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Examination No. 21-0066

Court File No. T-1347-20

**FEDERAL COURT**

B E T W E E N:

**BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Applicant

- and -

**ROYAL CANADIAN MOUNTED POLICE COMMISSIONER BRENDA LUCKI**  
**and ATTORNEY GENERAL OF CANADA**

Respondents

\*\*\*\*\*

CROSS-EXAMINATION OF SUPERINTENDENT MICHAEL O'MALLEY on  
affidavit affirmed February 3, 2021, pursuant to an  
appointment made on consent of the parties, to be reported  
by E.M. Gillespie Court Reporting, on February 26, 2021,  
commencing at the hour of 2:00 in the afternoon.

\*\*\*\*\*

APPEARANCES:

Paul Champ,  
Jessica Magonet,

for the Applicant

Michael Roach,  
Lesley McCoy,  
Jason Tree,

for the Respondents

The Examination was reported by E.M. Gillespie Court Reporting via  
video conference, having been duly appointed for the purpose.

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(i)

**INDEX**

NAME OF WITNESS: SUPERINTENDENT MICHAEL O'MALLEY

EXAMINATION BY: MR. CHAMP

**EXHIBITS**

<b><u>EXHIBIT NO. 1:</u></b>	Direction to Attend, dated February 17, 2021. ....	4
<b><u>EXHIBIT NO. 2:</u></b>	Letter from Michael Roach to Paul Champ, dated February 25, 2021. ....	4
<b><u>EXHIBIT NO. 3:</u></b>	National Public Complaints Directorate Organisational Chart, March 1, 2019. ....	9
<b><u>EXHIBIT NO. 4:</u></b>	National Public Complaints Directorate Organisational Chart, November 3, 2020. ....	16
<b><u>EXHIBIT NO. 5:</u></b>	Outstanding PII Reports - Status spreadsheet. ...	27
<b><u>EXHIBIT NO. 6:</u></b>	Outstanding Interim Reports - Status spreadsheet.	28
<b><u>EXHIBIT NO. 7:</u></b>	Undated draft email from Gina Levesque to C&IP Branch. ....	52
<b><u>EXHIBIT NO. 8:</u></b>	Email from Gina Levesque to Michael O'Malley, Denis Savard and email from Michael O'Malley to Denis Savard, Gina Levesque, September 22, 2020. ....	53
<b><u>EXHIBIT NO. 9:</u></b>	String of five emails between Michael O'Malley, Denis Savard, Gina Levesque, September 22 and 23, 2020. ...	58
<b><u>EXHIBIT NO. 10:</u></b>	String of emails between Michael O'Malley, Gina Levesque, Max Baier, Christiane Savard, November 18, 2020. ...	62

DATE TRANSCRIPT ORDERED: FEBRUARY 26, 2021

DATE TRANSCRIPT COMPLETED: MARCH 10, 2021

1                                    **SUPERINTENDENT MICHAEL O'MALLEY, AFFIRMED:**

2                                    **EXAMINATION BY MR. CHAMP:**

3                                    We're on the record on  
4                                    Friday, February the 26<sup>th</sup>, 2021, with respect to Federal  
5                                    Court file number T-1347-20, British Columbia Civil  
6                                    Liberties Association versus RCMP Commissioner Brenda  
7                                    Lucki and the Attorney General of Canada. We are here to  
8                                    examine the affidavit of Michael O'Malley, an affidavit  
9                                    affirmed February 3<sup>rd</sup>, 2021. This is Paul Champ, counsel  
                                     for the applicant to be conducting the examination.

10    1.                            Q. Superintendent O'Malley, is it okay if I call  
11                                    you Superintendent O'Malley or would you prefer Mr.  
12                                    O'Malley?

13                                    A. Either or. Whatever you're comfortable with,  
14                                    I'm fine with.

15    2.                            Q. I'm comfortable with Superintendent. I deal  
16                                    with RCMP guys all the time so if it's okay, I'll use  
17                                    Superintendent.

18                                    MR. ROACH: Counsel, sorry, just to interrupt. I  
19                                    think your video is frozen. We hear you fine but I think  
20                                    your video is frozen. It's not an issue but I just wanted  
21                                    to point that out.

22                                    MR. CHAMP: Has everyone else got me okay right  
23                                    now? Thanks, Michael.

24    3.                            Q. Superintendent, I'm just going to ask you  
25                                    questions with respect to this affidavit that you affirmed

1 on February 3<sup>rd</sup>, 2021. You affirmed to tell the truth in  
2 that affidavit? Is that right?

3 A. Yes, I did.

4 4. Q. You understand that the questions I'll put to  
5 you today, you're still bound by that oath to tell the  
6 truth? You understand that?

7 A. Yes.

8 5. Q. A couple questions just to start,  
9 Superintendent. You've got with you, I understand, your  
10 affidavit?

11 A. Yes, I have it here with me.

12 6. Q. I might refer you to a few of the specific  
13 paragraphs. As well you have the Direction to Attend?  
14 You have that with you as well?

15 A. Yes, I do.

16 MR. CHAMP: Just to start off, counsel, for  
17 exhibits what I propose we do, Mr. Roach, is I think  
18 between us on the Zoom, we can identify which specific  
19 documents that we're talking about and I'll ask them to be  
20 identified and then afterwards you and I can confer to  
21 make sure we are on agreement of what the documents are  
22 for exhibits that we can then forward to Ms. Penman. Does  
23 that sound okay?

24 MR. ROACH: That's fine. Thank you.

25 MR. CHAMP: I would like to ask that the Direction

1 to Attend be marked as Exhibit 1 to this examination. Is  
2 that okay, counsel?

3 MR. ROACH: That's fine.

4 **EXHIBIT NO. 1:** Direction to Attend, dated February  
5 17, 2021.

6 MR. CHAMP:

7 7. Q. Superintendent, you know that yesterday  
8 counsel for the Attorney General had forwarded to me a  
9 number of documents to produce relative to that Direction  
10 to Attend?

11 A. Yes.

12 8. Q. You have those with you as well, if I refer to  
13 some of those?

14 A. Yes, I do.

15 9. Q. I received a letter from counsel for the  
16 Attorney General producing those documents. It's a letter  
17 from Michael Roach to myself dated February 25<sup>th</sup>, 2021. Do  
18 you have that letter, Superintendent?

19 A. Yes, I do.

20 MR. CHAMP: Counsel, I would just ask to have the  
21 letter dated February 25<sup>th</sup> marked as Exhibit 2 to the  
22 examination. Is that okay?

23 MR. ROACH: That's fine. Thank you.

24 **EXHIBIT NO. 2:** Letter from Michael Roach to Paul  
25 Champ, dated February 25, 2021.

1                   MR. CHAMP: Jessica, I forgot to ask but I'm going  
2 to try to keep a note myself but if you can keep notes of  
3 the exhibits as well, that would be great.

4 10.               Q. Superintendent O'Malley, in your affidavit I  
5 understand you became the Director of the National Public  
6 Complaints Directorate in November of 2018?

7                   A. Yes.

8 11.               Q. In your affidavit you advise in paragraph 3  
9 that you first became generally aware of this matter, this  
10 complaint by the BCCLA during your transition to the  
11 director position in November of 2018. Do you recall how  
12 you became aware of it?

13                  A. I had meetings with the previous director of  
14 National Public Complaints Directorate and as well with  
15 the inspector or the second person in charge who was  
16 responsible for outreach and liaising with Civilian Review  
17 and Complaints Commission.

18 12.               Q. Did they talk about this complaint  
19 specifically or was it just like a list of outstanding  
20 complaints? How was this complaint brought to your  
21 attention?

22                  A. It was more in a general context in regards to  
23 the list of outstanding interim reports that required  
24 analysis and Commissioner Responses.

25 13.               Q. In that regard, when you assumed the position

1 in November 2018, you understand there was a large backlog  
2 of interim reports from the Commission that had not yet  
3 received a response from the Commissioner?

4 A. Yes, I was made aware.

5 14. Q. When you assumed the position, the concern  
6 about that backlog was communicated to you or the concern  
7 of the Commission about that backlog?

8 A. Yes, it was.

9 15. Q. I'll jump ahead a little bit to paragraph 19  
10 of your affidavit. We know that the Commission's interim  
11 report was provided to the RCMP and the Commissioner on  
12 June 23<sup>rd</sup>, 2017? Is that right?

13 A. Yes, that is the indications on the document  
14 was that it was received on the 23<sup>rd</sup> of June, 2017.

15 16. Q. No analyst was immediately assigned to the  
16 file at that time, correct?

17 A. That is correct.

18 17. Q. From my review of the information that's been  
19 produced, it's my understanding that no analyst was  
20 assigned until July 2020. Is that correct?

21 A. Yes, that is correct.

22 18. Q. If you go to paragraph 22 of your affidavit,  
23 at paragraph 22 you refer to an email message, or an email  
24 exchange I should say, between yourself and Ms. Joncas-  
25 Bourget about this complaint. Do you see that?

1                   A. Yes, I do.

2 19.               Q. The Commission was asking, "Can we get a reply  
3 to it within 90 days?" Was that what they were asking?

4                   A. What they were asking was in the context of an  
5 ATIP request that they had received at the CRCC and there  
6 are provisions somewhere through there that if there's  
7 going to be something additional within 90 days, that they  
8 could hold on to it and they wouldn't make the ATIP  
9 disclosure until they had the additional documentation.  
10 That was the context in which she was asking if it was  
11 going to be completed in the next 90 days. It was for the  
12 access to information request.

13 20.               Q. But she was also wondering when the  
14 Commissioner would complete the review, what was the  
15 status? Is that right?

