

**THE CORNWALL
PUBLIC INQUIRY**



**L'ENQUÊTE PUBLIQUE
SUR CORNWALL**

Public Hearing

Audience publique

Commissioner

The Honourable Justice /
L'honorable juge
G. Normand Glaude

Commissaire

VOLUME 209

Held at :

Hearings Room
709 Cotton Mill Street
Cornwall, Ontario
K6H 7K7

Wednesday, April 2 2008

Tenue à:

Salle des audiences
709, rue de la Fabrique
Cornwall, Ontario
K6H 7K7

Mercredi, le 2 avril 2008

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Mr. John E. Callaghan	Cornwall Police Service Board
Mr. Mark Crane	
Mr. Peter Manderville	
Mr. Neil Kozloff	Ontario Provincial Police
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. Michael Neville	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action

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1 --- Upon commencing at 9:39 a.m./

2 L'audience débute à 9h39

3 **THE REGISTRAR:** Order; all rise. À l'ordre;
4 veuillez vous lever.

5 This hearing of the Cornwall Public Inquiry
6 is now in session. The Honourable Mr. Justice Normand
7 Glaude, Commissioner, presiding.

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Good morning all.

11 Mr. Lee, how are you today?

12 **MR. LEE:** Good, how are you?

13 **THE COMMISSIONER:** Well, I'm here.

14 Mr. Derochie, how are you doing today?

15 **MR. DEROCHIE:** I'm very well, thank you.

16 **THE COMMISSIONER:** Okay.

17 **GARRY DEROCHIE:** Resumed/Sous le même serment

18 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE

19 (Continued/suite):

20 **MR. LEE:** Staff Sergeant Derochie, I'd like
21 to start by going back to the issue that we left a little
22 bit unresolved yesterday, dealing with the issue of when
23 Mr. Silmsler may have told Constable Sebalj that he was only
24 able to proceed with the charges against Charles MacDonald.
25 And you told us yesterday that you thought there may have

1 been some comment to that effect during the January 28th,
2 '93 interview of Mr. Silmsers. Is that right?

3 **MR. DEROCHIE:** Yes. I didn't know if there
4 was or there wasn't. I just ---

5 **MR. LEE:** That was the interview we know
6 that was conducted by Sergeant Lefebvre with Constables
7 Malloy and Sebalj present.

8 **MR. DEROCHIE:** That's correct.

9 **MR. LEE:** And so we have notes from a number
10 of people on this.

11 **MR. DEROCHIE:** Yes.

12 **MR. LEE:** Last night, I spoke with counsel
13 for the Cornwall Police and we confirmed the notes that we
14 need to put to you. So they are Exhibits 294, 314 and 315.

15 **THE COMMISSIONER:** Sorry, say that again,
16 294?

17 **MR. LEE:** Two-nine-four (294), 314, 315.

18 **THE COMMISSIONER:** Oh, good, okay.

19 **MR. LEE:** So 294 will be Sergeant Lefebvre's
20 notes; 314 will be Constable Sebalj's notes; and 315 are
21 Constable Malloy's notes.

22 Do you have each of those, Staff Sergeant
23 Derochie?

24 **MR. DEROCHIE:** Yes, I do.

25 **MR. LEE:** I don't know how you want to

1 proceed, if you want to look at all three together or if
2 you want ---

3 **MR. DEROCHIE:** If you've reviewed them, and
4 there is nothing there, I am willing to concede that.

5 **MR. LEE:** I have. I'm confident in saying
6 that there's nothing there that indicates that Silmsler ---

7 **MR. DEROCHIE:** Then that satisfies me.

8 **MR. LEE:** Can I take you to Exhibit 315?
9 Those are Constable Malloy's notes.

10 **MR. DEROCHIE:** Yes.

11 **MR. LEE:** And if we can -- if I can take you
12 to the Bates page ending in 882. Let me take you to 881
13 first, please.

14 (SHORT PAUSE/CAUSE PAUSE)

15 **MR. DEROCHIE:** Yes, I'm there.

16 **MR. LEE:** So Bates 881 is a continuation of
17 notes that have begun earlier dealing with what Mr. Silmsler
18 had to say about Ken Seguin?

19 **MR. DEROCHIE:** Yes.

20 **MR. LEE:** Okay. So there's a continued --
21 and he talks about, at the very bottom of the page, the
22 house was a bungalow, everything was on the main floor, a
23 couple of bedrooms, things along those lines. Okay?

24 **MR. DEROCHIE:** Yes.

25 **MR. LEE:** And if you turn the page over to

1 882, we have a time entered of 1200h where it's written, "I
2 left off his washer".

3 **MR. DEROCHIE:** Yes.

4 **MR. LEE:** And he comes back in six minutes
5 later and writes that, "We're still talking about incident
6 in that who may have known anything" and he talks about a
7 Father Paul and people that may have known. And if you
8 look at the -- do you see the time entry 12:25?

9 **MR. DEROCHIE:** I do.

10 **MR. LEE:** If you look at the slash above
11 that, it appears they are willing to go to court, something
12 I can't make out, I don't know if there is something struck
13 there, "Will support a prosecution 100 percent"?

14 **MR. DEROCHIE:** Yes, I see that.

15 **MR. LEE:** That's the closest I found in
16 these notes to commenting on that issue at all. Whether or
17 not that deals with MacDonald or Seguin or both, I don't
18 know, but that's what the note says. Okay?

19 **MR. DEROCHIE:** Yeah.

20 **MR. LEE:** You're willing to concede that ---

21 **MR. DEROCHIE:** I am.

22 **MR. LEE:** --- in these three documents,
23 there's no comment from Silmsler that he may not be able to
24 proceed?

25 **MR. DEROCHIE:** Yes.

1 **MR. LEE:** And so to close off where we were
2 yesterday, you agree that the March 10th comment from
3 Silmser that, "I don't think I can deal with that right
4 now", re Seguin, is the earliest confession we have from
5 him that he may not be able to proceed?

6 **MR. DEROCHIE:** Yes.

7 **MR. CALLAGHAN:** I'm not sure he can see
8 that. I thought we talked about the February 10th and
9 there's an issue, et cetera, et cetera. I'm not sure that
10 they conceded. Sorry?

11 **MR. LEE:** Can we look to yesterday's
12 transcript please, Volume 208?

13 **MR. ENGELMANN:** I don't know if that's
14 necessary. I think the transcript speaks for itself.

15 **THE COMMISSIONER:** It's just I'm -- no, get
16 me back up to speed. What was the problem? I know -- what
17 was the issue with February 10th?

18 **MR. LEE:** The original issue -- I tried to
19 put it to Staff Sergeant Derochie yesterday that the only
20 with issue was whether it was February 10th or March 10th,
21 that there is the first suggestion by Silmser that there
22 may be some issue with proceeding against both Seguin and
23 MacDonald.

24 **THE COMMISSIONER:** The first recorded.

25 **MR. LEE:** Right. Staff Sergeant Derochie

1 said, "Well, hold on, I think there might be something in
2 the January 28th..." ---

3 **THE COMMISSIONER:** Yes.

4 **MR. LEE:** So that's why we come back to it
5 today.

6 **THE COMMISSIONER:** Now I understand.

7 **MR. LEE:** We moved past that yesterday and
8 Staff Sergeant Derochie said based on what we have today in
9 front of us, leaving the January 28th issue aside, based on
10 what we have today, we can look at February 10th and March
11 10th. So I took him to February 10th ---

12 **THE COMMISSIONER:** M'hm.

13 **MR. LEE:** --- and he looked at that and if
14 you look at page 245 of the transcript ---

15 **THE COMMISSIONER:** Yeah.

16 **MR. LEE:** Two-four-five (245).

17 **THE COMMISSIONER:** Okay.

18 **MR. LEE:** The second last question by me on
19 that page, I asked:

20 "And we have no evidence. Would you
21 agree with me that we have no evidence
22 that Constable Sebalj took this
23 February 10th comment by Silmsler as
24 meaning -- as an instruction to halt
25 any investigation against Seguin?"

1 The answer is:

2 "No, there's no indication to that at
3 all."

4 And if you go to page 247 ---

5 **THE COMMISSIONER:** M'hm.

6 **MR. LEE:** --- again, the second last entry
7 on that page, I asked:

8 "And so would you agree with me then,
9 based on what we've seen here, that
10 Silmser doesn't advise Sebalj that he
11 doesn't want to proceed against Seguin
12 until this point, March 10th?"

13 And the answer is:

14 "Based on what we have before us right
15 here, yes."

16 **THE COMMISSIONER:** Okay. So what was your
17 objection?

18 **MR. CALLAGHAN:** I interpreted those a little
19 bit different.

20 I interpreted that there is no evidence as
21 in evidence of her saying it. There is a note which says
22 only -- the only issue, which was gone through before, but
23 I mean we can have this debate and I can re-examine to the
24 extent I want later, I guess, but that wasn't my
25 interpretation of that answer.

1 **MR. ENGELMANN:** I thought we were going to
2 have submissions later in this proceeding. We were just
3 going to deal with objections and I think, as I said, I
4 think the transcript speaks for itself. I don't see why
5 we're having a debate now. If parties want to make
6 submissions later, that's the appropriate time.

7 **THE COMMISSIONER:** Okay. But, trust me, I
8 don't want to get into that. I just want to situate
9 myself.

10 So are we content to say that the only
11 recorded comment about whether or not Mr. Silmsler wanted to
12 proceed or not proceed is done on March 10th?

13 **MR. LEE:** I think Mr. Callaghan is not
14 content to say.

15 **MR. CALLAGHAN:** No, I'm not content to say
16 that. I mean, we're looking at Ms. Sebalj's notes, who
17 isn't here, and it was a fair interpretation of February
18 10th that he only wanted to proceed with respect to the
19 allegations regarding Charlie MacDonald. And that ---

20 **THE COMMISSIONER:** The only recorded ---

21 **MR. CALLAGHAN:** Right.

22 **THE COMMISSIONER:** --- evidence that we have
23 shows that the first recorded comment is on March 10th.

24 **MR. CALLAGHAN:** It's February 10th as far as
25 we're concerned.

1 **THE COMMISSIONER:** Okay. Fine. Then we'll
2 leave that for argument.

3 **MR. LEE:** The way I see it, we have Staff
4 Sergeant Derochie's comments on what these notes mean and
5 we can give it a rest for now.

6 **THE COMMISSIONER:** Thank you.

7 **MR. LEE:** Staff Sergeant Derochie, is there
8 anything else in relation to those notes that you're
9 concerned about or want to talk about or can I move on from
10 that issue now?

11 **MR. DEROCHIE:** No, I have no further
12 comments.

13 **MR. LEE:** Okay. Can we turn up -- I only
14 have two areas left for you, Staff Sergeant Derochie -- can
15 we turn up Exhibit 1379? These are some of your notes.

16 Do you have that document, sir?

17 **MR. DEROCHIE:** I do, yes.

18 **MR. LEE:** And this is -- on the cover it
19 reads "20 June '02 to 6 January '03"?

20 **MR. DEROCHIE:** That's correct.

21 **MR. LEE:** If you turn over to the first
22 page, we have an entry on the 25th of June, 2002?

23 **MR. DEROCHIE:** That's correct.

24 **MR. LEE:** Re Project Truth and it reads:

25 "Last week, I informed the Chief that I

1 had a conversation with Pat Hall
2 concerning fall-out from the Project
3 Truth trials specifically concerning
4 Perry Dunlop's actions prior to matters
5 going to trial. Hall had expressed the
6 opinion that his actions might
7 constitute an obstruction of justice.
8 He indicated that he would be meeting
9 with the Crown to discuss this matter."

10 And it goes on. Do you see that?

11 **MR. DEROCHIE:** I do.

12 **MR. LEE:** So, as I understand it, Pat Hall
13 had expressed the opinion that Dunlop's actions might
14 constitute an obstruction of justice. Is that right?

15 **MR. DEROCHIE:** That's correct.

16 **MR. LEE:** And if we go over a couple of
17 pages to Bates ending 126, three-quarters of the way down
18 the page, there is an arrow and it reads:

19 "Telephone call from Crown McConnery."

20 Do you see that?

21 **MR. DEROCHIE:** I do.

22 **MR. LEE:** There's one matter that's
23 discussed and then the second bullet under that says:

24 "Re obstruct justice. His advice,
25 Chief should send a letter to Stuart

1 saying..."

2 **MR. DEROCHIE:** "We feel seized."

3 **MR. LEE:** "We feel seized - Dunlop, obstruct
4 justice. Have heard concern the CCPS
5 should not investigate. Ask for his
6 guidance, otherwise we will start."

7 Do you see that?

8 **MR. DEROCHIE:** Yes.

9 **MR. LEE:** What does it mean, "Otherwise we
10 will start"?

11 **MR. DEROCHIE:** Well, if they didn't give us
12 guidance with regards that we shouldn't do the
13 investigation, then we were prepared to start it.

14 **MR. LEE:** So if somebody else wasn't going
15 to do it, you would do it?

16 **MR. DEROCHIE:** Yes.

17 **MR. LEE:** And can I turn you over to Bates
18 123, please. And again we have, "Re Dunlop Project Truth"
19 and towards the bottom of the page, the last entry before
20 the 1600 time notation:

21 "Also received telephone call from Pat
22 Hall. He will send me list of..."

23 **MR. DEROCHIE:** "Issues".

24 **MR. LEE:** "...issues surrounding Dunlop which
25 should be investigated."

1 **MR. DEROCHIE:** Correct.

2 **MR. LEE:** Do you recall when the idea that
3 Dunlop may have obstructed justice or committed some other
4 illegal act first arose, generally? I don't need a
5 specific date.

6 **MR. DEROCHIE:** I don't have a specific date,
7 but certainly I would have at least began to put my -- turn
8 my mind to that whole issue in September of 1999 when I
9 received information that led me to believe there was -- we
10 were still having problems with disclosure issues.

11 **MR. LEE:** This was a long-running issue?

12 **MR. DEROCHIE:** Yes. We had tried to deal
13 with it in 2000.

14 **MR. LEE:** Can you turn over to 133 please,
15 Bates ending in 133? At the bottom of the page we see a
16 redaction there under a title "Re Dunlop".

17 **MR. DEROCHIE:** Yes.

18 **MR. LEE:** And then over on the next page
19 again we have a "ReDunlop" followed by a redaction?

20 **MR. DEROCHIE:** Yes.

21 **MR. LEE:** So these redactions were related
22 to privileged information. Is that right?

23 **MR. DEROCHIE:** Yes, that's correct.

24 **MR. LEE:** Conversations you were having with
25 lawyers about litigation or information?

1 **MR. DEROCHIE:** It would have been
2 information with regards to the legal opinion sought. I
3 didn't -- this is not my redaction.

4 **MR. LEE:** Right.

5 **MR. DEROCHIE:** So I -- it doesn't ---

6 **MR. LEE:** And the reason that there are
7 privileged conversations going on at this time is because
8 at this point-in-time, the Cornwall Police is a defendant
9 in a civil action that's been filed by Dunlop?

10 **MR. DEROCHIE:** That's correct.

11 **MR. LEE:** Is that right? So separate and
12 apart from the criminal considerations, there's a civil
13 action going on at the same time?

14 **MR. DEROCHIE:** Yes, and there are other
15 issues, but I'm not sure the timing -- Mr. Dunlop had
16 applied to become an RCMP officer, but that might have
17 something to do with it as well with regards to the legal -
18 - the advice we sought with regards to his personnel file.

19 **MR. LEE:** Okay. If we look at Bates 141, we
20 have another redaction. This one is more specific at 1100
21 hours "Re Dunlop's civil action"?

22 **MR. DEROCHIE:** Yes.

23 **MR. LEE:** So that's certainly an issue
24 that's alive at that point-in-time. Is that right?

25 **MR. DEROCHIE:** Correct, yes.

1 **MR. LEE:** And you are involved in some ways
2 in that issue, the civil action?

3 **MR. DEROCHIE:** Yes.

4 **MR. LEE:** You are the contact for the
5 Cornwall Police?

6 **MR. DEROCHIE:** Yes.

7 **MR. LEE:** And you are the contact, as I
8 understand it, or the person generally charged with trying
9 to figure out what to do in the criminal matter or
10 potential criminal matter against Dunlop. Is that fir?

11 **MR. DEROCHIE:** Yeah, I believe it would be a
12 fair statement to say I was involved in virtually all
13 matters that touched on Mr. Dunlop.

14 **MR. LEE:** There was some questioning during
15 your Examination in-Chief about the Earl Landry situation
16 surrounding a statement of claim filed by one of the
17 victims in that case?

18 **MR. DEROCHIE:** Yes.

19 **MR. LEE:** And at the same time there being
20 the criminal investigation of whether or not Earl Landry,
21 Sr. had done something improper ---

22 **MR. DEROCHIE:** Yes, yes.

23 **MR. LEE:** --- and by virtue of that
24 obviously, it would have involved members of the Force
25 other than Earl Landry, Sr.

1 In this situation, it's a little bit
2 different because the plaintiff in the civil action and the
3 suspect, I suppose, in the criminal considerations are the
4 same person; they are both Perry Dunlop. Is that right?

5 **MR. DEROCHIE:** Yes.

6 **MR. LEE:** In the Landry situation, you had a
7 plaintiff who was a victim of abuse and you had a criminal
8 investigation involving the abuser's father. So it's a
9 little bit different in this case where you have the same
10 person on both sides?

11 **MR. DEROCHIE:** Yes. Yes, I see where you're
12 going.

13 **MR. LEE:** And am I right that in the end
14 charges against Dunlop were not laid by the time that the
15 civil action settled?

16 **MR. DEROCHIE:** That's correct.

17 **MR. LEE:** And if we look at Bates 143, this
18 is a December 9th, '02 entry, and under the redaction we
19 have "Re Dunlop civil action" and you note:

20 "Informed Staff Sergeant Brunet,
21 Inspector Wells, Retired Chief Shaver,
22 Retired Deputy Chief St-Denis and
23 Retired Acting Chief Johnston of
24 decision of insurance co. to settle
25 with Dunlop by issuing a \$40,000

1 cheque. All were disappointed that a
2 settlement would be made."

3 Do you see that?

4 **MR. DEROCHIE:** Yes. Yes, I do.

5 **MR. LEE:** Do you recall that?

6 **MR. DEROCHIE:** I do.

7 **MR. LEE:** Can you appreciate that somebody
8 looking at this from the outside might have concerns that
9 the Cornwall Police's judgment on the criminal side of the
10 thing -- which is really the business of the police, is the
11 criminal side of things -- might be affected by what's
12 going on in the civil action?

13 **MR. DEROCHIE:** Obviously, because we are
14 looking for somebody else to do it.

15 **MR. LEE:** There's some talk of whether or
16 not it's proper for the Cornwall Police to do it. You're
17 receiving that advice from elsewhere?

18 **MR. DEROCHIE:** Yes. Yes.

19 **MR. LEE:** Earlier in your notes, you're
20 saying, you're essentially telling the Crown either take
21 this, tell us we can't do it or we're doing it. Is that
22 right?

23 **MR. DEROCHIE:** Yes. Yes.

24 **MR. LEE:** And the idea of whether or not
25 you're coordinating with Pat Hall; he's putting together a

1 list of what might have gone wrong

2 MR. DEROCHIE: M'hm.

3 MR. LEE: It's going to be the CPS that is
4 farming this thing out?

5 MR. DEROCHIE: I'm sorry?

6 MR. LEE: It's going to be the CPS that, if
7 the decision is made to farm this out to another force, it
8 will be the CPS that makes that request?

9 MR. DEROCHIE: Yes.

10 MR. LEE: The CPS will be providing
11 information on where the investigation should possibly
12 start; what they should be looking at?

13 MR. DEROCHIE: Yes, we would give them some
14 sense of what our concerns were, yes, as I had done
15 previously with the 2000.

16 MR. LEE: Do you think it might have been
17 wise, given what was going on with the civil action -- and
18 again, it's the whole question of the appearance of
19 impropriety and the appearance of conflict and the
20 appearance of neutrality, and things along those lines.

21 MR. DEROCHIE: Yes.

22 MR. LEE: Do you think it would have been
23 wise for the CPS to divorce itself entirely from the Dunlop
24 criminal issues, from discussion of it, from anything to do
25 with it whatsoever, given this civil action was

1 outstanding?

2 **MR. DEROCHIE:** As you know, we were very
3 conscious of the optics of our whole -- all of our dealings
4 with Mr. Dunlop.

5 We had been accused of, for whatever reason,
6 persecuting him, going after him, and we were certainly
7 sensitive to all of the issues surrounding Mr. Dunlop.

8 And you know, I'm at the point now where I
9 totally expect to be criticized for not dealing with him
10 more forcefully at the end of the day with regards to these
11 issues.

12 However, I think we were trying -- that we
13 were trying to maintain that distance. Therefore, we
14 wanted to go to the Crown Attorney and let him take it on
15 and decide whether this was an appropriate course of action
16 for us to follow.

17 I think we gave due consideration to the
18 optics of it and, quite frankly, maybe to a fault. We
19 concentrated on the whole idea of the optics of it.

20 **MR. LEE:** What do you mean by that?

21 **MR. DEROCHIE:** That means that we may have -
22 - should have taken steps sooner and more concrete in
23 retrospect, in hindsight, to have -- to have dealt with
24 this issue differently, but our advice and the advice we
25 received from people whose advice we respect was to back

1 off on that issue, to let someone else, for optics sakes,
2 deal with it. And to the best of our ability, we tried to
3 do that.

4 **MR. LEE:** In the note that I just took you
5 to there are a number of people listed who you telephone to
6 advise of the settlement and the last sentence in your
7 notes says:

8 "All were disappointed that a
9 settlement would be made."

10 Do you see that?

11 **MR. DEROCHIE:** Yes.

12 **MR. LEE:** Were you disappointed that a
13 settlement was made?

14 **MR. DEROCHIE:** Yes.

15 **MR. LEE:** Can you help me understand where
16 that disappointment stemmed from or the reason for it?

17 **MR. DEROCHIE:** Well, it's just the whole
18 idea that there would be some sort of admission or
19 acknowledgement that the civil action had any kind of
20 merit. I think that was what was -- that was in my mind
21 about it. It was a -- we understood and we were told it
22 was a nuisance settlement, but it still stuck in our craws
23 that -- or I can say it stuck in my craw that we were
24 making this settlement.

25 **MR. LEE:** You've spoken a couple of times

1 about your understanding that there was a feeling that it
2 was -- that Constable Dunlop was somehow being singled out
3 or was being treated unfairly or was being maligned by the
4 Cornwall Police in the community. You understood that?

5 **MR. DEROCHIE:** Yes.

6 **MR. LEE:** Doesn't the fact that all of these
7 members of the Cornwall Police expressed disappointment
8 that the insurance company had decided to settle this
9 action support that in some way?

10 Isn't this evidence of a mentality that it's
11 the Cornwall Police against Perry Dunlop?

12 **MR. DEROCHIE:** I don't -- I don't agree with
13 that.

14 These individuals who I informed had been
15 accused of being a part of a conspiracy to protect
16 pedophiles and they were very much affected by that and
17 didn't want that theory to -- to gain any kind of
18 credibility whatsoever, and although I was not involved
19 personally, I wasn't named as a defendant in the civil
20 action, I had that same concern with regards to members of
21 our Police Service being involved in that. That would not
22 certainly -- the allegations didn't certainly bode well for
23 us.

24 You know, the whole idea is -- is --
25 "disgusting" may be too severe a term, but that's what I

1 think. The whole idea of members of the Cornwall Police
2 Service conspiring to protect pedophiles was obscene in my
3 mind.

4 **MR. LEE:** And that's where the
5 disappointments come from?

6 **MR. DEROCHIE:** I can speak for myself, Mr.
7 Lee, but I can't speak for these individuals.

8 I understood or that's my understanding of
9 why they express that kind of -- of disappointment.

10 **MR. LEE:** Shifting focus.

11 **MR. DEROCHIE:** Okay.

12 **MR. LEE:** I want to take you to a document.
13 Madam Clerk, this document doesn't have a
14 document number. It's the Statutory Declaration of Garry
15 Derochie from January 24th, 2008.

16 **(SHORT PAUSE/COURTE PAUSE)**

17 **THE COMMISSIONER:** Thank you.

18 Exhibit 1394 is the Statutory Declaration of
19 Garry Derochie.

20 **--- EXHIBIT NO./PIÈCE NO P-1394:**

21 Statutory Declaration of Garry Derochie

22 **MR. LEE:** Staff Sergeant Derochie, this is a
23 declaration dealing with the results of a search for
24 relevant discipline records in relation to this Inquiry.
25 Is that right?

1 **MR. DEROCHIE:** That's correct.

2 **MR. LEE:** And this issue arose at the start
3 of this year and there was some discussion between parties.
4 There was a discussion with the Commissioner and CPS went
5 off and looked for documents and reported back on what it
6 had found.

7 **MR. DEROCHIE:** Yes.

8 **MR. LEE:** Is that right?

9 **MR. DEROCHIE:** Yes, yes.

10 **MR. LEE:** And this declaration very much
11 deals with a search for documents?

12 **MR. DEROCHIE:** Yes, it does.

13 **MR. LEE:** If we look at paragraph 2, it
14 notes that you're advised by Sergeant Robert Burnie that he
15 has reviewed all the relevant discipline records and it's
16 the second part of this that I'm interested in:

17 "...for those present and former
18 officers of the Cornwall Police Service
19 which this Commission of Inquiry has
20 identified as likely witnesses."

21 **MR. DEROCHIE:** Yes.

22 **MR. LEE:** So that was the first part of the
23 test in his search for discipline records, whether or not
24 the officer would be called to testify at the Inquiry?

25 **MR. DEROCHIE:** Yes.

1 **MR. LEE:** The search was not concerned with
2 officers who would not be called to testify at the Inquiry.
3 Is that right?

4 **MR. DEROCHIE:** Yes.

5 **MR. LEE:** And if we look at paragraph 3, we
6 have the definition of "relevant discipline" that was used
7 during this search. Is that right?

8 **MR. DEROCHIE:** That's correct.

9 **MR. LEE:** And we have three subcategories;
10 it begins with findings of guilt and imposition of formal
11 or informal discipline and then we have (a), (b) and (c).

12 I notice after (b), that there's the word
13 "and". Can you tell me whether this was interpreted as
14 requiring each of these three subcategories to apply in
15 order for a document to be relevant or was it any one of
16 the three?

17 To be perfectly clear, if there was a record
18 dealing with deceit on the part of an officer that had
19 nothing to do with subcategories (a) or (c), would it have
20 been produced?

21 **MR. DEROCHIE:** I took it to be read in
22 conjunction with the (c) ---

23 **MR. LEE:** Sorry ---

24 **MR. DEROCHIE:** --- and all three would have
25 to apply in order for there to have been a positive

1 response.

2 MR. LEE: So if we had a document that
3 related to the deceit of ---

4 MR. MANDERVILLE: I apologize, Mr.
5 Commissioner.

6 I was the one who arranged for this and I
7 don't wish to give evidence but it is not conjunctive. It
8 was any one of the three categories.

9 And if, for example, an officer had a
10 finding of misconduct for item (b), for any reason
11 irrespective of the type of investigation, it would be
12 produced and that direction was made clear.

13 THE COMMISSIONER: That direction was made
14 clear?

15 MR. MANDERVILLE: Was made clear.

16 THE COMMISSIONER: What do you mean "made
17 clear"?

18 MR. MANDERVILLE: That this was the nature
19 of what the search was.

20 MR. LEE: Can I just have one moment,
21 please?

22 THE COMMISSIONER: Sure.

23 (SHORT PAUSE/COURTE PAUSE)

24 MR. CALLAGHAN: Sorry, Mr. Commissioner,
25 that *sotto voce* discussion amongst us all was if -- and

1 Commission counsel has asked that the "stat dec" be amended
2 so that someone swears it on an "or", so that whole
3 disjunctive/conjunctive thing is resolved on the stat dec
4 itself and we'll do that.

5 **THE COMMISSIONER:** Okay.

6 **MR. LEE:** You weren't the officer, Staff
7 Sergeant Derochie, that conducted this search?

8 **MR. DEROCHIE:** Yes.

9 **MR. LEE:** It was -- that's correct?

10 **MR. DEROCHIE:** Well, in conjunction with
11 Sergeant Burnie.

12 Sergeant Burnie did the actual files of the
13 -- of the archived discipline files and those files that I
14 had in my possession, I searched those files.

15 **MR. LEE:** What I want to know is whether or
16 not your search of files would have been impacted by an
17 understanding that this was an "and" rather than an "or"?

18 **MR. DEROCHIE:** I would have brought to the
19 attention of our solicitors any of those categories had I
20 found them.

21 **MR. LEE:** Okay.

22 **MR. DEROCHIE:** So had I found (a), I would
23 have; had I found something in (b), I would have; and had I
24 found discipline relative to (c), I would have.

25 I wouldn't have made the distinction. I

1 would have let them make it -- "here it is".

2 MR. LEE: And what you declare in paragraph
3 4 of this declaration is that there are no records of
4 relevant discipline of the various present and former
5 officers of the Cornwall Police Service identified as
6 possible witnesses?

7 MR. DEROCHIE: That's correct.

8 MR. LEE: Not a single piece of paper?

9 MR. DEROCHIE: Not for these specific
10 categories.

11 MR. LEE: Not for those categories for those
12 witnesses.

13 And you go further than that in paragraph 6,
14 where you state that:

15 "In addition, with the exception of
16 former Constable Sebalj, [you] have
17 personally contacted, by telephone,
18 each and every present and former
19 member of the Cornwall Police Service
20 which this Commission has identified as
21 a likely witness."

22 And you write,

23 "I'm advised by each and every one of
24 those individuals that at no time in
25 their careers with the Cornwall Police

1 Service have they been the subject of
2 relevant discipline."

3 **MR. DEROCHIE:** That's correct.

4 **MR. LEE:** So you're not only telling us that
5 there are no documents, you're telling us that there never
6 were any documents because there never was any discipline.
7 Is that right?

8 **MR. DEROCHIE:** That's what they told me,
9 yes.

10 **MR. LEE:** So this isn't something where
11 we're worried about destruction of documents or anything
12 like that? Not nefarious destruction of documents but just
13 ---

14 **MR. DEROCHIE:** No.

15 **MR. LEE:** There never was?

16 **MR. DEROCHIE:** No, you're right.

17 **MR. LEE:** Can you -- if we look back at
18 paragraph 3, it speaks of "formal or informal discipline".
19 Can you help us out with what "informal discipline" might
20 mean in this context?

21 **MR. DEROCHIE:** Well, "informal discipline"
22 would be as described in the *Police Services Act* as being
23 resolved by way of discipline other than a -- as a result
24 of something other than a hearing where there was a
25 finding; an agreement between the Professional Standards

1 Officer or a supervisor with the officer, that there had
2 been -- there's an acknowledgment of some misconduct and
3 there's a penalty applied to it.

4 MR. LEE: Would counselling count as
5 "informal discipline", according to this definition?

6 MR. DEROCHIE: No, I think there had to be a
7 penalty applied.

8 MR. LEE: Counselling isn't considered to be
9 a penalty?

10 MR. DEROCHIE: Well, yes, it can be, it can
11 be. So, yes, you're right, it would include counselling.

12 MR. LEE: Would it include --- I'm thinking
13 as an example of Kevin Malloy who was off on sick leave and
14 so there was a decision made that there would be
15 counselling but he's off on sick leave and there's some
16 problems created. Would that count as "informal
17 discipline" for the purposes of this?

18 MR. DEROCHIE: Yes.

19 MR. LEE: And there are no documents
20 relating to ---

21 MR. DEROCHIE: There is a document; we
22 produced it. The ---

23 MR. LEE: Okay. So ---

24 MR. DEROCHIE: Yeah, I'm sorry? It's an
25 exhibit I believe, the letter from Acting Chief Carl

1 Johnson to me, indicating that ---

2 MR. LEE: Right. Can you ---

3 THE COMMISSIONER: Maybe if we just clear --
4 there's a letter from the ---

5 MR. DEROCHIE: When I submitted my report to
6 Antoine, to Carl Johnson, he subsequently responded by
7 giving me instructions and the instructions were to apply
8 to counsel, Constable Malloy ---

9 THE COMMISSIONER: Okay, okay. Come up.

10 MR. CALLAGHAN: I could go to it in my re-
11 examination.

12
13 THE COMMISSIONER: It's okay, I understand
14 what you meant. It's just you stopped in mid-
15 sentence and I didn't know where exactly we were
16 with that. That's fine.

17 MR. CALLAGHAN: Okay, thank you.

18 MR. DEROCHIE: I understood that Mr. Lee had
19 recalled that document.

20 MR. LEE: Yeah, I know, but somewhere along
21 the line I have to understand too, you know.

22 MR. DEROCHIE: Oh, I'm sorry.

23 THE COMMISSIONER: No, no, that's fine.

24 MR. LEE: So can I assume then that that
25 document was not referenced anywhere in this statutory

1 declaration or produced pursuant to this process because it
2 had already been produced?

3 **MR. DEROCHIE:** That was my understanding of
4 the document.

5 **MR. LEE:** Are there any other documents
6 you're aware of that have already been produced that
7 weren't -- I mean, I took this as being the final answer on
8 this issue? I didn't consider the fact that there may be
9 others that have already been produced, go find them
10 yourself.

11 **MR. DEROCHIE:** Yes, that's my understanding.
12 There's nothing other than what I can think of off-hand,
13 other than that particular document.

14 **MR. LEE:** So there's the Malloy one and
15 that's the only one that isn't ---

16 **MR. DEROCHIE:** I might be mistaken but I
17 really -- I don't know.

18 **MR. LEE:** I mean ---

19 **MR. DEROCHIE:** There's so many documents out
20 there.

21 **MR. LEE:** I know there are.

22 The problem I have is that it states, "There
23 are no records of relevant discipline". So when I read
24 that I take that as meaning there are no records of
25 relevant discipline.

1 It notes that you spoke with all past and
2 present members of the Cornwall Police, with the exception
3 of Constable Heidi Sebalj?

4 **MR. DEROCHIE:** And Mr. Dunlop.

5 **MR LEE:** Fair enough. Can you tell us why
6 you couldn't speak to Miss Sebalj on this?

7 **MR. DEROCHIE:** I'm sorry?

8 **MR. LEE:** Is there a reason you could not
9 have contacted Miss Sebalj on this issue?

10 **MR. DEROCHIE:** No, other than she's -- out
11 of a concern for her comfort level when I call her. It has a
12 tendency to not be a good day for her.

13 **MR. LEE:** We know she's not doing well.

14 **MR. DEROCHIE:** Yes, and I don't like to ---

15 **MR. LEE:** Do we have -- I mean, it seems to
16 me that the step outlined in paragraph 6 was prudent, in that
17 you didn't find any documents, you'd call and ask whether
18 there should be any.

19 Can we have as much confidence that Sebalj
20 was not subject to any kind of discipline that might have
21 been caught?

22 My concern is that there well have been
23 documents at some point-in-time and that they no longer
24 exist.

25 **MR. DEROCHIE:** To the best of my knowledge,

1 there's nothing from Ms. Sebalj.

2 **MR. LEE:** So you have no knowledge of any
3 formal or informal discipline in relation to the Silmser
4 matter, let's say, no discipline imposed there at any point?

5 **MR. DEROCHIE:** Not that I'm aware, no.

6 **MR. LEE:** And you're not aware of any
7 discipline at any point in her career that would have
8 involved anything set out in (a), (b) or (c)?

9 **MR. DEROCHIE:** No, nor any discipline at
10 all.

11 **MR. LEE:** And the same would apply to Luc
12 Brunet as it related to the Silmser investigation?

13 **MR. DEROCHIE:** Yes.

14 **MR. LEE:** There's no discipline in relation
15 to the Silmser investigation at all. Is that right?

16 **MR. DEROCHIE:** None.

17 **MR. LEE:** And was there any discipline
18 imposed on anybody in relation to ---

19 **MR. DEROCHIE:** Well -- I'm sorry -- with
20 regards to -- if we're -- I want to be thorough in my
21 answer -- with the exception of Mr. Dunlop. I don't know
22 if that's where you ---

23 **MR. LEE:** No ---

24 **MR. DEROCHIE:** --- if that's the depth of
25 the ---

1 **MR. LEE:** And there obviously -- there were
2 issues with Mr. Dunlop as it related to the -- and there
3 was a -- it went to a hearing stage and everything else.

4 **MR. DEROCHIE:** Yes, yes.

5 **MR. LEE:** Was there any discipline imposed,
6 formally or informally, on anybody in relation to the Earl
7 Landry, Jr. investigation?

8 **MR. DEROCHIE:** No.

9 **MR. LEE:** No counselling?

10 **MR. DEROCHIE:** No.

11 **MR. LEE:** Nothing with Ron Lefebvre, as an
12 example, in relation to that '85 investigation?

13 **MR. DEROCHIE:** No, no.

14 **MR. LEE:** And no formal or informal
15 discipline of Ron Lefebvre in relation to any other matter
16 at any point in his career involving deceit?

17 **MR. DEROCHIE:** No.

18 **MR. LEE:** What about Jeff Carroll? Nothing
19 at all in relation to his various investigations by way of
20 counselling or anything along those lines?

21 **MR. DEROCHIE:** No.

22 **MR. LEE:** Do you have some memory of which
23 officer, past and present members of the Cornwall Police,
24 were on the prospective witness list provided by Commission
25 counsel?

1 **MR. DEROCHIE:** Yes, I ---

2 **MR. LEE:** The reason I ask, I don't have
3 that list and it's changed from time-to-time throughout the
4 course of this Inquiry. We understood certain people would
5 be called and then they might not and then they might -- I
6 don't know what your list was at that point.

7 **MR. DEROCHIE:** And I don't have it before me
8 as well, but there was definitely a list that I used to
9 conduct this search for documents.

10 **THE COMMISSIONER:** So perhaps the affidavit
11 or certificate here, while you're amending it, could
12 include a paragraph saying, "Here is the people that we
13 searched for".

14 **MR. MANDERVILLE:** We could certainly do
15 that, Mr. Commissioner, and I can advise you that the list
16 provided to the CPS was rather longer than it now is.

17 **THE COMMISSIONER:** Of course, and I would
18 hope so.

19 Mr. Engelmann.

20 **MR. ENGELMANN:** I think while we're amending
21 the Affidavit just so we amend it only once, we're going to
22 want to amend paragraph 3 to make sure that it's not
23 conjunctive.

24 **THE COMMISSIONER:** Yes.

25 **MR. ENGELMANN:** We should amend paragraph 4

1 because it reads that:

2 "There are no records ..."

3 And then:

4 "... with the exception of the
5 following records which have been
6 produced."

7 **THE COMMISSIONER:** Right.

8 **MR. ENGELMANN:** And then I think there
9 should be a list of the witnesses as well. I only want to
10 amend it once.

11 **MR. MANDERVILLE:** I apologize to appear like
12 a yo-yo. Under the Police Act, informal counselling
13 is not discipline. Informal counselling is not viewed as
14 discipline, which is why relevant discipline as agreed upon
15 by Commission counsel and Mr. Manson and myself and Mr.
16 Coslove, is a defined term, and instructions were given to
17 search in accordance with the agreed-upon defined term. An
18 informal counselling session is not discipline under the
19 *Police Services Act*.

20 **THE COMMISSIONER:** So what you're saying is
21 that someone may have been counselled on (a), (b) and (c) -
22 - (a), (b) or (c) and you wouldn't have produced it?

23 **MR. MANDERVILLE:** What I am saying is the
24 only one that we are aware of, the only ones that we are
25 aware of, is the prospective, putative attempt vis-à-vis

1 Mr. Dunlop in the fall of '93, and then subsequently with
2 Mr. Malloy arising out of the Antoine investigation. And
3 those are the only relevant, informal counselling sessions
4 we are aware of.

5 **THE COMMISSIONER:** Okay.

6 **MR. LEE:** Sir, I'm hoping we're going to get
7 the list, but I'm hoping you may have some recollection of
8 it.

9 Can you tell me whether or not Robert
10 Trottier was on the list provided to you?

11 **MR. DEROCHIE:** I believe he was.

12 **MR. LEE:** And there was no record of
13 informal or formal discipline related to any of the
14 categories in (a), (b) or (c) in relation to Mr. Trottier?

15 **MR. DEROCHIE:** That's correct.

16 **MR LEE:** Would you agree me that the
17 Cornwall Police has traditionally been hesitant to
18 discipline its members and/or to lay charges under the
19 *Police Services Act*?

20 **MR. DEROCHIE:** Well, I think it's fair to
21 say that I've never worked for a chief that reached for the
22 Police Act, you know, as a first reaction to a situation.
23 They would -- they have a tendency -- the chiefs of police
24 have a tendency and I don't disagree with this, to only
25 deal with the most severe cases of discipline formally by

1 having a hearing.

2 The *Police Services Act* certainly supports
3 that philosophy and gives the Chief of Police an awful lot
4 of leeway with regards to what he considers to be a serious
5 breach of discipline.

6 We have over the years had several *Police*
7 *Services Act* trials -- hearings rather. So although it's
8 not the first tool that's reached for, it certainly is one
9 that is used within the organization.

10 Whether we lay more or less *Police Act*
11 charges than any other agency does, I have never compared
12 that, but I've been involved in several, both as a
13 prosecutor and as an investigator with regards to *Police*
14 *Act* issues. I've laid *Police Act* charges.

15 **MR. LEE:** Have you sensed in your time with
16 the Cornwall Police Service that the -- I suppose the
17 relationship that the management of the Cornwall Police
18 Service has with the Association has led to some hesitance
19 to proceed with discipline?

20 **MR. DEROCHIE:** No. We -- I would think that
21 a proof of that is the agreement we have on inspectors'
22 discipline on that informal, which was entrenched in our
23 policies which was a -- entrenched in our contract.

24 So they would certainly represent their
25 members aggressively as is their duty to do, but no, I

1 don't think there was apprehension or fear of the
2 association that we wouldn't lay a charge because they
3 would fight it and win or -- if that's what you're
4 suggesting, sir.

5 **MR. LEE:** Can I have one moment, please, Mr.
6 Commissioner.

7 **THE COMMISSIONER:** Sure.

8 (SHORT PAUSE/COURTE PAUSE)

9 **MR. LEE:** Just one more moment, please, sir.

10 **THE COMMISSIONER:** M'hm.

11 **MR. LEE:** Those are all my questions, Mr.
12 Derochie. Thank you.

13 **MR. DEROCHIE:** Thank you, Mr. Lee.

14 **THE COMMISSIONER:** Thank you. Mr. Neville.
15 Good morning, sir.

16 **MR. NEVILLE:** Good morning, Mr.
17 Commissioner. If I could just have a brief moment, sir.

18 **THE COMMISSIONER:** Certainly.

19 (SHORT PAUSE/COURTE PAUSE)

20 ---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

21 **NEVILLE:**

22 **MR. NEVILLE:** Sorry for the aside, Mr.
23 Commissioner. I just advised Mr. Engelmann that I sent --
24 our office sent a supplementary notice of two additional
25 documents dealing with the C-9 issue that arose near the

1 end of the day yesterday with Staff Sergeant Derochie. And
2 I have the requisite six copies, but I accidentally put
3 magic marker on one of the six. So I've just given that
4 one to Mr. Engelmann and I have, therefore, five copies of
5 one of them and six of the other; five unmarked and six
6 unmarked. I'll just bring them up.

7 **THE COMMISSIONER:** Thank you.

8 **MR. NEVILLE:** And the document numbers,
9 Commissioner, are 110209. It's an interview report of C-9
10 by Detective Fagan of the Ontario Provincial Police on the
11 3rd of March, 1994.

12 The second document is 712412, an interview
13 report of C-9 again by the OPP, Constable Dupuis, on the 7th
14 of June, 2000. That one, sir, has two versions. There's
15 the handwritten original and the typed came with it. The
16 first one I mentioned is only in a typed form.

17 **THE COMMISSIONER:** M'hm.

18 **MR. ENGELMANN:** Just before this is entered,
19 I'm not sure why we're doing this through a witness from
20 the CPS. I don't know what this has to do with this
21 witness' evidence. I just ---

22 **THE COMMISSIONER:** All right.

23 **MR. ENGLEMANN:** We'll have OPP witnesses
24 coming. If it's part of the OPP institutional response,
25 that's fine. I'm not sure how this is part of the

1 Cornwall.

2 **MR. NEVILLE:** Well, it deals with the
3 investigation of my client, Commissioner.

4 **THE COMMISSIONER:** Yes.

5 **MR. NEVILLE:** Father MacDonald.

6 **THE COMMISSIONER:** M'hm.

7 **MR. NEVILLE:** And it was evidence solicited
8 through Mr. Lee's cross-examination of observations made by
9 C-9 in relation to an event directly involving my client,
10 Father MacDonald.

11 **THE COMMISSIONER:** But no.

12 **MR. NEVILLE:** Yes. It involves an event,
13 sir, well -- it involves Mr. C-9 ---

14 **THE COMMISSIONER:** Yes.

15 **MR. NEVILLE:** --- being questioned about a
16 specific event that was one of a series of events alleged
17 by David Silmsler involving my client, Father MacDonald.

18 **THE COMMISSIONER:** All right. But ---

19 **MR. NEVILLE:** And C-9 was one of a number of
20 people questioned by Detective Sebalj and others about that
21 specific event. And the suggestion has been made that C-
22 9's evidence in some fashion, there's more to it and the
23 like involving my client.

24 **THE COMMISSIONER:** No, no.

25 **MR. NEVILLE:** Well, it was, sir. I can give

1 you the references.

2 **THE COMMISSIONER:** Well, let's talk about it
3 a little bit.

4 **MR. NEVILLE:** All right.

5 **THE COMMISSIONER:** My understanding is we're
6 looking at an institutional response. We're looking at an
7 officer who's phoning someone and that person gets a
8 response.

9 And what -- the officer gets a response from
10 that person, and the issue is whether a police officer, and
11 we've heard from different people, how they would have
12 reacted to that. So it's not there for the truth of its
13 contents.

