

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
at the Winnipeg Convention Centre
Winnipeg, Manitoba

Wednesday, August 2, 2006

Volume 11

INQUIRY PROCEEDINGS

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Mr. R. Wolson, Q.C.	For the Winnipeg Police Association and certain members
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INDEX OF PROCEEDINGS

DESCRIPTION:	PAGE
THOMAS BURTON ANDERSON, continued	
- BY MR. WOLSON	2350
- BY MR. CODE, re-exam	2413
DAVID KOVNATS	
- BY MR. CODE	2437

INDEX OF EXHIBITS

14	Letter dated April 28, 1993 from Mr. Quinney to Bruce Miller	2401
15A	Volume 1 of David Kovnats' documents	2437
15B	Volume 2 of David Kovnats' documents	2438

1 WEDNESDAY, AUGUST 2, 2006

2 Upon commencing at 9:300 a.m.

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

5 THE COMMISSIONER: Good morning. I hope this is
6 the last time I have to say good morning to you.

7 THE WITNESS: Hopefully, yes.

8 MR. WOLSON: It will be on my account.

9 THE COMMISSIONER: Okay. Go ahead, Mr. Wolson.

10 MR. WOLSON: Thank you, Mr. Commissioner.

11 BY MR. WOLSON:

12 Q I am going to ask you just a very few questions
13 about background, and then we will go right into
14 the issues at hand, Sergeant Anderson. You
15 joined the unit that investigated homicides in
16 November of 1986, did you not?

17 A Yes, sir, that's correct.

18 Q And that unit did more than just homicides.
19 What did the unit do at that time?

20 A Well, it was responsible for the investigation
21 of crimes against persons, which generally
22 included robberies, homicides, extortions,
23 serious assaults, that sort of thing.

24 Q Kidnapping, sexual assaults and those types of
25 cases?

- 1 A Yes, sir.
- 2 Q And when you got in, in November of '86, were
3 you doing more of the non-homicide than homicide
4 cases?
- 5 A Yes, sir.
- 6 Q And you would have been ranked as a junior
7 detective at that time?
- 8 A Yes.
- 9 Q And by 1990 would you still have been a junior
10 detective?
- 11 A Yes, sir.
- 12 Q But, I take it, as you got closer to 1990, you
13 would be taking part in investigations on
14 homicides more often than when you first came
15 into that department?
- 16 A Some parts, yes.
- 17 Q You would have had a number of different
18 investigations ongoing at the same time?
- 19 A Yes, sir, that's correct.
- 20 Q And while there are dates in your notebook, gaps
21 of periods of time that are missing, would you
22 say that you were involved, likely in other
23 investigations, during that period of time?
- 24 A You're talking about gaps in the Harder homicide
25 notebooks?

1 Q Yes.

2 A Oh, yes. For sure, needless to say, this wasn't
3 the only case on the go in the City of Winnipeg
4 at the time.

5 Q And how many cases, around that time, in 1990,
6 would you have been involved in, just a global
7 figure?

8 A Well, Mr. Kennedy asked me that same question.
9 Just off the top of my head, I think 15 to 20
10 maybe, somewhere in that neighbourhood.

11 Q Would you have been personally involved in
12 those?

13 A I would have some part.

14 Q I'm talking while you were doing the Harder
15 homicide investigation?

16 A Oh, I'm sorry. I thought you meant up until
17 that time period.

18 Q No. How many cases would you be balancing at
19 that time?

20 A Oh, well, gosh, if you're including
21 non-homicides, anything that we handle, I
22 couldn't even hazard a guess. There could have
23 been five or six armed robberies on the go, and
24 maybe a sexual assault case or two. I don't
25 know.

- 1 Q So your attentions were directed to other
2 matters?
- 3 A Oh, absolutely.
- 4 Q As well as the homicide investigation that you
5 were dealing with on the Harder case?
- 6 A Yes, sir.
- 7 Q Would I be correct in stating that the
8 supervisors really sort of called the shots on
9 what investigators would be doing on a
10 particular case, let's say the Harder case?
- 11 A Definitely, sir, yes.
- 12 Q Would there have been -- and the supervisors on
13 the Harder homicide case were -- Vandergraaf was
14 your immediate supervisor?
- 15 A Well, I think I've explained this before. It's
16 a little bit complicated. Sergeant Vandergraaf
17 came to be, I guess, the de facto coordinator of
18 the case, but there were other supervisors that
19 had a part in it as well.
- 20 Q But Vandergraaf would have had the most input
21 into the Harder investigation?
- 22 A Yes, sir.
- 23 Q And above him would be Randy Bell, who was an
24 inspector?
- 25 A That's true. And then for part -- that was in

1 the beginning. And part of the time an
2 Inspector named D.K. Johnson.

3 Q Randy Bell is known to me as former homicide
4 investigator. Would he be a hands-on type of
5 investigator?

6 A Yes, sir.

7 Q And was he a hands-on type of inspector?

8 A Yes.

9 Q Would I be correct in stating that all actions
10 by you would be the subject of discussion and
11 debate, and you would then follow direction from
12 your supervisor?

13 A That's exactly how it worked.

14 Q You ultimately became a supervisor in a unit
15 dedicated only to homicide cases?

16 A Yes, in 1994.

17 Q And was the practice back in 1990, and
18 ultimately when you became a supervisor, if you
19 thought that an investigator should prepare a
20 Supp of something, would you, ultimately as a
21 supervisor, would you have so instructed that
22 detective?

23 A Well, I think I explained that yesterday, that's
24 exactly what a supervisor does when he is
25 supervising a major case like that, or any case,

1 for that matter. That's one of the key parts of
2 your job is to ensure that the investigation is
3 complete and that the report covering the
4 investigation is complete.

5 Q So I'm assuming then, when you were, as a junior
6 detective in the Harder homicide case, if you
7 submitted your supp. to Vandergraaf, for
8 example, would you expect that if further
9 supplementals were required, you would have been
10 so directed?

11 A Absolutely. And even if a supp. wasn't
12 submitted, the briefings -- and I think I've
13 described this to this inquiry already, that the
14 briefings were so frequent and full, that a
15 supervisor would know and would recognize if a
16 supplementary wasn't present and demand it.

17 Q Now, I want to deal directly with the
18 October 10th admission by Ray Zanidean. You had
19 first met him the day before; true?

20 A Yes, sir.

21 Q And on October 10th, when you met him and
22 interviewed him, he disclosed to you that he may
23 have a problem with his credibility, or words to
24 that effect; true?

25 A Yes, sir.

1 Q And that he then disclosed his involvement in an
2 arson in Swift Current?

3 A Yes, sir.

4 Q And then later, further amplification of that on
5 October 29th?

6 A That's true, yes.

7 Q Is there any doubt that you disclosed these
8 admissions by Zanidean to your supervisor and
9 inspector?

10 A No doubt.

11 Q And to Bruce Miller?

12 A Correct.

13 Q But there is no supplemental regarding those two
14 disclosures, are there?

15 A Well, there isn't one that I've seen --

16 Q Yes.

17 A -- in connection with this inquiry no.

18 Q And you say, regarding that, that you would have
19 ordinarily prepared a document to an outside
20 agency?

21 MR. CODE: If I could just interject at this
22 point. This witness is Mr. Wolson's client.
23 And he's now at important parts of the
24 examination, and he is asking extraordinarily
25 leading questions.

1 MR. WOLSON: Well, you know, the objection was
2 raised the other day. It seems like the other
3 day, at least, when I was examining Sergeant
4 Paul. And I appreciate that this is a unique
5 situation, in that there have been now eight
6 cross-examinations that have been conducted of
7 this witness already, eight including
8 Mr. Kennedy.

9 There is no precedent for it that I'm aware
10 of. But to now suggest that I shouldn't lead
11 the witness, after eight lawyers have
12 cross-examined him, and most of the areas that
13 I'm going to examine on are those areas that
14 other lawyers have cross-examined on, seems to
15 me to be ridiculous, quite frankly, that I
16 should now be leading my witness after eight
17 cross-examinations.

18 My friend, Mr. Code, cross-examined this
19 witness leading off, and it was a
20 cross-examination. And I had occasion to refer
21 to the rules, after the objection was made with
22 Mr. Paul. While your counsel is entitled to ask
23 leading and non-leading questions, there's
24 nothing in the rules that would suggest he would
25 be engaging in a full-fledged cross-examination,

1 as he has been. But I assume that you wanted to
2 hear that. He is your counsel. And I assume
3 that we want to get to the heart of the matter,
4 and I haven't objected for that reason. By the
5 same token, I say, we've been over much of this
6 eight different times, and it seems to be silly
7 that I should now be leading the witness.

8 MR. CODE: I'm suggesting he not lead. It's not
9 silly that he lead him.

10 MR. WOLSON: It seems to me silly that I should
11 have to lead the witness by way of an
12 examination-in-chief. So I would think we want
13 to get to the heart of the matter, and that's
14 why I'm asking direct questions of the witness,
15 to elicit a direct response.

16 THE COMMISSIONER: As you all know, I have
17 little -- I have no experience in inquiries, but
18 I suspect that the traditional rules of evidence
19 that we used at trials don't apply to the same
20 extent as they would at a normal trial. I guess
21 one of the things about leading questions, there
22 are a host of ways in which one might lead a
23 witness. But when the leading is actually
24 giving the answer, then it makes the witness's
25 response unhelpful, in the sense that it becomes

1 the questioner's evidence, rather than the
2 witness's.

3 There's nothing wrong with leading to the
4 area and setting out the surrounding
5 circumstances. And I'm not going to prohibit
6 you from even suggesting the answer. But it
7 isn't helpful, I don't think, for the witness's
8 credibility. And this is a very capable
9 witness. And so it might be preferable if you
10 didn't give the answer in your question.

11 MR. WOLSON: I just remind you that when
12 Mr. Code was examining Burton, for instance, we
13 didn't really need the witness here because the
14 answers were coming from Mr. Code in his
15 questions, all through the examination. But I
16 will tailor my questions in a style that,
17 hopefully, you'll feel is reasonable in your
18 inquiry into this matter.

19 THE COMMISSIONER: Thanks, Mr. Wolson.

20 BY MR. WOLSON:

21 Q You had these two admissions from Reath Zanidean
22 on October 10th and 29th regarding the Swift
23 Current arson?

24 A Yes, sir.

25 Q Who did you give information to regarding these

1 admissions?

2 A Well, just about anybody who have an interest in
3 them, Inspector Bell, Staff Sergeant
4 Vandergraaf, whatever other investigators were
5 at meetings, Bruce Miller, Ross Burton,
6 everybody in robbery/homicide knew about these
7 admissions.

8 Q You have no supplementals regarding them?

9 A Well --

10 Q No supplementals that we have here before us
11 today?

12 A That's correct, sir, yes.

13 Q Were you going to prepare something for Swift
14 Current?

15 A Oh, absolutely.

16 Q And what were you going to prepare?

17 A That would be the vehicle by which they would
18 make their case and subpoena Al Paul and me to
19 the Swift Current court.

20 Q And what were you going to prepare?

21 A Well, the proper -- I believe the proper
22 approach is to prepare a report called an
23 assistance to an outside agency with a different
24 file number. And I think I have explained
25 before, it should be cross-referenced to the

1 homicide file.

2 Q Now, it appears that that never happened. Can
3 you tell the Commissioner why, in relation to
4 the calls that you had in April, in particular,
5 why you didn't prepare a brief to an outside
6 agency?

7 A Well, I don't know for sure why we don't have
8 that report here today. But I suspect that --
9 and there are two events, really, not just
10 April 5th. There are two things that happened
11 that I suspect answer why we don't have that
12 report today.

13 One is the phone call the day after the
14 second admission was made, October 30th, that is
15 to Ross Burton, about which I have testified
16 here already. I learned that there wouldn't be
17 this rush to investigate the arson with respect
18 to Ray Zanidean.

19 Secondly, on April 5th, I was to learn, and
20 I did learn, that there would be no need for
21 that report covering those comments to go to
22 Swift Current at all. Because, as I have
23 testified, Constable Burton informed me that
24 they wouldn't be proceeding on charges with Ray
25 Zanidean.

1 Q You've been cross-examined at length by many
2 different counsel at this inquiry. And the
3 inference to be drawn by the cross-examination
4 is that you failed to report, in supplemental
5 form, in an effort to deprive the Crown of
6 information. And of course, if the Crown didn't
7 have the information, the inference is they
8 couldn't disclose that information to the
9 defence. What do you say to that?

10 A Well, that's just nonsense. As I've said here
11 before, it makes no sense at all. First of all,
12 everyone, meaning in the robbery/homicide
13 division, as well as Bruce Miller, knew about
14 those comments. And I think more than Bruce
15 Miller knew about those comments. Anybody who
16 knew that Ray Zanidean had admitted to an arson,
17 that he and James Driskell did in Swift Current,
18 had to have known. I didn't acquire this
19 information by mental telepathy. It had to
20 have come by way of a conversation between
21 Sergeant Paul, myself and Ray Zanidean. So the
22 fact that these notes existed, I just can't
23 imagine how anyone could view it as a secret or
24 kept --

25 Q Let me ask you --sorry?

1 A -- or kept from anybody.

2 Q You indicated to the Commissioner that you did
3 tell Bruce Miller, and you've said that on a
4 number of different occasions. Do you think you
5 would have to remind Bruce Miller to tell
6 Mr. Dangerfield?

7 A Well, no. First of all, I don't think I would
8 have to remind him. And, secondly, it wouldn't
9 be my place to talk to Bruce Miller about how he
10 communicates with his subordinates.

11 Q Did you believe -- or let me ask you this -- did
12 Bruce Miller tell you, at any time: Look it,
13 Anderson, what you tell me stops with me. I
14 don't disclose to Dangerfield. Was there that
15 kind of conversation with him?

16 A Of course not.

17 Q What was your expectation?

18 A Well, I guess my expectation was like that of
19 someone dialing 911 to report a murder, they
20 wouldn't necessary normally have to talk to the
21 homicide unit to report a murder. You talk to
22 the first person who answers the phone and that
23 information would get to where it is supposed to
24 be.

25 Q Let me ask you, Bruce Miller and George

1 Dangerfield, were they in the same building, the
2 Woodsworth Building?

3 A I believe so, yes.

4 Q Were they on the same floor, to your knowledge?

5 A Well, I don't know. I don't know that.

6 Q Okay. An obvious inference that could be drawn,
7 and I would like your position on it, to
8 withhold information from the Crown would be to
9 endanger the prosecution. What would your
10 statement be on that regard?

11 A I would agree.

12 Q Did you intend to affect the prosecution by
13 withholding evidence?

14 A No.

15 Q You told the Commissioner that you expected Greg
16 Brodsky, defence counsel, to raise Swift Current
17 in his cross-examination of Zanidean?

18 A Well, I just don't know how anyone could see
19 that he wouldn't. He had the best window seat
20 on disclosure in the house. He had a client who
21 lit the match under the umbrella of
22 lawyer/client privilege. How could it not be
23 raised?

24 Q I want to take you to tab 28 of book 2.

25 A Yes, sir, I'm there.

1 Q Tab 28 is a note from Corporal Orr. Do you see
2 that? Are you on tab 28?

3 A Yes, I am. I just don't see Corporal Orr's name
4 anywhere. It is a continuation report dated
5 '91/05 --

6 THE COMMISSIONER: Yes. It's hard to read his
7 signature.

8 THE WITNESS: Oh, okay.

9 THE COMMISSIONER: But his handwriting is pretty
10 distinct. And the evidence is that it is from
11 him, I think.

12 BY MR. WOLSON:

13 Q So accept for the purposes of this question that
14 it is Corporal Orr's note.

15 "I was talking to Sergeant Vandergraaf...",
16 and this is a note of the 14th of May; do you
17 see that?

18 A Yes, sir.

19 Q "I was talking to Vandergraaf on another
20 matter when he advised me that Sergeant Tom
21 Anderson had been advised by someone from
22 Swift Current that ex-RCMP was looking for
23 Mr. Zanidean. Apparently, Staff Sergeant
24 Savage was looking for Ray on behalf of
25 Brodsky, who was the main counsel for

1 Driskell."

2 Do you see that?

3 A Yes, sir, I do.

4 Q So you had information about a month before
5 Zanidean was to testify that Mr. Brodsky had a
6 private investigator investigating in Swift
7 Current?

8 A Yes, sir.

9 Q Would that have aided your belief that obviously
10 Swift Current was going to be raised in
11 cross-examination?

12 A Yes. It is just further confirmation of what I
13 say.

14 Q Knowing that, would you withhold information of
15 Swift Current from Crown counsel?

16 A Well, I wouldn't, knowing that or not knowing
17 that.

18 Q Now, you had dealings in your career with George
19 Dangerfield. You would agree with me that he is
20 pretty strong counsel?

21 A Yes, sir.

22 Q When you look at the transcript, and accept this
23 for the purposes of this question, Mr. Brodsky
24 asked many questions of Mr. Zanidean about Swift
25 Current. You'll accept that, will you?

1 A Yes, sir.

2 Q Were you summoned by Mr. Dangerfield prior to a
3 re-examination, and were questions put to you
4 about, what is this about Swift Current, what do
5 you know, Anderson? Did that type of
6 confrontation take place with you and
7 Mr. Dangerfield?

8 A No, sir.

9 Q The body pack evidence that you became aware of
10 was filed as an exhibit in the case. You know
11 that, don't you?

12 A I know that one such meeting between
13 Mr. Zanidean and Mr. Driskell, that the tape
14 covering, I believe, that was filed or
15 entered.

16 Q And you've come to know that that tape contains
17 some discussion about the burning of a house?

18 A Yes, sir.

19 Q That was filed at the trial, you became aware of
20 that?

21 A Yes, sir.

22 Q At the end of this case was there a complaint
23 made against you by George Dangerfield for
24 withholding evidence or attempting to affect the
25 prosecution of the case?

- 1 A No, sir.
- 2 Q To the contrary, you received a letter of
3 commendation?
- 4 A Yes, sir.
- 5 Q You've testified on several occasions now on
6 this matter, or you've answered questions
7 regarding Witness Protection Program issues not
8 going in, ordinarily, to supplementals?
- 9 A Yes, sir.
- 10 Q And not ordinarily being placed in your notes?
- 11 A Yes.
- 12 Q There are two supplementals that contain witness
13 protection matters, or matters that are
14 sensitive to the witness. If you'd look at tab
15 17, please? This is a supplemental prepared by
16 you?
- 17 A Oh, did you say 17?
- 18 Q Tab 17, please, book number 2, it would have
19 book of documents for Commission Counsel's
20 examination of -- your name would be one of
21 them. Are you there?
- 22 A I have it now.
- 23 Q This is a report prepared by you, we see at the
24 bottom?
- 25 A Yes, sir.

1 Q It's a report prepared in '91, in April?

2 A Yes, sir.

3 Q And it's a report setting out that Zanidean had
4 been threatened. That would be the essence of
5 this report, is it not?

6 A Yes, that's correct.

7 Q Why is this supplemental being prepared by you?

8 A Well, I believe I mentioned this before, but
9 that the -- and, actually, the way that my
10 interview with Mr. Code is worded on this
11 subject is quite accurate. These matters
12 wouldn't normally be reported in the form of a
13 supplementary, unless requested, unless there
14 was a request to report them, and there would be
15 some specific reason. This, I suspect, is as a
16 result of a specific request from Vandergraaf or
17 some other supervisor. I suspect from
18 Vandergraaf, because I know now that he had
19 arranged witness protection for Zanidean
20 following this matter.

21 Q And then there is a second supplemental at
22 document 58. That's an added document to that
23 book. Are you there?

24 A Yes, sir. Yes, sir, I am.

25 Q This is a supplemental, again, prepared -- is

1 this prepared by you as well?

2 A Yes, sir, it is.

3 Q And it's setting out, in essence, the long-term
4 and the short-term plan for Mr. Zanidean, is it
5 not?

6 A Yes, sir.

7 Q Under the heading "Witness Protection for Ray
8 Zanidean"?

9 A That's correct.

10 Q And why is this one prepared?

11 A Well, ditto for my comments on the last
12 question. And this one, I believe, is signed
13 off by Inspector Randy Bell. I believe those
14 are his initials at the bottom. And that would
15 be unusual, the inspector doesn't normally sign
16 off reports, supervisors do. So this tells me
17 that he asked me to submit this.

18 Q And is that a report that would be a money issue
19 for the Police Service?

20 A Yes.

21 Q Or for the Department of Justice?

22 A Yes, sir. I might add, as well, what's a little
23 misleading about this supplementary is the fact
24 that this looks like the kind of report that
25 would come in four copies. And I think I also

1 explained this yesterday, that sometimes a
2 report that wouldn't be split up, as a four copy
3 supplementary normally would be, because it
4 would be used as a vehicle to report a matter
5 like this.

6 Q It would be of an internal nature, would it?

7 A Correct, that's what I'm getting at.

8 Q Now, I want to go to the calls to Swift Current
9 that you had with Burton in October, and then
10 in April of 19 -- October of '90 and April of
11 1991. And the suggestion to you, by inference
12 or otherwise, is that you weren't being truthful
13 in your recounting of the facts of those phone
14 calls. And, secondly, that you, by not
15 preparing a supplemental, in effect, that you
16 were withholding that information from the
17 Crown. Do you recall those types of
18 questions?

19 A Yes, sir.

20 Q Well, let me -- and what's your response to
21 those?

22 A Well, it's nonsense.

23 Q Let me take you to book 2, tab 10, which is your
24 account of matters.

25 A Yes, I have it.

1 Q This is an account that you prepared in October
2 of 1991?

3 A That's true.

4 Q And you prepared this as a result of a complaint
5 that had come to the Police Service?

6 A Yes, sir.

7 Q Would you have shared with Mr. Miller the fact
8 that a complaint had come in and your response
9 to it?

10 A Oh, yes.

11 Q This is prepared in '91, when Bruce Miller,
12 thankfully, was alive and well?

13 A Yes, sir.

14 Q And you had indicated to the Commissioner that
15 you had had many, many dealings with him in 1990
16 and 1991, concerning Ray Zanidean; isn't that
17 so?

18 A That's true.

19 Q You note at paragraph 4 of the first page,
20 "On the second day of our involvement with
21 Zanidean, 10 October 1990, he revealed that
22 he felt his credibility as a witness may
23 present a problem as he had committed an
24 arson in Swift Current."

25 Do you see that?

- 1 A Yes, sir, I do.
- 2 Q He indicated that the issue -- and I'm now
3 summarizing -- he indicated that revenge was the
4 motive?
- 5 A Yes, sir.
- 6 Q You indicate that he was read his rights?
- 7 A Yes, sir.
- 8 Q And that he could expect no assistance from you
9 with respect to the matter? You were going to
10 call Swift Current and leave it to them?
- 11 A Exactly, yes.
- 12 Q Now, this is a note, although 1991, in October,
13 and these calls took place a year earlier, true,
14 this call at least, approximately?
- 15 A Yes, sir.
- 16 Q You indicate, in the end of that paragraph, that
17 you immediately notified Randy Bell, the officer
18 in charge of the investigation?
- 19 A Yes, sir.
- 20 Q Staff Sergeant Vandergraaf?
- 21 A Yes.
- 22 Q And Crown Attorney Bruce Miller?
- 23 A Yes, sir.
- 24 Q Bruce Miller would have seen this document?
- 25 A I'm sure he got a copy of it after the complaint

1 came in.

2 Q Were you ever criticized for misstating
3 something in here?

4 A No, sir, not at all, on the contrary.

5 Q I want to go to the page 2 of this document.
6 Just before that, by the way, at the bottom of
7 page 1, you indicate in the document about the
8 October 27th call, but you didn't connect with
9 Ross Burton at that time. Is that a fair
10 summary of that paragraph?

11 A Yes, sir, it is.

12 Q But you did connect at page 2, the top of the
13 page, with Constable Burton on October 30th,
14 1990?

15 A Yes, sir.

16 Q "I telephoned Burton and he confirmed
17 he was in charge of the investigation. I
18 discussed the situation with him and he
19 indicated the entire Zanidean family was
20 being interviewed with respect to the
21 arson."

22 A Yes, sir.

23 Q Is that the first time that you became aware of
24 that?

25 A Is that the first time that I became aware of

1 it?

2 Q Yes?

3 A Yes, of course.

4 Q "He said there was no further evidence
5 against Ray Zanidean."

6 A Yes, did he.

7 Q And he made the suggestion, to which you readily
8 agreed?

9 A Yes, sir.

10 Q Now, did you get a call -- just go, if you will,
11 to tab number 11, please, which is Ross Burton's
12 response to your October 8th memo, page 2. He's
13 discussing the October 30th call.

14 "Anderson advised that Zanidean is a
15 witness in a homicide prosecution and he
16 observed Driskell execute a Crown
17 witness...",

18 you talked about that yesterday,

19 "...in relation to another prosecution.

20 Anderson requested that we keep the
21 information in confidence and hold off on
22 pursuing Zanidean as it will endanger their
23 prosecution of Driskell."

24 He adds this note:

25 "As a matter of logical deduction, one

1 would have to wonder why I would delay our
2 pursuit of Zanidean on the arson. I had no
3 knowledge of the circumstances of the
4 murder and would have no idea that pursuing
5 him would jeopardize their murder
6 prosecution."

7 Did Ross Burton call you, knowing that you had
8 disclosed to him that there had been an
9 admission by Zanidean of arson?

10 A Well, first of all, I called him.

11 Q Yes.

12 A I called Constable Burton. And I'm sorry, what
13 was the second?

14 Q Now, if you look at page 2?

15 A Yes, I'm there.

16 Q "As a matter of logical deduction, one
17 would wonder why I would offer to delay our
18 pursuit of Zanidean on the arson."

19 A Yes.

20 Q When he had no knowledge of the circumstances
21 regarding the murder and would have no idea that
22 pursuing him would jeopardize the investigation.
23 Do you see that?

24 A Yes, I do see that.

25 Q So in your call to Ross Burton, you did advise

1 him that Zanidean had made an admission of
2 arson?

3 A Oh, yes.

4 Q Yes. Did Ross Burton call you back on
5 October 31st, November 5th, any time in
6 November, December, January, February, or
7 March, or prior to your discussion with him in
8 April, did he call you to tell you that, or to
9 ask you any questions regarding the arson
10 admission?

11 A No, sir. And I don't think there was ever a
12 call from Swift Current to me until July 16th of
13 '91.

14 Q Yes.

15 A All other calls were from me to him.

16 Q Yes. But there was a call if he -- if he took
17 objection to the issue of withholding the
18 investigation of Zanidean, did he call you to
19 tell you, for instance, that: Gee, I asked
20 the Winnipeg RCMP to take a statement from
21 Zanidean?

22 A No, not at all. Exactly what he volunteered to
23 do happened.

24 Q So for a several month period, there was no
25 phone call to you to say that -- anything to

1 the contrary of what he had volunteered in the
2 phone call that you had with him on
3 October 30th?

4 A No, absolutely not. We had never spoken until
5 that April 5th call, where I called him.

6 Q When you called him on the October 30th, the
7 first call that you spoke to Burton, what were
8 your expectations? What did you think was
9 going to happen when you told Burton of the
10 serious admission by Zanidean regarding an
11 arson?

12 A Well, I expected that there would be an
13 immediate investigation. I didn't -- I didn't
14 realize that -- I imagined D Division, that's
15 the Winnipeg RCMP, getting involved in an
16 investigation right away. I wouldn't have
17 imagined that there would have been any Winnipeg
18 Police involvement from our arson squad or --
19 but I expected an investigation to commence,
20 either by Swift Current RCMP to Winnipeg, or by
21 their counterparts here commencing this
22 investigation, based on the admissions of
23 Zanidean.

24 Q Would you have expected, if the phone call was,
25 other than as you say it is, that Ross Burton

1 would have been more aggressive in his pursuit
2 of Zanidean with you? After the October 30th
3 call, if the phone call was not as you say it
4 is, would you have expected that there would
5 have been action taken?
6 A Well, absolutely, yeah.
7 Q Now, you've been criticized for not making a
8 supplemental of the initial -- of that
9 initial call. Take a look, if you will, at tab
10 16?
11 A Yes, sir, I have it.
12 Q Page 481 at the bottom.
13 A 481?
14 Q Page 481, at the bottom of tab 16. And you will
15 come to Part 7 of the Witness Protection Program
16 application. Are you there?
17 A Yes, sir, I have it.
18 Q If you would look under part 4, please, or point
19 4, please?
20 A I see that.
21 Q If you look at the middle of the page,
22 "Constable Burton confirms they are
23 investigating..."
24 Would this information have come from you?
25 A Yes, sir.

1 Q "Constable Burton has agreed not to pursue
2 Zanidean at this time, but will continue
3 the investigation once our trial is
4 concluded."
5 Did that information come from you?
6 A Yes, sir.
7 Q And we're advised by Orr that this application
8 for witness protection was made some time
9 probably in February or March of 1991.
10 A That sounds reasonable.
11 Q That's a summary of your phone call with Ross
12 Burton?
13 A Yes, it is.
14 Q And that was given to RCMP Corporal Orr?
15 A Correct, sir, yes.
16 Q Corporal Orr is the man you asked in April --
17 you were going to approach Swift Current in
18 April. You were going to call. And you asked
19 Burton to call Swift Current?
20 A I asked Corporal Orr.
21 Q Corporal Orr, I should say, to call Swift
22 Current?
23 A Yes, sir.
24 Q If the information -- Corporal Orr has told us
25 that he discussed this Part 7 with Swift

1 Current. If the information that you gave in
2 the witness protection application had been
3 wrong, would you expect Swift Current to take a
4 contrary view, if the information you put in
5 this document were wrong?

6 A Of course.

7 Q To your knowledge, did they take a contrary
8 view?

9 A No, sir, not to my knowledge.

10 Q Not at that time, anyway?

11 A No.

12 Q Bruce Miller was dealing with issues regarding
13 Swift Current?

14 A Yes. Well, with Corporal Orr.

15 Q Yes. He was dealing also with Mr. Kovnats?

16 A Yes, sir.

17 Q Do you think it would have been important for
18 him to know about your discussions in Swift
19 Current, with Swift Current?

20 A Well, obviously, because he was dealing with
21 Mr. Kovnats.

22 Q And did you impart those discussions with him?

23 A Yes, of course.

24 MR. GATES: Mr. Commissioner, I rise
25 reluctantly, but I don't believe that there

1 is any evidence that the contents of the
2 Zanidean witness protection application was ever
3 in the possession of the Swift Current
4 detachment.

5 MR. WOLSON: I don't know whether the document
6 itself --

7 THE COMMISSIONER: Thank you, Mr. Gates.

8 MR. WOLSON: I don't know whether the document
9 itself was. But Corporal Orr indicated that he
10 phoned, and there is a memo to the effect, I
11 think on the 4th of April, 1991, and spoke to
12 Upton regarding Part 7 of the application. And
13 when I examined Corporal Orr, I put to him these
14 comments. And he indicated that he would likely
15 have told Swift Current about these comments,
16 and that he noted it in his tab 13. You can
17 find, at tab 13 of the Orr book, and I'm going
18 to be referring to that in a couple of minutes,
19 but you will find that at tab 13 in the Orr
20 book.

21 THE COMMISSIONER: Okay.

22 BY MR. WOLSON:

23 Q Now, before we leave the October call, you did
24 make some sparse notes in your notebook. And if
25 you would look at tab 4, please, of the first

1 volume, and if you'd find page 34?

2 A Yes, sir, I have it.

3 Q What was your understanding, from the phone call
4 of October 30th, regarding the investigation of
5 the arson in Swift Current?

6 A At the conclusion of my --

7 Q Yes.

8 A -- call, or conversation with Constable Burton?

9 Q Yes.

10 A Well, it was quite simply this, Constable
11 Burton, as I've explained before, was going to
12 delay his pursuit of Zanidean and go after
13 Zanidean's sister. So, in other words, he was
14 going to continue with the investigation in all
15 respects, except pursuing Zanidean.

16 Q And what -- if you look at page 34, the top part
17 of the page, the entry,

18 "Burton advises no evidence to confirm, but
19 investigation will continue."

20 What did you mean when you put that in that
21 book?

22 A Well, what I meant was that Burton told me that
23 they had no idea about Zanidean and Driskell
24 being responsible for the fire. They were -- he
25 explained that they were interviewing all family

1 members.

2 Q So their investigation would continue?

3 A Oh, absolutely.

4 Q And that's what you put in your book?

5 A Exactly, yes.

6 Q You called Swift Current in April. And you
7 accept the date of April 5th for -- you have
8 accepted that date, you don't take issue that it
9 was the 5th of April?

10 A No, sir, I don't take issue with that.

11 Q And you called because of a complication in
12 terms of getting Zanidean into the Witness
13 Protection Program?

14 A Yes, sir, that's correct.

15 Q Now, go to tab 10, please. Page 2, the third
16 paragraph. And the third paragraph is your
17 account of your two calls to Swift Current in
18 April?

19 A Yes, sir.

20 Q About four or five lines from the top of that
21 paragraph,

22 "I had two further conversations with
23 Constable Burton. During the first
24 conversation I explained the dilemma."

25 And the dilemma was the -- not getting into the

1 witness protection if he had an outstanding
2 charge?

3 A Yes, sir.

4 Q "And I believe he had already spoken to
5 Corporal Orr."

6 A Yes, sir.

7 Q Now, you had, in your evidence yesterday, you've
8 said, and you've indicated that today, as well,
9 that you were having Orr call Swift Current.
10 And you were going to call Swift Current?

11 A Yes, sir. And let me just explain, I have
12 already, but just a reminder, that the reason
13 for that was simply that I had this -- I, a
14 Winnipeg Police officer, had this contact in
15 Swift Current. Corporal Orr had no contact in
16 Swift Current, but he did belong to the same
17 police force. So we both struck this agreement
18 that we will see what Swift Current intends to
19 do.

20 Q So there was sort of a parallel approach?

21 A Yes, sir.

22 Q Now, you indicate in your note,
23 "During the first conversation...",
24 so you're talking about the first April
25 conversation; right?

1 A Yes, sir.

2 Q So you say you thought he had talked to Orr,
3 true?

4 A Yes, sir.

5 Q And then you say,
6 "In any case, he had given the matter
7 thought and he offered to withdraw their
8 pursuit of Zanidean entirely."

9 A And again, go after his sister.

10 Q And you had indicated, at the bottom of that
11 paragraph,

12 "Following this conversation, Sergeant Paul
13 and I notified Inspector Johnson, Staff
14 Sergeant Vandergraaf and Crown Attorney
15 Bruce Miller."

16 A Yes, sir.

17 Q And, again, that's a note that you wrote, you
18 wrote this memo in 1991 when Bruce Miller was
19 alive and well?

20 A Yes, sir, that's true.

21 Q Were you ever criticized for indicating that you
22 told Crown Attorney Bruce Miller of this?

23 A No.

24 Q If you look at the parallel investigation -- the
25 paralled call. And if you would take Exhibit 3,

1 please, and turn to tab 13? Exhibit 3 is the
2 Orr book.

3 A Yes, sir, I have it.

4 Q If you turn -- have you got tab 13 there?

5 A Yes, I do.

6 Q 94/01/12, you have that?

7 A I see that, yes.

8 Q 10:55?

9 A Yes, sir.

10 Q This is again Corporal Orr reporting,
11 "Called Swift Current detachment..."
12 and then he says,
13 "...further to my call of April."
14 Well, that's the day before you called Swift
15 Current, isn't it?

16 A Yes, it is. And that might account for why I
17 had the impression -- I mentioned in my memo
18 that I had the impression that he had already
19 spoken to Corporal Orr.

20 Q "At that time I spoke to second in command
21 of the detachment, Sergeant Upton, and
22 explained the situation regarding Zanidean,
23 as per note 7..."
24 and that's the note 7 that I referred you to a
25 few minutes ago?

1 A Yes, sir.

2 Q "...Zanidean and Driskell were probably
3 responsible for burning Zanidean's sister's
4 garage. Sergeant Upton explained he would
5 have Constable Burton, the file
6 investigator, call me."

7 Do you see that?

8 A Yes, sir, I do.

9 Q Well, we're told by Burton -- I'm sorry, we're
10 told by Orr that Burton didn't call him back,
11 but you, in fact, you know you spoke to Burton
12 the next day? You spoke to Burton on the 5th of
13 April?

14 A Yes. Yes, sir, I did.

15 Q Now, your belief that Orr had talked to Burton,
16 it appears that Orr had talked to Upton. You
17 see that?

18 A Yes, sir.

19 Q It appears that Upton was going to get Burton to
20 call you. You see that?

21 A Yes, sir.

22 Q And likely briefed him on their conversation?

23 A That's an inference I would draw, yes.

24 Q So when you talked to Burton and you write --
25 you didn't know about this entry?

1 A No, sir, I did not.

2 Q When you talked to Burton on the 5th of April,
3 the very next day, it appeared to you that Orr
4 had already talked to him?

5 A And now I understand why, yes, sir.

6 Q Well, the end result, according to your evidence
7 of the April 5th call with Constable Burton, the
8 call that you had, was that Swift Current was
9 going to terminate their pursuit entirely of
10 Zanidean?

11 A That's true, sir, yes.

12 Q And you've been criticized in questioning that
13 perhaps that wasn't accurate. You accept that
14 you've been criticized?

15 A Yes, I do.

16 Q Yes. Take a look at the next line, because
17 Sergeant Orr calls back to the detachment on the
18 12th of April, one week after your discussion
19 with Constable Burton.

20 "Swift Current will be concluding their
21 file and Ray Zanidean is no longer wanted
22 for questioning."

23 Do you see that?

24 A Yes, sir, I do.

25 Q Isn't that the same information you received,

1 for all intents and purposes, from Burton when
2 you talked to him on the 5th?

3 A It's identical.

4 Q Or RCMP, Orr was from the RCMP?

5 A Yes, sir.

6 Q Now, you've made no supplemental of that, you've
7 told this inquiry that many times.

8 A Yes, sir.

9 Q Right? But you did tell, according to your memo
10 in 1991, you did call to tell Bruce Miller about
11 it?

12 A Yes, sir.

13 Q It's not as if you were interviewed by
14 Commission Counsel in 2006, and raised telling
15 Bruce Miller about these things for the first
16 time?

17 A No, of course not.

18 Q So Constable Burton told you, no strings
19 attached, that they were ending their pursuit of
20 Ray Zanidean?

21 A Correct, sir, yes.

22 Q April 5th?

23 A Yes, sir.

24 Q The same information was given to RCMP Officer
25 Orr one week later?

1 A Identical.

2 Q And I'm assuming that that information would
3 have been important for Mr. Miller to know?

4 A Yes, of course.

5 Q Now, as a police officer, and you've now, at the
6 time of your retirement, had been many years a
7 policeman?

8 A 25 years, sir.

9 Q And part of that period of time was as a
10 supervisor in a homicide unit?

11 A Yes, for eight years.

12 Q I am assuming that you would have had
13 conversations with many, many Crown attorneys
14 over the years?

15 A Yes, sir, that's true.

16 Q Would you ordinarily make notes of your
17 conversations with Crown attorneys in a
18 notebook?

19 A No. No, that's the point I've been trying to
20 make here.

21 Q Or in a supplemental?

22 A No.

23 Q And I'm talking about contact with Crown
24 attorneys in a myriad of other cases, aside from
25 this case?

1 A Absolutely, no, I would never make a note about
2 anything -- any conversation I had with the
3 Crown. I wouldn't expect there to be a need for
4 it.

5 Q And when Mr. Abra says to you, in his
6 examination of you, that he has been through
7 your notes, and your notes don't mention Bruce
8 Miller's name. In any homicide case, aside from
9 this case, would you expect to have notes of
10 conversations with Crown attorneys?

11 A No, not at all.

12 Q I may have asked you this, but I want to make
13 sure. Were you ever told by Mr. Miller, when
14 you gave him information such as this phone
15 call, or such as the admission by Zanidean, that
16 his credibility may be at issue, and you did
17 give that to him? You did give him that
18 information?

19 A Verbally, yes.

20 Q Pursuant to your memo of October 1991, where you
21 say that, true? In your 1991 memo, you make
22 reference to the fact that you imparted that
23 information to Bruce Miller?

24 A Yes, sir.

25 Q Were you ever told, at any time, by Mr. Miller,

1 anything you tell me stays with me and I don't
2 tell Dangerfield?

3 A No, of course not.

4 Q It's been suggested to you that you didn't tell
5 Dangerfield certain things and you can't take
6 issue with that; true?

7 A That's true.

8 Q Mr. Miller was the director of prosecutions?

9 A Yes, sir.

10 Q He was working on a homicide case at a certain
11 part of it? That is, he was dealing with
12 witness protection issues --

13 A Yes, sir.

14 Q -- with you?

15 A And some other issues, yes.

16 Q Would I be correct in stating that when you
17 had important conversations, or had important
18 information regarding this case, that you
19 imparted that to your superiors and to
20 Mr. Miller?

21 A That was pretty much always the case, in this
22 case.

23 Q You told Mr. Code, and I think Ms. Carswell, and
24 you've made reference to it on a few other
25 occasions, that you've not seen the homicide

1 file as it stands today, that is the Harder
2 homicide file?

3 A That's correct. And that's one of the biggest
4 problems that I have answering questions
5 sometimes.

6 Q And you were told by Mr. Code that the file is
7 intact, as far as he knew?

8 A Yes, sir.

9 Q And you were told by Ms. Carswell that this is
10 an ongoing investigation?

11 A Yes, sir.

12 Q The document that caused you to write the
13 October 8th memo to Johns, the document would
14 have been a complaint from Swift Current.
15 You've said that many times?

16 A Yes, sir.

17 Q Have you ever seen that document?

18 A No. No, I haven't, and I've been asking for it
19 from the beginning. But I'm told, indirectly
20 through you, that it doesn't exist or it no
21 longer exists.

22 Q It's not in the disclosure materials that we
23 have. Is that the type of material that could
24 go missing --

25 A Oh, absolutely.

- 1 Q -- from a homicide file?
- 2 A Absolutely.
- 3 Q You had indicated to Commission Counsel that
4 when you wrote your October 8th memo, back in
5 1991, that there may have been some pieces of
6 paper, loose pieces of paper, that enabled you
7 to get the dates. Because there are a number of
8 date references in your October '91 memo. Would
9 you agree with me?
- 10 A Yes, sir, I would.
- 11 Q Have you ever seen those pieces of paper that
12 enabled you to get those dates?
- 13 A No, sir.
- 14 Q Are those the types of things, given -- given
15 what you know, that this is an ongoing
16 investigation, involvement with Swift Current,
17 I'm assuming, would not be an ongoing matter
18 anymore?
- 19 A No, sir, it wouldn't.
- 20 Q Are those the types of things that could have
21 been swept from the file?
- 22 A Absolutely.
- 23 Q Tell the Commissioner, if you will, having
24 experience as a homicide investigator and
25 supervisor, the makeup of a file and what it

1 would look like if the file were here in its
2 original form?

3 A Well, it would be quite messy. There would be
4 probably an accordion folder with several manila
5 folders in them. Each of those manila folders,
6 one might contain supplementary or continuation
7 reports, another might contain, oh, computer
8 printouts of licence plates that were checked
9 and so on. There would be short scrap papers,
10 long foolscap papers, and just a whole lot of
11 paper.

12 Q And in terms of who would sort of have conduct
13 of that file on an ongoing basis?

14 A Well, it would stay in the supervisor's office.
15 So the on-duty supervisor would have control of
16 that file while it's open.

17 Q And if the file were trimmed, or documents that
18 were thought to be unnecessary, what would
19 happen to those documents?

20 A Well, they would get thrown away when the file
21 got cleaned up.

22 Q Did you do that, as a homicide supervisor, from
23 time to time, as you moved on in your capacity?

24 A Sure.

25 Q You would take documents that you thought were

- 1 currently unimportant --
- 2 A Scrap -- computer printouts that were
- 3 irrelevant, that sort of thing.
- 4 Q You were criticized by counsel for not having
- 5 any meetings noted with Mr. Miller. And you've
- 6 explained to the Commissioner that you wouldn't,
- 7 ordinarily, document conversations that you had
- 8 with Crown. Would that be --
- 9 A That's correct, yes, sir.
- 10 Q And I'm assuming that you wouldn't, ordinarily,
- 11 document meetings either?
- 12 A Correct, sir.
- 13 Q But there are some, and I want to direct your
- 14 attention to them. Look at tab 59, please. You
- 15 can put the Orr book aside. And if you look at
- 16 tab -- volume 2, tab 59, which is an add-on?
- 17 A Yes, sir.
- 18 Q Do you have that document?
- 19 A Yes, sir, I do.
- 20 Q And you see, in the second paragraph of that
- 21 document, a note by Bruce Miller?
- 22 A Yes, sir, I do.
- 23 Q Of a meeting with you, or having had contact
- 24 with you?
- 25 A Yes, sir.

- 1 Q You didn't document that, did you?
- 2 A No, sir, I didn't.
- 3 Q Take a look at October 10th -- tab 10,
4 October 8th, your memo in 1991, please? If you
5 would go over to page 5, tab 10, page 5? Are
6 you there?
- 7 A Yes, sir, I am.
- 8 Q You note in that memo a meeting that you had
9 with Bruce Miller?
- 10 A Yes, sir.
- 11 Q And the purpose of this 1991 memo, of course,
12 there was no suggestion by anyone within the
13 Police Service that you had withheld information
14 from Bruce Miller, like the kind of inquiry
15 we're into today?
- 16 A No, of course not.
- 17 Q No. And the purpose of writing the '91 memo
18 was to respond to the complaint from Swift
19 Current?
- 20 A Yes, sir, it was.
- 21 Q And the complaint from Swift Current, although
22 we don't have it today, would never have
23 included you not discussing matters with the
24 Crown, that wasn't the issue of the complaint,
25 was it?

- 1 A No.
- 2 Q The issue of the complaint was that dealing
3 with -- your dealings with Swift Current and
4 Burton?
- 5 A Yes, sir, that's true.
- 6 Q Tab 5, on the 24th of July, 1991,
7 "Sergeant Paul and I met with Senior
8 Attorney Bruce Miller, briefed him
9 completely, provided him with the name of
10 the Saskatchewan counterpart, Richard
11 Quinney. He agreed to contact Quinney and
12 discuss this matter."
- 13 A Yes, sir.
- 14 Q Now, you're not writing this memo to cover your
15 tracks that you had met with Bruce Miller?
- 16 A No, not at all.
- 17 Q And what you were briefing him about were the
18 two calls that you received from Mr. Burton in
19 July, July the 16th, or at least the July 16th
20 call?
- 21 A Yes, sir.
- 22 Q Which is noted at page 3 of your letter, page 3
23 in the middle paragraph. You're briefing him
24 about that, are you?
- 25 A Yes, sir.

1 Q And at page 4, the second last paragraph, the
2 telephone call on the 18th of July?

3 A Yes, sir.

4 Q And these calls were, in essence, that the
5 position by Burton back on April 5th was now
6 changed?

7 A That's correct, sir, yes.

8 Q And that's what you were briefing Mr. Miller
9 about?

10 A Yes, sir.

11 Q Now, in that regard you gave him the name, at
12 page 5, of Richard Quinney?

13 A Yes, sir.

14 Q And Richard Quinney was a Justice official in
15 Saskatchewan?

16 A Yes. I believe Bruce Miller's counterpart
17 there.

18 Q And you learned of his name, you say in your
19 October 8th memo, from Mr. Burton when you
20 talked to him?

21 A Yes, sir.

22 Q In July?

23 A That's true.

24 Q And that's the discussion where you said you had
25 suggested it be bumped up to the Justice of each

1 province?

2 A Yes, sir.

3 MR. WOLSON: There is a document,
4 Mr. Commissioner, that I have provided to
5 counsel, and to Madame Clerk. And I have asked
6 that it be shown to the attention of the
7 witness. If it could be marked as an exhibit.
8 It's April 28, 1993, a letter from Mr. Quinney
9 to Bruce Miller.

10 THE COMMISSIONER: What number is this?

11 THE CLERK: 14.

12 THE COMMISSIONER: Exhibit 14.

13 (EXHIBIT 14: Letter dated April 28, 1993
14 from Mr. Quinney to Bruce Miller)

15 BY MR. WOLSON:

16 Q Okay. There has been -- and I just want to ask
17 you some questions leading up to that document.
18 There has been a barrage, or have been a barrage
19 of questions, and criticism of you, that this
20 discussion, or this plan to tell Zanidean about
21 the Swift Current position, that they weren't
22 pursuing the arson, that this was a discussion,
23 or came as a result of discussion and
24 instruction from Bruce Miller. And you have
25 been asked a number of questions about all of

1 that?

2 A Yes, sir.

3 Q And criticized and challenged that it did not
4 come from Bruce Miller?

5 A Yes, sir.

6 Q Your position is that it did, of course?

7 A Yes, of course.

8 Q Let's consider for a moment, and I only ask you
9 to consider this for the purposes of these
10 questions, that Mr. Miller did not give you
11 that instruction. Will you accept that, just
12 for the moment?

13 A All right.

14 Q And that he found out only from this letter, the
15 last exhibit, April 28, '93. If you would take
16 a look at that letter, this is a letter from
17 Mr. Quinney to Mr. Miller. Look at the first
18 page, third paragraph.

19 "With respect to Mr. Zanidean's
20 involvement, this matter was brought to
21 our attention, through materials compiled
22 by the RCMP, that Zanidean did testify...",
23 and I'll slow down, because I am going far too
24 fast,

25 "...did testify at Driskell's murder trial

1 and assisted in the conviction of Driskell
2 for first degree murder. The materials
3 disclosed a considerable amount of
4 confusion as to whether or not Mr. Zanidean
5 was told, by the Winnipeg City Police,
6 prior to testifying or after his
7 testifying, that the police in Swift
8 Current were now going to grant him
9 immunity with respect to the arson in Swift
10 Current."

11 And it talks of an internal investigation. Go
12 over to page 2, please, the top of the page.

13 "The Winnipeg City Police investigator...",
14 that must be you,

15 "...still maintains that he did not tell
16 Zanidean about the immunity until after
17 Zanidean had testified."

18 Do you see that?

19 A Yes, sir, I do.

20 Q This was sent to Mr. Miller on April 28th, 1993.
21 So if you assume, for a minute, that you didn't
22 have the instruction from Miller, and that's
23 what I've asked you to assume, and he found out
24 by this letter, do you recall getting any phone
25 calls from Mr. Miller chastising you,

1 criticizing you, or criticizing you to your
2 superiors, regarding what was noted in that
3 letter?

4 A No, sir.

5 Q And you would accept that's because Mr. Miller,
6 in fact, gave you those instructions?

7 A That's exactly it, yes, sir.

8 MR. ABRA: How can he say that, with respect?

9 MR. WOLSON: Well, the witness has said that
10 already.

11 MR. ABRA: Well, I am objecting to it and ask
12 that the answer not be considered. It's
13 ludicrous.

14 BY MR. WOLSON:

15 Q Well, let me approach it from this perspective.
16 Did you get instructions as to whether to tell
17 Mr. Zanidean after he testified?

18 A Yes, sir.

19 Q And from whom were those instructions?

20 A From Bruce Miller.

21 Q Not only were you not criticized by
22 Mr. Dangerfield, or Mr. Miller, for your -- for
23 matters that you're being criticized today, you
24 were promoted?

25 A Yes, in 1992.

1 Q There has been criticism leveled at you, by
2 counsel at this inquiry, in their examination of
3 you, for not -- the suggestion made was that it
4 would have been important to document, by way of
5 a supplemental, the fact that Zanidean had gone
6 missing in Calgary and was -- ultimately had to
7 be arrested?

8 A Yes, sir.

9 Q Do you recall those types of questions were put
10 to you?

11 A Yes, sir.

12 Q And the inference being that would be important
13 for Mr. Brodsky to know and to be disclosed by
14 Mr. Miller or by Mr. Dangerfield?

15 A Yes, sir.

16 Q I want to take you to the incident at the Safety
17 Building when you brought -- you went out to
18 Calgary and arrested Mr. Zanidean in Cochrane,
19 Alberta?

20 A That's true, yes, sir.

21 Q You brought him back to Winnipeg?

22 A Yes, sir.

23 Q And when you brought him back to Winnipeg, and
24 you have been asked questions about this, the
25 Crown attorneys came down to the Safety

1 Building?

2 A Yes, sir, that's true.

3 Q Mr. Miller and Mr. Dangerfield?

4 A Yes, sir, correct.

5 Q This is after you bring back the star witness
6 from his sojourn in Calgary?

7 A Yes, sir, correct.

8 Q To write a supp. telling Miller or Dangerfield
9 that you had arrested their star witness in
10 Cochrane, Alberta, is this something that they
11 would have known, being at the Safety Building
12 that night?

13 A Of course.

14 Q Who would you be advising if you had written
15 this supp.? Would you be advising
16 Mr. Dangerfield?

17 A If I was writing a supp. about the Cochrane,
18 Alberta business?

19 Q Yes. And Mr. Miller?

20 A Yes.

21 Q Did they know?

22 A Yes, they knew.

23 Q They were there?

24 A They were at the Public Safety Building, yes,
25 sir.

1 Q You have told the court yesterday that you might
2 do things a little differently now, and that you
3 might have been a little naive back in 1990?

4 A Yes, sir, I did.

5 Q Are you satisfied that the people who needed to
6 know all of the critical developments with
7 regard to Zanidean knew?

8 A Absolutely, and I've said that several times
9 here.

10 Q Although it's not in supplemental form?

11 A Not in supplemental forms that we have here
12 today, no.

13 Q If you would turn, please, to tab 41?

14 A Yes, sir, I have it.

15 Q You were asked about this supplemental, which
16 you prepared?

17 A Yes, sir.

18 Q And you have been asked a number of times about
19 question and answer number 6?

20 A Yes, sir.

21 Q When you would be given the task of writing this
22 supp., this supp. would then be given to whom,
23 your supervisor?

24 A Yes. And on the 18th of May, it appears that
25 that would have been Acting Staff Sergeant

1 Ryland who signed it off.

2 Q Is the information contained in the last
3 paragraph information that Mr. Miller was aware
4 of, by your discussions with him?

5 A Yes, sir.

6 Q You might have to tell a kid -- and you have
7 been criticized for not -- you have been asked a
8 number of times, did you tell Mr. Dangerfield
9 this information? Did you give him this
10 knowledge? You might have to tell a child, or
11 even a teenager, or even a young man or a young
12 woman to make sure you pass information on to
13 another party. Did you feel that you had to do
14 that with Bruce Miller?

15 A No, of course not.

16 Q Would it have been your place to do that?

17 A No, not at all.

18 Q You were referred to tab 53. Tab 53 is a supp.
19 prepared by your partner, Al Paul?

20 A Yes, sir.

21 Q This is about what has been referred to as a
22 blow-up --

23 A Yes, it has.

24 Q -- at the hotel?

25 A Yes, sir.

1 Q And you weren't there at the time?

2 A No, sir, I wasn't.

3 Q But you don't take issue with the fact, and you
4 have stated this, that Al Paul called you,
5 although you don't remember the call?

6 A That's correct.

7 Q And this is a supp. that was not made
8 contemporaneously, but made as a result, we've
9 been told, of the Ewatski/Hall inquiry?

10 A Yes, sir.

11 Q The contents of the fifth or sixth paragraph,
12 paragraph 3 from the bottom, the larger
13 paragraph, do you see that?

14 A Yes, sir, I do.

15 Q It's different than the tape that was played to
16 you. And I ask that you look at about the
17 fourth line,

18 "Zanidean threatened to go to the press,
19 tell the press his testimony had been lies
20 and would really fuck us. I informed him
21 that he testified in court and could be
22 charged with perjury. He then stomped out
23 of the room and made some comment about
24 showing us not to fuck around with him. He
25 attended to a bedroom, slammed the door.

1 At this time, the writer phoned
2 Anderson...",
3 and he goes on to indicate that further
4 information. Do you see that?

5 A Yes, sir, I do.

6 Q Was that -- was your impression of Zanidean, was
7 he an explosive-type character?

8 A Yes, he was.

9 Q You would know, at that time, that negotiations
10 were not going well for him?

11 A Yes, that's an understatement.

12 Q He was complaining to you and to Paul, his two
13 handlers, all the time?

14 A As was Bruce Miller to me.

15 Q Yes. He was being a pain in the backside for
16 everyone that had to deal with him?

17 A That's pretty accurate, sir, yes.

18 Q You were told that he was a -- you were
19 suggested -- it was suggested to you by my
20 friend, Mr. Lockyer, that this was a
21 manipulative kind of guy. And you said that was
22 in your mind?

23 A Yes, sir.

24 Q When you interviewed Zanidean early in October
25 and November, you took a number of statements

1 from him?

2 A Yes, sir.

3 Q When you would take a statement from Zanidean,
4 would you ever attempt to put words in his
5 mouth?

6 A No, of course not.

7 Q How did the statement process go when you took
8 statements from him?

9 A Well, he dictated the statement.

10 Q And would it be written down verbatim?

11 A Yes, sir.

12 Q And when it was written down, would it be given
13 to him to read?

14 A Correct.

15 Q And to make any changes that he thought were
16 necessary?

17 A Yes, sir.

18 Q Did you ever -- and I ask you this because it
19 may come up from other evidence -- did you ever
20 ask him to say things that weren't true?

