

**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 105

Held at :

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

Thursday, April 19, 2007

Tenue à:

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

Jeudi, le 19 avril 2007

ERRATA

Volume 86
January 30th, 2007

Page 201, Line 16

MR. ENGELMANN: Okay.

The first time you were interviewed by
Children's Aid, that was with Mr. Bough and Ms. DeBellis?

Should have read:

MR. ENGELMANN: Okay.

The first time you were interviewed by
Children's Aid, that was with **Mr. Bell** and Ms. DeBellis?

Page 202, Line 18

MR. ENGELMANN: All right.

The other individuals you dealt with from
Children's Aid, Mr. Bough, Ms. DeBellis?

Should have read:

MR. ENGELMANN: All right.

The other individuals you dealt with from
Children's Aid, **Mr. Bell**, Ms. DeBellis?

Page 203, Line 3

MR. ENGELMANN: There we some letters that were
signed by Mr. Bough, Ms. DeBellis and Mr. Carriere who I think
was their supervisor.

Should have read:

MR. ENGELMANN: There we some letters that were
signed by **Mr. Bell**, Ms. DeBellis and Mr. Carriere who I think
was their supervisor.

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	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. Dallas Lee	Victims Group
Mr. David Bennett	The Men's Project
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
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association

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1 --- Upon commencing at 9:34 a.m./

2 L'audience débute à 9h34

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 **MR. CALLAGHAN:** Good morning Mr.
11 Commissioner.

12 **THE COMMISSIONER:** Good morning.

13 **MR. CALLAGHAN:** If you're ready.

14 **THE COMMISSIONER:** I'm always ready sir.

15 **MR. CALLAGHAN:** I had left off in the fall
16 of 1993 and I would have ---

17 **THE COMMISSIONER:** Excuse-me Mr. Callaghan,
18 I just want to notice one thing, that Mr. Lee is sitting in
19 the seat that's usually occupied by yourself. I don't know
20 if that's a ---

21 **MR. CALLAGHAN:** Well, I think Mr. Lee's
22 moving up in the world but let's take a look.

23 (LAUGHTER/RIRES)

24 **THE COMMISSIONER:** Again, a little humour is
25 always a good thing.

1 **MR. CALLAGHAN:** Well, you'll have to
2 understand that we as professional counsel are friends
3 outside the adversity that might appear in the courtroom.

4 **THE COMMISSIONER:** There you go.

5 **MR. CALLAGHAN:** What I was about to take you
6 to next ---

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

8 **MR. CALLAGHAN:** --- Mr. Commissioner was the
9 discussion that Ms. Sebalj has with -- Constable Sebalj has
10 with Mr. Silmsers in November of 1993 and it's referenced in
11 Exhibit 296. And I -- just to set the context while Madam
12 Clerk sets it up on the screen.

13 It has been reviewed so I won't go in great
14 detail but this is the discussion that she has with him
15 about whether he wants to proceed against Mr. Seguin.

16 And I would have referred him -- I first
17 would have referred him to the paragraph,

18 "Silmsers further advise that his lawyer
19 had contacted him on behalf of the
20 police to enquire as to his intentions
21 with Ken Seguin".

22 At this, Constable Sebalj asked him if he
23 wished to pursue that matter and, as before, Silmsers
24 declined.

25 "Silmsers made himself very clear, he no

1 longer wanted to talk about all this."

2 And I would have asked him about that
3 interchange. I would have asked him about what knowledge
4 he had about Heidi Sebalj contacting his lawyer to make the
5 inquiry. And I would have asked whether the contents were
6 true. I would have suggested to him that he was indeed,
7 well, if that was true, assuming he agreed, that he was
8 simultaneously telling the Children's Aid that he was not
9 done with matters ---

10 **THE COMMISSIONER:** Before you go there, I
11 think we should go to the paragraph before however ---

12 **MR. CALLAGHAN:** Yes.

13 **THE COMMISSIONER:** --- where he says,
14 however:

15 "That if other victims came forward,
16 that he would gladly assist as a
17 witness, however, he did not want to be
18 any part of any agency's fishing
19 trips."

20 **MR. CALLAGHAN:** Right.

21 **THE COMMISSIONER:** So there was still that
22 little door there.

23 **MR. CALLAGHAN:** Right. And it wasn't that,
24 it was the issue about Seguin absolutely. I think he was
25 prepared, recognizing that if others came forward, he would

1 too... cooperate.

2 And then, I would have taken him to Exhibit
3 270. And recognizing that others have done some of this,
4 I'll try to move quickly Mr. Commissioner.

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

6 **MR. CALLAGHAN:** And it -- the 24th page Madam
7 Clerk -- back to page 24 and two more, there you go.

8 And I would have taken him down to the
9 passage, "I brought". I would have read to him the
10 passage:

11 "I brought this suit against MacDonald
12 after took a lot of thinking about it
13 and I wanted to take him to court and I
14 wanted people to know what kind of man
15 he was."

16 I would have stopped him there and confirmed
17 to him that what he is talking about suit against
18 MacDonald, he is talking the criminal investigation because
19 that is the only thing that preceded November 2nd. And I
20 would have continued reading saying:

21 "Start with MacDonald first anyways and
22 so I phoned the Bishop and I phoned the
23 person who handled it and within two or
24 three weeks of telling me there, you
25 know, this is what I'm going to do to

1 you, take you to court, they had
2 settled with me, for they gave me
3 \$32,000 to keep my mouth shut."

4 **THE COMMISSIONER:** Okay.

5 **MR. CALLAGHAN:** And then I would have ---

6 **THE COMMISSIONER:** Well, again you're -- you
7 would have asked him whether or not the suit referred to
8 criminal proceedings or civil proceedings.

9 **MR. CALLAGHAN:** Right, but there were no
10 criminal or civil proceedings.

11 **THE COMMISSIONER:** Well, no, no. See, if
12 you read through this here though, I mean, you know, I
13 don't think -- you're coming to conclusions as a lawyer,
14 there was no civil suit. But if you read through the
15 paragraph, he says like
16 "So I phoned the Bishop and I phoned the person who handles
17 it and within two or weeks of coming there, of telling me
18 there, you know, that this is what I am going to do to you,
19 take you to court, they had settled with me for \$32,000."

20 **MR. CALLAGHAN:** Well ---

21 **THE COMMISSIONER:** So it may well be that it
22 was in his non-legal mind that bringing in the suit is
23 phoning somebody and telling them that they're going to do
24 that. So I don't agree with your conclusion that because
25 there was no suit ergo, because he is not here, you're

1 going to tell me that it was that. I think that -- you
2 could have put it to him ---

3 **MR. CALLAGHAN:** Right, as you point out,
4 we're not in a position to say that, but I would have and I
5 don't mean to debate it, but when he says "I brought a suit
6 against MacDonald" seems to be a positive assertion and the
7 only thing he did as far as I am aware, is to start a
8 criminal investigation and I would have asked him if that's
9 what he was speaking of and I guess, we might have found
10 out that I misunderstood the phrase.

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

12 **MR. CALLAGHAN:** But I can only go -- but I
13 would have ---

14 **THE COMMISSIONER:** No, no, no. But I've got
15 to stop you there. I just want to make sure that what
16 you're doing is you're saying what questions would have
17 been put.

18 **MR. CALLAGHAN:** Right.

19 **THE COMMISSIONER:** But then you're coming
20 back and saying "A ha, but the only conclusion is this:
21 because he had not brought suit." And I am saying to you
22 no, that is not the only conclusion.

23 **MR. CALLAGHAN:** I appreciate that. I guess
24 I have an oversized view of my abilities as an examiner,
25 but I think that he probably would have said it and I think

1 -- but that's my own view, and who knows, if A, then B, if
2 B, then C, I mean you know, as you know from being on our
3 side of the fence, you know, if he'd given another answer,
4 the examination as I said at the outset might have gone a
5 different way.

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

7 **MR. CALLAGHAN:** I don't know. But I would
8 have anticipated him to say that rightly or wrongly. And
9 then I would have taken him down, I wouldn't have
10 regurgitated how he came to the \$32,000 which has been read
11 to you I think now twice. I wouldn't have put that to him.

12 I would have taken him down to the passage
13 at the bottom of the next page, page 25, you've got it
14 right Madam Clerk, at the bottom. And if you can see that,
15 I would have picked it up,

16 "But I'm not going to stop where I am
17 now. I don't know how to approach it
18 but I still got a story to tell in
19 Cornwall some way or another and I
20 still got -- I still got to make these
21 people pay for what they did to me, and
22 that's Seguin and that's along also,
23 and I'm still on the war path with
24 them.

25 And it's either by writing a book and

1 getting it published and letting people
2 know what kind of man these people are.
3 Or I don't know, I haven't thought
4 about it enough yet, but I haven't
5 stopped yet ---

6 **THE COMMISSIONER:** Mr. Callaghan I
7 understand what you're saying, I guess I am not explaining
8 properly. What I'm trying to convey to you is that that's
9 all well and fine, it's all there.

10 I just don't want you to give me or the
11 public conclusions that are not makeable and so no, those
12 passages do not necessarily make it that a suit has to be a
13 criminal proceeding. You can't do that. I won't let you
14 do that.

15 **MR. CALLAGHAN:** Okay. And I understand
16 that. I think, I mean, this is the difficulty with the
17 process because, clearly it would be open to me to cross-
18 examine that way. And I know we did this discussion and I
19 don't mean to open it but that illustrates the problem.
20 This illustrates the problem because the predicate of the
21 cross-examination is he would have said this and I would
22 have gone on further. But then the cross-examination falls
23 flat because the predicate isn't achieved. We would move
24 on to another area.

25 **THE COMMISSIONER:** We know that. We've been

1 there and we've done it twice now. And I asked you not to
2 do it and you come back and say "Well, I'm not going to do
3 it but I'll do it anyways". And I am ---

4 **MR. CALLAGHAN:** Well ---

5 **THE COMMISSIONER:** --- and I am saying "No,
6 no, no, no, no. No, no, no, no." We know that this is not
7 a perfect system. We know that, and what I've asked you to
8 do is point me to the places. Tell me what you would have
9 done, but please no conclusions.

10 **MR. CALLAGHAN:** But I would have, I would
11 have put to him that's what he meant and then the whole
12 cross-examination sequence which I am trying to articulate
13 here would make sense. And what I would have done next
14 after having done that, I would have pointed out that
15 indeed, that while he has told Heidi Sebalj he didn't want
16 to talk about it, he was indeed planning to do something as
17 articulated ---

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

19 **MR. CALLAGHAN:** --- and indeed, I would have
20 then taken him to the OPP interview at Exhibit 271.

21 **THE COMMISSIONER:** Okay. So far, I agree
22 with you that if you look at the phone call that was
23 apparently recorded by Ms. Sebalj and this, that within --
24 on November 4th and whenever ---

25 **MR. CALLAGHAN:** November 2nd.

1 **THE COMMISSIONER:** November 2nd, that he is
2 apparently saying different things to different people.

3 **MR. CALLAGHAN:** Okay.