14 **MR. NEVILLE:** No, I understand.

15 **THE COMMISSIONER:** It's there just to show
16 what the response was and so there are some people clearly
17 that have said that Officer Sebalj should have travelled to
18 Ottawa to speak to ---

19 **MR. NEVILLE:** No, it's not that person, sir.

20 **THE COMMISSIONER:** Oh, sorry. I'm sorry.

21 **MR. NEVILLE:** No, C-9, sir, is the person
22 whose occupation ---

23 **THE COMMISSIONER:** Right. I'm sorry. I'm
24 sorry. Sorry. Okay, let's go back.

25 **MR. NEVILLE:** That's why, sir.

1 **THE COMMISSIONER:** Okay.

2 **MR. NEVILLE:** And I think if you see the
3 material, you'll see why it relates directly to my client
4 and when you see the material, you will see that the two
5 additional documents that C-9, indeed, provided interviews.

6 In other words, what I'm attempting to
7 demonstrate to you, sir, through the witness in brief
8 questioning is that the picture is not exactly as presented
9 yesterday, and I think that's legitimate.

10 **THE COMMISSIONER:** Okay. Let's see ---

11 **MR. ENGELMANN:** Sir, if I could speak to it
12 because I think we're off field again perhaps.

13 The issue, as I understand it, that arose
14 yesterday was -- and the witness said this -- that the
15 response was unusual from that witness, given that witness'
16 occupation.

17 **THE COMMISSIONER:** Right.

18 **MR. ENGELMANN:** And if this deals with that
19 and perhaps some follow-up on that, then it's part of the
20 CPS institution response that deals with another issue
21 about what else he might have said to someone else later.
22 I don't think that helps us in looking at -- I mean, that
23 was how it arose; that this was an unusual reaction given
24 the occupation of that individual.

25 **THE COMMISSIONER:** M'hm.

1 **MR. ENGELMANN:** So I don't know how this is
2 helpful.

3 **THE COMMISSIONER:** Mr. Kozloff.

4 **MR. NEVILLE:** Commissioner, perhaps it would
5 assist. What I was going to do before turning to these
6 particular documents and not in great detail, I can assure
7 you, was simply to refer the Staff Sergeant to certain of
8 his answers on the topic yesterday.

9 **THE COMMISSIONER:** M'hm.

10 **MR. NEVILLE:** Attempt first to clarify those
11 and then to move on.

12 But one of the concerns I have is that the
13 thrust or -- maybe I shouldn't be discussing it in the
14 presence of the witness. ---

15 **MR. DEROCHIE:** Do you want me to leave?

16 **THE COMMISSIONER:** Yes, please.

17 **(WITNESS WITHDRAWS/TÉMOIN SE RETIRE)**

18 **MR. NEVILLE:** While he is leaving us,
19 Commissioner, if I could just have the -- on the screen,
20 from yesterday's transcript -- and I'm using the actual
21 page number as opposed to the ones on the SuperText or the
22 internet version. So it would be starting on page 225 of
23 yesterday.

24 **THE COMMISSIONER:** Madam Clerk, do I have a
25 copy of that yet? What volume is it? Oh yeah, I've got

1 it. Sorry.

2 **MR. NEVILLE:** It's kind of ironic,
3 Commissioner; the debate on this is going to take longer
4 than the evidence.

5 But in any event, at the bottom of page 225,
6 Mr. Lee -- there was a discussion about the moniker issue
7 and then he refers to a passage at the bottom, sir, and
8 that's directly from part of the OMPPAC report of Officer
9 Sebalj with the substitution of the C-9 moniker.

10 And then if you continue on to the next
11 page, Mr. Lee first, at page -- line 13, says, after citing
12 or confirming the fact that the witness had become outraged
13 and refused to become involved or discuss the matter
14 further -- that's at line 10 and 11 -- Mr. Lee says:

15 "Would you agree with me that given C-
16 9's profession, that is a very odd
17 reaction to Constable Sebalj's
18 questions?"

19 And then I objected that his question, as
20 worded at line 10, was not accurate with the report because
21 it omitted C-9 having told that officer; that is, Sebalj,
22 that the allegations that she was explaining to him were
23 false.

24 **THE COMMISSIONER:** M'hm.

25 **MR. NEVILLE:** So it was more than simply

1 being outraged, the allegations were false that she was
2 telling him, and we will get to that perhaps in a moment.
3 And then he goes on at the bottom:

4 "The question is whether you would
5 agree with me that C-9's reaction was
6 very odd given his profession?"

7 Then at the top of 227, Mr. Lee says:

8 "Would you agree with me that the
9 description of his reaction here leaves
10 one with the impression that C-9 might
11 know more than he is saying?"

12 To which the officer says:

13 "It might. It might. If you view it
14 in one way, it might."

15 And Mr. Lee at least raises the question:

16 "Possibly yes?"

17 MR. DEROCHIE: Yes."

18 Now, that was where I intended to start
19 with, simply to have that issue clarified and from there --
20 -

21 **THE COMMISSIONER:** What issue clarified?

22 **MR. NEVILLE:** These answers.

23 **THE COMMISSIONER:** M'hm.

24 **MR. NEVILLE:** I intend to ask him what is
25 it, for example, about the phrase "The allegations were

1 completely false", "Refusing to become involved" or
2 "discuss the matter further", what, in his mind, tells him
3 he might know more, which I suggest is a perfectly
4 legitimate question.

5 **THE COMMISSIONER:** M'hm.

6 **MR. NEVILLE:** That's where I wanted to
7 start.

8 **THE COMMISSIONER:** M'hm.

9 **MR. NEVILLE:** Right there. And then I've
10 provided these documents, Commissioner, if necessary, to
11 show that this person has, in fact, provided specific
12 detail that, when you look at them, if you take a moment to
13 do so, will see are, in effect, in more detail saying that
14 the allegations are false. What you -- you don't
15 understand yet, sir, because I'm not sure whether you've
16 had a chance to look at it. Maybe you have, and I
17 shouldn't say that.

18 You have available to you the original duty
19 book notes of Constable Sebalj ---

20 **THE COMMISSIONER:** M'hm.

21 **MR. NEVILLE:** --- Exhibit 295.

22 **THE COMMISSIONER:** M'hm.

23 **MR. NEVILLE:** If one looks at them, sir, it
24 would appear that given the passage of time, she is
25 investigating a 20-year old event that -- largely what she

1 appears to have done in many instances to cue the
2 witnesses' memory was advise them of what she understood
3 was a certain situation and what could they tell her about
4 it.

5 **THE COMMISSIONER:** M'hm.

6 **MR. NEVILLE:** And one of the issues was an
7 alleged retreat event at St. Andrews.

8 **THE COMMISSIONER:** M'hm.

9 **MR. NEVILLE:** So by virtue of doing that,
10 she would provide certain details of what allegedly
11 happened there by Mr. Silmser's version ---

12 **THE COMMISSIONER:** M'hm.

13 **MR. NEVILLE:** --- and ask for a comment from
14 the witness. So that's what I understood, given her
15 approach, was what she did with C-9 ---

16 **THE COMMISSIONER:** M'hm.

17 **MR. NEVILLE:** --- about whom very specific
18 allegations are made.

19 And indeed, sir, if we go back in the
20 transcript, Mr. Lee quotes what part of the purported story
21 was to which this person was purportedly a witness.

22 **THE COMMISSIONER:** M'hm.

23 **MR. NEVILLE:** Involving my client.

24 **THE COMMISSIONER:** M'hm.

25 **MR. NEVILLE:** That it was -- yes, at page

1 223, "running around in the nude and telling jokes".

2 **THE COMMISSIONER:** M'hm.

3 **MR. NEVILLE:** That type of things. So
4 that's an example of how the officer -- and I don't raise
5 it as a criticism -- she is dealing with a 20-year old
6 event, how she went -- apparently went about it.
7 Presumably with this witness, because -- and that is with
8 C-9 -- because she did it with several others, as you can
9 see from those notes, Exhibit 295.

10 So when in fact, assuming that is likely
11 what happened, because we don't have her evidence, nor his
12 yet, if we ever do, assuming that's likely how it was done,
13 would, I suggest, not surprisingly a list of the response
14 from C-9 the allegations were completely false.

15 **THE COMMISSIONER:** M'hm.

16 **MR. NEVILLE:** Now, if you look at the
17 companion documents that I've identified today, he, in
18 fact, does say essentially that.

19 **THE COMMISSIONER:** Ten years later or ---

20 **MR. NEVILLE:** Pardon me?

21 **THE COMMISSIONER:** Many years later.

22 **MR. NEVILLE:** Well, so was the first
23 interview and the report that Mr. Lee quoted from.

24 **THE COMMISSIONER:** Right. No, but my focus
25 is this. I'm looking not really whether it was true or

1 not, but how an officer should or would react to what --
2 how C-9 reacted, all right? And so, if you look at that
3 and if somebody comes up with an opinion, well, his
4 reaction was unusual and that it may have put up a flag to
5 say ---

6 **MR. NEVILLE:** Well, that's what I wanted to
7 ask him, sir.

8 **THE COMMISSIONER:** Right.

9 **MR. NEVILLE:** To what extent -- why would he
10 call it unusual? Could he expand what, in his mind, that
11 meant?

12 **THE COMMISSIONER:** No problems with that.

13 **MR. NEVILLE:** That's where I wanted to start
14 and if ---

15 **THE COMMISSIONER:** Okay.

16 **MR. NEVILLE:** --- there was any merit to it,
17 turn to these documents to show for the sake of the record
18 that this witness, in fact, provided further information,
19 and without even necessarily filing them. My friends
20 besides me may have a reason to do that, but I thought I
21 should give the notice. But this is where I want to start.

22 **THE COMMISSIONER:** Well, let's start with
23 that.

24 **MR. NEVILLE:** All right.

25 **THE COMMISSIONER:** That's not a problem.

1 So can we get the witness back?

2 **GARRY DEROCHIE, Resumed/Sous le même serment:**

3 **THE COMMISSIONER:** Thank you very much,
4 Staff Sergeant Derochie.

5 **MR. DEROCHIE:** No problem.

6 **MR. NEVILLE:** Thank you, Commissioner.

7 I guess we'll need it on the screen for the
8 witness as well. Actually I just didn't go through the
9 formality as I should. I know the Staff Sergeant knows me.

10 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

11 **NEVILLE (Cont'd/suite):**

12 **MR. NEVILLE:** Good morning Staff Sergeant.

13 **MR. DEROCHIE:** Good morning, Mr. Neville.

14 **MR. NEVILLE:** We've met obviously before.

15 **MR. DEROCHIE:** Yes, we have.

16 **MR. NEVILLE:** And for the record, I think
17 you know I represent Father MacDonald and also for the
18 estate of Mr. Seguin and his family.

19 **MR. DEROCHIE:** Yes.

20 **MR. NEVILLE:** So you should have on the
21 screen there for you -- I just want to ask you some brief
22 questions about part of your testimony yesterday in
23 response to Mr. Lee.

24 **MR. DEROCHIE:** Yes.

25 **MR. NEVILLE:** And it dealt with the person

1 we're describing as C-9 whom you know, of course.

2 **MR. DEROCHIE:** Yes.

3 **MR. NEVILLE:** Now, if we can just look at
4 the bottom of page -- Madam Clerk, page 225 at the bottom -
5 - yeah, it's on the screen there now.

6 You have Mr. Lee reading to you, Staff
7 Sergeant, the portion of the OMPAC report dealing with C-
8 9.

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** Where he was approached about
11 the allegations, became outraged, said they were false and
12 refused to become involved or to discuss the matter, right?

13 **MR. DEROCHIE:** Yes.

14 **MR. NEVILLE:** And then you were asked a
15 question and I objected actually as to the reaction of this
16 person given his profession, and then on page 227, after my
17 objection, we have the question repeated to you by Mr. Lee
18 at the top of the page:

19 "Would you agree with me that the
20 description of his reaction here leaves
21 one with the impression that C-9 might
22 know more than he is saying?"

23 And then it says -- you say:

24 "It might. It might. If you view it
25 in one way, it might."

1 Now, just stopping there, what -- can you
2 tell me what, having looked again on the screen at the
3 passage that was read back to you, what is it about that
4 passage that would lead you to say that that person might
5 know more?

6 **MR. DEROCHIE:** Well, he might know more. I
7 just -- I don't know what it would -- what it would be.
8 It's a reaction to a set of -- or to a question that's put
9 to him. I don't know the context of the question or what
10 point in the conversation he has with Sebalj that he
11 becomes outraged. It's ---

12 **MR. NEVILLE:** Well, that's what I'm getting
13 at.

14 **MR. DEROCHIE:** It's a very -- it's a very
15 strong word "outraged" and it suggests -- it could suggest
16 that there was more to say or it could suggest that there
17 was nothing more to say.

18 **MR. NEVILLE:** Exactly.

19 **MR. DEROCHIE:** And that this is ridiculous.

20 **MR. NEVILLE:** Precisely, because what is
21 also contained there is the statement summarized by her.
22 He said the allegations were false; right?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** Okay. Now, you also were
25 asked whether given his profession -- the bottom of page

1 226:

2 "The question was..."

3 And Mr. Lee repeats it:

4 "...whether you would agree with me that
5 C-9's reaction to the questioning by
6 Heidi Sebalj was very odd given his
7 profession?"

8 And your answer was "Yes."

9 Now, I don't want you to do anything about
10 the profession issue, but why would you say yes to that?
11 Just because he became angry?

12 **MR. DEROCHIE:** That and knowing him
13 personally, that I wouldn't have thought that he would have
14 reacted that way.

15 **MR. NEVILLE:** Okay. Fair enough. So we
16 don't have a whole lot to work with from a four-line
17 summary. Is that a fair statement?

18 **MR. DEROCHIE:** Exactly what I was thinking,
19 yes.

20 **MR. NEVILLE:** All right.

21 Now, are you aware, Staff Sergeant, that the
22 person we are talking about, C-9, was in fact further
23 interviewed? We know from the history of this matter, as
24 the Commissioner has heard many times, that throughout the
25 greater part of '94, starting in February right to the end,

1 the OPP re-tilled the soil, redid the investigation.

2 **MR. DEROCHIE:** Correct.

3 **MR. NEVILLE:** Are you aware that this
4 individual was interviewed by the OPP as part of that
5 process?

6 **MR. LEE:** I think this is what Mr. Engelmann
7 was objecting to originally, and I object as well. The
8 issue here is whether or not when Sebalj heard what C-9 had
9 to say she should have done something.

10 **THE COMMISSIONER:** M'hm.

11 **MR. LEE:** Whether or not the OPP went and
12 looked at it after the fact and cleared that matter up
13 isn't relevant to the Cornwall Police response. The issue
14 here deals with what Sebalj should or should not have done
15 in relation to that. That's what this witness can speak
16 to, and the fact that the OPP talked to him later on makes
17 absolutely no difference to the CPS response.

18 So I object to this line of questioning and
19 to the introduction of these documents and in putting
20 anything about what the OPP did years later on this issue.

21 The issue is what Sebalj should have done.

22 **THE COMMISSIONER:** M'hm.

23 **MR. CALLAGHAN:** Mr. Commissioner, this seems
24 to me like a very similar situation we had when I was
25 cross-examining Superintendent Skinner with respect to the

1 comments about the scary stuff, the one that you first
2 averted to.

3 It seems to me that, you know, I think it
4 was Justice Grange said, we're also educating the public.
5 It's been put out by people that this is their
6 interpretation of what these words mean.

7 **THE COMMISSIONER:** M'hm.

8 **MR. CALLAGHAN:** Ms. Sebalj, for reasons
9 which were discussed here, is unable to attend and we are
10 imputing a lot.

11 **THE COMMISSIONER:** M'hm.

12 **MR. CALLAGHAN:** And Mr. Lee put his theory
13 of what he thinks it means. He also put out a scenario
14 based on a third person and tied it all together.

15 I would be doing this as well, but it seems
16 to me that where the comment there that it's false, that we
17 ought to take a look at what was told to the OPP later.

18 At least you can have an assessment. You
19 can have the whole range of facts, and you can still say,
20 you know, when you get a comment like that, you should.
21 But unfortunately, I don't think at the end of the day --
22 it would be my submission, at the end of the day, you
23 wouldn't have the context, but I think you're not going to
24 have the whole context unless you see it all, and I don't
25 think there's any harm in that being before you so that you

1 can make that assessment. At the end of the day, you may
2 say, whenever there's an odd comment, we should do more.
3 It may well be. It may be that we have to rely on the
4 judgment of the officers and, unfortunately, you didn't get
5 that full view.

6 **THE COMMISSIONER:** M'hm.

7 **MR. CALLAGHAN:** But the way it's being
8 presented by Mr. Lee at the moment isn't giving you that
9 full view, and I would suggest that this would give you the
10 full view or at least more of the view, because we'll never
11 have the full view because Ms. Sebalj will not be
12 testifying, but I think that's something that you'll have
13 to consider at the end of the day and without this
14 evidence, you won't have it.

15 **THE COMMISSIONER:** Yes, but what about
16 waiting for -- you see, the way I look at it, just not
17 knowing exactly where everything is right now on this
18 issue, is this. We have this comment and we Officer
19 Sebalj's reaction or non-reaction to it as whether she
20 should have gone further.

21 So now when the OPP comes up, they're going
22 to come up and say, "Oh, we went and we talked to him and
23 here are the statements. So we did what --corrected, if
24 there was any correction to be made to what Officer Sebalj
25 did -- did that. And so here are the statements", which I

1 suspect will say that Father MacDonald never ---

2 **MR. CALLAGHAN:** We've got the gist of what
3 it's going to be, yes.

4 **THE COMMISSIONER:** Okay. There was no
5 illegal act between Father MacDonald and this person.

6 **MR. CALLAGHAN:** Right.

7 **THE COMMISSIONER:** All right? And so that
8 would be part of the institutional response of the OPP as
9 to how they conducted it.

10 Now, people can argue that the harm was
11 already done in the sense that by the fact that this
12 witness withdrew from the process that that person had been
13 committed to that and had someone talk to that person right
14 then, that maybe it would have been a little different ---

15 **MR. CALLAGHAN:** And a lot of that obviously
16 -- I mean, I recognise we are crystal balling here.

17 **THE COMMISSIONER:** Oh yes.

18 **MR. CALLAGHAN:** The difficulty with the
19 process is obviously we've got Staff Sergeant Derochie who
20 didn't write these notes.

21 **THE COMMISSIONER:** Right.

22 **MR. CALLAGHAN:** Who I don't believe averted
23 to this in his own notes.

24 **THE COMMISSIONER:** M'hm.

25 **MR. CALLAGHAN:** I might be wrong. I could

1 stand to be corrected, but even so, he's now being put in a
2 position to say what it is, which has gone on throughout,
3 and it just seems to me that he doesn't -- Staff Sergeant
4 Derochie hasn't seen these as well. And I'm sure I'm going
5 to hear from my friends, "Oh, no, no, look at what Staff
6 Sergeant Derochie said."

7 And maybe we are going to hear that all the
8 time, and you're going to have to obviously, "Well, that's
9 all very fine, but no one asked him these following
10 questions."

11 This is a problem we are going to have when
12 we sort this thing out in the end, I appreciate.

13 **THE COMMISSIONER:** All right. But all I'm -
14 - what I'm getting at, I suppose, is this. It's that let's
15 assume for a moment that Officer Sebalj -- that this should
16 have ---

17 **MR. CALLAGHAN:** Alerted her.

18 **THE COMMISSIONER:** --- alerted her and she
19 should have done something. The fact that 10 years later
20 or whatever that people get a statement that ---

21 **MR. CALLAGHAN:** It's actually a year -- less
22 than a year later.

23 **THE COMMISSIONER:** Oh, I'm sorry. Okay.

24 **MR. CALLAGHAN:** To be very clear ---

25 **THE COMMISSIONER:** No.

1 **MR. CALLAGHAN:** And that's the same thing
2 with the other fellow.

3 **THE COMMISSIONER:** Well, there was 2002?

4 **MR. CALLAGHAN:** No, one -- she's obviously
5 doing hers in 2003, and the one statement that he wants to
6 direct you to is March 3rd, 1994.

7 **THE COMMISSIONER:** Okay. And then the other
8 one?

9 **MR. CALLAGHAN:** The other one is in the
10 subsequent investigation in 2000.

11 **THE COMMISSIONER:** Okay. So ---

12 **MR. CALLAGHAN:** So one is notably ---

13 **THE COMMISSIONER:** Okay. So it may be of
14 comfort to the Cornwall Police Service ---

15 **MR. CALLAGHAN:** It is, that we got it right,
16 I mean, if it's that interpretation, if false means nothing
17 happened.

18 **THE COMMISSIONER:** Right. Well, that may be
19 some small comfort to you folks, but from an institutional
20 response, if you did wrong, if you didn't do it right the
21 first time, it's a small comfort that this statement comes
22 out.

23 **MR. CALLAGHAN:** But the difficulty I have is
24 that what's being presented to you is that based on a note
25 that wasn't even properly read the first time but based on

1 a note that says it's false, they then run off and say,
2 "Oh, yes, but they used tag language." Without her
3 testifying, it's all very iffy and it just seems to me the
4 public should get the full picture of well, just so you are
5 aware, this is what happened, and maybe the more
6 appropriate interpretation is otherwise. And since this
7 witness testified, I would have thought that he ought to.

8 Now, I'm taking up Mr. Neville's time here,
9 but he may look at me and say that wasn't going to be my
10 argument, but I walked myself into something.

11 But that, to me, was a logical way and we
12 did that, as I say, with Superintendent Skinner.

13 **THE COMMISSIONER:** The public would
14 understand that what we are looking at is the institutional
15 response of your client.

16 **MR. CALLAGHAN:** I understand, but the global
17 of this issue goes beyond my client.

18 **THE COMMISSIONER:** Which will come out when
19 the OPP comes up and says, "Look, we took a statement from
20 his person. We took a statement. Here it is and away we
21 go."

22 Mr. Neville -- Mr. Engelmann.

23 **MR. NEVILLE:** In fact, if I may,
24 Commissioner, what I -- and I don't think it matters if the
25 staff is here -- what I was going to assist by doing, sir,

1 was take us all with you, of course, along to the notes of
2 Officer Sebalj and how indeed you'll see the timing that
3 she took the significance she placed on what this person
4 had said to her.

5 It's quite clear in the notes, sir, what she
6 did. I don't want to say more because I do have a few
7 brief questions on the topic. I think you'll see how it
8 fits together.

9 And I don't need necessarily to turn to
10 these. You're going to get them eventually.

11 **THE COMMISSIONER:** M'hm.

12 **MR. NEVILLE:** I'm quite content in what I
13 said to you earlier, I wasn't necessarily going to ask.
14 But my question that led to the objection was, does he
15 realize or does the staff realize that this person was
16 subsequently interviewed by the OPP and I didn't get the
17 answer whether it was a yes or a no.

18 **THE COMMISSIONER:** All right. Let's get
19 that one out of the way. Were you aware that C-9 was
20 subsequently re-interviewed a year later and some years
21 later?

22 **MR. DEROCHIE:** In the extent that they --
23 the OPP redid what we did, I assumed that he had been.

24 **MR. NEVILLE:** Okay. The only other follow-
25 up question on that point was, did you ever -- have you

1 ever seen, prior to today, the interview result with that
2 person that the OPP did?

3 **MR. DEROCHIE:** I haven't seen it today,
4 either. I've never seen it.

5 **MR. NEVILLE:** All right. That's all I was
6 going to touch on there, sir, because he hasn't seen it. I
7 wasn't going to pursue it. Now I want to do another aspect
8 of it, though.

9 So could we now then see, briefly, it's
10 Exhibit 295, Commissioner, Document 717428.

11 **THE COMMISSIONER:** Two ninety five (295).

12 **MR. NEVILLE:** It's the Sebalj notes.

13 **MR. DEROCHIE:** I have it. What was that
14 Exhibit number again, I'm sorry?

15 **THE COMMISSIONER:** Two nine five (295) sir.
16 And what page?

17 **MR. NEVILLE:** Yes. Could we start,
18 Commissioner, at page 30 -- I'm using her numbering on the
19 document -- page 34.

20 **THE COMMISSIONER:** M'hm. All I've got is a
21 bunch of number 33s. Oh, okay, I see, "On March 8th --
22 March 2nd?" Is that the one you want? Can you give me a
23 Bates page number? The last three numbers, 761?

24 **MR. NEVILLE:** Yes. I'll get it for you sir.

25 **(SHORT PAUSE/COURTE PAUSE)**

1 **MR. NEVILLE:** Bates page, Commissioner,
2 would be -- the last four numbers would be 3760. I hope
3 we're on the same version. Yes, 717428, Bates page 3760;
4 717428, Exhibit 295.

5 **THE COMMISSIONER:** What's the first ---

6 **MR. NEVILLE:** The date, Commissioner, is
7 the 2nd of March.

8 **THE COMMISSIONER:** Yeah, well that's so far
9 so good.

10 **MR. NEVILLE:** And the time at the top is
11 14:10; 2 March in the -- it's cut off. '93, it should be
12 obviously. And then the 14:10, "Escorted to front lobby".
13 Then 14:31 "Telephone call to victim" -- I presume that's
14 Silmsner -- "residence".

15 **THE COMMISSIONER:** M'hm.

16 **MR. NEVILLE:** So starting there, sir.

17 **THE COMMISSIONER:** Yeah.

18 **MR. NEVILLE:** And there's two or three
19 points I wish to cover, not just the C-9 one. But -- now
20 that we're in the notes.

21 Could we look, Staff Sergeant, at the entry
22 for 15:35, as part of your investigation of the
23 investigation in the fall of '93, apart from meeting with
24 various persons, you met with Murray MacDonald ---

25 **MR. DEROCHIE:** I did.

1 **MR. NEVILLE:** --- and addressed the issue of
2 whether there had been consultations and the like. So if
3 we can just look at this entry in her notes at 15:35

4 "Meet Crown MacDonald in CIB; ..."

5 Looks like "asked" and I took that to mean
6 Mr. MacDonald asked "how investigation was going".

7 "Advised re C-9 ..."

8 And I won't give the next name, "denial".
9 And the next name I'll leave out, another name, "not being
10 present".

11 "Became concerned about my grounds.

12 Suggested a meeting with V."

13 Meaning Silmser, I presume.

14 "Advised scheduling difficulties.

15 Asked to be kept up to date."

16 So this appears to be a direct entry of a
17 consultation with the Crown and given the wording of her
18 notes, it would appear that as of that date, Mr. MacDonald
19 was even aware of the investigation to some degree, because
20 he's asking if that's the right reading, asked how
21 investigation was going.

22 She wouldn't be asking herself. So he's
23 already has to some degree, it appears, an awareness;
24 correct?

25 **MR. DEROCHIE:** That's correct.

1 **MR. NEVILLE:** All right. Now it appears by
2 this point when we look at these notes that Officer Sebalj
3 has, in fact, done an interview with three named persons,
4 one of whom is C-9; right?

5 **MR. DEROCHIE:** That's correct.

6 **MR. NEVILLE:** And this person she describes
7 as a denial. And what I'm suggesting to you here is this,
8 that at this point having done these interviews, including
9 of C-9. These are contradictions of the story from the
10 complainant.

11 And therefore, as it says, "became concerned
12 about my grounds"; right?

13 **MR. DEROCHIE:** Correct.

14 **MR. NEVILLE:** All right. Now, let's look at
15 the next entry; 16:50 it appears that she speaks to the
16 complainant, Mr. Silmser; right?

17 **MR. DEROCHIE:** Correct.

18 **MR. NEVILLE:** Describes him as being in a
19 good mood; right?

20 **MR. DEROCHIE:** Yes.

21 **MR. NEVILLE:** So if we look about the fifth
22 line down, she says to him "asked" -- let me just put it in
23 context, "asked him when he next expected to be in
24 Cornwall; stated money ..." -- and there's some problem
25 appears he's having with money for a -- looks like a tax

1 refund.

2 MR. DEROCHIE: Yes.

3 MR. NEVILLE: Then asked, that is Silmsen
4 asked if it had to be done right away. I, meaning Sebalj
5 advised it was a priority with me; correct?

6 THE COMMISSIONER: If that's the word.

7 MR. NEVILLE: It looks like priority.

8 MR. DEROCHIE: There's prior in it.

9 MR. NEVILLE: Yeah. So it was a prior
10 (missing) with me so I'm going to suggest priority with me.
11 Because he's asked does it have to be done right away. I'm
12 suggesting the logical thing is she's saying it's a
13 priority with me that I see you; right?

14 MR. DEROCHIE: That appears to make sense,
15 yes.

16 MR. NEVILLE: All right. And his answer is
17 "I'm not in a rush anymore. If it takes three, six, eight
18 months, it doesn't matter to me."

19 MR. DEROCHIE: Yes, that's what it says.

20 MR. NEVILLE: Okay. Now, this is the kind
21 of material that you reviewed in coming to your conclusions
22 about the bona fides and the quality investigation, it
23 would have included these notes.

24 MR. DEROCHIE: I did review these notes.

25 MR. NEVILLE: Did you review these notes

1 with Heidi Sebalj ---

2 MR. DEROCHIE: It -- no.

3 MR. NEVILLE: --- point by point or just in
4 a general fashion?

5 MR. DEROCHIE: In a general fashion, just to
6 get a sense of what she had done.

7 MR. NEVILLE: Okay. All right. Let's carry
8 on a bit here. The next entry, "Then stated he heard about
9 ..." -- and I'm going to leave out the first name because
10 that's C-9; isn't it?

11 MR. DEROCHIE: That's correct.

12 MR. NEVILLE: Right. "Stated he", Silmsers,
13 "heard about C-9 not wanting to get involved and suggested
14 he knew why."

15 So just stopping there, it appears that
16 somehow, certainly by the 2nd of March, C-9 has been
17 interviewed; ---

18 MR. DEROCHIE: Yes.

19 MR. NEVILLE: --- would appear to have
20 denied the allegations given to him as coming from Silmsers.

21 MR. DEROCHIE: Yes.

22 MR. NEVILLE: And Silmsers somehow knows it;
23 right?

24 MR. DEROCHIE: It sounds that way, yes.

25 MR. NEVILLE: Sure it does. Now did you

1 ever notice that rather odd circumstance that Silmsers seems
2 to know who's being interviewed?

3 **MR. DEROCHIE:** Quite frankly no, I didn't
4 notice that.

5 **MR. NEVILLE:** No. Suggested he knew why. I
6 asked that he clarify. He said it would hinder his
7 profession. I questioned this and he said "Because things
8 went on that shouldn't have gone on, not sexual."

9 I suggested it wasn't a concern with this
10 case. He stated he could get C-9 to talk. Then I asked
11 him to let me take care of the investigation; right?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** At this point now,
14 Commissioner, I want to refer -- subject to an objection or
15 ruling by you -- and a ruling by you -- and one of the
16 documents I passed up to you, sir ---

17 **THE COMMISSIONER:** I haven't received them.

18 **MR. NEVILLE:** Oh, sorry.

19 **THE COMMISSIONER:** They're not passed up
20 yet. There was an objection, so ---

21 **MR. NEVILLE:** Yes, all right.

22 One of them is 712412.

23 **THE COMMISSIONER:** Well, all right.

24 Mr. Engelmann, are you still arguing against
25 the introduction of the documents or ---

1 **MR. ENGELMANN:** My only concern, sir, was I
2 thought the reason we were doing this was because the
3 witness commented that the reaction was strange given the
4 profession of this person.

5 **THE COMMISSIONER:** M'hm.

6 **MR. ENGELMANN:** And now we've gone off --
7 I'm not going to -- I'm not going to argue this any
8 further. I think we've already gone off on too much of a
9 digression, so I don't see how this is going to be helpful
10 but I'm not going to maintain the objection. It would take
11 too long a time.

12 **THE COMMISSIONER:** Okay. So, Madam Clerk,
13 can I have the -- so the documents will be made exhibits,
14 then, Madam Clerk?

15 **MR. NEVILLE:** The exhibit number,
16 Commissioner, is 712412. It's the OPP interview in 2000.

17 **THE COMMISSIONER:** Okay. And what's the
18 purpose of bringing in that?

19 **MR. NEVILLE:** It's a follow-up to confirm,
20 Commissioner, what's actually been going on here in the
21 investigation and I've referred the witness, and through
22 the witness, yourself, sir, to some of Mr. Silmsers
23 comments, including that he would do certain things and was
24 told not to.

25 **THE COMMISSIONER:** M'hm.

1 **MR. NEVILLE:** And I'm going to refer you to
2 a document, sir, that will show you that he did exactly
3 that.

4 **THE COMMISSIONER:** And then we'll take a
5 break?

6 **MR. NEVILLE:** Yes.
7 Now this, just for your information, Staff
8 Sergeant ---

9 **THE COMMISSIONER:** I'm sorry, sir, just
10 there should be a stamp on this?

11 **MR. NEVILLE:** Yes, there should be, indeed.

12 **THE COMMISSIONER:** Thank you.

13 **(SHORT PAUSE/COURTE PAUSE)**

14 **MR. NEVILLE:** It's 712142. Do you have it
15 there, Staff Sergeant?

16 **--- EXHIBIT NO./PIÈCE NO P-1395:**

17 (712142) Interview report of C-9 by
18 Det. Dupuis - 07 Jun, 00

19 **MR. DEROCHIE:** Pardon me? Yes, I have it
20 here.

21 **MR. NEVILLE:** All right. And this is a 2000
22 interview of C-9 by the OPP, Detective Dupuis?

23 **MR. DEROCHIE:** That's correct.

24 **MR. NEVILLE:** If we look at page 2,
25 mid-page, almost dead mid-page, we see -- we'll see the

1 sentence, "Silmser did call". Do you see that?

2 MR. DEROCHIE: Yes.

3 MR. NEVILLE: "Silmser did call him at home
4 wanting C-9 to assist him with his
5 suit. C-9 told Silmser they were never
6 on a retreat together. C-9 only knew
7 Silmser because he had dated his older
8 sister for a very short time."

9 MR. DEROCHIE: Yes.

10 MR. NEVILLE: All right? So it would appear
11 that apart from any other denials, that Mr. Silmser, in the
12 face of being told "don't speak to other potential
13 witnesses", taking this at it's face value is -- that's
14 precisely what he did ---

15 MR. DEROCHIE: He did and I don't know when.

16 MR. NEVILLE: --- right?

17 MR. DEROCHIE: I don't know when he did
18 that.

19 MR. NEVILLE: No, I agree.

20 MR. DEROCHIE: But apparently he did that,
21 yeah.

22 MR. NEVILLE: I agree. He told the officer
23 in her notes that he could get him to talk; right?

24 MR. DEROCHIE: Oh yes, okay.

25 MR. NEVILLE: Right.

1 MR. DEROCHIE: Yeah.

2 MR. NEVILLE: And then we see an interview
3 indicating that's exactly what he attempted to do; right?

4 MR. DEROCHIE: He did talk to him, yes.

5 MR. NEVILLE: Right. To get him to assist
6 with his suit?

7 MR. DEROCHIE: Yes.

8 MR. NEVILLE: All right.

9 Break, Mr. Commissioner?

10 THE COMMISSIONER: Thank you.

11 THE REGISTRAR: Order; all rise. À l'ordre;
12 veuillez vous lever.

13 This hearing will resume at 11:15.

14 --- Upon recessing at 11:03 a.m./

15 L'audience est suspendue à 11h03

16 --- Upon resuming at 11:23 a.m./

17 L'audience est reprise à 11h23

18 THE REGISTRAR: This hearing is now resumed.
19 Please be seated. Veuillez vous asseoir.

20 THE COMMISSIONER: Mr. Neville.

21 MR. NEVILLE: Thank you, Commissioner.

22 GARRY DEROCHIE, Resumed/Sous le même serment:

23 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

24 MR. NEVILLE (Continued/suite):

25 MR. NEVILLE: Can we look -- just dealing

1 briefly one more time with C-9, Staff Sergeant, if we could
2 look at Constable Sebalj's notes, at the same exhibit,
3 Commissioner, 295, at Bates page 7063771.

4 **MR. DEROCHIE:** I'm there.

5 **MR. NEVILLE:** And it's just above the middle
6 of the page. There's a time entry of 12:45, a telephone
7 call to a witness in Edmonton. Have you found that?

8 **MR. DEROCHIE:** I have.

9 **MR. NEVILLE:** Just above it, Officer Sebalj
10 has an entry "Info received from C-9" and then he gives the
11 name and his profession in Edmonton; right?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** And that's whom she calls, in
14 the next entry?

15 **MR. DEROCHIE:** Yes.

16 **MR. NEVILLE:** All right. So to what -- to
17 some degree, at least, it appears that C-9 is providing of
18 some assistance to her according to this entry; right?

19 **MR. DEROCHIE:** Yes, it appears that ---

20 **MR. NEVILLE:** Right.

21 **MR. DEROCHIE:** --- he's providing
22 information to her.

23 **THE COMMISSIONER:** Just a second. Okay.

24 **MR. NEVILLE:** Now, again, you did a review
25 as part of your mandate in the fall of '93 of the

1 investigation -- I guess we're calling that "Part 2" of
2 your mandate -- and again reviewed these notes and many
3 other aspects of Officer Sebalj's investigation, and one of
4 the issues you were looking at was the question of time
5 and/or time delay; right?

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** And we've dealt with the
8 statements by Mr. Silmsers in March, "Take 'x' number of
9 months, I'm in no hurry" type of thing; right?

10 **MR. DEROCHIE:** Yes.

11 **MR. NEVILLE:** I'm not saying that he's right
12 or wrong.

13 **MR. DEROCHIE:** No, no.

14 **MR. NEVILLE:** I'm not saying that. I'm just
15 saying ---

16 **MR. DEROCHIE:** No. I'm sorry, I shouldn't
17 have hesitated ---

18 **MR. NEVILLE:** Yes, that's what he's saying;
19 right?

20 **MR. DEROCHIE:** Yes.

21 **MR. NEVILLE:** All right. So let's look in
22 her notes at Bates page 3835.

23 We have an entry in her notes, Staff
24 Sergeant, at the bottom of that page, the 24th of August.
25 It appears that she's returning a call from Silmsers?

1 **MR. DEROCHIE:** Yes, a progress report, yes.

2 **MR. NEVILLE:** Yes. And she tells him about
3 waiting for a meeting with the out-of-town Crown. You've
4 given us a fair bit of evidence about that.

5 **MR. DEROCHIE:** Yes.

6 **MR. NEVILLE:** She asks him questions about
7 counselling and the like and about his school marks, that
8 he was attempting to obtain up to now and not successfully.
9 She described him as being in a very good mood and if you
10 look on the next page:

11 "Advised he was not in any hurry.
12 Don't care if it takes another four
13 months..." --

14 and then we just have the word -- I'm not sure what it is.

15 **THE COMMISSIONER:** "Advised"?

16 **MR. NEVILLE:** It looks like "advised",
17 Commissioner, I'm not sure.

18 **THE COMMISSIONER:** Yeah, don't know.

19 **MR. NEVILLE:** So he tells her "still doesn't
20 care if it takes another four months"; right?

21 **MR. DEROCHIE:** That's what it says, yes.

22 **MR. NEVILLE:** Now, you became aware of
23 course -- and we know it from her notes -- that on the very
24 same page that I started at the bottom, she becomes aware
25 at the top of that same page, Bates page 335, from Mr.

1 MacDonalld -- Malcolm, that is -- that he's also seeking an
2 update; right? Now, there's nothing telling her at this
3 point from either Mr. MacDonalld or Silmser, that there's
4 any kind of negotiations of a settlement going on as
5 reflected at least in her notes; right?

6 **THE COMMISSIONER:** I'm sorry, I missed that.

7 **MR. DEROCHIE:** Sorry, Commissioner.

8 **THE COMMISSIONER:** No, no, I just ---

9 **MR. NEVILLE:** At the top of the page ---

10 **THE COMMISSIONER:** Yes.

11 **MR. NEVILLE:** --- 23rd of August -- have you
12 found that, Staff?

13 **MR. DEROCHIE:** Yes.

14 **MR. NEVILLE:** Okay. She has a telephone
15 conversation with Malcolm MacDonalld who had diarized the
16 matter, looking for an update; right?

17 **MR. DEROCHIE:** Yes, yes.

18 **MR. NEVILLE:** And asked for a concession if
19 there was going to be an arrest, et cetera?

20 **MR. DEROCHIE:** Yes.

21 **MR. NEVILLE:** And then she has the
22 conversation the day later with Silmser; right?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** And then the next entry in her
25 notes, you know, is the 7th of September when she meets with

1 Staff Sergeant Brunet and seems to be learning about the
2 settlement on or around that date; right?

3 MR. DEROCHIE: Yes.

4 MR. NEVILLE: So up to the 23rd, with Mr.
5 MacDonald, the lawyer, and the 24th with Silmsler, no direct
6 indication to the officer that something civilly is going
7 on elsewhere, at least as reflected in the notes?

8 MR. DEROCHIE: Yes.

9 MR. NEVILLE: Fair enough?

10 MR. DEROCHIE: Yes.

11 MR. NEVILLE: Now, in your evidence with Mr.
12 Engelmann fairly early on in your testimony, one of the
13 things you said was that there is a degree of risk involved
14 in a police investigator having exchanges or conversations
15 with a defence counsel. And ---

16 MR. DEROCHIE: Yes, there can be.

17 MR. NEVILLE: Okay. That's what I wanted to
18 ask you. From your perspective, when you said yes, there
19 could be a risk involved, what did you have in mind?

20 MR. DEROCHIE: Well, there would be that
21 whole idea that there would be a suggestion by someone that
22 the defence lawyer was trying to influence the
23 investigating officer.

24 MR. NEVILLE: Right.

25 MR. DEROCHIE: Those are the obvious risks.

1 You might say something as an investigator innocently that
2 the ---

3 **MR. NEVILLE:** Right.

4 **MR. DEROCHIE:** --- counsel might seize on
5 and turn on you at trial.

6 **MR. NEVILLE:** Yes. The main risk, may I
7 suggest, speaking personally, is that if a wily defence
8 lawyer extracted some comment about the merits of the case
9 that was negative from the policeman's standpoint, he might
10 use it in cross-examination?

11 **MR. DEROCHIE:** Exactly.

12 **MR. NEVILLE:** All right.

13 But in this case, would you also agree with
14 this, Staff Sergeant, that there can be a great deal of
15 good from cooperation from the defence, whether it be the
16 accused or his counsel if he has one at that stage?

17 **MR. DEROCHIE:** There could be.

18 **MR. NEVILLE:** Well, if we look at Officer
19 Sebalj's notes, doesn't she in fact get assistance on
20 contentious matters from Mr. MacDonald? You've read the
21 notes. For example, one of the unresolved puzzles was when
22 and if and where a certain retreat took place; right?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** And doesn't she ask him to get
25 the date for her and he does?

1 **MR. DEROCHIE:** Yes, she does that.

2 **MR. NEVILLE:** Yeah. And he provides her the
3 date?

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** All right.

6 So this was a fairly significant piece of
7 the puzzle that she couldn't get pinned down and she got it
8 from the defence counsel?

9 **MR. DEROCHIE:** I agree. I don't believe
10 though that that would be what I would encourage an
11 investigator to do. I would want her to ---

12 **MR. NEVILLE:** Fair enough.

13 **MR. DEROCHIE:** --- get that independent.
14 But yes, you're quite right, it's ---

15 **MR. NEVILLE:** Well, she was ---

16 **MR. DEROCHIE:** --- it's like Mr. Silmser
17 getting his own school records; there's less hassle
18 involved in it for the police officer.

19 **MR. NEVILLE:** Right. All I'm getting at
20 here, Staff Sergeant, is when you said "yes" to the
21 question of a risk, in fairness, it's a qualified risk,
22 right, on both ---

23 **MR. DEROCHIE:** It's a qualified risk and
24 it's part of the police culture that I might be suspicious
25 about a defence lawyer wanting to be helpful to my

1 investigators. I'm sorry.

2 (LAUGHTER/RIRES)

3 MR. NEVILLE: Now, that comes as a great
4 surprise.

5 THE COMMISSIONER: Healthy scepticism on the
6 part of an investigator is always ---

7 MR. NEVILLE: I think that phrase has come
8 up before, Commissioner.

9 THE COMMISSIONER: Thank you.

10 MR. NEVILLE: Yes. Now, can I just ask you
11 briefly Staff Sergeant, a phrase you used, and I know it's
12 a technical term or a term of art, so to speak, in
13 interrogation terminology, you indicated to, I believe Mr.
14 Engelmann, that -- or actually to Ms. Daley, that when
15 you're taking a statement, you'd like to get what's called
16 a "pure version".

17 MR. DEROCHIE: That's correct.

18 MR. NEVILLE: That's a technical term; isn't
19 it?

20 MR. DEROCHIE: That's correct.

21 MR. NEVILLE: Tell the Commissioner and the
22 public what you mean.

23 MR. DEROCHIE: Well, you want a pure-version
24 statement from the victim. You want the victim's words
25 without any kind of suggestion as to where you want the

1 victim to go with the story.

2 So it's a matter of going to that victim and
3 not having a preamble to it, explaining -- you would
4 certainly explain what you're investigating. If it was a
5 victim you were interviewing, then certainly that victim
6 would be the -- would already have knowledge and you would
7 just start your investigation or your interrogation, your
8 questioning by saying "Tell me what happened."

9 **MR. NEVILLE:** Right.

10 **MR. DEROCHIE:** And I'd like to qualify my
11 expertise in this area. I don't have a large amount of
12 expertise. I haven't been trained in these types of
13 statement-taking, but as a result of having spoken to
14 investigators and, you know, reviewing their statements, I
15 got some knowledge of it.

16 **MR. NEVILLE:** Right.

17 **MR. DEROCHIE:** But certainly others have
18 more than I do.

19 **MR. NEVILLE:** Right. Well, I wanted to have
20 that explained for all -- for everyone's benefit, including
21 the Commissioner, because I note -- it struck me when you
22 said it that you were using it as a term of art within the
23 police profession and that it has a very special meaning.
24 And we see that when we see statements, don't we? You see
25 often a long narrative version ---

1 **MR. DEROCHIE:** Yes.