21 A No, of course not.

22 Q Did you ever coach him for his evidence in
23 court?

24 A No, sir.

25 Q You were a subpoenaed witness in this case?

- 1 A Yes, sir.
- 2 Q But, ultimately, you weren't called to testify?
- 3 A That's true.
- 4 Q This was, to your knowledge, a direct indictment
5 case? There was no preliminary inquiry?
- 6 A Yes, sir.
- 7 Q And you've testified that you believe your notes
8 were with the Crown?
- 9 A Yes, sir.
- 10 Q At the end of the day -- and I'm almost finished
11 my questioning of you -- Vandergraaf, Bell and
12 Johnson had full knowledge of your involvement
13 with Mr. Zanidean?
- 14 A Every step of the way.
- 15 Q Mr. Miller as well?
- 16 A Yes, sir.
- 17 Q Did that include your October 10th and
18 October 29th disclosures by Zanidean of arson in
19 Swift Current?
- 20 A Yes, sir.
- 21 Q Would that include your October phone call to
22 Ross Burton?
- 23 A Yes, sir.
- 24 Q Your April 5th call to Ross Burton?
- 25 A Yes, sir.

1 Q You had a follow-up call to Ross Burton?

2 A Yes, I did.

3 Q And the follow-up call was to confirm his
4 telling you that Swift Current was not pursuing
5 Zanidean, and that he had raised it with his
6 superiors?

7 A Yes, that's correct.

8 Q That's the July 16th and July 18th calls from
9 Ross Burton to you?

10 A Yes, sir.

11 MR. WOLSON: Thank you.

12 THE COMMISSIONER: Thank you, Mr. Wolson.

13 BY MR. CODE:

14 Q Just four matters that I want to raise with you
15 in re-examination, Sergeant Anderson.

16 First of all, going back to Mr. Gates'
17 cross-examination, on behalf of the RCMP, you'll
18 recall he pressed you a number of times when
19 questioning you about the final agreement that
20 you and Burton reached in April. And,
21 incidentally, I don't take any serious issue
22 with your account of that April 5th call. My
23 reading of your version and Burton's version is
24 they are substantially consistent.

25 He pressed you a number of times to take

1 responsibility for the immunity deal, I think
2 was the way he put it. He said -- he said that
3 you were the guy who made the immunity deal.
4 You were responsible for it, and it was up to
5 you to report it.

6 Do you recall that line of questioning
7 being put to you a number of times?

8 A Yes, sir, I do.

9 Q And your response, as I noted it, was to say
10 that -- to deny his assertion. And you've
11 backed up your denial by saying that the real
12 confirmation of the deal, and I didn't quote
13 this verbatim, but this was the gist of it, the
14 real confirmation of the deal came from Corporal
15 Orr. I think you said words to the effect that
16 it was Orr who signed and sealed it by his sort
17 of parallel communications with Swift Current at
18 that time.

19 Do you recall your response along those
20 lines?

21 A Yes, sir.

22 Q And what I wanted to ask you about was -- if
23 you've got volume 2 of the materials, tab 54 --
24 is Burton's report later in that year, in the
25 summer, in July, after the third set of calls.

1 He prepares a relatively contemporaneous report
2 of his July 16th conversations with you, in
3 which he records the two of you as referring
4 back to the April discussions. And I put
5 paragraph 10 to you in my original examination.
6 Do you see paragraph 10 at page 3 of the
7 report?

8 A Yes, sir. I will just read it now.

9 Q So this is in the July conversation, but
10 referring back to the April conversations?

11 A Yes, sir.

12 Q Now, I know you disagree with the first sentence
13 of that paragraph 10, and I'm not focused on
14 that at all here. I'm focused on the body of
15 the paragraph, the main body of the paragraph,
16 where he sets out an apparent discussion that
17 the two of you had about Orr's three calls. Orr
18 has two calls with Upton, which your counsel
19 took you to. And he has a third call with
20 Inspector Preston, the more senior officer,
21 which is the final conversation that he has on
22 April 16th. But leaving aside the content of
23 those April calls, what I am interested in here,
24 in re-examination, is that you appeared, in
25 response to Mr. Gates, to say that you relied

1 substantially on Orr to confirm the agreement;
2 is that correct?

3 A Well, I think, if I remember the exchange with
4 Mr. Gates, I think --

5 THE COMMISSIONER: Let me tell you what my note
6 is, and my note is far from accurate. But my
7 note was, and I usually translate it into my
8 own words, is that: I relied on what Burton
9 told me, which was confirmed by Corporal Orr and
10 later confirmed by Bruce Miller. Now, that's
11 what I thought your response was?

12 THE WITNESS: Okay. Thank you. Thank you.

13 THE COMMISSIONER: Does that coincide?

14 MR. CODE: That's the gist of it.

15 THE COMMISSIONER: Okay.

16 MR. CODE: That's the gist of the matter. I am
17 just trying to clarify.

18 THE COMMISSIONER: I might have compressed two
19 or three answers in there.

20 THE WITNESS: Okay. My recollection of the
21 exchange with Mr. Gates is that he was -- he
22 found it incredible that I would take the word
23 of this mere constable with respect to this
24 issue of immunity. And as I recall, my answer
25 was -- and if you are asking me the question

1 again, my answer is now that, no, it was more
2 involved than that. I had a second call back
3 to him to confirm that his supervisor, or his
4 detachment commander, approved his decision.
5 And I knew that -- I had no reason to doubt what
6 I found out, on confirmation from the second
7 call, because I never heard from Corporal Orr,
8 or Mr. Miller, that the whole agreement didn't
9 fly.

10 BY MR. CODE:

11 Q That's a slightly separate point, as to whether
12 Burton had authority, and that you needed the
13 approval of his superiors, and what we've got
14 is --

15 A Well, it would appear from what -- I'm sorry,
16 but it would appear, from what you pointed out
17 to me, that Constable Burton did have the
18 authority. His own supervisor tells Corporal
19 Orr --

20 Q Well, don't you worry about what Orr -- what
21 Burton did or didn't have. We've got lots of
22 evidence about that from the RCMP file. What
23 I'm focused on here is what you relied on,
24 that's what you can tell us about. And your
25 answer to Gates, as I understand it, is that you

1 relied on Burton?

2 A Yes.

3 Q Your conversations with Burton?

4 A Correct.

5 Q And you also relied on the confirmation that
6 came through Orr.

7 A No.

8 Q Is that correct or is that not correct?

9 A No, not the confirmation that came from. The
10 fact that I never heard from Corporal Orr, or
11 Bruce Miller, or Bill Vandergraaf, there is
12 still a problem here because Swift Current --
13 apparently you misunderstood Constable Burton.
14 I never heard that from any of those three
15 people.

16 Q So then the Commissioner's note and my note are
17 both inaccurate when we've got you saying, in
18 response to Gates, that you relied initially on
19 what Burton told you, but then you also got
20 confirmation through Orr. Was that accurate or
21 is that inaccurate?

22 A No, that's inaccurate. I mis-explained it to
23 Mr. Gates, if that is --

24 THE COMMISSIONER: Oh, no, you may not have. It
25 may be my note.

1 THE WITNESS: Well, the meaning that I was
2 trying to convey to Mr. Gates yesterday,
3 regardless of what I said yesterday, I don't
4 know. But the meaning that I was trying to
5 convey to Mr. Gates yesterday is simply this: I
6 had a conversation with Corporal Orr, April 5th.
7 A few days later I had a confirming
8 conversation --

9 BY MR. CODE:

10 Q Your April 5th call is with Burton, not with
11 Orr?

12 A Oh, I meant to say Burton, I'm sorry. I had a
13 follow-up conversation, as I've explained
14 before, with Constable Burton about the
15 detachment commander approval issue. And I
16 accepted that as -- right or wrong --

17 Q We've got all that.

18 A Okay, right or wrong, I accepted that. My
19 answer to Mr. Gates was just that the absence of
20 any call from Corporal Orr, or any communication
21 from Bruce Miller, and Bill Vandergraaf, for
22 that matter, that what I had learned on
23 April 5th was wrong, was confirmation to me that
24 it was right, that's what I was trying to
25 explain.

1 Q So the confirmation comes from the absence of
2 any communication from Orr?

3 A Exactly.

4 Q Not from any positive communication back from
5 Orr?

6 A Correct. And if you think about it, Mr. Code,
7 it makes sense. Because how did I -- what did
8 I testify to about my meeting with Corporal Orr?
9 That I would make a phone call to Constable
10 Burton, and that he would make a phone call to
11 Swift Current, and that's what we had agreed to.

12 Q So you and Orr never reconnected afterwards?

13 A Not to my knowledge, no. I have no recollection
14 of that. Because he would have dealt with Staff
15 Sergeant Vandergraaf.

16 Q Well, we know that Orr was dealing with a number
17 of people, and we've got his evidence. But all
18 I'm trying to clarify is this note that both I
19 made and the Commissioner made, that we,
20 obviously, misunderstood you, that you never
21 positively communicated with Orr afterwards to
22 get confirmation. You simply relied on the
23 silence, as it were?

24 A Exactly.

25 MR. OLSON: Mr. Code, if it helps, my note is

1 not consistent with yours and the
2 Commissioner's. But, rather, I assumed that it
3 satisfied Orr because he never heard back from
4 him is what he said.

5 THE WITNESS: That's what I thought I said.

6 THE COMMISSIONER: And that's probably what you
7 did say.

8 BY MR. CODE:

9 Q That's the function of re-examination is to
10 clear things up like that. Because you will
11 recall, when I put paragraph 10 to you in chief,
12 you were very clear with me that you did not
13 rely on anything Orr had learned. You didn't
14 know about Orr's conversations with Upton or
15 with Preston?

16 A Yes, sir.

17 Q And you stand by that?

18 A Yes, sir.

19 Q All right. So that clears that up.

20 The second matter I wanted to ask you about
21 came at the end of Ms. Carswell's
22 cross-examination of you. And this all relates
23 to the issue of, is there some part of the file
24 that's missing? And you've -- you've mentioned
25 this a number of times in your examination. And

1 you have recently reviewed it with your own
2 counsel, Mr. Wolson. And explained your
3 concerns about whether or not some things are
4 missing from the file. And what I simply wanted
5 to clear up with you here in re-examination,
6 Sergeant Anderson, is that on a number of
7 occasions, when dealing with this issue, you
8 left the implication that I had somehow withheld
9 documents from you or that I hadn't given you
10 access to the file. Do you recall those
11 answers?

12 A Yes, sir, I do.

13 Q And what I wanted to be clear with you about, on
14 this, is are you aware that everything I have,
15 everything this Commission has, is dependent on
16 what the parties give us?

17 A Yes, sir, I am aware of that.

18 Q So when we talk about your file, the Winnipeg
19 Police Service file, we have what the Winnipeg
20 Police Service has given us. And you understand
21 that?

22 A I can accept that, yes, sir.

23 Q And do you also understand that your own
24 counsel, Mr. Wolson, has everything that I
25 have?

1 A Well, that may be the case, but I haven't seen
2 it all.

3 Q He has got it. What's produced to me, it's
4 produced to him.

5 A And he's allowed to give me copies of it?

6 Q And we share it all.

7 A He is allowed --

8 Q He will give you whatever he thinks is
9 professionally appropriate for counsel to give a
10 witness, which I hope he is not giving you other
11 people's witness statements, because we have got
12 a witness exclusion order here. But he's got
13 everything I've got.

14 MR. WOLSON: Well, first of all,
15 Mr. Commissioner, just to make sure we're on the
16 same page; A, I don't give him other witness
17 statements; and, B, I'm content, and it hasn't
18 been suggested by me, nor will it ever be
19 suggested by me, that Mr. Code has not given me
20 what he has. That's not an issue from my
21 perspective, and I've never related that to
22 anybody. It's not the issue.

23 THE COMMISSIONER: All right. Well, actually,
24 I am glad this issue has come up. Because what
25 happens is that when the Commission was struck,

1 we sought all of the records of all of the
2 parties that we thought would have records, that
3 they produce them to us. And they have been
4 subpoenaed, I believe, in most cases, if not all
5 cases. So we rely on the parties, Winnipeg
6 Police Service, RCMP, Crown service, Justice,
7 and on and on, to provide their documents, all
8 of their documents. Every document, every piece
9 of paper that's received by the Commission has
10 been passed on to each counsel who is involved
11 here, just so you understand that.

12 THE WITNESS: Thank you.

13 BY MR. CODE:

14 Q I just want to be clear with you, Sergeant, that
15 if I was so foolish as to withhold a document
16 from you that would be helpful to you, your own
17 counsel would fill the breach.

18 A Well, Mr. Code, if I could just finish up on
19 that issue and give you some insight into what I
20 meant when I made those comments. It is this
21 simple to me, that there are questions that have
22 come at me during my testimony that I am in a
23 poor position to answer because of the limited
24 materials that I've read.

25 For example, yesterday Mr. Lockyer -- I

1 think he predicated a whole theory of wrongdoing
2 on his belief that a trip wasn't taken down a
3 back lane with Mr. Gumieny. Now, I know that
4 Mr. Lockyer is wrong about that, but I don't
5 have the materials, in what has been provided to
6 me, to answer that question and demonstrate that
7 that's wrong.

8 Q You would have liked to have seen the notes for
9 October 6th, instead of just the notes for
10 October 10th?

11 A As well as supplementary reports of all other
12 officers, because I know that that event
13 happened. But due to the absence of it
14 materially, for me, that kind of issue is left
15 hanging, and I don't like that.

16 Q Fair enough. It's a helpful illustration of
17 your point.

18 All right. Moving on to matters of greater
19 substance, I've got two final matters that I
20 want to clear up with you. These both come out
21 of Mr. Wolson's examination this morning.

22 The first one is that he referred you to
23 your October 8th, 1991 report to Inspector
24 Johns, which we find at tab 10. And he pointed
25 out to you that, both in relation to your

1 account of the -- your early discussions with
2 Corporal Burton in October, and with Zanidean,
3 and your April discussions with Burton about the
4 de facto immunity arrangement that you and
5 Burton agreed to, that on both occasions your
6 report indicates that you orally briefed Bruce
7 Miller about those matters. Do you recall that
8 area of examination?

9 A Yes, sir.

10 Q And he brought out the fact from you that
11 Mr. Miller never corrected those statements, or
12 got back to you about those statements, or
13 suggested that you were in error at a time when
14 he was still alive. Do you recall that area of
15 questioning?

16 A Yes, sir.

17 Q And all I wanted to clarify is, do you have any
18 information or knowledge that this report was
19 ever passed to Bruce Miller?

20 A I can't say with 100 per cent certainty, but I
21 would be very surprised if it wasn't.

22 Q And perhaps you could assist us with the basis
23 for that belief?

24 A Because it was a matter of great interest to
25 Bruce Miller. He would have been dealing with

1 Saskatchewan Justice Department at that time. I
2 know for sure that I talked to him about the
3 complaint, and I suspect that I sent him a copy
4 of this, but I can't say for sure.

5 Q All right. And we did not find a copy of it in
6 the Department of Justice file. We got it from
7 a fellow by the name of McNairn, who does the
8 696 review in Ottawa. And his records show
9 that he got it from the Winnipeg Police Service.
10 So I just wanted to understand the basis for
11 that.

12 And I take it that the substance of this
13 document, or the nature of this document, is
14 that it's a response to an internal
15 disciplinary complaint within the Winnipeg
16 Police Service?

17 A Yes, sir.

18 Q And that's not the kind of document that would
19 normally go outside of the disciplinary
20 context --

21 A That's not true.

22 Q -- in normal circumstances?

23 A No, that's not true. This is a matter that has
24 an impact on what Mr. Miller is doing as well.

25 Q No. No, I understand your logic, that you're

1 saying that there were issues going on with
2 Miller that cause you to believe he did get
3 this. But I'm saying in the normal course,
4 disciplinary documents, police forces are fairly
5 jealous about them and guard them closely, do
6 they not?

7 A Yes. But this was a disciplinary, or an
8 internal investigation not being handled by the
9 internal investigation unit. This was, as you
10 can see by however many pages of regular bond
11 paper was typed up, I never got instructions at
12 the time from the Deputy Chief Klippenstein,
13 don't share this with Bruce Miller, that's why I
14 suspect that I did.

15 Q In any event, your position or your
16 understanding is that whatever the normal
17 disciplinary process with disciplinary documents
18 might be, in this case you believe that it was
19 shared with Miller, although you don't have any
20 actual recollection of that?

21 A Yes, sir.

22 Q And that belief is based on the fact that he
23 was dealing with issues related to this at the
24 time?

25 A And that I discussed with him the fact that this

1 complaint had come in.

2 Q That's helpful, thank you.

3 The last point that I wanted to direct you
4 to is, your counsel questioned you about the
5 formal RCMP witness protection application at
6 tab 16. And that was prepared on behalf of
7 Zanidean and submitted to the RCMP. Do you
8 have, tab 16?

9 A Yes, sir, I do.

10 Q And he specifically took you to page 481.

11 A Yes, sir.

12 Q And reviewed with you the part dealing with the
13 outstanding Swift Current investigation?

14 A Yes, sir.

15 Q At letter C at the bottom of the page?

16 A Yes.

17 Q And he specifically read to you the two
18 sentences,

19 "Constable Burton confirms that they are
20 investigating the same. Constable Burton
21 has agreed not to pursue Zanidean at the
22 time, but he will continue investigation
23 once our trial is concluded."

24 And he asked you if you were likely the source
25 of those passages in the application, and you

1 agreed that you were?

2 A Yes, sir.

3 Q And is that correct?

4 A Yes, sir.

5 Q And, indeed, you probably drafted this part of

6 the report; is that fair?

7 A Yes, that's quite likely, and if I am wrong

8 about that, I would have provided the

9 information to whoever did.

10 Q Because the information in there is information

11 that was exclusively within your knowledge base,

12 or at least not exclusively, but you were the

13 primary source of that information based on your

14 conversations with Burton?

15 A Yes, sir.

16 Q And what's interesting about those two sentences

17 that my colleague read to you is you see they

18 refer to file number 90-2787?

19 A Yes, sir, I do.

20 Q And the letter that Constable Burton sent to

21 Sergeant Mann on December 14th, a couple of

22 months before you prepared this document,

23 encloses those files; is that correct?

24 A I'm sorry, I didn't hear the last part of the

25 question?

1 Q The letter that Constable Burton sent to
2 Sergeant Mann on December 14th encloses the
3 Swift Current arson files; is that correct?

4 A Well --

5 THE COMMISSIONER: What tab is that?

6 MR. CODE: It's at tab 30 of Exhibit 1.

7 THE COMMISSIONER: I don't think you have it.

8 MR. GATES: Are you in the Burton book of
9 documents?

10 BY MR. CODE:

11 Q Exhibit 1, tab 30. Thank you, Madam Registrar.
12 If you look at tab 30 in Exhibit 1, it is the
13 letter that Burton sends to Sergeant Mann on
14 December 14th. And you agreed with your counsel
15 that this document would have been prepared, the
16 witness protection application, at tab 16, was
17 prepared in and around February, March of 1991?

18 A Yes, sir.

19 Q So this letter predates your preparation of the
20 application by a couple of months; is that
21 correct?

22 A This December letter, yes.

23 Q And if you look in the top right-hand corner of
24 that letter --

25 A Yes, I see that.

1 Q -- Constable Burton sets out the file numbers
2 for the two arson files, the two RCMP
3 investigative file numbers?

4 A Yes, sir, I see that.

5 Q And you've quoted that file number in your
6 discussion of the arson and the Source Witness
7 Protection application?

8 A It is quoted there, yes, sir.

9 Q And you have a discussion about the motive for
10 the file -- for the fire, immediately prior to
11 that, that there is some dispute about the
12 motive for the fire?

13 A Correct, sir, yes.

14 Q And my question to you is, does that document
15 assist you as to whether or not you, in fact,
16 did obtain the Swift Current arson file from
17 Sergeant Mann?

18 A Well, no, it doesn't. But what it does assist
19 me with is settling the issue of whether or not
20 I typed up this paragraph 4. I think that says
21 to me, proof positive, that someone who had the
22 arson file, someone like Sergeant Vandergraaf or
23 Sergeant Paul, must have typed that up. The
24 information, the information pertaining to the
25 conversations with Burton may have come from me,

1 as I said, I either wrote this or provided the
2 information to whoever did. And I think what
3 you've shown me now convinces me that probably
4 Staff Sergeant Vandergraaf typed up this
5 section.

6 Q In any event, what it makes clear is that the
7 homicide investigators were preparing this
8 application, you and Vandergraaf and Paul; is
9 that correct?

10 A Yes. In some shape or form, the three of us
11 certainly contributed the information to it.
12 Who had their fingers to the keys, I couldn't
13 say.

14 Q This application is not being prepared by
15 Sergeant Mann. It's being prepared by the
16 homicide squad; right?

17 A Yes. It's being prepared by Bill Vandergraaf,
18 in some combination of input from Al Paul and
19 me.

20 Q So the homicide officers have got the Swift
21 Current arson file at this point, it appears; is
22 that fair?

23 A Well, it would appear that, whoever typed that
24 up, had the file number, that's for sure, the
25 file number from Swift Current.

1 MR. CODE: Thank you very much.

2 THE COMMISSIONER: Thank you very much,
3 Mr. Anderson. You were very helpful. Thank
4 you.

5 Would this be a convenient time for the
6 morning recess?

7 MR. CODE: Absolutely.

8 THE CLERK: All rise. This Commission of
9 inquiry is now in recess.

10 (Proceedings recessed at 11:18 a.m. and
11 reconvened at 11:35 a.m.)

12 THE CLERK: All rise. This Commission of
13 inquiry is now recommenced.

14 MR. CODE: Mr. Commissioner, if I could make a
15 brief opening statement, as we are now starting
16 the third block of evidence. And has been my
17 practice, I'll announce the next group of
18 witnesses so that it can be published and the
19 media will have some notice of what the next
20 body of evidence is.

21 The next three witnesses are David Kovnats,
22 Greg Brodsky and Chief Ewatski. And we are
23 calling them in that order, in order to
24 accommodate their calendars. All three
25 witnesses are very busy and have got

1 difficulties in their calendars. But we think
2 that if we call them in that order, we can get
3 them in, in a manner that will disrupt their
4 calendars in the least possible way. So it's a
5 slight variation on the order that I had
6 originally proposed. So it's Kovnats, Brodsky
7 and Ewatski, in that order. And we hope that
8 there won't be any glitches with their
9 scheduling difficulties.

10 In terms of the issues that we cover with
11 this group of witnesses, they are not an
12 integrated group, quite the way the first two
13 groups were, but there is a broad-linking theme,
14 which is the theme of disclosure.

15 First of all, Mr. Kovnats, who, as we all
16 know, was Reath Zanidean's counsel. It is,
17 obviously, Mr. Kovnats who negotiates the
18 financial arrangements of behalf of Reath
19 Zanidean, as well as the whole Swift Current
20 immunity issue on behalf of his client. So he
21 can speak to the negotiations, both from the
22 perspective of what Zanidean was seeking, and
23 from the perspective of what was being offered
24 or granted. In other words, both sides of the
25 negotiation coin can be spoken to by

1 Mr. Kovnats.

2 Mr. Brodsky, then, is the second witness in
3 the group, and will testify primarily on the
4 issue of what he received by way of disclosure
5 about those negotiations, as well as disclosure
6 on other issues.

7 And then, finally, Chief Ewatski can
8 testify in his former capacity as Inspector
9 Ewatski, as to what he learned in 1993 when the
10 Perry Harder homicide review was carried out, as
11 a result of various concerns that were being
12 expressed publicly about the case. And he and
13 his colleague, Inspector Hall, did a full review
14 of the matter and produced a report.

15 And the information that the Winnipeg
16 Police Service learns, as a result of that 1993
17 review, is obviously something Chief Ewatski can
18 speak to from his past role at that time. He
19 can also speak to the rationale for why that
20 report was kept confidential within the Winnipeg
21 Police Service for a period of time.

22 So that's a brief outline of the next group
23 of witnesses. And if I could then call David
24 Kovnats.

25 THE CLERK: Do you wish to swear on the Bible or

1 affirm?

2 THE WITNESS: I'll affirm.

3 THE CLERK: Please spell your name for the
4 record?

5 THE WITNESS: David Benjamin Kovnats.

6 D-A-V-I-D, B-E-N-J-A-M-I-N. Kovnats,
7 K-O-V-N-A-T-S.

8 DAVID BENJAMIN KOVNATS, having been first
9 duly affirmed, testifies as follows:

10 BY MR. CODE: Now, Mr. Commissioner, our usual
11 practice at the beginning of an examination of a
12 new witness, if I could have the documents book
13 that we have produced for Mr. Kovnats marked as
14 an exhibit. But I also wanted to make a brief
15 submission about two of the tabs in that book.
16 And my colleague, Mr. Wolson, may wish to speak
17 to the matter as well.

18 If I could ask that the two volumes of
19 David Kovnats' documents be marked as exhibits
20 15A and 15B?

21 THE COMMISSIONER: Yes. 15A and 15B. Volume 1
22 will be 15A and volume 2 will be 15B.

23

24 (EXHIBIT 15A: Volume 1 of David
25 Kovnats' documents)

1 (EXHIBIT 15B: Volume 2 of David Kovnats'
2 documents)

3 MR. CODE: And that can be now released to the
4 media, the public copies. Madam Registrar can
5 look after that in her usual fashion, which we
6 appreciate.

7 There are two documents in this book that
8 we recently received that require a brief
9 submission as to their character and their
10 admissibility, and they are at tab 4 and tab 37.

11 You'll recall that the history of
12 Mr. Kovnats' involvement with the inquiry is
13 that initially he had two impediments to his
14 ability to assist us. One was he was trying to
15 locate his file. And the other was, he was of
16 course bound by solicitor/client privilege.
17 Both of those impediments were recently
18 overcome. And after an exhaustive search, which
19 we are very appreciative that he undertook, he
20 found the file.

21 And, secondly, he also obtained a waiver of
22 solicitor/client privilege, a subject matter
23 specific waiver in relation to the witness
24 protection negotiations and the subject matter
25 of Mr. Zanidean's testimony at the Driskell

1 trial, but a waiver, nevertheless, that was
2 completely effective for our purposes.

3 And as a result of those two developments,
4 Mr. Kovnats was able to produce the documents at
5 tab 4 and tab 37 to us, which we had not
6 previously had.

7 The document at tab 4 is a notarized
8 statement that is signed by Reath Zanidean and
9 his wife, Susan Fehr, that was produced to
10 Mr. Kovnats on June 6th. And he will be
11 testifying about that event and the production
12 of the document to him.

13 Similarly, the document at tab 37 is not a
14 sworn document, but it is initialled or signed
15 at various places by Zanidean and Fehr making
16 comments on Zanidean's police statements.

17 I've had discussions with my colleagues,
18 Mr. Wolson and Mr. Lockyer, as the two parties
19 who I assumed were most interested in these
20 documents. And I told them that my position
21 would be that these documents are being
22 introduced only for the non-hearsay fact of
23 proving what the documents were that were passed
24 to Mr. Kovnats on June 6, 1991, in the
25 restaurant down by the river by his client, and

1 the incident that Sergeant Paul described for us
2 on Monday.

3 The truth of the contents of the documents
4 is not something that we seek to tender them
5 for. At this point there are, obviously,
6 serious issues about the reliability and the
7 credibility of the documents. And, obviously,
8 unless Mr. Zanidean was to come to testify, the
9 reliability of the document could not be
10 properly tested. And I don't believe it fits
11 within any well-known hearsay exception that
12 would gain its admission in a Court of law.

13 Now, obviously, we're not bound by the
14 ordinary rules of evidence at this inquiry, such
15 as the hearsay rule. But the hearsay rule is,
16 obviously, a wise rule of caution that's been
17 with us for some time, and we shouldn't
18 completely ignore it in terms of admitting
19 anything, any old hearsay at the inquiry.

20 So Mr. Wolson and Mr. Lockyer, based on my
21 discussions with them, are both content with
22 that position. I haven't canvassed all of my
23 colleagues on it, but obviously what it means at
24 this stage, subject to any ruling from you,
25 Mr. Commissioner, to the contrary, is that the

1 documents ought not to be used in
2 cross-examination as if they were true. And I
3 would hope that the media would show wise
4 caution, as well, in not treating the documents
5 as if they were admissible for their truth at
6 this stage.

7 So those are the preliminary comments I had
8 to make, subject to Mr. Wolson wanting to add
9 anything.

10 MR. WOLSON: Mr. Commissioner, I appreciate my
11 friend's comments, and I agree with them
12 totally, and we had discussed the matter. But I
13 say beyond these documents, there will be areas
14 of discussion between Mr. Zanidean and
15 Mr. Kovnats which are also hearsay, in that
16 Mr. Zanidean is not being called, and some of
17 those discussions may be critical. And without
18 being able to cross-examine the maker of the
19 statement, I am satisfied that Mr. Kovnats can
20 say what Zanidean said, and Mr. Kovnats can be
21 cross-examined on the accuracy of his recording
22 or of his memory, but I can't cross-examine
23 Mr. Zanidean because he's not presently being
24 called. And I understand why he's not being
25 called. This would turn into a sideshow, I

1 would think, so I fully understand that.

2 But in my view, discussions between
3 Mr. Kovnats and Mr. Zanidean would fall into the
4 same category. And I make an objection to it
5 before we start because, in my view, it's the
6 same principle. So rather than jumping up all
7 the time, which you would be tired of seeing
8 me --

9 THE COMMISSIONER: Oh, I would never be tired of
10 seeing you, Mr. Wolson.

11 MR. WOLSON: How kind. But I don't want to be a
12 pest in these proceedings. But I say, in my
13 view, it's the same principle that would apply,
14 so I start by making that objection. And I can
15 renew it from time to time, but I say it's in
16 the same situation.

17 THE COMMISSIONER: Any other counsel have any
18 comment on the comments of Mr. Code and
19 Mr. Wolson?

20 MR. ABRA: I don't know if you've had the
21 opportunity, Mr. Commissioner, of reviewing tab
22 4 in particular?

23 THE COMMISSIONER: I've had the opportunity, but
24 I haven't availed myself of it.

25 MR. ABRA: Well, it's now before you. There are

1 some comments in it related to Susan Fehr.
2 Mr. Wolson and I had discussed our concern about
3 that document when we first received a copy of
4 it a week or so ago from Mr. Code. And I am
5 prepared to accept the assurance that Mr. Code
6 has given to you that's what in there, the
7 reliability of it, and the truthfulness of it,
8 is not being relied upon at all. I can
9 understand that the reason that it has to be
10 tendered is for the unfolding of the narrative,
11 so to speak. But, certainly, I am not prepared
12 to adopt any of the comments that may have been
13 made in tab 4, in particular, as they relate to
14 Mr. Miller.

15 THE COMMISSIONER: Thank you, Mr. Abra. Any
16 other comment from counsel?

17 I will certainly concur in the suggestions
18 that have been put forward. And I think also,
19 you know, if we look at the terms of reference
20 of this inquiry, it would probably also lead us
21 to the same conclusion, that the truth of the
22 comments that may be made in there, I am not
23 sure what they are, probably is not relevant to
24 what it is we are inquiring into.

25 MR. CODE: I think that's correct,

1 Mr. Commissioner. Mr. Wolson's position, as you
2 can see, goes somewhat beyond my position. And
3 if I could just respond briefly to his
4 suggestion that oral communications between
5 Mr. Zanidean and Mr. Kovnats, that have nothing
6 to do with the tab 4 and tab 37 narratives --
7 tab 4 and tab 37 are essentially narratives of
8 past events that Zanidean is purporting to
9 record and tell a story of what unfolded over a
10 period of time. That's quite a distinct form of
11 hearsay, from an oral instruction that a client
12 gives to his solicitor, which the solicitor then
13 immediately memorializes in a letter and says,
14 on the instructions of my client, I seek the
15 following. So I intend to elicit from
16 Mr. Kovnats a significant number of instructions
17 from his client which he then acted on.

18 And that is a very, very different kind of
19 hearsay, a kind of hearsay that I would submit
20 easily meets the test of reliability, given that
21 a professional like Mr. Kovnats acts on
22 instructions of clients at all times, that's
23 what he is in the business of doing. And,
24 especially, when he sets it out in a letter, as
25 you'll see, that his client's instructions are

1 the following. And I very much want to elicit
2 that hearsay for its truth, that that is, in
3 fact, the instructions that Mr. Zanidean gave
4 him.

5 So what I have asked Mr. Wolson to do is
6 that if there is some particular oral
7 communication between the solicitor and his
8 client that I elicit in my examination, that he
9 objects to as being unreliable hearsay, in the
10 same category as tabs 4 and tab 37, that he
11 address it on its own merits at the appropriate
12 time. I certainly don't accede to any blanket
13 suggestion, at the outset, that those kinds of
14 hearsay are similar in kind to the tab 4 and tab
15 37 hearsay. So I would ask that we deal with
16 that on a case-by-case basis.

17 THE COMMISSIONER: All right. Might I just
18 comment that any document that has been
19 introduced, that was in the possession of any of
20 the interested parties here, we take that for
21 its face value, not necessarily that it's true,
22 but that that information was conveyed. And it
23 would be admissible in the normal course,
24 because it was in the possession of the persons
25 who have an interest in this inquiry. Beyond

1 that, I make no comment, because I don't want to
2 try and rule in the abstract.

3 MR. CODE: Thank you, Mr. Commissioner.

4 BY MR. CODE:

5 Q Mr. Kovnats, we've held you back long enough.
6 Could I ask you to keep in front of you what are
7 now marked Exhibits 15A and 15B, and starting,
8 of course, with 15A. I am going to try to
9 proceed chronologically with you, as I have with
10 the other witnesses.

11 First of all, at tab 1 of Exhibit 15A is
12 your statement to the inquiry at an interview on
13 May 16th; is that correct?

14 A That is correct.

15 Q And we, of course, conducted that interview at a
16 time when you did not have your file, and you
17 did not have the waiver of solicitor/client
18 privilege, so you were under certain
19 constraints. But leaving those limitations
20 aside for now, have you had a chance to review
21 that statement, both prior to its being
22 finalized, and recently, in preparation for your
23 testimony?

24 A Yes.

25 Q And are you content with its accuracy?

1 A Yes.

2 Q And as a result of that, you will see, as we go
3 through, I'll skip over certain areas that are
4 fully set out in your statement, and simply
5 leave that part of your evidence in writing.

6 Now, in the very beginning of the
7 statement, you set out your background as a
8 solicitor here in Manitoba. And your law
9 practice has mainly been a commercial law and
10 real estate practice; is that correct?

11 A Yes.

12 Q And you have had very little criminal law
13 experience?

14 A Correct.

15 Q Is that correct?

16 A Yes.

17 Q You've got a microphone in front of you. And I
18 would ask that you speak into it and speak up so
19 that we can all hear you.

20 And your relationship with -- your
21 solicitor/client relationship with Ray Zanidean,
22 in fact, came about as a result of having done a
23 real estate transaction for him in the summer of
24 1990 when he purchased the Chelsea Avenue
25 premises; is that correct?

1 A Yes.

2 Q So that's how he knew you, when he needed a
3 lawyer in the fall of 1990, he had recently used
4 you in the real estate transaction?

5 A Yes.

6 Q Now, the earliest record we have of your
7 involvement is a November 12th note, in Sergeant
8 Anderson's notebook that we just reviewed in the
9 last few days, in which Zanidean advises
10 Sergeant Anderson, on November 12th, that he has
11 a meeting with you the next day, November 13th.
12 And then we have the officer's notes of a
13 November 13th meeting that they attend at your
14 office with Zanidean.

15 So from a police side, the first record of
16 your involvement is those November 12th and 13th
17 notes. And from your side, if we look at your
18 dockets at tab 2, are those your dockets at tab
19 2?

20 A Yes.

21 Q And your first entry is a November 13th meeting
22 with the police. Do you see that?

23 A Yes.

24 Q So your docket confirms the police note. And
25 perhaps we could just deal generally with your

- 1 dockets, since we will be going to these
2 documents, from time to time, to try to fix the
3 dates for certain events. What was your
4 docketing practice at that time? How did you
5 fill out those dockets for billing purposes?
- 6 A We used a time slip system. There was a yellow
7 sheet at the bottom, and you wrote on these
8 little white -- I guess you wrote on it. It
9 wasn't carbon paper, but it would show up on the
10 sheet that you actually wrote on, and then there
11 would be the yellow sheet underneath. You would
12 take the white sheets that were on top and
13 submit them to the accounting department. And
14 then they would, in my case, try to decipher
15 what I wrote and enter it into the computer
16 system.
- 17 Q So you would write on a white slip and tear it
18 off?
- 19 A Yes.
- 20 Q And then submit it to the accounting department.
21 And you would keep the carbon yellow sheet
22 underneath with the new slips for the next day
23 or the next dockets?
- 24 A Yes. And we would operate on that basis.
- 25 Q And what was the quality of your handwriting?

1 A Poor.

2 Q So there were issues of legibility that we will
3 see from time to time as we go on. What about
4 completeness, were you a good "docketer," did
5 you always docket every single meeting, every
6 phone call?

7 A No, I did not.

8 Q And we will see that as well from time to time,
9 that there are dockets that seem to go missing
10 or don't occur.

11 And also there are names in here that
12 appear from time to time. We sometimes see Ray
13 and we sometimes see Roy, we sometimes see
14 Bruce, we sometimes see Brace -- or, sorry,
15 Bruno, Bruce sometimes becomes Bruno. Did you
16 review these dockets for typos or misreadings of
17 your handwriting?

18 A No. It was not relevant. Most of my clients
19 were just, when I just sent them a bill, they
20 paid the bill. They didn't care if I spelled it
21 properly.

22 Q So the accounting department would type up the
23 docket and you wouldn't correct it?

24 A No.

25 Q Is that correct?

1 A Well, the odd time if I noticed something was
2 glaringly absent, if one of the white slips
3 hadn't gotten in, if I saw something where I
4 knew I had spent a lot of time and it didn't
5 show up on the card, we would get a printout at
6 the end, if I didn't see it on the printout, I
7 would go back to the yellow sheets.

8 Q I'm just talking about the mistakes, the
9 typos --

10 A Oh, sorry.

11 Q -- getting names wrong?

12 A No, I wouldn't correct those.

13 Q All right. Now, this initial meeting with the
14 police on November 13th, where Zanidean
15 obviously must have contacted you, and the
16 police and Zanidean show up at your office.
17 Tell us in a general sense, what was your
18 understanding from the initial contact with your
19 client in this time period in November, why he
20 felt he needed a lawyer? Why did he come to see
21 you?

22 A I was advised that Mr. Zanidean had admitted
23 some culpability to the police in some criminal
24 issues, and that he was going to be a witness in
25 a murder case, and that the police had promised

1 him certain witness protection issues and
2 certain immunity issues. That was what I was
3 advised at the beginning.

4 Q And what were your instructions, what were you
5 to do in relation to those witness protection
6 and immunity issues that he advised you of?

7 A I was to negotiate the details of them and have
8 them reduced to writing.

9 Q And do I understand you that your client's
10 instructions were that he felt the witness
11 protection issues and the immunity issues --
12 what was the status of what the police had told
13 him about those issues at the time when he came
14 to see you?

15 A At the outset of the meeting I was advised that
16 the immunity was for anything and everything
17 that had gone on. The police took exception to
18 that. There was discussion of --

19 Q Your client advised you of that?

20 A My client advised me of that.

21 Q That it was everything and anything?

22 A At the meeting there was a discussion with the
23 police that said, no, we are only dealing with
24 Manitoba issues. We told them there was no
25 further point talking.

1 The words -- you have to understand I am
2 going back a number of years, so I can't tell
3 you the exact words that were used. I can give
4 you the general gist of what I remember, and
5 some of it may not be 100 per cent accurate.

6 But to the best of my ability, my
7 understanding, at the end of that meeting, was
8 that my client had been promised immunity on all
9 issues. My client had been promised that the
10 police would make him whole, and by that I mean
11 they would help him in a Witness Protection
12 Program that would move him from Winnipeg to
13 somewhere in British Columbia. And that he
14 would be in the same kind of position in British
15 Columbia as he was in Winnipeg. And the details
16 of that, if I remember correctly, the police
17 were going to have me negotiate the details of
18 that sort of agreement in principle with the
19 Crown.

20 Q And if we look at the one memo to file that you
21 prepared much further on in these negotiations
22 at tab 3 --

23 A Yes.

24 Q -- perhaps you could identify that document at
25 tab 3? It states it was dictated on June 2nd;

1 is that correct?

2 A The first portion of it was dictated on June 2nd
3 in the evening, and the second portion was
4 finalized in my office, probably on June 3rd in
5 the morning. It may have been in my home
6 office, it may have been at the office, I can't
7 tell for sure.

8 Q All right. And we will see what the
9 developments were that had occurred by June 2nd
10 that caused you to dictate the memo. But up
11 until that time, you had not kept
12 contemporaneous memos in your file; is that
13 correct?

14 A No. That is correct, yes.

15 Q And why is that? Why would you not have made a
16 contemporaneous memo of this November 13th
17 meeting?

18 A I don't make as many memos to the file as other
19 people do. I usually am -- you know, when you
20 are doing a commercial thing, you make notes of
21 what's going on. I had letters reflecting what
22 was going on, so I didn't need to make notes of
23 each and every meeting.

24 Q The memo in the second, third and fourth
25 paragraphs refers to your initial meeting

1 with Sergeants Anderson and Paul; is that
2 correct?

3 A That's correct. And as I indicated in my
4 statement to you previously, I don't know
5 whether at that first meeting I knew the charge
6 in Saskatchewan was arson or what it was. I
7 don't think I knew it in the first meeting. I
8 think I knew it within the next month or so, or
9 two, but I can't tell you exactly when I knew
10 what the charge was. But I don't think I was
11 aware of the exact details of the charge in the
12 first meeting itself.

13 Q And the fourth paragraph there, the one that
14 starts,

15 "Ray Zanidean indicated to me...",
16 sets out this conversation you've just told us
17 about whereby the police qualified the immunity
18 as relating only to Manitoba issues; is that
19 correct?

20 A Yes.

21 Q And the further discussion that you've told us
22 about where it was expanded to include all
23 matters is not noted, as I read the memo?

24 A No, it is not.

25 Q And is there any explanation for why that

1 further discussion would not be included in the
2 memo?

3 A I had not memoed the file during the entire time
4 that everything had been going on. And some
5 events occurred in the latter part of May, early
6 part of June, in 1991, which -- pardon me, yes,
7 '91, that upset me so much. I had a meeting
8 with Greg Brodsky who said: David, you are
9 pretty upset, or words to that effect. I don't
10 know the exact words. But the upshot of it was
11 that I had better dictate a memo. And in a
12 very -- under a great deal of strain, I grabbed
13 a dictaphone and I dictated a memo that I had
14 typed, that I never got around to revising or
15 editing or anything else. I know I had started
16 to edit it at some point. I remember sitting
17 down somewhere to do that, but I can't even find
18 that edited memo at this point. It wasn't fully
19 edited.

20 Q All right. The police officers' notes of the
21 meeting indicate that they directed you to Gregg
22 Lawlor, in the Crown's office, in order to
23 discuss issues such as long-term relocation and
24 change of identity. Do you have any
25 recollection of speaking to Mr. Lawlor, either

1 at a meeting or by telephone?

2 A I know I spoke to Mr. Lawlor at some point, but
3 I can't remember. Most of my dealings with were
4 Mr. Miller. And then Mr. Miller and
5 Mr. Whitley. And then, on a couple of
6 occasions, Mr. Garson.

7 Q The police notes also discuss the need to
8 temporarily relocate Zanidean to a safe house,
9 pending the trial, once disclosure is made. At
10 this point in early November, disclosure to the
11 defence had not been made, so that the fact that
12 Zanidean was a witness was not yet known. But
13 do you recall discussions about the need to move
14 him to a safe house to get him out of Chelsea
15 Avenue?

16 A Yes.

17 Q All right. The next significant development in
18 the chronology, as I read the documents, is that
19 there appears to be a meeting with Bruce Miller;
20 is that correct?

21 And perhaps to assist you, I could ask you
22 to refer to tab 8, which is a memo of
23 Mr. Miller's to Stu Whitley in late December,
24 after he has received your letter of
25 December 14th. But he refers back, in the

1 second paragraph of the letter, he tells
2 Mr. Whitley,

3 "As you know, I met with Mr. Kovnats in
4 his office and concluded my discussions
5 with him by suggesting that he itemize
6 in writing the requests (demands) of his
7 client. You now see the result."

8 And Mr. Miller is passing along your
9 November 14th letter. Does that second
10 paragraph of the tab 8 memo accord with your
11 recollection of the chronology? That you had a
12 meeting with Miller, he asked you to itemize the
13 matters that Zanidean was requesting, and you
14 then produced the letter?

15 A We had a meeting. We had telephone
16 conversations. The letter -- well, you've read
17 my summary -- the letter was confirming most of
18 the matters with, I believe, only two additions,
19 things that we had discussed and had agreed in
20 principle.

21 Q I'm going to come to the substance of what was
22 discussed at the meeting. And all I'm trying
23 to nail down here is the chronology, the
24 narrative.

25 A Yes.

1 Q Has Mr. Miller accurately set out the chronology
2 of how events proceeded? You had a meeting. He
3 asked you to memorialize in writing the matters
4 under discussion. You then produced the
5 December 14th letter?

6 A Yes.

7 Q And he then passes it on to Mr. Whitley. Is
8 that the accurate chronology, to your
9 recollection?

10 A There were also phone calls.

11 Q And if we look at your dockets at tab 2, they
12 show a meeting on the 21st of November; is that
13 correct?

14 A Yes. There is also a meeting showing on the
15 12th of December.

16 Q And a meeting on the 12th of December, you are
17 quite right. Okay. So do you have any
18 recollection of what the date was of the meeting
19 with Miller?

20 A No.

21 Q It could be either one of those?

22 A That's correct.

23 Q All right. Tell us about the substance of the
24 meeting with Miller? What was discussed and
25 what was the resolution?

1 A I would prefer to answer not just the meeting,
2 because I can't tell what we did on the meeting
3 and what we did on the phone calls.

4 Q Fair enough.

5 A And I don't want to say one thing happened
6 during which event. Basically, we had an
7 agreement in principle that everything in my
8 December 14th letter, save and except for the
9 burglar alarms, was agreed in principle. We
10 were going to have -- Ray was going to be
11 given witness protection. He was going to be
12 moved from Manitoba to B.C. He was going to
13 have his equity out of his house. They were
14 going to help him find a job, in a comparable
15 job to what he had with the railway. He was
16 going to have immunity from any prosecutions
17 for any past sins. He was going to -- they were
18 going to make sure that they protected -- I am
19 not sure if we dealt with the credit rating at
20 that point. They were going to protect Susan's
21 health benefits. I would have to -- you know, I
22 would have to refer to my letter of
23 December 14th, if you don't mind.

24 Q We will come to it in just a minute. But I just
25 want to get this global view of your best

1 recollection of the outcome of that meeting that
2 led to you write the letter. And as I
3 understand you, and this is set out in your
4 statement at tab 1, you felt you had a broad
5 agreement in principle. You added a few little
6 details in the letter, such as the burglar
7 alarms. But, in substance, you felt you had an
8 oral agreement in principle with Mr. Miller to
9 most of the matters set out, the essential
10 matters set out in your letter?

11 A Correct.

12 Q Now, if we turn to your letter, we find it at
13 tab 7. And Mr. Miller had asked you to write
14 the letter; is that fair?

15 A Yes.

16 Q According to his own memo, which you've agree
17 with?

18 A Yes, he asked me to put it in writing.

19 Q And what the letter says at tab 7, in the
20 introduction to it, is that you've had an
21 opportunity to meet with your clients. And then
22 you set out,

23 "What Ray requires is as follows:"

24 A That's correct.

25 Q So, again, dealing with the initial point that I

1 made in response to Mr. Wolson's objections
2 about oral communications, do I take it that
3 what is set out in this letter is based on
4 instructions from your client? Is what is set
5 out in this letter based on instructions from
6 your client?

7 A In part.

8 Q Explain that to us?

9 A Well, it's in part what we had agreed with
10 Bruce. It is in part the instructions I had
11 from my client and the discussions I had with
12 Bruce.

13 Q I suppose what I'm getting at is, the letter
14 says,

15 "What Ray requires..."

16 A Yes.

17 Q "...is as follows:"

18 Was he content with the 15 points? Was this
19 what he wanted and needed in order to become a
20 Crown witness in this case?

21 A Yes, the content of the letter was what he
22 wanted.

23 Q Did you review it with your client before you
24 sent it out?

25 A I don't know whether I reviewed the actual

1 letter each time. The points, yes, definitely.

2 Q The reason I ask that is, when we come to your
3 second major letter on behalf of your client,
4 setting out his position on June 4th, we know,
5 from your file now that you actually did review
6 a draft with him and he makes some additions and
7 changes to it?

8 A That's correct.

9 Q And I'm just wondering whether this letter went
10 through a similar process?

11 A No. I don't think it did. I think this one was
12 made from notes and discussions that I had with
13 him, and then with Bruce, and then with him, and
14 then back and forth, and it culminated in the
15 letter.

16 Q Fair enough. Now, if you already had an
17 agreement in principle with Mr. Miller, as you
18 tell us you recall you did, and this was merely
19 to memorialize the agreement in principle, why
20 would you not say that in the introduction to
21 the letter?

22 A This wasn't a contract that I was sending over,
23 you know, this is what we had agreed. We
24 discussed it and he asked me to confirm it with
25 my clients. We talked a bit. I can't remember

1 the exact words that were used, but this was the
2 deal that we basically had.

3 Q What did you mean by the term "what Ray
4 requires"?

5 A Well, what Ray required, what he was suppose
6 today get from this situation was to be the 15
7 points -- there is actually 16 points in here
8 because there is the issue that they were paying
9 my fee as well, the end. But the 15 points,
10 that's what Ray required.

11 And we added to this letter, after my
12 discussion with Bruce, the issue of a fire
13 alarm -- not a fire alarm, but some sort of an
14 alarm system, both at where he was and then I
15 think there was supposed to be another one as
16 well. I have to read the memo.

17 Q The fire alarm at the new place --

18 A Yeah.

19 Q -- when he gets moved to B.C.?

20 A Yes, that's correct.

21 Q Now, when you say you added those, you are
22 saying those had not been the subject of
23 discussion?

24 A They had not been in the discussion with Bruce,
25 no.

1 Q Now, most of the 15 items are self-explanatory,
2 I am not going to go through them one by one.
3 You've already identified the key ones. But the
4 one I want to ask you a number of specific
5 questions about is number 8, the whole question
6 of immunity.

7 A Yes.

8 Q What was Mr. Miller's position in relation to
9 the immunity issue, as you recall it, prior to
10 your writing this letter?

11 A That there would be no prosecutions of Ray for
12 any past sins, period, end of story, here or
13 anywhere else.

14 Q And the way you framed it in paragraph number 8,
15 it doesn't identify what the particular matters
16 are, you agree?

17 A No, it doesn't identify them. It was all past
18 sins.

19 Q And in the discussions with Mr. Miller that you
20 recall, had there been a discussion of what
21 you're talking about? What are the past sins on
22 which you, on behalf of your client, are
23 requesting immunity?

24 A I knew that -- I can't tell for sure whether I
25 knew it was arson or something major in

1 Saskatchewan. I knew there was a major issue in
2 Saskatchewan. And I was told by Mr. Miller, and
3 not by my client, that there were a number of
4 "minor issues." But I am not using the word
5 minor in quotes, I am saying it was something
6 smaller in Manitoba, petty items, minor items,
7 whatever, as well.

8 Q So there was a major issue in Saskatchewan and
9 minor matters locally in Winnipeg or in
10 Manitoba --

11 A Yes.

12 Q -- that were the subject of the discussion?

13 A That's correct. And I don't know whether we
14 used the word "arson" by that time or not. I
15 know that in the first meeting I knew nothing
16 about arson. Somewhere along the line, I became
17 aware that it was an arson issue. I can't tell
18 you on what date.

19 Q I see. You appreciate the Crown obviously can't
20 offer you a blank cheque on immunity. Any
21 sensible immunity discussions have got to be
22 crime specific?

23 A Mr. Miller was a senior Crown prosecutor. He
24 gave me his word. I relied on it. I'm not a
25 criminal lawyer. He tells me that he can take

1 care of it, he can take care of it.

2 Q Did he appear to know what the matters were?

3 A Oh, yes, he seemed to have a whole list of
4 things that my client may have been involved
5 with.

6 Q You've said that it was understood that the
7 major matter, the one that was of greatest
8 concern, was the matter out of the province of
9 Saskatchewan. And that, again, I take it, you
10 appreciate, that Mr. Miller's jurisdiction
11 would not extend to Saskatchewan. How could he
12 offer you immunity on an out-of-province
13 charge?

14 A I don't know how he could do it. If he's
15 offering it, I take that he has the authority to
16 do so.

17 Q And was there any discussion about the kind
18 of process that there would have to be to
19 secure immunity on an out-of-province serious
20 charge?

21 A There was no discussion whatsoever.

22 Q Again, if we look at your memo to the file at
23 tab 2, sorry, tab 3, there does not appear to be
24 a reference to that early meeting with
25 Mr. Miller, as I read it?

1 A It refers to the discussions, it certainly does.

2 I think the sixth paragraph,

3 "Ray wanted me to negotiate with the police
4 and the Crown to get the Witness Protection
5 Program and have it all signed up. I had
6 those discussions with Crown attorneys.

7 As a result of those discussions, a letter
8 dated December 14th was issued."

9 Q Fair enough. There is a general reference to
10 the discussions, both by telephone and by
11 meeting. But what I'm getting at is, there's no
12 specific reference to the fact of your having
13 discussed immunity, especially out of province
14 immunity, with Mr. Miller, prior to the writing
15 of that letter? Again, I'm wondering if there
16 is any explanation for that?

17 A We discussed that issue in the first meeting
18 with the police. I don't know whether -- again,
19 I can't tell you when I learned of the arson. I
20 don't think I had that in the first meeting, but
21 it was discussed with the Crown attorneys
22 afterwards. And I remember discussing this
23 with Mr. Miller, and I can't tell you whether it
24 was in person or on the phone, the fact that the
25 police had, at the outset of our meeting, tried

1 to say that they were only offering immunity for
2 Manitoba, and that we had made it clear that it
3 was Manitoba and Saskatchewan.

4 Q You knew there was an issue about
5 out-of-province immunity, that had been --

6 A Yes.

7 Q -- brought to your attention?

8 A Yes, I knew that.

9 Q Again, the absence of a reference to the
10 substance of the discussions in your memo, is
11 there any explanation for that?

12 A I indicated to you that I wrote this, I dictated
13 this memo some five or six months later, after
14 some exceedingly upsetting events occurred. And
15 it was -- and it wasn't even my idea to dictate
16 the memo. I was pretty upset. And Mr. Brodsky
17 came to my home. And as the memo indicates, he
18 said: David, you had better -- don't rely on
19 your memory. You had better put this in
20 writing. You had better start putting some
21 things down. And he just -- he did it somewhat
22 gratuitously. I know Mr. Brodsky.

23 Q In any event, the main focus of my interest is
24 that you clearly were insisting on this. And
25 you spelled it out in your letter on

1 December 14th, in item number 8; is that
2 correct?

3 A That is correct.

4 Q Can you tell the Commission what was the
5 importance of this item, item number 8, in terms
6 of the relative significance of the requests
7 that were being made? What was its status in
8 your client's mind, in your client's
9 instructions to you?

10 A It was key. It was a very important item,
11 obviously.

12 Q In your statement, at tab 1, to this Commission,
13 if you turn to page 5, about five or six lines
14 down on page 5 at tab 1. Do you have that?
15 There is a reference to your June 2nd memo to
16 file and the discussion with Anderson and Paul
17 where there had been this attempt to qualify the
18 immunity to being only local charges. Do you
19 see that?

20 A Yes.

21 Q And your statement is that you responded by
22 saying this would be a deal breaker. Do you see
23 that?

24 A Yes.

25 Q And I take it that's consistent with what you've

1 just said?

2 A Yes. I used a different word, but same thing.

3 Q And what I wanted to ask you about that is, why
4 was it a deal breaker? What was it that your
5 client instructed you about this that made it a
6 deal breaker, assuming there were instructions?

7 A He indicated to me that if there was no
8 immunity, there was no testimony, period.

9 Q And was there --

10 MS. CARSWELL: Can the witness keep his voice
11 up, please? I am having a lot of trouble
12 hearing it.

13 THE COMMISSIONER: He indicated to me if there
14 was no immunity, there would be no testimony. I
15 think that's what you said, isn't it?

16 THE WITNESS: That's correct, sir. I apologize.

17 BY MR. CODE:

18 Q And what was the rationale for that? Did he
19 indicate to you any rationale, in his mind, for
20 why he was taking that position?

21 A He was risking his life by testifying.

22 Q Now, Mr. Miller responds to your letter at tab
23 9, is the next development, with the
24 December 28th letter, two weeks later; is that
25 correct?

1 A Yes.

2 Q And in his letter, did he reject any of your
3 requests, or your assertion of what Ray
4 requires, did he reject any of them out of hand
5 as being simply off the table or out of the
6 question?

7 A No. His letter speaks for itself.

8 Q And he said that there would be an internal
9 process to address the letter; is that
10 correct, that they would deal with the matter
11 internally?

12 A That's what they said, "the matter".

13 Q The next important development in the
14 chronology, as I read the documents, is a
15 January 22nd meeting with Stu Whitley and Bruce
16 Miller. And, again, if you could look at your
17 docket at tab 2. You have a docket for a
18 meeting on January 22nd?

19 A I do.

20 Q Four hours is docketed?

21 A Yes. That may have been more than one meeting,
22 it was meetings that I was at.

23 Q And at tab 3, your memo to file, two-thirds of
24 the way down the first page, you memorialize
25 that January 22nd meeting and identify it as a

1 meeting with Miller and Whitley; is that
2 correct?

