

CANADA

PROVINCE OF NOVA SCOTIA

IN THE MATTER OF THE
FATALITY INVESTIGATIONS ACT

S.N.S. 2001, c. 31

THE DESMOND FATALITY INQUIRY

TRANSCRIPT

HEARD BEFORE: The Honourable Judge Warren K. Zimmer

PLACE HEARD: Guysborough, Nova Scotia

DATE HEARD: February 25, 2020

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1 **February 25, 2020**

2 **COURT OPENED (09:36 HRS.)**

3

4 **THE COURT:** Good morning.

5 **COUNSEL:** Good morning, Your Honour.

6 **THE COURT:** As I recall, yesterday I think we broke
7 with Dr. Smith on the stand. So, Dr. Smith, if you could return
8 to the witness stand, please. Good morning. Dr. Smith was
9 still under oath when he was excused yesterday. Thank you.

10 Ms. Ward?

11 **MS. WARD:** Thank you, Your Honour.

12

13 **DR. PAUL SMITH resumed stand, previously sworn, testified:**

14

15 **CROSS-EXAMINATION BY MS. WARD**

16

17 **MS. WARD:** Dr. Smith, my name is Lori Ward. I
18 represent the Attorney General of Canada.

19 **A.** Excuse me, I'm going to turn my hearing aids up a
20 little bit. Say that again, please.

21 **Q.** My name is Lori Ward and I represent the Attorney
22 General of Canada.

1 **A.** Okay.

2 **Q.** That includes Veterans Affairs, Canadian Armed
3 Forces, and other federal departments.

4 Dr. Smith, other than a one-year contract in 2000-2001 as
5 an ER doctor, you've never been employed by the Canadian Armed
6 Forces, have you?

7 **A.** No.

8 **Q.** Nor Veterans Affairs Canada?

9 **A.** No.

10 **Q.** And that doesn't mean that serving members or
11 veterans cannot come see you if they wish, correct?

12 **A.** Correct.

13 **Q.** And they do?

14 **A.** They do.

15 **Q.** Some witnesses have said that if they had more
16 information on Lionel Desmond's medical history or background,
17 they might have done things differently. Do you agree with
18 that?

19 **A.** Oh, totally.

20 **Q.** Did you ever have Mr. Desmond sign a consent form to
21 seek any of his medical records?

22 **A.** No.

DR. PAUL SMITH, Cross-Examination by Ms. Ward

1 **Q.** Did you ever ask him to seek medical records for you
2 to examine?

3 **A.** The ones that he brought in were part of our
4 instruction. He had to have proof of and information of
5 diagnoses and previous, you know, attachment with the CF.

6 **Q.** Okay. But you never sought anything beyond that?

7 **A.** No.

8 **Q.** And so when he came in February of 2016 and asked you
9 to fill out the firearms form, that was your third ever visit
10 with Mr. Desmond as I recall, correct?

11 **A.** That's true.

12 **Q.** And you had heard from his wife Shanna in November to
13 say that she thought he was manic at the time and angry and
14 aggressive?

15 **A.** Yeah.

16 **Q.** And in your opinion and in your words he was pissed
17 off about money at the time, correct?

18 **A.** Yes.

19 **Q.** And I appreciate that you were not, you felt you were
20 not the decision-maker and that the firearms people would be
21 getting more information from other people but you never sought
22 further information in consideration of filling out the firearms

DR. PAUL SMITH, Cross-Examination by Ms. Ward

1 form, did you?

2 **A.** I did not. And I would go on to say I ... besides
3 the three times that I met him, I had known him socially at our
4 open house so it wasn't, you know, only three times. You know,
5 I did get to know him a little bit.

6 **Q.** Okay, fair enough.

7 **A.** Yeah.

8 **Q.** Turning to other matters now, yesterday you said a
9 typical conversation with Veterans Affairs is listening to music
10 on the phone for half an hour, then they don't know anything
11 about you and there's no warmness. Do you remember saying that?

12 **A.** The last word was what?

13 **Q.** Warmness.

14 **A.** Warmness, yes.

15 **Q.** We anticipate later in this Inquiry we're going to be
16 hearing from Mr. Desmond's case manager. We anticipate that
17 she'll tell this Inquiry that she, in fact, requested to keep
18 Mr. Desmond on in her caseload when he moved from one province
19 to another, even though that's not the normal procedure. We
20 anticipate ... And that was because she wanted him to have a
21 continuity of care when he moved. We anticipate she will also
22 tell us she personally did things for Mr. Desmond, like she

DR. PAUL SMITH, Cross-Examination by Ms. Ward

1 drove him to the airport when he was going for residential
2 treatment in Quebec and, in fact, she considered ways to speed
3 up the process of getting him a clinical case manager by bending
4 the rules. Does that sound like a lack of warmness to you?

5 **A.** There's good people in the DVA system and I apologize
6 for a sweeping statement that may have tried to present
7 otherwise. It remains, though, that the attitude from many vets
8 - not all vets - is that the, it's a constant struggle to deal
9 with DVA in terms of attitude and things like that. I go on to
10 rapidly say, though, that some excellent people certainly serve
11 there and treat people with great compassion and understanding,
12 so I would ...

13 **Q.** So you'll agree your sweeping statement denigrated
14 the reputations and dedication of a lot of people?

15 **A.** Absolutely.

16 **Q.** Thank you.

17 **A.** Yeah.

18 **Q.** Do you ever speak directly with Veterans Affairs
19 employees on behalf of veterans?

20 **A.** I constantly talk to case workers and, you know, I
21 communicate with some of the other docs that work with OSI and
22 that sort of thing.

DR. PAUL SMITH, Cross-Examination by Ms. Ward

1 Q. Okay. Those are my questions. Thank you.

2 A. Okay.

3 **THE COURT:** Ms. Lunn?

4 **MS. LUNN:** No questions for this witness, Your Honour.

5 **THE COURT:** Thank you. Ms. Whitehead?

6 **MS. WHITEHEAD:** No questions at this time, Your Honour.

7 **THE COURT:** Thank you. Mr. Macdonald?

8 **MR. MACDONALD:** Thank you.

9

10 **CROSS-EXAMINATION BY MR. MACDONALD**

11 (09:43:03)

12 **MR. MACDONALD:** Good morning, Dr. Smith.

13 A. Good morning.

14 Q. My name is Tom Macdonald and I am the lawyer for
15 Ricky and Thelma Borden and Sheldon Borden and they would be
16 father, mother, brother of Shanna Desmond, the grandparents and
17 the uncle of Aaliyah Desmond ...

18 A. Okay.

19 Q. ... who I share representation with Ms. Tara Miller.

20 I wanted to start this with a little bit of preliminary
21 things. So I've seen your disclosure in terms of your medical
22 records that you produced to the Inquiry. Is there anything

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 from the Lionel Desmond medical file you did not produce to the
2 Inquiry?

3 **A.** No, I was quite careful to ... That file was
4 presented in total. That's why even those things at the back
5 that didn't seem to be related to my involvement were also
6 attached.

7 **Q.** Okay. Just to jump there for a moment, and we don't
8 need to go there to look at it, we may come back to it ...

9 **A.** Yeah.

10 **Q.** But I noticed the very last page of the disclosure of
11 the file is a series of handwritten what I will call bullet
12 points.

13 **A.** Yes.

14 **Q.** Are those yours, your writing?

15 **A.** No.

16 **Q.** Okay.

17 **A.** That's the same guy that was responsible for digging
18 up the information ...

19 **Q.** Yes.

20 **A.** ... that was supposed to be current information on
21 the **Firearms Act**.

22 **Q.** Yes.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **A.** He was the writer of that.

2 **Q.** Okay. And you mentioned yesterday, and I'm not sure
3 whether I have the term right, but what was he to you, a
4 counsellor or an assistant or a helper?

5 **A.** He's a veteran volunteer counsellor that I used to
6 help me with difficult cases.

7 **Q.** Yes.

8 **A.** And, you know, he would actually be a guy that would
9 go to a home, if necessary, or speak to someone to introduce
10 them to what we can offer them and things like that.

11 **Q.** Okay. And what's his name?

12 **A.** Tom Barrett.

13 **Q.** Tom Barrett?

14 **A.** Barrett.

15 **Q.** Barrett. And he's in the Fredericton area?

16 **A.** Yes.

17 **Q.** Okay. Thank you.

18 **A.** Yeah.

19 **Q.** Now this maybe perhaps states the obvious but I just
20 wanted to be clear because it's an inquiry and we're on the
21 record, you have no ... You're a family doctor?

22 **A.** Yes.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 Q. For many years, correct?

2 A. Yes.

3 Q. And you have, it would seem, considerable experience
4 with veterans, correct?

5 A. Yes.

6 Q. But you don't have formal training in psychiatry, do
7 you?

8 A. That's true.

9 Q. And you're obviously, and I don't mean anything by
10 this, but you're not a psychiatrist?

11 A. I'm not, no.

12 Q. No. Okay. I wanted to go through Exhibit 140, which
13 are your, well, Lionel Desmond's medical records from your file,
14 certain ones, please. So the first one I want to take you to is
15 page 12 of Exhibit 140. You've seen this questionnaire
16 yesterday - Mr. Russell was touching on it with you - haven't
17 you?

18 A. Yes.

19 Q. Yes. Just before we look through it, can you help me
20 to navigate a little bit. On the left-hand side I see "Meds"
21 and there are prescription medications, I take it, written
22 there.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **A.** Yeah.

2 **Q.** Those, that's your writing, isn't it?

3 **A.** This is all my writing, yes.

4 **Q.** Yes. The third one, and you mentioned it yesterday,
5 it starts with an E, I can't quite read it, Effer- ...

6 **A.** Effexor.

7 **Q.** Yes. And what is ... is that a number after that?

8 **A.** Yeah, it's a 150, it's an Effexor 150, it's a
9 standard dose, either one or two a day, in that range,
10 sometimes.

11 **Q.** Sure. And on the other side of the margin, and this
12 deals with the THC, that's one gram, is that what I'm looking
13 at?

14 **A.** Correct, yes.

15 **Q.** Yes. Okay. So we have a list of current symptoms,
16 and Lionel has filled in, I take it, the numbers by those
17 symptoms?

18 **A.** Those numbers are his, yes.

19 **Q.** Yes. But the last item on the list is a handwritten
20 item "Homicidal thoughts", that's your writing, as I understand
21 from yesterday?

22 **A.** Correct, yes.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **Q.** What prompted you to add that?

2 **A.** It would have been part of the normal discussion and
3 I'll write notes about all sorts of things like that. I, you
4 know, it was probably coming from Dr. Joshi's notes. He talked
5 about homicidal, suicidal, and I was probably just reiterating,
6 you know, is that still true, you know, something like that.

7 **Q.** And so the zero that we see is your writing?

8 **A.** That's, yeah.

9 **Q.** And that is your writing in terms of 0 to 10, 10
10 being the most severe in terms of the rating that you would give
11 it?

12 **A.** Well, it just means, it means, in my writing it means
13 nothing. I wasn't trying to rate it on a scale of 10, I don't
14 think. It was just when I put a zero behind it, it means there
15 is none or nothing, so ...

16 **Q.** But you'd agree with me number 3 begins, Please take
17 the following current ... "Please rate the following current
18 symptoms from 0 to 10." So you clearly put a zero, you were
19 rating it, weren't you?

20 **A.** Yeah, yeah, it could be used that way, too, yeah.

21 **Q.** Would you have made that note the same day you saw
22 Lionel when you reviewed this checklist with him?

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **A.** I think it was the same day that I saw him. Is this
2 the July 2nd one?

3 **Q.** Yes.

4 **A.** Yeah, it would ... Yeah.

5 **Q.** So your evidence is this was written by you the same
6 day?.

7 **A.** Yes, it looks like it's all the same, you know ..

8 **Q.** Would you agree with me that the zero is very
9 uncharacteristically small?

10 **A.** It's a zero is a zero in my mind ...

11 **Q.** Well, when you look ...

12 **A.** ... you know, big or small.

13 **Q.** Sorry.

14 **A.** I mean his numbers are big.

15 **Q.** Sure.

16 **A.** My number's in proportion to my writing here, so,
17 yeah.

18 **Q.** Yeah. But your other numbers on the form that you
19 signed that day are much larger than the zero, aren't they?

20 **A.** You know, when I put a zero behind it, it's always on
21 the right ...

22 **Q.** But, Doctor, your numbers are larger ...

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **A.** Yes.

2 **Q.** ... than the zero, the other numbers on the form,
3 aren't they, the 150 by the Effexor?

4 **A.** Oh, yeah, but I'm putting a ...

5 **Q.** That's much larger than the zero, isn't it?

6 **A.** Yeah.

7 **Q.** And the 1 for the THC is much larger than the 0,
8 isn't it?

9 **A.** THC?

10 **Q.** On the right-hand side, the 1 gram.

11 **A.** There's no 0 in that one.

12 **Q.** No, but the number 1, 1 gram ...

13 **A.** Yeah, yeah.

14 **Q.** ... is much larger than the 0 by homicidal thoughts,
15 right?

16 **A.** Right.

17 **Q.** Yeah. Any explanation for that?

18 **A.** It's typical in the right upper corner that you put a
19 zero for meaning nothing.

20 **Q.** But I mean is there any explanation for why the zero
21 is so infinitely small?

22 **A.** I'm trying to give you that explanation.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **Q.** Okay. So what is it?

2 **THE COURT:** So you can stop, Mr. Macdonald. Why do
3 you put the zero in the top right-hand corner like that?

4 **A.** It's just the habit of saying nothing. It's always in
5 the right upper corner. It's a standard that I've been using
6 for years in terms of anxiety 0. It's not like I don't scale it
7 ... You know, if I'm writing a note and I put a small zero to
8 the right upper corner of something, it means nothing.

9 **THE COURT:** It's part of your note-taking style?

10 **A.** That's my style, that's right.

11 **THE COURT:** To do that?

12 **A.** Yeah.

13 **THE COURT:** So a small zero means nothing, it's ... All
14 right. Thank you.

15 **A.** Yeah.

16 **THE COURT:** Go ahead, Mr. Macdonald.

17 **MR. MACDONALD:** So that's ... I have your answer, Doctor.

18 Thank you.

19 **A.** Okay.

20 **Q.** So if we could turn to page 17, Doctor, please. So
21 this ... Are you there?

22 **A.** Yeah, it just came up.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **Q.** Sure. So this, the date on this is July 2, 2015, but
2 at the bottom you have, I guess, a fairly extensive note and, as
3 I understood your evidence yesterday to Mr. Russell, you would
4 have made that note November 16th or 17th of 2015, is that
5 right?

6 **A.** Yes.

7 **Q.** The note about Shanna Desmond?

8 **A.** Yeah, that's right.

9 **Q.** Okay. And you remember that call, do you?

10 **A.** Yeah, somewhat.

11 **Q.** And she says that Lionel is angry and aggressive,
12 manic?

13 **A.** The word manic came up for sure, yeah.

14 **Q.** What about angry?

15 **A.** Yeah.

16 **Q.** And aggressive came up, too?

17 **A.** That's why I made the notes of it, yeah.

18 **Q.** Exactly. Thank you. So let's turn to page 18,
19 please, and this is the Medical Assessment for the Province of
20 New Brunswick Department of Public Safety Chief Firearms
21 Officer. So this is February 23rd, 2016, when Lionel came to see
22 you, correct?

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **A.** Yes.

2 **Q.** And as I recall your evidence yesterday, and tell me
3 if I have it wrong, you thought he was coming for a check-up?

4 **A.** Yeah.

5 **Q.** You didn't think that he was coming for a firearms
6 assessment certificate signed ...

7 **A.** No, I was not pre-aware of that.

8 **Q.** Okay. How long was your appointment with him that
9 day?

10 **A.** Probably 45 minutes or so.

11 **Q.** Okay. And so the top part of the form that begins
12 "Reason for Assessment" and we see a full paragraph there ...

13 **A.** Yeah.

14 **(09:53:06)**

15 **Q.** That's your typing, is it?

16 **A.** No, that's what came with the form.

17 **Q.** That came with the form. Okay.

18 **A.** Yeah.

19 **Q.** And you read it on that day though?

20 **A.** Yes.

21 **Q.** Okay. So when we look at it, I'm going to break it
22 down, so I'm not reading every word, but when I look at it it

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 says, "RCMP indicates on 27th of November 2015, they received a
2 call from a female." You see that?

3 **A.** Yes.

4 **Q.** The first line?

5 **A.** Yeah.

6 **Q.** And then it goes on to say, "Her husband had sent her
7 some text messages saying he was going to do harm to himself."
8 You see that?

9 **A.** Yeah.

10 **Q.** And then, "He told her he was going to use a firearm
11 and was on his way to the garage. This is where they are
12 stored." Do you see that?

13 **A.** Yeah.

14 **Q.** And then to break it down continually, "He is a
15 military veteran and has PTSD." You see that?

16 **A.** Yes.

17 **Q.** "And he told her to say goodbye to their daughter and
18 he would see her in heaven." You see that?

19 **A.** Yes.

20 **Q.** "Police attended the residence." You saw that?

21 **A.** Yeah.

22 **Q.** Yeah. And in the second last line, "He is very

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 depressed." You see that?

2 **A.** Yeah.

3 **Q.** "He is concerned for his well-being." You see that?

4 **A.** Yeah.

5 **Q.** So when you saw all of those factors, did you ever
6 think on February 23rd to match the dates, in other words, this
7 had all happened about three months before he came to you to
8 have the medical authorization form signed?

9 **A.** I can't remember if I matched dates. I think I did
10 not.

11 **Q.** Okay. But as you're here today looking at this,
12 you'd agree with me that these events, this event happened about
13 three months before he came to see you, correct?

14 **A.** Right.

15 **Q.** So did you not think that these factors that are in
16 this paragraph that came from the Province of New Brunswick
17 Firearms Office were red flags that this person maybe should not
18 be approved for an authorization to get firearms back?

19 **A.** I could have, in a certain perspective, and that's
20 what our discussion was about, of course, so ...

21 **Q.** Okay. You had mentioned, I think, yesterday, you
22 were speaking of your opinion, you were asked to give your

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 opinion on this form.

2 **A.** On this?

3 **Q.** Yes.

4 **A.** Yeah.

5 **Q.** But really it was an assessment. Assessment leads
6 to, is a step on the way to an opinion, isn't it?

7 **A.** Sure.

8 **Q.** You assess before you opine, correct?

9 **A.** Yeah.

10 **Q.** Okay. So how did you weigh the factors? I mean, to
11 me these are very serious factors that would preclude a medical
12 authorization form being signed. So what weight did you give to
13 the other side of the equation to convince yourself you should
14 sign this?

15 **A.** The discussion with Lionel was, What this is all
16 about? And, as I mentioned, it was his interpretation of this
17 is an angry moment, a fleeting angry moment where he felt
18 frustrated and said some things that he didn't mean, and that
19 was the gist of what his explanation was. And I said, Well,
20 what did the police say when they came? And apparently they had
21 very little concern that he was at risk of himself or others.
22 And he'd also seen this other doctor, and I said, Well, what did

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 he say? He said the same thing, didn't think there was any
2 concern. So I said, Okay, so a single incident where he was
3 angry and said some things, which we all notoriously may do from
4 time to time, would have been put into a better perspective. If
5 I took that as my only evidence, I would have to agree with you.
6 My opinion was based on a discussion with him about all those
7 factors and other components to that report as to what were the
8 other people's opinions, and the doctor and the RCMP included,
9 so ...

10 Q. So you relied on Lionel's version of what the police
11 said to him and what the emergency room doctor in Oromocto said
12 to him as opposed to ever calling them? You didn't call them,
13 did you?

14 A. That's true, yeah.

15 Q. You could have called them, though, right?

16 A. I'm not sure who I would phone here but, you know,
17 that's potentially true, yeah.

18 Q. So I'm guessing, Doctor, practicing in the
19 Fredericton area for 40 years, if you wanted to speak to someone
20 at the ER at the Fredericton hospital, you can track a doctor
21 down, can't you?

22 A. Yeah. I'm not sure if that would have been something

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 I would have done in the middle of the day like that but I could
2 have done it later perhaps, yeah.

3 Q. And if you had chosen to do it later, you could have
4 held off signing this form on that date, correct?

5 A. True.

6 Q. Did you, it doesn't say here, but did you know and
7 did Lionel tell you that the RCMP seized a weapon that day,
8 seized a firearm?

9 A. I can't remember if that was discussed or not. I
10 think he did mention that they took his firearms and stuff,
11 yeah.

12 Q. Did that give you any kind of stand-alone concern
13 that a weapon, a firearm, was seized from a soldier who had
14 PTSD?

15 A. If I had collected that information, it may have
16 played a role here but, again, the police, he was saying the
17 RCMP came and he said to them that he wasn't suicidal or a risk
18 and yet he still would go on to see the doctor if they wished,
19 which he did, and both sources felt that he was not suicidal or
20 homicidal.

21 Q. But just to clarify, as I understood your evidence a
22 moment ago, you're saying that he told you that a firearm, his

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 firearm was seized, correct?

2 **A.** Yeah, I'm pretty unsure about that fact but ...

3 **Q.** Well, Doctor, what did you think he was there for?

4 He was there to get a signed form to get his firearms back,
5 right?

6 **A.** He was renewing his firearms license.

7 **Q.** Well, renewing or asking to have it reinstated?

8 There's a difference.

9 **A.** I ... you know, I had no idea that it was anything
10 different than a renewal.

11 **Q.** So if I suggest to you today it was not a renewal, it
12 was a reinstatement because his firearms license was under
13 review because the RCMP had taken it from him, he wanted his
14 weapon back, you're saying, are you hearing that for the first
15 time today?

16 **A.** Am I hearing which part for the first time?

17 **Q.** That it was a reinstatement application he was making
18 to get them back, not renewing but looking to get the firearms
19 back, that's why he wanted the form signed?

20 **A.** Yeah.

21 **MR. HAYNE:** Your Honour, if I may, I just think that I
22 have a concern with that question. I think maybe it would be

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 appropriate to ask whether Dr. Smith knew it at the time or
2 learned it subsequent. But hearing it for the first time today,
3 I mean, there's been, the Inquiry is public, that information
4 has been made public through the Inquiry, so it's just a slight
5 concern with the nature of how that question was phrased.

6 **THE COURT:** Mr. Macdonald, I think the doctor, Dr. Smith
7 understands the question but basically your question is at the
8 time that Mr. Desmond was in his office and the form was
9 presented to him, what did he think the purpose of that report
10 was for, correct? What was it for, correct?

11 **MR. MACDONALD:** Well, as I understand ...

12 **THE COURT:** At that time, not today.

13 **MR. MACDONALD:** Sure, but as I understand, the witness
14 answered that he thought it was to renew.

15 **THE COURT:** That's right. He said he thought it was for
16 a renewal.

17 **MR. MACDONALD:** So, Doctor, is your evidence that you did
18 not know he was looking to have the firearm returned and that's
19 why he wanted the certificate signed?

20 **A.** No, my understanding was this was a renewal.

21 **Q.** Okay. So did you use any type of a checklist in
22 determining whether you should sign this form or not with Mr.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 Desmond in terms of clinical factors you would look for to
2 decide whether you would sign this form or not?

3 **A.** The question is is he a safety risk to himself or
4 others and based on what I had known of him and his nature and
5 background, I did not think he was suicidal or homicidal.

6 **Q.** When you say "based on what you know of him" but we
7 know from the form here that three months before he walked into
8 your office he was going to kill himself.

9 **A.** Well, that was the heat of the moment and that was his
10 explanation of that and I don't take heat of the moment issues,
11 you know, as serious as something that's happening on a regular
12 basis.

13 **Q.** Sorry, I didn't quite get that.

14 **A.** You know, I mean this is a small event, it's more of
15 an impulsive reaction to anger and that does not mean that
16 that's what he was like all the time because that's not what I
17 saw all the time. I didn't see this aspect of him at any time
18 when I saw him so my opinion still had to be based on not
19 reports like that but what I knew of him and what he reported to
20 me to be, my opinion was based on that.

21 **Q.** So you're saying to you, on that day, the fact that he
22 was going to commit suicide three months before, the RCMP were

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 called, his weapon was seized, that's a small event?

2 **(10:03:13)**

3 **A.** He said ...

4 **Q.** Is that a small event, Doctor, to you? That was the
5 word you used.

6 **A.** Yeah, when things are said does not mean that they are
7 going to be done. People say things in the impulse of an anger
8 moment that may well not be anything close to what they intend
9 to do.

10 **Q.** Did you consider it a small event, yes or no?

11 **A.** Did I consider that a small event? I was considering
12 the patient in front of me to give an opinion. This information
13 was available to the RCMP and I thought it was their
14 responsibility to weigh the factors that are on paper here in
15 the bigger scheme of approval or not approval. My opinion was
16 based on do I think this man is suicidal or homicidal and my
17 opinion was no.

18 **Q.** Did you consider it a small event, yes or no, Doctor?

19 **THE COURT:** Excuse me, just stop. There's no "yes" or
20 "no" answers, okay? You cannot limit a witness to a "yes" or
21 "no" reply to a question that you ask. Some places you may be
22 able to, not in here. All right? If you ask a question, not

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1 "yes" or "no", the doctor can answer it the way he likes. Thank
2 you.

3 **MR. MACDONALD:** Thank you, Your Honour, I respectfully
4 disagree with interrupting a cross-examination ...

5 **THE COURT:** You can disagree all you like.

6 **MR. MACDONALD:** ... so I'll continue.

7 **THE COURT:** You do not pose the questions and then ask
8 the doctor is it simply "yes" or "no".

9 **MR. MACDONALD:** No, I understand your direction.

10 **THE COURT:** Thank you.

11 **MR. MACDONALD:** Thank you, Your Honour.

12 So, Doctor, did you send the form the same day that you
13 signed it in to the department ... the Firearms Office?

14 **A.** I'm not sure if it was sent the same day or not but I
15 assume it was sent soon so yeah.

16 **Q.** So would you have discussed with him on the 23rd of
17 February 2016 whether he had delusions?

18 **A.** I didn't hear the last part.

19 **Q.** I said would you have discussed with him on February
20 23, 2016 whether he had delusions?

21 **A.** Delusions?

22 **Q.** Yes.

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1 **A.** It probably did not come up, it's not a common topic.

2 **Q.** Would you have discussed flashbacks with him?

3 **A.** I certainly would have talked about how's his PTSD
4 which would include things like that and he was well aware of
5 what PTSD was so he'd tell me things like that.

6 **Q.** Would you have discussed depression with him?

7 **A.** Directly/indirectly, yes.

8 **Q.** Sorry, when you say directly/indirectly, I wasn't
9 quite sure.

10 **A.** We would have reviewed the PTSD symptoms, yeah.

11 **Q.** Okay. Did you discuss marital issues with him on that
12 day?

13 **A.** That was the biggest part of the conversation I would
14 say.

15 **Q.** And what do you remember about those issues that were
16 discussed?

17 **A.** What I remember clearly was, you know, the money
18 problems, that was the main issue. He was frustrated and
19 continuously frustrated with the way the money was being handled
20 at the home. He did say that, you know, he didn't know how the
21 marriage was going to go even though he remained hopeful and
22 that was basically around that topic. I said, Well, would you

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1 have anger moments like this? And he said, Yeah, I really get
2 upset and when I get upset, I get real upset and ... but I cool
3 down real quick and, you know, and I think I remember him
4 feeling embarrassed that this event had happened and that's
5 probably all I can remember about that.

6 **Q.** Would you have discussed suicidal or homicidal
7 ideation with him that day?

8 **A.** Yes.

9 **Q.** Now, other than looking at the form, there are no
10 notes that you took contemporaneously that day listing some of
11 these factors that you say you discussed, are there?

12 **A.** I did discuss it with him though for sure. I would
13 have discussed this event so that certainly would have come up.

14 **Q.** But there are no notes other than this form, are
15 there?

16 **A.** I'm not sure, probably not.

17 **Q.** You're not sure so are there notes?

18 **A.** I don't think so. Yeah.

19 **Q.** Okay. So I think in your evidence yesterday to Mr.
20 Russell you indicated that, and I think you called it Bellwood,
21 that he was on his way to Bellwood?

22 **A.** Ste. Anne's, Bellwood.

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1 **Q.** Yes. So if I call it Ste. Anne's, we're talking about
2 the same place, right?

3 **A.** Yeah.

4 **Q.** Now, and you had no concerns about him going there,
5 correct?

6 **A.** No, I was excited about him going there.

7 **Q.** So now I was a little confused by that yesterday
8 because as I understood your evidence to Mr. Russell, at least
9 at that time, Ste. Anne's were, I will put it this way, non-
10 believers in the medical marijuana treatment, is that fair?

11 **A.** At that time that's true.

12 **Q.** Yes. And when Mr. Desmond came to you, he was not on
13 any prescription medication and then began this regime of
14 medical marijuana treatment, correct?

15 **A.** He had stopped it. I can't remember how soon before
16 but he had stopped it in preparation for the admission because I
17 think they must do a pee sample or something on admission and I
18 think he probably would have been told to stop it ahead of it.

19 **Q.** But he started a regime of medical marijuana treatment
20 with you under your care, didn't he?

21 **A.** Way before that again.

22 **Q.** Yes.

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1 **A.** Is that what you're saying?

2 **Q.** Yes.

3 **A.** Sorry.

4 **Q.** You prescribed medical marijuana for Mr. Desmond?

5 **A.** Yes, is that what your question was?

6 **Q.** Well, but my question is this. If he's going to Ste.
7 Anne's and he's not taking medical marijuana on the 25th of
8 February 2016, might he have stopped at that point?

9 **A.** Yeah.

10 **Q.** Yeah. Presumably they were going to put him back on
11 prescription medication as they don't believe in the medical
12 marijuana therapy. Did you have concerns that the treatment
13 program that you had started with him was going to really go
14 back to an older program, prescription versus medical marijuana.
15 Did you have concerns about that?

16 **THE COURT:** Stop for a second. Mr. Hayne?

17 **MR. HAYNE:** My concern with the question is the
18 presumption that at Ste. Anne's that Mr. Desmond would be put
19 back on some other form of medication and there's no evidence to
20 that as far as I know but he can certainly ask the witness what
21 his understanding was or what his expectation was but I have a
22 difficulty with that presumption being part of the question.

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1 **THE COURT:** So in the context of all the disclosure that
2 we have and the information we have and we have a report from
3 Ste. Anne's Hospital, we know the list of medications that he
4 was on at Ste. Anne's, so in that context I think we have an
5 expectation that we'll eventually get some information that when
6 he went Ste. Anne's, that he was on a prescription regimen if
7 you will. Would it be your experience that that would likely
8 happen at any rate?

9 **A.** Bellwood was famous for stopping all medications, even
10 pharmaceutical in some cases, so they always wanted to start
11 from scratch and find out what worked and didn't work and
12 marijuana was at an early stage of understanding so it wasn't
13 like an acceptable therapy at that point. So I totally
14 understood and that was their policy in those days. Now that's
15 changed to allow edibles if they're doing well on medical
16 marijuana products at this time, but at that point early in the
17 game they were famous for starting right from scratch and they
18 often would stop the pharmaceuticals and anything else they may
19 be on so they could then see what he was like in the raw, so to
20 speak, and decide what therapies might be useful thereafter.

21 **MR. MACDONALD:** So did you have any concern that that may
22 happen in the context of him getting a firearm back?

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1 **A.** My excitement that he was going to Bellwood was that
2 he was going to get some more attention for his PTSD which was
3 good. They have a good reputation for that. The firearm really
4 didn't factor in to that excitement, it was not a factor in that
5 bigger picture. We had already established that the marijuana
6 worked for him and I was concerned that he may be put back on
7 medications at some point. I think that was part of our
8 discussion, even now that we talk about it, that the medications
9 would be ... was that something he was comfortable with and I
10 don't remember the response, I think it was neutral or possibly
11 negative. He was doing well on the marijuana we thought and
12 that it was a beneficial part of his treatment. He could
13 certainly restart it after he left their program. That would be
14 his choice, of course, so based on his response to whatever
15 treatment he had there.

16 **(10:13:02)**

17 **Q.** You saw marijuana as a stabilizer for him, didn't you?

18 **A.** It was, yeah.

19 **Q.** So did it concern you that he was now off of this
20 stabilizer and was getting a weapon back?

21 **A.** In a controlled environment I did not have problems
22 with that.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **Q.** What was your and is your definition of a "controlled
2 environment"?

3 **A.** Bellwood.

4 **Q.** Okay.

5 **A.** It's an in-residence program.

6 **Q.** Yes.

7 **A.** Yeah.

8 **Q.** So in terms of your discretion to sign his form,
9 before you signed the form, you didn't have to sign it that day,
10 did you?

11 **A.** No, but I usually get things done the same day.

12 **Q.** Yes.

13 **A.** I don't leave things for later if I can help it so,
14 yeah.

15 **Q.** Was it available to you to call Shanna Desmond to
16 discuss the issue of the firearm with her if you had concerns
17 about that?

18 **A.** That didn't cross my mind.

19 **Q.** But it was available to you, that call, you could
20 have?

21 **A.** To talk to Shanna?

22 **Q.** Yes.

