

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

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The Honourable Patrick LeSage, Q.C. Commissioner

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

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Friday, September 29, 2006

Volume 27

INQUIRY PROCEEDINGS

<p style="text-align: right;">Page 6264</p> <p>COMMISSION STAFF:</p> <p>Mr. Michael Code     Commission Counsel  Mr. Jonathan Dawe    Associate Commission Counsel  R.L. (Bob) Giasson   Chief Administrative Officer  Wendy Bergmann     Administrative Assistant  Kathy Karamchand   Administrative Assistant  Nancy Pelletier     Administrative Staff  David Bruni          Legal support staff</p> <p style="text-align: center;">APPEARANCES</p> <p>Mr. Alan M. Libman and  Mr. James Lockyer    For Mr. James Driskell  Mr. E.W. Olson, Q.C. For Province of Manitoba  Mr. Jay Prober        For George Dangerfield  Mr. D. Abra, Q.C.     For The Estate of Bruce Miller  Mr. R. Tapper, Q.C.   For Mr. Stuart Whitley  Mr. D. Gates, Q.C.    For the RCMP  Ms. K. Carswell      For the Winnipeg Police                                   Services and certain members  Mr. R. Wolson, Q.C.   For the Winnipeg Police                                   Association and certain members  Mr. J. Kennedy, Q.C. For the Association in                                   Defence of the Wrongly                                   Convicted</p>	<p style="text-align: right;">Page 6266</p> <p style="text-align: center;">INDEX OF EXHIBITS  NO EXHIBITS MARKED</p>
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1 represent the Winnipeg Police Service in these  
 2 proceedings?  
 3 A I am aware of that.  
 4 Q As I indicated yesterday, Mr. Schille, I don't  
 5 intend to take a long time in questions with  
 6 you. If you could turn your mind to the  
 7 questions which were asked by Mr. Abra  
 8 yesterday. And it would be helpful if you were  
 9 to open Exhibit 48A. And that's your book of  
 10 documents, sir, tab 20, which is your memorandum  
 11 to Mr. Finlayson dated November 26, 2003. And  
 12 I'll be referring to page 1121. I'll wait for  
 13 you to go there, sir.  
 14 A I have that.  
 15 MS. CARSWELL: All right.  
 16 THE COMMISSIONER: Exhibit 20?  
 17 MS. CARSWELL: Tab 20 in Exhibit 48.  
 18 THE COMMISSIONER: Oh, 48, I'm sorry.  
 19 MS. CARSWELL: Mr. Schille's book of documents.  
 20 THE COMMISSIONER: Thank you.  
 21 BY MS. CARSWELL:  
 22 Q And page 1121 of that document,  
 23 Mr. Commissioner. And you'll recall yesterday,  
 24 Mr. Schille, that Mr. Abra took you through  
 25 the -- what were the three items, in your view,

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1 that were contained within the review report  
 2 you've described as police report that were not  
 3 contained within the files of Manitoba Justice  
 4 based on your review. And that's contained in  
 5 the large paragraph towards the middle of that  
 6 page.  
 7 A That's correct.  
 8 Q And the first of those items, sir, and we have  
 9 been through this before, but it was pointed out  
 10 to you that the first of those items was the  
 11 fact that Mr. Zanidean makes a telephone call to  
 12 Mr. Brodsky after Driskell's conviction and  
 13 recanted his testimony. Do you see that?  
 14 A Yes.  
 15 Q You will see a note, then, after that that says:  
 16 "Brodsky reported the matter."  
 17 Do you recall, sir, where that information  
 18 came from? Because the evidence of this inquiry  
 19 is that Mr. Brodsky did not report the matter to  
 20 police or to authorities, but produced calls for  
 21 the media in 1993 in March.  
 22 A I don't recall what the source of that was.  
 23 Q All right. So it's possible, then, that the  
 24 report you're talking of, or the reporting of,  
 25 was the review group's listening to the tape

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1 when they interviewed Ms. Duncan and  
 2 Mr. Driskell at Stony Mountain?  
 3 A It could be. At this point, I am not suggesting  
 4 that that was an official report to the police.  
 5 At this point, I don't recall.  
 6 Q And would it be fair, sir, that you would agree  
 7 with me as an officer of the court, if you  
 8 received a telephone call from a witness, or  
 9 someone who alleges, alternately, that he was a  
 10 witness or was a friend of a witness, and knows  
 11 that a witness has lied in his evidence, that  
 12 that should be reported to police or to the  
 13 Crown attorney involved in the case and it can  
 14 be investigated, would you agree with that?  
 15 A As a general proposition I would. But my  
 16 understanding is Mr. Brodsky has indicated he  
 17 had no idea who it was, so I'm not sure what  
 18 value there would have been. But as a general  
 19 proposition, I would agree with that, yes.  
 20 Q Well, in addition -- well, Mr. Brodsky indicated  
 21 he didn't know who he was, but he did have a  
 22 tape-recording that could have been provided to  
 23 the authorities to investigate?  
 24 A Correct.  
 25 Q And in that situation, I think you would agree