4 **THE COMMISSIONER:** That's from the
5 documents. So stick to the documents and I think you'll be
6 fine.

7 **MR. CALLAGHAN:** I'll stick ---

8 **THE COMMISSIONER:** No, you won't.

9 **MR. CALLAGHAN:** Let me put it this way, I'll
10 try to be fine.

11 **THE COMMISSIONER:** No, you won't.

12 **MR. CALLAGHAN:** I would have then taken him
13 to Exhibit 271.

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

15 **MR. CALLAGHAN:** And again, this is something
16 you've seen before and I would have taken him to ---

17 **THE COMMISSIONER:** This is November 26th, '93
18 ---

19 **MR. CALLAGHAN:** Right.

20 **THE COMMISSIONER:** --- which is the
21 interview report which is -- yes.

22 **MR. CALLAGHAN:** I may have the wrong number
23 here.

24 **THE COMMISSIONER:** Well, this is his
25 statement in any event. Is that what you're looking for?

1 **MR. CALLAGHAN:** Exhibit 271, this is -- yes,
2 I actually sir, I actually have the typed version in my
3 hand.

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

5 **MR. CALLAGHAN:** And I would have -- if I
6 could be given a minute just to situate it next to the
7 handwritten.

8 **THE COMMISSIONER:** Just tell me what part
9 you're looking at.

10 **MR. CALLAGHAN:** It says "I phoned Malcolm
11 MacDonald".

12 **THE COMMISSIONER:** That would be near the
13 end.

14 **MR. CALLAGHAN:** Yes. That's page 4.

15 **THE COMMISSIONER:** Yes, page 4, bottom half.

16 **MR. CALLAGHAN:** And Mr. Commissioner, I will
17 read off the typed version so if it's different then, my
18 eyes won't be on the screen I am afraid.

19 Now to situate ourselves, this is ---

20 **THE COMMISSIONER:** Just a second, let me
21 make sure we got -- yes.

22 **MR. CALLAGHAN:** This is ---

23 **THE COMMISSIONER:** There it is, right in the
24 middle, okay.

25 **MR. CALLAGHAN:** --- November ---

1 **THE COMMISSIONER:** Twenty third (23rd),
2 twenty -- well hold on a minute now. November 26, '93, now
3 query this is -- how did that work -- this is the statement
4 he had prepared?

5 **MR. CALLAGHAN:** Yes.

6 **THE COMMISSIONER:** And they came back to him
7 and asked him to sign it.

8 **MR. CALLAGHAN:** This is -- I think this is
9 where he meets one of the OPP officers, they sit down, they
10 write out a statement and he signs it.

11 **MR. ENGELMANN:** The statement he prepared.
12 It's an earlier exhibit. That's in February.

13 **THE COMMISSIONER:** Okay. All right.

14 **MR. ENGELMANN:** It's the interview just
15 after Ken Seguin's death.

16 **MR. CALLAGHAN:** Right.

17 **THE COMMISSIONER:** Thank you, sorry, thank
18 you very much for that.

19 **MR. CALLAGHAN:** So it's with the OPP, it's
20 not with the Cornwall police, it's November 26 and he says
21 -- and this passage has been, I believe, read to you by
22 maybe Mr. Sherriff-Scott ---

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

24 **MR. CALLAGHAN:** --- or Mr. Neuberger, I
25 can't recall. But it said:

1 "I phoned Malcolm Macdonald, asked if
2 he was representing Ken Seguin. He
3 said no, not at this time. I phoned
4 Ken Seguin around a week or so ago at
5 work."

6 Now, that would put us about November 16th or
7 17th.

8 "I told him that I wanted a settlement
9 from him for what he had done to me.
10 He told me to talk to Malcolm
11 MacDonald, his lawyer. I called
12 Malcolm, he asked me if I had a lawyer,
13 I said no. He said he could not be
14 involved in this case if I had a
15 lawyer. Then he asked me how much I
16 wanted. I didn't tell him till the
17 next day. I wanted \$100,000. Malcolm
18 said that was a lot of money. I said
19 he didn't have the money, I was going
20 to sue the Ministry of Probation and
21 Parole. That was it for that
22 conversation."

23 And again, the point that you've just made
24 shortly after the discussion, he appears not to want to do
25 any -- he is in fact doing something by dealing with Mr.

1 Seguin and his lawyer.

2 I would have briefly taken him to Exhibit
3 372, which also has been covered by others.

4 **THE COMMISSIONER:** This is the letter?

5 **MR. CALLAGHAN:** No, I have it noted as the
6 occurrence report.

7 **THE COMMISSIONER:** Okay.

8 Madam Clerk, could I get the next binder?

9 **MR. CALLAGHAN:** There we go.

10 I won't bore you, Mr. Commissioner. Mr.
11 Neuberger read this. You will recall this is the call that
12 one of our officers receives from someone who purports to
13 be Mr. Silmsler and purports to indicate to him, that if
14 something should happen to Mr. Seguin ---

15 **THE COMMISSIONER:** No, to himself. If
16 something should happen to him.

17 **MR. CALLAGHAN:** Right. Him being, I
18 understood to be Mr. Seguin -- or Mr. Silmsler. Did I say
19 Mr. Seguin? My apologies.

20 **THE COMMISSIONER:** Yes. Yes.

21 **MR. CALLAGHAN:** I'm getting my names mixed
22 up. I apologize.

23 If something happened to Mr. Silmsler that
24 Ken Seguin and Charlie MacDonald were to be considered
25 suspects. I won't read it all. It was already read to you

1 by Mr. Neuberger. So I would have inquired about that and
2 got the confirmations that Mr. Neuberger had sought, as
3 well.

4 The next thing I would have covered was the
5 issue that came up when Mr. Sherriff-Scott was examining
6 him, and for the record, at Volume 90, page 207, wherein he
7 stated that at some point in time he was shown a letter by
8 Constable Sebalj. If you wish, we could take a look at
9 that. It's ---

10 **THE COMMISSIONER:** Which letter do you mean?

11 **MR. CALLAGHAN:** Well, that was never
12 identified. He said he was shown a letter from the Crown
13 Attorney ---

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

15 **MR. CALLAGHAN:** --- by Constable Sebalj.

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

17 **MR. CALLAGHAN:** And I would have sought
18 confirmation as to exactly when that occurred. It wasn't
19 clear. I would have further examined him as to whether he
20 had told that to anybody in the course of the last 14
21 years, because there doesn't seem to be a record of that
22 event occurring.

23 I would have asked him whether Exhibit 301
24 was the letter.

25 **THE COMMISSIONER:** That's the letter dated

1 September 14th, 1993 from Murray MacDonald, the Crown
2 Attorney ---

3 **MR. CALLAGHAN:** Right.

4 **THE COMMISSIONER:** --- from Staff Sergeant
5 Lucien Brunet?

6 **MR. CALLAGHAN:** Right.

7 I would have asked him whether he read the
8 contents of the letter, as he seems to have said, whether
9 he understood the letter, whether in fact he read the
10 predicate letter. That is the letter referred to in the
11 first paragraph. I would have asked him what his
12 understanding of it was. I would have asked whether -- he
13 had indicated under testimony that he thought Heidi
14 Sebalj's hands were tied and whether he understood that
15 they were tied because of the advice she was being given
16 from the Crown Attorney. I would have asked those course
17 of questions.

18 But unfortunately, there is not much I can
19 point you to, Mr. Commissioner, as to how he might have
20 answered because it hasn't previously been covered by any
21 of the other interviews.

22 **THE COMMISSIONER:** Right.

23 Interesting from where your conversation
24 yesterday. I don't know when -- we'll probably cover that
25 in institutional response, but MacDonald is saying, "Also

1 the officer was tentative on the issue of R. and P.G.
2 before the so-called settlement".

3 **MR. CALLAGHAN:** Right.

4 **THE COMMISSIONER:** Grounds are now even
5 further -- but anyways. Okay. We'll cover that later.

6 **MR. CALLAGHAN:** Yes. Just for the record, I
7 mean, this letter follows up a discussion with Luc Brunet,
8 who is the Staff Sergeant responsible for Constable Sebalj,
9 and that the letter of Exhibit 300 just basically said that
10 it was the understanding of Luc Brunet that the Crown
11 wouldn't proceed if the victim wasn't willing. And that's
12 an issue obviously you have to consider in the -- Exhibit
13 300 -- that's an issue that obviously as a matter of
14 policy, we'd probably want to look at in the Inquiry, but -
15 --

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

17 **MR. CALLAGHAN:** --- that was the advice
18 being given. I'm not sure how much of what the letter
19 meant, Mr. Silmsler understood. And I would have asked him,
20 if indeed this is the letter, the predicate issue of
21 whether -- what the answer would have been.

22 I would have then moved on to the issue of
23 Marcel Lalonde.

24 **THE COMMISSIONER:** Yes.

25 **MR. CALLAGHAN:** I would have and I'm not

1 sure it's necessary, but I would have confirmed with him
2 again, that the first time he raised it as in fact, I think
3 it was Mr. Lee who confirmed, was with the Children's Aid
4 Society to Mr. Bell on November 2nd '93.

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

6 **MR. CALLAGHAN:** I would have confirmed that
7 he did not advise the Cornwall Police when he was
8 interviewed, which he has already testified to. I would
9 have taken him to a document -- document 728485.

10 **THE COMMISSIONER:** Thank you.

11 Exhibit 405 is a letter addressed to Mr.
12 Silmsler dated September 1st, 1994 from L. Brunet, Staff
13 Sergeant, Criminal Investigations.

14 **--- EXHIBIT NO./PIÈCE NO. P-405:**

15 (728485) Letter to Mr. Silmsler from
16 Staff Sergeant L. Brunet, Criminal
17 Investigations, dated September 1, 1994

18 **MR. CALLAGHAN:** Right. I would have gone
19 over the fact that the letter was written. I would have --
20 just for the record, Mr. Commissioner, the first line
21 refers to a letter of July 29, 1994, that Acting Chief Carl
22 Johnston received from Detective Inspector Smith. For the
23 record, that is -- I'm afraid that's not a letter. I'll go
24 to that letter next. I thought it was already an exhibit.
25 I will go to that letter next just for continuity purposes,

1 for the record.

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

3 **MR. CALLAGHAN:** But that they'd received a
4 letter advising for the first time of the allegation
5 regarding Lalonde.

6 **THE COMMISSIONER:** Well ---

7 **MR. CALLAGHAN:** Well, that's -- whether, the
8 context again, sir.

9 Then ---

10 **THE COMMISSIONER:** It is the letter from the
11 OPP advising the Cornwall Police ---

12 **MR. CALLAGHAN:** Right.

13 **THE COMMISSIONER:** --- of this situation.

14 **MR. CALLAGHAN:** Right.

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

16 It will be up to you -- through the
17 institutional response, we'll hear from the Cornwall Police
18 as to whether or not it was the first time.

19 **MR. CALLAGHAN:** Fair enough.

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

21 **MR. CALLAGHAN:** I would have reviewed the
22 letter with him and that they were asking for him to
23 contact them, either directly or through counsel, if he was
24 -- in order to proceed with the complaint.

