

**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 106

Held at :

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

Thursday, April 26, 2007

Tenue à:

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

Jeudi, le 26 avril 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Louise Mongeon	Registrar
Mr. Peter Manderville	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Gina Saccoccio Brannan, Q.C.	
Mr. David Rose	Ontario Ministry of Community
Mr. Joe Neuberger	and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Steven Canto	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. Giuseppe Cipriano	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association

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1 --- Upon commencing at 10:03 a.m./

2 L'audience débute à 10h03

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. Good morning.
10 Mr. Engelmann, how are you doing today?

11 **MR. ENGELMANN:** Good morning, Mr.
12 Commissioner.

13 This morning we have three matters to deal
14 with.

15 Firstly, a report from Mr. Lee on the
16 affidavits that you asked him to report back on. These are
17 the affidavits that were filed in support of the Victims
18 Group's application for standing and funding.

19 Secondly, we have an overview of documentary
20 evidence of an individual who has a moniker here in these
21 proceedings, and the moniker is C-3.

22 And thirdly, there is an issue that was
23 brought to my attention yesterday by counsel for the OPP.
24 Ms. Brandon is here to speak to that and it deals with a
25 Freedom of Information request that's been made to the OPP

1 with respect to, I believe, documents that are also
2 documents that have been produced to this Commission of
3 Inquiry.

4 **THE COMMISSIONER:** All right.

5 **MR. ENGELMANN:** So those are three matters
6 for this morning.

7 I also wanted to mention, and I forgot to at
8 the all counsel meeting yesterday, that there are some
9 dates that will be cancelled by the Commission. Those are
10 May 16th and 17th and June the 7th, and I know I had some
11 discussions with some counsel about a couple of those
12 dates.

13 But May 16th, 17th and June 7th, I will be
14 speaking to counsel before people leave today about the
15 possibility of picking up a couple of days in June and I
16 want to leave some dates with them. So I want to announce
17 that for the record, but hopefully we will be able to pick
18 up a couple of days as well.

19 **THE COMMISSIONER:** Good.

20 **MR. ENGELMANN:** So, I think I'll just turn
21 things over to Mr. Lee then so that he can give us his
22 report.

23 **THE COMMISSIONER:** Thank you.

24 Mr. Lee?

25 **MR. LEE:** Good morning sir.

1 **THE COMMISSIONER:** Good morning.

2 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:**

3 **MR. LEE:** As you know I am here pursuant to
4 an order you made, to advise you of the status of affidavit
5 reviews that we've been conducting for about the last
6 month.

7 To give you some background, the Victims
8 Group initially, when we were in contact with the
9 Commission at the beginning, well before the Inquiry really
10 -- prior to the standing and funding phase, we indicated
11 that the Victims Group would be comprised of 48
12 individuals, all of whom were victims of abuse in Cornwall
13 and who had some interest in the Inquiry.

14 In the end, however, only 44 affidavits were
15 sworn. Three individuals of the 48 had indicated their
16 intention to join the Victims Group and swear an affidavit
17 and in the end, did not do that, and advised us that they
18 did not wish to be part of the Victims Group.

19 Another original member of the Victims Group
20 did swear an affidavit and it was filed with our
21 application for standing and funding, is no longer
22 represented by the firm. We've been unable to review his
23 affidavit with him.

24 **THE COMMISSIONER:** I am sorry, say that
25 again.

1 **MR. LEE:** We've been unable to review his
2 affidavit with him.

3 **THE COMMISSIONER:** Why is that?

4 **MR. LEE:** To be perfectly frank with you, he
5 will no longer take our calls; he'll no longer respond to
6 our letters. We've been advised not to contact him. He is
7 now represented by other counsel and we're hopeful that
8 they'll be able to review the affidavit with him.

9 **THE COMMISSIONER:** Have you sent the
10 affidavit to the other counsel?

11 **MR. LEE:** We have not yet. I am still
12 waiting for word on exactly on who we should be sending
13 that to. We've having -- we've made efforts and I expect
14 it's going to be resolved soon.

15 Of the 44 that we do currently represent, we
16 have now contacted and been able to review all but seven of
17 those. The remaining seven, we have made efforts
18 consisting of at least, in all seven cases, two letters
19 enclosing the affidavit and asking them to contact us and a
20 minimum of three telephone calls to each. We have not
21 heard back from any of them. Our efforts obviously will
22 continue in that regard.

23 So at this point, out of the 44 affidavits,
24 we have reviewed 37 of them.

25 I am in your hands, therefore, whether or

1 not you want a partial report at this time or whether you
2 want us to continue with the seven and bring you a full
3 report at the end.

4 **THE COMMISSIONER:** No, we'll deal with the
5 partial report now.

6 **MR. LEE:** Certainly.

7 As you know, the affidavits that we're
8 dealing with were sworn by dozens of victims of abuse in
9 late 2005, which is the time that the standing and funding
10 applications were being heard at this Inquiry. All of
11 these were sworn in support of the Victims Group
12 application for standing and funding. As such, they were
13 intended to identify the affiants as victims of abuse in
14 Cornwall or the surrounding areas who were interested in
15 participating in this Inquiry with full standing and
16 funding as a party.

17 Given the request for funding, the
18 affidavits not only identified the affiants as victims of
19 abuse, but also briefly provided some overview of their
20 economic situation to justify the funding request.

21 As you know, the affidavits were not
22 intended to be a comprehensive statement of facts or an
23 outline of a line history or anything along those lines,
24 and were not intended to serve any purpose beyond the
25 standing and funding phase.

1 So it's clear to anybody who may be
2 following along, these issues have now become relevant
3 because two witnesses at this Inquiry during Phase 1 have
4 indicated during their testimony that their affidavits
5 contain errors.

6 Most recently, a witness who is known by
7 moniker C-10, appeared here and indicated that his
8 affidavit contained a serious error and that was that
9 Father Charles MacDonald was identified in that affidavit
10 as having been an abuser of C-10 when in fact he had not
11 abused him. C-10 -- a letter was sent to the Commission
12 and counsel explaining that and C-10 also during his
13 testimony clarified and explained that, in fact, he was not
14 abused by Charles MacDonald. C-10 went on to explain that
15 he simply did not read the affidavit before signing it and
16 he didn't notice the error.

17 Certain parties raised issues prior to C-10
18 coming to testify here with respect to the errors. There
19 were some discussion of whether he would be called to
20 testify. You agreed that he should be called and he
21 appeared here. His affidavit, as you recall, was then put
22 to him during examination-in-chief by Commission counsel.
23 He was also cross-examined on it.

24 Following that, you ordered the Victims
25 Group to review all of the affidavits filed in support of

1 standing and funding and to report back to you within 30
2 days and today was identified by Mr. Engelmann as the day
3 that I should make that report.

4 I'd like to briefly explain to you the
5 review process that we've undertaken since your order.

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

7 **MR. LEE:** The day after your order was
8 issued, every one of our clients was sent a letter from us
9 that detailed your order, explaining the importance of it
10 and enclosed a copy of their affidavit. The affiant was
11 asked to review his or her affidavit on his own, or her
12 own, and to then contact one of two law clerks at our firm
13 to set up an appointment to have the affidavit reviewed
14 with one of three lawyers at our firm who were made
15 available for this process.

16 I can tell you that the review process began
17 almost immediately upon receipt of these letters. Some
18 clients opened the letter, reviewed the affidavit and
19 called us the same day. Others obviously took a little bit
20 more time.

21 You'll recall that you ordered that this
22 work was to be carried out by my firm at no cost to the
23 province or to any of our clients and we've complied with
24 that order. We have kept track of the time spent on the
25 task however and I can tell you that it was considerable.

1 As noted, two law clerks and three lawyers were assigned
2 the task. Affidavits have been reviewed during regular
3 business hours, on weekends, during the evenings, at
4 whatever time was available to try as best we could to
5 comply with your order and the timeline you set.

6 As I outlined at the start, we've reached
7 all but seven of our clients and I can tell you that we've
8 made our best efforts to contact each and everyone of them.
9 Many of them have proved extremely difficult to reach.

10 It's important to note at that this time
11 that our review -- the majority of these affidavits were
12 sworn on October 18th, 2005. Others were not sworn on that
13 date but were sworn in and around that time.

14 As I have explained, most of our clients
15 live in or around Cornwall and were able to travel to
16 Cornwall and meet with us. Others weren't. Some were
17 living in southwestern Ontario, some were living in Ottawa,
18 others Kingston, along those lines, and went to a city hall
19 or whatever it might be to have them sworn. But it was all
20 around October of 2005.

21 So, during our review process, we keyed in
22 on whether these statements set out in the affidavits were
23 true to the best of their knowledge on the date that the
24 affidavit was sworn. And the reason that's important is,
25 as an example, perhaps the easiest example, many of the

1 affidavits state that the affiant was not receiving
2 counselling or treatment at the time or was receiving
3 limited treatment, was dissatisfied with the options.

4 This Inquiry thankfully has changed that in
5 the minds of many of my clients who are now receiving
6 counselling that they feel is perfectly sufficient and
7 they're quite pleased with the level of choices that they
8 have.

9 Given that these were sworn during the
10 standing and funding phase and for that purpose, our
11 concern was not whether they're satisfied with funding now
12 or with counselling now, but at the time of the affidavit
13 if they swore to the fact they were not receiving
14 counselling, were not satisfied, was that true at the time.
15 So as I said, our focus was on the date of that affidavit.

16 All that being said, I can update you on the
17 results of our review so far.

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

19 **MR. LEE:** And I should say at this point
20 that my understanding is that these affidavits on their own
21 aren't going to inform your conclusions or recommendations
22 in this phase of the Inquiry. My position is, in the event
23 that a Party wishes to take the position that one of these
24 affidavits is relevant to the evidentiary phase for some
25 reason, that the affiant should be cross-examined on it

1 during their testimony here as C-10 and Mr. Renshaw were
2 for example. My presentation today obviously, in my
3 submission, is not evidence of, should come from witnesses.

4 I can tell you that, other than C-10 and
5 Robert Renshaw's affidavit, we have identified affidavits
6 that contain errors. I can report to you that none of the
7 errors are in any way close to as serious as the errors in
8 C-10's affidavit. His was thankfully an anomaly. None of
9 the affidavits I am about to speak to contain improperly
10 named perpetrators of abuse. None of the errors result in
11 one of the affiants not being a victim of abuse. And none
12 of the errors pertaining to an affiant's financial
13 situation, in my submission, would have in any way altered
14 your decision with respect to funding.

15 So to start, we have, given that we were
16 obviously very carefully going over these affidavits with
17 our clients, various typographical and clerical errors were
18 identified. As an example, names that have been
19 misspelled. An easy example I can give you is that one of
20 the affiants alleges abuse at the hands of a Father
21 Lefebvre. The affidavit has his name being spelled L-E-F-
22 E-V-B-R-E. In fact, it should be the "B" before the "V".
23 Things along those lines. I'm not going to spend your time
24 going through each of these clerical type errors.

25 **THE COMMISSIONER:** It's funny though that,

1 let's assume that there was a Father Lefebvre who spelled
2 his name with the "B" and "V", he might have not thought
3 that inconsequential.

4 **MR. LEE:** Thankfully in that case, sir, I
5 can tell you that the Father's first name was included as
6 well.

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

8 **MR. LEE:** And the other thing I can tell you
9 of that particular affidavit is that the affiant is a
10 litigant. So I mean, in that particular case -- I
11 understand your concern and I understand your point
12 certainly, but in that particular case, the concern isn't
13 as serious.

14 There's one affidavit that I would
15 specifically like to bring you to, sir.

16 **THE COMMISSIONER:** Yes.

17 **MR. LEE:** And the reason for that is I think
18 it requires some explanation.

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

20 **MR. LEE:** The affiant's name is Pierre
21 Levert. I don't know if Madam Clerk has the ability to put
22 these on the screen or not. There is one very short
23 paragraph that I could certainly read aloud if you'd like
24 but ---

25 **THE REGISTRAR:** Application for Standing?

1 **MR. LEE:** It would be in our Application for
2 Standing. I believe it's broken into two volumes. It
3 would likely be at the end of the first volume if I had to
4 guess. They appear in alphabetical order all in two large
5 documents.

6 Pierre Levert, L-E-V-E-R-T.

7 If you can scroll down to paragraph 2
8 please. Well, possibly if you can go to, I presume page 6
9 of this electronic document. You'll notice that this
10 affidavit is not sworn.

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

12 **MR. LEE:** You'll recall that at the time of
13 the Standing and Funding Application, my colleague Rob
14 Talach appeared here to argue our case before you. He
15 explained at that time that a few of the affidavits had not
16 been sworn. The affiant or the proposed affiant had
17 indicated to us that he was interested in swearing and just
18 for logistical reasons, I presume, he wasn't physically
19 able to sign them. You explained your concerns at the time
20 about those being submitted at all, but you didn't order
21 them removed from the application. So even though this
22 application wasn't sworn -- or this affidavit rather -- I
23 want to explain the error in the unsigned document because
24 I can presume that my friends behind me would have reviewed
25 these affidavits in preparing for the Inquiry with

1 particular reference to their clients.

2 If I can take you to paragraph 2 of this
3 affidavit. It reads:

4 "In or around 1953, I was sexually
5 abused by Brother George Edmond of St.
6 Joseph's Training School. This abuse
7 continued for three or four months."

8 As you know, St. Joseph's Training School
9 was a government institution located in Alfred, Ontario.
10 As it states there, it was a training school. The horrors
11 of that particular institution are well known by now. The
12 problem with this affidavit is that Mr. Levert did not
13 attend St. Joseph's Training School. He attended St.
14 Joseph's Elementary School in Alexandria. The importance
15 of that error, therefore, is obviously that -- well,
16 perhaps not obviously -- is that St. Joseph's Training
17 School has been considered to be outside the mandate of
18 this Inquiry. We are not looking at what happened at that
19 school. St. Joseph's Elementary School in Alexandria on
20 the other hand, would fall within the mandate of this
21 Inquiry. There are still some issues with Mr. Levert, in
22 particular the timeframe of the abuse may not be something
23 we are looking at, but regardless, on its face, it's
24 something that should be noticed, or noted rather.

25 Given the number of people in this area of

1 the country that were involved with St. Joseph's Training
2 School, a number of our clients in particular who were, I
3 can guess that it would not have been difficult for this
4 mistake to have been made. Mr. Levert likely advised --
5 and I'm guessing here that ---

6 **THE COMMISSIONER:** No, no. No, no. I don't
7 want you to guess.

8 The fact is, that this document contains an
9 important error.

10 **MR. LEE:** It does.

11 **THE COMMISSIONER:** And so we can waltz
12 around as to what kind of resources we have and how
13 difficult it is to get to the clients, but you know, we are
14 dealing with an affidavit. We are dealing with a law firm
15 that purports to act in the best interests of these people,
16 and we have people that are swearing affidavits. So, no, I
17 don't want any guesswork.

18 **MR. LEE:** I don't -- obviously, I have no
19 intention of arguing with you. An error is an error. I
20 completely agree and I'm not trying to play games. I think
21 I have to take some issue with your statement that we
22 purport to act in the best interests of our clients. We do
23 our best; I do my best. I can speak for myself at least to
24 act in the best interests of my clients.

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

1 **MR. LEE:** There was no deceit involved here.
2 There was no -- nobody at our firm and none of our clients
3 intentionally filed an affidavit that had an error in it
4 with the intention of misleading this Inquiry or misleading
5 you.

6 **THE COMMISSIONER:** No, that's not my point.

7 **MR. LEE:** And ---

8 **THE COMMISSIONER:** My point is, sir, that in
9 this Inquiry, the biggest thing that we've had to fight
10 with is misunderstandings, miscommunication, innuendos and
11 that kind of thing. I think we've heard about how some of
12 the affidavits were taken, and I think this without -- and
13 you are right -- I think we should take it away from the
14 specific, but the general principle is, that in this
15 Inquiry, if people are going to say things, write things
16 down, and the people who are receiving that information
17 have a standard of care. That standard of care is that we
18 make sure that what's in the document is correct.

19 **MR. LEE:** Given what has arisen, given the
20 errors we've discovered, given the fact that the first
21 affidavit, when it was discovered to have an error and then
22 a second and now, we've discovered another here ---

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

24 **MR. LEE:** --- clearly there is a lot of
25 hindsight going on here within the firm, in my mind, of

1 looking back on what we could have done. At the time these
2 affidavits were sworn, sir, we had virtually no
3 relationship with the majority of these people. Some we
4 represented, others we met for the first time when we came
5 up. The ---

6 **THE COMMISSIONER:** Does that lessen your
7 duty of care? Sir ---

8 **MR. LEE:** No, sorry.

9 **THE COMMISSIONER:** I'm quite willing to --
10 all I want to do today in this exercise is number one, to
11 bring home to your clients and to your firm that this type
12 of thing cannot happen again.

13 Number two -- and that's just a minor point
14 -- the more important point is to all of us that are here,
15 to deal with the fact that we have to be very careful as to
16 what we say and how we say it.

17 Now, if you want to go back and continue
18 explaining, then I may well want to take you to task about
19 the whole issue about how those affidavits were done. So
20 it's your choice.

21 I'm quite prepared to accept the changes
22 that are done, your undertaking that things -- we are going
23 to work better at doing that. But if you take a client on
24 as a client, the standard of care is the same whether the
25 person is 100 miles away or next door to your office.

1 **MR. LEE:** I don't disagree with that in the
2 slightest, sir. My only point was that we clearly appear
3 to have underestimated the effects of abuse on some people.