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1 with me, that that should have, then, been  
 2 turned over so that it could be investigated?  
 3 A Actually, given that he had the tape-recording,  
 4 I think that sort of takes it up a notch in  
 5 terms of the potential value.  
 6 THE COMMISSIONER: This is not an uncomplicated  
 7 area.  
 8 MS. CARSWELL: No.  
 9 THE COMMISSIONER: Okay.  
 10 BY MS. CARSWELL:  
 11 Q Thank you. If I could refer you, then, just to  
 12 tab 11 in the same exhibit. And if you could  
 13 turn to page 11 of Mr. Lockyer's letter. And  
 14 this is a letter that would have been in the  
 15 files of Manitoba Justice before you wrote this  
 16 memo later that -- some ten months after that  
 17 year. If you turn to page 11 of that memo or  
 18 letter?  
 19 A Yes.  
 20 Q You will see that counsel for Mr. Driskell  
 21 relates that the phone call is made by  
 22 Mr. Zanidean. And advises, at that point, in  
 23 January of 2003, that the call was  
 24 Mr. Zanidean's call to Mr. Brodsky. Do you see  
 25 that?

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1 A I don't. Where is that on page 11?  
 2 Q It says page 11 at the top:  
 3 "Additional New Evidence",  
 4 number one at the bottom:  
 5 "Brodsky phone call"?  
 6 THE COMMISSIONER: It is almost at the bottom of  
 7 the page.  
 8 BY MS. CARSWELL:  
 9 Q You are at tab 11. It's a letter dated  
 10 January 20, 2003, Mr. Finlayson?  
 11 A Right. Tab 11, page 11?  
 12 Q Yes. And there is a page number at the bottom,  
 13 number 1843. In the mechanically produced page  
 14 numbers at the bottom, bottom right. If I could  
 15 approach I could help?  
 16 THE COMMISSIONER: Yes, absolutely. Absolutely.  
 17 I see the problem is that the page number at the  
 18 bottom is different than the page number at the  
 19 top.  
 20 THE WITNESS: That's correct. I have that,  
 21 thank you.  
 22 BY MS. CARSWELL:  
 23 Q All right. And you will see there that counsel  
 24 for Mr. Driskell, in this letter, has part of  
 25 the text of that call, presumably from the tape

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1 and then the transcript that was prepared from  
 2 the tape, and assigns the call to Mr. Zanidean.  
 3 So that they were aware at that time and were  
 4 advising Manitoba Justice that the call was  
 5 Mr. Zanidean's.  
 6 MR. LOCKYER: No. No, sorry, I must correct  
 7 that. My friend forgets we have met with Chief  
 8 Ewatski and Mr. Finlayson on August 30, 2001.  
 9 And also, that's true it, was in the interview  
 10 with Dan Lett that we had a copy of from 2000.  
 11 So any suggestion that -- please. So any  
 12 suggestion or well, no, the implication that we  
 13 had acquired or information from Mr. Brodsky  
 14 telling us it was Mr. Zanidean is just not  
 15 right. That's the implication my friend is  
 16 seeking to draw here.  
 17 MS. CARSWELL: It is not.  
 18 MR. LOCKYER: Oh, I thought it was. My mistake.  
 19 BY MS. CARSWELL:  
 20 Q No. I said the text came from or could have  
 21 come from the tape which was transcribed from  
 22 Mr. Brodsky's tape, that was the only  
 23 implication.  
 24 The implication here is the fact that there  
 25 is an indication in Manitoba Justice's files

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1 that this is the recantation call is  
 2 Mr. Zanidean. Do you see that?  
 3 A Yes.  
 4 Q Just further on the recantation threat,  
 5 Mr. Schille, you would have been aware from  
 6 reading the review, and this is back at tab --  
 7 going back to tab 20 now, your second point, at  
 8 page 1121. And it reads:  
 9 "The second main point..."  
 10 I don't want to read it into the record. I  
 11 know you can read it.  
 12 A Yes, right.  
 13 Q Is that there was a threat to the media. If I  
 14 could ask you, then -- to recant after the  
 15 testimony. If I could ask you, then, turn to  
 16 tab 5 in the same exhibit, Exhibit 48. And look  
 17 at page 2 of Mr. Quinney's letter dated  
 18 January 16 of 1992. And if you look at page 2,  
 19 the second paragraph, it says:  
 20 "Sergeant Anderson advised."  
 21 Do you see that, sir?  
 22 A Yes.  
 23 Q And, again, this is the recantation threat to go  
 24 to the media that you have referred to in point  
 25 two of your memo?

