

**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 327

Held at :

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

Friday, December 19, 2008

Tenue à:

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

Vendredi, le 19 décembre 2008

Appearances/Comparutions

Ms. Brigitte Beaulne	Registrar
Ms. Karen Jones	Commission Counsel
Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Leslie McIntosh Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Dallas Lee	Victims' Group
M ^e Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Murray MacDonald	

Table of Contents / Table des matières

	Page
List of Exhibits :	iv
MURRAY MacDONALD, Resumed/Sous le même serment	1
Cross-Examination by/Contre-interrogatoire par Mr. Dallas Lee	1
Cross-Examination by/Contre-interrogatoire par Mr. Michael Neville	142
Cross-Examination by/Contre-interrogatoire par Mr. Peter Chisholm	188
Statement by the Commissioner/Déclaration par le Commissaire	196
Statement by/Déclaration par Ms. Karen Jones	198
Statement by/Déclaration par Mr. Peter Manderville	199
Statement by/Déclaration par Mr. Stephen Scharbach	200
Cross-Examination by/Contre-interrogatoire par Ms. Gisèle Levesque	201
Cross-Examination by/Contre-interrogatoire par Mr. Peter Manderville	220
Statement by/Déclaration par Mr. Neil Kozloff	244
Cross-Examination by/Contre-interrogatoire par Ms. Leslie McIntosh	245
Statement by/Déclaration par Mr. Frank Horn	276

LIST OF EXHIBITS/LISTE D'EXHIBITS

NO.	DESCRIPTION	PAGE NO
P-2937	(129777) - Diocese Alexandria-Cornwall Report and Recommendations of Commission 3: Co-Responsibility in the Ministering Role of the Clergy dated 2000	208
P-2938	(129705) - E-Mail from Kevin Malloy to SGT. Snyder re: C-54 dated 09 Jul 98	253
P-2939	(114209) - Handwritten Notes of Malcolm MacDonald re: Sabourin	264

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

2 L'audience débute à 9h34

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Good morning all. Good morning, Mr.

11 MacDonald.

12 Mr. Lee?

13 **MURRAY MacDONALD, Resumed/Sous le même serment:**

14 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE:**

15 **MR. LEE:** Good morning, sir.

16 Mr. MacDonald.

17 **MR. MacDONALD:** Hi.

18 **MR. LEE:** You know that I act for the
19 Victims Group here?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. LEE:** I have a number of areas that I'd
22 like to deal with you on -- some of them I'm just looking
23 for clarification and perhaps something I didn't understand
24 and there are a couple of areas you haven't touch on much
25 and that I'd like to go into.

1 You spoke during your examination in-chief
2 of your work with the Children's Aid Society in your
3 capacity as a Crown?

4 **MR. MacDONALD:** Yes, sir.

5 **MR. LEE:** And you spoke specifically of
6 giving a couple of seminars?

7 **MR. MacDONALD:** Yes, sir.

8 **MR. LEE:** And you worked with Elizabeth
9 MacLennan on those?

10 **MR. MacDONALD:** Yes.

11 **MR. LEE:** And did I understand that those
12 were earlier in your career, prior to 1993?

13 **MR. MacDONALD:** Yes, sir.

14 **MR. LEE:** And can I presume that part of the
15 reason you were doing that was an attempt to foster some
16 cooperation between the CAS, the Crown, the police, the
17 justice institutions generally?

18 **MR. MacDONALD:** Yes, sir.

19 **MR. LEE:** And I take it you recognized at
20 the time the role that the CAS plays and that there is some
21 link there?

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

23 **MR. LEE:** The roles aren't identical but the
24 CAS plays a role?

25 **MR. MacDONALD:** What I'd identified in

1 particular was that the means of evidence collection
2 without a connection would result in evidence that the CAS
3 took often -- taken in a manner that would be inadmissible
4 or exposed to problems in criminal trials, so I tried to
5 find ways and means that -- of having statements taken in
6 contexts that would be admissible to both criminal and
7 family court proceedings.

8 We recognized as well that there were
9 instances when, you know, you couldn't use the criminal --
10 for instance, a common one was leading questions and repeat
11 interviews when the social workers had cause to believe
12 that the youth or the child was unable to disclose.

13 And so those were the areas where it was
14 identified that there's no point in fighting between police
15 and CAS at that point over who's right and who's wrong in
16 terms of the procedure applied. If, at the bottom line,
17 between the two, the child protection would trump -- child
18 protection would act with trump criminal code.

19 **MR. LEE:** And I think you explained
20 yesterday you appreciated the fact that they were -- there
21 were different goals between the police and the CAS? The
22 CAS is solely focused on the protection of children?

23 **MR. MacDONALD:** Yes, sir.

24 **MR. LEE:** And the police obviously are very
25 much concerned with the protection of children but they

1 have some other things they need to consider as well?

2 MR. MacDONALD: I'd agree.

3 MR. LEE: And I take it you've had a good
4 relationship with the CAS throughout your career?

5 MR. MacDONALD: Yes, always good with --
6 certainly with Liz and her legal staff and the gentleman on
7 behalf of the CAS that's been monitoring these proceedings,
8 he and I throughout have always -- even during that -- even
9 during the colder uncomfortable periods '94 to '96 or 7, we
10 always had a good rapport at that level.

11 MR. LEE: Do you mean Mr. Carriere?

12 MR. MacDONALD: Bill, yes, Bill Carriere.
13 Bill's his first name?

14 MR. LEE: Yes. Yes. And what about Rick
15 Abell?

16 MR. MacDONALD: Mr. Abell and I kept our
17 distance from one another for -- during those years I
18 think.

19 MR. LEE: After '93 you mean?

20 MR. MacDONALD: Yes. Near the end of his
21 regime, however, you know, all of that was starting to
22 melt; the chill was starting to thaw.

23 MR. LEE: You told us that you learned of
24 the Silmser allegations in February of '93?

25 MR. MacDONALD: Yes, sir.

1 **MR. LEE:** And you spoke to us of having
2 actually physically read the statement yourself on either
3 the first or second meeting with Ms. Sebalj?

4 **MR. MacDONALD:** Yes.

5 **MR. LEE:** And that was the Silmer's eight-
6 page handwritten statement?

7 **MR. MacDONALD:** I believe it was.

8 **MR. LEE:** And you've told us here that you
9 understood, in that statement, on the face of the statement
10 anyways, abuse being alleged against two persons, on of
11 them Charles MacDonald and the other one, Ken Seguin?

12 **MR. MacDONALD:** Second one alluded to, the
13 first one described.

14 **MR. LEE:** It certainly alleged sexual abuse
15 by Ken Seguin, it just didn't provide details.

16 **MR. MacDONALD:** Yes.

17 **MR. LEE:** And you weren't -- you had no --
18 you understood clearly upon reading that statement that was
19 the allegation against Seguin, sexual abuse?

20 **MR. MacDONALD:** Yes.

21 **MR. LEE:** And then you've told us about
22 allegations about a judge?

23 **MR. MacDONALD:** Yeah.

24 **MR. LEE:** I'm going to leave that. I
25 understand that you've told us about it but I am -- on the

1 face of the statement, we have Seguin and we have
2 MacDonald.

3 **MR. MacDONALD:** Right.

4 **MR. LEE:** And you told us that you had dealt
5 with Seguin in his capacity as a probation officer?

6 **MR. MacDONALD:** Yes, for years.

7 **MR. LEE:** By '93, you knew who he was?

8 **MR. MacDONALD:** Oh, for sure. And saw him
9 once a week.

10 **MR. LEE:** And I believe you told us you knew
11 he was a probation officer at that time but you thought
12 that he was working with adults?

13 **MR. MacDONALD:** I believe he was, yeah.

14 **MR. LEE:** And do you remember turning your
15 mind to that at the time? Or is that something you've
16 considered since?

17 **MR. MacDONALD:** Something I've -- fair to
18 say, I considered since. I mean, I knew it; I may have
19 thought about it. But I don't recall.

20 **MR. LEE:** And you knew Charles MacDonald --
21 you didn't know Charles MacDonald ---

22 **MR. MacDONALD:** No.

23 **MR. LEE:** --- but you knew generally he was
24 a priest and you knew he was still working?

25 **MR. MacDONALD:** I knew only when Heidi told

1 me about the case. I didn't know -- I'd never heard of his
2 name before that day.

3 MR. LEE: But you understood from her that
4 he was an active priest?

5 MR. MacDONALD: That he was an active
6 priest, yes. At that time, yes.

7 MR. LEE: And Mr. Engelmann asked you a
8 little bit about the duty to report to the CAS. And you've
9 told us obviously (a) that you didn't report to the CAS
10 pursuant to any kind of duty?

11 MR. MacDONALD: No, sir.

12 MR. LEE: And what I want to ask you is were
13 you aware, whether you thought it applied or not, were you
14 aware of the statutory duty to report ---

15 MR. MacDONALD: I knew ---

16 MR. LEE: --- under the *Child and Family*
17 *Services Act*?

18 MR. MacDONALD: I well knew about it.

19 MR. LEE: In '93?

20 MR. MacDONALD: Yes.

21 MR. LEE: And had you ever had occasion to
22 report pursuant to that duty, prior to '93?

23 MR. MacDONALD: Only -- never prior and only
24 once since.

25 MR. LEE: Had you ever had any dealings with

1 the duty to report at all in terms of training and terms of
2 giving a legal opinion in relation of the duty or anything
3 along those lines?

4 **MR. MacDONALD:** I believe that that was a
5 separate conference that I spoke at -- which I spoke that
6 was hosted by -- put on by the CAS. Aside from those two
7 training ---

8 **MR. LEE:** Right.

9 **MR. MacDONALD:** --- programs.

10 **MR. LEE:** Prior to '93?

11 **MR. MacDONALD:** Yes.

12 **MR. LEE:** And so you would -- you at the
13 very least knew there was a duty and you understood what
14 the duty was; is that fair to say?

15 **MR. MacDONALD:** Yes, I thought I understood
16 it well.

17 **MR. LEE:** With the benefit of hindsight and
18 looking back on things, is it your opinion now that you
19 did, in fact, have a duty to report?

20 Let me be more specific. After having read
21 the Silmsler statement for the first time and only after
22 having read the Silmsler statement, do you say now you had a
23 duty to report, in hindsight?

24 **MR. MacDONALD:** I think that in hindsight,
25 I'd agree with you. At the time, my focus was more so on

1 alerting the Church and the probation authorities and --
2 via the police and then-Chief Shaver said he was going to
3 do that. I believe we touched upon CAS as number three on
4 the list of important persons to contact.

5 I think you've heard me explain earlier why
6 that was but I will have to concede, sir, that I would have
7 put the CAS third on the list.

8 **MR. LEE:** And I take it you didn't have any
9 concerns with reporting to the CAS at that point?

10 **MR. MacDONALD:** A concern about?

11 **MR. LEE:** You did not -- you didn't
12 intentionally not report to the CAS because of some
13 concerns ---

14 **MR. MacDONALD:** Right.

15 **MR. LEE:** --- you had with providing them
16 with the information?

17 **MR. MacDONALD:** That's fair.

18 **MR. LEE:** There was no issue there. There
19 was no problem, it simply -- you didn't think you needed to
20 report?

21 **MR. MacDONALD:** I didn't think I had -- I
22 didn't know how I could articulate a report at that point.

23 **MR. LEE:** Can we turn up, Madam Clerk,
24 Exhibit 228, please?

25 Should the witness have that report?

1 **THE COMMISSIONER:** I don't know. It depends
2 -- might as well just give it to him, just in case.

3 **MR. MacDONALD:** Yes -- I have it up; it's
4 okay.

5 **MR. LEE:** You're okay with the screen?

6 **MR. MacDONALD:** I'm okay here, sir, if you
7 ---

8 **THE COMMISSIONER:** Okay. No, that fine.

9 **MR. LEE:** Please let me know if you want a
10 hard copy of anything. We can stop and get that in front
11 of you.

12 This is the April 2nd, '97 memo -- that was
13 the April 2nd -- so this is the memo from Pelletier to
14 Griffiths dated April 2nd, '97.

15 And if you look, please, Madam Clerk, at the
16 second page, second paragraph?

17 **MR. MacDONALD:** "The matter did not enter?"

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

19 **MR. LEE:** Yeah. That's the one. Mr.
20 Pelletier is giving Mr. Griffiths a run-down. The subject
21 matter is *Regina v. Charles MacDonald's* recent developments
22 and it -- he begins his letter by essentially running
23 through the history of what's happened, not in full detail
24 obviously, but he is giving some idea what's happened.

25 And he speaks in the previous paragraph

1 about Malcolm MacDonald having been charged, prosecuted and
2 receiving an absolute discharge. And he says:

3 "The matter did not end there. Silmser
4 was now intent on proceeding criminally
5 against Father MacDonald in relation to
6 his earlier complaints of sexual abuse.
7 The matter was further investigated by
8 OPP CIB by Detective Inspector Tim
9 Smith of Kingston CIB."

10 Then he writes:

11 "All prior investigations were
12 considered and the complainant Silmser
13 was interviewed again with a view to
14 determining whether there presently
15 existed reasonable prospects of
16 conviction."

17 And here's the part I'm interested in:

18 "Silmser's credibility was questioned,
19 bearing in mind the suspicious nature
20 of certain of the allegations, the lack
21 of corroboration, and Silmser's
22 criminal record, including dozens of
23 convictions involving dishonesty."

24 Do you see that?

25 **MR. MacDONALD:** Yes, sir.

1 **MR. LEE:** And you told us you would have
2 received this around the time that it was sent, and Mr.
3 Engelmann showed you a fax cover sheet yesterday. You
4 recall that?

5 **MR. MacDONALD:** Right.

6 **MR. LEE:** And I'm wondering whether or not
7 you ever took a look at Mr. Silmser's criminal record.

8 **MR. MacDONALD:** I believe it was reported to
9 me. I don't recall if I looked at it or not.

10 **MR. LEE:** I just want to ---

11 **MR. MacDONALD:** Heidi may have showed it to
12 me but I don't recall.

13 **MR. LEE:** I want to just take a quick look
14 to clear something up.

15 Exhibit 1296, Madam Clerk.

16 **THE COMMISSIONER:** That's okay, Madam Clerk.
17 It will go on the screen.

18 **MR. LEE:** And if we can start, please, with
19 the last page -- there are only two pages -- at the very
20 bottom. You'll see there, Mr. MacDonald:

21 "...and the police information,
22 12 March, '93."

23 The very last thing on the page.

24 **MR. MacDONALD:** Yes, sir.

25 **MR. LEE:** And I think we can presume that

1 means that the criminal record was -- check was run on the
2 12th of March, '93 in the afternoon; okay?

3 **MR. MacDONALD:** I suppose, right.

4 **MR. LEE:** And if we look back at the first
5 page, please, Madam Clerk, we have Mr. Silmser's criminal
6 record and it begins under the redaction in 1978. We have
7 theft over 200.

8 **MR. MacDONALD:** Yes, sir.

9 **MR. LEE:** Nineteen-eighty (1980) a couple of
10 possession of stolen property charges, parole violation in
11 '81, B&E in '81, B&E with intent in '81, theft over 200,
12 theft over 200, unlawfully at large, prison breach -- you
13 see all that?

14 **MR. MacDONALD:** Yes, sir.

15 **MR. LEE:** Eighty-six ('86) we hit fraud, a
16 couple of uttering forged documents and a failure to attend
17 court. You see that?

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** Can we scroll down, Madam Clerk?

20 Eighty-seven ('87) possession of property
21 obtained by crime, '87 attempted fraud and a fraud, and in
22 '87 we have parole and we have end of convictions and
23 discharges. Do you see that?

24 **MR. MacDONALD:** Yes, sir.

25 **MR. LEE:** So a couple of things here.

1 We have no -- by 1993, we have no criminal
2 convictions since 1987. You see that?

3 **MR. MacDONALD:** Right.

4 **MR. LEE:** And I take it you understood,
5 certainly by 1997 when Mr. Pelletier is writing to
6 Mr. Griffiths, that one of the allegations made by David
7 Silmsers is that he had been abused by Ken Seguin while on
8 probation.

9 **MR. MacDONALD:** By the time that Bob
10 Pelletier wrote this letter I knew that. I think I knew it
11 shortly -- you know, in the days or weeks prior to the
12 letter being written, but ---

13 **MR. LEE:** And the allegation was that
14 Mr. Silmsers had been abused as a young person ---

15 **MR. MacDONALD:** By that time, yes.

16 **MR. LEE:** --- while on probation.

17 **MR. MacDONALD:** Yeah.

18 **MR. LEE:** Meaning, presumably, that we need
19 to be looking at the start of his criminal record and his
20 criminal history for when he alleges abuse by his probation
21 officer.

22 **MR. MacDONALD:** I presume, yeah.

23 **MR. LEE:** And you obviously, being a Crown
24 Attorney, understand the role of a probation officer ---

25 **MR. MacDONALD:** M'hm.

1 **MR. LEE:** --- not only to manage the terms
2 of probation but also to assist the young person.

3 **MR. MacDONALD:** Yes.

4 **MR. LEE:** And you, I take it, would have
5 understood by this time that there could be very serious
6 harm caused by any abuses by a probation officer.

7 **MR. MacDONALD:** Breach of trust.

8 **MR. LEE:** And you'll notice the early -- the
9 early offences that Mr. Silmsler is convicted of -- theft
10 over, possession of stolen property, parole violations,
11 things of those nature -- those aren't traditionally what
12 we would refer to as crimes involving dishonesty, are they?

13 **MR. MacDONALD:** All property offences and
14 offences against the administration of justice -- well, not
15 all offences against the administration of justice but all
16 property offences are defined as offences of dishonesty.

17 **MR. LEE:** So you understood the crime of
18 theft over to be a crime of dishonesty as a Crown Attorney
19 would define it?

20 **MR. MacDONALD:** Every Crown Attorney in
21 Ontario would feel the same way, yeah.

22 **MR. LEE:** And we have Mr. Pelletier writing
23 of dozens ---

24 **MR. MacDONALD:** Yes.

25 **MR. LEE:** --- dozens of convictions. Having

1 looked at this, you'll agree that we don't have dozens of
2 convictions here?

3 MR. MacDONALD: Well, I haven't counted
4 them, but you have to realize that one entry could relate
5 to eight convictions, right?

6 MR. LEE: Sorry, say that again.

7 MR. MacDONALD: Well, if you look at, for
8 example, in 1986, offences that occurred after this man's
9 victimization ---

10 MR. LEE: Yeah.

11 MR. MacDONALD: Alleged victimization.

12 MR. LEE: Yeah.

13 MR. MacDONALD: There were 10 counts of ---

14 MR. LEE: I see - oh, I see what you're
15 saying.

16 MR. MacDONALD: Yeah.

17 MR. LEE: In the December 3rd, '86 entry. Is
18 that right?

19 MR. MacDONALD: Yes, each is a separate --
20 so just in that alone you've almost got a dozen.

21 MR. LEE: How many prosecutions would you
22 have dealt with at Alfred, do you recall?

23 MR. MacDONALD: Two.

24 MR. LEE: Two?

25 MR. MacDONALD: Yes.

1 **MR. LEE:** And you would have worked with Tim
2 Smith ---

3 **MR. MacDONALD:** Yes.

4 **MR. LEE:** --- during that?

5 **MR. MacDONALD:** Yes, I did.

6 **MR. LEE:** And when Mr. Smith was here,
7 having been asked about Mr. Silmsers's criminal history, he
8 told us that Mr. Silmsers was like an angel compared to many
9 of the victims that he worked with at Alfred.

10 **MR. MacDONALD:** One of the two victims that
11 I dealt with at Alfred was as close to an innocent human
12 lamb that I've ever met.

13 **MR. LEE:** Sorry, I missed the ---

14 **MR. MacDONALD:** An innocent human being that
15 I've ever met.

16 **MR. LEE:** Right.

17 **MR. MacDONALD:** And the second one was --
18 his criminal record would show he was a monster. So I saw
19 -- in my two complainants I saw both extremes, and
20 Mr. Silmsers's record would -- or at least the nature of his
21 convictions would have paled in comparison to the
22 convictions of the one man that I'm referring to.

23 **THE COMMISSIONER:** But in other words, like
24 he's not convicted of perjury or obstruct justice or
25 anything like that where there would be an act of, you

1 know, swearing on a Bible and ---

2 **MR. MacDONALD:** Yeah. No. I'm not -- I
3 don't know if there's any -- I haven't paid close attention
4 to -- especially to page 2, but the case law says that
5 crimes of dishonesty are property offences, theft-related
6 offences.

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

8 **MR. MacDONALD:** We classify them into the
9 same category, but it's also fair to say that if you see a
10 perjury in someone's record that's evidence of the most
11 egregious form of dishonesty, I would say. I see a
12 difference between them both, for sure, if that's what Your
13 Honour was ---

14 **THE COMMISSIONER:** Yes.

15 **MR. LEE:** Moving on, you -- Mr. Engelmann
16 asked you during your examination in-chief about the
17 September, 1993 letter that you wrote to Luc Brunet ---

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** --- about this matter.

20 **MR. MacDONALD:** Yes.

21 **MR. LEE:** And you confirmed, obviously, that
22 there'd been -- you hadn't received a Crown brief at that
23 point, nor had you reviewed any officer notes or occurrence
24 reports or anything along those lines?

25 **MR. MacDONALD:** No.

1 **MR. LEE:** I'm correct?

2 **MR. MacDONALD:** Right. You know, I may have
3 seen the record. I don't recall. I saw the statement.

4 **MR. LEE:** Right. And you told us in-chief
5 that providing an opinion without a Crown brief was
6 consistent -- the words you used -- "with our practice at
7 the time", meaning in 1993.

8 **MR. MacDONALD:** What I meant by that in
9 analogous terms is we operated an emergency medical clinic-
10 style -- you know, if I can analogize it to the medical
11 model.

12 Whereas now with the personnel services and
13 policy in place, we operate more of a critical care unit.
14 Well, maybe that's being a little bit too generous to
15 myself, but certainly a med surg floor as opposed to an
16 emerg department.

17 **MR. LEE:** Then let me put it this way.

18 Are you telling us it was the practice of
19 the Crown here in '93 to provide legal opinions to the
20 police without having reviewed a Crown brief, or at least a
21 work product of an investigation in advance?

22 **MR. MacDONALD:** Well, most of the contact we
23 had with the officers -- although we had a significant
24 minority of contact on evidentiary direction questions --
25 most of the contact was post-charge.

1 **MR. LEE:** But the contact you had in the
2 Silmsler case was -- this was about the decision to proceed
3 or not to proceed?

4 **MR. MacDONALD:** Yeah.

5 **MR. LEE:** This was going to conclude things
6 or he's going to have things continue. You understood -- I
7 mean that's ---

8 **MR. MacDONALD:** Sir, the practice that I
9 applied then was not the best practice. It was what I
10 thought to be the only option, but I will certainly concede
11 to you that our practice today, personally as a result of
12 what we've learned from this case, is the best practice.

13 **MR. LEE:** And as a Crown, when providing
14 legal advice or an opinion, whether it be on RPG or on
15 something else near the conclusion of an investigation, so
16 not on an evidentiary point or providing direction but
17 something substantive on ---

18 **MR. MacDONALD:** Conclusion.

19 **MR. LEE:** --- is this thing going to go or
20 is it not going to go ---

21 **MR. MacDONALD:** Yeah.

22 **MR. LEE:** --- would you agree with me it's
23 important to fully review Crown brief materials, notes,
24 whatever it may be, to in part assess the adequacy of the
25 investigation?

1 **MR. MacDONALD:** Yes, and that's what Bob
2 Pelletier was going to do with the file and with, you know,
3 whatever Heidi had produced by the time it reached that
4 point.

5 **MR. LEE:** Because presumably, generally
6 speaking, if you are dealing with an officer who is coming
7 to the Crown and saying, "I don't have RPG" and you are
8 relying on the verbal report of that officer it would be
9 virtually impossible to conclude that he is wrong because
10 you are receiving the Information and you have nothing to
11 look at. You have no independent assessment of anything;
12 right?

13 **MR. MacDONALD:** Right, and my sense then,
14 and I think the sense of a number of my colleagues across
15 the province was that the officer had to swear the
16 Information. So it had to be the officer who was satisfied
17 as to, you know, the contents of the evidence collected so
18 far on the RPG's piece.

19 You know, it's fair to say that if Heidi
20 Sebalj didn't tell me everything chronologically or in
21 detail as she should have I think part of that
22 responsibility should be on my shoulders for giving her the
23 impression that this was just an RPG exercise and not my
24 full review of the case, you know what I mean? I think
25 that that's an important distinction that you just brought

1 up.

2 MR. LEE: You appreciate it, I take it, by
3 the time of your September 14th '93 letter to Officer Brunet
4 that this was going to be the end of the investigation of
5 Charles MacDonald?

6 MR. MacDONALD: No, I think Chief Shaver
7 would have -- had he had anything else to work with would
8 have insisted on continuing. You know, I think that when
9 the complainant -- it's fair to say that when the
10 complainant insisted on his disinclination or so we thought
11 -- so we thought ---

12 MR. LEE: Right.

13 MR. MacDONALD: --- to proceed, I thought it
14 had hit a dead end. I don't know if we could say the file
15 was closed but the file was certainly in abeyance.

16 MR. LEE: And for practical purposes there's
17 not much of a difference between the two, is there?

18 MR. MacDONALD: Well, I think that the
19 appearance of a closed file is something we should be
20 cautioned against here because a closed file means no one
21 is going to give it a second thought. And everybody in
22 that Service was going to be thinking about that priest and
23 any other evidence that may come up in the future that file
24 would have been drawn out of abeyance very quickly. I have
25 no doubt about that. The Chief would have seen to that and

1 Luc Brunet, as I know him, would likewise have done so.

2 MR. LEE: Any concerns about Mr. Silmser
3 aside, by September of 1993 you told us that the Cornwall
4 Police had moved from a weak suspicion to a strong
5 suspicion as it related to Charles MacDonald. Remember
6 that?

7 MR. MacDONALD: Yeah, and it was because of
8 that one witness in particular.

9 MR. LEE: Right.

10 MR. MacDONALD: Yeah.

11 MR. LEE: And I take it by September of 1993
12 you would at least consider the possibility that there were
13 other potential victims out there that had not yet been
14 identified?

15 MR. MacDONALD: Yeah, and Heidi had been
16 endeavouring to find them.

17 MR. LEE: And I take it you had had some
18 experience at Alfred, I would imagine, dealing with
19 perpetrators who had abused more than one victim?

20 MR. MacDONALD: Both my -- one of my
21 perpetrators in Alfred only abused one victim and the other
22 one abused three.

23 MR. LEE: Okay. And you appreciated,
24 obviously, that it was not terribly uncommon in cases of
25 sexual abuse of young persons to have more than one victim?

1 **MR. MacDONALD:** I would say I knew it then
2 and I'm -- more of an education and anecdotal experience
3 has shown me much more evidently. But I knew it then that
4 if a predator will -- could have large numbers of victims,
5 many of whom never have the wherewithal to make it to
6 criminal court as complainants because they're not -- you
7 know, well, you've heard in the first year of testimony why
8 they sometimes can't do it.

9 **MR. LEE:** Regardless of the numbers that
10 don't make it to criminal court you also appreciate there
11 is a certain percentage that don't make it to the police at
12 all?

13 **MR. MacDONALD:** Right.

14 **MR. LEE:** And I suppose one of the things
15 that I'm still confused about is that at the end of the
16 day, in relation to the Charles MacDonald investigation or
17 possible prosecution, by September of '93 all appears to be
18 lost. There doesn't appear to be anywhere else to go. You
19 don't have a complainant as far as you're concerned. There
20 are problems with Silmsen in your own mind. The police
21 don't have RPG. This thing is dead in the water
22 essentially. Is that a fair way of putting your thought at
23 the time?

24 **MR. MacDONALD:** Right.

25 **MR. LEE:** At that point why not bring

1 Charles MacDonald for questioning?

2 **MR. MacDONALD:** I'd have to go back to a
3 comment I made, I think, yesterday. He'd already offered
4 to come in. We had nothing to work with, didn't even have
5 a complainant to make reference to and I don't -- I shared
6 Luc Brunet and the Chief's impression that the more
7 vigorous stance should be now to get this priest out of
8 practice, out of harms way in the church.

9 **MR. LEE:** The police had C-56 by this point.
10 You referred to him a moment ago.

11 **MR. MacDONALD:** One of the guys, one of the
12 names I recognize? Yeah.

13 **MR. LEE:** It's the other -- it was the other
14 one you were concerned about.

15 **MR. MacDONALD:** Yeah.

16 **MR. LEE:** Did you see any harm to bringing
17 Charles MacDonald at that point? As I understood it, you
18 had said earlier you don't bring him in mid-investigation
19 if you don't have enough ---

20 **MR. MacDONALD:** Yeah.

21 **MR. LEE:** --- because you're only going to
22 get one shot.

23 **MR. MacDONALD:** Yeah.

24 **MR. LEE:** Dead in the water what's the harm
25 in bringing him -- I mean, was there a conversation on

1 that? Was it considered and dismissed or was it just not
2 considered?

3 **MR. MacDONALD:** It wasn't considered.

4 **MR. LEE:** And I take it you'd agree with me
5 there's no need to publicly identify him in any way in
6 order to interview him?

7 **MR. MacDONALD:** No.

8 **MR. LEE:** If you're going to lay a charge
9 you'd better be pretty sure because the paper is going to
10 print it; right?

11 **MR. MacDONALD:** Yeah, but he could be
12 interviewed without even his employers knowing about it.

13 **MR. LEE:** Right. It's not going to harm his
14 reputation or out him in any way to the community to bring
15 him in?

16 **MR. MacDONALD:** Right.

17 **MR. LEE:** You would agree with me it's at
18 least possible that in the course of such an interview the
19 police could come across helpful information?

20 **MR. MacDONALD:** Possible, yes.

21 **MR. LEE:** It's possible the result of that
22 interview could be that the police receive information
23 which tends to exonerate Father MacDonald?

24 **MR. MacDONALD:** That's what I expect that
25 they would have found.

1 **MR. LEE:** It's at least possible there could
2 have been a confession?

3 **MR. MacDONALD:** Anything's possible when we
4 start, you know, to that point.

5 **MR. LEE:** Do you think in hindsight it was
6 worth a shot, sir?

7 **MR. MacDONALD:** Well, you know, he was
8 confronted by his supervisor and his employer, moral
9 supervisor, and he said that there was sexual -- homosexual
10 contact but no crime. That's what he would have told the
11 police, I'm sure or I expect. I don't know why he would
12 have broken down otherwise. He hasn't to date.

13 **MR. LEE:** You certainly didn't know what he
14 would do with any certainty in 1993.

15 **MR. MacDONALD:** No, I had the impression
16 when I got the offer from his counsel as to what he would
17 do. We never get offers from counsel, you know, that
18 counsel has a concern that the fellow may be inclined to
19 make an admission.

20 **MR. LEE:** I don't mean to be flippant here
21 at all but you've been interviewed by the police in a
22 situation where you're a person of interest.

23 **MR. MacDONALD:** Yes.

24 **MR. LEE:** And you'll agree with me it's not
25 an easy process?

1 **MR. MacDONALD:** No.

2 **MR. LEE:** It's not something somebody
3 typically goes through.

4 **MR. MacDONALD:** No, it's an emotionally
5 traumatic experience.

6 **MR. LEE:** It's difficult?

7 **MR. MacDONALD:** Yes, and I'm a trained
8 lawyer. It's, I think, more difficult for folks who are
9 less comfortable or, you know, unfamiliar with the process.

10 **MR. LEE:** Just a minor point, you told us
11 that Ms. Sebalj told you in March of '93 that Silmsers was
12 seeking or would seek a civil settlement from the Diocese.

13 **MR. MacDONALD:** That was my impression, yes.

14 **MR. LEE:** That was your understanding of it.
15 And you also told us that you were not told that Silmsers
16 had a lawyer but that you presumed that he did.

17 **MR. MacDONALD:** Yes, sir.

18 **MR. LEE:** Did you at any point ask who that
19 lawyer was?

20 **MR. MacDONALD:** No, no. I knew at one time
21 Don Johnson was being considered. I think Heidi told me
22 that.

23 **MR. LEE:** We know from other material that
24 Ms. Sebalj had some information from Ms. Silmsers or from
25 Mr. Silmsers about ---

1 **MR. MacDONALD:** I see. I remember ---

2 **MR. LEE:** --- having spoken to Don Johnson.

3 **MR. MacDONALD:** I remember learning that at
4 some point but I didn't have the impression that Johnson
5 was on for him by the time that the settlement was reached.

6 **MR. LEE:** You never spoke to Johnson, I take
7 it, about that?

8 **MR. MacDONALD:** I think -- it seems to me
9 that Don Johnson told me prior to all of this going in
10 probably, you know, springtime of that year, that he had
11 been approached and wasn't interested. That was at a time
12 when there was -- Mr. Johnson knew that I knew that
13 investigation was ongoing.

14 **MR. LEE:** Right. Can you flesh that out a
15 little bit, given we're going to hear from Mr. Johnson?

16 **MR. MacDONALD:** Yes.

17 **MR. LEE:** Can you flesh out a little bit
18 that conversation with him, please?

19 **MR. MacDONALD:** It seems to me he said that
20 he had been approached and wasn't interested and I don't
21 recall why, but he didn't seem to be inclined to take on
22 the case. I can't -- frankly, can't remember why.

23 **MR. LEE:** Do you recall if he had any words
24 about Mr. Silmsler, either positive or negative?

25 **MR. MacDONALD:** He was very -- it was very

1 brief. I took it -- I took it to -- by implication, it was
2 negative, but he didn't -- I don't recall him saying
3 -- you know, I don't recall, but I took by
4 implication -- it was as brief conversation and it was that
5 he wasn't interested.

6 I may be wrong. Maybe it's because the man
7 didn't have enough retainer but, you know, I ---

8 **MR. LEE:** Right. What was your relationship
9 with Mr. Johnson like in the spring of '93? Colleagues, at
10 the very least, in the sense that you're both lawyers in
11 Cornwall?

12 **MR. MacDONALD:** Yes.

13 **MR. LEE:** Friends?

14 **MR. MacDONALD:** Don and I have never been
15 friends. We've been colleagues, and we've been members of
16 the Bar, co-members of the Bar. When we were colleagues,
17 we would socialize occasionally in a group, but I would say
18 it was more of a professional form of contact.

19 So by that time that you're asking in '93,
20 we were -- had a professional form of relationship that
21 sometimes was more than cordial and sometimes a little less
22 than cordial, as adversaries can be. Don and I get along,
23 I would say, 95 percent of the time.

24 **THE COMMISSIONER:** You don't invite him over
25 to your place for Christmas supper or anything ---

1 **MR. MacDONALD:** No, but I wouldn't turn him
2 away if he was hungry.

3 **THE COMMISSIONER:** No.

4 **(LAUGHTER/RIRES)**

5 **THE COMMISSIONER:** That's really good of
6 you.

7 But your families didn't socialize together
8 or anything like that, did they?

9 **MR. LEE:** I recall my spouse and I going to
10 parties whenever I was a member of Don's legal staff with
11 the L'Original Crown Attorney's office. Mel Massé and Bob
12 Pelletier were Crowns there, and Guy Simard and I and Don,
13 and the five couples would get together and -- and paint
14 the town.

15 **THE COMMISSIONER:** We won't take that as an
16 admission.

17 **(LAUGHTER/RIRES)**

18 **MR. MacDONALD:** Thank you.

19 **MR. LEE:** I went off on a bit of a tangent
20 there ---

21 **MR. MacDONALD:** Sorry.

22 **MR. LEE:** --- on the Johnson matter, but I
23 had originally asked you -- you said you didn't know
24 Silmsler had a lawyer but you presumed that he did?

25 **MR. MacDONALD:** Yes.

1 **MR. LEE:** You told me that you didn't
2 specifically ask Sebalj or anyone else at that point who
3 the lawyer was?

4 **MR. MacDONALD:** I was operating under the
5 impression he couldn't finalize a civil settlement without
6 counsel.

7 **MR. LEE:** Well, there ---

8 **MR. MacDONALD:** I was wrong.

9 **MR. LEE:** No, the -- that's one of the
10 distinctions that I was a little bit confused about in your
11 testimony because you first told us you presumed he had a
12 lawyer.

13 **MR. MacDONALD:** Right.

14 **MR. LEE:** And almost as an afterthought, you
15 told us, "But I understood he could just get independent
16 legal advice at the end of the day and that would be fine".

17 So, I mean, looking back, which was it? Do
18 you remember, looking back on it? Did you presume ---

19 **MR. MacDONALD:** Well, I ---

20 **MR. LEE:** --- he had a lawyer or did you
21 know he didn't, and just thought it would be okay because,
22 at the end of the day, he would run it by ---

23 **MR. MacDONALD:** I -- I presumed he had a
24 lawyer.

25 **MR. LEE:** You presumed he had a lawyer?

1 **MR. MacDONALD:** Yes. He was looking for a
2 lawyer in whatever -- you know, several months earlier, so
3 I presumed he had found one.

4 **MS. McINTOSH:** Just a clarification,
5 Mr. Commissioner?

6 I didn't understand the witness to say
7 that -- yesterday, that he thought that Mr. Silmsen could
8 just get a lawyer at the end of the day. I think he was
9 making the point he just made, which is that he didn't
10 think you could enter into a settlement without a lawyer.
11 So I don't think there's a conflict in what he was saying.

12 **THE COMMISSIONER:** No. No, you're
13 absolutely right. He did say, I think, yesterday, that he
14 thought you needed a lawyer to settle. It's almost like
15 when you're dealing with minors or something like that,
16 but -- okay, that's fine.

17 **MR. LEE:** My recollection of the evidence,
18 it was essentially, at the end of the day, before
19 settlement could be concluded he understood you would need
20 a lawyer, so ---

21 **THE COMMISSIONER:** Okay.

22 **MR. LEE:** Wouldn't you typically any time
23 you were discussing a case of a legal matter, just, if for
24 noting more than to satisfy your own curiosity, ask who the
25 lawyers were on the file?

1 **MR. MacDONALD:** I oftentimes do that on a
2 criminal file.

3 **MR. LEE:** But not on this one?