2 **MR. NEVILLE:** --- and sometimes, quite
3 often, Q and A following to clarify.

4 **MR. DEROCHIE:** To clarify.

5 **MR. NEVILLE:** But that's to clarify
6 uncertainties or details. You want to get the real story
7 unsullied from the mouth of the witness?

8 **MR. DEROCHIE:** That's correct. A person
9 might say "This happened at such and such a time" and not
10 be specific ---

11 **MR. NEVILLE:** Right.

12 **MR. DEROCHIE:** --- and you might want to go
13 back and say "Can you be specific about when it happened?"

14 **MR. NEVILLE:** You don't want to be shaping
15 the evidence because it isn't your evidence.

16 **MR. DEROCHIE:** No.

17 **MR. NEVILLE:** It's the witness' evidence.

18 **MR. DEROCHIE:** Exactly.

19 **MR. NEVILLE:** Now, can we just deal briefly
20 with some aspects of your notes, your dedicated notes from
21 the review you did in '93?

22 And that's Exhibit 1293, Commissioner.

23 **THE COMMISSIONER:** Yes, 1293.

24 **MR. NEVILLE:** These are your notes, Staff
25 Sergeant, from October 7th through to early '94. I just

1 have a few areas I want to touch on with you briefly.

2 THE COMMISSIONER: What page, sir?

3 MR. NEVILLE: Yes, Commissioner, I'd like to
4 first ---

5 MR. DEROCHIE: I don't believe I have that
6 binder.

7 THE COMMISSIONER: Madam Clerk will get it
8 for you; 1293.

9 MR. NEVILLE: It might be simplest,
10 Commissioner, if I use his numbers at the top ---

11 THE COMMISSIONER: Yes.

12 MR. NEVILLE: Yes. Page 11, sir, October
13 12th.

14 THE COMMISSIONER: M'hm.

15 MR. DEROCHIE: Page 12?

16 MR. NEVILLE: Page 11. I'm using your
17 numbers ---

18 MR. DEROCHIE: Yes.

19 MR. NEVILLE: --- Staff Sergeant.

20 MR. DEROCHIE: Yes.

21 MR. NEVILLE: October 12th is in the top
22 right corner; right?

23 MR. DEROCHIE: Yes.

24 MR. NEVILLE: And the second paragraph from
25 the top, line 5, you indicate having knowledge of Mr.

1 Dunlop having had a major *Police Act* conviction and wanted
2 to assure him that in terms of what you were doing, was not
3 to be seen as some kind of head hunting.

4 What degree of knowledge did you have of his
5 previous major conviction? Did you know what it was?

6 **MR. DEROCHIE:** I knew it was in relation to
7 the car accident that Ms. Dunlop referred to in her
8 testimony.

9 **MR. NEVILLE:** Right.

10 **MR. DEROCHIE:** The exact nature of the
11 charge, the exact charge that was laid at that time, I
12 thought I was sure, but I am not sure of it today, exactly
13 what the ---

14 **MR. NEVILLE:** Did you hear her and see her
15 evidence?

16 **MR. DEROCHIE:** Yes.

17 **MR. NEVILLE:** All right.

18 She pooh-poohed the whole matter as a big
19 deal about a \$100 accident, did she not?

20 **MR. DEROCHIE:** Yes, she did. Yes, she did.

21 **MR. NEVILLE:** But that really wasn't what
22 the problem was. It was that he lied, wasn't it?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** Yeah.

25 **MR. DEROCHIE:** About how the accident had

1 happened.

2 **MR. NEVILLE:** He left the scene of an
3 accident?

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** He damaged the cruiser; left
6 the scene of an accident and then lied about the whole
7 thing. So it started off as an allegation of deceit, did
8 it not?

9 **MR. DEROCHIE:** It did.

10 **MR. NEVILLE:** Yeah.

11 **THE COMMISSIONER:** Okay. But left the scene
12 of an accident?

13 **MR. NEVILLE:** With the cruiser.

14 **THE COMMISSIONER:** Right. But didn't he hit
15 a pole or something?

16 **MR. NEVILLE:** I believe -- I'm not sure
17 whether he did or not. He damaged the cruiser.

18 **THE COMMISSIONER:** Right. But, you know,
19 leaving the scene of the accident, you know, conjures up --
20 -

21 **MR. NEVILLE:** Oh no, I'm not trying to
22 suggest that ---

23 **THE COMMISSIONER:** --- people injured or
24 anything like that.

25 **MR. NEVILLE:** No, no. I didn't mean to

1 suggest that, Commissioner.

2 THE COMMISSIONER: No.

3 MR. DEROCHIE: It's a single motor vehicle
4 accident involving a ---

5 MR. NEVILLE: It was a property ---

6 MR. DEROCHIE: --- police cruiser and a --

7 -

8 MR. NEVILLE: It was a property damage
9 accident to the cruiser.

10 MR. DEROCHIE: Correct. Involving a
11 guardrail or a post, something to that effect.

12 MR. NEVILLE: Exactly. So the real problem
13 for Mr. Dunlop at that point wasn't the accident; it was
14 the story he told to cover the accident?

15 MR. DEROCHIE: That's correct.

16 MR. NEVILLE: All right.

17 And was it your understanding that that was
18 dealt with -- because I know again it's a term under the
19 Act -- as a major offence?

20 MR. DEROCHIE: It was.

21 MR. NEVILLE: Okay. And that has
22 significance in terms of potential penalties?

23 MR. DEROCHIE: It does.

24 MR. NEVILLE: All right.

25 Now, can we look to page 26?

1 **THE COMMISSIONER:** I'm sorry; was he charged
2 under the ---

3 **MR. DEROCHIE:** *Police Services Act.*

4 **THE COMMISSIONER:** Not under the *Criminal*
5 *Code* or the *Highway Traffic Act*?

6 **MR. DEROCHIE:** No, not that I am aware of.

7 **THE COMMISSIONER:** Okay.

8 **MR. NEVILLE:** I'm not sure, Commissioner.
9 We have more documents coming on that topic. I think we
10 do, but I'm not sure. I've seen them, but ---

11 **THE COMMISSIONER:** I'm usually the last to
12 know.

13 **(LAUGHTER/RIRES)**

14 **MR. NEVILLE:** I think it's supposed to work
15 that way.

16 **THE COMMISSIONER:** I only say that because
17 sometimes you people keep talking about things ---

18 **MR. NEVILLE:** Right.

19 **THE COMMISSIONER:** --- and I'm just left in
20 the dark sometimes.

21 **MR. NEVILLE:** The mushroom theory.

22 **THE COMMISSIONER:** Yeah.

23 **MR. NEVILLE:** Okay.

24 **THE COMMISSIONER:** I'll stick to "in the
25 dark."

1 (LAUGHTER/RIRES)

2 MR. NEVILLE: All right. Probably a good
3 idea. We won't extend the metaphor.

4 All right. Can we look at page 26, Staff
5 Sergeant?

6 MR. DEROCHIE: Yes.

7 MR. NEVILLE: And you're discussing in the
8 middle there that the potential form of discipline that was
9 going to be imposed.

10 MR. DEROCHIE: Yes.

11 MR. NEVILLE: And I take it there was a
12 technical difference between the two types?

13 MR. DEROCHIE: Yes. Very, very -- yes,
14 there was.

15 MR. NEVILLE: All right. And I just want to
16 be clear here. You write in -- about six lines from the
17 bottom, that the Chief's version was what was called -- and
18 there's some discussion today -- informal discipline,
19 counselling?

20 MR. DEROCHIE: Yes.

21 MR. NEVILLE: And you were leaning, as was
22 the Deputy Chief, towards something called a "conduct
23 sheet"?

24 MR. DEROCHIE: Again, which is informal
25 discipline. It was -- it's ---

1 **MR. NEVILLE:** But higher up?

2 **MR. DEROCHIE:** More formal in that it's
3 placed on the personnel file as opposed to the appraisal
4 file.

5 **MR. NEVILLE:** All right. That's my next
6 question, because you write in the next three lines or so
7 the following:

8 "However, so long as the counselling
9 session was supported by some form of
10 documentation, I had no problem with
11 it."

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** Do you mean there that you
14 wanted some assurance that it would be reflected somewhere
15 on his personnel file?

16 **MR. DEROCHIE:** Not on his personnel file, on
17 his appraisal file.

18 **MR. NEVILLE:** Okay. In other words, it
19 would have a degree of consequence?

20 **MR. DEROCHIE:** Yes.

21 **MR. NEVILLE:** All right. That's fine.

22 Now, can we look briefly at page 29? At the
23 top of the page, you're referring in your notes here to
24 your contact with, I guess it's Staff Sergeant D'Arcy
25 Dupuis?

1 **MR. DEROCHIE:** That's correct.

2 **MR. NEVILLE:** All right. And what dealings
3 he'd had with Mr. Dunlop?

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** And that Dunlop had approached
6 him with his concerns as he had others; right?

7 **MR. DEROCHIE:** That's correct, yes.

8 **MR. NEVILLE:** And then he tells you that
9 Dunlop had re-contacted him and told him, mid-first
10 paragraph, he was dealing with the matter himself and
11 Dupuis should not bother?

12 **MR. DEROCHIE:** Yes.

13 **THE COMMISSIONER:** Just a second.

14 **MR. NEVILLE:** Page 29, Commissioner.

15 **THE COMMISSIONER:** Yeah.

16 **MR. NEVILLE:** It would be the ---

17 **THE COMMISSIONER:** Yeah, you know, you're
18 right. Yes, thank you.

19 **MR. NEVILLE:** --- mid paragraph.

20 **THE COMMISSIONER:** Yeah.

21 **MR. NEVILLE:** Now, we -- would it be fair to
22 say looking now what we know or what you came to know that
23 what Dunlop likely meant when he said to Mr. -- to Staff
24 Dupuis was the CAS route on his own?

25 **MR. DEROCHIE:** I assumed that, yes.

1 **MR. NEVILLE:** All right. Now, can we turn
2 to page 30? It's actually 31 but we need to just start at
3 the bottom of 30.

4 Actually it's -- I meant to start at the top
5 of 30. I apologize. This is where you're speaking to
6 Officers O'Reilly and Quinn about what you're proposing to
7 do and what you would like them to advise Mr. Dunlop;
8 right?

9 **MR. DEROCHIE:** That's correct.

10 **MR. NEVILLE:** And if we look at the top of
11 the page, this is you now in conversation with O'Reilly.
12 If you want to cue yourself, it's at the bottom of page 29
13 where Mr. O'Reilly -- Officer O'Reilly is now frustrated.

14 **MR. DEROCHIE:** Yes.

15 **MR. NEVILLE:** "Did not know what was going
16 on. Dunlop was getting advice from a
17 number of sources and he, O'Reilly, was
18 washing his hands of it."

19 **MR. DEROCHIE:** Yes.

20 **MR. NEVILLE:** Now, I take it you were of the
21 view that prior to this exchange with O'Reilly, he and
22 Quinn were being both somewhat supportive or helpful to
23 Dunlop, but by this point O'Reilly was now not so
24 supportive?

25 **MR. DEROCHIE:** Well, I think primarily Quinn

1 would have been dealing with Mr. Dunlop because, as I said
2 before, they were good friends.

3 **MR. NEVILLE:** Right.

4 **MR. DEROCHIE:** And I know that Mr. O'Reilly
5 was dealing with other issues; didn't have that same kind
6 of relationship with Mr. Dunlop.

7 **MR. NEVILLE:** Okay, well let's look at page
8 31.

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** Because at the bottom of 30,
11 you say how you've come to conclusions; right?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** Page 31, number 2:

14 "There is division within the
15 Association executive as to how this
16 issue is to be dealt with."

17 Isn't that what we just touched on?

18 **MR. DEROCHIE:** Yes.

19 **MR. NEVILLE:** All right. That O'Reilly was
20 frustrated and wanted no more of it because it wasn't
21 working sensibly, I suggest?

22 **MR. DEROCHIE:** That was the impression I
23 got.

24 **MR. NEVILLE:** All right. Fair enough.

25 Now let's look at number 1:

1 "Constable Dunlop was not prepared to
2 take any criticism for his actions in
3 this incident. He sees himself as a
4 white knight."

5 Now you wrote that on October the 15th, 1993;
6 right?

7 **MR. DEROCHIE:** I don't believe I wrote it on
8 that day.

9 **MR. NEVILLE:** No, you may have written it
10 actually in early November?

11 **MR. DEROCHIE:** Yes.

12 **MR. NEVILLE:** But it's something that you
13 came to as a conclusion on/or about that date?

14 **MR. DEROCHIE:** Yes.

15 **MR. NEVILLE:** Now, I'm going to suggest to
16 you, Staff Sergeant, that almost 15 years later, 14 and-a-
17 half or so, nothing has changed with Constable Dunlop;
18 right? He still is not taking any criticism.

19 **MR. DEROCHIE:** Correct.

20 **MR. NEVILLE:** Nothing has changed; right?

21 **MR. DEROCHIE:** No.

22 **MR. NEVILLE:** No.

23 **THE COMMISSIONER:** Mr. Horn.

24 **MR. HORN:** The Coalition is very concerned
25 of the direction this thing is going and that it seems to

1 be an attempt to use this form of questioning in order to
2 just bring Constable Dunlop's name here and bring out all
3 kinds of allegations against him and try to discredit him
4 without him having an opportunity to in any way defend
5 himself.

6 And I think that it's an inappropriate
7 tactic that is being used by Mr. Neville.

8 **THE COMMISSIONER:** Mr. Horn, a couple of
9 things.

10 First of all, that Mr. Dunlop is not here to
11 defend himself is his choice. That's number one.

12 Number two, allegations have not been put
13 forward here but I'm going to get to a point where I agree
14 with you somewhat. The allegation is a fact with respect
15 to the police car.

16 It's there. Would you not agree with me?
17 He was ---

18 **MR. HORN:** Yes, but I mean what is the
19 purpose of now going on and on about his -- something that
20 happened years ago regarding an accident and then going on
21 and on and on for one purpose only.

22 And that's to discredit Mr. Dunlop who will
23 never be allowed to -- or may never be here to defend
24 himself. So this is just an opportunity to just ---

25 **THE COMMISSIONER:** No.

1 **MR. HORN:** --- blacken his name and then
2 just leave it at that. I mean, I think that's ---

3 **THE COMMISSIONER:** Mr. Horn, you're getting
4 closer now. I have the greatest of respect for Mr. Dunlop
5 and any other persons that are involved in this Inquiry.

6 Mr. Neville is free to bring up the cross-
7 examination of -- on cross-examination, the issue of the
8 automobile and the major -- because Mrs. Dunlop talked
9 about it as well.

10 I agree with you that on the issue of
11 whether anything has changed with Mr. Dunlop is really this
12 officer's opinion on how he feels things went by. And
13 you're right, it is I think of marginal use.

14 So in that regard I agree with you.

15 **MR. HORN:** Thank you.

16 **THE COMMISSIONER:** Now, is there anything
17 else?

18 **MR. HORN:** No, thank you.

19 **THE COMMISSIONER:** Mr. Neville. Well, just
20 for the record ---

21 **MR. NEVILLE:** It was somewhat argumentative
22 and I agree.

23 **THE COMMISSIONER:** Exactly. Thank you.

24 **MR. NEVILLE:** Now can you we just look
25 briefly, Staff Sergeant, at page -- the bottom of page 46

1 to the top of page 47?

2 This is your -- one of your meetings with
3 Mr. Abell.

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** And he advises you, moving to
6 the top of page 47, that he seems to be aware that -- what
7 he's suggesting I gather is confidential police-type
8 information is flowing freely in the community?

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** Did that surprise you?

11 **MR. DEROCHIE:** No.

12 **MR. NEVILLE:** Okay. And he says there's --
13 also there's all kinds of gossip in the community. Do you
14 know why that was?

15 **MR. DEROCHIE:** Because there was all kinds
16 of leaks coming out, unofficial information, information
17 that was incomplete.

18 **MR. NEVILLE:** All right.

19 **MR. DEROCHIE:** Those were the issues, yes.

20 **MR. NEVILLE:** I understand. Now, we know of
21 one clearly identified leak, for want of a better term, was
22 the statement being taken by Mr. Dunlop, not just the
23 verbal communication but the statement itself to Mr. Abell.

24 This suggests much more going on by way of
25 leaking than just that?

1 **MR. DEROCHIE:** Yes, Mr. Abell gave me that
2 impression. I didn't pursue it with him. He may have
3 other examples that I'm not aware of.

4 **MR. NEVILLE:** Did you agree that that's what
5 was happening? That there was a lot getting out that
6 should not have?

7 **MR. DEROCHIE:** In that I don't think any
8 information about a criminal investigation was getting out,
9 yes, there was talk of it in the community, talk of it
10 within the Police Service.

11 **MR. NEVILLE:** You didn't ask him, I take it,
12 what he meant by that in particular, what specific pieces
13 of information?

14 **MR. DEROCHIE:** No, I didn't.

15 **MR. NEVILLE:** Did you understand him to be
16 talking about this case, this investigation, or just a
17 general comment?

18 **MR. DEROCHIE:** Well, in the context of the
19 conversation we were having, I assumed he was talking about
20 this particular case.

21 **MR. NEVILLE:** Okay, and you didn't ask him -
22 - because we knew about the statement part. He was the
23 recipient?

24 **MR. DEROCHIE:** Yes.

25 **MR. NEVILLE:** You didn't ask him, I take it,

1 "What do you mean by that, Richard?" What information?
2 What sources?

3 **MR. DEROCHIE:** No, I -- I may have -- you
4 know, my mind may have been -- I may have understood or I
5 may have thought I had knowledge of what he was speaking
6 of.

7 **MR. NEVILLE:** Okay.

8 **MR. DEROCHIE:** Yes, I have those same
9 frustrations.

10 **MR. NEVILLE:** Well, we know this, Staff
11 Sergeant, that Officer Sebalj, and the Commissioner has her
12 notes as an exhibit, in the earlier parts of the year, had
13 spoken to quite a large number of people, two or three
14 dozen people?

15 **MR. DEROCHIE:** Yes.

16 **MR. NEVILLE:** Some of them parents of --
17 because if we look at the notes, we'll see that she
18 actually made quite a significant number of contacts. Some
19 were with former altar boys, some were with spouses, some
20 were with parents. So there would be any number of people
21 out there knowing that an investigation was on?

22 **MR. DEROCHIE:** Yes.

23 **MR. NEVILLE:** And some of her questioning of
24 interested persons or persons of interest I should say,
25 directed at specifically certain events, a certain parish,

1 a certain priest?

2 MR. DEROCHIE: Yes.

3 MR. NEVILLE: This is a small city,
4 relatively speaking.

5 MR. DEROCHIE: That information would have
6 percolated throughout the community.

7 MR. NEVILLE: Exactly. And that would be
8 one of the reasons, among many, that the step would be
9 taken of creating this project file to try to do something
10 to cap the leaking?

11 MR. ENGELMANN: The project file obviously
12 was done well before November 4th. I'm just concerned, sir,
13 about the context and things being mis-stated. We know
14 that the project file was opened before this time, and Mr.
15 Neville was referring as well.

16 If we look at page 47 to things being
17 attributed to Mr. Abell, obviously Mr. Derochie has his own
18 views about leakage and that's in the brackets when he does
19 his musing.

20 I'm just a little concerned about the
21 context and getting the facts right. I'm also concerned
22 that we're being somewhat repetitive but, in any event ---

23 MR. NEVILLE: Well, I didn't assume, sir,
24 that Mr. Abell heard all of these things on the 4th of
25 November for the first time.

1 I just assumed that this is when they met
2 and he's bringing the officer up to date as to what he is
3 aware is going on in the community, but I'll move on.

4 **THE COMMISSIONER:** Well, yes, please do.

5 **MR. NEVILLE:** Thank you.

6 Now, you were asked some questions in-chief
7 by Mr. Engelmann about Murray MacDonald and in particular
8 the question of his conflict that he had identified that he
9 might have?

10 **MR. DEROCHIE:** Yes.

11 **MR. NEVILLE:** All right. Can we just look
12 briefly at page 52 of your notes?

13 **MR. DEROCHIE:** Yes.

14 **MR. NEVILLE:** And at the bottom of the page,
15 there's a reference to Mr. MacDonald's father; right?

16 **MR. DEROCHIE:** Yes.

17 **MR. NEVILLE:** And difficulties he'd had with
18 the law?

19 **MR. DEROCHIE:** Correct.

20 **MR. NEVILLE:** And then we go over to the
21 next page. You have in your notes, although I don't think
22 it was led in-chief:

23 "This information in no way makes me
24 suspicious of Murray MacDonald's
25 involvement in this case. However, it

1 is information that must be
2 acknowledged."

3 Right?

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** Then further down you have
6 this:

7 "I have since been told by the Chief
8 that the Crown's reasons for declaring
9 a conflict were completely innocent and
10 I'm sure that they are."

11 Correct?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** And you wrote that then and
14 you would stand by that today?

15 **MR. DEROCHIE:** I would, yes.

16 **MR. NEVILLE:** Okay.

17 **THE COMMISSIONER:** It does go on though, in
18 fairness. It says:

19 "However, should all of this become
20 public information, it could prove
21 embarrassing to him and I'll have to
22 pass that on to the Chief."

23 And you still stand by that as well?

24 **MR. DEROCHIE:** Yes, I'm referring to the
25 information that his father was convicted of the offence

1 and that if this becomes common knowledge again, that it
2 would be embarrassing to Mr. MacDonald. That's what I was
3 referring to.

4 **MR. NEVILLE:** And it already had been in the
5 press hadn't it?

6 **MR. DEROCHIE:** Well, I would imagine at the
7 time, yes, it was.

8 **MR. NEVILLE:** Sure.

9 **THE COMMISSIONER:** Yes, but that wasn't the
10 reason for declaring a conflict?

11 **MR. DEROCHIE:** No, no, it wasn't.

12 **MR. NEVILLE:** That is exactly my point to
13 finish the point with the Commissioner. He had this part
14 of his family history?

15 **MR. DEROCHIE:** Yes.

16 **MR. NEVILLE:** But his conflict, you learned
17 from the Chief, was perfectly legitimate and innocent?

18 **THE COMMISSIONER:** No, no, just a second
19 now. Just a second now.

20 Your learned from the Chief that the Chief
21 was of the opinion that the conflict was completely ---

22 **MR. NEVILLE:** Fair enough. That the Chief
23 told him that it was completely ---

24 **THE COMMISSIONER:** Right.

25 **MR. NEVILLE:** --- well, he does say, "And

1 I'm sure that they are".

2 **THE COMMISSIONER:** Well, and that -- you're
3 right, but ---

4 **MR. NEVILLE:** And I asked him if that was
5 his position.

6 **THE COMMISSIONER:** Yes, yes, but in your
7 question you said, and it's true that the -- you were
8 stating as a fact and as a conclusion and I think that the
9 conflict of interest issue will be up to me to decide.
10 It's not a fact.

11 **MR. NEVILLE:** It will.

12 **THE COMMISSIONER:** So it's what the Chief
13 told him.

14 **MR. NEVILLE:** And I think you will hear
15 further evidence about it in any event, Commissioner.

16 **THE COMMISSIONER:** I will.

17 **MR. NEVILLE:** Yes.

18 **THE COMMISSIONER:** I will, but for the time
19 being, don't jump to conclusions.

20 **MR. NEVILLE:** I know you haven't, not even
21 close.

22 **THE COMMISSIONER:** Let's leave the sidebar
23 comments please, gentlemen.

24 **MR. NEVILLE:** Thank you, sir.

25 **THE COMMISSIONER:** So your understanding,

1 Mr. Derochie, is the Chief was of the view that the
2 conflict was perfectly innocent?

3 **MR. DEROCHIE:** Yes.

4 **THE COMMISSIONER:** And that you shared that
5 view?

6 **MR. DEROCHIE:** Yes.

7 **THE COMMISSIONER:** Fine.

8 **MR. NEVILLE:** And, indeed, I won't go back
9 over it, you've got a significant portion of your notes
10 where you have a discussion on the topic itself with Mr.
11 MacDonald later in this review?

12 **MR. DEROCHIE:** That's correct.

13 **MR. NEVILLE:** All right. So we will leave
14 those to themselves.

15 Now, can I just ask you to look briefly, and
16 it is part of your meeting with him actually, on page 81.
17 Do you have that, Staff Sergeant?

18 **MR. DEROCHIE:** I do, yes.

19 **MR. NEVILLE:** So at the bottom of the page,
20 Mr. MacDonald is talking about Ms. Heidi Sebalj's problems
21 forming RPG; right?

22 **MR. DEROCHIE:** Yes.

23 **MR. NEVILLE:** And at the top of the next
24 page, he says:

25 "The Crown was not concerned because he

1 was aware of the issues Sebalj was
2 dealing with."

3 **MR. DEROCHIE:** I'm sorry, I'm not following
4 you.

5 **MR. NEVILLE:** Sorry. I'm at the bottom of
6 page 81. There's a paragraph ---

7 **MR. DEROCHIE:** Yes, yes, I'm sorry, yes,
8 okay.

9 **MR. NEVILLE:** So the last sentence on the
10 bottom:

11 "The Crown was not concerned because he
12 was aware of the issues Sebalj was
13 dealing with. He confirmed the need to
14 proceed with caution under the
15 circumstances."

16 What does that mean? Does it mean a police
17 officer who does not believe personally that he or she has
18 the grounds; can't lay a charge? Is that another way of
19 saying exactly that?

20 **MR. DEROCHIE:** It could have been. I don't
21 have a specific recollection as to what I was referring to
22 there or what he was referring there.

23 **MR. NEVILLE:** My question, I suppose, is
24 this, as a start. Are these -- this phrase "Proceed with
25 caution under the circumstances", is that your words or

1 his?

2 **MR. DEROCHIE:** It would be my interpretation
3 of the conversation. I don't know if he would have said
4 verbatim that, but that's what he meant.

5 **MR. NEVILLE:** Fair enough. All right.
6 Can we move next to -- it's Exhibit 1302,
7 Commissioner.

8 It's your notes, Staff Sergeant, of a
9 telephone call you had, I believe, on December 16th, 1993,
10 with Mr. Silmser.

11 **THE COMMISSIONER:** What page, please?

12 **MR. NEVILLE:** Bates page, sir, is 7719.

13 **THE COMMISSIONER:** M'hm.

14 **MR. NEVILLE:** Now, quite a few things have
15 happened by this date, Staff Sergeant, that have been
16 reviewed extensively with you in-chief and by other
17 counsel. We have also the death by suicide of Mr. Seguin,
18 and this is a conversation you have with Silmser on that
19 date, right?

20 **MR. DEROCHIE:** Correct.

21 **MR. NEVILLE:** And you've recorded him as
22 saying this, and I'm looking on page 719, as the last three
23 numbers, page 72 in your Duty Book. He replied:

24 "You know what investigation. Ten
25 months and nothing has been done by the

1 Cornwall Police."

2 Right?

3 **MR. DEROCHIE:** Yes.

4 **MR. NEVILLE:** So he's suggesting to you that
5 10 months went by and the Cornwall Police did nothing?

6 **MR. DEROCHIE:** That's what he's saying, yes.

7 **MR. NEVILLE:** Right. This is the same
8 person that was quoted in her notes, "Take all
9 the time you want, three, four months, six
10 months. Take your time." Right?

11 **MR. ENGELMANN:** You'll recall, of course,
12 when Mr. Silmsler testified he denied those comments. Those
13 are in her notes.

14 **MR. NEVILLE:** He wasn't cross-examined
15 either.

16 **THE COMMISSIONER:** That's fine.

17 **MR. NEVILLE:** There will be other entries,
18 sir. I'm just trying to demonstrate here the difficulty
19 the police were having. It relates to the investigation of
20 my client and, indeed, I'm going to ask the officer to
21 confirm, because I believe he is aware, that here, on the
22 16th of December, he is somehow blaming the police. That's
23 step one.

24 Now, my next question would be this, Staff
25 Sergeant, you're aware of notes, I think, and if you're

1 not, fine, of Officer Brunet having a conversation in early
2 January with Mr. Silmser, are you?

3 **MR. DEROCHIE:** In January of 1994?

4 **MR. NEVILLE:** Of '94, where he attempts to
5 blame the Crown.

6 **MR. DEROCHIE:** I don't believe I'm aware of
7 that, counsel.

8 **MR. NEVILLE:** All right. Well, we'll ask
9 him; that is, Officer Brunet, who I believe is next
10 Now, can I just refer you briefly to Exhibit
11 1300?

12 **MR. DEROCHIE:** Yes, sir.

13 **MR. NEVILLE:** This is your memo to Acting
14 Chief Johnston. This, I take it, accompanied you report.
15 It's almost like a cover letter?

16 **MR. DEROCHIE:** It is, sir, yes.

17 **MR. NEVILLE:** I'm going to suggest this,
18 sir. If you look at the second paragraph of that document,
19 and the events that you looked into, would I be fair in
20 saying that apart from Officer Dunlop taking an internal
21 document to the CAS, the real problem, or the more serious
22 problem was what was happening with his wife?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** That was the real problem, and
25 that's what you're addressing in this document?

1 **MR. DEROCHIE:** That's correct.

2 **MR. NEVILLE:** That she, because of what she
3 learned, was out almost reinvestigating or certainly trying
4 to intervene with a complainant who was seeking anonymity?

5 **MR. DEROCHIE:** She was trying to get him to
6 continue the investigation. That was my understanding.

7 **MR. NEVILLE:** Right. And the next document
8 that we can look at briefly, sir, and I don't --there seems
9 to be some uncertainty about this topic, Commissioner.
10 That's why I'm referring the witness to it. It is not yet
11 an exhibit. It's 725242.

12 **THE REGISTRAR:** Exhibit 296.

13 **MR. NEVILLE:** Oh, it is 296. Thank you very
14 much.

15 **THE COMMISSIONER:** Exhibit 296. Thank you.

16 **MR. NEVILLE:** Just to put this in context for
17 you, Staff Sergeant, one of the issues that we seem to be
18 having some difficulty pinning down with some degree of
19 certainty was if and when Mr. Silmsler, in the fall of '93,
20 post settlement vis-à-vis Charles MacDonald, unequivocally
21 communicated his lack of interest in anything involving Mr.
22 Seguin.

23 And if we can just look at this report and
24 refer you to the second last paragraph. This deals with a
25 number of issues, including the fact that the CAS were now

1 approaching him and others, and then he says, six lines or
2 so from the bottom:

3 "Silmser further advised that his
4 lawyer had contacted him on behalf of
5 the Police, to inquire as to his
6 intentions with Ken Seguin. At this,
7 Constable Sebalj asks Silmser if he
8 wished to pursue that matter and as
9 before, Silmser declined. Silmser made
10 himself very clear he no longer wanted
11 to talk about all this."

12 And then he goes in again to the question of Mrs. Dunlop.

13 **THE COMMISSIONER:** Just a minute.

14 **MR. NEVILLE:** Sorry, sir.

15 **THE COMMISSIONER:** So Silmser further
16 advised that his lawyer had contacted him on behalf of the
17 Police.

18 **MR. NEVILLE:** Correct.

19 **THE COMMISSIONER:** Who's his lawyer?

20 **MR. NEVILLE:** I believe that's Sean Adams,
21 sir.

22 You may recall, Commissioner, we had some --
23 at least that was my sense -- which is why I thought this
24 document might be of some assistance, of getting it cleared
25 due to some uncertainty as to who may have called whom, and

1 when and if it actually became clear what Mr. Silmser's
2 intention were, and it seemed that this document, such as
3 it is, settled the issue, out of his mouth, as opposed to
4 the lawyer himself.

5 You became aware of this, sir?

6 **MR. DEROCHIE:** Yes, I did. Should I clarify
7 that a bit by saying that Staff Sergeant Brunet had called
8 Mr. Adams and requested that we -- that he approach Mr.
9 Silmser on our behalf for instructions with regards to this.

10 **MR. NEVILLE:** Yes.

11 **MR. DEROCHIE:** And that was done because Mr.
12 Silmser didn't want to be involved with us any further.

13 **MR. NEVILLE:** I understood that, sir. The
14 difficulty that some of us were having, or maybe I'm the
15 only one, was it never became clear whether that ever ended
16 up happening, either Mr. Adams calling or whatever, but
17 this appears to be confirmation that one way or the other,
18 Silmser got the message through, directly in this case, of
19 "I don't want any more part of it", as of that date.

20 **MR. DEROCHIE:** Certainly there'd be no
21 question at this time.

22 **MR. NEVILLE:** All right. That's fine.

23 Now, can I just refer you briefly to your
24 OPP Interview Statement.

25 That's Exhibit 1332, Commissioner.

1 **MR. DEROCHIE:** I don't have that exhibit.

2 **THE COMMISSIONER:** Thirteen thirty-two (1332)

3 **MR. DEROCHIE:** Oh, I'm sorry, I'm in the
4 wrong book.

5 **THE COMMISSIONER:** Page number, please?

6 **MR. NEVILLE:** Yes, Commissioner, I can use
7 the page number, if it's convenient to you, sir, at the
8 bottom corner that they've put on the document?

9 **THE COMMISSIONER:** Yes.

10 **MR. NEVILLE:** Page 4 of 31. It's Bates page
11 2823.

12 **MR. DEROCHIE:** I have it.

13 **MR. NEVILLE:** And they're asking you, at the
14 bottom of page 4, through most of page 5 -- I'm using their
15 numbering. Do you see at the bottom right corner there,
16 Staff Sergeant ---

17 **MR. DEROCHIE:** I do, yes.

18 **MR. NEVILLE:** --- page 4 of 31? If you want
19 to use the Bates numbers, tell me, and then we'll use
20 those.

21 **MR. DEROCHIE:** No, I'm at 4 of 31.

22 **MR. NEVILLE:** So they ask you there whether
23 you had been aware in the course of Heidi Sebalj's
24 investigation of Father Charles, of what they describe as
25 more than one victim. And then you go through a discussion

1 at the bottom of that page, through the top of the next
2 page.

3 Can I suggest to you, sir, that what you're
4 getting at there is that there was a significant issue as
5 to whether, from the point of view of what we lawyers call
6 "similar act or similar fact", it applied?

7 **MR. DEROCHIE:** Yes.

8 **MR. NEVILLE:** Because the allegations by
9 Silmsler related to a 12/13 age bracket and the two
10 gentlemen with the "encounters", I think was one of the
11 words used, were 18 or more?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** All right. So apart from --
14 that was a significant discrepancy in terms of the
15 requirements of similar fact evidence?

16 **MR. DEROCHIE:** In my opinion, yes, I wanted
17 clarification from the Crown that my understanding was
18 correct.

19 **MR. NEVILLE:** Right. And did you get that
20 clarification?

21 **MR. DEROCHIE:** No, I never got there.

22 **MR. NEVILLE:** Did you ever ask for an
23 opinion as to the appropriateness of that evidence being
24 even available as potential similar act?

25 **MR. DEROCHIE:** No.

1 **MR. NEVILLE:** Okay. That was certainly your
2 view, from your experience, that it was a problem?

3 **MR. DEROCHIE:** It was my view. I was -- I
4 thought my interpretation of the requirement was correct
5 but ---

6 **MR. NEVILLE:** Right.

7 **MR. DEROCHIE:** --- just as a final loose
8 string I wanted to tie it up.

9 **MR. NEVILLE:** Fair enough, and we can
10 confirm it, if you wish, but I think the record will
11 reflect in other documents that the two persons in question
12 were at least age 18 when these events happened that they
13 described?

14 **MR. DEROCHIE:** Yes.

15 **MR. NEVILLE:** All right.

16 **MR. DEROCHIE:** There had been considerable
17 amount of discussion about these two other ---

18 **MR. NEVILLE:** Right.

19 **MR. DEROCHIE:** --- victims.

20 **MR. NEVILLE:** What I'm getting at is given
21 that interpretation, which I suggest was probably correct
22 at the time, what was left was Mr. Silmser.

23 **MR. ENGELMANN:** Again, sir, just for the
24 record, we have an ODE for C-3. It talks about incidents
25 that occurred when he's younger than 18 as well. Mr.

1 Neville would be well aware of that.

2 MR. NEVILLE: Yes.

3 THE COMMISSIONER: Were you aware of that?

4 MR. NEVILLE: Yes.

5 THE COMMISSIONER: So ---

6 MR. NEVILLE: If you want me to discuss
7 that, sir, I certainly will, but I'm -- then we're going to
8 dwell greatly into the merit. So would the ---

9 THE COMMISSIONER: No ---

10 MR. NEVILLE: --- so would the Staff
11 Sergeant if he read the interview.

12 THE COMMISSIONER: No. No, no. We don't
13 want to dwell into the merits.

14 What I'm concerned about is you putting
15 things to the witness and past me that aren't correct.

16 MR. NEVILLE: With all due respect, it is
17 not incorrect. I am not misstating evidence.

18 THE COMMISSIONER: Okay.

19 MR. NEVILLE: And I resent that suggestion.
20 I am going on his interpretation of the evidence as he
21 understood it.

22 THE COMMISSIONER: I'm not accusing you.

23 I'm saying that Mr. Engelmann gets up and
24 says that there's something in the statement that says that
25 the person is under 18 years of age.

1 You say, yeah, that's true.

2 And I'm looking ---

3 **MR. NEVILLE:** Which the complainant, sir,
4 described as a "joke".

5 I don't want to go on. I'll move on.

6 **THE COMMISSIONER:** Good idea.

7 **MR. NEVILLE:** Thank you.

8 **(SHORT PAUSE/COURTE PAUSE)**

9 **MR. NEVILLE:** Can I refer you briefly, Staff
10 Sergeant, to Exhibit 1308, which is your notes for the 12th
11 of September, 1995. This is your encounter, so to speak,
12 with Mr. Chisholm and John MacDonald.

13 **MR. DEROCHIE:** Yes, I'm there.

14 **MR. NEVILLE:** Could I refer you to Bates
15 page 556. You described some of this event in-chief with
16 Mr. Engelmann and touched on it with other counsel,
17 particularly the notion that Mr. Chisholm was seeking a
18 confrontation.

19 Can I just refer you to the last entries in
20 your notes for this episode. You record the following:

21 "Mr. Chisholm was obviously the
22 catalyst and driving force behind Mr.
23 MacDonald's complaint."

24 That's what you wrote?

25 **MR. DEROCHIE:** That's what I wrote.

1 **MR. NEVILLE:** And you based that on?

2 **MR. DEROCHIE:** My observations of who was in
3 charge of this meeting that they were having with me.

4 **MR. NEVILLE:** All right. Can we just deal
5 briefly, then, Staff Sergeant, with your "investigating" of
6 Mr. Dunlop, if I can use that term, in relation to his
7 contacts with the media?

8 **MR. DEROCHIE:** Yes.

9 **MR. NEVILLE:** Including the whistle-blower's
10 program and that -- those types of events?

11 **MR. DEROCHIE:** Correct.

12 **MR. NEVILLE:** Now, you were asked some
13 questions about the fact that Mr. Dunlop was saying things
14 to the media despite of a directive from Inspector Trew,
15 right?

16 **MR. DEROCHIE:** Correct.

17 **MR. NEVILLE:** And can I refer you to
18 Document 102191? Not yet, Commissioner, an exhibit, I
19 don't believe.

20 **(SHORT PAUSE/COURTE PAUSE)**

21 **MR. NEVILLE:** It's the actual transcript,
22 sir, of the -- one of the media events known as the
23 "Whistle-Blower's Show", which led to the various
24 investigations.

25 **THE COMMISSIONER:** Thank you.

1 --- EXHIBIT NO./PIÈCE NO P-1396:

2 (102191) Excerpts: 1011751-70 Various
3 Correspondence re: Media Statements

4 MR. NEVILLE: From reading your various
5 documents, your own personal ones, Staff Sergeant, I
6 understand that at some point, either through a Mr.
7 MacEachern or otherwise, you got this transcript?

8 MR. DEROCHIE: Yes, ultimately I got a
9 transcript from the media outlet.

10 MR. NEVILLE: Fair enough.

11 And this would be it?

12 MR. DEROCHIE: I believe it is, yes.

13 MR. NEVILLE: All right. And one of the
14 concerns was that, as a police officer, he was expressing
15 opinions about the merits of a case in the public?

16 MR. DEROCHIE: Yes.

17 MR. NEVILLE: Something you disagreed with,
18 and you made reference to "old school" versus "new school",
19 right?

20 MR. DEROCHIE: Yes.

21 MR. NEVILLE: All right. Can we look on the
22 first page of the transcript, and so it's clear, it appears
23 that he is being interviewed here about Mr. Silmsers
24 statement; is he not?

25 MR. DEROCHIE: Yes.

1 **MR. NEVILLE:** Because if we look at the
2 fifth entry from the bottom, the reporter is quoted:

3 "The day after Perry spoke to the
4 investigating officer, he asked to see
5 the victim's statement, which had been
6 written out by the young man in his own
7 handwriting. Perry...",

8 and it quotes him,

9 "It's much more powerful to see a
10 victim's statement written out
11 themselves."

12 Reporter questioning:

13 "So there was no doubt in your mind
14 that this was a valid -- this was a
15 true complaint, then?"

16 Perry:

17 "Never a doubt."

18 Right?

19 **MR. DEROCHIE:** Yes, that's what it says.

20 **MR. NEVILLE:** Now, have you ever heard of an
21 experienced, senior investigator making a comment like that
22 to the media?

23 **MR. DEROCHIE:** No, we wouldn't -- an
24 investigator would not make those kinds of comments, not in
25 our system.

1 **MR. NEVILLE:** And the fact that he would
2 speak to the media and say these kinds of things, apart
3 from the ethics of it and the propriety of it as a police
4 officer, the problems that might present for the
5 administration of justice are significant, aren't they?

6 **MR. DEROCHIE:** Yes, they are.

7 **MR. NEVILLE:** For example, the right to a
8 fair trial, right?

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** The causing potentially of
11 such things as a change of venue, tainting a jury pool?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** There's all kinds of things
14 that could happen of consequence, apart from whether it's
15 appropriate for a police officer professionally to say this
16 kind of thing?

17 **MR. DEROCHIE:** The only way a police officer
18 can do that professionally is in an information, Criminal
19 Information sworn before.

20 **MR. NEVILLE:** Or in the witness box to be
21 cross-examined?

22 **MR. DEROCHIE:** Where there's an information
23 before the court.

24 **MR. NEVILLE:** Right.

25 **THE COMMISSIONER:** Mr. Neville, I'm sorry, I

1 just received this. I can't -- I haven't read it ---

2 **MR. NEVILLE:** Sorry, Commissioner.

3 **THE COMMISSIONER:** No, no, but you see when
4 I'm reading this, I see well it's a true complaint then.
5 Right?

6 **MR. NEVILLE:** Right.

7 **THE COMMISSIONER:** Does it mean it is a true
8 complaint and the police should act on it or is it that the
9 complaint is true, the guy is guilty, and I don't have any
10 doubt that the person is guilty?

11 **MR. NEVILLE:** Well ---

12 **THE COMMISSIONER:** Do you see the
13 difference? What is he saying? I don't know what he's
14 saying there.

15 **MR. NEVILLE:** Well, let me ask you this.
16 Maybe I'll ask this question, Commissioner.

17 **THE COMMISSIONER:** M'hm.

18 **MR. NEVILLE:** When you saw this, you took it
19 as potentially being a policeman saying this is a true
20 story. The person it's talking about is guilty.

21 **MR. DEROCHIE:** My interpretation of it was
22 basically that the allegations set forth in the statement
23 are true.

24 **MR. NEVILLE:** Right.

25 That the person against whom they're made,

1 my client, is guilty as described?

2 MR. DEROCHIE: Yes, and of course that ---

3 MR. NEVILLE: And this was a person who was
4 potentially going to have to go on trial in this community?

5 MR. DEROCHIE: Without the presumption of
6 innocence, yes.

7 MR. NEVILLE: Well, certainly not in one
8 person's mind and anybody who listened to it and agreed
9 with him?

10 MR. DEROCHIE: Yes.

11 MR. NEVILLE: Right.

12 MR. DEROCHIE: That was my concern.

13 MR. NEVILLE: And that was the concern. It
14 would be verging on contempt, would it not, in your
15 experience?

16 THE COMMISSIONER: Well, not contempt, no.
17 It -- verging on *Police Act* charges, right, for sure.

18 MR. NEVILLE: Well, with respect,
19 Commissioner, I think it may go further than that, but I
20 won't ---

21 THE COMMISSIONER: It might.

22 MR. NEVILLE: I said it might.

23 This was the main concern you had when you
24 looked into this matter was this comment?

25 MR. DEROCHIE: Yes.

1 **MR. NEVILLE:** I mean there was also the fact
2 that he was doing it at all in the face of a directive.
3 That was one issue.

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** And you came to the conclusion
6 that for reasons of practicality and the like, we shouldn't
7 go there, no more platforms needed basically; right?

8 **MR. DEROCHIE:** Yes.

9 **MR. NEVILLE:** But this one's a little
10 different.

11 **MR. DEROCHIE:** This could impact the
12 investigation.

13 **MR. NEVILLE:** Right.

14 Now, the next issue that you also looked at
15 at the same time was the fact that he was claiming lack of
16 backup.

17 **MR. DEROCHIE:** Yes.

18 **MR. NEVILLE:** And he asked for an
19 opportunity, did he not, to itemize to you in writing the
20 alleged events of non backup?

21 **MR. DEROCHIE:** I asked him -- yes, he was
22 given that opportunity to give examples of what he meant by
23 that.

24 **MR. NEVILLE:** And put it in writing is what
25 he wanted to do, if necessary, right?

1 **MR. DEROCHIE:** Yes.

2 **MR. NEVILLE:** Did he ever provide you any
3 orally to justify that allegation?

4 **MR. DEROCHIE:** No.

5 **MR. NEVILLE:** Did he ever provide anything
6 in writing?