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1 **A.** Yeah, in my experience she was hard to get ahold of
2 and her opinion here was not what they were looking for. They
3 were looking for my opinion on how stable he was, not her
4 opinion on whether she should or should not do something. So,
5 no, I didn't.

6 **Q.** Could you have called the New Brunswick Firearms
7 Office to discuss the form further with them?

8 **A.** That did cross my mind and ... but I knew that I was,
9 you know, part of a chain of decision, it was simply my opinion.
10 I thought my job at this point was to give my opinion, that the
11 firearms officer would be collecting information from several
12 sources to make his final decision. I talked to Lionel about
13 the fact that with this kind of information up top here, you
14 know, the likelihood of a positive decision was probably not
15 very high so I do remember saying those things to him. I said
16 my opinion is still that you're not suicidal and homicidal and I
17 wanted to know why he was asking for his license. He talked
18 about hunting and being very, you know ... he loved nature and
19 loved to get out and do his hunting stuff and things like that
20 so it made sense to me that he was asking it for a reason. Now
21 in retrospect you could argue that, of course, but we're not
22 here to speculate those things here I don't think.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **Q.** Now yesterday in response to a question from Mr.
2 Russell who took you to the form, the Dr. Joshi form, remember
3 that form where it was one of the things, saying on his
4 discharge from military, was that he was not to use weapons in
5 the military and as I understood your evidence, you said that
6 was, I'm not trying to put words in your mouth, a standard form
7 or standard that they would put that on a form when they're
8 leaving, is that fair?

9 **A.** Right. That's a standard rubber stamp that every
10 soldier gets once they're no longer operationally available so
11 that was not a personal description of what they thought about
12 Lionel, that's their description of, and you can ask DVA here,
13 that's their description of he's no longer available for
14 deployment, therefore, he's no longer able to do any CF
15 activities.

16 **Q.** So you could have called Dr. Joshi and asked him some
17 questions if you wanted to, could you not?

18 **A.** I'm not even sure Dr. Joshi was still serving at that
19 point. Now I wouldn't ... I thought Joshi was out of the
20 picture at this point.

21 **Q.** Could you have called some psychiatrist who you knew
22 treated Mr. Desmond somewhere, couldn't you, including at

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 Veterans Affairs?

2 **A.** I would have no idea.

3 **Q.** Or Forces. Pardon me?

4 **A.** I would not have any idea who to contact.

5 **Q.** Okay.

6 **A.** Someone that knew him back in those days or prior to?

7 **Q.** Yes.

8 **A.** No.

9 **Q.** So you ...

10 **A.** They're asking for my opinion not someone else's
11 opinion.

12 **Q.** And you gave your opinion?

13 **A.** I gave my opinion.

14 **Q.** What about Mr. Desmond's case manager at Veterans
15 Affairs Canada, could you have contacted that person?

16 **A.** I wasn't familiar with her and I don't think her name
17 came up even though she was obviously involved so, yeah, and
18 would that ... I mean I'm not asking ... they're not asking for
19 me to find out what someone else's opinion, they're asking my
20 opinion so I don't think it was my job to ask ten people what
21 they thought they should do.

22 **Q.** But had you chosen to ask others there was no barrier

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1 to prevent you from doing that, was there?

2 **A.** No barrier to what?

3 **Q.** To prevent you from contacting other people if you
4 chose to do that?

5 **A.** I could have, yes.

6 **Q.** You mentioned yesterday, again in response to a
7 question from Mr. Russell, the cohort, my word, of people you
8 see, the veterans, now I wrote the words down, "they are some of
9 the most dangerous and volatile people in the world" was your
10 statement yesterday, do you remember that?

11 **A.** Yeah.

12 **Q.** Yeah. Mr. Desmond was part of that cohort wasn't he
13 as a patient of yours?

14 **A.** They all are, yeah.

15 **Q.** So wouldn't that just alone give you pause before you
16 signed that form where you know he's going to have a weapon?

17 **A.** PTSD is stable or not stable. PTSD can be very
18 unstable and my opinion in that case would be no, he should not
19 have his firearm. PTSD can be stable and non-suicidal so that
20 was my opinion and that's what they're asking for here I think.

21 **Q.** Since Mr. Desmond was your patient and even though the
22 events that transpired in the years since then, have you made

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 any changes to your practice when you are asked to fill out
2 forms for the Firearms Office?

3 **A.** Their new forms are wonderful in terms of ability to
4 ... they ask many of the relevant questions as to what has gone
5 on, are there recent medication changes, other factors that make
6 someone a suicidal risk or things like that. It's not just a
7 "yes" and "no". I looked at that yes and no thing to say that's
8 very restrictive, you have either a yes or a no, you've already
9 collected lots of information that I didn't know anything about,
10 why are you asking my opinion except that I knew this person to
11 a certain degree and that's what my opinion was. Whether it was
12 a big factor in the decision of yes or no themselves or not, I
13 didn't have a feel for that.

14 **Q.** Can you give us an estimate of how many times since
15 January of 2017 you would have been asked to sign New Brunswick
16 Firearms Office forms in terms of firearms licenses?

17 **A.** I would say four times perhaps.

18 **Q.** Recent or closer to 2017? Closer to 2020?

19 **A.** A little bit of both, yeah.

20 **Q.** Okay. Did you approve ... you signed the forms where
21 people can get their licenses?

22 **A.** One I did. One I did, the others I did not.

DR. PAUL SMITH, Cross-Examination by Mr. Macdonald

1 **Q.** Okay. For the others that you did not, why not?

2 **A.** Because I didn't think they were stable. There was
3 factors that, you know, affected their personality and daily
4 instability. I didn't think they were ... the one guy that I
5 said yes to did very well again and he was extremely stable,
6 PTSD again.

7 **Q.** So the ones that you said no to, what were those
8 factors that you looked at?

9 **A.** Well, I can't remember all the details on that but
10 they would have been in the process of early stages of
11 treatment, I think, and had not reached a point of stability and
12 I think one guy was very early, I didn't know him well enough to
13 really have a feel for which way it was at this point for him.

14 **Q.** So comparing those to Lionel Desmond, did you feel
15 then, is it your evidence that he had reached the point of
16 stability on February 23, 2016?

17 **A.** I thought he was very stable, he was doing well.

18 **MR. MACDONALD:** Those are my questions, Doctor, thank you
19 very much.

20 **A.** Okay.

21 **THE COURT:** Thank you. Ms. Miller?

22

DR. PAUL SMITH, Cross-Examination by Ms. Miller

CROSS-EXAMINATION BY MS. MILLER

(10:23:03)

MS. MILLER: Dr. Smith, my name is Tara Miller, I am counsel representing Brenda Desmond, Lionel Desmond's mother through Brenda's personal representative and as Mr. Macdonald indicated, I'm also sharing representative of Aaliyah Desmond through a personal representative.

I want to talk a little bit more about your experience with the practice you've developed since 2014 and interactions with Veterans Affairs Canada.

A. Mm-hmm.

Q. In my understanding of your resume and your evidence yesterday is that since 2014, so about six years now, you've been specializing in the assessment and utilization of medical marijuana, that's been the focus of your practice?

A. That was in evolution, yes.

Q. Yeah, and that developed in 2014 in response to you treating veterans in the military community and seeing a number of suicides and hearing anecdotally, if I can, that there were benefits to some of the PTSD symptoms through the use of street marijuana, is that a correct characterization?

A. Mm-hmm.

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **Q.** I think you said you treat between 1,500 and 2,000
2 patients a year?

3 **A.** I have active files in that range.

4 **Q.** You have active files, yeah. Seventy-five percent of
5 those patients are military members?

6 **A.** Yes.

7 **Q.** Okay. And are they all veterans or do you have a
8 combination of veterans and active CF members?

9 **A.** I have a few that are in JPSU.

10 **Q.** Okay.

11 **A.** They're in the final stages of release.

12 **Q.** On their way out of the military?

13 **A.** On the way out and they're looking for a family doc
14 or, you know, just trying to create some transition I think.

15 **Q.** So it's fair to say, though, that 75 percent of your
16 patients of those 1,500 to 2,000, they're all military in some
17 ways, veterans or ones that are on their way to becoming
18 veterans?

19 **A.** Yes.

20 **Q.** And I think you said 80 to 90 percent of those
21 individuals are on medical cannabis?

22 **A.** Yes.

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **Q.** Okay. And only 15 percent of the patients you've had
2 have not been able to, I guess, trial through the medical
3 marijuana, is that correct?

4 **A.** We did a trial and it wasn't for them.

5 **Q.** It wasn't for them but the ...

6 **A.** Or ...

7 **Q.** Sorry.

8 **A.** Yes, you're right.

9 **Q.** Eighty-five percent of the patients that you started,
10 it had worked for them?

11 **A.** Yes.

12 **Q.** Okay. You just touched about it with this JPSU, the
13 veterans military discharge, this as I understand it, this
14 doesn't come about overnight. When somebody is a serving
15 Canadian Forces member and they are moving towards a medical
16 discharge, this is not a process that happens very quickly,
17 there's certainly a period of time when they work their way
18 through the CF system, is that correct?

19 **A.** It's rarely fast, it can take a year or two.

20 **Q.** Okay. And it can take a year or two?

21 **A.** Yes.

22 **Q.** So this is on the horizon for both the CF and the

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 military member that they are going to be discharged from the
2 military with a medical reason?

3 **A.** Right, they have this designation of, you know, not
4 available for deployment ...

5 **Q.** Yes.

6 **A.** ... and that's when they give that designation, the
7 rubber stamp we talked about, and then they're on JPSU which is
8 preparation for out the door, usually a co-op program or, you
9 know, trying to reintegrate them back into some kind of
10 workplace idea.

11 **Q.** And while they're still in the Canadian Forces, they
12 are able to access the team of medical treatment providers that
13 they've already accessed?

14 **A.** Right.

15 **Q.** Psychiatrists, psychologists, family doctors, et
16 cetera, et cetera?

17 **A.** Yes.

18 **Q.** Okay. But when they leave the military, the day that
19 they are discharged from the military, they effectively become a
20 civilian, correct?

21 **A.** Right.

22 **Q.** And they leave that support network of all of the

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 medical services that have been provided to them, correct?

2 **A.** Yes. OSI would be part, if they have PTSD, OSI would
3 be part of their transition.

4 **Q.** Right. So OSI though is not part of the Canadian
5 Forces, it's part of the transition into the civilian world?

6 **A.** Correct.

7 **Q.** And that would fall under, I guess, the new umbrella
8 or the new world for them under Veterans Affairs Canada?

9 **A.** Yes.

10 **Q.** The transition from the Canadian Forces to Veterans
11 Affairs Canada, is that fair to say?

12 **A.** Yes.

13 **Q.** And through that one to two years of getting ready for
14 the discharge, what's your understanding of the involvement with
15 Veterans Affairs Canada to prepare them for when they are
16 discharged or is there any involvement?

17 **A.** Well, no, that's improved and in the last few months
18 people start to sketch out what happens once you're discharged.
19 That discharge day is often a couple months transition where
20 their funding is delayed a little bit, it's always caught up
21 later, and that the rehab program is described as to, you know,
22 what we expect you to make the efforts to improve during that

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 next two years of rehab and that's generally where most of these
2 guys go and that their participation is required. They continue
3 that benefit and so on.

4 Q. So to continue to be eligible for the funding benefit
5 through Veterans Affairs?

6 A. Yes.

7 Q. Okay. So as I understand your evidence, there is some
8 interaction, I guess, between the Canadian Forces and Veterans
9 Affairs Canada in the last couple months before a member is
10 discharged?

11 A. Yes. There's an education that seems to be a lot more
12 prevalent at this point in the last couple months where they try
13 to prepare people what to expect, yes.

14 Q. Okay. I think you said yesterday, though, despite
15 this, it usually takes about two months for rehab to be
16 organized after the member has been discharged?

17 A. That's an average, yeah.

18 Q. Okay. It can certainly be longer than that. That's
19 your experience?

20 A. No, I don't see it too much longer than two months.

21 Q. Okay.

22 A. Unless they're undiagnosed and that's a whole

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 different problem.

2 **Q.** That's a different, yeah, but that wouldn't apply to
3 Lionel Desmond because he was diagnosed, certainly a well-
4 established diagnosis from, as we know, from Dr. Joshi?

5 **A.** There would be ... I mean the guys that are diagnosed
6 would certainly be handled in a different way. If they're
7 undiagnosed, they could come back a year or two or ten years
8 later and, you know, with symptoms and we'd send them off to be
9 correctly diagnosed at that point.

10 **Q.** So with respect to Mr. Desmond, Corporal Desmond, his
11 release date was June 26th ...

12 **A.** Yeah.

13 **Q.** ... and you saw him on July 2nd?

14 **A.** Yeah.

15 **Q.** Which is pretty quick for him to get in to see you?

16 **A.** Yeah.

17 **Q.** I think you said yesterday you assumed that his case
18 manager would have been in place in and around the time of his
19 discharge?

20 **A.** Case workers will say hello right away and say, you
21 know, We're going to be doing a rehab program, you will receive
22 your letter from DVA and your payments would be in place within

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 the next couple months. I think the ... what I see is the case
2 workers probably are the first contact.

3 Q. Okay.

4 A. Yeah.

5 Q. So would it surprise you to hear that the first
6 contact, at least based on the records that we have, between
7 Lionel Desmond and his case manager was January 27th, 2016, some
8 seven months after he would have been released medically from
9 the military?

10 A. That's surprising.

11 Q. That's surprising.

12 A. Yeah.

13 Q. And would it also surprise you to hear, at least from
14 the records that we have, that it shows that his first
15 psychiatrist appointment through the OSI clinic after being
16 discharged from the military was November the 3rd, 2015, four
17 months later?

18 A. That's not surprising.

19 Q. That's not surprising, the OSI treatment?

20 A. Yeah.

21 Q. Okay. So my sense is that, you know, you have a
22 pretty good focus group, if I will, of veterans. You treat a

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 fair percentage of them and you've got frontline observations
2 with veterans and their interactions/experience with Veterans
3 Affairs. Do you think that they come up with work-arounds to
4 help them in this gap period between when they're discharged and
5 when Veterans Affairs treatment starts? For example, we see
6 Lionel getting out on the 26th of June and showing up with you
7 on July the 2nd.

8 **A.** Yeah.

9 **Q.** Yeah. They've devised sort of their own system to
10 some extent, certainly with respect to accessing your treatment.

11 **A.** So what's your question now? Just ...

12 **Q.** There's a gap ...

13 **A.** Yeah.

14 **Q.** ... obviously, between when veterans are discharged
15 ... military members are discharged and when treatment actually
16 starts to ...

17 **A.** Right.

18 **Q.** ... come to fruition. And my sense is that veterans
19 take their own steps in their own informal community to fill in
20 that gap by accessing services themselves. And your program ...

21 **A.** Yeah.

22 **Q.** ... is one of ...

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **A.** Yeah.

2 **Q.** ... such things.

3 **A.** Right.

4 **Q.** Yeah.

5 **A.** Yeah.

6 **Q.** Because Lionel was in to see you within six days of
7 his discharge. And it sounds like that came through the
8 connections with the Marijuana ...

9 **A.** With his ...

10 **Q.** ... Trauma Group?

11 **A.** With his buddies. Yeah.

12 **Q.** Yeah. So that veteran support is very valuable in
13 helping them transition through that process.

14 **A.** I believe so. Yeah.

15 **Q.** Okay. So I want to touch about the work that you do
16 do. As I understand your evidence yesterday, you have a
17 significant population of veterans with PTSD that you do treat.

18 **A.** Mm-hmm.

19 **Q.** Are you aware of any other services similar to yours,
20 Dr. Smith, across the country in other military communities that
21 provide similar services?

22 **A.** There's lots of veteran support groups.

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1 Q. Yes.

2 A. They're springing up across Canada for sure. In terms
3 of other physicians, I don't keep track of what other guys are
4 doing. I assume there's people like myself ...

5 Q. Okay.

6 A. ... elsewhere, so ...

7 Q. But in New Brunswick, would you ... are you aware if
8 there's anybody else offering the same level of support and
9 services to veterans with PTSD?

10 **(10:33:01)**

11 A. No. They would be making efforts to connect with
12 family docs.

13 Q. Yeah.

14 A. And some family docs have little appreciation for what
15 the veteran has been through. They get varying degrees of
16 appreciation and understanding when they connect with those
17 people so ...

18 Q. Based on different levels of familiarity and
19 experience with other veterans.

20 A. Be quite a spectrum, I would say.

21 Q. Yeah. Quite a spectrum. So with your practice, as I
22 understand it, you have ... you're the physician at the top of

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 sort of a complement of staff, although they're not directly
2 paid by you. Is that fair to say?

3 **A.** I ... yeah. I have ...

4 **Q.** Yeah.

5 **A.** I have supports. I have lots of volunteers and ...

6 **Q.** Right. You said ...

7 **A.** ... guys that ...

8 **Q.** ... you had eight coaches?

9 **A.** Eight coaches. Yeah.

10 **Q.** Those are all volunteers.

11 **A.** Yeah. Most of ... well, several are and several are
12 paid by their own association. Of course, they ... they're not
13 part of my office. They work with me.

14 **Q.** They work ...

15 **A.** And I ...

16 **Q.** ... with you.

17 **A.** And I depend on them, as usual, to do some of the
18 education.

19 **Q.** Okay.

20 **A.** They're self- ... they're trained in-house, so to
21 speak.

22 **Q.** So are coaches different than counsellors?

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1 **A.** Yes.

2 **Q.** Do you ... yes. Okay.

3 **A.** Yes.

4 **Q.** So you have eight coaches. Some are volunteers and
5 some are paid by their own organizations and they work with you
6 ...

7 **A.** Yes.

8 **Q.** ... to educate veterans and other patients on the use
9 of the medical marijuana. And then you also have counsellors in
10 addition to that. Correct?

11 **A.** Right.

12 **Q.** Yeah. And how many counsellors do you have?

13 **A.** Oh, I think I have three at this point. That comes
14 and goes depending on, you know, their own family issues and ...

15 **Q.** Right.

16 **A.** ... things like that. These are ...

17 **Q.** Who pays for the ... sorry.

18 **A.** These are veterans that are volunteering their time.
19 They have an appreciation. They would be considered, in my
20 mind, in the final stages of PTSD and we always present the fact
21 that helping someone else is part of your final resolution of
22 ...

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 Q. Right.

2 A. ... treatment for PTSD.

3 Q. Okay. So those are ... those counsellors are veterans
4 who volunteer who have worked their way successfully through the
5 program and they're effectively giving back ...

6 A. Exactly.

7 Q. ... to others who are at the beginning of their
8 journey.

9 A. Yes.

10 Q. So they're success stories who can serve as a role
11 model? Is that ...

12 A. There's many. Yeah.

13 Q. ... fair to say?

14 A. Yeah.

15 Q. So we ... my friend, Mr. Russell, yesterday covered
16 with you how the individuals are compensated, whether as coaches
17 and ... you are not compensated in any way, shape, or form by
18 any marijuana companies.

19 A. That's correct.

20 Q. Do you bill New Brunswick ... the New Brunswick
21 healthcare system? Is that how you're paid?

22 A. Yeah. Medicare and ...

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1 Q. Yeah.

2 A. Yeah.

3 Q. Is ... are there any other sources of income that you
4 receive other than billings through the Medicare system in New
5 Brunswick?

6 A. Workmen's Comp. and ... I fill out a lot of forms for
7 ...

8 Q. Forms.

9 A. ... DVA and ...

10 Q. Right.

11 A. ... stuff like that. Yeah.

12 Q. So you would get paid to complete forms for Veterans
13 Affairs and Workers' Comp.

14 A. Right. I'm not on salary or anything.

15 Q. Right.

16 A. Yeah.

17 Q. That's sort of a piecemeal thing, so to speak.

18 A. Yes.

19 Q. Yes.

20 A. Yeah.

21 Q. Okay. But your primary source of income would come
22 from being funded through the Medicare system in New Brunswick

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 ...

2 **A.** Yes.

3 **Q.** Billings.

4 **A.** Yeah.

5 **Q.** What resources does Veterans Affairs provide you in
6 servicing a significant veteran population?

7 **A.** Just the opportunity to be a public servant. No
8 funding ...

9 **Q.** No funding.

10 **A.** ... directly. Yeah.

11 **Q.** Okay. Have they ever consulted ... Veterans Affairs
12 ever consulted with you for input into, you know, how they can
13 support you or how you can support them to improve the care
14 experience for the veteran?

15 **A.** No.

16 **Q.** So would you say your interaction with Veterans
17 Affairs is strictly administrative in terms of managing
18 individual patients?

19 **A.** Yeah, basically. I've written letters through
20 Veterans Affairs' people without response.

21 **Q.** You've written letters to Veterans Affairs' people
22 without response. And what's the nature of those letters been,

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1 Dr. Smith?

2 **A.** Would be, you know, concerns about stability of the
3 group that I see in terms of available medical marijuana and the
4 fact that the pharmaceutical end of things can be destabilizing,
5 make them worse with significant side effects, and things like
6 that, so ... it was just bringing them to, you know, a place of
7 notice.

8 **Q.** Bringing information to their attention.

9 **A.** Right.

10 **Q.** But they've never convened for the stakeholders'
11 meeting to, you know, pick your brain, to get more information,
12 anything like that.

13 **A.** No.

14 **Q.** And I think you answered this earlier in response to a
15 question perhaps from Ms. Ward or Mr. Macdonald, Do you ever
16 communicate with case managers? And I think you said you do.

17 **A.** I talk to case managers quite a bit. Yeah.

18 **Q.** Yeah. And in the course of your conversations with
19 case managers, do they ever share additional medical records
20 with you, Dr. Smith, from what the patient would need to show up
21 with initially to confirm their diagnosis?

22 **A.** No. That's the patient's own responsibility. They

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1 have enough records in hand usually to back up my demands for, I
2 need a diagnosis or paper. Some deviate and say they have a
3 pension for something maybe, and that sort ...

4 Q. Okay.

5 A. ... of thing.

6 Q. So ... but as you continue to treat a military veteran
7 over the course of their interaction with you and with Veterans
8 Affairs, you don't receive any sharing of medical information
9 which might help inform you in terms of the service that you're
10 providing?

11 A. Any letters from DVA to the patient would then be
12 shared with me as a matter of fact.

13 Q. Right.

14 A. You know, what's SISIP and Manulife, you know ...
15 which is part of DVA's left arm, so to speak, you know, what
16 kind of communications are we getting that would ... are the
17 expectation? See, they do periodic checks ...

18 Q. Right.

19 A. ... and things like that so ...

20 Q. And those would be more administrative forms that the
21 veteran would bring in to you because they've received?

22 A. Right.

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1 Q. Yeah.

2 A. Yeah.

3 Q. Okay. But in terms of sharing medical records as the
4 individual, for example, is working their way through the OSI
5 system, there's no sharing of that information with you.

6 A. OSI sends reports now ...

7 Q. They do now?

8 A. ... of ... they do.

9 Q. Okay. When did that start?

10 A. Well, that's been going on for probably the last
11 couple of years, at least. Things have improved that way. I
12 did have a meeting with OSI at one point. I think it was about
13 two-and-a-half years ago. And they just wanted ... I think they
14 were just trying to understand what my point of view was and
15 they were giving me theirs. I was a bad boy in their eyes. You
16 know, I was doing the marijuana thing and they didn't appreciate
17 that. They don't allow their own physicians to prescribe it,
18 which I think is a mistake, but ... I think that would diffuse
19 the whole issue here if they did it themselves. Now they
20 appreciate things better. But, anyway, to answer your question,
21 I've been receiving reports from psychiatrists ...

22 Q. Yes.

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **A.** ... for the last couple of years, at least.

2 **Q.** Last couple of years?

3 **A.** Yeah.

4 **Q.** Okay. So what I understand from your evidence is
5 you're a member of the veterans medical team because you're
6 working with them to provide them with medical marijuana
7 treatment and support that comes with that.

8 **A.** Yeah.

9 **Q.** OSI is a part of the veterans medical team.

10 **A.** Yeah.

11 **Q.** And there seems to be very little collaboration
12 between you and OSI and Veterans Affairs other than you getting
13 some reports from OSI.

14 **A.** Some. And I've sent them some reports in ...

15 **Q.** Right.

16 **A.** ... special cases sometimes, too, so ...

17 **Q.** So would it seem prudent in terms of delivering the
18 best service to your mutual patient and client that all of you
19 would be collaborating, Veterans Affairs ... you'd have case
20 conferences, for example, with ...

21 **A.** Yeah.

22 **Q.** ... Veterans Affairs and/or OSI?

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1 **A.** Absolutely. Yeah.

2 **Q.** The staff that you have, the coaches and the
3 counsellors, I think you indicated yesterday that Fabian Harvey
4 was Corporal Desmond's coach?

5 **A.** Yeah. "Henry."

6 **Q.** Yeah.

7 **A.** At one time. Yeah.

8 **Q.** Sorry?

9 **A.** Henry?

10 **Q.** Oh, sorry. I had it written down as "Harvey". Fabian
11 Henry. Okay.

12 **A.** Was a coach initially. Yes.

13 **Q.** Yeah. And between the coaches and the counsellors, do
14 they keep any records of their interactions, Dr. Smith, with the
15 veterans?

16 **A.** They do now and they do periodic phone calls to, you
17 know, make sure that things are going okay if they haven't had
18 ... they get quite a bit of talk back and forth as to, you know,
19 This is what I've tried, this is what's going on. What should I
20 do next? Some of that is recorded and some of it wouldn't ...
21 you know, there's a lot of conversations on a daily basis. I
22 mean ...

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1 **Q.** So would you expect that Fabian Henry might have some
2 records relating to his interaction with Corporal Desmond, as
3 his coach?

4 **A.** I doubt it. I think it would be more of a memory
5 thing.

6 **Q.** Okay. Do you know if anybody has ever checked with
7 him or any other of the coaches and counsellors to see if they
8 have any written records relating to their interaction with
9 Corporal Desmond?

10 **A.** I'm not sure. And I did wonder that myself. Yeah.

11 **Q.** Okay. You've not asked.

12 **A.** I don't speak to Fabian at this point, unfortunately,
13 so ...

14 **Q.** Okay. And from your recall, you indicated that Fabian
15 Henry was one of Corporal Desmond's coaches or was the coach
16 assigned initially in July of 2015. Was he ... did he ever ...
17 did Corporal Desmond ever work with any other coaches?

18 **A.** Not that I was aware of, no.

19 **Q.** Did Corporal Desmond ever work with any of the
20 counsellors?

21 **A.** We didn't have those counsellors in that ... at that
22 time period.

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1 **Q.** You didn't have at that time.

2 **A.** No.

3 **Q.** So in terms of trying to identify if there's any
4 additional records, it really would only be from Fabian Henry
5 who was Lionel's coach at the time.

6 **(10:43:01)**

7 **A.** Right. And he's ... it would be a memory source of
8 information.

9 **Q.** Okay.

10 **A.** Yeah.

11 **Q.** And you talked yesterday, towards the end of your
12 evidence, Dr. Smith, about your observations about how veterans
13 are treated after they leave the military and lose the sort of
14 defining relationship in their lives. And you indicated that
15 other nations seem to be able to do this ... manage this
16 transition a lot better than we do.

17 **A.** Yeah.

18 **Q.** Can you give us, just so that we can go and take a
19 look at this because that's the purpose of this Inquiry, looking
20 for, you know, recommendations and solutions. Can you give us
21 what those nations are, from your perspective ... handle this
22 transition more seamlessly?

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1 **A.** Israel is the one that everybody talks about. They
2 claim they have one percent or less PTSD. They have a slightly
3 different situation, obviously. They ... conscription. They're
4 fighting for their own soil. They have a clear sense of, I'm
5 protecting my own society. The attitudes in reintegration is
6 handled, I think, in a slightly different way there. Treated as
7 brothers and sisters. We know you've been damaged. Come be
8 part of our society. We love you anyway. Our society seems to
9 be ... they don't understand what PTSD ... PTSD is the ...
10 what's the right word? I guess a money-gobbling malingerer, at
11 best, or dangerous or ... I use the word "leper." I didn't
12 really mean that but it's not treated with understanding and
13 respect.

14 **Q.** Okay.

15 **A.** And our society's lack of understanding of what PTSD,
16 I think, is a part of what our reintegration process should
17 address.

18 **Q.** So you've indicated Israel seems to have a better
19 system of reintegration. Are there other nations that you could
20 give us to look to for guidance, for example?

21 **A.** Well, no, I think Israel is the one we've looked at.
22 I mean, historically, you can look at the Romans. They spent a

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1 year of reintegration before they were allowed to go home after
2 their military service. So they handled it better. There was a
3 time to hash it out with the guys before you were allowed to go
4 back to your families, which I thought made a lot of sense. If
5 you get off the plane and you're quickly debriefed and then sent
6 back to your families, it's like, Wow! I'm in a whole different
7 world here and I'm not ready for this.

8 **Q.** Right.

9 **A.** And ... you know, so there's ... the reintegration is
10 a very delicate process because you're going from a place where
11 persons have lost their job, typically, or if they're disabled,
12 and their identity as a soldier, and they are put back with the
13 family who may or may not have had information to have their own
14 understanding what PTSD was, also into a society that has no
15 appreciation what PTSD was, they feel pretty alone and
16 unappreciated. And it's hard for them to identify with any of
17 those aspects. And many of them, without having that identity,
18 have very difficult times reintegrating.

19 **Q.** Speaking of reintegration, are you able to give us,
20 based on your experience with this significant segment of the
21 military veteran population with PTSD ... are you able to give
22 us any sense of what the integration process may or may not be

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1 for family members? I think you touched on it. Family members
2 don't really understand PTSD. But, to your knowledge, is there
3 any kind of formal structure through either the Canadian Forces
4 or Veterans Affairs to support families when military members
5 with PTSD are reintegrating and coming home?

6 **A.** It's been talked about many times and it's sporadic.
7 It seems that some families have been treated very well and
8 explained and reintegrated. I think the general consensus of
9 what we're dealing with, the families are ... they still have no
10 understanding what PTSD is. The guys are still embarrassed or
11 withholding a lot of information. It's kind of us and them.
12 And the family has to be the place for reintegration.

13 I think it has to start right from day one. Your husband
14 is back. He's injured. He's a hero. We think he's a great
15 soldier. He will always be that in our eyes. We want you to
16 take possession of him and help look after him together but with
17 some understanding of what PTSD is. That would be the better
18 place, of course. And, you know, they even struggle to get
19 family counselling, let alone PTSD understanding, appreciation,
20 and an attitude from the services that says, you know, We salute
21 our guys. We want to help the family understand what this is so
22 they can create a new place of identity and belonging to the

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1 family without those difficulties.

2 Q. Thank you.

3 A. Yeah.

4 Q. I'm going to move now, Dr. Smith, to some questions on
5 your records and some clarification of your evidence yesterday.

6 A. Yeah.

7 Q. We've seen your records. They're at Exhibit 140. You
8 see Corporal Desmond on July the 2nd. You see him on October
9 the 1st. There's some phone calls in November with his wife
10 Shanna and then a call or two in early December with Lionel.
11 And then he arrives back in your office on February 23rd. And
12 that is the ... that's the totality of the professional contact,
13 I guess you had with him. Is that fair to say?

14 A. Yeah.

15 Q. You indicated that you would have had exposure and
16 experience with Corporal Desmond at social sessions that you
17 provide as well?

18 A. Yes. Right.

19 Q. Okay.

20 A. Yeah.

21 Q. And what do you remember about those social sessions
22 specifically with respect to Corporal Desmond?

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1 **A.** He integrated well with his buddies. Every ... you
2 know, he was well accepted. Great sense of humour and was
3 always kind of let down and relaxed. He wasn't that uptight
4 little guy in the corner that's not talking to anybody. He was
5 always very gregarious and open with the other guys and
6 typically they'd be ... you know, I wouldn't interfere with what
7 they were talking about, but they'd be talking about, you know,
8 hunting and fishing and women, as usual and, you know, that kind
9 of integrations ...

10 **Q.** What kind of social sessions did Corporal Desmond
11 attend? I appreciate how he would have interacted with others
12 there, but what do you remember about the sessions that he
13 actually went to?

14 **A.** Well, they're not official sessions. They're just an
15 ...

16 **Q.** Okay.

17 **A.** ... open house, so ...

18 **Q.** It's an open house. Okay.

19 **A.** So in the process of having my office, there were two
20 or three other rooms where guys would just hang around and have
21 a coffee and talk about this and that, so ...

22 **Q.** And how many times do you remember Corporal Desmond

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 attending these open houses between July and February ...

2 **A.** Well ...

3 **Q.** ... sort of thing?

4 **A.** ... I think two or three at least. Yeah.

5 **Q.** Okay. Did you see him at any social sessions after
6 February 23rd, 2016?

7 **A.** No, I never met him after that time at all.

8 **Q.** Okay. You indicated yesterday that you gave Corporal
9 Desmond an initial prescription for four months on July the 2nd
10 for medical marijuana.

11 **A.** Yeah.

12 **Q.** And that you never gave him another prescription past
13 that four months.

14 **A.** Well, there was nothing on record. I had that same
15 question in my own mind.