4 **MR. MacDONALD:** No. We have a number of
5 civil counsel who will contact us, you know, either in the
6 course of a criminal prosecution or just after it's
7 completed in order to get access to the Crown brief
8 materials, the police file primarily, and it's -- I really
9 don't pay any heed to who's writing me in that context, and
10 that -- so I'd say that's the same type of analogy.

11 **MR. LEE:** Did the question of Mr. Silmsner's
12 legal representation come up in either of your phone calls
13 with Malcolm MacDonald?

14 **MR. MacDONALD:** No, sir.

15 **MR. LEE:** What about Leduc?

16 **MR. MacDONALD:** No, sir.

17 **MR. LEE:** Can we take a brief look, Madam
18 Clerk, at Exhibit 1233, please? This is your July 14, '94
19 interview at the Long Sault Detachment with Officers Smith
20 and Fagan. Do you see that on the screen?

21 **MR. MacDONALD:** Yes, sir.

22 **MR. LEE:** And, if we can go, Madam Clerk, to
23 Bates page 861, which is page 27 of the document. And if
24 we can look at the answer at the bottom of the page?

25 **MR. MacDONALD:** I stuttered a lot then.

1 **MR. LEE:** I'm sorry?

2 **MR. MacDONALD:** I stuttered a lot then.

3 **MR. LEE:** And Officer Smith's asking you
4 just above that:

5 "That things were coming to a close in
6 and around August of '93 and the
7 settlement was made. Can you tell us
8 what you were made aware of?"

9 And your answer is:

10 "I was made aware by Constable Sebalj
11 of some real hard negotiations going on
12 between Father MacDonald, Malcolm
13 MacDonald's lawyer and the Diocese. I
14 did not know who was on for the
15 Diocese. I subsequently learned it was
16 Jacques Leduc."

17 Do you see that?

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** What did you mean by "real hard
20 negotiations"?

21 **MR. MacDONALD:** It wasn't -- it wasn't -- in
22 the context we have -- if I can use the criminal analogy
23 with which I'm more familiar, there are counsel pre-trials
24 where, you know, at the end of the conversations, "What
25 about this?" If we do wrap up a file, and there are other

1 cases where it's -- "Let's settle this and let's nail down
2 the details. I'm not -- I will settle, Mr. Crown, if you
3 seek less penitentiary time", or whatever, you know.

4 That's what I was referring to, hard
5 negotiations versus feeling out, softly probing for a Crown
6 position or an inclination to plead.

7 **MR. LEE:** And the specific wording you use:

8 "...real hard negotiations going on
9 between Father MacDonald, Malcolm
10 MacDonald's lawyer and the Diocese".

11 **MR. MacDONALD:** Right.

12 **MR. LEE:** No mention of the complainant
13 there. Did you understand that there were real hard
14 negotiations going on internally ---

15 **MR. MacDONALD:** No.

16 **MR. LEE:** --- between the Diocese and
17 MacDonald?

18 **MR. MacDONALD:** I meant with the
19 complainant.

20 **MR. LEE:** Did you have any information at
21 that time at all about Malcolm MacDonald's efforts on
22 behalf of Charles MacDonald to convince the Diocese ---

23 **MR. MacDONALD:** None.

24 **MR. LEE:** --- to be part of the settlement?

25 **MR. MacDONALD:** None.

1 **MR. LEE:** You didn't know any of that?

2 **MR. MacDONALD:** No.

3 **MR. LEE:** You didn't have any inkling or any
4 indication at all that Malcolm MacDonald was needing to
5 convince the Diocese of anything ---

6 **MR. MacDONALD:** None.

7 **MR. LEE:** -- or the Bishop, specifically, I
8 suppose.

9 **MR. MacDONALD:** None at all. None.

10 **MR. LEE:** So when you speak of "real hard
11 negotiations", you're speaking of ---

12 **MR. MacDONALD:** Serious efforts at a quick
13 settlement, an early settlement.

14 **MR. LEE:** With Silmser?

15 **MR. MacDONALD:** With the complainant.

16 **MR. LEE:** So Malcolm and the Diocese or both
17 or -- you had some confusion at the time of what Malcolm's
18 role was?

19 **MR. MacDONALD:** I thought Malcolm was on for
20 both.

21 **MR. LEE:** As you understood it, it was -- it
22 was Malcolm on one side and Silmser on the other side?

23 **MR. MacDONALD:** Right.

24 **MR. LEE:** And I don't need you to turn it
25 up, but while we were looking at Exhibit 300 yesterday, you

1 told us that you were concerned during your second phone
2 call with Malcolm MacDonald ---

3 **MR. MacDONALD:** Yes, sir.

4 **MR. LEE:** --- that he believed the
5 settlement would conclude the criminal matter, and so you -
6 - you gave him what you call "a caution"?

7 **MR. MacDONALD:** Yes. I told him I -- I told
8 him specifically that it would not.

9 **MR. LEE:** And when you were asked whether
10 you considered that either you as the Crown or the Cornwall
11 Police should look at the settlement documents to see if
12 they were dictating Silmser's actions, you said that you
13 were still assuming lawyers -- the lawyers were acting in
14 good faith, and that Sean Adams was giving Silmser proper
15 advice as to the enforceability and the legality of the
16 settlement.

17 **MR. MacDONALD:** Sean Adams is a very
18 capable, experienced lawyer, yes.

19 **MR. LEE:** And did you know Sean Adams in
20 1993?

21 **MR. MacDONALD:** Sean in -- by about that
22 time, maybe later, but around that time, I knew his father
23 better. After his father passed ---

24 **MR. LEE:** Also a lawyer?

25 **MR. MacDONALD:** Yes, sir.

1 After his father passed on, I became more
2 acquainted with Sean because of his four or five times a
3 year phoning, looking for money on some charity or another.

4 **THE COMMISSIONER:** He wasn't a criminal
5 lawyer? When you say he's a fine lawyer, within his realm
6 of expertise?

7 **MR. MacDONALD:** Yes, sir. I think he does
8 primarily commercial and real estate.

9 **THE COMMISSIONER:** So with respect ---

10 **MR. MacDONALD:** I think -- don't quote me on
11 that, I'm not sure.

12 **THE COMMISSIONER:** And so criminal law?

13 **MR. MacDONALD:** I've never -- I don't ever
14 recall talking to him about a criminal file. Well, not ---

15 **THE COMMISSIONER:** Generally ---

16 **MR. MacDONALD:** --- not as -- he spoke to me
17 once very recently on a file where he was complainant.

18 **THE COMMISSIONER:** No, no. In 1993, in
19 those days was he a regular in criminal court?

20 **MR. MacDONALD:** An irregular in criminal
21 court.

22 **THE COMMISSIONER:** Thank you.

23 **MR. LEE:** Do you have a recollection of ever
24 having seen him in criminal court?

25 **MR. MacDONALD:** I don't recall ever seeing

1 him in criminal court, so -- maybe even "irregular" is
2 being too ---

3 **MR. LEE:** And so your reference that
4 Mr. Adams would call you asking for donations to various
5 charities and -- I take it that wouldn't be infrequent,
6 certainly. He's testified here and we've had some evidence
7 from him about what appears to be tireless work in relation
8 to charities, and I take it ---

9 **MR. MacDONALD:** Oh yes.

10 **MR. LEE:** --- it was the same in '93 and
11 before?

12 **MR. MacDONALD:** I don't know about back
13 then. I thought his father was the -- his father used to
14 lead the charge, and then when Mr. Adams the elder passed
15 on, Sean took up the torch.

16 **MR. LEE:** Leaving the question of whether or
17 not you should have been assuming good faith on the part of
18 the lawyers at that point aside for a moment, did you
19 consider at any point whether the settlement document
20 should be part of your file or the CPS file, just to
21 document the file in order to close it off? Is that
22 something you considered at any point?

23 **MR. MacDONALD:** No, I didn't consider that.

24 **MR. LEE:** And what you did know at that
25 point is that the settlement in one way or another had

1 directly affected the investigation?

2 MR. MacDONALD: Yes.

3 MR. LEE: Had directly affected any
4 possibility of a prosecution?

5 MR. MacDONALD: I don't know about directly.
6 I thought indirectly as a result of the settlement the
7 victim had lost interest, for whatever reason, in the
8 criminal case.

9 MR. LEE: And I take it you were presuming
10 at the time that but for the settlement Silmsler would have
11 still been interested?

12 MR. MacDONALD: I was concerned that if the
13 settlement hadn't been reached -- I wouldn't say concerned.
14 I would have -- I presumed that if the settlement hadn't
15 been reached, he would have continued in his dealings with
16 Heidi.

17 MR. LEE: Did you consider the possibility
18 in September of '93 that further allegations against
19 Charles MacDonald might surface in the future?

20 MR. MacDONALD: I thought that if they were
21 out there that Heidi would have come over them. She was,
22 you know, looking at past contacts, altar boy associates in
23 the past, folks that he didn't even know. I know that she
24 checked with some folks who served on the altar under this
25 priest. I believe that's what she told me. And she was --

1 I told her when it was time to drill out, as opposed to
2 down.

3 I told her that if she, you know, inquires
4 of enough folks, sooner or later if there's -- if he's a
5 predator that she's going to find someone else because a
6 predator is just -- well, obvious. It's obvious that the
7 predators are more active in terms of numbers and attempted
8 contacts with victims.

9 MR. LEE: I don't want to suggest it's the
10 role of a Crown to have a personal interest in finding
11 information and digging up dirt and laying charges and
12 prosecuting, but in terms of the possibility of a
13 prosecution and the possibility of a successful
14 investigation leading to charges in relation to the Silmsers
15 complaint, it was encouraging at very least when Ms. Sebalj
16 eventually told you that she got a couple of hits,
17 essentially?

18 MR. MacDONALD: Yes, yes.

19 MR. LEE: And you knew those people were out
20 there?

21 MR. MacDONALD: Yes. I knew one fellow was
22 a confirmatory witness.

23 MR. LEE: And did you consider the
24 possibility, at any time of September of '93, that Silmsers
25 might change his mind at some point and wish to proceed

1 after all?

2 **MR. MacDONALD:** I do recall -- I think it
3 was with Luc, but possibly the Chief, but I recall with one
4 or the other, saying, "You know what, maybe this man needs
5 some time but push him anyway".

6 **MR. LEE:** Do you recall whether or not you
7 instructed either Officer Brunet or Officer Sebalj to make
8 that known to Mr. Silmsers at the end of the day that ---

9 **MR. MacDONALD:** I don't recall. You know, I
10 may not have done that. I may have -- the message that I
11 may have relayed was probably more along the lines of,
12 "Push him to do it now. Don't wait till spring. Do it
13 now."

14 **MR. LEE:** Did you consider the possibility
15 that -- let me back up.

16 You spoke during your examination in-chief
17 about incremental disclosure.

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** If we leave Silmsers aside for a
20 moment, you had these two other people, C-56 being one of
21 them, who you seemed particularly interested in.

22 **MR. MacDONALD:** Right.

23 **MR. LEE:** Did you consider the possibility
24 there may be more there, and that in time ---

25 **MR. MacDONALD:** Well, he ---

1 **MR. LEE:** And I'm not suggesting there was,
2 by the way, before ---

3 **MR. MacDONALD:** Yeah, yeah.

4 **MR. LEE:** --- anybody gets upset.

5 **MR. MacDONALD:** But in terms of probing,
6 trying to push the other folks ---

7 **MR. LEE:** Either in terms of trying to push
8 the other folks or in terms of thinking let's keep this on
9 the radar.

10 **MR. MacDONALD:** I didn't then; I would in
11 retrospect.

12 **MR. LEE:** And did you at any point consider,
13 again, the possibility that Silmsler could end up as a
14 witness rather than a complainant at some point in support
15 of somebody else's allegations?

16 **MR. MacDONALD:** No.

17 **MR. LEE:** That didn't ---

18 **MR. MacDONALD:** It didn't come up, but it
19 would have had we heard of another complainant coming who
20 was willing to make an allegation, you know, proceed with a
21 charge. Then the officers would have gone back with or
22 without my suggestion, I'm sure of their own initiative, to
23 say, "Listen, we know you have a story to tell. Would you
24 be willing to come back?"

25 **MR. LEE:** But at no point, as far as you can

1 recall, was there any discussion between yourself and
2 either of the police officers or any police officer about
3 getting a hold of the settlement docs just to have them in
4 the file ready to go, just in case?

5 MR. MacDONALD: No, no.

6 MR. LEE: You spoke with Claude Shaver after
7 the settlement was concluded, and whether he used these
8 words or not, did you appreciate that his feeling at the
9 time was that his hands were tied?

10 MR. MacDONALD: Yes.

11 MR. LEE: And we know there's media later on
12 where Mr. Shaver uses those words. Do you recall whether
13 he used those words with you at the time?

14 MR. MacDONALD: I don't recall, but he
15 certainly was frustrated; felt that, you know, he had an --
16 he was encumbered.

17 MR. LEE: As I understand your evidence
18 about Mr. Shaver, he was -- he was annoyed or upset or
19 angry about the whole thing really. He didn't know if the
20 problem was Silmsner or if the problem was the Church or if
21 the problem was the Crown. Something went bad and he was
22 upset about it. Is that right?

23 MR. MacDONALD: I'd say that's right, yeah.

24 MR. LEE: And given some of his confusion
25 about exactly what had happened and the feeling he was

1 expressing to you as the Chief of Police that his hands
2 were tied, did you during that conversation with Claude
3 Shaver, reflecting upon it afterwards, consider the
4 possibility that it may be a good idea to instruct the
5 police to look into this thing?

6 **MR. MacDONALD:** Oh, he was going to. There
7 is -- I didn't have to instruct him to do so. He was going
8 to. He was in the course of actually doing so.

9 **MR. LEE:** What did you understand he was
10 going to be doing exactly to look into this matter?

11 **MR. MacDONALD:** To review the investigation.

12 **MR. LEE:** He was going to review the
13 investigation? Certainly you described him, I don't
14 remember the exact wording, but being upset anyways and Ms.
15 Sebalj being in over a weekend entering everything into the
16 system. You know about that?

17 **MR. MacDONALD:** Well, that was my
18 impression. I don't have -- it's only hearsay.

19 **MR. LEE:** And you understood at the very
20 least that he wasn't fully up-to-speed but he was going to
21 get fully up to speed?

22 **MR. MacDONALD:** Yes, he was.

23 **MR. LEE:** On the investigation?

24 **MR. MacDONALD:** Yes. That's why he called
25 me in. He wanted my piece.

1 **MR. LEE:** What about in relation to the
2 settlement?

3 **MR. MacDONALD:** He was going to go straight
4 to the Bishop.

5 **MR. LEE:** And did you discuss with him at
6 any point what the goal of that confrontation with the
7 Bishop should be?

8 **MR. MacDONALD:** No, I -- but it was in that
9 part of the conversation that I cautioned him to check with
10 his civil counsel before, you know, making public
11 assertions.

12 **MR. LEE:** You know, obviously, that in the
13 wake of the settlement, before it becomes public knowledge,
14 there's no obstruct justice investigation.

15 **MR. MacDONALD:** Right.

16 **MR. LEE:** Right? And you didn't instruct
17 anybody to begin an obstruct justice ---

18 **MR. MacDONALD:** No, sir.

19 **MR. LEE:** --- investigation?

20 **MR. MacDONALD:** No.

21 **MR. LEE:** And I take it you appreciate now,
22 and have probably appreciated for a long time, that some
23 will look at the fact that there wasn't an obstruct justice
24 investigation as evidence of collusion.

25 **MR. MacDONALD:** The person that would have

1 been -- the first question about obstruct justice, that was
2 as against the complainant himself.

3 **MR. LEE:** In the sense of, you know, was
4 this a ploy all along ---

5 **MR. MacDONALD:** Right.

6 **MR. LEE:** --- to further ---

7 **MR. MacDONALD:** Yeah.

8 **MR. LEE:** Further his own financial
9 interests.

10 **MR. MacDONALD:** And my view -- my comment to
11 the Chief was that I don't -- we can presume that there may
12 have been some ulterior motive in using the police, but
13 that's not sufficiently there to make an allegation.

14 I mean, this man had a right to pursue a
15 civil -- there's no law. You know, there's no crime to
16 pursue it and as to his motives, there was no sufficient
17 evidence to suggest that it was criminal in nature. But
18 none of us liked it and, again, we blamed him perhaps more
19 so than we should have.

20 **MR. LEE:** I'm trying to put myself back in
21 time and picture this conversation between you and Chief
22 Shaver.

23 You've had two phone calls with Malcolm
24 MacDonald, the second of which you felt uncomfortable and
25 felt the need to caution him.

1 **MR. MacDONALD:** Yeah.

2 **MR. LEE:** You had a phone call with Jacques
3 Leduc ---

4 **MR. MacDONALD:** Yeah.

5 **MR. LEE:** --- where there wasn't that
6 similar uncomfortableness but, nonetheless, you felt the
7 need to caution him.

8 **MR. MacDONALD:** Right.

9 **MR. LEE:** You had been a member of a Diocese
10 subcommittee and that had -- you weren't happy with how
11 that turned out.

12 **MR. MacDONALD:** Right.

13 **MR. LEE:** And generally, you had some
14 concern about the way the Church generally had reacted in
15 the past to these kind of situations?

16 **MR. MacDONALD:** In a spiritual context, yes.

17 **MR. LEE:** We have -- right. You told us a
18 lawyer you knew a civil settlement was okay.

19 **MR. MacDONALD:** Yeah, correct.

20 **MR. LEE:** But as a moralist you had issues
21 with it.

22 And we have Shaver in the room who we know
23 from evidence here was not very pleased with the Diocese's
24 history in these matters from the 1986 Gilles Deslauriers
25 investigation process.

1 **MR. MacDONALD:** I didn't know about that.

2 **MR. LEE:** That's fine.

3 **MS. LEVESQUE:** Mr. Commissioner, this
4 witness has no knowledge of the Gilles -- firsthand
5 knowledge of the Deslauriers investigation or the Diocese's
6 role or whether they cooperated or not.

7 **THE COMMISSIONER:** Well, I don't know.

8 **MS. LEVESQUE:** The evidence is irrelevant.

9 **THE COMMISSIONER:** The -- Mr. Lee?

10 **MR. LEE:** I don't think I'm there yet,
11 frankly. I don't intend to question him about Deslauriers
12 or anything that happened there.

13 **THE COMMISSIONER:** No.

14 **MR. LEE:** We have Mr. MacDonald at a meeting
15 with Chief Shaver. I've outlined for him his own history
16 via his evidence of concerns at very least with the process
17 and I've told him we've had evidence here that Shaver had
18 concerns with the Diocese and with the Bishop relating from
19 Deslauriers. My next question was going to be whether or
20 not Shaver discussed that with him at all and maybe he did;
21 maybe he didn't.

22 **THE COMMISSIONER:** So it's not for the truth
23 of its contents. It's to see what his state of mind was.

24 **MS. LEVESQUE:** Thank you.

25 **THE COMMISSIONER:** Thank you.

1 **MR. LEE:** Do you recall any discussion with
2 Shaver in October of '93 about his own feelings about the
3 Diocese or his past dealings with the Bishop?

4 **MR. MacDONALD:** Not about his past dealings.
5 We shared the view that it may be lawful but it's not -- in
6 terms of optics for the Church to be doing this mid-
7 criminal investigation I thought was morally wrong and so
8 did Chief Shaver.

9 **MR. LEE:** Did you turn your mind at any
10 point in that period to the possibility that there was some
11 undue influence exerted upon David Silmser?

12 **MR. MacDONALD:** No, sir.

13 **MR. LEE:** I take it you would have
14 recognized that there was a fairly significant power
15 imbalance here?

16 **MR. MacDONALD:** Yes, but when I -- with the
17 impression that this is what he was set out -- this is part
18 of his agenda that he'd set out to do and that he had
19 succeeded we had no cause to believe that a power imbalance
20 would have done nothing other than reduce the amount of
21 money he got in his settlement.

22 **MR. LEE:** Is this a situation that by
23 September of 1993 you just can't get past the idea that
24 this is Silmser's doing and that Silmser has orchestrated
25 this and that Silmser ---

1 **MR. MacDONALD:** Well, Silmsers, I thought,
2 participated more initiating the thing than he did. But
3 that doesn't change the fact that the Church should have
4 known better in a moral context, I think, and the lawyers
5 for the Church are going to -- are going to take their run
6 at me for that reason but that's my view.

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

8 **MS. LEVESQUE:** That's opinionated evidence.

9 **THE COMMISSIONER:** Yes.

10 **MS. LEVESQUE:** It's not factual.

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

12 **MS. LEVESQUE:** So he should not be allowed
13 to provide opinionated evidence. He should stick to the
14 facts.

15 **THE COMMISSIONER:** Well ---

16 **MS. LEVESQUE:** It's his own personal
17 opinion.

18 **THE COMMISSIONER:** Right.

19 **MS. LEVESQUE:** It's not based on any -- it
20 has no factual basis other than it is his impression, it is
21 his opinion. It's not ---

22 **THE COMMISSIONER:** But he was guided by his
23 impressions and his opinions in making certain decisions.
24 So should we not know what his state of mind was in the
25 sense that he is saying now that maybe he overestimated

1 Silmsers methods and he thought at that time that the
2 Church shouldn't have done that, and how did that colour
3 his actions afterwards, if any? I think that's where we
4 need to go.

5 **MS. LEVESQUE:** But the basis for his
6 foundation is opinionated. It's his own personal opinion.
7 That's my objection, Mr. Commissioner.

8 **THE COMMISSIONER:** Yeah, I know but --
9 right, but I mean this gentleman took how -- went on a
10 course of action, ordered his affairs professionally in a
11 certain way. And so I think it's very important to know
12 why he did that and his state of mind when he was talking
13 with him. Whether it's right or wrong it matters not. You
14 can maybe cross-examine him on those points and say, well,
15 look, ta da da da, but it's still what was motivating him
16 to move forward and I think that's relatively ---

17 **MS. LEVESQUE:** It has no factual basis.
18 That's my objection.

19 **THE COMMISSIONER:** Thank you, but opinions
20 don't need factual basis, I think.

21 All right. So where were we?

22 **MR. MacDONALD:** I forget.

23 **THE COMMISSIONER:** We were saying that you
24 thought that Mr. Silmsers may not have been as big a mover
25 on the settlement and you thought that the Church's

1 settlement was, in your personal view, not moral. Did you
2 say moral? I don't want to put that word in your mouth.

3 **MR. MacDONALD:** Civil rights aside, certain
4 creatures such as Crown attorneys ---

5 **THE COMMISSIONER:** Right.

6 **MR. MacDONALD:** --- and I think other
7 professions, certainly, that all clerics, clerical
8 institutions, have to sometimes be, as my colleague Guy
9 Simard always says in French, plus catholique quel Pape.

10 **THE COMMISSIONER:** More Catholic than the
11 Pope.

12 **MR. MacDONALD:** And by that I mean the law,
13 the civil law notwithstanding because there is certain
14 things that we have to do and be seen to be doing that
15 retains the high ground. If an institution claims to be on
16 the high ground I think we should always be careful, be it
17 Crown attorneys, priests, doctors or anyone else in the
18 room to maintain that high ground. I don't think and nor
19 did Chief Shaver feel that that was done in this instance
20 and we were more upset about that component than we were
21 about any criminal misconduct by the Church.

22 **MR. LEE:** I would love to end with that
23 answer but I have some more questions so we're going to
24 have to keep going here.

25 Given your feelings at the time and what you

1 knew about Silmser, you've told us you thought something
2 went on but you didn't know if it was legal or illegal.
3 You had these ---

4 **MR. MacDONALD:** Well, the priest -- right,
5 and Claude -- and Chief Claude Shaver confirmed to me that
6 the priest had admitted an isolated moment of weakness; act
7 of indiscretion, a homosexual act.

8 **MR. LEE:** Did ---

9 **MR. MacDONALD:** Which caused us to -- which
10 is what we suspected ourselves before Claude Shaver even
11 knew that he'd admitted to it.

12 **MR. LEE:** Did Shaver go any further than
13 that in terms of what he understood that Father Charles
14 MacDonald had admitted to?

15 **MR. MacDONALD:** I'm not sure what you mean.

16 **MR. LEE:** Let me put it this way. Did
17 Claude Shaver tell you at any point that he had information
18 that Charles MacDonald had admitted to sexual contact with
19 Silmser?

20 **MR. MacDONALD:** I thought that's what he
21 admitted to, that he had -- I presume that he had admitted
22 to lawful homosexual contact with Mr. Silmser. That's what
23 he -- was reported to me by Claude Shaver, I believe.

24 **THE COMMISSIONER:** Yes.

25 **MS. LEVESQUE:** We know that Claude Shaver

1 testified here and resiled on that statement.

2 **THE COMMISSIONER:** Wait just a minute.

3 **MS. LEVESQUE:** Bishop LaRocque denied it.

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

5 **MS. LEVESQUE:** We have the evidence of Luc
6 Brunet ---

7 **THE COMMISSIONER:** Yeah, but ---

8 **MS. LEVESQUE:** --- which is in his
9 contemporaneous notes as well.

10 **THE COMMISSIONER:** M'hm. But this is a
11 conversation between the Chief and this man. Does he not
12 have the right and the obligation to tell us (a) what did
13 Chief Shaver tell him and does it matter whether Chief
14 Shaver has said things to a million other people? We still
15 have the right to hear what this man said.

16 And I have to weigh what all of that means;
17 right?

18 **MS. LEVESQUE:** Yes.

19 **THE COMMISSIONER:** So ---

20 **MS. LEVESQUE:** We have the *vive voce*
21 evidence of Chief Shaver that he resiled on that statement.

22 **THE COMMISSIONER:** Well, not to him.

23 **MS. LEVESQUE:** Well, he said, presumed or
24 was told. Maybe we need to clarify that.

25 **THE COMMISSIONER:** Sure.

1 **MS. LEVESQUE:** Whether he was told by Chief
2 Shaver himself or whether it's an assumption that he drew
3 from ---

4 **THE COMMISSIONER:** Oh, no, no. Very well,
5 very well, very well, no, no.

6 **MS. LEVESQUE:** --- discussion with him.

7 **THE COMMISSIONER:** We're talking about a
8 conversation you had with Chief Shaver?

9 **MR. MacDONALD:** Yes, sir.

10 **THE COMMISSIONER:** All right. So that's
11 very clear, right?

12 What did he tell you, as far as you're
13 concerned, with -- if anything, about Father Charles
14 MacDonald's activities?

15 **MR. MacDONALD:** Admission?

16 **THE COMMISSIONER:** Yeah.

17 **MR. MacDONALD:** I'm sure that he made the --
18 that ---

19 **THE COMMISSIONER:** He's telling you ---

20 **MR. MacDONALD:** Claude reported to me that -
21 - Claude Shaver reported to me that the priest had admitted
22 to the Bishop a homosexual act but not a crime.

23 **THE COMMISSIONER:** Right.

24 **MR. MacDONALD:** And I believe that he said
25 it was making reference to Mr. Silmsler. I may be wrong but

1 that was my impression.

2 **THE COMMISSIONER:** Thank you.

3 **MR. MacDONALD:** I'm not certain of that but
4 it's my impression.

5 **THE COMMISSIONER:** Thank you.

6 **MS. LEVESQUE:** Thank you.

7 **MR. LEE:** Sir, I need to say that I think
8 we've now had three objections that amount to Ms. Levesque
9 doesn't like the evidence.

10 **THE COMMISSIONER:** I know.

11 **MR. LEE:** She has an opportunity to cross-
12 examine and ---

13 **THE COMMISSIONER:** Exactly.

14 **MR. LEE:** --- this gets a little tiring,
15 frankly.

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

17 **MR. LEE:** Mr. MacDonald, the conversation
18 that you had with Claude Shaver, did he communicate to you
19 what his source of information was? You've told us that he
20 understood that MacDonald had made this admission to the
21 Bishop, but who did Shaver hear it from? Did he tell you
22 that?

23 **MR. MacDONALD:** I thought it was in the same
24 meeting but it may have been in a phone call that followed,
25 I'm not sure, but I thought it was in that same meeting

1 with Chief Shaver that he also said that he got this
2 information from the Bishop. However, at that first
3 meeting -- it may have precluded his meeting with the
4 Bishop and he may have spoken to me a day or days
5 afterwards. I just don't recall.

6 But certainly he did report back to me that
7 he got this information from the Bishop. Is that your --
8 is that the question?

9 MR. LEE: Yeah, it was. Thank you.

10 MR. MacDONALD: The local Bishop.

11 MR. LEE: LaRocque?

12 MR. MacDONALD: Yeah.

13 MR. LEE: Are you aware that Luc Brunet
14 testified here at this Inquiry in April?

15 MR. MacDONALD: Yes.

16 MR. LEE: I'd like to take you -- we're
17 going to need a couple of documents, Madam Clerk. The
18 first is Exhibit 300.

19 THE COMMISSIONER: That's a letter?

20 MR. LEE: Yes.

21 THE COMMISSIONER: Okay.

22 MR. LEE: Just for some context,
23 Mr. Commissioner, Mr. MacDonald writes his opinion to Luc
24 Brunet on September 14th. This is the letter that requests
25 that opinion.

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

2 **MR. LEE:** Do you have that before you,
3 Mr. MacDonald?

4 **MR. MacDONALD:** Yes, sir.

5 **MR. LEE:** And, Madam Clerk, I'm also going
6 to want Volume 213 of the Inquiry transcript available at
7 some point.

8 Now, I asked Mr. Brunet about this letter to
9 you when he was here, and you'll see that he begins his
10 letter by saying:

11 "This will confirm our telephone
12 conversation of September 8th, 1993."

13 Do you see that?

14 **MR. MacDONALD:** Yes, sir.

15 **MR. LEE:** And do you recall having a
16 telephone conversation with Mr. Brunet prior to this letter
17 being written?

18 **MR. MacDONALD:** I don't recall but I believe
19 it happened.

20 **MR. LEE:** You don't recall but?

21 **MR. MacDONALD:** We had a number of contacts
22 around that time of the year, so I'm sure it must have
23 happened.

24 **MR. LEE:** And what he says in the second
25 paragraph of the letter is that on September 3rd, he'd

1 received a letter from Malcolm MacDonald attaching a
2 statement from David Silmsler stating that he'd received a
3 civil settlement to his satisfaction, and received
4 independent legal advice before accepting it and now no
5 longer wished to proceed further with criminal charges. Do
6 you see that? The second paragraph of the letter.

7 **MR. MacDONALD:** Yes. The long, large
8 paragraph?

9 **MR. LEE:** Yes. So Officer Brunet is giving
10 you some context here about why he's writing.

11 **MR. MacDONALD:** Yes, sir.

12 **MR. LEE:** And he gets to the point of the
13 letter in the final paragraph:

14 "It is my understanding after our
15 conversation, that your office does not
16 prosecute without the full cooperation
17 of the victim. I'm anxiously awaiting
18 your direction."

19 And from this you've sent off your reply on
20 September 14th that addresses directly that point, being the
21 policy of your office about proceeding without the full
22 cooperation. You recall that?

23 **MR. MacDONALD:** I replied, sir -- my letter
24 that you've just referenced applies both to the contents of
25 this letter plus the conversation I had with Luc that was,

1 you know, more expansive than just these three paragraphs
2 here.

3 **MR. LEE:** I'm going to have Madam Clerk hand
4 up to you Volume 213.

5 **THE COMMISSIONER:** Thank you.

6 **MR. LEE:** If you can turn around page 245.

7 **MR. MacDONALD:** Thank you.

8 **MR. LEE:** And if you look in the middle of
9 the page, around line 11, I'm asking Officer Brunet about
10 an answer he'd given in-chief, and his answer was -- the
11 question was:

12 "Do you recall what information you
13 provided to Murray MacDonald during
14 that call?"

15 And Mr. Brunet in-chief had answered:

16 "Well, not word-for-word, but basically
17 there was two issues that I was curious
18 about that I wanted to get information
19 about. The first one was, can they
20 legally do that and, second of all, the
21 issue of what we do if we don't have a
22 willing complainant in a sexual assault
23 investigation."

24 You see that?

25 **MR. MacDONALD:** Yes, sir.

1 **MR. LEE:** And I go on and follow up on the
2 first question he set out and ask him:

3 "What does that first question mean,
4 sir; 'Can they legally do that'?"

5 Mr. Brunet replies:

6 "Exactly that. Can they settle a civil
7 settlement. Can they actually give him
8 money during an active police
9 investigation?"

10 I follow up:

11 "Who would you have meant by 'they'?"

12 The transcript reads Mr. Manson; it should
13 read Mr. Lee. And I rephrase the question so:

14 "Can the Diocese settle a civil lawsuit
15 during the course of a criminal
16 investigation?"

17 And Brunet answers:

18 "That was my question, yes."

19 You see that?

20 **MR. MacDONALD:** Yes.

21 **MR. LEE:** And if you look at the next page,
22 page 247 at line 2, I ask:

23 "So can we take this answer and what
24 you've just told me now as you saying
25 that you recognized soon after, or at

1 the time of learning of the DS
2 settlement, that there might be a
3 problem with the legality of the
4 settlement?"

5 Brunet answers:

6 "I was asking the question because I
7 didn't know."

8 And I continue:

9 "The question I have is, did you
10 recognize early on, and was it one of
11 the questions you were putting to
12 Mr. MacDonald, whether or not that
13 settlement might be illegal because it
14 had an impact on the criminal
15 proceedings?"

16 He answers my question -- was:

17 "I really didn't know if it did or not
18 and I wanted to have legal advice on
19 that. My question was, we've got a
20 victim that's given some money here and
21 now he doesn't want to proceed. Is it
22 legal for the Diocese to give him money
23 during a criminal investigation? That
24 was my question."

25 I ask:

1 "Do you recall turning your mind to the
2 issue at that time?"

3 And he replies: "Yes."

4 You see that?

5 **MR. MacDONALD:** Yes, sir.

6 **MR. LEE:** And he then goes on, at page 249,
7 to confirm for me that that question of the legality of the
8 settlement doesn't make its way into his letter at Exhibit
9 300 because he was satisfied, based on his discussion
10 during the telephone call of September 8 with you, that it
11 was no longer an issue.

12 And I ask him at line 9:

13 "Your concerns were allayed?"

14 And he answers: "Yes."

15 And I ask:

16 "And you didn't begin an investigation
17 of the legality of the settlement at
18 any point?"

19 And Brunet says:

20 "No, I did not."

21 Do you see all that?

22 **MR. MacDONALD:** Yes, sir. And nor did I
23 recommend he should.

24 **MR. LEE:** My first question was, has
25 Mr. Brunet fairly recalled the content of that conversation

1 to the best of your recollection?

2 **MR. MacDONALD:** I would think that was -- to
3 the best of my recollection.

4 **MR. LEE:** My question for you is, when
5 Officer Brunet on September 8 specifically raises the
6 question of the legality of the settlement, did you not
7 think even then that you should look at the documents?

8 **MR. MacDONALD:** He asked -- he asked and we
9 conferred, and the question as to the -- whether you can
10 conduct a civil negotiation in the context of a criminal
11 investigation. That was the legalities that he was
12 inquiring about and that was the legalities I commented
13 upon.

14 **MR. LEE:** Page 247 of the transcript, I ask
15 him:

16 "At the time of learning of the DS
17 settlement..."

18 Sorry. So we -- at line 2:

19 "So we can take this answer and what
20 you've told me, now is you saying that
21 you recognized soon after or at the
22 time of learning of the DS settlement
23 that there might be a problem with the
24 legality of the settlement?"

25 Brunet:

1 "I was asking the question because I
2 didn't know."

3 Did you, during the course of this
4 conversation or after the conversation, consider that there
5 might be a problem with the legality of the civil
6 settlement and consider whether you should get the
7 documents?

8 **MS. McINTOSH:** Mr. Commissioner, I think the
9 witness was just asked and answered that question, that the
10 problem that was being asked was, is it legal to settle
11 while a criminal investigation is going on, and there was
12 no question put to this witness about any particular terms
13 of the settlement and whether they were lawful or not.

14 **THE COMMISSIONER:** Go ahead.

15 **MR. LEE:** May I respond?

16 **THE COMMISSIONER:** Yes.

17 **MR. LEE:** He reframed that question in his
18 answer.

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

20 **MR. LEE:** And so I'm putting it back to him
21 having read -- having now asked the question for a second
22 time because I didn't get an answer to it the first
23 time, sir.

24 **MS. McINTOSH:** Well, but that -- that is not
25 the question that Luc Brunet asked this witness. And I

1 think that's clear from the whole of the transcript.

2 **THE COMMISSIONER:** Right. But Ms. McIntosh,
3 what about if he is changing that at this point and saying
4 something different at this point? Is he not allowed to
5 canvass that, just say "Wait a minute now, were you
6 confused or is it changed?"

7 **MS. McINTOSH:** Well, I think the witness
8 changed it back to the question that Luc Brunet asked him
9 recognizing that it was an unfair way to say simply
10 legality, that means that, you know, there was a concern
11 about some term of the settlement that you should have
12 looked into. The specific question, as this witness said,
13 and answered that question, was "Is it lawful to engage or
14 to make a civil settlement in the middle of a criminal
15 investigation?"

16 And it's not fair to suggest there was
17 another question put to this witness that he didn't answer
18 or take up at the time.

19 **THE COMMISSIONER:** Mr. Lee?

20 **MR. LEE:** I think Ms. McIntosh and I can
21 disagree on what Mr. Brunet's evidence is and she has a
22 transcript and you'll have the transcript at the end of the
23 day, but I think I'm entitled to submit, at the end of the
24 day, that Mr. Brunet has given us evidence that he was
25 questioning the legality of the settlement in this

1 telephone call with Mr. MacDonald.

2 And I think I'm duty bound to put it to Mr.
3 MacDonald if I'm going to make that submission at the end
4 of the day.

5 My question, I read Staff Sergeant Brunet's
6 evidence as saying that he had concerns about the legality
7 of the settlement, not just the question of whether it was
8 legal to settle in civil claim, but about whether or not
9 the effect that that might have on the criminal proceedings
10 is at issue. Mr. MacDonald may well tell me that's not the
11 case and it's not what he understood. But I think I ---

12 **THE COMMISSIONER:** Go ahead.

13 **MR. LEE:** Mr. MacDonald, my question for you
14 is, during the course of your conversation with Officer
15 Brunet or having reflected upon it after the fact, did you
16 consider that there may be a problem with, again, the
17 legality of the settlement itself and whether or not that
18 should at least be looked into?

