

COMMISSION OF INQUIRY INTO
CERTAIN ASPECTS OF THE TRIAL
AND CONVICTION OF JAMES DRISKELL

The Honourable Patrick LeSage, Q.C. Commissioner

Transcript of Proceedings
before the Commission sitting
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INQUIRY PROCEEDINGS

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1 FRIDAY, AUGUST 11, 2006

2 UPON COMMENCING AT 9:30 A.M.

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

5 THE COMMISSIONER: Just before you begin, Mr.
6 Lockyer, I just want to make a general comment.
7 We are a bit behind schedule, but I don't mean
8 with this witness, but overall. However, I
9 think that as inquiries go, we have been
10 remarkably close to being on schedule, and I
11 commend everyone for their assistance in that
12 regard. I believe, however, that what we must
13 do at this point is add some additional cushion
14 days to our proposed schedule. We did have
15 some, a couple of cushion days already
16 scheduled, I think they will be more than taken
17 up with the present forecast. So what I would
18 like counsel to do, is to consider at least one,
19 if not two, of the following dates;
20 September 22nd, September 26th, and
21 September 27. So that's September 22, 26, and
22 27. I'm not going to ask for any response at
23 this time, but I would hope that maybe at the
24 end of this session this morning, afternoon
25 actually, that you could maybe get together and

1 indicate your availability. Now, it may well be
2 that all -- that none of those days will be
3 available to all counsel. However, I would
4 expect some flexibility and I have no doubt that
5 associate counsel are more than adequate to fill
6 in. I do know, for instance, that Mr. Code is
7 not available on those days. However, that will
8 not be a bar to our continuing. As much as I
9 will miss him and his skill and perspicacity,
10 Mr. Dawe will carry on.

11 So I don't need any response at this time,
12 but I hope that perhaps at the end of the day
13 you can get together. And I really would hope
14 that we can pick two extra cushion days. It may
15 be that we won't be required to utilize them,
16 but I suspect we will. Thank you. You may
17 continue, Mr. Lockyer.

18 BY MR. LOCKYER:

19 Q Chief Ewatski, I want to come back to one thing
20 that I was asking you about, yesterday, you
21 remember you were telling us yesterday how at
22 the end of the day you felt some confidence, you
23 felt you still had some confidence in
24 Mr. Gumieny's story; do you remember that?

25 A That's correct, sir.

1 Q And indeed, your report, sir, you make reference
2 to that at page 173 of the report, sir, at the
3 bottom of that page. You say -- right at the
4 back.

5 A Yes, sir.

6 Q At the bottom there you say, sir,
7 "The committee believes John Gumieny and
8 Reath Zanidean did not provide their
9 information for the betterment of mankind
10 no matter what they told police. They were
11 protecting their own skins, not wanting to
12 get caught up in the dragnet. Zanidean at
13 least wanted to gain financially. This was
14 all that presented itself to the police who
15 are not able to choose the witnesses that
16 they deal with. The committee remains
17 suspect of Reath Zanidean's character but
18 somewhat more comfortable with John
19 Gumieny. Even though we are suspect of
20 their overall credibility, we have not
21 found anything that would lead to us
22 believe they were not telling the truth in
23 reference to the evidence they provided."
24 Do you remember that, sir?

25 A Yes.

1 Q One of the things that I asked you about
2 yesterday, sir, was whether you had -- to what
3 extent you had investigated Mr. Gumieny's
4 background and I asked you if you had ever
5 discovered the facts behind his rape conviction
6 in the 1980s?

7 A That's correct, sir.

8 Q And I believe you said you hadn't. I can't
9 remember what you said.

10 A I don't recall being privy to that information,
11 sir.

12 Q I think I pointed out to you that it was a rape
13 of a lady who was on her way home from a bus
14 stop late at night and she was attacked by
15 Mr. Gumieny from behind, assaulted and then
16 raped. And I put before you this morning, sir,
17 the document that outlines the facts of that
18 case. And I don't want to focus so much on the
19 facts as -- sorry, on the document, as the
20 covering fax. And I have the document for you,
21 Mr. Commissioner.

22 THE COMMISSIONER: Okay.

23 MR. LOCKYER: I point out that the name of the
24 complainant, as best I can tell and some of it
25 is a little hard to read, has been blacked out

1 in all places, but I would suggest, if I may, I
2 don't want to sound pertinent, but that there be
3 a ban on publication.

4 THE COMMISSIONER: Absolutely.

5 MR. LOCKYER: I don't think her name is there
6 but --

7 THE COMMISSIONER: I would assume that I have
8 that authority, and I know that the media would
9 not publish anything that would be in violation
10 of the protection that is afforded under the
11 Criminal Code and general policy that would
12 identify the complainant in this particular
13 case.

14 BY MR. LOCKYER:

15 Q And if we look at the covering fax, and I did
16 put this to you yesterday, but I thought I might
17 actually let you look at it. You will see that
18 the fax was sent on May 22 of 1991, which is
19 about 11 days before the trial begins and I
20 guess that's somewhat less than two weeks
21 yesterday. It is sent to Sergeant Osborne, as
22 you can see, of the Winnipeg Police department
23 who was the senior of the two handlers looking
24 after Mr. Gumieny; is that your understanding?

25 A No, he was the junior of the two members,

1 Sergeant Williams would be the senior.

2 Q We always talked of Osborne and Williams, it
3 should have been Williams and Osborne?

4 A It doesn't matter.

5 THE COMMISSIONER: Maybe it is alphabetic.

6 BY MR. LOCKYER:

7 Q Maybe. And the message, as you can see, is from
8 a Detective Clark of the Vancouver police
9 department, major crime. And as we heard as
10 well yesterday this was recovered, as I
11 understand it now, from Sergeant Osborne's own
12 files, I believe I'm right in saying. So it
13 never made its way into the Winnipeg Police
14 department files. And I'm wondering, sir, if
15 you have any idea why Sergeant Osborne would
16 have obtained this document when he did, and
17 kept it to himself?

18 A I have no idea, sir.

19 Q One might have thought that if he had obtained
20 it for the purposes of disclosure, that's one
21 reason one could think of why he would have
22 obtained it, but that doesn't seem to fit if it
23 never made its way to the Winnipeg Police file,
24 never made its way to the Crown's file and never
25 made its way to Mr. Brodsky's file. So he gets

1 this document, keeps it personally, and gets it
2 just before Mr. Gumieny is in fact going to
3 testify?

4 A I can't speak for Sergeant Osborne's intention
5 or actions on this matter, I have no knowledge
6 of that.

7 THE COMMISSIONER: I assume that this does
8 relate to John Gumieny? Because this is not the
9 name.

10 MR. LOCKYER: Yes -- is his name actually not in
11 here? Maybe you are right.

12 THE COMMISSIONER: It is, it is Collin Gail or
13 Gail Collin.

14 MR. DAWE: If I can assist, there is other
15 documents where Collin Gail is listed as an
16 alias.

17 THE COMMISSIONER: Okay.

18 BY MR. LOCKYER:

19 Q Did you speak to Osborne and Williams in
20 preparation of the review, sir, or not?

21 A We did not have formal interviews with them,
22 sir.

23 Q That's not quite what I asked you. Did you
24 speak with them?

25 A I believe we may have had some conversation with

1 them during the course of this review.

2 Q Substantive conversation, as opposed to "will
3 you talk to us, no, conversation?"

4 A I can't recall the extent of the conversation,
5 but we did not conduct a formal interview with
6 either one of them.

7 Q I wanted to ask you a little bit, sir, as well,
8 about your examination of the claims of the
9 Karas, as to how they were treated by the
10 police. Certainly my interpretation of how you
11 address their claims in your report, is, if I
12 could put it in one word, is that you were
13 troubled by their claims, would that be --

14 A I don't know if I would use the word troubled,
15 but it certainly -- it is an area that we needed
16 to highlight in the report.

17 Q But the way you presented it suggested that
18 their claims caused you concern?

19 A That was one of the concerns that we identify in
20 the course of the investigation, or the course
21 of the review that we identified, and that's the
22 word we used, "concerns".

23 Q And it is a concern that you never really
24 cleared up in your own mind?

25 A We understood what the Karas had told us. We

1 certainly had a good understanding in terms of
2 the two officers who dealt with the Karas had
3 written in their reports and would have
4 testified to. And obviously there was again a
5 disconnect between that information.

6 Q Someone wasn't telling the truth and someone was
7 presumably. Two diverse stories you might say?

8 A There was a disconnect there obviously.

9 Q And you sort of ended up coming down the middle
10 of it on your conclusions in the report, is that
11 right, sir? You sort of said you half accept
12 what the Karas say and you half accept what the
13 police say and sort of come down the middle
14 somewhere?

15 A I wouldn't put it that way, sir. I think we
16 just laid out what our observations were. Our
17 observations were that the two officers had
18 documented their interactions with the Karas and
19 they had testified under oath in terms of their
20 involvement with the Karas, and then you had
21 what the Karas had to say, you know, subsequent
22 to that. And we just laid that out in the
23 report.

24 Q I mean, just taking page 163, sir, and these
25 various extracts about the Karas have been read

1 into the record before, so I don't want to read
2 them all again. But at 163, which is sort of
3 the last word that you had on the Karas in the
4 report, you say,

5 "It appears investigators armed with
6 significant information that was being
7 given to them by Zanidean attempted to and
8 did get the Kara brothers to incorporate
9 this into their statement. Based on our
10 experience and interview with him, it is
11 our opinion Ashif Kara's statement is not
12 verbatim but appears more likely to be a
13 summary of the interview. In regards to
14 Shafik Kara's statement, he agrees these
15 are his words but argues they were words
16 that the police wanted to hear."

17 Q Now the Ashif Kara, how he gave his statement,
18 how you concluded he gave his statement is
19 actually contrary to the evidence given under
20 oath by Shipman and Morin at the trial?

21 A That was our observations, and we laid out our
22 observations.

23 Q I'm not being critical. I just wanted to see
24 what you felt after the interviews that you had
25 done. And it is hardly -- I mean, how you could

1 have ended up your conclusion regarding the Kara
2 brothers, which is really just contained in
3 these three paragraphs is to conclude that they
4 were a pair of liars and you didn't believe a
5 word they said, but you certainly didn't take
6 that position, am I right?

7 A No, I did not, sir.

8 Q Did you pass on your concern about the Karas, I
9 think that's a word that we can agree on, when
10 you spoke to Mr. Dangerfield and Mr. Lawlor,
11 sir, on August 23rd?

12 A We certainly had discussion relative to the
13 Karas and the evidence. I think that's
14 documented in my notes. I don't have a full
15 record of that conversation, but there is
16 references in terms of the Kara brothers, and in
17 particular Ashif Kara's actions at the trial.

18 Q Your notes, sir, without reading them, simply
19 talk about Mr. Dangerfield thinking that they
20 were important evidence that he completely
21 believed, right?

22 A I would have to refer to my notes.

23 Q Have a look. It is at tab 4, volume 2 of the
24 Commission's materials. Look at page 810 of tab
25 4, would you? Look at the bottom of that page.

1 I'm sorry, tab 4, sir?

2 A I have tab 4.

3 Q It is the log book.

4 A The log book, not my notes, sir.

5 Q I understand, I'm sorry.

6 THE COMMISSIONER: I'm sorry, Mr. Lockyer, the
7 page?

8 MR. LOCKYER: 810. They are a bit faded, it is
9 closer -- it is actually halfway through the
10 tab, Mr. Commissioner. August 23rd notes,
11 Monday, August 23.

12 THE COMMISSIONER: Yes.

13 BY MR. LOCKYER:

14 Q And if you look towards the bottom there you
15 will see that it is put in a somewhat different
16 way, but Mr. Dangerfield is saying to you that
17 he thinks their statements were important
18 evidence, right? And he doesn't believe the
19 recantation.

20 A Well, let me read the entry in here. In
21 relation to the Karas, the first they were made
22 aware of problems with them was the morning they
23 were to testify. No indication of any problem
24 was brought forward until this time.

25 Mr. Dangerfield felt that Ashif Kara was not

1 credible as --

2 Q Evidenced by comments --

3 A As evidenced by comments made by Mr. Justice
4 Morse. In relation to -- that ends there.

5 Q That's the point I'm trying to make with you, is
6 that Mr. Dangerfield thought that Mr. Kara's
7 statement, or the Karas' statements, were
8 reliable. Do you see what I mean?

9 THE COMMISSIONER: Which one testified?

10 MR. LOCKYER: Ashif.

11 BY MR. LOCKYER:

12 Q Could you focus on me, Chief Ewatski?

13 A I'm just going back to my notes too, sir,
14 because I do have notes on this too. I am
15 listening to you, sir.

16 Q Mr. Dangerfield thought that the Karas were
17 important for the Crown's case?

18 A Well, that would be my observation since he
19 called them as a witness.

20 Q But that's what he told you in effect on
21 August 23rd, he thought their statements were of
22 significance in terms of the case against
23 Mr. Driskell?

24 A I'm trying to see -- if I could look at my notes
25 and see exactly what he said relative --

1 Q What would be easier, why don't you go to your
2 report in this regard?

3 THE WITNESS: If I can go to my notes,
4 Mr. Commissioner?

5 THE COMMISSIONER: Yes, absolutely.

6 MR. LOCKYER: Just trying to keep us moving.

7 THE WITNESS: My notes indicate that they were
8 first aware of trouble with the Kara brothers on
9 the morning that they were supposed to testify.
10 And Dangerfield tells that Ashif Kara was
11 involved more than he let on in court. That was
12 my notes. Obviously the notes that I read in
13 the journal are also there.

14 BY MR. LOCKYER:

15 Q Your best summary of it, sir, is perhaps at 96
16 of your report, could you turn to that, as to
17 what Mr. Dangerfield thought. Can you turn to
18 that?

19 A Page 96?

20 Q Yes. At the bottom.

21 "When we interviewed the two prosecuting
22 Crown attorneys, Mr. Dangerfield and
23 Mr. Lawlor, they expressed their opinions
24 as to the credibility of the Kara brothers.
25 Mr. Dangerfield was of the opinion that

1 both of them were indeed involved with
2 Driskell and that their story of
3 mistreatment at the hands of the police is
4 not true."

5 And that's the proposition that I'm trying
6 to put to you. That was your understanding from
7 Mr. Dangerfield.

8 A Obviously it was, that is what we put in our
9 report, sir.

10 Q And you then say, and this is what I'm a little
11 more interested in.

12 "Mr. Lawlor appears to share this opinion
13 but was not as vocal on this point."

14 What did you mean by that? So you don't
15 refer to what Mr. Lawlor says to you in the
16 notes, either you or Mr. Hall?

17 A I think my recollection of that conversation was
18 that since Mr. Dangerfield was the senior
19 prosecutor in the case, he was discussing and he
20 was answering most of the questions, and doing
21 most of the talking. Mr. Lawlor interjected
22 from time to time. But it was Mr. Dangerfield
23 who was the lead in the discussions that took
24 place. It was just an observation that we made.

25 Q It seems an odd thing to put in the report, sir,

1 unless you are saying that Mr. Lawlor shared
2 your concerns as well. Did he?

3 A I don't have any recollection that he shared the
4 concerns that we had. It was an observation
5 that he was not as vocal as Mr. Dangerfield.

6 Q Does it help you in remembering whether or not
7 you shared your concerns with them meaning with
8 Dangerfield and Lawlor?

9 A Sir, again, I wish I had better recollection of
10 all of the content of the significant discussion
11 that we had with them. Unfortunately we didn't
12 record that interview, or that meeting with
13 them, we didn't obviously capture every single
14 word that was said there. So we may have shared
15 those concerns. I'm not certain sir, I can't
16 recall.

17 Q Do you have, and I'm not going to refer to your
18 notes, no disrespect, but I can't read them.

19 A No disrespect taken.

20 Q I want to refer to the log notes because I can
21 read them, and if we can go back to them, sir,
22 that meeting that you had with Mr. Dangerfield
23 and Mr. Lawlor. So go back to tab 4, if you
24 would, at page 810.

25 A Yes.

- 1 Q And I want to ask you first, sir, as I
2 understand it from what you've said, one of the
3 purposes of the review and the work you did on
4 the review, was to determine whether the
5 information that the police had, had been passed
6 along to the Crowns, am I right?
- 7 A That was part of the review, yes, sir.
- 8 Q Right. This is your only, as far as I know,
9 your only meeting with the trial Crowns in
10 preparation of your review; am I right?
- 11 A That's correct, sir.
- 12 Q Is that right? You just met with them the one
13 time?
- 14 A I believe so, sir.
- 15 Q By the time you meet them August 23rd, sir, you
16 have already covered a lot of ground in
17 preparation of your review; am I right?
- 18 A That's correct, sir.
- 19 Q You have already been to Swift Current?
- 20 A Yes, sir.
- 21 Q So, the Zanidean side of your investigation is
22 largely completed.
- 23 A That would be accurate, sir.
- 24 Q And here you are going to meet the two trial
25 Crowns, who presumably are the primary source of

1 information as to what was communicated to them
2 by the Winnipeg Police members, am I right?

3 A Yes, sir.

4 Q So given that you have focused on this as being
5 one of the purposes of the review, would it not
6 be an inevitable conclusion from that, that in
7 talking to them you would have discussed any
8 concerns that you may have had as to matters
9 that may not have been communicated to them by
10 the Winnipeg Police?

11 A That would be a logical conclusion, sir.

12 Q And it is so logical that it is inconceivable
13 that you didn't do that, isn't it?

14 A It is a logical conclusion, sir.

15 Q Isn't that the purpose, or the prime purpose for
16 which you went to speak to them, to see what
17 they got from the police?

18 A That was certainly one of the purposes, yes,
19 sir.

20 Q Right. And by the time you come to talk to
21 them, sir, you know by now that what
22 Mr. Zanidean had said in response to several of
23 Mr. Brodsky's questions was as far as you were
24 concerned false; am I right?

25 A We were certainly concerned and had suspicions

1 that Mr. Zanidean had perjured himself.

2 Q In several regards, in regards to the motivation
3 for the fire in Swift Current, with regards to
4 the benefits that he had received, with regards
5 to the way he had been treated, with regards to
6 the purpose for which he had retained counsel,
7 those I'm just remembering from your examination
8 in chief yesterday, all of those concerns were
9 in your mind, correct?

10 A That's correct, sir.

11 Q So, surely it is reasonable to suppose that you
12 must have discussed those concerns with
13 Mr. Dangerfield and Mr. Lawlor when you met
14 them?

15 A Sir, I have already suggested that, that was
16 more than likely part of the conversation. I do
17 not have a specific recollection in terms of
18 going through things point by point with them
19 and asking them point by point, or exactly what
20 we brought forward to them. I wish I had
21 recollection. But obviously if that was one of
22 the primary focuses of our review, which it was,
23 that certainly would have been our opportunity
24 to do so. And judging by their response, we
25 were satisfied that they were satisfied with the

1 information that was passed on to them by
2 investigators. Again, in hindsight, perhaps we
3 should have took more detailed notes or even
4 audio taped that meeting. However, sir, I don't
5 know how many more times I could say that.

6 Q This is not -- I'm not trying to criticize your
7 notetaking in this, so don't misunderstand why
8 I'm asking these questions.

9 A I must be misunderstanding you.

10 Q Well, you are not. The purpose of my questions
11 is I want to know what the conversation was;
12 that's what I'm trying to find out.

13 A Sir, I'm trying to remember what the
14 conversation was, and I'm telling you that my
15 complete accurate recollection is --

16 Q I understand.

17 A -- is impossible, so I'm doing the best that I
18 can here trying to recall.

19 Q So I'm trying to sort of help you along as best
20 I can, by suggesting, if you like, that the
21 circumstantial evidence suggests very strongly
22 that you would have discussed these matters with
23 Mr. Dangerfield and Mr. Lawlor, given it was the
24 only time you met them, given it was one of the
25 purposes for which you met them in the first

1 place and given that in your mind you are
2 troubled by so many of the responses that
3 Mr. Zanidean has given to Mr. Brodsky. So
4 circumstantially, one might infer that you would
5 have surely raised this with Mr. Dangerfield and
6 Mr. Lawlor.

7 A That conclusion certainly could be reached, sir.

8 Q As a further compounding reason that one might
9 think you would have raised this with Mr.
10 Dangerfield and Mr. Lawlor, sir, is the fact
11 that, as you acknowledged to Commission Counsel
12 yesterday in your examination in chief, it
13 became quite apparent to you, and I think it
14 would be apparent to anyone reading Mr.
15 Brodsky's questions and Mr. Zanidean's answers
16 and Mr. Brodsky's failure to follow up and
17 challenge some of Mr. Zanidean's answers with
18 what you might call statements of fact, that
19 what you are saying is not true. For example,
20 that when you spoke to Dangerfield and Lawlor
21 you had every reason to believe that there was
22 information about Mr. Zanidean that Mr. Brodsky
23 had not known, right?

