

**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 89

Held at :

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

Monday, February 05, 2007

Tenue à:

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

Lundi, le 5 février 2007

ERRATA

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TRANSCRIPT

Pages 16 to 41

Header identifies Cross-Examination by Mr. Lee, however
it should have read Cross-Examination by Mr. Lamb

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Raija Pulkkinen	Commission Counsel
Ms. Louise Mongeon	Registrar
Mr. John E. Callaghan Mr. Mark Crane	Cornwall Police Service Board
Mr. Neil Kozloff Ms. Suzanne Costom	Ontario Provincial Police
Mr. David Rose	Ontario Ministry of Community and
Mr. Joe Neuberger	Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Steven Canto	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Dominic Lamb	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Ms. Jill Makepeace	Mr. Jacques Leduc
Mr. Mark Wallace	Ontario Provincial Police Association
Ms. Jennifer Birrell	Catholic District School Board
Mr. Clinton H. Culic	Mr. David Silmser

Table of Contents / Table des matières

	Page
List of Exhibits :	iv
Opening remarks/Remarques préliminaires	1
Submission by/Représentation par Mr. Clinton H. Culic	2
Submission by/Représentation par Mr. Dominic Lamb	11
Submission by/Représentation par Mr. Peter Chisholm	17
Submission by/Représentation par Mr. Joe Neuberger	19
Submission by/Représentation par Mr. Stephen Scharbach	22
Submission by/Représentation par Mr. David Sherriff-Scott	25
Submission by/Représentation par Mr. John E. Callaghan	28
Submission by/Représentation par Mr. Neil Kozloff	29
Submission by/Représentation par Mr. Mark Wallace	31
Submission by/Représentation par Ms. Jennifer Birrell	31
Submission by/Représentation par Mr. Peter Engelmann	32
Submission by/Représentation par Mr. Clinton H. Culic	35
DAVID SILMSER, Resumed/Sous le même serment	44
Cross-Examination by/Contre-interrogatoire par Mr. Peter Chisholm	46
Cross-Examination by/Contre-interrogatoire par Mr. Stephen Scharbach	51
Cross-Examination by/Contre-interrogatoire par Mr. Dominic Lamb	81

LIST OF EXHIBITS/LISTE D'EXHIBITS

NO.	DESCRIPTION	PAGE NO
P-304	(109250) Note to File from Robert Pelletier re: Regina v. Charles MacDonald - Undated	52
P-305	(109252) Memo from Mireille to Mr. Pelletier - March 18, 1996	57
P-306	(113948) Letter from Robert Pelletier to Bryce Geoffrey - May 2, 1996	62
P-307	(109255) Memo from Mireille to Bob - July 19, 1996	65
P-308	(109256) Note to File from Robert Pelletier re: Regina v. Charles MacDonald - July 19, 1996	69

1 --- Upon commencing at 2:07 p.m./

2 L'audience débute à 14h07

3 **THE REGISTRAR:** This hearing of the Cornwall
4 Public Inquiry is now in session. The Honourable Mr.
5 Justice Normand Glaude presiding.

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Good afternoon all.

8 Mr. Engelmann.

9 **MR. ENGELMANN:** Good afternoon, Mr.
10 Commissioner.

11 Mr. Silmser is here. He is in the
12 Commission's witness support room.

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

14 **MR. ENGELMANN:** His counsel, Mr. Culic is
15 present.

16 Yesterday, Mr. Culic sent an email to all
17 counsel and, in his email, he advised counsel that he would
18 be seeking a motion for directions from you this afternoon
19 with respect to three issues, and I will let him talk to
20 them, but in summary fashion, I believe the first one was
21 dealing with a change in the order of the cross-examination
22 of his client; the second one was a concern about
23 duplication of questions; and the third one was, I think,
24 an expression of concern for some upcoming documents and
25 whether their use might be relevant or not. That's his

1 neutral way, as I understand it, what he was seeking.

2 There was a response from Mr. Cipriano not
3 with respect to the order nor with respect, I don't think,
4 with duplication questioning, but three, with respect to
5 how broadly or not questions could be asked on certain
6 documents.

7 Other than that, I'm not aware of responses
8 by counsel, but they may have come in this morning ---

9 **THE COMMISSIONER:** All right.

10 **MR. ENGELMANN:** --- and I'm sure counsel
11 will speak to it orally after Mr. Culic addresses you.

12 **THE COMMISSIONER:** Terrific!

13 **MR. ENGELMANN:** I just wanted to bring you
14 up-to-date on that and, as I said, Mr. Silmsler is present
15 and is in the witness support room.

16 **THE COMMISSIONER:** Thank you.

17 Yes, sir.

18 **MR. CULIC:** Good afternoon, Mr.
19 Commissioner.

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

21 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CULIC:**

22 **MR. CULIC:** Mr. Commissioner, I hope we can
23 all agree that David Silmsler is not on trial here, but
24 that's not how he feels. And my requests are designed to
25 maximize the likelihood that this particular witness with

1 his sensitivities and his needs will be treated
2 compassionately in a manner that will allow him to finish
3 his testimony, his important testimony before this
4 Commission.

5 I think I should deal with the three issues
6 separately because they are not going to be as of one when
7 it comes to the position of counsel in this matter.

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

9 **MR. CULIC:** My first request with regard to
10 cross-examination order is simply designed -- its purpose,
11 if you will, is to take the counsel who represent the
12 clients who have, as I put it, the most evocative responses
13 from Mr. Silmsler, and evocative in the classic dictionary
14 sense of bringing up, dredging up bad or horrific
15 nightmares or memories, that those particular counsel go
16 last in a particular pecking order.

17 My big three, if you will, are the Cornwall
18 Police, the Diocese and Father MacDonald, in particular.
19 Again, not wishing to belabour the point, I want to make it
20 painfully clear that it is not Mr. Lamb who represented Mr.
21 MacDonald previously, and I thought, quite properly so. It
22 is not him personally or his conduct that is objectionable.
23 It is the fact that it is not he who Mr. Silmsler sees
24 standing at the podium when he deals with questions coming
25 from Mr. MacDonald's counsel.

1 So, generally speaking, I think that those
2 three should go last. I think -- originally I had thought
3 that perhaps the Catholic School Board might go before
4 that, but now I understand that they will probably be quite
5 benign in their presentation. Less so, I suspect, would be
6 the OPP.

7 So for the digest of my fellow counsel who
8 will no doubt be bounding up here with their own opinions
9 in this matter, the last three, I suggest, would be the
10 OPP, the Cornwall Police, the Diocese and then Father
11 MacDonald.

12 And I think I should then turn this over
13 with your permission, Mr. Commissioner, to the response on
14 that issue of the other counsel.

15 **THE COMMISSIONER:** Why don't we do them all?

16 **MR. CULIC:** Oh! Well -- you mean all three
17 of my points?

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

19 **MR. CULIC:** Okay.

20 The restriction on duplication; again, we've
21 got parties here and their subsequent counsel who have a
22 major similarity of interests and, in effect, in certain
23 cases a conjoining of their interests, and they are going
24 to be asking very similar questions if not identical
25 questions; and it is the repetition of the same question

1 even from a different counsel which, in my experience, Mr.
2 Silmsler would find so aggravating.

3 And I'm attempting to try to do two things:
4 achieve fairness for the witness and prevent his sense of a
5 badgering, which would potentially start off a chain
6 reaction that, if you go back to what we observed from him
7 last, you get a causational effect that starts a chain
8 reaction that is, to a certain extent, a cascading failure
9 reaction.

10 And then my personal belief was that what
11 finally put him over the end previously was when my friend,
12 Mr. Callaghan, bounded forward to the microphone to object
13 to my simple request to take an opportunity to try to calm
14 my client down.

15 So I am asking that for all subsequent
16 cross-examination, that once a question has been passed and
17 answered, that that is it. It has been asked; it has been
18 answered. I do not want every counsel who comes up to ask
19 that question or a craftily-drafted, strikingly similar
20 question because, frankly, my concern is to how it is going
21 to be reacted to.

22 The last one is going to be most difficult
23 and most time-consuming and will probably need to be done
24 at length, and perhaps on a case-by-case basis, and it is
25 the relevancy of certain documents and the lines of

1 questions that will evolve from them.

2 If I may, by analogy, I don't want those
3 arguments to be done in front of Mr. Silmser when he is on
4 the witness stand.

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

6 **MR. CULIC:** To do that is just asking to
7 start that cascading descent into rage, which I'm trying to
8 avoid.

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

10 **MR. CULIC:** A mini *voir dire*, if you will,
11 rather than in the absence of the jury, in the absence of
12 the witness.

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

14 **MR. CULIC:** There are a couple right now I
15 can advise, Mr. Commissioner, that are very bothersome to
16 me. They are previous statements of his cousin and
17 something that I was just advised -- I think it was
18 Thursday I was just advised -- is now going to be used is a
19 two-hour OPP video.

20 Now, from my point of view, again he's not
21 on trial. He is not here to be cross-examined as he would
22 in a criminal or a civil proceeding. David Silmser's
23 purpose in coming here, and his understanding when he
24 agreed to testify before this Commission, is that that was
25 not how he was going to be treated, that this was not going

1 to be a full gloves-off. It's just like you're in the
2 criminal preliminary inquiry again, and every question is
3 fair game, and everything is on the table.

4 The purpose behind this Inquiry is quite
5 different. It is to test the effectiveness, the efficacy,
6 if you will, of the institutional response to his
7 allegations. We have been very careful in-chief -- my
8 friend, Mr. Engelmann, has been excellent in-chief -- not
9 to get into the details of his allegations ---

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

11 **MR. CULIC:** --- and to qualify them as
12 allegations. That was asked and that was done.

13 So they should be taken on their face and
14 the real inquiry here should not be to go behind them and
15 say "What is the veracity of these statements?" Take them
16 on their face and take a look at how the response was made
17 to them by the institution.

18 Now, let's take the particular document, the
19 statement of, I think it is, Brian Simser, who actually
20 spells his name differently, leaves the "l" out. I think
21 the statement was made in April of 1995 and my
22 understanding -- because the first time I saw it was in my
23 civil proceeding with regard to the corrections -- is that
24 during the course of the investigation, it may not have
25 been put to him. Mr. Silmsler was never given an

1 opportunity to respond to it. He was never asked "What is
2 your side of this story?" That is a fair inquiry as to the
3 institutional response.

4 But to then cross-examine Mr. Silmsler on
5 this statement, and attempt to impeach his entire
6 testimony, and to say that everything he has gone through
7 and everything he has testified to is a sham, is a
8 contrivance. If that is where we're going and if that is
9 where the examination is allowed to go, then I can all but
10 effectively guarantee to you, Mr. Commissioner, that the
11 David Silmsler, that I have come to know quite well, will
12 not survive that procedure, will not survive that line of
13 questioning.

14 **THE COMMISSIONER:** Well, that's a big 'if'.
15 So far, in track record other than, and leaving your
16 client's testimony aside, I think that everyone has
17 comported themselves in an outstanding fashion.

18 **MR. CULIC:** Oh! No, no -- and I've been
19 very clear on the record that I am not in any way, shape or
20 form saying that it is the counsel's conduct that will
21 evoke the response from my client. That is -- I haven't
22 seen that and I don't expect to see that. It doesn't -- I
23 think Mr. Lamb has to be the best example I could give. He
24 was polite and his composure was to the point of being
25 timid without -- and perhaps that is an insult to a

1 counsel, but it shouldn't be -- but, Mr. Commissioner, you
2 saw my client's response. That behaviour was irrelevant to
3 the response he evoked. It was the questions being asked.

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

5 **MR. CULIC:** Some questions, you can ask in
6 the politest conceivable manner, but if they are asked at
7 all, you are going to get a certain response.

8 **THE COMMISSIONER:** So is there any question
9 that Mr. Lamb shouldn't have gone to?

10 **MR. CULIC:** No. I do not think -- because
11 Mr. Lamb was putting a record to Mr. Silmsers.

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

13 **MR. CULIC:** And I think that's a fair
14 inquiry. There is a record. Now, proving a negative is
15 somewhat different, difficult if you don't wish to read the
16 entire record in.

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

18 **MR. CULIC:** Okay.

19 But again I haven't read that record, but I
20 trust Mr. Lamb. I know that there are members here,
21 perhaps Mr. Commissioner is one of them, who have read that
22 entire document and who know with, you know, to their own
23 level of certainty, that it says -- it is as Mr. Lamb puts
24 it forward to be. But we have an example that happened
25 just the other day.

1 Mr. Commissioner, you know records are not
2 perfect. They can be incomplete. You are doing a
3 continuous ongoing process of correcting your own record
4 for this Inquiry.

5 Put to the witness "Were you given an
6 opportunity on this record to correct?" I'm sure you'll
7 know what the answer will be.

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

9 **MR. CULIC:** Okay.

10 "Was any effort made to see if that record
11 reflects your recollection?" I'm sure you know what the
12 answer will be.

13 Right?

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

15 **MR. CULIC:** But once it has been clearly
16 stated this is my recollection, but here is the record and
17 my recollection doesn't appear in the record. That should
18 be it. There should be no badgering past that point.

19 And Mr. Lamb did not go past that point, and
20 I am not faulting -- again, I'm being at great pains to do
21 this -- I'm not faulting Mr. Lamb's line of question or his
22 conduct. It was perhaps the subsequent response, when I
23 attempted to just get Mr. Silmsler to calm down, to give him
24 a break, and the objections to that I think -- my personal
25 opinion -- is what evoked the response that we saw.

