

**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 172

Held at :

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

Tenue à:

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

Wednesday, December 5 2007

Mercredi, le 5 décembre 2007

Appearances/Comparutions

Ms. Julie Gauthier	Registrar
M ^e Simon Ruel	Commission Counsel
Ms. Dierdre Harrington	
Ms. Reena Lalji	Cornwall Police Service Board
Ms. Diane Lahaie	Ontario Provincial Police
Mr. David Rose	Ontario Ministry of Community
Mr. Joe Neuberger	and Correctional Services and
M ^e Claude Rouleau	Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Steven Canto	
Mr. Dallas Lee	Victims Group
Mr. Michael Neville	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police
Mr. Mark Wallace	Association
Mr. Frank T. Horn	Mr. Carson Chisholm

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1 --- Upon commencing at 9:32 a.m./

2 L'audience débute à 9h32

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Good morning, all. Good
10 morning, sir. How are you doing today?

11 **MR. DOWNING:** Great.

12 **THE COMMISSIONER:** Good. You understand
13 you're still under oath?

14 **MR. DOWNING:** Yes, I do.

15 **THE COMMISSIONER:** Thank you.

16 Maître Ruel.

17 **MR. RUEL:** Good morning, Mr. Commissioner.

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

19 **MR. RUEL:** Good morning, Mr. Downing.

20 We have a new counsel present.

21 **THE COMMISSIONER:** Right.

22 **MR. RUEL:** I should say student-at-law, Mr.
23 Emtiaz Bala from the Crown Law Office, Civil, is there with
24 Mr. Kloeze today.

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

1 Welcome aboard.

2 We have the cast of -- the regular cast. I
3 see Mr. Manderville is out in the bleachers this morning
4 and he's taking notes.

5 **MR. MANDERVILLE:** I got my ticket too late.

6 (LAUGHTER/RIRES)

7 **THE COMMISSIONER:** All right.

8 Maître Ruel.

9 **PAUL DOWNING, Resumed/Sous le même serment:**

10 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.

11 RUEL:

12 **MR. RUEL:** Mr. Downing, we left off
13 yesterday talking about some of the steps you took in the
14 course of your review of the Cornwall issues that were
15 brought to your attention through websites. That's
16 correct?

17 **MR. DOWNING:** That's correct.

18 **MR. RUEL:** And we talked about an interview
19 you had with Mr. Bill Roy, who was former Regional Manager
20 in the Eastern Region.

21 Now we're going to talk about information
22 you've obtained concerning Mr. Jos van Diepen.

23 So, Mr. Commissioner, we will need three
24 documents, the first one being 123665.

25 **THE COMMISSIONER:** All right. So Exhibit

1 Number 1084 -- I'm sorry, what are these notes, Mr. Ruel?
2 These are Mr. Downing's notes?

3 **MR. RUEL:** Yes, those are Mr. Downing's
4 notes of a meeting with Mr. Pat Hall.

5 **THE COMMISSIONER:** On February 14th, 1994?
6 Yes, date of interview?

7 **MR. RUEL:** No, Mr. Commissioner, this is the
8 date of the -- those notes refer to a statement that was
9 given by Mr. van Diepen on February 14th, 1994, but my
10 understanding was that the meeting with Mr. Hall was on
11 September 27, 2000. There doesn't seem to be a reference
12 to the date of the ---

13 **THE COMMISSIONER:** Okay. Well, we'll just
14 put them down as Mr. Downing's notes.

15 --- **EXHIBIT NO./PIÈCE NO. P-1084:**

16 (123665) Notes of Mr. Paul Downing

17 **THE COMMISSIONER:** Okay. The next exhibit?

18 **MR. RUEL:** The next document would be
19 725557.

20 **MR. MANSON:** Mr. Commissioner?

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

22 **MR. MANSON:** I'm sorry to interrupt, but I'm
23 having some difficulty keeping track of the documents and
24 the exhibits, and it would be very helpful when something
25 is made an exhibit, if we had the document number and some

1 description, the date, et cetera.

2 **THE COMMISSIONER:** Well, that's what I'm
3 trying to do, but ---

4 **MR. MANSON:** Exactly. Then I can find them,
5 because I'm ---

6 **THE COMMISSIONER:** All right.

7 **MR. MANSON:** Mr. Ruel has them organized in
8 his fashion, but I may not have mine organized in the same
9 way.

10 **THE COMMISSIONER:** Yes. Very well.

11 **MR. MANSON:** So I would appreciate that.

12 **THE COMMISSIONER:** All right.

13 So the document number is 1148839. So
14 1148839. That's Exhibit Number 1084, and the best I could
15 say is these are Mr. Downing's notes.

16 **MR. RUEL:** Mr. Commissioner, if I may, the
17 document I have is 123665.

18 **THE COMMISSIONER:** Oh, I'm sorry, you're
19 right. You're right. Sorry. I'm looking at the left-hand
20 side. So the document number is 123665. Sorry.

21 Okay. So are we done with that exhibit?
22 All right.

23 So Document Number 725557 is an interview
24 report of Jos van Diepen by the OPP on February 14th, 1994.
25 So that will become Exhibit Number 1085.

1 **--- EXHIBIT NO./PIÈCE NO. P-1085:**

2 (725557) PUBLICATION BAN - Interview Report
3 - Jos van Diepen with OPP D.C. Genier and C.
4 McDonnell dated February 14th, 1994

5 **THE COMMISSIONER:** Okay.

6 **MR. RUEL:** And the next document is already
7 an exhibit. It's Exhibit 1063.

8 **THE COMMISSIONER:** Okay, 1063, yes.

9 **MR. RUEL:** It's the same interview report as
10 the previous document but with handwritten notes made by --
11 or handwritten corrections or changes made by Mr. van
12 Diepen on the document.

13 **THE COMMISSIONER:** All right.

14 Okay. So do you have those three documents,
15 sir?

16 **MR. DOWNING:** Yes, I do.

17 **THE COMMISSIONER:** Thank you.

18 Go ahead, sir.

19 **MR. RUEL:** Mr. Downing, you have indicated
20 yesterday that you had a meeting with OPP officer Pat Hall
21 on September 27, 2000 and on that day you were allowed to
22 make notes concerning a statement that Mr. Jos van Diepen
23 had given to the OPP. Is that correct?

24 **MR. DOWNING:** That's correct.

25 **MR. RUEL:** And Exhibit 1084, would those be

1 your notes of that meeting?

2 MR. DOWNING: Those would be my notes taken
3 from the statement that I was provided access to.

4 MR. RUEL: Okay. So there are two documents
5 or two versions of the statement, Exhibit 1085 and Exhibit
6 1063. Can you explain which one -- well, first of all,
7 have you ever -- I mean, did you have those -- were you
8 given those two statements by Mr. Hall? Were you shown --
9 I'm sorry, I'll rephrase.

10 Were you shown those two statements by Mr.
11 Hall?

12 MR. DOWNING: I was shown one statement.

13 MR. RUEL: So which one?

14 (SHORT PAUSE/COURTE PAUSE)

15 THE COMMISSIONER: You're asking him to
16 compare ---

17 MR. RUEL: Exhibit 1085 and Exhibit 1063.

18 THE COMMISSIONER: Right.

19 MR. DOWNING: I was shown statement 1063.

20 MR. RUEL: And this statement has
21 handwritten notes on it. Do you know who made those notes?

22 MR. DOWNING: I assumed it was either Jos or
23 the interviewing police officer.

24 MR. RUEL: So going back to Exhibit 1084,
25 which are your notes, it starts with -- well, "Date of

1 Interview: February 14, '94" and then it goes, a little bit
2 below, "Statement", and you write:

3 "Started P&P in September of 1975.
4 Started part-time once a week in
5 Cornwall, full-time in 1976."

6 So if I go back to Exhibit 1063, that seems
7 to be a transcription, I guess, of Mr. van Diepen's
8 statement.

9 **MR. DOWNING:** As best I could.

10 **MR. RUEL:** Okay. So going back to Exhibit
11 1063, the statement you were shown, can you explain which
12 portions of this statement you felt were of interest for
13 your review?

14 **MR. DOWNING:** Well, what drew -- what drew
15 my attention were the actual changes in the statement. The
16 number of changes and the nature of changes were consistent
17 with regards to knowledge about Ken's background and his
18 association with certain male friends. Certainly the
19 description used in the typed statement, the wording was
20 changed significantly.

21 **MR. RUEL:** Can you give an example?

22 **MR. DOWNING:** For instance, the typed
23 statement said:

24 "I know Malcolm's -- Malcolm is queer"

25 ---

1 **MR. RUEL:** So sorry, you are at page, the
2 second page of the statement?

3 **MR. DOWNING:** That's correct. Which was
4 changed:

5 "I believe Malcolm is gay."

6 **MR. RUEL:** And then there's some changes
7 made there?

8 **MR. DOWNING:** Yes, I -- the typed statement
9 said:

10 "I know Malcolm's boyfriends".

11 And then it was changed:

12 "I know some of Malcolm's male
13 friends."

14 **MR. RUEL:** Can you read the next sentence as
15 well?

16 Maybe I can help you with that. It seems to
17 say:

18 "I know Ken's boyfriends."

19 That was in the initial statement and it seemed to have
20 been changed:

21 "I know some of Ken's male friends."

22 **MR. DOWNING:** That's correct.

23 **MR. RUEL:** So you had some concerns with
24 that?

25 **MR. DOWNING:** Well, certainly a different --

1 a significant difference in the description, yes.

2 **MR. RUEL:** So, essentially, what did you
3 learn from reading this statement?

4 **MR. DOWNING:** Well, it suggested to me that
5 when initially interviewed -- from my experience, I can't
6 believe that the interviewing police officer made that many
7 mistakes in recording the statement. That's based on my
8 experience. And I would suspect that this been has been a
9 trained police officer who has taken many statements
10 before. I'm assuming this.

11 For the person interviewed to go back and
12 change -- make so many changes, it would suggest to me that
13 the person being interviewed, Jos, after seeing what he may
14 have said was uncomfortable with that in writing and wanted
15 to make changes.

16 **MR. RUEL:** And is it fair to say that in
17 that statement to the OPP on February 14, '94 so the OPP --
18 the interviewer was Detective Constable Genier and Chris
19 McDonell from the OPP, Mr. Van Diepen was saying that he
20 knew that Mr. Ken Seguin had contacts, or out-of-office
21 contacts with Ministry clients. Is that correct?

22 **MR. DOWNING:** That would be accurate.

23 **MR. RUEL:** So for example, the second page,
24 the paragraph starts with:

25 "Back then, Ken had a lot of

1 personal life at home and his work at
2 the office but he said in some other
3 words to mind my own business. In the
4 last two years Ken and I never talked,
5 he basically told me off when I was
6 telling him to watch out about clients
7 interactions with him. Peter Sirrs (I
8 think it's been corrected to Peter
9 Sirrs), told Ken once..."

10 And the initial wording was "about" and it
11 was changed to:

12 "...around the Nelson got the boot to go
13 Montreal if he got those tendencies.
14 Ken asked me afterwards what Peter
15 meant by that. I told him if you're
16 queer don't do it here."

17 So you remember reading that?

18 **MR. DOWNING:** Yes.

19 **MR. RUEL:** And at the bottom of page -- the
20 next page, there's a mention about Mr. van Diepen was
21 saying there, "That Ron Gendron and I", so Ron Gendron and
22 Mr. van Diepen:

23 "... tried to talk to Ken about his
24 clients living there and that, but Ken
25 would always tell us to get out of his

1 office."

2 And there was some spying. Mr. van Diepen
3 was describing some spying that he did on Ken Seguin with
4 Ron Gendron. So you remember that?

5 **MR. DOWNING:** Yes.

6 **MR. RUEL:** So you've interviewed -- well,
7 before we go there, I just had some questions with respect
8 to Mr. Hall, so coming back on some of the points we
9 discussed yesterday.

10 Was it your understanding that the OPP was
11 investigating allegations made against Mr. Seguin who was
12 then deceased?

13 **MR. DOWNING:** My question was -- I explained
14 to Pat, obviously, why I was asking to meet with him to
15 gather any information about employees who are under
16 investigation or that they had documents that would assist
17 me in my administrative investigation. At that time, Pat
18 said there was no Ministry employee under investigation or
19 believed to be involved in criminal activity.

20 **MR. RUEL:** Okay. And, overall, in your
21 dealings with Mr. Hall, were you satisfied with the level
22 of cooperation you got in relation to your own review?

23 **MR. DOWNING:** There was certainly a level of
24 professional courtesy, however, I believe that I was
25 provided limited information.

1 **MR. RUEL:** So you only got one statement,
2 that's with -

3 **MR. DOWNING:** I didn't really ---

4 **THE COMMISSIONER:** No, just a minute. He
5 didn't get a statement.

6 **MR. DOWNING:** I didn't -- yeah, that's what
7 I was going to say, I didn't get the statement. I quickly
8 summarized it from my own notes.

9 **MR. RUEL:** Okay. So you've interviewed Mr.
10 van Diepen yourself and this is -- I'll refer you to your
11 report which is Exhibit 958.

12 **THE COMMISSIONER:** Okay; 958. Thank you.

13 **MR. RUEL:** Mr. Commissioner, the Bates page
14 would be 1001536.

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

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

17 **MR. RUEL:** So it seems that you've
18 interviewed Mr. van Diepen on September 28, 2000. Would
19 that be accurate?

20 **MR. DOWNING:** Yes.

21 **MR. RUEL:** And I gather that you had sent a
22 note or an invitation, if I can it like that, to Mr. van
23 Diepen to attend the interview with you?

24 **MR. DOWNING:** That's correct.

25 **MR. RUEL:** So did Mr. van Diepen express at

1 the beginning of the interview any concerns with respect to
2 delays, not having the time to prepare or any concern of
3 that nature?

4 **MR. DOWNING:** I recall him being reluctant
5 to meet with me and that he was seeking, I believe, funding
6 for a lawyer through the Ministry and didn't wish to meet
7 with me initially until that was put in place.

8 **MR. RUEL:** So when he attended -- so, first
9 of all, where -- this interview took place at the Eastern
10 Regional office?

11 **MR. DOWNING:** That's correct.

12 **MR. RUEL:** That's in Kingston?

13 **MR. DOWNING:** That's correct.

14 **MR. RUEL:** So did Mr. van Diepen come with -
15 - attend the interview with counsel?

16 **MR. DOWNING:** No, he brought his wife.

17 **MR. RUEL:** And did he ask counsel to be
18 present? Did he ask you for a postponement, for example?

19 **MR. DOWNING:** No.

20 **MR. RUEL:** So going through this interview
21 there are some -- well, this is a typed statement but
22 there's also some handwritten changes made to the document.
23 Can you explain who made those changes?

24 **MR. DOWNING:** Those changes would have been
25 made by Jos following the completion of the interview, and

1 the printing out of this statement that I had recorded or
2 typed.

3 MR. RUEL: So did you record this?

4 MR. DOWNING: No, I typed it.

5 MR. RUEL: After the interview?

6 MR. DOWNING: As he spoke.

7 MR. RUEL: So the changes were made the same
8 day?

9 MR. DOWNING: That's correct.

10 MR. RUEL: And at the last page, which is
11 page 19 or -- yes, that would be the page after 18,
12 conclusion of the statement, there's a signature. It seems
13 to be the signature of Mr. van Diepen -- well, there's a
14 signature. There's a print name, P. J. van Diepen,
15 position, PP02. Is that the signature of Mr. van Diepen?

16 MR. DOWNING: Correct.

17 MR. RUEL: So he approved the typed
18 interview with the changes?

19 MR. DOWNING: Correct.

20 MR. RUEL: So in the course of this
21 interview what did you learn from Mr. van Diepen?

22 MR. DOWNING: Well, it was an 18-page
23 interview.

24 Are you suggesting that we go into the front
25 of it and go through it or ---

1 **MR. RUEL:** Yes, if you want.

2 I can show you some paragraphs and ask you
3 to expand, but I just want generally to ask you what you
4 learned from Mr. van Diepen in the course of the interview.

5 **MR. DOWNING:** I think generally speaking, I
6 -- I -- you could summarize it, Jos had knowledge that Ken
7 was socially involved with Ministry clients outside of
8 work.

9 From the interview, no evidence was gathered
10 during that interview that would suggest that that
11 association was associated with any sexual impropriety;
12 however, that Ken was contravening Ministry rules with
13 regards to associations with Ministry clients.

14 **MR. RUEL:** I'd just like to pause here.

15 You're saying Ministry rules with respect to
16 association with Ministry clients. What are you referring
17 to?

18 **MR. DOWNING:** Referring to guidelines or
19 rules that the Ministry has in place to ensure the
20 integrity of a professional relationship between our
21 employees and our clients or offenders under our care
22 through the courts.

23 **MR. RUEL:** And those rules, I think I'll go
24 to them after, but do they apply or did they apply to past
25 clients as well?

1 **MR. DOWNING:** Yes, they did. My
2 understanding they did.

3 **MR. RUEL:** And what's the importance of
4 those rules?

5 **MR. DOWNING:** Well, it's -- the importance
6 for the administration of justice to show that -- that
7 those who work in the justice field are able to remain
8 objective and to provide a service to the court that in
9 reality and perception is fair and transparent.

10 **MR. RUEL:** So I'd like to refer you to
11 page 4 of the interview, at the bottom of the page some
12 paragraphs that I would just point out to you. The last
13 one:

14 "Ken was single, good looking and
15 eligible bachelor."

16 And the last sentence:

17 "Presented himself as a confirmed
18 bachelor."

19 So Mr. van Diepen said that to you?

20 **MR. DOWNING:** Correct.

21 **MR. RUEL:** And at page 5, it's towards the
22 end:

23 "At no time did Ken Seguin confide in
24 me about his sexual orientation. In
25 fact, he took the trouble to present me

1 with an image that he was
2 heterosexual."

3 Do you remember that?

4 **MR. DOWNING:** Yes.

5 **MR. RUEL:** And at the top of that page
6 there's mention of Mr. van Diepen, saying:

7 "I do not have a knowledge of him
8 having a liaison with Ministry clients
9 other than I know that some of his
10 clients did seem to interact with him
11 socially. Probationers stopped at his
12 house in Cornwall and also met with him
13 at the local tavern. They were adult
14 clients."

15 Do you remember that?

16 **MR. DOWNING:** Yes.

17 **MR. RUEL:** Is it fair to say that this
18 didn't seem to be consistent -- fully consistent with his
19 previous statement to the OPP?

20 **MR. DOWNING:** I would agree with that.

21 **MR. RUEL:** In what sense?

22 **MR. DOWNING:** Well, his statement to Pat
23 Hall, the one that I was provided, seemed that he had
24 further knowledge about Ken's personal life and his
25 association with certain individuals in the community and

1 the nature of that contact.

2 MR. RUEL: And it's fair to say that you
3 questioned Mr. van Diepen on this previous statement to the
4 OPP in the course of this interview?

5 MR. DOWNING: Yes, I did.

6 MR. RUEL: And there's reference to that at
7 page 12 of the interview and the sentence reads -- it's, I
8 would say, in the middle of the page:

9 "Do you recall providing a statement to
10 the OPP following Ken's death?"

11 And he answered:

12 "I don't remember."

13 "If you did ..."

14 You asked a question, you asked:

15 "If you did, you would have been
16 truthful?"

17 "Yes."

18 And then you ask him some questions
19 concerning the previous statements. Is that correct?

20 MR. DOWNING: That's correct.

21 MR. RUEL: So what did you want to achieve
22 by that?

23 MR. DOWNING: Well, it seemed to me during
24 the course of the interview that Jos was reluctant on these
25 issues and there seemed to be, still in my mind, the

1 original statement that was -- several changes that had
2 been made by him and I was really -- I was curious as an
3 investigator to have an explanation for that, and even his
4 comment about he didn't remember giving a statement, it
5 just didn't make sense to me as an investigator.

6 **MR. RUEL:** So at the top of page 13, you
7 mention, "You also provided a statement..." -- that's your
8 question:

9 "You also provided a statement to the
10 OPP that you were aware of that while
11 Gerry Renshaw and Ken Seguin resided
12 together that they were lovers. Can
13 you explain this statement?"

14 And the answer is:

15 "I believe that they were in a
16 relationship."

17 That's the answer.

18 So I guess he was not standing by his
19 previous statement?

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

21 **MR. RUEL:** And I guess you got into, at some
22 point in the interview, the issue as to whether Mr. van
23 Diepen reported those -- this knowledge to his superiors?

24 **MR. DOWNING:** Correct.

25 **MR. RUEL:** And what answer did you get?

1 **MR. DOWNING:** Could you refer me to the
2 section of the statement?

3 **MR. RUEL:** Well, for example, there's at
4 page 14 -- the question is:

5 "Did you or Ron report your concerns to
6 the management?

7 Right? That's the question you asked?

8 **MR. DOWNING:** Correct.

9 **MR. RUEL:** And the answer was, "No"?

10 **MR. DOWNING:** Correct.

11 **MR. RUEL:** And then the middle of the page,
12 "You provided" -- the question you ask is:

13 "You provided the OPP a statement that
14 you and Ron Gendron tried to talk to
15 Ken about his clients living there, but
16 Ken would always tell you to get out of
17 his office. Why were you concerned
18 enough to confront Ken about his
19 association with Ministry clients
20 outside the workplace?"

21 And the answer was:

22 "I felt his behaviour was appropriate."

23 So that happened? I mean, this exchange
24 between you and Mr. van Diepen happened?

25 **MR. DOWNING:** Correct.

1 **MR. RUEL:** And at page 15, the middle of the
2 page, the question is from you:

3 "Prior to this, you said you would not
4 report such matters to Emile. Why did
5 you think it was a significant matter
6 to go to him and report it when you
7 previously couldn't because of poor
8 working relationship?"

9 And then the answer was:

10 "Notwithstanding my poor relationship
11 with Emile Robert, I went to him and
12 told him about my concerns regarding
13 Ken Seguin's relationship with
14 clients."

15 Correct?

16 **MR. DOWNING:** Correct.

17 **MR. RUEL:** And then you seem to be
18 questioning Mr. van Diepen concerning the truthfulness, if
19 I can say, of this statement. Would that be accurate?

20 **MR. DOWNING:** Yes, it would.

21 **MR. RUEL:** And why was that?

22 **MR. DOWNING:** Well, if you read the
23 statement as one piece and work through it, you'll see that
24 he was taking a position of having little or no knowledge,
25 and then as I began to ---

1 **MR. RUEL:** Knowledge of what?

2 **MR. DOWNING:** Of any sort of relationship
3 with Ken with offenders outside the workplace. He -- my
4 questioning brought his statements into question and he was
5 basically forced to provide me responses, which complicated
6 his position further, based on his statement and the
7 information I held.

8 So there was certainly a difference of
9 opinion that he put forward initially, and as an
10 investigator, I worked him through some of those statements
11 he made that were contrary to previous information that I
12 had gathered.

13 **MR. RUEL:** So he said to you that according
14 to him, his reporting did not bring any -- his reporting to
15 Mr. Robert did not bring any change ---

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

17 **MR. RUEL:** --- or any response?

18 **MR. DOWNING:** That's correct.

19 **MR. RUEL:** So after the interview, what was
20 your assessment of Mr. van Diepen's version of events?

21 **MR. DOWNING:** Based, again, on his initial
22 statement to the police, the changes I witnessed, his
23 position at the beginning of my interview and the movement
24 throughout that interview, I don't think that -- I think
25 that Jos was reluctant and I'm not sure why. I think that

1 he had information that he could have been more forthright
2 about. He could have better explained some of his conduct
3 or actions that he shared with me during the interview.

4 I believe that he did have significant
5 knowledge with regards to Ken's association with offenders
6 within the community, contrary to Ministry rules.

7 **MR. RUEL:** You also interviewed Mr. Emile
8 Robert?

9 **MR. DOWNING:** Correct.

10 **MR. RUEL:** And this is as an appendix to
11 your report and, Mr. Commissioner and Mr. Downing, that
12 would be Bates page 1001530.

13 So this interview took place on September
14 26, 2000 in Kingston as well?

15 **MR. DOWNING:** Correct.

16 **MR. RUEL:** And I gather the same process was
17 followed. You would type a statement. Mr. Robert made
18 changes and he signed the statement the same day? And
19 that's at the last page of the statement, "Conclusion of
20 Statement"?

21 **MR. DOWNING:** Correct.

22 **MR. RUEL:** So, again, the same question as
23 for Mr. van Diepen. What did you learn from Mr. Robert in
24 the course of this interview?

25 **MR. DOWNING:** Again, in summary, without

1 specifically going to sections of the statement, it would
2 be reasonable, based on the information shared with me,
3 that he had knowledge that Ken was associating with
4 Ministry clients outside of business. There was no
5 evidence provided by him that that association was sexual
6 in nature, however, that it certainly and clearly
7 contravened Ministry policy.

8 I don't -- again, similar to Jos, I think
9 that at times during the statement, Emile was reluctant and
10 not forthright.

11 **MR. RUEL:** Can you give an example?

12 **MR. DOWNING:** An example would -- could be
13 the situation where Ken was at his residence, and I believe
14 it was in 1992, and was visited by three males, one being
15 under court supervision and one -- I believe it may be the
16 same one -- a pre-sentence report was being prepared for
17 the court based on the documents that I had received. Ken
18 had followed Ministry policy by reporting an incident that
19 took place that evening to his supervisor, Emile.

20 During my interview with Emile, until I
21 confronted him with documents that were contrary to his
22 statement to me, he had said that he was not aware of the
23 incident until some seven or eight months later when an OPP
24 officer, I think by the name of Millar, approached him
25 regarding the incident.

1 **MR. RUEL:** So let's unpack this point, if
2 you want, Mr. Downing. So at page 5 of Mr. Robert's
3 statement, the last paragraph reads -- and this is the
4 answer of Mr. -- or the statement of Mr. Robert in August
5 of 1992:

6 "OPP officer Randy Millar contacted me
7 and informed me that Ken Seguin had
8 some involved..."

9 I guess it's "involvement":

10 "...in a murder investigation that took
11 place in January of 1992. Randy told
12 me that the victim and the individual
13 who had been alleged to have committed
14 murder had been at Ken's residence in
15 Summerstown during the evening the
16 murder took place. According to OPP
17 Randy Millar, the individuals attended
18 Ken's home and he provided them with
19 beer. According to OPP Millar, it was
20 his opinion that the youth intimidated
21 Ken and that is why he allowed them
22 into the house. Ken was writing a pre-
23 sentence report on one of the young
24 adults and another adult was an ex-
25 offender."

1 So that's what he told you? That's what you
2 were referring to?

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

4 **MR. RUEL:** So he mentioned -- the following
5 paragraph, Mr. Robert mentioned consulting with Roy Hawkins
6 and he mentioned issuing a letter of counsel or a letter of
7 reprimand, and he was expressing disappointment that this
8 matter was reported to him almost 10 months after the
9 incident. That's correct; that's what he told you?

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

11 **MR. RUEL:** And then the next question, it's
12 from you:

13 "There is an incident report submitted
14 by Ken Seguin dated January 8th, 1992
15 regarding the adults attending his
16 residence and their reported
17 involvement in a murder later that same
18 evening. Did you know about this
19 incident for the first time in August
20 of 1992 or January of 1982?"

21 I guess it's 1992. So that's your question.

22 **MR. DOWNING:** Correct.

23 **MR. RUEL:** And I guess the answer you got is
24 that he could not explain why he only took action in
25 November of 1992 by issuing a reprimand letter or a letter

1 of counsel.

2 MR. DOWNING: That was his response, yes.

3 MR. RUEL: So there was an issue, according
4 to you of -- is it fair to say there was an issue of
5 credibility of Mr. Robert's comments there?

6 MR. DOWNING: Clearly.

7 MR. RUEL: Have you reviewed the -- did you
8 have the chance to review the documentation related to this
9 incident?

10 MR. DOWNING: If you're referring to the
11 incident report that I presented to Emile at the time I
12 did, yes.

13 MR. RUEL: You had that?

14 MR. DOWNING: I had it at the time, yes.

15 (SHORT PAUSE/COURTE PAUSE)

16 MR. RUEL: I'd like to refer you to
17 Exhibit 927.

18 (SHORT PAUSE/COURTE PAUSE)

19 MR. RUEL: And, Mr. Commissioner, Mr.
20 Engelmann will address tomorrow -- Mr. Engelmann or Mr.
21 Dumais, the potential -- the possibility of giving a
22 moniker to some of the names mentioned there, but I don't
23 know if this is being marked as a ---

24 THE COMMISSIONER: It is -- 927 has been
25 marked as a publication ban ---

1 **MR. RUEL:** So ---

2 **THE COMMISSIONER:** --- and I would suspect
3 that it should apply to the probationer involved.

4 **MR. RUEL:** Yes.

5 **THE COMMISSIONER:** And so, yes, we will be
6 naming those names tomorrow, so let's -- for purposes of
7 this discussion, if we are to use the names of the
8 probationer, it has to be -- you should give them a
9 temporary moniker.

10 **MR. RUEL:** Okay, Mr. Commissioner, I don't -
11 - I'm not going to refer to the names and I've discussed
12 the matter with the witness so I think we can -- we don't
13 need to refer to the names.

14 **THE COMMISSIONER:** Thank you.

15 **MR. RUEL:** Mr. Commissioner, if I may
16 suggest just a few seconds for the witness to read the
17 document. I'm not sure if he's had a chance to review it
18 before ---

19 **THE COMMISSIONER:** Certainly

20 **MR. RUEL:** --- before now.

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MR. RUEL:** So, Mr. Downing, is this the
23 incident report you were referring to?

24 **MR. DOWNING:** Correct.

25 **MR. RUEL:** This is dated January 8, 1992,

1 and this was prepared by Mr. Ken Seguin, correct; that's
2 your understanding?