7 **MR. DEROCHIE:** No. In truth, the only thing
8 he said was that it was a sense he had when I asked him to
9 give me an example.

10 **MR. NEVILLE:** I think you said in-chief it
11 was a feeling.

12 **MR. DEROCHIE:** A feeling, a sense, yes.

13 **MR. NEVILLE:** Now, can I next refer you,
14 sir, because you've become quite heavily involved with Mr.
15 Dunlop's activities in the fall of 1999. And can I start
16 by referring to Document 727868?

17 I stand to be corrected, Commissioner. I
18 don't believe these notes are yet an exhibit. They are
19 some of ---

20 **THE COMMISSIONER:** Thank you.

21 **MR. NEVILLE:** --- Staff Derochie's notes.

22 **THE COMMISSIONER:** Exhibit 1397 is notes of
23 Staff Sergeant Derochie. Do we have a date? The 22nd of
24 September 1999.

25 --- **EXHIBIT NO./PIÈCE NO. P-1397:**

1 (727868) Notes of S/Sgt. Derochie -
2 September 22, 1999

3 **MR. NEVILLE:** And just for the record, these
4 are your notes, Staff Sergeant?

5 **MR. DEROCHIE:** They are.

6 **MR. NEVILLE:** All right.

7 Now, these notes reflect an actual meeting.
8 This is at the point where you're just starting to get into
9 the managing of the Dunlop problem, if I can put it that
10 way. Is that fair?

11 **MR. DEROCHIE:** Yes.

12 **MR. NEVILLE:** Taking over, I think, from Mr.
13 Trew?

14 **MR. DEROCHIE:** Correct.

15 **MR. NEVILLE:** All right.

16 And one of the first things that happens is
17 you end up in a meeting with senior detectives from Project
18 Truth about something that's come to their attention
19 directly related to your assignment?

20 **MR. DEROCHIE:** Yes.

21 **MR. NEVILLE:** And if we can look at the
22 bottom of the first page of the notes themselves that bear
23 the date 22 September '99? Staff -- Inspector Hall advises
24 you that a victim had come forward in the spring. This
25 would be now the spring of 1999; right?

1 **MR. DEROCHIE:** Yes, I believe so.

2 **MR. NEVILLE:** This would be almost two years
3 after he was first asked to be cooperative in June of '97
4 with Inspector Trew and Tim Smith?

5 **MR. DEROCHIE:** Yes.

6 **MR. NEVILLE:** Close to two years after the
7 order, and they discover that he had met -- contrary to
8 directives, he had met with a potential victim, taken a
9 videotaped statement; right?

10 **MR. DEROCHIE:** Yes.

11 **MR. NEVILLE:** Did refer the so-called victim
12 over to Project Truth?

13 **MR. DEROCHIE:** Yes.

14 **MR. NEVILLE:** But had kept the video to
15 himself; right?

16 **MR. DEROCHIE:** Yes, yes.

17 **MR. NEVILLE:** You record in your notes at
18 the top of page 2, if I may refer you to them:

19 "This new information that Dunlop was
20 still actively conducting his own
21 investigation surprised me. I believed
22 that he was merely referring victims to
23 Project Truth."

24 Right?

25 **MR. DEROCHIE:** Yes.

1 **MR. NEVILLE:** Now, some of the concerns that
2 this raised were legal/*Police Act* concerns.

3 **MR. DEROCHIE:** Yes.

4 **MR. NEVILLE:** Not obeying orders and the
5 like; right?

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** But there were other
8 significant concerns. And do I have it correctly that
9 you've identified them in the bottom half of that page?

10 **MR. DEROCHIE:** Yes.

11 **MR. NEVILLE:** The first one is "He doesn't
12 have expertise in sexual assault investigations."

13 **MR. DEROCHIE:** Correct.

14 **MR. NEVILLE:** And you know from your own
15 police experience that that's a somewhat specialized area?

16 **MR. DEROCHIE:** It is.

17 **MR. NEVILLE:** We touched on pure-version
18 statements.

19 **MR. DEROCHIE:** Correct.

20 **MR. NEVILLE:** That's one particular area, I
21 think you know from experience, where the taking of a
22 statement is important that it be done carefully?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** That it not be leading
25 questions?

1 **MR. DEROCHIE:** Correct.

2 **MR. NEVILLE:** Okay. Then you have other
3 concerns that he hinder a successful prosecution of Truth
4 cases.

5 **MR. DEROCHIE:** Yes.

6 **MR. NEVILLE:** And the final one is exposing
7 your Service -- I think that's what you mean, "the Service"
8 -- to unnecessary risk of civil action.

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** What did you have in mind
11 there, sir?

12 **MR. DEROCHIE:** Well, that either potential
13 victims who are complainants who have their cases dismissed
14 on a Charter argument and/or the people who are accused of
15 these things could come back on the Police Service.

16 **MR. NEVILLE:** Right. That's what I was
17 going to ask you. So the potential for a civil action was
18 from a number of angles?

19 **MR. DEROCHIE:** Yes. At least that was my
20 opinion.

21 **MR. NEVILLE:** Fair enough.

22 Can I just refer you next to Exhibit 1330,
23 which is your actual order to Mr. Dunlop in January of
24 2000?

25 **MR. DEROCHIE:** Yes, sir, I'm there.

1 **MR. NEVILLE:** And the only part of it I'd
2 like -- do you have it, Staff Sergeant?

3 **MR. DEROCHIE:** I do, yes.

4 **MR. NEVILLE:** Okay. Commissioner, you have
5 it as well?

6 **THE COMMISSIONER:** Yes.

7 **MR. NEVILLE:** I just want to refer you to
8 paragraph 5. This is the cease and desist paragraph.

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** And interestingly, you have
11 this mid-paragraph:

12 "Where the jurisdiction of Project
13 Truth is inapplicable, an OMPAC
14 incident shall be created ..."

15 Now, I take it what you're saying there is
16 if it's not a Truth case, but it might be a CPS case?

17 **MR. DEROCHIE:** Yes.

18 **MR. NEVILLE:** Okay.

19 **MR. DEROCHIE:** Or some other information.

20 **MR. NEVILLE:** All right. Fair enough.

21 "... an OMPAC incident shall be created,
22 a report submitted to the Cornwall
23 Police Service ..."

24 And this was the part I'm interested in:

25 "... and directions sought from your

1 supervisor regarding your continued
2 involvement."

3 So do I take that to mean that because you
4 knew that complainants were approaching him ---

5 **MR. DEROCHIE:** Yes.

6 **MR. NEVILLE:** --- that he wasn't necessarily
7 being even precluded from a role if he otherwise complied?

8 **MR. DEROCHIE:** I'm sorry; would you repeat
9 that, please?

10 **MR. NEVILLE:** Yes. This seems to suggest
11 that if he otherwise complied with these directives, right?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** That he might still, with his
14 supervisor's permission, be permitted a role?

15 **MR. DEROCHIE:** Oh yes, he could come across
16 allegations totally unrelated to anything with regards to
17 historical sexual assaults or Project Truth types
18 investigations, you know, the sexual assaults that a normal
19 uniform patrol officer ---

20 **MR. NEVILLE:** I took it to mean somewhat
21 more than that, and that's why I'm asking you for
22 clarification. I took it to mean that even if it was a
23 sexual assault type complaint ---

24 **MR. DEROCHIE:** Yes.

25 **MR. NEVILLE:** --- but outside Truth's

1 mandate ---

2 **MR. DEROCHIE:** Yes.

3 **MR. NEVILLE:** --- that he might -- might --
4 under the permission of a supervisor, have some continued
5 involvement. Is that what you meant?

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** All right.

8 **MR. DEROCHIE:** Yes. Go ahead, yes.

9 **MR. NEVILLE:** So he wasn't being excluded as
10 long as he complied otherwise?

11 **MR. DEROCHIE:** Exactly, yes.

12 **MR. NEVILLE:** And he read this paragraph in
13 your presence and signed this document eventually.

14 **MR. DEROCHIE:** Yes, I believe I read it to
15 him.

16 **MR. NEVILLE:** Line-by-line?

17 **MR. DEROCHIE:** I believe I did that, yes. I
18 think my notes say that.

19 **THE COMMISSIONER:** In fairness now, I don't
20 want to quibble, but either you read it to him -- I don't
21 think it's fair to say that he -- that in your question
22 that Officer Dunlop read them because all he does is, he
23 says, "I acknowledge receipt of these orders". It doesn't
24 say: "I acknowledge having read them" or anything like
25 that.

1 **MR. NEVILLE:** I believe the evidence,
2 Commissioner, was that he went through it line-by-line with
3 him.

4 **MR. NEVILLE:** Oh, no, no. If that's your
5 evidence ---

6 **MR. DEROCHIE:** Yes, I believe that's what I
7 said.

8 **THE COMMISSIONER:** Fine.

9 **MR. NEVILLE:** That's what I understood him
10 to have done on the initial day, line-by-line. He then
11 took it away; correct?

12 **MR. DEROCHIE:** For legal counsel, yes.

13 **MR. NEVILLE:** That's right, and came back
14 either already having, or in fact, to sign it on the 17th?

15 **MR. DEROCHIE:** Yes.

16 **MR. NEVILLE:** Is there any question in your
17 mind that, line-by-line, you reviewed it with him?

18 **MR. DEROCHIE:** No.

19 **MR. NEVILLE:** Now, I'm not going to go
20 through in any detail at all your lengthy notes, which is
21 our Exhibit 1325. These are your notes from September '99
22 to June 2000 that deal with what might be called the
23 "Dunlop disclosure issue"; right?

24 **MR. DEROCHIE:** Yes, sir.

25 **MR. NEVILLE:** And you've confirmed already

1 in your testimony that you testified at the Father
2 MacDonald section 11(b) application.

3 MR. DEROCHIE: I did, yes.

4 MR. NEVILLE: You were called indeed n-Chief
5 by the Crown, were you not?

6 MR. DEROCHIE: Yes.

7 MR. NEVILLE: And we do have that
8 transcript. It was not made an exhibit, Commissioner, and
9 I don't know frankly whether you want any more paper
10 foisted on you, but it's on the Commission's list of
11 Proposed Documents and for sake of completeness, it's
12 120898, but let me just do this.

13 I cross-examined you at some length that
14 day, sir?

15 MR. DEROCHIE: You did.

16 MR. NEVILLE: And I essentially walked you
17 through these notes from start to finish?

18 MR. DEROCHIE: Yes.

19 MR. NEVILLE: And these notes became in
20 effect the essence of your testimony on the Dunlop
21 disclosure problem?

22 MR. DEROCHIE: Correct.

23 MR. NEVILLE: All right. Now, the one topic
24 I did want to turn to briefly though from the notes is the
25 question at the end of June, 2000, the wrongful dismissal

1 letter from Mr. Yegendorf?

2 MR. DEROCHIE: Yes.

3 MR. NEVILLE: I'm using, Commissioner,
4 Exhibit 1325.

5 THE COMMISSIONER: Yes, I'm there.

6 MR. NEVILLE: Document 109487 and the
7 reference is to the Yegendorf letter.

8 MR. DEROCHIE: June 29th on my notebook, page
9 95.

10 THE COMMISSIONER: Can you give me the last
11 three numbers on the top left-hand side?

12 MR. NEVILLE: Yes, I'm just trying to find
13 it right now.

14 MR. DEROCHIE: It's 394.

15 THE COMMISSIONER: Thanks.

16 MR. NEVILLE: All right. Now, you got ---
17 yes, I found it, thank you very much, Mr. Engelmann.

18 So it's on the 29th of June and you learn
19 that there's this claim being asserted for constructive
20 wrongful dismissal, right ---

21 MR. DEROCHIE: Correct.

22 MR. NEVILLE: --- based on intolerable
23 working conditions?

24 MR. DEROCHIE: Correct.

25 MR. NEVILLE: And can you confirm for me,

1 sir, that you were tasked, at least in part, to answer his
2 claim of intolerable working conditions; right?

3 MR. DEROCHIE: Yes.

4 MR. NEVILLE: All right. Let me refer you -
5 - I mentioned your testimony before -- and that's before
6 Mr. Justice Chilcott on the delay application, Father
7 Charles?

8 MR. DEROCHIE: Correct.

9 MR. NEVILLE: It's document, Commissioner,
10 120898.

11 THE REGISTRAR: It's already an exhibit.

12 MR. NEVILLE: That's right, it is an
13 Exhibit.

14 THE COMMISSIONER: Exhibit ---

15 MR. NEVILLE: So it is already an exhibit.

16 THE COMMISSIONER: Je ne l'ai pas.

17 MR. NEVILLE: Can I just -- do we have it?

18 THE COMMISSIONER: Okay, well it's lunch
19 time in any event, so let's take lunch and take it from
20 there.

21 THE REGISTRAR: Order. All rise.

22 À l'ordre. Veuillez vous lever.

23 This hearing is adjourned until 2:00 p.m.

24 --- Upon recessing at 12:34 p.m. /

25 L'audience est suspendue à 12h34

1 --- Upon resuming at 2:06 p.m. /

2 L'audience est reprise à 14h06

3 **THE REGISTRAR:** Order; all rise. À l'ordre;
4 veuillez vous lever.

5 This hearing is now resumed. Please be
6 seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Mr. Neville?

8 **GARRY DEROCHIE:** Resumed/Sous le même serment

9 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

10 **NEVILLE (continued/suite):**

11 **MR. NEVILLE:** Thank you, Commissioner.

12 Because we broke and we we're at just at a
13 small portion of your testimony for Justice Chilcott, I'll
14 tidy that point up. I did want to go back to a couple of
15 things in here, other notes, but let me just refer you,
16 Staff Sergeant, Commissioner to -- using the numbering of
17 the transcript itself, Commissioner, it would be page 399,
18 using the volume numbers themselves.

19 You have it there, Staff Sergeant?

20 **MR. DEROCHIE:** Yes.

21 **MR. NEVILLE:** On that page, I'm just
22 confirming with you what your role was in Professional
23 Standards in particular in relation to Mr. Dunlop. And at
24 the bottom we see:

25 "As far as you know, we've covered with

1 Inspector Trew ..."

2 And just stopping there, he also testified that you're
3 aware, Staff Sergeant?

4 **MR. DEROCHIE:** Yes, I'm aware of that.

5 **MR. NEVILLE:** And you, in some detail:

6 "... the direct dealings of the Dunlop
7 (sic) from basically '97, I think June
8 or so of '97, right through to April of
9 2000, just under three years.

10 Question: Other than what we've
11 learned through you and Trew, was
12 Officer Dunlop given, from what you
13 know, ordinary, conventional police
14 assignments in those three years?

15 Answer: Oh, yes, yes.

16 Question: Okay, so the only -- if I can
17 call it different or unusual things
18 that I suggest were happening were all
19 the things that you and Officer Trew
20 had to take on to assist the OPP?

21 Answer: Yes.

22 Question: Can you suggest for the
23 court anything in that almost three
24 years that could be described as
25 'intolerable working conditions'?

1 Answer: In my opinion, we bent over
2 backwards to accommodate Constable
3 Dunlop and used an abundance of caution
4 in dealing with him."

5 Do you stand by those answers today?

6 **MR. DEROCHIE:** Yes, I do.

7 **MR. NEVILLE:** Following up on that
8 point, can we next look at Document 729879?

9 Again, this is in connection, Staff
10 Sergeant, with your assigned obligations or tasks in
11 relation to the question of the wrongful dismissal claim.

12 You'll see, Mr. Commissioner, this is a memo
13 to the Chief from the Staff Sergeant on this very topic,
14 sir.

15 **THE COMMISSIONER:** Exhibit 1398 is
16 internal correspondence from Staff Sergeant Garry Derochie
17 dated September 11, 2000.

18 --- **EXHIBIT NO./PIÈCE NO. P-1398:**

19 (729879) Internal Correspondence from
20 Garry Derochie to A. Repa re: Wrongful
21 Dismissal Claim - September 11, 2000

22 **MR. NEVILLE:** I missed the number, sir; 1-3

23 ---

24 **THE COMMISSIONER:** Nine-eight (98).

25 **MR. NEVILLE:** Thank you. I apologize.

1 Now, in your memo to the Chief -- this is
2 authored by you, obviously, just for the record, Staff
3 Sergeant?

4 **MR. DEROCHIE:** It is.

5 **MR. NEVILLE:** All right. And you go
6 through the whole chronology essentially of Mr. Dunlop's
7 activities after he returned from his extended absence, and
8 then he went through the modified work program and
9 whatever; right?

10 **MR. DEROCHIE:** Yes.

11 **MR. NEVILLE:** All right. And you go
12 through the various assignments he had. I want to refer
13 you to -- it comes up later in your notes, to one entry.
14 And that's at the bottom of page 2; June 19th, 2000.

15 Now this is very shortly before his leaving
16 the force; right?

17 **MR. DEROCHIE:** Which date, I'm sorry, again?

18 **MR. NEVILLE:** Yes. June 19th, ---

19 **MR. DEROCHIE:** Yes.

20 **MR. NEVILLE:** --- two thousand (2000).

21 **MR. DEROCHIE:** Oh, yes.

22 **MR. NEVILLE:** And if you just read that to
23 yourself for a moment, please.

24 **MR. DEROCHIE:** Yes, I've read that.

25 **MR. NEVILLE:** We'll look at a reference in

1 some of your notes that I'll get to in a couple of minutes.

2 Your source of information about what Mr.
3 Dunlop was doing at a certain point that month would appear
4 to be, at least in part, Pat Hall of the OPP.

5 **MR. DEROCHIE:** Yes.

6 **MR. NEVILLE:** All right. And just
7 summarizing this entry in your memo; it would appear that
8 at that point in June, Mr. Dunlop's father was in bad shape
9 health wise, perhaps dying I guess.

10 Mr. Dunlop was granted compassionate leave
11 purportedly to see his dying father and rather than do
12 that; went to Toronto to deliver documents as part of his
13 personal campaign; right?

14 **MR. DEROCHIE:** Yes.

15 **MR. NEVILLE:** And then gave an interview to
16 the media when his father passed away how sorry he was that
17 he hadn't been out to visit him before he died.

18 **THE COMMISSIONER:** No, just a second now.
19 Well, there's a couple things. First of all, you're using
20 this thing -- these things to support an argument that he
21 didn't go.

22 **MR. NEVILLE:** Right.

23 **THE COMMISSIONER:** And I'm saying well, is
24 it possible that he went out west and he also gave the
25 documents to the Attorney General on his way there?

1 **MR. NEVILLE:** Well --- actually, I'm only
2 going by what he's quoted as saying in the paper himself.

3 **THE COMMISSIONER:** Right.

4 And so on Monday, July 17th, right, he says I
5 really wanted to make it out west to see my parents.

6 **MR. NEVILLE:** Right.

7 **THE COMMISSIONER:** Right? So that doesn't
8 mean he didn't go.

9 **MR. NEVILLE:** Well, let me ask it this way,
10 Commissioner ---

11 **THE COMMISSIONER:** M'hm.

12 **MR. NEVILLE:** --- all right. There's a
13 sentence authored by you, I take it, Staff Sergeant, as
14 follows, "The fact that he did not travel to Prince Albert
15 is further supported by a quote," et cetera.

16 **THE COMMISSIONER:** M'hm.

17 **MR. NEVILLE:** So my question then to put it
18 -- perhaps to comply with your concern, sir, is this, Staff
19 Sergeant, is this, this is your memo.

20 Is that how you took the facts to be?

21 **MR. DEROCHIE:** Yes.

22 **MR. NEVILLE:** All right. Whether or not it
23 happened as the Commissioner suggested may or may not have
24 happened, this is how you took it to have happened?

25 **MR. DEROCHIE:** Yes.

1 **MR. NEVILLE:** All right. Now, can we look
2 at the last page of the summary? This is in response to --
3 -

4 **THE COMMISSIONER:** Mr. Engelmann.

5 **MR. ENGELMANN:** I just rise because I am
6 concerned about estimates of time on cross-examination. I
7 don't know how much more time we're going to spend on this
8 but I'm not sure what, if anything, this has to do with Mr.
9 Neville's clients' interest.

10 **THE COMMISSIONER:** All right.

11 **MR. ENGELMANN:** If it has something to do
12 with the Cornwall Police Service interest I'm sure they'll
13 be there but I just -- I wonder what we're doing.

14 **THE COMMISSIONER:** Mr. Neville?

15 **MR. NEVILLE:** Well, I haven't discussed in
16 detail, Commissioner with my friends, their cross-
17 examination. I thought it was somewhat in your interest
18 and the public interest that some of these issues be
19 covered.

20 Mr. Dunlop's activities impacted directly on
21 both my clients.

22 **THE COMMISSIONER:** Well, your ---

23 **MR. NEVILLE:** And I think it's important
24 that some of this knowledge be out.

25 **THE COMMISSIONER:** Well, both your clients

1 know because most of the work that Mr. Dunlop did in
2 investigations was post Mr. Seguin's demise.

3 **MR. NEVILLE:** Yes.

4 **THE COMMISSIOINER:** So you know, other than
5 coming up and -- in September of 1993 and giving the
6 allegations to the Children's Aid Society from which no
7 investigation was done on Mr. Seguin, I think that's
8 negligible.

9 With respect to -- the whole idea behind
10 trying to complete this Inquiry is Mr. Callaghan, he's a
11 big boy. And he can re-exam -- and I don't mean size-wise
12 ---

13 **(LAUGHTER/RIRES)**

14 **MR. NEVILLE:** I wasn't going to go there,
15 sir.

16 **THE COMMISSIONER:** Yeah. He can take care
17 of his own interests.

18 **MR. NEVILLE:** I'm sure he can.

19 **THE COMMISSIONER:** And with respect to your
20 interests, your clients' interests, I think Mr. Engelmann's
21 got a fair point.

22 If we're going to get through all of this,
23 let's narrow it down to what your clients' interests were
24 and your clients' interests were that -- so I've given you
25 great latitude here but where are we going? What are we

1 doing?

2 MR. NEVILLE: Well I -- this -- the topic
3 was touched upon in Chief, sir ---

4 THE COMMISSIONER: M'hm.

5 MR. NEVILLE: --- that this witness was part
6 of that exercise of the action and this document was not
7 put in. I didn't see it on anybody else's list ---

8 THE COMMISSIONER: M'hm.

9 MR. NEVILLE: --- as being going to be used.
10 I thought it was important for the record to put it in.

11 THE COMMISSIONER: Well, let's concentrate
12 on your clients' interests.

13 MR. NEVILLE: I'll move on.

14 THE COMMISSIONER: Let's move on.

15 MR. NEVILLE: Give me a moment, sir.

16 THE COMMISSIONER: Sure.

17 MR. NEVILLE: Now, can we just come back to
18 a couple of points from your notes. And that is the
19 dedicated notes, dedicated notebook, 1325.

20 MR. DEROCHIE: I've got it.

21 MR. NEVILLE: And if I could refer you to
22 Bates page 3392.

23 MR. DEROCHIE: Yes.

24 MR. NEVILLE: The time recorded is 16:05 or
25 4:05 p.m.

1 **MR. DEROCHIE:** Sixteen zero five (16:05)?

2 **MR. NEVILLE:** Yes, sir.

3 **MR. DEROCHIE:** Four zero five (4:05) p.m.,
4 yes.

5 **MR. NEVILLE:** Correct. And this is a
6 telephone conversation with Officer Hall in relation to the
7 -- what was to have been the trial of Father MacDonald in
8 May of that year.

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** All right. And he brings to
11 your attention that the trial has been put off and the two
12 reasons are, in the bottom half of that page, number 1
13 reason, the amount of new material disclosed.

14 So that would be the nine boxes and the 110-
15 page will say in essence?

16 **MR. DEROCHIE:** Yes.

17 **MR. NEVILLE:** Okay. And the second reason,
18 the new charges MacDonald is now facing. Can you confirm
19 for me, sir, that this was a complainant that we came to
20 know here as C-2 whose complaint or allegation Officer
21 Dunlop did not turn over to the OPP until, pursuant to your
22 order, he did so in early 2000?

23 **MR. DEROCHIE:** I don't know that. I don't
24 know that that's ---

25 **MR. NEVILLE:** Okay.

1 **MR. DEROCHIE:** --- the new -- the charges
2 that resulted from that complainant. I don't know who that
3 complainant is.

4 **MR. NEVILLE:** Okay. No, I'm not asking you
5 to confirm the name because we're using a moniker in any
6 event. What I'm asking you to confirm is that the new
7 charges arose from a disclosure made by Mr. Dunlop.

8 **MR. DEROCHIE:** That's correct.

9 **MR. NEVILLE:** All right. We know the name
10 otherwise. That's fine.

11 All right. Can we look then at our Exhibit
12 to your notes, 1378?

13 **THE COMMISSIONER:** I'm sorry, what Exhibit
14 again?

15 **MR. NEVILLE:** It's Exhibit 1378,
16 Commissioner. It's an excerpt of Constable -- sorry, Staff
17 Sergeant Derochie's notes.

18 **THE COMMISSIONER:** What page?

19 **MR. NEVILLE:** Yes. The Bates page is, if I
20 use the last four numbers, sir, 8049; date of August 22nd,
21 '01.

22 **THE COMMISSIONER:** M'hm.

23 **MR. DEROCHIE:** Yes, I'm there.

24 **MR. NEVILLE:** At the top of the page, you
25 confirm that there'll be an OPP announcement -- this is

1 information from, I take it, the Chief -- that they'll be
2 announcing that the conclusion of their investigation is no
3 conspiracy or a cover up?

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** And then you have a reference
6 at the bottom that Mr. Dunlop was to be in town in a month
7 or so or a few -- a couple of weeks to testify, right?

8 **MR. DEROCHIE:** Yes.

9 **MR. NEVILLE:** Now if we can just turn over
10 to the next page, you have an entry for the next two days
11 later, the 24th. You have a reference in your notes to
12 "newspaper coverage, local and in Ottawa" about the
13 wrapping up of Project Truth.

14 **MR. DEROCHIE:** Yes.

15 **MR. NEVILLE:** And you have this:

16 "Dunlop and Guzzo are quoted as saying
17 the OPP's announcement is just another
18 part of the cover-up."

19 **MR. DEROCHIE:** Yes, I have that recorded.

20 **MR. NEVILLE:** All right. And you -- that's
21 a summary, I take it, of what was the essence of the
22 newspaper coverage?

23 **MR. DEROCHIE:** That's what I took from that.

24 **MR. NEVILLE:** That these two gentlemen,
25 including a member of your Force a year before -- he's been

1 gone a year now -- is calling even the OPP conduct a cover-
2 up.

3 **MR. DEROCHIE:** Yes. Well, the announcement
4 of the conclusion ---

5 **MR. NEVILLE:** Yes, of their conclusion and a
6 conclusion about your Force?

7 **MR. DEROCHIE:** Yes.

8 **MR. NEVILLE:** Yes.

9 Now, if we look on the next page for the
10 same date, you have an entry at 3:15 or 1515; again, you're
11 in contact with Inspector Hall, and he confirms for you
12 that -- and I presume what he's talking about here, "tapes
13 and Mr. Guzzo", was something flowing from what Mr. Guzzo
14 was saying in the media about tapes?

15 **MR. DEROCHIE:** Could you reference me again,
16 please?

17 **MR. NEVILLE:** Yes, sir.

18 **MR. DEROCHIE:** We're on Bates page 051?

19 **MR. NEVILLE:** Yes, sir.

20 **MR. DEROCHIE:** Okay.

21 **MR. NEVILLE:** The time is 1515.

22 **MR. DEROCHIE:** Oh, yes, I'm sorry.

23 **MR. NEVILLE:** Got it?

24 **MR. DEROCHIE:** Yes.

25 **MR. NEVILLE:** And he talks about Guzzo

1 talking about tapes. Is this a reference back again to
2 media statements?

3 MR. DEROCHIE: Yes.

4 MR. NEVILLE: All right. And he confirms
5 for you that the OPP had long confirmed that they were
6 commercial porn tapes?

7 MR. DEROCHIE: That's what he told me, yes.

8 MR. NEVILLE: All right. Now, can we next
9 look at 08055? There was an earlier reference to Mr.
10 Dunlop going to be in town to testify in early September in
11 your notes?

12 MR. DEROCHIE: Yes.

13 MR. NEVILLE: At the bottom of this page,
14 you have a reference that you had met with the Chief and,
15 among other things, were advised that Mr. Dunlop was going
16 to appear on something called "Talk-Back Live, John
17 Davinski" tomorrow. Is that a local radio show?

18 MR. DEROCHIE: It is. It was a local
19 phone-in radio program.

20 MR. NEVILLE: I'm sorry.

21 MR. DEROCHIE: Of our local radio station.
22 It was hosted by Mr. John Davinski.

23 MR. NEVILLE: And of some popularity?

24 MR. DEROCHIE: Oh yes, yes, well listened
25 to.

1 **MR. NEVILLE:** Widely listened to?

2 **MR. DEROCHIE:** Yes.

3 **MR. NEVILLE:** Well, it looks like, if we
4 look at the next page, that you listened to it?

5 **MR. DEROCHIE:** I did.

6 **MR. NEVILLE:** Maybe having been almost
7 tasked to, perhaps.

8 **MR. DEROCHIE:** Well, if not, I certainly
9 would have done it on my own initiative.

10 **MR. NEVILLE:** All right. And you have, at
11 the bottom of the next page, September 6th, "Re Mr. Dunlop,"
12 you have a quote at the bottom:

13 "Some of the same old misinformation
14 repeated as gospel."

15 **MR. DEROCHIE:** Yes.

16 **MR. NEVILLE:** What was he repeating as
17 gospel that was misinformation, that you can recall now, if
18 anything?

19 **MR. DEROCHIE:** I'm sorry, I can't recall any
20 of the specifics.

21 **MR. NEVILLE:** Now, can we next look at
22 Exhibit 1375? Again, it is Notes, Commissioner, of Staff
23 Sergeant Derochie.

24 **THE COMMISSIONER:** Yes.

25 **MR. NEVILLE:** And there will be a reference

1 here, Commissioner, that should be covered by a moniker in
2 terms of ---

3 **THE COMMISSIONER:** M'hm. So we should put a
4 stamp on it. I don't think there was a -- I don't know
5 that there was a stamp.

6 **MR. NEVILLE:** I can't remember, but I'm also
7 ---

8 **THE COMMISSIONER:** Madam Clerk will be able
9 to tell us. Well, there should -- so what reference are
10 you ---

11 **MR. NEVILLE:** Yes, sir, the page reference
12 again and also I think in terms of the screen, sir, but ---

13 **THE COMMISSIONER:** Well, no, we ---

14 **MR. NEVILLE:** It's okay?

15 **THE COMMISSIONER:** It depends.

16 **MR. NEVILLE:** Oh, okay.

17 **THE COMMISSIONER:** It depends at what level
18 we're at.

19 **MR. NEVILLE:** All right, 8101 are the last
20 four numbers.

21 **THE COMMISSIONER:** Eight one (81) ---

22 **MR. NEVILLE:** --- It's May 7th, 2002.

23 **THE COMMISSIONER:** Yes, you're right.

24 So we should -- actually, with respect to C-
25 9, Mr. Engelmann -- I'm sorry?

1 **THE COMMISSIONER:** Yes, but does it go up on
2 the public screens or is it -- it can go up? Okay.

3 In any event, this is ---

4 **MR. NEVILLE:** This is C-8, Commissioner.

5 **THE COMMISSIONER:** C-8?

6 **MR. NEVILLE:** This is C-8, sir.

7 **THE COMMISSIONER:** Yes, okay. Yes, sorry.
8 Right, C-8, okay.

9 **MR. NEVILLE:** Now, we have a reference --
10 you have it there, Staff Sergeant?

11 **MR. DEROCHIE:** Bates page?

12 **MR. NEVILLE:** Yes, I'm sorry, it's 8101,
13 using the last four numbers, May 7th.

14 **MR. DEROCHIE:** Oh.

15 Yes, I have it.

16 **MR. NEVILLE:** All right. And you've got a
17 reference, again telephone information from Inspector Hall
18 and you'll see a name about two bullet points down.

19 **MR. DEROCHIE:** Yes.

20 **MR. NEVILLE:** That we monikered as "C-8"?

21 **MR. DEROCHIE:** Yes.

22 **MR. NEVILLE:** And you had been advised by
23 Officer Hall that C-8 had admitted perjuring himself in
24 relation to Father MacDonald?

25 **MR. DEROCHIE:** Yes.

1 **THE COMMISSIONER:** No, no. No, no, no. I
2 don't think it was perjury. Perjury is lying under oath.

3 **MR. NEVILLE:** That's what he did. He
4 testified, sir, on oath, at the OPP station, at a
5 preliminary inquiry and then admitted to Mr. McConnery that
6 the entire story was a fabrication.

7 **THE COMMISSIONER:** Sorry. Just help me out
8 here.

9 **MR. NEVILLE:** Yes, sir.

10 **THE COMMISSIONER:** He gave a statement.

11 **MR. NEVILLE:** He gave two KGB-video sworn
12 statements.

13 **THE COMMISSIONER:** Okay.

14 **MR. NEVILLE:** One about Mr. Lalonde.

15 **THE COMMISSIONER:** M'hm.

16 **MR. NEVILLE:** One about my client.

17 **THE COMMISSIONER:** Yes.

18 **MR. NEVILLE:** Both under oath.

19 **THE COMMISSIONER:** Right, but at the trial,
20 he recanted.

21 **MR. NEVILLE:** No, no.

22 In relation to my client, he then testified
23 under oath in front of Mr. Justice Renaud.

24 **THE COMMISSIONER:** Yes, at the preliminary.

25 **MR. NEVILLE:** Correct, sir.

1 THE COMMISSIONER: Okay.

2 MR. NEVILLE: And told the whole story.

3 THE COMMISSIONER: Then the word "perjury"
4 is fine.

5 MR. NEVILLE: Yes, sir.

6 THE COMMISSIONER: Thank you.

7 MR. NEVILLE: Thank you.

8 And just so you know, sir, because it may
9 not have been obvious here, the admissions that we're
10 talking about here of lying ---

11 THE COMMISSIONER: Yes.

12 MR. NEVILLE: --- were in a pre-trial
13 interview.

14 THE COMMISSIONER: Right.

15 MR. NEVILLE: You may recall from previous
16 comments that this complainant was withdrawn in front of
17 Justice Chilcott.

18 THE COMMISSIONER: With respect to your
19 client -- with respect to Father MacDonald.

20 MR. NEVILLE: Correct.

21 THE COMMISSIONER: Yes.

22 MR. CHISHOLM: Yes, yes, just before this
23 date, in fact, in the notes.

24 THE COMMISSIONER: M'hm.

25 MR. NEVILLE: Together with C-2 was also

1 withdrawn.

2 **THE COMMISSIONER:** M'hm.

3 **MR. NEVILLE:** So -- and what I'm interested
4 in is this, Staff Sergeant, Officer Hall tells you that;
5 right?

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** And then he says:

8 "Regional Crown will order an
9 investigation into C-8 which will lead
10 to Dunlop."

11 **MR. DEROCHIE:** Yes.

12 **MR. NEVILLE:** Did you understand what he
13 meant by that?

14 **MR. DEROCHIE:** That Dunlop was somehow
15 involved in C-8's perjured testimony.

16 **MR. NEVILLE:** Now, there is a memo of the
17 interview notes of the two Crowns, Mr. McConnery and Mr.
18 Phillips, with C-8 when the admissions are made. Were
19 those notes provided to you?

20 **MR. DEROCHIE:** No.

21 **MR. NEVILLE:** Okay. So you've never seen
22 that memo of what C-8 actually said and why he said it?

23 **MR. DEROCHIE:** No.

24 **MR. NEVILLE:** All right. Now, the next
25 reference I want to give you is in the same notes, Bates

1 page 8106, and let me just summarize and ask you a couple
2 of questions.

3 There's a series of notes -- entries in your
4 notes here involving a complainant that came forward at
5 that point apparently, whose name is in your notes, right?

6 I'm not sure, Commissioner, if this is a
7 monikered person.

8 **THE COMMISSIONER:** He's not -- no.

9 Well, wait a minute, now.

10 **MR. NEVILLE:** I won't use the name. It's --

11 -

12 **THE COMMISSIONER:** No. There's no moniker.
13 I don't know if we've ever addressed the issue with respect
14 to this gentleman.

15 **MR. NEVILLE:** All right.

16 **THE COMMISSIONER:** If you can get around
17 without ---

18 **MR. NEVILLE:** I will. No, I will. I will.

19 See if I summarize this accurately or
20 correctly, Staff Sergeant. This person comes forward, but
21 apparently comes forward through the auspices of Mr.
22 Chisholm and Mr. Nadeau?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** Okay. And we have an entry at
25 the bottom of that page that those gentlemen, probably more

1 likely Mr. Nadeau, had taken his allegation and posted it
2 on the famous Project Truth website, right?

3 **MR. DEROCHIE:** Yes.

4 **MR. NEVILLE:** And it would appear he was
5 placed in contact with Mr. Dunlop, who in turn had put him
6 in contact with David Silmsler and John MacDonald?

7 **MR. DEROCHIE:** Yes, I see that.

8 **MR. NEVILLE:** Now, stopping there, Staff
9 Sergeant, this is another example of exactly the conduct
10 that Mr. Dunlop -- although he's no longer a policeman, so
11 I guess your power is gone -- this is the kind of conduct
12 he was being -- had been ordered not to do?

13 **MR. DEROCHIE:** Yes.

14 **MR. NEVILLE:** And you learn on the next
15 page, 107, that no sooner has this new potential
16 complainant left, your brother officer Carroll gets a call
17 from Mr. Nadeau wanting to know how long the investigation
18 will take and that he has material to turn over to assist.

19 **MR. DEROCHIE:** Yes.

20 **MR. NEVILLE:** Right?

21 **MR. DEROCHIE:** Yes.

22 **MR. NEVILLE:** And this is all being conveyed
23 to you by Officer Carroll?

24 **MR. DEROCHIE:** Correct.

25 **MR. NEVILLE:** Okay. Now, let's look at

1 Bates page 108.

2 MR. DEROCHIE: Yes.

3 MR. NEVILLE: You have a further contact
4 with Mr. Hall?

5 MR. DEROCHIE: Yes.

6 MR. NEVILLE: Who says that he has now filed
7 a formal complaint -- I guess I shouldn't have used the
8 word formal -- he's filed a complaint against C-8 ---

9 MR. DEROCHIE: Yes.

10 MR. NEVILLE: --- for perjury ---

11 MR. DEROCHIE: Yes.

12 MR. NEVILLE: --- and advises you that,
13 based on what he knows, that that investigation could lead
14 to Mr. Dunlop?

15 MR. DEROCHIE: Yes.

16 MR. NEVILLE: And indicates that the two
17 Crowns want to speak with you.

18 MR. DEROCHIE: Yes.

19 MR. NEVILLE: Do you recall if either or
20 both of McConnery and Phillips did, shortly after this call
21 from Mr. Hall, debrief you on what had happened?

22 MR. DEROCHIE: No, I don't believe so.

23 MR. NEVILLE: Well, let me just refer you
24 then to the next page, 109, 18th of May, 11:10. It looks
25 like you're trying to reach him ---

1 MR. DEROCHIE: Yes.

2 MR. NEVILLE: --- and leaving messages,
3 right?

4 MR. DEROCHIE: Yes.

5 MR. NEVILLE: Okay. Then if I can refer you
6 to page 113, 27th of May, this is a follow-up to this
7 potential new complainant?

8 MR. DEROCHIE: Yes.

9 MR. NEVILLE: And again, it's a
10 teleconference with Officer Hall who now is able to tell
11 you that the OPP have statements -- "a number" is the
12 phrase he uses -- going back as far as 1995.

13 MR. DEROCHIE: Yes.

14 MR. NEVILLE: That the allegation had been
15 reviewed by the Crown and there was no likelihood of a
16 conviction?

17 MR. DEROCHIE: Yes.

18 MR. NEVILLE: Would you look at the next
19 page, 114?

20 MR. DEROCHIE: Yes.

21 MR. NEVILLE: "He cautioned that..."
22 I'll leave the name out:

23 "...evidence would be tainted in the
24 extreme."

25 MR. DEROCHIE: Yes, I recall that.

1 **MR. NEVILLE:** Did you understand that to be
2 because of the multiple involvements of people like Nadeau,
3 Chisholm, Dunlop, et cetera?

4 **MR. DEROCHIE:** That was my understanding,
5 yes.

6 **MR. NEVILLE:** Yes. The next entry:

7 "He will supply all doc..."

8 Meaning documents, I presume:

9 "...Project Truth has. He also informed
10 that it would have been (the same
11 person's) statement which Carson
12 Chisholm had displayed on camera for
13 CJOH TV outside of the courthouse at
14 the start of the MacDonald trial."

15 **MR. DEROCHIE:** Yes.

16 **MR. NEVILLE:** Did you know that Mr. Chisholm
17 had done that at the start of my client's trial?

18 **MR. DEROCHIE:** I don't -- I remember the
19 article in the paper. I just don't know what ---

20 **MR. NEVILLE:** Okay.

21 **MR. DEROCHIE:** --- what time period it was.

22 **MR. NEVILLE:** All right.

23 Can we look at 116? It looks like you do
24 hear back from Mr. McConnery on May 31st that he's going to
25 get back to you?

1 **MR. DEROCHIE:** Yes, this was specific to the
2 -- to that investigation that we were just talking about.

3 **MR. NEVILLE:** Not the ---

4 **MR. DEROCHIE:** Not about the previous.

5 **MR. NEVILLE:** Not the C-8 perjury issue?

6 **MR. DEROCHIE:** That's correct.

7 **MR. NEVILLE:** Fair enough. That's one of
8 the things I wanted to check with you. All right.

9 Now, I want to look for a moment at Exhibit
10 1379, again notes, Commissioner, of Staff Sergeant
11 Derochie, Bates page 8123, 25th of June 2002.

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** Now, this is about a month and
14 a half -- I take it you will recall about -- well, just
15 over a month, actually, after a stay had been entered in
16 the MacDonald trial by Justice Chilcott, which was roughly
17 mid-May?

18 **MR. DEROCHIE:** Yes.

19 **MR. NEVILLE:** All right.

20 So then you have a note here about
21 instructing the Chief of a conversation shortly before with
22 Officer Hall described as concerning fallout from the
23 Project Truth trials, specifically concerning Perry
24 Dunlop's actions prior to matters going to trial.

25 "Hall expressed the opinion that his

1 actions might constitute an obstruction
2 of justice. He indicated he would be
3 meeting with Crowns to discuss this
4 matter, but he felt we should be
5 looking at the issue of investigating
6 Dunlop's failure to provide disclosure.
7 It was reported that Dunlop admitted he
8 hid his notes when testifying at the C.
9 MacDonald trial."

10 Now, at some point around this point or
11 shortly after, am I right, Staff Sergeant, that you took it
12 upon yourself to read the transcripts of the MacDonald
13 trial?

14 **MR. DEROCHIE:** Yes, I ordered them.

15 **MR. NEVILLE:** Pardon me?

16 **MR. DEROCHIE:** I believe I ordered them and
17 read them.

18 **MR. NEVILLE:** Right. And did you read Mr.
19 Dunlop's evidence?

20 **MR. DEROCHIE:** Yes, I'm sure I did.

21 **MR. NEVILLE:** Right. He did testify, didn't
22 he?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** Can you confirm that he was
25 called by the Crown?

1 **MR. DEROCHIE:** I don't recall. I'm sorry,
2 sir.

3 **MR. NEVILLE:** Do you recall his saying to
4 the Court that he had hidden notes?

5 **MR. DEROCHIE:** I had that knowledge that
6 that was said.

7 **MR. NEVILLE:** Yeah. Now, this is the same
8 person who, in memos or to you or under oath had testified
9 that he had turned over everything, right?

10 **MR. DEROCHIE:** Yes.

11 **MR. NEVILLE:** And now testifies, in May of
12 2002, that in fact he had hidden notes, right?

13 **MR. DEROCHIE:** Yes.

14 **MR. NEVILLE:** Now, I'm going to suggest, and
15 we'll come to a couple of documents consistent to show
16 that, that this is the conduct that you then turn your mind
17 to in particular as potential obstruction and/or perjury?

18 **MR. DEROCHIE:** Yes.

19 **MR. NEVILLE:** Because -- I'm going to
20 suggest this by summary -- there had been a previous look
21 at Mr. Dunlop for perjury with an opinion from Mr. Garson.

22 **MR. DEROCHIE:** Yes.

23 **MR. NEVILLE:** And one of the concerns there
24 was that it couldn't really be established with a
25 reasonable prospect of conviction that Mr. Dunlop

1 intentionally misled the Court?

2 MR. DEROCHIE: There was no corroboration to
3 that effect.

4 MR. NEVILLE: And one of the problems was
5 the corroborating witness was going to be none other than
6 C-8?

7 MR. DEROCHIE: Yes.

8 MR. NEVILLE: An admitted perjurer?

9 MR. DEROCHIE: Yes.

10 MR. NEVILLE: However, this time the
11 allegation of potential perjury was based on his own
12 testimony ---

13 MR. DEROCHIE: Correct.

14 MR. NEVILLE: --- that he in fact had not
15 turned stuff over; he had hidden it on purpose?

16 MR. DEROCHIE: Correct.

17 MR. NEVILLE: Now, in the middle of that
18 page, the Chief, just below the middle -- the Chief says --
19 instructs you to clarify who was going to do what.

20 MR. DEROCHIE: I'm sorry, could you read --
21 -

22 MR. NEVILLE: Yes, I'm sorry, sir. It's
23 8124.

24 MR. CALLAGHAN: In fairness, I think you'll
25 have to read the paragraph before.

1 **MR. NEVILLE:** Yes, I will. I will. I will.

2 And I was going to put it in context on that very point.

3 It's the middle of the page because it makes the

4 instructions clear:

5 "There was discussion prior to last
6 week that there would be some sort of
7 inquiry into the activities of various
8 witnesses involved in the Project Truth
9 but that a police service other than
10 OPP ..."

11 And I think the next one is Ottawa City
12 Police Service.

13 "OCPS."