4 I attended Cornwall as a Commissioner of
5 Oath. I sat in front of people who said, "I've read the
6 affidavit and I swear it to be true".

7 Clearly, I should have reviewed every single
8 one of them in detail. Clearly, I should have understood
9 that as a victim of abuse they may not particularly care
10 what's in the document. They may trust though if a lawyer
11 drafted it, it must be right.

12 I didn't do that at the time, and I regret
13 that. And there are errors now, and I can assure you and I
14 take your point to heart. I can absolutely assure you this
15 is not going to happen again.

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

17 **MR. LEE:** Clearly, at this Inquiry, we
18 understand the importance of things being accurate, of
19 documents being accurate. My efforts today are to advise
20 you that we've done everything we can to review these now.
21 We've identified errors. The errors, thankfully, are no
22 where near as serious as the one in C-10's affidavit, and
23 obviously we're going to take your direction on where we go
24 from here.

25 **THE COMMISSIONER:** So, let's go and correct

1 the errors, and we'll leave the explanations to the side.

2 MR. LEE: That brings up a good point,
3 obviously, sir, as exactly I'm seeking some direction from
4 you.

5 THE COMMISSIONER: Yes.

6 MR. LEE: On what you want done with these
7 affidavits. For example, Mr. Levert's. Let's take his
8 example.

9 THE COMMISSIONER: Well, let's go -- I think
10 what I -- what I think we should do is go through all of
11 the errors, and then we'll -- I'll assess to see what -- to
12 what degree they are ---

13 MR. LEE: Sure.

14 THE COMMISSIONER: --- in need of
15 rectifying.

16 MR. LEE: Sure.

17 As I said, Mr. Levert was a unique situation
18 in the review we've done because it, I mean, it brings him
19 from outside the mandate, to inside the mandate, and
20 obviously that's important to put on the record.

21 The affidavits, as you know, were to a
22 certain extent, made from a template. Some of the
23 paragraphs are identical in virtually all affidavits. Two
24 paragraphs in particular were included in virtually all of
25 the affidavits, and we now understand that the paragraphs

1 do not apply to some of the affiants. Those numbers --
2 those paragraphs appear in affidavits, at different
3 numbers, depending on what preceded, but, generally, if I
4 can -- they're not long, sir, if I can read them to you.
5 The first is:

6 "I believe that further details of my
7 first-hand experience, as a victim,
8 dealing with the Cornwall Police and
9 the Justice System, which is the focus
10 of part one of this inquiry, would be
11 beneficial information for the
12 inquiry."

13 The second is -- there you go, so it
14 appears in Mr. Levert's; and paragraph 14:

15 "My detailed experiences dealing with
16 the Police and Justice institutions
17 could be obtained by my testimony, or
18 the provision of a summary of my
19 experiences."

20 You'll recall that when Mr. Renshaw was
21 here, Mr. Manderville took him to these paragraphs in
22 particular, and asked him about his dealings with the
23 Cornwall Police Service. Mr. Man -- Or, Mr. Renshaw,
24 rather, explained at the time he hadn't dealt with the
25 Cornwall Police Service, he had dealt with the Ontario

1 Provincial Police. We have discovered other affiants who
2 can say the same thing; that they have had dealings with
3 police in the Cornwall area, but not the Cornwall Police
4 Service. And the Justice System obviously is a little more
5 vague, so that doesn't apply.

6 We have, however, discovered other
7 affidavits, where the affiant did not report to a police
8 force. And yet, this paragraph appears in the affidavit.
9 Obviously, it should not.

10 The other types of -- let me give you
11 specific examples, frankly. Again, it's my submission that
12 none of what follows would have affected your standing and
13 funding decision, but they are inaccuracies. I can give
14 you an example. One client's affidavit, states that he
15 left school in Grade 9. We've now been advised that, in
16 fact, he left school in Grade 12.

17 Another affiant advised in his affidavit
18 that he was not seeing a counsellor at the time the
19 affidavit was sworn. He now advises that he was, in fact,
20 in treatment at one time.

21 And another affidavit, by way of an example,
22 states that the affiant was earning a monthly income of
23 \$1400, which is true. However the affidavit states that
24 those funds came from a disability pension, when, in fact,
25 they were the result of employment.

1 So, as I said, these are not -- these errors
2 don't have the effect of removing somebody from the
3 category of victim, or from having somebody misnamed, or
4 anything like that.

5 **THE COMMISSIONER:** I don't think that's the
6 issue.

7 **MR. LEE:** But, no ---

8 **THE COMMISSIONER:** The issue is one of
9 sloppiness, and just making sure that everything is
10 straightened away.

11 **MR. LEE:** So, as I said, those are the types
12 of errors that we found here. I -- the outstanding
13 question is therefore, where we go from here.

14 **THE COMMISSIONER:** No, no. I want to know,
15 are those all of the mistakes?

16 **MR. LEE:** We have -- as I said, there are a
17 number that have the lines -- paragraphs about the Cornwall
18 Police ---

19 **THE COMMISSIONER:** Yes.

20 **MR. LEE:** --- and Justice System.

21 **THE COMMISSIONER:** Yes.

22 **MR. LEE:** They are in -- and then finally,
23 as I said, we have -- we have a -- as I said, the one who
24 had dropped out, it reads to you,

25 "dropped out in Grade 9"

1 but in fact, he had dropped out in Grade 12.

2 **THE COMMISSIONER:** Yes.

3 **MR. LEE:** We have another who -- the
4 affidavit reads that he had difficulty maintaining gainful
5 employment.

6 **THE COMMISSIONER:** Yes.

7 **MR. LEE:** He advised that he had difficulty
8 keeping a job, but he managed to keep the job for 23 years,
9 so he's not sure, he wasn't comfortable with the impression
10 that left, that he had changed jobs frequently.

11 We have another who advised that he was
12 exposed to alcohol, by his abuser. He advises he was not -
13 --

14 **THE COMMISSIONER:** Yes.

15 **MR. LEE:** --- exposed to alcohol.

16 Then we have -- finally, we have one more
17 who advised, in the affidavit, he was not receiving any
18 psychological help. And he advised at the time the
19 affidavit was sworn, he was in fact in treatment.

20 And as I said, there are seven outstanding
21 that we have not reviewed yet.

22 **THE COMMISSIONER:** Those are all the
23 changes?

24 **MR. LEE:** Yes.

25 **THE COMMISSIONER:** Okay. So now your

1 question is how do we remedy this?

2 **MR. LEE:** It is.

3 **THE COMMISSIONER:** All right. Well, my
4 suggestion is that you obtain supplementary affidavits from
5 each an every one of the persons who need to have their
6 affidavits corrected. That they -- you put out -- you set
7 out that where the error was, and that it has now been
8 changed, and that the true reading, or.. what the
9 correction should be.

10 Then what I suggest we do, is we put back
11 the affidavits onto the website, together with the
12 supplementary affidavits, with a note on the original
13 affidavits to see the supplementary affidavits for
14 corrections.

15 That's what I would suggest. I don't know
16 if anyone else has any comments, or suggestions. No? All
17 right.

18 **MR. LEE:** Doesn't look like it.

19 **THE COMMISSIONER:** And of course, that you
20 continue your efforts with respect to the seven folks that
21 you have not been able to contact, and of course, the one
22 who has another lawyer should -- that should be forwarded
23 to that lawyer, and they should ---

24 **MR. LEE:** Of course.

25 **THE COMMISSIONER:** Yes. How does that

1 sound?

2 MR. LEE: Is there anything else -- that's
3 fine, sir.

4 THE COMMISSIONER: At no cost.

5 MR. LEE: Yes, I presumed.

6 THE COMMISSIONER: Thank you.

7 MR. LEE: Is there anything else, sir?

8 THE COMMISSIONER: No.

9 MR. LEE: Thank you.

10 THE COMMISSIONER: Again, the reason I want,
11 and I think it's important for us to go through this
12 correction stage, is that, as I've indicated during our
13 discussion, the whole inquiry is to de-mystify, and look at
14 what are the facts, and to the extent possible, figure out
15 what the truth is in a lot of these things. We have seen
16 through the evidence that I've heard so far, issues of non-
17 communication, mis-communication, use of different words to
18 explain different things, and I think the standard that we
19 have to apply, is one that, if someone is going to sign an
20 affidavit, they should have reviewed it, and they should
21 know the contents. And for the law firm, or the -- law
22 firm, or the authority who is taking down this information,
23 they also have a duty to - and a standard, to ensure that
24 what is recorded is accurate and appropriate in the
25 circumstances.

1 So, again, I certainly do not want to unduly
2 criticize the persons who signed those affidavits, or the
3 law firm, but I think it's something that needed to be
4 addressed, and accordingly the standard is reiterated here,
5 as to what I expect of the folks before me.

6 Thank you, Mr. Englemann?

7 --- SUBMISSION ON OVERONVIEWOF DOCUMENTARY EVIDENCE
8 BY/REPRÉSENTATION SUR LE SURVOL DE LA PREUVE DOCUMENTAIRE
9 PAR MR. PETER ENGELMANN :

10 **MR. ENGELMANN:** Mr. Commissioner, I'd now
11 like to turn to the overview of documentary evidence of ---

12 **THE COMMISSIONER:** Yes.

13 **MR. ENGELMANN:** --- an individual who's
14 known here by a moniker, C-3.

15 **THE COMMISSIONER:** Yes.

16 **MR. ENGELMANN:** And just on the issue of
17 monikers, one of the things that has come up at all counsel
18 meetings is that a listing of the monikers be available
19 right here on this podium.

20 **THE COMMISSIONER:** Yes.

21 **MR. ENGELMANN:** That is -- that has now been
22 done.

23 **THE COMMISSIONER:** Yes.

24 **MR. ENGELMANN:** This were to be sent out to
25 all counsel, I hope that was done. And the clerk will be

1 retrieving the list from the podium at the end of the day,
2 or at breaks.

3 **THE COMMISSIONER:** Yes.

4 **MR. ENGELMANN:** So that that's not
5 available.

6 **THE COMMISSIONER:** No, I think that's a
7 great initiative. In fact, I have it here and it does
8 reassure me that I can look down and monitor that a little
9 bit.

10 **MR. ENGELMANN:** I note that one of those
11 monikers was, in fact, lifted and that was for C-7. So, I
12 just wanted to ---

13 **THE COMMISSIONER:** Yes.

14 **MR. ENGELMANN:** --- bring that to your
15 attention. I have amended the schedule here for counsel,
16 as well.

17 Sir, there are still some issues involving
18 confidentiality measures ---

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

20 **MR. ENGELMANN:** --- that arose during the
21 narrative for Mr. Silmsen and that have arisen before.
22 Commission staff is working on a complete list and I can
23 advise you that I don't have that with me today, but I
24 would like to address you on that point when we're next
25 back, on May 7th.

1 THE COMMISSIONER: M'hm.

2 MR. ENGELMANN: We will be lifting a number
3 of temporary C's ---

4 THE COMMISSIONER: M'hm.

5 MR. ENGELMANN: --- and indicating a
6 publication ban and why, and asking your permission for
7 that. And in many cases, it will be because there has a
8 been a reference to a moniker, so you've already determined
9 that some form of confidentiality measure was appropriate
10 so, I don't think in those cases I will give you a
11 justification ---

12 THE COMMISSIONER: M'hm.

13 MR. ENGELMANN: --- for Dagenais/Mentuck
14 because that decision's been made.

15 THE COMMISSIONER: Terrific, thank you.

16 MR. ENGELMANN: So, sir, with respect to the
17 overview of documentary evidence, I want to give some
18 background to you and to the public about how this has come
19 about and what they are, and when we're referring to an
20 overview of documentary evidence, what it is.

21 So what we intend to do, as I've said, is to
22 file an overview as well as accompanying documents for an
23 individual today who's been granted some confidentiality
24 measures.

25 THE COMMISSIONER: M'hm.

1 **MR. ENGELMANN:** And by way of background,
2 Commission counsel has for some time spoken about using
3 some form of overview, and I think we've used the term
4 "factual overview" or "overview of documents" and this goes
5 back to opening statements that were made many months ago.
6 And in this case, an overview can be described as a
7 framework or a sketch of a sequence of events in this
8 particular individual's case, a report of the allegations
9 of sexual abuse and following events through its
10 investigation and prosecution.

11 In the main, the focus is on the
12 individual's contact with various institutions; certainly
13 not the entire institutional response, which in many cases
14 is beyond the scope of the individual's personal knowledge.
15 This obviously larger picture of the institutional response
16 will be developed during that stage of Phase 1.

17 In preparing this overview and others that
18 Commission counsel are working on, counsel have attempted
19 to capture the themes and issues that arise in both a
20 neutral and thorough fashion. The backbone for the -- for
21 this framework is a collection of relevant documents that
22 have been produced to the Commission by the parties with
23 standing.

24 Commission counsel acknowledge that the
25 documents referred to in the overview may not be all of the

1 documents that pertain to that individual. In fact,
2 Commission counsel has and will continue to provide parties
3 with a list of other related documents. This is what we've
4 done, sir, when we've prepared documents and anticipated
5 evidence summary for *viva voce* witnesses. We've also
6 included related documents that Commission counsel have
7 found in their research of this very large database, to
8 assist the parties.

9 So these documents may include institutional
10 documents, such documents -- when I'm talking about other
11 related documents -- such as an exchange between a Crown
12 prosecutor and a police Officer. As a general rule, the
13 individual in question would not have knowledge of these
14 documents and these types of documents or institutional-
15 type documents would not be included in the overview of a
16 victim or alleged victim, but would be addressed at the
17 institutional stage.

18 There are of course other examples, but in
19 doing this we're keeping in mind what we've been doing with
20 live witnesses.

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

22 **MR. ENGELMANN:** So what's the purpose of an
23 overview of documentary evidence -- or an ODE, in short
24 form?

25 At its most basic level, the overview will

1 enable us to place some evidence that might not otherwise
2 be available by way of *viva voce* evidence into the record.
3 There are a number of reasons for preparing these; we
4 believe they will assist you in your work.

5 A basic framework will provide you with a
6 starting point for review of some of the evidence. We
7 believe they will also assist all parties in identifying
8 relevant evidence from our database before we begin the
9 institutional response stage of Phase 1. We're concerned
10 that if we don't use some form of overviews, the parties in
11 particular public institutions will be less likely to
12 comprehend the scope of the issues and themes that will be
13 examined during the institutional response stage.

14 Building on this last point, by proceeding
15 with overviews of evidence that are contained in the
16 database but not otherwise available -- overviews for
17 evidence that is contained in the database, but not
18 otherwise available -- we believe we can maximize fairness
19 and efficiency and ensure we're conducting a thorough
20 Inquiry.

21 Finally, but not insignificantly, we are
22 hopeful that this will allow the public to better follow
23 along the information and the stories that you are hearing.
24 This is important, given the desire to maintain openness
25 and transparency in this Inquiry. Simply filing documents

1 without any form of overview will in our view not fulfill
2 that desire.

3 A few comments on the source of the
4 Commission's authority to file overviews. Section 3 of the
5 *Public Inquiries Act* states that:

6 "Subject to sections 4 and 5 the
7 conduct and procedure to be followed on
8 in an inquiry is under the control and
9 direction of the Commission directing
10 the inquiry."

11 Paragraph 5 of the order-in-counsel
12 establishing this Inquiry suggests that the Commission may
13 receive evidence:

14 "In a manner other than through
15 witnesses or other than through *viva*
16 *voce* evidence."

17 And paragraph 5(b), for example, indicates:

18 "That the Commission may refer to an
19 rely on factual overview reports
20 prepared by any party."

21 Lastly, several of the rules of practice and
22 procedure at this Inquiry also lends support to the use of
23 overviews. Rule 6 mirrors Section 3 of the *Public*
24 *Inquiries Act* indicating that:

25 "Subject to sections 4 and 5 of that

1 Act, the conduct of and the procedure
2 to be followed on the inquiry is under
3 the control and discretion of the
4 Commissioner."

5 Rule 13 provides:

6 "That the Commission is entitled to
7 receive any relevant evidence which
8 might otherwise be inadmissible in a
9 court of law, and that the strict rules
10 of evidence will not apply to determine
11 admissibility of evidence."

12 In that way -- similar to many
13 administrative or quasi-judicial tribunals.

14 Lastly, Rule 14 reaffirms:

15 "That the commission may refer to and
16 rely on material listed in paragraph 5
17 of the order-in-counsel and to such
18 other material as the Commission
19 considers relevant to its duties."

20 These rules together with the *Public*
21 *Inquiries Act* and the order-in-counsel, point towards the
22 acceptability of alternative forms of evidence which, in
23 our view, include overviews.

24 It is the hope of Commission counsel to use
25 overviews sparingly, and to do so when witnesses are

1 unavailable for any number of reasons such as medical or
2 health issues; the individual may be deceased; the
3 individual may be out of the jurisdiction; and only when we
4 are of the view that the witnesses evidence is of
5 sufficient import to justify the need to provide a
6 framework separate and apart from just dealing with these
7 issues when we get to the institutional response stage.

8 I should note that Commission counsel, as
9 we've said on several occasions, will not be calling all
10 victims and alleged victims of child sexual abuse. Just
11 because the allegations of an individual are not led in
12 evidence however does not mean that the response to those
13 allegations will not be examined during the institutional
14 response stage of this Inquiry. The Divisional Court, in
15 upholding your decision confirming your right to hear from
16 victims and alleged victims certainly emphasized that *viva*
17 *voce* evidence will not always be required.

18 With that background, I'd like to just move
19 on to the overview of documentary evidence that we'd like
20 to present today.