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1 A Well, I wasn't sure, going through the two  
 2 documents, if that would be the same incident or  
 3 that was the second incident where he was  
 4 threatening to recant.  
 5 Q Well, we have heard evidence at this inquiry  
 6 that the last dealings Sergeant Anderson and  
 7 Paul had with Mr. Zanidean were that incident in  
 8 the hotel room where he threatens to go to the  
 9 media. And this would appear, from the  
 10 documents, to be the same threat. You don't  
 11 take issue with that?  
 12 A Oh, I don't take issue with that. It's just at  
 13 the time I wrote my memo in November of '03, I  
 14 wasn't sure if that would have constituted  
 15 another threat to recant.  
 16 Q So then going to the last item in your  
 17 memorandum, again at tab 20, page 1121, that's  
 18 the Crime Stopper's information?  
 19 A Yes.  
 20 Q Is it usual for the Crown attorney to get  
 21 information on Crime Stopper's rewards?  
 22 A No.  
 23 Q And, in fact, they are generally considered  
 24 privileged information; is that correct?  
 25 A Absolutely, yes.

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1 Q You spoke yesterday in your evidence about two  
 2 things Manitoba Justice decided not to turn over  
 3 during the course of the disclosure process to  
 4 Mr. Driskell's counsel. And one was a  
 5 correspondence file. And I am sure you will be  
 6 happy to know I am not going to ask you  
 7 questions on that. I have taken your answers.  
 8 A Right.  
 9 Q Can you tell us the reasons that your review,  
 10 the prosecution's review, wasn't provided?  
 11 A Well, my review contained no new information.  
 12 It was simply my own views, having reviewed the  
 13 file. But that having been said, I think after  
 14 the Saskatchewan correspondence was discovered  
 15 not to have been disclosed, obviously, the  
 16 timeline of what I knew and when I knew it  
 17 became relevant, and that document became  
 18 relevant, at least in my view.  
 19 Q And certainly, because of your view that the  
 20 review contained no new material, it was your  
 21 view that it was an internal document and not  
 22 subject to disclosure, correct?  
 23 A Well, that was my view. As I've already said,  
 24 though, we were always intending to send that  
 25 down to the Criminal Commission Review Group in

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1 the event that they took a different view.  
 2 Q Yes. If I could ask you, then, to turn to tab  
 3 14 of Exhibit 48 that, again, is your book of  
 4 documents?  
 5 A Yes.  
 6 Q And go to the memorandum of Inspector  
 7 McCorrister to you dated 04/22/2003. It is  
 8 towards the end of the material. Unfortunately,  
 9 there are no page numbers here.  
 10 A I have that, yes.  
 11 Q And just with respect to this, Mr. Schille, it's  
 12 clear from the first paragraph, I think you  
 13 would agree with me, that this memorandum was  
 14 sent to you in response to Mr. Lockyer's request  
 15 for disclosure?  
 16 A That's correct.  
 17 Q And it's clear that in that, that's the context  
 18 in which the paragraph that Commission Counsel  
 19 referred you to, in which the Winnipeg Police  
 20 Service was not willing to provide the review,  
 21 must be taken?  
 22 A Well, I don't mean to quibble. But when I  
 23 passed it on, I think it then became a Crown  
 24 request, because there were certainly things --  
 25 if there was something in there that I thought

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1 was unreasonable, I wouldn't have passed it  
 2 along.  
 3 Q Do you recall how it was passed along,  
 4 Mr. Schille, because have I been through all of  
 5 the material? And I found Mr. Lockyer's letter  
 6 requesting the various items. And I have found  
 7 this response to that request. But I have found  
 8 nothing from you forwarding that request to the  
 9 Winnipeg Police Service?  
 10 A If I can just have a moment.  
 11 Q Certainly. And if your counsel is aware of  
 12 where it is, I would appreciate the assistance.  
 13 I've just been unable to locate that document in  
 14 all of the materials.  
 15 A No. I don't think there is a separate document.  
 16 I think I've seen a copy of that where I have  
 17 made notations on the document. I may be  
 18 mistaken. It may be another document. But I  
 19 think it would have probably been passed on to  
 20 Sergeant Burchill just over the phone going  
 21 through it item by item.  
 22 Q All right. Now, finally, just one last point,  
 23 you indicated yesterday that one of the issues  
 24 that came to your attention in the review was  
 25 that of police notes and the fact that there