14 **MR. DEROCHIE:** I think it was Ottawa-
15 Carleton Regional Police Service at that time ---

16 **MR. NEVILLE:** "Ottawa-Carleton Police
17 Service or City of Cornwall Police
18 Service ..."

19 **MR. DEROCHIE:** Right.

20 **MR. NEVILLE:** "... would be tasked with the
21 investigation."

22 **MR. DEROCHIE:** Yes.

23 **MR. NEVILLE:** All right.

24 "Chief's instruction to me today was to
25 clarify who was going to do what."

1 **MR. DEROCHIE:** Yes.

2 **MR. NEVILLE:** All right.

3 Now, he says -- I think we should just
4 complete the point here --

5 "He directed that should the decision-
6 makers fail to provide written
7 indications that some police service
8 other than us would be tasked, that his
9 wishes were that we would investigate
10 Dunlop or anyone else who may have
11 committed a criminal offence in
12 Cornwall."

13 And then you called Mr. Hall?

14 **MR. DEROCHIE:** Yes.

15 **MR. NEVILLE:** And the decision-makers, I
16 take it, were likely going to be at the Ministry of the
17 Attorney General, either the Regional Crown or perhaps up
18 the line?

19 **MR. DEROCHIE:** Somebody, yes, somebody was
20 going to make a decision. I had always been of -- or I was
21 always of the impression that there was going to be a
22 discussion at the end of the day ---

23 **MR. NEVILLE:** Yes.

24 **MR. DEROCHIE:** --- that would decide what
25 further action, if any, ought to be taken.

1 **MR. NEVILLE:** I got it. All right.
2 Can we look at 8126?
3 You have a lunch meeting with Mr. Hall at
4 noon?
5 **MR. DEROCHIE:** Yes.
6 **MR. NEVILLE:** And a discussion about the
7 investigation of the C-8 perjury?
8 **MR. DEROCHIE:** Yes.
9 **MR. NEVILLE:** Again possibly leading to Mr.
10 Dunlop?
11 **MR. DEROCHIE:** Yes.
12 **MR. NEVILLE:** Further down that day, you
13 have a telephone conference with Mr. McConnery?
14 **MR. DEROCHIE:** Yes.
15 **MR. NEVILLE:** All right. There's a
16 reference to this new complainant's file?
17 **MR. DEROCHIE:** Yes.
18 **MR. NEVILLE:** And a discussion of the
19 question of obstruct justice?
20 **MR. DEROCHIE:** Yes.
21 **MR. NEVILLE:** Now that relates potentially
22 to Mr. Dunlop?
23 **MR. DEROCHIE:** Yes.
24 **MR. NEVILLE:** All right. And it appears
25 that the advice at that point of Mr. McConnery is that your

1 Chief should send a letter to James Stewart, the Regional
2 Senior Crown; right?

3 MR. DEROCHIE: Correct.

4 MR. NEVILLE: For guidance as to what should
5 happen in terms of what force doing the investigation. Is
6 that basically a fair way to summarize it?

7 MR. DEROCHIE: Yes.

8 MR. NEVILLE: All right.

9 Now can we look next on the issue of -- and
10 that brings us some months later to -- at least for
11 purposes of some context -- to some of the documents that
12 went in the other day and I can refer you to our Exhibit
13 now 1382.

14 You have it, Staff Sergeant?

15 MR. DEROCHIE: I have it, sir, yes.

16 MR. NEVILLE: All right.

17 So I have taken you through a number of
18 itemized details on these topics of obstruction and/or
19 perjury, and we see your memo of April 10th, 2003, to the
20 Chief, and that is what gives context, I would suggest, to
21 the opening phrase:

22 "For some considerable time now, we
23 have been waiting for direction."

24 MR. DEROCHIE: Yes.

25 MR. NEVILLE: Right?

1 **MR. DEROCHIE:** Yes.

2 **MR. NEVILLE:** Because these issues, whether
3 it's C-8 or Mr. Dunlop or perjury of one or both or
4 obstruction, have been sort of out there unresolved. It's
5 now closing in on a year?

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** All right. And I think you
8 put it for Mr. Commissioner the other day, at some point,
9 you'd like to get some closure, as the saying goes, on all
10 of this.

11 **MR. DEROCHIE:** Yes, we were most anxious to
12 do that.

13 **MR. NEVILLE:** Pardon me?

14 **MR. DEROCHIE:** We were most anxious to do
15 that.

16 **MR. NEVILLE:** Sure. And the memo speaks for
17 itself and I'm sure Mr. Commissioner has it and will read
18 it.

19 Can we look next -- and just so it's clear,
20 and I apologize, Mr. Commissioner, I took it somewhat out
21 of sequence. I meant to refer -- and it may not be an
22 exhibit, so maybe I should just make sure.

23 I should have referred the witness before
24 that last document to Document Number 738474, and I'm not
25 sure -- it is part of the notes, but I'm not sure it's one

1 of the ones that went in.

2 MR. DEROCHIE: What was that document
3 number, sir?

4 MR. NEVILLE: Yes, 738474.

5 THE COMMISSIONER: No, you wouldn't have
6 that.

7 MR. DEROCHIE: No?

8 THE COMMISSIONER: Unless it's an exhibit.

9 MR. DEROCHIE: I thought it might be this
10 one.

11 THE COMMISSIONER: No. The next one?

12 MR. NEVILLE: Yes. The cover page,
13 Commissioner, describes them as notes from February 4th,
14 2003 to July 22nd, 2003.

15 THE COMMISSIONER: Thank you. Exhibit 1399
16 are notes as described by Mr. Neville of Staff Sergeant
17 Garry Derochie.

18 --- EXHIBIT NO./PIÈCE No P-1399:

19 (738474) Notes of Garry Derochie - 06
20 Jan, 03 to 27 Jul, 03

21 MR. NEVILLE: So just to, as it were, close
22 the loop for us here, we have the memo to the Chief in
23 April and if we just look, and I'll identify some of the
24 Bates page numbers, how this issue is still percolating up
25 to that memo. We have 8149, 4th of February '03.

1 MR. DEROCHIE: Yes.

2 MR. NEVILLE: All right. That's a reference
3 to that issue.

4 Eight one five zero (8150), 5th of February.
5 It looks like a briefing with the Deputy Chief.

6 MR. DEROCHIE: Yes.

7 MR. NEVILLE: Item -- issue 3 or item 3 is
8 that same issue?

9 MR. DEROCHIE: Yes.

10 MR. NEVILLE: Okay. There's a reference to
11 Sergeant Snyder potentially assisting should you and your
12 force be the investigators?

13 MR. DEROCHIE: Yes.

14 MR. NEVILLE: All right. Eight one five one
15 (8151), 7th of February.

16 MR. DEROCHIE: Yes.

17 MR. NEVILLE: Same issue as referenced in
18 other meeting with the Chief and the Deputy Chief?

19 MR. DEROCHIE: Yes.

20 MR. NEVILLE: Eight one five nine (8159),
21 20th of March.

22 MR. DEROCHIE: Yes.

23 MR. NEVILLE: If you've had a chance to read
24 it to yourself, again it's a series of notes of you and the
25 Deputy Chief discussing this ongoing, unresolved matter.

1 **MR. DEROCHIE:** Yes.

2 **MR. NEVILLE:** All right. Eight one six zero
3 (8160), 31st of March.

4 **MR. DEROCHIE:** Yes.

5 **MR. NEVILLE:** Eight one six two (8162), 8th
6 of April. At the bottom of the page, one o'clock, I think
7 it is 13:00, you speak with Inspector Hall?

8 **MR. DEROCHIE:** Yes.

9 **MR. NEVILLE:** He is waiting to hear back
10 about his complaint about C-8?

11 **MR. DEROCHIE:** Yes.

12 **MR. NEVILLE:** And there's where we find your
13 closure reference; right?

14 "We wanted to bring closure to Dunlop."

15 **MR. DEROCHIE:** Yes.

16 **MR. NEVILLE:** All right. Top of the next
17 page, 8163?

18 **MR. DEROCHIE:** Yes.

19 **MR. NEVILLE:** You make a note to yourself I
20 guess:

21 "I will be taking action to get letter
22 to Regional Crown so we can at least
23 establish who should conduct the
24 investigation. Working on memo to
25 Chief and draft of letter to Crown,

1 Murray MacDonald."

2 Did that get completed, if you can recall?

3 **MR. DEROCHIE:** Yes.

4 **MR. NEVILLE:** Okay. And in fact if we look
5 on 8164, April 10th.

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** "Re Dunlop submitted memo and
8 draft of letter to the Crown."

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** And that is also the date of
11 Exhibit 1382, your memo to the Chief.

12 **MR. DEROCHIE:** Yes, it is.

13 **MR. NEVILLE:** All right. Now can I refer
14 you to 8168? We are now up to the 30th of June 2003.

15 Have you found it?

16 **MR. DEROCHIE:** Yes. Yes.

17 **MR. NEVILLE:** We have a reference, "0900,
18 Project Truth"?

19 **MR. DEROCHIE:** Yes.

20 **MR. NEVILLE:** It's another teleconference
21 with Inspector Hall?

22 **MR. DEROCHIE:** Correct.

23 **MR. NEVILLE:** And it covers a number of
24 points.

25 If we start at the bottom, it appears that

1 he's telling you that he has a letter, I gather to him, by
2 Mr. Stewart, the Regional Crown, all right?

3 **MR. DEROCHIE:** Dated June 19th ---

4 **MR. NEVILLE:** Yes, right.

5 In respect to the Chief's letter dated June
6 3rd, so that may be a letter that you drafted?

7 **MR. DEROCHIE:** Yes.

8 **MR. NEVILLE:** All right?

9 **MR. DEROCHIE:** yes.

10 **MR. NEVILLE:** And it says:

11 "Hall informed me that Stewart referred
12 Chief ..."

13 Meaning, I take it, your Chief?

14 **MR. DEROCHIE:** Yes.

15 **MR. NEVILLE:** "... to advice given to us by
16 Crown Attorney Garson, which eventually
17 resulted in Ottawa's investigation of
18 Dunlop regarding C-8's prelim testimony
19 and Dunlop's testimony at the same
20 prelim, re R. v. M. Lalonde."

21 Right?

22 **MR. DEROCHIE:** Yes.

23 **MR. NEVILLE:** All right. Then the next four
24 lines or so, it appears that again, as the case of Mr.
25 Garson, the investigation should not be conducted, that

1 your Chief should find an outside force?

2 MR. DEROCHIE: Yes.

3 MR. NEVILLE: All right. Let's go down two
4 bullet points:

5 "Hall also informed me that he had
6 received information from a Florida
7 State reporter that after Dunlop
8 testified at the C. MacDonald trial, he
9 attended a party at which he bragged
10 about having lied on the stand. Hall
11 said that he was prepared and would put
12 down in writing all of the concerns he
13 has with Dunlop and others which have
14 surfaced during his investigation of
15 Project Truth."

16 MR. DEROCHIE: Yes, I see that.

17 MR. NEVILLE: Did you obtain any further
18 information from Mr. Hall about this bragging about lying?

19 MR. DEROCHIE: No. We -- I -- we didn't
20 take any steps to obtain -- obtain more ---

21 MR. NEVILLE: Further information?

22 MR. DEROCHIE: Not at that point, no.

23 MR. NEVILLE: Okay. Now, can I refer you to
24 Document Number 705437?

25 It's a letter, Commissioner, from Mr. --

1 from Inspector Hall to James Stewart, the Regional Crown,
2 on the question of C-8, perjury and Mr. Dunlop on the 15th
3 of May, 2002.

4 And I'd like mainly to ask if this witness
5 is aware of it or was provided a copy; if not, I'll just
6 simply leave it for other witnesses.

7 (SHORT PAUSE/COURT PAUSE)

8 THE COMMISSIONER: That will be Exhibit
9 Number 1400.

10 MR. NEVILLE: May I say something,
11 Commissioner?

12 I was going to ask you -- I'm quite happy to
13 have that happen, but you may feel that he's not familiar
14 with it, it's premature; I don't know.

15 THE COMMISSIONER: Okay.

16 MR. NEVILLE: The content is relevant to
17 everything I've been covering, but simply on the
18 technicality of whether this witness ---

19 THE COMMISSIONER: Have you ever seen this
20 document?

21 MR. DEROCHIE: I don't believe I have.

22 MR. NEVILLE: All right.

23 THE COMMISSIONER: Okay.

24 MR. NEVILLE: That's what I wasn't sure,
25 sir, because he's not directly copied, but it's -- it's on

1 point.

2 I'm quite happy to have it an exhibit; it's
3 going to obviously come into your hands through Officer
4 Hall, but ---

5 **THE COMMISSIONER:** Mr. Engelmann?

6 **MR. ENGELMANN:** I don't mind it going in
7 there.

8 **THE COMMISSIONER:** One four zero zero
9 (1400), then.

10 --- **EXHIBIT NO./PIECE NO P-1400:**

11 (705437) Letter from P.R. Hall to James
12 Stewart - 15 May ,02

13 **MR. NEVILLE:** One four zero --
14 document 705437.

15 **MR. DEROCHIE:** Did you want me to read this?

16 **MR. NEVILLE:** Well, I don't think so, sir,
17 but if you haven't seen it before.

18 **THE COMMISSIONER:** Pardon? Publication ban,
19 yes.

20 **MR. NEVILLE:** Well, maybe I -- maybe I
21 should refer the -- thank you, Mr. Engelmann.

22 Mr. Engelmann just referred me, sir, I
23 should maybe take the witness to the last paragraph. If
24 you'd just for a moment, Staff Sergeant:

25 "It is not the mandate of the Ontario

1 Provincial Police to investigate Perry
2 Dunlop; however, I feel that the C-8
3 perjury allegations must be
4 investigated. The offence would have
5 occurred within the City of Cornwall.
6 Staff Sergeant Garry Derochie of the
7 Cornwall Police is aware of these
8 allegations of C-8. In my view, the
9 Cornwall Police Service should not
10 conduct any investigation into C-8 due
11 to the Dunlop connection."

12 Does that statement by the Inspector to Mr.
13 Stewart comport with your recollection?

14 **MR. DEROCHIE:** Yes, it does.

15 **MR. NEVILLE:** Okay, thank you.

16 Now, there's one final area -- I'll just be
17 a couple of moments to tidy it up, Mr. Commissioner -- again
18 it deals with the issue of perjury. It involves again C-8
19 and possibly Mr. Dunlop and then if I could refer the
20 witness and Commission to document 728285.

21 This appears to be authored by the witness,
22 sir.

23 **THE COMMISSIONER:** Thank you.

24 Here's a Supplementary Occurrence Report
25 from Staff Sergeant Derochie and when -- when did you do

1 this? On the 9th of the -- or September 7th?

2 --- EXHIBIT NO./PIECE NO P-1401:

3 (728285)Letter from P.R. Hall to James
4 Stewart - 15 May, 02

5 MR. NEVILLE: They relate -- it relates to
6 events, sir, on September 7th, 2000.

7 THE COMMISSIONER: Right, okay.

8 MR. NEVILLE: You authored this document,
9 Staff Sergeant, or dictated the contents, at least?

10 MR. DEROCHIE: Yes.

11 MR. NEVILLE: I'm just asking because it
12 says on the header "Authored, Derochie, G." ---

13 MR. DEROCHIE: Yes.

14 MR. NEVILLE: --- entered by a data person
15 or whatever.

16 MR. DEROCHIE: I normally do my own data
17 entry, that's what's caused me a little ---

18 MR. NEVILLE: Okay, fair enough.

19 MR. DEROCHIE: I'm taken aback by the fact
20 that I had someone else do it.

21 MR. NEVILLE: Okay. Now, this deals with
22 C-8, again, right?

23 Now, this deals with another instance of
24 perjury where C-8, on the eve of testifying ---

25 MR. DEROCHIE: Oh yes, yes.

1 **MR. NEVILLE:** It's coming back now?

2 **MR. DEROCHIE:** I think it's coming back now,
3 yes.

4 **MR. NEVILLE:** Okay. On the eve of his
5 testimony at Marcel Lalonde's trial ---

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** --- similar to the Father
8 MacDonald situation, admits in the preparatory interview
9 having, in part, lied, right?

10 **MR. DEROCHIE:** Yes.

11 **MR. NEVILLE:** And you record the
12 circumstances of his explanation for the lie; is that right?

13 **MR. DEROCHIE:** Yes, as related to me by
14 Detective Constable Desrosiers.

15 **MR. NEVILLE:** Now, the officer of your Force
16 with direct carriage of the Lalonde matter was René
17 Derosiers?

18 **MR. DEROCHIE:** Correct.

19 **MR. NEVILLE:** And am I right; my
20 recollection is that this was a prosecution that had a bit
21 of a joint aspect?

22 **MR. DEROCHIE:** It did, with the OPP.

23 **MR. NEVILLE:** Right. And I think it was
24 Officer Genier?

25 **MR. DEROCHIE:** Genier.

1 **MR. NEVILLE:** Because some of the conduct
2 was outside the City limits?

3 **MR. DEROCHIE:** Exactly.

4 **MR. NEVILLE:** Okay, I got it.

5 And it would appear that in the interview at
6 which Officer Desrosiers and -- and Ms. Wilhelm, the
7 prosecutor were present, he acknowledges having perjured
8 himself ---

9 **MR. DEROCHIE:** Yes.

10 **MR. NEVILLE:** --- and says this:

11 "He went on to explain that Dunlop had
12 told him that for the purpose of a
13 civil action in relation to the same
14 allegations for which Lalonde was
15 charged, it would be beneficial if an
16 incident had occurred at or in
17 relationship to Lalonde's position as
18 an employee of the Catholic School
19 Board of SDG; that is to say, Lalonde
20 had limited assets, but the school
21 board had, in effect, 'deep pockets'.
22 C-8 put took Dunlop's advice and
23 fabricated a story which would result
24 in the school board being libelled
25 along with Lalonde, subsequently C-8

1 included the fabrication in the
2 statement given to Dunlop and then
3 repeated the story under oath at the
4 preliminary inquiry."

5 Right?

6 **MR. DEROCHIE:** Yes.

7 **MR. NEVILLE:** Now, you then became as it
8 were the complainant into this matter.

9 **MR. DEROCHIE:** Correct.

10 **MR. NEVILLE:** All right. So if we could
11 next look at Document 728297?

12 (SHORT PAUSE/COURTE PAUSE)

13 **THE COMMISSIONER:** Okay, Exhibit Number 1402
14 is a supplementary report of Staff Sergeant Derochie and
15 that's dated the 31st of January '02.

16 ---EXHIBIT NO./PIÈCE NO P-1402:

17 (728297) Supplementary Report - 15 Aug,
18 01

19 **MR. DEROCHIE:** If I may clarify, this is the
20 supplementary report filed by Detective Sergeant Gary
21 Lefebvre.

22 **THE COMMISSIONER:** Thank you. And what date
23 would that have been on? Is it the 31st of January, '02?

24 **MR. NEVILLE:** It's hard to tell,
25 Commissioner. It looks like ---

1 **MR. DEROCHIE:** The 15th of ---

2 **MR. NEVILLE:** The 15th, yes, of August.

3 **MR. DEROCHIE:** The 15th of August, '01.

4 **MR. NEVILLE:** Zero one ('01). Relating to
5 the same event in September 2000, sir.

6 **THE COMMISSIONER:** M'hm. Okay.

7 **MR. NEVILLE:** I think you see when we get to
8 the final document, there may be some reason for the delay
9 because ultimately you'll learn, sir, that nothing directly
10 comes of this by way of a prosecution and why.

11 **MR. NEVILLE:** Can we just look, now you're -
12 - as we see at the top, have become in effect the
13 complainant?

14 **MR. DEROCHIE:** Yes, I would expect that
15 there would be a general occurrence report that I would
16 have submitted ---

17 **MR. NEVILLE:** Okay.

18 **MR. DEROCHIE:** --- prior to this.

19 **MR. NEVILLE:** Fair enough. Fair enough. So
20 this has to do with the fact that C-8 is eventually brought
21 back for, as it were, a formal interrogation or interview
22 about his conduct in having perjured himself?

23 **MR. DEROCHIE:** Yes.

24 **MR. NEVILLE:** All right, and here is what he
25 says, about the sixth line:

1 "A video interview was conducted with
2 C-8 admitting he lied under oath
3 concerning the allegations of sexual
4 assault on the school trip to Toronto.
5 He stated that Perry Dunlop kept
6 questioning him about the possibility
7 of an assault occurring while Lalonde
8 was acting in his capacity as a
9 teacher, but was adamant that he was
10 never counselled or instructed to lie."

11 Meaning by Dunlop; right?

12 **MR. DEROCHIE:** Yes.

13 **MR. NEVILLE:** All right.

14 "When asked why he would make up the
15 Toronto assaults, he indicated that due
16 to his victimization in the past, he
17 was quite susceptible to any type of
18 pressure or suggestion. He considered
19 Dunlop a good friend who had helped him
20 through a very difficult time in his
21 life and was eager to please him. When
22 Dunlop continued to question him about
23 possible assaults in relation to school
24 activities, C-8 made up the story about
25 Toronto as he believed it would gain

1 him further acceptance with Perry.
2 Once he fabricated the story, he felt
3 trapped and decided he had no choice
4 but to continue with that version of
5 events."

6 Now, I'm going to suggest, Staff Sergeant,
7 that this event, as we've just confirmed, epitomizes why
8 you and others were instructing Mr. Dunlop to stop speaking
9 to complainants?

10 **MR. DEROCHIE:** Certainly, this is an extreme
11 example ---

12 **MR. NEVILLE:** Sure.

13 **MR. DEROCHIE:** --- of that concern.

14 **MR. NEVILLE:** Yes. He apparently has done
15 this to please Perry Dunlop because he keeps pressuring
16 him, "Tell me more;" right?

17 **MR. DEROCHIE:** Yes.

18 **MR. NEVILLE:** Now, let's look at one further
19 document, 728293.

20 **(SHORT PAUSE/COURTE PAUSE)**

21 **THE COMMISSIONER:** Exhibit 1403 is a
22 supplementary report filed by, I see, a constable -- is it
23 Constable Lefebvre?

24 **MR. NEVILLE:** Sergeant.

25 **THE COMMISSIONER:** Sergeant Lefebvre on the

1 19th of May '01.

2 --- EXHIBIT NO./PIÈCE NO. P-1403:

3 (728293) Supplementary Report dated 19
4 May 01

5 **MR. NEVILLE:** Now, this appears, Staff
6 Sergeant, to be somewhat of a summary of the matter as it
7 unfolded from the start and just, if you want to confirm
8 that for me and for Mr. Commissioner, please do. Because I
9 just want to take you to the third page of it?

10 **MR. DEROCHIE:** Yes, it appears that's what
11 he's doing here.

12 **MR. NEVILLE:** All right. So I just want to
13 come to what was the resolution of this problem and it's on
14 page -- and I'm using number three in the top right corner,
15 sir.

16 **MR. DEROCHIE:** Yes, I'm there.

17 **MR. NEVILLE:** "On the 17th of January the
18 writer was able to speak with Assistant
19 Crown Wilhelm concerning this matter.
20 She is in agreement that there is
21 sufficient evidence to support a charge
22 of perjury against C-8. However, given
23 the circumstances and history
24 surrounding this case, she has also
25 agreed the case against him should be

1 resolved without proceeding on criminal
2 charges. The above belief is based on
3 the following."

4 And then she itemizes them. No charges were
5 ever laid based on the false allegation. He came forward
6 voluntarily prior to trial and admitted his lies. He was a
7 fragile psychological state. The fourth bullet point:

8 "Although there was no evidence of
9 overt actions by other individuals to
10 cause C-8 to perjure himself, it is
11 evident that individuals took advantage
12 of his mental state to further their
13 own agendas."

14 I'm suggesting to you, Staff Sergeant,
15 that's Perry Dunlop; isn't it?

16 **MR. DEROCHIE:** He would be one.

17 **MR. NEVILLE:** Yes. Staff Sergeant, I'm
18 finished my questions.

19 I would be remiss if I didn't say to you
20 personally that the Cornwall community have been well
21 served by your professional contributions, both at this
22 Inquiry and prior. Thank you.

23 **MR. DEROCHIE:** Well, thank you for those
24 comments, sir.

25 **MR. NEVILLE:** Thank you, Commissioner.

1 **THE COMMISSIONER:** We'll take the afternoon
2 break.

3 **THE REGISTRAR:** Order; all rise. À l'ordre;
4 veuillez vous levez.

5 This Hearing will resume at 3:20.

6 --- Upon recessing at 3:08 p.m./

7 L'audience est suspendue à 15h08

8 --- Upon resuming at 3:28 p.m./

9 L'audience est reprise à 15h28

10 **THE REGISTRAR:** Order; all rise. À l'ordre;
11 veuillez vous levez.

12 This Hearing is now resumed. Please be
13 seated. Veuillez vous asseoir.

14 **GARRY DEROCHIE, Resumed/Sous le même serment:**

15 **THE COMMISSIONER:** Mr. Engelmann?

16 **MR. ENGELMANN:** I'm not jumping the queue,
17 sir. I just wanted to clarify one thing for the record
18 before Mr. Chisholm starts. Exhibit 1395 ---

19 **THE COMMISSIONER:** M'hm.

20 **MR. ENGELMANN:** --- which was entered during
21 Mr. Neville's cross, it should be noted as document -- for
22 the record, Document 712142. I believe it was stated as
23 712412. It is in fact 712142.

24 **THE COMMISSIONER:** Thank you.

25 **MR. ENGELMANN:** Thank you.

1 **THE COMMISSIONER:** Yes and before -- well,
2 Mr. Chisholm, come on up and before you start speaking, I
3 will be, and it's not out of any malice or anything, but
4 when we get into repetition, I will be stopping people and
5 just putting ---

6 **MR. CHISHOLM:** That's fair, sir.

7 **THE COMMISSIONER:** Anyway, so there you are,
8 Mr. Chisholm.

9 **MR. CHISHOLM:** Thank you.

10 **THE COMMISSIONER:** Are you repeating
11 yourself?

12 **(LAUGHTER/RIRES)**

13 **THE COMMISSIONER:** All right.

14 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

15 **CHISHOLM:**

16 **MR. CHISHOLM:** Good afternoon, Staff
17 Sergeant.

18 **MR. DEROCHIE:** Good afternoon, sir.

19 **MR. CHISHOLM:** You know who I am and who I
20 act for?

21 **MR. DEROCHIE:** I do.

22 **MR. CHISHOLM:** If I could start by taking
23 you please to Exhibit 1299?

24 **THE COMMISSIONER:** Twelve-ninety-nine
25 (1299), m'hm.

1 **MR. CHISHOLM:** And this, I understand, is a
2 note from Richard Abell dated October 14th, '93 with respect
3 to a meeting that he had with you between the hours of 8:30
4 and 8:53 a.m. That's what you understand this document to
5 be, Staff Sergeant?

6 **MR. DEROCHIE:** That's correct.

7 **MR. CHISHOLM:** If I could take you to the
8 second page, it's Bates page 7044919 and in the first two
9 hash marks, it says something should be done to investigate
10 allegation against Ken Seguin. That was you saying that
11 according to Richard Abell. Is that your understanding
12 that you in fact said that?

13 **MR. DEROCHIE:** Yes, I don't have an
14 independent recollection, but yes.

15 **MR. CHISHOLM:** You have no reason to doubt
16 that ---

17 **MR. DEROCHIE:** No, none whatsoever.

18 **MR. CHISHOLM:** Okay. And the next mark:

19 "I tell him we are beginning our
20 investigation."

21 Do you have any recollection of ---

22 **MR. DEROCHIE:** I do. I remember him telling
23 me that he had called in the OPP. He was going to do an
24 investigation and then he was going to ask the OPP to
25 participate.

1 **MR. CHISHOLM:** And you understood that to be
2 an investigation with respect to the allegation against Ken
3 Seguin; is that right?

4 **MR. DEROCHIE:** No.

5 **MR. CHISHOLM:** No?

6 **MR. DEROCHIE:** I thought that was an
7 investigation with regards to Father Charlie MacDonald.

8 **MR. CHISHOLM:** And if Mr. Abell were to
9 testify in the future that he indicated that he was
10 beginning the investigation with respect to all of Mr.
11 Silmser's allegations basically against Father MacDonald
12 and Ken Seguin; what would you say to that?

13 **MR. DEROCHIE:** My recollection of those
14 conversations, and there were two of them with regards to
15 Mr. Seguin, was that it was my understanding that the
16 Project Blue investigation would not include Ken Seguin.
17 That was my understanding.

18 **MR. CHISHOLM:** Okay. If I could take you,
19 please, to Exhibit 1293 and specifically to Bates page
20 7113417?

21 **MR. DEROCHIE:** Three-four-one-seven (3417)?

22 **MR. CHISHOLM:** Yes, sir, the last four
23 numbers are 3417, and it's page 45 of your notes, Staff
24 Sergeant, the last paragraph. And this is -- I'll wait for
25 you to get there.

1 **MR. DEROCHIE:** I'm there.

2 **MR. CHISHOLM:** "Abell also informed me
3 that they were not involving themselves
4 with looking into Ken Seguin's
5 involvement. The Ministers were not
6 connected as previously thought and
7 they were not prepared to enter into
8 the same type of investigation they
9 were doing on MacDonald (no further
10 question??)"

11 That's what you -- that's the position you
12 just put to me?

13 **MR. DEROCHIE:** That was my thoughts.

14 **MR. CHISHOLM:** Okay.

15 **MR. DEROCHIE:** That was my understanding.

16 **MR. CHISHOLM:** And is it possible, sir, you
17 may have been mistaken with respect to what Mr. Abell told
18 you?

19 **MR. DEROCHIE:** It is possible.

20 **MR. CHISHOLM:** And you'd agree your note is
21 inconsistent with the note of Mr. Abell. Is that fair to
22 say?

23 **MR. DEROCHIE:** They're inconsistent.

24 **THE COMMISSIONER:** And that's not with a
25 question mark. That's with a period.

1 **MR. DEROCHIE:** With a period?

2 **THE COMMISSIONER:** They are inconsistent.

3 **MR. DEROCHIE:** Well, my notes are
4 inconsistent with Mr. Abell's, yes.

5 **THE COMMISSIONER:** No, I was just ---

6 **MR. DEROCHIE:** I'm sorry.

7 **THE COMMISSIONER:** You remember a couple
8 days ago we talked about whether they should be question
9 marks or ---

10 **MR. DEROCHIE:** Yes, quite right. Quite
11 right, yes. A little slow.

12 **MR. CHISHOLM:** It's been a long nine days,
13 sir.

14 **MR. DEROCHIE:** Somewhat.

15 **MR. CHISHOLM:** If I could take you back to
16 page 15 of your notes? It's Bates page 7113387, the entry
17 of October 14th.

18 **MR. DEROCHIE:** Yes.

19 **MR. CHISHOLM:** Do I understand that your
20 notes with respect to October the 14th were actually made at
21 3/11, which would be November the 3rd?

22 **MR. DEROCHIE:** Correct.

23 **MR. CHISHOLM:** That's some 20 days after the
24 event. Is that right?

25 **MR. DEROCHIE:** Correct.

1 **MR. CHISHOLM:** And would you agree that
2 notes made 20 days after the event may not be as accurate
3 as notes that are made contemporaneously?

4 **MR. DEROCHIE:** I would agree that that's
5 true.

6 **MR. CHISHOLM:** And would you agree that it's
7 possible that you were mistaken with respect to what Mr.
8 Abell told you about the commencing investigation with
9 respect to the allegations of Mr. Silmsler with respect to
10 Ken Seguin?

11 **MR. DEROCHIE:** It's possible, but I made
12 notations with regard -- the same notations or the same --
13 my understanding was the same after both meetings with Mr.
14 Abell with regards to Ken Seguin, but it's possible that I
15 made a mistake. I misunderstood what I ---

16 **MR. CHISHOLM:** And you recall there was some
17 confusion with respect to -- Mr. Abell had a question with
18 respect to what ministry Ken Seguin was employed by?

19 **MR. DEROCHIE:** Yes.

20 **MR. CHISHOLM:** That was an outstanding
21 question for a period of time?

22 **MR. DEROCHIE:** That was, yes.

23 **MR. CHISHOLM:** Would you agree with me that
24 it would be inconsistent for the CAS to investigate Mr.
25 Silmsler's allegations with respect to Father MacDonald and

1 to not investigate the allegations of Mr. Silmsler with
2 respect to Mr. Seguin due to the fact that Mr. Seguin
3 worked for a ministry that was not the governing ministry
4 of the CAS?

5 **MR. DEROCHIE:** Yes, I didn't see why his
6 belonging to whatever ministry had anything to do with
7 regards to the CAS mandate, if that's your question.

8 **MR. CHISHOLM:** Nothing would turn on that
9 with respect to the CAS mandate? Right?

10 **MR. DEROCHIE:** Right. Nothing turns on it.

11 **MR. CHISHOLM:** Okay. Now, if I could move
12 on to another area, the Jeannette Antoine area. If I could
13 take you, please, to Exhibit 1337, and specifically to page
14 -- these are your notes -- and specifically to page 52 of
15 your notes. That would be Bates page 7175707. I'm
16 interested in the last two lines in that page, Staff
17 Sergeant.

18 **MR. DEROCHIE:** The last two lines on page
19 52?

20 **MR. CHISHOLM:** On page 52 of your notes, and
21 that's a January 24, 1994 entry. Is that right?

22 **MR. DEROCHIE:** Yes, it is.

23 **MR. CHISHOLM:** I'll just wait for it to come
24 up on the screen.

25 It would be the last two lines, Madam Clerk.

1 "Sebalj says that Malloy dismissed
2 Antoine as ..."

3 And then turning the page:

4 "... being unreliable and that he was
5 unable to corroborate her allegations."

6 **MR. DEROCHIE:** Correct.

7 **MR. CHISHOLM:** That's what Constable Sebalj
8 told you? Do I understand your note?

9 **MR. DEROCHIE:** Yes, words to that effect.

10 **MR. CHISHOLM:** Okay. Then still in that
11 exhibit, page 93, sir, Bates page 7175748, halfway down the
12 page, Staff Sergeant, starting with "Mr. Bell" ---

13 **THE REGISTRAR:** Do you have the Bates
14 number?

15 **MR. CHISHOLM:** I'm sorry; Bates page
16 7175748.

17 Do you have that, Staff Sergeant?

18 **MR. DEROCHIE:** I do.

19 **MR. CHISHOLM:** And it reads:

20 "Mr. Bell struck me as a very dedicated
21 professional who would not compromise
22 in his beliefs. Mr. Bell was very
23 cooperative and spoke freely on this
24 matter."

25 You're speaking of Greg Bell of CAS. Is

1 that right, sir?

2 **MR. DEROCHIE:** Correct.

3 **MR. CHISHOLM:** And that was with respect to
4 a meeting that you had on February the 10th of '94 ---

5 **MR. DEROCHIE:** That's correct.

6 **MR. CHISHOLM:** --- with Mr. Bell?

7 **MR. DEROCHIE:** Yeah.

8 **MR. CHISHOLM:** And do you still stand by
9 that statement today, sir? Has anything changed?

10 **MR. DEROCHIE:** No, not at all.

11 **MR. CHISHOLM:** If I could take you, please,
12 to page 10 of that exhibit, and it's Bates page 7175665,
13 and the last paragraph is what I'm interested in.

14 Just to set the context, Staff Sergeant,
15 you're speaking of a meeting there. And you may want to
16 look -- you don't need to, Madam Clerk, to take us back to
17 page 9 -- but you may want to flip back to page 9 of your
18 note for a second, sir, the last line. It gives you a date
19 of November of 1993. And then if I could take you back to
20 page 10, the last paragraph, it reads:

21 "Also in on this meeting between
22 Sebalj, Antoine, were Geraldine
23 Fitzpatrick, a CAS caseworker and
24 Carleen Cummings ..."

25 You have Cummings with an "s". I don't believe -- Carleen

1 Cumming is the way I believe it should read.

2 "... a CAS contract caseworker."

3 Can you tell me, Staff Sergeant, how you
4 came to conclude that Ms. Cumming was in attendance on that
5 interview along with Constable Sebalj and Ms. Fitzpatrick
6 and Ms. Antoine?

7 **MR. DEROCHIE:** I would have gotten that
8 information from Constable -- or Detective Constable
9 Sebalj.

10 **MR. CHISHOLM:** You believe Constable Sebalj
11 told you that?

12 **MR. DEROCHIE:** I believe so, yes.

13 **MR. CHISHOLM:** Thank you.

14 And with respect to that interview that was
15 conducted by -- with Ms. Antoine and Ms. Sebalj and Ms.
16 Fitzpatrick and, according to Ms. Sebalj, Ms. Cumming, do
17 you know if anyone ever brought any of the concerns that
18 arose out of that interview to the attention of any of the
19 authorities at the CAS?

20 **MR. DEROCHIE:** Not to my knowledge.

21 **MR. CHISHOLM:** I take it, sir, that at one
22 point Constable Shawn White was assigned to investigate the
23 allegations made by Ms. Antoine at the Second Street Group
24 Home. Is that right?

25 **MR. DEROCHIE:** That's right. I should

1 complete my last question saying I have -- I didn't.
2 Someone else may have. I don't know.

3 **MR. CHISHOLM:** Not to your knowledge? You
4 didn't bring any concerns to the CAS?

5 **MR. DEROCHIE:** I didn't bring it to anyone,
6 and I don't have knowledge if someone else did. I can't
7 recall if someone else did. Maybe it's fair.

8 **MR. CHISHOLM:** With respect to Constable
9 Shawn White's investigation, who oversaw that? Who oversaw
10 Constable White?

11 **MR. DEROCHIE:** He reported to me. He worked
12 rather independently, but he reported to me on a need-to
13 basis.

14 **MR. CHISHOLM:** In the chain of command, you
15 would have been above him?

16 **MR. DEROCHIE:** Yes, he was under the
17 supervision of Staff Sergeant Brunet and seconded, as it
18 were, to this investigation. It was outside his normal CID
19 duties.

20 **MR. CHISHOLM:** And did you have some
21 knowledge with respect to what Constable White was doing in
22 his investigation? How it was progressing?

23 **MR. DEROCHIE:** Yes, some basic knowledge.

24 **MR. CHISHOLM:** What do you know in terms of
25 the number of people that Constable White would have

1 interviewed?

2 **MR. DEROCHIE:** Oh, he did an extensive
3 investigation into this. He did some considerable
4 travelling and interviewed a number of people.

5 **MR. CHISHOLM:** Travelling out to Western
6 Canada?

7 **MR. DEROCHIE:** That's correct. Yes.

8 **MR. CHISHOLM:** Sorry. Just one moment
9 please.

10 **(SHORT PAUSE/COURTE PAUSE)**

11 **MR. CHISHOLM:** Do you know what Constable
12 White's ultimate conclusion was with respect to the
13 allegations made by Ms. Antoine with respect to the Second
14 Street Group Home?

15 **MR. DEROCHIE:** He sought the opinion of a
16 Crown and there was no grounds to -- there was no
17 reasonable prospect for a conviction. No charges were laid
18 on the matters relating -- that he investigated.

19 **MR. CHISHOLM:** And you understand Constable
20 White investigated the allegations with respect to physical
21 and sexual abuse made by Ms. Antoine of the Second Street
22 Group Home; is that right?

23 **MR. DEROCHIE:** Correct. Correct.

24 **MR. CHISHOLM:** Okay. And you indicated that
25 he sought the guidance of a Crown attorney?

1 **MR. DEROCHIE:** Correct.

2 **MR. CHISHOLM:** And would that be the
3 Regional Director of Crown Attorneys at the time, Peter
4 Griffiths?

5 **MR. DEROCHIE:** Correct.

6 **MR. CHISHOLM:** And do you know -- if I could
7 take you please to Exhibit 1339.

8 **MR. DEROCHIE:** I'm there, yes, sir.

9 **MR. CHISHOLM:** It would be the second page
10 of that letter of -- the letter is dated October 24th, 1994.
11 It's a letter addressed to Constable White by at the time
12 the Regional Director of Crown Attorneys, Peter Griffiths.

13 I am interested in the second page, Bates
14 page 7175883, the first paragraph, the last sentence
15 therein reads:

16 "Accordingly, it is my opinion you do
17 not have reasonable and probable
18 grounds to lay any charge of physical
19 abuse or assault arising out of the
20 allegations of Ms. Antoine."

21 **MR. DEROCHIE:** That's correct, that's what
22 it says. That was the opinion he had received from the
23 Crown.

24 **MR. CHISHOLM:** And was that an opinion, do
25 you know, that was -- that Constable White held as well?

1 **MR. DEROCHIE:** Yes.

2 **MR. CHISHOLM:** And if I take you two
3 paragraphs further down on that page:

4 "Given the nature of this allegation,
5 the age of the complaint and the lack
6 of confirmatory evidence, it is my
7 opinion that you do not have reasonable
8 and probable grounds for the laying of
9 any charges arising out of this
10 complaint."

11 And I believe this complaint would refer to
12 the paragraph immediately above the one I just read, the
13 sexual impropriety made by Ms. Antoine touching upon Bryan
14 Keough and Derry Tenger.

15 Is that your understanding, sir?

16 **MR. DEROCHIE:** Yes, it is.

17 **MR. CHISHOLM:** And to your understanding,
18 did Constable White share the view that he did not have
19 reasonable and probable grounds to lay a charge?

20 **MR. DEROCHIE:** That's correct. He did not.

21 **MR. CHISHOLM:** If I could take you please to
22 Exhibit 1286. This is the April 1995 report to Acting
23 Chief Carl Johnston with respect to the Jeannette Antoine
24 complaint.

25 I'm interested in your page 12 of that

1 report which would be Bates page 7175651.

2 MR. DEROCHIE: Did you say 1286?

3 MR. CHISHOLM: I'm sorry, Exhibit 1286.

4 MR. DEROCHIE: No, I don't have that binder.

5 Thank you.

6 Yes, I'm there.

7 MR. CHISHOLM: And on page 12, halfway down

8 that page, in the third paragraph after item number six,

9 and the paragraphs reads "Firstly, presumably ..."

10 Do you see that paragraph?

11 MR. DEROCHIE: I'm sorry, which one again

12 now?

13 MR. CHISHOLM: I'm on page 12 and the

14 paragraph is halfway down the page and it reads:

15 "Firstly, presumably the motivation for

16 Constable Malloy ..."

17 Do you see that, sir?

18 MR. DEROCHIE: Yes, yes.

19 MR. CHISHOLM: Oh, sorry.

20 MR. DEROCHIE: Yes, yes.

21 MR. CHISHOLM: The last sentence of that

22 paragraph:

23 "I believe it is obvious that CAS

24 wanted the matter investigated

25 thoroughly and laid to rest once and

1 for all."

2 That was the opinion that you held when you
3 wrote this report in April of '95?

4 **MR. DEROCHIE:** That's correct.

5 **MR. CHISHOLM:** Has anything changed since
6 then?

7 **MR. DEROCHIE:** It has not.

8 **MR. CHISHOLM:** If I could take you to
9 Exhibit 1338 please.

10 **MR. DEROCHIE:** Yes, sir, I'm there.

11 **MR. CHISHOLM:** This is a memo to Acting
12 Chief, Carl Johnston, written by you dated November 2nd,
13 1994, and the first paragraph reads -- I will wait for
14 Madam Clerk to get it on the screen, I apologize.

15 The first paragraph reads, Staff Sergeant:

16 "I have reviewed the letter sent to
17 Constable White by Mr. Peter Griffiths,
18 Regional Director of Crown Attorneys.

19 I am not surprised by the conclusions
20 reached by Mr. Griffiths. Constable
21 White and myself were in agreement that
22 it would be very difficult to
23 successfully prosecute anyone in this
24 matter."

25 Can you tell me why you were of the view it

1 would be very difficult to successfully prosecute anyone in
2 that matter?

3 **MR. DEROCHIE:** His investigation had
4 revealed absolutely no corroboration for the allegations
5 that were put forth. There was no evidence.

6 **MR. CHISHOLM:** Okay. And with respect of
7 the second paragraph of the memo, it reads:

8 "Although we had identified major
9 credibility problems very early in this
10 investigation, let me assure you that
11 Constable White did not just go through
12 the motions. He conducted an extensive
13 and very thorough inquiry into Ms.
14 Antoine's allegations and no shortcuts
15 were taken; he exhausted each and every
16 avenue of investigation."

17 Is that still your position that Constable
18 White did a thorough and extensive investigation?

19 **MR. DEROCHIE:** He did. I went -- I went to
20 pains when we were talking, at the outset, that -- that
21 there were no shortcuts to be taken on this, that he had
22 carte blanche to go wherever he wanted to go with this; it
23 was important because it was going to be scrutinized.

24 **MR. CHISHOLM:** And he made reference to the
25 identification of major credibility problems?

1 **MR. DEROCHIE:** Yes.

2 **MR. CHISHOLM:** Whose credibility that you're
3 referring to in that paragraph?

4 **MR. DEROCHIE:** Ms. Antoine's.

5 **MR. CHISHOLM:** If I could take you to one
6 last area, please, and this would be the Earl Landry Jr.
7 and the Larry Seguin investigation.

8 The exhibit I'll take you to is
9 Exhibit 1353, that's a "C" exhibit.

10 **MR. DEROCHIE:** Yes, sir, I'm there.

11 **MR. CHISHOLM:** Do you have that, Staff
12 Sergeant?

13 **MR. DEROCHIE:** I do.

14 **MR. CHISHOLM:** Okay. And this is a letter
15 written from Dr. Malcolm Park from the Children's Hospital
16 of Eastern Ontario to John Dupuis of the CAS, dated
17 September 11, 1985.

18 Do you recall during your evidence with Mr.
19 Engelmann you had a discussion -- and this would have been
20 prior to the three-week break we just had -- you had a
21 discussion with Mr. Engelmann with respect to there being
22 an earlier letter from CHEO?

23 **MR. DEROCHIE:** That's my belief, yes.

24 **MR. CHISHOLM:** That's your belief.