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

22 **MR. ENGELMANN:** I would note that the
23 individual to whom the overview pertains is an individual,
24 as I've said, who's been granted confidentiality measures
25 and a moniker, C-3. As a result, his name or any

1 information that tends to identify him cannot be published.
2 There is a publication ban in existence for this individual
3 from a criminal court process that was never lifted.

4 Many of the counsel have asked that
5 Commission counsel should give some explanation or
6 indication as to why in a particular case, an individual is
7 not available ---

8 **THE COMMISSIONER:** M'hm

9 **MR. ENGELMANN:** --- and therefore we are
10 using an overview of documentary evidence. One of our
11 investigators contacted this individual and in fact
12 contacted this individual last night again, and he
13 confirmed that we could give an explanation on his behalf
14 and I'm prepared to do that now.

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

16 **MR. ENGELMANN:** I can also say that he
17 reviewed the overview and took no objection to our using
18 this form of document to tender in this fashion, and took
19 no exception with the overview as drafted.

20 **THE COMMISSIONER:** Right. Well ---

21 **MR. ENGELMANN:** I don't know if we'd always
22 have that information, but we have that information and I'm
23 just advising you and the public.

24 **THE COMMISSIONER:** Objection is ---

25 **MR. ENGELMANN:** He had no concern.

1 **THE COMMISSIONER:** Well, that's fine and
2 that's good, but whether or not he has any objection or not
3 may well be considered but irrelevant to the determination
4 as to whether we hear it or not.

5 **MR. ENGELMANN:** Certainly.

6 **THE COMMISSIONER:** All right.

7 **MR. ENGELMANN:** So the reasons why this
8 individual is not available, if I can use that term.

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

10 **MR. ENGELMANN:** He has indicated to us that
11 he has all the indicators of a serious medical illness and
12 is concerned about aggravating this condition and other
13 conditions that were identified earlier during the course
14 of the investigation and prosecution of his complaint.

15 He has expressed a concern to our
16 investigator about being re-victimized by this process,
17 having followed some of the witness evidence at this
18 Inquiry.

19 Lastly, he is concerned about the effect
20 that testifying may have on his livelihood as a small
21 businessperson.

22 Sir, Commission counsel proposes to enter
23 all of the documents referred to in the Overview of
24 Documentary Evidence of C-3 at the outset of the
25 presentation. It is hoped this will facilitate the process

1 of moving through the Overview in a more organized and
2 efficient fashion.

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

4 **MR. ENGELMANN:** Given that this Overview
5 pertains to an individual who has been granted
6 confidentiality measures, as one would expect, the
7 documents that would be entered as exhibits in relation to
8 the Overview contain his name as well as information that
9 would tend to identify him, and in introducing those
10 documents as exhibits, I will be giving some information as
11 to monikers and whether or not there will be a publication
12 ban on name and/or information.

13 In addition, the documents that Commission
14 counsel will enter also may contain the names of other
15 persons, some of whom have been granted confidentiality
16 status or measures. These individuals, in many cases, are
17 also referred to by moniker. Again, I will identify that
18 when I get to each document.

19 Sir, I just wanted to explain briefly before
20 tendering the Overview of Documentary Evidence that there
21 has been a consultation with the Parties with respect to
22 this process, and I wanted to inform you and the public
23 about the efforts Commission counsel has made with respect
24 to the preparation of the ODE and the consultations we have
25 had with the Parties.

1 The Overview of Documentary Evidence for C-3
2 were sent to the Parties on April 12th, 2007, with a
3 description of the process the Commission plans to
4 undertake. We have had consultations with counsel for the
5 Parties on April 19th and again yesterday. April 25th.

6 Counsel for the Parties were provided with
7 drafts of the Overview of Documentary Evidence before each
8 meeting and their comments have, in many respects, been
9 included into the document we intend to file this morning.

10 I can report this has been a cooperative
11 process. The Parties were told from the outset our reasons
12 for using ODEs and, as well, the fact that the use of an
13 ODE will be dealt with on a case-by-case basis.

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

15 **MR. ENGELMANN:** In other words, the Parties
16 are entitled to object to a particular ODE being filed or
17 object to any attachment to an ODE being filed on the basis
18 of relevance just as any other document that would be
19 entered. In addition, the Parties were advised that
20 Commission counsel would not argue, that by participating
21 or not objecting to a particular ODE the Parties would, in
22 any way, be stopped or prohibited from objecting to another
23 ODE for any reason.

24 **THE COMMISSIONER:** I think that's a good
25 point, and I think that if anyone has, as we go through

1 this process, any strong objection with respect to whether
2 or not a witness should be or should not be called, to feel
3 free to bring that up to your attention and to me directly
4 in these processes.

5 **MR. ENGELMANN:** Sir, the Parties were also
6 advised in the event of an inconsistency between the actual
7 documents that are from the database and the Overview
8 prepared by Commission counsel, that the documents would
9 clearly prevail.

10 **THE COMMISSIONER:** Okay.

11 **MR. ENGELMANN:** Sir, at this point, I am
12 prepared to begin by filing the Overview of Documentary
13 Evidence, but I wanted to turn the floor over to any of my
14 colleagues if they wanted to make any comments or
15 submissions at this stage before I seek to introduce the
16 Overview of C-3.

17 **THE COMMISSIONER:** All right. Shall I
18 canvass everyone? Mr. Canto, do you have any comments at
19 this time?

20 **MR. CANTO:** None whatsoever.

21 **THE COMMISSIONER:** Thank you. Mr. Lee.

22 **MR. LEE:** None.

23 **THE COMMISSIONER:** Mr. Bennett.

24 **MR. BENNETT:** I would prefer to make my
25 comments at the end after I hear from my colleagues on this

1 point. It depends what issues get raised whether I make --
2 if you want, I can address what I think they're going to
3 talk about.

4 **THE COMMISSIONER:** I don't know if anybody
5 is going to talk about anything.

6 **MR. BENNETT:** That's why I'm here this
7 morning, because I believe some issues are going to be
8 raised that affect my client's participation.

9 **THE COMMISSIONER:** Okay. Well, we'll see.
10 We'll put you at the back of the line there.

11 **MR. BENNETT:** Thank you.

12 **THE COMMISSIONER:** All right. So Mr.
13 Cipriano, any comments?

14 **MR. CIPRIANO:** No comments.

15 **THE COMMISSIONER:** Mr. Chisholm.

16 **MR. CHISHOLM:** Good morning, sir, No
17 comments with respect to this Overview. Thank you.

18 **THE COMMISSIONER:** Thank you. Mr. Neuberger
19 or Rose.

20 **MR. NEUBERGER:** I think, Mr. Commissioner, I
21 have the longest walk out of the group to the front
22 microphone. Based upon the fair comments as put forward by
23 Mr. Engelmann, we have no comments with respect to this
24 particular process with this witness, and quite fairly with
25 other witnesses, there may be points where we'll stand and

1 raise issues or objections, but thank you very much.

2 **THE COMMISSIONER:** Thank you.

3 Mr. Scharbach.

4 **MR. SCHARBACH:** No comments, Mr.
5 Commissioner. Thank you.

6 **MR. SHERRIFF-SCOTT:** Mr. Manderville is
7 going to speak before me, Commissioner, if that's
8 acceptable.

9 **THE COMMISSIONER:** Sure. Sacrificial lamb?

10 **MR. MANDERVILLE:** Perhaps.

11 Good morning, Mr. Commissioner.

12 **THE COMMISSIONER:** Good morning.

13 --- COMMENTS ON OVERVIEW BY/COMMENTAIRES SUR LE SURVOL PAR

14 **MR. MANDERVILLE:**

15 **MR. MANDERVILLE:** As I said to you
16 previously when we had our chat about the possible
17 expungement of Mr. Silmser's evidence ---

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

19 **MR. MANDERVILLE:** And I'm going to be
20 telling you a few things that I know you already know.
21 Procedural fairness requires a right to challenge the
22 allegations, to test the allegations of a witness. Here,
23 we have a proposed situation where we have no witness at
24 all, and we think this is a proposed manner of proceeding
25 that could be fraught with danger, and I want to alert you

1 to some of those.

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

3 **MR. MANDERVILLE:** It's our view that a
4 documentary overview cannot be a reliable substitute for
5 testimony, live testimony, and should not or cannot be used
6 to demonstrate the truth of the contents of the documents
7 put forward.

8 **THE COMMISSIONER:** The truth of the -- so in
9 a complaint, the document could not be used as proof that
10 the complainant was abused ---

11 **MR. MANDERVILLE:** The content of the
12 document ---

13 **THE COMMISSIONER:** Right.

14 **MR. MANDERVILLE:** --- hypothetically, the
15 document says the light was red on the occasion in
16 question.

17 **THE COMMISSIONER:** Right.

18 **MR. MANDERVILLE:** And rather than have the
19 witness in the box give evidence and be cross-examined on
20 it, we simply file this document that says the light was
21 red.

22 **THE COMMISSIONER:** Right.

23 **MR. MANDERVILLE:** We say you cannot rely on
24 that document as proof that the light was red.

25 **THE COMMISSIONER:** No.

1 **MR. MANDERVILLE:** You can rely on the
2 document to the extent that on this date, a document was
3 created, but you cannot rely on the document as proof that
4 the light was red.

5 **THE COMMISSIONER:** No, but I think you can
6 -- no, but again that's going back to proof of the
7 statement in it. But from what I can -- no, I understand
8 that what's important is that the complaint was made that
9 the light was red is a fact because the document is there.
10 Right? And what goes on from there is what did the
11 institutions do as a result of being given that fact.
12 Whether it's true or not is irrelevant. Whether the light
13 was red or not is irrelevant. The mandate of this Inquiry
14 is to see what happened afterwards.

15 So in that regard, as long as we are talking
16 about the same thing, you are correct, but I don't think it
17 stops the fact that the complaint is filed.

18 **MR. MANDERVILLE:** Oh, in that situation, I
19 agree with you.

20 **THE COMMISSIONER:** Right.

21 **MR. MANDERVILLE:** That a document could be
22 relied upon as, you know, the standard sort of pre-trial
23 procedure situation where we confirm the letter says the
24 date that it was sent and it was sent on that date, but we
25 don't agree that the contents within the letter are

1 factually true.

2 **THE COMMISSIONER:** Okay.

3 **MR. MANDERVILLE:** And where this comes into
4 play and I submit that the Commission should not rely on
5 what are, in fact, untested allegations as a basis or a
6 partial basis for findings of misconduct at the end of the
7 day, nor should it use these untested allegations as
8 corroborating evidence to assist in making a finding of
9 misconduct.

10 And it would be our position that such a
11 method of proceeding at the end of the day contravenes both
12 Section 5(1) of the *Public Inquiry's Act* as well as the
13 fairness principle enunciated by the Supreme Court in the
14 Blood inquiry or the Krever Commission decision.

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

16 **MR. MANDERVILLE:** Moreover, if the
17 Commission decides someone's evidence is necessary for the
18 Commission to carry out its mandate, and the witness will
19 not or cannot attend, we submit the parties and the public
20 have a right to know why the witness won't attend, what
21 efforts the Commission has made to secure the attendance of
22 this witness whose evidence the Commission believes to be
23 necessary. And we submit that the Commission should make
24 use of its power to issue summonses where appropriate.

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

1 **MR. MANDERVILLE:** It may not be apt with
2 this particular proposed ODE but if the Commission
3 interviewed the witness and the witness will not attend or
4 cannot attend, the interview notes should be produced, if
5 appropriate, if they help in assisting the parties in
6 understanding the evidence of this witness.

7 Today, we are dealing with C-3 and his
8 Overview of Documentary Evidence. And we're quite keen --
9 pleased to receive your assurance and that of Mr. Engelmann
10 that these ODEs and their propriety in the party's position
11 regarding them are to be considered on a case by case
12 basis.

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

14 **MR. MANDERVILLE:** There may be some
15 individuals down the road for whom credibility is a serious
16 issue. And we would not want to be met with an estoppel
17 argument by virtue of acquiescing for C-3's testimony or
18 information to go in by way of documentary overview.

19 **THE COMMISSIONER:** Again, credibility as to
20 what happened with respect to the institutional response.

21 **MR. MANDERVILLE:** Credibility as to things
22 squarely within the Commission's mandate.

23 **THE COMMISSIONER:** Okay.

24 **MR. MANDERVILLE:** And those are the points I
25 wish to make with you sir.

1 **THE COMMISSIONER:** All right. Thank you.

2 Mr. Sherriff-Scott?

3 **--- COMMENTS ON OVERVIEW BY/COMMENTAIRES SUR LE SURVOL PAR**
4 **MR. SHERRIFF-SCOTT:**

5 **MR. SHERRIFF-SCOTT:** My point Mr.
6 Commissioner -- good morning, sir. My point is a little
7 narrower and it pertains only to the filing of the document
8 which is the narrative summary ---

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

10 **MR. SHERRIFF-SCOTT:** --- as a piece of
11 evidence in and of itself.

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

13 **MR. SHERRIFF-SCOTT:** My friend has confirmed
14 for us at our meetings, and I take there is no controversy
15 about this position that he's taking and he'll confirm that
16 for you, that he intends to file the narrative not only as
17 a vehicle through which the exhibits and documents referred
18 to therein are marked as evidence and placed in the record
19 as evidentiary exhibits for whatever purpose.

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

21 **MR. SHERRIFF-SCOTT:** But also that the
22 document itself is to be filed as an exhibit as a piece of
23 evidence.

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

25 **MR. SHERRIFF-SCOTT:** I separate the two

1 issues and say the document's fine subject to the various
2 objections that may accrue ---

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

4 **MR. SHERRIFF-SCOTT:** --- but as a general
5 principle, fine at the moment.

6 Where I part company from Mr. Engelmann is
7 that it is my submission that the subjective or prosaic
8 description in the overview itself is not and cannot be
9 received as evidence, and should not be marked so as an
10 exhibit because it's not evidence of the author; it's not
11 evidence of the recipient; it's not evidence of the
12 authenticity of the document; and it's not a substitute for
13 the *viva voce* testimony of the person in connection with
14 whom the document is going to be tendered.

15 And so I would submit sir, that what you
16 ought to do respectfully, is to treat the document, the OED
17 or whatever we're going to call it ---

18 **THE COMMISSIONER:** The ODE.

19 **MR. SHERRIFF-SCOTT:** --- ODE as a narrative
20 or summary or submission only, and that it not be marked as
21 a piece of evidence. The documents to which it refers or
22 adverts, fine, subject to people getting up and rising and
23 quibbling about that because, even though you have various
24 discretion, counsel, through its own mouth, any counsel,
25 can't tender evidence. What counsel says is not evidence,

1 but rather a submission only.

2 And my contention therefore that any summary
3 by any counsel including Commission counsel, is not
4 evidence but should be marked, if anything, only as a
5 summary or narrative, just like a factum or submission in
6 writing. Those are my submissions sir. Thank you; unless
7 you have a question.

8 **THE COMMISSIONER:** Yes, but it is
9 circulated, I mean, isn't this thing just devoid of any
10 subjective inflammatory comments. Like C-10 was born in
11 1954, like I thought there would be non controversial
12 things and since you might not like it, but it's in the
13 statement. I mean, he made a complaint on such and such a
14 date ---

15 **MR. SHERRIFF-SCOTT:** There is no doubt that
16 there are things in there about which nobody will quibble
17 from a factual point of view.

18 **THE COMMISSIONER:** Right.

19 **MR. SHERRIFF-SCOTT:** But there are things,
20 for example, there is a paragraph in there that I take
21 issue with in terms of how it's presented. And when it
22 goes into the record as a piece of evidence, I am not happy
23 with that.

24 **THE COMMISSIONER:** Right.

25 **MR. SHERRIFF-SCOTT:** The way it's cast in my

1 respectful view has an innuendo that's unhelpful to my
2 client which, in the greater context of the document
3 itself, is eliminated. And so ---

4 **THE COMMISSIONER:** In the exhibit ---

5 **MR. SHERRIFF-SCOTT:** Yes, in the real
6 evidence, not counsel's summary of it. So I would just say
7 that the danger is, although yes, there is consultation but
8 we don't agree on everything. Otherwise we'd all be
9 filing, you know, ODEs. So that's my ---

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

11 **MR. SHERRIFF-SCOTT:** Thank you.

12 **THE COMMISSIONER:** Mr. Kozloff, are you on
13 today?

14 --- COMMENTS ON OVERVIEW BY/COMMENTAIRES SUR LE SURVOL PAR
15 **MR. KOZLOFF:**

16 **MR. KOZLOFF:** Good morning sir.

17 **THE COMMISSIONER:** Good morning.

18 **MR. KOZLOFF:** Mr. Commissioner, I guess I
19 should begin by saying that ideally in this process, we
20 would hear from witnesses *viva voce* with an opportunity to
21 test their evidence by way of cross-examination in the
22 traditional mode.

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

24 **MR. KOZLOFF:** I appreciate Mr. Engelmann's
25 comments at the outset. I share the concerns of both Mr.

1 Manderville and Mr. Sherriff-Scott. I'm not sure it would
2 be helpful to parse some of Mr. Englemann's language. He
3 says to place evidence not otherwise available, I guess the
4 word "available" is the magic word.

5 Witnesses who are deceased are obviously
6 candidates for an ODE. Witnesses who are incapacitated are
7 obviously a candidate for an ODE. Witnesses who are out of
8 the jurisdiction are a candidate for an ODE. It's where we
9 go from the black and the white into the grey areas that,
10 in my submission, some concern is aroused.

11 What witness is not coming here because he
12 does not wish his evidence to be tested by cross-
13 examination because he is aware of its frailties.