16                   A. In the context of an ATIP request that they  
17 had received.

18 21.               Q. And you had indicated to her that it wouldn't  
19 be provided within 90 days?

20                   A. Yes.

21 22.               Q. Because at that point no analyst had even been  
22 assigned at that point? Is that right?

23                   A. That's right.

24 23.               Q. At paragraph 23 you talk about a meeting  
25 between the new CRCC chairperson and Commissioner Lucki.

1           You attended that meeting as well? Is that right?

2                   A. Yes, I did.

3 24.           Q. You say that the BCCLA complaint was not  
4 specifically discussed but I gather the big backlog of  
5 interim reports was discussed?

6                   A. Yes, it was.

7 25.           Q. The CRCC chairperson expressed concern about  
8 that backlog to the Commissioner at the RCMP?

9                   A. Yes.

10 26.           Q. Can you recall what the Commissioner indicated  
11 that the RCMP would do to address those concerns at that  
12 time?

13                   A. Specifically other than what's in my  
14 affidavit, I don't remember the specifics of the  
15 conversation other than we all acknowledged there was a  
16 backlog that needed to be addressed.

17 27.           Q. I'll get into it in a bit more detail a little  
18 bit later but I understand that over 2019 and 2020, your  
19 directorate ramped up significantly in terms of the amount  
20 of personnel? Is that right?

21                   A. I would say it's more accurate that - I  
22 wouldn't say it's a significant ramp-up. We did increase  
23 some of our resources but we certainly had better success  
24 more recently in acquiring additional resources, both  
25 permanent resources, indeterminate positions, and part-

1 time people from even outside of Ottawa, certainly outside  
2 of my directorate.

3 28. Q. I saw those at paragraphs in the affidavit.  
4 Maybe we'll go to some of these documents that were  
5 produced. If you can find tab 17, Superintendent  
6 O'Malley, of the documents that were provided yesterday?

7 A. Yes.

8 29. Q. This is an organisational chart, it's my  
9 understanding, from March 1<sup>st</sup>, 2019. Is that right?

10 A. That is correct.

11 30. Q. That's for your directorate, the National  
12 Public Complaints Directorate?

13 A. Yes, it is.

14 MR. CHAMP: In this organisational chart -  
15 actually just so I make sure I don't forget, counsel, I  
16 would ask that tab 17 be made Exhibit 3 to this  
17 examination.

18 MR. ROACH: That's fine. Thank you.

19 **EXHIBIT NO. 3:** National Public Complaints  
20 Directorate Organisational Chart, March 1, 2019.

21 MR. CHAMP:

22 31. Q. Superintendent O'Malley, I see here that on  
23 the right-hand side of this organisational chart, we see  
24 that there is a number of complaint analyst positions.  
25 You'll see that under Manager Review, it looks like

1           there's six complaint analyst positions. Is that right?

2                   A. Yes. Everything that is highlighted in yellow  
3           were new positions.

4   32.           Q. Then on the left we see public complaints  
5           manager, new, public complaints manager, new, and then six  
6           other public complaints advisors, also new. Those were  
7           all new positions that were being created at that time?

8                   A. That's correct.

9   33.           Q. Had they been created at that time or that was  
10           what was proposed?

11                   A. Part of my job when I arrived in the  
12           directorship was to do a review to determine what the  
13           issues were, what the root causes were. It came back to  
14           being a capacity gap and lack of resources. There was  
15           only one position in the previous organisational chart  
16           that was dedicated to analysing interim reports and  
17           preparing the analysis report to inform the Commissioner  
18           on her response.

19                   I did that work. I submitted it to the director  
20           general of the Workplace Responsibility branch. This is  
21           basically the proposed organisational chart which he  
22           reviewed and approved. At that point in March of 2019, it  
23           was the position of the director general that we proceed.

24                   Then there is the classification process that was  
25           required to be undertaken. Every federal government

1 department has an organisation and classification  
2 department. They determine what group within the federal  
3 public service is most appropriate and then at what level.  
4 We followed that process after and it was some time  
5 following that creation of that organisational chart that  
6 the positions were actually created. We are not able to  
7 proceed with any type of staffing action until such a time  
8 as positions are created.

9 34. Q. If I understand what you're telling us,  
10 Superintendent O'Malley, is that these public complaints  
11 advisor positions and the public complaints manager, a  
12 total of eight positions, prior to this, there was only  
13 one person doing all of that work?

14 A. There was one position. There were multiple  
15 people. We brought in people from other areas on  
16 secondments and assignments and at the time that I arrived  
17 in the directorate, there were actually four people but  
18 there was only one established position. We had three  
19 other people that had come in from different areas; one in  
20 2017, another two in 2018.

21 35. Q. And those were sort of ad hoc secondments?

22 A. Correct. They were in recognition that the  
23 backlog was increasing, that there was a need to bring in  
24 people to address the backlog.

25 36. Q. There was no manager position also? Is that

1 right?

2 A. That's correct. There was no manager  
3 position.

4 37. Q. If I understand then correctly, on the right-  
5 hand side of this table, all these complaint analyst  
6 positions, they were responsible for dealing with  
7 complaints that came in firsthand to the RCMP? They  
8 weren't dealing with Commission interim reports? They  
9 were dealing with public complaints that the RCMP tasked  
10 itself initially to conduct the initial investigation? Is  
11 that right?

12 A. Yes. When we talk about complaint analysts  
13 and outreach analysts, the complaint analysts are the  
14 regular members. They're all sergeants. They review the  
15 RCMP final report or the letter of disposition that goes  
16 to the complainant at the end of the RCMP's investigation  
17 into the public complaint. All of those positions, I  
18 shouldn't say all of them, certainly the complaint analyst  
19 positions are the front-end positions in regards to our  
20 public complaint process and then the outreach analysts,  
21 they are more for exchanges of information between the  
22 RCMP and the Civilian Review and Complaints Commission.  
23 For example, if at the end of a public complaint  
24 investigation, the complainant gets a letter, at the end  
25 of every letter it's written that they have the right to

1 submit a written request for review within 60 days of  
2 receiving the letter and they submit that to the CRCC.

3           Once the CRCC receives that request, they will  
4 contact the National Public Complaints Directorate and ask  
5 for the relevant material related to not only the public  
6 complaint investigation but also the investigation that  
7 led to the public complaint. So any material that's  
8 relevant is then disclosed to the CRCC and they conduct  
9 their review. Once that review is conducted, if they  
10 decide that they are not satisfied with the RCMP  
11 disposition of the complaint, that generates an interim  
12 report. It's that interim report that would then go to  
13 the left side where it shows all those highlighted  
14 positions.

15 38.           Q. That's great. That's super helpful. The  
16 complaints going to the left side of the chart, that's  
17 only if an individual says, "I'm not satisfied with that  
18 disposition," and they reach out to the Commission and ask  
19 them to review it? Is that right?

20           A. That's correct. I think in the grand scheme  
21 of things, there is 2,200 to 2,300 complaints received and  
22 investigated by the RCMP every year. Out of that there is  
23 probably another 200 to 250 on average that are reviewed  
24 by the CRCC upon request of the complainant and then out  
25 of that, roughly 50 interim reports are generated per year

1 for reasons like I said; the CRCC is not satisfied with  
2 all or some of the RCMP disposition in that matter.

3 39. Q. And it's those 50-odd reports roughly, and we  
4 have the statistics or data in your affidavit and also the  
5 Commission, but the 50-odd reports, those are the reports  
6 that this left side of this organisational chart would be  
7 responsible for reviewing and providing analysis and  
8 recommendation to the Commissioner for her final response  
9 back to the Commission? Is that right?

10 A. That is it.

11 40. Q. Again, if I understand correctly, for those  
12 roughly 50-odd reports, prior to March 2019, the resources  
13 that the RCMP had dedicated to that task was one full-time  
14 permanent equivalent but then three other people who were  
15 seconded to the task?

16 A. Correct.

17 41. Q. Even though there is three people seconded to  
18 the task, if I understand your testimony correctly, those  
19 three people were seconded after you took over in November  
20 2018. You looked at the backlog and you started coming up  
21 with - no. I guess the timing is off. They would have  
22 already been seconded prior to that?

23 A. Correct. One was in 2017, I believe January  
24 2017, and the other two were February 2018, so prior to my  
25 arrival.

1 42. Q. That's helpful, Superintendent. Thank you for  
2 that. I'll take you now to tab 18 in those book of  
3 documents. This is another organisational chart that was  
4 produced. It's my understanding this is an organisational  
5 chart from November 2020.

6 A. Correct. I see the signature is off.  
7 Sometimes when you PDF these things, because they are  
8 signed with certificates, sometimes it doesn't come  
9 through in the copy but that would have been from November  
10 of 2020.

11 43. Q. I don't see a date on here but the letter  
12 indicates November 3<sup>rd</sup>, 2020, so I accept that. That's  
13 fine. Based on the discussions we were just having, is  
14 there a bit of a flip here? Where in this chart would the  
15 people dealing with the interim reports from the  
16 Commission, where would they be?

17 A. They now appear on the right-hand side.  
18 Everything where it has Manager Public Complaints, there's  
19 three of those positions across the top on the right-hand  
20 side and then underneath there is public complaint advisor  
21 positions. Some are indeterminate positions and then some  
22 are marked as Term.

23 44. Q. I see that.

24 A. Term positions were created but they would  
25 only be filled to have a surge capacity. If we were ever

1 to get a large file that that we needed multiple advisors  
2 to work on, we could assign advisors and then fill term  
3 positions to do work on other files or vice versa. It's  
4 just giving us more flexibility to bring people into  
5 actual established positions, whether they were term or  
6 indeterminate.