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1 were not police notes in the file. Is it your  
 2 evidence that there were no police notes in the  
 3 file at all or that there were some police notes  
 4 in the file?  
 5 A I think that there were some police notes on  
 6 file. But nowhere near the number that you  
 7 would expect, given the involvement of the  
 8 officers.  
 9 Q No, that's fine. I was just going to take you  
 10 to where notes had been sent previously to the  
 11 Crown.  
 12 A Yes.  
 13 MS. CARSWELL: But that answers that. Thank you  
 14 very much, Mr. Schille. I believe I stuck  
 15 within my five minutes.  
 16 THE COMMISSIONER: Good morning, Mr. Wolson.  
 17 BY MR. WOLSON:  
 18 Q Mr. Commissioner. Morning, Mr. Schille.  
 19 A Good morning, Mr. Wolson.  
 20 Q I have some questions for you that arise out of  
 21 Mr. Abra's examination of you yesterday. And in  
 22 that regard, I want to refer you to a document  
 23 that he referred you to yesterday. It's tab or  
 24 Exhibit 30C and 30A, too, please, if you don't  
 25 mind. Thank you.

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1 A That was 30C?  
 2 THE COMMISSIONER: 30C, which is volume 3.  
 3 BY MR. WOLSON:  
 4 Q Yes. 30C, tab 69, if you will, please?  
 5 A Yes, I have that.  
 6 Q You will recall yesterday that Mr. Abra took you  
 7 to this document in the third paragraph. This  
 8 is a document dated the 16th of April of '93.  
 9 And it's a letter from Mr. Miller to  
 10 Mr. Quinney. Do you see that?  
 11 A Yes.  
 12 Q And he directed you to the third paragraph. And  
 13 it concerned -- and I'll just briefly summarize  
 14 it. It concerned a number of newspaper articles  
 15 which had indicated that Mr. Zanidean had been  
 16 granted immunity, an immunity from prosecution  
 17 from the Province of Saskatchewan arising out of  
 18 an agreement. Do you see that?  
 19 A Yes.  
 20 Q And you see that Mr. Miller was of the view that  
 21 there was never such an agreement. And that's  
 22 what Mr. Abra asked you yesterday, and you  
 23 agreed with that?  
 24 A Yes.  
 25 Q And that is true immunity, isn't it, when it

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1 because we know Zanidean wasn't charged. And  
 2 then Mr. Abra had you look at a memo in Exhibit  
 3 30A. And the memo was located at tab 20,  
 4 Mr. Schille.  
 5 A Yes.  
 6 Q And just before we get to this memo, is it your  
 7 understanding that, in effect, there was never  
 8 immunity given to Mr. Zanidean, but there had  
 9 been discussions which had resulted in Zanidean  
 10 not being charged? Were you of that view or do  
 11 you recall?  
 12 A I think that would have been my personal view,  
 13 based on all of the available information.  
 14 Q Okay, all right. And then if we go to tab 20 of  
 15 30A, I think you're there?  
 16 A I'm there.  
 17 Q And that's a memo from my client, Tom Anderson,  
 18 concurred with by his partner, Al Paul, also my  
 19 client, to Inspector Johns. And you were asked  
 20 to look at this document. And you said you  
 21 hadn't seen it before, to your knowledge?  
 22 A That's correct.  
 23 Q And Mr. Abra had you look at paragraph 4.  
 24 A That was on the first page, paragraph 4?  
 25 Q Yes, it's about -- and, in effect, what the

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1 comes from the Justice Department? And so that  
 2 if there were to be immunity from a Saskatchewan  
 3 charge, true immunity, that it would come from  
 4 the Justice Department of Saskatchewan, wouldn't  
 5 it?  
 6 A Correct.  
 7 Q And that's what you understand "immunity" to  
 8 mean?  
 9 A Correct.  
 10 Q But if you look at the preceding paragraph,  
 11 Mr. Zanidean was himself investigated by the  
 12 RCMP in Saskatchewan for arson related offences.  
 13 Ultimately, a decision was made by your  
 14 department not to prosecute him?  
 15 A Correct.  
 16 Q And it's not an immunity, but a decision made  
 17 not to lay a charge, was that your  
 18 understanding?  
 19 A That's what it appears to say.  
 20 THE COMMISSIONER: I'm sorry, could you just  
 21 repeat the question? I'm not sure I heard it.  
 22 BY MR. WOLSON:  
 23 Q Well, I said not an immunity dispensed by  
 24 Saskatchewan Justice, but a decision by Justice  
 25 not to prosecute and, in effect, not to charge,