24 A First of all, I didn't say that it was apparent
25 to me that that would be the case at all. I

1 said you could draw that conclusion. However, I
2 certainly was not privy to Mr. Brodsky's thought
3 process and strategy in terms of cross-examining
4 Mr. Zanidean. However, it was what it was in
5 terms of the questions that he asked. So you
6 could draw a conclusion, but you could also draw
7 a conclusion that perhaps Mr. Brodsky decided
8 not to ask any questions about that, I don't
9 know, sir. I didn't have an opportunity to
10 interview Mr. Brodsky and that wasn't part of
11 our review.

12 Q Well, you never attempted to interview him, did
13 you?

14 A No, sir.

15 Q That's actually an interesting point. I never
16 thought of it. You never tried to interview one
17 of the prime speakers in the Winnipeg Sun
18 articles, but that's a by-the-by for a moment.
19 I want to stay on the focus I'm on. So, from
20 what you just said, I think you are agreeing to
21 this extent, that when you went to speak to Mr.
22 Lawlor and Mr. Dangerfield it was in your mind
23 that maybe Mr. Brodsky had not been advised of a
24 number of matters that you were now aware of as
25 of August 23rd, 1993?

1 A That certainly may have been in our minds, sir,
2 yes.

3 Q Which, of course, is a further reason to raise
4 the issues with Mr. Dangerfield and Mr. Lawlor,
5 because I would imagine it would have been in
6 your mind that if they had had the information
7 that maybe Mr. Brodsky didn't have, that if they
8 had had it they would have passed it on, which
9 could easily lead to an inference that they
10 didn't have it either. Do you see the point?

11 A I think the conclusion that we came to is that
12 we had no reason to believe that information
13 that the Crown had was not passed on to the
14 defence.

15 Q I'm more interested in what is going from you to
16 the Crowns actually in this regard.

17 A But, sir, you have linked it to my observations
18 of what Mr. Brodsky had or didn't have, and that
19 information would have come from the Crown or
20 not have come from the Crown.

21 Q That's part of my question.

22 A Exactly, sir.

23 Q So if you discussed this then, sir, and logic
24 suggests you did, if you discussed these matters
25 with Mr. Dangerfield and Mr. Lawlor, if they

1 had -- let's assume for a moment you did, I
2 think it is a reasonable assumption so we can
3 act on it in a sense as a reasonable hypothesis.
4 If you raised these matters with them, sir, such
5 as the immunity issues and what you had found
6 out about the immunity issues, such as the
7 benefits issues where Mr. Zanidean was
8 concerned, indeed even the Crime Stoppers issues
9 as well, if you had raised these with
10 Mr. Dangerfield and Mr. Lawlor in this meeting
11 and they had told you that they had been unaware
12 of the information in these regards -- are you
13 with me?

14 A I'm with you.

15 Q They say, no, we didn't know these things?

16 A I'm with you.

17 Q I think, would it be reasonable to assume, sir,
18 given the mandate or part of your mandate, that
19 you would have made a note of it?

20 A Certainly if the issue was that they were
21 unaware of any information that was discussed,
22 that would have been worthy to make a note of.

23 Q I would think so, given your mandate that you
24 keep telling us, part of it being what did the
25 police give the Crowns, did they give full

1 disclosure to the Crowns, right?

2 A That's correct, sir.

3 Q And when you look at the bottom of 810, sir, and
4 I know Mr. Code took you there, I just want to
5 finish this point. At the bottom there.

6 "In relation to any deal made with Reath
7 Zanidean they both emphatically stated no
8 deals were made or proposed. That they had
9 in fact personally told Zanidean that they
10 could offer no assistance with the Swift
11 Current charges and made no attempt to
12 assist him. They are also adamant that the
13 police made no deals with Zanidean."

14 And as I read that, sir, and I try and
15 sit -- I try and be a fly on the wall, so to
16 speak, and imagine this conversation that you
17 are having with Mr. Dangerfield and Mr. Lawlor,
18 that you and Hall are having with
19 Mr. Dangerfield and Mr. Lawlor, it seems
20 inconceivable to me that you wouldn't have told
21 them what you had found out in the meantime. I
22 know that you say that, Mr. Dangerfield, but you
23 should know that we went down to Swift Current
24 and they are of a completely opposite view. It
25 sounds inconceivable that you wouldn't have said

1 something about it, isn't it?

2 A We may have. I'm not certain.

3 Q Can you imagine a conversation that you wouldn't
4 have raised that with them, in the context that
5 you are there and the context that they are
6 talking to you?

7 A Mr. Lockyer, I'm trying remember to the best of
8 my recollection all of the details about this.
9 That is what the notes indicate and I wish I
10 could be more specific about it, but I cannot.

11 Q The one thing that sort of has a little slot of
12 its own, sir, so to speak, and I want to ask you
13 about -- Mr. Commissioner, can I file a book of
14 documents as the next exhibit? It looks a
15 little imposing, but a lot of it has been
16 covered by --

17 THE COMMISSIONER: Is this 29 or 30?

18 THE CLERK: 29D.

19 THE COMMISSIONER: Exhibit 29D.

20 MR. LOCKYER: Could Chief Ewatski be given a
21 copy.

22 (EXHIBIT 29D: Book of Documents for
23 Examination of Ewatski by Mr. Lockyer)

24 BY MR. LOCKYER:

25 Q Could you turn to tab, 4 sir. What you are

1 looking at there is the last page of several
2 pages of a continuation report by Corporal Orr
3 of the RCMP. And he has made a report regarding
4 a communication that he had with you on May 5th
5 of 1993. And I'm sorry, I have only given you
6 the last page and we have all seen the previous
7 pages and they are really not relevant, so I'm
8 trying to save a paper exercise, although the
9 whole document is somewhere as an exhibit before
10 the Commission. And this is what he wrote.

11 Believe me, this is in its own context, if you
12 looked at the previous page it wouldn't help you
13 in regards to comprehending this. He says,

14 "We were also able to discuss Gumieny, and
15 Inspector Ewatski stated they had tracked
16 him down in Ottawa living in a trailer
17 court."

18 A That would be Zanidean.

19 Q Sorry, Zanidean, my mistake.

20 "We were also able to discuss Zanidean and
21 Inspector Ewatski stated they had tracked
22 him down, I will say somewhere in British
23 Columbia, living in a trailer court. He
24 was surprised that Janie Duncan had not
25 found him as yet as they, the Winnipeg

1 Police, had little difficulty. Ewatski
2 stated that they had some very pointed
3 questions to ask Zanidean, as it appeared
4 he knew more about the murder et cetera,
5 than what he had advised police. In fact,
6 there was a possibility that Zanidean was
7 involved in the murder itself."

8 Do you remember saying something like that
9 to Corporal Orr, sir?

10 A I don't -- I don't have any conflict with what
11 he put down there. I can't remember the exact
12 words of the discussions. But we certainly made
13 it very clear to him that we did have concerns
14 with Mr. Zanidean on a number of fronts, and
15 we -- that's why we wanted to interview him. We
16 had a number of questions we wanted to raise
17 with him.

18 Q The one that Corporal Orr thought was the
19 highlight, so to speak, of the pointed questions
20 you wanted to ask him, was your belief that
21 there was a possibility he had been involved in
22 the murder itself; is that right?

23 A Again, keeping a very open mind going into this
24 review, we kept everything in the back of our
25 minds as being a possibility, sir.

- 1 Q But you made a point, it would seem, of advising
2 Corporal Orr of this.
- 3 A Obviously again that was a discussion. Those
4 are his notes. I can't deny saying that. That
5 certainly would have been in my mind.
- 6 Q Tab 7, sir, you will see, and I wish we could
7 date it, we can't date it, but that's the only
8 reference that we could find as to your -- I say
9 your, in fact it was you, your release to the
10 public through the media of your findings, so to
11 speak, as a result of your review. Do you see
12 that?
- 13 A I have it here.
- 14 Q And, of course, you wouldn't release the report,
15 you wouldn't release the contents of the report,
16 just that you said -- you just said that we
17 found nothing to suggest Jim Driskell wasn't
18 involved in the murder of Perry Harder. And
19 that's the extent to which you release the
20 results of your review?
- 21 A Relative to this date, yes, sir.
- 22 Q This would be in '93?
- 23 A Yes.
- 24 Q I presume this is sometime in late '93?
- 25 A What is the date on this?

1 Q I don't have the date.

2 A I don't have the date either.

3 Q But the report went to Chief Henry in October of
4 '93, is that right, is that your memory?

5 A It was September, if I'm not mistaken, '93. I'm
6 just reading this as you are speaking.

7 Q I was not going to make any more reference to
8 it. It was a passing reference. At tab 8, sir,
9 and I'm now going to take you through the next
10 ten years quickly. Tab 8, the first document,
11 sir, we have Mr. Henry, Chief Henry, writing to
12 his Deputy Chief saying, we can also -- if you
13 look halfway down the first page.

14 "We can also release a copy of the report
15 to division 23 members and others involved
16 in the investigation and accordingly
17 approached during our review."

18 Was that done as far as you know?

19 A To my understanding it was not done, sir.

20 Q It was not done?

21 A It was not done, no, sir.

22 Q Certainly the people that we have heard from
23 deny that they ever saw the report around this
24 time?

25 A It is my understanding it was not done, sir.

1 Q And then, sir, as you will remember over the
2 next several years there were various attempts
3 by different people on behalf of Mr. Driskell to
4 obtain a copy of the report; do you remember
5 that?

6 A There were requests for the report, yes, sir.

7 Q Ms. Duncan made requests over a four year
8 period; do you remember that?

9 A She made requests of us, sir.

10 Q They were between '93 and '97 as best I can
11 tell. These are all in tab 8. Leonard
12 Tailleir, a lawyer, made a request out of Mr.
13 Brodsky's office in 1994. The Innocence Project
14 made a request in September of '98, from
15 Toronto, do you remember that?

16 A Yes, I believe so, sir.

17 Q I want to refer you to just a couple of
18 documents in there, sir. Could you go in tab 8
19 to a letter of July 29th of 1997. And they are
20 in chronological order so you should be able to
21 find it. July 29 of '97, it is a letter from
22 Deputy Chief Klippenstein to Ms. Duncan. Do you
23 see that?

24 A Yes, I have it in front of me.

25 Q I don't think that you need to read the letter.

1 It is another denial that he won't pass it over.
2 It is the last two lines that I'm interested in.
3 "Be advised that the Winnipeg Police
4 Service will reserve its right to release
5 the review report until requested by the
6 Federal or Provincial Minister of Justice."
7 Now I'm going to come to the Provincial
8 Minister of Justice. I just wanted to ask you,
9 sir, when you were chief, because I realize at
10 this time I don't think you were, it was just
11 before you became chief, when you were chief was
12 there ever a request from the Provincial
13 Minister of Justice for the report, verbally or
14 in writing?
15 A Not that I can recall, sir.
16 Q So, did you speak to members of the Justice
17 Department in 2002/2003 about this report, sir?
18 A I may have, sir.
19 Q But no one ever said would you give it to us?
20 A I don't believe so, sir.
21 Q Would you?
22 A Would have I?
23 Q Pardon?
24 A I was just repeating, would have I?
25 Q Yes, would have you. Yes, sorry?

1 A I believe that if there was information in that
2 report that we felt that Manitoba Justice was
3 not privy to, did not have, then it would have
4 been our obligation to provide that information,
5 the information to Manitoba Justice. The report
6 itself was an internal document written in that
7 manner at the direction of Chief Henry and it
8 was classified as an internal document.

9 Q All right. We will come back to that. If you
10 could then move on a few more pages to a letter
11 of January 26th of 1999, from Mr. Lett of the
12 Winnipeg Free Press. Do you remember this
13 letter, sir? It is addressed to you. And in
14 this letter, if you look sort of a little below
15 the middle of the letter, he is trying his best
16 to advocate to you in this letter as to why you
17 should release the report, suggesting it would
18 be in the best interests of the police, the best
19 interests of society, the best interests of
20 Mr. Driskell. It is quite a persuasively
21 written letter, albeit, it didn't entirely
22 succeed in its goal.

23 If you look halfway down it says,
24 "Given the nature of the case and
25 Mr. Driskell's allegations, it is not

1 appropriate for you or the police service
2 to ask the public to 'trust us.' This is
3 not an issue of trust, nor is it about
4 believing the department can do its job
5 properly."

6 And this notion of you asking Mr. Lett to
7 trust you, sir, brings back to memory a meeting
8 the day I met you with Mr. Libman, August 30 of
9 2001, a couple of years later. You did the same
10 at that meeting, do you recall? You asked us to
11 trust you when we asked you to give us a copy of
12 the review. Do you remember that, sir?

13 A I don't recall saying, asking you to trust us,
14 but I certainly recall telling you very clearly,
15 Mr. Lockyer, that we would certainly cooperate
16 and do everything we could in this matter if a
17 section 690 of the Criminal Code application was
18 made. And we have maintained that position
19 right -- actually before I became Chief. I made
20 that very clear too. But it was very obvious --
21 I would be surprised that I said to trust us,
22 because it is very obvious what you told me,
23 that I was biased, so obviously you wouldn't
24 trust me.

25 Q Well, I think anything that I said to you, sir,

1 was probably in response to the numerous times
2 you asked me to trust you.

3 A I don't know what the response was.

4 THE COMMISSIONER: I'm not sure that I want to
5 have you under oath.

6 MR. LOCKYER: I understand.

7 BY MR. LOCKYER:

8 Q But do you remember asking Mr. Lett to trust
9 you, sir? He has put it in quotes. It is the
10 only words that he has put in quotes in the
11 whole letter.

12 A I have said many things to Mr. Lett over the
13 times, some that have been described as accurate
14 and other things I would question whether I said
15 those things, sir.

16 Q And what you were saying, sir, both to the media
17 back in '93 and to Mr. Lett in '99, was that
18 there was really nothing in your report that was
19 new that could assist Mr. Driskell; isn't that
20 right?

21 A We took that position, that the information that
22 was contained in the report, the evidence that
23 was contained in that report had been passed on
24 to the prosecution.

25 Q That's not what I put to you, sir. Listen to

1 what I put to you, will you?

2 A I'm listening, yes.

3 Q What I put to you was that you were telling the
4 media and Mr. Lett, and indeed everyone who was
5 dealing with you on behalf of Mr. Driskell,
6 particularly commencing in 2001, as well, that
7 there was nothing in the report that was new.

8 A In the case of new evidence, evidence that the
9 Crown did not know about, sir.

10 Q And that's not what you said, sir?

11 A But, sir, that's what I meant.

12 Q I'm suggesting to you that what you said is that
13 you lead everyone to believe that there was
14 nothing in the report that was new that could be
15 of any assistance to Mr. Driskell, not nothing
16 that the Crown didn't know, but nothing that was
17 new that could assist Mr. Driskell?

18 A I'm putting that statement into context, sir,
19 new evidence that the Crown wasn't aware of.

20 Q You are doing that now, but you didn't at the
21 time.

22 A Sir, that was my intention and that was the
23 meaning of those words.

24 Q You don't deny that you didn't give it that
25 context at the time.

1 A I don't know if I did or not, there is many
2 times that I made that statement.

3 Q And then, sir, at tab 10, commencing in February
4 of '01, it might be said that we moved into the
5 era where ultimately we did obtain the report,
6 is that right? It took a couple more years, but
7 starting in February '01, correspondence, it
8 actually went back to 2000, correspondence with
9 AIDWYC, ultimately the report was produced
10 through the Federal Minister of Justice; is that
11 right?

12 A That demonstrates the fact that we cooperated
13 with the process once the application was filed.

14 Q It demonstrates that ten years after you wrote
15 the review it finally made its way to
16 Mr. Driskell; that's another way of putting it?

17 A I'm putting it this way; that it demonstrates
18 the fact that back in '97, the Winnipeg Police
19 Service stated very clearly that we would
20 cooperate with the process. I made it very
21 clear in our interview with you personally in
22 2001, that we would supply that information if
23 an application was filed, and what this says is
24 that we followed up with that commitment, sir.

25 Q Let me just examine that for a minute. The 2001

1 meeting, the position ultimately taken by
2 yourself and Mr. Finlayson was that any
3 disclosure requests, including the review, would
4 have gone on hold until the DNA aspects of the
5 case had been sorted out; is that right?

6 A It is my recollection the fact that we would say
7 that we would cooperate fully once an
8 application was made under the legal process,
9 sir.

10 Q Well, I think, and I'm not going to take you
11 through it, sir, but a letter written to you on
12 September 7th, it can be found in tab 10, I
13 think to which certainly no dispute was ever
14 taken by you, sets out what I just put to you
15 pretty clearly?

16 A My recollection of that meeting, sir, was the
17 fact that --

18 Q You are putting me in a very difficult position,
19 sir.

20 A I'm just telling you my recollection.

21 THE COMMISSIONER: Go ahead.

22 THE WITNESS: My recollection of that meeting,
23 sir, was the fact that you were not prepared to
24 file that process at that point of time, until
25 the DNA testing was done. That was my sense of

1 that meeting, sir.

2 BY MR. LOCKYER:

3 Q That raises an interesting point, Chief Ewatski,
4 that you are surely aware that when one files an
5 application with the Minister under what was
6 then 690, they are really not going to take any
7 notice of it unless you have got new evidence,
8 so it was sort of a catch 22 situation. They
9 can't -- they are not going to do anything
10 unless you present new evidence and you are
11 saying a document which may contain new evidence
12 you are not going to hand over until an
13 application is made. Do you see the catch 22
14 that you put everybody in?

15 A I didn't say that the document did contain new
16 evidence.

17 Q I'm well aware of that.

18 A We took the opinion that there was no new
19 evidence, it was evidence that was known to the
20 Crown. I understand the catch 22, sir, however,
21 that is the process and that is the process that
22 we followed.

23 Q It is a process that you created, sir. There is
24 no set procedure for whether that review should
25 or should not have been disclosed?

- 1 A It isn't something that I created, sir.
- 2 Q It is a position that your police service took.
- 3 A And it is the position that the Manitoba Justice
4 took also, I believe.
- 5 Q In tab 10, sir, commencing March 28th, 2003, and
6 you will remember now that the DNA results came
7 in in December 2002, remember that?
- 8 A Yes, I do, sir.
- 9 Q And once again, a request is made of you on
10 March 28, 2003 for the report; is that right?
- 11 A I'm just reading the letter, sir. Yes, sir.
- 12 Q And then you really don't have to read it, but
13 there is a loose letter of March 28, '03 to
14 Mr. McFarlane who was then the Deputy Minister.
15 Do you see that?
- 16 A Yes, sir.
- 17 Q And it is again asking him for the review, just
18 for your information, there is other things in
19 there too, but that's one of the things that's
20 asked of him. And there is sort of a legal
21 analysis given to him, sir, as to why he was
22 obliged to obtain it and disclose it. That's in
23 the March 28th letter to Mr. McFarlane?
- 24 A I will take your word for it.
- 25 Q You will see case law, Mr. McFarlane sends a

1 reply, April 7, 2003. And he says, page 3 of
2 that letter under the heading -- are you with
3 me?

4 A Yes.

5 Q Under the heading "Disclosure of the post
6 conviction investigation", do you see that?

7 A Yes.

8 Q He first of all gives thanks for the legal
9 analysis and then says,

10 "At this point I would simply make one
11 observation. I recognize that the courts
12 have endeavored to place a disclosure
13 obligation on the Crown which includes
14 documents and information in the possession
15 and control of the Crown, both the Crown
16 and the police. An obligation to disclose
17 something that is not under your control is
18 at best a difficult concept, made even more
19 difficult by the separation between Crown
20 and police recognized in the Regan
21 decision."

22 That was a Nova Scotia politician. Do you
23 remember that?

24 A Yes, sir.

25 Q "Government control over police is, of

1 course, the first step to a police state.
2 So we traditionally have been extremely
3 careful not to blur the roles,
4 responsibilities and functions of Crown and
5 police in this province. In view of the
6 fact that I have attributed certain views
7 or positions to the Chief of the Winnipeg
8 Police Service which I believe to be
9 accurate, I have taken the liberty of
10 forwarding a copy of this letter to Chief
11 Ewatski for his information."

12 And then he gives salutations at the end of
13 the letter, followed by a letter of yours
14 April 11 saying once again that you won't
15 disclose the review, but you are prepared to
16 cooperate under 696 of the Criminal Code. Do
17 you see that?