14 Mr. Manderville spoke about the issue of the
15 truth of its contents and raised the example of the light
16 is red.

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

18 **MR. KOZLOFF:** Perhaps the more apt example
19 is, I told this particular public institution that I was
20 being abused and they didn't respond.

21 **THE COMMISSIONER:** Well, where does that ---

22 **MR. KOZLOFF:** We're not talking about C-3 at
23 this point, we're talking in hypotheticals.

24 **THE COMMISSIONER:** M'hm. Where would he
25 have said that; in his statement?

1 **MR. KOZLOFF:** It may be in a statement ---

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

3 **MR. KOZLOFF:** --- it may be in a discovery;
4 it may be something he mentioned in passing to somebody
5 else who's been interviewed and finds its way into an
6 officer's notes; maybe something that the witness said in a
7 courtroom.

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

9 **MR. KOZLOFF:** It's a document. So the
10 document goes in, it's untestable in this proceeding by the
11 public institution. So, that's the kind of evidence, which
12 I -- causes me concern, as counsel for a public
13 institution, that I am unable to face the witness and
14 confront the witness with evidence, contrary to his
15 evidence, or a position contrary to his evidence, and get
16 his reaction. And I'm concerned about a process that would
17 permit you to make a finding based on that document,
18 without it being tested.

19 **THE COMMISSIONER:** Yes.

20 **MR. KOZLOFF:** Those are some of the concerns
21 I have, sir.

22 Thank you.

23 **THE COMMISSIONER:** Mr. Carroll?

24 ---COMMENTS ON OVERVIEW BY/COMMENTAIRES SUR LE SURVOL PAR
25 **MR. CARROLL:**

1 **MR. CARROLL:** Good morning. I'd like to
2 just talk a little bit about the process that precedes
3 going to an ODE, because I think, quite frankly, there
4 should be a formalized process.

5 **THE COMMISSIONER:** Yes.

6 **MR. CARROLL:** Acceptable forms of evidence
7 do not necessarily always equate to the best evidence
8 that's available. In my opinion, we need to have a
9 structure, that's formalized, I think, and adopted to
10 determine whether or not an ODE is an appropriate way to
11 go. Mr. Kozloff's given you certain obvious situations
12 where the unavailability of a witness, due to being out of
13 the jurisdiction, or demonstrable incapacity, or some such
14 thing, but in those greyer areas, in particular, it seems
15 to me, that it's insufficient to simply have Commission
16 Counsel stand before you and say, "We spoke to them, and
17 this is our determination based on what he said." And
18 rather, there should be some kind of a ruling from you.
19 Excuse me. I think that's important for the record. I
20 think it's important for any review process that might be
21 undertaken with respect to the process.

22 **THE COMMISSIONER:** Yes.

23 **MR. CARROLL:** Because how does a Reviewing
24 Court say this was appropriate, or not, unless there's
25 certain standards that are articulated and then followed.

1 **THE COMMISSIONER:** Yes.

2 **MR. CARROLL:** And ---

3 **THE COMMISSIONER:** Well, how about a process
4 in the sense that Commission Counsel proposes to you folks,
5 than an ODE be prepared, ---

6 **MR. CARROLL:** Right.

7 **THE COMMISSIONER:** --- like we did today,
8 and what we're going to proceed. Nobody -- there may have
9 been some grumblings, but nobody is objecting to this ODE
10 going in, and so there you go. And so the procedure is, if
11 for the next ODE, there are some serious concerns, and
12 there can't be an agreement, then we bring it before me,
13 and then we argue it out.

14 **MR. CARROLL:** Well, exactly. But that
15 hasn't been said yet. But what I -- I'm saying that there
16 should be standards though. No, no, no, not just he comes
17 before you, and he gives you his reasons. I -- to me, it
18 seems, you should be required to make a ruling based on
19 some evidence, not just submissions. So that my
20 investigators interviewed this person, and he feels he'd be
21 re-victimized, or his -- a good one would be, for example,
22 his physical health doesn't permit him to attend. Well,
23 you know, if that's in fact the case, I would think a
24 letter from a doctor would be an appropriate evidentiary
25 basis upon which you would say, "I'm not going to issue a

1 summons." Because if I come before you, as a party, and
2 say, "I wish a summons issued."

3 **THE COMMISSIONER:** Yes.

4 **MR. CARROLL:** Assuming I could satisfy you
5 as to the materiality of the evidence I expect, it will
6 issue.

7 **THE COMMISSIONER:** Yes.

8 **MR. CARROLL:** And it will only not issue if
9 there is other information, which persuades you that it
10 would be not in the best interests of the -- justice and
11 this Commission to so issue. So if I come before you, I'm
12 going to get that summons issued, I would expect.

13 **THE COMMISSIONER:** Yes.

14 **MR. CARROLL:** And I'm saying there should be
15 some similar kind of process, where a decision is made by
16 Commission Counsel not to issue a summons. There should be
17 some justification.

18 **THE COMMISSIONER:** Well you're absolutely
19 right. Except, the checks and balances are you people, in
20 the sense that if Mr. Engelmann says, "I want an ODE for C-
21 whoever we're doing today." And you people say, "No."
22 Well then, it will be up to him to satisfy me. And I can
23 tell you that if he comes up and says, "well, you know, I
24 talked to him, and he's not physically able," you people
25 are going to get up and say, "That's not enough." You

1 know, I think people would say, "Yeah, you're right, you've
2 got to get a medical report."

3 **MR. CARROLL:** Well, if I have the assurance
4 that there is going to be some kind of procedure like that,
5 then that's fine, but I have concerns because from time to
6 time, I've heard the expression, and I expect we may hear
7 from Mr. Bennett, something to the effect that the mere
8 asking them to come re-victimizes the victim. And that
9 casts anyone who objects to the old process, in a terrible
10 light, and is not really I don't think, a concrete enough
11 concept, for me to grasp at least, to challenge; and that
12 there needs to be more than that phrase articulated by an
13 investigator on behalf of the Commission, or other parties.

14 **THE COMMISSIONER:** Well, I think -- I
15 understand your concern, but I have 14 parties here. If
16 Mr. Engelmann wants to run the risk of coming up, over your
17 objections, and come up and say, "Well, I've talked to
18 him." Well, I think we know where we're going to go.

19 **MR. CARROLL:** Well, I'm happy to hear that,
20 and I hope I've anticipated what you're going to do. Thank
21 you.

22 **THE COMMISSIONER:** All right. Mr. Carroll.
23 The school boards aren't here are they? Mr. Engelmann, did
24 you wish --? I'm sorry?

25 **MR. ENGELMANN:** I think that Mr. Bennett

1 wanted to ---

2 **THE COMMISSIONER:** Oh, I'm sorry. Mr.
3 Bennett, that's right.

4 **MR. ENGELMANN:** I don't think there was
5 anybody else.

6 **THE COMMISSIONER:** Right.

7 **MR. BENNETT:** (off mike) I think Mr. Lee
8 asked to go before me, and I have no objections.

9 **THE COMMISSIONER:** I thought you said you
10 had no comments, Mr. Lee?

11 **---COMMENTS ON OVERVIEW BY/COMMENTAIRES SUR LE SURVOL PAR**
12 **MR. LEE:**

13 **MR. LEE:** I silently asked Mr. Bennett
14 during Mr. Carroll's speech if I could go before him.

15 I just have a couple of concerns. I wasn't
16 exactly sure on what would be raised today, or what would
17 not. There are a couple of issues. The first issue is
18 should we have an ODE at all. And the second issue is we
19 have an ODE, what do we do with it, what are you allowed to
20 take from it. I'm going to leave the second issue for now.

21 In terms of the issue whether or not to have
22 an ODE, there's some discussion of compelling witnesses.
23 At this stage, obviously, we're dealing with victims of
24 abuse, and that's my concern with whether they should be
25 compelled. There's been some discussion of whether

1 Commission Counsel should provide an explanation of why the
2 witness is otherwise unavailable. There's been some
3 discussion of, by Mr. Manderville, if a witness isn't
4 available, and is not going to be compelled, at a very
5 least, Commission Counsel's notes should be made available
6 to shed some light on the situation.

7 I would -- before any of those things
8 happen, I would like an opportunity, with notice, to seek
9 instructions and to make proper submissions to you on the
10 propriety of calling victims of abuse who don't want to be
11 here. The propriety of forcing them to provide evidence of
12 why they can't be here, as opposed to perhaps, why they
13 just don't want to be here. And certainly I would want to
14 make submissions on anything, on any attempt to compel any
15 document from Commission Counsel, in terms of their
16 preparation, either by Commission Counsel or investigators.

17 And I -- that's really all I have to say.
18 I'm not prepared to make submissions today, but those are
19 serious issues for my client, and ones that I would want to
20 address with some notice.

21 **THE COMMISSIONER:** Thank you.

22 Yes, sir.

23 ---COMMENTS ON OVERVIEW BY/COMMENTAIRES SUR LE SURVOL PAR
24 **MR. BENNETT:**

25 **MR. BENNETT:** Good morning, Mr.

1 Commissioner.

2 Before I get into my submissions, I would
3 like to announce for this Commission, something that's
4 happening at the same time as this, is that Rick Goodwin,
5 who I think everyone here has met, who's the executive
6 director of the Men's Project, as we are speaking is
7 receiving an award of merit from the Ontario Government ---

8 **THE COMMISSIONER:** Yes.

9 **MR. BENNETT:** --- for his work with the
10 Men's Project.

11 **THE COMMISSIONER:** Good.

12 **MR. BENNETT:** So, I thought that was a good
13 news story to share with everyone. And Rick, in his
14 modesty, didn't even tell me until last night, when I
15 called him to seek instructions on this issue.

16 I would like to comment about the issue of
17 summonsing, or potential summonsing of witness. And before
18 I get into that, I would like to say that I am appreciative
19 of the fact of how sensitive this Commission has been to
20 date ---

21 **THE COMMISSIONER:** Yes.

22 **MR. BENNETT:** --- of survivors of abuse, and
23 trying to ensure that there is not re-victimization. And
24 there have been many steps that have been taken, and I
25 recognize that the Commission staff has, I would say, if I

1 can pronounce this word, Herculean efforts to make sure
2 that they don't do that. So, and yourself, in terms of the
3 Witness Support Program, the counselling, and how it looks
4 like Phase Two may be proceeding, have all been very
5 consistent with that.

6 **THE COMMISSIONER:** Yes.

7 **MR. BENNETT:** I think it's probably fair to
8 say that Mr. Carroll is right about what I'm going to say
9 when I get up here. My client's perspective, is, the
10 receiving of a summons of a loan, for someone who's a
11 survivor of abuse, could trigger certain reactions. And
12 it's interesting, as lawyers we say, if you receive a
13 summons, it's not a big deal. You then come and appear and
14 say why you can, or cannot, but I think we forget about the
15 effect it has -- and I'm not even talking about survivors
16 of abuse, just members of the general public. When they
17 receive any type of legal document, the type of stress it
18 creates, whether it's a summons, whether it's even for jury
19 duty. It's amazing how many calls, probably all of my
20 colleagues here have got over our careers, of, I've
21 received this notice, what do I do?" Same with this. When
22 someone receives this and thinks, "I may be forced to go
23 and talk about something that I don't want to talk about"
24 even though the purpose may not be to talk about their
25 exact situation of abuse but it may be about -- they're

1 dealing with an institution. The fact that they received
2 that may trigger some reactions that Dr. Jaffe and Wolfe
3 talked about.

4 And I just want to -- again, like my friend
5 Mr. Lee -- we would like to have notice of that because we
6 would want to be -- before any summons is ever issued, we
7 would like to address that issue on a more formal basis
8 with more preparation than obviously we've had to do for
9 today. But I would like to alert you to that fact.

10 I would also like to describe my
11 conversation with Mr. Goodwin last night, when I said, "You
12 know, I presume you want me to get up and say the receiving
13 of a summons...". He said, "Even discussing this matter is
14 re-victimization."

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

16 **MR. BENNETT:** Now, people may say well,
17 that's a bit extreme, but I just want -- that was the
18 initial reaction, that even going down that road may be
19 very fraught with dangers that this Commission has made
20 very good efforts to avoid.

21 I do recognize, however, my friends for the
22 institution, their concerns about being able to have --
23 being able to test evidence and it may be one of those
24 other dilemmas that I'm going to put up to you that, at
25 that time, you're going to have a very difficult decision

1 to make.

2 And those are my submissions, unless you
3 have any questions.

4 **THE COMMISSIONER:** Thank you.

5 **MR. BENNETT:** Thank you.

6 **THE COMMISSIONER:** Mr. Engelmann?

7 --- COMMENTS ON OVERVIEW BY/COMMENTAIRES SUR LE SURVOL PAR
8 **MR. ENGELMANN:**

9 **MR. ENGELMANN:** I was such an optimist, I
10 thought I might be done by now, that is, with the ODE, but
11 I feel compelled to say a couple of comments.

12 I think no matter how many times you
13 say something, sometimes you're not heard and I just want
14 to repeat.

15 The way I see this process working is, you
16 know, we've heard from some of the institutional lawyers
17 about right to object and process and we've heard from
18 lawyers for victims saying, "We need notice." I mean, what
19 we're trying to do is consult; we're trying to use these
20 sparingly when we do use them. People will have notice and
21 we will know, for example, if someone is actually objecting
22 to the introduction of the ODE.

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

24 **MR. ENGELMANN:** And I'm not sure -- I don't
25 think I heard an objection although the closest to it I

1 think was Mr. Sherriff-Scott who may be objecting to the
2 introduction of this ODE, despite the fact that that will
3 not in anyway prejudice him if he wants to object to the
4 introduction of another one, but I think he may be
5 objecting to it being entered as an exhibit so, I'll let
6 him speak, if that is in fact his case. And I don't think
7 Mr. Carroll went that far.

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

9 **MR. ENGELMANN:** My anticipation was today
10 that nobody was objecting to the introduction of this
11 particular ODE, fully reserving rights, as we have said in
12 many letters and in many discussions, but yet we hear it
13 again this morning, so ---

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

15 **MR. ENGELMANN:** --- I'm not sure, but that
16 would be the time when Mr. Carroll might want to make his
17 submissions. That would be the time when Mr. Bennett or
18 Mr. Lee might want to make their submissions, and that
19 would be the time when you would make a ruling. Whether we
20 give information as Commission counsel or we don't, I mean,
21 testing the sufficiency of that and then you make a
22 decision as to whether or not that particular narrative,
23 that particular ODE, should be accepted as an exhibit.

24 **THE COMMISSIONER:** You're saying that
25 whatever is in that ODE ---

1 **MR. ENGELMANN:** Yes.

2 **THE COMMISSIONER:** --- is in the documents?

3 **MR. ENGELMANN:** Yes. And what I have said -
4 - and I've said it repeatedly in letters, in meetings, and
5 I'm saying it again for the second time this morning --
6 that if there is an inconsistency between the ODE and the
7 actual document -- and I think that was one of the concerns
8 Mr. Sherriff-Scott had ---

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

10 **MR. ENGELMANN:** --- obviously, it is the
11 document that you rely on. And there will be an
12 opportunity in the institutional response for that document
13 to be explained, by a witness, in every case. And if there
14 isn't, we'll come up with an alternate -- we'll come up
15 with some way to deal with that.

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

17 **MR. ENGELMANN:** I mean, some of the
18 witnesses may well not be available, but when it comes to
19 determining availability, with the greatest of respect, I
20 think that's a determination that we as Commission counsel
21 make. If there are others that are dissatisfied with that,
22 they object to the introduction of the ODE and we have it
23 out.

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

25 **MR. ENGELMANN:** Just as on the issue of

1 issuing a summons, if Commission counsel makes that
2 decision I don't think that's a decision we have to consult
3 with the parties on. Whether that's Mr. Bennett's group or
4 any other group here, that's a decision we make.

5 People are unhappy with that, there can be
6 arguments presented before you. When it gets down to an
7 argument on an ODE and on its admissibility -- and maybe
8 some of the counsel here will say, "Well, with this one, we
9 really want this person to be here. We think the
10 Commission should compel." Obviously, in that case there
11 will be a discussion about the inappropriateness or
12 appropriateness of a summons, and whether or not you, sir,
13 wish to have that person in the box.

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

15 **MR. ENGELMANN:** But that is something for
16 another day, I thought.

17 So just briefly -- to check my notes,
18 because I may have missed something, I mean, we're not
19 talking about red lights. And I think you had the point,
20 if we were you know, I'm thinking there would have been far
21 more discussion beforehand and clearly there would be
22 objections.

23 As I've said, if there are inconsistencies
24 with the document, the document -- the actual documentary
25 evidence, in our database -- documents that have been

1 identified as relevant by the parties -- that is the
2 document that prevails. In our respectful submission.

3 With respect to Mr. Kozloff's hypothetical -
4 - again, if we were dealing with that hypothetical, I think
5 there'd be a lot of objections about doing that by way of
6 an ODE. In other words, a comment that someone would have
7 made that "I was abused and they did not respond."

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

9 **MR. ENGELMANN:** And that's clearly not the
10 case with this ODE.

11 So we're not there and if we ever are there,
12 I'm sure there'll be a discussion about it and who knows?
13 There might not be a need to have a fight about the
14 introduction of the ODE. Commission counsel may well agree
15 that that's a witness that we need to have here in person.
16 Or some other form, to deal with it.

17 I think I dealt with Mr. Carroll's comments,
18 I think the time is -- if in fact there is an objection to
19 a particular ODE ---

20 **THE COMMISSIONER:** Interview notes?

