's going on. Some cases require more  
8 information than others because they may be more  
9 serious. Others, they may have a particular  
10 interest in where they are asking me to update  
11 them on certain things. And as well, because the  
12 structure of the prosecution branch allows for  
13 meetings and file discussions with the senior  
14 management group, where lawyers handling files can  
15 go and speak to others, although I do know that  
16 the ultimate decision on a matter is that of the  
17 counsel -- well, independent counsel who has it --  
18 there's no group, so to speak, that the  
19 independent counsel can go to in a way that the  
20 in-house counsel can go to. And to some extent,  
21 Mr. Kaplan and Mr. Slough form that group. They  
22 don't instruct, they don't tell you what to do,  
23 but they listen, they have experience that can be  
24 drawn upon. They can, you know, relate other  
25 cases and remind you of government policies, Crown

1 policies. And I don't think that the contact is  
2 inappropriate.

3 Q You'll agree with me, sir, that you  
4 are a very senior member of the bar with extensive  
5 experience in criminal law matters?

6 A Yes.

7 Q And you were given serious cases  
8 because of your ability --

9 A Yes.

10 Q -- and your stature within the  
11 profession, sir?

12 A Yes.

13 Q And, sir, would you not see that there  
14 is an issue of perception with the kind of regular  
15 contact that occurred in this case, given the  
16 importance of maintaining your independence as a  
17 prosecutor?

18 A Well, perhaps there may be a  
19 perception problem, but to understand and to  
20 explain what the nature of the contact is and the  
21 purpose of it, in my view, clarifies the  
22 perception. There is a perception that might be  
23 by those who are members of the bar, and there's a  
24 public perception which might be different. And I  
25 can only see that from my perspective, as a

1 lawyer, I don't see this to be a problem. I do  
2 appreciate that you may raise this as a public  
3 issue, and it's a good thing that I'm telling the  
4 Commissioner that this is how it works and the  
5 public can understand it. And they would then, I  
6 hope, not come to wrong conclusions about it.

7 Q Okay, sir, I'm going to take to you  
8 the independent prosecutor's policy, and I do  
9 promise you, sir, that we'll have an opportunity  
10 to explore each of the major contacts to see the  
11 nature of them, and I know you describe the  
12 importance of you maintaining your independence,  
13 and the information that's provided. And we'll  
14 explore the degree to which there may have been  
15 some collaboration on decisions. And I'll give  
16 you an opportunity to comment on that as it  
17 arises.

18 A Okay.

19 Q But for now, I'd like you to take a  
20 look, please, at document G-44, which should be in  
21 front of you. This is the appointment of  
22 independent counsel document, sir, from January of  
23 2005?

24 A Yes, 217, yes, sir.

25 Q And if you can go, please, sir, to the

1 terms and conditions at page 1384?

2 A What page, sir?

3 Q 1384. It would be page 5 of the  
4 document that you have, G-44, appointment of  
5 independent counsel, January of 2005?

6 A Oh, yes, sorry.

7 Q And, sir, take a look, please, at page  
8 5 of that document. We have it as page 1384. And  
9 take a look at term C, and I will read it to you,  
10 sir. It says:

11 "The advice and decisions in the case  
12 are final and binding on the  
13 Department of Justice for the Province  
14 of Manitoba, subject only to receiving  
15 direction from the Attorney General or  
16 the Deputy Attorney General, which  
17 direction, if given, will forthwith be  
18 made public."

19 Do you see that, sir?

20 A Yes.

21 Q And you would agree with me that that  
22 reaffirms the importance of the decisions being  
23 made by the independent prosecutor, and that it  
24 would only be exceptional that any direction would  
25 be given to the independent prosecutor by members

1 of Manitoba Justice. And that when that happens,  
2 it is to be transparent and clear to the public,  
3 sir.

4 A Giving directions, yes, telling them  
5 what to do.

6 Q Yes, sir. And you would agree with me  
7 that this highlights, this provision highlights  
8 the importance of maintaining independence and  
9 distance?

10 A It's certainly one of them and it  
11 identifies them, yes.

12 Q And in this particular context, sir,  
13 you had the prosecution of a police officer and  
14 the independent counsel resolution, or policy  
15 rather, made it a pro forma decision to go to an  
16 independent prosecutor in such cases because of  
17 the perception or apprehension that the  
18 prosecutors might give favour to police officers  
19 who they work so closely with?

20 A Correct.

21 Q And that is because police officers  
22 are the witnesses who Crowns depend upon, and it  
23 would be extremely difficult for a Crown, perhaps,  
24 to go in and demonstrate the lack of credibility  
25 of a particular police officer in a case, and then



1 subsequently have that police officer appear for  
2 other prosecutors. So it makes sense to get  
3 distance from it, sir?

4 A Yes, it is. And that's the position  
5 in Manitoba. I don't know whether or not police  
6 officers would be prosecuted by in-house Crown  
7 counsel in other provinces. That I don't know.

8 Q Yes, sir. And I didn't ask you that  
9 sir, I was just simply talking about why it  
10 happens. And in this particular case, sir, you  
11 would agree with me that there was a high degree  
12 of sensitivity in terms of the importance of  
13 demonstrating that there would be no interest on  
14 the part of prosecutors in maintaining  
15 relationships with police officers?

16 A I don't think this case stood out as  
17 any other case involving a police officer.

18 Q Well, let me --

19 A It would be the same position, period.  
20 And moreover, sir, the reason that the cases get  
21 sent out is for that purpose.

22 Q Yes.

23 A No matter who the accused is.

24 Q All right, sir. Well, let's come back  
25 to this case. You know at the outset, sir, you

1 knew you had a police officer who is being  
2 prosecuted. But by the time the case was  
3 investigated and as it moved along, you learned  
4 that you had up to 23 police officers as potential  
5 witnesses, who were providing evidence  
6 inconsistent with other witnesses who claimed that  
7 Mr. Derek Harvey-Zenk was impaired. Correct, sir?

8 A Or that other police officers were  
9 providing inconsistent evidence with the 23  
10 Winnipeg police officers.

11 Q However you wish to cut it, sir, you  
12 agree with me that you had --

13 A Yes.

14 Q -- twenty-three police officers who  
15 were providing evidence that would have been  
16 inconsistent with the case you were asked to  
17 prosecute?

18 A Yes.

19 Q And if you did choose to prosecute  
20 that case, or anyone, whoever was handling it  
21 chose to prosecute that case, they would be put in  
22 a position where they would not be calling those  
23 witnesses as prosecution witnesses, but those  
24 witnesses would potentially be called as defence  
25 witnesses and then cross-examined by the

1 prosecutor; correct, sir?

2 A Yes. Certainly one of the issues that  
3 I perceived in this case, which was that  
4 Mr. Wolson would call these officers and that I  
5 would then be able to cross-examine them, because  
6 leading them was going to not get the prosecution  
7 anywhere.

8 Q Certainly. And it would, for a  
9 full-time prosecutor, be a very uncomfortable  
10 specter, would it not, to have to try and  
11 discredit an entire platoon of officers from the  
12 police force that feeds them the bulk of their  
13 witnesses?

14 A Well, that's the belief and that's the  
15 philosophy and that's why they have the policy.

16 Q Yes, sir. So this isn't an ordinary  
17 case of a police officer. As it developed, it  
18 became something quite extraordinary, did it not,  
19 sir? Have you ever seen a case before where you  
20 had this dynamic with the possibility or prospect  
21 of having to cross-examine and discredit up to 23  
22 police officers from the Winnipeg Police Service,  
23 sir?

24 A No. No, no, no.

25 Q No. And, sir, that's why I'm

1 suggesting to you that this case was different.

2 A Okay, yes.

3 Q And that's why I'm suggesting to you  
4 there is a high premium placed on independence.

5 A Yes, now I understand.

6 Q That it's something that is  
7 tremendously important, and the perception of  
8 independence is equally important.

9 A Yes.

10 Q All right, sir, we're going to come  
11 back to this as we go through the specific  
12 contacts that you had with the Winnipeg Police --  
13 or with Mr. Kaplan and Mr. Slough. And I promise  
14 you that we'll highlight them.

15 First I want to deal with the  
16 involvement of the Winnipeg Police Professional  
17 Standards Unit. You had very early dealings  
18 related to or with the Winnipeg Police  
19 Professional Standards Unit. We had information,  
20 which you have testified did not occur, with  
21 respect to you advising Carter to contact Jim  
22 Poole, but you certainly had contact from the  
23 Professional Standards Unit on the 1st of March --

24 A Yes.

25 Q -- 2005, sir. And that was Jim Poole

1 contacting you shortly after 8:00 o'clock in the  
2 morning, sir. And he is advising you that there  
3 was, to use his term from his notes:

4 "A reluctant on the part of East St.  
5 Paul to become involved in the  
6 follow-up to investigate the  
7 activities of Mr. Harvey-Zenk in the  
8 hours leading up to the collision."

9 Sir, do you recall that?

10 A My understanding was not that there  
11 was a reluctance, but that they didn't have the  
12 manpower to do it and were looking for assistance  
13 in that function to help them with the  
14 investigation.

15 Q Yes, sir. At this time in the morning  
16 it wasn't yet clear that they were looking for  
17 assistance, sir. There was a prior interview that  
18 had occurred the night before, that you were made  
19 aware of, of Sergeants Anderson and Humniski. And  
20 that the Winnipeg Professional Standards Unit had  
21 called East St. Paul Police, and East St. Paul  
22 Police Chief Bakema was happy to have them conduct  
23 that interview, but there had yet to be a decision  
24 made by the East St. Paul Police that they wanted  
25 the Winnipeg Police Service to get involved.

1 There was discussion about a shortage of  
2 resources. And the information we have from  
3 Inspector Poole is you essentially told Inspector  
4 Poole, or Sergeant Poole rather at the time, that  
5 if you -- if East St. Paul wasn't going to do it,  
6 you wanted it done, because this had to be done  
7 and it was important that there be an exploration  
8 of Mr. Harvey-Zenk's activities leading up to the  
9 accident. I take it you have no problem with  
10 that?

11 A No, it had to be done.

12 Q It had to be done. And the  
13 information he furnished was also that you said if  
14 there are no resources available for East St.  
15 Paul, and Winnipeg Police Service is willing to do  
16 it, then Winnipeg Police Service should do it, and  
17 that formal approval should be obtained from the  
18 East St. Paul Police to permit that to happen. Do  
19 you take any issue with that, sir?

20 A I don't think so.

21 Q And, sir, I'm going to ask you, given  
22 that the police officers who were with  
23 Mr. Harvey-Zenk were members of the Winnipeg  
24 Police Service, did you have any concern about  
25 endorsing the function of the Professional

1 Standards Unit as the investigative team who would  
2 be investigating those police officers?

3 A I had none, and I believed that they  
4 could do the job. They regularly investigate  
5 their officers and would think that -- I have no  
6 reason to think that they would not do that job  
7 with integrity, with professionalism. And on the  
8 face of it, I have no reason to discredit them as  
9 being unable to do that work.

10 Q Sir, did you give any thought to  
11 whether it would be preferable to have an outside  
12 police agency like the RCMP conduct that  
13 particular investigation?

14 A As I said, no, I didn't, and I did not  
15 think that they were incapable of doing the job.

16 Q Sir, you would agree with me that a  
17 prosecutor working in-house for Manitoba Justice  
18 would be capable of prosecuting Derek Harvey-Zenk,  
19 but that from the point of view of the  
20 appearances, it was important enough for the  
21 Manitoba Justice to go out and get an independent  
22 prosecutor, and that capability really isn't the  
23 only issue?

24 A Well, sir, I do cases where the  
25 Winnipeg Police Service investigates its own

1 members all the time. And for alleged criminal  
2 offences, they interview other officers who are  
3 part of that, who may shed light on the  
4 investigation. And I read these reports -- not  
5 speaking about this -- and I render opinions on  
6 them. And I would have no reason to believe that  
7 because there are police officers, that they  
8 should always be investigated by outside agencies.

9 Now, the experience here may show that  
10 maybe there's good reason to do it. But that begs  
11 the question of whether or not even an outside  
12 agency would have been successful in getting these  
13 officers to say something other than which they  
14 said when interviewed.

15 Q Certainly, the question gets begged,  
16 sir, but you would agree with me that from the  
17 point of view of the public perception, you  
18 wouldn't be in the position that's occurred now,  
19 where you have people questioning whether this was  
20 an investigation that was properly conducted?

21 A I agree. But at the same time, on  
22 balance when this is occurring, I am using the  
23 experience of ongoing prosecutions and ongoing  
24 files where there would be no reason to disbelieve  
25 or have any doubt that they couldn't do the job.



1           Q     With the benefit of hindsight, sir,  
2     would it be better to bring in an outside police  
3     agency, given the kind of reaction that has been  
4     generated through this investigation, sir?

5           A     I don't say this disrespectfully, but  
6     whether or not another investigating agency could  
7     have done something, received different results, I  
8     don't know, but maybe there is merit, period, in  
9     the establishment of some group other than  
10    Professional Standards to investigate police  
11    officers who are involved in criminal offences.  
12    And Professional Standards perhaps should focus  
13    itself on internal disciplinary issues. So I  
14    can't disagree with that.

15                   My experience has been that the work  
16    received from Professional Standards has been, on  
17    the files that I have, good, but for the purpose  
18    of public, yes, because the public is always  
19    suspicious about these things.

20           Q     Sir, we have learned that you received  
21    a copy of the report of the investigation from the  
22    Professional Standards Unit on the 6th of May,  
23    2005, sir. And we understand that Chief Bakema  
24    from East St. Paul did not receive a report until  
25    July 13th, 2005, some two months later. Do you

1 have any knowledge about that, sir?

2 A No, sir. I would have thought that  
3 the protocol should have been them, being East St.  
4 Paul first, me second. And that it would have  
5 come, or it would have been delivered  
6 simultaneously.

7 Q And, sir, I take it that you take that  
8 position because East St. Paul was the  
9 investigating police force and they were getting  
10 assistance --

11 A Yes.

12 Q -- from the Professional Standards  
13 Unit. And that it happening like this, it takes  
14 on the appearance of two separate investigations  
15 reporting to you, which is not what was meant to  
16 be, sir?

17 A I didn't hear the last part?

18 Q I was saying that happening this way,  
19 it takes on the appearance of two separate  
20 investigations, each reporting to you, which is  
21 not meant to be --

22 A It did happen that way, it was wrong,  
23 it should have been given to them first and then  
24 given to me either, as I said, simultaneously or  
25 by East St. Paul.

1           Q     Sir, one of the first things that  
2 happened in this file is you were brought into  
3 contact with the Sveinsons, the parents of Crystal  
4 Taman, sir?

5           A     The Sveinsons, yes, sir.

6           MR. PACIOCCO: Yes. On September  
7 21st, 2005, you received a fax from Mr. Brian  
8 Kaplan containing a copy of the letter from the  
9 Sveinsons to the Minister, sir. You can find that  
10 and I'll have the document given to you. It's in  
11 book R-1.91.4, R-1.91.4 at page 3115, R-1.91.4 at  
12 3115. If that can be made the next exhibit,  
13 please?

14           THE CLERK: Exhibit 219.

15           MR. PACIOCCO: Exhibit 219.

16           (EXHIBIT 219: R-1.91.4, Fax from Brian  
17 Kaplan to Martin Minuk dated September  
18 21, 2005 with attached Action Route  
19 Slip)

20           THE WITNESS: Yes, I recall this.

21 BY MR. PACIOCCO:

22           Q     All right, sir. You have a fax  
23 transmission in front of you, followed by a  
24 letter. Now, counsel present today have seen this  
25 letter in another book and it's been filed as a

1 separate exhibit, Exhibit 19, so they will be  
2 familiar with it. But the cover letter is dated  
3 the 21st of September, to Marty Minuk from Brian  
4 Kaplan, and it says under the heading remarks on  
5 the faxed copy:

6 "Ms. Victoria Sveinson - regarding  
7 death of daughter Crystal Taman  
8 (Harveymordenzenk) Ministerial  
9 correspondence follows for this  
10 matter. Could you please draft a  
11 response for Brian's signature on the  
12 justice issues and forward to me for  
13 Brian's review. Thanks Marty.  
14 Colleen."

15 And we have learned, sir, that Colleen is Colleen  
16 Ireton?

17 A Yes.

18 Q And Colleen Ireton is Mr. Brian  
19 Kaplan's assistant and that she sent this document  
20 to you on Mr. Brian Kaplan's instructions for the  
21 purpose of you drafting a response to  
22 Ms. Sveinson's letter so that Brian Kaplan could  
23 sign that response, sir.

24 You are assigned, at this time, as the  
25 independent prosecutor in connection with the

1 case, sir?

2 A Yes.

3 Q Do you feel it is appropriate for you,  
4 an independent prosecutor, to be drafting a letter  
5 for the signature of someone from Manitoba  
6 Justice?

7 A I didn't, and wasn't going to and, in  
8 fact, told Mr. Kaplan that I wasn't going to do  
9 that, and that I thought that the best course was  
10 to meet these people and speak to them. And I did  
11 meet with them and speak to them. And then I  
12 recall that I wrote, or sent an e-mail to  
13 Mr. Kaplan expressing to him that I thought that I  
14 was capable of discussing some of the matters with  
15 these people, but on some of the issues that they  
16 were raising, that they were outside my frame of  
17 reference and I couldn't deal with them.

18 Q All right, sir.

19 A And that's how I dealt with that  
20 situation.

21 Q Let's take this a little bit at a  
22 time. Your evidence is that you told him you  
23 weren't going to draft a letter, sir?

24 A Well, that I was not going to do it  
25 right away, that I was going to meet with these

1 people and speak with them, and see whether or not  
2 an in-person meeting would be better. It seemed  
3 to me that just reading this letter and writing a  
4 letter back to these people was --

5 Q So your objection wasn't to writing  
6 the letter, your objection was to writing the  
7 letter without meeting with these people?

8 A Well, I ultimately did not write the  
9 letter and I didn't think that it was for me to  
10 write the letter.

11 Q Well, sir, you indicated in your  
12 earlier statement to the Commissioner on this  
13 issue that you told Mr. Kaplan that you were not  
14 going to write the letter?

15 A Yes.

16 Q When did you do that?

17 A Well, after I read this letter, it was  
18 clear to me that writing a letter back was not  
19 really the right thing to do.

20 Q Sir, I didn't ask you why you didn't  
21 want to write the letter.

22 A Shortly after, I can't pinpoint that.

23 Q All right, sir. I'm going to ask you  
24 to take a look at a couple of other documents. If  
25 you could take a look at R-1.91.5, R-1.91.5. If

1 that can be made the next exhibit, please?

2 THE CLERK: Exhibit 220.

3 (EXHIBIT 220: R-1.91.5, Hard copy of  
4 email trail, last message from Brian  
5 Kaplan to Martin Minuk sent Sept 27,  
6 2005 11:51 a.m.)

7 BY MR. PACIOCCO:

8 Q Sir, you have in front of you an  
9 e-mail that was provided, it's an e-mail chain  
10 actually here, and there is one from you at the  
11 top on the 27th of September, 2005, at 11:40 a.m.  
12 to Mr. Brian Kaplan re Harvey-Zenk prosecution?

13 A Yes.

14 Q You indicate after he asks you, he  
15 says "assume you will contact them," you indicate:  
16 "I will. In that regard, the October 1  
17 deadline for response may need to be  
18 extended. Is that possible?"

19 Do you see that, sir?

20 A Yes.

21 Q And the response was the response to  
22 the letter, was it not?

23 A Yes, I'm assuming so.

24 Q Yes, sir. So you hadn't indicated  
25 that you weren't going to write the letter. You

1 wanted an extension because you couldn't meet the  
2 October 1st deadline?

3 A That might have been, but ultimately I  
4 don't believe that I wrote the letter.

5 Q No, I don't think you wrote the letter  
6 either, sir, but it wasn't a case, I would suggest  
7 to you, of you saying I'm not going to write the  
8 letter, it just never got done?

9 A No, I don't think it was that it  
10 didn't get done. I wanted time to think about it,  
11 that I wasn't going to be doing it, and that's my  
12 sense of it.

13 Q All right, sir. But he made the  
14 original overture to you on the 21st of September,  
15 2005, and you're still planning to do it when you  
16 have this e-mail exchange with him on the 27th of  
17 September. And you want an extension from the  
18 October 1st deadline, sir; correct?

19 A There may be some initial sort of plan  
20 to do it, but ultimately I reviewed it and made  
21 the decision no.

22 Q All right. That brings me back to my  
23 question, sir. Do you have any comments to make  
24 on the fitness of you, as independent prosecutor,  
25 preparing a letter for the signature of Mr. Kaplan



1 to the parents of the deceased complainant?

2 A I never really thought about it. Now  
3 that you're asking me to think about it, I would  
4 think that my decision not to do the letter was  
5 probably the right thing to do.

6 Q All right. Thank you, sir.

7 Now, Ms. McCorrister's understanding  
8 was you were asked by the Minister or someone on  
9 behalf of the Minister to contact the Sveinsons.  
10 Is that a fair or accurate impression on her part,  
11 sir?

12 A My understanding -- my recollection,  
13 sir, was that I had received a call from Lesley  
14 McCorrister of Victims' Services, who asked me if  
15 I would meet with them. I don't know -- I don't  
16 recall someone other than Victims' Services  
17 contacting me to meet with the Sveinsons.

18 Q Okay. You were not required under the  
19 terms of the Victims' Bill of Rights to meet with  
20 them, sir, but you chose to do that?

21 A My understanding is that the way you  
22 put it is correct, I was not required to.

23 Q Our information is you were called by  
24 Mr. Sveinn Sveinson on the 28th of September,  
25 2005, by phone, and that your response was, I had

1    been wondering how to get ahold of you.  And you  
2    indicated to him you were aware of the letter and  
3    you had a conversation over the phone with him,  
4    sir.  Does that ring any bells for you, sir?

5           A     No, sir.

6           Q     It would have been consistent with  
7    your impression at this point that you wanted to  
8    meet with them, to say something like, I had been  
9    wondering how to get ahold of you?

10          A     It's possible.  But I think that there  
11   would have been an easy way to get ahold of them.  
12   So it strikes me that I wouldn't have had a  
13   difficulty in doing that.

14          Q     Okay, sir.  You, immediately after  
15   getting that phone call with Mr. Sveinson on  
16   September 28, 2005, you by that time had already  
17   read that letter, sir.  Immediately what you do is  
18   you call Brian Kaplan.  Are you able to indicate  
19   whether you call Mr. Kaplan as a result of having  
20   had this conversation with Mr. Sveinson?

21          A     I can't tell you that, sir.

22          Q     Does it not make sense, sir, given the  
23   timing of it.  You've got a letter from him.  He's  
24   asking you to draft a response.  It's a letter  
25   that makes very strong criticisms of the justice

1 system. And you get a phone call from this  
2 gentleman, and then after you finish that phone  
3 call, you then contact Brian Kaplan. Does it not  
4 make sense, sir, that that would have been the  
5 purpose?

6 A I can't disagree with that. It may be  
7 that I was simply telling him that I made contact  
8 with the Sveinsons and was going to meet with  
9 them.

10 Q Sir, would you not have discussed the  
11 contents of that 20-minute conversation that you  
12 had with Mr. Sveinson? This was pretty clearly  
13 going to be a bit of a potential critical issue  
14 for the Ministry, given the position that the  
15 Sveinsons were taking?

16 A I think I would have simply told him  
17 that I was meeting with them. I can't really, you  
18 know, I don't know, you know, what Kaplan and I  
19 would have discussed, if anything, beyond that.

20 Q It's just that I noticed that your  
21 discussion docket for September 28th is 4.50 of an  
22 hour. So it's basically a half hour period, sir?

23 A Yes.

24 Q And that included your call from the  
25 deceased's family, which we're given to understand

1 was about 20 minutes. So your call to Mr. Kaplan,  
2 more or less, would have been 10 minutes?

3 A It would have been, if that, yes, and  
4 the call to MPI to try to find out, you know, the  
5 information that they were talking about.

6 Q Okay. So they had some concerns about  
7 the Manitoba provincial insurance scheme and how  
8 it affected them?

9 A Yes, because they were raising issues  
10 about that.

11 Q Yes, it was raised in the issue. You  
12 do meet with the Sveinsons on October 3rd, 2005,  
13 sir?

14 A October the?

15 Q 3rd, 2005?

16 A Yes.

17 Q And it, I understand, was a long  
18 meeting, sir?

19 A It was virtually the entire morning,  
20 sir.

21 Q All right. Now, I notice, I'm going  
22 to take you to book R-2. Now, please don't put  
23 away the documents in front you.

24 A Oh, no, I'm trying to organize them  
25 and that's why I was hoping to get a yellow tab

1 for the laying of charges, so I can keep them all  
2 numbered.

3 Q We'll try and keep you as organized as  
4 we can, sir. You can take a look at a document  
5 I'm going to have put to you, it's at R-2.91.83,  
6 book R-2 tab 91.83. This is at page 3316 of the  
7 book, Mr. Commissioner, page 3316. This would be  
8 Exhibit 221, I understand?

9 THE CLERK: Yes, Exhibit 221.

10 (EXHIBIT 221: R-2.91.83, Hard copy of  
11 email trail, last message from Ron  
12 Perozzo to Martin Minuk at 10/29/07,  
13 3:57 p.m.)

14 BY MR. PACIOCCO:

15 Q What you have here in front of you,  
16 sir, is a memo that you prepared to Mr. Don Slough  
17 in response to a complaint that had been made, or  
18 a claim that had been made in an article about the  
19 family not being contacted with respect to the  
20 plea bargain. And correct me if I'm wrong, sir,  
21 but what you do in this memo is you set out all of  
22 the contacts that you have had with the various  
23 victims, the Sveinsons and the Tamans, along with  
24 the time that you had spent with them, sir; is  
25 that correct?

1           A     Yes.  And I also thought that there  
2     was -- yes, that's the reason why.  And if I could  
3     just add one thing, sir, which goes back to  
4     something you asked me about before, if you don't  
5     mind?

6           Q     Give it a try.

7           A     If we go to page 2, it raises the  
8     issue that you raised before about PRISM, because  
9     they don't have this information in the system.  
10    So if it was there, I could have entered it.  They  
11    would have had it right away.

12          Q     Okay.  So that's an illustration of  
13    how your lack of access to PRISM --

14          A     Yes.

15          Q     -- can handicap your ability to also  
16    communicate effectively with them?

17          A     It works both ways.

18          Q     Certainly.

19          A     That's just why I wanted to point out.

20          Q     All right.  So the questions I have,  
21    you have indicated the times here, and I take it  
22    you have done that in order to show how extensive  
23    your dealings were with the victims in this case?

24          A     I went through my time sheets, I  
25    indicate they were saying that I didn't contact

1    them.  I think it was broader than just on the  
2    plea bargain.  There was some allegation that I  
3    didn't even meet with them, that's what I  
4    understood.  And I was covering the -- addressing  
5    the times that I met with them.  I thought that it  
6    was put to me as a broader allegation.

7           Q     It may have happened in some  
8    discussion, sir, but the e-mail is pretty precise  
9    at page 3317.

10                   "Brodbeck saying victims' family not  
11                   contacted re plea bargain.  What are  
12                   the facts?"

13    And you ultimately respond and give detailed  
14    information about your ongoing dealings with the  
15    victims?

16           A     Yes.

17           Q     Sir, with respect to the timing,  
18    comparing those times that you show for number one  
19    and two on page 3316, one, September 28, 2005,  
20    telephone call with Sveinson family, 30 minutes is  
21    the first entry you have there.  We just looked at  
22    that docket on September 28th, and you indicated  
23    that you also had a call to the MPI re ministerial  
24    correspondence and a call to B. Kaplan in that  
25    same half hour period, sir?

1           A     Well, right, but the point -- I don't  
2     know if I actually spoke with anyone at MPI. I  
3     don't know if I spoke -- if it was .1 for Kaplan,  
4     it may have been nothing, you know. I'm just  
5     saying that the bulk of that conversation would  
6     have been with those people.

7           Q     Yes?

8           A     With the Sveinson people. The time  
9     entries are -- they are determined, it's .1, as  
10    I've done --

11          Q     You did them composite, you did three  
12    things and you put them together in your docket  
13    for a half an hour. And when it came time to put  
14    down your contact with the victims, you attributed  
15    all of it to contact with the victims?

16          A     Right. I wasn't doing anything other  
17    than, you know, I wasn't -- I was reading out my  
18    time sheets and just putting them in there.

19          Q     It's just, the point I want to make,  
20    sir, is a minute ago when we were talking about  
21    the length of your contact with Mr. Kaplan, you  
22    talk about, well, I had to call MPI and the rest  
23    of it. And I got the sense that the MPI would  
24    have taken some time. And now your indication is  
25    it would have been just a fleeting thing?



1           A     Well, I don't think that I would have  
2 spent lots of time on those issues, because I  
3 would have only been calling Kaplan to tell him  
4 that I was meeting with these people.

5           Q     All right, sir. On October 3rd, you  
6 have docketed, or you have indicated here, meeting  
7 with Sveinson family, three hours, in this note  
8 that you have provided to Mr. Slough showing the  
9 extent of your dealings with the family, sir?

10          A     Yes.

11          Q     And in your docket, you have review  
12 file and meet with deceased parents on October 3,  
13 '05, three hours. So you would agree with me,  
14 sir, that some of the time in your docket wasn't  
15 for a meeting with the Sveinsons, it was for  
16 review of the file and subsequently, I would take  
17 it, a meeting with the parents. This is on  
18 October 3rd, 2005, it's at page 3401.32.

19          A     I would have not reviewed -- I would  
20 have had it in front of me with them. I don't see  
21 that I was doing anything separate and apart with  
22 them. The whole time was with them.

23          Q     So your docket for the meeting with  
24 them includes review of file, because you had the  
25 file with them as you were --

1           A     Reviewing the file.

2           Q     Okay.

3           A     And I'm writing these notes, I keep my  
4 time records by scribbling on a piece of paper and  
5 then hand them in, and they get typed. I'm not  
6 entering them myself and --

7           Q     Sir, I just want to be clear with you  
8 here. We have received evidence from  
9 Ms. McCorrister that you spent more time with the  
10 victims in this case than prosecutors typically  
11 spend with victims. And you have met with the  
12 Sveinsons, even though you weren't technically  
13 required to meet with them under the Bill of  
14 Rights. So both of those things have been taken  
15 note of. I simply wanted to canvass the accuracy  
16 of the information you were furnishing to  
17 Mr. Slough about the duration of time to make sure  
18 that it is consistent with the actual meetings?

19          A     I think it's accurate. That's all I  
20 can tell you.

21          Q     Okay. Sir, when you did have your  
22 meetings with the Sveinsons, did the topic of the  
23 letter come up?

24          A     I would have had their letter with me.

25          Q     You had clearly read it before they

1 came in?

2 A Yes. And that's why I would have said  
3 to Mr. Kaplan that -- he asked me to just write a  
4 letter -- that my general experience as a lawyer  
5 would tell me you just can't write a letter to  
6 people who are writing this, they want an  
7 in-person meeting, they want to talk to a human  
8 being, so to speak.