3 MR. DOWNING: Correct.

4 MR. RUEL: Is it your understanding that Mr.
5 Robert had received this document in January of '92?

6 MR. DOWNING: Correct.

7 MR. RUEL: How do you know that?

8 MR. DOWNING: I recall an initial being on
9 the incident report, but I'm looking for it now.

10 MR. RUEL: Well, there seems to be some
11 marking on the first page.

12 MR. DOWNING: Correct.

13 MR. RUEL: Did you ask Mr. Robert whether or
14 not those were his initials?

15 MR. DOWNING: Yes, I did.

16 MR. RUEL: And he confirmed? He said yes?

17 MR. DOWNING: Yes.

18 THE COMMISSIONER: Which initials were they,
19 the one on the top?

20 MR. DOWNING: I believe it's at the top,
21 right-hand corner.

22 THE COMMISSIONER: Above "Incident Report"?

23 MR. DOWNING: I believe so.

24 THE COMMISSIONER: Thank you.

25 MR. RUEL: So in this report, Mr. Seguin was

1 describing the visit of four individuals and including one
2 of his clients; correct?

3 **MR. DOWNING:** A former client, yes.

4 **MR. RUEL:** Well, there's mention here about
5 a client that he had appointment -- one of the individuals,
6 that's at the bottom of the page, the individual -- I'm
7 going to read from the report:

8 "He reminded me that his scheduled pre-
9 sentence report interview was the
10 following day."

11 So he was a current client of Mr. Seguin?

12 **MR. DOWNING:** I'm -- from this incident
13 report I'm not sure as to whether he was actually on
14 probation and a client at that time. Certainly one -- the
15 person that -- one of the people that was at his residence,
16 he was writing a report for the court.

17 **MR. RUEL:** Okay. And you also described in
18 this report an incident whereby one of the individuals were
19 shot by another in the group after they had departed Mr.
20 Seguin's residence. That's correct?

21 **MR. DOWNING:** Fatally shot, correct.

22 **MR. RUEL:** Fatally shot?

23 There was no mention of alcohol being served
24 at that -- by Mr. Seguin on that occasion?

25 **MR. DOWNING:** Not in this report.

1 **MR. RUEL:** So in your view -- well, as an
2 investigator, I guess your task with determining if the
3 conduct of Ministry employees fall within Ministry policies
4 or guidelines or any regulation. Is that correct?

5 **MR. DOWNING:** Correct.

6 **MR. RUEL:** So based on this incident report,
7 what would you have expected Mr. Robert to do at the time?

8 **MR. DOWNING:** Based on the information that
9 was reported and the incident and the previous knowledge or
10 suspicions that Emile had reported having with regards to
11 Ken's association with clients outside of the workplace and
12 based on my experience as a Ministry inspector, this would
13 clearly be a situation that would normally be investigated
14 by an inspector or one in Level 1 investigation. This is a
15 high profile situation that could bring disrepute to the
16 administration of justice having someone in the justice
17 system, at least from the initial information, possibly
18 involved or have knowledge of.

19 So that would indicate to me that it -- that
20 there should have been at least a discussion as to whether
21 an investigation should have taken place with regards to
22 this matter.

23 **MR. RUEL:** Do you know if that happened?

24 **MR. DOWNING:** I'm not aware of that
25 happening.

1 I would assume it didn't, because it -- it
2 wasn't until almost eight months later when confronted by
3 an OPP Officer Millar that Emile took any action.

4 **MR. RUEL:** I'd like to refer you now to
5 Exhibit 929.

6 Mr. Commissioner, the same issue would apply
7 to this document.

8 **THE COMMISSIONER:** It's got a publication
9 ban.

10 **MR. RUEL:** Publication ban, thank you.

11 So, Mr. Downing, do you remember reading or
12 reviewing this document at the time of your review?

13 **MR. DOWNING:** Yes, I do.

14 **MR. RUEL:** And there was new information in
15 this report concerning the incidents. That's correct? I'm
16 saying new information as compared to the incident report
17 provided by Mr. Seguin.

18 **MR. DOWNING:** It would seem that this was
19 new information to Emile Robert, correct.

20 **MR. RUEL:** Yes, this is a letter -- I should
21 have said -- this is a letter addressed to Mr. Emile Robert
22 by Detective Constable Millar from the -- well the OPP,
23 dated September 3, 1992.

24 **MR. DOWNING:** But it's not new information.

25 **MR. RUEL:** Well, at the second page ---

1 **THE COMMISSIONER:** What do you mean by it's
2 not new information?

3 **MR. DOWNING:** I would assume that this
4 information was available sometime soon after the event.

5 **THE COMMISSIONER:** Right.

6 **MR. RUEL:** Oh, I see, but not -- what I'm
7 saying, new information, new information to Mr. Robert?

8 **MR. DOWNING:** Correct.

9 **THE COMMISSIONER:** So are you questioning
10 that the letter of September 3rd, 1992, that it took -- and
11 the event occurred on January 9th, 1992, why the police
12 would have taken so long to communicate this to Mr. Robert?

13 **MR. DOWNING:** No, I -- as an investigator, I
14 think this supports that at the time of the incident being
15 reported there should have been some discussion as to
16 whether a Ministry investigation took ---

17 **THE COMMISSIONER:** I see.

18 **MR. DOWNING:** --- could have taken place.
19 If it had, this information would have been made available
20 then.

21 **THE COMMISSIONER:** Right. I see. I see.

22 **MR. RUEL:** When I was talking, Mr. Downing,
23 about new information -- and I won't read the names -- but
24 at the second page, the third paragraph from the bottom,
25 there's mention of Mr. Seguin providing beer to the

1 individuals. That's correct?

2 MR. DOWNING: Correct.

3 MR. RUEL: So that's an additional fact for
4 Mr. Robert or that was an additional fact for Mr. Robert to
5 consider?

6 MR. DOWNING: Correct.

7 MR. RUEL: And in fairness to Mr. Seguin,
8 it's also mentioned at page 3 of the report that:

9 "Seguin stated he felt intimidated by
10 their presence and did not argue when
11 one of the individuals took three beers
12 from his fridge. He just wanted them
13 to leave."

14 So it's your understanding that this was --
15 I mean, Mr. -- Detective Constable Millar was referring to
16 an interview he had with Mr. Seguin?

17 MR. DOWNING: Correct.

18 MR. RUEL: And I'd like to show you Exhibit
19 928.

20 THE COMMISSIONER: And that's a letter dated
21 November 10th, 1992 ---

22 MR. RUEL: Yes.

23 THE COMMISSIONER: --- to Ken Seguin from
24 Emile Robert.

25 MR. RUEL: Mr. Commissioner, the same

1 comment applies. There's some names in there that will be
2 dealt with by either Mr. Engelmann or Mr. Dumais tomorrow.

3 **THE COMMISSIONER:** Yes. Thank you.

4 **MR. RUEL:** So, Mr. Downing, have you seen
5 this document as part of your review?

6 **MR. DOWNING:** Correct.

7 **MR. RUEL:** So this is the letter of counsel
8 to Mr. -- from Mr. Robert to Mr. Seguin concerning this
9 incident?

10 **THE COMMISSIONER:** Counsel?

11 **MR. RUEL:** Letter of counsel, letter of
12 reprimand.

13 **THE COMMISSIONER:** Letter of reprimand.
14 Okay. Well, I -- okay.

15 **MR. DOWNING:** I'm not sure if it's a letter
16 of counsel or reprimand. There's a difference. One is
17 discipline and one is providing guidance.

18 **MR. RUEL:** Okay. Well, is there any other
19 letter than this one, to your knowledge, that was sent by
20 Mr. Robert to Mr. Seguin?

21 **MR. DOWNING:** I'm not aware of any other
22 letter.

23 **MR. RUEL:** So this is the response for -- of
24 Mr. Robert to Mr. Seguin concerning this incident?

25 **MR. DOWNING:** Correct.

1 **MR. RUEL:** How would you qualify that
2 letter?

3 **MR. DOWNING:** I don't understand the
4 question.

5 **MR. RUEL:** Well, is it a letter of counsel,
6 a letter of reprimand, or is it something else?

7 **THE COMMISSIONER:** Before we go there,
8 please explain to me what you understand is the difference
9 between the letter of reprimand and the letter of counsel
10 by definition, and then we can get your opinion.

11 **MR. DOWNING:** Counselling can be provided
12 verbally or in writing.

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

14 **MR. DOWNING:** And it is not used in the
15 disciplinary process. In other words, you can't rely upon
16 that to discipline someone later on.

17 **THE COMMISSIONER:** Right. Okay.

18 **MR. DOWNING:** A letter of reprimand is the
19 first step in discipline.

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

21 **MR. DOWNING:** And you can, under certain
22 guidelines, rely upon that to possibly increase discipline
23 the next time such an event takes place.

24 **THE COMMISSIONER:** Okay.

25 **MR. RUEL:** So, Mr. ---

1 **THE COMMISSIONER:** Now, how would you
2 characterize this letter then?

3 **MR. DOWNING:** Well, again, this is back in
4 1992. From my experience, it's very important to clarify
5 the difference between those.

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

7 **MR. DOWNING:** And what I would do, if I was
8 the administrator, I would actually write on the top
9 "Letter of Reprimand".

10 **THE COMMISSIONER:** Or "Letter of Counsel"?

11 **MR. DOWNING:** Correct.

12 **THE COMMISSIONER:** Okay.

13 **MR. DOWNING:** And I would actually say, if
14 it was a letter of counsel, it's non-disciplinary.

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

16 **MR. RUEL:** So apart from that, I mean,
17 there's no mention of that on the top of the letter, but
18 from your experience, reading this letter, is this either a
19 letter of counsel or a letter of reprimand?

20 **MR. DOWNING:** I would suggest this is a
21 letter of counsel.

22 **THE COMMISSIONER:** And the last paragraph:
23 "I am bringing this matter to your
24 attention in order that future similar
25 incidents can be avoided. You should

1 be advised that if a similar situation
2 should arise, disciplinary action could
3 be imposed."

4 **MR. DOWNING:** That's the confusing part.

5 **THE COMMISSIONER:** Yeah.

6 **MR. DOWNING:** It doesn't say that this
7 letter is discipline, yet talks about discipline in the
8 future.

9 **MR. RUEL:** And the previous paragraph
10 mentioned -- Mr. Robert mentioned:

11 "I wish to bring to your attention that
12 it is improper to allow Ministry
13 clients to visit your residence and to
14 offer them alcoholic beverages.
15 Further, we have reviewed the Ministry
16 policy on employee contact with
17 offenders/ex-offenders. I have
18 enclosed a copy for your reference."

19 That's what he said in the letter.

20 **MR. DOWNING:** Correct. It's my opinion the
21 letter is clearly telling Mr. Seguin not to allow this to
22 happen again.

23 **MR. RUEL:** So based on the information you
24 had in the context of your review, was this an appropriate
25 response from Mr. Robert considering the facts he had in

1 front of him, those -- and I'm referring to those -- the
2 report from Detective Constable Millar and the incident
3 report from Mr. Seguin?

4 **MR. DOWNING:** Specifically, whether this is
5 appropriate I think can only be answered by Mr. Robert
6 because he may have more information than I had with
7 regards to the employee's employment record, his
8 performance, mitigating circumstances that may have been
9 discussed between the two, but certainly the incident, on
10 the surface, I think something has been missed here.

11 There might have been more information
12 available if an investigation had been conducted and may
13 have provided more information at this step that could have
14 impacted upon the decision of the employer.

15 **MR. RUEL:** Mr. Downing, I'd like to go back
16 to your report because there's some other elements in the -
17 - Mr. Robert's interview that I would like to bring your
18 attention to. So we're back to Exhibit 958. And Mr.
19 Robert's interview, that's at page 5. For precise
20 reference, if needed, it's Bates Number 1001532.

21 So the third paragraph from the top, he was
22 mentioning -- Mr. Robert was mentioning an instance where
23 Mr. Seguin approached him in 1989 about the possibility of
24 Gerald Renshaw residing with him at his cottage in
25 Summerstown, and Mr. Renshaw was an ex-offender. Do you

1 recall that?

2 MR. DOWNING: Yes, I do.

3 MR. RUEL: So what was the -- what did Mr.
4 Robert tell you about that and did you have any issue with
5 this matter?

6 MR. DOWNING: Well, it's clearly stated in
7 paragraph 3, page 5. If you're asking -- are you asking
8 what my opinion is of the decision?

9 MR. RUEL: Yes.

10 MR. DOWNING: Well, again, I think Mr.
11 Robert is the only one that can answer that. He may have
12 more information available to him that assisted in him
13 looking at as to whether there would be an actual conflict
14 of interest or a perception of a conflict of interest.

15 However, on the surface, based on my
16 experience, it's not very often that someone who is in
17 Ken's position would normally be permitted to have an
18 offender live with him.

19 MR. RUEL: An ex-offender in this case.

20 MR. DOWNING: Ex-offender.

21 MR. RUEL: And would you expect Mr. Robert
22 or the manager in this case receiving such a request to
23 thoroughly review the matter before granting an exemption?

24 MR. DOWNING: Yes. There would have to be
25 some sort of reason, whether it be rehabilitation or

1 programming or a lengthy connection with the ex-offender
2 that, again, Mr. Robert might be able to explain that made
3 sense and that the risk management to the Ministry and the
4 public safety was considered.

5 MR. RUEL: And the following paragraph,
6 there was also some other matters that Mr. Robert was
7 telling you, that in around 1989 Mr. Robert said, and I'll
8 read the paragraph:

9 "In around 1989 I recall observing a
10 number of rough looking youths around
11 20 years old in Ken Seguin's car."

12 Do you remember that?

13 MR. DOWNING: Correct.

14 MR. RUEL: So you questioned him on this
15 point?

16 MR. DOWNING: Well, this -- I didn't --
17 there's -- no, I didn't question -- I don't believe I
18 questioned him on that. That was a statement he made to
19 me.

20 MR. RUEL: And he said that -- my
21 understanding of what he said is that he had some concerns
22 with that and he went to -- he asked some questions to Jos
23 van Diepen about this?

24 MR. DOWNING: Correct.

25 MR. RUEL: And Mr. van Diepen said that this

1 was a bunch of youth helping Ken with his cottage. That's
2 correct?

3 **MR. DOWNING:** Correct.

4 **MR. RUEL:** Was there anything else with
5 respect to -- concerning Mr. Robert's interview that you
6 felt was important for your review?

7 **MR. DOWNING:** Just that it was clear to me
8 that Emile Robert had suspicions of Ken's association with
9 clients outside the workplace and -- or he would not have
10 been sharing his observations with me in his statement and
11 approaching a colleague for clarification and being
12 sensitive to a number of different issues.

13 Certainly on record to support that we know,
14 as previously discussed in '92, at Ken's house he declared
15 that association or a contact with an offender or someone
16 before the courts.

17 So at the end of the day if you are asking
18 me for a quick summary, I reasonably concluded, based on
19 the statement and information that I had received, that
20 Emile strongly suspected that there was a -- Ken was
21 contravening Ministry rules with regards to association
22 with offenders under our supervision -- the Ministry's
23 supervision.

24 **MR. RUEL:** And did you form an opinion as to
25 whether Mr. Robert had taken any action with respect to

1 this knowledge?

2 MR. DOWNING: Well, the only action that I
3 saw was initiated by Ken's declaration a number of times
4 that caused him to respond.

5 MR. RUEL: And finally, with respect to the
6 interviews you've conducted, you've interviewed Father
7 Kevin Maloney; that's correct?

8 MR. DOWNING: Correct.

9 MR. RUEL: So that's at Bates page 1001546
10 of your report. So that interview, Mr. Downing, took place
11 on September 27th, 2000.

12 MR. DOWNING: Correct.

13 MR. RUEL: In Cornwall?

14 MR. DOWNING: Correct.

15 MR. RUEL: And what did you learn from that
16 interview from Father Maloney?

17 MR. DOWNING: That he denied all allegations
18 that had been made in the Project Truth website.

19 MR. RUEL: Did you have any issue with
20 credibility of Mr. -- of Father Maloney with respect to his
21 statement to you?

22 MR. DOWNING: I had no evidence at the time
23 of the interview to suggest contrary to his position.

24 MR. RUEL: So now you also had access to
25 other documents for your review. Is that correct?

1 **MR. DOWNING:** Correct.

2 **MR. RUEL:** And how did that work? Did you
3 make a request to the Ministry to obtain documents or to
4 the Cornwall Probation Office to obtain documents that
5 would be relevant to your review?

6 **MR. DOWNING:** I recall receiving a box of
7 documents from the Regional Office.

8 **MR. RUEL:** For example, I'd like to refer
9 you to Exhibit 125.

10 **THE COMMISSIONER:** That would be in another
11 binder.

12 **(SHORT PAUSE/COURTE PAUSE)**

13 **MR. RUEL:** Mr. Downing, did you -- this is a
14 report dated May 31, 1982 concerning -- of the Inspections
15 -- Inspection and Investigation Branch concerning
16 allegations of unprofessional conduct of Nelson Barque. Do
17 you remember that?

18 **MR. DOWNING:** Yes.

19 **MR. RUEL:** So you received this document as
20 part of your review?

21 **MR. DOWNING:** Yes.

22 **MR. RUEL:** And attached to that there is
23 also a report from the then Area Manager Mr. Peter Sirrs
24 into the same issues?

25 **MR. DOWNING:** Correct.

1 **MR. RUEL:** So you reviewed those documents
2 in preparing your report?

3 **MR. DOWNING:** Correct.

4 **MR. RUEL:** And just for to close the loop on
5 this I'd like to refer you to Exhibit 869.

6 So, Mr. Downing, this is the
7 letter -- we talked about that yesterday, but I didn't show
8 you the document. This is the letter from Mr. Peter Sirrs
9 to Mr. Pierre Landry concerning -- the title or the
10 reference is "Employment Reference - Nelson Barque". So
11 you received this document as well?

12 **MR. DOWNING:** Correct.

13 **MR. RUEL:** So now I'd like to go back to
14 your report, which is Exhibit 958.

15 And at the second or third page there is a
16 section titled "Executive Summary". So may I ask you --
17 we've covered a lot of the ground, so maybe we do not need
18 to expand on all the details, but can you go through your
19 report and highlight some of the key findings you came to
20 after your review of those incidents? For example, it
21 starts with Nelson Barque.

22 **MR. DOWNING:** Well, under Nelson Barque I've
23 summarized his employment with the Ministry, with the
24 Cornwall Probation and Parole Office. I've alluded to an
25 investigation that was conducted in 1982 with regards to

1 allegations of misconduct concerning liquor and drugs to
2 probation clients and a review of his sexual involvement
3 with probationers he supervised.

4 **MR. RUEL:** M'hm

5 **MR. DOWNING:** And the investigation that was
6 conducted by Claire McMaster, and that he resigned from the
7 Ministry in 1982, shortly following the completion of that
8 report.

9 **MR. RUEL:** So then you talk about Mr. Peter
10 Sirrs who was Area Manager of the Cornwall Probation and
11 Parole Office for a time.

12 **MR. DOWNING:** It talks about summarizing
13 that following Nelson Barque's resignation from the
14 Ministry, shortly thereafter he became employed under the
15 Ministry of Community Services in Cornwall to work with
16 mentally disturbed children and in part it was -- his
17 hiring was in part based on a written and/or verbal
18 reference given by the Area Manager, Peter Sirrs.

19 And the discussion or the point about Pierre
20 Landry receiving a written reference with regards to
21 employment of Barque and a report -- it discusses a
22 reported conversation between the two, that being Sirrs and
23 Landry, regarding Barque's employment. And it talks about
24 later, following his hiring, Landry discovered information
25 that suggested misconduct on his part and confronted Nelson

1 and, as a result, according to Landry, Nelson Barque
2 resigned. And it talks about later in 1995, Nelson Barque
3 was convicted of a criminal offence and incarcerated for
4 four months for committing indecent assault.

5 MR. RUEL: I'm just going to ask you to
6 pause there. Did you review the facts related to this that
7 have led to those charges against Mr. Barque?

8 MR. DOWNING: I don't recall.

9 MR. RUEL: Do you know who the victim was?

10 MR. DOWNING: No, I don't.

11 MR. RUEL: Then you mentioned that Mr.
12 Barque is reported to have committed suicide in 1998?

13 MR. DOWNING: Correct.

14 MR. RUEL: And Mr. -- then you talk about
15 Mr. Seguin and the fact -- the issue of the permission from
16 Emile Robert to have Mr. Gerald Renshaw to rent a room?

17 MR. DOWNING: Correct.

18 MR. RUEL: And you mentioned the request was
19 made in accordance to Ministry policy?

20 MR. DOWNING: Correct.

21 MR. RUEL: So you mean the request made by
22 Mr. Seguin?

23 MR. DOWNING: Yes.

24 MR. RUEL: And then you talk about Mr.
25 Robert approving Mr. Seguin's request; right?

1 **MR. DOWNING:** Correct.

2 **MR. RUEL:** Okay. You talk -- in your
3 summary, then you talk about Mr. van Diepen. Maybe if you
4 want to summarize your findings with respect to Mr. van
5 Diepen?

6 **MR. DOWNING:** Again, I went point form, his
7 employment with the Ministry and his statements with
8 regards to having no knowledge of Ken's sexual involvement
9 with probationers under his care, and about his statement
10 to the police in 1994 and a statement to myself in 2000,
11 and the knowledge that he had been aware that male
12 probationers had attended Seguin's residence in Cornwall
13 and that he was aware that Seguin had met probationers at a
14 local tavern, and that prior to Ken's death in 1993, he and
15 a colleague confronted Ken in the Cornwall Probation and
16 Parole office regarding his relationships and/or
17 association with Ministry clients ---

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

19 **MR. DOWNING:** --- outside of his duties as a
20 probation and parole officer.

21 **MR. RUEL:** And then Mr. Robert. You talk
22 about Mr. Robert as well. You mention:

23 "PPO van Diepen said he told Mr. Robert
24 of his concerns regarding PPO Seguin's
25 association with Ministry clients.

1 According to PPO van Diepen, he and
2 Area Manager Robert took no action
3 regarding PPO Seguin's alleged
4 association with offenders/ex-
5 offenders."

6 **MR. DOWNING:** Correct.

7 **MR. RUEL:** And then the third paragraph:
8 "AM Robert said that around 1989 he
9 observed a number of rough looking
10 youths."

11 So we talked about that in the -- this comes
12 from the interview with Mr. Robert?

13 **MR. DOWNING:** Correct.

14 **MR. RUEL:** Then you go on to discuss -- set
15 out the facts that you've learned concerning the visit of
16 the four individuals, including a person, a Ministry
17 client, to Mr. Seguin's residence?

18 **MR. DOWNING:** Correct.

19 **THE COMMISSIONER:** So bottom line, what your
20 executive summary is telling what you did and that kind of
21 thing, but did you come up with any recommendations?

22 **MR. DOWNING:** It came -- I think my report
23 was through the statements we've just gone through ---

24 **THE COMMISSIONER:** Yes.

25 **MR. DOWNING:** --- the purpose was again to

1 provide information, factual information, to the senior
2 administrators so they could make a decision on this.

3 And so what I was doing was pulling together
4 what was credible, what I could actually substantiate and
5 people's positions, and that in itself, I think, brought
6 forward a number of concerns.

7 **THE COMMISSIONER:** Yes. Yes.

8 **MR. DOWNING:** So that was the purpose of
9 this report. And, again, in the conclusion I'm very clear
10 that I've identified that there's some risk management
11 here. There's concerns that need to be looked at.

12 **THE COMMISSIONER:** Okay. Well, let's look a
13 little bit as to your role. You see, as investigator, I
14 would have thought that you would put your -- "I recommend
15 that we look into this. I recommend that we look into
16 that," that kind of thing.

17 **MR. DOWNING:** Normally, the approach in
18 Correctional Services, the administrative investigations,
19 is to provide determinations ---

20 **THE COMMISSIONER:** Yes.

21 **MR. DOWNING:** --- of what happened ---

22 **THE COMMISSIONER:** Right.

23 **MR. DOWNING:** --- and not necessarily in
24 this format to make recommendations.

25 **THE COMMISSIONER:** Okay. So you're saying

1 it's not -- you're saying it's not your role to do that?

2 **MR. DOWNING:** That's correct.

3 **THE COMMISSIONER:** Should it be?

4 **MR. DOWNING:** I think after a report like
5 this is produced, I think there is room for consultation
6 with the subject experts ---

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

8 **MR. DOWNING:** --- to ask for advice.

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

10 **MR. RUEL:** And in the same vein, Mr.
11 Downing, there's no mention in here of, well,
12 recommendations. There's no mention about any potential
13 disciplinary action that should be taken against those
14 individuals. Is that fair?

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

16 **MR. RUEL:** Why is that so?

17 **MR. DOWNING:** Again, it's -- as an
18 investigator, I'm -- if you're talking about me, I'm not
19 the one that recommends the nature of discipline. I
20 provide the facts for a senior manager to take the
21 information I provide, look at the mitigating circumstances
22 and other information to determine what would be
23 appropriate discipline.

24 **THE COMMISSIONER:** Well, appropriate
25 discipline, I mean, that's already implying that we're

1 going there. You know, I don't know -- let's take one step
2 back. Never mind discipline; that we should look into this
3 further, I mean, maybe a letter of counsel, maybe --
4 whatever else. So I don't know if we can jump into
5 discipline right away.

6 You see, I guess when I'm reading your
7 summary, it certainly doesn't give me -- and your
8 interpretation of all of the statements, much as what Mr.
9 Ruel has extracted from you, gives me a much better flavour
10 than just your report.

11 Is that a fair statement?

12 **MR. DOWNING:** I would -- I don't disagree
13 with that.

14 However, I would -- the conference call that
15 took place following the completion of my report ---

16 **THE COMMISSIONER:** Oh, okay.

17 **MR. DOWNING:** --- that type of discussion
18 would have taken place.

19 **THE COMMISSIONER:** Okay. All right. Well,
20 we'll wait for that then. Thank you.

21 **MR. RUEL:** There's other points. You did
22 not -- I mean, you mentioned that there was some breach of
23 Ministry policy, but there is no mention as to which policy
24 would apply at a given time.

25 Is there any reason for that?

1 **MR. DOWNING:** Well, I mention in my
2 conclusion that based on the information, that in fact
3 staff did or ought reasonably to have known that Ken was
4 contravening Ministry rules governing employee contact with
5 offenders and ex-offenders.

6 **MR. RUEL:** Okay.

7 **MR. DOWNING:** So I've clearly identified
8 that based on the previous statements.

9 **MR. RUEL:** So that's in your conclusion at
10 page 5?

11 **MR. DOWNING:** That's correct.

12 **MR. RUEL:** And you also mention:

13 "According to Ministry records, no
14 Ministry investigation has taken place
15 regarding David Silmser's 1993
16 allegation concerning alleged sexual
17 misconduct on the part of PPO Seguin
18 and other matters relevant to the
19 supervision of Ministry clients at the
20 Cornwall Probation and Parole Office."

21 And you've testified about that yesterday,
22 saying this was, on its face, I guess, if I'm trying to
23 wrap up what you were saying, this complaint was on its
24 face within the mandate of the IIU, the Independent
25 Investigation Unit to investigate; right?

1 MR. DOWNING: Correct.

2 MR. RUEL: So this -- up to this point it's
3 only -- we talked about Stage 1 and Stage 2 of your process
4 yesterday?

5 MR. DOWNING: Correct.

6 MR. RUEL: And this is only Stage 1, which
7 was to assess whether or not there was some -- any current
8 risk with respect to current Ministry employees?

9 MR. DOWNING: That would be accurate.

10 MR. RUEL: So you did not, for example,
11 interview the individuals who had made statements alleging
12 abuse by Mr. Seguin on the website?

13 MR. DOWNING: No.

14 MR. RUEL: Did you ever review the caseload
15 of Mr. Seguin or Mr. Barque with a view of identifying
16 further potential victims of Mr. Seguin and Mr. Barque?

17 MR. DOWNING: No.

18 MR. RUEL: Do you know if this was ever done
19 by -- well, was this ever done by you through your
20 involvement in this process?

21 MR. DOWNING: No.

22 MR. RUEL: Was this ever done by the
23 Ministry as you know?

24 MR. DOWNING: I have no knowledge.

25 MR. RUEL: And you didn't interview the

1 support staff -- any other staff of the Cornwall Probation
2 and Parole Office except those you've mentioned here in
3 your report?

4 MR. DOWNING: That's correct.

5 MR. RUEL: Is there any reason for that?

6 MR. DOWNING: Well, again, this was a --
7 more of a status report to quickly gather information
8 properly so -- for senior administrators to make an
9 assessment of next steps.

10 MR. RUEL: M'hm.

11 MR. DOWNING: And keeping ---

12 THE COMMISSIONER: It wasn't in your
13 mandate?

14 MR. DOWNING: That's correct.

15 MR. RUEL: Was it within your mandate, as
16 well, to assess any systemic issue with respect to the
17 functioning of the Cornwall Probation and Parole Office,
18 for example, supervision, office morale, problems --
19 management problems within that office. Was that within
20 your mandate?

21 MR. DOWNING: No.

22 MR. RUEL: Did you ever do that in the
23 course of your involvement in this matter?

24 MR. DOWNING: No.

25 MR. RUEL: Do you know if there's ever been

1 an audit -- operational audit of the Cornwall Probation and
2 Parole Office?

3 **MR. DOWNING:** I have no knowledge.

4 **MR. RUEL:** We talked about an action plan
5 and the policy dealing with investigations -- Ministry
6 investigations and Level 1 investigations and action plans
7 being prepared to follow up on the investigative reports;
8 do you know if an action plan was prepared with respect to
9 this -- following the issuance of your report?

10 **MR. DOWNING:** I'm not aware of one, but I
11 would distinguish this as not -- as your typical -- you're
12 using the terms "investigation". I'm looking at this more
13 as an administrative review and that was my understanding
14 of what I was supposed to do.