18 A That's correct, sir.

19 Q Now, it takes me back to a question that I asked
20 you earlier this morning. Mr. McFarlane's
21 concerns, whether I agree with them or not, it
22 seems to me that the simple way through the
23 impasse that everyone seemed to be at at this
24 point, was for the Deputy Minister of Justice to
25 pick up the phone and call you and say can you

1 give us a copy of the review because we would
2 like to disclose it to counsel for Mr. Driskell.
3 Because Mr. McFarlane is never saying I don't
4 want to disclose it to you, he is saying I would
5 if I could but I can't. And it just seems to me
6 hard to believe he didn't just pick up the phone
7 and speak to you and say why don't you give us a
8 copy of it so we can pass it over to
9 Mr. Driskell's counsel. Did that happen?

10 A Did that happen?

11 Q Yes?

12 A I have no recollection of Mr. McFarlane ever
13 requesting it from me verbally, sir.

14 Q Was there some potential political problem
15 involved here, sir, between Manitoba Justice and
16 your department and your office, indeed, about
17 this whole matter, that there would have been a
18 battle royal between your department and
19 Manitoba Justice if Manitoba Justice had tried
20 to enforce what certainly are arguably its legal
21 obligations?

22 A A political problem, sir?

23 Q Yes, political, that's the question?

24 A Well, I have a hard time understanding the
25 politics of that in the truest sense, but I can

1 tell you this; that if Manitoba Justice took the
2 position that they believed that the Winnipeg
3 Police Service had information that they did not
4 have, and that it was their obligation to
5 disclose that information, we certainly would
6 have complied with that, sir.

7 Q At tab 11, sir, we have the judgment of the
8 Associate Chief Justice of the Queen's Bench,
9 Justice Oliphant, who in an ultimate irony, it
10 might be said, dismissed a motion by
11 Mr. Driskell's counsel to suppress the report
12 from the public pursuant to an undertaking that
13 you had asked Justice to impose on
14 Mr. Driskell's counsel. But leaving aside the
15 irony of the situation, the bottom of page 2 of
16 that tab, sir, Mr. Justice Oliphant said in
17 paragraph 14,

18 "The contents of the report, which I have
19 read, are relevant, not only in terms of
20 the application for judicial interim
21 release, but also, in my view, in possibly
22 assisting the applicant in demonstrating
23 that his conviction for first degree murder
24 in the death of Mr. Harder may well be the
25 result of a miscarriage of justice. More

1 questions are raised than answered in the
2 report. Fundamental freedoms, such as the
3 freedom of expression and the press, as
4 guaranteed by the Charter, cannot be
5 sacrificed to avoid embarrassment to the
6 various individuals. To me, the innocence
7 and the liberty of Mr. Driskell is at stake
8 here. Nothing can trump that in terms of
9 what is important as far as the public
10 disclosure of the report of the Winnipeg
11 Police Service is concerned. I cannot
12 think of one valid reason why the secrecy
13 surrounding this report and the other
14 documents in question ought to be
15 maintained. In fact, I cannot think of a
16 bad reason why they ought not to be
17 publicly disclosed. The application for
18 the sealing order is therefore dismissed."
19 Now you were briefed on this judgment
20 immediately?

21 A I was briefed on it, yes, sir.

22 Q And presumably you had a chance to read these
23 words straight away?

24 A I may or may not have. I can't recall, sir.

25 Q Let me come back to that in a minute. At tab

1 14, sir, we have the opinion of the Minister of
2 Justice for the country, Irwin Cotler, as he
3 then was. And what we are looking at here, sir,
4 is Mr. Cotler's or his Ministry's press release
5 in which he is quoted in that press release.
6 And in it he is explaining why that day,
7 March 3rd of 2005, he ordered that
8 Mr. Driskell's conviction be quashed as was
9 within his power under Section 696 and he
10 ordered a new trial. And one of the reasons he
11 gave, sir, was the DNA. Do you see that in the
12 middle of the page?

13 A Yes, sir.

14 Q "DNA hair analysis in 2002 effectively
15 refuted expert evidence presented by the
16 Crown at Mr. Driskell's trial that three
17 hairs found in a vehicle owned by him
18 belonged to the victim. The DNA analysis
19 clearly established the hair did not belong
20 to the victim."

21 THE COMMISSIONER: Not too fast.

22 MR. LOCKYER: My apologies, I'm just taking
23 longer than I meant to, Mr. Commissioner, and so
24 I'm trying to get faster. Terrible habit.

25

1 BY MR. LOCKYER:

2 Q "So, that a significant piece of evidence,
3 upon which the jury relied, was unfounded.
4 The Crown failed to disclose that its two
5 key witnesses -- Reath Zanidean and John
6 Gumieny -- who had testified that
7 Mr. Driskell planned the murder, had
8 received substantial financial
9 consideration. This denied Mr. Driskell's
10 right to full disclosure and right to
11 challenge the credibility of key witnesses.
12 For 11 years after Mr. Driskell's trial,
13 the Crown failed to disclose information
14 that Mr. Zanidean likely committed perjury
15 at the trial. For ten years, Winnipeg
16 Police failed to disclose an investigative
17 report regarding the murder which included
18 important and relevant information that
19 would have been helpful to Mr. Driskell's
20 defence."

21 I will read that again.

22 "For ten years, Winnipeg Police failed to
23 disclose an investigative report regarding
24 the murder which included important and
25 relevant information that would have been

1 helpful to Mr. Driskell's defence. The
2 Crown's two key witnesses, Zanidean and
3 Gumieny, have, since Mr. Driskell's trial,
4 either recanted or threatened to recant
5 their trial testimony regarding
6 Mr. Driskell's involvement in the murder.
7 The failure to disclose this information to
8 the defence was not only a serious breach
9 of the constitutional duty to disclose, but
10 the information also significantly
11 undermined the credibility of these key
12 witnesses. Cotler said that these new
13 matters taken and weighed together "clearly
14 denied Mr. Driskell the right to a full and
15 fair hearing." They so seriously
16 prejudiced the fairness of the original
17 trial and the validity of the original
18 conviction that the only appropriate remedy
19 is to quash the conviction and grant a new
20 trial."

21 Those are pretty powerful words coming from
22 the senior legal person in the country, are they
23 not, sir?

24 A Yes, sir.

25 Q And whilst I don't have a response that you

1 gave, because I'm not sure you gave a public
2 response to what Mr. Cotler said, with regards
3 to this case, sir, and with regards to the role
4 played in it for ten years by the Winnipeg
5 Police, I do have the response that you gave to
6 Mr. Justice Oliphant. And I want to play it to
7 you, if I may, and that's really -- this is the
8 end of my cross-examination, you might say. If
9 we could play -- this is a press conference,
10 sir, Mr. Justice Oliphant said what he said, if
11 we go back to tab 11, on November 24 of 2003,
12 sir, and I think I'm right in saying that this
13 press conference was held the next day on
14 November 25th of 2003. Tab 12. I am right, it
15 was the following day at 1:56 in the afternoon,
16 and I think it is worth noting, sir, and I
17 imagine you knew this at the time, that this
18 press conference that you gave, and it is only
19 ten minutes I think, was carried live across the
20 country by CBC News World; did you know that at
21 the time, sir?

22 A I may have, sir.

23 Q So they could have watched it in the Northwest
24 Territories, Newfoundland or B.C.?

25 A It could be.

1 Q Let alone Manitoba. Could we make it an exhibit
2 first, please?

3 THE COMMISSIONER: The disk will be exhibit 29E.

4 (EXHIBIT 29E: CD of Press conference,
5 November 25th of 2003)

6 MR. LOCKYER: If you turn to page 2 of tab 12,
7 you will see there is a transcript of this press
8 conference. I say 10 minutes, maybe 12 minutes.

9 (CD of Press conference played)

10 THE COMMISSIONER: Thank you.

11 BY MR. LOCKYER:

12 Q And the previous page to that press conference,
13 sir, in tab 12, is a press release that you
14 issued at that press conference, is that right?

15 A That's my understanding, sir.

16 Q And just to go through a few of the things you
17 said, sir. First of all, this was your best
18 response to what Mr. Justice Oliphant had said
19 the day before in court; is that right?

20 A I don't believe it was a response to what
21 Mr. Justice Oliphant said, sir.

22 Q Nor do I. I agree with you. The first page of
23 the transcript, sir, if you could turn to it.
24 You say seven lines, ten lines down

25 "The mandate of this review which has been

1 filed in Manitoba Queen's Bench was not to
2 reinvestigate the homicide, but to ensure
3 that all of the evidence gathered by the
4 homicide investigators was provided to the
5 Crown."

6 You say that again and again and again
7 during the course of the press conference?

8 A Yes, I did, sir.

9 Q And as we heard yesterday, that was merely one
10 of the purposes of the review, is that right
11 sir? Really the way it is expressed in the
12 review is a subsidiary purpose, there is one
13 reference to it on page 4 and that was it.

14 A The mandate certainly broadened and contained
15 other aspects of it, yes, sir.

16 Q The original mandate, as I recall from
17 yesterday, was a mandate to respond to the
18 concerns raised by the articles in the Winnipeg
19 Sun?

20 A No, it was to ensure that the information that
21 was gathered by our investigators had been
22 provided to the Crown relative to this matter.
23 The issue relative to the Winnipeg Sun,
24 obviously that was one of the issues that I
25 would assume triggered the decision by Chief

1 Henry to call for this review.

2 Q Go down ten lines, sir.

3 "The review does not contain new evidence;
4 it only reviews the evidence that and
5 confirms that that evidence was in the
6 hands of the prosecutors. I'd like to be
7 clear about this. The process assigns all
8 players with roles and it is not the
9 responsibility of the police to forward any
10 information directly to defence counsel or
11 anyone other than the Crown."

12 That brings me back to some questioning a
13 few minutes ago. The statement that the review
14 dose not contain new evidence, something that I
15 suggested to you, you said to counsel for
16 Mr. Driskell and indeed to Mr. Lett as well back
17 in 2000 and to counsel for Mr. Driskell from
18 2001 on, presumably you would revise that
19 statement now, the review does not contain new
20 evidence. We heard in your examination in chief
21 yesterday you acknowledge any number of items of
22 new evidence that you uncovered in your review,
23 isn't that right, sir?

24 A That's not accurate, sir.

25 Q Maybe I misunderstood. I thought it happened

1 with me when I questioned you as well, I took
2 you through six or seven items and so did Mr.
3 Code.

4 A And I believe I commented on all of them.

5 Q And you agreed they were all new evidence?

6 A No, I didn't agree they were all new evidence.

7 Q What did you think you were doing? You were
8 uncovering evidence that was already known to
9 everyone anyway? I don't understand. I thought
10 it was perfectly clear yesterday that you
11 acknowledged that the evidence that you
12 uncovered in 1993, a large amount of it was new,
13 am I wrong?

14 A I didn't say that, sir.

15 Q You didn't. I'm bewildered by your answer,
16 frankly, I don't know quite how to deal it. We
17 heard the question new evidence being
18 acknowledged by you time and time again
19 yesterday. And now you are saying that you
20 didn't uncover new evidence, is that what you
21 are saying today?

22 A We talked about the fact that what has been
23 described as new evidence, is evidence that we
24 believed or we understood was in the hands of
25 the Crown Attorney.

1 Q Well, you didn't understand when you found it
2 out, sir, that the Swift Current evidence was in
3 the hands of the Crown Attorney. You knew very
4 well it wasn't.

5 A We were aware that the Crown was certainly aware
6 of all of the issues with the Swift Current
7 issues and so on.

8 Q Chief Ewatski, this doesn't make you look good.

9 A Sir, I don't understand your question.

10 THE COMMISSIONER: Mr. Lockyer, that's not
11 helpful.

12 MR. LOCKYER: Sorry.

13 BY MR. LOCKYER:

14 Q Down at the bottom, sir.

15 "The Winnipeg Police Service gathered the
16 available evidence and provided all of it
17 to the Crown."

18 Would you like to revise that statement
19 now, sir?

20 A That was our conclusion, sir.

21 Q Is it still your conclusion, sir?

22 A Based on what I have testified here at the
23 inquiry the only aspect of that I would say that
24 would differ from that, would be the information
25 relative to the Crime Stoppers evidence, or

1 Crime Stoppers information.

2 Q Let me ask you this, sir; when exactly and to
3 whom did you advise of Mr. Zanidean's
4 recantation to Paul? Did you tell Mr. Miller,
5 Mr. Dangerfield, Mr. Lawlor, who?

6 A Could you ask the question again, sir? I didn't
7 follow your question, sir.

8 Q Which one of them did you tell, if not all of
9 them, sir, about Mr. Zanidean's recantation to
10 Mr. Paul?

11 A Did we tell?

12 Q Yes?

13 A We were under the impression that that
14 information was known by the Crown, sir.

15 Q I see. You also said on the second page, more
16 than halfway down you said,

17 All of the information that is in the
18 report was provided to the Crown."

19 And there is a mistake here, that the word
20 "through" should read "during", as I listen to
21 it. I will just reread that.

22 All of the evidence that is in the report
23 was provided to the Crown during the course
24 of the criminal proceedings against
25 Mr. Driskell."

1 I mean, that's patently untrue, isn't it?

2 A Pardon me, sir?

3 Q That's patently untrue, sir, isn't it?

4 A That was our opinion, sir, that it was.

5 Q The next page, sir, at the bottom. Page 3 at
6 the bottom. You were asked by a reporter,
7 "Chief Ewatski, are you saying that Crown
8 counsel knew that the key witness,
9 Mr. Zanidean, was a liar?"
10 And you said,
11 "Not only that the Crown counsel knew the
12 issues surrounding all of the witnesses -
13 so did the jury."
14 That's simply not correct, is it, sir?

15 A I was answering the question relative to the
16 Crown counsel. Obviously they were aware of the
17 testimony and they were aware of the information
18 prior to his testimony, sir. And --

19 Q So were you of the --

20 A I can't say that the jury knew of everything,
21 no, sir.

22 Q They surely didn't, that's the whole point.

23 A It is obvious, sir, yes.

24 Q It was obvious then too, just taking the
25 cross-examination of Mr. Zanidean, isn't it,

1 sir? It was obvious to you in '93 that the jury
2 didn't know the real story about Mr. Zanidean?

3 A My answer was in relation to the character of
4 Mr. Zanidean and the issues surrounding him.

5 Q The question was, are you saying that Crown
6 counsel knew that the key witness Mr. Zanidean
7 was a liar, that was the question?

8 A Um-hum.

9 Q And that's the question you responded to?

10 A Obviously the response wasn't totally accurate,
11 sir.

12 Q And that brings me back to your August meeting
13 in '93 with Mr. Dangerfield and Mr. Lawlor, sir.
14 It would really have to be on the basis of that
15 meeting, wouldn't it, that you could say that
16 Crown counsel knew the issues surrounding the
17 witnesses. It would have to be from that
18 meeting that you would be able to say that,
19 wouldn't it?

20 A It was even prior to that. It was during the
21 course of our meeting with Mr. Miller back in
22 May of that year that made it very clear that he
23 was aware of all of the issues surrounding
24 Mr. Zanidean.

25 Q You were then asked, sir, just carrying on.

1 "They knew that that jury was made aware of
2 the fact that Mr. Zanidean may have had a
3 deal and claimed he didn't have a deal?"

4 That's the question. Sorry, the bottom of
5 3, just carrying on from where I left off.

6 A Go ahead.

7 Q The last question on the page.

8 A I see that.

9 Q Just read it to yourself and then I will read
10 your answer. Your answer to the question,

11 "All the information that is in that report
12 was in the hands of the Crown prosecutor at
13 the time of the court proceedings against
14 Mr. Driskell."

15 So once again, sir, you are saying that the
16 Crown had everything about Mr. Zanidean, the
17 benefits and so on and so forth?

18 A It was our position and our opinion that the
19 Crown Attorney was aware of all of the issues
20 relative to Mr. Zanidean, sir.

21 Q Question by a reporter.

22 "Did you ever have opportunity to tell the
23 Crown prosecutors that you had evidence
24 that Mr. Zanidean tried to recant his
25 testimony a week after the trial? Was

1 there any opportunity to share that with
2 the Crown?

3 Ewatski: Everything that's in that report
4 was given to the Crown prosecutors during
5 the course of the criminal proceedings
6 against him.

7 Reporter: So that happened after the trial
8 - how could you have provided it to them
9 when it happened after the trial?

10 Ewatski: Everything that is in that report
11 was provided to the Crown Prosecutors - I
12 don't think I could repeat it one more time
13 that would be any clearer than that."

14 So clearly, sir, you are stating as a fact
15 there, that Mr. Zanidean's recantation has been
16 communicated by you to the Crown Prosecutors, is
17 that right?

18 A Sir, one could argue that I didn't answer those
19 two questions specifically to that reporter, I
20 just reiterated a statement that I was saying
21 over and over again, and that is something that
22 is not uncommon in a press conference, to just
23 relate the point, reinforce the point.

24 Q Perhaps you speak for yourself when you say
25 that?

1 A Sorry? Perhaps you don't do that, sir.

2 Q I try not to, Chief Ewatski. And it is
3 interesting you say that. Was there a reason
4 that you didn't want to answer that question?

5 A I was trying to maintain focus on the message
6 that we were providing to the public and that
7 message was that it was our opinion, our
8 position that the evidence that was collected by
9 the investigators during the course of this
10 investigation was forwarded and in the hands of
11 the Crown Attorney.

12 Q I don't recall, sir, I don't believe you did,
13 you didn't call a press conference after
14 Minister Cotler's order and the stay of
15 proceedings entered against Mr. Driskell, am I
16 right?

17 A I can't recall, sir.

18 Q I don't believe you did. So, perhaps we can
19 just act on the premise that you did not. If we
20 go back to tab 14, sir, where Minister Cotler
21 says,

22 "For ten years Winnipeg Police failed to
23 disclose an investigative report regarding
24 the murder which included important and
25 relevant information that would have been

1 helpful to Mr. Driskell's defence. The
2 Crowns two key witnesses, Zanidean and
3 Gumieny, have since Mr. Driskell's trial
4 either recanted or threatened to recant
5 their trial testimony regarding
6 Mr. Driskell's involvement in the murder.
7 The failure to disclose this information to
8 the defence was not only a serious breach
9 of the constitutional duty to disclose, but
10 the information also significantly
11 undermined the credibility of these key
12 witnesses. Cotler said that these new
13 matters taken together and weighed together
14 clearly denied Mr. Driskell the right to a
15 full and fair hearing. They so seriously
16 prejudiced the fairness of the original
17 trial and the validity of the original
18 conviction, the only appropriate remedy is
19 to quash the conviction and grant a new
20 trial."

21 Since you have never responded publicly to
22 that position taken by the Chief Justice
23 Minister of the country, sir, would you like to
24 do it now?

25 A I will go to the line where he indicates that

1 the failure to disclose this information to
2 defence was not only a serious breach, it is the
3 role of the Crown Attorney to disclose that
4 information to defence counsel, not to the
5 police. And we took the position that the
6 information that was gathered during the course
7 of this investigation was disclosed to the
8 Crown, sir.

9 Q Of course, you are not suggesting, sir, for
10 example, are you, that when you spoke to the
11 Crowns that you fully briefed them on what you
12 had seen in the Swift Current files, are you?

13 A What I'm suggesting, sir, and what --

14 Q Just as an example?

15 A What I'm suggesting, sir, and what I have
16 testified to is that it was my belief that
17 certainly the Crowns were well aware of all of
18 the information relative to that matter.

19 Q Do you have any further answer to that, just to
20 give you the chance, to what the minister said
21 in March --

22 A That's my answer, sir.

23 Q -- in March 2005. And do you have anything to
24 say in that regard to Mr. Driskell, sir?

25 A That's my answer, sir.

1 Q All right. Thank you?

2 A You are welcome.

3 MR. KENNEDY: I assume I will go next.

4 THE COMMISSIONER: I thought maybe that was the
5 flow, if it is other than that, because counsel
6 have been very good about sorting this out and I
7 appreciate that.

8 BY MR. KENNEDY:

9 Q It is fine, Mr. Commissioner. Chief Ewatski, my
10 name is Jerome Kennedy. I represent AIDWYC at
11 this inquiry. Good morning, sir.

12 A Good morning, sir.

13 Q Chief Ewatski, this is the second major inquiry
14 held in this province with the Sophonow report
15 being released in September of 2001; correct?

16 A Yes, sir.

17 Q In terms of some of the recommendations made in
18 the Sophonow report, and I'm not going to get
19 into detail but, for example, have the
20 recommendations that related to the police been
21 implemented? And I will give you a couple of
22 examples; the videotaping of witnesses and the
23 retention of notebooks, for example.

