

I N D E X

P a g e (s)

Discussion  
Certificate  
Key Word Index

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1 **October 19, 2016**  
 2  
 3 THE COMMISSIONER:  
 4 Now, before we start, we have one participant, I  
 5 think, by telephone from -- Is Mr. Abbass on the  
 6 line? Who has the phone?  
 7 MR. ABBASS:  
 8 I am, Justice.  
 9 THE COMMISSIONER:  
 10 Oh, you can hear me, okay. And we're -- you're  
 11 sitting where?  
 12 MR. ABBASS:  
 13 I'm in Corner Brook.  
 14 THE COMMISSIONER:  
 15 You're in Corner Brook, okay, by telephone. Mr.  
 16 Abbass, I'll just tell the assembly that you're  
 17 seeking standing or participation possibly as a  
 18 witness, and I should note that you have an appeal  
 19 that I think has been heard but not decided, is that  
 20 correct?  
 21 MR. ABBASS:  
 22 That's true, Justice.  
 23 THE COMMISSIONER:  
 24 Ongoing in the Court of Appeal. I, I have not had

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1 that correct?  
 2 MS. RASMUSSAN:  
 3 Yes, my lord.  
 4 THE COMMISSIONER:  
 5 And you requested permission to participate this  
 6 morning by telephone, which was granted.  
 7 MS. RASMUSSAN:  
 8 Yes, my lord, and we (inaudible) that opportunity.  
 9 THE COMMISSIONER:  
 10 Yeah. So, again, I think you're -- I'm not sure of  
 11 the number, one second now. Number four on the...  
 12 So, the RCMP application will be number four on the  
 13 list to be considered. So again, you'll have to do a  
 14 little bit of waiting.  
 15 MS. RASMUSSAN:  
 16 Thank you, my lord.  
 17 THE COMMISSIONER:  
 18 So, I'll just -- do you have any brief comment before  
 19 I start, by the way?  
 20 MS. RASMUSSAN:  
 21 No, my lord.  
 22 THE COMMISSIONER:  
 23 I'm going to make some opening remarks and then I'm  
 24 going to address the individuals or organizations who

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1 any participation in that. As a matter of fact, I  
 2 didn't know about it until quite recently, but  
 3 there's a question of whether Mr. Abbass has an  
 4 interest or can contribute to the inquiry, whether as  
 5 a party with standing or limited standing or as a  
 6 witness. So, Mr. Abbass, I have an order of names  
 7 where I'm going to consider the application for  
 8 standing and you're, I think, number seven on the  
 9 list or thereabouts, so you'll have a bit of time to  
 10 wait. So I'll going to proceed now with my opening  
 11 remarks and we'll try not to forget that you're in  
 12 the background there, and if we do happen to forget  
 13 would you speak up and if you can't hear, if you have  
 14 difficulty hearing let me know, as well, please.  
 15  
 16 Also, we have RCMP counsel from Halifax, I  
 17 believe. Are they on the line? Sorry.  
 18 MS. RASMUSSAN:  
 19 Lori Rasmussan and Mark Freeman from Halifax, my  
 20 lord.  
 21 THE COMMISSIONER:  
 22 Okay, thank you, Ms. Rasmussan, and Mr. Freeman, and  
 23 you've had communication with the Commission by  
 24 email, and I believe by telephone with counsel, is

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1 applied for standing. I'll deal with them one by  
 2 one. So, normally I'd expect that you'd be heard  
 3 when your -- when the RCMP name is called. Do you  
 4 have anything of a preliminary nature?  
 5 MS. RASMUSSAN:  
 6 No, my lord. Thank you.  
 7 THE COMMISSIONER:  
 8 Okay, thank you. My name is Leo Barry and on  
 9 September 23, 2016, I was appointed as Commissioner  
 10 of the Commission of Inquiry respecting the death of  
 11 Mr. Donald Dunphy. I'm also a Justice of the Supreme  
 12 Court of Newfoundland and Labrador Court of Appeal.  
 13 This is the first public session of the Commission  
 14 and I welcome those present in the hearing room, as  
 15 well as those joining us online by webcast and by  
 16 telephone, as I've noted.  
 17  
 18 Before we commence hearing the standing and  
 19 funding applications, I want to take a few minutes to  
 20 tell you what has been happening since the Commission  
 21 was established and how I plan to proceed with the  
 22 work of the Commission in the future.  
 23  
 24 Independence. In this Province Commissions

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1 of Inquiry are established by Orders in Council  
 2 issued under the authority of the **Public Inquires**  
 3 **Act, 2006, 2006**. While Government makes the decision  
 4 to appoint a Commission of Inquiry, the Commission is  
 5 independent of Government. I was not selected to be  
 6 the Commissioner by Government. Government asked the  
 7 Chief Justice of Newfoundland and Labrador to put  
 8 forward the name of a Supreme Court Justice for the  
 9 position. The Chief Justice put forward my name. I  
 10 in turn selected the Commission staff and I will  
 11 introduce you to them in a moment. Independence is a  
 12 founding principle for this Commission and it will  
 13 continue to be a guiding principle as we do our work.  
 14 I'll speak more later about some of the measures  
 15 we've taken to ensure our independence. I perhaps  
 16 should check with our audio people if I'm speaking  
 17 loudly enough or too loudly.  
 18 **AUDIO:**  
 19 This is perfect.  
 20 **THE COMMISSIONER:**  
 21 Everything okay, thank you. What a public inquiry  
 22 does. First, I would like to speak to you about what  
 23 a public inquiry does. The Cameron Inquiry Report  
 24 has been helpful in this regard. A public inquiry is

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1 However, because the factfinding role of the  
 2 Commission means that individuals or organizations  
 3 may find their reputations at risk, the principle of  
 4 procedural fairness requires that due process  
 5 safeguards be followed by this Commission, and they  
 6 will be.  
 7  
 8 How the Inquiry is to proceed - The Order in  
 9 Council which created the Commission requires that I  
 10 deliver my final report to the Minister of Justice  
 11 and Public Safety before July 1, 2017. As this gives  
 12 an approximate nine-month window, we have been moving  
 13 quickly since the Commission's appointment. Key  
 14 members of our team have been put in place. We have  
 15 established offices here in this building at 425  
 16 Topsail Road and Commission counsel have begun  
 17 gathering evidence and identifying potential  
 18 witnesses. We've also developed Rules of Procedure  
 19 and Practice which are published on our website, and  
 20 I might note that from reading various Reports of  
 21 Commissions, I think this has been set up and  
 22 commenced operations more quickly than any that I've  
 23 seen in any of the Reports that I've received so far,  
 24 and I want to thank the hardworking staff of the

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1 an official review of events or issues of public  
 2 concern or importance. Its purpose is to establish  
 3 the facts and causes of an event or issue to  
 4 determine what went wrong or what went right, and  
 5 then to make recommendations to the Government, so as  
 6 to avoid any similar errors or to improve on  
 7 responses to similar events in the future.  
 8  
 9 The specific Terms of Reference for this  
 10 Commission of Inquiry are public and can be found on  
 11 our website at [www.ciddd.ca](http://www.ciddd.ca). We will be inquiring  
 12 into the shooting death of Mr. Donald Dunphy by Royal  
 13 Newfoundland Constabulary Officer Constable Joseph  
 14 Smyth on April 5, 2015, at Mr. Dunphy's home in  
 15 Mitchells Brook, St. Mary's Bay. We will be  
 16 inquiring into a number of aspects of that event as  
 17 are more particularly detailed in the Terms of  
 18 Reference which I encourage you to review.  
 19  
 20 I want to specifically mention what this  
 21 Commission will not do. Although I will make  
 22 recommendations, I will not express any conclusion or  
 23 recommendation regarding the civil or criminal  
 24 responsibility of any person or organization.

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1 Commission for permitting this to happen. I'll  
 2 mention them in a moment.  
 3  
 4 Although the exact dates of the public  
 5 hearings have not been finalized, we have tentatively  
 6 reserved January and February 2017. Parties with  
 7 standing will be consulted as to schedule, and as our  
 8 schedule is formalized it will be posted to our  
 9 website. Our hearings will be conducted in the  
 10 traditional manner of public inquiries in this  
 11 Province. Witnesses will be called and in the normal  
 12 course, examined by Commission counsel and then  
 13 cross-examined by parties who have standing, if they  
 14 wish. Our hearing room will be open to the public  
 15 and the hearings will be simultaneously webcast on  
 16 our website. Transcripts of the proceedings and  
 17 exhibits entered into evidence at the public hearings  
 18 will also be posted to our website.  
 19  
 20 A word about transparency, privacy and  
 21 consultation - As you will have noted this will be a  
 22 public affair and the Commission is dedicated to  
 23 being transparent and accountable, as well as  
 24 efficient and fair. That being said, we will be

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1 inquiring into traumatic events that involve people,  
 2 people with privacy interests and concerns, so while  
 3 we will be making most of the information we receive  
 4 public, there are times that information may be  
 5 vetted or withheld, so as to protect the privacy  
 6 interest of those involved. This will not be done in  
 7 a way so as to impede the Inquiry or the parties'  
 8 ability to analyze and test the evidence.

9  
 10 I intend to consult with parties who are  
 11 granted standing before this Commission on issues  
 12 that I believe may impact them. Counsel for parties  
 13 who are granted standing should feel free to give  
 14 their thoughts and feedback about our procedure and  
 15 processes through Commission counsel. In some cases  
 16 we will seek out such input directly. For example,  
 17 Commission counsel will be carrying out prehearing  
 18 interviews of potential witnesses. It is intended  
 19 that, to the extent possible, witnesses will be  
 20 provided with documentation that may be relevant to  
 21 their evidence prior to being interviewed by  
 22 Commission counsel. If any of the parties or their  
 23 counsel have concerns about this proposed procedure,  
 24 please advise Commission counsel as soon as possible.

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1 Terms of Reference are specific to ensure a  
 2 responsible spending of public funds and an efficient  
 3 process. I will be insisting that our work,  
 4 including the efforts of Commission counsel and the  
 5 parties with standing, focus on the specific areas of  
 6 inquiry listed in that document. For example, we  
 7 will not be inquiring in detail into Mr. Dunphy's  
 8 experiences with Workplace Newfoundland and Labrador.  
 9 I understand that the history and treatment of Mr.  
 10 Dunphy's case by Workplace Newfoundland and Labrador  
 11 has been referred to the Office of the Citizens'  
 12 Representative for investigation. I ask that all  
 13 parties respect our Terms of Reference. I also ask  
 14 all parties and their counsel to remain aware that  
 15 fairness may demand that certain evidence, for  
 16 example, that relating to the credibility of  
 17 witnesses, not be dealt with publically until the  
 18 complete context has been provided.

19  
 20 Introduction of Commission staff - I'd now  
 21 like to introduce you to the Commission staff.  
 22 Shortly after I was appointed I began to assemble a  
 23 team to assist in the work of the Commission. Ms.  
 24 Diane Blackmore, who I think has already presented to

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1 Similarly, I am considering releasing some  
 2 documentation to the public prior to the commencement  
 3 of the hearings in January, in particular the  
 4 investigative reports and findings of the Royal  
 5 Canadian Mounted Police, the Royal Newfoundland  
 6 Constabulary, former Justice David Riche, the Alberta  
 7 Serious Incident Response Team and the Saskatoon  
 8 Police Service. I request that counsel for parties  
 9 who are granted standing after today's procedure give  
 10 their feedback on this proposal, either to me today  
 11 at the end of the standing applications or to  
 12 Commission counsel as soon as possible.

13  
 14 Specifically with respect to privacy  
 15 concerns, if at any time parties who provide evidence  
 16 to the Commission have concern that some of the  
 17 information they have provided may contain private or  
 18 sensitive information that they believe should be  
 19 vetted, I ask that they notify Commission counsel of  
 20 this fact as soon as possible. All input will be  
 21 considered.

22  
 23 Focusing on the issues and caution concerning  
 24 public discussion of evidence - The Commission's

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1 you this morning, is our Chief Administrative Officer  
 2 who oversees our office and all administrative  
 3 matters. Co-counsel are Sandra Chaytor, Q.C. - Ms.  
 4 Chaytor, could you stand up please - of the firm Cox  
 5 and Palmer, and Kate O'Brien - Ms. O'Brien - of the  
 6 firm O'Brien, White. As I've already mentioned, they  
 7 have begun the process of meeting with persons who  
 8 can provide us with information and gathering  
 9 documentation. You can find the contact particulars  
 10 for all of our staff on the Commission's website.

11  
 12 I want to thank, by the way, also some  
 13 individuals from the Department of Justice and I  
 14 specifically would refer to the Deputy Minister, to  
 15 Mr. Neil Croke and to Mr. Todd Stanley. While we  
 16 will be remaining independent of Government, I have  
 17 to acknowledge the assistance that have been given us  
 18 to permit us to get up and running as a Commission.  
 19 I'd say weeks have been saved by the contributions  
 20 that have been made by these individuals, and as well  
 21 as by the hard work that the Commission counsel and  
 22 Ms. Blackmore have put in.

23  
 24 A few operational matters - I want to mention

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1 a few of these before we commence hearing  
 2 applications this morning. First, the computer  
 3 systems, first I want to advise everyone of some of  
 4 the measures we've taken to protect the Commission's  
 5 documents and data. While we are independent of  
 6 Government, Government is providing some of the  
 7 infrastructure that the Commission is using,  
 8 including our computer systems, server and support.  
 9 These information technology supports are provided  
 10 through the Office of the Chief Information Officer.  
 11 To ensure that our data is secure while being stored  
 12 and transmitted through the Government owned and  
 13 operated systems, the following measures have been  
 14 taken:

15  
 16 Electronic files for the Inquiry will be  
 17 hosted on the Government file storage system, but  
 18 will be placed in their own unique folder structure.  
 19 Access to these files will be controlled and limited  
 20 only to Inquiry staff members. Information  
 21 Technology support staff have access to the Inquiry's  
 22 data storage area for administrative purpose, for  
 23 example, data backups, and will not access the data  
 24 directly. An audit report of data and file access

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1 to be pretty good, this is not the final setup that  
 2 you'll see when the hearing ultimately commences in  
 3 January, and particularly we recognize that all may  
 4 not be as good as it could be as far as the work of  
 5 the media is concerned, so let us know, let counsel  
 6 know if there's something obvious that we should have  
 7 recognized is needed or required in order for you to  
 8 get your job done.

9  
 10 And lawyers, I expect to make most of my  
 11 decisions on the standing applications and  
 12 recommendations on the funding applications today.  
 13 I've reviewed the documentation and a lot of it is  
 14 straightforward. There are one or two where some  
 15 consideration may require some delay in the decision,  
 16 but I'll try not to delay too long. On Monday  
 17 morning at 10:00 a.m. legal counsel for parties who  
 18 have been granted standing are invited to a meeting  
 19 with Commission counsel at the boardroom at our  
 20 office. A number of operational items will be  
 21 discussed, including scheduling.

22  
 23 I want to thank you for your attention and  
 24 I'll now turn to the applications for standing and

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1 will be run weekly and provided to the Inquiry. The  
 2 Inquiry will have a separate email presence hosted  
 3 within the Government email infrastructure, but  
 4 separate and apart from Government internal email.  
 5

6 The Commission did consider installing its  
 7 own server and computer system, however the costs of  
 8 doing that were very high and the security advantages  
 9 were limited. We need to be mindful of how we spend  
 10 public funds and ultimately, and after much  
 11 consideration, I determined that the expense was not  
 12 warranted.