1 THE COMMISSIONER: M'hm.

2 MR. CULIC: Thank you.

3 THE COMMISSIONER: Mr. Canto?

4 MR. CANTO: We are not taking a position.

5 THE COMMISSIONER: Thank you.

6 Mr. Lee.

7 MR. LEE: No position.

8 THE COMMISSIONER: Mr. Bennett is not here.

9 Mr. Lamb.

10 MR. LAMB: Good afternoon, Mr. Commissioner.

11 Thank you.

12 THE COMMISSIONER: Good afternoon.

13 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LAMB:

14 MR. LAMB: Our position with regard to these
15 three points would be as follows:

16 Regarding the order of cross-examination, we
17 don't take any strong position on it other than the only
18 concern that we would put before yourself, Mr.
19 Commissioner, is that I -- the original email we got stated
20 the idea of putting myself last. I don't have any issue of
21 going last in terms of cross-examination of Mr. Silmser;
22 that will maximize the likelihood that counsel who
23 represent less evocative clients will at least get their
24 questioning completed. Now, as far as we're concerned, it
25 suggests that I'm not going -- that, in of itself, suggests

1 I'm not going to get to complete my questioning.

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

3 **MR. LAMB:** And that's the obviously first
4 and foremost, and really only concern in terms of I -- we
5 think it's imperative that, on behalf of our client, we get
6 to cross-examine fully Mr. Silmsler, on all of the points
7 that we feel are relevant.

8 Regarding the duplication of questioning;
9 it's, again, our position that a cross-examination takes on
10 very different forms. I think if we look back to Mr.
11 Wardle's cross-examination earlier, where he discussed
12 memory and the difficulties Mr. Silmsler had, the context of
13 that cross-examination certainly didn't -- wasn't, to use
14 Mr. Culic's word, evocative, at the end of what that cross-
15 examination sought to do.

16 But, certainly, if I were to cross-examine
17 in the same area, it would be very important for me in a
18 very different area.

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

20 **MR. LAMB:** So I think it's inevitable with
21 the number of parties that's standing at this Inquiry, Mr.
22 Commissioner, that there is going to be duplication to some
23 extent.

24 Obviously, everyone does their best to
25 minimize that but it's our position that there has to be

1 great leeway given to counsel to establish the points they
2 want to make in cross-examination.

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

4 **MR. LAMB:** In terms of -- we did send an
5 email with regard to our position on documents such as the
6 one that was mentioned, which is Brian Simser's statement
7 to the police.

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

9 **MR. LAMB:** It was our position that, in
10 order to fully appreciate the institutional response to the
11 allegations that have been made by Mr. Silmsner, that he
12 must be examined fully.

13 **THE COMMISSIONER:** Yes, but was that part of
14 your institutional response?

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

16 **THE COMMISSIONER:** This statement that
17 somebody gave ---

18 **MR. LAMB:** Yes.

19 **THE COMMISSIONER:** It's important to be able
20 to gauge the institutional response. Which institutional
21 response? Because if your client -- you're not
22 representing an institution.

23 **MR. LAMB:** Absolutely, but if that is the
24 term of reference of the Inquiry, Mr. Commissioner, it's
25 our position that -- given that that was part of the crime

1 disclosure in the original criminal charge against Father
2 MacDonald ---

3 **THE COMMISSIONER:** Yes.

4 **MR. LAMB:** --- that statement by Brian
5 Simser ---

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

7 **MR. LAMB:** --- it's imperative that we be
8 allowed to cross-examine Mr. Silmsen fully with regard to
9 that.

10 **THE COMMISSIONER:** Why, again?

11 **MR. LAMB:** Perhaps, if I may, sir, list
12 those -- the reasons. We have to look at the information
13 all of the public institutions had at the time.

14 **THE COMMISSIONER:** Right.

15 **MR. LAMB:** And, obviously, that includes
16 changing stories or shifting stories, witness statements
17 and how the criminal matter proceeded. That includes the
18 answers given by Mr. Simser at discoveries, at the
19 preliminary inquiry. The preliminary inquiry, how it
20 proceeded, is obviously dealt with in the context of the
21 police investigation, crime and disclosure with regard to
22 what was given to the defence and, obviously, of importance
23 there is that specific statement was part of that.

24 **THE COMMISSIONER:** Right.

25 But all I'm saying is that, let's assume for

1 a minute that it's the Crown who was saying, "You know, we
2 have this statement and you know, his credibility was down
3 and we had to make an assessment and that slowed everything
4 down." That doesn't have very much to do with you.

5 **MR. LAMB:** In terms of?

6 **THE COMMISSIONER:** Institutional response.

7 Like, what you're saying is, if we're
8 looking at the institutional response -- and you know, I
9 don't have the statement in front of me and maybe we should
10 just defer this to some other time -- but the point I'm
11 trying to make is this, is that number one, as your
12 predecessor said very often "Father Charles MacDonald has
13 never been on trial in this matter."

14 Well, now it's time to change that around a
15 little bit and tell you that none of the alleged victims
16 are on trial here. And so we have to be careful to make
17 sure that counsel look at their point of view, where
18 they're coming from, and make sure that the questions are
19 always firmly entrenched, as far as relevancy, to the
20 mandate.

21 So, no, I don't think I'll have very much
22 sympathy unless I can be given some great relevance as to
23 where you're going with some questions. That's all I'm
24 saying on that issue.

25 I think for the Crowns, for example, I'm

1 using that. If that statement comes up and they get that
2 and they say "Well, this isn't very good for the
3 prosecution," and maybe they change their response around.
4 So if you can show me, for example, how it's relevant to
5 your client that these things happened, as an institutional
6 response or otherwise, I'm sure other counsel are going to
7 have covered it.

8 Do you understand what I'm saying?

9 **MR. LAMB:** I do understand what you're
10 saying.

11 I would have to maintain, Mr. Commissioner,
12 that it's our position that, from our perspective, in order
13 to fully appreciate the entire institutional response,
14 without breaking it down into individual institutions at
15 this point, given we're still speaking hypothetical, maybe
16 this statement hasn't been seen -- has never been put to
17 Mr. Silmsen here, it will remain our position that in order
18 for the Inquiry to fully appreciate the institutional
19 responses, all of these things have to be taken, and it is
20 but one -- but one of many things that will have to be
21 taken into account in determining -- making those
22 determinations.

23 **THE COMMISSIONER:** All right.

24 **MR. LAMB:** In terms of -- I just want to --
25 if you can give me a brief moment, Mr. Commissioner?

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

2 **(SHORT PAUSE/COURTE PAUSE)**

3 **MR. LAMB:** All right.

4 That's -- in terms of what Mr. Culic dealt
5 with, that's would be all I have to state.

6 Thank you.

7 **THE COMMISSIONER:** Thank you, sir.

8 Mr. Chisholm.

9 **MR. CHISHOLM:** Good afternoon, Mr.
10 Commissioner.

11 **THE COMMISSIONER:** Good afternoon, sir.

12 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CHISHOLM:**

13 **MR. CHISHOLM:** With respect to Mr. Culic's
14 three points, dealing first with the batting order if you
15 will, the order of cross-examination, I note that the
16 parties have always been able to agree amongst themselves
17 as to the order. If they can't in this case, we have the
18 batting order that was established by -- there's a list
19 published that I believe Madam Registrar has.

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

21 **MR. CHISHOLM:** If we can't come to an
22 agreement, there's always the list to fall back on.

23 **THE COMMISSIONER:** Well, actually, there's
24 always me.

25 **(LAUGHTER/RIRES)**

1 **MR. CHISHOLM:** Even better, Mr.
2 Commissioner.

3 **THE COMMISSIONER:** All right.

4 **MR. CHISHOLM:** The second point, the
5 duplication of questions, I would object to that in terms
6 of looking at the transcripts from last week, I see that
7 Mr. Lee cross-examined Mr. Silmsler on an area that I want
8 to cross-examine on. You made reference to this in your
9 discussion with Mr. Lamb. The parties, I would submit,
10 need not go beyond their own sphere of interest.

11 My purpose in putting any questions to the
12 witness, be it Mr. Silmsler or any other witness, will be
13 with respect to the institutional response of the
14 Children's Aid Society. I don't expect that to change with
15 respect to Mr. Silmsler or any other witness, but I would
16 wish to cross-examine on an area that Mr. Lee has already
17 touched upon. So I would disagree with Mr. Culic on that
18 point.

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

20 **MR. CHISHOLM:** The third and final point,
21 the relevancy of documents being determined prior to the
22 witness taking the stand, I can't argue with that. It
23 seems like a sensible approach when dealing with a witness
24 who may be fragile.

25 Subject to your questions or comments, Mr.

1 Commissioner, those would be my submissions.

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

3 Thank you.

4 **MR. CHISHOLM:** Thank you.

5 **THE COMMISSIONER:** Who is speaking for
6 Probation?

7 Mr. Neuberger?

8 **MR. NEUBERGER:** Yes.

9 **THE COMMISSIONER:** Yes.

10 **MR. NEUBERGER:** Thank you very much.

11 It is a bit of a challenge navigating all of
12 the bags, and boxes, and binders.

13 Good afternoon, Mr. Commissioner.

14 **THE COMMISSIONER:** Good afternoon, sir.

15 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEUBERGER:**

16 **MR. NEUBERGER:** Just a few comments. With
17 respect to the order of cross-examination, although we
18 didn't make the top three list, I think the party that I
19 represent probably would evoke a certain amount of concern
20 from the witness, and so I've had discussions with my
21 friends, and I think we can work around an order, in the
22 sense that the less evocative parties proceed, seems to
23 make sense.

24 As far as trying to avoid any duplicity,
25 certainly, if I, at least, come after the Cornwall Police

1 Service, that would be helpful.

2 **THE COMMISSIONER:** I'm sorry

3 Coming after ---

4 **MR. NEUBERGER:** If I come after the Cornwall
5 Police Service it would be helpful.

6 One thing I do want to say with respect to
7 the issue of duplication, it is clear that we all represent
8 different interests. At times, these interests do have
9 similarity or converge, and, I think, up until this point,
10 all parties, all counsel have done a fairly good ---

11 **THE COMMISSIONER:** Oh! Yes.

12 **MR. NEUBERGER:** --- and respective job of
13 trying to not have a witness on the stand repeat after
14 numerous times.

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

16 **MR. NEUBERGER:** The other thing I would say,
17 is that -- I wasn't here last week, but I've had the
18 benefit of reading the transcripts and, again, I would say
19 that I don't think that Mr. Silmsen is a person who
20 objectively would be viewed as being on trial.

21 Clearly, this evokes certain emotion for him
22 and difficulty, which is understandable given the sensitive
23 nature of what we're dealing with, but I don't think the
24 image should be given that we, here as counsel representing
25 various interests, are putting him on trial.

1 So I don't want to look at this request and
2 try and deal with it out of some sense of fear or
3 misconception of what we're trying to do here. These are
4 all very important things.

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

6 **MR. NEUBERGER:** I think, as I've said, most
7 parties are respectful.

8 I think it really comes down to your role,
9 Mr. Commissioner, when we look at items two and three.

10 Legitimately, there may be one or two items
11 of evidence which are statements not authored by the
12 individual that we could vet ahead of time.

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

14 **MR. NEUBERGER:** I would not want to get into
15 a process where we're vetting cross-examination prior to
16 the witness' testimony. I think it unfortunately robs the
17 party with the dynamic nature of the cross-examination and
18 point they want to make.

19 If there's legitimate documents which are
20 raised, I have no position with respect to the statements
21 of -- previous statements of his cousin. I think that's a
22 thing that we can argue out ahead of time. I think that
23 makes some sense.

24 But with respect to the actual areas of
25 cross-examination -- the actual areas of cross-examination,

1 it's difficult to do a minute analysis as we go along. I
2 think if you, as you have all along, carefully listen for
3 questions that are outside of the interests of the
4 particular party which are not relevant or which may border
5 on just simply, as my friend says, badger, or just simply
6 are there to cause problems for the witness, then I think
7 you can rule on that as we go along.

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

9 **MR. NEUBERGER:** Those are my concerns.

10 Thank you for listening to me.

11 **THE COMMISSIONER:** Thank you, sir.

12 Mr. Scharbach.

13 **MR. SCHARBACH:** Good afternoon, Mr.

14 Commissioner.

15 **THE COMMISSIONER:** Good afternoon, sir.

16 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SCHARBACH:**

17 **MR. SCHARBACH:** With respect to the issue of
18 duplication of questions, I think that's a matter that's
19 best left to you, as the proceedings go on. I think
20 counsel are sensitive to that issue and I know that you're
21 sensitive to that issue.

22 With respect to the issue of the relevancy
23 of documents, I agree with my friend, Mr. Neuberger, that
24 that also is a matter that I think can be dealt with in the
25 course of the cross-examinations as they go forward. But

1 again, I think, speaking for myself, I know that I'm
2 sensitive to that issue as well.

3 I do have a certain concern though, with
4 respect to changing the order.

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

6 **MR. SCHARBACH:** The concern arises from the
7 fact that, as Mr. Culic said in his email to all counsel
8 "It seems to be meant ..." I'm trying to quote. I wrote down
9 the note here:

10 "...is meant to maximize the likelihood
11 that counsel who represent less
12 evocative clients, will get their
13 questioning completed."

14 I take from that there's a suggestion that
15 if the more contentious cross-examinations take last, it
16 may be that Mr. Silmser's cross-examination may be
17 terminated, in which case at least the Commission will be
18 left with the evidence of the less contentious parties.
19 And we did have a concern about that. If we're changing
20 the order in order to facilitate a process that allows for
21 some cross-examination but not all cross-examination, I
22 think that may be unfair to the parties.

23 I think, from our point of view, the
24 interaction of the various public institutions is inter-
25 related. Although it may not be directly in our sphere of

1 interest, the Attorney General, for example, may rely on
2 some of the cross-examinations, some of the evidence that
3 comes out from the other parties.

4 Although, in general, changing the order of
5 cross-examination isn't a large issue. If we're doing it
6 in order to facilitate a process to allow some cross-
7 examination to take place knowing that there's a large
8 likelihood that some of the other cross-examination won't
9 take place, I think that's a matter of concern.

10 **THE COMMISSIONER:** Okay.

11 Well, I was thinking more like this. If
12 there is a possibility that one party is going to
13 inadvertently or for whatever reason, make it that this
14 gentleman will not testify anymore.

15 Do we put him in front and, therefore, make
16 or break it or do we put the less contentious ones up
17 front, for a couple of reasons?