25 I would have asked if he got the letter and

1 what, if anything he did about it.

2 Just to be clear, as I said a moment ago, I
3 would, for the sake of clarity for the record, I would have
4 put in I suppose, document 728471, which is the letter
5 referred to in the first paragraph, which I think there's a
6 misdate. But we'll obviously hear about that.

7 **THE COMMISSIONER:** I don't -- you know, it's
8 always interesting when you're reading letters for the
9 first time. It says:

10 "In order for us to accomplish this, we
11 will have to meet with you and obtain
12 full disclosure of the assaults in
13 question that you referred to during
14 previous interviews."

15 **MR. CALLAGHAN:** Right.

16 **THE COMMISSIONER:** Well ---

17 **MR. CALLAGHAN:** I think what you'll see is
18 that the interview -- he relays it to the OPP. Well, we'll
19 hear about that.

20 **THE COMMISSIONER:** Do you agree with me that
21 when you're reading that, there is an issue of during
22 previous interviews?

23 **MR. CALLAGHAN:** Right. Which is referable
24 to the information received from the OPP and also the
25 Children's Aid Society because there was the ---

1 **THE COMMISSIONER:** Well, that's why you
2 better file the other letters to put in context ---

3 **MR. CALLAGHAN:** Sure.

4 **THE COMMISSIONER:** --- because this letter
5 standing alone doesn't quite mean ---

6 **MR. CALLAGHAN:** No and I misspoke. I had
7 thought the other one was in evidence. So it's document
8 728471.

9 **THE COMMISSIONER:** Thank you.

10 That will be Exhibit 406, a letter dated 21st
11 of July, which is not the 29th of July ---

12 **MR. CALLAGHAN:** Right.

13 **THE COMMISSIONER:** --- as referred to in
14 your letter.

15 **MR. CALLAGHAN:** Right.

16 **THE COMMISSIONER:** Exhibit 406, which is a
17 letter, addressed to the Chief of Police Carl Johnston and
18 signed by Detective Inspector Smith, Criminal Investigation
19 Branch, Kingston Unit.

20 --- **EXHIBIT NO./PIÈCE NO. P-406:**

21 (728471) Letter to Chief of Police Carl
22 Johnston from Detective Inspector
23 Smith, Criminal Investigation Branch,
24 dated July 21, 1994

25 **MR. CALLAGHAN:** Right.

1 And the contents of that letter briefly, are
2 bringing to the attention of the Cornwall Police, that this
3 allegation had been made at first to the Children's Aid and
4 then brought to the attention of the OPP, who were
5 forwarding it to the Cornwall Police.

6 **(SHORT PAUSE/COURTE PAUSE)**

7 **THE COMMISSIONER:** Okay.

8 **MR. CALLAGHAN:** I don't think there's any
9 need to read it into the record.

10 **THE COMMISSIONER:** No.

11 **MR. CALLAGHAN:** I would have then taken him
12 to Exhibit 280, which was obviously put to him.

13 **THE COMMISSIONER:** Two-eighty (280).

14 Which is a letter dated September 12th, 1994,
15 which is addressed to him, to Mr. Silmser from Staff
16 Sergeant Brunet.

17 **MR. CALLAGHAN:** Right.

18 It refers to a conversation that he had with
19 Acting Chief Carl Johnston ---

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

21 **MR. CALLAGHAN:** --- and his expressing
22 reluctance to make a statement to the Cornwall Police.

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

24 **MR. CALLAGHAN:** I would have asked him about
25 that. His request to consider making the allegation to

1 another police agency that could independently investigate
2 the complaint. So I would have asked him about the
3 circumstances. My understanding is the letter was sent by
4 registered mail. I don't know if that made a difference
5 but I would have asked whether he got it or not. I was
6 just asking Mr. Engelmann and neither of us can recall
7 whether he said he doesn't recall the letter or he didn't
8 get it. I don't -- but I would have asked him about his
9 conversation and I would have asked him about the receipt
10 of the letter.

11 I would have reviewed with him briefly the
12 release of the statement and the airing of the statement in
13 January '94 on the television.

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

15 **MR. CALLAGHAN:** I would have talked to him
16 about his contacts with the reporter, Charlie Greenwall. I
17 would have asked him about his contacts with others, the
18 Cornwall Police and I would have reviewed with him his
19 commencement of a lawsuit and his commencement of a public
20 complaint.

21 I would have then moved on to discuss his
22 relationship with John MacDonald and I would have, first
23 obviously confirmed that, as he did say that he hadn't seen
24 Mr. MacDonald for many years.

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

1 **MR. CALLAGHAN:** And that Mr. MacDonald came
2 back in May of '95 and made contact again, the summer of
3 '95.

4 I would have reviewed with him his testimony
5 on January 30th, at page 162. Mr. Engelmann, at about line
6 7:

7 "Did you contact other victims or
8 alleged victims, to your knowledge,
9 during that calendar year?"

10 Mr. Silmser: "I can't remember that
11 year."

12 Mr. Engelmann: "Well, do you recall if
13 you ever spoke to any other victim or
14 alleged victim about the details of ---
15 "

16 Mr. Silmser: "Mine?"

17 Mr. Engelmann: "--- the alleged
18 abuse?"

19 Mr. Silmser: "Oh! Never."

20 Mr. Engelmann: "You never have?"

21 Mr. Silmser: "Never have."

22 Mr. Engelmann: "Not even with John
23 MacDonald?"

24 Mr. Silmser: "John MacDonald, I
25 believe has never read his statement

1 nor have I ever read his statement."

2 And then they go on to discuss John

3 MacDonald.

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

5 **Mr. CALLAGHAN:** His relationship. And then,
6 if you go over page 199 -- 91, Mr. Engelmann picks it up.

7 **THE COMMISSIONER:** Sorry, what page?

8 **MR. CALLAGHAN:** Page 191.

9 **THE COMMISSIONER:** Yeah.

10 **MR. CALLAGHAN:** And Mr. Engelmann picks up
11 the point:

12 "Until this time, no one else had
13 come forward? Mr. Silmser: that's
14 correct. Mr. Engelmann: Or at least,
15 that's what you'd been told, that no
16 one had come forward, that there was
17 no other victims. Mr. Silmser:
18 that's correct. Mr. Engelmann: did
19 he get into the details the of the
20 alleged abuse that he suffered that
21 he --- Mr. Silmser: No, we'd never
22 talked about that."

23 Now -- obviously he's talking about John
24 MacDonald at that point.

25 **THE COMMISSIONER:** M'hm

1 **MR. CALLAGHAN:** and then, at Mr. Lee's
2 question in Volume 88, which would be February 1st ---

3 **THE COMMISSIONER:** Madam Clerk? Yeah.
4 Thank you.

5 M'hm. What page, sir?

6 **MR. CALLAGHAN:** Page 12.

7 And -- page 12.

8 **THE COMMISSIONER:** Yeah. I'm sorry, where's
9 the -- well ---

10 **UNIDENTIFIED:** Twelve (12). Page 2.

11 **MR. CALLAGHAN:** Twelve (12)? One and two?
12 There we go.

13 **THE COMMISSIONER:** Yeah.

14 **MR. CALLAGHAN:** Oh, sorry. Right. Thank
15 you, Madam Clerk.

16 "Mr. Lee: My question is, have you
17 ever met with a victim of abuse and
18 gone into the details of your abuse?

19 Mr. Silmsler: Absolutely not. Mr. Lee:
20 Have you ever met with a victim of
21 abuse and gone into the details of
22 his abuse, whoever that victim might
23 have been? Mr. Silmsler: Absolutely
24 not."

25 I would have then talked about his meetings

1 with John MacDonald, we know that they met ---

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

3 **MR. CALLAGHAN:** And they had the day
4 together, I believe it was on August 12th.

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

6 **MR. CALLAGHAN:** I would have taken him to --
7 and again I -- obviously his view was he didn't talk about
8 it, I would have taken him to Document 721620.

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

10 **MR. CALLAGHAN:** And this is a ---

11 Thank you. Oh, I -- I want to make sure,
12 Mr. Commissioner, you have the right Bates Page. It's
13 7080536.

14 **THE COMMISSIONER:** That's what it is.

15 **MR. CALLAGHAN:** Okay.

16 **THE COMMISSIONER:** So it's an excerpt of
17 Document 71 -- 721620, and what is this?

18 **MR. CALLAGHAN:** This is a handwritten note
19 of a phone call -- we understand, a phone call between Mr.
20 Silmsler and Mr. Abel at the Children's Aid Society, on
21 August 21st, 1995.

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

23 **MR. CALLAGHAN:** And it says:

24 "Lots happening in the last two days.
25 Altar boy in B.C., back four months

1 not sure if I wouldn't be objecting at this point, in the
2 sense -- I'm not sure what this has to do with Cornwall
3 Police.

4 I'm not sure what this has to do with the
5 Cornwall Police Service institutional response. We're now
6 in the summer of 1995.

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

8 **MR. ENGELMANN:** Maybe Mr. Callaghan could
9 just explain that?

10 **MR. CALLAGHAN:** Well, I mean, to be clear, I
11 would have thought that the issue has been raised in this
12 inquiry. It's been -- Commission Counsel's raised it, the
13 victim's lawyers raised it, and I think as a general
14 proposition, I think Mr. Commissioner should be apprised of
15 information that might be a little different than what
16 you've been hearing.

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

18 **MR. CALLAGHAN:** And I think that's only
19 fair, I think -- credibility, as I indicated previously
20 with the quote from the Krever Commission, is an issue.

21 I have indicated earlier, that you know,
22 discussions amongst victims, et cetera ---

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

24 **MR. CALLAGHAN:** --- and their dealings with
25 people including the Cornwall Police as Mr. MacDonald does,

1 and as Mr. Silmsner does in a minute in respect of that this
2 very time is an issue.

3 And I was just highlighting that perhaps,
4 when we talk about it, there was more communication. And I
5 recognize that's a conclusory statement and I know you
6 don't want to hear it, but I was just pointing out the
7 inconsistency.

8 **THE COMMISSIONER:** No, no, no. Just a
9 minute. Here, I might agree with you.

10 (LAUGHTER/RIRES)

11 **THE COMMISSIONER:** But we have to be very
12 clear. Credibility as to the complaints ---

13 **MR. CALLAGHAN:** M'hm.

14 **THE COMMISSIONER:** --- and not as to whether
15 the actions or the charge -- the events that would have led
16 to charges.

17 **MR. CALLAGHAN:** Right.

18 **THE COMMISSIONER:** We're just dealing with
19 the credibility, with respect to the complaints.

20 **MR. CALLAGHAN:** Yeah. This does - this only
21 has to do with credibility of complaints.

22 **THE COMMISSIONER:** Absolutely.

23 **MR. CALLAGHAN:** This is not verifying an
24 assault ---

25 **THE COMMISSIONER:** No.

1 **MR. CALLAGHAN:** Or not verifying anything.

2 **THE COMMISSIONER:** No. So what you're saying
3 is that -- if I'm -- and let me try this, so...