13  
 14 Media - Second, I'd like to address the  
 15 media. We anticipate that some members of the media  
 16 will be following the work of the Commission closely  
 17 and will be in attendance at many of the public  
 18 hearings. It is our intention to have an area set up  
 19 in the building for the media to use, and so that we  
 20 can consult with you on your needs for that space and  
 21 on any other matters, please consider identifying  
 22 yourself to Commission counsel following our  
 23 proceedings today. And I have to note that although  
 24 a lot of work has been done and the facilities seem

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1 funding. Standing means the right to participate in  
 2 the Inquiry and s. 5(2) of the **Public Inquiries Act,**  
 3 **2006** is relevant. This says, "A commission shall  
 4 determine whether a person may participate in an  
 5 inquiry, and how he or she may participate, after  
 6 considering (a) whether the person's interests may be  
 7 adversely affected by the findings of the commission;  
 8 (b) whether the person's participation would further  
 9 the conduct of the inquiry; and (c) whether the  
 10 person's participation would contribute to the  
 11 openness and fairness of the inquiry." It's through  
 12 the participation of interested parties that the  
 13 Commission is able to consider different perspectives  
 14 on the information received. Today we have nine  
 15 applications of people and organizations seeking  
 16 standing. I will evaluate their applications based  
 17 on the three factors enumerated in the Act.  
 18

19 Seven of the applications for standing also  
 20 seek funding. Under the **Public Inquiries Act, 2006,**  
 21 s. 5(5), I do not determine who receives funding. I  
 22 may, however, for persons or organizations who have  
 23 been granted standing make recommendations that  
 24 funding be provided by Government. Government may or

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1 may not accept the recommendation.  
 2  
 3 Now turning to the first application, and  
 4 while we've given some consideration to the order,  
 5 this is not necessarily perfect, but we hope that --  
 6 if counsel for any opposed party wishes to wait and  
 7 move further down the line, let us know and we'll  
 8 consider that, but right now the first person that I  
 9 have noted as applying for standing is Mr. Joe Smyth  
 10 and counsel for Mr. Smyth is -- Mr. Smyth, I  
 11 understand it's Mr. Kennedy. Is that correct, Mr.  
 12 Kennedy?  
 13 KENNEDY, Q.C.:  
 14 Correct.  
 15 THE COMMISSIONER:  
 16 And I have your letter of October 14, 2016, Mr.  
 17 Kennedy, and you indicate you've been retained by  
 18 Constable Smyth who'll be seeking standing, pointing  
 19 out that he was the police officer who attended at  
 20 Mr. Dunphy's house and was involved in the events  
 21 leading to the death of Mr. Dunphy. He was also the  
 22 subject of the RCMP investigation, and Constable  
 23 Smyth applies for standing at the Inquiry pursuant to  
 24 Rules 1 and 7 of the Commission's Rules of Procedure

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1 Joseph Smyth, so Constable Joseph Smyth is the full  
 2 name that we'll use. I didn't mean to become too  
 3 familiar in my expression of the name there, but  
 4 sometimes individuals go by the abbreviated version  
 5 rather than longer one, but I'll use the version that  
 6 you've set out in your letter, Mr. Kennedy.  
 7  
 8 So, Mr. Smyth, Mr. Joseph Smyth, Constable  
 9 Joseph Smyth is granted standing and I'm satisfied  
 10 that it is appropriate that I make a recommendation  
 11 for funding pursuant to Rule 8 as requested. Now,  
 12 Mr. Kennedy, you may wish to wait until we've  
 13 finished the other applications, but it's up to you.  
 14 There will be a few matters to be dealt with that you  
 15 might be interested in at the end.  
 16 KENNEDY, Q.C.:  
 17 Yes, thank you.  
 18 THE COMMISSIONER:  
 19 The next application for standing and funding is the  
 20 application of Megan Dunphy, the daughter of Donald  
 21 Dunphy. And Ms. Breen, I understand that you will be  
 22 representing Ms. Dunphy.  
 23 MS. BREEN:  
 24 Yes, that's correct.

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1 and Practice on the grounds that (a) his interest may  
 2 be adversely affected by the findings of the  
 3 Commission, (b) his participation would further the  
 4 conduct of the Inquiry, and (c) his participation  
 5 would contribute to the openness and fairness of the  
 6 Inquiry.  
 7  
 8 Constable Smyth also asks that the Commission  
 9 make recommendations for funding pursuant to Rule 8.  
 10 As outlined in Constable Smyth's affidavit - and  
 11 you've enclosed a copy of that - he will not be able  
 12 to have legal counsel represent him at the hearing  
 13 without funding or at the Inquiry without funding.  
 14 Now, it looks pretty straightforward from where I  
 15 sit, Mr. Kennedy. Do you have anything that you wish  
 16 to add?  
 17 KENNEDY, Q.C.:  
 18 No, unless your -- or, excuse me, unless the  
 19 Commissioner has specific questions, I think it is  
 20 pretty straightforward. I don't.  
 21 THE COMMISSIONER:  
 22 Right, I think it speaks for itself and I'm satisfied  
 23 that Mr. -- I'm sorry, the first page said Joe Smyth.  
 24 I see the heading of your letter refers to

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1 THE COMMISSIONER:  
 2 And I have your letter of October 13, 2016, and you  
 3 want participation in relation to all phases and  
 4 evidence of the upcoming Inquiry. You point out that  
 5 Ms. Dunphy is the daughter and sole and immediate  
 6 family member of Mr. Donald Dunphy, and that she  
 7 suffered severe personal and devastating loss as a  
 8 result of the death of her father on April 5, 2015,  
 9 that she had maintained a very close relationship  
 10 with her father. She was present with him in his  
 11 home the day before his death. She was with him on  
 12 the morning of his death, and she was outside his  
 13 residence immediately after the shooting. She has  
 14 specific knowledge of her father's health condition,  
 15 daily routine and demeanour and behaviour, and she  
 16 will also be appointed the Executor of the Estate of  
 17 Mr. Dunphy in the very near future. Ms. Dunphy also  
 18 took back custody of her father's home, the scene of  
 19 the shooting, from the RCMP on April 11, 2015.  
 20 Additionally, she was interviewed by members of the  
 21 RCMP and made observation, often engaged in  
 22 communications with them throughout their conduct of  
 23 the criminal investigation.  
 24

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1 You mention that since April 5, 2015, Ms.  
 2 Dunphy has felt and acted upon a heightened  
 3 responsibility to ensure she obtains all relevant  
 4 information in relation to her father's shooting  
 5 death. She's undertaken numerous steps in  
 6 furtherance of this purpose, including obtaining  
 7 legal representation immediately after the shooting,  
 8 and you say that in the most personal sense her  
 9 purpose accords with the underlying consideration of  
 10 the Inquiry in carrying out the Terms of Reference as  
 11 set out in ss. 2(a) and (b), the need to maintain  
 12 public confidence in law and order and the need to  
 13 protect fundamental rights of citizens. Her  
 14 knowledge of Mr. Dunphy was an intimate one, as  
 15 intimate as one would expect for a daughter. This  
 16 knowledge is unique to Ms. Dunphy and would be of  
 17 benefit to the Commission in furthering its conduct  
 18 of the Inquiry within the Terms of Reference. You  
 19 can sit down by the way, Ms. Breen, if you wish.

20 MS. BREEN:

21 Okay.

22 THE COMMISSIONER:

23 Sorry. Specifically Ms. Dunphy advises that she has  
 24 information that she believes would be relevant to

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1 letter of the same date, she sets out her financial  
 2 situation and her need for funding to participate and  
 3 she wants some expenses covered. Because she resides  
 4 in Holyrood, there'll be costs back and forth.

5  
 6 Now, you mention two legal counsel. You're  
 7 going to be commencing maternity leave shortly,  
 8 hopefully not this morning, but very quickly you  
 9 indicate, and Ms. Dunphy wishes for you to continue  
 10 to represent her, and you say that for Ms. Dunphy to  
 11 receive effective representation, two legal counsel  
 12 will be required for Inquiry preparation and at the  
 13 Inquiry itself, and you're requesting funding for  
 14 legal representation by yourself and Robert E.  
 15 Simmonds, Q.C., of your office. Now, I understand it  
 16 won't be overlapping. That it'll be Mr. Simmonds  
 17 will be filling in basically for you when you're on  
 18 maternity leave. Is that it?

19 MS. BREEN:

20 Justice, I would anticipate that there would have to  
 21 be some further discussions with Inquiry counsel, or  
 22 whoever we are seeking funding from, to determine  
 23 what would be the terms and conditions.  
 24

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1 the Inquiry with respect to - and you list a number  
 2 of Terms of Reference, and as Donald Dunphy's only  
 3 immediate family member, her participation would  
 4 contribute to the openness and fairness of the  
 5 Inquiry, as likely she is the only person who possess  
 6 such detailed and reliable information about Mr.  
 7 Dunphy. She quite simply is her father's  
 8 representative whose information as to what occurred  
 9 on April 5, 2015, will never be heard, and that her  
 10 participation in the Inquiry will further public  
 11 confidence in the process. Again, this seems to be a  
 12 straightforward application. Do you have anything  
 13 that you wish to add, Ms. Breen?

14 MS. BREEN:

15 No, I don't, Justice Barry, unless you have any  
 16 questions of me.

17 THE COMMISSIONER:

18 Okay.

19 MS. BREEN:

20 Separately, I did make the application for funding,  
 21 as well, in a secondary document.

22 THE COMMISSIONER:

23 Yes, sorry, I have another letter there. I don't  
 24 think I need to go into this in full detail. The

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1 THE COMMISSIONER:

2 Right, okay, I'll leave that for you to discuss with  
 3 counsel, and either way it may be that - I shouldn't  
 4 have put it, I suppose, in overlap - that Mr.  
 5 Simmonds might be participating in matters although  
 6 you are back in the office after hopefully your brief  
 7 sojourn for delivery, so we'll work that out with you  
 8 and with counsel, okay. Thank you.

9 MS. BREEN:

10 Thank you very much.

11 THE COMMISSIONER:

12 And as far as expenses are concerned, I see no  
 13 problem with that in terms of reasonable expenses  
 14 being obtained by Ms. Dunphy, so I'm satisfied that  
 15 it's appropriate that Megan Dunphy have standing  
 16 before this Inquiry, that she receive funding to  
 17 permit her to have two legal counsel, as worked out  
 18 by counsel for Ms. Dunphy and counsel for the  
 19 Commission, and if there are any problems, I'll take  
 20 a decision on the extent of the representation.  
 21 Again, we want to avoid unnecessary duplication. We  
 22 all have responsibilities, you know, to make sure we  
 23 spend public funds efficiently, and saying that we  
 24 want to have a thorough Inquiry and make sure that

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1 it's done in a good manner. So, I think I've covered  
 2 everything there for you.  
 3 MS. BREEN:  
 4 Thank you, Justice.  
 5 THE COMMISSIONER:  
 6 The third applicant is the Royal Newfoundland  
 7 Constabulary, and I understand Mr. Avis, you'll be  
 8 representing the Constabulary.  
 9 AVIS, Q.C.:  
 10 That is correct.  
 11 THE COMMISSIONER:  
 12 I have your letter of October 13th and with -- you're  
 13 saying you're seeking standing as a full participant  
 14 under the various headings as set out, (a) to (j)  
 15 basically, and sorry, 3(1)(a) to (j) and six of those  
 16 relate specifically to the RNC. Mr. Smyth was a  
 17 member of the RNC at the time. You mention the areas  
 18 of Inquiry and the Regulations 3(1)(a)(g) and (i),  
 19 and you mention that while the RNC did not  
 20 investigate Mr. Dunphy's death, the RNC reviewed the  
 21 incident before requesting an outside agency to  
 22 conduct an independent investigation, and that would  
 23 bring Regulation 3(1)(j) into play, so that would  
 24 bring the RNC within Rule 1(a).1(a) of the CRPP, and

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1 budget of the RNC and that you would wish the funding  
 2 to be approved by the Inquiry, by the Commission. Is  
 3 that your --  
 4 AVIS, Q.C.:  
 5 That's correct. It's in the affidavit of Theresa  
 6 Heffernan who filed. It's the -- funding application  
 7 is separate.  
 8 THE COMMISSIONER:  
 9 Yeah, I was looking at that. Where is it? Oh, yes,  
 10 paragraph four, "The Constabulary has no funding  
 11 allocated to retain counsel to manage the workload of  
 12 either staff solicitor, of which you have two, if  
 13 you're obliged to assigned one of your own staff  
 14 solicitors," so they're taken up with their work and  
 15 you believe, in any event, that there should be an  
 16 independent counsel and that it's not practical for  
 17 you to amalgamate with other groups.  
 18  
 19 Again, I don't have too much in the way of a  
 20 problem with what's being sought here. Mr. Avis, do  
 21 you have anything further to add? Yeah, I'm  
 22 satisfied that the Royal Newfoundland Constabulary  
 23 should have standing, a full standing at this  
 24 Inquiry, and that appropriate funding should be

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1 you talk about the RNC having special interest in the  
 2 subject matter because its findings and  
 3 recommendations will be particularly relevant to the  
 4 present and future operations of the RNC and the RNC  
 5 may be adversely affected by these findings.  
 6  
 7 You mention that we'll be examining the  
 8 actions of the officer involved, as well as RNC  
 9 training protocols, policies and so forth, and you  
 10 believe that the RNC's full participation will not  
 11 only further the conduct of the Inquiry, but also  
 12 contribute to the openness and fairness of the  
 13 Inquiry, and again I think this is fairly  
 14 straightforward.  
 15  
 16 Funding, you've requesting funding, as well.  
 17 Now, in one sense it's, I guess, out of one pocket of  
 18 Government and into another, in that Government  
 19 provides funds for the operation of the Constabulary,  
 20 but you do point out, or someone has pointed out,  
 21 that there is a problem with the budgeting of the  
 22 Commission that -- I'm trying to see where that's  
 23 noted, but I have a note somewhere that there was no  
 24 provision or funds available within the present

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1 provided to permit the retaining of independent  
 2 counsel to act for the RNC at the Inquiry. Anything  
 3 further?  
 4 AVIS, Q.C.:  
 5 No. Thank you, Commissioner.  
 6 THE COMMISSIONER:  
 7 Okay. Now, the next applicant I have is the Royal  
 8 Canadian Mounted Police. So, Ms. Rasmussen and Mr.  
 9 Freeman, are you still there?  
 10 MS. RASMUSSEN:  
 11 Yes, we are, my lord.  
 12 THE COMMISSIONER:  
 13 Okay, thank you for waiting. I have your email,  
 14 well, first your letter of October 14, 2016, to the  
 15 Commission, and one unique aspect of this I should  
 16 mention that has to do with the fact that  
 17 constitutional jurisdiction or jurisdiction under the  
 18 *Constitution* may in certain cases, in certain matters  
 19 that come before inquiries, be matters of federal  
 20 concern rather than provincial concern. However,  
 21 there are cases, including Supreme Court of Canada,  
 22 which recognize appropriate provincial jurisdiction  
 23 relating to the administration of justice, as well as  
 24 arguably other headings.

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1 I'm happy to see that the Attorney General of  
 2 Canada has indicated that the -- or that you, Mr.  
 3 Freeman, have indicated that your instructions from  
 4 the Attorney General are to be as cooperative and  
 5 open as possible, and that is the approach that the  
 6 Commission intends to take, as well. It would be  
 7 very easy, I suspect, for the Commission hearings to  
 8 be derailed if we got into a dispute over whether a  
 9 certain matter was within provincial or federal  
 10 jurisdiction. It would probably involve an  
 11 application to Court for a determination, and being a  
 12 member of the Court I'm all too aware of how easily  
 13 delays can arise by the time counsel prepare facts  
 14 and make their legal arguments and then there's a  
 15 decision. Months could very easily pass and any  
 16 schedule anticipated by the Commission would be out  
 17 the window.

18  
 19 So, having said that, I have an obligation to  
 20 make sure that I see that the Terms of Reference are  
 21 met, as far as that is possible, and I'm hoping and I  
 22 should note that the Attorney General has indicated a  
 23 wish to participate in this matter on a voluntary  
 24 basis, and so far that has not proven a problem. I

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1 result in an infringement of federal jurisdiction,  
 2 it's not my intention to proceed at this time, in any  
 3 event, on the information I now have with legal  
 4 determinations in the abstract, and I believe that  
 5 the appropriate approach would be that if counsel for  
 6 the RCMP are concerned about areas that Commission  
 7 counsel may be seeking to explore, your concerns can  
 8 be raised with Commission counsel, hopefully worked  
 9 out, and if not then I'll have to get involved in  
 10 terms of making a decision as we go along, but at  
 11 this stage we have gotten, I think, the material we  
 12 requested, except for certain attachments to the  
 13 investigative file, I believe. So if counsel have  
 14 any further information, or would like to make any  
 15 further comment, now's the time please.

16 MS. RASMUSSEN:  
 17 Thank you, my lord. I would just say we appreciate  
 18 your comments, certainly cooperation is the order of  
 19 the day. I don't know if you need to hear from us  
 20 further with respect to standing. In terms of the  
 21 comments on inter-jurisdictional immunity in our  
 22 letter, we simply wish to flag that for the  
 23 Commission at an early stage. We certainly wish to  
 24 avoid any such protracted or otherwise arguments that

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1 will note for the record that there have been  
 2 Summonses to Produce that have gone out to various  
 3 parties including, I believe, the Royal Canadian  
 4 Mounted Police, but my interest is in making sure  
 5 that all the available documentation and testimony of  
 6 witnesses is made available to the Inquiry and I'm  
 7 not particularly interested, as I say, in more  
 8 closely refining the line, the jurisdictional line  
 9 between the jurisdiction of the Province and the  
 10 jurisdiction of the Government of Canada.

11  
 12 So, before I go further, is there anything  
 13 that -- and again, I note the emphasis is on, and  
 14 will be on, cooperation from my perspective. Before  
 15 I proceed further, does counsel for the RCMP have  
 16 anything that they'd like to say or would like to add  
 17 or comment on anything that I've said for that  
 18 matter? Sorry, I should - before I do that -  
 19 indicate that I've looked at the Terms of Reference  
 20 and I don't see at this point where it will become  
 21 necessary to get into legal argument and so forth,  
 22 and I believe that while counsel for the RCMP have  
 23 expressed concern that certain of the Terms of  
 24 Reference may be worded so broadly that they could

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1 you've alluded to, my lord, and I think that the  
 2 Commission's aware as counsel for the Attorney  
 3 General of Canada appearing on behalf of the RCMP we  
 4 do have this broader interest and we just wish to  
 5 bring that to the attention of the Commission right  
 6 off the bat, but as I said cooperation is the order  
 7 of the day and we are working on the documents. We  
 8 can have further discussion with respect to those  
 9 attachments. There are actual technical issues to do  
 10 with the attachments to the Reports, so we can have a  
 11 discussion with Commission counsel about that later,  
 12 but unless your lordship has any further questions  
 13 respecting standing, those would be my comments at  
 14 this time.

15 THE COMMISSIONER:  
 16 Yeah, I guess one thing I forgot to mention is that  
 17 you have applied for standing and the RCMP has  
 18 requested through you standing, and that application  
 19 is made in the context of our Rules and Procedures  
 20 which require parties with standing to produce  
 21 certain documents and make witnesses available and so  
 22 forth, so I guess I should raise do you see any  
 23 problem at this stage in your being able to comply  
 24 with these Rules and Procedures that we've set up?

