

**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 197

Held at :

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

Thursday, February 14 2008

Tenue à:

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

Jeudi, le 14 février 2008

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Ms. Raija Pulkkinen	Commission Counsel
Ms. Mary Simms	
Mr. Ian Stauffer	
Mr. John E. Callaghan	Cornwall Police Service Board
Mr. Mark Crane	
Mr. Peter Manderville	
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
Ms. Gina Saccoccio Brannan, Q.C.	
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. Mark Wallace	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Ms. Amanda Connolley	Ottawa Police Service

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

2 L'audience débute à 9h34

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Good morning, all. Superintendent Skinner.

11 **MR. SKINNER:** Thank you.

12 **THE COMMISSIONER:** How are you doing this
13 morning?

14 **MR. SKINNER:** I am very well, sir. How are
15 you?

16 **THE COMMISSIONER:** Mr. Callaghan, welcome
17 back.

18 **MR. CALLAGHAN:** Thank you, Mr. Commissioner,
19 it's nice to be back.

20 --- WILLIAM BRIAN SKINNER: Resumed/Sous le même serment

21 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
22 CALLAGHAN:

23 **MR. CALLAGHAN:** Superintendent Skinner, as
24 you know, I'm John Callaghan and I'm here to ask a few
25 questions on behalf of the Cornwall Police Service.

1 Now, it's fair to say that when you got your
2 assignment, you saw it as a serious situation to be asked
3 to investigate whether there was a cover-up at the Cornwall
4 Police; correct?

5 **MR. SKINNER:** Correct.

6 **MR. CALLAGHAN:** All right. And I take it
7 you took it seriously?

8 **MR. SKINNER:** Correct, yes, I did.

9 **MR. CALLAGHAN:** And you sought the
10 assistance of Staff Sergeant Blake; right?

11 **MR. SKINNER:** Yes.

12 **MR. CALLAGHAN:** Now, I think you've
13 indicated to us that you weren't doing a sexual assault
14 investigation were you?

15 **MR. SKINNER:** No, I wasn't.

16 **MR. CALLAGHAN:** And it's fair to say that
17 you weren't trained as a sexual assault investigator were
18 you?

19 **MR. SKINNER:** I was not.

20 **MR. CALLAGHAN:** And you said something to
21 Mr. Neville the other day with respect to your experience.
22 You said when he were asked:

23 "You did many investigations from major
24 down to minor?"

25 And the answer:

1 "I didn't say many. I didn't spend a
2 lot of time in that."

3 But am I to understand that you spent most
4 of your time on the administration and the supervision of
5 the Ottawa Police rather than the investigative side. Is
6 that fair to say?

7 **MR. SKINNER:** Most of it, probably about 50
8 per cent of it, that's a very rough estimate. In terms of
9 my actual activities as a criminal investigator, that was
10 one year in 1971 and one year in 1978 when I was actually a
11 CID investigator.

12 **MR. CALLAGHAN:** Right, so -- and I take it
13 that when you eventually became the Superintendent of the
14 Investigative Service Division in 1993 ---

15 **MR. SKINNER:** M'hm.

16 **MR. CALLAGHAN:** --- the quality that you
17 brought to the job was supervision. You weren't sort of a
18 superstar investigator come up through CID but you had been
19 trained in supervisory issues; correct?

20 **MR. SKINNER:** Supervisory and management,
21 yes.

22 **MR. CALLAGHAN:** Right.

23 **MR. SKINNER:** M'hm.

24 **MR. CALLAGHAN:** And that's an important
25 quality, correct, that if you're going to manage people?

1 **MR. SKINNER:** I would think it is, yes.

2 **MR. CALLAGHAN:** And I take it that you, for
3 example, with Chief Shaver, that you'd met him when he
4 taught some of those courses at the Canadian Police
5 College; correct?

6 **MR. SKINNER:** Taught parts of them, yes.

7 **MR. CALLAGHAN:** Parts of them. And you
8 became a fellow teacher with him?

9 **MR. SKINNER:** No.

10 **MR. CALLAGHAN:** Oh, I'm sorry, I
11 misunderstood that. I thought that you had some
12 involvement with the Canadian Police College. Is that ---

13 **MR. SKINNER:** I did, I did. After I took a
14 senior police administration course there in 1978, I was
15 invited back in 1979 to act as a guest coordinator for
16 another senior police administration course.

17 But that position wasn't really that of an
18 instructor, it was just more an overseer, a facilitator. I
19 didn't actually instruct at any of the classes. I was just
20 there for the candidates who were -- and for the lecturers
21 and so on as well, to facilitate the course.

22 **MR. CALLAGHAN:** And is that a time when
23 Chief Shaver was instructing at that time or is that after?