9 Q Ms. Sveinson testified that you told  
10 her you had not read the letter when you met with  
11 her?

12 A That's not true at all. I had the  
13 letter days before.

14 Q Yes. And did you tell them that you  
15 were assigned the task of responding to the  
16 letter?

17 A No.

18 Q Did you explain to them how the  
19 meeting with them came about, that this was your  
20 suggestion?

21 A I may have told them that I received  
22 this letter but --

23 Q So you may have told them you received  
24 the letter, sir?

25 A I might have. I didn't really take

1 note of what it was. I understood that I would be  
2 meeting with them, and there was information both  
3 from Victims' Services that they wanted to see me.  
4 They asked me if I would meet with them. I had  
5 this letter. I thought, you know, I should meet  
6 with them. I just didn't pay much attention to  
7 any of that, other than -- and moreover, even  
8 though they were not the victims under the  
9 legislation, I just thought that the right thing  
10 to do --

11 Q Yes, we appreciate that. You  
12 discussed conditional sentences with them at that  
13 time as well. Do you recall that?

14 A It was a very lengthy conversation,  
15 sir, yes, where one of the topics was conditional  
16 sentences in Manitoba.

17 Q And they were opposed. They made it  
18 clear to you they were opposed to it occurring in  
19 this case, sir?

20 A They were opposed to it not only in  
21 this case, but in every case. And Mr. Sveinson  
22 was making it known to me that he was very  
23 familiar with the judicial system, very familiar  
24 with sentencing in Manitoba, that he disagreed  
25 with all of it, and that these for sure were bad.

1           Q     And, sir, their indication is that you  
2     told them that the conditional sentences and their  
3     application in a case like the one you had was the  
4     law, and there were precedents supporting that.  
5     Do you recall that, sir?

6           A     I reviewed many of the cases in  
7     Manitoba with them, in fact, because I had been  
8     involved in these cases, both as Crown and  
9     defence, keep an ongoing accumulation of them,  
10    generally bring it out. Would have shown them the  
11    various cases, told them different fact situations  
12    and said, this is the law in Manitoba. And I  
13    specifically recall discussing with them that this  
14    was not a Provincial Government legislation, this  
15    was Federal Legislation, the need to perhaps  
16    amend, and how one would go about doing that, and  
17    the process. There wasn't anything that -- I  
18    didn't hear that they disagreed, and I did not  
19    fail to make suggestions to them about how they  
20    might go about affecting change.

21          Q     And they also indicated to you that  
22    they felt you had a discretion in this case and  
23    you didn't need to go with a conditional sentence,  
24    sir? They made that known to you?

25          A     They told me that I should not feel

1 bound by precedent, not by discretion, that I  
2 should not feel bound by precedent, and that I  
3 should disregard the decisions of Manitoba Court  
4 of Appeal, and do, and argue against their  
5 decisions.

6 Q So, it's fair to say, sir, you were  
7 kind of preparing them for the outcome of this  
8 case, which you anticipated even at that point  
9 could well be a conditional sentence?

10 A I would say yes to that, that I was --  
11 I had a sense, sir, early on, even in the best  
12 case scenario, if the fellow was convicted, that  
13 that would be what was requested by the defence,  
14 and there certainly is overwhelming authority in  
15 Manitoba for that. I know that it's different  
16 elsewhere, but in Manitoba that's the law.

17 Q You also indicated to them, they told  
18 us, that it was good that you were a defence  
19 lawyer. They had some concerns about that, but  
20 you indicated it was good because you could know  
21 how the defence might think in a case like this.

22 A I wouldn't have said that it was good  
23 that I was a defence lawyer, I would have said  
24 that in coming to be doing prosecutions, that I  
25 would draw on the experience as a defence lawyer,

1     which might not be the same experience possessed  
2     of by an in-house Crown Attorney, and that the  
3     tools or the experience would hold me in good  
4     stead.

5             Q     All right. The issue of plea  
6     bargaining came up as well. It was a big fear of  
7     theirs, and they didn't want this case plea  
8     bargained. They made that they clear to you, sir?

9             A     Yes.

10            Q     And Mr. Sveinson also indicates that  
11    you told him that there were lots of witnesses and  
12    they were being interviewed by different  
13    departments so that there wasn't a conflict? Do  
14    you have any idea where that --

15            A     Pardon me?

16            Q     That there were lots of witnesses and  
17    they were being interviewed by different  
18    departments?

19            A     I never said that at all.

20            Q     It would be an accurate statement  
21    though, sir, given that the Winnipeg Police  
22    Service was conducting some of the interviews, and  
23    the East St. Paul was conducting some of the  
24    interviews?

25            A     I can't -- I would not have discussed

1 with them the investigation, so I just, I can't  
2 agree to that. I wouldn't have said that to him.

3 Q All right. So you wouldn't even have  
4 discussed who is conducting the investigation as  
5 opposed to the details of it?

6 A No.

7 Q Sir, when you met with Robert Taman on  
8 May 3rd, 2006, he confronted you about having  
9 spoken to his in-laws before having spoken to him,  
10 sir?

11 A Very much so, sir.

12 Q He didn't want information coming out  
13 from their conversations. He wanted to know  
14 before, from you directly, before he learned it  
15 from them, sir?

16 A He eventually arrived at that point.

17 Q Lesley McCorrister had given you heads  
18 up, I think, that he was upset about this?

19 A I would say, sir, that your  
20 description of his demeanour is mild.

21 Q All right, sir. We'll get into his  
22 demeanour later. I don't want to get sidetracked  
23 on that issue right now.

24 What did you tell him to assuage his  
25 concerns?



1           A     I told him that I would not discuss  
2     the case, if we could call it that, with his  
3     family, that they were the victims, and if I had  
4     discussions with them, it would not be about the  
5     case.

6           Q     Did you tell him that you had met with  
7     them on a matter not related to this charge?

8           A     No, I would have told him that I met  
9     with them because of a request to meet them by  
10    Victims' Services, and that I would have discussed  
11    a variety of topics with them, as I recall.

12          Q     We'll get into the other topics later,  
13    sir, I'm just interested in that one point.

14                    Can you furnish the witness, please,  
15    with Exhibit 11? It should be volume L containing  
16    a number of correspondence from Victims' Services.  
17    And I'm going to ask you to turn to page 1870 of  
18    that document, which contains consultation sheets  
19    taken from the PRISM system, sir. Page 1870 has a  
20    consultation note created by Lesley McCorrister,  
21    who we understand was present during the meeting  
22    that you had with Robert Taman. And the reason I  
23    asked you whether you indicated to them that you  
24    had met with the Sveinsons on a matter not related  
25    to the charge is that's what Ms. McCorrister has

1 recorded here. In the second sentence beginning  
2 at the end of the line, you will see:

3 "Marty advised Robert that he had met  
4 with them, i.e. the Sveinsons, his  
5 in-laws, on a matter not related to  
6 this charge."

7 A Well, I don't know where she got that  
8 because -- and I will tell you, though, that we  
9 did not discuss the specifics of the facts of the  
10 case involving Mr. Zenk. We spent on it, the  
11 entire time, in my view, not about the case but  
12 about the philosophy and the approach of Manitoba  
13 courts, period.

14 Q Well, sir, you told us that you had  
15 the file out and you docketed review of file as a  
16 result of --

17 A I had it out and I did not discuss  
18 that with them.

19 Q Why did you have it out?

20 A Well, I didn't know what they were  
21 going to be discussing or what they wanted.

22 Q Well, if you had it out, you must have  
23 been prepared to discuss the file with them?

24 A Yes, but we never got there.

25 Q Well, sir, you indicated that you had

1 a conversation about conditional sentences in this  
2 case and --

3 A Not -- we did not discuss conditional  
4 sentences in this case. It was a discussion about  
5 the state of the law in Manitoba.

6 Q Sir, you indicated to me that you were  
7 preparing them for the real possibility that this  
8 would be a conditional sentence in this case?

9 A Well, I would be preparing not --  
10 well, not -- in an indirect way, yes.

11 Q You knew they were talking about  
12 conditional sentences in this case and you were  
13 responding to them, sir?

14 A In a general way, not about this case,  
15 about the state of the law in Manitoba. And I  
16 would not talk to them about this specific case  
17 because it was way too early to be talking about  
18 this specific case, and we would only be able to  
19 talk about generalities, about previously decided  
20 cases. Because they had newspaper articles with  
21 them, they had collected a scrapbook essentially  
22 of matters that they had been following about the  
23 state of the law in Manitoba. And this was, as I  
24 understood it, not something which arose just from  
25 this case, but this was views that they had held

1 generally.

2 Q And I take it, sir, that's where you  
3 got the discomfort from with Lesley McCorrister's  
4 comments when you indicated that you had met with  
5 them on a matter not related to this charge. You  
6 agree it was related to the charge, but your  
7 evidence now is you didn't discuss the specifics  
8 of the case with them?

9 A Well, I guess it's a matter of  
10 semantics, because I would consider related to the  
11 charge meaning the specifics of the case, as  
12 opposed to the generalities of the law in  
13 Manitoba.

14 Q Well, sir, they came in, you would  
15 agree with me, for the purpose of discussing not  
16 just changes to the law in Manitoba, but they were  
17 concerned about the prosecution of their  
18 daughter's --

19 A They may have been, but I wasn't going  
20 to be going there with them at that time.

21 Q But you knew from your discussions  
22 with them that they were opposed to plea bargains,  
23 and you knew from your discussions with them that  
24 they felt a conditional sentence would be  
25 inappropriate in this case, and you had some

1 comments about the law relating to that?

2 A A general comment about the process of  
3 plea bargaining. All I intended to do was to  
4 explain to them these legal concepts.

5 Q Okay. And we're going to leave this  
6 topic very, very shortly, sir. But I can indicate  
7 to you that, apropos of the note of Lesley  
8 McCorrister recording that you had advised Robert  
9 that you had met with them on a matter not related  
10 to the charge, we had heard testimony from Jordan  
11 Taman, who was present during that meeting, as  
12 follows:

13 "He said that what he had discussed  
14 with them had nothing to do with the  
15 charges that were laid."

16 And he described how his dad was confused, and  
17 said in response to that:

18 "What else would they have met for?"

19 Robert Taman testified, and he says  
20 what you told him was:

21 "He said it had zero to do with what  
22 we are dealing with."

23 It had zero to do with what we were dealing with.

24 Do you not agree, sir, that you told them that  
25 your meeting with the Sveinsons was not related to

1 the charge?

2 A No, I don't. All I can tell you,  
3 Mr. Paciocco, is that, as I see it, they confused  
4 what it is that was going on at that meeting,  
5 which was a discussion about the case itself, or  
6 what I was doing with the Tamans was having a  
7 general discussion with them about the law in  
8 Manitoba. And how they walked away from it and  
9 took that is their perception, but I was not, at  
10 that point, going to be discussing the  
11 circumstances of this case with anyone. I would  
12 have told them that it's too early to do that.

13 Q The question had to do with what you  
14 told Robert Taman about the meeting with the  
15 Sveinsons?

16 A Well, I would have told him that I  
17 would not have discussed the case with him, I  
18 would have talked about generalities about the law  
19 in Manitoba.

20 MR. PACIOCCO: All right, sir.  
21 Mr. Commissioner, if you would, it's a good time  
22 for a break.

23 THE COMMISSIONER: I think so. Yes.  
24 Thank you. Fifteen minutes.

25 THE CLERK: All rise. This Commission

1 of inquiry is now in recess.

2 (Proceedings recessed at 10:44 a.m.

3 and reconvened at 10:59 a.m.)

4 THE CLERK: All rise, please. This  
5 Commission of Inquiry is now reopened. Please be  
6 seated.

7 BY MR. PACIOCCO:

8 Q Mr. Minuk, I understand from your  
9 file, and certainly from the evidence that's been  
10 presented so far, that there's not a tremendous  
11 amount of controversy about the proposition that  
12 this investigation presented you with very  
13 significant problems as a prosecutor?

14 A Yes.

15 Q In an effort, I think it's important  
16 to try and put the whole picture together in one  
17 convenient package. So what I've done is I've  
18 taken the liberty of preparing a status of the  
19 case chart, setting out what I understand to be  
20 the case for and against each of the charges in  
21 very brief terms, based on the evidence we have  
22 heard, my review of the file, and some of my own  
23 observations. I'm going to go over it with you, I  
24 am going to take advantage of your presence, and  
25 anything you feel that needs to be added or not to

1 the document, we can certainly do that. I felt it  
2 was important to have one place where we have all  
3 of that assembled.

4 So the status of the case chart which  
5 was handed out to counsel this morning, if that  
6 could be made the next exhibit, please?

7 THE CLERK: Exhibit 222.

8 (EXHIBIT 222: Status of the Case  
9 Chart)

10 BY MR. PACIOCCO:

11 Q You'll see that what I did there, sir,  
12 is I have broken down the charges beginning with  
13 the refusal, and I put the case for and the  
14 problems with. With respect to the refusal  
15 charge, you had clear evidence available to you of  
16 a subjective opinion held by Sergeant Carter, with  
17 some identified objective supporting criteria, he  
18 made observations in his notes about a strong  
19 smell, unsteady on feet, flushed face, glassy,  
20 bloodshot eyes, coupled with whatever information  
21 may have been available to him about how the  
22 accident happened. And there was also in the  
23 file, based on Constable Woychuk's notes and  
24 Constable Carter's notes, clear evidence that  
25 there had been a refusal of the demand. So that



1 would have been essentially the case for.

2 But the case against presented a  
3 litany of problems. First were charter problems.  
4 Based on the notes you had, and I know that many  
5 of these observations are made by you in the  
6 letter to Mr. Slough that we looked at before, and  
7 I'll go back to that later, sir, so I don't think  
8 that anything in here is going to be new to you.

9 But based on the notes, you had the file disclosed  
10 that Harvey-Zenk was arguably detained in the  
11 police vehicle at the scene from 7:42 to 8:08  
12 without a real reason being offered, potentially  
13 leading to an arbitrary detention finding. You  
14 had no information that a right to counsel had  
15 been furnished to Mr. Harvey-Zenk, which would  
16 have been required if he indeed was detained.

17 On the reasonable and probable grounds  
18 that the law requires before a demand be made for  
19 a sample of one's breath, Sergeant Carter  
20 identified grounds, but there would have been some  
21 issue as to whether the grounds were adequate.  
22 More importantly, why did no one notice indicia of  
23 impairment on site, other than an odour of alcohol  
24 by a couple of individuals. And that could  
25 arguably cast some doubt on the credibility or

1 integrity of the observations made by Chief  
2 Carter. If those people who were on site did  
3 notice the signs of impairment, why did they not  
4 make the demand? And if they did notice it, then  
5 you would have had problems with the "as soon as  
6 practicable requirements" of section 254 of the  
7 criminal code.

8 In addition, you had an indication in  
9 Carter's notes that the demand that was made was  
10 not proper. You have records, and we know that  
11 they exist in three locations in the file, of  
12 blood demands being made as opposed to breath  
13 demands, which leads to two problems. First, you  
14 cannot charge someone for not giving a breath  
15 sample in response to a blood demand. And  
16 secondly, there was no legal basis for making a  
17 blood demand on the facts available that day.

18 So you had a number of serious  
19 problems with the refusal charge there, sir. Are  
20 there any additional ones that come to mind that  
21 are not listed?

22 A Well, I do know that if there was, as  
23 Woychuk did suggest, odour of alcohol, and I can't  
24 recall that at the moment, that the failure, even  
25 if he didn't have reasonable and probable grounds,

1 the failure really to give him the handheld, in my  
2 mind, which would then form a basis for reasonable  
3 and probable grounds, is a problem.

4 Q You didn't have the advantage that's  
5 available in some cases of a roadside fail --

6 A Correct.

7 Q -- in order to give the basis for an  
8 evidential breath test.

9 A Right. And I just wanted to say one  
10 thing as well?

11 Q Yes?

12 A I do know that Mr. Carter told me  
13 that, or said that, he did tell me that he made a  
14 breath demand as opposed to a blood demand and  
15 that that was an error, and if it did happen, it  
16 may have well happened on that day that he brought  
17 to me the stunning report, if I could call it.

18 Q We'll go into the stunning report in  
19 some detail and I will ask you about the breath  
20 demand conversation?

21 A I just wanted to say, on this point  
22 here, there would be also, even with his  
23 correction, a credibility issue.

24 Q Okay.

25 A And I think that -- these are, I see

1 the legal issues --

2 Q Yes, yes.

3 A -- but not necessarily the --

4 Q All right. So, essentially, even if  
5 he was to come forward and testify that he  
6 actually said breath demand, the existence of the  
7 blood demand reference in his notes could be used  
8 potentially by defence counsel --

9 A Yes.

10 Q -- to challenge his claim --

11 A Yes.

12 Q -- that it was truly a breath demand?

13 A Yes.

14 Q On the impaired driving causing death  
15 charge, sir, the case for impaired driving causing  
16 death, put at its highest, would indicate that the  
17 accused was at locations throughout the evening  
18 where alcohol was served, and was observed to have  
19 alcohol in front of him by four officers at  
20 Branigan's. Now, that's very imprecise  
21 information, that he had what appeared to be a  
22 beer in front of him. I think there was evidence  
23 from several to that effect. You had an  
24 unexplained accident with no attempt to abate  
25 speed or brake, and ample notice of oncoming

1 traffic, which is sometimes consistent with an  
2 impaired act, but can be consistent with other  
3 causes. Description of conduct that could be  
4 considered evasive from some of the witnesses.  
5 One of the things that officers are taught to look  
6 for is unusual conduct, and there was an apparent  
7 attempt to keep his head down and not speak or  
8 make eye contact with anyone, that could be  
9 divined from the evidence, and may ultimately  
10 present some evidence of after the fact conduct  
11 consistent with impairment. Not a strong point in  
12 and of itself, but coupled with the other factors,  
13 something that a court might take into account. A  
14 number of witnesses note the smell of alcohol  
15 before the arrival at the station, I should say,  
16 rather than at the scene. You have Constable  
17 Woychuk in his notes indicating that he smelled a  
18 slight odour of alcohol en route. You have  
19 Mr. Rosser, the paramedic, Mr. Fontaine, the  
20 paramedic, and Constable Graham detecting the  
21 odour of alcohol in the motor vehicle, which I  
22 suspect you will recall, sir?

23 A (Witness nodding)

24 Q Then you have opinion evidence offered  
25 from some witnesses that he was impaired. Most

1 notably Sergeant Carter at the station forms that  
2 opinion. Constable Woychuk signs a prisoner log  
3 sheet, which has been made Exhibit 101 in this  
4 case, and records in there -- and is indicating  
5 impairment. There is a check box at the bottom  
6 that you may have picked up in your file review,  
7 and he records in his narrative report, although  
8 not in his notes, that he observes signs of  
9 impairment at the scene. Constable Pederson forms  
10 the opinion that he is impaired when he is being  
11 released, according to the statement she gave to  
12 the RCMP. And you had information of certain  
13 circumstantial similarities at the time between  
14 the patron with eight beers and Derek Harvey Zenk  
15 namely coincidental information that the patron  
16 with eight beers had a pregnant wife, and so too  
17 did Harvey-Zenk, that the person who had eight  
18 beers was one of the first to arrive on February  
19 2005, and so too is Harvey-Zenk. And that the  
20 person with the eight beers ate a large number of  
21 wings, and you had all kinds of information that  
22 Harvey-Zenk was someone who ate a large number of  
23 wings.

24 Problems with the impaired driving  
25 charge. None of the witnesses at the scene note

1 signs of impairment, other than that potential  
2 evasive conduct, which is very ambiguous. Evasive  
3 conduct is consistent with shock or the aftermath  
4 of the collision, if you tried to make much of it.  
5 The key indicia of impairment observed by the  
6 police at the station, unsteadiness is arguably  
7 ambiguous after a motor vehicle accident. Neither  
8 Woychuk nor Pedersen had indicated their opinions  
9 about impairment in their notes. The waitress who  
10 made the observations about the eight beers being  
11 served to a customer did not recognize the  
12 Harvey-Zenk photo when presented with it,  
13 weakening the value of her evidence of  
14 circumstantial indicators of identity. And most  
15 significantly, sir, none of the 23 police officers  
16 who were with the accused, including up until  
17 very, very shortly before the collision, confirmed  
18 heavy patterns of alcohol consumption or offered  
19 the opinion he was impaired. Most disclaimed the  
20 opportunity to observe, but some did indeed offer  
21 the opinion that he appeared fine or was not  
22 impaired.

23                   So your impaired evidence was there,  
24 but you had contradictory evidence and there were  
25 problems with the evidence that you did have, sir.

1 Anything that you wish to add to that list?

2 A Again, all the credibility problems,  
3 the issue of -- the issue with notes, as revealed  
4 by the subsequent RCMP investigation, which in my  
5 view would have also impacted on all of the, what  
6 might be described as points in favour --

7 Q Yes, sir.

8 A -- of the prosecution.

9 Q And the criminal negligence causing  
10 death charge. The key elements of that offence, I  
11 think we can take it from the experts who have  
12 filed documents with this Commission, and from our  
13 own knowledge as lawyers, that the prosecutor has  
14 to prove a marked departure from the standards of  
15 the norm, and prove that the driving was in a  
16 manner that "shows wanton or reckless disregard  
17 for the lives or safety of others." And of  
18 course, causation also has to be proved, that the  
19 act of the accused that were negligent caused the  
20 death of the victim.

21 The case in favour of that charge  
22 would include the unexplained collision after 12  
23 or more seconds of warning with no attempt to  
24 abate speed or avoid collision, possibly evidence  
25 of alcohol consumption. And you had a pretty



1 clear case of causation, given the traffic  
2 accident report that came out. So the question  
3 was whether or not the driving that lead to the  
4 cause was, in fact, criminally negligent.

5           The problem with that charge include,  
6 there was no evidence of a pattern of erratic  
7 driving or speeding identified by the accident  
8 reconstructionist or witnesses. And I know from  
9 your experience, sir, you would agree that in most  
10 criminal negligence cases, you have evidence of  
11 some ongoing pattern of irresponsible driving  
12 that, on its face, shows that someone just doesn't  
13 care about the lives or safety of others. And you  
14 didn't have that here. The possibility of a  
15 momentary lapse of attention or falling asleep at  
16 the wheel was something that had to be considered.  
17 And we'll explore the extent to which that may  
18 have been a problem for you later. But by and  
19 large, the criminal negligence causing death case  
20 had its biggest problems in the absence of an  
21 ongoing driving pattern.

22           The dangerous driving causing death  
23 charge, the key elements of that offence are that  
24 you again require a marked departure from the  
25 standards of the norm. The driving must be in a

1 manner that is dangerous to the public, and all of  
2 the circumstances. And you require again  
3 causation of the consequence of death.

4           The case for it was, again, the  
5 unexplained collision after 12 or more seconds of  
6 warning, with no attempt to abate speed or avoid  
7 the collision, potentially evidence of alcohol  
8 consumption, according to some authorities. And  
9 you had clear causation of the consequence of  
10 death.

11           The problems with the dangerous  
12 driving cause death that have been identified to  
13 date are, no evidence of a pattern of erratic  
14 driving or speeding. And the possibility that  
15 could be argued of a momentary lapse of attention  
16 or falling asleep at the wheel.

17           Sir, is that a fair summary in your  
18 view of the charges?

19           A     More or less. And I would say that in  
20 dealing with the possibility of momentary lapse of  
21 attention, I'm assuming you are factoring in  
22 through that the traffic accident  
23 reconstructionist, even though he isn't set out  
24 here, Corporal Blandford? I am correct on that?

25           Q     Yes. You had, I understand, received

1 information from Corporal Blandford that he  
2 couldn't rule out a momentary lapse of inattention  
3 or falling asleep?

4 A Right.

5 Q And those are things that we will  
6 explore in more detail later, sir, but this is  
7 basically the --

8 A Also -- I can't measure or quantify  
9 the effect that all of the scene errors and all of  
10 the subsequent note changing and activities would  
11 have on the trier of fact, that may just put an  
12 overwhelmingly, an overwhelming smell or tainting  
13 on the case that could go to the benefit of the  
14 accused.

15 Q What Mr. Wolson was referring to in  
16 his testimony yesterday?

17 A He didn't say it that clearly -- and  
18 using that language, I don't recall that, but  
19 clearly, yes.

20 Q And again, we'll explore that in a  
21 moment, sir. One of the things that I did notice  
22 is when you filed the resolution hearing report  
23 that you are required to prepare in connection  
24 with the case, where you meet with the judge and  
25 you're kind of narrowing the issues and showing

1 what happens, there was a point where you said, no  
2 problems anticipated with admissibility of  
3 evidence. Do you recall that, sir? Would you  
4 like me to take you to the document? I can  
5 certainly do that. Why don't we do that? It's  
6 book R-1.91.10. R-1.91.10, that will be exhibit  
7 223. R-1.91.10 found at page 3136 of volume R-1.

8 (EXHIBIT 223: R-1.91.10, Letter from  
9 Provincial Judge Meyers to Martin  
10 Minuk and Richard Wolson dated  
11 February 10, 2006)

12 BY MR. PACIOCCO:

13 Q What you have in front of you, sir, is  
14 a resolution hearing report before presiding Judge  
15 Meyers dated December 19th, 2005. And the thing  
16 that I was, that caught my attention was .8, under  
17 preliminary matters by prosecution:

18 "No problems anticipated re  
19 admissibility of evidence by defence."  
20 It says none. I'm just wondering how that might  
21 fit into any potential charter challenges or  
22 exclusion that might result from the arbitrary  
23 detention or the right to counsel issue, and  
24 whether you can explain why that's recorded in  
25 that way?

1           A     I don't really understand this at all  
2     or why it was written there, because it was left  
3     that we -- Mr. Wolson and I would be discussing  
4     the case. We would be getting back to Judge  
5     Meyers that -- and I know Mr. Wolson's practice in  
6     going to these hearings is that he doesn't  
7     disclose anything, doesn't raise any issues. We  
8     generally don't talk about too much, and it's more  
9     perfunctory. There are some lawyers who take the  
10    view that they just don't like them, and will  
11    discuss these things ourselves.

12           Q     Sir, I can see tactically, if he's not  
13    going to come in and say we've got the problem  
14    with the admissibility of that evidence, you're  
15    not going to, as a prosecutor, put down that we  
16    do?

17           A     Right. I'm keeping my cards as close  
18    to the vest as he is.

19           Q     Okay. Sir, I'm going to take you back  
20    to the document that went to Mr. Slough explaining  
21    the decisions you took with respect to the  
22    charges. This is the one at R-2.91.74?

23           A     That's 143, yes, sir.

24           Q     This is the memo that we looked at  
25    earlier at page 3296. And there are a number of

1 points that you raise in here about problems with  
2 the case, that have a slight gloss on them  
3 relative to the number -- or the explanations that  
4 I have set down, and appear to contain what may be  
5 minor errors, or minor inconsistencies with the  
6 evidence in the case. And I just want to explore  
7 them with you. If you take a look at page 3298?

8 A 3298?

9 Q Yes?

10 A Yes.

11 Q And I know these things are going to  
12 come up, so I just want to do this and clear it up  
13 all at once, sir. 3298, you have -- dealing first  
14 of all with the refusal charge, C5. You record in  
15 C5 on page 3298:

16 "The Carter demand would simply not  
17 withstand the challenge that it was  
18 not made forthwith and his grounds for  
19 making a demand some two hours after  
20 the accident with limited knowledge  
21 would also not be sustainable."

22 A That's a typo. It should be three  
23 hours. It's just, it's not like --

24 Q Three hours after the accident?

25 A I believe that the code provision is

1 three hours, not two hours, and I think that --

2 Q So you were referring to the code  
3 provision here, because the two hours --

4 A Okay.

5 Q -- is a mis-stroke?

6 A Let me go back.

7 Q Yeah.

8 A What I'm saying here is that from the  
9 time -- what I was contemplating there was that if  
10 Carter's demand for blood was believed to be a  
11 blood demand, and not accepted as a blood demand,  
12 that the breath demand, I believe, when I was  
13 calculating the time, the first time would have  
14 been two hours after the accident.

15 Q Yeah. And that's inconsistent with  
16 the information we have, not that it's a huge  
17 point, sir, but the accident happened at 7:07, in  
18 around there, and the first demand was at 8:21?

19 A That's the blood demand I believe that  
20 he made.

21 Q All right. So your interpretation  
22 would be that that's not a breath demand, even  
23 though Carter is telling you that it was?

24 A I was writing this, not from that  
25 perspective, sir, but what I was contemplating was

1 what would the arguments be made by Mr. Wolson if  
2 the evidence went in, in the worst way possible.  
3 That's really what I was addressing. And so that  
4 if Carter's blood demand was just accepted as a  
5 blood demand, it was disbelieved, and then there  
6 was a breath demand and he corrected it, then  
7 that's my calculation of the time.

8 Q And the other point, and again I doubt  
9 if anything would have ultimately turned on it,  
10 but you use the term "forthwith" in passage, and  
11 that provision, forthwith, is the criteria that is  
12 used with respect to a roadside alert?

13 A Yes.

14 Q But for an actual evidential breath  
15 demand, it has to be forthwith or as soon as  
16 practicable?

17 A Yes.

18 MR. PACIOCCO: Just for the sake of  
19 completeness again, I'm going to file with the  
20 court, please, copies of the statutory sections.  
21 I don't know whether the clerk was furnished with  
22 this document today. If those could be made  
23 Exhibit 224, section 254 of the Criminal Code?

24 THE CLERK: Exhibit 224.

25



1 (EXHIBIT 224: Section 254 of the  
2 Criminal Code)

3 BY MR. PACIOCCO:

4 Q And, sir, you will notice on the  
5 second page of that document --

6 A Yes, yes. I think that I had actually  
7 used that language on page 2 of my memo, when I  
8 was talking about it, and that incapable of  
9 blowing or that it was impracticable. It was just  
10 part of the --

11 Q Okay. So it's just an incomplete  
12 reference rather than a misunderstanding of what  
13 the relevant authority was?

14 A Correct.

15 Q It probably wouldn't have had much  
16 difference to the outcome, in any event, sir.

17 The other point that I wanted to draw  
18 out here is you site two cases in point number 4  
19 in support of your conclusion that this breath  
20 demand would not have met the requirements set out  
21 in your code. You site Cote and you site Woods,  
22 right?

23 A Yes.

24 Q Each of those, sir, are cases dealing  
25 with roadside demand in the forthwith requirement,

1 and they are not cases that deal with blood or  
2 breath demand at the actual station for an  
3 evidential sample. Were you aware of that, sir?

4 A Yes. And in fact, if I looked at it,  
5 I probably would have put those cases under point  
6 number one rather than where they are now.

7 Q Okay. So those were not the cases  
8 that pointed out the problems with the way in  
9 which the demand occurred under section 254,  
10 right?

11 A Right.

12 Q In fact, section 254, subsection 3,  
13 which deals with the breathalyzer demand, says  
14 that:

15 "Where a peace officer believes on  
16 reasonable and probable grounds that  
17 the person is committing or at any  
18 time within the preceding three hours  
19 has committed as a result of the  
20 consumption of alcohol an offence  
21 under section 253, the peace officer  
22 may, by demand made to the person  
23 forthwith or as soon as practicable,  
24 require the person to provide then or  
25 as soon thereafter as practicable a

1 sample."

2 So effectively, Sergeant Carter, having concluded  
3 that Mr. Harvey-Zenk committed a breath -- or an  
4 alcohol driving offence within the previous three  
5 hours, would have been within his right to make a  
6 demand and to require that that sample be provided  
7 forthwith or as soon as practicable. Do you agree  
8 with that?

9 A Well, as long as he had sufficient  
10 background information to know that this person  
11 was driving a motor vehicle, and other criteria.

12 Q Yes?

13 A If he just saw a fellow drunk, being  
14 brought into the station --

15 Q But you know that's not the facts  
16 here.

17 A Right.

18 Q And the problem we're addressing right  
19 now the "as soon as practicable." That's not  
20 really a problem in these circumstances, sir?