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1 paragraph talks about was a disclosure by  
 2 Zanidean on October 10th, in which Zanidean told  
 3 Detectives Paul and Anderson that his  
 4 credibility may be in issue as a witness because  
 5 he committed an arson with Driskell?  
 6 A Right. I recall reading that answer.  
 7 Q And if you look at the bottom of that paragraph,  
 8 after that disclosure was made, Tom Anderson  
 9 says he notified his superiors, Randy Bell and  
 10 Staff Sergeant Vandergraaf, and later Bruce  
 11 Miller?  
 12 A That's what it says, right.  
 13 Q And you were asked whether or not you saw any  
 14 document like this in the file or there was an  
 15 indication in the file that Mr. Miller or any  
 16 other prosecutor were notified of this?  
 17 A Right.  
 18 Q And you indicated that, although you don't  
 19 recall the file completely, that's something  
 20 that Mr. Abra pressed you on that you would  
 21 remember?  
 22 A I think I would, yes.  
 23 Q All right. And did you ask Mr. Miller about the  
 24 state of disclosure that he was given by the  
 25 police?

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1 A I never spoke to Mr. Miller in regards to this  
 2 matter.  
 3 Q Because it seems pretty clear from the police  
 4 review, the review conducted by then Inspector  
 5 Ewatski and Inspector Hall, and I'll just read  
 6 this to you. Mr. Commissioner, it's from 28A.  
 7 It's the homicide review report. And you may  
 8 just make a note that it's at page 81. And I'll  
 9 read you this paragraph:  
 10 "Miller told us he was satisfied that he  
 11 and his prosecuting attorneys had been  
 12 fully advised of all aspects of what  
 13 Zanidean had told the police investigators  
 14 during the course of their investigation,  
 15 including his involvement in the arson."  
 16 were you aware of that?  
 17 A I would have seen that. Because I certainly had  
 18 access to the homicide review, so I would have  
 19 seen that at some point.  
 20 Q Because that would clearly indicate that there  
 21 was disclosure by the police to Mr. Miller and  
 22 to the prosecuting counsel that this evidence of  
 23 the arson was disclosed by the police to the  
 24 Crown?  
 25 A That's what the report seems to indicate. I

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1 didn't recollect that.  
 2 Q Then Mr. Abra took you to the second page of  
 3 this memo from my client, Tom Anderson,  
 4 concurred with by Al Paul. And he took you to  
 5 the third paragraph of the second page. And  
 6 that paragraph indicates, in summary, if you  
 7 look at the middle of that paragraph, there is a  
 8 discussion that Tom Anderson says that he had  
 9 with Officer Burton in Swift Current, whereby  
 10 Officer Burton offered to withdraw completely  
 11 his pursuit of Zanidean?  
 12 A I recall that from yesterday.  
 13 Q And that, you would agree, is not immunity. But  
 14 it's an arrangement not to lay a charge or to  
 15 pursue Zanidean, you agree with that?  
 16 A I agree with the distinction, yes.  
 17 Q Had you had the benefit of the Orr file? Had  
 18 you seen anything from Tom Orr's file that  
 19 indicates that he received similar information  
 20 from Swift Current and passed it along to  
 21 Mr. Miller?  
 22 A I didn't review the Orr file. I am not sure I  
 23 had it. I am not sure if that was contained in  
 24 the administrative file.  
 25 MR. ABRA: Well, I object to that question,

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1 Mr. Commissioner. I haven't got it with me, but  
 2 my recollection is that the Orr file didn't show  
 3 Orr telling Miller anything about the arson in  
 4 Swift Current when he first received information  
 5 of it. What he did testify to is he thinks he  
 6 must have passed it on. But there is certainly  
 7 nothing on the file that shows that he did.  
 8 BY MR. WOLSON:  
 9 Q Well, let me rephrase the question. Were you  
 10 aware that Tom Orr, who was dealing with Swift  
 11 Current on issues of witness protection, were  
 12 you aware that his evidence was that he was  
 13 asked by Mr. Miller to phone Swift Current? He  
 14 phones Swift Current and found out that they  
 15 were not pursuing Zanidean. And he indicated  
 16 that he would have, by inference, told  
 17 Mr. Miller that, were you aware of that?  
 18 A I wasn't aware of that.  
 19 Q Do you have a firm recollection of the review  
 20 that you did in terms of the files, the file  
 21 that you looked at? Do you remember the  
 22 intricacies of the file today?  
 23 A At this point, absolutely not, no.  
 24 Q It is not something that you reviewed? And I am  
 25 not critical of you at all.