4 **MR. CALLAGHAN:** To speed it up, perhaps.

5 **THE COMMISSIONER:** Yes, you're saying, if
6 Silmsler phoned Abel and if it was Silmsler calling, he told
7 him that it was the same retreat, same bush in Bishop's
8 house in country ---

9 **MR. CALLAGHAN:** Right.

10 **THE COMMISSIONER:** --- and if it was Silmsler
11 who made the call and if he was talking about MacDonald,
12 well then that imputes some knowledge to him of what
13 MacDonald was alleging as an abuse.

14 **MR. CALLAGHAN:** Right and also ---

15 **THE COMMISSIONER:** Right.

16 **MR. CALLAGHAN:** It also illustrates that,
17 whether - going back to the quote of Ostler and I'm not -
18 well its, Ostler being -- people get mistaken about some of
19 their testimony, and you're going to have to weigh this
20 testimony. This is -- if this is the -- what has been
21 said, then frankly ---

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

23 **MR. CALLAGHAN:** --- he hasn't -- his
24 testimony wasn't as clear here, then, as it might have been
25 ---

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

2 **MR. CALLAGHAN:** If this had been put to him.

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

4 We should be careful though with this
5 document, there is a name in that document that is subject
6 to a publication ban.

7 **MR. CALLAGHAN:** Right. And I don't intend
8 to use -- say that name.

9 **THE COMMISSIONER:** No, no I know. I know,
10 but for purposes of the media and whoever is looking at
11 these documents, I tried to outline for them, especially
12 the media, so that if they're looking at these documents,
13 that -- while it's their responsibility to ensure that they
14 are not in breach of any publication ban, it's nice if we
15 can highlight that for their sake.

16 **MR. CALLAGHAN:** Right, and then we can tell
17 them it's a C-3 and C-9, if that assists the media.

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

19 **MR. CALLAGHAN:** The -- I would have pointed
20 out the note just above those names:

21 "Family wrote church 15 years ago."

22 **THE COMMISSIONER:** I don't know if it's 15
23 or 25, but okay.

24 Fifteen (15) or -- yeah. Sorry, I may be
25 misread -- 25 sounds logically the right number, but:

1 "Never got an answer, parents well
2 respected."

3 I would have asked whether that was
4 communication from John MacDonald ---

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

6 **MR. CALLAGHAN:** --- that he believed that
7 his mother had written the church.

8 I would have also put to him that -- and I
9 can just, rather than pull it up, there was a question at
10 his discovery. Exhibit 374, and I'll -- it's just one
11 question:

12 "Question: did John tell you what
13 Father Charles MacDonald did to him?

14 Answer: Yes..."

15 **THE COMMISSIONER:** No -- 374?

16 **MR. CALLAGHAN:** Right.

17 **THE COMMISSIONER:** Two (2) -- 374, right.
18 Okay. Say that again.

19 **MR. CALLAGHAN:** Page 192.

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

21 Okay, and so, Line 950, is that where you're
22 going?

23 **MR. CALLAGHAN:** Yes. Right:

24 "...Did John tell you what Father
25 Charles MacDonald did to him?

1 Answer: "Yes, to a certain point[...]
2 Did you tell John MacDonald what
3 Father Charles had done to you? [...]
4 No, I don't believe so."

5 I would have sort of, simultaneously moved
6 into his discussion with Constable David Bough ---

7 **THE COMMISSIONER:** Well, I don't -- maybe
8 you can go back to Document ---

9 **MR. CALLAGHAN:** Sure.

10 **THE COMMISSIONER:** --- Exhibit 407. Is
11 there any comment about that first sentence on top, there?

12 --- **EXHIBIT NO./PIÈCE NO. C-407:**

13 (721620) Excerpt 7080536-37,
14 Handwritten notes of David Silmsler -
15 August 21, 1995

16 **MR. CALLAGHAN:** "Lots happening in the last
17 two days"? Or the next page?

18 **THE COMMISSIONER:** No, that -- next page.
19 Slip it over.

20 **MR. CALLAGHAN:** Yes. I mean it obviously
21 identifies the person ---

22 **THE COMMISSIONER:** Well, it depends, I mean
23 ---

24 **MR. CALLAGHAN:** But I mean, I didn't think
25 there was a big -- I didn't think that was going to be a

1 big issue, as to whether that -- that that's was what he
2 was talking about. But that -- that to me would have
3 suggested...

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

5 **MR. CALLAGHAN:** I would have -- and I would
6 take him back to the point that he's talking to Carson
7 Chisolm and this is, just to put it in context, August of
8 '95 ---

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

10 **MR. CALLAGHAN:** --- just while we're on the
11 document.

12 **THE COMMISSIONER:** Okay, thank you.

13 **MR. CALLAGHAN:** I'm advised that I did miss
14 one point, which was that Exhibit 206, page 54, this is an
15 interview of John MacDonald to the ---

16 **THE COMMISSIONER:** Two oh six (206)?

17 **MR. CALLAGHAN:** Yes.

18 **THE COMMISSIONER:** Madam Clerk, can you help
19 me out with the other book, there?

20 **MR. CALLAGHAN:** She's there and it's page --
21 oh, I'm sorry. Help you out. I thought you -- all right.

22 **THE COMMISSIONER:** I hope I don't have it
23 here.

24 **THE REGISTRAR:** (inaudible)

25 **THE COMMISSIONER:** No, there's (inaudible).

1 Pardon me?

2 **THE REGISTRAR:** (inaudible)

3 **THE COMMISSIONER:** Okay, I may have it,
4 let's see here. No, I don't think so. (Inaudible)

5 **THE REGISTRAR:** (inaudible)

6 **THE COMMISSIONER:** Okay, in any event maybe
7 I can just go on with the monitor then, Madam Clerk.

8 **MR. CALLAGHAN:** It's page 54 of the
9 document.

10 **THE COMMISSIONER:** Okay.

11 **MR. CALLAGHAN:** And we're down at the
12 bottom, Madam Clerk. And then:

13 "After this: -- okay, and then since
14 then, who have you told of these
15 events..."

16 She's got it at the top of the screen.

17 **THE COMMISSIONER:** Okay, yes.

18 **MR. CALLAGHAN:** (Reads)

19 "I'm interested I believe, even a
20 little bit, what you tell David
21 Silmser. John: I'd showed him the
22 letter, this letter, the bottom only.
23 Tim: Okay, did you discuss any of the
24 three events with him, that occurred?
25 John: No, except for sitting down

1 with Bryce, one time at a meeting
2 that we did. Tim: The three of you?
3 Yeah, okay, Tim. Bryce: just for
4 your information, we talked about the
5 first two, we never talked about the
6 third. Tim: The third, the one out
7 in Boundary Road? Bryce: That's
8 right. Okay."

9 Right. So that -- just to finish it off,
10 and you'll recall, sir that there -- the evidence you'd
11 heard was that they met with Mr. Geoffrey some time, and I
12 think it's the 10th of October, but I may have the date
13 wrong.

14 I would have asked -- would have then segued
15 into his contact with Constable David Bough, exhibit 234,
16 and I would have reviewed with him his discussions with
17 Constable Bough, and I think we last day found these
18 notes were out of order, but they start at the bottom of
19 Exhibit -- the first page.

20 **THE COMMISSIONER:** What date did you want to
21 go to?

22 **MR. CALLAGHAN:** I just point out the first
23 page, that he contacted him on the 22nd, and I would have
24 asked him, of course, why did he contact Constable Bough;
25 how it is he came to know of Constable Bough, because he

1 later says some things that we heard that I would have
2 challenged but -- and I would have sort of asked him his
3 views of Constable Bough.

4 And I would have -- again, if we can go to
5 the third page of -- not the next page but the next page,
6 which is what follows on from where we just read. It's out
7 of sequence in the Bates age.

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

9 **MR. CALLAGHAN:** And that he was phoning to
10 say that he would do what he could to help.

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

12 **MR. CALLAGHAN:** I would have taken him to --
13 again, just because we're on the document rather than
14 coming back to it. I would have taken him to the portion a
15 little bit below, Madam Clerk, where he says:

16 "Dave advises that Carson Chisholm told
17 him about another alter boy was going
18 to come forward. He was found two days
19 later on the train tracks. Probably a
20 murder."

21 **THE COMMISSIONER:** "Possibly a murder."

22 **MR. CALLAGHAN:** "Possibly a murder."

23 And I would have talked to him and asked him
24 about his contacts with Carson Chisholm, which I'll get to
25 later, but this is August '95.

1 I would have again pointed out:

2 "Dave advises that John and parents had
3 written a letter to Charlie 25 years
4 ago."

5 Which is part of the -- was referred to earlier.

6 **THE COMMISSIONER:** No. No, no, no. The
7 parents wrote a letter, not to Charlie, because Charlie
8 could be Charlie Greenwell or Charlie MacDonald. But he
9 wrote a letter -- parents wrote.

10 **MR. CALLAGHAN:** Sorry, I misread that.

11 **THE COMMISSIONER:** To the church 25 years
12 ago. That's what it says.

13 **MR. CALLAGHAN:** Sorry.

14 And I sort of filled in the point that I
15 think we heard from John MacDonald.

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

17 **MR. CALLAGHAN:** And I would have gone over
18 to the 12th of September and I would have confirmed his
19 discussion with him, with Constable Bough, on the 12th of
20 September and that he was going to ---

21 **THE COMMISSIONER:** Where do you see that
22 now?

23 **MR. CALLAGHAN:** Right at the top.

24 "The 12th of September, 10:21, telephone
25 call to David Silmsen."

1 **THE COMMISSIONER:** No, it says -- oh, right,
2 down there. Right. Sorry. Okay.

3 **MR. CALLAGHAN:** "To confirm our
4 appointment tomorrow."

5 **THE COMMISSIONER:** "He won't be coming?"

6 **MR. CALLAGHAN:** "He won't be coming.

7 Advises will be going to the press."

8 **THE COMMISSIONER:** Well, no, no, no, going
9 to the papers.

10 **MR. CALLAGHAN:** Sorry, the papers.

11 **THE COMMISSIONER:** Madam Clerk, could you --
12 and madam reporters, make sure that the name is -- at least
13 ---

14 **MR. CALLAGHAN:** Right.

15 I would have gone on to read beyond that.

16 "Charlie Greenwall told him that Dunlop
17 put it on T.V. Carson Chisholm is
18 Dunlop's wife's brother. He's trying
19 to back-up Dunlop. Government where
20 you have to sue in six months. Dave's
21 re-sued them for \$2.8 million."

22 And I would have asked whether that's
23 referable to his lawsuit or to Dunlop's lawsuit. I'm not
24 sure what that's referable to. And then he goes on to talk
25 about settling with ---

1 **THE COMMISSIONER:** Scroll down, please,
2 Madam Clerk.

3 **MR. CALLAGHAN:** They wanted ---

4 **THE COMMISSIONER:** Okay.

5 **MR. CALLAGHAN:** Settle with him, Sean Adams,
6 Leduc, Malcolm MacDonald. So I would have asked him about
7 his discussions and the tenor of his discussions with
8 Constable Bough.