21 A Right.

22 Q Now, sir, with respect to the blood  
23 issue, it was noticed that you make observations  
24 about that in point number 7 at page 3296?

25 A Yes.

1 Q And you go on, in some detail, to  
2 explain the problems as it exists.

3 "At 8:21 Carter read the blood demand  
4 which appears not to have been  
5 required by reason of there being no  
6 evidence to satisfy 254.3  
7 requirement..."

8 et cetera, et cetera, et cetera. It goes on for  
9 four lines. Nothing controversial about the  
10 description of the law or the facts that you have  
11 there, sir. The only point I wanted to explore  
12 was, you sent a draft of this memo before you sent  
13 the actual memo to Mr. Slough. Do you remember  
14 doing that?

15 A I saw the draft, yes.

16 Q Okay. And that draft is found at tab  
17 R-2.91.73. R-2.91.73.

18 A I believe it probably just says it  
19 gave the blood demand.

20 Q I'll be with you in a second, sir.  
21 That would be Exhibit 142. Do you have that  
22 e-mail dated the 20th of September, 2007, sir? Is  
23 that what you have in front you?

24 A (Witness nodding)

25 Q Okay. Then you have this from

1 Mr. Slough.

2 "Marty, this is great. Please send me  
3 the revised version so I can get it  
4 across the street."

5 And attached to that document is a memorandum  
6 almost identical to the one we had just been  
7 looking at, but it seems to be an earlier version,  
8 because at point 7, all it says is:

9 "At 8:21 Carter read the blood  
10 demand."

11 And it doesn't include the explanation that the  
12 final memo does. I was just curious as to where  
13 the choice was made to elaborate on point 7, whose  
14 decision was that? Was that something that maybe  
15 Mr. Slough recommended to you?

16 A No. He wanted to know what the  
17 argument was that would be made by the defence  
18 lawyer, because as I read it, that's all it was to  
19 me is I was trying to describe what I thought  
20 Mr. Wolson might argue if the matter had gone to  
21 trial.

22 Q Okay. Sir, you indicate with respect  
23 to the impairment charge, if we can go back to the  
24 final draft of your memo which you had in front of  
25 you and which appears at the next tab, tab 74?

1 You indicate, sir, at page 3297 in point B3, after  
2 reviewing --

3 A I'm lost, sir.

4 Q Yes. Do you have the original or the  
5 final memo?

6 A Final memo in my right hand.

7 Q Please go to what would be page 2 of  
8 that memo?

9 A Page 3.

10 Q Page 2 of that memo, and you see topic  
11 B at the bottom.

12 "Could you provide a summary of the  
13 evidence of impairment?"

14 Do you have that heading, sir?

15 A Yes, I have it in the final version.

16 Q Yes. And point number 3 you say:  
17 "After reviewing all of the  
18 statements, not one officer could  
19 recall what it was that Mr. Zenk had  
20 to drink."

21 Do you see that, sir?

22 A Yes.

23 Q You'd agree with me that you did have  
24 some evidence that some officers at Branigan's had  
25 a beer in front of Mr. Harvey-Zenk, or were

1 prepared to say he was drinking beer? There  
2 weren't many, but there were officers, Mikawoz,  
3 Buors, Williams?

4 A Well, my recollection is that they  
5 said it was in front of them. I don't think that  
6 any of them would give an inch that he even lifted  
7 it to taste it.

8 Q All right. And what you meant, I take  
9 it, is not just what kind of thing he was  
10 drinking, but what he consumed over the course of  
11 the period by that?

12 A Yes.

13 Q Okay. The next point, sir, is the  
14 next sentence:

15 "Some officers themselves reported  
16 their impairment was such that they  
17 did not remember much of the evening."

18 Where did you get that, sir?

19 A Two officers who I interviewed in my  
20 office, I know that. My recollection today is  
21 that at least one of them, in their statements,  
22 may have said that they were that drunk and  
23 couldn't --

24 THE COMMISSIONER: Could you speak --

25 THE WITNESS: I'm sorry. That's my

1 recollection from the statements, that's all I can  
2 tell you.

3 BY MR. PACIOCCO:

4 Q Because on our review of the evidence,  
5 no one took this position. No one admitted to  
6 being drunk that evening, with the exception of  
7 one officer, David Harding. No one admitted to  
8 seeing more than one officer intoxicated other  
9 than David Harding. And David Harding never said  
10 that his impairment was such that he did not  
11 remember much of the evening. And so --

12 A Well, I know, sir, that I interviewed  
13 Mr. Black, I can't remember, Humniski, I can't  
14 remember the names of the persons I did.

15 Q The individuals you had contact with  
16 were Mr. Black, who you interviewed in your  
17 office, Mr. Anderson, who you called from your  
18 office, either when Mr. Black was there or  
19 immediately after he left, because you have one of  
20 those composite dockets?

21 A Yeah.

22 Q You had two conversations with  
23 Sergeant Humniski, both I believe over the phone.  
24 You had two telephone calls with Constable  
25 Harding, probably about the subpoena. But only



1 one officer in your office, according to your  
2 docket as I see them, sir?

3 A But I'm saying that officers I spoke  
4 to would have provided me with this information.

5 Q Sir, did you take notes of those  
6 conversations --

7 A No.

8 Q -- with the officers? This represents  
9 a profound departure from the statements that had  
10 been furnished, both to the East St. Paul Police  
11 and ultimately to the Commission. And you are not  
12 able to be any more precise than some officers  
13 said --

14 A That's what they said. I wouldn't  
15 have obtained it anywhere else.

16 Q Is it not possible, sir, that you may  
17 have misunderstood or made a mistake about that?

18 A No.

19 Q Just another minor point, sir. You  
20 make, you mention in point number 6 on that page  
21 3298, that at the scene an ambulance attendant  
22 stated that he noted the smell of alcohol. You  
23 had more than one ambulance attendant?

24 A Yes, there were two, I noticed that.

25 Q Yeah. And the other point is, you go

1 on and say:

2 "...even though Zenk was permitted by  
3 attending officers to walk around the  
4 area without police supervision..."

5 Where did you get that information from, sir?

6 A That was my impression on reading the  
7 statements that he was standing outside of his  
8 vehicle, leaning up against it, walking about. In  
9 fact, there was even civilian witnesses, as I  
10 recall, who said that they had seen him walking in  
11 the ditch, even though the police were there.  
12 They may not have been there, but that was how I  
13 interpreted was being said.

14 Q Okay. Because from looking at the  
15 statements, again, there doesn't seem to be  
16 anybody who says this in the investigative file  
17 about the police officers being there at the time  
18 that they make their observations of Harvey Zenk?

19 A Well, that was my impression of their  
20 evidence.

21 Q And I noticed during your interview  
22 with Mr. Clifford, when you were asked the same  
23 question, you attributed that information to the  
24 Taman girls, that they had made comments to you  
25 about him walking?

1           A     Well, they did -- it would have been  
2     in August of 2007, for the first time that I had  
3     ever heard that from them.

4           Q     Yes, and that's why I was wondering  
5     how it made it into the memo.

6           A     It might have been that. Today I  
7     can't remember.

8           Q     But it wouldn't have factored into  
9     your decision?

10          A     Oh, no, not at all. No, no, no.  
11     Whether he was allowed to walk about or not would  
12     only be, you know, it wouldn't have mattered.

13          Q     I'm saying what the Taman girls told  
14     you wouldn't have --

15          A     Oh, no.

16          Q     -- factored into your decision,  
17     because you had already made it by the time you  
18     heard this information?

19          A     Yes.

20          Q     So you might have had a composite of  
21     things that you actually had in mind at the time  
22     and subsequent information?

23          A     Yes.

24          Q     With respect to the driving offences,  
25     sir, you refer at page 3299 to having

1 approximately 12 seconds where he did not brake  
2 before a red light came on?

3 A Um-hum.

4 Q Where did you get the 12 seconds from?

5 A I received that from Mr. Blandford.

6 THE COMMISSIONER: I'm sorry, from  
7 whom?

8 THE WITNESS: Chris Blandford.

9 THE COMMISSIONER: Chris Blandford  
10 said 12 seconds?

11 THE WITNESS: Yes.

12 BY MR. PACIOCCO:

13 Q So you remember him saying that orally  
14 to you, sir?

15 A Yes.

16 Q Did you take a note of that?

17 A No. I remember him saying that to me  
18 orally, and it stuck out in my mind because I had  
19 written it down on a number of places.

20 Q Yes, and it's inconsistent with what's  
21 actually found in his report, not that a few  
22 seconds are going to make a huge difference, but  
23 his estimate in the report is 15 seconds of delay  
24 at a minimum. And he goes on to talk about if the  
25 light was indeed just changing green, as one of

1 the parties to the collision, Ms. Beattie, said,  
2 that the time frame would have been much longer  
3 than that.

4 A Yes. It may be. That was my  
5 recollection on that day, and as I did much of  
6 this from recollection, without pulling out the  
7 entire file, because I was pressed for time, I was  
8 doing my best to try to remember what it was. I'm  
9 sure if I would have had the opportunity, if they  
10 would have given me more time, I would have gone  
11 through it.

12 Q Okay, sir. The position with respect  
13 to dangerous driving, what was your position as to  
14 the strength of that dangerous driving charge?

15 A I didn't hear your question?

16 Q Dangerous driving --

17 A Yes.

18 Q -- what was your assessment about the  
19 strength of the dangerous driving charge?

20 A I knew that the strength would lie in  
21 the unexplained accident, broad daylight. I  
22 appreciate that Mr. Blandford would give me the  
23 expert evidence that he could with respect to the  
24 overhead lighting system and the traffic lights,  
25 but at the end of the day, he couldn't really give

1 more than that. So it would have -- someone  
2 from -- but the combination of the time to stop,  
3 the speed, which was the speed limit as I  
4 understood it from one of the witnesses, without  
5 slowing down --

6 Q Mr. Shaw.

7 A -- to the stop as others may have been  
8 doing or would have been doing had they seen it,  
9 had noticed, those were the factors.

10 Q Okay. But what did you think about  
11 the strength of your case, not what are the  
12 factors, what did you think about the strength of  
13 your case?

14 A I thought that there were a number of  
15 problems with it, which were that if -- well,  
16 first of all, I did not think in any way that I  
17 could link alcohol to a cause of the driving.

18 Q Okay. We'll deal with that in detail.

19 A I didn't think that I was going to  
20 have any chance of that at all.

21 Q All right. So we'll push alcohol out  
22 of the equation for now.

23 A And I thought that if this was an  
24 unexplained accident, it was momentary lapse or  
25 falling asleep, and there was certainly some

1 suggestion that the fellow had been fatigued, that  
2 maybe there would be some evidence of falling  
3 asleep, and that there was not a slam dunk, so to  
4 speak, but there were risks to that, and  
5 certainly, when prosecuted with everything else,  
6 problems. If it was prosecuted independently,  
7 without reference to the other matters and the  
8 other problems, it might have been stronger, but  
9 still it had its weaknesses.

10 Q Okay. I want to explore all of those  
11 points in some detail, but the first point I want  
12 to explore is the suggestion that the problems  
13 with the balance of the case would taint the  
14 dangerous driving charge based solely on the  
15 driving evidence.

16 You'd agree with me, sir, that  
17 Mr. Shaw was a lay witness unconnected to the East  
18 St. Paul Police and played no part in the  
19 inaccuracies or improprieties that may have taken  
20 place during the investigation?

21 A True enough.

22 Q And his evidence was the evidence that  
23 placed the speed of the vehicle at approximately  
24 the speed limit. He used terms like "blew by" and  
25 things like that when describing the vehicle?

1           A     I agree. But that, of course, I have  
2 to factor in as a subjective view on his part of  
3 what he thinks the speed is and what weight would  
4 be attributed to that. But I agree with you, that  
5 was the only evidence though.

6           Q     Yes. And you had the evidence of the  
7 reconstructionist, Corporate Blandford, or  
8 Constable Blandford, I am not sure what his rank  
9 was, but his evidence provided very detailed  
10 description of the distance that would have had to  
11 be travelled from the warning lights, and the  
12 functioning of the lights, and the taillights  
13 being on, and the length of time the red light's  
14 on, and the visibility that day?

15          A     Yes.

16          Q     He gave you all kinds of details that,  
17 again, would not have been tainted by the  
18 investigation itself, sir?

19          A     True. But at the same time, he told  
20 me that, if pressed by the defence, could he rule  
21 out --

22          Q     Sir, we'll deal with that in a second.  
23 Let's try and deal with this one piece at a time  
24 or it's just going to become too confusing.

25                MR. GREEN: I'm wondering if it's fair



1 to cut the witness off on something like that?

2 THE COMMISSIONER: I understand your  
3 position, Mr. Green, but Mr. Minuk is having  
4 trouble focusing on the answers. Mr. Paciocco is  
5 trying to get answers on specific matters, and he  
6 is going all over the place. I can understand the  
7 frustration, but let him -- maybe if you could  
8 admonish your client to concentrate on the  
9 answers, we would get through this today. I'm  
10 getting a little frustrated because I can't get  
11 down half the notes.

12 MR. GREEN: Well, that could be in  
13 some areas. But on something as important as  
14 that, I don't think it's appropriate for  
15 Commission Counsel to be cutting him off in  
16 midstream. It's just, it wouldn't be allowed in a  
17 court room, that's for sure, and it shouldn't be  
18 allowed here.

19 THE COMMISSIONER: I'm sorry, it would  
20 not be allowed in a court room?

21 MR. GREEN: For counsel to cut off a  
22 witness like that, with the greatest of respect.

23 THE COMMISSIONER: Well, with the  
24 greatest of respect, when witnesses do not respond  
25 to a question, it's perfectly proper for counsel

1 to say, let's focus on what I'm trying to ask and  
2 the answers I want to get. And that's all he is  
3 asking him to do. I'm having difficulty getting  
4 notes, because we're jumping all over the place.

5 Now, let's get on with it.

6 Mr. Paciocco, give him an opportunity  
7 to answer, but I appreciate your desire to have  
8 him focus on the issues.

9 MR. PACIOCCO: Yes, Mr. Commissioner,  
10 I will. And it's just that I was asking the  
11 witness about the tainting effect of the  
12 misconduct of the police on the evidence of  
13 dangerous driving, and he wanted to begin talking  
14 about other problems with dangerous driving. I  
15 want to deal with these one at a time, otherwise  
16 we're not going to get a clear picture of the  
17 strength of the case.

18 THE COMMISSIONER: Yes, go ahead.

19 BY MR. PACIOCCO:

20 Q Sir, I put to you that Mr. Shaw's  
21 evidence and the evidence of Mr. Blandford would  
22 not have been tainted.

23 A No, correct.

24 Q And that was the evidence you were  
25 counting on for the dangerous driving?

1           A     Absolutely.

2           Q     You also indicated that you had some  
3 concerns, based on the conversation that  
4 Mr. Blandford and you had about the possibility of  
5 falling asleep and momentary lapse of attention?

6           A     That's right, yeah.

7           Q     Sir, did you pursue that with him at  
8 all, discuss it with him, debate it with him?

9           A     I did not.

10          Q     Because, based on the evidence that  
11 you had, you had a vehicle approaching a caution  
12 light, that was many, many metres from the  
13 intersection, and would have taken a period of 15  
14 seconds, according to the report, to travel. You  
15 also had evidence that the vehicle in question was  
16 not wavering all over the road. You had evidence  
17 of the stoplight, the light being on and the  
18 vehicles being in that location. And you had  
19 evidence of, in Mr. Blandford's report, attempts  
20 to steer the vehicle immediately after the  
21 collision.

22                     Sir, if this had been a momentary  
23 lapse of attention, would you not have expected  
24 that this person would have somehow been in the  
25 process of slowing down or responding to all the

1 signals that had occurred?

2 A I don't know. I can't answer that. I  
3 just don't know.

4 Q Well, sir, you would have evaluated  
5 the momentary lapse of attention claim that was  
6 made, sir, and you know that many of the momentary  
7 lapse of attention cases are somebody drifting  
8 over a line --

9 A Yes.

10 Q -- at the last minute or something  
11 like that. You had dependable evidence of the  
12 time that this person would have had to respond,  
13 and it was far more wasn't it, sir, than what  
14 could fairly be described as a momentary lapse,  
15 that there was no response to the road conditions  
16 that that driver was facing?

17 A I appreciate that. That would be my  
18 argument on behalf of the Crown.

19 Q Did you explore that in those terms  
20 with Mr. Blandford?

21 A Not that I recall.

22 Q And with respect to falling asleep at  
23 the wheel, you had evidence from Mr. Shaw that  
24 this vehicle had maintained itself in its position  
25 in the lane, and he was able to watch it approach

1 and ultimately strike the vehicle. And you also  
2 had evidence from Mr. Blandford of evasive action  
3 being taken in the form of steering, immediately  
4 after the collision by the truck. Did that strike  
5 you as consistent with someone who is unconscious  
6 behind the wheel?

7 A I can't, to me, I can't answer that  
8 question. Those are factual matters which would  
9 have been determined by the judge.

10 Q Well, as a prosecutor evaluating the  
11 strength of your case, sir, you would certainly  
12 consider those things?

13 A Yes.

14 Q And you would take them into account?

15 A I would take them into account.

16 Q And you didn't brooch this with  
17 Mr. Blandford when he indicated he couldn't rule  
18 out?

19 A I didn't, but at the same time, I  
20 didn't, you know, back off from prosecuting that.

21 Q Yes, I know you didn't, sir. And you  
22 have a bunch of comments that you made along the  
23 way about the strength of your case. This is what  
24 you told the judge. And I would ask the witness  
25 to be taken to tab J-63. This is from the

1 transcripts. And I apologize, Madam Clerk, I  
2 don't have the exhibit number recorded.

3 Sir, with respect to the dangerous  
4 driving charge, at page 1712 of our document, page  
5 26 of the transcript, this is from the proceedings  
6 of the 12th of September, 2007, you indicate --

7 THE COMMISSIONER: Page?

8 MR. PACIOCCO: This is page 1712, page  
9 26 of the transcript.

10 BY MR. PACIOCCO:

11 Q Starting with line 1:

12 "Secondly, because the evidence is in  
13 this case, in my view, evidence of an  
14 expert from the traffic accident  
15 reconstructionist, which I told you  
16 about at the first hearing, which was  
17 the best available evidence, and I  
18 told you clearly that although perhaps  
19 not as expressly as I did today, that  
20 there was anecdotal evidence of other  
21 matters which was not sufficient, in  
22 the Crown's view, that we were clearly  
23 of the view that we could prove  
24 dangerous driving."

25 Do you see that, sir?

1 A Yes.

2 Q Do you remember saying that to Judge  
3 Wyant?

4 A Yes.

5 Q You also indicate at page 1714, Judge  
6 Wyant at line 5 says:

7 "Oh, there is no question, but there  
8 is, there is a significant difference.  
9 Your comment was, if I have it right,  
10 the other charges are stayed not  
11 because the accused pled guilty to  
12 dangerous driving cause death. That's  
13 what you said. But because the Crown  
14 had the legal proof of dangerous  
15 driving cause death. And that's what  
16 I heard you say before and that's what  
17 I heard you say today.  
18 Well, that's my opinion."

19 So in each of those cases, sir, you are  
20 communicating that you believed you could prove  
21 the charge of dangerous driving?

22 A Yes.

23 Q Is that a fair description of your  
24 mindset, sir?

25 A I thought that -- I thought that we

1 could prove dangerous driving, but I was, I think  
2 I expressed to him that that was my opinion, and  
3 that I couldn't predict the outcome of the case,  
4 and I referred to him the Lesuk case.

5 Q That you couldn't predict the outcome  
6 with any certainty because you never know what is  
7 going to happen?

8 A Right. I thought that we had the  
9 evidence to prove it, that is all I was telling  
10 him.

11 Q You believed you had a strong case on  
12 dangerous driving, did you not?

13 A I wouldn't say -- I had a case on  
14 dangerous driving, I wouldn't say that it was a  
15 strong case, it was a -- I thought it was a case  
16 to prosecute.

17 Q You heard Mr. Wolson's testimony that  
18 he felt that, based on the arguments on the  
19 driving alone, he had a 10 to 12 per cent chance?

20 A Yes.

21 Q And then you factor in the other  
22 considerations, it might go to 20 to 25, but on  
23 the driving alone, he only felt he had a 10 or 12  
24 per cent of acquittal, sir?

25 A I don't disagree with Mr. Wolson.



1           Q     Okay.  It's consistent with what you  
2     are said by the Tamans to have told Robert and  
3     Jordan.  They both had testified that you  
4     indicated that you felt that you could prove that  
5     charge, sir.  The challenge that emerges here,  
6     sir, is that the Sveinsons were under the  
7     impression that you had told them you would have  
8     problems proving the dangerous driving charge.  Do  
9     you recall that, sir?

10          A     No.

11          Q     I'm going to show you a letter that is  
12     in tab O, it's Exhibit 23, in tab O, I take you to  
13     page 81.a.8.  When you get to that document, you're  
14     going to see that the first one has a post-it on  
15     the front which makes it difficult to read.  If  
16     you flip to the second page, it's a repeat of the  
17     first page without the obstruction of the post-it,  
18     sir.

19          A     What page do you want me to go to,  
20     sir?

21          Q     If you go to the 2139, you won't have  
22     the post-it photocopied over the top of the page.

23          A     Oh, I see.

24          Q     It's just a repeat of the very same  
25     page you were just looking at.  And you will see

1 in the second paragraph where they record in a  
2 letter written to you:

3 "We are also most distressed by your  
4 accounting of the many difficulties  
5 faced in proving dangerous driving."

6 And they go on and talk about how obvious it is to  
7 them that this is a case of dangerous driving.  
8 When they testified here, sir, they indicated that  
9 you told them that you didn't know how you were  
10 going to prove that charge, because of the absence  
11 of skid marks and the absence of an ability to, on  
12 the part of the investigator, to assess the speed.  
13 Do you recall receiving this letter, sir?

14 A Not at all, sir. I don't recall that  
15 at all.

16 Q You don't recall getting the letter?

17 A I don't recall getting the letter and  
18 I certainly don't recall telling them that I would  
19 have problems proving the dangerous driving.

20 Q That wasn't your position, sir, you  
21 felt you could prove it?

22 A Yes.

23 Q There were also comments attributed to  
24 you by the lay witnesses to the accident,  
25 Ms. Bukowski, Mr. Shaw, Ms. Beattie, relating a

1 conversation that took place outside of court  
2 after the plea was entered, where you expressed  
3 some surprise, indicating that this gentleman  
4 could well have gotten off. Do you recall making  
5 comments like that, sir?

6 A Not at all. I would have expressed to  
7 them that there had been a change in the -- or a  
8 development that I hadn't anticipated, which is  
9 that Mr. Wolson's client had pleaded guilty to  
10 these charges, because I would have expected it to  
11 have gone to trial. But that's about it. They  
12 may have misinterpreted what I said, but in my  
13 telling them that I was surprised that it had  
14 unfolded in this way, they may have interpreted  
15 what I was saying to be something other than what  
16 I said. But I was surprised that it did unfold in  
17 that way.

18 Q Would you allow for the possibility  
19 that whatever it was you said may have created a  
20 misperception --

21 A Oh, absolutely.

22 Q -- because all three of them shared  
23 the same misperception? And I would suggest to  
24 you, sir, that the Tamans put it even higher in  
25 conversations with you. They, Tara, Jordan and

1 Kristin, each recalled conversations with you  
2 where you said you could have gotten  
3 Mr. Harvey-Zenk off. Do you have any  
4 recollection --

5 A No.

6 Q -- of saying that, sir? Is that  
7 something you would have said or is that not  
8 something you would have said?

9 A That's not something I would have  
10 said. And I would have said that a competent  
11 defence lawyer may be able to, you know, achieve  
12 an acquittal in these circumstances.

13 Q And you wouldn't have used yourself as  
14 an example, sir?

15 A There's no point in using me as  
16 myself, because I'm not the person who was going  
17 to be doing it.

18 Q So, by and large, I guess to sum up  
19 our little tour through the strength of the  
20 charges, you knew in your own mind that you  
21 weren't going to succeed with the three charges  
22 that you ultimately stayed?

23 A I knew that I had problems with them  
24 and that I was not likely going to get past the  
25 Preliminary?

1           Q     But with the dangerous driving charge,  
2     you had a sense that it was a strong enough case  
3     that you believed you could prove it, and you  
4     always allow for the contingency that something  
5     surprising could happen?

6           A     Yeah.

7           Q     You reported to the trial judge,  
8     again, on September 12th in the same document that  
9     I hope you still have in front of you, sir?

10          A     I do, sir.

11          Q     1701?

12          A     1701.

13          Q     Yes, please, 1701. And again, we're  
14     still at tab J-63 at line 3.

15                     "Those charges were stayed when the  
16                     guilty plea was entered. They were  
17                     stayed not because the accused pleaded  
18                     guilty to dangerous driving, but  
19                     because of the Crown's obligations I  
20                     described to you in my introductory  
21                     remarks. The obligation is to have  
22                     and to be able to present to the court  
23                     legal proof."

24     So you are effectively communicating that you  
25     didn't feel you had proof for those charges?

1           A     I have looked at that many, many  
2 times, Mr. Paciocco, and it's definitely not my  
3 best advocacy, and I wish I would have stated that  
4 a whole lot better, because I have looked at it  
5 and looked at it, and it was not -- it didn't  
6 convey what it was that I intended to say.

7           Q     I take it your reservations had to do  
8 with whether this formed part of the plea bargain?

9           A     Yes, it did not convey what I  
10 intended.

11          Q     And in fairness to you, sir, we will  
12 come back to that. But for now I was simply  
13 pointing it out as an indication that you didn't  
14 have confidence in those other charges that you  
15 had engaged in?

16          A     Right.

17          Q     Sir, just, I'm going to take you now  
18 through a narrative of events leading up to the  
19 ultimate entry of those pleas. And you were  
20 getting ready for the first scheduled Preliminary  
21 and you met with Sergeant Carter on February 24th,  
22 2005, in your office to discuss the case  
23 generally, to discuss some of the problems with  
24 the case. You learn later on that after he left  
25 the office on this date with Mr. Woychuk,

1 Mr. Woychuk made disclosures to him that were very  
2 distressing and, ultimately, you evaluated it as  
3 very damaging to your case, sir, but you didn't  
4 learn about those until April 21st --

5 A That's correct.

6 Q -- 2006. So on February 24th, you  
7 have just a general meeting about the  
8 investigation and the quality of the case.  
9 Unbeknownst to you, he has this conversation with  
10 Mr. Woychuk, and it's not until April 21st that  
11 you learn about the conversation, is that --

12 A That's fair.

13 Q Sir, you were, I understand for at  
14 least part of the period between February 24th and  
15 April 21st, 2006, at Norway House for an inquest  
16 into a police shooting?

17 A Correct.

18 Q Are you aware of when you went to  
19 Norway House?

20 A Today, no, but I'm sure I have it  
21 recorded somewhere.

22 Q Any idea how long after the meeting  
23 with Carter that that would have been, sir?

24 A I can't say. I'm sorry, sir, I don't  
25 know.

1 Q Any idea how long you were there?

2 A I think the inquest was three -- oh,  
3 you know what, I don't really, it was either two  
4 or three weeks, because I know that we would fly  
5 up and then fly back to the city, so...

6 Q Could it have been longer than two to  
7 three weeks, sir?

8 A I would have to go to the office and  
9 check. Maybe it was. I don't really recall  
10 specifically.

11 Q We know that you were sending some  
12 e-mails in connection with this file during the  
13 interim, between the 24th of February meeting and  
14 the 21st of April. On February 28th, for example,  
15 you wrote to Mr. Wolson about disclosure?

16 A Um-hum.

17 Q Would you have done that while working  
18 at Norway House, sir?

19 A I may have. There was internet  
20 access, I think there was, I may have been doing  
21 some other things, like other work.

22 Q And on April 10th, you write to  
23 Mr. Carter about search warrants. We'll come back  
24 to that later.

25 A Yeah. Well, I'm not disagreeing with



1 you that I did it. You have --

2 Q The reason I'm inquiring is because we  
3 had some questions for Sergeant Carter, now Chief  
4 Carter, about why it took him so long to get in  
5 touch with you, and we were exploring the  
6 possibility of you being incommunicado?

7 A Who me?

8 Q Yes.

9 A Well, no, because Mr. Carter would  
10 have received, the first thing Mr. Carter would  
11 have received is a business card. And on the  
12 business card, it has my direct office line, it  
13 has my cell phone, which would not work in Norway  
14 House, but I do have a Manitoba cell phone number.  
15 So if you call, like the Roger's number, it  
16 transfers directly to the Manitoba cell phone,  
17 because it's call forwarded. So I would have  
18 that. He had my home phone number, because that's  
19 on my business card. And he would also have my  
20 office e-mail address, which is on my business  
21 card. So anybody who would get it would therefore  
22 have at least four ways of getting in touch with  
23 me.

24 Q In fairness to Chief Carter, he did  
25 indicate he wanted to meet with you in person over

1 this. Your best recollection is that you were  
2 gone for a period of two to three weeks throughout  
3 that two-month period?

4 A That might be correct, yes, I don't  
5 disagree with that.

6 Q All right, sir. He raised some  
7 problems that caused you tremendous concern when  
8 you did meet with him on April 21st, sir?

9 A Yes.

10 Q He ultimately provided a report to you  
11 on April 25th, 2006, in writing that has been made  
12 Exhibit 123 in these proceedings. And I'll  
13 furnish it to you to assist you, if you require  
14 it, for any memory issues. It's in book E-1.23.o.  
15 That's the memo dated April 25th, 2006, that was  
16 prepared, sir?

17 A Yes.

18 Q At whose request was that written  
19 report prepared?

20 A I asked Mr. Carter to write up a  
21 report, because he came to tell me in narrative  
22 fashion, an oral, you know, recitation. I said to  
23 him, Mr. Carter, you need to record this in  
24 writing, you need to get it down right away, and  
25 you have to get me this report of this

1 information.

2 Q All right, sir. Just, I know it's  
3 fairly obvious as to why you'd want it in writing,  
4 but could you, in your own words, express why you  
5 felt that the oral recitation was not adequate?

6 A Well, I wanted to have a record that I  
7 could go forward with, based on what Carter had  
8 told me. As opposed to my notes of what Carter  
9 was telling me, I thought that the better way  
10 would be for Carter, based on my experience, would  
11 be to prepare some type of supplementary police  
12 report or prepare some report about what it was  
13 that had occurred. And if anything could be done  
14 thereafter, it would be best to have Carter's  
15 report.

16 Q So you have a hard, accurate record of  
17 what it was that you had to ultimately consider or  
18 discuss with others?

19 A Carter's actual report, as opposed to  
20 my notes of what Carter was telling me, I thought  
21 was a better way to go.

22 Q Thank you. You were advised of a  
23 number of fairly incidental concerns when this  
24 written report was given to you. Things like  
25 Constable Graham not submitting an incident report

1 and photos being taken without anyone really  
2 knowing who took them, and some details left out  
3 of Bakema's incident report such as Harvey-Zenk  
4 identifying himself as a police officer, or no  
5 notes of uniform being seized, a lot of incidental  
6 stuff like that. But the things that I take it  
7 really troubled you, the more serious ones were  
8 Woychuk's disclosure to Carter that the notes  
9 were, as it was put to you, were not his notes,  
10 that he had been influenced in terms of what had  
11 to be put in those notes, and he was told that his  
12 notes should coincide with Graham's and Bakema's,  
13 and the observation that Graham's and Bakema's  
14 notes appeared to overlap and have similarities.  
15 That was one of the things, I take it --

16 A Yes.

17 Q -- that was of concern, a major  
18 concern. And the other was Woychuk telling  
19 Bakema, or telling Carter rather that Bakema had  
20 advised Woychuk at the scene that Harvey-Zenk was  
21 pissed.