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1 A Yes.  
 2 Q But you didn't review that file before you  
 3 testified?  
 4 A No.  
 5 Q So when you are asked questions by counsel  
 6 regarding your review of the file, it's a very  
 7 difficult task to remember in any detail, from  
 8 the time that you did this review years ago, you  
 9 would agree with that?  
 10 A I would agree with that. And as well,  
 11 recognizing the time frame I was dealing with  
 12 when I received notice that I would be appearing  
 13 at the inquiry.  
 14 Q Now, at one point, as well, yesterday  
 15 Mr. Lockyer referred you to a document that  
 16 indicated that certain notes were sent to you by  
 17 the Winnipeg Police Service in your review.  
 18 A Correct.  
 19 Q You recall that?  
 20 A Yes.  
 21 Q And you had indicated -- regarding the notes of  
 22 Al Paul, you made a comment that whether they  
 23 were on the file and they had gone missing, you  
 24 can't say?  
 25 A Correct.

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<p>1 Q Was it -- do you know, did it appear, or was 2 there some indication, that parts of the file 3 were not there? We were told, for instance, 4 that the transcripts weren't available to 5 Mr. Lawlor when he went to look for something. 6 Did you see the transcripts on the file?</p> <p>7 A Well, what had happened when the homicide review 8 was conducted, the police had borrowed our 9 transcripts and never returned them. And when I 10 commenced my review, I had to access the Court 11 of Appeal transcripts and we made a copy.</p> <p>12 Q Okay.</p> <p>13 A And at some point, the police were loaned -- or 14 the police actually returned -- I think Sergeant 15 Burchill found the transcripts and returned them 16 to the Crown's office.</p> <p>17 Q And when you got the file back from Judge Enns, 18 it was in a state much different than it was 19 given to Judge Enns. There were -- it was a 20 dog's breakfast, so to speak?</p> <p>21 A As I said, I tried to keep it in, to the extent 22 possible, the same condition it was in when I 23 had initially encountered it. And it was 24 unrecognizable when we got it back from Judge 25 Enns.</p>	<p>1 response to the request for disclosure made by 2 Mr. Lockyer, because that's what it says in the 3 first line. And that request, if we can 4 identify it in tab 13 as being Mr. Lockyer's 5 letter to you of February 24th. If you can 6 confirm that and just keep those two open?</p> <p>7 A Yes.</p> <p>8 Q All right. And so when Inspector McCorrister 9 says in his memo to you of April 22nd, in that 10 first paragraph: 11 "Please note, I have broken the list of 12 documents down by the corresponding number 13 on Mr. Lockyer's request of February 24th." 14 That's the various numbers A, B, C and 15 itemized 18A and 3B, and so on. He is 16 responding item by item?</p> <p>17 A Right. 18 THE COMMISSIONER: Mr. Olson. 19 MR. OLSON: Yes. 20 THE COMMISSIONER: I'm sorry, I'm just a little 21 confused. It is maybe by your use of A, B and 22 C. 23 MR. OLSON: Yes. In Mr. Lockyer's letter, what 24 I was referring to, Mr. Commissioner, in the 25 February 24th letter.</p>
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<p>1 Q Did you do an inventory to see if documents were 2 missing?</p> <p>3 A No.</p> <p>4 Q Do you know whether -- when you got the file in 5 the first place, whether documents were missing 6 from the file?</p> <p>7 A I couldn't say exclusively. But as I said in my 8 report, it appeared to be relatively intact and 9 in fairly good order.</p> <p>10 Q Okay. So whether a document like notes were 11 missing, you couldn't say?</p> <p>12 A No. 13 MR. WOLSON: Thanks so much. 14 MR. WULLUM: Mr. Commissioner, we have no 15 questions of this witness. 16 THE COMMISSIONER: Thank you. 17 BY MR. OLSON:</p> <p>18 Q Mr. Schille, I just have one very brief matter 19 arising out of Ms. Carswell's questions of you. 20 If you can take your book of documents, Exhibit 21 48, and turn to tab 14, the memorandum from 22 Mr. McCorrister to you of April 22, 2003?</p> <p>23 A Yes.</p> <p>24 Q And if you keep your finger on that, sir. And I 25 understand that that is Mr. McCorrister's</p>	<p>1 THE COMMISSIONER: Oh, right. I'm sorry. I see 2 now the capital "A"s. 3 MR. OLSON: Yes. 4 THE COMMISSIONER: Forgive me. 5 BY MR. OLSON: 6 Q They use the same numbering system, I 7 understand. Ms. Carswell asked if you knew how 8 the request was passed on, and you indicated 9 that you didn't recall. In light of the 10 detailed response and the same numbering and the 11 detailed of the questions being asked and the 12 detailed responses to them, can you assist us as 13 to whether or not you may well have been given a 14 copy of that letter to Burchill or McCorrister 15 so that they could follow?</p> <p>16 A Oh, I would have. And as I have indicated in 17 answer to Ms. Carswell's question, the document 18 I was referencing was actually the document you 19 referred me to at tab 13. If you would note 20 under heading number 13. 21 "The history of the Esso credit card", 22 That's my handwriting after the typing 23 there saying: 24 "no history". 25 I would have been going over that on the</p>