18 First of all, to ensure that at least that
19 evidence gets in; and, second of all, maybe get him into a
20 stride where, near the end, he won't be so bothered. So,
21 put that way, it kind of softens the blow as to, you know -
22 - and if we thought for a moment that Mr. Silmsler had it in
23 his mind that "I'll get through everybody. The minute the
24 last guy shows up, I'm out of here."

25 Well, you know, a lot of the things can be

1 dealt by way of argument, the documents are there, like
2 anything. So, I don't know.

3 So, are you saying then that you want the
4 order to stay and we risk not hearing any evidence or do we
5 fix things around so that maybe we can hear as much as we
6 can?

7 **MR. SCHARBACH:** I'm expressing a concern,
8 Your Honour, and I do hear your second point, which I
9 hadn't thought of, that being that it may be that, once the
10 witness gets into a stride, he may feel more comfortable
11 and completing the cross-examination.

12 I suppose I only wanted to raise the concern
13 that if the change in the order is really meant in order to
14 let the witness testify with respect to the more friendly
15 cross-examinations and then decline, I think that's an
16 issue.

17 **THE COMMISSIONER:** Yeah.

18 **MR. SCHARBACH:** That's all I wanted to say.

19 **THE COMMISSIONER:** Thank you.

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

21 **THE COMMISSIONER:** Ms. Makepiece?

22 **MS. MAKEPIECE:** No, thank you.

23 **THE COMMISSIONER:** Thank you.

24 Mr. Sherriff-Scott?

25 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:

1 **MR. SHERRIFF-SCOTT:** I would say just these
2 few points, Commissioner, that, as a general rule,
3 individuals should precede institutions because the thrust
4 of the Inquiry is on institutional responses, and I frankly
5 desire to hear the cross-examination of Charles Macdonald,
6 before I cross-examine, because it may touch on how I
7 cross-examine.

8 Secondly, I think that, echoing my friend's
9 comments, contentious cross-examinations, if you are going
10 to use that expression, are as important, if not sometimes
11 more important than non-contentious ones and I think, if we
12 leave Mr. Macdonald's testimony to the last, I'm not
13 suggesting Mr. Silmsler will walk away, as you use the
14 expression, but I think the possibility that that will
15 terminate, is much greater if he knows that he has other
16 cross-examinations afterwards, that may not be as
17 contentious. In other words, he should be encouraged to
18 understand that his evidence is valuable and if it's all
19 left to the end, I think it would be much easier and much
20 more probable that it will terminate.

21 Mr. Callaghan and Mr. Kozloff and I, and
22 others have had discussions about the order. In my
23 submission, the Diocese should go after all individuals,
24 before the CPS and the OPP, and I'm indifferent as to where
25 I line up vis-à-vis Corrections, and I think my friends,

1 Mr. Callaghan, Mr. Kozloff agree with that. There's
2 symmetry to that point.

3 The Diocese involvement is first.
4 Effectively, it runs at least sometimes parallel to CPS,
5 but it certainly is first in time. It will obviously
6 affect what Mr. Callaghan does and so it should proceed in
7 that fashion. In other words, I don't wish to go after it
8 all. It won't make sense from the point of view of the
9 Diocese. I think I should be going before the CPS and the
10 OPP. Otherwise, I'm indifferent.

11 But I do think, lastly, that Charles
12 Macdonald has started his cross-examination, it should be
13 finished, and I'd be concerned of the idea that he gets
14 into a stride. I think it took 10 minutes or 15 minutes
15 for what happened the last day to happen. So we're going
16 to know pretty fast.

17 Moreover, all of these examinations, the
18 CAS, the OPP, the CPS, the Diocese, Corrections, they'll
19 all have a certain amount of content which is not going to
20 be agreeable to the witness potentially. And so, we're
21 going to know pretty fast, whether it is going to work one
22 way or another.

23 Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Callaghan.

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

2 **MR. CALLAGHAN:** Good afternoon.

3 Let me assure, Mr. Culic, I do not bound. I
4 neither have the physical prowess nor the inclination.

5 Last day, I mentioned what I did because of
6 discussions outside this room, even between lawyers and
7 witnesses under cross-examinations, and if I've upset Mr.
8 Silmsler, I apologize, but I think it was a necessary
9 interjection.

10 In terms of the order, I, as a public
11 institution, am concerned that we hear from other players
12 who interacted in one way or other with public
13 institutions, particularly the accused.

14 **THE COMMISSIONER:** The accused?

15 **MR. CALLAGHAN:** Yes, Father Charles
16 Macdonald.

17 **THE COMMISSIONER:** Oh! Okay.

18 **MR. CALLAGHAN:** I mean the reality is, I
19 mean, you know, we can be criticized for our conduct with
20 the victims, and we can be criticized for our conduct with
21 the accused, and I think we're entitled to hear that in
22 advance. And I'd suggest that Father Charles Macdonald go
23 before the institutions who are going to have to answer all
24 of the allegations, and that would be my hope.

25 In terms of the other two issues, I think,

1 over the last number of years, we have effectively dealt
2 with repetitive questions. We've effectively dealt with
3 those issues, and I don't see a need to change the manner
4 in which we do things.

5 You've been very diligent. You've told
6 witnesses and have acted upon your advice, that we would
7 control and, in fact, yourself would control, often with
8 the assistance of lawyers, and I don't see a need to
9 particularly change our *modus operandi*, at this stage.

10 **THE COMMISSIONER:** Thank you.

11 Mr. Kozloff.

12 **MR. KOZLOFF:** Good afternoon, sir.

13 **THE COMMISSIONER:** Good afternoon, sir.

14 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KOZLOFF:**

15 **MR. KOZLOFF:** I would, first of all, with
16 respect to order, commend Mr. Culic's to the rules of
17 procedure at this Inquiry; Rule 24(b), speaks directly to
18 the order of cross-examination.

19 It says that that order is to be determined
20 by the parties having standing at the Inquiry, and if they
21 are unable to agree, the matter is to be determined by you.

22 We don't have difficulty agreeing on the
23 order of cross-examination. So in my respectful
24 submission, that point is moot.

25 I agree with what Mr. Callaghan and Mr.

1 Scharbach had to say about the second and third issues. We
2 are now well into the second year of this Commission ---

3 **THE COMMISSIONER:** Don't put it that way.

4 (LAUGHTER/RIRES)

5 **MR. KOZLOFF:** --- and, I'm gratified that
6 the Commissioner has opened the discussion today with your
7 summary of how we have conducted ourselves. In my
8 submission, any duplication or inappropriate questioning of
9 any witness has been and will be zealously dealt with by
10 this Commissioner.

11 Victims are not on trial; that goes without
12 saying.

13 Having said that, Mr. Silmsler, over the
14 course of his examination-in-chief, has directly impugned
15 every public institution in this room and he has directly
16 impugned the conduct of individuals, in the then employ of
17 all of those public institutions. I should exclude perhaps
18 the Separate School Boards, since he hasn't impugned that
19 institution or its employees, with the exception of Mr.
20 Lalonde, and, surely, counsel acting on behalf of the
21 parties are entitled to test the basis of his evidence,
22 which impugned those parties and their employees. And I'm
23 sure the Commissioner recognizes the importance of that.
24 It's all I have to say about that.

25 **THE COMMISSIONER:** Thank you.

1 Mr. Wallace.

2 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WALLACE:

3 MR. WALLACE: Good afternoon Sir.

4 As far as the order of the cross-examination
5 is concerned, in my respectful submission, the status quo
6 has been working quite well. I find the logic that Mr.
7 Sherriff-Scott offered to you, earlier this afternoon, to
8 be quite compelling and I that you give that serious
9 consideration. In any event, it would be my request that I
10 follow Mr. Kozloff, in whichever order you determine.

11 As far as the duplication is concerned, I
12 think it has to be recognized that different parties have
13 different interests. So they may have different interests
14 in the same questions. So that I think that has to be
15 looked at on a case-by-case basis, as well as the issue of
16 the documents, again, relevancy is the guide and that has
17 to be done on a case-by-case basis.

18 Thank you.

19 THE COMMISSIONER: Thank you.

20 Ms. Birrell.

21 Is that how you pronounce your name?

22 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. BIRRELL:

23 MS. BIRRELL: Birrell.

24 THE COMMISSIONER: Birrell.

25 MS. BIRRELL: Good afternoon Mr.

1 Commissioner.

2 I note, in terms of the batting order, I'm
3 last and, in this case, Mr. Keill is quite correct. The
4 evidence of my client or the cross-examination will be
5 fairly limited, if any, and so I would be amenable to going
6 out of order.

7 However, in terms of a precedent, the
8 process, as it stands and as it's set out in the rules and
9 as has been endorsed by all the parties, I would agree that
10 should not be altered, and a witness ought not to be able
11 to dictate the order. That's a matter for the parties and
12 ultimately your determination.

13 And I'd also share the concerns that other
14 parties have already expressed in terms of pre-determining
15 the scope of evidence, before it's been heard. Certainly,
16 that can be addressed through objections and rulings on
17 your part. And I have no position in terms of
18 documentation.

19 Thank you.

20 **THE COMMISSIONER:** Thank you.

21 Yes, sir.

22 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:**

23 **MR. ENGELMANN:** I was happy that Mr. Kozloff
24 corrected Mr. Callaghan on how long we've been here. It
25 was months, not years.

1 Just a couple of quick points, if I may,
2 sir, and just on your jurisdiction to hear this. Although
3 Mr. Kozloff is correct, about what Rule 24(b) says, Rule 7
4 does give you the power to amend the rules or dispense with
5 a client's with them, as you deem necessary to ensure that
6 the Inquiry is thorough, fair and timely. So, I just
7 wanted to leave you with that.

8 I would concur with a lot of what my
9 colleagues have been saying about duplication. They all
10 have different interests and, sometimes, areas need to be
11 covered more than once, from a different perspective and I
12 think all counsel have made every effort to do that, and I
13 would agree with many of them who've said that if they
14 stray from that, you'll tell them so.

15 And, of course, Mr. Culic is here and has
16 the right to object on behalf of his client. It's
17 difficult with documents in advance. I think with certain
18 documents or perhaps with the videotape that he mentioned
19 or other things, that, clearly, we can do some of this by
20 way of a *voir dire* or in any event, in the absence of the
21 witness, and we can come across that as we go ahead.

22 **THE COMMISSIONER:** Right.

23 **MR. ENGELMANN:** With respect to the order,
24 very briefly, I, to some extent, share your concern that
25 perhaps if we can get the witness on the wave and carry him

1 through, that's the way to do this.

2 I would understand that, typically,
3 institutions would follow individuals. My concern here,
4 and perhaps it's based a little bit on a concern about the
5 scope of Father Macdonald's intended cross-examination,
6 many months ago I engaged in letter-writing with Mr.
7 Cipriano about, this would not become a trial-like process,
8 this was not about anybody trying to prove his client
9 guilty, or about him trying to provide his client innocent,
10 and I'm concerned and I heard it again today from Mr. Lamb,
11 I was hoping I'd hear a slightly different start that the
12 scope of the cross-examination will have -- well, that
13 there would be a number of objections and I'm not just
14 saying from Mr. Culic with respect to where Father
15 MacDonald may go.

16 I mean this is not a criminal trial and so I
17 just -- I'm wondering in that case, and I'm just thinking
18 out loud, whether some change in the order might be
19 appropriate because I can see if we don't, we're going to
20 have a number of objections and a number of concerns
21 expressed right here and there and whereas we could get
22 this thing back on the path.

23 So that's just a concern and something that
24 I'm expressing because of the comments that have been made.
25 With respect to the rest of the order, I really have no

1 comment. We have an order that's been established and
2 those are some brief comments.

3 **THE COMMISSIONER:** Thank you.

4 Mr. Culic.

5 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CULIC:**

6 **MR. CULIC:** Very briefly, Mr. Commissioner.

7 First of all, I agree with my learned
8 friend, Mr. Engelmann's comments with regard to Mr.
9 Kozloff's assertion based on the Rules and if I have it
10 correct, he seems to be telling you, Mr. Commissioner, that
11 you have no control over your own process.

12 My experience before courts is good luck
13 with that one. Obviously, you do. You should have and I
14 just don't think that argument carries any weight.

15 With regard to the concerns about my, quote
16 "about maximizing the likelihood," my friends seem to be
17 faulting me for my frankness. It's my nature. I was being
18 very straightforward and very honest when I put out that
19 email. I have concerns. I have concerns that are not
20 vacuous or imaginary. They come out of my knowledge of Mr.
21 Silmsler as person, and what we've all seen already with
22 regard to the nature of the rage that can be evoked from
23 this individual.

24 If we are not prepared to accept the reality
25 of this type of shattered life as they come before us to

1 testify, then how can we expect them to be able to survive
2 the process?

3 I can't sit here and mislead the Commission
4 or any counsel and say "I can guarantee that my client is
5 going to get all the way through this process," because I
6 can't. But what I can try to do is to guarantee as much as
7 possible that he will have the highest possible likelihood
8 of getting through as much as he possibly can.

9 Now, if there is a disagreement as to what
10 the order may be to maximize that likelihood, we can all
11 listen to that; that's fine. But what I'm hearing from the
12 other side is actually a completely different attitude
13 towards it, attitude that this is the order; we control
14 that order, not the Commission; and we're going to just
15 simply let it rip in that fashion and let the chips fall
16 where it may.

17 Well, Your Honour, in fact, there may well
18 be a vested interest in certain parties to try to drive Mr.
19 Silmser off the witness stand, to then make the argument,
20 because he could not withstand cross-examination, all of
21 his testimony should be expunged from the record and that
22 you could not consider it.

23 I'm not alleging that that is anybody's
24 argument, but I'm certainly saying that you have to be
25 rather naive not to think that that is at least a

1 possibility. I'm trying to get around all of that. I'm
2 trying to produce the best possible evidence for the
3 Commissioner, you, sir, to be able to make a very, very
4 important finding. That was the whole purpose behind my
5 request for these changes and for these directions.