22 A Yes.

23 Q And that this was not recorded --

24 A Anywhere.

25 Q -- anywhere. So those things came as

1 a total shock to you, no doubt?

2 A Very unsettling, disturbing meeting.

3 Q And you indicated in an RCMP, you  
4 communicate with the RCMP, because of their  
5 report, that you had concerns that this could  
6 prove fatal to the prosecution. We see those  
7 words being attributed to you in a subsequent  
8 report, sir, and you had concerns that were that  
9 profound about it?

10 A Yes, sir.

11 Q The first thing that you did on April  
12 21st, after you had this oral disclosure by  
13 Carter, was to contact Brian Kaplan?

14 A Yes, sir.

15 Q Could you explain to the Commissioner  
16 what the nature of that contact was and why you  
17 did that?

18 A I simply wanted to keep him informed  
19 of what was going on, and to let him know of this,  
20 what I would describe as startling disclosure.  
21 That had been the first time that I had certainly  
22 encountered this and I thought it was extremely  
23 serious and that he should know about it, because  
24 it could clearly affect the prosecution of this  
25 case.

1           Q     Your notes record, your docket notes,  
2     sir, and you probably still have the exhibit in  
3     front of you with the blue on it, if you want to  
4     make reference to it? For the 21st of April,  
5     2006, if you can flip there?

6           A     Um-hum.

7           Q     "Meeting with Chief of the East St.  
8                 Paul Police Norm Carter and  
9                 teleconference with B. Kaplan one  
10                hour."

11    Do you see that, sir?

12           A     Yes, sir.

13           Q     Just for the sake of clarity of the  
14    record, what did you mean by teleconference?

15           A     It was really a telephone call, and I  
16    can't tell you today who may have entered that  
17    time entry, but I do know that when I am recording  
18    my time, it will be -- sometimes I use T/C,  
19    sometimes I use "TELE C", so I don't know how that  
20    got transcribed.

21           Q     So any impression that this might have  
22    created that Carter --

23           A     Oh, Carter is not part of it at all.

24           Q     -- you and Kaplan were all speaking is  
25    inaccurate?

1           A     Oh, no, no. No, that's not correct,  
2     sir.

3           Q     You had real concerns about these  
4     revelations, not only because they would impact  
5     upon your case, sir, but I note through some of  
6     the correspondence and documents you had concern  
7     that you had to disclose this information to the  
8     defence?

9           A     Well, I knew that I would have to.

10          Q     Yes. And you wanted to try and assess  
11     the impact it would have and get to the bottom of  
12     what this information was before you undertook  
13     your disclosure obligation?

14          A     Yes, I think that part of -- yes, you  
15     are right.

16          Q     And you have that discretion as a  
17     Crown, under Stinchcombe, to delay disclosure if  
18     you have an appropriate ground to do so, provided  
19     it is made in a timely fashion?

20          A     Correct. And also I think I would be  
21     required to review it, and sometimes I would  
22     review and send it out piece by piece.

23          Q     On April 26th, you received the report  
24     itself. Again, immediately after reviewing it,  
25     you contact Brian Kaplan. This time you want to

1 set up a meeting which --

2 A Yes.

3 Q -- is held on May 2nd, 2006 --

4 A Yes.

5 Q -- and goes for about an hour?

6 A Yes.

7 Q And I understand the decision was made

8 at that meeting to have the RCMP conduct an

9 investigation?

10 A Yes.

11 Q You didn't take any notes of that  
12 meeting, sir?

13 A I didn't, because we were  
14 discussing -- I didn't think that it was a  
15 meeting -- well, I didn't take any notes.

16 Q Yeah. I mean, you knew it was an  
17 important meeting in a big high profile case with  
18 significant potential consequences, so that's not  
19 why you didn't take notes, you just didn't take  
20 notes?

21 A I just -- right.

22 Q In the midst of this unfolding, and I  
23 think the word "mess" is one you would probably  
24 share with me, you have a meeting with Robert  
25 Taman. Do you recall that, sir? This is the May



1 3rd, 2006 meeting. On the 2nd, you have your  
2 meeting with Mr. Kaplan and the decision is taken  
3 to contact the RCMP. And then you have a meeting  
4 with Mr. Taman on May 3rd?

5 A Okay.

6 Q The Preliminary Inquiry is  
7 approaching. It's going to occur on June 5th,  
8 2006, according to the scheduled date?

9 A Yes.

10 Q This is your first meeting with  
11 Mr. Taman, the designated victim under the  
12 Victims' Bill of Rights Act. Were you aware that  
13 he had been wanting to meet you for some time,  
14 sir?

15 A No.

16 Q You, of course, explain to the  
17 Commissioner that you don't have access to PRISM?

18 A Correct.

19 Q I'm going to take you through a few  
20 documents that show the efforts he was making to  
21 try and connect --

22 A With me?

23 Q -- with you as the prosecutor?

24 A Oh, okay.

25 Q This is Exhibit 11, which I think you

1 may still have in front of you. It's the large  
2 bundle of communications from PRISM?

3 A Yes, I do.

4 THE COMMISSIONER: Which one is it,  
5 volume?

6 MR. PACIOCCO: It will be Volume L.

7 BY MR. PACIOCCO:

8 Q I'll take you back to page 1860?

9 A 1860, sir?

10 Q Yes, 1860. This is almost a year  
11 before the actual meeting of May 3rd, 2006. This  
12 is May 26th, 2005.

13 "Telephone call Robert in response to  
14 message left by him."

15 This, of course, is created by Lesley McCorrister,  
16 as you can see, sir. Continuing with the reading:

17 "He was wondering if there was a court  
18 update yet. I told when court was  
19 remanded to. Robert wanted to know if  
20 any plea bargaining would take place  
21 without his knowledge. I explained  
22 that the Crowns were good at keeping  
23 families informed about any talks  
24 taking place and that they generally  
25 met with the family to explain their

1 position. He was happy to hear that."  
2 And then it goes on and talks about the accused's  
3 picture in the paper, and then in the last  
4 sentence:

5 "I suggested that I try and set up the  
6 meeting with the Crown handling this  
7 matter and he thought that would be a  
8 good idea."

9 Now, that's the first mention of him wanting to  
10 meet with the Crown, and it's approximately one  
11 year before the actual meeting. I take it, sir,  
12 you didn't have access to this memo?

13 A No.

14 Q And you didn't get a copy of it and  
15 you weren't apprised of that memo?

16 A Correct.

17 Q You can turn to page 1862. June 1st,  
18 2005, so approximately a week after:

19 "Telephone call Robert. He had  
20 noticed that I tried calling him on  
21 his cell and was calling back. I  
22 informed him of Preliminary being set  
23 and provided him with the dates. We  
24 discussed him talking with the Crown  
25 closer to the Preliminary date and I

1                   said I would call him in April to find  
2                   out times he would be available."

3       So, again, sir, I take it that you didn't get  
4       information from that PRISM communication that he  
5       was going to be looking for some meeting come  
6       April?

7           A       I never received this at all.

8           Q       February 28, 2006, on the very next  
9       page, sir, this is 1863. This is an e-mail to  
10      you, sir, and this is also in the package of  
11      disclosure we received from you, the same e-mail.

12                   "Good morning, Marty. I understand  
13                   that you have had contact with Robert  
14                   Taman. I last spoke with him last  
15                   June and I'm glad to hear you have  
16                   spoken with him. If there's any way I  
17                   can assist, please ask. If you have  
18                   any notes you wish me to put on the  
19                   file, you can e-mail them to me."

20      Do you remember getting this correspondence on  
21      February 28th, 2006, sir?

22           A       I don't remember it, but I can't --  
23      I'm not disputing that I got it.

24           Q       You have -- you actually respond to  
25      the e-mail in the next page.

1 A Okay.

2 Q Page 1864.

3 "Nice to hear from you. I expect this  
4 case to be very hard on all and I am  
5 glad you are around to help out. The  
6 case is unlikely to settle and will be  
7 on the minds of all for a while. I  
8 will stay in touch. Martin Minuk."

9 Correct, sir?

10 A That's me.

11 Q That's the same day that you received  
12 the e-mail in which he congratulates you for  
13 having met with, or expresses relief on her behalf  
14 for you having met with Mr. Robert Taman. You  
15 hadn't met with him at that point in time, had  
16 you, sir?

17 A You know, I don't know.

18 Q Our information is that you had not  
19 yet met with Mr. Robert Taman. The first time you  
20 met with him is when he came in and was upset  
21 about learning that you had met with the  
22 Sveinsons. That was May 3rd, 2006.

23 A That could be right. I'm not  
24 disputing that.

25 Q There was no indication in your

1 response to her that you hadn't met with them,  
2 "Lesley, you're misinformed, I have not met with  
3 Robert Taman yet." Can you explain why you didn't  
4 reply to the very purpose of the e-mail?

5 A I don't know, sir, today. Sometimes I  
6 can only tell you that, and I'm not sure if I did  
7 this on this occasion or not, sometimes I make a  
8 phone call first, leave a voice mail. If they are  
9 not there, then I would follow it up with an  
10 e-mail like this. Maybe I did, maybe I didn't.  
11 Today I can't remember.

12 Q Well, sir, I can indicate to you that  
13 Ms. McCorrister doesn't recall that conversation,  
14 and she didn't recall it on the 1st of May, 2006,  
15 because there's yet another e-mail on this same  
16 theme which would be inconsistent with that  
17 possibility. And you'll find that at 1867.

18 A Oh, okay. I see that, yes.

19 Q Yeah. This is the heads up that she's  
20 giving you.

21 "Telephone call Robert. He asked if I  
22 was still the worker and I said that,  
23 yes, I was. He knew I had changed  
24 jobs. I said that the Prelim was  
25 coming up in June and he said he

1           hadn't heard anything yet, and  
2           remembered I had said he could meet  
3           the Crown. I asked if he had met with  
4           Marty Minuk and he said no, but his  
5           in-laws had. He said he was quite  
6           angry that the Crown would meet with  
7           them and not him. I apologized and  
8           said I had been under the  
9           understanding that he had met with the  
10          Crown. I expressed my surprise..."

11        et cetera, et cetera.

12                 So you see there, sir, where it's  
13        pretty apparent that his efforts to try and meet  
14        with you had not come to fruition, and even though  
15        you had been notified that Lesley McCorrister  
16        believed you had already met with Mr. Taman --

17                A     I don't know what -- I've never seen  
18        these e-mails before, or why they are even being  
19        written, so -- like why these file notations are  
20        being written?

21                Q     Well, sir, they are PRISM records of  
22        the victim contacts. And you'd agree with me that  
23        it would have been very useful for you, as an  
24        independent prosecutor?

25                A     Absolutely.

1           Q     If you had seen this train of e-mails  
2     coming along, you would have met with him much  
3     earlier, I take it?

4           A     I would -- the moment they wanted to  
5     meet, I would have met with them.

6           Q     All right, sir. And after this e-mail  
7     of May 1st, 2006, there is a communication with  
8     you and steps are taken to set up a meeting, and  
9     that no doubt happens. So the meeting actually  
10    occurs two days later on May 3rd?

11          A     Yes.

12          Q     Remember, this is happening in the  
13    context of the revelations and the meeting with  
14    Mr. Kaplan, and the decision to get the RCMP  
15    involved. You don't mention to Mr. Taman these  
16    difficulties when you meet with him, do you, sir?

17          A     No. And I did not mention to him  
18    about the investigation because, as I recall from  
19    the policy, I don't think I am supposed to be -- I  
20    think there's a prohibition against mentioning or  
21    discussing ongoing investigations.

22          Q     You also don't mention to him or alert  
23    him to the possibility of an adjournment at this  
24    time?

25          A     If -- I may not have had that issue



1 settled with Mr. Wolson if I didn't alert him to  
2 it.

3 Q Now, you were meeting with Robert  
4 Taman for the first time, you were meeting with  
5 Jordan Taman, and you were meeting with Lesley  
6 McCorrister. Those were the persons present.  
7 Ms. McCorrister testified that Mr. Taman was civil  
8 and respectful during that meeting. This is the  
9 meeting where the issue came up about you  
10 contacting the Sveinsons. I know you have a  
11 different take on that, sir. What's your position  
12 about the mood and atmosphere in that meeting?

13 A My impression was that Mr. Taman was  
14 very angry with me for having met with his  
15 in-laws. He was angry that I had met with people  
16 who were not the registered victim. He certainly  
17 impressed me with his knowledge that, or wanted to  
18 leave with me the impression and make it clear  
19 that he was the registered victim, that I was to  
20 be meeting with him about this case, with no one  
21 else. And it was a very uncomfortable moment for  
22 me, because I appreciated what he was saying, but  
23 at the same time, I thought that in meeting with  
24 the in-laws, I was doing the sensitive thing, and  
25 wasn't doing it to hurt him or to insult him or to

1 in any way minimize what I understood to be his  
2 connection to the -- to the legislation and being  
3 the registered victim. And at some point in time  
4 I learned some information which caused me to  
5 understand that dynamic.

6 Q And, sir, his evidence was that it  
7 wasn't that he didn't want you meeting with them,  
8 he didn't want them learning information before he  
9 did. He didn't want it coming back to him through  
10 third-hand channels that he couldn't confirm. Is  
11 that consistent with the conversation you had with  
12 him?

13 A That was one of the points that he  
14 made, but that wasn't my impression of what it was  
15 he was telling me. That was on his list of points  
16 which included him being the registered victim.  
17 It was one of many points.

18 Q And, sir, is it possible that he was  
19 pointing out that he was a registered victim as a  
20 way to ensure that you would follow the statutory  
21 protocol at least and make sure that he got the  
22 information first?

23 A Perhaps, I don't know. I wanted to  
24 simply -- I heard what he had to say, and wanted  
25 to make him understand that I understood his

1 position and I wasn't doing -- I wasn't meeting  
2 his in-laws to in any way defeat his rights.

3 Q Yes. And this is the same meeting  
4 where that prior PRISM communication that talked  
5 about you not talking or discussing the case comes  
6 from.

7 Sir, you explained how the Preliminary  
8 Hearing worked and what it was during the course  
9 of that meeting?

10 A I believe I would have.

11 Q It's upcoming and that's the kind of  
12 thing you would normally do in this type of a  
13 get-together, sir. You explained that it would  
14 take less than two weeks, and it would result in a  
15 delay if there was a committal, that the trial  
16 still might be a year down the road?

17 A That was sort of what could be  
18 expected, yes.

19 Q And according to the testimony of the  
20 Tamans, it became pretty clear during that meeting  
21 that they were opposed to conditional sentences,  
22 including in this case?

23 A I don't think that we discussed that  
24 at that point. I don't have a recollection of it,  
25 sir, and we weren't even -- I don't think we were

1 discussing that. It may have come up, but I  
2 certainly don't recall it, and that's the best I  
3 can say.

4 Q You would agree with me that it would  
5 make sense for the victims of the family to have a  
6 preoccupation with the outcome of the case, and  
7 that's likely something they would approach you  
8 for? This is their first meeting with the Crown  
9 and they want to know how this is going to end up?

10 A It's possible. I just don't remember  
11 today, and I may have said, which I would often  
12 say, that it's too early to go down that road.

13 Q They say that you discussed the kinds  
14 of sentencing that were available and you proposed  
15 the likelihood of a conditional sentence in this  
16 case, given the circumstances?

17 A If I did, it would be because I would  
18 have reviewed with them again what the state of  
19 the law was in Manitoba, as I understood it to be,  
20 which I would not disagree with. I would think  
21 that -- it's part of the job would be to explain  
22 to them the local scene, if I could call it that.

23 Q They describe the conversation as  
24 becoming heated at that point. They were animated  
25 in their opposition to a conditional sentence and

1 that there would be no doubt that you would  
2 understand that as a result of the conversation  
3 you had with them?

4 A I don't accept that. I don't think we  
5 even got to that point of --

6 Q So you don't recall the conversation?

7 A No, I don't recall that they got angry  
8 with me on anything other than the issue of  
9 meeting with the Sveinsons. That's the only  
10 thing, sir, that I recall that stands out about  
11 what he was angry about.

12 Q But you didn't take notes of the  
13 meeting, sir?

14 A No.

15 Q And you began by indicating, you don't  
16 remember whether there was conversation about the  
17 sentence?

18 A I didn't hear your question, sir?

19 Q You indicated that you don't really  
20 recall, you don't remember there being discussion  
21 about sentencing, but you did say at one point  
22 that it could have happened?

23 A It could have happened, yes.

24 Q So, is it possible that you're just  
25 not remembering their attempts to make it clear to

1 you that they didn't want a conditional sentence?

2 A As I said, sir, if I were -- I would  
3 recall what would stand out at the meeting, and  
4 what I told you stood out was this issue about the  
5 in-laws.

6 Q Sir, we can return to the RCMP  
7 investigation. We took that little detour into  
8 the meeting with the Tamans, and coming back on  
9 our chronology, what happens is, as a result of  
10 your meeting with Mr. Kaplan on May 2nd, Mr. Mike  
11 Horn, who is the assistant Deputy Minister  
12 Criminal Justice is contacted by Mr. Kaplan to get  
13 the RCMP investigation going. I know you had some  
14 communications with Mr. Horn?

15 A Yes.

16 Q I understand, from some discussions in  
17 preparing for this case, that Mr. Horn is well  
18 placed to contact the RCMP because he is a former  
19 RCMP officer. Were you aware of that, sir?

20 A No.

21 Q On May 12th, a meeting is being set  
22 up, and it's being set up by Brian, and it's  
23 intended to include you and Mr. Slough. You can  
24 find reference to that. I'm going to refer to a  
25 document in book R-1, the tab is 91.16.

1                   If this can made the next exhibit,  
2    please?

3                   THE CLERK:   Exhibit 225.

4                   (EXHIBIT 225: R-1.91.16, hard copy of  
5                   email trail, last message from Brian  
6                   Kaplan to Colleen Ireton sent 5/12/06,  
7                   3:42 p.m.)

8                   THE COMMISSIONER:  Did you say 16?

9                   MR. PACIOCCO:  Exhibit 225, it's found  
10                  at page 3167, that's tab R-1.91.16, page 3167.

11                  THE COMMISSIONER:  Thank you.

12    BY MR. PACIOCCO:

13                  Q     You see there that you are cc'd on a  
14                  memo that is from Brian Kaplan to his assistant  
15                  Colleen Ireton re Harveyordenzenk Preliminary,  
16                  and it is cc'd to yourself, Don Slough.

17                         "Please set up a meeting circa 30  
18                         minutes for the three of us, but I  
19                         believe Don will be away most of the  
20                         week.  Do your best.  Brian."

21    Right?

22                  A     (Witness nodding)

23                  Q     You had indicated in an earlier e-mail  
24                  to Mr. Kaplan that you wanted to:

25                         "...meet with both you and Mr. Slough

1 as early as possible to determine how  
2 best to handle and disclose what needs  
3 to be disclosed to the defence before  
4 this matter gets closer to the  
5 Preliminary."

6 A Yes.

7 Q So you had requested the meeting and  
8 Mr. Kaplan was effectively setting that meeting  
9 up?

10 A (Witness nodding)

11 Q Sir, that meeting takes place, I  
12 understand, on May 18th. This document can be  
13 found at page 3183 and it can be found in tab  
14 R-1.91.22, R-1.91.22. R-1.91.22, that is already  
15 an exhibit, it's exhibit number 46, exhibit 46.

16 I'm going to take you to the second  
17 page of the document that you have just been  
18 handed after you feel comfortable with it, sir.  
19 If you can take a look at the second page of it,  
20 please?

21 A Yes.

22 Q And this is an e-mail from Ms. Ireton  
23 to Mr. Slough and Jacqueline St. Hill, cc'd to  
24 yourself along with Mr. Kaplan on May 18th, 2006?

25 A Yes, I see that.



1           Q     And it says:  
2                   "A meeting was held this morning with  
3                   Marty Minuk, Greg Lawlor..."  
4     who I understand was general counsel to the  
5     Province of Manitoba at the time, sir,  
6                   "...and I to discuss the issues that  
7                   had been brought to our attention by  
8                   Mr. Minuk. Mr. Minuk gave Greg a  
9                   detailed background of the matter and  
10                  advised him of the letter from East  
11                  St. Paul Police Services dated April  
12                  25th, '06. You have been provided  
13                  with a copy of the April 25th, '06  
14                  letter. Marty requested the meeting  
15                  this morning as he is greatly  
16                  concerned about the matter going ahead  
17                  at this point in time and wanted some  
18                  direction as to how he felt an  
19                  adjournment should be addressed.  
20                  Marty also noted to us that the family  
21                  issues in the case are a huge factor  
22                  and should be considered as well.  
23                  Greg's advice was as follows: In a  
24                  letter to the defence, Richard Wolson,  
25                  Marty should indicate recent issues

1           have come to light respecting the  
2           investigation of the accident, time is  
3           needed to properly go ahead with the  
4           case, and because of the ongoing  
5           investigation by an outside policing  
6           agency into the case, the Crown feels  
7           the matter must be adjourned. Marty  
8           will draft a letter that he will be  
9           sending to both Greg and I to review  
10          this afternoon."

11       Do you see that, sir?

12           A     Yes.

13           Q     So, effectively, you had wanted some  
14       direction as to how to deal with the adjournment,  
15       according to this memo, sir?

16           A     I didn't -- well, I'm not sure that I  
17       wanted direction, I wanted to discuss this issue  
18       with Mr. Kaplan and Mr. Slough. And adding to the  
19       problems you have already discussed with me, I  
20       didn't want to add another one which might be the  
21       whole issue of delay. So I wanted to address this  
22       issue of how to deal with this issue of another  
23       police investigation, what I understood, what  
24       could or could not be disclosed, and need some of  
25       their experience.

1 Q So you were concerned about  
2 compromising the investigation if you disclosed  
3 this information, but at the same time, you wanted  
4 to profit from the experience of other lawyers,  
5 other senior lawyers?

6 A If they had had this problem before,  
7 you know, what happens in this kind of situation?

8 Q So, as a senior lawyer yourself, you  
9 still felt you had to have access to the input of  
10 other lawyers to make sure you felt comfortable  
11 with the decision, sir?

12 A I don't think that there is a problem  
13 of lawyers discussing their matters with each  
14 other. I do it on a regular basis, in my firm.  
15 The only difficulty is that in my firm, I wouldn't  
16 have had the benefit of the experience of others  
17 to discuss this type of issue with. So discussing  
18 it with people in the Crown's office is clearly  
19 what the practice has been.

20 Q Okay. So the practice has been for  
21 independent counsel to go and discuss and bounce  
22 things off of the very office that they are meant  
23 to be independent from, sir?

24 A Yes. But they would never tell us  
25 what to do. They will listen, give some insight,

1 share some experience from previous cases, tell us  
2 what the policy might be, and send you on your own  
3 with some information to make your mind up.

4 Q So they could give you information  
5 which could ultimately influence the decision you  
6 come to? That's why you go to them.

7 A I guess it could have an effect on  
8 influencing, but I don't think that that's the  
9 purpose of it. That's a consequence, yes.

10 Q You wanted input that you could use?

11 A I wanted to hear what they had to say,  
12 you know. And ultimately if it was of value, I  
13 would use it.

14 Q Sir, you wanted to hear more than what  
15 they had to say. Mr. Lawlor, I understand,  
16 drafted the words that ultimately found their way  
17 into your letter requesting the adjournment;  
18 correct?

19 A Yes, but I did not know how that came  
20 about. I am not sure that I really -- I don't  
21 know how Mr. Lawlor got involved in all of this,  
22 but I do know that he did get involved in it.

23 Q And he provided the language that  
24 ultimately ends up in the letter that you sent to  
25 Mr. Wolson; correct?

1 A Yes.

2 Q And Mr. Wolson ultimately consents to  
3 the adjournment on the 24th of May. He leaves you  
4 a voice mail, 9:45 in the morning?

5 A Yes. He ultimately --

6 Q And so it took a little while, but May  
7 24th --

8 A Yeah.

9 Q -- he is prepared to accept it. And  
10 you immediately call Brian Kaplan and advise him?

11 A Yes.

12 MR. PACIOCCO: This is a good time for  
13 the lunch break, Mr. Commissioner.

14 THE COMMISSIONER: Mr. Weinstein was  
15 on his feet before you finished the suggestion.

16 MR. PROBER: He was on his way out.

17 MR. WEINSTEIN: I'm just showing  
18 respect for you, Mr. Commissioner.

19 THE COMMISSIONER: Thank you,  
20 Mr. Weinstein. 1:45.

21 THE CLERK: All rise. This Commission  
22 of Inquiry is adjourned until 1:45.

23 (Proceedings recessed at 12:31 p.m.  
24 and reconvened at 1:45 p.m.)

25 THE CLERK: Order, all rise. This

1 Commission of Inquiry is now reopened. Please be  
2 seated.

3 BY MR. PACIOCCO:

4 Q Mr. Minuk, at the break we were just  
5 at the point where you had secured an adjournment  
6 through the consent of Mr. Wolson, and the  
7 Preliminary Inquiry that had been set for 2006 was  
8 not going to take place. It is evident that you  
9 had to let the families know about the fact that  
10 the case was going to be adjourned?

11 A Yes.

12 Q And you met with both the Sveinsons  
13 and the Tamans, I understand, sir?

14 A Yes.

15 Q You had two meetings with the  
16 Sveinsons, one on the 25th of May and again on the  
17 31st of May, and I am going to start with the 25th  
18 meeting with the Sveinsons. You didn't tell the  
19 Sveinsons about the adjournment at that meeting,  
20 and I take it the reason that you didn't was that  
21 because you certainly understood that Mr. Taman  
22 didn't want you providing information to them  
23 first, ahead of him?

24 A Correct.

25 Q Do you recall how that meeting came

1 about, sir?

2 A No, today I don't.

3 Q They were interested with the  
4 Preliminary Inquiry coming up and just getting an  
5 update and finding out what was about to take  
6 place. And they contacted you, and even though  
7 you weren't statutorily required to meet with  
8 them, you decided that that would be the  
9 appropriate thing to do and you agreed to meet  
10 with them, sir?

11 A That's fair.

12 Q Mrs. Sveinson testified that she found  
13 you not very forthcoming during the meeting and  
14 was left with the impression that you felt they  
15 were pestering you. Is there anything that you  
16 can share with us that might help explain how  
17 Mrs. Sveinson felt?

18 A I don't think that I would have  
19 thought that I was being pestered. I don't think  
20 that -- I don't perceive to have conveyed that to  
21 them. I just thought that I -- after being told  
22 what I was told by Mr. Taman, was always going to  
23 be in a difficult situation in dealing with the  
24 Sveinsons, who I just had a hard time reconciling  
25 with just ignoring. So it was a very difficult

1 position to be in.

2 Q You were essentially caught in the  
3 middle, in your mind, sir?

4 A Yes.

5 Q You felt the need to speak to them,  
6 but at the same time, you felt you really couldn't  
7 speak to them?

8 A Yes.

9 Q Sir, you made a comment to Robert in  
10 one of the meetings that you had with him about  
11 the Sveinsons railing against the system. Is that  
12 something that you would have said, sir?

13 A I don't -- I may have talked about my  
14 meetings with them being about that, but that term  
15 "railing against the system" is not something  
16 which I use.

17 Q Sir, I'm going to just show you a  
18 document that's found at the PRISM reports again,  
19 it is volume L, it is exhibit 11, you should still  
20 have it in front of you?

21 A Yes, I have it.

22 THE COMMISSIONER: Page?

23 MR. PACIOCCO: This would be page  
24 1877.

25



1 BY MR. PACIOCCO:

2 Q This is the notation, sir, of Lesley  
3 McCorrister dated the 29th of May, 2006. This is  
4 at page 1877, and about two-thirds of the way down  
5 through that report Ms. McCorrister records:

6 "Marty reassured Robert that he wasn't  
7 providing them with information but  
8 was listening to them rail against the  
9 system."

10 A That's not my words. That might be  
11 her, Ms. McCorrister's description but...

12 Q What do you think you would have said  
13 that would have caused her to interpret you as  
14 describing the Sveinsons as railing against the  
15 system?

16 A That my meetings with them, the lion's  
17 share of the time spent with them was Mr. Sveinson  
18 reminding me of his experience in the justice  
19 system, and that it wasn't working properly, and  
20 that he disagreed with the decisions of the court,  
21 and would present newspaper articles about various  
22 matters which would either substantiate his view  
23 or whatever. But I think that's not the language,  
24 I know that's not the language that I would use,  
25 and that's all I can say, sir.

1           Q     Sir, there was also a record in  
2     Mr. Wolson's notes, and you will recall him  
3     testifying yesterday about the meeting with Chief  
4     Judge Wyant, in which he had a notation that the  
5     parents of the deceased were militant. Do you  
6     know where that came from?

7           A     I have no idea where that came from at  
8     all, other than to say that in my discussions with  
9     Judge Wyant, I would have told him that the  
10    parents are very opposed to all of the things that  
11    they would have listed.

12          Q     So, you think that Mr. Wolson would  
13    have interpreted that as a description of  
14    militancy and put it in his notes, sir?

15          A     Could have been.

16          Q     Let's move on to the Robert Taman  
17    meeting of May the 29th. That meeting was set up  
18    on May the 26th. It seems from your docket that  
19    you had a person by the initials E.E.M. at that  
20    meeting, sir. You have an assistant who has that  
21    set of initials?

22          A     She is a junior lawyer at the firm.

23          Q     And her name would be?

24          A     Erin McNicol.

25          Q     And I notice we did not receive

1 disclosure of any notes from the meeting from  
2 either you or from Erin?

3 A She told me, when questioned, that she  
4 did not take notes of the meeting.

5 Q There was some recollection on the  
6 part of the Tamans of a young woman in there  
7 taking notes, and you can't provide with us any  
8 more help on that, sir?

9 A She wasn't there necessarily for the  
10 purpose of taking notes of the meeting. She was  
11 there as a result of my concern about what the  
12 earlier allegations were, and I just wanted to  
13 make sure that, for my own purposes, that there  
14 was someone else there from my firm to be present  
15 if I was going to be challenged again.

16 Q Sir, wouldn't you want that person to  
17 be taking notes, if they are there in order to  
18 protect your interests, given how the relationship  
19 was becoming a little unsettled, I think we could  
20 say?

21 A She didn't, that's all I can tell you.

22 Q The Victims' Services worker was there  
23 at that meeting on May 29th as well. Do you  
24 recall that?

25 A I don't recall.

1           Q     The purpose of the meeting was to  
2 discuss the adjournment of the preliminary?

3           A     Yes.

4           Q     Mr. Taman and his son have testified  
5 as to how this was devastating information for  
6 Mr. Taman to receive when he was told about the  
7 delay, and that he broke down in your office. Do  
8 you remember that, sir?

9           A     I don't, but I don't disagree with it.

10          Q     He saw it as a significant  
11 development, from the point of view of his family  
12 and the stress they were under, they really wanted  
13 to get this thing on, it was finally coming, and  
14 all of a sudden they are faced with another horrid  
15 delay. Do you recall what you told him and Jordan  
16 about the reason for the adjournment?

17          A     Well, I probably told them that, and I  
18 don't recall it specifically today, but that the  
19 preliminary needed to be adjourned for some  
20 additional investigation.

21          Q     Would you have said anything more than  
22 that, sir?

23          A     Unlikely.

24          Q     Because the meeting you have taking  
25 1.5 hours in your records, it certainly wouldn't

1 take very long to communicate that message?

