

**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 104

Held at :

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

Wednesday, April 18, 2007

Tenue à:

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

Mercredi, le 18 avril 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Raija Pulkkinen	Commission Counsel
Ms. Louise Mongeon	Registrar
Mr. John E. Callaghan Mr. Mark Crane	Cornwall Police Service Board
Mr. Neil Kozloff Ms. Diane Lahaie	Ontario Provincial Police
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Christopher Thompson	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Dominic Lamb	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. Mark Wallace	Ontario Provincial Police Association

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1 --- Upon commencing at 9:36 a.m./

2 L'audience débute à 9h36

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. Please be seated. Veuillez vous
7 asseoir.

8 **THE COMMISSIONER:** Thank you.

9 Good morning, Mr. Engelmann.

10 **MR. ENGELMANN:** Good morning, Mr.

11 Commissioner.

12 **THE COMMISSIONER:** Good morning everyone.

13 **MR. ENGELMANN:** As you know, Mr. Kozloff
14 will be finishing off the OPP narrative this morning, ---

15 **THE COMMISSIONER:** Yes.

16 **MR. ENGELMANN:** --- followed by Mr. Wallace,
17 for the OPPA and then Mr. Callaghan.

18 **THE COMMISSIONER:** Thank you.

19 **MR. ENGELMANN:** I'll turn it over.

20 **THE COMMISSIONER:** Mr. Kozloff.

21 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KOZLOFF

22 (cont'd/Suite):

23 **MR. KOZLOFF:** Good morning, sir.

24 If I may have your indulgence, first of all,
25 Mr. Commissioner, Ontario lost a great jurist last night,

1 Mr. Justice Archie Campbell passed away.

2 **THE COMMISSIONER:** No. I didn't know that.
3 Sorry to hear that.

4 **MR. KOZLOFF:** I'm sure everybody joins me in
5 expressing their condolences to the family.

6 **THE COMMISSIONER:** Exactly. Thank you.

7 **MR. KOZLOFF:** The next area that I was going
8 to touch on, sir, I've already referred to it. It's the
9 letter from Peter Griffiths to Detective Inspector Smith
10 re: the investigation of Father Charles MacDonald, dated
11 December 21, 1994. That's Exhibit 393, is it?

12 ---EXHIBIT NO./PIÈCE NO. P-393

13 (700963) Letter from Peter D. Griffiths to
14 Detective Inspector T.F. Smith, December 21,
15 1994

16 I would have explained ---

17 **THE COMMISSIONER:** Just a second, can I get
18 a copy of that?

19 **MR. KOZLOFF:** Yes.

20 **THE COMMISSIONER:** Hang on. I might have it
21 right here.

22 Yes, I do. Thank you.

23 **MR. KOZLOFF:** Thank you.

24 I would have explained to Mr. Silmsler that
25 this letter sets out what is being requested of Mr.

1 Griffiths by Detective Inspector Smith, that is to say,
2 whether there is in law reasonable and probable grounds
3 revealed in the evidence. It sets out what a determination
4 of whether there are reasonable and probable grounds to
5 support criminal charges involves, in the view of Mr.
6 Griffiths; that is to say, first that the police must be
7 objectively satisfied that there is sufficient credible
8 evidence, and second that the officer swearing the
9 information must be prepared to state under oath his
10 personal belief that the evidence is sufficiently strong to
11 give rise to reasonable and probable grounds. In other
12 words, the officer must be subjectively satisfied. And
13 finally, it provides an analysis, Mr. Griffiths' analysis
14 of the evidence supporting the four allegations and why the
15 evidence in each case did not, in Mr. Griffiths' view, meet
16 either the objective or subjective standard.

17 It is Mr. Griffiths that makes reference to
18 the vagueness of the allegations, to the difficulty in
19 placing them within a reliable time frame, to the lack of
20 corroboration and to the fact that Detective Inspector
21 Smith is not personally or subjectively satisfied that he
22 has reasonable and probable grounds.

23 I would have gone on to explain to Mr.
24 Silmsler that this document was the basis upon which
25 Detective Inspector Smith came to the conclusion that he

1 did, with respect to the investigation of Mr. Silmser's
2 allegations in December of 1994.

3 **THE COMMISSIONER:** How do we know that?

4 **MR. KOZLOFF:** Because Detective Inspector
5 Smith received the letter from Mr. Griffiths, then informed
6 Mr. Silmser and Mr. Geoffrey that there would in fact be no
7 charges laid and there were at that time, no charges laid.

8 **THE COMMISSIONER:** How do we know that
9 that's the only consideration that he had?

10 **MR. KOZLOFF:** Because the record, which I
11 went through yesterday ---

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

13 **MR. KOZLOFF:** --- the references that I made
14 to Detective Inspector Smith's notes, with respect to the
15 1994 investigation ---

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

17 **MR. KOZLOFF:** --- all culminate with his
18 awaiting the opinion of Mr. Griffiths with respect to
19 whether or not charges should be laid.

20 **THE COMMISSIONER:** Right. But I don't want
21 to split hairs with you, sir.

22 **MR. KOZLOFF:** Yes, sir.

23 **THE COMMISSIONER:** Until we hear from
24 Inspector Smith, right, there may have been other
25 considerations. So you have to be careful when we're

1 dealing with this cross-examination.

2 **MR. KOZLOFF:** All right. Perhaps I could
3 put it this way.

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

5 **MR. KOZLOFF:** I would have explained to Mr.
6 Silmsler that I expect that Detective Inspector Smith will
7 say that this document, Exhibit 393, was the basis upon
8 which he came to the conclusion that he did, with respect
9 to the investigation.

10 **THE COMMISSIONER:** M'hm. And I see that, as
11 well, because in the last paragraph of that letter ---

12 **MR. KOZLOFF:** Yes.

13 **THE COMMISSIONER:** --- Mr. Griffiths goes on
14 and says, "This letter is my opinion only, and as such is
15 not binding upon you."

16 The Ontario Provincial Police operate
17 independently of the Crown Attorney's office and are
18 legally entitled to lay charges if they see fit without the
19 approval of the Crown Attorney.

20 **MR. KOZLOFF:** Absolutely.

21 **THE COMMISSIONER:** All right.

22 **MR. KOZLOFF:** That's the separation between
23 the prosecutorial branch and the investigatory branch.

24 **THE COMMISSIONER:** Right. So the impression
25 should not be left that and, maybe Officer Smith will be

1 questioned on it -- I don't know -- that he said, well,
2 look it, I got the opinion from the Crown, it's out of my
3 hands and so there won't be any charges. The decision was
4 his.

5 **MR. KOZLOFF:** Your comment is absolutely
6 fair.

7 **THE COMMISSIONER:** Thank you.

8 **MR. KOZLOFF:** I would also explain to Mr.
9 Silmsler that I expect the Detective Inspector would say
10 that -- Smith would say that this document was the basis
11 upon which he provided the explanation for the decision
12 that there would be no charges against Father MacDonald.

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

14 **MR. KOZLOFF:** Finally, this document, and
15 we'll get to it when I get to my final area -- this
16 document was one of the sources to which Detective
17 Inspector Hall would have referred when writing Exhibit
18 302. Exhibit 302, sir, just to remind you, is ---

19 **THE COMMISSIONER:** Madam Clerk, can I get
20 Exhibit 302, please?

21 **MR. KOZLOFF:** That's the letter from
22 Detective Inspector Pat Hall to the Director of the Ontario
23 Provincial Police Criminal Investigation Branch, Orillia,
24 dated the 5th of October, 2000.

25 **THE COMMISSIONER:** Thank you.

1 Yes.

2 **MR. KOZLOFF:** That letter and selected
3 portions of it in particular, was put to Mr. Silmser by Mr.
4 Lee, in cross-examination.

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

6 **MR. KOZLOFF:** The next area, sir, that I'm
7 going to address is the 1995 OPP investigation.

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

9 **MR. KOZLOFF:** The first reference in the
10 transcript is at January 30th, page 196, line 17 or sorry,
11 at line 4, by Mr. Engelmann.

12 Question: "I am wondering why you are
13 calling the CAS?"

14 This is with reference to the phone call
15 made in the summer of 1995.

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

17 **MR. KOZLOFF:** And the evidence at the
18 Inquiry is to the effect that in August of 1995, Mr.
19 MacDonald wrote a letter to Kevin Maloney, that, within a
20 week of that, Mr. MacDonald was speaking to members of the
21 Cornwall Police.

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

23 **MR. KOZLOFF:** And you have Mr. Silmser's
24 evidence that he called the CAS, and that evidence is at
25 page 196 and it is:

1 Question by Mr. Engelmann: "I am
2 wondering why you are calling the CAS?

3 You're not calling the Cornwall
4 Police Service or the OPP. This is the
5 middle of 1995.

6 Is there a reason for this?"

7 Answer: "To be honest with you, I
8 don't remember phoning."

9 Question: "All right."

10 Answer: "But it looks like I did."

11 Question: "M'hm."

12 Answer: "There's very few institutions
13 that I trusted at the time, definitely
14 not the Cornwall police, and definitely
15 not the OPP at the time."

16 Question: "What was the problem with
17 the OPP at the time?"

18 Answer: "The OPP was Tim Smith, and
19 had been for that year or two. Tim
20 Smith and I just did not see eye to
21 eye. It could have been some of my
22 fault, but I found he did push way too
23 hard. And it was just a hard time for
24 me at that time. So if I went to the
25 Children's Aid, it's probably one of

1 the -- I probably didn't trust them all
2 that much either."

3 That's his response.

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

5 **MR. KOZLOFF:** Well, I would have suggested
6 to Mr. Silmsler that the problems between Mr. Silmsler and
7 the OPP and with Detective Inspector Smith in particular,
8 were generated by Mr. Silmsler, beginning with his telephone
9 call of March the 1st, 1994, which I referred to yesterday.

10 I would have suggested to Mr. Silmsler that
11 it probably didn't help that, as a consequence of the
12 recommendations of Peter Griffiths in December of 1994 and
13 the decision of Detective Inspector Smith, that no charges
14 were laid. And it also probably didn't assist that in
15 April of 1995, the Ontario Provincial Police had
16 interviewed Mr. Silmsler's cousin, Brian Simser and Mr.
17 Silmsler's friend, Leonard Bowden, regarding a comment ---

18 **THE COMMISSIONER:** Hold it now.

19 **MR. KOZLOFF:** Yes.

20 **THE COMMISSIONER:** So, where are we going
21 with ---

22 **MR. KOZLOFF:** What I'm going to do, is I'm
23 going to advise you of the comment. I'm going to put to
24 you the source of the information.

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

1 **MR. KOZLOFF:** I'm going to leave it for you
2 to determine whether or not that may have impacted on the
3 relationship.

4 You see, here's my ---

5 **THE COMMISSIONER:** I don't know. Is this
6 document in evidence, or ---

7 **MR. KOZLOFF:** Yes. Well, I'm about to put
8 it in evidence.

9 **THE COMMISSIONER:** Okay. Okay.

10 **MR. KOZLOFF:** In April of 1995, information
11 came to the Ontario Provincial Police regarding some
12 comment that Mr. Silmsler had made to his cousin, Brian.

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

14 **MR. KOZLOFF:** And in the presence of Mr.
15 Silmsler's friend, Leonard Bowden, while they were at Mr.
16 Simser's -- Brian Simser's farm.

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

18 **MR. KOZLOFF:** The comment was to the effect
19 that his allegations against Father Charlie were a
20 fabrication.

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

22 **MR. KOZLOFF:** Detective Inspector Smith then
23 spoke with Bryce Geoffrey on May 10th, 1995. Mr. Geoffrey
24 advised Detective Inspector Smith that he knew that Mr.
25 Silmsler's cousin and friend had spoken to the OPP and that

1 Smith then advised Mr. Geoffrey that he wanted to speak to
2 Mr. Silmsler under caution regarding the allegations.

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

4 **MR. KOZLOFF:** The reference is document
5 701568, which is I believe Exhibit 392, is it? Detective
6 Inspector Smith's notes.

7 **THE COMMISSIONER:** Yes. Well, those are the
8 notes. Where is that?

9 **MR. KOZLOFF:** Now I'm going to refer you to
10 Bates pages 7004040 ---

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

12 **MR. KOZLOFF:** --- and 7004041, the notes of
13 Detective Inspector Smith, 10th of May, 1995, 9:10.

14 **THE COMMISSIONER:** Okay.

15 **MR. KOZLOFF:** If I could just have your
16 brief indulgence?

17 **THE COMMISSIONER:** Sure.

18 **(SHORT PAUSE/COURTE PAUSE)**

19 **MR. KOZLOFF:** The note reads as follows:

20 "Message to call Bryce Geoffrey:
21 called same, advised B. Simser, Cornwall Police."

22 **THE COMMISSIONER:** "Settled"?

23 **MR. KOZLOFF:** "Settled."

24 "Father Charlie not filing unknown,
25 claim his lawyer" ---

1 **THE COMMISSIONER:** Whoa.

2 **MR. KOZLOFF:** Sorry.

3 Father Charlie not filing response to claim.

4 His lawyer is Michael Hebert?

5 **THE COMMISSIONER:** Yeah.

6 **MR. KOZLOFF:** With a telephone number. He

7 advises:

8 "Silmsers was aware his cousin spoke to

9 us. Brian Simser and a fellow -

10 Leonard ---"

11 **THE COMMISSIONER:** Named Leonard, yeah.

12 **MR. KOZLOFF:** (reads)

13 "Leonard spoke to David and said his

14 cousin was trying to stop him from

15 getting money on a civil suit.

16 Silmsers stated to Geoffrey that his

17 cousin and he had a falling out over

18 money for cutting wood. Cousin

19 wouldn't pay, only gave him beer,

20 advised Geoffrey I would like to

21 speak to Simser under caution, re.

22 allegations, and we discussed

23 polygraph. Advised Geoffrey we had

24 another alleged victim of Father

25 MacDonald come forward and we hoped

1 to interview him."

2 That's the entry.

3 **THE COMMISSIONER:** Okay so -- wait a minute
4 now. So where in there do you come up with -

5 **MR. KOZLOFF:** Well ---

6 **THE COMMISSIONER:** --- the allegation that
7 there was a fabrication?

8 **MR. KOZLOFF:** If you want, sir, I will take
9 the time to find the note in the relevant Officer's
10 notebook, with respect to that.

11 **THE COMMISSIONER:** Well, yeah.

12 **MR. KOZLOFF:** If you go back to the 21st of
13 April ---

14 **THE COMMISSIONER:** Yeah, m'hm.

15 **MR. KOZLOFF:** --- 1995.

16 **THE COMMISSIONER:** Yeah. And then I ---

17 **MR. KOZLOFF:** I don't have the Bates page.

18 **THE COMMISSIONER:** Seven zero zero four zero
19 three five (7004035).

20 **MR. KOZLOFF:** Thank you.

21 **THE COMMISSIONER:** I think -- that's
22 "Meeting with Brian Silmser" --

23 **MR. KOZLOFF:** "At his residence".

24 **THE COMMISSIONER:** -- "residence". Yeah.

25 Okay.

1 **MR. ENGELMANN:** Will -- excuse me, is this
2 still exhibit 393?

3 **THE COMMISSIONER:** Yeah.

4 **MR. KOZLOFF:** Yes.

5 Would you like me to read it into the
6 record, sir?

7 **THE COMMISSIONER:** Yeah.

8 **MR. KOZLOFF:** (Reads)

9 "Meet Brian Silmser at his residence,
10 [it says] 071753, lot three,
11 concession five. (inaudible)

12 **THE COMMISSIONER:** Well, we don't need the
13 addresses, yeah.

14 **MR. KOZLOFF:** Yeah, okay.

15 **THE COMMISSIONER:** Cannot ---

16 **MR. KOZLOFF:** (Reads)

17 "Proceed to detachment in Durham" is
18 the next relevant comment.

19 "Cannot talk at house, proceed to
20 detachment in Durham [D-u-r-h-a-m]"

21 **THE COMMISSIONER:** Yeah.

22 "Have lunch and discuss what he had
23 (inaudible)."

24 **MR. KOZLOFF:** (Reads)

25 "C. Fagan begins writing statement."

1 **THE COMMISSIONER:** M'hm. Okay.

2 **MR. KOZLOFF:** (Reads)

3 "David Silmser cousin on my dad's
4 side, known him since childhood,
5 spent summers at his house in
6 Cornwall as a child, he seemed normal
7 boy at about 14 years" ---

8 **THE COMMISSIONER:** Okay. Just a -- Madam
9 Clerk, can you keep scrolling down?

10 **MR. KOZLOFF:** In fairness to everybody in
11 here, maybe I'll read a little slower. I have a typed
12 version of this which makes it a little easier.

13 "...at about 14 years, had trouble with
14 law."

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

16 **MR. KOZLOFF:** (Reads)

17 "My dad was a policeman and had to
18 go to Guelph for David, to bail him
19 out of jail. Next contact was in
20 1984. He was in trouble, he called me
21 for my help and I called his parole
22 Officer. I was in Etobicoke and he
23 moved into my house. He was there a
24 few weeks during my..."

25 and I don't know that -- it looks like,

1 "Doing my tasks."

2 "There was a gay guy there, Randy --
3 well, perhaps I won't say the name.

4 **THE COMMISSIONER:** Yeah, no. I won't
5 say.

6 **MR. KOZLOFF:** (Reads)

7 "There was a gay guy there [and a
8 reference] and he was a friend" ---

9 **THE COMMISSIONER:** (Reads)

10 "...and a customer."

11 **MR. KOZLOFF:** (Reads)

12 "...and a customer. And he stayed at
13 my place. I was separated then, wife
14 lived in basement, I had two kids
15 upstairs. Next contact..."

16 This ---

17 "...next contact was at my dad's
18 funeral, May '90 -- May 1990..."

19 I can't read that word, it's no something.

20 "...just to mourn her. Next action,
21 came in 1993 -- with David came in
22 1993. He phoned and spoke to me
23 about things in general, but nothing
24 of his present problem. He called
25 about 5 times until he and his wife

1 and kids came up in the summer of
2 1994, stayed for weekend and returned
3 to Ottawa. Prior to this date, David
4 had never mentioned his problems
5 relating to sexual abuse, this time
6 he did and spoke about money. About
7 money and how much was coming his
8 way. Said he already got \$37,000,
9 know it was a priest who sexually
10 assaulted him, he talked about lawyer
11 and left a card with Bryce Geoffrey's
12 name. I was interested because I got
13 hit by a truck and wanted to consult
14 with one. I arranged to go to Ottawa
15 and speak with Bryce in August of
16 1994; eventually I spoke with Bryce,
17 but nothing about David's case. I
18 stayed at David's house and went out
19 drinking all night. At the bar, David
20 ... with a guy whose parents..."

21 **THE COMMISSIONER:** "... used blue ..."

22 **MR. KOZLOFF:** "used" ---

23 **THE COMMISSIONER:** "...Blue Line taxi, he
24 said."

25 **MR. KOZLOFF:** Right.

1 "He said that he'd been molested as a
2 boy by a priest, by his probation
3 Officer, and how he was going to make
4 a lot of money out of it. Said he
5 already got \$37,000 from the Church.
6 He had Cogan and Cogan on it. We
7 were at [looks like]" ---

8 **THE COMMISSIONER:** Mexicali.

9 **MR. KOZLOFF:** Rose?

10 **MR. ENGELMANN:** Rosa's.

11 **MR. KOZLOFF:** Are you familiar with that?

12 (LAUGHTER/RIRES)

13 **MR. ENGELMANN:** Yes, actually.

14 **MR. KOZLOFF:** (Reads)

15 "Later all three of us went back to
16 his house on NCC property in
17 Gloucester."

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

19 **MR. KOZLOFF:** (reads)

20 "I responded, my medical evidence
21 spoke for itself" ---

22 **THE COMMISSIONER:** Woah ---

23 **MR. KOZLOFF:** Sorry.

24 **THE COMMISSIONER:** Where are we now?

25 **MR. KOZLOFF:** Did we lose something there?

1 **THE COMMISSIONER:** We may have.

2 **MR. KOZLOFF:** Okay. I'm going to try to read
3 this sir, then ---

4 **MR. ENGELMANN:** Just I -- just want to make
5 a short interjection, if I can, because I'm having trouble
6 following this.

7 **THE COMMISSIONER:** M'hm

8 **MR. ENGELMANN:** I understood that this was
9 to deal with an alleged - well, not an alleged. Mr.
10 Silmsler said he had some difficulties with the OPP in the
11 summer of 1995.

12 **THE COMMISSIONER:** Right.

13 **MR. ENGELMANN:** We're now reading, as I
14 understand it, notes written by Detective Inspector Smith
15 of a story that's being told to him by -- I guess it's
16 Brian Simser?

17 **THE COMMISSIONER:** Yes.

18 **MR. KOZLOFF:** Correct.

19 **MR. ENGELMANN:** And I'm -- that's very
20 interesting, but I'm not sure what it has to do with why
21 there's a poor relationship with the OPP. Maybe we're going
22 to get there ---

23 **THE COMMISSIONER:** Well, what I wanted Mr.
24 Kozloff to direct me to was that portion and maybe we don't
25 have to go through this whole statement, but there's a spot

1 in there supposedly where Mr. Silmsner 's cousin says --
2 attributes a comment to Mr. Silmsner -- the witness ---

3 **MR. ENGELMANN:** Yes.

4 **THE COMMISSIONER:** David, that he made us
5 the whole story about being abused by father MacDonald.
6 And from what Mr. Kozloff is saying is, that was another
7 reason for the rift between the OPP and David Silmsner.

8 **MR. ENGELMANN:** Presumably for there to have
9 been a rift, that allegation -- or that comment --- that he
10 fabricated would have had to have been put to him by the
11 OPP. There's talk about a caution so, hopefully we'll get
12 there at some point.

13 **THE COMMISSIONER:** Oh, I'm assuming that ---

14 **MR. ENGELMANN:** Yeah, okay.

15 **THE COMMISSIONER:** --- that Mr. Kozloff's
16 going to show me that David Silmsner was aware of -- that
17 the police were aware of this comment.

18 **MR. ENGELMANN:** Yeah, okay.

19 **MR. KOZLOFF:** I believe I've actually shown
20 you that by reference to the conversation on May 10th with
21 Mr. Geoffrey, in which Mr. Geoffrey tells Detective
22 Inspector Smith that Mr. Silmsner is aware of what his
23 cousin said.

24 **THE COMMISSIONER:** Okay.

25 **MR. ENGELMANN:** That doesn't assist us in

1 whether there's a rift with the OPP. Presumably, if we're
2 dealing with this issue, what we'd want is Detective
3 Inspector Smith meeting with Silmser, saying "Here, this is
4 an allegation, I want to caution you" and then actually
5 going somewhere with it, rather than this off hand comment
6 to the lawyer.

7 I'm hoping we're going to get there,
8 otherwise I just don't see the relevance.

9 **THE COMMISSIONER:** Well ---

10 **MR. KOZLOFF:** The -- I mean there's a lot of
11 things in life that would be nice, but we're trying to deal
12 with the reality of what happened. I'm in a situation
13 where I'm trying to offer to you alternative explanations
14 for the breakdown in the relationship between Mr. Silmser
15 and Detective Inspector Smith. Because Mr. Silmser gave
16 you to believe, through his evidence, that the sole reason
17 why his relationship with Detective Inspector Smith went
18 down the tubes was because of the manner in which Detective
19 Inspector Smith initially had conducted the interview with
20 him, that he pushed way too hard, that he didn't give him a
21 break, and that his relationship thereafter was a negative
22 one. So I have to try to find if the evidence supports at
23 some alternatives ---

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

25 **MR. KOZLOFF:** --- for you to consider. This

1 is one of them.

2 **THE COMMISSIONER:** Yeah but, I just want to
3 make sure that we frame it properly in the sense that, if
4 you're going to say that there was a statement out there
5 that the OPP knew about, right?

6 **MR. KOZLOFF:** Yes.

7 **THE COMMISSIONER:** Well, you'd have to show
8 me that David Silmsler was aware of it -- that the OPP
9 knew, and so that -- and then we're into the realm of
10 maybe, that that may have poison and that's a matter for
11 later, for submissions. But so -- so what you've got so
12 far is you're telling me that the link bringing back to
13 impugning knowledge on David Silmsler is through his lawyer.

14 **MR. KOZLOFF:** Right.

15 Here's my problem. If Mr. Silmsler was
16 sitting there ---

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

18 **MR. KOZLOFF:** --- I could ask him ---

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

20 **MR. KOZLOFF:** --- "Mr. Silmsler, were you
21 aware that the Ontario Provincial Police investigated an
22 allegation by your cousin Brian ---

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

24 **MR. KOZLOFF:** --- in April of 1995 ---

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

1 **MR. KOZLOFF:** --- that you had denied that
2 you were assaulted by Father Charles MacDonald?"

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

4 **MR. KOZLOFF:** --- and he would answer either
5 yes or no.

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

7 **MR. KOZLOFF:** My expectation is irrelevant,
8 as to what he would answer.