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1 And by the way these are not necessary carved in  
 2 stone in that if we've missed something obvious or if  
 3 any of you - I say this to all counsel, not just  
 4 counsel for the RCMP - if you have suggestions as to  
 5 how the Rules of Procedure and Practice might be  
 6 improved let us know, but at this stage do you see  
 7 any conflict between taking this cooperative  
 8 voluntary approach and having the, you know,  
 9 treatment of the RCMP like all other parties in terms  
 10 of documents and witnesses they make available?  
 11 MS. RASMUSSAN:  
 12 We certainly don't foresee problems in making  
 13 documents and witnesses available. In terms of  
 14 seeking to have the summons withdrawn, we simply wish  
 15 to avoid any kind of arguments, because there are  
 16 arguments to be made in various cases, on a  
 17 case-by-case basis with respect to the ability to  
 18 compel documents and witnesses, however we don't  
 19 foresee any problems in that regard. We simply are  
 20 looking at this on a case-by-case basis with these  
 21 documents because some of the things requested may or  
 22 may not be in our possession and we haven't had the  
 23 time to ascertain where these documents reside yet or  
 24 whether we have possession and control of them,

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1 would be sent out to make sure that there's a legal  
 2 obligation created on the party receiving the Summons  
 3 to produce what's required, and if it's on a  
 4 voluntary basis, arguably we're not guaranteed that  
 5 that is being done. I'm not saying this because I  
 6 any way question your good faith, Ms. Rasmussan, or  
 7 counsels' generally, but do you see the potential  
 8 problem I'm discussing here if -- and I think there  
 9 was some correspondence with you as to whether you  
 10 could be in a position to guarantee that we did get  
 11 everything we should get from the RCMP, and I note I  
 12 wasn't aware of the technical problems, but I note  
 13 that you made those this morning and we'll see if  
 14 these can be worked out, but as I see it we've gotten  
 15 most of what we requested and that you voluntarily  
 16 offered regarding the documents, except for the  
 17 attachments. I'm not clear on what all the  
 18 attachments are. I think some of them are recordings  
 19 of the statements of witnesses which have been  
 20 summarized and signed in a hardcopy form. Is that  
 21 part of it?  
 22 MS. RASMUSSAN:  
 23 Yes, my lord, they're audio recordings and video  
 24 recordings and photographs and paper documents and my

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1 things of that nature, so.  
 2 THE COMMISSIONER:  
 3 Right.  
 4 MS. RASMUSSAN:  
 5 We're certainly doing what we can at this point to  
 6 ascertain the information we need to respond to the  
 7 Commission's request.  
 8 THE COMMISSIONER:  
 9 Okay, so just for the information of the parties  
 10 gathered here, when I think we emailed you the  
 11 Summons to Produce I think you communicated you  
 12 prefer to do it on a voluntary basis at that stage,  
 13 and I indicated in order to have the proceeding move  
 14 ahead expeditiously that I had no problem with - I  
 15 think I asked counsel and I assume that was passed on  
 16 to you - that I had no problem with that temporary  
 17 revocation, but the Rules and Procedures are still  
 18 there, and again, I don't want to bog us down now in  
 19 any legal argument, but I'm just trying to make sure  
 20 that we proceed on a basis that's not going to lead  
 21 to problems down the road, and I see a little bit of  
 22 conflict possibly arising.  
 23  
 24 Normally a Summons or a Notice to Produce

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1 understanding is that they've been given to us in a  
 2 format that we cannot access, and we're working, you  
 3 know, our technical people are working on that, so  
 4 it's not an issue of not being able to sort this out  
 5 eventually.  
 6 THE COMMISSIONER:  
 7 Right, okay, now --  
 8 MS. RASMUSSAN:  
 9 But with respect to your concern -  
 10 THE COMMISSIONER:  
 11 Yeah.  
 12 MS. RASMUSSAN:  
 13 - I think I would simply say that we intend to  
 14 identify any issue immediately as it arises, and we  
 15 certainly recognize the ability of the Commission to  
 16 issue a new Summons -  
 17 THE COMMISSIONER:  
 18 Right.  
 19 MS. RASMUSSAN:  
 20 - should we get to that point, and we just hope that  
 21 we don't get to that point.  
 22 THE COMMISSIONER:  
 23 Right, okay. All right, so we may leave that for now  
 24 subject to -- at the end of these applications we'll

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1 make -- there may be some counsel or party who wants  
 2 to come back to that, so we'll leave it for now and  
 3 I'll merely say that I find that it is appropriate to  
 4 have the -- now, should it be the Royal Canadian  
 5 Mounted Police or the Department of Justice Canada as  
 6 a party, Ms. Rasmussen? Your letterhead is from the  
 7 Department of Justice Canada.  
 8 MS. RASMUSSEN:  
 9 It should be the Attorney General of Canada, my lord,  
 10 on behalf of the RCMP.  
 11 THE COMMISSIONER:  
 12 The Attorney General of Canada on behalf of the Royal  
 13 Canadian Mounted Police, is that it?  
 14 MS. RASMUSSEN:  
 15 Yeah, thank you, my lord.  
 16 THE COMMISSIONER:  
 17 Okay, thanks. Okay, it's appropriate to have the  
 18 Attorney General of Canada representing the Royal  
 19 Canadian Mounted Police as a party with standing. I  
 20 take it you don't want funding?  
 21 MS. RASMUSSEN:  
 22 No, my lord.  
 23 THE COMMISSIONER:  
 24 All right, we may need funding, but we'll leave that

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1 THE COMMISSIONER:  
 2 Okay, and you in your letter, sorry, your application  
 3 -- Is there a date on that? Yeah, the 14th of  
 4 October 2016, you made your application for standing  
 5 and you referred to the Terms of Reference,  
 6 particularly 3(1)(b)(c) and (h), and the Rules of  
 7 Practice and Procedure 1(a) and (b)(7), and you note  
 8 that Mr. Davis was Premier from September 26, 2014,  
 9 to December 14, 2015, which would cover the period  
 10 when this incident occurred.  
 11 WILLIAMS, Q.C.:  
 12 That's correct.  
 13 THE COMMISSIONER:  
 14 And there you raise the question whether Mr. Davis's  
 15 interests may be adversely affected by the findings  
 16 of the Commission, and you refer to public discussion  
 17 which occurred around the time of the incident, and  
 18 you refer to so-called speculation ran rampant, you  
 19 say, regarding the involvement of the various  
 20 parties, including the Applicant, and you refer to  
 21 so-called political factors - political in quotation  
 22 mark - may warrant some consideration in the  
 23 deliberations of the Commission, and so it's crucial  
 24 that the Applicant be provided with an opportunity to

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1 for later. Thank you. Is there anything further  
 2 right now, Ms. Rasmussen or Mr. Freeman, that you  
 3 want to add?  
 4 MS. RASMUSSEN:  
 5 No, thank you, my lord.  
 6 THE COMMISSIONER:  
 7 All right, we'll again invite you to stand by, if you  
 8 wish, to see what other matters may be raised at the  
 9 end of these applications. We're making good  
 10 progress as far as I can see. Now, the next  
 11 applicant for standing is Mr. Paul Davis, MHA, and  
 12 the application is made in his own right and as  
 13 former Premier of the Province of Newfoundland and  
 14 Labrador, and I take it in that format Mr. Davis is  
 15 recognizing that the Office of the Premier may be  
 16 affected by the operations of the Inquiry or the  
 17 future operations of the Office of the Premier, and I  
 18 understand that Mr. Williams, you're representing Mr.  
 19 Davis?  
 20 WILLIAMS, Q.C.:  
 21 That's correct, Mr. Commissioner, I stand here on  
 22 behalf of Mr. Davis in his personal capacity and as  
 23 former Premier.  
 24

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1 fully participate in the proceedings of the Inquiry,  
 2 so as to ensure that his reputation and record of his  
 3 Government are not impugned as a result of any  
 4 inferences or suggestion of possible wrongdoing, that  
 5 such could clearly have a serious and long-term  
 6 effect on the Applicant as he continues to serve as  
 7 an elected representative, and he was leader of the  
 8 Opposition at the time, but I understand that he has  
 9 resigned that position since the letter was written,  
 10 and you say given the speculation and rumour that  
 11 continues to abound as to the role of the Premier or  
 12 the Premier's Office in the events that unfolded on  
 13 April 5, 2015, then there stands a very real and  
 14 legitimate concern that the Applicant's interest may  
 15 be adversely affected, and you attach a Schedule "A"  
 16 which has extracts from various newspaper articles  
 17 which I may mention in a moment, but you set out that  
 18 failure to grant participation in the Inquiry may  
 19 have a very negative impact on the Applicant on a  
 20 permanent basis, and you state that in his former  
 21 capacity as Premier he had a duty to uphold the Oath  
 22 of Office, et cetera, any possibility or suggestion  
 23 of any infringement of his duties is a primarily  
 24 concern and would have serious and long-term

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1 consequences.  
 2  
 3 You talk about the Office of the Premier and  
 4 the Protective Services Unit that operated within the  
 5 RNC, the Constabulary. You ask the question whether  
 6 Mr. Davis' participation would further the conduct of  
 7 the Inquiry, and you note that there was, you say, an  
 8 alleged threat which was the subject of the  
 9 investigation. There's some question as to whether  
 10 it's an alleged threat or not when you read the full  
 11 chain of tweets, the full thread, but in any event  
 12 that's in your letter.

13  
 14 You say furthermore in light of the fact that  
 15 two of the Terms of Reference being term 1(c) and (h)  
 16 deal directly with the dissemination of information  
 17 and the presence and protocols of the Office of the  
 18 Premier and the Applicant's participation is  
 19 essential. And whether Mr. Davis' participation  
 20 would contribute to the openness and fairness you  
 21 make a case for that, as well, so I'm not going to  
 22 delay matters, other than I'm wondering if Mr.  
 23 Davis's standing -- I think he should be granted  
 24 standing. The only question is whether it's

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1 THE COMMISSIONER:  
 2 Okay, yeah. That's fair enough, yeah.  
 3 WILLIAMS, Q.C.:  
 4 And as well there's also the issue of Mr. Davis's  
 5 previous employment as a RNC officer, and there's  
 6 been speculation and rumour as to whether or not  
 7 there was any form of undue influence because of his  
 8 former occupation as a member of the RNC.  
 9 THE COMMISSIONER:  
 10 Oh, yeah, and I think his Chief of Staff was also --  
 11 Mr. Brown.  
 12 WILLIAMS, Q.C.:  
 13 His Chief of Staff, Mr. Joseph Brown, was also a -  
 14 THE COMMISSIONER:  
 15 He was former Police Chief. I should remember him.  
 16 WILLIAMS, Q.C.:  
 17 - former Chief of Police with the RNC, so I think  
 18 because of all the surrounding circumstances it's  
 19 necessary. It would be very hard to isolate just  
 20 that period of time, and then try to cherry pick from  
 21 remaining issues that arise during the Inquiry as to  
 22 whether or not his involvement should be there. You  
 23 would nearly need to monitor it on a daily basis and  
 24 then --

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1 necessary that there be full standing, in that it  
 2 would seem to me a lot of the evidence will relate to  
 3 the period of the shooting and after the shooting,  
 4 and I'm not sure that Mr. Davis would have much to  
 5 bring to the Inquiry in terms of information in that  
 6 regard.  
 7

8 Now, in terms of the beginning, the reason  
 9 why the police officer went to the Dunphy residence,  
 10 that would obviously be something where Mr. Davis  
 11 would be entitled to participate, or should be  
 12 entitled to participate. The full participation, do  
 13 you see that as being necessary? Mr. Williams, can  
 14 you explain a bit there?

15 WILLIAMS, Q.C.:  
 16 I would suggest that it is necessary. While  
 17 obviously the events that surrounded the shooting are  
 18 obviously the utmost importance, immediately  
 19 preceding and immediately subsequent to it, as we've  
 20 outlined in our application for standing. The  
 21 innuendos, the rumours, the matters that surrounded  
 22 the Office of the Premier in the months that followed  
 23 are also very important. We're not just talking  
 24 about the isolated event.

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1 THE COMMISSIONER:  
 2 Well, let me put it this way, and this won't be just  
 3 you. They're be other. I'll have similar comments  
 4 for at least one other individual whose organization  
 5 has applied for standing, but I'll leave it to  
 6 counsel, but you will have indications of what the  
 7 thrust of testimony will be from day to day and  
 8 again, I'm thinking just in terms of saving  
 9 Government money when it need not be spent. I'll  
 10 leave it to you as an officer of the Court and  
 11 responsible professional to determine whether it's  
 12 necessary for you to be present at all times when  
 13 you're into areas that may be of interest of  
 14 everybody, including your client, but don't  
 15 specifically impact on your client, or not likely to  
 16 affect your client's interest. Do you understand  
 17 what I'm saying?  
 18 WILLIAMS, Q.C.:  
 19 Sure, I would only, I guess, limit those comments to  
 20 the point that I would need full disclosure of  
 21 materials with lists, things of that nature, so that  
 22 we could review it.  
 23 THE COMMISSIONER:  
 24 Oh, yeah, yeah, sure, sure.

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1 WILLIAMS, Q.C.:  
 2 And I would also just highlight for the benefit of  
 3 the Commission that obviously the issue of protocols  
 4 may require attendance with respect to those issues  
 5 because they would directly affect the Office of the  
 6 Premier at the time.  
 7 THE COMMISSIONER:  
 8 I was going on and refer to that, right.  
 9 WILLIAMS, Q.C.:  
 10 So, protocols in respect to the RNC or RCMP and the  
 11 operation of the Protective Services Unit and any  
 12 direction they may or may not receive could be of  
 13 relevance to Mr. Davis.  
 14 THE COMMISSIONER:  
 15 Agreed, agreed, all right. As I say, I am satisfied  
 16 the Royal Newfoundland Constabulary should have --  
 17 sorry, Mr. Paul Davis, MHA, should have standing and  
 18 that funding should be provided to him for  
 19 representation at the Inquiry, and is there anything  
 20 else I need as far as you can see, Mr. Williams,  
 21 anything further?  
 22 WILLIAMS, Q.C.:  
 23 Nothing else, Mr. Commissioner.  
 24

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1 THE COMMISSIONER:  
 2 Okay, and I invite Commission counsel to point out if  
 3 I am missing anything as I go along. The next  
 4 Applicant is the Royal Newfoundland Constabulary  
 5 Association, which I think it is as set out in a  
 6 letter from Mr. John Drover, October 14, 2016. It  
 7 points out that the RNC is a corporation without  
 8 share capital and is recognized under Collective  
 9 Agreement with the Crown as the bargaining unit for  
 10 noncommissioned officers of the Royal Newfoundland  
 11 Constabulary, which has a statutory duty to, amongst  
 12 other things, improve the working conditions of its  
 13 members in accordance with s. 2(b)(1) of the Act -  
 14 that's the **Royal Newfoundland Constabulary Act** - that  
 15 Mr. Smyth was a member in good standing of the RNCA  
 16 and the RNCA seeks standing before the Inquiry on the  
 17 following basis. First possible adverse affect, the  
 18 Terms of Reference in s. 3 of the Commission of  
 19 Inquiry make numerous references to policing  
 20 policies, protocols and manuals in effect at the  
 21 relevant time, as well as operational considerations  
 22 and investigative procedures in relation to the  
 23 specific incident in question.  
 24

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1 The objects of the RNCA according to its  
 2 Memorandum of Association are to act on behalf of its  
 3 membership in securing and maintaining improved  
 4 working conditions, to use legitimate and reasonable  
 5 efforts to maintain a just and partial and efficient  
 6 police force, to engage in activities which foster  
 7 the social, economic and general welfare of members  
 8 of the RNCA and to promote legislation that ensures  
 9 the safety and security of both the public and the  
 10 police. It's the RNCA's position that any  
 11 recommendations made by the Inquiry with respect to  
 12 how its members carry out their duties could have an  
 13 adverse effect on those members, as ultimately it  
 14 will be those officers who will be subject to any  
 15 policy and procedural changes, which may arise from  
 16 final recommendations of the Inquiry with respect to  
 17 those specific Terms of Reference which deal with  
 18 police, procedure, investigative techniques and  
 19 operational consideration.  
 20  
 21 It's possible, without presupposing the  
 22 outcome of the standing application phase of the  
 23 Inquiry, that the RCMP as an organization will be  
 24 granted standing at the Inquiry -

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1 MR. DROVER:  
 2 I think that should be RNC.  
 3 THE COMMISSIONER:  
 4 That the RNC - sorry - as an organization will be  
 5 granted standing at the Inquiry. Admittedly there  
 6 may be some common ground between the RNC and the  
 7 RNCA in terms of policy and procedure concerns raised  
 8 at the Inquiry. The RNCA's interests are not the  
 9 same as those of management. The RNC's interests  
 10 will likely focus on the administration of the Force  
 11 and the collective rights of both management and RNCA  
 12 members. The RNCA's focus, however, will be on the  
 13 individual rights of officers and how any  
 14 recommendations will affect those officers as they  
 15 carry out their daily policing duties. So, this is  
 16 with respect to the possible adverse impact on the  
 17 members of the Association. You go on, furtherance  
 18 of conduct at the Inquiry, you say you have a unique  
 19 perspective considering what your mandate for  
 20 improved working conditions, have a unique  
 21 perspective on the impact of policy procedure and  
 22 operational considerations on its members which is  
 23 different than that of the RNC's management.  
 24

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1 As stated, management's main concern is  
 2 likely to be administrative, to be administration of  
 3 the Force, whereas the RNCA's focus is on the impact  
 4 on individual officers of any changes to policy and  
 5 procedure which might arise from the recommendations  
 6 made by the Inquiry. The RNCA's perspective on the  
 7 impact of policy and procedural considerations stems  
 8 from its participation over three decades in internal  
 9 and public complaint hearings, as well as policy and  
 10 procedural grievances. The RNCA also participated  
 11 with full standing in all phases of the Lamer Inquiry  
 12 which conducted its work between 2003 and 2006. In  
 13 this respect, the RNCA's participation will further  
 14 the conduct of the Inquiry by providing a perspective  
 15 from the point of view of its members and the  
 16 possible impact of policy and procedural  
 17 considerations arising from the Inquiry's  
 18 recommendations.