2 A We would have talked about many  
3 matters, not just that. I don't recall all of the  
4 topics that we had discussed that particular day,  
5 but it would have been more than just about the  
6 adjournment, and when it would get back on again,  
7 and how long it would take, and all -- I'm sure we  
8 would have canvassed many matters.

9 Q Their recollection is that you told  
10 them that it was to conduct further investigation,  
11 you were going to send some people to do more  
12 investigation basically to close holes. Does that  
13 ring a bell, sir?

14 A No, not at all. There was --

15 Q So your position would be that you  
16 clearly didn't say that it was to close holes in  
17 the investigation?

18 A I don't think that I would have said  
19 that to them, because that wasn't what was going  
20 on at that particular time. I don't -- I'm sorry,  
21 sir, I just --

22 Q Because Mr. Taman, his evidence was  
23 that he agreed because he wanted everything done  
24 right, and if they had to wait in order to make  
25 sure that the case was ready and the holes were

1 closed, then even though it was a painful thing  
2 for he and his family, they were prepared to do  
3 that?

4 A Mr. Taman's impression of what I was  
5 telling him and what I was telling him may --  
6 always may be some, you know, difference there.  
7 And I can only tell you that I felt constrained at  
8 that time by the fact that I did not feel that I  
9 could disclose this investigation that was going  
10 on for, not only the policy, but not to affect the  
11 investigation. And it would have been -- I would  
12 have tried my best to deal with that the most  
13 sensitive way that I could.

14 Q So you wouldn't have said to him,  
15 look, it is important that we get all of the  
16 relevant facts out, we have to postpone this and  
17 get this further investigation done, sir?

18 A Well, I may have told him that part,  
19 but suggesting that I said to him that we did it  
20 to close holes, no, I don't remember that  
21 language.

22 Q Close holes?

23 A Close holes.

24 Q Close holes in the case?

25 A I don't ever remember saying that to

1 him, but I would have told him that there was a  
2 need to do additional investigation, that it may  
3 affect the case, a whole variety of things I may  
4 have told him.

5 Q Sir, if you were telling him about  
6 further investigation saying it may affect the  
7 case, wouldn't it be pretty apparent to him, given  
8 what he knew, that the investigation was going to  
9 be about the case and going to affect the case,  
10 otherwise why would it be done?

11 A Well, I'm not suggesting that he  
12 didn't understand what it was that I was saying.  
13 My only observation, sir, was that it was the  
14 phraseology that it was for the purpose of closing  
15 holes in the case, that I don't believe I said to  
16 him.

17 Q Did you tell him that you had some  
18 questions that needed answering and that you  
19 needed the relevant information to come out?

20 A I may well have said that as well.

21 Q You can take a look at exhibit 11,  
22 which you still have in front of you, at page  
23 1877. Beginning at the start of the page, and we  
24 just looked very briefly at this same document a  
25 moment ago.

1 "Marty met with Robert to advise him  
2 that the prelim would not be happening  
3 in June as expected. He explained to  
4 Robert that he had the investigating  
5 officers out doing more interviews as  
6 he had some questions that he needed  
7 answered. Marty acknowledged that  
8 Robert would want the prelim to not be  
9 delayed but he needed to know that it  
10 was more important to have all of the  
11 facts, relevant or not. Robert agreed  
12 that he was disappointed it wasn't  
13 starting, as he and his children were  
14 geared up for it to start, but he  
15 agreed it was better to have a  
16 complete investigation."

17 It's pretty clear from that passage, sir, that  
18 Ms. McCorrister's take on this was that you were  
19 telling them that you needed to have further  
20 investigation to get a complete picture, and that  
21 it is better for them to wait and have a complete  
22 investigation and to get the relevant facts out,  
23 rather than to go on and have the case without  
24 this additional investigation. Would you not  
25 agree with that, sir?



1           A     Well, that's what she was explaining  
2     to him and that's what I think I have agreed to.  
3     I don't think that I told him that I had the  
4     investigating officers, which suggests to me it  
5     might have been East St. Paul, I don't think I  
6     would have said that to them.

7           Q     There is no suggestion here that you  
8     did, sir. All of the focus of this conversation,  
9     you would agree with me, is about the  
10    investigation of Harvey-Zenk?

11          A     Well, I'm only, as I read this, you  
12    know, I don't recall specifically, sir, what I  
13    would have said to them, but it may well have been  
14    included in that that there would be more  
15    interviews to be done. Like if they would have  
16    asked me what I thought might be going on, that's  
17    one of the things that I would have told them I  
18    suspect would be going on.

19          Q     And it is very clear here, sir, that  
20    Ms. McCorrister at least forms the impression that  
21    you are telling them that it is a good thing that  
22    you hold off because you have got to have a  
23    complete investigation?

24          A     Yes.

25          Q     And certainly the impression is left,

1 from reading this, that you were talking about  
2 this being a further investigation into the  
3 Harvey-Zenk prosecution. Do you not agree with  
4 that?

5 A Well, that's how this is left. Yes,  
6 that would be fair, I guess that was their  
7 impression.

8 Q An impression created by the words you  
9 spoke?

10 A Well, no, because I --

11 Q She is not purporting to record their  
12 impression, she is purporting to record your  
13 words?

14 A Pardon me, sir?

15 Q Ms. McCorrister is not purporting to  
16 record their impression, she is purporting to  
17 record your words?

18 A Well, I think she is doing a summary  
19 of what it is that she thought I explained to  
20 them, and she may have misunderstood as well. I  
21 don't know. I don't know, sir.

22 Q Sir, the Sveinson meeting took place  
23 on the 31st of May?

24 A Yes.

25 Q Now, you've explained the adjournment

1 to the Taman family. You are in a position now  
2 where you can explain it to the Sveinsons.

3 Ms. Victoria Sveinson testified that  
4 you were postponing the preliminary because you  
5 had more investigation to do. And she quotes you,  
6 and this is in her transcript:

7 "I have to plug a few holes."

8 So Ms. Sveinson is using or attributing to you the  
9 same expression that the Tamans attributed to you  
10 as a result of their earlier meetings.

11 Sveinn Sveinson said that you  
12 explained that it was to get more evidence. Do  
13 you recall any of that, sir?

14 A Again, sir, I would not have told them  
15 that the purpose was to plug holes, and I told  
16 them specifically that there was a further  
17 investigation to be done that may have an impact  
18 on the case. That's what I would have told them.

19 Q Mr. Sveinson recalls you saying that  
20 you were going to interview all of the policemen  
21 that were partying with Mr. Harvey-Zenk and you  
22 are just more or less tying things up. Does  
23 that --

24 A No, that does not even ring a bell at  
25 all -- familiar at all.

1           Q     Are you saying that you recall the  
2     conversation and that wasn't included in it, or  
3     you just don't remember it?

4           A     Well, it doesn't -- I don't believe  
5     that I would have said that, and knowing what the  
6     police officers had to say, it doesn't make sense  
7     to me that I would have even said that.

8           Q     You also, they say, gave them to  
9     understand that the adjournment was actually a  
10    good thing, given the state of the case?

11          A     Well, that might have been their  
12    impression, but that certainly was not what it was  
13    that I was conveying to these people. I couldn't  
14    tell them whether or not this was going to be a  
15    good thing or a bad thing. I would not know. All  
16    I would know is that, as you know, I received this  
17    letter from Carter, it was disturbing, it required  
18    investigation.

19          Q     Did you tell them you had received a  
20    letter from Carter that was disturbing?

21          A     No, sir, I did not.

22          Q     The Sveinsons indicate that you told  
23    them that the delay would be two to six months?

24          A     I would have not -- I would have not  
25    said that because I know that that's not accurate.

1 Q How long was the delay that you  
2 expected, sir?

3 A About a year, I would expect, because  
4 we would have to -- I would not know how long the  
5 RCMP investigation would take. I know that  
6 Mr. Wolson is extremely busy and has commitments  
7 in Manitoba and outside and, generally speaking,  
8 from experience with him, it is always in that  
9 nine to twelve month range.

10 Q Indeed, sir, the day before you  
11 attended court with Mr. Wolson where he explained  
12 to the court that he couldn't get a date in that  
13 year, in the remaining seven months in that year.  
14 He has a memo to that effect, right? So your  
15 evidence is that their recollection of the delay  
16 that you told them is inaccurate, two to six  
17 months?

18 A Their recollection is inaccurate, yes.

19 Q That's your position.

20 They sent you this letter that we  
21 looked at earlier on December 14th, 2006, you will  
22 recall it is exhibit 24, and it is at tab  
23 R-1.91.34.

24 A Bear with me, I don't see that I have  
25 21.

1 Q We looked at earlier --

2 A I have 23, Mr. Paciocco, but not 24 in  
3 front of me.

4 Q I could certainly have taken down the  
5 wrong exhibit number, I have been known to do  
6 that, sir.

7 A Exhibit -- one that had the sticky  
8 note on it, and then the next page was the same.

9 Q It should be exhibit 24?

10 A I just have 23, sir.

11 Q This is another copy elsewhere in the  
12 book of the same letter that I showed you earlier,  
13 and I apologize for duplicating them like that.  
14 This one is actually from your book, indicating  
15 that it had been received --

16 A Um-hum.

17 Q -- by you, sir?

18 A Yes.

19 Q When we asked you about this before  
20 the break, you couldn't recall receiving the  
21 letter where they expressed their distress over  
22 dangerous driving. Do you recall it now, sir,  
23 that we see it among your materials?

24 A Yes.

25 Q By this time they had learned that the

1 delay was going to be about a year. They said, at  
2 the third line of this letter:

3 "This additional delay should have  
4 been just a few months, perhaps six,  
5 but a delay of well over a year is  
6 truly absurd."

7 It is consistent with their understanding of what  
8 took place during your meeting, sir?

9 A Yes.

10 Q They expressed the hope that you are  
11 going to find more evidence. They continue in the  
12 fourth line:

13 "At the very least we hope this delay  
14 was worthwhile and you have been  
15 successful in obtaining more  
16 evidence."

17 So they again are writing to you reflecting their  
18 understanding that this adjournment was for the  
19 purpose of getting more evidence in connection  
20 with this case, sir. Would you agree with that?

21 A That's their -- how they are writing  
22 this letter, yes.

23 Q So very shortly after, on  
24 December 18th, they are writing a consistent  
25 account of their understanding of what took place

1 during the meeting, which differs from yours?

2 A Well, they are writing about what  
3 their hope will be about the investigation, but  
4 not about what I told them the investigation was  
5 about, as I read this.

6 Q It certainly reflects their  
7 expectations, does it not?

8 A Oh, yes.

9 Q And they are distressed about the  
10 dangerous driving and your position on precedents,  
11 and they are also quite exercised over the fact  
12 that Mr. Harvey-Zenk was able to refuse the  
13 breathalyzer, a theme I think you have seen before  
14 and comes up again here. You didn't respond to  
15 the letter, sir. Is there a reason why you didn't  
16 respond to a letter directed specifically to you?

17 A I didn't see them wanting a response  
18 to this letter. They were expressing their  
19 opinion, and I didn't see that they were asking me  
20 to write back.

21 Q I think it is fair that there is no  
22 specific place here where they ask you to, and I'm  
23 just putting it to you, sir, that you didn't feel  
24 it might have been an appropriate thing to respond  
25 to the letter, to try and make it clear to them



1 what is going on and why it is going on, given how  
2 distressed they obviously are?

3 A I thought I had made it clear, and it  
4 was evident to me that I was not succeeding.

5 Q What was the purpose of the RCMP  
6 investigation, sir?

7 A My request of the RCMP was to, first,  
8 look at whether or not there were any grounds for  
9 a charge of obstruction of justice against  
10 Mr. Bakema, and as a result, that was the focus, I  
11 believe, and whether or not there would be  
12 anything arising out of that investigation which  
13 would be helpful in gathering evidence to -- as  
14 far as re-investigating the accident was  
15 concerned, if they could help in that area.

16 Q Sir, I want to be clear about this  
17 because it matters. Were you of the view that  
18 both of those things were purposes of the  
19 investigation, namely, the investigation of Harry  
20 Bakema with a view to possible obstruct charges on  
21 the one hand, and secondly, an attempt to find  
22 further evidence in connection with the  
23 Harvey-Zenk prosecution?

24 A That is what I had hoped would come of  
25 it, and what I had spoken about.

1 Q Okay. So the first, I take it, is the  
2 purpose, the RCMP investigation was aimed at  
3 finding out whether or not Harry Bakema had  
4 obstructed justice?

5 A Yes.

6 Q And you hoped that as a collateral  
7 result of that you would get further evidence to  
8 assist you in the Harvey-Zenk prosecution?

9 A Would come as a result of that, yes,  
10 but -- yes, or the opposite.

11 Q Okay. Any evidence that might  
12 enlighten the Harvey-Zenk prosecution?

13 A Right.

14 Q But you would agree with me, sir, that  
15 at no time did anyone proceed on the basis that  
16 the purpose of the investigation was to assist in  
17 enlightening people about the Harvey-Zenk  
18 prosecution?

19 A No, the focus turned out to be on  
20 Mr. Bakema.

21 Q Yes. And you received cc'd letters  
22 from the RCMP that made it very clear that that's  
23 what they were investigating, they were  
24 investigating Harry Bakema's obstruction charge  
25 and they were not seeking evidence as a matter of

1 purpose to assist you in the prosecution of  
2 Harvey-Zenk; correct?

3 A That was their focus, yes.

4 Q And at no time did you write to them,  
5 even though you had been cc'd with a number of  
6 documents recording that purpose, saying, hey,  
7 while you are at it, reinvestigate the charges  
8 against Mr. Harvey-Zenk?

9 A I didn't do that and I did not do that  
10 because I thought I would wait to see what had  
11 come out of the report that they had done. And  
12 then as it turned out, as we now know, I wasn't  
13 involved in anything to do with that.

14 Q Sir, did you not think if you had a  
15 hope, an expectation that this would produce  
16 evidence to assist you in the difficulties you had  
17 with the prosecution, or in clarifying the state  
18 of the prosecution, that you would have said to  
19 the RCMP agents who were interviewing these very  
20 same witnesses for the most part, look, I'm not  
21 satisfied with the state of the investigation that  
22 was done into Harvey-Zenk, I want you to also  
23 reinvestigate that alleged crime while you are at  
24 it, see what you can uncover that will help me in  
25 my role as prosecutor. Why would you sit back a

1 year waiting to see the outcome before seeing  
2 whether your hope would come true? Why not tell  
3 them that that was one of the things that you  
4 wanted done?

5 A My only reply to that, sir, would be  
6 that I don't think that I had the authority to  
7 direct this investigation, and I would have, as I  
8 stated with Mr. Bakema, or the report of  
9 Mr. Carter, I delivered it to the justice office,  
10 which I thought I was supposed to do. If, in  
11 fact, I did have the authority to direct an  
12 investigation, perhaps I could have. I'm assuming  
13 that even having brought forward the report of  
14 Mr. Carter about what had gone on at the scene,  
15 that as much as I might have wanted an  
16 investigation to be done, I guess people may not  
17 have wanted to do it, or chosen not to do it.

18 Q How would you know that if you didn't  
19 ask, sir?

20 A Well, I wouldn't know that, sir, I  
21 agree with you.

22 Q And as for the RCMP investigation, it  
23 came about as a result of your meeting with  
24 Mr. Kaplan?

25 A Yes, I agree.

1           Q     And you obviously indicated in your  
2     earlier testimony that you wanted an investigation  
3     done into obstruction of justice by Mr. Bakema?

4           A     Yes.

5           Q     You could have easily influenced the  
6     direction this investigation would take by simply  
7     putting your oar in the water and letting them  
8     know that you also had a case to prosecute?

9           A     It may have happened, yes, I could  
10    have written to them.

11          Q     The net effect of this, sir, is that  
12    the family, whatever your words were, left those  
13    meetings prepared to accept a year's adjournment,  
14    not that they could have prevented it, but  
15    prepared to accept it based on the understanding  
16    that this investigation was going to help in the  
17    prosecution of Derek Harvey-Zenk. Yet the  
18    investigation was not focused on the prosecution  
19    of Derek Harvey-Zenk, and at no time did you take  
20    any steps to try and direct it in that way; is  
21    that a fair summary, sir?

22          A     I did not direct that further  
23    investigation to be done by the RCMP.

24          Q     We've heard testimony from the Tamans  
25    and the Sveinsons about how painful the delay was,

1 and not having this resolved, and how it just ate  
2 away at them for another year, and how they have  
3 been unable to obtain closure. And they were of  
4 the view that this delay of one year was to  
5 facilitate the prosecution of the man who took the  
6 life of their loved one. And now they are  
7 learning that that's not what the investigation  
8 was about. Do you have any comment to make, sir?

9 A Well, Mr. Paciocco, had I been able to  
10 tell them what the investigation was about, had I  
11 not been bound by restrictions that I understood  
12 in the policy, I probably would have told them. I  
13 wouldn't not tell them if I didn't believe that I  
14 couldn't.

15 Q With respect to what you did tell  
16 them, you've said that you didn't say that it was  
17 to fix holes, but do you not agree that they were  
18 in some respects misled about what was going to  
19 take place?

20 A I can't -- I did not mislead them,  
21 would not mislead them, and people who are, in my  
22 view, in a distressed state, listening to me as a  
23 lawyer trying to explain a case to them, may have  
24 a different understanding. Unfortunately --

25 Q Sir, Ms. McCorrister wasn't in a

1 distressed state and she had a different  
2 misunderstanding. And with respect to whether the  
3 parents were militant, Mr. Wolson, who wasn't in a  
4 distressed state, had a different understanding  
5 from you, sir. Why is it that everybody that you  
6 speaks to seems to have a different  
7 misunderstanding of what you are saying?

8 A I don't really -- I don't follow that,  
9 sir. These people, I'm telling you what I told  
10 them, and how they understood it is how they  
11 understood it.

12 Q Do you agree with me, sir, that the  
13 RCMP never even questioned the Winnipeg Police  
14 Officers in connection with their investigation?

15 A Correct.

16 Q All right. Sir, the investigation is  
17 done, the preliminary is approaching, again you  
18 are engaged in some preparation for the case. It  
19 is June. It is just around the corner, it is  
20 going to be in 2007, you are going to have the new  
21 preliminary, the delay has gone by, the  
22 investigation is done. We all understand, at  
23 least the lawyers in the room understand the  
24 importance of having an independent police  
25 investigation and a separate and distinct

1 prosecutor's role. That the investigation has to  
2 be done by the police who either lay or respond to  
3 the complaint, investigate, gather the evidence,  
4 bring it to a prosecutor, who has to remain  
5 separate enough from the investigation to evaluate  
6 whether it is appropriate to proceed with the  
7 charges, and can stay those charges if they are  
8 not appropriate.

9 A Yes.

10 Q Mr. Gover, in his expert opinion that  
11 will be presented before this tribunal, says this,  
12 and I'm going to read to you what he says in his  
13 report, it is in Y-2, volume Y-2. I have not  
14 telegraphed this document to the clerk, book Y-2.  
15 There are two volumes and individuals should be  
16 careful that we are looking at the one that says  
17 "Expert Opinion of Brian Gover" and not the one  
18 that says "additional disclosure." And I'm going  
19 to look at page 7 of his opinion. It is coded as  
20 Y-2.c, which is why the clerk was having trouble  
21 finding it.

22 Sir, you are being provided of a copy  
23 of an opinion which has been furnished and  
24 requisitioned by the Commission on the role of the  
25 prosecutor and ethical and professional



1 responsibilities. And I'm going to take you to  
2 the bottom of the first section on page 7, just  
3 above the word "ethics." And in the last four  
4 lines on that page, beginning at the end of the  
5 line, Mr. Gover records a position expressed in  
6 the Federal Prosecution Service Desk Book which he  
7 provides as a general and accurate statement of  
8 the law. It would be tab C, page 7.

9 "Once charges are laid, full  
10 responsibility for the proceedings  
11 shifts to the Attorney General. On  
12 request, police have the  
13 responsibility to carry out further  
14 investigations that counsel believes  
15 are necessary to present the case  
16 fairly and effectively to the court."

17 I will read it again to you, sir.

18 A What?

19 Q It is at the seventh page of the  
20 opinion document that you have been furnished.

21 A Is the page number at the top?

22 Q The page number is at the top, page 7.  
23 Do you see the heading "ethics" at the bottom of  
24 the page?

25 A Under page 7, ethics, I have conflict

1 the interest.

2 Q Yes, just above it.

3 "Once charges are laid..."

4 this is four lines above it, beginning at the end  
5 of the line, sir.

6 "Once charges are laid, full  
7 responsibility for the proceeding  
8 shifts to the Attorney General. On  
9 request police have the responsibility  
10 to carry out further investigations  
11 that counsel believes are necessary to  
12 present the case fairly and  
13 effectively to the court."

14 Sir, do you agree with that  
15 proposition?

16 A I agree that it is stated clearly that  
17 way in the Federal Prosecutions Service Desk Book,  
18 yes, I agree with that.

19 Q Sorry?

20 A I'm not sure that it is in the policy  
21 that I was given from Manitoba Justice, but, sure.

22 Q Mr. Gover's position is going to be,  
23 without question, that this is the way that  
24 officers and the prosecutors interact after  
25 charges are laid, that it becomes the

1 responsibility of the prosecutor. Would you agree  
2 that that's an accurate statement, sir?

3 A Well, I do agree that we can request  
4 police to do investigations. Whether they do them  
5 or not is another issue, but, yes.

6 Q And you would say --

7 A I did request, and I know that I did  
8 do that.

9 Q Absolutely you did, and I'm going to  
10 take you to there right now. In fact, in your  
11 interview with Mr. Clifford, you agreed that it  
12 would be incumbent on you, as a prosecutor, to  
13 point out problems in the investigation and  
14 request that they be fixed?

15 A All I'm saying is that I don't think  
16 this is a Manitoba policy, but it is, I agree the  
17 Federal, and I know that I have done this.

18 Q Okay. You directed Carter, Sergeant  
19 Carter to go and get records and other  
20 investigative materials?

21 A Yes.

22 Q And I'm going to take you to the one  
23 document, there are a number of them and we have  
24 seen them already, but I think one will suffice  
25 for our purposes at this point. It is exhibit

1 124, for the lawyers it is in book R-1.94.7.

2 Do you have that document in front of  
3 you, sir?

4 A I only -- I only receive them as I'm  
5 getting them.

6 Q I just was looking at my notes, I  
7 didn't notice if she walked over.

8 THE COMMISSIONER: Is that the letter,  
9 December 20th?

10 MR. PACIOCCO: It is indeed,  
11 Mr. Commissioner.

12 THE WITNESS: Yes, I do have it.

13 BY MR. PACIOCCO:

14 Q December 20, it is at page 3125 of the  
15 book for those of us with the books. This is a  
16 letter to Detective Sergeant Carter. You have  
17 reviewed the disclosure and you note that you are  
18 not in possession of certain documents, the report  
19 by Constable Chris Blanchard, as he is described  
20 here, the traffic analyst, that would be  
21 Blandford. You are also looking for the paramedic  
22 report. You are looking for the statement of the  
23 witness, Kathy Beattie. If you will recall, all  
24 you had for Kathy Beattie was a traffic accident  
25 report?

1           A     Yes.

2           Q     In addition, you indicate that you  
3     don't know whether or not a warrant to seize the  
4     records of Branigan's Restaurant for  
5     February 25th, 2005 was ever obtained for the  
6     purposes of determining whether or not Mr. Zenk  
7     did use his credit card for purchases at the  
8     restaurant; correct, sir?

9           A     Yes.

10          Q     So this is an example of what you  
11     describe, you saw things that were missing from  
12     your file that you felt were incomplete and you  
13     were, in a very gentle way, giving Sergeant Carter  
14     to understand that he should go and get these  
15     things and provide them to you?

16          A     Gentle push.

17          Q     Yes. Now, you no doubt had looked at  
18     the investigative material that the Professional  
19     Standards Unit had provided you with respect to  
20     the police officers, sir?

21          A     Yes, sir.

22          Q     And you felt that, notwithstanding the  
23     witness accounts of Mr. Harvey-Zenk's habits or  
24     practices on that evening, you still wanted the  
25     records?

1           A     I will tell you this, Mr. Paciocco,  
2     that I would think that a judge might say that  
3     proof of payment of a bill is not really proof of  
4     consumption of food or alcohol, but I was trying  
5     to find anything that I could possibly find, and  
6     this would be one of those items that might  
7     assist.

8           Q     Yes.  And it would certainly be a  
9     piece of hard evidence in the sense that it is not  
10    someone's recollection, it is an actual piece of  
11    real evidence?

12          A     It is a piece of paper, yes.

13          Q     And it may not be definitive of  
14    consumption, but by and large would be, you would  
15    agree, very important evidence if you are trying  
16    to quantify the consumption of an individual?

17          A     Another piece of circumstantial  
18    evidence, yes.

19          Q     Would you not agree that it could be a  
20    very important piece of evidence?

21          A     It could be, yes.

22          Q     One way or other?

23          A     It is going to work one way or the  
24    other.

25          Q     You had, I take it, some concerns with

1 respect to your ability to rely wholly on the  
2 statements that had been given by the police  
3 officers to the Professional Standards Unit?

4 A I think you are being polite about my  
5 concerns.

6 Q All right. Could you tell us what  
7 your concerns were with those statements?

8 A I had 20 plus statements from police  
9 officers, none of whom would serve to assist the  
10 prosecution, period. So, in my view, they  
11 would -- they were not the types of witnesses that  
12 I would be wanting to be calling in direct  
13 evidence, rather as part of the Crown's case, and  
14 not being able to cross-examine.

15 Q Did you have concerns about the  
16 quality of the investigation and the integrity of  
17 the information that was contained in those  
18 interviews, sir?

19 A No. I think that I might have been  
20 more cynical than I was about that than concerned  
21 about the integrity.

22 Q So, if I understand you, you are  
23 saying that now you are more cynical of the  
24 information than you were at the time that you  
25 were receiving it?

1           A     No, I was then as well, sir.

2           Q     Okay. So you -- and you had concerns  
3 about the investigation, I take it, sir, you knew  
4 that there was no attempt made by the Winnipeg  
5 Police Service to acquire the very records that  
6 you were now trying to get?

7           A     I knew that the Winnipeg Police  
8 Service didn't do it. I didn't really understand  
9 really, to some extent, why they thought they  
10 needed to do it, because I understood that it was  
11 East St. Paul that was doing the investigating.  
12 And had I thought that I should be writing to the  
13 Winnipeg Police Service to do this, I would have,  
14 but I considered myself, in writing to Mr. Carter  
15 here, to be writing to the investigating police  
16 agency.

17          Q     Okay. And by this point the Winnipeg  
18 Police Service report is already in your hand?

19          A     Yes.

20          Q     And they didn't do it?

21          A     No.

22          Q     And you had concerns about the  
23 information you were getting from the police  
24 officers. I take it you shared, although it  
25 wasn't something that came out openly in court,



1 the judge's observation about the role of police  
2 officers trained in powers of investigation and  
3 powers of observation, when he expressed some  
4 disquiet about the fact that nobody could see  
5 anything, sir?

6 A Yes.

7 Q So you decide you want to see any hard  
8 evidence you can, and you make four tries, sir --

9 A Yes.

10 Q -- to try and get Carter to go after  
11 these records?

12 A I know that I wrote a few times. I  
13 don't recall exactly how many.

14 Q December 20th you have this initial  
15 letter, and then you write him again on  
16 April 10th, but it refers to a conversation that  
17 you had during your meeting on February 24th,  
18 where you raised it again.

19 A Okay.

20 Q You told him you needed the records.  
21 And then the letter of April 10th, where you again  
22 say I need the records. And then April the 20th,  
23 as the preliminary is approaching, the first one,  
24 you are again looking for the records?

25 A Yes.

1           Q     Now, Chief Carter has testified that  
2 he drew the conclusion that he didn't have  
3 reasonable and probable grounds to secure the  
4 records you were seeking, and that's why he never  
5 responded to the four requests that you made, sir.  
6 Did he ever talk to you about this apprehension?

7           A     No.

8           Q     And what do you, as a prosecutor,  
9 think about a police officer making that call when  
10 a prosecutor is asking him to use a tool of  
11 investigation?

12          A     I would think this; that in that  
13 detachment they probably don't do a lot of search  
14 warrants, that would be number one. Number two, I  
15 would think that if they had problems because they  
16 don't do a lot of them, that he could have called  
17 me and asked me for some help. And number three,  
18 I think that if I'm asking for it, to just  
19 conclude, perhaps as he did, that there was no  
20 reasonable and probable grounds, that he might  
21 want to discuss that with me to find out whether  
22 or not I had a different opinion, and why was it  
23 that I was asking him to do this, if he held this  
24 view. Like, I should explain myself.

25          Q     Yes?

1           A     We didn't have such a conversation.

2           Q     After you tried those several months  
3 leading up to the first preliminary, why didn't  
4 you go over his head, sir?

5           A     He was the head, as I understood it.

6           Q     Sir, he was the Chief of Police, but  
7 he reports to the municipality, Rural Municipality  
8 of East St. Paul. Did you not think to go to the  
9 chief administrative officer of the municipality  
10 and say --

11          A     No.

12          Q     Did you not think that you might want  
13 to pin him down and say, look, I have sent you a  
14 number of requests, this is obviously information  
15 that I consider important enough to send you a  
16 number of requests, I want this stuff, explain to  
17 me why you are not getting it?

18          A     I'm not going to deny, Mr. Paciocco,  
19 that I could have confronted him in that fashion,  
20 but I thought I had asked enough times that it  
21 would be clear that I was interested in this.

22          Q     But you basically chose, a year before  
23 the ultimate preliminary dates, to give up in your  
24 effort to get these?

25          A     I don't think that I gave up.

1 Q Well, you never mention it again after  
2 April 20th, 2006, sir?

3 A I don't know what I can do to make him  
4 do this. He didn't tell me that he wasn't going  
5 to do this. It never ever crossed my mind that it  
6 wouldn't get done. If I would have known what  
7 you've told me, which is that he didn't think he  
8 had reasonable and probable grounds, we would have  
9 talked about that.

10 Q But, in any event, you chose not to  
11 talk to him about it, even though he hadn't  
12 responded to those four requests?

13 A I did speak to him about it once, but  
14 I'm not sure -- I think that, you know, if I  
15 didn't have an in-person conversation, I would  
16 hope that my letter would be good enough.

17 Q Well, I'm not going to belabour the  
18 point, but it was a whole year and you didn't  
19 follow up after you knew it wasn't coming.

20 Sir, you ultimately made the decision  
21 to engage in what you now understand and claim or  
22 identify as a plea bargain, without the Branigan's  
23 records?

24 A Oh, yes.

25 Q And you also made that decision, sir,

1 without interviewing a number of witnesses?

2 A Fair enough.

3 Q You didn't interview the driver of the  
4 green car that was involved in the accident,  
5 Kathleen Beattie, sir?

6 A I did not interview her. She was  
7 struck from the rear by the Taman vehicle, and  
8 based on her statement that she didn't know what  
9 had occurred other than she was struck from the  
10 rear, I didn't feel she would have any relevant  
11 evidence at all to the proof of the charges that  
12 were necessary.

13 Q You didn't prepare her for the  
14 preliminary?

15 A Did not speak with her beforehand, no.

16 Q You didn't feel that it might be  
17 useful to see what else she might happen to know  
18 that wasn't contained in the traffic accident  
19 report and the RCMP investigation that had a  
20 different focus?