19 **MR. MacDONALD:** No, as he put it at line 18,
20 is it ---

21 **MR. LEE:** What page sir?

22 **MR. MacDONALD:** I'm sorry, 247 where we left
23 off.

24 **MR. LEE:** Yeah.

25 **MR. MacDONALD:** Is it legal for the Diocese

1 to give him money during a criminal investigation? That
2 was the question; that's how I answered.

3 **MR. LEE:** And my question for you is --
4 leaving that aside, during the course of the conversation
5 with Brunet or after the conversation with Brunet, did you
6 consider -- did you, aside from what the question that Mr.
7 Brunet put to you, did you consider, as a result of this
8 conversation, whether there may be an issue with the
9 legality of the settlement and whether or not that should
10 be investigated?

11 **MR. MacDONALD:** No, sir.

12 **MR. LEE:** Okay.

13 You were asked -- moving on, you were asked
14 yesterday about -- in-chief about information and in cross
15 by Ms. Daley, I think, about information that Ms. Sebalj
16 may have been providing to Malcolm MacDonald.

17 **MR. MacDONALD:** Yes, sir.

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

19 **MR. MacDONALD:** Yes, I recall.

20 **MR. LEE:** And, having gone through what she
21 may have provided and -- I'll leave it at that. You told
22 us that an officer would not typically want to provide
23 details about a complainant being uncooperative or
24 unreliable to an accused person's civil counsel?

25 **MR. MacDONALD:** Right.

1 **MR. LEE:** And you understood that Malcolm
2 MacDonald was more than just Father Charles MacDonald's
3 civil counsel; did you not?

4 **MR. MacDONALD:** I thought ---

5 **MR. LEE:** At that time?

6 **MR. MacDONALD:** I'm sorry. I thought he was
7 counsel for the Diocese as well, but I was wrong.

8 **MR. LEE:** And I appreciate there was no
9 criminal charge laid and he wasn't into a full defence or
10 anything. But you certainly understood that Malcolm
11 MacDonald was a criminal lawyer and that his interest was
12 in Father MacDonald's possible criminal involvement in this
13 matter. Did you not?

14 **MR. MacDONALD:** Yeah, I think that's fair to
15 say. Mr. MacDonald did some civil and real estate too.
16 But that's aside from the point. I understand what you're
17 driving at. And yes, I presume that he would have been
18 interested in his criminal -- the criminal case as well.

19 Indeed he was because he contacted Sebalj
20 and said, "If and when you arrest him" there was something
21 about how he would be arrested. So that's correct.

22 **MR. LEE:** And where you expressed your
23 opinion that typically an officer would not want to provide
24 those types of details to a civil counsel; certainly that
25 would apply to a criminal counsel as well?

1 **MR. MacDONALD:** Right. He was contact --but
2 I was asked, I think, the question relating to civil
3 counsel. And that's what I had -- is that what I was
4 asked?

5 **MR. LEE:** It may well be. I'm simply -- you
6 would ---

7 **MR. MacDONALD:** It would apply to a criminal
8 as well, yes. Perhaps even more so. Or maybe not. But
9 either way, you don't -- it would be unusual to raise --
10 share this information with criminal or civil counsel.

11 **MR. LEE:** You were asked questions about
12 your contacts with Malcolm MacDonald and your feelings
13 about those. And you're also asked about your feelings in
14 hindsight about the phone call you had with Jacques Leduc?

15 **MR. MacDONALD:** Yes.

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

17 **MR. MacDONALD:** Yes.

18 **MR. LEE:** And one of the things that you
19 told us is that you had specifically asked Tim Smith for
20 his opinion about Jacques Leduc and whether or not he was
21 involved in the illegal settlement; do you recall that?

22 **MR. MacDONALD:** Well, I didn't know whom
23 among the three ---

24 **MR. LEE:** Who are the three, sir?

25 **MR. MacDONALD:** The three lawyers involved.

1 **MR. LEE:** Yeah.

2 **MR. MacDONALD:** Who was party to the, you
3 know, creating the clause. And I wanted to know because I
4 had to deal with these three men, two of them more so than
5 the third, regularly in my -- in the future, you know. Mr.
6 Adams, I would not have dealt with regularly, but the
7 Christmas Law Society dinners, you'd want to be cordial
8 with the folks that you can be with.

9 Mr. Leduc was an executive of the
10 Association and he was active in terms of the business of
11 the Association as well as some social stuff in respect of
12 the Association. As you know, from that luncheon meeting
13 that Guy and André had with him.

14 **MR. LEE:** Yes.

15 **MR. MacDONALD:** And so I just wanted to know
16 who I could trust. And Tim Smith told me that he was of
17 the view that Adams -- Mr. Adams was completely clean of
18 any oblique motive. And he ---

19 **MR. LEE:** Do you remember if he expanded on
20 that at all with you?

21 **MR. MacDONALD:** We didn't talk much about
22 Adams.

23 **MR. LEE:** Okay.

24 **MR. MacDONALD:** We just -- it was "Don't
25 worry" -- my impression was don't worry about Mr. Adams'

1 ethics.

2 MR. LEE: What about Leduc?

3 MR. MacDONALD: And Leduc, he was not -- he
4 was of the view that there was insufficient -- he thought,
5 if I recall, and I may have the words not correct, but the
6 message was, he is a civil lawyer who probably just missed
7 it.

8 MR. LEE: Right.

9 MR. MacDONALD: And he concluded that Mr.
10 MacDonald's intent was the one that was the lead in putting
11 in that agreement. And that was disconcerting to me to say
12 the least because I had specifically told him that the case
13 would continue.

14 MR. LEE: During your examination in-chief
15 with Mr. Engelmann, you were asked about your relationship
16 with Mr. Leduc and how you knew him.

17 MR. MacDONALD: Yes.

18 MR. LEE: You told us first that you knew
19 him professionally only; you didn't have a social
20 relationship with him.

21 MR. MacDONALD: That's correct.

22 MR. LEE: You told him -- you told us as
23 you've just reiterated now that he was involved in the
24 local Law Association and was active in that regard.

25 MR. MacDONALD: Yes, sir.

1 **MR. LEE:** And you told us that you likely
2 dealt with him half a dozen times per year on criminal
3 files.

4 **MR. MacDONALD:** Yeah, that may be less.

5 **MR. LEE:** Do you have a specific
6 recollection of having dealt with him on criminal files?

7 **MR. MacDONALD:** No.

8 **MR. LEE:** How did you come up with half a
9 dozen times a year then?

10 **MR. MacDONALD:** I would have seen him in the
11 courthouse. And I don't have a specific recollection of
12 every case. I have a general recollection of him making
13 submissions in front of Judge Fitzpatrick on rare occasion.
14 And Judge Fitzpatrick was our Ontario -- our Provincial
15 Court judge at the time.

16 **MR. LEE:** You have recollections of Leduc
17 making submissions before an Ontario court justice?

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** On a criminal matter?

20 **MR. MacDONALD:** Yes, I do. I'm almost
21 certain of that.

22 **MR. LEE:** And you joined the Crown's office
23 here in September of '88?

24 **MR. MacDONALD:** Yes, sir.

25 **MR. LEE:** And this all happens in September

1 of '93, so there's about a five-year period there.

2 **MR. MacDONALD:** Yes, sir.

3 **MR. LEE:** Would you have had some
4 professional dealings with Leduc throughout that five-year
5 period in terms of legal work, not Law Association work?

6 **MR. MacDONALD:** I'm -- I would -- I'm not
7 sure but reasonably confident that he would have
8 occasionally written for a brief or -- he, like most
9 practitioners in Cornwall, would act for the duty impaired
10 file on the client's son, you know.

11 **MR. LEE:** The -- right. So he -- I
12 understand.

13 **MR. MacDONALD:** Yeah.

14 **MR. LEE:** You were aware that Mr. Leduc
15 testified here?

16 **MR. MacDONALD:** Yes.

17 **MR. LEE:** He told us he did not practice
18 criminal law. And we have an interview report from 1994
19 where he tells Tim Smith and Mike Fagan the same thing,
20 that he did not practice criminal law.

21 **MR. MacDONALD:** I believe he dabbled in it.

22 **MR. LEE:** And you were interviewed by the
23 Ottawa Police Service in '94, the OPP in '94, and the OPP
24 in '98 about issues surrounding the Silmsler settlement?

25 **MR. MacDONALD:** Yes, sir.

1 **MR. LEE:** And do you recall ever having been
2 asked about your knowledge of Mr. Leduc's criminal law
3 experience by any of those investigators?

4 **MR. MacDONALD:** No, I don't recall. Can you
5 point them out to me?

6 **MR. LEE:** I don't believe you were.

7 **MR. MacDONALD:** Oh.

8 **MR. LEE:** Just, I'm -- I'm asking, you're a
9 Crown Attorney ---

10 **MR. MacDONALD:** Yes.

11 **MR. LEE:** --- and the police officer, I
12 presume there was some discussion off the record and ---

13 **MR. MacDONALD:** I don't recall. There was a
14 lot of discussion off the record over the years, that's
15 true, but I don't recall our talking about -- I just
16 asked -- I remember inquiring of Tim Smith as, who can I
17 trust here, you know?

18 **MR. LEE:** M'hm? And you're aware Tim Smith
19 testified here recently?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. LEE:** And one of the things he told us
22 is that in his determination of who was involved in the
23 civil settlement, a relevant factor in his mind was that
24 Malcolm MacDonald was a former Crown Attorney, a criminal
25 defence lawyer, and Leduc was not.

1 **MR. MacDONALD:** He told me that.

2 **MR. LEE:** And his reasoning, as I understood
3 it, was that Leduc would have needed some knowledge of
4 criminal law in order to appreciate that there was a
5 problem with paragraph 2 of that settlement.

6 **MR. MacDONALD:** I see.

7 **MR. LEE:** Okay? Leaving whether that's true
8 or not aside, that was Smith's theory on it.

9 **MR. MacDONALD:** I see.

10 **MR. LEE:** Did he ever discuss that theory
11 with you in any detail?

12 **MR. MacDONALD:** No, sir. I wasn't privy to
13 that component of the investigation.

14 **MR. LEE:** Mr. Commissioner, I have -- I'm
15 not going to be done by 11:00. I don't know if now is a
16 good time for a break or ---

17 **THE COMMISSIONER:** Sure.

18 Before we go -- before we go, how much
19 longer do you have? I just need to plan our time.

20 **MR. LEE:** It's entirely my fault. My
21 estimate was not very good. I would say I probably have at
22 least a half-an-hour left, sir.

23 **THE COMMISSIONER:** Thirty minutes? All
24 right.

25 Mr. Neville? Can you give me some idea?

1 **THE COMMISSIONER:** Thank you.

2 Mr. Kozloff?

3 **MR. KOZLOFF:** None contemplated, Mr.

4 Commissioner.

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

6 **MR. CARROLL:** None, sir.

7 **THE COMMISSIONER:** All right.

8 And Ms. McIntosh?

9 **MS. McINTOSH:** Half-an-hour to forty-five
10 minutes, sir.

11 **THE COMMISSIONER:** Okay.

12 So, hopefully, we might be able to get this
13 done by early afternoon.

14 All right, good, thank you.

15 **THE REGISTRAR:** Order; all rise. A l'ordre;
16 Veuillez vous lever.

17 This hearing will resume at 11:15 a.m.

18 --- Upon recessing at 10:57 a.m./

19 L'audience est suspendue à 10h57

20 --- Upon resuming at 11:21 a.m./

21 L'audience est reprise à 11h21

22 **THE REGISTRAR:** Order; all rise. A l'ordre;
23 Veuillez vous lever.

24 This hearing is now resumed. Please be
25 seated. Veuillez vous asseoir.

1 MURRAY MacDONALD, Resumed/sous le même serment:

2 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE:
3 (cont'd/suite):

4 THE COMMISSIONER: Gees, Mr. Lee, I thought
5 you had changed sides and seen the light.

6 MR. LEE: Madam Clerk, I'm going to want two
7 exhibits, Exhibit 298 and Exhibit 863. Two-nine,-eight
8 (298).

9 THE COMMISSIONER: Two-nine-eight (298).

10 MR. LEE: And eight-six-three (863).

11 These relate to Malcolm MacDonald's
12 statements to the police.

13 MR. MacDONALD: Thank you.

14 MR. LEE: So, sir, 298 is the -- no, wait --
15 863 is the other number.

16 MR. MacDONALD: Okay.

17 MR. LEE: You have 298 up, sir?

18 MR. MacDONALD: Yes.

19 MR. LEE: And you'll see this is -- I
20 believe Ms. Daley took you to this -- it's the June 20th,
21 '94 statement from Malcolm MacDonald, and paragraph 5
22 reads:

23 "Before taking any further action, I
24 discussed this matter with Murray
25 MacDonald, Crown Attorney, and

1 explained the Church's position and my
2 part in it. He indicated to me he saw
3 nothing wrong and to go ahead on that
4 basis and avoid further court
5 proceedings."

6 Do you see that?

7 **MR. MacDONALD:** Yes, sir.

8 **MR. LEE:** I take it you disagree with ---

9 **MR. MacDONALD:** Well, it's a lie.

10 **MR. LEE:** And you have no recollection at
11 all of having said anything like that?

12 **MR. MacDONALD:** I know I didn't.

13 **MR. LEE:** Not even possible?

14 **MR. MacDONALD:** I beg your pardon?

15 **MR. LEE:** Not even possible?

16 **MR. MacDONALD:** Not even possible.

17 **MR. LEE:** And if we look at Exhibit 863 --

18 **MR. MacDONALD:** Yes, sir.

19 **MR. LEE:** --- this is the October 28, '94
20 interview of Malcolm MacDonald, and if I can take you to
21 page 18. For the record, it's Bates page ending 944.

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

23 **MR. LEE:** We have Tim Smith asking, "Did
24 you..." The first question on the page:

25 "Did you indicate at that time that it

1 was a civil matter that you were
2 settling or the totality?"

3 And Malcolm MacDonald replies:

4 "The totality of it, yes, yes, yeah."

5 Smith asks:

6 "Even the criminal end of it?"

7 MacDonald:

8 "Yes, yes. Yeah, yeah."

9 And it goes on:

10 "What did he say to that?"

11 And at the top of page 19, we have the
12 answer that you're purported to have responded:

13 "Well, fine. If everybody's happy, I'm
14 happy."

15 And Smith presses again:

16 "Even on the criminal end?"

17 And Malcolm says:

18 "Well, he didn't be specific in
19 anything, he just said..."

20 And it goes on with Smith pushing:

21 "Are you sure it was criminal?"

22 And at the end of the page, the last answer
23 by MacDonald:

24 "I don't think I said specifically, you
25 know, civil and criminal, you know. I

1 think that it was clear to him that he
2 wouldn't proceed with anything, put it
3 that way."

4 Do you see that?

5 **MR. MacDONALD:** Yes, sir.

6 **MR. LEE:** And presumably what he's saying
7 there is it was clear that Murray MacDonald, that David
8 Silmsler, wouldn't proceed with anything -- "put it that
9 way", right? That's what he's saying?

10 **MR. MacDONALD:** I see.

11 **MR. LEE:** And ---

12 **MR. MacDONALD:** If it was clear to Mr.
13 MacDonald, it wasn't clear to me, because that's not the --
14 the gist of our conversation.

15 **MR. LEE:** We'll get there and I
16 I'll ask you directly to comment on that.

17 If I can just take you first to page 27?

18 **MR. MacDONALD:** Yes, sir.

19 **MR. LEE:** Malcolm says:

20 "Well, as far as I was concerned, I
21 felt that Mr. MacDonald, Murray
22 MacDonald, was full well aware of what
23 was going on and what we were talking
24 about. You know, I didn't walk in and
25 just say I have a matter here you know,

1 would you agree to this, you know."

2 Okay? So it's a couple of times in this
3 interview that Malcolm MacDonald's suggesting that you were
4 in the loop and whether he explicitly said, yeah, criminal
5 and civil, you knew exactly what we were talking about
6 here? That what he's saying here.

7 So it seems to me there are a couple of
8 interpretations here; okay? And I'll ask you directly for
9 comment.

10 Number one, you might take what he's saying
11 here, that you had a specific knowledge that the settlement
12 would stipulate both the civil and criminal would come to
13 an end. Or, number two, you knew that the effect of the
14 settlement, whatever its terms, would be the whole thing of
15 both the criminal and civil proceedings; okay?

16 You obviously flatly deny the first,
17 specific knowledge that ---

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** --- the terms, right -- that -- no
20 doubt in your mind on that?

21 **MR. MacDONALD:** And I can flatly deny the
22 second, too.

23 **MR. LEE:** And dealing with the second,
24 that's what I want to talk to you about, and the way I
25 framed it is you knew that the effect of the settlement,

1 whatever it included, would be the halting of both the
2 civil and criminal proceedings?

3 Is that not true from a practical point-of-
4 view? Wasn't that in your mind at the time?

5 **MR. MacDONALD:** No, not at all. I recall --
6 I either told him clearly it would not or the gist of the
7 conversation was -- made that apparent. I hate to speak
8 ill of the dead but he's just not recounting it the way it
9 was, sir.

10 **MR. LEE:** What did you think the point of
11 the settlement was?

12 **MR. MacDONALD:** In a small, local law
13 association, to show the Crown that I'm doing something
14 that may be of no assistance to your case but -- I'm sorry,
15 the settlement, not the call. Sorry, I missed ---

16 **MR. LEE:** No, I think we definitely have
17 your evidence ---

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** --- in terms of ---

20 **MR. MacDONALD:** Yes.

21 **MR. LEE:** --- what you thought the point
22 of ---

23 **MR. MacDONALD:** Sorry.

24 **MR. LEE:** --- the telephone calls were.

25 **MR. MacDONALD:** Sorry.

1 **MR. LEE:** What did you think the point of
2 this settlement was, if not, for the lack of a better term,
3 to get Father MacDonald and the Diocese off the hook
4 complete? What else would the purpose of the settlement
5 be?

6 **MR. MacDONALD:** To hope that that would be
7 enough for this man and that he would not be inclined to
8 continue with his allegations.

9 **MR. LEE:** In other words, you considered
10 it -- you considered the possibility that the -- at least
11 the hope of Malcolm MacDonald and Charles MacDonald and the
12 Diocese was that, "If we settle with this man civilly, he
13 may just give up on the criminal"? Is that ---

14 **MR. MacDONALD:** Sure. He may change his
15 story, soften his story, or give up.

16 **MR. LEE:** And did you consider in that time
17 that the Diocese and/or Father MacDonald would not likely
18 negotiate a settlement and pay out monies without some
19 certainty that this matter was going to be concluded?

20 **MR. MacDONALD:** Oh, I've seen a number of
21 settlements where the criminal cases continued or even were
22 initiated after them, so, no, that didn't -- it struck me
23 that what we hoped for, it struck me that what we hoped
24 for, Heidi, the staff sergeant and I, the detective
25 sergeant and I, was that when we got this out of the way

1 then we'd be in a position to clear away the spectre of
2 monetary motive for continuing on a criminal case.

3 **MR. LEE:** You'd agree with me this -- what
4 you're dealing with here is a different situation as
5 compared to a situation where a charge has already been
6 made or been laid, rather, and the matter was public and
7 there is then a civil negotiation?

8 **MR. MacDONALD:** We had seen some of that in
9 the Alfred case.

10 **MR. LEE:** You would agree with me and --
11 well, did you turn your mind to the fact that a major
12 concern of Father MacDonald and the Diocese would be this
13 becoming public?

14 **MR. MacDONALD:** No, sir.

15 **MR. LEE:** That didn't enter your mind at all?

16 **MR. MacDONALD:** No, sir. I knew it was
17 going to become public if charges were laid.

18 **MR. LEE:** And they knew it would become
19 public if charges were laid. My point is, did you consider
20 the fact that everything they were doing was to avoid that
21 very publicity and avoid this becoming public knowledge?

22 **MR. MacDONALD:** I don't recall if I thought
23 about their views on public disclosure.

24 **MR. LEE:** Let me briefly summarize. You had
25 absolutely no idea that Charles MacDonald or the Diocese

1 were attempting to buy Silmsers' silence in totality.

2 **MR. MacDONALD:** I think they were hoping to
3 discourage him after he got his money.

4 **MR. LEE:** And you say neither Malcolm
5 MacDonald nor Jacques Leduc advised you of what they were -
6 - of an attempt to put a halt to the criminal proceedings.
7 That's not the way they spun it to you?

8 **MR. MacDONALD:** Right. They spun it as
9 they're exercising their civil liberty, at least the
10 complainant -- the suspect, sir, or the defendants,
11 whatever we call them, were exercising their right to civil
12 negotiations.

13 **MR. LEE:** I take it you've spent a lot of
14 time since news of the illegal settlement became public in
15 early '94 playing these events over in your mind?

16 **MR. MacDONALD:** Yeah.

17 **MR. LEE:** But with the benefit of hindsight,
18 with the benefit of having prepared for the Inquiry, with
19 the benefit of the documents and everything else, sitting
20 here today why do you believe -- what do you believe was
21 going on when you were contacted by Malcolm MacDonald and
22 Jacques Leduc in those three telephone calls?

23 **MR. MacDONALD:** I'm not sure how to answer
24 that.

25 **MS. LEVESQUE:** Mr. Commissioner, I'm not

1 sure that that's a proper question today. I mean, the
2 witness has testified about what he took from the telephone
3 calls then. I don't know that it's helpful to ask him to
4 revisit that today and say, you know, "Do you think they
5 were trying to pull the wool over your eyes?" I just don't
6 see the utility of that question.

7 **THE COMMISSIONER:** Mr. ---

8 **MR. LEE:** We're at a public inquiry, sir.
9 We have the Crown attorney here. He was directly involved.
10 He dealt with these people. He knew these people. He's
11 been party to the telephone calls. I think it's a valid
12 question to ask him what he thinks was going on now that he
13 has the facts and now that he's had time to reflect over
14 it.

15 **THE COMMISSIONER:** How is that relevant to
16 the Inquiry?

17 **MR. LEE:** I think it's relevant to the
18 Inquiry that depending on his answer I may elicit further
19 information from him about why he believes that and -- I'm
20 not satisfied, at least in my mind. I fully understand his
21 answers in relation to why at the time he believed that
22 Malcolm MacDonald was calling him, why he believed at the
23 time Malcolm MacDonald called the second time, why he
24 believed at the time that Jacques Leduc ---

25 **THE COMMISSIONER:** Well, he's told us that

1 already. He has told us that he thought they were taking
2 the high road, that they were telling him that at that
3 time.

4 **MR. LEE:** And ---

5 **THE COMMISSIONER:** Yeah, okay, go ahead.

6 **MR. LEE:** I think I'm entitled to press him
7 a little bit on whether or not that's true and whether or
8 not he had other thoughts in his mind at the time and
9 whether or not he was in fact suspicious at the time.

10 **THE COMMISSIONER:** You can do that but what
11 does asking him for his opinion as to what things are now,
12 how is that going to -- I think you can ---

13 **MR. LEE:** I think -- can we ask the witness
14 to be excused for a moment?

15 **THE COMMISSIONER:** Sure, thank you.

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

17 **MR. LEE:** I suppose if he tells me that with
18 the benefit of hindsight nothing in his mind has really
19 changed and that he still believes that, the best I can do
20 is say to him, "Well, it wasn't reasonable to believe at
21 the time" and lay out for him why I say that. If on the
22 other hand he says, "With the benefit of hindsight, I think
23 they set me up. I think they were in on it. I have now
24 figured out exactly what's going on and here's what I say
25 was going on" ---

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

2 **MR. LEE:** --- I think I'm then entitled to
3 put that back to him and say, "Well, what's changed? What
4 information you have now that you didn't have in '94 that
5 wouldn't lead you at that time to think of it?" I mean,
6 you know, as I said it's a public inquiry. This man is
7 directly involved. He is obviously -- we've got some
8 impression from his evidence that this has affected him in
9 a great way, that he spent a lot of time thinking about it
10 and, you know, I think I should be entitled to ask him what
11 his theory is on it.

12 **THE COMMISSIONER:** Thank you.

13 There is someone ---

14 **MS. ROBITAILLE:** Mr. Commissioner, my
15 concern is that there is a lot of water under the bridge
16 from the time that these conversations occurred to today.
17 I'm not sure that this witness will be able to isolate
18 knowledge that he acquired through preparation for the
19 Inquiry, certain pieces of news that he's read, websites he
20 may have read, and so his impression of those phone
21 conversations could be tainted in any number of ways that
22 will be very difficult to weed out. That's my first
23 concern.

24 My second concern is his evidence as to what
25 he believes now, what his theory is, is not exactly

1 probative, and we know that my client's involvement in the
2 settlement was investigated and reviewed by no less than
3 five Crown attorneys and no charges were laid. So you
4 know, I think the value of the evidence is not very great.
5 And those are my submissions.

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

7 I think Ms. McIntosh?

8 **MS. McINTOSH:** As I understand what Mr. Lee
9 is saying, he's saying that if Mr. MacDonald concedes today
10 or says today, "I think I was set up" that that is somehow
11 probative of the fact that he should have known at the time
12 of these conversations that he was being set up. And my
13 friend says, "What's changed?" Well, for starters, Malcolm
14 MacDonald pleaded guilty to obstructing justice.

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

16 **MS. McINTOSH:** So to suggest that his
17 opinion today is somehow probative of something else than
18 what he's told us then and in light of what Ms. Robitaille
19 has said about all of the water under the bridge including
20 a guilty plea from one of the parties to obstructing
21 justice, it just can't be correct, Mr. Commissioner.

22 Thank you.

23 **THE COMMISSIONER:** Okay.

24 **MR. LEE:** Can I just very, very briefly?

25 **THE COMMISSIONER:** Yes, yes, yes.

1 **MR. LEE:** All right.

2 The book on Malcolm MacDonald on this has
3 been written. My version of events that I'll put to you at
4 the end of the day in relation to Mr. Leduc is going to be
5 far different from Ms. Robitaille's and that's what I'm
6 trying to focus.

7 **THE COMMISSIONER:** Right, but I think you're
8 going about it in a way that you're asking him the wrong
9 question to start off with. I don't know that his opinion
10 is all that relevant at this point but I'm sure that you
11 can put to him, "Well, you know, we now know this. You
12 know, how would that factor in?" And so if you put in the
13 facts that you want to factor in, I think I might be more
14 inclined to have you do that.

15 **MR. LEE:** I think I understand your ruling,
16 sir, and I think for the most part I have the evidence I
17 need. I have a couple of questions that I don't think
18 anybody is going to have an issue with.

19 **THE COMMISSIONER:** All right. Thank you.
20 Can we get the witness back in, please?

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

22 **THE COMMISSIONER:** So sir, I think you've
23 heard this before but when witnesses are asked to leave it
24 has nothing to do with your testimony. It's an
25 administrative matter that we have to deal with, the

1 admissibility of certain questions.

2 **MR. MacDONALD:** Thank you.

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

4 Go ahead, Mr. Lee.

5 **MR. LEE:** You knew Malcolm MacDonald by 1993
6 at least fairly well in a professional capacity as a lawyer
7 in town?

8 **MR. MacDONALD:** I thought I did.

9 **MR. LEE:** And there's information in one of
10 his statements that he was called to the Bar in June of
11 1955. He was a very senior lawyer by the time that you
12 were dealing with him in '93?

13 **MR. MacDONALD:** Yes, sir. He had Judge
14 Fitzpatrick's ear in a particular way.

15 **MR. LEE:** We've had evidence here that
16 Mr. Leduc was called to the Bar in 1978, so he'd been out
17 about 15 years by 1993.

18 **MR. MacDONALD:** Right.

19 **MR. LEE:** And you've told us here that you
20 were called to the Bar in 1987.

21 **MR. MacDONALD:** Yes, sir.

22 **MR. LEE:** And became the fulltime Crown in
23 1992.

24 **MR. MacDONALD:** Yes, sir.

25 **MR. LEE:** You were about five years out at

1 the time.

2 **MR. MacDONALD:** Yes, sir.

3 **MR. LEE:** And you recognized at the time, I
4 take it, Mr. Leduc and Mr. MacDonald as senior members of
5 the Bar?

6 **MR. MacDONALD:** Yes, I would have considered
7 them such.

8 **MR. LEE:** Moving on.

9 You understood that Silmser initially
10 alleged abuse by both Charles MacDonald and Ken Seguin;
11 you've told us that. And Mr. Engelmann took you yesterday
12 to the fact that in March of 1993 Mr. Silmser told Ms.
13 Sebalj that he wished to proceed. He could only -- he
14 could only handle essentially proceeding against Charles
15 MacDonald. He couldn't do -- he couldn't go with both at
16 the same time. You recall that?

17 **MR. MacDONALD:** Yes, sir.

18 **MR. LEE:** And you understand that his
19 original handwritten statement was received in December of
20 '92?

21 **MR. MacDONALD:** Mr. Silmser's? Yes, sir.

22 **MR. LEE:** Yeah, and in January of '93 you
23 now know that he was interviewed by the Cornwall Police
24 Service?

25 **MR. MacDONALD:** Yes.

1 **MR. LEE:** So in March of '93 we have
2 Mr. Silmsers saying, "Let's go with Charles MacDonald only."

3 **MR. MacDONALD:** Yes, sir.

4 **MR. LEE:** And that's -- depending on the
5 date, it's a couple of months after the interview of
6 January '93 where you now know he provided some details of
7 the abuse by Mr. Seguin.

8 **MR. MacDONALD:** Yes, sir.

9 **MR. LEE:** Did you at any point instruct the
10 Cornwall Police Service to more closely examine why
11 Mr. Silmsers advised that he wished to not proceed at that
12 time against Mr. Seguin?

13 **MR. MacDONALD:** Yes, sir.

14 **MR. LEE:** And do you recall what your
15 instruction was?

16 **MR. MacDONALD:** To go back and to tell
17 Mr. Silmsers -- encourage him to try to have the
18 wherewithal, try to collect the wherewithal to disclose
19 this one too.

20 **MR. LEE:** And ---

21 **MR. MacDONALD:** The detail of this
22 disclosure.

23 **MR. LEE:** Do you recall whether or not you
24 asked the Cornwall Police to inquire into whether or not
25 there'd been any contact between Silmsers and Seguin?

1 **MR. MacDONALD:** No, sir, I don't recall. I
2 don't believe I did.

3 **MR. LEE:** Or whether you asked them to flesh
4 out the nature of any contacts that they may have had?

5 **MR. MacDONALD:** I don't recall.

6 **MR. LEE:** Do you remember turning your mind
7 at that time to the question of whether or not it was
8 possible that Seguin had exerted some influence over
9 Silmsers?

10 **MR. MacDONALD:** No, sir, I don't recall.

11 **MR. LEE:** Just not something that occurred
12 to you at the time?

13 **MR. MacDONALD:** It didn't occur to me.

14 **MR. LEE:** Can we turn up, please, Exhibit
15 228? I think we looked at this earlier. Hopefully it's
16 still there.

17 **THE COMMISSIONER:** What is it?

18 **MR. LEE:** This is the April 2nd, 97 memo from
19 Robert Pelletier to Peter Griffiths.

20 **THE COMMISSIONER:** Right.

21 **MR. MacDONALD:** Yes, sir.

22 **MR. LEE:** And if we look at the second-last
23 page, page 9, the second paragraph, Mr. Pelletier has, to a
24 large extent, outlined many of the allegations contained in
25 the Dunlop-Bourgeois brief, as you referred to it

1 yesterday, and he says:

2 "Needless to say, I am not convinced
3 that these allegations are well
4 founded."

5 And he goes on and he says:

6 "Given three unfortunate
7 coincidences..."

8 These people are convinced of the existence
9 of a conspiracy as it relates to your involvement.

10 **MR. MacDONALD:** Yes, sir.

11 **MR. LEE:** And in the next paragraph, midway
12 through he says:

13 "A decision not to recommend charges
14 would in all likelihood be seen as the
15 latest in the obstructive measures
16 employed by those in authority. It is
17 in this connection that my personal as
18 well as professional affiliations with
19 Murray MacDonald become a complicating
20 factor. Your views in this regard
21 would of course be very much
22 appreciated."

23 This is Mr. Pelletier writing to
24 Mr. Griffiths. Do you know what he is referring to when he
25 says his, "personal as well as professional affiliations"

1 with you? Specifically I'm interested in the personal
2 relationship there.

3 **MR. MacDONALD:** We were close personal
4 friends. We are close personal friends.

5 **MR. LEE:** And you were in 1997, I take it?

6 **MR. MacDONALD:** Yes, sir. By virtue of his
7 new role in the system we don't have regular contact any
8 more but we're still -- we're still on good terms.

9 **MR. LEE:** Where did that friendship
10 originate, just generally? I mean ---

11 **MR. MacDONALD:** Undergrad ---

12 **MR. LEE:** Okay, so it goes back a fair ways.

13 **MR. MacDONALD:** Yes, sir.

14 **MR. LEE:** And so certainly by '93 and when
15 all of this is happening you were at that point good
16 friends of Peter Griffiths?

17 **MR. MacDONALD:** Peter Griffiths or Bob
18 Pelletier?

19 **MR. LEE:** Sorry, Robert Pelletier. Robert
20 Pelletier, sorry.

21 **MR. MacDONALD:** Yes, sir.

22 **THE COMMISSIONER:** He does that sometimes
23 just to see if we're ---

24 **MR. LEE:** Having never met any of these
25 people, it's hard to keep them straight.

1 **THE COMMISSIONER:** I understand, Mr. Lee.

2 **MR. LEE:** I want to just briefly ask you
3 about a woman named Geraldine Fitzpatrick.

4 **MR. MacDONALD:** Yes.

5 **MR. LEE:** Do you know her, sir?

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

7 **MR. LEE:** And you know she's a Children's
8 Aid Society worker?

9 **MR. MacDONALD:** Yes, sir, I know her. I
10 know her and I know her brother.

11 **MR. LEE:** Sorry, her brother?

12 **MR. MacDONALD:** Yes, sir.

13 **MR. LEE:** Mr. Chisholm has picked up his
14 pen.

15 If we can look, please, at Exhibit 2353.
16 Are you aware that Ms. Fitzpatrick testified
17 here?

18 **MR. MacDONALD:** Yes, sir.

19 **MR. LEE:** While Madam Clerk is getting that
20 I can tell you that in February of 2008 Ms. Fitzpatrick, in
21 preparation for the Inquiry, was interviewed by Bill
22 Carriere, among others, just to see what information she
23 had about the Inquiry. We've been produced what I'll
24 describe as a summary of that interview, where she says a
25 number of things and I want to put some of those to you and

1 get your response; okay?

2 **MR. MacDONALD:** Thank you, ma'am.

3 **MR. LEE:** Let me start by asking you whether
4 you ever discussed, after the media got a hold of the
5 Silmsen settlement and the -- it was well known that there
6 was an illegal clause and the OPP and the OPS had come in
7 to look at things.

8 Did you at any point sit down with
9 Ms. Sebalj to discuss what had happened and the fallout, or
10 anything along those lines?

11 **MR. MacDONALD:** No, sir.

12 **MR. LEE:** To this day have you ever done
13 that?

14 **MR. MacDONALD:** No, sir. It was at a time
15 when we couldn't talk about it because she was under
16 investigation, other police services or my supervisor were
17 involved, so it was a topic that we both recognized we
18 should stay away from.

19 **MR. LEE:** Do you recall having a specific
20 conversation with her even about that, or was it just
21 understood that you would both ---

22 **MR. MacDONALD:** I understood it. I would
23 imagine she did too. She didn't articulate it to me but
24 she understood, you know, the big picture.

25 **MR. LEE:** And have you ever met

1 Ms. Fitzpatrick?

2 MR. MacDONALD: Yes, yes.

3 MR. LEE: In a professional capacity, I take
4 it.

5 MR. MacDONALD: Yes, yes.

6 THE COMMISSIONER: But you also knew her
7 personally?

8 MR. MacDONALD: Only professionally. Her
9 brother is a few years older than me but he grew up in
10 Lancaster, in South Lancaster, which is the suburb of
11 Lancaster.

12 THE COMMISSIONER: Oh yes.

13 (LAUGHTER/RIRES)

14 MR. MacDONALD: And so we would run into his
15 brother from time to time.

16 MR. LEE: The -- I'm going to take you to --
17 all at once I'm going to take you to four pages of this.
18 I'm going to point you to some bullets. I'm going to let
19 you read them and then -- they all deal with the same
20 matter and I'm going to ask you generally for comment;
21 okay?

22 MR. MacDONALD: Thank you.

23 MR. LEE: We start on page 1, the fourth-
24 last bullet:

25 "Heidi said she didn't know why they

1 were making issue in this case now.
2 Heidi said she had discussed the case
3 with the Crown attorney and he had said
4 she didn't have a case. Now they want
5 to open it up as a case."

6 Okay? And this all stems from Ms. Sebalj
7 having received some allegations of abuse from a woman
8 named Jeannette Antoine; okay? And Ms. Sebalj asked
9 Ms. Fitzpatrick to come along for an interview and they had
10 many discussions about many things during the course of
11 that; okay?

12 So that's the first bullet. If we turn over
13 to the second page, they're talking in the context of
14 Ms. Fitzpatrick saying, "Here's what Heidi Sebalj told me
15 about the Silmsers affair." In the second bullet:

16 "Heidi had gone to the Crown attorney.
17 By the time Heidi goes to the Crown,
18 victim had gone to the Diocese. Victim
19 being offered a settlement. Murray
20 MacDonald told Heidi she didn't have a
21 case. Heidi felt very frustrated."

22 And then skip a bullet and:

23 "Heidi is unhappy about opinion of
24 Murray MacDonald and goes back and
25 speaks to a few officers."

1 Okay? Then if we turn over to page 5.

2 **MR. MacDONALD:** Yes, sir.

3 **MR. LEE:** And if you can start just below
4 halfway on the page, there's a bullet that reads:

5 "Geri said she asked Heidi why she
6 wasn't going to her supervisor."

7 You see that?

8 **MR. MacDONALD:** Yes, sir.

9 **MR. LEE:** And if you can just read the rest
10 of that page to yourself.

11 **MR. MacDONALD:** Yes, sir.

12 **MR. LEE:** You've read that already?