7 45. Q. From what I understand in this organisational  
8 chart, we now have 21 positions dealing with those interim  
9 reports, if I understand, 21 analysts and three managers,  
10 so a total of 24 people now dealing with the interim  
11 reports? Is that right?

12 A. Not quite. The indeterminate positions are  
13 the funded positions and those are the ones that would be  
14 assigned. Under each manager, there are three funded  
15 positions for advisors. It would only be the three  
16 positions that we would fill. We would only fill term  
17 positions if there was a need outside of the normal type  
18 of operations.

19 MR. CHAMP: Again, counsel, just so I don't  
20 forget, can we identify tab 18 as Exhibit 4 to the  
21 examination?

22 MR. ROACH: Yes, that's fine. Thank you.

23 **EXHIBIT NO. 4:** National Public Complaints  
24 Directorate Organisational Chart, November 3, 2020.

25 MR. CHAMP:

1 46. Q. If I compare this to the previous document,  
2 now we see that there is three managers of public  
3 complaints whereas in the March 2019, there was only two  
4 managers of public complaints that were proposed. Now, as  
5 of November 2020, about 18 months later, now there is  
6 three managers. Is that right? There's one more manager?

7 A. It was named a manager position by the  
8 organisation and classification but it be more accurate to  
9 refer to it as a supervisory position.

10 47. Q. Team leader or supervisor?

11 A. Team leader, that would be a fair name.

12 48. Q. But it has increased in number? In the  
13 November 2019 organisational chart that Chief  
14 Superintendent Drouin had approved, there was two new  
15 public complaints manager or team lead positions and now  
16 we see in November 2020, you now have three manager  
17 positions? Is that right?

18 A. Yes, so three supervisory positions.

19 49. Q. Three supervisory positions. Prior to March  
20 2019, you had none, right? Prior to March 2019, there was  
21 zero supervisor positions. In March 2019, the RCMP  
22 proposed to create two supervisor positions and now, as of  
23 November 2020, there is three supervisor positions? Is  
24 that right?

25 A. Right. Just to clarify, we did have a

1 supervisory position that was one of the assignments from  
2 a different part of the Workplace Responsibility branch  
3 and that was a senior advisor, not a public service  
4 employee but a civilian member under the RCMP, classified  
5 at the PADM-6 level.

6 50. Q. I'm not sure I follow. Of these three manager  
7 - I appreciate you saying that they are supervisors but I  
8 think it will be helpful if we just use the terms in the  
9 organisational charts. In tab 18, we see there's three  
10 manager positions for public complaints, correct? There's  
11 three manager, public complaints?

12 A. Yes, there's three established positions.

13 51. Q. And they are all responsible for dealing with  
14 interim Commission reports? Is that right?

15 A. Yes.

16 52. Q. This is an increase by at least one manager  
17 position from March 2019? Is that right?

18 A. Yes, that's right.

19 53. Q. Similarly in the March 2019, we saw that you  
20 had proposed six public complaints advisor positions,  
21 permanent, and under this organisational chart in tab 18,  
22 we now see that you've got nine permanent positions? Is  
23 that right?

24 A. Yes.

25 54. Q. In addition to those nine permanent, we also

1 see that there is 12 term positions? Is that right?

2 A. That is correct.

3 55. Q. You would agree with me there was a  
4 significant ramping up in your personnel to deal with  
5 these interim reports between 2019 and 2020?

6 A. I'll make a distinction between creating an  
7 organisational chart and establishing positions and  
8 staffing those positions. Even though we had created the  
9 organisational charts, we still had to go through the  
10 hiring processes to bring people into those positions.

11 56. Q. As of November 2020, how many of these  
12 positions were vacant?

13 A. All of the term positions were vacant. All of  
14 the manager positions were vacant and there were at that  
15 point in time three positions filled on an indeterminate  
16 basis.

17 57. Q. Three of the nine?

18 A. Correct.

19 58. Q. How about as of today, February 26<sup>th</sup>? Starting  
20 with the manager positions, are any of them filled on an  
21 indeterminate basis yet?

22 A. The manager positions are not. Like I said,  
23 we still have someone that I would consider to be the  
24 manager who is on assignment from a different part of the  
25 Workplace Responsibility branch as our senior advisor or

1 for lack of a better term, the manager. Then we have one  
2 of our advisors who occupies the position who is currently  
3 on maternity leave, has been so since July. Then we have  
4 three more in positions and then we also have a number of  
5 full-time secondments, some on a 90-day casual contract,  
6 and approximately 16 temporary resources that are working  
7 part-time. Seven of those are the public complaint  
8 analysts that are working within my directorate. I have  
9 tasked them --

10 59. Q. But they are not the ones dealing with these  
11 interim reports though, right?

12 A. Yes, they are. As of December, we have  
13 adjusted our approach for internal reasons of trying to  
14 fill these indeterminate positions between the hiring  
15 processes where we didn't get the number of successful  
16 candidates that we had hoped and then having to go through  
17 the security clearance process, it's been taking longer  
18 than anticipated to fill those positions.

19 As of today, I have three more letters of offer  
20 going out to fill three of those positions and then  
21 there's three more people who are in the security  
22 clearance process and hopefully they are at the final  
23 stages because the other three are completed so I'm hoping  
24 that sometime in the next week or two, I will get word  
25 whether or not they've been granted their security

1 clearance and if they are granted their security clearance  
2 then they will be given a letter of offer and they will be  
3 hired.

4 We had most recently seven candidates going into  
5 the security clearance process. Three were granted  
6 security clearances. One withdrew at that stage and three  
7 more are still pending. If those three that are still  
8 pending get their clearances granted and they accept their  
9 letters of offer then we will have filled the nine. We  
10 will have all nine indeterminate positions filled at that  
11 time.

12 60. Q. Is it fair to say, Superintendent, that when  
13 you reach that level, you will have a dramatically greater  
14 capacity to respond to these interim reports than you have  
15 had in the past?

16 A. Absolutely, and like I said, starting in  
17 December we have changed our approach and we have  
18 dramatically, specifically this fiscal year, increased the  
19 output of Commissioner's Responses. I've had that in the  
20 affidavit as well but the numbers as of today,  
21 Commissioner's Responses out the door so far this fiscal  
22 year is 77. The best year prior to that in that last five  
23 years was 33 and that was the highest. The next highest  
24 was 22. Again, it was a capacity issue. It was a lack of  
25 resources. It wasn't due to lack of work. The people

1           that were in there on secondments were working hard.

2           There just wasn't enough of them.

3   61.           Q.   I've seen some of those emails and the time at  
4           which they were sent and so forth. I don't take issue  
5           with how hard those analysts were working who were in  
6           those positions. I'll return to those numbers in a minute  
7           that you just mentioned, Superintendent O'Malley, but just  
8           so I understand when you say fiscal year, you mean from  
9           April 1<sup>st</sup> to March 30<sup>th</sup> of the following year? So when you  
10          say that 77 --

11           A.   Yes. From April 1<sup>st</sup>, 2020, until March 31<sup>st</sup> of  
12          2021 is our current fiscal year and within that period, we  
13          have completed 77 Commissioner Responses.

14   62.           Q.   I'll return then to your affidavit, if I  
15          could. I'll take you to paragraph 41 of your affidavit,  
16          Superintendent. You talk here in paragraph 41 about why  
17          it can take a significant amount of time to respond to an  
18          interim report? Is that right? You set out the factors?

19           A.   Yes, 41.

20   63.           Q.   If I'm understanding some of the responses  
21          that I'm getting today, Superintendent, of these factors,  
22          it sounds like by far the most significant one that is  
23          responsible for the delays historically would have been  
24          the availability and workload of advisors completing the  
25          work?

1           A. That's a part and again, capacity is one thing  
2 and when we're talking about files or responses, we have  
3 to keep in mind that a file like the one that we're  
4 talking about today with the BCCLA and the National Energy  
5 Board hearings or also referenced in my affidavit is Kent  
6 County response, those were files that were very large,  
7 very complex. The Kent County file is arguably the  
8 largest file we've ever received with two terabytes of  
9 data. There's a number of others that come in like the  
10 response that was sent in December in regards to the  
11 Colten Boushie matter.

12           Those are all files that can have 45 findings and  
13 20 or more recommendations whereas another file could have  
14 three findings and one recommendation. There is a  
15 significant difference between files. When we're talking  
16 files, it's difficult to even understand because like I  
17 say, even a file that might only have three findings and  
18 one recommendation, the issues that that file is dealing  
19 with could be complex legal issues or something to do with  
20 the Charter of Rights as opposed to something that's  
21 policy.

22           We're doing a lot of legal research and legal  
23 analysis as part of this and it depends on the volume of  
24 jurisprudence that needs to be looked at. Capacity is  
25 certainly one issue but the volume of the files is another

1 but also the complexity of what needs to be looked at in  
2 those files is another factor as well.

3 64. Q. If I could, Superintendent, I want to take you  
4 to another one of the documents in the book of documents  
5 that was produced. I'll take you to the document at tab  
6 2. These are, I understand, sort of a summary of the  
7 status of outstanding reports at certain times.

8 A. Yes. Just for information purposes so you  
9 understand, tab 2 and tab 3 are from one spreadsheet but  
10 they are two different tabs under the spreadsheet. Tab 2  
11 is the portion of the spreadsheet that deals with public  
12 interest investigations and then tab 3 deals with what we  
13 call individual complaints or complaints from citizens. I  
14 am anticipating that you understand the difference between  
15 a public interest investigation and just a review of a  
16 public complaint.