19  
 20 And you go on then to deal with openness and  
 21 fairness that considering the impact will be of  
 22 certain considerations that it would be fundamental  
 23 unfair not to grant the RNCA standing, and you talk  
 24 about the need, if management gets standing that the

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1 THE COMMISSIONER:  
 2 Would you agree that there'll be significant aspects  
 3 of testimony that will not particularly relate to the  
 4 RNCA? I'm thinking now specifically of the  
 5 investigation of the death itself, for example.  
 6 MR. DROVER:  
 7 Well, I note that in the Order in the Terms of  
 8 Reference in 3(1)(e), you know, the facts surrounding  
 9 the command and control and implementation of the  
 10 policy on the day of the shooting and the actions of  
 11 any other members of the Royal Newfoundland  
 12 Constabulary involved in that. Policing obviously  
 13 involves the following the policies and procedures  
 14 which cover everything from the initial investigation  
 15 of Mr. Dunphy through the shooting and then through  
 16 the investigation of that shooting.  
 17 THE COMMISSIONER:  
 18 Right, but how would you see your client bringing in  
 19 information that would not already be brought in by  
 20 the Constabulary, for example, or sorry, by the RCMP  
 21 in its investigation in that example that you give?  
 22 MR. DROVER:  
 23 It might not be that the RNCA will actually bring any  
 24 witnesses or information in that regard, but it would

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1 Employees' Association should, to temper the  
 2 requirements of the employer in terms of any changes  
 3 in policy and procedure in the way police officers  
 4 conduct their work, and you said that argument  
 5 applies to openness, as well, it's important to have  
 6 the views and needs of the RNC officers represented  
 7 at the Inquiry because, as stated, it is the members  
 8 of the RNCA who will most likely be most affected by  
 9 the final recommendations of the Inquiry, as the  
 10 employer and Government implement those  
 11 recommendations.

12  
 13 Again, I'm satisfied that the RNCA should  
 14 have standing. The question arises whether it should  
 15 be full participation or limited. Mr. Drover, you  
 16 will be --

17 MR. DROVER:

18 Mr. Commissioner.

19 THE COMMISSIONER:

20 Sorry, you will be, I take it, acting for the RNCA,  
 21 is that correct?

22 MR. DROVER:

23 Yes, that's correct.

24

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1 be, I think, important for counsel to be able to  
 2 cross-examine those witnesses from the point of view  
 3 of the RNCA and its mandate.

4 THE COMMISSIONER:

5 Can you give me an example of how your  
 6 cross-examination of a witness would differ from that  
 7 of the Constabulary?

8 MR. DROVER:

9 It's difficult to say without having seen any of the  
 10 material or a witness list or sort of a can-say  
 11 statement or anything like that. It's pure  
 12 speculation at this point, as with --

13 THE COMMISSIONER:

14 Well, there's a lot of -- I have to confess I had the  
 15 same problem when I was appointed. I didn't have  
 16 very much material, other than news articles and  
 17 newspaper reports.

18 MR. DROVER:

19 Right.

20 THE COMMISSIONER:

21 But from those you can glean a lot in terms of what  
 22 our focus should be, but --

23 MR. DROVER:

24 I mean as with Mr. Williams and his client, it might

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1 be something that needs to be monitored as it goes  
 2 along and if participation is not required and as you  
 3 say to make sure that the funds for the Commission  
 4 are spent appropriately that we can discuss with  
 5 Commission counsel and monitor that as it goes.  
 6 THE COMMISSIONER:  
 7 Yeah, I don't want to be unfair to your client and I  
 8 don't want to impede your client in having the  
 9 opportunity to get his point or points out, but again  
 10 the cost to Government is - cost to the taxpayer, I  
 11 should say, is something that I'm going to remain  
 12 sensitive to and again, I'll just leave it to you as  
 13 your professional responsibilities would require that  
 14 you consider when you need not be there. Because  
 15 your client has standing does not mean that you need  
 16 be there at all times and -  
 17 MR. DROVER:  
 18 Yes, I understand.  
 19 THE COMMISSIONER:  
 20 - I'd ask you take it, as I did with Mr. Williams,  
 21 take a good sharp pencil to your, you know, your  
 22 planned participation, but not so as to in anyway  
 23 hamper or have the interest of your client adversely  
 24 affected. Okay, well, I'm satisfied that the Royal

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1 believe.  
 2 THE COMMISSIONER:  
 3 Yeah, okay, thank you. Anything further that you  
 4 want to add?  
 5 MR. DROVER:  
 6 Nothing, Mr. Commissioner.  
 7 THE COMMISSIONER:  
 8 Thank you, Mr. Drover. Now, the next application is  
 9 by the Don Dunphy Community Coalition, and we have  
 10 Mr. Cletus E. Flaherty who has made an application on  
 11 behalf of the group. Mr. Flaherty?  
 12 MR. FLAHERTY:  
 13 Thank you, sir. Myself and -- actually states, it's  
 14 myself and Kenneth Mahoney of Rogers Bristow Moyse,  
 15 and further there will be support provided by Noel  
 16 Daley who's actually a member of the organizing  
 17 committee for the Coalition.  
 18 THE COMMISSIONER:  
 19 Okay. Yes, I'm sorry, I apologize to Mr. Mahoney,  
 20 that's in paragraph 14 noted there. Who else did you  
 21 say?  
 22 MR. FLAHERTY:  
 23 Noel Daley of Noel Daley Law.  
 24

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1 Newfoundland Constabulary Association should have  
 2 standing and I'm satisfied that I should recommend  
 3 funding to the Government to ensure their  
 4 participation in the Inquiry.  
 5  
 6 And here I should say that there is  
 7 information regarding the financial position that you  
 8 provided and you indicated your financing comes  
 9 mainly from members' dues, although you do put out a  
 10 publication which members of the community contribute  
 11 to, I think, and so forth, but you don't have the  
 12 money, the Association doesn't have the money to  
 13 participate without funding from Government.  
 14 MR. DROVER:  
 15 The money that they have goes into their operations,  
 16 into programs for their members and into support for  
 17 the members, particularly legal support in internal  
 18 complaints, public complaints and those sorts of  
 19 things.  
 20 THE COMMISSIONER:  
 21 Right, and that if money is taken from that, that'll  
 22 have a detrimental effect on your operations.  
 23 MR. DROVER:  
 24 Right, on the community and on the members, I

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1 THE COMMISSIONER:  
 2 Noel Daley, D-a-l-e-y?  
 3 MR. FLAHERTY:  
 4 Yes, Commissioner.  
 5 THE COMMISSIONER:  
 6 Or D-a-l-y?  
 7 MR. FLAHERTY:  
 8 D-A-L-E-Y.  
 9 THE COMMISSIONER:  
 10 D-A-L-E-Y, okay. Okay, and you indicate that the  
 11 Coalition does not require funding?  
 12 MR. FLAHERTY:  
 13 Does not require funding, Mr. Commissioner.  
 14 THE COMMISSIONER:  
 15 Okay, always happy to see that.  
 16 MR. FLAHERTY:  
 17 You would.  
 18 THE COMMISSIONER:  
 19 And you've indicated that although you've never  
 20 compiled a membership list due to the sensitive  
 21 nature of Mr. Dunphy's death, your group is composed  
 22 of members of the communities along the Salmonier  
 23 Line and in close proximity to the community of  
 24 Mitchells Brook. You say you have approximately 100

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1 members that have taken part of the activities of the  
2 Coalition. The Coalition was formed in the week  
3 following Mr. Dunphy's death.

4  
5 Initially the Coalition mandate included the  
6 following: (A) to raise awareness respecting Mr.  
7 Dunphy's death; to ensure that Mr. Dunphy's death was  
8 properly investigated; to ensure information  
9 concerning the death of Mr. Dunphy and any  
10 investigation relating to this was communicated to  
11 members of the local community; and to provide  
12 support to the Dunphy family residing in the local  
13 community; to aid in community healing required as a  
14 result of Mr. Dunphy's death; and to liaise with  
15 media with respect to Mr. Dunphy's death. So, this  
16 is what you've done up to now since your formation.

17 Is there any formal incorporation or anything, or  
18 just a voluntary --

19 MR. FLAHERTY:

20 There was never any kind of formal incorporation.

21 THE COMMISSIONER:

22 Okay.

23 MR. FLAHERTY:

24 It's just purely grassroots, community-based group,

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1 them. The local impact of tragedies has often  
2 grounded a community constituency group's entitlement  
3 to participate in public inquiries in Canada, and you  
4 refer to the -- in an Appendix to the Report of the  
5 Walkerton Committee where Commissioner Dennis  
6 O'Connor, CGA, discussed the relationship between the  
7 local impact of tragedy, participation rights of  
8 local groups and the work of a public inquiry  
9 commission. Now, I should say that I would see the  
10 individuals in the Walkerton situation directly  
11 impacted. This was where their water was  
12 contaminated, and I think there's some question as to  
13 whether this is an appropriate parallel situation,  
14 but I'm not going to get too hung up on that.

15  
16 Judge O'Connor, Commissioner O'Connor pointed  
17 out that the residents of Walkerton were seriously  
18 affected by the water contamination and that they had  
19 a significant interest as a result in the  
20 circumstances that led to the contamination and the  
21 various causes that may have contributed to it. You  
22 also refer to the Missing Women Commission of Inquiry  
23 in British Columbia, and there you say that the  
24 Commission say that participation of community

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1 Mr. Commissioner.

2 THE COMMISSIONER:

3 Okay. Okay, so you've added the establishment of the  
4 Public Inquiry to your mandate, and up to now you've  
5 circulated media releases, you have been interviewed  
6 by local -- people for the Coalition have been  
7 interviewed by local and provincial media and  
8 organized community events have been carried out,  
9 including memorial walk and annual vigils. You  
10 submitted as an ongoing and genuine interest in the  
11 investigation of Mr. Dunphy's death and the  
12 establishment of a public inquiry. Participation,  
13 like you say, although Mr. Dunphy's death is a matter  
14 of general public importance and concern within the  
15 Province of Newfoundland Labrador, the Coalition  
16 submits that the impact upon the local community is  
17 unique and when compared to the impact upon the  
18 general population of the Province is a far greater  
19 magnitude.

20  
21 This is clear when one considers the facts  
22 that the death occurred in close proximity to the  
23 members of the Coalition and involved a person who  
24 had formed and maintained a relationship with many of

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1 constituency-based groups contributes to the openness  
2 and fairness of the Inquiry. You repeated this and  
3 submitted that your participation would contribute to  
4 the openness and fairness of the Inquiry and that  
5 further you would further the conduct of the Inquiry  
6 as set out in 5(2)(b) of the Act by enriching the  
7 evidence basis and level of analysis of the  
8 commission, and specifically by - and here's where I  
9 think I'm most impressed by the points that you make  
10 is - the Coalition may marshal witnesses who may not  
11 otherwise testify. I think that's fair to say that  
12 you may be in a better position to have individuals  
13 come forward than other parties might who would not  
14 be as familiar with people who may have something to  
15 contribute to the Inquiry.

16  
17 Provide evidence with respect to Mr. Dunphy's  
18 character and reputation, his propensity for violence  
19 or lack thereof, his use of social media and his past  
20 dealings with police, the movement and acts of the  
21 police officers around Mr. Dunphy's property and the  
22 community at large following his death -- I have a  
23 question mark about that, what all that implies, but  
24 as well as the historical interaction of the RCMP and

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1 RNC police officers with members of the local  
 2 community. I take it you're saying there might be  
 3 some difference in the history there and that of the  
 4 community at large and the Island of Newfoundland,  
 5 for example?  
 6 MR. FLAHERTY:  
 7 Yes, Mr. Commissioner.  
 8 THE COMMISSIONER:  
 9 What does that go back to?  
 10 MR. FLAHERTY:  
 11 That goes back to -- essentially the organizing  
 12 committee has met with members of the community and  
 13 they've been able to discuss how these members of the  
 14 community have observed how police officials may have  
 15 dealt with Mr. Dunphy in the past and how police  
 16 generally conduct themselves within the community.  
 17 So, there's been issues raised there amongst the  
 18 community members. What I've been tasked to do and  
 19 what I believe the Inquiry has been tasked to do is  
 20 just to put a spotlight on that and see if there was  
 21 any kind of difference between how the local  
 22 community generally interacts with police and how Mr.  
 23 Dunphy himself interacted with police.  
 24

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1 anything that might delay, unnecessarily, the work of  
 2 the Inquiry without contributing significantly to its  
 3 task. So, is that satisfactory to leave it at that  
 4 for now and if there's a problem and you can work it  
 5 out I'll deal with it, and I guess like any member of  
 6 the public you're open to being present and following  
 7 what's going on, but this would only relate to where  
 8 you'd be entitled to participate in terms of the  
 9 examination of witnesses and so forth?  
 10 MR. FLAHERTY:  
 11 That's satisfactory, Mr. Commissioner.  
 12 THE COMMISSIONER:  
 13 And I confess, because of the unusual nature of your  
 14 organization I haven't finalized my own thinking with  
 15 regard to what would be appropriate in terms of  
 16 conditions, but, as I say, your participation should  
 17 be more liberal because of the fact that you're  
 18 paying your own money to fund it. Is there anything  
 19 Commission counsel want me to raise that I haven't  
 20 dealt with there?  
 21 (No audio response)  
 22 THE COMMISSIONER:  
 23 Okay. So, I'll leave that for now, so that is  
 24 satisfactory for you. Okay, so we can expect either

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1 THE COMMISSIONER:  
 2 Okay, I'm not going to press you too long on that.  
 3 I'm satisfied that the Coalition, the -- let me see  
 4 your official name now.  
 5 MR. FLAHERTY:  
 6 The Don Dunphy Community Coalition, Mr. Commissioner.  
 7 THE COMMISSIONER:  
 8 The Don Dunphy Community Coalition should have  
 9 standing, however I believe that that standing should  
 10 be limited and I'll just leave it. I'm not as  
 11 concerned, actually, about the extent of your  
 12 participation because you're self funding.  
 13 MR. FLAHERTY:  
 14 Yes.  
 15 COMMISSIONER;  
 16 You're not drawing upon the taxpayers' funds, so I  
 17 think your participation should be somewhat more  
 18 liberal than would otherwise be the case in that  
 19 regard, and I won't expressly set out conditions now,  
 20 but I'd ask you to consult with counsel at the  
 21 appropriate time, Commission counsel, in terms of  
 22 what aspects you would want to be involved in, and  
 23 here I'm mainly concerned with avoiding unnecessary  
 24 cross-examination of witnesses, repetition and

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1 one of three of you probably to be involved. Is that  
 2 the situation now, yourself, Mr. Mahoney or Mr.  
 3 Daley?  
 4 MR. FLAHERTY:  
 5 Yes, Mr. Commissioner.  
 6 THE COMMISSIONER:  
 7 Okay. All right, the next application, and I'm going  
 8 to try and finish these before we take a break, but  
 9 I'm not sure I'll make it. The next one is an  
 10 application by Mr. Andrew Abbass. Are you still  
 11 there, Mr. Abbass?  
 12 MR. ABBASS:  
 13 Yes, Commissioner.  
 14 THE COMMISSIONER:  
 15 Thank you, and I think, Mr. Abbass, while I'm going  
 16 to be referring to some matters that would be  
 17 considered private to you, you in fact have had much  
 18 of what you set out, if not all of what you've set  
 19 out in your application, has already been the subject  
 20 of media attention, is it not, on the West Coast?  
 21 MR. ABBASS:  
 22 Yes, Commissioner.  
 23 THE COMMISSIONER:  
 24 Yeah, so you don't have a problem with my referring

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1 to your situation with the hospital officials and so  
 2 forth, your interaction?  
 3 MR. ABBASS:  
 4 Not at all, Commissioner.  
 5 THE COMMISSIONER:  
 6 Okay. Mr. Abbass, again, brings a certain unique  
 7 perspective and he requests standing in regards to  
 8 the Commission respecting the death of Donald Dunphy.  
 9 He says as an active Twitter user at the time -- oh,  
 10 I'm sorry, before I go on I should note, Mr. Abbass,  
 11 that I have to be careful I don't intervene in the  
 12 appeal process, or say anything that's going to  
 13 influence your appeal process.  
 14 MR. ABBASS:  
 15 I understand that, Commissioner.  
 16 THE COMMISSIONER:  
 17 Hopefully the decision will be received before we get  
 18 into hearings or get into a final report in any  
 19 event. And I take it that your appeal -- I went  
 20 looking for it this morning before I came out and  
 21 frankly didn't have time to obtain it before I came  
 22 into the hearing, but your appeal is from the  
 23 decision of the Tribunal which committed you  
 24 involuntarily to the Western Memorial Hospital, is

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1 under the ***Mental Health Care and Treatment Act*** for  
 2 six days. I was released without diagnosis and have  
 3 suffered long-term ramification from my detainment  
 4 that effectively ended the life I was enjoying prior  
 5 to that day. As such I believe I have standing under  
 6 one of the three grounds."  
 7  
 8 And these are the three grounds I have  
 9 earlier noted respect to findings that might have an  
 10 adverse effect on you and your personal interest,  
 11 that your participation would further the conduct of  
 12 the Inquiry and that your participation would  
 13 contribute to the openness and fairness of the  
 14 Inquiry. You indicate that if those grounds are  
 15 inadequate, you're still willing to act as a witness.  
 16 MR. ABBASS:  
 17 Yes, Commissioner.  
 18 THE COMMISSIONER:  
 19 And then you in an email following questions, I  
 20 think, from Commission counsel, you describe what has  
 21 occurred and you set out the tweet which is already  
 22 on line through the Western Star. Sorry, I should  
 23 put in before I get into the tweet there was a phone  
 24 call from the RNC the morning the tweet went out.