3 A Yes.

4 Q First of all, could you explain to us what was
5 your understanding of why Mr. Whitley is
6 appearing on the scene after your initial
7 meeting with Mr. Miller and your letter to Mr.
8 Miller?

9 A My understanding was that Mr. Whitley was the
10 person who authorized the cheques.

11 Q And there were clearly money issues here arising
12 out of your December 14th letter?

13 A Yes.

14 Q The memo to file, at tab 3, the paragraph that
15 deals with the meeting, indicates that you
16 reviewed the letter; is that correct?

17 A That's correct.

18 Q You reviewed the items on the letter. And was
19 there any indication, again, that any of the
20 items on the letter were out of the question or
21 off the table?

22 A No. Some of the details had to be reviewed, but
23 the basic principles were not at any time in
24 question. They promised me most everything that
25 was in the letter.

1 Q And in terms of the details, working out the
2 details, was there any reference to the RCMP's
3 involvement?

4 A Yes. They were going to get the RCMP Witness
5 Protection Program to meet with us, I don't know
6 whether it was with myself or with myself and my
7 client, to start that process.

8 Q And who was going to contact the RCMP? Who was
9 going to take the initiative in that regard?

10 A I believe it was Miller, but it could have been
11 Whitley. They were -- I mean, I was sitting
12 with two gentlemen, and they said: We will take
13 care of it. I can't tell you which one of the
14 two said it. If you asked me what had happened
15 last week, I could say, sorry.

16 Q You've answered my question. They were going to
17 look after it for you --

18 A That's correct.

19 Q -- engaging the RCMP in the matter. And if you
20 look at their internal documents at tab 8, you
21 see the tab 8 memo has Miller passing on the
22 letter to Whitley, consistent with your account
23 at tab 3 of reviewing the letter with them.

24 If you look at tab 10, another internal
25 Department of Justice document, Miller again

1 briefs Whitley on the matter. He appears to
2 pass the letter to him a second time. He says,
3 "I'm providing you with another copy."
4 And if you look at the notations on the bottom,
5 the handwritten notations back and forth between
6 Mr. Whitley and Mr. Miller, they appear to set
7 up the January 22nd meeting for both of them
8 with you, is that correct, the bottom right-hand
9 note?

10 A Yes, that's correct.

11 Q And the bottom left-hand note, they appear to
12 set up a meeting with the RCMP, a Tom Orr, for
13 six days later on January 28th; is that
14 correct?

15 A That's what this memo appears to be.

16 Q And did you attend that January 28th meeting
17 with them, with Corporal Orr?

18 A No. My first meeting with Mr. Orr, I think,
19 Corporal Orr, sorry, was sometime later, if my
20 memory serves me. I am going from memory and
21 also looking at my document, my memo to file
22 that I dictated. I don't know the exact date.
23 My document says March 6th. And then if I look
24 at my docket time, and I don't see it on the 6th
25 of March. But there was a meeting with Corporal

1 Orr at some point, and myself. And when he
2 explained -- well, it was at a later date, it
3 was some time in March, sorry.

4 Q I don't want to you get ahead of yourself. We
5 will jump -- we will get to your meeting with
6 Orr in a minute. But all I'm asking you is,
7 Whitley and Miller appear to be setting up a
8 meeting with Corporal Orr in January, on
9 January 28th?

10 A Yes.

11 Q And your recollection is you didn't attend, your
12 memo to file shows your first meeting with Orr
13 is in March?

14 A That's my recollection.

15 Q It says March 6th?

16 A It says March 6th. I can't say for sure it was
17 March 6th, but somewhere in there.

18 Q We will come to that in a minute.

19 So just to catch up before we get you to
20 March 6th, there is a March 4th memo, again, an
21 internal Department of Justice memo at tab 11,
22 if you turn to the next tab?

23 A Yes.

24 Q Miller to Whitley again, in which they
25 memorialize the fact of their meeting with you?

1 A Yes.

2 Q And Miller updates Whitley on a number of
3 matters, in particular, the only matter of
4 contention he notes appears to be the mortgage
5 payments issue?

6 A That's correct.

7 Q Do you see that?

8 A That's correct.

9 Q And was the issue of the mortgage, what was to
10 happen to Zanidean's mortgage since he had been
11 moved out of his house and the house was vacant,
12 was that an issue that was under discussion
13 between you and Miller?

14 A It became an issue. I can't tell you the date
15 that it became an issue. I know we had
16 discussions.

17 Q All right. We will come that.

18 A I apologize, I don't have it memorialized.

19 Q We will come to the chronology again in due
20 course. All I'm asking you is, is the subject
21 matter of this memo by Mr. Miller consistent
22 with the discussions that you were having with
23 him at the time, that the mortgage became a
24 topic of discussion?

25 A Yes, it became a topic of discussion at some

1 point.

2 Q And you see on the second page of the memo he
3 has got Sergeant Anderson meeting with Corporal
4 Orr to launch the application process, to
5 prepare the witness protection application. Do
6 you see that?

7 A Yes.

8 Q Did you have any involvement in the preparation
9 of that application?

10 A I don't recall. I know that I became aware of
11 the terms of the application, or the type of
12 application and the terms of what the Witness
13 Protection Program were in my first meeting with
14 Corporal Orr.

15 Q The final reference here, before taking you to
16 your meeting with Corporal Orr of these various
17 internal Department of Justice meetings is, if
18 you go back to your dockets at tab 2, and we're
19 now on page 2 of your dockets, you have a
20 March 20th meeting with Stu Whitley and Bruce
21 Miller. Do you see that?

22 A Yes.

23 Q And then a March 26th meeting with Corporal Orr.
24 Do you see that?

25 A Yes.

1 Q Do you recall what that further meeting with
2 Whitley and Miller, shortly before your meeting
3 with Orr, was about?

4 A Not the specific meeting. I can recall what we
5 were talking about during that time period, but
6 not specifically what was said in the meeting.

7 Q And, again, Mr. Whitley's role in these matters
8 was?

9 A He was the banker. He was the guy with the
10 cheque.

11 Q Now, there is one last document that I want to
12 take you to before we go to your meeting with
13 Orr. And this is some notes at tab 12 that are
14 dated in early March. There are two documents.
15 And one is dated March 6th and one is dated
16 March 7th, and I would like to you refer to
17 those.

18 A Yes.

19 Q We believe these to be the internal notes of
20 Bruce Miller. So you wouldn't have seen them,
21 but he has got your name on the first one.

22 A Yes.

23 Q And the subject matter, which I want to take you
24 to, appears to be related to the matters you
25 were dealing with.

1 First of all, dealing with the March 6th
2 note, it says,

3 "Meet with RCMP."

4 Was that something that was under discussion at
5 this time in March?

6 A Yes.

7 Q Yes. The second bullet is,

8 "Insurance premiums - Wawanesa will not
9 cover house as a result of the fire in the
10 garage and the fact that the house is
11 vacant."

12 Was that the subject of discussions, the
13 problem with insurance on the garage for a
14 vacant house?

15 A For the whole house and the garage.

16 Q But there had been a fire in the garage?

17 A Yes.

18 Q And as a result of the fire, it has brought the
19 insurance problem to a head; is that fair?

20 A Yes.

21 Q That the insurance company was not willing to
22 insure a vacant house?

23 A No, they weren't.

24 Q And as a result of that, what position were you
25 taking with the Crown about who should be

1 responsible for the insurance on the vacant
2 house?

3 A The Crown.

4 Q And, finally,

5 "Wishes the bike to be covered."

6 Was that the subject of discussions, and what
7 was that about?

8 A Their bike had been stolen, or I have to refresh
9 my notes, I can't remember if it was stolen or
10 damaged, and we felt that they should cover the
11 loss.

12 Q So again it was an insurance issue?

13 A Yes.

14 Q It was Zanidean's bike; is that correct?

15 A Yes.

16 Q So does this note appear to be reflective of
17 discussions between you and Miller at the time
18 about Zanidean's matter?

19 A Yes.

20 Q Then we turn the page, the more important of the
21 two notes, the March 7th one, if I could ask you
22 to look at this one carefully?

23 First of all, at the top of the page, under
24 the number 1 there is a note,

25 "Reimburse equity position on Chelsea

1 Avenue home."

2 Was that the topic of discussions between you
3 and Bruce Miller at this time?

4 A Yes.

5 Q And this obviously relates to the whole issue of
6 selling the vacant house; is that fair?

7 A Yes.

8 Q And the bullet immediately below that says,
9 "Chelsea Avenue should be sold, but at
10 Kovnats' bidding."

11 And then there is an arrow down at the bottom
12 and another alternative option is set out with a
13 star beside it,

14 "...or repossessed - left to mortgage
15 foreclosure and sale."

16 And was that the topic of discussion between you
17 and Miller at the time?

18 A We discussed it.

19 Q And as between those two options, selling the
20 house at your bidding or allowing the mortgagee
21 to repossess through foreclosure and sale
22 proceedings, which of those two options was the
23 one that you were favouring, or were you taking
24 a position?

25 A We took a position, we wanted the house sold.

1 Q And the repossession and foreclosure option, why
2 was that option not attractive to you?

3 A We wanted a credit rating. Ray had had a hard
4 time being able to get a mortgage in the first
5 place, and he wanted to be able to get another
6 mortgage when he moved.

7 Q All right. Then leaving those initial notes, if
8 I could turn to the second bullet there,

9 "We will make up any shortfall based upon
10 reasonable assessments, billings, et
11 cetera."

12 What does that relate to?

13 A The house had just been purchased in --

14 Q I think it's the summer of 1990?

15 A No, possession date was December 1st, the
16 possession date was December 1, 1989. Ray and
17 Susan had just purchased the house. They had a
18 mortgage through, I believe it was Investor's
19 Group, if I'm not mistaken.

20 Q Yes, it was.

21 A And they had had a hard time getting the
22 mortgage. We had helped them arrange their
23 financing. And we wanted -- the house was
24 going to be sold, but it would be sold vacant.
25 And people -- the housing market was not buoyant

1 at that time. And there might have been a
2 small loss, and Ray was not to lose money
3 because he had to move out and sell his house.
4 He was to get his equity back, with all of his
5 expenses.

6 Q So what you wanted was for him not to make a
7 profit, but also for him not to make a loss on
8 the house?

9 A Yes. He was to come out with his equity --
10 sorry, with his equity intact.

11 Q And that's consistent with the note at the top,
12 "Reimburse equity position on Chelsea
13 Avenue home."

14 A Yes.

15 Q So the first note at the top and the third
16 bullet are related; is that fair?

17 A That's correct.

18 Q And the mandatory language here,
19 "We will make up any shortfall...",
20 is that language consistent with the tenor of
21 the discussions you had with Mr. Miller?

22 A Yes.

23 Q And the next bullet states,
24 "Our undertaking is to NOT leave the
25 witness in the lurch or in jeopardy."

1 Can you assist us with what that refers to?

2 A That was his promise to us, that Ray wouldn't be
3 hung out to dry, that he would be made whole.
4 It was part of the whole ongoing agreement in
5 principle that we had.

6 Q And, again, is the tenor of the language being
7 used here consistent with your understanding
8 that there was an agreement in principle?

9 A Yes.

10 Q And the last bullet is,

11 "Reasonable comparative lifestyle in area
12 where he is relocated."

13 What is your understanding of that note?

14 A Well, he was just repeating what I put in my
15 December 14th letter, Ray was to move, have a
16 nice job, he was going to have a job with I
17 think it was CN or CP, I can't remember which
18 railway. And he was going to have a certain
19 lifestyle. And they were going to relocate him
20 and give him the same lifestyle where he went
21 when he moved. That's it.

22 Q That had been the objective of your 15 items set
23 out in your December 14th letter?

24 A That is what we had been discussing, yes.

25 Q Had you seen this note before you came to

1 prepare to testify today?

2 A The first I saw it was when you sent it to me
3 last week, the books, on Friday.

4 Q Does this note reflect your understanding of the
5 position you and Mr. Miller had arrived at?

6 A On these points, yes.

7 Q No mention of immunity anywhere here?

8 A That's right. We agreed on that as well.

9 THE COMMISSIONER: The word "jeopardy", then,
10 that's in that memo is not intended to refer to
11 immunity?

12 THE WITNESS: Well, I don't know for sure.
13 That's why I don't want to say.

14 THE COMMISSIONER: Okay.

15 THE WITNESS: Immunity is not specifically
16 mentioned. The concern, if I may, is that, as
17 was explained to me at the time, you have to
18 understand this is going back some time, but
19 there was a fear that Ray, if he ever went to
20 jail, would be killed. And so this, you know,
21 included probably absolutely everything, but it
22 doesn't mention the word immunity. I was asked,
23 does it refer to the immunity? The jeopardy may
24 well encompass the immunity as well.

25

1 BY MR. CODE:

2 Q I suppose what I'm getting at, Mr. Kovnats, is
3 by this time in March, you clearly are aware of
4 the arson in Swift Current?

5 A No question.

6 Q So we're now being very crime specific when we
7 talk about immunity, we know there has been a
8 serious arson in Swift Current, and that's what
9 you're seeking immunity on?

10 A Yes. Well, we had been promised immunity.

11 Q So the memo speaks in broad terms about,
12 "Our undertaking is not to leave the
13 witness in jeopardy."

14 But there is nothing specific about immunity on
15 the Swift Current arson, and discussions with
16 the Saskatchewan officials to that effect?

17 A No. But it would include that, because
18 otherwise he would be in jeopardy.

19 Q You would read it as including that?

20 A Yes.

21 MR. CODE: Fair enough. This is a perfect point
22 to break. I'm about to come to the meeting with
23 Corporal Orr.

24 THE COMMISSIONER: Okay. We will break until
25 2:00 o'clock.

1 THE CLERK: All rise. This Commission of
2 Inquiry is adjourned until 2:00.

3 (Proceedings recessed at 12:45 and
4 reconvened at 2:00 p.m.)

5 THE CLERK: All rise. This Commission of
6 inquiry is now open, please be seated.

7 MR. CODE: Good afternoon, Mr. Commissioner.

8 BY MR. CODE:

9 Q Mr. Kovnats, we have now arrived at the famous
10 meeting with Corporal Orr in March, and as we
11 saw, your dockets at tab 2 show the meeting as
12 March 26th, is that correct? Tab 2, page 2 at
13 the top, specifies an hour and a half meeting
14 with Corporal Orr?

15 A An hour, 1.3.

16 Q Sorry, 1.3?

17 A Yes.

18 Q And your memo to file at tab 3 refers to the
19 meeting as well at the bottom of page 1, the
20 first page of the memo, and it states that you
21 believe that the date of the meeting was
22 March 6th. Do you see that?

23 A Yes, I do.

24 Q And did you have your dockets available to you
25 when you were dictating the memo?

1 A I didn't have them with me.

2 Q So you got the date wrong by about 20 days, it
3 looks like?

4 A Yes.

5 Q And your statement to the inquiry at tab 1 about
6 this meeting with Orr, I'm just trying to
7 establish the broad geography of the meeting
8 before we go into the substance of it. As to
9 who was present, you state you have a
10 recollection, this is at page 6 of your
11 statement at tab 1, you have a recollection of
12 Zanidean and the police being present at the
13 meeting, as well as you and Orr. Do you see
14 that at tab 1, page 6?

15 A I see that, yes.

16 Q And how sure are you of that recollection that
17 the others were present?

18 A I'm not sure. That's why I was clear to tell
19 you before, I couldn't remember for sure who was
20 there.

21 Q All right.

22 A I just want to check my tab 2 for a moment.

23 Q Tab 2 of your dockets show the meeting as
24 March 26th. Tab 3, your memo to file, shows it
25 as March 6th. And your statement to the

1 Commission at page 6 states that you have a
2 recollection of others being present. And your
3 evidence -- Ms. Carswell didn't hear you. If
4 you could pay attention to the microphone there,
5 Mr. Kovnats. Your recollection as to whether
6 others were present, your response again to that
7 is?

8 A I can't say for sure others were present. We
9 were going through my notes, I don't know there
10 was more than one meeting. It appears, just
11 taking my note from my time docket, that I met
12 with Tom Orr and then I spoke to my client by
13 phone. So obviously he wasn't present.

14 Q It would appear from your docket that your
15 client was not there because you are
16 communicating to him after the meeting by phone?

17 A That's correct.

18 Q Now, Corporal Orr's contemporaneous report of
19 the meeting at tab 17, if you turn to that? He
20 has got the meeting as clearly just being you
21 and he, and he has got the date as March 25th.
22 So there is a discrepancy of one day between his
23 report and your docket. Do you have any
24 explanation for that?

25 A No, other than the fact that either his date is

1 wrong or mine is wrong when they typed it in,
2 and my handwriting being what it is, it could
3 have been, you know, when I write a 25, 26, my
4 staff could have confused the date.

5 Q Your five and your six could have got confused
6 by the bookkeeping staff who were typing in the
7 docket?

8 A That's correct.

9 Q All right. In any event, what is important
10 about the meeting is the substance of it. And
11 you have told us the story of the meeting in
12 your witness statement at page 6, and it is also
13 set out in your memo at tab 3 at the bottom of
14 page 1. Could you summarize for the Commission
15 the substance of the meeting, what happened at
16 that meeting?

17 A Mr. Orr, Corporal Orr told me what the Witness
18 Protection Program would include from the RCMP
19 perspective. And it was nothing, it was night
20 and day compared to what the police had told us
21 and what Mr. Miller had promised us. Basically,
22 the RCMP Witness Protection Program, not to be
23 colloquial, but it was their way or the highway,
24 totally discretionary, they could do whatever
25 they wanted, you did what you were told, when

1 you were told, if your were told, as opposed to
2 having a say in where you would go, what jobs
3 you would have, what home you would have, et
4 cetera.

5 Q In your statement to the Commission at page 6
6 you stressed the aspects that you have just
7 mentioned now, that the location -- what was the
8 issue about the location to which Mr. Zanidean
9 wished to be moved to?

10 A He wanted to move to B.C.

11 Q And what did Corporal Orr tell you about that?

12 A That was going to be totally at the RCMP's
13 discretion and Ray would have nothing to say
14 about it.

15 Q And the second issue you mentioned is that you
16 wanted assurances of suitable jobs and housing,
17 and comparable lifestyle kinds of issues. What
18 did the RCMP, Corporal Orr tell you about that?

19 A That that was not up to us to dictate.

20 Q And if we look at tab 18, which I've reproduced
21 from Corporal Orr's materials for you, this is
22 the standard form letter of acknowledgment for
23 the RCMP program. You see at tab 18 there is a
24 redacted version of it and then an unredacted
25 version at the back of the tab?

1 A Yes.

2 Q And that LOA, as they call it, at paragraph 3
3 states,

4 "I understand and acknowledge the RCMP will
5 provide me with special protective services
6 considered good and sufficient at the sole
7 discretion of the RCMP."

8 Was that consistent with the advice Corporal Orr
9 was giving you?

10 A Yes.

11 Q And was that satisfactory to you and your
12 client?

13 A No.

14 Q And at the bottom of the page, the sub
15 paragraphs (g) and (h) again stress that the
16 payments are at the sole discretion of the RCMP,
17 do you see that?

18 A Yes.

19 Q And are subject to adjustment?

20 A I see that.

21 Q And then the last paragraph (h) asserts,

22 "The special protective services are
23 entirely gratuitous and may be terminated
24 at any time at the sole discretion of the
25 RCMP."

1 Again, are those consistent with the advice that
2 Corporal Orr was giving you?

3 A Yes.

4 Q And what was your client's response and your
5 response to being enlightened about the nature
6 of the RCMP program?

7 A At the conclusion of my meeting with Constable
8 Orr, I felt, based on the information I had from
9 my client, that we would not be able to do -- to
10 have my client in the witness protection
11 program. And I spoke to my client, and I
12 remember, I don't know whether it was that day
13 or the next day, I would have to check my
14 records, and I don't even know if my records
15 would tell me, but I know I spoke to Bruce and
16 said this is not what we were promised. And
17 Bruce said he would negotiate something, or help
18 us work out something, I don't know the
19 phraseology that was used.

20 Q One issue that I want to touch on specifically
21 in your meeting with Corporal Orr, that we
22 haven't mentioned so far, is the whole question
23 of the outstanding jeopardy in Swift Current.
24 Was there any discussion of that subject matter
25 with Corporal Orr?

1 A I don't know whether it was in that meeting or a
2 different meeting, but I certainly was aware
3 that the only way that my client could go in the
4 RCMP protection program was if he had no
5 outstanding charges.

6 THE COMMISSIONER: Which, I'm sorry?

7 THE WITNESS: I was aware that my client could
8 not participate in the Witness Protection
9 Program if he had any outstanding criminal
10 charges.

11 I'm having a hard time with this
12 microphone.

13 BY MR. CODE:

14 Q That awareness or understanding that you
15 acquired, did that come from Corporal Orr at
16 this meeting, or did it come from somebody else
17 at some other meeting? Can you be specific as
18 to whether it was Corporal Orr who gave you that
19 advice or gave rise to that understanding of
20 yours?

21 A I cannot be specific, but I believe certainly by
22 the end of this meeting I was well aware of it.
23 So I may have known before or not, but I think
24 when I finished the meeting with Corporal Orr, I
25 was certainly aware if it.

1 Q And your understanding, just so I'm clear, was
2 that he could not enter the program if there was
3 outstanding criminal jeopardy?

4 A That's correct.

5 Q Now, shortly after this meeting, assuming it is
6 March 25th, and not March 26th, let's assume the
7 accuracy of Corporal Orr's continuation report
8 and assume that your docket was mis-recorded, or
9 mis-transcribed, assuming it was March 25th, if
10 we look at your dockets at tab 2, they show
11 immediately afterwards, especially on
12 March 28th, a series of high level phone calls.
13 As I read this, you are phoning Miller, you are
14 phoning Whitley, you are phoning the Deputy,
15 Mr. Garson, and you are also, there is even a
16 reference to calling the Minister's office?

17 A I don't think it was the Minister, it should
18 have been the Deputy Minister.

19 Q So it looks like three separate attempts on
20 March 28th to call very senior officials in the
21 Ministry; is that correct?

22 A Yes, definitely.

23 Q And what was that all about? Do you have any
24 recollection why you were placing those phone
25 calls on March 28th?

1 A I can't say with 100 per cent certainty today,
2 but my basic recollection and what the documents
3 indicate to me is we were pretty upset after
4 meeting with Constable Orr, because what we had
5 been told prior to that was one thing and what
6 Constable Orr, who was the authority on this
7 subject, was saying were completely different.

8 Q All right. The next development in the
9 chronology is, we are now into early April, out
10 of March, and Zanidean gets relocated to Calgary
11 as a result of an incident that he reports to
12 you on April 4th, it appears, and then he
13 reports it to the police on April the 5th.

14 Do you have any recollection of that
15 incident in early April that lead to Zanidean's
16 relocation to Calgary?

17 A I have a vague recollection on seeing some notes
18 now, but I can't say for sure. There was
19 apparently some sort of a note on the car, but I
20 can't say for sure. I'm sorry.

21 Q And you were very frank in your interview with
22 us that you really had little recollection of
23 this, and we can reconstruct it completely from
24 the documents, as between the RCMP documents and
25 the Winnipeg Police documents, and I have

1 reproduced some of them at tabs 19 to 22. I am
2 not going to go through them with you, we have
3 been through them extensively with the police
4 officers, I think we have that part of the
5 chronology pretty clear.

6 There is one document that is authored by
7 you in this time period in mid April, and that's
8 the one at tab 23, if I could draw your
9 attention to your letter dated April the 18th?
10 This would be, we believe Zanidean goes to
11 Calgary around April the 12th, so within a week
12 of his departure to Calgary you write this
13 letter to Mr. Miller. If I could just review a
14 couple of matters with you, do you have tab 23
15 open?

16 A Yes, I do.

17 Q First of all, you see in the second and third
18 paragraphs the issue of the insurance on the
19 Chelsea Avenue house is raised?

20 A Yes.

21 Q And was that the subject of discussions between
22 you and Mr. Miller at this time, the issue of
23 who would look after the insurance coverage on
24 the vacant house?

25 A Yes.

1 Q And then secondly, at the bottom of the page, I
2 wanted to draw your attention to a paragraph
3 that says,

4 "Also we are waiting for Tom Moore..."
5 Do you see that?

6 A Yes, that should have been Tom Orr.

7 Q So it is a dictation or typing error?

8 A Typing error.

9 Q And it says you are waiting for an official
10 agreement which the RCMP in Calgary have
11 indicated should be forthcoming?

12 A I was told the agreement was coming from
13 Calgary, the official papers. I don't know from
14 where.

15 Q And you say over the page,

16 "I would ask you contact Tom and see
17 whether or not you can expedite the matter
18 on our behalf."

19 What I wanted to ask you about that, if you
20 walked out of that meeting with Orr on
21 April 25th with the state of mind that you have
22 told us about --

23 A Are you referring to March 25th?

24 Q Sorry, March 25th, and you are upset and angry
25 and placing these phone calls on March 28th, why

1 are you, less than a month later, writing Miller
2 a letter trying to expedite the RCMP agreement?
3 What is this all about?

4 A Mr. Miller had promised me that he would
5 intercede with the RCMP on Ray's behalf and deal
6 with some of the contentious issues that we had,
7 and there would be an official agreement
8 forthcoming.

9 Q So the gist of it, as I understand it, is that
10 Miller felt that somehow he could intercede with
11 the RCMP and get them to modify the normal terms
12 of their program to accommodate your needs and
13 your client's needs?

14 A My client's needs, that's correct.

15 Q Have I summarized the substance of the
16 conversation accurately?

17 A That's correct. I don't know if it was one
18 conversation; I would say it was a number of
19 conversations.

20 Q And then finally at the top of the second page
21 of the letter, you advise him that there have
22 been negotiations with respect to the house and
23 your client's position has been modified to a
24 minor extent. You appear to be keeping him
25 informed of the house negotiations; is that

1 correct?

2 A That's correct.

3 Q And the reason why you are keeping him informed
4 is because the house negotiations, there was a
5 separate Crown counsel, Mr. Perreault, who was
6 dealing with that matter?

7 A That's correct.

8 Q And he was on the civil side of the ministry?

9 A That's my understanding.

10 Q At least he was somebody who was conversant with
11 real estate matters?

12 A That's my understanding.

13 Q Now the other document that I want to refer you
14 to around this time period is at tab 13. And it
15 is, again, we believe this is a document of
16 Mr. Miller's in his handwriting. And if you
17 look at the third page of it, it has got a date
18 April 15th to the 20th, and Tom Orr's name on
19 it, with respect to per diem expenses?

20 A That's correct.

21 Q At the Marlborough Inn, it appears to relate to
22 the Calgary relocation of --

23 MR. WOLSON: What tab?

24 MR. CODE: Tab 13, Mr. Wolson.

25 THE WITNESS: I don't know what it relates to.

1 BY MR. CODE:

2 Q I'm more interested in the time frame, that we
3 are in mid April at a time when we know that
4 Zanidean is in Calgary. And it is the first two
5 pages of the note that are more important, I was
6 just trying to situate the time frame.

7 And Mr. Miller on the first page, assuming
8 it is Mr. Miller's writing, he sets out two
9 options, option one and option two. Do you see
10 that?

11 A Yes.

12 Q And the first option is, he enters the program
13 and gets the various aspects of the program,
14 including a clean credit rating; do you see
15 that?

16 A Yes.

17 Q And that would obviously assist with a house
18 purchase. And then option two is,

19 "We pay them a lump sum and they undertake
20 their own relocation - he does not enter
21 the program at all."

22 Do you see that?

23 A Yes.

24 Q And my question to you is, at this point, as a
25 result of this somewhat disappointing meeting

1 with Corporal Orr, was there -- the option 1, it
2 appears from your letter of April 23rd, is still
3 on the table and is still being discussed. But
4 my question to you is whether option 2 was now
5 starting to emerge?

6 A I don't recall it emerging, I don't know whether
7 Constable Orr may have mentioned a potential of
8 it at some point. I don't recall. I apologize.

9 Q Does that option eventually emerge?

10 A Yes, it eventually emerges, but I can't --
11 certainly by the first week of June or so.

12 Q You are simply not -- you have no recollection
13 whether it emerged this early on in April?

14 A That's correct.

15 Q Now, the place where we see that this option
16 clearly emerges is at tab 24, at least the one
17 that we are able to clearly put a date on, the
18 first one that we can put a date on is at tab
19 24. And this is the meeting on April 29th,
20 after Zanidean runs into difficulties in Calgary
21 and lands back in Winnipeg. And when the police
22 learn that he is back, it appears between
23 Vandergraaf and Orr and Miller, a meeting of all
24 parties is arranged for April the 29th. Do you
25 recall that meeting? It is described at the

1 bottom of, if you are at tab 24 and you look at
2 the bottom of the first page, Corporal Orr's
3 notes summarize the meeting as beginning with an
4 argument, an extended argument between
5 Vandergraaf and Zanidean about the money
6 problems he had in Calgary, and then there is a
7 second meeting over the page. I will go into
8 the content of it with you in a minute, I'm just
9 asking you if you have a general recollection of
10 this meeting being convened upon Zanidean's
11 return from Calgary?

12 A At this moment, no, I would have to refer to my
13 notes and see if I put it in there.

14 Q I don't believe it is in your memo.

15 A You know, I can tell you there were constant
16 discussions and ongoing discussions over
17 problems that were arising as the time period
18 went on, but I can't tell you about a specific
19 meeting.

20 Q All right. Let's deal with the content of the
21 meeting as Orr records it. And we have heard a
22 great deal of testimony about this because both
23 Orr and Vandergraaf were present. But do you
24 recall that there were disputes about Zanidean's
25 expenses in Calgary?

1 A Yes. They only paid -- they were supposed to be
2 paying everything every day, and I don't know
3 the details of it because I wasn't party to all
4 of those discussions, they were dealing with my
5 client directly without me on many occasions,
6 the police and/or the Crown. So when I say they
7 in that circumstance, I don't know who it was
8 that was dealing directly with Ray. But what my
9 understanding of the situation was, they were
10 supposed to be covering his expenses, and there
11 was a per diem allowance or allotment or
12 whatever, and he was to be in a hotel or
13 something in Calgary. And I don't remember the
14 details of it, and I don't think they covered
15 the whole hotel bill, they tried to stick him
16 with the money, and he had taken money out of
17 his pocket and he didn't have much money to walk
18 around with, in any event. But I don't recall
19 it all.

20 Q I will help you with the contents of it in a
21 moment because we have a memo from Mr. Miller.
22 In any event, there was disputes about
23 reimbursement for expenses incurred in Calgary;
24 is that a fair summary?

25 A That appears to be correct.

1 Q More importantly, over the page, on the second
2 page of the continuation report, we see --

3 A Which tab are we on?

4 Q Still on tab 24, the April 29th meeting.

5 A Okay.

6 Q It appears from Corporal Orr's notes that the
7 meeting splits into a second part, Miller and
8 Vandergraaf leave, and you have a meeting just
9 with Corporal Orr. Do you see his note there on
10 the second page of tab 24?

11 A Now, that was a meeting not just with Corporal
12 Orr, Ray and his wife were there too.

13 Q Yes, of course.

14 "The second hour spent in discussion about
15 the Witness Protection Program..."

16 A Right.

17 Q "...without Winnipeg Police or Mr. Miller.
18 Both Mr. and Mrs. Zanidean had questions
19 about employment history and credit ratings
20 should they decide on a name change."
21 So I wanted to just pause there and ask you
22 whether you recall discussions, whether at this
23 meeting or generally in this time period, about
24 the necessary incidents of formal entry into the
25 Witness Protection Program such as name changes?

1 A Yes, there were more issues discussed. I
2 remember being at a meeting, and I would assume
3 it was this one, that's why in my note, it was
4 written two or three months later, or a month
5 and a half later, I had perhaps the two meetings
6 lumped together. I remember we discussed the
7 name change. I remember we discussed, there was
8 a disability claim that we discussed as well. I
9 remember that being discussed, and a bunch of
10 details about the Witness Protection Program.

11 Q My question very simply is, had your client made
12 up his mind that he wanted this, that he wanted
13 to go through with this?

14 A Not the way it was being offered by the RCMP.

15 Q And the next sentence in that paragraph, the
16 last sentence in that paragraph then goes on to
17 raise the possibility that they could attempt a
18 cash settlement with the province and head out
19 on their own. Do you see that?

20 A Yes.

21 Q And do you recall Corporal Orr raising that sort
22 of second option or alternative with you and
23 your client?

24 A I don't recall it specifically. I know that at
25 some point it came up, but I don't recall it

1 specifically, I'm sorry.

2 Q And what was your client's attitude towards
3 that? What was his response to that?

4 A Well, certainly by early June my client was
5 going back and forth on whether he should go
6 into witness protection or not. Mr. Miller had
7 been encouraging me to keep my client in the
8 Witness Protection Program, as opposed to taking
9 a cash settlement and going on his own, because
10 of the perceived threat to my client's life, and
11 felt that if my client tried to do it on his
12 own, he would end up dead. I felt -- I was
13 having a great deal of difficulty with the
14 situation, because my client was talking to me
15 and he was talking to others, the Crown and the
16 police. And one day I would get one
17 instruction, the next day I would get a
18 different instruction. When I say day, on one
19 occasion, and the next occasion something
20 different.

21 Bruce said for my client's own safety he
22 would be much better off in the program, but it
23 appeared that notwithstanding his, Bruce's
24 effort to modify the program, or to enhance the
25 program I guess is probably a better expression,

1 the RCMP were saying, it is our program, we will
2 do it our way or the highway sort of thing. And
3 my client was not a person who would welcome a
4 "my way or the highway" situation.

5 Q So to summarize, as I understand your answer,
6 your client was going back and forth between the
7 two options; is that correct?

8 A That's correct.

9 Q And Mr. Miller favored, as a matter of
10 principle, the formal Witness Protection
11 Program, but realized that there were practical
12 difficulties with it?

13 A Correct.

14 Q All right. Tab 25, Mr. Miller does a memo to
15 file, or memo to Louise Beaudette memorializing
16 the results of the April 29th meeting. And he
17 sets out, helpfully for us, the dispute about
18 expenses. And without going into this in any
19 detail, it appears, as I read this, that the
20 RCMP had covered Mr. Zanidean for six of the
21 days that he was in Calgary, but that the other
22 13 days, he had ended up paying his own
23 expenses. Is that a reasonable summary of what
24 happened?

25 A That appears to be what the letter says.

- 1 Q And you and your client were looking for
2 reimbursement for the 13 days where he had had
3 to pay his own expenses?
- 4 A Correct.
- 5 Q And finally on this April 29th meeting,
6 Mr. Kovnats, we have now Mr. Miller and Corporal
7 Orr both confirming, with reasonably
8 contemporaneous notes or memos, the fact of this
9 meeting and the fact that you were present. If
10 we look at your dockets at tab 2, you completely
11 miss this one, it looks like?
- 12 A Well, there is nothing extra on my docket, but
13 there are things missing from it.
- 14 Q So, again, this is a good illustration of your
15 imperfect docketing practices, should we put it
16 that way?
- 17 A Yes.
- 18 Q We won't tell your partners about that, but the
19 government got that meeting for free, did they?
- 20 A That and more.
- 21 Q Mr. Lockyer is offering to send in a
22 supplementary account for you.
- 23 A There is a whole big one.
- 24 Q I want to turn to the real estate negotiations,
25 Mr. Kovnats.

1 A Yes.

2 Q We are still in the April time period, as I read
3 the documentation, and there is a sheath of
4 documentation about the real estate
5 negotiations. I'm going to try and boil it down
6 and simplify it. But is it fair to say that
7 during this time frame you are heavily engaged
8 in negotiating the real estate aspect of the
9 agreement concerning the Chelsea Avenue house?

10 A Correct.

11 Q And this is an area of practice that you
12 obviously knew well, it was right in your
13 Wheelhouse?

14 A Yes, no problem.

15 Q And as of April, the house had now been standing
16 vacant since early December when he had been
17 moved to the safe house?

18 A That was my understanding.

19 Q So for some four to five months it had been
20 vacant and the mortgage had fallen into arrears
21 for that period?

22 A That's correct.

23 Q And in addition, there had been a fire in the
24 garage which resulted in an insurance claim, and
25 the insurance company was denying coverage

1 because the house had been standing vacant. Is
2 that correct?

3 A Correct.

4 Q So we had a number of issues here about what was
5 going to happen to the house, what was going to
6 happen to the mortgage, and what was going to
7 happen with the insurance claim. And you were
8 negotiating all of those matters in a bundle
9 mainly with this Mr. Perreault, but also with
10 the mortgagee who was represented by their own
11 lawyer; is that correct?

12 A And with Bruce.

13 Q And Mr. Miller becomes involved as well, you are
14 quite correct.

15 Now, I bundled together all of the real
16 estate, insurance, mortgage negotiating
17 documents at tab 27, Mr. Commissioner. And you
18 will be very pleased to know, this was very
19 painful reading for me, Mr. Kovnats, because I
20 have nothing to do with this side of our
21 profession. But I think I boiled it down into
22 three documents, the essence of it I'm hoping I
23 can distill succinctly, with Mr. Kovnats help.

24 First of all, Mr. Kovnats, if you look at
25 your statement to the Commission at tab 1, page

1 7, you have got a very nice succinct little
2 paragraph there in the middle of page 7 where
3 you boil it down, and you basically say this
4 wasn't a big problem, it was never a major
5 sticking point in the overall negotiations. Is
6 that a fair summary?

7 A That's a fair summary. There was a couple of
8 small issues. One, I had made an error
9 honestly, when we were assembling what Ray had
10 put in the house for his equity back, I
11 neglected his original down payment, and Mr.
12 Perreault attempted to capitalize on that, and
13 Mr. Miller and I agreed we weren't going to have
14 sharp practice. And there was an issue I think
15 of the deductible for the insurance. And then
16 there was an issue, they tried an omnibus trust
17 condition and I sent them back their documents.

18 Q So you had a couple of minor points of detail,
19 but the substance of the agreement, as I read
20 the documents, doesn't appear to have ever been
21 in any serious doubt. Is that fair?

22 A That's correct.

23 Q And I think the actual substance of the
24 transaction is somewhat misdescribed there at
25 page 7 of the statement, but let me go through

1 the actual documents with you, and I think the
2 true nature of the agreement is pretty clear.

3 So at tab 27, the three important
4 documents, as I read them are, first of all, can
5 you find an April 24th letter? They are all
6 chronological, Mr. Commissioner, and the
7 negotiations get started in earnest on April 4,
8 and 20 days into the negotiations, which in a
9 real estate transaction means about a half inch
10 of paper, as far as I can see. You guys know
11 how to write letters. We have an April 24th
12 letter that is the first one that I need to deal
13 with. Do you have that April 24th, 1991 letter?

14 A That's the letter from Perreault addressed to me
15 dated April 24?

16 Q From Crown Counsel, Mario Perreault to yourself
17 dated April 24th?

18 A Yes.

19 Q It is a three page letter. And again, to
20 distill the substance of this for those of us
21 who don't work in this area, he essentially
22 sends you four things, as I read the first page.
23 He sends you a trust cheque, first of all, for
24 \$7,000 change; is that correct?

25 A Correct.

1 Q And that money was the exact amount that you had
2 requested to achieve the objective that we saw
3 in Mr. Miller's notes back at tab 12, that we
4 dealt with just before the lunch recess. You
5 remember the note at tab 12 is that the
6 government would reimburse Zanidean's equity
7 position and make up any shortfall. Do you
8 remember that tab 12 note?

9 A Yes, I see it here.

10 Q And you then send a letter that spells out
11 exactly what that amount is, the amount he paid
12 on closing plus any adjustments; is that
13 correct?

14 A That's correct, and that's where I made the
15 mistake on the 500.

16 Q The mistake you made is you left out his \$500
17 deposit?

18 A That is correct.

19 Q So you shortchanged your client by \$500 --

20 A We got it back.

21 Q -- due to your mistake? And we make it up in a
22 minute, I will take you to the next document.
23 But the substance of it is, Perreault is
24 agreeing to what Miller has undertaken to do
25 here at the tab 12 note. Is that correct?

- 1 A Yes.
- 2 Q He is buying Zanidean's equity out so he ends up
3 even, having lost nothing on the house?
- 4 A That's correct.
- 5 Q And then there is a transfer of land to the
6 mortgagee, Investors Group?
- 7 A That's correct.
- 8 Q So Zanidean is deeding over the land to his
9 mortgagee; is that correct?
- 10 A Yes.
- 11 Q And that's for the sum of \$1.00, as I read it?
- 12 A Yes.
- 13 Q So, the mortgagee essentially gets their debt
14 back by repossessing the land for \$1.00?
- 15 A That's correct.
- 16 Q And then the quick claim deals with the
17 outstanding mortgage arrears, is that correct?
- 18 A And the principal.
- 19 Q That there is no outstanding debt as between the
20 mortgagor and the mortgagee?
- 21 A That's correct.
- 22 Q So Zanidean is off the hook for his arrears?
- 23 A Yes.
- 24 Q And then finally the fourth item, the assignment
25 of the release, that deals with transferring the

1 insurance over to the mortgagee; is that
2 correct?

3 A Yes.

4 Q Now, on the second page, I just want to note
5 that one thing that Mr. Perreault asked for, the
6 conditions he insists on, the only one of any
7 significance is 2(d), he asks for a release from
8 you of all claims, demands and payments
9 resulting from and arising out of this case
10 under the Witness Protection Program. Do you
11 see that?

12 A Yes.

13 Q So he essentially wants to have Zanidean commit
14 that he will never sue for any claim under the
15 Witness Protection Program. Is that what this
16 request is for?

17 A They told me afterwards they didn't mean it.

18 Q But have I summarized the substance of it?
19 That's what he is seeking?

20 A Yes.

21 Q And did you ever accede to that condition?

22 A No.

23 Q And did they withdraw that condition?

24 A Yes.

25 Q So on April 24th, the outlines of the agreement

1 are in place, is that fair, subject to this one
2 error you have made about the \$500 deposit?

3 A That's correct.

4 Q And then if we flip forward a short period,
5 there is not a lot of paper for the next week,
6 or the next month, to May 31st. Do you have a
7 May 31st letter from Mr. Miller, two page
8 letter?

9 A Yes.

10 Q And by this point we are on the eve of trial.
11 This is the Friday before the trial is to start
12 on Monday, June 3rd. And Mr. Miller sends you a
13 cheque for \$500, which is the deposit that you
14 had failed to include in the original request;
15 is that correct?

16 A Yes.

17 Q And he states,

18 "This is intended to afford your client the
19 opportunity to proceed to complete the
20 transaction with respect to Chelsea
21 Avenue."

22 And he says,

23 "The documents pertaining to the Chelsea
24 Avenue transaction have, as I understand
25 it, been returned to you for acceptance and

1 completion by your client."

2 So, was it the situation there, on the eve of
3 trial, that the real estate transaction was now
4 in place and there were no outstanding issues?
5 It was simply a matter of completing the
6 documents, signing the documents?

7 A Except for the motorcycle claim, yes.

8 Q You see his item 3, the insurance, the claim on
9 the loss of the motorcycle in the garage fire
10 was related to, is it fair to say it was related
11 to the insurance claim -- or related to the
12 house deal, but was not the substance of the
13 house deal?

14 A That's correct.

15 Q And then finally the last letter at June 25th,
16 we actually execute the documents. If you flip
17 forward, again, a small number of pages to
18 June 25th, we have your letter to Mr. Perreault
19 in which you execute the three documents, the
20 land transfer, the assignment and release of the
21 insurance, and the quit claim on the mortgage?

22 A Sorry, my papers are coming out of the book
23 here. Just give me a minute.

24 Q June 25th?

25 A Yes, I have my letter here.

1 Q On your letterhead?

2 A Yes, sir.

3 Q And there is one important condition that you
4 attach to the completion of the transaction, and
5 that is condition 2, you want a clean credit
6 rating --

7 A Yes.

8 Q -- in relation to the outstanding mortgage
9 arrears so he can get a new house and a new
10 mortgage without a credit history, is that
11 correct?

12 A Without a bad credit history, yes.

13 Q And did you succeed in getting that condition
14 fulfilled?

15 A Eventually.

16 Q Now, the signed, executed documents, if I could
17 just take you to those quickly, they are
18 attached here. First of all, the transfer of
19 the land, the indenture is dated June 21st?

20 A Yes.

21 Q And both Zanidean and Fehr sign it?

22 A Yes.

23 Q And similarly the assignment and release of the
24 insurance policy is also dated June 21st, and
25 signed by both Zanidean and Fehr; is that

1 correct?

2 A Yes.

3 Q And then finally is this third document, the
4 quit claim?

5 A That's correct.

6 Q And it is also dated June 21st and signed by
7 both Zanidean and Fehr; is that correct?

8 A Eventually perhaps, I think we sent it unsigned,
9 undated.

10 Q My copy is signed and dated, the very last page
11 here. There is a section 9 about the Farmlands
12 Ownership Act?

13 A The quit claim is the first document attached to
14 the letter. It had to be executed not only by
15 ourselves, but by Investors Group.

16 Q I see. But it is executed by Zanidean and Fehr?

17 A It was executed by Zanidean and Fehr, but I
18 think I sent it undated, because I would have
19 Investors, the last person to sign would date
20 it.

21 Q I see your point. Everything else is signed and
22 dated on June 21st?

23 A That's correct.

24 Q So your clients attended at your office, and the
25 real estate agreement was finalized, subject to

1 the fulfilment of that one condition on
2 June 21st; is that correct?

3 A We met on June 21st. I have to see if I went to
4 them or they came to me.

5 Q I'm not concerned about that.

6 A Yes, it was done on June 21st.

7 Q They attended to the signing of the documents in
8 your presence on June 21st?

9 A Yes.

10 Q And the transaction was completed subject to the
11 performance of that one condition?

12 A That's correct.

13 Q And that, of course, is the same date that we
14 will see in a moment where Mr. Miller sends you
15 the June 21st letter agreeing to \$20,000 in
16 relocation costs. Do you remember his June 21st
17 letter?

18 A I will have to look at the letter. I don't
19 remember the exact date on it.

20 Q You can take it from me, it is dated June 21st.

21 A That's fine.

22 Q It appears there was a lot of final settlement
23 going on, on June 21st, as I read these?

24 A Yes, yes.

25 Q Had your clients been waiting to execute the

1 real estate documents? Why is there this lag
2 time between May 31st, when Miller sends you the
3 \$500 cheque, so you have got all of the money
4 you wanted out of the deal? Had your clients
5 given you any instructions in relation to when
6 they were willing to sign these documents?

7 A You sort of asked me two questions. My
8 recollection of the situation was that was a
9 very high intensity time. We had a couple of
10 very dramatic events, in my dealings with the
11 Crown and with my clients, et cetera. And my
12 clients, I was convinced that we had the Crown's
13 undertaking and that the Crown, albeit somewhat
14 slow to honour their undertaking, would
15 eventually comply with their undertakings. My
16 client didn't share the same conviction. And as
17 a result, my client wasn't prepared to sign
18 anything until we had everything resolved.

19 Q So --

20 A We hadn't made -- the Witness Protection
21 Program, I mean, depending on the hour of the
22 day, whether he was going in that or getting
23 some sort of a settlement happened during that
24 time period, all sorts of things had happened.
25 And until my client was satisfied that we had an

1 omnibus deal, he wasn't going to do it
2 piecemeal.

3 Q If I can boil that down into simple terms, the
4 agreement on the house was in place, but the
5 other part of the deal was not in place, and
6 your client wanted an omnibus deal before he
7 signed off on any part of it. Is that a fair
8 summary?

9 A Well, no. I think that there was, the other
10 part of the deal had been in place and it was
11 being altered. I think -- I apologize for being
12 difficult, but I want to be correct. I believed
13 we had a deal, and then it kept changing. So,
14 if you would have asked me at any point in time,
15 if you would have asked me on May 31st, or at a
16 certain time on May 31st, I would say, yes, we
17 have a deal, but it was never put to paper.

18 Q Let me try again. The real estate part of the
19 deal was in place?

20 A Yes.

21 Q The rest of the deal, in your mind, had been
22 reached but had not yet been documented?

23 A That's correct.

24 Q And your client took the position that he wanted
25 the entire deal documented before he signed off

- 1 on any of it. Is that fair?
- 2 A Correct.
- 3 Q Now, you have got approximately \$7,700 sitting
4 in your trust account here. Do I take it that
5 that money was eventually paid over to your
6 client?
- 7 A Yes.
- 8 Q Once the conditions were satisfied about the
9 credit arrangements?
- 10 A That's correct.
- 11 Q So this part of the deal, that was consummated
12 with much less difficulty than the rest of it,
13 was essentially that the mortgagee got the house
14 for a dollar and forgave the arrears, is that
15 correct, or didn't come after Zanidean for the
16 arrears?
- 17 A Plus they didn't come after him for the
18 principal.
- 19 Q Fair enough. They cancelled the mortgage as a
20 result of getting the house and payments of
21 \$1.00?
- 22 A That's correct.
- 23 Q And Zanidean was freed of the mortgage, and got
24 his equity back and a clean credit rating on his
25 side; is that correct?

1 A Yes, that's correct.

2 Q I think that more accurately describes it than
3 the way we did it the first time I took a cut of
4 this on page 7 of your witness statement.

5 Turning to the events of May that lead up
6 to the trial, again, we've got some relocation
7 issues that the documents help us with. Did
8 your client have a plan to relocate back to
9 Calgary again? Do you recall what came of that?

10 A My client went to Calgary towards the latter
11 part of May, and then the police brought him
12 back.

13 Q I'm not there yet. I'm in early May. You are
14 coming -- I'm trying to pick up after the
15 April 29th meeting where he has been relocated
16 to Calgary once, he has come back, you have had
17 a difficult meeting about reimbursing him for
18 his expenses. If you look at tab 28, it appears
19 in early May there was a plan for him to go back
20 to the Calgary that was never carried out. Do
21 you have tab 28?

22 A Yes.

23 Q In particular, if you look at the second page of
24 tab 28, it is another one of these internal
25 memos to file of Mr. Miller's, in what we

1 believe is Mr. Miller's handwriting. This one
2 has the initials B.H.M. on it?

3 THE COMMISSIONER: Sorry?

4 MR. CODE: Tab 28.

5 THE WITNESS: You are referring to page 2 of tab
6 28?

7 BY MR. CODE:

8 Q Page 2 of tab 28. The first page of it is
9 Corporal Orr's note of his call with Mr. Miller
10 on May 13th, and the second page is Mr. Miller's
11 memo of that same call on May 13th, where he
12 says Zanidean and his wife are not likely to go
13 to Calgary on May 14th or 15th. And he says,
14 "I also told Corporal Orr that I had
15 requisitioned further funds to cover
16 expenses for the Zanideans for the period
17 May 5 to 21 inclusive."

18 A I see the memo.

19 Q My question to you is, is that consistent with
20 your recollection of the arrangements that were
21 made for Mr. Zanidean in early May? That he
22 was --

23 A Mr. Zanidean was negotiating directly with the
24 police, without me, with respect to this. I had
25 knowledge that they had some intention of going,

1 but I don't know the details of that.

2 Q Did you have any involvement in these interim
3 provision of funds that appear to be going on
4 here?

5 A Very little, I knew of them from time to time
6 but I was not directly negotiating them.

7 Q Okay. Tab 29, the next tab, we see the RCMP
8 apparently becoming impatient that the witness
9 protection agreement is not moving forward, and
10 we get Orr's boss, Callens, writes a letter on
11 May 22. And you see the second to last
12 paragraph he again raises the option of the
13 straight cash settlement. Do you see that?

14 A Yes.

15 Q Again, my question to you, was this option the
16 subject of further discussion at this time? Was
17 it becoming, coming more into favour, less into
18 favour? Do you have any recollection of the
19 status of this option 2, as Miller called it, in
20 his tab 13 memo?

21 A My recollection, and I'm not saying that these
22 things didn't happen, my recollection is that
23 that became a lot more serious after the meeting
24 I had at the Public Safety Building at the end
25 of May.

1 Q All right. Fair enough. And we will be coming
2 to that very shortly.

3 Again, the option is coming from the RCMP?

4 A I never saw this.

5 Q I appreciate that.

6 A You gave this to me, I think it was last Friday.

7 Q Your answer is perfectly helpful. This is the
8 second time that we have seen the RCMP raising
9 this option, and I'm asking you for your
10 perspective on it, and you have given it to us,
11 that's very helpful.

12 Now the next development in the chronology,
13 as I read the documents, is that, as you've just
14 told us, some time in late May Zanidean does in
15 fact go to Alberta. Is that correct?

16 A That's correct.

17 Q And you relate that in your memo at tab 3?

18 A I believe so.

19 Q Go back to volume 1, tab 3, page 2, and I would
20 like to review these three paragraphs in the
21 middle of page 2 with you fairly carefully, as
22 they appear to shed some light on your client's
23 state of mind at this point.

24 THE COMMISSIONER: Sorry, what page?

25 MR. CODE: Tab 3 of volume 1, at page 2.

1 THE COMMISSIONER: Okay.

2 BY MR. CODE:

3 Q And there is a paragraph almost in the middle of
4 the page that says,

5 "My client went off to Alberta...",
6 the third paragraph at page 2?

7 A Yes.

8 Q "My client went off to Alberta a couple of
9 times and then came back and there was no
10 problem. He kept in touch with me even
11 though the police wanted him to keep in
12 touch with them."

13 And my question emerging out of that
14 paragraph is, what is the basis for this
15 assertion by you that the police wanted him to
16 keep in touch with them? What is going on here
17 in terms of Zanidean and the police, and who is
18 keeping in touch with who?

19 A I believe he went to Alberta twice. I believe
20 the first time he came back on his own. The
21 second time he was brought back. The police and
22 my client appeared to have an up and down
23 relationship. He wanted to get away from them
24 sometimes and yet he came back. He was
25 negotiating directly with the police and what he

1 was telling me, from time to time -- and I even
2 think he met with Bruce Miller, if I'm not
3 mistaken, but I wasn't there so I can't say for
4 sure, but my recollection is that he may have
5 met with Bruce as well. And he was talking to
6 them back and forth. When he went away, they
7 said you can go but you have to keep in touch
8 with us. That was my understanding at the time.
9 And that he didn't want to keep in touch with
10 them, but he did keep in touch with me when he
11 was away.

12 Q So there was an issue between Zanidean and the
13 police about not staying in touch with them?

14 A That's my recollection, but it is not firm
15 because I wasn't part of those discussions, I
16 was getting that from my client, and we are
17 going back --

18 Q This is second-hand information that's being
19 relayed to you by your client?

20 A That's correct.

21 Q And the second paragraph is one of interest that
22 I want to review with you carefully, right in
23 the middle of page 2.

24 "My client had phoned the TV station and
25 had one of them contact me and told me that

1 if the Crown was not going to do what he
2 had wanted, that he was going to go to the
3 defence lawyer and the TV and make a scene,
4 and he wanted me to do it. We discussed
5 this in some detail and he then instructed
6 me to get the best deal we could with the
7 Witness Protection Program, but keep in the
8 back of my mind that we might have to go to
9 the defence counsel and the TV stations and
10 blow the whole thing out of the water."

11 Now, can you help us with what this was all
12 about, what is going on here in terms of your
13 client's instructions to you about blowing the
14 whole thing out of the water, what was he
15 talking about?

16 A My client felt that between the police and the
17 Crown, he was not getting treated appropriately.
18 He felt that they were making promises and
19 breaking them. And I can't say whom at the
20 time. I told him I wasn't prepared to represent
21 him going to TV stations, et cetera, I know
22 that. But that he was going to do what he felt
23 he should do and tell everybody what was going
24 on.

25 Q And what did he mean by tell everybody what was

1 going on? What was it that he was going to
2 disclose?

3 A At that point in time, it was my understanding
4 that he was unhappy with the way the police had
5 been treating him, and what was going on between
6 him and the police and the Crown. The promises
7 that had been made going all the way back,
8 certainly, probably to December, certainly
9 confirmed by what you see in the March memo,
10 nothing ever got put in writing. So we would
11 get promise after promise, after promise, after
12 promise, undertaking after undertaking, and
13 nothing ever came to us properly in writing
14 other than the house deal.

15 Q Tell me if I have summarized this accurately, he
16 felt there had been a course of bad faith
17 negotiating and he was going to disclose that to
18 either the defence counsel or the TV; is that
19 the essence of it?

20 A That is correct.

21 Q And the third and last paragraph here in the
22 middle of the page I want to deal with.

23 "On a week ago Thursday...",
24 and remember this memo is from the perspective
25 of Sunday, June 2nd, so you are now referring

1 back to --

2 A About the 20th.

3 Q -- the 23rd, I would think would be a week ago
4 Thursday of May, in other words, shortly before
5 the material witness warrant, or on the 23rd or
6 the 24th.

7 "A week ago Thursday, I advised Bruce
8 Miller that my client had instructed me
9 that if the Crown didn't do what he said,
10 that he wasn't coming to Winnipeg until the
11 Crown had agreed to everything that they
12 had promised in the first instance and I
13 advised Mr. Miller of that."

14 Could you assist us with this telephone call you
15 had with Bruce Miller in and around May 23rd,
16 24th it appears? What did you advise him of?