16 **Q.** Well, I think there is and that's why I wanted to
17 review this with you, Dr. Smith. If you can go to Exhibit 140,
18 page 26 to 27.

19 **A.** Okay.

20 **Q.** So page ... they're identical, it appears, although
21 somewhat different discretely. But page 26 is a medical
22 cannabis request for Lionel Desmond. Date of requisition,

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1 October 1st. And then page 27 is the exact same thing.

2 **A.** Okay.

3 **Q.** Do you recall that the purpose of the October 1st,
4 2015 assessment with Corporal Desmond was to provide him with a
5 year-long prescription?

6 **A.** Yeah. At that point, I knew that he knew what to do
7 and he was doing better. It was a useful therapy for him. We
8 were still trying to get him away from the smoke ... you know
9 ...

10 **Q.** Yeah. So he had successfully trialed, according to
11 your evidence, and ...

12 **A.** Yeah.

13 **Q.** ... it was appropriate for you ... at this point, you
14 determined to give him a year-long prescription. And that's
15 what you did?

16 **A.** That ... yeah.

17 **Q.** Okay. Why are there two forms?

18 **A.** Two different companies.

19 **Q.** Two different companies. Okay.

20 **A.** Yeah.

21 **Q.** And why are these forms different than the forms that
22 you would have completed at his July 2nd appointment? And so

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 just so that you can see, those forms are at pages 19 and 20.

2 **A.** Oh, we had simply developed our own prescription form
3 that was easier. That original one is cumbersome, slow and, you
4 know, not required.

5 **Q.** When you say "that original one", do you mean the one
6 that we're looking at now at page 19?

7 **A.** Yes. July 2nd.

8 **Q.** Okay.

9 **A.** The original one ...

10 **Q.** Yeah.

11 **A.** ... is a form provided by the company.

12 **Q.** Right.

13 **A.** It's ... well, it's hard for me to read it and it's
14 difficult ... has more information than is required.

15 **Q.** Okay.

16 **A.** So the ... we redesigned our own prescription,
17 basically.

18 **Q.** So he left your office on October 1st, 2015 with these
19 prescriptions for a year. And is it fair to say that unless
20 something ... he was having some difficulty with, that you had
21 no expectation to see him back for further treatment unless he
22 needed another prescription.

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1 (10:53:09)

2 A. We invite them back whenever they require.

3 Q. Okay.

4 A. And I knew he was going to Bellwood. I wasn't sure

5 ...

6 Q. Well, at this point, he was ... I don't think that was
7 on the books.

8 A. No, this was later.

9 Q. Yeah.

10 A. And so in October he had a prescription for a year.

11 And then I saw him on February, so I knew he still had his
12 prescription available so that when he was out of Bellwood, he
13 could easily resume what he knew worked or unless he found
14 something else that worked meanwhile, so ...

15 Q. You indicate ... and I wanted to clarify your evidence
16 yesterday, because you indicated that you believed ... that
17 you'd only given him a prescription for medical marijuana in
18 July and no further prescriptions and that you believe the
19 February 23rd appointment was set up to give him an additional
20 prescription? But when we look at these records, and now that
21 you've refreshed your memory with looking at ...

22 A. Yeah.

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **Q.** It looks like he was given that prescription, October
2 the 1st.

3 **A.** In October for the year. That's right.

4 **Q.** So is it more likely that the reason he showed up in
5 your office in February was solely to have the ... a firearms
6 license form completed?

7 **A.** Well, that piece of ... that question has gone through
8 my mind a few times. It wasn't unusual for him to come back in
9 three months. Because lots of times we'll invite people back
10 and say, If you have issues, let us know. It's possible he made
11 an appointment for that.

12 **Q.** How do patients make appointments? Like is there any
13 way that you can go back and check when he would have made the
14 February 23rd appointment?

15 **A.** I wouldn't ... those records wouldn't exist. They
16 would simply be a phone call to the secretary maybe and ... it's
17 not like we would say, Did we make that or did he make that?
18 I'm not ... I wouldn't have, you know, information like that.

19 **Q.** So we understand from the evidence of the Chief
20 Firearm Officer that in late January of 2016, he reviewed
21 Lionel's file and he sent Lionel this form to be completed. So
22 my assumption is that this February 23rd visit to you was

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 triggered by form completion ... the necessity for form
2 completion ...

3 **A.** It's possible. Yeah.

4 **Q.** ... any need to ... because then he need to come in
5 and get a prescription because he already had the prescription.

6 **A.** Right.

7 **Q.** Okay. I'm also going to take you now to some notes in
8 relation to the July 2nd visit. So if we take a look at page
9 ten of Exhibit 140, this is the intake form that Corporal
10 Desmond would have completed. Under "Family Doctor", it says,
11 "No family doctor."

12 **A.** Right.

13 **Q.** Okay? That's not unusual for veterans ...

14 **A.** No.

15 **Q.** ... six days out of discharge ...

16 **A.** No.

17 **Q.** ... not to have a family doctor.

18 **A.** Nobody has a family doctor at that point, it would be
19 rare.

20 **Q.** Are you effectively acting as their family doctor at
21 this point?

22 **A.** I am. Yeah. And I do that more officially now.

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **Q.** Okay. And if we turn ...

2 **A.** I would say ...

3 **Q.** ... then ... oh, sorry?

4 **A.** Sorry. I would simply say that, you know, Until you
5 find one, you go ahead and put your name on the list, I would
6 step into that role for the next year or two, which is the
7 average time for that.

8 **Q.** Okay.

9 **A.** Some of them, you know, maybe their wife has a family
10 doc, so they'd be looked after by that person, as well, so ...
11 yeah.

12 **Q.** I want to take you to page 16 of the same exhibit, Dr.
13 Smith. This is that same form from the July 2nd intake. And
14 the very last question says, "I have made my physician aware
15 that I will be using medicinal marijuana." And that's checked
16 off.

17 **A.** Yeah.

18 **Q.** Did you ever ask ... we see that he has no family
19 doctor but here you've checked off that he has made his
20 physician aware. Did you ever come into information as to who
21 that physician would be?

22 **A.** No.

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **Q.** No. Okay. Did you ever ask him?

2 **A.** No.

3 **Q.** Okay. Why is that question there?

4 **A.** It's just if they do have a physician, they are ...
5 their responsibility is to let that physician know because there
6 may be some attitude, yes or no, in terms of the marijuana
7 options. So that their responsibility is to let a physician
8 know, if they have one to say, Listen, I'm thinking about doing
9 a trial of medical marijuana here. Is that okay for you or not?
10 And some ... most of them say yes and you get the odd one that
11 says, No frigging way so ...

12 **Q.** Okay.

13 **A.** Pardon my language there on that one, so ...

14 **Q.** I'm going to take you back to page 12. My friend, Mr.
15 Macdonald, had you take a look at page 12 of Exhibit 140. This
16 again is the intake questions from July 2nd, 2015. And as I
17 understood your evidence, the left-hand medication listing of
18 zopiclone, Risperdal, Effexor, and Viagra, those were your
19 handwritten notes of medication that Lionel had been on but was
20 no longer on?

21 **A.** That's correct. Yeah.

22 **Q.** Okay. And where did ... how do you know he was not on

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1 it at this point?

2 A. Oh, he said he had stopped them.

3 Q. He had said that to you on July 2nd that he'd stopped.

4 Do you have a clear memory of him saying that he had stopped
5 that medication on July 2nd?

6 A. Yes.

7 Q. Okay. And the reason I ask that is because we have
8 some documents that suggest that he was on those medications as
9 of the date of his release ...

10 A. Okay.

11 Q. ... which would have been six days earlier. So ...

12 A. Yeah.

13 Q. ... just to be helpful, I'm going to take you Exhibit
14 147. And that'll come up on the screen. And I'm looking at
15 page 12 of Exhibit 147.

16 **EXHIBIT P-000147 - OPERATIONAL STRESS INJURY CLINIC MEDICAL**

17 **CHART**

18 So, Dr. Smith, just to orient you to this document, this is
19 information that's been produced by the Health Authority,
20 enclosing the Operational Stress Injury Clinic records. And
21 when we go to ...

22 A. Can you blow that up? I can't see it. There. Okay.

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1 Thanks.

2 Q. So I'm looking at page 12 of this exhibit.

3 A. Okay.

4 Q. Yeah. Okay. So this ... and I'm looking at the third
5 paragraph ... second paragraph. So this is a November ...
6 sorry. This is the November 3rd, as I understand it,
7 assessment.

8 A. August 31st, it looks like.

9 Q. August 31st assessment.

10 A. Yeah.

11 Q. Which indicates that prior to his release he was seen
12 at Base Gagetown and was on Effexor XR 150 mg daily, Risperdal
13 200 mgs *q.h.s.*, zopiclone 10 mgs *q.h.s.* and Ativan.

14 A. Right.

15 Q. So that suggests to me that he was on that medication
16 at the time that he saw you?

17 A. That's what they thought.

18 Q. Yeah. But you understood from Corporal Desmond that
19 he was not?

20 A. Correct. And the game being played here unfortunately
21 is called compliance. Until they're out the door they would buy
22 prescriptions, not necessarily take them, in order to remain

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1 compliant. What people appear to do and what they actually do
2 are quite different in this setting.

3 If he had decided to come off these because he thought they
4 were causing problems he would have stopped them, which is never
5 a good idea, but very frequently done by vets who are fed up
6 with being on medication. They would go on to fill the
7 prescriptions and tell their MO, military officer, while still
8 serving that they're on their pills and yet be off them.

9 Q. Okay.

10 A. Some ... I think it was pretty clear that he had
11 stopped them on his own ...

12 Q. Okay ...

13 A. ... and ...

14 Q. ... that's what you understand from your July 2nd
15 visit with him.

16 A. Yeah.

17 Q. Because I'm going to take you to another document ...

18 A. Yeah.

19 Q. ... at the same exhibit and this is page 10, and this
20 is a progress note from December 3rd, 2015. And from what I can
21 tell it's the next assessment since the August one. And it's
22 the very bottom paragraph and I'll read it: "As far as his

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1 medications go, he no longer believes they're helpful. He's
2 convinced they were increasing his suicidality and, indeed, I've
3 completely stopped all medications from the last two months."

4 Which suggests to me that from October to December the
5 medications were stopped further reinforcing the assumption that
6 he was actually still taking medication ...

7 **A.** Okay.

8 **Q.** ... when he would have seen you in July. So ...

9 **A.** Yeah.

10 **Q.** ... all you can offer us I guess is your recollection
11 that the listing of medication that you have ...

12 **A.** Right.

13 **Q.** ... is based on your recall that Lionel was not taking
14 them at the time?

15 **A.** Right.

16 **Q.** Okay. And whether he was or wasn't ...

17 **A.** Yeah.

18 **Q.** ... you can't comment on that?

19 **A.** Yeah.

20 **(11:02:50)**

21 **Q.** Okay. This was touched upon a little bit yesterday,
22 but we know that November 11th, 2015 Lionel had an interaction

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1 with the RCMP in Nova Scotia, which was a wellness check. And
2 as part of that wellness check he advised the RCMP, that's
3 Constable Maccallum, that he was going back to New Brunswick the
4 following week and that he had follow-up appointments with you
5 and with another physician.

6 Your records don't include any notes of a follow-up
7 appointment with ... or any appointment with Lionel in November.
8 And do you have any recall of seeing him outside of July,
9 October and then February?

10 **A.** I mean, I ... just the social stuff we talked about.
11 But, you know, he wouldn't have ... he's not the type to grab me
12 and say, Look, we're having an official visit here offline.

13 **Q.** Right.

14 **A.** You know what I mean.

15 **Q.** So ...

16 **A.** No, I didn't see him aside from what my notes said.

17 **Q.** If he had seen you at some point in November after
18 that interaction in Nova Scotia with the RCMP, you would expect
19 there would be some record of it somewhere?

20 **A.** Yes. Yeah.

21 **Q.** I'm going back to Exhibit 140, which is my final
22 question on that. At page 32 you indicated earlier that this

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 the complete package of what you have in your office. And at
2 page 32 of this there's an email chain between you and a Dr.
3 Schollenberg. Who is Dr. Schollenberg?

4 **A.** He's the CEO of our College. The College of
5 Physicians and Surgeons New Brunswick.

6 **Q.** Okay. So he's not a lawyer.

7 **A.** He is a lawyer.

8 **Q.** Oh, he is a lawyer?

9 **A.** Yeah.

10 **Q.** Okay. You write to him and you're looking for his
11 advice and you indicate in your email to him of March 13th, 2017
12 you indicate: "There's certainly the other side of the story
13 that explains my writing of the firearm licence to this high
14 profile individual ... which I will forward to you tonight."

15 I'm looking for whatever it was that you were referencing
16 when you said "I will forward this to you tonight". Did you
17 forward anything further to ...

18 **A.** To Schollenberg?

19 **Q.** ... Dr. Schollenberg?

20 **A.** I think it was the ... I think I recollect the article
21 or the request to ... you know, from the paper, I think. That's
22 all I asked him to comment on, I think.

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1 **Q.** Okay. So subject to His Honour's direction, and your
2 counsel, I would ask that you go back and search your records to
3 see what, if anything, else you forwarded to him in the context
4 of this.

5 **A.** To Schollenberg? Yeah.

6 **Q.** Okay, thank you.

7 And my last series of questions, Dr. Smith, is about the
8 firearm licence form that you completed, and certainly you've
9 been asked many questions about that. I'm going to go back to
10 page 6 of Exhibit 140. This is a page in the series of your
11 notes which initially start on page 3 and deal with your October
12 the 1st visit with Corporal Desmond.

13 **A.** Yeah.

14 **Q.** But if we look at page 3 we also see written on this
15 same page, page 3, sorry to jump around. At page 3 we see
16 February 23rd, '16 written above the October 1st, 2015, date.
17 Do you see that?

18 **A.** Yeah.

19 **Q.** What does that mean in terms ...

20 **A.** Just ...

21 **Q.** ... of you looking at your records?

22 **A.** ... it means I saw him again on that date. So if I'd

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1 see him three or four times I'd put ... keep going up if you
2 know what I mean.

3 Q. So you did make some notes other than the firearm form
4 in relation to your February 23rd visit?

5 A. It ... I would use the last visit as a template of
6 things that we discussed ...

7 Q. Right.

8 A. ... and didn't read ... you know, maybe read and put
9 down lots ... I didn't need to put more information on unless
10 there was information that I thought was important so ...

11 Q. Okay. So when we go to page 6 of that document, this
12 is the PTSD-related questionnaire and we see at the very bottom
13 of that page a note, February 3rd, '16, and I assume, and you
14 can correct me if my assumption is wrong, Dr. Smith, these are
15 your notes from February 23rd ...

16 A. Right.

17 Q. ... about your conversations with Corporal Desmond.

18 A. Yeah.

19 Q. Can you read that for us?

20 A. "Pills made him worse. February 23rd, '16 off medical
21 marijuana due to upcoming Ste. Anne's Homeward program in Quebec
22 in two weeks. Only treatment that works is (medical marijuana)

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1 MM."

2 Q. Okay. And you had previously gone through with
3 Corporal Desmond in terms of your assessment, this PTSD-related
4 questionnaire. We see the first one in July, we see one that
5 you completed in October. Did it occur to you or did you do
6 this, did you, knowing he was off all medication, knowing he
7 wasn't on medical marijuana, he was on no medication at all, did
8 it occur to you that it might be prudent to do an update of that
9 PTSD-related questionnaire at that time?

10 A. In hindsight. At that point, I wasn't ... you know,
11 he was presenting very calmly and didn't seem any different that
12 the last time I saw him and ...

13 Q. Fair enough. But ... and I heard your answer saying
14 yes, in hindsight yes it would have been prudent.

15 A. Yes.

16 Q. And you didn't do any ... we talked yesterday about
17 the Global Assessment of Functioning score, you didn't do any
18 update on the Global Assessment of Functioning score?

19 We know that Dr. Joshi's initial report had him at a 50
20 when you ...

21 A. Oh yeah, I think you're ...

22 Q. You didn't take that opportunity knowing he was off

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1 all medications, pharmaceutical and medical marijuana, to do any
2 kind of an update on these symptoms?

3 **A.** His appreciation of where he was at this point was he
4 was doing was quite well. So I ... no, I didn't actually do any
5 measuring of things in terms of numbers like this at that time.
6 It's a general feeling of how he's doing at this point.

7 **Q.** Do you ... you would have billed Medicare in New
8 Brunswick for this visit ... February 23rd?

9 **A.** I think so, yeah.

10 **Q.** Yeah. Because you ...

11 **A.** Yeah.

12 **Q.** ... and you didn't get paid by the Firearms Office to
13 complete the form?

14 **A.** No.

15 **Q.** No. So ... and you said earlier, you were asked how
16 long this visit have been, you said I assume it would have been
17 about 45 minutes to an hour. But do you have an independent
18 recollection of how long you spent with Corporal Desmond?

19 **A.** I'm sorry, I don't.

20 **Q.** Okay.

21 **A.** I mean, I'm just giving you an average. You know ...

22 **Q.** Yeah.

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1 **A.** ... it would be ...

2 **Q.** That detail would be recorded though in your billing
3 to Medicare, how long you spent with him ...

4 **A.** Yeah, about ...

5 **Q.** ... if it was 15 minutes or an hour? Yeah.

6 **A.** Yeah, right.

7 **Q.** Okay. We've heard your evidence as to why you
8 completed this form and why you didn't do any ... canvass with
9 any other additional people. But you did say several times you
10 told Lionel that you believed the likelihood of him being
11 approved for his firearm was not very high.

12 **A.** Right.

13 **Q.** Why did you say that?

14 **A.** Because of the incidences that were on record by the
15 RCMP. So I assumed those records would have created a
16 cautionary no.

17 **Q.** Okay.

18 **A.** And I said, Yeah, there's information here that looks
19 like it's important for them in their decision-making. My
20 opinion is my opinion; I'm putting that down. Their opinion is
21 based on the information they collect. So my piece was only a
22 part of that, that final ...

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1 **Q.** Yeah.

2 **A.** ... yeah.

3 **Q.** So and your opinion, as you said, was based on that
4 moment in time, your assessment of him at that moment in time
5 ...

6 **A.** Yeah.

7 **Q.** ... without any further collateral information,
8 correct?

9 **A.** Right. Yeah.

10 **Q.** Based on having officially met with him twice up until
11 February 23rd, correct?

12 **A.** Yes.

13 **Q.** And seeing him in some social situations?

14 **A.** Right.

15 **Q.** So in terms of ... have you adopted your practice in
16 any way, Dr. Smith, when you fill out these firearm forms to
17 indicate you won't fill them out unless you have a longer
18 history and involvement with a client or a patient?

19 **A.** Well, I wouldn't fill out a firearm first time I met
20 somebody if that's what you mean and maybe not even the second.
21 You know it depends on how open they are, what's going on in
22 their life and so on. Lionel was pretty forthcoming with

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1 things, you know, you could read him I thought. You know maybe
2 I was misreading things perhaps I guess in hindsight, but he
3 presented in a very stable, calm way.

4 Q. Yeah.

5 A. And ...

6 Q. He was there ...

7 A. ... he was either good at that or that's what he was
8 really doing. And my opinion was that he was stable and he had
9 done much better without the pills and with the, you know, use
10 of marijuana in his life. He had social networks and he had
11 lots of friends, he had a good sense of humour, he was off
12 alcohol except for two beer a week.

13 Q. That was the assessment that you had of him based on
14 your two interactions with him up until this date ...

15 A. Yeah. So the ...

16 Q. ... some social ...

17 A. ... that was all part of ...

18 Q. ... open house?

19 A. ... that opinion, right.

20 **(11:12:56)**

21 Q. Yeah. Can you say with hindsight that it might be
22 prudent for the Chief Firearms Office to require any kind of a

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1 sign-off on this form from a physician who has a more long-
2 standing and more regular frequent contact with a patient?

3 **A.** Yeah, I wasn't asked if I saw him once or a hundred
4 times ...

5 **Q.** No, I appreciate that. Yeah.

6 **A.** ... you know, so it's ... they just ... they were
7 looking for an opinion as to ... and they didn't collect the
8 information as to how long I knew this patient.

9 **Q.** Final question. Prior to filling this form out for
10 Corporal Desmond on February 23rd, 2016, what education had you
11 received, if any, from the Firearms Office of New Brunswick
12 about your role as a physician in completing these forms? This
13 is before you filled this form out in February?

14 **A.** Education?

15 **Q.** Yeah. I mean, emails, bulletins, general information
16 from the Firearms Office to physicians in New Brunswick about
17 what they're looking for, background information on what you
18 should be considering when you fill out this form.

19 **A.** I would say zero.

20 **Q.** None?

21 **A.** Yeah.

22 **Q.** Have you received any since?

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1 **A.** They sent the ... with the revision of their forms ...

2 **Q.** Yes.

3 **A.** ... there's a nice little summary of information and
4 websites to look at and things like that.

5 **Q.** So more fulsome ...

6 **A.** Right.

7 **Q.** ... guidance for you to fill out the form?

8 **A.** And that's the first time I'd seen anything in that
9 direction.

10 **Q.** And prior to February 23rd, 2016, what kind of
11 education had you received from the CMPA or the College of
12 Physicians or from your registrar to you as a physician filling
13 out these forms for the Firearm Office?

14 **A.** I would ... nothing official.

15 **Q.** Okay.

16 **A.** Yeah.

17 **Q.** And since then have you received anything education-
18 wise from either of those sort of professional bodies?

19 **A.** Again, nothing official, no.

20 **Q.** When you say "nothing official"?

21 **A.** Well, I mean, it ... in that revision of the firearms
22 form there was some good websites, I did look at them and in

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1 terms of, you know, information that's available, in terms of
2 what's expected and things like that. So that would be perhaps
3 the only ... and that came from the firearms people themselves,
4 not my CMPA people or anything like that. But I assume there
5 might be courses available for things like that but I've never
6 seen one, so yeah.

7 **Q.** Okay, thank you.

8 Your Honour, one thing I just want to clarify for you and
9 for the room, I misspoke when I was asking an earlier question
10 to Dr. Smith about understanding when OSI would have had first
11 contact with Corporal Desmond and I had said November, and I
12 appreciate from the exhibit I referenced it's actually August
13 31st, 2015, initial date of assessment. I just wanted to
14 clarify that ...

15 **THE COURT:** Thank you.

16 **MS. MILLER:** ... so we don't have material difference.
17 Thank you, those are my questions.

18 **THE COURT:** Mr. Rodgers?

19 **MR. RODGERS:** I wonder, Your Honour, if it might be an
20 appropriate time for a morning break.

21 **THE COURT:** All right. It's quarter after 11, we'll
22 come back 11:30 please. Thank you.

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1 COURT RECESSED (11:16 HRS.)

2 COURT RESUMED (11:36 HRS.)

3 **THE COURT:** Thank you. Sorry, Mr. Rodgers, just give me
4 a second here, I just want to ask Ms. Miller something.

5 Ms. Miller, I think it was Exhibit 147, page 14, and this
6 is for my clarification, thank you. I think you had asked ...
7 you were asking Dr. Smith some questions and if I'm correct you
8 read a portion of that under the "Treatment Plan" I have no
9 immediate ... sorry, "I have made no immediate changes to
10 medications", and there were medications that were listed off,
11 and I think you had posed to the doctor that this was an
12 assessment from November 3rd and then you corrected that it was
13 actually August 31st, 2015 was the assessment date.

14 **MS. MILLER:** Yes, Your Honour, correct.

15 **THE COURT:** Right.

16 **MS. MILLER:** Yeah.

17 **THE COURT:** All right. So, the information in regard to
18 the treatment plan and no immediate changes to the medication,
19 that would have been presumably observations of Dr. Njoku during
20 the August 31, 2015 assessment?

21 **MS. MILLER:** That's correct, but my ...

22 **THE COURT:** Okay.

DR. PAUL SMITH, Cross-Examination by Ms. Miller

1 **MS. MILLER:** ... point with Dr. Smith, Your Honour, was
2 that ...

3 **THE COURT:** I'm just trying to straighten out the dates.
4 So ...

5 **MS. MILLER:** Yes, Your Honour.

6 **THE COURT:** ... and the November 3rd date comes from the
7 bottom where it just simply says it was typed November 3rd ...

8 **MS. MILLER:** Thank you. Yes.

9 **THE COURT:** ... 2015?

10 **MS. MILLER:** That was my error, yes.

11 **THE COURT:** Okay.

12 **MS. MILLER:** Yeah.

13 **THE COURT:** So, go ahead.

14 **MS. MILLER:** Sorry, yeah, that's what I wanted to
15 clarify, I had said November 3rd earlier in my evidence in
16 suggesting to Dr. Smith that the first assessment that Corporal
17 Desmond had with the OSI clinic after his discharge was not
18 until November 3rd but it was actually August the 31st.

19 **THE COURT:** Thank you. All right. Mr. Rodgers?

20

21

22

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 CROSS-EXAMINATION BY MR. RODGERS

2 (11:39:02)

3 MR. RODGERS: Thank you, Your Honour. Dr. Smith, I'm Adam
4 Rodgers and I'm representing Corporal Lionel Desmond through his
5 personal representative.

6 Dr. Smith, we've gone through early on your experience, 40
7 years plus as a medical doctor and that you've specialized in
8 the assessment and utilization of medical marijuana since
9 approximately 2014, correct, so six years thereabouts.

10 Can you ... and then during that time or since that time
11 you've treated a considerable number of military combat veterans
12 in your practice ...

13 **A.** Yes.

14 **Q.** ... correct? And you gave some numbers in the 1,500
15 to 2,000 range you might have a patient load, 75 percent of
16 those being veterans or military personnel.

17 **A.** Right.

18 **Q.** And that's ... there's some turnover in that list too.
19 I would presume people would come and go from your practice?

20 **A.** Oh yes.

21 **Q.** So that's not a ... it's not a static number over six
22 years, that would be ...

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **A.** No.

2 **Q.** ... there would be more than that?

3 **A.** People move all over Canada and, you know, come and go
4 sort of thing, yeah.

5 **Q.** Yeah. Can you tell us now, Doctor, in developing the
6 specialization whether this was something that you developed
7 through your own sort of private study or was it something where
8 there was some formal study involved?

9 **A.** Yeah, I grabbed everything I could read from largely
10 overseas, you know, the big textbooks about pharmacodynamics of
11 medical marijuana and then I was listening to, you know, the
12 vets as they came and went as to what worked and didn't work.
13 We were in a learning curve of our own. We understood the
14 basics of the cannabis and the pharmacodynamics of that, I
15 thought and, you know, the strain general selections and so on.
16 Does that kind of answer your question?

17 **Q.** Yeah, that's what I was wondering. What it was that
18 you ... what you did to become a specialist in this area.

19 **A.** Well, you know, I call myself a specialist, there's no
20 ...

21 **Q.** Sure, I know that it's not a formal designation, yes.

22 **A.** Right. And it's simply interested in and becoming

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 experienced in, that's maybe a better description of that.

2 Q. All right, good. And in the course of your study in
3 dealing with veterans in this area, would you say you've also
4 done some study on PTSD, as well, in the course of doing that?

5 A. Of course, yes.

6 Q. Now, I want to talk a little bit about your published
7 paper and this is Exhibit 141. You were the lead author of 12
8 authors on this, correct?

9 A. Correct.

10 Q. And this is a peer-reviewed article?

11 A. Yes.

12 Q. Do you know the review process that this article
13 underwent?

14 A. It was one of the pain magazines ...

15 Q. Yes.

16 A. ... or pain journals that published it. Is that your
17 question?

18 Q. I guess so, yeah. I understand it was published in
19 the **Journal of Pain Management**, that's the title of the journal?

20 A. Right. Yes, I believe so. Yeah.

21 Q. And it's ... from what I could gather, it's published
22 out of New York through Nova Science Publishers and has a fairly

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1 widely ... wide and breadth, at least in geography, editorial
2 board.

3 **A.** Right.

4 **Q.** Is that your understanding of the journal?

5 **A.** Yeah.

6 **Q.** In the article, Doctor, you talk about PTSD and that
7 certain areas of an individual's life are affected and you
8 mention social, occupational and interpersonal. And I guess
9 from your understanding can you talk a little bit about that and
10 how PTSD affects those areas of an individual's life?

11 **A.** In terms of Lionel?

12 **Q.** Well, in terms ... I guess in broader terms first.

13 **A.** So your question is how does it affect the family
14 then? Is that what you're ...

15 **Q.** Well, how does it affect a person's life from a social
16 aspect, from an occupational aspect and then from an
17 interpersonal aspect, if those are distinct categories in your
18 view?

19 **A.** Okay. Well, socially for sure. I mean, insomnia is a
20 big deal so they're exhausted. Their ability to handle stress,
21 multitask and to make decisions and have a sense of humour and a
22 sex drive is basically diminished dramatically, which then

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1 interferes with their family life of course. And vocationally
2 until sleep is established ... sleep is probably one of the
3 first big steps in therapy. Until sleep is established, they're
4 totally unable to consider any form of work and their family
5 life would be so minimal that it would be, you know, in a major
6 way disrupted. So does that kind of answer your question?

7 Q. Yeah, that's what I was wondering, that kind of
8 detail, Doctor. So in addition in the article you talk about
9 some of the symptoms of PTSD and you talk about flashbacks,
10 avoidance symptoms and arousal symptoms and I think anger would
11 fit into that category. Can you talk a little bit about those
12 symptoms and maybe how those manifest themselves?

13 A. Can you focus on what you're interested in there?
14 There's so many aspects there I guess. Is it the anger you're
15 interested in mainly?

16 Q. Well I guess I'm curious in a broader sense from your
17 understanding in dealing with patients who have PTSD what the
18 common symptoms might be. And some of the ones you noted in the
19 article were flashbacks, avoidance and arousal symptoms. Are
20 those ... the most common are ... is one more common than the
21 other? What have you been seeing?

22 A. Flashbacks depend on the environment and most guys

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1 learn to isolate themselves away from triggers. They avoid loud
2 sounds and trucks and military garb and things like that or
3 smells are common. And I mean they can be triggered from
4 anything from a child, there may have been some casualties, you
5 know, on the field with that.

6 **(11:45:57)**

7 So it's unpredictable, but whatever it is that triggers
8 them, they've learned to avoid those things, which means that
9 they live often a life of total isolation to make sure that
10 there's no crowds or big vehicles or loud sounds or multiple
11 crowds, all of which are triggers for some people. So it
12 affects their life. The avoidance of triggers makes them
13 hermits in many ways, they avoid things.

14 And flashbacks basically will diminish as they learn to
15 sleep a little better and learn the breathing techniques to keep
16 their oxygen levels higher and so on. So psychotherapy and just
17 simple little tricks to avoid the flashbacks or to abort them
18 when they come, they work quite effectively, but the avoidance
19 of things tends to limit their life.

20 They are unable to deal with vocational efforts because if
21 a boss pisses them off and they have problems with authority,
22 they could have a flashback and take a swing pretty quick or,

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1 you know, they're out back trying to avoid the public where they
2 have to make decisions quickly because that's usually very
3 limited. Is that the kind of stuff you're looking at?

4 Q. Well, that's what I, that's an answer close to what I
5 was expecting, I suppose.

6 A. Okay.

7 Q. Or that ... it is an answer to the question.

8 A. All right. If you want more details, I'd be glad to
9 give you ...

10 Q. Well, it's in the study, so I don't want, you don't
11 need to repeat everything that's in there, but just to get some
12 of the highlights so that we understand a little bit more about
13 your experience with the soldiers that had PTSD.

14 A. Yeah.

15 Q. In particular, by the way, if you have particular
16 memories of Corporal Desmond and what he's told you about these
17 things, then please feel free to add that to it, if there were
18 symptoms, for example, that were more prominent in his PTSD as
19 he identified to you.

20 A. Yeah. We did talk somewhat about his experience in
21 Afghanistan, and is that kind of the information you're hoping
22 to get? I mean ...

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **Q.** Well, I guess I'm going to ask you a very brief
2 question about that, but for Corporal Desmond do you recall
3 whether it was flashbacks that were the biggest problem, whether
4 it was avoidance symptoms that were the biggest problem, or
5 arousal symptoms, or whether they were all issues with him? Not
6 to say that's an exclusive list of possible symptoms but ...

7 **A.** Was one of those more prominent for him?

8 **Q.** Yeah.

9 **A.** I think he had them all, initially.

10 **Q.** Yeah.

11 **A.** I think a lot of those diminished with the therapy
12 that we offered him.

13 **Q.** Yeah.

14 **A.** His ... Are you looking for details?

15 **Q.** No, that's fine, Doctor. I'm going to ask you about
16 the effects of the medical marijuana and some particular
17 elements ...

18 **A.** Yeah.

19 **Q.** ... broadly, and then if you can recall for Corporal
20 Desmond, as well.

21 **A.** Yeah.

22 **Q.** But just before I do that, you mentioned Afghanistan

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 and then, in your opening evidence, you said, basically, as soon
2 as you hear Afghanistan 2007, you know, you know it's bad.