21 A I thought that what I had was  
22 sufficient from her.

23 Q And Garth Shaw, you didn't interview  
24 Garth Shaw, the eye witness to the accident, sir?

25 A Pardon me?

1 Q Garth Shaw, Mr. Garth Shaw, the eye  
2 witness to the accident, you didn't interview him?

3 A No. And I accepted his statement as  
4 being accurate, which was that the car was  
5 travelling at 80 kilometres an hour, that it was  
6 driving straight, didn't slow down, and I accepted  
7 every word, word for word, as Mr. Shaw put it in  
8 his statement, and had no doubt that he was making  
9 that up or that he was wrong in his observations.

10 Q You have made the observation, sir,  
11 that he was just a lay witness?

12 A Well, yes, I do agree with that, but  
13 that's what he was going to say and I didn't have  
14 any doubt about that. It is not for -- I didn't  
15 mean to say that his opinion about the speed would  
16 be in his mind wrong, I only wanted to convey that  
17 he would say that and it would ultimately be for  
18 the trier of fact to determine how much weight to  
19 put on his evidence. That's all I was saying,  
20 sir.

21 Q Okay. And you didn't feel that it was  
22 worthwhile following up to see whether he may have  
23 made some observations of Harvey-Zenk that weren't  
24 recorded in the interviews that were done?

25 A Well, I didn't speak with him.

1           Q     You would agree with me that some of  
2     the interviews weren't really the most thorough  
3     interviews you have ever had put on your desk,  
4     sir?

5           A     Some of them, yes, some of them not,  
6     you know.

7           Q     You did not interview the ambulance  
8     attendants, Mr. Rosser and Mr. Fontaine?

9           A     No, but I was aware that they had the  
10    smell of alcohol on the breath of this individual,  
11    and that they did have some observations of his  
12    physical -- like his actions at the scene. And I  
13    would have accepted those as they recorded them  
14    because they are professionals, and would think  
15    that I could rely on that.

16          Q     Do you recall that Mr. Fontaine was  
17    never really interviewed? He was asked to bring  
18    in a statement and he composed something himself  
19    and dropped it off?

20          A     I don't recall that, but you may be  
21    right.

22          Q     And Constable Woychuk, you would agree  
23    with me that for all the flaws that you could  
24    anticipate in his credibility, ultimately through  
25    cross-examination, he was a pretty key witness?

1           A     Yes.

2           Q     You didn't interview him either, sir,  
3     although I know you did try at one point?

4           A     I did try, and would have interviewed  
5     him had the matter proceeded.

6           Q     July the 15th was the date that you  
7     tried, sir, the weekend before the court  
8     appearance, in fact, the day before the court  
9     appearance.

10          A     Yes, because as I considered Woychuk  
11     and his evidence, he had evidence which might  
12     assist, but at the same time had -- as a result of  
13     the information received from Mr. Carter -- a  
14     fellow who was going to face a lot of problems in  
15     cross-examination. I thought that I would meet  
16     with him on the weekend. As circumstances turned  
17     out, I was unable to do so. But in the planning  
18     for the case, I knew that had it gone on, I could  
19     have met with him Monday evening, Tuesday evening,  
20     and even Wednesday evening, again, as necessary.

21          Q     All right, sir. By the 15th of July,  
22     that's the Sunday before you are about to appear  
23     in court the next day, what was the state of your  
24     resolution discussions?

25          A     At that particular time, I was



1 satisfied that Mr. Wolson's client would be  
2 prepared to plead guilty to dangerous driving in  
3 return for the joint recommendation and, of  
4 course, the stays on the other charges. But even  
5 though I have the utmost respect for Mr. Wolson, I  
6 would not know until his client actually entered  
7 the plea, that there is some confirmation. So to  
8 the extent that I was satisfied that Mr. Wolson  
9 was telling me what his client would do, until the  
10 plea actually gets entered, there is always a risk  
11 that the client could change his mind, or her  
12 mind, overnight or the next day, and knowing what  
13 the difficulties were with the prosecution, could  
14 have had a change of heart. So I was still trying  
15 to get ready, even though I believed that it was  
16 settled, but you never know.

17 Q Okay. So, essentially, you felt that  
18 the plea bargain was going to come to fruition,  
19 but there was always a chance it might not, so you  
20 were still preparing as though it might not?

21 A Yes, because I needed to sort of allow  
22 for that, which would mean that I would probably  
23 have to have some witnesses available, and just  
24 sort of make sure that I wouldn't get caught with  
25 wasting a court day and having no reasonable

1 explanation for it, other than to say we thought  
2 we had some resolution but it failed, and I don't  
3 have any witnesses today.

4 Q But you already entered into those  
5 discussions before you had even talked to Woychuk,  
6 is that fair, sir?

7 A Oh, yes.

8 Q I need to explore a little bit more  
9 the circumstances surrounding the missed meeting,  
10 because Constable Woychuk attended at your law  
11 offices and waited around for a good hour on a  
12 Sunday?

13 A Um-hum.

14 Q And you never showed up, and Chief  
15 Carter never received a phone call saying that you  
16 couldn't make it, and he was in communication with  
17 Mr. Woychuk. And I'm just wondering, if it is not  
18 going to intrude too deeply on your privacy,  
19 because you did mention something about it being a  
20 personal matter?

21 A I'm more than happy to tell you.

22 Q Why?

23 A The 15th was a Sunday, it would have  
24 been. It was not the Thursday of that week, but  
25 the Thursday of the week before, I fell in my yard

1 and landed with the entire weight of my body on my  
2 right shoulder causing a fracture of my shoulder  
3 and a dislocation of the -- it was explained to me  
4 that there is some type of channel in your  
5 shoulder that the bicep muscle goes through, and  
6 that had broken as well, and it popped out. And I  
7 was in a lot of discomfort during that period  
8 right after, unable to sleep lying down. I could  
9 only sleep if I could sleep in a chair.

10 Q How did this really unfortunate injury  
11 contribute to you not attending --

12 A I suspect that it is just that I would  
13 not have been sleeping properly during that period  
14 of time. I can't see any reason why I would have  
15 missed that meeting, other than that. And I do  
16 recall that later in that day, I did speak with  
17 Mr. Carter and apologized for missing that  
18 meeting. And I told him that I would meet  
19 Mr. Woychuk again, if necessary, if matters didn't  
20 come to fruition. And if it wasn't later that  
21 day, it would have been early in the morning on  
22 Monday, because I did have a conversation with  
23 Mr. Carter to brief him at least as to what  
24 Mr. Wolson's client was intending to do. He was  
25 aware of that, and I'm certain that the Woychuk

1 apology would have done that, would have been  
2 there.

3 Q All right, sir. I guess getting back  
4 to the central theme that we are pursuing right  
5 now, you entered into the resolution discussions  
6 without interviewing this man. And you agree with  
7 me that he had some pretty central things that he  
8 needed to talk to you about, or you needed to talk  
9 to him about?

10 A Yes, but -- I agree that he had  
11 matters to talk about and I did enter into these  
12 discussions.

13 Q One of those is that you had  
14 information from the notes that a blood demand had  
15 been given by Carter, and I'm sure that you  
16 noticed that Woychuk's notes say "breath demand"?

17 A Yes.

18 Q And you could have canvassed that with  
19 him to see really how vulnerable your refusal  
20 charge was?

21 A Well, yes. However, I'm trying to  
22 look at Woychuk in the context of how vulnerable  
23 he is, period, and to determine, could he possibly  
24 give some support to Carter? Woychuk, I thought,  
25 was one of the most vulnerable witnesses because

1 of the notes issue, and didn't think that, in  
2 assessing what might happen with him, that he  
3 could be a witness who could bolster Mr. Carter.  
4 He had his own problems.

5 Q Surely it was worth feeling him out  
6 and seeing what his position would be, sir?

7 A Yes. However, whatever it might have  
8 been, I anticipated a cross-examination that he  
9 could never have withstood.

10 Q The other issue had to do with the  
11 charter problem. All of the charter problems  
12 relating to the refusal charge were hinged, as I  
13 think you would agree, on the question of whether  
14 Mr. Derek Harvey-Zenk was detained?

15 A Yes.

16 Q Did you ever question Chief Bakema or  
17 Woychuk to find out whether or not Mr. Harvey-Zenk  
18 consented to going into the vehicle and agreed to  
19 go to the station?

20 A I didn't, but they certainly in their  
21 notes didn't indicate any consent. They simply  
22 said that they had placed him in the vehicle, and  
23 there was no suggestion that they even gave him a  
24 choice.

25 Q One of the reasons they expressed, and

1 I do understand they expressed more than one, but  
2 one of the reasons they expressed was he was cold  
3 and distraught. Was that not the foundation for  
4 at least exploring the possibility that there was  
5 consent?

6 A Well, it may have been, but there was  
7 so many reasons that at the end of the day, when I  
8 assessed the value, I couldn't be satisfied that  
9 they would have been believed or would have --  
10 their evidence had any value. It was -- and these  
11 are, of course, as you know, judgment calls that  
12 I'm making --

13 Q Yes, sir.

14 A -- about the problems that these  
15 individuals have, and whether or not they can even  
16 be remedied in a direct examination.

17 Q Sir, when you were going through this  
18 process of making the judgment calls, did you take  
19 into account, on the charter issue relating to the  
20 refusal, that even if there was a breach, the  
21 evidence might not be excluded in Manitoba because  
22 of your Court of Appeal decision in Orbanski?

23 A I considered that it may not be  
24 excluded. Of course I have to do that, because  
25 that's an issue always, which is just because

1 there is the charter violation, I know that the  
2 remedy isn't all exclusion.

3 Now, having said that, when I looked  
4 at this particular case, I always had in mind not  
5 just the specifics of one incident, but I was  
6 always looking at it in a global context of what  
7 had gone wrong from the beginning through to his  
8 arrival, so to speak, at the detachment, and how  
9 that whole atmosphere would affect the prosecution  
10 on those charges, period.

11 Q Sir, Sergeant Carter says that he  
12 discussed the case with you and the investigation,  
13 but you never really interviewed him as a witness.  
14 Is that consistent with your recollection, sir?

15 A Well, I'm not sure what he anticipates  
16 being interviewed as a witness, because when I  
17 would go through his material with him as a police  
18 officer, we would go through his notes and we  
19 would talk about what he did, and the types of  
20 information that I would have to get from him, so  
21 to speak, in his direct evidence, which would be  
22 recorded in his notebook and his observations and  
23 what he did. I don't know what he is thinking  
24 about as opposed to what I'm thinking about.  
25 Because I'm going to be leading this man in his

1 evidence. He is going to have his notes of it, he  
2 is going to be starting to tell me what he did  
3 from the time he arrived until the time that he  
4 released this man. And we did have an opportunity  
5 to go over that. And he told me that, once we  
6 met, that he was comfortable with detailing that  
7 scenario. So I don't know what it is more that he  
8 wanted. But, as I said, had the matter proceeded,  
9 after dealing with the day's witnesses, I would  
10 have had these fellows in, in the evening, to  
11 review again what it was that I would be expecting  
12 of them.

13 Q All right. Sir, you indicated earlier  
14 that you did discuss the blood demand issue with  
15 him?

16 A I did initially. I do know that he  
17 said that he reminded me that -- or told me that  
18 this was an error. And if he did, it would have  
19 been, sir, at the time of that meeting when --

20 Q February 24th?

21 A Right -- when he brought that report  
22 in. And I know I have a disclosure obligation.  
23 And when I would have met with him in the evening  
24 in preparation, the first thing I would have done,  
25 once he reminded me of it, I likely would have



1 done -- surely would have called Mr. Wolson on his  
2 home phone or his cell phone, which I have access  
3 to, and I would have said to Mr. Wolson, I've met  
4 with Mr. Carter, this is what he is going to say.

5 Q When you say "would have," you are  
6 trying to recreate what happened, is that what I'm  
7 to understand, sir, or --

8 A No, I'm saying that had we gone  
9 through the hearing, again, in my mind --

10 Q Okay. So, when he initially told you  
11 this back in 2006, you didn't write off a letter  
12 to Mr. Wolson advising him that Mr. Carter --

13 A I didn't do that, and I can only think  
14 that I was just so taken aback by the revelations  
15 of note fixing and note changing and --

16 Q Those were some two months later,  
17 right?

18 A It was too much -- it was too much  
19 information on that day.

20 Q That was April 21st, where you learned  
21 all of that stuff --

22 A Yes.

23 Q -- as opposed to February 24th. So  
24 you didn't, in that in two months before you  
25 became wrapped up in the April 21st thing, write

1 Mr. Wolson?

2 A No, because I don't think he told me  
3 that, Carter.

4 Q When did he tell you about the blood  
5 demand?

6 A I think that -- I'm not sure when he  
7 told me, but had he told me when we first went  
8 through it, I'm sure that I would have dealt with  
9 it. I don't recall him telling me this on the  
10 first meeting. I honestly do not recall. And I  
11 can't disagree with him that he did tell me, there  
12 would be no purpose for that because I don't  
13 remember. And if he did, I'm sure that it would  
14 have been more likely when we met again.

15 Q I think his evidence --

16 A Because he didn't --

17 Q I think his evidence was that you  
18 didn't ask him. Now, he has a notation on one of  
19 the documents that was produced, "spoke to  
20 Mr. Minuk" adjacent to the blood demand  
21 indication. So there was an inconsistency between  
22 his notation and his testimony, but his testimony  
23 was that you did not ask him about this?

24 A He may have volunteered it.

25 Q Do you recall a conversation about the

1 blood demand?

2 A No, I don't today. That's what I'm  
3 saying to you, sir.

4 Q You were aware that his notes do  
5 record that he was making a breath demand at the  
6 time that Mr. Harvey-Zenk was out of the interview  
7 room?

8 A I do know that he, at some point, at  
9 that second entry in his notebook, he said that,  
10 and I do know that he recorded a couple of times  
11 that he had made a blood demand and didn't correct  
12 that in his notebook.

13 Q In separate documents?

14 A Pardon me?

15 Q In separate documents, in three  
16 separate documents?

17 A Right.

18 Q And he acted as though he was making a  
19 breath demand, he went in and started to get the  
20 machine ready, sir?

21 A I don't have his notes in front of me,  
22 but, you know.

23 Q Constable Woychuk's notes disclose  
24 that?

25 A Um-hum.

1 Q And Constable Woychuk's notes identify  
2 a breath demand?

3 A Well, yes. However, as I said to you  
4 before --

5 Q But together all of those things  
6 didn't -- you didn't take the impression that  
7 maybe this was something that you might be able to  
8 overcome, the --

9 A It is a problem with the case, just  
10 another one of many. And individually, maybe one  
11 I could have overcome. Could I have overcome them  
12 all? Not likely whatsoever. And in my  
13 assessment, there was just so much that -- it  
14 wouldn't have been of assistance.

15 Q You didn't interview the Branigan's  
16 witnesses either, sir?

17 A No. And the reason I didn't interview  
18 the Branigan's witness is the Branigan's witness,  
19 as I recall, was unable to make an identification  
20 of Mr. Zenk. And to the extent that I was able to  
21 place Mr. Zenk at Branigan's, by other police  
22 officers, to at least have alcohol present amongst  
23 the group, alcohol present in front of him, and to  
24 have police officers testify that he then went to  
25 Mr. Black's, I would have believed that there was

1 sufficient evidence there, without the need to  
2 bring the Branigan's person, who could not  
3 identify him, to establish where he was, what he  
4 was doing, and at least for the purpose of a  
5 preliminary, at that point, call that evidence and  
6 to get -- towards getting the committal. I didn't  
7 think adding the Branigan's witness would be of  
8 assistance at least in securing a committal.

9 Q Sir, I was thinking more about talking  
10 to them before you made a deal that basically put  
11 the impaired charge down. I'm thinking about  
12 Mr. Gerardy as well who made observations about  
13 several -- a few is I think is the term he used,  
14 in fairness -- a few of the officers being  
15 intoxicated enough that he insisted that they not  
16 drive and took steps to try and ensure that they  
17 had designated drivers. Mr. Gerardy was never  
18 asked to describe the officers who were in that  
19 state. You didn't choose to interview him, did  
20 you, sir?

21 A I relied on the statement that was  
22 provided to me and I did not interview them, and I  
23 had no reason to disbelieve the integrity of these  
24 witness statements, that they weren't -- I had no  
25 reason to believe they weren't telling the truth

1 or weren't telling all that they knew.

2 Q Those employees at Branigan's?

3 A Right.

4 Q And not to belabour the point again,  
5 but Gerardy was never asked to identify or  
6 describe the people who he was concerned about.

7 And it wasn't something that you picked up on or  
8 wanted to explore further?

9 A No.

10 Q The Winnipeg Police officers, I know  
11 that you met with Sean Black on July 11th,  
12 according to your docket, sir?

13 A Yes.

14 Q And you had no notes, as we  
15 established this morning, of the conversation that  
16 you had with him?

17 A No.

18 Q You also had a docket for Mr. Anderson  
19 at the same time, it is on the same docket with  
20 Mr. Black, although that one is a phone call. Did  
21 you call Anderson while Black was there, sir?

22 A Pardon me?

23 Q Did you call Anderson while Black was  
24 there?

25 A No, I never.

1           Q     You have dockets for calls from  
2     Harding on July 9 and 12th, and you have dockets  
3     for calls and a meeting with Mr. Humniski, a  
4     Sergeant Humniski. Do you know Sergeant Humniski?

5           A     No, I don't.

6           Q     He was the leader of the platoon that  
7     you were dealing with in this case.

8                     Now, he has testified that he called  
9     you a couple of times, he met you once and he  
10    called you once. And then among the things that  
11    you discussed was he was prevailing upon you not  
12    to call Winnipeg Police Service officers if they  
13    were going to be redundant, and he wanted you to  
14    spare these officers from having to get up there  
15    and testify with the adversity that that could  
16    bring.

17                    Do you recall that kind of  
18    conversation with Sergeant Humniski?

19           A     I don't recall it, and if he did say  
20    something like that, I would have told them that  
21    I'll decide what witnesses I will be calling, not  
22    you, and that's not really for you to be concerned  
23    about.

24           Q     So you would agree with me that in a  
25    case where the police officers might end up being

1 defence witnesses, it is really awkward for a  
2 police sergeant to be talking to the prosecutor  
3 about who should or shouldn't be called?

4 A I don't recall it, but when I think  
5 about it, it is even an odd thing to be doing,  
6 considering that had he known what I knew about  
7 what all of these other people had said and, you  
8 know, far be it from me to assume that they would  
9 have spoken to each other, but I can't imagine  
10 that he would think that I would be calling them  
11 as Crown witnesses.

12 Q In other cases, though, it might be  
13 something that a platoon sergeant might do if a  
14 Crown is to try to schedule the witnesses that  
15 might be testifying against the platoon or  
16 something like that?

17 A I would hope that the police don't  
18 phone Crown Attorneys or prosecutors and tell them  
19 what witnesses to call. It is none of their  
20 business.

21 Q Sir, I just wanted also to make the  
22 observation, and I know that everybody prepares  
23 differently, but in the disclosure that we  
24 received we never got any preparation documents  
25 from you for the preliminary. And by that I mean



1 any typed out questions for witnesses, or any  
2 typed out bullets of things that you needed to  
3 cover. We have a list of witnesses from  
4 Mr. Wolson, based on a telephone conversation with  
5 you, and we have your list of subpoenas, but we  
6 didn't get the kind of preparatory notes that many  
7 lawyers would prepare.

8           Is that, sir, because you didn't  
9 prepare those types of things, or because you  
10 don't as a matter of practice?

11           A     My practice is to create a filing  
12 system, if I can call it that, where I would sort  
13 of deposit each witness's statement in there, meet  
14 with them beforehand, review their witness  
15 statement with them, and determine -- let them  
16 refresh their memory if they don't remember,  
17 because oftentimes they don't, and then, generally  
18 speaking, would use that witness statement as a  
19 format for following the examination that I would  
20 ask of them, and that's how I have been doing it.

21           Q     So you don't prepare a written script  
22 or anything like that for each witness?

23           A     I found that sometimes being a slave  
24 to the script can get you into difficulties.

25           Q     Sir, given the fact that you made this

1 decision without the records, and that you hadn't  
2 interviewed those witnesses, and you had  
3 continuing concerns about the Winnipeg Police  
4 Service statements that you were getting, I just  
5 have to put this to you, sir, for your response:  
6 Do you feel that you exercised due diligence in  
7 terms of really getting to know your case before  
8 you engaged in these resolution discussions?

9           A     I think, sir, that on a -- I wouldn't  
10 say a regular basis, but the files are presented  
11 on that basis that I get them without interviewing  
12 people to provide opinions on, which I do, not  
13 necessarily in this case, but in others. And I  
14 rely on the reports that are being provided to me.  
15 I rely on witness statements and other  
16 information. And it is my experience that in plea  
17 resolutions, both as a defence lawyer and as a  
18 prosecutor, that the reliance is placed generally  
19 on the investigative report, and not all that  
20 often is it the case that all of the witnesses who  
21 have been identified by the police, who may -- who  
22 they spoke to, ever get spoken to, and that I  
23 don't find it out of the ordinary that plea  
24 negotiations would go on in that way.

25           Q     Even in cases, sir, where you are

1 entering into the plea negotiations in large  
2 measure because you have problems with your case  
3 that you might want to explore with the witnesses  
4 before maybe giving up on --

5 A Well, if I sectioned off a case and  
6 looked at it as I did, I did not think, period, at  
7 all -- whether it was right or wrong for the  
8 Winnipeg Police Service members to be interviewed  
9 by Professional Standards Unit, I didn't think  
10 that even a re-interview of those people would  
11 result in a change of statements. I just could  
12 not imagine that those officers would recant or  
13 change their statements. So, that was one part of  
14 the problem.

15 Q All right, sir.

16 A I had problems with East St. Paul  
17 Police, which were legal problems arising from  
18 their conduct and not so much factual issues. At  
19 the end of the day, I did not think that the  
20 civilian witnesses would have added much to the  
21 resolution of the legal problems that this case  
22 had, because it was a case bereft of legal  
23 problems as opposed to -- of course, some factual  
24 problems, but plagued with legal problems over and  
25 above the factual problems which would arise.

1                   I was confident always that I had a  
2   good handle on this case, I knew what the problems  
3   were, I knew that at the end of the day the  
4   likelihood of establishing or getting a conviction  
5   on the refusal, on the impair cause death, on the  
6   crim neg, it was very, very difficult. And then  
7   what I had left with would have been Mr. Shaw,  
8   whose evidence I accepted at face value, of the  
9   speed, that of Corporal Blandford, the traffic  
10  accident reconstructionist. And that part of the  
11  case was the best part of it.

12                Q     Sir, you ultimately did end up staying  
13  the three charges that you just described as being  
14  in tremendous peril?

15                A     Yes.

16                Q     Before you did so, and I want to be  
17  fair to you because I don't remember which of the  
18  documents you weren't sure you had seen before,  
19  but one of the guidelines that I showed you, which  
20  has become exhibit 216, was the laying and staying  
21  of charges guidelines, sir. It is probably on  
22  your desk?

23                A     I probably have it here on my desk.

24                Q     Is that one of the ones that you had  
25  seen before this case, sir? It is dated

1 April 2001. I guess what I want to know is, did  
2 you consult that policy before making the decision  
3 to stay the three charges that you stayed?

4 A Well, I wouldn't have consulted the  
5 policy, but I'm aware of it. And to the extent  
6 that these are all my assessments of the quality  
7 of my case, and I didn't think that -- if I didn't  
8 think that there would have been at least some  
9 reasonable and probable grounds to proceed,  
10 period, or rather a reasonable likelihood of  
11 conviction, I wouldn't have proceeded. I will say  
12 this to you; that had it come time to advance the  
13 matter at the preliminary inquiry, I had it in my  
14 mind that securing a conviction on crim neg would  
15 be very, very difficult. And the charter issue  
16 was an issue which would have to be raised at  
17 trial, so that certainly at the preliminary we  
18 could test those issues out, and who knows where  
19 they may go and how the evidence might come.  
20 So --

21 Q That's what I'm building up to, sir,  
22 you see the policy has two criteria that you are  
23 to consider?

24 A Yes.

25 Q And I think they are criteria that are

1 familiar to all of us who practice in the criminal  
2 courts. And they include the one that you focused  
3 on, whether there is a reasonable likelihood of  
4 conviction, and whether or not there exists a  
5 public interest in proceeding is the second of  
6 them?

7 A Yes, sir.

8 Q And this policy talks about the  
9 importance of the rule of law, talks about the  
10 importance of the repute of the administration of  
11 justice, talks about the interests of the victim,  
12 the protection of the public, and speaks  
13 specifically in point 5, at page 1390, of the  
14 likely effect of a prosecution on public order and  
15 respect for the rule of law, including the  
16 necessity of maintaining confidence in the  
17 legislature, courts, and the administration of  
18 justice.

19 Now, you had a case that was a  
20 tremendously difficult case in a lot of respects.  
21 You had a police officer who was about to get  
22 charges against him that were infamous, they were  
23 about to be stayed. You had 23 police officers  
24 effectively claiming to one degree or another that  
25 they were paying no attention to this gentleman,

1 some of them saying he wasn't impaired, issues  
2 that the public might have intuitive concerns  
3 about the credibility with. You had the case in  
4 which the dangerous driving charge was one that,  
5 even though you were, like every lawyer, prepared  
6 to allow for the possibility of something  
7 happening, you had a dangerous driving charge that  
8 you essentially believed in. Why not just take  
9 this case through the preliminary inquiry at  
10 least, or even run it at trial, to see where it  
11 was going to end up? I mean, could you have ended  
12 up -- realistically, were you really concerned  
13 that you were going to end up worse off after a  
14 trial than you did after the plea bargain you  
15 entered into?

16 A I don't see that there would be any  
17 purpose to put in a trial on the charge of  
18 dangerous driving when the accused is prepared to  
19 plead guilty to the charge of dangerous driving.  
20 To simply say, well, I know I can get a conviction  
21 on this, I don't really care, period. It is a  
22 case of, as you've described it, notoriety. And  
23 if I'm simply going to run the trial even though  
24 the fellow is going to be pleading guilty to this  
25 charge, I think is irresponsible.

1           Q     Okay. The issue with respect to the  
2 sentence, and we will get to the plea bargain  
3 arrangement later, but was it or was it not the  
4 case, sir, that you ended up saying that I'm going  
5 to do this even though I'm going to be agreeing to  
6 a conditional sentence in this case?

7           A     Yes. But I did that in the context of  
8 what I understood the jurisprudence in Manitoba to  
9 be, and what I understood the penalty to be,  
10 whether people went to trial or whether they  
11 entered guilty pleas, on dangerous driving cause  
12 death. And in some cases even impaired driving  
13 cause death in Manitoba, for first offenders of  
14 the background of this individual, was sentences  
15 of Provincial jail time, some as low as 15 months,  
16 I believe, and some at the high end of the range,  
17 which were two years less a day, to be served  
18 conditionally.

19                     I was also aware that there had been  
20 cases where trial judges at the lower court had  
21 sentenced individuals to what we in Manitoba use  
22 as "real jail," when we use that phraseology here,  
23 as opposed to the conditional sentence when it  
24 falls within that range, and that the Court of  
25 Appeal had reversed those decisions and had



1 imposed conditional sentences.

2           So that on my review of the law, I  
3 believed that the sentence which was being  
4 recommended by myself was well -- was in the  
5 range. It wasn't -- I don't even consider that to  
6 be -- it was the appropriate sentence, it was what  
7 the Court of Appeal had directed. And in fact,  
8 two years less a day, it was the maximum period of  
9 time available to allow the accused to afford, or  
10 rather to be considered for conditional sentence.  
11 So I didn't think that, in considering the case  
12 that I had and the available law, that I was doing  
13 anything which was contrary to the law, contrary  
14 to the policies.

15           Q     You didn't at that point, sir, feel  
16 that it was perhaps worth seeing what could happen  
17 with the other charges, and making open  
18 submissions that might have called for jail and  
19 opposed a conditional sentence on the basis that  
20 Chief Judge Wyant ultimately put to you?

21           A     That's a judgment call that I made,  
22 sir. I believe that securing the convictions, as  
23 I said to you before, on crim neg was not going to  
24 happen, that the other two charges were  
25 overwhelmingly difficult. And that I was in a

1 situation where, A, I did not expect to happen  
2 because of the problems with the case and the  
3 experience of defence counsel. I'm not suggesting  
4 that other counsel may not have triggered to what  
5 Mr. Wolson did, but certainly he would be in a  
6 group of individuals in Manitoba, for that matter,  
7 and certainly in Canada, who would smell the  
8 problems, so to speak, miles away. And that the  
9 likelihood of securing convictions on anything but  
10 dangerous driving in my view was remote.

11 Q And you felt you would get a  
12 conviction on dangerous but your position was that  
13 you were getting it through the plea, is that a  
14 fair summary?

15 A I knew there was some risk to the  
16 dangerous driving, but low. And I would not know  
17 what the evidence would be that the defence would  
18 call. I wouldn't have access to it. And as you  
19 know, Mr. Paciocco, had there been some medical  
20 evidence, for example, on the issue of fatigue, I  
21 would have received notice of that, I would have  
22 been able to deal with it at a trial.

23 Q That's one of the things that I had  
24 meant to deal with earlier with respect to  
25 dangerous driving. You would agree with me that

1 if Mr. Harvey-Zenk had allowed himself to become  
2 extremely tired, and being aware of his condition,  
3 coupled with the consumption of some alcohol that  
4 we know to be a depressant, that it might be a  
5 marked departure from the standards of the norm to  
6 enter a motor vehicle in that condition?

7 A Yes, I am aware of the sleeping while  
8 driving cases. In fact, as I was moving through  
9 this, I had been aware and reminded myself of a  
10 case even here in Manitoba, which was pre Hundal.  
11 It was Judge Giesbrecht of the Provincial Court, a  
12 former Crown Attorney. The fellow had fallen  
13 asleep, so to speak, driven across the highway and  
14 collided with some people. He was acquitted, but  
15 I certainly know that there is some, that the law  
16 in that area is not really all that settled and  
17 probably should get settled.

18 Q And I think you would agree with me  
19 that, given the nature of the charge, driving in  
20 manner dangerous to the public, that someone who  
21 takes to the wheel of a car when they are sleep  
22 deprived is taking a risk that is unacceptable and  
23 is a fact to consider in dangerousness, and that  
24 that to some degree could neutralize any  
25 suggestion that, oh, he fell asleep as a defence?

1           A     It is there to be argued by the Crown,  
2     yes.

3           Q     I want to deal with the conditional  
4     sentence policy now, if I could. This is G-45.

5           A     Yes.

6           Q     And I believe this is the one you said  
7     that you had not necessarily seen before, or am I  
8     mistaken?

9           A     I thought you -- you may not have seen  
10    it, but when I was requested to deal with one  
11    specific case before this matter, and the issue  
12    was a conditional sentence, it is possible that I  
13    may have then reviewed this, because there were  
14    issues that arose in the Provincial Court and the  
15    Justice Department had, because of some issue of  
16    conflict, asked the Crown who had already made a  
17    submission for a conditional sentence to step  
18    down. And I came in to look at it and review the  
19    law in Manitoba, and if possible that that  
20    applied, took a look at this policy.

21          Q     If you can look at it now, please, at  
22    page 1385?

23          A     Yes.

24          Q     You will see that point number 1 of  
25    this policy, dated April 2005:

1 "Crown Attorneys are instructed that  
2 generally a conditional sentence  
3 should not be recommended in cases  
4 involving death or serious bodily  
5 harm."

6 And you see this repeated again under  
7 principles, A:

8 "Generally Crown Attorneys should not  
9 recommend the granting of a  
10 conditional sentence, either as part  
11 of a plea arrangement or as a  
12 submission on sentencing or appeal in  
13 cases involving death or serious  
14 bodily harm."