17 65. Q. Yes. That's super helpful. I was kind of  
18 guessing that's what the difference was and public  
19 interest complaints meaning complaints that are  
20 essentially initiated by the Commission before the RCMP  
21 even looks at it whereas the public complaints are ones  
22 that end up being reviewed by the Commission after they've  
23 already been investigated by the RCMP and then the  
24 Commission prepares an interim report on some of those.  
25 Is that right?

1           A. Yes. A public interest investigation is  
2 investigated - once the chairperson initiates a public  
3 interest investigation or a chair initiated complaint  
4 where the chairperson has asked that the CRCC resources  
5 conduct the investigation, in those cases the result is  
6 always an interim report regardless of what the findings  
7 are and then on the other side, on tab 3, are the  
8 individual complaints where an individual has requested  
9 that the RCMP disposition of their complaint be reviewed  
10 by the CRCC.

11           There are three different ways that that can go.  
12 If the CRCC is satisfied, they issue a satisfied report.  
13 If they feel that there is further investigation required,  
14 they will make a request to have a further investigation  
15 completed and then the third is to issue an interim report  
16 that is identifying areas where they don't agree in whole  
17 or in part with the RCMP disposition of the original  
18 complaint.

19 66.           Q. I'm just kind of curious. I should know the  
20 answer to this. On those public complaints that then get  
21 taken up by the Commission because the complainant is  
22 dissatisfied with the RCMP disposition, does the  
23 Commission ever reinvestigate them if they are unhappy  
24 with them or do they just send them back to the RCMP to  
25 investigate or do they just express their concerns or

1           disagreements with the findings or conclusions of the  
2           RCMP's investigation?

3                   A. I'm not aware of an instance when a  
4           complainant has requested a review and as a result of that  
5           review, the CRCC has conducted their own investigation.  
6           If it has happened, I imagine it would be exceptional and  
7           probably something that the CRCC would be able to advise  
8           on. The majority of all public complaints are  
9           investigated by the RCMP with the exception of public  
10          interest investigations and chair initiated complaints.  
11          In those instances where even if we had been given the  
12          complaint initially, as soon as the chairperson indicates  
13          that it's going to be a public interest or a chair  
14          initiated investigation, the RCMP stops any investigation  
15          that they have started and they turn those materials over  
16          to the CRCC.

17 67.           Q. What I also take from that is this particular  
18          complaint we're talking about, the BCCLA public interest  
19          investigation complaint, that is not found in tab 3?

20                   A. No, it's not. It would be in tab 2.

21                   MR. CHAMP: I'll ask you a couple questions about  
22          the tab 2 document. With tab 2, counsel, I think I would  
23          introduce this as an exhibit to the examination of  
24          Superintendent O'Malley.

25                   MR. ROACH: Yes.

1                    **EXHIBIT NO. 5:** Outstanding PII Reports - Status  
2                    spreadsheet.

3                    MR. CHAMP:

4 68.                Q. Superintendent O'Malley, who creates these  
5                    charts?

6                    A. This particular chart was maintained by our  
7                    senior advisor. Like I said, she was in a supervisory  
8                    role and all for intents and purposes, a manager. It was  
9                    her responsibility to maintain the spreadsheet. Who  
10                    created it? I'm not exactly sure. This goes back to 2014  
11                    which goes back to when the National Public Complaint  
12                    Directorate came to be. That's all I can tell you about  
13                    that.

14 69.                Q. If I understand correctly, the document at tab  
15                    1, that's the same table from 2017 but is it merged, the  
16                    public interest investigations and the individual  
17                    complaint reviews? It's merged. I see it.

18                    A. If you go right to the end - if we go back to  
19                    when the interim report was received in regards to the  
20                    National Energy Board hearings and the BCCLA complaint,  
21                    that goes back to 2017. That just shows what was in  
22                    existence at the time that the interim report was received  
23                    for the BCCLA matter.

24 70.                Q. Unless I'm mistaken, I don't think the BCCLA  
25                    one is in tab 1. Is that right?

1           A. I don't believe that it was added to the  
2 spreadsheet until the next - I'll just step back a bit to  
3 make sure to be clear. This is like a living document.  
4 Every month it is renewed. At the end of the month, it's  
5 saved in its current state and then the following month,  
6 it's updated depending on what's been completed and what's  
7 been received, and at the end of the next month, it's  
8 saved again. Every month you have a version saved but  
9 it's a version of the same document. It's like a rolling  
10 document. You'll see this one from 2017 that's at tab 1.  
11 It was further developed so that when we look at what was  
12 provided in regards to the version that was being used in  
13 2020 --

14 71.           Q. It's got more info.

15           A. -- it is significantly different and you'll  
16 see where a separate tab was then added for the public  
17 interest investigations and the individual complaints were  
18 kept on a separate tab as well.

19           MR. CHAMP: Counsel, I wasn't going to but now I  
20 think I may. I'm going to ask for tab 1 to be introduced  
21 as Exhibit 6 to the examination.

22           MR. ROACH: That's fine.

23           **EXHIBIT NO. 6:** Outstanding Interim Reports -  
24 Status spreadsheet.

25           MR. CHAMP:

1 72. Q. While we're on tab 1, Superintendent, we know  
2 that the BCCLA report came in in June of 2017 but it  
3 appears at August of 2017, it still had not been  
4 introduced to this table. Is that fair to say?

5 A. That's how it appears. I don't see it there.  
6 I don't believe that that information was redacted. I  
7 would agree.

8 73. Q. I just want to make sure I understand to  
9 compare it a little bit. This older one, 2017, it's got  
10 all these columns. When it has "PII report received," by  
11 that I gather they mean the interim report? Is that  
12 right?

13 A. Yes, the Public Interest Investigation report.

14 74. Q. When it says "Rel. Mat Received," that's  
15 relevant material received? Is that right?

16 A. Yes. That's the common terminology that both  
17 the NPCD and the CRCC use to refer to materials that are  
18 relevant to the file.

19 75. Q. That would be the background information of  
20 the investigation or something like that?

21 A. The background information? I'm not sure what  
22 you mean by that.

23 76. Q. I'll ask again because maybe I didn't  
24 understand the answer. What is the relevant material  
25 received? What is that in reference to? Who is it coming

1 from?

2 A. Anything to do with the investigation. For  
3 example, for a public interest investigation that was  
4 completed wholly by the CRCC, we would get all of their  
5 statements that were taken, any reports that they had  
6 received, any materials, and at various times as part of  
7 their investigation they will come to us with requests for  
8 relevant material. That could be such things as, like I  
9 said, the original occurrence file, the police occurrence  
10 file related to the incident or files. They could ask for  
11 the member's notes. They could ask for copies of policy  
12 or anything that is under the control of the RCMP that  
13 they determine is relevant, they request. That's all  
14 stipulated in the RCMP Act in regards to the provisions of  
15 sharing information.

16 77. Q. Return then to tab 2 which we have introduced  
17 as Exhibit 5. I see that the BCCLA complaint can be found  
18 at the third page here. It's in July of 2017. I  
19 apologise. I think I said June 2017 earlier but it was  
20 received in July of 2017.

21 A. The report was completed on June 23<sup>rd</sup>, 2017.  
22 We received the report and the relevant material in July,  
23 just to be clear on that.

24 78. Q. Fair enough. Then here on the other columns,  
25 analysis assigned to Gina, Max, and Christiane. That's

1 Gina Levesque, Max Baier, and Christiane Savard?

2 A. Correct.

3 79. Q. We see analysis is assigned on July the 15<sup>th</sup>,  
4 2020? Is that right?

5 A. Correct.

6 80. Q. How would the file be assigned? Would you  
7 call down the hallway to Ms. Levesque, "Gina, I've got a  
8 new file for you"? How is the modality of assigning that  
9 file to those analysts?

10 A. The simple answer is in the order in which  
11 they were received so chronologically.

12 81. Q. I mean the modality. Do you send it by an  
13 email? Do you send them a memo? How would Ms. Levesque  
14 know that she is now the analyst for that file? How is it  
15 communicated to her on the 15<sup>th</sup> that she is now the  
16 analyst?

17 A. You're right. It could just be saying, okay,  
18 we need to start working on the next file in the list.  
19 Again, this was a living document so as things were  
20 completed, you can see that they stay on the list but then  
21 at the front end as new reports are received, they are  
22 again put in order and the various notations are made.

23 When I arrived in the National Public Complaints  
24 Directorate, the approach at that time was that as  
25 complaints were received, they were sent out in the same

1 order. When you look back again on tab 2, if you go back  
2 to starting at 2014 and you go to the second column in  
3 from the right, you will see "CR Signed On" at the top.  
4 That's Commissioner's Response signed on. That means that  
5 those were the dates by which those files were completed.  
6 If you keep going down through that column, you'll see  
7 that by that date when this was printed, what was  
8 basically done and what was still left to do.

9 That was how it was managed within the directorate  
10 was this was a master document and it was kept up to date.  
11 It was updated sometimes daily or at least weekly and then  
12 it was saved monthly. Anytime an advisor would say, "I'm  
13 done with this file," then they would get assigned usually  
14 another one or two files; the reason being is they could  
15 be working on two files at the same time. If they needed  
16 information or they needed to consult or whatever the need  
17 may be, while they're waiting for that information, they  
18 could be working on the other file.

19 82. Q. That was all helpful. Thank you for that.

20 What I was trying to understand is on the morning of July  
21 the 15<sup>th</sup>, 2020, is there a staff meeting and you're handing  
22 out files and "Here, you're the lucky one"? Do you send a  
23 memo to Ms. Levesque saying, "Hey, you're the lucky one"?  
24 How does she find out that she's the analyst?