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

10 **MR. KOZLOFF:** Right? That's not what we're
11 doing here. I told you yesterday and I'm telling you
12 today, I'm not going to put words in Mr. Silmsers' mouth.
13 But if I don't have him there to ask the question ---

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

15 **MR. KOZLOFF:** --- the only thing I can do is
16 bring the evidence to you, for your consideration.

17 Based on this evidence, is it likely that
18 Mr. Silmsers a) knew about what his cousin Brian had said?

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

20 **MR. KOZLOFF:** b) knew that the police wanted
21 to speak to him under caution and c) did this inform or
22 affect his attitude about the Ontario Provincial Police?

23 **THE COMMISSIONER:** Okay, what I'm going to
24 do is, I'm going to permit you to continue at the -- excuse
25 me -- at the worst case scenario, I think you're entitled

1 to bring this in later, in any event ---

2 MR. KOZLOFF: Yes.

3 THE COMMISSIONER: --- under institutional
4 response. That -- I mean, to show what frame of mind Mr.
5 Smith may have had, because obviously he was aware of what
6 the cousin was saying.

7 MR. KOZLOFF: M'hm.

8 THE COMMISSIONER: If you're telling me,
9 then that there's nowhere in your presentation that can
10 link the knowledge to Silmsler directly, other than through
11 his lawyer, that's where it's going to stop.

12 MR. KOZLOFF: Good.

13 THE COMMISSIONER: Okay? Thanks.

14 So -- just so you know - it will be left
15 open for me to decide whether or not I can find, on a
16 balance of probabilities, that he knew.

17 MR. KOZLOFF: Okay.

18 THE COMMISSIONER: Is that fair?

19 MR. KOZLOFF: Yes sir.

20 THE COMMISSIONER: Okay.

21 MR. KOZLOFF: If you can just scroll down a
22 little bit?

23 THE COMMISSIONER: Okay, so can we -- i
24 guess with this statement here, can we just roll down, Mr.

25 ---

1 **MR. ENGELMANN:** I guess -- and I don't mean
2 to -- I'm just - I'm -- again, we're all trying to work
3 with -- as if the witness was here.

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

5 **MR. ENGELMANN:** I agree that Mr. Kozloff did
6 put that question -- well I don't know if he could,
7 actually. Did their lawyer tell you -- and then we get
8 into -- it's your client privilege. But in any event, all
9 I have to say -- my concern wasn't whether David Silmser
10 might have known that his cousin said what he said to the
11 OPP in April, it was Mr. Kozloff was going here to explain
12 the relationship and why there might have been a breakdown
13 in the relationship. And I just would have thought that if
14 we were going there ---

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

16 **MR. ENGELMANN:** --- there would have been a
17 cautioning. There would have been something that happened
18 where he was confronted about the statement by an OPP
19 Officer.

20 Anyway ---

21 **THE COMMISSIONER:** Well ---

22 **MR. ENGELMANN:** --- we are where we are, and
23 ---

24 **THE COMMISSIONER:** No, I think we can go
25 forward, I think we put the provisos down.

1 I don't know where we're going. You see,
2 you people know the story more than I do. I don't know
3 whether Mr. Kozloff is then going to tell me that he was
4 interviewed and talked about this thing.

5 **MR. ENGELMANN:** I would let him carry on.

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

7 **MR. KOZLOFF:** Can you scroll down, please? A
8 little more. A little more. Next page.

9 Perhaps I can just read that. This is in
10 connection with a discussion that Mr. Silmsen and his
11 cousin Brian are having. Brian Simser says:

12 "I responded. My medical evidence
13 spoke for itself and I have no problem
14 with that. Said his wife got \$50,000 a
15 year. He said look at my case where
16 nothing happened. Nobody touched me.
17 They can't prove it so it's okay. This
18 shocked me because I believed something
19 had happened to him. I was the only
20 one present at the time and he was cold
21 stone sober."

22 **THE COMMISSIONER:** "Everything is on my
23 side."

24 **MR. KOZLOFF:** "Everything is on my side.
25 The probation officer committed

1 suicide. The church had already
2 admitted guilt by paying. The priest
3 was an absolute homosexual. That was
4 the end of this discussion. He went to
5 bed at 7:00 p.m. Leonard and my wife
6 and I went to town at 9:00 and got back
7 about 2:00. David was up and dressed
8 saying that in Ottawa have to get back
9 and wanted to borrow \$50 for the bus
10 and the bus is leaving at 8:00 in the
11 morning. He then went up to bed. The
12 next morning David woke up. He was
13 upset and wanted to catch the bus so I
14 took him to the bus in Durham and he
15 left. I've had no contact with him
16 since."

17 That's the relevant portion of the
18 information.

19 **THE COMMISSIONER:** Can you scroll that back
20 down, Madam Clerk? Back up. Back up.

21 **MR. KOZLOFF:** The next part that ---

22 **THE COMMISSIONER:** Just a second, sir.

23 **MR. KOZLOFF:** Yes.

24 **THE COMMISSIONER:** Can you bring it up some
25 more, please. A little more. Okay.

1 **MR. KOZLOFF:** Would you like me to read that
2 into the record, sir?

3 **THE COMMISSIONER:** No, you already have.

4 **MR. KOZLOFF:** No, no, there's additional
5 information but it concerns a conversation Brian Simser had
6 with Leonard Bowden.

7 **THE COMMISSIONER:** No, I'm sorry, I was just
8 reading back what you had ---

9 **MR. KOZLOFF:** All right. Okay.

10 **THE COMMISSIONER:** Okay. Thank you.

11 **MR. KOZLOFF:** Brian Simser went on to say:

12 "On Saturday 8, April ---

13 **THE COMMISSIONER:** Where are we now?

14 **MR. KOZLOFF:** I'm sorry.

15 If you can scroll down a little.

16 "On Saturday 8, April '95 I talked to
17 my wife Julie and Leonard and said what
18 David had told me about the sexual
19 abuse not happening. Leonard said
20 David told him and another fellow by
21 the name of Rod. The only thing that
22 happened was..."

23 **THE COMMISSIONER:** Now, we're ---

24 **MR. KOZLOFF:** Sorry.

25 **THE COMMISSIONER:** Next page then.

1 **MR. KOZLOFF:** "The only thing that had
2 happened was that the priest had only
3 rubbed his leg. Leonard showed me what
4 David said the priest did by rubbing
5 his leg. I told him 'We have to do
6 something. This is not right.' We
7 discussed this guy who had committed
8 suicide. Once a guy is branded and if
9 he is innocent when you're in a public
10 position he may have taken the easy way
11 out. Leonard said 'Leave it alone' and
12 he went off about David lying to him
13 about other things. I thought about
14 this for an hour or two and called the
15 Cornwall Police to tell them what David
16 had said. They said the OPP would be
17 in touch with me and here you are."

18 That's the end of the statement.

19 **THE COMMISSIONER:** Okay. That was in '95.
20 Okay. Now, is there in the letter --

21 Exhibit 302. Is there any reference to that in this?

22 **MR. KOZLOFF:** Could I ask you to indulge me
23 by allowing me to come to that. It'll be the last area
24 that I cover.

25 **THE COMMISSIONER:** Fine. Sure.

1 **MR. KOZLOFF:** Thank you.

2 **THE COMMISSIONER:** Thank you.

3 **MR. KOZLOFF:** The other point to be made is
4 that in actual fact, and there is evidence before you from
5 John MacDonald on this point and from documents that were
6 filed, Cornwall Police documents for August of 1995,
7 Silmsler did call the Cornwall Police to let them know that
8 he had another victim, which is a reference to John
9 MacDonald. He said he had another victim for out west who
10 was sexually assaulted by Father Charles MacDonald.

11 And I would have also suggested -- and I
12 don't have a document to put to you, but I'll just say
13 this; that there was a phone call made by Mr. Silmsler in
14 August of 1995 to Detective Constable Fagan, and that phone
15 call was made -- if you look at Detective Inspector Smith's
16 notes for the 23rd of August 1995 ---

17 **THE COMMISSIONER:** Where would that be?

18 **MR. KOZLOFF:** That would be in Exhibit 391.
19 I don't have the Bates Page, sir. Maybe it's 700441 as
20 well. Yes, 7004041.

21 **THE COMMISSIONER:** Exhibit 391 is Wilson's
22 notes.

23 **MR. KOZLOFF:** Sorry, 392. My mistake, sir.
24 Scroll down please to ---

25 **MR. ENGELMANN:** I just want to make sure

1 we're on the same document. I've got 391.

2 **MR. KOZLOFF:** It's 392.

3 **THE COMMISSIONER:** No, 392.

4 **MR. ENGELMANN:** Is this Detective Inspector
5 Smith?

6 **MR. KOZLOFF:** Yes. 391 is Detective
7 Constable ---

8 **THE COMMISSIONER:** Wilson.

9 **MR. KOZLOFF:** --- Wilson's notes.

10 There should be an entry for 23 August, '95,
11 9:45. It reads:

12 "Call from Mike Fagan. Silmsner has
13 called him and Chris McDonell and
14 Cornwall Police. Says he has another
15 victim from out west who was sexually
16 assaulted by Father Charles MacDonald.
17 Silmsner irrational. Says we will have
18 egg on our face."

19 The only other relevant document with
20 respect to the 1995 investigation is the fact that after
21 Detective Inspector Smith interviewed John MacDonald and
22 moniker C3 he received document 113943. That, sir, is a
23 memorandum from Robert Pelletier to Detective Inspector
24 Smith.

25 **THE COMMISSIONER:** Dated -- any date there?

1 MR. KOZLOFF: Dated March 5th, 1996.

2 THE COMMISSIONER: Right. You're right.

3 And it's Exhibit 394 now.

4 MR. KOZLOFF: Thank you.

5 THE COMMISSIONER: M'hm.

6 MR. KOZLOFF: And that was the opinion
7 received from Robert Pelletier to -- as a result of which
8 Father Charles MacDonald was charged.

9 I wonder if ---

10 THE COMMISSIONER: Can you just hold on for
11 a second. I just want ---

12 MR. KOZLOFF: Sure.

13 (SHORT PAUSE/COURTE PAUSE)

14 THE COMMISSIONER: Mr. -- yes.

15 MR. ENGELMANN: The document that is now on
16 the screen has a name. It should have a moniker.

17 THE COMMISSIONER: Yes. That's what I'm
18 looking at.

19 MR. ENGELMANN: I just wanted to jump up on
20 that.

21 THE COMMISSIONER: And that's seen on ---

22 MR. ENGELMANN: It's moniker number 3 again.

23 THE COMMISSIONER: And that's on page 2?

24 MR. ENGELMANN: It's on ---

25 THE COMMISSIONER: No.

1 **MR. ENGELMANN:** --- the first page as well.
2 Yes, subparagraph 4 on the first page. It's also found I
3 think elsewhere in the document.

4 **THE COMMISSIONER:** That's right.

5 All right. So a reminder then to -- well,
6 actually, should this be a public document? No. How did
7 we deal with that?

8 **MR. ENGELMANN:** I think with all the
9 monikers we've been using a temporary "C", because there
10 was some discussion about lifting some of the monikers. I
11 think in this particular case it will not be ---

12 **THE COMMISSIONER:** Right.

13 **MR. ENGELMANN:** --- given the individual and
14 the fact that we've spoken to him and he does not want his
15 name used in any way.

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

17 **MR. ENGELMANN:** So actually given that
18 circumstance, and I know that from contacts Commission
19 staff has had with this individual, it would be my request
20 that this actually be made a "C" document.

21 **THE COMMISSIONER:** Well, I'm wondering if --
22 -

23 **MR. ENGELMANN:** Or perhaps what we could do,
24 which would be the least ---

25 **THE COMMISSIONER:** Intrusive.

1 **MR. ENGELMANN:** --- intrusive, is we could
2 black out the name. I think if we do that it doesn't
3 necessarily leave any identifying information, and that
4 would be the most public way of having this document dealt
5 with.

6 **THE COMMISSIONER:** Okay.

7 **MR. ENGELMANN:** It could be a "P" document
8 that we could make a redaction of the name.

9 **THE COMMISSIONER:** So what I'm going to do
10 is make it a temporary "C" exhibit right now. Later on
11 during the day, Mr. Engelmann, when you have a moment, you
12 can review this document to see if just striking the name
13 would be sufficient. If it is, I'd prefer to have it done
14 that way. In that way it remains more of a public document
15 because it obviously is an important document for people to
16 know the contents of, given that it is the first document
17 that recommends charges being laid.

18 **MR. ENGELMANN:** That's right.

19 **THE COMMISSIONER:** All right.

20 Any comments or objections in that regard?
21 No. All right. So please make a note of it and speak to
22 me about it this afternoon.

23 **---EXHIBIT NO./PIÈCE NO C-394:**

24 (113943) Memo from Robert Pelletier to
25 Detective Inspector Tim Smith - March 5,

1 1996.

2 I am sorry. Yes, Mr. Kozloff? All right,
3 now you wanted to take me somewhere else now?

4 **MR. KOZLOFF:** Yes, the next area that I was
5 going to deal with sir, is the relationship between ---

6 **THE COMMISSIONER:** Sorry? This document?
7 No. We're finished with it now?

8 **MR. KOZLOFF:** Yes.

9 **THE COMMISSIONER:** All right, thank you.

10 **MR. KOZLOFF:** The next area I was going to
11 deal with was the relationship between David Silmser and
12 Robert Pelletier.

13 **THE COMMISSIONER:** Yes?

14 **MR. KOZLOFF:** And I'd asked that Exhibit 304
15 be pulled up. Do you want the document number?

16 Is that Exhibit 304?

17 **THE COMMISSIONER:** No, no, Exhibit 304 is a
18 note to the file.

19 **MR. KOZLOFF:** Right.

20 **THE COMMISSIONER:** Is that the one for ---

21 **MR. KOZLOFF:** Yes, dated February 7th, 1996.

22 **THE COMMISSIONER:** Yes.

23 **MR. KOZLOFF:** One zero nine two five zero
24 (109250).

25 **THE COMMISSIONER:** Right. Put a zero there

1 instead of the nine. There you go. Yes.

2 **MR. KOZLOFF:** Voilà.

3 This has already been put into the record,
4 but if you'll just indulge me sir I want to read it because
5 of the phone call of March 1st, 1994 from Mr. Silmser ---

6 **THE COMMISSIONER:** Wait a minute, I am
7 sorry. You want to go into the relationship with Mr.
8 Pelletier?

9 **MR. KOZLOFF:** What I want to do is I want to
10 provide you with the evidence that was already before you -
11 --

12 **THE COMMISSIONER:** Yes.

13 **MR. KOZLOFF:** --- regarding the relationship
14 between Mr. Silmser and Mr. Pelletier through these notes
15 to file and memorandums, and ask you to consider them in
16 the light of what you have heard over the last two days
17 about the contents of Detective Inspector Smith's notebook
18 entries insofar as they relate to his contacts with Mr.
19 Silmser.

20 My position sir, is that there is a striking
21 similarity between Mr. Silmser's relationship with
22 Pelletier and his relationship with Smith, that might
23 inform you about why Mr. Silmser had a problem getting
24 along with Smith and Pelletier, other than the one
25 explanation that Mr. Silmser provided to you.

1 **THE COMMISSIONER:** Okay.

2 **MR. KOZLOFF:** The relevant portion is at the
3 second paragraph, the third sentence, it says:

4 "Mr. Silmsers expressed considerable
5 dissatisfaction at the manner in which
6 the matter was proceeding. He informed
7 me that he had been waiting three years
8 for charges to be laid and felt the OPP
9 was treating him like shit. He became
10 abusive and vulgar and asked me if I
11 knew how frustrated he was. I inquired
12 of Mr. Silmsers if he spoke to everyone
13 that way, at which time he became even
14 more upset, declared war upon the OPP
15 and myself and hung up the phone."

16 The next -- I simply ask you sir to when you
17 read that, read the note entry of Detective Inspector Smith
18 from March 1st, 1994 and consider them in the context of Mr.
19 Silmsers' version of why he wasn't getting along with
20 Smith.

21 **THE COMMISSIONER:** Okay.

22 **MR. KOZLOFF:** If you just scroll down a
23 little bit on that note to file. You'll note that
24 Detective -- that Robert Pelletier opted to pursue the same
25 solution to dealing with Mr. Silmsers that Detective

1 Inspector Smith had. He spoke with Mr. Geoffrey ---

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

3 **MR. KOZLOFF:** "Informed Mr. Geoffrey that
4 it was not his intention to speak with
5 Mr. Silmsers any further and told his
6 secretary to inform Mr. Silmsers if he
7 called again that he wouldn't be
8 speaking to him, that any information
9 he wished to convey to us, he could do
10 through his lawyer."

11 Exhibit 305, this is a memorandum to Robert
12 Pelletier from René Legault dated March 18th.

13 **THE COMMISSIONER:** Yes.

14 **MR. KOZLOFF:** This is a call that is
15 approximately six weeks after the first call. And it's
16 made apparently, contrary to the understanding reached
17 between Mr. Geoffrey and Mr. Pelletier.

18 **THE COMMISSIONER:** Well, it's not a contract
19 between ---

20 **MR. KOZLOFF:** I understand that ---

21 **THE COMMISSIONER:** --- Mr. Silmsers and --
22 let's not forget one thing now, you know, well, we'll get
23 to it.

24 **MR. KOZLOFF:** I was just going to say this -

25 --

1 **THE COMMISSIONER:** Constable Hall and -- or
2 Officer Smith and Mr. Pelletier are public institutions.

3 **MR. KOZLOFF:** Yes.

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

5 **MR. KOZLOFF:** If Mr. Silmser were here, I
6 could have asked him whether he was aware of the
7 conversation ---

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

9 **MR. KOZLOFF:** --- that took place between
10 his lawyer and Mr. Pelletier.

11 **THE COMMISSIONER:** M'hm. But, just so I
12 don't -- you don't -- so what, I mean, let's assume Mr.
13 Silmser was aware of the conversation, he could say "No, I
14 won't agree to that ---

15 **MR. KOZLOFF:** Right.

16 **THE COMMISSIONER:** --- I'm going to call the
17 Crown attorney", he is the crown attorney ---

18 **MR. KOZLOFF:** He could.

19 **MR. ENGELMANN:** In fact, he was cross-
20 examined on this by MAG ---

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

22 **MR. ENGELMANN:** --- and in fact, it was
23 clear he was aware but he didn't like that because he had
24 to pay his lawyer, he told us that.

25 **THE COMMISSIONER:** M'hm. Right. That's

1 right.

2 **MR. ENGELMANN:** I'm not sure -- again I know
3 this is a substitute process but I'm not sure what the
4 question would have been here.

5 **THE COMMISSIONER:** Well I think ---

6 **MR. ENGELMANN:** Exactly where we're going.

7 **THE COMMISSIONER:** I think Mr. Kozloff has
8 made his point that the relationship with ---

9 **MR. ENGELMANN:** We have this file.

10 **THE COMMISSIONER:** Yes and we have the
11 document so can we move on?

12 **MR. KOZLOFF:** Exhibit 283.

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

14 **MR. KOZLOFF:** This is the letter from
15 Pelletier to Geoffrey dated the 19th of March simply
16 confirming their earlier conversation.

17 **THE COMMISSIONER:** All right. Good, I don't
18 think we need to put it up on the screen.

19 **MR. KOZLOFF:** Exhibit 307.

20 **THE COMMISSIONER:** Yes.

21 **MR. KOZLOFF:** I'm sorry, Exhibit 306 --
22 just, I am going in chronological order even though the
23 exhibits aren't in order sir.

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

25 **MR. KOZLOFF:** That's a letter from Pelletier

1 to Geoffrey dated May 2nd.

2 THE COMMISSIONER: M'hm.

3 MR. KOZLOFF: It simply demonstrates that
4 Mr. Pelletier is continuing to communicate with Silmser,
5 MacDonald and moniker C-3 through their counsel.

6 THE COMMISSIONER: M'hm.

7 MR. KOZLOFF: Exhibit 307, the memorandum
8 from Mireille Legault to Robert Pelletier dated July 19th.

9 THE COMMISSIONER: M'hm.

10 MR. KOZLOFF: That one actually raises more
11 questions than anything else because I would have asked Mr.
12 Silmser what lawyers in Toronto he was referring to.

13 THE COMMISSIONER: Yes, but now we're going
14 very far afield ---

15 MR. KOZLOFF: Well ---

16 THE COMMISSIONER: He is not -- Pelletier is
17 not your client. He is Crown attorney.

18 MR. KOZLOFF: Absolutely.

19 THE COMMISSIONER: Yes.

20 MR. KOZLOFF: But he says "The lawyers in
21 Toronto say they've lost the file", what does that mean?

22 THE COMMISSIONER: I don't know.

23 MR. KOZLOFF: It also makes reference to a
24 cover up, sir.

25 THE COMMISSIONER: Yes.

1 **MR. KOZLOFF:** And again, I am simply raising
2 the fact that he wasn't questioned on this, on the contents
3 of that document.

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

5 **MR. KOZLOFF:** I would have wanted to do
6 that.

7 Exhibit 303 and 286, these are later
8 memorandums for the same day from Mireille Legault to
9 Robert Pelletier.

10 **THE COMMISSIONER:** Yes, we don't have to --
11 I don't think. You're just pointing the ---

12 **MR. KOZLOFF:** Yes.

13 **THE COMMISSIONER:** --- notes for my record -
14 --

15 **MR. KOZLOFF:** Yes.

16 **THE COMMISSIONER:** --- so that I can consult
17 with them.

18 **MR. KOZLOFF:** Yes. But if you could just --
19 I wonder if you could pick that up, this -- sorry, Exhibit
20 303. Now, what it refers to sir is another victim that has
21 been located by a private investigator. You see that?

22 "Received a second call from Mr.
23 Silmsler at 11:30 a.m. ---

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

25 **MR. KOZLOFF:** --- Wanted to leave the

1 message that another victim has been
2 located by a private investigator. I
3 asked him if the police were made aware
4 of this and he said that they did not."

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

6 **MR. KOZLOFF:** So, I'd ask you to consider
7 that document in the context of the conversation noted in
8 Detective Inspector Smith's notes that he had with Mr.
9 Silmsler in September of 1994 where Mr. Silmsler told
10 Detective Inspector Smith there were a lot of things he
11 didn't tell him about.

12 If you could also note that the second last
13 line is a reference to a public inquiry. It sort of raises
14 the issue of who conceived of that as a solution, that Mr.
15 Silmsler was suggesting whether it was himself or someone
16 else.

17 The last area sir is the letter from
18 Detective Inspector Pat Hall to the Director of the Ontario
19 Provincial Police Criminal Investigation Branch, Orillia,
20 dated 05 October 2000.

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

22 **MR. KOZLOFF:** That's Document 103451,
23 Exhibit 302. Mr. Lee acting on behalf of the Victims'
24 Group put this document to Mr. Silmsler in cross-
25 examination, suggesting to him at pages 221 and 222 of the

1 transcript for January 31st.

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

3 **MR. KOZLOFF:** Thirty-first (31st).

4 (SHORT PAUSE/COURTE PAUSE)

5 **THE COMMISSIONER:** Thank you. What page
6 again?

7 **MR. KOZLOFF:** Two twenty-one (221). It
8 begins sir, at line 9. Mr. Lee says:

9 "And you told us that some issues --
10 you told us that some issues with Tim
11 Smith."

12 "Yes, I did."

13 Question:

14 "There is another aspect to the story
15 with the OPP that I would like to
16 discuss with you. I would like to take
17 you to a document that I don't believe
18 you would have seen before."

19 It is Document 103451 which is now Exhibit
20 302. And Mr. Lee, at page 222, after the document is made
21 an exhibit ---

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

23 **MR. KOZLOFF:** --- he says:

24 "Now, I am not particularly concerned
25 with the nature of that Act of Bill 103

1 . . ."

2 This is at line 17.

3 ". . . or anything else. I am
4 concerned about the contents of this
5 document because I think it provides a
6 nice summary of the OPP position at a
7 certain period of time. And that's I
8 am bringing you here, I wanted your
9 thoughts on this position."

10 He then directed Mr. Silmser to that portion
11 of the letter which dealt with the circumstances that led
12 to no charges being laid following investigations before
13 1995 into complaint of sexual abuse.

14 And that's at 223 of lines 4 through 9.

15 And I would have explained, sir, that Pat
16 Hall wasn't on this investigation in 1994. In fact, he
17 wasn't on this investigation until 1997. That Mr. Hall
18 only became involved in the investigation while the
19 MacDonald preliminary hearing was underway. So that any
20 information that he is conveying or opinions that he is
21 expressing in this memorandum which was written in the year
22 2000, would have to be a combination of what he has been
23 told by others, seen in documents, coupled with his own
24 later contacts with Mr. Silmser.

25 Document 713359.

1 **THE COMMISSIONER:** Thank you. Those are an
2 interview report of David John Silmsers, dated the 1st of
3 August, '97.

4 **MR. KOZLOFF:** Yes.

5 **THE COMMISSIONER:** Exhibit 395.

6 **MR. KOZLOFF:** Yes, sir.