24 A Actually prior to the recommendations coming
25 forward, the Winnipeg Police Service has changed

1 a number of their policies and practices
2 relative to the capturing of information from
3 witnesses, from accused persons, as well as
4 having policies in place relative to the
5 retention of information in notebooks.

6 Q So, it is fair for me to state that as Chief of
7 Police you took that report seriously.

8 A Absolutely, sir.

9 Q And I would assume that you would give assurance
10 to the Commission or to the people of this
11 inquiry that any recommendations made would, to
12 the best of your ability, in conjunction with
13 the Department of Justice, be implemented in
14 this province or in Winnipeg for sure?

15 A I think that would be a fair statement, sir.

16 Q One of the issues that AIDWYC have had in a
17 number of these inquiries is the issue of
18 accountability. And I will just refer you to --
19 are you familiar with the terms of reference?
20 I'm not going to go into them in detail, but are
21 you familiar with the terms of reference in this
22 case?

23 A I have read them, yes, sir.

24 Q That the Commissioner can give advice, obviously
25 without expressing opinion or conclusions or

1 recommendations or criminal liability, he can
2 give advice as to whether matters should be
3 referred to the Law Society or the Law
4 Enforcement Review Agency or to an outside
5 agency; are you familiar with that, sir?

6 A Yes, sir.

7 Q Would you agree with me, sir, that one of the
8 basic principles of police work is that people
9 who commit illegal acts or criminal acts should
10 be held accountable for their actions?

11 A I think that's the basis of our criminal law,
12 sir.

13 Q So in terms, sir, in this particular case if any
14 recommendations are made in that respect, your
15 cooperation would be forthcoming in terms of
16 what I just talked about, the references, advice
17 as to the Winnipeg Police Service, Law
18 Enforcement Review Agency or an independent
19 police service, your cooperation would be
20 forthcoming would it, sir?

21 A Yes, sir.

22 Q Sir, do you agree with me that accountability,
23 and by accountability, I will give you an
24 example, I'm not simply referring to police, it
25 could be disciplinary proceedings, resignations,

1 criminal charges, accountability can lead to
2 changes in attitudes and practices?

3 A That would certainly be one of the change
4 factors, yes, sir.

5 Q And along with accountability, sir, is the issue
6 of responsibility or the acceptance of
7 responsibility; would you agree with me that the
8 two would go hand in hand?

9 A Yes, sir.

10 Q So you have been the Chief of Police since 1998,
11 is that correct?

12 A November of '98, yes, sir.

13 Q I assume one of your roles as the Chief of
14 Police would be the mentoring of other officers,
15 advising other officers, setting policies and
16 guidelines; correct?

17 A To a certain degree, sir.

18 Q Have you left your stamp or your method of
19 policing, Chief Ewatski, on the Winnipeg Police
20 Service over the last eight years as Chief, do
21 you think?

22 A Some would argue yes and some would argue no.

23 Q In this particular case, all of the other
24 officers from what I can see, the other officers
25 that have been involved in this case have

1 retired, correct?

2 A I believe there may be some officers who took
3 probably minor roles in this investigation that
4 are still with us on the service, but it is my
5 understanding that all of the ones, the major
6 players, are no longer with the service.

7 Q So you are the only officer left who played, or
8 do you agree that you played a major role in
9 this case?

10 A Well, if you -- maybe describe the case, because
11 if it was the investigation into the murder, I
12 had no role whatsoever. If you talk on a
13 broader sense relative to this whole matter,
14 obviously I played a role in it as being one of
15 the officers who was tasked with reviewing the
16 investigation.

17 Q Sir, would you, or is it fair for me to assume
18 that you will accept this Commission's findings
19 in relation to your service, but also in
20 relation to yourself?

21 THE COMMISSIONER: I think that may require a
22 crystal ball. I think maybe you better read
23 them.

24 THE WITNESS: Mr. Commissioner, I was going to
25 say I normally don't answer hypothetical

1 questions or situations so --

2 MR. KENNEDY: Mr. Commissioner, in this
3 particular case I think there will be certain
4 arguments at the end of the day that will be
5 forthcoming. I would just like to ask this
6 officer if he is willing to assure the
7 Commission that he will accept the findings
8 whatever they may be.

9 THE COMMISSIONER: We can only ask him to
10 consider. I hope he accepts them. But if I
11 come out with some recommendation that's
12 contrary to law or the constitution, for
13 instance, how can he possibly abide by it?

14 MR. KENNEDY: That is fair, I will use a
15 concrete example.

16 BY MR. KENNEDY:

17 Q Chief Ewatski, in the recent inquiry in
18 Newfoundland presided over by former Chief
19 Justice Antonio Lemer, there was advice given
20 that an independent review of the director of
21 public prosecutions office take place. That
22 advice or recommendation was followed by the
23 Minister of Justice in Newfoundland. Do you
24 think, sir, that an independent review of the
25 Winnipeg Police Service would be helpful or

1 necessary in your opinion to ensure public
2 confidence in your service?

3 A Based on what, sir?

4 Q Based, sir, on a pattern that I would suggest to
5 you that has developed over many years, and it
6 is an attitude, sir, that you have continued to
7 display today, non-acceptance of responsibility,
8 Chief Ewatski?

9 THE COMMISSIONER: Well, I think you are going
10 to have to be more specific.

11 BY MR. KENNEDY:

12 Q You, sir, do not accept that you did anything
13 wrong in this case, do you?

14 A I didn't say that, sir.

15 Q Have you done things wrong, Chief Ewatski?

16 A I don't know, sir. I did to the best of my
17 ability the job that was asked of me to do, sir.

18 Q Okay. So that means you haven't done anything
19 wrong in your opinion; is that what you are
20 saying?

21 A I didn't say that, sir.

22 Q Give me an example of something that you could
23 have done differently?

24 A I think in retrospect anything that we do we
25 could look back and say I could do things

1 differently. In retrospect, let's go back to
2 our interview with Mr. Dangerfield and Lawlor.
3 We probably would have taken more comprehensive
4 notes, that's one example. Is it wrong or is it
5 right? It is not up for me to decide, sir.

6 Q So, in your opinion there is no review of the
7 Winnipeg Police Service necessary, everything is
8 running well, is that what you are saying?

9 A I have the utmost confidence in the members of
10 the Winnipeg Police Service that they go about
11 their duties on a day-to-day basis in a manner
12 that is professional, effective, following the
13 law of this land, the regulations of the police
14 service, and provide the citizens of this city a
15 very professional policing service to the city.

16 Q So the answer is no, in your opinion?

17 A No, that was my answer, sir.

18 Q It seems to be -- that suggestion seems to upset
19 you, Chief Ewatski?

20 A I am deeply --

21 THE COMMISSIONER: I think he just didn't agree
22 with your characterization of what his answer
23 was.

24 MR. KENNEDY: Mr. Commissioner, I have noticed
25 for a couple of days, this is a continuing theme

1 sir, I will be arguing at the end of this, but
2 the officer seems to get upset or the Chief
3 seems to get upset when anyone suggests to him
4 that perhaps he didn't fulfill his duty, and I
5 just asked him --

6 THE COMMISSIONER: I'm not sure, you know, that
7 you really should be giving evidence, and so I
8 think --

9 MR. KENNEDY: That's fine, Commissioner. I get
10 your point. I will move on.

11 THE WITNESS: Mr. Commissioner, can I answer
12 that last question, though, sir?

13 THE COMMISSIONER: Yes.

14 THE WITNESS: Thank you very much. I am
15 passionate about the Winnipeg Police Service and
16 the job they do. And I do get passionate when
17 people make accusations against the Winnipeg
18 Police Service and allegations against the
19 police service, and make comments such as that
20 against the Winnipeg Police Service which has a
21 long and proud history in this city. And, yes,
22 I do get passionate. If I didn't get
23 passionate, then that would be time that I would
24 step down being Chief of Police.

25 BY MR. KENNEDY:

1 Q I want to move on now to the issue of post
2 conviction disclosure. I'm not going to go
3 through what Mr. Code and Mr. Lockyer have taken
4 you through in terms of the factual findings or
5 whether the report should have been provided in
6 some way to the Crown. Are there any policies
7 in place in relation to the provision of new or
8 subsequent facts in post-conviction matters in a
9 way that they be provided to the Crown, has this
10 matter been addressed?

11 A I believe our practices and our policies
12 relative to disclosure comply with what is
13 required of us by law, sir.

14 Q So there have been no policies put in place; is
15 that your answer?

16 A I didn't say that, sir, I said that I believe
17 that our policies presently that we have within
18 the police service comply with our legal
19 obligations relative to disclosure.

20 Q So is there a policy in place which could
21 prevent what happened in this case, as Mr.
22 Lockyer pointed out, 10 years for this new
23 evidence to be provided to the Crown and the
24 defence?

25 A Sir, you want me to characterize this

1 information as new evidence, which I have said
2 over and over again, that the evidence that was
3 collected by our investigators had been passed
4 on, had been disclosed to the Crown.

5 Q Chief Ewatski in the Order-In-Council there is
6 reference to the Law Enforcement Review Agency,
7 that the Commissioner could give advice about
8 matters being referred to the Law Enforcement
9 Review Agency. Perhaps you could just very
10 briefly tell us, do you know what the Law
11 Enforcement Review Agency does?

12 A Yes, I do sir. They are tasked with, I guess,
13 the administration and the investigative
14 function under the Law Enforcement Review Act
15 which deals with certain aspects of police
16 conduct for members of municipal police services
17 in the Province of Manitoba.

18 Q Are there policies or statistics available,
19 Chief Ewatski, in relation to the role of I
20 think it is called LERA for short?

21 A That's what it is called, LERA.

22 Q Do you know if there is any policies or
23 statistics available?

24 A For what, sir?

25 Q For what LERA does, in terms of the number of

1 complaints it hears, the findings it makes, et
2 cetera?

3 A Yes, sir, every year they publish an annual
4 report that contains that information.

5 Q Sir, do you yourself know, again I'm sure we can
6 find these statistics, but do you know
7 whether -- do you know the number of complaints,
8 for example, in the last number of years that
9 have resulted in disciplinary action against
10 your officers?

11 A The number of complaints or the number of
12 disciplinary actions?

13 Q The number of disciplinary actions as a result
14 of complaints made?

15 A I don't know the specific number of complaints
16 made to the agency. I'm saying that it will
17 probably be on an average, probably less than
18 400 per year.

19 Q And in terms of resulting in action taken
20 against the officers?

21 A There is different actions to take. All of that
22 information, LERA has it in their annual report.

23 Q So are you aware if LERA has any lawyers in its
24 employ?

25 A Lawyers? I have no idea, sir.

1 Q Do you have any idea, sir, as to how long it
2 takes for a LERA complaint to be heard?

3 A I couldn't answer that with certainty, sir.

4 Q Do you have any knowledge, sir, as to whether
5 the vast majority of complainants in these cases
6 are unrepresented?

7 A I can't tell you that, sir, I don't know.

8 Q Fine. I want to deal very briefly, sir, with
9 notetaking. At the time of the Driskell matter,
10 were there any policies in place in terms of a
11 procedure manual or in regulations in relation
12 to the taking of notes?

13 A I believe there was, sir.

14 Q Could copies of those be provided at some point?
15 MS. CARSELL: I have been told that I have to
16 move people out of the way. Mr. Commissioner, I
17 told both Mr. Code and Mr. Kennedy that given we
18 received notification of his interest in this
19 particular area on the weekend, I have not had
20 the opportunity to gather the policies that
21 would be germane to the issues in his material,
22 and that I would be doing so and disclosing it
23 in due course. Obviously with the hours that we
24 have been doing, it has just been impossible for
25 me to get it to the Commission as yet. But it

1 is forthcoming, and I have advised both Mr. Code
2 and Mr. Kennedy that.

3 THE COMMISSIONER: Thank you, Mrs. Carswell.

4 BY MR. KENNEDY:

5 Q One last point I want to make on this issue,
6 because we will get these materials. I
7 questioned Sergeant Anderson last week in terms
8 of the makeup of the homicide investigation at
9 the time. And the organization of a homicide
10 investigation then as opposed to now would be
11 quite different, would it, Chief Ewatski?

12 A Yes, it would be, sir.

13 Q I would assume that like every other major
14 police force in the country you are now using
15 the major case management model in terms of the
16 organization of homicide investigations?

17 A The exact model, I'm not sure, because there is
18 different models out there, but it is certainly
19 with that concept.

20 Q The concept of a case coordinator, whatever the
21 actual terms are, case manager or the lead
22 investigator?

23 A Yes.

24 Q And would, sir, in your opinion the use of this
25 major case management model prevent some of the

1 problems that occurred in this original
2 investigation in terms of notes not being
3 provided to superiors and then to the Crown?

4 A I think as a result of not only developing or
5 using the concept of major case management, but
6 also the evolution of police training and
7 constant development in scanning the country
8 relative to best practices, police services,
9 including the Winnipeg Police Service, have
10 continued to evolve their practices, their
11 policies, to ensure that we are performing our
12 roles to the best of our abilities, ensuring
13 that we are meeting all of our legal obligations
14 and that we are able to investigate matters in a
15 thorough, complete and objective manner.

16 Q I have two final questions for you, Chief
17 Ewatski. I don't have it with me, but I think
18 it was tab 14 that Mr. Lockyer referred you to,
19 sir. It was Minister of Justice Cotler's --
20 THE COMMISSIONER: It is tab 14.

21 BY MR. KENNEDY:

22 Q You see at the second page of that there is a
23 reference to a major report which had been
24 prepared by various senior police officers and
25 Crowns across the country in relation to the

1 prevention of miscarriages of justice. Are you
2 aware of that report, sir?

3 A I'm vaguely aware of that.

4 Q My question was were you one of the senior
5 police officers who was involved in putting that
6 together?

7 A No, sir.

8 Q The next question I have for you and it may be
9 somewhat trite, and the answer may be obvious,
10 Chief Ewatski. But just as you are passionate
11 about policing and police services, are you also
12 as passionate about ensuring that miscarriages
13 of justice do not occur?

14 A I think my record speaks to the fact, when we
15 talk about my involvement in the Thomas Sophonow
16 case, I think that would clearly show that I'm
17 passionate about those issues, sir.

18 Q Sir, is it your position that what we are all
19 trying to do or do you agree that we are all
20 trying to work together for the betterment of
21 the system?

22 A I think it is important that all players within
23 the criminal justice system certainly ensure
24 that the system is fair to everyone involved,
25 most importantly to the accused persons. I

1 think that speaks to the heart of the criminal
2 justice system and it speaks to the level of
3 confidence that people in this country have to
4 have in that criminal justice system.

5 MR. KENNEDY: Thank you very much, Chief
6 Ewatski. I thank you, Mr. Commissioner. Those
7 are my questions.

8 THE COMMISSIONER: Thank you, Mr. Kennedy. I
9 think this is about the time we would take the
10 morning recess, so it probably is an appropriate
11 time to do so.

12 THE CLERK: All rise. This Commission of
13 Inquiry is now in recess.

14 (Proceedings recessed at 11:22 a.m.
15 and reconvened at 11:35 a.m.)

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

18 MR. PROBER: Mr. Commissioner.

19 THE COMMISSIONER: Mr. Prober.

20 BY MR. PROBER:

21 Q Good morning, Chief Ewatski. We know each other
22 and you may know that I represent
23 Mr. Dangerfield at this inquiry?

24 A Yes, sir.

25 Q Before the morning started I had only two what I

1 would call simple matters to talk to you about,
2 but now I have four. I should be fairly brief.

3 If you look at tab 1 of your book of
4 documents, volume 1, please?

5 A Yes, sir.

6 Q It is your statement to the inquiry counsel.

7 A A summary of the interview, yes, sir.

8 Q Right. Page 7, bold type at the bottom,
9 opposite C.

10 "New information discovered in review."

11 Do you see that?

12 A Yes, I do, sir.

13 Q And there are six items listed there?

14 A That's correct, sir.

15 Q Okay. And no issue about what the word "new"
16 means, that's fairly clear?

17 A Do I understand what the word "new" means? Is
18 that what you are asking?

19 Q Right.

20 A I certainly understand what the word means.

21 Q And it was something, information that your
22 review had discovered, right?

23 MS. CARSELL: Excuse me, Mr. Prober.

24 Mr. Commissioner, I rise at this point, and I
25 mentioned it to Mr. Code yesterday when there

1 was a line of examination with respect to the
2 summary of Inspector Hall and the "new facts" as
3 put as a heading when there was a list of
4 issues. Those are not Inspector Hall's words.
5 They are an organizational method that
6 Commission Counsel dealt with to get at the
7 subsequent --

8 THE COMMISSIONER: Chief Ewatski's.

9 MS. CARSELL: This is in Hall's. Well, he has
10 got Hall's open.

11 MR. PROBER: But I had referred to --

12 MS. CARSELL: But it certainly was an
13 organizational, it wasn't the words out of these
14 individual's mouths. And if you look at Hall's
15 statement on the last page, I think that's
16 clarified. So given that we are going here
17 again today, I did feel obligated to rise and
18 indicate that.

19 MR. PROBER: That's fair enough.

20 BY MR. PROBER:

21 Q Do you dispute, Chief Ewatski, referring to your
22 statement that the six items under "new
23 information discovered in the review" is not
24 accurate? You would call it something else?

25 A Depending on obviously your point of view in

1 terms of how you are trying to describe this as
2 information, whether this is information that
3 was new to the Winnipeg Police Service, not
4 known by the Winnipeg Police Service prior, or
5 not known by the Crown's office. So there is --
6 yes, there is some issues with that, sir.

7 Q It is your point of view that I'm interested in.
8 From your point of view, do you dispute the
9 heading "new information discovered in review"
10 and the six items listed under that? Is that a
11 misdescription? Is it a disconnect in some way?

12 A I would say that the title itself is fine, but
13 there is explanation relative to what is meant
14 by new. New to who, I suppose, is probably --

15 Q That's what I'm going to get to in a minute.

16 Turn to tab 2? When your counsel took the
17 mike I had opened, in fairness to you, I wanted
18 to put to you what your co-author said. Page 9.
19 "New facts discovered during Hall and Ewatski's
20 review." It goes on,

21 "Hall agrees that during their
22 investigation, he and Ewatski discovered a
23 number of potentially new items of
24 information that were previously either
25 entirely unknown to the Winnipeg Police

1 and/ or the Crown, or where there was some
2 question as to who had had knowledge and
3 how much they had known."

4 Do you disagree with that comment?

5 A I think that probably captures what I was just
6 trying to say in my previous answer, sir.

7 Q Six items, the same six items that are listed
8 under the heading in your statement "new
9 information" are listed here, right? Crime
10 Stoppers, Zanidean's apparent perjury regarding
11 the Swift Current arson, Zanidean's request for
12 immunity, Zanidean's telephone call to Brodsky,
13 Gumieny's recantation threats and the benefits
14 paid to Zanidean, I mean, I'm not going to take
15 you through them all, we have already done that.
16 Same issues, right?

17 A Those are the same ones that are identified in
18 both our summaries, sir.

19 Q And again, reading from Hall's summary of his
20 interview, the last page, page 14,

21 "Due to the benefit of hindsight, and later
22 analysis of the evidence, Hall only now
23 recognizes that the report contained
24 potentially new material which the Crown
25 was not aware of."

1 Do you see that?

2 A Yes.

3 Q Do you disagree with that?

4 A I would emphasize on potentially new material
5 that they were not aware of, yes.

6 Q But you don't disagree with it?

7 A No, I don't, sir.

8 Q Good. Now, you said a moment ago, and I said we
9 would come back to it, it depends on your
10 perspective as to what you describe as new. As
11 I listened to your evidence this morning, I must
12 admit I was a little puzzled. You seem to be
13 saying at first it wasn't new. Then you said,
14 well, it was new, but it wasn't new to the Crown
15 because the Crown already knew that. You recall
16 saying that?

17 A I don't know if those were my exact words but
18 they were certainly --

19 Q Does that capture the essence of what you said?

20 A For the most part, sir, I think.

21 Q And I have to ask you this; how could it be new
22 to the police and not new to the Crown, since
23 the Crown only gets its information from the
24 police? I mean, how could the Crown come by it
25 unless they get it from the police? So it seems

1 to me that it has to be new to both the Winnipeg
2 Police and the Crown?

3 A I think an example of that is one of the
4 benefits paid to Mr. Zanidean, the \$20,000, that
5 is new to the Winnipeg Police Service.

6 Obviously that information came from the RCMP in
7 the possession of the Crown, and it was new to
8 us. So there is an example of that.

9 Q My understanding was the \$20,000 cheque may have
10 gone to Staff Sergeant Vandergraaf to deliver to
11 Zanidean. Now, I may be wrong in that, but
12 that's my understanding?