25 If I could take you please -- keep -- keep

1 that exhibit around, 1353 -- but if I could take you also,
2 please, to Exhibit 1349 which are your notes.

3 **MR. DEROCHIE:** Yes, I'm there.

4 **MR. CHISHOLM:** If I could take you to page 8
5 of your notes, please; Bates page 7181140. Page 8 and it's
6 the last four lines I'm interested in, the September 14th,
7 '99 entry.

8 If I understand your notes correctly, Staff
9 Sergeant, on September the 14th, 1999, you attended at the
10 CAS at 1:25 in the afternoon; is that right?

11 **MR. DEROCHIE:** That's correct.

12 **MR. CHISHOLM:** And you make reference to
13 "Patricia"; would that be Patricia Garrahan of the CAS?

14 **MR. DEROCHIE:** I -- I don't know the lady,
15 but if that's who it would have been, yes.

16 **MR. CHISHOLM:** Possibly.

17 **MR. DEROCHIE:** Possibly.

18 **MR. CHISHOLM:** Okay.

19 If I could take you on to page 9, please,
20 the last six lines, ones I'd be interested in and it reads:

21 "The only reference to Landry is
22 contained in a letter to CAS from Dr.
23 Malcolm Park of CHEO who, in the
24 correspondence dated July 23, '85,
25 indicates 'The boys were referred to

1 CHEO to be examined by a special team.
2 The hospital has to deal with such
3 referrals. The team concluded that
4 although there was no physical evidence
5 of sexual abuse, their opinion was that
6 the abuse had occurred.'"

7 So looking at your notes, you were of the
8 view that the earlier letter was dated July the 23rd of
9 1985; is that fair?

10 **MR. DEROCHIE:** Yes, that's fair.

11 **MR. CHISHOLM:** Okay. Now, if I could take
12 you back to Exhibit 1353 and keep your notes handy, please.

13 **MR. DEROCHIE:** Yes.

14 **MR. CHISHOLM:** In the first paragraph of
15 that letter is what I'm interested in. These two boys were
16 brought to the medical clinic on July 23, 1985?

17 **MR. DEROCHIE:** Yes.

18 **MR. CHISHOLM:** That's the same date that you
19 have in your -- in your notebook suggesting that the date
20 of the letter was July the 23rd; is that right?

21 **MR. DEROCHIE:** That's correct.

22 **MR. CHISHOLM:** And would you agree with me,
23 looking at the first paragraph, that July the 23rd is, in
24 fact, the first day that Dr. Park met with the boys who
25 were the subject of this letter?

1 **MR. DEROCHIE:** Yes.

2 **MR. CHISHOLM:** And if I could take you back
3 to your notes -- but again keeping the letter handy, please
4 -- page 9 of the notes again, the last six lines, you say
5 the only reference to Landry is contained in the letter of
6 July the 23rd; right?

7 **MR. DEROCHIE:** That's correct, yes.

8 **MR. CHISHOLM:** And if I could take you back
9 to the letter and get you to look at the second paragraph,
10 there's a reference to Earl Landry; is that fair to say?

11 **MR. DEROCHIE:** That's correct.

12 **MR. CHISHOLM:** And then dealing with the
13 letter, if I could take you to the second page, which is
14 Bates page 7179462, and the first paragraph reads:

15 "Physical examination was also
16 completely normal with no evidence of
17 trauma."

18 Do you see that?

19 **MR. DEROCHIE:** Yes.

20 **MR. CHISHOLM:** And in the third paragraph on
21 that page, there's a reference to the hospital's Child
22 Protection Team; is that right?

23 **MR. DEROCHIE:** Correct, yes.

24 **MR. CHISHOLM:** And in the following
25 paragraph, there's a conclusion that -- by that team, that

1 extra-familial sexual abuse had occurred; is that right?

2 MR. DEROCHIE: That's correct, yes.

3 MR. CHISHOLM: If I could take you back to
4 page 10 of your notes, please. So at page 10, in the top
5 two -- the top -- the top two lines, there's a reference to
6 a special team referred to in the correspondence that you
7 indicate was July the 23rd of '85; is that right?

8 MR. DEROCHIE: That's correct.

9 MR. CHISHOLM: And just a few lines down,
10 you also make reference to the fact there was no physical
11 evidence of sexual abuse; right?

12 MR. DEROCHIE: Correct. Correct.

13 MR. CHISHOLM: And would you agree with me,
14 sir, that the words "no physical evidence of sexual abuse"
15 is a summary of Dr. Park's words that there was no evidence
16 of trauma?

17 MR. DEROCHIE: Yes.

18 MR. CHISHOLM: If I could take you back to
19 the letter, please, of September of 1985, the second page,
20 and it's Bates page 7179462; in the second paragraph,
21 there's a reference to swabs being taken for culture which
22 were negative?

23 MR. DEROCHIE: Yes.

24 MR. CHISHOLM: And you conclude from that
25 that there was a -- once the swabs were taken, a culture

1 test was performed?

2 MR. DEROCHIE: Yes, it takes some time to do
3 that, I understand.

4 MR. CHISHOLM: Some time?

5 Now, would you agree with me, Staff
6 Sergeant, if -- if the -- if there was, in fact, a letter
7 from CHEO, July the 23rd, 1985, it would have had to have
8 been written the same day as the boys first attended at the
9 hospital?

10 MR. DEROCHIE: I agree with that, yes.

11 MR. CHISHOLM: Okay. The swab tests that I
12 just referred to would have had to have been completed by
13 July the 23rd, in order for that ---

14 MR. DEROCHIE: I'm sorry?

15 MR. CHISHOLM: Would you also agree that if
16 there was a letter of July the 23rd, the swab tests would
17 have had to have been completed by that very same day?

18 MR. DEROCHIE: Only if he was going to
19 report on that, on those -- on that particular item on the
20 23rd.

21 Your -- my theory is that there was a letter
22 generated -- first of all, I'm subject to being mistaking -
23 - mistaken on this. God knows I've ---

24 MR. CHISHOLM: I'm going to suggest that --
25 at the end of my question I'm going to suggest that you are

1 and that what you did, you actually looked at the September
2 11th, 1985 letter and you took -- when you were making your
3 notes, you saw the July 23, 1985 date in the first
4 paragraph and instead of referencing the letter September
5 11, 1985, you put the July 23rd date in?

6 **MR. DEROCHIE:** Yes. And that, I concede, is
7 possible. I could have done that. However, I don't
8 believe that is the case.

9 I believe that -- because had I seen this
10 document, obviously, I was surprised when I saw it in
11 nineteen -- when I saw it when Sergeant Snyder produced it
12 or told me about it.

13 And I said, well that's strange. There was
14 no recommendation with regards to the police continuing
15 their follow up. It was -- on the letter that I saw.

16 So my theory is that Dr. Park may well have
17 dictated a letter right after he examined the boy and sent
18 that off, and this is a supplement letter. And that would
19 be easily confirmed by asking to check in the records in
20 CHEO, and I don't know if you've done that.

21 If you've done that and have -- there's only
22 one letter, then obviously I was mistaken. I'll concede to
23 that.

24 **MR. CHISHOLM:** That might be a wise
25 suggestion that we do that, but in the letter of September

1 the 11th, 1985, the second page, the recommendation from the
2 Child Protection Team is that the police investigation
3 continue?

4 **MR. DEROCHIE:** Yes, exactly, and that's why
5 I'm saying that if I would have seen that when I reviewed
6 the documents, that would have jumped out at me. That
7 would have been very, very significant to me, as you can
8 well imagine.

9 **MR. CHISHOLM:** That you would have noted
10 that in ---

11 **MR. DEROCHIE:** In my notes, and I would not
12 have been taken aback when Sergeant Snyder told me about
13 this provision of the letter that he saw.

14 And again, you know, I can't be 100 percent
15 sure that I'm right on this, but it would easily be -- it
16 could easily be proven that I'm right or I'm wrong on this.

17 **MR. CHISHOLM:** Would you agree with me that
18 the reference -- the letter in your notes that you
19 reference as being written in July contains all of the
20 elements. Leaving aside to continue the police
21 investigation, it contains all the elements that you noted
22 in your notes?

23 **MR. DEROCHIE:** There's no physical evidence
24 of sexual assault, yes.

25 **MR. CHISHOLM:** And the fact that there was a

1 Child Protection Team that reviewed this matter, all the
2 elements that you attribute to the July letter ---

3 **MR. DEROCHIE:** Yes.

4 **MR. CHISHOLM:** --- are in the actual letter
5 of September 11th, 1985, including the date of July the 23rd?

6 **MR. DEROCHIE:** Yes, my notes reference it,
7 that the team had reviewed this matter. If my notes
8 reflect that, then clearly I'm wrong.

9 **MR. CHISHOLM:** I believe I can take you to
10 that. If I could take you to page 10, the top four lines.
11 In the top two lines even:

12 "Special team, the hospital has to deal
13 with such referrals."

14 Do you see that, Staff Sergeant?

15 **MR. DEROCHIE:** I do see that.

16 **MR. CHISHOLM:** Is that -- do you ---

17 **MR. DEROCHIE:** It doesn't satisfy my needs
18 because it just says the team examined them, but I don't
19 see where they -- what -- hang on.

20 It does say the team concluded that although
21 there was no physical evidence of sexual abuse, their
22 opinion was that the abuse had occurred. This opinion is
23 based on interview and other considerations.

24 **MR. CHISHOLM:** If I could take you just to,
25 touching on this subject as well, the investigation with

1 respect to Garry Seguin, who is the officer who
2 investigated that matter.

3 **MR. DEROCHIE:** Ron Lefebvre.

4 **(SHORT PAUSE/COURTE PAUSE)**

5 **MR. CHISHOLM:** And do I understand that Ron
6 Lefebvre -- it would have been Sergeant Ron Lefebvre at the
7 time?

8 **MR. DEROCHIE:** Yes, I'm sorry, Sergeant --
9 Detective Sergeant Ron Lefebvre.

10 **MR. CHISHOLM:** Detective Sergeant. And that
11 matter resulted, do I understand, in a charge and
12 convictions?

13 **MR. DEROCHIE:** Yes.

14 **MR. CHISHOLM:** Against Mr. Seguin?

15 **MR. DEROCHIE:** Yes.

16 **MR. CHISHOLM:** And do you know what there
17 was in terms of cooperation between the CAS and the
18 Cornwall Police Service on that matter?

19 **MR. DEROCHIE:** Yes, there was excellent
20 cooperation.

21 **MR. CHISHOLM:** Was there an interview held
22 at the Cornwall Police Service in ---

23 **MR. DEROCHIE:** Yes, I recall notes to that
24 effect.

25 **MR. CHISHOLM:** July of '85?

1 **MR. DEROCHIE:** Yes, sounds right.

2 **MR. CHISHOLM:** And if there was an interview
3 held that day, would you conclude that a police officer
4 would have been in attendance if the meeting -- if the
5 interview was held at the police service headquarters?

6 **MR. DEROCHIE:** Yes. Oh, yes. This one with
7 Bill Carriere? Is that the one you're talking about? And
8 Jean Dupuy?

9 **MR. CHISHOLM:** Mr. Dupuy is who I had in
10 mind.

11 **MR. DEROCHIE:** Oh, okay. Yes, I recall that
12 there are notes in Mr. Lefebvre's notebook with regards to
13 a meeting at our office.

14 **MR. CHISHOLM:** Those are questions, Staff
15 Sergeant. I'd like to thank you very much for your
16 evidence that you've given over the last nine days.

17 **MR. DEROCHIE:** Thank you, Mr. Chisholm.

18 **THE COMMISSIONER:** Thank you. Mr. Rose.

19 **MR. ROSE:** Staff Sergeant Derochie, my
20 name's David Rose. We've met before.

21 **MR. DEROCHIE:** Yes, Mr. Rose.

22 **MR. ROSE:** I act for The Ministry of
23 Community Safety and Correctional Services. I have no
24 questions for you. Thank you for your patience over these
25 several days.

1 **MR. DEROCHIE:** Thank you.

2 **THE COMMISSIONER:** Mr. Kloeze.

3 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

4 **KLOEZE:**

5 **MR. KLOEZE:** Good afternoon, Staff Sergeant
6 Derochie. My name is Darrell Kloeze. I'm one of the
7 counsel here for the Ministry of the Attorney General.

8 **MR. DEROCHIE:** Good day, sir.

9 **MR. KLOEZE:** I have a few questions for you,
10 but before I start, I wanted to sort of lay out my
11 understanding of the framework that covers relations
12 between the police and the crowns.

13 **MR. DEROCHIE:** Yes.

14 **MR. KLOEZE:** Especially in the area of when
15 the police decide to lay a charge or when they're
16 conducting an investigation up to the point of laying a
17 charge.

18 **MR. DEROCHIE:** Yes.

19 **MR. KLOEZE:** And my understanding is that,
20 and this may be trite, but there are two things that a
21 police -- that the police would need in laying a charge and
22 especially a sexual assault type of investigation.

23 And those two things first are a
24 complainant.

25 **MR. DEROCHIE:** Yes.

1 **MR. KLOEZE:** And that means somebody who's
2 going to testify in court that this sexual offence happened
3 to me.

4 **MR. DEROCHIE:** To prove the facts in issue,
5 yes.

6 **MR. KLOEZE:** Exactly. And that complainant
7 could be a willing complainant or an unwilling one?

8 **MR. DEROCHIE:** Yes, it could be.

9 **MR. KLOEZE:** In the sense of you might have
10 to subpoena a complainant to come and testify if they're
11 not willing to do so on their own volition?

12 **MR. DEROCHIE:** Quite right.

13 **MR. KLOEZE:** The second thing that the
14 police would need is they would have to obviously conduct
15 an investigation even after getting this complaint from a
16 complainant. And at the conclusion of the investigation
17 the police would have to form what are called reasonable
18 and probable grounds to lay a charge?

19 **MR. DEROCHIE:** Yes.

20 **MR. KLOEZE:** And the way I understand that
21 second component, the reasonable and probable grounds is
22 that there are two parts of that, and the first is that
23 there should be sufficient credible evidence of the
24 essential elements of the offence?

25 **MR. DEROCHIE:** Yes.

1 **MR. KLOEZE:** And that's what we have come to
2 know as the objective part of the reasonable and probable
3 grounds.

4 **MR. DEROCHIE:** Yes, yes.

5 **MR. KLOEZE:** But there's a second part, and
6 that is that the officer has to personally believe that the
7 evidence is strong enough to provide the reasonable and
8 probable grounds.

9 **MR. DEROCHIE:** Yes.

10 **MR. KLOEZE:** Because the officer at the end
11 of the day has to swear an Information that they're of that
12 belief that there are RPG's?

13 **MR. DEROCHIE:** That's very right, very true.

14 **MR. KLOEZE:** Now, in the course of an
15 investigation, the police would often seek the advice of
16 the Crown. This is up to and including the point of laying
17 the charge but even before that, the police may seek the
18 advice of crowns ---

19 **MR. DEROCHIE:** Oh, yes, they might.

20 **MR. KLOEZE:** And often those communications
21 between police and Crown are done at an informal level?

22 **MR. DEROCHIE:** They are, yes.

23 **MR. KLOEZE:** Often just a passing reference
24 in the courthouse, and you might discuss the progress of
25 the investigation with the Crown?

1 **MR. DEROCHIE:** Yes.

2 **MR. KLOEZE:** You might discuss questions or
3 ask the Crown questions, specific questions on, you know,
4 for example, the legal elements of the offence?

5 **MR. DEROCHIE:** Yes.

6 **MR. KLOEZE:** And what you are going to need
7 to prove the different elements of the offence?

8 **MR. DEROCHIE:** Quite right.

9 **MR. KLOEZE:** And sometimes you might ask the
10 Crown questions on admissibility of evidence?

11 **MR. DEROCHIE:** Yes.

12 **MR. KLOEZE:** Now, normally, you wouldn't ask
13 the Crown, I mean you might ask the Crown's advice, but you
14 wouldn't ask the Crown questions about how to do the
15 investigation, like who it is you are going to be
16 interviewing or things like that?

17 **MR. DEROCHIE:** No.

18 **MR. KLOEZE:** Those are matters of police
19 expertise?

20 **MR. DEROCHIE:** Yes.

21 **MR. KLOEZE:** How to conduct an investigation
22 would be a matter of police expertise. You might toss some
23 ideas around with the Crown, I suspect?

24 **MR. DEROCHIE:** I might well in a very
25 complicated, unusual case. I might say who would

1 be a good expert witness to get or something to
2 that effect, yes.

3 **MR. KLOEZE:** Exactly.

4 But in terms of trying to find -- trying to
5 do the investigation itself to get your grounds, that's
6 police expertise in terms of the manner of doing the
7 investigation?

8 **MR. DEROCHIE:** Yes.

9 **MR. KLOEZE:** Now, again in the context of
10 the pre-charge stage, up to the point of laying a charge,
11 police often ask advice formally from the Crowns?

12 **MR. DEROCHIE:** Yes, they do.

13 **MR. KLOEZE:** And this is done by way of
14 written letter usually?

15 **MR. DEROCHIE:** Yes.

16 **MR. KLOEZE:** And the usual case in which
17 that happens, the Police will, at the conclusion of their
18 investigation, put together the fruits of their
19 investigation and basically a complete record of that
20 investigation and put that to the Crown?

21 **MR. DEROCHIE:** Correct.

22 **MR. KLOEZE:** And that's called a Crown
23 Brief?

24 **MR. DEROCHIE:** That's right.

25 **MR. KLOEZE:** And upon receipt of the Crown

1 Brief, the Crown will give an opinion as to whether or not
2 they believe there are reasonable -- whether or not the Crown
3 is of the opinion that there are reasonable and probable
4 grounds?

5 MR. DEROCHIE: Sometimes, yes, they will do
6 that, yeah.

7 MR. KLOEZE: Sometimes they will do that and
8 sometimes they won't?

9 MR. DEROCHIE: It's obvious, or they'll say
10 that it's obvious you have the grounds, you're not asking for
11 that, but they'll give an opinion with regards to your
12 prospect of conviction.

13 MR. KLOEZE: Okay. Now, when did that
14 start, the prospect of conviction element of it, that wasn't
15 all the time that you've been a policeman?

16 MR. DEROCHIE: No, it's not. It's evolved
17 over the years, and the relationship between the Crown and
18 the police has evolved over the years. It used to be a very
19 informal process where you would go into the Crown's office
20 and sit down, saying, "Here's what I've been able to uncover.
21 What do you think?" Based on what that opinion was, you
22 would proceed or you wouldn't proceed, type of thing.

23 MR. KLOEZE: Now, when the Crown does give
24 the police advice on reasonable and probable grounds, what
25 the Crown is doing is giving the Police advice on the

1 objective element; isn't that true?

2 MR. DEROCHIE: Yes, whether or not -- yes.

3 MR. KLOEZE: Now, the Crown's not telling
4 the police, "I think subjectively you have -- I think you
5 should subjectively have reasonable and probable grounds for
6 this".

7 MR. DEROCHIE: No, no, you're saying whether
8 or not you've got the facts in issue covered off.

9 MR. KLOEZE: Exactly.

10 It's still up to the police officer to
11 determine, in his or her own mind, whether or not they have
12 the subjective element?

13 MR. DEROCHIE: Correct.

14 MR. KLOEZE: Now, I wanted to add just two
15 caveats to that. The police don't need a Crown opinion as to
16 RPG before they can lay a charge?

17 MR. DEROCHIE: Oh, no. No, as a matter of
18 fact, at one point a Crown Attorney wouldn't -- you know,
19 they would say "Crown, the R and PG is yours to establish.
20 Come to me once you've formed R and PG. So, no, you're
21 quite right.

22 MR. KLOEZE: But it's often done that the
23 police will ask for an opinion on R and PG?

24 MR. DEROCHIE: Yes.

25 MR. KLOEZE: But it's not necessary?

1 **MR. DEROCHIE:** It's not necessary.

2 **MR. KLOEZE:** Okay. And the second caveat is
3 that even if the Crown gives the opinion that there's no
4 objective R and PG, the police can still lay a charge?

5 **MR. DEROCHIE:** They can.

6 **MR. KLOEZE:** It's legal advice?

7 **MR. DEROCHIE:** It's legal advice for us to
8 take or ignore.

9 **MR. KLOEZE:** Exactly. And sometimes people
10 do not listen to their lawyers?

11 **MR. DEROCHIE:** There are such foolish people
12 around.

13 **THE COMMISSIONER:** Yeah, but in fairness
14 though -- but if a Crown Attorney says it doesn't look
15 good, you don't go ---

16 **MR. DEROCHIE:** No. In practical terms, no.
17 We have that option, certainly, but ---

18 **MR. KLOEZE:** In your own experience, have
19 you ever exercised that option to lay a charge when the
20 Crown has said there doesn't look to be objective,
21 reasonable and probable grounds?

22 **MR. DEROCHIE:** No, nor have I ever
23 supervised anybody that went against that advice.

24 **MR. KLOEZE:** Okay. Now, I want to put this
25 in the context of the David Silmser investigation, and

1 especially in the context of the communications between
2 Constable Sebalj and Murray MacDonald, who was the Crown
3 Attorney at the time and still is a Crown Attorney in
4 Cornwall.

5 MR. DEROCHIE: Yes.

6 MR. KLOEZE: Now, you know that Constable
7 Sebalj met several times with Murray MacDonald on an
8 informal basis?

9 MR. DEROCHIE: Yes.

10 MR. KLOEZE: And you know that because, I
11 guess, some of those meetings are captured in her notes?

12 MR. DEROCHIE: Yes.

13 MR. KLOEZE: And both Constable Sebalj and
14 Murray MacDonald told you personally that they had met on
15 several occasions?

16 MR. DEROCHIE: Yes, that's right.

17 MR. KLOEZE: Now, that wasn't unusual for
18 Murray MacDonald to do?

19 MR. DEROCHIE: He's very approachable.

20 MR. KLOEZE: He's a very approachable guy.
21 He's not the sort of guy who's going to say "Don't come and
22 talk to me. Make a meeting first."

23 MR. DEROCHIE: Yeah, put it in writing, type
24 of thing, yes.

25 MR. KLOEZE: He's always made himself

1 available to the officers of the Cornwall Police Service?

2 MR. DEROCHIE: Yes, he has.

3 MR. KLOEZE: And that generally is a benefit
4 to the police, if the Crown's going to make themselves that
5 available?

6 MR. DEROCHIE: Oh, absolutely.

7 MR. KLOEZE: Especially on an informal
8 level, that you can sort of run things by the Crown?

9 MR. DEROCHIE: Yes, you're not afraid to be
10 ridiculed. You can run anything by him and he'll listen to
11 you and not be offended or not be annoyed at the fact that
12 you're bothering him. Like I say, he's very approachable,
13 very accommodating.

14 MR. KLOEZE: And in fact, in this
15 investigation, you know that Murray MacDonald spoke with
16 Constable Sebalj. You know that he spoke with Staff
17 Sergeant Brunet, and you know also that he spoke with
18 Sergeant Lortie and Constable Dunlop ---

19 MR. DEROCHIE: Yes.

20 MR. KLOEZE: --- on different matters. They
21 all came and talked to him about different aspects of this
22 investigation?

23 MR. DEROCHIE: Yes, and so did -- possibly,
24 I think Shaver did as well. Chief Shaver may have spoken
25 to him.

1 **MR. KLOEZE:** And all of these, except for
2 the one I'm going to come to, especially with Constable
3 Sebalj, all of these contacts were at the level of informal
4 contact, passing -- I guess they met in an office or
5 passing in a hall and talking about the investigation?

6 **MR. DEROCHIE:** They were all informal up
7 until the time, I think, it was more formal when Sergeant
8 Brunet sent a letter asking for a written opinion.

9 **MR. KLOEZE:** Okay. Well, that's the letter
10 I want to come to now.

11 You say he was asking for a written opinion,
12 but I'd like to turn to the letter, and it's at Exhibit
13 300.

14 Madam Registrar, if we can turn to that?
15 Do you have the letter, Staff Sergeant?

16 **MR. DEROCHIE:** I do, yes.

17 **MR. KLOEZE:** And the first paragraph says --
18 indicates that there had been a previous telephone
19 conversation?

20 **MR. DEROCHIE:** Yes.

21 **MR. KLOEZE:** The second paragraph tells Mr.
22 MacDonald the circumstances as to why the letter is being
23 written, that there has been a letter received from Mr.
24 Malcolm MacDonald containing a statement from Mr. Silmsler,
25 stating he has received a civil settlement to his

1 satisfaction and advising he no longer wished to proceed
2 with criminal charges?

3 MR. DEROCHIE: That's correct, yes, it says
4 that.

5 MR. KLOEZE: And the third paragraph of the
6 letter is, I guess, the purpose of the letter?

7 MR. DEROCHIE: Yes.

8 MR. KLOEZE: And it's asking Mr. MacDonald -
9 - well, basically it says:

10 "It is my understanding, after our
11 conversation, that your office does not
12 prosecute without the full cooperation
13 of the victim. I'm anxiously awaiting
14 your direction. Please find attached a
15 copy of the letter and statement."

16 I seems to me that the letter is not asking
17 for advice on the investigation itself but just
18 confirmation of a Crown policy? Is that ---

19 MR. DEROCHIE: Yes, that's quite right. I
20 stand corrected on that, yes. He's not asking for an
21 opinion.

22 MR. KLOEZE: And the Crown policy that he's
23 asking confirmation of is the policy that the Crown will
24 not prosecute without the full cooperation of a victim?

25 MR. DEROCHIE: Correct.

1 **MR. KLOEZE:** And in the context of this
2 investigation, we're talking about a sexual assault victim?

3 **MR. DEROCHIE:** That's correct.

4 **MR. KLOEZE:** Now, that's not the kind of
5 advice that we were talking about earlier, where the
6 Crown's being asked to give an opinion on RPG?

7 **MR. DEROCHIE:** You're quite right.

8 **MR. KLOEZE:** Okay. And if we can turn just
9 to Mr. MacDonald's response at Exhibit 301?

10 A few days later, on September 14th ---

11 **MR. DEROCHIE:** Yes, I'm there.

12 **MR. KLOEZE:** --- he writes a letter of
13 response and confirms, at the beginning of the second
14 paragraph:

15 "It is our policy not to compel victims
16 of sexual crimes to proceed against
17 their wishes."

18 **MR. DEROCHIE:** Yes.

19 **MR. KLOEZE:** Then he goes on to comment on
20 Constable Sebalj's appreciation as to whether or not she
21 had RPG and he says:

22 "Also, the Officer was tentative on the
23 issue of R and PG before this so-called
24 settlement."

25 **MR. DEROCHIE:** Yes.

1 **MR. KLOEZE:** And that was your understanding
2 of it as well after speaking with Constable Sebalj, that
3 she was tentative on the issue of reasonable and probable
4 grounds?

5 **MR. DEROCHIE:** Yes.

6 **MR. KLOEZE:** Now, this investigation never
7 got to the stage -- and I think you've testified about this
8 before with Mr. Engelmann -- it never got to the stage
9 where Constable Sebalj or anybody at the Cornwall Police
10 was ready to put together a Crown Brief and give it to the
11 Crown for an opinion on R and PG?

12 **MR. DEROCHIE:** That's correct.

13 **MR. KLOEZE:** And in fact, Constable Sebalj
14 didn't start putting any of her investigation or anybody at
15 the Cornwall Police was ready to put together a Crown brief
16 and give it to the Crown for an opinion on RMPG?

17 **MR. DEROCHIE:** That's correct.

18 **MR. KLOEZE:** And in fact, Constable Sebalj
19 didn't start putting any of her investigation, or the
20 fruits of her investigation, into OMPPAC until after this
21 letter was written. This letter was written September 14th
22 and then she started, I think, after being ordered by the
23 Chief on October 4th, 1993, to start putting her notes into
24 OMPPAC?

25 **MR. DEROCHIE:** Yes.

1 **MR. KLOEZE:** Basically. And in OMPPAC,
2 we've seen the exhibits, they're styled Crown brief.

3 **MR. DEROCHIE:** Yes.

4 **MR. KLOEZE:** But that brief was never put to
5 a Crown?

6 **MR. DEROCHIE:** No, that's a function of our
7 RMS system, that when you want to get a summary of the
8 case, you ask it to produce a Crown brief. That's what it
9 identifies it as.

10 **MR. KLOEZE:** So in some sense it's a
11 default. That's how the system's going to identify
12 information that's put into it?

13 **MR. DEROCHIE:** Well, you have to identify to
14 the system which documents you want to use to create the
15 Crown brief, but the beauty of the system is that it
16 organizes the information in that type of efficient manner.
17 So if you want to review something, the best way to review
18 it to ask it to produce a Crown brief.

19 **MR. KLOEZE:** Okay. And the information that
20 we've seen in those exhibits that are entitled "Crown
21 Brief", that's exactly the kind of information that would
22 eventually go into a Crown brief?

23 **MR. DEROCHIE:** Yes.

24 **MR. KLOEZE:** That's witness statements?

25 **MR. DEROCHIE:** Yes.

1 **MR. KLOEZE:** Sort of a summary of the
2 contacts that ---

3 **MR. DEROCHIE:** There would have been both.
4 There would have been a summary of the contact in the
5 report plus the verbatim witness statement if the system is
6 told to include it.

7 **MR. KLOEZE:** Okay. I want to move to
8 something slightly different.

9 Mr. Engelmann asked you in his Examination-
10 in-Chief whether after the Cornwall Police received this
11 settlement from Mr. Silmsler, whether anybody at the
12 Cornwall Police thought to ask whether the settlement was
13 voluntary. Do you remember that evidence?

14 **MR. DEROCHIE:** Yes.

15 **MR. KLOEZE:** And those questions that Mr.
16 Engelmann was asking?

17 **MR. DEROCHIE:** Yes.

18 **MR. KLOEZE:** And I believe your answer was
19 that to your knowledge, it had not occurred to anyone. It
20 had not occurred to you to ask whether that, if the
21 settlement was voluntary. And I can turn to the reference.
22 It's at page ---

23 **MR. DEROCHIE:** It's making me think because
24 I know that we weren't satisfied with the letter from
25 Malcolm MacDonald with the note from Sean Adams that we had

1 actually asked Mr. Silmsler to come up -- come in and give
2 us that information in person.

3 **MR. KLOEZE:** Well, that's why I was curious
4 about that.

5 **MR. DEROCHIE:** I would, if I testified to
6 that, then I was confused about that, what was being asked
7 of me obviously because I know that he was asked to come in
8 and tell us in his own words. I think he wrote a -- and
9 that's been an exhibit -- he wrote a passage in Sebalj's
10 notebook or something.

11 **MR. KLOEZE:** Well, that's correct and I
12 wanted to refer to that passage.

13 **MR. DEROCHIE:** Yeah. Well, then I miss -- I
14 caused that confusion by saying that then.

15 **MR. KLOEZE:** Well, I don't want to mis-state
16 the evidence, so I just want ---

17 **THE COMMISSIONER:** So you're referring to a
18 transcript now?

19 **MR. KLOEZE:** Yes, Volume 203 of the
20 evidence.

21 **THE COMMISSIONER:** Thank you. What page,
22 please?

23 **MR. KLOEZE:** Page 52. And I guess the
24 paragraph at the very beginning of the page is a
25 continuation of a question from Mr. Engelmann where it

1 says:

2 "I'm asking you in hindsight, would you
3 agree that someone from the Cornwall
4 Police Service should have looked at
5 the settlement or at least asked to
6 look at it in order to determine if Mr.
7 Silmser's decision not to proceed was
8 voluntary. In other words, that it was
9 not coerced or compromised by some form
10 of a legal settlement."

11 **MR. DEROCHIE:** Yes, and I answered that
12 question as I understood it. Did we look at the settlement
13 itself to see that there -- was there a condition in there
14 that restricted his continuing with this criminal
15 investigation? No, that had no occurred to me. I don't
16 see that as your question that I just answered.

17 **MR. KLOEZE:** No, that's right. And that's
18 where -- it is not my question.

19 **MR. DEROCHIE:** Oh, I'm sorry.

20 **MR. KLOEZE:** But that's exactly right.
21 There was a confusion there because I had understood this
22 as saying that you hadn't even thought to ask Mr. Silmser
23 whether it was voluntary.

24 **MR. DEROCHIE:** Oh, so again, I'm not wrong.

25 **MR. KLOEZE:** Okay. But what your answer is,

1 if I can paraphrase it, is that you hadn't looked at the
2 settlement physically?

3 **MR. DEROCHIE:** That's right. We never saw a
4 copy of the document to evaluate whether or not it was
5 legal.

6 **MR. KLOEZE:** Okay. But you certainly did
7 think to ask Mr. Silmsers himself or Constable Sebalj to
8 think that?

9 **MR. DEROCHIE:** That he was -- that this were
10 his wishes and he wasn't under any duress to instruct his
11 lawyer to give that information to us, yes.

12 **MR. KLOEZE:** Okay. And, in fact, we know
13 that Mr. Silmsers did come into the Cornwall Police Service
14 ---

15 **THE COMMISSIONER:** Go ahead.

16 **MR. KLOEZE:** We know that Mr. Silmsers did
17 come into the Cornwall Police Service and he signed
18 Constable Sebalj's notebook?

19 **MR. DEROCHIE:** That's correct.

20 **MR. KLOEZE:** And gave a statement.

21 **MR. DEROCHIE:** His wishes were -- those were
22 his wishes that we discontinue the investigation.

23 **MR. KLOEZE:** And the reason I asked that
24 partly was to confirm that, but also at Constable Sebalj's
25 notebook, and this is Exhibit 295, this is not the sign-off

1 itself. The sign-off is Exhibit 269, but I'm just looking
2 at the notebooks and the Bates page I'm looking at, end
3 number 3837.

4 **THE COMMISSIONER:** I'm sorry? We're looking
5 at Exhibit 295?

6 **MR. KLOEZE:** Two-nine-five (295). Bates
7 ending 3837.

8 **THE COMMISSIONER:** Three-eight-three-seven
9 (3837), okay.

10 **MR. KLOEZE:** It's very near the end of the
11 notes. The third-last page. And I'm looking at the entry
12 for the 13th of September, '93 at 8:50 a.m.

13 **MR. DEROCHIE:** Yes, I'm there, yes. Sorry.

14 **MR. KLOEZE:** And what Constable Sebalj
15 writes there is that she:

16 "Meet with Crown MacDonald. Advise of
17 10:00 a.m. appointment."

18 And I believe that's an appointment she had
19 with Mr. Silmsers?

20 **MR. DEROCHIE:** Yes.

21 **MR. KLOEZE:** And then it says:

22 "Suggest satisfy that Silmsers acted of
23 his own free will."

24 **MR. DEROCHIE:** Yes. Yes, I see that.

25 **MR. KLOEZE:** And I take that -- and

1 obviously you weren't there and we probably will get
2 evidence of this from Mr. MacDonald, but the way I read
3 that is that Crown Murray MacDonald is telling Constable
4 Sebalj that -- or suggesting that she satisfy herself that
5 Silmser acted of his own free will?

6 **MR. DEROCHIE:** I think that's fair.

7 **MR. KLOEZE:** We know at this point that
8 Crown MacDonald had received the request from Staff
9 Sergeant Brunet about the policy. So Crown MacDonald knew
10 that there had been a settlement ---

11 **MR. DEROCHIE:** Clearly, he was in the loop
12 at that time, yes.

13 **THE COMMISSIONER:** But aren't we missing the
14 point, though?

15 Let's assume for a minute the Crown didn't
16 have a case. The police did not have a case. And it was
17 out of his own free will. Isn't it illegal to accept money
18 to forego a criminal prosecution, period? And so whether
19 it's his own free will is irrelevant.

20 **MR. KLOEZE:** Well, I'm just -- all I'm
21 doing, Mr. Commissioner, is clarifying this one point that
22 left me confused in Staff Sergeant Derochie's evidence from
23 last month.

24 **THE COMMISSIONER:** M'hm.

25 **MR. KLOEZE:** That question, I think, we can

1 ask of the other witnesses and I imagine this was asked of
2 Staff Sergeant Derochie himself.

3 **THE COMMISSIONER:** Okay.

4 **MR. KLOEZE:** Now, if you can turn to Exhibit
5 1293 please, Staff Sergeant Derochie. These are your own
6 notes from the Silmsler review?

7 **THE COMMISSIONER:** Twelve-ninety-three
8 (1293)?

9 **MR. KLOEZE:** I'm sorry, I'm looking -- I'm
10 going to turn to -- if I can use your numbering, page 27.

11 **THE COMMISSIONER:** Hold on now.

12 **MR. KLOEZE:** Sorry.

13 **THE COMMISSIONER:** Twelve-ninety-three
14 (1293), yes.

15 **MR. KLOEZE:** Twelve-ninety-three (1293).

16 **THE COMMISSIONER:** Yes, got it. What page?
17 Sorry, Mr. Kloeze, what page?

18 **MR. KLOEZE:** Page 72.

19 **THE COMMISSIONER:** Thank you.

20 **MR. KLOEZE:** Bates page ending 3444.

21 **THE COMMISSIONER:** Okay.

22 **(SHORT PAUSE/COURTE PAUSE)**

23 **MR. KLOEZE:** And I wanted to bring your
24 attention to these notes. This is your meeting with Murray
25 MacDonald on November 10th of '93.

1 **MR. DEROCHIE:** Correct.

2 **MR. KLOEZE:** You had two -- this was sort of
3 the meeting in passing, and then you've set up another
4 meeting later on that you had in December.

5 But at this meeting you discussed the
6 possibility of going to the l'Original Crown?

7 **MR. DEROCHIE:** Yes.

8 **MR. KLOEZE:** And you knew at this point in
9 November that Murray MacDonald was still willing -- that
10 the offer was still open to send a Crown brief on to the
11 l'Original Crown?

12 **MR. DEROCHIE:** Yes.

13 **MR. KLOEZE:** And what Murray MacDonald tells
14 you at page 72, the first full paragraph:

15 "We spoke briefly about the case and I
16 asked if he was still willing to
17 arrange a meeting for us with the
18 l'Original Crown. He said that he would
19 if we had a victim."

20 And then you put in your square brackets,
21 which I understand are your thoughts or your interpretation
22 of this:

23 "[I got the impression that he would
24 not arrange a meeting unless we had a
25 charge to lay.]"

1 **MR. DEROCHIE:** Yes.

2 **MR. KLOEZE:** Now, I just wanted to confirm
3 that what Murray MacDonald actually told you was "Get me a
4 victim and I'll send -- and a Crown brief," I assume, "and
5 I'll send that on to the l'Original Crown." Is that your
6 understanding of what Murray MacDonald was willing to do?

7 **MR. DEROCHIE:** Yes, basically, that's what
8 he told me, yes.

9 **MR. KLOEZE:** So you would need first a
10 victim that was willing to testify. When he says "Get me a
11 victim" he wouldn't ---

12 **MR. DEROCHIE:** Yes, a cooperating victim.

13 **MR. KLOEZE:** A cooperating victim is what
14 we're talking about?

15 **MR. DEROCHIE:** Yes.

16 **MR. KLOEZE:** Okay.

17 Now, Mr. Engelmann had some questions of you
18 around this particular paragraph or this entry, and he
19 suggested that there was a bit of a stalemate between you
20 and the Crown, and I don't see where that stalemate arises,
21 because Mr. Engelmann, I think, suggested that Mr.
22 MacDonald was telling you, "Decide whether you have RPGs
23 and then I'll send it to the l'Original Crown," but in fact
24 what he was telling you, as I understand it, is "Find me a
25 willing victim or a willing complainant who's going to

1 testify; put together a Crown brief and then we'll put all
2 that to the l'Orignal Crown, and the Crown, the l'Orignal
3 Crown, is the one who's going to determine objectively
4 whether there are reasonable and probable grounds."

5 **MR. DEROCHIE:** Yes. And when Mr. Engelmann
6 put it to me, I didn't take it that they were at a
7 stalemate, meaning we were at odds or we had cross-
8 purposes-type thing. I didn't see it as being ---

9 **MR. KLOEZE:** Well, in fact, a stalemate
10 arises from the fact that you still had problems finding a
11 willing victim?

12 **MR. DEROCHIE:** I still don't -- yes.

13 **MR. KLOEZE:** And if we can just turn to the
14 next page, page 73, and I'm turning to a slightly different
15 matter. You testified that the Chief had told you that he
16 had heard that Murray MacDonald's advice would have been
17 different had he known about the two other victims.

18 Do you remember that evidence?

19 **MR. DEROCHIE:** Yes. He said it may have
20 been different.

21 **MR. KLOEZE:** May have been different. Okay.

22 **MR. DEROCHIE:** Yeah. Well, what did I say
23 here?

24 **MR. KLOEZE:** Sorry, we can go to that
25 reference. That's at page 54 of the notes.

1 You have it right. I'm looking at the
2 bottom of the paragraph of the first -- of the only
3 complete paragraph on that page. "The Chief had since
4 confirmed that the Crown's advice may have been different
5 if he had possessed all information."

6 **MR. DEROCHIE:** Yes.

7 **MR. KLOEZE:** Now, you have a conversation
8 with Murray MacDonald about that, and your conversation
9 with Mr. MacDonald is -- basically starts at the bottom of
10 page 73 -- sorry, the middle of page 73, where you say:

11 "I asked him if he was aware that
12 Sebalj had found two other people who
13 had sexual encounters with Father
14 MacDonald at about the same time or a
15 year or two later. He indicated that
16 he was not aware. We discussed the
17 issue of compelling a victim of a
18 sexual assault to testify. He repeated
19 that policy was that they not. I also
20 asked if he would compel a person who
21 was not complaining of being assaulted
22 but had a similar incident occur to him
23 to testify in support of a willing
24 victim. He said that the same policy
25 would apply.

1 And the rest of it is:

2 "He pointed out that people commit
3 suicide over these things."

4 And then you have your comments about it
5 afterward.

6 Now -- so you do have a discussion with Mr.
7 MacDonald about the two other individuals that Constable
8 Sebalj had identified who told her of, I guess, sexual
9 incidents involving Father MacDonald?

10 **MR. DEROCHIE:** Sorry, what was the first
11 part of your question?

12 **MR. KLOEZE:** So you had a conversation with
13 Murray MacDonald about ---

14 **MR. DEROCHIE:** Yes.

15 **MR. KLOEZE:** --- about those two other
16 victims that she had identified?

17 **MR. DEROCHIE:** Yes.

18 **MR. KLOEZE:** And it was understood by both
19 of you in that conversation that neither of those victims
20 was willing to come and testify either as their own -- as a
21 complainant of their own offence or their own charge
22 against Father MacDonald or in support of another
23 complainant?

24 **MR. DEROCHIE:** Well, my understanding was
25 one was willing at best. Reluctantly, he would come and

1 testify. If we subpoenaed him, he would. You know, he
2 wouldn't run off and hide, as it were. He would be
3 available.

4 **MR. KLOEZE:** And that was the one who would
5 testify only in support of another charge?

6 **MR. DEROCHIE:** Exactly; did not want to be a
7 victim -- or a complainant himself.

8 **MR. KLOEZE:** Okay. Now, you said at page 73
9 that Murray MacDonald indicated he was not aware of those
10 two other people, but can I suggest to you that what Mr.
11 MacDonald was actually saying was that he wasn't aware that
12 there were other complainants who were willing to testify.
13 That would have changed his opinion, surely, if there were
14 other victims who were willing to testify as complainants?

15 **MR. DEROCHIE:** Oh yes. I understood that,
16 yes.

17 **MR. KLOEZE:** And what he was saying to you
18 was that he wasn't aware that there were such other people,
19 as in other complainants who were willing to testify?

20 **MR. DEROCHIE:** That's correct.

21 **MR. KLOEZE:** And, in fact, there were not
22 such other people?

23 **MR. DEROCHIE:** Not at that time, no.

24 **MR. KLOEZE:** Okay. And the last point, it's
25 at the same page, at the top of page 73, is about Mr.

1 MacDonald's conflict, and Mr. Neville asked you some
2 questions earlier today that pointed out what Mr.
3 MacDonald's conflict was not, but I just wanted to go
4 through and clarify that. You had this discussion with Mr.
5 MacDonald as to what his conflict -- where it actually
6 arose?

7 **MR. DEROCHIE:** Yes.

8 **MR. KLOEZE:** And I remember Mr. Engelmann
9 asked you these questions as well, and you gave some
10 evidence to Mr. Engelmann that you knew it arose because
11 Mr. Murray MacDonald had been a member of a church
12 committee that discussed the incidents of, I guess,
13 pedophilia by priests?

14 **MR. DEROCHIE:** Yes, and I don't know that it
15 was a church committee as opposed to some sort of an
16 advisory committee of some sort, whether it was put up by
17 the -- I had -- my impression was it was a committee to
18 advise the Bishop on policy-making ---

19 **MR. KLOEZE:** Okay.

20 **MR. DEROCHIE:** --- issues.

21 **MR. KLOEZE:** At the top of page 73 --
22 actually, we'll start at the very bottom of page 72. And
23 your notes -- I just wanted to read through your notes that
24 talk about this conflict:

25 "He told me that he had declared a

1 conflict in this matter because of his
2 involvement with the Church. He
3 explained that he is a member of a
4 committee and that he had been in a
5 debate with the Bishop over the matter
6 of secrecy involving wrongdoing by
7 members of the clergy. He identified
8 this case as being another example of
9 the Church covering up sexual
10 misconduct by a priest."

11 So, in fact, it wasn't just an advisory
12 committee to the Bishop but in fact it indicates or he
13 indicated to you that he had been in a debate with the
14 Bishop over this matter?

15 **MR. DEROCHIE:** Yeah, that they had butted
16 heads over some of those issues. That was my impression.

17 **MR. KLOEZE:** Okay. Exactly.

18 So the conflict wasn't only that he was a
19 member of the committee but that he had taken perhaps even
20 a public position against the Bishop?

21 **THE COMMISSIONER:** Don't know about that.

22 **MR. KLOEZE:** Excuse me, sir?

23 **THE COMMISSIONER:** A public position?