15 **MR. RUEL:** Well, you did interview certain
16 individual -- you interviewed Mr. van Diepen, Mr. Robert.
17 This was an investigative-type exercise, at least as it
18 relates to them?

19 **MR. DOWNING:** Some of the skills I used
20 would be similar to an investigation, but I respectfully
21 suggest to you that if it was the intent of the Ministry to
22 thoroughly investigate this, you would require a team of
23 people and not just me.

24 My clear understanding was it was an
25 administrative review to quickly gather information to

1 provide senior administrators, that had apparently no
2 knowledge of the events, to put them in a position to make
3 a decision.

4 **MR. RUEL:** So in terms of having further
5 investigation into the matter, was this your opinion
6 following -- after the information you've gathered, that a
7 broader investigation should have -- I mean, should be
8 conducted into the -- any issues surrounding the Cornwall
9 Probation and Parole Office, Mr. Seguin, Mr. Barque and
10 others?

11 **MR. DOWNING:** I -- I would suggest that that
12 was one option that could have been considered.

13 Certainly, I clearly identified in my
14 administrative review some significant issues or risk
15 management issues that needed to be addressed.

16 How they would be addressed I would --
17 senior administration I would think would be in the best
18 position to determine that.

19 **MR. RUEL:** So after you were a Special
20 Investigator, you got more staff and you became the Chief
21 of the CISU, which is the Correctional -- and remind me,
22 the ----

23 **MR. DOWNING:** Investigation and Security
24 Unit?

25 **MR. RUEL:** Yes. So were you ever tasked

1 with conducting a broader or an investigation -- or a
2 broader investigation into the matter as Chief or the CISU?

3 **MR. DOWNING:** My recollection is that during
4 that time there were a number of interviews that followed
5 or while I was Chief that I was asked to assign an
6 inspector to go and take a statement from someone related
7 to this matter.

8 **MR. RUEL:** And you did that? You did pursue
9 some investigative -- or I won't call them "investigative",
10 but some steps following the issuance of your report?

11 **MR. DOWNING:** I was asked and I did assign
12 an inspector to meet with the complainants. I believe they
13 were two or three.

14 **MR. RUEL:** Did you know if -- Mr.
15 Commissioner, maybe I can just finish with this point.
16 I've got five minutes, and then we can move on to ---

17 **THE COMMISSIONER:** After the break.

18 **MR. RUEL:** After the break, another area?

19 **THE COMMISSIONER:** Sure.

20 **MR. RUEL:** Did you know if the -- following
21 the issuance of your report, do you know if the matter, the
22 file, was turned over to the Independent Investigation
23 Unit?

24 **MR. DOWNING:** I have no knowledge of that.
25 My understanding was that Denise Dwyer was

1 handling the file.

2 MR. RUEL: Who is Denise Dwyer?

3 MR. DOWNING: She's a lawyer with the
4 Ministry.

5 MR. RUEL: I'd like to refer you to a
6 document and, Madam Clerk, this is in the Ministry of
7 Community Safety and Correctional Services corporate
8 presentation. It's Document Number 60 ---

9 THE COMMISSIONER: What book?

10 MR. RUEL: Sorry, Tab -- Volume 8.

11 THE COMMISSIONER: Yeah, okay. And what
12 tab?

13 MR. RUEL: Tab 54.

14 THE COMMISSIONER: Okay.

15 (SHORT PAUSE/COURTE PAUSE)

16 THE COMMISSIONER: All right. So hang on
17 now, we've got to get that for the witness.

18 MR. RUEL: Madam Clerk, this is -- our
19 document administrator has given document numbers for those
20 tabs. It's Document Number 600182.

21 THE COMMISSIONER: So, no, I don't think he
22 has this book. It would be one of these, Mr. Downing?
23 Okay, so that's Tab 54?

24 So that we know that this is a memorandum to
25 the regional director, superintendents and area managers

1 from Mr. -- the Assistant Deputy Minister John F. Rabeau,
2 dated May 4th, 1999, and the subject matter is "Revised
3 Allegations of Criminal Activity, Sexual Assault, Workplace
4 Discrimination, Harassment and Sexual Impropriety
5 Directive".

6 **MR. RUEL:** And, Mr. Downing, at page -- if
7 you can flip the page to the actual directive which is
8 issued -- or was issued on May 4, 1999, and the subject is
9 as Mr. Commissioner has indicated, "Allegations of Criminal
10 Activity, Sexual Assault, Workplace Discrimination,
11 Harassment and Sexual Impropriety".

12 Are you familiar with this policy or this
13 directive?

14 **MR. DOWNING:** Yes.

15 **MR. RUEL:** And under the heading "Policy",
16 it reads:

17 "When a manager learns or has
18 reasonable cause to believe that
19 employment-related criminal activity,
20 sexual impropriety, discrimination or
21 harassment has or may have occurred
22 involving an employee or client, the
23 manager or supervisor shall advise
24 (a) the police, (b) the Independent
25 Investigation Unit, of complaints or

1 allegations of sexual impropriety,
2 including sexual assault, committed by
3 employees including employees of
4 agencies or companies with which the
5 Ministry is contracting for services,
6 against clients or former clients, and
7 (c) the police and the OPP Professional
8 Standards Bureau regarding allegations
9 of physical or sexual assault by
10 clients on other clients or clients on
11 employees."

12 So is it not fair to say that according to
13 this directive, the IIU shall be advised of all complaints
14 or allegations of sexual improprieties committed by
15 employees against clients or former clients?

16 **MR. DOWNING:** Correct.

17 **MR. RUEL:** Do you know if this was done in
18 and this -- the case you'd been dealing with?

19 **MR. DOWNING:** According to Bill Roy and the
20 documents that were provided back in '92, '93, that that's
21 correct. The IIU was advised and contacted and the Ontario
22 Provincial Police were contacted.

23 **MR. RUEL:** But you've learned ---

24 **THE COMMISSIONER:** I'm sorry -- I'm sorry --
25 this is with respect to?

1 **MR. DOWNING:** Mr. Seguin.

2 **THE COMMISSIONER:** Mr. Seguin. Okay. Okay.

3 **MR. RUEL:** But is it fair to say that you've
4 learned through your review of the website that there were
5 additional complaints made against Mr. Seguin of a sexual
6 nature by individuals?

7 **MR. DOWNING:** I can't say if they were
8 additional complaints. I'm not sure whether the police
9 already had these complaints or not.

10 My understanding would be this is -- the
11 person in question, the employee, there was original
12 contacts made in 1992 and this is a continuation of the
13 allegation. In other words, the policy had been followed.
14 The police were contacted and the IIU was contacted
15 regarding this matter.

16 **MR. RUEL:** Let me put it this way; it seems
17 to me that reading this and, if I understand correctly the
18 mandate of the IIU, that the matters you've been tasked to
19 review in 2000 was -- were within the mandate of the IIU to
20 review. Is that your understanding?

21 **MR. DOWNING:** I don't think -- I think that
22 the policy for the IIU was consistent in 1992 as it was in
23 1999, if that's the question. It was the same policy.

24 **MR. RUEL:** So they could have been asked by
25 management to review the facts that you were asked to

1 review?

2 **MR. DOWNING:** I think that's fair to say,
3 that at any time during that period they could have been
4 asked a second time as they were back in 1992.

5 **MR. RUEL:** And that didn't happen?

6 **MR. DOWNING:** I'm not aware of that.

7 **MR. RUEL:** Mr. Commissioner, I think that it
8 would be good time for a break.

9 **THE COMMISSIONER:** Perfect. Thank you.
10 Let's take the morning break.

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

13 This hearing will resume at 11:20.

14 --- Upon recessing at 11:04 a.m./

15 L'audience est suspendue à 11h04

16 --- Upon resuming at 11:24 a.m./

17 L'audience est reprise à 11h24

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

20 This hearing is now resumed. Please be
21 seated. Veuillez vous asseoir.

22 **PAUL DOWNING, Resumed/Sous le même serment:**

23 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**
24 **RUEL (cont'd/suite):**

25 **MR. RUEL:** Mr. Downing, I just wish to come

1 back to a few points. Can you explain exactly what you
2 mean, the difference between, in your view, an
3 investigation and a review?

4 **MR. DOWNING:** Well, in this case an
5 administrative review, as I previously stated, was to
6 provide information as quickly as possible surrounding the
7 Project Truth website and the allegations regarding current
8 employees. From my point of view, the administrative
9 summary was not intended to be as in depth as an
10 investigation. It was intended to promptly provide
11 information to senior administrators so they could make
12 decisions, next-steps type decisions.

13 **MR. RUEL:** So what is an investigation?

14 **MR. DOWNING:** An investigation, from my
15 point of view, is a very thorough review of all matters
16 relevant to an incident.

17 **MR. RUEL:** So this is not what you were
18 tasked to do by Mr. Commeford and Ms. Newman?

19 **MR. DOWNING:** That's correct.

20 **MR. RUEL:** And you were never tasked to do
21 an investigation, a thorough review of the matters?

22 **MR. DOWNING:** That's correct.

23 **MR. RUEL:** And you mentioned the fact that,
24 for example, in the course of the interview with Mr. van
25 Diepen that there was no indication that Mr. -- from your

1 review, that Mr. Seguin was involved in sexual
2 improprieties?

3 **MR. DOWNING:** I had no information at that
4 point in time to indicate that.

5 **MR. RUEL:** But it was not your mandate -- or
6 was it within your mandate to determine whether or not
7 sexual improprieties had been committed?

8 **MR. DOWNING:** If the information had come to
9 me during that process, I would have documented that in an
10 administrative review report, yes.

11 **MR. RUEL:** But there was allegations made on
12 the website and statements posted on the website alleging
13 sexual improprieties and you didn't meet those people.

14 **MR. DOWNING:** That wasn't my task. My task
15 was to meet with the current employees.

16 **MR. RUEL:** Okay.

17 **THE COMMISSIONER:** Current or retired?

18 **MR. DOWNING:** Correct.

19 **THE COMMISSIONER:** So just employees.

20 **MR. DOWNING:** Correct.

21 **MR. RUEL:** So the scope of your exercise, I
22 guess, was quite limited?

23 **MR. DOWNING:** That would be fair.

24 **MR. RUEL:** And just to -- I don't want to
25 play on words but if refer you to Exhibit 1080, 1-0-8-0,

1 which has been filed yesterday, and this is an email to you
2 -- from you to a Ms. Newman and where at the second
3 paragraph you were saying that:

4 "Case management responsibilities and
5 actual investigating the incident are
6 very different functions. It would
7 appear that certain Ministry staff need
8 to be asked specific questions. Prior
9 to those staff being approached certain
10 investigative steps should be taken to
11 secure possible evidence."

12 And then you mention:

13 "It would be my suggestion that we
14 discuss a number of developing issues
15 and then implement an investigative
16 plan.?"

17 So does that mean -- I mean, it seems to
18 suggest that you were considering that your exercise should
19 be an investigation, not a review. Would that be a fair
20 comment?

21 **MR. DOWNING:** That wouldn't be my
22 understanding, no.

23 **MR. RUEL:** So what would your ---

24 **MR. DOWNING:** I mean, there's a tanglement
25 of terms here. I think that goes back soon after my initial

1 contact in August, and I'm thinking, looking at that email, I
2 was simply trying to put some sort of framework around
3 whatever I was to do and to slow the process down a bit to
4 have something that made sense. In other words, I had
5 mentioned earlier to actually get a hold of the website
6 documentation to actually go through and look at all the
7 references that were made to current and past employees. And
8 then at that point further discussions could take place.

9 MR. RUEL: So is it fair to say that it was
10 not within your mandate to determine the truth of allegations
11 of abuse?

12 MR. DOWNING: That would be fair.

13 MR. RUEL: So that would have been -- that
14 would be the subject of a possible broader investigation?

15 MR. DOWNING: It could have been.

16 MR. RUEL: And you've mentioned that you
17 didn't review the files of Mr. Seguin and Mr. Barque?

18 MR. DOWNING: I think I saw -- you're
19 talking about their personnel files or ---

20 MR. RUEL: Sorry, the caseload files.

21 MR. DOWNING: No, I did not.

22 MR. RUEL: And in your opinion, if there had
23 been an investigation into the matter, is this something that
24 should have been or should be looked at, the -- or should be
25 reviewed, the actual files of the probationers or the clients

1 that were under Mr. Seguin's supervision -- Mr. Seguin and
2 Barque and others that -- against whom allegations were made?

3 **MR. DOWNING:** That's difficult to answer.
4 I'd have to make an assumption as to what a mandate might be
5 for a follow-up investigation. I'm just assuming I would be
6 -- I don't know what the parameters of such an investigation
7 would be. The parameters as set out in the mandate might
8 assist in defining as to whether those areas of documents
9 should be looked at.

10 **MR. RUEL:** When you did your review, do you
11 know if there was publicity in the community, in the media or
12 otherwise concerning those -- the matters you were asked to
13 review?

14 **MR. DOWNING:** I don't recall. I recall
15 seeing some newspaper articles in the website Project Truth
16 itself, I believe. I think they were attachments or in the
17 information that I received. I don't -- I didn't look in the
18 daily paper in Cornwall for articles of that nature.

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

20 **MR. RUEL:** I would like to refer you to
21 Document Number 100526.

22 **THE COMMISSIONER:** That will be a new one.

23 (SHORT PAUSE/COURTE PAUSE)

24 **THE COMMISSIONER:** Thank you.

25 Exhibit 1086 are a number of newspaper

1 clippings, the first one being one from the Hamilton
2 Spectator dated April 20th, 2000.

3 ---EXHIBIT NO./ PIÈCE NO P-1086:

4 (100526) Newspaper clippings

5 MR. RUEL: So this, Mr. Downing, seems to
6 have been -- well, I should ask you, have you received
7 those documents as part of your review?

8 MR. DOWNING: I definitely received them
9 because they're my initials and date and time. How I
10 received them, I'm not clear.

11 MR. RUEL: And there's -- if I look, for
12 example -- I won't go through the -- I mean, you received
13 that on September 5, 2000?

14 MR. DOWNING: Correct.

15 MR. RUEL: And in those, for example, if you
16 turn to the third page of this document there is an undated
17 article here and the title is "Big Support for Petition
18 Demanding Full Inquiry".

19 Do you see that?

20 MR. DOWNING: Correct. I do.

21 MR. RUEL: And this was into the Project
22 Truth cases. Is that correct?

23 MR. DOWNING: Correct.

24 MR. RUEL: Then if you can turn the next --
25 to the second page after that, there is an article here

1 titled "Chance to Sign Petition".

2 Do you see that?

3 **MR. DOWNING:** I do.

4 **MR. RUEL:** It's dated August -- there's a
5 handwritten note here. It seemed to have been dated August
6 25, 2000.

7 So, Mr. -- just relying on those newspaper
8 articles, would it be fair to say that there was some
9 publicity, at least in Cornwall, concerning the Project
10 Truth matters and issues surrounding sexual abuse in
11 Cornwall at the time of your review?

12 **MR. DOWNING:** I would agree with that.

13 **MR. RUEL:** And your report of October 10,
14 2000, was it ever made public?

15 **MR. DOWNING:** I have no knowledge of that.

16 **MR. RUEL:** Do you think if -- was that
17 something that should be made public or should have been
18 made public?

19 **MR. DOWNING:** I think that that report
20 identified a number of concerns; that decisions had to be
21 made about that report. If one of the those decisions was
22 to make it known publicly, I certainly was not in a
23 position to do that.

24 **MR. RUEL:** That was not your role to make it
25 public?

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

2 **MR. RUEL:** So you didn't make it public?

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

4 **MR. RUEL:** But what I'm getting at is that
5 there's -- I mean, just reading the allegations made on the
6 website, would you agree with me that those raised
7 significant concerns with respect to the functioning and
8 work of the Cornwall Probation and Parole Office?

9 **MR. DOWNING:** In general, I would agree.
10 However, I think the releasing -- if you're asking me if
11 the releasing of the report at that time would have been
12 the appropriate thing to do, I'm not aware of what other
13 discussions were going on with regards to what was going to
14 happen to that report.

15 If, for instance, an investigation or more
16 thorough investigation was going to take place, in fact,
17 the releasing of that document might contaminate any future
18 investigation. Again, I wasn't privy to that, but that may
19 be something that was being discussed or thought of.

20 **MR. RUEL:** So just to close the loop on one
21 point, we talked about the Independent Investigation Unit
22 and I'd like to refer you to a document which is Document
23 123944.

24 **THE COMMISSIONER:** What kind of document is
25 it?

1 **MR. RUEL:** It's a policy document. It's the
2 Terms of Reference of the Independent Investigation Unit.

3 **THE COMMISSIONER:** And it hasn't been filed
4 yet?

5 **MR. RUEL:** I don't believe so.

6 **THE REGISTRAR:** It's 123944?

7 **MR. RUEL:** Yes.

8 **THE COMMISSIONER:** Say again.

9 **MR. LEE:** Could it be 117894?

10 **MR. RUEL:** Mr. Lee mentions 117894. I don't
11 know if it's the same document. This one is dated ---

12 **THE COMMISSIONER:** Can you show it to Mr.
13 Ruel please, Madam Clerk?

14 Is this the one?

15 **MR. RUEL:** No.

16 Mr. Commissioner, maybe we can clarify that
17 at the lunch break and come back to that.

18 **THE COMMISSIONER:** Sure. Okay.

19 **MR. RUEL:** Mr. Downing, I'd like to go now
20 to your notes, which is Exhibit 1064.

21 **THE COMMISSIONER:** One-zero-six-four (1064).

22 **MR. RUEL:** What I want to do is go through
23 some additional steps you took and some discussions you had
24 following the issuance of your report.

25 **MR. DOWNING:** I don't have those notes in

1 front of me.

2 **THE COMMISSIONER:** Exhibit 1064. It would
3 be in one of those binders, I believe. Maybe not.

4 **MR. RUEL:** It's page -- well, why don't we
5 go to page 18 of your notes.

6 So at the bottom of the page this is -- we
7 talked about that. This is your final report submitted to
8 Gary Commeford, Deborah Newman and Michael Stephenson,
9 right; correct?

10 **MR. DOWNING:** Correct.

11 **MR. RUEL:** Then the next page, October 16,
12 there seemed to have been a conference call with Mr.
13 Commeford and Ms. Newman where you reviewed your written
14 report with them.

15 **MR. DOWNING:** Correct.

16 **MR. RUEL:** Can you tell us what was
17 discussed during this conference?

18 **MR. DOWNING:** Well, according to my notes
19 there were a couple of follow-up items. I assume that they
20 had the report. We were discussing it and there was some
21 consultation, and I believe point 1 regarding Jos' claim
22 that he told Emile Robert of his concerns, I believe I was
23 asked to contact Emile and directly ask him that question
24 as to whether Jos had approached him and to get his
25 response in either an email or in writing.

1 And the second one was that there was some
2 claim by Emile that Gilbert Tayles was involved in some
3 sort of an investigation that was dealt with
4 inappropriately, that being the investigation concerning
5 the alleged conduct of Jos.

6 **MR. RUEL:** Okay. The next entry is October
7 18th and it says that you spoke with Emile Robert. Can you
8 tell us what was the nature of this conversation?

9 **MR. DOWNING:** It was with regards to point 1
10 from October the 16th with regards to the information that
11 Jos had provided that he had said that he had told Emile or
12 provided information regarding Ken's association with
13 offenders outside of the office.

14 **MR. RUEL:** And what did Mr. Robert tell you?

15 **MR. DOWNING:** Emile denied -- stated that
16 Jos had not approached him regarding this matter.

17 **MR. RUEL:** This matter being contacts with
18 Ministry clients?

19 **MR. DOWNING:** That's correct.

20 **MR. RUEL:** And he confirmed that to you in
21 writing as well, right? Correct?

22 **MR. DOWNING:** Correct?

23 **MR. RUEL:** And this document is, Mr.
24 Commissioner, Madam Clerk, 100581.

25 **THE COMMISSIONER:** Thank you. Exhibit

1 Number 1087 is a letter dated October 18th, 2000 from Emile
2 Robert to Paul Downing.

3 --- EXHIBIT NO./PIÈCE NO. P-1087:

4 (100581) Letter dated October 18, 2000 from
5 Emile Robert to Paul Downing

6 MR. RUEL: Mr. Downing, you remember
7 receiving this letter?

8 MR. DOWNING: I do.

9 MR. RUEL: So Mr. Robert was confirming in
10 that letter that Mr. van Diepen had never raised any
11 concern with him regarding Mr. Ken Seguin's personal
12 relationship with Ministry clients?

13 MR. DOWNING: That's correct.

14 MR. RUEL: So coming back to your notes, and
15 I'm now at page 21, on November 9 it appears -- 2000 -- it
16 appears that you had a telephone conference with John
17 Rabeau, Morris Zbar, who was the Deputy Ministry, Deborah
18 Newman, Gary Commeford, regarding the written report.

19 Can you tell us what was discussed during
20 this conference call?

21 MR. DOWNING: Well, obviously the
22 investigation or the administrative review report was what
23 was being briefed. That was discussed at that time with
24 all the parties and to make sure that there was clarity to
25 the report and no questions that were left unanswered.

1 **MR. RUEL:** Do you remember if there was any
2 direction given to you with respect to conducting a full-
3 scale investigation into the matter or other types of
4 investigation?

5 **MR. DOWNING:** There may have been. I'm not
6 sure. I'd have to refer to my notes, but there may have
7 been a couple of minor follow-up issues again. But no,
8 there was no decision during that telephone conference
9 that, I'll just say, a full and thorough investigation
10 would be conducted.

11 **MR. RUEL:** So it appears here that -- it
12 reads -- it's the second sentence:

13 "Will forward report ASAP to Legal
14 Branch."

15 You were asked to do that?

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

17 **MR. RUEL:** At the next entry, November 16th
18 seems to read:

19 "Provided..."

20 I can't read the next word.

21 **MR. DOWNING:** I think that I probably made a
22 telephone call and provided a briefing, verbal briefing, to
23 her.

24 **MR. RUEL:** Okay. To Denise Dwyer from the
25 Legal Branch?

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

2 **MR. RUEL:** So after that, you've had -- is
3 it fair to say you've had regular dealings with the
4 Ministry Legal Branch with respect to your report and
5 findings?

6 **MR. DOWNING:** I don't know if I would term
7 it regular. There was periodic contacts with Legal Branch;
8 correct.

9 **MR. RUEL:** Okay. The next page, page 22,
10 there's an entry on November 24, 2000 at 15:10. It reads:

11 "Telephoned Peter Sirrs. Introduced
12 myself and explained to him why I was
13 contacting him. Reference Nelson
14 Barque."

15 Is that accurate?

16 **MR. DOWNING:** Correct.

17 **MR. RUEL:** So can you explain the
18 conversation or go through the conversation you had with
19 Mr. Sirrs, what you told him and what he told you.

20 **MR. DOWNING:** Well, like my case notes said,
21 I did introduce myself and what I was asked to do by the
22 Ministry, what I was looking into and what I wanted to
23 speak to him specifically about, and that was with regards
24 to a reported conversation that he had with Pierre Landry
25 regarding employment for Ken. And I asked him whether he

1 had provided a reference ---

2 **THE COMMISSIONER:** No, not Ken. Nelson.

3 **MR. DOWNING:** Nelson, I'm sorry.

4 **THE COMMISSIONER:** Yes.

5 **MR. DOWNING:** Thank you. Nelson.

6 And initially he said he didn't provide any
7 reference, employment reference, and he initially, I
8 believe, made comments similar to he didn't recall any
9 conversation -- verbal conversation with Pierre, a
10 telephone conversation, and then later during our --
11 without looking at my notes and just recalling this, and
12 then later during the conversation he acknowledged that
13 there had been a telephone contact, but he had not released
14 any information and had told Pierre that he needed the
15 release form prior to providing any information regarding
16 Nelson's employment.

17 I then talked to him about a letter I had --
18 a letter of reference, and he stated that he had not
19 prepared any such letter of any nature and I said to him I
20 had one in my hands and it appeared to be his signature.
21 He initially responded that, "Then somebody must have
22 forged it because I didn't do it."

23 And then our conversation slowly -- it wound
24 down after that. He was reluctant to talk to me and asked
25 for reassurance that a lawyer would be provided and any

1 expenses if he talked to me any further.

2 **THE COMMISSIONER:** He was, at that time,
3 still employed by the Ministry, was he not?

4 **MR. DOWNING:** I believe he was retired. He
5 was living in North Bay.

6 **MR. RUEL:** So as an investigator, may I ask
7 you if you formed any conclusion following this
8 conversation with Mr. Sirrs? If I may put this into
9 context, you had spoken with Mr. Landry before you had the
10 letter, and then you spoke to Mr. Sirrs. So did you form
11 any conclusion with respect to those -- the events that you
12 discussed with those witnesses?

13 **MR. DOWNING:** Well, there appeared to be
14 certainly a difference of opinion based on my conversation
15 with Pierre and Peter. Pierre was very clear to me during
16 my telephone conversation that he had in fact had some
17 discussion with regards to the employment that Nelson would
18 become involved in and that that was the purpose of his
19 telephone call, was to assure that Nelson would be
20 appropriate for that nature of work. Obviously, from my
21 discussion with Peter, he's taking the position that that
22 did not take place.

23 **MR. RUEL:** Did you make a credibility
24 assessment in terms of -- for the purpose of making
25 recommendations to the Ministry between those two versions?

1 **MR. DOWNING:** Well, based on -- I recall the
2 conversations very clearly because it was, for me -- for me
3 as an investigator, it was a significant issue with a
4 reference letter on file, the investigation report that
5 caused Nelson to resign and the potential future employment
6 that this former employee was to become involved in, I had
7 no reason, based on my conversation with Pierre -- it was
8 quick, it was spontaneous, that he -- he seemed to be
9 credible -- the reluctance of Peter caused me concern.

10 **MR. RUEL:** Now, I'd like to refer you to
11 some other notes, at page 26.

12 And then I gather, without going to the
13 notes, that you've had some discussions concerning the
14 David Silmser complaint with Ms. Denise Dwyer from Legal
15 Services; that's correct?

16 **MR. DOWNING:** I think that would have come
17 about because of my administrative review report, which
18 indicated that the contacts had been made to IIU but no
19 investigation, in fact, had taken place, and there was a
20 question surrounding exactly who made that call not to
21 investigate and refer it to Legal Branch.

22 **MR. RUEL:** Okay. Just before that, your
23 report was forwarded to the Legal Branch of the Ministry?

24 **MR. DOWNING:** That's correct.

25 **MR. RUEL:** Do you know what they did with

1 it?

2 **MR. DOWNING:** My understanding was that they
3 used that report to assist them in providing advice.

4 **MR. RUEL:** And to your knowledge did they
5 prepare advice for whoever within the Ministry concerning
6 your report?

7 **MR. DOWNING:** Can I ask direction from Mr.
8 Commissioner?

9 **MR. RUEL:** Well, Mr. Downing, I'm not asking
10 for the nature of the advice and there's no objection from
11 your counsel.

12 If I may, I'm just asking if the -- you know
13 if Ms. Downing provided advice to the Ministry concerning
14 your report?

15 I know that the Ministry is claiming
16 privilege on the advice, so I'm just asking the question.

17 **MR. DOWNING:** Yes, there was a report
18 produced.

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

20 **MR. RUEL:** And I gather that the Ministry is
21 claiming privilege over that report.

22 **MR. DOWNING:** That's my understanding.

23 **MR. RUEL:** So then you did some -- conducted
24 some more steps to review the Silmser matter; that's
25 correct?

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

2 **MR. RUEL:** And there's a reference here,
3 December 22, 2000, at page 26:

4 "Telephoned Loretta Eley"

5 **MR. DOWNING:** Correct.

6 **MR. RUEL:** "Interview schedule for
7 January 5"

8 **MR. DOWNING:** Correct.

9 **MR. RUEL:** "2001".

10 **THE COMMISSIONER:** Excuse me; on the issue
11 of privileges, has that been acknowledged and accepted by
12 Commission lawyers?

13 **MR. RUEL:** Yes. Maybe my friends may want
14 to speak to that, but we -- yes, we've accepted the claim
15 of privilege as being valid in this case.

16 **MR. ROSE:** Yes, Mr. Commissioner, I'm not
17 sure what comment you're looking to us for?

18 **THE COMMISSIONER:** Okay, I'm sorry; I just
19 want to get situated here.

20 There's a claim of privilege for a report
21 that was prepared after Mr. Downing's report?

22 **MR. ROSE:** Yes.

23 **THE COMMISSIONER:** That went to the
24 Minister?

25 **MR. ROSE:** Well, its distribution is to

1 various people but it's generated by Legal Branch. It's
2 solicitor-client opinion.

3 **THE COMMISSIONER:** Yeah, okay. That's fine.
4 No, I just wanted to situate myself where we
5 are.

6 **MR. ROSE:** Thank you.

7 **THE COMMISSIONER:** Thank you.

8 **MR. RUEL:** Mr. Downing, I'd like to refer
9 you to document number 123491.

10 **THE COMMISSIONER:** It's a new document.
11 Thank you.

12 **MR. RUEL:** That's ---

13 **THE COMMISSIONER:** Just a minute.
14 Exhibit number 1088 is an interview
15 statement of Loretta Eley -- E-L-E-Y; is that how you
16 pronounce her name?

17 **MR. DOWNING:** Eley.

18 **THE COMMISSIONER:** Eley, sorry.
19 January 9th, 2001.

20 --- EXHIBIT NO./PIÈCE NO 1088:

21 (123491) Interview statement of Loretta Eley
22 dated 9 Jan 2001

23 **MR. RUEL:** Mr. Downing, you conducted this
24 interview with Ms. Eley on January 9, 2001; is that
25 correct?

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

2 **MR. RUEL:** So I gather that Ms. Eley was the
3 executive assistant to then Deputy Minister Michele Noble
4 in September of 1993 when the complaint made by Mr. David
5 Silmsler was received by Bill Roy in the eastern region; is
6 that accurate?

7 **MR. DOWNING:** Correct.