9 I would have -- the purpose obviously was
10 just to review the communications with him and his
11 interactions with the Cornwall Police. But I would have
12 also wanted to ask him about his allegation that he made
13 the other day about the picketing issue, if you recall.

14 **THE COMMISSIONER:** Yes.

15 **MR. CALLAGHAN:** There is no note of that
16 discussion.

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

18 **MR. CALLAGHAN:** I would have gone over it
19 with him what ---

20 **THE COMMISSIONER:** That's the picketing
21 where after Malcolm MacDonald's plea of guilt?

22 **MR. CALLAGHAN:** No.

23 **THE COMMISSIONER:** No?

24 **MR. CALLAGHAN:** See, there are two
25 picketing.

1 **THE COMMISSIONER:** Right.

2 **MR. CALLAGHAN:** And that's one of the things
3 I would have put to him. He had testified that he said he
4 was going to picket the church and that he contacted
5 Constable Bough about picketing the church and that
6 Constable Bough said that he would shoot him if he picketed
7 the church.

8 **THE COMMISSIONER:** Right.

9 **MR. CALLAGHAN:** And I would have put it in
10 the strongest of terms that that didn't happen. And I
11 would have put to him that his evidence was that after that
12 discussion he decided not to picket the church, which is
13 what he indicated to Mr. Engelmann.

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

15 **MR. CALLAGHAN:** And I would have put to him
16 that indeed it had nothing to do with any alleged
17 discussion with Constable Bough, which, again, I would have
18 alleged never took place. It had to do with communications
19 he had between his lawyer and the Diocese lawyer, and I
20 would have taken him first to document 738118.

21 I would have asked him about this
22 discussion. This is a "To Whom it may Concern". It's
23 signed by Father Kevin Maloney.

24 **THE COMMISSIONER:** Okay. So Exhibit -- is
25 it 408, Madam Clerk? It looks like 468.

1 ---EXHIBIT NO./ PIÈCE NO P-408:

2 Letter from Rev. Kevin J. Maloney to St.
3 Columban's Parish - October 18, 1995
4 (738118)

5 **THE COMMISSIONER:** Okay. Go ahead.

6 **MR. CALLAGHAN:** And the date of the
7 communication -- the memo is October 18th. It says:

8 "Telephone call received on Monday
9 October 16th, 1995 at approximately
10 10:30 a.m. Phone call answered by
11 Father Rory MacDonald. The caller
12 identified himself as David Silmser.
13 He informed Father Rory that he would
14 be picketing St. Columban's Church on
15 the following weekends. David was
16 polite and non-confrontational. He
17 stated that he just wanted us to know
18 that would be happening."

19 And I would have confirmed whether that
20 discussion took place.

21 And then I would have taken him to document
22 738119.

23 **THE COMMISSIONER:** Do you know how much
24 longer you'll be, sir?

25 **MR. CALLAGHAN:** Forty-five (45) minutes.

1 **THE COMMISSIONER:** Okay.

2 Exhibit 409 is a letter to Bryce Geoffrey
3 dated October 18th, 1995 from David Sherriff-Scott.

4 **---EXHIBIT NO./ PIÈCE NO P-409:**

5 Letter from David Sherriff-Scott to Bryce V.
6 Geoffrey - October 18, 1995 (738119)

7 **MR. CALLAGHAN:** And I would have put to him
8 the letter which said:

9 "I'm advised by the Reverend Gordon
10 Brian that your client called the
11 Diocese on October 16th, '95. Reverend
12 Brian was informed that your client
13 intends to start picketing in front of
14 St. Columban's Church every weekend
15 starting the weekend commencing October
16 20th, '95. I'm sure you can appreciate
17 that the kind of activity which your
18 client is contemplating will not be
19 productive to the resolution of matters
20 between him and our client. Other
21 potential implications of his intended
22 actions are of course known to you."

23 Over to the next page:

24 "I understand that you have been
25 speaking with your client and are

1 attempting to dissuade him from the
2 course of action he is contemplating.
3 Would you let me know what his
4 intentions are before the weekend, if
5 you can."

6 Then I would have taken him to document
7 738123, and this is ---

8 **THE COMMISSIONER:** Thank you. Exhibit 410.
9 It's a letter dated October 19th, 1995 addressed to a
10 variety of lawyers from Bryce Geoffrey; amongst others
11 Peter Annis of your firm -- no, I'm sorry, not your firm.
12 The firm of Scott Neely.

13 **---EXHIBIT NO./ PIÈCE NO P-410:**

14 Letter from Bryce V. Geoffrey to Peter B.
15 Annis, Michael Hebert, Thomas Swabey, Mike
16 Chambers & Denis Power - Oct 19, 1995
17 (738123)

18 **THE COMMISSIONER:** All right.

19 **MR. CALLAGHAN:** And if you can just scroll
20 the screen down a little bit, Madam Clerk.

21 And I would have referred him to the first
22 paragraph:

23 "Further to my recent correspondence,
24 as you may have heard my client had
25 intended to picket outside the St.

1 Columban's Church in Cornwall this
2 coming weekend. Fortunately I have
3 been able to convince him that this
4 would not in any way advance his
5 interests but rather would likely be
6 counterproductive in the circumstances
7 of this case. Although he is currently
8 accepting my advice he is volatile at
9 different times, to say the least."

10 The rest of the letter goes on to talk about
11 a settlement discussion.

12 I would have obviously put to him that the
13 sequence of events was that -- having put to him that the
14 discussion never occurred; that indeed it was as a result
15 of communications between lawyers and his discussion with
16 the lawyers that the picketing did not occur.

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

18 **MR. CALLAGHAN:** And I would have asked were
19 there discussions about it and whether indeed I had the
20 same thought, whether he was confused and he was talking
21 about something else or whether John MacDonald was
22 involved. I would have inquired further.

23 I would have then asked him about his
24 communication with Constable Emma Wilson-King and I would
25 have attempted to have him describe those communications

1 and his reaction to those communications, and this deals
2 with the request not to phone Father Maloney.

3 I would have put to him the notes of
4 Constable Emma Wilson-King, which is document number
5 200063.

6 **THE COMMISSIONER:** These are notes from?

7 **MR. CALLAGHAN:** These are notes of Officer
8 Emma Wilson-King.

9 **THE COMMISSIONER:** Right. And she's an
10 officer with?

11 **MR. CALLAGHAN:** The Cornwall Police Service.

12 And I would have taken him to the fourth
13 page and I would have read him the note:

14 "Call the phone number David Silmser.
15 Informed him who I was. At which time
16 he said 'Is this a fucking joke. Next
17 time you want to speak to me come here
18 and see me.' I asked the address. He
19 said '551 Woodside. I don't give a
20 fuck who you are. I'll be calling the
21 Chief of Police tomorrow and lay a suit
22 against you.' I again tempted to
23 reason with him and he hung up."

24 And I would have asked whether that accords
25 with the discussion -- his recollection of the discussion

1 he had with Emma Wilson-King.

2 **THE COMMISSIONER:** By the way, the exhibit
3 was wrongly described. It should be 410. Right?

4 **THE REGISTRAR:** Four-eleven (411).

5 **THE COMMISSIONER:** Four-eleven (411).

6 Sorry.

7 **---EXHIBIT NO./ PIÈCE NO P-411:**

8 Handwritten Notes of Emma Wilson-King -
9 August 24, 1995 (200063)

10 **MR. CALLAGHAN:** I would have taken him to
11 Exhibit 204.

12 **THE COMMISSIONER:** Okay.

13 **MR. CALLAGHAN:** Which are the notes of John
14 MacDonald, and I would have pointed out the series of notes
15 and they're very faint, I'm afraid, Mr. Commissioner, on
16 the second page.

17 **THE COMMISSIONER:** What part?

18 **MR. CALLAGHAN:** We covered this with Mr.
19 John MacDonald. The note on August 24th, the 8:00 p.m.
20 refers to a discussion that John MacDonald has with Emma
21 Wilson-King.

22 "8:30 - Dave called saying same. Said
23 he was going to call back police
24 station.

25 8:40 - Dave called back. Said that he

1 gave someone shit.

2 8:45 - Left message ..."

3 Which I think it was John MacDonald left the
4 message for Emma Wilson-King.

5 "4:35 - Emma Wilson-King called back.

6 Explains situation. Dave taped."

7 And I had asked John MacDonald, I believe
8 about that and I would have asked Mr. Silmsers whether there
9 was a tape of any of the communications they had with Emma
10 Wilson-King.

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

12 **MR. CALLAGHAN:** And if there is, where is
13 it?

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

15 **MR. CALLAGHAN:** I would have then reviewed
16 Mr. Silmsers' contacts with Mr. Dunlop and Mr. Chisholm. I
17 would have reviewed with him the testimony on January 31st,
18 2007, which is Volume 87 at page 31.

19 Starting with:

20 Mr. Engelmann: "Okay."

21 At line 9.

22 "So Spencerville; are you living in
23 Spencerville in August of 1996?"

24 Mr. Silmsers: "Yes, I am."

25 Mr. Engelmann: "So how was it that

1 this man Carson Chisholm comes to visit you at your home?"

2 Mr. Silmser: "I don't really know how
3 he got there."

4 Mr. Engelmann: "Did he phone you?
5 What happened?"

6 How was this set up?"

7 Mr. Silmser: "I think he just showed
8 up."

9 Mr. Engelmann: "He just showed up?"

10 Mr. Silmser: "I believe so."

11 Mr. Engelmann: "Okay."

12 Mr. Silmser: "But I'm not 100 per cent
13 sure."

14 Mr. Engelmann: "All right.
15 Did you know who he was?"

16 Mr. Silmser: "No."

17 Mr. Engelmann: "All right.
18 Did he come with someone else?"

19 Mr. Silmser: "Perry Dunlop."

20 Mr. Engelmann: "All right.

21 And did you know who he was?"

22 Mr. Silmser: "I don't know if I met
23 Perry before that. I don't think so."

24 Mr. Engelmann: "All right."

25 Mr. Silmser: "I think that was the

1 first time."

2 Mr. Engelmann: "You had heard of him,
3 though, by that time?"

4 Mr. Silmser: "Yes."

5 I would have tried to clarify with Mr.
6 Silmser that indeed communications with Carson Chisholm and
7 perhaps Perry Dunlop had started at least by the summer of
8 1995. I won't take you back but we've already reviewed two
9 notes in the summer of '95; the one of Mr. Abell, that
10 referred to Carson Chisholm and the one of Constable Bough,
11 referring to Carson Chisholm.

12 I would have reviewed with him his
13 interactions with John MacDonald and Carson Chisholm. You
14 will recall that John MacDonald testified that he was
15 introduced to Carson Chisholm by Mr. Silmser and how Carson
16 Chisholm appeared at his home.

17 I would have reviewed ---

18 **THE COMMISSIONER:** How Mr. Chisholm appeared
19 at John MacDonald's home.

20 **MR. CALLAGHAN:** Right.