24 **MR. SKINNER:** That would have been 1979. I
25 believe he was still there then, yes.

1 **MR. CALLAGHAN:** And did you find this course
2 helpful?

3 **MR. SKINNER:** Did I find what?

4 **MR. CALLAGHAN:** This course helpful?

5 **MR. SKINNER:** The senior police
6 **Administration** course? Yes, I did.

7 **THE COMMISSIONER:** But do you mean the one
8 that was ---

9 **MR. CALLAGHAN:** The one that the
10 Superintendent took from Chief Shaver.

11 **THE COMMISSIONER:** Oh, okay. The one that
12 you participated in with Chief Shaver.

13 **MR. SKINNER:** Well, let me clarify that a
14 little bit.

15 The way the Canadian Police College works in
16 those lengthier management courses is that there isn't one
17 instructor, there's a coordinator for the class, but then
18 it's a whole series of instructors and Chief Shaver would
19 have been one of them.

20 I can't say with absolute certainty that he
21 was involved in all of the courses that I attended, but he
22 would have been an instructor at most of them and for only
23 part of them.

24 **MR. CALLAGHAN:** And as I said, you felt that
25 his instruction to you was helpful?

1 **MR. SKINNER:** The whole course was helpful,
2 yeah, all parts of it.

3 **MR. CALLAGHAN:** Including that of Chief
4 Shaver?

5 **MR. SKINNER:** Yes.

6 **MR. CALLAGHAN:** All right. Now -- so to be
7 clear, you had no training as a sexual assault
8 investigator?

9 **MR. SKINNER:** No specific training, no.

10 **MR. CALLAGHAN:** And Staff Sergeant Blake was
11 in Intelligence?

12 **MR. SKINNER:** At the time that we were in
13 Cornwall, I believe he was, yes.

14 **MR. CALLAGHAN:** And I take it he wasn't a
15 sexual assault investigator per se?

16 **MR. SKINNER:** No.

17 **MR. CALLAGHAN:** And in fairness to you, that
18 wasn't the focus of what you were doing; correct?

19 **MR. SKINNER:** That's right, it wasn't.

20 **MR. CALLAGHAN:** And there is a little
21 confusion on my part. You would probably not know this but
22 the Ottawa Police Service provided production to the
23 parties of some 75 documents which would have appeared to
24 have been provided as a result of your investigation.

25 You have seen -- and I've got a list of

1 them. Well, if you can imagine, all the documents on this
2 side and this side that have been put in as exhibits during
3 your testimony including Exhibits 395, 314, 266, 299, 300,
4 301, 269 and those new exhibits starting with 1207 down to
5 approximately 1226, were all documents that the parties got
6 from the Ottawa Police Service.

7 **MR. SKINNER:** M'hm.

8 **MR. CALLAGHAN:** Were you aware of that?

9 **MR. SKINNER:** If you're referring to what I
10 got from the Ottawa Police Service, then I'm -- yeah, I'm
11 with you but let me clarify that.

12 Most of those -- I was amazed when I got
13 that binder from the Ottawa Police Service because I hadn't
14 seen most of those documents before. And I have no idea
15 how the Ottawa police came to be in possession,
16 particularly of my report and of the copies of my notes and
17 Staff Sergeant Blake's notes.

18 Because, I think, as I said yesterday, I
19 never made either the report or the notes the subject of an
20 Ottawa Police file. They were never turned into the Ottawa
21 Police.

22 **MR. CALLAGHAN:** But it's fair to say that
23 somehow they ended up in the Ottawa Police files?

24 **MR. SKINNER:** Obviously, they did, yes.

25 **MR. CALLAGHAN:** And there are some

1 additional documents I just want to clarify for you. And
2 what I will do is I'll show you one or two samples and then
3 perhaps with my friends the Commission counsels'
4 indulgence, we can arrange to sort out what came from the
5 Ottawa Police Service so we know.

6 If that would be acceptable to Commission
7 counsel, rather than take the time to put them all in
8 through this witness ---

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

10 **MR. CALLAGHAN:** --- if that's acceptable Mr.
11 Commissioner?

12 **THE COMMISSIONER:** Does anybody have any
13 objections?

14 **MR. CALLAGHAN:** If I could ask the ---

15 **THE COMMISSIONER:** Mr. Stauffer?

16 **MR. STAUFFER:** No, well, this is a tortured
17 paper trail I must say in terms of where documents
18 originated. I don't honestly know, Mr. Commissioner, if we
19 will ever be able to sort out the trail.

20 But I'm happy with my friend obviously
21 putting to Superintendent Skinner whatever paperwork as to
22 whether he recognizes it or if it formed a part of his
23 analysis before he prepared his report and so on.