17 A Obviously, I can't remember the exact words, but
18 the basic message was that we had been promised,
19 since I believed December 14th, a letter
20 confirming all of the arrangements between the
21 Crown and my client, and that that letter had
22 never been forthcoming. And my client was tired
23 of waiting. My client was hearing one thing
24 from the police and another thing from me. We
25 had countless promises of communication, as I

1 indicated before. They did not come. And my
2 client said enough is enough, I want everything
3 documented and I want it documented now, I'm not
4 coming back until it is. He never said he
5 wouldn't testify. He just wasn't coming back
6 and dealing with the police. They wanted him to
7 come and meet and prepare for trial, and he
8 didn't want to do that until they had everything
9 documented.

10 Q So he left town essentially?

11 A That seems to be what he did, he left town, yes.

12 Q And you advised Mr. Miller of that? You phoned
13 Mr. Miller and you told him, he is not coming to
14 Winnipeg, in other words that he has left
15 Winnipeg, he is out of town somewhere and he is
16 not coming back until he has got his agreement?

17 A That's right.

18 Q And --

19 A He wasn't coming back to meet with the Crown and
20 police. We never said at any time he wouldn't
21 come back for the subpoena.

22 Q I appreciate the distinction that you are
23 drawing. He is not refusing to attend court, as
24 required, but he is refusing to deal with the
25 Crown prior to his subpoena?

- 1 A That's correct.
- 2 Q Until he has got his agreement?
- 3 A That's right.
- 4 Q Or what you would say, until the agreement is
5 memorialized?
- 6 A Yes.
- 7 Q And, of course, what we know that leads to is
8 tab 30, we are now back into volume 2, which is
9 the material witness warrant. Is that correct?
- 10 A It appears to be. I had nothing to do with the
11 material witness warrant, as you can appreciate.
- 12 Q Well, you dealt with the results of the material
13 witness warrant?
- 14 A Yes, I dealt with the results, but I had nothing
15 to do with it.
- 16 Q I'm trying to help you with the chronology here.
17 If you look at tab 30, page 2, the application,
18 or the report on the material witness warrant
19 says,
- 20 "On May 24th police received information
21 indicating that Reath Zanidean has left
22 Winnipeg and will not appear in court as
23 required."
- 24 A That's an absolute falsehood.
- 25 Q We have got problems with the hearsay rule. You

1 were having conversations with Miller, and
2 Miller presumably had conversations with the
3 police, and then the police fill out an
4 application, so the information is third or
5 fourth hand by the time it gets into this
6 document. But in any event, the timing, this is
7 consistent with your conversation with Miller;
8 is that correct?

9 A Yes.

10 Q Now, the arrest of Zanidean on the material
11 witness warrant leads to your client being taken
12 into custody, and brought back to Winnipeg and
13 calling you from custody and your going down to
14 the Public Safety Building to meet with him, is
15 that correct?

16 A No. His wife called me. They wouldn't let him
17 call me. They denied him access to counsel.

18 Q All right. Well, again you are relying on what
19 you have been told.

20 A No, I remember that. That was one of the
21 disputes that I had with Mr. Miller on the night
22 in the Public Safety Building.

23 Q I don't want to get into collateral issues,
24 Mr. Kovnats, I'm simply trying to establish a
25 chronology here, that you get called.

1 A I get called and I go down, yes.

2 Q Thank you. Now, the events that unfold at the
3 Public Safety Building as between yourself and
4 Miller and Dangerfield are set out in
5 considerable length in your statement to the
6 inquiry at tab 1, pages 8 to 10. If you want to
7 refer to that. Are you content with the
8 accuracy of your account of the events that
9 ensue at pages 8 to 10? Is there any additional
10 detail that needs to be added?

11 A I'm just wanting to make sure that included in
12 here is the discussion that he should be able to
13 reach me.

14 Q That your client should be able to reach you?

15 A Yes.

16 Q I believe it is at page 10.

17 A I just want to make sure that's in there.

18 Q Page 10, about ten lines down from the top, "he
19 would be allowed daily contact with Kovnats?"

20 A Yes, I'm satisfied with that.

21 Q Now, and you will be happy to know that
22 Mr. Dangerfield's account of the incident is not
23 of any substantial difference from yours, so I'm
24 not going to go into the details of it. What I
25 am interested in is the substance of the

1 discussion that takes place, or the argument
2 that takes place, between the parties, down at
3 the Public Safety Building that night. Can you
4 summarize for us the essence of the dispute?
5 What were the two sides of the argument? What
6 did you want and what did Mr. Dangerfield and
7 Mr. Miller want?

8 A I wanted my client released from custody. I
9 wanted my letter.

10 Q Your letter meaning what?

11 A I wanted the confirmation in writing of the
12 agreement.

13 Q So on your --

14 A And I wanted my client released from custody.

15 Q And --

16 A He had to have access to his wife and he had to
17 have access to me.

18 Q So, his final memorialized agreement, out of
19 custody, access to you and access to his wife,
20 are the four essential requirements on your
21 side; is that fair?

22 A That's correct.

23 Q And what did the Crown want on their side?

24 A They wanted him to talk to them. And they
25 wanted him -- I mean, we ended up making a deal

1 that they would keep him in custody, but his
2 wife would be with him.

3 Q And it was in a somewhat form of loosened
4 custody rather than in jail custody; he would be
5 under police guard at a hotel, is that fair?

6 A That's correct.

7 Q And the Crown in return for that would have
8 access, would have access to him, to be able
9 to --

10 A They were going to talk with him, yes.

11 Q -- negotiate with him?

12 A I can't remember whether it was at that moment
13 that we said they had -- I had to be present on
14 all negotiations. I think it was. I think at
15 that point that we said I had to be present, but
16 it may have been the next day that we said it.

17 Q What was said in relation to the agreement, you
18 wanted the agreement memorialized in writing;
19 what was said about that?

20 A If I remember correctly, Bruce Miller said you
21 will get a letter and everything will be
22 documented and it will be done. And I think I
23 said to him why don't you just sign the letter
24 of December 14th and be done with it? We don't
25 need -- you don't need to write a letter, you

1 don't even have to go away from here. I had my
2 brief case with me and I could have handed him
3 the letter and he could have signed it.

4 Q And that's set out at page 10 of your statement,
5 that he agrees to send you a letter sometime in
6 the following week and you make the quip or
7 suggestion that all he has to do is initial the
8 December 14th letter?

9 A That's right.

10 Q Is that set out accurately at page 10?

11 A Yes, about almost halfway down the page.

12 Q Now, when that arrangement is arrived at that
13 settles the dispute after a period of time, is
14 Mr. Dangerfield still present?

15 A I don't recall, I don't believe so. I think
16 Mr. Dangerfield and I had had an unfortunate
17 altercation, and as a result I think that he
18 left the discussions to Miller and myself.

19 Q Now, I'm interested in what is said in
20 Mr. Dangerfield's presence, because this is
21 the -- appears to be the one and only time that
22 you meet with Mr. Dangerfield; is that correct?

23 A That's correct.

24 Q So can you assist us that while the argument is
25 going on before it gets resolved in the manner

1 set out at page 10, what was said in
2 Mr. Dangerfield's presence about the nature of
3 the agreement that you were seeking or the
4 memorialization of the agreement?

5 A I don't know that we went into the details. I
6 don't know. I can't remember whether we just
7 referred to the December 14th letter. I can't
8 remember whether -- sorry, I can't remember.
9 This was a very heated discussion afterwards. I
10 remember that quite well, but I don't remember
11 the exact wordings used between Mr. Dangerfield
12 and myself. Mr. Miller had not arrived.
13 Mr. Dangerfield, my client, myself and some
14 policemen were in a room. Mr. Dangerfield felt
15 that my client should do what he is told, where
16 he is told, and should be cooperating with them.
17 And my client and I took the position that until
18 we had everything finalized, my client had no
19 obligation to talk to them whatsoever.

20 Q You consistently said that it is unlikely that
21 you would have discussed the details of the
22 negotiating or the details of the agreement with
23 Mr. Dangerfield.

24 A I don't think I did.

25 Q Fair enough. And as I say, you have been

1 consistent on that. In terms of the fact of
2 this December 14th letter, was that mentioned in
3 Mr. Dangerfield's presence in the course of the
4 argument, or do you recall?

5 A I can't recall 100 per cent, I'm sorry.

6 Q Fair enough. And the one final aspect of this I
7 wanted to clarify with you is your client's most
8 recent instructions to you at tab 3 before he
9 left for Alberta. We reviewed them carefully at
10 tab 3, page 2, this business about going to the
11 media or defence counsel and blowing the whole
12 thing out of the water, was there any mention of
13 that negotiating ploy, if I could call it that,
14 in the course of these discussions with
15 Mr. Dangerfield?

16 A I believe there was a question of talking to
17 defence counsel raised in Mr. Dangerfield's
18 presence. I can't swear to it 100 per cent, but
19 I'm pretty strongly -- I'm pretty sure it was
20 there. There was no discussion of going to the
21 media whatsoever.

22 Q You weren't keen on the idea of going to the
23 media?

24 A Absolutely not.

25 Q But you have some recollection of saying that

1 your client was considering going to speak to
2 Driskell's defence counsel.

3 A My recollection at this point, I would have to
4 check my notes in there, I may have asked him
5 who the defence counsel was. I'm not sure.

6 Q If you look at your memo, tab 3, if you look at
7 page 3 of the memo. You refer to a Sunday phone
8 call, Sunday would be the 26th of May, the day
9 that Zanidean is arrested and brought back?

10 A Yes.

11 Q You refer to the phone call with Mr. Miller
12 where you try to resolve the matter before
13 heading down to the Public Safety Building. Do
14 you see that at the top of page 3, tab 3?

15 A Yes. My recollection is that Miller and I were
16 trying to resolve things in an amicable fashion
17 in the afternoon. My client wasn't going to be
18 in until the evening, and Miller and I were
19 trying to work out an arrangement so that my
20 client could get out of jail quickly and we
21 would have things working in a good fashion.

22 Q Now that paragraph at the top of page 3, where
23 you refer to that discussion with Mr. Miller
24 where you are trying to work things out, is the
25 first time in your chronology where you appear

1 to avert to the option 2 cash settlement option;
2 is that correct?

3 A That's the first time -- I think it had been
4 raised earlier and Miller said that wasn't a
5 good idea for Ray's protection, but I think the
6 relationship between my client and the police
7 was such that it had to become a realistic
8 consideration.

9 Q And were you and Mr. Miller both on the same
10 page now, or getting close to being on the same
11 page on this discussion?

12 A We were now reopening the negotiations in my
13 opinion.

14 Q Fair enough. And the number \$30,000, where did
15 that come from?

16 A I believe my client had given me that number or
17 Susan had given me the number. I'm not sure
18 who.

19 Q All right. And did Mr. Miller balk at that or
20 did he appear to think it was a reasonable
21 negotiating point, or what was his response?

22 A I don't recall his response. He certainly
23 didn't balk at it, I can tell you that, it was
24 something that he was willing to discuss. He
25 wasn't agreeing to it, he didn't agree to it per

1 se, but there was no big balking at it or
2 anything like that.

3 Q And in terms of what your memo says about once
4 you went down to the police station and met with
5 Mr. Dangerfield, if you look at the bottom of
6 that page, after you have set out your demands
7 or your position, you see the last paragraph at
8 the bottom of page 3,

9 "I told them that they were bound by the
10 agreement made by Mr. Miller and that the
11 Crown was bound. Mr. Dangerfield told me
12 that the Crown was not bound. I reminded
13 him that was the way it was, and then
14 looking away from Mr. Dangerfield to
15 Mr. Miller, said to Mr. Miller in no
16 uncertain terms, either you are honest or
17 you are not, either you honour your
18 undertakings or not."

19 And Mr. Dangerfield responds that you had
20 no right to talk to him like that, that he is
21 not the Crown. I am the Crown in this case, I
22 make the decisions.

23 Does that note to your file accurately
24 summarize the conversation you had in
25 Mr. Dangerfield's presence?

- 1 A There may have been some stronger language.
- 2 Q Is the substance of it accurate?
- 3 A Yes, the substance is accurate. There may have
4 been stronger language.
- 5 Q And you are dictating this memo on June 2nd,
6 from the distance of about six days, seven days
7 after?
- 8 A I knew it was going to get tight. I didn't want
9 to use language that was going on in that room
10 that night.
- 11 Q In terms of the timing you are dictating this
12 memo almost exactly about a week after the
13 events?
- 14 A That's correct.
- 15 Q And how fresh were these events in your mind at
16 the time that you dictated this?
- 17 A Very fresh.
- 18 Q When you said that the Crown was bound by the
19 agreement made by Mr. Miller, was there any
20 inquiry of you as to what that agreement was, or
21 any request for clarification?
- 22 A No. Bruce knew exactly what we had agreed to.
23 There was no question.
- 24 Q Both Mr. Miller and Mr. Dangerfield are present
25 at this point?

1 A They were both present. Bruce knew exactly what
2 I was referring to. We had been talking for
3 months. This was nothing new.

4 Q All right. I want to turn then to the
5 concluding negotiations in the last week before
6 the trial and shortly after the trial. You come
7 out of this May 26th, May 27th evening events
8 down at the Public Safety Building expecting a
9 letter from Bruce Miller, sometime during the
10 following week, memorializing the agreement; is
11 that correct?

12 A That's correct.

13 Q And as I read your statement, we are now on to
14 pages 10 to 11 of your statement, you became
15 increasingly anxious as the week wore on and no
16 letter arrived; is that a fair summary?

17 A That's correct.

18 Q And you summarized, your concerns and the steps
19 you took at the bottom of page 10 and over at
20 the top of page 11?

21 A That's correct.

22 Q And again, if we go to your memo to file, to see
23 the instructions you have from your client at
24 this point, when you went away from the Public
25 Safety Building, do you have your memo to file

1 at tab 3?

2 A I do.

3 Q Page 4. Now getting towards the end of the
4 memo, there is a long paragraph at the top where
5 we just finished off where your discussions with
6 Mr. Dangerfield and Mr. Miller are summarized,
7 and do you see at the last line at the end of
8 that paragraph, "the deal that we wanted was the
9 exact same deal as what was contained in the
10 December 14th letter?"

11 A Yes.

12 Q And that's what you said to Mr. Miller as you
13 departed?

14 A That was the final culmination of that evening.

15 Q And your memo to file then, if you carry on
16 there in the middle of page 4, there is two
17 short paragraphs and then there is a long
18 paragraph. And it says "he has finally agreed"
19 do you see that in the middle of the page?

20 A Yes.

21 Q On the Wednesday it appears of that week, which
22 would be May 29th, three days after the events
23 at the Public Safety Building,
24 "It was finally agreed on Wednesday that
25 Bruce would write me a letter and I would

1 receive it on Thursday outlining our whole
2 arrangement. It did not come Thursday.
3 Late Thursday afternoon Bruce said that it
4 will come Friday. Friday it did not come.
5 Friday afternoon Bruce said it would come
6 Monday. I told Bruce that if it did not
7 come Monday I would advise my client and
8 that would be it."

9 Now I want to try and reconstruct the
10 events of Wednesday. It appears as I read this,
11 Wednesday the 29th you have a conversation with
12 Miller in which he agrees to provide you the
13 letter you have been requesting within 24 hours,
14 by the next day, Thursday; is that correct?

15 A That's my recollection.

16 Q And if we look at your dockets at tab 2, you in
17 fact have a docket of a phone call with
18 Mr. Miller on May 29th; is that correct?

19 A Yes.

20 Q You see at page 3 of your dockets, you record a
21 point 5 docket for a telephone call with
22 Mr. Miller and a meeting with Von Baird, V.
23 Baird?

24 A Yes.

25 Q Who was Mr. Baird?

1 A Mr. Baird was an associate of our firm. He was
2 a senior lawyer who practiced in Winnipeg for
3 many years. His office was right next door to
4 mine and I went to seek some assistance from
5 him, some advice.

6 Q So you sought some independent counsel and had
7 this phone call with Mr. Miller?

8 A That's correct.

9 Q Could you turn then to tab 31, where we see a
10 record of what Mr. Miller does on that
11 Wednesday, the 29th, and this is Corporal Orr's
12 note, tab 31, and Orr notes that he just
13 received a call from Miller at 2:20 in the
14 afternoon. And Miller -- he notes that Miller
15 had received a letter from you. We know there
16 is no letter in and around that date, so that
17 presumably must have been an error in Orr's
18 notes, but we do know that there was a call from
19 you. And Mr. Miller sets out three points
20 summarizing your requirements. Do you see that?

21 A That's correct. I see it.

22 Q And I'm about to get into the substance. The
23 first one is the letter about the clear credit
24 rating as a result of the mortgage business, is
25 that correct?

1 A That's an important feature, yes.

2 Q And that was something that you were discussing
3 with Mr. Miller?

4 A Yes.

5 Q One of your points. The second one is the
6 equivalent job, equivalent lifestyle issue; is
7 that fair?

8 A That's correct.

9 Q And again that was an issue that was under
10 discussion with Mr. Miller that had been in
11 there essentially from the beginning?

12 A Um-hum.

13 Q And the third one is Swift Current immunity; is
14 that correct?

15 A Yes, I see it, yes.

16 Q And again, according to you, that had been a
17 consistent request?

18 A Well, you have to understand it was included in
19 the witness protection program, but if we were
20 going to switch to the \$30,000 payment, during
21 this time -- my wording was a yoyo, this thing
22 kept going back and forth between now witness
23 protection, now a payment. If he was in witness
24 protection, there would be no question, because
25 he gets immunity, he can't go in it unless he is

1 free from any prosecutions. But if he was going
2 to take cash, then he had to have a letter
3 confirming it. And it wasn't just Swift
4 Current, it was any and all matters. This memo
5 says Swift Current, that's between Miller and
6 Orr. That's their discussion.

7 Q As the cash settlement option became more
8 prominent, the need for a distinct and separate
9 Swift Current letter became more important; is
10 that fair?

11 A Yes, the immunity letter, because it would
12 include Swift Current and anything in Manitoba.

13 Q Okay. And you see in the immediately following
14 paragraph, consistent with what you have just
15 said, Mr. Miller and Corporal Orr discuss the
16 idea of a single payout in that context. Do you
17 see that?

18 A Yes.

19 Q So, the note that Corporal Orr has of his
20 discussions with Miller is generally consistent
21 with the matters that you recall being under
22 discussion at that time in and around May 29th?

23 A Yes.

24 Q Now, you don't receive the response from
25 Mr. Miller, we know, until Monday, June 3rd, and

1 over the weekend of June 1st and June 2nd, there
2 is an intervening event where you get a call
3 from Mr. Brodsky; is that correct?

4 A Yes.

5 Q And again this is set out fully in your
6 statement at tab 1, at pages 11 to 12 and it is
7 also set out fully in your memo to file at tab
8 3, pages 4 to 5. So if I could just summarize
9 the essence of it, Mr. Brodsky hears about the
10 brouhaha at the Public Safety Building through
11 the grapevine and gives you a call, or has his
12 student call you. You call each other back and
13 he wants to interview your client is the essence
14 of it; is that correct?

15 A That's my understanding, yes.

16 Q And eventually he comes to visit you on Sunday
17 evening and renews that request, and you in the
18 meantime are consulting with Mr. Miller as to
19 whether this is appropriate, and whether it will
20 jeopardize the agreement; is that correct?

21 A That's correct.

22 Q All right. And then the more important event is
23 on the Monday, June the 3rd, you receive
24 Mr. Miller's May 31st response, which we find at
25 tab 32, is that correct?

1 A That's an important event, yes.

2 Q It is at least -- it is the letter that you have
3 been waiting for, is that correct?

4 A No, it is not.

5 Q I appreciate the substance of it is not what you
6 have been waiting for, but the form of it is
7 what you have been waiting for.

8 A It was the start.

9 Q So you get the letter, and we know from your
10 subsequent response to it -- although it is
11 dated Friday, May 31st, it gets faxed to you on
12 Monday, June 3rd?

13 A I would have to check my file, but I believe
14 that's the case, yes.

15 Q And it is at tab 32, if you can turn to it. We
16 looked at it once already. The first two points
17 simply set up the real estate deal; is that
18 correct?

19 A That's correct.

20 Q And it is essentially now ready to go. Tab 3
21 says that the insurance issue is still under
22 consideration?

23 A That's part of the insurance issue, that's the
24 motorcycle portion.

25 Q Those first three items, before we turn the

1 page, were any of these three points major
2 issues or contentious issues in the
3 negotiations?

4 A Well, they weren't deal breakers, if that's what
5 you are asking. This had been agreed upon right
6 from the beginning, the house deal, and we
7 hadn't gotten -- we never had the final
8 agreement on the motorcycle for quite a while.
9 The 500, it was just a calculation error on my
10 part and Bruce promised that would be cleaned up
11 quickly. That's the first issue. The documents
12 had gone back and forth because of trust
13 conditions, and --

14 Q Listen to my question, Mr. Kovnats. Were these
15 major issues in the negotiations?

16 A I'm having difficulty with the word major.

17 Q You don't have to choose -- you don't have to
18 adopt my words, you use your own words. Were
19 these significant aspects of --

20 A They were part of the negotiations.

21 Q Okay. Turn the page, please. Item 4, was this
22 an important part of the negotiations, witness
23 protection issues?

24 A That was key.

25 Q Was item 4 more important or more contentious

1 that the first three items?

2 A Item 4 was the key.

3 Q Exactly. What does he tell you about item 4?

4 What is his response on the key to the

5 negotiations?

6 A It is a non-answer. It is a warm and fuzzy, but

7 it is a stall tactic, and I told him that.

8 Q He essentially says we will support your witness

9 protection application, but it is on terms yet

10 to be arranged.

11 A Yes.

12 Q So, what was your response to this particular

13 item 4?

14 A I can't remember whether I did it by phone or

15 whether I wrote him a letter. I wrote him a

16 letter.

17 Q Exactly. We get your response at tab 35.

18 A Yes.

19 Q I'm going to go to tab 35, which obviously sets

20 out the substantive response, but I'm simply

21 asking in a global sense, what was your's and

22 your client's response to this letter?

23 A It was unacceptable.

24 Q Thank you. Turning to tab 35 then where you

25 respond to him. Could I go through this letter

1 carefully with you.

2 MR. CODE: And perhaps, Mr. Commissioner, I know
3 it is just about 3:30, this would be a good
4 point to take a break. This is an important
5 document.

6 THE CLERK: All rise. This Commission of
7 Inquiry is now in recess.

8 (Proceedings recessed at 3:30 p.m.

9 and reconvened at 3:45 p.m.)

10 THE CLERK: All rise. This Commission of
11 Inquiry is now recommenced. Please be seated.

12 BY MR. CODE:

13 Q Mr. Kovnats, I was just finishing up on
14 Mr. Miller's letter at tab 32, before turning to
15 your response. There was one question I
16 neglected to ask you. In his paragraph 4, do
17 you have tab 32, Mr. Miller's paragraph 4, where
18 he says,

19 "...the witness protection agreement is on
20 terms yet to be arranged."

21 A Yes.

22 Q There is no express mention of the Swift Current
23 immunity issue there?

24 A No, sir, there is not.

25 Q And did you have any thoughts about that when

1 you got the letter about where the Swift Current
2 immunity issue fits in, in all of this?

3 A I would have to look at my response. I mean,
4 the immunity issue was part of the whole thing.

5 Q Tab 35 is your response, and the Swift Current
6 immunity figures prominently in your response.
7 So I was just interested in whether you had any
8 recollection of how Mr. Miller was dealing with
9 it at the time?

10 A The letter was not well received by myself
11 and/or my client.

12 Q All right. Turning to the tab 35 response?

13 A Perhaps if you look at paragraph 3, item 5.

14 Q I'm going to go through it carefully with you,
15 Mr. Kovnats. I know that you explicitly refer
16 to immunity two or three times in the letter.

17 Tab 35 is your response and you note that
18 it was faxed to you on June 3rd; is that
19 correct?

20 A Yes.

21 Q And you then immediately say that you have met
22 with your client to discuss the matter fully
23 and,

24 "Mr. Zanidean indicated to me fully that I
25 was to advise you as follows:"

1 A Yes.

2 Q Do I take it from that that you were clearly
3 setting out your client's instruction in this
4 letter?

5 A Yes. In fact, if you look at the second part of
6 the tab, you will see I went to the trouble of
7 having my client sign -- I had done a draft
8 letter and he and I reviewed it, pardon me, he
9 and Susan and I reviewed it, and I had their
10 written instruction as to how the letter was to
11 be worded.

12 Q And they initial all of the changes on the
13 original draft; is that correct?

14 A That is correct.

15 MR. CODE: Do you see that, Mr. Commissioner, at
16 the back of the tab?

17 THE COMMISSIONER: Yes, I do.

18 BY MR. CODE:

19 Q Why is it that you went to that particular
20 precaution to meet with your client, have them
21 review a draft and initial any changes?

22 A At this point my client was indicating, around
23 this time I was getting the feeling that my
24 client was being influenced by others. He was
25 being told, and he at some point told me that I

1 was incorrect and that he had no deal unless it
2 was in writing. And I don't know if it was the
3 police or the Crown who told him that. And I
4 said we have a binding arrangement with another
5 lawyer, and once I have that, their word is
6 their bond and that's the end of it. He said
7 they have told me unless it is in writing we
8 have got nothing, or words to that effect. I'm
9 giving you the gist of the conversation, I can't
10 remember the exact words. And he was going back
11 and forth between witness protection and a cash
12 settlement. And they were negotiating directly
13 with him. I felt that was inappropriate. I
14 mentioned that. And so we sat down and I wanted
15 to know that I was giving the correct position
16 and I was representing exactly what I was being
17 asked to represent. I also declined to do
18 certain things that my client had asked me. And
19 that was it.

20 Q The tone of this letter and those initial
21 introductory paragraphs are consistent with what
22 you have just said, that you are repeatedly
23 spelling out that these are your client's wishes
24 and your client's instructions. And we didn't
25 see that in the earlier letter, and you've

1 explained the circumstances that lead to that.

2 So then turning to the substance of the
3 letter, the first point deals with the house
4 deal. And I believe you have covered this
5 already with us, that you were signalling to
6 Mr. Miller that you were not going to sign off
7 on the house transaction until you had
8 everything finalized. Is that correct?

9 A Yes.

10 Q And the second point deals with the substance of
11 the house deal, that it was satisfactory except
12 there was still this small dispute about the 200
13 deductible on the insurance; was that correct?

14 A Well, there was also the \$800 for the motor
15 bike. That's referred to further on in the
16 letter as well, sir.

17 Q All right. If I could deal with paragraph 2,
18 have I summarized it that you were telling him
19 that the house deal was satisfactory subject to
20 the \$200 deductible issue?

21 A Yes.

22 Q And over the page, item 3, you set out your
23 request for full witness protection which you
24 itemize as having five aspects to it; is that
25 correct?

1 A Yes. We had dropped the aspect of B.C. At that
2 point we were coming -- this thing was, it was
3 at the penultimate moment, so to speak, and the
4 issue of B.C. was not included in the demand.

5 Q So you were trying to come closer to the RCMP's
6 position on how the program was to be run; is
7 that correct?

8 A Yes.

9 Q But the substance of it is much the same as in
10 your original December 14th letter; is that
11 fair?

12 A Pretty much.

13 Q And the fifth aspect of it is the immunity issue
14 and --

15 A No, the fifth, pardon me.

16 Q 3 sub 5?

17 A Yes.

18 Q Five aspects of what you understood the Witness
19 Protection Program to mean?

20 A Yes.

21 Q Again, I think you have covered that with us
22 that you understood, if he went to the Witness
23 Protection Program, immunity on Swift Current
24 would be part and parcel of that?

25 A Yes.

- 1 Q Items 4 and 5 are small points about insurance
2 issues that I'm not particularly interested in.
3 Item 6, you then raise an alternative to
4 full Witness Protection Program and that is the
5 cash settlement option?
- 6 A Yes.
- 7 Q Again, this is the matter that you and
8 Mr. Miller had been discussing on the night of
9 May 26th when Zanidean came back from Alberta;
10 is that correct?
- 11 A We had certainly discussed it in the afternoon.
- 12 Q In the phone call before you went down to the
13 Public Safety Building?
- 14 A Yes.
- 15 Q And you are now committing to it in writing.
16 And is this one of the items that you got your
17 client to initial on the draft document that's
18 attached?
- 19 A Yes, because I didn't have -- the \$30,000
20 figure, I had had that verbally, I wanted it in
21 writing for my client, and we put in the amount
22 in writing, and you will see that he initialled
23 it on the draft.
- 24 Q And do you know where he came up with that
25 amount from?

1 A No.

2 Q Was there any calculations done about costs of
3 moving and relocation?

4 A I don't know how that was determined at this
5 point. I probably did at the time, but I do not
6 know today.

7 Q In any event, you had his express written
8 instructions that that was the amount that he
9 was willing to take --

10 A Yes.

11 Q -- in lieu of formal witness protection?

12 A That's right. The whole premise of the
13 December 14th letter and this letter was he
14 wasn't -- the only thing that he was coming out
15 slightly ahead on, for having taken the risk,
16 was the fact that he wouldn't be prosecuted.
17 Everything else was just to compensate him for
18 his move, et cetera. This was not to be a
19 profit making situation, at no time. I can't
20 tell you the calculations, and I looked from my
21 file to see if I had a handwritten note, and I
22 haven't -- I have papers with numbers on them,
23 but none of them mean anything today. I mean,
24 at the time I am sure they did, but today I
25 can't tell you.

1 Q He is in police custody at this point, and we
2 will come to your meeting with him in a moment.
3 You meet with him the day before, on June 30th,
4 to go over these matters?

5 A Yes.

6 Q And he gives you the number 30,000; is that what
7 you are saying?

8 A We arrive at the \$30,000 number, he authorizes
9 the \$30,000 number. I cannot tell you today how
10 we came to that figure, but I do know the theory
11 behind it was not one of making a profit, but
12 one of covering cost.

13 Q I appreciate that's the principle, I'm just
14 trying to understand the process of how you
15 arrived at it. You had mentioned that number?

16 A I had mentioned that number before because I
17 think we had discussed it.

18 Q Back at tab 3.

19 A Yes, I am just looking.

20 Q Tab 3, page 3, you mentioned it in your May 26th
21 phone call. If you can't recall how you arrived
22 at it, that's fine. I'm just interested in
23 whether there was any kind of rigorous process
24 to arrive at this \$30,000 number?

25 A There had been discussions about moving costs,

1 et cetera. I can't -- I don't have -- I have
2 some handwritten notes here that are not
3 complete, that don't have 30,000 at the bottom.
4 I have little note papers that were in the file.
5 I cannot find where I made notes with Ray
6 saying, it is \$5,000 to drive out there and rent
7 a truck to carry the equipment or whatever. Do
8 I have some sort of a vague recollection today
9 of discussing moving costs and that sort of
10 thing? Yes. In establishing the \$30,000
11 number, with Ray, which I think took place not
12 the day before I wrote the letter, but over a
13 week before that, I think it was, in fact, I
14 think it went back to mid May, but I can't say
15 for sure. I do remember -- and I don't remember
16 the detail, I apologize, I can't remember the
17 detail today -- but I have this vague
18 recollection of discussing if they didn't move
19 him, what would it cost Ray and Susan to move
20 themselves and re-establish themselves?

21 Q You don't have any document setting out a
22 breakdown of this \$30,000?

23 A I haven't been able to find it, no. I'm not
24 saying it didn't exist, but I have gone through
25 this file a dozen times since we found it to try

1 and find that document, because somewhere I
2 remember this vague recollection that I have of
3 writing down --

4 Q Please don't start going through it now, Mr.
5 Kovnats, we will be here all day. I accept your
6 answer, you have looked through it, you can't
7 find a document with a breakdown, that's fine,
8 that answers my question.

9 A Okay, sorry.

10 Q Item 8, I'm back at tab 35?

11 A Yes.

12 Q Item 8, you are requesting a meeting with Tom
13 Orr and you are confirming that you have had a
14 telephone conversation about it?

15 A Yes.

16 Q And what was the purpose of the meeting with
17 Mr. Orr that you were discussing with Mr. Miller
18 and confirming here?

19 A Well, if we --

20 Q It says to finalize all matters?

21 A If we were going to go the witness protection
22 route, we wanted to meet with Orr and make sure
23 that everything was documented and had it done,
24 and we wanted to hear what he had to say. I
25 believe at this point Bruce was still saying

1 that he would use some influence, but they
2 couldn't be bound, because the RCMP wouldn't be
3 bound by his influence. But I believe, again,
4 I'm going from recollection from 15 years ago, I
5 believe there was some sort of idea that we
6 would arrange the final details, that he would
7 then know if he was moving to Newfoundland, or
8 New Brunswick, or B.C, or wherever, so we would
9 have a final arrangement with Orr, so that we
10 knew what our two options were very clearly.

11 Q So the option at the top of the page, item 3 on
12 your list, was one that still had to be worked
13 out with Corporal Orr?

14 A Yes.

15 Q And you were hoping that Bruce Miller might be
16 able to influence him to moderate the
17 traditional RCMP position?

18 A Not necessarily moderate it, but at least tell
19 us what we are getting. If you read the
20 documents from the RCMP, it is like we are going
21 to do this, at our sole discretion, if we want,
22 when we want, as we want, and we can stop it
23 whenever we want. We wanted a little more than
24 that.

25 Q Item 11, please, Mr. Kovnats.

1 A Yes.

2 Q "My client wishes me to be present at all
3 interviews with the Crown."

4 A Yes.

5 Q What was the reason for that particular request?

6 A My client was starting to tell me that he was
7 getting pushed around and being influenced by
8 them, and they were giving him one story versus
9 what they were telling me. And he was feeling
10 under huge pressure, and he was getting
11 somewhat -- it was getting confusing and things
12 were going back and forth too much, he wanted me
13 there so we could have a clear outline of where
14 we were going.

15 Q And when we look at the draft of the letter,
16 this is one of the additional conditions that
17 gets added in as a result of your meeting with
18 your client?

19 A That's right.

20 Q On the previous day, on June 3rd?

21 A Yes.

22 Q And then finally, item 12,

23 "My client wants a letter from the Crown
24 that the Crown and the City of Winnipeg
25 have no information that could result in my

1 client being charged with an offence under
2 any statute."

3 Again, another pitch for immunity. What was the
4 rationale for this separate immunity clause that
5 you were seeking in writing from the local
6 police department and the Crown?

7 A My client told me that the Crown had, that the
8 police had told him that it was one thing for us
9 to have had an arrangement with respect to some
10 of the petty things that had been discussed with
11 me before, but they may have other things about
12 him that he had not admitted to them, and so we
13 wanted to cover everything under the sun.

14 Q All right. And again, if we look at the draft
15 letter attached, that's another one of the items
16 that gets expressly added in as a result of your
17 meeting with your client?

18 A Yes.

19 Q All right. Now, I want to take you back to the
20 previous day, June 3rd, to the meeting that
21 leads to this letter. And we find your memo at
22 tab 34, the previous tab.

23 A Yes.

24 Q So chronologically, it is the day before, but it
25 makes a little more sense once you see the

1 letter, you know what it is that you are talking
2 about in the meeting the day before.

3 A Yes.

4 Q So I have done them in inverse order. So tab 34
5 is your memo to file of the events of Tuesday,
6 June 3rd. And I think June 3rd was actually a
7 Monday, so we either have got the date wrong or
8 the day wrong. In any event, this is the very
9 early beginnings of the first week of the trial.
10 And as I read the last paragraph of this memo,
11 you make the memo to file contemporaneously with
12 the events?

13 A Yes.

14 Q And --

15 A I dictated it -- it may have been typed the next
16 day or more later. I dictated it right at the
17 time.

18 Q Fair enough. And the events that are covered in
19 it, if I could just go through it, it is a
20 fairly dense little memo. The very first
21 paragraph, the second line, you refer to the
22 letter, the June 4th letter that you have
23 prepared on your client's instructions. Is that
24 correct?

25 A Yes.

1 Q We are talking about the letter at tab 35 that
2 we have just reviewed?

3 A That's correct.

4 Q And in the next couple of sentences, your client
5 advises you for the first time that his
6 statement that he had given to the police was
7 not all in his own words, but that the police
8 had altered it. Is that correct?

9 A That's what he told me.

10 Q And is that the advice that leads you to insert
11 what becomes clause number 11 in your letter,
12 the next day on June 4th, wanting you to be
13 present at all interviews?

14 A That was part of it.

15 Q Carrying on in the next paragraph, you document
16 actually meeting with your client. The first
17 paragraph I believe is a phone call, two phone
18 calls?

19 A Yes.

20 Q And the second paragraph is an actual meeting in
21 which he advises you that he is preparing full
22 written instructions and a full written history
23 of everything that has gone on with this case?

24 A Yes.

25 Q Is that the first you had heard of that?

1 A That's correct.

2 Q And that he wanted you to meet with Mr. Miller
3 and advise him of the truth?

4 A Yes.

5 Q And what was that all about?

6 A We wanted -- we had a long discussion, Ray and
7 I, about his testimony, using his words versus
8 someone else's words. And he was telling me
9 that he was being influenced by others. And so
10 I wanted him -- my advice to him was, you tell
11 the truth in your own words, in your own way,
12 and don't worry about what other people have to
13 say. And I felt that Miller should be made
14 aware, that he is an officer of the court and he
15 should be made aware of exactly what was and was
16 not correct.

17 Q Carrying on in the memo, there is a short little
18 paragraph about a meeting out in the parking lot
19 that you and your client have with a Ken
20 Cameron. Who is Ken Cameron?

21 A I believe he was the police officer.

22 Q And we have had him identified, Paul and
23 Anderson both agree he was one of the guarding
24 officers who would spell them off. And we have
25 attached some documents at this tab that

1 identify a K. Cameron as one of the relief
2 officers on the guard duty.

3 So I take it that Zanidean and Fehr have
4 been brought to you somewhere where there is a
5 parking lot in order to meet with you. You are
6 not being taken to them at their hotel suite?

7 A No, they were brought to meet me. I can't
8 remember where on that occasion.

9 Q Under officer Cameron's guard?

10 A It may have been the same restaurant, I don't
11 know, that I met the next day, but I just know
12 that I went to meet them.

13 Q And you see what that paragraph says,
14 "Ray gave them a copy of the letter to
15 read."

16 A Yes.

17 Q And then there is some discussion in the next
18 paragraph about getting copies of the statement.

19 "Ken told me that it would take two days
20 and I wanted to review it with my client."

21 What is this all about? Why is Ray showing a
22 copy of you're tab 35 letter to one of the
23 guarding officers and then having this
24 discussion about statements?

25 A My understanding was that the statement was not

1 entirely in my client's own words. I told him
2 he should be clear to everybody that he was
3 going to say what he had to say in his words,
4 not someone else's words, and the police should
5 know it, everyone should know it, we are not
6 going to play games and this thing is going to
7 be done appropriately, period, end of story.

8 He decided to show it to this Mr. Cameron.
9 That's his business. I asked Mr. Cameron for a
10 copy of the statement because I wanted to review
11 it with Ray, I wanted to know what he was
12 telling me. This was quite upsetting to me. At
13 this late moment I was learning something for
14 the first time that I had not been told before,
15 and I wanted to give my client proper advice. I
16 couldn't get the statement from Ken. I wanted
17 to see the statement. I believe I went to see
18 Bruce and said, you know, I want that statement,
19 I want to go over it with my client, I want to
20 know what is going on here, because something is
21 wrong. For someone to clean up Ray's language
22 is one thing. To put words in his mouth would
23 be another. Mr. Zanidean's language was not the
24 type of thing that you would necessarily want in
25 court. His daily discussion was not always

1 polite or using perhaps correct English. But if
2 it was something more than that, which it
3 appeared to be, I wanted to get on top of it and
4 I wanted to deal with it immediately.

5 Q I will come to the meeting with Mr. Miller in a
6 minute, which is the last part of the memo. But
7 just to finish up on the meeting in the parking
8 lot with Ken Cameron, what Ray is giving him, as
9 I read this, is your copy of your June 4th
10 letter, the tab 35 letter that is about to go
11 out to Mr. Miller?

12 A No. I think what he is giving him is a copy of
13 the June 4th letter, the draft.

14 Q In draft, absolutely. You have just reviewed it
15 with your client. Your client has made the
16 changes?

17 A Yes.

18 Q What I'm trying to understand here is, why is
19 Zanidean, your client, sharing a letter that you
20 are sending to the Crown with the guarding
21 police detail? What is going on there?

22 A He wanted him to know what was going on. Ray
23 wanted him to know. I don't know why. He felt
24 he should be telling him. I have some
25 suspicions why, but I can't say for sure, he

1 didn't tell me.

2 Q So you and Ray complete the draft of the letter
3 that's going to Miller, and then he confers with
4 Cameron about the contents of the letter?

5 A Ray, Susan and I complete the draft.

6 Q Yes.

7 A I just want to be clear that everyone was
8 involved.

9 Q Yes, that's apparent from the face of the
10 document.

11 A Okay.

12 Q And then he confers with Cameron about that
13 final draft of the letter?

14 A Yes.

15 Q You meet with Mr. Miller, as I understand the
16 memo --

17 A Yes.

18 Q -- is the last event of the day. And what is it
19 that you tell Mr. Miller?

20 A It is there. I told him I wish I had never been
21 involved with this thing, it was turning --
22 nothing was going the way I thought a case
23 should be going. And I felt that this was, the
24 behaviour was not appropriate. I said, I wish I
25 had never been involved, I just wanted to finish

1 the contracts, as I was, that was what my
2 retainer was, I wanted to get them done and get
3 out of there.

4 Q Leaving aside your personal feelings about the
5 matter, Mr. Kovnats, the substance of the issue
6 before you, what did you tell Mr. Miller about
7 this discovery that you had just made?

8 A I told him what my client had told me. And I
9 said that my client and I had better have a copy
10 of that statement so we could review it together
11 and I could give my client proper advice.

12 Q And what was Mr. Miller's response to this
13 information that your client was telling you
14 that his statement, that some of the wording had
15 been changed by the police and perhaps certain
16 ideas had been added by the police? What was
17 Mr. Miller's response to that issue, if you
18 recall?

19 A I don't recall the exact response. The next day
20 I had a copy of the statement with my client.

21 Q You obtained the copy?

22 A Whether it was the next day, or within a day or
23 two, I had a copy of the statement and was
24 meeting with my client with a copy of the
25 statement.

1 Q Your client gave you a copy of the statement?

2 A My client had it. At that point they had given
3 him a copy.

4 Q Did Mr. Miller give you a copy?

5 A Mr. Miller did not give me a copy.

6 Q But he may have facilitated getting a copy to
7 you?

8 A My understanding was he was going to. But,
9 again, you are asking me to remember back, and I
10 don't remember exactly so I can't say.

11 Q Fair enough. Turning to the next significant
12 event, June 6th, at tab 36?

13 A Yes.

14 Q We have another meeting with your client at a
15 restaurant. This is the one with Sergeant Paul
16 down by the river. Is that correct?

17 A That's correct.

18 Q Where your client, Zanidean, hands over these
19 documents to you, and you and Sergeant Paul get
20 into an argument about whether you are entitled
21 to take them away?

22 A Yes.

23 Q Now, again, this is one of these events where we
24 have got a lengthy account from you set out in
25 your statement at tab 1, pages 14 to 15, and I'm

1 not going to go through it in any detail. It is
2 also, you have got this separate file memo here
3 at tab 36 that contemporaneously sets out the
4 events. Again, I take it this memo at tab 36
5 was dictated the same day as the events
6 happened?

7 A Yes.

8 Q And the documents that your client hands to you
9 at this meeting in the restaurant, if we could
10 identify them, they are first of all the
11 handwritten history at tab 4; is that correct?

12 A Yes, that is correct.

13 Q And this is the document that your client told
14 you about at the June 3rd meeting that he was
15 preparing?

16 A That's what he gave me after telling me he was
17 preparing it, so I assume that to be the
18 document, yes. And he actually declared it
19 before me under oath.

20 Q It is dated June 5th, and you notarize it on
21 June 6, on the last page?

22 A Yes.

23 Q Is that your signature on the last page under
24 the jurat?

25 A Yes. You can even read it.

- 1 Q And the second document that he gives you is the
2 police statements, the copies of the police
3 statements that you have just been telling us
4 about?
- 5 A Yes, at tab 37.
- 6 Q Those are at tab 37, and again we see various
7 annotations on them, initialled by R.Z., Ray
8 Zanidean; is that correct?
- 9 A That's correct.
- 10 Q And Susan Fehr signs her name as well?
- 11 A Yes.
- 12 Q And those are the documents that, when you were
13 taking them away, Sergeant Paul became concerned
14 as to whether they were police property and
15 whether you were entitled to take them. And you
16 informed him that they had solicitor/client
17 information noted on them. Is that correct?
- 18 A That's correct.
- 19 Q As I read your memo at tab 36, when you received
20 these documents from your client in the
21 restaurant, you called Mr. Miller from the
22 restaurant, is that correct? If you look at tab
23 36 in the middle, it appears to be going on
24 before you go out to the parking lot?
- 25 A I don't know whether we did it in the restaurant

1 or parking lot, I have to read my memo. I know
2 I contacted him. I contacted a bunch of people
3 that day.

4 Q If you look right in the middle of tab 36, you
5 see a paragraph that starts,

6 "Miller then calmed down and we agreed that
7 he would call me later today after getting
8 the information from Orr."

9 A Yes.

10 Q And the next paragraph says,

11 "I then went out to the car with Ray."

12 A Yes. So we did it inside. I phoned someone
13 else first, but it is right there so --

14 Q Did you have a cell phone with you?

15 A Yes.

16 Q You are calling on your own cell phone?

17 A I called on my cell phone.

18 Q Now, what Mr. Miller says to you, according to
19 the notation here, is that he would call you
20 later after getting the information from Orr.

21 Can you assist us as to what it was that
22 Mr. Miller needed to get from Corporal Orr?

23 A All right. All the documentation with respect
24 to the witness protection, in the course of the
25 conversation we discussed the statement, this is

1 the problem that had come up, and we discussed
2 finalizing and memorializing our agreement. We
3 had to know where we were going. So it wasn't
4 just one topic, it was two or three topics that
5 had been discussed on the phone.

6 Q What is it that he needs to get from Orr?

7 A He needed to get a contract from Orr for us to
8 review, to see if Ray would either go with that
9 contract, or we would go with a cash settlement
10 payment.

11 Q So this refers back to either the two options of
12 either the Witness Protection Program or the
13 cashing settlement option?

14 A Yes.

15 Q And you wanted to see it in writing in order to
16 consider which option to accept?

17 A That's right.

18 Q At this tab we have also inserted behind your
19 memo a series of phone messages. This is from
20 the Department of Justice file, phone messages
21 that were disclosed to us, apparently from
22 Mr. Miller's office. Two of them are dated
23 June 6th involving calls from you apparently at
24 the restaurant?

25 A Um-hum.

1 Q So there was some difficulty making contact, it
2 appears. And then we have, if you turn the tab
3 sideways, you see at the bottom of the page
4 there is a note running the other way on the
5 left-hand side in handwriting?

6 A Yes.

7 Q It says B. and then D.K., your initials?

8 A Yes.

9 Q "Expecting a phone call from the client in
10 five minutes re incident with the police
11 yesterday. Client ready to talk...",
12 and it is unclear whether this is June 6th or
13 June 5th, it doesn't have a date.

14 "Client ready to talk to defence counsel -
15 involving or trying to involve Mr. Garson -
16 feels like a yoyo."

17 A Yes.

18 Q And could you assist us as to what this message
19 is all about? Does this look like it is a
20 message from you, first of all?

21 A It appears to be.

22 Q And what is the note,

23 "Client ready to talk to defence counsel."

24 A My client wanted to talk to defence counsel.

25 Q Again, is that a reference back to the

1 instructions he gave you in the tab 3 memo,
2 before he left for Alberta, that we reviewed in
3 detail at page 2?

4 A I think he gave me those instructions on two or
5 three or four occasions, a number of occasions,
6 I don't know how many.

7 Q So he is still using, as a bargaining tactic,
8 this idea that he will go to defence counsel or
9 the media and blow the whole thing out of the
10 water; is that fair?

11 A What it is saying here, on this message, what it
12 is indicating is that my client is talking about
13 going to defence counsel.

14 Q And why would that be a useful piece of
15 information to give to Mr. Miller?

16 A Because Mr. Miller did not want him talking to
17 defence counsel.

18 Q All right. Now, to just go back to the parking
19 lot incident with Sergeant Paul, the substance
20 of your two accounts of what happened that day
21 is not in any significant dispute, as I read it,
22 nor is there any dispute about how it was
23 resolved. You place a phone call, or he places
24 a phone call to a police inspector, and the
25 inspector essentially sides with you and says,

1 you can take the documents; is that correct?

2 A That's correct. I don't know who he talked to.
3 He said he talked to a police inspector. I
4 wasn't on the phone.

5 Q The one area of disagreement is over details
6 that I'm not overly interested in, but I'm
7 obliged to put them to you. Are you sure that
8 Sergeant Paul stood in front of your car?

9 A Yes.

10 Q Are you sure that he leaned on the hood of your
11 car?

12 A Yes.

13 Q Are you sure that he banged on your windshield
14 with his hand?

15 A Yes.

16 Q All right.

17 A I don't know if it was my car or van, my
18 vehicle.

19 Q Thank you.

20 A I had a mini van as well as a car, a small
21 little mini van.

22 Q After the events of June 6th, we have a bit of a
23 gap in your recollection as to what happens for
24 the next few days until June 10th, is that
25 correct? And we have no dockets between

1 June 6th and June 10th?

2 A No, I didn't hear anything.

3 Q And your account of that is set out in your
4 statement at tab 1 at page 15, that you
5 essentially hear nothing for four days at this
6 rather critical juncture?

7 A That's correct.

8 Q And was it ever cleared up to you -- you can see
9 it is at the bottom of page 15 of your
10 statement, tab 1, page 15, that you heard
11 nothing from Zanidean until June 10th, and your
12 dockets confirm that. Was it ever cleared up
13 for you why you had no involvement in the next
14 four days leading up to Zanidean's testimony on
15 the 11th?

16 A I don't recall it being cleared up. It may have
17 been, but I don't recall it.

18 Q Were you told, or did you glean or infer what
19 had gone on in those days, in the four days
20 before you next saw him?

21 A I believe he was preparing for trial.

22 Q Okay. On June 10th, in any event, the day
23 before he is to testify, we get a flurry of
24 activity. If we look at your dockets, tab 2,
25 you see the third page of your dockets at tab 2,

1 there is four dockets for June 10th, including
2 two, two hour meetings, and a couple of phone
3 calls, including a phone call from Bruce. Do
4 you see that?

5 A Yes, that's correct. One of those meetings took
6 place in the evening, it is clearly marked there
7 was a daytime meeting and an evening meeting.

8 Q Yes. Can you assist us; this is Monday,
9 June 10th, commencement of the second week of
10 the trial. I believe that Gumieny is on the
11 stand, Zanidean is about to get on the stand.
12 What is going on here in this sudden flurry of
13 activity that you get involved in?

14 A I believe we were still trying to work out --

15 Q I don't have any documents that can assist you.

16 A I don't have any documents either.

17 Q And your witness statement at tab 1, pages 15 to
18 16, records your best recollection of it, which
19 is a bit uncertain?

20 A That's because it is uncertain.

21 Q Do you have any clear recollection of --

22 A I have no clear recollection.

23 Q -- these final events?

24 A No, I believe what we were doing was that there
25 was discussions over whether or not we had a

1 deal, there wasn't a deal, there is a deal,
2 there isn't a deal, that sort of thing. I don't
3 know exactly what those meetings were about, I'm
4 sorry.

5 MR. LOCKYER: I didn't hear.

6 MR. CODE: "I don't recall what those meetings
7 were about, I'm sorry."

8 BY MR. CODE:

9 Q Did you have the impression by the time your
10 client got into the witness stand that an
11 agreement had been finalized or not?

12 A In my opinion, we had an arrangement but it was
13 never memorialized. And my client was being
14 told by others that unless it was memorialized,
15 there was no arrangement.

16 Q And you say he was told by others because --

17 A That's what he told me.

18 Q That the advice that he received from others was
19 that there was no agreement?

20 A That's correct.

21 Q And your account of that at the top of page 16
22 of your statement, tab 1, was that you took the
23 view that that was inaccurate, that there was an
24 agreement, there simply wasn't a written record
25 of the agreement?

- 1 A That's correct.
- 2 Q And the substance of the agreement was what?
- 3 A That either we would have the witness protection
4 program or the \$30,000 payment. I think we went
5 back to the June 4th letter and that -- we had
6 an agreement in principle again because -- we
7 went back to the June 4th letter, and we had an
8 agreement in principle that we go either route A
9 or route B, and these other issues will be
10 resolved.
- 11 Q Now, these would appear to be fairly significant
12 meetings, they are on the eve before his
13 testimony, they appear to be lengthy. Why is
14 there no record? Why is there no memo to file
15 in relation to these June 10th events, unlike
16 the June 3rd and June 6th events?
- 17 A I don't know. I can't say.
- 18 Q I want to review three aspects of Mr. Zanidean's
19 trial testimony with you.
- 20 A Wait a minute, there is one other thing. My
21 client was listening to others more than me, at
22 that point.
- 23 Q Did you have a sense that you knew what the
24 agreement was, if there was an agreement?
- 25 A I knew what Mr. Miller had promised me.

1 Q You keep going back to the December 4th letter
2 as --

3 A No, no, we agreed subsequent to June 4th. I
4 said, look, if you are not going to give us what
5 you promised in the beginning, then give us
6 this, the money. And Miller said you will get
7 one or the other, or words to that effect. I
8 don't know the exact words, I am sorry, I can't
9 tell you the exact words. But my general
10 impression was that we either are going to go
11 the witness protection route or the \$30,000
12 route. But they didn't want me involved and my
13 client was dealing with them on his own without
14 me.

15 Q Perhaps I can jump ahead for a moment, since
16 thematically this is a useful point to do it.
17 If you look at the final letter you get from
18 Miller at tab 42 on June 21st -- do you have tab
19 42, the June 21st letter?

20 A Yes, I do.

21 Q Where he appears, as I read it, to be telling
22 you of a final agreement that has been reached.
23 He describes it as,

24 "The plan arranged for your client is one
25 that has been worked out with the police

1 and is one with which your client is
2 comfortable."

3 A That's correct.

4 Q Are you aware of this plan worked out with the
5 police which your client was comfortable with?

6 A No. This was sent to me as a draft letter, I
7 got a copy as a draft letter. It was faxed to
8 my office, and it was news to me.

9 Q It reads like Mr. Miller is telling you about
10 what has been negotiated in your absence between
11 your client and the police?

12 A That's correct.

13 Q Is that the way you read it?

14 A That's the way I read it.

15 Q Then coming back to the events of June 10th, and
16 when I asked you why you hadn't made a memo to
17 file about those June 10th events, you mentioned
18 that you had the sense that your client was
19 dealing with others. And how did that impact on
20 your decision whether or not to make a memo to
21 file about what was going on?

22 A You know what, I can't sit here today and
23 remember exactly what it is. I just think that
24 I was concerned that he was doing his own thing
25 and it wasn't me that was going to memo this

1 thing or deal with it.

2 Q Tab 38, Mr. Kovnats, is your client's testimony,
3 and I know you weren't present for it in court,
4 but I want to take you to three aspects of that
5 testimony and ask you whether, based on the
6 facts within your knowledge, that testimony was
7 accurate or whether it was misleading. Could I
8 take you first of all, the first passage that I
9 want to deal with, tab 38, starting at page 42.
10 You see in the middle of page 42, Mr. Brodsky is
11 questioning him about the Swift Current arson,
12 and he agrees that he burned down the house at
13 line 12 to 14. Do you see that? He admits that
14 he committed the arson?

15 A Yes.

16 Q And tab 17, sorry, page 17 to 18, he admits that
17 the police found out about it, but that he has
18 not been charged yet. Do you see that?

19 A You are talking about lines 17 and 18, sir?

20 Q Yes, I am.

21 A Yes, I see that.

22 Q I'm just giving you the context for the question
23 that I'm interested in. At the bottom of the
24 page he states at line 23, after he told -- the
25 police found out about the Swift Current arson,

1 he says,

2 "...they give the Swift Current RCMP the
3 information I give them, and that was it.

4 Then I talk to my lawyer."

5 And this is the question that I'm interested in
6 at the top of page 43:

7 "Q You talked to your lawyer?

8 A Right.

9 Q About making a deal to avoid being
10 charged in Swift Current?

11 A No, that's not what I said."

12 Did your client, Reath Zanidean, talk to his
13 lawyer about making a deal to avoid being
14 charged in Swift Current?

15 A At some point, yes, definitely.

16 Q So when he answered,

17 "No, that's not what I said...",

18 that's not a full, fair and accurate response;
19 is that correct?

20 A I wouldn't have given that response had I been
21 him.

22 Q Over the page at page 44, the second issue I
23 want to draw to your attention, this is
24 testimony about the real estate deal, the house
25 deal, status of his house on Chelsea. In the

1 middle of page 44, line 13, Mr. Brodsky says,

2 "And you had to move out of your house?"

3 and Zanidean says,

4 "Right."

5 And Mr. Brodsky says,

6 "You are being paid for that?"

7 And the answer is,

8 "Paid for moving out of the house, no.

9 Q What are you being paid for?

10 A I'm not being paid for nothing. All as
11 they're doing is paying my accommodation
12 where I'm staying right now."

13 And if you could just skip forward to the next
14 page, he comes back to the real estate deal.

15 A I don't have a next page, sir.

16 Q Page 45?

17 A I do not have that in my --

18 Q You don't have page 45 in your binder. Perhaps
19 Mr. Dawe can give you his book.

20 So he asks him first of all about moving

21 out of the house and whether he was paid for

22 that, and he says no, all they are paying is my

23 accommodations, where I'm staying right now.