21 **MR. ENGELMANN:** No. I don't think that's
22 appropriate. If it came down to it -- but that'll be your
23 decision sir. And if you feel it's necessary that an
24 investigator testify, you will so order. At first blush, I
25 don't see it, but I guess it will depend on a case-by-case

1 basis, and we're not there right now in my respectful
2 submission.

3 And I don't think it's asking to come.
4 Everybody's asked to come. It's the compelling to come and
5 we'll deal with that if and when we have another ODE and we
6 have another concern that's expressed about that.

7 Those are my brief submissions. If in fact
8 there is an objection to this particular ODE, then I will
9 speak to that specifically. So I just maybe should confirm
10 if Mr. Sherriff-Scott's in fact objecting. I didn't think
11 anyone was objecting to the introduction of the ODE, but
12 that's fine. If there is a formal objection to it being
13 entered into evidence, I'll speak to it.

14 --- **ADDITIONAL COMMENTS ON OVERVIEW BY/COMMENTAIRES**
15 **SUPPLÉMENTAIRES SUR LE SURVOL PAR MR. SHERRIFF-SCOTT :**

16 **MR. SHERRIFF-SCOTT:** My point was, in a
17 matter of principle, that the ODE should not be received as
18 evidence in and of itself. Any ODE, period. It's a
19 summary by counsel; it's a submission to you.

20 There may or may not be full consensus on
21 the document; there may or may not be inconsistency. The
22 documents are the evidence, they go in subject to
23 objection.

24 That was my point, so my point applies to
25 all. I've made this in writing and verbally, and I do have

1 a particular point about this ODE with respect to one
2 paragraph which I'll -- I suppose I can rise when he gets
3 to it -- when Mr. Engelmann gets to it, when he's going to
4 read it because I understand from our meetings that it's
5 his intention to read it into the record.

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

7 **MR. SHERRIFF-SCOTT:** My understanding from
8 our meetings that there were three purposes to the ODE --
9 to educated the public, to assist you, and as a vehicle for
10 the exhibits. All of these objectives are accomplished if
11 the ODE is not made a piece of evidence in and of itself,
12 just like a factum. The factum's not evidence, it's the
13 submission of counsel.

14 **THE COMMISSIONER:** Well, okay.

15 We're going to split hairs here. I don't
16 know that these are submissions of counsel, but the rest of
17 your argument stands.

18 **MR. SHERRIFF-SCOTT:** Fine.

19 **THE COMMISSIONER:** Mr. Engelmann, is there
20 any problem -- or, Mr. Sherriff-Scott, don't -- just stay
21 here for a minute. What damage would there be if we put it
22 in, for identification purposes as a -- we file it, and it
23 is identified, and we put it as, on top of it saying, "This
24 is a summary only, and reference should be made to the
25 specific exhibits."

1 Would that satisfy you, Mr. --?

2 --- **ADDITIONAL COMMENTS ON OVERVIEW BY/COMMENTAIRES**
3 **SUPPLÉMENTAIRES SUR LE SURVOL PAR MR. ENGELMANN :**

4 **MR. ENGELMANN:** It doesn't satisfy me, sir.

5 **THE COMMISSIONER:** It doesn't satisfy you?

6 **MR. ENGELMANN:** No.

7 **THE COMMISSIONER:** Okay.

8 **MR. ENGELMANN:** I think it should be an
9 exhibit. I'll speak to it quickly. This is not a
10 submission.

11 **THE COMMISSIONER:** Yes.

12 **MR. ENGELMANN:** It is a narrative, that's
13 fine, but as I've indicated to you, the *Public Inquiry's*
14 Act, the Order in Counsel, are rules permit you to accept
15 evidence of this nature.

16 **THE COMMISSIONER:** Yes.

17 **MR. ENGELMANN:** This is not a court of law,
18 this is not a formal process. There is all sorts of case
19 law on this, I don't have it with me, I didn't anticipate
20 any argument this morning. I have indicated already, and I
21 will speak to this issue when we get to the particular
22 paragraph ---

23 **THE COMMISSIONER:** Yes.

24 **MR. ENGELMANN:** -- try to be as fair as
25 possible, so what we did was, I mean, we just quoted the

1 provision, and we did this with a couple of others, as
2 well. But the issue is, and I'll say it again, you will
3 give it whatever weight you wish to give it.

4 **THE COMMISSIONER:** Yes.

5 **MR. ENGELMANN:** If there's a document that
6 contradicts it in any way, it is certainly the position of
7 Commission Counsel, that you should give more weight to the
8 actual document. So if Mr. Sherriff-Scott is concerned
9 about how a paragraph characterizes a letter, and the
10 letter is the contemporaneous response, in 1994 to a
11 complaint, the letter governs, it trumps. I've said it,
12 I've said it, I've said it. You give this the weight it
13 deserves, but we'd like it to be an exhibit. You have
14 ample reasons, ample authority, including the Divisional
15 Court decision, on the whole argument about whether or not
16 you should actually hear *viva voce* evidence.

17 **THE COMMISSIONER:** Yes.

18 **MR. ENGELMANN:** It's kind of -- we've gone
19 full circle, where people have tried to shut us down for
20 calling the evidence from victims, and alleged victims, now
21 to trying to put in some overviews of that evidence. And
22 the Divisional Court, I can refer you to a couple of the
23 references if you'd like, but certainly says you have the
24 authority to do this.

25 **THE COMMISSIONER:** Okay.

1 Thank you.

2 Let's take a break and I'll come back in --
3 then we'll deal with matters.

4 Thank you.

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

7 The hearing will resume at 11:45.

8 --- Upon recessing at 11:26 a.m. /

9 L'audience est suspendue à 11h26

10 --- Upon resuming at 11:47 a.m. /

11 L'audience est reprise à 11h47

12 **THE REGISTRAR:** This hearing of the Cornwall
13 Public Inquiry is now in session.

14 Please be seated. Veuillez vous asseoir.

15 **THE COMMISSIONER:** Thank you.

16 Mr. Engelmann, let me begin by saying that,
17 with respect to Mr. Sherriff-Scott's objection, about
18 whether or not the matter should be an exhibit, the ODE
19 should be an exhibit or not, that I will reserve my
20 decision on that, and for the time being, it will be marked
21 as an exhibit for identification purposes only, and I'll
22 give my reasons, or decision in due course.

23 **MR. ENGELMANN:** Mr. Commissioner, perhaps, I
24 had given the documents to the clerk, and I had attempted
25 to put them in in bulk form. Could it -- if you're going

1 to do that, could it be marked as Exhibit I-413, which is
2 the next exhibit number, ---

3 **THE COMMISSIONER:** Yes.

4 **MR. ENGELMANN:** --- because I've given
5 exhibit numbers to all of these.

6 **THE COMMISSIONER:** Yes. No, no, I
7 understand. Yes. Sure, sure we can. Because no matter
8 what, it's going to be part of the record, in which way or
9 not, it just depends whether or not, how I characterize it.

10 **MR. ENGELMANN:** All right.

11 --- SUBMISSION BY/REPRÉSENTATION PAR JUSTICE NORMAND GLAUDE

12 **THE COMMISSIONER:** All right.

13 So that's number one. Mr. Engelmann, if I
14 could make a few comments with respect to comments that
15 were made with respect to the ODEs. First of all, comments
16 made by counsel are concerns that may or may not apply, I
17 don't know, because what we're -- it doesn't -- they don't
18 apply to this document, in the sense that there are three
19 things that I want to comment -- two things.

20 First of all, the interview notes of the
21 Commission counsel, or investigators, findings of
22 misconduct, and the truth of the contents of the documents
23 of -- First of all, I've indicated that we are going to
24 deal with matters on a case-by-case basis, and it is
25 important that we deal with matters on a case-by-case

1 basis, because it seems every case is unique.

2 As well, it's difficult to make decisions in
3 vacuums -- in a vacuum because we're talking about whether
4 or not the documents, or the whatever is filed is there for
5 the truth of its contents. And I've indicated that -- and
6 much of this inquiry is the, no, that the truth of whether
7 or not the abuse took place is irrelevant to my mandate,
8 largely, if not completely. But the fact that things were
9 said, is where lies the import and the complaint, I guess.
10 And so until -- and I think the vast majority of situations
11 will be that the importance is not whether, or not, someone
12 said something was true, or not, but there was the fact
13 that it was said that will effect how the institutional
14 response was either created, continued or completed.

15 With respect to findings of misconduct, I
16 will make findings of misconduct based on the law, and on
17 legal principles that are proper in the circumstances. And
18 I will take into consideration what is, in law, permissible
19 for me to do so.

20 With respect to the interview notes, I don't
21 know that -- I'll just adjourn that comment until such time
22 as, if and when, the need arises.

23 With respect to witnesses being summoned, or
24 not, I think Mr. Engelmann was quite correct, that that
25 decision, whether to summons and to summons, is his

1 decision initially. It is, of course, up to any party to
2 come forward and either to contest that the summons be
3 made, or contest that the summons not be made. We have, in
4 the past, and I continue to indicate that, with respect to
5 alleged victims and survivors, that there has to be some
6 sensitivity with respect to how they are handled. That
7 does not mean to say that they have a veto as to whether,
8 or not, they will testify, or not. And that many of the
9 considerations that I've heard today, through Mr. Bennett,
10 Mr. Lee, and the others, institutions, as to the need for
11 having *viva voce* evidence, are all things that we put in
12 the mix, and that I have to weigh and evaluate, and come up
13 with the decision in each and every case, as to what is
14 best for the mandate of this inquiry, and balancing the
15 interests of having someone come to be cross-examined, and
16 the need to protect their health and safety.

17 So, all to say that it's on a case-by-case
18 basis, and I will welcome any intervention, publicly, with
19 respect to, on this issues.

20 There you go, so Mr. Engelmann, the ODE is
21 now I ---

22 **MR. ENGELMANN:** I believe it's 413.

23 **THE COMMISSIONER:** 413, thank you.

24 **MR. ENGELMANN:** It's document entitled:

25 "Overview of Documentary Evidence, C-

1 3."

2 Although, sorry, I'm saying C-3, the name is
3 there, in the document for you.

4 --- EXHIBIT No./PIÈCE NO. I-413:

5 (ODE) Overview of Documentary Evidence C-3

6 **THE COMMISSIONER:** Right. Yes.

7 **MR. ENGELMANN:** So what I'd like to do then
8 is enter the other documents that are referred to.

9 **THE COMMISSIONER:** Yes.

10 **MR. ENGELMANN:** In I-413, and I'll just give
11 you a description.

12 And I'll do this in the order they appear,
13 if I may?

14 **THE COMMISSIONER:** Yes.

15 **MR. ENGELMANN:** The next document is the
16 Preliminary Inquiry Transcript. It is dated February 26th,
17 1997. The document number is 111-25-0. If that could be
18 exhibit 414, please. And with respect to that exhibit, I
19 would just add that there are references to C-3, C-8 and C-
20 9. I actually have Bates Page numbers if necessary, but I
21 just want you to know and, therefore, that exhibit,
22 although a public exhibit, should be subject to a
23 publication ban ---

24 **THE COMMISSIONER:** Thank you.

25 **MR. ENGELMANN:** --- with respect to those

1 individuals.

2 --- EXHIBIT NO./PIÈCE NO I-414:

3 (111250) R. vs Charles MacDonald -
4 Preliminary Inquiry - Volume 3 -
5 February 26, 1997

6 **MR. ENGELMANN:** The next document that I
7 would like marked is Document Number 110402, and that is an
8 OPP interview of C-3 dated November 24th, 1995. It includes
9 references obviously to C-3 and to C-9. If that could be
10 Public Exhibit 415 with a publication ban with respect to
11 those individuals.

12 **THE COMMISSIONER:** Thank you.

13 --- EXHIBIT NO./PIÈCE NO P-415:

14 (110402) Transcript of: St. John's/St.
15 Joseph's Investigation - November 24,
16 1995

17 **MR. ENGELMANN:** The next exhibit that I
18 would like entered is Document Number 738039. It is a
19 letter from C-3 to Bishop LaRocque dated January 11th, 1994.
20 It's a handwritten letter. It obviously includes
21 references to C-3. So again Public Exhibit 416 with a
22 publication ban for C-3.

23 --- EXHIBIT NO./PIÈCE NO P-416:

24 (738039) Letter from C-3 to Reverend
25 Eugene LaRocque - January 11, 1994

1 **MR. ENGELMANN:** The next document I would
2 like entered as Exhibit 417 is Document Number 720025, and
3 there are a number of excerpts that I have included from
4 that particular document. Those are excerpts of notes of
5 Constable Heidi Sebalj. There is already a version of
6 Constable Sebalj's notes in the record and that is Exhibit
7 295. Those are another version of these same handwritten
8 notes.

9 Unfortunately, in preparing this Overview,
10 it came to our attention that Exhibit 295 is missing some
11 pages that contained information that was relevant and so,
12 therefore, we have given you this Document Number 720025,
13 and just certain excerpts from this document. We hope this
14 doesn't any confusion. This may be something we have to
15 deal with again if there are other pages that may be
16 missing. This particular document then, if it could be
17 entered as Public Exhibit 417.

18 **THE COMMISSIONER:** Yes.

19 **MR. ENGELMANN:** And it has references at
20 various Bates Pages to obviously C-3 and also to C-9.

21 **THE COMMISSIONER:** Thank you.

22 **--- EXHIBIT NO./PIÈCE NO P-417:**

23 (720025) Excerpts: 7072624, 7072628-33,
24 7072641-44, 7072650-51 - Handwritten
25 Officer's Notes by Officer Heidi Sebalj

1 - March 1993

2 **MR. ENGELMANN:** The next document
3 referred to in Exhibit I-413 is already an exhibit, that is
4 Exhibit 297. Those are the transcribed notes of Constable
5 Sebalj. There may have been some confusion in the record
6 about whether or not that document should be subject to a
7 publication ban. It should be. There are a number of
8 monikers -- at least for the purposes of certain monikers.

9 **THE COMMISSIONER:** It's 297, you say?

10 **MR. ENGELMANN:** Yes.

11 **THE COMMISSIONER:** That should be a
12 publication ban.

13 **MR. ENGELMANN:** And for example, there are
14 references to C-3, C-9 in a number of places in those
15 notes. There may well also be references to others and I
16 had indicated, I believe, earlier, Mr. Commissioner, that I
17 wanted to clean this all up the week of May 7th.

18 So again, we have given just certain
19 excerpts in the Exhibit I-413 to Exhibit 297.

20 **MR. ENGELMANN:** The next document I would
21 like entered is Document Number 715940. If that could be
22 Public Exhibit 418. These are notes of Constable Sebalj.
23 They are undated. They are unsigned. They are similar, if
24 not identical, to the March 12th, 1993 entry in her notebook
25 that details a call she had with C-3 on that date. The

1 notes obviously contain references to C-3. They also
2 contain a reference to C-9. So for a publication ban for
3 those particular individuals at issue.

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

5 **--- EXHIBIT NO./PIÈCE NO P-418:**

6 (715940) Handwritten Officer's Notes by
7 Officer Heidi Sebalj - Undated

8 **MR. ENGELMANN:** The next document that I
9 would like tendered as an exhibit is Document Number
10 716012. This is an interview report of C-3 by the Ontario
11 Provincial Police dated February 16th, 1994. The concern
12 there for a publication ban would be references obviously
13 to C-3. Again, Public Exhibit 419, but with a publication
14 ban with respect to C-3.

15 **--- EXHIBIT NO./PIÈCE NO P-419**

16 (716012) C-3 - Interview Report -
17 February 16, 1994

18 **MR. ENGELMANN:** The next exhibit, if it
19 could be entered as the next exhibit, is Document Number
20 713543. These are excerpts of notes of Detective Constable
21 Fagan of the Ontario Provincial Police obviously with
22 respect to interactions with C-3. There are references to
23 C-3. If that could be Public Exhibit 420 with a
24 publication ban with respect to C-3.

25 **--- EXHIBIT NO./PIÈCE NO P-420:**

1 (713543) Excerpts: 7052341-43 -
2 Handwritten Officer's Notes by
3 Detective Constable Fagan - February
4 14, 1994

5 **MR. ENGELMANN:** The next document I would
6 like to enter as an exhibit is Document Number 737935.
7 This is a letter from Monsignor MacDougald to C-3 dated
8 February 3rd, 1994. Again, obviously there are references
9 to C-3 in the letter. So if that could be Public Exhibit
10 421 with a publication ban with respect to C-3.

11 --- **EXHIBIT NO./PIÈCE NO P-421:**

12 (737935) Letter from Msgr. D. B.
13 McDougald to C-3 - February 3, 1994

14 **MR. ENGELMANN:** The next document I would
15 like to enter is Document Number 714974. These are
16 excerpts of the police officer notes of Chief Inspector
17 Smith of the Ontario Provincial Police. Again, there are
18 references to C-3. If that could be marked then as Public
19 Exhibit 422 with a publication ban on C-3. There are two
20 excerpts there.

21 **THE COMMISSIONER:** Thank you.

22 --- **EXHIBIT NO./PIÈCE NO P-422:**

23 (714974) Excerpts: 7056497, 7056500 -
24 Handwritten Officer's Notes by
25 Detective Inspector Smith - November

1 17, 1995

2 **MR. ENGELMANN:** The next document -- I hope
3 I got that name right -- Detective Inspector Smith; yes,
4 sorry, for that document.

5 And also for the next document, although in
6 the next document -- which I would like entered then is
7 Document Number 701568. These are excerpts of notes of
8 Detective Inspector Smith. They again have references
9 obviously to C-3. If that could be marked as Public
10 Exhibit 423 with a publication ban with respect to C-3.