25 A. That was left up to Ms. Levesque's discretion.

1 83. Q. I apologise, Superintendent. I don't mean to  
2 interrupt you. I think you might not be - she just  
3 naturally knows that she should start that file? How does  
4 she know that she's responsible for that file? How is  
5 that communicated to her?

6 A. Again, she was the one making the decisions on  
7 the assigning of files to the different advisors.

8 84. Q. It was up to her? She reached some conclusion  
9 on July the 15<sup>th</sup> that after three years, ah-ha, now is the  
10 time to look at this BCCLA complaint? She is the one that  
11 made that decision?

12 A. There's a lot more to it than that, for sure.  
13 With regards to the workload, again we were documenting  
14 everything on this list. We were keeping track of  
15 everything knowing that we have to respond to every  
16 interim report. As a result of keeping track of  
17 everything, at different times, depending on - and again,  
18 the approach was as they came in, they went out. There  
19 were some things that were done which I refer to in my  
20 affidavit where priority was assigned in particular to the  
21 Kent County file when it came in. That came in in 2019.  
22 It was completed around March. We got the relevant  
23 material, and again, this was two terabytes of relevant  
24 material and the largest file we've ever received.

25 Also at that point in time, of the four people

1           that I had working, one of them accepted a position over  
2           at the CRCC and left so now I was down to three. Because  
3           of the decision taken between the chairperson and  
4           Commissioner that Kent County should be a priority, the  
5           only three advisors that I had at that time were assigned  
6           to work on that file and it required all three resources,  
7           the only three resources, and they needed to go through  
8           thousands of documents, audio recordings, videos, all  
9           related to the Kent County matter. We struggled a bit  
10          with the relevant material and by the time we got it  
11          sorted out, it was probably closer to August when we were  
12          able to get it to a state where it was searchable and  
13          reviewable. From that point on until basically June of  
14          2020, that was the work that was done by my three senior  
15          advisors.

16                        In January of 2020, as a result of the first  
17          hiring process in 2019, I hired one employee and I also  
18          had another constable who had just completed a law degree  
19          join as well for a six-month assignment. Basically my  
20          three most senior advisors were working strictly on the  
21          Kent County file and then these new employees who needed  
22          to build their experience base were assigned files off of  
23          the individual list because they needed to be able to  
24          understand how to do that and do the work. They couldn't  
25          jump right into a more complex file. That just gives a

1 little more context in that regard.

2 By the time that the Kent County file was done, we  
3 were having discussions looking at our list, knowing that  
4 as a result of dedicating all of our resources to Kent  
5 County, and again I refer to this in my affidavit, it was  
6 communicated clearly to the CRCC that if the Kent County  
7 file was going to be prioritised, that meant that  
8 basically nothing else was going to move and they  
9 understood that.

10 85. Q. Who was that communicated to?

11 A. Nika Joncas-Bourget.

12 86. Q. Who communicated that? Yourself?

13 A. I did.

14 87. Q. When the Commission comes out with their  
15 annual report saying they're upset about the backlog, were  
16 you unhappy about that? Did you say to the Commission,  
17 "Let's agree we're only going to focus on one file to the  
18 exclusion of all the other files," and you understood that  
19 the Commission agreed with that and was okay with that and  
20 then they come out with their annual report complaining,  
21 did that cause you concern?

22 A. It's certainly not optimal. We were doing our  
23 best. I came in with a mandate to take a look and see  
24 what was going on. There was a need to improve relations  
25 between the RCMP and the CRCC, improve communications, and

1 I was committed to that. I took the steps and then we go  
2 into various HR related processes including the  
3 classification and establishment of those positions and  
4 then the hiring processes. Neither of those went as  
5 quickly as I had hoped and as well, the security clearance  
6 process is another step, the final step that has to be  
7 taken, and that can take anywhere from three to six  
8 months.

9 Even though I had come in to the position and by  
10 early on in my mandate, so in early 2019, I had realised  
11 that what we needed to do was increase the establishment  
12 which is the result of the organisational chart we  
13 referred to from 2019, March 1<sup>st</sup>, that it wasn't until  
14 January of 2020 that we actually hired the first person  
15 for a position that was created back nine months earlier.

16 88. Q. March 2019.

17 A. Right. We have our processes that we have to  
18 go through. Those are things that are outside of my  
19 control. I try and control what I can but when we only  
20 have a finite number of resources, I have to put them  
21 against --

22 89. Q. Let me re-frame that last question. You're  
23 not suggesting to us, are you, Superintendent O'Malley,  
24 that the Commission agreed that it was okay that the RCMP  
25 only focus on reviewing one of these complaints? They

1           didn't agree that was okay, did they?

2                     A. I don't think it was a question of agreeing or  
3 not agreeing. I think it was a question of awareness,  
4 just making them aware.

5 90.                Q. In January of 2020, you're saying you advised  
6 the Commission that you were really only going to be  
7 working on one file, if that's such a priority for them?

8                     A. I can't remember exactly what it was but I  
9 believe I've addressed that in my affidavit.

10 91.                Q. We can look at it and maybe counsel might re-  
11 direct on it. I didn't see it kind of put in quite that  
12 way that you're suggesting. Just going back a couple of  
13 steps here, Superintendent O'Malley, and I apologise. It  
14 may sound like I'm asking this question a couple of times  
15 but I think it's because maybe I'm not asking it correctly  
16 in the sense that you're not understanding what I'm  
17 asking.

18                     In the tab 2 document which we've identified now  
19 as Exhibit 5, we see that Gina, Max, and Christiane were  
20 assigned as analysts on July the 15<sup>th</sup>, 2020. It's still a  
21 little unclear to me how do they know that they are the  
22 analyst on July 15<sup>th</sup>? What happens? Do they get an email  
23 from you saying, "Hey, you're the analysts on this file  
24 today. You guys are now in charge of this"? How do they  
25 learn that they are now assigned to that file?

1           A. Back in July of 2020, I believe it's July 8<sup>th</sup>  
2 and I believe this is also included in my affidavit  
3 material, a letter from received from the chairperson of  
4 the CRCC on two matters. One was on I think it was an  
5 individual complaint. Yes, it was an individual complaint  
6 and then also in regards to the BCCLA complaint and public  
7 interest investigation. The chairperson, in writing to  
8 the Commission, advised that she was requesting that the  
9 Commissioner complete her response to both of those  
10 matters within 90 days and then if not completed within  
11 the 90 days, the chair was considering releasing the  
12 interim reports or words to that effect. Specifically  
13 that letter is attached and we would be able to refer to  
14 it.

15 92.           Q. Counsel, I don't mind if you intervene if I'm  
16 not - I'm not sure you understand the phrasing of my  
17 question. I appreciate that that is what then prompted  
18 assigning the file to Ms. Levesque. I'm just trying to  
19 understand how she learned on the 15<sup>th</sup>. How? Did she show  
20 up to work that morning and you called her on the phone or  
21 you yelled down the hallway? You sent her an email?

22           MR. ROACH: Maybe to help out you could the  
23 witness his direct involvement in that and whether or not  
24 he was directly involved in that.

25           MR. CHAMP:

1 93. Q. Superintendent O'Malley, were you directly  
2 involved in assigning that file to Ms. Levesque on July  
3 the 15<sup>th</sup>, 2020?

4 A. Once I was aware of the letter that was  
5 received from the Commission, there was a discussion. I  
6 don't remember exactly what it was but it was obvious that  
7 this was going to be a priority and it was going to cause  
8 us to stop work on other files so that we could focus on  
9 the two files that were prioritised by the chairperson in  
10 her letter to the Commissioner. It was probably just a  
11 conversation saying, "This letter is out. We need to deal  
12 with this. We need to deal with this in 90 days." I know  
13 that one of my three senior advisors had already started  
14 the work on the other file that the chairperson had sent  
15 the letter on but that work had stopped when Kent County  
16 came in. That advisor worked on that file until it was  
17 completed and then joined the other two, being Gina and  
18 Max, on the Natural Energy Board file.

19 94. Q. Another question I have, Superintendent  
20 O'Malley, it had to do with paragraph 51 of your  
21 affidavit. You speak there about the MOU, meaning the MOU  
22 between the Commission and the RCMP that the RCMP would  
23 respond to interim reports from the Commission in six  
24 months. Here you are saying that the RCMP, with some  
25 limited exceptions, is meeting the agreed upon time limit

1 in the MOU.

2 I'm just wondering about that because when I look  
3 at tables 2 and 3, I don't see any indication in that the  
4 RCMP was able to respond to interim reports within six  
5 months.

6 A. Just to clarify that paragraph in my  
7 affidavit, it would be better, it would be more accurate,  
8 if it said, "It is also meeting the other agreed upon time  
9 limits," plural. By that, if you go into the appendix of  
10 the MOU, there are over 50 different specified time limits  
11 in regards to either RCMP or the CRCC are required to  
12 complete their work at different steps in the process. In  
13 regards to paragraph 51, that's what I was referring to.  
14 It was basically other than the six-month time limit that  
15 we have for getting the Commissioner's Response out to  
16 interim reports, the other 50-plus time limits that are  
17 noted in the MOU, we're meeting those on a fairly  
18 consistent basis with some exceptions. If we feel that  
19 there are going to be exceptions to that on either side,  
20 we are communicating that between my outreach people and  
21 the people that report to Ms. Joncas-Bourget in the review  
22 group over at the CRCC.

23 95. Q. That's very helpful. That clarifies that for  
24 me. As you may be aware, Ms. Joncas-Bourget, in her  
25 affidavit, she says, "Since signing the memorandum of

1 understanding, the RCMP Commissioner has not responded to  
2 any reports within the six-month period set out in that  
3 agreement.”