7 **--- EXHIBIT NO./PIÈCE NO. P-395:**

8 (713359) Interview Report of David John
9 Silmsers, August 1, 1997

10 **MR. KOZLOFF:** That document sir, is the
11 evidence of the first meeting between Detective Inspector
12 Hall, who at that point, as you can see, is still a
13 Detective Sergeant.

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

15 **MR. KOZLOFF:** So at that point in time,
16 Detective Inspector Smith is still the officer in charge.

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

18 **MR. KOZLOFF:** Detective Sergeant Hall is the
19 next senior officer on the matter.

20 Hall met Silmsers for the first time at the
21 OPP Prescott detachment, took a statement from Mr. Silmsers
22 on a death threat investigation.

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

24 **MR. KOZLOFF:** The material that Detective
25 Inspector Hall relied upon in writing this document would

1 have included, I would suggest to Mr. Silmser, the video
2 taped interview of Mr. Silmser dated the 22nd of February,
3 the notes of Detective Inspector Smith, the notes of
4 Detective Constable Fagan, the brief which was provided by
5 Detective Inspector Smith to Peter Griffiths in November of
6 1994 and the letter provided by Peter Griffiths or written
7 by Peter Griffiths to Detective Inspector Smith, dated
8 December 21, 1994.

9 **THE COMMISSIONER:** But we don't have that
10 written anywhere? You're advising me of that.

11 **MR. KOZLOFF:** I'm suggesting to you that
12 that's a reasonable inference.

13 **THE COMMISSIONER:** Okay.

14 **MR. KOZLOFF:** And I expect that that is what
15 Detective Inspector Hall would say if and when he were
16 called as a witness at this Inquiry.

17 **THE COMMISSIONER:** All right.

18 **MR. KOZLOFF:** Is there an echo?

19 (LAUGHTER/RIRES)

20 **THE COMMISSIONER:** Sorry, I missed that.

21 **MR. KOZLOFF:** You know, I always pay very
22 close attention to the professor.

23 **THE COMMISSIONER:** Yes.

24 **MR. KOZLOFF:** It was a *sotto voce* comment.
25 Does he want me to share it with the ---

1 I want to be careful here, because -- let me
2 just say this, sir. I would have explained to Mr. Silmser
3 that Exhibit 302 was an internal memorandum, written by an
4 OPP case manager to his supervisors for their reference in
5 formulating a response to allegations being made in the
6 legislature.

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

8 **MR. KOZLOFF:** It was never intended by the
9 author or anyone associated with the Ontario Provincial
10 Police that this document be made public.

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

12 **MR. KOZLOFF:** It most certainly was never
13 intended by the author or anyone associated with the
14 Ontario Provincial Police that this document would be used
15 to embarrass and humiliate Mr. Silmser. And I believe it
16 is clear that this letter and it being shown to Mr.
17 Silmser, had a deleterious effect on Mr. Silmser's state of
18 mind.

19 Those are my comments, sir, with respect to
20 the evidence.

21 **THE COMMISSIONER:** Thank you.

22 Good morning, Mr. Wallace.

23 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WALLACE:**

24 **MR. WALLACE:** Good morning, Mr.
25 Commissioner.

1 Sir, there are three areas that I propose to
2 develop in a much briefer fashion than Mr. Kozloff, who has
3 gone before me in this presentation.

4 The first one has to do with the
5 circumstances surrounding the taking of and making the
6 statement on the 26th of November, 1993, that is the
7 interview that Mr. Silmsler gave right on the heels of the
8 apparent suicide of Mr. Seguin.

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

10 **MR. WALLACE:** Dealing there with the factual
11 omissions that Mr. Silmsler alleges were made in the taking
12 of that statement.

13 Secondly, I wanted to look at the interview
14 that he gave -- that is, Mr. Silmsler gave on the 22nd of
15 February '94, to Detective Inspector Smith and Detective
16 Constable Fagan. I want to look at that for two reasons:
17 the first dealing specifically with the issue of counseling
18 that I'll make reference to in the transcript references,
19 as well as what it was he would have understood to be the
20 process. What was going to happen. What was his
21 understanding of the process.

22 The third area is to demonstrate through
23 notebook entries, some specific examples of what would be
24 either classified as lack of cooperation or certainly not
25 full cooperation with the police in the course of this

1 investigation and subsequent prosecution itself.

2 So with respect to the statement of the 26th
3 of November, 1993, the statement itself -- that I don't
4 want to go to right this second, is Exhibit 271, but Mr.
5 Commissioner, you'll recall that in the course of his
6 evidence, Mr. Silmsler on the 30th of January, Volume 86, he
7 made reference to the fact that certain significant
8 features did not appear in that statement. Mr. Kozloff has
9 gone through this, but I'll just very quickly read the
10 exact areas where Mr. Silmsler has said to this Commission,
11 that areas were not included in this statement.

12 **THE COMMISSIONER:** What page?

13 **MR. WALLACE:** That's at page 121.

14 **THE COMMISSIONER:** That's of the transcript
15 of January 30th?

16 **MR. WALLACE:** Yes, it is, sir.

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

18 Madam Clerk, is it up on the screen?

19 **MR. WALLACE:** Yes, sir, look right at the
20 second line, from yourself, sir.

21 "I don't think there's anything after
22 that, but, did you phone Ken Seguin,
23 Mr. Silmsler?

24 "No, I did not.

25 Yes, there was more and I don't know

1 why that's not in, because I'm sure I
2 told them. Anyways, what I said to him
3 was basically that and he said, "Did
4 you go to the Cornwall Police?"

5 Mr. Engelmann: "He being Ken Seguin?"

6 Mr. Silmser: "Ken Seguin."

7 Mr. Engelmann: "This is a telephone
8 call."

9 Mr. Silmser: "This is correct.

10 He said, 'Did you go to the Cornwall
11 Police?' And I said, 'Yes, I have gone
12 to the Cornwall Police.' And he said,
13 'Did you tell them anything?' I told
14 him, I said, 'I told him the truth.'
15 And he went, 'Oh, my God!' And then the
16 phone went click. And then that night,
17 he committed suicide."

18 "And that's how you remember the call
19 ending?"

20 "That's exactly how it went."

21 Now the exhibit itself is -- the statement
22 itself is Exhibit 271 and you've been made aware of the
23 fact that this interaction is not included in the statement
24 that was taken by officers Miller and McDonell and I'd like
25 to draw your attention to the notes of Constable McDonell,

1 that is, Constable McDonell. And at the bottom of the page
2 -- of the first page, you'll see, "Cause of Death -
3 Suicidal Hanging".

4 Then at the entry at 12:45, "Proceed to
5 David John Silmser" and has an address and arrival time at
6 roughly 13:50 at the residence itself.

7 So the point that I just wanted to point
8 out, was that, at the time that Officer McDonell and Miller
9 arrived at the Silmser residence, McDonell at least, had
10 been present at the post-mortem and is armed with the
11 information that the cause of death appeared to be a
12 suicidal hanging.

13 So it's against that background that the
14 statement is taken and I think it's common sense that any
15 information that would shed light either to refute or to
16 support that working theory would be relevant to the
17 exercise.

18 Now, I wanted to point out, in addition,
19 that because the suggestion had been made yesterday that
20 there was a number of possible theories as to why the
21 matter didn't appear in the statement and it is the -- the
22 question has to be asked, as far as the officer is
23 concerned, what it was they were doing here, and it's quite
24 clear what they were doing because they're investigating an
25 apparent suicide.

1 In addition to the statement itself,
2 Constable McDonnell's notes that were taken at the time and
3 more specifically that relate ---

4 **THE COMMISSIONER:** That remains to be proven
5 whether they were taken at the time. If you're talking
6 about his police officer's notes.

7 **MR. WALLACE:** Well, okay.

8 **THE COMMISSIONER:** We've seen mistakes in
9 the notes before.

10 **MR. WALLACE:** Sure.

11 **THE COMMISSIONER:** In the police officers'
12 notes.

13 **MR. WALLACE:** Well, okay. These notes, just
14 for your purposes, Mr. Commissioner, they extend over about
15 12 pages long.

16 **THE COMMISSIONER:** What notes are you
17 talking about?

18 **MR. WALLACE:** Constable McDonnell's.

19 **THE COMMISSIONER:** The police officer's?

20 **MR. WALLACE:** Yes.

21 **THE COMMISSIONER:** Of which I only have two
22 or three.

23 **MR. WALLACE:** I'm sorry.

24 **THE COMMISSIONER:** This is just the ---

25 **MR. WALLACE:** You don't have the document?

1 **THE COMMISSIONER:** No, I've just got the
2 excerpt of the document.

3 **MR. WALLACE:** Oh, okay. I'm sorry. It's my
4 mistake. I had identified -- and it was my intention to
5 only refer to the page I did refer to.

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

7 **MR. WALLACE:** In the course of yesterday's
8 proceedings, in fact, and last night when I was looking at
9 this, it occurred to me that there is another area of
10 interest in a broader sense, and I wasn't aware of the fact
11 that when I only identified a couple of pages the whole
12 document wouldn't be reproduced. But that's the case.

13 Just for your purposes so that it's at least
14 on the record ---

15 **MR. ENGELMANN:** Maybe I can make a
16 suggestion. Mr. Wallace thinks this is important. Perhaps
17 we can deal with this at the morning break, make sure that
18 you have the other remaining pages of that interview.

19 **THE COMMISSIONER:** And the morning break
20 would be now. How's that?

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

23 The hearing will resume at 11:15 a.m.

24 --- Upon recessing at 10:54 a.m./

25 L'audience est suspendue à 10h54

1 --- Upon resuming at 11:20 a.m./

2 L'audience est reprise à 11h20

3 **THE REGISTRAR:** This Hearing of the Cornwall
4 Public Inquiry is now in session.

5 Please be seated. Veuillez vous asseoir.

6 **MR. ENGELMANN:** I'll just be a second.

7 Mr. Commissioner, just during the break we
8 had copied further pages of the excerpts of document number
9 737494.

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

11 **MR. ENGELMANN:** So this is Exhibit 396 and
12 the Bates Pages that should form part of the exhibit are
13 7156951 until 7156964.

14 ---EXHIBIT NO./PIÈCE NO P-396:

15 (737494) Handwritten notes of
16 Detective Constable Chris McDonell -
17 November 26, 1993.

18 **THE COMMISSIONER:** Thank you.

19 Mr. Wallace.

20 **MR. WALLACE:** Thank you, sir.

21 I wanted to point out the fact that the
22 passage that is missing that Mr. Silmsner says was not taken
23 down, does not appear in the statement. It does not appear
24 in Constable McDonell's notebook entries, and more
25 specifically at Bates Page 7156963 on the bottom half of

1 that page he's dealing with -- yes, starting there.

2 This is where Mr. Silmser is talking about
3 the telephone communications between himself and Malcolm
4 MacDonald and Ken Seguin. In this passage, there is no
5 mention of that statement as well. It says:

6 "I didn't hear anything on Wednesday so
7 I called Ken between 7:00 and 9:00
8 p.m., the 24th, November '93. I said
9 'What are you going to do?' and he said
10 'I don't think I can come up with that
11 type of money.' I told him to discuss
12 it with Malcolm and call me Friday or I
13 was getting a lawyer and sue. He said
14 Malcolm would call me [Friday is
15 written, scratched out Thursday] but he
16 didn't call. This morning I called
17 Malcolm about 9:30 a.m. and I called
18 Malcolm and spoke to him."

19 So, again, where the issue is spoken of at
20 least this note-taker didn't record it as well.

21 Lastly, ---

22 **THE COMMISSIONER:** Excuse me. Can I just
23 stop you for a second?

24 **MR. WALLACE:** M'hm.

25 **THE COMMISSIONER:** Chris McDonnell -- and

1 it's my faulty memory. There was some question about some
2 officer being the cousin of Father MacDonald.

3 **MR. WALLACE:** Yes, that's him.

4 **THE COMMISSIONER:** That's him. Okay.

5 **MR. WALLACE:** That's him. Okay.

6 Now, the best I can do at this stage, as far
7 as that, is to say -- and I would have, if Mr. Silmsner was
8 here, was to put to him the fact that I have spoken to
9 Officer McDonell and he has told me he's not related to
10 him, nor is he even a parishioner of Father MacDonald.

11 So, you know, I mean ---

12 **THE COMMISSIONER:** Wait a minute.

13 **MR. WALLACE:** We're not going to find family
14 trees in this investigation here.

15 **THE COMMISSIONER:** No, no. Right. I'm well
16 aware of that except you can't give me evidence like that.

17 **MR. WALLACE:** You know, if he was here,
18 questions are constantly stated on the basis I expect the
19 officer will testify and when he does he will say as a fact
20 he is not a relative.

21 **THE COMMISSIONER:** Yes, I know, but we're
22 not, and so why not wait until you get to the officer.

23 **MR. WALLACE:** I wasn't going to mention it
24 but for the fact that you raised it.

25 **THE COMMISSIONER:** What did I ask?

1 **MR. WALLACE:** You asked was he not the
2 person who was alleged to be related.

3 **THE COMMISSIONER:** Right. And the answer is
4 yes. Thank you. And we'll deal with that later.

5 **MR. WALLACE:** Well ---

6 **THE COMMISSIONER:** We'll deal with it later.

7 **MR. WALLACE:** Okay.

8 **THE COMMISSIONER:** In the fullness of time.
9 Remember, we're not supposed to come to any conclusions
10 until right to the end. So we're just saying was this the
11 fellow that was alleged to him.

12 **MR. WALLACE:** Okay. And he was.

13 **THE COMMISSIONER:** Okay. So what you're
14 saying is that, sir, in the statement -- if I can just --
15 you're saying :

16 "Look it. These officers went and seen
17 him the day after the suicide. They
18 took a statement. They knew they were
19 going there from the Coroner's office
20 with a suicidal hanging and so these
21 are the statements that they took, and
22 that was the purpose for which they
23 were going."

24 **MR. WALLACE:** Yes. And you'll recall that
25 the statement that Mr. Silmsler said -- formed part of the

1 phone conversation -- was pretty dramatic. So bearing in
2 mind as another piece of information, bearing in mind why
3 they're there, you'd expect if it was said it would be in
4 the statement. Okay. It's not. And then you'll have to
5 come to your conclusions later.

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

7 **MR. WALLACE:** Two other things that I wanted
8 to bring to your attention as far as this issue is
9 concerned.

10 The first is, on the -- he actually said
11 that he believed he was given an opportunity to read the
12 statement over before signing it. I would refer you to the
13 last page of his written statement, Exhibit 271, which is
14 Bates Page 7057874, and the very last point on the
15 statement contains that.

16 "Can you read -- [it said 'tell' and
17 that's scratched out and initialed] Can
18 you read this statement and if it is
19 true and accurate will you sign each
20 page."

21 And we can see that each page is in fact
22 signed.

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

24 **MR. WALLACE:** The other matter touching on
25 this issue is that there is no mention of this conversation

1 in the interview that he gave to Detective Inspector Smith
2 and Detective Constable Fagan on the 22nd of February, a
3 scant three months later. And more specifically, if you
4 look at that, that's Exhibit 267, at the bottom of page 44
5 and top of 45, the last entry at the bottom of 44 is
6 dealing with these phone calls and up to and including the
7 long answer at the top of 45. Again, there's no mention of
8 those words that Mr. Silmsler says he said to the officers.

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

10 **MR. WALLACE:** That's all I wish to say with
11 respect to that statement.

12 And I wanted to deal shortly with the
13 interview of the 22nd of February. And on the 30th ---

14 **THE COMMISSIONER:** Okay. Hold it.

15 **MR. WALLACE:** I'm sorry.

16 **THE COMMISSIONER:** You have to bear with me.
17 What exhibit were you going to?

18 **MR. WALLACE:** It's the same one.

19 **THE COMMISSIONER:** Okay. Sorry. Yes, yes,
20 of course.

21 **MR. WALLACE:** And I'll just make a reference
22 here for a second. On the 30th of -- rather than flipping
23 off the screen here. On the 30th of January, Volume 86, at
24 page 166, he's asked the question by Mr. Engelmann:
25 "Mr. Silmsler, at that time, during the course of that

1 interview or before or after the tape is shut off either of
2 those officers talking to you about counseling services or
3 support for you as an alleged victim of child abuse?"

4 Mr. Silmser:

5 "I don't believe so, no."

6 "Do you know if they had any
7 discussions with your lawyer about
8 that?"

9 "My lawyer never mentioned it to me,
10 no."

11 I would refer you to the interview itself at
12 page 46. This is part of the area that I brought to your
13 attention yesterday and it's contained at the timer 2:48 to
14 2:49 of the interview, because by my listening there's --
15 persons are wrongly identified in the transcript and there
16 is a little further to it, and I leave it to you, but as I
17 read and interpreted the video itself, about halfway down
18 the page Constable Fagan raises the issue:

19 "Have you ever been to any treatment
20 for sexual abuse?"

21 And it says "inaudible". When I listen to
22 it carefully I heard "when you were in the institution"

23 Silmser:

24 "No".

25 Smith: "Do you - the first person you

1 ever told was a couple of years ago,
2 out of prison since '87..."

3 And then Mr. Geoffrey jumped in -
4 By my listening, he's seeing someone
5 now that I've arranged for him. It's
6 only been a couple of times, but
7 it's..."

8 And then in the inaudible part, they listen
9 carefully.

10 "...it's up and running right now."

11 And then, at the bottom, and then the next
12 statement is,

13 "Detective Inspector Smith: there's
14 some..."

15 And when I was listening to it yesterday, I
16 could quite clearly,

17 "there's some very good therapists
18 around Ottawa, now."

19 ...is what is contained, there. And then Mr.
20 Silmsler indicated that he didn't have much faith in that
21 and related an experience he had and then, at the bottom of
22 the page as well, the last statement by Detective Inspector
23 Smith is:

24 "Well, I think what we found with
25 some of the fellows we dealt with -

1 said they had -- there's a self group
2 of a bunch and there's some down your
3 way and they find a lot of comfort in
4 talking to each other, um."

5 So, he didn't say that the issue was he
6 being Mr. Silmser, never said that the issue wasn't raised,
7 he didn't believe it had been raised and clearly it was and
8 it also, it's clear that Mr. Geoffrey has indicated that
9 I've arranged for someone to look after him, and he's being
10 looked after at the present time.

11 And, notwithstanding that, Detective
12 Inspector Smith indicates that there - here's and
13 additional resource, a self-help group that is available
14 down your way. That's at the bottom of the page.

15 **THE COMMISSIONER:** Somewhere - I don't read
16 in there, though, "And if you'd like to have some further
17 details about that." Like I -- if that's a conclusion you
18 want me to reach, I don't see that. I mean, he's just
19 said, "Yeah and there's a bunch of people here" -

20 **Mr. WALLACE:** M'hm.

21 **THE COMMISSIONER:** And -- so, they're having
22 a general conversation about ---

23 **MR. WALLACE:** I think -- about counselling.

24 **THE COMMISSIONER:** About counselling.

25 **MR. WALLACE:** Yes, yeah. And Mr. Geoffrey

1 has indicated that he's seeing someone.

2 The issue is raised by Detective Constable
3 Fagan, originally, and the point is that Mr. Silmsner
4 indicated in his evidence he didn't believe the issue was
5 raised, clearly it was by Detective Constable Fagan.

6 Now, there are -- after the interview took
7 place, Mr. Kozloff yesterday brought you to the phone call
8 that he -- that is, Detective Inspector Smith, received
9 from David Silmsner on the 1st of March ---

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

11 **MR. WALLACE:** --- and I want to carry on
12 from that with a phone call that Detective Constable Fagan
13 received on the 2nd of March. And just by way of background
14 for your purpose, on the 1st of March -- at 9:20, in
15 response to a phone message -- Detective Inspector Smith
16 called Mr. Silmsner and he was -- he asked how the
17 investigation was progressing. I advised two officers were
18 working on it and were in the process of interviewing past
19 altar boys. And then he goes on to indicate that he was
20 upset and - ultimately, as you'll recall, he said he was
21 pissed off and hung up on me at that time.

22 On the 2nd of March, and this is Detective
23 Constable Fagan's notes, which are Document number 713543.
24 They haven't been entered, as far as I know.

25 **THE COMMISSIONER:** Again, this is an excerpt

1 of document 713543, Exhibit 397. Consisting of Bates Page,
2 or -- yeah, 7052350 to 7052352.

3 --- EXHIBIT NO./PIÈCE NO P-397:

4 (713543) Handwritten Notes of
5 Detective Constable Ron Wilson - Date
6 Unknown

7 MR. WALLACE: Thank you.

8 THE COMMISSIONER: M'hm.

9 MR. WALLACE: And you'll see at -- date of
10 the 2nd of March '94, entry appears to be 8:25 ---

11 THE COMMISSIONER: M'hm.

12 MR. WALLACE: (reads)

13 "Contact Bryce Geoffreys [it's a phone
14 number]. Received call, wanted to
15 apologize for Silmsers' outburst.
16 Said Silmsers had a witness but didn't
17 know his name. At 8:40, Constable
18 Fagan contacts Mr. Silmsers, Silmsers
19 stated, 'I have another witness who
20 was assaulted by MacDonald and Seguin
21 and is willing to testify.' Said it
22 was Seguin's cousin, didn't know his
23 name or address. He said he met him
24 in Cornwall, wouldn't say when.
25 Became upset when questions about

1 when and where he met him. Said,
2 'You are the same as Cornwall Police,
3 all fucking assholes.' He said,
4 'It's been one and a half years, and
5 you haven't laid charges.' I said,
6 'We just got the case and we had -
7 have to interview witnesses.' He
8 said there's enough to lay charges,
9 if we didn't lay charges, he will go
10 to the press and hung up."

11 And Mr. Kozloff brought to your attention,
12 and yesterday, that Detective Inspector Smith, he called
13 Mr. -- you'll recall, on the day before he put a call out
14 and Mr. Geoffrey didn't reach him. He spoke to him on the
15 2nd of March, and that reference is document 701568 --
16 Exhibit 392, yeah, Bates Page 7004011 -- and that would be
17 the reference at 9:10 on the 2nd of March.

18 And if you'll recall, as I just pointed out,
19 Mr. Geoffrey was on the phone with Detective Constable
20 Fagan at 8:25, apologizing for the conduct of Mr. Silmsler
21 and between 9:10 and 9:20, he's essentially apologizing
22 again for Mr. Silmsler's action, this time to detective --
23 Detective Inspector Smith. And it was at that time that
24 the two -- that is, Mr. Geoffrey and Detective Inspector
25 Smith, agreed to deal person to person, rather than going

1 through Mr. Silmsers for any additional information.

2 Later in the investigation, there was other
3 contacts that Mr. Silmsers had, with officers involved, and
4 I wanted to draw your attention to a couple of those.

5 The first is a reference from document
6 number 733623 which are the notes of Detective Constable
7 Joseph Dupuis.

8 **THE COMMISSIONER:** Thank you.

9 Exhibit number 398, it's an occurrence
10 summary. It deals with matters between 1968 and 1975 from
11 the Cornwall Police Service.

12 **MR. WALLACE:** What's that? Is it -- wait a
13 second.

14 **THE COMMISSIONER:** Well actually, no that
15 was just the top one. Sorry. In any event, it's a number
16 of occurrence summaries from the Cornwall Police Service.

17 **MR. WALLACE:** No, it shouldn't be, Mr.
18 Commissioner.

19 **THE COMMISSIONER:** Okay. Madam Clerk, wrong
20 document. It looks like -- yeah you want the Officer's
21 notes of Constable Joe Dupuis.

22 **MR. WALLACE:** (Inaudible)

23 **THE REGISTRAR:** He wants the exhibit
24 (inaudible)

25 **MR. WALLACE:** You want the Bates Page, you

1 mean?

2 **THE REGISTRAR:** I guess.

3 **MR. WALLACE:** Okay.

4 **THE REGISTRAR:** (inaudible)

5 **MR. WALLACE:** Starting at 7131564.

6 **THE COMMISSIONER:** All right. Exhibit
7 number 398.

8 --- **EXHIBIT NO./PIÈCE NO P-398:**

9 (733623) Handwritten Notes of Constable
10 Dupuis - September 20, 1999

11 **THE COMMISSIONER:** Do you ---

12 **MR. WALLACE:** If ---

13 **THE COMMISSIONER:** Just a sec. Okay, let's
14 make --

15 **MR. WALLACE:** Just ---

16 **THE COMMISSIONER:** Where you want to go on
17 this?

18 **MR. WALLACE:** Okay, the first reference is -
19 - just to simply locate the date, it's the 20th of September
20 '99. and ---

21 **THE COMMISSIONER:** For some reason, I don't
22 know that this is the right document.

23 **THE REGISTRAR:** Bates Page 7131564.

24 **THE COMMISSIONER:** Okay. It might be.

25 **MR. WALLACE:** Yeah.