3 **A.** I've heard so many times the things that they had to
4 do and so on. It's, like, if the general public knew what they
5 were up to, we probably wouldn't have sent the guys over there.
6 It's just, like, unbelievable what they had to survive there,
7 and, you know, the casualties of the public and so on, the
8 babies, and the burning bodies, and extermination of things and
9 the piles of this and that, and yet they still had to sit and
10 hold this position while the rockets came in every night. And
11 they would draw grids on the surface and they would have bets
12 where the next rocket would land. That's what they did for
13 entertainment, for months. And the guys where the rockets would
14 land, some of them may have gotten killed but, you know,
15 somebody would make a few bucks from that. You probably don't
16 want to hear this ...

17 **Q.** No, that's fine, Doctor, I wasn't stopping you.

18 **A.** So it's ...

19 **THE COURT:** I'm going to though.

20 **A.** Yeah, okay, and I'm not ...

21 **MR. RODGERS:** I have a follow-up question, I guess,
22 Doctor. From what you hear from these times, I guess it doesn't

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 surprise you that there's some PTSD, that people are coming back
2 with PTSD from those experiences?

3 **A.** Right. It's not everybody but some definitely are
4 left with indelible memories.

5 **Q.** Doctor, so in the study you talk about particular
6 results from medical marijuana trials.

7 **A.** Yes.

8 **Q.** And their effects on particular things - social
9 impact, drug and alcohol use, marital relationship harmony, pain
10 severity, and suicidal thoughts. Maybe I'll go through those.

11 **A.** Yes.

12 **Q.** And just get you to comment on them. First, social
13 impact was something that you identified. Can you tell us a
14 little bit about what you mean by that.

15 **A.** Well, the first one is lack of sleep and sex drive -
16 you're short-tempered, you're moody, you're withdrawn, you're
17 not able to be in touch with emotions, you may have memory gaps,
18 and it makes you a pretty difficult guy to have a relationship
19 with. Short-tempered ... You know, the warm and fuzzy
20 relationship we expect in a marriage is extremely difficult.
21 Alcohol is rampant. Most people would turn to alcohol,
22 initially, and that creates problems, and sometimes they'll try

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 to hide that, which, you know, until they've had other
2 treatments that allow them to be free of that and so on, of
3 course, so it's all of which disrupts their marital
4 relationships. And then the belonging to a society is a whole
5 different thing, too, because of society's general attitudes
6 about what PTSD is - they're afraid of you and they think you're
7 unpredictable or they think you're a malingerer, you know, to
8 get some money and so on. There's so many attitudes that you
9 just, you don't want to be part of any social interactions and
10 you don't feel like that you belong anymore, so they're
11 withdrawn.

12 **Q.** Yeah. So what does ... what have you discovered in
13 your study that medical marijuana has done for those symptoms,
14 for those feelings?

15 **A.** The biggest thing that we always aim for, initially,
16 is sleep. And in sleep is a good sense of humour or better
17 sense of humour, at least; sex drive; ability to handle any
18 stress; and to multi-task; and to start to be in touch with
19 emotions. So if you achieve sleep, initially, you're well on the
20 way to the other things falling into place. So I think in REM
21 sleep it's been shown that the unconscious mind is dealing with
22 the trauma, so you feel more refreshed and more comfortable with

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 some of the things that you've experienced and so on.

2 Q. And in terms of pain severity and suicidal thoughts,
3 have you found, has your study found that medical marijuana
4 makes a difference in those regards?

5 A. Pain is tremendous, and pain itself, even without
6 PTSD, can cause significant depression, it's exhausting, it's
7 constant. And most people don't want to be on narcotics and
8 other painkillers and things like that because of their side
9 effects, so if you can reduce the pain under five, they can live
10 with that. So the guy that's at an eight or nine pain every day
11 despite the medications, if we can bring him down to a four on a
12 scale of 10, he's got a life back and he can go do things and,
13 even though he's hobbling along, he's still able to keep a sense
14 of humour about that.

15 Marijuana also gives you a sense of I don't really don't
16 care what other people think anymore, I'm not so self-conscious,
17 I really can just be comfortable right here and right now. So
18 it's a very Zen experience to be on the medical marijuana, so
19 they can have a sense of peace despite all the trauma and
20 memories that they have. So they start to become comfortable in
21 their body and in their own escape place, and then they feel
22 that this is something they can reproduce - if I can find a

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 place of peace somewhere in my life, some place with somebody,
2 with my dog and my family and with my grandmother, if I get
3 triggered over here I can always come back to this place. So
4 that's the initial part of therapy, as well.

5 **Q.** Now, Doctor, you mentioned that there were studies
6 from outside of Canada that dealt with medical marijuana, as
7 well, but fewer studies, such studies in Canada. I just wanted
8 to ask if you were familiar with the 2018 study from the BC
9 Center for Substance Use. I only ask ... I ask you that, you
10 were quoted in the same article as this study was noted. Is
11 that something you're aware of?

12 **A.** That particular article I'm not aware of, no.

13 **Q.** Okay, no, it was a **Globe and Mail** article from May of
14 2018.

15 **A.** '18.

16 **Q.** Yeah. And it was, the study was from the British
17 Columbia Center for Substance Use.

18 **A.** Okay.

19 **(11:56:01)**

20 **Q.** And it talked about medical marijuana and the
21 reduction in suicide risk.

22 **A.** Yeah.

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **Q.** So you're not familiar with that study, that's fine,
2 but is that consistent with your findings that those that were
3 taking medical marijuana had a reduced risk of suicide?

4 **A.** Is that what they found there, you mean?

5 **Q.** They did, yes, 60 to 65 percent.

6 **A.** Okay. Now one of the problems with the studies that
7 are being done, I see, is that they're using ... they're just
8 letting people smoke and figure out what they're doing. And I'm
9 saying, Well, that's ancient, and the newer ways that we've
10 discovered, which are much more stable and reproducible, would
11 be the way to do the new studies.

12 **Q.** Yes.

13 **A.** Instead of just saying, Okay, go smoke marijuana,
14 we'll check you back in a few days and see how you're doing. I
15 think that's ... it could even make them worse. So some of the
16 studies designed that way are not coming out with the same kind
17 of results that we did with the better, you know, implementation
18 methods and so on.

19 **Q.** Would it be one of your recommendations, broadly
20 speaking, that more study on this area be done within Canada?

21 **A.** Absolutely, yeah.

22 **Q.** Can you tell us, Doctor, if you can, how exactly it

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 is that medical marijuana helps with such things as the central
2 nervous system, memory processes, or improving mood. Is that
3 something that you can discuss?

4 **A.** You're talking about the physiology of it?

5 **Q.** Yes.

6 **A.** The endocannabinoid receptors outnumber most other
7 receptors almost a hundred to one. So we have our own
8 endogenous receptors or components that we've had through
9 evolution that are supposed to calm us when we're excited and so
10 on, so those endocannabinoid, our own receptors and our own
11 chemicals that we make ourselves, are something that we've
12 evolved with. So to have an external source of the same
13 receptor stimulators, such as marijuana, became a very natural
14 thing for our nervous system, I think. And since the mid-brain,
15 which controls breathing and that aspect of us, there's very few
16 receptors, it leaves marijuana extremely safe for use because it
17 kills nobody, even at big doses, so they might be stupid for a
18 little while but they're not going to die from it, like
19 narcotics and so on. The receptors for narcotics in the mid-
20 brain that controls our breathing is rampant for narcotics;
21 therefore, overdoses kill people. So does that come close to
22 your question maybe?

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **Q.** I think so. Doctor, what were some of the side
2 effects you were noticing on the pharmaceutical side? You
3 mentioned that there were negative side effects that people were
4 experiencing they didn't want to. What were some of those
5 prominent side effects?

6 **A.** It's a spectrum again. Some people respond very well
7 on medications, that's great, we don't see them very often. The
8 bad side effects, anything from dry mouth, blurred vision,
9 constipation, lack of erection, to increases in suicide,
10 agitation, anger, delusions and suicidal thinking, so you can
11 get just the opposite to what you're intending with any
12 medication, and that's unpredictable. The percentages probably
13 aren't that high but they, when they happen, they're extremely
14 dangerous and can be very upsetting for the individual.

15 **Q.** Doctor, I want to take you to Exhibit 148.

16 **EXHIBIT P-000148 - NATIONAL DEFENCE DOCUMENT RE LIONEL DESMOND**

17 **DRUG USAGE**

18 This, Doctor, is a note from National Defence and it's a
19 note from, signed by Registered Nurse Alison Macdonald and
20 signed off by also Major Willem Noppers, M.D. This is from
21 January of 2015, so before Corporal Desmond saw you.

22 **A.** Yeah.

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **Q.** As you see in the first section there, "History of
2 Present Illness", it says, "Here today to advise he is now using
3 medical marijuana prescribed and smoking four grams a day." Now
4 whether he was actually prescribed that or not is not really my
5 question, all right? That's not ...

6 **A.** No. I think that's his own use there somehow from
7 probably his buddies or whatever.

8 **Q.** Below that it says, "Reports good effect on sleep and
9 decreasing rumination." Do you see that?

10 **A.** Right.

11 **Q.** Is that consistent with your expectations?

12 **A.** Yes, it's very good for sleep, pain, and you don't
13 think about the memories much, which gives you a sense of peace
14 so you can get on with your day without being intruded
15 constantly.

16 **Q.** We also saw, and you were brought to this, these were
17 brought to your attention yesterday, Doctor, that Corporal
18 Desmond complained at some point later that he thought, looking
19 back, that perhaps the medical marijuana made his nightmares
20 worse or made him a little paranoid.

21 **A.** Yeah.

22 **Q.** You would attribute that to perhaps he smoked too

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 much at one point and went overboard on the THC?

2 **A.** If you're tolerant to the dose and used to it, you
3 probably would not get those symptoms. If it's a sudden dose
4 that you're not used to or it's more than, you know, more than
5 you should be typically as smoke ...

6 **Q.** Sorry, you were saying that perhaps it was depending
7 on how much of a dose a person is used to?

8 **A.** Right. So if, say, he was on oils all day, a nice
9 even dose, and all of a sudden he smoked at night, he could
10 potentially have two to three hours every time he smoked
11 something that he was not used to.

12 **Q.** Yeah.

13 **A.** If he was smoking all day and becoming tolerant to
14 that dose, he's used to that dose now, he probably wouldn't get
15 these symptoms. If it's a dose that he's not used to or just
16 being used occasionally, where there's no tolerance being built,
17 he would probably have that symptom every time he smoked.

18 **Q.** Okay.

19 **A.** Or takes more than what his body is used to, in other
20 words.

21 **Q.** All right.

22 **A.** Yeah.

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **Q.** Okay. So unmanaged dosage can be an issue, then?

2 **A.** Right, and paranoia is one of the symptoms of a dose
3 that you're not used to.

4 **Q.** And you've already answered, Doctor, I guess, about a
5 policy ... I want to move over to a question about Ste. Anne's
6 in Montreal and their policy of not allowing patients or not
7 permitting patients to be admitted who are still taking medical
8 marijuana.

9 **A.** Yeah.

10 **Q.** And you've shared your thoughts on that already.

11 I think we've learned that Corporal Desmond came out of
12 that program in August and then really wasn't treated for a few
13 months thereafter. Would you have expected him perhaps after
14 that treatment program to revisit medical marijuana in the
15 normal course? Is that something that you may have expected if
16 somebody went into a residential treatment program and came out?

17 **A.** I assume, now I don't know anything about this, but I
18 assume, unless they had him on medications, which I don't even
19 know that much, that he would have resumed his marijuana at that
20 point to some degree, but he may have been on other therapy or
21 they might have given him something for sleep or ... so
22 unfortunately, I'm totally unaware of what they were prescribed

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 in Bellwood so ...

2 Q. In a situation where Corporal Desmond was going back
3 home after a residential treatment program to live with his wife
4 and daughter for the first time in quite some time

5 A. Right.

6 Q. Would it be your view that medical marijuana would
7 have been helpful under those circumstances?

8 A. Yeah, I'm convinced of that. That would have been
9 ... You know, as long as he, again, he wasn't ... I would have
10 told him if I had seen him to, like I said, get off the smoke,
11 get onto the more stable, slower, lower doses and stay there, I
12 think he would have had less suicidal thinking and things like
13 that, he would have slept better and been a more effective
14 family man and in touch with his emotions better and so on.

15 Q. Doctor, I just want to switch topics slightly now and
16 you've already discussed Marijuana For Trauma and Fabian Henry,
17 who I understand now is, the organization is called Veterans For
18 Healing. I don't know if you're aware of that organization,
19 what they do, very well. Are you aware of the change in name?

20 **(12:06:05)**

21 A. Veterans For Healing? Yeah, that was the name we
22 gave them many years ago.

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **Q.** Okay.

2 **A.** I think they took it and ran with it, but ... Is that
3 what they're called now, is it?

4 **Q.** Yes.

5 **A.** I guess, I mean I think it was sold a few times and
6 split and so I didn't keep track of all that stuff, though.

7 **Q.** That's fine. The corporate model of all of this, if
8 I can put it that way, or the organizational model of that side
9 of things seems to be involved in, I don't know if you have any
10 comments on that, from your position, Doctor, if you've observed
11 that and how you see it going and if it's working for veterans
12 or not under the current model. Is that something you've given
13 thought to or is that outside of your realm?

14 **A.** I don't know what the model is now but, I mean, our
15 original dream together was to develop programs where people
16 would come and be able to connect with other like-minded or
17 like-traumaed individuals, you know, veterans. So that was a
18 common dream. I assume and hope that that's still alive and
19 well and what they plan.

20 **Q.** Now I know you've discussed, you know, the
21 philosophical difference over, you know, smoke a whole bunch
22 versus the more managed and predictable dosages, as you've

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 outlined.

2 **A.** Yeah.

3 **Q.** But the other parts of it seem to be common, like,
4 things like the art therapy, yoga, music therapy, peer support
5 groups, social events, those sorts of things, that you've
6 incorporated into your practice, is that ...

7 **A.** I think we probably came up with the original ideas
8 and they ran with that. That's fine. And there needs to be a
9 hundred of those centers around the country so ...

10 **Q.** Well, that's what I was going to ask, Doctor, do you
11 know a way that that idea could be scaled up to, in veterans'
12 communities across the country or around the region, at least?

13 **A.** The more centers that people have options to go to,
14 the better it is. You know, so even if it's just go and pat a
15 horse today, get them out of the house, get them involved with
16 nature and other people to develop relationships. If they find
17 a sense of belonging somewhere in the middle of this process,
18 you've achieved something big, because belonging is one of their
19 biggest problems. They don't feel like they belong to our
20 society, their families have often lost their identity, as well,
21 or ... You know, so to connect with other soldiers is a common
22 theme, for sure.

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 **Q.** Perhaps this is the new Legion, the new version of
2 the Legion? Would you see it ...

3 **A.** Yeah. The older version's kind of ...

4 **Q.** Is that where the younger veterans would be
5 gravitating towards this kind of an experience?

6 **A.** Yeah, I agree. And I think a combination ... The
7 older version had some really good things, and some bad things,
8 I think, and the newer version would a place, a center, centers,
9 for as many as possible, centers where people can spend some
10 time, get out of the house and reconnect with something. Yeah.

11 **Q.** Are other doctors in your circle, in your experience,
12 becoming more accepting or trying to become involved in this
13 world in the kind of practice that you've created?

14 **A.** I don't see it too much right yet and, you know,
15 marijuana, even though it's more acceptable at this point, is
16 still, a lot of people will hesitate to be involved with that
17 whole thing. They think they're being looked at or chastised by
18 their peers and so on. And then even if you were to eliminate
19 the marijuana aspect and just say, Okay, let's develop a social
20 place for veterans, in general. And I would point out that the
21 civilian population is rampantly full of PTSD - undiagnosed, a
22 lot of it - they would also benefit from the same programs. But

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 if DVA is spending their money, they want to focus on the vets,
2 of course.

3 Q. Sure.

4 A. But depending on who's doing what for who there but
5 these social centers are important for our survival.

6 Q. Doctor, you gave us ... We've seen Corporal Desmond's
7 medical records and some notes from different hospital visits,
8 and they paint a picture often of somebody struggling with
9 depression, you know, had a flat affect and that sort of
10 presentation. And you gave us a glimpse yesterday and today of
11 a different Corporal Desmond, somebody who was smiling, joking,
12 being social.

13 A. Yeah.

14 Q. I wonder if you can expand on that a little bit for
15 us and just tell us a little bit about the Corporal Desmond that
16 you saw in these social centers and situations.

17 A. Yeah. Well, depression can be a long-term thing
18 that's pretty consistent or it can be very based on what
19 happened today already. I saw him as much less depressed from
20 early visit to the second visit even, and then socially, as he
21 interacted, you know, he's a guy that could laugh, he joked, he
22 would even laugh at himself which, to my mind, was a mindfulness

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 level that also added to his stability and so on. But he had a
2 sense of humour that was outstanding. Everybody said, Man, this
3 guy is fun. And now he may have had a public persona that he
4 didn't show, you know, when he was alone. I think he did
5 appreciate the contact with other people.

6 When's he alone he could be a whole different thing, but I
7 don't know that and neither does anyone else, I guess, except
8 maybe his family. Depression can fluctuate, you know, depending
9 on the circumstances; in other words, it's not a consistent
10 hundred percent time of the issue, it fluctuates. And even
11 sleep, if you get sleep you can wake up the next day saying,
12 Man, I got some sleep last night, I feel wonderful, and then as
13 your day goes on something bad happens, you're back into it.

14 When we talk to guys about their depression spells, they
15 describe them to last a few hours, a few days sometimes, and a
16 few weeks sometimes. So you know, the few hours is common - I
17 have depression that lasts two or three hours; when it comes, I
18 just withdraw, and then I'm okay the rest of the day. So it
19 can fluctuate that quickly or it can last for days or weeks or
20 some people just are always depressed. So I would describe him
21 as fitting into the would last for a few hours, maybe a day or
22 two if he wasn't sleeping well, he'd be in that kind of

DR. PAUL SMITH, Cross-Examination by Mr. Rodgers

1 category.

2 Q. This and these interactions would give him a positive
3 few hours, at least, or something to look forward to?

4 A. Right. He seemed to respond to public contact very
5 nicely and he had a social network. If you mentioned his name,
6 everybody said, Oh yeah, I know Lionel, and they also, in
7 retrospect, have gone on to say he's the last one that I would
8 expect to have been in this situation. So, you know, and this
9 is from the mouths of many of vets that I know. It's, like,
10 very inconsistent with who they thought he was, I guess, or at
11 least what they saw of him in their public contacts with him.

12 Q. Dr. Smith, thank you very much. Those are my
13 questions.

14 A. Okay.

15 **THE COURT:** Mr. Hayne?

16 **MR. HAYNE:** I have no questions, Your Honour.

17 **MR. RUSSELL:** I just have one brief question, Your
18 Honour, on follow-up.

19 **THE COURT:** Go ahead.

20

21

22

DR. PAUL SMITH, Re-Direct Examination by Mr. Russell**RE-DIRECT EXAMINATION**

1
2 (12:14:27)

3 **MR. RUSSELL:** Doctor, we've looked briefly at Exhibit 32.
4 I just want to clarify a name with you. My friend, Ms. Miller,
5 had referred you to a bit of this report and referenced follow-
6 up appointments. So this is when Lionel Desmond had interacted
7 with Sergeant Maccallum on November 19th, 2016. In the second
8 paragraph it indicates, "He advised that he has stopped taking
9 certain meds." Do you see that line? I guess if we scroll down
10 a little.

11 **A.** After 17:00?

12 **Q.** Yes. If we scroll down just a little bit more.

13 **A.** Yes.

14 **Q.** So the third paragraph: "He advised that he has
15 stopped taking certain meds after consulting his doctors, Dr.
16 Paul Smith and Dr. Matthews in New Brunswick." Do you know who
17 a Dr. Matthews is?

18 **A.** I've asked that a hundred times, I don't know.

19 **Q.** You don't know who that is?

20 **A.** No.

21 **Q.** Okay.

22 **A.** I assumed it was OSI maybe.

DR. PAUL SMITH, Examination by the Court

1 Present Illness", RLS date 26 June 2015, I take it that's his
2 release date. Read a little further down it says: "Here today
3 to advise he is now using medical marijuana prescribed and
4 smoking about four grams a day." It suggests that he had a
5 prescription, presumably that he told somebody that he had a
6 prescription. Were you aware of any prescriptions in advance of
7 the prescriptions you wrote him?

8 **A.** No.

9 **Q.** No? Read further down on that document under "Plan",
10 the second item: "Safety sensitive chit provided in addition
11 AR/MELs. MELs, I think, are limitations with regard to
12 employment, I think the medical employment limitations, I think
13 that's what it stands for. Have a look, if we could go to
14 Exhibit 150 then, please.

15 **EXHIBIT P-000150 - MEDICAL REPORT**

16 **Q.** Under "Occupational MELs" it says: "Unable to work in
17 safety sensitive positions." And then there's an example and
18 one of the examples is with live weapons or ammunition. "And
19 also unfit to drive DND vehicles, unable to remain on alert
20 vigilant and unable to supervise personnel." So here's my
21 question. So this is in January 2014, I think he's still in his
22 regular unit at that point in time because the ...

DR. PAUL SMITH, Examination by the Court

1 **A.** Before JPSU.

2 **Q.** The document, just give me a second here. The
3 recommendation for the JPSU unit ... no, perhaps I'm wrong. So
4 that was written January 14, 2015. I think Exhibit 146, which
5 appears to be the career manager's analysis and the
6 recommendation for a transfer to the JPSU, that's dated April
7 30, 2014.

8 **EXHIBIT P-000146 - REPORT - CAREER MANAGER'S ANALYSIS AND**
9 **RECOMMENDATION**

10 **Q.** So that shift, then, would have been after he
11 presumably got transferred to the JPSU?

12 **A.** In 2014, yeah.

13 **Q.** 2014. So while we have that up, we can have a look.
14 So this is the report, if you read through it, there's a
15 recommendation with regard to the transfer and the documents
16 contained in that exhibit are basically sign-offs by I think all
17 the individuals who need to sign off on it. But if you look at
18 the body of the CM's comment, among other things, partway
19 through, maybe it's about six lines or thereabouts down, it
20 says: "The member needs specialist appointments more frequent
21 than six months. He is unable to handle/effectively operate his
22 personal weapon and is unable to remain alert or vigilant."

DR. PAUL SMITH, Examination by the Court

1 Those appear to me to be observations made before he's in the
2 unit but he's being recommended for the unit. So the way I read
3 it, it doesn't strike me as them being conditions imposed
4 because he's in the unit, they're observations because of his
5 conduct that is part of the recommendation to go to the unit?

6 **A.** He may have been on marijuana from another source and
7 they knew it and didn't feel he was fit for duty as a result of
8 that too and that's prior to my information base so it looks
9 like he might have been into on his own for some time.

10 **Q.** If we look at ... so appreciating that that's the
11 recommendation to the Joint Personnel Support Unit and keeping
12 in mind that that's an April 30th date. If we have a look at
13 document 144, please.

14 **EXHIBIT P-000144 - POST-TRAUMATIC STRESS DISORDER (PTSD),**
15 **DEPRESSION, SUICIDAL, DATED 2013-10-29**

16 **A.** I guess the other comment I should make is some of the
17 medications that he may have been on still, risperidone
18 especially would make you really sleepy all the time.

19 **Q.** I was going to get that and it may very well be that
20 some of these observations were as a result of the medications
21 that he was taking?

22 **A.** Yeah, and we don't know when he stopped it and that

DR. PAUL SMITH, Examination by the Court

1 didn't come out in the information so it's possible he had a lot
2 of side effects plus maybe already trying some marijuana too.

3 **Q.** This document, its date is October 29, 2013 so this is
4 well in advance of when he saw anybody and under "Assessment".
5 So the assessment is post-traumatic stress disorder, depression
6 and suicidal risk and the first item in the plan is: "The member
7 is taking his WPNS (I translate as weapons) to a friend who
8 lives in Tracy to keep them." And further in the plan it says:
9 "No live ammunition or CF driving added to chit/RTW." Again,
10 that may be as a result of the medications that he's taking or
11 some other ...

12 **A.** I think at this point he probably was on medication
13 for sure.

14 **Q.** Okay.

15 **A.** So are you thinking the medications were possibly
16 causing the suicidal thing, is that what you're ...

17 **Q.** Well, not so much as just to make the observation that
18 even back in October of 2013 there was a notation on his ... if
19 you want to have a look at the chit. Let's go over to have a
20 look at document 145.

21 **EXHIBIT P-000145 - CFHS CHIT**

22 **Q.** So that's the same date and it's noted as CFHS Chit

DR. PAUL SMITH, Examination by the Court

1 and it's signed off by the same person, same date, and that chit
2 talks about unable to safely handle or effectively operate a
3 personal weapon. The point being, I guess, is that as far back
4 as October 2013 there was a notation within his service
5 parameters that he was not to be in possession of firearms.

6 **A.** Right.

7 **Q.** Whether it was as a result of the medications he was
8 taking or as a result of just whatever ...

9 **A.** There might not have been a JPSU rubber stamp, it
10 might have been that he had other issues.

11 **Q.** That's right. My point being that I appreciate your
12 observation that when they come through JPSU, you see that as a
13 rubber stamp and you see that list of items but it seems well
14 before that that there was that notation on his CFHS chit, and
15 I'm sure we'll learn about chits a little bit more extensively
16 later, but even back then there was a limitation on his ability
17 to handle and effectively operate personal weapons.

18 **A.** But he was diagnosed with PTSD in 2011. He would have
19 been on medications probably from then on so we assume at this
20 point he was on medications and the ones he was on certainly
21 would include side effects, you know, as grogginess and
22 potentially increased suicidal thinking like he mentioned.

DR. PAUL SMITH, Examination by the Court

1 **Q.** I guess my interest in it is this. Is that, you know,
2 if he's being seen by health care personnel and they see a need
3 for him to be moving his personal weapons to another location
4 out of his own hands and then within the military structure, he
5 is not to be possessing firearms at all for whatever reason
6 whether it's medication or mental health reasons, some might ask
7 well, would anyone in the military ever see a need to share that
8 information with the Chief Firearms Officer in New Brunswick or
9 make some exploration to decide whether or not he has personal
10 weapons outside the military when within the military he's not
11 to be handling them. It's a question.

12 **A.** Yeah.

13 **Q.** But I just wanted to point out that it appears that at
14 least long before his appointment or his transition to the JPSU
15 that these CFHS chits were noting that limitation.

16 **A.** Yeah. Good point.

17 **Q.** But I appreciate your opinion that once you're in the
18 JPSU, that limitation, you would see it often?

19 **A.** Yes, that's standard.

20 **Q.** That would be standard at least at that point?

21 **A.** This is before the standard rubber stamp.

22 **Q.** Before the standard rubber stamp?

DISCUSSION

1 **A.** Yeah.

2 **THE COURT:** All right, I think that's all I was going to
3 ask. Any questions following that, Counsel? No.

4 Dr. Smith, you've been here for a couple days, I very much
5 appreciate your time and the information you provided to the
6 Inquiry. Thank you very much, you're free to go.

7 **A.** My privilege to be a part of this and hopefully
8 something comes from this whole thing.

9 **THE COURT:** Thank you.

10 **WITNESS WITHDREW (12:28 HRS)**

11 **THE COURT:** I think we have two witnesses for this
12 afternoon?

13 **MR. MURRAY:** Yes, Your Honour, Nicole Mann from the Naomi
14 Society and a witness from Leaves & Limbs.

15 **THE COURT:** And the expectation is we'll be able to deal
16 with both the witnesses this afternoon?

17 **MR. MURRAY:** Hopefully.

18 **THE COURT:** So we'll adjourn until 1:30, thank you.

19 **COURT RECESSED (12:19 HRS)**

20 **COURT RESUMED (13:33 HRS)**

21 **THE COURT:** Mr. Murray?

22 **MR. MURRAY:** Thank you, Your Honour, calling Nicole Mann.

1 **NICOLE MANN, sworn, testified:**

2

3 **THE COURT:** Good afternoon, Ms. Mann.

4 **A.** Good afternoon.

5 **THE COURT:** Ms. Mann, during the course of the afternoon
6 you may be shown some documents. The documents will come up on
7 your monitor and, in addition, there will be a paper copy in one
8 of the exhibit binders that you might be referred to if you
9 prefer one over the other. Just help yourself.

10 **A.** Thank you.

11 **THE COURT:** Thank you. Mr. Murray?

12

13 **DIRECT EXAMINATION**

14

15 **MR. MURRAY:** Thank you, Your Honour.

16 Can you tell the Inquiry your name, please?

17 **A.** Nicole Mann.

18 **Q.** And how do you spell your last name?

19 **A.** M-A-N-N.

20 **Q.** All right, and how are you employed, Ms. Mann?

21 **A.** I am the executive director at the Naomi Society in
22 Antigonish.

NICOLE MANN, Direct Examination

1 **Q.** All right, and can you tell the Inquiry, first of all,
2 how long have you been employed with the Naomi Society?

3 **A.** Since 2010. I started as a support worker and have
4 been the executive director since 2017.

5 **Q.** All right, and the Naomi Society. Perhaps you can
6 help us. What exactly is the Naomi Society and what work do you
7 do?

8 **A.** Naomi Society is a not-for-profit organization. We're
9 funded by the Department of Community Services through the Nova
10 Scotia Status of Women. We're a member of the Transition House
11 Association of Nova Scotia and provide services primarily to
12 women and their children who have experienced domestic or
13 intimate partner violence.

14 **Q.** Okay, so intimate partner violence, or domestic, in
15 the home type of violence?

16 **A.** Yes.

17 **Q.** Or in a relationship?

18 **A.** Or relationships, yeah.

19 **Q.** All right. And I understand that the Naomi Society
20 provides a number of different types of supports or services to
21 people who find themselves in those circumstances?

22 **A.** Yes.

NICOLE MANN, Direct Examination

1 **Q.** Can you give us a sense of what type of work you do
2 with victims of intimate partner violence?

3 **A.** Sure. We do one-on-one counselling, support work in
4 the office. We take crisis calls at the office. We do advocacy
5 and support work. We go to court with people. We go to legal
6 appointments. We liaise with the Department of Community
7 Services Child Protection. Essentially, we meet with the woman,
8 find out where she is and what her needs are and we help support
9 her through whatever process that is.

10 **Q.** What type of counselling would the Naomi Society be
11 able to provide?

12 **A.** So we do one-on-one support in the office with regard
13 to healthy relationships, domestic violence, the cycle of
14 violence, effects of violence on children, those types of
15 things.

16 **Q.** All right.

17 **A.** Yeah, and any support that they might need. So for
18 example, peace bonds or emergency protection orders, any of that
19 kind of thing. We would help with that support or guidance
20 throughout that process.

21 **Q.** And your employees, they do or can do court
22 accompaniment with individuals who have to go to either

NICOLE MANN, Direct Examination

1 Provincial Court or to Family Court?

2 **A.** Yes.

3 **Q.** And also you said, I think, to appointments with
4 lawyers?

5 **A.** Yes.

6 **Q.** Okay.

7 **A.** Yeah.

8 **Q.** The area that I guess you provide service to. You're
9 in Antigonish. What area would you provide service to?

10 **A.** So we provide services to Antigonish and Guysborough
11 Counties.

12 **Q.** Okay.

13 **A.** Mm-hmm.

14 **Q.** So your office is in Antigonish. Do you meet with
15 clients in Guysborough? Because we do have a geographic
16 distance here. How does that work?

17 **A.** We do. We have an outreach worker and she meets with
18 women and children in Guysborough County. So, for example, she
19 goes into the schools and meets with some children, and if she's
20 meeting with a woman in Guysborough typically she might do that
21 at the hospital or a local organization where she makes a
22 connection with and does that. So she's met with people at the

NICOLE MANN, Direct Examination

1 detachment or in town. People from Guysborough also come to
2 Antigonish often to shop or do other things. So they may meet
3 in our office as well.

4 Q. Okay. I suppose it depends on where the person feels
5 comfortable meeting?

6 A. Exactly.

7 Q. Okay, so you would meet people if they needed it or
8 wanted in the Village of Guysborough? Do you go to other
9 communities in Guysborough County?

10 A. Yes. Lori goes to Canso and Sherbrooke and
11 Guysborough. She has gone to some outreach communities, but
12 it's usually in special circumstances and we'd make arrangements
13 for that with a local organization if that was the case.

14 And perhaps to do presentations. We also do workshops and
15 presentations as well. So we do a lot of prevention stuff.

16 Q. Okay, and the Lori you referred to, that's Lori
17 Castle?

18 A. Yes.

19 Q. Okay, and I think one of the previous witnesses,
20 Constable MacDonald, may have mentioned her name. He's
21 stationed in this area.

22 A. Yes.

NICOLE MANN, Direct Examination

1 Q. So he would have contact with her, I assume.

2 A. Yes.

3 Q. Right. The Naomi Society has been in place, I think,
4 in Antigonish for some period of time? I think ...

5 A. Yes.

6 Q. ... since the '80s? Am I correct about that?

7 A. Yes, yeah, over 30 years, yeah.

8 Q. Okay. So you mentioned you have an outreach worker -
9 that would be Lori Castle - who comes to Guysborough. How many
10 employees in total work at the Naomi Society?