4 That’s just one of those time limits? She’s  
5 correct in stating that but you’re saying that the RCMP is  
6 meeting almost all the other time limits set out in the  
7 MOU for other steps? Is that right?

8 A. With regards to responding to the interim  
9 reports and the MOU, prior to the signing, so in October  
10 2019, we were at the CRCC offices and we had final drafts.  
11 We were going over a few different issues in regards to  
12 the contents of the MOU and talking about some of the  
13 timelines to make sure that everybody was comfortable with  
14 the different timelines and when we talked about the six-  
15 month time limit for interim reports and it was discussed,  
16 during that discussion I made it clear that yes, that’s  
17 where we want to get to and we see that as very attainable  
18 once we have the resources in place to do that and once we  
19 have cleared the backlog, however in the immediate future,  
20 even upon signing of the MOU, that doesn’t mean that  
21 automatically we’re going to start responding to  
22 everything in six months including everything that’s in  
23 the backlog.

24 Again, it wasn’t a matter of getting agreement or  
25 not getting agreement. It was a matter of the CRCC

1 understanding that that was the situation and they said  
2 that they did. They understood that it would take us time  
3 to get to that. I believe in my own mind that I was  
4 demonstrating to the CRCC that I was committed to working  
5 towards that and to getting that done and that we were  
6 making strides, albeit it was taking time.

7 96. Q. I think we see that, Superintendent O'Malley,  
8 in fairness. The new organisational chart that we now  
9 see, the one that we've identified as Exhibit 4 which was  
10 tab 18 from your documents, we see now you have a very  
11 large number of managers and public complaints advisors  
12 who are reviewing those interim reports. It's just taking  
13 you a while to fill those positions?

14 A. We have the positions. We don't have the  
15 people yet.

16 97. Q. You've got the position numbers and everything  
17 so you're way down the road there.

18 A. Absolutely and so the next part is the  
19 staffing processes and those are taking - if you tack on  
20 the security clearance, it can take anywhere from six  
21 months to eight months, up to a year. Again that's  
22 outside of my scope. That's outside of my --

23 98. Q. Power or control. Superintendent, basically  
24 you are indicating that once you get up to speed on all  
25 those position, there won't be a difficulty in meeting

1           that six-month timeline set out in the MOU?

2                     A. I can tell you today that I feel confident,  
3 more confident than I've felt at any time in my mandate  
4 with the National Public Complaint Directorate that we  
5 will clear this backlog before the end of this calendar  
6 year and that probably sometime between even September and  
7 December we should clear that backlog, if we're able to  
8 maintain the same momentum with all of the temporary  
9 resources that we have and in addition to the new  
10 resources that are going to come in through March and  
11 April.

12                     The other piece is starting April 1<sup>st</sup>, any new  
13 interim reports that are received, because I will then  
14 have my new resources in place, we will start addressing  
15 those and ensuring that they are completed within that  
16 six-month timeframe and that will be any report moving  
17 forward from April 1<sup>st</sup>. The goal is to get them completed  
18 within the six months. There is still going to be the  
19 backlog that remains but if the new people that come in  
20 that are working on the new reports have the capacity to  
21 take on some additional work in the backlog, they will  
22 take that on in addition to all of the other people, the  
23 temporary resources that are working specifically on  
24 clearing the backlog.

25                     Like I said, it's been a significant improvement

1 since the Kent County report came out. There was 21  
2 reports that resulted from the work on the Kent County  
3 file but since then there has been another 56  
4 Commissioner's Reponses which have gone out including the  
5 BCCLA complaint, including the Colten Boushie matter.  
6 Again, these aren't small insignificant files. They're  
7 files that require a lot of work.

8 In regards to the remaining public interest  
9 investigations, there is another one that went out today  
10 which leaves only two - there's three public interest  
11 investigations left to be completed and those three are in  
12 the final stages of their analysis and I'm hoping that by  
13 next week, by the end of next week, those remaining three  
14 responses to public interest investigations will be out,  
15 if everything goes well. If not, it will be sometime in  
16 the month of March that we'll be able to say we've  
17 completed all outstanding public interest investigations  
18 which will leave us only one which is ongoing right now.  
19 It's a chair initiated complaint in regards to a use of  
20 force incident in what was formally Cape Dorset.  
21 Kinngait, Nunavut, is what it's called.

22 99. Q. I'm just kind of curious actually while we're  
23 talking about specific reports. In the affidavit of Ms.  
24 Joncas-Bourget, she attaches an interim report of a  
25 complaint about the long delay of the RCMP Commissioner in

1           responding to an interim report.

2                   A.   If you could direct me to that specifically, I  
3           would be happy to take a look at that.

4                   MR. CHAMP:   It's in her affidavit at - I'll circle  
5           back to it just because I have a copy of it right here but  
6           unfortunately I don't have the exhibit number.  Maybe one  
7           of the other counsel, just for time, if anyone can  
8           identify which exhibit that is for Superintendent  
9           O'Malley?  I just don't have it open right now.  It was  
10          the complaint against the Commissioner himself.

11                   MR. ROACH:   Exhibit AA or AB?

12                   MR. CHAMP:   It's Exhibit AB.

13   100.            Q.   "The CRCC provided the interim report and the  
14           delay complaint, previously cited as Exhibit AB, to the  
15           RCMP Commissioner on March 28<sup>th</sup> 2019.  The completion of  
16           the interim report was itself delayed by an unusually  
17           lengthy wait to receive necessary information from the  
18           RCMP" --

19                   A.   Excuse me, Mr. Champ.  If you could just  
20           direct me to which part that you are reading?

21   101.            Q.   I'm reading from paragraph 96 of Ms. Joncas-  
22           Bourget's affidavit.  She is referring to Exhibit AB of  
23           her affidavit.

24                   A.   I was looking for that in AB.  So paragraph  
25           96?

1 102. Q. The report itself is the one at Exhibit AB.

2 A. Which would you like me to look at?

3 103. Q. Let's go to paragraph 96, Superintendent.

4 A. Thank you.

5 104. Q. She's referring to the delay complaint. Are  
6 you familiar with the delay complaint?

7 A. Generally.

8 105. Q. And that it was previously cited as Exhibit AB  
9 to the RCMP Commissioner on March 28<sup>th</sup>, 2019. This is a  
10 report where the chairperson says that the RCMP  
11 Commissioner is taking too long to review these complaints  
12 and recommends that the RCMP apologise to the complainant  
13 and consider adopting service standards that would provide  
14 reasonable timelines for the completion of the  
15 Commissioner's Response to interim reports.

16 I'm reading now just from the last page,  
17 Recommendations of Exhibit AB.

18 A. And I'm there as well.

19 106. Q. It's still being analysed. I'm not going to  
20 explore that. I'm just kind of curious. Do you have some  
21 sense of when the RCMP Commission might be responding to  
22 this interim report?

23 A. As I indicated as we're working through our  
24 backlog, it will be responded to at some point in this  
25 calendar year. It was received in 2019. Just to confirm,

1 is that --

2 107. Q. Yes. According to the affidavit, it was  
3 received in March 2019.

4 A. If we received this interim report in 2019, I  
5 can confirm that we are currently working on interim  
6 reports that were received in 2019. Again, it's very  
7 difficult for me based on - you can't say one file is the  
8 same as another file. Because of the complexities,  
9 depending on what's in between this file on the list and  
10 all the other files, it could be short period of time or  
11 it could be a long period of time depending on the number  
12 of findings and recommendations in each report, the issues  
13 that are at hand, what type of research is required, any  
14 consultation with policy centres, anything in regards to  
15 the relevant material, the volume of the relevant  
16 material.

17 For me to be able to say it will be completed in X  
18 amount of time is difficult. All I can say is we have  
19 approximately 40 different reviews that are being analysed  
20 right now and at any given time. As we're moving forward  
21 through this backlog, sometime between now and probably  
22 into the fall or early winter of 2021, this one, this  
23 Exhibit AB that you are referring to, the response will be  
24 out to that. A specific time? I'm not able to do that  
25 for all the reasons that I've stated.

1 108. Q. I trust you appreciate there's little bit of  
2 irony in the sense that this report was a complaint or an  
3 interim report about delays in responding to interim  
4 reports. You would appreciate the irony of that,  
5 Superintendent?

6 A. I don't know that I appreciate it. I've come  
7 into what I would say is an unenvied position.

8 109. Q. Fair enough.

9 A. I'm doing my best to work through it. I have,  
10 today, more confidence in saying that by the end of 2021  
11 we will be out of a backlog situation, we'll stop talking  
12 about a backlog. Nothing will be make me happier than  
13 being able to say there's no more backlog and that we will  
14 be able to consistently meet the agreed upon six-month  
15 time limit.

16 Again in that report that you have referred to, we  
17 already have set those time limits in the MOU. Those were  
18 done in December of 2019 and this is one of the things  
19 that we see and even though an interim report might be in  
20 our backlog, that doesn't mean that work isn't ongoing  
21 that will address the recommendations.

22 In some cases, depending on what we see in regards  
23 to an interim report, because when an interim report comes  
24 in there is always an initial triage that's done. It's  
25 read. It's reviewed by an advisor to determine what the

1 issues are going to be and if we need to consult outside  
2 of the National Public Complaints Directorate, whether we  
3 need to go to a policy centre in regards to operational  
4 policy on prisoners, for example, or detention or whatever  
5 it might be. We will do that initial triage just so that  
6 we have a sense so that when we're getting ready to do the  
7 analysis, we can have the outreach group reach out to the  
8 people that we need to in order to get their input that  
9 will help inform the analysis and ultimately inform the  
10 Commissioner's Response.