13 A I don't know, sir. All I know is the fact that
14 when Mr. Miller indicated to us that \$20,000 was
15 paid, that was new to us, the Winnipeg Police
16 Service.

17 Q All right. But, basically, most of the
18 information that you learned about, that was
19 new, that was potentially new, was new to the
20 Winnipeg Police and new to the Crown, the Crown
21 wasn't aware of it. I mean, that's what Hall
22 said in his interview?

23 A I don't believe so, sir. I think in my
24 testimony I have tried to demonstrate what our
25 opinion was relative to the level of knowledge

1 of that information, even the information that
2 is described as new.

3 Q All right. You have latched on to a \$20,000
4 cheque. What about all of the other items that
5 have been described under the heading "new
6 information, new facts."

7 A Should we go through them one by one?

8 Q If you want to. Are you saying that was known
9 to the Crown, all of those other items?

10 A I believe my testimony was relative to the issue
11 of the Crime Stoppers, that that was not
12 disclosed.

13 Q Right.

14 A Number two, Zanidean's apparent perjury
15 regarding the Swift Current arson; it is our
16 position that the Crown was aware of those facts
17 because the Crown certainly was aware of the
18 Swift Current issue and was aware of the
19 testimony given by Mr. Zanidean.

20 Q I'm not going to take you through the fact that
21 there was no supp prepared. You acknowledged
22 that yesterday.

23 A Sir, I'm trying to explain my explanation to why
24 I believe the Crown was aware of this
25 information.

1 Q And what do you base that information on, that
2 the Crown was aware of that?

3 A Well, I think I just tried to explain that for
4 point number 2, that they were aware of the
5 issues surrounding the Swift Current arson.
6 They were also aware of Mr. Zanidean's testimony
7 relative to that point. So having said that, it
8 is obvious that they were aware of that
9 information, so it was something that was not
10 new to them.

11 Q What information? What perjury? What are you
12 talking about? The revenge motive? The fact
13 that he said he didn't make a deal and he had?
14 What are you talking about? The financial
15 benefits?

16 A What I'm talking about is all of the information
17 they knew about Mr. Zanidean prior to the trial,
18 and then what they heard at the testimony of the
19 trial.

20 Q Do I need to take you again through what
21 Mr. Code took you to, that is material that was
22 in the police officers' notes that didn't get
23 into the supps and wouldn't go to the Crown?
24 Surely, you remember that yesterday?

25 A Mr. Prober, I'm not going to dispute the fact

1 that the Crown did not have every piece of
2 information on the Swift Current file relative
3 to that.

4 Q Right.

5 A I have never suggested that they did. But they
6 were certainly aware of the gist of the
7 allegations and the disconnect on all of these
8 other issues, and they were certainly aware of
9 what Mr. Zanidean testified to.

10 Q Is it your position then that all of this new
11 information, despite the fact of what Hall says,
12 "the Crown was not aware of it", are you saying
13 that the Crown was aware of it?

14 A Well, Mr. Prober, I think I just said that I'm
15 sure that they were not aware of every single
16 fact relative to the Swift Current file.

17 Q Well, that's an understatement.

18 A But they were certainly aware of the majority of
19 it, the important salient points of it, in my
20 opinion, sir.

21 Q Why would you call it new information, and why
22 would Inspector Hall say that new items of
23 information that were previously either entirely
24 unknown to the Winnipeg Police and/or the Crown,
25 and then go on to describe, like I said at page

1 14, potentially new material of which the Crown
2 was not aware of. You are not disputing that?

3 A First of all, sir, I'm not describing it, I
4 didn't author this summary, so I didn't describe
5 it as new information. It is listed under that
6 title with the explanation in terms of what I
7 believe that information was, and what I believe
8 what people knew about that information, sir.

9 Q Okay. Now, if I understood the second issue
10 that I want to talk to you about, Mr. Lockyer's
11 question this morning about the Kara brothers,
12 he appeared to be suggesting to you that
13 Dangerfield thought they were credible. Is that
14 your recollection?

15 A I believe so, sir.

16 Q Well, if you could go to tab 4, the log book
17 notes at page 810?

18 MR. LOCKYER: I kind of misspoke myself there.
19 I meant credible in the sense that he was saying
20 that what they originally said to the police was
21 true. That's what I meant and I was a bit --

22 THE COMMISSIONER: I assumed that's what he
23 meant, because there are two stories.

24 MR. LOCKYER: So I was saying that

25 Mr. Dangerfield accepted the police claim as to

1 what he said, volunteered back in October 23rd
2 of '90. I was a bit confused.

3 MR. PROBER: Fair enough. That's cleared up,
4 because in the notes Dangerfield felt that Kara
5 was not credible, he said that.

6 MR. LOCKYER: I know.

7 THE COMMISSIONER: Actually, it is an
8 interesting sentence, and I think what it means
9 is that --

10 MR. LOCKYER: What he first said was true.

11 THE COMMISSIONER: Yes, that what he first said
12 was true and what he said at trial wasn't.

13 MR. PROBER: That makes sense, because the
14 report at page 76 and then the next page
15 indicates that they were considering a perjury
16 charge against Ashif Kara. So I couldn't
17 understand. Now that's cleared up, I don't have
18 to deal with that.

19 THE COMMISSIONER: Are we correct in that?

20 THE WITNESS: That's my understanding,
21 Mr. Commissioner.

22 MR. PROBER: Okay, no problem. Thank you.
23 Thanks, Mr. Lockyer.

24 BY MR. PROBER:

25 Q Two simple matters left, what I would describe

1 as what I thought were simple matters, they may
2 become a little more complicated depending on
3 your answer. But do you recall being questioned
4 by Mr. Code yesterday about the
5 cross-examination by Mr. Brodsky of Zanidean?

6 A Yes, sir.

7 Q And you readily appeared to agree to his
8 suggestion that -- let's take a clear example --
9 there was no cross-examination on Zanidean's
10 testimony that he committed the arson out of
11 revenge. Do you recall that?

12 A I believe so, sir.

13 Q And, therefore, Brodsky was not armed, it was
14 apparent was not armed with the information, the
15 disclosure to cross-examine him on that, do you
16 recall that?

17 A I recall that my answer was, I believe, that you
18 could draw that conclusion.

19 Q Right. And I am suggesting to you there are
20 other conclusions that could be drawn. For
21 example, Brodsky may have had the information
22 that the arson was committed for profit and not
23 revenge, and chosen not to challenge the witness
24 as a matter of strategy. That's another
25 conclusion?

1 A Yes, sir.

2 Q Or he may have had the information and simply
3 forgot to use it, or forgot entirely about the
4 information. We don't know, right?

5 A That's correct, sir.

6 Q As long as we understand that there are a number
7 of possible explanations, because you wouldn't
8 know what was in Brodsky's file, I take it? You
9 didn't interview him --

10 A That's correct.

11 Q -- in your review?

12 A That is correct, sir, and I believe I referenced
13 that this morning in an answer to one of Mr.
14 Lockyer's questions.

15 Q And you knew, I believe, and correct me if I'm
16 wrong, we know that Brodsky, Mr. Brodsky got
17 information from his investigator, Savage?

18 A I was aware of that.

19 Q You found that out?

20 A Yes, sir.

21 Q You knew as well that he may have gotten
22 information from David Kovnats?

23 A I believe that, sir, yes.

24 Q And you knew that he may have gotten information
25 from his assistant counsel, Mr. Ian Garber, who

1 was interviewing some witnesses for Mr. Brodsky
2 in this matter?

3 A I may have known that, yes, sir.

4 Q So bottom line is, you wouldn't have known what
5 Brodsky had or didn't have in relation to the
6 motive for the arson, in relation to whether
7 there was any deal or not; right?

8 A That's correct, sir.

9 Q And in relation to whether any benefits had been
10 paid to Zanidean, I mean, you simply wouldn't
11 know any of that?

12 A I would not know with certainty, sir.

13 Q You can't make the leap that because he didn't
14 cross-examine him that he didn't have the
15 information?

16 A You are right, sir.

17 Q My final matter relates to your meeting with
18 Dangerfield and Lawlor. At the time you
19 conducted the interview or the meeting, whatever
20 you want to call it, you had 20 years as a
21 police officer, I think, experience as a police
22 officer?

23 A Around that.

24 Q Approximately?

25 A Yes, sir.

1 Q And I guess Inspector Hall, who was an inspector
2 at the time, or sergeant at the time?

3 A He was an inspector also.

4 Q He would have had about 20 years as I recall?

5 A 21 years.

6 Q So, we have got combined total of about 40 years
7 of experience in notetaking, and I take it that
8 you at least can speak to the experience you
9 had, and I would have expected that you would
10 have made notes of hundreds, probably thousands
11 of interviews?

12 A I can't dispute that.

13 Q In that 20 years?

14 A I can't dispute that, yes, sir.

15 Q And you knew, as you told us, that your notes
16 would reflect important matters, relevant
17 matters, correct?

18 A They should, yes, sir.

19 Q You knew at the time you interviewed or met with
20 Dangerfield and Lawlor that Miller told you that
21 there was no deal made with Zanidean?

22 A We were aware of that, yes.

23 Q Right. And by the way, why don't we go to your
24 own notes, not the log at the moment, but your
25 own notes. I think it is tab 6.

- 1 A Yes, sir.
- 2 Q And the pages at the bottom are 249 to 251; am I
3 right?
- 4 A Yes, sir.
- 5 Q And that's the meeting with Dangerfield and
6 Lawlor?
- 7 A Yes, sir.
- 8 Q How long was the meeting?
- 9 A I'm just having a look to see if I had an end
10 time on it.
- 11 Q I notice you have a start time of 10:00 o'clock
12 in the morning?
- 13 A That's correct, sir.
- 14 Q And I'm wondering if you have an end time,
15 because I couldn't see it.
- 16 A I don't have it in my notes, sir.
- 17 Q Based on your notes and based on your
18 recollection, what can you tell me about the
19 length of the meeting?
- 20 A I wish I could be more definitive, sir. I can't
21 tell you if the meeting lasted half an hour, or
22 an hour, hour and a half, I don't know.
- 23 Q Half a day, any idea?
- 24 A I don't think it would last half a day.
- 25 Q Based on what, sort of two or three pages of

1 notes, can you --

2 A Also with my recollection trying to recall, it
3 was -- I know we had what I would call a
4 significant discussion with them.

5 Q Right.

6 A But in the time frame, I'm sorry, I can't assist
7 in that regard.

8 Q All right. Now, the fact that Miller said there
9 was no deal -- and incidentally, the issue of
10 whether there was a deal with Zanidean, there is
11 no dispute, is there, that that was a relevant,
12 important matter?

13 A I wouldn't dispute that, sir.

14 Q And important because part of your mandate, I
15 think you were taken to this before, at page 4
16 of the report, indicates that you were to
17 determine if the police informed the Crown of
18 all of the material facts; right?

19 A That's correct, sir.

20 Q No issue that it is important. You know what
21 Miller told you. Now we get to Dangerfield and
22 Lawlor, who don't just deny there was no deal,
23 but they emphatically state there was no deal,
24 they made no deal, the police made no deal.
25 Correct?

1 A That's what is recorded, sir.

2 Q So you have got three Crowns saying there was no
3 deal, which appeared contrary to what you and
4 Inspector Hall had discovered. It looked like,
5 as you put in your report, a strong suggestion
6 of a deal could be made; right?

7 A A strong suggestion of a deal could be made,
8 yes.

9 Q And there was an issue of a secret deal. You
10 know what -- I don't need to take you through
11 what the others told you, Anderson told you,
12 Burton told you. So you have all of that
13 information, and I know that you say that you
14 can't recall whether you discussed the issue. I
15 also know that you say in your summary that you
16 don't have an independent recollection, apart
17 from your notes. You recall that at page 7 of
18 your summary?

19 A If that's what it says, sir, I agree.

20 Q But what I'm saying is you can't recall it, you
21 told us that, you don't have an independent
22 recollection, but based on all of your
23 experience of notetaking, is it not likely, is
24 it not probable, if you had tried to disabuse
25 Lawlor and Dangerfield of the notion that they

1 had, that there was no deal, which they
2 emphatically denied, if you had raised that with
3 them, is it not likely that we would see
4 something in your notes about that?

5 A It might be likely, sir. There is no note.

6 Q You don't have to tell us that, we know that.
7 The issue is --

8 A Well, sir, I can't speculate in terms of why I
9 put something, or did not put something in my
10 notes or --

11 Q I'm not asking you to say why you didn't, we may
12 get into that in a moment. All I'm suggesting
13 to you, is it not a fair comment, is it not
14 reasonable to have something like that in your
15 notes if you, in fact, raised it with them?

16 A May or may not, sir, I don't know.

17 Q It may not?

18 A It may or may not, sir. It is hard to answer
19 that question. The fact of the matter is, I
20 have said on more than one occasion that we
21 don't have notations on it, I wish the notes
22 were much more comprehensive than that, but they
23 are not.

24 Q Well, you and Hall have 40 years of experience
25 in notetaking, you yourself have interviewed

1 hundreds of thousands of different people, you
2 know about notetaking, you are now an inspector.
3 You've acknowledged that you make notes of
4 important, relevant matters. You have
5 acknowledged this is an important relevant
6 matter. All I'm suggesting to you is, if you
7 discussed it with them, is it not likely that
8 there would be a note of it, based on all of the
9 background that we have gone through?

10 A It is possible, sir.

11 Q Possible. I suggest to you that it is more than
12 possible, that it is probable, that it is
13 likely. You are a good police officer, and you
14 are there, I mean, you are not going to forget
15 to put something like that in your notes, are
16 you?

17 A Sir, again, I can't even recall what is going
18 through my mind during the time of that
19 interview.

20 Q I'm not asking you that.

21 A Could I finish?

22 THE COMMISSIONER: Just let him finish.

23 THE WITNESS: Going back and looking at these
24 notes and trying to recall the exact
25 conversation, or the gist -- well, we call it

1 gist of the conversation -- there was a lot of
2 conversation about this. And at the end of the
3 day, when you look at what we wanted to find out
4 from them, whether or not they were satisfied
5 with the information, obviously that was the
6 most important point. Conversation leading up
7 to it obviously is, or may or may not be
8 included or not. Knowing, I guess again with
9 the benefit of hindsight, that that was going to
10 be such an important interview or meeting with
11 them, we would have taken either more
12 comprehensive notes or recorded the
13 conversation. I don't know what else I can say,
14 sir.

15 BY MR. PROBER:

16 Q Well, you have not focused on my suggestion. I
17 didn't ask you if you recalled it, I didn't ask
18 you for the gist of the conversation, I didn't
19 ask you what the most important elements of the
20 conversation were. I'm not asking you to look
21 back and say, well, what should you have done.
22 All I'm saying is, considering all that we have
23 just gone through, is it not likely, is it not
24 probable that something like that would have
25 made it into your notes? I mean, here you are

1 being told by Dangerfield and Lawlor,
2 emphatically, not just casually, emphatically
3 there is no deal, you know it is an important
4 issue, you don't say, hey boys, we are getting
5 contrary information from some other people
6 here. And one would think that that would
7 likely make it into your notes, especially their
8 reaction, if you raised it?

9 A Well, sir, again I can only speculate, that
10 answer from them saying emphatically no may have
11 been as a result of that being put to them. I
12 can't recall, sir.

13 Q If you had put it to them, it is probable that
14 it would be in your notes. You say it is
15 possible. I suggest to you it is more than
16 possible, it is probable.

17 A Well, sir, if you look at what else they told us
18 too, there isn't the lead up in terms of what
19 caused them to say those things either.

20 Q I'm not asking you what caused them to say those
21 things, I'm not asking you what caused them to
22 emphatically deny there was a deal. I'm only
23 suggesting to you that something that important,
24 which was contrary to what you had found out,
25 would have made it to your notes --

1 A Well --

2 Q -- had you raised it?

3 A Let's look at my notes, sir, if you don't mind.

4 Q No problem.

5 A There is a hyphen in the number of these

6 entries, and that's my note to myself saying

7 that this is something that they told us, told

8 me. There is nothing to say what elicited that

9 response or that -- and I'm sure, I'm positive

10 that isn't the total response. I wrote down

11 what I thought was important, but I have nothing

12 in between to say, well, why did they say this,

13 why did they say that, what elicited that

14 response? Those are not captured. But

15 obviously something was asked of them, something

16 was discussed with them to elicit a response to

17 this. That's the way I took notes of that

18 conversation, sir. And I wish I could be more

19 helpful to clear this up.

20 Q All you can say, had you raised it with them, it

21 is possible it would be in your notes, all

22 right?

23 A Sir, nothing else is in my notes relative to

24 what specifically we raised with them. I'm just

25 trying to give you a sense of the way I tried to

1 capture that discussion.

2 Q Well, it is inconceivable to me, sir, that on
3 such a material element that you wouldn't have
4 raised it with them. It is inconceivable to me
5 that had you raised it with them, there wouldn't
6 be a comment in your notebook about it, based on
7 all of your experience and based on what you
8 were there for.

9 A Well, sir, again that is the way I capture that
10 information.

11 Q And I say to myself, and I ask you, why would
12 you not raise it with them?

13 A Well, I'm not saying that I didn't raise it with
14 them. I'm suggesting that it is very possible
15 that it was raised with them.

16 Q You don't recall --

17 A I don't.

18 Q -- and you don't know. But is it not something
19 that, when you look back now, or even at the
20 time, that you would have raised with them?

21 A Well --

22 Q Or you just can't say?

23 A Well, sir, obviously I have tried to say we may
24 have raised it with them because obviously that
25 was an important aspect of our review. I can't

1 see any reason why we didn't raise it with them.

2 Q Well, you either didn't raise it with them and
3 you forgot, and you are too good a police
4 officer to do that. So you wouldn't have
5 forgotten, would you?

6 A Sir, I can't recall. But what I'm saying is
7 that I would see no reason not to raise it, but
8 I can't say with certainty. And it is very, you
9 know, you want me to say with certainty, I
10 believe, and I can't.

11 Q I didn't say certainty, I used the word
12 probable. But in any event, it is not because
13 you forgot to raise it with them. It is not
14 because it wasn't relevant or important, because
15 you acknowledged that it was; right?

16 A Sir, I'm trying to recall to the best of my
17 recollection --

18 Q And you wouldn't not raise it with them --

19 THE COMMISSIONER: Mr. Prober, you are
20 interrupting.

21 MR. PROBER: Sorry, I didn't mean to do that. I
22 didn't know he was focusing on the question.

23 BY MR. PROBER:

24 Q But in any event, you wouldn't have not raised
25 it with them to keep them in the dark? That

1 wouldn't be the purpose of not raising it with
2 them, if you didn't raise it with them?

3 A Mr. Prober, I haven't told you whether I raised
4 it with them. I can't recall.

5 Q I see.

6 A But certainly there were points that were raised
7 with them to elicit a response to this.

8 Q Well, if I were to suggest to you that you
9 didn't raise it with them, because there is no
10 note of it, there should have been a note of it,
11 because you were trying to protect your own
12 police officers at the time, because you knew
13 they had given you contrary information, maybe
14 that's the most likely scenario, maybe that's
15 why you sat on the report for so long. I mean,
16 is that -- would you agree with that suggestion,
17 that you were protecting your officers and you
18 didn't want to tell the Crown because you knew
19 the Crown would have to disclose it?

20 A Absolutely not, sir.

21 Q No explanation as to why it didn't make it in
22 your notes?

23 A I tried to explain why, sir.

24 MR. PROBER: Those are my questions. Thank you.

25 THE COMMISSIONER: Thank you, Mr. Prober.

1 MR. GATES: Good afternoon, Mr. Commissioner.

2 THE COMMISSIONER: Mr. Gates.

3 BY MR. GATES:

4 Q Chief Ewatski, we met yesterday and I believe
5 you are aware, sir, that my name is David Gates
6 and I am here on the behalf of the Commissioner
7 of the RCMP. I have got a couple of areas that
8 I would like to ask you some questions about.

9 First of all, I wonder if you can perhaps
10 elaborate, very briefly, on where you were in
11 terms of your official responsibilities in 1990
12 and 1991, when the Perry Harder homicide
13 investigation was underway?

14 A To the best of my recollection, I would say that
15 I was attached to our training division at that
16 time.

17 Q Had you, at the time of the Perry Harder
18 homicide investigation, had you had prior
19 experience in the robbery/homicide branch of the
20 Winnipeg Police Service?

21 A Yes, sir.

22 Q And in 1990/1991, did you know or had you worked
23 with Sergeants Anderson and Paul and Staff
24 Sergeant Vandergraaf?

25 A I not only worked with them over the course of

1 my career, I also supervised them over the
2 course of my career.