13 **MR. MacDONALD:** Yeah.

14 **MR. LEE:** So she's suggesting that --
15 Ms. Fitzpatrick is suggesting that Heidi Sebalj told her
16 that she had some issue with both you and Luc Brunet. Do
17 you see that there?

18 **MR. MacDONALD:** Yes.

19 **MR. LEE:** And in the second-last bullet:

20 "Geri says that Heidi wanted to bring
21 the victim to the Crown Attorney but
22 basically he was protecting somebody
23 and that the chain of command was going
24 to silence her. That's what she felt."

25 Okay?

1 MR. MacDONALD: Yes.

2 MR. LEE: Finally, if we can turn to page 11
3 and just above the midpoint of the page, this relates to
4 the Antoine matter.

5 "Bill" is Bill Carriere being referred to,
6 he's conducting the interview:

7 "Bill asked Geri if Heidi provided her
8 with any details as to why Heidi was
9 acting on the matter. Geri says that
10 it was because of the way that the
11 Crown Attorney handled the priest's
12 case and Geri says she was becoming
13 suspicious; this is not the right chain
14 of command or something. And now the
15 agency is in trying to read her file.
16 She's starting to think what is going
17 on here."

18 Things along those lines; okay?

19 When she testified here, Ms. Fitzpatrick was
20 adamant that Heidi Sebalj told her that Heidi wanted to
21 charge Father MacDonald and that you would not let her;
22 okay?

23 And she also told us that Heidi said that
24 she could not trust you or Luc Brunet with the Jeannette
25 Antoine investigation because of how she'd been let down on

1 the Father MacDonald investigation; okay?

2 That was Ms. Fitzpatrick's evidence here and
3 you've seen what she said; a summary, granted, but she
4 confirmed that it was accurate.

5 So question number 1, did you ever have a
6 discussion with ---

7 **MR. MANDERVILLE:** Sorry, Mr. Commissioner.
8 Sorry to interrupt my friend.

9 You will recall that Ms. Fitzpatrick resiled
10 from her statement to a degree, in that she acknowledged
11 that her statement was inaccurate to the extent that she
12 suggested Heidi didn't trust Luc Brunet.

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

14 **MR. MANDERVILLE:** And she repeatedly resiled
15 from that.

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

17 **MR. LEE:** That's fair, sir.

18 **THE COMMISSIONER:** Sure.

19 **MR. LEE:** I didn't frame that properly.

20 You understood the distinction Mr.

21 Manderville said about ---

22 **MR. MacDONALD:** Yes.

23 **MR. LEE:** Did you ever have a discussion
24 with Heidi Sebalj about the fact that she felt you had let
25 her down on the Charles MacDonald case?

1 **MR. MacDONALD:** Never.

2 **MR. LEE:** Did you ever have a discussion
3 with Heidi Sebalj that she wanted to charge Charles
4 MacDonald after all and that she felt you would not let
5 her?

6 **MR. MacDONALD:** Never.

7 **MR. LEE:** Do you have any knowledge that
8 Ms. Sebalj had concerns about your impartiality as a Crown?

9 **MR. MacDONALD:** I don't -- she didn't think
10 I had an impartial -- that I was impartial -- that I was
11 biased.

12 **MR. LEE:** She never confronted you about any
13 of these matters? You never had a discussion with Ms.
14 Sebalj about any of this?

15 **MR. MacDONALD:** Never. And I had a number
16 of conversations with her on a number of files after that
17 fact, and our relationship in terms of a professional
18 comfort zone didn't change in the least bit. As a matter
19 of fact, I would think that both having gone what we went
20 through, I had the sense that we had more respect for one
21 another than before. At least we knew each better, you
22 know?

23 **MR. LEE:** Right.

24 **MR. MacDONALD:** So I am shocked to see this
25 allegation and I don't believe that Heidi said any of it.

1 **MR. LEE:** We know that Ms. Sebalj went off
2 on sick leave at some point.

3 **MR. MacDONALD:** I just don't recall when but
4 ---

5 **MR. LEE:** Right. Did you at a -- I may have
6 asked this but I'm not certain so I'm going to ask it again
7 -- did you at any point have an opportunity to sit down at
8 any time prior to today with Heidi Sebalj and talk about
9 the MacDonald matter and talk about ---

10 **MR. MacDONALD:** No.

11 **MR. LEE:** So you've never done that?

12 **MR. MacDONALD:** No.

13 **MR. LEE:** Okay.

14 I think out of fairness, while I'm here,
15 sir, if you can turn to page 16. Midway down the page
16 there's a bullet that begins:

17 "Geri proceeds to explain our
18 involvement."

19 Do you see that?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. LEE:** There are some names there that we
22 certainly don't need to say aloud, but I'd like to give you
23 an opportunity to read the rest of that page ---

24 **MR. MacDONALD:** Okay.

25 **MR. LEE:** --- all of page 17 and the first 6

1 bullets of page 18; okay? These relate directly to you and
2 I'm going to give you an opportunity to comment.

3 MR. MacDONALD: Next page, please, up.

4 MR. LEE: Next page, please, Madam Clerk.

5 MR. MacDONALD: I'm reading it a little more
6 slowly than the last one. I'm having to read some lines
7 twice. The next -- sorry.

8 MR. LEE: Scroll down, please, Madam Clerk.

9 MR. MacDONALD: Next.

10 MR. LEE: And then, just as I said, the
11 first six bullets or so, sir.

12 MR. MacDONALD: Okay. Thank you.

13 MR. LEE: Do you have any recollection of
14 the case that Ms. Fitzpatrick is referencing here?

15 MR. MacDONALD: Not particularly.

16 MR. LEE: Do you have any recollection of
17 her having sought advice from you at any point?

18 MR. MacDONALD: Yes.

19 MR. LEE: Do you have any recollection of
20 her having worked on a case with Kevin Malloy, in
21 particular, and having sought your advice?

22 MR. MacDONALD: No independent recollection.

23 MR. LEE: Do you have any recollection of a
24 meeting with Ms. Fitzpatrick as she describes on page 17?

25 MR. MacDONALD: Well, as she describes, I

1 may have met with her on a file or that file with Kevin
2 Malloy. I believe that's possible. The rest is melodrama.

3 **MR. LEE:** You know the gist of it: "He was
4 so rude to me. He was degrading and attacking me."

5 **MR. MacDONALD:** Yes.

6 **MR. LEE:** "Insulting me in a very demeaning
7 way". She was shocked, she was going to leave the agency.

8 **MR. MacDONALD:** Well, I'm well known to be a
9 degrader of members of the CAS. It's preposterous.

10 **MR. LEE:** You ---

11 **MR. MacDONALD:** I don't recall ever being
12 anything less than courteous and professional with any
13 member of the CAS, even when their members were -- had
14 made, you know, steps that I could have been critical
15 about; not in terms of bad faith but just in terms of
16 errors committed in the exercise of their discretion.

17 And so it's -- I mean, it's one thing for
18 somebody to say from their point-of-view they felt that
19 they were treated rudely or insulted in a meeting,
20 everybody's got their right to give a perspective here, but
21 I don't believe that I ever treated her or anybody else at
22 the CAS in that manner.

23 **MR. LEE:** Do you have any recollection of
24 every having -- ever having had any kind of confrontation
25 or anything of the sort with Ms. Fitzpatrick?

1 **MR. MacDONALD:** No. I thought we were on
2 good civil terms.

3 **MR. LEE:** I have ---

4 **MR. MacDONALD:** Didn't I prosecute this
5 case?

6 **THE COMMISSIONER:** No. It doesn't look like
7 it was prosecuted.

8 **MR. MacDONALD:** Oh.

9 **MR. LEE:** That's certainly the information
10 we have here. I mean, this is what I'm relying on.

11 **MR. MacDONALD:** Because I've prosecuted
12 cases of hers, I think, before.

13 **MR. LEE:** She's been a CAS worker for some
14 time.

15 **MR. MacDONALD:** For some time. I don't know
16 how long but -- I don't know if she predates me, but for
17 some time.

18 **MR. LEE:** I have two matters I need to deal
19 with you on, sir. I'm ---

20 **MR. MacDONALD:** The other piece of the last
21 page you showed me?

22 **MR. LEE:** Yeah.

23 **MR. MacDONALD:** I wish that community
24 rumours had -- they'd told me about.

25 **MR. LEE:** The last page is in relation to

1 rumours about ---

2 MR. MacDONALD: About my father.

3 MR. LEE: Okay.

4 And two matters I need to deal with. Both
5 hopefully won't take too long. The first is Gilf Greggain.
6 You were ---

7 MR. MacDONALD: Yes, sir.

8 MR. LEE: --- asked a few questions. Gilf
9 Greggain.

10 MR. MacDONALD: Yes, sir.

11 MR. LEE: The schoolteacher Mark Latour was
12 the complainant. You recall that?

13 MR. MacDONALD: I don't remember that case.

14 MR. LEE: But you recall being asked about
15 it in-chief by Mr. Engelmann briefly?

16 MR. MacDONALD: Yes, sir.

17 MR. LEE: I'm on for Mr. Latour. I have a
18 few questions I'd like to ask you. If we can start,
19 please, at Exhibit 362.

20 MR. MacDONALD: If you can bring it up, that
21 would be fine.

22 MR. LEE: Sure. These are Jeff Carroll's
23 notebooks -- notes, he was the investigation officer, he
24 looked at these briefs ---

25 THE COMMISSIONER: What exhibit again?

1 **MR. LEE:** Three six two (362).

2 **THE COMMISSIONER:** Thank you.

3 **MR. LEE:** And Madam Clerk, if we can go to
4 the third page of the document, Bates 229, down at the
5 bottom? We have a Monday, January 6th, 2003 entry and at
6 11:15, we see Officer Carroll's notes:

7 "All tapes and brief with criminal
8 record of victim turned over to Guy
9 Simard, hand-delivered by myself."

10 Do you see that?

11 **MR. MacDONALD:** Yes, sir.

12 **MR. LEE:** And then over on the next page,
13 Mr. Engelmann briefly looked at the fact that later on
14 Officer Carroll has a discussion with you about it and that
15 you've reviewed the videos and are of the opinion -- and it
16 goes on. And I'll get into the opinion with you.

17 If you're the one providing the opinion
18 here, can we presume that you would have reviewed the
19 materials that Officer Carroll sent over?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. LEE:** And that would have included the
22 videos and the Crown brief?

23 **MR. MacDONALD:** Yes, sir.

24 **MR. LEE:** And presumably the criminal record
25 of the complainant?

1 **MR. MacDONALD:** I presume so.

2 **MR. LEE:** And as part of your review of a
3 Crown brief in 2003, would you have endeavoured to assess
4 the adequacy of the police investigation?

5 **MR. MacDONALD:** Possibly.

6 **MR. LEE:** Let me give you an example if --
7 an hypothetical example, if Mr. Latour had said "One of my
8 classmates witnessed the abuse" and Officer Carroll doesn't
9 appear to have followed up with the classmate, that's
10 something that you would take note of and you would go back
11 to Officer Carroll obviously; is that ---

12 **MR. MacDONALD:** Possibly.

13 **MR. LEE:** And -- well, I mean, is it one
14 goal of your review of a Crown brief to assess the
15 investigative steps taken or is it not?

16 **MR. MacDONALD:** I think it's fair to say
17 that -- was this pre- or post-charge? Can you recall?

18 **MR. LEE:** He was never charged.

19 **MR. MacDONALD:** Never charged.
20 Investigative flaws, in that context, we oftentimes would
21 point out to the officers.

22 **MR. LEE:** Okay. And I take it you had
23 situations where that's occurred. You've reviewed a brief
24 and noted flaws and pointed those out?

25 **MR. MacDONALD:** Yes, sir, I pointed out new

1 areas to explore, yes.

2 MR. LEE: And I take it, in particular, if
3 you're being asked to comment pre-charge in a situation
4 where an officer is coming to you saying that the does not
5 have RPG ---

6 MR. MacDONALD: M'hm.

7 MR. LEE: --- you certainly would want to
8 satisfy yourself that the investigation's been completely
9 thorough?

10 MR. MacDONALD: Well, I recall that Guy
11 Simard and I scrummed this file.

12 MR. LEE: Right.

13 MR. MacDONALD: Scrum meaning a second
14 opinion ---

15 MR. LEE: Yeah.

16 MR. MacDONALD: --- review. And I don't --
17 I have the impression it was sort of a thorough review. I
18 don't recall if we set Jeff off for further follow-up. I
19 don't recall if Guy did. Guy met with him first and I
20 don't know -- I don't recall. And I would -- I can't
21 speculate on that.

22 MR. LEE: What we have on the screen:

23 "Discussion with Murray MacDonald re: *R*
24 *and Greggain*, Murray has reviewed the
25 case videos and is of the opinion that

1 no reasonable prospect of conviction
2 exist and feels that my determination
3 that R&PG to lay a charge has not been
4 established. Will not consider having
5 the victim take a polygraph. Points to
6 credibility problems of victim, lack of
7 corroboration, and witnesses whose
8 credibility is in question. Advised I
9 will follow up with written letter of
10 understanding regarding our
11 conversation."

12 Do you see that?

13 **MR. MacDONALD:** Yes, sir.

14 **MR. LEE:** And the points that you set out,
15 number one is credibility problems of victim; do you see
16 that?

17 **MR. MacDONALD:** Yes, sir.

18 **MR. LEE:** And the alleged victim in this
19 case was, as I said, a man named Marc Latour. Can you help
20 me out at all with what credibility problems of the victim
21 you were referring to here?

22 **MR. MacDONALD:** I'm sorry, I can't recall.

23 **MR. LEE:** Do you know Mr. Latour, sir? Does
24 that name ring a bell to you?

25 **MR. MacDONALD:** No, sir.

1 **MR. LEE:** Do you recall ever having had any
2 dealings with him in relation to a fraud charge?

3 **MR. MacDONALD:** No, sir.

4 **MR. LEE:** Doesn't ring a bell at all?

5 **MR. MacDONALD:** Prosecuting him?

6 **MR. LEE:** Yes.

7 **MR. MacDONALD:** I don't recall.

8 **MR. LEE:** All right. You don't recall a
9 situation where a fraud charge was withdrawn on the eve of
10 trial against Mr. Latour?

11 **MR. MacDONALD:** No, sir.

12 **MR. LEE:** You don't recall him being rather
13 irate about the entire thing? Doesn't ring a bell at all?

14 **MR. MacDONALD:** No, no, sir.

15 **MR. LEE:** Do you have -- not the greatest
16 question I'll ever ask but I'll ask it anyways; do you have
17 any recollection of having assessed Mr. Latour's
18 credibility or this Crown brief with any information other
19 than was in the Crown brief at the time?

20 **MR. MacDONALD:** I don't recall sir, sorry.

21 **MR. LEE:** So -- how would that work
22 generally? If you have some knowledge of a criminal
23 complainant that is not encapsulated in any way in the
24 Crown brief ---

25 **MR. MacDONALD:** Yes, sir.

1 **MR. LEE:** --- is that proper to consider?

2 Is that improper to consider?

3 **MR. MacDONALD:** I think it's fair to say I
4 sometimes do.

5 **MR. LEE:** Okay. But you don't recall doing
6 that in this case?

7 **MR. MacDONALD:** No, I have no recollection
8 of this. The only thing that I can recall -- garnered is I
9 think I saw a screening form or something on the file
10 recently ---

11 **MR. LEE:** Right.

12 **MR. MacDONALD:** --- if you have one in your
13 record somewhere. I may have -- that's all my memory is of
14 this case. Although it's very, very, very common for me to
15 scrum a file with an assistant Crown attorney or two.

16 **MR. LEE:** Right.

17 **MR. MacDONALD:** And usually Mr. Simard.

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

19 **MR. MacDONALD:** Our scrums are usually the
20 most animated in terms of looking at things in detail.

21 **MR. LEE:** I spent a fair of time on this
22 investigation with Officer Carroll. I'll leave it there.

23 The final area I want to ask you about is an
24 investigation conducted by Shawn White of the Cornwall
25 police.

1 **MR. MacDONALD:** Yes, sir.

2 **MR. LEE:** And allegations made by Jeannette
3 Antoine and then throughout the course of that
4 investigation, it mushroomed and many allegations were
5 received by other persons in relation to the Second Street
6 Group Home. Do you have any recollection of this at all?

7 **MR. MacDONALD:** No, sir. I don't even
8 remember the home.

9 **MR. LEE:** Let me show you a document. Could
10 we have Exhibit 2214, please?

11 You know Shawn White, I take it?

12 **MR. MacDONALD:** Yes, sir, yeah.

13 **MR. LEE:** I think you can put it on the
14 screen, that's fine. I'm looking specifically -- I'll give
15 you the specific Bates page, 717 -- yeah, 7176177. These
16 are Officer White's notes, sir. If we go to the second
17 half of the page, Madam Clerk, we have an entry the 19th of
18 October 1994, 1400 hours, it reads:

19 "Murray MacDonald and I met with
20 Regional Crown Peter Griffiths, he
21 indicated he read the brief and was in
22 agreement with us that there was no
23 evidence to support Ms. Antoine's
24 allegations against Bryan Keough."

25 He was a former CAS worker against whom Ms.

1 Antoine had alleged abuse.

2 MR. MacDONALD: I see.

3 MR. LEE: "In regards to other sexual
4 misconduct by other workers, after
5 March '76, it was felt that given the
6 fact that none of the complainants were
7 willing to make a formal complaint, and
8 because in each their own..."

9 The gist of it, there were problems in
10 memory and establish to obtain the fact. Do you see that?

11 MR. MacDONALD: Yes.

12 MR. LEE: So he says in relation to that, we
13 have Antoine and we have others. Okay? In relation to the
14 others, the first problem noted is that none of the
15 complainants were willing to make a formal complaint; do
16 you see that?

17 MR. MacDONALD: Yes, sir.

18 MR. LEE: And then the second bullet on that
19 page:

20 "At best the Crown could show common
21 assault which a trial would be a
22 summary conviction offence which after
23 18 years would have elapsed because of
24 the Statute of Limitations. Mr.
25 Griffiths will forward me a

1 correspondence on this within a few
2 days."

3 Okay?

4 **MR. MacDONALD:** Yes, sir.

5 **MR. LEE:** Madam Clerk, if you can pull up
6 Exhibit 1339 on the screen?

7 This is just a letter -- I don't know if the
8 screen's fine or not? This was notice given by -- I can
9 give you the Bates page if you want, 7175882.

10 Sir, this is a letter from Peter Griffiths,
11 the Regional Director of Crown Attorneys, to Shawn White on
12 October 24th, so five days after the notebook entry. And
13 if we look at -- he begins by saying that in early
14 September he had been sent the entire investigation brief
15 with respect to the allegations made by Antoine. In the
16 second paragraph:

17 "I've now completed my review and I've
18 met with yourself and Crown Attorney
19 Murray MacDonald who has conducted a
20 similar review."

21 Okay?

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

23 **MR. LEE:** In the next paragraph he says:

24 "For simplicity, I've divided my review
25 into two parts and like at the meeting

1 part one is Antoine and part B is the
2 other allegations."

3 Okay? And if we go to go the second page,
4 Madam Clerk, he spends the first three paragraphs talking
5 about the Antoine allegations and I'm not going to deal
6 with that with you.

7 The last paragraph he writes:

8 "The allegations that report sexual
9 misconduct suffered by other victims is
10 subject to several apparently
11 insurmountable impediments. I
12 understand that none of the victims
13 wish to make a formal complaint to the
14 police about any sexual assaults
15 suffered by them in the 1970s,
16 notwithstanding that they have had
17 every opportunity and encouragement to
18 do so during the course of this
19 investigation and, indeed, the last 15
20 years. Some of the victims have been
21 adamant to the point of hysteria on
22 this instruction to the police."

23 Do you see that?

24 **MR. MacDONALD:** Yes, sir.

25 **MR. LEE:** And he goes on, in fairness, on

1 the next page to set out other impediments. Do you see
2 that at the top of the page?

3 **MR. MacDONALD:** Yes, sir.

4 **MR. LEE:** And the second-last paragraph he
5 says that regretfully, notwithstanding a most thorough
6 investigation, he is of the opinion that there are no RPG
7 to warrant the laying of criminal charges and if he's wrong
8 there's no RPC either.

9 And he says:

10 "I have had the benefit of the wisdom
11 and advice of Murray MacDonald in
12 reaching this opinion and he joins me
13 in my conclusion, if not in my choice
14 of words."

15 Okay?

16 **MR. MacDONALD:** Yes, sir.

17 **MR. LEE:** And has anything in that letter
18 refreshed your memory at all about ---

19 **MR. MacDONALD:** No, sir.

20 **MR. LEE:** --- these matters?

21 **MR. MacDONALD:** No, I'm sorry.

22 **MR. LEE:** I take it, given that you were at
23 the meeting and that Mr. Griffiths has written this letter,
24 you don't take any issue with the fact that you obviously
25 would have reviewed the Crown brief or discussed it with

1 Mr. Griffiths?

2 MR. MacDONALD: Right. The last point is
3 that I wouldn't have chosen his words because he is a much
4 better writer than I am.

5 MR. LEE: The reason I'm bringing you to
6 this, sir, is that both in the meeting and in the letter,
7 the first issue that is raised in support of Mr. Griffiths'
8 conclusion that it would not be prudent to proceed with
9 charges, is that there are no willing complainants; okay?

10 MR. MacDONALD: I see.

11 MR. LEE: And it certainly when you review
12 the brief, he's quite right that there are complainants who
13 flatly refuse to participate who won't proceed and who just
14 don't want to be involved.

15 MR. MacDONALD: I see.

16 MR. LEE: I'm going to just take you to a
17 couple of examples though where it appears that there are
18 some willing complainants and I just want to see perhaps if
19 this will jog your memory and whether or not this was
20 discussed with Mr. Griffiths.

21 The Crown brief is Exhibit 2210 and we're
22 going to be dealing with some monikers here, sir.

23 MR. MacDONALD: Okay.

24 MR. LEE: Of three people in particular.

25 MR. MacDONALD: Okay. I won't say any

1 names.

2 **MR. LEE:** Yeah. We'll have Madam Clerk show
3 you the names or perhaps even write just on ---

4 **THE COMMISSIONER:** We have the system now,
5 Mr. ---

6 **MR. LEE:** So let's get this up first and
7 then we can -- I'd like to start, Madam Clerk, at -- I'll
8 give you the Bates page, 7175409. And can you show him
9 three monikers, please, 84, 86 and 14?

10 **MR. MacDONALD:** Okay.

11 **(SHORT PAUSE/COURTE PAUSE)**

12 **MR. MacDONALD:** Yes, sir.

13 **MR. LEE:** Okay. So as I said, the exhibit
14 we're looking at ---

15 **MR. MacDONALD:** Sir, I went to high school
16 with the third name.

17 **MR. LEE:** Oh, okay. That was unexpected,
18 one of my clients or perhaps not. Which was the third name
19 you showed him? Okay, never mind. Thank you for that
20 though.

21 The first person we're looking at here is an
22 interview with C-84, Madam Clerk, if you can just go to the
23 top of the page just to refresh the witness' memory, and we
24 see the witness there. Do you see that, sir?

25 **MR. MacDONALD:** Yes, sir.

1 **MR. LEE:** And if you go to the very bottom
2 of the page, Madam Clerk, and I don't want to belabour
3 anything here, I just want to try to put this to you. The
4 final paragraph begins:

5 "I recall a time..."

6 And three rows down in the middle of the
7 page, C-84 say:

8 "Also, I remember a time in which one
9 of the other kids were given a strap to
10 the extent of blistering and bleeding.
11 I myself was given the strap to the
12 point of blistering and bruising and it
13 was so painful I couldn't even sit but
14 was made to sit down on a hard-bottomed
15 chair which only increased the pain. I
16 myself was involved in an isolated
17 incident where Mike, a staff member,
18 and myself were arguing and I was
19 swearing at him and..."

20 Well, I'll just read it.

21 "...I was swearing at him and he was
22 swearing back at me and he told me to
23 stop swearing or I would have to go to
24 the garage and stay there until I
25 cooled down. I told him he could not

1 make me and he lifted me off the ground
2 and literally put me through the
3 hallway wall right into the living
4 room, at which point I suffered from
5 bruising."

6 You see that?

7 **MR. MacDONALD:** Yes, sir.

8 **MR. LEE:** Serious allegations?

9 **MR. MacDONALD:** Yes, sir.

10 **MR. LEE:** We have blistering and bleeding
11 and bruising and being put, as he says it, literally
12 through the wall into the living room.

13 **MR. MacDONALD:** Yes, sir.

14 **MR. LEE:** Would those, in your opinion, have
15 amounted to more than a common assault?

16 **MR. MacDONALD:** I can speculate. It's hard
17 to say with a one liner vis-à-vis opinions made on a
18 broader perspective of a whole file, you know. At law --
19 is that one line potentially raising criminal liability as
20 far as *actus reus* is concerned; yes.

21 **MR. LEE:** I'm concerned more about -- part
22 of the opinion is that the allegations disclosed common
23 assault and there's a limitation period.

24 **MR. MacDONALD:** I can't say anything more
25 than -- that one line would, I think, hold bare bones, hold

1 the *actus reus* for assault/bodily harm.

2 MR. LEE: Let's go to page ending 412, Madam
3 Clerk. This is just the end of the interview.

4 Officer White asks, in the middle of the
5 page:

6 "Did you consider the physical
7 discipline at the Second Street Group
8 Home abusive and if so in what way?"

9 And the answer is:

10 "Yes, I do not believe that any child,
11 regardless of his or her actions,
12 should be hit with a belt until he or
13 she bruises, blisters or bleeds. I
14 don't believe for whatever the reason a
15 child, as in my case, should be put
16 from one room to the other by being
17 thrown right through the wall."

18 Do you see that?

19 MR. MacDONALD: Yes, sir.

20 MR. LEE: And then at the end, at the very
21 last question:

22 "Is there anything else that you would
23 like to tell me?"

24 The answer:

25 "This time, I feel I have told you all

1 I know or remember through counselling.
2 I may remember more and at such time if
3 I feel it would help, I would contact
4 you but this is all there is at this
5 time."

6 Do you see that?

7 **MR. MacDONALD:** Yes, sir.

8 **MR. LEE:** And it would appear that C-84,
9 based on that last answer, is being quite helpful?

10 **MR. MacDONALD:** Yes, sir.

11 **MR. LEE:** And at least on the face of this
12 statement, you don't see -- I mean excerpts, I take it, you
13 don't see any indications he's unwilling to proceed?

14 **MR. MacDONALD:** Well, at the time he gave
15 that statement he said he'd get back -- even if he had
16 remembered anything, he'd go back to them with more, so it
17 looked like from that last sentence that he was inclined to
18 proceed.

19 **MR. LEE:** And Mr. Commissioner, just for
20 your own reference, I'm not going to take the witness
21 there.

22 Bates page beginning 7175334 is a
23 supplementary occurrence report that contains many of the
24 same details in it and a discussion of the discussions
25 Officer White had with C-84.

1 **THE COMMISSIONER:** Thank you.

2 **MR. LEE:** And, Madam Clerk, if we can now go
3 to Bates page ending 5341? You see if we can -- this
4 relates to -- if we can turn to the second page, Madam
5 Clerk, the next page rather, down towards the bottom of the
6 page on Friday, March 18th, you'll see a name in that line,
7 sir, and that's C-86; okay?

8 **MR. MacDONALD:** Is that the fellow I
9 referred to in high school?

10 **MR. LEE:** I believe so. Madam Clerk has a
11 cursor pointed there right now. That's the gentleman that
12 you know?

13 **MR. MacDONALD:** Yes, that's the one.

14 **MR. LEE:** And they've contacted him out of
15 town and he says he remembers -- he's asked specifically
16 about his stay at the Second Street Group Home which is the
17 major focus of Mr. White's investigation.

18 **MR. MacDONALD:** I see, I see.

19 **MR. LEE:** Okay, Second Street here in
20 Cornwall. He says he remembers:

21 "...no traumatic experiences while he
22 was there [meaning the group home].
23 However, he did indicate that he was
24 sexually abused during the 1970s while
25 he was a ward of CAS and was staying at

1 Laurencrest. He states that a home
2 worker by the name of Bernie was
3 engaged in sexual activity with him."

4 Do you see that?

5 **MR. MacDONALD:** Yes, sir.

6 **MR. LEE:** And if we go down to the fourth
7 line, fourth last line on the page, C-86 claims that he:

8 "...never told anyone about the sexual
9 abuse but would be interested in having
10 the matter investigated by police."

11 **MR. MacDONALD:** I see.

12 **MR. LEE:** See that?

13 **MR. MacDONALD:** Yes, sir.

14 **MR. LEE:** And then we have over on -- I'm
15 not sure you need to look at it -- over on Bates page
16 ending 353, we have a reference made of the fact that C-86
17 was contacted in the town that he lived in and an
18 appointment was set-up to be interviewed by that police
19 service.

20 **MR. MacDONALD:** I see.

21 **MR. LEE:** Just in terms of an easy way to do
22 things, I suppose.

23 And on page ending 374 at the top, Madam
24 Clerk, we have a reference here on Friday, June 10 somebody
25 from that other police force had been unable to locate this

1 person.

2 MR. MacDONALD: Yes.

3 MR. LEE: And, therefore, Mr. White is
4 unable to ascertain whether or not he still wishes to file
5 a complaint.

6 MR. MacDONALD: I see.

7 MR. LEE: Do you see that?

8 MR. MacDONALD: Yes.

9 MR. LEE: And then we have, at Bates page
10 ending 5459, a witness statement of this person and the
11 statement time being '94 07 04, so after that time, and we
12 have a statement being taken here; okay?

13 MR. MacDONALD: Yes, sir.

14 MR. LEE: And I'm going to suggest to you
15 that there's nothing in this statement to indicate anything
16 contradictory to his original -- originally stated desire
17 to have the police look at this thing; okay? I realize in
18 a perfect world I'd give you the entire Crown brief and
19 have you rely on it but -- or have you review it and give
20 me your opinion, but what I can tell you is based on the
21 information in the Crown brief I don't see anything that
22 suggests that this person suddenly changed his mind and
23 articulated to Officer White that he's not willing to
24 proceed.

25 MR. MacDONALD: I see.

1 **MR. LEE:** This relates to C-14. And if you
2 look at the very bottom of the page ---

3 **THE COMMISSIONER:** Hold on.
4 Do you know who C-14 is?

5 **MR. MacDONALD:** Is he -- is his name ---

6 **MR. LEE:** We'll have the name here, sir.

7 **THE COMMISSIONER:** Okay.

8 **MR. LEE:** C-14, the last two paragraphs. It
9 begins on June 2, '94:

10 "[C-14] contacted writer and advised
11 him that he had a pending civil suit
12 against the CAS for multiple incidents
13 of physical and sexual abuse. He
14 indicated that none of these were at
15 the hands of Bryan Keough but that Mr.
16 Keough knew that was going on in his
17 life. [C-14] indicated that he would
18 have to speak to his lawyer, Mr.
19 Michel..."

20 It's a spelling mistake; I believe it's
21 Mazerolle:

22 "...before agreeing to speak to
23 police."

24 And at 1420:

25 "Writer spoke to Mr. Mazerolle, who

1 advised that his client, Mr. [C-14] is
2 emotionally traumatized from his past
3 and therefore feels that it would not
4 be in his best interest to speak to
5 police at the present time."

6 You see that?

7 **MR. MacDONALD:** Yes, sir.

8 **MR. LEE:** So we have at least three people
9 here who on the -- well, the first two, I suppose. Let's
10 leave this one aside. The first two -- one of them on the
11 face doesn't seem to have any information about not being
12 willing to proceed.

13 The next one specifically says he'd be
14 interested in proceeding. And then we have Mr. C-14 here,
15 who says he has a civil claim and he's going to need legal
16 advice, and the lawyer then says -- apparently on the same
17 day -- that he's emotionally traumatized and therefore
18 feels he shouldn't speak to the police. Do you see that?

19 **MR. MacDONALD:** Yes, sir.

20 **MR. LEE:** Do you -- I suspect I know the
21 answer but I'm going to ask anyways. Do you have any
22 recollection of having recognized what C-14 says here and
23 asking Sergeant White, or Officer White, to follow up on
24 this or to ---

25 **MR. MacDONALD:** No, I don't recall at all.

1 **MR. LEE:** Just don't recall this at all?

2 **MR. MacDONALD:** I just don't remember the
3 case, no.

4 **MR. LEE:** And you can't, I take it, really
5 help me in relation to what you were thinking at the time
6 or with discussions you had with Mr. Griffiths in relation
7 to any of these people?

8 **MR. MacDONALD:** Well, if I met with
9 Mr. Griffiths it would have been a thorough review of the
10 file. That's all I'd be able to tell you.

11 **MR. LEE:** You can't get into details with
12 me; you don't recall what ---

13 **MR. MacDONALD:** I don't recall ---

14 **MR. LEE:** --- you did at the time?

15 **MR. MacDONALD:** No, I can't.

16 **MR. LEE:** You don't recall the discussion at
17 the time?

18 **MR. MacDONALD:** No. I could speculate but I
19 better not.

20 **MR. LEE:** Finally, sir, you know that I'm on
21 for the Victims Group ---

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

23 **MR. LEE:** --- at this Inquiry. You're
24 obviously the Crown attorney here. I'm wondering -- and
25 feel free to decline if you wish, but I'm wondering if

1 you'd like to take this opportunity -- you're going to need
2 to deal with my clients I think probably in an official
3 capacity at some point -- other complainants in this
4 community as a Crown. I'm going to give you the
5 opportunity, if you have anything you'd like to say, to do
6 that now.

7 **MR. MacDONALD:** Oh. Well, thank you for the
8 opportunity. I would -- I'd like to -- the comments I make
9 with reference to Crown are to my legal staff as well as
10 myself, and I would -- I'd hope every Crown in Ontario.
11 But I'm going to focus on my legal staff. I'd ask that you
12 -- you probably have already, but I'd hope that your
13 clients understand that when we exercise our discretion and
14 sometimes determine that we can't take cases in the
15 direction that complainants wish we would -- we could or
16 would -- complainants wish we could, we're doing this by
17 virtue of our responsibility as agents of the Attorney
18 General, but we aren't doing it as cold-hearted
19 bureaucrats.

20 I'm sure there are occasions when some of
21 your clients felt that way, and probably many of those
22 occasions where they were rightly so. By that I mean that
23 people didn't always get information in a timely fashion
24 from me; that perhaps I -- cases had to be resolved for
25 sentences less than were hoped, or if they couldn't be

1 continued, if their charges had to be withdrawn at some
2 point for whatever reason, that I wasn't the most
3 diplomatic in getting the responses back to them on time in
4 that regard, or sending an officer who wasn't -- who didn't
5 give as thorough an explanation as they should have.

6 I believe that we've improved dramatically
7 since 2001 with the Victim Witness Assistance Program's
8 support, but I know that we were not always perfect with
9 our prior systems that we had in play. In that regard I'd
10 just like to remind them that the words of Josh Billings
11 always come to mind when I think of my legal staff; that
12 reason occasionally makes mistakes but conscience never
13 does. We didn't make any -- any mistakes we made we
14 apologize for. They were never done in bad faith and they
15 were never done out of a cold-hearted sense for how to help
16 these -- for the fact that we were trying to otherwise help
17 these folks navigate through the criminal justice system.

18 And I'll end by saying that every one of my
19 legal staff on numerous occasions have gone home and taken
20 home with them, in the context of vicarious trauma, some of
21 the hardships felt by victims of crime, whether the cases
22 went to trial or not, whether there was convictions of not.
23 And although we may sometimes again seem like bureaucratic
24 machines, these folks do really care and it's because we
25 care that I want to express to your clients the fact that I

1 wish every one of them had walked away from our office
2 thoroughly pleased with the service they got.

3 **MR. LEE:** A major goal of this Inquiry, as
4 you know, is to look to the future as well as the past. I
5 take it as the Crown here, and the Acting Regional Director
6 soon, you are confident and can assure my clients and
7 others here publicly that complaints of historical sexual
8 abuse are going to be taken seriously in Cornwall.

9 **MR. MacDONALD:** We always thought they were
10 and will continue to do so. What the difference I think
11 that your clients should know is we've -- we in the city
12 and we in the province and in the country have learned a
13 lot as investigators and prosecutors as well, so that
14 should -- I want to use that as a sign of cause for
15 confidence that we have moved onward, upward, and I think
16 are better prepared now than we were in the early nineties
17 to take on these cases.

18 **MR. LEE:** And I take it locally this Inquiry
19 has kept the issue and some of the challenges relating to
20 the prosecution of historical sexual abuse claims in the
21 fore of your mind and the mind of your colleagues here in
22 Cornwall.

23 **MR. MacDONALD:** Yes, yes, that's certain.
24 That's for sure.

25 **MR. LEE:** And many of the challenges that

1 are inherent in these cases have been recognized, and I
2 take it there have been ongoing discussions of what you
3 need to do better and what you can do in the future.

4 **MR. MacDONALD:** At a personal level, at an
5 office level, at a province-wide level, that's true.

6 **MR. LEE:** Mr. Commissioner, those are all
7 the questions I have.

8 I would like to apologize, My estimate was
9 not even close time-wise and I've gone over horribly, but
10 those are all my questions.

11 **THE COMMISSIONER:** Mr. Manderville will
12 gladly donate his time and I guess you're paying lunch.

13 **MR. LEE:** That's fair.

14 **THE COMMISSIONER:** Thank you.

15 Let's have the lunch break and come back at
16 2:00 o'clock. Thank you.

17 **THE REGISTRAR:** Order. All rise. À
18 l'ordre. Veuillez vous lever.

19 This hearing will resume at 2:00 p.m.

20 --- Upon recessing at 12:29 p.m./

21 L'audience est suspendue à 12h29

22 --- Upon resuming at 2:00 p.m./

23 L'audience est reprise à 14h00

24 **THE REGISTRAR:** Order. All rise. À
25 l'ordre. Veuillez vous lever.

1 This hearing is now resumed. Please be
2 seated. Veuillez vous asseoir.

3 **THE COMMISSIONER:** Mr. Neville?

4 **MURRAY MacDONALD, Resumed/Sous le même serment:**

5 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
6 **NEVILLE:**

7 **MR. NEVILLE:** Good afternoon, Commissioner.
8 Good afternoon, Mr. MacDonald.