24 And then if you turn the page to page 45, do you

25 have that?

1 A I have that now.

2 Q Line 16, he comes back to the house, he says he
3 is getting \$50 a day for his per diem, for his
4 food. And then line 16 Mr. Brodsky says,
5 "And your mortgage payments?"

6 And Zanidean says,

7 "My mortgages payments are in arrears right
8 now since then, and I'm on the verge of
9 losing my house; and you can check that
10 out."

11 Mr. Brodsky says,

12 "What arrangements have you made for that?"

13 And his answer is,

14 "I have made no arrangements for that."

15 Had Mr. Zanidean made no arrangements about the
16 house?

17 A In my opinion, we had made arrangements, but
18 Mr. Zanidean was taking the position that there
19 were no arrangements because there was nothing
20 in writing, and that's why he hadn't signed the
21 final arrangements with respect to the house
22 sale.

23 Q I appreciate that, we have the whole story from
24 you. My question is simply, had you made
25 arrangements in relation to the house?

1 A I believed I had.

2 Q Had his moving expenses been paid for moving out
3 of his house?

4 A That I can't tell you. They weren't paid to me.

5 Q That's fair enough. The monies in relation to
6 that appear to have been funnelled directly to
7 the police, so you are quite right on that
8 point.

9 So are Mr. Zanidean's answers in relation
10 to losing his house and no arrangements being
11 made in relation to it, are they full, fair and
12 accurate, in your view?

13 A It depends on your view of the situation. I
14 would not have answered that way, but I can
15 understand how he would have.

16 Q All right. Because he was taking the position
17 that it was a package deal, it is all or
18 nothing?

19 A That appears to be the case. He was being given
20 advice by others at that point a lot more than
21 myself.

22 Q Finally, on the living expenses issue, if you go
23 back to page 44, at line 19 he raises the point
24 of somebody is paying his accommodations right
25 now. And at line 21, page 44, line 21.

1 "Somebody is paying your living expenses?"

2 A They are paying for my room and my
3 meals."

4 Do you see that?

5 A Yes.

6 Q And then over the page at page 45 it continues
7 at line 9, Mr. Brodsky says,

8 "For how long will they continue to pay for
9 your room and board?"

10 And then he says,

11 "That's a pretty good deal, isn't it?"

12 And Zanidean answers,

13 "Until the end of the day, unless I'm
14 needed tomorrow."

15 He appears to say that paying for his current
16 expenses will terminate after his testimony.

17 And then Mr. Brodsky comes back to it at page
18 46. Do you have page 46, line 14? He says,

19 "I engaged a lawyer to take care of the
20 witness protection program."

21 Do you have that?

22 A Yes, I see that.

23 Q And Mr. Brodsky says,

24 "Wasn't that payment of money?"

25 And his answer is,

1 "No. What that is is relocation and new
2 identity, if needed."

3 And Mr. Brodsky says,

4 "And start-up costs?"

5 And his answer is,

6 "They never mentioned start-up costs."

7 so my question to you is, were the support
8 payments for his room and board to terminate
9 immediately after his testimony?

10 A I don't know.

11 Q Had there been no mention --

12 A I want to be clear, I didn't negotiate that part
13 with the police and/or the Crown.

14 Q Fair enough.

15 A I'm not saying one way or the other, I don't
16 know.

17 Q Fair enough. Had there been no mention of
18 start-up costs?

19 A By whom?

20 Q Well, the question is about the negotiations, as
21 I read it?

22 A Well, I don't know.

23 Q Had your side mentioned start-up costs?

24 A I believe I did, but I think what was being
25 offered by the police was different at that

1 point in time. All right. And I have to go
2 back, I would like to go back to the tab where
3 Sergeant Anderson gave us that agreement. I
4 would like to review that agreement, if I can.

5 Q Let's just deal with your side, first of all.
6 Your original letter of December 14 at tab 7,
7 has an express item, item 15, that asks for
8 start-up costs?

9 A That's correct.

10 Q And in terms of the other side of what they were
11 offering, had Mr. Miller mentioned a cash
12 settlement payment?

13 A To me?

14 Q Yes?

15 A We had discussed it, yes.

16 Q And you passed that on to your client? You
17 informed your client of that?

18 A A cash settlement payment, yes.

19 Q Thank you. Now, the final events, June 19th,
20 June 20th and June 21st, we know significant
21 developments happened in which you are involved,
22 and yet you have no dockets for those three
23 days. If we look at your tab 2 dockets, there
24 are no dockets at all for June 19th, 20th and
25 21st, is that correct? There is a gap in your

1 dockets between June 14th and June 28th, tab 2,
2 page 3?

3 A I see the gap.

4 Q And you've tried to explain this in your
5 statement at tab 1, page 17, you have offered an
6 explanation for why that might have happened,
7 that you might have been out at your cottage at
8 this time in June, and you suggest a number of
9 ways in which this may have happened. Is that
10 correct?

11 A Yes. Every year at that time, when my kids were
12 young, I was away Monday, Tuesday, Wednesday,
13 sometimes even Thursday, I would be in touch by
14 cell phone, but I was not -- I would go away
15 with my kids.

16 Q So let me just see if I can help you with the
17 three events on those three days, and you tell
18 me whether this refreshes your memory or not.
19 We have no documents from you about these
20 events.

21 On June 19th, if you look at tab 40,
22 Corporal Orr has a record of a final meeting of
23 everybody?

24 A What day of the week was that?

25 Q June 19th, the first of these three days, I'm

1 going to go through the 19th, 20th and 21st.

2 A What day of the week was it?

3 THE COMMISSIONER: What day of the week?

4 THE WITNESS: I asked three times, what day of
5 the week was it.

6 BY MR. CODE:

7 Q I can try and calculate it for you. I would say
8 it was a Wednesday, the 3rd we know is a Monday,
9 so the 10th and 17th would be Mondays, so this
10 is a Wednesday.

11 A What tab am I going to here?

12 Q I'm at tab 40. I'm going to be at 40, 41 and
13 42, June 19th, June 20th and June 21st?

14 A Just give me a second here. Was the 2nd a
15 Sunday?

16 Q Yes?

17 A I thought so, because I went to my mom's.

18 Q Mr. Kovnats, all I want to do is ask you to read
19 this note and ask you if it refreshes your
20 memory about this meeting. The 19th is a
21 Wednesday.

22 A Okay. All right.

23 Q Do you have that note in front of you at tab 40?

24 A Yes.

25 Q And Corporal Orr records a meeting with you,

1 your client, Mr. Miller and himself. You see
2 his note. He and Mr. Miller had discussed the
3 relocation fee idea prior to the meeting, and
4 the note says that they put it to you, and it
5 says,

6 "The idea of a relocation fee is attractive
7 to Zanidean et al, but he was promised the
8 sun and the moon by the Winnipeg City
9 Police in the first instance and is
10 sticking with that misconception. I would
11 imagine that that will be the way that they
12 will go and that witness protection is out
13 of the picture, but we will see."

14 A Okay.

15 Q Does that note help refresh your memory about
16 the June 19th meeting?

17 A Not in particular, but I can remember that sort
18 of thing going on. I don't remember the exact
19 detail of the meeting. I apologize. I don't.

20 Q It is consistent with the general --

21 A It is consistent with the general theme of what
22 was going on, yes.

23 Q All right. Tab 41 is the next day, June 20th,
24 where we have a report from Sergeant Paul, it is
25 not a contemporaneous report, it is done over

1 two years later, but he records a very dramatic
2 event. And particularly if you look, do you see
3 about the third bullet from the bottom of the
4 page he records what happens on June 20th, that
5 there were numerous phone calls between Zanidean
6 and his attorney, presumably you.

7 "He became increasingly upset as the day
8 progressed, finally exploding, accusing the
9 writer of screwing up the package. The
10 writer finally had enough of Zanidean's
11 ranting and raving and argued with him.
12 Zanidean threatened to then go to the press
13 and tell the press it had all been lies and
14 that would really fuck us."

15 And the police at the next bullet end up
16 terminating the witness protection arrangements
17 for him. And then the final bullet at the
18 bottom of the page is, he obtains the telephone
19 records from the hotel manager, and over the
20 page he notes that most of the calls were to
21 957-1700, the number of his lawyer, David
22 Kovnats, but also one call to Greg Brodsky,
23 defence counsel.

24 Was 957-1700 your telephone number at the
25 time?

1 A Yes, still is.

2 Q Does that account of the events of June 20th
3 help refresh your memory as to what happened
4 that day?

5 A Not specifically that day. I mean, I remember
6 that Ray was upset and there was a lot of
7 difficulty.

8 Q And do you remember that he was essentially
9 expelled from Winnipeg Police protection as a
10 result of his argument over him threatening to
11 go to the press and say his testimony had all
12 been lies?

13 A I never knew why he was expelled.

14 Q Tab 42 is the final letter that you received the
15 next day, June 21st, that we briefly looked at
16 already, the apparent agreement reached with the
17 police and your client, that has a \$20,000 cap
18 on relocation expenses. And my question is, do
19 you have any understanding or idea of how that
20 \$20,000 figure was arrived at, where and who
21 reached this agreement and came up with this
22 number?

23 A Absolutely no idea.

24 Q And in fairness to you, the letter seems to be
25 telling you this. The letter says it is

1 strictly for discussion purposes for approval by
2 the Deputy, but it is a signed letter that we
3 know is faxed to you. Was it ever clarified to
4 you whether the Deputy ever approved the \$20,000
5 payment?

6 A I would have to look at my file. I gave you
7 guys a copy of my complete file. I know that we
8 got the money eventually, or my client got the
9 money eventually, so I would imagine it was
10 approved.

11 Q It is res ipsa loquitur, isn't it?

12 A Yes.

13 Q And we in fact have a second copy of the letter,
14 the next page, which has Mr. Whitley
15 corresponding or communicating with Mr. Miller
16 about it, and it apparently receives the
17 Deputy's approval.

18 Finally, what we know happens on June 21st
19 is the meeting with your client to sign the
20 property agreement that we already dealt with
21 back at tab 27.

22 Do you recall these events all coming to a
23 head on these three days, June 19th, June 20th
24 and June 21st, resulting in the exchange of
25 these documents?

1 A In detail, no. This thing, they had made their
2 own deal without me. I then was finalizing the
3 transaction. If I had been involved more in the
4 negotiation of it, I would probably remember it
5 better. I don't recall the exact days anymore.

6 Q Mr. Commissioner, I have got one last question,
7 if you will indulge me, we are two minutes over,
8 three minutes over, but I can finish this up
9 with one final document, and then my friends
10 will have all of my examination to consider
11 overnight, if that's agreeable.

12 THE COMMISSIONER: Yes.

13 BY MR. CODE:

14 Q Tab 44 is the last document that I want you to
15 look at, Mr. Kovnats, please. And this is a
16 report that Sergeant Anderson prepares in the
17 fall in which he goes back over -- he retraces
18 his steps for the past year, specifically in
19 relation to Swift Current and immunity on the
20 arson charge. And there is a small part of it I
21 wanted to ask you about. Do you have tab 44 in
22 front of you?

23 A Yes, I'm reading it right now.

24 Q If I can direct you to the bottom of page 2, to
25 save you some time, it is just a couple of

1 paragraphs that I want you to look at. You see
2 at the bottom of page 2, he refers to,

3 "On the 11th of June, Zanidean testified at
4 the murder trial."

5 Do you have that?

6 A Yes.

7 Q So that fixes the time frame that they are
8 talking about. And then over the page at the
9 top of page 3 are the two paragraphs that I want
10 you to look at. Do you have the paragraph at
11 the top of page 3?

12 It says,

13 "On that date...",

14 namely June 11th,

15 "...at the conclusion of Zanidean's
16 testimony, Sergeant Paul and I informed
17 Zanidean that we had assurances from Swift
18 Current RCMP that he would not be charged
19 with the arson that he had admitted to us.
20 Zanidean expressed disbelief but we assured
21 him that the decision not to charge him
22 came from the officer in charge of the
23 investigation. Prior to this date,
24 Zanidean clearly expected to be charged
25 with the Swift Current arson."

1 If we just pause there for a moment. Could I
2 ask you whether you were ever told by your
3 client that immediately after testifying he had
4 met with Officers Paul and Anderson, who had
5 informed him that he had immunity on the Swift
6 Current arson based on RCMP undertakings?

7 A No.

8 Q And did your client, the assertion that prior to
9 that event Zanidean clearly expected to be
10 charged with the Swift Current arson, is that
11 consistent with your understanding of your
12 client's expectations?

13 A It shouldn't have been.

14 Q What do you mean by that? Explain that?

15 A Well, I don't know what he expected, but he
16 shouldn't have expected that, because we had
17 been promised as early as December, if not
18 before that, that he wouldn't be.

19 Q All right. And then carrying on in the next
20 paragraph,

21 "Negotiations relating to Zanidean's long
22 term protection continued at this time...",
23 that's the post trial time, after June 11th,
24 "...and involved Corporal Tom Orr, Staff
25 Sergeant Vandergraaf, Zanidean, his lawyer,

1 David Kovnats, and senior Crown Attorney,
2 Bruce Miller. Zanidean's immunity became a
3 part of the protection agreement reached by
4 Miller and lawyer Kovnats."

5 And my question to you is, was immunity raised
6 in the post-trial period and became part of the
7 immunity agreement in that post-trial period, in
8 your negotiations with Mr. Miller?

9 A I don't recall that.

10 Q All right. When was it that you had raised
11 immunity with Mr. Miller?

12 A Before testimony.

13 MR. CODE: All right. Thank you very much.

14 Those are my questions.

15 MR. ABRA: Mr. Commissioner, Mr. Kovnats has
16 made reference to a file that he has got with
17 him at his desk, that he has been paging through
18 some documents, and we don't know what they are.

19 THE WITNESS: Most of those documents, sir, if
20 you take a look through these papers, I have a
21 personal file.

22 MR. ABRA: What I'm wondering is whether the
23 personal file is the same as in the two books of
24 documents? Are there any documents in your
25 personal file that are different than what is in

1 the two books of documents?

2 THE WITNESS: There is some personal notes in
3 there.

4 MR. ABRA: I would like to see those.

5 MR. CODE: I think if I could assist here. The
6 process, when we got the waiver of
7 solicitor/client privilege was that Mr. Giasson
8 attended at Mr. Kovnats' office and photocopied
9 the file. And we then disclosed the file in a
10 photocopy form. Mr. Kovnats has got the
11 originals of the file, which is what he has been
12 referring to.

13 MR. ABRA: Is that that binder, the one that we
14 got a couple of weeks ago that says "further
15 Kovnats disclosure"?

16 MR. CODE: Yes.

17 MR. ABRA: Fine.

18 MR. CODE: Let me be clear that we did not take
19 every single scrap of paper in that file,
20 because the waiver of solicitor/client
21 privileges was subject matter specific. So if
22 there was a document in the file that was not
23 covered by the subject matter waiver, Mr.
24 Kovnats has kept it. So, we believe we have
25 every document covered by the subject matter

1 waiver, which we then disclosed in the binder
2 that my friend Mr. Abra is referring to. So it
3 would have been better if, when Mr. Kovnats came
4 to court today, I simply gave him the photocopy
5 to refer to instead of him bringing his original
6 file. But that was my mistake in not taking
7 care of that.

8 MR. ABRA: Just so that I --

9 THE COMMISSIONER: Well, Mr. Kovnats, have you
10 referred to anything today in your file that was
11 not disclosed to the Commission?

12 THE WITNESS: No.

13 THE COMMISSIONER: All right. I will let you
14 and Mr. Code and Mr. Kovnats try and sort out
15 any other issues over the evening.

16 MR. ABRA: That's fine.

17 THE COMMISSIONER: Thank you. Tomorrow we go
18 from 9:30?

19 MR. CODE: Start time is the same, and the
20 finish time is changed.

21 THE COMMISSIONER: And it is 1:30.

22 THE CLERK: All rise. This Commission of
23 inquiry is now adjourned.

24 (PROCEEDINGS ADJOURNED AT 5:00 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

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able 2439:4 2441:18 2483:4,5 2494:9 2503:17 2538:12 2538:14 2540:8 2567:23 2569:16	accounting 2449:13 2449:20 2450:22 accounts 2586:20 accuracy 2441:21 2446:25 2496:7 2538:8	admissibility 2438:10 admissible 2441:5 2445:23 admission 2355:18 2361:14 2376:9 2377:1,10 2378:10 2392:15 2440:12	agreeable 2608:11 agreed 2375:8 2380:1 2399:11 2420:11 2426:5 2429:21 2430:1 2431:14 2458:19 2460:9 2462:9 2463:23 2486:8 2513:13 2534:11 2547:22 2549:18 2549:24 2556:5 2583:6 2592:3	alive 2372:12 2386:19 2426:14 allotment 2505:11 allowance 2505:11 allowed 2423:5,7 2538:19 allowing 2482:20 altercation 2541:17 altered 2524:11 2573:8 alternative 2482:12 2507:22 2564:3
Abra 2347:14 2392:5 2404:8,11 2442:20,25 2443:15 2611:15 2611:22 2612:4 2612:13,17 2613:2,8,16	accurate 2369:11 2389:13 2410:17 2416:6 2418:20 2453:5 2459:8 2547:2,3 2594:7 2595:18 2598:12	admits 2594:13,16 admitted 2362:16 2451:22 2571:12 2609:19 admitting 2440:18 adopt 2443:12 2556:18 advice 2493:8 2494:1 2495:19 2551:5 2573:10 2574:10 2576:15 2579:11 2590:18 2598:20	agreeing 2515:24 2522:15 2545:25 agreement 2385:17 2413:19 2416:1 2417:8 2453:18 2460:7 2461:5,8 2463:17,19 2485:4,8 2499:10 2499:12 2500:2,7 2511:9 2513:19 2514:2 2517:25 2521:25 2524:4 2528:9 2535:16 2536:2,4 2539:12 2539:18 2540:17 2540:18 2542:3,4 2542:22 2546:10 2547:19,20 2548:10 2554:20 2556:8 2558:19 2584:2 2590:11 2590:19,24,25 2591:2,6,8,24,24 2592:22 2601:3,4 2606:16,21 2607:20 2611:3,7	amplification 2356:4 Anderson 2348:4 2350:14 2363:13 2365:21 2367:5 2375:14,20 2410:2 2413:15 2422:6 2434:3 2448:10 2455:1 2470:16 2478:3 2574:23 2601:3 2608:16 2610:4 Anderson's 2448:8 and/or 2505:6 2559:11 2600:13 angry 2499:24 annotations 2582:7 announce 2434:17 answer 2358:24 2359:6,10 2361:11 2404:12 2407:19 2416:24 2417:1,25 2419:19 2424:23 2425:6 2460:1 2509:5 2529:7 2568:6 2596:7 2597:13 2599:25 2600:5
absence 2419:19 2420:1 2425:13 2469:9 2593:10	accurately 2459:1 2500:16 2526:2 2533:15 2541:10 2546:23	admissions 2356:8 2359:21 2360:1,7 2378:22 admits 2594:13,16 admitted 2362:16 2451:22 2571:12 2609:19 admitting 2440:18 adopt 2443:12 2556:18 advice 2493:8 2494:1 2495:19 2551:5 2573:10 2574:10 2576:15 2579:11 2590:18 2598:20	agreement 2385:17 2413:19 2416:1 2417:8 2453:18 2460:7 2461:5,8 2463:17,19 2485:4,8 2499:10 2499:12 2500:2,7 2511:9 2513:19 2514:2 2517:25 2521:25 2524:4 2528:9 2535:16 2536:2,4 2539:12 2539:18 2540:17 2540:18 2542:3,4 2542:22 2546:10 2547:19,20 2548:10 2554:20 2556:8 2558:19 2584:2 2590:11 2590:19,24,25 2591:2,6,8,24,24 2592:22 2601:3,4 2606:16,21 2607:20 2611:3,7	amount 2403:3 2515:1,11,11 2564:21,25 2565:8 amplification 2356:4 Anderson 2348:4 2350:14 2363:13 2365:21 2367:5 2375:14,20 2410:2 2413:15 2422:6 2434:3 2448:10 2455:1 2470:16 2478:3 2574:23 2601:3 2608:16 2610:4 Anderson's 2448:8 and/or 2505:6 2559:11 2600:13 angry 2499:24 annotations 2582:7 announce 2434:17 answer 2358:24 2359:6,10 2361:11 2404:12 2407:19 2416:24 2417:1,25 2419:19 2424:23 2425:6 2460:1 2509:5 2529:7 2568:6 2596:7 2597:13 2599:25 2600:5
absent 2451:2	accusing 2605:8 achieve 2515:2 acknowledge 2493:4 acknowledgment 2492:22 acquire 2362:18 acquired 2495:15 Act 2521:12 acted 2444:17 Acting 2407:25 action 2379:5 actions 2354:9 activity 2588:24 2589:13 acts 2444:21 actual 2428:20 2462:25 2513:23 2514:1 2573:20	admits 2594:13,16 admitted 2362:16 2451:22 2571:12 2609:19 admitting 2440:18 adopt 2443:12 2556:18 advice 2493:8 2494:1 2495:19 2551:5 2573:10 2574:10 2576:15 2579:11 2590:18 2598:20 advise 2376:25 2500:21 2534:16 2550:7 2559:25 2574:3 advised 2365:20,21 2375:14 2380:7 2451:22 2452:3,6 2452:15,19,20 2534:7,13 2535:12 advises 2383:18 2448:9 2573:5,21 advising 2406:14,15 affect 2364:12 2367:24 affirm 2437:1,2 affirmed 2437:9 afford 2518:18 afternoon 2488:7 2544:17 2550:3,5 2551:14 2564:11 agency 2356:20 2360:23 2361:6 aggressive 2379:1 ago 2387:25 2443:4 2533:23 2534:3,7	agrees 2541:5 2550:12 2594:12 ahead 2350:9 2476:4 2565:15 2592:15 aided 2366:9 al 2360:18 2408:19 2409:4 2433:18 2604:7 Alan 2347:10 alarm 2464:13,13 2464:14,17 alarms 2460:9	amount 2403:3 2515:1,11,11 2564:21,25 2565:8 amplification 2356:4 Anderson 2348:4 2350:14 2363:13 2365:21 2367:5 2375:14,20 2410:2 2413:15 2422:6 2434:3 2448:10 2455:1 2470:16 2478:3 2574:23 2601:3 2608:16 2610:4 Anderson's 2448:8 and/or 2505:6 2559:11 2600:13 angry 2499:24 annotations 2582:7 announce 2434:17 answer 2358:24 2359:6,10 2361:11 2404:12 2407:19 2416:24 2417:1,25 2419:19 2424:23 2425:6 2460:1 2509:5 2529:7 2568:6 2596:7 2597:13 2599:25 2600:5 answered 2368:6 2474:16 2595:16 2598:14 answering 2394:4
abstract 2446:2 accede 2445:12 2517:21 accept 2365:13 2366:22,25 2384:7 2389:13 2402:11 2404:5 2422:22 2443:5 2568:5 2584:16 acceptance 2518:25 accepted 2384:8 2419:16,18 access 2422:10 2537:17 2539:16 2539:17,19,19 2540:8,8 accommodate 2434:24 2500:12 accommodation 2596:11 accommodations 2596:23 2598:24 accord 2458:10 accordion 2396:4 account 2350:8 2371:24 2372:1 2384:17 2387:16	add 2370:22 2441:8 added 2369:22 2461:5 2464:11 2464:21 2538:10 2570:17 2571:16 2579:16 addition 2511:23 additional 2538:9 2570:16 additions 2458:18 2463:6 address 2445:11 2472:9 addressed 2514:14 adds 2375:24 add-on 2397:16 adjourned 2488:2	admits 2594:13,16 admitted 2362:16 2451:22 2571:12 2609:19 admitting 2440:18 adopt 2443:12 2556:18 advice 2493:8 2494:1 2495:19 2551:5 2573:10 2574:10 2576:15 2579:11 2590:18 2598:20 advise 2376:25 2500:21 2534:16 2550:7 2559:25 2574:3 advised 2365:20,21 2375:14 2380:7 2451:22 2452:3,6 2452:15,19,20 2534:7,13 2535:12 advises 2383:18 2448:9 2573:5,21 advising 2406:14,15 affect 2364:12 2367:24 affirm 2437:1,2 affirmed 2437:9 afford 2518:18 afternoon 2488:7 2544:17 2550:3,5 2551:14 2564:11 agency 2356:20 2360:23 2361:6 aggressive 2379:1 ago 2387:25 2443:4 2533:23 2534:3,7	agrees 2541:5 2550:12 2594:12 ahead 2350:9 2476:4 2565:15 2592:15 aided 2366:9 al 2360:18 2408:19 2409:4 2433:18 2604:7 Alan 2347:10 alarm 2464:13,13 2464:14,17 alarms 2460:9	amount 2403:3 2515:1,11,11 2564:21,25 2565:8 amplification 2356:4 Anderson 2348:4 2350:14 2363:13 2365:21 2367:5 2375:14,20 2410:2 2413:15 2422:6 2434:3 2448:10 2455:1 2470:16 2478:3 2574:23 2601:3 2608:16 2610:4 Anderson's 2448:8 and/or 2505:6 2559:11 2600:13 angry 2499:24 annotations 2582:7 announce 2434:17 answer 2358:24 2359:6,10 2361:11 2404:12 2407:19 2416:24 2417:1,25 2419:19 2424:23 2425:6 2460:1 2509:5 2529:7 2568:6 2596:7 2597:13 2599:25 2600:5 answered 2368:6 2474:16 2595:16 2598:14 answering 2394:4

<p>answers 2359:14 2363:22 2416:19 2422:11 2568:8 2598:9 2599:12 anxious 2548:15 anybody 2360:2 2362:15 2363:1 2423:22 anymore 2395:18 2608:5 anyway 2381:10 apologize 2471:16 2477:18 2503:8 2524:11 2567:16 2604:19 apparent 2415:16 2578:9 2606:16 apparently 2365:23 2418:13 2497:19 2528:8 2584:21 2584:23 2607:16 appear 2417:15,16 2433:23 2450:12 2467:2,23 2475:6 2475:11 2476:7 2481:16 2490:14 2500:24 2513:20 2528:3 2529:22 2536:22 2544:25 2545:20 2591:11 2591:13 2598:6 APPEARANCES 2347:9 appeared 2389:3 2415:24 2508:23 2530:22 2577:3 appearing 2473:6 appears 2361:2 2388:16,19 2407:24 2433:21 2457:19 2475:1 2475:15 2477:4 2479:24 2490:10 2497:12 2501:21 2503:2,22 2505:25 2506:6 2509:19,25 2522:22 2526:18 2534:16 2536:10 2541:21 2549:21 2550:10 2582:23 2585:2,21 2592:21 2598:19 2599:15 application 2379:16 2380:7 2381:2 2382:2,12 2429:5</p>	<p>2429:25 2431:16 2431:20 2432:7 2433:8,14 2478:4 2478:5,9,11,12 2536:17 2537:4 2557:9 apply 2358:19 2442:13 appointed 2614:6 appreciate 2357:4 2438:6 2441:10 2466:19 2467:10 2529:5 2535:22 2536:11 2555:5 2566:13 2597:23 appreciative 2438:19 approach 2360:22 2380:17 2385:20 2404:15 appropriate 2423:9 2445:11 2554:19 2578:24 appropriately 2532:17 2576:7 approval 2417:13 2419:15 2607:1 2607:17 approved 2417:4 2607:4,10 approximately 2373:14 2525:3 April 2349:3 2361:4 2361:10,19 2369:1 2371:10 2371:10 2377:8 2378:5 2380:16 2380:18 2382:11 2384:6,7,9,18 2385:24 2387:13 2388:13 2389:2,7 2389:18 2390:22 2400:5 2401:8,13 2402:15 2403:20 2412:24 2413:20 2413:22 2415:4 2415:10,22,23 2419:6,10,23 2426:3 2497:9,12 2497:13,15 2498:7,9,11 2499:21 2501:18 2502:3 2503:2,13 2503:19,24 2506:4 2509:16 2510:5 2511:2,15 2514:5,7,11,13,15</p>	<p>2514:17 2517:25 2526:15 area 2359:4 2426:8 2426:14 2485:11 2511:11 2514:21 2587:5 areas 2357:12,13 2441:13 2447:3 argued 2605:11 argument 2504:4,4 2539:1,5 2541:24 2543:4 2580:20 2606:10 arising 2473:11 2504:17 2517:9 armed 2352:23 arrange 2483:22 2569:6 arranged 2369:19 2503:24 2557:10 2558:20 2592:24 arrangement 2426:4 2541:12 2544:19 2550:2 2561:4 2569:9 2571:9 2590:12 2590:15 arrangements 2435:18 2525:9 2527:20 2534:20 2597:12,14,15,17 2597:19,21,25 2598:10 2605:16 arrears 2511:20 2516:17,22 2520:9 2525:14 2525:16 2597:7 arrest 2537:10 arrested 2405:7,18 2406:9 2544:9 arrive 2566:8,24 arrived 2486:5 2488:9 2541:12 2542:12 2548:16 2566:15,21 2606:20 arrow 2482:11 arson 2356:2 2359:23 2361:17 2362:16 2372:24 2374:21 2376:2,9 2376:18 2377:2,9 2378:11,18 2383:5 2401:22 2403:9 2412:18 2431:3 2432:2,6 2432:16,22</p>	<p>2433:21 2455:6 2465:25 2466:14 2466:16,17 2468:19 2487:4,8 2487:15 2594:11 2594:14,25 2608:20 2609:19 2609:25 2610:6 2610:10 aside 2391:24 2392:8 2397:15 2415:22 2446:20 2579:4 asked 2352:8 2366:24 2370:17 2377:19 2380:16 2380:18,20 2392:12 2401:5 2401:25 2403:23 2405:24 2407:15 2407:18 2408:7 2429:24 2445:5 2458:12 2459:3 2461:13,18 2463:24 2474:14 2486:22 2517:5 2523:7 2524:14 2524:15 2544:4 2561:17,18 2576:9 2593:16 2603:4 asking 2356:24 2358:14 2394:18 2416:25 2476:6 2477:20 2504:9 2529:9 2556:5 2557:21 2580:9 asks 2517:7 2596:20 2601:7 aspect 2511:8 2543:6 2563:1,13 aspects 2346:2 2492:6 2502:13 2556:19 2562:24 2563:18 2591:18 2594:4 assault 2352:24 assaults 2350:23,24 assembling 2513:9 assertion 2414:10 2472:3 2530:15 2610:8 asserts 2493:21 assessments 2483:10 assignment 2516:24 2519:20 2520:23</p>	<p>assist 2426:22 2432:15,18 2438:14 2457:21 2485:1 2502:17 2534:14 2541:24 2583:21 2585:18 2589:8,15 2612:5 assistance 2360:23 2373:8 2551:4 Assistant 2347:5,6 assisted 2403:1 associate 2347:3 2551:1 Association 2347:20,21 assume 2358:1,2 2403:21,23 2496:6,8 2507:2 2581:17 assumed 2421:2 2439:19 assuming 2355:5 2391:2,12 2395:17 2397:10 2471:6 2496:5,9 2502:7 assurance 2443:5 assurances 2492:16 2609:17 assured 2609:20 attach 2520:4 attached 2390:19 2520:18 2521:13 2564:18 2571:15 2574:25 attempt 2411:4 2470:17 2507:17 attempted 2513:12 attempting 2367:24 attempts 2496:19 attend 2448:13 2475:16 2476:11 2535:23 attended 2409:25 2521:24 2522:7 2612:8 attention 2397:14 2401:6 2402:21 2469:7 2490:4 2498:9 2499:2 2595:23 attentions 2353:1 attitude 2508:2 attorney 2373:22 2386:14,22 2399:8 2605:6 2611:1</p>
---	---	---	---	--

attorneys 2391:13 2391:17,24 2392:10 2405:25 2468:6,21 attractive 2483:2 2604:6 August 2346:17 2350:1 authored 2498:6 authority 2417:12 2417:18 2467:15 2497:6 authorized 2473:10 authorizes 2566:8 available 2488:24 availed 2442:24 Avenue 2447:24 2457:15 2482:1,9 2484:13 2498:19 2511:9 2518:21 2518:24 avert 2545:1 avoid 2595:9,13 aware 2357:9 2367:9,19 2374:23,25 2408:3 2422:14 2422:17 2455:11 2466:17 2478:10 2487:3 2495:2,7 2495:22,25 2574:14,15 2593:4 awareness 2495:14 a.m 2350:2 2434:10 2434:11	2515:3,20 2516:14 2525:24 2526:8,12,16,19 2529:19 2530:9 2530:20,21,24 2531:6,17 2532:8 2533:7 2534:1 2535:4,5,16,19,21 2536:8 2537:12 2544:9 2552:22 2554:12 2556:12 2560:16 2561:10 2564:9 2566:18 2567:14 2568:10 2570:12 2571:19 2580:9 2584:11 2585:25 2586:18 2591:5,7 2592:1 2593:15 2596:14 2597:2 2598:23 2599:17 2601:2,2 2607:21 2608:17 backed 2414:11 background 2350:13 2447:7 backside 2410:15 bad 2520:12 2533:16 Baird 2550:22,23 2550:25 2551:1 balancing 2352:18 balk 2545:19,23 balking 2546:1 banged 2587:13 banker 2479:9 bargaining 2586:7 barrage 2401:18,18 base 2430:11 based 2378:22 2428:22 2430:13 2440:20 2462:3,5 2483:9 2494:8 2594:5 2610:6 basic 2473:23 2497:2 2534:18 basically 2460:6 2464:2 2491:21 2513:3 basis 2396:13 2426:22 2427:10 2445:16 2449:24 2530:14 Beaudette 2509:15 becoming 2528:8,17 bedroom 2409:25 beginning 2354:1 2394:19 2437:11	2447:6 2452:3 2504:3 2552:11 2556:6 2592:5 beginnings 2572:9 behalf 2365:24 2413:17 2429:6 2435:18,20 2463:3 2465:22 2499:18 2500:5 behaviour 2578:24 belief 2366:9 2388:15 2425:2 2426:23 2428:22 believe 2360:21 2363:11 2364:3 2367:14 2369:8 2370:12,13 2381:25 2385:4 2400:16 2412:7 2424:4 2428:2,18 2440:10 2458:18 2474:10 2479:19 2483:18 2488:21 2495:21 2498:10 2501:15 2504:14 2527:1 2529:18 2530:19,19 2538:16 2541:15 2543:16 2545:16 2555:13 2562:4 2568:25 2569:3,5 2573:17 2574:21 2576:17 2588:21 2589:10,14,24 2600:24 2612:24 believed 2524:12 2534:19 2598:1 Bell 2353:23 2354:3 2360:3 2370:13 2373:17 2412:11 belong 2385:16 benefits 2460:21 Benjamin 2437:5,8 Bergmann 2347:5 best 2364:19 2453:6 2460:25 2532:6 2589:18 better 2456:11 2469:18,19,20 2508:22,25 2579:9 2608:5 2613:3 beyond 2441:13 2444:2 2445:25 Bible 2436:25 bidding 2482:10,20 big 2510:23 2513:4	2546:1 biggest 2394:3 bike 2481:5,8,14 2562:15 bill 2418:11 2419:21 2433:17 2450:19,20 2505:15 billing 2449:5 billings 2483:10 binder 2596:18 2612:13 2613:1 binding 2561:4 bit 2353:16 2463:25 2587:22 2589:19 blank 2466:20 blanket 2445:12 block 2434:16 blow 2532:10 2586:9 blowing 2532:13 2543:11 blow-up 2408:22 board 2599:9 2600:8 Bob 2347:4 body 2367:9 2415:14,15 2434:20 boil 2511:5 2513:3 2524:3 boiled 2512:21 bond 2428:10 2561:6 book 2364:24 2368:18,19 2369:23 2371:23 2382:17,20 2383:21 2384:4 2387:2 2397:15 2431:8 2437:12 2437:15 2438:7 2519:22 2596:19 bookkeeping 2491:6 books 2486:3 2611:23 2612:1 boss 2528:10 bottom 2368:24 2370:14 2374:6 2379:12,14 2386:10 2409:12 2429:15 2449:7 2475:4,8,11 2482:11 2488:19 2491:13 2493:14 2499:1 2504:1,2	2546:5,8 2548:19 2567:3 2585:3 2588:9 2594:23 2605:3,18 2608:24 2609:2 bound 2438:16 2440:13 2546:9 2546:11,12 2547:18 2569:2,3 Brace 2450:14 breach 2424:17 break 2487:22,24 2558:4 breakdown 2567:22 2568:7 breaker 2470:22 2471:4,6 breakers 2556:4 breaking 2532:19 brief 2361:5 2434:15 2436:22 2437:14 2438:8 2541:2 briefed 2388:22 2399:8 2426:6 briefing 2399:17,23 2400:8 briefings 2355:12 2355:14 briefly 2444:3 2606:15 briefs 2475:1 bring 2406:5 bringing 2613:5 British 2453:13,14 broad 2461:4 2487:11 2489:7 broad-linking 2435:13 Brodsky 2364:16 2365:25 2366:5 2366:23 2405:13 2434:22 2435:6 2436:2 2456:8 2469:16,22 2554:3,9 2594:10 2596:1,5 2597:4 2597:11 2599:7 2599:17,23 2600:3 2605:22 brought 2402:20 2405:17,21,23 2426:10 2469:7 2480:18 2526:11 2530:21 2537:12 2544:9 2575:4,7 brouhaha 2554:10
--	---	--	--	---

<p>Bruce 2347:14 2349:3 2356:11 2360:5 2362:13 2362:14 2363:3,5 2363:9,12,25 2372:11 2373:22 2373:24 2381:12 2386:15,18,22 2390:10,15 2392:7,23 2397:21 2398:9 2398:14 2399:8 2399:15 2400:16 2401:9,14,24 2402:4 2404:20 2408:14 2410:14 2416:10 2418:11 2419:21 2426:6 2426:19,25 2428:13 2450:14 2450:15 2457:19 2462:10,12 2463:13 2464:12 2464:24 2472:15 2478:20 2479:20 2482:3 2494:15 2494:17 2508:21 2512:12 2531:2,5 2534:7,15 2540:20 2547:22 2548:1,9 2549:25 2550:3,5,6 2556:10 2568:25 2569:15 2576:18 2589:3 2611:2 Bruce's 2508:23 Bruni 2347:8 Bruno 2450:15,15 Brunswick 2569:8 building 2364:1,2 2405:17 2406:1 2406:11,24 2528:24 2537:14 2537:22 2538:3 2539:3 2544:13 2548:8,25 2549:23 2554:10 2564:13 bullet 2480:7 2482:8 2483:8 2484:16,23 2485:10 2605:3 2605:15,17 bumped 2400:25 bunch 2507:9 2583:2 bundle 2512:8</p>	<p>bundled 2512:15 buoyant 2483:25 burglar 2460:9 2461:6 burned 2594:12 burning 2367:17 2388:3 Burton 2348:4 2359:12 2360:5 2361:15,23 2371:9 2374:9,13 2374:16 2376:7 2376:12,25 2377:4 2378:7,9 2378:25 2379:22 2380:1,12,19 2383:8,11,18,22 2384:23 2388:5,9 2388:10,11,12,15 2388:19,24 2389:2,7,19 2390:1,18 2399:4 2399:18 2400:5 2400:19 2412:22 2412:24 2413:1,9 2413:20 2416:8 2417:12,17,21 2418:1,3,13,19 2419:10,12,14 2420:10 2426:2,3 2426:5 2429:19 2429:20 2430:14 2430:20 2431:1,8 2431:13 2432:1 2432:25 Burton's 2375:11 2413:23 2414:24 business 2406:18 2444:23 2543:10 2551:24 2576:9 busy 2434:25 buying 2516:2 B-E-N-J-A-M-I-N 2437:6 B.C 2460:12 2464:19 2492:10 2563:1,4 2569:8 B.H.M 2527:2</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 2429:15 calculate 2603:7 calculation 2556:9 calculations 2565:2 2565:20 calendars 2434:24 2435:1,4</p>	<p>Calgary 2405:6,18 2406:6 2497:10 2497:16 2498:11 2498:12 2499:10 2499:13 2501:22 2502:4 2503:20 2504:6,11,25 2505:13,23 2509:21 2526:9 2526:10,16,20 2527:13 call 2361:13 2373:10,14 2374:8 2375:10 2375:13 2376:7 2376:25 2377:4,8 2377:12,16,18,25 2378:2,5,7,24 2379:3,3,9 2380:11,18,19,21 2382:23 2383:3,8 2385:9,10 2386:25 2387:13 2388:6,10,20 2389:7,8 2390:10 2392:15 2399:20 2400:2 2409:5 2412:21,24 2413:1,3,22 2415:19 2417:2,7 2419:10,20 2420:9,10 2435:2 2436:23 2450:6 2493:2 2496:20 2527:9,11 2534:14 2537:17 2543:13 2544:8 2544:11 2550:17 2550:21 2551:7 2551:13,18 2554:2,11,12,12 2564:12 2566:21 2573:17 2583:7 2583:19 2585:9 2586:23,24 2589:3 2605:22 called 2353:8 2360:22 2376:10 2376:12 2378:5,6 2384:6,11 2387:11,14 2409:4 2412:2 2441:16,24,25 2528:19 2537:16 2537:25 2538:1 2582:21 2583:17 Callens 2528:10</p>	<p>calling 2434:23 2496:16 2537:13 2583:16 calls 2361:4 2371:8 2371:14 2373:13 2377:15 2384:17 2389:17 2399:18 2400:4 2403:25 2413:8 2414:25 2415:17,18,23 2459:10 2460:3 2496:12,25 2499:25 2573:18 2584:23 2589:3 2605:5,20 calmed 2583:6 Cameron 2574:20 2574:20 2575:1 2576:8,9 2577:8 2578:4,12 Cameron's 2575:9 cancelled 2525:19 canvassed 2440:22 cap 2606:17 capable 2359:8 capacity 2396:23 2436:8 capitalize 2513:12 car 2497:19 2583:11 2587:8 2587:11,17,20 carbon 2449:9,21 card 2451:5 care 2450:20 2467:1,1 2474:13 2599:19 2613:7 career 2366:18 carefully 2481:22 2529:21 2531:22 2543:9 2558:1 2559:14 carried 2436:10 2526:20 carry 2549:15 2567:7 carrying 2573:15 2574:17 2610:19 Carswell 2347:17 2393:23 2394:9 2471:10 2490:3 Carswell's 2421:21 case 2352:3,24 2353:5,10,10,13 2353:18 2354:25 2354:25 2355:6 2360:18 2367:10 2367:22,25</p>	<p>2386:6 2391:25 2392:8,9 2393:10 2393:18,21,22 2411:25 2412:5 2423:1 2428:18 2436:12 2449:14 2451:25 2462:20 2517:9 2541:2 2546:21 2555:14 2573:23 2578:22 2598:19 cases 2350:25 2351:4 2352:5,18 2354:15 2391:24 2424:4,5 case-by-case 2445:16 cash 2507:18 2508:9 2528:13 2545:1 2553:2,7 2561:11 2564:5 2584:9 2601:11 2601:18 cashing 2584:13 catch 2476:19 category 2442:4 2445:10 cause 2428:2 caused 2394:12 2454:10 caution 2440:16 2441:4 Cecelia 2614:6,16 cell 2583:14,16,17 2602:14 cent 2426:20 2453:5 2497:1 2543:5,18 Centre 2346:13 certain 2346:2 2347:18,20 2393:5,10 2446:18 2447:3 2449:3 2452:1,2 2485:18 2524:16 2561:18 2579:15 certainly 2433:11 2443:11,17 2445:12 2468:1 2495:2,21,25 2503:11 2508:4 2533:8,8 2545:22 2564:11 certainty 2426:20 2497:1 CERTIFICATE 2614:2 certify 2614:8</p>
---	---	--	---	--

<p>cetera 2483:11 2492:4 2523:11 2532:21 2565:18 2567:1 challenged 2402:3 chance 2446:20 change 2456:24 2506:20 2507:7 2514:24 changed 2400:6 2579:15 2613:20 changes 2411:15 2463:7 2506:25 2560:12,21 2577:16 changing 2524:13 character 2410:7 2438:9 charge 2373:18 2374:17 2385:2 2455:5,10,11 2467:13,20 2608:20 2609:21 2609:22 charged 2409:22 2571:1 2594:18 2595:10,14 2609:18,24 2610:10 charges 2361:24 2470:18 2495:5 2495:10 chastising 2403:25 check 2489:22 2494:13 2544:4 2555:13 2597:9 checked 2396:8 Chelsea 2447:24 2457:14 2481:25 2482:9 2484:12 2498:19 2511:9 2518:20,23 2595:25 cheque 2466:20 2479:10 2514:23 2518:13 2523:3 cheques 2473:10 chief 2347:4 2421:11 2428:12 2434:22 2436:7 2436:17 child 2408:10 choose 2556:17 chronological 2514:6 chronologically 2446:9 2571:24</p>	<p>chronology 2457:18 2458:11,23 2459:1,8 2472:14 2477:19 2497:9 2498:5 2529:12 2536:16 2537:25 2544:25 circumstance 2505:7 circumstances 2359:5 2376:3,20 2427:22 2562:1 City 2352:3 2403:5 2403:13 2570:24 2604:8 civil 2501:8 claim 2507:8 2511:24 2512:7 2516:16 2517:14 2519:7,8,11,21 2521:4,13 claims 2517:8 clarification 2547:21 clarified 2607:3 clarify 2416:17 2420:18 2426:17 2543:7 clause 2571:4 2573:11 clean 2502:14 2520:5 2525:24 2576:21 cleaned 2396:21 2556:10 clear 2421:10,12 2422:5,13 2424:14 2425:20 2433:6 2469:2 2489:18 2496:1 2498:5 2514:2 2551:23 2570:13 2576:2 2578:7 2589:21,22 2600:12 2612:18 cleared 2588:8,12 2588:16 clearly 2469:24 2473:11 2487:3 2490:20 2503:16 2503:17 2560:2 2569:10 2589:6 2609:24 2610:9 clears 2421:19 Clerk 2350:3 2401:5,11 2434:8 2434:12 2436:25</p>	<p>2437:3 2488:1,5 2558:6,10 2613:22 client 2356:22 2364:20 2435:20 2439:25 2444:11 2444:14,17 2445:8 2451:19 2452:19,20 2453:8,9 2458:7 2462:4,6,11,23 2463:3 2465:22 2466:3 2467:4 2471:5 2474:7 2490:12,15 2493:12 2494:9 2494:10,11 2495:3,7 2505:5 2507:11,23 2508:4,7,11,14 2509:3,6 2510:1 2515:19 2518:18 2519:1 2523:16 2523:17,25 2524:6,24 2525:6 2526:8,10 2530:5 2530:8,22 2531:16,19,24 2532:16 2534:8 2534:21,22,23 2535:2 2537:11 2538:14 2539:8 2539:14 2542:13 2542:15,17,18 2544:1,17,20 2545:6,16 2548:23 2550:7 2554:13 2559:11 2559:22 2560:7 2560:20,22,24 2561:18 2564:17 2564:21 2570:2,6 2570:18,23 2571:1,7,17 2573:4,16 2574:19 2575:20 2576:15,19 2577:15,15,19 2579:8,9,11,13,20 2579:24 2580:1,2 2580:14,18 2581:8,13 2582:20 2585:9 2585:11,14,23,24 2586:12 2590:10 2590:13 2591:21 2592:13,24</p>	<p>2593:1,5,11,18 2595:12 2601:16 2601:17 2604:1 2606:17 2607:8 2607:19 2610:3,8 clients 2444:22 2450:18 2461:21 2463:25 2521:24 2522:25 2523:4 2523:11,12 client's 2444:25 2452:9 2470:8,8 2494:4 2500:13 2500:14,23 2508:2,10,21 2529:22 2532:13 2543:7 2557:22 2560:3 2561:23 2561:24 2572:23 2576:1 2594:2 2610:12 close 2545:10 closely 2428:5 closer 2351:12 2563:5 closing 2515:12 CN 2485:17 coach 2411:22 Cochrane 2405:18 2406:10,17 Code 2347:2 2348:6 2348:9 2356:21 2357:18 2358:8 2359:12,14 2369:10 2393:23 2394:6 2413:13 2416:14,16 2417:10 2419:9 2420:6,25 2421:8 2423:19 2424:13 2424:18 2431:6 2431:10 2434:1,7 2434:14 2437:10 2438:3 2442:18 2443:4,5,25 2446:3,4 2471:17 2487:1,21 2488:7 2488:8 2495:13 2501:24 2502:1 2527:4,7 2529:25 2530:2 2558:2,12 2560:15,18 2590:6,8 2603:6 2608:13 2611:13 2612:5,16,18 2613:14,19 coin 2435:25</p>	<p>coincide 2416:13 collateral 2537:23 colleague 2430:17 2436:13 2437:16 colleagues 2439:17 2440:23 colloquial 2491:23 Columbia 2453:13 2453:15 combination 2433:18 come 2362:20 2367:16 2370:25 2372:5,8 2379:15 2379:24 2380:5 2402:4 2411:19 2423:24 2424:22 2425:20 2429:1 2432:25 2440:8 2451:20 2458:21 2460:24 2463:2 2476:18 2477:17 2477:19 2484:9 2487:22 2495:15 2495:16 2525:15 2525:17 2526:16 2535:1,7,21 2545:15 2548:6 2550:2,4,4,5,7 2563:5 2566:2 2577:5 2584:1 comes 2420:1 2554:16 2596:14 2597:2 2599:17 comfortable 2593:2 2593:5 coming 2359:14 2499:12 2519:22 2526:14 2528:17 2529:1,3 2534:10 2535:4,5,13,16,19 2563:2 2565:14 2593:15 2607:22 command 2387:20 commander 2417:4 2419:15 commence 2378:19 commencement 2589:9 commencing 2350:2 2378:21 commendation 2368:3 comment 2409:23 2442:18 2443:16 2445:18 2446:1 comments 2361:21</p>
--	--	--	--	---

<p>2362:14,15 2370:11 2382:14 2382:15 2424:20 2439:16 2441:7 2441:11 2442:18 2443:1,12,22 commercial 2447:9 2454:20 Commission 2346:1 2346:12 2347:1,2 2347:3 2350:3 2368:19 2390:14 2395:3 2422:15 2423:25 2424:9 2434:8,12 2470:4 2470:12 2488:1,5 2490:1 2491:14 2492:5 2512:25 2558:6,10 2613:11,22 Commissioner 2346:5 2350:5,9 2350:10 2358:16 2359:19 2361:3 2363:2 2364:15 2365:6,9 2372:14 2381:24 2382:7 2382:21 2395:23 2397:6 2401:4,10 2401:12 2413:12 2416:5,13,15,18 2418:24 2420:19 2421:6 2423:15 2423:23 2431:5,7 2434:2,14 2437:10,21 2440:25 2441:10 2442:9,17,21,23 2443:15 2444:1 2445:17 2446:3 2471:13 2486:9 2486:14 2487:24 2488:7 2495:6 2512:17 2514:6 2527:3 2529:24 2530:1 2558:2 2560:15,17 2603:3 2608:6,12 2611:15 2613:9 2613:13,17,21 Commissioner's 2418:16 2421:2 commit 2517:13 committed 2372:23 2594:14 committing 2564:15 communicated</p>	<p>2420:21 communicates 2363:10 communicating 2490:16 2607:15 communication 2419:20 2420:2,4 2445:7 2534:25 communications 2414:17 2444:4 2462:2 company 2480:21 2511:25 comparable 2460:14 2492:17 comparative 2485:11 compared 2491:20 compensate 2565:17 compiled 2402:21 complaining 2410:12 complaint 2367:22 2372:4,8 2373:25 2394:14 2398:18 2398:21,24 2399:2 2427:3,15 2429:1 complete 2355:3,4 2518:19 2567:3 2578:2,5 2607:7 completed 2522:10 completely 2399:9 2439:2 2440:18 2497:7,23 2510:10 completeness 2450:4 completing 2519:5 completion 2519:1 2520:4 complicated 2353:16 complication 2384:11 comply 2523:15 compressed 2416:18 computer 2396:7 2397:2 2449:15 concern 2443:2 2467:8 2486:16 concerned 2522:5 2582:13 2593:24 concerning 2372:16 2511:9</p>	<p>concerns 2422:3 2436:11 2548:18 concluded 2380:4 2429:23 2458:4 concluding 2389:20 2548:5 conclusion 2383:6 2443:21 2494:7 2609:15 concur 2443:17 condition 2513:17 2517:21,23 2520:3,5,13 2522:1,11 conditions 2517:6 2525:8 2556:13 2570:16 conduct 2396:12 conducted 2357:6 2446:15 confers 2578:3,12 confidence 2375:21 confidential 2436:20 confirm 2383:18 2413:3 2416:1 2417:3 2463:24 2588:12 confirmation 2366:12 2414:12 2414:14 2417:6 2418:5,9,20 2419:23 2420:1 2420:22 2539:11 confirmed 2374:16 2416:9,10 2533:9 confirming 2419:7 2458:17 2510:7 2534:20 2553:3 2568:13,18 confirms 2379:22 2429:19 2448:24 confrontation 2367:6 confused 2491:4,5 confusing 2570:11 confusion 2403:4 connect 2374:8,12 connection 2356:17 consider 2402:8,9 2584:16 2608:10 considerable 2403:3 2538:5 consideration 2545:8 2555:22 considered 2404:12 2493:6</p>	<p>considering 2544:1 consistent 2413:24 2421:1 2470:25 2474:22 2477:21 2484:11,20 2485:7 2493:8 2494:1 2527:19 2537:7 2543:1 2552:17 2553:14 2553:20 2561:21 2604:20,21 2610:11 consistently 2542:20 constable 2361:23 2374:13 2376:12 2379:22 2380:1 2383:8,10 2384:23 2388:5 2389:7,19 2390:18 2416:23 2417:17 2418:13 2419:14 2420:9 2429:19,20 2430:20 2431:1 2432:1 2494:7 2497:4,6 2503:7 constant 2504:15 constraints 2446:19 consulting 2554:18 consummated 2525:11 contact 2385:14,15 2391:23 2397:23 2399:11 2451:18 2474:8 2499:16 2531:25 2538:19 2585:1 contacted 2451:15 2583:2,2 contain 2368:12 2396:6,7 contained 2408:2 2549:9 contains 2367:16 contemporaneous 2415:1 2454:12 2454:16 2490:18 2510:8 2604:25 contemporaneously 2409:8 2572:11 2581:3 content 2415:22 2423:17 2440:21 2446:25 2462:18 2462:21 2504:8 2504:20 2538:7</p>	<p>contention 2477:4 contentious 2500:6 2556:2,25 contents 2382:1 2409:11 2440:3 2505:20 2578:4 context 2427:20 2553:16 2594:22 continuation 2365:4 2396:6 2496:7 2506:2 continue 2380:2 2383:14,19 2384:2 2429:22 2599:8 continued 2348:4 2610:22 continues 2599:6 contract 2463:22 2584:7,9 contracts 2579:1 contrary 2368:2 2374:4 2378:1 2381:4,7 2440:25 contributed 2433:11 control 2396:15 convened 2504:10 convenient 2434:5 Convention 2346:13 conversant 2501:10 conversation 2362:20 2363:15 2383:8 2384:24 2385:23,25 2386:12 2388:22 2392:2 2415:9,21 2419:6,8,13 2455:16 2500:16 2500:18 2537:7 2546:24 2550:11 2561:9 2568:14 2583:25 conversations 2384:22 2391:13 2391:17 2392:10 2393:17 2397:7 2415:2,10 2418:3 2421:14 2430:14 2432:25 2458:16 2500:19 2537:1,2 convey 2419:2,5 conveyed 2445:22 Convicted 2347:23 conviction 2346:3 2403:1 2523:16</p>
---	--	--	--	--