21 **THE COMMISSIONER:** Yes.

22 **MR. CALLAGHAN:** I would have reviewed that
23 with him and then asked what his involvement was with
24 arranging contact between Mr. Silmser and -- pardon me, Mr.
25 MacDonald and Mr. Chisholm.

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

2 **MR. CALLAGHAN:** I would have enquired
3 further as to what his understanding of the relationship
4 between Mr. Chisholm and Mr. Dunlop and we just reviewed
5 Constable Bough's note that Carson Chisholm was helping
6 Perry Dunlop. It wasn't entirely clear but I would have
7 asked in what capacity and to what end was the statement --
8 what then was Carson Chisholm trying to assist John
9 MacDonald and whether he knew about Carson Chisholm taking
10 the statement and releasing it as was thought by John
11 MacDonald to the press; whether he agreed with that.

12 I would have reviewed with him whether he
13 had contact with Perry Dunlop at this time. We've heard
14 from Mr. MacDonald that he had some contact. He contacted
15 for example, Mr. Dunlop to get the number of Bob Roth, a
16 reporter. We know that Perry Dunlop requested John
17 MacDonald to come by and pick up scrapbooks. I don't know
18 what involvement Mr. Silmsler would have had at that stage,
19 in '95, with those items. There's no record for me to
20 point you to.

21 So I would have inquired. I would have
22 pointed out that he had obviously had dealings with Helen
23 Dunlop earlier, back at least in '93, which I take from --
24 I don't want to put words in their mouth, but I would have
25 suggested that was not a pleasant communication. He wasn't

1 happy about hearing Helen Dunlop. So I would have wanted
2 to further explain. He knew that Carson Chisholm was the
3 brother-in-law and I would have asked how he came in
4 contact again with Carson Chisholm and the Dunlops.

5 I would have taken him to -- oh, and I would
6 have -- we just talked about whether he had any involvement
7 in the rally that John MacDonald spoke of, which he was
8 doing with Carson Chisholm and Mr. Dunlop.

9 I would have taken him to Exhibit 395.

10 **THE COMMISSIONER:** Which is the interview
11 report of Mr. Silmsler, dated August '97.

12 **MR. CALLAGHAN:** Right.

13 I would have taken him to the bottom of that
14 first answer.

15 **THE COMMISSIONER:** This is dealing with
16 death threats. Right?

17 **MR. CALLAGHAN:** Right.

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

19 **MR. CALLAGHAN:** I would have taken him to
20 the bottom where he says:

21 "Perry told me the threats..."

22 And these are death threats on the Dunlops,
23 not the Seguin matter.

24 "... told me the threats on numerous
25 occasions; once in Toronto when we met

1 with our lawyers, Perry's lawyers and
2 mine ..."

3 **THE COMMISSIONER:** I'm sorry. I'm sorry to
4 interrupt you, but didn't the threats also concern him, as
5 well? It said:

6 "The threat consisted of taking my life
7 and Perry Dunlop's life."

8 **MR. CALLAGHAN:** Yes. Well, I would have to
9 double check as to whether that was the investigative issue
10 or whether that was his perception. I can't recall.

11 **THE COMMISSIONER:** All I'm saying is I'm
12 responding -- I hear you saying that it didn't have to do
13 with Mr. Silmsler and I'm just perusing this and I'm saying,
14 wait a minute now. It says that.

15 **MR. CALLAGHAN:** We'll leave it to the OPP.
16 I don't know exactly what the investigation was.

17 **THE COMMISSIONER:** In any event, you're
18 saying Perry -- so ---

19 **MR. CALLAGHAN:**

20 "Perry told me of the threats on
21 numerous occasions; once in Toronto when we met with our
22 lawyers, Perry's lawyers and mine."

23 I'm not sure what that's at.

24 "Al, I don't recall his last name,
25 Robichaud. That was about eight months

1 Silmser at 11 a.m."

2 **THE COMMISSIONER:** Okay. Well, first of
3 all, this is -- Mireille is a secretary or support staff at
4 the Crown Attorney's office?

5 **MR. CALLAGHAN:** Yes.

6 **THE COMMISSIONER:** Yes. Okay.

7 **MR. CALLAGHAN:**

8 "Received a second call from Mr.
9 Silmser at 11 a.m. Wanted to leave the
10 message that another victim had been
11 located by a private investigator."

12 And it goes on.

13 I would have asked him whether the private
14 investigator was indeed a reference to Mr. Dunlop.

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

16 **MR. CALLAGHAN:** I would have taken him to
17 Exhibit 287.

18 **THE COMMISSIONER:** These are ---

19 **MR. CALLAGHAN:** Exhibit 287, if my note is
20 right, it should be the interview.

21 **THE COMMISSIONER:** Do you want the document
22 number, Madam Clerk?

23 Exhibit 287, you're on. One one six two
24 eight three (116283). That's not what it's supposed to be
25 though.

1 **MR. CALLAGHAN:** Maybe Mr. Commissioner, I
2 have to get a Bates Page. One second, please.

3 **THE COMMISSIONER:** One zero two five ---

4 **MR. CALLAGHAN:** I have 1102560.

5 **THE COMMISSIONER:** Is that a 6 or an 8?

6 Yes, that's what we need, I think.

7 **MR. CALLAGHAN:** Right.

8 **THE COMMISSIONER:** And what are these?

9 **MR. CALLAGHAN:** These have been identified
10 as notes of -- or almost a statement of Mr. Silmsler, if you
11 go to the seventh page.

12 **THE COMMISSIONER:** Right.

13 "This is a statement true and given
14 freely. My memory of these events. A
15 statement to Carson Chisholm."

16 **MR. CALLAGHAN:** Right. It's a statement to
17 Carson Chisholm.

18 So I would have explored why it is he was
19 giving a statement to Carson Chisholm; what the purpose of
20 the statement was.

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

22 **MR. CALLAGHAN:** I would have queried whether
23 it was in support of the lawsuit of Constable Dunlop. I
24 would have further queried how it was set up, the extent of
25 the relationship, again, which presumably would have been

1 covered.

2 So I would have gone into some detail as to
3 the surrounding circumstances. The content would not have
4 been an enormous issue because it's content we've heard.
5 But I -- why he's giving a statement is of interest.

6 I would have then taken him back to the
7 transcript in Volume 87, page 46. It says at the top:

8 "So when she calls you ..."

9 And we're talking about Helen Dunlop.

10 "... in the fall of 1996 had you ever
11 met her?"

12 Mr. Silmser: "No."

13 And I obviously would have put to him that
14 presumably he met her at least, at the very least, during
15 the period when she was purportedly hounding him in '93.

16 **THE COMMISSIONER:** Well.

17 **MR. CALLAGHAN:** Well, communicating with him
18 in '93.

19 **THE COMMISSIONER:** There you go.

20 **MR. CALLAGHAN:** I'm not sure he would have
21 disagreed with it though, but ---

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

23 **MR. CALLAGHAN:** --- I hear what you're
24 saying.

25 Mr. Engelmann: "All right."

1 So she introduced herself on the
2 phone?"

3 Mr. Silmsler: "That's correct."

4 Mr. Engelmann: "And why does she want
5 you to go to Toronto?"

6 Mr. Silmsler:

7 "She said that Perry is doing an
8 investigation on sexual abuse cases,
9 and you wanted to take a statement from
10 me. I refused the first couple of
11 times she phoned. I really didn't want
12 to go but she's kept on insisting and
13 said that they would even pay my train
14 fare down there and my meals and
15 whatever, so I finally agreed to go."

16 And I would have queried further into that
17 communication. I would have asked whether he understood
18 these to be official police investigations; about what he
19 understood Constable Dunlop's role to be and why they were
20 asking him to go to Toronto to see Mr. Dunlop's lawyer.

21 I would have confirmed it was Mr. Bourgeois,
22 I would have confirmed that he understood Mr. Bourgeois was
23 a civil lawyer for a civil lawsuit who he was meeting with.

24 I would have taken him and asked him whether
25 notes were taken at that meeting by Mr. Bourgeois. I

1 would have asked whether notes were taken by anybody other
2 than Mr. Dunlop. I would have asked him what other
3 discussion took place with Mr. Bourgeois and Mr. Dunlop. I
4 would have asked whether anybody -- whether they told him
5 it was in furtherance of the lawsuit. So I would have
6 canvassed at some length about it. I would have tried to
7 clarify the exact date he went down. There is a statement
8 that he does give Mr. Dunlop on November 30th, 1996.

9 Oh sorry, Exhibit 288. And the statement
10 here is relating to Mr. Lalonde and I would have asked
11 further questions. He had indicated during his testimony
12 that he wasn't aware that that would come up, because he
13 didn't know how Mr. Dunlop knew about it, and so I would
14 have queried further one of their discussions and whether
15 that was the purpose of the meeting.

16 I would have, obviously, queried further as
17 to what other further discussions -- ongoing discussions --
18 he was having with Mr. Dunlop.

19 I would have taken him to Exhibit 289 and I
20 would have asked him about further follow-up meetings with
21 Mr. Dunlop and Mr. Chisholm and, in particular, this
22 consent form and what the purpose of providing this to Mr.
23 Dunlop and Mr. Chisholm.

24 I would have asked, during the course of his
25 discussions, either in any of this period, whether he had

1 come in contact with Mr. Leroux or Mr. Don LaBelle or
2 indeed if he came into contact with others who might have
3 discussed the goings-on leading to the situation in
4 Cornwall.

5 **MR. CALLAGHAN:** I would have also taken him
6 to Bates Page 7059707, and these are notes of Constable
7 Dunlop. They're a series of notes, Mr. Commissioner. We
8 have been entering them as they come up, on a page-by-page
9 basis because of the fact that there are names throughout
10 them.

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

12 **MR. CALLAGHAN:** But anyway ---

13 **THE COMMISSIONER:** Sorry, is this a new
14 exhibit now?

15 **MR. CALLAGHAN:** This would be a new exhibit.
16 I don't believe this particular page has been entered.

17 I would have pointed out the May 6, '97
18 entry ---

19 **THE COMMISSIONER:** Well, but just a second,
20 just a second. We're not ---

21 **MR. CALLAGHAN:** Yes, the one you have on
22 screen is the right page.

23 **THE COMMISSIONER:** So that's Exhibit number
24 412?

25 **THE REGISTRAR:** Four-twelve (412).

1 **THE COMMISSIONER:** All right.

2 **THE REGISTRAR:** We don't have that one.

3 **MR. CALLAGHAN:** The document number for this
4 is 716120, which is a large bundle.

5 **THE REGISTRAR:** Yes, I'll mark that, thank
6 you.

7 **THE COMMISSIONER:** It might be time for a
8 break.

9 **MR. CALLAGHAN:** Sure.

10 **THE COMMISSIONER:** Let's take the morning
11 break.

12 **THE REGISTRAR:** Order; all rise. À l'ordre;
13 veuillez vous lever. The hearing will resume at 11:15.