8 **MR. RUEL:** So what did you learn through
9 your interview of Ms. Eley?

10 **MR. DOWNING:** Could I just take a second to
11 review it?

12 **THE COMMISSIONER:** Oh, absolutely.

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

14 **MR. DOWNING:** I recall the -- in summary,
15 the substance of this interview was to determine as to who
16 and why a decision had been apparently made by the Deputy
17 Minister's office not to have the IIU proceed with an
18 investigation and to have the complaint moved to Legal
19 Services.

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

21 **MR. DOWNING:** And at the time of my
22 interview, Loretta had confirmed that she was in the
23 position. I had discussed with her the complaint had come
24 through the IIU and I believe, according to her statement,
25 she believed that it fit the terms of reference for the

1 IIU; she has some recall with regards to instructions to
2 the IIU not to proceed and to move it over to the Legal
3 Services but she could not recall who made that decision in
4 the Deputy Minister's office.

5 **MR. RUEL:** Could she recall the rationale
6 for making that decision, from your interview with her?

7 **MR. DOWNING:** Not that I recall.

8 **MR. RUEL:** Is it fair to say that she also
9 explained to you the process when their office was --
10 received or was informed of a complaint concerning -- that
11 would be within the mandate of the IIU?

12 **MR. DOWNING:** Correct.

13 **MR. RUEL:** For example, at page 5 of the
14 interview, there's a -- it's your question and I'm going to
15 read the second sentence:

16 "At the time that you were the
17 executive assistant to the Deputy
18 Minister what was your understanding
19 with reference to who was responsible
20 in deciding when a complaint or
21 incident fell within the terms of
22 reference and/or mandate of the IIU?"

23 And the answer was:

24 "It was my experience that our office
25 received a complaint that appeared to

1 fall under the IIU mandate, we, that
2 being the Deputy Minister's Office,
3 would refer the matter to the IIU. It
4 would be the IIU's responsibility to
5 assess and determine as to whether the
6 matter fit within their mandate. The
7 office would respond back to the source
8 of information (complaint/allegation)
9 and informed the individual what action
10 we have taken. If the information
11 and/or complaint was received directly
12 by the IIU from the field or the
13 complainant, the manager would again
14 determine whether it fell within the
15 IIU mandate."

16 Is that what you -- this is what she told
17 you?

18 **MR. DOWNING:** That's correct.

19 **MR. RUEL:** So I guess she was explaining to
20 you, in terms of process, that it was not within the
21 purview of the Deputy Minister's office to determine which
22 complaint fell within the mandate of the IIU; it was the
23 IIU, the Independent Investigation Unit that had to make
24 that determination?

25 **MR. DOWNING:** Correct.

1 **MR. RUEL:** And going back to your notes, Mr.
2 Downing, and I won't read the exact entries, but maybe just
3 one. It's at page 28 and it's an entry dated January 13,
4 2001.

5 Can you read what's there?

6 **MR. DOWNING:** I'm sorry, what date is that
7 again, please?

8 **THE COMMISSIONER:** January 13th, 2001.

9 Is there just one reference to January 13th?
10 I can't see it on the screen there.

11 **MR. DOWNING:** Yes.

12 **MR. RUEL:** There is, yes, Mr. Commissioner.

13 **MR. DOWNING:** I'm just trying to read my
14 writing.

15 "Received fax regarding new disclosure
16 of sexual abuse by Ken Seguin towards a
17 former client. Left voicemail message
18 for Denise Dwyer."

19 **MR. RUEL:** So, and following that, is it
20 fair to say that you've received information concerning
21 three more disclosures of sexual abuse by Ken Seguin
22 towards Ministry clients?

23 **MR. DOWNING:** That would be accurate.

24 **MR. RUEL:** So what was the context here?
25 Who did you -- who gave you or who informed you of those

1 disclosures?

2 **MR. DOWNING:** I'd have to look at each one
3 to determine that. I believe -- I don't know, unless I
4 look at the documents and how they came about.

5 **MR. RUEL:** So let me refer you to page 29.
6 There's an entry -- and Mr. Commissioner, there's again --
7 there's a publication ban attaching to those -- Mr.
8 Downing's notes. I gather that my colleagues will address
9 the matter with you tomorrow morning, but in the meantime I
10 will not name those individuals.

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

12 **MR. RUEL:** So it's March 21st, 2001. It seems
13 -- it reads here:

14 "At 15:45 hours spoke with Susan
15 Freeborn regarding three new
16 complaints. Susan commented that I
17 should continue to do my own
18 investigation of the matters regardless
19 of her action on the civil side of any
20 issues."

21 So who is Susan Freeborn?

22 **MR. DOWNING:** I recall that there were some
23 historical abuse cases and I believe that this lawyer was
24 assigned to that caseload, which was separate and apart
25 from the matter that I -- the administrative review that I

1 had prepared.

2 It's my belief, and again I'm just going on
3 memory, that Denise Dwyer was dealing with the issues that
4 we had looked at. Susan Freeborn had a different file and
5 was looking at the more historical abuse. And I may have
6 been asked to contact her.

7 **MR. RUEL:** So is it fair to say that she was
8 in the litigation office? Was that your understanding?
9 Was she litigating or involved in the litigation?

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

11 **MR. RUEL:** And then I gather that she gave
12 you the green light to continue your investigation of the
13 matters?

14 **MR. DOWNING:** Keeping in context, I think
15 her advice was, "It will not interfere with what I'm doing.
16 You continue to do whatever you were doing".

17 **MR. RUEL:** M'hm. And you have obtained
18 statements from two of those complainants. Is that
19 accurate?

20 **MR. DOWNING:** An inspector I assigned did,
21 yes.

22 **MR. RUEL:** Okay. Who was that inspector?

23 **MR. DOWNING:** Inspector Mark McGillis.

24 **MR. RUEL:** And this person obtained
25 statements from two individuals, and were you provided with

1 those statements afterwards?

2 **MR. DOWNING:** Yes, I was.

3 **MR. RUEL:** So I'd like to enter those two
4 statements.

5 Mr. Commissioner, again, the matter will be
6 addressed tomorrow but there's some -- those two names, for
7 the moment I would ask you that they be subject to a
8 temporary publication ban ---

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

10 **MR. RUEL:** --- at least until tomorrow.

11 **THE COMMISSIONER:** Thank you.

12 **MR. RUEL:** The first document is 123492 and
13 the second is 123493.

14 **THE COMMISSIONER:** So for the purposes of
15 these exhibits why don't we do it this way?

16 Exhibit 1089 is an interview statement of C-
17 47. We'll give that person a C-47 moniker. And the
18 statement was given on May 25th, '01. Actually, it's an
19 interview, an interview statement.

20 **---EXHIBIT NO./ PIÈCE NO P-1089:**

21 (123492) PUBLICATION BAN - Interview by Mark
22 McGillis dated May 25, 2001

23 **THE COMMISSIONER:** And the next one is
24 Exhibit 1090. Interview statement of C-48, which was given
25 on May 24th, '01.

1 **---EXHIBIT NO./ PIÈCE NO P-1090:**

2 (123493) PUBLICATION BAN - Interview by Mark
3 McGillis dated May 24, 2001

4 **MR. RUEL:** So, Mr. Downing, Exhibit 1089 is
5 the statement of C-47 and I gather, and correct me if I'm
6 wrong, I'm just summarizing to I guess speed up the
7 process, but this person was alleging that Ken Seguin had
8 abused him when he was -- sexually abused him when he was
9 on probation in the '70s?

10 **(SHORT PAUSE/COURTE PAUSE)**

11 **MR. DOWNING:** Correct.

12 **MR. RUEL:** So that's your understanding?

13 **MR. DOWNING:** Correct.

14 **MR. RUEL:** And the person was 15-16 years
15 old at the time of those events from what we can gather
16 from the statement?

17 **MR. DOWNING:** Correct.

18 **MR. RUEL:** And I'll bring to your attention
19 the last paragraph -- or the second-to-last paragraph,
20 which reads as follows:

21 "My life has been upsetting since Ken
22 Seguin abused me and I'm 46 years old
23 now and I'm still having nightmares
24 about it. I always buried myself in
25 drugs to get away from my memories. He

1 wrecked my life. I wondered what my
2 life would have been like if I had
3 never met Ken Seguin or had a different
4 probation officer."

5 Do you remember that?

6 **MR. DOWNING:** Well, when you ask me do I
7 remember it, I didn't take the statement.

8 **MR. RUEL:** Okay, but you read it?

9 **MR. DOWNING:** I may have read it briefly but
10 I don't, unless -- until reading it today I don't recall
11 the content of this specifically.

12 **MR. RUEL:** Okay. Do you remember what you
13 did with this statement?

14 **MR. DOWNING:** Yes, I do.

15 **MR. RUEL:** What did you do?

16 **MR. DOWNING:** Well, the context of this was
17 that there were, like you previously mentioned, three
18 further interviews that were conducted, but these weren't
19 your typical investigative interviews, I would suggest.

20 If you look at the format of them it's more
21 of a question and a narrative answer. And the assignment
22 for the inspector, which I had asked to delegate, was
23 simply to go and record the complaint or the allegation and
24 not to question the complaint.

25 Once that statement was taken, or the

1 complaint recorded, I believe it was submitted -- I'd have
2 to look at my notes -- but, again, to Denise Dwyer who was
3 handling the file and there may have been a couple of other
4 senior administrators if it was forward to that. I would
5 have to see my notes.

6 MR. RUEL: So was the statement collected
7 for the purpose of civil litigation?

8 MR. DOWNING: I know -- I don't know the
9 answer for that.

10 MR. RUEL: So the next document is Exhibit
11 1090 and this is the statement of C-48, and in this
12 statement the witness was alleging sexual -- I will make
13 reference to sexual encounters with his probation officer,
14 Ken Seguin. Is that your recollection? I don't know if
15 you want -- Mr. Commissioner, maybe the witness will need a
16 few seconds to read it.

17 THE COMMISSIONER: Sure.

18 (SHORT PAUSE/PAUSE COURTE)

19 MR. DOWNING: Correct.

20 MR. RUEL: And it would be accurate to say
21 that this person was also making other allegations
22 concerning Mr. Seguin?

23 MR. DOWNING: Correct.

24 MR. RUEL: And for -- if I summarize that,
25 he was saying that he was providing drugs or selling drugs

1 to Mr. Seguin and that drugs were being supplied and used,
2 I guess, at the Cornwall Probation and Parole Office?

3 MR. DOWNING: Correct.

4 MR. RUEL: There's also reference at page 3
5 to a police officer and the -- what Mr. -- the witness
6 appears to be saying is that this police officer was aware
7 of -- that first of all there was drugs in the probation
8 office and that this drug was -- and that this was at the
9 knowledge of Mr. Seguin. Is that -- do you recollect that?
10 Would you read that?

11 MR. DOWNING: Correct.

12 MR. RUEL: So did you remember receiving
13 that information at the time?

14 MR. DOWNING: No.

15 MR. RUEL: Do you remember what you did with
16 this information? Did you turn it over to the police for
17 further investigation?

18 MR. DOWNING: I forwarded it to Denise Dwyer
19 and, again, I'd have to refer to my notes but I believe
20 senior administration.

21 MR. RUEL: Sorry. I ---

22 MR. DOWNING: I forwarded this statement to
23 Denise Dwyer along with the previous one, and I believe,
24 I'd have to check my notes, I think these statements were
25 also sent to senior administrators. I'd have to check my

1 notes.

2 MR. RUEL: But you don't recall referring
3 this statement to the police for review or investigation?

4 MR. DOWNING: No, I did not.

5 MR. RUEL: Is there anything else that you
6 did in the -- to finalize, I guess, your mandate with
7 respect to those issues? Anything else that you want to
8 add in terms of your role?

9 MR. DOWNING: No. I think that's -- you've
10 covered most of my involvement.

11 MR. RUEL: Going back to your notes, that's
12 at the last page, and it reads as follows and we're still -
13 - Madam Clerk, it's Exhibit 1064.

14 And I'll read it to you and correct me if
15 this is not accurate.

16 "September 6th, 2001, Consultation ..."
17 Is that it?

18 MR. DOWNING: Correct.

19 MR. RUEL: " ...with Gary Commeford. File
20 closed. Crown law office dealing with
21 matters relevant to Project Truth. Will
22 maintain information on file. PD"

23 So those are your initials?

24 MR. DOWNING: Correct.

25 MR. RUEL: So did Mr. -- in this

1 consultation, did Mr. Commeford explain to you why the file
2 would be -- your file would be closed?

3 **MR. DOWNING:** Other than Denise Dwyer would
4 be dealing with the matter and to maintain all records as
5 you have seen today. That's it. There was no explanation
6 as to why I was to close the file.

7 **MR. RUEL:** Do you know if the Crown law
8 office would be tasked to investigate those matters?

9 **MR. DOWNING:** I don't know.

10 **MR. RUEL:** It wouldn't be their role to do
11 that?

12 **MR. DOWNING:** I think I've mentioned before
13 that it's my opinion, based on my experience, that lawyers
14 aren't investigators ---

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

16 **MR. RUEL:** --- so I'd be surprised, unless
17 they again employed one of the investigative units that
18 we've talked about or some outside source, that they would
19 actually be conducting an investigation themselves.

20 **MR. RUEL:** Mr. Commissioner, I would be
21 done. The only point is this document that we couldn't
22 locate ---

23 **THE COMMISSIONER:** Well, it's time for lunch
24 in any event. Why don't we come back at a quarter- to-two
25 and we can do the document and then go on.

1 **MR. RUEL:** A few minutes -- I'm going to be
2 five minutes and then I'm going to be done.

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

4 **MR. RUEL:** Thank you.

5 **THE COMMISSIONER:** Good.

6 **THE REGISTRAR:** Order; All rise. L'ordre;
7 veuillez vous lever.

8 The hearing will resume at 1:45 p.m.

9 --- Upon recessing at 12:20 p.m. /

10 L'audience est suspendue à 12h20

11 --- Upon resuming at 1:54 p.m. /

12 L'audience est reprise à 13h54

13 **THE REGISTRAR:** Order; All rise. L'ordre;
14 veuillez vous lever.

15 This hearing is now resumed. Please be
16 seated. Veuillez vous asseoir.

17 **THE COMMISSIONER:** Thank you. Good
18 afternoon.

19 **MR. RUEL:** Good afternoon, Mr. Commissioner,
20 Mr. Downing.

21 Just a few more questions.

22 In the course of your review which took
23 place between August 8, 2000 and September 6, 2001, did you
24 have any dealings with the local probation and parole
25 office here in Cornwall?

1 **MR. DOWNING:** No, I did not. Other than
2 with the area manager who assisted me in becoming more
3 familiar geographically with Cornwall.

4 **MR. RUEL:** Did you know that before you were
5 appointed to do this review and in the course of your
6 review, the local office had received some disclosures of
7 instances of sexual abuse by Mr. Seguin and Barque on -- by
8 Mr. Seguin on Ministry clients?
9 Did ---

10 **MR. DOWNING:** The staff received disclosure.

11 **MR. RUEL:** Well, that's my understanding but
12 my question is were you made aware of any disclosures, any
13 additional disclosures of sexual abuse by Mr. Seguin or
14 Barque in the course of your review by the local probation
15 parole office?

16 **MR. DOWNING:** Only the matters that we've
17 previously discussed today.

18 **MR. RUEL:** No. So the answer is no?

19 **MR. DOWNING:** That's correct.

20 **MR. RUEL:** I wish to discuss now Document
21 Number 123944 and, Mr. Commissioner, we had given notice on
22 this document. There was some -- for whatever reason we
23 couldn't find it earlier.

24 **THE COMMISSIONER:** Yes. In any event,
25 Exhibit 1091 is the Independent Investigations Unit Terms

1 of Reference.

2 ---EXHIBIT NO./ PIÈCE NO P-1091:

3 (123944) Independent Investigations Unit

4 Terms of Reference

5 MR. RUEL: So, Mr. Commissioner, Mr.

6 Downing, this document is -- you'll see that at the bottom

7 of the page is dated January, 1994.

8 Are you familiar with the Terms of Reference

9 of the Independent Investigations Unit?

10 MR. DOWNING: Generally.

11 MR. RUEL: So do you have any reason to

12 believe that those Terms of Reference were not -- sorry,

13 I'll rephrase. It's my understanding that those Terms of

14 Reference were those that were in force at the time you

15 conducted your review. Do you have any information to the

16 contrary?

17 MR. DOWNING: No.

18 MR. RUEL: I just want to show you page 2

19 under "Sexual Impropriety", and I'll read it to you:

20 "The Independent Investigations Unit

21 will investigate allegations of sexual

22 impropriety, including gestures, oral

23 or written remarks, et cetera, by

24 employees towards clients who are, and

25 former clients who were, resident of

1 the Ministry of Correctional or
2 Detention Centres or recipients of
3 Ministry Probation and Parole
4 Services."

5 And the following paragraph:

6 "In the event that the respondent is no
7 longer a Ministry employee, the IIU
8 will not conduct an investigation
9 unless the Ministry can provide
10 redress."

11 Was that your understanding of the Terms of
12 Reference with respect to sexual improprieties?

13 **MR. DOWNING:** Yes.

14 **MR. RUEL:** And at the following page, and
15 I'll read it to you. Again, it deals with criminal
16 investigations:

17 "If at any time during the course of an
18 investigation the investigators uncover
19 evidence of a sexual assault or any
20 serious criminal activity, they shall
21 determine whether the manager has
22 notified the police, and if the police
23 have not been contacted the unit shall
24 notify the police pursuant to the
25 Ministry's protocol for contacting the

1 police. Unless directed otherwise by a
2 Crown attorney, the Independent
3 Investigations Unit will continue to
4 conduct its investigation whether or
5 not the police investigation
6 commences."

7 So those are the Terms of Reference of the
8 IIU. This issue of concurrent criminal investigations and
9 Ministry investigations, is that -- like in your role as
10 Special Investigator or Chief or Director of the CISU,
11 would you follow the same approach if there was an
12 allegation of criminal activity, but at the same time an
13 issue that you felt you had the power to investigate?

14 **MR. DOWNING:** If the question is that if a
15 criminal offence -- if I believe a criminal offence may
16 have taken place or activity, I would have an obligation to
17 report that to the police.

18 If I believed that there was activities that
19 fell within the mandate of the investigative unit, a
20 parallel investigation would continue.

21 **MR. RUEL:** So ---

22 **MR. DOWNING:** The answer would be yes.

23 **MR. RUEL:** Okay. For Ministry purposes of
24 course?

25 **MR. DOWNING:** Correct.

1 **MR. RUEL:** Which would be -- could be, for
2 example, imposing discipline on someone, firing someone?

3 **MR. DOWNING:** Any action the employer takes,
4 my understanding of case law is that the employer must
5 conduct its own separate investigation and rely upon that
6 investigation to make any decisions regarding the matters
7 you've just mentioned and cannot rely on a third- party
8 investigation such as another police agency.

9 **MR. RUEL:** Thank you.

10 And then to conclude, we're asking the same
11 question to all witnesses, I guess.

12 Do you have any recommendations for the
13 Commissioner considering the experience you've gained in
14 dealing with those issues?

15 **MR. DOWNING:** Yes, I do.

16 Mr. Commissioner.

17 **THE COMMISSIONER:** Thank you.

18 **MR. DOWNING:** Thank you.

19 With regards to the Ministry of Community
20 and Correctional Services, I have three recommendations
21 based on my close to 30 years experience in this business.

22 One is that the Correctional Services
23 Division significantly increase investigative resources to
24 enable the division to adequately respond and investigate
25 increasingly complex investigations or incidents relevant

1 to Ministry business, public safety and, generally,
2 government accountability.

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

4 **MR. DOWNING:** My second recommendation would
5 be that the Correctional Services Division Investigations
6 Unit, known as the Correctional Investigation and Security
7 Unit, report directly to the Office of the Commissioner of
8 Corrections to ensure investigation advice, guidance and
9 the conduct of investigations can be carried out without
10 real or perceived influence by other parties who may have a
11 vested interest.

12 My third recommendation is that provincial
13 Crown attorneys, Legal Services employed by the provincial
14 government, and specifically the Ministry of Community and
15 Correctional Services, understand and operate in a manner
16 consistent with existing legislation that permits the
17 sharing of information between investigative units who are
18 conducting lawful investigations.

19 **THE COMMISSIONER:** Thank you.

20 **MR. DOWNING:** Those are my comments.

21 **THE COMMISSIONER:** Thank you.

22 **MR. RUEL:** Just to clarify one point, if I
23 may. The Correctional Investigations Security Unit, who
24 does it report to actually?

25 **MR. DOWNING:** It reports to the director.

1 In this case who we've spoken about recently, the former
2 Director Gary Commeford.

3 **MR. RUEL:** So the -- it still reports to the
4 Director of Operational Support and standard or ---

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

6 **MR. RUEL:** Okay. Thank you.

7 So, Mr. Commissioner, those are my
8 questions.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Manson.

11 **MR. MANSON:** I'm just digesting some of the
12 more recent comments from the witness.

13 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
14 **MANSON:**

15 **MR. MANSON:** Mr. Downing, my name is Alan
16 Manson and I'm one of the counsel for the Citizens for
17 Community Renewal, a group of Cornwall citizens concerned
18 with institutional reform and especially the protection of
19 children and young people.

20 I just want to go to your recommendations
21 for a second. Are you suggesting that with respect to your
22 third recommendation that there was a failure on the part
23 of Crown attorneys or Legal Services to properly share
24 material with you during your administrative review?

25 **MR. DOWNING:** I'm not suggesting any

1 wrongdoing. What I'm suggesting is that we ensure that
2 there is a clear understanding of legislation; that all
3 parties who conduct lawful investigations, investigation
4 units share information.

5 **MR. MANSON:** So you did contact Shelley
6 Hallett in the course of your administrative review?

7 **MR. DOWNING:** That's correct.

8 **MR. MANSON:** And you were satisfied with
9 communications with her?

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

11 **MR. MANSON:** Can I just for a minute go to
12 your curriculum vitae?

13 Is it fair to say that within the ---

14 **MR. DOWNING:** I don't have that document in
15 front of me right now.

16 **MR. MANSON:** I'm going to ask very general
17 questions about it. If you need to see it I'll show it to
18 you.

19 But what I want to ask is, is it fair to say
20 that for the past 9 or 10 years within the Ministry you
21 would be one of the most experienced investigators?

22 **MR. DOWNING:** That would be fair.

23 **MR. MANSON:** And one of the best trained
24 investigators within the Ministry?

25 **MR. DOWNING:** That would be fair.

1 **MR. MANSON:** And you've outlined in your CV
2 your experience going back to your time as a police officer
3 in the Woodstock Police Force.

4 Have you taken any courses in sexual
5 assaults investigations?

6 **MR. DOWNING:** No.

7 **MR. MANSON:** Have you taken any courses
8 dealing with historical sexual assaults?

9 **MR. DOWNING:** No.

10 **MR. MANSON:** Now, yesterday Mr. Ruel was
11 talking to you for a minute about Level 1 and Level 2
12 investigations and, in particular, he drew your attention
13 from a directive dated August 14th, '98 by Louie Di Palma,
14 and you were explaining the distinction between Level 1 and
15 Level 2, and then you went on and said something like, "And
16 of course there are managers who could be seconded for
17 investigations".

18 Do you recall saying that?

19 **MR. DOWNING:** That's correct.

20 **MR. MANSON:** My question for you is were you
21 referring to area managers?

22 **MR. DOWNING:** Any manager, which could
23 include an area manager.

24 **MR. MANSON:** So that would be someone like
25 Peter Sirrs in 1982?

1 **MR. DOWNING:** That could, but my
2 understanding was there was not a training program in place
3 in 1982.

4 **MR. MANSON:** For?

5 **MR. DOWNING:** Conducting investigations.

6 **MR. MANSON:** And I think Mr. Sirrs quite
7 frankly admitted he had no experience with criminal
8 investigations or investigations in general. That would
9 conform with your understanding at the time?

10 **MR. DOWNING:** Correct.

11 **MR. MANSON:** You are familiar with his
12 investigation in April 1982?

13 **MR. DOWNING:** Just the report that I read.

14 **MR. MANSON:** Yes.

15 **MR. DOWNING:** Correct.

16 **MR. MANSON:** Was it the practice at that
17 time to get area managers to deal with this kind of issue
18 rather than going directly to the Investigative Branch?

19 **MR. DOWNING:** Every situation or incident is
20 looked at separately and determined with regards to
21 complexity. There will always be situations where a
22 manager, locally, would be asked to fact-find or gather
23 preliminary information. That information then can be used
24 to again decide next steps, if an investigative unit has to
25 be called from the outside or whether the local manager

1 could deal with the matter.

2 MR. MANSON: Is that still the practice
3 today?

4 MR. DOWNING: Correct.

5 MR. MANSON: And that would apply even with
6 allegations as serious as sexual impropriety and possibly
7 criminal offences of a sexual nature?

8 MR. DOWNING: There might be some
9 preliminary gathering of information. To properly brief
10 those who might be asked to come in to investigate, the
11 local manager would have a dialogue with their supervisor.
12 They would certainly have to have some base information to
13 share to support calling in an investigative unit to
14 investigate such a matter.

15 MR. MANSON: It's my understanding that with
16 respect to sexual assaults in general and particularly
17 historical sexual assaults, that there is a concern that
18 investigators have some specialized training.

19 Is that your understanding as well?

20 MR. DOWNING: They certainly -- my
21 understanding is that they should have experience and their
22 expertise.

23 MR. MANSON: And one of the reasons for that
24 is the concern that witnesses not be tainted by a poor
25 initial investigation. Isn't that true?

1 **MR. DOWNING:** I think that's true in any
2 investigation.

3 **MR. MANSON:** But particularly with respect
4 to sexual assaults and historical sexual assaults, wouldn't
5 you agree?

6 **MR. DOWNING:** No. I would think any
7 investigator going in to investigate has to be careful they
8 don't contaminate or cause issues later on in the
9 investigation.

10 **MR. MANSON:** But still, you're using area
11 managers to do your preliminary investigations when you've
12 got a trained unit?

13 **MR. DOWNING:** I don't understand the
14 question.

15 **MR. MANSON:** Well, if there's a concern
16 about contaminating witnesses through less than ideal
17 initial investigation, why would you use area managers
18 rather than your trained investigative unit for the
19 preliminary work?

20 **MR. DOWNING:** I'm not aware that Mr. Sirrs
21 interviewed Mr. Nelson Barque.

22 **MR. MANSON:** Well, let's take a look and see
23 who he interviewed. He interviewed one of the
24 complainants. If you take a look at page 5 ---

25 **MR. DOWNING:** Of what document?

1 **MR. MANSON:** Of the Sirrs Report. It's
2 document 100548. It's an exhibit.

3 **THE COMMISSIONER:** Yeah, so what's the
4 exhibit number?

5 **MR. MANSON:** One-two-five -- it's part of
6 the joint exhibit with the McMaster Report.

7 **THE COMMISSIONER:** So Exhibit 125?

8 **MR. MANSON:** Exhibit 125.

9 **MR. DOWNING:** Where's the reference, please?

10 **MR. MANSON:** Well, it starts at the bottom
11 of the fourth page:

12 "At the time, I spoke to..."
13 And there's a list of names and it goes on to the next
14 page. One of those people was one of the complainants,
15 correct -- one of the alleged participants in the
16 relationship with Nelson Barque?

17 **MR. DOWNING:** I have no page numbers on this
18 document. Did you say page 4?

19 **MR. MANSON:** Let me give you the Bates page.

20 **THE COMMISSIONER:** Right. If you look on
21 the top left-hand corner, Mr. Manson will give you a Bates
22 page. The top left hand.

23 **MR. MANSON:** The number is 1001833, right at
24 the bottom of the page:

25 "At the time, I spoke to..."

1 I don't want to mention any names ---

2 **THE COMMISSIONER:** No.

3 **MR. MANSON:** --- because I don't have the
4 moniker list quickly at hand and it's not important.

5 **THE COMMISSIONER:** Yes, 1001833, it's the
6 second-last page from the back. Actually, you should be
7 looking at the right-hand side.

8 **MR. MANSON:** So it is clear that Mr. Sirrs
9 did interview one of the complainants; correct?

10 **MR. DOWNING:** That's correct. I don't know
11 the nature or the depth of that contact or interview.

12 **MR. MANSON:** But if there's a concern about
13 contamination, the greatest concern would be with alleged
14 victims who may have to come forward later and give
15 evidence at a criminal trial, for example?

16 **MR. DOWNING:** If you're asking me is there
17 sensitivities and caution with regards to discussing the
18 specifics or details of an alleged offence, I would agree
19 with you.

20 **MR. MANSON:** And we know that Mr. Sirrs had
21 no special training; correct?

22 **MR. DOWNING:** That's correct.

23 **MR. MANSON:** Now, we also know that Mr.
24 Sirrs agreed that it didn't occur to him to interview or
25 audit any other probationers or former probationers. Are

1 you aware of that?

2 **MR. DOWNING:** No.

3 **MR. MANSON:** Do you think that was prudent
4 on his part not to interview other probationers given the
5 nature of the allegation against Mr. Barque?

6 **MR. DOWNING:** I have no idea.

7 **MR. MANSON:** He went on and his explanation
8 was, "It would be pointless because they're unreliable".
9 I'm paraphrasing, but that was essentially his comment.

10 Do you agree with that?

11 **MR. DOWNING:** I have no idea.

12 **MR. MANSON:** Well, he was making a general
13 statement that, "Why would I interview probationers? They
14 would just take advantage of the situation".

15 **MR. DOWNING:** I wouldn't know what he based
16 that statement on, whether he had other information that he
17 used to base that statement or not.

18 **MR. MANSON:** But you would have no
19 compunction about interviewing probationers or former
20 probationers?