<p>convinced 2523:12 convinces 2433:3 cooperating 2542:16 coordinator 2353:17 copies 2370:25 2423:5 2438:4 2575:18 2582:2 copy 2371:2 2373:25 2427:3,5 2443:3 2475:3 2521:10 2575:14 2575:22 2576:10 2577:9,12 2579:9 2579:20,21,23,24 2580:1,3,4,5,6 2593:7 2607:7,13 corner 2431:23 Corporal 2365:1,3 2365:14 2380:14 2380:16,20,21,24 2381:14 2382:9 2382:13 2385:5 2385:15 2387:10 2387:19 2414:14 2416:9 2417:7,18 2418:10 2419:6 2419:20 2420:8 2426:2 2475:17 2475:19,25 2476:8 2478:3,14 2478:16,23 2487:23 2488:10 2488:14 2490:18 2491:17 2492:11 2492:18,21 2493:8 2494:2,21 2494:25 2495:15 2495:18,24 2496:7 2503:1 2504:2 2506:6,9 2506:11 2507:21 2510:6 2527:9,14 2551:11 2553:15 2553:19 2569:13 2583:22 2602:22 2603:25 2610:24 correct 2350:17 2351:19 2353:7 2354:9 2356:12 2360:12 2369:6 2370:9 2371:7 2380:15 2384:14 2390:21 2393:16 2394:3 2397:9,12 2400:7 2406:4,7</p>	<p>2409:6 2411:14 2413:7 2416:2 2418:4,8,8 2420:6 2430:3,23 2431:3 2431:21 2432:13 2433:9 2443:25 2446:13,14 2447:10,14,15,25 2450:23,25 2451:12 2454:1 2454:13,14 2455:2,3,19 2457:20 2459:13 2459:22 2461:11 2461:24 2463:8 2464:20 2466:13 2470:2,3 2471:16 2471:25 2472:10 2473:2,16,17 2474:18 2475:8 2475:10,14 2477:6,8 2481:14 2484:17 2488:12 2490:17 2491:8 2496:4,21 2500:14,17 2501:1,2,7,20 2503:14 2505:25 2509:7,8,13 2510:4 2511:10 2511:22 2512:2,3 2512:11,14 2513:22 2514:24 2514:25 2515:13 2515:14,18,25 2516:4,7,9,15,17 2516:21 2517:2 2518:3,15 2519:14 2520:11 2521:1,5,7,23 2522:2,12 2524:12,23 2525:2,10,15,22 2525:25 2526:1 2529:15,16 2531:20 2533:20 2536:1,9 2537:8 2537:15 2539:22 2540:6 2541:22 2541:23 2545:2 2547:14 2548:11 2548:12,17,21 2550:14,18 2551:8,21,25 2552:8,14 2554:3 2554:14,20,21,25 2555:3,18,19</p>	<p>2559:19 2560:13 2560:14 2561:15 2562:8,13,25 2563:7 2564:10 2572:24 2573:3,8 2574:1,16 2577:1 2580:16,17 2581:11,12 2582:8,9,17,18,22 2587:1,2,25 2588:7 2589:5 2590:20 2591:1 2593:3,12 2595:19 2601:9 2601:25 2602:10 2614:9 corrected 2426:11 correctly 2453:16 2540:20 corresponding 2607:15 cost 2566:12 2567:19 costs 2522:16 2565:2 2566:25 2567:9 2600:4,6 2600:18,23 2601:8 cottage 2602:7 counsel 2347:2,3 2357:22 2358:2 2362:2 2364:16 2365:25 2366:15 2366:20 2390:14 2395:3 2397:4 2401:5 2405:2 2415:18 2422:2 2422:24 2423:9 2424:10,17 2429:4 2431:14 2435:16 2442:17 2443:16 2501:5 2514:16 2532:9 2533:18 2537:17 2543:11,17 2544:2,5 2551:6 2585:14,23,24 2586:8,13,17 2605:23 Counsel's 2368:19 counterpart 2399:10 2400:16 counterparts 2378:21 countless 2534:25 couple 2382:18 2430:21 2431:20</p>	<p>2457:5 2498:14 2513:7,18 2523:9 2530:8 2573:4 2589:2 2608:25 2612:14 course 2362:6 2363:16 2375:3 2381:6,23 2390:17 2391:4 2393:3 2398:11 2398:16 2402:6,7 2406:13 2408:15 2411:6,21 2428:3 2438:16 2445:23 2446:8,15 2477:20 2506:13 2522:13 2533:16 2536:7 2543:3,14 2583:24 court 2360:19 2407:1 2409:21 2411:23 2440:12 2535:23 2536:22 2574:14 2576:25 2594:3 2613:4 2614:2,17,21 cover 2399:14 2435:10 2480:9 2481:10 2527:15 2571:13 coverage 2498:23 2511:25 covered 2481:5 2505:14 2509:20 2562:4 2563:21 2572:18 2612:23 2612:25 covering 2355:3 2361:21 2367:14 2505:10 2566:12 CP 2485:17 credibility 2355:23 2359:8 2372:22 2392:16 2440:7 credit 2460:19 2483:3 2502:14 2506:19 2520:5 2520:10,12 2525:9,24 2551:23 crime 2466:22 2487:6 crimes 2350:21 criminal 2447:12 2451:23 2466:25 2495:9 2496:3 critical 2407:6</p>	<p>2441:17 2588:6 criticism 2401:19 2405:1 criticized 2374:2 2379:7 2386:21 2389:12,14 2397:4 2402:3 2404:21,23 2408:7 criticizing 2404:1,1 cross-examination 2357:20,25 2362:3 2364:17 2366:11 2413:17 2421:22 2441:2 cross-examinations 2357:6,17 cross-examine 2441:18,22 cross-examined 2357:12,14,18 2362:1 2441:21 cross-referenced 2360:25 Crown 2362:5,6 2364:8 2366:15 2371:17 2373:22 2375:16 2386:14 2386:22 2391:13 2391:17,23 2392:3,10 2397:8 2398:24 2405:25 2412:8 2424:6 2453:19 2462:20 2466:19,23 2468:4,6,21 2480:25 2481:3 2501:5 2505:6 2508:15 2514:16 2523:11,13 2532:1,17 2533:6 2534:9,11,21 2535:19,25 2539:23 2540:7 2546:11,12,21,21 2547:18 2561:3 2570:3,23,24 2571:6,7 2577:20 2600:13 2611:1 Crown's 2456:22 2523:12 culminated 2463:14 culmination 2549:14 culpability 2451:23 current 2356:2 2359:23 2360:14</p>
--	---	---	--	---

<p>2360:19 2361:22 2362:17 2364:16 2365:22 2366:7 2366:10,15,25 2367:4 2371:8 2372:24 2373:10 2377:12 2378:20 2380:17,19,22 2381:1,3,13,19,19 2382:3,15 2383:5 2384:6,17 2385:9 2385:10,15,16,18 2387:11,15 2389:8,20 2394:14 2395:16 2398:19,21 2399:3 2401:21 2403:8,10 2412:19 2413:4 2414:17 2418:12 2420:11 2429:13 2431:3 2432:16 2433:21,25 2435:19 2487:4,8 2487:15 2494:23 2552:13 2553:4,5 2553:9,12 2558:22 2559:1,5 2563:23 2594:11 2594:25 2595:2 2595:10,14 2599:15 2608:19 2609:18,25 2610:6,10 currently 2397:1 custody 2537:12,13 2539:8,14,19 2540:1,4,4 2566:1 cut 2526:3</p> <hr/> <p style="text-align: center;">D</p> <p>D 2347:14,16 2378:14 daily 2538:19 2576:25 damaged 2481:10 Dangerfield 2347:13 2363:6 2363:14 2364:1 2366:19 2367:2,7 2367:23 2393:2,5 2404:22 2405:14 2406:3,8,16 2408:8 2538:4 2539:6 2541:14 2541:16,22 2542:11,13,14,23</p>	<p>2543:15 2546:5 2546:11,14,19 2547:24 2549:6 Dangerfield's 2538:22 2541:20 2542:2 2543:3,17 2546:25 date 2384:7,8 2395:8 2459:18 2466:18 2475:22 2476:2 2477:14 2483:15,16 2488:21 2489:2 2490:21,25 2491:4 2501:17 2503:17,18 2521:19 2522:13 2522:19 2551:16 2572:7 2585:13 2609:13,23 dated 2349:3 2365:4 2401:13 2468:8 2479:14 2479:15,15 2498:9 2514:15 2514:17 2520:19 2520:24 2521:6 2521:10,22 2522:20 2555:11 2581:20 2584:22 dates 2351:20 2395:7,12 2449:3 David 2347:8 2348:8 2349:5,7 2434:21 2436:23 2437:5,8,19,24 2438:1 2456:8 2469:18 2605:21 2611:1 Dawe 2347:3 2596:19 day 2355:19 2357:2 2357:3 2361:13 2372:20 2387:14 2388:12 2389:3 2412:10 2448:11 2449:22 2490:22 2491:20 2494:12 2494:13 2505:2 2508:16,17,18 2523:22 2540:16 2544:8 2550:14 2566:3 2567:12 2568:5 2570:20 2571:20,24 2572:2,8,16 2573:12 2575:11</p>	<p>2578:18 2579:19 2579:22,22 2581:5 2583:3 2586:20 2588:22 2597:3 2599:13 2602:24 2603:2,3 2603:4 2604:23 2605:7 2606:4,5 2606:15 days 2419:7 2448:9 2475:13 2489:2 2509:21,22 2510:2 2514:8 2547:6,6 2549:22 2575:19 2587:24 2588:5,14,19,19 2601:23 2602:17 2602:25 2607:23 2608:5 daytime 2589:7 de 2353:17 2426:4 dead 2508:12 deal 2355:17 2410:16 2414:1,3 2414:12,14 2445:15 2448:25 2456:12 2464:2 2470:22 2471:4,6 2472:10 2500:5 2504:20,22 2508:13 2514:12 2519:12,13 2523:4 2524:1,5,6 2524:10,13,17,19 2524:21,25 2525:11 2532:6 2533:14,22 2535:24 2539:25 2549:8,9 2555:17 2556:4,6 2561:1 2562:4,11,17,19 2577:4 2590:1,1,1 2590:2 2594:1,9 2595:9,13,24,25 2596:14 2598:17 2599:11 2601:5 2608:2 dealing 2353:5 2381:12,15,20 2393:11 2399:2 2420:16 2422:7 2426:25 2428:23 2429:12 2452:23 2461:25 2479:25 2480:1 2501:6 2505:4,8 2535:6 2559:8 2592:13</p>	<p>2593:19 dealings 2366:18 2372:15 2399:3 2457:3 2523:10 deals 2473:15 2516:16,25 2562:3,10 dealt 2420:14 2460:19 2515:4 2536:12,14 2607:20 debate 2354:11 debt 2516:13,19 December 2377:6 2430:21 2431:2 2431:14,22 2457:23,25 2459:5,15,16 2460:8,23 2468:8 2470:1 2471:24 2473:12 2483:15 2483:16 2485:15 2485:23 2511:16 2533:8 2534:19 2540:24 2541:8 2542:7 2543:2 2549:10 2563:10 2565:13 2592:1 2601:6 2610:17 decide 2506:20 decided 2576:8 decipher 2449:14 decision 2417:4 2593:20 2609:21 decisions 2546:22 declared 2581:18 declined 2561:17 dedicated 2354:15 deductible 2513:15 2562:13,20 deduction 2375:25 2376:16 deeding 2516:8 defence 2347:22 2362:9 2364:16 2457:11 2532:3,9 2533:18 2543:11 2543:17 2544:2,5 2585:14,23,24 2586:8,13,17 2605:23 definitely 2353:11 2463:1 2496:22 2595:15 degree 2403:2 delay 2376:1,17 2383:12</p>	<p>demand 2355:16 2563:4 demands 2458:6 2517:8 2546:6 demonstrate 2425:6 denial 2414:11 denied 2537:17 dense 2572:20 deny 2414:10 denying 2511:25 departed 2549:13 department 2351:15 2370:21 2427:1,6 2449:13 2449:20 2450:22 2474:25 2476:21 2478:17 2571:6 2584:20 departure 2498:12 dependent 2422:15 depending 2523:21 depends 2598:13 deposit 2515:17 2518:2,13 deprive 2362:5 Deputy 2428:12 2496:14,18 2607:2,4 Deputy's 2607:17 described 2355:13 2440:1 2503:25 describes 2526:2 2592:23 DESCRIPTION 2348:3 desk 2611:17 detachment 2382:4 2387:11,21 2389:17 2417:4 2419:15 detail 2509:19 2513:18 2532:5 2538:10 2567:16 2567:17 2577:21 2581:1 2586:3 2604:19 2608:1 details 2452:7 2453:15,17 2455:11 2461:6 2473:22 2474:1,2 2505:3,14 2507:10 2528:1 2538:24 2542:5 2542:21,22 2569:6 2587:5 detective 2351:7,10 2354:22 2355:6</p>
--	--	--	--	---

<p>determined 2565:4 development 2457:17 2471:23 2472:13 2497:8 2529:12 developments 2407:6 2439:3 2454:9 2601:21 dialing 2363:19 dictaphone 2456:13 dictate 2454:10 2456:11 2469:15 2492:19 dictated 2411:9 2453:25 2454:2 2456:13 2469:12 2475:22 2547:16 2572:15,16 2581:5 dictating 2488:25 2547:5,11 dictation 2499:7 diem 2501:19 2505:11 2597:3 difference 2538:23 different 2351:17 2358:6 2360:23 2362:2 2363:4 2409:15 2444:18 2471:2 2495:2 2497:7 2508:18 2508:20 2600:25 2611:25 differently 2407:2 difficult 2524:12 2526:17 difficulties 2435:1,9 2503:20 2509:12 difficulty 2508:13 2525:12 2556:16 2585:1 2606:7 dilemma 2384:24 2384:25 direct 2358:14,15 2397:13 2412:4 2429:3 2608:24 directed 2353:1 2355:10 2456:21 direction 2354:11 directly 2355:17 2505:5,8 2527:23 2528:6 2530:25 2561:12 2598:6 director 2393:8 disability 2507:8 disagree 2415:12 disagreement</p>	<p>2587:5 disappointing 2502:25 disbelief 2609:20 disciplinary 2427:15,19 2428:4,7,17,17 disclose 2362:8 2363:14 2533:2 2533:17 disclosed 2355:22 2356:1,7 2376:8 2403:3 2405:13 2584:21 2612:9 2613:1,11 disclosure 2364:20 2394:22 2435:14 2436:4,5 2457:9 2457:10 2612:15 disclosures 2356:14 2412:18 discovery 2579:7 discrepancy 2490:22 discretion 2492:13 2493:7,16,24 2569:21 discretionary 2491:24 discuss 2399:12 2456:23 2457:7 2545:24 2553:15 2559:22 discussed 2374:18 2380:25 2428:25 2441:12 2443:2 2458:19,22 2459:24 2463:24 2468:13,17,21 2482:18 2503:3 2507:1,6,7,8,9 2532:4 2542:21 2564:11 2566:17 2571:10 2583:25 2584:1,5 2601:15 2604:2 discussing 2375:13 2398:23 2468:22 2485:24 2552:2 2564:8 2567:9,18 2568:17 discussion 2354:10 2367:17 2377:7 2389:18 2400:24 2401:20,22,23 2415:16 2432:6,9 2441:14 2452:18</p>	<p>2452:22 2455:21 2456:1 2459:4 2464:12,23,24 2465:20 2466:12 2467:17,21 2470:16 2477:12 2477:24,25 2480:4 2482:16 2494:24 2506:14 2528:16 2538:12 2539:1 2542:9 2543:20 2544:23 2545:11 2552:10 2553:6,22 2574:6 2575:17,24 2576:25 2607:1 discussions 2381:18 2381:22 2408:4 2415:4 2426:1,3 2439:17 2440:21 2441:17 2442:2 2457:13 2458:4 2462:11 2463:12 2465:19 2466:21 2468:1,6,7,10 2469:10 2477:16 2477:22 2480:12 2481:6,17 2482:2 2484:21 2487:15 2498:21 2504:16 2504:16 2505:4 2506:22 2531:15 2541:18 2543:14 2549:5 2553:20 2566:25 2589:25 dispute 2432:11 2509:17 2539:4 2541:13 2562:12 2586:21,22 disputes 2504:24 2505:22 2537:21 disrupt 2435:3 distance 2547:6 distill 2512:23 2514:20 distinct 2365:10 2444:10 2553:8 distinction 2535:22 ditto 2370:11 division 2362:13 2378:14 docket 2448:24 2450:5,23 2472:17,17 2475:24 2490:11 2490:14,23 2491:7 2496:8</p>	<p>2510:12 2550:17 2550:21 docketed 2472:20 docketer 2450:4 docketing 2449:4 2510:15 dockets 2448:18,18 2449:1,5,23 2450:9,16 2459:11 2478:18 2478:19 2488:11 2488:24 2489:23 2496:10 2510:10 2550:16,20 2587:25 2588:12 2588:24,25 2589:1 2601:22 2601:23,24 2602:1 document 2356:19 2369:22,22 2373:24 2374:5,7 2381:5 2382:5,8 2394:12,13,17 2397:7,11,18,21 2398:1 2401:3,17 2405:4 2424:8,15 2427:13,13,18 2430:22 2431:15 2432:14 2439:7 2439:12,13,14 2440:9 2443:3 2445:18 2453:24 2474:25 2475:21 2475:23 2479:11 2498:6 2501:13 2501:15 2515:22 2521:3,13 2537:6 2558:5 2564:17 2567:21 2568:1,7 2573:15 2578:10 2581:13,18 2582:1 2608:9,14 2612:22,25 documentation 2511:3,4 2583:23 documented 2524:22,25 2535:3,3,9 2540:22 2568:23 documents 2349:5,7 2368:19 2396:17 2396:19,25 2422:9 2424:7,8 2428:4,17 2431:9 2437:12,19,25 2438:2,7 2439:4</p>	<p>2439:20,21,23 2440:3,7 2441:1,4 2441:13 2449:2 2457:18 2472:14 2474:20 2479:14 2497:2,24,24,25 2512:17,22 2513:17,20 2514:1,4 2518:23 2519:6,6,16,19 2520:16 2522:7 2523:1,6 2526:7 2529:13 2556:11 2569:20 2574:25 2580:19 2581:8 2582:12,20 2587:1 2589:15 2589:16 2602:19 2607:25 2611:18 2611:19,24,24 2612:1 doing 2351:3 2352:14 2353:9 2427:24 2444:23 2454:20 2589:24 2593:24 2596:11 dollar 2525:14 door 2409:25 2551:3 doubt 2356:7,10 2417:5 2513:21 dozen 2567:25 draft 2463:6 2560:7 2560:13,21 2564:17,23 2570:15 2571:14 2577:13,14 2578:2,5,13 2593:6,7 drafted 2430:5 dramatic 2523:10 2605:1 draw 2388:23 2498:8 2499:2 2595:23 drawing 2535:23 drawn 2362:3 2364:6 Driskell 2346:3 2347:11 2362:17 2366:1 2367:13 2375:16,23 2383:23 2388:2 2403:1 2438:25 Driskell's 2402:25 2544:2 drive 2567:6</p>
--	--	---	--	---

<p>dropped 2563:1 dry 2485:3 due 2425:13 2477:19 2515:21 duly 2437:9 2614:6 duty 2575:2 D-A-V-I-D 2437:6 D.K 2354:2 2585:7</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 2373:13 2545:4 2561:25 earliest 2448:6 early 2410:24 2426:1 2456:5 2457:10 2467:24 2479:14 2497:9 2497:15 2503:13 2508:4 2511:16 2526:13,19 2527:21 2572:9 2610:17 earnest 2514:7 easily 2444:20 edit 2456:16 edited 2456:18,19 editing 2456:15 effect 2355:24 2371:15 2382:10 2414:15 2456:9 2487:16 2561:8 2592:7 effective 2439:2 effort 2362:5 2508:24 eight 2357:5,7,11 2357:16 2358:6 2391:11 either 2378:20 2397:11 2433:1 2456:25 2459:21 2490:25 2533:18 2546:16,17 2572:7 2584:8,11 2584:12 2589:16 2591:3,8 2592:10 elicit 2358:15 2444:15 2445:1,8 else's 2574:8 2576:4 emerge 2503:5,9 emerged 2503:13 emerges 2503:10,16 emerging 2503:6 2530:13 employment 2506:19 enabled 2395:6,12</p>	<p>encloses 2430:23 2431:2 encompass 2486:24 encouraging 2508:7 endanger 2364:9 2375:22 ended 2509:22 2539:25 ends 2516:2 engaged 2511:7 2599:19 engaging 2357:25 2474:19 English 2577:1 enhance 2508:24 enlightened 2494:5 ensure 2538:9 ensure 2355:2 enter 2449:15 2496:2 2502:20 entered 2367:15 enters 2502:12 entire 2374:19 2456:3 2524:25 entirely 2386:8 2389:9 2493:23 2576:1 entitled 2357:22 2580:20 2582:15 entry 2383:17 2388:25 2448:21 2506:24 equipment 2567:7 equity 2460:13 2481:25 2484:4,9 2484:10,12 2513:10 2515:6 2516:2 2525:24 equivalent 2552:6,6 error 2426:13 2499:7,8 2513:8 2518:2 2551:17 2556:9 especially 2444:24 2468:13 2496:11 essence 2369:4 2370:3 2400:4 2512:22 2533:19 2539:4 2554:9,13 essential 2461:9 2539:20 essentially 2444:7 2514:21 2516:13 2517:13 2525:13 2535:10 2552:11 2555:20 2557:8 2586:25 2588:5</p>	<p>2606:8 establish 2489:7 2537:24 establishing 2567:10 estate 2347:14 2447:10,23 2448:4 2501:11 2510:24 2511:4,8 2512:16 2514:9 2519:3 2521:25 2523:1 2524:18 2555:17 2595:24 2596:14 et 2483:10 2492:3 2523:11 2532:21 2565:18 2567:1 2604:7 eve 2518:10 2519:2 2591:12 evening 2454:3 2544:18 2548:7 2549:14 2554:17 2589:6,7 2613:15 event 2425:12 2428:15 2433:6 2439:11 2460:6 2469:23 2491:9 2505:18,22 2537:6 2554:2,22 2555:1 2565:7 2572:8 2578:18 2580:12 2588:22 2605:2 2610:9 events 2361:9 2444:8 2449:3 2456:5 2459:2 2469:14 2523:10 2526:5 2538:2,8 2547:13,15 2548:7 2549:22 2550:10 2572:5 2572:12,18 2580:23 2581:4,5 2587:22 2589:23 2591:15,16 2593:15,17 2601:19 2602:17 2602:20 2606:2 2607:22 eventually 2503:9 2503:10 2520:15 2521:8 2523:15 2525:5 2554:16 2607:8,9 everybody 2360:6 2532:23,25</p>	<p>2576:2 2602:23 evidence 2358:18 2359:1 2364:13 2365:10 2367:9 2367:24 2375:4 2382:1 2383:18 2385:7 2389:6 2411:19,22 2417:22 2420:17 2434:16,20 2440:14 2447:5 2490:3 Ewatski 2434:22 2435:7 2436:7,9 2436:17 Ewatski/Hall 2409:9 exact 2453:3 2455:11 2456:10 2464:1 2475:22 2515:1 2522:19 2534:17 2542:11 2549:9 2561:10 2579:19 2592:8,9 2604:18 2608:5 exactly 2354:13,24 2373:11 2377:22 2384:5 2404:7 2420:3,24 2455:9 2515:11 2547:12 2547:22 2548:1 2557:3,17 2561:16 2574:15 2580:10 2590:3 2593:23 examination 2356:24 2359:15 2368:20 2392:6 2405:2 2415:5 2421:25 2425:21 2426:8 2437:11 2445:8 2608:10 examination-in-c... 2358:12 examine 2357:13 examined 2382:13 Examiners 2614:7 examining 2357:3 2359:12 example 2355:8 2424:25 exceedingly 2469:14 exception 2440:11 2452:17 exchange 2416:3,21 2607:24</p>	<p>exclusion 2423:12 exclusively 2430:11 2430:12 execute 2375:16 2519:16,19 2522:25 executed 2520:16 2521:14,16,17 exhaustive 2438:18 EXHIBITS 2349:1 exhibit 2367:10 2386:25 2387:1 2401:7,12,13 2402:15 2431:6 2431:11,12 2437:14,24 2438:1 2446:11 exhibits 2437:19 2446:7 exist 2394:20 2567:24 existed 2362:22 exists 2394:21 expanded 2455:22 expect 2355:8 2373:8 2381:3 2392:3,9 expectation 2363:17,18 expectations 2378:8 2610:12 expected 2364:15 2378:12,19,24 2379:4 2609:24 2610:9,15,16 expecting 2548:8 2585:9 expedite 2499:17 2500:2 expelled 2606:9,13 expenses 2484:5 2501:19 2504:25 2505:10,23 2509:18,23 2510:3 2526:18 2527:16 2598:2 2598:22 2599:1 2599:16 2606:18 experience 2358:17 2395:24 2447:13 explain 2385:11 2419:25 2462:8 2473:4 2602:4 2610:14 explained 2353:15 2354:23 2360:24 2371:1 2383:11</p>
--	---	---	---	--

<p>2383:25 2384:24 2387:22 2388:4 2397:6 2419:13 2422:2 2476:2 2486:17 2562:1 explanation 2455:25 2468:16 2469:11 2490:24 2602:6 explicitly 2559:15 exploding 2605:8 explosive-type 2410:7 express 2558:22 2565:7 2601:7 expressed 2436:12 2609:20 expression 2508:25 expressly 2571:16 extend 2467:11 extended 2504:4 extensively 2498:3 extent 2358:20 2500:24 extortions 2350:22 extra 2510:12 extraordinarily 2356:24 ex-RCMP 2365:22 E.W 2347:12</p> <hr/> <p style="text-align: center;">F</p> <p>face 2445:21 2578:9 facilitated 2580:6 fact 2362:22 2370:23 2372:7 2388:11 2392:22 2404:6 2405:5 2409:3 2418:10 2426:10 2428:22 2428:25 2432:15 2439:22 2445:3 2447:22 2457:11 2468:12,24 2476:25 2480:10 2490:25 2510:8,9 2529:15 2543:1 2550:17 2560:5 2565:16 2567:13 2607:13 facto 2353:17 2426:4 facts 2371:13 2594:6 failed 2362:4 2518:14 fair 2374:9 2425:16</p>	<p>2430:6 2433:22 2460:4 2461:14 2463:16 2468:9 2480:19 2482:6 2484:16 2487:21 2505:24 2511:6 2513:6,7,21 2518:1 2519:10 2524:7 2525:1,19 2529:1 2539:21 2540:5 2542:25 2543:6 2545:14 2548:16 2552:7 2553:10 2563:11 2572:18 2580:11 2586:10 2595:18 2598:5,11 2600:14,17 fairly 2428:4 2529:21 2572:20 2591:11 fairness 2606:24 faith 2533:16 fall 2442:3 2448:3 2608:17 fallen 2511:20 falsehood 2536:24 family 2374:19 2383:25 famous 2488:9 far 2394:7 2402:23 2416:6 2494:22 2514:10 Farmlands 2521:11 fashion 2438:5 2544:16,21 fast 2402:24 favored 2509:9 favour 2528:17,18 favouring 2482:23 faxed 2555:11 2559:18 2593:7 2607:3 fear 2486:19 feature 2552:1 February 2377:6 2380:9 2431:17 fee 2464:9 2604:3,6 feel 2359:17 2408:13 feeling 2560:23 2570:9 feelings 2579:4 feels 2585:16 Fehr 2439:9,15 2443:1 2520:21 2520:25 2521:7</p>	<p>2521:16,17 2575:3 2582:10 fellow 2427:7 felt 2372:22 2451:20 2452:10 2461:4,7 2481:10 2494:8 2500:10 2508:11,12 2532:16,18,22 2533:16 2542:14 2561:13 2574:13 2577:23 2578:23 fifth 2409:11 2563:13,15 figure 2352:7 2564:20 2566:10 2606:20 figures 2559:6 file 2360:24 2361:1 2388:5 2389:21 2394:1,2,6 2395:1 2395:21,25 2396:1,13,16,17 2396:20 2417:22 2421:23 2422:4 2422:10,18,19 2427:6 2430:18 2432:1,3,5,10,16 2432:22 2433:21 2433:24,25 2438:15,20 2446:16 2453:20 2454:12,18 2456:3 2463:5 2467:22 2470:16 2472:23 2473:14 2475:21 2476:12 2488:18 2489:24 2509:15 2526:25 2546:23 2548:22 2548:25 2549:15 2554:7 2555:13 2565:21 2567:4 2567:25 2572:5 2572:11 2581:2 2584:20 2591:14 2593:17,21 2607:6,7 2611:16 2611:21,23,25 2612:9,9,11,19,22 2613:6,10 filed 2367:10,14,19 files 2430:23 2431:3 2432:2 fill 2424:17 2449:5 2537:3 final 2413:19</p>	<p>2415:21 2425:19 2478:15 2522:22 2539:18 2543:6 2549:14 2556:7 2569:6,9 2578:13 2589:23 2592:17 2592:22 2597:21 2601:19 2602:22 2605:17 2606:14 2608:9 finalize 2568:20 finalized 2446:22 2454:4 2521:25 2542:18 2562:8 2590:11 finalizing 2584:2 2608:2 finally 2436:7 2481:4 2500:20 2510:5 2516:24 2519:15 2521:3 2549:18,24 2570:22 2598:22 2605:8,10 2607:18 financial 2435:18 financing 2483:23 find 2382:17,19 2383:1 2425:24 2427:5 2456:17 2460:14 2461:12 2514:5 2554:24 2567:5,23 2568:1 2568:7 2571:21 fine 2522:21 2566:22 2568:7 2612:17 2613:16 fingers 2433:12 finish 2424:18 2577:7 2578:25 2608:8 2613:20 finished 2412:10 2495:24 2549:5 finishing 2558:13 fire 2383:24 2432:10,12 2464:12,13,17 2480:9,16,18 2511:23 2519:9 firm 2531:14 2551:1 first 2351:14 2355:19 2362:11 2363:7,22 2372:19 2374:23 2374:25 2376:10 2378:7 2382:25</p>	<p>2384:23 2385:23 2385:24 2390:15 2402:17 2403:2 2413:16 2415:12 2423:14 2425:22 2435:12,15 2437:8 2443:3 2446:11 2448:15 2448:21 2454:2 2455:5,7,12 2466:15 2468:17 2468:20 2472:24 2473:4 2475:18 2476:12 2478:13 2479:21 2480:1 2481:23 2483:4 2484:15 2486:2 2488:20 2498:17 2502:4,7,12 2503:11,18 2504:2 2512:24 2514:4,12,22,23 2520:18 2521:13 2526:3 2527:8 2530:20 2534:12 2544:25 2545:3 2551:23 2555:16 2555:25 2556:11 2557:1 2562:3 2572:9,20 2573:5 2573:16,25 2576:14 2581:10 2583:13 2585:20 2594:8,8 2596:20 2601:5 2602:25 2604:9 fits 2440:10 2559:2 five 2352:23 2384:20 2469:13 2470:13 2491:5 2511:19 2562:24 2563:18 2585:10 fix 2449:2 fixes 2609:7 flip 2518:4 2519:16 floor 2364:4 flurry 2588:23 2589:12 fly 2417:9 focus 2469:23 focused 2415:13,14 2417:23 folder 2396:4 folders 2396:5,5 follow 2354:11 following 2369:20 2386:12 2444:15</p>
---	---	---	---	---

2445:1 2541:6 2548:10 2553:13 follows 2437:9 2461:23 2462:17 2559:25 follow-up 2413:1,3 2419:13 food 2597:4 foolish 2424:15 foolscap 2396:10 force 2385:17 forces 2428:4 foreclosure 2482:15 2482:21 2483:1 foregoing 2614:8 forgave 2525:14 form 2362:5 2369:12 2396:2 2407:10 2433:10 2444:10 2492:22 2540:3 2555:6 2612:10 formal 2429:5 2506:24 2509:10 2565:11 former 2354:3 2436:8 forms 2407:11 forth 2463:14 2475:5 2508:5 2509:6 2531:6 2552:22 2556:12 2561:11 2570:12 forthcoming 2499:11 2500:8 2534:22 forward 2443:18 2518:4 2519:17 2528:9 2596:13 found 2402:14 2403:23 2416:22 2417:6 2438:20 2567:25 2594:17 2594:25 four 2370:25 2371:2 2384:20 2413:14 2472:20 2511:19 2514:22 2539:20 2586:5 2588:5,14,19 2589:1 fourth 2409:17 2454:24 2455:13 2516:24 2537:5 frame 2502:2,6 2511:7 2609:7 framed 2465:14	frank 2497:21 frankly 2357:15 free 2510:19 2553:1 freed 2525:23 frequent 2355:14 fresh 2547:15,17 Friday 2486:3 2518:11 2529:6 2550:4,4,5 2555:11 friend 2357:18 2410:20 2613:2 friends 2608:9 friend's 2441:11 front 2446:6 2447:17 2587:8 2603:23 2608:22 fuck 2409:20,24 2605:14 fulfilled 2520:14 fulfilment 2522:1 full 2355:14 2412:12 2436:13 2562:23 2564:4 2573:21,22 2595:18 2598:11 fully 2442:1 2447:4 2456:18 2554:5,7 2559:22,24 full-fledged 2357:25 function 2421:9 funds 2527:15 2528:3 funnelled 2598:6 further 2355:8 2356:4 2366:12 2375:4 2384:22 2387:13 2410:3 2452:25 2453:21 2455:21 2456:1 2479:1 2527:15 2528:16 2562:15 2612:14 fuzzy 2557:6	2496:15 2585:15 Gates 2347:16 2381:24 2382:7 2413:16 2415:25 2416:4,21 2417:25 2418:18 2418:23 2419:2,5 2419:19 2431:8 Gee 2377:19 general 2451:17 2453:4 2468:9 2504:9 2592:9 2604:20,21 generally 2350:21 2448:25 2506:23 2553:20 gentlemen 2474:12 geography 2489:7 George 2347:13 2363:25 2366:18 2367:23 getting 2371:7 2378:15 2384:12 2384:25 2403:24 2451:11 2462:13 2468:11 2483:21 2487:2 2520:13 2523:22 2525:20 2531:16 2532:17 2545:10 2549:3 2560:23 2569:19 2570:7,10,11 2575:18 2580:6 2583:7,20 2597:3 Giasson 2347:4 2612:7 gist 2414:13 2416:14,16 2453:4 2500:9 2561:9 give 2359:10,25 2392:17,17 2402:10 2408:9 2422:16 2423:5,8 2423:9,16 2424:19 2453:3 2485:20 2519:23 2576:15 2579:11 2580:4,5 2586:15 2592:4,5 2595:2,3 2596:19 2603:14 given 2380:14 2386:6 2390:24 2395:14,14 2407:21,22 2411:12 2422:9 2422:20 2423:19	2443:6 2444:20 2460:11 2523:5 2529:10 2545:16 2545:17 2573:6 2580:2 2595:20 2598:19 gives 2444:12 2554:11 2566:6 2582:1 giving 2358:24 2423:10 2493:9 2494:2 2561:9,15 2570:8 2577:8,12 2594:22 glad 2423:24 glaringly 2451:2 glean 2588:18 glitches 2435:8 global 2352:6 2460:25 2557:21 go 2350:9,13 2352:3 2352:23 2361:21 2371:8 2374:5 2375:10 2383:12 2384:15 2386:9 2394:24 2398:5 2403:11 2409:18 2411:7 2427:19 2447:2 2450:3,9 2451:7 2465:2 2478:18 2479:12 2489:8 2492:2 2495:3 2498:2 2504:7 2507:13 2508:5 2513:25 2526:19 2527:12 2529:15,19 2531:7 2532:2,8 2538:1,24 2541:1 2548:22 2552:25 2555:20 2557:19 2557:25 2559:14 2566:4 2568:21 2572:19 2576:19 2577:10 2581:1 2582:24 2584:8,9 2586:8,18 2591:8 2592:10 2598:22 2601:1,2 2602:14 2603:1 2604:12 2605:12 2606:11 2613:17 goes 2410:3 2444:2 2498:10 2507:16 2608:17 going 2350:12 2357:13 2359:5	2360:13,16,20 2366:10 2368:8 2373:9 2378:9 2380:17,18 2382:17 2383:11 2383:14 2385:10 2388:19 2389:9 2402:23 2403:8 2410:10 2413:16 2428:1 2446:8 2449:1 2451:24 2453:2,17 2454:21,22 2456:4 2458:21 2460:10,10,11,12 2460:14,16,17,18 2460:20 2465:2 2474:4,8,9,16 2475:20 2483:24 2485:16,18,19 2486:18 2490:9 2492:12 2498:2 2508:5,9 2509:6 2509:18 2511:5 2512:5,5,6 2513:13 2522:23 2523:22 2524:1 2527:25 2528:3 2530:16 2531:17 2532:1,2,12,21,22 2532:23 2533:1,1 2533:5,7,17 2537:13 2538:24 2540:10 2541:25 2543:10,20,22 2544:1,17 2547:8 2547:9 2552:20 2552:22 2553:1 2557:19 2559:14 2561:10 2562:6 2568:4,21 2569:4 2569:20 2570:12 2570:14 2576:3,6 2576:6,20 2577:21,22 2578:3,22,23 2580:8 2581:1 2582:23 2584:3 2586:13 2589:12 2592:1,4,10 2593:21,25 2603:1,11,12 2604:18,22 good 2350:5,6 2450:4 2488:7 2493:6 2510:14 2544:21 2545:5
---	--	---	--	---

<p>2558:3 2599:11 gosh 2352:20 gotten 2451:3 2556:7 government 2510:19 2515:6 grabbed 2456:12 grant 2403:8 granted 2435:24 grapevine 2554:11 gratuitous 2493:23 gratuitously 2469:22 great 2426:24 2456:12 2504:22 2508:13 greater 2425:18 greatest 2467:7 Greg 2364:15 2434:22 2456:8 2605:22 Gregg 2456:21 group 2434:17 2435:11,12 2436:3,22 2483:19 2516:6 2521:15 groups 2435:13 guard 2428:5 2540:5 2575:2,9 guarding 2574:23 2575:23 2577:20 guess 2352:22 2353:17 2358:20 2363:18 2449:8 2508:25 Gumienny 2425:3 2589:10 guy 2410:21 2414:3 2479:9 guys 2514:10 2607:7</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>h 2493:15,21 half 2488:13 2507:5 2514:9 halfway 2541:11 Hall 2436:13 hand 2350:14 2472:4 2537:5 2587:14 handed 2541:2 handle 2352:21 handled 2428:8 handlers 2410:13 hands 2580:18</p>	<p>2581:8 hands-on 2354:4,7 handwriting 2365:9 2449:25 2450:17 2491:2 2501:16 2527:1 2585:5 handwritten 2475:5 2565:21 2567:2 2581:11 hanging 2425:15 happen 2378:9 2396:19 2477:10 2512:5,6,7 2528:22 happened 2361:2 2361:10 2377:23 2425:13 2460:5 2474:14 2491:15 2509:24 2523:23 2523:24 2581:6 2586:20 2601:21 2602:6,9 2606:3 happens 2423:25 2587:23 2605:4 2607:18 happy 2538:21 hard 2365:6 2483:3 2483:21 2495:11 Harder 2351:24 2352:14 2353:5 2353:10,13,21 2355:6 2394:1 2436:10 hazard 2352:22 head 2352:9 2480:19 2507:18 2607:23 heading 2370:7 2544:13 health 2460:21 hear 2358:2 2430:24 2447:19 2490:3 2568:24 2588:2,5 2590:5 heard 2417:7 2418:10,14 2421:3 2504:21 2573:25 2588:10 hearing 2471:12 2534:23 hears 2554:9 hearsay 2440:11,15 2440:15,19 2441:15 2444:11 2444:19,19 2445:2,9,14,15 2536:25</p>	<p>heart 2358:3,13 heated 2542:9 heavily 2511:7 held 2446:5 help 2453:11 2460:14 2494:17 2505:20 2512:23 2526:7 2532:11 2536:16 2602:16 2604:15 2606:3 helped 2483:22 helpful 2359:7 2424:16 2425:16 2429:2 2434:3 2529:7,11 helpfully 2509:17 helps 2420:25 hereinbefore 2614:10 high 2496:12 2523:9 highway 2491:23 2509:2,4 history 2438:11 2506:19 2520:10 2520:12 2573:22 2581:11 hold 2375:21 home 2454:5 2469:17 2482:1 2484:13 2492:3 homicide 2351:3,24 2352:15 2353:4 2353:13 2354:3 2354:15 2355:6 2361:1 2363:21 2375:15 2391:10 2392:8 2393:10 2393:25 2394:2 2395:1,24 2396:22 2433:7 2433:16,20 2436:10 homicides 2350:15 2350:18,22 2351:14 honest 2546:16 honestly 2513:9 honour 2523:14 2546:17 Honourable 2346:5 hood 2587:10 hook 2516:22 hope 2350:5 2423:10 2435:7 2441:3 hopefully 2350:7</p>	<p>2359:17 hoping 2512:22 2569:15 host 2358:22 hotel 2408:24 2505:12,15 2540:5 2575:6 2605:19 hour 2488:13,15 2506:14 2523:21 2589:2 hours 2472:20 2550:13 house 2364:20 2367:17 2457:8 2457:14 2460:13 2477:11,11 2480:9,10,14,15 2480:22 2481:2 2482:6,20,25 2483:13,17,23 2484:3,8 2498:19 2498:24 2500:22 2500:25 2501:4 2502:17 2511:9 2511:15,17 2512:1,5 2513:10 2516:3 2519:12 2519:13 2520:9 2524:4 2525:13 2525:20 2533:14 2556:6 2562:3,7 2562:11,19 2594:12 2595:24 2595:25 2596:2,8 2596:21 2597:2,9 2597:16,21,25 2598:3,10 housing 2483:25 2492:16 huge 2570:10 hung 2485:3</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 2376:4,21 2383:23 2469:15 2543:22 2545:5 2553:16 2569:5 2586:8 2604:3,6 2606:19,23 ideas 2579:16 identical 2390:3 2391:1 identified 2465:3 2574:22 identify 2453:24 2465:15,17</p>	<p>2472:25 2575:1 2581:10 identity 2456:24 2600:2 ignore 2440:18 illustration 2425:16 2510:14 imagine 2362:23 2604:11 2607:9 imagined 2378:14 2378:17 immediate 2353:14 2378:13 immediately 2373:17 2432:10 2444:13 2482:8 2496:11 2553:13 2559:21 2577:4 2600:9 2610:3 immunity 2403:9 2403:16 2414:1,3 2416:24 2426:4 2435:20 2452:2,6 2452:11,16 2453:8 2455:17 2460:16 2465:6,9 2465:23 2466:20 2466:21 2467:12 2467:19 2468:13 2468:14 2469:1,5 2470:18 2471:8 2471:14 2486:7 2486:11,15,22,23 2486:24 2487:7,9 2487:10,14 2552:13,25 2553:11 2558:23 2559:2,4,6,16 2563:13,23 2571:3,4 2608:19 2610:5 2611:2,5,7 2611:11 impact 2427:24 2593:19 impart 2381:22 imparted 2392:22 2393:19 impatient 2528:8 impediments 2438:13,17 imperfect 2510:15 implication 2422:8 importance 2470:5 important 2356:23 2381:17 2391:3 2393:17,17 2405:4,12</p>
---	---	---	--	---

<p>2470:10 2472:13 2481:20 2491:9 2502:5 2514:3 2520:3 2552:1 2553:9 2554:22 2555:1 2556:22 2556:25 2558:4 importantly 2506:1 impression 2387:17 2387:18 2410:6 2590:9 2592:10 inaccurate 2418:17 2418:21,22 2590:23 inappropriate 2561:13 inch 2514:9 incident 2405:16 2440:1 2497:11 2497:15 2538:22 2585:10 2586:19 incidentally 2413:21 incidents 2506:24 include 2412:17,21 2455:22 2487:17 2491:18 2518:14 2553:12 included 2350:22 2398:23 2456:1 2486:21 2538:11 2552:18 2563:4 including 2352:20 2357:7 2487:19 2502:14 2589:1,3 inclusive 2527:17 incorrect 2561:1 increasingly 2548:15 2605:7 incredible 2416:22 incurred 2505:23 indenture 2520:19 independent 2551:6 INDEX 2348:1 2349:1 indicate 2373:6,16 2374:7 2385:22 2410:3 2456:21 2471:19 2497:3 indicated 2363:2 2372:14 2373:2,3 2374:19 2382:9 2382:14 2385:8 2386:10 2395:3 2455:3,15 2469:12 2471:7 2471:13 2499:11</p>	<p>2535:1 2559:24 indicates 2426:6 2469:17 2473:15 indicating 2386:21 2536:21 2560:22 2586:12 indication 2473:19 indictment 2412:4 indirectly 2394:19 indulge 2608:7 infer 2588:18 inference 2362:3,7 2364:6 2371:11 2388:23 2405:12 influence 2569:1,3 2569:16 influenced 2560:24 2570:7 2574:9 information 2359:25 2362:6,7 2362:8,19 2363:23 2364:8 2366:4,14 2371:16 2375:21 2379:24 2380:5 2380:24 2381:1,4 2389:25 2390:24 2391:2 2392:14 2392:18,23 2393:18 2398:13 2408:2,3,9,12 2410:4 2426:18 2430:9,10,10,13 2432:24,24 2433:2,11 2436:15 2445:22 2494:8 2531:18 2536:20 2537:4 2570:25 2579:13 2582:17 2583:8 2583:20 2586:15 2595:3 informed 2361:23 2409:20 2500:25 2501:3 2582:16 2601:17 2609:16 2610:5 initial 2379:8,9 2451:13,18 2454:25 2461:25 2473:6 2483:7 2541:7 2560:12 2560:21 2561:20 2564:17 initialled 2439:14 2564:22 2582:7 initially 2418:18</p>	<p>2438:13 initials 2370:14 2527:2 2585:7 initiative 2474:9 Inn 2501:21 input 2353:20 2433:18 inquiries 2358:17 inquiring 2443:24 inquiry 2346:1,20 2350:4 2355:13 2356:17 2359:18 2362:2 2390:7 2398:14 2405:2 2409:9 2412:5 2434:9,13 2438:12 2440:14 2440:19 2443:20 2445:25 2446:12 2488:2,6 2489:5 2538:6 2547:20 2558:7,11 2613:23 insert 2573:10 inserted 2584:18 inside 2583:12 insight 2424:19 insisting 2469:24 insists 2517:6 inspector 2353:24 2354:2,7 2356:9 2360:3 2370:13 2370:15 2386:13 2415:20 2425:23 2436:8,13 2586:24,25 2587:3 instance 2359:12 2377:19 2534:12 2604:9 instructed 2354:21 2471:5 2532:5 2534:8 instruction 2401:24 2402:11 2403:22 2444:11 2508:17 2508:18 2560:3 2560:10 instructions 2404:6 2404:16,19 2428:11 2444:14 2444:16,22,25 2445:3 2452:4,10 2462:4,5,10 2470:9 2471:6 2523:5 2532:13 2543:8 2548:23</p>	<p>2561:24 2565:8 2572:23 2573:22 2586:1,4 insurance 2480:8 2480:13,19,21 2481:1,12 2498:18,23 2511:24,25 2512:7,16 2513:15 2517:1 2519:8,11,21 2520:24 2555:21 2555:23 2562:13 2564:1 insure 2480:22 intact 2394:7 2484:10 integrated 2435:12 intend 2364:12 2444:15 intended 2486:10 2518:18 intends 2385:18 intensity 2523:9 intention 2527:25 intents 2390:1 intercede 2500:5,10 interest 2360:2 2426:24 2445:25 2469:23 2531:21 interested 2415:23 2439:19 2445:20 2502:2 2538:25 2541:19 2559:7 2564:2 2566:22 2587:6 2594:23 2595:5 interesting 2430:16 interim 2528:2 interject 2356:21 internal 2371:6 2403:11 2427:14 2428:8,9 2472:8 2474:20,24 2476:21 2478:17 2479:19 2526:24 internally 2472:11 intervening 2554:2 interview 2369:10 2446:12,15 2497:21 2554:13 interviewed 2355:22 2374:20 2390:13 2410:24 interviewing 2383:25 interviews 2570:3</p>	<p>2573:13 introduced 2439:22 2445:19 introduction 2461:20 2463:20 introductory 2561:21 inverse 2572:4 investigate 2361:17 investigated 2350:15 investigating 2366:6 2379:23 2429:20 investigation 2350:20 2352:15 2353:4,21 2355:2 2355:4 2373:18 2374:17 2376:22 2377:18 2378:13 2378:16,19,22 2380:3 2383:4,14 2383:19 2384:2 2386:24 2394:10 2395:16 2403:11 2428:8,9 2429:13 2429:22 2609:23 investigations 2351:13,18,23 investigative 2432:3 investigator 2354:4 2354:5,19 2366:6 2388:6 2395:24 2403:13 investigators 2353:9 2360:4 2433:7 Investors 2516:6 2521:15,19 Investor's 2483:18 involve 2585:15 involved 2351:22 2352:6,11 2378:15 2417:2 2424:10 2467:4 2512:13 2578:8 2578:21,25 2589:13 2592:12 2601:21 2608:3 2610:24 involvement 2356:1 2372:20 2378:18 2395:16 2402:20 2412:12 2438:12 2448:7,16 2474:3 2478:8 2528:2 2588:13</p>
--	---	--	---	--

<p>involving 2584:23 2585:15 ipsa 2607:11 irrelevant 2397:3 issue 2370:18 2373:2 2377:17 2384:8,10 2392:16 2393:6 2398:24 2399:2 2409:3 2413:21 2416:24 2419:15 2421:23 2422:7 2423:20,22,24 2424:19 2425:14 2432:19 2435:20 2436:4 2464:8,12 2465:9 2466:1,8 2466:17 2468:17 2469:4 2477:5,9 2477:12,14,15 2481:12 2482:5 2492:8,15 2494:20 2498:18 2498:22 2513:14 2513:16 2531:12 2552:6,9 2555:21 2555:23 2556:11 2558:23 2559:2,4 2562:20 2563:4 2563:13 2579:5 2579:17 2595:22 2598:22 issued 2468:8 issues 2350:14 2368:7 2381:12 2393:12,15 2428:1,23 2435:10 2436:6 2440:6 2450:2 2451:24 2452:1,2 2452:6,11,11,13 2452:24 2453:9 2455:18 2456:23 2466:4 2473:11 2492:17 2500:6 2507:1 2512:4 2513:8 2519:4 2526:7 2537:23 2556:2,2,15,23 2564:2 2591:9 2613:15 item 2470:1,5,5,10 2516:24 2519:8 2556:21,25 2557:2,3,13 2559:13 2562:22 2564:3 2568:10</p>	<p>2568:12 2569:11 2569:25 2570:22 2601:7,7 itemize 2458:5,12 2562:24 items 2465:1 2466:6 2466:6 2473:18 2473:20 2485:22 2555:25 2557:1 2564:1,16 2571:15 <hr/>J<hr/>J 2347:21 jail 2486:20 2540:4 2544:20 James 2346:3 2347:11,11 2362:17 January 2377:6 2472:15,18,25 2475:7,13,16 2476:8,9 Jay 2347:13 jealous 2428:5 jeopardize 2376:5 2376:22 2554:20 jeopardy 2484:25 2486:9,23 2487:13,18 2494:23 2496:3 job 2355:2 2460:14 2460:15 2485:16 2485:16 2552:6 jobs 2492:2,16 Johns 2394:13 2425:24 Johnson 2354:2 2386:13 2412:12 joined 2350:15 Jonathan 2347:3 July 2377:12 2399:6,19,19,19 2400:2,22 2413:8 2413:8 2414:25 2415:2,9 jump 2476:5 2592:15 jumping 2442:6 junction 2588:6 June 2439:10,24 2453:25 2454:2,4 2454:9 2456:6 2463:4 2470:15 2503:11 2508:4 2518:12 2519:15 2519:18,24</p>	<p>2520:19,24 2521:6,22 2522:2 2522:3,6,8,15,16 2522:20,23 2533:25 2547:5 2553:25 2554:1,1 2554:23 2555:12 2559:18 2566:3 2570:20 2571:20 2572:6,6,22 2573:12 2577:9 2577:13 2580:12 2581:14,20,21 2584:23 2585:12 2585:13 2587:22 2587:24 2588:1,1 2588:11,22 2589:1,9 2591:5,7 2591:15,16,16 2592:3,18,19 2593:15,17 2601:19,20,20,24 2602:1,1,8,21,25 2603:13,13,13 2604:16,23 2605:4 2606:2,15 2607:18,23,23,24 2609:3,14 2610:23 junior 2351:6,9 2355:5 jurat 2581:24 jurisdiction 2467:10 Justice 2370:21 2400:14,25 2424:6 2427:1,6 2474:25 2476:21 2478:17 2584:20 <hr/>K<hr/>K 2347:17 2575:1 Karamchand 2347:6 Kathy 2347:6 keen 2543:22 keep 2375:20 2446:6 2449:21 2471:10 2508:7 2530:11,16 2531:7,9,10 2532:7 2540:1 2592:1 keeping 2500:24 2501:3 2530:18 Ken 2574:19,20 2575:19 2576:16</p>	<p>2577:8 Kennedy 2347:21 2352:8 2357:8 kept 2362:24 2363:1 2436:20 2454:11 2524:13 2530:10 2552:22 2612:24 key 2355:1 2465:3 2470:10 2556:24 2557:2,4 keys 2433:12 kid 2408:6 Kidnapping 2350:24 kids 2602:11,15 killed 2486:20 kind 2363:15 2370:24 2398:14 2410:21 2425:14 2427:18 2442:11 2444:18,19 2445:14 2453:14 2467:17 2566:23 kinds 2445:13 2492:17 Klippenstein 2428:12 knew 2360:6 2362:13,15,16 2394:7 2406:22 2407:7 2417:5 2448:2 2451:4 2455:5,7,8,9 2465:24,25 2466:1,15 2469:4 2469:8 2511:12 2528:5 2547:8,22 2548:1 2569:10 2591:23,25 2606:13 know 2352:25 2355:15 2357:1 2358:16 2361:7 2364:5,5,18 2367:5,10,12,16 2369:18 2381:18 2382:5,8 2388:11 2388:25 2391:3 2395:15 2405:13 2406:21 2407:6 2410:9 2415:12 2419:4 2420:16 2421:14 2425:3 2425:12 2427:2 2435:16 2442:20 2443:19 2454:19</p>	<p>2455:4 2456:10 2456:15 2457:2 2458:3 2460:21 2462:25 2463:4 2463:23 2466:13 2466:15 2467:2 2467:14 2468:18 2469:22 2474:5 2475:22 2477:15 2478:10 2486:12 2486:20 2487:7 2490:9 2491:3 2494:12,14,15,18 2495:1 2499:13 2500:17 2501:25 2502:3 2503:6 2504:15 2505:2,7 2507:24 2512:18 2514:10 2528:1 2532:21 2536:7 2538:21 2542:5,6 2551:15,18 2553:25 2555:9 2558:2 2559:15 2561:2,15 2564:24 2565:4,6 2566:10 2569:7 2572:1 2575:11 2575:11 2576:5,5 2576:11,18,20 2577:22,23,23 2582:25 2583:1 2584:3 2586:6 2587:2,17 2590:3 2591:17 2592:8 2593:22 2594:3 2600:10,16,22 2601:20 2603:8 2607:3,7,18 2610:15 2611:18 knowing 2366:14 2366:16,16 2376:7 knowledge 2364:4 2376:3,20 2381:7 2381:9 2408:10 2412:4,12 2420:13 2426:18 2430:11 2527:25 2594:6 known 2354:3 2362:18 2406:11 2457:12 2495:23 Kovnats 2348:8 2349:5,7 2381:15 2381:21 2434:21 2435:6,15,17</p>
---	---	---	--	---

<p>2436:1,24 2437:5 2437:6,8,13,19,25 2438:1,12 2439:4 2439:10,24 2441:15,19,20 2442:3 2444:5,16 2444:21 2446:5 2458:3 2482:10 2487:2 2488:9 2490:5 2510:6,25 2512:19,23,24 2537:24 2538:19 2556:14 2558:13 2559:15 2568:5 2569:25 2579:5 2594:2 2603:18 2605:22 2608:15 2611:1,4,15 2612:8,10,15,24 2613:3,9,14 K-O-V-N-A-T-S 2437:7</p> <hr/> <p style="text-align: center;">L</p> <p>lag 2523:1 land 2516:5,8,14 2519:20 2520:19 lands 2503:21 lane 2425:3 language 2484:18 2484:20 2485:6 2547:1,4,9 2576:21,23 larger 2409:12 late 2457:23 2529:14 2550:3 2576:13 launch 2478:4 law 2440:12 2447:8 2447:9,12 Lawlor 2456:22,25 2457:2 lawyer 2448:3 2451:20 2466:25 2512:11 2532:3 2551:2 2561:5 2595:4,7,13 2599:19 2605:21 2610:25 2611:4 lawyers 2357:11,14 lawyer/client 2364:22 lead 2357:10 2358:8 2358:9,11,22 2443:20 2497:15 2526:5 2562:1 leading 2356:25</p>	<p>2357:16,19,23 2358:7,21,23 2359:3 2401:17 2588:14 leads 2536:7 2537:11 2571:21 2573:10 leaned 2587:10 learn 2361:19,20 2503:22 learned 2361:16 2400:18 2419:22 2421:13 2436:9 2468:19 learning 2576:13 learns 2436:16 leave 2373:10 2382:23 2447:5 2484:24 2487:12 2506:8 leaving 2415:22 2446:19 2483:7 2579:4 led 2461:2 left 2422:8 2425:14 2482:14 2515:16 2535:10,11,14 2536:21 2541:18 2543:9 2586:2 left-hand 2475:11 2585:5 Legal 2347:8 legibility 2450:2 length 2362:1 2538:5 lengthy 2580:24 2591:13 LeSage 2346:5 letter 2349:3 2368:2 2399:22 2401:8 2401:13 2402:14 2402:16,16 2403:24 2404:3 2429:15 2430:20 2431:1,13,19,22 2431:24 2444:13 2444:24 2457:24 2458:1,9,14,16,17 2459:5 2460:8,22 2461:2,6,10,12,14 2461:19 2462:3,5 2462:13,21 2463:1,3,9,15,21 2464:11 2465:10 2468:7,15 2469:25 2471:22 2471:24 2472:2,7</p>	<p>2472:9 2473:7,12 2473:16,18,20,25 2474:22,23 2475:2 2485:15 2485:23 2492:22 2498:9,13 2500:2 2500:21 2503:2 2509:25 2514:5 2514:12,13,14,19 2515:10 2518:7,8 2519:15,18,25 2521:14 2522:15 2522:17,18 2528:10 2534:19 2534:21 2539:9 2539:10 2540:21 2540:23,25 2541:3,5,8 2542:7 2543:2 2548:9,16 2549:10,25 2550:13 2551:15 2551:16,23 2553:2,9,11 2555:2,9 2557:15 2557:16,22,25 2558:14 2559:1 2559:10,16 2560:4,8,10 2561:20,25 2562:3,16 2563:10 2565:13 2565:13 2567:12 2570:15,23 2571:15,21 2572:1,22,22 2573:1,11 2575:14,22 2577:10,10,13,19 2578:2,4,13 2591:5,7 2592:1 2592:17,19 2593:6,7 2601:6 2606:14,24,25 2607:2,13 letterhead 2520:1 letters 2454:21 2514:11 let's 2353:10 2402:8 2496:6 2504:20 2601:5 level 2496:12 leveled 2405:1 Libman 2347:10 licence 2396:8 lies 2409:19 2605:13 2606:12 lieu 2565:11</p>	<p>life 2471:21 2508:10 lifestyle 2485:11,19 2485:20 2492:17 2552:6 light 2529:22 liked 2425:8 limitations 2446:19 limited 2424:23 line 2389:16 2409:17 2414:6 2466:16 2549:7 2572:21 2594:13 2594:24 2596:1 2597:2,4 2598:23 2598:25,25 2599:7,18 lines 2384:20 2414:20 2470:13 2538:18 2594:19 Lisa 2614:6,20 list 2467:3 2569:12 Listen 2556:14 listening 2591:21 lit 2364:21 little 2353:16 2358:17 2370:22 2407:2,3 2447:12 2449:8 2461:5 2497:22 2513:1 2528:5 2567:4 2569:23 2571:25 2572:20 2574:17 2587:21 living 2598:22 2599:1 LOA 2493:2 local 2470:18 2571:5 locally 2466:9 locate 2438:15 location 2492:7,8 Lockyer 2347:11 2410:20 2424:25 2425:4 2439:18 2440:20 2510:21 2590:5 logic 2427:25 logical 2375:25 2376:16 long 2396:10 2446:5 2549:4,17 2574:6 2599:8 2610:21 longer 2389:21 2394:21 long-term 2370:3</p>	<p>2456:23 look 2363:12 2366:22 2368:14 2376:14 2379:9 2379:18,21 2382:25 2383:16 2386:24 2389:16 2396:1 2397:14 2397:15 2398:3 2402:16,17 2409:16 2431:12 2431:23 2438:5 2443:19 2448:17 2453:20 2459:11 2467:22 2472:16 2474:17,20,24 2475:4,23 2481:22 2492:20 2496:10 2498:23 2501:17 2504:1 2510:10 2512:24 2522:18 2526:18 2526:23 2536:17 2544:6,6 2546:5 2550:16 2559:3 2559:13 2560:5 2570:15 2571:14 2582:22 2583:4 2585:19 2588:24 2592:4,17 2601:23 2602:21 2605:2 2607:6 2608:15 2609:1 2609:10 2611:20 looked 2555:16 2565:20 2568:6 2606:15 looking 2365:22,24 2475:21 2510:1 2546:14 2566:19 looks 2370:24 2489:3 2496:19 2510:11 loose 2395:6 loosened 2540:3 loquiter 2607:11 lose 2484:2 losing 2597:9 2598:10 loss 2481:11 2484:2 2484:7 2519:9 lost 2516:3 lot 2396:10 2451:4 2471:11 2518:5 2522:22 2528:23 2574:18 2575:5 2577:8 2582:24</p>
---	--	--	---	---