6 It is not some orchestrated scheme to
7 guarantee that certain people are denied their rights and
8 I, frankly, take umbrage at the suggestion.

9 **THE COMMISSIONER:** Well, I think some people
10 might take umbrage at your suggestion that there is a
11 conspiracy -- God forbid that word! -- but that they were
12 going to try to run Mr. Silmsler off the stand. And I find
13 that comments, one way or the other, that are like that are
14 not appropriate in this scenario.

15 I hope, because I can say that counsel have,
16 in my view, acted not only appropriately, but with
17 sensitivity for all the witnesses that have been here to
18 date.

19 Having said that, I am of the view that when
20 an order of cross-examination is set up and agreed by the
21 parties that I, as Commissioner, should be very leery of
22 intervening and interloping, I suppose, in that order.

23 I will today only because of the needs of a
24 witness. It's not the witness that is dictating who will
25 be cross-examining him when; it is not the parties who are

1 shuffling in to get the best seat; it's based on facts and
2 reality. The reality is that we have a witness who has
3 come forward who, as a result of what he's been through,
4 has certain limitations when it comes to answering
5 questions.

6 I think if we look at this as a belligerent
7 witness, then all is lost. I think what we should be
8 looking at is as a witness who has a condition that
9 requires persons who are going to cross-examine to be
10 innovative, to be creative, to be sensitive, because in the
11 end, ladies and gentlemen, whether or not Mr. Silmsler
12 finishes his examination or not, I mean, I was here. I
13 heard everything. I'm quite able to make certain
14 conclusions based on what I have heard.

15 So maybe as a hint that we should be careful
16 of how we cross-examine, that's obvious, but, for example,
17 for Mr. Lamb while he was asking him about looking at the
18 transcript, well if we know that those types of questions
19 are going to set him off, I mean we know that that argument
20 can be made in argument. I have read the transcript and I
21 can make my own conclusions as to what he said and what was
22 in the transcript.

23 So I'm going to ask the parties to do that.
24 I am not going to, in any way, impede the type of cross-
25 examination with respect to limiting to one question. I

1 think we all have experienced counsel here, people at the
2 top of their careers. They have seen many witnesses. They
3 cross-examined many witnesses. And I would say that the
4 challenge is going to be for them to ensure that Mr.
5 Silmsen gets through the cross-examination. And if he
6 doesn't, maybe it can be seen as a failure on our part to
7 be able to craft a way in which to get meaningful answers
8 out of a person who has a condition.

9 With respect to how broadly people can
10 cross-examine, again, I am a big defender of full cross-
11 examination so long as it remains relevant. And that's the
12 general principle I intend to apply at this point, keeping
13 in mind, of course, that we have a witness that has some
14 difficulties at times with repetitive answers.

15 And so duplication of questions I have
16 answered. How broadly, we'll determine that on step-by-
17 step and case-by-case. Let us not forget that rightfully
18 or wrongfully, this man thinks he's on trial, and that I'm
19 very concerned about re-victimization and, if at some
20 point, I find that even though he may be willing to
21 continue, I may interject.

22 In any event, what I want to do with respect
23 to the order of cross-examination is change it somewhat in
24 the sense that I would like the Children's Aid Society to
25 begin today and that would be followed by Jacques Leduc;

1 then we go back to the Probation Corrections, the Ministry
2 -- well, no, then we go -- just a minute now. Let me go
3 backwards.

4 I agree that the Diocese, the Cornwall
5 Police, the OPP and the OPPA should stay in that order.
6 Then it's a question of putting Father MacDonald before the
7 Diocese and then -- so then we go backwards and we'll put -
8 - we go through the Children's Aid, Probation, Ministry of
9 the Attorney General, Jacques Leduc and then Father
10 MacDonald.

11 Are there any comments or concerns in that
12 regard?

13 Yes, sir. I'm sorry.

14 **THE REGISTRAR:** And the Catholic School
15 Board.

16 **THE COMMISSIONER:** Well, it could be in the
17 end.

18 **MR. NEUBERGER:** Thank you.

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

20 **MR. NEUBERGER:** The reason I indicated it
21 would help if I went after the Cornwall Police Services
22 because if there is some questioning with respect to the
23 unfolding of the investigation by the Cornwall Police
24 Service, that will save me from getting into those
25 documents.

1 **THE COMMISSIONER:** You're right.

2 **MR. NEUBERGER:** And I'll save some time.

3 **THE COMMISSIONER:** Sorry.

4 **MR. NEUBERGER:** No, it's okay.

5 **THE COMMISSIONER:** So we'll put you -- yes,
6 in fact, I had -- when I was writing them down, it was
7 Father Charles MacDonald, the Diocese, the OPP, the CPS --
8 well, actually, CPS should go before OPP in the order, and
9 then Probation.

10 How is that?

11 **MR. NEUBERGER:** Perfect!

12 Thank you very much.

13 **THE COMMISSIONER:** And then the Catholic
14 School Board.

15 **MR. NEUBERGER:** Okay.

16 Thank you very much, Mr. Commissioner.

17 **THE COMMISSIONER:** All right.

18 So we go with the Children's Aid Society
19 first, then the Ministry of the Attorney General, then
20 Monsieur Leduc, and then we resume the order after Father
21 MacDonald with the rest.

22 Now, I should say the reason why I'm doing
23 that is, while I certainly do not want to go and dabble in
24 what the parties have agreed to, I think these are special
25 circumstances in which it might be best that we let some

1 less contentious cross-examination, if I can put it that
2 way, lead off and so that we can see where we're going, and
3 then after that go where it will take us.

4 All right?

5 **MR. ENGELMANN:** Mr. Commissioner, it may
6 just be me.

7 **THE COMMISSIONER:** Oh! No.

8 **MR. ENGELMANN:** I just want to make sure; so
9 you've got Children's Aid Society ---

10 **THE COMMISSIONER:** Yes.

11 **MR. ENGELMANN:** --- Ministry of Attorney
12 General ---

13 **THE COMMISSIONER:** Yes.

14 **MR. ENGELMANN:** --- Jacques Leduc.

15 **THE COMMISSIONER:** Yes.

16 **MR. ENGELMANN:** --- and then are we going to
17 Father MacDonald?

18 **THE COMMISSIONER:** Yes, we are.

19 **MR. ENGELMANN:** What about the Catholic
20 School Board?

21 Did you want to go there next or ---

22 **THE COMMISSIONER:** Well, we'll keep them at
23 the end.

24 **MR. ENGELMANN:** All right.

25 **THE COMMISSIONER:** All right?

1 So should we call in the witness then or do
2 you want to take a break?

3 **MR. ENGELMANN:** Perhaps we could have 15
4 minutes.

5 **THE COMMISSIONER:** All right.

6 Well, let's be careful about what we're
7 going to tell the client -- the witness on where we go.
8 I'd like to have a chance to speak with him when he comes
9 in and have a few opening comments. I think the bottom
10 line is that I understand what the concerns are and that I
11 am trying to balance all of the interests at the same time
12 and I would hope that positive feedback is what we are
13 going to tell this witness.

14 In any event, thank you.

15 Let's take a break.

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

18 The hearing will resume at 3:20.

19 --- Upon recessing at 3:05 p.m./

20 L'audience est suspendue à 15h05

21 --- Upon resuming at 3:20 p.m./

22 L'audience est reprise à 15h20

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

25 Please be seated. Veuillez vous asseoir.

1 **DAVID SILMSER, Resumed/Sous le même serment:**

2 **THE COMMISSIONER:** Monsieur Silmser, how are
3 you doing today?

4 **MR. SILMSER:** Good. Thanks.

5 **THE COMMISSIONER:** All right.

6 Before we begin, I want to relate to you
7 what my view of what we've been doing in your absence, and
8 that is trying to set up a system whereby people can all
9 the while ask you questions in such a way as to permit you
10 to be in a position of answering.

11 All right?

12 So one of the first things I did was I have
13 changed the order of cross-examination a little bit.
14 Eventually, everyone will have their turn to ask you
15 questions, but I thought that putting a couple of other
16 institutions or parties ahead of Father MacDonald might
17 give us a chance to establish a routine in questions that
18 may be eliminated out of the questioning that Mr.
19 MacDonald's lawyer may give to you.

20 With respect to duplication of questions, I
21 will not permit multi duplication of questions. I can tell
22 you that in cross-examination, historically, people do
23 repeat the questions a little too often. That's in the
24 general course of things.

25 In this inquiry, I can tell you that in the

1 last few months that counsel have been very good about that
2 and that -- but if it comes to the point where it needs to
3 be done, I can assure you that I will be vigilant so will
4 your lawyer and others to object if we get to that point.

5 With respect to the use of certain documents
6 for purposes of cross-examination, that's going to be on a
7 case-by-case basis because I really don't know what the
8 documents are until I see them. So if we get to those
9 situations, one of the things that I've decided to do is
10 that if we are going to talk about whether or not an
11 exhibit is going to be put to you or not, I am going to ask
12 you to go wait in the witness room. All right? There's no
13 use getting you to sit there and listen to all of this and
14 then it all comes to not.

15 Those are the types of things that I'm going
16 to do to ensure that you are as comfortable as possible
17 with what we are going to do.

18 As well, I may take some breaks, more
19 frequent breaks than we have in the past, and that will be
20 up to me and to you. All right? In a sense that I'm going
21 to count on you a little bit as well that if you are
22 feeling the beginning of feeling boxed in there, just tell
23 me and then we can take a break and you can go out and get
24 some fresh air and you can come back. I don't care how
25 long this takes. I just want to make sure we're doing it

1 in a fair, compassionate way to you and fair to the
2 parties, so that they can ask the questions that they want
3 to ask.

4 Is there anything else you want to say to me
5 before we begin?

6 **MR. SILMSER:** No, that's fine, Your Honour.

7 **THE COMMISSIONER:** All right, good.

8 So you are still under oath. All right, and
9 I've asked the Children's Aid Society to come and begin
10 cross-examination.

11 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

12 **CHISHOLM:**

13 **MR. CHISHOLM:** Good afternoon, Mr. Silmsers.
14 I wasn't here last week, so I'll introduce myself. My name
15 is Peter Chisholm. I am counsel for the local Children's
16 Aid Society. I am not going to put any documents to you
17 today, so you don't have to worry about me taking you
18 through any of those, and I just have a couple of areas
19 that I want to take you through in cross-examination.

20 If you don't understand my question, please
21 let me know and I can try and make it understandable.

22 During your examination in-chief with Mr.
23 Engelmann, he had asked you about the follow-up that you
24 may have had with the Children's Aid Society following your
25 November 2nd, 1993 interview with Pina DeBellis and Greg

1 Bell. Do you recall that line of questioning?

2 MR. SILMSER: Yes, I do.

3 MR. CHISHOLM: Originally, you indicated to
4 Mr. Engelmann that you were of the belief that there was no
5 follow-up. Is that right?

6 MR. SILMSER: I don't believe there was.
7 No.

8 MR. CHISHOLM: And you would agree with me
9 back at that time, back in November of 1993, you had a lot
10 of things going on in your life in terms of dealing with a
11 number of institutions. Is that fair to say?

12 MR. SILMSER: Yes.

13 MR. CHISHOLM: And you would agree with me
14 that it's understandable if a person, given the passage of
15 time and the fact that they were involved with a number of
16 different institutions, may not have a recollection as to
17 what -- the specific recollection as to all that had
18 transpired between you and the CAS, for instance. Is that
19 fair to say?

20 MR. SILMSER: That's fair.

21 MR. CHISHOLM: Although you don't recall, is
22 it possible that back in November of '93 that there were a
23 number of communications between you and the Children's Aid
24 Society following that November 2nd interview with respect
25 to getting you back in and come for another interview?

1 **MR. SILMSER:** You're saying over the phone?

2 **MR. CHISHOLM:** Yes, telephone calls between
3 Greg Bell and yourself?

4 **MR. SILMSER:** I just don't remember them.

5 **MR. CHISHOLM:** And that's fair. No, I don't
6 think anyone is going to blame you because it was a fairly
7 lengthy period of time ago, but is it possible that took
8 place and you just don't have a recollection of it?

9 **MR. SILMSER:** It's possible.

10 **MR. CHISHOLM:** Okay. With respect to your
11 recommendations, you gave, I believe, nine recommendations
12 at the conclusion of your evidence in-chief. Again, these
13 were right at the end of Mr. Engelmann's questions that he
14 put to you, you had nine recommendations for the
15 Commission. Do you recall those recommendations or giving
16 those recommendations? I'm not going to ask that you list
17 them, but do you recall giving the recommendations?

18 **MR. SILMSER:** Yes, I do.

19 **MR. CHISHOLM:** And one of those
20 recommendations had to deal with the Children's Aid
21 Society, and it was your fifth recommendation. And I'm
22 reading from Volume 87 of this transcript, page 117, and I
23 will just read that:

24 "Number five, institutions such as the CAS should
25 not ask direction from the Catholic Church

1 involving sexual abuse cases that are ongoing."

2 Do you recall making that recommendation,
3 sir?

4 **MR. SILMSER:** Yes, I do.

5 **MR. CHISHOLM:** And my client is interested
6 in your recommendations, as it is for all the witnesses who
7 testify, and it's important that my client be able to
8 understand fully the recommendations that are put forth.
9 Do you have any knowledge with respect to the CAS taking
10 direction from the Catholic Church, with respect to its
11 investigations?

12 **MR. SILMSER:** I believe when I talked to Mr.
13 Abell, that one meeting with John, I believe he had
14 mentioned he had talked to the Catholic Church about these
15 instances, and there was some type of direction being
16 given, which way to go, which way not to go.

17 **MR. CHISHOLM:** Now, you would agree with me
18 there's a great distinction between speaking with members
19 or representatives of the Catholic Church and taking
20 direction from the Catholic Church. Is that fair to say?

21 **MR. SILMSER:** Yes.

22 **MR. CHISHOLM:** Okay. And is it possible
23 that Mr. Abell acknowledged to you that -- again, this is a
24 conversation that you have with Richard Abell dealing with
25 John MacDonald. Is that right?