11 A. We have three. So myself as the executive director,
12 and we're funded for one and a half other positions. So we have
13 Deidre Debodt as a support worker, and Lori Castle, who does
14 work full time.

15 Q. Okay, so she's funded half but ...

16 A. Yes.

17 Q. ... works for free the other half of the time?

18 A. Yeah. Yeah.

19 Q. Okay.

20 A. The Board, it's a not-for-profit, yeah.

21 Q. Yeah.

22 A. We fundraise for the rest.

NICOLE MANN, Direct Examination

1 **Q.** Okay. Now you said you're funded by Department of
2 Community Services through the Nova Scotia ...

3 **A.** Advisory Council.

4 **Q.** Advisory Council on the Status of Women.

5 **A.** Yes.

6 **Q.** And you're also part of the Transition House
7 Association?

8 **A.** Yes.

9 **Q.** Okay, so Naomi does not have a transition house
10 itself. Correct?

11 **A.** Correct.

12 **Q.** There are transition houses in the neighbouring
13 communities, I think on both sides, are there?

14 **A.** There is. We have Leaside Transition House in Port
15 Hawkesbury and Tearmann Transition House in New Glasgow.

16 **Q.** So if clients of Naomi require a transition house for
17 a period of time would they typically go to one or the other of
18 those transition houses?

19 **A.** Yes. Typically they would go to one of the closer
20 transition houses, but if someone was originally from Sydney,
21 then we would make arrangements for them to get there if we had
22 to. But typically women from this area prefer to be closer to

NICOLE MANN, Direct Examination

1 this area because they may be working or, you know, their
2 children are in school. So most of the time they would go to
3 one of the neighbouring transition houses.

4 Q. Right. Now when a client goes to a transition house
5 there's obviously a limited amount of time that they're allowed
6 to stay there. Is that correct?

7 A. That's correct, yeah.

8 Q. All right, and if I understand - and you can help us
9 with this - Naomi does do work in the area of second-stage
10 housing, do you?

11 A. We do. We own a house in town that has two units, two
12 three-bedroom units. They're independent living.

13 Q. Right.

14 A. So people can live in those units for up to one year
15 and then we help during that time to help them transition to an
16 apartment or home or ...

17 Q. Okay, so the second-stage housing is available then,
18 potentially for up to a year for clients who need it?

19 A. It is, yes.

20 Q. All right.

21 A. It's often not vacant. So unfortunately.

22 Q. As one might expect.

NICOLE MANN, Direct Examination

1 **A.** Yeah.

2 **Q.** Right, so in terms of how clients come to you, I
3 assume there are a variety of ... I guess maybe the term is
4 points of entry to your services?

5 **A.** Mm-hmm.

6 **Q.** How do clients typically come to you?

7 **A.** It really varies. People can self-refer. If we're
8 out doing a presentation oftentimes people may recognize some of
9 the warning signs in their own relationship, or you know,
10 family, and they may come in as a self-referral. We get
11 referrals from the RCMP, of course. We work very closely with
12 the local detachments. In fact, we partner on some of our
13 resources so that they are distributed when they're going to a
14 domestic violence call. We work closely with Child Protection.

15 **(13:43:11)**

16 So if somehow Child Protection is intervening in a
17 situation that they would often refer the woman and potentially
18 her children, depending on the situation, to us. And we get
19 referrals from other community agencies as well.

20 **Q.** All right. Such as?

21 **A.** The food bank, the Antigonish Women's Resource Centre.
22 Just, you know, other organizations that we may work with in

NICOLE MANN, Direct Examination

1 town.

2 Q. All right. Are there crisis lines for individuals who
3 may need domestic violence assistance, I guess?

4 A. Yes.

5 Q. What would those be?

6 A. Yeah, so if anyone calls our line they have the option
7 to press a number that will connect them to a 24-hour line and
8 it would be through Tearmann Transition House out of New
9 Glasgow. There's also a line for the province that people can
10 call at any time 24 hours.

11 Q. Okay.

12 A. It's connected to the transition houses as well.

13 Q. All right, so similar sorts of ways to connect people
14 with a transition house?

15 A. Yes.

16 Q. Okay.

17 A. Yes, and each of the individual transition houses
18 would have their own line but there is one for the province that
19 will connect to any.

20 Q. All right. So the types of counselling that Naomi
21 would provide are typically to the victims of intimate partner
22 violence, most often the female partner.

NICOLE MANN, Direct Examination

1 **A.** Yes.

2 **Q.** Although I assume not always. But ...

3 **A.** Yes.

4 **Q.** ... your counselling would be for women.

5 **A.** Yes.

6 **Q.** Is there counselling for men who find themselves in
7 domestic violence situations either as perpetrator or as ...

8 **A.** Mm-hmm.

9 **Q.** ... victim?

10 **A.** Yeah, so if we had a male victim, obviously we work
11 with boys. Lori would do that in a school and we would do that
12 in our office. If it's an adult male we have provided services
13 on the phone and we also have gone to other organizations to
14 provide some one-on-one support. We don't do that in our office
15 but we will go to another organization.

16 So for example, if I had a call from Mental Health and
17 Addictions and they had a victim of domestic violence and they
18 wanted us to go, then we would offer that service in the short
19 term and then we would likely provide a referral to Family
20 Services of Eastern Nova Scotia who have therapists, and they
21 have the men's health centre in Antigonish.

22 And then for perpetrators of domestic violence there is a

NICOLE MANN, Direct Examination

1 few programs in Antigonish run through Family Service of Eastern
2 Nova Scotia as well, and then the New Leaf Program out of New
3 Glasgow.

4 **Q.** So Family Services of Eastern Nova Scotia, which is
5 located in Antigonish or has an office in Antigonish?

6 **A.** Yes.

7 **Q.** Can provide services to men who require those services
8 and they also, you said, operate one of the programs for
9 perpetrators. That's Respectful Relationships, is it?

10 **A.** Correct.

11 **Q.** All right.

12 **A.** Yes, yeah, and I don't want to speak too much to what
13 they do but ...

14 **Q.** Right.

15 **A.** ... they have therapists that would provide that
16 service.

17 **Q.** Right. Okay. And the New Leaf Program, that one is
18 in Pictou County. Correct?

19 **A.** It is, yes, and that's a group program.

20 **Q.** Right. Okay. All right. So you said you became the
21 executive director of Naomi in 2017, I think?

22 **A.** Yes.

NICOLE MANN, Direct Examination

1 Q. Or thereabouts?

2 A. Yes.

3 Q. All right. In any event, you were certainly employed
4 with Naomi in 2017?

5 A. Yes.

6 Q. All right. We understand, and obviously the reason
7 that you're here, is that you believe you had some involvement
8 with the Desmond family in January of 2017?

9 A. Yes.

10 Q. Prior to January 3rd, 2017, which is the day we're
11 going to speak about here, did you have any contact or
12 communication with the Desmond family? Did you know either
13 Lionel Desmond or Shanna Desmond?

14 A. Not to my knowledge. What I mean by that is
15 potentially an anonymous call came in, but not to my knowledge.

16 Q. All right. And you gave a statement to the police on
17 January 4th, 2017 and that was in relation to something that
18 occurred on January 3rd, 2017.

19 A. That's correct, yes.

20 Q. All right. And so just before I ask you, I believe
21 you took a call on that day. So let me ask you more generally.
22 You said that there is a crisis line that will connect

NICOLE MANN, Direct Examination

1 individuals to Tearmann if it's, I guess, after hours? Is that
2 ...

3 **A.** Yes, or even if we didn't answer during the day.

4 **Q.** Okay.

5 **A.** So potentially some staff could be out at a meeting.

6 **Q.** Right. If a person calls, though, the offices of
7 Naomi Society in Antigonish, typically what will happen when
8 they call? Is there somebody who answers or is it connected to
9 other individuals?

10 **A.** One of the staff would answer. There's an automated
11 service. You can press number 1 to speak with me, for example,
12 number 2 to speak with another worker, and then option number 4
13 would be to speak with anyone. So it would just ring through to
14 anyone.

15 **Q.** Okay. And do you get calls from individuals who are
16 just seeking information?

17 **A.** Oh, yes.

18 **Q.** And how often would that happen?

19 **A.** Daily.

20 **Q.** Okay. So it's a regular occurrence?

21 **A.** Yes.

22 **Q.** All right. And in a general sense, what types of

NICOLE MANN, Direct Examination

1 questions would you get from individuals who are calling for
2 information?

3 **A.** It could really be anything. I mean typically when
4 they're calling us they may know what services we provide. So
5 they may be asking specific questions about domestic violence
6 and the court process, perhaps peace bonds, perhaps Family
7 Court, Provincial Court. Could be about giving a statement. It
8 could be about anything, really.

9 If they're not familiar with our services sometimes we just
10 get information calls about what it is that we do. It could be
11 someone looking for a food voucher, for example, or grocery
12 items. Or you know, if people aren't really aware of what we're
13 doing. We get all kinds of different calls but ...

14 **Q.** All right. And if calls come to you that really
15 aren't the services you provide you would put them on to the
16 service that are appropriate for them?

17 **A.** Exactly.

18 **Q.** All right. And so when someone calls for information
19 do you typically record that information? Do you take notes?
20 What do you do as you're talking to the individual?

21 **A.** So we have a contact sheet - we call it a one-time
22 contact sheet - that we typically will either bring up on our

NICOLE MANN, Direct Examination

1 screen on a computer and fill that in as we're talking. Or we
2 would, you know, mark some notes down on a piece of paper and
3 then transcribe it onto the one-time contact sheet on the
4 computer.

5 Q. Okay, and so that's the sheet that, I guess, prompts
6 you to the information that you might want to record? Is that
7 ...

8 A. Yes.

9 Q. All right. All right, so can we bring up Exhibit 78?
10 We'll go to page 2.

11 **EXHIBIT P-000078 - NICOLE MANN'S REPORT re JANUARY 3, 2017 CALL**
12 **FROM SHANNA DESMOND**

13 So Exhibit 78, and this is page 2. First of all, do you
14 recognize what this document is? We can zoom in a little better
15 at the top ...

16 A. Yeah.

17 Q. ... maybe.

18 A. Yeah, I recognize it. It would have been the one-time
19 contact sheet at that time.

20 Q. Okay, and there's a paper copy of it if you want to
21 follow. It would be in binder 1 if you want. You don't have to
22 but if you like to have paper you can.

NICOLE MANN, Direct Examination

1 **A.** Okay.

2 **Q.** Is this the form that was typically in use in January
3 of 2017?

4 **A.** It was.

5 **Q.** Okay. So you said you would normally take notes.
6 Handwritten notes?

7 **A.** Potentially, yes.

8 **Q.** Okay. Are you a person who types directly into the
9 computer or do you ...

10 **A.** It depends on what else is on my desk at the time.

11 **Q.** Right.

12 **A.** Yeah.

13 **Q.** Okay.

14 **A.** Yeah.

15 **Q.** But if you did take handwritten notes you would
16 transfer that information into the one-time contact sheet?

17 **A.** Yes.

18 **Q.** Okay. And if you did take handwritten notes from a
19 call or a general information type of call ...

20 **A.** Mm-hmm.

21 **Q.** ... would you keep those notes or would you ...

22 **A.** Typically no.

NICOLE MANN, Direct Examination

1 **Q.** Okay.

2 **A.** No. We would transcribe them onto the sheet and
3 destroy the others.

4 **Q.** All right. So if somebody calls for information and
5 you complete a one-time or use the one-time contact form do you
6 open a file usually?

7 **A.** For a one-time contact, no. We have a one-time
8 contact file. So this sheet that you're looking at would have
9 gone directly into a file called one-time contacts. It would
10 have that information in the event that someone called back and
11 said, you know, I spoke to Nicole on such and such a date, she
12 provided me with this information. Then we can pull that and
13 have that as reference and then the file would be opened on the
14 second contact.

15 **Q.** Right.

16 **A.** So typically on the first contact, no.

17 **Q.** Okay. And you may or may not ask or be provided a
18 name or other identifying information when somebody calls for
19 information?

20 **(13:53:01)**

21 **A.** That's right, yeah.

22 **Q.** Okay.

NICOLE MANN, Direct Examination

1 **A.** We typically don't ask for a name.

2 **Q.** Okay.

3 **A.** If they provide a name, then we will obviously record
4 it. But if they don't we don't record it.

5 **Q.** All right. And the document that we're looking at,
6 Exhibit 78, is a one-time contact sheet that you completed on
7 January 3rd, 2017?

8 **A.** Correct.

9 **Q.** And it was completed by you?

10 **A.** Yes.

11 **Q.** All right. So I'm going to ask you what you remember,
12 having reviewed the one-time contact sheet. I appreciate that
13 this was a brief call three years ago.

14 **A.** Mm-hmm.

15 **Q.** And so your memory of it will be primarily from
16 reviewing your notes. I understand that. But I'm going to ask
17 you what you remember of this call. So this was a call that
18 came to the office on January 3rd, 2017 and you have time of
19 visit recorded. That would also apply to the time of call,
20 would it?

21 **A.** Correct.

22 **Q.** Okay. So that would be 3 o'clock p.m.?

NICOLE MANN, Direct Examination

1 **A.** Yes.

2 **Q.** The time that you record on the sheet, is that the
3 time that the person initially calls?

4 **A.** Yes.

5 **Q.** Okay, so if you're talking to somebody for an hour it
6 would still be the time that they initially called?

7 **A.** Yes.

8 **Q.** All right. File number in this sheet is not recorded.
9 You hadn't opened a file?

10 **A.** That's right.

11 **Q.** All right, and the name of the caller was not given to
12 you, I take it.

13 **A.** That's right.

14 **Q.** Okay. So this, I guess, initially, was it an unusual
15 call or was it one like many other calls that you receive?

16 **A.** It was one like many other calls.

17 **Q.** All right. And, again, you said if the individual who
18 calls provides information like a name or an address or
19 something like that you will record it but you don't kind of go
20 asking for it.

21 **A.** That's right.

22 **Q.** And I assume that's because you don't want a person to

NICOLE MANN, Direct Examination

1 feel uncomfortable or ...

2 **A.** Yes, yeah. We want people to reach out and access
3 services. So we typically let them lead the conversation and
4 then provide the resources around what they're asking.

5 **Q.** All right. In this particular case, there was some
6 identifying information, I understand, from the call display,
7 was there?

8 **A.** That's correct, yes.

9 **Q.** And what was the identifying information?

10 **A.** Shanna Desmond was on the call display and her phone
11 number was there as well.

12 **Q.** Okay, and if we go just to page 1. It's the fax
13 coversheet that went along with this. There's a number recorded
14 there in the paragraph, 902-234-2585?

15 **A.** I see that.

16 **Q.** Where would that number have come from?

17 **A.** That would have come from the call display on the
18 phone.

19 **Q.** Okay.

20 **A.** In my office.

21 **Q.** That's not a number that you recorded on the form but
22 I understand you were able to retrieve it subsequently, were

NICOLE MANN, Direct Examination

1 you?

2 **A.** Yes, the next day.

3 **Q.** Okay, so in a case such as this where information
4 comes up on call display, like a person's name, you still don't
5 record it on the form?

6 **A.** We don't.

7 **Q.** And why is that?

8 **A.** Because the person who is calling is calling
9 anonymously. We do not have call display anymore. But when
10 someone is calling us the intention is that it's an anonymous
11 call unless they identify themselves so ...

12 **Q.** Okay.

13 **A.** ... if they're not identifying themselves we're not
14 writing it down.

15 **Q.** Okay, and you've actually gotten rid of your call
16 display? Is that what you said?

17 **A.** We have.

18 **Q.** For that reason?

19 **A.** Yes.

20 **Q.** Okay. So if we can go back to the second page there.
21 And just go down to the section that says "Description of
22 Present Situation". So do you recall what the individual with

NICOLE MANN, Direct Examination

1 whom you spoke ... I take it, it was a woman, was it?

2 **A.** Yes.

3 **Q.** All right. Can you describe as best you can recall,
4 or what you recall from looking at the notes, of the nature of
5 the call was, what she was asking or telling you or ...

6 **A.** Sure, yeah. I've reviewed my police statement and
7 that's essentially what I'm basing my testimony on because I do
8 not have recollection of the phone call. But she called
9 inquiring about a peace bond and what the process was for
10 applying for a peace bond. So that was her initial question
11 when she called.

12 **Q.** Okay.

13 **A.** So I would have provided her with that information.
14 Would you like me to go into detail about that?

15 **Q.** Sure.

16 **A.** Yeah.

17 **Q.** So questions about peace bonds, I assume, are
18 something that you get ...

19 **A.** Yes.

20 **Q.** ... on a regular basis, do you?

21 **A.** Yes. It's on our panel card, our rack card that we
22 provide to provide as one of the resources that we offer. So we

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1 can explain the process, essentially. So I would have gone
2 through with the caller what that would look like. So basically
3 that she would, you know, pick up an application from the
4 justice centre, fill that out, what that would look like,
5 essentially that a court date would be set, and go through all
6 of that with her on the phone.

7 **Q.** Okay, so the information that you normally give to
8 individuals who ask about peace bonds; that they require a form
9 ...

10 **A.** Yes.

11 **Q.** ... in court. What else do you tell them?

12 **A.** So we would go through, yeah, just basically from
13 start to finish what potentially it could look like. So from
14 filling out the application to filing the paperwork at the
15 justice centre to the person being named in the peace bond
16 application being served with that. We would talk about what
17 that might look like in terms of safety when that happens. So
18 anything that's written in the peace bond the person is going to
19 see and be able to read and there's going to be a court date,
20 and the two people would have to appear at that point. Somebody
21 would have the opportunity to either enter into the peace bond
22 or to, you know, get some support from a lawyer, which then

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1 might require another date.

2 We talked about getting legal advice and what that might
3 look like. So I did note in my statement that I spoke to her
4 about Legal Aid and summary advice, which is offered at the
5 justice centre as well. So there was some dialogue around that
6 as well.

7 **Q.** Do you know or do you recall if she asked additional
8 questions about the peace bond process?

9 **A.** She did. From my notes, she referenced a ten-year-old
10 daughter and she asked if the daughter is someone that could be
11 named in the peace bond.

12 **Q.** Yes.

13 **A.** And so that led to a conversation about Family Court
14 and whether or not there was a Family Court order in place at
15 the time. So we had some dialogue around that. The answer was
16 no, there wasn't. If I recall correctly. And so then we had a
17 conversation about Family Court and what that might look like if
18 she was applying for Family Court.

19 **Q.** And did the person with whom you spoke seem to have
20 knowledge about, for example, the Family Court process or did it
21 seem to be that you were providing the information kind of fresh
22 to her?

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1 **A.** It seemed like I was providing the information. The
2 call strictly seemed to be an information call ...

3 **Q.** Right.

4 **A.** ... and, in fact, I think it was identified as that,
5 just gathering information about potential resources.

6 **Q.** And did she appear to have, though, any knowledge base
7 herself or was she fairly new in the process as best you could
8 tell?

9 **A.** As best I could tell, from my notes, it seemed like
10 she was just gathering information.

11 **Q.** Okay. And what information do you typically give to a
12 person such as this caller about the Family Court process?

13 **A.** So similar information. So about how an application
14 would be made if she wanted to do that on her own at the justice
15 center or whether or not she would like to get a lawyer to
16 discuss that with. As well, it's noted that I provided her with
17 the Nova Scotia Family Law website to gather some information
18 about that so we would talk about that. Also talk about what
19 our services would be during that process so that we could, you
20 know, attend a meeting with her if she wanted to go meet with a
21 lawyer first or accompany her to court if it meant that.

22 **Q.** Do you recall as you were giving her that information

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1 if there was a lot of questions coming back at you or was it
2 just a lot of information being given to her?

3 **A.** I don't recall. Based on the notes it sounds like I
4 was providing information.

5 **Q.** Okay. The document that you created, the one-time
6 client form, has information that she provided you about her
7 partner or ex-partner?

8 **A.** Yes.

9 **Q.** And what did she say about the ex-partner?

10 **A.** It indicates in my notes that she noted that he was
11 ex-military and that he had some mental health issues and was
12 suffering from PTSD.

13 **(14:03:04)**

14 **Q.** Would you typically follow up on that or ask questions
15 about that or would you simply record that?

16 **A.** It depends on the way the conversation evolved. It
17 sounds like I did follow up on that and asked some questions
18 around safety particularly as it related to her daughter that
19 she had mentioned and had a conversation about whether or not
20 she felt safe or felt any risk, I guess, and her response to
21 that was no, she did not. We had a conversation about the RCMP
22 and whether or not there had been contact or she thought that

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1 there should be contact and her response was no, not at this
2 time.

3 **Q.** Okay. If a person in response to a question such as
4 do you feel safe or do you feel some risk, if that person
5 answered yes would you then engage in some safety planning with
6 them?

7 **A.** Yes, that's one of the, you know, major areas of our
8 focus is safety planning so we would definitely have a
9 conversation about that.

10 **Q.** If necessary, what kind of advice can you provide to a
11 client about safety planning, what are the types of factors that
12 you would have them thinking about?

13 **A.** Well, we would talk about first of all what, you know,
14 what prompted her to call today. You know, what was different
15 today than any other day and that conversation may have happened
16 in this call but I'm not sure. We would talk about her physical
17 space so where she's living, what that might look like, what
18 areas of the house are safer than others. We would talk about
19 weapons being in the house. We would talk about backing the car
20 in the driveway, having keys available, having a phone on, you
21 know, just things like that, checking in with family. So it
22 could be ... it depends on what their situation is, where they

NICOLE MANN, Direct Examination

1 are, where they're living, what that looks like, change in
2 routines.

3 **Q.** Okay. You made a note here: "She (meaning the caller)
4 noted she felt like she should have some concerns for her ten-
5 year-old daughter if he was unfit to remain in the military."
6 Would that have been the way that she would have phrased that?

7 **A.** Yes.

8 **Q.** Okay.

9 **A.** Yes, and after I read my statement as well and it
10 sounded to me like she was saying that people were saying that
11 she should have concerns and she was gathering resources in the
12 event that she had to follow through on anything.

13 **Q.** Okay. Almost as though she was getting the advice
14 that she should be more concerned?

15 **A.** Yes, than she was.

16 **Q.** Okay, all right. So your note down below says:
17 "Worker provided information on peace bond. As conversation
18 evolved, worker spoke about Family Court orders (which you've
19 discussed), Legal Aid, summary advice, and you provided the
20 nsfamilylaw.ca website." If you had talked about other issues,
21 other related issues like that, would you typically make a note
22 of those?

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1 **A.** Oh yes.

2 **Q.** Okay. "Worker talked about referrals in the event she
3 feels her child is unsafe with ex-partner." So what referrals
4 would those have been if she had felt some risk to her child?

5 **A.** So we would have had a conversation about child
6 protection and duty to report.

7 **Q.** Yes.

8 **A.** So basically we would have had a conversation about
9 whether or not she felt her child was at any risk of harm and if
10 the answer would have been yes or had she provided details to
11 that effect then we would have had a conversation, a more in-
12 depth conversation about what that looked like, and whether or
13 not she would have been comfortable providing me with her name
14 and following up on a referral. So what would have happened in
15 this situation or what typically would happen is that I would
16 just give her an overview of the duty to report should a child
17 be at risk.

18 **Q.** Okay. So in this case she didn't disclose or
19 information didn't come to you that there was an imminent risk
20 to her child?

21 **A.** No. She didn't speak about any domestic violence or
22 anything at all.

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1 **Q.** So on that point, would you typically ask if there's
2 been a history of domestic violence in the relationship?

3 **A.** No, typically what we would ask is when someone calls
4 and asks for information and begins the dialogue, one of the
5 first questions we would ask is, Are you safe now? Are you in a
6 safe place to speak? Is this a good time to have this
7 conversation? Those types of things. So those are the kind of
8 the leading questions.

9 **Q.** Any direct questions, though, about the history of the
10 relationship?

11 **A.** No.

12 **Q.** And is there some reason why you wouldn't probe that
13 much in a first call like this?

14 **A.** We're really trying to keep the door open the first
15 call so we try to limit the questions essentially in terms of
16 probing into the relationship so we let the person lead the
17 conversation and give as much as information as we can without
18 being probing, if that makes sense.

19 **Q.** Right. If a caller who may ultimately want to use
20 your services, if you ask too many questions on a first call
21 like that, is there a risk that they may shut down or ...

22 **A.** Yes.

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1 **Q.** Okay. I assume that's something you want to avoid?

2 **A.** Yes, very much.

3 **Q.** As best you can tell from your notes, did the caller
4 appear hesitant or was she more forthright in her questions and
5 discussion with you?

6 **A.** No, I made a note in my statement that she was very
7 articulate and straightforward. Like I said, it was a very
8 typical information call ...

9 **Q.** Right.

10 **A.** ... that the person was not in crisis or upset or
11 distraught in any way, it was just what I would call a normal
12 information call and it may not seem normal to everyone else but
13 we get calls like that all the time so ...

14 **Q.** Right.

15 **A.** ... there was nothing alarming about the call.

16 **Q.** There are some callers, I assume, that are more
17 emotional or distraught when they call you?

18 **A.** Yes.

19 **Q.** And you handle those a little differently, do you?

20 **A.** Well, it depends on ... yes, of course, it depends on
21 what the caller is, yeah, how they're feeling at the time on the
22 other end of the call. Just because someone appears to be not

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1 distraught doesn't mean they aren't ...

2 Q. Right.

3 A. ... obviously we know that but her ... the way she was
4 speaking to me it was very clear and focused on information.

5 Q. There are some other, I guess, boxes on the form that
6 could be filled out if that information was provided to you so
7 obviously information with respect to the caller's address,
8 phone number, date of birth, age, none of that was provided to
9 you. Her partner's name was not provided to you?

10 A. That's correct.

11 Q. And children, she made reference to a ten-year old
12 daughter?

13 A. She did.

14 Q. And reference to any other children?

15 A. No.

16 Q. Okay. So in the box a little further up where it says
17 "Children", what would be put in there, if the person provided a
18 name or?

19 A. Yes, yes. And typically I would put ten-year-old
20 daughter.

21 Q. Okay.

22 A. It probably should have been in there.

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1 **Q.** Okay, all right. "Source of Referral" in this case
2 was not filled out because it's a telephone call?

3 **A.** Yes.

4 **Q.** She wasn't ...

5 **A.** Yeah, or she didn't identify. So some people will
6 call and say there was an incident at my house last night, the
7 RCMP gave me your card ...

8 **Q.** Okay.

9 **A.** ... so I would record RCMP referral.

10 **Q.** Okay. No indication of a referral here?

11 **A.** No.

12 **Q.** All right. "Types of Abuse", if a client or a caller
13 seeking information did disclose some previous abuse from a
14 partner you would ... would you put that description in?

15 **A.** Yes.

16 **Q.** And there was none given to you here?

17 **A.** Correct.

18 **Q.** All right. "Other Services being Utilized". Again,
19 if the caller had indicated other services would you have
20 recorded that?

21 **A.** Yes.

22 **Q.** And what other services typically would you record

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1 there?

2 **A.** It could be anything from mental health and addictions
3 to food bank to Eastern Mainland Housing. If they referred to
4 another service typically we would record it.

5 **Q.** Okay. "Are you safe now?" From what you said you
6 felt she was safe at the time, would you normally put something
7 there?

8 **A.** Yes, and this questionnaire is also used when you're
9 sitting one-to-one with someone so although these questions are
10 on this form, we don't always ask them, we fill them in if it
11 comes up in the conversation.

12 **(14:13:10)**

13 **Q.** Okay.

14 **A.** Yes. But yes.

15 **Q.** So if an individual had suggested some imminent risk
16 or some concern, would it have been recorded on the form there
17 typically?

18 **A.** Yes, it would have been recorded probably in the notes
19 as well.

20 **Q.** All right. There was no discussion then of her having
21 seen a physician. Have you seen a doctor?

22 **A.** No.

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1 **Q.** Would that normally refer to injury or ...

2 **A.** Yes, and that would be again if she had indicated that
3 there was an assault of some sort ...

4 **Q.** Right.

5 **A.** ... then that would be a follow-up question to that.

6 **Q.** Right, okay.

7 **A.** But we wouldn't just ask a caller if they've seen a
8 doctor.

9 **Q.** Tell us all about your doctor?

10 **A.** Exactly.

11 **Q.** Right, okay, understood. Now the question "Are there
12 weapons in the house?" And so do you typically ask about
13 weapons and, in particular, firearms when you're speaking to a
14 caller in these circumstances?

15 **A.** We would ask those questions if a person indicated
16 that they were feeling unsafe or that there had been an assault
17 or that there's, you know, some dialogue around fear. So we
18 would definitely follow up with that question but, again, it's
19 not a question that we ask.

20 **Q.** Okay. So if it came up organically in the
21 conversation, if the caller raised it, then there would be some
22 notation there on the form typically?

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1 **A.** Yes.

2 **Q.** Okay. Is it a fair inference then that there was no
3 discussion of firearms in the call with her?

4 **A.** Yes.

5 **Q.** Okay. And then obviously "Do you feel he/she may use
6 them?" Obviously the same answer to that?

7 **A.** Correct.

8 **Q.** "Have you had previous contact with the Naomi
9 Society?" When a person calls for information would you ask if
10 they had, for example, called and talked to another case worker
11 in the past?

12 **A.** We may but we don't always.

13 **Q.** All right. And there was no indication in this case
14 that she had?

15 **A.** No.

16 **Q.** All right. And after the fact and we're going to talk
17 about how you came to look back at this form, did you look back
18 to see if there could have been an earlier form relating to
19 Shanna Desmond?

20 **A.** We did.

21 **Q.** All right. And were there any?

22 **A.** There was not.

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1 **Q.** Okay. Or any forms even without a name that might
2 indicate that it was she?

3 **A.** I don't know that we did that.

4 **Q.** Okay, all right. Further down the form, "Have you
5 applied for an EPO" which is an Emergency Protection Order?

6 **A.** Mm-hmm.

7 **Q.** And again that would be something that might come up
8 in the conversation?

9 **A.** It could, yes.

10 **Q.** Would you ask that question though?

11 **A.** No.

12 **Q.** And given that she wasn't familiar even with the
13 Family Court process, there wasn't really any indication that
14 she would have been involved in the EPO process?

15 **A.** No, she wasn't indicating any fear or safety concerns.

16 **Q.** Okay. A danger assessment and a safety plan, what's
17 the difference between a danger assessment and a safety plan?

18 **A.** So a danger assessment is like the police do what's
19 called the ODARA so if there's an assault that they respond to,
20 it's called the ODARA risk assessment and so if they're aware of
21 that, for example, there's a high risk protocol in Nova Scotia
22 so if we get that, this is just a recording mechanism

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1 essentially so if we were aware that there was an ODARA done, we
2 would put the ODARA score on there but things have evolved and
3 everything seems to have its own form now so that would just be
4 attached to the file. There's also the Jacqueline Campbell
5 Danger Assessment which is a high risk form so if there was
6 conversation around EPOs and past assaults and those kinds of
7 things, then we may have some dialogue around that.

8 **Q.** Okay. The ODARA is the Ontario Domestic Violence Risk
9 Assessment, I believe?

10 **A.** I don't know.

11 **Q.** That's my recollection of the acronym myself.

12 **A.** I call it the ODARA all the time.

13 **Q.** Yeah, okay. The ODARA is an instrument that's used,
14 at least in this province, by police ...

15 **A.** Yes.

16 **Q.** ... sometimes when they're investigating crimes of
17 domestic violence?

18 **A.** Yes, I believe it's mandatory to be done.

19 **Q.** Is the ODARA form sometimes shared with you in cases
20 where you're giving support to a client?

21 **A.** What would be shared with us is if the file scored
22 high risk ...

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1 **Q.** Yes.

2 **A.** ... then it would be shared within the protocol team
3 so the members of that protocol team would get a copy of the
4 ODARA which would identify the victim and the accused and the
5 incident itself and the details around that incident and it
6 would be shared within service providers to be able to provide
7 the best service.

8 **Q.** Okay. There was no indication here that any risk
9 assessments had been done?

10 **A.** No.

11 **Q.** No. Did you feel the need to talk about safety
12 planning then with the caller?

13 **A.** It's not noted anywhere so it's noted that there was
14 no fear in the conversation or safety concerns so ...

15 **Q.** Okay. The length of the call you note as 20 minutes?

16 **A.** Yes.

17 **Q.** Okay. For a call of this nature and perhaps this is a
18 bit unfair because they're all a little different, but is that a
19 typical length for a call of this nature or is a little shorter
20 or a little longer?

21 **A.** I wouldn't want to say that anything is typical.

22 **Q.** Right.

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1 **A.** You know, sometimes the conversations are very short
2 and sometimes they're very lengthy, it depends really on the
3 nature of what people are asking. But in a situation where
4 someone's calling and asking for information and they're not
5 providing a lot of detail besides just asking specific
6 questions, then I would say that this is fairly normal.

7 **Q.** Okay. Given that there was a reference to the
8 military or her partner having been in the military, are there
9 any resources that you're aware of for family members of
10 military individuals in this area that you would be able to
11 refer the caller to?