2583:1 2586:19 2598:20 2606:6 lots 2417:21 Louise 2509:15 ludicrous 2404:13 lump 2502:19 lumped 2507:6 lunch 2515:4 lurch 2484:25	2488:12,22 2489:24,25 2490:21 2496:6,6 2496:9,12,20,25 2497:10 2499:23 2499:24,25 2533:9 Mario 2514:16 marked 2401:7 2437:13,19 2446:7 2589:6 market 2483:25 Marlborough 2501:21 match 2364:21 material 2394:23 2534:5 2536:9,11 2536:12,18 2537:10 materially 2425:14 materials 2394:22 2402:21 2403:2 2414:23 2424:24 2425:5 2492:21 matter 2355:1 2358:3,13 2359:18 2365:20 2368:6 2369:20 2371:4 2373:9 2375:25 2376:16 2386:6 2395:17 2399:12 2402:20 2416:16 2419:22 2421:20 2426:24 2427:23 2436:14 2437:17 2438:22 2438:24 2441:12 2467:7,8 2472:10 2472:12 2474:19 2475:1 2477:3,21 2479:23 2481:18 2494:24 2499:17 2501:6 2509:9 2519:5 2544:12 2559:22 2564:7 2579:5 2612:21 2612:23,25 matters 2353:2 2368:13,13 2369:11 2371:24 2398:23 2404:23 2413:14 2425:18 2425:19 2426:7 2455:23 2458:13 2458:18 2459:3 2461:9,10 2465:15 2466:9	2467:2 2477:3 2479:7,24 2498:14 2501:11 2512:8 2553:4,21 2566:4 2568:20 McNairn 2427:7 meals 2599:3 mean 2383:20 2453:10 2464:3 2474:11 2517:17 2523:21 2532:25 2539:25 2559:3 2563:19 2565:23 2565:23 2606:5 2610:14 meaning 2362:12 2419:1,4 2539:10 means 2440:23 2514:9 meant 2352:16 2383:22 2419:12 2424:20 media 2434:19 2438:4 2441:3 2543:11,21,23 2586:9 meet 2461:21 2474:5 2480:3 2535:7,19 2537:14 2541:22 2560:20 2566:3 2568:22 2574:2 2575:5,7,12 2578:15 meeting 2367:12 2397:23 2398:8 2420:8 2448:11 2448:13,21 2450:5 2451:13 2452:15,22 2453:7 2454:17 2454:23,25 2455:5,7,12 2456:7,21 2457:1 2457:19 2458:12 2458:15,22 2459:2,12,14,16 2459:18,24 2460:1,2 2461:1 2466:15 2467:24 2468:11,17,20,25 2472:15,18,21,25 2473:1,7,15 2475:7,12,16,18 2475:25 2476:5,8 2476:12,25 2478:3,13,16,20	2478:23 2479:1,2 2479:4,6,12 2487:22 2488:10 2488:11,13,19,21 2489:6,7,13,23 2490:10,16,19,20 2491:10,11,15,16 2494:7,21 2495:1 2495:2,16,17,22 2495:24 2496:5 2497:4 2499:20 2502:25 2503:19 2503:23,25 2504:3,7,10,19,21 2506:4,7,8,11,23 2507:2 2509:16 2510:5,9,19 2526:15,17 2528:23 2550:22 2566:2 2568:12 2568:16 2570:17 2571:17,20 2572:2 2573:16 2573:20 2574:18 2577:5,7 2579:24 2580:14 2581:9 2581:14 2589:7,7 2602:22 2603:20 2603:25 2604:3 2604:16,19 2607:19 meetings 2360:5 2397:5,11 2472:22 2478:17 2507:5 2589:2,5 2590:3,6 2591:12 meets 2444:20 members 2347:18 2347:20 2384:1 memo 2375:12 2382:10 2386:18 2387:17 2390:9 2392:20,21 2394:13 2395:4,8 2398:4,8,11,17 2399:14 2400:19 2453:20 2454:10 2454:16,24 2455:23 2456:2 2456:11,13,18 2457:22 2458:10 2461:16 2464:16 2467:22 2469:10 2469:13,16,17 2470:15 2472:23 2473:14 2474:21 2475:15,21	2476:12,20,21 2477:21 2478:2 2486:10 2487:11 2488:18,20,25 2489:24 2491:13 2504:14 2505:21 2509:14,15 2527:11,18 2528:20 2529:17 2533:9,24 2544:6 2544:7 2546:3 2547:5,12 2548:22,25 2549:4,15 2553:4 2554:7 2571:21 2572:5,10,11,20 2574:17 2577:6 2578:16 2581:2,4 2582:19 2583:1 2584:19 2586:1 2591:14 2593:16 2593:20,25 memoed 2456:3 memorialization 2542:4 memorialize 2459:3 2463:19 2472:24 2476:25 memorialized 2477:18 2536:5 2539:18 2540:18 2590:13,14 memorializes 2444:13 memorializing 2509:15 2548:10 2584:2 memory 2441:22 2469:19 2475:20 2475:20 2602:18 2603:20 2604:15 2606:3 memos 2454:12,18 2510:8 2526:25 mental 2362:19 mention 2392:7 2486:7,22 2543:12 2558:22 2600:11,17 mentioned 2369:8 2387:17 2421:24 2486:16 2492:7 2492:15 2494:22 2503:7 2543:2 2561:14 2566:15 2566:16,20 2593:17 2600:6
--	---	--	---	--

<p>2600:23 2601:11 mere 2416:23 merely 2463:18 merits 2445:11 message 2534:18 2585:18,20 2586:11 messages 2584:19 2584:20 messy 2396:3 met 2355:19,21 2399:7,15 2458:3 2490:11 2522:3 2531:2,5 2546:4 2559:21 2575:11 2610:4 Michael 2347:2 microphone 2447:17 2490:4 2495:12 mid 2498:7 2502:3 2567:14 middle 2379:21 2399:23 2513:2 2529:21 2530:3 2531:23 2533:22 2549:16,19 2582:23 2583:4 2594:10 2596:1 Miller 2347:14 2349:3 2356:11 2360:5 2362:13 2362:15 2363:3,5 2363:9,12,25 2372:7,11 2373:22,24 2381:12 2386:15 2386:18,22 2390:10,15 2391:3 2392:13 2392:23,25 2393:8,20 2397:5 2397:21 2398:9 2398:14 2399:8 2399:15 2400:8 2401:9,14,24 2402:4,10,17 2403:20,22,25 2404:5,20,22 2405:14 2406:3,8 2406:19 2408:3 2408:14 2410:14 2412:15 2416:10 2417:8 2418:11 2419:21 2426:7 2426:11,19,25 2427:24 2428:2</p>	<p>2428:13,19 2443:14 2457:4,4 2457:19 2458:8 2458:12 2459:1 2459:19,24 2461:8,13 2463:17 2465:19 2466:2,23 2467:25 2468:14 2468:23 2471:22 2472:16 2473:1,7 2473:8 2474:10 2474:21,25 2475:6 2476:7,24 2477:2,13,21 2478:21 2479:2 2479:20 2481:17 2482:3,17 2484:21 2486:5 2491:21 2496:13 2498:13,22 2500:1,4,10 2502:7 2503:23 2505:21 2506:7 2506:17 2508:6 2509:9,14 2510:6 2512:13 2513:13 2515:24 2518:7 2518:12 2522:14 2523:2 2527:9 2528:19 2531:2 2534:8,13,15 2535:12,13 2537:1,2,7,21 2538:4 2539:7 2540:20 2541:18 2542:12 2544:11 2544:15,18,23 2545:4,9,19 2546:10,15,15 2547:19,24 2548:9 2549:6,12 2550:12,18,22 2551:7,10,13,14 2551:14,19 2552:3,10 2553:5 2553:15,20,25 2554:18 2559:8 2562:6 2564:8 2568:17 2569:15 2574:2,13 2577:5 2577:11 2578:3 2578:15,19 2579:6 2580:4,5 2582:21 2583:6 2583:18,22 2586:15,16</p>	<p>2591:25 2592:6 2592:18 2593:9 2601:11 2604:1,2 2607:15 2611:2,4 2611:8,11 Miller's 2392:8 2400:16 2457:23 2465:8 2467:10 2501:16 2502:8 2515:3 2526:25 2527:1,10 2554:24 2558:14 2558:17 2579:12 2579:17 2584:22 mind 2410:22 2460:23 2470:8 2471:19 2499:21 2507:12 2524:21 2529:23 2532:8 2547:15 mine 2491:1 2551:4 mini 2587:20,21 Minister 2496:17 2496:18 Minister's 2496:16 ministry 2496:21 2501:8 minor 2466:4,5,6,9 2500:24 2513:18 minute 2403:21 2460:24 2476:6 2476:18 2504:8 2515:22 2519:23 2577:6 2591:20 minutes 2382:18 2387:25 2585:10 2608:7,8 misconception 2604:10 misdescribed 2513:24 misleading 2370:23 2594:7 misreadings 2450:16 missing 2351:21 2394:24 2405:6 2421:24 2422:4 2450:9 2510:13 misstating 2374:2 mistake 2515:15,16 2515:21 2613:6 mistaken 2483:19 2531:3 mistakes 2451:8 misunderstood 2418:13 2420:20</p>	<p>mis-explained 2418:22 mis-recorded 2496:8 mis-transcribed 2496:9 moderate 2569:16 2569:18 modified 2500:23 modify 2500:11 2508:24 moment 2402:8,12 2489:22 2504:12 2505:21 2522:14 2540:12 2563:3 2566:2 2576:13 2592:15 2610:1 mom's 2603:17 Monday 2440:2 2518:12 2550:6,7 2553:25 2554:23 2555:12 2572:7 2589:8 2602:12 2603:8 Mondays 2603:9 money 2370:18 2473:11 2484:2 2504:5 2505:16 2505:16,17 2515:1 2523:3 2525:5 2592:6 2599:24 2607:8,9 monies 2598:5 month 2366:4 2377:24 2455:8 2500:1 2507:4 2518:6 months 2430:22 2431:20 2469:13 2507:4 2511:19 2548:3 moon 2604:8 Moore 2499:4 morning 2350:5,6 2425:21 2434:6 2454:5 mortgage 2477:4,9 2477:10,23 2482:14 2483:4,6 2483:18,22 2511:20 2512:6 2512:16 2516:17 2519:21 2520:8 2520:10 2525:19 2525:23 2551:24 2597:5 mortgagee 2482:20</p>	<p>2512:10 2516:6,9 2516:13,20 2517:1 2525:13 mortgages 2597:7 mortgagor 2516:20 motive 2373:4 2432:9,12 motor 2562:14 motorcycle 2519:7 2519:9 2555:24 2556:8 mouth 2411:5 2576:22 move 2453:12 2457:13 2484:3 2485:15 2492:10 2565:18 2567:18 2567:19 2596:2 moved 2396:23 2460:12 2464:19 2477:11 2483:6 2485:21 2492:9 2511:17 moving 2425:18 2528:9 2565:3 2566:25 2567:9 2569:7 2596:8,20 2598:2,2 murder 2363:19,21 2376:4,5,21 2402:25 2403:2 2451:25 2609:4 myriad 2391:24</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>nail 2458:23 naive 2407:3 name 2365:3 2368:20 2392:8 2399:9 2400:11 2400:18 2427:7 2437:3 2479:21 2501:18 2506:20 2506:25 2507:7 2582:10 named 2354:2 names 2450:11 2451:11 Nancy 2347:7 narrative 2443:10 2458:24 narratives 2444:6,7 nature 2371:6 2427:13 2494:5 2514:2 2542:2 necessarily 2445:21 2569:18 2576:24</p>
---	--	---	--	--

<p>necessary 2363:20 2411:16 2506:24 need 2359:13 2361:20 2392:3 2454:22 2457:7 2457:13 2514:12 2540:25,25 2553:8 needed 2407:5 2417:12 2448:2 2451:20 2462:19 2583:22 2584:7 2599:14 2600:2 needless 2352:2 needs 2500:12,13 2500:14 2538:10 2584:6 neglected 2513:11 2558:16 negotiate 2452:7 2453:17 2468:3 2494:17 2540:11 2600:12 negotiated 2593:10 negotiates 2435:17 negotiating 2511:8 2512:8,16 2527:23 2528:6 2530:25 2533:17 2542:22 2543:13 2545:21 2561:12 negotiation 2435:25 2608:4 negotiations 2410:9 2435:21 2436:5 2438:24 2453:21 2500:22,25 2501:4 2510:24 2511:5 2513:5 2514:7,8 2540:14 2545:12 2548:5 2556:3,15,20,22 2557:5 2600:20 2610:21 2611:8 neighbourhood 2352:10 never 2361:2 2378:4 2392:1 2398:22 2417:7 2418:10,14 2420:12,20 2421:3 2423:21 2426:11 2428:11 2442:9 2456:14 2513:4 2517:14 2524:17 2526:20 2529:4 2534:22</p>	<p>2535:4,20 2556:7 2578:20,25 2590:13 2600:6 2606:13 nevertheless 2439:1 new 2437:12 2449:22 2464:17 2520:9,9 2548:3 2569:8 2600:1 Newfoundland 2569:7 news 2593:8 nice 2485:16 2513:1 night 2406:12 2491:19 2537:21 2539:3 2547:10 2564:8 nonsense 2362:10 2371:22 non-answer 2557:6 non-hearsay 2439:22 non-homicide 2351:3 non-homicides 2352:21 non-leading 2357:23 normal 2358:20 2427:22 2428:3 2428:16 2445:23 2500:11 normally 2363:20 2369:12 2370:15 2371:3 2427:19 notarize 2581:20 notarized 2439:7 notation 2583:19 notations 2475:4,5 note 2365:1,14,16 2372:19 2373:12 2375:24 2385:22 2386:17 2387:23 2387:24 2392:1 2397:21 2398:8 2416:5,6,7 2418:16,16,25 2420:18,25 2448:7,24 2475:9 2475:11 2480:2 2481:16,24 2484:11,15 2485:13,25 2486:4 2490:11 2497:19 2502:5 2506:9 2507:3 2515:5,8,25</p>	<p>2517:4 2527:9 2546:23 2551:12 2553:19 2559:17 2565:21 2567:4 2585:4,22 2603:19,23 2604:2,4,15 notebook 2351:20 2382:24 2391:18 2448:8 notebooks 2351:25 noted 2382:16 2397:5 2399:22 2404:2 2414:9 2455:23 2582:17 notes 2362:22 2368:10 2382:24 2391:16 2392:7,7 2392:9 2412:7 2425:8,9 2448:12 2448:17 2454:20 2454:22 2456:20 2457:7 2463:12 2477:4 2479:13 2479:19 2481:9 2481:21 2483:7 2490:9 2497:17 2504:3,13 2506:6 2510:8 2515:3 2544:4 2551:12 2551:14,18 2567:2,5 2605:20 2612:2 2614:9 notice 2434:19 noticed 2451:1 notified 2373:17 2386:13 notwithstanding 2508:23 November 2350:16 2351:2 2377:5,6 2410:25 2448:7 2448:10,11,13,16 2448:21 2451:14 2451:19 2454:16 2457:10 2458:9 2459:12 number 2351:17 2360:24 2363:4 2368:18 2375:11 2395:7 2401:10 2401:25 2407:18 2407:19 2408:8 2410:25 2413:18 2413:25 2414:7 2420:16 2421:25 2422:6 2430:18</p>	<p>2432:5 2433:24 2433:25 2444:16 2453:2 2465:4,5 2465:14 2466:3 2470:1,5 2477:2 2481:24 2500:18 2512:4 2519:17 2545:14,16,17 2566:6,8,9,15,16 2566:24 2567:11 2573:11 2586:5 2602:8 2605:21 2605:24 2606:22 numbers 2432:1,3 2565:22 numerous 2605:5 <hr/>O<hr/>oath 2581:19 objected 2358:4 objecting 2404:11 objection 2357:1,21 2377:17 2442:4 2442:14 objections 2462:1 objective 2485:22 2515:2 objects 2445:9 obligation 2542:19 obliged 2587:7 observed 2375:16 obtain 2432:16 obtained 2438:21 2579:21 obtains 2605:18 obvious 2364:6 obviously 2366:9 2381:20 2420:20 2435:17 2436:17 2440:5,7,13,16,23 2451:15 2466:19 2470:11 2482:5 2490:13 2502:17 2511:12 2534:17 2557:19 occasion 2357:20 2508:19,19 2575:8 occasions 2363:4 2368:5 2393:25 2422:7 2426:5 2457:6 2505:5 2586:5,5 occur 2450:10 occurred 2454:9 2456:5 2469:14 October 2355:18,21</p>	<p>2356:5 2359:22 2361:14 2371:9 2371:10 2372:1 2372:21 2373:12 2374:8,13 2375:12,13 2377:5 2378:3,6 2379:2 2382:23 2383:4 2392:20 2394:13 2395:4,8 2398:3,4 2400:19 2410:24 2412:17 2412:18,21 2425:9,10,23 2426:2 odd 2451:1 offence 2571:1 offer 2376:17 2466:20 2467:12 offered 2386:7 2435:23 2507:14 2600:25 2602:5 offering 2467:15 2469:1 2510:21 2601:11 office 2396:14 2448:14 2451:16 2454:4,6,6 2456:22 2458:4 2496:16 2521:24 2551:3 2584:22 2593:8 2612:8 officer 2347:4 2373:17 2385:14 2390:24 2391:5 2415:20 2574:14 2574:21 2575:9 2609:22 officers 2425:12 2433:20 2456:20 2498:4 2574:24 2575:2,23 2610:4 officer's 2448:12 official 2400:14 2499:9,13 2500:7 2614:7 officials 2487:16 2496:20 oh 2352:2,16,20 2353:3 2360:15 2365:8 2368:17 2372:10 2377:3 2384:3 2394:25 2396:7 2418:24 2419:12 2442:9 2451:10 2467:3 okay 2350:9 2364:6</p>
--	--	---	---	---

<p>2365:8 2382:21 2401:16 2416:12 2416:15,20 2419:18 2459:17 2486:14 2487:24 2506:5 2528:7 2530:1 2553:13 2556:21 2568:9 2578:11 2588:22 2603:22 2604:14 old 2440:19 Olson 2347:12 2420:25 omnibus 2513:16 2524:1,6 once 2380:3 2429:23 2457:9 2525:8 2526:16 2546:3 2555:16 2561:5 2571:25 ones 2465:3 ongoing 2351:18 2394:10 2395:15 2395:17 2396:13 2485:4 2504:16 on-duty 2396:15 open 2396:16 2488:6 2498:15 opening 2434:15 operate 2449:24 opinion 2545:13 2590:12 2597:17 opportunity 2442:21,23 2461:21 2518:19 opposed 2492:1 2508:8 option 2482:12 2483:1,2 2502:9,9 2502:12,18 2503:1,4,9,15 2507:22 2528:12 2528:15,19 2529:3,9 2545:1,1 2553:7 2564:5 2569:11 2584:13 2584:16 options 2482:19,22 2502:9 2509:7 2569:10 2584:11 oral 2444:4,11 2445:6 2461:8 2462:2 orally 2426:6 order 2423:12 2434:23,23 2435:2,5,7</p>	<p>2456:22 2462:19 2572:4 2575:5 2584:15 ordinarily 2356:19 2368:8,10 2391:16 2397:7 2397:10 ordinary 2440:14 original 2396:2 2415:5 2513:11 2518:14 2560:13 2563:10 2601:6 2613:5 originally 2435:6 originals 2612:11 Orr 2365:1 2380:7 2380:14,16,20,21 2380:24 2381:14 2382:9,13,17,19 2385:5,9,15 2386:2 2387:2,10 2387:19 2388:10 2388:15,16 2389:3,17 2390:4 2390:25 2397:15 2414:15,16 2415:17 2416:1,9 2417:7,19,20 2418:6,10,20 2419:6,11,20 2420:2,5,8,12,16 2420:21 2421:3 2421:13 2475:12 2475:17,18,19 2476:1,6,8,12 2478:4,14,16,23 2479:3,13 2487:23 2488:10 2488:14 2489:6 2489:13 2490:12 2491:17,17 2492:11,18 2493:8 2494:2,8 2494:21,25 2495:15,18,24 2497:4,6 2499:6 2499:20 2503:1,7 2503:23 2504:21 2504:23 2506:9 2506:12 2507:21 2510:7 2527:14 2551:12 2553:6 2553:15,19 2568:13,17,22 2569:9,13 2583:8 2583:20,22 2584:6,7 2602:22</p>	<p>2603:25 2610:24 Orr's 2365:3,14 2415:17 2421:14 2490:18 2492:21 2496:7 2501:18 2504:2 2506:6 2527:9 2528:10 2551:11,17 Ottawa 2427:8 ought 2441:1 outcome 2461:1 outline 2436:22 2570:13 outlines 2517:25 outlining 2550:1 outset 2445:13 2452:15 2468:25 outside 2356:19 2360:23 2361:5 2427:19 outstanding 2385:1 2429:13 2494:23 2495:5,9 2496:3 2516:17,19 2519:4 2520:8 out-of-province 2467:12,19 2469:5 overall 2513:5 overcome 2438:18 overly 2587:6 overnight 2608:11 Ownership 2521:12 owns 2576:1 o'clock 2487:25</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pack 2367:9 package 2598:17 2605:9 page 2348:3 2372:19 2374:5,7 2374:12,13 2375:12 2376:14 2379:12,14,21 2383:1,16,17 2384:15 2398:5,5 2399:22,22 2400:1,12 2402:18 2403:12 2403:12 2415:6 2423:16 2429:10 2429:15 2470:13 2470:14 2472:24 2478:2,19 2481:20,23 2488:12,19,20</p>	<p>2489:10,14 2490:1 2491:12 2491:14 2492:5 2493:14 2499:1 2499:15 2500:20 2501:17 2502:7 2504:2,7 2506:1,2 2506:10 2512:25 2513:2,25 2514:19,22 2517:4 2518:7 2521:10 2526:4 2526:23 2527:5,8 2527:8,10 2529:19,21,24,25 2530:4,6 2531:23 2533:22 2536:17 2538:16,18 2541:4,10,11 2542:1 2543:10 2544:7,14,22 2545:10,11 2546:6,8 2548:19 2548:20 2549:3 2549:16,19 2550:20 2556:1 2556:21 2562:22 2566:20 2569:11 2581:21,23 2585:3 2586:3 2588:4,9,10,25 2590:21 2594:9 2594:10,16,24 2595:6,22,22 2596:1,14,15,16 2596:18,24,24 2598:23,25 2599:6,6,17,18 2602:2,5 2605:4 2605:18,20 2607:14 2608:24 2609:2,8,9,11 pages 2428:10 2502:5 2519:17 2538:6,9 2548:14 2554:6,8 2580:25 2589:17 2614:8 paging 2611:17 paid 2450:20 2505:1 2515:11 2525:5 2596:6,8,9 2596:10,21 2598:2,4 pain 2410:15 painful 2512:19 paper 2395:6,6,11 2396:11 2424:9</p>	<p>2428:11 2449:9 2514:10 2518:5 2524:17 2612:19 papers 2396:9,10 2499:13 2519:22 2565:22 2567:4 2611:20 paragraph 2372:19 2373:16 2374:10 2384:16,16,21 2386:11 2397:20 2399:23 2400:1 2402:18 2408:3 2409:11,12,13 2415:5,6,13,15,15 2421:11 2432:20 2455:13 2458:1 2458:10 2465:14 2468:2 2473:14 2493:2,21 2499:2 2507:15,16 2513:2 2528:12 2530:3,6,14 2531:21 2533:21 2544:22 2546:7 2549:4,8,18 2553:14 2558:16 2558:17 2559:13 2562:17 2572:10 2572:21 2573:15 2573:17,20 2574:18 2575:13 2575:18 2583:5 2583:10 2609:10 2610:20 paragraphs 2454:25 2493:15 2498:18 2529:20 2549:17 2561:21 2609:1,9 paralleled 2386:25 parallel 2385:20 2386:24 2414:17 parcel 2563:24 pardon 2456:6 2560:8 2563:15 parking 2574:18 2575:5 2577:7 2582:24 2583:1 2586:18 part 2351:13 2352:13 2353:19 2353:25 2354:1 2379:15,18 2380:25 2382:12 2383:16 2391:9 2393:11 2421:23</p>
---	---	---	---	--

<p>2429:12 2430:5 2430:24 2447:5 2456:5,6 2462:7,9 2462:10 2485:4 2498:4 2506:7 2524:5,7,10,18 2525:11 2526:11 2531:15 2555:23 2556:10,20,22 2559:4 2560:5 2563:24 2573:14 2577:6 2600:12 2608:20 2611:3,6 participate 2495:8 particular 2353:10 2361:4 2442:22 2443:13 2445:6 2465:15 2477:3 2526:23 2557:12 2560:19 2570:5 2604:17 particularly 2564:2 2605:2 parties 2422:16 2424:2,5 2439:18 2445:20 2503:24 2539:2 partner 2408:19 partners 2510:18 parts 2351:16 2355:1 2356:23 party 2408:13 2505:3 pass 2408:12 2475:2 passage 2594:8 passages 2429:25 passed 2424:10 2426:19 2439:23 2601:16 passes 2459:7 passing 2458:8 2474:21 Patrick 2346:5 Paul 2357:4,22 2360:18 2362:21 2386:12 2399:7 2408:19 2409:4 2410:12 2432:23 2433:8,18 2440:1 2455:1 2470:16 2574:22 2580:15 2580:19 2582:13 2586:19 2587:8 2604:24 2609:16 2610:4 pause 2506:21</p>	<p>2610:1 pay 2490:4 2502:19 2510:3 2599:8 paying 2464:8 2505:2 2509:22 2596:11,22 2598:24 2599:1,2 2599:15 payment 2513:11 2552:20,23 2584:10 2591:4 2599:24 2601:12 2601:18 2607:5 payments 2477:5 2493:16 2517:8 2525:20 2597:5,7 2600:8 payout 2553:16 Pelletier 2347:7 pending 2457:9 penultimate 2563:3 people 2407:5 2418:15 2420:17 2454:19 2483:25 2574:12 2583:2 people's 2423:11 perceived 2508:10 perfect 2487:21 perfectly 2529:7 performance 2522:11 period 2351:23 2352:17 2377:24 2391:9 2436:21 2444:10 2451:19 2465:12 2471:8 2479:5 2498:7 2501:14 2504:17 2506:23 2511:2 2511:21 2518:4 2523:24 2527:16 2541:13 2576:7 2611:6,7 periods 2351:21 perjury 2409:22 Perreault 2501:5 2512:9 2513:12 2514:14,16 2515:23 2517:5 2519:18 Perry 2436:10 person 2363:22 2468:24 2473:10 2509:3 2521:19 personal 2579:4 2611:21,23,25 2612:2</p>	<p>personally 2352:11 persons 2350:21 2445:24 perspective 2404:15 2423:21 2435:22 2435:23 2491:19 2529:10 2533:24 pertaining 2432:24 2518:23 pest 2442:12 petty 2466:6 2571:10 phone 2361:13 2363:22 2371:13 2377:25 2378:2 2378:24 2379:3 2380:11 2383:3 2392:14 2403:24 2412:21 2420:9 2420:10 2450:6 2459:10 2460:3 2468:24 2490:13 2490:16 2496:12 2496:24 2499:25 2544:7,11 2550:17 2551:7 2557:14 2564:12 2566:21 2573:17 2573:17 2583:14 2583:16,17 2584:5,19,20 2585:9 2586:23 2586:24 2587:4 2589:2,3 2602:14 2605:5 phoned 2382:10 2410:1 2531:24 2535:12 2583:12 phoning 2496:13,14 2496:14 photocopied 2612:8 photocopy 2612:10 2613:4 phraseology 2494:19 pick 2526:14 picture 2604:13 piece 2424:8 2586:14 piecemeal 2524:2 pieces 2395:5,6,11 pitch 2571:3 place 2363:9 2367:6 2373:13 2408:16 2464:17 2483:5 2503:15 2518:1 2519:4 2524:4,5</p>	<p>2524:10,19 2539:1,2 2567:11 2586:23 2589:6 2614:10 placed 2368:10 places 2439:15 2586:23 placing 2496:24 2499:25 plan 2370:4 2401:20 2526:8 2526:19 2592:24 2593:4 plates 2396:8 play 2576:6 played 2409:15 please 2350:4 2368:15,18 2375:11 2379:18 2379:19 2382:25 2384:15 2387:1 2397:14 2398:4 2403:12 2407:13 2437:3 2471:11 2488:6 2556:21 2558:11 2568:4 2569:25 2608:15 pleased 2512:18 ploy 2543:13 plus 2515:12 2525:17 pocket 2505:17 point 2356:22 2379:18 2391:19 2417:11 2425:17 2429:3 2433:21 2440:5 2452:25 2456:16,18 2457:2,10 2460:20 2461:25 2476:1 2478:1 2487:21 2502:24 2503:8 2507:25 2513:5 2518:10 2521:21 2524:14 2529:23 2533:3 2540:15 2544:3 2545:21 2547:25 2548:24 2550:21 2558:4 2560:22 2560:25 2562:3 2562:10 2563:2 2565:5 2566:1 2568:25 2580:2 2591:22 2592:16 2595:15 2598:8 2598:20,23</p>	<p>2601:1 pointed 2417:16 2425:24 points 2462:18 2463:1 2464:7,7,9 2486:6 2513:18 2551:19 2552:5 2555:16 2556:1 2564:1 police 2347:17,19 2370:19 2372:5 2378:18 2385:14 2385:17 2391:5 2398:13 2403:5,7 2403:13 2422:19 2422:20 2424:6 2427:9,16 2428:4 2436:16,21 2439:16 2448:15 2448:22,24 2451:14,16,23,25 2452:12,17,23 2453:10,16 2455:17 2456:20 2457:7 2468:3,18 2468:25 2489:12 2491:20 2497:13 2497:25 2498:3 2503:21 2505:6 2506:17 2508:16 2526:11 2527:24 2530:11,15,17,21 2530:25 2531:13 2532:16 2533:4,6 2534:24 2535:6 2535:20 2536:20 2537:3,3 2540:5 2545:6 2546:4 2561:3 2566:1 2571:6,8 2573:6,7 2574:21 2576:4 2577:21 2579:15 2579:16 2582:2,2 2582:14 2585:10 2586:24 2587:3 2592:25 2593:5 2593:11 2594:17 2594:25 2598:7 2600:13,25 2604:9 2605:15 2606:9,17 policeman 2391:7 policemen 2542:14 policy 2520:24 polite 2577:1 poor 2424:23 2450:1</p>
---	---	--	---	--

<p>portion 2454:2,3 2555:24</p> <p>position 2364:7 2400:5 2401:21 2402:6 2424:23 2428:15 2439:20 2440:22 2444:1,2 2453:14 2463:4 2465:8 2471:20 2480:24 2481:25 2482:24,25 2484:12 2486:5 2500:23 2515:7 2524:24 2542:17 2546:7 2561:15 2563:6 2569:17 2597:18 2598:16</p> <p>positive 2420:4 2432:21</p> <p>positively 2420:21</p> <p>possession 2382:3 2445:19,24 2483:15,16</p> <p>possibility 2507:17</p> <p>possible 2435:4</p> <p>post 2610:23</p> <p>post-trial 2611:6,7</p> <p>potential 2503:7</p> <p>practical 2509:11</p> <p>practice 2354:17 2434:17 2437:11 2447:9,10 2449:4 2511:11 2513:14</p> <p>practiced 2551:2</p> <p>practices 2510:15</p> <p>precaution 2560:20</p> <p>precedent 2357:9</p> <p>predates 2431:19</p> <p>predicated 2425:1</p> <p>prefer 2460:1</p> <p>preferable 2359:9</p> <p>preliminary 2412:5 2441:7</p> <p>premise 2565:12</p> <p>premises 2447:25</p> <p>premiums 2480:8</p> <p>preparation 2431:19 2446:22 2478:8</p> <p>prepare 2354:19 2360:13,16,20,22 2361:5 2478:5 2486:1 2535:7</p> <p>prepared 2356:19 2368:15,23 2369:1,7,25 2370:1,10 2372:1</p>	<p>2372:4,11 2407:16 2408:19 2429:6 2430:22 2431:15,17 2433:14,15,17 2443:5,11 2453:21 2523:17 2532:20 2572:23</p> <p>prepares 2415:1 2608:16</p> <p>preparing 2371:15 2433:7 2573:21 2581:15,17 2588:21</p> <p>presence 2522:8 2541:20 2542:2 2543:3,18 2546:25</p> <p>present 2355:16 2372:23 2489:9 2489:12,17 2490:2,6,8,13 2504:23 2510:9 2540:13,15 2541:14 2547:24 2548:1 2570:2 2573:13 2594:3</p> <p>presently 2441:23</p> <p>press 2409:18,19 2605:12,13 2606:11</p> <p>pressed 2413:18,25</p> <p>pressure 2570:10</p> <p>Preston 2415:20 2421:15</p> <p>presumably 2537:2 2551:17 2605:6</p> <p>pretty 2365:9 2366:20 2393:21 2410:17 2456:9 2469:16 2497:3 2498:5 2514:2 2543:19,19 2563:12 2599:11</p> <p>previous 2570:20 2571:20,22</p> <p>previously 2439:6 2455:4</p> <p>primarily 2436:3</p> <p>primary 2430:13</p> <p>principal 2516:18 2525:18</p> <p>principle 2442:6,13 2453:18 2458:20 2460:7,9 2461:5,8 2463:17,19 2485:5,8 2509:10</p>	<p>2566:13 2591:6,8</p> <p>principles 2473:23</p> <p>printout 2451:5,6</p> <p>printouts 2396:8 2397:2</p> <p>prior 2367:2 2377:7 2403:6 2432:10 2446:21 2465:9 2468:14 2497:5 2535:25 2604:3 2609:23 2610:8</p> <p>private 2366:6</p> <p>privilege 2364:22 2438:16,22 2446:18 2612:7</p> <p>privileges 2612:21</p> <p>probably 2380:9 2388:2 2396:4 2421:6 2430:5 2433:3 2443:20 2443:23 2454:4 2486:21 2508:25 2533:8 2565:5 2608:4</p> <p>Prober 2347:13</p> <p>problem 2355:23 2372:23 2418:12 2480:13,19 2511:14 2513:4 2530:10 2584:1</p> <p>problems 2394:4 2504:6,17 2536:25</p> <p>proceed 2446:9 2518:19</p> <p>proceeded 2459:2</p> <p>proceeding 2361:24</p> <p>proceedings 2346:11,20 2348:1 2434:10 2442:12 2482:22 2488:3 2558:8 2613:24</p> <p>process 2411:7 2428:17 2463:10 2467:18 2472:9 2474:7 2478:4 2566:14,23 2612:6</p> <p>produce 2424:3 2439:4</p> <p>produced 2423:3,4 2436:14 2437:13 2439:9 2458:14 2459:4</p> <p>production 2439:11</p> <p>profession 2512:21</p>	<p>professional 2444:21</p> <p>professionally 2423:9</p> <p>profit 2484:7 2565:19 2566:11</p> <p>program 2368:7 2379:15 2384:13 2453:12 2468:5 2474:5 2478:13 2491:18,22 2492:23 2494:6 2494:11 2495:4,9 2496:2 2500:12 2502:12,13,21 2506:15,25 2507:10 2508:8 2508:22,24,25 2509:1,11 2517:10,15 2523:21 2532:7 2552:19 2563:6 2563:19,23 2564:4 2584:12 2591:4 2599:20</p> <p>progressed 2605:8</p> <p>prohibit 2359:5</p> <p>prominent 2553:8</p> <p>prominently 2559:6</p> <p>promise 2485:2 2533:11,11,11,12</p> <p>promised 2451:25 2453:8,9 2473:24 2487:10 2491:21 2494:16 2500:4 2534:12,18 2556:10 2591:25 2592:5 2604:7 2610:17</p> <p>promises 2532:18 2533:6 2534:25</p> <p>promoted 2404:24</p> <p>proof 2432:21</p> <p>proper 2360:21,21 2576:15 2579:11</p> <p>properly 2440:10 2450:21 2533:13</p> <p>property 2582:14 2607:20</p> <p>proposed 2435:6</p> <p>prosecuted 2565:16</p> <p>prosecution 2364:9 2364:12 2367:25 2375:15,19,23 2376:6</p> <p>prosecutions 2393:8 2460:16</p>	<p>2465:11 2553:1</p> <p>prosecutor 2466:23</p> <p>protect 2460:20</p> <p>protected 2460:18</p> <p>protection 2368:7 2368:13 2369:19 2370:7 2379:15 2380:8 2381:2 2382:2 2384:13 2385:1 2393:12 2429:5 2431:16 2432:7 2438:24 2452:1,5,11 2453:11 2460:11 2468:4 2474:5 2478:5,13 2491:18,22 2494:10 2495:4,8 2506:15,25 2507:10 2508:6,8 2509:10 2517:10 2517:15 2523:20 2528:9 2532:7 2545:5 2552:19 2552:23,24 2556:23 2557:9 2558:19 2561:11 2562:23 2563:19 2563:23 2564:4 2565:11 2568:21 2583:24 2584:12 2591:3 2592:11 2599:20 2604:12 2605:16 2606:9 2610:22 2611:3</p> <p>protective 2493:5 2493:22</p> <p>provide 2424:7 2493:5 2550:12</p> <p>provided 2399:9 2401:4 2425:5 2430:8 2433:1</p> <p>providing 2475:3</p> <p>province 2347:12 2401:1 2467:8 2468:13 2507:18 2614:7</p> <p>proving 2439:23</p> <p>provision 2528:3</p> <p>public 2406:24 2438:4 2528:24 2537:14,22 2538:3 2539:3 2544:13 2548:8 2548:24 2549:23 2554:10 2564:13</p> <p>publicly 2436:12</p>
---	--	---	---	---

<p>published 2434:18 purchase 2502:18 purchased 2447:24 2483:13,17 purporting 2444:8 purpose 2398:11,17 2568:16 purposes 2365:13 2366:23 2390:1 2402:9 2439:2 2449:5 2607:1 Pursuant 2392:20 pursue 2380:1 2429:21 pursuing 2375:22 2376:4,22 2383:15 2401:22 2413:4 pursuit 2376:2,18 2379:1 2383:12 2386:8 2389:9 2390:19 pushed 2570:7 put 2367:3 2381:4 2382:13 2383:20 2384:4 2397:15 2405:9 2411:4 2414:2,7 2415:4 2421:11 2443:18 2461:18 2469:19 2485:14 2503:17 2503:18 2504:13 2510:15 2513:10 2524:17 2533:10 2564:21 2576:22 2587:7 2604:4 putting 2469:20 p.m 2488:4 2558:8 2558:9 2613:24</p> <hr/> <p style="text-align: center;">Q</p> <p>qualified 2455:17 qualify 2470:17 quality 2449:25 question 2352:8 2359:10 2365:13 2366:23 2370:12 2407:19 2416:25 2425:6 2430:25 2432:14 2465:5 2472:6 2473:20 2473:24 2474:16 2487:5 2494:22 2502:24 2503:4 2507:11 2527:19 2528:15 2530:13 2543:16 2547:23</p>	<p>2552:24 2556:14 2558:15 2568:8 2594:22 2595:5 2597:24 2600:7 2600:20 2606:18 2608:6 2611:5 questioned 2429:4 questioner's 2359:1 questioning 2389:12,22 2412:11 2413:19 2414:6 2426:15 2594:11 questions 2350:12 2356:25 2357:23 2358:14,21 2359:15,16 2366:24 2367:3 2368:6 2371:18 2377:9 2394:4 2401:17,19,25 2402:10 2405:9 2405:24 2424:21 2465:5 2506:18 2523:7 2611:14 quick 2516:16 quickly 2520:17 2544:20 2556:11 Quinney 2349:3 2399:11,11 2400:12,14 2401:8,14 2402:17 quip 2541:6 quit 2519:21 2521:4 2521:13 quite 2357:15 2369:11 2383:10 2396:3 2430:7 2435:12 2444:10 2459:17 2512:14 2542:10 2556:8 2576:12 2598:7 quote 2414:12 quoted 2432:5,8 quotes 2466:5 Q.C 2346:5 2347:12 2347:14,15,16,19 2347:21</p> <hr/> <p style="text-align: center;">R</p> <p>R 2347:15,19 railway 2460:15 2485:18 raise 2364:16 2413:14 2507:17 2564:3</p>	<p>raised 2357:2 2364:23 2366:10 2390:14 2413:5 2498:19 2543:17 2545:4 2611:5,10 raises 2528:12 2598:23 raising 2507:21 2529:8 Randy 2353:23 2354:3 2370:13 2373:17 ranked 2351:6 ranting 2605:11 rating 2460:19 2483:3 2502:14 2520:6 2525:24 2551:24 ratings 2506:19 rationale 2436:19 2471:18,19 2571:4 raving 2605:11 Ray 2355:18 2361:18,24 2362:16,21 2365:24 2370:7 2372:16 2375:5 2389:21 2390:20 2447:21 2450:12 2455:15 2460:10 2461:23 2462:15 2464:3,5,10 2465:11 2468:3 2472:3 2483:3,16 2484:2 2485:2,15 2486:19 2492:13 2505:8 2506:12 2513:9 2567:5,11 2567:19 2574:6 2575:14,21 2576:11 2577:8 2577:22 2578:2,5 2582:7 2583:11 2584:8 2606:6 Ray's 2500:5 2545:5 2576:21 RCMP 2347:16 2377:20 2378:15 2378:20 2380:14 2390:4,4,24 2402:22 2413:17 2417:22 2424:6 2429:5,7 2432:2 2474:4,8,19 2475:12 2480:3 2491:18,22</p>	<p>2492:18,23 2493:4,7,16,25 2494:6 2495:4 2497:24 2499:10 2500:2,5,11 2507:14 2509:1 2509:20 2528:7 2529:3,8 2569:2 2569:17,20 2595:2 2609:18 2610:6 RCMP's 2474:2 2492:12 2563:5 reach 2538:13,14 reached 2413:20 2524:22 2592:22 2606:16,21 2611:3 read 2365:6 2373:6 2411:13 2415:8 2424:24 2429:17 2430:17 2455:23 2457:18 2458:16 2464:16 2467:25 2472:14 2487:19 2496:13 2509:19 2511:2 2513:19 2514:4,22 2516:11 2522:23 2529:13 2548:13 2550:10 2569:19 2572:10 2575:15 2577:9 2581:25 2582:19 2583:1 2586:21 2592:21 2593:13,14 2600:21 2603:18 readily 2375:7 reading 2413:23 2512:19 2608:23 reads 2593:9 ready 2555:20 2585:11,14,23 real 2414:11,14 2447:10,23 2448:4 2501:11 2510:24 2511:4,8 2512:15 2514:9 2519:3 2521:25 2523:1 2524:18 2555:17 2595:24 2596:14 realistic 2545:7 realize 2378:14 realized 2509:11 really 2353:8 2359:13 2361:9</p>	<p>2409:20 2497:22 2605:14 reason 2358:4 2369:15 2385:12 2417:5 2443:9 2463:2 2501:3 2570:5 reasonable 2359:17 2380:10 2483:10 2485:11 2509:23 2545:20 reasonably 2510:7 Reath 2359:21 2435:16,18 2439:8 2536:21 2595:12 recall 2371:17 2403:24 2405:9 2413:18 2414:6 2414:19 2416:24 2421:11 2422:10 2426:7,14 2438:11 2457:13 2463:18 2465:9 2465:20 2478:10 2479:1,4 2503:6,8 2503:25 2504:24 2505:18 2506:22 2507:21,24,25 2526:9 2541:15 2543:4,5 2545:22 2553:21 2566:21 2579:18,19 2588:16,17 2590:6 2607:22 2608:5 2611:9 receive 2550:1 2553:24 2554:23 received 2368:2 2389:25 2399:18 2424:9 2436:4 2438:8 2443:3 2457:24 2536:20 2551:13,15 2559:10 2582:19 2590:18 2606:14 receives 2607:16 recess 2434:6,9 2515:4 2558:7 recessed 2434:10 2488:3 2558:8 recognize 2355:15 recollection 2416:20 2420:13 2428:20 2456:25 2458:11 2459:9 2459:18 2461:1</p>
--	--	--	---	--

2476:11,14 2489:10,11,16 2490:2,5 2496:24 2497:2,14,17,22 2503:12 2504:9 2523:8 2527:20 2528:18,21,22 2531:4,14 2543:25 2544:3 2544:15 2550:15 2559:8 2567:8,18 2568:2 2569:4 2587:23 2589:18 2589:21,22 recommended 2434:13 2558:11 reconnected 2420:12 reconstruct 2497:23 2550:9 reconvened 2434:11 2488:4 2558:9 record 2437:4 2444:9 2448:6,15 2550:20 2551:10 2590:24 2591:14 2602:22 recording 2441:21 records 2415:3 2424:1,2 2427:8 2494:14,14 2504:21 2589:18 2603:25 2605:1,4 2605:19 recounting 2371:13 redacted 2492:24 reduced 2452:8 refer 2357:20 2430:18 2457:22 2460:22 2479:16 2486:10,23 2501:13 2504:12 2538:7 2544:7,11 2544:23 2559:15 2572:21 2613:5 reference 2392:22 2393:24 2443:19 2467:24 2468:9 2468:12 2469:9 2470:15 2474:2 2478:15 2496:16 2585:25 2611:16 references 2395:8 referred 2387:24 2408:18,21 2425:22 2542:7	2562:15 2613:10 referring 2382:18 2415:3,10 2499:23 2527:5 2533:25 2548:2 2612:12 2613:2 refers 2454:25 2457:25 2468:1 2485:1 2488:18 2584:11 2609:2 reflect 2486:4 reflecting 2454:21 reflective 2481:16 refresh 2481:8 2604:15 2606:3 refreshes 2602:18 2603:19 refusing 2535:23,24 regard 2364:10 2400:11 2407:7 2474:9 regarding 2356:13 2356:18 2359:22 2359:25 2360:8 2368:7 2376:21 2377:9 2378:10 2381:12 2382:12 2383:4 2387:22 2393:18 2404:2 regardless 2419:3 Registrar 2431:11 2438:4 regular 2428:10 Reid 2614:6,6,16,20 reimburse 2481:25 2484:12 2515:6 reimbursement 2505:23 2510:2 reimbursing 2526:17 reject 2472:2,4 relate 2443:13 2483:12 2501:21 2529:17 related 2423:21 2428:23 2443:1 2479:24 2484:16 2519:10,10,11 relates 2421:22 2482:5 2501:25 relating 2455:18 2610:21 relation 2361:3 2375:19 2425:25 2438:23 2452:5 2465:8 2520:8 2523:5 2540:17	2591:15 2597:25 2598:5,9,11 2608:19 relationship 2447:20,21 2530:23 2545:6 relative 2470:6 relatively 2415:1 relayed 2531:19 release 2516:25 2517:7 2519:20 2520:23 released 2438:3 2539:8,14 relevant 2443:23 2450:18 reliability 2440:6,9 2443:7 2444:20 relied 2415:25 2416:8 2417:23 2418:1,5,18 2420:22 2443:8 2466:24 relief 2575:1 relocate 2457:8 2485:19 2526:8 relocated 2485:12 2497:10 2526:15 relocation 2456:23 2497:16 2501:22 2502:20 2522:16 2526:6 2565:3 2600:1 2604:3,6 2606:18 reluctantly 2381:25 rely 2421:13 2424:5 2469:18 relying 2537:18 remember 2409:5 2416:3 2453:4,16 2456:16 2457:3 2463:25 2468:22 2481:9 2485:17 2489:19 2494:12 2505:13 2507:2,6 2507:7,9 2515:5,8 2522:16,19 2533:24 2534:17 2537:20 2540:12 2540:20 2542:6,8 2542:8,10,10 2557:14 2561:10 2567:15,15,16 2568:2 2575:8 2580:9,10 2593:23 2604:17 2604:18 2606:5,8	2608:4 remind 2359:11 2363:5,8 reminded 2546:12 reminder 2385:12 renew 2442:15 renews 2554:17 rent 2567:6 reopening 2545:12 repeatedly 2561:22 repeating 2485:14 report 2355:3 2360:22 2361:8 2361:12,21 2362:4 2363:19 2363:21 2365:4 2368:23 2369:1,3 2369:5,14 2370:18,24 2371:2,4 2414:5 2414:24 2415:1,7 2425:23 2426:6 2426:18 2430:6 2436:14,20 2490:18,23 2496:7 2506:2 2536:18 2604:24 2604:25 2608:16 reported 2369:12 REPORTER 2614:17,21 REPORTER'S 2614:2 reporting 2387:10 reports 2370:16 2396:7 2425:11 2497:11,13 repossess 2482:21 repossessed 2482:14 repossessing 2516:14 repossession 2483:1 represent 2532:20 2561:17 represented 2512:10 representing 2561:16 reproduced 2492:20 2498:1 request 2369:14,16 2517:16 2518:14 2547:21 2552:17 2554:17 2562:23 2570:5 requested 2369:13	2375:20 2515:2 requesting 2458:13 2465:23 2550:13 2568:12 requests 2458:6 2470:6 2472:3 require 2438:8 required 2355:9 2464:5,10 2535:24 2536:23 requirements 2539:20 2551:20 requires 2461:23 2462:15 2464:4 2472:4 requisitioned 2527:15 res 2607:11 resolution 2459:25 resolve 2544:12,16 resolved 2523:18 2541:25 2586:23 2591:10 respect 2361:17 2373:9 2374:20 2402:19 2403:9 2404:8 2416:23 2500:22 2501:19 2518:20 2527:24 2571:9 2583:23 2597:21 respects 2383:15 respond 2398:18 2444:3 2557:25 responded 2470:21 responds 2471:22 2546:19 response 2358:15 2358:25 2371:20 2372:8 2375:12 2414:9,19 2415:25 2416:11 2418:18 2427:14 2462:1 2490:6 2494:4,5 2508:3 2545:21,22 2553:24 2554:24 2555:10 2557:4 2557:12,17,20,22 2558:15 2559:3,5 2559:6,12,17 2579:12,17,19 2595:18,20 responsibility 2414:1 responsible 2350:20 2383:24 2388:3
--	---	--	---	--

<p>2414:4 2481:1 rest 2524:21 2525:12 restaurant 2439:25 2575:10 2580:15 2581:9 2582:21 2582:22,25 2584:24 result 2369:16 2372:4 2389:6 2401:23 2409:8 2436:11,16 2439:3 2447:2,22 2458:7 2468:7 2480:9,18,24 2497:11 2502:25 2523:17 2525:20 2541:17 2551:24 2570:17,25 2571:16 2606:10 resulted 2511:24 resulting 2517:9 2607:24 results 2509:16 2536:12,14 retainer 2579:2 retirement 2391:6 retraces 2608:17 return 2504:11 2540:7 returned 2518:25 revealed 2372:21 revenge 2373:3 review 2427:8 2436:10,13,17 2446:20 2450:16 2462:23 2463:5 2498:13 2529:20 2531:22 2560:21 2575:20 2576:10 2579:10 2584:8 2591:18 2601:4 reviewed 2422:1 2429:12 2448:8 2462:25 2473:16 2473:18,22 2543:9 2560:8,9 2573:2 2577:14 2586:2 reviewing 2442:21 2474:23 revising 2456:14 re-establish 2567:20 re-exam 2348:6 re-examination 2367:3 2413:15</p>	<p>2415:24 2421:9 2422:5 Richard 2399:10 2400:12,14 ridiculous 2357:15 right 2350:13 2378:16 2385:25 2390:9 2402:13 2419:16,18,24 2421:19 2423:23 2425:18 2427:5 2433:16 2445:17 2451:13 2454:8 2456:20 2457:17 2459:17,23 2477:17 2483:7 2486:8 2489:21 2491:9 2497:8 2504:20 2506:16 2509:14 2511:12 2529:1 2531:22 2535:17 2536:3 2537:18 2541:9 2545:19 2546:20 2548:4 2551:3 2554:22 2556:5 2559:12 2562:17 2565:12 2570:19 2571:14,19 2572:16 2583:4 2583:13,23 2584:17 2586:18 2587:16 2595:8 2596:4,12,23 2597:7 2598:7,16 2598:24 2601:1 2603:22 2604:23 2608:23 2610:19 2611:10,13 2613:13 rights 2373:6 right-hand 2431:23 2475:8 rigorous 2566:23 rise 2350:3 2381:24 2434:8,12 2488:1 2488:5 2495:19 2558:6,10 2613:22 risk 2565:15 risking 2471:21 river 2439:25 2580:16 robberies 2350:22 2352:23 robbery/homicide 2360:6 2362:12</p>	<p>role 2436:18 2479:7 room 2409:23 2542:14 2547:9 2599:2,9 2600:8 Ross 2360:5 2361:15 2374:9 2375:11 2376:7 2376:25 2377:4 2378:25 2380:11 2412:22,24 2413:1,9 route 2568:22 2591:8,9 2592:11 2592:12 Roy 2450:13 rule 2440:15,15,16 2446:2 2536:25 rules 2357:21,24 2358:18 2440:14 ruling 2440:24 run 2563:6 running 2585:4 runs 2503:20 rush 2361:17 Ryland 2408:1 R.L 2347:4 R.Z 2582:7</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe 2457:8,14 2511:17 safety 2405:16,25 2406:11,24 2508:21 2528:24 2537:14,22 2538:3 2539:3 2544:13 2548:8 2548:25 2549:23 2554:10 2564:13 sale 2482:15,21 2597:22 Saskatchewan 2399:10 2400:15 2427:1 2455:6 2466:1,2,8 2467:9 2467:11 2469:3 2487:16 sat 2561:14 satisfactory 2493:11 2562:11 2562:19 satisfied 2407:5 2421:3 2441:19 2523:25 2525:8 2538:20 Savage 2365:24 save 2460:8</p>	<p>2608:25 saw 2451:3 2486:2 2488:11 2515:2 2529:4 2588:20 saying 2414:11 2418:17 2428:1,3 2464:22 2466:5 2470:22 2497:7 2509:1 2528:21 2543:25 2566:7 2567:6,24 2568:25 2586:11 2600:15 says 2387:12 2392:5 2432:20 2444:13 2461:19 2462:14 2475:2,23 2476:15,16 2480:2 2482:8 2499:3,9 2509:25 2518:22 2527:12 2527:13 2530:4 2536:19 2546:3 2549:18 2553:5 2555:21 2557:8 2558:18 2568:20 2575:13 2583:10 2583:18 2585:7 2586:25 2595:1 2596:1,3,5,22 2597:2,4,6,11 2599:7,10,18,23 2600:3 2604:4,5 2606:25 2609:12 2612:14 scene 2473:6 2532:3 scheduling 2435:9 scrap 2396:9 2397:2 2612:19 screwing 2605:9 se 2546:1 sealed 2414:16 search 2438:18 seat 2364:19 seated 2350:4 2488:6 2558:11 second 2361:14 2369:21 2372:20 2376:13 2387:20 2397:20 2400:1 2417:2,6 2421:20 2436:2 2454:3,24 2458:1,9 2463:3 2475:2 2478:2 2480:7 2483:8 2492:15 2498:17 2500:20 2504:7</p>	<p>2506:1,7,10,14 2507:22 2517:4 2526:23 2527:10 2528:11 2529:8 2530:21 2531:21 2552:5 2560:5 2562:10 2572:21 2573:20 2582:1 2589:9 2595:22 2603:14 2607:13 secondly 2361:19 2363:8 2371:14 2438:21 2499:1 second-hand 2531:18 secret 2362:23 section 2433:5 2521:11 secure 2467:19 see 2364:18 2365:1 2365:3,17 2366:2 2368:23 2372:25 2376:23,24 2379:20 2385:18 2387:7 2388:7,17 2388:20 2389:23 2397:20 2403:18 2409:13 2410:4 2415:6 2428:10 2430:17 2431:25 2432:4 2444:2,25 2447:2 2448:22 2450:3,8,12,13,13 2450:14 2451:6 2451:20 2452:14 2454:8 2458:7 2466:19 2470:19 2470:22 2474:21 2475:24 2477:7 2478:2,6,21,24 2488:22 2489:13 2489:15 2492:23 2493:17,20 2498:17 2499:5 2499:16 2502:9 2502:14,22 2503:15 2504:13 2506:2,9 2507:19 2514:10 2515:9 2517:11 2519:8 2521:16,21 2522:3,14 2527:18 2528:7 2528:11,13 2533:9 2544:14 2546:7 2548:22 2549:7,19</p>
---	--	---	--	--