1 THE COMMISSIONER: It might be.

2 MR. WALLACE: yeah.

3 The date is on the -- at the very second
4 last line.

5 THE COMMISSIONER: Right. Twentieth (20th)
6 of September '99?

7 MR. WALLACE: Yes.

8 THE COMMISSIONER: Okay.

9 MR. WALLACE: And then if you slip over two
10 more pages, this is where I want to get to.

11 THE COMMISSIONER: A ---

12 MR. WALLACE: An entry at 10:40.

13 THE COMMISSIONER: Yeah.

14 MR. WALLACE: (Reads)

15 "Called Mrs. David Silmsler, request
16 an appointment for David to meet Mrs.
17 -- Ms. Hallett. Mrs. Silmsler will
18 give him message, get back to me."

19 So, we know Ms. Hallett is with the
20 prosecution and this is to line up a meeting.

21 If you turn the next page ---

22 THE COMMISSIONER: Yes, but ---

23 MR. WALLACE: Sorry, it's 7131570.

24 THE COMMISSIONER: We don't have that.

25 Mr. ENGELMANN: If I could just interrupt

1 for a moment, this should probably be marked with a
2 temporary 'C' ---

3 **THE COMMISSIONER:** This is Exhibit 398?
4 Yeah.

5 **MR. ENGELMANN:** Yes.

6 **THE COMMISSIONER:** Okay. Thank you.

7 **MR. WALLACE:** This is an entry for the 22nd of
8 September '99, the top entry 907:

9 "Called Mrs. Silmser, trying to locate
10 David Silmser, not at home."

11 Drop down to the bottom of the page, Mr.
12 Commissioner, at 11:35. We're now on the 23rd of September:

13 "Talked to Pam Silmser again. David
14 sick in bed this week. She will talk
15 to him again, see if he will call."

16 **THE COMMISSIONER:** Is this another document
17 Mr. Wallace where we should be putting a temporary "C"?

18 **MR. WALLACE:** I was given to understand that
19 from Mr. Engelmann. Yes, please.

20 **THE COMMISSIONER:** No, no, no, no. That was
21 from the previous one. Remember these are documents that
22 you're producing for cross-examination so you're supposed
23 to keep an eye out for these things as well.

24 **MR. WALLACE:** Okay.

25 **THE COMMISSIONER:** And I think that at the

1 back there is a -- I don't know, I just see a name there,
2 Mr. Engelmann, on the 23rd of September, on top, page 13.

3 **MR. ENGELMANN:** Yes, we've already indicated
4 that this exhibit should have a temporary "C".

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

6 **MR. WALLACE:** Oh, I'm sorry. It was another
7 document ---

8 **THE COMMISSIONER:** Yes, where ---

9 **THE REGISTRAR:** This is Exhibit C-399.

10 ---EXHIBIT NO./PIÈCE NO C-399:

11 (733623) Handwritten Notes of Constable
12 Dupuis - September 22, 1999

13 **MR. ENGELMANN:** I am sorry, I thought we
14 were running this as one exhibit.

15 **THE COMMISSIONER:** No, we are not.

16 **MR. ENGELMANN:** Okay, very well. Yes,
17 again, that would need a temporary "C".

18 **THE COMMISSIONER:** So just a reminder again
19 to those who are cross-examining that, while I'm sure
20 Commission counsel are looking, it's a joint endeavour that
21 everyone looks at the documents, specifically is you're the
22 one who's presenting it. Just to make sure that we don't
23 cause any harm to anyone by having it made public.

24 **MR. WALLACE:** The next document is number
25 733626. Again these are notes of Officer Dupuis, 26th of

1 April 2000, and there is a monikered individual mentioned
2 in this document.

3 **THE REGISTRAR:** Which page please?

4 **MR. WALLACE:** Seven-one-three-one-eight-
5 zero-five (7131805).

6 **THE COMMISSIONER:** Okay.

7 **MR. WALLACE:** Again, just to contextualize
8 this. This is again the officer's efforts to line up
9 witness interviews with Ms. Hallett; this on a different
10 occasion obviously, different year. It you refer to the
11 next page at 16:28.

12 **MR. ENGELMANN:** Perhaps this could be
13 marked.

14 **MR. WALLACE:** Yes.

15 **THE COMMISSIONER:** Marked what? Temporary
16 "C"?

17 **MR. WALLACE:** Yes.

18 **MR. ENGELMANN:** Yes, I just want to make
19 sure we have the numbers for the record.

20 **THE COMMISSIONER:** Exhibit number 400
21 temporary "C".

22 **---EXHIBIT NO./PIÈCE NO C-400:**

23 (733626) Handwritten Notes of Constable
24 Dupuis - April 26, 2000.

25 **MR. WALLACE:** "Received page from John

1 MacDonald. Set up appointment with Ms.
2 Hallett 3rd of May at 13:00 hours, Long
3 Sioux. He will make contact with David
4 Silmser and have him there for Thursday
5 the 4th of May."

6 **THE COMMISSIONER:** I am sorry; I must have
7 lost the grip -- where are we going with this?

8 **MR. WALLACE:** What I was -- would have been
9 doing if the witness was here, was trying to show the lack
10 of cooperation in very simple matters in terms of making
11 appointments, making himself available, these sorts of
12 things. Here are notebook entries that are documented now,
13 and I have a few more that I wanted to bring to your
14 attention and ---

15 **THE COMMISSIONER:** Go ahead.

16 **MR. WALLACE:** And the next page at 15:36:
17 "Called John MacDonald. Still not
18 spoken to David Silmser. Will be going
19 there tonight. Will have him attend
20 appointment on Thursday. He will go
21 there for his appointment on
22 Wednesday."

23 At the bottom on the 2nd of May, 8:40:

24 "MacDonald advised he would not be able
25 to keep his appointment tomorrow,

1 sister's in the hospital. He goes on
2 to indicate that he'll have David
3 Silmsen take his appointment time; will
4 have him take all his material as well.
5 Will call back when appointment's set."

6 At 20:38:

7 "Constable Dupuis received a page. He
8 re-called the number. He spoke to Mr.
9 MacDonald. He advised he'd spoken to
10 Mr. Silmsen. He didn't want to repeat
11 what he had said about meeting with us.
12 In short, Silmsen advised that if we
13 wanted to speak to him, we knew where
14 he lived. MacDonald advised. Still
15 has no phone service."

16 **THE COMMISSIONER:** So you're thinking of
17 making these exhibits at this point?

18 **MR. WALLACE:** I thought it was, I thought it
19 had been.

20 **MR. ENGELMANN:** Could that be given a
21 temporary "C" also, please?

22 **THE COMMISSIONER:** Okay. Four-zero-one
23 (401), temporary "C".

24 ---EXHIBIT NO./PIÈCE NO C-401:

25 (733626) Handwritten Notes of Constable

1 Dupuis - May 1, 2000.

2 **MR. WALLACE:** The last two documents I
3 wanted to refer to are Document number 733266.

4 **THE REGISTRAR:** Seven-three-three-two-six-
5 six (733266)?

6 **MR. WALLACE:** Two-six-six (266), yes. Bates
7 Page 7129862. This should be a temporary "C" exhibit.

8 **THE COMMISSIONER:** Thank you.

9 **---EXHIBIT NO./PIÈCE NO C-402:**

10 (733266) Handwritten Notes of Detective
11 Constable Steve Seguin - February 18, 2002.

12 **MR. WALLACE:** And these are the notes of
13 Detective Constable Steve Seguin, 18th of February '02.

14 I'll refer you to the second page at 13:26
15 and the detective constable speaks to a woman identifying
16 herself as David Silmsers's wife. He indicates that he'll
17 be over at approximately 3:30 in the afternoon. He attends
18 at about 2:30 in the afternoon to the Silmsers's residence,
19 serves a subpoena and, for my purposes, he advised that the
20 Crown McConnery would like to meet with him next week ---

21 **THE COMMISSIONER:** Where is this "The
22 Crown"?

23 **MR. WALLACE:** Crown McConnery ---

24 **THE COMMISSIONER:** Right.

25 **MR. WALLACE:** Okay.

1 ". . . would like to meet with him next
2 week. Agreed upon Wednesday at 10:30
3 a.m. Advised him Detective Constable
4 Dupuis will pick him up at 9:30 that --
5 --"

6 I can't read that word.

7 And then following up on that, the meeting,
8 look at the next document, 733629. And this should be
9 another temporary "C".

10 **THE COMMISSIONER:** Thank you. Exhibit 403.

11 **---EXHIBIT NO./PIÈCE NO C-403:**

12 (733629) Handwritten Notes of Detective
13 Constable Dupuis - February 26, 2002.

14 **MR. WALLACE:** This is where Officer Dupuis
15 in fact picks him up. If you look at the entry, the 27th of
16 February '02, 8:45:

17 "Pick up David Silmsers re meeting with
18 Crowns."

19 At 10:30:

20 "Crowns arrived. Started discussing
21 judge only. Reason why judge only:
22 Silmsers advised that he was very upset
23 with criminal justice system that had
24 failed him and other victims. Silmsers
25 became upset for no reason. Advised

1 this discussion is over and walked out
2 of the room. I went out after and
3 asked if he would like a ride home. He
4 refused and walked away from the car.
5 Silmser has no confidence in the judges
6 that had heard the cases before in the
7 project matters. He advised that he
8 doesn't care about the criminal case or
9 the other people involved in the
10 criminal case. Silmser didn't seem
11 angry; just got up and walked out."

12 Those are the areas that I wanted to draw to
13 your attention in terms of showing the lack of, what was
14 professed in the interview, of a 150 per cent cooperation
15 with the police in the course of the investigation and
16 prosecution.

17 Thank you, sir.

18 **THE COMMISSIONER:** Thank you.

19 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CALLAGHAN:

20 **MR. CALLAGHAN:** If I can be permitted a
21 minute just to get organized.

22 **THE COMMISSIONER:** Yes, sir.

23 **(SHORT PAUSE/COURTE PAUSE)**

24 **MR. CALLAGHAN:** Good morning, Mr.
25 Commissioner.

1 **THE COMMISSIONER:** Good morning, sir.

2 **MR. CALLAGHAN:** If I might be permitted, I
3 would like to echo my sentiments along with Mr. Kozloff
4 regarding Mr. Justice Archie Campbell, who ---

5 **THE COMMISSIONER:** Yes.

6 **MR. CALLAGHAN:** --- was a very dear friend
7 of mine and was -- as well as others, including Professor
8 Manson.

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

10 **MR. CALLAGHAN:** I believe, for the people at
11 home, we are the only ongoing inquiry commenced by the
12 Province of Ontario at the moment. And like yourself, Mr.
13 Commissioner, Mr. Justice Campbell was sought out and his
14 expertise, his abilities, were put to use as a Commissioner
15 like yourself.

16 Notwithstanding that Mr. Justice Campbell
17 was critically ill, he released the last of a three-volume
18 or a three staged-volume set regarding the SARS inquiry in
19 January.

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

21 **MR. CALLAGHAN:** For those of us who knew
22 him, we knew him as a tireless worker. He was a
23 renaissance man in so many different ways and he did a
24 credit to the justice system in Ontario and he did a credit
25 to Commissions of Inquiry everywhere.

1 Indeed, I think in this long road that we're
2 about to take or we're on at the moment, it will be made
3 easier because of his own work on Bernardo as we've talked
4 about earlier.

5 Indeed, many of the issues that you're going
6 to grapple with at the end of the day, he was able to deal
7 with some time 10 years ago. Things have changed, maybe
8 things need to change more, but our road will be straighter
9 for it.

10 In any event, I didn't want to get too
11 melancholy but he was a very dear friend and I think, you
12 know, we, as the last vestiges at the moment of public
13 inquiries in Ontario, should take a moment. But thank you.

14 **THE COMMISSIONER:** Okay.

15 **MR. CALLAGHAN:** You know, when we started
16 this process, there was a considerable amount of latitude
17 given to us who have this awkward position of doing these
18 presentations. Mine might be slightly different. I have
19 listened to some of your admonitions and I will try to
20 abide by them. But it may be slightly different.

21 I should say for the record, obviously, and
22 as a phrase I've use that obviously, and you've said this
23 before, this isn't a substitute for a cross-examination.
24 What I'm about to do is give you a flavour of what might
25 have been, just a flavour.

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

2 **MR. CALLAGHAN:** In doing that, I'm going to
3 raise issues. I'm going to provide contradictions that I
4 might have seen in the evidence. And I think it's
5 important that -- and I know, Mr. Commissioner, you know,
6 but the public should know -- that you know, while we
7 cross-examine, not every contradiction is an allegation of
8 deliberate untruth.

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

10 **MR. CALLAGHAN:** There's much more to that.
11 Honest people need to be straightened out, if I might say
12 it, by cross-examination. I thought, because I think
13 there's a little tension by those who might watch, who
14 might -- including Mr. Silmser, and we'll all make our
15 final submissions how we see things. But there is a quote
16 from Mr. Justice Cory in *R. v. Osolin* and he said:

17 "There can be no question of the
18 importance of cross-examination. It is
19 of essential importance in determining
20 whether a witness is credible. Even
21 with the most honest witness, cross-
22 examination can provide the means to
23 explore the frailties of the testimony.
24 Its importance cannot be denied. It is
25 the ultimate means of demonstrating and

1 testing veracity."

2 And of course, as we know in the Krever
3 case, Mr. Justice Cory also held that Commissioners must be
4 able to weigh the testimony of witnesses before them, to
5 make findings of credibility, so it's something that you
6 also have to consider.

7 But I think it's important that the public
8 understand that. And recognizing the position that this
9 Commission is in at this time, they should understand as I
10 say, that this is a matter of a flavour of what a cross-
11 examination might have been.

12 My presentation will generally follow the
13 chronology of the investigation by the Cornwall Police.

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

15 **MR. CALLAGHAN:** I doubt my cross-examination
16 would necessarily have followed that chronology, but I'm
17 doing it this way for the sake of ease of comprehension of
18 both you, Mr. Commissioner and those watching at home.

19 I don't intend to bring out every
20 inconsistency that is present in the records. Clearly, the
21 records speak for themselves. I might well have spent more
22 time on those inconsistencies had Mr. Silmsler been here
23 today. Clearly, even the flow of cross-examination might
24 well bring out inconsistencies. Indeed, new issues might
25 well arise during the course of cross-examination, as has

1 been the case in others. Moreover, testimony elicited
2 during cross-examination might well have changed the tenor
3 and focus of my cross-examination.

4 I do not intend to be repetitive of the
5 points made by others, if I can avoid it. So like any
6 other cross-examination, I may rely on points that have
7 been raised, because I just -- obviously, we've been at
8 this for awhile and every point could be re-examined.

9 The theme of my cross-examination would have
10 had as its objective: one, the education of you, Mr.
11 Commissioner, as to the facts, so that it might assist you
12 in your later deliberations; two, equally important, is the
13 education of the public as to the facts, as was noted by
14 Mr. Justice Grange in the Sick Kids Inquiry. The purpose
15 of an inquiry is not just to find the facts, but also to
16 educate the public. And third, my purpose would in
17 addition, have been to educate as best I could, Mr.
18 Silmser, as to what occurred in the investigation of his
19 complaint.

20 The cross-examination would have explored
21 not only the DS investigation, Mr. Silmser's investigation,
22 but other interactions that Mr. Silmser had with the
23 Cornwall Police, his interaction with Mr. Dunlop and Mr.
24 Chisholm, his interaction with other victims, including Mr.
25 MacDonald, the Children's Aid Society and other players.

1 And it would have, I must say, explored and dealt with some
2 of the weaknesses in his testimony and some
3 inconsistencies.

4 I would have likely started my examination
5 of Mr. Silmsler by examining his understanding of the
6 criminal justice system, the purpose of which would be to
7 put the Cornwall Police investigation into context. I
8 would have established whether he understood the concept of
9 reasonable doubt and whether he understood that an officer
10 would have to swear under oath that they possessed an
11 honest belief that there were reasonable and probable
12 grounds to believe that an offence had been committed. And
13 if so, when, where and by whom?

14 To my mind, it is important for Mr. Silmsler
15 to know and the public to know that the police and in
16 particular, Constable Sebalj had to eventually swear under
17 oath that she personally had a sufficient basis to have
18 reasonable and probable grounds that an offence had been
19 committed.

20 It's through that prism that I would have
21 asked Mr. Silmsler to see the investigation.

22 I would have explored a little more as to
23 Mr. Silmsler's view of Heidi Sebalj, which, I think it's
24 fair to say, was generally complimentary. To date, he has
25 called her a "super lady". He has said he liked her, and

1 described her as a very nice person. He's said she dealt
2 with him with a lot of concern and "she was quite nice to
3 me". He described how he "felt sorry for her" when he said
4 that he didn't want to proceed. I would have explored
5 these views further. I would have suggested to him that
6 among other things, Heidi Sebalj was decent and considerate
7 to him. She dealt with him in an honest and forthright
8 manner throughout. He mentioned that she took notes. I
9 would have suggested that there's no reason for those notes
10 not to be accurate.

11 I would have explored his comments that
12 Heidi Sebalj too, was a victim. As he said, "She is a
13 victim of this thing as much as I am". That's page 105 of
14 Volume 87.

15 I would have asked him why he felt this way.
16 Presumably because -- and I would have suggested it, I
17 suppose, that it was because, that she too has been
18 unfairly portrayed in this world of rumour and innuendo
19 that has engulfed this case.

20 With that sort of introduction and obviously
21 there would have been some other issues of a general nature
22 I would have covered, I probably would have started with
23 the investigation. I won't go through it, but I clearly
24 would have gone through the contact between the Cornwall
25 Police and Mr. Silmser.

1 As was discussed in Mr. Kozloff's
2 presentation, it is clear that he called the Cornwall
3 Police first in December '92 and he spoke to Sergeant
4 Nakic.

5 Still, it would have been my position to him
6 that it's uncertain as to why he called the Cornwall Police
7 in December, a full eight months after his initial contact
8 with the OPP. I would have put to him that he was clearly
9 mistaken when he said that he first spoke to an officer,
10 Heidi Sebalj, as he testified in-chief. The records are
11 clear that he spoke to Constable Sergeant Nakic and then
12 Sergeant Lortie.

13 The time of the December report raises
14 whether DS started this process with the police or the
15 church. As indicated, we know that he contacted the
16 Cornwall Police first on December 9th and that's evident
17 through Exhibit 293, Sergeant Nakic's note.

18 At the preliminary inquiry on December 9th,
19 1997 and perhaps we can get it up, at Exhibit 290, page 48,
20 he said:

21 Question: "Now I also understand at some
22 point you came to see the church, Catholic Church Authority
23 here in Ottawa."

24 **THE COMMISSIONER:** Wait a minute. Where are
25 you?

1 **MR. CALLAGHAN:** Sorry.

2 **THE COMMISSIONER:** Page 48?

3 **MR. CALLAGHAN:** I think we're there. I
4 think, Madam Reporter, you just cut down. "Now I also
5 understand..."

6 "Now I also understand that at some
7 point you came to see the church,
8 Catholic Church Authority here in
9 Ottawa."

10 Answer: "Yes, I did."

11 Question: "That was Father or
12 Monsignor Schonenbach?"

13 Answer: "I believe that's what his
14 name was. Yes."

15 Question: "Do you remember when that
16 was?"

17 Answer: "Not exactly. No."

18 Question: "Was it before or after you
19 went to the City Police, apparently on
20 the 9th?"

21 Answer: "I believe it was before."

22 Question: "Before?"

23 Answer: "Yes."

24 Question: "So your recollection is
25 that you see the Monsignor first, then

1 you go to the police station?"

2 Answer: "I believe so. Yes."

3 Question: "That's how you recall it?"

4 Answer: "Yes."

5 During the testimony, you'll recall that he
6 told Mr. Silmsler that he went to the police first?

7 **THE COMMISSIONER:** He told Mr. Silmsler?

8 **MR. WALLACE:** Sorry, he told Mr. Sherriff-
9 Scott he went to the police first.

10 I raise this as Mr. Neuberger has
11 articulated a feeling that others have articulated, which
12 is whether there was a leveraging off the criminal
13 investigation for the civil gain. As such, I would have
14 questioned him on the sequence of his reporting and why he
15 would have changed his story, if that's the case, or why
16 his memory is different.

17 I would have then proceeded to go through
18 the investigation, starting with the January 13th note of
19 Constable Heidi Sebalj, which can be found at Exhibit 297.

20 Mr. Commissioner, perhaps you could let me
21 know when you plan to break and I can work towards a proper
22 ---

23 **THE COMMISSIONER:** Twelve-thirty (12:30).

24 **MR. CALLAGHAN:** Twelve-thirty (12:30).

25 Mr. Commissioner ---

1 **THE COMMISSIONER:** Or sooner if you've
2 finished your cross-examination.

3 **MR. CALLAGHAN:** I don't think so. But I'll
4 do my best.

5 **(LAUGHTER/RIRES)**

6 **THE COMMISSIONER:** Just asking.
7 All right.

8 **MR. CALLAGHAN:** Perry Mason is not before,
9 I'm afraid. Perry Mason has left the building.

10 **THE COMMISSIONER:** Exhibit 297 are the
11 transcribed notes of Heidi Sebalj.

12 **MR. CALLAGHAN:** Right. And I think, as
13 we've indicated earlier, we've been working from these but
14 the extent there's a difference in the handwriting, we
15 obviously go to a handwriting ---

16 **THE COMMISSIONER:** Yes.

17 **MR. CALLAGHAN:** And I don't believe there
18 is, but it may come up later.

19 Mr. Engelmann has asked me to point out that
20 these were not transcribed by the Cornwall Police but
21 rather the OPP.

22 So I would have pointed out to Mr. -- I
23 would have confirmed that he had called on -- that he had a
24 discussion, I should say, with Constable Sebalj and that
25 she contacted him on January 13th, 1993. I would have

1 pointed out that in the totality of this note, that the
2 discussion appears to be with respect to only Father
3 Charlie MacDonald. I would have asked him to read it and
4 confirm whether that was true, that when he had an
5 opportunity to speak to someone of the Cornwall Police,
6 that all he spoke about at first, was Father Charles
7 MacDonald.

8 I would have reviewed a little more detail
9 as to the discussions that he had with Heidi Sebalj about
10 his contact with the Church -- if I can put it that way --
11 in Ottawa. I would have -- you'll recall there was cross-
12 examination earlier as to whether he saw the Bishop or
13 Monsignor Schonenbach, et cetera. I would have pointed out
14 to him that it was he that told Heidi Sebalj, at least
15 according to this note, that Father Charlie MacDonald had
16 retained counsel. Where it says, "suspect was said to have
17 retained counsel".

18 **THE COMMISSIONER:** I'm sorry. Where is that
19 now?

20 **MR. CALLAGHAN:**

21 "Victim advised he had spoken and met
22 with Bishop in Ottawa" ---

23 **THE COMMISSIONER:** What note?

24 **MR. CALLAGHAN:** It's in that first note.

25 Sorry. January 13th. My apologies.

1 **THE COMMISSIONER:** There's two January 13s,
2 but okay.

3 **MR. CALLAGHAN:** Okay?

4 "Victim advised he had spoken and met
5 with Bishop in Ottawa".

6 Which I just spoke of a moment ago.

7 "Who apparently had filed a report and
8 spoke with suspect who is said to have
9 retained counsel".

10 I would have confirmed with him that it was
11 he that told the Cornwall Police that Charlie MacDonald had
12 counsel.

13 **THE COMMISSIONER:** Well, confirmed.

14 **MR. CALLAGHAN:** I would have confirmed that
15 that was right. Because there was an indication earlier --
16 during his cross -- his examination, he mentioned well, how
17 did the police -- why were the police talking to Charlie
18 MacDonald's counsel, Malcolm MacDonald? He had mentioned
19 that during his examination. All I would have done is to
20 confirm that indeed it was he who told them that they had
21 counsel, at the beginning. He's the one that raised it.
22 If he agrees with the note. Obviously, we don't know, but
23 assuming he would have agreed with the note.

24 I would have got him to verify the contents
25 of the note, obviously.

1 I would have pointed out to him that at the
2 very outset, there was a discussion with Heidi Sebalj about
3 the age at which these assaults had taken place. And I
4 note that it says:

5 "Victim advised the assaults occurred
6 while in grade five and six, at St.
7 Columbans."

8 **THE COMMISSIONER:** In grade five and six?

9 **MR. CALLAGHAN:** In grade five and six.

10 **THE COMMISSIONER:** Yes.

11 **MR. CALLAGHAN:** I then would have taken him
12 over to the next page, where it says:

13 "Victim asked to determine time frame
14 and to whom he had spoken to about
15 this, that is, Bishop."

16 Example; I think is what it's intended to
17 refer, but that indeed there was discussion with him at the
18 outset, that the time frame of when this happened would be
19 important.

20 I would have likely asked him whether he
21 knew what the age of consent was for these historical
22 sexual assaults, which we've done with others. I would
23 have asked him what he did to clarify the dates.

24 I would have pointed out that he raised his
25 criminal record right from the outset, if you go back a

1 page.

2 **THE COMMISSIONER:** That he would have raised
3 it?

4 **MR. CALLAGHAN:** If you can go down.

5 **THE COMMISSIONER:** States his criminal
6 record is as a result of the assaults.

7 **MR. CALLAGHAN:** Right.