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

2 **MR. CHISHOLM:** Is it possible that Mr. Abell
3 said to you and to Mr. MacDonald that I've had discussions
4 with respect to getting help for Mr. MacDonald?

5 **MR. SILMSER:** Can you repeat that again? I
6 just didn't ---

7 **MR. CHISHOLM:** Is it possible that what you
8 are describing is Mr. Abell telling you and Mr. MacDonald
9 that yes, he's had discussions with a representative of the
10 Diocese but not to take direction but to actually get help
11 for Mr. MacDonald in terms of counselling?

12 **MR. SILMSER:** I don't know about that.

13 **MR. CHISHOLM:** No. You don't -- would you
14 agree with me it's at least a possibility, sir?

15 **MR. SILMSER:** If it could be a possibility?
16 I suppose it could be.

17 **MR. CHISHOLM:** Okay. And just going back to
18 your recommendation, apart from what you've told us about
19 your discussion that you had with Mr. Abell, is there
20 anything else that you've relied upon to form the belief
21 that the CAS was taking direction from the Catholic Church
22 or the Diocese?

23 **MR. SILMSER:** Not off hand, no. No.

24 **MR. CHISHOLM:** Thank you, sir. Those are my
25 questions and good luck to you.

1 **MR. SILMSER:** Thank you.

2 **THE COMMISSIONER:** Thank you.

3 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

4 **SCHARBACH:**

5 **MR. SCHARBACH:** Good afternoon, Mr. Silmsers.

6 **MR. SILMSER:** Good afternoon.

7 **MR. SCHARBACH:** My name is Stephen Scharbach
8 and I'm the lawyer for the Ministry of the Attorney
9 General. I am going to have a few questions for you today.

10 Last week, Mr. Engelmann took you through
11 some of your contacts with Robert Pelletier, the Crown
12 Attorney who handled your case for part of the time against
13 Charles MacDonald. Mr. Engelmann talked to you about some
14 of the contacts but, in my view, he didn't talk to you
15 about all of the contacts with Mr. Pelletier. So I want to
16 take you through some of those contacts briefly, if I can.

17 **MR. SILMSER:** Okay.

18 **MR. SCHARBACH:** And I am going to be
19 referring to some of the documents -- some documents that
20 are already exhibits and some additional ones.

21 But before we do that, Mr. Pelletier talked
22 to you about your contacts with Mr. Pelletier during the
23 first half of 1996 and during that time, Mr. Pelletier was
24 the Crown Attorney assigned to the prosecution of Charles
25 MacDonald. Do you recall?

1 **MR. SILMSER:** Yes.

2 **MR. SCHARBACH:** Just by way of background,
3 the OPP had presented an investigation concerning Charles
4 MacDonald to Robert Pelletier, and Mr. Pelletier had
5 recommended that charges be laid. Were you aware of that?

6 **MR. SILMSER:** I wasn't aware of that at that
7 time, no.

8 **MR. SCHARBACH:** Okay. In any event, you
9 knew that charges against Charles MacDonald were laid in
10 March of 1996?

11 **MR. SILMSER:** Yes.

12 **MR. SCHARBACH:** And in February of 1996, I
13 understand that you contacted Mr. Pelletier for the first
14 time?

15 **MR. SILMSER:** I personally contacted him?

16 **MR. SCHARBACH:** Yes.

17 I am going to show you a note that Mr.
18 Pelletier made to file that records the conversation that
19 he had with you that day, if I may. It's document 109250.

20 **THE COMMISSIONER:** It's a new exhibit, so it
21 won't be in there.

22 All right. So Exhibit No. 304 is a Note to
23 File by Robert Pelletier and it seems to be dated 7/2/96.

24 **--- EXHIBIT NO./PIÈCE NO P-304:**

25 (109250) Note to File from Robert

1 Pelletier re: Regina v. Charles
2 MacDonald - Undated

3 **MR. SCHARBACH:** Thank you.

4 Mr. Silmsers, if you would, please take a
5 moment and read through that note.

6 **MR. SILMSER:** Okay.

7 **(SHORT PAUSE / COURTE PAUSE)**

8 **MR. SILMSER:** Okay, I've read your letter.

9 **MR. SCHARBACH:** Thanks. Now, Mr. Silmsers, I
10 know that you haven't seen this note before and I know this
11 wasn't your note, but this is Mr. Pelletier's note
12 regarding your conversation with him. So I wanted to give
13 you a chance to give your version of what had occurred.
14 But before I do that, let me just ask you, we know from the
15 record that charges against Mr. MacDonald were recommended
16 by Mr. Pelletier in March of 1996; a little while after you
17 had this conversation. In other words, you contacted him
18 before charges were laid, and my question to you, how did
19 you know that Mr. Pelletier was the Crown Attorney assigned
20 to reviewing this investigation at that point?

21 **MR. SILMSER:** It's possible my lawyer
22 advised me of that. I'm not 100 per cent sure. I don't
23 really know.

24 **MR. SCHARBACH:** Around this time, would you
25 have been in contact with the OPP officers investigating;

1 Mike Fagan, Tim Smith?

2 MR. SILMSER: No, I don't believe so. No.

3 MR. SCHARBACH: No? All right.

4 Do you know -- this is the first Note to
5 File that I've been able to find concerning your contact
6 with Mr. Pelletier. Is it your recollection that this was
7 your first contact with Mr. Pelletier?

8 MR. SILMSER: That again I'm not sure of.

9 MR. SCHARBACH: All right. Do you recall
10 what your purpose was in calling him that day?

11 Mr. Pelletier says that you expressed
12 considerable dissatisfaction at the manner in which the
13 matter was proceeding. Could it be that you were phoning
14 him simply to express your dissatisfaction in the manner in
15 which he was proceeding?

16 MR. SILMSER: There had to be something that
17 triggered -- to trigger it off; more than likely that CBC
18 report on TV triggered out a little bit of frustration that
19 things weren't being properly -- going forward in the case
20 and I wanted to talk to him about it. I don't think they
21 had very good communication. I think his secretary there -
22 - he was very rarely ever in the office. His secretary had
23 never -- if I did phone, I would never get to speak to Mr.
24 Pelletier.

25 MR. SCHARBACH: Okay.

1 We're going to touch on some of your
2 conversations with the secretary and so on. But I suggest
3 to you that this was the first conversation you had with
4 him and, according to the note, you left a message for him
5 and he got back to you the same day.

6 **MR. SILMSER:** Mr. Pelletier did?

7 **MR. SCHARBACH:** Yes, according to his note.

8 **MR. SILMSER:** I don't remember that.

9 **MR. SCHARBACH:** Okay.

10 At any rate, you had a voice-to-voice
11 conversation with him. You had a telephone conversation
12 with him and, according to Mr. Pelletier, it was brief and
13 you expressed your frustration.

14 Is that -- do you have any recollection of
15 that at all?

16 **MR. SILMSER:** I remember a few phone calls
17 from Mr. Pelletier, but I don't remember ever being that --
18 he says in this I was abusive and vulgar. I think he went
19 a little bit overboard on that.

20 **MR. SCHARBACH:** Right.

21 You mentioned last week -- I think it became
22 clear that you felt frustrated with the way these matters
23 were proceeding.

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

25 **MR. SCHARBACH:** And at times, you can

1 express that frustration in an angry manner.

2 Is that correct?

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

4 **MR. SCHARBACH:** All right.

5 Now, Mr. Pelletier says in his note that
6 after he had that conversation with you, he got in touch
7 with your lawyer, Bryce Geoffrey.

8 **MR. SILMSER:** Yes, I see that.

9 **MR. SCHARBACH:** Yes. And Mr. Pelletier says
10 that he told Mr. Geoffrey that he wouldn't be speaking with
11 you directly anymore and that he -- Mr. Pelletier says that
12 he informed Mr. Geoffrey that communication between you and
13 Mr. Pelletier should go through Mr. Geoffrey from that
14 point onwards. This is what he said in the note.

15 I think you mentioned last week that Mr.
16 Geoffrey had a conversation with you in which he advised
17 you not to call the Crown's office anymore.

18 Is that correct?

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

20 **MR. SCHARBACH:** Now, the next contact that
21 you had with the Crown's office was contained in a note
22 that wasn't entered into as an exhibit. It was -- I gave
23 late notification of it. Mr. Engelmann was content with
24 that. But I was asked to bring eight copies of the
25 document with me, which I have.

1 It's document no. 109252.

2 **THE COMMISSIONER:** Exhibit 305 is a
3 memorandum dated March 18, 1996 from Mireille Legault to
4 Mr. Pelletier.

5 --- **EXHIBIT NO./PIÈCE NO. P-305:**

6 Memo from Mireille Legault to Mr.
7 Pelletier - March 18, 1996

8 **MR. SCHARBACH:** Now, if you'll take a
9 moment, please, Mr. Silmsers, and read that note.

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

11 **MR. SILMSER:** Okay.

12 **MR. SCHARBACH:** Okay.

13 Mr. Silmsers, again, I know that you haven't
14 seen this note before and you didn't make that note.

15 However, it's a note from Mr. Pelletier's
16 assistant, Mireille -- I hope I'm pronouncing that
17 correctly ---

18 **THE COMMISSIONER:** Mireille.

19 **MR. SCHARBACH:** --- to Mr. Pelletier. She
20 is reporting to Mr. Pelletier a telephone call that she
21 received from you. And I think you made reference to this
22 issue last week.

23 **MR. SILMSER:** That's correct.

24 **MR. SCHARBACH:** Right.

25 I think you had said that you had contacted

1 Mr. Pelletier's office in order to express your concern
2 that a police officer, who was Charles MacDonald's first
3 cousin, was doing interviews of ex-altar boys.

4 Is that correct?

5 **MR. SILMSER:** That's correct.

6 **MR. SCHARBACH:** So you reported that to Mr.
7 Pelletier's office?

8 **MR. SILMSER:** That's correct.

9 **MR. SCHARBACH:** And in the last paragraph,
10 Mireille states that you wanted charges laid against the
11 police officer and if nothing is done you would go to the
12 media and raise a stink about the whole thing.

13 Again, do you -- does this assist in your
14 recollection of that conversation?

15 **MR. SILMSER:** This conversation I remember,
16 yes.

17 **MR. SCHARBACH:** Yes. Okay.

18 And is her description of it accurate?

19 **MR. SILMSER:** Fairly.

20 **MR. SCHARBACH:** Okay.

21 **THE COMMISSIONER:** I'm sorry.

22 Did you -- fairly?

23 **MR. SILMSER:** Fairly.

24 **THE COMMISSIONER:** Okay.

25 **MR. SCHARBACH:** All right.

1 Now, you left that -- did Mireille tell you
2 that she would bring that to the attention of Mr.
3 Pelletier?

4 **MR. SILMSER:** I don't remember what she
5 said.

6 **MR. SCHARBACH:** Okay.
7 All right.

8 Now, I'd like to take you to the next
9 document. I'd like to draw it to your attention. This one
10 has been made an exhibit. It's Exhibit 283.

11 **THE COMMISSIONER:** So that would be -- it's
12 going to come up on the screen but it's in the book as
13 well, if you wish.

14 **(SHORT PAUSE/COURTE PAUSE)**

15 **MR. SCHARBACH:** Mr. Silmsers, this letter had
16 been brought to your attention last week by Mr. Engelmann.
17 It appears to be a letter that Mr. Pelletier wrote to your
18 lawyer, Bryce Geoffrey, March 19, the day after the
19 telephone conversation.

20 In this letter Mr. Pelletier reminds Mr.
21 Geoffrey that communications between you and his office
22 should go through Mr. Geoffrey, again.

23 **MR. SILMSER:** Okay.

24 **MR. SCHARBACH:** And he ---

25 **MR. SILMSER:** Was this -- this one now, was

1 this before the prelim?

2 **MR. SCHARBACH:** This would be before the
3 preliminary inquiry, yes.

4 **MR. SILMSER:** Okay.

5 **THE COMMISSIONER:** This is March 19, which
6 is about the day after you would have phoned and spoken to
7 Mireille Legault.

8 **MR. SILMSER:** Okay.

9 **THE COMMISSIONER:** So this is the letter
10 that he sent -- he meaning Mr. Pelletier -- to your lawyer
11 covering the conversation that you had in February and in
12 March.

13 **MR. SCHARBACH:** Do you recall whether your
14 lawyer brought this to your attention?

15 **MR. SILMSER:** I do not remember. I don't
16 even know if I brought it to my lawyer's attention.

17 **MR. SCHARBACH:** Okay.

18 **MR. SILMSER:** The reason is because every
19 time it cost me money to phone my lawyer ---

20 **MR. SCHARBACH:** Sure.

21 **MR. SILMSER:** --- or use my lawyer.

22 **MR. SCHARBACH:** I understand. I understand
23 only too well.

24 **MR. SILMSER:** Pardon me?

25 **MR. SCHARBACH:** I understand only too well.

1 **MR. SILMSER:** Oh!

2 **MR. SCHARBACH:** Now, I'd just like to take
3 you to a couple of additional contacts. The next one is
4 Exhibit 284. It should be document 109336.

5 **THE COMMISSIONER:** Three six (36).

6 **MR. SCHARBACH:** Three six (36), and this is
7 a -- sorry. This is your letter back from Bryce Geoffrey
8 to Mr. Pelletier in which he is apologizing on your behalf
9 and he -- but he says:

10 "You should understand that having been
11 a victim of Father MacDonald, [you're]
12 easily upset from time to time."

13 If I can refer you now to Exhibit 285, this
14 is Mr. Pelletier's letter back to Mr. Geoffrey. You can
15 see that Mr. Pelletier, in the first paragraph, seems to
16 acknowledge that:

17 "... these have been trying times and it
18 must have been frustrating for [you] to
19 wait this long for your day in court."

20 However, he reiterates that communication
21 should take place through the lawyer's office in order to
22 maintain a certain level of civility.