24 **MR. KLOEZE:** Okay. Do you know whether or
25 not Murray was concerned that the debate he had with the

1 Bishop was a public debate? Do you remember talking about
2 that?

3 MR. DEROCHIE: I don't know that it was
4 public and I don't know if he was in -- a represent -- he
5 was on the committee as a representative, an official
6 representative, or as a layperson.

7 I don't know what his status was on the
8 committee.

9 MR. KLOEZE: Okay. But you did talk about
10 the fact ---

11 MR. DEROCHIE: Or I don't recall it,
12 anyways, I'm sorry.

13 MR. KLOEZE: I'm sorry?

14 MR. DEROCHIE: I don't recall what his role
15 was with that.

16 MR. KLOEZE: But Mr. MacDonald did tell you
17 that he thought at least the allegations here or the
18 circumstances here were similar to what he had identified
19 as a problem in the church ---

20 MR. DEROCHIE: Yes.

21 MR. KLOEZE: --- in the sense of the church
22 paying off victims to cover up incidents of sexual abuse by
23 priests; do you remember talking about that with Mr.
24 MacDonald?

25 MR. DEROCHIE: Yeah, the issue was the

1 secrecy of -- of the church -- the church was involved in
2 making -- or making settlements in secrecy over these kinds
3 of allegations.

4 **MR. KLOEZE:** Okay. Staff Sergeant Derochie,
5 it's late in the day and I thank you very much for patience
6 and cooperation.

7 Those are my questions.

8 **MR. DEROCHIE:** Thank you, sir.

9 **THE COMMISSIONER:** Thank you.

10 We'll take a short break now and then we'll
11 continue on once we can.

12 **THE REGISTRAR:** Order, all rise. À l'ordre;
13 veuillez vous lever.

14 This hearing will resume at 4:55.

15 --- Upon recessing at 4:42 p.m./

16 L'audience est suspendue à 16h42

17 --- Upon resuming at 4:56 p.m./

18 L'audience est reprise à 16h56

19 **THE REGISTRAR:** The hearing is now resumed.
20 Please be seated. Veuillez vous asseoir.

21 **THE COMMISSIONER:** Thank you. We'll just --
22 yes?

23 **MS. ROBITAILLE:** Good afternoon, Mr.
24 Commissioner.

25 **THE COMMISSIONER:** Good afternoon, good

1 afternoon.

2 We'll just wait a moment for Mr. Callaghan.

3 While you were away, Mr. Callaghan, we've
4 completed the re-examination of the witness and he's going
5 home.

6 **MR. CALLAGHAN:** I think he'd like that.

7 **MR. MANSON:** He wouldn't be the only one.

8 **MS. ROBITAILLE:** I guess I have my marching
9 orders.

10 **THE COMMISSIONER:** From the peanut gallery.

11 All right.

12 **GARRY DEROCHIE, Resumed/Sous le même serment:**

13 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

14 **MS. ROBITAILLE :**

15 **MS. ROBITAILLE:** Good afternoon, ---

16 **MR. DEROCHIE:** Good afternoon.

17 **MS. ROBITAILLE:** --- Staff Sergeant
18 Derochie, my name is Danielle Robitaille and I represent
19 Jacques Leduc here at the Inquiry.

20 **MR. DEROCHIE:** Good afternoon, Ms.

21 Robitaille.

22 **MS. ROBITAILLE:** I just want to turn to
23 Exhibit 1330, which is your January 10th order to Mr.
24 Dunlop.

25 **THE COMMISSIONER:** Oh, 1330.

1 Thank you.

2 **MS. ROBITAILLE:** And we don't -- we don't
3 need to go to any paragraph particularly, I just want to
4 make the point that this order ordered Mr. Dunlop to turn
5 over everything that he had in relation to Project Truth or
6 may, in any way, be related to Project Truth; isn't that
7 right?

8 **MR. DEROCHIE:** And other investigations,
9 yes.

10 **MS. ROBITAILLE:** And other investigations.
11 And this order specifically spelled out that
12 he was to turn over his notes; is that right?

13 **MR. DEROCHIE:** That's correct.

14 **MS. ROBITAILLE:** And do you recall, sir,
15 that you did not receive an original note from Mr. Dunlop
16 until he hands in his Will Say on April 7th, 2000, nearly
17 three months after you've given him this order?

18 **MR. DEROCHIE:** I don't -- I don't recall. I
19 don't know -- if you're saying that's your ---

20 **MS. ROBITAILLE:** No, that's -- that's fine,
21 we'll go through the chronology.

22 **MR. DEROCHIE:** Okay.

23 **MS. ROBITAILLE:** Before we go through the
24 chronology ---

25 **MR. DEROCHIE:** He turned in his notes

1 separate from his Will Say; they were separate documents.

2 MS. ROBITAILLE: Yes.

3 MR. DEROCHIE: But they may have been on the
4 same day.

5 MS. ROBITAILLE: Well, we'll go through
6 everything in detail.

7 I just want to make sure that I have a good
8 assessment of his working conditions during this period.

9 You testified that he was working
10 independently in a private office, there was a window, we
11 established, and that he was working eight hours a day, 40
12 hours a week; that's right?

13 MR. DEROCHIE: That's correct.

14 THE COMMISSIONER: I'm sorry, you may have
15 established or was there a window in his ---

16 MR. DEROCHIE: Yes.

17 THE COMMISSIONER: And this is in the -- we
18 talked about that ---

19 MR. DEROCHIE: Yes, it was -- the office is
20 now occupied by the Inspector in charge of Quality Control.

21 THE COMMISSIONER: Right, okay.

22 MS. ROBITAILLE: You'll recall, Mr.
23 Commissioner, that Staff Sergeant Derochie testified that
24 he actually was able to get the plans for the building.

25 MR. DEROCHIE: Yes.

1 **THE COMMISSIONER:** M'hm.

2 **MR. DEROCHIE:** I went back into them, yes.

3 **MS. ROBITAILLE:** Yeah.

4 **THE COMMISSIONER:** Okay.

5 **MS. ROBITAILLE:** And you would agree with me
6 that once you ordered Mr. Dunlop, on January 10th to had
7 everything over, he didn't just come into the headquarters
8 with his boxes of material and say, "Look, Staff Sergeant,
9 this is everything I've got; here you go."

10 **MR. DEROCHIE:** Not a -- not initially, no,
11 no.

12 That's not what he was to do. He was to go
13 through it and -- and provide -- provide disclosure. Get
14 things ready for disclosure.

15 **MS. ROBITAILLE:** Right. And no CPS officer
16 went to his home and indexed any of the material that he
17 was keeping there, right?

18 **MR. DEROCHIE:** No, my understanding was he
19 brought everything to the station and worked at the station
20 from that material.

21 **MS. ROBITAILLE:** And no one was keeping
22 track or indexing items as he brought it into the station,
23 right?

24 **MR. DEROCHIE:** Only as he turned it over to
25 me.

1 **MS. ROBITAILLE:** Right. And so I want to go
2 through that with you.

3 So on January 10th, you give him the order,
4 right?

5 **MR. DEROCHIE:** Yes.

6 **MS. ROBITAILLE:** And on the 17th, he signs
7 that order, right?

8 **MR. DEROCHIE:** Correct.

9 **MS. ROBITAILLE:** And something else happens
10 on the 17th; if we can just go to your notes on that.

11 Sorry, I'm just trying to find the exhibit
12 number.

13 It's Exhibit 1325.

14 **THE COMMISSIONER:** What page?

15 **MS. ROBITAILLE:** Bates page ending in 345.

16 **THE COMMISSIONER:** M'hm.

17 **MS. ROBITAILLE:** One zero four three three
18 four five (1043345).

19 And at the bottom of the page, if you just
20 scroll down there.

21 **MR. DEROCHIE:** Yes.

22 **MS. ROBITAILLE:** You write:

23 "While at HQ headquarters this morning,
24 Dunlop advised me to look at the notes
25 that he had for December 12th, '96."

1 **THE COMMISSIONER:** Wait minute, where are
2 you now? January 24th?

3 **MS. ROBITAILLE:** It should be January 17th.

4 **THE COMMISSIONER:** So that's 344.

5 **MS. ROBITAILLE:** Yes.

6 **THE COMMISSIONER:** Okay. Okay ---

7 **MS. ROBITAILLE:** Oh, that's right, it's the
8 page before, I'm sorry.

9 **THE COMMISSIONER:** Ask me to look at notes
10 again?

11 **MS. ROBITAILLE:** There we go, yeah.
12 Just scroll down a little more, Madam Clerk.
13 All right.

14 "Dunlop advised me to look at the notes
15 that he had for December 12th, '96."

16 And that date's significant because that was
17 one of the dates of the notes requested by the defence in
18 the Marcel Lalonde prosecution, right?

19 **MR. DEROCHIE:** Quite right.

20 **MS. ROBITAILLE:** And so it continues on the
21 next page, "The notes consisted of one line which states..."
22 something to the effect of that C-8 gave his statement that
23 date?

24 **MR. DEROCHIE:** Yes.

25 **MS. ROBITAILLE:** And then here it says:

1 "I questioned him on that entry. My
2 info is that C-8 gave his statement
3 January 26th, 1997, that is what Dunlop
4 testified to at the prelim. Dunlop
5 appeared to be a little confused when I
6 pointed this out to him and he said he
7 would have to look at the statement."

8 **MR. DEROCHIE:** Yes.

9 **MS. ROBITAILLE:** That's how you recall that
10 -- that meeting with Mr. Dunlop?

11 **MR. DEROCHIE:** Yes.

12 **MS. ROBITAILLE:** So what's happening here is
13 you're starting to realize that Mr. Dunlop's notes may
14 contradict his sworn testimony; is that right?

15 **MR. DEROCHIE:** Yes.

16 **MS. ROBITAILLE:** In any event, he doesn't
17 hand you that note on that date; is that right?

18 **MR. DEROCHIE:** That's correct, yes.

19 **MS. ROBITAILLE:** Now, if we could just go to
20 the next Bates page that's relevant, which is ending in
21 347.

22 On January 24th -- if we can see here, Mr.
23 Dunlop asks to have a lock put on his office door?

24 **MR. DEROCHIE:** Yes.

25 **MS. ROBITAILLE:** And you recall that?

1 **MR. DEROCHIE:** Yes, I do.

2 **MS. ROBITAILLE:** And he wants a lock because
3 he wants to keep his fellow officers out of the room; is
4 that right?

5 **MR. DEROCHIE:** He wants his -- he wants his
6 materials kept secure. He doesn't want anything to go
7 missing, yes, that's -- yes, that's quite right.

8 **MS. ROBITAILLE:** He doesn't want anyone
9 going in there?

10 **MR. DEROCHIE:** That's correct, yes.
11 And I wouldn't want anybody going in there,
12 either, you know.

13 **MS. ROBITAILLE:** Fine.

14 The next Bates page is ending in 350.

15 So February 9th, 2000, nearly a month after
16 you've given him the order, he hands over a few things?

17 **MR. DEROCHIE:** Oh, no, this was quite a --
18 quite a pile of documents.

19 **MS. ROBITAILLE:** Yes, that's a better
20 explanation of it.

21 What it gives you is -- if we could just go
22 through it -- there are four sets of notes corresponding to
23 four different dates.

24 **THE COMMISSIONER:** No, there's four volumes
25 of documents.

1 **MS. ROBITAILLE:** Yes, there are four ---

2 **MR. DEROCHIE:** Not necessarily notes.

3 **MS. ROBITAILLE:** No, I understand. We'll go
4 through the page here:

5 "Received four volumes of documents
6 from Dunlop. Does not represent all
7 that he has. Some notes also
8 provided."

9 Now, I just want to go through the notes
10 that were provided, if we can do that?

11 **THE COMMISSIONER:** It says:

12 "Some notes also provided relative
13 to Lalonde."

14 **MS. ROBITAILLE:** Exactly. So you have seven
15 pages of notes dated Sunday, June 9th, '96. If you just
16 scroll down there you'll be able to see that. Right.

17 And then at number two is one page of notes
18 dated Monday, 10th of June, '96?

19 **MR. DEROCHIE:** Yes.

20 **MS. ROBITAILLE:** Three pages of notes dated
21 November 11th, '96?

22 **MR. DEROCHIE:** Correct.

23 **MS. ROBITAILLE:** Four pages of notes dated
24 the 19th of November, '96?

25 **MR. DEROCHIE:** Correct.

1 **MS. ROBITAILLE:** And the qualification we
2 have above here is that these are notes relating to
3 Lalonde, the Lalonde prosecution?

4 **MR. DEROCHIE:** There's one other set of
5 notes on the following page, number five.

6 **MS. ROBITAILLE:** Number five.

7 **MR. DEROCHIE:** That's the notes you're
8 referring to now that you had previously referred to?

9 **MS. ROBITAILLE:** Yes. Now, we could go to
10 those notes in the disclosure, but the notes relate
11 exclusively to C8 and Ron Leroux. Would you agree with me
12 on that? I don't know if you have a recollection.

13 **MR. DEROCHIE:** I wouldn't have a
14 recollection, but I would have no reason to doubt what
15 you're saying.

16 **MS. ROBITAILLE:** Thank you.

17 So what Mr. Dunlop has done here is, he's
18 extracted portions of his handwritten notes that
19 relate to two witnesses and handed them over?

20 **MR. DEROCHIE:** Okay, yes.

21 **MS. ROBITAILLE:** And we know that by this
22 point, in February 2000, Mr. Dunlop had taken many witness
23 statements, had made contact with many more witnesses
24 beyond simply C8 and Ron Leroux, but at this point, a month
25 into his order, these are the notes that he's providing?

1 **MR. DEROCHIE:** Yes. There was a sense of
2 immediacy with regards to the Lalonde notes.

3 **MS. ROBITAILLE:** Yes. And the other items
4 that he gives you on February 9th, 2000, are four volumes?

5 **MR. DEROCHIE:** Yes.

6 **MS. ROBITAILLE:** I've gone through the index
7 that you've provided in your notes and I don't know if
8 you'd agree with me, but the first two volumes correspond
9 to the Fantino brief?

10 **MR. DEROCHIE:** That's what I assumed some of
11 them were, yes.

12 **MS. ROBITAILLE:** And the second two, to the
13 Police Act proceedings?

14 **MR. DEROCHIE:** Yes.

15 **MS. ROBITAILLE:** Now, it wouldn't have taken
16 Mr. Dunlop long to compile the Fantino briefs, and this is
17 something he had already done in the past as early as
18 December '96, and he had sent it to various people along
19 the way; right?

20 **MR. DEROCHIE:** Yes.

21 **MS. ROBITAILLE:** He may have even have had a
22 copy at home that he just was able to bring in?

23 **MR. DEROCHIE:** He may have, yes.

24 **MS. ROBITAILLE:** Okay. So, to recap.

25 A month into the order, Mr. Dunlop has

1 turned over the Fantino brief and about 19 pages of notes
2 relating exclusively to C8 and Ron Leroux. Does that sound
3 right?

4 **MR. DEROCHIE:** Yes.

5 **MS. ROBITAILLE:** If we can skip to February
6 29th, which is Exhibit 1325 again and Bates page 376.

7 What we see here as we're scrolling through,
8 is you've painstakingly indexed everything in the Fantino
9 brief and ---

10 **THE COMMISSIONER:** I'm sorry, what -- 376?

11 **MS. ROBITAILLE:** Yes, 376.

12 **THE COMMISSIONER:** And what date?

13 **MS. ROBITAILLE:** The date is February 29th.

14 **THE COMMISSIONER:** Okay, yes, sorry.

15 **MS. ROBITAILLE:** But just to finish my point

16 ---

17 **THE COMMISSIONER:** I'm sorry, go ahead.

18 **MS. ROBITAILLE:** --- you took the time to
19 index everything that Mr. Dunlop was providing you and when
20 he was providing it to you. Is that right?

21 **MR. DEROCHIE:** That's correct.

22 **MS. ROBITAILLE:** So, February 29th, if you
23 just scroll down, says:

24 "Received two VHS tapes from Carter."

25 And the way this would have worked was, Mr.

1 Dunlop would have provided these items to -- sorry, is it
2 Inspector Carter?

3 MR. DEROCHIE: Yes.

4 MS. ROBITAILLE: And he would have provided
5 them to you; right?

6 MR. DEROCHIE: Correct.

7 MS. ROBITAILLE: "Received two VHS tapes
8 from Carter stamped copy Ron Leroux."
9 And it goes on. And there are four cassette
10 tapes and two VHS tapes that are provided on that date, if
11 you just want to satisfy yourself?

12 Mr. DEROCHIE: Yes.

13 MS. ROBITAILLE: Now, providing those tapes
14 wouldn't have taken very long, would it have?

15 MR. DEROCHIE: As far as providing them to
16 me, no, that wouldn't have taken long, no.

17 MS. ROBITAILLE: And as I went through your
18 notes, I noticed that you arranged for the copying of those
19 tapes, it wasn't Mr. Dunlop, so that legwork was on you;
20 right?

21 MR. DEROCHIE: Correct.

22 MS. ROBITAILLE: The next Bates page that I
23 want to look at is 380 and the date here is March 8th, 2000.

24 MR. DEROCHIE: Yes.

25 MS. ROBITAILLE: Could you just flip to the

1 next page?

2 **THE COMMISSIONER:** Three-eight-one (381)?

3 **MS. ROBITAILLE:** Yes. Fourteen (14), 15,
4 yeah, that's it.

5 You write:

6 "Received four-tab volume 'Constable
7 Perry Dunlop's Notes' from Dunlop. He
8 informed me that this represented all
9 of his notes, although he still had a
10 few ..." --

11 and that looks like an abbreviation for "miscellaneous".
12 Is that right?

13 **MR. DEROCHIE:** That's correct.

14 **MS. ROBITAILLE:** "... miscellaneous items,
15 diagrams, photos, et cetera, and he'll
16 get that to me ..."

17 **MR. DEROCHIE:** "Next."

18 **MS. ROBITAILLE:** "... next."

19 So now, finally, two months after you've
20 given him the order, Mr. Dunlop turns over copies of his
21 notes to you; right?

22 **MR. DEROCHIE:** Yes.

23 **MS. ROBITAILLE:** But no originals yet. Am I
24 right?

25 **MR. DEROCHIE:** That's correct.

1 **MS. ROBITAILLE:** Staff Sergeant Derochie, do
2 you have any explanation why it took Mr. Dunlop two months,
3 sitting in that room with all of his boxes, to turn over
4 photocopies of his notes?

5 **MR. DEROCHIE:** That's how long it took him
6 to do it. He was making photocopies I would assume of his
7 notes, all of his disclosure; he was reproducing.

8 **MS. ROBITAILLE:** Your photocopy machine at
9 the time was a fully functioning machine?

10 **MR. DEROCHIE:** Yeah, oh yes. Well, there
11 was problems with it. He told us he was having problems
12 with it and we had that fixed, yes.

13 **MS. ROBITAILLE:** You were able to
14 accommodate him and fix it?

15 **MR. DEROCHIE:** Yes, yes.

16 **MS. ROBITAILLE:** Now, the delay wasn't
17 because he needed time to complete his Will Say because the
18 arrangement that you had with him, as I understand it, is
19 he would provide you a copy and he would keep the original;
20 right?

21 **MR. DEROCHIE:** That's correct.

22 **MS. ROBITAILLE:** So while he's completing
23 his Will Say, he has a record that he can refer to?

24 **MR. DEROCHIE:** Correct.

25 **MS. ROBITAILLE:** And so you've no

1 explanation as to why it would take him two months, working
2 eight hours a day, 40-hour weeks, to provide you with those
3 copies?

4 **MR. DEROCHIE:** No.

5 **MS. ROBITAILLE:** Was there any reason why he
6 needed to be alone in that room with his originals?

7 **MR. DEROCHIE:** No.

8 **MS. ROBITAILLE:** And to be clear, Mr. Dunlop
9 knew at least three things when he was sitting there in
10 that room. He knew that (1) his contact with witnesses had
11 the power to delay trials, as it did in the Lalonde trial?

12 **MR. DEROCHIE:** I would expect that he knew
13 that, yes, it had been mentioned to him. It had been
14 documented in the order so we cognisant of that, yes.

15 **MS. ROBITAILLE:** He knew too that since
16 August '97, he had been ordered not to have contact with
17 Project Truth witnesses; right?

18 **MR. DEROCHIE:** That's correct.

19 **MS. ROBITAILLE:** And in particular, he had
20 specifically instructed to cease speaking with a mother of
21 one of the complainants against my client. Are you aware
22 of that?

23 **MR. DEROCHIE:** At this time, no, I don't
24 believe I would have been aware of it.

25 **MS. ROBITAILLE:** We can get the evidence

1 from another witness, thank you.

2 And the last thing is he knew that you were
3 keeping track of his testimony as it related to the notes?

4 **MR. DEROCHIE:** As it related to?

5 **MS. ROBITAILLE:** His notes.

6 **MR. DEROCHIE:** I'm sorry. I was keeping
7 track of his testimony as it relates to his notes?

8 **MS. ROBITAILLE:** Well, if you recall, you
9 had that meeting on January 17th where you said to him,
10 "Look, Mr. Dunlop, these notes don't correspond to what you
11 testified to"?

12 **MR. DEROCHIE:** Oh, yes, yes, it was obvious
13 to me that that's exactly what those notes indicated.

14 **MS. ROBITAILLE:** And so you were aware and
15 he was aware that you were aware ---

16 **MR. DEROCHIE:** Aware, yes, we were.

17 **MS. ROBITAILLE:** --- that sometimes his
18 notes didn't correspond with his sworn testimony?

19 **MR. DEROCHIE:** Yes.

20 **MS. ROBITAILLE:** And so you were aware, and
21 he was aware that you were aware that sometimes ---

22 **MR. DEROCHIE:** Yes, we were ---

23 **MS. ROBITAILLE:** --- his notes didn't
24 correspond with his sworn testimony?

25 **MR. DEROCHIE:** Yes. Yes, I was well aware

1 of that.

2 MS. ROBITAILLE: And so those are the three
3 things he knows while he is sitting there with his
4 originals; right?

5 MR. DEROCHIE: Yes.

6 MS. ROBITAILLE: Now, in-chief you've
7 described Mr. Dunlop's notes as undisciplined.

8 MR. DEROCHIE: Yes.

9 MS. ROBITAILLE: What did you mean by that
10 exactly?

11 MR. DEROCHIE: They don't follow -- they
12 don't follow an acceptable format in that they're
13 scattered. They're -- you know, there's one line on a full
14 page, and they are not what we would consider to be police
15 notes.

16 MS. ROBITAILLE: They are not held to the
17 rigorous police standard; right?

18 MR. DEROCHIE: No, he's not viewing them
19 obviously in that light.

20 MS. ROBITAILLE: And maybe you can help us
21 out here because from your time in Professional Standards
22 and, generally, your experience as a police officer, you
23 are aware of the way police notes should be kept; right?

24 MR. DEROCHIE: Oh, yes.

25 MS. ROBITAILLE: You know that they have to

1 be accurate?

2 MR. DEROCHIE: Yes.

3 MS. ROBITAILLE: They have to be complete?

4 MR. DEROCHIE: Yes.

5 MS. ROBITAILLE: They have to be maintained
6 in such a way that someone down the road wouldn't be able
7 to say within a shadow of a doubt that these have been
8 altered?

9 MR. DEROCHIE: That's correct.

10 THE COMMISSIONER: Or a reasonable doubt, in
11 any event?

12 MR. DEROCHIE: Yes.

13 MS. ROBITAILLE: And officers are required
14 to number their pages consecutively?

15 MR. DEROCHIE: Yes.

16 MS. ROBITAILLE: They can't skip pages or
17 rip pages out?

18 MR. DEROCHIE: No.

19 MS. ROBITAILLE: And you are generally
20 supposed to write on every line, as you mentioned?

21 MR. DEROCHIE: That's the preferred way of
22 doing it, yes.

23 MS. ROBITAILLE: And that's because you
24 don't want anyone to say in court, for example, well,
25 someone could have added something there?

1 **MR. DEROCHIE:** That's right. You want to
2 make sure that the notes have integrity and you can't --
3 you're not subject or opened to those types of criticisms;
4 quite right.

5 **MS. ROBITAILLE:** You are supposed to write
6 in ink not pencil?

7 **MR. DEROCHIE:** Yes.

8 **MS. ROBITAILLE:** And you are not allowed to
9 re-write your notebooks; right?

10 **MR. DEROCHIE:** Oh, no. No.

11 **MS. ROBITAILLE:** And you're never supposed
12 to destroy them, except for in accordance with the
13 legislation?

14 **MR. DEROCHIE:** Exactly.

15 **MS. ROBITAILLE:** But Mr. Dunlop hadn't
16 written on every line, as you stated?

17 **MR. DEROCHIE:** No. He didn't consider these
18 police notes.

19 **MS. ROBITAILLE:** And he didn't keep notes in
20 consecutively numbered notebooks?

21 **MR. DEROCHIE:** That's correct.

22 **MS. ROBITAILLE:** There were pages missing
23 and skipped; right?

24 **MR. DEROCHIE:** Oh, yes.

25 **MS. ROBITAILLE:** And there were large gaps

1 in dates.

2 **MR. DEROCHIE:** There was.

3 **MS. ROBITAILLE:** On Monday, while Mr.
4 Engelmann was examining you, you said something that was
5 very interesting to me. There was a difficult in your
6 testimony and you said basically, and tell me if I'm
7 paraphrasing correctly, you said Mr. Engelmann, I have
8 recorded everything diligently, and I'm here to be cross-
9 examined. I am accountable.

10 Do you recall that?

11 **MR. DEROCHIE:** I am here, and I've -- yes,
12 okay.

13 **(LAUGHTER/RIRES)**

14 **MR. DEROCHIE:** You know, I don't
15 specifically recall that, but I do remember some reference
16 to here I am, you know, I expect to be cross-examined
17 vigorously on what I've done.

18 **MS. ROBITAILLE:** Part of your accountability
19 is the vigilance and that -- the precise way that you keep
20 your notes. Am I right?

21 **MR. DEROCHIE:** It's important to me.

22 **MS. ROBITAILLE:** Would you agree with me
23 that one of the reasons a person would keep poor notes,
24 cursory notes, disorganized notes with missing pages is
25 because that person is perhaps not willing to be

1 accountable for their actions?

2 **MR. DEROCHIE:** That's possible.

3 **MS. ROBITAILLE:** And in fact for some of Mr.
4 Dunlop's notes, you never saw an original and you were
5 never -- you were only ever provided with a copy. Do you
6 recall that?

7 **MR. DEROCHIE:** Yes, but I subsequently got
8 his originals.

9 **MS. ROBITAILLE:** Isn't it true that there is
10 a final duty notebook that was issued that is still
11 missing?

12 **MR. DEROCHIE:** That's correct.

13 **MS. ROBITAILLE:** So there are originals
14 outstanding?

15 **MR. DEROCHIE:** There's one notebook,
16 original notebook that was issued to him in his last period
17 of service with the organization that was never recovered.

18 **MS. ROBITAILLE:** And if we can go to Exhibit
19 1386, we can see, and I believe it's -- if you just scroll
20 down there. Oh, it's the next -- it's 176 is the Bates
21 page.

22 **THE COMMISSIONER:** What is the ---

23 **MS. ROBITAILLE:** Oh, no. I have a different
24 version. So we'll just scroll down on this page.

25 So this is a note of yours from May 18th.

1 This is your notebook; right?

2 MR. DEROCHIE: It is my notebook. Those are
3 my -- that's my note, yes. It's Bates page 7022302.

4 MS. ROBITAILLE: Okay, and if we can just
5 scroll down there and if we can just situate ourselves in
6 time. This is in May of 2004 and you are collecting
7 documents because Leduc is up again?

8 MR. DEROCHIE: Yes.

9 MS. ROBITAILLE: For a second time?

10 MR. DEROCHIE: Yes.

11 MS. ROBITAILLE: And you write:

12 "Also..."

13 There's a list of the notebooks that you've recovered, and
14 you write:

15 "Also retrieved the bounded document
16 provided by Dunlop, which contains his
17 loose notes and included are portions
18 of photocopies of pages from above
19 notebooks as well as pages..."

20 It looks like,

21 "...7 through 39 of what is believed to
22 be notebook 2316, which was issued to
23 him on December 31st, '99, but appears
24 to have been -- have not been turned in
25 on his resigning from the service."

1 **MR. DEROCHIE:** That's correct.

2 **MS. ROBITAILLE:** So you've never seen an
3 original from that book?

4 **MR. DEROCHIE:** I have never seen that
5 original notebook.

6 **MS. ROBITAILLE:** And sir, are you aware that
7 in the Lalonde prelim -- well, you are aware, in 1999, that
8 Mr. Dunlop testified that he had disclosed everything?

9 **MR. DEROCHIE:** Yes.

10 **MS. ROBITAILLE:** And you told Mr. Neville a
11 little earlier that you were also aware that when Mr.
12 Dunlop testified under on the 11-B Motion in Father
13 MacDonald's trial that he provided everything; right?

14 **MR. DEROCHIE:** Yes.

15 **MS. ROBITAILLE:** And in 2004, he testified
16 again at the Leduc disclosure motion and again he said he
17 turned over everything?

18 **MR. DEROCHIE:** I don't think I was present
19 at that. That -- I think that was Sergeant Snyder.

20 **MS. ROBITAILLE:** That's fine. We can get
21 that evidence, thanks.

22 And so we've just reviewed, you have
23 firsthand knowledge that his testimony in Lalonde on that
24 point and his testimony on MacDonald on that point is not
25 true. Right?

1 **MR. DEROCHIE:** Well, I have evidence to
2 suggest that it wasn't true, yes.

3 **MS. ROBITAILLE:** Thank you.

4 **MR. DEROCHIE:** It's my belief that it wasn't
5 true.

6 **MS. ROBITAILLE:** Thank you.

7 **THE COMMISSIONER:** In that, that last
8 notebook has not been ---

9 **MR. DEROCHIE:** No, in that he had tried to
10 hide notes or that he had not made full disclosure.

11 **THE COMMISSIONER:** Okay.

12 **MR. DEROCHIE:** Is that -- that was your
13 question, if I -- yes?

14 **MS. ROBITAILLE:** That's right. That one
15 notebook is an example of evidence leading to that opinion;
16 am I right?

17 **MR. DEROCHIE:** That's true. That particular
18 notebook wasn't of the era of those issues.

19 **MS. ROBITAILLE:** Right.

20 **MR. DEROCHIE:** But it's a similar type,
21 again, situation ---

22 **MS. ROBITAILLE:** Thank you.

23 **MR. DEROCHIE:** --- where we failed to
24 uncover notes.

25 **MS. ROBITAILLE:** If we can go to Exhibit

1 1381? Mr. Derochie, this is the letter that you write on
2 March 12th, 2003, to Chief Repa. Am I right?

3 **MR. DEROCHIE:** That's correct.

4 **MS. ROBITAILLE:** I just want to read for you
5 the third paragraph. Now, you write:

6 "Mr. Dunlop has testified that he
7 withheld information from OPP
8 investigators after being ordered to
9 provide such information by his
10 supervisors. There is evidence that
11 Mr. Dunlop actively pursued potential
12 witnesses and conducted interviews of
13 said witnesses after having been
14 ordered to refrain from such
15 activities. Further, there is evidence
16 that Mr. Dunlop made against written
17 orders not to do so public statements
18 relative to matters before, or which
19 eventually would go before courts,
20 which resulted in Charter arguments in
21 various courts publicly commenting on
22 the damage created by Mr. Dunlop as a
23 result."

24 **MR. DEROCHIE:** That's what I wrote, yes.

25 **MS. ROBITAILLE:** My question, if an

1 investigation would have followed in 2003, which is what
2 you were asking Chief Repa to follow up on, was to either
3 refer to another Force or for you -- for the Cornwall
4 Police to do it themselves -- get an investigation started;
5 am I right?

6 **MR. DEROCHIE:** Yes, I would have liked to
7 have seen that.

8 **MS. ROBITAILLE:** And if there had been such
9 an investigation in 2003, that investigation would have
10 included an investigation into possible perjury at the
11 MacDonald 11-B hearing, right?

12 **MR. DEROCHIE:** Yes.

13 **MS. ROBITAILLE:** It would have included
14 investigation into obstruction of justice by not turning
15 over materials?

16 **MR. DEROCHIE:** Correct.

17 **MS. ROBITAILLE:** And it would have included
18 investigation into possible interference with witnesses?

19 **MR. DEROCHIE:** Obstruction, yes.

20 **MS. ROBITAILLE:** So is it fair to say that
21 such an investigation may have also included investigating
22 Dunlop's contact with witnesses relevant to the Leduc
23 matter?

24 **MR. DEROCHIE:** It may have, yes.

25 **MS. ROBITAILLE:** If we could go to document

1 1382.

2 Mr. Commissioner, this document has been
3 entered, but I noticed that there's a name that, you know,
4 we may want to stamp this document.

5 **THE COMMISSIONER:** Thank you, yes. Thank
6 you. Madame Clerk, could you ensure that the document is
7 stamped.

8 **MS. ROBITAILLE:** Just the second paragraph
9 there. Now this is a correspondence from you to the Chief,
10 and you're explaining certain conversations that you've had
11 with Inspector Hall, right?

12 **MR. DEROCHIE:** That's correct, yes.

13 **MS. ROBITAILLE:** And part of your project in
14 this period was to elicit from Inspector Hall a statement
15 regarding his concerns, vis-à-vis Dunlop during Project
16 Truth, right?

17 **MR. DEROCHIE:** Yes.

18 **MS. ROBITAILLE:** And so the second paragraph
19 reads:

20 "Inspector Hall has speculated to me
21 that it may be that the Crown is not
22 prepared to deal with the issues
23 surrounding C-8, Dunlop until such time
24 as the Leduc matter has been decided."

25 **MR. DEROCHIE:** Yes.

1 **MS. ROBITAILLE:** You may also recall that
2 the Leduc matter is awaiting decision as to whether or not
3 it will be appealed.

4 Then you write:

5 "Politics appear to be playing a role
6 to some degree with the end result
7 being a lack of enthusiasm on the part
8 of the Crown's office to deal with
9 these matters."

10 **MR. DEROCHIE:** Yes.

11 **MS. ROBITAILLE:** Now, is politics your word
12 or is it Inspector Hall's word?

13 **MR. DEROCHIE:** No, I take ownership of the
14 words that are in here.

15 **MS. ROBITAILLE:** What did you mean by
16 politics?

17 **MR. DEROCHIE:** Office politics that were
18 going on in the Crown's office with regards to -- I don't
19 think anybody had an awful lot of appetite to get further
20 involved with Dunlop. That's my personal opinion on that,
21 and that's what I'm expressing to the Chief.

22 **THE COMMISSIONER:** Okay so -- just so we
23 were clear about that politics, as internal Crown politics
24 as opposed to politics at Queen's Park?

25 **MR. DEROCHIE:** Oh, yes. I had no knowledge

1 that Queen's Park was involved in this, no.

2 **MS. ROBITAILLE:** Why would the Crown or
3 Inspector Hall for that matter be interested in the Leduc
4 matter being completed before this matter gets resolved?

5 Why would that be a concern?

6 **MR. DEROCHIE:** Well, it just was my opinion
7 that the consensus was let's deal with all of these issues
8 first and then we'll deal with Dunlop.

9 Let's get the -- all of the matters
10 surrounding Project Truth done with. Then we'll move on to
11 -- the final chapter of this will be whether or not we're
12 going to deal with the allegations or the potential that
13 there was criminal activity by Mr. Dunlop and others.

14 **MS. ROBITAILLE:** But they're connected;
15 aren't they?

16 **MR. DEROCHIE:** I'm sorry?

17 **MS. ROBITAILLE:** The Leduc prosecution and
18 the Dunlop matters are connected. They're related.

19 **MR. DEROCHIE:** In ---

20 **THE COMMISSIONER:** In what way?

21 **MS. ROBITAILLE:** There was a concern about
22 missing disclosure in the Leduc prosecution.

23 **MR. DEROCHIE:** Some of the issues were the
24 same.

25 **MS. ROBITAILLE:** There was a concern about

1 contact with witnesses in the Leduc prosecution.

2 **THE COMMISSIONER:** He doesn't know that. I
3 think he said so ---

4 **MS. ROBITAILLE:** Well, I'm asking him.

5 **THE COMMISSIONER:** No, no, but you've
6 already asked him, and he said that he wasn't aware of
7 that.

8 **MS. ROBITAILLE:** He said he wasn't sure he
9 was aware, at the time that Dunlop was in the room, whether
10 he had been given an order specific to a complainant's
11 mother.

12 What I'm asking him now is whether ---

13 **MR. DEROCHIE:** No ---

14 **MS. ROBITAILLE:** Sorry, go ahead.

15 **MR. DEROCHIE:** I'm sorry, my understanding
16 of your question and then my answer was at the time was I
17 aware that Dunlop had made contact with the mother of one
18 of the victims. And I didn't know at that time.

19 **MS. ROBITAILLE:** Right.

20 **MR. DEROCHIE:** I certainly know that now.

21 **MS. ROBITAILLE:** Right.

22 **MR. DEROCHIE:** But I didn't at the time
23 we're dealing with these issues.

24 **MS. ROBITAILLE:** In 2003, were you aware
25 that Dunlop's contact with witnesses was a relevant issue,

1 a live issue in the Leduc prosecution?

2 MR. DEROCHIE: I don't recall. I would have
3 to review my notes to make that determination. I -- I
4 don't, I don't know when that became an issue.

5 MS. ROBITAILLE: You don't recall, in the
6 first prosecution, when the mother of a complainant
7 testified that she had had ---

8 MR. DEROCHIE: Oh, yes. Yes.

9 MS. ROBITAILLE: You recall that?

10 MR. DEROCHIE: Yes.

11 MS. ROBITAILLE: And you would have known
12 that at the time?

13 MR. DEROCHIE: Yes, when was that?

14 MS. ROBITAILLE: In 2001.

15 MR. DEROCHIE: Was that 2001?

16 MS. ROBITAILLE: Yes.

17 MR. DEROCHIE: Yes, then I would have known
18 that, that there was issues. Those issues were there then,
19 yes.

20 MS. ROBITAILLE: And so potential perjury by
21 Mr. Dunlop and possible tainting of witnesses by Mr. Dunlop
22 would be something relevant to the Leduc prosecution.
23 Would you agree?

24 MR. DEROCHIE: Certainly, yes, it would be
25 relevant.

1 **MS. ROBITAILLE:** If we can go to document
2 number 731876. I don't believe this is an Exhibit yet.

3 **THE COMMISSIONER:** Thank you. Exhibit 1404
4 is an exchange of e-mails and, on the top, it's from Danny
5 Aikman to Anthony Repa sent October 15th, 2003.

6 Oh, no, wait a minute. Yes, with the
7 original. The bottom one was from Detective -- Staff
8 Sergeant Derochie to Danny Aikman. Okay.

9 **--- EXHIBIT NO./PIÈCE No P-1404:**

10 (731876) E-mail exchange fr Garry
11 Derochie to Danny Aikman - 15 Oct, 03

12 **MS. ROBITAILLE:** If we could just go to the
13 second paragraph there, and this is also an e-mail where
14 Staff Sergeant, you are reporting on a conversation that
15 you've had with Pat Hall. Is that right?

16 **MR. DEROCHIE:** That's correct.

17 **MS. ROBITAILLE:** So you write:

18 "He also told me that Leduc is
19 appealing the order for a new trial to
20 the Supreme Court, and he has no idea
21 how long that will take, and when I
22 asked him how it would impact on the
23 statement he was to provide to us, re:
24 the investigation into the criminal
25 wrong doing by Dunlop, he told me that

1 he would not be able to provide that
2 without the consent of the Crown
3 working on Leduc. They do not want to
4 'muddy the water.'"

5 "Muddy the water", are those Inspector
6 Hall's words or yours?

7 **MR. DEROCHIE:** They're in quotation marks.
8 If they're not his words, they're words to the effect --
9 that was certainly what the impression I was left with.

10 **MS. ROBITAILLE:** And what did you take him
11 to mean by those words?

12 **MR. DEROCHIE:** That they didn't want to be
13 distracted from the Leduc matter right now. They wanted to
14 concentrate on that.

15 **MS. ROBITAILLE:** Even though those matters
16 are very connected, and it would be an interest to that
17 prosecution if it was found that Mr. Dunlop had perjured
18 himself, for example, or tainted witnesses, for example?

19 **MR. DEROCHIE:** Yes, but it was my
20 understanding the defence was alive to those issues. I
21 might be wrong there, but I was always under the impression
22 that Mr. Leduc's defence was aware of this, of these
23 issues. Certainly, they had all my disclosures, all my
24 notes.

25 **MS. ROBITAILLE:** Yes. Yeah. Did Pat Hall

1 ever provide you with the statement that you were asking
2 him to?

3 **MR. DEROCHIE:** No, we didn't -- when the --
4 when this Inquiry was -- we made further attempts after
5 this date to get the matters going, but as soon as the
6 Inquiry was officially announced, then the decision was
7 made that we would hold off and let the Inquiry deal with
8 these issues.

9 **MS. ROBITAILLE:** At this point, in 2003, the
10 time of these correspondences, you were in the Criminal
11 Investigations Division. Is that right?

12 **MR. DEROCHIE:** Yes.

13 **MS. ROBITAILLE:** Would you say that
14 generally the way criminal investigation works is the
15 possibility of criminal activity becomes known to an
16 officer, either through a complaint or through their own
17 observations; right?

18 **MR. DEROCHIE:** Yes.

19 **MS. ROBITAILLE:** And then that activity is
20 investigated?

21 **MR. DEROCHIE:** That's correct.

22 **MS. ROBITAILLE:** Now, does impact on
23 upcoming trials, is that an unusual consideration when
24 deciding whether to investigate criminal and then that
25 activity is investigated?

1 **MR. DEROCHIE:** That's correct.

2 **MS. ROBITAILLE:** Now, does impact on
3 upcoming trials, is that an unusual consideration when
4 deciding whether to investigate criminal activity?

5 **MR. DEROCHIE:** Unusual is a term I would use
6 frequently involving all of these matters.

7 **MS. ROBITAILLE:** That's a yes?

8 **MR. DEROCHIE:** And I have used those terms
9 frequently.

10 **MS. ROBITAILLE:** Is that a yes, Mr.
11 Derochie?

12 **MR. DEROCHIE:** There's nothing -- yes,
13 that's yes, I'm sorry.

14 **THE COMMISSIONER:** The usual is the unusual.

15 **MR. DEROCHIE:** The usual is the unusual.

16 **MS. ROBITAILLE:** And at this point, in the
17 fall of 2003, it's your opinion that Mr. Dunlop may have
18 engaged in criminal activity; is that right?

19 **MR. DEROCHIE:** That's correct.

20 **MS. ROBITAILLE:** The matter isn't
21 investigated?

22 **MR. DEROCHIE:** The matter is not
23 investigated? That's correct.

24 **MS. ROBITAILLE:** It seems as though
25 everyone's waiting until Leduc finishes, right?

1 **MR. DEROCHIE:** Seems that way, yes. That's
2 a fair statement.

3 **MS. ROBITAILLE:** And indeed, are you aware
4 that after Dunlop testified in 2004 in the Leduc hearing,
5 that the Cornwall Police renewed their efforts to
6 investigate Dunlop and they send a letter to Crown Lidia
7 Narozniak asking for direction from the Attorney General on
8 "how an investigation into possible criminal misconduct by
9 Dunlop should be undertaken"?

10 **MR. DEROCHIE:** That's correct.

11 **MS. ROBITAILLE:** You're aware of that?

12 **MR. DEROCHIE:** Those were those further
13 steps I was mentioning prior.

14 **MS. ROBITAILLE:** Those are all my questions.
15 Thank you.

16 **MR. DEROCHIE:** Thank you very much.

17 **THE COMMISSIONER:** Mr. Kozloff? I take it
18 the OPPA's away. All right. How about Mr. Carroll? I was
19 told that the OPPA would have no questions, but ---

20 **MR. CARROLL:** Be careful who your messenger
21 is.

22 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

23 **CARROLL:**

24 **MR. CARROLL:** Mr. Kozloff, on behalf -- I'm
25 authorized on behalf of the OPPA, has no questions.

1 I wonder with respect to my questions, sir,
2 I have very briefly just one area actually arising out of
3 the previous cross. My name is Bill Carroll and I'm
4 counsel for the OPPA.

5 Madam Clerk, if you could put up the last
6 exhibit that was just on the screen, 1404? Thanks.

7 This letter, sir, that you authored, I'm not
8 sure that it was clear, but it certainly comes out from
9 this letter, not clear from your evidence, but it comes out
10 in this letter that in fact at this point Pat Hall is in
11 retirement mode. I think he refers to it as pre-retirement
12 mode.

13 But you understand that in police jargon to
14 be he's no longer performing any official duties, correct?

15 **MR. DEROCHIE:** He's coasting, yes.

16 **MR. CARROLL:** He's coasting because he has
17 some ---

18 **(LAUGHTER/RIRES)**

19 **MR. CARROLL:** Well, he has earned the right
20 by virtue of time off and in time in lieu in the bank to --
21 -

22 **MR. DEROCHIE:** All of that momentum carries
23 him right to retirement.

24 **MR. CARROLL:** Yes, all right. So that he
25 really isn't in any official capacity when ---

1 **MR. DEROCHIE:** That's correct. That's my
2 understanding.

3 **MR. CARROLL:** --- the request is made of
4 him, right?

5 **MR. DEROCHIE:** Yes.

6 **MR. CARROLL:** And in fact, that's been
7 passed off to another officer according to the letter?

8 **MR. DEROCHIE:** Quite correct.

9 **MR. CARROLL:** And also, if I might just
10 direct you to the paragraph that begins, "he also told me
11 about Leduc appealing..." and then it goes on as -- you were
12 directed to:

13 "He told me that he would be not able
14 to provide that..."

15 Being the statement,

16 "...without the consent of the Crown
17 working on Leduc. They did not want to
18 muddy the waters."