11 There's other instances where I've actually sent  
12 an interim report, prior to the Commissioner's Response  
13 coming out, to a division to say, "You should take a look  
14 at this because I think there are some issues here that we  
15 can address without waiting for the Commissioner to  
16 respond."

17 In those cases, work was done so that by the time  
18 it comes to completing the analysis and the Commissioner's  
19 Response, and the CRCC will be able to confirm this, is  
20 that in some Commissioner's Response it will say, "I  
21 support the recommendation that," and whatever it may be,  
22 and then provide the information that since the interim  
23 report was received, this has been done, this has been  
24 done, this has been done and as a result of that action,  
25 whether it's amending policy already, that no further

1 action will be taken because that work has already been  
2 completed.

3 That does happen. Some of it is intentional and  
4 some of it is just by nature that we identify that we need  
5 to be better in certain areas, we need to have more  
6 clarity in policy or better direction to our members.  
7 That work is something that is ongoing on a continual  
8 basis which allows us to be able to say in some of the  
9 Commissioner's Responses that we support a recommendation  
10 and that the work in regards to that recommendation is  
11 already completed.

12 MR. CHAMP: Thank you, Superintendent. Just to be  
13 clear, if you took it the wrong way, there's not a  
14 suggestion, from me anyway, that you have in anyway done  
15 anything wrong here. From what I see, you seem to be the  
16 only one in your position who has ever tried to address  
17 this issue. I recognise the restraints from the  
18 information. I've seen and recognise the restraints that  
19 you have been operating under.

20 MR. ROACH: Counsel, I just have my eye on the  
21 time. We've been going an hour and 20 minutes or so. Did  
22 we want to take five, 10 minutes? Is this a good time for  
23 you?

24 MR. CHAMP: If Superintendent O'Malley would like  
25 a break, we could. I'll just say this. I'm close to

1 done. If we just keep going, I might be done in 10  
2 minutes.

3 MR. ROACH: I'm okay with continuing.

4 MR. CHAMP: Is that okay with you, Superintendent  
5 O'Malley?

6 THE WITNESS: Absolutely.

7 MR. CHAMP: I'm nearly done here.

8 110. Q. If I could, I'll take you to the book of  
9 documents, tab 14. This is an undated draft email from  
10 Ms. Levesque because it says Gina at the end, Gina  
11 Levesque who was the advisor assigned to review this  
12 interim report?

13 A. Yes.

14 111. Q. This is an email that she sent to a particular  
15 branch, the C&IP branch? Is that right?

16 A. Yes. That's the Contract and Indigenous  
17 Policing branch of the RCMP which is the operational  
18 policing branch. You may be familiar with it as the  
19 Contract and Aboriginal Policing branch it was called  
20 previously. They have rebranded, I guess.

21 112. Q. We don't have the date of when she sent it out  
22 but we see at the end she has asked for their position by  
23 August 10<sup>th</sup>, 2020. I gather she probably would have sent  
24 that out not long after she was assigned, giving them  
25 about three or four weeks to respond. Does that sound

1 about right?

2 A. Yes. To my recollection, this was an  
3 attachment to an email that sent to the outreach unit.  
4 Like I said, we have people that make contact with the  
5 different policy centres or divisions that they are  
6 looking for information and that's the outreach group.  
7 This was something that Ms. Levesque had prepared and it  
8 went to the Contract and Indigenous Policing branch so  
9 that they could provide their input on those specific  
10 recommendations.

11 MR. CHAMP: Can we mark this as an exhibit, Mr.  
12 Roach?

13 MR. ROACH: That's fine.

14 **EXHIBIT NO. 7:** Undated draft email from Gina  
15 Levesque to C&IP Branch.

16 MR. CHAMP:

17 113. Q. This would have been a normal form of  
18 consultation with different branches? Is that right,  
19 Superintendent?

20 A. Yes. Where we need to obtain input, that  
21 would be a standard approach.

22 114. Q. I'll take you then to tab 5. This is one page  
23 of exchanges of emails. The one at the bottom is from Ms.  
24 Levesque to yourself and Mr. Savard. Denis Savard, he's  
25 the chief superintendent, the director general of this

1           directorate? Is that right?

2                   A. No. Denis Savard was the inspector in charge  
3 of the outreach and liaison. He was my second in command.

4 115.           Q. Here we see that Ms. Levesque is saying on  
5 September 22<sup>nd</sup>, "For your information and action, today was  
6 the deadline I had set myself to submit the analysis in  
7 NEB to the Commissioner. As you know, we are far from  
8 having completed the analysis as we are still awaiting the  
9 input from the various policy centres under  
10 recommendations."

11                   The various policy centres, she's talking about  
12 C&IP and some of the other policy centres that they were  
13 reaching out to?

14                   A. Yes. In regards to this file, there were  
15 multiple policy centres consulted.

16                   MR. CHAMP: Can we mark this as Exhibit 8, Mr.  
17 Roach?

18                   MR. ROACH: That's fine.

19                   **EXHIBIT NO. 8:** Email from Gina Levesque to Michael  
20 O'Malley, Denis Savard and email from Michael  
21 O'Malley to Denis Savard, Gina Levesque, September  
22 22, 2020.

23                   MR. CHAMP:

24 116.           Q. Superintendent, I'll take you to tab 6. Let  
25 me know when you're with me there.

1                   A. Yes, I am on tab 6. I'm looking at the  
2 document.

3 117.             Q. This is a chain of emails, primarily between  
4 Inspector Savard and - Ms. Levesque, is she a regular  
5 member?

6                   A. She is a civilian member.

7 118.             Q. And Ms. Levesque. If you go to page 2 of this  
8 email, at the bottom it starts from Denis Savard on  
9 September 22<sup>nd</sup> at 9:25 am. Do you see that?

10                  A. Yes.

11 119.             Q. "Hi Gina. This is the responses I received so  
12 far. Recommendation 6."

13                   These would be the different policy centres that  
14 they had reached out to? Is that correct? Below that,  
15 CPIC, NICC, C&IP, OIM?

16                  A. Yes.

17 120.             Q. Just so I know, CPIC, what is that?

18                   A. Canadian Police Information Centre.

19 121.             Q. I apologise. I'm not going to try to make it  
20 an exam. NICC, what is that one? Do you know offhand?

21                   A. National Intelligence Coordination Centre.

22 122.             Q. OIM?

23                   A. Operational Information Management.

24 123.             Q. How about FSIS?

25                   A. I guess the common term would be ident or

1 identification so the people that do the fingerprints.  
2 That would be forensic sciences. Under forensic sciences  
3 falls the labs and all of the members that are out in the  
4 field that go to crime scenes and check for fingerprints  
5 and DNA and all of that, that's FSIS.

6 124. Q. Perfect. Then we see here Mr. Savard saying  
7 it looks as of the 22<sup>nd</sup> they've got responses from almost  
8 all of them and he says, "It does not seem that there is  
9 any meaningful response from any of the policy centres  
10 despite the direct questions."

11 I see from your response on the other page at 2:08  
12 pm, you kind of agree the responses weren't that great.  
13 "The responses from the policy centres is frustrating, to  
14 say the least. To me, going back to the policy centres at  
15 this point" - well, you didn't think that was a good idea  
16 going back to the policy centres? Is that fair to say?

17 A. Yes, that's - I think you can sense my  
18 frustration in this whole thing in the tone of that  
19 message. There were a number issues that created delays  
20 specifically to this file once it had been assigned and as  
21 much as I had wanted to get it out within the 90 days,  
22 there were a number of factors beyond my control that just  
23 stymied any of our best intended efforts.

24 125. Q. Is it fair to say, Superintendent, that maybe  
25 the policy centres, at least to this point, don't maybe

1 appreciate the importance of the work that your  
2 directorate is doing?

3 A. The ones that we deal with on a regular basis,  
4 I believe they do but again, the RCMP being what it is, we  
5 have a lot of HR churn, I'll call it. We have a lot of  
6 turnover in key position and as people change, we find  
7 that we're almost back to square one. A lot of what I  
8 have referred to in my tenure here in National Public  
9 Complaints is it's like a game of snakes and ladders.  
10 That's how I feel some days. Some days I go up the ladder  
11 and I feel great. The next day, I'm down the snake.

12 Like I say, you can see it from that message that  
13 I was frustrated with the fact that we had specifically  
14 crafted what we wanted from the policy centres in such a  
15 manner that it should have been clear to them what we were  
16 looking for and the input that we required, and what came  
17 back was not useful. That was problematic for us and we  
18 continued to go back and forth with a number of policy  
19 centres right up until about November 16.

20 126. Q. I'm not going to put in all the other emails.  
21 I might only put in one other one but from my  
22 understanding is Ms. Levesque, with the assistance of  
23 Inspector Savard and even yourself, she starts taking the  
24 limited amount of input that you got from the policy  
25 centres and comes up with her own analysis for the

1 Commissioner on those issues? Is that fair to say?

2 A. There were a number of different meetings and  
3 involvement. There was work that was being done at the  
4 working level, advisors that worked over in the policy  
5 centres dealing with Ms. Levesque, but then there were  
6 also other meetings that were held with some of the senior  
7 officers to express our concerns in regards to the results  
8 of our requests for consultation and what we were getting  
9 back and that we needed to get something that we could use  
10 so that we could meet the timeline so that we could have  
11 something that would inform the Commissioner so she could  
12 provide an appropriate response.

13 127. Q. Is it fair to say had you gotten more  
14 meaningful input back from the policy centres on this  
15 file, you probably would have been able to complete the  
16 Commissioner's analysis and response even more quickly  
17 than you did?