23 Do you recall -- did your lawyer show you
24 these letters, Mr. Silmsers?

25 **MR. SILMSER:** I don't believe he showed me

1 this one, no.

2 MR. SCHARBACH: Did he speak to you about
3 this or do you have any recollection of him speaking to you
4 again about this?

5 MR. SILMSER: No.

6 MR. SCHARBACH: All right.

7 It could be that he did, but these
8 conversations, I imagine, are hard to recall several years
9 later.

10 Is that correct?

11 MR. SILMSER: That's correct.

12 MR. SCHARBACH: Okay.

13 All right.

14 Now, if I can take you to the next contact,
15 which should be document 113948, which I don't believe has
16 been made an exhibit yet.

17 THE COMMISSIONER: Thank you.

18 Exhibit 306 is a letter dated May 2nd, I
19 believe, 1996 from Mr. Pelletier to Bryce Geoffrey.

20 --- EXHIBIT NO./PIÈCE NO. P-306:

21 Letter from Robert Pelletier to Bryce
22 Geoffrey - May 2, 1996

23 (SHORT PAUSE/COURTE PAUSE)

24 MR. SILMSER: Okay.

25 MR. SCHARBACH: Mr. Silmsers, have you seen

1 this letter before?

2 Did Mr. Geoffrey show you this letter or
3 discuss it with you?

4 **MR. SILMSER:** I have no recollection of it,
5 no.

6 **MR. SCHARBACH:** Okay.

7 But it appears that Mr. Pelletier is
8 communicating the status of your case and the upcoming
9 dates with your lawyer. He's asking your lawyer to
10 communicate that information to you.

11 Would you agree?

12 **MR. SILMSER:** Yes, I would agree.

13 **MR. SCHARBACH:** Okay.

14 So he's communicating -- Mr. Pelletier is
15 communicating to you through your lawyer?

16 **MR. SILMSER:** That's right.

17 **MR. SCHARBACH:** Would you agree?

18 **MR. SILMSER:** Yes.

19 **MR. SCHARBACH:** Okay.

20 Now, the next contacts that we've been able
21 to find documentation of, occur in July. These are
22 documents and I don't think they've been entered as
23 exhibits. But perhaps we could look at them as a package
24 of three. It's document 10925 ---

25 **THE COMMISSIONER:** Hang on just a second,

1 please.

2 MR. SCHARBACH: --- 5.

3 THE COMMISSIONER: All right.

4 MR. SCHARBACH: --- 109253 and 109254.

5 THE REGISTRAR: One zero nine two five three
6 (109253) is Exhibit 303.

7 (SHORT PAUSE/COURTE PAUSE)

8 THE REGISTRAR: One zero nine two five three
9 (109253) is Exhibit 303.

10 MR. SCHARBACH: Okay.

11 All right.

12 Thank you.

13 THE COMMISSIONER: Exhibit 303.

14 MR. SCHARBACH: Two five three (253) is 303?

15 THE REGISTRAR: Yes.

16 THE COMMISSIONER: Two five three (253),
17 yes.

18 MR. SCHARBACH: Thanks.

19 THE COMMISSIONER: So Exhibit 303 would be,
20 may not ---

21 All right.

22 Has it been put in the binder?

23 MR. SCHARBACH: I think so.

24 THE COMMISSIONER: Okay.

25 So we have Exhibit 303.

1 **MR. SCHARBACH:** Thank you.

2 Mr. Engelmann informs me that Exhibit 109254
3 is Exhibit 286. It's already been placed in as an exhibit.

4 **THE COMMISSIONER:** Okay.

5 So, 286. So, we're wanting to look at, Mr.
6 Silmsers, 303 which you have, 286 which is in the book and
7 the new exhibit 307, which is a memo dated July 19, 1996.

8 **--- EXHIBIT NO./PIÈCE NO. P-307:**

9 Memo from Mireille to Bob - July 19, 1996

10 **MR. SCHARBACH:** Yes Sir, they're all memos
11 dated July 19th, 1996. The three memos on the same day.

12 **THE COMMISSIONER:** Yeah, that's true.

13 **MR. SCHARBACH:** Thank you, Mr. Commissioner.
14 Now, Mr. Silmsers, have you had a chance to glance at those
15 three documents -- read those three documents?

16 **MR. SILMSER:** Okay.

17 I have two in front of me. I have 303 and
18 286.

19 Is there another one?

20 **THE COMMISSIONER:** Three zero seven (307) --

21 -

22 **MR. SILMSER:** Three zero six (306)?

23 **THE REGISTRAR:** Three zero seven (307).

24 **MR. SCHARBACH:** Three zero seven (307)

25 All right.

1 Thank you.

2 **THE COMMISSIONER:** So maybe we should put
3 them in order, chronologically.

4 **MR. SCHARBACH:** Yes.

5 **THE COMMISSIONER:** I would think that 307 is
6 the first one?

7 **MR. SCHARBACH:** If that's the one that says:
8 "I received a call at 10:00 am, this
9 morning..."

10 **THE COMMISSIONER:** Yeah.

11 **MR. SCHARBACH:** Yes.

12 **THE COMMISSIONER:** And then, 303 is the
13 second one and 286 would be the last one.

14 **MR. SCHARBACH:** Right. Thank you.

15 **THE COMMISSIONER:** Have you got that, Mr.
16 Silmsers?

17 **MR. SILMSER:** Yes, I do.

18 **THE COMMISSIONER:** Okay.

19 So it starts off on 307. She writes she
20 received a call from you at 10:00 a.m. saying what it says.

21 **MR. SCHARBACH:** All right.

22 Thank you Mr. Commissioner.

23 Now, Mr. Silmsers, two of these documents
24 have already been put in as exhibits, but I wanted to get
25 them all in, all three of them in because they record the

1 communications that took place on July the 19th. And it
2 appears -- now that you've read them, I think you'll agree
3 with me that you had contacts with the Crown's office that
4 day and it appears that you were frustrated and angry that
5 day.

6 Is that fair to say?

7 Well, let's look at the first contact.

8 **MR. SILMSER:** They're saying this. I just
9 can't remember if I was or not.

10 **MR. SCHARBACH:** Okay.

11 All right.

12 Well, let's look at it and see if it jogs
13 your memory at all.

14 Exhibit 307 records a telephone call from
15 you to Mireille, at 10:00 a.m. in which you appear to be --
16 in which she says, at least, that you learned that the
17 lawyers in Toronto have lost the file, and it appears --
18 shows that a cover-up is going on and you hope that you,
19 meaning the Crown's office in Ottawa, is not doing the same
20 thing.

21 Do you recall that?

22 **MR. SILMSER:** That letter I don't even
23 recall.

24 **MR. SCHARBACH:** I'm sorry.

25 **MR. SILMSER:** That phone call, I don't even

1 recall.

2 MR. SCHARBACH: You don't recall.

3 MR. SILMSER: No.

4 MR. SCHARBACH: All right.

5 MR. SILMSER: I don't even know what it
6 consists of.

7 MR. SCHARBACH: Okay.

8 And if we look at the second memo, the one
9 that states:

10 "...received a second call from Mr.
11 Silmsers at 11:30 a.m."

12 THE COMMISSIONER: It's Exhibit 303.

13 MR. SCHARBACH: Three zero three (303).

14 Thank you.

15 It appears that you were attempting to make
16 the Crown's office aware of another victim who had been
17 located by a private investigator.

18 Do you recall that conversation?

19 MR. SILMSER: No, I don't.

20 MR. SCHARBACH: Okay.

21 You have no memory of this at all?

22 MR. SILMSER: No.

23 MR. SCHARBACH: Okay.

24 All right.

25 And if we look at Exhibit 286, the last

1 record, this appears to be Mireille's report to Bob, being
2 Robert Pelletier, on the same day, recording a message you
3 left on the answering machine, in which she says that you
4 were extremely upset, the Crown doesn't have the right to
5 refuse the calls as you are a victim and this is the one
6 where you made reference to a Public Inquiry. I think Mr.
7 Leigh raised that with you last week.

8 Do you recall that?

9 **MR. SILMSER:** I don't recall the telephone
10 call, no.

11 **MR. SCHARBACH:** Okay.

12 So you don't recall any of the contacts that
13 day?

14 Did none of that jog your memory?

15 **MR. SILMSER:** No.

16 **MR. SCHARBACH:** Okay.

17 All right.

18 Then I'd like to take you to document
19 109256. And this will just round out the last of those
20 contacts, Mr. Silmsers.

21 **MR. SILMSER:** What's the number of again?

22 **THE COMMISSIONER:** It's not in the book yet.

23 **MR. SILMSER:** Oh!

24 **THE COMMISSIONER:** Okay.

25 Exhibit 308 is a memo dated July 19th, 1996,

1 to the file from Robert Pelletier?

2 --- EXHIBIT NO./PIÈCE NO. P-308:

3 Note to File from Robert Pelletier re:
4 *Regina v. Charles MacDonald* - July 19, 1996

5 (SHORT PAUSE/COURTE PAUSE)

6 MR. SILMSER: Okay.

7 I've read the letter.

8 MR. SCHARBACH: Thank you.

9 Now, this is apparently a note to file from
10 Mr. Pelletier dated the same day as those earlier telephone
11 calls and voice mail messages were left, in which he's
12 noting to the file, the fact that you had made those calls.
13 And he sets out here the reason why he's decided that
14 communication should go between you and the Crown's office,
15 through your lawyer's office, and he says here that:

16 "Given that charges have already been
17 laid..."

18 Sorry, his concern is that if he speaks to
19 you at this time, a conflict will develop which will require him
20 to step down, which could lead to an 11(b) argument. In other
21 words, an argument that the charge should be stayed due to
22 delay. In other words, it would cause delay in the prosecution
23 of the offence -- of Mr. MacDonald's offence.

24 Do you know whether anyone from the Crown's
25 office or your lawyer's office, explained this to you?

1 **MR. SILMSER:** No they didn't.

2 **MR. SCHARBACH:** All right.

3 **MR. SILMSER:** I don't even know this. I've
4 never seen this letter before. So.

5 **THE COMMISSIONER:** It's not a letter though.
6 You have to understand he wrote this memo to the file, put
7 in this file, after the day's end -- at day's end after --
8 what he says there were three calls -- at least three
9 calls.

10 **MR. SILMSER:** Okay.

11 **THE COMMISSIONER:** Okay.

12 **MR. SCHARBACH:** Now, Mr. Silmsers, he ...

13 **MR. SILMSER:** Sorry to interrupt.

14 **MR. SCHARBACH:** All right.

15 **MR. SILMSER:** But he was in the preliminary
16 at this time?

17 **THE COMMISSIONER:** Well, this is July 19th,
18 1996.

19 **MR. SILMSER:** This is way before the
20 preliminary?

21 **THE COMMISSIONER:** Pardon me.

22 **MR. SILMSER:** Is this still before the
23 preliminary?

24 **MR. SCHARBACH:** The preliminary took place
25 in September, or at least your testimony at the preliminary

1 took place in September of 1996 (sic).

2 **MR. SILMSER:** Yeah. Okay.

3 **THE COMMISSIONER:** So this is July 19th.

4 **MR. SCHARBACH:** Ninety-seven (97).

5 **MR. SILMSER:** Okay.

6 **MR. SCHARBACH:** Okay?

7 Sir, just to make that clear. You testified
8 at the Preliminary in September -- 9, 10 and 11 September
9 1997.

10 **THE COMMISSIONER:** Ninety-seven (97)?

11 **MR. SCHARBACH:** Ninety-seven (97).

12 **THE COMMISSIONER:** So this is a year and a
13 couple of months before that.

14 **MR. SILMSER:** Okay.

15 **MR. SCHARBACH:** Right.

16 Now you'll see here that he does say that he
17 contacted Mike Fagan -- that would be Detective Mike Fagan
18 of the OPP -- and advised him that you were claiming there
19 was a fourth victim.

20 Do you know whether Mike Fagan got in touch
21 with you to get clarification concerning that?

22 **MR. SILMSER:** I can't remember, no.

23 **MR. SCHARBACH:** It's possible that he did
24 get in touch with you to find your information -- to get
25 your information?

1 **MR. SILMSER:** We're talking about ten years
2 ago, or more than ten years ago.

3 **MR. SCHARBACH:** Sure.

4 **MR. SILMSER:** I just can't remember.

5 **MR. SCHARBACH:** Okay.

6 Thank you.

7 Now, these are the notes and the contacts
8 that found recorded, involving your contacts with the
9 Crown's office, leading up to your testimony at the
10 Preliminary in September of 1997.

11 Do you recall whether there were any
12 additional contacts, communications with the Crown's
13 office?

14 **MR. SILMSER:** I don't believe so, but I
15 don't remember some of these. So.

16 **MR. SCHARBACH:** Yeah.

17 Did communication thereafter go through your
18 lawyer?

19 **MR. SILMSER:** It's either that or I just
20 gave up and didn't contact Mr. Pelletier anymore.

21 **MR. SCHARBACH:** Okay.

22 **MR. SILMSER:** You have to realize that
23 there's quite a period of time here. When Mr. Pelletier
24 took over the case and to when the charges were laid, it
25 was quite a period -- until the trial started or the prelim

1 started.

2 MR. SCHARBACH: Right.

3 MR. SILMSER: So I couldn't understand why
4 the delay for that, for one reason, I was frustrated in
5 that.

6 MR. SCHARBACH: Right.

7 MR. SILMSER: And I wasn't getting any
8 information right from Mr. Pelletier's office, ever.

9 MR. SCHARBACH: But Mr. Pelletier's office
10 had let you know that all communications should go through
11 your lawyer, to and from.

12 MR. SILMSER: And I refused that, because it
13 cost me money and I didn't have the money to pay my lawyer.

14 MR. SCHARBACH: All right.

15 Now, at some point, you learned that the
16 preliminary was scheduled for September of 1997, you were
17 to come to testify.