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1 that correct?  
 2 MR. ABBASS:  
 3 No, Commissioner, the appeal was to the *habeas corpus*  
 4 that was to try to get me out of the hospital while I  
 5 was allegedly being unlawfully detained there. I've  
 6 never been before an appeal board, sir, and there's  
 7 no option for me to have this appealed.  
 8 THE COMMISSIONER:  
 9 Okay, I'm sorry about that. That was information  
 10 that was provided me, so I'll take a look at the  
 11 initial decision which you're now appealing, but I'll  
 12 set out your application. You say, "As an active  
 13 Twitter user at the time of Mr. Dunphy's death, I was  
 14 closely following the matter as it unfolded when the  
 15 tweet that triggered his death was released to the  
 16 public. I was among the first to read the full  
 17 extent of his tweets from that day. I began sending  
 18 screen shots of it to other Twitter users and media  
 19 outlets covering the matter. On April 7, 2015, while  
 20 reading through press releases that still refused to  
 21 acknowledge the nonthreatening nature of the  
 22 exchange, I posted a rhetorical question to then  
 23 Premier Paul Davis's Twitter account and was  
 24 subsequently detained without charge and certified

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1 They wanted you to come into the station and you  
 2 asked if you were being arrested. They refused to  
 3 indicate otherwise. You informed them that you "had  
 4 a Charter matter being heard before the Supreme Court  
 5 on the 9th and was unwilling to risk arrest because  
 6 they didn't understand my tweet. They informed me  
 7 that if I refused to come in they'd send armed  
 8 officers to my home. I told them I didn't own any  
 9 guns. I didn't want armed officers approaching my  
 10 home after the way Mr. Dunphy had been treated. They  
 11 arrived later in the afternoon and brought me to the  
 12 hospital where I was certified under their orders.  
 13 The certification paper indicates that it was done  
 14 through their wishes, but no diagnosis was ever put  
 15 forward. They were tasked with excluding disorders  
 16 and none was ever discovered once they realized the  
 17 full context of my tweets. Two different doctors,  
 18 both from South Africa and familiar with abusive  
 19 psychiatry were the ones who signed me out."  
 20  
 21 So, the tweet you say read like this, "How  
 22 about his one at Premier of NL. I'm going to bring  
 23 down Confederation and have politicians executed.  
 24 Ready to have me shot, coward?" Now, that threat you

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1 say was interpreted as a threat to blow up  
 2 Confederation Building. You say your last name being  
 3 Arabic and your beard and your opposition to Canadian  
 4 foreign policy were enough to get you "profiled as  
 5 similar to the Ottawa shooter according to the doctor  
 6 who certified me after five minutes. It was  
 7 published in response to then Premier Davis's  
 8 announcement that rather than review policy that led  
 9 to Dunphy's death they were going to crack down and  
 10 increase security monitoring of social media for  
 11 other threats. Myself and others took this as a  
 12 direct attack on freedom of expression in the  
 13 Province."

14  
 15 Okay, now I'm not going to get into the rest  
 16 of it. You provide additional information. You make  
 17 some arguments here. It strikes me, Mr. Abbass, that  
 18 while you may -- and following discussion with  
 19 Commission counsel, will take a final position on  
 20 your being called as a witness, I am not sure and I'm  
 21 not ready at this stage to conclude that you should  
 22 have standing in the Inquiry in terms of being in a  
 23 position to either show an adverse affect upon you  
 24 yourself from the considerations that are made in the

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1 mine apparently involved six, so just even the  
 2 contrast and how the two matters were handled  
 3 following just a brief Twitter exchange, I thought  
 4 might provide some relevance to the hearing.

5 THE COMMISSIONER:  
 6 Yeah, and that could go in through your being called  
 7 as a witness, as opposed to, you know, having  
 8 standing to participate and cross-examining and so  
 9 forth, unless I'm missing something. Do you have  
 10 anything --

11 MR. ABBASS:  
 12 No, I understand that complete, Commissioner.

13 THE COMMISSIONER:  
 14 Okay, all right, I thank you for your frank  
 15 statements here, Mr. Abbass, and for having this  
 16 personal information released, although as I say most  
 17 of it I think has already been released to the  
 18 Western Star, and we'll let you get on with the  
 19 appeal and you'll be getting a decision in that  
 20 presumably. We'll be in further touch with you. We  
 21 have your contact information, I believe. Yes, from  
 22 the emails you've sent out. So I'll let you go away  
 23 on the basis that right now I would say the odds are  
 24 against your getting standing, or at least full

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1 course of the Inquiry, or how you're going to bring  
 2 information that would further the conduct of the  
 3 Inquiry or contribute to the openness and fairness of  
 4 it. Now, I say that just to indicate my preliminary  
 5 thinking because, again, frankly I haven't had enough  
 6 time to fix my mind around it, but at this point I'm  
 7 inclined to say no, there shouldn't be standing, but  
 8 that you might very well be appropriately called as a  
 9 witness. Do you have any comment on that at this  
 10 stage, and again this is not going to be a final  
 11 decision. I'm going to have to adjourn your matter  
 12 and arrive at a final conclusion sometime later. Do  
 13 you have any further comment on that?

14 MR. ABBASS:  
 15 I understand if there's questions about the issue of  
 16 standing, Commissioner, and look, I understand you  
 17 have to adjourn to review the matter more fully.

18 THE COMMISSIONER:  
 19 Right.

20 MR. ABBASS:  
 21 My only interest in this is that my own Twitter  
 22 related matter might be seen as a case study how it  
 23 was handled differently following the -- like where  
 24 Mr. Dunphy's situation only involved one officer,

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1 standing, and they're more towards your being called  
 2 as a witness at the appropriate time.

3 MR. ABBASS:  
 4 Thank you, Commissioner.

5 THE COMMISSIONER:  
 6 Is that okay?

7 MR. ABBASS:  
 8 That's perfectly fine.

9 THE COMMISSIONER:  
 10 Okay, thank you.

11 MR. ABBASS:  
 12 Yeah.

13 THE COMMISSIONER:  
 14 Now, we have one further application and that is the  
 15 application of Ed Hollett and Hans Rollmann on behalf  
 16 of the Ad Hoc Coalition for Civil Liberties in  
 17 Newfoundland and Labrador. This Coalition was only  
 18 recently formed. I think there are only two, Mr.  
 19 Hollett and Mr. Rollmann may have been the only two  
 20 when the actual application was put in. Commission  
 21 counsel has been in contact with Mr. William Hiscock.  
 22 Mr. Hiscock is here this morning, good. Mr. Hiscock,  
 23 you are holding out for standing, you're requesting  
 24 standing on behalf of the Coalition, and since your

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1 application's been put in you've supplied us with a  
 2 further list of names. Initially you weren't sure  
 3 who was ready to have their name go forward, but you  
 4 now have supplied us with in addition to Mr. Hollett  
 5 and Mr. Rollmann you have one, two, three, four,  
 6 five, five other individuals, and I recognize some of  
 7 the names as having been active in political and  
 8 social commentary and other commentary, I guess, on  
 9 matters of public interest in the Province.

10  
 11 And I'll just briefly summarize the nature of  
 12 your application. You say -- and you're seeking  
 13 funding, as well, to be represented by legal counsel.  
 14 You say the Applicants represent a diverse group of  
 15 Newfoundlanders and Labradoreans who utilize social  
 16 media and other similar forms of public communication  
 17 to discuss policy issues, question Government actions  
 18 and policies, express views on matters of public  
 19 interest, and further civil discourse in our  
 20 Province. The Applicants, as outspoken users of the  
 21 electronic and social media, have a particular  
 22 interest in the following aspects of the Terms of  
 23 Reference for the Commission as laid out previously.  
 24

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1 Constabulary investigation of the comments Mr. Dunphy  
 2 had made on Twitter. It was also widely reported the  
 3 Twitter comments of Mr. Dunphy were brought to the  
 4 attention of the RNC by a staff person within the  
 5 Province, within the Office of the Premier, and you  
 6 refer to Applicants having fundamental freedoms, 2(b)  
 7 freedom of thought, belief, opinion and expression,  
 8 including freedom of the press and other media of  
 9 communications, that the Applicants and public at  
 10 large are unaware of what systems of monitoring and  
 11 storing of social media comments are used by the  
 12 Office of the Premier or the RNC or for what purposes  
 13 and upon what grounds those social media comments can  
 14 be collected, stored or utilized by the Office of the  
 15 Premier or the RNC, that Mr. Dunphy utilized social  
 16 media to express displeasure with the actions and  
 17 policies of the Government of Newfoundland and  
 18 Labrador and the Office of the Premier, that  
 19 Constable Joe Smyth of the RNC told local media in a  
 20 written statement that "At no point did I or members  
 21 of the RNC interpret any of Mr. Dunphy's social media  
 22 commentary as threats, as has been indicated time and  
 23 time again by both traditional and social media  
 24 platforms," that the Applicants come from differing

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1 The s. 3(1)(h)(2) inquire into the relevant  
 2 policies, protocols or manuals in force in the Office  
 3 of the Premier, the Royal Newfoundland Constabulary,  
 4 including particularly any policies, protocols or  
 5 manuals relating to the monitoring of and response to  
 6 social media. (B) it'd be s. 3(1)(h)(e) with respect  
 7 to the Royal Newfoundland Constabulary policies,  
 8 protocols or manuals governing communications by  
 9 members with the public or the media following  
 10 serious incidents and during active investigations.  
 11 (C) 3(1)(k) making recommendations that the  
 12 Commission of Inquiry considers necessary and  
 13 advisable relating directly to the matters of public  
 14 concern referred to in this section, and (d) any and  
 15 all other Terms of the Commission to the extent that  
 16 they directly engage and relate to s. 3(1)(h)(2) and  
 17 the policies, protocols or manuals in force at the  
 18 material times in either the Office of the Premier or  
 19 the Royal Newfoundland Constabulary relating to the  
 20 monitoring of and response to social media, and you  
 21 seek funding, and you cite facts.

22  
 23 You say it was widely reported that the  
 24 incident occurred during a Royal Newfoundland

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1 ideology and political perspectives but share a  
 2 common interest in ensuring that the collection and  
 3 utilization of social media commentary by either the  
 4 Office of the Premier or the RNC does not have a  
 5 chilling effect on or otherwise suppress the  
 6 Applicants' rights of free opinion and expression.  
 7

8 You feel that there might be an adverse  
 9 impact that may lead to reservation on the part of  
 10 the Applicants to speak freely and openly on social  
 11 media platforms. I think maybe you're stretching it  
 12 there in terms of differentiating how your clients  
 13 would be different than the ordinary member of the  
 14 public in this regard, but I note your submission.  
 15 You say for fear that the information may be  
 16 collected and utilized for unlawful purposes or to  
 17 retaliate against the Applicants if the views they  
 18 express are critical of Government officials or  
 19 Government policy, and you believe that your  
 20 participation would further the conduct of the  
 21 Inquiry by providing the perspective of those with a  
 22 significant interest in the policies, protocols or  
 23 manuals of the Office of the Premier and the RNC  
 24 relating to the monitoring of and response to social

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1 media.  
 2  
 3 I'm just going to abbreviate this somewhat  
 4 now, that you believe you'd contribute to the  
 5 openness and fairness of the Inquiry and you believe  
 6 the standing in events will provide useful and  
 7 different submissions from parties, that you'll  
 8 address the *Charter* and you say the Ad Hoc Coalition  
 9 for Civil Liberties in Newfoundland and Labrador was  
 10 formed in recent days by the named Applicants in  
 11 order to ensure a party with a particular focus on  
 12 civil liberties was represented during this upcoming  
 13 Inquiry. While it is intended to be formalized and  
 14 established in a more permanent way in coming months  
 15 to address the serious gap in this Province's civil  
 16 society, it currently lacks a formal structure or any  
 17 assets or revenue whatsoever. Members are currently  
 18 reaching out to other interested individuals and  
 19 expect the membership to expand. We will request to  
 20 have their names added if such individuals come  
 21 forward, and if that is the preference of the  
 22 Commission. We are interested in representing as  
 23 large a group of citizens concerned with matters of  
 24 civil liberties as is possible and to which this

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1 research upon the topics that are raised,  
 2 presentation of a paper by your group, a seminar that  
 3 might be held with participation by individuals  
 4 identified by your group and by others who might wish  
 5 to become involved, so what I'm going to say right  
 6 now is that I'm not -- one of the problems I had was  
 7 identifying whether the individuals in your  
 8 association had any particular expertise, you know,  
 9 in terms of arguing *Charter* issues or legal matters  
 10 relating to civil liberties. As I say, since seeing  
 11 your latter list I can identify several who have had  
 12 the opportunity to present at public forums many of  
 13 the issues that you raise, so I'm not as concerned as  
 14 lack of identification and expertise, and it's not so  
 15 much whether they know what they're talking about.  
 16 It's if somebody is coming into an Inquiry one  
 17 question I think is validly raised is well, what do  
 18 they bring that any citizen would not be able to  
 19 deliver on?  
 20  
 21 So, what I'm going to propose is we're going  
 22 to break for 15 minutes or so and I'm going to be --  
 23 this is one of the issues that I wanted to discuss  
 24 with the counsel for the parties who have standing

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1 Commission thinks fit, and you say your standing  
 2 would relate to discussion of policy issues, question  
 3 Government actions and policies, express views on  
 4 matters of public interest and further civil  
 5 discourse in our Province.  
 6 Mr. Hiscock, much of what you propose as your  
 7 objective here is of interest to myself, to the  
 8 Inquiry, I think. Our thinking has not been  
 9 finalized in this regard, but we believe it might be  
 10 that the Inquiry might most efficiently proceed by  
 11 way of two stages, one dealing directly with the  
 12 circumstances surrounding the death and the police  
 13 reaction and two -- I say two, there may be three or  
 14 four, but I'll say just two for now. The second, the  
 15 second phase, we'll call it, dealing with matters  
 16 relating to social media, the collection of  
 17 information, possible chilling effect on expression  
 18 and the various constitutional and civil liberties  
 19 issues that are raised.  
 20  
 21 In other commissions there have been somewhat  
 22 unique ways utilized to get out this type of  
 23 information. For example, it may be that the  
 24 Commission could provide funding to permit some

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1 generally, whether it makes sense to proceed by way  
 2 of a couple at least different phases, whether your  
 3 group or a group similar to yours or other  
 4 individuals might usefully contribute along the lines  
 5 of the arguments that you're presenting by preparing  
 6 research and letting us have their own's views, as  
 7 well apart from research, letting us have your views  
 8 on these issues. I think they're important issues  
 9 that you raise. I'm just not sure how the Inquiry  
 10 can best deal with them. So unless you have anything  
 11 further you want to add, maybe -- would you be in a  
 12 position to stay around?  
 13 MR. HISCOCK:  
 14 Absolutely.  
 15 THE COMMISSIONER:  
 16 Okay, after. Mr. Budden is there with you, I see.  
 17 Mr. Budden, you can intervene directly if you wish to  
 18 have something to say. Don't be shy.  
 19 MR. BUDDEN:  
 20 Yeah, it's Mr. Hiscock's file, but Mr. Commissioner,  
 21 if you're interested in the background of some of the  
 22 individuals who we have added, Mr. Hiscock can  
 23 certainly can speak to Mr. Jerry Vink, for example,  
 24 who --

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1 THE COMMISSIONER:  
 2 Yeah, that's one individual I say I've been -- I  
 3 think I've been present when he made a couple of  
 4 presentations years ago and I recognize him as  
 5 someone with a particular expertise. I didn't have  
 6 his name until this morning, but yes, he'd -- you  
 7 know, again the question is still there, Mr. Budden,  
 8 as to how best get his input most effectively and  
 9 keeping in mind, of course, the cost to Government.  
 10 We read almost every day -- you know, I was going to  
 11 leave this 'till we come back after the break, but we  
 12 read almost every day of shootings by police of  
 13 citizens. In the United States, for example, many  
 14 controversies have arisen. I'm sure, although I  
 15 haven't had a chance to look directly, there must be  
 16 a lot of literature out there in terms of social  
 17 media and how that may or may not have led to the  
 18 wrong type of interaction between the citizen and the  
 19 police. I'm sure there's material out there relating  
 20 to the chilling effect of collecting information  
 21 generally which is not highlighted, but I think it's  
 22 underlying a significant part of the application  
 23 here, whether just as a matter of principle we got to  
 24 take a hard look and bring in changes to the way we