12 **A.** Well, since this I've become aware of resources in the
13 Halifax area for families and support and then we have a list of
14 therapists who specialize in PTSD and are aware of that but it's
15 been since this that we've kind of gained that as a resource I
16 would say.

17 **Q.** Okay. So 20 minutes with the caller, do calls of this
18 nature typically end on their own when the individual kind of
19 runs out of questions, is that how they end?

20 **A.** Yeah, we typically would ask at the end if there's
21 anything else that they can think of that they may have wanted
22 to know when they called, if there's anything else that they

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1 wanted to cover in the conversation, so it's them determining
2 when the call ends and according to my statement with the
3 police, that it was asked if she would like to come in and she
4 indicated that she'd like some time to think about that.

5 Q. Okay. And at the bottom of the form as well, you
6 said: "Worker informed client of services and noted she was
7 welcome to come schedule an appointment if she would like.
8 Client noted she would give it some thought." Would you
9 typically offer that to a caller of this nature, that they would
10 be welcome to make an appointment?

11 A. Oh yes, yeah.

12 Q. Okay.

13 A. We would typically offer that to most people who
14 called, yeah.

15 Q. And if a person were to make an appointment and come
16 in and see someone, assuming you were able to link this form to
17 the subsequent visit, this would be included in their file,
18 would it?

19 A. Yes.

20 Q. Okay. And, again, from reviewing your statement and
21 the notes, was there anything about the caller's demeanour that
22 caused you any concern? Can you say anything about her

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1 demeanour on the phone?

2 **A.** No, it would have been a very normal conversation for
3 me to be having.

4 **Q.** Yes.

5 **A.** And there was no indication in her voice or in her
6 words that indicated a fear of any kind.

7 **Q.** Okay. So the call ended and when would you have done
8 the one-time call sheet?

9 **A.** Shortly thereafter. We close at ... I think at that
10 time we closed at 4:30 so it would have been done between 3:30
11 and 4:30 that day.

12 **Q.** Okay.

13 **A.** And ...

14 **Q.** And filed?

15 **A.** Sorry?

16 **Q.** And filed?

17 **A.** And filed, yes.

18 **Q.** Sorry, I cut you off there.

19 **A.** That's okay. It was there the next morning when I
20 went to look for it.

21 **Q.** Right. And would you retain it electronically as well
22 or would it be retained just as a paper copy?

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1 **A.** No, it would be retained electronically as well for a
2 period of time and then it would be deleted from our records.

3 **(14:23:05)**

4 **Q.** Okay. The paper copy would be kept for how long?

5 **A.** Forever.

6 **Q.** Forever, okay.

7 **A.** We have no file destruction policy right now.

8 **Q.** Okay. So that was on the 3rd and you said you closed,
9 sorry, what time did you say you closed?

10 **A.** I believe we were still closing at 4:30 then, we close
11 at 4 now.

12 **Q.** Okay, all right. And then other information came to
13 your attention the next day, did it?

14 **A.** Yes.

15 **Q.** And what was that?

16 **A.** I believe we were having our morning case conference
17 so we typically will review any new calls or files from the
18 previous day in the morning and obviously this was in the media
19 and it came to our attention about an incident that occurred the
20 evening before. One of my colleagues received a phone call from
21 a partner organization and she came into the room and said the
22 name of the individuals who were suspected to be involved in the

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1 incident, I don't believe the names were in the media at that
2 time, but ... and then obviously it triggered my call from the
3 day before and I went and said I think I may have spoken to her
4 yesterday and went and looked for the form and we checked the
5 call display on the phone.

6 Q. Okay. So the information that you got, although the
7 names weren't disclosed at that point the next morning, you had
8 some information about who may have been involved?

9 A. Correct.

10 Q. And was that the name of the victim or ...

11 A. Yes.

12 Q. ... what names were ... what names came to your
13 attention?

14 A. Shanna's. Shanna Desmond.

15 Q. Right. The day before when you had taken the call,
16 despite the fact that you didn't mark it down, did you visibly
17 note it on the phone?

18 A. Yes.

19 Q. Okay.

20 A. And I would have seen it obviously.

21 Q. Okay. And that call display was still available the
22 next day, was it?

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1 **A.** It was.

2 **Q.** So what action did you take as a result of putting ...
3 connecting that incident to your call the day before?

4 **A.** We, in terms of sharing it, we had ... we continued
5 our meeting and had some dialogue around whether or not we even
6 had the right to disclose that information to anyone at the time
7 and then we decided that it would be in the best interest of
8 people involved. So I got directed from my executive director,
9 Michelle Keats at the time, to make the call to the RCMP in
10 Guysborough and I believe I spoke with Denise Wood who is the
11 detachment assistant there and had a conversation with her,
12 essentially filled her on on what I told you and sent her the
13 contact form and the fax cover that you see there.

14 **Q.** Right.

15 **A.** And then I was interviewed that afternoon, I believe,
16 by the RCMP at my office.

17 **Q.** So do you recall the time of day that you would have
18 forwarded it to the police?

19 **A.** It may be on there. I believe it was in the morning
20 it would have been.

21 **Q.** And you were interviewed by members from ... was it
22 from Northeast Nova Major Crime?

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1 **A.** I believe so, yes.

2 **Q.** And that was that afternoon?

3 **A.** Yes.

4 **Q.** Okay. So you provided them with the, I guess, the
5 contact information, the caller display information, and your
6 one-time contact form. Did you have any other information, any
7 other notes or any other documentation?

8 **A.** I did not.

9 **Q.** And any notes that you would have created while
10 talking to Shanna Desmond were destroyed, handwritten notes, or
11 do you recall if you made handwritten notes?

12 **A.** I don't recall if I made handwritten notes.

13 **Q.** Okay.

14 **A.** I may have recorded it directly on the sheet, I'm not
15 sure.

16 **MR. MURRAY:** Right, okay.

17 All right, thank you, Ms. Mann, those are my questions.

18 **A.** You're welcome.

19 **THE COURT:** Ms. Ward?

20

21

22

NICOLE MANN, Cross-Examination by Ms. Grant1 **CROSS-EXAMINATION BY MS. GRANT**2 **(14:27:50)**

3 **MS. GRANT:** Thank you, Your Honour. Ms. Mann, my name
4 is Melissa Grant and I represent the Attorney General of Canada
5 along with my colleague Lori Ward.

6 Just a question and if you could pull up Exhibit 78, we
7 were just looking at and I think my friend, Mr. Murray,
8 mentioned this but as you go down to the next page there's
9 reference towards the bottom to a safety plan and we just heard
10 your evidence that you thought that in these particular
11 circumstances that wasn't something that you got into. But
12 we're wondering what is a safety plan, what would be a typical
13 safety plan or is there a typical safety plan?

14 **A.** So a safety plan would be based on the information
15 that the individual has provided to us. So if a person has
16 indicated that they're fearful of their partner or their ex-
17 partner, then we would have some conversation around what
18 they're already doing to keep themselves safe. Some people
19 continue to stay in the relationship, some people are leaving
20 the relationship, so the conversation would be around exactly
21 that. So if they're in the situation, what does it look like so
22 what does the physical space look like, what does it look like

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1 when there's a situation where there's an assault taking place,
2 or if they're leaving the relationship, what that might look
3 like in terms of, you know, making sure that there's a bag
4 packed, making sure that they have contact information for
5 someone. It could really look like anything, it depends on
6 their situation.

7 **Q.** So in terms of when you might implement a safety plan
8 and work on that with a client, would a time when a woman is
9 leaving the relationship be a particularly dangerous or fraught
10 time in that process?

11 **A.** Yes, when someone's leaving the relationship typically
12 is when they're at the most risk, so we would have a
13 conversation about that.

14 **Q.** And do you have any ... in your many years of
15 experience, do you have anything you can offer the Inquiry as to
16 why that might be the case? Why a woman is at most risk when
17 she leaves a relationship?

18 **A.** Well, I mean, typically a relationship that's abusive
19 is about control and obviously that's a period of time where the
20 control at least appears to be lost by the perpetrator. So it's
21 a situation where oftentimes, even a person who is perpetrating
22 violence, may think rationally at times, when irrational thought

NICOLE MANN, Cross-Examination by Ms. Grant

1 begins to occur so there should be a plan in place about safety
2 at that time.

3 **MS. GRANT:** Thank you, Ms. Mann, those are our
4 questions.

5 **A.** You're welcome.

6 **THE COURT:** Ms. Lunn?

7 **MS. LUNN:** No questions for this witness.

8 **THE COURT:** Thank you. Ms. Whitehead?

9 **MS. WHITEHEAD:** No questions, Your Honour.

10 **THE COURT:** Thank you. Mr. Macdonald?

11 **MR. MACDONALD:** Your Honour, Mr. Morehouse will be doing the
12 examination.

13 **THE COURT:** All right. Thank you. Mr. Morehouse?

14

15 **CROSS-EXAMINATION BY MR. MOREHOUSE**

16 **(14:30:59)**

17 **MR. MOREHOUSE:** Good afternoon, Ms. Mann. My name is Thomas
18 Morehouse. With my co-counsel Tom Macdonald, we are counsel to
19 Ricky and Thelma Borden, who are Shanna's parents, and Sheldon
20 Borden, who is Shanna's brother. We also share representation
21 of Aaliyah Desmond with my friend, Tara Miller.

22 Ms. Mann, I believe you stated in your evidence that this

NICOLE MANN, Cross-Examination by Mr. Morehouse

1 form at P78 is the form that was in use on January 3rd, 2017.

2 Is there a new form now?

3 **A.** There is.

4 **Q.** Can you briefly describe the changes to the new form
5 that you've made.

6 **A.** Sure. It doesn't have the questions on it, so it's
7 similar in makeup in terms of date, time, caller, personal
8 information, and those kinds of things. If you scroll down, it
9 would just ... it would have, again, relational information on
10 it and then a description of the situation. So it's more
11 narrative in a sense, so that we can, we record more information
12 based on what the caller is telling us.

13 **Q.** Okay. Thank you.

14 **A.** You're welcome.

15 **Q.** Ms. Mann, I heard you briefly describe your duty to
16 report if you thought that a child was in danger.

17 **A.** Mm-hmm.

18 **Q.** If you became aware of an imminent risk of harm to a
19 spouse or a woman calling you what steps could you take to
20 prevent that harm?

21 **A.** If someone is disclosing to us, whether it be
22 suicidal or homicidal thoughts, then we also would have a duty

NICOLE MANN, Cross-Examination by Mr. Morehouse

1 to report that.

2 Q. Okay. And who would you report that to?

3 A. To the police.

4 Q. Have you ever done that before?

5 A. Yes.

6 Q. Okay. What information would need to be conveyed to
7 you before you would take that step?

8 A. "He's going to kill me", for example.

9 Q. Those express words?

10 A. Yes, that's an example. Or he's ...

11 Q. Would there ever be an occasion where those specific
12 words would not be said but you would gather enough information
13 to form the opinion that somebody was in danger?

14 A. If I gathered enough information that I felt that
15 someone was in imminent risk, then I would make that decision to
16 call, yes.

17 **(14:33:01)**

18 Q. Okay. You also say in your evidence that you tend to
19 let the caller dictate the direction of the call because you
20 don't want to inadvertently make them uncomfortable and then the
21 conversation shuts down, is that correct?

22 A. Yes...

NICOLE MANN, Cross-Examination by Mr. Morehouse

1 **Q.** If I misstated your evidence, please correct me.

2 **A.** Yes. What we want is to open the door, the lines of
3 communication for people. So it's not that we don't ever ask
4 questions, if someone is expressing fear, then we would probably
5 delve into that a little bit more. But if someone's calling as
6 an information, if it's an information call, specifically around
7 processes, then we wouldn't be delving into too much
8 questioning. Is that helpful?

9 **Q.** Yes, it is. Thank you.

10 **A.** Okay.

11 **Q.** With this call, in particular, with Shanna Desmond,
12 or who we presume to be Shanna Desmond, did she say, I don't
13 want to provide a name, or did you just not ask the question?

14 **A.** I don't know the answer to that.

15 **Q.** Okay.

16 **A.** I likely didn't ask her the question. I typically
17 don't ask someone for their name unless they provide it to me.

18 **Q.** Has there ever been an occasion where you did ask for
19 someone's name and they got uncomfortable and shut down the
20 conversation?

21 **A.** I don't recall asking someone for their name, if they
22 haven't provided it to me or they're not making an appointment.

NICOLE MANN, Cross-Examination by Mr. Morehouse

1 So if they haven't agreed to a follow-up ... I'm not saying I
2 never have done that but I don't recall a time that I did.

3 **Q.** You said in your evidence that, you know, if you ask
4 too many probing questions, there's a chance that somebody could
5 get uncomfortable and shut down the conversation. Is the
6 opposite also true that sometimes people were waiting for you to
7 ask the question?

8 **A.** Yes. I don't know that I said that it's probing but
9 perhaps I did. Yes, that could be a time where people would
10 open up more if you asked more questions.

11 **Q.** And why have you made the decision to err on the side
12 of not asking the question?

13 **A.** We would like to invite people to come in and gain
14 services. Oftentimes people, when they're reaching out when
15 they're experiencing violence, it's a very difficult decision,
16 so we try to let them lead the conversation so that it's more
17 comfortable for them, so that if they want to get services then
18 they understand that it's a receptive place to be in. We're not
19 going to be asking for all kinds of details about what's
20 happening to them because that's not our role. Our role is to
21 provide resources and support to them, not delve into the
22 details about what's happening with them.

NICOLE MANN, Cross-Examination by Ms. Miller

1 **Q.** Okay. Final question. Is your approach with
2 respect to being inviting and, you know, I know I misstate this
3 every time, but not asking too many questions, is that a similar
4 approach taken by other organizations that are similar to yours?

5 **A.** I think that's a question that you'd have to ask
6 other organizations.

7 **Q.** But you're not aware of that?

8 **A.** I wouldn't want to comment on that.

9 **Q.** Okay. Thank you. Those are my questions.

10 **THE COURT:** Ms. Miller?

11

12 **CROSS-EXAMINATION BY MS. MILLER**

13 **(14:36:38)**

14 **MS. MILLER:** Ms. Mann, my name is Tara Miller. You've
15 heard from my friend Mr. Morehouse that I share representation
16 with counsel of Aaliyah Desmond, and I also represent Brenda
17 Desmond.

18 I just have one question for you. You indicated that ...
19 you were asked about resources for women who are experiencing
20 intimate partner violence in the context of military members,
21 and my understanding of your evidence is that at the time you
22 weren't aware of any but you have subsequently come to learn of

NICOLE MANN, Cross-Examination by Ms. Miller

1 resources available for family members in the military,
2 primarily through Halifax?

3 **A.** Correct.

4 **Q.** Okay. And what would those resources be?

5 **A.** I have the resources at my office. I don't ... I
6 couldn't recall them to you. So it's something that I would
7 look up.

8 **Q.** Okay.

9 **A.** If I was speaking to somebody and offering resources.

10 **Q.** So you understand that the military does have some
11 resources and there would be a number and/or a name that you
12 would be able to look up and provide to a caller or an
13 appointment?

14 **A.** Yes.

15 **Q.** Okay. Thank you.

16 **A.** You're welcome.

17 **MS. MILLER:** Those are my questions.

18 **THE COURT:** Mr. Rodgers?

19 **MR. RODGERS:** Thank you, Your Honour, I have no questions
20 of this witness.

21 **THE COURT:** Thank you.

22

NICOLE MANN, Cross-Examination by Ms. Miller**EXAMINATION BY THE COURT**

1
2 (14:38:07)

3 **THE COURT:** The list of resources that you have
4 available in your office is it, like, a formatted list that you
5 can simply go to and it'll have the name of the organization and
6 the contact information or contact person? Is that how ... Or
7 do you have a file folder with a variety of different things in
8 it, because what I'm going to ask you is whether or not it's
9 kind of like in the format of a published list, that if you had
10 a copy of it, if I asked you to send a copy of it to Mr. Murray,
11 for instance, if you'd be able to do that, and he might be able
12 to share it with the other counsel, just so that we have some
13 idea of what now would be available to your society.

14 **A.** Sure. Yes, I could do that. It's not in a file, it's
15 electronic, obviously. It's ... I got the information from the
16 military and they've provided offsite therapists who work with
17 families of military members. So, yes, I could do that.

18 **Q.** So would you be comfortable compiling that and putting
19 it just maybe on your letterhead and send it to Mr. Murray ...

20 **A.** Of course.

21 **Q.** And saying, you know, Further to what the judge
22 requested, here's a copy of the resources that are now

NICOLE MANN, Examination by the Court

1 available?

2 **A.** Of course.

3 **Q.** You would do that. Would counsel be content to get it
4 that way? Thank you.

5 **MR. MURRAY:** Your Honour, I just had one question before
6 the witness is released, as well.

7 **THE COURT:** All right. I'll let you ask your one
8 question before I ask my one question. Go ahead.

9 **MR. MURRAY:** Thank you.

10

11

RE-DIRECT EXAMINATION

12 **(14:39:33)**

13 **MR. MURRAY:** I think when we've spoken I may have asked
14 you and if I neglected, I'll ask it now, you said that you have
15 Ms. Castle, who's the outreach worker to Guysborough County.
16 Where you cover an area that's geographically large and it's
17 sparsely populated, are there additional resources, if they were
18 to be available, that might allow your organization or similar
19 organizations to reach people more effectively?

20 **A.** If we could have access to more resources, would we
21 take them?

22 **Q.** Yes. Well, I'm thinking, in particular, about the

NICOLE MANN, Re-Direct Examination by Mr. Murray

1 nature of covering an area like Guysborough County, where you
2 have, well, a sparsely populated, spread-out population ...

3 **A.** Yes.

4 **Q.** ... much of it or almost all of it rural.

5 **A.** Mm-hmm.

6 **Q.** Are there additional things that you would need to
7 meet that unique kind of ...

8 **A.** Absolutely. We've recently, just in the last week,
9 have been granted some funding to explore that particular thing
10 that you're talking about. We are going to be able to hire
11 another part-time staff person to alleviate some of our work.
12 We're going to be able to hire a consulting firm to look at
13 women in rural, in this rural area, Guysborough County, in
14 particular, and Antigonish County, and the outreach services
15 that we are providing now and how we can become better equipped
16 to provide that work. So it is something that we're going to
17 explore.

18 **Q.** All right. And the needs of individuals who access
19 your services who experience intimate partner violence in rural
20 areas, I assume, could be a little different than, for example,
21 in Halifax?

22 **A.** Mm-hmm.

NICOLE MANN, Re-Direct Examination by Mr. Murray

1 **Q.** Given the nature of where they live and the
2 distances?

3 **A.** Oh, absolutely. I mean the nature of travel alone is
4 huge, the barrier to transportation. You know, if someone is in
5 a relationship where they're looking to leave that relationship
6 and it's a Friday night, it's a lot more difficult to get
7 somebody out of Canso than it is to get somebody out of downtown
8 Antigonish, for sure.

9 **Q.** Right.

10 **A.** You know, it takes a little bit more time and planning
11 and there's a lot of things that can happen during that time.

12 **Q.** When you embark on the process that you just
13 described, looking at ways to address that, what would be the
14 end result of that? Will that be potentially an ask for more
15 resources, or what, how do you foresee that playing out?

16 **A.** Yeah, so we're working very closely with the Nova
17 Scotia Status of Women and Department of Justice through the
18 Standing Together prevention program to build a five-year
19 strategic plan. So this project will last two years, and then
20 we'll build a ... During that time, as well, we're going to
21 build a business case plan as to how to better provide outreach
22 services within the Counties of Antigonish and Guysborough.

NICOLE MANN, Re-Direct Examination by Mr. Murray

1 **Q.** All right. Thank you very much.

2 **A.** You're welcome.

3

4

EXAMINATION BY THE COURT

5 **(14:42:51)**

6 **THE COURT:** The last question, now Mr. Morehouse kind
7 of touched on it, when you have someone call you, you're on the
8 phone, your practice is to generally allow them to lead the
9 conversation, correct?

10 **A.** Correct.

11 **Q.** Okay. And he was talking about general practice, so
12 I would ask it this way, you're a counsellor, as well, you've
13 been trained in counselling practices?

14 **A.** Yes.

15 **Q.** And you would go to programs where people would
16 discuss best practices and how to go about doing some things,
17 including telephone intake or advice?

18 **A.** Yes.

19 **Q.** So in that context, is it generally thought that it's
20 preferable to allow or to have the person who's making the call
21 kind of lead the conversation versus it turning into something
22 that's more inquisitorial? I think that was what Mr. Morehouse

NICOLE MANN, Examination by the Court

1 was getting at as well. I'm just asking it a little
2 differently.

3 **A.** Yes.

4 **Q.** Not what other practices are but whether there's a
5 kind of consensus, you know, within the world that you live in,
6 whether it's, you know, societies providing advice, or
7 transition houses or other support services, when you come into
8 that kind of contact situation, generally by phone.

9 **A.** Mm-hmm. Yes. I mean, I think that, generally
10 speaking, we allow the person to lead the conversation, as I
11 have said.

12 **Q.** Mmm.

13 **A.** However, there are definitely opportunities to be
14 inquisitive and ask questions and ...

15 **Q.** No doubt.

16 **A.** Yeah. So that's definitely part of a conversation.
17 And when you're talking about different resources and processes
18 and so forth, obviously, if someone indicates, for example, that
19 they're in fear, well, that's going to lead to a whole different
20 set of questions than, you know, I have no fear, I'm not ... I
21 just would like to know what it looks like to go through the
22 Family Court process. So ... yeah.

NICOLE MANN, Examination by the Court

1 **Q.** All right. Thank you.

2 **A.** You're welcome.

3 **THE COURT:** That's it then. Thank you. Well, thank you
4 very much for your time, Ms. Mann. I appreciate you coming
5 today.

6 **A.** Thank you.

7 **THE COURT:** You're free to go. Thank you.

8 **WITNESS WITHDREW (14:45 HRS)**

9 **THE COURT:** We have the last witness, Mr. Kulanek, is
10 it?

11 **MR. MURRAY:** Yes.

12 **THE COURT:** I don't know if you want to take a break or
13 if you just want to start with Mr. Kulanek?

14 **MR. MURRAY:** Maybe we could take the break, Your Honour,
15 just before we start.

16 **THE COURT:** All right. 15 minutes, then. Thank you.
17 We'll come back at five to three. Thank you.

18 **COURT RECESSED (14:46 HRS.)**

19 **COURT RESUMED (15:00 HRS.)**

20 **THE COURT:** Mr. Murray?

21 **MR. MURRAY:** Thank you, Your Honour, the next witness
22 we're calling is Dan Kulanek.

1 **DANIEL KULANEK sworn, testified:**

2

3 **THE COURT:** Good afternoon, Mr. Kulanek.

4 **A.** Hi.

5 **THE COURT:** Mr. Kulanek, during the course of the
6 afternoon you might be shown some documents that come up on the
7 monitor in front of you. There's also paper copies in the
8 various binders, so you can be referred to them, as well. I
9 know that there's going to be a video that's going to be
10 displayed, as well, and that will be on the monitor and it will
11 be on the overhead, as well.

12 If you're asked a question and you don't understand the
13 question, you can always ask to have it repeated, all right? If
14 you have any other questions or any other issues that might
15 arise during the course of your evidence just let me know.

16 **A.** Okay.

17 **THE COURT:** And I'll see if I can address them for you,
18 okay?

19 **A.** Thank you.

20 **THE COURT:** Mr. Murray is going to ask you some
21 questions now. Thank you.

22 **MR. MURRAY:** Thank you, Your Honour.

DANIEL KULANEK, Direct Examination by Mr. Murray**DIRECT EXAMINATION**1
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22**(15:01:18)****MR. MURRAY:** Can you tell the Inquiry your name, please.**A.** Daniel KulaneK.**Q.** And how do you spell your last name, sir?**A.** K-U-L-A-N-E-K.**Q.** Okay. And Mr. KulaneK, you own and operate a business, I understand?**A.** Yes, I do.**Q.** And what's your business?**A.** Leaves & Limbs Sports.**Q.** Leaves & Limbs Sports?**A.** Sport Shop, yes.**Q.** Okay. Where is your business located?**A.** East of Antigonish, on the Lower South River.**Q.** Okay. What type of a business is that?**A.** It's a sporting goods shop.**Q.** Okay. So what types of things would you sell? What kind of product would ...**A.** A lot of archery gear, a lot of ammunition, a lot of rifles, firearms, clothing. A little bit of everything related to hunting.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay. So primarily for hunting; and do you do
2 fishing, as well?

3 **A.** Target shooting, target, and a little bit fishing.

4 **Q.** Okay.

5 **A.** Target ... on the target stuff mostly.

6 **Q.** Target shooting?

7 **A.** And archery and rifle.

8 **Q.** Okay. And how long have you been in business?

9 **A.** My personal self, I've been in business all my life,
10 basically, 25 years at least.

11 **Q.** As Leaves & Limbs how long have you been in business?

12 **A.** At least 20, 25 years. I started it out of my home
13 and then I advanced to where I'm at now.

14 **Q.** Okay. The location that you're at now, how long
15 have you been in that particular location?

16 **A.** Quite a few years. I think ... I don't know exactly
17 how many but it's quite a few. I bought the building in '90-
18 something, '80, '90, in that area.

19 **Q.** Okay. So you've been in that location for quite a
20 number of years, as well?

21 **A.** Yes, yes.

22 **Q.** All right.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** I had a prior business there before.

2 **Q.** Right. Okay. Before it was called Leaves & Limbs?

3 **A.** Yes.

4 **Q.** Okay. All right. And you have a number of employees
5 that work there, do you?

6 **A.** My wife works there and we have a part-timer and
7 during the summertime we have a full-timer doing signage,
8 engraving.

9 **Q.** Okay. So you do some engraving, as well?

10 **A.** Yes.

11 **Q.** Okay. Your customer base, are they mostly local
12 people that come in?

13 **A.** From all over. We deal ... we're kind of a specialty
14 shop, so we kind of deal with a little bit of everybody from all
15 over the province. All over the province.

16 **Q.** Okay. And so you sell some products that aren't
17 readily available, say, at Canadian Tire and that type of thing?

18 **A.** Correct, correct.

19 **Q.** Okay.

20 **A.** We do a lot of special orders. We're a custom shop.

21 **Q.** Okay. And is that in the area of, like, firearms, in
22 particular, or would it be ...

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Mostly archery.

2 **Q.** Archery?

3 **A.** Yes.

4 **Q.** Okay. All right. And I don't know of another store
5 that sells archery equipment so ...

6 **A.** Not too many, not too many.

7 **Q.** Right. Okay. You were in business there in your
8 current location, were you, in January of 2017?

9 **A.** Yes.

10 **Q.** Okay. And you were in business as Leaves & Limbs at
11 that time?

12 **A.** Correct.

13 **Q.** Okay. And the nature of your business then was,
14 basically, the same as it is today?

15 **A.** Correct.

16 **Q.** Okay. So we've called you here because while you've
17 been in business you had some contact with Lionel Desmond.

18 **A.** Correct.

19 **Q.** All right. So I want to ask you about that, and
20 starting in January of 2017, specifically January 3rd, I know
21 you had some contact with Lionel Desmond.

22 **A.** Yes, prior to that, yes, on a couple of occasions.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 Q. You had ...

2 A. Once or twice, I can't remember exactly.

3 Q. Okay. So that's what I was going to ask you about.

4 Prior to January 3rd, 2017, you had, you had other contact with
5 Lionel Desmond?

6 A. Correct.

7 Q. Okay. Can you tell us what you remember about that.

8 A. I remember him coming in and looking at a couple of
9 firearms. They were smaller calibres, like something you'd use
10 for hunting rabbits or something like that. Very pleasant,
11 very quiet, and I just ... I don't know how else to explain it,
12 other than ... very patient.

13 Q. Okay. And how many times prior to January 3rd do you
14 think he might have been in your store?

15 A. At least a couple times. I can't say for sure. It's
16 at least a couple times, I'm going to say.

17 Q. Okay. And do you have a sense of how close in time
18 to January 3rd those earlier visits were?

19 A. I want to say somewhere earlier in December and
20 possibly late November. They were relatively close together.

21 Q. Okay. So that would be November and December of
22 2016?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Correct.

2 **Q.** Just weeks or a month before?

3 **A.** Correct. Correct.

4 **Q.** All right. And on that earlier occasion or earlier
5 occasions did you deal with him yourself?

6 **A.** Yes, I did.

7 **Q.** And did you talk to him?

8 **A.** Yes, a couple of occasions.

9 **Q.** Apart from those visits to your store, do you recall
10 ever having any contact with Lionel Desmond any other time or
11 any other place?

12 **A.** No, never did.

13 **Q.** Okay. So when he was in to see you before, you said
14 he looked at smaller calibre firearms?

15 **A.** Correct.

16 **Q.** Okay. What type of firearms did he look at?

17 **A.** .22-calibre, which would be just a small, like, it's
18 a small rimfire cartridge and it's used for hunting rabbits or
19 target shooting, plinking, stuff like that.

20 **Q.** When he came in and looked at the .22s on the
21 previous occasions, do you recall what you talked to him about?

22 **A.** I recognized the name and I knew of his grandfather,

DANIEL KULANEK, Direct Examination by Mr. Murray

1 and we sort of talked a little bit about that, I told him I knew
2 him. And then he told me about his services and we talked about
3 that for a little bit, and then that was pretty well the gist of
4 it.

5 Q. Okay. And his grandfather was who?

6 A. Was Wilf Desmond. We always called him Wilf. Now
7 whether that was his real name or his original name, but we
8 always called him Wilf Desmond.

9 Q. Okay. And how did you know his grandfather Wilf
10 Desmond?

11 A. He was a bus driver at the time when I went to trade
12 school.

13 Q. So he drove you on the bus?

14 A. Correct.

15 Q. So obviously if there was conversation about his
16 grandfather and you knew his name, you must have ...

17 A. We sort of related the name to the name.

18 Q. Right. You must have learned Lionel Desmond's name
19 when he was in earlier, did you?

20 A. Yes, yeah.

21 Q. How did you learn his name when he was ...

22 A. Through his PAL card. That's how I ... that's how we

DANIEL KULANEK, Direct Examination by Mr. Murray

1 came across the conversation.

2 Q. Okay. So his PAL card, that's his, what's a PAL
3 card?

4 A. That's the possession or acquisition to buy a
5 firearm.

6 Q. Okay. So possession and ...

7 A. His name is right on it.

8 Q. Right. A possession and acquisition license?

9 A. Correct.

10 Q. Okay. And in your experience, what does a possession
11 and acquisition license, what does that let you do?

12 A. Well, possession ... for a while possession would
13 only allow you to buy ammunition, and then it was advanced to
14 possession and acquisition, which allowed you to buy ammunition
15 or a firearm.

16 Q. Okay. So now the license ... there's one license to
17 cover both firearms and ammunition?

18 A. Correct. Correct.

19 Q. Okay. So you must see a lot of PALs, do you?

20 A. Every day.

21 Q. Okay. And in, well, let's start with Nova Scotia, in
22 Nova Scotia, the PAL cards, do those have a photograph on them?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Yes, they do.

2 **Q.** Okay. And what else is on a PAL card?

3 **A.** A number, an expiry date, date of birth and date of
4 expiry, and his license number, his actual license number that's
5 given to him at the time.

6 **Q.** Okay. And do you see PAL cards from other provinces?

7 **A.** Yeah. They're pretty well all the same. You know,
8 Canada has got them, I think they're all on the same idea.

9 **Q.** All right. So they don't differ from province to
10 province?

11 **A.** Not to my knowledge.

12 **Q.** Okay. And if a person comes into the store looking
13 at firearms, if they want to handle a firearm as they're looking
14 at it, do you have some requirement before they do that?

15 **A.** There's no law requiring it, but we always ask to
16 look at the card, initially, and if they have it we pass them
17 the firearm. Because we don't want them to mark it up or scratch
18 it or anything, so we ask to see if they're legit, and if
19 they've been in before, if we recognize them, we'll show it to
20 them again if they have to.

21 **Q.** Okay. So if I went into your store, for example, and
22 I wanted to look at a firearm, you would want to see my PAL ...

DANIEL KULANEK, Direct Examination by Mr. Murray

1 (15:10:02)

2 A. Correct.

3 Q. ... before I handled the firearm in your store?

4 A. Correct.

5 Q. All right. And if I handed you my PAL, what would
6 you look for on it?

7 A. Expiry date and a legitimate number.

8 Q. How do you tell if it's a legitimate number?

9 A. It's ... well, the number will be with expiry date.
10 It will have the number, and the expiry date will be up in the
11 right corner to say if it's still a good card, a valid card or
12 not.

13 Q. Okay. And these cards have a photograph on them?

14 A. Correct.

15 Q. Do you compare the photograph on the card to the
16 person you're dealing with?

17 A. We have a quick look, but it's pretty simple ... A
18 lot of them are, they're similar to a driver's license, they're
19 sort of blurred out a little bit, somewhat, but they're ...

20 Q. Okay.

21 A. You can tell.

22 Q. But you have a look to see if it bears a resemblance,

DANIEL KULANEK, Direct Examination by Mr. Murray

1 I guess, to the customer?

2 **A.** Yes, yeah. Yes, we do.