18 MR. SILMSER: That's correct.

19 MR. SCHARBACH: And who would have informed
20 you of that?

21 Would it have been Detective Fagan?

22 MR. SILMSER: More than likely.

23 MR. SCHARBACH: Was Detective Fagan in touch
24 with you, from time-to-time, leading up to the preliminary?

25 MR. SILMSER: I doubt it. I don't remember.

1 MR. SCHARBACH: All right.

2 MR. SILMSER: But I had to get the subpoena
3 from somebody. So ---

4 MR. SCHARBACH: M'hm.

5 MR. SILMSER: --- more than likely it was
6 from Mr. Fagan.

7 MR. SCHARBACH: Now, I understand that
8 Detective Fagan met with you on a couple of occasions prior
9 to the preliminary?

10 MR. SILMSER: That I can't remember.

11 MR. SCHARBACH: And I understand that he met
12 with you, in the presence of Mr. Pelletier, prior to the
13 preliminary, in Mr. Pelletier's office -- sorry -- in the
14 Crown's office, in the court house on Elgin Street.

15 Do you recall that?

16 MR. SILMSER: No, I don't.

17 MR. SCHARBACH: You don't recall any
18 meetings?

19 MR. SILMSER: No, I don't.

20 MR. SCHARBACH: In the regional Crown's
21 office?

22 MR. SILMSER: No, I don't.

23 MR. SCHARBACH: All right.

24 Do you recall Mr. Pelletier explaining to
25 you what the issues were going to be at the preliminary?

1 **MR. SILMSER:** No, I don't.

2 **MR. SCHARBACH:** Okay.

3 I'm wondering if we could call up -- I want
4 to refer you to a very brief part of the transcript of the
5 preliminary, if I may. It's document 738201, which is
6 Volume 1, and it's page 112.

7 **MR. SILMSER:** So, I have the prelim?

8 **THE COMMISSIONER:** Exhibit -- yeah, we do.
9 We just have to figure out which volume of the pre it is.

10 **MR. SCHARBACH:** Seven three eight two zero
11 one (738201).

12 **THE COMMISSIONER:** So, it's Exhibit 290,
13 and, what page?

14 **MR. SCHARBACH:** One hundred and twelve
15 (112). If we can scroll down the page a little farther,
16 please?

17 Yes, that's fine. Maybe just a little bit
18 up so you we see the topic there.

19 Okay.

20 Mr. Silmsen, if I can just try to jog your
21 memory a little bit. Close to the beginning of the
22 proceedings, Mr. Neville was asking you questions and you
23 started talking about an incident that didn't form part of
24 the charges. And, there was an objection made to you
25 describing that incident. And, at this point, actually,

1 you were asked to leave the courtroom, because there was
2 discussion between the judge and the lawyers, concerning
3 how they were going to proceed, with respect to that
4 allegation.

5 And, you will see at about paragraph 15, I
6 think it's the judge speaking here, and the judge says:

7 "Mr. Silmsers, I presume, has been told
8 that it is not being proceeded with.
9 It formed part of his original
10 complaint. So, I assume he knows it's
11 not being proceeded with."

12 And Mr. Pelletier says:

13 "That's a fact. During our meetings,
14 I've mentioned to him that this
15 particular episode, the car ride
16 incident, is not part of the matters
17 before the Court."

18 **MR. SILMSER:** No, no. That's incorrect. I
19 never had meetings with Mr. Pelletier on these matters.

20 **MR. SCHARBACH:** Well, I mention that you
21 because I was wondering whether this would jog your memory.

22 Do you remember having conversations with
23 him -- meetings he says, with him, in which he explained to
24 you that the car ride incident was not part of the matters
25 that are being considered by the court?

1 **MR. SILMSER:** No, I don't.

2 **MR. SCHARBACH:** Okay.

3 Are you saying you don't recall those
4 meetings or are you saying you recall that they didn't
5 occur?

6 **MR. SILMSER:** I don't recall the meetings.

7 **MR. SCHARBACH:** Okay.

8 All right.

9 Thank you.

10 **MR. SILMSER:** There was one meeting I
11 recall, if it means anything. It was after the prelim, and
12 I don't know why I went to his office in L'Original; it was
13 either to pick up some paperwork or I have no idea what it
14 was for, and he told me he had his secretary count how many
15 questions that Mike Neville had asked me through the
16 prelim. It came out to be something like 20,000 questions,
17 and I just couldn't understand why he would have his
18 secretary count how many questions Mike Neville had.

19 **MR. SCHARBACH:** No. I was more interested
20 in the questions in the meetings that took place before the
21 prelim.

22 **MR. SILMSER:** I was more interested in that
23 one myself because I just thought that was quite a waste of
24 time.

25 **MR. SCHARBACH:** Okay.

1 Now, later the case was taken over by
2 another prosecutor, Shelley Hallett, you mentioned.

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

4 **MR. SCHARBACH:** And you mentioned that you
5 have at least one meeting with her at the OPP office in
6 Long Sault.

7 **MR. SILMSER:** That's correct.

8 **MR. SCHARBACH:** And were you invited to that
9 meeting by the OPP -- by the OPP investigators?

10 **MR. SILMSER:** It was either through the OPP
11 or herself, Mrs. Hallett herself ---

12
13 **MR. SCHARBACH:** M'hm.

14 **MR. SILMSER:** --- one of the two.

15 **MR. SCHARBACH:** All right.

16 And, at that meeting, it must have been
17 clear to you that Ms. Hallett was taking over the case from
18 Mr. Pelletier?

19 **MR. SILMSER:** Yes, it was.

20 **MR. SCHARBACH:** And was there any discussion
21 as to why?

22 I mean you must have wondered why that
23 occurred.

24 **MR. SILMSER:** No, never discussed why.

25 **MR. SCHARBACH:** You didn't ask?

1 MR. SILMSER: No.

2 MR. SCHARBACH: So I take it they didn't
3 tell you why Ms. Hallett was taking over the case?

4 MR. SILMSER: That's correct.

5 MR. SCHARBACH: And you didn't ask?

6 MR. SILMSER: That's right.

7 MR. SCHARBACH: All right.

8 And did she discuss with you the status of
9 your case at that point?

10 MR. SILMSER: Not to myself. She was
11 discussing most of the matters to whoever she was with,
12 talking basically about time delay.

13 MR. SCHARBACH: And the purpose of the
14 meeting was for you to meet her?

15 MR. SILMSER: I think that was the only
16 purpose.

17 MR. SCHARBACH: To set up a contact between
18 you so you can get to know each other because you would be
19 prosecuting that case?

20 MR. SILMSER: That's right.

21 MR. SCHARBACH: Okay.

22 All right.

23 Those are all my questions.

24 Thank you, Mr. Silmsers.

25 MR. SILMSER: Thank you.

1 **THE COMMISSIONER:** Ms. Makepeace.

2 **MS. MAKEPEACE:** Nothing.

3 Thank you.

4 **THE COMMISSIONER:** Thank you.

5 Mr. Lamb?

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

7 **MR. LAMB:** Excuse me. I'm sorry. I picked
8 up a bug last week.

9 So, Mr. Silmsers, if you can't hear me or if
10 anybody needs me to repeat myself or if I'm slower than I
11 already am, which is quite slow, I apologize.

12 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**

13 **LAMB(cont'd/suite):**

14 **MR. LAMB:** Mr. Silmsers, I wanted to return
15 to some -- well, where we left off last Thursday. We were
16 discussing, and I was asking you questions about the
17 preliminary inquiry, about your opinion, the delay was
18 something to do with -- it was Mr. Neville's fault. And
19 you said you had heard Mr. Neville speaking outside of the
20 court to his client at one point, and you indicated he was
21 saying something to the effect that "In cases like this..."
22 and he was gesturing with his hands "...we have to extend it
23 as far as we can."

24 Do you recall saying that?

25 **MR. SILMSER:** Yes, I do.

1 **MR. LAMB:** And that was in Ottawa.

2 Correct?

3 **MR. SILMSER:** That was in Ottawa, yes.

4 **MR. LAMB:** That was at the stay hearing?

5 **MR. SILMSER:** That was the preliminary
6 hearing that was going on, wasn't it?

7 **MR. LAMB:** I don't know. That's my question
8 to you.

9 **MR. SILMSER:** I don't understand.
10 The stay hearing itself?

11 **MR. LAMB:** The stay hearing was in 2002.

12 **MR. SILMSER:** Which would be in Cornwall.
13 Right?

14 **MR. LAMB:** No. I apologize. I guess it was
15 in Cornwall with Justice Chilcott sat -- did he sit in
16 Cornwall?

17 **MR. SILMSER:** Yes.

18 **MR. LAMB:** Okay.

19 **MR. SILMSER:** As far as I know -- as far as
20 I know.

21 **MR. LAMB:** So when you saw him outside of
22 the court making this, you're saying that was at the -- was
23 that at the stay hearing or the preliminary hearing?

24 **MR. SILMSER:** The preliminary hearing.

25 **MR. LAMB:** Okay.

1 **MR. SILMSER:** He also, at the preliminary
2 hearing, appealed the decision the judge made and that
3 caused the time of, like, four months recess and when the
4 court came back, Mr. Neville never put the appeal in so
5 that it resumed without the appeal. So that was like kind
6 of a bit of a strategy to waste time I figured also.

7 **MR. LAMB:** Okay.

8 Well, the preliminary hearing, to be fair,
9 sir, was five years before the matter was stayed.

10 Right?

11 **MR. SILMSER:** It was that long?

12 **MR. LAMB:** Nineteen ninety-seven (1997).

13 **MR. SILMSER:** The prelim took five years?

14 **MR. LAMB:** No, it occurred five years before
15 the matter was stayed.

16 **MR. SILMSER:** Okay.

17 **MR. LAMB:** Okay.

18 And would you agree with me, simply agree or
19 disagree, that you weren't aware of the context within
20 which Mr. Neville was talking to his client?

21 **MR. SILMSER:** It seemed pretty plain to me.

22 **MR. LAMB:** But in terms of hearing simply a
23 snip of what somebody is saying, you're not aware of the
24 context of the conversation?

25 **MR. SILMSER:** No. It seemed pretty clear to

1 me.

2 **MR. LAMB:** And in terms of your knowledge of
3 these things, you're not a lawyer and you don't have an
4 understanding of the legal intricacies of cases before the
5 courts; that's fair.

6 Correct?

7 **MR. SILMSER:** Okay.

8 **MR. LAMB:** Is that fair?

9 **MR. SILMSER:** The amount of time I spent in
10 the courts in the last 15 years, I sure got some knowledge.

11 **MR. LAMB:** But in terms of the legal issues
12 that have to be sorted out, that's not something -- that's
13 an area of expertise that you understand.

14 **MR. SILMSER:** I've learned quite a bit in
15 the last 15 years, like I say again. I'm not a lawyer and
16 there's going to be lots of things I don't understand, but
17 when somebody says that, in a case like this, we have to
18 extend it as long as we can, to me, that sounds pretty well
19 black and white.

20 **MR. LAMB:** Lawyers have to make decisions
21 with regard to strategy in cases. Obviously, lawyers
22 you've dealt with in the past yourself have advised you as
23 to how to proceed in certain situations. For example, here
24 today, you have the help of a lawyer's advice and that's
25 something -- a lawyer's advice is something that you would

1 rely on because it's not something you have knowledge of
2 yourself.

3 **MR. SILMSER:** Can you repeat that again,
4 please?

5 I'm sorry.

6 I just didn't understand.

7 **MR. LAMB:** Lawyers obviously have to make
8 decisions with regards to cases.

9 Right?

10 **MR. SILMSER:** Correct.

11 **MR. LAMB:** So even here today, you have had
12 the help of -- you have had the assistance of a lawyer.

13 **MR. SILMSER:** That's correct, but ---

14 **MR. LAMB:** And all I'm saying is that
15 despite what you -- and I understand you have reached a
16 conclusion with regard to this, but despite that
17 conclusion, would you agree with me that lawyers are there
18 to advise their clients and to provide the best advice
19 possible with regard to matters before the courts?

20 **MR. SILMSER:** I agree with you there.

21 **MR. LAMB:** Okay.

22 **(SHORT PAUSE/COURTE PAUSE)**

23 **MR. LAMB:** Mr. Silmsers, over the history of
24 these proceedings, and they go back a long way, you have
25 had difficulties with your memory of dates relating to

1 allegations of abuse.

2 **MR. SILMSER:** Never abuse; maybe dates,
3 times.

4 Did you have a coffee in a coffee house this
5 morning?

6 **MR. LAMB:** I'm sorry.

7 **MR. SILMSER:** Did you have a coffee in a
8 coffee house this morning?

9 **MR. LAMB:** I didn't, sir.

10 **MR. SILMSER:** Oh! I was just going to ask
11 you what colour the paints on the walls were. It's
12 memories 10 to 15 years ago; that's the type of questions
13 you're asking me: Did you turn left? Did you turn right?
14 What date did this fall on 15 years ago?

15 You know, I just didn't have a memory for
16 that, exact memories for that. But you ask me about the
17 abuses itself, I can tell you exactly what happened. Some
18 things in your memory just stay there and some they don't
19 stay there.

20 **MR. LAMB:** Mr. Wardle had addressed this
21 with you in his cross-examination earlier and said there
22 were issues with regard to memory, and I understand why.
23 You've answered my question with regard to, you know,
24 specific allegations. But in terms of dates, contact with
25 other parties involved both in investigative actions, legal

1 proceedings, plus involving criminal, your memory has had
2 difficulty with regards to the recollection of specifics.

3 Is that fair?

4 **MR. SILMSER:** You'd have to tell me specific
5 what. If it's -- if the weather was cold or if the colour
6 of the walls were a different colour, the colour of his car
7 was different or what size of his car was, yes, I'd have to
8 say so.

9 **MR. LAMB:** Okay.

10 **MR. SILMSER:** But there's many specifics I
11 was dead on right, like the abuse, where it happened,
12 approximately when it happened. I was a child. Those
13 things are very, very close to my memory.