3 Q In 1990/1991, had you supervised them, any or
4 all of them at that point in your career or did
5 that come after?

6 A I believe all or some of them were attached to
7 that unit when I was there, going back I guess
8 from 1984 to 1990, in that period of time. I
9 can't say with certainty.

10 Q Okay, thank you. I want to pick up, if I may,
11 on this issue about notes, and I'm more
12 interested in your notetaking practices as an
13 investigator as opposed to your role in the
14 Perry Harder homicide review in 1993. Allow me
15 to perhaps just go back a little bit. You've
16 already told us that for a period of time you
17 were attached to the training academy that
18 relates to the Winnipeg Police Service?

19 A That's correct.

20 Q What would your role have been at the training
21 academy?

22 A I was holding the rank of Staff Sergeant, and I
23 was the second in command of the training
24 academy, in charge of basically the recruit
25 training program and the in-service training

1 program.

2 Q Are all members of the Winnipeg Police Service
3 required to go to the training academy?

4 A Well, once you are hired as a member of the
5 Winnipeg Police Service, you receive your
6 recruit training at the training academy. There
7 are also, we have over the course of years held
8 both mandatory and elective training and courses
9 and development programs at the training
10 academy.

11 Q Is the only method of becoming a member of the
12 Winnipeg Police Service via the training
13 academy? I guess what I'm getting at is, could
14 you transfer from another city police
15 department?

16 A We have a lateral entry program which allows
17 officers from other police services that fit
18 certain criteria to join the Winnipeg Police
19 Service, and we have an accelerated training
20 program for those officers.

21 Q Your counsel, Ms. Carswell, has already kindly
22 agreed to provide us with the Winnipeg Police
23 Service policy on notetaking. Can you tell us
24 whether or not that is something, notetaking is
25 a subject of instruction as part of your

1 training process at the academy?

2 A Yes, it is, sir.

3 Q Are you familiar in a general way, or perhaps in
4 a very specific way, with what that would look
5 like, what the training around notetaking, what
6 it would consist of?

7 A In a general way I could tell you.

8 Q Okay, could you please, chief?

9 A Well, I think, first of all, putting it in
10 context, I think we have realized that we have
11 evolved as a police service in terms of being
12 able to provide that training and direction to
13 our members relative to the taking of notes, the
14 importance of the accuracy and information
15 contained in notes. We realize that taking of
16 notes has coming under, has always come under
17 question relative to the provision of evidence
18 in a court of law or any other type of hearings.
19 Obviously, our role is to provide evidence in
20 the most complete manner, in the most accurate
21 manner, and the whole issue of police notetaking
22 has taken on greater significance over the
23 course of the years in terms of accuracy. And I
24 think that is why most police agencies have
25 recognized the fact of the importance of

1 electronic recording of information as being a
2 superior way of gathering information from
3 people.

4 Q Can I perhaps return to the question of your
5 practices, your personal practices in terms of
6 note-keeping as an investigator. And I'm asking
7 you to think back to, as my friend Mr. Prober
8 has indicated, your many years of experience in
9 investigating crime as a police officer. What
10 is the essence of note-keeping from your
11 perspective?

12 A The essence would be to ensure that you have an
13 accurate record of your activities and your
14 involvement in investigations, that you have
15 accuracy of information that is supplied during
16 the course of investigation, a documentation of
17 your actions.

18 Q Perhaps I can ask you a couple of very specific
19 questions, Chief Ewatski. In your experience as
20 an investigator, would it be fair for me to
21 conclude that you have had many, many, many
22 dealings with other police officers, either
23 police officers within the Winnipeg Police
24 Service and officers in other police
25 organizations?

1 A Yes, sir, I have.

2 Q Is that the type of contact that you would
3 typically document in your notes?

4 A Well, it depends what the contact is for. If it
5 is a professional matter, a business matter
6 relative to police service, obviously you would
7 want, and if it was germane to an investigation
8 or an issue, you would want to make notes and
9 take notes of it. But if you have just general
10 contact -- we have contact with officers on a
11 daily basis, and that doesn't require any notes
12 to be taken.

13 Q In the course of your career, Chief Ewatski,
14 have you had occasion to be involved in an
15 assist role to another police agency on an
16 investigation they might be doing?

17 A Yes, sir.

18 Q In a general way, would that fall within your
19 definition of where notes would be appropriate
20 for you?

21 A If you are assisting in an investigation,
22 regardless of who has custody of that
23 investigation, and there is a potential that
24 information that you are trying to obtain to
25 assist may be relevant to the investigation, or

1 relevant to further court proceedings, certainly
2 we would, I would expect people to take notes of
3 the important facts, just as they were if they
4 were investigating something in the City of
5 Winnipeg.

6 Q During your career as an investigator, again,
7 would it be fair for me to conclude that you
8 would have had a great many dealings with Crown
9 attorneys, lawyers associated with the Manitoba
10 Attorney General's Department?

11 A That's a fair statement, sir.

12 Q And would it be fair for me to conclude that at
13 least some of those dealings would be you
14 seeking guidance, advice, or direction from the
15 Crown with respect to a particular
16 investigation?

17 A From time to time, yes, sir.

18 Q Is that the kind of interaction or exchange that
19 you would have typically documented in your
20 notes?

21 A Not necessarily all the interactions with it.
22 It depends on the nature of the information
23 passed on. If there was relevance to the matter
24 at hand, obviously, that's something that would
25 you want to put in your notes.

1 Q If you, and when you received a direction from
2 the Crown Attorney, would that be something that
3 would find its way into your notes?

4 A If we are seeking direction from a Crown
5 Attorney, we have a formal process of seeking
6 it, and that is, that certainly is done with the
7 accompanying documentation, whether it be notes
8 or the exchange of letters or memos.

9 Q At tab 4 of the volume of materials, Chief
10 Ewatski, that is prepared relative to your
11 testimony, I mean, we have talked about this a
12 number of times. It is the log book that I
13 understand relates to your work with Inspector
14 Hall on the review. And I would just like you
15 to have a quick look at page 768, which as I
16 recall your evidence given to Mr. Code
17 yesterday, documents a meeting that you and
18 Inspector Hall had with Mr. Miller on May 13th,
19 1993. So that's tab 4, page 768.

20 A Yes, sir, I have it in front of me.

21 Q My reading of this notation in the log is that
22 the meeting with Mr. Miller was in part to seek
23 his direction and/or assistance in how you were
24 going to approach Mr. Zanidean. Is that a fair
25 reading?

1 A That would be a fair reading, sir.

2 Q And I guess what I'm wondering, Chief Ewatski,
3 is whether or not the way in which you have
4 captured that, or the way in which that has been
5 captured in the log book, is representative of
6 how you would have captured advice or directions
7 from the Crown on an important issue?

8 A It certainly isn't the way we would -- if we
9 asked for a formal Crown opinion relative to a
10 charge, we would certainly capture it in a more
11 formal manner. But this was a conversation and
12 this is a summary of that conversation. We had
13 questions, we had some concerns relative to how
14 best we approach Mr. Zanidean relative to that
15 issue of perjury, or the alleged perjury.

16 Q And again, I don't want to put words into your
17 mouth, Chief, but my reading is that you were
18 looking for some guidance from Mr. Miller?

19 A I would say guidance is probably a good word, or
20 his input at least.

21 Q My last question, Chief Ewatski, around your
22 note-keeping practices. Can you tell us what
23 you wouldn't put in your investigative notes?

24 A What I wouldn't?

25 Q What you would not, consciously not put in your

1 notes?

2 A Obviously, there is information that you would
3 want to be -- if it was sensitive information
4 relative to confidential informants, there could
5 be some concerns relative to that information,
6 information that was not relevant, or at least
7 in my mind that was not relevant or germane to
8 the matter. Again, the basic principle for
9 notes are to give you an assist to recollect
10 what transpired. And obviously, I think we all
11 realize that it is virtually impossible to
12 record absolutely everything verbatim that is
13 said during the course of a meeting. You
14 certainly try as best you can, but there are
15 other times that you would make a decision that
16 it isn't important to try to capture information
17 verbatim.

18 Q Okay. Thank you very much. Chief.

19 I would like now to turn to a couple of
20 questions that I have around the practice in
21 Manitoba with respect to the discontinuation of
22 an investigation or a prosecution. If you could
23 perhaps turn to tab 3, which is volume 1 of the
24 book of materials put together by the
25 Commission, and it contains the results of the

1 review, the Perry Harder homicide review. On
2 page 79, if you can turn to there, the last --
3 sorry, the second last paragraph on that page,
4 Chief Ewatski, deals with what I would
5 characterize as the conclusion that you and the
6 other members of your review team came to
7 relative to the issue of whether or not there
8 had been a deal struck that involved the
9 granting of immunity from prosecution for
10 Mr. Zanidean. I'm not interested in whether
11 there was a deal or whether there wasn't a deal,
12 or what the subject matter of that deal might
13 be. We have heard a lot of evidence on that and
14 I am sure there will be a great deal of argument
15 on that at the end of the inquiry.

16 What I am interested in hearing from you,
17 sir, is what your understanding was in 1990, and
18 it may be the same today, I don't know, in 1990
19 in terms of whose authority was required in
20 Manitoba to enter into the kind of arrangement
21 that is described on this page of your review?

22 A Whose authority would it be to enter into an
23 arrangement of immunity, was that what you were
24 saying?

25 Q Let's start with immunity; who could authorize

1 immunity?

2 A Well, first of all, I think you would have to be
3 concerned with the issue of jurisdiction, of who
4 had jurisdiction of the case or the charge that
5 the immunity was centred around. I think that's
6 important. And then I would imagine that it
7 would have to be somebody within justice to do
8 it.

9 Q Perhaps, to avoid having to go down the first
10 avenue around jurisdiction, let's assume we are
11 talking about a situation that take places
12 entirely in Manitoba?

13 A Okay. Then obviously it is, you know, Manitoba
14 Justice, or the Prosecutions Branch of Manitoba
15 Justice has control and custody, and that's
16 their responsibility of issues such as that,
17 such as immunity. The police cannot offer
18 immunity, or at least grant immunity, I should
19 say, to somebody.

20 Q Perhaps then I can ask you about circumstances
21 that may involve something less than full formal
22 immunity, which we have just been discussing.
23 What level of authority or approval would be
24 required to not charge someone as part of an
25 arrangement to secure their testimony in another

1 matter?

2 A Again, it would certainly have to -- you would
3 have to incorporate Manitoba Justice
4 Prosecutions into that matter relative to not
5 charging someone, depending on the
6 circumstances. Police officers obviously have
7 the independence to lay a charge or not lay a
8 charge, depending whether there are reasonable
9 grounds to believe that this person has
10 committed an offence, there is police discretion
11 relative to that. But where evidence would
12 exist that would suggest there are reasonable
13 grounds to believe this person has committed
14 this offence, granting immunity for the
15 commission of a crime, in my mind, would have to
16 be done by the Justice Department.

17 Q Chief Ewatski, in your view, is there a
18 distinction between the granting of immunity and
19 the exercise of discretion not to prosecute
20 where there are reasonable and probable grounds
21 to believe that an individual has committed an
22 offence?

23 A I would have to say there is some distinction
24 between those two.

25 Q Can you help us in how you see those

1 distinctions and what the significance of the
2 distinction would be from a practical point of
3 view?

4 A The issue of immunity in my mind, my
5 understanding of what immunity would be, that
6 regardless of the evidence, regardless of the
7 facts surrounding that matter, that the person
8 who was granted this immunity would not face
9 criminal consequences on it. The other aspect
10 of deciding not to lay a charge, there is
11 various reasons why a charge may not be laid.
12 It may be the fact that there is no likelihood
13 of successful prosecution in a court of law that
14 a decision would be made not to lay a charge.

15 Q Would the --

16 A Or would not be in the public interest not to
17 lay a charge.

18 Q Would the determination of whether or not a
19 prosecution was likely to succeed, or whether or
20 not it was in the public interest, be a decision
21 in your experience taken by the police?

22 A Those type of situations, for the most part, are
23 dealt with by the police, and would seek a Crown
24 opinion relative to the facts, and a decision
25 would be rendered by the Crown Attorney to

1 decide whether or not there is a likelihood of
2 prosecution, or enough evidence to move forward
3 on a charge. Again, there is still this line of
4 discretion and police independence, and I
5 believe there has been many debates, and I'm
6 sure there is legal precedents relative to the
7 role of police and their authority to lay a
8 charge, even when an opinion suggests that there
9 isn't a likelihood of prosecution.

10 Q Okay. Thank you very much.

11 The last area that I want to talk to you
12 about, and I have a few questions, has to do
13 with the contact between the Winnipeg Police
14 Service and the RCMP in Swift Current. I wonder
15 Madam Clerk, if we can show Chief Ewatski,
16 exhibit 6A and 6B? These are the books of
17 materials that the Commission put together
18 relative to the evidence of Sergeants Anderson
19 and Paul and Staff Sergeant Vandergraaf.

20 Chief Ewatski, during the course of your
21 review, the 1993 review that you undertook with
22 Inspector Hall, were you aware, or did you
23 become aware that Sergeant Anderson was the only
24 member of the Winnipeg Police Service who was in
25 contact with Constable Burton in Swift Current,

1 other than Sergeant Mann, which is a bit of an
2 aside?

3 A I think that was my understanding, sir.

4 Q I would like you to have a look, please, at tab
5 10 of volume 1 of exhibit 6A -- sorry, it is
6 volume 2, it is exhibit 6B.

7 A Yes, sir.

8 Q This is, as you can see, and I am sure you are
9 familiar with this, you referred to it earlier
10 in your testimony, the report that Sergeant
11 Anderson prepared for Inspector Johns in
12 October 8th, 1991?

13 A Yes, sir.

14 Q I'm happy to take you to the specific page
15 references, but my review of this document and
16 the other material that's been filed in this
17 Commission, and I'm sure I will be corrected if
18 I'm wrong, is that there appear to have been six
19 telephone calls involving the Swift Current RCMP
20 detachment and the Winnipeg Police Service
21 relative to this aspect of this case, relating
22 to the arson in Swift Current?

23 A I would have to accept it, sir, I don't know for
24 certain that that's the number.

25 Q Relying on Sergeant Anderson's account which is

1 before you, it appears that there was a call on
2 October 27th to the Swift Current detachment,
3 and he learned of Constable Burton's
4 involvement. Then it appears that he spoke to
5 Constable Burton on October 30th. Sergeant
6 Anderson says that there were two calls in April
7 of 1991. Just for your information, Constable
8 Burton's account is that there was only one
9 telephone call. And then Sergeant Anderson
10 refers on pages 3 and 4 of his report to
11 Inspector Johns to telephone calls on July 16th
12 and July 18th.

13 Was all of that information before you in
14 1993 when you conducted your review?

15 A I believe so, sir.

16 Q If you can just hold that for a moment, I want
17 to talk about what material you had access
18 during the course of 1993 and what material you
19 didn't have access to. As I understood your
20 evidence yesterday, Chief Ewatski, and please
21 correct me if I didn't hear you correctly, you
22 did not have access to the personal notes of
23 Sergeants Anderson or Paul?

24 A That's correct, sir.

25 Q Would access to their notes have assisted you in

1 your review process?

2 A Yes, sir.

3 Q I would like you to have a look in exhibit 6A,
4 which is the other volume of materials that I
5 asked the clerk to give you, Chief Ewatski,
6 specifically at tab 4. For your information,
7 Chief, these are the notes of Sergeant Anderson
8 that were provided to the Commission as part of
9 the disclosure process. I would like you,
10 please, to look at page 33 and 34? And the
11 numbering is confusing because there is actually
12 two notebooks that are contained within this
13 tab, but it is the first page 33, near the front
14 of the materials?

15 A Is that for an entry of the 30th of October,
16 1990?

17 Q Correct. And you will see that at 10:30
18 Sergeant Anderson indicates that he contacted
19 the Swift Current RCMP detachment, Constable
20 Ross Burton, GIS. Do you see that?

21 A Yes, sir.

22 Q Have you seen these notes before?

23 A No, sir.

24 Q I wonder if you would take a moment and review
25 the notes on the remaining portion of that page

1 of Sergeant Anderson's notebook, and on to the
2 following page, page 34?

3 A Sorry, I'm having a little trouble reading -- I
4 know that sounds very ironic.

5 Q We have been over them a number of times, I
6 would be happy to read them to you if that would
7 help you?

8 A I think I have been able to read that notation
9 for the 30th.

10 Q Chief Ewatski, would it surprise you to learn
11 that the notes I've just referred you to are the
12 only contemporaneous notes that were made of
13 those six telephone calls to the Swift Current
14 detachment?

15 A Would it surprise me, sir?

16 Q Yes?

17 A I don't know what my reaction would be, sir. I
18 would assume that, you know, Sergeant Anderson
19 would have kept appropriate notes relative to
20 his involvement, so --

21 Q Would it surprise you that other than the report
22 to Inspector Johns that I took you to at tab
23 number 10, there are no other reports from the
24 Winnipeg Police Service relative to those six
25 telephone calls to Swift Current?

1 A I would expect there would be some type of
2 documentation relative to that contact, sir.

3 Q Would it surprise you if you were to discover
4 that there weren't?

5 A I wouldn't have been surprised -- I would just
6 have to -- it is what it is. If there weren't,
7 there weren't. I would expect that there should
8 be.

9 Q The last question that I really have for you,
10 Chief Ewatski, is to take you to your review and
11 the results of your review on the summary that
12 was done, so we are at tab 3 of your book of
13 materials?

14 A Yes, sir.

15 Q And the summary is only one page, so I hope --
16 there is no numbers on the page but the heading
17 of the page is summary?

18 A Yes, sir.

19 Q And I'm looking at the third last paragraph, and
20 I'm quoting sir,

21 "After six months of assessing reports,
22 transcripts, wiretaps, interviewing
23 civilian witnesses, police investigators,
24 Crown attorneys, the accused, and the
25 private investigator, the Committee is

1 confident the investigation was conducted
2 within acceptable police standards."

3 Do you see where I'm reading from, Chief
4 Ewatski?

5 A Yes, sir.

6 Q The information that has been provided to you
7 today regarding the documentation of the six
8 telephone calls with Swift Current, does that
9 alter your conclusion?

10 A The conclusion that we came to in 1993 is the
11 conclusion that was made based on our
12 observations, based at that time, in 1993, in
13 terms of policies and practices of police
14 services.

15 Q But today, in 2006, does the new information
16 that I have shared with you this afternoon, does
17 that impact on the conclusion that you reached
18 in 1993, admittedly with less information, does
19 it impact on it?

20 A I think I would put it this way, sir, that 13
21 years later there has been a significant
22 evolution of how police go about and do their
23 business. And certainly looking at an
24 investigation such as this, through the lens of
25 2006, there is going to be an impact on

1 conclusions, obviously. But that was our
2 observation at that time, in 1993, and that is
3 why we included that in the summary.

4 Q Okay.

5 MR. GATES: Thank you very much, Chief Ewatski,
6 those are my questions. Thank you,
7 Mr. Commissioner.

8 THE COMMISSIONER: Thank you, Mr. Gates.

9 MR. PROBER: If I may, Mr. Commissioner, I had
10 wanted to clarify something that came out of my
11 examination, and that is the issue of the cheque
12 and who Zanidean got it from.

13 If you look at exhibit 15B, which is David
14 Kovnats volume 2, you will note that Reath
15 Zanidean signed a receipt and states, and I
16 raise this in case Ms. Carswell wants to deal
17 with it in her examination, signs a receipt.

18 "I further acknowledge receipt of the sum
19 of \$20,000, from W. Vandergraaf of the City
20 of Winnipeg Police, which monies
21 represented the final commitment of the
22 Department of Justice towards my relocation
23 and protection."

24 And that's dated December 16, '91, and I know
25 the review committee did interview Staff

1 Sergeant Vandergraaf, so I wanted to clarify
2 that in case Ms. Carswell wants to deal with it.
3 Thank you.

4 THE COMMISSIONER: Thank you, Mr. Prober.

5 THE WITNESS: Mr. Commissioner, may I comment
6 to that?

7 THE COMMISSIONER: Absolutely.

8 THE WITNESS: Mr. Prober did make a comment
9 saying we did interview Staff Sergeant
10 Vandergraaf. We did not have a formal interview
11 with Staff Sergeant Vandergraaf, as far as I
12 recall.

13 MR. GATES: You didn't have one?

14 THE WITNESS: That's correct, sir.

15 BY MR. ABRA:

16 Q Chief Ewatski, I'm acting for the late Bruce
17 Miller, as you know?

18 A Yes.

19 Q You knew Bruce very well?

20 A Yes, sir.

21 Q He was the senior Crown Attorney at the Public
22 Safety Building for a number of years while you
23 were a police officer?