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1 as a principle out front, as well as thoroughness,  
 2 fairness, efficiency, openness and so forth.  
 3 Proportionality might come into play in terms of what  
 4 you're setting out in your application.  
 5 MR. HISCOCK:  
 6 If I can make one comment on that -  
 7 THE COMMISSIONER:  
 8 Yeah.  
 9 MR. HISCOCK:  
 10 - which is we are very cognizant of the fact that  
 11 it's public funds that are being used to run this  
 12 Commission, and we do not have any intent on being  
 13 involved in areas outside of that limited focus,  
 14 which was one of the Terms of Reference for this  
 15 Commission.  
 16 THE COMMISSIONER:  
 17 Right.  
 18 MR. HISCOCK:  
 19 And in terms of the global issue of perhaps police  
 20 collection of data or so on, that's engaged here as  
 21 it relates to the RNC. However, the Office of the  
 22 Premier and the collection of that information in the  
 23 political sphere is another consideration all  
 24 together and it doesn't engage in those issues of

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1 collect information and have all this information  
 2 available on individuals. It used to be a time when  
 3 the collectors of information had to destroy it all  
 4 at a certain -- I guess everybody except the CIA  
 5 would have to destroy material after a certain period  
 6 of time to avoid that sort of chilling effect and  
 7 potential unwelcome intrusion into the privacy of  
 8 individuals, but again I want to hear from counsel as  
 9 to how far we can go in -- I'm not saying we couldn't  
 10 do it, but should the Newfoundland taxpayer be  
 11 required to fund an extensive examination of this  
 12 type of issue which is almost a global issue now,  
 13 particular considering we're in the era of terrorism  
 14 and accessing communication seems to be a tool that  
 15 is very important in the arsenal of those who are  
 16 trying to prevent acts of terrorism and again, we're  
 17 opening up an area, or it has been opened up by your  
 18 brief which, you know, we could lose sight of, I  
 19 think, the main focus being looking at the  
 20 circumstances surrounding the death of Mr. Dunphy,  
 21 how the police reacted and what we could do in this  
 22 Province to improve things, and at some point, I  
 23 think, as Commissioner Goudge, Judge Goudge, retired  
 24 now, he talked about we got to keep proportionality

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1 terrorism and the global, the larger global picture,  
 2 rather it relates more directly, I think, to  
 3 politically interested people both within and outside  
 4 of Government and how much information they're  
 5 collecting on each other, more than anything.  
 6 THE COMMISSIONER:  
 7 Right, okay, well, let's take a break. I'm sorry I'm  
 8 gone over, but I thought it would be fair to have  
 9 everybody dealt with at the same time since I was  
 10 close to the end, and we'll take a break and come  
 11 back and deal with a few more points.  
 12  
 13 **(Off the Record)**  
 14  
 15 THE COMMISSIONER:  
 16 Okay, now do we still have counsel for the Attorney  
 17 General here? Gone? Ms. Rasmussen or Mr. Freeman?  
 18 MS. RASMUSSEN:  
 19 Can you hear me, my lord?  
 20 THE COMMISSIONER:  
 21 Are you still here?  
 22 MS. RASMUSSEN:  
 23 We're still here, my lord.  
 24

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1 THE COMMISSIONER:  
 2 Okay, I can hear you now, all right. What about Mr.  
 3 Abbass, is he still here?  
 4 MR. ABBASS:  
 5 I'm still here, my lord.  
 6 THE COMMISSIONER:  
 7 Oh, well done, okay, good. We have everybody. Now,  
 8 there were a couple of matters that, as we were going  
 9 along, I indicated that it might be the appropriate  
 10 time to get some input from counsel for those who  
 11 have standing and, or in your case I'll accept  
 12 potential standing, as well, in terms of your input.  
 13 Counsel themselves have anything to raise first?  
 14 KENNEDY, Q.C.:  
 15 I had some comments on something earlier.  
 16 THE COMMISSIONER:  
 17 Comments?  
 18 KENNEDY, Q.C.:  
 19 Just in terms of the phases of the Inquiry, a  
 20 suggestion as to (inaudible) --  
 21 THE COMMISSIONER:  
 22 Now that, Mr. Kennedy, that was one the, of the  
 23 points that -- it was the third point I had to raise,  
 24 but it may be that's a little -- going to take a

1 little bit longer discussion. It might be better to  
 2 have it at the end, close to the end.  
 3 KENNEDY, Q.C.:  
 4 That's fine.  
 5 THE COMMISSIONER:  
 6 Some of the other matters are briefer.  
 7 KENNEDY, Q.C.:  
 8 Okay, sorry about that.  
 9 THE COMMISSIONER:  
 10 No, that's not a problem. Other counsel have  
 11 anything that they at this point wanted to raise?  
 12 This is not to foreclose and, by the way, as we go  
 13 along, at any time, if you have submissions to make  
 14 in terms of how we're proceeding and so forth, raise  
 15 them and we'll deal with them. Any counsel have any  
 16 comment with respect to the approach that we're  
 17 taking regarding possible -- avoiding conflicts  
 18 between the federal and provincial jurisdiction?  
 19 Anybody have any concerns that that's going to become  
 20 an issue? And I realize that many of you haven't  
 21 seen much in the way of material yet, but that was  
 22 one of the items that I noted as we were going  
 23 through.  
 24

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1 I don't see it right now with the information I  
 2 have as being something that can't be worked out as  
 3 we move along with respect to the material that  
 4 should be produced and the witnesses who should be  
 5 made available to testify, but I'm not totally  
 6 convinced that it will not become an issue, but I'm  
 7 hoping it doesn't. Anybody have any comments with  
 8 that? If not --  
 9 KENNEDY, Q.C.:  
 10 Yes, Commissioner, from Constable Smyth's perspective  
 11 it's our concern that all of the information in  
 12 possession of the RCMP in relation to the  
 13 investigation be provided to the Commission, which  
 14 would then provide it to counsel. It's going to be  
 15 crucial when you look at the Terms of Reference, and  
 16 one of the issues that has to be explored is the  
 17 Commission has to determine under Term 3(j)  
 18 "ascertain whether there were any material  
 19 deficiencies in the investigation into Mr. Dunphy's  
 20 death." If full information or all information in  
 21 the possession of the police in relation to the  
 22 investigation is not provided, that would become a  
 23 difficult Term to comply with.  
 24

1 THE COMMISSIONER:  
 2 Well, I guess it might be a matter of making sure  
 3 that perfection doesn't become the enemy of the good.  
 4 You know, we're never absolutely certain about  
 5 anything in this life, but it strikes me that from  
 6 the preliminary reading of the police reports and so  
 7 forth that well, right now I don't see it being an  
 8 issue.  
 9 KENNEDY, Q.C.:  
 10 Okay, that's fine.  
 11 THE COMMISSIONER:  
 12 But I note your point, Mr. Kennedy. We're going to  
 13 strive to get everything that we should have  
 14 obviously. We may not be perfect in our approach,  
 15 but if we consider the terrible ramifications for a  
 16 delay while there are constitutional arguments made  
 17 with respect to federal versus provincial  
 18 jurisdiction -- the message that I've been seeing  
 19 both before and after my appointment has been that  
 20 there's a concern out there that too much time has  
 21 passed without relatively full disclosure to the  
 22 general public as to what's gone on, and I think your  
 23 client -  
 24

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1 KENNEDY, Q.C.:  
 2 We would like --  
 3 THE COMMISSIONER:  
 4 I know the spokesperson for the RNCA, I think - I  
 5 don't know about the RNC itself - have taken the  
 6 position the sooner the better -  
 7 KENNEDY, Q.C.:  
 8 Correct.  
 9 THE COMMISSIONER:  
 10 - on disclosure, so -- sorry.  
 11 CHAYTOR, Q.C.:  
 12 Sorry, just to clarify and the RCMP, of course, can  
 13 speak for themselves, but I don't think there's been  
 14 any suggestion that we would not receive the full  
 15 investigative file of the RCMP.  
 16 THE COMMISSIONER:  
 17 No.  
 18 MS. RASMUSSAN:  
 19 Yeah, it's Lori Rasmussan.  
 20 THE COMMISSIONER:  
 21 Yes.  
 22 MS. RASMUSSAN:  
 23 If I could? That was Mr. Kennedy speaking and I --  
 24

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1 MS. RASMUSSAN:  
 2 Yeah.  
 3 THE COMMISSIONER:  
 4 Mr. Kennedy, do you have any comment in regard to  
 5 that?  
 6 KENNEDY, Q.C.:  
 7 No, at this point obviously the Commission has the  
 8 ability to issue Summonses to compel the production  
 9 of documents, but if counsel are indicating to the  
 10 Commission that they are providing the documents that  
 11 are required, then I don't think at this point  
 12 there's a need to question the voluntary (inaudible)  
 13 --  
 14 THE COMMISSIONER:  
 15 Yeah, I think we can monitor it and come back to it  
 16 if we have to.  
 17 KENNEDY, Q.C.:  
 18 Yeah.  
 19 THE COMMISSIONER:  
 20 But for now monitor it as we go along, and I guess  
 21 from the experience you just had, it'll help if  
 22 counsel gets closer to the mike in terms of letting  
 23 Ms. Rasmussan hear what's going on. Okay, thank you,  
 24 Ms. Rasmussan. I don't know if there's anything else

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1 THE COMMISSIONER:  
 2 Ms. Rasmussan, I don't think you're quite as loud as  
 3 you were earlier. I don't know if it's a matter of  
 4 getting closer to the mike or if I'm starting to lose  
 5 my hearing even more so, but could you speak up?  
 6 MS. RASMUSSAN:  
 7 Sorry, my lord, can you hear me now?  
 8 THE COMMISSIONER:  
 9 Oh, yes, you're loud and clear there now.  
 10 MS. RASMUSSAN:  
 11 We didn't hear everything Mr. Kennedy said, but I  
 12 think we just want to be clear that we haven't stated  
 13 any intention to hold anything back at this point,  
 14 and our issues with the full investigation Report  
 15 Appendices are at this point technical and if  
 16 anything else privacy and relevancy related, but we  
 17 haven't at this point said that we're going to vet  
 18 anything from that Report and full Appendices.  
 19 THE COMMISSIONER:  
 20 Yeah, that's my understanding, as well, and really  
 21 raising this point now I was thinking along the lines  
 22 is counsel concerned about the voluntary nature of  
 23 the production, as much as anything. That was my  
 24 main concern.

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1 we need to say on that.  
 2  
 3 The other point I had noted, scheduling.  
 4 Does anybody -- I should say, first of all, I'm going  
 5 to try and avoid having to reconcile the one, two,  
 6 three, four, five, six, seven, seven or eight or nine  
 7 schedules, so at the end of the day we got to be a  
 8 little draconian here, but we'll also be as  
 9 sympathetic as we can be to the concerns of counsel.  
 10  
 11 Does anybody see significant problem with  
 12 contemplating the 9th of January to start and, and  
 13 going full out until we finish, whether we go in to  
 14 February or not. I mean in one way there are some  
 15 complex issues to be worked out, but we don't have  
 16 the large mass of documents that many inquiries have  
 17 to handle. We don't have the large numbers of  
 18 witnesses, particularly if we avoid duplication.  
 19 It's not like a murder trial where you basically, as  
 20 far as I can see, the police seem to have adopted the  
 21 practice you got to call every police officer whoever  
 22 showed up on the scene, and maybe it's the Court's  
 23 cases over the years that have led to this, but I  
 24 don't see a necessity for that. We have a long list

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1 of police witnesses, many of whom have fairly minor  
 2 roles in the situation and the circumstances, and I'd  
 3 ask that counsel in their discussions with Commission  
 4 counsel on Monday or later, if necessary, look  
 5 closely at just who has to be called and who need not  
 6 be called.

7  
 8 Now, Monday may be a bit early for some of  
 9 you who haven't had access to material, you know, and  
 10 we're sensitive to that, as well, but just speaking  
 11 in general terms you can at least communicate with  
 12 Commission counsel whether you're satisfied that we  
 13 don't have to go to everybody and that there are  
 14 significant numbers of witnesses who might not be  
 15 called, which will save a fair bit of time, but again  
 16 that is not to avoid any evidence at any point, or to  
 17 limit the counsel in raising any points that they  
 18 believe are significant. It's just that -- and I  
 19 guess I didn't realize Mr. Drover, you're in the same  
 20 firm as Mr. Kennedy.

21 MR. DROVER:

22 Yes.

23 THE COMMISSIONER:

24 I hadn't picked that up. Possibly I should have.

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1 MS. BREEN:

2 Yes, Mr. Commissioner, I do have some concerns about  
 3 the schedule, but I think probably it's better for us  
 4 to address those in detail with Commission counsel.

5 THE COMMISSIONER:

6 Yeah.

7 MS. BREEN:

8 But also I think that from my perspective, in  
 9 particular, I haven't seen any documentation at all  
 10 in relation to the file, so it really will depend on  
 11 when the release of documentation is going to take  
 12 place in terms of our ability to be ready for the  
 13 January 9th date.

14 THE COMMISSIONER:

15 Okay, and that was the next point that I had noted.  
 16 I mention that we're inclined to release the Reports  
 17 fairly quickly, the ones that we have up to now.  
 18 Does the RCMP have any concern, Ms. Rasmussan, about  
 19 our releasing the case file as we have it now without  
 20 the attachments and while we work on getting the  
 21 attachments?

22 MS. RASMUSSAN:

23 No, subject to the signing of the Confidentiality  
 24 Agreements that we understand are --

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1 Counsel were aware of it and I found out during the  
 2 break. Now that sort of highlights the concern I  
 3 raised with you earlier in terms of when you might  
 4 need to be there as opposed to not being required to  
 5 repeat something that's already been done. I don't  
 6 see. Obviously you work out whether there's a  
 7 conflict between your clients when you take on the  
 8 retainer, so we have to assume there's no conflict,  
 9 but in terms of what you handle and what Mr. Kennedy  
 10 handles, we won't want to see any repetition.

11 MR. DROVER:

12 I think the fact that we're in the same firm might  
 13 actually help to avoid repetition.

14 THE COMMISSIONER:

15 Might help there, sure, yeah. Okay, so does anybody  
 16 -- in terms of the general schedule, do you think  
 17 that's going to be long enough to do the necessary  
 18 preparation which will -- some of you may want to  
 19 have -- I think you've already identified in some  
 20 cases you may want to call expert witnesses and so  
 21 forth which you have to get started upfront on fairly  
 22 quickly, I would think, if you're going to be doing  
 23 that in January or February. Anybody given any  
 24 thought to it yet in terms of -- Ms. Breen?

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1 THE COMMISSIONER:

2 And the Confidentiality Agreements, these relate to  
 3 the counsel using the material that they receive only  
 4 for Commission purposes basically.

5 MS. RASMUSSAN:

6 Right.

7 COMMISSIONER:

8 I think Commission counsel were working on that this  
 9 morning. I don't know if we -- We don't have a final  
 10 draft, but again, that might be something that  
 11 counsel might want to have some discussion on on  
 12 Monday. I don't want to set your agenda for you but.  
 13 Okay, so we can anticipate, baring something  
 14 unforeseen, that as soon as we can get these Reports  
 15 photocopied they'll be out to the parties. Is that  
 16 fair? I'm not hearing -- By the way, I keep looking  
 17 into the heavens, Ms. Rasmussan, because it sounds --  
 18 when you come on you sound like you're everywhere in  
 19 the hall.