11 **--- EXHIBIT NO./PIÈCE NO P-423:**

12 (701568) Excerpts: 7004044,
13 7004046, 7004049 - Handwritten
14 Officer's Notes by Detective Inspector
15 Smith - November 20, 1995

16 **MR. ENGELMANN:** The next document that I
17 would like -- sorry, this next document is already entered
18 -- I will just be one moment, sir.

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

20 **(SHORT PAUSE / COURTE PAUSE)**

21 **MR. ENGELMANN:** Yes, the next document I
22 would like to enter is Document Number 110766. That is an
23 information sworn dealing with allegations against Father
24 Charles MacDonald. One of the accounts on the information
25 deals with C-3. If that could be Public Exhibit 424, but

1 with a publication ban for C-3.

2 **THE COMMISSIONER:** Thank you.

3 --- **EXHIBIT NO./PIÈCE NO P-424:**

4 (110766) Notes by Detective Constable
5 Mike Fagan - Undated

6 **MR. ENGELMANN:** There are other individuals
7 listed on Exhibit 424 where the publication ban has been
8 lifted.

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

10 **MR. ENGELMANN:** In fact, we have heard from
11 them as witnesses.

12 The next document referred to in the ODE,
13 Document 113583, has already been entered as an exhibit.
14 It is Exhibit 226. These are the reasons for judgment.
15 This is the Committal Decision of Judge Dempsey on October
16 24th, 1997, and there are references to C-3. So a
17 publication ban with respect to C-3.
18 As I've said, that is already an exhibit.

19 **THE COMMISSIONER:** Yes, thank you.

20 **MR. ENGELMANN:** The next document I'm
21 seeking to enter is Document Number 727732. These are
22 excerpts of the notes of Detective Constable Genier of the
23 Ontario Provincial Police, and I'd like them marked as
24 Public Exhibit 425. There are references to C-3 and
25 therefore I'd like it subject to a publication ban as it

1 relates to C-3.

2 --- EXHIBIT NO./PIÈCE NO P-425:

3 (727732) Excerpts: 7107468-69

4 Handwritten Officer's Notes by Detective
5 Constable Genier - November 6, 1998

6 **THE COMMISSIONER:** Thank you.

7 **MR. ENGELMANN:** The next document I'm
8 seeking to enter is Document Number 733623. These are
9 excerpts of Police Officer notes of Detective Constable
10 Dupuis from the Ontario Provincial Police. If they could
11 be marked as Exhibit -- Public Exhibit 426, there are
12 references here to C-3, also to C-7 by the -- oh, sorry, C7
13 is no longer an issue. But the reference is to C-5 as
14 well. So publication ban with respect to C-3 and C-5, sir.

15 --- EXHIBIT NO./PIÈCE NO P-426:

16 (733623) Excerpts: 7131564-66,

17 7131606-10 - Handwritten Officer's Notes
18 by Detective Constable Dupuis -
19 September 16, 1999

20 Next document I'm seeking to enter is
21 document 113597. I'm just assuming that if anybody has an
22 objection to my entering any of these documents, they're
23 going to jump up ---

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

25 **MR. ENGELMANN:** --- and I'm sorry for doing

1 this so quickly, but I don't anticipate an objection but if
2 there is one, I guess we'll hear.

3 So document 113597. I'd like it to be
4 Public Exhibit 427. These are notes of a Crown prosecutor
5 by the name of Shelley Hallett, dated October 19, 1999.
6 And they refer to C-3. It's an interview, I think, of her
7 by -- sorry, by her of him. So if it could be Public
8 Exhibit 427, with a publication ban as it relates to C-3.

9 **--- EXHIBIT NO./PIÈCE NO P-427:**

10 (113597) Handwritten Notes of Shelley
11 Hallett - October 19, 1999

12 Next document I'm seeking to enter is
13 Document Number 713527. This is the Interview Report.
14 It's dated February 21st 2000 and I believe it's an
15 interview report of Detective Constable -- just one moment.

16 **THE COMMISSIONER:** Genier.

17 **MR. ENGELMANN:** Genier, yes.

18 So if that -- it -- there are references to
19 C-3. Oh, just one moment. Yes, references to C-3 ---

20 **THE COMMISSIONER:** Yes.

21 **MR. ENGELMANN:** So if it could be Public
22 Exhibit 428, with a publication ban with respect to C-3.

23 **--- EXHIBIT NO./PIÈCE NO P-428:**

24 (713257) C-3 - Interview Report -
25 February 21, 2000

1 The next document, sir, is Document Number
2 727733. These are excerpts of notes of Detective Constable
3 Genier, dated February 21, 2000. If they could be marked
4 as Public Exhibit 429. There are references to C-3 and
5 there's information that may or may not tend to identify C-
6 9.

7 **--- EXHIBIT NO./PIÈCE NO P-429:**

8 (727733) Excerpt: 7107791 - Handwritten
9 Officer's Notes by Detective Constable
10 Genier - February 21, 2000

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

12 **MR. ENGELMANN:** So I would just ask for a
13 publication ban with respect to those two individuals.

14 The next document I'm seeking to enter is
15 document 733626 and these are excerpts of police officer
16 notes. The Officer in question, Detective Constable
17 Dupuis, of the Ontario Provincial Police and these notes
18 start on -- with an excerpt starting with April 19th 2000.
19 There are four excerpts there, sir, and they contain
20 references to a number of monikers, C-3, C-4, C-5, C-6, C-8
21 and C-9. So if the document could be Public Exhibit 430
22 with publication bans for those individuals.

23 **--- EXHIBIT NO./PIÈCE NO P-430:**

24 (733626) Excerpts: 7131801, 7131805-06,
25 7131813-14, 7131856-57 - Handwritten

1 Officer's Notes by Detective Constable
2 Dupuis - April 19, 2000

3 The next document I'm seeking to enter is
4 document 113601. These are notes, again, of Crown
5 prosecutor Shelley Hallett, dated May 9th 2000. If they
6 could be entered as Public Exhibit 431. They have
7 references to C-3, so a publication ban with respect to C-
8 3.

9 **--- EXHIBIT NO./PIÈCE NO P-431:**

10 (113601) Handwritten Notes of Shelley
11 Hallett - May 9, 2000

12 **THE COMMISSIONER:** Thank you.

13 **MR. ENGELMANN:** The next Exhibit I'm seeking
14 to enter, exhibit number 733629 and there are three
15 excerpts, sir, if -- these are excerpts of notes of
16 Detective Constable Dupuis of the Ontario Provincial
17 Police. If they could be Public Exhibit 432. There are
18 references to C-3, C-4, C-6 and C-7. So if that could be a
19 public exhibit, but with a publication ban for those
20 individuals.

21 **--- EXHIBIT NO./PIÈCE NO P-432:**

22 (733629) Excerpts: 7132052-54, 7132063,
23 7132074-75 - Handwritten Officer's Notes
24 of Detective Constable Dupuis -
25 February 5, 2002

1 The next document is Document Number 116154.
2 Sir, this document has already been entered as Exhibit 227.
3 It is subject to a publication ban already in the record
4 with respect to C-3 and perhaps others, and that document
5 is the ruling on the Section 11(b) motion, the stay motion
6 ---

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

8 **MR. ENGELMANN:** --- by Justice Chilcott.

9 The next document referred to in the ODE and
10 I'm seeking to enter is Document Number 700849. This is a
11 -- it's described as a police questionnaire. It's a form
12 for the Criminal Injuries Compensation Board. If that
13 could be marked as Exhibit 433 and note again references to
14 C-3, so a publication ban with respect to C3.

15 **--- EXHIBIT NO./PIÈCE NO P-433:**

16 (700849) Police Questionnaire re: C-3

17 The next document referred to in the ODE
18 that I'm seeking to enter -- Document Number 700850, and
19 that is a letter from Detective Inspector Hall from the
20 Ontario Provincial Police to Melanie Shuebrooke of the
21 Criminal Injuries Compensation Board, dated August 11th
22 2003. That could be marked as Public Exhibit 434. Again,
23 there are references to C-3, so a publication ban with
24 respect to C-3.

25 **--- EXHIBIT NO./PIÈCE NO P-434:**

1 (700850) Letter from Detective Inspector
2 P.R. Hall, OPP, to Melanie Shuebrooke -
3 August 11, 2003

4 And then, I'm happy to say, the last
5 document referred to in the ODE, Document Number 737947
6 and, sir, this document is an Examination for Discovery
7 transcript of C3 dated May 30, 1996. It includes,
8 obviously, references to C-3 and to C-9.

9 --- **EXHIBIT NO./PIÈCE NO P-435:**

10 (737947) Ontario Court C-3 and Father
11 Charles MacDonald, Bishop Adolphe Proulx,
12 and the Roman Catholic Episcopal Corporation
13 for the Diocese of Alexandria-Cornwall in
14 Ontario - May 30, 1996

15 Many of these documents include references
16 to C-3 under others, not just by name but also information
17 that would tend to identify him, so just make that
18 reference vis-a-vis the publication bans with respect to
19 those documents.

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

21 **MR. ENGELMANN:** Sir, those are the documents
22 that are referred to in what is now marked as I-413.

23 Sir, I will now read I-413 and I may make
24 references again to some of those documents that have now
25 been marked.

1 C-3 was born in Cornwall on August 31st 1957.
2 He grew up in the Cornwall area. There are references to
3 those facts in Exhibits 414 and 415.

4 He was an altar boy at St. Columban's Parish
5 and has indicated that Father Charles MacDonald was one of
6 the priests at the parish while he was an altar boy, and
7 that's referred to in Exhibit 414 and 415.

8 At one time, C-3 considered the priesthood
9 as a career. Again, a reference in Exhibit 415 and 416.

10 C-3 reported to the Cornwall Community
11 Police Service, the Diocese of Alexandria-Cornwall and the
12 Ontario Provincial Police that Father MacDonald sexually
13 abused him when he was a young person, and there are
14 references to that in Exhibits 415, 416, 417 and 418.

15 He has indicated that he had not spoken to
16 anyone about the alleged abuse until Constable Heidi Sebalj
17 of the Cornwall Police contacted him -- sorry, called him.
18 That's referred to in Exhibit 415.

19 The next caption -- or the next portion of
20 Exhibit I-413 deals with the Cornwall Police investigation.
21 According to the notes of Cornwall Police Officer Sebalj,
22 on the morning of March 12th 1993, she attempted to contact
23 C-3. She placed calls to a number of his family members,
24 including his father ---

25 **THE COMMISSIONER:** Excuse me, sir. Just --

1 "...she attempted..." and I've got, "...to locate C-3" ---

2 **MR. ENGELMANN:** C-3.

3 **THE COMMISSIONER:** C-3?

4 **MR. ENGELMANN:** Yes.

5 **THE COMMISSIONER:** "Locate...".

6 **MR. ENGELMANN:** The moniker on the transcript
7 please.

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

9 **MR. ENGELMANN:** I'll read that again:

10 "According to the notes of Cornwall
11 police officer Constable Sebalj, the
12 morning of March 12th, 1993, she
13 attempted to locate C-3; she placed
14 calls to a number of his family
15 members, including his mother, to
16 obtain his contact information. That
17 morning, she left a message for C-3 at
18 his place of work."

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

20 **MR. ENGELMANN:** That is set out in Exhibit
21 417 and Exhibit 297.

22 "On the afternoon of March 12th, 1993,
23 Constable Sebalj contacted C-3 by
24 phone."

25 She reached him at home and, according to

1 Constable Sebalj's notes, among other things, she asked him
2 to recall his relationship with Father MacDonald. He
3 described to Constable Sebalj incidents of alleged sexual
4 abuse by Father MacDonald that took place at Father
5 MacDonald's house beside the church in Apple Hill, and also
6 at St. Columban's parish. There are references in Exhibits
7 417 and 418 to those facts.

8 Constable Sebalj's notes of that call also
9 indicate that C-3 needed time to think about whether he
10 would provide a statement. She advised that she would call
11 him back; references in Exhibits 417 and 418.

12 On March 17th, 1993, Constable Sebalj called
13 C-3 but there was no answer at his home. That is set out
14 at Exhibit 417. Constable Sebalj reached C-3 by phone on
15 March 18th, 1993. According to Constable Sebalj's notes, C-
16 3 told her that he had now spoken to his lawyer; and that
17 he had decided against making a statement. He told her
18 this was a difficult decision for him. Constable Sebalj
19 asked C-3 to meet with him, I think that should say meet
20 with her, in person, to obtain further information. He
21 agreed. She indicated that she would call him back to set
22 up an appointment. According to the officer's notes, C-3
23 was very quiet during the call. Those are set out in
24 Exhibit 417 and the typed version at Exhibit 297.

25 According to Constable Sebalj's notes, she

1 contacted C-3 again by phone on March 22nd, 1993; she asked
2 him to meet with her on April 3rd, 1993. He stated "No
3 problem."

4 **THE COMMISSIONER:** "I've got no trouble."

5 **MR. ENGELMANN:** Sorry. You're right. He
6 stated "No trouble," but then questioned what they had to
7 talk about. She advised him and he indicated "I just don't
8 want to be subpoenaed". She indicated that she would call
9 and confirm the meeting. That's indicated at Exhibit 417
10 and 297.

11 Constable Sebalj contacted C-3 on the
12 afternoon of March 25th, 1993 and the meeting was confirmed
13 for April 3rd, 1993. That is indicated in Exhibits 417 and
14 297, her notes.

15 On April 3rd, 1993, Constable Sebalj met with
16 C-3 at his home. This is all set out, sir, in her notes;
17 it is according to her notes. Among other things, he
18 indicated that he did not want to provide a statement,
19 provided some reasons for that.

20 According to Constable Sebalj's notes, C-3
21 said he was a 21-year resident of Cornwall, his mom has MS
22 and is not well, he does not want to upset his family and
23 he is trying to make a name for himself in a new business.
24 Constable Sebalj's notes also state "Forgot about it and
25 dealt with it". And again references in her notes to those

1 facts, Exhibit 417 and Exhibit 297.

2 According to the officer's notes, Constable
3 Sebalj advised C-3 that she "had to make a complete
4 disclosure". C-3, "Mentioned being a hostile witness or
5 that he would deny it". Again set out at Exhibits 417 and
6 297.

7 Constable Sebalj explained her investigation
8 to C-3 and, "that his statement would be very helpful".
9 Her notes indicate that she left him with some blank
10 statement forms. Her notes also indicate that C-3 seemed
11 very torn as to the proper thing to do. He asked Constable
12 Sebalj to keep in touch and let him know if she located
13 further victims. This meeting is the last contact with C-3
14 that Constable Sebalj documented. And again references to
15 her notes in Exhibit 417 and 297.

16 In a letter that he wrote to Bishop
17 LaRocque, C-3 indicated that Constable Sebalj contacted him
18 in the fall of 1993. In his letter he writes the
19 following:

20 "Constable Sebalj contacted me in the
21 fall of 1993 to tell me that there
22 would be no charges laid and that
23 Father MacDonald was removed from his
24 duties and was somewhere around Toronto
25 at counselling."

1 And then in parenthesis:

2 “(The fact that I decided not to give a
3 signed statement to the police had a
4 big outcome on the charges not being
5 laid.) She also stated that the
6 Children’s Aid Society was looking into
7 the matter.”

8 The reference there sir is Exhibit 416.

9 The next portion of the ODE deals with the
10 Diocese of Alexandria-Cornwall. On January 11th, 1994, C-3
11 wrote a letter to Bishop Eugene LaRocque of the Diocese of
12 Alexandria-Cornwall. In his letter, among other things, he
13 indicated that he too was an altar boy at St. Columban’s
14 parish who was allegedly sexually abused by Father
15 MacDonald. The reference there is to Exhibit 416.

16 When speaking with Detective Constable Mike
17 Fagan of the OPP on February 16th, 1994, C-3 indicated that
18 he received a letter from the Bishop in response to his
19 January 11th, 1994 letter. This letter thanked him for his
20 letter and advised him that Father MacDonald would not be
21 sent to another parish. The interview report also
22 indicates that C-3 told Detective Constable Fagan that he
23 then received a call from the Bishop again thanking him for
24 the letter and wanting to know if he wanted Father
25 MacDonald to write him. C-3 indicated that he did not want

1 a letter and wanted nothing further to do with the matter.
2 The reference there is to Exhibits 419 and 420.

3 Later, during the course of a taped
4 interview with Detective Inspector Tim Smith and Detective
5 Constable Fagan of the OPP, on November 24th, 1995,
6 Detective Inspector Smith noted that C-3 had brought to
7 their attention some discrepancy after reviewing the notes
8 of the February 16th, 1994 call with Detective Constable
9 Fagan. C-3 indicated that he had received a verbal reply
10 from the Bishop and that he had never received a letter.
11 The reference there sir is to Exhibit 415.

12 During the November 24th, 1995 interview, C-3
13 further indicated, among other things, the following:

14 "I guess it was a day or two before he
15 (the Bishop) had come out on this
16 newscast. I had sent him off a letter
17 saying yes, I was another victim and I
18 was assaulted by Father Charles
19 MacDonald. Yes, it was about less than
20 a week after he received the letter, he
21 called me one evening. I remember it
22 was around six o'clock ..."

23 It says "H'hm", this is a quote.

24 "... and he had offered me, at that time,
25 if I needed counselling or anything,

1 any way the church could help out. My
2 concern to him was that Father
3 MacDonald was not allowed into a parish
4 or be allowed a -- near a -- children
5 again and he stated to me that he was
6 removed from -- he was removed and from
7 the church active duty."