24 A That is correct, sir.

25 Q In fact, right up to the time that you were in

1 the robbery and homicide division, he was still
2 at the Public Safety Building for a number of
3 these years, was he not?

4 A That is correct, sir.

5 Q And he subsequently became the Director of
6 Prosecutions, and you had considerable numbers
7 of dealings with him over subsequent years?

8 A Yes, sir.

9 Q Right up until the time that he became a judge?
10 And you, of course, were Chief of Police for
11 part of the time that he was the Director of
12 Prosecutions. Am I correct?

13 A I believe so, sir, yes.

14 Q You had a good relationship with him?

15 A Yes, sir.

16 Q You liked working with him?

17 A Absolutely, sir.

18 Q There is a couple of things that I would like to
19 ask you about. Firstly, you told Mr. Gates, who
20 was the previous lawyer that just asked you the
21 questions, the import from Edmonton, that his --
22 you agreed with his perception that from reading
23 the log book that had been -- that you and
24 Inspector Hall had prepared for the meeting with
25 Bruce Miller, one of the things that you were

1 seeking was advice as to how to deal with
2 Zanidean, or some input from him?

3 A Advice, guidance, we were seeking his wisdom on
4 that.

5 Q You wanted some guidance, or advice, or some
6 input at least, to use your word?

7 A Yes, sir.

8 Q And that was, of course, recorded in the log
9 book as one of the purposes of the meeting with
10 Miller and why you wanted to meet with him?

11 A That was one of the entries, yes, sir.

12 Q Yes. And isn't it true that it is not uncommon
13 for police officers to go to Crown attorneys for
14 advice on what direction to go in investigations
15 and what to do next and so on, and to get the
16 Crown Attorney's advice as to what he or she
17 thinks should be done next in an investigation?

18 A I would suggest that back in the early '90s,
19 there was probably more contact with the Crowns
20 relative to those issues than there is today.

21 Q And if a Crown Attorney was asked, and I
22 experienced this myself, if a Crown Attorney is
23 asked by a police officer to give advice on a
24 direction of an investigation, or what witnesses
25 to question, or whatever, it was certainly my

1 experience that that generally found its way
2 into the police officer's notes or
3 supplementaries, to indicate that I spoke to
4 Crown Attorney X and he or she gave this advice
5 to me. Is that fair?

6 A If it was the formal seeking of advice and it
7 was something that was relevant to the matter,
8 generally that would be the case.

9 Q Yes. And if it was a particularly significant
10 piece of advice, I suggest to you that officers
11 would normally record it in either a
12 supplementary or their notebooks?

13 A That would be left to the officer's discretion
14 whether it should be included or not, sir.

15 Q In your own view, should it be?

16 A I think if it is important, germane to the
17 event, and that it is something that obviously
18 may assist that officer, you know, from that
19 point on, that would be the appropriate place to
20 document it.

21 Q In the notebook and then generally in the
22 supplementary?

23 A In the notebook and/or in the supplementary.

24 Q Okay. Now I would like to take you to your
25 report and page 53?

1 A Yes, sir.

2 Q And this is where you are doing an assessment of
3 both Mr. Gumieny and Mr. Zanidean, and the
4 respective manner in which they were handled as
5 far as witness protection and so on was
6 concerned?

7 A Yes, sir.

8 Q And the first paragraph deals with Gumieny, and
9 as you've indicated in your report, it went
10 quite smoothly, he went into the formal Witness
11 Protection Program immediately after he
12 testified and became under the auspices of the
13 RCMP, so to speak?

14 A No, sir, he was never put in the formal program
15 is my understanding.

16 Q Gumieny?

17 A Gumieny.

18 Q Well, the evidence we have heard is that he was?

19 A Well, I'm just reading the report here. It says
20 that Mr. Gumieny chose not to meet certain
21 conditions proposed in the witness protection
22 plan and thus became ineligible.

23 Q That was after he was already in it, I suggest?

24 A Officially, he was never in the program but was
25 provided legitimate funding concessions during

1 relocation. After two months he would be on his
2 own.

3 Q Okay. But that was after he had already been,
4 he was moved, was he not, he was put in Ottawa
5 and then moved to Thunder Bay and --

6 A That doesn't necessarily mean he was in the
7 formal RCMP Witness Protection Program, sir.

8 Q That's fine. I'm sorry, I made more out of it
9 than I really intended to. It is the next
10 paragraph that I'm interested in, the one
11 related to Zanidean?

12 A Yes, sir.

13 Q And you said, you have written and I quote, and
14 I assume you and Hall were the ones that came to
15 these conclusions.

16 "Reath Zanidean's situation is different,
17 Mr. Zanidean was involved with Mr. Driskell
18 in the arson of Zanidean's sister's
19 residence in Swift Current, Saskatchewan.
20 Zanidean made investigators aware of this
21 when they pressed him on any criminal
22 activity he may have been involved in with
23 Driskell. The investigators, Sergeant
24 Anderson and Paul, made this information
25 available to the RCMP in Swift Current and

1 several contacts followed over the ensuing
2 months between the two forces."

3 Now that's something that we heard a lot of
4 evidence about and, obviously, it is something
5 that you and Hall became aware of during the
6 course of your investigation?

7 A That's correct, sir.

8 Q Okay. You then went on to write,

9 "The exact content of these contacts is a
10 point of contention and is dealt with in a
11 separate section of this report. Sergeant
12 Anderson is clear in stating no promises or
13 deals were made with Reath Zanidean for his
14 testimony. More exactly, Zanidean was not
15 told he would not be charged with the Swift
16 Current arson."

17 And that's something that Anderson told you
18 during the course of your investigation?

19 A I can't recall exactly where that information
20 came from, sir.

21 Q Well, obviously, you were satisfied that was his
22 position because you put it in your report?

23 A Yes, but I don't know if it came as a result of
24 some type of documentation or a conversation
25 with him.

1 Q Okay. And then you went on to write --

2 A Sorry, I would imagine that it was as a result
3 of that October 8th memo.

4 Q Well, we can go to that if you wish?

5 A I believe so, I'm speculating.

6 Q Why don't we go to that then, volume 2 of
7 exhibit 6B, which I think you were just --

8 THE COMMISSIONER: Tab 10.

9 THE WITNESS: Thank you, sir.

10 BY MR. ABRA:

11 Q Now, obviously you and Hall were satisfied that
12 that was Anderson's position because you wrote
13 it in your report?

14 A Yes, sir.

15 Q Now, if you go to page 2 of tab 10, the third
16 paragraph, and this is the report that Anderson
17 wrote to Inspector Johns as a result of what
18 Winnipeg Police interpreted as a complaint by
19 the RCMP against Sergeant Anderson.

20 A Yes, sir.

21 Q Okay. And I can read the whole paragraph to
22 you, but beginning in the middle, what Anderson
23 has written was that -- well, I will start at
24 the beginning.

25 "During March and April 1991, Sergeant Paul

1 and I made efforts to facilitate Zanidean's
2 entry into the RCMP Witness Protection
3 Program. We learned from Corporal Tom Orr
4 of D division that Zanidean would not
5 qualify for the program if he was the
6 subject of the RCMP arson investigation.
7 Consequently, I had two further
8 conversations with Constable Burton.
9 During the first conversation I explained
10 the dilemma, and I believe he had already
11 spoken to Corporal Orr. In any event, he
12 had given the matter thought and he
13 immediately offered to withdraw their
14 pursuit of Zanidean entirely. He explained
15 that he planned to interview James Driskell
16 after the murder trial in an effort to gain
17 evidence against both Zanidean and his
18 sister, but that he would only charge his
19 sister. Approximately one week later, I
20 telephoned Constable Burton again to ensure
21 that his proposal was agreed to by his
22 superiors. He assured me that his
23 detachment commander had approved, and I
24 reminded him that we would not make
25 Zanidean privy to this arrangement until

1 after he testified. "

2 And then he goes on to say that he reported this
3 to Sergeant, or he and Sergeant Paul notified
4 Inspector Johnson, Staff Sergeant Vandergraaf,
5 and Crown Attorney Bruce Miller.

6 Now, in that particular document, Anderson
7 seems to be confirming that indeed there was an
8 arrangement for immunity?

9 A Um-hum. Yes, sir.

10 Q And yet you people wrote in your report that he
11 stressed that there wasn't. So you must have
12 learned that from somewhere?

13 A I'm trying to recall, sir.

14 Q Okay. But you are satisfied that the entry that
15 you made in your report was accurate?

16 A I believe so, sir.

17 Q Okay. Now, I would like to go over to the next
18 page, page 3 of Anderson's report to Johns, and
19 you will see at the top of the page he wrote, in
20 essence, describing how he advised Zanidean of
21 the Swift Current decision immediately after
22 Zanidean testified; right?

23 A Yes, sir.

24 Q Now I would like to take you down then to the
25 paragraph, second from the bottom of that page.

1 Because the paragraph before that, you will see
2 that Constable Anderson said that Burton had
3 contacted him in July and told him that
4 superiors in the RCMP had decided that they were
5 going to charge Zanidean?

6 A Yes, sir.

7 Q Okay. And Anderson then wrote,

8 "I told Constable Burton that we had
9 already informed Zanidean of his immunity
10 which had become part of his negotiations
11 with our Justice Department. I also
12 expressed my dissatisfaction with this turn
13 of events."

14 Okay?

15 A Yes, sir.

16 Q Now, you read this particular entry or this
17 report or memo prepared by Anderson, I would
18 suggest fairly early in your investigation, or
19 your review, when you were trying to get a
20 handle on this whole situation; is that fair?

21 A That's possible, sir.

22 Q You are not sure?

23 A I'm not sure.

24 Q In any event, going back to your report, again
25 you've written that Anderson said that there

1 were no promises or deals made with Zanidean for
2 his testimony. He goes on -- you went on to
3 write,

4 "More exactly, Zanidean was not told that
5 he would not be charged with the Swift
6 Current arson. This fact is confirmed by
7 both Crown attorneys involved in the case
8 who as well state they too told Zanidean
9 there were no deals."

10 That's Dangerfield and Lawlor?

11 A Yes.

12 Q And you testified yesterday and your notes
13 reflect that Dangerfield and Lawlor insisted
14 that there was no immunity for Zanidean?

15 A That's correct, sir.

16 Q You went on to write,

17 "After Zanidean completed his testimony,
18 Sergeant Anderson, based on information
19 that he says he received from Constable
20 Ross Burton, RCMP Swift Current, told
21 Zanidean he would not be charged."

22 Now, that's consistent with what is in the
23 report that he had prepared, that you obviously
24 reviewed as part of your review?

25 A Yes, sir.

1 Q And that's where you came for the information
2 that's contained in this particular paragraph, I
3 suggest?

4 A That is possible, sir.

5 Q Okay. But then you went on to write,
6 "This was not a deal made through the
7 Manitoba Justice Department, as confirmed
8 by Director of Winnipeg Prosecutions,
9 Mr. Bruce Miller, or the Saskatchewan
10 Justice Department. This apparently is
11 information passed to Sergeant Anderson
12 from Constable Burton and not to Zanidean
13 until after his testimony."

14 Right?

15 A Yes, sir.

16 Q Well, you were aware, having met with Miller,
17 that he was adamant there was never any promise
18 of immunity for Zanidean?

19 A He was adamant there was no deal that was made,
20 yes, sir.

21 Q He told you that Zanidean's lawyer, Kovnats, was
22 pushing for immunity, but that Miller wasn't
23 prepared to grant it because he didn't have any
24 authority to do so and he wasn't prepared to
25 approach Saskatchewan Justice to discuss it. Is

1 that fair?

2 A I don't know if that's what he told us, sir.

3 Q Well, certainly in your notes --

4 A He was certainly adamant that there was no deal.

5 Q Okay. And it is reflected in your notes that he

6 indicated that that was a situation that would

7 have to be worked out with Saskatchewan Justice

8 and he never contacted them in that regard?

9 A I think I would like to refer to my notes on

10 that one, sir.

11 Q Sure. Actually, it is not even necessary to go

12 to your notes, you can go to the report at page

13 81.

14 A I would just like to look at my notes, sir.

15 Q Sure.

16 A What was the page? 81?

17 Q Yes. Second paragraph, and this I suggest came

18 from your meeting with Miller, because you have

19 written it in your report.

20 "Miller made it clear to Zanidean, through

21 his lawyer, that the aspects of relocation

22 and financial assistance were negotiable,

23 but that the Manitoba Justice Department

24 had no authority in promise and/or granting

25 immunity for a crime committed in

1 Saskatchewan."

2 And then the next paragraph,

3 "Regarding the question of immunity, Miller
4 stated his department never promised or
5 suggested immunity to Zanidean or his
6 lawyer."

7 So in two different spots in your report you
8 have expressed the fact that Miller was adamant
9 about the fact that there was no immunity
10 granted and, in essence, that only Saskatchewan
11 could grant it and he never made any approach to
12 them?

13 A That's my understanding, sir.

14 Q Yes. Now, when you got then to Swift Current,
15 after you had met with Miller, you found out
16 from the RCMP file that indeed there may have
17 been a promise of immunity made to Zanidean?

18 A From the RCMP files?

19 Q It was the RCMP file where you became aware of
20 the fact that there was a disconnect between
21 what Winnipeg -- what Anderson and Paul were
22 saying and what Constable Burton was saying;
23 right?

24 A Well, the disconnect was what Constable Burton
25 and Anderson were saying relative to the pursuit

1 of Zanidean on these charges.

2 Q Right. Which is immunity, in essence, or at
3 least not the laying of a charge?

4 A Well, again, there is disconnect between not
5 pursuing him until the trial was finished, just
6 totally not pursuing, not laying a charge or not
7 wanting to lay a charge. There was a
8 significant amount of confusion around the
9 subject, and I think you have just highlighted
10 it.

11 Q Exactly. So you could see, after you had read
12 Anderson's report of October of '91, and after
13 you had reviewed the RCMP Swift Current file,
14 that there was a significant issue and, in fact,
15 a disconnect, to use your word, as to what
16 exactly Zanidean had been told and what had been
17 promised him. Is that fair?

18 A There certainly was confusion, sir.

19 Q And it appeared, from Anderson's report, that he
20 had told that he and Burton had agreed that
21 Swift Current would not charge Zanidean, and
22 that Anderson said that he wouldn't tell
23 Zanidean until after he testified.

24 A Um-hum.

25 Q But that there was certainly, in Anderson's

1 view, an agreement with Swift Current that
2 Zanidean would not be charged?

3 A That's what is contained in Anderson's report,
4 sir.

5 Q And when you read Burton's report, you saw that
6 he was kind of upset about that, because he was
7 satisfied that indeed Anderson had offered
8 immunity to Zanidean when Burton hadn't wanted
9 him to?

10 A I think, to characterize that, I think Burton
11 said that Winnipeg Police had created a set of
12 circumstances that wouldn't allow for this to
13 move forward.

14 Q Okay. And you became aware of that all of that
15 during your investigation?

16 A During the course of the review, we became aware
17 of all of the information, or we believed we had
18 all of the information relative to this matter,
19 which, again, still lead to a significant amount
20 of confusion.

21 Q But isn't it true that you never discussed that
22 confusion with Miller? You never went back to
23 him, after you had been to Swift Current, did
24 you?

25 A I don't recall meeting with Mr. Miller

1 subsequent to that. I know we had contact with
2 him by phone.

3 Q So, as far as you were aware, and you were
4 satisfied that from the time you met with Bruce
5 Miller in May of '93, until you wrote your
6 report which is dated September of '93, it was
7 his adamant position that there was no promise
8 of immunity to Zanidean and that no immunity was
9 given to him?

10 A Mr. Miller made it very clear that there was no
11 immunity given, there was no deal.

12 Q And it is fair to say, I suggest, based upon
13 what you have written, that the misunderstanding
14 in that regard was as a result of the direct
15 relationship between Anderson and Burton, a
16 misunderstanding?

17 A A misunderstanding, or a disconnect of
18 information, or contrary information, generally
19 between those two.

20 Q Now, going back to Anderson's report at page
21 3 --

22 A Yes.

23 Q -- I again draw your attention to the second
24 last paragraph,

25 "I told Constable Burton that we had

1 already informed Zanidean of his immunity,
2 which had become part of his negotiations
3 with our Justice Department."

4 In fact, based upon what Miller told you, that
5 there was no immunity, and that although
6 Zanidean's lawyer was trying to get it, Miller
7 wasn't prepared to give it to him, that
8 statement by Anderson is false, isn't it?

9 A I don't know, sir.

10 Q Well, you are aware of the fact that although
11 there may have been negotiations over immunity,
12 Miller didn't grant it?

13 A Miller indicated to us that there was no deal
14 that was made, sir, yes.

15 Q Yes. And yet Anderson, I suggest, in that
16 paragraph, is attempting to tell Johns that
17 immunity actually became part of the deal or the
18 agreement that was made with Zanidean?

19 A It certainly highlights the confusion around
20 this matter, sir.

21 Q Yeah. Now, I know that you weren't able to
22 interview Anderson, but would you agree with me
23 that what you have written at page 53 of your
24 report, that Anderson's position is
25 contradictory?

1 On one hand, he has apparently told you or
2 lead you to believe, because you have written it
3 in your report, that there was never any deal
4 for immunity with Zanidean, and yet for some
5 reason, immediately after Zanidean had
6 testified, Anderson saw fit to tell Zanidean he
7 wasn't going to be charged?

8 A Obviously, sir, there was tremendous amount of
9 confusion about this.

10 Q Well, in fact, it is contradictory, is it not?

11 A Yes, you could call it contradictory, yeah.

12 Q Now, going to page 9 of your statement, your
13 statement of course is tab 2 -- I am sorry,
14 yours is 1. I don't want to mix you up with
15 Hall.

16 A Yes, sir.

17 Q Page 9 under 3,

18 "Immunity for Zanidean on the Swift Current
19 arson."

20 Are you with me, Mr. Commissioner?

21 THE COMMISSIONER: Yes.

22 BY MR. ABRA:

23 Q You wrote,

24 "On Sergeant Anderson and Bruce Miller's
25 accounts, there was no deal with Zanidean

1 for immunity on the Swift Current arson..."
2 which is what you wrote on page 53, but then you
3 went on to write,

4 "...at least until after his testimony was
5 completed."

6 I'm suggesting to you that at no time did Bruce
7 Miller ever lead you to believe that he knew
8 anything about any arrangement to tell Zanidean
9 he wasn't going to be charged with the Swift
10 Current arson after he had testified?

11 A Well --

12 Q As far as Miller was concerned, there was never
13 any arrangement for immunity with respect to the
14 Swift Current charge?

15 A I can't say with certainty, sir.

16 Q Well, you are the one that wrote this, sir. In
17 fact, I'm suggesting to you --

18 A I wrote what, sir?

19 Q You wrote the sentence, or the statement, you
20 have adopted the statement?

21 A I adopted the summary of my interview, yes, sir.

22 Q And what I'm suggesting to you is that that part
23 of your statement is inaccurate in that Bruce
24 Miller never advised you that there was any
25 arrangement for Zanidean for immunity once his

1 testimony was completed?

2 A I believe that this is a summary of what I said,
3 that our opinion was that Mr. Miller was aware
4 of all of the aspects relative to this matter
5 and the confusion surrounding it. Specifically,
6 I cannot recall everything that was discussed
7 with Mr. Miller.

8 Q But certainly Miller did not lead you to believe
9 that he had anything to do with an arrangement
10 related to telling Zanidean about his -- that he
11 had immunity in Swift Current after he had
12 testified?

13 A I can't recall, sir.

14 Q I see. Now, I would like to take you to page 80
15 of your report.

16 A Yes, sir.

17 Q The last paragraph, and again you make the point
18 that Zanidean was a different kettle of fish
19 from Gumieny. And you wrote,

20 "Miller informed us Zanidean, through his
21 lawyer, was very demanding in his requests
22 for assistance. His prime concern was that
23 of safety for he and his wife which would
24 include relocation."

25 And over to the next page,

1 "Zanidean also requested immunity from
2 outstanding criminal charges and Miller,
3 who was aware of his admission to arson,
4 took this to mean immunity for prosecution
5 for this crime as well as any perjury
6 charge that may evolve from his testimony.
7 This was not agreed to by Miller."

8 That's what you wrote?

9 A That's what is there, sir.

10 Q Yes. Now Miller also told you about the \$20,000
11 payment to Zanidean?

12 A That's correct, sir.

13 Q What he told you about it, I suggest to you,
14 that he made it clear that it was in essence to
15 assist Zanidean in relocating out of the
16 province because Zanidean was concerned about
17 his safety?