20 MS. RASMUSSAN:

21 Wow.

22 THE COMMISSIONER:

23 Do you have any problems in that regard?

24

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1 MS. RASMUSSAN:  
 2 No, it's our understanding that nothing will be made  
 3 public until it's become an exhibit at the hearing  
 4 though, is that correct?  
 5 THE COMMISSIONER:  
 6 No, that's not. That's why I'm saying we're talking  
 7 about making the Reports available within a matter of  
 8 days. The hearing is not going to start till January  
 9 at the earliest, but parties will need to have the  
 10 material in order to know what testimony they're  
 11 going to extract from witnesses, what documents  
 12 they're going to rely on and so forth.  
 13 MS. RASMUSSAN:  
 14 Right, my lord, I understand that they're to be made  
 15 available to the parties and for use with the  
 16 Inquiry, but --  
 17 THE COMMISSIONER:  
 18 Oh, you're referring to the public release.  
 19 MS. RASMUSSAN:  
 20 Yes, my understanding was they would not be placed on  
 21 the website or become, you know, open to the general  
 22 public unless and until they're made exhibits.  
 23 THE COMMISSIONER:  
 24 Well, again, that's a subset of what I want to talk

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1 MS. RASMUSSAN:  
 2 Sorry, I think our general concern would just be, you  
 3 know, a handful of documents be put out there out of  
 4 context.  
 5 THE COMMISSIONER:  
 6 Well, they're not --  
 7 MS. RASMUSSAN:  
 8 There's going to voluminous evidence and witnesses to  
 9 speak to them.  
 10 THE COMMISSIONER:  
 11 Yeah, but they are -- the material that speaks to  
 12 them -- we're talking about the main documents here.  
 13 For example, the RCMP investigative file. Sure  
 14 there'll be people speaking, the witnesses speaking  
 15 to aspects, but won't that speak for itself in terms  
 16 of you'll see what backup material has not yet been  
 17 released and there'll be recognition of the need to  
 18 keep all this in the context of all the evidence, but  
 19 is there -- do you think the RCMP's interests are  
 20 going to be adversely affected somehow by the public  
 21 release?  
 22  
 23 And I'm sorry, I don't mean to put you on the spot  
 24 here in this, if you wanted to have a bit of time to

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1 about. What is the concern if we do that? I can see  
 2 it at a trial, you know, where there's a person at  
 3 risk and they're -- You know, I'm just thinking  
 4 through now. There's a risk of tainting, in some  
 5 cases, the testimony of witnesses by a witness's  
 6 memory being affected by what he or she hears from  
 7 another witness or some other -- a witness wanting to  
 8 deliberately his or her testimony to what someone  
 9 else has said, but do we have the same concern in a  
 10 public inquiry where we're not --  
 11 MS. RASMUSSAN:  
 12 I think our general concern would just be that  
 13 there's a lot of material that's going to come out  
 14 and it's going to be addressed by witnesses, -  
 15 THE COMMISSIONER:  
 16 Right.  
 17 MS RASMUSSAN:  
 18 - and our preference would be that, you know, a few  
 19 -- a handful of pieces or documents not be, you know,  
 20 out of context basically.  
 21 THE COMMISSIONER:  
 22 Yes, okay, sorry, could you speak up just a little  
 23 bit?  
 24

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1 think about it, but I'm concerned that the sense I  
 2 get from having gone back over the various news  
 3 articles in order just to get some background  
 4 information before I got the Reports, I get a sense  
 5 of the general public, a lot of members of the  
 6 general public, commentators expressing concern about  
 7 an undue delay in releasing the Report, and maybe you  
 8 can inform me here, if there had not been an Inquiry  
 9 would the RCMP Investigative Report be released by  
 10 now? In the normal course of events, aren't these  
 11 reports released once the decision has been made not  
 12 to lay charges?  
 13 MS. RASMUSSAN:  
 14 My understanding is no. In the normal course it  
 15 would not have been released just as a matter of  
 16 general policy.  
 17 THE COMMISSIONER:  
 18 But can they be -- sorry.  
 19 MS. RASMUSSAN:  
 20 You know, it would be disclosed to the Crown if any  
 21 charges had been recommended.  
 22 THE COMMISSIONER:  
 23 Right.  
 24

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1 MS. RASMUSSAN:  
 2 And certain aspects could be subject to access to  
 3 information requests.  
 4 COMMISSIONER:  
 5 Right.  
 6 MS. RASMUSSAN:  
 7 I guess, my lord, my comments would be the documents  
 8 would be in the hands of the Commission. Our  
 9 preference would have been for them to be disclosed  
 10 during the hearing in an orderly fashion. However, I  
 11 recognize that, you know, really there's not a lot we  
 12 can say about this issue. I do have concerns based  
 13 on privacy and relevance with some of the appendices  
 14 that you'll find.  
 15 THE COMMISSIONER:  
 16 Yeah, we can work that out. As you get your  
 17 technical problems with the appendices solved, we can  
 18 work out, you know, what might be kept out for  
 19 privacy reasons or whatever, but it strikes me that  
 20 the release -- I'm trying to think over the material.  
 21 I'm having difficulty seeing how anybody would be  
 22 prejudiced by full and open disclosure here of these  
 23 main Reports that have been made available to the  
 24 Commission, and I don't think the RNC is seeking that

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1 something, not arguing a point, but...  
 2 THE COMMISSIONER:  
 3 But you'll get it. We're not discussing delay in  
 4 keeping it from Commission counsel. As soon as you  
 5 sign your Confidentiality Agreement, you're going to  
 6 have it. Go ahead.  
 7 AVIS, Q.C.:  
 8 Yes, that's what I'm saying, but with respect to the  
 9 other issue, -  
 10 THE COMMISSIONER:  
 11 Right.  
 12 AVIS, Q.C.:  
 13 - I have been involved in three inquiries, two of  
 14 them shootings and involving RCMP and RNC and the  
 15 Lamer Inquiry and all three inquiries released the  
 16 information as it was presented.  
 17 THE COMMISSIONER:  
 18 Right.  
 19 AVIS, Q.C.:  
 20 And I'm not saying that's how it should be done or  
 21 must be done, for the kinds of concerns. The  
 22 considerations were the same considerations that are  
 23 being looked at here.  
 24

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1 they be retained from the public, unless I'm wrong  
 2 here. Mr. Avis, do you?  
 3 AVIS, Q.C.:  
 4 I have no such instructions, Commissioner.  
 5 THE COMMISSIONER:  
 6 Yes, and there's no one else, I think.  
 7 AVIS, Q.C.:  
 8 If I could say a couple of things just for --  
 9 THE COMMISSIONER:  
 10 Sure.  
 11 AVIS, Q.C.:  
 12 The main issue, I think, for counsel is the timeframe  
 13 between now and the Inquiry starts.  
 14 THE COMMISSIONER:  
 15 Right.  
 16 AVIS, Q.C.:  
 17 I think I have a better sense of how much is there.  
 18 I haven't had a chance to look at it. I think we  
 19 need that material as soon as possible for counsel.  
 20 THE COMMISSIONER:  
 21 Yeah.  
 22 AVIS, Q.C.:  
 23 And if it's of any help to you, you know, I have been  
 24 involved in three inquiries and I'm merely stating

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1 THE COMMISSIONER:  
 2 Then what did lead to in terms of delays in the final  
 3 report, 'cause you see if we wait until, you know,  
 4 these are presented in January, well then individuals  
 5 are going to say I'm not ready to deal with them.  
 6 Sorry, Mr. Kennedy, you're shaking your head.  
 7 KENNEDY, Q.C.:  
 8 Oh, no, no, I didn't mean, I'm not shaking my head  
 9 about what you're saying. Sorry, I'll make a comment  
 10 when the time is right, Justice.  
 11 AVIS, Q.C.:  
 12 I'm not questioning what is being done.  
 13 MS. RASMUSSAN:  
 14 My lord, I must I'm just --  
 15 AVIS, Q.C.:  
 16 I'm merely saying, trying to be helpful.  
 17 THE COURT:  
 18 Sure. No, that's what I'm encouraging here.  
 19 AVIS, Q.C.:  
 20 I don't have an argument one way or the other.  
 21 THE COMMISSIONER:  
 22 That's what I'm encouraging. Sorry, Ms. Rasmussen, I  
 23 heard you. Go ahead. You were cut off, I think.  
 24

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1 MS. RASMUSAN:  
 2 Sorry, my lord. I mean just based on our  
 3 understanding after we reveled the Rules of the  
 4 Commission, particular s. 37, was that nothing would  
 5 be made public until it was made an exhibit.  
 6 THE COMMISSIONER:  
 7 One second now, let me see here, s., the Rules --  
 8 MS. RASMUSAN:  
 9 Or unless, well, it's --  
 10 THE COURT:  
 11 The Rules, s. 37. Here we are.  
 12 UNIDENTIFIED FEMALE:  
 13 (Mike not turned on).  
 14 THE COMMISSIONER:  
 15 I have it. Yeah, I have it, thank you. "Subject to  
 16 Rule 35 Commission counsel will endeavour to provide  
 17 in advance to both the witness and the parties with  
 18 standing documents that will likely be referred to  
 19 during the course of the testimony of that witness  
 20 and a brief written statement of anticipated evidence  
 21 of that witness."  
 22 MS. RASMUSAN:  
 23 Sorry, that's 38, my lord.  
 24

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1 any other shall be treated as confidential unless and  
 2 until they are made part of the public record or the  
 3 Commissioner otherwise declares." Well releasing  
 4 them to the public would make -- is that enough to  
 5 make them part of the public record? They're not  
 6 part of the record legally in terms of if we were in  
 7 a court situation.  
 8 KENNEDY, Q.C.:  
 9 Could I make a comment on this particular point,  
 10 Justice?  
 11 THE COMMISSIONER:  
 12 Sure, go ahead, Mr. Kennedy.  
 13 KENNEDY, Q.C.:  
 14 Yeah, from Constable's perspective there has been a  
 15 lot of discussion in the public about the failure to  
 16 provide information. It's especially important from  
 17 my client's perspective that whatever information can  
 18 be reasonably provided to the public should be  
 19 provided.  
 20 THE COMMISSIONER:  
 21 And that's why I refer to the news reports.  
 22 KENNEDY, Q.C.:  
 23 I really don't think we should go another three  
 24 months with the Reports being to the public -

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1 THE COMMISSIONER:  
 2 What I'm reading is 37 or 38, you say? 38, "Parties  
 3 shall at their earliest opportunity provide the  
 4 Commission counsel" --  
 5 MS. RASMUSAN:  
 6 Oh, sorry, I think you have different numbering, my  
 7 lord.  
 8 THE COMMISSIONER:  
 9 Uh, oh, maybe I have an earlier draft. Sorry about  
 10 that or a later one.  
 11 MS. RASMUSAN:  
 12 Perhaps it's 36 on your copy. It says, "Subject to  
 13 any requirements to disclose by law."  
 14 AVIS, Q.C.:  
 15 That's 36.  
 16 THE COMMISSIONER:  
 17 36, yeah I have that, "Subject to any requirement to  
 18 disclose by law." That's 36.  
 19 MS. RASMUSAN:  
 20 Yes, and that's number 37 in our Rules, but that's  
 21 what I'm referring to.  
 22 COMMISSIONER:  
 23 Okay, we'll get that checked out. We got a glitch  
 24 there. Okay, "So documents received from party or

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1 THE COMMISSIONER:  
 2 Right, I don't.  
 3 KENNEDY, Q.C.:  
 4 - appear to be withheld.  
 5 THE COMMISSIONER:  
 6 Right.  
 7 KENNEDY, Q.C.:  
 8 In this particular case nothing is going to change  
 9 between what's in that Report today and what's going  
 10 to be that Report when it's presented.  
 11 THE COMMISSIONER:  
 12 Right, okay.  
 13 KENNEDY, Q.C.:  
 14 So, from Constable Smyth's perspective, and I only  
 15 speak for him, we support whatever reasonable  
 16 information can be released to the public, so that  
 17 they can get a fuller understanding of what occurred  
 18 on that particular day.  
 19 THE COMMISSIONER:  
 20 Yeah.  
 21 MS. RASMUSAN:  
 22 If I could make a suggestion, perhaps the documents  
 23 could be released to the parties, and then they could  
 24 make further comments on when they would like the

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1 documents put on the website.  
 2 THE COMMISSIONER:  
 3 Okay, well, that's not unreasonable, Ms. Rasmussan, I  
 4 think. I'll just say to you that my inclination is  
 5 to have them released to the general public as  
 6 quickly as possible unless a party indicates that  
 7 there is some adverse impact going to arise, either  
 8 adverse to individuals, organizations or to the  
 9 Inquiry itself, so just to give you a heads-up there,  
 10 but that's a reasonable, I think, suggestion.  
 11 Anybody have any problem with that, and we're talking  
 12 about as quickly as we can them photocopied, getting  
 13 them to counsel and then giving counsel -- what are  
 14 you going to need, just to let you get a feel to get  
 15 a release to the public, you're probably going to  
 16 need less than a weekend for that or a week. There's  
 17 a bit of reading, but it's, you know, you can get the  
 18 gist of the whole circumstances. Anybody have any  
 19 comment?  
 20 CHAYTOR, Q.C.:  
 21 Can we discuss it at counsel meeting on Monday  
 22 (unintelligible - no mike).  
 23 THE COMMISSIONER:  
 24 Right, right. Ms. Rasmussan, we're going to adopt

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1 either at the meeting of counsel on the 11th, which  
 2 will be early because you won't have the material,  
 3 but there may be something come up as a matter of  
 4 principle why you may think of it, but in a couple of  
 5 weeks at the latest, by the middle of November, I  
 6 would think, counsel should be in a position to  
 7 inform the Commission as to whether they have any  
 8 problem with the documents going public. Mr.  
 9 Kennedy, you seem to be nodding agreement.  
 10 KENNEDY, Q.C.:  
 11 My lord, I think that's very reasonable, very  
 12 reasonable approach.  
 13 THE COMMISSIONER:  
 14 Okay. Ms. Rasmussan, do you have anything further to  
 15 add in that regard? Again, I don't want to be --  
 16 MS. RASMUSSAN:  
 17 No, that sounds good, my lord, and we certainly have  
 18 no problem with the documents ultimately becoming  
 19 public. We just wish to see the whole process unfold  
 20 in an orderly fashion, and in terms of logistics  
 21 those documents are in electronic format, so they  
 22 could be disseminated that way quite quickly.  
 23 THE COMMISSIONER:  
 24 Yeah, one of my main concerns in this discussion is

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1 your suggestion and basically try and set a timeline  
 2 for when the documents should be released to the  
 3 public, but in all probability, unless I'm supplied  
 4 with further information or reasons why not, I would  
 5 expect that the documents will be supplied well in  
 6 advance of when they will be presented to the hearing  
 7 in session, which will be in January, so I think -  
 8 I'm just thinking aloud now - that by the middle of  
 9 November these documents in all probability will be  
 10 out for public consumption, unless, as I say, either  
 11 you or other counsel or other parties bring some  
 12 reason as to why that shouldn't happen, and what I  
 13 was -- I understand your concern about the documents  
 14 requiring certain context, but I don't see, thinking  
 15 from my review of the material, how there's going to  
 16 be significant modification in the information that's  
 17 in these basic, the main documents, how that's going  
 18 to change, you know.  
 19  
 20 So, subject to anybody having any further comment,  
 21 including you -- I don't want to cut you off, Ms.  
 22 Rasmussan, if there's some reason why it would be a  
 23 problem to release to the public until during the  
 24 hearing, I'll expect parties to bring that forward

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1 that I have a schedule in my mind and I don't want to  
 2 back off from it. I've seen too many examples where  
 3 the slippage occurs upfront and results in lengthy  
 4 delays down the road, so I want to get the material  
 5 out there, and who knows there might be something  
 6 sparked by release to the public that we're not aware  
 7 of. Sorry, Ms. O'Brien, you have something?  
 8 MS. O'BRIEN:  
 9 Thank you, just to let Ms. Rasmussan know that on  
 10 Monday when we meet with counsel we will be  
 11 discussing how documents will be given to the parties  
 12 and we will be using electronic transfer sites, so  
 13 that will make it really easy and fast once the  
 14 documents are released.  
 15 THE COMMISSIONER:  
 16 Okay. All right, we'll move from that, unless  
 17 there's something else. There's one further point,  
 18 that's all that I have noted, but counsel might have  
 19 something else. That has to do with the phases. Mr.  
 20 Kennedy, you started off with in terms of how many  
 21 phases we should have. Part of that, from reading  
 22 material on Royal Commissions of Inquiry - because  
 23 I'm a bit of a novice at this myself - they talk  
 24 about preparation of a game plan and which as far as

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1 I can see involves identifying the key issues upon  
 2 which main focus should be maintained, and I'd  
 3 welcome the inputs of counsel now. You can go first,  
 4 Mr. Kennedy, since you were there before.  
 5 KENNEDY, Q.C.:  
 6 I don't know if I should be standing or sitting,  
 7 Justice. Do you have a preference?  
 8 THE COMMISSIONER:  
 9 Whatever is -- that's fine. Sitting is fine.  
 10 KENNEDY, Q.C.:  
 11 Commissioner, I mean.  
 12 THE COMMISSIONER:  
 13 Some people can't speak unless they're standing.  
 14 KENNEDY, Q.C.:  
 15 I know, it's very difficult. Commissioner, I agree  
 16 with your -- although I know you were somewhat  
 17 thinking out loud with the issue of the different  
 18 phrases.  
 19 THE COMMISSIONER:  
 20 Right.  
 21 KENNEDY, Q.C.:  
 22 Normally - and I'm familiar with a number of  
 23 different inquiries - there's usually two broad  
 24 categories of phases. There's a factfinding phrase,

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1 THE COMMISSIONER:  
 2 Okay, 3(1)(k). One second now. Go ahead.  
 3 KENNEDY, Q.C.:  
 4 Yes, because it's a --  
 5 THE COMMISSIONER:  
 6 Ascertain -- oh, in accordance with s. 4 make  
 7 recommendations, yeah.  
 8 KENNEDY, Q.C.:  
 9 So, that -- in order to make the recommendations, I  
 10 would suggest, Commissioner, that there has to be an  
 11 application of the determination of facts and then  
 12 what flows from the facts, as you were discussing  
 13 earlier today with some counsel. Within the  
 14 factfinding phase I would suggest though that should  
 15 be as clear a phase as possible in that dealing with  
 16 the Terms of Reference from 3(1) to (j).  
 17 THE COMMISSIONER:  
 18 Right.  
 19 KENNEDY, Q.C.:  
 20 I would suggest then that the Commission has a lot of  
 21 discretion in terms of if you wish to move into the  
 22 policy phase, the discussion you had with Mr.  
 23 Flaherty, the discussion you had with Mr. Hiscock and  
 24 that that would give you then -- that could be set up

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1 which is the crucial phase in terms of determining  
 2 what happened or what went wrong or what went right.  
 3 There's also the systemic phase which leads to the  
 4 recommendations, the policies, the recommendations  
 5 for change, so when I looked at the Terms of  
 6 Reference there was no specific reference to having a  
 7 factfinding phase and a systemic phase, but when I  
 8 looked at Term 3(k) it allowed the Commissioner or  
 9 the Commission in accordance with s. 4 to make  
 10 recommendations that the Commission of Inquiry  
 11 considers necessary and advisable. So if I could  
 12 just make a suggestion as just for --  
 13 THE COMMISSIONER:  
 14 I'm sorry, you said 3?  
 15 KENNEDY, Q.C.:  
 16 3(k).  
 17 THE COMMISSIONER:  
 18 3(k) of the Terms of Reference.  
 19 KENNEDY, Q.C.:  
 20 Of the Terms of Reference.  
 21 MS. O'BRIEN:  
 22 3(1)(k).  
 23 KENNEDY, Q.C.:  
 24 3(1)(k), sorry, yes.