21 **MR. DOWNING:** Every person you interview, I
22 think there's a credibility issue and you assess that
23 credibility based on that individual and the facts and
24 information that are provided. I don't believe there's,
25 again, speaking from my experience, a blanket policy to go

1 in not to believe a general group of people.

2 **MR. MANSON:** So in other words, you'd
3 disagree with Mr. Sirrs if he says as a general
4 proposition, you don't interview probationers? You would
5 go about your work and then make your credibility
6 assessments; correct?

7 **MR. DOWNING:** I'd permit the investigation
8 to direct the flow of interviews, correct, the need to
9 interview people.

10 **MR. MANSON:** If we could look at the first
11 part of Exhibit 125? It's the subsequent McMaster Report.
12 You've seen this document, haven't you? You referred to it
13 in your administrative review.

14 **MR. DOWNING:** Correct.

15 **MR. MANSON:** And this was conducted -- now
16 we are talking about experienced investigators; correct?

17 **MR. DOWNING:** Correct.

18 **MR. MANSON:** And my reading of it is that
19 they also did not interview any other probationers or
20 former probationers of Mr. Barque.

21 Is that your understanding of the document?

22 **MR. DOWNING:** I don't -- based on this
23 document, this is, from my reading and experience, a
24 summary of an investigation that was completed by Mr.
25 McMaster. So I'm not privy to any other file information

1 that may have been gathered during his investigation or who
2 else he may have interviewed.

3 **MR. MANSON:** But you'd agree with me that if
4 you read this, it certainly makes no mention of
5 interviewing other probationers or former probationers;
6 correct?

7 **MR. DOWNING:** I'd have to go through the
8 entire report again to take a position on that.

9 **THE COMMISSIONER:** You can take our word for
10 it, okay?

11 **MR. MANSON:** Can we just move to the last
12 page, the conclusions? Before we get to them, the date of
13 this report is May 13th, 1982 and you'd agree with me that
14 by this point Mr. Barque has already resigned; correct?

15 **THE COMMISSIONER:** The report is dated what?
16 May 31st.

17 **MR. MANSON:** May 13th, 1982.

18 **THE COMMISSIONER:** Well, it says May 31st,
19 but either you or ---

20 **MR. MANSON:** No, that's the covering letter.

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

22 **MR. MANSON:** The transmission.

23 **THE COMMISSIONER:** Okay. I thought one of
24 us was ---

25 **MR. MANSON:** The date of the report is on

1 the second page, Mr. Commissioner.

2 **THE COMMISSIONER:** Right. May 13th. You're
3 right. Mr. Barque had resigned on the ---

4 **MR. MANSON:** Mr. Barque was already
5 resigned, correct? You can see that right in the
6 conclusion, the last conclusion.

7 **MR. DOWNING:** Correct.

8 **MR. MANSON:** I want to read to you the first
9 two conclusions:

10 "For reasons unexplainable even by Mr.
11 Barque, he became inappropriately
12 involved with R.S. and C-44"

13 Correct? That's what it says?

14 **MR. DOWNING:** Correct.

15 **MR. MANSON:** And then it says:

16 "As a consequence of the nature of this
17 involvement, Mr. Barque effectively
18 compromised his authority and position
19 as a probation officer."

20 Correct?

21 **MR. DOWNING:** Correct.

22 **MR. MANSON:** And I think we'd all agree that
23 he's compromised his authority, but hasn't he also probably
24 committed a serious sexual impropriety and maybe even a
25 criminal offence?

1 **MR. DOWNING:** I wouldn't disagree.

2 **MR. MANSON:** And this seems to be off the
3 radar entirely from Mr. McMaster and Mr. Porter; correct?

4 **MR. DOWNING:** If you're -- if the question
5 is should Mr. McMaster have determined as to whether a
6 criminal offence took place, I'm not sure whether he would
7 be qualified to do that.

8 **MR. MANSON:** That's not my question. My
9 question is when I read those two statements, "For reasons
10 unexplainable even by Mr. Barque" and then the reference to
11 "compromising authority", I would suggest to you that those
12 two statements suggest a complete lack of understanding of
13 sexual exploitation by a person in authority?

14 **MR. DOWNING:** I don't agree.

15 **MR. MANSON:** There's no glimmer of any
16 understanding that what has gone on is someone in a
17 position of authority. A probation officer has engaged in
18 sexual conduct with probationers and former probationers of
19 a young age. There's no glimmer of that. You disagree
20 with me, Mr. Downing?

21 **MR. DOWNING:** I disagree with you. I guess
22 if you're isolating the conclusion separate and apart from
23 the rest of the report, I would agree with you, but I don't
24 think you can separate. I think there's a -- I believe
25 they interviewed Mr. Barque or took information from him

1 and that he admitted to those sexual improprieties.

2 MR. MANSON: Yes. And their conclusion is
3 that this compromised his authority.

4 MR. DOWNING: Correct.

5 MR. MANSON: But if you look at it from the
6 position of the two probationers, this was a matter of
7 sexual exploitation by a person in authority; correct?

8 MR. DOWNING: Correct.

9 MR. MANSON: And that's not mentioned
10 anywhere. Do you agree with me they certainly don't go
11 down that road? This is 1982 and I'm just trying to
12 understand what was on their mind. That was not on their
13 mind, the issue of sexual exploitation?

14 MR. DOWNING: Well, of course it was.
15 That's what they were investigating, the conduct of -- in
16 this case the nature of the conduct was sexually relevant.
17 That was the misconduct.

18 MR. MANSON: Can we look at your
19 administrative review report, Exhibit 958, for a minute?
20 I'm moving on to another matter. I'm interested in your
21 interview with Bill Roy. So this is Exhibit 958.

22 If we look at your summary at page 4 ---

23 THE COMMISSIONER: Hold on a second now, Mr.
24 Manson. Make sure everybody is on the same page,
25 literally.

1 **MR. DOWNING:** I only have three pages in
2 front of me.

3 **MR. MANSON:** Well, the one up on the screen
4 is the one I'm going to start with. Do you see under the
5 name "David Silmser" ---

6 **MR. DOWNING:** Okay.

7 **THE COMMISSIONER:** I'm sorry, what page is
8 it again?

9 **MR. MANSON:** It's the one on the screen. If
10 we could just enlarge it slightly, please.

11 **THE COMMISSIONER:** Okay.

12 **MR. MANSON:** Thank you.

13 **THE COMMISSIONER:** Okay. Page 4.

14 **MR. MANSON:** Yeah. Do you see the sentence
15 that starts "R.M. Roy"?

16 **MR. DOWNING:** The second paragraph?

17 **MR. MANSON:** Yeah.

18 "R.M. Roy said that on December 16th,
19 1993 he contacted Lena Bradburn,
20 Manager of the IIU, and the Lancaster
21 OPP regarding Silmser's allegations of
22 sexual misconduct on the part of PPO
23 Seguin (deceased)."

24 Correct? That's what it says?

25 **MR. DOWNING:** Correct.

1 **MR. MANSON:** I want to suggest to you that
2 there's a mistake here and that, in fact, he contacted the
3 Cornwall Police. And if I can just show you -- if we can
4 go to Mr. Roy's statement to you, which is an appendix to
5 the report. Are the appendices part of Exhibit 958? No,
6 it's not this one. It's the Bill Roy statement.

7 **THE COMMISSIONER:** Yeah, 1001527.

8 **MR. MANSON:** That's it. And can we go to
9 the third page, about two-thirds of the way down? No, it
10 must be the page -- that's it. The paragraph that starts:

11 "Bill said that he also telephoned the
12 Lancaster OPP."

13 Do you see what I'm referring to, Mr.
14 Downing?

15 **MR. DOWNING:** Correct.

16 **MR. MANSON:** Now, just for background, Mr.
17 Roy has told you that he got a phone call from David
18 Silmser and I believe in your evidence yesterday -- just
19 give me one second -- somewhere you said something about a
20 Grandview settlement. Do you recall that?

21 **MR. DOWNING:** No.

22 **MR. MANSON:** Just give me a second. I'll
23 find it. I'll find it in a second, but in any event,
24 Silmser phones Mr. Roy that he was engaged in trying to get
25 some kind of settlement from the now deceased Ken Seguin,

1 correct? This is about three weeks after Seguin's death?

2 MR. DOWNING: That's my understanding.

3 MR. MANSON: And then Bill Roy tells you
4 that he phoned Lenna Bradburn and then he tells you that he
5 informed a Sergeant "B" from the Lancaster OPP Detachment.
6 Do you see that?

7 MR. DOWNING: Correct.

8 MR. MANSON: Let's look at Lenna Bradburn's
9 notes, which is document 100558.

10 THE COMMISSIONER: This is a new document?

11 MR. MANSON: New document.

12 It's already an exhibit?

13 THE REGISTRAR: One-zero-eight-three (1083).

14 MR. MANSON: It's 1083. Perfect.

15 THE COMMISSIONER: One-zero-eight-three
16 (1083).

17 MR. MANSON: This is -- we'll get it up on
18 the screen in a minute, Mr. Downing, but this is a note
19 that Lenna Bradburn apparently makes December 17th, '93 at
20 3:45 p.m. about her phone call with Bill Roy.

21 Go to the next page, please. The next one
22 again. The next one again.

23 THE COMMISSIONER: You're looking for
24 "Grandview Resolutions"; is that what you wanted?

25 MR. MANSON: I'm looking for 1001856.

1 **THE COMMISSIONER:** Oh, okay. It's just that
2 on 55 they talk about a ---

3 **MR. MANSON:** That's right.

4 **THE COMMISSIONER:** --- Grandview Resolution.
5 Okay.

6 But then to the next page, Bill Roy?

7 **MR. MANSON:** Right.

8 Do you see halfway down the page, this is
9 the note of her phone call with Bill Roy. It says,
10 "Sergeant Brunet, Cornwall City".

11 All I'm suggesting to you, Mr. Downing, is
12 Bill Roy probably told you that he called Sergeant Brunet
13 at the Cornwall City Police as well and that you just made
14 a clerical error recording it.

15 **MR. DOWNING:** No, I didn't.

16 **MR. MANSON:** You're sure he was talking
17 about Sergeant "B" from the Lancaster OPP?

18 **MR. DOWNING:** I'm sure that he told me he
19 telephoned the Lancaster OPP Detachment and believed the
20 name of the person started with a "B" but could not recall
21 the name.

22 **MR. MANSON:** Well, Ms. Bradburn's note says:
23 "Sergeant Brunet, Cornwall Police, are
24 aware of the male caller, had prepared
25 a criminal case against the priest and

1 against Ken Seguin? You'd agree with that, wouldn't you?

2 **MR. DOWNING:** Yes.

3 **MR. MANSON:** That's what he's saying to you?

4 **MR. DOWNING:** Correct.

5 **MR. MANSON:** He's saying, "I called the
6 police and they told me they'd been working on this case";
7 correct?

8 **MR. DOWNING:** Correct.

9 **MR. MANSON:** And he's telling you I had no
10 inkling of that; correct?

11 **MR. DOWNING:** Correct.

12 **MR. MANSON:** Now, I want to -- I just have
13 two more areas to ask you about.

14 Instead of this matter going onto a further
15 investigation you told us that it went to the Legal Branch
16 after your report sometime in November of 2000?

17 **MR. DOWNING:** You're talking about my
18 administrative review?

19 **MR. MANSON:** Yes.

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

21 **MR. MANSON:** And is the reason for that
22 because someone thought there was some liability exposure?

23 **MR. ROSE:** Well, sorry, Mr. Commissioner,
24 first of all, there is a privilege which has been claimed
25 over the legal opinions and so forth.

1 100585. This is an email from Denise Dwyer to you dated
2 December 21st, 2000.

3 If we can make this an exhibit, Mr.
4 Commissioner?

5 **THE COMMISSIONER:** If we can find it. Thank
6 you.

7 Exhibit 1092 is in fact an email letter from
8 Denise Dwyer to Paul Downing dated Thursday, December 21st,
9 2000.

10 **---EXHIBIT NO./ PIÈCE NO P-1092:**

11 (100585) Email letter from Denise Dwyer to
12 Paul Downing dated December 21, 2000

13 **MR. MANSON:** Earlier today my friend, Mr.
14 Ruel, put into evidence as Exhibit 1088 the Loretta Eley
15 statement that you took on January 9th, 2001. But this is
16 Ms. Dwyer telling you how to deal with Ms. Eley; correct?

17 **MR. DOWNING:** She's providing guidance in
18 areas to -- my interpretation would be to ensure that
19 during my interview with her I cover these areas.

20 **THE COMMISSIONER:** Well, read the last
21 paragraph, please.

22 **MR. MANSON:** She's telling you how to do
23 your job, isn't she?

24 **MR. DOWNING:** She's probably ensuring that I
25 do the job the way it's intended to be done; correct.

1 **THE COMMISSIONER:** Very diplomatic.

2 **MR. MANSON:** We'll be hearing from Ms. Eley
3 I think next week.

4 I want to ask you one other question and
5 it's very short. Earlier with Mr. Ruel, he put into
6 evidence two statements that your man Mr. McGillis took
7 from new complainants. I take it that was at your
8 direction; you asked him to interview certain people
9 because names had come into your possession?

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

11 **MR. MANSON:** And I want to just ask you a
12 single question about Exhibit 1089, and I'm not going to
13 mention the name. The Document Number is 123492, Exhibit
14 1089.

15 Do you recall receiving this statement from
16 Mr. McGillis?

17 **MR. DOWNING:** I'm just seeing what's on the
18 screen. I don't have the statement in front of me.

19 **MR. RUEL:** Oh, we have to go to the next
20 page, please.

21 **THE COMMISSIONER:** You would have it. It
22 would be in a loose one that we gave you this morning.

23 **MR. RUEL:** And then the next page.

24 **MR. DOWNING:** I think it was taken back.

25 **THE COMMISSIONER:** Oh, it's in the binder.

1 Are they in my binder as well?

2 MR. RUEL: Mr. Commissioner, just for the
3 record, Madam Clerk was pointing out to me during the lunch
4 break that ---

5 THE COMMISSIONER: We signed the wrong ---

6 MR. RUEL: Monikers, I guess -- I mean ---

7 THE COMMISSIONER: Okay, so let's cover
8 that.

9 Madam Clerk, you are saying that there was
10 one moniker already taken, which we will confirm tomorrow,
11 so which moniker did I give?

12 MR. RUEL: You gave C-47.

13 THE COMMISSIONER: Which is taken, so if we
14 are looking at Exhibit 1089 which moniker should we give
15 this one?

16 THE REGISTRAR: C-48.

17 THE COMMISSIONER: C-48. All right.

18 So Mr. Manson, we can refer to the
19 interviewee in this matter as C-48 and for Exhibit -- is it
20 1087?

21 MR. RUEL: Ten-ninety (1090).

22 THE COMMISSIONER: Is it 1090? Yes, that
23 will be C-49.

24 MR. RUEL: Thank you.

25 THE COMMISSIONER: All right.

1 **MR. MANSON:** Could we look at the third
2 page, please? One more -- and if you can just enlarge it
3 slightly?

4 **MR. MANSON:** Mr. Downing, could you please
5 read the third paragraph to yourself. The one that starts,
6 "After approximately"?

7 **MR. DOWNING:** You're talking about page 3?

8 **MR. MANSON:** Yes.

9 **THE COMMISSIONER:** Page ---

10 **MR. MANSON:** The one that's on the screen.

11 **MR. RUEL:** No, actually it's page 2 on the
12 bottom.

13 **MR. DOWNING:** Okay.

14 **THE COMMISSIONER:** All right.

15 **MR. MANSON:** It says page 2 on the bottom,
16 that's right. Front page is the cover page. It says page
17 2.

18 "After approximately two or three
19 months of probation..." ---

20 **THE COMMISSIONER:** The microphone, please,
21 Mr. Manson. Thank you.

22 **MR. MANSON:** It's the paragraph that starts:

23 "After approximately two or three
24 months of probation..."

25 Do you see the paragraph I mean?

1 **MR. DOWNING:** Correct.

2 **MR. MANSON:** And you'd agree with me that
3 the maker of the statement is referring to a time when he's
4 a juvenile. He's born in 1955 and this is around 1970 to
5 '71 that he's referring to?

6 **MR. DOWNING:** Correct.

7 **MR. MANSON:** So he's a juvenile probationer
8 and what I want to suggest to you is this paragraph when
9 you read it must have caused you special concern because it
10 adds a whole new dimension to the problems. It's now not
11 just an issue of improper social association and not just
12 an issue of sexual impropriety. It's now a matter of
13 serious threats by a probation officer. Isn't that the
14 allegation here?

15 **MR. DOWNING:** Specifically, the two
16 statements that were taken later on by Inspector McGillis,
17 I had peripheral reading of these statements.

18 My task was simply to assign an inspector to
19 go out and take a statement and to forward that statement
20 to Legal Services. I was not asked to make any sort of
21 assessment with regards to the statement or the information
22 contained within those two statements.

23 **MR. MANSON:** But let's make an assessment
24 now. You'd agree with me that this is a new serious
25 dimension. I'll read the threat. The threat was:

1 "I would go to Alfred Training School.
2 He said I'd go there for a long time.
3 He held it over my head all the time."

4 That's a serious matter for the Ministry of Corrections,
5 isn't it?

6 **MR. DOWNING:** Absolutely.

7 **MR. MANSON:** Thank you, Mr. Downing.

8 **THE COMMISSIONER:** Thank you.

9 Mr. Horn?

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

11 **HORN:**

12 **MR. HORN:** My name is Frank Horn. I'm
13 representing the Coalition for Action, a citizen's group
14 that agitated for the formation of this Inquiry.

15 How big is your office now? How many -- how
16 much staff do you have?

17 **MR. DOWNING:** I have about 220.

18 **MR. HORN:** Now, initially when you were
19 appointed, you had how many?

20 **MR. DOWNING:** I had seven or eight.

21 **MR. HORN:** Seven or eight staff. Did you
22 operate alone? As the sole investigator?

23 **MR. DOWNING:** Could you help me out? What
24 time frames are you talking about?

25 **MR. HORN:** Okay. I'm talking 1997 when you

1 were appointed as the Special Investigator.

2 MR. DOWNING: In 1997 I worked alone.

3 MR. HORN: You worked alone. And you didn't
4 have any staff at all?

5 MR. DOWNING: That's correct.

6 MR. HORN: Okay. Now, at that time, what
7 were the other investigators that were involved prior to
8 your appointment? Who could have been doing that job and
9 should have been doing it? And they had to appoint you
10 because they weren't doing their job properly?

11 MR. ROSE: I'm sorry. I have to object to
12 the way the question's framing. I think Mr. Horn's ---

13 THE COMMISSIONER: No, no, well, there's --
14 that's a mouthful, Mr. Horn.

15 MR. HORN: Okay. All right.

16 THE COMMISSIONER: So you can break that
17 down. I'm not saying ---

18 MR. HORN: All right. Okay.

19 When you were appointed at that point, what
20 other investigative agencies within the Ministry were --
21 were there besides yourself?

22 MR. DOWNING: The Professional Standards
23 Bureau were providing investigative services to the
24 Correctional Division and the Independent Investigations
25 Unit was providing services to the division.

1 **MR. HORN:** Okay. And was it necessary for
2 you to be appointed because they -- was there something
3 lacking in what they were doing?

4 **MR. DOWNING:** There was a belief, based on
5 the quantity of investigations that were required or
6 instances required to be investigated, that there were not
7 enough resources to adequately respond to those incidents.

8 **MR. HORN:** So were you basically as a
9 trouble shooter? They were a larger organization, you were
10 alone, operating alone sent to trouble spots?

11 **MR. DOWNING:** I was assigned complex and
12 high-profile investigations that they would feel assured
13 would have a prompt response to.

14 **MR. HORN:** Okay. I'm just saying -- that
15 could have been done by someone else beside yourself, why
16 couldn't it be done that way?

17 **MR. DOWNING:** I'm not sure who you are
18 referring to?

19 **MR. HORN:** I'm talking about -- these are
20 larger investigative organs of the government. They would
21 have had people there. They could have done the same thing
22 you did.

23 **MR. DOWNING:** I'm not sure who you are
24 referring to.

25 **MR. HORN:** Well, the other two -- the other

1 two investigative groups that were there at the time you
2 were appointed.

3 **MR. DOWNING:** Well, in 1997 there would be a
4 number of incidents that I might investigate that would not
5 fall under the mandate of the Independent Investigations
6 Unit. The Professional Standards Bureau, while in a
7 position to respond might have a workload that would not
8 permit them to respond as quickly as the administration
9 would like.

10 **MR. HORN:** Okay. Now, this was in 1997. I
11 understand that at that point the government, Conservative
12 Party at that time?

13 **MR. DOWNING:** I'm not sure.

14 **MR. HORN:** Who was the Minister of your
15 Ministry?

16 **MR. DOWNING:** I can't recall.

17 **MR. HORN:** Is it Mr. Runciman?

18 **MR. DOWNING:** In 1997, I can't recall.

19 **MR. HORN:** Okay. At that time in 1997, Mr.
20 Guzzo I understand was agitating for a public inquiry. Did
21 that have anything to do with you being appointed specially
22 for this sensitive operation?

23 **MR. DOWNING:** I have no knowledge of that.
24 I never heard anything about Cornwall until 2000.

25 **MR. HORN:** So you never -- you were -- you

1 were not aware of the things that happened back in 1993 and
2 '92?

3 **MR. DOWNING:** In 1997, that's correct.

4 **MR. HORN:** So you were completely unaware
5 even though you were in the Ministry?

6 **MR. DOWNING:** That's correct.

7 **MR. HORN:** And you were an investigator?

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

9 **MR. HORN:** So you didn't hear the -- the
10 goings-on in Cornwall at all?

11 **MR. DOWNING:** That's correct.

12 **MR. HORN:** So was that the reason why they
13 choose you because you'd be independent and unbiased?

14 **THE COMMISSIONER:** Well, we don't know
15 whether -- unless they -- did they tell you we're choosing
16 you because you are unbiased and you don't anything about
17 Cornwall?

18 **MR. DOWNING:** No.

19 **THE COMMISSIONER:** Okay. You can't go into
20 other people's head through him ---

21 **MR. HORN:** Okay.

22 **THE COMMISSIONER:** --- unless they would
23 have told ---

24 **MR. HORN:** Okay. So the report that you
25 would be putting together, it would go to certain people,

1 but would it get into the hands of the Cabinet or at a high
2 level -- high level in the Ministry?

3 **MR. DOWNING:** Once it leaves my office to my
4 supervisor, I do not determine where that report goes.

5 **MR. HORN:** So it could wind up in the -- on
6 the desk of the Minister?

7 **MR. DOWNING:** Once that report leaves my
8 desk, the person who receives that report determines where
9 it goes.

10 **THE COMMISSIONER:** Did you ever have any
11 knowledge today that your report ended up on some
12 minister's desk?

13 **MR. DOWNING:** No.

14 **THE COMMISSIONER:** Thank you.

15 **MR. HORN:** Okay. But it could have because
16 once it's out of your hands, it's out of your hands
17 completely.

18 Now, the problems that started -- that were
19 in the Cornwall office started in the early '80s with both
20 Mr. Barque and Ken Seguin in the offices here. You know
21 that, eh?

22 **THE COMMISSIONER:** Well, no, just a minute
23 now. We know that there was a problem with Mr. Barque in
24 the early '80s.

25 **MR. HORN:** There was a problem -- well, you

1 know that both Ken Seguin and Mr. Barque worked in the
2 Cornwall office in the early 1980s?

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

4 **MR. HORN:** And in your investigations you
5 found out that they were in Cornwall in the probation
6 office?

7 **MR. DOWNING:** Correct.

8 **MR. HORN:** Okay. And when you were
9 investigating, you were only really looking into Mr. Barque
10 and the problems that he was having in Cornwall, but Ken
11 Seguin, back in the '80s, was not even on the radar screen
12 of problems, of sexual impropriety?

13 **MR. DOWNING:** Keeping in mind that at the
14 beginning of my testimony I had stated that the framework
15 for my administrative review was to review the Project
16 Truth website and to take any sort of statements made about
17 employees or former employees, to seek out clarity on those
18 statements.

19 **THE COMMISSIONER:** So that would cover both
20 then?

21 **MR. DOWNING:** Correct.

22 **MR. HORN:** So it would cover both these two
23 individuals?

24 **MR. DOWNING:** Correct.

25 **MR. HORN:** Okay. And they were in the

1 Cornwall office. Mr. Barque was there for a short while
2 until he left in 1982; right?

3 MR. DOWNING: Correct.

4 MR. HORN: But Ken Seguin continued to
5 remain there from early '80s until early '90s. So he was
6 there for about 10 years?

7 MR. DOWNING: Correct.

8 MR. HORN: Okay. And the difficulties that
9 the probation pffice were having in Cornwall were -- now
10 that you look back -- were because of these two individuals
11 working in that office?

12 MR. DOWNING: What kind of difficulties?

13 MR. HORN: I'm talking about sexual
14 improprieties.

15 MR. DOWNING: Well, it's a matter of record
16 that Nelson Barque, yes, was involved in sexual
17 improprieties and my understanding is there were
18 allegations that Mr. Seguin was involved.

19 MR. HORN: Okay. So there's allegations,
20 and these allegations came to light and you had to
21 investigate them?

22 MR. DOWNING: No, I didn't investigate
23 allegations surrounding Mr. Seguin's alleged conduct.

24 MR. HORN: You were not investigating the
25 allegations against Mr. Ken Seguin?

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

2 **MR. HORN:** What were you doing then?

3 **MR. DOWNING:** I was preparing an
4 administrative review report on a number of statements that
5 have been made on the website, to quickly and promptly
6 provide senior administration with information that would
7 permit them to make decisions, next best steps, with
8 regards to that information.

9 **MR. HORN:** Okay. So when you -- in one of
10 the web pages -- in one of the emails it talks about you're
11 there to protect the interests of the Ministry, isn't it?

12 **MR. DOWNING:** I recall that.

13 **MR. HORN:** Okay. So was that your -- the
14 reason why you were appointed was to go there and bring
15 back information to protect the Ministry?

16 **MR. DOWNING:** To protect the interests of
17 the Ministry, you must include the clients because they are
18 part of the Ministry, and I will tell you that my
19 interpretation and my understanding of those conversations
20 were very clear, that the senior administration needed
21 prompt and adequate and accurate information quickly to
22 ensure that the Ministry's clients were not at continued or
23 current risk.

24 **MR. HORN:** But that doesn't sound that way
25 when you read the email. It sounds like you were there to

1 protect the Ministry ---

2 THE COMMISSIONER: Which one are you ---

3 MR. HORN: --- which is the government.

4 THE COMMISSIONER: Which ---

5 MR. HORN: I'm talking about the Ministry of
6 the Solicitor General.

7 THE COMMISSIONER: I'm sorry, which email?

8 MR. HORN: Pardon? Okay. I don't have it,
9 but I know he referred -- he knows what I'm talking about.
10 He's made reference -- he's acknowledged it, it's there.

11 THE COMMISSIONER: I know, but ---

12 MR. HORN: But I'm just ---

13 THE COMMISSIONER: --- it would be helpful
14 to me, if you want to make your point, because I'm the one
15 who's going to maybe write a report someday.

16 MR. HORN: Ten-seventy-two (1072).

17 THE COMMISSIONER: All right, 1072.

18 MR. HORN: And the exact wording is ---

19 THE COMMISSIONER: Okay, 1072, the Document
20 Number is 1001610, Exhibit 1072.

21 MR. ROSE: Thank you, sir.

22 MR. HORN: Yes.

23 "As discussed, your role at this
24 particular time is to establish a
25 liaison for the purpose of protecting

1 the interests of the organization."

2 So it's the organization, not individuals
3 that you were protecting. You were protecting the
4 organization. Is that not right?

5 **MR. DOWNING:** I think I've explained to you
6 my interpretation of that. If you're in disagreement, I
7 think you should talk to the author of that document.

8 **MR. HORN:** Well, no, but you see, our -- my
9 organization believed that there was a concerted effort for
10 a cover-up and we believe that this is proof that there was
11 a cover-up. You were assigned for that purpose, to protect
12 the organization.

13 **MR. DOWNING:** If you're suggesting that I
14 was involved in a cover-up, you're incorrect.

15 **MR. HORN:** Pardon?

16 **MR. DOWNING:** If you're suggesting that I
17 was involved in a cover-up, you're incorrect.

18 My interpretation of that email was to
19 ensure accurate and prompt information was provided to my
20 supervisors so they could make decisions as to consider as
21 to whether current clients were at risk by any of the
22 employees -- current employees that were mentioned in that
23 website.

24 **MR. HORN:** Okay. During this period of time
25 there was a -- not only was there the Project Truth

1 website, but there was efforts by Mr. Guzzo and our
2 organization to establish the Inquiry. Were you aware of
3 that?

4 **THE COMMISSIONER:** During the year 2000?

5 **MR. HORN:** Yes, that was -- I think that was
6 in the year 2000.

7 **THE COMMISSIONER:** The email is in the year
8 2000 -- August 11th, 2000.

9 **MR. HORN:** Yes.

10 **THE COMMISSIONER:** Okay.

11 **MR. HORN:** And it was -- Bill 103 was in
12 June of 2000.

13 **THE COMMISSIONER:** Okay. So are you aware
14 that that was occurring at the same time?

15 **MR. DOWNING:** No, I'm not.

16 **MR. HORN:** Okay. So you were never told
17 that possibly you were being sent in to gather this
18 information for political purposes for the Ministry?

19 **MR. DOWNING:** That's correct.

20 **MR. HORN:** That Mr. Guzzo was agitating for
21 an inquiry and so was our organization, and they felt that
22 it was necessary in order to clear the air. You weren't
23 aware of any of that?

24 **MR. DOWNING:** That's correct.

25 **MR. HORN:** So you were basically going in

1 there, just looking at things that you were concerned with,
2 but you didn't look at the big picture of what was really
3 going on?

4 **MR. DOWNING:** I carried out an
5 administrative review under the mandate or framework that
6 was explained to me by my superiors.