9 **MR. MacDONALD:** Sir.

10 **MR. NEVILLE:** We know each other, obviously?

11 **MR. MacDONALD:** Yes, sir.

12 **MR. NEVILLE:** For many years.

13 **MR. MacDONALD:** Never in this context
14 before.

15 **MR. NEVILLE:** No, indeed.

16 I represent, as you know, Father Charles
17 MacDonald and you may or may not also know I represent the
18 Estate of Ken Seguin, his brother and family. So I'd like
19 to spend a few minutes with you this afternoon if I could.

20 During your evidence in-chief, as I recall
21 it was, you mentioned to Mr. Engelmann that at some point
22 in the narrative of the Charles MacDonald/David Silmser
23 matter, other people formed opinions and authored opinions
24 about the merits of that case, including Mr. Griffiths.
25 You're aware of that?

1 **MR. MacDONALD:** That's actually what I was
2 referring to.

3 **MR. NEVILLE:** Yes, I know you were, and
4 could we just briefly, Commissioner, have Mr. MacDonald see
5 our Exhibit 1147?

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

7 **MR. MacDONALD:** Thank you.

8 **MR. NEVILLE:** You have it there, sir?

9 **MR. MacDONALD:** Yes, sir.

10 **MR. NEVILLE:** And I take it at some point, I
11 assume even prior to these proceedings or preparing for
12 them, you had read this document, you had seen it and read
13 it?

14 **MR. MacDONALD:** Yes, sir.

15 **MR. NEVILLE:** All right. And in this
16 document, Mr. Griffiths then was -- offers his opinion to
17 Detective Inspector Smith on the Father Charles MacDonald
18 case and he reviews, in particular at the bottom of page 1
19 and the first paragraph on the top of page 2, the concept
20 of reasonable probable grounds including the subjective and
21 objective components?

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

23 **MR. NEVILLE:** All right.

24 Now, would you agree with this suggestion,
25 Mr. MacDonald, that the key factor in terms of reasonable

1 probable grounds is the personal state of mind, the
2 personal, subjective belief of the person who must swear to
3 the oath to lay a charge? That's your start.

4 **MR. MacDONALD:** I think you're reading that
5 from the case law.

6 **MR. NEVILLE:** Well, I may have committed
7 some of it to memory.

8 Do you agree with me, sir, that the
9 subjective component, that personal, subjective belief,
10 cannot be imposed on the affiant by anyone, including you
11 as a Crown?

12 **MR. MacDONALD:** Yes, sir.

13 **MR. NEVILLE:** He or she has it or they
14 don't.

15 **MR. MacDONALD:** Yes, sir.

16 **MR. NEVILLE:** Do you agree with me, sir,
17 that reasonable probable grounds, apart from being a legal
18 standard originally in the *Criminal Code*, is now since 1982
19 with the Charter, a constitutional standard?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. NEVILLE:** It is a constitutional
22 protection for everyone, isn't it?

23 **MR. MacDONALD:** That's my understanding.

24 **MR. NEVILLE:** Yes.

25 And the second concept of reasonable

1 prospect of conviction is as it were in the continuum, the
2 next step from the Crown Attorney's standpoint when the
3 brief lands on his or her desk. For screening purposes,
4 where does this case go next, if at all, right?

5 MR. MacDONALD: Yes, and it stems from our
6 quasi-judicial overseeing obligation of agency of the
7 Attorney General. There's a certain gatekeeper component
8 to it.

9 MR. NEVILLE: Exactly. And it flowed, in
10 part at least, from the Martin Committee report?

11 MR. MacDONALD: Yes. That's where the
12 determination was to have it a clearly established test.

13 MR. NEVILLE: And it has a public interest
14 component, right?

15 MR. MacDONALD: Yes, sir.

16 MR. NEVILLE: Because a prosecution, apart
17 from its merits vis-à-vis, the accused ought to be one
18 that's in the public interest?

19 MR. MacDONALD: Yes, sir.

20 MR. NEVILLE: And that has to do with many
21 issues, some as mundane as resources and the like.

22 MR. MacDONALD: Yes. There are a number of
23 elements to that.

24 MR. NEVILLE: Yes. And when you are
25 exercising that decision function on the basis of

1 reasonable prospect of conviction, you will analyse it
2 through the prism of the presumption of innocence?

3 MR. MacDONALD: That -- that's the
4 foundation to the analysis.

5 MR. NEVILLE: The onus on the Crown?

6 MR. MacDONALD: Yes.

7 MR. NEVILLE: And that the onus ultimately
8 will be proof beyond a reasonable doubt?

9 MR. MacDONALD: Yes, sir.

10 MR. NEVILLE: All right.

11 Do you agree as well, Mr. MacDonald, that in
12 the hierarchy of criminal charges and the stigma that flows
13 from them, perhaps short of murder, there are few more
14 damaging to one's reputation than a charge of sexual abuse
15 of a child?

16 MR. MacDONALD: That's for sure, yeah.

17 MR. NEVILLE: When the charge is laid, the
18 damage is frequently done regardless of the outcome?

19 MR. MacDONALD: I -- I expect so.

20 MR. NEVILLE: Yes. And that is why both
21 reasonable probable grounds and reasonable prospect of
22 conviction are such critical steps?

23 MR. MacDONALD: Yes. They aren't the only
24 steps, but that's irrelevant to that.

25 MR. NEVILLE: Of course they're not, because

1 once the decision is made, yes on both, the person is
2 before the courts, it's in the public domain, and whatever
3 the fall-out may be, it will not be changing?

4 **MR. MacDONALD:** I see what you mean, yes.

5 **MR. NEVILLE:** Right?

6 **MR. MacDONALD:** Yes.

7 **MR. NEVILLE:** All right.

8 So you were asked to assist Constable Sebalj

9 ---

10 **MR. MacDONALD:** Yes, sir.

11 **MR. NEVILLE:** --- as she worked her way
12 through the Silsmer file?

13 **MR. MacDONALD:** By Constable Sebalj, yes.

14 **MR. NEVILLE:** Right. And she made it clear
15 to you very early on that she was experiencing some
16 difficulties with the case?

17 **MR. MacDONALD:** Yes.

18 **MR. NEVILLE:** And I'm going to suggest to
19 you, it had in part to do with Mr. Silmsen and his
20 personality?

21 **MR. MacDONALD:** That was my impression,
22 partly.

23 **MR. NEVILLE:** Yes, and in part the contents
24 of what he was saying?

25 **MR. MacDONALD:** Partly, yes.

1 **MR. NEVILLE:** All right. Can we look, by
2 way of a couple of quick illustrations, at two documents,
3 Commissioner, Exhibit 262? Actually it would be three,
4 three exhibits to assist at this point: 262 which is Mr.
5 Silmser's handwritten statement; 314 which is Officer
6 Sebalj's notes of January 28th, 1993; and 295 which is the
7 dedicated notes for the Silmser file.

8 **MR. MacDONALD:** I have 314 and 295 here.

9 **MR. NEVILLE:** Okay. You'll also need 262.

10 **MR. MacDONALD:** Thank you.

11 **MR. NEVILLE:** Can we start -- if you have it
12 there, Mr. MacDonald -- with 262, Mr. Silmser's statement?

13 **MR. MacDONALD:** Thank you. Yes, I've got
14 it.

15 **MR. NEVILLE:** And it's an eight-page
16 handwritten statement. And you'll recall, I take it you've
17 reviewed it then and perhaps a few occasions since,
18 including for these proceedings that in this narrative he
19 wrote out for the police -- and you understood that he had
20 been orally interviewed -- and we know the date because
21 we'll turn to the notes of Ms. Sebalj in a moment -- on the
22 28th of January, was provided with forms to fill out on his
23 own initiative, his statement and brought those back, the
24 statement finished two or three weeks later.

25 **MR. MacDONALD:** I know that now. I don't

1 know if I knew then about the exchange ---

2 **MR. NEVILLE:** Fair enough. All right.

3 And we know from your evidence that you were
4 provided with a copy of this, Exhibit 262; right?

5 **MR. MacDONALD:** I believe this is the one
6 that I saw.

7 **MR. NEVILLE:** Yes, that's what you've told
8 us. That's fine. And he sets out in the statement, I'm
9 just summarizing, basically four allegations: The touching
10 of his leg in the Sacristy; an event at a retreat; an event
11 in Father MacDonald's office; and an event involving a
12 drive into the country.

13 **MR. MacDONALD:** In the car, yes, sir.

14 **MR. NEVILLE:** All right. Now, if you just
15 look for me at what is in -- and you'll see page numbers at
16 the top right -- page 8. Do you have it?

17 **MR. MacDONALD:** Yes, sir.

18 **MR. NEVILLE:** Actually, this part of the
19 statement is the narrative of the drive in the country
20 event; all right? So the tail end of it is the top four-
21 five lines at the top of page 8. Right?

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

23 **MR. NEVILLE:** And he describes what he
24 alleges Father MacDonald did. And in the fifth line, he
25 describes feeling pain, et cetera; right?

1 **MR. MacDONALD:** Yes, sir.

2 **MR. NEVILLE:** From an alleged attempt to
3 penetrate with a penis in his rectum; that's what he
4 alleges ---

5 **MR. MacDONALD:** Yes, sir.

6 **MR. NEVILLE:** --- right?

7 **MS. JONES:** I just want to intercede at this
8 point what the purpose of going over the Silmsers suit
9 statement in such detail with this particular witness has?
10 I just don't see the relevancy of it. Is Mr. Neville
11 trying to test the credibility of Mr. Silmsers through this
12 witness? This is not appropriate at this particular point.
13 Many people have looked at this statement already, and I
14 don't think this is relevant whatsoever with this
15 particular witness at this juncture.

16 **THE COMMISSIONER:** Mr. Neville?

17 **MR. NEVILLE:** What I'm trying to illustrate,
18 Commissioner, is some of the evidentiary concerns the
19 officer had and whether she raised some of these with Mr.
20 MacDonald.

21 **THE COMMISSIONER:** What's -- but this fourth
22 element wasn't -- when the charges were finally laid, ---

23 **MR. NEVILLE:** Precisely.

24 **THE COMMISSIONER:** --- this thing didn't go
25 anywhere.

1 **MR. NEVILLE:** It didn't. And we're coming
2 to that. That's part of the narrative, indeed.

3 **THE COMMISSIONER:** Okay. Carry on. I'll
4 give you some leeway.

5 **MR. NEVILLE:** Thank you.
6 Now, if you'd look for me, Mr. MacDonald, at
7 Exhibit 314?

8 **MR. MacDONALD:** Yes, sir.

9 **MR. NEVILLE:** These are Constable Sebalj's
10 notes of the January 28th interview. Right?

11 **MR. MacDONALD:** Yes, sir.

12 **MR. NEVILLE:** If you look at Bates page
13 ending in 508.

14 **MR. MacDONALD:** Yes, I'm there.

15 **MR. NEVILLE:** This are the notes she records
16 when he is describing the same event we just looked at in
17 the subsequent written statement; all right?

18 **MR. MacDONALD:** I see.

19 **MR. NEVILLE:** If you count down about 10
20 lines ---

21 **MR. MacDONALD:** "Never touch."

22 **MR. NEVILLE:** "Never touched me with his
23 penis."

24 **MR. MacDONALD:** Yes, sir.

25 **MR. NEVILLE:** All right. It appears to be

1 significantly at odds with the written statement that
2 arrives about two and a half weeks later; right?

3 **MR. MacDONALD:** Yes, I presume he is
4 referring to the same incident.

5 **MR. NEVILLE:** Yes. Well "never" seems to
6 cover pretty much all events.

7 But in any event, let's look briefly back at
8 Exhibit 262.

9 **MR. MacDONALD:** Yes, sir.

10 **MR. NEVILLE:** Again at page 8.

11 **MR. MacDONALD:** Yes, sir.

12 **MR. NEVILLE:** We look in the bottom half of
13 the page, he has described the four events; right? And
14 then throughout the rest of the page, describes what he
15 says his life became i.e. a life of crime and other
16 misconduct caused, he says, by the abuse he suffered at the
17 hands of apparently Father MacDonald and he also alleges
18 Ken Seguin; right?

19 **MR. MacDONALD:** Yes, sir.

20 **MR. NEVILLE:** And if you look about 10 lines
21 from the bottom, he's talking about how he's started into a
22 life of crime, petty theft and the like and says:

23 "I was placed on probation at age 14 or
24 just the beginning of 15 with Ken
25 Seguin."

1 Right?

2 MR. MacDONALD: Yes, sir.

3 MR. NEVILLE: So he has now into his
4 criminal career and the like presumably as a result of
5 these abuses; right?

6 MR. MacDONALD: Yes, sir.

7 MR. NEVILLE: Now, as part of Constable
8 Sebalj's investigation, I can advise you that she
9 interviewed his mother and his sister.

10 MR. MacDONALD: I knew that.

11 MR. NEVILLE: I know you did. And his
12 sister, who was born in 1959, says that she was at the
13 retreat in question at St. Andrew's. And on the date of
14 the weekend of the retreat, on the 2nd of June, she turned
15 14; that would make it 1973. Mr. Silmsler was born in March
16 of 1958. So by June of 1973, he's already 15 years old and
17 at least three of the events haven't even happened yet.

18 Now this is the kind of thing that would
19 clearly, by anybody looking at it, cause a concern; would
20 it not?

21 MR. MacDONALD: Yes, I can't say
22 specifically that Heidi and I talked about it, but these
23 are the types of things that would have -- did concern her
24 in the context of the course of drilling down.

25 MR. NEVILLE: That's -- I was going to

1 borrow your phrase. This is part of what called drilling
2 down. I know it's your choice of term, of looking
3 properly, and with some degree of discrimination, what is
4 going on and what is the story; right?

5 **MR. MacDONALD:** Yes, sir.

6 **MR. NEVILLE:** And this is the kind of thing
7 that would tell an investigator "I'm not sure I can ever
8 form reasonable probable grounds here." Right? Unless
9 somehow that gets reconciled; right?

10 **MR. MacDONALD:** Yeah. Officers are well --
11 and Heidi as well as the other detectives, are aware that a
12 one-sentence allegation of a crime doesn't mean the RPG
13 assessment is complete.

14 **MR. NEVILLE:** Right. Now, I want to talk to
15 you just briefly about -- the word "confirmation" or
16 "corroboration" was used with you in your evidence in-chief
17 with Mr. Engelmann. Right?

18 **MR. MacDONALD:** Yes, sir.

19 **MR. NEVILLE:** And there was talk about these
20 two other persons who might have some degree of
21 confirmatory status. And you were given the moniker C-56
22 and C-3; right?

23 **MR. MacDONALD:** Yes.

24 **MR. NEVILLE:** All right. We can look at
25 Exhibit 295, Officer Sebalj's notes.

1 **THE COMMISSIONER:** It's coming up. It's on
2 the screen.

3 **MR. MacDONALD:** Oh, thank you. Yes, sir.

4 **THE COMMISSIONER:** We have to get what page
5 though.

6 **MR. NEVILLE:** Yes, Commissioner, it would be
7 Bates page ending in 791.

8 **MR. MacDONALD:** Right.

9 **MR. NEVILLE:** Now, just to put some context
10 both legal and otherwise to this next few questions, you,
11 of course, as a lawyer and a Crown in particular, are quite
12 familiar with the concept of similar act or similar fact;
13 correct?

14 **MR. MacDONALD:** As it's evolved from time to
15 time.

16 **MR. NEVILLE:** Exactly. And among other
17 things, and I'll just touch on a few significant points, it
18 is presumptively inadmissible ---

19 **MR. MacDONALD:** Yes, sir.

20 **MR. NEVILLE:** --- right? It requires a high
21 degree of similarity to the substantive offence alleged.

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

23 **MR. NEVILLE:** And it is specifically
24 prohibited to be used for mere propensity?

25 **MR. MacDONALD:** It's not a grounds for --

1 yeah, it's not ground for use.

2 **MR. NEVILLE:** So, turning then to page
3 ending in 791 -- you have it there?

4 **MR. MacDONALD:** Yes, sir.

5 **MR. NEVILLE:** This is C-56; do you see it?
6 Right?

7 **MR. MacDONALD:** Yes, sir, I see it.

8 **MR. NEVILLE:** And he describes an event
9 which he says happened at the age of 18 or 19 when a hand
10 was placed in his groin area for about a minute and then
11 removed.

12 **MR. MacDONALD:** I see.

13 **MR. NEVILLE:** Right?

14 **MR. MacDONALD:** Yes, sir.

15 **MR. NEVILLE:** Are you familiar that that's
16 the nature of his allegation?

17 **MR. MacDONALD:** Yes.

18 **MR. NEVILLE:** Okay. Now, you know what the
19 nature of the allegations was by Mr. Silmsen?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. NEVILLE:** Both the nature, the age and
22 the like?

23 **MR. MacDONALD:** Yes, sir.

24 **MR. NEVILLE:** I'm going to suggest to you
25 that from your knowledge and experience, the story of C-56

1 would likely never qualify as similar-act evidence.

2 **MR. MacDONALD:** That's for sure.

3 **MR. NEVILLE:** Likewise, C-3, who alleges an
4 event at the rectory in Apple Hill when he was at least 18,
5 again I suggest to you would not likely qualify as a
6 similar-act event in relation to the allegations of David
7 Silmser.

8 **MR. MacDONALD:** Well, actually that type of
9 scenario is what the Court of Appeal has been particularly
10 harsh on the Crown when sending trials back in that -- when
11 that type of simfac was proffered by the Crown.

12 **MR. NEVILLE:** Right. So when police
13 officers like Officer Sebalj come and meet with you for
14 advice, you're bringing to bear on your advice, on your
15 consultations, this kind of legal knowledge. That's why
16 she's speaking to you.

17 **MR. MacDONALD:** Partially, yes, as well as -
18 --

19 **MR. NEVILLE:** No, not exclusively ---

20 **MR. MacDONALD:** Yes.

21 **MR. NEVILLE:** --- but that's the kind of
22 help she's looking for, right?

23 **MR. MacDONALD:** Correct.

24 **MR. NEVILLE:** So when we get to the end of
25 the day, as it were, late August on the eve of the

1 settlement or even as it's just been struck ---

2 MR. MacDONALD: Yes, sir.

3 MR. NEVILLE: --- and we go and look at your
4 statement, you are very clear in what you say to the OPP in
5 '94, that even with these two other events that we've now
6 looked briefly at, C-56 and C-3, she and Officer Brunet did
7 not have subjective belief that they could lay a charge.

8 MR. MacDONALD: No, they didn't. That's
9 what they told me.

10 MR. NEVILLE: And, in fact, you go on to say
11 very carefully -- and I'm trying to save us all time here
12 but it's in your statement and the Commissioner has it --
13 that you even asked them, even in the face of these -- and
14 now we've looked at them from a legal analysis standpoint --
15 - they didn't feel they could lay a charge.

16 MR. MacDONALD: Right.

17 MR. NEVILLE: All right.

18 Now, I just want to touch briefly while we
19 have her notes out -- Exhibit 295. Mr. Engelmann took you
20 to a couple of entries in Ms. Sebalj's notes, particularly
21 -- I'll wait for you. It's 295.

22 MR. MacDONALD: Is that what's up now?

23 THE COMMISSIONER: Yes, except ---

24 MR. NEVILLE: It is.

25 THE COMMISSIONER: --- not the right page.

1 **MR. NEVILLE:** Not the right page yet.

2 **MR. MacDONALD:** Okay. Thank you.

3 **THE COMMISSIONER:** What page are we looking
4 at?

5 **MR. NEVILLE:** Well, I was going to just set
6 a foundation first if I could, sir.

7 If we look at her notes -- and if you need
8 to look at the pages I'll take you there, Mr. MacDonald --
9 she has recorded in her notes, particularly in February of
10 '93, that Mr. Silmsler tells her how he's been contacted by
11 the Diocese, right?

12 And an example of that, Commissioner, is
13 page 7 -- Bates 733.

14 **THE COMMISSIONER:** Seven-three-three (733)?

15 **MR. NEVILLE:** That's one point where this
16 happens. You see at the bottom of the page?

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

18 **MR. NEVILLE:** Do you have it there, sir?

19 **MR. MacDONALD:** Yes.

20 **MR. NEVILLE:** It's at the bottom of that.
21 There you go. That's it.

22 Okay, and if we look at the next page, 734,
23 the bottom half of the page under the date 9 February, '93.
24 This deals with him describing a meeting he attended at the
25 Diocese, right?

1 **MR. MacDONALD:** Yes.

2 **MR. NEVILLE:** Okay.

3 And then if we look at the next page, 735,
4 under the heading "February 16th" which is the date in fact
5 he brings in his written statement that we looked at, he
6 refers to a Father McDougald calling the previous night,
7 the 15th, to discuss a settlement.

8 **MR. MacDONALD:** Yes.

9 **MR. NEVILLE:** Right?

10 Let's look if we can, briefly, at Bates page
11 750. The date is the 25th of February.

12 **MR. MacDONALD:** Sorry, top part of the page?

13 **MR. NEVILLE:** No, sir. It starts right at
14 the bottom. The entry is 14:55. It's a telephone call
15 from Malcolm MacDonald.

16 **MR. MacDONALD:** Yes.

17 **MR. NEVILLE:** Right. If we look at the top
18 of the next page ---

19 **MR. MacDONALD:** Right.

20 **MR. NEVILLE:** --- she actually is aware that
21 he is acting for Father MacDonald, right?

22 **MR. MacDONALD:** Right.

23 **MR. NEVILLE:** And she actually gets advice
24 from him, or information from him, that Mr. Leduc is the
25 lawyer for the Diocese.

1 MR. MacDONALD: I see.

2 MR. NEVILLE: Which makes me think that
3 perhaps she didn't convey that piece of information to you.

4 MR. MacDONALD: I don't recall it.

5 MR. NEVILLE: That's my sense from your
6 evidence, all right.

7 And then she's got, "Gave his history of his
8 file". You see that? Fourth line, fifth line from the top
9 of that page.

10 MR. MacDONALD: "Gave history of his file",
11 yes.

12 MR. NEVILLE: Okay. And then he refers to a
13 Monsignor Schonenbach ---

14 MR. MacDONALD: Yes, sir.

15 MR. NEVILLE: --- meeting with Silmser.

16 MR. MacDONALD: Yes, sir.

17 MR. NEVILLE: Right? Monsignor McDougald.

18 MR. MacDONALD: Yes, sir.

19 MR. NEVILLE: At the bottom of the page that
20 he, Angus Malcolm MacDonald, and Father Charles MacDonald
21 had met with Father McDougald on December 17th.

22 MR. MacDONALD: Yes, sir.

23 MR. NEVILLE: Top of the next page, Father
24 McDougald sent a letter to Mr. Silmser indicating the
25 allegations were being denied by Father Charles, right?

1 MR. MacDONALD: Yes.

2 MR. NEVILLE: Okay.

3 Now, let's look -- you'll see the black dot
4 for the middle hole.

5 MR. MacDONALD: Yes.

6 MR. NEVILLE: And you'll see right beside it
7 that, "Attended headquarters" -- sorry, I'll just go up.
8 Let's just go up about three lines:

9 "Victim told Church he was going to the
10 police."

11 Are you with me?

12 MR. MacDONALD: Yes, sir.

13 MR. NEVILLE: "Suggests that after
14 victim first attended [headquarters] HQ
15 on 28 January, 1993..."

16 And we know, stopping there, that's the date
17 of the interview that we looked at the notes.

18 MR. MacDONALD: I see.

19 MR. NEVILLE: "...at approximately 23:00
20 hours that night..."

21 The night of the first interview.

22 "...called McDougald and stated he
23 wanted to go through the Diocese."

24 MR. MacDONALD: Yes, sir.

25 MR. NEVILLE: So this is a version where the

1 initiative is coming not from the Diocese to Silmsers but
2 from Silmsers to the Diocese, right?

3 **MR. MacDONALD:** Appears to be.

4 **MR. NEVILLE:** Okay.

5 "McDougald believes victim was very
6 intoxicated at the time, therefore,
7 meeting at the Diocese on Montreal Road
8 on February 9th set up at victim's
9 request."

10 Right?

11 **MR. MacDONALD:** I see.

12 **MR. NEVILLE:** Let's look over at the next
13 page, fourth line -- fifth line from the top:

14 "Advises victim has retained Tom Swabey
15 and Don Johnson, both, and has parted
16 ways with both a couple of days later."

17 So that fits in with the entries Officer
18 Sebalj has where Silmsers said he's retained Johnson but
19 fired him because he was doing things he didn't want him to
20 do.

21 **MR. MacDONALD:** I've never heard
22 Mr. Swabey's name mentioned before though.

23 **MR. NEVILLE:** Other than in these notes,
24 you're right.

25 **MR. MacDONALD:** No, this is the -- yeah,

1 this is the first time ---

2 **MR. NEVILLE:** Yes?

3 **MR. MacDONALD:** --- I've seen this one.

4 **MR. NEVILLE:** Says this to her:

5 "Advises the Church's files are open.
6 They are willing to cooperate. Advised
7 he would get go-ahead from McDougald to
8 provide me with a copy of victim's
9 allegations to the Church."

10 **MR. MacDONALD:** Yes, sir.

11 **MR. NEVILLE:** "States Church believes
12 victim wants money as he has made
13 certain demands..."

14 And then it says, "i.e. for starters".

15 **MR. MacDONALD:** Yes, sir.

16 **MR. NEVILLE:** Now, you were asked about a
17 letter, and it's referred to on the previous page, to
18 Monsignor Schonenbach, right?

19 **MR. MacDONALD:** Yes, sir.

20 **MR. NEVILLE:** You may recall that when Mr.
21 Engelmann was dealing with that part of your evidence, I
22 started to come forward to object and the Commissioner ---

23 **MR. MacDONALD:** On the two ---

24 **MR. NEVILLE:** --- did my job for me, and
25 pointed out that in fact what Mr. Silmsler says to

1 Schonenbach is, "I want an apology for starters".

2 **THE COMMISSIONER:** No, no. I think he says,
3 "For starters, I want an apology".

4 **MR. NEVILLE:** You know what, Commissioner,
5 I'll say, "For starters, I want an apology".

6 **THE COMMISSIONER:** Yeah.

7 **MR. NEVILLE:** Now, Mr. MacDonald, put
8 yourself in the position of a lawyer.

9 **MR. MacDONALD:** Yes, sir.

10 **MR. NEVILLE:** A person comes in and says,
11 "I've had an allegation made against me and the person
12 alleging it says they want me to apologize, for starters".

13 What would you think? You might want to
14 know what "for starters" meant, right?

15 **MR. MacDONALD:** Well, there'll be a --
16 something, another request to follow the apology.

17 **MR. NEVILLE:** So something is being sought
18 more than an apology, right?

19 **MR. MacDONALD:** Something.

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

21 Let's look at page 760; Bates page 760. The
22 date is the 2nd of March.

23 There it is. Yeah, it's on the screen, if
24 you could blow it up for Mr. MacDonald. It's the first --
25 it's the entry at 1535?

1 **MR. MacDONALD:** That -- yes. That's 12
2 March?

3 **MR. NEVILLE:** Yes. Now, this is where she
4 actually has notes recorded about her meeting with you.

5 **MR. MacDONALD:** Yes, sir.

6 **MR. NEVILLE:** Have you seen these before
7 this particular entry?

8 **MR. MacDONALD:** I don't recall this.

9 **MR. NEVILLE:** All right. Let's just look at
10 it, briefly, together.

11 "Meet Crown MacDonald in CIB."

12 I think it's "office." No, "Asked."

13 **MR. MacDONALD:** Oh, I've seen this, yes,
14 before.

15 **MR. NEVILLE:** "Asked," meaning, I think,
16 you:

17 "Asked how investigation was going.

18 Advised re..."

19 And that's a monikered person, that first
20 name.

21 "...C-9."

22 **MR. MacDONALD:** I see.

23 **MR. NEVILLE:** I won't use the next name. A
24 couple of names are mentioned.

25 **MR. MacDONALD:** Yes, sir.

1 **MR. NEVILLE:** "Denial," and then another
2 name, not being present:

3 "...became concerned about my grounds."

4 What she appears to be saying here is, she
5 is summarizing some of what she's developed so far, and you
6 are saying to her that you have, or are developing, concern
7 about her grounds?

8 **MR. MacDONALD:** I thought that was a mutual
9 impression about ---

10 **MR. NEVILLE:** Oh, I -- I'm not saying it
11 wasn't. I'm just saying, she clearly records you telling
12 her that, "If this is what you're coming up with, there is
13 a concern here about reasonable probable grounds," right?

14 **MR. MacDONALD:** Well, it certainly would
15 have -- it was prompting -- I was prompting her to dig
16 deeper.

17 **MR. NEVILLE:** Oh, sure, absolutely.

18 **MR. MacDONALD:** Meaning, there wasn't enough
19 there yet.

20 **MR. NEVILLE:** Right. So we'll come back ---

21 **MS. McINTOSH:** Sorry. Sorry to interrupt my
22 friend, but I'm not sure the witness knows he's being asked
23 whether that's his expression or Ms. Sebalj's expression.

24 **THE COMMISSIONER:** Can you clear that up
25 there, Mr. Neville?

1 **MR. NEVILLE:** Certainly, Commissioner.

2 As the notes are recorded, Mr. MacDonald,
3 when she wrote here:

4 "Became concerned about my grounds..."

5 I suppose that could be her speaking to
6 herself, right? Or, it seems more likely, that she's
7 putting, in very short form, an opinion or advice you are
8 giving back to her as a result of her telling you some of
9 this material that's recorded?

10 **MR. MacDONALD:** That's possible.

11 **MR. NEVILLE:** Yes.

12 **MR. MacDONALD:** I don't recall ---

13 **MR. NEVILLE:** So it could go either way?

14 **MR. MacDONALD:** --- either way, yes.

15 **MR. NEVILLE:** It could be either way, all
16 right. I'll come back to another little part of her notes
17 in a moment.

18 I just want to spend a couple of minutes, a
19 few minutes, if I could, with your recorded statement on
20 July 14th, 1994. It's Exhibit 1233, Commissioner.

21 **THE COMMISSIONER:** One two three three
22 (1233).

23 **MR. NEVILLE:** You should have a hard copy,
24 unless you're happy with the screen.

25 **MR. MacDONALD:** I have a hard copy, and I

1 like it up on the screen, too, if possible.

2 **MR. NEVILLE:** Okay. No, whatever's
3 comfortable.

4 **MR. MacDONALD:** Yes, I've got it.

5 **MR. NEVILLE:** You have it?

6 **MR. MacDONALD:** Yes, thank you.

7 **MR. NEVILLE:** Can we look at -- and it's
8 perhaps easier to find it, the pages at the top, the
9 numbering that are part of the document, and I'm looking at
10 page 24.

11 **MR. MacDONALD:** Yes, I've got it.

12 **MR. NEVILLE:** All right. And Detective
13 Inspector Smith is asking you, at the top of that page,
14 about being updated on an ongoing basis by Constable
15 Sebalj; right?

16 **MR. MacDONALD:** Yes.

17 **MR. NEVILLE:** All right. And you say:
18 "Yes, I had an ongoing -- every contact
19 I had with her was an update of the
20 investigation, and it was verbal. This
21 is where -- this is where I'm at now."
22 And that's you, as if speaking of her.

23 **MR. MacDONALD:** I see.

24 **MR. NEVILLE:** "And so the plot was
25 thickening every time we spoke, and by

1 that I mean she was -- her
2 difficulty -- difficulties, with the
3 investigation were increasing, and by
4 that I mean she was having more
5 difficulty managing this complainant,
6 in terms of how -- how to -- in terms
7 of securing his, sort of, cooperation.
8 And I understand she explained to me
9 things, like, in calling it an
10 intoxicated state..."

11 And you go on to give other examples of her
12 interpersonal difficulties with him, all right?

13 **MR. MacDONALD:** Yes, sir.

14 **MR. NEVILLE:** And then we look at the
15 bottom:

16 "She had managed to do some follow-up
17 contact, managed to get more details,
18 and she told me, in some of our
19 meetings, that these details were
20 being -- were proving to be
21 uncorroborated. She was telling
22 me -- it was very clear in my mind,
23 just so I can maybe spell it out.
24 As Constable Sebalj and I had meetings,
25 or update meetings, she was having more

1 and more difficulty believing this
2 person."

3 Is what you tell Smith, right?

4 **MR. MacDONALD:** That was my impression.

5 **MR. NEVILLE:** "My impression is, she
6 started this with an open mind. I have
7 no criticism at all of Constable
8 Sebalj's motive throughout this whole
9 investigation. She started it with an
10 open mind and, as her investigation
11 developed, she lost -- she did not have
12 belief sufficient to lay a charge. Her
13 belief, indeed, was giving more and
14 more -- she was becoming more
15 disbelieving as the investigation..."

16 And obviously you're cut off. I presume you
17 meant to say, "progressed" or "went on." And, Smith
18 actually, finishes the sentence, in a sense:

19 "Through the conduct of Silmsen,
20 himself or was she unable to get any
21 other witnesses that had similar..."

22 Page 26:

23 "...similar things that occur, or
24 corroboration?"

25 And your answer is:

1 "Both."

2 Eight?

3 MR. MacDONALD: Yes, sir.

4 MR. NEVILLE: Now, can we look next at the
5 top -- at page 36?

6 MR. MacDONALD: Yes, I'm there.

7 MR. NEVILLE: All right. No, maybe I've led
8 you astray there. Just give me a moment.

9 (SHORT PAUSE/COURTE PAUSE)

10 MR. NEVILLE: Yes. If we can go to page 47?

11 MR. MacDONALD: Yes, sir, I'm there.

12 MR. NEVILLE: Actually, let me just back up.
13 Can we go back to page -- sorry, pardon me for this
14 confusion; page 33?

15 MR. MacDONALD: Yes, sir, I'm there.

16 MR. NEVILLE: All right. The second -- the
17 second-last entry at the bottom, Detective Inspector Smith:

18 "Subsequently, did you have further
19 meetings with Constable Sebalj, and did
20 she bring to your attention that there
21 had been a settlement?"

22 And you say:

23 "Yes, she contacted me after that call
24 I had from Malcolm MacDonald. She
25 contacted me on -- it seemed on the eve

1 of the settlement to say that her
2 investigation had come up with some
3 indication that there seemed to
4 be -- have been -- the target of the
5 investigation, Father MacDonald, may
6 have had, you know, homosexual
7 tendencies. This was from someone else
8 who was reluctant to assist in the
9 police investigation..."

10 If we stop there, we know that's likely C-3,
11 right?

12 **MR. MacDONALD:** I -- I presume so.

13 **MR. NEVILLE:** Right:

14 "...but did say that he..."

15 That is the other person:

16 "...had sex -- had homosexual contact
17 with the priest. So this, sort of, was
18 the first time in many contacts I've
19 had with Constable Sebalj which seemed
20 to be whether there was something in
21 favour of the complainant, as opposed
22 to against his credibility. As it
23 turned out, and as I asked the police,
24 was this alone sufficient to give them
25 RPG, and they didn't feel they did,

1 because they didn't feel they -- by
2 that point, still didn't feel they had
3 enough to believe the complainant to
4 the point of reasonable grounds."

5 Right?

6 **MR. MacDONALD:** Yes. They were sufficiently
7 inspired now to -- to certainly continue vigorously with
8 the investigation, however -- that's fair to say, too.

9 **MR. NEVILLE:** Right. Well, we seem to have
10 notes, though, that at this point -- from an investigating
11 standpoint, Officer Sebalj felt she was finished and was
12 going to seek, through your assistance, the advice of a
13 Crown?

14 **MR. MacDONALD:** That's not my recollection.

15 **MR. NEVILLE:** No? Well, let's look at her
16 notes, Exhibit 295.

17 **THE COMMISSIONER:** Two ninety-five (295).

18 **MS. McINTOSH:** I'm sorry to interrupt my
19 friend. I don't think the witness is denying that that's
20 in the notes. I think what he's saying is that's not his
21 recollection, at the time.

22 **MR. MacDONALD:** That's not the way I think
23 it went.

24 **MR. NEVILLE:** Okay. Well, I'm just seeing
25 if I can either refresh your memory or correct your

1 recollection.

2 MR. MacDONALD: Okay.

3 MR. NEVILLE: How's that? The date,
4 Commissioner, is August 24th, '93. The Bates page in
5 Exhibit 295 is -- ends in 835.

6 THE COMMISSIONER: Eight-three-five (835).
7 M'hm, yes.

8 MR. MacDONALD: The very start?

9 MR. NEVILLE: Do you have it? It's at the
10 bottom of the page. The date is 24 August '93.

11 MR. MacDONALD: Okay, thank you.

12 MR. NEVILLE: This is her entry at 12:09
13 noon.

14 MR. MacDONALD: Yes, sir.

15 MR. NEVILLE: "Return TC [telephone call]
16 to Dave Silmser requesting progress
17 report. Advised..."

18 i.e. she advised him:

19 "...simply awaiting meeting with
20 out-of-town Crown to review."

21 MR. MacDONALD: That's what she's got here.

22 MR. NEVILLE: Right. So I'm not questioning
23 what you may recall now, I'm looking where she appears to
24 have been at in her mind on the 24th of August. All right?

25 MR. MacDONALD: I understand your point.

1 **MR. NEVILLE:** Now, I understand what you're
2 suggesting, and may I put it this way.

3 The police would always be prepared to
4 investigate and keep the matter going if there was
5 something worth looking at, right?

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

7 **MR. NEVILLE:** But if nobody comes to the
8 door or they don't get the lead and they have what they
9 have, a decision has to be made. Fair enough?

10 **MR. MacDONALD:** Yes.

11 **MR. NEVILLE:** And it looks like, as part of
12 her decision-making process, she was going to get the
13 advice of an out-of-town Crown. At least that's what she
14 feels as recorded in her notes.

15 **MR. MacDONALD:** That's what she feels. I ---

16 **MR. NEVILLE:** Okay.

17 **MR. MacDONALD:** I thought otherwise.

18 **MR. NEVILLE:** Okay.

19 Let's look at the next page. The next date
20 she has entered in her notes is the 7th of September 1993.

21 **MR. MacDONALD:** Right.