24 But I don't know if we'll ever get the
25 answer as to who first got the paperwork and then where it

1 went from there.

2 **THE COMMISSIONER:** And ,importantly, when
3 they got the paperwork.

4 **MR. CALLAGHAN:** Well, it's a bit of an
5 issue. I just -- I wanted just to clarify a few things for
6 the Superintendent because I think there were some comments
7 he might have made that he might see these documents, he
8 might recollect having seen them. And he may not, it's 14
9 years later. He may say I can't tell one way or the other,
10 but it's helpful for all of us to know.

11 If I can start then with Document 101564.

12 **THE COMMISSIONER:** Sir, do you propose these
13 -- to file these as exhibits whether he recognizes them or
14 not?

15 **MR. CALLAGHAN:** I think we should just so we
16 have a clarity as to what we're talking about. I mean,
17 it's -- and then if you want to put a different number --
18 letter on it, I think it would be helpful to know what came
19 from Ottawa.

20 And we can sort that out with Commission
21 counsel and I can ask him if he saw this type of document.
22 If he said no, I can -- I'll advise you that there were
23 more like it in the file and then we'll move one and we can
24 sort out how we make sure that the Commission knows what
25 came from Ottawa.

1 All right? If that's acceptable?

2 **MR. STAUFFER:** Sorry, I don't want to
3 prolong the agony here, but the only documents that I'm
4 aware of that were created, if you will, by the Ottawa
5 Police Service would be the notes obviously that Staff
6 Sergeant Blake wrote, the notes the Superintendent Skinner
7 wrote.

8 But the balance, the rest of the paperwork I
9 think that Mr. Callaghan is going to refer to, originated
10 with the Cornwall Police Service, if I can put it that way.

11 But, again, I will leave that in my friend's
12 hands and I should say there is that memo from Chief --
13 forwarded to Deputy Chief Lyon which is already an exhibit.
14 That would be an Ottawa Police Service document obviously.

15 But in any event, I will leave this to Mr.
16 Callaghan to go through.

17 **THE COMMISSIONER:** There's two things.
18 First of all, couldn't we have done this before, like asked
19 them before?

20 **MR. CALLAGHAN:** I asked Commission counsel
21 to identify what Ottawa had. I mean, they went through
22 their examination obviously the way they felt, and I'm now
23 in a position where I think it's of some help. I didn't
24 know until, you know, the testimony that I think what --
25 and we can clarify with the witness. The witness said he

1 gave whatever he had back. Whatever he had, he gave to
2 Staff Sergeant Blake, and what he understands Staff
3 Sergeant Blake did was when he retired, he shredded it.

4 Am I right with that, witness?

5 **MR. SKINNER:** That's correct, yeah. M'hm.

6 **THE COMMISSIONER:** But for the fact that you
7 want to identify what was produced by Ottawa -- the Ottawa
8 Police and not knowing when they received it, what's the
9 relevance?

10 **MR. CALLAGHAN:** Well, I guess we'll have to
11 find out. I mean, obviously at some point -- we're talking
12 14 years ago -- the Superintendent's been very clear that
13 his memory is not that clear as to what he had and didn't
14 have. He can recollect some things but not all things.

15 **THE COMMISSIONER:** Right.

16 **MR. CALLAGHAN:** It comes back from Ottawa,
17 and I'm just -- I would like to put to him whether he
18 recalls seeing it. If he doesn't recall seeing it, whether
19 he might have seen it and, at the end of the day, if it
20 becomes an issue, you may have to decide whether it's more
21 likely than not that they saw it. I don't know if it's
22 going to be an issue, but I can't tell you what's going to
23 happen at the end of the day.

24 I don't propose to put them all to him, with
25 this agreement with my friend. I'm proposing to identify

1 the few documents by sort -- and this will take a lot less
2 time just to do it and then by the end of the day, you can
3 say, "Okay, well, here's what Ottawa had. Is it likely" --
4 if it becomes an issue; it may not -- "that Superintendent
5 Skinner and Staff Sergeant Blake would have seen it or
6 didn't see it". Otherwise, how did it get in the Ottawa
7 Police file.

8 **THE COMMISSIONER:** And by putting it in as
9 an exhibit, it is in evidence though.

10 **MR. CALLAGHAN:** Well, and it's no different
11 than people asking him -- we've put documents to witnesses
12 before and said, "Have you seen this?" "No." And then put
13 it in as an exhibit.

14 I think at the end of the day you have a
15 mountainous task to sort out what people say they saw and
16 what they didn't see, and I think, you know -- and to
17 clarify for the public, you do that every day. This is not
18 something you don't do.