7 **MR. HORN:** Okay. In the web page, was there
8 anything that you read on the web page regarding agitation
9 for a public inquiry?

10 **MR. DOWNING:** I don't recall.

11 **MR. HORN:** That's all. Thank you.

12 **THE COMMISSIONER:** Thank you.

13 Do you mind if we take the break, Mr. Lee?

14 **MR. LEE:** Not at all.

15 **THE COMMISSIONER:** I thought maybe you were
16 rising to suggest that.

17 Can you canvass -- Maître Ruel, do we know
18 if we're going to be finished with this witness today?
19 Could you canvass that or have you canvassed that?

20 **MR. RUEL:** I will canvass it to make sure I
21 get the correct answer.

22 **THE COMMISSIONER:** Thank you.

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

25 This hearing will resume at 3:15.

1 --- Upon recessing at 2:56 p.m./

2 L'audience est suspendue à 14h56

3 --- Upon resuming at 3:17 p.m./

4 L'audience est reprise à 15h17

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

7 This hearing is now resumed. Please be
8 seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Mr. Lee.

10 **MR. LEE:** Good afternoon, sir.

11 **THE COMMISSIONER:** Good afternoon.

12 **PAUL DOWNING, Resumed/Sous le même serment:**

13 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE:**

14 **MR. LEE:** Mr. Downing, my name is Dallas
15 Lee. I represent the Victims Group here at the Inquiry.

16 I would like to start with your September
17 9th, 2000 Case Management Administrative Summary Review.
18 That's Exhibit 1082. Do you have that, sir?

19 So as I understand it, sir, at this point in
20 time you had retrieved all the website information that you
21 could get your hands on. You had summarized it and you
22 explained to us the reasons for doing that. Is that right?

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

24 **MR. LEE:** And by this time you've also
25 emailed Deborah Newman and suggest, in some of the emails

1 we look at, something more formal and structured, and she's
2 responded that a formal investigation is required.

3 Do you recall that?

4 **MR. DOWNING:** That's correct.

5 **MR. LEE:** And so if we go to the end of this
6 document to the second last page, page 7, my understanding
7 is that you're setting out for her a proposal for how you
8 would proceed from here. Is that correct?

9 **MR. DOWNING:** That's correct.

10 **MR. LEE:** And we have Stages 1 and 2, and we
11 now know that you only completed Stage 1. You did not
12 complete Stage 2. Is that right?

13 **MR. DOWNING:** That's correct.

14 **MR. LEE:** What I want to understand, sir, is
15 what the purpose of the investigation was from your point
16 of view at the time you set out this proposal? So in other
17 words, when you sat down to devise Stage 1 and 2, what was
18 the purpose of that investigation to be globally?

19 **MR. DOWNING:** Well, Stage 1, as I previously
20 stated, was to access information quickly and promptly
21 about current and past employees so that the senior
22 administration could make a decision as with regards to the
23 interests of our clients, who are offenders under our
24 protection and care, to see if there was any risk
25 management with regards to those issues.

1 The senior administration that was in place
2 at the time in the regional office -- in the Eastern
3 Regional Office -- would not have and did not have the
4 history of the events that were described in that website.

5 **MR. LEE:** So that's Stage 1?

6 **MR. DOWNING:** Correct.

7 **MR. LEE:** So what was the point of Stage 2
8 then, in your mind?

9 **MR. DOWNING:** Stage 2 would have been a more
10 in-depth and full investigation into the matters that come
11 about from the Stage 1 report.

12 **MR. LEE:** So would it be fair to say that
13 the purpose of Stage 1 is to determine what the allegations
14 were and to provide that information to senior
15 administrators?

16 **MR. DOWNING:** And what other issues needed
17 clarity.

18 **MR. LEE:** And do I understand that the focus
19 of Stage 2 then would have been to determine whether or not
20 the allegations were true?

21 **MR. DOWNING:** To gather information to be
22 able to be in a position to determine as to whether the
23 allegations were true or not substantiated, correct.

24 **MR. LEE:** So through Phase 2, you would have
25 been in a position where you would have been assessing

1 credibility of witnesses?

2 **MR. DOWNING:** I could have been.

3 **MR. LEE:** And possibly you could have been
4 making some determination as to what had happened and what
5 had not happened, in your opinion?

6 **MR. DOWNING:** I could have been or someone
7 could have been.

8 **MR. LEE:** At the time, in 2000, would that
9 have been within the range of your abilities and experience
10 to do that kind of investigation?

11 **MR. DOWNING:** I believe so.

12 **MR. LEE:** And you've told us that in the end
13 you did not proceed with Stage 2 because those were your
14 instructions. Is that right?

15 **MR. DOWNING:** I received no instructions.

16 **MR. LEE:** So nobody told you not to proceed
17 with Stage 2. They just didn't tell you one way or the
18 other. Is that right?

19 **MR. DOWNING:** That's correct.

20 **MR. LEE:** And you needed some kind of
21 positive authorization to proceed with Stage 2?

22 **MR. DOWNING:** That's correct.

23 **MR. LEE:** And as I understand it, you can't
24 help us understand why that authorization wasn't given. Is
25 that right?

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

2 **MR. LEE:** Can you help me understand who we
3 should be talking to about the reasoning behind that
4 decision?

5 **MR. DOWNING:** I would suggest the parties
6 that were involved in the conference call that I briefed
7 with regards to the administrative report I prepared.

8 **MR. LEE:** So Gary Commeford, I presume?

9 **MR. DOWNING:** I'd have to check my notes,
10 but my recall is that Deborah Newman, Gary Commeford -- I'm
11 not sure if Mickey Stephenson was in on the call. Morris
12 Zbar and John Rabeau. That was the senior management group
13 of the day. Again, I'd have to go back to my notes
14 specifically to identify, but that group.

15 **MR. LEE:** Okay. Thank you.

16 You told us yesterday in-chief -- my note of
17 what you said is that Pat Hall was a skilled criminal
18 investigator and you are a skilled administrative
19 investigator. Do you recall saying that?

20 **MR. DOWNING:** I do.

21 **MR. LEE:** Can you flesh that out for me a
22 little bit, exactly what the difference is between a
23 criminal investigator and an administrative investigator?

24 **MR. DOWNING:** Well, a criminal investigator
25 investigates criminal offences or criminal activity. An

1 administrative investigator, with regards specifically to
2 myself, investigates conduct or activities under the
3 *Ministry of Correctional Services Act* and in relation to
4 rules, regulations and policies as set out by the Ministry
5 in the correctional environment.

6 MR. LEE: So the interests of the two don't
7 necessarily overlap?

8 MR. DOWNING: The interests of the two could
9 overlap.

10 MR. LEE: But they may not?

11 MR. DOWNING: They may not.

12 MR. LEE: You testified yesterday that Pat
13 Hall told you early on that no Ministry of Corrections
14 employees were under investigation by the OPP. Is that
15 right?

16 MR. DOWNING: That's correct.

17 MR. LEE: And you understood that by that
18 point, both Ken Seguin and Nelson Barque were deceased?

19 MR. DOWNING: That's correct.

20 MR. LEE: And so that obviously would have
21 put an end to any police investigation of those two. Is
22 that your understanding of the situation?

23 MR. DOWNING: No, it's not my understanding.

24 MR. LEE: Well, typically, the police don't
25 investigate dead persons, do they, sir?

1 **MR. DOWNING:** They might investigate
2 activities -- actually, I can't comment on that because I'm
3 not a criminal investigator. I don't have that knowledge.

4 **MR. LEE:** Well, speaking from a Ministry of
5 Corrections perspective then, you would agree that your
6 interests may be somewhat broader than the police's
7 interests because the police are concerned specifically
8 with criminal allegations and there may be other -- I'll
9 call them offences, but there may be other issues that are
10 not criminal but are still in contravention of Ministry
11 policy?

12 **MR. DOWNING:** There may be omissions or
13 actions, correct.

14 **MR. LEE:** And I take it you would agree with
15 me that the death of an employee, as an example, doesn't
16 absolve the Ministry of its obligations entirely?

17 **MR. DOWNING:** Correct.

18 **MR. LEE:** If we leave the Cornwall review
19 aside for a moment and look at your job as a Special
20 Investigator for the Ministry generally, am I right to say
21 that you would investigate various issues to determine
22 whether something did or did not occur?

23 **MR. DOWNING:** I could.

24 **MR. LEE:** And that people would get
25 disciplined or possibly even dismissed as a result of your

1 investigations?

2 MR. DOWNING: They could.

3 MR. LEE: They might be exonerated?

4 MR. DOWNING: They could.

5 MR. LEE: And, again, leaving Cornwall
6 aside, were you typically, as part of your investigations,
7 asked to make recommendations?

8 MR. DOWNING: No.

9 MR. LEE: Can you turn up your CV? It is
10 Exhibit 1070. Let me know when you have that, sir.

11 Do you have that, sir?

12 MR. DOWNING: Correct, I do.

13 MR. LEE: Can I take you to page 8, please?
14 This is the page that we find your description of your
15 duties as a Special Investigator between 1997 and 2001,
16 right at the top of the page. I'm just going to read that
17 in, sir:

18 "Conducted independent, high-profile,
19 confidential investigations which
20 involve significant violations of
21 Ministry policy and procedures by
22 custody and community adult offenders
23 and young offenders and/or Ministry
24 employees.
25 Responsible for the analysis of

1 evidence obtained during investigation,
2 including credibility of witnesses and
3 preparing comprehensive reports which
4 addressed all concerns raised.
5 Making recommendations surrounding
6 static and dynamic security to senior
7 Ministry officials regarding changes
8 required to prevent introduction of
9 contraband and recurrence of security
10 breaches."

11 Can you help me understand what the context
12 of making recommendations in this description is all about?

13 **MR. DOWNING:** Well, after an investigation's
14 been conducted and there's been several determinations made
15 for instance in that, what you quoted, "static and
16 dynamic", dynamic being human and static being physical.
17 Obviously, we're in a correctional environment where static
18 security is significant to the safety of those that work in
19 those buildings and the general public.

20 For instance, if there was something -- if I
21 determine in an investigation on a bailiff's bus that there
22 was a faulty mechanism at the back of the bus that
23 permitted an offender to escape, I've determined that.

24 Following the report or submission of the
25 report, I might be asked for advice if I'm aware of any

1 products that might resolve that, so I might provide a
2 recommendation that these things could be done to resolve
3 that matter, and that could be applied to different
4 situations.

5 Again, it's more calling upon my subject
6 expertise after the investigation's been completed.

7 **MR. LEE:** Had you ever conducted an
8 investigation prior to August of 2000 in your position as
9 Special Investigator where you presented conclusions as to
10 whether or not a Ministry policy had been breached or not
11 been breached?

12 **MR. DOWNING:** If -- conclusion or
13 determination -- are we talking the same terms?

14 **MR. LEE:** Your opinion.

15 **MR. DOWNING:** My opinion?

16 **MR. LEE:** Had you ever in a report stated,
17 "It is my belief based on what I found that a breach did
18 occur or did not occur"?

19 **MR. DOWNING:** My belief would be based on
20 factual evidence and credibility. I would make those type
21 of statements, yes.

22 **MR. LEE:** Had you ever, prior to August of
23 2000, made a recommendation as to what action might be
24 warranted given a breach?

25 **MR. DOWNING:** Within an investigation

1 report, I don't recall that, no.

2 MR. LEE: Do you recall being asked by
3 anybody senior to you what you would recommend given the
4 breach you had found?

5 MR. DOWNING: Yes.

6 MR. LEE: That was not what you were asked
7 to do in Cornwall?

8 MR. DOWNING: I'm sorry?

9 MR. LEE: That was not what you were asked
10 to do in Cornwall though?

11 MR. DOWNING: No.

12 MR. LEE: It was a review?

13 MR. DOWNING: Correct.

14 MR. LEE: You told us about the Silmser
15 matter being referred to the Legal Branch in the mid-90s.
16 Do you recall that?

17 MR. DOWNING: Yes, I do.

18 MR. LEE: And what you told us was that the
19 alleged sexual activity between employees and clients was
20 within the jurisdiction of the IIU at that time. Is that
21 right?

22 MR. DOWNING: That's what I believed.

23 MR. LEE: And my note of what you said was
24 that your humble opinion would be that it most probably
25 fell under the jurisdiction of the IIU?

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

2 **MR. LEE:** And you also told us that you were
3 not sure why the Legal Department would be dealing with it
4 given that they're not skilled and trained investigators.
5 Is that right?

6 **MR. DOWNING:** That's correct.

7 **MR. LEE:** Did you have those same thoughts
8 when you were told to forward your materials to the Legal
9 Branch?

10 **MR. DOWNING:** No.

11 **MR. LEE:** And why was that?

12 **MR. DOWNING:** Because they were forwarded to
13 Legal Branch for a legal opinion.

14 **MR. LEE:** And how is that different than
15 what had happened in the Silmsers matter, from your point of
16 view?

17 **MR. DOWNING:** Well, my understanding of the
18 Silmsers matter -- that it was my understanding that it
19 never was investigated, and I clearly indicated in my
20 report a number of areas that were of concern, that I would
21 be of the opinion that further clarity might be required
22 for investigation.

23 **MR. LEE:** Wouldn't that be similar to your
24 feelings when you were not authorized or instructed to
25 proceed with Stage 2 of your investigation?

1 **MR. DOWNING:** I don't understand the
2 question.

3 **MR. LEE:** Well, you've just told us that the
4 comments you made with respect to the Silmsler affair being
5 referred to the Legal Branch had to do with the fact that
6 there were not then a full investigation there. There
7 hadn't been a full investigation of the matters you looked
8 into either?

9 **MR. DOWNING:** My assumption that it was
10 referred to Legal Branch -- if they were intending to
11 investigate they were not equipped to investigate. I'm not
12 sure what the intentions, other than receiving a legal
13 opinion from my administrative summary, what the intentions
14 were with Legal Branch. I do know that they asked me to
15 send the material to Denise Dwyer for a legal opinion.

16 **MR. LEE:** So as far as you knew, the opinion
17 from Legal could very well have been to conduct an
18 investigation?

19 **MR. DOWNING:** It could have been.

20 **MR. LEE:** You're aware that we heard from
21 Peter Sirrs here last week?

22 **MR. DOWNING:** Correct.

23 **MR. LEE:** And he told us about what he
24 termed the preliminary investigation that he conducted at
25 the time of the allegations against Nelson Barque, and you

1 spoke with Mr. Manson a little bit about that. You're
2 familiar somewhat with his report?

3 **MR. DOWNING:** Yes.

4 **MR. LEE:** And then you looked also with Mr.
5 Manson to the subsequent McMaster Report?

6 And you're aware that Mr. Barque at some
7 point resigned and that no further investigation was
8 conducted?

9 **MR. DOWNING:** Correct.

10 **MR. LEE:** And when you came in to look at
11 the situation you didn't at any point uncover a full and
12 thorough investigation of Mr. Barque's activities by the
13 Ministry?

14 **MR. DOWNING:** Is the question, did I
15 undertake?

16 **MR. LEE:** No, did you uncover any evidence
17 of such an investigation having taken place?

18 **MR. DOWNING:** No.

19 **MR. LEE:** And then you've also talked about
20 what happened at the time of the Silmsker complaint and the
21 same situation, no formal investigation at that time that
22 you came across?

23 **MR. DOWNING:** Not that I'm aware of.

24 **MR. LEE:** And where your involvement ends
25 here, your materials are sent to the Legal Branch and at

1 that point-in-time there had been no formal investigation
2 of those matters either?

3 **MR. DOWNING:** As far as I'm aware.

4 **MR. LEE:** Again, leaving Cornwall aside,
5 does the Ministry of Corrections in other areas in dealing
6 with other issues ever conduct full, thorough
7 investigations of matters?

8 **MR. DOWNING:** Yes.

9 **MR. LEE:** And you've done that, I take it,
10 in your various roles?

11 **MR. DOWNING:** Correct.

12 **MR. LEE:** Can you just pick an example of a
13 full, thorough examination where you would have looked at
14 an issue in detail and made a determination? Can you give
15 us some example of what that might be?

16 **MR. DOWNING:** It could be a sudden death.

17 **MR. LEE:** Okay. Can you -- I mean, I don't
18 want names or anything like that, but can you give us an
19 idea of what you might be asked to investigate and what you
20 might do and what you might come back with at the end?

21 **MR. DOWNING:** The circumstances surrounding
22 an offender's death while in the custody and care of a
23 correctional facility. So you would investigate -- or I
24 would have investigated the circumstances surrounding to
25 determine as to whether there was any omissions or acts

1 that may have contributed to the death of that person while
2 in our custody.

3 And I would, if possible, I would either
4 gather or determine -- in most cases a coroner would
5 determine the cause of death, but I would look at whether
6 there were any administrative or any acts or omissions by
7 correctional employees that may have contributed to the
8 death, or other parties involved, like other offenders.

9 **MR. LEE:** And at the end of the day you
10 would report on whether or not it was your belief that
11 there had been a contribution?

12 **MR. DOWNING:** I would report, for instance,
13 if I didn't believe there were any omissions or acts that
14 contributed or caused the death. I would make that
15 determination.

16 **MR. LEE:** If you did not believe?

17 **MR. DOWNING:** If I did not believe there was
18 any or vice versa, if I did believe, based on the fact
19 surrounding that specific event.

20 **MR. LEE:** Can I take you to the report of
21 your administrative review. It's Exhibit 958 and I'm going
22 to give you the Bates page number; that's the small number
23 in the top left-hand corner. It's 1001527 front. It's the
24 first page after the title page appendices.

25 **THE COMMISSIONER:** Is that the interview

1 with Mr. Roy?

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

3 And I'm not concerned with the Roy interview
4 specifically but more the interviews in general.

5 Was your methodology, the way you conducted
6 these interviews, consistent throughout?

7 **MR. DOWNING:** I would attempt to be
8 consistent, depending on who I interviewed.

9 **MR. LEE:** I'm only talking methodology. You
10 didn't videotape any of these?

11 **MR. DOWNING:** No, that's correct.

12 **MR. LEE:** You didn't audiotape any of these?

13 **MR. DOWNING:** I didn't have the equipment.

14 **MR. LEE:** You had -- as I understood it, you
15 would interview these people and you would start typing
16 your report as you went along?

17 **MR. DOWNING:** If I -- in the case with
18 employees, they didn't have an option as to how I was going
19 to record it. So my consistent approach was with a
20 computer and typing word-for-word the statement.

21 **MR. LEE:** Was that somehow different in the
22 case of non-employees?

23 **MR. DOWNING:** Well, non-employees, if they
24 chose -- if they disagreed with the way I was going to take
25 a statement they could simply walk out and not give me any

1 statement at all.

2 MR. LEE: That didn't happen during this
3 administrative review?

4 MR. DOWNING: Certainly, the comments in
5 this case by Mr. Roy that he wouldn't provide me a
6 statement if I recorded or typed it, that would have --
7 that had an impact on my approach.

8 MR. LEE: Is there a reason you didn't audio
9 or videotape these?

10 MR. DOWNING: I didn't have equipment.

11 MR. LEE: Is there a reason you couldn't
12 have ---

13 MR. DOWNING: I don't have transcribers.

14 MR. LEE: Was it just a resource issue?

15 MR. DOWNING: I don't believe that
16 technology was widely used within Correctional Services at
17 that time.

18 MR. LEE: In 2000?

19 MR. DOWNING: Correct.

20 MR. LEE: Was there any Ministry policy at
21 that time on the way that statements should be taken by
22 investigators?

23 MR. DOWNING: No.

24 MR. LEE: Is there any Ministry policy on
25 that now that you know of?

1 **MR. DOWNING:** With regards to the nature of
2 how a statement is taken?

3 **MR. LEE:** The procedure, yes.

4 **MR. DOWNING:** You're talking about with
5 videotaping, recording ---

6 **MR. LEE:** Videotaping, audio taping a
7 witness, whatever it might be.

8 **MR. DOWNING:** I don't believe there's a
9 current policy. I do know that case law has an impact upon
10 how statements are taken, and over a number of years now, I
11 think that case law has been very clear as to using, when
12 possible, the most -- the best system to accurately record
13 the statement. And I think we've moved from typing to
14 audio recording to video and audio recording now. That
15 technology is readily available.

16 **MR. LEE:** Would you agree that audio and
17 video recording might be seen by some to be more consistent
18 with the objectives of operating in a transparent manner?

19 **MR. DOWNING:** In today's environment,
20 absolutely.

21 **MR. LEE:** That wasn't the case at the time?
22 It wasn't a concern you had?

23 **MR. DOWNING:** It wasn't a concern I had, no.

24 **MR. LEE:** Changing topics, I want to talk to
25 you a little bit about Jos van Diepen. And if I can take

1 you to the statement that he gave? We're already at the
2 document. You just need to go to -- the last three digits
3 of the Bates page are 536. And I want to take you to page
4 5 of his statement when you have it up, the top paragraph,
5 please.

6 Do you have that, sir?

7 **MR. DOWNING:** Correct, I do.

8 **MR. LEE:** Can you just confirm this is part
9 of a narrative of an answer given by Mr. van Diepen, if you
10 go to the previous page? You've asked:

11 "Please go on."

12 And he's going on to detail some of his involvement with
13 Ken Seguin.

14 **MR. DOWNING:** Correct.

15 **MR. LEE:** So he begins at the top of the
16 page:

17 "I do not have any knowledge of him
18 having a liaison with Ministry clients
19 other than I know that some of his
20 clients did seem to interact with him
21 socially. Probationers stopped by his
22 house in Cornwall and also met him at a
23 local tavern. They were adult Ministry
24 clients. I don't believe that I ever
25 saw him in the company of adult

1 clients."

2 I think there may be some kind of contradiction there.

3 "Some Ministry clients were younger
4 than him, older, and some were married.
5 This knowledge..."

6 I think it says:

7 "...may have come from a number of
8 sources. When Ken moved from Cornwall
9 to Summerstown, Ken asked permission to
10 have a younger adult male probationer
11 reside with him at his residence."

12 Did I read that accurately, sir?

13 **MR. DOWNING:** Correct.

14 **MR. LEE:** Did you ask at any point what Mr.
15 van Diepen meant by the term "adult"?

16 **MR. DOWNING:** Well, I assumed from my
17 experience as a probation officer that he meant someone
18 over the age of 17, like an adult client.

19 **MR. LEE:** Meaning an adult as defined by the
20 law ---

21 **MR. DOWNING:** Correct.

22 **MR. LEE:** --- as it relates to probation and
23 parole officers?

24 **MR. DOWNING:** Correct.

25 **MR. LEE:** Do you recall asking him that

1 question or that was just your assumption?

2 MR. DOWNING: That was my assumption.

3 MR. LEE: By the time you interviewed Mr.
4 van Diepen, you had had some contact with him; is that
5 correct?

6 MR. DOWNING: I just -- can I go back?

7 MR. LEE: Sure.

8 MR. DOWNING: Actually, in the statement he
9 talks about they were adult Ministry clients. So I assume
10 that that's ---

11 MR. LEE: That ties into what your
12 assumption was?

13 MR. DOWNING: Correct.

14 MR. LEE: The question I asked was whether
15 or not -- whether you had had some contact with Mr. van
16 Diepen prior to this. You had at least had a phone call
17 where he had indicated that he might want a lawyer?

18 MR. DOWNING: I recall that.

19 MR. LEE: And by this point you had talked
20 to Pat Hall and you had reviewed his statement and you had
21 received a comment from Pat Hall that he had the impression
22 that Mr. van Diepen wasn't being totally forthcoming?

23 MR. DOWNING: That would be accurate.

24 MR. LEE: And Mr. van Diepen was an active
25 probation officer at this point?

1 **MR. DOWNING:** Correct.

2 **MR. LEE:** Do you know whether Mr. van Diepen
3 was suspended pending your review?

4 **MR. DOWNING:** I'm not aware of that.

5 **MR. LEE:** Can I take you to a new document,
6 sir? I don't think it's been entered as an exhibit yet.
7 It's document 100515. The clerk will provide that to you,
8 sir.

9 **THE COMMISSIONER:** Thank you.

10 Exhibit Number 1093 is an email
11 correspondence between -- from Deborah Newman to Paul
12 Downing, August 13th, 2000.

13 **--- EXHIBIT NO./PIÈCE NO. P-1093:**

14 (100515) Email correspondence from Deborah
15 Newman to Paul Downing dated August 13,
16 2000

17 **MR. LEE:** Do you have that, Mr. Downing?

18 **MR. DOWNING:** Yes, I do.

19 **MR. LEE:** So if we look at this, the first
20 email noted is from Deborah Newman to yourself, copy to
21 Lori Potter on Sunday, August 13th. Do you see that?

22 **MR. DOWNING:** Yes, I do.

23 **MR. LEE:** And she's asking you to review the
24 information below so that she can discuss it with you?

25 **MR. DOWNING:** Correct.

1 **MR. LEE:** And below we have two emails. The
2 first one, chronologically, is the last one, which begins
3 on the middle page and it's from Claude Legault to Deborah
4 Newman on August 11th, 2000.

5 Do you see that?

6 **MR. DOWNING:** I do.

7 **MR. LEE:** So if we work backwards in the
8 document, it looks like Claude Legault has written to
9 Deborah Newman on Friday, August 11th. Deborah Newman has
10 responded to Claude Legault on Sunday, August 13th, and then
11 she's forwarded that correspondence to you for review. Is
12 that how you read this?

13 **MR. DOWNING:** It would appear that. I
14 haven't read this, but it would appear that.

15 **MR. LEE:** You haven't read this today or you
16 haven't read this at all?

17 **MR. DOWNING:** I haven't read this today.

18 **MR. LEE:** You would have received it at the
19 time though, presumably?

20 **MR. DOWNING:** Well, it's my initials at the
21 top and I documented it, correct.

22 **MR. LEE:** Can I take you to the -- to page
23 number 2 of this, and that's the earliest email which is
24 from Legault to Newman, please. And if you look at the
25 second paragraph of that email, it begins:

1 "Later in the morning I was asked by
2 Sue Larivière and Viviane Quenneville
3 to go for a coffee offsite."

4 Do you see that?

5 **MR. DOWNING:** Correct. I do.

6 **MR. LEE:** Then the start of the next

7 paragraph:

8 "Sue and Viviane both reported having
9 seen the site but neither of them
10 printed its content and the site is now
11 closed."

12 What I'm interested in is about halfway
13 through that paragraph there's a sentence that begins:

14 "Jos was on vacation..."

15 Do you see that?

16 **MR. DOWNING:** I do.

17 **MR. LEE:** So it reads:

18 "Jos was on vacation at the time that
19 this website was operational but he
20 came in briefly one day and was in his
21 office. Viviane reports that the
22 following day when she opened her
23 electronic case notes, the name of the
24 PO that appeared on her case notes was
25 Jos van Diepen. She wonders if he

1 accessed the site using her name and
2 password (would have access to this as
3 LSO). Viviane plans to contact Crystal
4 Brown Technology Support to inquire
5 further and to see if there is any way
6 of verifying if the site was accessed
7 from her computer on the day that Jos
8 was in the office."

9 Do you recall following up on that at all?

10 **MR. DOWNING:** No, I don't.

11 **MR. LEE:** Was that a serious concern for
12 you? Does that breach any kind of Ministry policy that
13 you're aware of at the time?

14 **MR. DOWNING:** Well, I'm not sure what
15 exactly he did or what he accessed.

16 **MR. LEE:** It wasn't a concern of yours?

17 **MR. DOWNING:** Pardon me?

18 **MR. LEE:** It just wasn't a concern of yours
19 at the time?

20 **MR. DOWNING:** I didn't say that. It's not
21 something -- I don't believe it's something that I
22 investigated, if that's the question.

23 **MR. LEE:** Okay. No, that's fair. It was
24 just a brief point on that.

25 On the next page is the real reason I

1 brought you to this document. Actually, I better take you
2 to -- for context, I better take you to the bottom of page
3 2. Mr. Legault notes:

4 "Discussions with staff raised some
5 questions in their minds and here are
6 the main ones:..."

7 And we have a few bullets. And if you turn over to the top
8 of page 3, the last bullet reads:

9 "What is the Ministry's position on
10 these allegations? Is it business as
11 usual as if nothing happened? Should
12 Jos be suspended as a result of these
13 allegations as other staff have been
14 following allegations against them and
15 until an investigation cleared them of
16 any wrongdoing? Should or have police
17 been contacted to see if they have or
18 are investigating these allegations?"

19 Do you see that there, sir?

20 **MR. DOWNING:** I do.

21 **MR. LEE:** Do you recall any discussion of
22 whether Mr. van Diepen should have been suspended?

23 **MR. DOWNING:** I wasn't involved in any of
24 those discussions.

25 **MR. LEE:** You weren't privy to any

1 discussion about that?

2 **MR. DOWNING:** No.

3 **MR. LEE:** Do you have any information about
4 what other staff is being referred to here.

5 **MR. DOWNING:** No, I don't.

6 **MR. LEE:** You don't know anything about
7 other staff being suspended with allegations and being
8 cleared of wrongdoing. You have no information about that
9 paragraph at all?

10 **MR. DOWNING:** Regarding the Cornwall
11 Probation and Parole Office, no, I don't.

12 **MR. LEE:** Okay. Thank you.

13 I'm going to take you to another document
14 that isn't yet an exhibit. It is Document 126442.

15 **THE COMMISSIONER:** Thank you.

16 Exhibit 1094 are notes of ---

17 **MR. LEE:** I understand of Deborah Newman,
18 sir.

19 **THE COMMISSIONER:** --- Deborah Newman, and
20 it's titled October 23rd, 2000 to January 16th, '01.

21 **---EXHIBIT NO./PIÈCE NO P-1094:**

22 (126442) Notes of Deborah Newman dated
23 October 23rd, 2001 to January 16th, 2001

24 **MR. LEE:** And can I turn you to the third
25 page of that document, sir? It's a -- the Bates ends with

1 625. I'm sorry; I want the next page, 626, front.