22 **MR. NEVILLE:** And let me just refer to the
23 top of the page because you mentioned this in passing
24 during your evidence in-chief. Here's one of the
25 indications where now he's saying, take your time, no rush,

1 take three or four months more if you want, right?

2 MR. MacDONALD: I see.

3 MR. NEVILLE: Do you see that at the top?

4 And you were told of some of these things, weren't you?

5 MR. MacDONALD: Yes, sir.

6 MR. NEVILLE: All right. So now she has the
7 7th of September:

8 "Met with Staff Sergeant Brunet.
9 Handed a letter from Malcolm
10 MacDonald's office in which is enclosed
11 a direction signed by Silmsler on 3
12 September '93 to stop any further
13 proceedings."

14 MR. MacDONALD: Yes, sir.

15 MR. NEVILLE: So, on the face of it, this
16 would appear to be her learning of the settlement and the
17 direction to close the file. That appears to be what she's
18 recorded? Now, it could be that between the 24th and the
19 7th, she was told something verbally, but she certainly sees
20 a document to that effect on the 7th, right?

21 MR. MacDONALD: Right. I thought that there
22 was a phone call or heads-up first from them.

23 MR. NEVILLE: There may be. That's why I
24 say there may have been something -- this is where her
25 staff sergeant or supervisor says, here's the document ---

1 MR. MacDONALD: Yes, sir.

2 MR. NEVILLE: --- right from the lawyer.

3 MR. MacDONALD: Yes, sir.

4 MR. NEVILLE: Okay.

5 Now, can we look just momentarily, briefly,
6 at page 49? I'm going back to your recorded statement.

7 MR. MacDONALD: Yes, sir, I'm there.

8 MR. NEVILLE: Okay. And it's a fairly long
9 discussion by yourself with Detective Smith and it starts,
10 really, back on page 47 and goes on for the better part of
11 two or three pages.

12 MR. MacDONALD: Yes, sir.

13 MR. NEVILLE: Actually, almost four.

14 MR. MacDONALD: I go on sometimes.

15 MR. NEVILLE: And the essence, if I can
16 summarize it here, Mr. MacDonald, is you're telling the
17 police, who are now faced with the fait accompli, as it
18 were, worked by the civil lawyers that, look, you have a
19 reluctant complainant, you've had all these various
20 difficulties. The bottom line answer here is you don't
21 have reasonable probable grounds.

22 MR. MacDONALD: They knew that.

23 MR. NEVILLE: That's what I'm saying. And
24 you lay this out here in two or three pages of the
25 conversations you have with them saying -- because if you

1 look at 48 for me -- sorry, 49.

2 MR. MacDONALD: Yes, sir.

3 MR. NEVILLE: You see about eight lines from
4 the top:

5 "What do we do with a reluctant
6 witness?"

7 And you talked further down that page how
8 the police were "hung up" on the notion of reluctant sexual
9 assault complainant witnesses and the policy of the Crown
10 not to force them to go on, right?

11 MR. MacDONALD: I think hung up to the
12 extent that they needed it explained to them.

13 MR. NEVILLE: Oh, yes. But what you're
14 really telling them ultimately is, look, there's that
15 problem all right, but here's where you're at. There is no
16 reasonable probable grounds. That's what you're telling
17 me. If that's your state of mind, the law says to me and I
18 say to you, the case is stopped until you get beyond that
19 point.

20 MR. MacDONALD: They didn't really need
21 instruction though on that, they understood that.

22 MR. NEVILLE: Yeah.

23 MR. MacDONALD: We were just sort of ---

24 MR. NEVILLE: Yeah.

25 MR. MacDONALD: --- walking it through

1 logically the three of us, you know.

2 **MR. NEVILLE:** M'hm. Okay. So this was
3 perhaps more of a give-and-take conversation.

4 But just so it's clear, on these four pages
5 up to page 50 is where you set out the essence of that and
6 you're, in effect, reminding them, as you put in the letter
7 ---

8 **MR. MacDONALD:** Yes, sir.

9 **MR. NEVILLE:** --- there's a policy about a
10 reluctant complainant ---

11 **MR. MacDONALD:** Yes, sir.

12 **MR. NEVILLE:** --- and the root problem
13 before that is ---

14 **MR. MacDONALD:** You still need ---

15 **MR. NEVILLE:** --- you don't have RPG.

16 **MR. MacDONALD:** You still need RPG.

17 **MR. NEVILLE:** Okay. Let's look just for a
18 moment, if we could ---

19 **MR. MacDONALD:** Sorry, I never told them
20 they didn't have RPG.

21 **MR. NEVILLE:** Oh, I know you didn't.
22 They're -- because they have to tell you or ---

23 **MR. MacDONALD:** Yes.

24 **MR. NEVILLE:** --- or tell themselves, right?

25 **MR. MacDONALD:** Right.

1 **MR. NEVILLE:** It's not for you to tell them.
2 They do or they don't.

3 **MR. MacDONALD:** Right.

4 **MR. NEVILLE:** Right. We talked about that a
5 few minutes ago.

6 Can we look at Exhibit 1421?

7 **MR. MacDONALD:** Yes, sir.

8 **MR. NEVILLE:** This is the taped interview
9 with the OPP of Staff Sergeant Brunet.

10 **MR. MacDONALD:** It's up on the screen, yes.

11 **MR. NEVILLE:** And if we can look at Bates
12 page, Commissioner, 849.

13 **THE COMMISSIONER:** Which exhibit number
14 again, sir?

15 **MR. NEVILLE:** The exhibit number,
16 Commissioner, is 1421, is what I have.

17 **THE COMMISSIONER:** Thank you, right.

18 **MR. NEVILLE:** Document Number 728585.

19 **THE COMMISSIONER:** Okay.

20 **MR. MacDONALD:** Yes, sir.

21 **MR. NEVILLE:** We're together? And this is
22 where they asked the staff sergeant about his discussions
23 or dealings with you on the Silmsler matter. I just want to
24 go through it with you and see if you agree with his
25 explanation.

1 So you can see the question starts in the
2 second line:

3 "Did you ever have any discussions with
4 Crown Attorney, Murray MacDonald as..."

5 **MR. MacDONALD:** Could you bring that up just
6 to ---

7 **MR. NEVILLE:** Oh, yes.

8 **THE COMMISSIONER:** Madam Clerk?

9 **MR. MacDONALD:** Thank you.

10 **MR. NEVILLE:** All right?

11 **MR. MacDONALD:** Yes, sir.

12 **MR. NEVILLE:** So, if you see, it starts end
13 of the second sentence:

14 "Did you ever have any discussion with
15 Crown Attorney Murray MacDonald as the
16 investigation proceeded before any
17 settlement was ever reached?"

18 Staff Brunet says:

19 "If -- if I did, it was just in..."

20 **MS. JONES:** I'm just going to reiterate the
21 objection I raised earlier.

22 It seems that this is exactly what Mr.
23 Neville is doing, going on and on and on again about the
24 so-called credibility, or lack thereof, of David Silmsler.

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

1 **MS. JONES:** And I don't know if Mr.
2 Neville's intent is to go through every document that we've
3 already had many, many times over in this Inquiry, pointing
4 out the same statement over and over again.

5 I think we established about half-an-hour
6 ago that there was a lack of R&PG on the part of Heidi
7 Sebalj, there were discussions with Mr. MacDonald, and
8 there was a discussion with Staff Sergeant Brunet. We've
9 established that. I'm just wondering why we need half-an-
10 hour to go over it and over it and over it.

11 **MR. NEVILLE:** If my friend would be patient
12 and we look at this passage together, Commissioner, you
13 will see that it does not deal only with that. And I'm
14 asking Mr. MacDonald if this by the Staff Sergeant
15 accurately summarizes the position.

16 **THE COMMISSIONER:** And how much longer do
17 you have, sir?

18 **MR. NEVILLE:** About five minutes.

19 **THE COMMISSIONER:** Go ahead.

20 **MR. NEVILLE:** Of my forty-five, sir, and I
21 think I'm on target.

22 **THE COMMISSIONER:** You're pretty well there.

23 **MR. NEVILLE:** I think so. Are we together,
24 Mr. MacDonald?

25 **MR. MacDONALD:** Yes, sir.

1 **MR. NEVILLE:** All right. His answer is:
2 "If I did, it was just in passing while
3 discussing something else. I remember
4 -- and I can't remember if it was
5 before or right after the settlement,
6 but I remember talking to Murray, and
7 Heidi had mentioned to him that she was
8 having a real hard time with
9 credibility of the witness, like the --
10 of the victim, and she felt that the
11 victim was very, very difficult to
12 handle because he was up and down and
13 very aggressive and she was having
14 credibility problems. And he had also
15 made it very clear to her..."

16 This is Silmser.

17 "...right from the beginning that he
18 was going after money, and he seemed to
19 have a real interest in a civil
20 settlement. So that made her a little
21 bit uneasy about the -- m'hm his
22 credibility. And Murray had mentioned
23 to me that there was a credibility
24 issue, but I don't remember if that was
25 prior to the settlement or after the

1 settlement."

2 Right?

3 **MR. MacDONALD:** Yes.

4 **MR. NEVILLE:** Now, that would then be
5 consistent with what you said in Exhibit 301 to Staff
6 Sergeant Brunet about Mr. Silmsner having an evident
7 ulterior motive, wouldn't it?

8 **MR. MacDONALD:** Possibly. The one thing
9 that I -- I'm pretty sure that Luc and I didn't speak up
10 until late August for the first time on this file. He ---

11 **MR. NEVILLE:** Okay. Well, as you can see,
12 even he's not certain ---

13 **MR. MacDONALD:** Right.

14 **MR. NEVILLE:** --- whether it was before or
15 after.

16 **MR. MacDONALD:** I'm ---

17 **MR. NEVILLE:** The essence of what he's
18 saying ---

19 **MR. MacDONALD:** I'm certain. I'm certain we
20 hadn't until just before.

21 **MR. NEVILLE:** Okay.

22 You did say in cross-examination yesterday
23 with, I believe, Ms. Daley, that "we all" was the way you
24 put it, and I took that to mean you, Sebalj and Brunet.

25 "...believed there was some kind of..."

1 I think I wrote it down fairly carefully:

2 "...some kind of sexual contact between
3 David Silmser and Father MacDonald."

4 **MR. MacDONALD:** Yes, sir.

5 **MR. NEVILLE:** Would I be fair to say that
6 there was a suspicion?

7 **MR. MacDONALD:** A definite suspicion.

8 **MR. NEVILLE:** Okay.

9 **MR. MacDONALD:** Not -- nothing more but that
10 was ---

11 **MR. NEVILLE:** That's fine; nothing more.

12 **MR. MacDONALD:** Yeah.

13 **MR. NEVILLE:** That's fine.

14 **MR. MacDONALD:** That was to be explored,
15 sir.

16 **MR. NEVILLE:** All right.

17 Mr. MacDonald, I think I'm finished with my
18 questions but I want to say something. There's a party
19 here, some of whose members contributed to the personal
20 anguish that you and your family have felt, who have not
21 seen fit to be here to ask you any questions.

22 **THE COMMISSIONER:** Whoa, whoa, whoa, whoa,
23 whoa, whoa, whoa. Sir ---

24 **MR. NEVILLE:** For whatever reason.

25 **THE COMMISSIONER:** No, come on. I don't

1 need ---

2 **MR. NEVILLE:** Well, I'm going to simply say,
3 Commissioner, that Mr. MacDonald should take that as
4 recognition that his character and strength ---

5 **THE COMMISSIONER:** No.

6 **MR. NEVILLE:** --- and integrity speak for
7 themselves.

8 **THE COMMISSIONER:** Thank you, sir.

9 **MR. NEVILLE:** Those are my questions.

10 **THE COMMISSIONER:** Thank you.

11 Sir, we're going to take a -- well, no,
12 we'll see what -- I don't know that I want that type of
13 editorializing to occur here, sir. So while Mr. -- while
14 the emotion may have been there, I don't know that it
15 should have been said here. All right? So there we go.

16 Ms. Robitaille. Oh no, Mr. Chisholm. I'm
17 sorry.

18 **MR. CHISHOLM:** Good afternoon, sir.

19 Mr. MacDonald, we know each other.

20 **MR. MacDONALD:** Yes, sir. Could I just have
21 a moment, please?

22 **MR. CHISHOLM:** Certainly; sure.

23 **MR. MacDONALD:** Thank you. Good morning --
24 afternoon.

25 **MR. CHISHOLM:** Good afternoon.

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

2 MR. CHISHOLM:

3 MR. CHISHOLM: I act for the CAS, as you
4 may be aware.

5 MR. MacDONALD: Yes, sir.

6 MR. CHISHOLM: Just a couple of areas that I
7 want to touch upon.

8 MR. MacDONALD: Yes, sir.

9 MR. CHISHOLM: Would you agree with me, Mr.
10 MacDonald, that over the years you have encouraged the
11 cooperative relationship between your office and the CAS?

12 MR. MacDONALD: I've tried.

13 MR. CHISHOLM: I'm going to suggest that you
14 succeeded. You wouldn't disagree with me?

15 MR. MacDONALD: I hope I -- I hope that's
16 correct.

17 MR. CHISHOLM: If I understand your evidence
18 from a couple of days ago and today during Mr. Lee's cross-
19 examination of you, I take it you got along well with
20 Elizabeth MacLennan of the CAS.

21 MR. MacDONALD: I always have.

22 MR. CHISHOLM: And also William, or Bill,
23 Carriere?

24 MR. MacDONALD: Very well with Bill and Liz,
25 yes. Those are the two folks I knew and dealt with most

1 frequently at the Society.

2 MR. CHISHOLM: And we would expect those to
3 be the individuals that you would be involved with on a
4 more day-to-day basis, as opposed to the Executive
5 Director, Mr. Abell. Is that fair to say?

6 MR. MacDONALD: That's correct.

7 MR. CHISHOLM: During your cross-examination
8 by Mr. Lee today and during your evidence in-chief when you
9 were speaking to Mr. Engelmann, you spoke of a chilling
10 effect between you and some of the institutions within the
11 city. Do you recall that?

12 MR. MacDONALD: With me as institution,
13 Crown Attorney's Office?

14 MR. CHISHOLM: Yes.

15 MR. MacDONALD: Yeah.

16 MR. CHISHOLM: And you suggested it was
17 nothing overt, I believe were your words.

18 MR. MacDONALD: Yeah. We never spoke -- we
19 never said a word about it. We never have to this day said
20 a word about it. But there was -- I felt it and I believe
21 the others did too.

22 MR. CHISHOLM: So no-one ever suggested --
23 none of the institutions in the City of Cornwall ever
24 suggested to you that, "We're concerned with respect to the
25 allegation that has been made against you with respect to

1 you attempting or conspiring to cover up an allegation..."

2 **MR. MacDONALD:** No, no, no, no, that -- I
3 don't mean in that context, no.

4 **MR. CHISHOLM:** And would you agree with me,
5 Mr. MacDonald, that when you -- once you heard of such an
6 allegation you'd be rather sensitive on that point?
7 Rightfully so, but you'd become sensitive whenever you hear
8 of an allegation that you've attempted to cover up an
9 allegation of sexual abuse?

10 **MR. MacDONALD:** I was sensitive and angry;
11 more angry than sensitive.

12 **MR. CHISHOLM:** And is it possible that you
13 could be mistaken in your perception -- I'm speaking now of
14 the CAS. Is it possible that you could have been mistaken
15 in your perception that there was a chilling effect brought
16 about by the allegation that was made against you?

17 **MR. MacDONALD:** Oh, I think the chilling
18 effect may well have been that they were just uncomfortable
19 around me because they knew that I was in the eye of the
20 hurricane in certain respects, and so maybe it was just
21 uncomfortable. They were uncomfortable and you know why --
22 you will know better than I. But I just thought I sensed
23 that and I thought my colleagues thought they sensed it
24 too.

25 **MR. CHISHOLM:** That's your perception that

1 you had. You perceived them being uncomfortable?

2 **MR. MacDONALD:** Right.

3 **MR. CHISHOLM:** They never told you that?

4 **MR. MacDONALD:** No, and Bill Carriere went
5 out of his way to be diplomatic every time we spoke, and
6 we've -- I don't -- I understand your point and I'm sure
7 that my sensitivity, as you've used it, was -- may not have
8 been completely accurate. But I just felt something -- in
9 terms of all institutions in the city. We were all looking
10 behind each other's back for a while; around each other's -
11 - looking round each other's shoulder for a while.

12 **MR. CHISHOLM:** That's the way you perceive
13 and that -- given the allegations made against you, that
14 could be a normal human reaction. Would you agree with
15 that?

16 **MR. MacDONALD:** Sure. We didn't know what
17 the bottom line was in all of the -- you know, the rumour
18 mills and allegations that were starting to swirl around
19 and kept swirling, and so you're inclined to hold your
20 tongue, and that's probably why I wasn't on the phone as
21 regularly as I would have been prior to, saying, "Liz,
22 let's try a conference on this," or to the Chief of Police
23 in Cornwall, "Let me -- let's get a training session on the
24 new amendments to impaired driving law."

25 **MR. CHISHOLM:** And from the perspective of

1 the CAS it could also be another reason why you were not on
2 the phone as often. I'm going to suggest to you that
3 during the period of time that you've spoken of, it's
4 possible that you weren't communicating as often because
5 there was no need to communicate with the CAS for -- the
6 CAS never went to you for advice or consultation because
7 the need never arose. Is that a possibility?

8 **MR. MacDONALD:** Well, there was a
9 significant length of time where they didn't come, and
10 perhaps it's my paranoia I presumed that's why they weren't
11 coming, but maybe it's -- just didn't have work to take.

12 **MR. CHISHOLM:** And if I suggested to you
13 that in fact was the case, you couldn't disagree with me?

14 **MR. MacDONALD:** I couldn't disagree with
15 you. It's nice to hear.

16 **MR. CHISHOLM:** And I take it you wouldn't
17 disagree with me if Richard Abell held the view that you
18 were, in his -- from his perspective you were always a top-
19 flight professional. You couldn't disagree with that?

20 **MR. MacDONALD:** Well, it's nice to hear.

21 **MR. CHISHOLM:** And that there was always,
22 from his perspective, an excellent relationship between the
23 CAS and you in particular, and your office. You wouldn't
24 disagree with that?

25 **MR. MacDONALD:** Well, not with the senior

1 management group. I think that Ms. Fitzpatrick would
2 suggest otherwise but ---

3 **MR. CHISHOLM:** And I'll come -- that's what
4 I'll go to next with Ms. Fitzpatrick. But from the
5 perspective of Mr. Abell, Ms. ---

6 **MR. MacDONALD:** Senior management.

7 **MR. CHISHOLM:** --- Ms. MacLennan, Bill
8 Carriere.

9 **MR. MacDONALD:** No.

10 **MR. CHISHOLM:** If I suggested to you that's
11 what they felt, you wouldn't disagree with me?

12 **MR. MacDONALD:** No, no.

13 **MR. CHISHOLM:** Now, if I could take you,
14 please, to -- on to Exhibit 2353. That's the statement
15 that Mr. Lee took you to this morning that arose -- and I
16 say "statement," it's a summary of the -- an interview of
17 February 20th, 2008 involving Ms. Fitzpatrick, Anne McKinnon
18 and Bill Carriere, and it's Exhibit 2353, and if I take
19 you, please, to Bates page 7181408, which is page 17 of the
20 document.

21 Are you going to work off the screen, Mr.
22 MacDonald, or do you want ---

23 **MR. MacDONALD:** Yes. Yes, thank you.

24 **MR. CHISHOLM:** Okay.

25 We'll go to page 17, please.

1 **THE REGISTRAR:** Can you give me Bates page
2 number?

3 **MR. CHISHOLM:** Yes, 7181408. I'm going down
4 six -- if we start at the sixth bullet from the top, and
5 I'll just read -- summarize these, Mr. MacDonald.

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

7 **MR. CHISHOLM:** The suggestion is that the
8 Crown attorney, being -- as I understand it, the reference
9 to the Crown attorney is you:

10 "The Crown attorney is 'so rude to
11 me.' "

12 And the next bullet, the Crown attorney was
13 degrading Ms. Fitzpatrick and attacking Ms. Fitzpatrick.
14 And the next bullet refers to "insulting me in a very
15 demeaning way."

16 And down four more bullets:

17 "The Crown Attorney was terrible to
18 me."

19 Can I ask you, sir, what your reaction was
20 when you first saw this document and particularly these
21 statements?

22 **MR. MacDONALD:** If she felt that way, I
23 don't recall how and what I did or said to cause it. I
24 certainly didn't intend for her to feel the least bit
25 embarrassed. I may have met her about weaknesses in the

1 evidence and I may have suggested or had to come out
2 directly and say that this procedure will result in this
3 piece being inadmissible or otherwise, but that's not -- I
4 didn't intend to be in any way demeaning or terrible to
5 her.

6 **MR. CHISHOLM:** If there was -- not
7 necessarily with Ms. Fitzpatrick -- but if you ever had
8 such a type of meeting where you treated someone out of the
9 ordinary, I would submit, would that be something that you
10 might remember?

11 **MR. MacDONALD:** Oh, for sure. I thought
12 I've always been particularly respectful towards -- I'm
13 harder on police officers than I am on CAS workers.

14 **MR. CHISHOLM:** Yes.

15 **MR. MacDONALD:** And I only really get rough
16 with people when I have to push back. It's not my nature
17 to do so unless fighting fire with fire.

18 **MR. CHISHOLM:** So do I take it you were
19 somewhat taken back when you saw these -- this statement?

20 **MR. MacDONALD:** Oh, very disappointed to see
21 it, but I understand that this was not the agency's
22 position. I'm not suggesting that. I understand that this
23 is her view and I was greatly taken aback.

24 **MR. CHISHOLM:** And just with respect to the
25 allegation I put to you, what is your position with respect

1 to those allegations?

2 **MR. MacDONALD:** I think she's mistaken in my
3 words and conduct because I had no intention to be anything
4 other than professional and diplomatic with her, and either
5 I failed miserably or I've -- or I'm -- anyway, that's it.

6 **MR. CHISHOLM:** Thank you, Mr. MacDonald.
7 Those are my questions.

8 ---**STATEMENT BY THE COMMISSIONER/DÉCLARATION PAR LE**
9 **COMMISSAIRE:**

10 **THE COMMISSIONER:** Thank you.

11 Before we take the break, I think it's
12 incumbent on me to comment on Mr. Neville's comments at the
13 end of the examination.

14 And perhaps it is my fault in the sense that
15 I have permitted counsel, in my view at least, great leeway
16 in order to advance the interest of the parties or -- and,
17 even more, the interests of this Inquiry.

18 I find that Mr. Neville's comments dealing
19 with the conduct of another party and other solicitors in
20 this Inquiry, unfortunate. I am also saying that I'm
21 surprised that it would be coming from a senior member of
22 the Bar.

23 We've had considerable press about how we
24 deal with this Inquiry, the length and its cost, but I've
25 always been proud of the fact that we have always attempted

1 to deal with matters in a professional way.

2 Accordingly, and this is an admonishment to
3 Mr. Neville and to all of us, that those types of comments
4 will not be permitted and I suggest you govern yourselves
5 accordingly. Thank you.

6 Let's take the break.

7 Oh, by the way, now we should be checking
8 about time, I know there's a witness here. I'm prepared to
9 sit late tonight to have him started and maybe even finish
10 his chief, but I'll ask Ms. Jones to speak with the witness
11 and the parties and see how we're going to finish this off.
12 Okay?

13 Thank you.

14 **THE REGISTRAR:** Order. All rise. À
15 l'ordre. Veuillez vous lever.

16 This hearing will resume at 3:15 p.m.

17 --- Upon recessing at 15:01 p.m./

18 L'audience est suspendue à 15h01

19 --- Upon resuming at 15:20 p.m./

20 L'audience est reprise à 15h20

21 **THE REGISTRAR:** Order. All rise. À
22 l'ordre. Veuillez vous lever.

23 This hearing is now resumed. Please be
24 seated. Veuillez vous asseoir.

25 **THE COMMISSIONER:** Thank you.

1 ---STATEMENT BY/DÉCLARATION PAR MS. JONES:

2 MS. JONES: Mr. Commissioner, just a couple
3 of things to clarify.

4 Mr. Manderville had said earlier that Mr.
5 White, or Officer White's testimony with regards to C-86
6 had to do with the demise of C-86, and that's why Officer
7 White had not continued any further, or why the
8 investigation hadn't continued any further in any event.
9 But I just want to refer to the transcript on this issue
10 with Officer White.

11 It's at Volume 290, at page 176, when he's
12 under cross-examination by Ms. Daley, and Ms. Daley stated:

13 "And setting aside that you found the
14 statement somewhat undetailed, he was
15 demonstrating his willingness to
16 cooperate?

17 SERGEANT WHITE: Yes.

18 MS. DALEY: Is there a reason why his
19 allegations weren't further pursued?

20 SERGEANT WHITE: Yes.

21 MS. DALEY: What's the reason?

22 SERGEANT WHITE: The statement was
23 lacking detail and I needed more detail
24 from him or try to get more detail
25 about the specific criminal allegation.

1 And what happened was he moved and all
2 efforts to try to relocate him again
3 fell through. I could never find him
4 again.

5 MS. DALEY: So when you went back to
6 him for further details he couldn't be
7 located?

8 SERGEANT WHITE: That's right.

9 **THE COMMISSIONER:** Okay, so bottom line is,
10 rumours of his demise had been greatly exaggerated?

11 **MS. JONES:** So it would appear. He
12 confirmed that also with Mr. Lee a few pages later.

13 **THE COMMISSIONER:** Okay, unless Mr.
14 Manderville wants to ---

15 **MR. MANDERVILLE:** During the lunch break,
16 Mr. Commissioner -- I had a concern about that as well, and
17 during the lunch break, I made an inquiry of my client to
18 track that issue down in terms of documents and I hope to
19 be able to advise you and ideally for C-86 repeat the words
20 of Mark Twain.

21 **THE COMMISSIONER:** M'hm. Oh, I thought
22 maybe you were going to say sorry for having extinguished
23 his life so prematurely?

24 ---**STATEMENT BY/DÉCLARATION PAR MR. MANDERVILLE:**

25 **MR. MANDERVILLE:** I believe it was Mark

1 Twain who said rumours of one's demise were greatly
2 exaggerated.

3 **THE COMMISSIONER:** Thank you.

4 All right, so Ms. Robitaille, or did you
5 want to speak about time.

6 **MS. JONES:** Yes, I do. I'm wondering if
7 perhaps the Crown counsel could speak to Mr. Johnson ---

8 **THE COMMISSIONER:** Mr. Scharbach?

9 ---**STATEMENT BY/DÉCLARATION PAR MR. SCHARBACH:**

10 **MR. SCHARBACH:** Good afternoon, Mr.
11 Commissioner.

12 **THE COMMISSIONER:** Yes.

13 **MR. SCHARBACH:** I had spoken to Don Johnson,
14 he was prepared to testify this afternoon but in view of
15 the lateness of time, he was informed by Ms. Jones that it
16 was his choice as to whether to start again on January the
17 6th, anew, or to continue on this afternoon. He chose to
18 start on January the 6th, anew. So as I understand it, he
19 won't be participating later on tonight.

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

21 **MR. SCHARBACH:** Thank you.

22 **THE COMMISSIONER:** I know that that
23 disappoints a lot of the lawyers here, that we'll have to
24 leave a little earlier, but it will have to do.

25 Ms. Robitaille?

1 **MS. ROBITAILLE:** Mr. Commissioner, I have an
2 agreement with counsel for the Diocese that their cross-
3 examination will proceed before mine. Thank you.

4 **THE COMMISSIONER:** Ms. Levesque?

5 **MURRAY MacDONALD, Resumed/Sous le même serment:**

6 **--- CROSS EXAMINATION BY/CONTRE-INTERROGATOIRE DE MS.**

7 **LEVESQUE :**

8 **MS. LEVESQUE:** Good afternoon, Mr.
9 MacDonald.

10 **MR. MacDONALD:** Madame.

11 **MS. LEVESQUE:** My name is Gisèle Levesque.
12 I'm counsel for the Diocese of Alexandria-Cornwall

13 **MR. MacDONALD:** Madame.

14 **MS. LEVESQUE:** And Bishop Larocque.

15 I just have a few areas I want to cover with
16 you this afternoon. I shouldn't be very long.

17 The first area is the statement that you
18 gave to Detective Inspector Smith and Detective Constable
19 Fagan ---

20 **MR. MacDONALD:** Yes, madame.

21 **MS. LEVESQUE:** --- on July 14th of 1994?

22 **MR. MacDONALD:** Yes, madame.

23 **MS. LEVESQUE:** You were told at that time
24 that you were a person of interest in an investigation for
25 obstruction of justice? That was your evidence earlier.

1 Your evidence in-chief is that you were advised prior to
2 giving your statement that you were a person of interest?

3 MR. MacDONALD: I believe I was, yes.

4 MS. LEVESQUE: You recall that?

5 So they were investigating your conduct;
6 correct? You knew that they were investigating your
7 conduct?

8 MR. MacDONALD: Yes, ma'am.

9 MS. LEVESQUE: And your role as a Crown
10 Attorney; correct?

11 MR. MacDONALD: My conduct in respect to
12 this -- the case of the Silmsler complaint.

13 MS. LEVESQUE: Correct. And your role as a
14 Crown Attorney in that investigation?

15 MR. MacDONALD: Correct.

16 MS. LEVESQUE: And they were also
17 investigating your involvement with the Diocese of
18 Alexandria-Cornwall, so the question of the conflict of
19 interest?

20 MR. MacDONALD: With regard ---

21 MS. LEVESQUE: You knew that they were
22 investigating you with regards to your role with the
23 Diocese of Alexandria-Cornwall?

24 MR. MacDONALD: Yes, because I told them
25 about it.

1 **MS. LEVESQUE:** Correct. So you know that as
2 a Crown Attorney and an officer of the court, you have an
3 obligation to provide comprehensive information to the
4 police?

5 **MR. MacDONALD:** Yes, ma'am.

6 **MS. LEVESQUE:** You have an obligation the
7 complete information?

8 **MR. MacDONALD:** Yes, ma'am, which I did.

9 **MS. LEVESQUE:** And you wanted to facilitate
10 their investigation as well at that time?

11 **MR. MacDONALD:** Yes.

12 **MS. LEVESQUE:** And you'll agree with me that
13 your evidence a year-and-a-half -- rather your statement
14 that you gave a year-and-a-half following the events is
15 fresher than the events today?

16 **MR. MacDONALD:** Probably is, yeah.

17 **MS. LEVESQUE:** Okay. Because you've told us
18 in your in-chief that you agreed that the events were
19 fresher in your mind a year-and-a-half after the events, so
20 in 1994 ---

21 **MR. MacDONALD:** Yeah, as a rule ---

22 **MS. LEVESQUE:** --- than they are today?

23 **MR. MacDONALD:** As a rule, the sooner the
24 better, except for instances where I've since learned
25 things, you know, after the fact, after the event ---

1 MR. MacDONALD: Yes.

2 MS. LEVESQUE: --- so in 1994 ---

3 MR. MacDONALD: Yeah, as a rule.

4 MS. LEVESQUE: --- than they are today?

5 MR. MacDONALD: As a rule, the sooner the
6 better, except for instances where I've since learned
7 things, you know, after the fact. If I didn't know
8 something in 1993, my -- there was no memory there, of
9 course.

10 I've learned a lot of things as time has
11 gone by. I try to delineate what I knew then from present
12 memory learned about past events.

13 MS. LEVESQUE: And there's a difficulty
14 there as well, because some of the information you've
15 learned could be from the media or from discussions ---

16 THE COMMISSIONER: So far we've gone over
17 this exact, same testimony in chief, almost to a "T", so
18 can we get on?

19 MS. LEVESQUE: I'd just like to look at
20 your -- your statement. It's Exhibit 1233.

21 MR. MacDONALD: Yes, Ma'am.

22 MS. LEVESQUE: And I'd like to go to Bates
23 page 5840. It's page 6 in the statement.

24 I want to look at you -- I want to look with
25 you at what you told the officers in '94 regarding your

1 participation in the Ecclesia 2000 Committee.

2 **MR. MacDONALD:** Yes.

3 **MS. LEVESQUE:** And I'm just going to
4 go -- if you look at the bottom, I'm just going to go
5 straight to the recommendation.

6 So they were questioning you regarding your
7 role in Ecclesia, and if you look at the bottom of page 6,
8 or Bates page 5840, starting with -- and I'm just going to
9 read it in:

10 "The recommendation that I participated
11 in writing -- and I must say I -- that
12 I was the only lawyer on the particular
13 subcommittee, and so I had
14 considerable, ah, ah, involvement in
15 writing that -- that one particular
16 recommendation."

17 Do you see that?

18 **MR. MacDONALD:** Yes, Ma'am.

19 **MS. LEVESQUE:** Okay. I'm just going to take
20 you down now, just a few lines, four lines down, to -- then
21 it goes on and then you give your -- the recommendation
22 that you made at that committee, and you say:

23 "Cooperation, ah, with -- ah,
24 particularly with the CAS and the
25 police, as well as being upfront with

1 the media,..."

2 And that's what you would have told the
3 officers at that time was your involvement?

4 **MR. MacDONALD:** Right.

5 **MS. LEVESQUE:** And the recommendation that
6 you did, which you would have drafted; correct?

7 **THE COMMISSIONER:** He didn't tell us about
8 what the recommendation was, but just he drafted it.

9 **MS. LEVESQUE:** Yeah.

10 **THE COMMISSIONER:** And you claimed
11 privilege, so I don't know where we're going.

12 **MS. LEVESQUE:** I'd like to look at now
13 the -- the report and recommendations of the Ecclesia 2000.
14 It's in your document, Mr. Commissioner.

15 **THE COMMISSIONER:** You're waiving privilege?

16 **MS. LEVESQUE:** Yeah. I didn't claim
17 privilege on the document. I raised a concern as to
18 where ---

19 **THE COMMISSIONER:** I thought for sure you
20 said you claimed privilege, but ---

21 **MS. LEVESQUE:** I did not claim privilege.

22 **THE COMMISSIONER:** Okay.

23 **MS. LEVESQUE:** I did not claim privilege,
24 Mr. Commissioner. It's in the database; it's been
25 disclosed.

1 **MR. MacDONALD:** Can you also show me the
2 recommendation that our ---

3 **MS. LEVESQUE:** I will.

4 **MR. MacDONALD:** --- that our committee sent?

5 **MS. LEVESQUE:** I will, yes. That's where
6 I'd like to go. It's Document Number 129777.

7 **THE COMMISSIONER:** Okay, so what's the
8 relevance of this to the Inquiry? Like, you know, this is
9 what he thought. This is why he had a conflict. Now you
10 want to show me this document. Why?

11 **MS. LEVESQUE:** I want to look at his
12 recommendation with him.

13 **THE COMMISSIONER:** His recommendation?

14 **MS. LEVESQUE:** Yeah, the recommendation
15 that ---

16 **MR. MacDONALD:** I've been informed, up to
17 this point, ma'am, that it couldn't be found.

18 **MS. LEVESQUE:** That it could not be found?

19 **MR. MacDONALD:** Right.

20 **MS. LEVESQUE:** It's -- no. This was
21 disclosed to the Commission some time ago.

22 **MR. MacDONALD:** Can I see the document?

23 **THE COMMISSIONER:** Okay.

24 **MS. LEVESQUE:** And it's in our cross
25 documents ---

1 **THE COMMISSIONER:** No, no, no, that's all
2 right.

3 **MS. LEVESQUE:** Yes, it's coming.

4 **THE COMMISSIONER:** So is Christmas.

5 **(LAUGHTER/RIRES)**

6 **THE COMMISSIONER:** Thank you. Exhibit 2937
7 is ---

8 **MR. MacDONALD:** Thank you.

9 **THE COMMISSIONER:** --- a report and
10 recommendations of Commission Number 3, "Co-Responsibility
11 in the Ministering Role of the Clergy."

12 **---EXHIBIT NO./PIÈCE NO P-2937:**

13 (129777) - Diocese Alexandria-Cornwall
14 Report and Recommendations of Commission 3:
15 Co-Responsibility in the Ministering Role of
16 the Clergy dated 2000

17 **MS. LEVESQUE:** So if you go to page -- it's
18 Bates page ---

19 **THE COMMISSIONER:** In the year 2000, by the
20 way. Okay.

21 **MS. LEVESQUE:** Yeah, Ecclesia 2000. Bates
22 page 8020. Actually, it should be, 8021. The pages are
23 not numbered, Mr. MacDonald, but the recommendations are,
24 and the recommendations I'm looking at is Recommendation
25 Number 23.

1 **MR. MacDONALD:** Thank you.

2 **MS. LEVESQUE:** Which is the second one on
3 Bates page 8021.

4 **MR. MacDONALD:** Thank you.

5 **MS. LEVESQUE:** So if you look at
6 Recommendation Number 23, it says:

7 "Be it resolved that this commission
8 prepare guidelines to deal with such
9 situations; these guidelines should be
10 made public, especially through parish
11 councils, and they should include the
12 following points: Cooperation with the
13 civil authorities, assistance to the
14 accused and the victim, and procedures
15 for dealing with the media."

16 **MR. MacDONALD:** Can I see my recommendation?

17 **MS. LEVESQUE:** This is the recommendation
18 that was made to the committee, and, if we go back to your
19 statement, you'll see that it is consistent with your
20 statement.

21 **MS. McINTOSH:** Pardon me. Mr. Commissioner,
22 you may recall yesterday the witness said that his
23 subcommittee produced a report which -- this document that
24 he's just been shown is not the same document, and so I
25 think when he says, "Can I see my recommendation?" what

1 he's saying is, "I'd like to see what my subcommittee
2 produced."

3 **MR. MacDONALD:** Right.

4 **MS. McINTOSH:** We don't have that.

5 **THE COMMISSIONER:** Do you ---

6 **MR. MacDONALD:** My ---

7 **THE COMMISSIONER:** Just a second. Okay,
8 thank you. Do you have his recommendation from the
9 committee?

10 **MS. LEVESQUE:** My understanding is that
11 these are the recommendations that were made. The
12 recommendation, if you go to the back of the document,
13 you'll see that there was a resolution. It's at Bates page
14 8024.

15 **THE COMMISSIONER:** Yeah.