8 **THE COMMISSIONER:** Well ---

9 **MR. CALLAGHAN:** Well, I would have suggested
10 to him that it was raised. Whether he raised it, there was
11 a discussion at the outset that she wouldn't presumably
12 know about his criminal record.

13 **THE COMMISSIONER:** Really? Look at the top
14 of the note there on January 13th.

15 **MR. CALLAGHAN:** Oh, I see, CPIC. You're
16 right. Sorry.

17 **THE COMMISSIONER:** "Criminal record on file
18 extensive."

19 **MR. CALLAGHAN:** Right. Sorry. I misread my
20 note. But nonetheless, I would have pointed out that he
21 was upfront about it and he was upfront about it
22 particularly because he's a well -- he's knows the criminal
23 justice system and he knows that credibility comes into
24 play in the criminal justice system, and I would have asked
25 him about it.

1 It was raised in-chief about his criminal
2 record.

3 **THE COMMISSIONER:** Right.

4 **MR. CALLAGHAN:** I would have pointed out
5 that his criminal record did have and it did contain fraud
6 allegations, uttering forged documents, and that that was
7 one of the reasons why he raised it. So it was well known
8 to everybody.

9 **THE COMMISSIONER:** Well ---

10 **MR. CALLAGHAN:** Well, whether he raised it
11 or not I guess we'll have to wait. He's not here.

12 **THE COMMISSIONER:** No, no, no, no, but I'm
13 just concerned about conclusions. I mean, you say, well,
14 he was very well versed with the criminal justice system
15 and that's why he told her, was upfront about his criminal
16 record. One might also say, you know, he knew the police
17 would know about his criminal record so why not tell them.

18 **MR. CALLAGHAN:** Sure. And you know I -- as
19 between what answer there is I don't know what he would
20 have given. You're absolutely right. So I can't conclude
21 what he gave them, which is obviously one of the issues we
22 have here.

23 I would have tried -- whether I am skillful
24 enough to ask him the question appropriately and got
25 whatever answer, I don't know what he would have said. But

1 my point being is, is that these things were discussed at
2 the outset and I suspect when one comes to assess the
3 totality of the evidence at the end of the day, one has to
4 look at what Constable Sebalj had to work with, including
5 the fact that he had these. And I would have confirmed it
6 with him, so there wasn't a doubt at the end of the day as
7 to what the discussion is and whether it was upfront that
8 this was out there and that he knew that that went into the
9 mix.

10 We'll hear from Constable Sebalj and I guess
11 we'll hear what went into the mix, but at this stage I
12 would have got that confirmed.

13 **THE COMMISSIONER:** Right. No, what I'm
14 concerned about is that you're making comments about well,
15 you know, the underlying thing is that he knew the justice
16 system, and I take it that that has that undercurrent there
17 about his intentions and that's not there.

18 **MR. CALLAGHAN:** Well, it's not -- I don't
19 know if it's undercurrent about intention. I wouldn't -- I
20 haven't got there yet and maybe that's what I'll say at the
21 end of the day.

22 I think what I'm trying to illicit is the
23 fact that he did have an extensive criminal record. He was
24 aware of the criminal process. He knew credibility comes
25 up in criminal trials. He would know all that. I will

1 eventually tell you that he also knew there wasn't another
2 witness to any of these assaults so that he would have --
3 his credibility would be an issue.

4 As it was -- I mean, that was one of the
5 complaints he had about Mr. Neville; that all he did was go
6 after his credibility, which is one of the factors that I
7 think one has to consider from the institutions
8 perspective, of what they were having to deal with. And
9 I'm not saying that as a person but that's what goes into
10 the mix when they don't have corroborative evidence of the
11 actual events.

12 **THE COMMISSIONER:** Yes, I know, but ---

13 **MR. CALLAGHAN:** I know I'm making
14 conclusions but you're asking -- if you'd asked me the
15 question why is that relevant I would have told you that.
16 And I'll try to avoid it, but the difficulty of course is I
17 would be working towards conclusions in my cross-
18 examination, many of which I think you probably know where
19 I'm going in some cases. You probably could write -- I
20 wouldn't say all, but a little bit of my closing, and of
21 course that's what a good cross-examination does.

22 So I hope I don't go over the line and I
23 know I don't want to offend anybody, but I would tell you
24 that's how I would have approached it if he were here.

25 **THE COMMISSIONER:** Right. And so far so

1 good in the sense that I want to deal with this -- and it's
2 difficult -- in a dispassionate way.

3 **MR. CALLAGHAN:** I know.

4 **THE COMMISSIONER:** In the sense of "let's
5 leave the editorial comments and the submissions until
6 later". Show me the discrepancies. Show me things. But
7 for example, you know, we come back to this issue about he
8 was after money, that insinuation or allegation. So what?

9 **MR. CALLAGHAN:** Well, it may or may not be a
10 "so what" depending, for example, to jump a little bit
11 ahead, I will take you to the fact that nowhere is there a
12 record of Heidi Sebalj saying the case is closed and yet he
13 uses that as a predicate to say he's settling. He blames
14 it back on us. Frankly, that's why he's settling. And I
15 say no, that's not right; that there might have been
16 something going on here; that the settlement was always
17 available to him and he was going to take it.

18 I'm not judging him. I think you're quite
19 right, Mr. Commissioner. People have to understand it
20 causes problems for police but in our system you can
21 settle. If someone banged me on the head I'd sue him and
22 I'd get the cops after him. I'd do both. And there's
23 nothing inherently wrong with it. But when he comes
24 forward and says "By the way, I only settled because
25 Cornwall didn't do their job", which is not correct, I

1 think I'm entitled to explore what was really going on.

2 **THE COMMISSIONER:** Well, "we" is not
3 correct. I'll decide whether that was correct or not, that
4 kind of thing.

5 **MR. CALLAGHAN:** But you'll hear from me that
6 that's it.

7 **THE COMMISSIONER:** Absolutely.

8 **MR. CALLAGHAN:** And in the course of a
9 cross-examination I'm going to work towards that end, so at
10 the end of the day you can say "Well, Mr. Callaghan led
11 this evidence by examination or cross-examination. I
12 accept it or I don't accept it."

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

14 **MR. CALLAGHAN:** And I'll try. And I realize
15 we're in a very, very, very, very weird situation here;
16 very unique. I'm trying to be sensitive to obviously the
17 sensitivities that you're working with.

18 I didn't do -- as I said, my presentation
19 will differ. I didn't actually do all the necessary
20 contradictions that, say, Ms. Ithers (phonetic) did. I've
21 got some. Because I'm more working with her material and
22 maybe I'll be a la Bush/Gore leaving hanging chads as
23 opposed to pushing the chads out. But if I'd done a cross-
24 examination, I would have concluded that out just to
25 educate you, to educate the public, to educate Mr. Silmsen,

1 as to where we're going.

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

3 Now that's I've managed to really lose your
4 train of thought.

5 **MR. CALLAGHAN:** Well, why don't we finish
6 January 13th and I'll continue. I would have also pointed
7 out that they did have a discussion about counselling and
8 that it states at the next page ---

9 **THE COMMISSIONER:** Page?

10 **MR. CALLAGHAN:** The next page down.

11 **THE COMMISSIONER:** Yes.

12 **MR. CALLAGHAN:** Sorry. I'm sorry. My
13 apologies. I hadn't noticed you turned it over.

14 "Victim states has tried counselling
15 but left off as mad as he was told he
16 was good looking."

17 I would have actually, you know, just
18 pointed out that there was a discussion at the out front
19 about counselling.

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

21 **MR. CALLAGHAN:** I would have also pointed
22 out that he had indicated that he was very, very angry, or:
23 "...very angry and doesn't care about the
24 outcome in court, just wants him to go
25 through what he has."

1 And I would have asked him what, in fact,
2 did he mean by that statement; what was he trying to
3 convey.

4 I would have obviously concluded by the
5 appointment scheduled for Monday, January 18th, and I
6 suspect that might be just as good a time to pick it up at
7 that point, Mr. Commissioner, if that is acceptable to you.

8 **THE COMMISSIONER:** Thank you very much.

9 Let's break for lunch. We'll come back at
10 2:00.

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

13 The hearing will resume at 2:00 p.m.

14 --- Upon recessing at 12:25 p.m./

15 L'audience est suspendue à 12h25

16 --- Upon resuming at 2:04 p.m./

17 L'audience est reprise à 14h04

18 **THE REGISTRAR:** À l'ordre; veuillez vous
19 lever.

20 This Hearing of the Cornwall Public Inquiry
21 is now in session.

22 Please be seated. Veuillez vous asseoir.

23 **MR. ENGELMANN:** I'm just going to take Mr.
24 Callaghan's microphone for just a moment.

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

1 **MR. ENGELMANN:** Mr. Commissioner, we advised
2 parties in a meeting about plans for next week but we
3 haven't told the public. So I just wanted to indicate a
4 couple of matters, if I could, on the record.

5 This week on Thursday at the completion of
6 the narrative or presentations that have been dealing with
7 the evidence of David Silmsler, we will be having an all
8 counsel meeting.

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

10 **MR. ENGELMANN:** And today and yesterday the
11 parties have been receiving new hard drives from the
12 Commission as part of the Commission's ongoing disclosure
13 of documents that we're receiving. We are continuing to
14 make documents available to the parties, as is their right
15 as a result of their standing before the Commission.

16 In addition, as a result of some witness
17 availability and scheduling difficulties we are unable to
18 call evidence Monday afternoon of next week, Tuesday and
19 Wednesday. We will be calling evidence next Thursday and
20 dealing with some other issues on Thursday. We'll be
21 discussing those issues with counsel at the meeting
22 tomorrow as well.

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

24 **MR. ENGELMANN:** And I've indicated to
25 counsel, one of the things we'll be doing at the all-

1 counsel meeting is discussing with them the full slate of
2 witnesses we have available for the May and June Hearing
3 dates that are upcoming.

4 **THE COMMISSIONER:** Okay. Thank you.

5 Mr. Callaghan, I don't know what's going on
6 but my left or your right side is diminishing in number so
7 I don't know if it's ---

8 **MR. CALLAGHAN:** They're fleeing my team.

9 **THE COMMISSIONER:** Well ---

10 **MR. CALLAGHAN:** That is where I sat.

11 **THE COMMISSIONER:** I don't know if they're
12 on your team or not, or if it's the right wing or the left
13 wing, depending on which way we're looking at it.

14 **MR. CALLAGHAN:** Well ---

15 **MR. SHERRIFF-SCOTT:** You're just isolating
16 me as usual.

17 **MR. CALLAGHAN:** I kind of play the rover
18 position so I don't particularly worry.

19 **THE COMMISSIONER:** All right.

20 **MR. CALLAGHAN:** Where we were, Mr.
21 Commissioner, was I was reviewing Constable Sebalj's notes
22 which was what I intend to do to sort of set the tone of
23 the investigation and it's at Exhibit 297 and I'm at the
24 second page.

25 **THE COMMISSIONER:** Yes.

1 **MR. CALLAGHAN:** I'll wait for Madam Clerk to
2 get it up.

3 So on the second page we just reviewed,
4 they'd set up an appointment for January 18th. January 18th,
5 I'll go through it quickly. I would have obviously put to
6 him that he agreed that the meeting did not happen; that
7 they had to cancel due to weather.

8 **THE COMMISSIONER:** Car troubles.

9 **MR. CALLAGHAN:** Yes, because of the
10 extremely cold day. Sorry. Overheated. Right.

11 And then on the 19th of January, she called
12 him and they rescheduled for the 26th at 9:00 a.m.

13 And then if we can go down, Madam Clerk.
14 We'll just follow along with the dates, Madam Clerk.

15 So the 26th of January, it's 10:05, recalling
16 now, Mr. Commissioner, that they were supposed to meet at
17 9:00. I would have confirmed that indeed he didn't show
18 and asked him whether he ever recalls getting the call that
19 Constable Sebalj says she left for him. She taking the
20 more positive view that he was en route. Clearly he
21 couldn't. There was no call back. I would have confirmed
22 with him.

23 And then I would have confirmed that he did
24 finally talk to her after she called at 4:25 in the
25 afternoon. And he indicated that he had forgotten the

1 meeting. I would have confirmed that.

2 And then apparently there was a:

3 "He abruptly stated that it wasn't a
4 good time to talk; suggested I wanted
5 to reschedule and advise two days had
6 been set aside and then said 'As long
7 as I've got you I may well tell you I'm
8 not happy with the way this is going.'"

9 I would have asked him in more clarity what
10 he meant.

11 He goes on to talk about the fact that he
12 was unhappy that she was not a man and that he wanted to
13 talk to a man. And I would have canvassed with him again
14 the discussions he had, which I wouldn't have gone to great
15 detail because Mr. Engelmann did, but that they discussed
16 the fact that a male would be present.

17 I would have also confirmed that she offered
18 to put him to the Chief of Police and would have asked why
19 he wouldn't have accepted and would have suggested -- asked
20 to whether he did in fact ever speak to the chief.

21 Then there was a -- he then -- I would have
22 confirmed that he'd stopped the call as indicated and that
23 he stated that he would call in the a.m.

24 Then I would have put to him in some fashion
25 the note of January 27th. I recognize he wasn't involved.

1 But that indeed I would have put to him, to alert him to
2 the fact that the police seem to have taken his concern
3 seriously and that there had been a meeting, and then after
4 that meeting -- and this is a meeting to discuss whether or
5 not she would remain involved in the investigation -- and
6 he talked about how there had been an accommodation issue;
7 that there would be a male present. And I would have asked
8 him whether he had ---

9 **THE COMMISSIONER:** Sorry. Where do you see
10 that?

11 **MR. CALLAGHAN:** Well, he discussed it that
12 there was going -- I think Mr. Engelmann had put it to him
13 in-chief. I don't have a note. But my recollection is he
14 put it in-chief that yes, they made accommodations and they
15 had a male present.

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

17 **MR. CALLAGHAN:** If you recall, in-chief he
18 remembered Sergeant Malloy but did not remember Sergeant
19 Lefebvre.

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

21 **MR. CALLAGHAN:** I would have asked him, and
22 I suspect the answer would have been the same, whether he
23 recalls receiving the call that's noted in Constable
24 Sebalj's notebook. Sergeant Lefebvre thereafter called
25 Silmser and scheduled an appointment for January 28th at

1 nine o'clock. I would have asked him if he recalls that
2 conversation in fairness to him; he's already said he
3 doesn't recall Sergeant Lefebvre. But I would have put the
4 question to him, and presumably he would have said the same
5 thing.

6 We then would have moved into the January
7 26th -- pardon me, January 28th interviews. I would have
8 confirmed again that through all the questioning today he
9 still doesn't remember Sergeant Lefebvre which he said
10 earlier.

11 I would have confirmed with him that these
12 were -- this was a lengthy interview process and I would
13 have taken him to Exhibit 315. It's not necessary for it
14 to be brought up. This is Sergeant Malloy's notes which
15 confirm that the interview was not in anyway perfunctory,
16 but lasted a considerable period of time. It started at
17 9:20 in the morning and concluded at 12:25 over three
18 hours.

19 I would have confirmed, as is recorded in
20 Constable Malloy's -- or Sergeant Malloy's notes, that the
21 meeting terminated because Mr. Silmsler had to go and pick
22 up his wife in Ottawa.

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

24 **MR. CALLAGHAN:** I would have -- and I will
25 come back to the details in a little more -- in terms of

1 the information being imparted to the Cornwall Police, but
2 I would have probably at this time confirmed that he
3 advised the Cornwall Police of four instances with Father
4 MacDonald, Sacristy -- St. Andrew's retreat, the office and
5 the car ride, and I would have confirmed with him that, in
6 each case, he knew of no witnesses. And that none to date
7 have come forward as to those events, at least the event of
8 the assault.

9 **THE COMMISSIONER:** The event of the ---

10 **MR. CALLAGHAN:** Assaults.

11 **THE COMMISSIONER:** Assaults, right.

12 **MR. CALLAGHAN:** There is people who say who
13 will confirm the retreat at St. Andrews happened, but
14 nobody is going to confirm that they saw the assault.

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

16 **MR. CALLAGHAN:** And I would have done that
17 to illustrate and to -- I would have put to him that it
18 because an issue of credibility with respect to his
19 testimony recollection -- as to his recollection of events
20 because there were no other witnesses.

21 **THE COMMISSIONER:** Say that again?

22 **MR. CALLAGHAN:** Well, I would have put to
23 him that, insofar as there were no other witnesses ---

24 **THE COMMISSIONER:** Yes?

25 **MR. CALLAGHAN:** --- that what he said about

1 the events and his retelling of the events was an issue
2 whereby it was his retelling of the events and they had --
3 and that had to be scrutinized, because there wasn't any
4 other confirmatory information as to the actual assault.

5 In other words, there isn't any physical
6 evidence. There isn't anything that would assist as one
7 would expect, and therefore when he ---

8 **THE COMMISSIONER:** One minute, one minute.
9 "As one would expect"?

10 **MR. CALLAGHAN:** Well, I'm saying in a more
11 current sexual assault, one would expect there to be
12 physical evidence. One may well ---

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

14 "As one would expect" means -- you know, my
15 little flag went up saying, you mean in that kind of case?
16 No, that's not true.

17 **MR. CALLAGHAN:** No, right. And I'm not --
18 and I think this is covered off in some -- actually, and I
19 won't go back to it but I mean in some of the letters that
20 Mr. Kozloff pointed to this morning ---

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

22 **MR. CALLAGHAN:** --- there's no question.
23 But the point being that, that having no other person who
24 saw the actual event ---

25 **THE COMMISSIONER:** Right.

1 **MR. CALLAGHAN:** --- we're now left having to
2 look at what Mr. Silmsler says ---

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

4 **MR. CALLAGHAN:** --- to assess whether in the
5 case of this institution, whether they had reasonable
6 probable grounds.

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

8 **MR. CALLAGHAN:** And that's why - and I would
9 have raised it with Mr. Silmsler because he seems to take
10 exception that they were questioning him, and in great
11 detail about all the background including his criminal
12 record and all that, which would come into play when one
13 assessed the totality. And we'll get to the totality as we
14 go through, but my point solely being, at this stage, to
15 confirm that there wasn't any other person to witness the
16 event.

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

18 **MR. CALLAGHAN:** And I would have put to him
19 of course that portions -- at this stage, I probably would
20 have introduced the fact that portions of the story did
21 change over time, that there was either a recovered memory
22 as Mr. Sheriff Scott had said earlier. For example, with
23 respect to the Sacristy incident, but that we would get
24 into the issue a little further on when the police come
25 back on March 10th.

1 I would have confirmed that he left with a
2 statement to be filled out ---

3 **THE COMMISSIONER:** A statement page, or ---

4 **MR. CALLAGHAN:** Statement page to fill out.

5 **THE COMMISSIONER:** Form, right.

6 **MR. CALLAGHAN:** Statement form.

7 I would have confirmed that he was aware
8 that his statement would be key and it would be the basis
9 of any charges. In other words, he would have been aware
10 of that and he would have been aware that they were looking
11 for him to be accurate in his descriptions on that
12 statement form.

13 And I would have asked whether or not he
14 didn't tell you he had any instructions as to whether only
15 to deal with Father MacDonald, or also Ken Seguin.

16 **THE COMMISSIONER:** And where do you see
17 that?

18 **MR. CALLAGHAN:** I would have asked him that
19 question.

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

21 **MR. CALLAGHAN:** I would have pointed out to
22 him, as has already been done by Mr. Neuberger, that indeed
23 the Cornwall Police spoke to him for the better part of an
24 hour in respect to the allegations involving Ken Seguin.
25 And that can be seen from Sergeant Malloy's notes, Exhibit

1 315, and if you go to -- in sub -- eight pages. Again, I
2 didn't intend to repeat, but just back one page please.
3 Okay.

4 If one were to look at these notes, you
5 would see that shortly thereafter, at 10:57, he's talking
6 about Ken Seguin as his probation Officer -- the very
7 bottom of the screen -- and then, if you follow Sergeant
8 Malloy's notes over to the 11th page -- actually, you can go
9 back one. The very bottom of that, Madam Clerk.

10 He's talking at the end about Mr. Seguin's
11 Datsun B210 grey two-door, his house number. You go to the
12 top of the next page and Constable -- or, Sergeant Malloy
13 has to use the facilities. He comes back, and he picks it
14 up although it's not clear that that's exactly about Ken
15 Seguin. So -- but it's pretty clear from 10:57 to 12
16 o'clock, they're talking about Ken Seguin.

17 I would have then taken him -- and I will
18 come back because the statement's later -- but I would have
19 then moved on to the notes of Constable Sebalj, Exhibit 297
20 on February 3rd. And at 1:15, I would have pointed out that
21 he received a call from Constable Sebalj, and there was a
22 discussion about him requested to contact the school board
23 and obtain records.

24 Would have discussed with him his contact
25 with the Diocese, and his imparting of information on

1 Constable Sebalj and why and the basis of the discussion.

2 I would have pointed out to him at the
3 bottom that she had asked him to drop by before going --
4 that is, I would have put to him, before the meeting --
5 and giving me these statements so I can go over it and we
6 can discuss it when he gets back from his meeting . And I
7 would have put to him that she was asking him to come in
8 both before and after the meeting.

9 I would then go onto February 9th, 1993, and
10 I would have pointed out that the entry is at 10:46 and
11 that he met with the victim in the youth office, and he did
12 not yet have his statement. And then that they discussed
13 the meeting and I would have asked why it is he didn't
14 attend before the meeting, as requested by Constable
15 Sebalj, but rather, only after.

16 I would have reviewed the discussions
17 somewhat with him about his discussions of settlement with
18 the Diocese and the lawyers. I would have pointed out to
19 him that her notes says:

20 "Suggested he may go civilly after
21 criminal process completed."

22 He's already testified he doesn't remember
23 saying that, but I would have asked if that was his
24 intention. In other words, was he telling Constable Sebalj
25 throughout that he did not intend to resolve his civil case

1 until after the criminal had been completed?

2 I would have then moved on to the next date
3 -- or pardon me, I would have pointed out at the top that
4 he had indicated that his statement would be forthcoming on
5 the Friday, which would have been February 12th.

6 And then I would have touched on the
7 February 10th '93 date, and I would have been particularly
8 interested in the notation. First, that it was she who
9 called him, and that he advised us Seguin was running
10 scared. I would have queried that. Why would Mr. Seguin be
11 running scared? What contact did he have with Mr. Seguin
12 such that he would 'run scared'?

13 I would have asked him about the next note:

14 "Advised him he's only laying charges
15 on MacDonald" ---

16 **THE COMMISSIONER:** I've got one. He is ---

17 **MR. CALLAGHAN:** I think we went back to the
18 notes when it was first brought out and it was "only".

19 "Only lay ...", that's why I said the notes sort of trump ---

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

21 **MR. CALLAGHAN:** "Advised him he's only
22 laying charges on MacDonald. States
23 he's getting very mad."

24 And I would have focused particularly on the
25 "Advised him he's only laying charges on MacDonald."

1 THE COMMISSIONER: You know ---

2 MR. CALLAGHAN: And I would have asked him
3 why that was, and if he ---

4 THE COMMISSIONER: But -- wait just a
5 minute, just a minute.

6 MR. CALLAGHAN: --- he would have ---

7 THE COMMISSIONER: Just a minute. Couldn't
8 that be read that Constable Sebalj advised him, Seguin,
9 that he's only laying charges on MacDonald.

10 MR. CALLAGHAN: Well, I can categorically
11 tell you that that doesn't fit with the rest of the notes
12 and it wouldn't be my position that that was what was said.
13 It was quite the opposite. And I'll take that - I'll go --
14 I'll tell you why. That gets layered in the cross-
15 examination of Silmsler, because he says his information was
16 that he doesn't remember this call ---

17 THE COMMISSIONER: M'hm.

18 MR. CALLAGHAN: --- and that he says that he
19 never said that he didn't want to go after Seguin. But I
20 would -- in the end of the day, put that that is against
21 the rest of the evidence. And so, I -- as you'll see it
22 builds, rather than ---

23 THE COMMISSIONER: No -- wait a minute.
24 Just make sure that I understand. In reading this, right,
25 you could read it two ways, right?

1 It could be that the victim advised Seguin
2 that he is only laying charges on MacDonald.

3 **MR. CALLAGHAN:** So the victim tells Seguin
4 that he is only laying charges on MacDonald, to get Seguin
5 off the scent. I'm just trying to ---

6 **THE COMMISSIONER:** No, I'm just reading this
7 here ---

8 **MR. CALLAGHAN:** Oh, yes.

9 **THE COMMISSIONER:** --- and what do you say
10 that means? "Advised him he's only laying charges on
11 MacDonald".

12 **MR. CALLAGHAN:** I take that to be a note
13 whereby he's advising her that he only wants to proceed
14 with MacDonald.

15 **THE COMMISSIONER:** "Advised him".

16 **MR. CALLAGHAN:** By him. He does not want to
17 proceed against -- charges against Seguin. Silmsler is not
18 interested in pursuing a criminal case against Seguin.