2 So this is a note that was titled on the
3 earlier page "Project Truth November 14th".

4 And are you on page 626 front, sir?

5 Down a little Madame Clerk.

6 **MR. DOWNING:** The last three numbers are
7 626?

8 **MR. LEE:** 626, yes, that's right.

9 **MR. DOWNING:** Yes, I am.

10 **MR. LEE:** If you go down to the bottom
11 there's the word "issue" is underlined and it reads:

12 "If 'E' and 'J' grieve this could all
13 be made public through grievance
14 process."

15 Do you see that there?

16 **MR. DOWNING:** Yes. I do.

17 **MR. LEE:** Can you tell us anything about
18 that note? I know you are not the one who made it, but is
19 there anything that you can tell us about that? Were you
20 ever involved in the discussion about possible disciplinary
21 action being taken against ---

22 **MR. DOWNING:** No, I wasn't.

23 **MR. LEE:** --- anyone in this process?

24 Did you ever have a discussion or during a
25 conference call hear any talk of possible disciplinary

1 action?

2 MR. DOWNING: No.

3 MR. LEE: If you see higher up on the page
4 five written lines in we have number 3:

5 "Jos/contradicted himself. Close

6 friend? Trying to distance himself."

7 Is it likely that that information came from
8 you on -- about Mr. Van Diepen having contradicted himself?

9 MR. DOWNING: Was this the date of the
10 conference call, November the 9th?

11 MR. LEE: The note reads, "Project Truth
12 November 14th" on page 65.

13 My real points are -- do you -- you don't
14 have any information at all about possible grievance
15 processes or possible discipline?

16 MR. DOWNING: I was not part of any
17 discussions nor am aware of any discussions surrounding
18 that matter.

19 MR. LEE: You made no recommendation about
20 grievances?

21 MR. DOWNING: That's correct.

22 MR. LEE: Or about, sorry -- about
23 discipline?

24 MR. DOWNING: That's correct.

25 MR. LEE: If I could have a moment please?

1 **THE COMMISSIONER:** Certainly.

2 **(SHORT PAUSE/COURTE PAUSE)**

3 **MR. LEE:** Mr. Downing, those are my
4 questions. Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Neville, do you have any questions?

7 **(SHORT PAUSE/COURTE PAUSE)**

8 **MR. NEVILLE:** Sorry, Mr. Commissioner, I had

9 ---

10 **THE COMMISSIONER:** That's fine.

11 **MR. NEVILLE:** --- to find the right tab.

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

13 **NEVILLE:**

14 **MR. NEVILLE:** Good Afternoon Mr. Downing.
15 My name is Michael Neville and I represent Father Charles
16 MacDonald and more importantly, for today's purposes, the
17 Estate of Ken Seguin. I just have a few questions for you.

18 You explained in your evidence in-chief for
19 the Commissioner that we have a Stage 1 and a Stage 2
20 process in the type of investigations or reviews you do;
21 right?

22 **MR. DOWNING:** Are you talking about this
23 particular case?

24 **MR. NEVILLE:** Yes.

25 **MR. DOWNING:** That's unique to this

1 particular case, yes.

2 **MR. NEVILLE:** All right.

3 That's what I wanted -- that was my next
4 question. So it is unique to this situation.

5 And the Stage 1 was -- would it be fair to
6 describe it as an information gathering stage?

7 **MR. DOWNING:** Correct.

8 **MR. NEVILLE:** And Stage 2, which didn't
9 happen, would have been the stage, as I heard you in-chief
10 and I just want to confirm my understanding is correct,
11 would have been the stage at which an assessment would have
12 made of such things as validity, voracity, credibility of
13 the allegations?

14 **MR. DOWNING:** More detailed work would have
15 been done at that stage, correct.

16 **MR. NEVILLE:** And would have been done to
17 determine such issues as those?

18 **MR. DOWNING:** It could have been, yes.

19 **MR. NEVILLE:** Now, one of the things that
20 struck me and I just want to ask you briefly about it, is
21 this, we have in Exhibit 1074, which is document number
22 100499, and that, Mr. Commissioner, is a fax sent by a Mr.
23 Stephenson to a Mr. -- to yourself. And attached to it or
24 as part of it is a fax from Mr. Robinson to Mr. Stephenson
25 and the attachment to that is excerpts from Project Truth.

1 Do you recall that -- oh, there it is on the
2 screen for you. Do you have that document handy? I'm not
3 going to refer you to it in detail but you've got access --
4 -

5 **MR. DOWNING:** I recall that being entered in
6 as evidence earlier during my testimony.

7 **MR. NEVILLE:** Right.

8 Now, ---

9 **THE COMMISSIONER:** 1069; is that what you
10 said?

11 **MR. NEVILLE:** I have it Mr. Commissioner as
12 Exhibit 1074.

13 **THE COMMISSIONER:** 1074. All right.

14 Do you have -- so when you are speaking of
15 Project Truth you are talking about the website?

16 **MR. NEVILLE:** Yes. Yes, Mr. Commissioner, I
17 am.

18 Now, if I may, Mr. Downing, what I wanted to
19 ask you is this, and again, as I say, it's something that
20 somewhat struck me, there doesn't appear to have been any
21 inquiry or preliminary investigation, whatever term one
22 uses, into the background or origins of the web site; am I
23 correct?

24 **MR. DOWNING:** At this stage did I -- Stage
25 1?

1 **MR. NEVILLE:** Yes.

2 **MR. DOWNING:** That's correct.

3 **MR. NEVILLE:** Or in terms of anybody
4 briefing you on it.

5 In other words, what is Project Truth or
6 projecttruth.com; what is the origin?

7 **MR. DOWNING:** Well, if I recall, there was -
8 --

9 **MR. NEVILLE:** No, I'm not asking you if you
10 know it. Was that looked into?

11 In other words, you have a bunch of
12 allegations posted on a website. There's all kinds of
13 websites out there in cyber space these days, you know --
14 one on Elvis being alive or the world is flat. Here is a
15 website making all these allegations about people. What
16 was the voracity of any of them, that you knew, or that
17 anybody briefing you knew?

18 **MR. DOWNING:** Well, that's what I was asked
19 to do with regards to the notations or comments that
20 involved current employees and past employees.

21 **MR. NEVILLE:** I understand.

22 Did you come to learn that the source, as it
23 were, of the website, was a Mr. Nadeau?

24 **MR. DOWNING:** I recall that name.

25 **MR. NEVILLE:** All right.

1 What I'm asking you is whether you were
2 tasked or were aware of anybody being tasked to check out
3 the bona fides and the credibility of Mr. Nadeau?

4 **MR. DOWNING:** I was not initially, no.

5 **MR. NEVILLE:** Because it appears, as I read
6 all the documentation by way of email, et cetera, and
7 moving back and forth between you and others within the
8 Ministry, that he's taken at face value, he and his
9 website, as putting forward accurate allegations.

10 **MR. DOWNING:** I would disagree.

11 **MR. NEVILLE:** Okay. And what -- when -- why
12 do you disagree?

13 **MR. DOWNING:** That's why they assigned me to
14 look into it.

15 **MR. NEVILLE:** All right.

16 **MR. DOWNING:** If they had agreed with what
17 was on the website I would assume they wouldn't need an
18 investigator.

19 **MR. NEVILLE:** Well, all right.

20 So what you did then was you interviewed
21 various people including Mr. Van Diepen and others, right?

22 **MR. DOWNING:** Correct.

23 **MR. NEVILLE:** Now let me give you an
24 example. One of the people you interviewed is Father
25 Maloney, right?

1 **MR. DOWNING:** Correct.

2 **MR. NEVILLE:** And you interviewed him by
3 telephone on the 13th of November, and this is in your
4 notes, which is our Exhibit 1064, and he indicated he
5 denied any wrongdoing and said the allegations posted were
6 a fabrication. And then you met with Detective Hall in the
7 morning of the 27th of September.

8 **MR. DOWNING:** I don't recall having an
9 interview with him.

10 **MR. NEVILLE:** No, no, telephone.

11 **MR. DOWNING:** I may have had a conversation
12 with him.

13 **MR. NEVILLE:** No, I said a telephone
14 contact.

15 **MR. DOWNING:** I thought I heard interview.

16 **MR. NEVILLE:** No, no, telephone contact on
17 the 13th.

18 **THE COMMISSIONER:** This is Father Maloney?

19 **MR. NEVILLE:** Yes, sir.

20 **THE COMMISSIONER:** Yes.

21 **MR. NEVILLE:** In your notes. And then you
22 spoke and met with actually Detective Hall on the 27th in
23 the early morning between 7:30 and 8:30 approximately. And
24 one of the things he told you was that there would be no
25 charges laid against Father Maloney.

1 **MR. DOWNING:** No, no current investigation
2 surrounding him ---

3 **MR. NEVILLE:** Well ---

4 **MR. DOWNING:** --- and no ---

5 **MR. NEVILLE:** No charges were to be laid
6 against him?

7 **MR. DOWNING:** That could be true.

8 I don't have those notes in front of me, but
9 I thought ---

10 **MR. NEVILLE:** Well, do you have your exhibit
11 -- it's our exhibit, Mr. Commissioner, 1064, 123486, and
12 the date is November -- September 27th, page 15 on to page
13 16. If you look at the bottom of 15, it's also on the
14 screen to assist you, Mr. Downing, we have your attendance
15 with Detective Hall, right?

16 And if you look at the top of page 16 ---

17 **THE COMMISSIONER:** I think you're both
18 right, because it says:

19 "Pat said that criminal investigation
20 had found no evidence of wrongdoing by
21 Father Kevin Maloney..."

22 **MR. NEVILLE:** Yes.

23 **THE COMMISSIONER:** "...based upon current
24 investigation..."

25 **MR. NEVILLE:** Right.

1 **THE COMMISSIONER:** "...No charges against
2 Father Maloney have been proceeded
3 with."

4 **MR. NEVILLE:** Correct.

5 And that was the state of affairs as of
6 November 27th, 2000, correct?

7 **MR. DOWNING:** Correct.

8 **MR. NEVILLE:** Now, Father Maloney was a
9 person of interest because he was a contract employee of
10 the Ministry. He was the jail chaplain?

11 **MR. DOWNING:** Correct.

12 **MR. NEVILLE:** And you had received from the
13 Ministry people copies of the Project Truth website
14 material, right?

15 **MR. DOWNING:** Correct.

16 **MR. NEVILLE:** Which cited wrongdoing by
17 Father Maloney?

18 **MR. DOWNING:** Correct.

19 **MR. NEVILLE:** And it would appear -- were
20 you aware either through your own inquiries or from the
21 police that in the case of Father Maloney, he was alleged
22 to have done things at an institution that he was never at?
23 Did you learn that?

24 **MR. DOWNING:** I don't recall.

25 **MR. NEVILLE:** So what is it you did then to

1 check the veracity of the allegation against him as on the
2 website; just take his word?

3 **MR. DOWNING:** Initially, keeping in mind
4 that I assumed that the Investigations Unit -- the criminal
5 investigation had been going on for a number of years -- I
6 again reached out to Detective Hall to ask him as to
7 whether there was any evidence that he was aware of and any
8 wrongdoing, which I did.

9 I met with Father Maloney and asked him
10 whether -- to respond to the website statements concerning
11 -- surrounding his alleged conduct and he denied any
12 involvement.

13 **MR. NEVILLE:** Right.

14 **MR. DOWNING:** And that's what I reported at
15 that first stage, that administrative review.

16 **MR. NEVILLE:** Right.

17 Well, you actually anticipated my next bit
18 of -- couple of questions. You were aware that by the fall
19 of 2000, several persons were facing charges here in
20 Cornwall in the criminal courts? You were aware of that, I
21 take it?

22 **MR. DOWNING:** By when, I'm sorry?

23 **MR. NEVILLE:** By the fall of 2000, when you
24 were doing your work?

25 **MR. DOWNING:** I don't recall criminal

1 charges.

2 **MR. NEVILLE:** You didn't know that many
3 people, a dozen or more, were facing charges in the courts
4 here in Cornwall?

5 **MR. DOWNING:** I don't recall that.

6 **MR. NEVILLE:** Well, when you met with
7 Detective Hall, he didn't tell you that?

8 **MR. DOWNING:** I asked him specifically about
9 employees currently employed and former employees.

10 **MR. NEVILLE:** Right.

11 **MR. DOWNING:** And that's what my focus was
12 and that's -- the response was that none were suspected or
13 there was no criminal investigation ongoing regarding those
14 individuals.

15 **MR. NEVILLE:** All right.

16 Now, when you were doing your work that
17 formed the basis of the administrative review and for a
18 period thereafter, you became aware of Perry Dunlop?

19 **MR. DOWNING:** From the website, correct.

20 **MR. NEVILLE:** Right.

21 And you were -- did you understand or come
22 to learn that some of the material posted there implicating
23 Ministry people had actually come from him?

24 **MR. DOWNING:** I'd have to look at the actual
25 administrative chart that I did -- that I referenced when a

1 statement was made ---

2 MR. NEVILLE: Right.

3 MR. DOWNING: --- if there was actually a
4 source, and that's what I tried to do.

5 MR. NEVILLE: Okay.

6 MR. DOWNING: So without looking at that
7 document ---

8 MR. NEVILLE: Do we have that one handy?

9 THE COMMISSIONER: Well, in any event, if
10 you look at the part 2 ---

11 MR. NEVILLE: Right.

12 THE COMMISSIONER: --- of his

13 MR. NEVILLE: The summary?

14 THE COMMISSIONER: Not his summary. I think
15 his recommendations or whatever, for part 2 there was find
16 Mr. Dunlop, interview him and find out his sources and
17 identify who the unnamed complainants were.

18 MR. NEVILLE: Exactly.

19 THE COMMISSIONER: Correct.

20 MR. NEVILLE: That was the basis of my
21 question as to why I felt exactly what you've said.

22 THE COMMISSIONER: M'hm.

23 MR. NEVILLE: That by the time you finish
24 phase 1 or stage 1, it would appear that you had limited
25 knowledge of who Mr. Dunlop was. Is that a fair statement?

1 **MR. DOWNING:** That would be fair.

2 **MR. NEVILLE:** And I suggest you probably
3 didn't know at that point that some of the affidavits and
4 other published material on the website actually got to the
5 website from him?

6 **MR. DOWNING:** That would be fair.

7 **MR. NEVILLE:** And that he had generated some
8 of those documents, including affidavits, in the context of
9 his own personal civil action. You didn't know that?

10 **MR. DOWNING:** No.

11 **MR. NEVILLE:** All right.

12 Now, looking at the executive summary just
13 briefly, and that's -- I'm sorry, of the administrative
14 review, Exhibit 958, if I could refer Mr. Downing to page 2
15 of the executive summary, under the heading "Ken Seguin"?

16 The second paragraph, Mr. Downing -- sorry,
17 the first paragraph ends -- has a sentence as follows:

18 "Prior to his death PPO Seguin was
19 reportedly under investigation by the
20 Cornwall Police and OPP for suspected
21 improper sexual conduct."

22 Do you agree that that statement is
23 inaccurate?

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **MR. DOWNING:** I don't know if I can respond

1 to that. I'd have to look at the documents and the
2 information that I relied upon to make that statement.

3 **MR. NEVILLE:** I stand to be corrected by Mr.
4 Commissioner or other counsel, but I believe the evidence
5 is pretty clear that at the time of his death in late
6 November, 1993, Mr. Seguin actually wasn't under
7 investigation by anybody and certainly not by the OPP ever
8 for sexual misconduct. So where does that come from?

9 **MR. DOWNING:** Again, not -- I'm not sure,
10 but reportedly -- I'm not sure exactly where that came
11 from.

12 **MR. NEVILLE:** Could it be this, that when he
13 took his life, the police department that was called in to
14 investigate at his home and actually found him, or I guess
15 they and Mr. Leroux, was the OPP and perhaps you
16 inadvertently transposed it into him being under
17 investigation by them?

18 **MR. DOWNING:** I don't believe so.

19 **MR. NEVILLE:** No?

20 So if there is, in fact, no evidence of his
21 being under investigation for sexual misconduct by the OPP
22 and even, indeed, by that matter and his death by the
23 Cornwall police, that would be inaccurate?

24 **MR. DOWNING:** If there was no evidence, if
25 there was an investigation and nobody reported to me that -

1 - was there an investigation going on, that's true.

2 **THE COMMISSIONER:** Well, let's just make
3 sure here.

4 I can see your comments with respect to the
5 OPP.

6 **MR. NEVILLE:** Yes.

7 **THE COMMISSIONER:** With respect to the
8 Cornwall police and I can be corrected if I'm wrong, there
9 had been a complaint ---

10 **MR. NEVILLE:** Yes.

11 **THE COMMISSIONER:** --- by Mr. Silmser. The
12 name "Ken Seguin" was in there. Now, whether or not an
13 investigation was on or should have been on is something
14 that we're going to determine later on.

15 **MR. NEVILLE:** I believe we will learn -- I
16 think, Mr. Commissioner, Mr. Downing is aware through other
17 documents -- and I don't want to take up other people's
18 time unduly because we'll get to it ---

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

20 **MR. NEVILLE:** --- is that Mr. Silmser had,
21 number one, indicated from the outset he did not want to
22 proceed with two investigations, only with one against
23 Father MacDonald.

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

25 **MR. NEVILLE:** And secondly, specifically

1 told the Cornwall police, before Pr. Seguin's death, that
2 he didn't want to proceed with the allegation at all.

3 **THE COMMISSIONER:** And we will discuss ---

4 **MR. NEVILLE:** Yes.

5 **THE COMMISSIONER:** --- as to whether or not
6 who decides what charges are going to be laid and when. So
7 that's ---

8 **MR. NEVILLE:** I'm only ---

9 **THE COMMISSIONER:** --- still on the burner.

10 **MR. NEVILLE:** You're quite right, sir.

11 I'm looking at the concept of under
12 investigation by two police forces, if nobody's doing it.
13 That's all I'm getting at.

14 **THE COMMISSIONER:** Well ---

15 **MR. NEVILLE:** Can I leave it at this, sir,
16 by the OPP.

17 **THE COMMISSIONER:** By the OPP, that's fine.
18 That's fine.

19 **MR. NEVILLE:** So can we accept, sir, that
20 if, as we understand it to be the case, there was no OPP
21 investigation up to his death by the OPP of any sexual
22 misconduct, this would be an error in that part of your
23 report. Is that fair?

24 **MR. DOWNING:** Well, I'm not -- I'm recalling
25 the conversations I had with Bill Roy and I'm recalling,

1 without looking at the documents, there was some statement
2 that the OPP detachment had known Mr. Silmser and had been
3 conducting some sort of investigation.

4 **MR. NEVILLE:** Well, let me just ask you
5 about that for a minute.

6 **THE COMMISSIONER:** Well, it could be, you
7 know, and I don't know how relevant it is but it could have
8 been in relation to after his death with Silmser and the
9 extortion that the OPP had an investigation going.

10 **MR. NEVILLE:** That's quite so, Mr.
11 Commissioner. That is absolutely correct.

12 Can I just ask you this about the point of
13 your -- or the portion of your report dealing with Mr. Roy,
14 and previous counsel referred you to that part. It's the
15 first of appendices, it's the first one.

16 Now, as I understand it, Mr. Downing, Mr.
17 Roy did not consent to your doing this interview in your
18 normal fashion, i.e. I guess inputting in a computer as the
19 person spoke?

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

21 **MR. NEVILLE:** So what did you do to keep
22 track of what he was saying?

23 **MR. DOWNING:** I took notes.

24 **MR. NEVILLE:** You took notes?

25 **MR. DOWNING:** Correct.

1 **MR. NEVILLE:** Handwritten notes?

2 **MR. DOWNING:** If I recall.

3 **MR. NEVILLE:** All right. And where are
4 they?

5 **MR. DOWNING:** I don't know.

6 **MR. NEVILLE:** Are you indicating for Mr.
7 Commissioner that this typed document was prepared from
8 handwritten notes?

9 **MR. DOWNING:** Immediately after the
10 interview; correct.

11 **MR. NEVILLE:** Okay. And was it your
12 practice to keep or not keep the written notes?

13 **MR. DOWNING:** Most time I believe I kept
14 notes, but in this case I dictated them directly from the
15 notes onto this document, so I made an assessment I guess
16 at that time that I didn't require them because I made them
17 directly after the interview.

18 **MR. NEVILLE:** All right. Well, you've got
19 that portion of your document there that deals with Mr. Roy
20 and his interview?

21 **MR. DOWNING:** Correct.

22 **MR. NEVILLE:** All right. I've looked
23 through it briefly while I'm here and I don't see any
24 suggestion in your interview notes, the typed ones, that
25 Mr. Roy advised you of an investigation by the OPP of Mr.

1 Seguin for sexual misconduct.

2 If you can find it, please refer it to me.

3 **MR. DOWNING:** Well, on page 2 ---

4 **MR. NEVILLE:** M'hm.

5 **MR. DOWNING:** --- the third paragraph from
6 the bottom -- this is according to Bill, of course:

7 "Silmser was not reliable and had been
8 working with them for some time.

9 According to Bill he said the sergeant
10 said that they knew all about his
11 allegations regarding PO Seguin."

12 **MR. NEVILLE:** Yes.

13 **MR. DOWNING:** So if Bill was calling about
14 the allegations of sexual impropriety, which he told me he
15 did, I assumed that that's what he is referring to when he
16 is talking about the sergeant.

17 **THE COMMISSIONER:** And we've had a
18 discussion this morning, or earlier today, as to whether or
19 not that was really a call to the Lancaster or to ---

20 **MR. NEVILLE:** That's right.

21 **THE COMMISSIONER:** --- the Cornwall police.

22 **MR. NEVILLE:** I believe it's Sergeant
23 Brunet.

24 **THE COMMISSIONER:** M'hm. So then ---

25 **MR. NEVILLE:** So again, not OPP.

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

2 **MR. NEVILLE:** Right.

3 **THE COMMISSIONER:** So I think it's fair to
4 say that ---

5 **MR. NEVILLE:** It's a little murky.

6 **THE COMMISSIONER:** Well, yeah, but ---

7 **MR. NEVILLE:** All right.

8 I'll move on.

9 **THE COMMISSIONER:** Yes.

10 **MR. NEVILLE:** Now, in your evidence this
11 morning, Mr. Downing, you spoke about the three new
12 allegations that came forward and they're discussed in the
13 latter portion of your handwritten notes; right?

14 **MR. DOWNING:** Correct.

15 **MR. NEVILLE:** And you sent an inspector out
16 and he took statements from two; correct?

17 **MR. DOWNING:** Correct.

18 **MR. NEVILLE:** Would I be correct that one of
19 the three refused to be interviewed?

20 **MR. DOWNING:** I recall that without looking
21 at my notes. I believe so.

22 **MR. NEVILLE:** All right. And there's a
23 document I don't believe has yet been entered, Mr.
24 Commissioner. It's document 123490. It's a letter by Mr.
25 Downing ---

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

2 **MR. NEVILLE:** --- to Ms. Dwyer on this
3 topic, 490.

4 And I won't -- it will need names corrected
5 when the time comes, sir, so I won't read them out.

6 **THE COMMISSIONER:** Thank you.

7 Exhibit 1095 is a memorandum from Paul
8 Downing to Denise Dwyer dated May 30th, 2001.

9 **---EXHIBIT NO./ PIÈCE NO P-1095:**

10 (123490) Memorandum from Paul Downing to
11 Denise Dwyer dated May 30, 2001

12 **MR. NEVILLE:** That's a letter authored by
13 yourself, sir?

14 **MR. DOWNING:** That's correct.

15 **MR. NEVILLE:** And I won't refer directly to
16 peoples' names. In paragraph 1 there are two persons who
17 have now been given monikers, I believe C-47 and C-48, by
18 Mr. Commissioner.

19 And in the second paragraph, it confirms
20 that a third individual refused to be interviewed and/or to
21 proceed with a complaint?

22 **MR. DOWNING:** Correct.

23 **MR. NEVILLE:** All right. And are you able
24 to confirm, and maybe we can use your notes, sir, that the
25 other two persons appear to have come to the attention of

1 the Ministry through a lawsuit?

2 And just to assist you on that, if you'd
3 look at your notes ---

4 **THE COMMISSIONER:** Just a second, sir.
5 Are you at your notes? Okay.

6 **MR. NEVILLE:** Exhibit 1064.

7 **THE COMMISSIONER:** Yeah, what page? Mr.
8 Neville, what page?

9 **MR. NEVILLE:** Oh, sorry, Mr. Commissioner.
10 It starts at the bottom of 28 through to page 29.

11 **THE COMMISSIONER:** Okay.

12 **MR. NEVILLE:** And just to give context to
13 yourself and the witness, at the bottom of 28 -- have you
14 found it, sir?

15 **MR. DOWNING:** Page 28?

16 **MR. NEVILLE:** Yes. February 15th, 2001 ---

17 **MR. DOWNING:** Correct, I have.

18 **MR. NEVILLE:** --- you're advised by a Cathy
19 Johnston about a new complaint; right?

20 **MR. DOWNING:** M'hm.

21 **MR. NEVILLE:** And if we turn over to the
22 next page, the bottom half is an entry of March 20th, you're
23 in contact by telephone, I believe, with a Lori, is it,
24 Potter, and it refers to three new complaints. And then
25 there's a name, Howard Yegendorf, and two lines down

1 "representing two clients".

2 It would appear that two of the three are
3 clients of a Mr. Yegendorf in a lawsuit that's being
4 handled by -- if we look onto the next page, page 30 -- Ms.
5 Freeborn?

6 **MR. DOWNING:** Correct.

7 **MR. NEVILLE:** All right. And just one final
8 point. If you could turn back to again Exhibit 958, your
9 administrative review, and the interview of Mr. van Diepen
10 which is in the appendices.

11 **THE COMMISSIONER:** Can you give us ---

12 **MR. NEVILLE:** Yes, the Bates page, sir.

13 **THE COMMISSIONER:** Yes.

14 **MR. NEVILLE:** I can. It's 541 is the last
15 three numbers.

16 **THE COMMISSIONER:** There's a 541 front and
17 back by the way.

18 **MR. NEVILLE:** Oh, I'm sorry. Yes, this is
19 back, sir.

20 **THE COMMISSIONER:** They try to trick you.

21 **MR. NEVILLE:** It's back, 541 back.

22 **THE COMMISSIONER:** So it will be on the
23 left-hand side.

24 **MR. NEVILLE:** It starts with the sentence --
25 a question by yourself:

1 "Prior to your following..." ---

2 It says "following out". I believe it
3 probably should be falling out with Ken Seguin; at the top
4 of the page.

5 **THE COMMISSIONER:** M'hm. I've got it.

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

7 **MR. NEVILLE:** If we can just look at this
8 briefly, sir. You're asking Mr. van Diepen about his
9 regular socializing with Mr. Seguin at a restaurant here in
10 the city known as "Harv's Diner"; right?

11 **THE COMMISSIONER:** Correct.

12 **MR. NEVILLE:** And he asks -- you ask him how
13 frequently that was as far as he was concerned and he gives
14 you an answer. And then you ask about who all participated
15 in the luncheons, and is this the answer (sic):

16 "There was a large table with seating
17 for about eight people."

18 **THE COMMISSIONER:** And we'll be careful
19 about ---

20 **MR. NEVILLE:** I will, sir.

21 And I'm not going to read out the names
22 because, in particular, I don't have my moniker sheet in
23 front of me, Mr. Commissioner. But I know in the third
24 line there is clearly C-8, and I'm not too sure about the
25 second one in the list because I don't have the list in

1 front of me. Here it is. It doesn't appear to be, sir,
2 but I believe, as best I can tell, that only C-8's name is
3 problematic.

4 **THE COMMISSIONER:** M'hm. Well, I'll leave
5 that to you because I don't want to be caught.

6 **MR. NEVILLE:** I agree. But you can imagine
7 how little I want to get caught.

8 **THE COMMISSIONER:** Yes.

9 **MR. NEVILLE:** So simply to say that he lists
10 a whole group of people, and for your benefit there's a
11 person just after the name Robertson, we know as C-8. The
12 next name is a Leo White. So it's the person just before
13 that we know as a C-8. And then Mr. van Diepen says, "And
14 on one or two occasions Ron Leroux and a number of other
15 businessmen". That's the answer he gave you?

16 **MR. DOWNING:** Okay. I'm at the point where
17 you are referring to the group at the large table.

18 **MR. NEVILLE:** Yes.

19 **MR. DOWNING:** Where's the next reference?

20 **MR. NEVILLE:** Well, then he lists a whole
21 group of people who will be participants at this large
22 table, right?

23 **MR. DOWNING:** Correct.

24 **MR. NEVILLE:** And concludes by saying, "and
25 on one or two occasions Ron Leroux and a number of other

1 businessmen".

2 **MR. DOWNING:** That would be the statement he
3 provided me.

4 **MR. NEVILLE:** Right. Indicating that Mr.
5 van Diepen confirms to you that taking all these people and
6 other businessmen was -- looks like it was a meeting place
7 of professional and businesspersons including Lise and many
8 others at which he personally participated. Is that fair?

9 **MR. DOWNING:** Correct.

10 **MR. NEVILLE:** Thank you, Mr. Commissioner,
11 those are my questions.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Chisholm?

14 **MR. CHISHOLM:** Good afternoon, sir.

15 Mr. Downing, good afternoon. My name is
16 Peter Chisholm. I'm counsel for the local CAS. I have no
17 questions for you. Thank you.

18 **THE COMMISSIONER:** Thank you.

19 Then, Mr. Bala?

20 **MR. KLOEZE:** We have no questions. Thank
21 you, Mr. Commissioner.

22 **THE COMMISSIONER:** Thank you.

23 I guess we go down to the Cornwall Police,
24 Ms. Lalji?

25 **MS. LALJI:** We have no questions. Thank

1 you.

2 **THE COMMISSIONER:** Thank you.