14 **MR. LAMB:** When you -- when Mr. Engelmann
15 was asking you questions in your examination in-chief, ---

16 **MR. SILMSER:** Right

17 **MR. LAMB:** --- you stated that, with regard
18 to when you were an altar boy, you said two years, and then
19 he suggested shortly after that that perhaps it was three
20 and a half years.

21 **MR. SILMSER:** That's possible.

22 **MR. LAMB:** Do you agree?

23 **MR. SILMSER:** That's possible.

24 **MR. LAMB:** Okay.

25 So that's one example. Somewhere between

1 two and four years at different points in time, both here
2 at this inquiry and the preliminary hearing, during
3 discoveries ---

4 **MR. SILMSER:** See, that's a bad example
5 you're using right there. It's because the abuses were
6 early and after that, I really didn't care much for -- I
7 might have been following the steps and doing what I had to
8 do, but my memory started to go after that. I blocked
9 things in the back of my head. So I might have been altar
10 boy for four years but only -- you know what I mean. Like
11 the only ones I remember is the two years when I was
12 abused.

13 **MR. LAMB:** So you would have forgotten or
14 forgotten about the two years where you weren't being
15 abused?

16 Is that what you're saying?

17 **MR. SILMSER:** No, no. That's not what I'm
18 saying, no. Many years after the abuses, even the years
19 after the abuses, I know I lived on the street.

20 I don't know where I lived half the time. I
21 don't know what I ate for supper. I didn't know what I ate
22 for lunch. Those are the things I just don't remember.
23 The little things I don't remember.

24 And if you ask me about the abuse itself, I
25 can give you practically a perfect picture of it in my head

1 because it's like a film going over -- on in my head.

2 **MR. LAMB:** Now, I also wanted to -- one of
3 the other things that came up during your testimony was a
4 review of old -- of your statements. For example, when you
5 were at the preliminary inquiry and you were asked here at
6 the Inquiry whether you were given an opportunity to review
7 statements you had made.

8 **MR. SILMSER:** I don't understand the
9 question.

10 **MR. LAMB:** I -- you said you weren't given
11 an -- you were asked whether you were given an opportunity
12 to review statements that you had made.

13 **MR. SILMSER:** When?

14 **MR. LAMB:** This was during your examination
15 in-chief by Mr. Engelmann on January the 31st, and that was
16 in the context of preparing for the preliminary inquiry.

17 **MR. SILMSER:** Okay.

18 **MR. LAMB:** He was asking you questions about
19 that.

20 **THE COMMISSIONER:** So, Mr. Engelmann was
21 asking you questions about -- at the preliminary inquiry
22 were you given a chance to review your statements?

23 And I believe ---

24 **MR. SILMSER:** Oh! Yes.

25 Okay.

1 I remember that now, and I said "No."

2 **MR. LAMB:** That's right. And during the
3 preliminary inquiry, Mr. Silmsers, while you were on the
4 stand, you had difficulty recalling certain things and at
5 one point, you were asked -- by counsel for Father
6 MacDonald, you were asked to read over the statement you
7 had given the OPP back in February of 1992 -- 1994 -- sorry
8 -- but you wouldn't do that because, in your words, you
9 knew the truth already.

10 **THE COMMISSIONER:** I'm sorry.

11 Is there a question?

12 **MR. LAMB:** My question simply is -- again,
13 it confirms -- that would confirm one that you did have
14 difficulties with memory.

15 Correct?

16 **MR. SILMSER:** No, I don't believe so.

17 **MR. LAMB:** Did not?

18 **MR. SILMSER:** No, I don't believe so.

19 **MR. LAMB:** And although you said you didn't
20 have the opportunity to review your statements, when you
21 were asked if you wanted to review your statements in the
22 prelim, you simply refused to do so.

23 Is that correct?

24 **MR. SILMSER:** When did I refuse?

25 You're starting to -- I think so.

1 **THE COMMISSIONER:** No, no. That's okay.
2 Hold on! Hold on! So hang on!

3 **MR. CULIC:** My recollection is that, one,
4 Mr. Commissioner, related to review, before he took the
5 witness stand, if I've got this question correct, it's an
6 opportunity to review under cross-examination while he's on
7 the witness stand. They're not the same thing.

8 **THE COMMISSIONER:** Mr. Engelmann.

9 **MR. ENGELMANN:** If I can just make a brief
10 comment. I'm having trouble following the questions myself
11 and I'm thinking that the relevance ---

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

13 **MR. ENGELMANN:** If there's something that
14 counsel wishes to take from the witness with respect to
15 questions that he says are put, if he wants to refer to the
16 transcript, it might be of assistance.

17 **THE COMMISSIONER:** M'hm. I think he can ---

18 **MR. ENGELMANN:** Because I believe the
19 witness said that he hadn't referred to documents, but then
20 he acknowledged that -- and this is just on my memory now
21 -- he might have looked at his original statement, the
22 eight-page statement before the preliminary.

23 So given that there were hundreds or
24 thousands of questions at the preliminary inquiry and there
25 were certainly three full days of cross-examination, if

1 there's something he wants to put to Mr. Silmsers,
2 presumably that's relevant to this Inquiry, perhaps he
3 could refer to the page and the question and the answer,
4 just to assist the witness.

5 **THE COMMISSIONER:** So, Mr. Lamb, can you
6 help me out?

7 Where are we going with this?

8 **MR. LAMB:** I am addressing the witness'
9 difficulties generally and specifically with memory, Mr.
10 Commissioner.

11 **THE COMMISSIONER:** So, how does that relate
12 to the institutional response or why we are here?

13 **MR. LAMB:** Surely, any institutional
14 response relates directly back to the credibility of the
15 complaints that were there in the first place.

16 **THE COMMISSIONER:** The credibility of the
17 complaints.

18 M'hm.

19 **MR. LAMB:** Those complaints have to be dealt
20 with by the institutions and weighing a number of factors:
21 the age of the complaints, how old they were; the
22 credibility of the person making the complaints or persons
23 making the complaints.

24 **THE COMMISSIONER:** Right.

25 But, see, I don't see that that's your job.

1 I'll give you a little more leeway, but I just don't see
2 it. This isn't a trial. This is -- and we've gone through
3 all of that.

4 Certainly, if -- well, the Crown has asked
5 questions about this witness.

6 So how they perceived what happened at the
7 preliminary inquiry really why would you want to bring that
8 up?

9 What -- how does that factor in with your
10 client's position that they, as standing at this Inquiry,
11 for his interests only, as it affects his interests?

12 **MR. LAMB:** Well, if we're speaking strictly
13 within the context of how it affects my client's interests
14 ---

15 **THE COMMISSIONER:** Yes.

16 **MR. LAMB:** --- Mr. Commissioner, I mean, I
17 think we are going to go right back to the first issue that
18 was put to the Inquiry by my colleagues with regard to this
19 and that's where we start, and that's a presumption that
20 our client is innocent.

21 **THE COMMISSIONER:** We've gone through all
22 that.

23 **MR. LAMB:** Yes, and I know we've been all
24 through that.

25 **THE COMMISSIONER:** So where are we going

1 with these issues of memory then?

2 **MR. LAMB:** Well, I think the ---

3 **THE COMMISSIONER:** No, no. Just ---

4 I'm sorry.

5 **MR. SILMSER:** Can I get out of here while --

6 -

7 **THE COMMISSIONER:** Yes, that's a good idea.

8 Thank you.

9 There we go. So we'll call you back.

10 Thank you.

11 **MR. SILMSER:** Thank you.

12 **MR. LAMB:** I think there's a direct, in my

13 respectful submission, Mr. Commissioner, a direct

14 correlation between memory, to use the broadest term

15 possible, and ---

16 **THE COMMISSIONER:** To what?

17 **MR. LAMB:** To how every institution -- and

18 that is the Terms of Reference of the Inquiry -- how every

19 institution responded to the allegations ---

20 **THE COMMISSIONER:** So why are you taking the

21 banner up and waving the banner when that's their jobs?

22 I would see that that would be the Diocese

23 coming up and questioning about that kind of stuff or the

24 Cornwall Police or the OPP saying, you know, at some point

25 they might say "Look it, we've got all these conflicting

1 statements. You know, we're starting to have some worries
2 about him," and talk about the Crown if that's what
3 occurred.

4 But as to your client, the only thing that
5 comes to mind is you're trying to prove him innocent.

6 Is that what you are trying to do?

7 **MR. LAMB:** That's -- I think that's a
8 presumption that's there from the get go.

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

10 What are you trying to do in this cross-
11 examination?

12 You're trying to show that he has no memory.

13 And why is that, that his memory was faulty
14 about the dates and stuff like that.

15 So why would you want to do that?

16 **MR. LAMB:** To show that the responses that
17 are out there, that this Inquiry has seen and will continue
18 to see, were appropriate.

19 **THE COMMISSIONER:** To see what?

20 **MR. LAMB:** That the responses from the
21 institutions were appropriate.

22 **THE COMMISSIONER:** Okay.

23 Well, then, you are going to have to
24 convince me that you are the one who should be shouldering
25 this responsibility. I mean, as far as I'm concerned,

1 that's irrelevant to your client's interests.

2 **MR. LAMB:** Okay.

3 I ---

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

5 Just a second!

6 I think Mr. Sherriff-Scott wants to come to
7 your aid.

8 **MR. LAMB:** Well, what I would like to, give
9 him the time anyway and maybe it's more appropriate, Mr.
10 Commissioner, if I address it in the morning. I didn't
11 expect that we would get to me so quickly this afternoon.

12 **THE COMMISSIONER:** Well, I think you were
13 ready the last time for the cross-examination.

14 **MR. LAMB:** Yes. Certainly!

15 **THE COMMISSIONER:** Let me see what Mr.
16 Sherriff-Scott has to say.

17 **MR. SHERRIFF-SCOTT:** Thank you,
18 Commissioner.

19 I would just -- I would suggest that I
20 understand your concern; what is the person who is the
21 alleged accused here doing shouldering this burden, to use
22 your expression. My view of the thing is that where there
23 is an accused person, their interests here are broader than
24 are being debated by my friends, and I think, with respect,
25 that is reflected by your perspective here.

1 My -- I'm just trying to focus the debate
2 here. I think an accused person who was the subject of a
3 prosecution, full or partial, partial in this case, as well
4 as various constitutional motions, but pursuant to which
5 there is an extensive preliminary inquiry at least and all
6 of this evidence developed, that their interests are, in
7 fact, very broad ---

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

9 **MR. SHERRIFF-SCOTT:** --- as opposed to
10 narrow. And I understand your concern; you want to say
11 "Well, how is your particular interest affected?"

12 Well, his interest was affected in the sense
13 that he was subjected to this entire process. And I would
14 submit that it behoves the Commission to allow any alleged
15 perpetrator's counsel to cross-examine broadly because that
16 individual's interests are enormously affected, whether the
17 prosecution went forward and there was an acquittal, or
18 whether there was a stay, or that they were never charged
19 because, surely, they are entitled to point out the
20 shortcomings and the evidence, not so far as guilt and
21 innocence, but perhaps what the institutions were dealing
22 with, why that affected their interests and how that
23 affected the prosecution and so forth.

24 So, in my submission, an accused person's
25 interests are much broader as opposed to narrower.

1 I do understand the concern you are
2 expressing here about culpability being the subject of the
3 cross-examination.

4 In other words, are you driving to prove
5 innocence?

6 And we know the rules here that may be off-
7 side, but beyond that I would have thought that an accused
8 person would have the broader interest to test all of the
9 things that were -- the individual was subjected to. So
10 just to make that point.

11 Thank you.

12 **THE COMMISSIONER:** Mr. Lamb?

13 **MR. LAMB:** Yes.

14 **THE COMMISSIONER:** I'm sorry.

15 Did you wish to say something?

16 **MR. CULIC:** Perhaps I didn't bound to my
17 feet quickly enough, but once I hear my friend talking
18 clearly about credibility, that that is where the memory
19 questions were going; that I think, Mr. Commissioner,
20 you're correct. That's outside of the scope; that's beyond
21 his purview and I'm not too sure that even the
22 institutional counsel will be unchallenged in that regard,
23 when it comes to questions whose sole purpose is to
24 undermine the veracity of this witness' recount.

25 **THE COMMISSIONER:** I find it unusual -- I

1 find it ironic that I sense that the -- you're asking
2 institutional questions that the Diocese should be asking
3 and the Diocese is getting up to argue your position which
4 ---

5 **UNIDENTIFIED SPEAKER:** Yeah.

6 **THE COMMISSIONER:** Shush!

7 I don't think that any comments are
8 appropriate at this time.

9 So I guess you've got an uphill fight in the
10 sense that I am of the view -- and I'll leave this for you
11 and then you can continue tomorrow -- that you may have to
12 overcome the perception that I have -- not the perception I
13 have -- that I'm going to guard against you attempting to
14 find your client not guilty. And issues of credibility, as
15 Mr. Culic has pointed out, are not really that important
16 unless you can convince me otherwise. I'll leave you to
17 think about that tonight.

18 In the meantime, could we get the witness
19 back and I'll advise him of what's happened and then we'll
20 break for the day?

21 Clearly, query, I suppose, if what Mr.
22 Sherriff-Scott says is correct, then maybe we have the
23 order wrong in the sense that the narrow should go first
24 and the broader should be batting clean-up; to use a sports
25 analysis.

1 Thank you very much, Mr. Silmser.

2 We're going to break for the end of the day.

3 What we're going to do tomorrow is we'll resume with you
4 absent and I'd ask some lawyers -- I gave them some
5 homework to do, I suppose, on some submissions they should
6 be giving me tomorrow. And we'll resume tomorrow at 9:30.

7 How's that?

8 **MR. SILMSER:** Thank you very much.

9 **THE COMMISSIONER:** Thank you.

10 **THE REGISTRAR:** Order; all rise.

11 The hearing is now adjourned. L'audience
12 est ajournée.

13 --- Upon adjourning at 4:38 p.m./

14 L'audience est ajournée à 16h38

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C E R T I F I C A T I O N

I, Sean Prouse a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Sean Prouse, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Sean Prouse, CVR-CM