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1 in whatever you determine we're going to look at, and  
 2 I just made a couple of notes, Justice, that the use  
 3 of force protocols, although they will be obviously a  
 4 factor in the factfinding stage because it has to be  
 5 specifically determined whether or not the RNC  
 6 officer complied with the use of force protocols, any  
 7 recommendations as to change could be looked at by  
 8 called policy experts or calling experts in the next  
 9 phase or the systemic phase.  
 10  
 11 The use of social media and in the last expert  
 12 evidence can be called in terms of -- if there are  
 13 systemic problems they are better off dealt with  
 14 apart from, I would suggest, Commissioner, the  
 15 factfinding phase, so I'm generally in agreement with  
 16 what you're suggesting as to how the Inquiry should  
 17 proceed and what phases -- how you want to describe  
 18 the phases. I have no difficulty with that, but my  
 19 only suggestion was that if we could keep the  
 20 factfinding phase as close as we can to the actual  
 21 facts of the case, as opposed to policy or systemic  
 22 recommendations.  
 23 THE COMMISSIONER:  
 24 Right, that's fair enough, yeah. Mr. Avis?

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1 KENNEDY, Q.C.:  
 2 Those would be my only comments there.  
 3 THE COMMISSIONER:  
 4 Mr. Avis?  
 5 AVIS, Q.C.:  
 6 If I may, Commissioner, just to concur with both  
 7 yourself and Mr. Kennedy, the only thing -- you know  
 8 the general way things go, as like a trial, you find  
 9 the facts and then, I guess, you call your experts  
 10 'cause you need the facts. Then there is a systemic  
 11 phase, but you often don't know what that is till  
 12 you've done the first part. There's usually a gap  
 13 and further consideration as to what you -- because,  
 14 you know, you simply just know.  
 15 THE COMMISSIONER:  
 16 Well, we do have in this case an indication by the  
 17 references to social media and the collection of  
 18 social media in the Premier's Office, or the  
 19 monitoring, and the suggestion by at least one  
 20 potential participant that this can lead to adverse  
 21 effects regarding freedom of expression and the  
 22 chilling effect on parties who want to advocate  
 23 regarding civil liberties, so we all, you know, I  
 24 think we can all -- whatever the facts, I think where

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1 be honest with you, but I'll let counsel take a look.  
 2 I won't delay for it. Mr. Williams, you had some  
 3 comments?  
 4 WILLIAMS, Q.C.:  
 5 Yes, Commissioner, just with respect to the issue,  
 6 the systemic phase and the issue regarding social  
 7 media, I guess my only thoughts would be that we be  
 8 careful to put perimeters on that. I don't mean to  
 9 restrict discussions. It's a bit --  
 10 THE COMMISSIONER:  
 11 No, I saw your comments regarding another inquiry and  
 12 I think you made some good points, Mr. Williams, in  
 13 terms of how you can lose control and things can get  
 14 out of control if the Terms of Reference are treated  
 15 too broadly.  
 16 WILLIAMS, Q.C.:  
 17 Yeah, and that's not to lessen the importance of the  
 18 topic.  
 19 THE COMMISSIONER:  
 20 Right.  
 21 WILLIAMS, Q.C.:  
 22 And I don't mean to suggest that, but obviously I  
 23 know that the Commission is trying to keep this  
 24 relatively focused and my only concern, and I know

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1 there's no dispute that there was this tweet which  
 2 sort of might be regarded as the beginning of the  
 3 unfortunate circumstances, and then so that this --  
 4 every inquiry is unique, I suppose, in some regard.  
 5 Maybe this is where this one is somewhat unique in  
 6 that we can see how a systemic phase may arise  
 7 because of the reference to social media and the way  
 8 this played a role, you know.  
 9 AVIS, Q.C.:  
 10 No doubt it will arise. I'm simply saying sometimes  
 11 you won't know till the end of the first part -  
 12 THE COMMISSIONER:  
 13 Yeah, I know, yeah, yeah.  
 14 AVIS, Q.C.:  
 15 - exactly where you need to go. We already have --  
 16 there's obviously some directions where it's most  
 17 likely to go and you're mentioning one of them.  
 18 Anyway just to say that I think one's necessary  
 19 somewhat.  
 20 THE COMMISSIONER:  
 21 Yeah, thank you. Anybody else have anything? Are we  
 22 only dealing with two, two main issues or are there  
 23 others, you know, that may -- I think we had  
 24 identified three or four. I can't recall them now to

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1 Mr. Avis participated in the Reid Inquiry, as well,  
 2 these things can take on a life of their own and I  
 3 wouldn't want to see us lose control of this, you  
 4 know.  
 5 THE COMMISSIONER:  
 6 Right, well I'll give you one issue which I noted  
 7 from a very quick glance at it - I haven't had a  
 8 chance to go through in detail the Reid Inquiry  
 9 Report - but one issue that I believe came up there  
 10 is whether there had been a failure by Social Welfare  
 11 authorities, and Ms. Breen this may be relevant to  
 12 this case, where there was evidence in the Reports  
 13 that Mr. Dunphy was living in, we'll say, deplorable  
 14 conditions, you know, as to the state of his home and  
 15 so forth, and did he fall between the -- did he fall  
 16 into a gap there in terms of social services. The  
 17 situation was probably complicated by the fact that  
 18 he was receiving some Workers' Compensation but  
 19 didn't believe there was enough, or was he cut off  
 20 completely? I confess I wasn't clear on that.  
 21 MS. BREEN:  
 22 And Mr. Justice, I, too, I know that the Workers Comp  
 23 issue has a long and sordid history. I do understand  
 24 he may have been receiving some limited income.

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1 THE COMMISSIONER:  
 2 He was receiving some, which might have meant that he  
 3 wasn't entitled to social assistance, but he might  
 4 have been entitled to some assistance in getting his  
 5 home repaired or whatever. Sorry, go ahead.  
 6 MS. BREEN:  
 7 And, Justice, again I feel at a bit of a disadvantage  
 8 today to meaningful contribute because I don't have  
 9 any -- I've never seen any documents in relation to  
 10 this matter, so...  
 11 THE COMMISSIONER:  
 12 Okay. You've been told certain things, I understand,  
 13 but yes, that's understandable.  
 14 MS. BREEN:  
 15 Yes. The detail --  
 16 THE COMMISSIONER:  
 17 We'll get to these documents as soon as we can, and  
 18 we'll put a high priority on yourself and Mr. Smyth  
 19 receiving the first ones hot off the press if we can  
 20 in terms of getting them out, so. But go ahead.  
 21 MS. BREEN:  
 22 What I was going to submit to you at this time is I'm  
 23 hopeful there'll be another opportunity for us to  
 24 make a submission as to phases of the Inquiry or in

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1 needed help may become a factor in the Inquiry, so  
 2 you'll see what I'm talking about when you get to  
 3 read the Report, but Mr. Williams has made a good  
 4 point that this is not primarily an inquiry on  
 5 Workers Compensation, on social assistance, on many  
 6 other items.  
 7  
 8 There may be a need for us looking at the  
 9 approach of police to individuals with mental  
 10 disorders and I'm just saying this theoretically, Ms.  
 11 Breen, I'm not saying that it's been established that  
 12 Mr. Dunphy was in that position, but Mr. Dunphy did  
 13 have issues in terms of expressing his grievances  
 14 against Government as far as I can see from just the  
 15 public information come out from the news articles.  
 16 To what extent do we get into how police should --  
 17 well, the protocol right now for police dealing with  
 18 individuals with mental disorders. You had those two  
 19 cases in Newfoundland previously where, I think, in  
 20 Mr. Reid and Mr. Power they were identified, were  
 21 they? Did they as clearly having mental disorders?  
 22 Yeah.  
 23 WILLIAMS, Q.C.:  
 24 Correct.

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1 terms of how it should be broken up or whether it  
 2 should be broken up once we do have a list of  
 3 witnesses, once we do have the documentation, because  
 4 right now I feel like I would just be speculating.  
 5 THE COMMISSIONER:  
 6 I'll invite everybody right now to do that when  
 7 they've had an opportunity to read the material, to  
 8 put it in writing to Commission counsel as to what --  
 9 how you see the Inquiry proceeding, whether one  
 10 phase, two phases, four phases, identify the key  
 11 issues, and that may - I don't know, - that may be an  
 12 example of what Mr. Williams said they ran into at  
 13 the Reid Inquiry and, you know, the same thing could  
 14 open up opportunities here because part of the  
 15 evidence that I've seen, Mr. Dunphy had a grievance  
 16 and expressed a grievance. I think there was  
 17 something like 27,000 tweets identified as coming  
 18 from him over the years, many of which were  
 19 expressing grievances against Government, whether  
 20 valid or not, I don't think we'll be going down that  
 21 road, as opposed to the Citizen's Representative, but  
 22 in terms of one of the interesting things that you'll  
 23 find -- I better let you read it, but Mr. Dunphy's  
 24 reported reaction to an indication that perhaps he

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1 THE COMMISSIONER:  
 2 Yeah.  
 3 WILLIAMS, Q.C.:  
 4 And they got it that the Inquiry went into the bigger  
 5 social context of how they - that you identified -  
 6 fell to the cracks.  
 7 THE COMMISSIONER:  
 8 Yeah, so --  
 9 MS. BREEN:  
 10 Justice, just on behalf of Megan Dunphy, she  
 11 certainly has never been aware that her father was  
 12 diagnosed with a mental disorder or has been treated  
 13 for a mental disorder of any kind.  
 14 THE COMMISSIONER:  
 15 No, no, yeah, and I think that comes out in the  
 16 material that I've seen. But I mention that only as  
 17 an example of if an individual feels that he is  
 18 aggrieved or she is aggrieved, there may be a  
 19 reaction to authorities, including the police, and  
 20 the proper approach of the police in dealing with  
 21 individuals who strongly feel they have been not  
 22 treated properly, maybe that is an area that we'll  
 23 have to deal with to some extent, but again, I  
 24 caution us to -- when you're looking at this

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1 hopefully with a view to assisting how we proceed,  
 2 you keep in mind that we've got to focus on certain  
 3 issues and that may not be one of them, but it may  
 4 come up peripherally and we got to, I think, in order  
 5 to stay on track and get this completed in a timely  
 6 fashion and do the job that we're supposed to do, we  
 7 have to stay focused on -- we've identified two.  
 8 There may be three or four issues, but we can't deal  
 9 with all the problems of the world in this Inquiry.  
 10 MR. ABBASS:  
 11 Mr. Commissioner, if I might interject?  
 12 THE COMMISSIONER:  
 13 Mr. Abbass, is it?  
 14 MS. ABBASS:  
 15 Yes.  
 16 THE COMMISSIONER:  
 17 Yes, go ahead.  
 18 MR. ABBASS:  
 19 I just wanted to speak to the issue of police conduct  
 20 in dealing with people with mental disorders. I  
 21 believe in a situation you're not really looking at  
 22 police dealing with established mental disorders.  
 23 You're dealing with suspicion of mental disorder.  
 24

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1 THE COMMISSIONER:  
 2 Right, now to be fair, Mr. Abbass, I think, as you  
 3 quite frankly set out, the wording of your tweet was  
 4 a bit -- would be of some concern, would it not, when  
 5 you talk about - I forget the wording - executing the  
 6 police, is it, or...  
 7 MR. ABBASS:  
 8 I understand that the wording of my tweet might have  
 9 seemed a little extreme given the situation that I  
 10 was doing, but again, just like Mr. Dunphy my tweet  
 11 was taken out of the context to which it was  
 12 intended. At the time I was discussing the *Charter*  
 13 application that I had which goes back to the  
 14 Charters that I filed against then Prime Minister  
 15 Stephen Harper and Foreign Affairs Minister John  
 16 Baird -  
 17 THE COMMISSIONER:  
 18 Right.  
 19 MR. ABBASS:  
 20 - in regards to statements they made abroad. Now, I  
 21 understand that's way outside the interests of this  
 22 commission, but I was not referring to local  
 23 politicians. I wasn't referring to the Confederation  
 24 Building. I was referring to Confederation as an

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1 THE COMMISSIONER:  
 2 Okay.  
 3 MR. ABBASS:  
 4 And in that situation it kind of casts a different  
 5 light. Where there's no proven disorder existing,  
 6 but the police go into a situation suspecting  
 7 something, it can change their perspective in how  
 8 they deal with people because they'd lack any sort of  
 9 medical information that might round out their  
 10 decisionmaking process.  
 11 THE COMMISSIONER:  
 12 That's a good point and you're thinking specifically  
 13 of your case where, I think, it was Ms. Moores, was  
 14 it, had an article in one of the -- an opinion piece,  
 15 I guess, an op-ed you'd call it, where she made the  
 16 point that arguably in your case things were  
 17 reversed, that you had to disprove a mental disorder  
 18 to stay out of confinement, whereas the proper  
 19 approach should have been for the authorities to  
 20 establish that you did have a mental disorder before  
 21 you were --  
 22 MR. ABBASS:  
 23 Or that I was some imminent danger to others or  
 24 myself.

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1 abstract concept in that -  
 2 THE COMMISSIONER:  
 3 Right, okay, we can --  
 4 MR. ABBASS:  
 5 - we'd given too much power to the Federal Government  
 6 and they've committed crimes in our name.  
 7 THE COMMISSIONER:  
 8 All right, okay, that's fair enough and I don't want  
 9 to go too deeply into the main points. You will  
 10 probably get an opportunity to, as a witness, make  
 11 your points there, but what we're dealing with here  
 12 is, I think, whether the protocol for police in  
 13 dealing with individuals who may have a mental  
 14 disorder is adequate and this case whether -- and I'm  
 15 not sure, but it may raise that issue and it may --  
 16 one of the things I may have to look at is whether  
 17 the current protocol is appropriate for what we now  
 18 know about the response of individuals to interaction  
 19 with the police. For example, I've seen not that  
 20 long ago as a result of a shooting, I think, in the  
 21 United States reference to the police making  
 22 commands is not necessarily to an individual with a  
 23 mental disorder is not a productive way to go, so  
 24 that's the sort of issue that we may have to get

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1 into.

2

3 Anyhow, thank you, Mr. Abbass, that's a good

4 point you make, and I'm going through this

5 preliminary comments session in the hope that we will

6 be able to focus where we're going fairly quickly,

7 maintain appropriate schedule and get the job done,

8 and I'm not taking any decisions here in case my

9 remarks are misinterpreted as to whether Mr. Dunphy

10 had a mental disorder or whether the police protocol

11 is not adequate. I'm just raising these as potential

12 issues that when you're reading the material you may

13 want to ask yourself is this something the Inquiry

14 should get into and if so to what extent, and as we

15 go along, as I say, if something comes up where you

16 think we're not adequately dealing with an issue let

17 us know and we'll try and improve.

18

19 I see it's one o'clock. I don't think we need

20 return this afternoon, subject to what counsel has to

21 say, but if there's anything before we close I'd

22 again welcome comments. And I again remind the media

23 that counsel will be looking forward to any of you

24 identifying yourself who will be participating in

1 terms of what you may need to get your job done in a

2 more efficient fashion. Anybody else have anything

3 that they want to say? I've said too much already.

4 WILLIAMS, Q.C.:

5 Could we have the particulars of the meeting on

6 Monday? If we could --

7 CHAYTOR, Q.C.:

8 We'll send out an agenda.

9 WILLIAMS, Q.C.:

10 They're going to send out a -- okay, we'll be getting

11 an agenda for Monday's counsel meeting.

12 THE COMMISSIONER:

13 Okay.

14 UNIDENTIFIED MALE SPEAKER:

15 What time?

16 CHAYTOR, Q.C.:

17 10:00 a.m.

18 MS. O'BRIEN:

19 And will be at our Commission offices which are in

20 this building in the boardroom there, but you won't

21 come in the entrance you used today. You'll come in

22 the other entrance. Thank you.

23 THE COMMISSIONER:

24 And if you get lost, it's a large building, don't be

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1 concerned. We'll find you. Okay, thank you, ladies

2 and gentlemen. We'll adjourn until the call of the

3 Chair, as they say.

4

5 **(Matter is Adjourned)**

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6 **CERTIFICATE**

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9

10 I, Beverly Guest, of Elite Transcription, of

11 Goulds in the Province of Newfoundland and

12 Labrador, hereby certify that the foregoing,

13 numbered 1 to 131, dated October 19, 2016, is a

14 true and correct transcript of the proceedings

15 which has been transcribed by me to the best of

16 my knowledge, skill and ability.

17

18

19 Certified By:

20

21 \_\_\_\_\_

22 Beverly Guest

23

24

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