3 OPP?

4 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

5 **MS.LAHAIE:**

6 **MS. LAHAIE:** Good afternoon, Mr. Downing.
7 My name is Diane Lahaie, and I'm one of the lawyers for the
8 Ontario Provincial Police and this Inquiry.

9 Good Afternoon, sir.

10 I have one area that I would like to canvas
11 with you. It involves your interactions with Detective
12 Inspector Hall. Sir, I just want to go over that meeting
13 you had with him on September 27th, 2000. And before we get
14 to that, I'd just like to review your contacts with him.

15 If we look at Exhibit 1064, those are your
16 notes at Document 123486?

17 **THE COMMISSIONER:** It's page 30 of your
18 notes, sir. Oh no, sorry. I don't know what page. What
19 page is it?

20 **MS. LAHAIE:** Just going to go through just
21 to various contacts, Mr. Commissioner. Thank you.

22 **THE COMMISSIONER:** All right.

23 **MS. LAHAIE:** On August 11th, 2000 that's your
24 first contact with Inspector Hall; is that correct?

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

1 **MS. LAHAIE:** That's the conversation that
2 you have with where he agrees to meet with you to discuss
3 these matters?

4 **MR. DOWNING:** That's correct.

5 **MS. LAHAIE:** And then I understand that you
6 spoke with Ms. Hallett on the 24th of August 2000? You
7 spoke with Shelley Hallett. That's at the third page of
8 those notes.

9 **THE COMMISSIONER:** That's where she wanted
10 to review case law and ---

11 **MR. DOWNING:** Correct.

12 **MS. LAHAIE:** And she wanted to have an
13 opportunity to speak with their lawyer to -- before
14 permitting you to discuss or speak with the OPP
15 investigators?

16 **MR. DOWNING:** Correct.

17 **MS. LAHAIE:** And your next contact with
18 Inspector Hall is on September 13th; is that correct, at
19 page 7 of your notes, where you arrange to meet with him
20 the week of September 25th?

21 **THE COMMISSIONER:** It's at the bottom of the
22 page and over to page 8.

23 **MR. DOWNING:** Correct.

24 **MS. LAHAIE:** And during these conversations
25 are you discussing with him what you are looking for,

1 specifically what you are looking into in your
2 investigation?

3 **MR. DOWNING:** I may have during one of those
4 conversations, of course, introduced myself, who I was,
5 where I was from and what my task was, yes.

6 **MS. LAHAIE:** Okay. And so he knew what to
7 expect and what you would be discussing when you did get
8 together the week of the 25th?

9 **MR. DOWNING:** That would be correct.

10 **MS. LAHAIE:** Okay. And then on the 25th you
11 touch base with him. At page 13 of your notes you
12 telephone him and arrange to meet with him in Kingston on
13 Wednesday, September 27th, at the Four Points?

14 **MR. DOWNING:** That's correct.

15 **MS. LAHAIE:** And I note that you also met
16 with someone else at the Four Points. Is that a location
17 that you had determined as being where you would be
18 conducting your -- your investigation or your -- or taking
19 your statements?

20 **MR. DOWNING:** No.

21 **MS. LAHAIE:** Was this a place which would be
22 convenient to him or was it ---

23 **MR. DOWNING:** I was residing or staying
24 there at the time ---

25 **MS. LAHAIE:** Okay.

1 **MR. DOWNING:** --- and the two parties that
2 you referred to wanted to meet me there.

3 **MS. LAHAIE:** All right.

4 And so he displaced himself to go and meet
5 with you, essentially. He went to you on the 27th of
6 September?

7 **MR. DOWNING:** Displaced himself? I don't
8 understand.

9 **MS. LAHAIE:** Well, you agreed to meet on
10 September 27th and he went to you; you didn't go to him. He
11 agreed to go -- to meet with you.

12 **THE COMMISSIONER:** It seems there's some
13 value, little points, if they go and see you or you go and
14 see them. You met at the Four Points.

15 **MR. DOWNING:** Yes, and I recall that I did
16 it at his convenience early in the morning.

17 **MS. LAHAIE:** There was some issue as to the
18 timing of ---

19 **MR. DOWNING:** I think he was the one that
20 chose. He knew I was in town and wanted to come by. He
21 had other work to do.

22 **MS. LAHAIE:** In Kingston?

23 **MR. DOWNING:** I'm not sure if it was in
24 Kingston or the surrounding area.

25 **MS. LAHAIE:** Okay. And you met with him at

1 the Four Points then at 7:20 in the morning, I see?

2 **THE COMMISSIONER:** Page 15.

3 **MR. DOWNING:** What page are we on now?

4 **THE COMMISSIONER:** Fifteen (15).

5 **MS. LAHAIE:** Page 15, sir.

6 **MR. DOWNING:** Thank you. Correct.

7 **MS. LAHAIE:** And you had asked him to bring
8 his file, the statements that you were interested in?

9 **MR. DOWNING:** Any information that would
10 assist me in my task. That's correct.

11 **MS. LAHAIE:** And he brought those -- that
12 file or those statements with him?

13 **MR. DOWNING:** He brought, as far as I know,
14 one statement with him.

15 **MS. LAHAIE:** Well, I'm just confused about
16 that because you're indicating in your note that you took a
17 summary of statements.

18 **MR. DOWNING:** One document. The person made
19 several statements in that document.

20 **MS. LAHAIE:** I just want to try to assist
21 you. I don't want to -- I'm not trying to set you up to
22 trick you in any way here. I really just want to assist
23 you by helping you refresh your memory. I have located a
24 statement which was taken by the OPP on August 4th, 1998,
25 and it is at Document 710198. And I have copies for the

1 Commission, and the reason that there was no notice served
2 on this is that -- I was tweaked to this, Mr. Commissioner,
3 based on your comment this morning when you reviewing the
4 statement that had the changes on it.

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

6 **MS. LAHAIE:** And you brought our attention
7 to the date of August 4th, 1998 and there were initials and
8 it was from that point that I started to look into what --
9 where another statement could possibly have been taken and
10 it brought us to this statement and, rightfully so, it
11 wasn't on the Commission's list of documents. It would
12 have been -- it probably would have been a stretch for them
13 to locate it, but I have located it and I have located it
14 and I have copies for the Commission. So if I could pass
15 those up, please?

16 **THE COMMISSIONER:** Terrific.

17 Mr. --- any objections, Maître Ruel?

18 Anyone have any objections? That's great.

19 All right. So Exhibit 1096 is an interview
20 report that of -- an interview of Jos van Diepen. Date of
21 interview, August 4th, 1998.

22 **--- EXHIBIT NO./PIÈCE NO. P-1096:**

23 (710198) Interview report - Jos van Diepen
24 with OPP S.T. Seguin and J.B. Dupuis dated
25 August 4th, 1998

1 **MS. LAHAIE:** Just let me have one moment,
2 please.

3 **(SHORT PAUSE/COURTE PAUSE)**

4 **MS. LAHAIE:** The reason that I think you
5 were given access to that statement, sir, is because if you
6 go to the second page of 8 of that statement, at the bottom
7 ---

8 **MR. DOWNING:** Page that's numbered 8?

9 **THE COMMISSIONER:** No.

10 **MS. LAHAIE:**

11 **THE COMMISSIONER:** No.

12 **MS. LAHAIE:** No, the page 2 of 8.

13 If you read that answer ---

14 **THE COMMISSIONER:** So we're talking about
15 how he got to Nelson's desk?

16 **MS. LAHAIE:** Yes, if you read that answer,
17 I'm just going to try to refresh his memory that, in fact,
18 he was given access to both statements by Inspector Hall
19 and that's why his notes reflect statements as opposed to
20 the one.

21 I think this would help him refresh his
22 memory in that if you read the answer that is given there:

23 "I was in Nelson's office because of
24 the shortages of offices. I believe I
25 was looking for a pen or an erasure, I

1 don't know, and I pulled open the
2 right-hand, top drawer, right on the
3 very top, front of the drawer, was a
4 small paperback which had a picture of
5 two naked males in some kind of an
6 embrace on the cover. Inside was
7 various sketches, page after page of
8 naked men in various sexual positions."

9 If you go to your notes, sir, of your
10 meeting with Detective Inspector Hall at document 123665;
11 they have been entered. I don't have the exhibit number --
12 1084, Mr. Commissioner.

13 **THE COMMISSIONER:** One-thousand-and-eighty-
14 four (1084). Okay, and what's the page of this?

15 **MS. LAHAIE:** The last page of those notes.

16 **THE COMMISSIONER:** Okay.

17 **MS. LAHAIE:** You see page 2 of 8? Page 2 of
18 8 is also the notation on the passage I just read.

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

20 No, right at the back. Right there, sir.

21 You see?

22 So what she's -- Ms. Lahaie is showing you
23 is that you made a note of page 2, of 2 of 8, which is
24 consistent with that second statement? And then you put
25 down "various sketches, page..."

1 **MS. LAHAIE:** "Page after page of naked men
2 in various sexual positions."

3 Do you see that?

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

5 **MS. LAHAIE:** All right. So these are the
6 notes that you took when you were meeting with Inspector
7 Hall, and it reflects page 2 of 8 with that passage, which
8 you can tie back to page 2 of 8 of that statement of
9 August 4th, 1998. Do you see that?

10 **MR. DOWNING:** Yes, I can.

11 **MS. LAHAIE:** Okay. So does that help
12 refresh your memory that Inspector Hall would have shown
13 you both statements, both the February 14th, 1994 statement
14 with handwritten changes and the August 4th, 1998 statement?

15 **MR. DOWNING:** I don't recall.

16 **MS. LAHAIE:** You don't recall?

17 **MR. DOWNING:** No.

18 **MS. LAHAIE:** Does it make sense that since
19 you've -- since you've written "page 2 of 8" and you've
20 reproduced a passage which can be taken from page 2 of 8 of
21 that statement that that's in fact what would have
22 occurred?

23 **MR. DOWNING:** It could. Again, I'd have to
24 review the other statement to see if whether there's any
25 information that ---

1 **MS. LAHAIE:** Can you do that? It was a
2 four-page statement not an eight-page statement, though.

3 But at page 2, I'll suggest to you that
4 that's not there.

5 **MR. DOWNING:** Okay.

6 **MS. LAHAIE:** Okay? So does it make sense
7 that you would have been given access to both statements
8 and that's why it's consistent on your notes when you say
9 that you reviewed the statements, you, in fact, reviewed
10 more than one statement?

11 **MR. DOWNING:** That's fair.

12 **MS. LAHAIE:** And you found Inspector Hall to
13 be forthcoming and cooperative with you?

14 **MR. DOWNING:** There was a professional
15 courtesy, yes.

16 **MS. LAHAIE:** You were speaking -- it was a
17 cordial conversation, investigator to investigator?

18 **MR. DOWNING:** It was professional courtesy.

19 **MS. LAHAIE:** He wasn't holding anything back
20 from you. In fact, he was even sharing with you his
21 opinion that Mr. van Diepen was holding something back?

22 **MR. DOWNING:** I don't think I could make a
23 conclusion as to whether he was holding anything back.

24 I will state that I was concerned why I
25 couldn't have copies of the statements that I was being

1 allowed to look at.

2 **MS. LAHAIE:** Okay. No, I'll get to that.

3 What I meant was that he was sharing his
4 opinion with you? He gave you his opinion that Mr.
5 van Diepen was -- knew more than he was letting on?

6 **MR. DOWNING:** Correct.

7 **MS. LAHAIE:** Okay.

8 **THE COMMISSIONER:** So other than the fact
9 that the documents weren't given to you as copies, do you
10 have any complaints about how Officer Hall dealt with you?

11 **MR. DOWNING:** Very professional.

12 **THE COMMISSIONER:** Thank you.

13 **MS. LAHAIE:** Thank you.

14 **THE COMMISSIONER:** So there's just one
15 issue.

16 **MS. LAHAIE:** Thank you.

17 And Inspector Hall, did he discuss with you
18 the policy of the OPP not to release statements from their
19 files?

20 **MR. DOWNING:** No, he did not.

21 **MS. LAHAIE:** Okay. And 80 minutes is
22 certainly ample time for you to have re-transcribed the
23 contents of those statements. Would you agree with that?

24 **THE COMMISSIONER:** Reminds me of the times
25 that -- for those of us who practiced criminal law way back

1 when, when the Crown attorney would sit behind a desk and
2 read the disclosure to you.

3 **MS. LAHAIE:** But I would suggest to you, in
4 fairness, Mr. Commissioner, it was a four-page statement
5 and there was an eight-page statement, and you took ten
6 pages of notes in your one-hour-and-twenty-minute
7 conversation with him, specifically about Mr. van Diepen.
8 Is that correct?

9 So you took ten pages of notes on twelve
10 pages of statement. Is that correct?

11 **MR. DOWNING:** I'd have to look to see how
12 many -- if you're ask -- you want an accurate?

13 **MS. LAHAIE:** Sure. The first statement is
14 four pages -- well, three pages and five lines ---

15 **THE COMMISSIONER:** No, this -- it's very
16 simple, all right?

17 The only issue here is whether or not it's
18 an efficient use of time and whether or not we should
19 review whether the OPP should, to a Corrections
20 investigator, make a policy to say, "Yeah, we'll give it to
21 him". And that we can decide in argument.

22 He's saying that he had lots of time; he
23 took the notes that he wanted; he wasn't prejudiced, but
24 it's still highly inefficient and, you know, something that
25 has to come with the time.

1 **MS. LAHAIE:** Is that correct? Are you
2 prepared to adopt, as Mr. Commissioner has stated, that you
3 had ample time to re-transcribe?

4 **MR. DOWNING:** I'd have to say I was rushed.

5 **THE COMMISSIONER:** Oh, there you go. All
6 right.

7 **MS. LAHAIE:** I was just concerned because
8 yesterday I think you misspoke when you stated on a couple
9 of occasions that you had 20 minutes. It was, in fact, an
10 hour and 20 minutes. Is that correct?

11 **MR. DOWNING:** According to my notes, that's
12 correct.

13 **MS. LAHAIE:** All right. And substantively
14 you'll agree with me that your report -- your
15 administrative report would not have changed if you had
16 been given copies? It would just perhaps have been a
17 better use of your time?

18 **MR. DOWNING:** Absolutely.

19 **MS. LAHAIE:** Thank you.

20 **MR. DOWNING:** It would have ---

21 **THE COMMISSIONER:** Go ahead. Go ahead.

22 **MR. DOWNING:** It would have given me more
23 accurate information. My recollection was it wasn't at the
24 very start of that hour and 20 minutes, whatever time I
25 spent with Mr. Hall, that I started doing a summary.

1 In fact, I was never told I could do a
2 summary. I just took it on my own accord to do that.

3 **MS. LAHAIE:** But he didn't stop you?

4 **MR. DOWNING:** He didn't stop me, but I
5 didn't feel comfortable doing it.

6 **MS. LAHAIE:** And you took 10 pages of notes?

7 **MR. DOWNING:** As quickly as I could.

8 **MS. LAHAIE:** Okay. And you can't today, Mr.
9 Downing, I'm going to suggest to you, point to anything in
10 those two statements that's missing from your summary which
11 would have changed your report in substance. Is that
12 correct?

13 **MR. DOWNING:** That's correct.

14 **MS. LAHAIE:** Okay. Were you able to contact
15 Inspector Hall or did you have a need to contact Inspector
16 Hall again?

17 **MR. DOWNING:** Not after he advised me that
18 no current or former employees were under investigation.

19 **MS. LAHAIE:** And when you left the meeting,
20 you certainly felt that the door was open for you to call
21 again if need be?

22 **MR. DOWNING:** If I felt a need to contact
23 any person, I would have.

24 **MS. LAHAIE:** Okay. And you didn't indicate
25 in your report that it was an impediment in any way that

1 you weren't able to take away those statements on that day?

2 **MR. DOWNING:** That had -- no, I did not.

3 **MS. LAHAIE:** Okay. I have nothing further.

4 Thank you, Mr. Downing, for coming.

5 Thank you, Mr. Commissioner.

6 **THE COMMISSIONER:** Mr. Wallace, do you wish

7 to ---

8 **MR. WALLACE:** I may as well introduce

9 myself.

10 **THE COMMISSIONER:** Might as well.

11 **MR. WALLACE:** Good afternoon, Mr. Downing,

12 my name is Mark Wallace and I'm counsel for the Ontario

13 Provincial Police Association.

14 **THE COMMISSIONER:** You have to speak to the

15 mic.

16 **MR. WALLACE:** And I do not have any

17 questions for you.

18 Thank you.

19 **THE COMMISSIONER:** Thank you.

20 All right. So now we go to Mr. Neuberger or

21 Mr. Rose. Do you have any -- how long do you think you're

22 going to be, sir?

23 **MR. ROSE:** I would think 15 minutes or less

24 and rather than come back at another time, perhaps we could

25 just stay late?

1 **THE COMMISSIONER:** You'll have to buy supper
2 for all the rest.

3 **MR. ROSE:** I already asked everyone and they
4 agreed without the supper provision.

5 **(LAUGHTER/RIRES)**

6 **MR. ROSE:** In anticipation.

7 **THE COMMISSIONER:** I hadn't though.

8 **(LAUGHTER/RIRES)**

9 **THE COMMISSIONER:** But I wouldn't let you
10 buy me lunch, sir. I was thinking of the others, as
11 always.

12 **MR. ROSE:** Thank you, Mr. Commissioner.

13 **--- CROSS-EXAMINATION BY / CONTRE-INTERROGATOIRE PAR MR.**
14 **ROSE:**

15 **MR. ROSE:** Good afternoon, Mr. Downing.

16 Mr. Downing, you've heard a number of
17 questions throughout the course of today and yesterday
18 about the scope of your investigation, right, and why
19 you're investigating these things, right?

20 **MR. DOWNING:** Correct.

21 **MR. ROSE:** Okay.

22 And one of the things that I want to ask you
23 about, just to clarify is, there is a statutory provision
24 which generates your authority isn't there?

25 **MR. DOWNING:** Correct.

1 **MR. ROSE:** And that's section 22 of the
2 *Ministry of Correctional Services Act?*

3 **MR. DOWNING:** Correct.

4 **MR. ROSE:** And I don't know that we've
5 talked about that in the last couple of days, but I just
6 want to read it to you and make sure that you agree with me
7 that that's what the statute says, just so that we're all
8 clear about what your statutory authority is. It says at
9 section 22:

10 "The Minister may designate any person
11 as an inspector to make such inspection
12 or investigation as the Minister may
13 require in connection with the
14 administration of this Act and the
15 Minister may and has just cause to
16 dismiss any employee of the Ministry
17 who obstructs an inspection or
18 investigation or withholds, destroys,
19 conceals or refuses to furnish any
20 information or thing required by an
21 inspector for the purposes of the
22 inspection or investigation."

23 That's what it says, isn't it?

24 **MR. DOWNING:** Correct.

25 **MR. ROSE:** And you are an inspector for

1 purposes of section 22 of the Act?

2 MR. DOWNING: At that time I was.

3 MR. ROSE: Yes. And at that time, when you
4 performed the investigation that brings you to this
5 Inquiry, it was such an investigation, at least for
6 purposes of your authority, isn't it?

7 MR. DOWNING: Correct.

8 MR. ROSE: In other words, whether it's an
9 administrative review or an inspection and what degree of
10 investigation you were doing, it falls within section 22 of
11 the Act, doesn't it?

12 MR. DOWNING: That's correct.

13 MR. ROSE: And the Ministry's employees who
14 you're speaking to also have certain obligations under
15 section 22, don't they?

16 MR. DOWNING: That's correct.

17 MR. ROSE: Okay. Now, you heard some
18 questions from Mr. Horn this afternoon, and one of the
19 questions was, at the very beginning -- I recall Mr. Horn
20 asking you about the number of staff that you had in 1997 -
21 - was raised, but also today. Do you remember that
22 question from Mr. Horn?

23 MR. DOWNING: Correct.

24 MR. ROSE: And your answer to Mr. Horn was
25 that you had 220 persons within your staff today. Do you

1 remember that answer?

2 MR. DOWNING: That's correct.

3 MR. ROSE: Okay. You're no longer with the
4 Ministry of Community Safety and Correctional Services, are
5 you?

6 MR. DOWNING: That's correct.

7 MR. ROSE: You are with the Youth Ministry,
8 aren't you?

9 MR. DOWNING: That's correct.

10 MR. ROSE: In fact, can you just tell
11 everyone again what exactly you're doing with that Ministry
12 today or yesterday and what you're going to go back to
13 tomorrow?

14 MR. DOWNING: I'm Superintendent of the
15 Bluewater Youth Centre with the Youth Justice Services at a
16 facility located just outside Goderich, Ontario.

17 MR. ROSE: Okay. And that is a secure
18 custodial facility for youths under the *Youth Criminal*
19 *Justice Act*; correct?

20 MR. DOWNING: That's correct.

21 MR. ROSE: So in other words, you're not
22 right now performing those same functions typically as an
23 inspector under section 22 of the Act, are you?

24 MR. DOWNING: That's correct.

25 MR. ROSE: Okay. So 220 people is the staff

1 at the jail?

2 MR. DOWNING: That's correct.

3 MR. ROSE: And you also were asked some
4 questions by Mr. Horn about not having heard anything about
5 the Cornwall -- the issues which generated this
6 investigation and this inspection, this administrative
7 review in 2000?

8 MR. DOWNING: That's correct.

9 MR. ROSE: Okay. And at that time, your
10 home office, if I can phrase it that way, which part of the
11 province would it have been in in 2000?

12 MR. DOWNING: It was located in Woodstock.

13 MR. ROSE: Woodstock. So in other words, we
14 would be about 30 minutes east of London?

15 MR. DOWNING: That's correct.

16 MR. ROSE: In Western Ontario?

17 MR. DOWNING: Correct.

18 MR. ROSE: Okay. Now, at that time, Mr.
19 Downing, as an inspector under section 22 of the Act, you
20 would have had legal ability to do inspections with respect
21 to probation officers; right?

22 MR. DOWNING: Correct.

23 MR. ROSE: And also correctional officers;
24 right?

25 MR. DOWNING: Correct.

1 **MR. ROSE:** Now, taking those two groups of
2 employees within the Ministry, can you give us a sense as
3 to how many employees the Ministry would have had, not that
4 specifically, but I mean of what magnitude are we talking
5 about? Is this in hundreds or thousands, or what?

6 **MR. DOWNING:** In the Correctional Division
7 there was anywhere between 6,000 to 7,000 employees.

8 **MR. ROSE:** And on the community side for
9 Probation?

10 **MR. DOWNING:** I'm sorry, that's a total I
11 would give for the ---

12 **MR. ROSE:** Total.

13 **MR. DOWNING:** --- whole division.

14 **MR. ROSE:** So in other words, the entire
15 Ministry had about 6,000 to 7,000 employees at the time?

16 **MR. DOWNING:** Entire division --
17 Correctional Division of the Ministry, which included
18 community and adult and youth facilities and corporate
19 office, so probation and parole officers, correctional
20 officers, administrators, anywhere between 6,000 and 7,000
21 employees.

22 **MR. ROSE:** Okay. And I take it your
23 evidence is that within a ministry having 6,000 to 7,000
24 employees, it was not widely known what was going on in
25 Cornwall with respect to the Probation Office?

1 **MR. DOWNING:** I think that would be a fair
2 comment.

3 **MR. ROSE:** Okay. Did that surprise you?

4 **MR. DOWNING:** No.

5 **THE COMMISSIONER:** I don't know how he would
6 know that, but ---

7 **MR. ROSE:** Well, certainly from his evidence
8 it wasn't -- as one employee ---

9 **THE COMMISSIONER:** One employee, yeah.

10 **MR. ROSE:** Is that right?

11 **MR. DOWNING:** Correct.

12 **MR. ROSE:** Okay. Lastly, Mr. Downing, you
13 were also asked some questions for the last couple of days
14 about the interests of the Ministry, and I want to take you
15 again to an email that Mr. Lee asked you about today.

16 So if we could have Document 100515 on the
17 screen.

18 **THE COMMISSIONER:** Is this a new exhibit?

19 **MR. ROSE:** I think it is -- we had it on the
20 screen earlier.

21 **THE COMMISSIONER:** No, it's got to be an
22 exhibit.

23 **MR. ROSE:** I believe it's 1093. Thank you.
24 If we could have that put on the screen?

25 **THE COMMISSIONER:** One-zero-nine-three

1 (1093). Okay.

2 MR. ROSE: Do you see that on the screen,
3 Mr. Downing?

4 MR. DOWNING: I do.

5 MR. ROSE: And Mr. Lee brought you through
6 the evolution of this email. This is one of those emails
7 that follows a string that goes back and forth between
8 people, doesn't it?

9 MR. DOWNING: Correct.

10 MR. ROSE: And what we see at the top is an
11 email from Deborah Newman to you on August the 13th, 2000,
12 4:42 in the afternoon; right?

13 MR. DOWNING: Correct.

14 MR. ROSE: Okay. And that says:

15 "Please review the information below.

16 I would like to discuss with you.

17 Thanks."

18 I've read that correctly?

19 MR. DOWNING: Correct.

20 MR. ROSE: The email that Ms. Newman is
21 referring you to is in fact an email from Deborah Newman,
22 it looks like to Claude Legault that same day, perhaps a
23 minute earlier. Do you see that?

24 MR. DOWNING: Correct.

25 MR. ROSE: Okay. And I want to take you,

1 please, to the fourth paragraph within that email which
2 begins with, "On Tuesday, August the 8th, after the long
3 weekend". And I just want to read this to you, and it says
4 -- because I don't believe that this paragraph has been
5 brought to your attention through the course of your
6 testimony here. It says:

7 "On Tuesday, August the 8th, after the
8 long weekend, I talked to Paul Downing,
9 the Ministry's special investigator,
10 about this and ask that he case manage
11 this from the Ministry's perspective.
12 He will be a liaison with the police,
13 Crown and others and will inquire
14 Project Truth as to whether any
15 Ministry staff, including Jos, are
16 under investigation."

17 And then the second-last sentence:

18 "This is very sensitive ground because
19 we cannot in any way interfere with an
20 ongoing police investigation."

21 The last sentence is:

22 "On the other hand, we obviously have
23 to protect the interests of the
24 Ministry and our clients."

25 I take it that you read that when you got

1 the email from Deborah Newman on August the 13th?

2 **MR. DOWNING:** Correct.

3 **MR. ROSE:** Okay. Now, when you performed
4 your investigation -- and I just want to ask you broadly --
5 when you refer to the protecting the interests of the
6 Ministry, with reference to this last sentence, where does
7 it fall in? Where does the interests of the Ministry and
8 our clients ---

9 **MR. DOWNING:** That's with regards to alleged
10 conduct that was made concerning our employees towards
11 clients and, like I had previously mentioned concerning the
12 Director's email to me, it was clearly understood to me
13 that the Ministry wanted to act promptly and quickly if
14 there was any credibility to the allegations to ensure that
15 our clients were not put at any risk or continuing risk.

16 **MR. ROSE:** Great.

17 Mr. Commissioner, those are my questions.

18 **THE COMMISSIONER:** Thank you, Mr. Rose.

19 Maître Ruel.

20 **MR. RUEL:** Very briefly, Mr. Commissioner.

21 **THE COMMISSIONER:** All right.

22 --- RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MR. RUEL:

23 **MR. RUEL:** Mr. Downing, Mr. Lee, Mr. Neville
24 and Ms. Lahaie pointed out to you your -- or made reference
25 to your review as it related to Mr. van Diepen and then I

1 remember Mr. Lee and I believe Ms. Lahaie as well referring
2 to your discussions with Pat Hall and Pat Hall indicating
3 to you that Mr. van Diepen had not been totally
4 forthcoming, or his opinion that Mr. van Diepen had not
5 been totally forthcoming about the issues he had been
6 discussing with Mr. Hall.

7 Is that accurate?

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

9 **MR. RUEL:** So I gather that your evidence is
10 that Mr. van Diepen had knowledge about Mr. Seguin's out-
11 of-office contacts with probationers?

12 **MR. DOWNING:** That's correct.

13 **MR. RUEL:** And this was a contravention to -
14 - Mr. Seguin's action was a contravention to Ministry
15 policy?

16 **MR. DOWNING:** If substantiated, yes.

17 **MR. RUEL:** What was expected from people
18 like Mr. van Diepen and Mr. Robert having this knowledge of
19 Mr. Seguin contravening Ministry policies?

20 **MR. DOWNING:** Well, similar to the
21 statements or the concern by senior administration, all
22 employees have a responsibility to ensure their clients are
23 safe and supervised appropriately and are not placed at
24 risk or in any inappropriate situations by the conduct of
25 our own business.

1 So if an employee becomes aware that another
2 employee is contravening policy that is put in place to
3 protect those clients, then they have an obligation to take
4 some sort of action to remove that risk or to report it, to
5 have somebody else look into it.

6 **MR. RUEL:** Is that obligation found in any
7 policy -- or was it found in any policy of the Ministry?

8 **MR. DOWNING:** I'm not sure if the Statement
9 of Ethical Principles were in place at that time or not.
10 Certainly, social work principles, anyone who has taken any
11 sort of social work, understands that there are certain
12 time limits as to when you can establish a personal
13 relationship or association with a client or patient or of
14 that nature, and certainly probation and parole officers
15 wear two hats, one enforcement and one social work.

16 **MR. RUEL:** Okay. Thank you very much.

17 **THE COMMISSIONER:** Thank you, sir.

18 I want to thank you for your cooperation and
19 testimony here today. I certainly will consider your
20 evidence in assessing my report.

21 So we can close down and come back at 9:30
22 tomorrow morning.

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

25 This hearing is adjourned until tomorrow

1 morning at 9:30 a.m.

2 --- Upon adjourning at 4:49 p.m./

3 L'audience est ajournée à 16h49

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C E R T I F I C A T I O N

I, Dale Waterman 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, Dale Waterman, 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.



Dale Waterman, CVR-CM