16 **MS. LEVESQUE:** It's number 20, which is
17 identical to Recommendation Number 23. So that resolution
18 was -- is the resolution that was voted on and adopted. At
19 the bottom of the page, Mr. Commissioner.

20 **THE COMMISSIONER:** Right.

21 **MR. MacDONALD:** I've never seen this
22 document before.

23 **THE COMMISSIONER:** Okay, so, sir ---

24 **MS. LEVESQUE:** It may be that the final
25 document was never shown to you but this is what -- this is

1 the final Ecclesia report that's headed "Report and
2 Recommendations."

3 **MR. MacDONALD:** Well, this is not the report
4 I'm referring to. I'm referring to a -- it was a
5 single -- our report -- the reports that we drafted were
6 stand-alone documents that were handwritten.

7 **THE COMMISSIONER:** So, sir, counsel is
8 showing you Documentation Number 21. Is that ---

9 **MS. LEVESQUE:** Twenty-three (23).

10 **THE COMMISSIONER:** I'm sorry, which one,
11 what number?

12 **MS. LEVESQUE:** Twenty-three (23).

13 **THE COMMISSIONER:** Twenty-three (23). Is
14 this the recommendation that you had drafted?

15 **MR. MacDONALD:** No, our -- what I drafted
16 would have filled the page.

17 **THE COMMISSIONER:** Right. Mr. Lee to the
18 rescue.

19 **MR. LEE:** Sir, I'm a little bit concerned
20 that yesterday when this issue arose during the examination
21 in-chief, it was during -- in the context of the conflict
22 of interest, or bias, or whatever it was.

23 Ms. Levesque got up here and essentially
24 said that none of this was put to the Diocese witnesses and
25 therefore we couldn't put it to Mr. MacDonald.

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

2 **MR. LEE:** He told us that there was an issue
3 whereby he had advanced a recommendation. When matters
4 came to a vote his recommendation was nowhere to be found.
5 He became upset, he -- I don't know if "upset" is the right
6 word. He took issue with that and he ---

7 **THE COMMISSIONER:** He and his wife left,
8 yes.

9 **MR. LEE:** Mr. Engelmann backed away from
10 that area, as I understood, in relation to your comments
11 with respect to Ms. Levesque's objection. We now have her
12 going back into this, and I think she's clearly opened a
13 door, and we now have no appreciation of what the initial
14 recommendation from this witness was because he hasn't
15 given us that evidence because he wasn't asked for it.

16 **THE COMMISSIONER:** Right.

17 **MR. LEE:** But now we have this being put to
18 him, which is the final result, and now we have this
19 evidence out there, hanging, that he had some issue with
20 what was put to a vote, and we have no evidence at all on
21 whether -- I think he needs to be entitled to
22 explore -- not that needs to be entitled, he needs to be
23 specifically asked what his issue was, and what the problem
24 was, because we're now into this and we don't have the
25 evidence.

1 **THE COMMISSIONER:** Well, I don't know that
2 we're going to get very -- go very much further.

3 This is a collateral issue, Madame Levesque.
4 I don't see how it's relevant. All we know is that this
5 gentleman prepared a resolution and he thinks it -- really,
6 whether you adopt -- he adopted it later is irrelevant.

7 In his state of mind, right, he thought a
8 set of facts, and because of that he developed his idea
9 that he had a conflict, un point c'est tout. Now, if
10 you're thinking of bringing him back and saying, "Well,
11 look, it was really the same," it's a collateral issue and
12 I don't want to go much further than that, unless you can
13 persuade me otherwise.

14 **MS. LEVESQUE:** Well, there might be an
15 underlying inference.

16 **THE COMMISSIONER:** Inference? Oh, you ---

17 **MS. LEVESQUE:** Depending on -- this
18 resolution is consistent with what he would have told
19 the ---

20 **THE COMMISSIONER:** Well ---

21 **MS. LEVESQUE:** --- in 1994, the police.
22 There was -- there is no mention in the statement ---

23 **THE COMMISSIONER:** I'll tell you what ---

24 **MS. LEVESQUE:** --- to his storming out.

25 **THE COMMISSIONER:** I'll tell you what, I

1 won't take any inference against the Diocese because this
2 man says that he walked out because he -- his resolution
3 was different, and I'm not going to take any adverse
4 inference on that point against the Diocese. That should
5 make it easy.

6 **MS. LEVESQUE:** Nor that the resolution was
7 not adopted.

8 **THE COMMISSIONER:** Oh, I don't know about
9 that. There's no proof of that. None. And it's
10 irrelevant to the Inquiry.

11 **MS. LEVESQUE:** Well, it's adopted in this
12 document. It's resolved ---

13 **THE COMMISSIONER:** Ms. Levesque ---

14 **MS. LEVESQUE:** --- and adopted. His dissent
15 is not shown anywhere.

16 **THE COMMISSIONER:** Ms. Levesque?

17 **MS. LEVESQUE:** Yes.

18 **THE COMMISSIONER:** Let's go on.

19 **MS. LEVESQUE:** Okay. So I'm just going to
20 renew my objection that it is unfair if you draw any
21 inferences from any of his evidence based on the fact that
22 our clients were not canvassed. Commission counsel was
23 aware of this Ecclesia document ---

24 **THE COMMISSIONER:** Ms. Levesque --

25 **MS. LEVESQUE:** --- when they met with the --

1 -

2 THE COMMISSIONER: I understand your
3 objection and I don't agree with it and we're going to move
4 on now, please.

5 MS. LEVESQUE: Okay, yes ---

6 THE COMMISSIONER: Thank you.

7 MS. LEVESQUE: --- I will. Thank you. The
8 next area I wanted to touch very briefly with you is the --
9 for the financial settlement for the David Silmser
10 investigation ---

11 MR. MacDONALD: Yes, madame.

12 MS. LEVESQUE: --- you had an explanation
13 that the Church did not support David Silmser or his mother
14 in the past. That was one of the explanations that was
15 provided to you?

16 MR. MacDONALD: I believe by Malcolm
17 MacDonald.

18 MS. LEVESQUE: That's your -- that was your
19 evidence.

20 MR. MacDONALD: Yeah. It may have been
21 Jacques Leduc, but I don't recall now. I think it was
22 Malcolm MacDonald.

23 MS. LEVESQUE: I believe your evidence was
24 Malcolm MacDonald.

25 MR. MacDONALD: Yeah, I think so.

1 **MS. LEVESQUE:** So you never personally
2 interviewed David Silmser?

3 **MR. MacDONALD:** No.

4 **MS. LEVESQUE:** Okay. You read his
5 statement?

6 **MR. MacDONALD:** Yes, madame.

7 **THE COMMISSIONER:** One of them.

8 **MS. LEVESQUE:** And that was not in his
9 statement. Do you agree with that?

10 **MR. MacDONALD:** I don't recall.

11 **MS. LEVESQUE:** And this information is
12 something that you obtained from a third person, which was
13 second- or third-hand? You obtained from Malcolm
14 MacDonald, but it was ---

15 **MR. MacDONALD:** Yes, it was ---

16 **MS. LEVESQUE:** It would have been second-,
17 third-hand.

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

19 **MS. LEVESQUE:** Okay.

20 The last area I'd like to look at with you
21 is, as part of this investigation, you never interviewed
22 Bishop LaRocque; correct?

23 **MR. MacDONALD:** No, ma'am.

24 **MS. LEVESQUE:** You never interviewed any
25 priests of the Diocese of Alexandria-Cornwall?

1 **MR. MacDONALD:** I don't interview directly
2 myself, ever.

3 **MS. LEVESQUE:** Okay. Heidi never
4 interviewed Bishop LaRocque; correct?

5 **MR. MacDONALD:** I don't believe so. I
6 believe that Chief Shaver did.

7 **MS. LEVESQUE:** Heidi -- Heidi ---

8 **THE COMMISSIONER:** He doesn't know. How
9 could he know?

10 **MS. LEVESQUE:** Heidi -- well, Heidi never
11 interviewed any priests of the Diocese?

12 **THE COMMISSIONER:** To your knowledge, did
13 ---

14 **MS. LEVESQUE:** To your knowledge?

15 **MR. MacDONALD:** I don't know. I don't -- I
16 don't believe so.

17 **MS. LEVESQUE:** And you've told us that you
18 were involved in ---

19 **MR. MacDONALD:** Well, she did -- I think she
20 had -- her notes suggest she spoke to one or two priests
21 during that period of time. So there were certain -- a
22 couple of priests that appears from the notes today she
23 spoke -- I didn't ---

24 **MS. LEVESQUE:** From the Diocese?

25 **MR. MacDONALD:** I didn't know ---

1 MS. LEVESQUE: From the Diocese ---

2 MR. MacDONALD: I didn't know it ---

3 MS. LEVESQUE: --- of Alexandria-Cornwall?

4 MR. MacDONALD: I didn't know it then, but I
5 see in Heidi's notes reference to a monsignor and a ---

6 MS. LEVESQUE: Well, she spoke -- no, it
7 wasn't ---

8 THE COMMISSIONER: Ms. Levesque, he doesn't
9 know who he [sic] spoke to.

10 MS. LEVESQUE: And you've told us that in
11 your investigations you prosecuted two of -- you did two of
12 the prosecutions for the Alfred Training School ---

13 MR. MacDONALD: Yes.

14 MS. LEVESQUE: --- correct? And then you
15 did some historical prosecutions in the City of Sudbury;
16 correct?

17 MR. MacDONALD: Possibly. I think ---

18 MS. LEVESQUE: Okay.

19 MR. MacDONALD: --- I did. I can recall
20 one.

21 MS. LEVESQUE: One? You did one?

22 MR. MacDONALD: It was not institutional; it
23 was intrafamilial.

24 MS. LEVESQUE: Okay. And your involvement
25 with the David Silmsler matter ended at the 29th of

1 September, '93; correct? Or shortly thereafter. As a
2 Crown attorney.

3 **MR. MacDONALD:** Except for giving statements
4 and reports back to the police and others, yes. My
5 supervisors -- that went on into '94 and beyond.

6 **MS. LEVESQUE:** Because of ---

7 **MR. MacDONALD:** Follow-up.

8 **MS. LEVESQUE:** --- collateral follow-up or
9 collateral ---

10 **MR. MacDONALD:** Yeah.

11 **MS. LEVESQUE:** --- investigations.

12 **MR. MacDONALD:** Yeah.

13 **MS. LEVESQUE:** But your involvement as a
14 Crown attorney in that investigation ended at the end of
15 September ---

16 **MR. MacDONALD:** Yes, madame.

17 **MS. LEVESQUE:** --- '93; correct?

18 **MR. MacDONALD:** Yes.

19 **MS. LEVESQUE:** Those are my questions.

20 Thank you.

21 **MR. MacDONALD:** Thank you.

22 **THE COMMISSIONER:** Thank you.

23 Ms. Robitaille?

24 **MS. ROBITAILLE:** No questions for the
25 witness.

1 **THE COMMISSIONER:** Thank you.

2 Mr. Manderville?

3 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

4 **MR. MANDERVILLE:**

5 **MR. MANDERVILLE:** Good afternoon,
6 Mr. Commissioner.

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

8 **MR. MANDERVILLE:** Good afternoon,
9 Mr. MacDonald.

10 **MR. MacDONALD:** Sir.

11 **MR. MANDERVILLE:** We have met before, but
12 I'm Peter Manderville, I'm counsel for the Cornwall Police.

13 **MR. MacDONALD:** Yes, sir.

14 **MR. MANDERVILLE:** Sir, you've been a Crown
15 here for 20 years?

16 **MR. MacDONALD:** Yes, sir, 20 and a bit.

17 **MR. MANDERVILLE:** And over those years
18 you've worked very closely with my client?

19 **MR. MacDONALD:** The Cornwall Police Service?

20 **MR. MANDERVILLE:** Yes.

21 **MR. MacDONALD:** Yes. Still do.

22 **MR. MANDERVILLE:** I do have other clients
23 but that's the one I want to talk about.

24 And I take it you would say you have a good
25 relationship with members of the Cornwall Police Service?

1 **MR. MacDONALD:** Well, we've been through
2 thick and thin and we still work well together.

3 **MR. MANDERVILLE:** And you know the Cornwall
4 Police to be staffed by competent, capable, hard-working
5 officers?

6 **MR. MacDONALD:** I do. That's for sure.

7 **MR. MANDERVILLE:** I want to go through, to
8 some degree, your 1994 interview with the OPP.

9 **MR. MacDONALD:** Yes, sir.

10 **MR. MANDERVILLE:** And that would be
11 Exhibit 1233. What I'd like to do, for the sake of
12 brevity, is to propose various things to you that you
13 indicated during the interview, and if you need to we can
14 certainly go to the specific page where you talk about it.

15 I just want you to have it handy, but if you
16 recall what you said and I put it to you and you agree, so
17 much the better. You've told us, and you told the OPP
18 officers, that you felt you had met with Heidi Sebalj seven
19 to 10 times through the course of her investigation?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. MANDERVILLE:** And you knew that she was
22 grappling with the issue of reasonable and probable
23 grounds.

24 **MR. MacDONALD:** She was grappling with the
25 issue of how to -- how to collect sufficient evidence to

1 formulate reasonable and probable grounds.

2 **MR. MANDERVILLE:** Correct. And she sought
3 some guidance from you and you tried to provide it.

4 **MR. MacDONALD:** Yes.

5 **MR. MANDERVILLE:** And Ms. Daley yesterday
6 suggested to you that Heidi was coming to you in the
7 absence of guidance from Luc Brunet. And Staff Sergeant
8 Brunet gave evidence that he and Constable Sebalj met
9 relatively regularly on an informal basis concerning this
10 investigation.

11 And given your knowledge of Luc Brunet, I
12 take it that would be consistent with your understanding of
13 him?

14 **MR. MacDONALD:** I'm not surprised to hear
15 that he did that. I didn't know -- I didn't have the sense
16 from Heidi that she had been conferring with him as well.
17 I may be wrong on that. If Luc says he did, that's -- he
18 probably did.

19 **MR. MANDERVILLE:** And you understood that
20 Constable Sebalj was finding Mr. Silmser difficult to deal
21 with?

22 **MR. MacDONALD:** Yes.

23 **MR. MANDERVILLE:** And finding it difficult
24 to get information from him?

25 **MR. MacDONALD:** At times. Not always, but

1 at times.

2 MR. MANDERVILLE: And as the investigation
3 went on, you came to the view that Constable Sebalj's
4 difficulties with the investigation were increasing rather
5 than decreasing?

6 MR. MacDONALD: Especially in the -- sort of
7 the March to the end of April timeframe, that's where most
8 of our contacts were and that's where it seems most of the
9 dead ends were being encountered.

10 MR. MANDERVILLE: And you understood that
11 despite the information Constable Sebalj secured from C-3
12 and C-56, that she never formed a subjective view that she
13 had reasonable and probable grounds to lay charges prior to
14 Mr. Silmsler insisting that he didn't want to proceed any
15 further?

16 MR. MacDONALD: Right.

17 MR. MANDERVILLE: And as you suggested to
18 Mr. Neville, it's not for you or for anyone else to go
19 behind the officer's subjective view, is it?

20 MR. MacDONALD: Right.

21 MR. MANDERVILLE: Unless you question or
22 second-guess her bona fides or her good-faith belief.

23 MR. MacDONALD: Oh, her good faith was never
24 in question, sir.

25 MR. MANDERVILLE: That was what I was going

1 to say to you, that -- or put to you -- that you never
2 questioned that at all ---

3 MR. MacDONALD: No.

4 MR. MANDERVILLE: --- did you?

5 MR. MacDONALD: No, no. No.

6 MR. MANDERVILLE: You subsequently came to
7 understand that when the OPP reinvestigated the Silmsers
8 complaint regarding Father MacDonald in 1994 ---

9 MR. MacDONALD: Yes, sir.

10 MR. MANDERVILLE: --- that Tim Smith, a
11 highly experienced OPP officer, was also unable to form the
12 subjective view that he had reasonable and probable grounds
13 to lay charges; correct?

14 MR. MacDONALD: Yes, sir.

15 MR. MANDERVILLE: And once again, it's not
16 for you or for anyone else to go behind or second-guess
17 officer Smith's subjective view, is it?

18 MR. MacDONALD: No. We now have a practice
19 of, when asked, offering our thoughts on the objective
20 component, but you can never question ultimately the
21 subjective conclusion.

22 MR. MANDERVILLE: That's right. And you
23 advised officer Brunet and/or Sebalj to go to Silmsers
24 following the settlement, or Sean Adams, to advise him or
25 to make it clear to him that his criminal complaint was not

1 affected by the civil settlement; correct?

2 **MR. MacDONALD:** Yes. I think that that
3 suggestion to Luc Brunet was not a surprise to Luc. I
4 think he -- seems to me his response was -- and I have it
5 somewhere in my notes, but it seems to me he said he had --
6 was about to do it, anyway.

7 **MR. MANDERVILLE:** And to your knowledge,
8 they did do so?

9 **MR. MacDONALD:** I know they did.

10 **MR. MANDERVILLE:** And -- and ---

11 **MR. MacDONALD:** Twice.

12 **MR. MANDERVILLE:** And Mr. Silmser made it
13 clear he didn't want to proceed?

14 **MR. MacDONALD:** That's what we thought.

15 **MR. MANDERVILLE:** And both Staff Sergeant
16 Brunet and Chief Shaver came to you to express their
17 concerns with the effects this settlement had had on the
18 investigation?

19 **MR. MacDONALD:** Yes.

20 **MR. MANDERVILLE:** Mr. Shaver was quite upset
21 by the outcome?

22 **MR. MacDONALD:** Oh yes, sir.

23 **MR. MANDERVILLE:** He was looking to you to
24 assist him in what steps the Cornwall Police might be able
25 to take to deal with the problems that they felt the

1 settlement created?

2 **MR. MacDONALD:** "Can we force the victim on
3 despite his wishes? Can we somehow hold the Diocese
4 responsible for undertaking these negotiations, civil
5 negotiations? Can we -- is Mr. -- did Mr. Silmser himself
6 go into the range of obstructing justice or attempting to?"
7 These were all questions that Mr. -- that Claude Shaver
8 had.

9 **MR. MANDERVILLE:** Looking at what legal
10 avenues might we be able to pursue?

11 **MR. MacDONALD:** Yes, sir.

12 **MR. MANDERVILLE:** And you understood that
13 Mr. -- Chief Shaver subsequently went to the Bishop of the
14 Diocese?

15 **MR. MacDONALD:** I understand he went to the
16 Bishop, Probation, and the CAS.

17 **MR. MANDERVILLE:** And do you also understand
18 he went to the Papal Nuncio in Ottawa?

19 **MR. MacDONALD:** I don't recall then. I've
20 since heard that at one point he did, but I don't recall if
21 he told me that.

22 **MR. MANDERVILLE:** And you understood that in
23 each case his approaches to the Bishop and to the CAS and
24 to Probation were to deal with the potential problems posed
25 by the possibility that Father MacDonald and/or Ken Seguin

1 were at large in the community, based on Mr. Silmsers's
2 allegations?

3 **MR. MacDONALD:** That would have been one of
4 the main reasons, one of the main points he would have
5 brought up. I'm sure that's what he expressed to me.

6 **MR. MANDERVILLE:** And you told the OPP that
7 one of Chief Shaver's primary concerns was, "How do we
8 protect children if Mr. Silmsers's allegations are in fact
9 true?"

10 **MR. MacDONALD:** That's fair to say.

11 **MR. MANDERVILLE:** And I take it you'd agree
12 with me that these actions do not appear to be the actions
13 of a man or of a police department looking to cover up the
14 Silmsers allegations, do they?

15 **MR. MacDONALD:** Heidi Sebalj could have
16 covered this up in January if she wanted to.

17 **MR. MANDERVILLE:** So you do agree with me?

18 **MR. MacDONALD:** Oh, this was -- it may have
19 been less than a perfect investigation, but it was nothing
20 near a cover-up, sir. It was the -- definitely not a --
21 anywhere near that, as far as everything I've seen in terms
22 of my involvement then and even subsequently.

23 **MR. MANDERVILLE:** I want to switch areas for
24 a little bit. You spoke to Mr. Engelmann in your first day
25 of evidence here about how the law regarding corroboration

1 had changed in 1988.

2 MR. MacDONALD: Between '88 and '93, yeah.
3 The *Evidence Act* I think was changed in '93.

4 MR. MANDERVILLE: And prior to that time the
5 *Evidence Act* required that the evidence of a child was to
6 be corroborated; correct?

7 MR. MacDONALD: Yes.

8 MR. MANDERVILLE: And a child's allegations
9 of a sexual assault had to have some form of corroboration?

10 MR. MacDONALD: Yes, sir.

11 MR. MANDERVILLE: So in 1985, a nine-year-
12 old mentally challenged child presenting with an allegation
13 of sexual assault would require corroboration of that
14 allegation in some form?

15 MR. MacDONALD: If it was investigated in
16 '83?

17 MR. MANDERVILLE: Eighty-five ('85).

18 MR. MacDONALD: Eighty-five ('85)? Yes.

19 MR. MANDERVILLE: And in the absence of
20 corroboration there would not be a basis to lay a charge.

21 MR. MacDONALD: In '85.

22 MR. MANDERVILLE: Correct.

23 Yesterday Mr. Engelmann took you through a
24 few documents from your Assistant Crown, Lynn Robinson ---

25 MR. MacDONALD: Yes, sir.

1 **MR. MANDERVILLE:** --- in the Earl Landry,
2 Jr. prosecution.

3 **MR. MacDONALD:** Yes, sir.

4 **MR. MANDERVILLE:** And in particular he took
5 you through some memos and correspondence between Ms.
6 Robinson and Staff Sergeant Brian Snyder. You recall that?

7 **MR. MacDONALD:** Yes, sir.

8 **MR. MANDERVILLE:** I understand Ms. Robinson
9 came to you and provided you with her perceptions of
10 Sergeant Snyder's responsiveness to her letters.

11 **MR. MacDONALD:** She was upset about him --
12 at him for that point.

13 **MR. MANDERVILLE:** And you wrote a letter to
14 Chief Repa in response to that; correct?

15 **MR. MacDONALD:** I just don't recall. Is it
16 ---

17 **MR. MANDERVILLE:** We looked at that
18 yesterday.

19 **MR. MacDONALD:** Yesterday; okay.

20 **MR. MANDERVILLE:** I take it you did not (a)
21 question the accuracy of Ms. Robinson's perceptions as she
22 told them to you.

23 **MR. MacDONALD:** No, I didn't.

24 **MR. MANDERVILLE:** And (b) you did not speak
25 to Staff Sergeant Snyder about it?

1 **MR. MacDONALD:** No, I didn't.

2 **MR. MANDERVILLE:** And Chief Repa and the
3 Cornwall Police were responsive to your letter and the
4 concerns expressed therein?

5 **MR. MacDONALD:** Yes, because I'd spoken to
6 the Chief and then in my writing -- in my letter you note
7 that I'm referring to different issues that I brought to
8 his attention on the topic of timely disclosure, and I did
9 not quote Lynn at large when I spoke to the Chief.

10 **MR. MANDERVILLE:** Now, you've spoken,
11 certainly in your letter of September 14, '93, on the
12 Silmser investigation and elsewhere about the Crown policy
13 of not compelling an unwilling complainant to proceed
14 against their wishes in the context of a sexual assault;
15 correct?

16 **MR. MacDONALD:** Yes, sir.

17 **MR. MANDERVILLE:** And I take it this is
18 because there are concerns about revictimization or
19 traumatization that the complainant may endure in the trial
20 process.

21 **MR. MacDONALD:** Precisely.

22 **MR. MANDERVILLE:** And indeed people commit
23 suicide over these sorts of issues if it's severe enough;
24 correct?

25 **MR. MacDONALD:** Yes, sir.

1 **MR. MANDERVILLE:** And you as a Crown, and
2 the provincial Crowns in general, are sensitive to that --
3 to avoid that possibility?

4 **MR. MacDONALD:** We had -- I recall it being
5 discussed in the early years -- late eighties, early
6 nineties -- the caution that had to be applied. I don't
7 recall if it was at a provincial education session, a
8 regional session or -- but it was something that we as a
9 professional group were recognizing.

10 **MR. MANDERVILLE:** Now, yesterday,
11 Mr. MacDonald, Ms. Daley took you to a statement of Malcolm
12 MacDonald's, suggesting that he was getting information
13 from the Cornwall Police about Mr. Silmser's attendance
14 record at appointments, or lack thereof, and I objected and
15 indicated to the Commissioner that there was no indication
16 in Officer Sebalj's notes of any sort.

17 And, Mr. Commissioner, I've gone through the
18 notes and I have the Bates pages to refer Mr. MacDonald to,
19 recording her conversations with Malcolm MacDonald.
20 Beginning at -- and it's Exhibit 295. That's Document
21 717428.

22 **MR. MacDONALD:** Sir, I really don't know
23 what she did or didn't tell Malcolm MacDonald.

24 **MR. MANDERVILLE:** I appreciate that. I know
25 that, Mr. MacDonald. I just wish to clarify the record.

1 **THE COMMISSIONER:** What page?

2 **MR. MANDERVILLE:** Bates page 7063750.

3 **THE COMMISSIONER:** Three seven five zero
4 (3750).

5 **MR. MANDERVILLE:** So ending at 3750, and it
6 should be Constable Sebalj's notes for 25 February 1993.
7 Down the bottom of the page at 1455:

8 "Telephone call from Malcolm
9 MacDonald..."

10 Go on to the next page:

11 "...counsel for the suspect, Father
12 Charles MacDonald, advises Jacques
13 Leduc is lawyer for the Diocese. Gave
14 history of his file. States Monsignor
15 Schonenbach met with Silmsier in Ottawa
16 on December 9, 1992 at Archdiocese.
17 Schonenbach is in charge of [something]
18 -- investigating offences. Schonenbach
19 wrote letter to Monsignor McDougald on
20 December 11, '92, advising about the
21 allegations against MacDonald.
22 McDougald in charge of investigations
23 for this area. McDougald wrote letter
24 to MacDonald on December 12, 1992,
25 advising him of allegations made

1 against him. MacDonald retained his
2 lawyer, Malcolm MacDonald, on December
3 16, '92. MacDonald and MacDonald met
4 McDougald on Thursday..."

5 Sounds like Peter Piper.

6 "...December 17, 1992, in a.m. in
7 St. Raphael's. Suspect wrote letter to
8 McDougald, then wrote a letter to
9 Silmsler on December 21, 1992, denying
10 allegations on the part of the suspect,
11 requesting clarification on incidents
12 and noting that dates provided by the
13 victim are wrong as MacDonald at St.
14 Columban's at that time. Victim told
15 Church he was going to the police.
16 Suggested after victim first attended
17 HQ on 28 January, 1993, that at
18 approximately 2300 hours that night
19 called McDougald and stated that he
20 wanted to go through the Diocese.
21 McDougald believes victim was very
22 intoxicated at the time, therefore
23 meeting at the Diocese on Montreal Road
24 on 09 February 1993 set up at victim's
25 request. Present at the meeting was

1 McDougald..."

2 Looks like it says:

3 "...in charge, Leduc lawyer and one

4 unknown from Glen Walter. States they

5 have talked about getting the victim

6 some psychological help through Royal

7 Ottawa without committing liability.

8 Victim was satisfied at the time.

9 However, called the next day to tell

10 them he was going through the police.

11 Advises victim has retained Tom Swabey

12 and Don Johnson, both, and has parted

13 ways with both a couple of days later.

14 Advises the Church's files are open and

15 they are willing to cooperate. Advised

16 he would get go-ahead from McDougald to

17 provide me with a copy of V [for

18 victim's] allegations to the Church.

19 States Church believes victim wants

20 money as he has made certain demands,

21 for starters. Advises Father MacDonald

22 is prepared to take a polygraph.

23 Bishop for area is LaRocque. MacDonald

24 gone on holidays for one week

25 commencing 27 Feb. Will contact me on

1 his return."

2 And then he gives a -- and then it goes on
3 to another phone call.

4 The next entry, Mr. Commissioner, is at
5 Bates page ending 3818.

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

7 **MR. MANDERVILLE:** It's dated March 17, 1993,
8 11:28:

9 "Telephone call to Malcolm MacDonald.
10 Asked him to confirm the years Father C
11 was at St. Columban's. Confirm dates
12 victim was an altar boy. Confirm dates
13 of any retreat in St. Andrew's. Asked
14 if he knew how to reach..."

15 A word I can't make out, sir.

16 **THE COMMISSIONER:** "How to reach" -- oh, I
17 don't know. "Monsignor" maybe?

18 **MR. MANDERVILLE:** Okay, could be:

19 "States he also is unable to locate.
20 Unknown if dead or alive. Knows he is
21 no longer a priest. Mentioned that..."

22 And there's another name there:

23 "...had sent a copy of his statement,
24 left his card at Christmas time and..."

25 I think it's Meilleur, sir.

1 **THE COMMISSIONER:** Oh.

2 **MR. MANDERVILLE:** "...has called. Will be
3 sending him a copy of their statement
4 as well. Very cooperative. Will call
5 with info ASAP."

6 And then at Bates page ending 3820, later
7 that same day, March 17, 1993, at 1334 Constable Sebalj
8 notes another call from Malcolm MacDonald:

9 "Advises Father C at St. Columban's
10 from July '69 to July '75. Silmsner was
11 an altar boy definitely in 1972, maybe
12 for part of '71 and '73."

13 **THE COMMISSIONER:** There's a Father ---

14 **MR. MANDERVILLE:** It's another name.

15 **THE COMMISSIONER:** Yeah.

16 **MR. MANDERVILLE:** "Left in 1976. Has not
17 been heard of or seen since. Left the
18 priesthood while in..."

19 **THE COMMISSIONER:** "In the States"?

20 **MR. MANDERVILLE:** "In the States," perhaps.

21 Thank you, sir:

22 "Was in Apple Hill from June '75 to
23 August '82. People that helped him
24 move include..."

25 And a number of names there. And then

1 10 minutes later on the same page, at 1355 Constable Sebalj
2 records another call from Malcolm:

3 "Advises Father Charlie only supervised
4 one retreat in States [perhaps] and was
5 in June of '73."

6 And the last recorded call is at Bates page
7 3835, dated August 23, 1993 at 9:30 a.m.

8 "Telephone call from Malcolm MacDonald.
9 States file diarized for this date.
10 Looking for update. Advised I was
11 waiting to meet with Crown. Asked that
12 his client be summonsed and he would
13 escort, as opposed to being handcuffed,
14 et cetera. Suggested I would try to
15 accommodate. Asked to be kept abreast
16 of situation."

17 Mr. Commissioner, those are all the notes
18 regarding contacts with Malcolm MacDonald by Officer Sebalj
19 and, Mr. MacDonald, I take you'd agree that there's no
20 indication in what I've recorded that she is advising
21 Malcolm MacDonald of any cooperation or lack thereof on the
22 part of Mr. Silmser; correct?

23 **MR. MacDONALD:** It appears not.

24 **MR. MANDERVILLE:** I'm sorry to have to go
25 through that, Mr. Commissioner.

1 **THE COMMISSIONER:** It's okay.

2 **MR. MANDERVILLE:** Next area, Mr. MacDonald.

3 **MR. MacDONALD:** Yes, sir.

4 **MR. MANDERVILLE:** You spoke yesterday that
5 you were of the impression that Heidi was -- Heidi Sebalj
6 was kept at work during a weekend in October to create her
7 notes, and I got up and objected. And if Officer -- Staff
8 Sergeant Brunet gave evidence that on a weekend in October
9 1993 Officer Sebalj was ordered to generate her OMPPAC
10 reports from her notes.

11 **MR. MacDONALD:** Maybe that's what I'm
12 thinking of.

13 **MR. MANDERVILLE:** And that she spent the
14 whole weekend doing so; that Officer Brunet reviewed them
15 and that they were presented to Chief Shaver on the Monday
16 in the form of a Crown brief that you looked at yesterday.

17 I'm going to suggest to you is it possible
18 you were mistaken in expressing the view that she had
19 created her notes on that weekend, as opposed to OMPPAC
20 reports from her notes?

21 **MR. MacDONALD:** I had the impression that in
22 late September or October she had made an attempt to
23 package everything she'd done up to that point together.
24 Is that -- is that what you mean?

25 **MR. MANDERVILLE:** Yes. I'm suggesting to

1 you that it is more likely -- you agree with me it's more
2 likely she was generating her OMPPAC reports from her notes
3 on that weekend, as opposed to creating her notes for the
4 first time?

5 **MS. McINTOSH:** I'm sorry to interrupt my
6 friend but my distinct impression was that it was
7 acknowledged that what we call the dedicated notes were not
8 contemporaneous, and maybe that's what the witness is
9 thinking about.

10 **MR. MANDERVILLE:** Perhaps we're into
11 semantics. I'm not sure what is meant by "dedicated
12 notes."

13 Would you agree with me, Mr. MacDonald, that
14 the notes we've been looking at of Officer Sebalj
15 recording, for instance just now, her conversations with
16 Mr. MacDonald; there is other instances where they record
17 meetings or conversations with you -- you would have no
18 reason to feel they were not contemporaneous?

19 **MR. MacDONALD:** The notes you've just gone
20 through appear to be all contemporaneous.

21 **MR. MANDERVILLE:** Yes.

22 **MR. MacDONALD:** I don't think that's -- I
23 don't ---

24 **THE COMMISSIONER:** No, but there's another
25 set of notes.

1 **MR. MANDERVILLE:** Correct, sir.

2 **THE COMMISSIONER:** Right, and that's the one
3 that wasn't contemporaneous.

4 **MR. MANDERVILLE:** Correct, yes.

5 **THE COMMISSIONER:** So we've got OMPPAC,
6 we've got that other set of notes and we've got ---

7 **MR. MANDERVILLE:** And then we've got the
8 contemporaneous ---

9 **THE COMMISSIONER:** --- the police officer
10 notes. Let's call them that.

11 **MR. MANDERVILLE:** Okay.

12 **THE COMMISSIONER:** And there's no
13 suggestion, I don't think, that Exhibit 295 is anything but
14 day-by-day notes.

15 **MR. MANDERVILLE:** Thank you, sir.

16 **MR. MacDONALD:** Yes, sir, and I'm not -- I'm
17 not -- I don't in any way wish to imply that she was
18 cooking her notes.

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

20 **MR. MacDONALD:** I think she was -- with the
21 -- the second set of notes was, I'm sure, adding time --
22 you know, putting information together that would tie
23 pieces of the notes together, you know. This would have
24 been, I think, appropriate under those circumstances.

25 **MR. MANDERVILLE:** The next area I want to

1 speak with you briefly about, Mr. MacDonald, is you've been
2 using the terminology for the past couple of days of "CYA
3 letter."

4 **MR. MacDONALD:** Yes, sir.

5 **MR. MANDERVILLE:** And it's your terminology
6 and you used it in ---

7 **MR. MacDONALD:** It wasn't Luc's terminology.

8 **MR. MANDERVILLE:** Pardon me?

9 **MR. MacDONALD:** It was not Luc Brunet's
10 terminology; it was mine.

11 **MR. MANDERVILLE:** No, I know that. You used
12 it in connection with your letter of September 14, 1993,
13 and I take it you did not mean to imply that the letter was
14 sort of written cavalierly by you without regard to its
15 accuracy.

16 **MR. MacDONALD:** Oh no. No, it was -- I used
17 strong language, particularly in the last two sentences,
18 that I would use differently knowing what I know today.
19 But none of it was cavalier and none of it was trying to
20 stretch the circumstances, but I knew Luc -- Luc asked for
21 it because he knew he had to answer to the brass, and so I
22 wanted to give something that sufficiently clearly laid out
23 the situation.

24 **MR. MANDERVILLE:** And it went a little
25 beyond that, I'm going to suggest to you, because you and

1 he both understood that you exchanged some potentially very
2 important information.

3 **MR. MacDONALD:** In the phone call?

4 **MR. MANDERVILLE:** Yes. He recognized the
5 importance of perhaps having you confirm your views in
6 writing so he could show it to the Chief and others that,
7 "Look, here's the opinion I've secured from Crown
8 MacDonald."

9 **MR. MacDONALD:** Yeah, possibly. Yeah.

10 **MR. MANDERVILLE:** And your letter was, at
11 the time you wrote it, as accurate as you thought it could
12 be; correct?

13 **MR. MacDONALD:** Yes.

14 **MR. MANDERVILLE:** And lastly, sir, yesterday
15 in your recommendations you spoke quite eloquently about
16 the fact that participants in the justice system, including
17 Crowns, are obliged to refrain from commenting on matters
18 which are *sub judice* or pending before the courts; correct?

19 **THE COMMISSIONER:** Yes. I believe that
20 would likewise apply to the police and the legislature.

21 **MR. MANDERVILLE:** That was the next point I
22 was going to make.

23 The police services in this country face the
24 same constraints, don't they?

25 **MR. MacDONALD:** I would say even -- it would

1 have to be more -- as cautious as any of those three
2 agencies I've just mentioned.

3 **MR. MANDERVILLE:** And unlike the situation
4 we sometimes see in the United States where a press
5 conference may be held at the time of arrest, and opinions
6 expressed as to the guilt of the person arrested, a person
7 -- our Crown's attorneys and our police services simply
8 don't do that here, do they? ...

9 **MR. MacDONALD:** No, they don't. That was
10 what I -- that's what I was trying to -- that's what I'm
11 inviting the Commission and the Commissioner to think about
12 because I don't have a perfect answer.
13 This was one of those times when maybe we should have done
14 something different or maybe we should have found a way to
15 circumvent -- or, comply with *sub judice* and still correct
16 the misinformation out there.

17 **MR. MANDERVILLE:** For good or for ill, we
18 have a time-honoured tradition of awaiting the outcome of
19 court proceedings; correct?

20 **MR. MacDONALD:** Correct.

21 **MR. MANDERVILLE:** Thank you very much, Mr.
22 MacDonald.

23 **MR. MacDONALD:** Thank you, sir.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Kozloff?

1 **---STATEMENT BY/DÉCLARATION PAR MR. KOZLOFF:**

2 **MR. KOZLOFF:** Good afternoon, Mr.
3 Commissioner.

4 **THE COMMISSIONER:** Good afternoon, sir.

5 **MR. KOZLOFF:** I don't have any questions for
6 you, Mr. MacDonald. I'd like to thank you for coming.