<p>2550:20 2551:9 2551:20,21 2552:15 2553:13 2553:17 2560:6 2560:15 2561:25 2564:22 2565:21 2571:25 2575:13 2576:17,17 2582:6 2583:5 2584:8,15 2585:3 2588:8,25 2589:4 2594:10,13,18,21 2599:4,22 2602:3 2602:16 2604:1 2604:13 2605:2 2609:1 2612:4 seeing 2442:7,10 2497:17 seek 2440:4 2444:14 2551:4 seeking 2435:22 2487:9 2517:19 2542:3 2571:5 seen 2356:15 2373:24 2393:25 2394:17 2395:11 2423:1 2425:8 2479:20 2485:25 2529:8 self-explanatory 2465:1 sell 2484:3 selling 2482:6,19 send 2510:21 2515:10 2541:5 sending 2463:22 2577:20 sends 2431:13 2514:22,23 2518:12 2522:14 2523:2 senior 2399:7 2415:20 2466:23 2496:20 2551:2 2611:1 sense 2358:25 2362:11 2420:7 2451:17 2557:21 2571:25 2591:23 2593:18 sensible 2466:21 sensitive 2368:14 sent 2403:20 2427:3 2430:20 2431:1 2450:19 2462:24 2486:2 2513:17 2521:8,18 2593:6</p>	<p>sentence 2415:12 2507:15,16 sentences 2429:18 2430:16 2573:4 separate 2417:11 2496:19 2501:5 2553:8 2571:4 2581:2 Sergeant 2350:14 2353:16 2357:3 2360:3 2362:21 2365:15,20,23 2373:20 2386:12 2386:14 2387:21 2388:4 2389:17 2399:7 2407:25 2413:15 2420:15 2422:6 2424:14 2430:21 2431:2 2431:13 2432:17 2432:22,23 2433:4,15 2440:1 2448:7,10 2478:3 2580:15,19 2582:13 2586:19 2587:8 2601:3 2604:24 2608:16 2609:16 2610:25 Sergeants 2455:1 series 2496:12 2584:19 serious 2350:23 2378:10 2413:21 2440:6 2467:19 2487:8 2513:21 2528:23 serves 2475:20 service 2370:19 2372:5 2398:13 2422:19,20 2424:6,6 2427:9 2427:16 2436:16 2436:21 services 2347:18 2493:5,22 session 2350:4 set 2414:25 2447:4 2447:7 2459:1 2461:3,9,10,22 2462:3,4 2475:6 2475:12 2482:12 2485:22 2491:13 2538:4 2541:4,10 2542:1 2546:6 2554:5,7 2555:17 2562:22 2580:24 2588:3</p>	<p>sets 2415:16 2432:1 2444:24 2455:16 2502:8 2509:17 2551:19 2557:19 2581:3 setting 2359:4 2369:3 2370:3 2463:4 2476:7 2560:3 2567:21 settlement 2507:18 2508:9 2522:22 2523:23 2528:13 2545:1 2553:7 2561:12 2564:5 2584:9,13 2601:12,18 settles 2541:13 settling 2432:19 seven 2547:6 sexual 2350:24 2352:24 shape 2433:10 share 2423:6 2428:13 2523:16 shared 2372:7 2428:19 sharing 2577:19 sharp 2513:14 sheath 2511:3 shed 2529:22 sheet 2449:7,10,11 2449:21 sheets 2449:12 2451:7 short 2396:9 2518:4 2549:17 2574:17 shortchanged 2515:19 shortfall 2483:9 2484:19 2515:7 shortly 2479:2 2496:5 2529:2 2534:4 2548:6 short-term 2370:4 shots 2353:8 show 2427:8 2441:3 2449:9 2451:5,16 2459:12 2488:11 2489:23 2496:10 2576:8 showing 2409:24 2459:14 2575:21 shown 2401:6 2433:3 shows 2476:12 2489:24 side 2448:15,17</p>	<p>2501:8 2512:20 2525:25 2539:21 2539:23 2585:5 2600:23 2601:5 2601:10 sides 2435:24 2539:5 2586:25 sideshow 2441:25 sideways 2585:3 sign 2370:15 2520:21 2521:19 2523:6,17 2540:23 2560:7 2562:6 2607:19 signalling 2562:5 signature 2365:7 2581:23 signed 2370:12 2408:1 2414:16 2439:8,14 2468:5 2520:16,25 2521:6,10,21 2524:7,25 2541:3 2597:20 2607:2 significance 2470:6 2517:7 significant 2444:16 2457:17 2556:19 2580:11 2586:21 2591:11 2601:20 signing 2519:6 2522:7 signs 2582:10 silence 2420:23 silly 2358:6,9,10 similar 2445:14 2463:10 similarly 2439:13 2520:23 simple 2424:21 2524:3 simplify 2511:6 simply 2383:10 2385:13 2419:5 2420:22 2422:4 2447:4 2472:5 2503:12 2507:11 2519:5 2537:24 2555:17 2557:20 2590:24 2597:24 2613:4 single 2450:5 2553:16 2612:19 sins 2460:17 2465:12,18,21 sir 2350:17 2351:1 2351:5,11,19</p>	<p>2353:6,11,22 2354:6 2355:20 2355:25 2356:3 2359:24 2360:12 2364:25 2365:18 2366:3,8,21 2367:1,8,18,21 2368:1,4,9,25 2369:2,24,24 2370:2,6,22 2371:19 2372:6 2372:13 2373:1,5 2373:7,15,19,23 2374:4,11,15,22 2375:9 2377:11 2379:11,17,25 2380:6,15,23 2381:9,16 2383:2 2384:10,14,19 2385:3,6,11,21 2386:1,4,16,20 2387:3,9 2388:1,8 2388:14,18,21 2389:1,5,11,24 2390:5,8,12,21,23 2391:8,15 2392:24 2393:9 2393:13 2394:8 2394:11,16 2395:10,13,19 2397:9,12,17,19 2397:22,25 2398:2,7,10,20 2399:5,13,21,25 2400:3,7,10,13,21 2401:2 2402:2,5 2403:19 2404:4,7 2404:18 2405:8 2405:11,15,20,22 2406:2,4,7,25 2407:4,14,17,20 2408:5,20,25 2409:2,10,14 2410:5,17,23 2411:2,11,17,24 2412:1,6,9,16,20 2412:23,25 2413:10 2414:8 2414:21 2415:8 2415:11 2421:16 2421:18 2422:12 2422:17,22 2426:9,16 2427:17 2428:21 2429:9,11,14 2430:2,4,15,19 2431:18 2432:4,8</p>
---	---	---	--	--

2432:13 2471:16 2520:2 2558:24 2562:16 2594:19 2596:15 2611:19 sister 2383:13 2386:9 sister's 2388:3 sit 2593:22 sitting 2346:12 2456:16 2474:11 2525:3 situate 2502:6 situation 2357:5 2374:18 2387:22 2442:16 2464:6 2505:9 2508:14 2509:4 2519:2 2523:8 2565:19 2598:13 six 2352:23 2469:13 2470:13 2475:13 2491:5 2509:20 2547:6 sixth 2409:11 2468:2 skip 2447:3 2596:13 slammed 2409:25 slight 2435:5 slightly 2417:11 2565:15 slip 2449:6,17 slips 2449:22 2451:2 slow 2402:23 2523:14 small 2484:2 2513:8 2519:17 2562:12 2564:1 2587:20 2608:20 smaller 2466:6 sojourn 2406:6 sold 2482:9,25 2483:24,24 sole 2493:6,16,24 2569:21 solicitor 2444:12,12 2445:7 2447:8 solicitor/client 2438:16,22 2446:17 2447:21 2582:16 2612:7 2612:20 somebody 2495:16 2501:10 2598:24 2599:1 somewhat 2444:2 2469:21 2502:25	2513:24 2523:13 2540:3 2570:11 somewheres 2476:17 sorry 2352:16 2362:25 2376:12 2388:9 2417:15 2419:12 2430:24 2450:14 2451:10 2467:23 2474:15 2475:19 2476:3 2484:10 2488:16 2495:6 2497:20 2499:24 2508:1 2519:22 2527:3 2529:24 2542:8 2543:5 2568:9 2590:4,7 2592:8 2594:16 sort 2350:23 2353:8 2385:20 2396:12 2397:3 2414:16 2453:18 2464:13 2497:19 2507:21 2509:2 2523:7,23 2567:8,9 2569:5 2590:2 2604:17 2613:14 sorts 2523:24 sought 2424:1 2551:6 sounds 2380:10 source 2429:24 2430:13 2432:6 sparse 2382:24 speak 2435:21 2436:18,19 2437:16 2443:11 2447:18,18 2544:1 2563:3 speaking 2456:25 speaks 2472:7 2487:11 special 2493:5,22 specific 2369:15,16 2438:23 2465:4 2466:22 2468:12 2479:4 2487:6,14 2495:17,21 2504:18 2612:21 specifically 2429:10 2429:17 2479:6 2486:15 2494:20 2507:24 2508:1 2606:5 2608:18 specifies 2488:13 spell 2437:3	2574:24 spelled 2450:20 2469:25 spelling 2561:23 spells 2515:10 spent 2451:4 2506:14 split 2371:2 splits 2506:7 spoke 2378:7 2382:11 2387:20 2388:11,12 2457:2 2490:12 2494:11,15 spoken 2378:4 2385:4 2387:19 2435:25 squad 2378:18 2433:16 staff 2347:1,7,8 2360:3 2365:23 2373:20 2386:13 2407:25 2420:14 2433:4 2491:4,6 2610:24 stage 2440:24 2441:6 stall 2557:7 stand 2421:17 2589:11,11 2590:10 standard 2492:22 standing 2511:15 2512:1 stands 2394:1 star 2406:5,9 2482:13 start 2442:5,14 2469:20 2474:7 2518:11 2555:8 2568:4 2613:19 started 2456:15 2514:7 starting 2434:15 2446:7 2503:5 2570:6 2594:9 starts 2455:14 2583:5 start-up 2600:4,6 2600:18,23 2601:8 state 2489:9 2499:21 2529:23 stated 2409:4 2614:11 statement 2364:10 2377:20 2411:3,7	2411:9 2434:15 2439:8 2441:19 2446:12,21 2447:4,7 2455:4 2461:4 2470:12 2470:21 2489:5 2489:11,25 2491:12 2492:5 2512:25 2513:25 2526:4 2538:5 2541:4 2548:13 2548:14 2554:6 2573:6 2575:18 2575:25 2576:10 2576:16,17,18 2579:10,14,20,23 2579:25 2580:1 2580:25 2583:25 2588:4,10 2589:17 2590:22 2602:5 statements 2410:25 2411:8 2423:11 2423:17 2426:11 2426:12 2439:16 2575:24 2582:2,3 states 2453:25 2484:23 2488:20 2490:1 2493:3 2518:17 2594:24 stating 2353:7 2354:9 2393:16 station 2531:24 2546:4 stations 2532:9,21 status 2452:12 2470:7 2528:19 2595:25 statute 2571:2 stay 2396:14 staying 2531:13 2596:12,23 stays 2393:1 Stenotype 2614:9 step 2412:14 steps 2548:18 2608:18 stick 2505:15 sticking 2513:5 2604:10 stolen 2481:8,9 stomped 2409:22 stood 2587:8 stop 2569:22 stops 2363:13 story 2444:9 2465:12 2491:11	2570:8 2576:7 2597:23 straight 2528:13 strain 2456:12 stress 2493:15 stressed 2492:6 strictly 2607:1 strings 2390:18 strong 2366:20 stronger 2547:1,4 strongly 2543:19 struck 2385:17 2423:25 Stu 2457:23 2472:15 2478:20 Stuart 2347:15 student 2554:12 style 2359:16 sub 2493:14 2563:16 subject 2354:10 2369:11 2438:22 2438:24 2440:24 2441:8 2464:22 2466:12 2477:20 2479:23 2480:12 2481:6 2493:19 2494:24 2497:7 2498:21 2518:1 2521:25 2522:10 2528:16 2562:19 2612:21,23,25 submission 2437:15 2438:9 submit 2370:17 2444:19 2449:13 2449:20 submitted 2355:7 2355:12 2429:7 subordinates 2363:10 subpoena 2360:18 2535:21,25 subpoenaed 2411:25 2424:4 subsequent 2555:10 2592:3 substance 2425:19 2427:12 2458:21 2459:23 2461:7 2469:10 2489:8 2491:10,15 2500:15 2513:19 2513:23 2514:20 2515:23 2517:18 2519:12 2538:25 2547:2,3 2551:22
--	--	--	--	--

<p>2555:5 2562:2,10 2563:9 2579:5 2586:19 2591:2 substantial 2538:23 substantially 2413:24 2416:1 substantive 2557:20 succeed 2520:13 succinct 2513:1 succinctly 2512:23 sudden 2589:12 sue 2517:14 sufficient 2493:6 suggest 2357:10,24 2602:8 suggested 2393:4 2400:25 2410:19 2410:19 2423:18 2423:19 2426:13 suggesting 2358:8 2359:6 2458:5 suggestion 2371:11 2375:7 2398:12 2405:3 2444:4 2445:13 2541:7 suggestions 2443:17 suitable 2492:16 suite 2575:6 sum 2502:19 2516:11 summarize 2491:14 2504:3 2509:5 2539:4 2546:24 2554:8 summarized 2500:15 2517:18 2533:15 2548:18 2549:6 2562:18 summarizing 2373:3 2551:20 summary 2374:10 2380:11 2458:17 2505:24 2509:23 2513:6,7 2524:8 2548:16 summer 2414:25 2447:23 2483:14 summoned 2367:2 sun 2571:13 2604:8 Sunday 2533:25 2544:7,8 2554:16 2603:15 superiors 2393:19 2404:2 2413:6 2417:13 supervising 2354:25</p>	<p>supervisor 2353:14 2354:12,14,18,21 2354:24 2355:15 2356:8 2369:17 2391:10 2395:25 2396:15,22 2407:23 2417:3 2417:18 supervisors 2353:8 2353:12,18 2370:16 supervisor's 2396:14 supp 2354:20 2355:11 2406:8 2406:15,17 2407:22,22 2408:18 2409:7 supplemental 2356:13 2362:4 2368:15 2369:7 2369:21,25 2371:15 2379:8 2390:6 2391:21 2405:5 2407:10 2407:11,15 supplementals 2355:9 2360:8,10 2368:8,12 supplementary 2355:16 2369:13 2370:23 2371:3 2396:6 2425:11 2510:22 support 2347:8 2557:8 2600:7 suppose 2462:13 2464:5 2487:2 supposed 2363:23 2464:15 2505:1 2505:10 supps 2355:7 sure 2352:2 2361:7 2373:25 2392:13 2396:24 2408:12 2423:15 2427:2,4 2433:24 2443:23 2454:7 2460:18 2460:19 2465:24 2476:16 2486:12 2489:16,18,19 2490:8 2497:18 2497:20 2531:4 2538:11,17 2543:19 2544:5 2545:17 2565:24 2567:15 2568:22</p>	<p>2577:25 2587:7 2587:10,13 surprised 2426:21 surrounding 2359:4 Susan 2439:9 2443:1 2483:17 2545:17 2560:9 2567:19 2578:5 2582:10 Susan's 2460:20 suspect 2358:18 2361:8,11 2369:15,17 2427:3 2428:14 suspicious 2577:25 swear 2436:25 2543:18 swept 2395:21 Swift 2356:2 2359:22 2360:13 2360:19 2361:22 2362:17 2364:16 2365:22 2366:6 2366:10,15,24 2367:4 2371:8 2372:24 2373:10 2377:12 2378:20 2380:17,19,21,25 2381:3,13,18,19 2382:3,15 2383:5 2384:6,17 2385:9 2385:10,15,16,18 2387:11,14 2389:8,20 2394:14 2395:16 2398:18,21 2399:3 2401:21 2403:7,9 2412:19 2413:4 2414:17 2418:12 2420:11 2429:13 2431:3 2432:16 2433:20 2433:25 2435:19 2487:4,8,15 2494:23 2552:13 2553:3,5,9,12 2558:22 2559:1,5 2563:23 2594:11 2594:25 2595:2 2595:10,14 2608:19 2609:17 2609:25 2610:5 2610:10 switch 2552:20 sworn 2439:14 system 2449:6,16 2464:14</p>	<p style="text-align: center;">T</p> <p>tab 2364:24 2365:1 2365:2 2368:14 2368:18 2371:23 2375:11 2379:9 2379:14 2382:16 2382:17,19,25 2384:15 2387:1,4 2397:14,16,16 2398:3,5 2399:6 2407:13 2408:18 2408:18 2414:23 2425:24 2429:6,8 2431:5,6,11,12,16 2438:10,10 2439:5,5,7,13 2442:21 2443:13 2444:6,6,7,7 2445:10,14,14 2446:11 2448:18 2448:18 2453:22 2453:25 2457:22 2458:10 2459:11 2461:4,13,19 2467:23,23 2470:12,14 2471:22 2472:17 2472:23 2473:14 2474:20,21,23,24 2476:21,22 2478:18 2479:13 2488:11,12,18 2489:5,11,14,22 2489:23,24 2490:19 2491:13 2492:20,23,25 2496:10 2498:8 2498:14 2501:14 2501:23,24 2503:16,18 2504:1 2506:3,4 2506:10 2509:14 2510:10 2512:17 2512:25 2514:3 2515:3,5,8,25 2526:18,21,24 2527:4,5,8 2528:7 2528:7,20 2529:17,19,25 2536:8,17 2538:6 2543:8,10 2544:6 2544:14 2549:1 2550:16 2551:9 2551:12 2554:6,7 2554:25 2555:15 2555:20 2557:17</p>	<p>2557:19,24 2558:14,17 2559:5,12,17 2560:6,16 2566:18,20 2568:10 2571:22 2571:22 2572:4 2573:1 2574:25 2575:22 2577:10 2580:12,25 2581:3,4,11 2582:5,6,19,22 2583:4 2584:18 2585:2 2586:1 2588:4,10,24,25 2589:17 2590:22 2592:18,18 2594:2,9,16 2601:2,6,23 2602:1,5,21 2603:11,12,23 2604:23 2606:14 2607:21 2608:14 2608:21 table 2472:5 2473:21 2503:3 tabs 2437:15 2445:10 2498:1 tactic 2557:7 2586:7 tailor 2359:16 take 2351:12 2364:24 2367:6 2371:23 2377:20 2379:9 2381:3,7 2384:8,10 2386:25 2389:16 2393:5 2396:25 2398:3 2402:15 2405:16 2409:3 2411:3 2413:21 2413:25 2416:22 2427:12 2445:20 2449:12 2462:2 2466:25 2467:1,9 2467:15 2470:25 2474:9,12 2479:12,23 2515:22 2520:17 2522:20 2525:4 2553:2 2558:4 2560:2 2565:9 2571:19 2575:3 2575:19 2580:21 2581:4 2582:15 2587:1 2594:4,8 2599:19 2611:20</p>
---	---	--	---	---

<p>2612:18 taken 2379:5 2425:2 2505:16 2537:11 2565:15 2575:6 2614:10 takes 2539:1,2 talk 2363:9,20,21 2422:18 2487:7 2539:24 2540:10 2542:19 2546:20 2585:11,14,23,24 2595:4,12 talked 2375:18 2386:2 2388:15 2388:16,24 2389:2,4 2390:2 2400:20 2427:2 2463:25 2587:2,3 2595:7 talking 2351:24 2352:14 2365:15 2365:19 2385:24 2391:23 2451:8 2452:25 2465:21 2479:5 2508:14 2508:15 2531:5 2532:15 2543:16 2548:2 2572:1 2573:1 2586:12 2586:16 2594:19 2609:8 talks 2403:11 tape 2367:13,16 2409:15 Tapper 2347:15 task 2407:21 tear 2449:17 teenager 2408:11 telepathy 2362:19 telephone 2400:2 2457:1 2458:15 2468:10 2534:14 2550:21 2568:14 2605:18,24 telephoned 2374:16 tell 2361:3 2363:3,5 2363:12,13 2377:8,19 2390:9 2390:10 2393:1,2 2393:4 2395:23 2401:20 2403:15 2404:16 2408:6,8 2408:10 2409:19 2416:5 2417:24 2444:9 2451:17 2453:2 2454:7 2455:9 2459:23</p>	<p>2460:2 2463:18 2465:24 2466:17 2468:19,23 2470:4 2474:13 2477:14 2489:18 2492:11,18 2494:15 2504:15 2504:18 2510:18 2532:23,25 2533:15 2545:23 2557:3 2565:20 2565:25 2566:9 2569:18 2570:6 2574:10 2578:1 2578:19 2579:6 2592:9 2598:4 2602:17 2605:13 telling 2390:14 2406:8 2413:4 2531:1 2562:18 2570:9 2574:8 2576:12 2577:24 2579:13 2581:16 2582:3 2592:21 2593:9 2606:25 tells 2370:16 2417:18 2458:1 2466:25 temporarily 2457:8 ten 2538:18 tender 2440:4 tendered 2443:10 tenor 2484:20 2485:6 term 2464:3 2610:22 terminate 2389:9 2599:16 2600:8 terminated 2493:23 terminating 2605:16 terms 2384:12 2396:12 2435:10 2440:18 2443:19 2470:5 2474:1 2478:11,12 2487:11 2500:11 2524:3 2530:17 2532:12 2543:1 2546:3,16 2547:11 2557:9 2558:20 2601:10 test 2444:20 tested 2440:10 testified 2361:15,23 2368:5 2403:17 2404:17 2409:21</p>	<p>2412:7 2609:3 testifies 2437:9 testify 2366:5 2402:22,25 2412:2 2420:8 2436:3,8 2440:8 2486:1 2535:5 2588:23 testifying 2403:6,7 2439:11 2471:21 2610:3 testimony 2409:19 2424:22 2438:25 2446:23 2471:8 2471:14 2504:22 2574:7 2588:14 2591:13,19 2594:2,5,6 2595:24 2599:16 2600:9 2606:11 2609:16 2611:12 thank 2350:10 2382:7 2413:11 2413:12 2416:12 2416:12 2424:12 2429:2 2431:11 2434:1,2,3 2443:15 2446:3 2538:2 2557:24 2587:19 2601:19 2611:13 2613:17 thankfully 2372:12 Thanks 2359:19 thematically 2592:16 theme 2435:13,14 2604:21 theory 2425:1 2566:10 thing 2350:23 2397:3 2454:20 2460:5 2471:2 2497:5 2509:2 2517:5 2532:10 2532:14 2534:23 2534:24 2543:12 2552:21 2559:4 2563:2 2565:14 2567:10 2571:8 2576:6,22,24 2578:21 2586:9 2590:2 2591:20 2593:24 2594:1 2604:18 2608:1 things 2358:21 2361:10 2390:15 2393:5 2395:14</p>	<p>2395:20 2407:2 2411:20 2421:10 2422:3 2458:19 2467:4 2469:21 2510:13 2514:22 2523:24 2528:22 2544:16,21,24 2561:18 2570:11 2571:10,11 think 2352:9 2353:15 2354:23 2355:12 2358:12 2359:7 2360:24 2362:14 2363:4,7 2365:11 2370:25 2377:11 2378:8 2381:17 2382:11 2393:23 2414:1 2414:15 2416:3,4 2420:6 2425:1 2431:7 2432:20 2433:2 2435:1 2442:1 2443:18 2443:25 2455:7,8 2455:10 2463:11 2463:11 2464:15 2468:2,20 2471:15 2475:18 2483:14 2485:17 2495:23 2496:17 2498:4 2505:14 2512:21 2513:14 2513:23 2514:1 2521:8,18 2524:9 2524:11 2526:2 2529:6 2531:2 2534:3 2540:14 2540:14,22 2541:15,17 2542:24 2545:3,5 2545:20 2563:21 2566:17 2567:11 2567:13,14 2572:6 2577:12 2586:4 2591:4 2593:23 2600:24 2612:5 thinks 2423:8 third 2384:15,16 2402:18 2414:25 2415:19 2434:16 2454:24 2484:15 2498:17 2501:17 2521:3 2530:6 2533:21 2537:4 2552:13 2588:25 2605:3</p>	<p>THOMAS 2348:4 thought 2352:16 2354:19 2386:2,7 2396:18,25 2411:15 2416:11 2421:5 2424:2 2578:22 2603:17 thoughts 2558:25 threat 2508:10 threatened 2369:4 2409:18 2605:12 threatening 2606:10 three 2415:17 2416:19 2418:14 2433:10 2434:21 2434:24 2496:19 2507:4 2512:22 2514:3,19 2519:19 2529:20 2549:22 2551:19 2555:25 2556:1 2557:1 2559:16 2584:4 2586:5 2591:18 2594:4 2601:22 2602:17 2602:17,25 2603:4 2607:23 2608:8 thrown 2396:20 Thursday 2533:23 2534:4,7 2550:1,2 2550:3,14 2602:13 tight 2547:8 time 2350:6,19 2351:7,18,21,23 2352:4,5,17,19 2354:1 2363:12 2374:9,23,25 2377:5 2380:2,8 2381:10 2387:20 2390:16 2391:6,9 2392:25 2396:23 2396:23 2409:1 2410:1,9,13 2414:18 2426:13 2427:1 2428:12 2428:24 2429:22 2434:5 2436:18 2436:21 2440:17 2442:7,15,15 2444:10 2445:12 2446:16 2449:2,2 2449:4,6 2450:3,3 2450:8,8,12,12 2451:1,4,19</p>
---	---	--	--	--

2452:13 2454:11 2456:3 2463:1 2466:14 2473:23 2475:2,24 2476:3 2477:23 2479:5 2480:5 2481:17 2482:3,17 2483:4 2483:21 2484:1 2486:17,18 2487:3 2490:11 2493:24 2495:11 2498:7,22 2501:14 2502:2,3 2502:6 2504:17 2506:23 2511:2,7 2523:2,9,24 2524:14,16 2526:3 2528:5,5 2528:16 2529:8 2529:14 2530:20 2530:21 2531:1,1 2531:8 2532:20 2533:3 2535:20 2537:5 2541:13 2541:21 2544:25 2545:3 2547:16 2552:21 2553:22 2559:9 2560:23 2565:5,19,24 2572:17 2573:5 2576:14 2590:9 2601:1 2602:8,11 2605:25 2608:25 2609:7 2610:22 2610:23 2613:19 2613:20 2614:10 times 2358:6 2390:7 2394:15 2407:8 2407:18 2408:8 2413:18,25 2414:7 2421:25 2444:22 2530:9 2559:16 2567:25 2603:4 timing 2537:6 2547:11 tired 2442:7,9 2534:22 today 2360:11 2361:8,12 2385:8 2394:1 2398:15 2398:22 2404:23 2407:12 2464:6 2486:1 2497:1 2565:6,23,24 2566:9 2567:8,17 2583:7 2593:22	2613:4,10 token 2358:5 told 2364:15 2378:9 2380:24 2382:15 2383:22 2386:22 2388:9,10 2390:7 2390:18 2392:13 2392:25 2393:23 2394:6,9,19 2403:5 2407:1 2409:9 2410:18 2416:9 2418:19 2439:20 2452:12 2452:24 2455:16 2455:21 2466:2 2491:11,17,20,25 2492:1,1 2497:5 2499:12,22 2517:17 2527:14 2529:14 2531:25 2532:20 2535:13 2537:19 2542:15 2542:16 2546:9 2546:11 2550:6 2557:7 2560:25 2560:25 2561:3,7 2571:7,8 2573:9 2575:19 2576:1 2576:14 2578:20 2579:8,8 2581:13 2588:18 2590:14 2590:16,17 2594:24 2610:2 Tom 2365:20 2475:12 2490:12 2499:4,6,16 2501:18 2568:12 2610:24 tomorrow 2599:14 2613:17 tone 2561:20 top 2352:9 2374:12 2383:16 2384:20 2403:12 2431:23 2449:12 2481:23 2484:11,15 2488:13 2500:20 2538:18 2544:14 2544:22 2548:20 2549:4 2569:11 2577:3 2590:21 2595:6 2609:9,11 topic 2477:24,25 2482:2,16 2584:4 topics 2584:4 totally 2441:12 2491:24 2492:12	touch 2494:20 2530:10,12,16,18 2531:7,9,10,13 2602:13 town 2535:10,11,15 tracks 2399:15 traditional 2358:18 2569:17 transaction 2447:23 2448:4 2513:24 2514:9 2518:20 2518:24 2519:3 2520:4 2522:10 2562:7 2608:3 transcript 2346:11 2366:22 2614:9 transfer 2516:5 2519:20 2520:18 transferring 2516:25 translate 2416:7 treated 2532:17 treating 2441:4 2533:5 trial 2346:2 2358:20 2367:19 2380:3 2402:25 2429:23 2439:1 2457:9 2518:10 2518:11 2519:3 2526:6 2535:7 2548:6,6 2572:9 2588:21 2589:10 2591:19 2609:4 2610:23 trials 2358:19 tried 2468:25 2505:15 2508:11 2513:16 2602:4 trimmed 2396:17 trip 2425:2 trouble 2471:11 2560:6 truck 2567:7 true 2353:25 2355:19,24 2356:6 2372:3,18 2373:13 2386:3 2386:20 2389:11 2391:15 2392:21 2393:6,7 2399:5 2400:23 2405:20 2406:2 2411:20 2412:3 2427:21 2427:23 2441:2 2445:21 2514:2 2614:8	trust 2513:16 2514:23 2525:4 2556:12 truth 2440:3 2441:5 2443:21 2445:2 2574:3,11 truthful 2371:12 truthfulness 2443:7 try 2446:2,8 2449:2 2449:14 2511:5 2524:18 2544:12 2550:9 2567:25 2603:7 2613:14 trying 2391:19 2416:17 2419:2,4 2419:24 2420:18 2438:14 2458:22 2489:6 2500:2 2502:6 2526:14 2536:16 2537:24 2544:16,19,24 2563:5 2566:14 2577:18 2585:15 2589:14 Tuesday 2572:5 2602:12 turn 2387:1,4 2407:13 2441:25 2461:12 2470:13 2476:22 2481:20 2483:8 2490:19 2510:24 2548:4 2551:9 2555:15 2555:25 2556:21 2585:2 2596:24 turning 2526:5 2557:24 2558:14 2559:12 2562:2 2578:21 2580:11 TV 2531:24 2532:3 2532:9,21 2533:18 twice 2530:19 two 2352:24 2356:13 2359:21 2361:9,10 2368:12 2384:17 2384:22 2399:18 2410:12 2415:3 2415:17,18 2416:18 2425:19 2429:17 2430:16 2432:2,2 2435:12 2437:15,18 2438:7,13 2439:3 2439:18 2455:9 2458:18 2471:24	2474:12,14 2479:14 2481:21 2482:19,22 2502:4,8,9,18 2507:4,5 2509:7 2518:7 2523:7 2539:5 2549:16 2555:16 2559:16 2569:10 2573:17 2575:19 2579:23 2584:4,11,22 2586:4,20 2589:2 2589:2 2605:1 2608:7 2609:9 2611:23 2612:1 two-thirds 2472:23 type 2354:4,7 2367:5 2394:23 2450:22 2478:11 2576:24 typed 2428:11 2432:20,23 2433:4,23 2456:14 2491:1 2572:15 types 2350:24 2371:17 2395:14 2395:20 2405:9 typing 2491:6 2499:7,8 typos 2450:16 2451:9
U				
ultimately 2354:14 2354:18,20 2405:6 2412:2 umbrella 2364:21 Um-hum 2552:12 2584:25 unacceptable 2557:23 uncertain 2546:16 2589:19,20 unclear 2585:12 undated 2521:9,18 underneath 2449:11,22 understand 2389:5 2417:25 2422:20 2422:23 2424:11 2427:10,25 2441:24 2442:1 2443:9 2452:9 2453:1 2461:3 2486:18 2493:4 2500:9 2509:5				

<p>2518:24 2552:18 2566:14 2577:18 2578:15 2598:15 understanding 2383:3 2428:16 2451:18 2453:7 2473:5,9 2485:7 2485:13 2486:4 2495:14,19 2496:1 2501:9,12 2505:9 2511:18 2531:8 2533:3 2554:15 2575:25 2580:8 2606:19 2610:11 understatement 2410:11 understood 2467:6 2563:18,22 undertake 2502:19 undertaken 2515:24 undertaking 2484:24 2487:12 2523:13,14 2533:12,12 undertakings 2523:15 2546:18 2610:6 undertook 2438:19 unfold 2538:2 unfolded 2444:9 unfolding 2443:10 unfortunate 2541:16 unhappy 2533:4 unhelpful 2358:25 unimportant 2397:1 unique 2357:4 unit 2350:15,18,19 2354:14 2363:21 2391:10 2428:9 unnecessary 2396:18 unredacted 2492:24 unreliable 2445:9 unsigned 2521:8 unusual 2370:15 updates 2477:2 upset 2456:7,9 2469:16 2497:3 2499:24 2605:7 2606:6 upsetting 2469:14 2576:12 upshot 2456:10</p>	<p>Upton 2382:12 2387:21 2388:4 2388:16,19 2415:18 2421:14 use 2547:9 2556:18 2569:1 useful 2586:14 2592:16 usual 2437:10 2438:5 usually 2416:7 2454:19</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>V 2550:22 vacant 2477:11 2480:11,14,22 2481:1 2482:6 2483:24 2498:24 2511:16,20 2512:1 vague 2497:17 2567:8,17 2568:2 value 2445:21 van 2587:17,20,21 Vandergraaf 2353:13,16,20 2355:7 2360:4 2365:15,19 2369:16,18 2373:20 2386:14 2412:11 2418:11 2419:21 2420:15 2432:22 2433:4,8 2433:17 2503:23 2504:5,23 2506:8 2610:25 variation 2435:5 various 2436:11 2439:15 2478:16 2502:13 2582:6 vehicle 2360:17 2371:4 2587:18 verbally 2392:19 2564:20 verbatim 2411:10 2414:13 verge 2597:8 version 2413:23,23 2492:24,25 versus 2570:8 2574:7 view 2362:23 2381:4,8 2442:2,5 2442:13 2460:25 2590:23 2598:12 2598:13</p>	<p>visit 2554:16 voice 2471:10 volume 2346:18 2349:5,7 2383:1 2397:16 2414:23 2437:21,22,24 2438:1 2529:19 2529:25 2536:8 volumes 2437:18 volunteered 2377:22 2378:1 Von 2550:22</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>Wait 2591:20 waiting 2499:4,9 2522:25 2534:23 2555:3,6,7 waiver 2438:21,23 2439:1 2446:17 2612:6,20,23 2613:1 walk 2505:17 walked 2499:20 want 2355:17 2358:3,12 2364:24 2371:8 2374:5 2392:12 2397:13 2401:16 2405:16 2413:14 2424:14 2425:20 2442:11 2445:1 2446:1 2460:5,25 2465:4 2476:4 2479:11,23 2486:13 2489:22 2494:20 2501:13 2510:24 2517:4 2520:5 2524:12 2531:9,22 2533:22 2535:2,3 2535:8 2537:23 2538:6,17 2539:6 2539:7,23 2547:8 2548:4 2550:9 2569:21,22,22,23 2571:19 2576:18 2576:19,19,24 2578:7 2586:16 2591:18 2592:12 2594:4,9 2595:23 2600:12 2603:18 2608:14 2609:1,9 wanted 2358:1 2389:21 2414:22 2421:20 2422:4 2422:13 2426:17</p>	<p>2427:10 2429:3 2437:14 2462:19 2462:22 2468:3 2471:3 2482:25 2483:3,5,23 2484:6 2491:25 2492:10,16 2499:2,19 2506:21 2507:12 2507:12 2523:4 2524:6,24 2530:11,15,23 2532:2,4 2535:6 2539:8,9,11,14,24 2539:25 2540:18 2543:7 2549:8 2561:14 2564:20 2568:22,24 2569:23 2570:12 2571:13 2574:2,6 2574:10 2575:20 2576:10,11,15,16 2577:3,4,22,23 2578:25 2579:2 2584:15 2585:24 2608:21 wanting 2441:8 2538:11 2573:12 wants 2517:13 2554:13 2570:23 warm 2557:6 warrant 2534:5 2536:9,11,13,18 2537:11 wasn't 2352:2 2355:11,16 2389:13 2398:24 2409:2 2425:2 2426:21 2449:9 2456:18 2463:22 2469:15 2490:13 2505:3 2513:4 2523:17 2524:1 2531:3,15 2532:20 2534:10 2535:5,19 2544:17 2545:4 2545:25 2553:3 2565:14 2584:3 2587:4 2590:1,24 2593:25 2599:24 water 2532:10,14 2543:12 2586:10 Wawanesa 2480:8 way 2358:11 2362:20 2369:9 2374:6 2405:4</p>	<p>2412:14 2414:2 2435:4,12 2436:4 2465:14 2472:24 2491:23 2495:3 2507:14 2509:2,4 2510:16 2526:3 2533:4,7 2546:13 2574:11 2578:22 2585:4 2593:13 2593:14 2598:14 2600:15 2604:11 ways 2358:22 2602:9 Wednesday 2346:17 2350:1 2549:21,24 2550:10,11 2551:11 2602:12 2603:8,10,21 week 2389:18 2390:25 2443:4 2474:15 2486:3 2498:11 2503:11 2518:5 2533:23 2534:3,7 2541:6 2547:12 2548:5 2548:10,15 2549:21 2567:13 2572:9 2589:9 2602:24 2603:2,3 2603:5 weekend 2554:1 weeks 2471:24 2612:14 welcome 2509:3 well-known 2440:11 Wendy 2347:5 went 2405:17 2463:9 2485:20 2486:19 2504:18 2522:3 2526:10 2530:5,8,19 2531:6 2542:5 2546:4 2548:24 2551:4 2560:6,19 2563:22 2564:12 2567:14 2575:12 2576:17 2583:11 2591:4,7 2603:17 weren't 2371:12 2401:21 2409:1 2411:20 2412:2 2480:23 2513:13 2543:22 2556:4 2594:3 2598:4 we're 2380:7</p>
---	--	---	--	--

<p>2388:9,9 2398:15 2423:15 2440:13 2478:18 2487:6 we've 2358:5 2409:8 2417:13 2417:21 2418:17 2419:17 2420:17 2446:5 2526:6 whatsoever 2467:21 2542:19 2543:21 Wheelhouse 2511:13 white 2449:8,12,17 2451:2 Whitley 2347:15 2457:5,23 2458:2 2459:7 2472:15 2473:1,5,9 2474:11,22 2475:1,6 2476:7 2476:24 2477:2 2478:20 2479:2 2496:14 2607:14 Whitley's 2479:7 wife 2439:9 2506:12 2527:12 2537:16 2539:16,19 2540:2 willing 2480:21 2523:6 2545:24 2565:9 window 2364:19 windshield 2587:13 Winnipeg 2346:13 2346:14 2347:17 2347:19 2352:3 2377:20 2378:15 2378:17,20 2385:14 2403:5 2403:13 2405:21 2405:23 2422:18 2422:19 2424:5 2427:9,15 2436:15,20 2453:12,15 2466:9 2497:25 2503:21 2506:17 2534:10 2535:14 2535:15 2536:22 2537:12 2551:2 2570:24 2604:8 2606:9 wise 2440:16 2441:3 wish 2436:25 2437:16 2578:20</p>	<p>2578:24 wished 2492:9 wishes 2481:5 2561:23 2570:2 withdraw 2386:7 2517:23 withheld 2398:13 2422:8 withhold 2364:8 2366:14 2424:15 withholding 2364:13 2367:24 2371:16 2377:17 witness 2350:7 2356:22 2357:7 2357:11,16,19 2358:7,11,14,23 2359:9,13 2365:8 2368:7,12,14 2369:19 2370:7 2372:22 2375:15 2375:17 2379:15 2380:8 2381:2 2382:2 2384:12 2385:1 2393:12 2401:7 2404:9 2406:5,9 2411:25 2416:12,20 2419:1 2421:5 2423:10,11,12,16 2424:12 2429:5 2431:16 2432:6 2436:2 2437:2,5 2437:12 2438:23 2451:24 2452:1,5 2452:10 2453:11 2457:12 2460:11 2462:20 2468:4 2471:10,16 2474:4 2478:5,12 2484:25 2486:12 2486:15 2487:13 2491:12,17,22 2494:10 2495:7,8 2501:25 2506:15 2506:25 2507:10 2508:6,8 2509:10 2517:10,15 2523:20 2526:4 2527:5 2528:8 2532:7 2534:5 2536:9,11,13,18 2537:11 2552:19 2552:22,23 2556:22 2557:8 2558:19 2561:11 2562:23 2563:18</p>	<p>2563:22 2564:4 2565:11 2568:21 2583:24 2584:12 2589:17 2590:10 2591:3 2592:11 2599:20 2603:4 2604:12 2605:16 2611:19 2612:2 2613:12 witnesses 2434:18 2434:21,25 2435:11 2436:23 2446:10 witness's 2358:24 2359:2,7 Wolson 2347:19 2348:5 2350:8,9 2350:10,11 2357:1 2358:10 2359:11,19,20 2365:12 2382:5,8 2382:22 2401:3 2401:15 2404:9 2404:14 2413:11 2413:12 2422:2 2422:24 2423:14 2437:16 2439:18 2440:20 2441:8 2441:10 2442:10 2442:11,19 2443:2 2445:5 2501:23,24 Wolson's 2356:22 2425:21 2444:1 2462:1 woman 2408:12 wonder 2376:1,17 wondering 2463:9 2468:15 2611:22 Woodsworth 2364:2 word 2416:22 2466:4,14,24 2471:2 2486:9,22 2556:16 2561:5 worded 2369:10 2560:11 wording 2552:21 2579:14 wordings 2542:11 words 2355:23 2383:13 2411:4 2414:15 2416:8 2435:24 2453:1,3 2456:9,10 2464:1 2534:4,17 2535:14 2556:18</p>	<p>2556:18 2561:8 2561:10 2573:7 2574:7,8,11 2576:1,3,4,22 2592:7,8,9 wore 2548:15 work 2494:18 2514:21 2544:19 2544:24 2589:14 worked 2354:13 2569:12 2592:25 2593:4 working 2393:10 2474:1 2544:21 worry 2417:20 2574:12 wouldn't 2361:16 2361:24 2363:8 2363:20 2364:19 2366:16 2369:12 2371:2 2378:16 2392:3 2395:19 2397:6,10 2450:23 2451:12 2479:20 2485:2 2535:5,20 2537:16 2565:16 2569:2 2595:20 2610:18 write 2388:24 2394:12 2406:8 2449:17 2461:2 2461:13 2491:3 2498:12 2514:11 2540:25 2549:25 writer 2410:1 2605:9,10 writes 2528:10 writing 2398:17 2399:14 2406:17 2407:21 2447:5 2452:8 2458:6 2459:3 2461:18 2465:10 2468:14 2469:20 2500:1 2502:8 2533:10 2533:13 2539:11 2540:18 2561:2,7 2564:15,21,22 2568:3 2571:5 2584:15 2597:20 written 2406:14 2411:10,12 2507:4 2560:10 2565:7 2573:22 2573:22 2590:24 wrong 2359:3</p>	<p>2381:3,5 2419:16 2419:18,23 2425:4,7 2430:7 2451:11 2489:2 2491:1,1 2572:7,8 2576:21 wrongdoing 2425:1 Wrongly 2347:22 wrote 2386:17,18 2395:4 2433:1 2449:7,8,10,15 2469:12 2557:15 2557:15 2567:12</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>yeah 2379:6 2464:18 year 2373:13 2414:24 2602:11 2608:18 years 2391:6,8,11 2391:14 2453:2 2551:3 2569:4 2605:1 yellow 2449:6,11,21 2451:7 yesterday 2354:23 2371:1 2375:18 2385:7 2407:1 2419:2,3,5 2424:25 2585:11 young 2408:11,11 2602:12 your's 2557:21 yoyo 2552:21 2585:16</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zanidean 2355:18 2356:8 2359:21 2361:18,25 2362:16,21 2364:17 2365:23 2366:5,24 2367:13 2369:3 2369:19 2370:4,8 2372:16,21 2374:19 2375:5 2375:14,22 2376:2,9,18 2377:1,18,21 2378:10,23 2379:2 2380:2 2382:2 2383:12 2383:15,23 2384:12 2386:8 2387:22 2388:2</p>
--	--	--	---	---

2389:10,21		100 2426:20 2453:5	2527:13	2437:22 2438:1
2390:20 2392:15	\$	2497:1 2543:5,18	16 2379:10,14	2448:18,19
2401:20 2402:22	\$1,00 2516:11,14	11 2346:18 2375:11	2429:6,8 2431:16	2459:11 2467:23
2403:4,16,17	2525:21	2476:21 2548:14	2464:7 2589:18	2472:17 2478:18
2404:17 2405:5	\$20,000 2522:15	2548:20 2554:6	2590:21 2597:2,4	2478:19 2488:11
2405:18 2407:7	2606:17,20	2569:25 2573:11	16th 2377:12	2488:12,12
2409:18 2410:6	2607:4	11th 2588:15	2399:19,19	2489:22,23
2410:24 2411:3	\$200 2562:20	2609:3,14	2413:8 2415:2,22	2496:10 2503:4
2412:13,18	\$30,000 2545:14	2610:23	2446:13	2510:10 2520:5
2413:5 2426:2	2552:20 2564:19	11:18 2434:10	17 2368:15,17,18	2527:5,8 2528:19
2429:7,21	2566:8,9,24	11:35 2434:11	2490:19 2594:16	2529:19,21,25
2435:19,22	2567:10,22	12 2479:13 2515:3,5	2594:16,19	2530:6 2531:23
2439:8,15 2440:8	2591:4 2592:11	2515:8,25 2554:6	2602:5	2536:8,17
2441:14,16,20,23	\$5,000 2567:6	2570:22 2594:13	17th 2603:9	2543:10 2545:1
2442:3 2444:5,8	\$50 2597:3	12th 2389:18	18 2492:20,23	2550:16 2562:17
2445:3 2447:21	\$500 2515:16,19	2448:7,10,16	2594:16,19	2586:3 2588:24
2448:9,14	2518:2,13 2523:3	2459:15,16	18th 2400:2	2588:25 2601:23
2451:14,16,22	\$7,000 2514:24	2498:11	2407:24 2413:8	2602:1 2608:24
2455:15 2457:8	\$7,700 2525:3	12:45 2488:3	2498:9	2609:2
2457:12 2458:13	\$800 2562:14	13 2382:16,17,19	19 2371:10 2498:1	2nd 2453:25 2454:2
2489:12 2492:8	1	2387:1,4 2501:14	2598:23	2454:9 2470:15
2497:10 2498:10	1 2349:5 2374:7	2501:24 2509:22	19th 2601:19,24	2533:25 2547:5
2502:4 2503:20	2431:6,11,12	2510:2 2528:20	2602:21,25	2554:1 2603:14
2504:5 2506:18	2437:21,24	2596:1	2603:1,13,20	2(d) 2517:7
2509:20 2516:8	2446:11 2461:4	13th 2448:11,13,16	2604:16 2607:23	2:00 2487:25
2516:22 2517:13	2470:12,14	2448:21 2451:14	1986 2350:16	2488:2,4
2520:21,25	2481:24 2483:16	2454:16 2527:10	1989 2483:16	2:20 2551:13
2521:7,16,17	2488:19 2489:5	2527:11	1990 2351:9,12	20 2352:9 2489:2
2525:15,23	2489:11,14	14 2349:3 2401:11	2352:5 2354:17	2514:8
2527:12,21,23	2491:14 2503:1	2401:12,13	2372:15,21	20th 2478:20
2529:14 2530:17	2512:25 2529:19	2580:25 2594:13	2374:14 2407:3	2501:18 2534:2
2531:12 2536:21	2529:25 2538:6	2599:18 2601:6	2447:24 2448:3	2601:20,24
2537:10 2544:9	2554:6 2580:25	14th 2365:16	2483:14	2603:1,13
2559:24 2564:9	2588:4,10	2430:21 2431:2	1991 2371:11	2604:23 2605:4
2575:3 2577:19	2589:17 2590:22	2431:14 2457:25	2372:2,16	2606:2 2607:23
2580:18 2582:8	2602:5	2458:9 2459:5	2373:12 2380:9	200 2562:12
2588:11 2589:11	1st 2483:15 2554:1	2460:8,23 2468:8	2382:11 2386:18	2006 2346:17
2595:12 2596:3	1.3 2488:15,16	2470:1 2473:12	2390:10 2392:20	2350:1 2390:14
2597:6,15,18	1:30 2613:21	2485:15,23	2392:21 2395:5	21 2527:17 2598:25
2599:12 2604:7	10 2371:23 2372:21	2527:13 2534:19	2398:4,11 2399:6	2598:25
2605:5,12 2609:3	2384:15 2398:3,5	2540:24 2541:8	2425:23 2431:17	21st 2459:12
2609:17,20,24	2415:5,6,13	2542:7 2543:2	2439:24 2456:6	2520:19,24
2610:9,25	2421:11 2425:24	2549:10 2563:10	2514:13	2521:6,22 2522:2
Zanideans 2527:16	2474:24 2538:6,9	2565:13 2602:1	1992 2404:25	2522:3,6,8,15,16
Zanidean's 2383:13	2538:16,18	15 2352:9 2462:18	1993 2349:3 2401:8	2522:20,23
2388:3 2402:19	2541:4,10 2542:1	2464:6,9 2465:1	2401:13 2403:20	2592:18,19
2435:16 2438:25	2548:14,19	2485:22 2569:4	2436:9,16	2601:20,25
2439:16 2477:10	10th 2355:18,21	2580:25 2588:4,9	1994 2354:16	2603:1,13
2481:14,18	2359:22 2398:3	2588:10 2589:17		2606:15 2607:18
2497:15 2504:10	2412:17 2425:10	2601:7	2	2607:24
2504:24 2515:6	2587:24 2588:1	15A 2349:5 2437:20	2 2346:17 2349:7	22 2498:1 2528:11
2516:2 2576:23	2588:11,22	2437:21,22,24	2350:1 2364:24	22nd 2472:15,18,25
2588:14 2591:18	2589:1,9 2591:15	2446:7,8,11	2368:18 2371:23	2475:7
2598:9 2605:10	2593:15,17	15B 2349:7 2437:20	2374:5,12	23 2498:8,14
2609:15 2610:21	2603:9	2437:21,22	2375:12 2376:14	2594:24
2611:2	10:55 2387:8	2438:1 2446:7	2384:15 2397:16	23rd 2503:2 2534:3
		15th 2501:18	2403:12 2414:23	2534:5,15

<p>2350 2348:5 24 2503:16,19 2504:1 2506:4,10 2514:15 2550:13 24th 2399:6 2514:5 2514:11,13,17 2517:25 2534:6 2534:16 2536:20 2401 2349:3 2413 2348:6 2437 2348:9 2349:5 2438 2349:7 25 2391:8 2491:3 2509:14 25th 2490:21 2496:6,9 2499:21 2499:23,24 2519:15,18,24 26 2491:3 26th 2478:23 2488:12 2489:24 2496:6 2544:8 2548:7 2564:9 2566:20 27 2512:17 2514:3 2607:21 27th 2374:8 2548:7 28 2349:3 2364:24 2365:1,2 2401:8 2401:13 2402:15 2526:18,21,24 2527:4,6,8 28th 2403:20 2471:24 2475:13 2475:16 2476:9 2496:12,20,25 2499:25 2602:1 29 2528:7 29th 2356:5 2359:22 2412:18 2503:19,24 2506:4 2509:16 2510:5 2526:15 2549:22 2550:11 2550:18 2551:11 2553:22</p> <hr/> <p style="text-align: center;">3</p> <p>3 2386:25 2387:1 2399:22,22 2409:12 2415:6 2453:22,25 2467:23 2472:23 2473:14 2474:23 2488:18 2489:24 2491:13 2493:2 2519:8 2529:17</p>	<p>2529:19,25 2543:8,10 2544:6 2544:7,14,14,22 2546:8 2549:1 2550:20 2554:8 2555:20 2559:13 2562:22 2563:16 2566:18,20,20 2569:11 2586:1 2602:2 2609:9,11 3rd 2454:4 2518:12 2553:25 2554:23 2555:12 2559:18 2570:20 2571:20 2572:6,6 2581:14 2591:16 2603:8 3:30 2558:3,8 3:45 2558:9 30 2431:6,11,12 2536:8,17 30th 2361:14 2374:13 2375:13 2378:3,6 2379:2 2383:4 2566:3 30,000 2566:6 2567:3 31 2551:9,12 31st 2377:5 2518:6 2518:7 2523:2 2524:15,16 2554:24 2555:11 32 2554:25 2555:15 2558:14,17 34 2383:1,16 2571:22 2572:4 35 2557:17,19,24 2559:5,12,17 2568:10 2573:1 2575:22 2577:10 36 2580:12 2581:3,4 2582:19,23 2583:4 37 2438:10 2439:5 2439:13 2444:6,7 2445:10,15 2582:5,6 38 2594:2,9</p> <hr/> <p style="text-align: center;">4</p> <p>4 2372:19 2379:18 2379:19 2382:25 2400:1 2432:20 2438:10 2439:5,7 2442:22 2443:13 2444:6,7 2445:10 2445:14 2514:7 2549:3,16 2554:8</p>	<p>2556:21,25 2557:2,3,13 2558:16,17 2564:1 2581:11 4th 2382:11 2463:4 2476:20 2497:12 2572:22 2573:12 2577:9,13 2591:5 2591:7 2592:1,3 40 2602:21 2603:12 2603:12,23 41 2407:13 2603:12 2604:23 42 2592:18,19 2594:9,10 2603:13 2606:14 43 2595:6 44 2595:22 2596:1 2598:23,25 2608:14,21 45 2596:16,18,24 2599:6 46 2599:18,18 481 2379:12,13,14 2429:10</p> <hr/> <p style="text-align: center;">5</p> <p>5 2398:5,5 2399:6 2400:12 2470:13 2470:14 2527:17 2550:21 2554:8 2559:13 2563:16 2564:1 5th 2361:10,19 2377:5 2378:5 2384:7,9 2388:12 2389:2,7 2390:2 2390:22 2400:5 2412:24 2413:22 2419:6,10,23 2497:13 2581:20 2585:13 5:00 2613:24 500 2515:15 2556:9 53 2408:18,18 54 2414:23 58 2369:22 59 2397:14,16</p> <hr/> <p style="text-align: center;">6</p> <p>6 2407:19 2439:24 2489:10,14 2490:1 2491:12 2492:5 2564:3 2581:21 6th 2425:9 2439:10 2475:23,24</p>	<p>2476:15,16,17,20 2479:15 2480:1 2488:22 2489:25 2580:12 2584:23 2585:12 2587:22 2588:1 2591:16 696 2427:8</p> <hr/> <p style="text-align: center;">7</p> <p>7 2379:15 2380:25 2382:12 2387:23 2387:24 2461:13 2461:19 2513:1,2 2513:25 2526:4 2601:6 7th 2479:16 2481:21</p> <hr/> <p style="text-align: center;">8</p> <p>8 2457:22 2458:10 2465:5,14 2470:1 2470:5 2474:20 2474:21 2538:6,9 2568:10,12 8th 2375:12 2394:13 2395:4 2398:4 2400:19 2425:23 86 2351:2</p> <hr/> <p style="text-align: center;">9</p> <p>9 2471:23 2521:11 2599:7 9:30 2613:18 9:300 2350:2 90 2371:10 90-2787 2430:18 91 2369:1 2372:11 2377:13 2395:8 2398:17 2456:7 91/05 2365:5 911 2363:19 93 2402:15 94/01/12 2387:6 957-1700 2605:21 2605:24</p>
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