14 --- Upon recessing at 10:56 a.m. /

15 L'audience est suspendue à 10h56

16 --- Upon resuming at 11:17 a.m. /

17 L'audience est reprise à 11h17

18 **THE REGISTRAR:** The hearing has now resumed.
19 Please be seated. Veuillez vous assoir.

20 **MR. CALLAGHAN:** Shall I wait?

21 Okay, I could just get away with something.
22 I can't get away with anything around here.

23 **THE COMMISSIONER:** No, I don't think you'll
24 get away with anything, Mr. Callaghan.

25 Sir, could you go and seek out Mr.

1 Engelmann, please? You don't mind? Thank you. I thought
2 for sure he had left and come back.

3 Well, is there anything else we want to talk
4 about Mr. Engelmann while he's away?

5 (LAUGHTER/RIRES)

6 MR. CALLAGHAN: Well, you know, I was going
7 to say, this morning, if it isn't too out of place -- I was
8 at a breakfast for the Children's Treatment Centre ---

9 THE COMMISSIONER: M'hm.

10 MR. CALLAGHAN: That we've heard a lot
11 about.

12 THE COMMISSIONER: M'hm.

13 MR. CALLAGHAN: And I got to tell you, this
14 community, the support that that event got -- and I will
15 urge all my fellow lawyers to support their Bikeathon
16 which, as we all know ---

17 THE COMMISSIONER: M'hm.

18 MR. CALLAGHAN: --- this is locally funded,
19 government does not fund ---

20 THE COMMISSIONER: M'hm.

21 MR. CALLAGHAN: --- so I hope the -- my
22 friends way to my rear will dig into their pockets and help
23 because, you know, it's part of what we're here to do.

24 THE COMMISSIONER: Yeah. M'hm.

25 MR. CALLAGHAN: So, that was good use of

1 time while Mr. Engelmann came back.

2 I was just going to briefly take you to a
3 note of Constable Dunlop's, which I believe you have, and
4 it's of May 6 '97. And I would have ---

5 **THE COMMISSIONER:** And -- well ---

6 **MR. CALLAGHAN:** --- sought a little
7 clarification ---

8 **THE COMMISSIONER:** Just a second, now.

9 We couldn't find this. This is a note from
10 Officer Dunlop?

11 **MR. CALLAGHAN:** It's in his notebook. It
12 was -- the bundle of notebooks, and I had indicated earlier
13 that we put -- we were putting them in one at a time so as
14 to avoid any confidentiality issues with other ---

15 **THE COMMISSIONER:** Yes.

16 **MR. CALLAGHAN:** And all I was going to ---
17 point out to him was, that in this note, the references --
18 and I can only read it, it says:

19 "DS stop. Stated he told CPS about
20 Marcel Lalonde in '92, '93, first saw
21 Heidi."

22 And I would have asked him about that
23 because, of course, his testimony was he didn't tell the
24 CPS, he told the CAS, and whether Mr. Dunlop got it wrong
25 or whether there's something else I don't know, but I would

1 have put that to him.

2 **THE COMMISSIONER:** All right, so this is
3 Exhibit number 412.

4 **--- EXHIBIT NO./PIÈCE NO P-412:**

5 Excerpt from Notes of
6 Constable Dunlop - May 6, 1999 (716120)

7 **MR. CALLAGHAN:** I would have asked him, sir,
8 whether he was aware of the material that Mr. Dunlop had
9 sent in December '96 to Chief Fantino and whether he was
10 aware of that. I would have asked him how much he was
11 aware, again, about the allegations and the lawsuit. And I
12 would have taken him to his preliminary inquiry transcript.

13 **THE COMMISSIONER:** Well it wasn't his
14 preliminary inquiry, but...

15 **MR. CALLAGHAN:** He -- oh, sorry. No, the
16 one that -- involving Charlie MacDonald. His testimony at
17 the preliminary inquiry may -- barely stated.

18 And that is -- sorry, I should have been
19 clearer, it's Exhibit 291.

20 **THE COMMISSIONER:** Actually, I think it's
21 290.

22 **MR. CALLAGHAN:** I'm sorry, I'm at the
23 September 10th date.

24 **THE COMMISSIONER:** Okay.

25 **MR. CALLAGHAN:** And I would have put to him

1 that, as I understand it, Mr. Dunlop actually attended at
2 the preliminary inquiry, and I would have put to him page
3 29 and a question at line 15:

4 "...because the history was there was
5 an investigation by Cornwall?

6 Answer:

7 "Yes."

8 Question:

9 "No charges resulted; we'll come to
10 why?"

11 Answer:

12 "Because -- because of the cover up
13 with the Crown Attorney. Did you know
14 that he's under investigation right now
15 because of the cover-up?"

16 Question:

17 "Tell us about that."

18 Answer:

19 "The Crown Attorney, as far as I know,
20 is a cousin of Malcolm MacDonald and he
21 had a meeting on Stanley Island with
22 Malcolm MacDonald, Father Charles
23 MacDonald, Ken Seguin and the whole
24 bunch of them. And they decided that
25 they were just going to pay me the

1 \$32,000 and drop all, not bring any
2 charges, that's what I heard."

3 Question:

4 "Which Crown attorney is that Mr.
5 Silmser?"

6 Answer:

7 "Murray MacDonald."

8 Question:

9 "Current Crown Attorney?"

10 Answer:

11 "Yes."

12 Question:

13 "Part of the cover-up?"

14 Answer:

15 "Yes, as far as I know."

16 Question:

17 "As far as you know?"

18 Answer:

19 "Yes."

20 Question:

21 "Did you witness this meeting?"

22 Answer:

23 "I had people that know there was a
24 meeting."

25 Question:

1 "Who's that?"

2 Answer:

3 "Perry Dunlop."

4 Question:

5 "Was he at the meeting?"

6 Answer:

7 "You'd have to ask him, I don't know."

8 So I would have asked him about the
9 information he was receiving from Perry Dunlop, and I would
10 have asked him whether he was aware of where Perry Dunlop
11 was getting his information, and whether it is indeed --
12 whether it was from Ron Leroux. Then I would have asked
13 him further questions relating to why he would raise it in
14 the middle of the preliminary.

15 So I would have put those series of
16 questions to him.

17 The last area I would have touched upon is,
18 I would have touched upon the evidence, you know, recall
19 when I examined Mr. John MacDonald. There was a note of
20 Mr. John MacDonald's wherein he had indicated in the note
21 that David Silmser had advised him that he had told, or
22 that he had reported, the abuse of Father MacDonald to the
23 Children's Aid Society six months before Constable Dunlop,
24 and I would have reviewed that in light of the comments in
25 the transcript of January 30th.

1 And it's page 200.

2 I would have then, at line 14 -- and it
3 starts "Mr. Engelmann: Okay. The first time you were
4 interviewed by Children's Aid that was..." and he says "Mr.
5 Bough".

6 I think that should be corrected. I think
7 it was Mr. Bell.

8 **THE COMMISSIONER:** I don't see where you
9 are.

10 **MR. CALLAGHAN:** Volume 86, page 201. Sorry,
11 I might have the wrong -- okay. And if you can go down,
12 Madam Clerk, a little bit.

13 **THE COMMISSIONER:** So you're saying that the
14 transcript is in error?

15 **MR. CALLAGHAN:** Well, in fact, Mr. Engelmann
16 just whispered to me. He says he believes it's already
17 been corrected. Mr. Bough is Mr. Bell. I mean, it's
18 either a misspoken or it's a mistranscription.

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

20 **MR. CALLAGHAN:** Mr. Silmsen:

21 "That's right."

22 Question:

23 "Have you looked at the document
24 already today, the November 2nd, '93?"

25 Mr. Silmsen:

1 "That's right."

2 "And so you and Mr. Abel had an
3 agreement about..."

4 **THE COMMISSIONER:** Had an argument.

5 **MR. CALLAGHAN:** "...had an argument when
6 about that date was?"

7 Mr. Silmser:

8 "That's correct."

9 Was there something else? You comment on the notes.

10 Sliding under the door. It was a certain date.

11 Mr. Engelmann:

12 "All right."

13 Mr. Silmser:

14 "Then I went to Children's Aid. It was
15 either -- it was before or after my
16 statement at the T.V. I believe."

17 Mr. Engelmann:

18 "All right. We know what happened in
19 January of '94."

20 Mr. Silmser:

21 "I see."

22 I'm being advised there is an earlier
23 portion I was to read at page 200.

24 **THE COMMISSIONER:** Mr. Engelmann.

25 **MR. ENGELMANN:** Just to clarify the record,

1 and I know Mr. Carriere brought this to my attention. I
2 think I brought it to the reporters' attention at the time.
3 But that error repeats itself, the reference to Mr. Bough
4 and it should be Mr. Bell, Mr. Greg Bell. And it's on
5 pages 201, 202 and 203 of the transcript, and I think we
6 caught some of the errata earlier. Volume 86.

7 **MR. CALLAGHAN:** Thank you.

8 If I can go back to page 200. I apologize,
9 Mr. Commissioner, my notes were out of order.

10 They're talking about a meeting between John
11 MacDonald and Mr. Abel and Mr. Engelmann starts at the top
12 of page 200:

13 "All right."

14 Mr. Silmser:

15 "It was John MacDonald's meeting
16 basically. John wanted to talk to
17 him."

18 Mr. Engelmann:

19 "Yes. What happened at that meeting?"

20 Mr. Silmser:

21 "We sure didn't see eye to eye."

22 Mr. Engelmann:

23 "What happened?"

24 Mr. Silmser:

25 "There was an argument about something,

1 about when I went to see Children's Aid
2 in the first place and they made a big
3 deal about the date and I said 'Well, I
4 don't understand. I think it was this
5 date. I want to see.' Well, he had
6 one of his employees slide a piece of
7 paper under the door."

8 Mr. Engelmann:

9 "This was during your meeting?"

10 Mr. Silmser:

11 "Yes. It was like a big top secret
12 thing and I just couldn't believe it.
13 He was just -- I don't know. He might
14 have had his reasons but he just looked
15 so stupid and so I kind of seen the
16 character he was and I just didn't like
17 him and I walked out with bad
18 feelings."

19 Mr. Engelmann:

20 "Well, let me just understand the
21 context. You went to a meeting that
22 John MacDonald was having with Richard
23 Abel. Right?"

24 Answer:

25 Mr. Silmser:

1 "Yes."

2 Mr. Engelmann:

3 "If I remember correctly, and you were
4 there, what, to provide him with some
5 support or was there another purpose?"

6 Mr. Silmsner:

7 "I can't remember now."

8 Mr. Engelmann:

9 "All right. And why is that? You and
10 Mr. Abel started to have a discussion?

11 Mr. Abel (sic) - Mr. Silmsner:

12 "Because of this all I can remember is
13 because at a certain time I want to see
14 Children's Aid. It was before Perry
15 Dunlop. Something to do with Perry
16 Dunlop anyways."

17 "Okay."

18 And so -- and then Mr. Engelmann goes on to
19 talk, which is what I read about, that the first time he
20 was interviewed was November 2nd, '93.

21 **THE COMMISSIONER:** Can I stop you there.

22 **MR. CALLAGHAN:** All right.