7 On behalf of my client, I'd like to
8 recognize your courage and your integrity over the past 15
9 years, the fact that you were the subject matter of an
10 investigation on two occasions notwithstanding.

11 And, Mr. Commissioner, I would like to wish you and
12 everybody else in this room, or at least those remaining
13 here, all the best of the Season.

14 **THE COMMISSIONER:** Thank you very much, Mr.
15 Kozloff.

16 **MR. MacDONALD:** Thank you.

17 **THE COMMISSIONER:** Mr. Carroll. He's gone.

18 **(LAUGHTER/RIRES)**

19 **THE COMMISSIONER:** Please make the record
20 note that Mr. Carroll is gone.

21 **MR. KOZLOFF:** He sends you his very best,
22 Mr. Commissioner.

23 **(LAUGHTER/RIRES)**

24 **THE COMMISSIONER:** Mr. Carroll has left the
25 room.

1 Ms. McIntosh?

2 **MURRAY MacDONALD, Resumed/Sous le même serment:**

3 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

4 **MS. McINTOSH:**

5 **MS. McINTOSH:** Good afternoon, Mr.
6 MacDonald. You know me, but for the viewing public who are
7 trapped inside on this day, I guess, and watching the
8 Cornwall Public Inquiry, I'm Leslie McIntosh for the
9 Ministry of the Attorney General.

10 I wanted to start by asking you a few
11 questions about your letter of September 14th, 1993 to Staff
12 Sergeant Brunet, as he then was, which is Exhibit 301.

13 **MR. MacDONALD:** Yes, ma'am.

14 **MS. McINTOSH:** Document 101560.

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

16 **MS. McINTOSH:** All right.

17 Now, as I read this letter, you're
18 addressing two, would it be right to say, separate issues
19 here, the policy and the RPGs. Is that correct?

20 **MR. MacDONALD:** Yes.

21 **MS. McINTOSH:** And as Mr. Manderville just
22 said to you, the policy against compelling reluctant
23 victims of sexual assault is based on the rationale of not
24 re-victimizing them?

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

1 **MS. McINTOSH:** And what about the policy
2 about domestic violence? Is my understanding correct that
3 you will compel a reluctant victim in a case of domestic
4 violence to testify? Is that -- is that correct?

5 **MR. MacDONALD:** Only where there's a
6 reasonable prospect of conviction and it's in the public
7 interest to do so, and it usually is in the public interest
8 to do so in our view, but for very different socio --
9 social and substantive criminal reasons.

10 **MS. McINTOSH:** All right. And is the
11 rationale for that that the reason that they might not be
12 testifying is, you know, because of their economic or
13 emotional dependence and so on in the situation, in the
14 abusive situation? Is that one of the rationales in any
15 event?

16 **MR. MacDONALD:** Yes, that's correct.
17 Emotional, social, financial. There are a number that
18 commissions of inquiry in this province have brought to the
19 attention of the police and prosecution service earlier in
20 the nineties.

21 **THE COMMISSIONER:** This isn't a -- this
22 isn't just your decision, this is mandated from the
23 Attorney General's office, is it not?

24 **MR. MacDONALD:** Yes, sir, policy as well as
25 confidential legal memoranda to us.

1 **THE COMMISSIONER:** Thank you.

2 **MS. McINTOSH:** All right.

3 Now, with respect to the policy issue in
4 your letter, how would you characterize what you're saying
5 about the policy issue? Would you call it a legal opinion,
6 what you were saying about the policy in your letter?

7 **MR. MacDONALD:** I think it can be said that
8 I was. I was trying to stay away from giving legal
9 opinions on RPGs, but I think this was a standalone one
10 that I was comfortable in giving.

11 **MS. McINTOSH:** But on the policy part of it,
12 you know, saying, our policy is not to compel reluctant
13 victims, was that, in your mind, giving a legal opinion,
14 that part of it?

15 **MR. MacDONALD:** I think so because -- I'm
16 not sure of your question, but they were asking what the
17 Crown's position was in respect to this application of
18 policy and, you know, I suppose policy and legal would
19 commingle at that point.

20 **MS. McINTOSH:** Okay. What I was really
21 getting at is whether there was sort of an application of
22 judgement or discretion or whatever in terms of the
23 application of the policy to the facts ---

24 **MR. MacDONALD:** No, no ---

25 **MS. McINTOSH:** --- in this case.

1 **MR. MacDONALD:** --- I didn't apply the
2 policy -- apply a discretion to it, I just explained to him
3 what it meant.

4 **MS. McINTOSH:** Okay. And with respect to
5 the RPGs issue, why was it that you addressed the RPGs
6 issue in this letter?

7 **MR. MacDONALD:** Because -- I'm trying to
8 recall. It was related to the context of our telephone
9 call as well as the letter. And seemingly Luc was
10 enquiring and asking for a back -- my global sense of
11 things that in order that he could answer back to his
12 supervisors, and that's why I wanted to show that this case
13 didn't turn on whether or not the individual opted to or
14 could be forced to testify, but also it turned on the fact
15 that it had not yet reached the reasonable grounds stage.

16 **MS. McINTOSH:** All right.
17 And in response to a question from Mr. Manderville just a
18 minute ago, you said, "We now have a practice to offer
19 opinions on objective RPGs", and I wondered whether you
20 were suggesting that there was a different practice at some
21 point-in-time.

22 **MR. MacDONALD:** I cut my teeth in this
23 business on the instructions from supervisors in --
24 particularly in Sudbury, that reasonable grounds are none
25 of your business except to the extent of assisting with

1 providing legal -- essentially legal elements to the
2 charge. And at that point -- beyond that, you should stay
3 away.

4 And it was only until I conferred with Mr.
5 Griffiths in 1994 and as '94 went by, that I learned that
6 he on behalf of the division, Criminal Law Division, felt
7 comfortable in wading into comment on the objective
8 component of the test.

9 **MS. McINTOSH:** Okay.

10 And did you ever talk to Peter Griffiths about this letter,
11 you know, the issues that you were going to address in this
12 letter before you wrote it, do you recall?

13 **MR. MacDONALD:** No, ma'am, Peter didn't --
14 Peter wasn't in the loop at that point.

15 **MS. McINTOSH:** Okay.

16 And also in response to -- Mr. Manderville
17 asked you some questions about the need for corroboration
18 pre-1988, and I think you ---

19 **MR. MacDONALD:** Eighty-five ('85)?

20 **MS. McINTOSH:** Nineteen eighty -- well, he
21 was asking ---

22 **MR. MacDONALD:** In -- in ---

23 **MS. McINTOSH:** --- about in '85.

24 **MR. MacDONALD:** Yeah.

25 **MS. McINTOSH:** And you were careful to say

1 you would have needed corroboration to charge in 1985. And
2 I was wondering whether you were suggesting that there was
3 a -- even if the offence occurred pre-1988, that it would
4 be different post-1988 in terms of the requirement for
5 corroboration.

6 **MR. MacDONALD:** I believe it was settled law
7 at that point that corroboration was no longer a legal
8 threshold bar or threshold to reach, but corroboration
9 could still, in the formulation of evidence for
10 consideration on the RPGs analysis, corroboration may or
11 may not become necessary, depending on the nature of the
12 case and the -- for example, credibility problems that may
13 arise with the complainant's version of events.

14 **MS. McINTOSH:** And is that true even with
15 offences -- was it your view that that was true even with
16 offences pre-1988, that if you were charging post-1988, you
17 didn't need corroboration?

18 **MR. MacDONALD:** That was my impression.

19 **MS. McINTOSH:** All right.
20 Back to your letter, you were asked by Mr. Engelmann about
21 the expression "so-called" and then "settlement" in quotes
22 and what you meant by that. And I -- I know you couldn't
23 come up with anything a couple of days ago. I wondered
24 whether this was expressly -- this was a reference to the
25 bad taste for backroom settlements that you had expressed

1 in the Ecclesia 2000 process?

2 MR. MacDONALD: I thought that's what I said
3 to Mr. Engelmann.

4 MS. McINTOSH: I could be wrong. I thought
5 you said you -- I thought you couldn't -- you didn't offer
6 him an explanation for that, so I'm -- I apologize if I've
7 mistaken that. But is that correct or ---

8 MR. MacDONALD: Yes.

9 MS. McINTOSH: All right.

10 MR. MacDONALD: I recall -- I recall
11 initially not -- it being clear in my mind why I put it in
12 there, and I speculated as to that being the reason.

13 MS. McINTOSH: Okay, thank you.

14 And in the last line you put the word
15 "crucified" in quotes, and I wondered whether you were
16 quoting someone there or why you -- why you put that in
17 quotes in the last -- in the last line?

18 MR. MacDONALD: I don't recall.

19 MS. McINTOSH: Okay.

20 Now, I wanted to take you next to Exhibit
21 2932, which I think was entered yesterday,
22 Document Number 129638. Have you got it there?

23 MR. MacDONALD: Yes, thank you.

24 MS. McINTOSH: And you'll recall that this
25 was the case that Mr. Engelmann, I think, suggested to you

1 was the same as Mr. Silmsers's case; right? And I wanted to
2 ask you to look at a couple of factors that would have been
3 known to Ms. Robinson at the time that she indicated that
4 this victim should be compelled to testify, and ask you
5 whether you think those factors distinguish this case from
6 Mr. Silmsers's case.

7 Now, because we've got a monikered
8 individual here, I just want to direct your
9 attention, and also there's other information
10 that could tend to identify this individual, so I
11 don't want to read it into the record.

12 I just want to direct your attention to the
13 seventh line down, beginning with the name of C-54.

14 **MR. MacDONALD:** Yes.

15 **MS. McINTOSH:** All right.

16 And if you would just read the next couple
17 of lines and see what C-54's situation was there, please?

18 **MR. MacDONALD:** Yes, I've read as far as the
19 release by way of recognisance.

20 **MS. McINTOSH:** Okay, that's what I wanted
21 you to read.

22 And then the other entry that I wanted you
23 to look at is Document Number 129705. I'm not sure if this
24 is an exhibit or not; I apologize if I've missed it.

25 **THE COMMISSIONER:** We'll check it.

1 Thank you. Exhibit 2938 is -- is this an
2 email -- it's an email message?

3 **MS. McINTOSH:** It's -- I think it is, yes,
4 I'm not exactly sure what kind of -- about the police
5 internal messaging but it looks like it's from Kevin Malloy
6 to Sergeant Snyder, some kind of messaging system.

7 **THE COMMISSIONER:** And copied to Staff
8 Sergeant Brunet and the date of this correspondence, the 9th
9 of July, 1998, just to identify the exhibit.

10 Okay, here we go.

11 **--- EXHIBIT NO./PIÈCE NO. P-2938:**

12 (129705) - E-Mail from Kevin Malloy to Sgt.
13 Snyder re: C-54 dated 09 Jul 98

14 **MS. McINTOSH:** Thank you. And the reference
15 I wanted you to look at, and again without reading it into
16 the record because it could tend to identify the
17 individual, if you could just look at the p.s. at the
18 bottom of the page?

19 I think the "Lynn" there is talking about
20 Lynn Robinson?

21 **MR. MacDONALD:** Yes, that would be Lynn, I
22 presume. That's safe to presume, yeah.

23 **MS. McINTOSH:** All right.

24 **MR. MacDONALD:** Thank you. I've read it.

25 **MS. McINTOSH:** All right.

1 So Lynn Robinson would have known these two
2 things prior to her note to Kevin Malloy which we've seen
3 at 29 -- Exhibit 2935 -- telling him that he'll subpoena --
4 he should subpoena this particular victim to testify if
5 he's reluctant; right.

6 **MR. MacDONALD:** Yes.

7 **MS. McINTOSH:** In your mind does that
8 distinguish this case that I've showed you these entries
9 from Mr. Silmser's case?

10 **MR. MacDONALD:** Well, I think that's one of
11 the reasons why it distinguishes it, yes.

12 **MS. McINTOSH:** All right. And are there
13 others that you would like to suggest to us?

14 **MR. MacDONALD:** Well, I mentioned the main
15 one last time I testified on the topic of ---

16 **THE COMMISSIONER:** So let's just -- other
17 than the ones you've already -- other than the ones you've
18 already told us ---

19 **MS. McINTOSH:** Yes, sorry, if you've already
20 ---

21 **THE COMMISSIONER:** --- and this one here ---

22 **MS. McINTOSH:** Yes, yes.

23 **THE COMMISSIONER:** --- is there anything
24 else?

25 **MR. MacDONALD:** No, sir.

1 **MS. McINTOSH:** All right, thank you.

2 Now, the next topic I wanted to take you to
3 was some questions that Ms. Daley asked you about Chief
4 Shaver and your discussion with Chief Shaver.

5 **MR. MacDONALD:** Yes, ma'am.

6 **MS. McINTOSH:** And I think Ms. Daley took
7 you to Exhibit 1789, which is Document 715814.

8 **THE COMMISSIONER:** And what kind of document
9 is that?

10 **MS. McINTOSH:** That is a statement by Chief
11 Shaver, as I understand it.

12 **THE COMMISSIONER:** Okay. Well, that's not
13 what we have here. That's not -- this would be David
14 Silmsner's statement.

15 **MS. McINTOSH:** Oh no, I think it's Chief
16 Shaver's statement, if I'm ---

17 **THE COMMISSIONER:** Well, that's not what's
18 on the -- oh, maybe it is. Oh yeah. Yeah, I'm sorry. I'm
19 sorry.

20 **MS. McINTOSH:** Okay.

21 Now, first of all, when Chief Shaver -- I
22 think she pointed out to you that Chief Shaver said
23 something like he didn't like your opinion; right? Was
24 your understanding that he didn't like your -- what part of
25 your opinion didn't he like? Was it the policy or the RPGs

1 or both, or ---

2 **MR. MacDONALD:** Well, it was the policy
3 about trying to -- I think he was also -- I think there
4 were two pieces to it, as I recall. One of them was the
5 inability to force the -- the disinclination to force the
6 complainant, and secondly was the perceived interference,
7 as he articulated it, by the Diocese in the course of a
8 police investigation -- during the course of a police
9 investigation.

10 **MS. McINTOSH:** Okay. So Chief Shaver wasn't
11 questioning the RPG part of it, if I can put it that way.
12 He wasn't suggesting ---

13 **MR. MacDONALD:** No.

14 **MS. McINTOSH:** --- there were RPGs and ---

15 **MR. MacDONALD:** No, no, no.

16 **MS. McINTOSH:** All right. Okay.

17 **MR. MacDONALD:** I'm sure he wasn't.

18 **MS. McINTOSH:** All right.

19 And on the first page of that statement in
20 the paragraph:

21 "I became aware that the D.S. case for
22 all intents and purposes was over when
23 the Crown attorney..."

24 **THE COMMISSIONER:** So that's one, two,
25 three, fourth paragraph down.

1 **MS. McINTOSH:** Sorry. Thank you,
2 Mr. Commissioner.

3 **MR. MacDONALD:** Yes, ma'am.

4 **MS. McINTOSH:** Right. You never advised
5 that the police could not proceed with the investigation
6 because he had -- D.S. had withdrawn his complaint, I take
7 it?

8 **MR. MacDONALD:** No.

9 **MS. McINTOSH:** Okay.

10 And I think that Ms. Daley also asked you
11 about the two persons whom you became aware of late in the
12 process who tended to corroborate Mr. Silmser's
13 allegations.

14 **MR. MacDONALD:** I see.

15 **MS. McINTOSH:** And I wondered whether either
16 of them, to your knowledge, was willing to be a complainant
17 against ---

18 **MR. MacDONALD:** I understood ---

19 **MS. McINTOSH:** --- Father MacDonald?

20 **MR. MacDONALD:** --- neither was inclined to
21 be a complainant -- had the wherewithal. Not lack of
22 cooperation; I think it was personal wherewithal.

23 **MS. McINTOSH:** Okay. Now, just a couple of
24 more areas.

25 On the outside Crown issue, I wanted to be

1 clear whether Constable Sebalj actually had to have laid a
2 charge before you would refer the matter to an outside
3 Crown, or whether she had to be ready to lay a charge.

4 **MR. MacDONALD:** Well, it didn't really
5 matter if the Information was signed or not. You know, the
6 point was was she -- were they ready to lay a charge or was
7 the charge about to be laid, or had it just been laid? In
8 neither instance -- in either of the three instances, what
9 it turned on is when they're ready to proceed with a
10 charge.

11 **MS. McINTOSH:** Okay. And what were you
12 going to refer to Mr. Pelletier? Were you going to set up
13 a meeting with ---

14 **MR. MacDONALD:** Yes.

15 **MS. McINTOSH:** --- Constable Sebalj?

16 **MR. MacDONALD:** Yes.

17 **MS. McINTOSH:** All right.

18 And what were you going to refer to
19 Mr. Pelletier? Were you going to set up a meeting with ---

20 **MR. MacDONALD:** Yes.

21 **MS. McINTOSH:** --- Constable Sebalj?

22 **MR. MacDONALD:** Yes.

23 **MS. McINTOSH:** All right. All right.

24 **THE COMMISSIONER:** What? Okay, a meeting
25 with Constable Sebalj, would you be involved in that?

1 **MR. MacDONALD:** You mean with Bob Pelletier?

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

3 **MR. MacDONALD:** I don't know if I would have
4 been or not. I haven't -- hadn't really thought about
5 that.

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

7 **MS. McINTOSH:** And did you expect that she
8 would do a brief, a police brief, in preparation for that
9 meeting?

10 **MR. MacDONALD:** For the meeting, for sure,
11 yes.

12 **MS. McINTOSH:** Okay.

13 **MR. MacDONALD:** Yes.

14 **MS. McINTOSH:** So you weren't going to refer
15 her until a police brief had been done?

16 **MR. MacDONALD:** And I don't think -- I
17 wasn't expecting a police brief until -- it's not like I
18 had told Heidi, "Prepare one." I didn't expect she was
19 going to -- going to until her investigation was
20 completed ---

21 **MS. McINTOSH:** All right.

22 **MR. MacDONALD:** --- until she was at the
23 stage to charge, ready to charge.

24 **MS. McINTOSH:** All right. So she never said
25 to you, "I'm ready to lay a charge"?

1 **MR. MacDONALD:** No.

2 **MS. McINTOSH:** And she never prepared a
3 brief, we know, except after the fact.

4 **MR. MacDONALD:** I presumed that she had a
5 file, but not in a -- I suppose, in a global form, I don't
6 know.

7 **MS. McINTOSH:** Okay. And she never asked
8 you to set up a meeting with an outside Crown?

9 **MR. MacDONALD:** No.

10 **MS. McINTOSH:** All right. So when Ms. Daley
11 said to you, you know, "There's a disconnect between you
12 and Ms. Sebalj," would it be in your view --and you said
13 you didn't think so at the time. Is it fair to say that
14 the disconnect is between what you understood and what her
15 notes say at the -- at this point in time?

16 **MR. MacDONALD:** Well, that's all I've got to
17 go on, is her notes.

18 **MS. McINTOSH:** All right. Now, did you ever
19 consider -- in respect of this Diocesan Committee issue,
20 did you ever consider that you had an actual or even
21 a -- there was a reasonable perception of bias on your
22 part? In other words, did you think there was really a
23 "conflict of interest," to use that term?

24 **MR. MacDONALD:** No, if I use the term
25 "conflict of interest" -- I don't recall using it. I don't

1 think I did, but I may have.

2 I should have -- what was in my mind, in
3 terms of the legal definition, was a bias, or perceived
4 bias, and that bias I thought could only come about after
5 the police had laid the charge and the matter was in the
6 discretion of the prosecution.

7 **MS. McINTOSH:** But, at that stage did you
8 consider that would -- you would have either an actual --it
9 would be in a case of actual bias or ---

10 **MR. MacDONALD:** No.

11 **MS. McINTOSH:** --- that there would be a
12 reasonable perception of bias at that stage even?

13 **MR. MacDONALD:** When the police -- well, had
14 I been prosecuting it, I think there would have been a
15 reasonable perception of bias ---

16 **MS. McINTOSH:** Okay, thank you.

17 **MR. MacDONALD:** --- if I -- had I been seen
18 to champion the -- the prosecution.

19 **MS. McINTOSH:** Okay. Now, turning to the
20 Nelson Barque case, you referred in your previous
21 testimony, I think, to Mr. Engelmann, to the *Spied* case,
22 and said that because Mr. Johnson was not going to be
23 cross-examining anyone, you didn't see a problem with him
24 participating in the plea of guilt. Did I understand your
25 evidence correctly?

1 **MR. MacDONALD:** Yes. I didn't see how you
2 could -- how you could articulate a legal relationship and
3 conflict therein, based on the *Spied* test.

4 **MS. McINTOSH:** And when you're saying that,
5 are you saying that Mr. Johnson would not be using
6 confidential information gained from ---

7 **MR. MacDONALD:** One client, to use adversely
8 in the course of his acting on behalf of a second client.

9 **MS. McINTOSH:** Okay. And I think that
10 Ms. Daley asked you how Peter Griffiths would know that Mr.
11 Barque had a previous -- had a previous record, and I just
12 wanted to draw your attention to -- it's Exhibit 916,
13 Document Number 703133.

14 **THE COMMISSIONER:** Is it a lengthy document,
15 Ms. ---

16 **MS. McINTOSH:** No, it's -- it's a three-page
17 letter from Constable Sebalj to this witness, and it's just
18 a paragraph on the first page that I ---

19 **THE COMMISSIONER:** Sure. That's fine.

20 **MS. McINTOSH:** And I just wanted to draw
21 your attention to the second paragraph, beginning, "You may
22 recall."

23 **MR. MacDONALD:** Yes, ma'am.

24 **MS. McINTOSH:** All right. So you see right
25 in the letter that you forwarded to Peter Griffiths --

1 well, let me ask you that, first of all; did you forward
2 this letter, together with the material that was attached,
3 to Peter Griffiths?

4 **MR. MacDONALD:** Yes.

5 **MS. McINTOSH:** All right. So right in the
6 letter, in the second paragraph, there's a reference to the
7 fact that Nelson Barque was charged the previous year,
8 right?

9 **THE COMMISSIONER:** For sexual offences.

10 **MR. MacDONALD:** Yes.

11 **THE COMMISSIONER:** Yes.

12 **MS. McINTOSH:** Yes, thank you.

13 **THE COMMISSIONER:** Yes.

14 **MS. McINTOSH:** You said -- turning to
15 another area of the Sabourin prosecution, and I think
16 Mr. Engelmann was telling you about some victims who were
17 unhappy with, you know, the degree, or lack thereof, of
18 contact from the Crown's office, and you mentioned a
19 case -- a police officer who was a case manager. I think
20 you said that was Kevin Malloy?

21 **MR. MacDONALD:** Yes.

22 **MS. McINTOSH:** And you talked about his role
23 in contacting victims in those days?

24 **MR. MacDONALD:** Preview -- yes.

25 **MS. McINTOSH:** Yes. And I wanted to just

1 take you to one example of that, which I think is not yet
2 an Exhibit either. It's Document Number 114209.

3 (SHORT PAUSE/COURTE PAUSE)

4 THE COMMISSIONER: Thank you. Exhibit 2939.

5 MR. MacDONALD: Thank you.

6 THE COMMISSIONER: These are notes of -- can
7 you help me out, Ms. ---

8 MR. MacDONALD: I think ---

9 THE COMMISSIONER: Whose notes would -- no,
10 no ---

11 MR. MacDONALD: I think they're my notes,
12 sir.

13 THE COMMISSIONER: Okay.

14 MS. McINTOSH: I think that at least some of
15 the notes on the first page are Mr. MacDonald's notes of
16 the -- I think the judicial pre-trial of Mr. Sabourin if
17 I'm not mistaken, and then on the back there is the -- I
18 think the back side of that judicial pre-trial note, and
19 also, attached to this page, a phone -- an exchange of
20 phone messages.

21 THE COMMISSIONER: All right. So that will
22 be Exhibit 2939.

23 ---EXHIBIT NO./PIÈCE NO P-2939:

24 (114209) - Handwritten Notes of Malcolm
25 MacDonald re: Sabourin

1 **MS. McINTOSH:** All right. So am I right
2 about that, Mr. MacDonald, that some of the writing on this
3 first page, Bates page 582, is your handwriting ---

4 **MR. MacDONALD:** Yes.

5 **MS. McINTOSH:** --- at the judicial
6 pre-trial?

7 **MR. MacDONALD:** Yes. I'm sorry about that.
8 I've improved -- I've quite improved my hand -- my
9 penmanship since then, I'm sorry.

10 **MS. McINTOSH:** Yes, I was saying, Mr.
11 MacDonald, that I'm expecting you to take responsibility
12 for global warming and the economic collapse any time soon,
13 so -- but, all right, so I really wanted to direct your
14 attention to the second page, a couple of entries on the
15 second page.

16 You'll see just above the phone message,
17 which seems to be attached to this page, there's a
18 27 November '98, entry. Do you recognize that handwriting?

19 **MR. MacDONALD:** That's Kevin Malloy's.

20 **MS. McINTOSH:** All right, and ---

21 **MR. MacDONALD:** Affectionately known as Kev.

22 **MS. McINTOSH:** Okay. And it looks like he's
23 saying:

24 "I returned a call to a victim to
25 update and sent date. Also called

1 another victim and left a message to
2 return my call re: victim impact
3 statement."

4 Am I reading that more or less ---

5 **MR. MacDONALD:** That's what ---

6 **MS. McINTOSH:** --- correctly?

7 **MR. MacDONALD:** Yes, that's what it says.

8 **MS. McINTOSH:** All right. And then "Kev."
9 That's "Kev"?

10 **MR. MacDONALD:** Yes.

11 **MS. McINTOSH:** All right. And then, in the
12 phone message, it looks like, in the shaded part, there's a
13 message to you from a victim ---

14 **MR. MacDONALD:** Yes.

15 **MS. McINTOSH:** --- and above that, on 26
16 November, '98, it says:

17 "Kev, find out why we didn't get a VIS
18 from victim. If he wants to give one I
19 have to get it to counsel prior to..."

20 **MR. MacDONALD:** "Sentence." So I
21 wanted -- I wanted -- I had to disclose it.

22 **MS. McINTOSH:** Okay, "prior to sentence, and
23 that's your initial there, the "M" there? Is that right?

24 **MR. MacDONALD:** Yes, that's obviously an
25 "M."

1 **MS. McINTOSH:** All right. So you're
2 directing Constable Malloy to get in touch with this victim
3 and make sure that the victim impact statement is -- is in
4 order in time for the sentence, is that correct?

5 **MR. MacDONALD:** Yes, ma'am.

6 **MS. McINTOSH:** All right.

7 **MR. MacDONALD:** Yes, I -- I understand
8 your -- your point. That's an example of the way it was to
9 work, and, you know, it worked most of the time, but Mr.
10 Lee knows of some occasions when, perhaps, it didn't.

11 **MS. McINTOSH:** Okay. And then, just if you
12 turn the page sideways, this also looks to be your
13 handwriting here, "Note to sentencing Crown," is that your
14 handwriting?

15 **MR. MacDONALD:** Yes.

16 **MS. McINTOSH:** And it says:

17 "Victim impact statements have been
18 filed, facts were read in..."

19 I'm not sure what that says.

20 **MR. MacDONALD:** Sorry, which ---

21 **MS. McINTOSH:** "Read in/filed?"

22 **MR. MacDONALD:** Been filed. "Facts were
23 read in and filed," which is -- which means you don't have
24 to go through the -- a finding of guilt process over again.

25 **MS. McINTOSH:** Okay. "Crown seeking two

1 years less a day," I guess that is.

2 **MR. MacDONALD:** That's what that means,
3 maximum reformatory.

4 **MS. McINTOSH:** Right, thank you.

5 **MR. MacDONALD:** Section 8 -- section 110
6 refers to a firearms prohibition.

7 **MS. McINTOSH:** Okay. I just wanted to --
8 without taking you to the report, but just for the
9 reference of everyone, it's Exhibit 1207. I just wanted to
10 give you an opportunity to agree or disagree with the
11 conclusions of Officer Skinner's report from the Ottawa
12 Police. What would you say about that?

13 **MR. MacDONALD:** I'm sorry, can you -- can
14 you direct me to that again?

15 **MS. McINTOSH:** Yes, sure, if you want to
16 look at it. It's Exhibit 1207 and I think it's Document
17 Number 101536. And it's the conclusions concerning you,
18 obviously, that I'm interested in.

19 **MR. MacDONALD:** And that's on page?

20 **THE COMMISSIONER:** Four five zero (450)?

21 **MR. MacDONALD:** Thank you.

22 **THE COMMISSIONER:** I don't know. I'm
23 asking; question mark.

24 **MS. McINTOSH:** Oh, I'm not sure. I can't
25 read my own writing here, I'm sorry, Mr. Commissioner. I

1 think it's 8870 but I could be wrong.

2 **THE COMMISSIONER:** No, it's a different
3 thing. Is it:

4 "...my opinion that the Crown Attorney
5 Murray MacDonald was less than
6 effective in his support of the
7 Cornwall Police Service"?

8 **MS. McINTOSH:** It's that and ---

9 **THE COMMISSIONER:** Okay, so that's 5450 --
10 450. So for counsel, 1025450. So we're straight.

11 **MS. McINTOSH:** I don't need to read that
12 into the record or anything.

13 **THE COMMISSIONER:** No.

14 **MS. McINTOSH:** I just wanted to have the
15 witness look at it and give a response if he was inclined
16 to.

17 **MR. MacDONALD:** Sir, you know, this
18 paragraph is based on five lines of notes in one of the
19 officer's notebooks. The other officer didn't even make
20 notes about this exchange, an exchange that I invited them
21 to tape-record.

22 **THE COMMISSIONER:** I'm sorry, what are you
23 talking about? What exchange?

24 **MR. MacDONALD:** The meeting that I had with
25 these officers, there are five lines of notes in a small

1 notebook that were recorded, and from that he's summarizing
2 in detail what he -- his version of the explanation I gave
3 him.

4 And I don't know if he understands it or
5 not. There's no reference to the point that I was trying
6 -- that I've always been trying to draw, that seemed to me
7 a rather straightforward one, and that is that the
8 appearance of bias would come about when it appeared that I
9 was spearheading or championing this charge myself as Crown
10 attorney, based on my earlier comments in a personal
11 context at Ecclesia -- with the Ecclesia 2000 exercise.

12 I don't think that this -- his comments are
13 fair and I'm -- that's all I'll say.

14 **MS. McINTOSH:** So you didn't think there was
15 any issue at the stage of advising Constable Sebalj about
16 steps that she was taking?

17 **MR. MacDONALD:** I don't -- I haven't heard
18 anybody articulate otherwise, based on the real facts, and
19 I don't believe anybody can.

20 **MS. McINTOSH:** All right.

21 **MR. MacDONALD:** I think that to tie in that
22 perceived bias potential that I saw to a concept of a
23 conflict of interest that could be construed as in terms of
24 my efforts to cover up a charge are ---

25 **THE COMMISSIONER:** No. No, no, sorry,

1 sorry. It wasn't an effort to cover up a charge.

2 **MR. MacDONALD:** Or to participate as Crown
3 fully; right?

4 **THE COMMISSIONER:** No. No. Let's go back
5 to your perceived conflict; all right?

6 **MR. MacDONALD:** Right.

7 **THE COMMISSIONER:** You thought that if you
8 prosecuted the priest, the Church would say, "Oh, because
9 your recommendation wasn't followed, you're punishing us by
10 doing this, by going after a priest."

11 **MR. MacDONALD:** "You've already shown your
12 personal --- "

13 **THE COMMISSIONER:** Exactly.

14 **MR. MacDONALD:** Yeah.

15 **THE COMMISSIONER:** Exactly. So the only
16 question -- and maybe it wasn't well expressed there, and I
17 probably won't express it very well either -- is if the
18 Church found out that you had been consulting -- or the
19 police had been consulting, don't you think they would say,
20 "Yeah, and he's the one who pushed for these charges"? And
21 wouldn't it be the same conflict, the same perceived bias
22 if you had any involvement with the file?

23 **MR. MacDONALD:** That bias would -- I'm
24 confident that that bias would be -- the door would be
25 closed on that perceived bias as soon as it was disclosed

1 to the Church, to criminal counsel acting for the priest,
2 that another Crown attorney, Robert Pelletier, who was
3 experienced in the area of institutional abuse, had taken
4 carriage of the prosecution and was champion -- he was the
5 champion of the prosecution; he reviewed the file.

6 I didn't -- I don't -- it didn't cross my
7 mind, sir, that that could be -- it didn't worry me that
8 the Church could take it into that area, take it -- I was
9 quite convinced that the very fact that an outside
10 prosecutor was exercising the Crown's discretion in terms
11 of determining that we proceed -- today we call it a
12 prospect of conviction analysis ---

13 **THE COMMISSIONER:** Right.

14 **MR. MacDONALD:** --- would answer the
15 question that whatever initial steps MacDonald took can all
16 be revealed in the notes of Heidi Sebalj or Luc Brunet or
17 whomever.

18 **THE COMMISSIONER:** Okay.

19 **MS. McINTOSH:** All right. And doesn't this
20 go back to the division of responsibility between the Crown
21 and the police that at the investigative stage it's
22 ultimately the police who are exercising the discretion, if
23 you like, or making the decision about whether a charge
24 will be laid?

25 **MR. MacDONALD:** Of course.

1 **MS. McINTOSH:** Yeah, all right.

2 Now, also it's suggested here that you had
3 reservations about the abilities of Constable Sebalj and
4 that arising out of that you should have reported that to
5 the Chief or his deputy.

6 **MR. MacDONALD:** Can you show me that?

7 **MS. McINTOSH:** Yeah, it's just under the
8 paragraph you just read.

9 **MR. MacDONALD:** "Also mentioned". Well, I
10 said that she was a new officer, she was of average ability
11 because she was a new officer, and I don't believe I had to
12 report to the Chief that she was a new officer who was --
13 who had her hands full with this file.

14 I thought that I could help her and their
15 hands would be sufficiently freed up to manage the case.
16 Maybe I should have gone to Luc Brunet earlier; I agree
17 with that. But to the Chief? I mean that could have
18 ruined her career for unnecessary reasons.

19 **MS. McINTOSH:** All right. You weren't
20 critical of Constable Sebalj to Skinner and -- I think it
21 was Russell.

22 **MR. MacDONALD:** No, I never called her --
23 you know, I called it as -- I guess what he's referring to
24 is exactly what I said. I used different language, but I
25 didn't accuse her of being incompetent or unreliable. I

1 just said that this was -- she was new and therefore of
2 average experience in an extra -- what turned out it be an
3 above-average or extraordinary case.

4 **MS. McINTOSH:** All right.

5 Now, just two more things. I wondered
6 whether you would end, Mr. MacDonald, by telling us, you
7 know, why you became a Crown in the eighties and why you
8 stayed in Cornwall all these last few years, if you're
9 inclined to today.

10 **MR. MacDONALD:** Well, why I became a Crown
11 is -- I mean, it's my calling. It's why I -- sometimes
12 when we say it's our calling it's hard to articulate in
13 one, you know, line or the other that -- your calling, the
14 calling of our colleagues, the calling of His Honour.
15 We're there because that's where our passions and our
16 philosophy and our interests draw us.

17 And when did I choose to be a Crown relates
18 to first year of law school, when I was impressed with the
19 criminal law right off the bat and I was struck with the --
20 in a free and democratic society, the degree of liberties
21 of the citizen as against the State. And I was always
22 respectful and impressed by the individual's rights in a
23 society, and I was surrounded by future or potentially
24 future criminal lawyers, so it seemed, who shared a very
25 keen philosophy in protecting the individual against the

1 State, which is necessary.

2 But I was the -- I was the guy in the back
3 row that -- or sometimes front row -- that felt that the
4 State, on the other hand, still needed protection of its
5 citizens. And so I sort of drew a line philosophically as
6 I'll -- as letting the other lads protect the individual,
7 qua accused person, and if I was going to get into the
8 criminal justice system, I saw myself on the side of the
9 State protecting Her Majesty's realm, so -- and citizens --
10 so there's the -- there are two of us in my law school
11 class ultimately became Crown attorneys; me right after I
12 left the bar and the other lady who's now a senior homicide
13 prosecutor in Montreal, spent two years on Wall Street and
14 that convinced her to come back and be a prosecutor. So
15 what more can I say to that.

16 But why did I choose to stay in Cornwall?
17 Because I was not asked to leave by my superiors, and
18 therefore I felt I had their support in staying here. This
19 was my jurisdiction and I did not have any -- I had done --
20 conducted myself in any way that would cause me to appear
21 to shuffle off to Buffalo in the middle of the night. And
22 I intended to -- I took an oath in 1992 and I intended to
23 stick to it.

24 **MS. McINTOSH:** Those are my questions.

25 Thank you.

1 **THE COMMISSIONER:** Thank you.

2 Now, I -- Mr. Horn, I take it you didn't
3 want to cross-examine?

4 **---STATEMENT BY/DÉCLARATION PAR MR. HORN:**

5 **MR. HORN:** I've had extensive discussions
6 with my friend, Mr. Dallas Lee, and --

7 **THE COURT:** I think you should be up at the
8 ---

9 **MR. HORN:** Oh, I'm sorry.

10 **THE COURT:** I just want to keep the record
11 clear here.

12 **MR. HORN:** For the last week or so we've had
13 extensive discussions with Mr. Lee in regards to some of
14 the questions that -- and our interests are very close, and
15 Mr. Paul and I have been involved in some issues at Court
16 last couple of days ---

17 **THE COMMISSIONER:** Right.

18 **MR. HORN:** --- and so we weren't able to be
19 here. But Mr. Lee did a fine job representing us. Thank
20 you.

21 **THE COMMISSIONER:** Thank you.

22 All right. Well, then, on that note, sir,
23 thank you very much for spending the days that you did. I
24 have appreciated your testimony. I will certainly consider
25 everything, and whatever the recommendations may be, I

1 think that -- I thank you for your cooperation in attending
2 and giving your testimony as you did.

3 **MR. MacDONALD:** Thank you.

4 **THE COMMISSIONER:** Best wishes for the
5 holidays. Come back happy and rested. We have another
6 month to go. Thank you.

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

9 This hearing is adjourned until Tuesday,
10 January 6, 2009, at 9:30 a.m.

11 --- Upon recessing at 4:49 p.m./

12 L'audience est suspendue 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