18 A I believe that it was sort of characterized that
19 this would be in lieu of Mr. Zanidean being
20 involved in the formal Witness Protection Plan
21 which would include relocation and such, so it
22 was in lieu of that.

23 Q Yes. But the whole purpose of it was basically
24 for the relocation of Zanidean, to assist him in
25 that regard?

1 A Well, that certainly was one of the major
2 issues, according to Mr. Zanidean, that he was
3 concerned with.

4 Q Yes. Now, I would like you next to go,
5 please -- I'm just about finished, Chief -- I
6 would like you to go nextly please back to
7 exhibit 6B, which is tab 53, please.

8 A Yes, sir, I have it in front of me.

9 Q Now, this was the report that was prepared by
10 Paul, I understand at yours and Hall's request,
11 related to what had occurred with the telephone
12 calls to Brodsky and the confrontation that they
13 had at the hotel?

14 A That's correct, sir.

15 Q And in the report he indicates that because of
16 the confrontation that he had with Zanidean, he
17 got in touch with Inspector Johnson, that was
18 Inspector D.K. Johnson?

19 A That was my understanding, sir.

20 Q As a result of which he said that Johnson told
21 them to stop their involvement with Zanidean and
22 to effectively cut him lose?

23 A That was the ultimate decision that was made,
24 sir.

25 Q There is nowhere in this report that -- and this

1 report was written at your request because you
2 needed the background. You knew from the
3 newspaper articles that there had been a phone
4 call to Brodsky?

5 A Um-hum.

6 Q Right?

7 A That's correct, sir.

8 Q And as a result of doing some investigating in
9 which you were very proficient, you were able to
10 determine that Paul and Anderson were the ones
11 that had knowledge in that regard, and you
12 therefore requested Paul to do the
13 supplementary?

14 A Correct, sir.

15 Q Yes. And the reason that you asked him for the
16 supplementary was that there was no record
17 anywhere that were you able to find, that the
18 Winnipeg Police had, of what had happened at
19 that hotel on June 20th?

20 A That's correct, sir.

21 Q There was certainly nothing written by Johnson
22 about it?

23 A Not that I'm aware of, sir.

24 Q No. And so you had to ask Paul and Anderson for
25 a supplementary to explain it to you?

1 A Yes, sir.

2 Q Now, you testified yesterday that it was your
3 understanding that Inspector Johnson was going
4 to notify the Crown of all of this?

5 A It was my understanding that there was
6 significant contact and discussion that was
7 still going on between the Police Service and
8 Justice, that being between Johnston and Bruce
9 Miller.

10 Q Where did you ever get that idea?

11 A I'm recalling that from suggestions with
12 Sergeant Paul.

13 Q From Sergeant Paul. Well, nowhere in his
14 supplementary does he make any comment about
15 Johnson even indicating that he is going to
16 contact the Crown?

17 A I see that, sir.

18 Q And you never talked to Johnson, I assume?

19 A I don't believe so, sir.

20 Q No. So what you are telling us is that Paul
21 told you that Johnson was going to contact the
22 Crown about all of this?

23 A In that essence. I can't recall the exact
24 words. But when we discussed the whole issue of
25 how Zanidean was being dealt with and our

1 involvement as a police service still being
2 involved, it was clear that there was still,
3 there were things going on, so to speak, behind
4 the scenes relative to the Crown Attorney's
5 office and the Police Service, relative to what
6 we were going to do, or what was going to happen
7 to Mr. Zanidean. And the people that we were
8 dealing with, the contact people were Inspector
9 Johnson and Mr. Miller.

10 Q You never talked to Johnson?

11 A No, sir.

12 Q You never went back and talked with Miller?

13 A No, sir.

14 Q You met with Miller in May of 1993?

15 A That's right.

16 Q You met with Dangerfield and Lawlor in August of
17 '93; right?

18 A That is correct, sir.

19 Q And this supplementary wasn't prepared until
20 September of '93?

21 A Yes, sir.

22 Q So what was it that made you think that somehow
23 the Crown's office had knowledge of this fiasco
24 that had gone on at the hotel, and in particular
25 that Zanidean had phoned Brodsky?

1 A Well, at the time we certainly knew, or we
2 assumed that the Crown would be aware of that
3 telephone call because it was certainly an issue
4 in the newspapers, you know, very, very clear,
5 clearly laid out that a telephone call had been
6 made. And again, going back to my recollection
7 relative to the environment that Paul and
8 Anderson were working in with Mr. Zanidean,
9 relative to what was going on in terms of behind
10 the scenes and what is going to happen.

11 Q I can understand your point in that regard, that
12 being that presumably the Crowns office was
13 aware of the newspapers articles just the same
14 as you were?

15 A Yes.

16 Q And it was those newspaper articles that were
17 causing this concern or, excuse me, was one of
18 the reasons for you being involved in the
19 investigation that you were, or the review;
20 right?

21 A Well, like I say, I think that had a bearing on
22 Chief Henry's mind.

23 Q So it may be that when you spoke to Dangerfield,
24 Lawlor and Miller, they may have read the
25 newspapers, but you never discussed with them, I

1 suggest, whether or not they had been made aware
2 of this information some two years before when,
3 in fact, Paul had gained the information?

4 A I can't recall if we discussed specifically with
5 them in subsequent meetings.

6 Q It may have been one thing for them to be aware
7 of it after a series of newspapers articles in
8 1993, but do you agree with me that it would
9 have been pretty significant that the Crown
10 should have been notified in June of 1991 that
11 there was evidence that Brodsky had, in fact,
12 been phoned by Zanidean, and more significantly
13 that Zanidean was threatening to recant his
14 testimony?

15 A Well, I can't disagree with the fact that a
16 report should have been put in and sent in
17 there. That's why we had Sergeant Paul put that
18 report in at that time --

19 Q And if the report -- sorry, didn't mean to cut
20 you off?

21 A -- to show his recollection of what he did and
22 how he conveyed that, or what he did with that
23 information. But ideally, it should be have
24 been done at the time in 1991.

25 Q And you have no reason to believe that it was

1 done at the time?

2 A Well, there wasn't a report done at the time,
3 no, sir.

4 Q Yes.

5 MR. ABRA: That's fine, sir. Thank you very
6 much. Thank you, Mr. Commissioner.

7 I don't know whether Mr. Olson can finish
8 in ten minutes or not.

9 MR. OLSON: I rise, Mr. Commissioner, to say I
10 have checked with Mr. Wolson and with Ms.
11 Carswell, who are coming behind me, and I think
12 I am the last one otherwise. They each have at
13 least an hour and a half, I have at least half
14 an hour and perhaps more.

15 THE COMMISSIONER: Well, I'm quite content to
16 break now if that's going to be -- there is no
17 question that we will not finish with you today,
18 and as much as I regret it, and I know you
19 regret it even more, but I will have to have to
20 invite you to come back.

21 THE WITNESS: It will be my pleasure,
22 Mr. Commissioner.

23 THE COMMISSIONER: I don't know if we can give
24 you a date now or whether that will be worked
25 out with Ms. Carswell, but it will be some time

1 after the middle of September.

2 THE WITNESS: Yes.

3 THE COMMISSIONER: Thank you very much.

4 MR. CODE: If I could perhaps assist in that, I
5 think the practical reality now in terms of
6 scheduling is that next week, I have told my
7 colleagues that I will be calling
8 Mr. Dangerfield first, and Mr. Whitley second,
9 and if we have time, Mr. Lawlor at the end of
10 the week. So the evidence we are not going to
11 reach and that we have to schedule into
12 September is the completion of Chief Ewatski,
13 the evidence of Todd Christianson, the forensic
14 science witness, and possible Mr. Lawlor if we
15 don't finish him next week. So, the week of
16 September 18th, where we have the panels
17 scheduled would be a good time obviously to
18 finish Chief Ewatski if he is in town that week,
19 September 18.

20 THE WITNESS: I believe I am, Mr. Code.

21 MR. CODE: So what I would propose then is that
22 we on September 18, the Monday, that we schedule
23 the panel on the stay of proceedings to commence
24 that morning, as we have got a number of people
25 coming in from out of town, but we could resume

1 the evidence that day, once the panel is
2 finished, and presumably call Mr. Christianson,
3 as it is very important to complete
4 Mr. Christianson's evidence before the second
5 panel. And then I would assume we would have
6 time in there. Mr. Christianson will not be a
7 lengthy witness. So perhaps, Chief Ewatski, if
8 you could keep your calendar flexible for the
9 Tuesday and Wednesday of that week, the 19th and
10 the 20th, we could get you finished in there,
11 and then do the --

12 THE COMMISSIONER: Concluded, not finished.

13 MR. CODE: And then do the forensic science
14 panel on Thursday the 21st. And then if this is
15 any evidence of Mr. Lawlor's that has to be
16 finished up, we could deal with Mr. Lawlor after
17 the forensic science panel on the afternoon of
18 the 21st. And now that we have got Friday,
19 22nd, which is a day when I am available,
20 incidentally, and I would be happy to complete
21 Mr. Lawlor's evidence in that block, if need be.
22 So with a bit of luck, we can get it all
23 finished in the week of the 18th, and we won't
24 need those extra days in the following week that
25 we have reserved this morning. So that would be

1 my tentative suggestion for a revamped schedule,
2 if I can call it that, in light of where we are.
3 THE COMMISSIONER: I just remind everyone that
4 we haven't had, you know, a real problem in
5 scheduling yet. And it has never been my
6 experience that I have ever gone through any
7 sort of moderate lengthy trial or process where
8 something untoward doesn't occur. Maybe this
9 will be the first time. So I would like to not
10 only have the 22nd available, if that meets with
11 everyone else's approval, but also one of the
12 26th or 27th, as an additional fall back day.
13 MR. CODE: And I should make it clear, I'm
14 entirely agreeable with that, and Mr. Dawe has
15 agreed to cover for Commission Counsel even
16 though I'm not available either of those days.
17 So I'm more than happy to agree to that from our
18 perspective.
19 THE COMMISSIONER: I will let you, after we
20 adjourn, I will let you speak with counsel and I
21 would really appreciate if you could make either
22 the 26th or 27th available, it doesn't matter to
23 me which of those days. With luck, we won't
24 need to utilize those days, but I find luck
25 doesn't come forth all that often.

1 MR. CODE: Could I raise one other matter in the
2 couple of minutes that we have got left, because
3 again --

4 THE COMMISSIONER: Actually, we can let you go.

5 THE WITNESS: That's fine, Mr. Commissioner.

6 MR. CODE: We now have the last two witness
7 statements that we have been waiting for, we
8 received them last night, the statements of
9 Sergeant Williams and Sergeant Osborne. And we
10 will be circulating those today, as soon as
11 Mr. Dawe and I go back to the office. So by
12 this afternoon, the parties will have all of the
13 witness statements of the witnesses who we have
14 interviewed, with the one exception of
15 Mr. Christianson who is in a completely separate
16 category, but he is a witness we are calling.
17 So what I'm concerned is that we get the
18 statements out of all of the witnesses who we
19 are not calling by the end of this week, and
20 that will be done, which will then allow us next
21 week to entertain any motions from any of the
22 parties in relation to the witnesses who we are
23 not calling. Because, obviously, if there is a
24 successful rule 27 motion, I think that's what
25 we would call it under our rules, to have a

1 witness called who is not on our witness list
2 and whose statement we are simply tendering,
3 then we need to deal with that next week.
4 Because we will need to schedule that additional
5 witness in and find time for that as well, which
6 may be a reason to keep both of those extra days
7 that you've announced this morning.

8 So could I advise my colleagues that I
9 think the only statements that have not already
10 been tendered, the book that you will have
11 received for next week has got Mr. Finlayson's
12 statement in it, who is one of the witnesses who
13 we are not calling, or not proposing to call,
14 but I believe it is Williams, Osborne, Wyant and
15 Garber I think are the only four witnesses who
16 have not been tendered. We will formally tender
17 those four statements next week.

18 And then if I could ask my colleagues next
19 week to bring on any application at some point
20 next week that they have relative to additional
21 witnesses that they think come within the test
22 in rule 27 of necessity to the Commission's
23 terms of reference.

24 MR. OLSON: I think it would be helpful to
25 counsel, Mr. Commissioner and Mr. Code, if we

1 had some indication as to what is happening on
2 the September 28, 29, 30, or what is planned?

3 Is it still to be reserved for argument
4 purposes, or what is the intention?

5 MR. CODE: Certainly, my hope is if the
6 optimistic schedule that I laid out for the week
7 of September 18th succeeds, and by Friday the
8 22nd we have completed the evidence, then the
9 idea would be that we would move into
10 submissions as scheduled in the two blocks of
11 time that we had reserved for submissions, which
12 are the 28th, 29th, and possibly the 30th, and
13 then again I believe the submissions on the
14 systemic issues were October 30th and 31st.

15 So I think the answer is yes, if we
16 complete the evidence in the week of the 18th,
17 which would be my hope, then we could keep our
18 two blocks of times that we presently have
19 scheduled for submissions.

20 MR. LOCKYER: Mr. Commissioner, one thing, as
21 you know, up until now I have been agreeing to
22 go straight after Commission Counsel with each
23 witness. And with the change of order,
24 Mr. Dangerfield coming up on Monday, which is a
25 recent decision of Commission Counsel, for

1 reasons unrelated to Mr. Dangerfield, but simply
2 for personal reasons, I won't be ready to
3 cross-examine him on Monday, I'm afraid. So I'm
4 going to ask that where he is concerned, that I
5 go perhaps where I should go with respect to
6 him, because he is clearly a witness whose
7 interests are contrary to those of Mr. Driskell.
8 I will be happy to go Tuesday morning, if that
9 means I'm third, or fourth, or fifth, I don't
10 mind at all, but I simply won't be ready Monday,
11 I just can't do it. I thought everyone should
12 know that.

13 THE COMMISSIONER: I'm glad you put it on the
14 record and I know that counsel will continue to
15 be cooperative.

16 MR. LOCKYER: Yes. It is really not related,
17 there is no tactical purpose to this, it is just
18 the way things have worked for me.

19 MR. CODE: I think in the normal course he would
20 not be a witness that Mr. Lockyer would be
21 expected to cross-examine first, in any event.
22 I hope that wouldn't cause any delay.

23 THE COMMISSIONER: Any comments from anyone?
24 All right. We will adjourn until Monday
25 morning.

1 THE CLERK: All rise. This Commission of
2 Inquiry is now adjourned.

3 (Proceedings adjourned at 1:30 p.m.)
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COURT REPORTER'S CERTIFICATE

CECELIA REID and LISA REID, duly appointed
Official Examiners in the Province of Manitoba,
do hereby certify the foregoing pages are a true
and correct transcript of our Stenotype notes as
taken by us at the time and place hereinbefore
stated.

Cecelia Reid

COURT REPORTER

Lisa Reid

COURT REPORTER

<p style="text-align: center;">A</p> <p>abide 3750:13 abilities 3759:12 ability 3746:12 3751:17 able 3685:15 3709:14,20 3713:20 3739:18 3759:14 3791:12 3806:8 3828:21 3834:9,17 Abra 3680:14 3681:9 3810:15 3817:10 3829:22 3839:5 absolutely 3687:4 3696:5 3746:8 3787:20 3797:12 3810:7 3811:17 academy 3789:17 3789:21,24 3790:3,6,10,13 3791:1 accelerated 3790:19 accept 3691:11,12 3749:18 3750:7 3751:12 3803:23 acceptable 3808:2 acceptance 3748:6 accepted 3771:25 accepts 3750:10 access 3804:17,19 3804:22,25 accompanying 3795:7 account 3803:25 3804:8 accountability 3746:18 3747:22 3747:23 3748:1,5 accountable 3747:10 accounts 3829:25 accuracy 3791:14 3791:23 3792:15 accurate 3699:23 3702:15 3717:13 3724:9 3734:24 3739:10 3763:24 3791:20 3792:13 3819:15 accusations 3753:17 accused 3746:3 3760:25 3807:24 acknowledge</p>	<p>3734:21 3809:18 acknowledged 3703:11 3735:11 3735:18 3768:21 3781:3,5 3786:15 act 3706:3 3742:19 3755:14 acting 3810:16 action 3756:9,19 actions 3689:5 3693:17 3747:10 3756:12,13,21 3792:17 activities 3792:13 activity 3815:22 acts 3747:9,9 actual 3758:21 adamant 3707:12 3822:17,19 3823:4 3824:8 3827:7 add 3683:13 additional 3683:13 3842:12 3844:4 3844:20 address 3690:11 addressed 3715:13 3754:10 adequate 3684:5 adjourn 3842:20 3846:24 adjourned 3847:2,3 administration 3755:13 Administrative 3680:4,5,6,7 admission 3832:3 admit 3766:12 admittedly 3808:18 adopted 3830:20,21 advice 3746:24 3747:2,16 3750:19,22 3755:7 3794:14 3796:6 3812:1,3,5 3812:14,16,23 3813:4,6,10 advise 3737:3 3844:8 advised 3704:23 3710:5 3714:3 3758:1 3819:20 3830:24 advising 3711:1 3748:15 advocate 3715:16 afforded 3687:10</p>	<p>afraid 3846:3 afternoon 3683:24 3731:15 3788:1 3808:16 3841:17 3843:12 agencies 3791:24 agency 3747:4,5,18 3755:6,9,11 3756:16 3793:15 ago 3734:13 3766:8 agree 3693:9 3724:21 3732:22 3735:6 3747:7,22 3748:7 3749:8 3752:21 3760:19 3773:7 3779:19 3787:16 3828:22 3838:8 3842:17 agreeable 3842:14 agreed 3735:5 3790:22 3811:22 3818:21 3825:20 3832:7 3842:15 agreeing 3704:20 3845:21 agreement 3826:1 3828:18 agrees 3692:14 3764:21 ahead 3720:21 3740:6 AIDWYC 3719:9 3745:10 3746:16 Alan 3680:10 albeit 3715:21 alias 3689:16 allegations 3715:25 3753:18 3770:7 alleged 3796:15 allow 3789:14 3826:12 3843:20 allows 3790:16 alphabetic 3688:5 alter 3808:9 amount 3735:12 3825:8 3826:19 3829:8 analysis 3722:21 3723:9 3728:14 3728:18 3765:22 Anderson 3758:7 3779:11 3788:23 3802:18,23 3803:11 3804:6,9 3804:23 3805:7 3805:18 3806:18 3815:24 3816:12</p>	<p>3816:17 3817:16 3817:19,22 3819:6 3820:2,7 3820:17,25 3821:18 3822:11 3824:21,25 3825:22 3826:7 3827:15 3828:8 3828:15,22 3829:6,24 3834:10,24 3837:8 Anderson's 3803:25 3806:1 3817:12 3819:18 3825:12 3825:19,25 3826:3 3827:20 3828:24 and/or 3770:24 3795:23 3813:23 3823:24 announced 3844:7 annual 3756:3,22 answer 3735:15 3739:3 3740:10 3740:10 3741:18 3742:4 3744:19 3744:22,25 3749:25 3752:16 3752:17,22 3753:11 3754:15 3757:3 3760:9 3765:6 3773:3,17 3774:13 3780:18 3783:10 3845:15 answered 3727:1 answering 3697:20 3738:15 answers 3703:15,17 Antonio 3750:19 anyway 3735:9 apart 3779:16 apologies 3728:22 apparent 3703:13 3703:14,24 3765:10 3768:14 3773:14 apparently 3822:10 3829:1 appear 3803:18 APPEARANCES 3680:9 appeared 3710:3 3771:12 3773:7 3779:3 3825:19 appears 3692:5,12 3697:12 3804:1,4</p>	<p>applicant 3726:22 application 3716:17 3719:13,23 3720:8 3721:5,13 3726:20 3727:17 3844:19 appointed 3848:6 appreciate 3745:7 3842:21 approach 3795:24 3796:14 3822:25 3824:11 approached 3712:17 appropriate 3716:1 3730:18 3743:18 3761:10 3793:19 3806:19 3813:19 approval 3799:23 3842:11 approved 3818:23 Approximately 3775:24 3818:19 April 3723:1 3724:14 3804:6 3817:25 area 3690:15 3757:19 3802:11 areas 3788:7 arguably 3725:20 argue 3741:18 3748:22,22 argues 3692:15 arguing 3753:1 argument 3798:14 3845:3 arguments 3750:4 armed 3692:5 3773:13,14 arrangement 3798:20,23 3799:25 3818:25 3819:8 3830:8,13 3830:25 3831:9 arson 3765:11 3768:15 3769:5 3773:10,22 3775:6 3803:22 3815:18 3816:16 3818:6 3821:6 3829:19 3830:1 3830:10 3832:3 articles 3704:18 3733:18 3834:3 3837:13,16 3838:7 Ashif 3692:11,17</p>
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