19 **THE COMMISSIONER:** Okay. You see, that's
20 where we, you know, we can go a bunch of ways. It could be
21 that Sebalj is saying, "Look it, I advise him that he is
22 only laying charges on MacDonald". Or, it could be say
23 that Silmsler is saying, "Look it, I advised him [Seguin]
24 that I am only laying charges against MacDonald".

25 **MR. CALLAGHAN:** Right.

1 **THE COMMISSIONER:** So there's three ways of
2 looking at it.

3 **MR. CALLAGHAN:** Right. And at this stage, I
4 would have put to him that it was he who said that he
5 wasn't. I mean, it's a cross-examination. I hear at the
6 end of the day, there'll be submissions, but I would have
7 put to him that that's what he told her. And it's to put
8 to him by others that that's what he told her. He denies
9 that that's what he told her, but that is an important
10 element because of the way things go.

11 **THE COMMISSIONER:** Right. But the way it's
12 written, it's not like advised her or advised me that he's
13 laying charges.

14 **MR. CALLAGHAN:** He's only laying charges --
15 well, he's only laying charges on MacDonald. I mean, I
16 kind of read it as direct. I should probably get the
17 original, but I don't think when you read the totality of
18 the discussion and the fact that -- and I'll get to it
19 later, there are other comments by Silmsler saying, "I can
20 only proceed -- I only want to proceed against MacDonald"
21 and that he was going to deal with Seguin later. It's
22 consistent. So that's what I'm saying. And I'm saying
23 that that's what he told her on the 10th of February.

24 **THE COMMISSIONER:** What I've got -- the note
25 here; you're saying that I should interpret that note

1 saying, he advised me that he only wants to lay charges on
2 MacDonald.

3 **MR. CALLAGHAN:** To go back to first
4 principles -- what you said -- I'm not telling you, making
5 a submission either. I'm telling you, I would have put to
6 him ---

7 **THE COMMISSIONER:** Yes.

8 **MR. CALLAGHAN:** --- that that's what he
9 said. And I would have put to him, that's what that note
10 means. He could agree or disagree. And that's what I
11 would have put to him.

12 **THE COMMISSIONER:** All right.

13 What do you say that note means? What would
14 you put to him that the note means?

15 **MR. CALLAGHAN:** The note means that he
16 advised her that he was only going to proceed against
17 MacDonald.

18 **THE COMMISSIONER:** Okay.

19 **MR. CALLAGHAN:** And that, when one sees the
20 remainder of the communications he has, I'd suggest that
21 that's the fair interpretation. But again, we're not here
22 to give conclusory statements, as you've indicated. And
23 I ---

24 **MR. ENGELMANN:** Just so there's no dispute
25 about what the actual note said. It says -- sorry,

1 **MR. CALLAGHAN:** I don't have it here as
2 well.

3 **MR. ENGELMANN:** I'll give it to you. Mr.
4 Callaghan.

5 It doesn't say advised her.

6 **THE COMMISSIONER:** No. It says:

7 "Advised him he's only laying charges
8 on MacDonald. Stated he's getting very
9 mad".

10 **MR. ENGELMANN:** Right.

11 **MR. CALLAGHAN:** Well, we'll have to wait and
12 see but I -- again, I mean, that's the way it's been
13 presented, as well by others on that basis, as you see.

14 Then I would have taken him to February 16th
15 ---

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

17 **MR. CALLAGHAN:** --- I would have taken it to
18 him that that's the date he provided his statement and I
19 would have pointed out, obviously, if one looks at the
20 statement, there's an -- the fact is he doesn't talk about
21 Seguin other than one line in the statement; going back to
22 the point obviously, it's a different interpretation.
23 Exhibit 262; one would see that his statement goes on for
24 eight pages and there's one line that he was assaulted by
25 Seguin.

1 THE COMMISSIONER: M'hm.

2 MR. CALLAGHAN: I would have, obviously,
3 gone into a little more detail of the continuing
4 discussions of the church. And again that he again advises
5 her that he did not entertain the conversation. In other
6 words, he wasn't in a position to accept any settlement,
7 that he wanted to proceed with the criminal.

8 I would have taken him through the fact that
9 there's still the outstanding request for school records,
10 which he was addressing.

11 I would have moved into the various
12 interviews that Constable Sebalj did and I wouldn't go into
13 great detail here, but I will say that there are a number
14 of interviews. The first one was with his mother.

15 THE COMMISSIONER: M'hm.

16 MR. CALLAGHAN: I would have pointed out
17 just a few facts.

18 If you could go down, Madam Clerk, to the
19 next page?

20 THE REGISTRAR: The next page?

21 MR. CALLAGHAN: Yes. Are you at the next
22 page. Maybe -- just above -- sorry, the next section up.

23 THE REGISTRAR: The next section up?

24 MR. CALLAGHAN: Just the next dot up, if I
25 could? Scroll up just a bit, please.

1 THE REGISTRAR: It's no use.

2 MR. CALLAGHAN: All right. So am I.

3 THE COMMISSIONER: So that means we're
4 rebooting?

5 MR. CALLAGHAN: Yes. Do you want me to
6 continue? I just ---

7 THE COMMISSIONER: No, hold on there.

8 (SHORT PAUSE/COURTE PAUSE)

9 THE COMMISSIONER: Are we back on?

10 MR. CALLAGHAN: Yes. I would have merely
11 pointed out a couple of points that his mother had advised
12 them. Again ---

13 THE COMMISSIONER: Page 6 of 64?

14 MR. CALLAGHAN: Yes, sir.

15 THE COMMISSIONER: M'hm.

16 MR. CALLAGHAN: The third bullet down:
17 "About 11 when he came home and said he
18 wanted to be an altar boy. Eight
19 months later, he came home and said he
20 didn't want to be an altar boy any
21 more. When I asked him why, he said
22 'No reason, just don't want to do it
23 anymore'. And from then on, it was."

24 And I would have sort of, asked her about
25 how long he'd been an altar boy, et cetera and whether that

1 -- whether he was only an altar boy for eight months or the
2 longer period which some of the testimony would say he was
3 three to three and a half years.

4 And again, when one reads his statement and
5 the dates change, that it makes a difference because he may
6 not have been an altar boy at the time.

7 I would have also then taken him down, just
8 because the only event that has some factual background
9 would be the retreat and I would have taken him down to the
10 bullet starting when he was ---

11 **THE COMMISSIONER:** In grade eight?

12 **MR. CALLAGHAN:** --- grade eight and Donna in
13 grade seven. "I sent them on a retreat." Which would put
14 them -- I would have suggested to him in about 1972 or
15 1973.

16 I wouldn't have gone through the detail.
17 It's there, obviously.

18 I would have moved on then, to the February
19 18th note.

20 **THE REGISTRAR:** February 18th note?

21 **MR. CALLAGHAN:** Yes. Back to the note.
22 Yes, February 18th. That's the page 8.

23 **THE COMMISSIONER:** You know, when we were
24 talking about Mr. Griffiths' letter, I believe ---

25 **MR. CALLAGHAN:** Right.

1 **THE COMMISSIONER:** --- saying that -- it
2 might not be you, but -- about no charges would be laid
3 because there was nobody to corroborate that astounding
4 fact that the allegation that Father Charles was running
5 around naked and yet there is a reference in here about
6 Donna saying that there was drinking and smoking up and the
7 boys were running around naked including Father Charlie.

8 **MR. CALLAGHAN:** Right. That was her
9 reporting what someone else had said. And that person who
10 said it, as I recall, said he didn't say it. But ---

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

12 **MR. CALLAGHAN:** --- that's something that
13 becomes an issue. What becomes an issue -- well, we'll get
14 back to that. But that is an issue we'll cover.

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

16 **MR. CALLAGHAN:** Then again, on this date,
17 she calls him.

18 **THE COMMISSIONER:** She meaning?

19 **MR. CALLAGHAN:** Constable Sebalj.

20 **THE COMMISSIONER:** Yes.

21 **MR. CALLAGHAN:** Oh, sorry. The other way
22 around: "Telephone call from victim." He called her.

23 **THE COMMISSIONER:** Where are we now?

24 **MR. CALLAGHAN:** Ten o'clock (10:00). Right
25 at the top of the screen.

1 **THE COMMISSIONER:** What page is it on?

2 **MR. CALLAGHAN:** Sorry. Page 8 of 64, Mr.
3 Commissioner.

4 **THE COMMISSIONER:** All right. Thank you.
5 Yes.

6 **MR. CALLAGHAN:** And this again was covered
7 earlier. I would have, sort of gone back over the fact
8 that he was seeking the records that had made contact with
9 the school. I would have -- I would have but I will not
10 now, go through the Don Johnson issue. That was covered by
11 others.

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

13 **MR. CALLAGHAN:** I would again have pointed
14 out the note that she indicates that he's not taking
15 settlement. "Will pursue it after criminal charges are
16 done."

17 And then I would have indicated -- pointed
18 out the note which others have, that he wanted to take them
19 to the cleaners; going for the full amount strong and hard.
20 And I would have asked what he meant about that and what he
21 intended.

22 Then I would have pointed out that they had
23 scheduled -- they made another attempted meeting for the
24 22nd of February and that she was going to speak to the
25 sister.

1 I would have pointed out that on the 22nd of
2 February, that she received a message and that the meeting
3 was cancelled due to snow, and that there were further
4 calls on that date, and that he was prepared to schedule
5 when it was -- when the snow cleared and that there was
6 going to be a delay getting records because it had to be
7 approved by the Ministry.

8 I would likely have had -- had I been first,
9 gone to the next to top of the next page and I might have
10 dealt with the issue regarding Don Johnson, although that's
11 already been covered by others, so I won't at this time.

12 I would have then gone to the 24th, and I've
13 missed a note somewhere along the line. They had set up a
14 meeting for 1:00. My eyes are deceiving me, Mr.
15 Commissioner, but somewhere in here, she had set up and I
16 would have confirmed that they'd set up a ---

17 **THE COMMISSIONER:** It's on the February 22nd
18 on a prior page.

19 **MR. CALLAGHAN:** Right.

20 **THE COMMISSIONER:** She said the deal was
21 I'll phone you up and confirm and he shows up an hour early
22 and he hadn't confirmed and she had to go to another
23 meeting.

24 **MR. CALLAGHAN:** Well, that's it for that.
25 That's what I would have pointed out. Again, that they

1 were trying and it was not working and that he wasn't
2 prepared to stay. And then, they were going to try for
3 Thursday.

4 I would have then gone on to point out a few
5 points -- just a few points on the interview on the 25th of
6 February '93 with sister Donna, which he appears to have
7 been present at, for part of it anyway. I don't know what
8 part. I would have asked.

9 I would have pointed out that on the next
10 page, that she was -- if you follow down, Madam Clerk --
11 that she points out that "I turned 14 that week end. It
12 was my birthday. They stuck a candle in a cupcake after
13 dinner. It must have been Saturday night. I was around
14 Father Charlie also. I was in that youth group so I was
15 around a lot."

16 So here she's talking about the date the
17 retreat is.

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

19 **MR. CALLAGHAN:** And if one goes up, one
20 finds that she would have turned -- her birthday was June
21 2nd and the retreat, according to her would have been June
22 2nd, 1973.

23 I would have gone over his continuing -- the
24 extent to which he was continuing to discuss matters with
25 the church, and I wasn't intending to put a document to

1 him, but I would have canvassed what additional discussions
2 he would have had during this period.

3 I would have moved over to March 2nd.

4 I'm trying to pull that up for you, Madam
5 Clerk. That will be the 17th.

6 **THE COMMISSIONER:** I'm sorry?

7 **MR. CALLAGHAN:** Pardon me. Page 17.

8 **THE COMMISSIONER:** Page 17? Right.

9 **MR. CALLAGHAN:** Before I did that, I would
10 have actually confirmed with him again that the only event
11 where others were present was the retreat.

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

13 **MR. CALLAGHAN:** I would have confirmed that
14 he had testified on September 9th in the prelim, Exhibit
15 290, and I'd ask that it not be put up on the screen
16 because I think there is a moniker that has to be used.
17 And maybe I'll just read it for the sake of ease, and the
18 question is, at page 20.

19 Question:

20 "You recall sir any other people who
21 were at that particular retreat?"

22 Answer:

23 "Yes, I do."

24 Question:

25 "Could you give us their names please?"

1 Answer:

2 "C-9 and my sister Donna."

3 Question:

4 "She was at it, yes?"

5 Answer:

6 "Yes. Like I remember faces like I
7 have a hard time with names."

8 Question:

9 "Fair enough. Do you remember any
10 other names?"

11 Answer:

12 "No, I don't."

13 And I would have, in an attempt to sort of
14 show that Constable Sebalj did do a proper -- an
15 investigation. I would have put to him and would have
16 presented to him and I'd ask that it be brought up, is
17 Document 736223. And actually, please don't put it on the
18 screen, now that I recall, there are monikers to be used.

19 **THE COMMISSIONER:** Well, put it up on my
20 screen.

21 **MR. CALLAGHAN:** Put it up, yes, that would
22 be perfect. In the first page, Mr. Commissioner, you'll
23 get the idea.

24 **THE COMMISSIONER:** Hold on.

25 **THE REGISTRAR:** What is the document number?

1 **MR. CALLAGHAN:** Seven-three-six-two-two-
2 three (736223). I think Mr. Engelmann has indicated it
3 probably could go on all the screens with the exception of
4 the public screen. It's not a -- it's just a moniker
5 issue.

6 **THE COMMISSIONER:** Yes. So that's Exhibit?

7 **THE REGISTRAR:** Exhibit 404.

8 **THE COMMISSIONER:** Four-zero (40)?

9 **THE REGISTRAR:** Four.

10 **THE COMMISSIONER:** Four-zero-four (404). Is
11 there a publication ban on this, sir?

12 **---EXHIBIT NO./PIÈCE NO C-404:**

13 (736223) Various Occurrence Summary Reports.

14 **MR. ENGELMANN:** I just need a moment.

15 **MR. CALLAGHAN:** I wouldn't have thought a
16 publication ban, it would have ---

17 **THE COMMISSIONER:** No, no. I am sorry?

18 **MR. CALLAGHAN:** Sorry. I apologize, I
19 didn't mean to interrupt.

20 **THE COMMISSIONER:** I don't know. If this is
21 all going in, an awful lot of names in here.

22 **MR. CALLAGHAN:** Right, and I thought that
23 the names -- we already dealt with these names and that if
24 there were certain monikers that -- which is why I thought
25 that they could go in. But the press was to be aware of

1 the monikers.

2 **THE COMMISSIONER:** Okay.

3 **MR. CALLAGHAN:** I may have it wrong. That's
4 why I thought it could go up on the screens but I defer to
5 Mr. Engelmann because today earlier, I thought we weren't
6 doing it. So I just want to make sure it's clear.

7 **MR. ENGELMANN:** Could I perhaps ask that
8 this be given a temporary "C" so that I can speak to
9 counsel about resolving this. I think this should be a
10 matter for some discussion on Thursday at the all-counsel
11 meeting.

12 **THE COMMISSIONER:** All right.

13 **MR. ENGELMANN:** Because there were some
14 monikers that were suggested by a counsel who is not here
15 today. And hopefully, we can deal with this. I'd like
16 these all to become public documents hopefully just for the
17 publication ban but I think for the time being they should
18 have a "C".

19 **THE COMMISSIONER:** All right, temporary "C".

20 **MR. CALLAGHAN:** I don't want to cause
21 further consternation, but these are the reports on the
22 file and Exhibit 297 are the notes which had to have all
23 the names on them. So it's the same issue.

24 But, the point of the exercise, sir, was to
25 point out and to go somewhat through it and there is not

1 much point without him here. That, in fact, while he was
2 able to give two names, she interviewed over 26 people and
3 was able to build on that to interview people who -- some
4 were at the retreat, some were at the retreat and recalled
5 Mr. Silmsler somewhere at the retreat and did not recall Mr.
6 Silmsler; none of them saw the event as we talked about
7 earlier.

8 I don't see the point in doing this now.
9 You'll obviously hear from witnesses but that was the point
10 of showing to Mr. Silmsler. And I would have asked him
11 questions but as I say, I don't think there is under the
12 process much to be gained.

13 And I might add, there are conflicting
14 recollections obviously about the retreat which would
15 probably not be entirely surprising.

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

17 **MR. CALLAGHAN:** I would have taken him to
18 the March 2nd date and I would have pointed out that she
19 called at 2:30. I would, in fairness, have pointed out to
20 him that, at 3:30, she'd actually met with the Crown
21 attorney. And I don't think he would have been able to say
22 anything but I would have pointed out that. And I would
23 have pointed out that it's anticipated the Crown attorneys,
24 at least in other proceedings, have testified that he said
25 that he met with her seven or eight times.

1 **MR. ENGELMANN:** I just have a question and
2 it's a question on the previous exhibit that we just
3 marked. I am just wondering. There is no date on it. The
4 only date is very current and I am wondering if Mr.
5 Callaghan's putting it in can explain when these documents
6 might have been created.

7 **THE COMMISSIONER:** Exhibit 404?

8 **MR. ENGELMANN:** Yes.

9 **THE COMMISSIONER:** When they were created?

10 **MR. CALLAGHAN:** I can't actually give you a
11 definitive answer. I can tell you the creation date is the
12 run date from the system in '06, so it's not current to the
13 date it was created. It was created much earlier. I would
14 have to get back on that point. I don't actually have a
15 note.

16 And I suspect you'll find other of our
17 documents that were -- that came out of the system would
18 have had the same, because these would be stored on OMPPAC
19 on the computer system that may well have been printed out.

20 I would have then moved on to at 4:50, the
21 telephone all from Mr. Silmser, when he was in a good mood.
22 I would have reviewed with him as the note continues, there
23 are some elements in the note -- we can move down, some --
24 the deal with a discussion regarding C-9 -- and down to
25 where it says "I changed" on the second page. Can you go

1 down a little further?

2 **THE COMMISSIONER:** "I changed subject?"

3 **MR. CALLAGHAN:** "I changed subject to his
4 school records noticing his good mood
5 fade. Advised me he hadn't fouled up
6 though on it, said he would write them
7 a letter requesting same. Then he
8 asked if I had enough to lay charges
9 now. I answered no. He asked 'Will
10 there be?' I told him there always is;
11 that things are going well; that the
12 church is cooperating; that I've spoken
13 with a few witnesses; that it was going
14 fine so far; then noticed a drastic
15 change in victim's demeanour.
16 'Well if you don't take care of it, I
17 will.' I questioned this and he
18 answered 'Just what I said, I'll take
19 care of it like I used to take care of
20 things.' I told him I didn't know why
21 he was getting upset right then, that
22 things were moving along. Really the
23 lawyer was cooperating ..."

24 That's a reference I believe to Malcolm
25 MacDonald who she was in communication with.

1 "... then told him that it was necessary
2 for us to meet in person because there
3 was a lot to discuss and to bring him
4 up-to-date on the investigation.
5 Victim answered only 'Well, I'm upset
6 and Im hanging up now. Bye'."

7 I would have reviewed that discussion. I
8 would have reviewed how he was -- demeanour was like with
9 Constable Sebalj. I would have -- I wouldn't have done in
10 this way with him and I will come back to it. I would
11 eventually come back and ask "Is this the discussion which
12 he takes to say that she says there is no charges being
13 laid?" "Is this the discussion which he refers to at the
14 end?"

15 And I am not sure I would have put that
16 proposition to him now, Mr. Commissioner. I'm just letting
17 you know because I want you to focus on that a little bit
18 because I'll come back to it.

19 And I would have, I mean it's hard here, but
20 I would have gone into what his position was; why he was
21 upset; how long he expected things to take et cetera. And
22 I would have generally reviewed this note with him.

23 And I would have actually -- sorry, I would
24 have actually taken -- Mr. Crane pointed out what I missed
25 at the top of the page. I would have pointed out that his

1 comment stated money-wise he was kind of broke:

2 "Expecting a refund from H&R, 3,500
3 now, have to file and wait. Then I
4 asked if it had to be done right away
5 and I advised that it was a priority
6 with me."

7 Then victim stated:

8 "I'm not in a rush anymore. If it
9 takes three to six to eight months, it
10 doesn't matter to me".

11 I would have reviewed that comment with him,
12 both his comment that it could be delayed and whether there
13 were ongoing discussions, for example, with the church at
14 that period. And why it was he was now in a position to
15 say he could wait.

16 Sorry, would you like ---

17 **THE COMMISSIONER:** Yes, this document should
18 not be on the public screen, is it? Is that right? Is
19 that what we had discussed that it should not be on the
20 public screen?

21 **MR. CALLAGHAN:** This document has been on
22 the public screen every day, Exhibit 297. Maybe at the
23 break, we should sort this out. I was going through the
24 protocol ---

25 **THE COMMISSIONER:** Well, it doesn't matter,

1 I think everybody here has signed an undertaking I think.
2 Is that correct?

3 **MR. CALLAGHAN:** Just the -- there is one --
4 some loyal fans here who I don't think have. Just two.

5 **THE COMMISSIONER:** Okay. Well, check with
6 it at the break and see where we go.

7 **MR. CALLAGHAN:** Yes, and anyway, just from
8 my point of view, I always understood that, you know, in
9 the confines of this room ---

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

11 **MR. CALLAGHAN:** --- whether or not monikers
12 were used. It was outside the chorus of this room, but I
13 may be mistaken but I am happy to talk to people.

14 **THE COMMISSIONER:** Okay.

15 **MR. CALLAGHAN:** Of course, the point that I
16 should have brought out is where -- is this conversation
17 and whether he indeed said it. And in fairness to him, he
18 told Mr. Sherriff-Scott that he does not remember the
19 conversation about -- there are notes here saying that he
20 is not in a particular hurry ---

21 **THE COMMISSIONER:** Well, hold on now.

22 **MR. CALLAGHAN:** Well, I advised that it was
23 a part ---

24 **THE COMMISSIONER:** Right. But it's in the
25 same breath. In the same breath, he starts off by saying

1 "I am broke, I'm going to get my H&R thing; it does not
2 matter if it's going to take six or eight months". Down
3 that very same page, "I noticed a drastic change in him ---

4 **MR. CALLAGHAN:** Right.

5 **THE COMMISSIONER:** --- I told him and he
6 says I don't know why" and then all of a sudden he hangs
7 up.

8 **MR. CALLAGHAN:** Right, and I think that -- I
9 think you are illustrating the point. We had one to the
10 other. That was what the police were doing and I think,
11 illustrating the point. But I am saying, that while I
12 would have asked him whether that was his initial reaction;
13 that and the juxtaposition with the \$3,500 is an
14 interesting juxtaposition.

15 But, I mean, those are the points I would
16 have asked. How this would have gone, this -- I mean, I
17 find it a very awkward -- to be very frank, Mr.
18 Commissioner, I don't mind the questions. I find it
19 awkward this whole process and I am sure I am not the only
20 one. But, I know this is not the way you traditionally
21 would operate a courtroom but that's something that we
22 would have inquired into with Mr. Silmser.

23 I would have moved over to March 10th and ---

24 **THE COMMISSIONER:** Hold on, now.

25 **MR. CALLAGHAN:** That one can be found ---

1 **THE COMMISSIONER:** Thirty nine (39).

2 **MR. CALLAGHAN:** Page 39.

3 **THE COMMISSIONER:** It starts at page 39,
4 bottom.

5 **MR. CALLAGHAN:** And I would have pointed out
6 that this involves a -- an attendance by Constable Sebalj
7 and staff Sergeant Lefebvre at his home, on March 10th at
8 10:56.

9 I would have pointed out to him if one goes
10 over to page 42 -- it's over four pages -- three pages --
11 the bottom of that entry, that they were there until 2:30.
12 So they were there three and a half hours. And the ---

13 **THE COMMISSIONER:** One, two ---

14 **MR. CALLAGHAN:** I was trying to work that
15 through in my mind, too.

16 **THE COMMISSIONER:** Eleven (11:00) o'clock?
17 They showed up at ---

18 **MR. CALLAGHAN:** Eleven (11:00) -- 10:56,
19 11:00 o'clock, and then they're there until 14:35. So
20 11:00 to two would be the interview -- formal part, I
21 guess, went 'til two, and they were there another half
22 hour. So, if my math is right, that's three and a half
23 hours.

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

25 **MR. CALLAGHAN:** Right?

1 And, you know, one remembers that they were
2 three hours in the first interview, so this is six and a
3 half hours of interviews.

4 I would have pointed out that his testimony
5 on January 30th, that they did not discuss the statement
6 with me much. It's probably not entirely there. There
7 wasn't, obviously, and you can see there's no recording of
8 this.

9 I would have, obviously, pointed that here,
10 when they're doing an interview, in accordance with what
11 the understanding was, staff Sergeant Lefebvre showed up as
12 a male Officer. Would have pointed out what's already been
13 pointed out, which was the statement was signed. He handed
14 it in without signing it.