8 And this is Exhibit 415 which is a
9 transcript of an OPP-taped interview; therefore the Ahs and
10 H'hms.

11 As noted in the paragraphs above, I am in
12 paragraph 21 now, C-3 has given conflicting statements as
13 to whether he received a letter in response to his letter
14 of January 11th, 1994 to Bishop LaRocque. A letter
15 addressed to C-3 dated February 3rd, 1994 and signed by
16 Monsignor MacDougald is contained with the disclosure
17 provided by the Diocese of Alexandria-Cornwall to this
18 Commission. In this letter Monsignor MacDougald wrote,
19 among other things:

20 "I was exceedingly disappointed to hear
21 from Bishop LaRocque your accusation
22 that you were sexually abused by Father
23 MacDonald."

24 He also encouraged C-3 to participate in the
25 court process. This letter contains a number of

1 handwritten notations. Now sir, this was the paragraph
2 that Mr. Sherriff-Scott referred to earlier and I thought,
3 if he wanted to make the comment on it or refer to the
4 actual exhibit, I'd give him that opportunity.

5 **MR. SHERRIFF-SCOTT:** Thank you. This I
6 submit is just sort of an illustration of my earlier point.
7 There is no direct conflict between the paragraph and the
8 document which is Exhibit 421.

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

10 **MR. SHERRIFF-SCOTT:** What I am concerned
11 about and, I hope you don't think this is quibbling,
12 Commissioner, but this is a public process, and what
13 concerns me is the innuendo, or what may be perceived as a
14 wrong reading of the statement here summarized.
15 Particularly the quotation, which is selected:

16 "I was exceedingly disappointed to hear
17 from Bishop LaRocque, your accusation
18 that you were sexually abused,"
19 could be read as, that Monsignor was disappointed in him
20 making the allegation, whereas the letter is far more
21 generous, and other quotations indicate, for example:

22 "I remember you from St. Columban's,
23 and appreciated you and your family as
24 very excellent parishioners, and it is
25 with deep regret that I became aware of

1 Columbans, and it is with deep regret
2 that I became aware of your situation."
3 And it goes on. So the letter speaks for itself, and what
4 we tried to do was just use a quote, and, as I said, there
5 are a number of things that are set out in this letter,
6 there are a number of things that were set out in the
7 letter that was addressed to the Bishop. They're exhibits
8 now, and obviously we'll get into that in the institution
9 response.

10 **THE COMMISSIONER:** Yes.

11 **MR. ENGELMANN:** We just would point out,
12 where there was -- where there were concerns expressed,
13 sometimes we just quoted. It was easier for us, rather
14 than to attempt a paraphrase.

15 **THE COMMISSIONER:** Yes.

16 **MR. ENGELMANN:** The next aspect of the ODE
17 is the OPP investigation, and prosecution. On February
18 16th, 1994, Detective Constable Fagan, of the Ontario
19 Provincial Police, called C-3. Detective Constable Fagan
20 explained that the OPP was assigned to investigate the
21 allegations against Father Charles MacDonald, and invited
22 C-3 to meet with him.

23 The interview report in the officer's notes,
24 indicate that C-3 stated that he did not want to get
25 involved. According to these documents, C-3 also indicated

1 that he had seen a press release on television by the
2 Bishop, and that he had asked people to come forward. He
3 wrote a letter to the Bishop explaining what had happened
4 to him, and said that Father MacDonald should not be placed
5 in another parish. He further explained that he had
6 received a return letter and call from the Bishop.

7 Okay, and that's set out in Exhibits 419,
8 and 420.

9 The next documented contact with C-3, was a
10 phone conversation on November 20th, 1995, between Detective
11 Constable Fagan and C-3's lawyer, Bryce Geoffrey.
12 According to Detective Constable Fagan's notes, he spoke to
13 Bryce Geoffrey to -- regarding an interview with C-3. And
14 that's set out, sir, in Exhibit 422.

15 Detective Inspector Smith then contacted
16 Bryce Geoffrey on November 21st, 1995, to set up a meeting
17 with C-3. That's set out in Exhibit 423.

18 On November 24th, 1995. C-3 was interviewed
19 by Detective Inspector Smith, and Detective Constable
20 Fagan, in relation to his allegations against Father
21 MacDonald. The interview was videotaped, and took place at
22 the Kanata OPP detachment. Bryce Geoffrey was in
23 attendance during the interview.

24 Again, sir, there are a number of references
25 there to Exhibits 415, 422, and 423 for those facts.

1 During the interview, C-3 outlined, among
2 other things, his allegations of sexual abuse against
3 Father MacDonald. He indicated that one incident occurred
4 in Apple Hill, where Father MacDonald was the parish
5 priest. He indicated that he was 16 years of age at the
6 time of this incident. He also described incidents that he
7 alleged occurred prior to the alleged Apple Hill incident,
8 during which time he was an alter boy at St. Columban's.
9 That's Exhibit 415 for that -- for those facts; for that
10 statement.

11 With respect to the alleged incident in
12 Apple Hill, Detective Inspector Smith asked C-3 if he could
13 expand on the issue of consent. C-3 explained as follows:

14 "Because he was, he was always lending
15 me his car and that, I sort of figured
16 it was might have been a pay back for
17 allowing me to use his car. And I was
18 obviously very naïve at the time. Why
19 I didn't try to stop him, that I can't
20 answer still to this day."

21 When asked if there was any indication of
22 force at all, he answered:

23 "No."

24 That's set out in Exhibit 415.

25 During the interview, C-3 recalled the names

1 of seven other alter boys. Same reference, Exhibit 415.

2 As indicated above, C-3 identified a
3 discrepancy when he reviewed the notes of an earlier
4 contact with the OPP. This discrepancy was in relation to
5 the response he had received from the Bishop, as a result
6 of the letter that he had sent. And again that's Exhibit
7 415.

8 During the interview, C-3 also discussed a
9 meeting he had had with David Silmser, and John MacDonald.
10 There was also some discussion about the issue of therapy.

11 Again the same interview notes, Exhibit 415.

12 He indicated that he was willing to
13 participate in the criminal process, as a witness, in
14 relation to the charges against Father MacDonald. Again
15 the reference, Exhibit 415.

16 On March 6th, 1996, an information was sworn
17 by Detective Constable Fagan, in respect of charging Father
18 MacDonald, with offences against David Silmser, John
19 MacDonald and C-3. There were seven charges in all, in
20 respect of C-3, the information stated that Detective
21 Constable Fagan believed, on a reasonable and probable
22 grounds, that Charles MacDonald, between January 1st, 1969
23 and December 31st, 1973, both inclusive at the city of
24 Cornwall, and elsewhere in the east region, did indecently
25 assault a male person to wit, C-3 contrary to section 148,

1 and it's JS.C.1953/54, volume 1, chapter 51, and section
2 156, the revised Statutes of Canada 170, chapter C-34. And
3 that's Exhibit 424, that information.

4 The notes of Detective Inspector Smith,
5 indicate that on March 6th, 1996, he advised Bryce Geoffrey
6 of charges in relation to Father MacDonald. That's Exhibit
7 423.

8 On February 24th, 1997, the Crown proceeded
9 on seven counts, in respect of the Father MacDonald matter.
10 One of those counts was in relation to C-3. C-3 gave
11 evidence in the preliminary inquiry, in relation to the
12 criminal charges against Father MacDonald, on February 26th,
13 1997. During his examination-in-chief, C-3 indicated,
14 among other things, that the alleged incidents took place
15 mainly in the sacristy of St. Columban's, and possibly at
16 the priest's residence across the street. Exhibit 414 was
17 the transcript.

18 When asked by the Crown why he chose not to
19 divulge the alleged abuse while it was taking place, C-3
20 stated,

21 "To me, it was done as he was playing,
22 like a joke."

23 And again, that's from that transcript,
24 Exhibit 414.

25 C-3 also described becoming involved in the

1 police investigation. He indicated that he initially did
2 not want to become involved in the police investigation
3 for:

4 "Personal reasons, mainly the shame."
5 Again Exhibit 414.

6 He indicated that later, when all of the
7 other allegations came out:

8 "I knew that I had basically given the
9 police a statement that I hadn't
10 signed, and that, as a result of, I was
11 probably going to end up being
12 subpoenaed. So, I had decided I might
13 as well go in on my own."

14 And the quote closes there, the comments,
15 obviously continue. That's Exhibit 414.

16 He also indicated that he was involved in a
17 civil action against the accused, the Parish Diocese and
18 the Bishop. Again at Exhibit 414.

19 On September 11th, 1997, the evidence for the
20 Crown on the Preliminary inquiry, in respect of the first
21 seven charges against Father MacDonald was completed. The
22 charge arising out of C-3's allegation was the subject of
23 argument, on the issue of committal to trial. These
24 arguments were completed on October 24th, 1997.

25 On October 24th, 1997, Judge Dempsey ordered

1 that Father MacDonald was to stand trial on all seven
2 counts. With respect, and I think it should say to the
3 count, in relation to C-3, Judge Dempsey stated, among
4 other things, the following:

5 "After having the opportunity of, in
6 fact, hearing the evidence and
7 considering same in this matter, and as
8 well, after having an opportunity of
9 considering the submissions that have
10 been made, I'm satisfied that in
11 regards to count number seven in the
12 information, that there is some, and I
13 would emphasize some, evidence upon
14 which a reasonable jury, properly
15 instructed, could convict. I'm mindful
16 that the nature of the acts described,
17 but I am mindful as well of the time
18 frames over which it occurred, and the
19 manner of the act."

20 And those -- Sir, that quote is from the
21 Reasons for Judgment. That's Exhibit 226, Reasons for
22 Judgment on the Committal.

23 The notes of Detective Constable Genier from
24 the OPP indicate that he contacted C-3 on November 11th,
25 1998 and advised him of Father MacDonald's next preliminary

1 inquiry dates. That's Exhibit 425.

2 According to the notes of Detective
3 Constable Joe Dupuis of the OPP, he contacted C-3 on
4 September 20th 1999 to set up an appointment for October
5 20th, 1999 at 11:00 a.m. at C-3's residence. That's Exhibit
6 426.

7 On the morning of October 19th, 1999,
8 Detective Constable Dupuis called C-3 to move up the
9 appointment to meet with C-3 at his residence to that
10 afternoon. Again, Exhibit 426.

11 That afternoon, according to his notes,
12 Detective Constable Dupuis attended at C-3's home along
13 with the Crown Prosecutor of the Crown, Shelley Hallett.
14 C-3 was provided with a copy of the transcript of his
15 preliminary inquiry testimony. Again, that's set out in
16 Exhibit 426 and then again in 427. Detective Constable
17 Dupuis' and Hallett's notes indicate that during the
18 meeting, they discussed a number of matters including the
19 following: Trial venue, publication ban, media, his
20 lawsuit, and his personal background, including the effect
21 that the alleged abuse was having upon him.

22 The notes also referred to C-3 receiving
23 psychiatric counselling for sexual abuse. There is also a
24 note to the effect that they are to send C-3 materials with
25 respect to the Men's Project. That is set out in Exhibits

1 426 and 427.

2 According to Detective Constable Dupuis'
3 notes, C-3 was told not to discuss anything with other
4 witnesses. Exhibit 426.

5 Detective Constable Genier contacted C-3 at
6 his place of work on February 21st, 2000. According to
7 Detective Constable Genier's notes, C-3 indicated that
8 there was nothing further than what he previously disclosed
9 in his statements. That is referred to at Exhibits 428 and
10 429.

11 Detective Constable Dupuis' notes indicate
12 that he next called C-3 on April 19th, 2000 and left a
13 message asking that C-3 call him. Later that day,
14 Detective Constable Genier advised him that C-3 had been
15 informed that there was no court on May 1st, 2000. That is
16 set out in Exhibit 430.

17 According to Detective Constable Dupuis'
18 notes, he called C-3 on April 26th, 2000. An appointment
19 was set for May 9th, 2000 for an interview with the Crown,
20 Shelley Hallett.

21 Detective Constable Dupuis was to call C-3
22 back with the location of the meeting. That's set out in
23 Exhibit 430.

24 Detective Constable Dupuis' notes indicate
25 that on May 4th, 2000, he left a message for C-3 about the

1 location of the May 9th, 2000 meeting. He requested a
2 return call; C-3 called back on May 5th, 2000 and the
3 meeting was confirmed for May 9th, 2000 at 1400 hrs at the
4 Ottawa Courthouse. The reference is Exhibit 430.

5 On May 9th, 2000, the Crown, Shelley Hallett,
6 met with C-3 at the V/WAP office in Ottawa. Hallett's
7 notes indicate that a copy of the Discovery transcripts are
8 to be sent to C-3. The notes also indicate, among other
9 things, that there was likely discussion of C-3's current
10 situation and his allegations against Father MacDonald.
11 Those are found in Exhibit 431.

12 Detective Constable Dupuis' notes indicate
13 that he left a message for C-3 on June 7th, 2000. C-3
14 called him back. Detective Constable Dupuis asked C-3
15 about his civil settlement. Exhibit 430.

16 The notes of Detective Constable Dupuis
17 indicate that he contacted C-3 on February 5th, 2002 to set
18 up a meeting with the Crown for February 6th, 2002 at 10:30
19 a.m. It is found in Exhibit 432.

20 C-3 attended at the meeting on February 6th,
21 2002. It was held at the Crown's office. According to the
22 notes of Detective Constable Dupuis, there was a discussion
23 of where the trial was at that time. He was given a copy
24 of transcripts. The meeting lasted approximately 22
25 minutes. He was served with a subpoena. Again, Exhibit

1 432.

2 On March 7th, 2002, Detective Constable
3 Dupuis received a page from C-3 -- a page being like a
4 call, pager -- and he returned his call. C-3 indicated
5 that he had gotten a job and could not be with the Crown
6 during the day. C-3 also indicated that he did not want to
7 proceed with criminal charges. According to the officer's
8 notes, Detective Constable Dupuis advised him that he would
9 have to talk to the Crown about that. Detective Constable
10 Dupuis would contact C-3 about an evening meeting the
11 following week. Again, Exhibit 432.

12 According to Detective Constable Dupuis'
13 notes, on April 23rd, 2002, at 11:04, he left a message for
14 C-3 to page him. When they spoke later in the day,
15 Detective Constable Dupuis told C-3 that he Crown "would
16 still like to meet him", and an appointment was to be set
17 up. Detective Constable Dupuis got the name and
18 coordinates of C-3's place of employment. That again is
19 Exhibit 432.

20 Detective Constable Dupuis' notes indicate
21 that he served C-3 on April 25th, 2002. According to his
22 notes, C-3 was "advised not to come Monday, that the Crown
23 would be talking to him before he testifies". Again,
24 Exhibit 432.

25 On May 13th, 2002, Justice Chilcott delivered

1 his ruling in respect of the Section 11(b) motion that had
2 been brought by Father MacDonald. Father MacDonald
3 requested an Order staying the proceedings, on the grounds
4 that his right to be tried within a reasonable period of
5 time had been infringed or denied, contrary to Section
6 11(b) of the *Charter of Rights and Freedoms*. That's found
7 in Exhibit 227.

8 By this time, Father MacDonald was also
9 facing charges in relation to a number of additional
10 alleged victims. In his decision, Justice Chilcott
11 outlined some of the facts surrounding the proceeding
12 against Father MacDonald as well as his assessment as to
13 the reasons for the delay. Again, Exhibit 227.

14 The Motion for a Stay was granted, thereby
15 staying the proceedings against Father MacDonald. In his
16 ruling, Justice Chilcott stated among other things:

17 "I am always reluctant to dispose of
18 criminal charges without a trial but
19 given the real prejudice to the accused
20 and to the 73-month delay, I must
21 conclude that his trial has been
22 unreasonably delayed. In the present
23 case, I am satisfied that the interests
24 of the accused and society in a prompt

1 trial outweighs the interests of
2 society in bringing the accused to
3 trial."

4 Again, that's a quote from Exhibit
5 227.

6 The next caption is the Criminal Injuries
7 Compensation Board. There is correspondence to suggest
8 that C-3 applied to the Criminal Injuries Compensation
9 Board in relation to the alleged abuse by Father MacDonald.
10 The CICB police questionnaire was completed on August 11th,
11 2003. Detective Inspector Pat Hall of the OPP also wrote a
12 letter to Melanie Shuebrooke, CICB, on August 11th, 2003
13 regarding C-3's application. In this letter, he provided a
14 summary of the C-3 matter. That's Exhibit 433 and 434.

15 And under Contact with Others, John
16 MacDonald and David Silmser, C-3 has indicated that in
17 November of 1995, he met with John MacDonald and David
18 Silmser at John MacDonald's house. C-3 has indicated that
19 what was discussed at that meeting was John MacDonald's and
20 David Silmser's action against Father MacDonald and the
21 Church. C-3 has said among other things, that they were
22 hoping that he "would become involved with them and
23 basically to strengthen their case". Again, that's Exhibit
24 415 for reference.

1 Then under Contact with Others, Perry
2 Dunlop, during his cross-examination in the preliminary
3 inquiry, C-3 indicated that he knew Perry Dunlop through
4 the media. He also indicated that he has never met him but
5 that he spoke to him once on the phone in the fall of 1995.
6 C-3 called him, "to thank him for what he had done".
7 That's in Exhibit 414, the preliminary inquiry transcript.

8 Contact with Helen Dunlop; C-3 also
9 indicated during cross-examination that he had not had any
10 dealings with Helen Dunlop.

11 As for Carson Chisholm, as well C-3
12 indicated that he had not had any dealings with Carson
13 Chisholm. Those references are all at Exhibit 414.