15 Sir, you realized that the resolution  
16 that you were proposing was one that would,  
17 according to this policy, have to involve what are  
18 referred to on the next page, 1386, as exceptional  
19 circumstances. And that exceptional  
20 circumstances, as allowed in this policy, would be  
21 difficult to define as there will be unusual and  
22 unforeseeable situations that will arise, although  
23 some factors may be considered, which will  
24 include -- one of them is the view of the victim.  
25 And this certainly wasn't a case, sir, where you

1 had victims saying, let's go for that conditional  
2 sentence. You have the exigencies of the case,  
3 which Mr. Wolson testified has become something of  
4 a buzz word here in Manitoba since the plea  
5 bargain decisions. And it goes on:

6 "The exigencies of the case, i.e.,  
7 difficulties with proof, may permit a  
8 Crown Attorney to recommend a  
9 conditional sentence in order to  
10 obtain a conviction, even though a  
11 conditional sentence would not  
12 normally be appropriate. This is a  
13 difficult judgment call, and a case  
14 conference will be of assistance in  
15 determining whether this course is  
16 justified."

17 I'm going to leave the case conference aside for  
18 the moment.

19 Sir, I take it from your earlier  
20 conversation with me that you didn't think that  
21 you had to offer a conditional sentence in order  
22 to get a conviction on the dangerous driving  
23 charge?

24 A As I indicated to you before, there  
25 was always a possibility that this -- that the

1 acquittal is looming for a variety of reasons, and  
2 it is clearly a fact. What I thought would be  
3 good may not be good enough, and it was a factor  
4 in my mind.

5 Q Sir, do you agree with me that's  
6 always a factor in a case, and that if that was  
7 enough to take a case into the exceptional  
8 circumstances category, you would never have a  
9 case that doesn't fall into the exceptional  
10 circumstances category? You had a strong case on  
11 dangerous driving, sir. Mr. Wolson saw that.

12 A Yes.

13 Q So I'm suggesting to you that this  
14 wasn't one of the those exceptional circumstances  
15 where the exigencies of the case required a  
16 conditional sentence in order to secure a  
17 conviction?

18 A All I can say to you, sir, about that,  
19 is that it may not have been a major factor. It  
20 was a factor in my consideration.

21 Q Do you feel that your decision  
22 comports with this policy?

23 A Well, let me say that I think that the  
24 policy is difficult to reconcile with the  
25 day-to-day prosecutions in this particular area,

1 and the fact that the -- wherever it may have been  
2 recommended by someone, in the cases that I've  
3 read, that there not be a conditional sentence for  
4 these types of offences, the Court of Appeal has  
5 reversed it. And to the extent that my assessment  
6 was made based on the case law, and that I was not  
7 going to be arguing a case which was contrary to  
8 the decisions of the Manitoba Court of Appeal, and  
9 moreover, in this particular case, although I  
10 don't know the name of it right now because I  
11 don't have my case book in front of me, there was  
12 a case in the Court of Appeal just in the month of  
13 July, preceding this guilty plea, where the Court  
14 of Appeal dealt with only one issue, which was the  
15 suspension of the driver's licence, but there was  
16 no issue taken as to the conditional sentence  
17 being imposed by the Provincial Court. It struck  
18 me that this is a policy here where I understand  
19 it, but at the same time, in my view as outside  
20 counsel, needs to be balanced with the state of  
21 the law in Manitoba. And just because the policy  
22 says that they generally should not recommend it,  
23 when all of the research that I had available to  
24 me from Manitoba cases is telling me this is what  
25 is the appropriate sentence, there is a conflict.



1 And I chose to be guided by the appellate  
2 decisions directing the Provincial Courts, Court  
3 of Queen's Bench, on what was the appropriate  
4 sentence for these kinds of cases.

5 Q Sir, you would agree with me that  
6 there is a difference between acknowledging that a  
7 conditional sentence is not inappropriate, while  
8 arguing for a more serious sentence, given the  
9 special circumstances of your case, and engaging  
10 in a joint position advocating for conditional  
11 sentence?

12 A If my recommendation is in accord with  
13 the law, and that's what it was that I was being  
14 asked to consider, yes. And to the extent that  
15 the issue would be -- there are other issues as  
16 well, it would be not necessarily just a  
17 conditional sentence, but the length of the  
18 conditional sentence, is it going to be a 12 month  
19 conditional sentence, is it going to be 15 months,  
20 is it going to be 18 months, will it be two years  
21 less a day? Those are other factors as well. And  
22 in my conversations about this matter, though it  
23 wasn't canvassed with Mr. Wolson, who I was here  
24 for yesterday, I was insistent that this was going  
25 to be two years less a day, that would be the

1 Crown's position with respect to the duration of  
2 it, so that formed also part of the discussion.

3 Q Sir, if I can summarize your evidence,  
4 it is that you acknowledge that this policy is not  
5 in keeping with the decision you arrived at, but  
6 you made a decision to go with what you understood  
7 to be the appropriate legal sentence, rather than  
8 to harken to the policy, sir?

9 A That, and that I had experience as  
10 well in previous cases where, notwithstanding the  
11 policy, that the position argued was for a  
12 conditional sentence.

13 Q Do you know whether those cases, that  
14 you included in your book of authorities where  
15 conditional sentences were imposed, were cases  
16 where the Crown opposed those sentences consistent  
17 with this policy, or whether they were joint  
18 positions?

19 A I can't remember today, sir.

20 Q You would agree with me that the  
21 purport of this policy is to discourage what the  
22 government, the Department of Justice considers to  
23 be a form of sentencing that they judge not to  
24 reflect the denunciatory and deterrent impact of  
25 sentencing in those cases where someone has died

1 or suffered serious bodily harm. There is an  
2 attempt here to try and get prosecutors on the  
3 same page to take a stand against this kind of  
4 sentencing?

5 A Now, that may well be the purpose of  
6 the policy, however, in practice, the discussions  
7 amongst defence lawyers and Crown attorneys, and  
8 vice versa, is about the appellate decisions, as  
9 opposed to the policy.

10 Q Sir, you also noted in the policy that  
11 it is customary to require a case conference to be  
12 held if a prosecutor is thinking of trying to fit  
13 into one of the exceptional circumstances  
14 situations identified in the policy?

15 A That's how this would work for line  
16 Crown attorneys.

17 Q Yes. And I understand that that does  
18 create some awkwardness in the case of an  
19 independent Crown. We have had some explanation  
20 of what these Crown conferences are like and what  
21 is required. And given the importance of  
22 maintaining your independence, it would seem  
23 self-defeating to then go into a scrum of  
24 individuals who have to work with the Winnipeg  
25 Police Service on a daily basis and get their

1 approval ultimately for the position you are  
2 taking?

3 A I don't have that available.

4 Q You don't have it available to you.  
5 And I took it from your earlier response to the  
6 question about the adjournment issue, that you  
7 felt you would profit by having access to senior  
8 lawyers who could assist you, you could bounce  
9 ideas off of, and it is something that you like to  
10 do in your own firm in other contexts?

11 A Yes.

12 Q So there is room, I take it, for some  
13 type of policy or practice in place to assist  
14 independent prosecutors in accomplishing the same  
15 thing without compromising their independence?

16 A Two things -- can I add one more to  
17 that list?

18 Q Please?

19 A I know that they have in-house  
20 continuing legal education, like on specific  
21 topics, where they bring in a speaker, expert,  
22 police officer, whatever. I only know about them  
23 because of my relationship with the department.  
24 And I would think that it is probably a good idea  
25 to allow the independent counsel people, or to

1 invite them to come to those and not just to have  
2 those in-house. We don't get invited. I know  
3 they have them. It would be a good thing. I  
4 would hope that the Commissioner might recommend  
5 that -- that we, those of us who do independent  
6 counsel work, get invited to these sessions.

7 THE COMMISSIONER: You are faced with  
8 the situation, unlike Crown attorneys, where you  
9 really have nobody to talk to, to run your case  
10 by?

11 THE WITNESS: Yes.

12 THE COMMISSIONER: Do you have any --  
13 I have heard what you just said, but do you have  
14 any suggestion as to whether the Manitoba bar  
15 could provide a senior counsel to whom you could  
16 go and discuss these facts and get their views?  
17 Not that you have to follow them, but at least run  
18 it by them and see what they have to say?

19 THE WITNESS: Well, I know that --  
20 those who do this work discuss matters between  
21 themselves. The problem in Manitoba, sir, is that  
22 the bar is small. In order to --

23 THE COMMISSIONER: The criminal bar is  
24 small?

25 THE WITNESS: Yes. In order to -- my

1 view of the land, if I can call it that, is those  
2 of us who engage in this type of work are in firms  
3 where there are no other criminal lawyers, because  
4 of the possibility of conflict. And the other  
5 lawyers who do practice criminal law, the dynamic  
6 of Winnipeg is that they are generally in smaller  
7 boutique firms, or firms that do exclusively that  
8 type of work. So that I, who do this type of  
9 work, Mr. Abra, who did it, now judge of the Court  
10 of Queen's Bench, Mr. Knight, Mr. Murray, who I  
11 can think of off the top of my head, we are really  
12 sort of on our own, except for the ability to  
13 speak to ourselves. And it is for that reason  
14 that the type of conversation that goes on with  
15 Mr. Kaplan and Mr. Slough, that Mr. Paciocco has  
16 alerted me to and suggested to me might be  
17 inappropriate, is really where we end up going.

18 Now, it may not be correct, it may not  
19 be the right thing, but it is where we are at.  
20 Because we would be considered to be experienced  
21 lawyers ourselves, but I know from virtually every  
22 matter that we have in the office, whether it is  
23 family matters, corporate matters, we all talk to  
24 each other and try to help each other out.

25 THE COMMISSIONER: What is the

1 alternative to going to -- do you have a suggested  
2 alternative than going to Mr. Kaplan and  
3 Mr. Slough?

4 THE WITNESS: I don't think that that  
5 is in itself a bad idea. It is difficult I think  
6 to understand -- it is important, though, to make  
7 sure that they are not advising and instructing.  
8 And that's the most difficult part of trying to  
9 balance what is getting information and  
10 experience, from other cases on the policies, and  
11 making sure that the public does not think that  
12 there is a lack of independence, and that there  
13 really is no independence. Because in Manitoba,  
14 we are short on resources at that level, so we  
15 turn back to the client, or the department for  
16 that experience.

17 MR. PACIOCCO: Mr. Commissioner.

18 THE WITNESS: I don't know if that's  
19 helpful, but I hope it is.

20 MR. PACIOCCO: Mr. Commissioner, I'm  
21 about to move on to a new area and I notice it is  
22 3:29.

23 THE COMMISSIONER: Okay. We will take  
24 a 15 minute break.

25 Mr. Paciocco, before we rise, there

1 was a disclosure that I seem to have, in my mass  
2 of disclosures here, seem to have lost, or can't  
3 remember which one it is. And that dealt with the  
4 opinion that was given by Mr. Minuk to Mr. Kaplan  
5 and Mr. Slough. Do you remember which one that  
6 was?

7 MR. PACIOCCO: The opinion that was  
8 given to --

9 THE COMMISSIONER: Mr. Slough and  
10 Mr. Kaplan.

11 MR. PACIOCCO: Concerning?

12 THE COMMISSIONER: Regarding this  
13 case, I believe -- I think, it was in one of the  
14 books. There was a preliminary report and then  
15 there was a second report?

16 THE WITNESS: Yes, I know what it is.

17 MR. PACIOCCO: Okay. That was the  
18 December 20th explanation to Mr. Slough of the  
19 history of the case at a time when he was about to  
20 brief the executive.

21 THE COMMISSIONER: Do you remember  
22 what book it was?

23 MR. PACIOCCO: Not off the top of my  
24 head.

25 THE COMMISSIONER: Mr. McDonald is on



1 his feet helping again, and Mr. Green, both of  
2 them. I will take one at a time.

3 MR. McDONALD: Exhibit 143, volume  
4 R-2.

5 THE COMMISSIONER: Thank you.

6 MR. PACIOCCO: There are two versions  
7 of that document in there next to each other, one  
8 is a draft and the other is the final.

9 THE COMMISSIONER: That's what I want  
10 to look at. Thank you very much.

11 THE CLERK: All rise. This Commission  
12 of Inquiry is now in recess.

13 (Proceedings recessed at 3:30 p.m.  
14 and reconvened at 3:45 p.m.)

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

17 THE COMMISSIONER: Mr. Minuk, I'm  
18 having a little difficulty understanding something  
19 that was said earlier, maybe I misunderstood what  
20 you said, or your answer. But in your report to  
21 Mr. Slough, and in both reports, under the  
22 heading, B, "Could you provide a summary of the  
23 evidence of impairment," do you have that?

24 THE WITNESS: Yes.

25 THE COMMISSIONER: Number 3.

1 "After reviewing all of the statements  
2 no one officer could recall what it  
3 was that Mr. Zenk had to drink. Some  
4 officers themselves reported their  
5 impairment was such that they did not  
6 remember much of the evening."

7 Now when you say some officers  
8 themselves reported their impairment, are you  
9 referring to any particular statements that you  
10 had or personal discussions with some of the  
11 officers?

12 THE WITNESS: Discussion with the  
13 officers.

14 THE COMMISSIONER: Do you have any  
15 recollection of what officers they were?

16 THE WITNESS: Today, sir, I do not.

17 THE COMMISSIONER: Was there more than  
18 one?

19 THE WITNESS: I believe that -- well,  
20 that was certainly one of the impressions that I  
21 believe I had from Mr. Anderson.

22 THE COMMISSIONER: Mr. Anderson.

23 THE WITNESS: Yes. I'm trying to  
24 think back.

25 THE COMMISSIONER: Anybody else you

1 can recall?

2 THE WITNESS: It is possible as well  
3 that maybe Mr. Humniski indicated that to me. But  
4 today, sir, I -- certainly it is not as fresh in  
5 my mind today as it was at the time I was doing  
6 this because it was shortly after the -- there was  
7 a memo dated September 20, it was fresh in my  
8 mind, a year later I must say that --

9 THE COMMISSIONER: All right. Let me  
10 understand this: You made no notes of what they  
11 said?

12 THE WITNESS: Correct. But I met with  
13 them not long before that, in preparation. And it  
14 was the focus of essentially my work because of  
15 the -- I may have had other files on my plate, but  
16 none of this sort.

17 THE COMMISSIONER: Okay. Now, your  
18 memo is dated September the 19th, 2007, so it must  
19 have been around the time --

20 THE WITNESS: Right after court or  
21 shortly thereafter one of the court appearances, I  
22 believe. I don't have the dates.

23 MR. PACIOCCO: There is a court  
24 appearance on the 12th of September, which was the  
25 re-appearance to argue about whether the judge

1 should give effect to the joint position that had  
2 been put to him on the 22nd of August.

3 THE COMMISSIONER: Where did this  
4 discussion take place?

5 THE WITNESS: I met Mr. Anderson, I  
6 believe.

7 THE COMMISSIONER: Take your hand  
8 away --

9 THE WITNESS: I'm thinking, sorry,  
10 sir.

11 THE COMMISSIONER: I have the same  
12 problem. Go ahead.

13 THE WITNESS: I know that -- either in  
14 my office or on the phone, one of those two  
15 locations, because those were the places that I  
16 would have spoken to police officers.

17 THE COMMISSIONER: I see. Did they  
18 give you this information as a group, the two of  
19 them?

20 THE WITNESS: No, I met with them  
21 individually.

22 THE COMMISSIONER: You met with them  
23 individually. So your best recollection is that  
24 two of the officers, one --

25 THE WITNESS: Were describing the

1 activities of the other officers.

2 THE COMMISSIONER: I see. And one of  
3 them, at least Anderson, said that he -- that  
4 their impairment was such that they did not  
5 remember much -- his impairment was such that he  
6 didn't --

7 THE WITNESS: Yes.

8 THE COMMISSIONER: -- remember the  
9 evening. And the other one might have been  
10 Humniski?

11 THE WITNESS: Yes. Or provided  
12 information about others, but I can't remember  
13 today, sir, I'm sorry.

14 THE COMMISSIONER: Thank you, very  
15 much.

16 THE WITNESS: I'm very sorry.

17 THE COMMISSIONER: No, thank you. Go  
18 ahead.

19 MR. PACIOCCO: Just before we begin, a  
20 housekeeping matter, the document that is  
21 containing Mr. Gover's opinion that I put the  
22 proposition to this witness with has not formally  
23 been made an exhibit. I believe it will become  
24 exhibit 226. That would be the Y-2 tab C  
25 document.

1 (EXHIBIT 226: Y-2.A, Gover report  
2 Y-2.B Correspondence date March 26,  
3 2008 from Commission counsel to Brian  
4 Gover. Y-2.C Correspondence date June  
5 17, 2008 constituting Brian Gover's  
6 expert witness report)

7 BY MR. PACIOCCO:

8 Q I'm going to deal now with the  
9 resolution discussions that you ultimately engaged  
10 in with Mr. Wolson.

11 A Yes, sir.

12 Q Your evidence during the interview  
13 with Mr. Clifford was that you remembered it  
14 occurring, beginning to occur on the long weekend  
15 of July, the beginning of July. And you heard Mr.  
16 Wolson's evidence yesterday that he believed that  
17 the discussions began when he contacted you. And  
18 he contacted you, he believes, his best  
19 recollection was on the Thursday before the long  
20 weekend, sir, or the Thursday before the weekend  
21 of July 14th and 15th, so it would have been July  
22 the 12th.

23 A It may be. As I said, Mr. Wolson and  
24 I had a number of discussions over the period of  
25 time about that. And I may have mis-- I may

1 have -- not having had the calendar in front of me  
2 which I do look at subsequently, I may have  
3 confused the period of time.

4 Q We know that you had a docket dated  
5 July 10, 2000, to meet with Richard Wolson. You  
6 put in some seven hours on July the 10th, which  
7 would have been the Tuesday?

8 A Yes.

9 Q And that would be at least a recorded  
10 time for a fairly extensive preparation and  
11 discussion, or a fairly extensive discussion with  
12 Mr. Wolson, sir?

13 A Yes. At that particular time we had  
14 set out to do what we had effectively told Judge  
15 Meyers we would be doing, which was taking a look  
16 at all of the witnesses, what witnesses we thought  
17 were necessary. We were doing what -- that work  
18 which would be perhaps required now to identify  
19 what are the issues, what are the witnesses to be  
20 called, whether or not there was some agreements  
21 or not. And I recall in reviewing the material  
22 that I had written to Mr. Wolson about whether he  
23 was going to agree with certain things or contest  
24 certain things. And we would have discussed  
25 the -- how this case was going to be -- the order

1 of it.

2 Q So we can not take it that that would  
3 have been the beginning of your plea discussions  
4 with him. That was actually an attempt to try to  
5 narrow down the issues for the prelim?

6 A Yes, but at the same time he certainly  
7 would have -- and I know he didn't spare the  
8 opportunity to remind me of the problems of my  
9 case and that I should be thinking about it.

10 Q Then on the 11th of July you get a  
11 telephone call from him and he is calling you and  
12 your note says "re: police statements." And  
13 "email statements to Richard Wolson preparation  
14 for prelim?"

15 A Yes.

16 Q And then later on July the 12th you do  
17 have a notation which would be the Thursday,  
18 "telephone call with Richard Wolson, .30."

19 A Yes, I can probably better -- if you  
20 know the days of the week rather than --

21 Q Yes, that would be the Thursday that  
22 Mr. Wolson's best recollection was that he began  
23 his approach with respect to the possibility of a  
24 plea bargain?

25 A My recollection -- if you are



1 interested, I can tell you how I remember it  
2 unfolding.

3 Q Sorry?

4 A I can tell you how I remember it  
5 unfolding.

6 Q Yes, please do that.

7 A Which was that we had started these  
8 discussions on the Wednesday. Mr. Wolson had  
9 indicated to me that he would be meeting with his  
10 client on the Thursday in the afternoon. Then he  
11 called me, I would think, at the end of that  
12 meeting where he would have then put to me the  
13 position that his client was prepared to go along  
14 with. And that would have been later at the end  
15 of the day, because I knew that this was happening  
16 in the afternoon. And we had sort of had our  
17 discussion about, you know, that we had talked  
18 about earlier. I, in some ways probably believe  
19 now when I think about it, that Richard's -- Mr.  
20 Wolson's identification of the problems of the  
21 case earlier on in the week, he was sort of  
22 perhaps grooming me in his own way to know that he  
23 was going to be meeting with his client and  
24 feeling out the issues. And then he called me and  
25 told me I guess what his instructions were, and

1 left it for me to consider what to do about that.

2 And that's how the day would have ended.

3 I knew that he was expecting that I  
4 would consider this, and I also knew that on that  
5 very weekend, if it wasn't the Sunday, it might  
6 have been the Saturday that, and I can't remember  
7 if his client was still living in Winnipeg at the  
8 time or not, but he indicated to me that there was  
9 going to be a large meeting, if we could call it  
10 that, with his client and his family members and  
11 they were going to discuss the plea again and wait  
12 for my information. And that's how I recall it.

13 Q Okay. Sir, you then learned at the  
14 end of the day on July 12th, 2007, that he was  
15 probably going to have a client who would be  
16 willing to enter a plea to the dangerous driving  
17 charge, and I understand from your evidence that  
18 it would be in exchange for a conditional sentence  
19 and the staying of the other charges?

20 A Yes.

21 Q You -- we will come back to that plea  
22 bargain content shortly, but I understand that you  
23 that evening contacted Mr. Kaplan. I think you  
24 may have shortchanged yourself on your accounts,  
25 because I couldn't find a reference to it in the

1 dockets. But you contact Mr. Kaplan in the  
2 evening at his home and you indicate to him that  
3 you think that this plea might come down. And the  
4 reason I'm putting that to you, sir, and I will  
5 share it with you now, it is a document that's  
6 found in book R-4, at page 3401.22. Book R-4,  
7 page 3401.22. And what you are going to find when  
8 it is ultimately put in front of you, sir, page  
9 3401.22 of volume R-4. Is that the entire R-4 in  
10 one exhibit form? And it has been put in as what  
11 exhibit, ma'am?

12 THE CLERK: Exhibit 48.

13 BY MR. PACIOCCO:

14 Q It is exhibit 48, already entered.  
15 And if you can turn to 3401.22, you should find a  
16 memorandum from Brian Kaplan to Don Slough dated  
17 July 13th, 2007. Is that what you have in front  
18 of you, sir?

19 A Yes.

20 Q And you see that there is a record  
21 recorded by Mr. Kaplan that he says:

22 "This is the East St. Paul case which  
23 was assigned to Marty Minuk two years  
24 ago. You will recall all of the  
25 issues dealing with the investigation

1 and evidentiary problems."

2 Clearly disclosing that there had  
3 been, as you indicated in your earlier testimony,  
4 some discussion on your part with these gentlemen  
5 about the problems you were having with this case,  
6 it continues:

7 "I received a call from Marty Thursday  
8 evening, July 12th, at home. The  
9 matter is set for preliminary hearing  
10 starting July 16. Richard Wolson QC  
11 is counsel. Marty informed me that he  
12 was touching base to indicate that he  
13 believed Zenk was prepared to plead  
14 guilty to drive dangerous cause death  
15 for an agreed upon joint  
16 recommendation for a conditional  
17 sentence. I said initially I wanted to  
18 sleep on it and arranged to meet him  
19 early Friday morning so he could  
20 provide all of the background on his  
21 opinion. We spent approximately an  
22 hour, wherein it was his view that  
23 this should be accepted based on the  
24 available evidence, exigencies of the  
25 police investigation and the provable

1 facts."

2 Does that refresh your memory to see  
3 it recorded in that fashion by Mr. Kaplan?

4 A Yes. I knew that I had spoken to him,  
5 and I can tell just from the next day that I met  
6 with him in the morning. I met with him, it is my  
7 first time entry that day. So I would have had to  
8 call him --

9 Q Do you recall what was said during  
10 that conversation that you had with him, sir?

11 A At home?

12 Q Yes, the phone call.

13 A Other than I would have told him that  
14 information I received from Richard, and that I  
15 wanted to let him know where we were with this and  
16 that if he thought it was necessary to meet, that  
17 I could meet with him the next day.

18 Q Okay. And, sir, if you could just  
19 come a little closer to the microphone it would be  
20 helpful for all of us.

21 A Sorry.

22 Q And did you, in fact, meet with him  
23 the next day?

24 A Yes, sir.

25 Q And you have that docket as well.

1 Where was the meeting held?

2 A Might have been at his office. I  
3 don't recall. It was not at my office.

4 Q And do you recall whether you brought  
5 your file with you?

6 A I don't have that information. I  
7 don't recall, sir.

8 Q Do you recall whether you had any  
9 documents setting out the state of your case to  
10 assist Mr. Kaplan, sir?

11 A I don't recall. I do not recall  
12 today. I would have assumed as well, and believe  
13 as well that they retain a copy of everything that  
14 I get as well.

15 Q All right. What do you know them to  
16 have a copy of?

17 A The disclosure that would have been,  
18 I'm assuming, provided initially by the East St.  
19 Paul Police. I would have hoped that any other  
20 information that had come along would get to them  
21 as well. I don't know their full filing system.  
22 And I don't know if they copy and send things to  
23 me directly. Never really sort of entered into  
24 that area. But I've always assumed that they  
25 would keep a copy of what it is that they sent me.

1 Q And we saw earlier from one of the  
2 correspondence that it appears that they did  
3 receive a copy of Sergeant Carter's letter of  
4 April 25th that you had him put together?

5 A Yes.

6 Q And you put that together because you  
7 felt that a written report for such an important  
8 matter was a significant assistance in accurately  
9 recording the information?

10 A Yes.

11 Q Did you prepare a report to Mr. Slough  
12 and Mr. Kaplan with respect to the circumstances  
13 and influences that were at play in causing you to  
14 recommend --

15 A I wasn't asked to do that. I was  
16 asked to come and have a chat with Mr. Kaplan and  
17 talk to him. And had he requested a report on  
18 that, I would have done that, but that wasn't the  
19 request that was made of me. It was to come and  
20 talk.

21 Q Okay. So he had requested that you  
22 come and speak to him about it?

23 A Yes.

24 Q Now I notice that he indicates that in  
25 his letter -- he says:

1           "The Friday meeting allowed a better  
2           understanding of outside counsel's  
3           position and his recommendation that  
4           the offer should be accepted. I  
5           advised that I wanted to run the  
6           background by a couple of senior  
7           Crowns for their opinion. I gathered  
8           who I could in the form of Zane  
9           Tessler and John Peden. All of us  
10          agreed that it was the best one could  
11          hope for in the particular  
12          circumstance of the case."

13           Were you present at the meeting with  
14          Zane Tessler and John Peden?

15           A     No, I didn't even know until now that  
16          this meeting was held.

17           Q     So any --

18           A     I didn't know who -- I didn't know. I  
19          wasn't there.

20           Q     So any impression that might have been  
21          created by reading this, that this might be  
22          somehow the informal equivalent to the type of  
23          meetings that regular Crowns have when discussing  
24          cases, case conferences, that's just not what took  
25          place?



1           A     No, sir, I never met ever with Mr.  
2     Tessler or Mr. Peden about this file or anybody  
3     else in the department other than Mr. Kaplan and  
4     Mr. Slough, that's all.

5           Q     So you basically made an oral report  
6     to Mr. Kaplan about the reasons why you felt that  
7     you should recommend this deal?

8           A     Yes. That's what he had asked for.

9           Q     Do you recall whether the prospect and  
10    implications of going ahead and potentially having  
11    to have police officers from the Winnipeg Police  
12    Service testify for the defence came up?

13          A     Well, I don't know if it came up in  
14    that context, but it certainly would have come up  
15    in the context of my indicating to him that the  
16    likelihood of calling these police officers for  
17    the prosecution was not going to be helpful, and  
18    that limiting them to putting him in certain  
19    places and identifying at certain places, it could  
20    be useful, but after that there would be, in the  
21    teams of officers, all saying that he -- giving  
22    evidence which would not be favorable to the  
23    prosecution, there would be no reason to call them  
24    and that they would likely be called by Mr. Wolson  
25    and we would only have the opportunity to

1 cross-examine them, if in fact he even needed to  
2 call them.

3 Q Was there any sense of when you had  
4 this discussion of any discomfort of the prospect  
5 of having you cross-examine Winnipeg Police  
6 Service officers?

7 A No, not at all.

8 Q No discussion about potential  
9 political problems or embarrassment arising out of  
10 this case?

11 A No, not at all.

12 Q And there was ultimately this meeting  
13 which you've learned about for the first time  
14 today by reviewing this, between Mr. Zane Tessler  
15 and John Peden and Mr. Brian Kaplan, and Mr.  
16 Kaplan gets back to you and he says:

17 "Marty was advised to deal with the  
18 husband of the deceased in explaining  
19 all circumstances at his arranged  
20 meeting Friday."

21 And it goes on, and essentially  
22 indicates that there is no problem on the part of  
23 Mr. Kaplan with this deal. It goes on the  
24 assumption that it is going to take place, right?

25 A Yes. And I'm assuming that if there

1 was some issue in the prosecution branch that I  
2 might be doing something which was against the  
3 policy which was sort of not something which they  
4 thought I should be doing, that they would have  
5 brought me back, they would have told me no, you  
6 shouldn't do this.

7 Q Okay. So they would have told you no,  
8 you shouldn't do that?

9 A But at the same time I think I would  
10 have had the opportunity to respond to that. But  
11 ultimately I know that if they really believed and  
12 took the view that I was completely off base, I  
13 would suspect that I would be removed from the  
14 file and that they would assign it to someone  
15 else.

16 Q So you were effectively vetting your  
17 position with Mr. Kaplan?

18 A Well, I was telling them what I was  
19 doing, I was informing them of it. I don't know  
20 if I was getting their approval necessarily. I  
21 was telling them where we were going, where this  
22 file was going, telling them, as I thought I was  
23 obliged to do. And I believed that, as I read  
24 this, it seems to me that Mr. Kaplan was  
25 determining whether or not I should be let alone,

1 so to speak, to carry on with this matter, or if I  
2 was so off base that others -- I should be removed  
3 from it. That's what I suspect would happen.

4 Q And you brought it in there knowing  
5 that was one of the possible reactions that your  
6 position could promote?

7 A If I was removed from a file because  
8 they thought I was doing the wrong thing, I would  
9 always expect that.

10 Q Yes. So you were effectively vetting  
11 it, were you not, sir?

12 A I don't know vetting -- I wasn't  
13 really seeking their approval in a way.

14 Q How is that consistent with the answer  
15 that you just gave, sir, that you knew if they  
16 felt you were off base, they would say no, you  
17 shouldn't do this, and if you persisted, they  
18 would remove you from the case? Is that not a  
19 process of trying to clear that hurdle, a process  
20 of seeking their approval?

21 A I understand that it seems  
22 contradictory.

23 Q Yes.

24 A I am with you on that. But I don't  
25 know -- this is the process that we have followed

1 on matters, it was what I was, I believe, required  
2 to do, tell them what I was doing, keeping them  
3 informed. And certainly one may read this that,  
4 if not being pulled from the file means that they  
5 were approving, I think it is also to me a sense  
6 that they may disagree, but if I could justify the  
7 case and it was not so, that they had to pull it  
8 away from me, that they might disagree but --

9 Q You would have to sell it to them?

10 A Right.

11 Q Sir, you can understand, I take it,  
12 based on the answers that you have just given, how  
13 Mr. Wolson put in his memo that came up yesterday,  
14 found at tab S-100, 3501, that you indicated to  
15 him that you had vetted this with Mr. Kaplan and  
16 Mr. Slough?