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1 phone with Sergeant Burchill. And he would have  
 2 been able to advise me, because of his  
 3 familiarity with the file: Well, on that you  
 4 are not going to get anything. So I had written  
 5 some notes in there as we were going over it on  
 6 the phone. And then it would have been  
 7 forwarded for a response after that.

8 Q Right. So when you made reference to there was  
 9 a document you thought with your handwriting on  
 10 it, it is this document that you are referring  
 11 to?

12 A That's what I was referring to. I couldn't put  
 13 my hands on it at the time.

14 MR. OLSON: Those are my only questions,  
 15 Mr. Commissioner.

16 THE COMMISSIONER: Okay. Thank you, Mr. Olson.

17 MR. OLSON: Commission Counsel has no  
 18 re-examination.

19 THE COMMISSIONER: I see when we assess the fees  
 20 now there will be two counsel fees for Mr. Olson  
 21 this morning. Just bear with me for a moment to  
 22 catch up in the notes. Thank you very much,  
 23 Mr. Schille.

24 THE WITNESS: Thank you, Mr. Commissioner.

25 THE COMMISSIONER: Your evidence was very

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1 helpful.

2 Well, counsel, it appears that we have,  
 3 unless I hear some further submissions, that we  
 4 have concluded the evidence in this inquiry.  
 5 And what remains are the submissions. And that  
 6 will be very perfunctory. But, nevertheless, in  
 7 the same way, I would like to thank all counsel.  
 8 It has truly been a pleasure to preside at this  
 9 inquiry. The assistance and the skill of all  
 10 counsel has been exceptional. And most  
 11 importantly, above that, the courtesy has even  
 12 exceeded that. And that's what makes the  
 13 proceeding, what made it flow so well. And for  
 14 that the credit goes, to a very considerable  
 15 extent, to each and every one of you. And I  
 16 would have said totally to you, but I see  
 17 Mr. Giasson in the back of the hearing room.  
 18 And I can't overlook the tremendous effort and  
 19 the tremendous result that he has achieved as  
 20 the chief administrative officer in organizing  
 21 this. I have further comments about everyone  
 22 else at a later time, but I thank you all for  
 23 that.

24 What remains are the submissions. And I  
 25 know we do have a tentative schedule for

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1 submissions. I realize that Mr. Tapper wasn't  
 2 present when this tentative schedule was  
 3 suggested. I do want to say that if -- as I  
 4 understand it, he is involved in a trial at the  
 5 time. I will make every accommodation that can  
 6 reasonably be made to receive his submissions at  
 7 a time that will best assist him.

8 MR. WULLUM: I know he is looking into his  
 9 schedule right now just to confirm what would be  
 10 the best available time, and we will confirm  
 11 that with the court.

12 THE COMMISSIONER: And if he wants us to start a  
 13 bit earlier in the morning, or if he wanted us  
 14 to adjust our schedule, I am reluctant to say to  
 15 extend it much further in the day because  
 16 everyone gets kind of tired at the end of the  
 17 day, most of all me, I think.