14 And under the last caption, Civil Matter, C-
15 3 sued Father MacDonald, Bishop Proulx and the Roman
16 Catholic Episcopal Corporation for the Diocese of
17 Alexandria-Cornwall, in relation to the abuse he alleged
18 against Father MacDonald. The Statement of Claim was
19 issued on November 27th, 1995. His Examination for
20 Discovery took place on May 30th, 1996. And the reference
21 to that and to the transcript of the Examination for
22 Discovery, is Exhibit 435.

23 On February 13th, 1998, C-3 signed a full and
24 final release in respect to the action against Father
25 MacDonald et al. There is a Confidentiality Clause in the

1 Agreement.

2 Sir, that is a review of the overview of
3 documentary evidence for C-3, which is Exhibit I-413. My
4 apologies to our interpreters, I didn't know they didn't
5 have a copy of the document ---

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

7 **MR. ENGELMANN:** --- so I realize that
8 sometimes, when one reads, you read or you speak much
9 faster and again, my apologies on that note. I should have
10 provided them with a copy beforehand.

11 **THE COMMISSIONER:** All right. Thank you.

12 **MR. ENGELMANN:** Sir, those are -- that then
13 concludes the overview of documentary evidence. I don't
14 know if there were any others who wanted or needed to
15 comment at this time.

16 We have one other matter to deal with and
17 I'll ask Ms. Brannan to speak to that if we've concluded
18 this part of this morning's proceedings.

19 **THE COMMISSIONER:** Any comments? No?

20 I think that it's important to note that
21 this is an ODE, the Overview. We will revisit it when it
22 comes time to the responses, and -- so I think that it's an
23 appropriate way to conclude at this point, subject to any
24 comments anyone may have. Failing which, I'll hear from
25 Ms. Brannan.

1 Now, I note that it's a quarter to one. I
2 don't know how long this is going to be, but I would prefer
3 to try to get this done shortly.

4 **MS. BRANNAN:** Mr. Commissioner, I'm hopeful
5 that we'll be out of here by one o'clock at the latest.

6 **THE COMMISSIONER:** All right, so what is
7 this all about?

8 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. SACCOCCIO**
9 **BRANNAN:**

10 **MS. SACCOCCIO BRANNAN:** We have, I guess, a
11 bit of a catch 22 situation in which we find ourselves as
12 the Ontario Provincial Police.

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

14 **MS. SACCOCCIO BRANNAN:** I will set the stage
15 for you. We have received from the Commission your
16 summons, October of 2005 and, as a result of that,
17 delivered to you our documents.

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

19 **MS. SACCOCCIO BRANNAN:** Following that,
20 through the disclosure process, you have asked for
21 Undertakings to be signed.

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

23 **MS. SACCOCCIO BRANNAN:** All of this is in
24 order to maintain the integrity of your process and the
25 delivery of the documentary evidence and what you decide

1 should be public and not.

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

3 **MS. SACCOCCIO BRANNAN:** the Ontario
4 Provincial Police has received a Freedom of Information
5 request.

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

7 **MS. SACCOCCIO BRANNAN:** That request has
8 been delivered to the Ministry, which governs the Ontario
9 Provincial Police, under which it operates, which is the
10 Ministry of Community Safety and Correctional Services.

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

12 **MS. SACCOCCIO BRANNAN:** The Freedom of
13 Information Office for that Ministry has requested the
14 Ontario Provincial Police to produce documents to respond
15 to this Freedom of Information request, which are documents
16 that are subject to the summons.

17 **THE COMMISSIONER:** I ---

18 **MS. SACCOCCIO BRANNAN:** And ultimately,
19 subject to the undertaking.

20 **THE COMMISSIONER:** Are they specified
21 documents?

22 **MS. SACCOCCIO BRANNAN:** They are documents
23 that relate to a specified individual.

24 **THE COMMISSIONER:** Okay.

25 **MS. SACCOCCIO BRANNAN:** The dilemma in which

1 we find ourselves is that public inquiries are not an
2 institution. So naturally, the Freedom of Information
3 request doesn't come to the public inquiry, nor are public
4 inquiries an exemption under the *Freedom of Information*
5 legislation.

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

7 **MS. SACCOCCIO BRANNAN:** I haven't canvassed
8 this broadly because these submissions were developed last
9 night, and what we are looking for is something of an
10 interim basis, on an interim basis.

11 **THE COMMISSIONER:** When did you receive this
12 notice?

13 **MS. SACCOCCIO BRANNAN:** The notice was
14 received in February, this particular one. There have been
15 other Freedom of Information requests, but they have been
16 abandoned, so there's been no need to address them.

17 **THE COMMISSIONER:** Right.

18 **MS. SACCOCCIO BRANNAN:** And we've tried to
19 address this within our organization. Unfortunately, we
20 run into this catch 22.

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

22 **MS. SACCOCCIO BRANNAN:** If we release the
23 documents tot the Freedom of Information office of our
24 Ministry ---

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

1 **MS. SACCOCCIO BRANNAN:** --- we are in breach
2 of the undertaking and, I believe, the summons. At least,
3 that's what I think at this point in time.

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

5 **MS. SACCOCCIO BRANNAN:** If we don't release
6 them, we are in breach of the *Freedom of Information*
7 legislation, hence the catch 22.

8 I brought this to the attention of the
9 Parties with standing who are other government
10 institutions. They have not had to deal with this issue
11 yet. I don't think this will be the last time we have to
12 deal with this issue.

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

14 **MS. SACCOCCIO BRANNAN:** And I was trying to
15 think of an interim resolution that I could ask from you,
16 Mr. Commissioner, so that we could then, as government
17 institutions, go and canvass this situation more broadly
18 for you and then bring back some law, if there's any law.

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

20 **MS. SACCOCCIO BRANNAN:** The interim order
21 that I'm suggesting is that -- or interim ruling -- is that
22 the Ontario Provincial Police be prohibited from delivering
23 the documents to its Freedom of Information Office ---

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

25 **MS. SACCOCCIO BRANNAN:** --- in the ministry,

1 pending a more fuller discussion of this matter and the
2 involvement of the other government institutions.

3 The reason why is that we are now at the end
4 of the extensions, because we've received extensions.

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

6 **MS. SACCOCCIO BRANNAN:** And we are on the
7 brink of handing those documents over.

8 **THE COMMISSIONER:** All right. Do I have
9 jurisdiction to do that?

10 **MS. SACCOCCIO BRANNAN:** I think that you
11 have jurisdiction to prohibit the Ontario Provincial Police
12 from releasing those documents to anyone, based upon the
13 fact that those documents, as a result of the summons, are
14 within your control. And I think that might be all that is
15 necessary to give you jurisdiction over the Ontario
16 Provincial Police because we are a Party with standing.

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

18 **MS. SACCOCCIO BRANNAN:** And then we have to,
19 therefore, submit to your rulings, your orders, your
20 procedures.

21 **THE COMMISSIONER:** And so -- okay.

22 **MS. SACCOCCIO BRANNAN:** It's a dilemma.

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

24 **MS. SACCOCCIO BRANNAN:** And I think if
25 there's an interim ruling, this way -- and I guess I can

1 also explain too that the Ministry of the Attorney General,
2 as I have learned -- and I have discussed this with Mr.
3 Scharbach, our colleague -- has an overview responsibility
4 with respect to all *Freedom of Information* applications.

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

6 **MS. SACCOCCIO BRANNAN:** And it is my hope
7 that, upon leaving here, we will be able to engage with the
8 Ministry of the Attorney General to try and resolve this
9 issue and bring it back to you with a resolution.

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

11 **MS. SACCOCCIO BRANNAN:** But if we handover
12 the documents, you know, the horses are out of the barn, so
13 to speak, and those documents then will be reviewed by the
14 Ministry's Freedom of Information Office and redacted in
15 accordance with the *Freedom of Information* legislation.

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

17 **MS. SACCOCCIO BRANNAN:** And then delivered
18 to the requester. So they will get out into the public
19 through another door.

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

21 **MS. SACCOCCIO BRANNAN:** Rather than your
22 door.

23 **THE COMMISSIONER:** Is there any urgency to
24 the request?

25 **MS. SACCOCCIO BRANNAN:** The only urgency to

1 the request is that the package is ready to be delivered to
2 MCSCS because of the timing. We've got no more extensions.

3 **THE COMMISSIONER:** And why not?

4 **MS. SACCOCCIO BRANNAN:** I guess we can go
5 and ask for another one.

6 **THE COMMISSIONER:** Okay, but if you asked
7 one, for an extension, well ---

8 **MS. SACCOCCIO BRANNAN:** I'm trying to think
9 of another way of dealing with it. The only problem is I
10 don't want to put the Ontario Provincial Police in the
11 position of breaching the *Freedom of Information*
12 legislation because there's all sorts of fines, and ---

13 **THE COMMISSIONER:** No, okay, but the urgency
14 see, I meant was, is there -- has whoever is requesting
15 this -- do you know of any sense of urgency that we would
16 have to -- that ---?

17 **MS. SACCOCCIO BRANNAN:** No, I do not. With
18 respect to the requestor, no, I do not.

19 **THE COMMISSIONER:** Okay.

20 So do you know about whom the documents are
21 about, but you don't know who the requestor is.

22 **MS. SACCOCCIO BRANNAN:** We know who the
23 requestor is, we know who the documents are about, but we
24 don't know for what use, or what urgency.

25 **THE COMMISSIONER:** Okay. Okay. So, would

1 you be ready to make argument on May 7th, for example?

2 **MS. SACCOCCIO BRANNAN:** We would have to be.

3 **THE COMMISSIONER:** Yes.

4 **MS. SACCOCCIO BRANNAN:** I would -- and I
5 would hope I would have some assistance from my colleagues
6 at the Ministry of the Attorney General because there is an
7 individual at the Ministry, I've learned today who is the
8 guru on Freedom of Information ---

9 **THE COMMISSIONER:** Yes.

10 **MS. SACCOCCIO BRANNAN:** --- and we'd like to
11 consult with that individual.

12 **THE COMMISSIONER:** All right. Anybody have
13 any comments? Everybody's hiding. Mr. Scharbach.

14 **MR. SCHARBACH:** Good afternoon, Mr.
15 Commissioner.

16 **THE COMMISSIONER:** Is the cavalry coming in
17 to the rescue?

18 **(LAUGHTER/RIRES)**

19 **MR. SCHARBACH:** Quite possibly.

20 The Ministry of the Attorney General does
21 provide legal advice to the various ministries with respect
22 to FOI issues.

23 **THE COMMISSIONER:** Yes.

24 **MR. SCHARBACH:** And I think that's what Ms.
25 Brannan is referring to when she says that MAG may have an

1 overall ---

2 **THE COMMISSIONER:** Yes.

3 **MR. SCHARBACH:** --- role to play here and
4 that's true. I talked to Ms. Brannan about it this
5 morning, and we recognize that there is an issue here.

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

7 **MR. SCHARBACH:** There seems to be a bit of a
8 tug of war between the FOI requirements and the
9 Commission's summoning of these documents and interest in
10 keeping these -- you know, maintaining the integrity of
11 these documents. But at the moment, all I can say is that
12 we recognize there is an issue here and we support Ms.
13 Brannan's requests for a bit of time ---

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

15 **MR. SCHARBACH:** --- in order to sort this
16 out.

17 **THE COMMISSIONER:** Okay.

18 **MR. SCHARBACH:** Thank you.

19 **THE COMMISSIONER:** Thank you. Mr.
20 Engelmann? Mr. Manderville.

21 **MR. ENGELMANN:** I'll just let counsel for
22 the parties go first and then I'll speak.

23 **THE COMMISSIONER:** Okay, sure.

24 **MR. MANDERVILLE:** Briefly, Mr. Commissioner,
25 we would support Ms. Brannan's initiative and the request

1 for an interim ruling might be the best way to deal with
2 this, until such time as it can be fully canvassed in front
3 of you.

4 **THE COMMISSIONER:** All right. Well, Mr.
5 Engelmann?

6 **MR. ENGELMANN:** The dilemma, as stated, is a
7 dilemma in breach of an undertaking or summons, if we don't
8 release in breach of the *Freedom of Information Act*.

9 I'm not sure, sir, about your jurisdiction
10 either. I'm wondering, though -- and I look forward to an
11 opportunity to hear some submissions on this issue when
12 people have had an opportunity to look at the law or what's
13 out there.

14 I'm wondering, and I just sort of pose this
15 question. I support some kind of an interim freeze, or
16 whatever we want to call it. If you're concerned about
17 having the power to make an order prohibiting something,
18 I'm wondering, and I guess maybe I'm posing this question
19 to Ms. Brannan or her colleagues, whether it would be
20 sufficient that you issue a directive that it would be
21 prudent that the OPP not, not, deliver the documents to the
22 requestor until such time as this matter could be
23 thoroughly argued before you. And your suggestion that it
24 take place the week of May 7th, that's a short delay.

25 I would think that -- I'm not sure how long

1 the requestor has been waiting for the documents, but that
2 doesn't seem like a lengthy delay and that would appear to
3 give OPP counsel and MAG some time to talk, and perhaps to
4 argue this with some law and with just some issues towards
5 your jurisdiction to make an order of a more permanent
6 nature.

7 **THE COMMISSIONER:** When during the week of
8 May would that be more appropriate? Do you have the
9 schedule or do you know what we're doing?

10 **MR. ENGELMANN:** Well, my colleague, Mr.
11 Dumais, is working on that as we speak. I think we could
12 have some flexibility if the afternoon of May 7th was too
13 early for Ms. Brannan, or inconvenient for her. Maybe it
14 could be the 8th or the 9th.

15 **THE COMMISSIONER:** Okay.

16 **MR. ENGELMANN:** I'm somewhat flexible there.
17 I'm just -- I'm not sure -- we have some issues to deal
18 with on the 7th, vis-à-vis confidentiality measures.

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

20 **MR. ENGELMANN:** You may or may not have a
21 decision with respect to what you took under advisement
22 today.

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

24 **MR. ENGELMANN:** But, we are, hopefully,
25 going to be able to advise counsel tomorrow as to the line-

1 up for the week of May 7th. And I'm unfortunately not in
2 the position to do that as I speak.

3 **THE COMMISSIONER:** All right. Thank you.

4 **MR. ENGELMANN:** So maybe I'll turn it back
5 to Ms. Brannan.

6 **THE COMMISSIONER:** All right.

7 **MS. SACCOCCIO BRANNAN:** Just listening to
8 Mr. Engelmann about a directive, I can understand your
9 concern about whether or not you have the jurisdiction to
10 make such an order as I request, even on an interim basis.

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

12 **MS. SACCOCCIO BRANNAN:** And I think with a
13 directive, what we might be able to do is buy another --
14 request another extension, and that might be helpful to us.

15 **THE COMMISSIONER:** Sure.

16 **MS. SACCOCCIO BRANNAN:** With respect to the
17 week of May the 7th, there's -- we're sitting, I think, the
18 whole week.

19 **THE COMMISSIONER:** Yes.

20 **MS. SACCOCCIO BRANNAN:** So, you know, I can
21 work Mr. Engelmann on timing.

22 **THE COMMISSIONER:** Okay.

23 So, in this regard, the Ontario Provincial
24 Police has made me aware of the situation where, through
25 the Freedom of Information Bureau, that they've been

1 requested to provide documents via-a-vis one person, and
2 those documents have been delivered and presented to this
3 Inquiry, and I take it is the subject matter of this
4 Inquiry.

5 Ms. Brannan has indicated that she has
6 attempted -- has obtained extensions, and that at this
7 point it's -- in order to determine whether or not her
8 obligations to the Freedom of Information Office conflict
9 with the undertakings and the subpoena that have generated
10 the documents to be produced of this Commission.

11 Mr. Scharbach has indicated that the
12 Attorney General's Office has, I suppose, a blanket
13 responsibility with respect to these issues and that -- and
14 what might be well said -- there well might be some merit
15 to adjourning this matter so that we can get some further
16 details as to what the situation would be.

17 There's some issue as to whether or not I
18 have jurisdiction to deal with this matter at all. It is
19 difficult to assess the urgency of the matter because I
20 don't know who the requestor is and under what
21 circumstances or timeframes they are operating. That's
22 important to me because if I can deal with this matter
23 quickly, then the less prejudice to whoever is requesting
24 that information. So I intend to give you the following.

25 To the extent that I have jurisdiction to do

1 so, I would think it very wise that the matter be held in
2 abeyance and would respect, or at least hope, that those
3 who make those decisions for the office in question, would
4 also see it fit to grant a further extension to -- what's
5 the end of May? At the end of the week in May? The first
6 week?

7 **MR. ENGELMANN:** The week of the -- that
8 would be the 11th.

9 **THE COMMISSIONER:** Till the 11th of May, in
10 order that the different parties reflect and prepare their
11 legal arguments for me, on the understanding that those
12 arguments would be made during that first week of May on a
13 date to be selected and agreed upon with Commission
14 counsel.

15 I say that because the brief delay may well
16 resolve the issue and that the prejudiced, in disclosing
17 the documents, may far outweigh any delay of two weeks that
18 we have in doing this matter.

19 So, there you have it. You have the comfort
20 of my endorsement and my blessings to seek and adjournment
21 from the office.

22 **MS. SACCOCCIO BRANNAN:** Thank you very much,
23 Mr. Commissioner.

24 **THE COMMISSIONER:** All right. Thank you.
25 There's no other matters then, Mr.

1 Engelmann? We will resume on May ---

2 **MR. ENGELMANN:** May the 7th.

3 **THE COMMISSIONER:** May the 7th at 2 o'clock
4 in the afternoon.

5 Thank you.

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

8 The hearing is now adjourned. La journée est
9 maintenant ajournée.

10 --- Upon adjourning at 1:03 p.m.

11 L'audience est ajournée à 13h03

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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