18 A. Yes. If it was under my control, it might  
19 have been a little bit easier but again, we're doing an  
20 analysis and we're not the ones that are necessarily  
21 providing the answers to the questions, especially when it  
22 comes to policy related areas. We have to get that input  
23 from the policy and then we include that into the analysis  
24 report. That figures largely in the Commissioner's  
25 Response and in some cases we take the input from the

1 policy centre and put it verbatim into the Commissioner's  
2 Response or portions of it.

3 It is very important to get good input in response  
4 to what we've asked and as you can see, we were asking  
5 clear questions and then we were getting responses that  
6 didn't actually answer the clear questions that we asked.  
7 There was a level of frustration with myself and my staff  
8 and further culminated with the deadline that we were  
9 under and then knowing that we weren't able to meet that  
10 which then creates additional pressure on the Commissioner  
11 in particular and it was at a time where I guess starting  
12 in June of 2020, there was a lot of media attention on the  
13 RCMP and the police in general in the world in regards to  
14 accountability and transparency. It didn't come at a good  
15 time. Absolutely not.

16 We did what we could with what we had at the time  
17 and like I said, up until November 16<sup>th</sup>, we were still  
18 grinding away trying to get something to properly inform  
19 the Commissioner so she would be able to respond.

20 MR. CHAMP: Counsel, can we identify that tab 6 as  
21 Exhibit 9?

22 MR. ROACH: That's fine. Thank you.

23 **EXHIBIT NO. 9:** String of five emails between  
24 Michael O'Malley, Denis Savard, Gina Levesque,  
25 September 22 and 23, 2020.

1 MR. CHAMP:

2 128. Q. I would take you to tab 13, Superintendent.  
3 This is just some exchanges between yourself and Ms.  
4 Levesque and the other analysts near the end. You're  
5 getting close to the final analysis and report and you're  
6 trying to get feedback on her final analysis, I  
7 understand, from those same policy centres?

8 A. Yes. We always like to go back to the policy  
9 centre once we've taken their input and drafted the  
10 analysis to go back and say, "Here's what we're thinking  
11 based on what you provided us and everything else. What  
12 do you think?" We want them to sign off on it again.

13 129. Q. Just because of the timeline, I appreciate  
14 probably the pressures you guys were under were caused in  
15 part by the actions of my client at that point but at this  
16 point, you guys were almost done. You still had some  
17 frustrations at that time? Is that fair to say?

18 A. Yes and you know, I just had something come to  
19 mind that I was just going to mention. Just give me a  
20 second. A file like this, we're talking amending  
21 policies. We're talking to some significant changes that  
22 will have far reaching impacts in the organisation so it's  
23 something that we don't take lightly. It would be really  
24 easy if we just agreed with everything that came out in an  
25 interim report. We are committed to doing a thorough

1 analysis and digging into the issues and making sure that  
2 what needs to be addressed does get addressed and that if  
3 the Commissioner is going to commit the organisation to a  
4 certain recommendation, we have to make sure that that's  
5 been well thought out and is in fact the appropriate  
6 course of action.

7           Your client will be able to give you this  
8 information as well but anecdotally I'll say once the CRCC  
9 issues an interim report, the Commissioner is agreeing  
10 with approximately 75 per cent of the findings and  
11 recommendations. I could go and give you specific numbers  
12 from previous years because I have that somewhere else but  
13 I know anecdotally that it's about 75 per cent that we're  
14 accepting but we still have to do our due diligence like  
15 everybody else in regards to the 25 per cent where we're  
16 either not agreeing or we're not agreeing in part.

17           Another thing I wanted to mention too, that when a  
18 review is requested, and I don't know if I've said this  
19 either today or in my affidavit, but right now we're over  
20 80 per cent of all those reviews result in a satisfied  
21 report so when we're talking about the public complaint  
22 process as a whole and again, out of approximately 22,000  
23 public complaints that we receive in a year, 75 per cent  
24 of those are concluded at the end of the RCMP's  
25 investigation and the complainant is satisfied with the

1 outcome or at the very least, they don't request a review.  
2 When a review is requested on that remaining 25 per cent,  
3 80 per cent of those are resulting in a satisfied report.

4 Globally overall with the RCMP public complaint  
5 process, those portions are working well. We're certainly  
6 tightening things up on my end where it comes to - I  
7 shouldn't say my end because I'm the policy centre for  
8 public complaints for the RCMP and that's my  
9 responsibility but on the interim report side, we're  
10 continuing to work towards making the changes. Like I  
11 said, by sometime in the middle of this year we will be  
12 consistently meeting that six-month time limit on all new  
13 interim reports received after April 1<sup>st</sup> and my expectation  
14 is sometime between September and December 2021, we will  
15 no longer have the backlog.

16 130. Q. And be able to meet that six-month timeline in  
17 the MOU?

18 A. We'll start doing that before we get to the  
19 end of the backlog. The reason being is I'm hiring new  
20 employees so they will be able to be dedicated. I have  
21 enough employees right now I can split them into two  
22 teams. I haven't had this to date. I can split into the  
23 new interim report team focusing only on interim reports  
24 and then the other team will be focused specifically, and  
25 that's what they're focused on now, is just the backlog.

1                   MR. CHAMP: Mr. Roach, that was tab 13. Could we  
2 have that identified as Exhibit 10?

3                   MR. ROACH: That's fine. Thank you.

4                   **EXHIBIT NO. 10:** String of emails between Michael  
5 O'Malley, Gina Levesque, Max Baier, Christiane  
6 Savard, November 18, 2020.

7                   MR. CHAMP:

8 131.            Q. Those are all the exhibits I wanted to enter  
9 but there was one document I did want to ask you one last  
10 question on, Superintendent, tab 8. It's an exchange of  
11 emails between yourself and Ms. Levesque.

12                  A. Right.

13 132.            Q. On page 2 of this document is an email that  
14 you send to her on October 29 at 1:48 pm, "Meeting with  
15 the Commissioner at 2:00 pm to discuss a meeting with the  
16 Minister tomorrow morning that Stephan and I are also  
17 attending with her," and you're talking about can she  
18 estimate a date for the NEB to be ready for the  
19 Commissioner.

20                  This meeting with the Minister, that was the  
21 Minister of Public Safety?

22                  A. Correct.

23 133.            Q. Was the Minister of Public Safety raising this  
24 issue of the delays in responding to Commission interim  
25 reports? Was that what that meeting was about?

1           A. Actually he was not. He was seeking  
2 information on the public complaints process as it exists  
3 within the RCMP. As you are likely aware, he was the  
4 Chief of Police in Toronto and was familiar with their  
5 public complaint system and how that worked and how it was  
6 set up for police forces in Ontario. He was just trying  
7 to make sense of how our process compared to what he knew  
8 as a public complaint process so he would have a better  
9 understanding and as our minister, he felt it was  
10 important to know. It was an information session in  
11 regard to public complaints in general.

12           There was also discussion about the backlog. We  
13 had previously submitted a plan to the minister, so going  
14 back to June, July of 2020. That resulted in that other  
15 organisational chart that you have that has the extra  
16 positions. That was a result of a plan that was put to  
17 the Minister to demonstrate that we had something in place  
18 that we were working towards, eliminated the backlog, and  
19 getting the responses out in the agreed upon timeline.

20           The discussion was mostly, and we met with the  
21 Minister for an hour, but the chief human resources  
22 officer was there with us as well so we were talking about  
23 things related to human resources within the RCMP and  
24 diversity and a number of other topics. Specifically in  
25 regards to public complaints, it was more of an

1 information session about the different steps in our  
2 process but also to update him on our plan and the  
3 progress that we were making in regards to increasing the  
4 output of Commissioner's Responses.

5 134. Q. We know from that other document, it's tab 18,  
6 we've identified it here as Exhibit 4, that organisational  
7 chart is from November 3<sup>rd</sup>, 2020. Was the approval for  
8 those extra positions, did that come after the meeting  
9 with the Minister that you had on October 30<sup>th</sup>?

10 A. No. The approval came I would say sometime in  
11 July. We have to submit the paperwork to create  
12 positions. By the time that organisational chart was  
13 generated, all of the work in front of that was completed  
14 to establish the positions, to submit the paperwork to our  
15 organisation and classification branch so that they could  
16 do their review and then create the organisational chart.

17 135. Q. The Minister or the Department of Public  
18 Safety had already sort of approved those positions prior  
19 to the meeting with the Minister on October 30<sup>th</sup>, 2020?

20 A. No. It was my director general. The Minister  
21 wouldn't be involved in that process at all. All I'm  
22 saying is in June, July, the Minister's office had asked  
23 for a plan on how we were going to address the backlog and  
24 the delays in the Commissioner's Responses. I worked with  
25 our chief administrative officer and the Commissioner to -

1 well, the chief administrator and I worked together to  
2 develop a plan that then went to the Commissioner and the  
3 Commissioner briefed the Minister on what that plan was  
4 and then from there we just continued to move forward on  
5 executing that plan.

6 MR. CHAMP: Thank you, Superintendent. Those are  
7 all the questions I have. I'm not sure if there are any  
8 questions on re-direct. Those are all the questions we  
9 have. Thank you.

10 MR. ROACH: Nothing from me on re-direct. Thank  
11 you.

12 -- THE EXAMINATION ADJOURNED AT THE HOUR OF 3:43 IN  
13 THE AFTERNOON.

14  
15 WE HEREBY CERTIFY THAT the foregoing was  
16 transcribed to the best of our skill and ability.

17  
18  
19 .....  
20 E.M. GILLESPIE / SP

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