23 **THE COMMISSIONER:** Yes, Madam Reporter will
24 be noting that you said Mr. Abel but it was really Mr.
25 Engelmann.

1 **MR. CALLAGHAN:** Oh, did I? Sorry.

2 **THE COMMISSIONER:** You flipped over a name.

3 Do you understand what I'm saying, question
4 and answer, question and answer? I believe he put Mr. Abel
5 in there when it was either Mr. Engelmann or Mr. Silmsen
6 who was speaking. I think it was Mr. Engelmann.

7 **MR. CALLAGHAN:** And I would have taken him
8 back to his evidence at the preliminary inquiry of
9 September 10th, which is Exhibit 291.

10 **THE COMMISSIONER:** Exhibit 291. Right.

11 **MR. CALLAGHAN:** If I can just be given a
12 minute to situate myself, whether it's -- and I hope I said
13 it correctly, Exhibit 290. I think I said 291. My
14 apologies. And it's September 9th I note. On page 72, Mr.
15 Commissioner.

16 And I would have started at line 19:

17 Question:

18 "Do you remember when that interview
19 was?

20 Answer: --- and they're talking about the
21 interview with Mr. Bell and Ms. DeBellis.

22 Answer:

23 "Not exactly, no."

24 Question:

25 "If I suggest to you it was the 2nd of

1 November '93 would you agree with that,
2 accept that?

3 Answer:

4 "No, I wouldn't."

5 Question:

6 "Okay. Well, I'm taking it off the
7 transcript. It's dated."

8 Answer:

9 "But there's a problem there."

10 Question:

11 "What's that?"

12 Answer:

13 "What I feel the Children's Aid Society
14 have, have changed dates in order to
15 protect Perry Dunlop on something. I
16 think I seen him a lot. A lot. It was
17 before that date they were written
18 down. I think the Children's Aid they
19 are involved in this cover-up in
20 Cornwall."

21 Question:

22 "Okay."

23 Answer:

24 "So I wouldn't stand by any of those
25 dates. I wouldn't stand by any of that

1 information from Children's Aid.

2 Question:

3 "Okay. They're part of a cover-up?"

4 Answer:

5 "I believe so."

6 Question:

7 "And they're involved in a cover-up
8 with whom, with Mr. Dunlop?"

9 Answer:

10 "No, no. I think they've covered up
11 some dates so they wouldn't -- they
12 covered up dates because what happened
13 there was I went to see the Children's
14 Aid Society and the Children's Aid
15 Society said that Perry Dunlop went to
16 see them before I did, and I'm saying
17 no, I didn't work that way so they
18 changed dates type of thing. So I
19 don't know why it's just ---

20 Question:

21 "Let's take another try at this. Where
22 is the discrepancy again?"

23 Answer:

24 "The discrepancy's in the dates. I
25 went to see them first, the first

1 meeting."

2 Question:

3 "I'm sorry?"

4 Answer:

5 "The first meeting I had but there's a
6 discrepancy in the dates."

7 And I would have asked whether he indeed
8 went before -- the six months before Perry Dunlop. I would
9 have followed that through.

10 There are other references that he talks
11 about a cover-up. I would have -- I frankly would not have
12 given it any credence but I didn't -- because when you read
13 the transcript it's hard to understand what he's talking
14 about, but I would have wanted to clarify the date in which
15 he went to the Children's Aid Society. And that would have
16 been the conclusion, mercifully.

17 **THE COMMISSIONER:** No. Thank you very much.
18 I think you've taken over -- was it from Mr. Lee who had
19 started at the Inquiry with these time estimates? I think
20 you get the golden star for ---

21 **MR. CALLAGHAN:** I'm sorry. It is very
22 difficult.

23 **THE COMMISSIONER:** It is. It is.

24 All right. Mr. Engelmann.

25 --- SUBMISSIONS ON BEHALF OF MS. BIRRELL OF THE CATHOLIC

1 DISTRICT SCHOOL BOARD BY / REPRÉSENTATIONS DE LA PART DE
2 MS. BIRRELL DE LA COMMISSION SCOLAIRE CATHOLIQUE PAR MR.
3 ENGELMANN:

4 **MR. ENGELMANN:** I'm about to do something
5 very unusual.

6 Ms. Birrell, who is counsel for the Catholic
7 District School Board of Eastern Ontario was unable to be
8 here. She wrote Commission counsel a letter setting out
9 some background as to what she would have done if she would
10 have had the opportunity to cross-examine Mr. Silmser. I
11 spoke to her about it. Submissions, if there were any,
12 have been deleted and she's asked me just to very briefly
13 read into the record what she would have done and I said I
14 would do that for her.

15 **THE COMMISSIONER:** Have other counsel been
16 made aware of this?

17 **MR. ENGELMANN:** I believe so, very
18 informally though. I don't know if anybody has any
19 objections.

20 **THE COMMISSIONER:** Okay. Go ahead.

21 So for the record, this is Mr. Engelmann who
22 is reading but on behalf of Ms. Birrell.

23 **MR. ENGELMANN:** So to speak. I've been
24 asked on occasion to ask questions for counsel and do other
25 things for counsel and I think it's part of the ongoing

1 role we have as Commission counsel.

2 This is a bit of a narrative, like what I
3 received from Mr. Neuberger, and we did not make that an
4 exhibit. So I think it would be inappropriate to make this
5 an exhibit. And I'll just read in as best I can what she
6 would have done.

7 So by way of background, she states the
8 board could have reviewed Mr. Silmsers educational history
9 with the former Stormont-Dundas & Glengarry County Roman
10 Catholic Separate School Board when he attended St. Anne's,
11 St. Columban's and Bishop MacDonell schools and would have
12 asked him to confirm that the last year in attendance at a
13 school within the SDG Separate Board was the '71-'72 school
14 year. Would have asked him to confirm that he left the
15 separate board in '72 to enter the public board system.
16 Would have confirmed with him that he attended CCVS, which
17 is a public school, for the calendar year '72-'73, or the
18 school year '72-'73.

19 With respect, and her next caption is
20 "Allegations of Abuse", and she indicates, and we've heard
21 this from other counsel, that Mr. Silmsers made
22 allegations against one of his former teachers, and had
23 they been provided with the opportunity to cross-examine,
24 the board could have confirmed that in making these
25 allegations, Mr. Silmsers is not alleging that one -- any

1 abuse took place while at school or during any school
2 related activity, and two, that any abuse took place during
3 school hours or on school board property. And she would
4 have referred him to pages 46 and 47 of the transcript of
5 his evidence in-chief on January 29th, 2007 to confirm that.

6 The next caption being "Non-reporting Abuse
7 to the Board". She states -- and would have had him
8 confirm that in his evidence in-chief he did not allege
9 that he had ever reported his allegations of abuse to the
10 board. This is with respect to Marcel Lalonde.

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

12 **MR. ENGELMANN:** The board then says it could
13 have cross-examined Mr. Silmsler and had him confirm that he
14 never reported his allegations of abuse against the teacher
15 to any representative of the Catholic District School Board
16 or any school board official. And to rely upon that they
17 would have relied upon Exhibit 278. I don't think we need
18 to put it on the screen, sir.

19 It's a letter dated July 28th, 2004 from the
20 CAS to Mr. Silmsler wherein it's captured that he advised --
21 he was advised to report allegations against a teacher to
22 "the relevant school board". Which indicates the board
23 would have confirmed that Mr. Silmsler never followed the
24 advice of the CAS or would have asked him whether he
25 followed that advice and tried to confirm that he never

1 reported the allegations to their board.

2 She would have also made a reference to
3 Exhibit 316, and this is an examination for discovery held
4 on December 14th, 2005, at page 221, which is our Bates Page
5 number 7164856 of the transcript. And she wanted to read
6 in a question and answer from Mr. Silmsler under oath.

7 Question:

8 "Did you tell anybody, the police or
9 anybody about the incidents with the
10 grade 8 teacher?"

11 Answer:

12 "I believe I told the Children's Aid
13 Society."

14 Question:

15 "Anybody else?"

16 Answer:

17 "No."

18 Lastly, she indicates had the board been
19 provided with an opportunity to cross-examine, the board
20 could have explored why the allegations against the teacher
21 were not raised with the board, when the witness, meaning
22 Mr. Silmsler, indicated that he had raised allegations
23 against other persons with various institutions.

24 That was essentially what she wanted to
25 cover, by way of confirmation.

1 **THE COMMISSIONER:** Thank you.

2 **MR. ENGELMANN:** So that was the last of the
3 parties that did not have an opportunity to cross-examine
4 Mr. Silmsler when he was here.

5 I don't know if there are any other parties
6 who wish to make any comments or any submissions, but those
7 are the five that didn't have that opportunity and this was
8 the alternative process that all parties agreed to consider
9 and to follow, as I say, while reserving their rights, if
10 they were dissatisfied with the process to take some
11 action. Obviously sir, you did the same.

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

13 **MR. ENGELMANN:** I don't know if there's
14 anyone else who has any further comments with respect to --
15 maybe I should stand down for a minute and make sure. And
16 then I'll just comment briefly on the Commission's role.

17 **THE COMMISSIONER:** I don't see anybody
18 rushing here.

19 **MR. ENGELMANN:** Sir, there are a number of
20 things that have arisen during the course of this
21 alternative process. As Commission counsel, rather than
22 try and engage in that process, I think more properly there
23 are a number of issues that have arisen that Commission
24 counsel will be covering with witnesses as we move into the
25 institutional response stage of Phase 1 of this Hearing.

1 So I will not attempt to suggest what I
2 would have done by way of re-examination.

3 I should also point out that I received an
4 email from Mr. Culic, who is Mr. Silmser's lawyer.

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

6 **MR. ENGELMANN:** He was, of course, advised
7 of your decision to allow him to participate in this
8 process and he indicated to me in an email yesterday that
9 his schedule did not permit him to be here. So the offer
10 was made. He indicated to us that he was otherwise
11 occupied and couldn't be here.

12 So I think that concludes then, this aspect
13 of the evidence of David Silmser and the alternative
14 process that we've engaged in.

15 **THE COMMISSIONER:** All right.

16 Thank you.

17 **MR. ENGELMANN:** Sir, then the last thing
18 that has been planned for today is an all-counsel meeting
19 with counsel for all the parties.

20 We will then be back here on the record with
21 the parties next Thursday, that is the -- I believe it's
22 the 26th of April. We had indicated to the parties that we
23 wanted to at that time, go through an overview of
24 documentary evidence for a witness who has a moniker here.
25 As well, I believe there was a report that you were going

1 to be receiving from Mr. Lee at that time.

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

3 All right. So why don't we adjourn to next
4 Thursday at 10:00. We'll make it a 10:00 start.

5 We'll leave it at that for now.

6 Thank you.

7 **MR. ENGELMANN:** Thank you.

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

10 This Hearing is adjourned until Thursday,
11 April 26th at 10:00 a.m.

12 --- Upon adjourning at 11:42 p.m./

13 L'audience est ajournée à 11h42

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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-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Sean Prouse, CVR-CM