17 A Well, that was his language, but I  
18 think that the process is -- it is not the best  
19 process, Mr. Paciocco, it lends itself to these  
20 kinds of issues of appearance of conflict, I agree  
21 with you. And it is similar to issues we've  
22 discussed. And I'm reporting to them, I know  
23 ultimately I can be pulled, I'm not expecting  
24 their approval, they are in a direct sense --

25 Q But, sir, the question to you was

1 this: You understand, given the explanation  
2 you've provided us, why Mr. Wolson would use the  
3 term "vetted" in his notes?

4 A Oh, yes. Yes, I understand that. And  
5 I do understand how it is not a good process that  
6 lends itself to misunderstanding and confusion,  
7 and there could be a better way.

8 Q And you also indicated that vetted was  
9 his word, and I know he wasn't prepared or able to  
10 indicate where that word came from, so he wasn't  
11 going to attribute it to you.

12 A No. Okay.

13 Q But let's look at your words, sir? Do  
14 you have the transcript in front of you of the  
15 interview with Mr. Clifford?

16 A I don't have anything in front of me.

17 Q It is on its way. This is transcript  
18 T7B.

19 A Which page are you at?

20 Q I'm about to take you to page 63. As  
21 soon as the lawyers have had the time to catch up,  
22 we will look at the relevant passage, page 63,  
23 lines six through to 11.

24 A Yes, I see that.

25 Q "Now, would you have vetted this

1 resolution with Mr. Kaplan or  
2 Mr. Slough?

3 A Absolutely.

4 Q Prior to speaking to the family  
5 about it?

6 A Absolutely."

7 And I know those words came out of  
8 Mr. Clifford's mouth, but you would agree with me  
9 that the "absolutely" is a pretty strong  
10 affirmation of the suggestion that you vetted the  
11 resolution, sir?

12 A I see that. It certainly wasn't what  
13 I intended by making that comment and I don't --  
14 they don't vet what I do. And that's -- they have  
15 never vetted what I've done. They hear about it,  
16 I inform them about what it is that I'm doing, and  
17 they reserve the right, as I understand it, to  
18 remove me from files. And we can agree to  
19 disagree.

20 Q If you agree to disagree, you are  
21 removed from the file, I take it?

22 A No, we can agree to disagree if the  
23 action would not be so outlandish that they may  
24 think -- we may have a different opinion, but if  
25 it is within a range or within the parameters, we

1 can disagree and I can go do what I want to do  
2 because I have the independence. But if it is at  
3 a certain point on the continuum, I would think  
4 over the end, then --

5 Q I know you are not responsible for the  
6 language used by Mr. Kaplan, but his memo talks  
7 about recommendation from you, and him wanting to  
8 sleep on it, and all of us agreeing. It just  
9 looks like far more than a simple information  
10 session, sir.

11 And you would agree with me that part  
12 of that process is you go there with your input,  
13 your recommendation, and they might well influence  
14 you to come to a different position. They might  
15 talk to you and suggest that it is not a good idea  
16 and you might change your mind?

17 A That would require me, if I disagree  
18 with them, to hold my ground.

19 Q And if you were persuaded by their  
20 positions, or you were prepared, because you  
21 didn't feel strongly about it, you might change  
22 your position, sir?

23 A Yes, but I may also in the process of  
24 the discussion realize that I'm bringing a limited  
25 perspective to something, and without the benefit



1 of speaking to people about it, that I don't have  
2 a clear vision, and talking to people about it  
3 will allow me the opportunity to clarify or, you  
4 know, to focus my vision, to widen my perspective,  
5 whatever it might be. So there is a handicap in  
6 it, yes. But I don't think the handicap is for  
7 the purpose of them interfering, it would be for  
8 either narrowing or broadening my focus.

9 Q It is a full-blown consultation?

10 A It is giving me information.

11 Q It is a full-blown consultation?

12 A I consider it to be what would be  
13 talked about as the case conference more than  
14 anything.

15 Q And you know that in a case conference  
16 that the Crown bringing the case forward has to do  
17 what the case conference decides?

18 A Yes, but I don't think that I'm  
19 obliged to do that.

20 Q Subject to limits?

21 A Yes.

22 Q You say in this interview with  
23 Mr. Clifford that -- he asks you at line 12 of the  
24 same page, page 63:

25 "And what was their reaction to your

1 proposed resolution?

2 They like, they were fine with it, I  
3 didn't -- I didn't hear any  
4 negativity."

5 So, you were satisfied at the end that they were  
6 okay with what you were doing, and that emboldened  
7 you to go ahead with the arrangement that you had  
8 proposed and recommended to them, sir.

9 A Well, I certainly knew I wasn't being  
10 pulled off the file, so one would infer that.

11 Q The note from Mr. Kaplan says that you  
12 were advised to deal with the husband of the  
13 deceased in explaining all of the circumstances at  
14 his arranged meeting Friday morning; correct, sir?  
15 It is the long document, you were at 3401.22?

16 A Yes, I have that. Sorry, I just  
17 closed it up.

18 Q That's fine, sir. 3401.22?

19 A Yes.

20 Q I'm reading from the third last  
21 paragraph on the page:

22 "Marty was advised to deal with the  
23 husband of the deceased in explaining  
24 all circumstances at his arranged  
25 meeting Friday morning."

1 Is that accurate, sir? Do you accept and affirm  
2 that that is advice that you were given?

3 A Yes, he told me to meet with the  
4 family, yes.

5 Q And to explain?

6 A Explain the circumstances, yes.

7 Q And it says "explains all  
8 circumstances," right?

9 A Well, he told me to meet with the  
10 family and explain the circumstances. I don't  
11 know if he used the phrase "all," but I'm not  
12 disagreeing with this.

13 Q Yeah. And he took the pains to record  
14 that term. He doesn't just say "the," he says  
15 "all," right?

16 A Yes, I agree.

17 Q And you don't take issue with that?

18 A No.

19 Q The next:

20 "Marty also informed the parents of  
21 the deceased, who I understand do not  
22 see eye to eye with their son-in-law,  
23 (husband of deceased) about many  
24 issues."

25 So according to Mr. Kaplan's note, you are telling

1 him that you have informed the parents of the  
2 deceased, that would be the Sveinsons?

3 A Um-hum.

4 Q It is clearly a reference to the  
5 resolution that you are recommending, sir?

6 A I don't see that, I didn't inform them  
7 about the resolution that I had recommended before  
8 I told Mr. Taman about that.

9 Q That's one of the things I was  
10 wondering about, sir. What did you tell  
11 Mr. Kaplan about the parents of the deceased,  
12 because he has recorded here "Marty has also  
13 informed the parents of the deceased"?

14 A "About many issues."

15 Q So in the context of a memo about a  
16 specific resolution, your interpretation is that,  
17 and I will have to ask Mr. Kaplan this, but your  
18 interpretation is that they were informed about  
19 many issues?

20 A I didn't inform them about the plea  
21 resolution. I wouldn't have informed them before  
22 I informed the Tamans.

23 Q You couldn't have, sir, because you  
24 hadn't met with them since May of 2006?

25 A I wouldn't have, and my discussions

1 with the Sveinsons were surrounding the letters  
2 that had been written by them. That's all it was.

3 Q Okay. And I don't want you to  
4 speculate about this, but if you do have any  
5 information you can give the Commissioner as to  
6 how Mr. Kaplan may have formed whatever impression  
7 he had to cause him to record that, do you know  
8 what it might have been?

9 A The only thing that I can think of is  
10 that Mr. Kaplan knew historically that I had met  
11 with these people, that is the Sveinsons, after  
12 they had written their letters, because I told  
13 him, as I indicated earlier today, I believe, that  
14 rather than writing to them, I thought that  
15 meeting them in person to talk about issues raised  
16 was a better way to go about it than writing them  
17 a letter.

18 Q Yes.

19 A But that --

20 Q At the bottom of the letter, sir, he  
21 records:

22 "My understanding from Marty is that  
23 due to the nature of the case and the  
24 position of the accused, former WPS,  
25 that the Chief Judge has agreed to

1 handle the plea and sentence."

2 Is that an accurate capture of what you would have  
3 told Mr. Kaplan with regards to the Chief Judge's  
4 involvement, sir?

5 A It is possible that I told him that.  
6 And that would be because the practice, until this  
7 particular case, was to call to the Chief Judge's  
8 office to inform him about particular cases, where  
9 I understand they had been in receipt of alerts  
10 about, which would be these types of cases, police  
11 officers, children of persons involved in the  
12 judicial system. And because the calls would come  
13 either from his assistant, or sometimes the Chief  
14 Judge himself may have contacted me about these  
15 things to ask where they were, and whether or not  
16 judges needed to be brought in from out of town or  
17 whatnot. And in that practice, it was likely  
18 discussed with Mr. Wolson that we would contact  
19 the court. And because I had recently, I don't  
20 know how recently, but I had been involved in a  
21 matter involving a police officer that Judge Wyant  
22 had presided over the sentencing of, that we would  
23 inform him of this and determine whether he would  
24 be presiding over this or not.

25 Q I think I understand your position is

1 that because this is a police officer, it may look  
2 better from appearances to bring in an outside  
3 judge, so you contact him and he ultimately  
4 decides he will hear it himself?

5 A He is the senior judge of the court  
6 and he will make those decisions about whether it  
7 will be handled internally or externally.

8 Q Yes. In the midst of your  
9 negotiations, the 13th, you have a meeting with  
10 Robert Taman. You called him on the evening of  
11 the 12th?

12 A Yes.

13 Q You have discussed it very briefly  
14 with Mr. Kaplan. The next day you meet with  
15 Mr. Kaplan, it is the first order of business.  
16 And then subsequently you meet with Robert Taman,  
17 correct?

18 A Yes.

19 Q That meeting had already been set up  
20 by Lesley McCorrister, so this wasn't a meeting  
21 that had been established for the purposes of you  
22 discussing the resolution of the case with him?

23 A Yes.

24 Q In fact, Mr. Taman started asking for  
25 this meeting on the 12th of June, 2007. He was

1 looking for information, because the preliminary  
2 was once again approaching. And Lesley  
3 McCorrister writes to you on that same date,  
4 June 12th, 2007. And there is no response by you  
5 by July 3rd, 2007. And she contacts you again.  
6 And you finally write back to her on July the 9th,  
7 2007. So it takes almost a month from the time  
8 she indicates to you that Mr. Taman wants to meet  
9 with her until you ultimately do. And I realize  
10 that this was more than a year ago, a little over  
11 a year ago, sir, but are you able to explain why  
12 the delay in agreeing to that meeting?

13 A I was in a six-week trial and would  
14 not have had time to meet, I was in court every  
15 day.

16 Q You would have time to respond and  
17 say, I can't meet until such and such a date,  
18 would you not, sir?

19 A Yes, I would have had a chance to  
20 respond to her email or make a phone call. I  
21 don't remember if I did or didn't.

22 Q But the email trail suggests that you  
23 didn't, sir. But besides that, were you aware  
24 that Mr. Taman had written to Ms. McCorrister on  
25 that date, June the 12th, indicating that he



1 didn't want any surprises? That was one of the  
2 things he said in his letter, sir.

3 A No.

4 Q And by this time you were aware that  
5 the Tamans were opposed to a plea bargain  
6 settlement to this case, it was not something that  
7 they wanted?

8 A Perhaps.

9 Q You don't have any notes of the  
10 meeting?

11 A No.

12 Q And any suggestion that the junior  
13 lawyer, or the woman who sat in on the other  
14 meeting, who we also understand from your docket  
15 sat in on this meetings, took notes, would be  
16 erroneous?

17 A If she would have taken notes, I  
18 reviewed that with her, and she did not.

19 Q What did you tell the Tamans at this  
20 meeting? You had Robert there and you had Jordan  
21 there. What did you tell them?

22 A This is the July the 13th meeting?

23 Q Yes, it is.

24 A I would have brought them up to speed  
25 on the discussions that I had had just recently

1 with Mr. Wolson, which would be been within less  
2 than 24 hours of that, and that the case looked  
3 like it was going to be resolved, or at least  
4 heading toward a possible resolution of the case  
5 in that the accused would plead guilty to  
6 dangerous driving.

7 Q And their recollection is a little bit  
8 different than that. They testify that you told  
9 them you were staying all of the charges other  
10 than the dangerous driving charge, because you  
11 didn't have evidence to prove them because East  
12 St. Paul had "screwed up" the investigation was a  
13 term they used. Is that possible that you told  
14 them you were staying the charges because East St.  
15 Paul had screwed up the investigation?

16 A Well, it is possible that during the  
17 course of the discussion about the matters that  
18 they needed to be told about, that the topic came  
19 up. I don't know if I said it in those very  
20 words, but certainly I would have told them that  
21 the case, in my view, had been compromised and  
22 that there were difficulties as a result of the  
23 investigation.

24 Q Did you tell them what those  
25 difficulties were, sir?

1           A     No, sir, I did not review with them.

2           Q     What did you understand Mr. Kaplan to  
3 mean when he suggested that you explain all of the  
4 circumstances to them?

5           A     I didn't understand that. I  
6 understood that to mean the -- not the legal  
7 issues involved in determining the issues, because  
8 I didn't think that would necessarily be something  
9 that would be expected of me to do, to explain to  
10 non-lawyers all of the charter issues, or the  
11 charter issues that arise, the admissibility  
12 issues that arise, the criminal code issues. I  
13 didn't understand that I was required to give them  
14 the legal issues that I was confronted with.

15          Q     Sir, did you not feel it might be  
16 helpful to their understanding of what was  
17 happening to try and explain that to them as best  
18 you could?

19          A     Maybe so.

20          Q     The evidence is that Robert Taman  
21 broke down. He said this information knocked the  
22 wind out of him. He was terribly upset by this.

23                 He also indicated, sir, that you never  
24 mentioned the resolution discussions, or a plea,  
25 that you were simply telling him that those three

1 charges were going to be stayed and that you were  
2 going ahead with the dangerous driving charge,  
3 sir. Does that possibility exist, given your  
4 recollection of that meeting?

5 A Well, no, it doesn't, sir, because I  
6 was carrying on preparing for the preliminary  
7 inquiry. I had an indication only that  
8 Mr. Wolson's client was considering this. And  
9 there was no -- there was no guarantee of that. I  
10 just don't see that that was the dynamic of that  
11 day. I wouldn't have told him that because that  
12 wasn't the case.

13 Q Sir, aren't those all reasons why you  
14 would have told him that? You wouldn't have told  
15 him that there is going to be a plea to the  
16 dangerous driving because that's not been put to  
17 bed yet?

18 A Correct.

19 Q And what you are telling him is you  
20 are proceeding with the dangerous driving and you  
21 are staying the other charges?

22 A No, I was proceeding with everything.  
23 At that point there would be no reason not to be  
24 proceeding. Why would I -- I wouldn't tell him  
25 that I wasn't going to be proceeding, there would

1 be no reason to do that. This was a preliminary  
2 inquiry. The issue was whether or not there was  
3 sufficient evidence for a committal. And  
4 notwithstanding the legal issues that I was aware  
5 of, I didn't -- as I told you earlier today, I was  
6 still, until the plea was entered, intending on  
7 proceeding with the preliminary inquiry. So,  
8 unless he misunderstood me, I would never -- I  
9 wasn't telling him that because that wasn't the  
10 state of affairs.

11 Q Sir, he gave, and Jordan gave fairly  
12 detailed evidence about a confrontation in which  
13 Mr. Taman indicated to you very clearly, he didn't  
14 agree with the staying of these charges, and he  
15 wanted you to know that he didn't want the alcohol  
16 charges out. And he testified that he told you  
17 that he would rather go to court and have him  
18 found not guilty than to put away those  
19 alcohol-related charges. Would you comment on  
20 that please, sir?

21 A He may well have said that, that he  
22 wanted the case to proceed. But at that point in  
23 time, their case was still proceeding, and if he  
24 did say it, he would have said it in the context  
25 of the potential that Mr. Wolson's client was

1 going to be pleading guilty to dangerous driving,  
2 and wanted the Crown to reject that offer, so to  
3 speak, and continue to proceed with the case.

4 Q Sir, your description of him, and you  
5 didn't say this overtly, but you didn't feel it  
6 was your job to explain the technicalities of the  
7 law to him, so you must have had some sense that  
8 maybe it would have been lost on him, but at the  
9 same time, you are attributing to him now  
10 sufficient sophistication that he susses out a  
11 possibility of a plea to a dangerous and the other  
12 charges being stayed. Why would he do that, sir?

13 A I don't know.

14 Q His evidence only makes sense if he is  
15 told those charges are going to be stayed?

16 A But I did not tell him that, sir.

17 Q He indicates that you suggested that a  
18 conditional sentence was the likely sentence and  
19 took out a case book and began to show him  
20 precedents from it. Does that ring any bells with  
21 you, sir?

22 A If I did do that, sir, it would have  
23 been in response to a question that he would have  
24 put to me, or I may have suggested to him. And  
25 the reason I would have done that is to at least

1 satisfy him that there was some basis to be doing  
2 this and that it was not completely out of  
3 proportion to what was going on.

4 Q You would have been doing it because  
5 this was the deal that you thought was very likely  
6 to happen at this point. You already had approval  
7 from Mr. Kaplan, and you had expectations when you  
8 approached Mr. Kaplan that Mr. Wolson would do  
9 this, and you were laying the groundwork for the  
10 conditional sentence that you were about to go in  
11 and make a joint submission for?

12 A I think that I may have talked about  
13 conditional sentences and these types of driving  
14 offences when I first met with him. I know that I  
15 did that with the Sveinsons. It is always  
16 something which was on my mind because, in  
17 speaking about it, having been involved in these  
18 matters before, the people involved in the case  
19 have a very difficult time reconciling the law, or  
20 the decisions of the Manitoba Court of Appeal with  
21 what they think personally is appropriate.

22 Q In fact, he said to you, he told you  
23 directly that he wanted a sentence of jail and  
24 that he felt that three to five years was  
25 appropriate, and that you should be asking for a

1 sentence of jail. Do you remember that, sir?

2 A I don't recall him setting out a term,  
3 but he may have said jail, which I would of course  
4 then in return explain to him that conditional  
5 sentence is a jail sentence predicated -- it is a  
6 jail sentence. It is two years less a day, or  
7 some variation thereof, in a Provincial  
8 institution. I would never have left someone with  
9 an impression that a conditional sentence is  
10 something other than a period of incarceration and  
11 the issue is where will that incarceration be  
12 served.

13 Q You drew the distinction before  
14 between real jail and conditional sentence?

15 A Yes.

16 Q Surely, lay people understand that  
17 distinction too, sir? Would you not agree with  
18 that? You don't really think that an explanation  
19 to someone who has lost their wife and is seeking  
20 a sentence that they believe is fitting is going  
21 to simply accept, if you say to him, well, it is  
22 really a jail sentence, they just don't go to  
23 jail?

24 A If it's too legalistic for the  
25 circumstances, it might be, but that's what I



1 would do.

2 Q You never told him that you were  
3 recommending a conditional sentence at this point  
4 because you still hadn't fully put the thing to  
5 bed?

6 A I had nothing put to bed at that  
7 moment.

8 Q Sir, they also indicated that you told  
9 them that the dangerous driving charge was the  
10 most serious of the charges?

11 A No.

12 Q In fact, Jordan described, using his  
13 hands, how you showed in relative terms that this  
14 was the greatest of all of the charges. Do you  
15 disagree with that, sir?

16 A I don't recall saying that, and I  
17 would have taken them through what the penalties  
18 were for each of the -- or described to them  
19 generally what the penalties were. And in the  
20 context of what I recall, there was a lot of  
21 discussion, always was, about the refusal charge  
22 and the importance of the refusal as being  
23 evidence of impairment.

24 Q Yes?

25 A And I would have explained to them

1 that because somebody refuses the breathalyzer, it  
2 is not proof of their impairment, which is  
3 difficult to reconcile for some people. And also  
4 that if there was any discussion about penalty in  
5 so far as dangerous driving is concerned, it would  
6 be certainly in the context of refusal, which  
7 would be a greater penalty than the refusal would  
8 have brought with it.

9 Q Sir, you would agree with me that  
10 dangerous driving is not the most serious of the  
11 offences that Mr. Harvey-Zenk faced?

12 A Correct.

13 Q And you know, the thing is that not  
14 only did Jordan show this by demonstrating with  
15 his hands, how you explained it, Robert says that,  
16 it is a good thing, you claimed, you are going  
17 ahead with dangerous driving, because it is the  
18 most serious of all charges. So both of them are  
19 giving the same account, sir.

20 A That's not my recollection, sir.

21 Q The Sveinsons also take the position  
22 that you told them that the dangerous driving  
23 charge was the most serious charge. And I'm going  
24 to show you a document, sir, this one is in book  
25 O.81.a.7, page 2136 in book O.

1                   You will not have seen this letter,  
2    sir, dated August 25th, 2007. And it is a letter  
3    to Minister Chomiak. At the bottom of the first  
4    page of the letter, you will see in the last five  
5    lines an indication by the Sveinsons that reads as  
6    follows:

7                   "Mr. Minuk was also not above lying to  
8                   us when we asked about this plea  
9                   bargain. He insisted that the  
10                  dangerous driving charge was a much  
11                  more serious charge than the impaired  
12                  charges were."

13   Do you see that, sir?

14                  A     Yes.

15                  Q     It is certainly consistent with the  
16    testimony that the Tamans are giving, and you are  
17    aware, sir, that these people were not even  
18    communicating at the time that that letter was  
19    written and the time of your meeting?

20                  A     Well, that I don't know, and I don't  
21    agree with what it is that they say I'm lying  
22    about.

23                  Q     And I know that's a hard word, and I'm  
24    not standing here endorsing it, sir, but the  
25    dangerous driving proposition as being the most

1 serious offence --

2 A Not correct, and I wouldn't have said  
3 it or lied about it.

4 Q What was the atmosphere like during  
5 that meeting with the Tamans?

6 A Mr. Taman was upset, I'm aware of  
7 that. He was -- and upset to the extent that I  
8 could never ever be sure that he was getting the  
9 full import of the explanations that I was  
10 providing to him.

11 Q And his son wasn't as upset as he was,  
12 he was giving some comfort to his father?

13 A I can't deny that.

14 Q And sir, he, Robert Taman told us that  
15 after you, and he attributes this to you, and I  
16 know again what your position is, after you said  
17 that East St. Paul screwed up, he said to you,  
18 "everybody screwed up right up into your office."  
19 And his evidence and the evidence of his son was  
20 that you sat back and stared him down, and you  
21 said, "I suggest you choose your words carefully  
22 in this office." Do you have any recollection of  
23 that conversation, sir?

24 A If I said it to him, which I don't  
25 really recall today, it would have been sort of --

1 reflects a remark almost that Mr. Taman was  
2 challenging my integrity and that I had done  
3 something to screw up this case, which I believe I  
4 had not and, moreover, was at that point either  
5 prepared to put the case in, or if not, had a  
6 possibility of resolving a case which may fall  
7 apart.

8 Q Sir, Jordan claims that he asked you  
9 outright if you were dropping these charges  
10 because of a plea bargain, and you weren't  
11 answering him, and he pushed you on it. And you  
12 then said, no, it is not. Do you recall that  
13 discussion?

14 A No, I don't recall that, and we  
15 weren't at that stage anyways. It was not a fait  
16 accompli at that point, so I couldn't have held it  
17 out to be a fait accompli. It was to inform them,  
18 as I believed I needed to inform them, of what the  
19 offer was that had come forward that was being  
20 considered.

21 Q Sir, would it not be the case that  
22 that is consistent with your position that it is  
23 not a fait accompli, when he is asking you, are  
24 you dropping these charges because of a plea  
25 bargain, and you say, no, it is not? Isn't that

1 consistent?

2           A     I don't recall having that  
3 conversation with him. And I didn't tell him,  
4 sir, that I was dropping charges, or any of them,  
5 because at that point we were proceeding to the  
6 preliminary inquiry, and what was out there,  
7 unresolved, was whether or not Mr. Wolson's client  
8 was going to plead guilty.

9           Q     Yes. And Jordan also said that he put  
10 it to you, look, if you can prove the dangerous  
11 driving -- and I said earlier that their position  
12 on your view on the dangerous driving was  
13 consistent with the position that you put to the  
14 judge, that you could prove that charge -- let me  
15 put it to you, if you can prove that, why not just  
16 run the case, why not run all of the charges, why  
17 not just do that and go in and ask for an  
18 appropriate sentence, rather than giving into this  
19 plea bargain that they were adamantly opposed to?

20           A     Well, I believe, sir, that there is  
21 two aspects to the function. One is to consult  
22 with the victims, as I'm required to do under the  
23 Victims' Bill of Rights. And there is an  
24 overriding function, which is the public function,  
25 and to the extent that a particular party may wish

1 something to occur, may not be in accord with the  
2 public function, and there will always be  
3 disagreement about that. And to the extent that  
4 the difficulties -- at least when I compare my  
5 private practice to the files that I do for  
6 Manitoba Justice, the conflict situations -- and I  
7 use that not in the conflict as you and I know it  
8 in a legal sense -- the conflict positions that a  
9 prosecutor can find themselves in when the agreed  
10 party wants them to do something presents a big  
11 problem in managing the role. So just because  
12 they wanted me to do it would bring into play my  
13 need to consider the larger issue, which is --

14 Q Public interest?

15 A Pardon me?

16 Q The public interest?

17 A The public interest, yes.

18 Q But certainly by the time this meeting  
19 was over, you knew that Robert and Jordan Taman  
20 were not on side with what you had been discussing  
21 with Mr. Kaplan and Mr. Wolson?

22 A I knew at the end of the meeting that  
23 they had their personal view about the case. I  
24 knew that -- I believed that they understood what  
25 my public function was, and although they may have

1 disagreed with the public function, they accepted  
2 that I had to follow -- they understood that I had  
3 to follow the law as I understood it to be, or  
4 they may not have. Like that, but my sense was  
5 that they accepted the overriding public function  
6 and the distinction between pursuing their  
7 individual family interests as opposed to the  
8 public function. If I misread that --

9 Q Where did you get that impression  
10 from, sir, given the dynamics of that meeting?

11 A Because that's the impression that I  
12 was left with after meeting with them.

13 Q Sir, I'm going to take you to a  
14 document at R-2, and I'm very close to being  
15 finished this theme, if you would please continue  
16 to indulge. R-2.91.49. If that would be the next  
17 exhibit, please?

18 THE CLERK: Exhibit 227.

19 (EXHIBIT 227: R2.91.49, hard copy of  
20 email trail, last copy from Martin  
21 Minuk to Colleen Ireton sent 7/16/07  
22 8:54 a.m.)

23 BY MR. PACIOCCO:

24 Q What you have here, sir, is an email  
25 that you have sent to Brian, which would be Brian



1 Kaplan, and Colleen. And I'm going to draw your  
2 attention, please, to page 3236 at the bottom of  
3 that page where you say:

4 "The main issue will become sentencing  
5 because the prevailing authorities on  
6 the facts admissible support a  
7 conditional sentence. I am of the  
8 opinion that it is the appropriate  
9 sentence in this case. It is unclear  
10 if the family understands all of the  
11 complexities and legal issues but they  
12 will be spoken to again."

13 Now, this is July 16th, three days later, sir.  
14 How do you have the impression that they  
15 understand your duties and your functions and the  
16 position you are taking, and yet three days later  
17 you write a letter saying that you doubt whether  
18 they understand?

19 A Well, I can never be certain. I  
20 thought they did. And out of an abundance of  
21 caution, just to make sure, I would intend to go  
22 over this again. But when they left that meeting,  
23 sir, there would be no doubt in my mind that they  
24 would have understood the difference between the  
25 lawyer representing them and a Crown attorney.

1           Q     But you would agree with me, sir, that  
2 they were upset about the position that the Crown  
3 attorney would be taking and they were not on side  
4 with the position that the Crown attorney was  
5 going to be taking?

6           A     I think they were more upset with the  
7 law, as it was, and how I felt obliged to follow  
8 that precedent as opposed to me personally.

9           Q     They were not in support of the  
10 position you were taking, sir? Isn't that  
11 evident?

12          A     Well, they may not have supported it,  
13 but I had a belief that they had an understanding  
14 of it and accepted it.

15          Q     One final point before I ask the  
16 Commissioner to adjourn for today, sir. After  
17 this meeting, you call Mr. Kaplan?

18          A     Well, at some point during the day I  
19 call Mr. Kaplan, yes, because I had met with  
20 Mr. Humniski, I had some discussions with  
21 Mr. Wolson. And later on, if I'm -- through an  
22 order, that I called Mr. Kaplan.

23          Q     Can it safe to assume that you would  
24 have discussed how your meeting with the family  
25 went, given that in the memo that he had

1 specifically instructed or advised you to talk  
2 about all of the circumstances of the case with  
3 the family, sir?

4 A Either that, sir, or to fill him in on  
5 the discussion that I had with Mr. Wolson, who  
6 informed me that he was going to be having a large  
7 family meeting, so to speak, with his client and  
8 other members of the family that was going to take  
9 place in his office on Saturday, where they were  
10 going to review again the discussions and whether  
11 or not there was going to be a resolution of this  
12 matter.

13 MR. PACIOCCO: Thank you, sir. Those  
14 are the questions that I have for you today,  
15 subject to the Commissioner's ruling on whether  
16 this is a fitting time to adjourn.

17 If I could just have a moment? There  
18 has been a request that I file another report at  
19 the same time as Mr. Gover's report, and I am  
20 prepared to do that. This will be the report of  
21 Mr. Peck. It is found in volume Y-1, and I'm  
22 going to ask you, Madam clerk, to file all of it  
23 as a composite exhibit, A, B, C and D.

24 And if you are amenable,  
25 Mr. Commissioner, I think it would be the best way

1 to file the Gover report as well, to file all of  
2 the documents as a composite exhibit. I'm afraid  
3 I only filed the opinion last time, but if the  
4 clerk could amend that exhibit number and include  
5 all of the documents found at book Y-2.

6 THE CLERK: Y-1 is Exhibit 228?  
7 (EXHIBIT 228: Book Y-1, Expert report  
8 of Richard Peck, including Y-1.a,  
9 Y-1.b, Y-1.c)

10 MR. PACIOCCO: Book Y-1 is Exhibit  
11 228. That's the expert report of Richard Peck.

12 THE CLERK: And then 226 will be all,  
13 it will be Y-2.

14 MR. PACIOCCO: 226 had previously only  
15 been Y2C. Now it will be the entire volume of Y2.  
16 Thank you very much, Mr. Commissioner.

17 THE COMMISSIONER: Before we rise, it  
18 has been drawn to my attention that certain  
19 counsel have trouble getting to the coffee machine  
20 in the afternoon break, because we have been  
21 adjourning at 3:30, and the machine or the  
22 restaurant closes at 3:30. So we will try to  
23 accommodate Mr. Weinstein and Mr. Prober by  
24 adjourning at 3:15 if we could, Mr. Paciocco.

25 MR. PROBER: It must be Mr. Weinstein.

1 I don't drink coffee in the afternoon.

2 THE COMMISSIONER: Never in the  
3 afternoon. There may be members of the public who  
4 would like to have their coffee as well. So we  
5 will adjourn each day at 3:15, or close as we can  
6 to it, so you can fulfill your coffee urges.  
7 Thank you.

8 9:00 o'clock, every day, 9:00.

9 THE CLERK: All rise. This Commission  
10 of Inquiry is adjourned until 9:00 tomorrow  
11 morning.

12 (Proceedings adjourned at 5:00 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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