3 **Q.** Okay. So on the earlier occasions when Lionel
4 Desmond was in, do you recall if he actually physically handled
5 some of the .22s he was looking at?

6 **A.** Yes, yes, he did.

7 **Q.** All right. And do you recall, I guess you've
8 answered this, but do you recall if you looked at his PAL on the
9 earlier occasions?

10 **A.** I did so, for sure.

11 **Q.** Okay. And to your recollection on the earlier
12 occasions or occasion, I guess, do you know if you looked at his
13 PAL more than once or would it have only been once?

14 **A.** I would say once and I recognized him probably the
15 second time, so ...

16 **Q.** All right. And do you remember looking to see if his
17 PAL was, on its face, valid?

18 **A.** Yes.

19 **Q.** And was it?

20 **A.** Yes, definitely.

21 **Q.** Okay. And you said you also had some conversation
22 about his grandfather.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Yes.

2 **Q.** And also about his military service?

3 **A.** Yes. He said that he was in the military and we
4 talked briefly about that and we ... But it didn't last very
5 long. We just talked about it, sort of thanked him for his
6 service type of thing, you know, and kind of continued on.

7 **Q.** Did he give you any more specifics about his military
8 service?

9 **A.** No, not a bit.

10 **Q.** Okay. On the earlier occasions when he had handled
11 the guns or looked at them, did he appear to have knowledge
12 about guns?

13 **A.** Somewhat, yeah. Yeah, he wasn't afraid of them by
14 any means. He knew exactly what he wanted to do, and how he was
15 handling them, he was comfortable with them.

16 **Q.** Okay. And did he give you any indication on those
17 earlier occasions why he wanted a firearm or why he was ...

18 **A.** Not a bit, not a bit.

19 **Q.** Okay. When he was in your store prior to January
20 3rd, on the earlier occasions, did you make any observations of
21 his demeanour and how he acted and how he presented to you?

22 **A.** He acted basically the same as he did on the day in

DANIEL KULANEK, Direct Examination by Mr. Murray

1 question, he was just very relaxed, calm, and no anxiety, no
2 desire to get past ... He was very patient. He was ... I just,
3 I don't get it. I just don't get it.

4 Q. Right. If a person comes into your store and they're
5 looking at firearms and they appear agitated or ...

6 A. We kind of question, we're kind of a little more
7 leery about it, but we never had an issue with that at all, not
8 once.

9 Q. Right.

10 A. Not once.

11 Q. So if a person, though, presented as more agitated or
12 something that caused you some concern, what might you do?

13 A. I probably wouldn't show it to him to begin with.
14 It's ... You know, I guess you really don't know until it
15 happens, but it's never happened, so I can't ... I don't know, I
16 think I'd probably be pretty cautious.

17 Q. Mm-hmm. Okay. And did you get a sense from the
18 earlier visits that he actually was looking to buy a firearm?

19 A. Yes. He looked at a couple of them and the
20 impression I got was he was interested in buying them.

21 Q. Okay. All right. And the length of time that he was
22 in on those earlier occasions, were they longer visits?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** No, they were, you know, 10, 15 minutes maybe, at the
2 most, maybe, not very long.

3 **Q.** Okay.

4 **A.** Just more of inquiring type of thing and ...

5 **Q.** Right. And you think those visits were within either
6 November or December?

7 **A.** I want to say somewhere around that time. I honestly
8 can't give you an exact time. At the time I probably would have
9 remembered, but it wasn't very ... it wasn't, I know it wasn't
10 long before January 3rd.

11 **Q.** Okay. So on January 3rd Lionel Desmond did visit
12 your store that day?

13 **A.** Yes.

14 **Q.** Do you remember anything about that particular day,
15 January 3rd?

16 **A.** I was busy. We're, like, a one-man shop. I cover a
17 lot of area. And I remember making the gesture to him "I'll be
18 with you in a minute" type of thing, and he said, Oh, no
19 problem, no hurry, he said, take your time.

20 **Q.** Okay.

21 **A.** Very calm, very collected, just ...

22 **Q.** Did you have other customers in the store that day?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Yes, I did.

2 **Q.** Okay. And do you have a recollection if other
3 people, apart from yourself, were working in the store that day?

4 **A.** I know, I think our sign guy was in, but I'm not
5 positive. I can't remember. I'd have to go back to my
6 employment records. But there was somebody else in the store
7 prior to that and they were just in and out, and I was working
8 with a customer at my archery desk and that's when I made the
9 gesture to him "I'll be with you in a minute", and he said,
10 Yeah, no problem.

11 **Q.** And your archery desk, is that separate from where
12 ...

13 **A.** It's on the other end ... it's right criss-cross from
14 each other, one end of the building to the other, end of the
15 room to the other.

16 **Q.** Okay. Did ...

17 **A.** Like the guns are one side and the archery is on the
18 other counter, just opposite each other.

19 **Q.** Okay. All right. And I haven't been in your store
20 but is it one large room or is it ...

21 **A.** It's one large room. The archery and the gun room is
22 sort of one big room, and then the clothing part is sort of

DANIEL KULANEK, Direct Examination by Mr. Murray

1 separate but it's not a doorway, just wide open. It's open
2 concept, the whole place.

3 Q. Okay. And you have a security system, I assume, in
4 your store?

5 A. Yes. We have approximately 16 cameras.

6 Q. Okay. And would that be typical for a store that
7 sells firearms and ammunition?

8 A. I'm not too sure what the others do. I know we have
9 lots of cameras. We always did. We have ... We were just
10 always worried that something would happen, you know, somebody
11 trying to break in, so we advanced our camera system and then we
12 advanced it again, and then we, now I think it's 16 cameras in
13 the store.

14 Q. Okay. In January of 2017 did you have that many
15 cameras?

16 A. Yes, we did.

17 Q. Okay. And so are all of those cameras always kind of
18 recording?

19 A. They are recording 24/7, day and night.

20 Q. And the footage ...

21 A. And they'll rewrite themselves, I think it's every
22 six days or seven days.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay. So every six or seven days, when you say
2 rewrite it, they copy over the hard drive?

3 **A.** Correct. Correct.

4 **Q.** Okay. Okay. So you said there were, there was at
5 least one other customer on January 3rd, 2017?

6 **A.** Yes.

7 **Q.** Do you remember the time of day that Lionel Desmond
8 entered your store?

9 **A.** I know it was in the afternoon. I thought it was
10 around 3 o'clock or so, but I could be mistaken. It's just, I
11 just go, I don't stop all day pretty well, I keep going all day.
12 I don't stop for dinner or nothing. To keep track of time is
13 tough.

14 **Q.** Okay. And we're going to kind of go through what
15 happened in the store but Lionel Desmond did make some purchases
16 that day?

17 **A.** Correct.

18 **Q.** All right. And there was a sales receipt, at least
19 with respect to one of the purchases.

20 **A.** Yes.

21 **Q.** Okay. And the sales receipts from your store do
22 contain a time of purchase on them, do they?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Yes, they do.

2 **Q.** Okay. So I think we have a photo. We might look at
3 that actually a little bit later, but would that be a guide as
4 to when ...

5 **A.** That would be pretty accurate, I would think, unless
6 the clocks didn't go back ... But I don't, I think they were on.

7 **Q.** Okay. All right. The video system that records
8 people in the store, it also has a timer on it, does it?

9 **A.** Correct. Correct.

10 **Q.** Okay. And that video or the videos that are
11 recorded, do you check to determine if the times on those are
12 accurate?

13 **A.** No.

14 **Q.** Okay.

15 **A.** I just know roughly the times. If they're off,
16 they're either plus or minus an hour or on ... You know, it's
17 ... I don't check them. I just ...

18 **Q.** Right. Okay. So when you say plus or minus an hour,
19 is that like when the time change happens?

20 **A.** When the time changes, yes.

21 **Q.** Right. Okay. And they eventually get corrected, do
22 they?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Correct, within six months.

2 **Q.** All right. They're always right half the year,
3 right? Kind of like the clocks in my house, twice a day they're
4 always right. All right.

5 So, in particular, one of the cameras that you use in your
6 security system, it's focused on the counter where you have the
7 guns?

8 **A.** Yes, there's actually two cameras.

9 **Q.** Two cameras?

10 **A.** One in each direction.

11 **Q.** All right. And I think you know that the police
12 collected some video from your store ...

13 **A.** Yes.

14 **Q.** ... as a result of what happened here?

15 **A.** Correct.

16 **Q.** And that video or the relevant portion of it, when
17 Lionel Desmond was in your store, you've had an opportunity to
18 see that video in the past, have you?

19 **A.** Several times.

20 **Q.** Okay. And we're going to have a look at it and we're
21 going to kind of walk through it, okay?

22 **A.** Okay.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** And you can tell me what's going on in the video. Do
2 you recall, before the, I guess, before Lionel Desmond enters
3 the area where he's depicted in this video, do you recall if he
4 did anything else in the store or if he was in the store for any
5 period of time?

6 **A.** He was there for a time, but I ... Maybe 10 minutes,
7 15 minutes prior to me handling him.

8 **Q.** Okay.

9 **A.** Exactly how many minutes I can't tell you. I don't
10 recall.

11 **Q.** No, that's fine. And do you have a memory if he
12 looked at any other products in the store other than the
13 firearms?

14 **A.** No, I don't, just the firearms.

15 **(15:20:00)**

16 **Q.** Okay.

17 **A.** He seemed to be interested in, for sure.

18 **Q.** Okay. All right.

19 **A.** On my ... when I was down at the counter, at least;
20 what he did on the other side, I don't know.

21 **Q.** Okay. You don't have any memory, at least, of him
22 looking ...

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Looking at anything else, no, I do not.

2 **Q.** Okay. All right. So maybe we can start the video.
3 I'm not sure what exhibit number it is, but ...

4 **THE CLERK:** P112.

5 **MR. MURRAY:** 122, thank you.

6 **EXHIBIT P-000112 - SURVEILLANCE VIDEO, LEAVES & LIMBS, JANUARY**
7 **3, 2017**

8 **THE COURT:** We'll have a look at the video, which is
9 Exhibit P112, but ... So just before we start to run it, Mr.
10 Murray, in the top right-hand corner it has 01-03-017 and then
11 04:00 and six/tenths of a second, I guess, or six/one hundredths
12 of a second p.m. So I think what we're going to do is we'll
13 play the video to a certain point in time and then when we stop
14 it I'm going to ask Mr. Murray just to note the time at which
15 the video was stopped. He'll likely ask you some questions, or
16 if I have some questions I might stop it, as well, and counsel
17 will do the same, so that the record will always reflect where
18 we were in the video at the time the questions were asked.
19 That's just for us to follow at a later time. All right? Thank
20 you.

21 **MR. MURRAY:** Thank you, Your Honour.

22 **LEAVES & LIMBS SURVEILLANCE VIDEO CUED AND PAUSED (15:21:40 HRS)**

DANIEL KULANEK, Direct Examination by Mr. Murray

1 So this is paused right now, is it? Can we just leave it paused
2 for just one moment?

3 **THE COURT**: Yes.

4 **MR. MURRAY**: So Mr. Kulanek, you see what's depicted
5 there in this, the beginning of this video?

6 **A.** Yes.

7 **Q.** And do you recognize that?

8 **A.** Yes.

9 **Q.** And what is that?

10 **A.** That's the back of the gun counter and that's Lionel
11 to the far left, and myself with my back to him, and I was
12 talking to another customer. I don't recall who the other
13 customer is.

14 **Q.** Okay. So ... And this is ... Where, physically, if I
15 walked in the front door of your store, where is the gun counter
16 located?

17 **A.** If you walked into my store you'd go directly to the
18 right. If you walked facing un, if you'd go directly to the
19 right, my gun counter is at the end of the building.

20 **Q.** Okay. If I turned right?

21 **A.** If you turned right when you walked in.

22 **Q.** Okay. All right. And is this where the majority of

DANIEL KULANEK, Direct Examination by Mr. Murray

1 the firearms that you sell are located?

2 **A.** Yes. And we have a vault in the back room with the
3 surplus.

4 **Q.** With the surplus?

5 **A.** With the surplus amount. Like, we don't.... We have
6 more guns in the back room in a locker.

7 **Q.** Okay. All right. So what I see in this is, it
8 appears to be primarily long guns that are displayed?

9 **A.** Correct.

10 **Q.** Do you sell other types of firearms?

11 **A.** We sell handguns. They're in a glass cabinet on the
12 lower part of the screen, and you can't see them in that picture
13 but they, the handguns have to be taken out every morning, put
14 away every night, double-locked.

15 **Q.** And that's because handguns are restricted firearms?

16 **A.** Restricted, and that's the regulations for them.

17 **Q.** Okay. So in dealing with your restricted firearms,
18 your handguns, every day, what is it you have to do?

19 **A.** We have to put them away in a locker, double-locked.
20 All handguns have to be double-locked. If they're in a show
21 glass, the glass has to be locked and the trigger lock has to be
22 on.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay. And so during the day when you're in business
2 you have some in the show cabinet?

3 **A.** Yes, correct.

4 **Q.** And they're displayed in the way that you just
5 mentioned?

6 **A.** Correct. Correct.

7 **Q.** Okay. So if a person came in and was looking at
8 restricted firearms, like handguns, and I appreciate that's not
9 the situation with Lionel Desmond, but if a person were, again
10 you would want to see a PAL?

11 **A.** They would have to have their PAL. Whether they came
12 in two days before, a day before, every time they come in they
13 have to show their PAL.

14 **Q.** And their PAL, in that case, would have to be for ...

15 **A.** Restricted.

16 **Q.** ... both restricted and non-restricted firearms?

17 **A.** Correct.

18 **Q.** Okay. If a person, however, is simply looking at the
19 long guns, rifles, a non-restricted PAL is what they would need?

20 **A.** Correct.

21 **Q.** All right. There appears to be a cord that goes
22 through both, both of the different ... or on either sides of

DANIEL KULANEK, Direct Examination by Mr. Murray

1 the door, I guess I'd say.

2 **A.** Yes.

3 **Q.** What is that?

4 **A.** That's a locking system. We have a cable going
5 through every gun, so nobody can just run in and grab a gun off
6 the wall when we're not there.

7 **Q.** Okay. And is that cable locked in some way?

8 **A.** There's three locks on each one.

9 **Q.** And how are they locked?

10 **A.** It's a tubular style lock. It's a cable that would
11 be in ... You'd be hard-pressed to cut it with bolt cutters.
12 It's really hard, it's a real hard material.

13 **Q.** Okay. All right. The firearms on either side of the
14 door, I guess, under the Leaves & Limbs sign ...

15 **A.** Yes.

16 **Q.** Are those new firearms?

17 **A.** They're all new. The ones on the very end, where it
18 shows there's only two or three of them, they're all just used
19 ones.

20 **Q.** Okay. So the firearms that are along the wall, the
21 new firearms ...

22 **A.** Yes.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** What types of firearms are there?

2 **A.** There could be any ... several different models and
3 brands, shotguns, .22s, high-calibre rifles, everything ... a
4 variety.

5 **Q.** Okay. And you said that when Lionel Desmond had been
6 in previously he looked at .22s?

7 **A.** Yes. They would have been right in front of me where
8 I'm standing there. That's, to the left side them are mostly
9 all smaller calibre rifles.

10 **Q.** All right. To the left of the door?

11 **A.** Yes.

12 **Q.** Okay. So those primarily are where the .22s are?

13 **A.** Correct.

14 **Q.** And on the right side of the door, what would be ...

15 **A.** There'd be shotguns and high-power rifles.

16 **Q.** Okay. All right. Now you said at the end of the
17 counter there's a sign that says "Used Guns"?

18 **A.** Yes.

19 **Q.** What's displayed there?

20 **A.** Guns that I would have bought myself or people would
21 put on ... I'd take them on consignment.

22 **Q.** Okay. So you might buy a used gun yourself...

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Correct.

2 **Q.** ... and resell it in your store?

3 **A.** Correct.

4 **Q.** Okay. And you also take guns on consignment from
5 other individuals?

6 **A.** Up to that time, yes.

7 **Q.** Okay. You don't do that anymore?

8 **A.** Don't do it anymore.

9 **Q.** All right. So at the time how did that work, if a
10 person was selling a gun through your store on consignment?

11 **A.** They'd have to pay me a commission on the sale of it.
12 And a lot of times there'd be ... there wouldn't be a whole lot
13 of commission but there'd be some. People just want to get rid
14 of their product sometimes and it, it was just commission based.

15 **Q.** Okay. So would you take a gun on consignment from
16 anybody or did you have some restrictions?

17 **A.** No, I had some restrictions, but it was pretty well
18 anybody that ... I had a pretty good idea how to read them a
19 little bit, somewhat, you know, if they're ... If I figured they
20 were trying to hide something, I'd kind of question it but...

21 **Q.** Mm-hmm. The people that would sell guns on
22 consignment in your store, would they typically be local people

DANIEL KULANEK, Direct Examination by Mr. Murray

1 or ...

2 **A.** Typically.

3 **Q.** Okay.

4 **A.** Typically.

5 **Q.** Would they be people that you knew?

6 **A.** Most ... in most cases at that time they were people
7 I would know. I'll very seldom buy a gun from a stranger, at
8 that time.

9 **Q.** Okay. And if a person was bringing a firearm into
10 the store to ask you to sell it for them, would they, what would
11 you require in terms of a license from those individuals?

12 **A.** Just the ones that are buying it, I'd need a valid
13 PAL.

14 **Q.** The person that brought it in to sell it, would you
15 want to see their PAL?

16 **A.** In some cases, a little bit. But a lot of times they
17 would bring them in ... If they were, like, maybe mom had guns
18 left over that dad passed away and she just wanted to get rid of
19 them, she wouldn't have a PAL, she just wanted to get rid of
20 them.

21 **Q.** Right.

22 **A.** And I'd in some cases buy them.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay. And were there any particular types of guns
2 that you would sell as used guns on consignment?

3 **A.** No. I'd pretty well ... The make or manufacturer
4 didn't make much difference.

5 **Q.** Okay.

6 **A.** I'd buy whatever I'd get a good deal on and so on.
7 It's consignment.

8 **Q.** Right. And would they be long guns, typically, or
9 ...

10 **A.** Yeah, most of them ... 99 percent of them are long
11 guns. The odd time I'd buy handguns, but they were ... they had
12 to be registered.

13 **Q.** Right. Okay. So a restricted firearm, like a
14 handgun, actually has to be registered, itself?

15 **A.** Correct, it has to be registered, correct, and it has
16 to be called in to transfer it.

17 **Q.** Okay. On this day it looks like there's maybe three
18 firearms at the end?

19 **A.** Correct.

20 **Q.** How many would ... I'm just looking at ... There
21 might be ...

22 **A.** There could be as many as 10 on that wall. It

DANIEL KULANEK, Direct Examination by Mr. Murray

1 depends. You know, some may just buy, sell a collection, you
2 know, and just want to ... You know, like I say, someone passed
3 and they just want to get rid of all the guns, they'd bring them
4 all in and get rid of them.

5 Q. Okay. All right. And you would take a commission on
6 those sales?

7 A. Correct, or I'd buy them, personally.

8 Q. Okay.

9 A. Through the shop.

10 Q. If you took a commission, what would that normally
11 be?

12 A. 10 percent, 15 percent. It depends on how well I
13 knew them. You know, I didn't want to ... If I knew them really
14 well and I knew they wanted to get rid of them and would try and
15 get rid of them quick, a lower price.

16 Q. Okay. But you don't do that anymore?

17 A. No.

18 Q. Okay. So there are three people in the video where
19 it's stopped right here, at four o'clock and six seconds.
20 There's one person whose face is intentionally blocked, I guess.
21 That person was a customer, I take it?

22 A. I'm assuming. I can't ... I don't recall. I've

DANIEL KULANEK, Direct Examination by Mr. Murray

1 tried to place him but I can't.

2 **Q.** Right. And you're depicted in that still shot, are
3 you?

4 **A.** Yes, I'm in the middle there.

5 **Q.** Okay. And then the person with the grey jacket on?

6 **A.** That's Lionel.

7 **Q.** Okay. And at that point, when he's there at the gun
8 counter, is that when you think he may have been in the store
9 about 10, 15 minutes?

10 **A.** Yeah, that's ... Like, I was talking to this customer
11 and I remember him walking ... sort of walking behind me sort of
12 and ...

13 **Q.** Mm-hmm.

14 **A.** But I can't recall exactly how long he was in the
15 store prior, but I know I made a gesture to him that I'd be with
16 him in a minute, because I was with a customer at the other
17 counter.

18 **Q.** Right. Okay.

19 **A.** When I was at my archery counter.

20 **(15:30:02)**

21 **Q.** At the archery counter. Okay. And at that point,
22 before you really started to deal with him, do you recognize him

DANIEL KULANEK, Direct Examination by Mr. Murray

1 at that point from your earlier ...

2 **A.** Yes, I do, yeah.

3 **Q.** Okay. And we're going to start this in a second but
4 on this occasion do you remember if he looked at more than one
5 gun or did he look at ...

6 **A.** I can't recall. I know he's focussed on that far end
7 and I can't recall exactly.

8 **Q.** And when you saw him in the store that day and
9 recognized him from the earlier visits ...

10 **A.** Yes.

11 **Q.** ... would you have recalled that he previously would
12 have shown you his PAL?

13 **A.** Yes, for sure.

14 **Q.** Okay, all right. And at that point did you think
15 anything more about him?

16 **A.** Not a bit.

17 **Q.** Did he stand out in any way to you?

18 **A.** Not a bit, very calm, very ...

19 **Q.** Okay. Maybe we can just start and play a bit of this
20 video and we'll stop it at a point in a bit.

21 **VIDEO COMMENCED (15:31:03 HRS)**

22 **Q.** I neglected to ask you but there's no sound on your

DANIEL KULANEK, Direct Examination by Mr. Murray

1 video security system is there?

2 A. There is not.

3 Q. Do you have any recollection if there was interaction
4 between Lionel Desmond and the customer you were dealing with?

5 A. I don't recall that, I can't say for sure.

6 Q. We're in the 4:03 minute here and you've left the
7 frame. You were dealing with the other customer?

8 A. I think he was purchasing the rifle, we were putting
9 it in the books to record it.

10 Q. Okay. And you would do that at your cash, would you?

11 A. Or at this counter, either one.

12 Q. Okay. So now at 4:04 you've entered the frame again?

13 A. Yes. He's looking at the .22-calibres right there.

14 Q. Okay.

15 A. That's like the rabbit gun.

16 Q. Right. So maybe if we could just pause there for one
17 second.

18 **VIDEO PAUSED (15:36:36 HRS)**

19 Q. And we're paused at 4:04:15 for the record. So the
20 gun that you're holding that you're going to show him, what kind
21 of a gun is that?

22 A. It would be a smaller calibre, it would be like a .22

DANIEL KULANEK, Direct Examination by Mr. Murray

1 or similar. I can't ...

2 Q. Hard to tell just from that video?

3 A. From that picture pretty blurry, yeah.

4 Q. Right.

5 A. The smaller calibre is on that counter, on that wall
6 would be a smaller calibre like a .22 or a .17 or .22 Magnum or
7 something like that, it would be a rimfire.

8 Q. And a gun like that, what would that typically be used
9 for by a customer?

10 A. Target shooting, plinking, rabbits, squirrels.

11 Q. So it could be used for hunting but small game?

12 A. Smaller game generally, yes.

13 Q. Okay. And again, you've had to unlock the cylinder
14 lock?

15 A. On that side, I don't know if I ... if it was unlocked
16 on the other side, I believe I might have unlocked that one to
17 show him that particular gun at the time.

18 Q. Right. And given that he had previously shown you his
19 possession acquisition licence, were you comfortable letting him
20 handle that firearm?

21 A. Right. Yes.

22 Q. And obviously it goes without saying but your firearms

DANIEL KULANEK, Direct Examination by Mr. Murray

1 were all unloaded obviously?

2 **A.** Correct.

3 **Q.** So ...

4 **A.** Most them have what's called a plug, it's just a tab
5 that goes in the bolt where you can't put the bolt ahead, you
6 have to pull that plug out.

7 **Q.** Okay. And that's a safety feature, is it?

8 **A.** Comes on all guns.

9 **Q.** Okay. Now you've described his demeanour up to this
10 point.

11 **A.** Yes.

12 **Q.** What do you recall of his demeanour?

13 **A.** There. Very patient and just quiet, didn't ... just
14 very calm.

15 **Q.** All right.

16 **A.** Very soothing. Like he was just not excited or
17 nothing, just very quiet, very patient.

18 **Q.** Do you recall if he asked for a particular gun to look
19 at?

20 **A.** No, I think at that time he was just looking towards a
21 certain gun, he sort of pointed it out and I just grabbed what I
22 thought he was looking at.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay. And in the frame where we stopped at 4:04:15,
2 he appears to be pointing perhaps when that view is taken?

3 **A.** It could have been, yeah, I pointed out another gun
4 maybe there.

5 **Q.** Okay, all right. Okay, so maybe we can just keep
6 playing.

7 **VIDEO RESUMED (15:38:52 HRS)**

8 **Q.** And if we could just pause again. Right.

9 **VIDEO PAUSED (15:40:25 HRS)**

10 **Q.** So we're just paused at 4:05:29. So he's looked at
11 this point at two of small calibre firearms ...

12 **A.** Yes.

13 **Q.** ... that you think are .22s or similar guns?

14 **A.** Yes.

15 **Q.** Do you remember if he had any particular questions
16 about those guns or ...

17 **A.** I honestly can't recall.

18 **Q.** Okay.

19 **A.** I can't recall.

20 **Q.** And I guess I asked you this earlier, he didn't give
21 you any indication of what his interest in the gun was?

22 **A.** No.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay.

2 **A.** I got the impression he wanted to do some target
3 shooting but ...

4 **Q.** Okay. And what gave you that impression?

5 **A.** Just when people look at the small calibre guns
6 they're either target, plinking or hunting rabbits type of
7 thing.

8 **Q.** Okay. Now at this point in the video he's gone down
9 or you've both gone down and taken one of the used guns off the
10 shelf?

11 **A.** Correct.

12 **Q.** Do you recall is that something that he asked about?

13 **A.** I can't recall. It seems to me he said something
14 about the ... about it but I honestly can't say for sure what he
15 said. I can't recall.

16 **Q.** Is it possible that you suggested those guns to him or
17 do you think it was more he who was interested in looking at
18 them?

19 **A.** No, I think ... I don't want to ... I honestly can't
20 say that. Some things really stick out in my mind, some things
21 don't and I don't recall anything there where he ... if he said
22 something about that grey one or if it was ...

DANIEL KULANEK, Direct Examination by Mr. Murray

1 Q. Okay.

2 A. I can't recall.

3 Q. And do you have a recollection if there was one,
4 you're obviously taking one off to let him look at it. Was
5 there anything about that one in particular?

6 A. I think that was the SKS-style, that's the military-
7 style gun.

8 Q. Yes.

9 A. AR-style.

10 Q. So I guess what I'm asking is did he ... was he
11 interested in that one, in particular, initially?

12 A. I honestly can't remember that part. Like I remember
13 him motioning something about it but I don't know exactly what
14 he said about it.

15 Q. Okay. So the gun that you first took off the shelf to
16 hand to him which is in the frame here at 4:05 that you're just
17 about to hand to him, what kind of a gun is that?

18 A. That's a SKS, Russian SKS-AR.

19 Q. So that's a rifle?

20 A. That's a rifle, yes. It's a military rifle that's
21 been converted to make it look like an AR.

22 Q. To make it look like a what?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** AR, like a machine gun.

2 **Q.** Okay.

3 **A.** That style, yeah, military style.

4 **Q.** You say this is a Russian manufactured gun?

5 **A.** This is a Russian manufactured, probably early '40s,
6 late '40s, in that area.

7 **Q.** Okay. And those guns are still in use?

8 **A.** Oh yes, there's thousands of them everywhere.

9 **Q.** Were many of them produced at the time, were they?

10 **A.** Yes. Yes.

11 **Q.** And were they produced, as far as you know, only in
12 Russia or in other places?

13 **A.** Well, there's knockoffs, there's Norincos that are
14 Chinese but they're all ... this was an actual Russian SKS.

15 **Q.** The one that we're talking about here?

16 **A.** Correct.

17 **Q.** Okay. So it would be approximately 70 or 80 years old
18 would it?

19 **A.** Yeah, it would be in the '40s for sure.

20 **Q.** 1940s that it was made?

21 **A.** Yes.

22 **Q.** Okay. And what else can you tell us about that gun?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** It had a little red dot scope on it and it had like
2 the ATI tactical stock on it which was what made it look like a
3 machine gun.

4 **Q.** Okay. And what part of the gun is it that makes it
5 look like?

6 **A.** Well, the grips. And it has like a pistol grip on it,
7 it has an adjustable stock.

8 **Q.** Okay. Would those features have been on the gun when
9 it was originally manufactured?

10 **A.** No. No.

11 **Q.** They were something that were added later?

12 **A.** It was something that was added later, it's a kit.

13 **Q.** When would that kit have been added to that gun?

14 **A.** That particular gun, I can't say for sure. Probably
15 with a year or two prior to being sold.

16 **Q.** Very recently then?

17 **A.** Yeah, within probably a year or two I would think.

18 **Q.** Okay. And what is that ... you say there's many of
19 those still in use?

20 **A.** Oh yeah, they're available, literally thousands of
21 them in warehouses. Thousands.

22 **Q.** Okay. What are they typically used for by people who

DANIEL KULANEK, Direct Examination by Mr. Murray

1 buy them?

2 **A.** Target shooting. They're a cheap gun to shoot,
3 they're a high-powered cheap gun to shoot and they're
4 workhorses, they're just a good, durable gun.

5 **Q.** Okay. So would they be used for hunting?

6 **A.** In some cases. They're not a very accurate gun.

7 **Q.** They're not accurate?

8 **A.** Not a very accurate gun. They're meant to do
9 military-style war and they're just meant to point and shoot,
10 you know, they're not ... no one would buy that for a target
11 gun.

12 **Q.** Okay.

13 **A.** It's not a target gun.

14 **Q.** And you say they're cheap to shoot?

15 **A.** Yes, ammunition is very cheap for them, made in bulk.

16 **Q.** Okay. And we're going to talk a little bit more about
17 the ammunition in a bit but the ammunition that one uses and
18 this is an older military-style weapon, is the ammunition
19 similarly older military-style ammunition?

20 **A.** Not necessarily, you can still buy new ammunition,
21 they still make a lot of it. There's a lot of old surplus stuff
22 around, there's lots of old surplus ammunition around, all kinds

DANIEL KULANEK, Direct Examination by Mr. Murray

1 of it.

2 Q. And is that why, because of the surplus ammunition,
3 that it's cheaper?

4 A. Yes, and it's dirtier, it corrodes the barrel. So
5 like if you don't clean it after it'll go rusty pretty quick.

6 Q. Okay. And you say it's cheap to fire but it's also
7 powerful?

8 A. Yeah, it's the same power. It's the same power, it
9 just has a cheaper bullet and it's corrosive.

10 Q. Okay.

11 A. Because it's made cheap.

12 Q. But compared to, say, the .22s that he was looking at
13 earlier, is this a more powerful ...

14 A. Oh yeah, for sure, yeah.

15 Q. Okay. I know you said it's not accurate but it could
16 be used for hunting?

17 A. Oh yeah, yeah.

18 Q. You typically hunt ... you said that .22s you might
19 use for rabbits?

20 A. Yes.

21 Q. What might you hunt with an SKS?

22 A. Deer, coyotes, big game.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay.

2 **A.** But not too many people use them for that.

3 **Q.** No?

4 **A.** Because they're not the most accurate gun, they're
5 just meant to ... you know, you might get a four-inch group at
6 100 yards.

7 **Q.** You might get what?

8 **A.** A group of four-inches maybe at 100 yards at most,
9 they're pretty basic.

10 **Q.** Okay. And that four inches at 100 yards, that's not a
11 particularly accurate gun?

12 **A.** No, that's not very accurate.

13 **Q.** What type of ammunition do you use with that gun?

14 **A.** What size?

15 **Q.** Yes.

16 **A.** It's 7.62x39.

17 **Q.** All right. And when you load, there's I think certain
18 restrictions on how many rounds can be put in a gun?

19 **A.** Correct.

20 **Q.** And what is that?

21 **A.** That one is ten. Or that one's five.

22 **Q.** Five.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Ten is like a .22-calibre.

2 **Q.** Okay.

3 **A.** That one's five.

4 **Q.** So that particular gun is limited to five rounds?

5 **A.** Correct.

6 **Q.** At any one given time?

7 **A.** Correct.

8 **Q.** Okay. Is that a Canadian rule?

9 **A.** That's Canadian to the best of my knowledge, I know
10 we're only allowed five.

11 **Q.** Okay. And when you load that particular gun, the SKS,
12 just tell us again how you load that gun.

13 **A.** Well, this one ... originally they came with a
14 stripper clip, you load them from the top, but this was
15 converted so it actually had a magazine. You load the magazine
16 and push the magazine up from the bottom.

17 **Q.** So these types of guns that aren't converted to have
18 the magazine on the bottom, there's a stripper clip with rounds
19 that go in the top of the gun?