15 And then he would have had a discussion
16 about the need for details. And that they had a discussion
17 about it, and I would have pointed out to him, obviously,
18 these are notes and that three and a half hours is not
19 contained verbatim in these notes, and obviously if he had
20 something he wanted to add or that -- maybe other things
21 that will be added later - and that they, again, discussed
22 the school marks. I then would have taken him through the
23 discussion -- which I think I will do, partly -- of some of
24 the issues that were being covered by the Cornwall Police -
25 --

1 THE COMMISSIONER: M'hm.

2 MR. CALLAGHAN: --- and why and what may be
3 gleaned from those coverage. I would have pieced it
4 together. And I would have started with the fact -- and
5 this is going to take a review, Mr. Commissioner, of the
6 notes that were taken in the initial interview -- there are
7 three sets -- and the statement.

8 THE COMMISSIONER: M'hm.

9 MR. CALLAGHAN: And I don't know if you -- I
10 don't know how you are operating up there, but I'll give
11 you those in case you want them out.

12 THE COMMISSIONER: M'hm.

13 MR. CALLAGHAN: Sergeant Lefebvre's notes
14 are Exhibit 294.

15 THE COMMISSIONER: Two ninety-four (294)?
16 Yeah.

17 MR. CALLAGHAN: Yeah.
18 Sergeant Malloy is ---

19 THE COMMISSIONER: In two ninety four (294)
20 yeah.

21 MR. CALLAGHAN: Yeah.
22 Sergeant Malloy's notes are Exhibit 315.
23 Constable Sebalj's notes are Exhibit 314.

24 THE COMMISSIONER: M'hm.

25 MR. CALLAGHAN: And the statement is Exhibit

1 262.

2 THE COMMISSIONER: Okay.

3 MR. CALLAGHAN: I would have -- and I would
4 have suggested that the first note, re page 2, "Wanted to
5 leave" was referable to the first incidents in the
6 Sacristy, which is referred to in Exhibit 262, at page 2.

7 THE COMMISSIONER: So -- and where does it
8 say that on page 2?

9 MR. CALLAGHAN: What's that?

10 THE COMMISSIONER: You're looking at the
11 statement; exhibit 262.

12 MR. CALLAGHAN: I think you're gonna - this
13 is one of those cross examinations where I'm piecing it
14 together ---

15 THE COMMISSIONER: right.

16 MR. CALLAGHAN: And asking him, because page
17 2:

18 "Wanted to leave, he was a very
19 powerful man..."

20 And we go back to the notes ---

21 THE COMMISSIONER: Oh no, where --

22 Okay, wait a minute. Okay, so you're - that
23 was in Officer Sebalj's notes, that "he was a powerful man,
24 wanted to leave" right?

25 MR. CALLAGHAN: Right. What I'm trying to

1 do -- I just thought, I mean, witness isn't here ---

2 **THE COMMISSIONER:** No ---

3 **THE COMMISSIONER:** --- and it's not a big
4 issue, but what I would have put to him ---

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

6 **MR. CALLAGHAN:** --- was that they were
7 trying to verify facts. They were trying to see whether
8 they had reasonable, probable grounds. That they were
9 concerned about that, and they were reviewing his
10 statement, having regard to what they told them, their
11 notes indicated that he told them in the interview in
12 January, and what his statement said. And that's what the
13 exercise was, and that's why they'd spent three and a half
14 hours in great detail, trying to figure it out.

15 Then again, I -- as I say there's no
16 question more was said than the pages of notes, and I don't
17 think three and a half hours goes by without more being
18 said but --

19 Re page 2, :

20 "...wanted to leave..."

21 maybe we could go through the notes:

22 "He was a very powerful man, he could
23 keep me there with his strength and
24 his..."

25 and it's hard to make out the wording in ---

1 THE COMMISSIONER: Personality.

2 MR. CALLAGHAN: His personality, and there
3 was a word in between.

4 THE COMMISSIONER: M'hm.

5 MR. CALLAGHAN: Next page:

6 "Personal touching beyond the outside
7 of my pants, on my genitals. Pretty
8 quick, just touched me to see how I
9 would react. To me it didn't seem to
10 bother him, it seemed he thought it
11 was normal. He was nonchalant, I
12 believe he was wearing his priest
13 attire. I don't think I even
14 remember the year."

15 I would have taken him to the notes, and I'd
16 suggest to you that -- I would have suggested then they
17 were trying to ascertain what in fact happened. And I
18 would have pointed out that what they were trying to make
19 certain was there was contact with the genitals. Because
20 it is - that would be an offence. And that is not clear
21 from the statement, and indeed, it's not clear from what
22 was said in the earlier interviews. And I would have taken
23 him to page 2 of Exhibit 262, down the page ---

24 THE COMMISSIONER: About ---

25 MR. CALLAGHAN: "First he squeezed my knee

1 and strongly, and slowly he moved up my leg to my
2 personals. I felt very uncomfortable."

3 **THE COMMISSIONER:** You've got to go further
4 down, Madam Clerk. There you go. Right in the middle
5 there, "then he started to touch my leg." Right a little -
6 - well, it's there. Okay.

7 **MR. CALLAGHAN:** And as you can see from that
8 note, Mr. Commissioner, they were trying to get clarity as
9 to what was being alleged. And when one goes back to the
10 interview and -- with Sergeant Lefebvre ---

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

12 **MR. CALLAGHAN:** Do you see his notes?

13 **THE COMMISSIONER:** Three-fifteen (315)?

14 **MR. CALLAGHAN:** Exhibit 294.

15 **THE COMMISSIONER:** Yeah, okay. What page?

16 **MR. CALLAGHAN:** The second page. And first
17 off the top, he says, the incidents had started in Grade 5,
18 that's what was told to them in January. And at the bottom
19 of the page, the note which I would have again - how I
20 would have put it to him, I probably would have started
21 with the note but,

22 "Believed he was sitting on his left,
23 touched one leg only. Father claimed
24 he was a good boy. Victim was..."

25 I'm not sure I can make that word out.

1 "Believes he told him so, but does not
2 remember."

3 The point is, is that, in the original
4 discussion, in the notes, there's no indication of touching
5 the genital area which, of course, would be needed for the
6 indecent ---

7 **THE COMMISSIONER:** Well ---

8 **MR. CALLAGHAN:** Well ---

9 **THE COMMISSIONER:** In the statement he said,
10 "He moved up my leg to my personals."

11 **MR. CALLAGHAN:** That's in the statement.

12 **THE COMMISSIONER:** Yes.

13 **MR. CALLAGHAN:** I'm referring to the
14 original interview.

15 **THE COMMISSIONER:** Right, okay. And where
16 is the original interview in here?

17 **MR. CALLAGHAN:** Exhibit 294 and then the
18 notes of -- I'm using -- I've got the -- they're on the
19 screen.

20 **THE COMMISSIONER:** Yes, no. Those are the
21 notes, yeah.

22 **MR. CALLAGHAN:** And then, in his statement -
23 --

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

25 **MR. CALLAGHAN:** He says:

1 "He moves up my leg to my personals."

2 **THE COMMISSIONER:** Right.

3 **MR. CALLAGHAN:** I think what I'm trying to
4 articulate is, they're trying to ascertain, the police are
5 doing their jobs, they're trying to ascertain what the
6 allegation is. Is this amount to an indecent assault? So
7 far, in "moving your hands up to my personals" he doesn't
8 say he touched my personals. The original, it was "I
9 touched his leg" only.

10 I would have gone through this and, what he
11 could have assisted me on -- or he could have said the
12 notes are wrong -- what conclusions we made, I would have
13 gone over those details. I would have pointed out -- back
14 to Exhibit 262 -- that he says the very first -- that he
15 says -- that he started --

16 "When I started Grade 6 at the age of
17 12, I joined the altar boys."

18 If you go down further, says:

19 "After four months of serving
20 faithfully as an altar boy."

21 So the first incidence is four months after
22 he served as an altar boy, again in the earlier interview,
23 he was in Grade 5 again -- we've been through that with Mr.
24 Neville's cross examination. But this is the information
25 that's being imparted, slightly different. We'll go

1 further along with it.

2 "In Grade 6..."

3 If my math is right, that's 1969 or 1970.
4 His birthday is in March, maybe that this -- it's hard to
5 know exactly when this occurred, other than four months
6 after.

7 I would have then taken him to what he -- is
8 next, is in our notes, is the review of the information
9 regarding the second incident at the retreat.

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

11 **MR. CALLAGHAN:** There's Exhibit 297. I
12 think we're going to have Madam Clerk ---

13 **THE REGISTRAR:** Page 41, is that where we're
14 ---

15 **MR. CALLAGHAN:** Page 40.

16 Sorry, starting -- it's the last page you
17 were at, Madam Clerk, further up. Right -- yes. And then
18 it goes:

19 "Approximately the end of Grade 6, I
20 don't remember it being very cold,
21 actually..."

22 **THE COMMISSIONER:** Sorry, what page are we
23 on?

24 **MR. CALLAGHAN:** Sorry, Mr. Commissioner,
25 page 40.

1 **THE COMMISSIONER:** Yeah, I'm there. Oh
2 right, that's the top of the page, yeah. Thank you.

3 **MR. CALLAGHAN:** Right. We're now onto the
4 St. Andrew's retreat.

5 **THE COMMISSIONER:** Yeah. Yeah.

6 **MR. CALLAGHAN:** (Reads)

7 "Apart from the end of Grade 6, I
8 don't remember it being very cold,
9 actually. I don't even remember
10 snow, maybe around spring and good -
11 spring and possibly it was spring
12 1970."

13 And there, he's describing the retreat, and
14 note that in the -- in page two of his statement, there
15 isn't any doubt about time, he's very specific.

16 **THE REGISTRAR:** You are talking about ---

17 **MR. CALLAGHAN:** Oh, I'm sorry, Madam Clerk.
18 Exhibit 262. It's all correct.

19 Down at the bottom, Madam Clerk. My
20 apologies.

21 "That summer, June 2nd, I was invited to
22 a retreat in St. Andrew's."

23 Now, the statement is clear about the time.
24 When they interview him again, he's somewhat unclear and
25 you'll recall, June 2nd isn't the date -- that's a date of

1 some significance. I mean, at least, it's his sister's
2 birthday. Now, his sister has the retreat in 1973 and he's
3 got it in 1970.

4 Going back ---

5 **THE COMMISSIONER:** Again, I'm going from
6 memory. Doesn't she have -- she's equivocal about, it's
7 one year or another? So it could be '72 or '73?

8 **MR. CALLAGHAN:** I didn't take you through
9 all the gruesome details. I thought she was pretty clear
10 that at the end of the day, it was her 14th birthday, which
11 would have put it at 1973.

12 He's a year older.

13 **THE COMMISSIONER:** Yes. It's just that, I
14 remember going through it and you may be right. I don't
15 know.

16 **MR. CALLAGHAN:** I didn't take ---

17 **THE COMMISSIONER:** She went through -- at
18 some point, she was vacillating, saying it could have been
19 that one or that one.

20 **MR. CALLAGHAN:** I'll take a look. I can't
21 remember but I thought -- in my head it was clear that she
22 was saying that it was when she had her 14th birthday, which
23 would have put him when he was 15. And if you remember the
24 mother said, it was grade 7 and 8. He's got himself, that
25 summer, he's 12. He might, depending on when grade 6 is,

1 either 12 or 13. And of course, that makes a difference
2 because the age of consent is 14.

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

4 **MR. CALLAGHAN:** So they're trying to
5 struggle with -- back then there was -- I mean, this is
6 historic. I mean that's aside from the fact that the
7 detail kind of matters when they're trying to explain what
8 happened.

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

10 **MR. CALLAGHAN:** But again, I mean, I think
11 you have a situation where there is clarity -- complete
12 clarity in the statement, and it appears that he wasn't as
13 clear when he talked to them. At least that's what the
14 note says.

15 If you go down, back to the notes, if that's
16 where we are. Yes.

17 If you take it down a bit, he refers to a
18 few other people that,

19 "Remember the incidents well, but I
20 have a hard time with the dates and the
21 order."

22 "11:37 - drew pictures of room in St.
23 Andrew's. Doesn't remember who was
24 beside him."

25 Then he goes down and says -- there's a

1 little more. I'll jump over that part with the names.

2 "No recollection" ---

3 **THE COMMISSIONER:** In fairness, for the
4 record, for the members of the public, he "doesn't remember
5 who was beside him in the room, who else except for" two
6 people. I mean, there's a little difference there.

7 **MR. CALLAGHAN:** Right. No. No. And
8 earlier, that fellow, I think came up in conversation. If
9 you recall, he was able to tell -- in the testimony, there
10 were only two he knew about. This is obviously after -
11 significant a part of the investigations ongoing.

12 I would have asked how he came to know that
13 when he'd earlier said that. But I'm assuming that there
14 was discussions with Constable Sebalj a little bit about
15 some elements of it.

16 And then it says, "No recollection of her
17 name". That refers back, I think, to a discussion. Again,
18 it's just a detail that wasn't -- couldn't be confirmed --
19 you can find this again in Sergeant Lefebvre's notes, which
20 is Exhibit 294, page 3.

21 And if you go down on the bottom, you'll see
22 the note:

23 "Remembers"

24 And he's talking about the event.

25 "In shock, disturbed. Remembers a girl

1 there and got to date her. Putting all
2 his emotions into her after that. Does
3 not recall her name."

4 And then it goes on. They're trying to
5 confirm whether he has any further recollection of her
6 name. Again, a detail that cannot be confirmed. That is a
7 person whom he confides in, that pours his emotion into it,
8 afterwards.

9 If I can go back to the notes.

10 **THE COMMISSIONER:** And you can pick a
11 convenient time for the afternoon break, too.

12 **MR. CALLAGHAN:** This would be just as good
13 as any.

14 **THE COMMISSIONER:** All right.

15 **MR. CALLAGHAN:** I hope this isn't too
16 tedious, Mr. Commissioner, but I think ---

17 **THE COMMISSIONER:** No, no. It's all right.

18 **THE REGISTRAR:** Order; all rise. À l'ordre;
19 veuillez vous lever. The hearing will resume at 3:35.

20 --- Upon recessing at 3:16 p.m./

21 L'audience est suspendue à 3h16

22 --- Upon resuming at 3:39 p.m./

23 L'audience est reprise à 3h39

24 **THE REGISTRAR:** This hearing of the Cornwall
25 Public Inquiry is now in session. Please be seated.

1 Veillez vous asseoir.

2 --- SUBMISSION BY/REPRÉSENTATION PAR MR. CALLAGHAN

3 (cont'd/Suite):

4 **THE COMMISSIONER:** Yes, sir.

5 **MR. CALLAGHAN:** We were on the March 10th
6 note dealing with the retreat.

7 If I could bring it down just a little.

8 I think we were referring that he didn't
9 remember who was beside him in the room and he didn't
10 remember who was there except Don Brand or C-9.

11 "I don't remember the stairs, how I got
12 up there."

13 He just referred to no recollection of her
14 name, which is what we were just talking about, Mr.
15 Commissioner, if you recall; that he confided in a young
16 lady. He then goes on to:

17 "Remember a lot of laughing and joking
18 a lot, of noise. Myself, I was very
19 quiet. I was very shy."

20 Then he says:

21 "It was really dark and he kind of
22 snuck in really fast. I'm not 100 per
23 cent sure if he's wearing clothes or
24 not. I was shocked and I was
25 automatically scared. There was

1 something wrong, but I can't remember
2 what he was wearing."

3 Now in his statement, Exhibit 262, at the
4 third page ---

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

6 **MR. CALLAGHAN:** --- if we go down, in the
7 middle, he said:

8 "I was very quiet and I saw Father
9 MacDonald quickly walk towards me and
10 sat down on my bed. He was in the
11 nude."

12 That statement would appear to be
13 unequivocal and I would have put to him that when he gets
14 to being interviewed -- at least the notes would indicate
15 that he's now not 100 per cent sure of that detail. And I
16 would have put to him that that is probably a fairly
17 significant detail, whether someone is wearing clothes or
18 not.

19 I would have gone back over the note. I
20 would have gone back to -- sorry, I said note -- back at
21 the notes. If I can remember the exhibit number, 297?

22 And then the note continues:

23 "He came in really fast and sat on my
24 bed. He snuck in. He practically sat
25 right on my side. His face was right

1 in my face. I don't remember any
2 smells. I don't. I think I drank.
3 I'm pretty sure he told me to be quiet.
4 He grabbed my genital area. His arm
5 was on my chest."

6 And he goes and describes the event. And I
7 would have asked him, because I think there's some
8 uncertainty as to whether or not he said anything. In
9 other words, did Mr. Silmsen say anything?

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

11 **MR. CALLAGHAN:** And I would have taken him
12 back to Exhibit 262. And remember this is an open concept
13 with cubicles and there are other children in the area. At
14 the bottom of the third page -- and he says at the bottom
15 of that page:

16 "All I could feel was shock and being
17 so uncomfortable. I can remember him
18 laughing and then putting his left arm
19 across my chest. I tried to remember
20 what he said to me but I guess I was so
21 scared that I didn't listen."

22 He talks about the event a little bit.

23 "All I can remember that I felt so
24 scared that I couldn't yell. After he
25 left and I could remember just crying."

1 Now I hadn't intended to go back to earlier
2 -- pardon me, later information, but if one were to go back
3 to the notes and I'll use Constable Sebalj, Exhibit 314.

4 **THE COMMISSIONER:** Three fourteen (314)?

5 **MR. CALLAGHAN:** Three fourteen (314).

6 **THE COMMISSIONER:** Okay.

7 **MR. CALLAGHAN:** I'm at the fourth page.

8 Actually, I think the fourth page.

9 **THE COMMISSIONER:** You mean the next page
10 then, the one with the 4 on it?

11 **MR. CALLAGHAN:** That's right. Page 4. Do
12 you have as page 4? I have page -- oh, I see, it's the
13 next page.

14 **THE COMMISSIONER:** Yes.

15 **MR. CALLAGHAN:** Sorry, that's it; it must be
16 out of order.

17 Actually, I think -- okay, if I go down a
18 little, you'll see:

19 "I remember there was a girl and I put
20 all the emotions into her instead of
21 this. Don't remember her name."

22 That was what we talked about earlier.

23 **THE COMMISSIONER:** Okay, just a minute. Can
24 I bring you back to that?

25 **MR. CALLAGHAN:** Go ahead.

1 **THE COMMISSIONER:** When you were talking
2 about it previously, you said, "I put all my emotions in
3 it." You used the word "confide". And so I ---

4 **MR. CALLAGHAN:** That's how I read it. I
5 mean, this is an interpretation. He's not here, obviously.

6 **THE COMMISSIONER:** Well, confide -- you
7 mean, that what you're telling me is, you're going to put
8 to him that "You told her what happened and now you don't
9 remember her name" as opposed to, "I put all my emotions
10 into this girl".

11 **MR. CALLAGHAN:** Well, I'm not sure of the
12 detail, I guess we won't know because we won't have him to
13 talk to. But I mean, I would have suggested that what he's
14 trying to say is that yes, he's having a difficult time,
15 whether it's emotions or whether confide, I'm not sure it
16 matters. But I mean, I'm not sure it does matter. I'm not
17 sure the details of which are -- I think what the problem
18 was, it's a detail that can't be confirmed and that that's
19 what they were trying to do. If it's confide or emotions,
20 I don't know, because I haven't had an opportunity to ask
21 him.

22 **THE COMMISSIONER:** But you're suggesting ---

23 **MR. CALLAGHAN:** I would have suggested it to
24 him. Yes, I would have. But I don't know what he would
25 have said.

1 **THE COMMISSIONER:** I know, but ---

2 **MR. CALLAGHAN:** I mean, it's cross-
3 examination. At the end of the day, I can't prove it. I
4 can't prove any of this because he's not here.

5 **THE COMMISSIONER:** No, that's not the point.

6 **MR. CALLAGHAN:** Okay.

7 I mean, I hear you but it's difficult for
8 us. I mean, it's like learning how to hit a ball without a
9 ball.

10 **THE COMMISSIONER:** No. No, it's not. No,
11 it's not. It's saying, look it. In fairness, I don't know
12 why you have to raise the fact that well, he may have told
13 her and now he's trying -- he doesn't remember her name.
14 Because that would be a big thing in my view. If he -- all
15 you can do now is deal with the fact that he says, "I put
16 my emotions in this girl", and he doesn't remember the
17 name. So I mean, collaterally I suppose somebody could go
18 and find this girl and say, "Look it. Do you remember
19 talking to this fellow?" And she might say, "No" or she
20 might say, "Yes, whoa, was he ever very emotional that day;
21 I don't know why".

22 **MR. CALLAGHAN:** Maybe.

23 Maybe I should have -- if you're taking to
24 task that in the confines of what we're doing here I
25 shouldn't use those. And it's kind of what you said to Mr.

1 Kozloff. I'll try to refrain.

2 THE COMMISSIONER: Yes. Yes.

3 MR. CALLAGHAN: But I can tell you, in the
4 course of the cross-examination, I probably would have
5 asked the question.

6 THE COMMISSIONER: Okay.

7 MR. CALLAGHAN: And in fairness, I would
8 have seen what happened.

9 THE COMMISSIONER: Right.

10 MR. CALLAGHAN: But clearly somebody they
11 were looking -- somebody who could confirm at least part of
12 the details that can't be remembered.

13 THE COMMISSIONER: That is a fair comment.

14 MR. CALLAGHAN: Okay.

15 THE COMMISSIONER: However, we're not in
16 that arena of cross-examination.

17 MR. CALLAGHAN: Fair enough.

18 THE COMMISSIONER: I'm asking not to spread
19 these little tendrils of, m'hm, maybe he did confide in
20 her. That's not a fair thing right now.

21 MR. CALLAGHAN: Okay.

22 THE COMMISSIONER: You're dealing with me
23 and you're dealing with bringing to my attention items that
24 are in the documents.

25 MR. CALLAGHAN: Right.

1 **THE COMMISSIONER:** There is nowhere in that
2 document that somebody says that he confided in her. He
3 put a lot of emotions or whatever and so inflammatory is I
4 think ---

5 **MR. CALLAGHAN:** Well, it may be, and I
6 didn't intend it to be inflammatory. I didn't think the
7 suggestion to the witness, which is what I was trying to
8 convey, would have been unfair.

9 **THE COMMISSIONER:** Well, then I'll ---

10 **MR. CALLAGHAN:** But if he'd said no then
11 obviously that would have been the end of it.

12 **THE COMMISSIONER:** And I'll stop you. And
13 I'm saying that it's not a cross-examination, it's a
14 change. So I've ask you not to put those things in.

15 **MR. CALLAGHAN:** Okay. That's fair enough.
16 I will -- and as I indicated, you know, we're trained to
17 change gears. My gears are now changed.

18 But in any event, if I may go back. And
19 again, I mean, this falls into the same area that there is,
20 in my view, un-clarity.

21 But what the note says:

22 "I remember saying no, no. I got
23 louder. And I think that's when he
24 left. I might have even been on the
25 verge of crying. I don't know. I told

1 him to stop right from the start five
2 or six times. Didn't last more than 10
3 minutes. Maybe it seemed like half an
4 hour to me."

5 And not to be unfair, but the later
6 characterizations didn't have the discussion. He was very
7 quiet is what he was indicating. And again, he's talking
8 at the time of the first interview he got louder and
9 louder, and again, as I said, they went to interview to see
10 if anybody else could confirm what happened. And I would
11 have put that to him as to what exactly happened and what
12 exactly he did or didn't do, such that whether we could
13 confirm it.

14 I would have continued on to the notes and
15 back to Exhibit 297.

16 **THE COMMISSIONER:** What page?

17 **MR. CALLAGHAN:** Page -- Exhibit -- pardon
18 me. My apologies. Page 41.

19 **THE REGISTRAR:** Page 40?

20 **MR. CALLAGHAN:** Forty-one (41).

21 I wasn't going to go through the -- any
22 further on the detail.

23 And again, I mean, Mr. Silmser's been clear
24 that the dates were difficult. I would have suggested to
25 him that it was put to him by the police officers based on

1 the information from the sister; the information from the
2 mother that the retreat was possibly between seven and
3 eight.

4 I'm not sure what the note "No way I helped
5 him move." But I would have asked whether he confirmed or
6 denied it.

7 The comment "He left when I was in grade
8 eight or nine" I take it refers to Father MacDonald, and I
9 would have asked about that.

10 And then he talks about -- at the bottom he
11 talks about "I remember being at Bishop's so I was in seven
12 or eight." I believe it's "till was an alter boy" or "I
13 was still an alter boy."

14 So there was the issue of them trying to
15 work with him trying to clarify what the dates are.

16 Then there is a discussion, as I indicated
17 earlier. They went through with him some of his criminal
18 record. There is the note at the middle of the page, which
19 has been confirmed I believe earlier.

20 If I can go down further. I'm just trying
21 to find it here. "Started running away from home in grade
22 eight." And I would have suggested that would have made --
23 that was consistent with his earlier testimony, which was
24 that he ran away when he was about 14 or 15 and that's when
25 he subsequently got into contact, I believe, with Mr.

1 Seguin. And if one goes back to the chronology that was
2 given in Exhibit 262 if the event happened in 1973 he would
3 have been -- and if it was the summer of 1973, he would
4 have been 15 years old. And then the subsequent events,
5 it's hard to place them in terms of timing because the
6 subsequent events happened after the retreat.