18 MR. WULLUM: Fair enough. Thank you.

19 THE COMMISSIONER: I had made some comments in  
 20 my usual disorganized rambling fashion about the  
 21 written submissions, and then Commission Counsel  
 22 sent out a further guide in that regard. And I  
 23 guess what I wanted really to say was that I  
 24 don't want voluminous written submissions. I  
 25 don't want you to feel that you have to cover

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1 everything in written submissions. I like to  
 2 have written submissions to assist me in  
 3 following the written argument. And for you to  
 4 be able to refer me to particular aspects,  
 5 particular areas perhaps to elaborate on your  
 6 oral presentation, which is limited in time.

7 If you have exhibits that you are referring  
 8 to, and if you are making copies for yourself  
 9 for your own submissions, then I would  
 10 appreciate copies of those. But as you know, I  
 11 have copies of all of the exhibits. But if you  
 12 were following a certain order and had copies  
 13 that you are making for yourself to assist you  
 14 in your submissions, that if you had a copy of  
 15 that for me as well, that is appreciated, but  
 16 not at all necessary.

17 There were a few things. There will be the  
 18 conduct notices will be sent out later today,  
 19 and you will be receiving them either later  
 20 today or on Monday.

21 Mr. Olson, there were a couple of things  
 22 that I'm not sure that would necessarily be  
 23 directed in the notice sent to the Department of  
 24 Justice, Manitoba Department of Justice. And I  
 25 would like you to maybe direct some comments as

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1 to the structure of the prosecution branch. It  
 2 strikes me that I'm -- that I'm certainly, at  
 3 least, able to explore the structure and to  
 4 inquire as to whether or not any breakdown in  
 5 communications was contributed to by the  
 6 structure. And by the structure, what I mean is  
 7 the somewhat, I won't say unusual, but different  
 8 structure where you had some of the prosecutors  
 9 reporting to the ADM and some prosecutors  
 10 reporting to the head of prosecutions for  
 11 Winnipeg.

12 The other thing, and I just direct this to  
 13 whoever may be interested in it, is there was a  
 14 lot of evidence about what actually, exactly,  
 15 happened between Anderson and Burton and  
 16 generally Winnipeg Police Services and the Swift  
 17 Current RCMP. I guess I would appreciate, if  
 18 you think it's relevant to your submissions,  
 19 that you give me sort of a simplified view of  
 20 what you think the end result of those  
 21 negotiations or discussions was. I don't know  
 22 that it is necessary to break it down in great  
 23 details that he said, he said. At the end of  
 24 the day, it may be more important as to whatever  
 25 the agreement or whatever was agreed at a

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1 broad things that I think are probably apparent  
 2 to everyone. But there are a few -- and I don't  
 3 mean that to be a list of the questions that I  
 4 have in my mind, but there are a few things that  
 5 I thought I would mention to counsel. If there  
 6 is nothing further, we will adjourn, then, until  
 7 October 30th at 9:30 a.m. And I would ask  
 8 counsel to make every effort to ensure that they  
 9 keep their submissions within the time period.  
 10 As you know, one of the reasons this has flowed  
 11 so well is because you have all been so punctual  
 12 throughout the inquiry. Thank you.

13 THE CLERK: All rise.  
 14 (Proceedings adjourned at 10:15 a.m.)  
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1 particular time and, more importantly, what was  
 2 the end result.

3 I would like comments from those who think  
 4 it is relevant to their submissions as to this  
 5 structure, to which some persons testified  
 6 about, withholding the fact of an immunity  
 7 having been granted until after the person  
 8 testified. Mr. Wolson, I'm sure you will be  
 9 commenting on the report about when Anderson was  
 10 responding, Anderson and Paul were responding to  
 11 the disclosure request about immunity,  
 12 favouritism, special deals with any witnesses.  
 13 And the Winnipeg Police Service is generally on  
 14 the -- generally about the information that they  
 15 were asked and the Swift Current information,  
 16 having regard to the fact that there was a file  
 17 there.

18 I would like to hear from anyone who  
 19 chooses to make any suggestions as to what  
 20 findings I should make and what, if any,  
 21 conclusions I should draw from findings, having  
 22 regard to the fact that the Order-In-Council,  
 23 not surprisingly, does not permit me to make any  
 24 findings of criminal or civil liability.

25 I think those are just a few of the very

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1  
 2 COURT REPORTER'S CERTIFICATE  
 3  
 4  
 5  
 6 LISA REID, duly appointed Official Examiner in  
 7 the Province of Manitoba, do hereby certify the  
 8 foregoing pages are a true and correct  
 9 transcript of my Stenotype notes as taken by me  
 10 at the time and place hereinbefore stated.  
 11  
 12  
 13  
 14 -----  
 15 Lisa Reid  
 16 COURT REPORTER  
 17  
 18  
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