19 Sir, did you take that to mean, as I think
20 is a reasonable interpretation, Pat Hall telling you that
21 the Crown does not want to muddy the waters?

22 **MR. DEROCHIE:** That was my interpretation of
23 it.

24 **MR. CARROLL:** Thank you very much, sir.
25 That's the only area I wanted to deal with.

1 Thank you very much for all of the evidence
2 you have given here, sir.

3 **MR. DEROCHIE:** Thank you, Mr. Carroll.

4 **THE COMMISSIONER:** And by that suntan, Mr.
5 Carroll, I think that you took full advantage of the weeks
6 that we were away.

7 **MR. CARROLL:** Sun lamp and textbooks, sir.

8 (LAUGHTER/RIRES)

9 **THE COMMISSIONER:** M'hm. Mr. Callaghan?

10 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

11 **CALLAGHAN:**

12 **MR. CALLAGHAN:** Good afternoon. I need no
13 introduction.

14 **MR. DEROCHIE:** None whatsoever, Mr.
15 Callaghan.

16 **THE COMMISSIONER:** Your reputation preceded
17 you.

18 **MR. CALLAGHAN:** Excuse me?

19 **THE COMMISSIONER:** Your reputation preceded
20 you.

21 **MR. CALLAGHAN:** Well, only my mother says
22 things like that in a nice way.

23 (LAUGHTER/RIRES)

24 **MR. CALLAGHAN:** I have obviously a number of
25 areas I want to canvas with you and I'm going to try to be

1 brief. A lot of things have been covered in cross-
2 examination, which I might well have had to go into. And
3 there will be some things I just need to sort out.

4 So bear with me, particularly you, Mr.
5 Commissioner. I want to make sure -- there are a few
6 things in the notes where I'm going to have to sort of make
7 sure, turn my mind to what's in because I don't want to be
8 repetitive, particularly because I want to get done today.
9 And I want -- I'm hoping that the Staff Sergeant can be
10 done today.

11 Can I -- just to start, we talked about the
12 audit reports; if you recall ---

13 **MR. DEROCHIE:** Yes.

14 **MR. CALLAGHAN:** --- done by Policing
15 Services Division. And you'll recall there were a number
16 of them and you had indicated that whilst you acknowledged
17 there were morale problems, you had always been under the
18 understanding that the line service wasn't affected.

19 Was that essentially your evidence?

20 **MR. DEROCHIE:** That's my evidence and that's
21 my belief.

22 **MR. CALLAGHAN:** And I just wanted to direct
23 your attention, because people directed your attention to
24 these reports, and I'll just take you to the two last --
25 the 1990 report, Exhibit 139 -- pardon me, 1391?

1 **MR. DEROCHIE:** Yes, sir.

2 **MR. CALLAGHAN:** And I'm at the Bates page
3 ending 467.

4 **MR. DEROCHIE:** I'm sorry, the Bates page
5 ends?

6 **MR. CALLAGHAN:** Ending 467. You can see it
7 as page 2 if you've got the hardcopy? It's not on the
8 screen, but perhaps I can continue if everybody's got the
9 hardcopy, if that is acceptable, Mr. Commissioner?

10 **THE COMMISSIONER:** Madam Clerk? Does it
11 seem ---

12 **THE REGISTRAR:** What was the Bates page?

13 **MR. CALLAGHAN:** I'm sorry.

14 **MR. DEROCHIE:** Seven-one-eight-zero-five-
15 two-four (7180524).

16 **MR. CALLAGHAN:** I'm sorry, I have a
17 different version. I apologize. Five-two-four (524). My
18 apologies. Thank you, Mr. Lee.

19 I just wanted to, you see -- if you can see,
20 first of all, it's on the screen that there a number of
21 people interviewed. I won't go through them all. And then
22 it says:

23 "The inspection revealed some very
24 positive aspects of the Cornwall Police
25 Service and conversely some significant

1 negative aspects were most evident."
2 And they go to -- to first and it says:
3 "A close examination of service
4 statistics, training records, excluding
5 in-service equipment and interviews
6 with persons involved with the service
7 at every level strongly indicated that
8 the Cornwall Police Service is
9 delivering an excellent level of
10 policing. The authorities interviewed
11 without exception were highly
12 complimentary of the Police Service.
13 Police Standards recently introduced by
14 Police Service Division reviewed in
15 detail with Chief Shaver and he is to
16 be commended for his attention he has
17 given them to date."

18 So are those the comments to which you were
19 referring when you thought that there were some positive
20 aspect to these reports?

21 **MR. DEROCHIE:** Yes. Yes.

22 **MR. CALLAGHAN:** And if I could then take you
23 over to page 6 of the report, and I'm in the second-last
24 paragraph. And there is discussion -- there's been
25 discussion here and we've been through the morale report

1 and the staff sergeant's report regarding Chief Shaver.

2 But it's noted here:

3 "It would be eminently unfair to
4 conclude this report without knowing
5 the positive effect Chief Shaver has
6 had on the Cornwall Police Service
7 during his tenure as Chief of Police.
8 There are a few members of the service
9 who do not recognize and compliment him
10 for his efforts in the significant
11 increase in the level of training
12 officers at the Ontario and Canadian
13 police colleges. They also applaud the
14 much needed enforcement related
15 equipment he has acquired. He's
16 fluently bilingual and was raised and
17 educated in Cornwall."

18 And then they go on to talk about how
19 cooperative he was and they refer to the comment that you
20 remain -- he acknowledges the comment, I guess, that you
21 had talked about of his management style and it's referred
22 to as spontaneous and impulsive.

23 But just to paint a fair picture of Chief
24 Shaver, there were positives as is noted here?

25 **MR. DEROCHIE:** Oh, yes, there were. Many

1 positives.

2 **MR. CALLAGHAN:** And did you agree with the
3 comments in this report in that regard?

4 **MR. DEROCHIE:** Yes, I did.

5 **MR. CALLAGHAN:** And if we could then go to
6 Exhibit 1393 and this would be the '93 report and I've got
7 a Bates page ending 072 and I hope Madam Clerk's got that
8 too.

9 And do you recall saying, sir, that -- that
10 whilst you understood that there were morale issues and
11 problems with the Cornwall Police, you also articulated
12 that during this time it was the social contract and that
13 there was -- to paraphrase what you were saying -- "a
14 unionization of policing" and you talked about the ball
15 caps and the jeans and that that was going on throughout
16 Ontario; correct?

17 **MR. DEROCHIE:** Yes.

18 **MR. CALLAGHAN:** All right. And I just --
19 much of this was read by Mr. Lee, but what was not read by
20 Mr. Lee as follows and it should be -- it goes as follows:

21 "The general community perceptions
22 about the delivery of policing services
23 were positive with some reservations
24 about prioritization and deployment of
25 resources. The negative attitudes and

1 perceptions that contribute to the
2 state of low morale in the Cornwall
3 Police Services are by no means unique
4 to Cornwall."

5 And then they go on to talk about the part
6 that Mr. Lee did raise.

7 Is that -- are those the types of comments
8 that you were referring to about personally the view of the
9 police in the community and, secondly, with respect to the
10 rest of the province?

11 **MR. DEROCHIE:** That's correct.

12 **MR. CALLAGHAN:** All right. If I can then
13 take you to page 32, which is Bates page 099 and at this
14 stage -- and I apologize, Mr. Commissioner, if I'm speaking
15 fast, but we're -- I'm keeping an eye on the clock -- at
16 this stage they're talking about the rank and file, if I
17 can put it that way, and it says -- and much of this was
18 read, again, by Mr. Lee and others -- but it says above
19 "Recommendations":

20 "Notwithstanding the comments noted
21 above, the advisors acknowledge that
22 the current level of police response to
23 calls for services continues to be
24 viewed by the community as acceptable.
25 This is a direct result of the rank and

1 file members responding to their duties
2 in a professional manner. There is no
3 denying that many individuals have been
4 strongly affected by the negative work
5 environment; however, there are several
6 well-documented acts of bravery and
7 clear evidence of ongoing devotion to
8 duty despite the less than ideal
9 situation."

10 That's not quite the way you put it, but is
11 that similar to what you're saying is that the -- that
12 whilst there were issues, you didn't observe, you
13 personally didn't observe it affecting the frontline
14 service that was being provided?

15 **MR. DEROCHIE:** That's correct.

16 **MR. CALLAGHAN:** All right. I want to touch
17 base, a little bit, and I don't want to do too much of this
18 but on -- on the -- on the DS investigation, that -- and
19 the work you did on that, but I'm doing it mostly in
20 response to other's comments. And if we could have Exhibit
21 1293?

22 **(SHORT PAUSE/COURTE PAUSE)**

23 **MR. CALLAGHAN:** And what I -- I just wanted
24 to -- to be clear, there was a suggestion and I can't
25 remember by whom, that this idea that Ms. Sebalj was not --

1 was having difficulty with RPG was somehow less than
2 genuine and I -- and I want to just address the comments
3 that you noted in -- in the -- in your material and I'm in
4 Exhibit 438.

5 **MR. ENGELMANN:** In fairness, I don't think -
6 - no, I know, but I think it was Mr. Lee, but it was a
7 question as to when she was concerned about those
8 difficulties; it wasn't ---

9 **MR. CALLAGHAN:** Well, maybe I misunderstood
10 it.

11 Perhaps I can just put this in, to clarify
12 the record, and if I have misstated what I understood, then
13 we can obviously deal with that in argument but given the
14 hour of day, I shan't be long.

15 Bates page 438.

16 And this is -- this is you interviewing Ms.
17 Sebalj and you're making your notes and this is on November
18 10th.

19 **THE COMMISSIONER:** Of 1993, right?

20 **MR. CALLAGHAN:** Yes, sir, November 10th, '93.

21 **THE COMMISSIONER:** Okay, go ahead.

22 **MR. CALLAGHAN:** I'm at Bates page 438; it
23 would be 66, sorry, that's right.

24 And it says:

25 "Sebalj continued to look for witnesses

1 but was unsuccessful. Sebalj was not
2 comfortable that she had RPG to lay a
3 charge."

4 Right?

5 **MR. DEROCHIE:** That's correct.

6 **MR. CALLAGHAN:** Yeah. And so as far -- as
7 that's fairly early on in your investigation, so it's fair
8 to say that you were made aware of the issue relatively
9 soon in -- in the work you were doing?

10 **MR. DEROCHIE:** Yes.

11 **MR. CALLAGHAN:** Fine. And -- now just to go
12 to the next page, I take it what's going on in the middle
13 there about "our ongoing investigations or courses at
14 Ontario Police College", you were going through what was
15 that delay that appears between the end of April and
16 August; correct?

17 **MR. DEROCHIE:** That's correct.

18 **MR. CALLAGHAN:** All right. And you've
19 testified as to your view on that, so I won't take you
20 there.

21 And then at the bottom of that page and just
22 to point it out again, that she again says -- she replied
23 that she in hindsight, she probably should have went to the
24 Crown in April and may have, but that she was having
25 difficulty with RPG; so that comes up again in your notes?

1 **MR. DEROCHIE:** Yes.

2 **MR. CALLAGHAN:** And then if I could take you
3 to page 72 and here you're -- you're discussing the matter
4 ---

5 **MR. DEROCHIE:** I'm sorry, I'm sorry; would
6 you reference me again on the page?

7 **MR. CALLAGHAN:** Page 72 -- it should be on
8 the screen -- and it says:

9 "The Crown told me that he had spoken
10 to Sebalj on more than one occasion
11 about this matter. He acknowledged
12 that the case was a strange one and
13 that Sebalj appeared to be having
14 trouble forming RPG."

15 So Murray MacDonald confirmed that during
16 the course of the investigation, he was aware that Sebalj
17 was having trouble with RPG?

18 **MR. DEROCHIE:** Yes.

19 **MR. CALLAGHAN:** And he advised that to you,
20 on November 10th ---

21 **MR. DEROCHIE:** Correct.

22 **MR. CALLAGHAN:** --- according to your notes.
23 Okay.

24 Just a point that Mr. Kloeze covered and
25 that was: I take it you did discuss with Murray MacDonald

1 the other two witnesses that had come forward; correct?

2 MR. DEROCHIE: Yes.

3 MR. CALLAGHAN: Do you remember that?

4 And I take it by the time you were concluded
5 -- and I think this is obviously what Mr. Kloeze said --
6 but by the time you had concluded your investigation, you
7 hadn't seen Mr. MacDonald's view change; that is ---

8 MR. DEROCHIE: That's correct.

9 MR. CALLAGHAN: All right. Even though he
10 was, at that time, at least aware of the other two
11 witnesses?

12 MR. DEROCHIE: Yes.

13 MR. CALLAGHAN: Reluctant witnesses, I
14 should point out.

15 If I could address something of a personal
16 nature, was what Mr. Horn had said about your son, you
17 recall his comment that -- about you meeting -- you
18 bringing your son into the Children's Aid Society; ---

19 MR. DEROCHIE: Yes.

20 MR. CALLAGHAN: --- you recall that?

21 Is it correct that -- that during
22 discussions with Mr. Abell, Mr. Abell advised you, as part
23 of Project Blue, that they would be interviewing altar boys
24 at the church?

25 MR. DEROCHIE: Yes.

1 **MR. CALLAGHAN:** All right. Is it in that
2 context that you had said that your son would be prepared
3 to be interviewed?

4 **MR. DEROCHIE:** I -- I told him I would
5 approach my son and see if he would be willing to
6 participate and be interviewed, yes.

7 **MR. CALLAGHAN:** All right. So is the extent
8 that Mr. Horn wants to characterize that like Mr. Dunlop, I
9 take it that's not the case?

10 **MR. DEROCHIE:** No, that ---

11 **MR. CALLAGHAN:** This was part of a
12 discussion?

13 And you talked briefly about the duty to
14 report and your understanding of the evolution of that duty
15 to report and you had mentioned that in previous occasions,
16 in major cases, it hadn't been brought to your attention or
17 to your knowledge or to the Service's attention on
18 historical sexual assaults that they were to report to the
19 Children's Aid Society; do you remember that?

20 **MR. DEROCHIE:** Yes.

21 **MR. CALLAGHAN:** All right. And just for
22 clarification, is one of those cases the Deslauriers case?

23 **MR. DEROCHIE:** Yes.

24 **MR. CALLAGHAN:** All right. I just wanted to
25 clarify that that was one of the cases. sexual assaults

1 that they were to report to the Children's Aid Society. Do
2 you remember that?

3 **MR. DEROCHIE:** Yes.

4 **MR. CALLAGHAN:** All right. And just for
5 clarification, one of those cases was the Deslauriers case?

6 **MR. DEROCHIE:** Yes.

7 **MR. CALLAGHAN:** Just wanted to clarify that
8 that was one of the cases.

9 In respect of the settlement that we've been
10 discussing between Mr. Silmsler and the Church and the issue
11 about what other documents might be available, in 1993,
12 when you started this investigation, were you familiar with
13 settlement documentations for a civil settlement?

14 **MR. DEROCHIE:** No.

15 **MR. CALLAGHAN:** All right. Would you have
16 at any time had any dealings with settlement agreements at
17 that time for a civil settlement?

18 **MR. DEROCHIE:** No.

19 **MR. CALLAGHAN:** And if I could, and I won't
20 take you to the documents, I think my friend would agree
21 that we could put these into Mr. Carl Johnston's ODE just
22 to save time, but you're aware, sir, that sometime after
23 the Ottawa report, that Chief Johnston sought the
24 assistance of the OPP to do a re-investigation of the
25 Silmsler case?

1 **MR. DEROCHIE:** Yes.

2 **MR. CALLAGHAN:** And an investigation into
3 whether or not there was an obstruct justice involving the
4 settlement with anybody?

5 **MR. DEROCHIE:** Yes, yes.

6 **MR. CALLAGHAN:** And whether or not there was
7 any conspiracy or cover-up at the Cornwall Police?

8 **MR. DEROCHIE:** That's correct.

9 **MR. CALLAGHAN:** And that was in about late
10 January, early February?

11 **MR. DEROCHIE:** Yes, it would have been
12 around that time, yes.

13 **MR. CALLAGHAN:** And I think my friend would
14 agree, we can put those in on the ODEs, so I won't take the
15 time now, Mr. Commissioner, given the late hour.

16 Now, Mr. Manson had put to you that you
17 might well order Mr. Dunlop in off disability to receive
18 informal disciplining. Do your recall that discussion?

19 **MR. DEROCHIE:** I'm sorry, would you ---

20 **MR. CALLAGHAN:** Mr. Manson had suggested
21 that you might well have ordered Mr. Dunlop to come in from
22 his disability or his time off, I suppose, to receive the
23 informal discipline?

24 **MR. DEROCHIE:** Yes.

25 **MR. CALLAGHAN:** And, just so I'm clear, have

1 you ever ordered anybody to come and receive informal
2 discipline?

3 **MR. DEROCHIE:** No.

4 **MR. CALLAGHAN:** Have you ever ordered
5 anybody that's receive -- ordered anybody in off a sick
6 leave?

7 **MR. DEROCHIE:** Not that I can recall.

8 **MR. CALLAGHAN:** And I take it, the type of
9 discipline that you were discussing would require Mr.
10 Dunlop to voluntarily accept it, correct? The type that
11 you -- the counselling that you were doing -- you proposed?

12 **MR. DEROCHIE:** I would have had the
13 authority, or I was comfortable that I had the authority,
14 to put it in his appraisal file.

15 **MR. CALLAGHAN:** Right, but does that under
16 the collective agreement require his ---

17 **MR. DEROCHIE:** That doesn't apply under the
18 collective agreement.

19 **MR. CALLAGHAN:** And is that considered
20 informal discipline under the Act?

21 **MR. DEROCHIE:** No, it's less than both of
22 those two ---

23 **MR. CALLAGHAN:** All right. And I take it --
24 you referred to Carl Johnston calling you, telling you not
25 to go ahead. Did you get any explanation from Carl

1 Johnston as to why not to go ahead?

2 **MR. DEROCHIE:** Not that I recall, no.

3 **MR. CALLAGHAN:** By the way, I asked you
4 earlier, and the letters that went to the OPP from Chief
5 Johnston, did you have any part in drafting those letters?

6 **MR. DEROCHIE:** No.

7 **MR. CALLAGHAN:** I just want to touch briefly
8 on the *Police Services Act* and the duty of the Professional
9 Standards Branch.

10 You'll agree with me that there have been
11 two regimes. There was a regime that applied up to 1997
12 and then when the Conservatives came in, there was a new
13 regime?

14 **MR. DEROCHIE:** That's correct, yes.

15 **MR. CALLAGHAN:** And I take it, in the second
16 regime is when you were the Professional Standards Officer?

17 **MR. DEROCHIE:** That's correct.

18 **MR. CALLAGHAN:** And I take it, sir, that
19 under that regime, discipline is a matter for the Chief of
20 Police -- directs the Chief of Police to be responsible for
21 discipline?

22 **MR. DEROCHIE:** That's correct.

23 **MR. CALLAGHAN:** And I take it the Chief of
24 Police is also responsible for the operations of the Police
25 Services?

1 **MR. DEROCHIE:** He is.

2 **MR. CALLAGHAN:** And I take it, it is as a
3 result of his authority to deal with discipline that he
4 appoints someone as the head of the professional standards?

5 **MR. DEROCHIE:** There's an appointment, yes.

6 **MR. CALLAGHAN:** And so it's all provided for
7 in a statute?

8 **MR. DEROCHIE:** That's right, yeah.

9 **MR. CALLAGHAN:** And, Mr. Commissioner, I
10 won't go -- do you know much about the earlier period,
11 prior to '97?

12 **MR. DEROCHIE:** Very little.

13 **MR. CALLAGHAN:** I might suggest, Mr.
14 Commissioner, we may want to get this out. I can advise
15 that former Chief Justice Lesage has done a summary in his
16 report.

17 You had indicated that there are changes now
18 so that the Commissioner should be aware that whatever
19 problems he might have perceived or might be perceived
20 about -- what was -- how it operated in your time, there's
21 a bill in front of the House, as you say; right?

22 **MR. DEROCHIE:** That's correct.

23 **MR. CALLAGHAN:** And, sir, I take it -- I
24 think you've made this point -- but I take it that while
25 you were head of Professional Standards, you did discipline

1 people under the *Police Services Act*?

2 MR. DEROCHIE: Oh, yes.

3 MR. CALLAGHAN: And you did, in fact, I
4 suppose at times -- have you ever had to lay a criminal
5 information against an officer?

6 MR. DEROCHIE: I have.

7 MR. CALLAGHAN: And so that when it's
8 suggested to you that there was a reluctance to do that,
9 what would you say to those who suggest that?

10 MR. DEROCHIE: No, if it was warranted,
11 under normal circumstances, we would proceed.

12 MR. CALLAGHAN: If I could then move into --
13 I'm moving as fast as I can, Mr. Commissioner, I don't know
14 what the timing will be.

15 There have been a number of people who have
16 covered the involvement with Mr. Dunlop and there are
17 documents that probably should be put in at some point, but
18 let me see if I can summarize and put it to you, sir, what
19 happened.

20 First of all, you don't get involved until
21 1999; correct?

22 MR. DEROCHIE: With the disclosure issues?

23 MR. CALLAGHAN: Yes.

24 MR. DEROCHIE: And, sir, you're aware that
25 it was Miss Ptak's letter that causes the consideration?

1 **MR. CALLAGHAN:** That and -- engages me into
2 this, yes.

3 **MR. DEROCHIE:** All right. And there are --
4 and I'll suggest to my friend later that we put these
5 documents later if that's acceptable. And then some will
6 go in through someone else, but I just want to make sure
7 it's clear because I think it's not particularly clear in
8 some instance.

9 At the time, there was one investigation, it
10 was a joint investigation by the Cornwall Police
11 and the OPP, and that dealt with the
12 investigation of Marcel Lalonde?

13 **MR. DEROCHIE:** Yes.

14 **MR. CALLAGHAN:** And that involved the person
15 known as C8?

16 **MR. DEROCHIE:** Correct.

17 **MR. CALLAGHAN:** And in 1997, there was a
18 request to Mr. Dunlop to provide disclosure in respect of
19 that matter; correct?

20 **MR. DEROCHIE:** That's correct.

21 **MR. CALLAGHAN:** And am I correct that he
22 provided an OMPPAC disclosure that referenced his getting
23 disclosure in January, 1997 and having no contact with the
24 person between June and that time?

25 **MR. DEROCHIE:** That's correct.

1 **MR. CALLAGHAN:** And, again, Mr.
2 Commissioner, the document supporting this will go in if
3 this is -- if any time you think this is an unacceptable
4 way to do it, please let me know. I don't want to offend
5 the process.

6 **THE COMMISSIONER:** I'm on guard.

7 **MR. CALLAGHAN:** All right. Thank you. As
8 if I should have worried.

9 **(LAUGHTER/RIRES)**

10 **MR. CALLAGHAN:** So I take it that up to the
11 Ptak letter that comes on the eve of the trial of Mr.
12 Lalonde, that it was unknown, at least to you, that there
13 would be further disclosure by Mr. Dunlop?

14 **MR. DEROCHIE:** With regards to the Lalonde
15 prosecution, that's correct.

16 **MR. CALLAGHAN:** All right. And I take it
17 that that causes concern by both the OPP and the Cornwall
18 Police and the Crown?

19 **MR. DEROCHIE:** Yes.

20 **MR. CALLAGHAN:** And in that letter, you then
21 ask for Mr. Dunlop to provide -- pardon me, René Desrosiers
22 asked him to provide disclosure; correct?

23 **MR. DEROCHIE:** Through the chain of command,
24 he's asked by his immediate supervisor to provide
25 disclosure.

1 **MR. CALLAGHAN:** I'm going to actually just
2 show you the disclosures, since I'm not sure that there is
3 anyone actually to show this to, and I just want to make
4 sure it's absolutely clear the disclosure he gives him, and
5 Mr. Crane will pass it to you.

6 It's Document 734677, and I'm handing those
7 to Madam Clerk. Can you handle this, Madam Clerk? And
8 there's a cover memo as well, of 734677, that goes as well.

9 **(SHORT PAUSE/COURTE PAUSE)**

10 **MR. CALLAGHAN:** Okay. I think they -- I'm
11 told those should be stamped, but I have some experience at
12 this.

13 And, Mr. Commissioner, while Madam Clerk is
14 doing that, what you will receive -- and these are
15 documents that need to be stamped, obviously ---

16 **THE COMMISSIONER:** M'hm.

17 **MR. CALLAGHAN:** --- because it has C-8's
18 name in it. You'll see a note from Mr. Dunlop and then
19 there are two excerpts from his notebook, both of which I
20 believe, Mr. Commissioner, you've seen, but it's important
21 to get it out that these are them.

22 The Document Number for that, I think, is
23 734677. It's 734678.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **THE COMMISSIONER:** Thank you.

1 So Exhibit 1405 are -- what are you calling
2 this? Well, it's a document that's dated 11 September '96,
3 9:10, C-8.

4 **--- EXHIBIT NO./PIÈCE NO. P-1405:**

5 (734677) Cover Page

6 **THE COMMISSIONER:** And Exhibit 1406 is a
7 note from Perry Dunlop?

8 **MR. CALLAGHAN:** Yes.

9 **THE COMMISSIONER:** Re: disclosure 11
10 September '96.

11 **--- EXHIBIT NO./PIÈCE NO. P-1406:**

12 (734678) Note from Perry Dunlop re:
13 Disclosure of September 11, 1996 -
14 November 19, 1996

15 **MR. CALLAGHAN:** The one should go on top of
16 the other.

17 So do you have that in front of you, sir?

18 **MR. DEROCHIE:** I do, yes.

19 **MR. CALLAGHAN:** Okay. Yeah. Just so we're
20 clear. And you have notes that verify this, but I just
21 want to put this to you, that what you received shortly
22 after you asked for it in early October from Mr. Dunlop is
23 you get the cover note because Ms. Ptak's letter refers
24 specifically, and I think people have talked about it, that
25 it refers specifically to two ---

1 **MR. DEROCHIE:** Dates, yes.

2 **MR. CALLAGHAN:** --- dates, September 11th,
3 '96 and November 19th, '96. And what you get is you get the
4 note from Mr. Dunlop:

5 "I saw C-8 on this date. Marcel
6 Lalonde was not discussed."

7 And you get a date of 11 September '96,
8 9:10, C-8.

9 And I can advise, Mr. Commissioner, we know,
10 Mr. Commissioner, we know because we've seen the whole
11 document. It's been redacted. So he's deleted -- Mr.
12 Dunlop has deleted the amount -- the information below.

13 **THE COMMISSIONER:** M'hm.

14 **MR. CALLAGHAN:** Okay. I just want to make
15 it clear that that's what we're seeing. We have this in
16 another form in all those notes of Mr. Dunlop that come out
17 later.

18 **THE COMMISSIONER:** Okay. But -- right.

19 **MR. CALLAGHAN:** But this is what he's
20 getting in October of 1999.

21 **THE COMMISSIONER:** Okay. So just out of
22 curiosity, the stuff that has been -- the material that has
23 been redacted, is that something that's unrelated to this
24 case? Do you know?

25 **MR. CALLAGHAN:** Well, what it is, it's

1 unrelated to C-8's complaint of Marcel Lalonde. And so
2 what Mr. Dunlop appears to have done and said -- and
3 correct me, Staff Sergeant -- "Well, that's not relevant to
4 the Lalonde matter, so I'll give you what is." And I can
5 tell you it refers to him, but as he says in the cover
6 note, "Marcel Lalonde was not discussed."

7 **THE COMMISSIONER:** Okay. Well, it'll come
8 out. I just don't want the public thinking something that
9 isn't there with respect to this. So you know what the
10 deletions were?

11 **MR. CALLAGHAN:** I know what the deletions --
12 there wasn't -- I didn't go back to them for the purpose of
13 this. We know what the deletions are. They're in the
14 record. In fact, you've got them in the record. I don't --
15 - I, off the top of my head, can't recall. I'm just going
16 on what Mr. Dunlop is telling, and it's not germane to me
17 whether he's truthful or not at this stage, and I don't --
18 as he says, he meets C-8 on that date and his note says
19 Marcel Lalonde was not discussed, and therefore he doesn't
20 provide it.

21 Have I got that right, Mr. Derochie?

22 **MR. DEROCHIE:** That's my understanding of
23 what happened, yes.

24 **MR. CALLAGHAN:** So that document, sir, Mr.
25 Commissioner, is in the record, and I can't answer your

1 question as to what the remainder of it is.

2 **THE COMMISSIONER:** Okay. That's fine.

3 **MR. CALLAGHAN:** I'm just advising that it
4 is.

5 **THE COMMISSIONER:** That's fine.

6 **MR. CALLAGHAN:** And then the note of
7 November 19th, '96; correct?

8 **MR. DEROCHIE:** Yes.

9 **MR. CALLAGHAN:** All right.

10 And I take it that that led you to conclude
11 and others to conclude -- it's not just you, but it was
12 others to conclude, it's not just you but it was others to
13 conclude that there had -- that in the -- that in a
14 preliminary inquiry, that Mr. Dunlop had not been entirely
15 truthful in an earlier preliminary inquiry when he talked
16 about ---

17 **MR. DEROCHIE:** Yes.

18 **MR. CALLAGHAN:** And again, sir, there are
19 notes for this which we can go to later, but I just want to
20 get this clear.

21 At that time then, you go to Mr. Garson to
22 seek advice, and that's Exhibit 1326?

23 **MR. DEROCHIE:** It also alerts me to the fact
24 that there's disclosure involved in Charles MacDonald.

25 **MR. CALLAGHAN:** Right. Which is the other

1 issue you're working on at this time because now you're
2 working on getting that order of January 10th -- of January
3 2000?

4 **MR. DEROCHIE:** Yes. I start almost
5 immediately turning my mind to that whole issue, especially
6 after I get this because there's an appearance here that
7 there's still -- you know, I'm not confident that he's
8 making full disclosure.

9 **MR. CALLAGHAN:** Right. I just want to just
10 make it clear as to what's going on.

11 So then Exhibit 1326 is Mr. Garson to you
12 and it's referable to a meeting that you had with him?

13 **MR. DEROCHIE:** Yes.

14 **MR. CALLAGHAN:** Right.

15 And in that it's laid out in some form and
16 it also is laid out for the record in your memo to Chief
17 Repa of 1329 -- Exhibit 1329 what the issue is. And it's
18 in -- at the bottom of the page, it says:

19 "While testifying under oath at the
20 preliminary hearing of Marcel Lalonde,
21 Dunlop advised the Court that he had
22 turned over all his notes in this
23 investigation to police and that Mr. C-
24 8, the complainant, did not make any
25 disclosure to Dunlop during the period

1 of June '96 and January '97."

2 And he refers to the preliminary hearing
3 transcript which my friend and I agree that if it's not in,
4 we'll put that in the record at a later date, Mr.
5 Commissioner.

6 **THE COMMISSIONER:** M'hm.

7 **MR. CALLAGHAN:** "Subsequent investigations
8 show there may still be outstanding
9 disclosure held by Dunlop and not
10 turned over to the police regarding
11 this investigation. In fact, police
12 now have in their possession notes from
13 Dunlop indicating that he in fact spoke
14 with C-8 about the Lalonde matter
15 during the above-noted time period."

16 So the point I was trying to get at, sir, is
17 that you raised this with the Crown that this issue is out
18 there and his advice to you is that it should be looked
19 into, but not by you; by another police force?

20 **MR. DEROCHIE:** Yes.

21 **MR. CALLAGHAN:** That's the short of it. You
22 went through a lot of it. I just -- on short, that's what
23 occurred?

24 **THE COMMISSIONER:** Can I stop you there for
25 a second? Did you receive this? Who received Exhibit

1 1405?

2 MR. DEROCHIE: Ultimately, it was received
3 by René Desrosiers, the investigating officer of the ---

4 THE COMMISSIONER: And then passed up to
5 you?

6 MR. DEROCHIE: I would have got copies of
7 it.

8 MR. CALLAGHAN: If I'm being too quick, I
9 can slow down. That could be explained.

10 MR. DEROCHIE: My notes would explain
11 exactly what the sequence of events are because ---

12 THE COMMISSIONER: Well, I guess my only --
13 my concern is with this is it's obvious that there have
14 been some deletions.

15 MR. CALLAGHAN: By Dunlop.

16 THE COMMISSIONER: Pardon me?

17 MR. CALLAGHAN: By Dunlop.

18 THE COMMISSIONER: By Dunlop.

19 MR. CALLAGHAN: Yeah.

20 THE COMMISSIONER: So maybe I need to be
21 filled in. Wouldn't have somebody said, "No, I want the
22 full copy and I want it now"?

23 MR. CALLAGHAN: Well, that was the whole
24 point of ---

25 MR. DEROCHIE: Of doing the order.

1 **THE COMMISSIONER:** Pardon me?

2 **MR. DEROCHIE:** That was the whole point of
3 making sure that we issued him an order that was -- it was
4 apparent to me that Mr. Dunlop was not going to cooperate
5 in any way, shape or form unless we were very specific.

6 **THE COMMISSIONER:** Okay. All right.

7 **MR. DEROCHIE:** So ---

8 **THE COMMISSIONER:** Just a second now. When
9 did he produce this to you?

10 **MR. CALLAGHAN:** He produced it to ---

11 **THE COMMISSIONER:** Derochie ---

12 **MR. CALLAGHAN:** --- Derochie in the end of
13 September.

14 **THE COMMISSIONER:** Of?

15 **MR. CALLAGHAN:** Of '99.

16 **THE COMMISSIONER:** All right.

17 And the Order that you gave him and gave him
18 an office to complete, that was in 2000?

19 **MR. DEROCHIE:** Yes. This is ---

20 **THE COMMISSIONER:** Okay.

21 **MR. CALLAGHAN:** Well, actually, it's a good
22 thing we're doing this because if -- I think we've all
23 rushed through this a little bit. But that's the sequence.

24 **THE COMMISSIONER:** Okay. Now I understand.
25 So that would bring forward the Order saying okay, we're

1 going to do ---

2 **MR. DEROCHIE:** If I'm correct, Mr.
3 Commissioner, in fact, the two dates that were referred to
4 in the Ptak letter, I don't believe the November 14th -- or
5 the November 19th letter was one that was referred.

6 I think there was a December date or
7 something that was referred in the original note. So this
8 again gave rise to the fact that there's more here that I
9 don't -- you know, there's stuff missing. I'm not
10 confident that we're -- disclosure is being made properly
11 in this case.

12 **MR. CALLAGHAN:** Right. And in fact, I think
13 Ms. Robitaille took it to the disclosure later.

14 **MR. DEROCHIE:** Yes.

15 **MR. CALLAGHAN:** Some of the disclosure.

16 **MR. DEROCHIE:** Yes.

17 **MR. CALLAGHAN:** Some of that disclosure
18 later, for example, included at least to the Cornwall
19 Police the statement taken by -- in the presence of Mr.
20 Dunlop by C-8 of December 12th.

21 **MR. DEROCHIE:** That's what's caused me to --
22 a great amount of concern because as I had recounted it, he
23 said -- he was emphatic and sure that no disclosure had
24 been made between the summer when he met C-8 and January of
25 1977 when he ---

1 **MR. CALLAGHAN:** Of '97.

2 **MR. DEROCHIE:** I'm sorry?

3 **MR. CALLAGHAN:** Of '97. You said '77.

4 **MR. DEROCHIE:** Oh, okay. That the -- that
5 there was no disclosure; there was no incremental
6 disclosure and he commented -- this is odd because normally
7 disclosure is done incrementally so that ---

8 **MR. CALLAGHAN:** I think you're getting a
9 sense of the issues, the concerns.

10 **MR. DEROCHIE:** M'hm.

11 **MR. CALLAGHAN:** That that was the issue.
12 Now, as it turns out, the December 12th -- and I have a copy
13 here of the December 12th statement by C-8 in the presence
14 of Mr. Dunlop or to Mr. Dunlop was contained in one of the
15 various briefs that went to either Fantino, the Solicitor
16 General or the Attorney General or all three.

17 I'm not sure if it was ever determined which
18 of the three. It had not been disclosed to the Cornwall
19 Police. Is that correct?

20 **MR. DEROCHIE:** That's correct. We didn't
21 know of its existence at this time.

22 **THE COMMISSIONER:** Okay.

23 **MR. CALLAGHAN:** So that's what prompts the
24 first iteration of dealing with Mr. Dunlop on a perjury
25 issue. It deals with his statements in the prelim of Mr.

1 Lalonde and it deals with the late disclosure and this
2 information that had not been disclosed?

3 **MR. DEROCHIE:** That's correct.

4 **MR. CALLAGHAN:** And just so we're clear, and
5 maybe it's a good thing for the Commissioner that he gets
6 this information, but Exhibit 1328 is the letter asking the
7 Ottawa Police to do that investigation.

8 **MR. DEROCHIE:** That's correct.

9 **MR. CALLAGHAN:** Right. And as I say, you
10 had discussions with Mr. Garson who had suggested that
11 perhaps it should be another police force?

12 **MR. DEROCHIE:** And this is the result of
13 that opinion or advice.

14 **MR. CALLAGHAN:** And you eventually get an
15 opinion -- or pardon me, a report from the Ottawa Police,
16 and if I could, it's Document 728308, and then we'll just
17 hand that out.

18 And just if I might ask a question, Mr.
19 Commissioner, while that's going on. At the end of the
20 day, the advice from the Ottawa Police was that there were
21 going to be difficulties with the possibility of a
22 conviction for perjury in respect of Mr. Dunlop's
23 involvement?

24 **MR. DEROCHIE:** That was the Crown's advice
25 to the Ottawa police service, yes.

1 **MR. CALLAGHAN:** And while we await that, you
2 personally were not given a copy of the advice to the
3 Ottawa Police?

4 **MR. DEROCHIE:** That's correct. I never saw
5 it.

6 **THE COMMISSIONER:** Exhibit 1407 is a letter
7 from the Ottawa Carlton Regional Police Service, Sergeant
8 Rolland Lalonde to Chief Repa dated -- they don't put dates
9 on their letters.

10 **MR. CALLAGHAN:** It's received the 24th of
11 July, sir. I don't actually see a date on it.

12 **THE COMMISSIONER:** Yeah, 2000.

13 --- **EXHIBIT NO./PIÈCE NO. P-1407:**

14 (728308) Letter from Sgt. Rolland
15 Lalonde to Chief A. Repa

16 **MR. CALLAGHAN:** And I don't -- you know, the
17 letter is there. And we'll have to go to Mr. Garson's
18 letter, which I don't propose now to understand this
19 letter.

20 But you understood that the issues raised
21 and Mr. Dunlop's behaviour up to date were not going to
22 result in any perjury charges?

23 **MR. DEROCHIE:** That's correct.

24 **MR. CALLAGHAN:** And is it similar -- I think
25 you said earlier or maybe it was Superintendent Skinner,

1 once you hand this over to the Ottawa Police, they do their
2 investigation the way they see fit. If it takes them down
3 a different avenue, that's where they go?

4 **MR. DEROCHIE:** That's correct.

5 **MR. CALLAGHAN:** The -- I take it during the
6 course of your involvement as the coordinator, if I can use
7 that phrase, of the Cornwall Police with Project Truth, you
8 were intaking documents, but I take it you weren't involved
9 in any of the investigative things that were going on in
10 Project Truth?

11 **MR. DEROCHIE:** No.

12 **MR. CALLAGHAN:** You were just facilitating
13 the obtaining of documents and handing them over?

14 **MR. DEROCHIE:** Exactly.

15 **MR. CALLAGHAN:** And in fact, just so it's
16 clear, I mean, you were still -- not you personally -- but
17 the Force was still under investigation by Project Truth?

18 **MR. DEROCHIE:** That's correct.

19 **MR. CALLAGHAN:** And Mr. Neville -- and I
20 take it -- sorry, if I could stop you there, the
21 involvement then of the Cornwall Police is -- let me choose
22 a word -- intermittent in the sense that you're not day to
23 day involved. You're getting reports back from
24 Superintendent Hall or Inspector Hall and the others of the
25 OPP?

1 **MR. DEROCHIE:** That's correct. There's good
2 communication between Pat Hall and myself.

3 **MR. CALLAGHAN:** And I take it it's raised
4 with you in, and I think without going there -- I may have
5 to -- but in May of 2002, that Pat Hall raises concerns
6 about Mr. Dunlop's testimony or -- not testimony; behaviour
7 and this was taken -- you were taken to this by Mr.
8 Neville.

9 **MR. DEROCHIE:** Yes.

10 **MR. CALLAGHAN:** And that would be in Exhibit
11 1375.

12 **THE COMMISSIONER:** What page, please?

13 **MR. CALLAGHAN:** I believe it's first at 101,
14 sir.

15 **THE COMMISSIONER:** Yes.

16 **MR. CALLAGHAN:** And this is now in respect
17 of the Father Charlie matter. And I recognize that we
18 talked earlier about the issue regarding C-8's testimony in
19 the Lalonde matter, correct?

20 **MR. DEROCHIE:** Yes.

21 **MR. CALLAGHAN:** Do you recall that?

22 **MR. DEROCHIE:** Yes.

23 **MR. CALLAGHAN:** I'm not going to review
24 that. That was another incident ---

25 **MR. DEROCHIE:** Yes.

1 **MR. CALLAGHAN:** --- that was dealt with.

2 And as I think Mr. Neville or someone else took you to,
3 there wasn't sufficient evidence on that issue. This is
4 the trip to Toronto.

5 **MR. DEROCHIE:** I'm sorry?

6 **MR. CALLAGHAN:** The statement, it was taken
7 to you earlier. Prior to this there's a statement
8 regarding the trip to Toronto.

9 **MR. DEROCHIE:** Oh, yes. Yes. The school
10 trip, yes.

11 **MR. CALLAGHAN:** And that was Staff Sergeant
12 Gary Lefebvre, right?

13 **MR. DEROCHIE:** Yes.

14 **MR. CALLAGHAN:** So we weren't -- I'm not
15 going to go there. That's another incident. But here,
16 which is what Ms. Robitaille was talking about, and this
17 was read in earlier, but:

18 "C-8 told Crown that he lied. Regional
19 Crown will order an investigation into
20 C-8 which will lead to Dunlop.
21 Investigation will be given to someone
22 other than OPP, OPS and CPS."

23 Correct?

24 **MR. DEROCHIE:** Yes.

25 **MR. CALLAGHAN:** All right.

1 And so this is -- the idea here is that the
2 Crowns have got this thing in hand and they're going to
3 deal with it and get back to people.

4 Was that the understanding?

5 **MS. DEROCHIE:** That was my understanding.
6 They had -- they would be the complainant eventually on
7 these issues.

8 **MR. CALLAGHAN:** And I'd suggest that as you
9 read through the material, that this is -- these are
10 matters that are occurring with Project Truth's involvement
11 with Mr. Dunlop and his testimony at various hearings;
12 right?

13 **MR. DEROCHIE:** Yes.

14 **MR. CALLAGHAN:** And I take it that the
15 intent, as we read through it, and again, there are plenty
16 of notes and we can -- if it's acceptable, I won't take you
17 to them all, but Pat Hall was intended to be your
18 complainant or the person giving you the information
19 either?

20 **MR. DEROCHIE:** Yes.

21 **MR. CALLAGHAN:** All right.

22 And in any event, you weren't going to do
23 it?

24 **MR. DEROCHIE:** In any event, we were not
25 going to do it, but we wanted something to kick-start the

1 investigation.

2 **MR. CALLAGHAN:** If I could take you to
3 Document 731860?

4 **THE COMMISSIONER:** And then we'll call it a
5 day, Mr. ---

6 **MR. CALLAGHAN:** Yes, I regret it. Do you
7 know what? Do you want to just call it a day now? I don't
8 think it adds anything to do this.

9 **THE COMMISSIONER:** Okay.

10 **MR. CALLAGHAN:** I apologize. I was trying
11 to move too quickly and I will try to move quickly
12 tomorrow.

13 **THE COMMISSIONER:** Certainly.

14 **MR. CALLAGHAN:** Because I know we've got
15 lots going on.

16 **THE COMMISSIONER:** Yes.

17 Mr. Engelmann.

18 **MR. ENGELMANN:** I think we should just try
19 and get an estimate from my friend. There are others
20 waiting to go ahead and I just want to get a sense from Mr.
21 Callaghan how long he'll be.

22 I will not be long. I think right now I've
23 got -- I'll have to look at my notes tonight, but probably
24 no more than about 20 minutes.

25 **MR. CALLAGHAN:** Yes, Mr. Commissioner, I am

1 doing my level best to move quickly. I fear that perhaps
2 some of this quickness, and just from your questions, that
3 sometimes it's not laid out in a complete fashion because
4 others have -- and I'm not -- everybody's got their job to
5 do, but it is the story of what happened and I just wanted
6 to fill in some of the blanks.

7 I will try to move as quickly as I have. I
8 appreciate the latitude I'm being given and I won't abuse
9 it, but I will try to move as quickly as I can.

10 Having said that, I will go through it in, I
11 hope, like 45 minutes. I hopefully will get through and I
12 just have a little bit to do.

13 A lot was done by others today and I will
14 start crossing things out. If that's acceptable?

15 **THE COMMISSIONER:** Forty-five (45) minutes?

16 **MR. CALLAGHAN:** Well, hold on. It sounds
17 like the Court of Appeal.

18 **(LAUGHTER/RIRES)**

19 **THE COMMISSIONER:** Oh, no.

20 **MR. CALLAGHAN:** No, I don't mean that. I
21 meant nothing ---

22 **THE COMMISSIONER:** Oh, no. I don't travel
23 in those lofty spheres. So 45 minutes for him and 15
24 minutes for you, Mr. Engelmann.

25 Thank you very much. I'll see you tomorrow.

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THE REGISTRAR: Order; all rise. À l'ordre;
veuillez vous levez.

This hearing is adjourned until tomorrow
morning at 9:30 a.m.

--- Upon adjourning at 6:27 p.m./

L'audience est ajournée à 18h27

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C E R T I F I C A T I O N

I, Marc Demers a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Marc Demers, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Marc Demers, CVR-CM