7 He then talked to them about the treatment
8 he'd received.

9 He then goes through the next incident. He
10 is talking about spring at 14 years old. According to his
11 statements, this is a few months after the event at the
12 retreat. It says:

13 "Spring at 14 years old was in Bishop.
14 Remember walking down the street.
15 Don't honestly remember it being
16 spring. I don't remember snow. Maybe
17 it was summer."

18 In his statement at Tab -- Exhibit 262 at
19 the bottom of page -- of the third page in. I'm not sure
20 you're at the right page, Madam Clerk. Can you try the
21 next page? Yes, at the bottom. And again it says:

22 "That spring, still at the age of 14, I
23 walked past St. Columbus..."

24 And he goes on to talk about the incident. So he was clear
25 in his statement but by the time he goes to interview it's

1 not so clear as to whether it was spring or fall and
2 obviously he's -- he says he's 14, but if it was 1973 he'd
3 be older.

4 They then talk about the fourth incident.
5 And I would have asked him about the disparity in the
6 fourth incident that is captured in the earlier notes. And
7 I'll -- just because I haven't used Sergeant Malloy's notes
8 -- Sergeant Malloy at Exhibit 315, and I'm at page 6 of
9 that.

10 And the next incident if we go down; and
11 this is the drive in the country, and we'll pick it up at:

12 "David ran full blast away. Father
13 caught up to him and tackled him.
14 Being restrained by a hand Father
15 grabbed inside David's pants and
16 grabbed his genitals. I'll always
17 remember his laugh. Remember he was
18 screaming. Doesn't remember getting
19 into the car or going home. Father did
20 not make David touch him. Did not ask
21 David to touch him. Father did not
22 touch him with his penis. Can't
23 remember where it happened. Thinks it
24 might have been St. Andrews."

25 Constable Sebalj, in the notes, for example,

1 is consistent with that. That's Exhibit 314 at page 7 --
2 page 9, sorry. If you go after the 8 -- yes. We'll pick
3 up -- sorry, you just had the right -- if I can pick it up
4 "Ran full blast" -- it comes from the last page.

5 "I can always remember his laugh. He
6 put his hand on my parts and grabbed me
7 and I can remember screaming. I think
8 I was wearing jeans. I don't remember
9 anything else. I don't remember
10 getting home. All I can remember is
11 screaming. I don't remember standing
12 up and walking away. All I remember
13 screaming. Never touched him. Never
14 asked me to touch him. Never touched
15 me with his penis."

16 When the statement is given at Exhibit 262
17 at page 6 -- sorry, it's title page 7. It's actually,
18 sorry, page 7. My apologies. And if you pick it up at the
19 bottom:

20 "I remember running up hill and past
21 the car. I just kept running as fast
22 as I could and then I was tackled by
23 the feet. I can remember screaming at
24 the top of my lungs. He called me
25 over. He rolled me over onto my back.

1 He was laughing and grabbing me
2 everywhere. I just kept on turning my
3 head from side-to-side screaming.
4 That's when he undid my pants. He was
5 sitting on my stomach. All I can
6 remember was the pain as he tried to
7 push his penis into me. I cried and
8 yelled and then I went blank. I think
9 I must have..."

10 I'm not sure I can make that word out.

11 **THE COMMISSIONER:** "Passed out".

12 **MR. CALLAGHAN:** "...passed out because I
13 remember nothing after."

14 And I would have asked Mr. Silmsner whether
15 he gave the first recount and whether they actively
16 recorded it and I would have suggested this recount is
17 different, quite sizably different, and I would have
18 suggested that even on this account it's very difficult to
19 see how the events could have taken place with them sitting
20 -- lying on his back and sitting on his stomach as
21 described. And I wouldn't have gone into it much more but
22 I would have pointed out that that's difficult.

23 I would have gone on to point out that there
24 was a difficulty, as he was aware, with Heidi Sebalj coming
25 to reasonable probable grounds.

1 **THE COMMISSIONER:** So, just to refocus
2 myself on that point. You, as the Cornwall Police, are not
3 at this point in this Inquiry attacking his credibility as
4 a witness as to whether or not those acts were done, you're
5 just trying to put me in the position of a police officer
6 looking at these difference scenarios and trying to decide
7 what, if anything, I should do with respect to charges?

8 **MR. CALLAGHAN:** Well, I mean, I don't know
9 what will be the submission of the day.

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

11 **MR. CALLAGHAN:** I don't think you need to.
12 I think what the difficult is, and I think that people have
13 to understand, and I think another officer, maybe perhaps
14 Jeff Carroll had said it earlier, I mean, they don't have
15 to call someone a liar. I mean, it's just ---

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

17 **MR. CALLAGHAN:** There are inconsistencies.
18 And the point being made here is his stories were
19 inconsistent as to some of the more crucial details that
20 gives rise to a thought of reasonable probable grounds,
21 particularly in circumstances where there isn't the
22 corroborating evidence as to the event.

23 And I would have -- and if that had become
24 an issue I would have gone back to say -- which I won't
25 because we just did it -- is Crown Griffith's letter who

1 deals with this and discusses the difficulty that even
2 after the reinvestigation they still couldn't come up to,
3 in his opinion -- it is a legal test after all with fact.
4 He couldn't assess reasonable probable grounds.

5 I would have even gone further into the
6 letter of Mr. Pelletier, if it became an issue, which was
7 that he said that even with the later -- other witnesses
8 who were prepared to come forward and testify, it was the
9 slimmest of grounds, and even this last event he wasn't
10 recommending and nor did they ever charge him that last
11 event, which, you know, at some point we're going to have a
12 question as to whether you can believe some and not others,
13 but that's another issue.

14 But that's -- the reason why I would have
15 done it isn't to embarrass Mr. Silmser, nothing of that
16 sort. The reality is that's what Constable Sebalj was
17 dealing with and she was trying to deal with it, and he
18 might say "Ah, this is all entirely wrong."

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

20 **MR. CALLAGHAN:** I mean, he doesn't even
21 remember. In fairness to him he said "They never talked to
22 me." There was three-and-a-half hours of talk. And there
23 is no way that this is all ---

24 **THE COMMISSIONER:** Okay. I just wanted to
25 resituate that and make it very clear that you're not

1 attacking this man's credibility as to whether or not any
2 acts occurred or not. You're simply trying to help me to
3 picture what situation the Cornwall Police were in as to
4 whether or not a decision to charge or not charge was to be
5 made.

6 **MR. CALLAGHAN:** Well, yes, without saying
7 that the events happened, without saying the corollary.

8 **THE COMMISSIONER:** Pardon me?

9 **MR. CALLAGHAN:** Without saying -- and I'm
10 not here saying the corollary either.

11 **THE COMMISSIONER:** No.

12 **MR. CALLAGHAN:** So I mean it's not -- you
13 know, I mean ---

14 **THE COMMISSIONER:** Yes or no?

15 **MR. CALLAGHAN:** What's that? Oh my gosh!
16 There's no "yes" or "no" in this world. I've learned that
17 long ago.

18 **THE COMMISSIONER:** You're not trying to
19 prove him guilty or innocent, you're just trying to
20 determine if the actions of the Cornwall Police were
21 appropriate given all the circumstances.

22 **MR. CALLAGHAN:** And one of the reasons why -
23 --

24 **THE COMMISSIONER:** Yes or no?

25 **MR. CALLAGHAN:** Yes, that's what ---

1 THE COMMISSIONER: Thank you.

2 MR. CALLAGHAN: --- I'm trying to do at the
3 moment.

4 THE COMMISSIONER: Thank you.

5 MR. CALLAGHAN: But I will point out that as
6 one reason for the benefit -- not for your benefit, Mr.
7 Commissioner, but for the benefit of those who might be
8 watching, one of the reasons why I read the quote of Mr.
9 Justice Cory. I mean, who knows what would have come out,
10 and indeed, you know, the police have to -- but they do
11 have to assess credibility. They have to assess it all.
12 And they have to assess his criminal record. They have to
13 assess how it all fits. And they have to assess how is
14 this ---

15 THE COMMISSIONER: Let's get back to the ---

16 MR. CALLAGHAN: All right.

17 THE COMMISSIONER: --- task at hand.

18 MR. CALLAGHAN: I probably -- because a lot
19 has been covered to date, I probably would have moved
20 forward to the discussion towards the end. We're in August
21 23rd and August 24th, page 62.

22 THE REGISTRAR: Which exhibit?

23 MR. CALLAGHAN: I'm sorry. I apologize.
24 Exhibit 297. Oh, pardon me. You know what? I am being
25 flagged that I missed something on March 10th. If I can go

1 back to March 10th. A very important point that I
2 completely missed and I apologize.

3 **THE COMMISSIONER:** Flag or flogged?

4 **MR. CALLAGHAN:** Well, it was just a great
5 discussion. Back to March 10th.

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

7 **THE REGISTRAR:** What page is it on?

8 **MR. CALLAGHAN:** Page 42 of 64.

9 I would have pointed out the note at 1400,
10 and this goes back to your earlier comment wherein
11 obviously there was a discussion about Seguin. "I don't
12 think I can deal with that too right now", re Seguin. That
13 indeed they're coming back and reconfirming that he does
14 not or cannot deal with Seguin, and I think that is
15 consistent with some of the testimony earlier that it was
16 difficult to deal with it all but he wasn't dealing with
17 Seguin.

18 At the break I can tell you there was lots
19 of discussion on the February 10th note that we went through
20 and your three choices, and the consensus seemed to be that
21 -- well, I mean, I know there's only one judge, judge, but
22 there is lots of little judges back here who think they can
23 opine on these things.

24 **THE COMMISSIONER:** Keep it for submissions.

25 **MR. CALLAGHAN:** Well, but, I mean, it is

1 that -- my point being is it's consistent that the
2 discussion is that he does not want to proceed with the
3 investigation of Seguin and I would have put it to him that
4 that's what it was.

5 And then if we go back to August -- pardon
6 me, page 62. And I would have obviously discussed with him
7 the note of August 24th. I would have gone over the
8 discussion again that she says she was waiting for an
9 outside Crown to look at it. I would have put to him his
10 testimony, if I could, at Volume 86, page 97 here at the
11 Inquiry.

12 **THE COMMISSIONER:** What page?

13 **MR. CALLAGHAN:** Actually it's probably best
14 to start with page 47.

15 And if I've read the transcripts right he
16 says:

17 "What else were you saying if you were
18 the only victim, if any?"

19 Mr. Silmser:

20 "That the case was going to be dropped.
21 Her exact words were 'We can't go ahead
22 with the case. It's come to an end.'"

23 Mr. Engelmann:

24 "But wasn't she still seeking an
25 opinion?"

1 Mr. Silmser:
2 "Which I couldn't understand. Why
3 would she be seeking an opinion for an
4 outside Crown if she tells me the case
5 is finished. It was something like
6 that. I thought it was just to say
7 well maybe we're not giving up 100 per
8 cent; that the case isn't finished, you
9 know. Just too I couldn't understand
10 that, no."

11 And then over at page 97:

12 "Mr. Engelmann:
13 Well, did she talk to you about getting
14 advice from an outside Crown at that
15 time? Do you remember?

16 Mr. Silmser:
17 "I remember something about an outside
18 Crown and I asked her about that. I
19 said 'How can you get an outside Crown
20 when the Crown in Cornwall, Murray
21 MacDonald, didn't want to lay charges?'
22 And she didn't have an answer back to
23 me. Like, in other words, she said
24 'Yes, it's pretty well finished. The
25 case is finished.'"

1 Mr. Engelmann:
2 "Now you're talking about a
3 conversation you had in August now?
4 Are you talking about a conversation on
5 September 29th?"

6 Mr. Silmsner:
7 "I believe it was before September
8 29th."

9 "All right. And you told us earlier
10 that you had a conversation where it
11 referred to taking a settlement about
12 whether this was going to be
13 proceeding?"

14 Answer:
15 "That's right."

16 I would have tried to tie together when
17 exactly this conversation is of the out-of-town Crown.
18 Obviously, he settles on September 2nd. The only note that
19 we have prior to that in the sequence is the August 24th.

20 And I would have put to him the preliminary
21 Inquiry transcript, Exhibit 292, page 37, and at the
22 bottom. Sorry, is that page 37?

23 **THE REGISTRAR:** Page 37.

24 **MR. CALLAGHAN:** Did I misspeak? It wouldn't
25 be the first time.

1 Again, they were dealing with this note at
2 the time.

3 Question:

4 "Do you remember her telling you at
5 some point at least that the file was
6 ready to be looked at by an out-of-
7 town Crown?"

8 Answer:

9 "All she said to me was the Crown in
10 Cornwall was not going to lay charges."

11 Question:

12 "Do you remember any reference?"

13 Answer:

14 "That's all I remember."

15 Question:

16 "Do you remember any reference by her
17 to you that an out-of-town Crown was
18 supposed to look at it?"

19 Answer:

20 "Can't remember."

21 Question:

22 "You just don't remember?"

23 Answer:

24 "I don't, no."

25 And I would have asked to just try and

1 reconcile that evidence with the new evidence that he
2 recalled some discussion of the out-of-town Crown now, but
3 it's difficult to place in time. And I would have
4 suggested to him that she had not sort of told him that the
5 case was concluded. I might have suggested that the March
6 2nd comment that I think I referred to earlier might have
7 been a confusion that he had, although I'm not sure I could
8 say he would have agreed.

9 I would have pointed out, which I think has
10 already been pointed out, that of course the note above had
11 discussions with Malcolm MacDonald about surrendering
12 Father Charlie MacDonald, which I would have suggested was
13 inconsistent.

14 **THE COMMISSIONER:** Which was what?

15 **MR. CALLAGHAN:** Back to Exhibit 297.

16 Inconsistent. I think this point has been made by, I don't
17 know if it was Mr. Sherriff-Scott or whoever, but on August
18 23rd, the day before, there's a note that she's speaking to
19 Malcolm MacDonald and that he asked that his client be
20 summoned and he would escort as opposed to being
21 handcuffed, which of course -- and the note also indicates
22 that she indicated to Malcolm MacDonald that she was
23 waiting to meet with the Crown. All of which is
24 inconsistent with a statement to Mr. Silmser that the case
25 was closed.

1 **THE COMMISSIONER:** You think so?

2 **MR. CALLAGHAN:** Well, closed maybe for the
3 purpose of investigation.

4 **THE COMMISSIONER:** M'hm. I think you're
5 reading too much into those words, Mr. Callaghan.

6 **MR. CALLAGHAN:** Well, unfortunately I don't
7 have the witness so, I mean, I don't know. I mean, I don't
8 want to get into submissions, Mr. Commissioner, but I ---

9 **THE COMMISSIONER:** No, no. Well, August
10 23rd, that's conversation that Heidi Sebalj had with Malcolm
11 MacDonald, and you're using that to tell me that well, it's
12 obvious that she hadn't closed the case because she's
13 talking to MacDonald and MacDonald phoned her, and she's
14 not about to tell MacDonald well, we're about to close the
15 case. She's waiting for the Crown's review, from an out-
16 of-town Crown.

17 **MR. CALLAGHAN:** Right.

18 **THE COMMISSIONER:** Which is normal procedure
19 in Cornwall?

20 **MR. CALLAGHAN:** I mean, it was what happened
21 in this case.

22 **THE COMMISSIONER:** We'll find out.

23 **MR. CALLAGHAN:** We will indeed find out.

24 But, I mean, I'm trying to articulate that I
25 would have put to him that he's got two inconsistent

1 stories, and I would have put to him that they were
2 inconsistent, that he testified one way here and one way
3 there.

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

5 **MR. CALLAGHAN:** I would have then proceeded
6 to discuss with him the settlement issues with Mr.
7 MacDonald and that how he did not notify Constable Sebalj
8 that he -- if we go down to September 8th, '93 ---

9 **THE REGISTRAR:** What page?

10 **MR. CALLAGHAN:** It's the next page.

11 I should put it in context. The Cornwall
12 Police found out about the settlement on September 7th. And
13 I would have said -- suggested to him that he was -- she
14 called on September 8th, '93 and there was no answer. I
15 would have pointed out that she called again on September
16 9th with no answer. I would have advised on -- I would have
17 pointed out on September 10th, '93 that she finally called
18 him.

19 **THE COMMISSIONER:** She finally reached him.

20 **MR. CALLAGHAN:** And that he was very
21 accommodating and he agreed to come in.

22 I would have pointed out on September 13th
23 that he was a no show and that she called him twice, and I
24 would have asked if he ever returned the call.

25 I would have then pointed out that he did

1 not come to the office to meet with her until September
2 29th, 1993, until he was contacted by Helen Dunlop. And I
3 would have reviewed with him his interactions with Helen
4 Dunlop who had called him and I ---

5 **THE COMMISSIONER:** What do you mean? What
6 are you saying there?

7 **MR. CALLAGHAN:** September 29th?

8 **THE COMMISSIONER:** Yes.

9 **MR. CALLAGHAN:** This is part of the story
10 you may not be aware of?

11 **THE COMMISSIONER:** No. No. It's just --
12 you're reading -- it says -- and I'm just looking at the
13 notes.

14 **MR. CALLAGHAN:** In office with David
15 Silmsler.

16 **THE COMMISSIONER:** "Advises that Helen
17 Dunlop called her yesterday."

18 So who is "her"?

19 **MR. CALLAGHAN:** Well, I would have pointed
20 out to him that what we're talking about was that Helen
21 Dunlop called him ---

22 **THE COMMISSIONER:** So a mistake in the
23 notes?

24 **MR. CALLAGHAN:** It's either a mistake or
25 maybe a mistake in the transcription. I don't have it in

1 front of me. But either one.

2 But in any event, he could have easily
3 clarified this, that in fact -- lots of notes. But he
4 could have clarified with her or with him, about his
5 contact with Helen Dunlop and I would have asked him about
6 that. I would have suggested to him that in fact that was
7 the reason why he came in. He didn't actually come in
8 because he was requested. In fact, he didn't come in when
9 he was requested.

10 It was at that time and I won't go through
11 it -- we've gone through the steps before -- that in fact
12 he signed off on Exhibit 269, which we referred to earlier
13 and that she -- I would have gone over some of the
14 discussion he had about her "hands being tied", is the way
15 he put it in examination in-chief. And I would have
16 examined him further on those points and confirmed with him
17 again that she was trying to ascertain that the settlement
18 was of his own free will and that he wasn't being coerced
19 and that he truly did not want to proceed.

20 I would have confirmed the note that he was
21 settling -- at least he told her that he was settling
22 because he didn't know how it would go in court and
23 therefore took the given. I know he has said that he
24 settled because he was told that charges weren't going
25 ahead. I would have put the note to him as something

1 opposed to what he was saying.

2 I would have then, again, approached the
3 reasons why he settled because obviously he settled -- he
4 says he settled because the investigation, to his mind,
5 wasn't going anywhere. I would have taken him to a portion
6 that I think has already been read, but it's the interview
7 with Mr. Bell. Exhibit 270, page 25.

8 I would have taken him to the portion
9 stating:

10 "I never asked for nothing. All I
11 asked for was an apology for what he
12 did to me in a letter; a letter of
13 apology. You know it's not a verbal, a
14 letter of apology. That's all I asked
15 for and they wouldn't give it to me.
16 Then I said screw it, I'll take you
17 right to court and put you in jail and
18 there was a police investigation. But
19 within three or four weeks, they had
20 said they'll settle for \$32,000. Why I
21 settled? It was a real big -- I don't
22 know if I should settle or if I
23 shouldn't settle. I wanted to take him
24 to court but financially I was a little
25 bit behind and \$32,000 I figure would

1 be great help, especially in the times
2 right now, so I took it."

3 So I would have put to him that explanation,
4 that he'd given as to why he'd settled. I would have put
5 to him the explanation he gave the OPP, at Exhibit 271.

6 I have a typed version. Let me get it.

7 **THE COMMISSIONER:** Page 3?

8 **MR. CALLAGHAN:** Page 2.

9 **THE COMMISSIONER:** Two (2)?

10 **MR. CALLAGHAN:** I'm reading from a typed
11 version and it says at the bottom:

12 "Around April, I got fed up with
13 waiting. I wanted to get this over
14 with. I phoned Father MacDougald and I
15 asked him what type of responsibility
16 the church would have for what Father
17 Charlie MacDonald had done to me. He
18 said he'd have a meeting at the Diocese
19 and see what we can do. I went to the
20 meeting in Cornwall on Montreal Road.
21 There was Father MacDougald, the lawyer
22 of the Diocese; there was another
23 reverend, another Bishop. They asked
24 me my story and I told them. The
25 lawyer was writing. The lawyer said,

1 'You must be angry'. That was it.
2 They said he would be in touch with me.
3 I kept Heidi Sebalj informed of these
4 matters. Nothing much happened except
5 I made a few calls to Father
6 MacDougald. He said that Father
7 Charlie denied it. I waited again for
8 the police and nothing was happening.
9 I learned that Father Charlie had
10 gotten Malcolm MacDonald as a lawyer.
11 It was either Father MacDougald or the
12 lawyer from the Diocese that had told
13 me this. The first meeting of Diocese
14 all I asked for was an apology from
15 Charlie MacDonald for what he had done
16 to me. I hadn't even thought about
17 money. I was in contact with Malcolm
18 and he told me Father Charlie would not
19 give me a written apology because it
20 would be a sign of guilt. He asked me
21 what I was looking for in a settlement.
22 I thought about it for a day or two and
23 thought \$20,000 and \$12,000 for
24 treatment. I told this to Malcolm
25 MacDonald. He said, 'You are being

1 fair. You should be asking for a lot
2 more'. The amount was agreed to. It
3 took about a week-and-a-half. And I
4 got Sean Adams, a lawyer, to sign legal
5 papers."

6 I would have pointed out that the discussion
7 about no charges going ahead wasn't discussed with the OPP.

8 I would have taken him to Exhibit 272, which
9 is the public complaint. I would have asked him to confirm
10 that this is a document that he signed at the bottom. I
11 would have asked whether he agreed that he certified that
12 the information was true. I would have gone to the
13 specific allegation:

14 "Unauthorized release of confidential
15 statement given to police in context of
16 criminal investigation. For additional
17 particulars, please see January 11,
18 '94, letter from Bryce Geoffrey."

19 And I would have asked him whether he had
20 actually read that letter and I would have put the letter
21 to him which is -- I don't think it was attached to this
22 but it's document 727788.

23 I would have taken him ---

24 **THE COMMISSIONER:** Hang on. Sir, you want
25 that filed?

1 **MR. CALLAGHAN:** Yes, that's the way to go,
2 sir. Yes.

3 I wonder whether it should be 118. Oh, 272
4 A, Mr. Engelmann. It's the attachment to the -- I think
5 what happened was this got put in but the letter didn't.

6 **THE COMMISSIONER:** That's correct.

7 Any preference, Madam Clerk?

8 **MR. CALLAGHAN:** So it may be 272A, Mr.
9 Commissioner. That may be -- so we don't lose track of
10 these things.

11 **THE COMMISSIONER:** Thank you.

12 Two seventy-two-A (272A) is a letter of
13 January 11th, 1994 from Mr. Bryce Geoffrey to the Cornwall
14 Police Services Board et al.

15 --- **EXHIBIT NO./PIÈCE NO. P-272A:**

16 (727788) Letter from Bryce Geoffrey to
17 CPS - January 11, 1994

18 **MR. CALLAGHAN:** Right.

19 I would have taken him to the second page,
20 Mr. Commissioner. Regrettably, down just a little bit.

21 I would have referred him to the section
22 that says:

23 "As I'm sure you're also aware, our
24 client had entered into an agreement
25 with the Roman Catholic Archdiocese

1 whereby he agreed not to commence any
2 civil proceedings against Father
3 Charles MacDonald, the St. Columban
4 Church and the Roman Catholic
5 Archdiocese as a result of the sexual
6 assaults upon him in return for payment
7 of the sum of \$32,000. The major
8 consideration for agreeing to accept a
9 sum far below that which he would be
10 entitled to within the context of a
11 court action was Mr. Silmsner desired to
12 avoid the adverse publicity and
13 personal embarrassment and agony
14 associated with a public trial. Since
15 the time of the assaults upon him, he
16 has suffered numerous and severe mental
17 and physical damages."

18 Again, I would have pointed out that the
19 explanation given by his lawyer didn't have anything to do
20 with the allegation that he'd been told that the criminal
21 proceedings were not going ahead.

22 Mr. Commissioner, it is 4:30. I do have
23 more than a short bit to do, so I don't know whether -- and
24 this ends that portion of it.

25 **THE COMMISSIONER:** All right. We'll come

1 back tomorrow morning.

2 Thank you.

3 Nine-thirty (9:30).

4 **THE REGISTRAR:** Order; all rise. À l'ordre;
5 veuillez vous lever. The hearing is now adjourned.

6 L'audience est ajournée.

7 --- Upon adjourning at 4:29 p.m./

8 L'audience est ajournée à 16h29

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C E R T I F I C A T I O N

I, Sean Prouse 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, Sean Prouse, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Sean Prouse, CVR-CM