20 **A.** Yeah, if you lay the stripper clip on top of the bolt
21 and you push it down with your finger and it loads the whole
22 magazine just by pushing your finger down.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** And then the clip comes back out?

2 **A.** Then the clip comes out.

3 **Q.** Okay. This one, however, you said was modified to
4 have a magazine on the bottom?

5 **A.** Yes, it had the kit on it to put a magazine in it.

6 **Q.** And why would it be modified to be loaded that way?

7 **A.** Well, it's a lot easier to put a magazine in it than a
8 stripper. Not too many people use the stripper clips, they'd
9 rather go with a magazine on the bottom.

10 **Q.** Okay. So if you have a magazine you can load it
11 separately from the bottom?

12 **A.** Correct, or if you want to unload it just take the
13 whole magazine out.

14 **Q.** Okay. Nonetheless though, five rounds is the maximum?

15 **A.** Yes.

16 **Q.** Okay. Had you ever sold this type of gun before?

17 **A.** Yes.

18 **Q.** So it's not uncommon in your store either?

19 **A.** No, definitely not, no.

20 **Q.** Okay. And just to be clear, this is a gun that was
21 being sold on consignment?

22 **A.** Correct.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 Q. It wasn't one that you bought and were reselling?

2 A. No, consignment gun.

3 Q. Okay. How much would an SKS rifle like this typically
4 sell for?

5 A. Today?

6 Q. Yes.

7 A. Five hundred the way that one's done up.

8 Q. And in 2017 when he bought it?

9 A. Four to five. Four to five, in that area, I would
10 think.

11 Q. Okay. So perhaps we'll start it again.

12 **VIDEO RESUMED (15:49:23 HRS)**

13 Q. And maybe we can just stop at 4:07.

14 **VIDEO PAUSED (15:51:36 HRS)**

15 Q. I think a moment ago you did a motion that was in the
16 4:06 minute as if you were showing him something.

17 A. Yes, on that gun when you pull the bolt back, it stays
18 open.

19 Q. And the bolt is on the top of?

20 A. On the top.

21 Q. Okay.

22 A. It stays open. In order to close it, it won't close

DANIEL KULANEK, Direct Examination by Mr. Murray

1 unless there's a bullet in it so you've got to trick it.

2 There's a bullet so you can close it so you can put it back.

3 Q. So this gun obviously was unloaded?

4 A. Correct.

5 Q. So how would you close the bolt without a round in it?

6 A. You push your finger on the cartridge and it'll slide
7 over your finger and it will go closed.

8 Q. Did Lionel Desmond know how to do that?

9 A. No.

10 Q. You had to show him?

11 A. Correct.

12 Q. Did he appear to have familiarity with the gun?

13 A. Somewhat, for sure. Somewhat but the jammed magazine
14 ... or the bolt stuck open was ... it kind of baffled him a
15 little bit but once I done it he said something along the lines,
16 Yeah, okay. It was pretty straightforward for him was the
17 impression I got at that moment.

18 Q. Okay.

19 A. Something along that line.

20 Q. Right, okay. So let's go ahead.

21 **VIDEO RESUMED (15:52:39 HRS)**

22 Q. We're at 4:07:30, you don't have to stop it, that's

DANIEL KULANEK, Direct Examination by Mr. Murray

1 okay, but he's looking at another one of the used guns?

2 **A.** Yes, I believe so.

3 **Q.** And maybe we'll just pause there, it's just at 4:10.

4 **VIDEO PAUSED (15:55:55 HRS)**

5 **Q.** So for the last two or three minutes he's been looking
6 at one of the other guns and then we go back to the original
7 gun, the SKS ...

8 **A.** Yes.

9 **Q.** ... at 4:10. Do you have any recollection of what the
10 other gun was?

11 **A.** I can't honestly say.

12 **Q.** And there's a little bit of discussion between the two
13 of you obviously, do you have a sense of what that conversation
14 was?

15 **A.** I can't say for sure.

16 **Q.** Okay.

17 **A.** It was probably ... it was obviously something about
18 the gun but I can't honestly say what it was exactly, I don't
19 recall.

20 **Q.** Are the prices or the tags like displayed on the guns?

21 **A.** Yes, they are.

22 **Q.** It appeared to me that he might have looked at one, do

DANIEL KULANEK, Direct Examination by Mr. Murray

1 you remember if he was price sensitive at all, was he asking
2 about price?

3 **A.** He didn't appear to be. It didn't appear to be
4 sensitive to anything. He was just so casual, so relaxed that

5 **Q.** Okay. So start again.

6 **VIDEO RESUMED (15:56:59 HRS)**

7 **Q.** And again maybe you can just stop there at 4:11.

8 **VIDEO PAUSED (15:58:14 HRS)**

9 **Q.** I think you put on your glasses there and he gave you
10 something.

11 **A.** Probably. I don't recall, it's blurry, probably ... I
12 don't know if he gave me the money for the gun or if he gave me
13 his card at that point. I know I recorded his card, I don't
14 know if it was there or later I recorded his card.

15 **Q.** So when a person decides to actually purchase a
16 firearm ...

17 **A.** Yes.

18 **Q.** ... in your store, a non-restricted firearm ...

19 **A.** Yes.

20 **Q.** ... well, any firearm obviously but we're talking
21 about a non-restricted firearm here what, if anything, do you do
22 with their possession acquisition licence?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** By law I just got to look at it but I record them all.

2 **Q.** Okay. So by law, what is your understanding what you
3 have to do?

4 **A.** The law, they show you a valid card that's not
5 expired. You don't have to record any but I record everything.

6 **Q.** And what do you record from the PAL?

7 **A.** The number and expiry date.

8 **Q.** Okay. And do you record the name?

9 **A.** No name.

10 **Q.** Just the number and expiry date?

11 **A.** Just the number and expiry date and correlate it to
12 the serial number of the gun.

13 **Q.** Okay. And how do you record that in your store, do
14 you ...

15 **A.** I have ... there's about eight record books I have
16 there and I have a separate book for just used guns.

17 **Q.** Okay.

18 **A.** But they're all recorded in the same way.

19 **Q.** So every sale would have a serial number from a gun,
20 the licence number for the PAL ...

21 **A.** Correct.

22 **Q.** ... and an expiry date?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Correct.

2 **Q.** And what's the reason for keeping that information?

3 **A.** For my own information, for my own, in case something
4 like this was to ever happen then obviously they ... for me to
5 have it, I guess.

6 **Q.** Okay. And I appreciate it's really impossible to see
7 what he's handing you there, I understand that, but do you
8 recall if he provided you with his PAL when he decided to
9 purchase the gun?

10 **A.** Yeah, I don't know if he provided it then or later. I
11 know I remember writing it down roughly where I was at, I
12 remember writing it down because I have it all recorded.

13 **(16:00:01)**

14 **Q.** And do you recall where you were when you wrote it
15 down?

16 **A.** Either right there or the next counter. I saw him,
17 he was there, right beside where I'm at there now, I believe.

18 **Q.** Okay. And do you recall he did purchase the gun?

19 **A.** Yes.

20 **Q.** Obviously. Do you recall how the sale was made, in
21 other words, how did he pay for it?

22 **A.** The gun was cash. The gun was cash and I think he

DANIEL KULANEK, Direct Examination by Mr. Murray

1 put the ammunition through cash, as well. I can't recall
2 because ...

3 Q. With the used guns, do those have to be cash sales or
4 can you do them ...

5 A. No, we can do what they want ... we can do whatever
6 way they want.

7 Q. Debit, credit, any ...

8 A. If they want to, yes. If it's my own guns that I'm
9 selling, yes, it goes through the store.

10 Q. Okay. All right. And in the case of this gun,
11 though, do you recall ...

12 A. It was consignment and I can't recall ...

13 Q. If it was cash or not?

14 A. It was cash, for sure, I remember that.

15 Q. Okay.

16 A. Because I remember he took it out of his inside
17 pocket, I believe, like that idea, that motion.

18 Q. The cash, you mean?

19 A. Yes.

20 Q. And the purchase price for this gun?

21 A. I think it was around 400, but I can't say for sure,
22 4 or 450, I can't recall, in that area, 350, 400.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** I think actually in your statement you said 450.
2 Does that accord with your memory?

3 **A.** That's possible. I can't recall, it's a long time
4 ago.

5 **Q.** Okay. All right. So we can start again.

6 **VIDEO RESUMED** **(16:01:22 HRS.)**

7 **VIDEO PAUSED** **(16:04:30 HRS.)**

8 **MR. MURRAY:** Okay. So we've just stopped at 4:13:30.
9 You've moved to the other counter, to the right of the screen,
10 and you'd previously taken something out and then you left the
11 frame and came back with two red boxes.

12 **A.** Yes.

13 **Q.** So what are you showing him there?

14 **A.** That's a different ... that's the hunting rounds for
15 an SKS.

16 **Q.** Okay. So is there two different kinds of ammunition
17 you're showing him there?

18 **A.** That's ... well, that's the Hornady hunting round,
19 and the other one was a surplus, but I believe, I don't know if
20 I showed him the surplus in that picture or not. I can't see.

21 **Q.** Okay. So the red box ...

22 **A.** But the red box is definitely Hornady.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** So Hornady ... Is it pronounced Hornaday or Hornady?

2 **A.** Hornady, both, either way. It's a brand name.

3 **Q.** It's a brand name, okay. And so, just generally
4 speaking, did you discuss more than one type of ammunition with
5 him?

6 **A.** Yes. Yes, he inquired about both styles.

7 **Q.** What was the ...

8 **A.** The surplus, the corrosive stuff, and the other one's
9 the hunting rounds.

10 **Q.** Okay. So tell us about each of those. What's the
11 surplus?

12 **A.** The surplus is the cheap rounds. They're just
13 corrosive, cheap rounds, and the red stuff is for, typically
14 used for hunting or target, a little bit of target, plinking.

15 **Q.** So the surplus, is that war surplus?

16 **A.** Yes.

17 **Q.** Okay. And you say it's corrosive.

18 **A.** Correct.

19 **Q.** So what does that mean? Will it damage your gun?

20 **A.** Well, if you don't clean your gun every day after you
21 use it, it's going to get rusty inside. It's a corrosive
22 ammunition.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 Q. Okay. And what else about that ammunition?

2 A. It's full metal jacket. It has a tip of solid ...
3 solid tip on it, a pointed tip. The Hornady stuff has a polymer
4 tip on it.

5 Q. Okay.

6 A. So it expands.

7 Q. Okay. So we'll just do these one at a time.

8 A. Okay.

9 Q. A surplus, you said it's a full metal jacket?

10 A. Full metal jacket.

11 Q. What does that mean?

12 A. Like it's a sharp, piercing style bullet.

13 Q. Okay. It's consistent on the outside, it's all ...

14 A. Correct.

15 Q. All the same?

16 A. Correct.

17 Q. Okay. And the tip of it is what?

18 A. It's solid copper or a form of copper.

19 Q. Okay. And the surplus ammunition is less expensive,
20 is it?

21 A. Yes. Yes.

22 Q. Like how much would surplus ammunition for this gun

DANIEL KULANEK, Direct Examination by Mr. Murray

1 cost?

2 **A.** Surplus, a 25-round box for that would be, like, five
3 bucks now. The hunting rounds would be \$35 for 20 rounds.

4 **Q.** So the other ammunition, which is more typically used
5 for hunting and made by Hornady ...

6 **A.** Yes.

7 **Q.** How does that ammunition differ?

8 **A.** It mushrooms more so when you hit, like, if you're
9 hunting big game, it will mushroom a little bit as it
10 penetrates.

11 **Q.** When you say "mushroom", what does that mean?

12 **A.** It opens up, like just spreads out, so it has a
13 bigger impact.

14 **Q.** Okay. And there's something on the tip of that
15 ammunition, did you say?

16 **A.** Yeah, it's a polymer tip. That just pretty well
17 melts away when it hits something hard.

18 **Q.** And that's why it mushrooms or ...

19 **A.** Mushrooms, right.

20 **Q.** Okay. And that ammunition is less corrosive, is it?

21 **A.** Yes, it's not corrosive at all.

22 **Q.** Okay. And why is that?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** It's just made of brass, it's a better quality.

2 **Q.** Okay. And, thus, more expensive, as you've ...

3 **A.** Correct, correct.

4 **Q.** How much would a box of ...

5 **A.** It would be, like, 30, \$35 for a box of better
6 ammunition, quality ammunition.

7 **Q.** 30 to \$35 for how many rounds?

8 **A.** That's for 20 rounds 20 or ... 20 to 50. It could be
9 anywhere, it could be ... It depends on the size of the box, and
10 I can't see the box, but I know the red one is Hornady. I would
11 say it would be around \$35 as opposed to the surplus that you'd
12 get 25 rounds for, like, \$5.

13 **Q.** Okay. So significantly more expensive?

14 **A.** Oh, yeah, it's a lot cheaper.

15 **Q.** All right. And I think in your statement you made
16 reference to a measure ... grain?

17 **A.** The weight of the ... It's the actual weight of the
18 bullet, but both bullets would be roughly the same weight.

19 **Q.** Okay. All right. But the weight of a bullet is
20 measured in grains?

21 **A.** Grains, yes.

22 **Q.** Okay. Now do you recall if you showed him, whether

DANIEL KULANEK, Direct Examination by Mr. Murray

1 we've seen it yet or not, did you show him both types?

2 **A.** I believe so but I can't recall. I know the surplus
3 stuff is all wrapped in paper, it's all, like, taped together.

4 **Q.** Um-hmm.

5 **A.** That's the way it comes, in bulk, in a big can, so
6 you kind of, when you take it out of the can it's all wrapped in
7 paper, brown paper wrapped.

8 **Q.** And apart from telling him about the different types
9 of ammunition, do you remember anything else about the
10 conversation?

11 **A.** I don't think, other than he wanted to know what the
12 difference was, if one was better and I was telling him and he
13 said ... I'm sure he took both.

14 **Q.** Okay. So he had questions about the difference, I
15 guess, is that ...

16 **A.** Yeah. One was, I was telling him one was better than
17 the other and he said, Well, I'll take both, along that line.

18 **Q.** All right. Well, let's just let this play and we'll
19 see how ...

20 **A.** Okay.

21 **VIDEO RESUMED (16:09:05 HRS.)**

22 **MR. MURRAY:** And there, at 4:14 there's a black box.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 Would that be the surplus ammunition or are you able to say?

2 **A.** That could be another hunting round if it's a black
3 box. Surplus stuff is, like, a brown wrap.

4 **(16:10:02)**

5 **Q.** Okay. So at 4:14:45 he appears to tap on one, on the
6 red box?

7 **A.** Yeah.

8 **Q.** When a person purchases a long gun, is there a
9 certain way that it should be packaged when they leave the
10 store?

11 **A.** Yeah. If they don't have a case I generally wrap
12 them up, box it, or have it locked.

13 **Q.** All right. And the used guns, do they typically have
14 a case?

15 **A.** No.

16 **Q.** All right. The newer ones would, would they?

17 **A.** New ones always come in a box, not necessarily a case
18 but a box.

19 **Q.** A box. So at 4:16 you've come back into the frame
20 with the box.

21 **A.** I can't ... I thought I put it in a cardboard box or
22 wrapped it in something.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **THE COURT:** We may have to wait to see that. I think
2 it's coming.

3 **A.** Okay.

4 **MR. MURRAY:** Now the box that you retrieved there, would
5 that necessarily have been a box that went with that gun or ...

6 **A.** No, no, it wouldn't have been. It would have been
7 just a spare box I had at one time, if I can find one ... I'm
8 sure, I'm sure I did.

9 **Q.** At 4:18 there you were just holding something. What's
10 that?

11 **A.** Yeah, I don't know if that was the ... It could have
12 been a kit to go with it or accessories to go with it. I can't
13 recall.

14 **Q.** And we're almost at 4:19 and Lionel Desmond actually
15 takes a case off the shelf.

16 **A.** Yeah, and I don't think the gun fit in it.

17 **Q.** Okay. Do you recall if that was your suggestion or
18 his, to try the case?

19 **A.** I can't recall.

20 **Q.** And do you sell cases by themselves?

21 **A.** Yes.

22 **Q.** Okay. So now we're just at 4:21 and the gun appears

DANIEL KULANEK, Direct Examination by Mr. Murray

1 to be partially in a box and you're wrapping it?

2 **A.** Yes, tying the end, tying up the end.

3 **Q.** And what do you use to wrap it up?

4 **A.** It'd be, like, a stretch wrap plastic, usually.

5 **Q.** Okay. And that would be satisfactory for it leaving
6 the store, would it?

7 **A.** Yes, in a box and ...

8 **THE COURT:** It was already trigger-locked. It was
9 already locked in some way, was it not?

10 **A.** There's no lock on it. You just disengage it.

11 **THE COURT:** Didn't put a cable lock through the breach?

12 **A.** It doesn't have to, not by law. We just wrap it. It
13 has to be locked one way or the other, whether it be encased or
14 locked. We just encase it.

15 **MR. MURRAY:** And then finally we're at 4:22:24 seconds
16 and you and Lionel Desmond walk out of the frame.

17 **A.** Yes.

18 **Q.** All right. And we'll stop it there.

19 **VIDEO CONCLUDED (16:20:22 HRS.)**

20 **Q.** Where did you go, do you recall?

21 **A.** To the cash register.

22 **Q.** And the cash register would be located where in

DANIEL KULANEK, Direct Examination by Mr. Murray

1 relation ...

2 **A.** At the far left of that screen, totally the opposite
3 side of that wall.

4 **Q.** Okay. And that's where the sale would be completed?

5 **A.** Correct.

6 **Q.** Okay. And if we'd be able to go to Exhibit 42. So
7 this is Exhibit 42, a number of photographs that were of items
8 taken from his Ford Escape, Lionel Desmond's Ford Escape or from
9 a Ford Escape, and I'm looking at photo 12 in those photographs.
10 Are you able to identify what that is?

11 **A.** That looks like a receipt from the shop, yes.

12 **Q.** All right. So that, that item says Leaves & Limbs
13 Sports Outpost Building. Would be the total title of your
14 business?

15 **A.** Yes, correct.

16 **Q.** And there's a date on there of January 3rd, 2017.

17 **A.** Yes.

18 **Q.** And a time?

19 **A.** 4:15. That should be about right.

20 **Q.** All right.

21 **A.** I didn't think it was that late but it could have
22 been.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay. And, again, from your earlier testimony you
2 thought the time on your cash register would be, roughly,
3 correct?

4 **A.** I thought it was, roughly, within the hour of that,
5 but it could have been later. I spent a lot ... a fair amount
6 of time with him, so I can't ... I knew it was later in the
7 afternoon but I didn't think it was that late.

8 **Q.** Okay. And the product that was purchased on that
9 sales receipt is what?

10 **A.** It's the Hornady stuff there, 125 ... 123 grain, I
11 believe it is, or 128, 123 grain SSTs, Hornadys.

12 **Q.** And that was the better quality ammunition?

13 **A.** That's the better one.

14 **Q.** Okay. And the price of that was ... I take it the
15 "1" is one box, is it?

16 **A.** One box, yes.

17 **Q.** And the price is \$43.95?

18 **A.** Correct.

19 **Q.** And do you remember how many rounds are in a box?

20 **A.** That box, there was probably 50.

21 **Q.** Okay. So maybe if we could just go to Exhibit 41,
22 photo 9.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** That looks like it.

2 **Q.** Okay. So maybe we can just zoom in on the label
3 there. Are you able to tell what kind of ... what brand of
4 ammunition that is?

5 **A.** Yeah, it's Hornady, yes.

6 **Q.** Okay. Would that be the same type of ammunition that
7 he purchased?

8 **A.** Yes, according to the ... I'd say yes. It looks very
9 similar.

10 **Q.** Okay. And the calibre of the ammunition is on the
11 box, as well, is it?

12 **A.** Correct.

13 **Q.** That's 7.62x39.

14 **A.** Correct, 7.62x39.

15 **Q.** Okay. And the weight is 123 grain?

16 **A.** Correct.

17 **Q.** Okay. And just go up in the picture a little bit.

18 The rounds themselves, do these appear to be the types of rounds
19 that ...

20 **A.** It looks very similar, yes.

21 **Q.** Okay. And they have a red tip?

22 **A.** Red tip on them, yes.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 Q. That's the red polymer tip you described earlier?

2 A. Yes. Yes.

3 Q. Okay. And that tray would appear to hold 50. Is
4 that typical for that box to hold 50 rounds?

5 A. Correct. I believe so, yeah. Yes, I believe so.

6 Q. So on the day that he was in the store, January 3rd,
7 2017, you said you would have recorded his number and the expiry
8 date of his PAL?

9 A. Yes, I did.

10 Q. As you do with all customers?

11 A. Every one.

12 Q. Okay. And did you or would you have had any way to
13 call anyone to check the validity of his PAL?

14 A. There probably is a number you could call, but we
15 weren't ... There's not to my knowledge that we had to call them
16 in. Once they eliminated the Registry, it was, it was all gone,
17 like there's no numbers for us to call. We probably could have
18 called and went through several channels to do it but ...

19 Q. Um-hmm.

20 A. There's nothing in it for us to do.

21 Q. Okay. And are you familiar or has anyone given you
22 information about a business web number or any number that you

DANIEL KULANEK, Direct Examination by Mr. Murray

1 can call?

2 **A.** Well, there's supposed to be a number you can call
3 for the handguns.

4 **Q.** Right.

5 **A.** And when we call to register ... If we ... We don't
6 have any ... No firearms chief came and told us that we should
7 ... that we could call it in or ... We had no idea, like, no
8 one's told us anything like that.

9 **Q.** Okay. And so in this case you had no one to call and
10 ...

11 **A.** No, not off the top of ... not off the cuff. We'd be
12 on the phone all day, we would be just steady calling.

13 **Q.** All right. And you said that you recorded that
14 information about the sales ...

15 **A.** Correct.

16 **Q.** And do other businesses, to your knowledge, do that?

17 **A.** Not to my knowledge. Some do, but I don't know of
18 many that do.

19 **Q.** Okay. Obviously, if this had been a sale of a
20 restricted firearm, like a handgun ...

21 **A.** It's totally ... They wouldn't be able to leave with
22 it, anyway. It's a week before they get it.

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **Q.** Okay. And you would have to call that in?

2 **A.** We'd have to call it in and the gun stays in the
3 vault until they get a letter in the mail saying that they can
4 pick it up.

5 **Q.** Okay. So if I bought a restricted firearm from you
6 today I wouldn't be getting it for another approximately a week?

7 **A.** Five days, seven days, right.

8 **Q.** All right. After ... you've left the frame here,
9 obviously, and completed the sale. Do you recall if you did
10 anything else that day?

11 **A.** I don't recall.

12 **Q.** No? Throughout the time that he was in the store,
13 did his demeanour change?

14 **A.** Not a bit, very calm, just relaxed, just ... I don't
15 know, I just, I never ... I would never expect that to happen.
16 Never.

17 **Q.** And do you remember, roughly, how long he was in the
18 store in total?

19 **A.** Maybe an hour, maybe, at the most. 45 minutes to an
20 hour. I can't say for sure.

21 **Q.** Okay. And when he left the store with his purchase,
22 at that time did you think anything more of it?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Not a thing. The last thing on my mind.

2 **Q.** Okay. And I know this is difficult, I'm sorry, you
3 heard the news then ...

4 **A.** That evening.

5 **Q.** That evening?

6 **A.** Yeah.

7 **A.** Did you initially connect it to the person that had
8 been in the store?

9 **A.** I sort of thought it was. And then the investigators
10 came down from Halifax, I believe they were, and I had that chat
11 with them, I think, the following day, following evening, at the
12 shop.

13 **Q.** That was January 4th that you spoke to the police?

14 **A.** I believe it was - January 4th, January 5th, in that
15 area somewhere. I just remember the guy.

16 **Q.** And the person that you dealt with on January 3rd,
17 did you see anything ... was there anything about your
18 interaction with him that caused you any concern?

19 **A.** No. He was sort of relaxed. His eyes were very
20 calm. And that's ... Like, they were very easy. Like, he was
21 just so relaxed. It's just beyond me. If I thought ...

22 **Q.** This has weighed heavily on you since then, has it?

DANIEL KULANEK, Direct Examination by Mr. Murray

1 **A.** Yeah.

2 **Q.** All right. Thank you, Mr. Kulanek. I appreciate it.

3 **A.** Yeah..

4 **THE COURT:** Mr. Kulanek, some of the counsel might have
5 some questions for you.

6 **A.** Okay.

7 **THE COURT:** We're going to finish up your evidence
8 today so that you won't have to come back on another occasion
9 but if you'd like to take a little break, we can take a little
10 break.

11 **A.** I'm good.

12 **THE COURT:** Stretch your legs for a few minutes, if you
13 like?

14 **A.** I'm good.

15 **THE COURT:** You're good?

16 **A.** Yeah.

17 **THE COURT:** Okay. If you want to take a little break
18 just let me know.

19 **A.** Okay. Thank you.

20 **THE COURT:** Ms. Ward?

21 **MS. WARD:** No questions, Your Honour.

22 **THE COURT:** Thank you. Ms. Lunn?

DANIEL KULANEK, Cross-Examination by Mr. Rodgers

1 Q. Yeah.

2 A. It's good for long distance but it's not classified
3 as an accuracy style gun.

4 Q. Okay.

5 **(16:29:58)**

6 A. People doing target shooting, they want to shoot,
7 like, you know, the size of a dime or a nickel, right?

8 Q. Yeah.

9 A. This is ... You'd be lucky to get four inches. I
10 mean, it's pretty basic.

11 Q. The other rifle he had in his hand had a scope. I
12 thought if we ...

13 A. I think the both of them had scopes.

14 Q. The SKS had a scope, as well?

15 A. Yes, it did.

16 Q. Okay. Was the rifle maybe better for long distance
17 shots, do you ...

18 A. It probably would have been. If it's the other style
19 rifle with a scope, it would have been better for long distance,
20 for sure.

21 Q. Okay.

22 **THE COURT**: I'm sorry, when you talk about long

DANIEL KULANEK, Cross-Examination by Mr. Rodgers

1 distance you're talking a hundred yards, four hundred yards?

2 **A.** 2, 300 yards, 400 yards.

3 **THE COURT:** All right.

4 **MR. RODGERS:** I'm sorry, I should have been more specific
5 with the distances.

6 **A.** Okay.

7 **Q.** The higher end rounds, and you've described some of
8 the differences there, I noticed at one point in the video he
9 was shaking the individual bullets. Any significance to that,
10 any reason why he would have done that?

11 **A.** I have no idea.

12 **Q.** Okay.

13 **A.** Maybe shaking to see if there's powder in them, I
14 guess. I don't know. I've never ... People do different
15 things.

16 **Q.** Yeah. And the last question is on the case, and I
17 think you may have answered this already but there's no ... he
18 wouldn't be required to have a case for that rifle in order to
19 leave the store with it?

20 **A.** No, as long as it's in a box.

21 **Q.** Did he ...

22 **A.** Or encased.

DANIEL KULANEK, Examination by the Court

1 of photographs ... Oh, sorry, I've got them right here. So it
2 would be Exhibit 42.

3 **A.** I'm to look in this to see it, you mean?

4 **Q.** I think it's going to come up on the monitor.

5 **A.** Okay.

6 **Q.** So give me a second here, and then it's, I think it's
7 number 27. I think there's two, there's 26 and 27. So let's
8 put up 27 first, the photograph. And there may be a book of
9 photographs ... Is there a little bench beside you there, just
10 down to your right? No, just down to your right is there a
11 binder of photographs there? There you go. So if you want to
12 have a look at that, go to the ... There's a blue tab, Tab 5.

13 **A.** Yes.

14 **Q.** And go to photograph 27, right in the back.

15 **A.** Okay.

16 **Q.** Okay. Have you got 27 there?

17 **A.** Yes.

18 **Q.** So you wouldn't necessarily know this but this was a
19 photograph of a box ... Just flip the page to photograph 26,
20 it's the one just before that. So you've got two, all right?

21 **A.** Okay.

22 **Q.** So you have, it shows, there's a vehicle there with a

DANIEL KULANEK, Examination by the Court

1 hatch up.

2 **A.** Yes.

3 **Q.** And then there's a picture of a box?

4 **A.** Yes.

5 **Q.** And on the left-hand side of the box it says ATI.

6 **A.** Correct.

7 **Q.** And then if you flip over to the next page,

8 photograph 27 ...

9 **A.** Yes.

10 **Q.** So that's the SKS Strikeforce Six-Position Side-

11 Folding Stock.

12 **A.** Correct.

13 **Q.** So is that the box that that firearm would come in or

14 is that just another SKS box?

15 **A.** That's just the plastic, the kit. That's not the

16 gun, that's just the kit.

17 **Q.** That's just the kit?

18 **A.** That's just the plastic.

19 **Q.** So this was an ATI kit?

20 **A.** Correct.

21 **Q.** But that firearm was already ...

22 **A.** Assembled, and this was the box that was probably

DANIEL KULANEK, Examination by the Court

1 with it at the time, maybe.

2 Q. Oh, okay.

3 A. It's very possible. It's the same style.

4 Q. It looks like it has the same kind of top-mounted
5 optic?

6 A. Yeah, similar.

7 Q. Similar ... at least similar. All right. And that's
8 the box that you put it in and then ...

9 A. I believe so, yes.

10 Q. And then plastic-wrapped it?

11 A. I believe so.

12 Q. All right. So if we could go back to the video and
13 take it back to 4:11, please. So I have a question, but I need
14 to find the spot that I want to ask you the question about,
15 because when I watched the video it seemed to me there was some
16 point in time where you may have put a cable lock through the
17 breach and then handed him something. So I know I asked you
18 that, but I'm going to let you watch the video and see if
19 that's, in fact, what you did.

20 A. I don't recall but it's possible, but I don't recall.

21 Q. Okay. Let's go back, if we can go back to 4:11.

22 Okay. So just run it from there. So we're at 4:10:55 and we're

DANIEL KULANEK, Examination by the Court

1 going to run it.

2 **VIDEO PLAYED (16:35:21 HRS.)**

3 **A.** I think I'm recording his number at that point.

4 **Q.** It looks like you handed him ... maybe you handed his
5 card back to him there?

6 **A.** Correct.

7 **Q.** And that was at 4:11:18.

8 And so it's 4:13:53 and he's looking at ammunition. So my
9 question would be would that firearm be more accurate with
10 Hornady quality ammunition versus ...

11 **A.** A better quality would be for sure.

12 **Q.** Would it?

13 **A.** The black box that was there is also Hornady.

14 **Q.** Is it? Okay.

15 What are you doing right there, do you know, at 4:17.

16 **A.** That's probably the kit that comes with it, accessory
17 kit.

18 **Q.** Accessory kit? All right. What are you doing right
19 there? Shaking something out?

20 **A.** It's probably the cleaning tubes for the rifle.

21 **Q.** Taking something out ...

22 **A.** It comes with a cleaning tube.

DANIEL KULANEK, Examination by the Court

1 **Q.** Okay. And what do you think you're doing right
2 there, 4:18?

3 **A.** Yeah, I did lock it, yeah. It is locked. It's a
4 cable lock.

5 **Q.** You cable locked it. Okay. We can stop it. So
6 4:18:25 or thereabouts.

7 **VIDEO CONCLUDED (16:44:40 HRS.)**

8 **Q.** That was the question I was going to ask you. I
9 thought you did cable lock it.

10 **A.** Yeah.

11 **Q.** I just wanted to confirm that, in fact, it was cable
12 locked as well as being wrapped before you let Mr. Desmond take
13 it out of the store.

14 All right. Thank you, Counsel. I know it's a difficult
15 day for you and we very much appreciate your time.

16 **A.** Okay.

17 **Q.** Thank you very much. You're free to go.

18 **WITNESS WITHDREW (16:45 HRS)**

19 **THE COURT:** All right. Thank you, Counsel. I think
20 we're adjourned. I wanted to finish off these witnesses today.
21 We will not sit again until Monday, we're scheduled for Monday
22 at 9:30. I think we have Mr. Parkin in on Monday?

DANIEL KULANEK, Examination by the Court

1 **MR. RUSSELL:** Yes, Your Honour, that's the anticipated
2 ...

3 **THE COURT:** And he's the only witness next week, as I
4 understand?

5 **MR. RUSSELL:** Conceivably, we could have one additional
6 person from the Nova Scotia Firearms Office.

7 **THE COURT:** Oh, fine. All right.

8 **MR. RUSSELL:** But not sure.

9 **THE COURT:** That's the nature of the evidence we're
10 going to hear next week?

11 **MR. RUSSELL:** Yes.

12 **THE COURT:** From the Nova Scotia CFO's office. All
13 right. Thank you, Counsel. We're adjourned for the day.

14

15 **COURT CLOSED (16:45 HRS.)**

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CERTIFICATE OF COURT TRANSCRIBER

I, Margaret Livingstone, Court Transcriber, hereby certify that the foregoing is a true and accurate transcript of the evidence given in this matter, **re Desmond Fatality Inquiry**, taken by way of electronic digital recording.



Margaret Livingstone

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DARTMOUTH, NOVA SCOTIA

February 28, 2020