19 But having said that, I think we need to
20 sort of have some clarity and we can sort it out. I'm
21 trying to do this as expeditiously as possible for you, Mr.
22 Commissioner.

23 **THE COMMISSIONER:** No, no, that I
24 understand.

25 What I'm getting at though is not only do we

1 have to look at what came from Ottawa but also when they
2 received it. If they received it in February of 1994, then
3 it's all relevant.

4 **MR. CALLAGHAN:** Well, for this witness.

5 **THE COMMISSIONER:** For this witness. Right.

6 **MR. CALLAGHAN:** And unless we find a reason
7 why they would have sent it up in February '94, we may have
8 to -- someone else in Ottawa might have to come forward and
9 tell them where they sourced the file out and where was it
10 in the archives, how is it they came to be, and maybe they
11 don't know. Maybe this is in the passage in the mist of
12 time and it'll be one of those things that we'll all muddle
13 along, and with any luck, Mr. Commissioner, it won't be an
14 issue at the end of the day anyway.

15 **THE COMMISSIONER:** Right.

16 **MR. CALLAGHAN:** But now that he's here, I
17 though I'd best be prudent about it.

18 **THE COMMISSIONER:** Fine.

19 **MR. CALLAGHAN:** So if I could get that
20 document which I referred to as Document 101564?

21 **THE COMMISSIONER:** This is a -- now, has
22 this already been an exhibit?

23 **MR. CALLAGHAN:** I don't believe this has
24 been an exhibit and I think even if it has, it should
25 probably be identified as coming from the Ottawa Police in

1 any event.

2 **THE COMMISSIONER:** Well, okay, just a
3 minute.

4 **MR. CALLAGHAN:** Ottawa Police file.

5 **THE COMMISSIONER:** How do you know it came
6 from the Ottawa Police file?

7 **MR. CALLAGHAN:** Well, I think my friend will
8 -- I don't think Commission counsel will doubt that we got
9 these delivered to us by the Ottawa Police productions.

10 **THE COMMISSIONER:** Okay.

11 **MR. CALLAGHAN:** And I'm happy to do that
12 offline with him.

13 **THE COMMISSIONER:** Okay.

14 **MR. CALLAGHAN:** I think as an officer of
15 this Commission, I can tell you that's where I got it. We
16 have it in our file, but this is the one that came from
17 them.

18 **THE COMMISSIONER:** Okay. So 1228 is a Will-
19 Say Statement ---

20 **MR. STAUFFER:** I'm sorry, when Mr. Callaghan
21 says they have it in their file, I'm assuming he's saying
22 the Cornwall Police Service has a copy -- had a copy of
23 this independent of what was provided by us?

24 **THE COMMISSIONER:** Yes.

25 **MR. STAUFFER:** Is that right?

1 **MR. CALLAGHAN:** My working theory is we
2 provided it to Ottawa. Ottawa added it somewhere in their
3 files, and now they're coming back and all I'm trying to
4 identify is Ottawa had it in their file.

5 Now, whether Superintendent Skinner saw it,
6 I'll just -- we'll have to ask him.

7 **THE COMMISSIONER:** Okay. So let's do it
8 this way; 1228 -- and, of course, Mr. Callaghan, I
9 appreciate that subject to confirmation that it came from
10 the disclosure to this Inquiry from the Ottawa Police.
11 That's how we're going to identify it.

12 **MR. CALLAGHAN:** All right.

13 **THE COMMISSIONER:** All right?

14 **MR. CALLAGHAN:** Good.

15 **THE COMMISSIONER:** Thank you.

16 --- **EXHIBIT NO./PIÈCE NO. P-1228:**

17 (101564) Will-Say Statement of David Silmser

18 **MR. CALLAGHAN:** And I think this record is
19 going to be abundantly clear when someone goes back to it.

20 Now, Superintendent Skinner, this is the
21 Will-Say Statement of Mr. Silmser ---

22 **MR. SKINNER:** Right.

23 **MR. CALLAGHAN:** --- that appeared on OMPPAC,
24 and to my -- and I can advise you and I think you are aware
25 that things didn't get put into OMPPAC until October. 1993.

1 It's one of -- I believe one of your criticisms that it
2 took that long; correct?

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

4 **MR. CALLAGHAN:** Do you recall having
5 reviewed the OMPPAC version of Mr. Silmsler's statement?

6 **THE COMMISSIONER:** Is this the OMPPAC
7 version?

8 **MR. CALLAGHAN:** Yes.

9 **THE COMMISSIONER:** Okay.

10 **MR. CALLAGHAN:** So this would have been
11 inputted into OMPPAC.

12 **THE COMMISSIONER:** Right.

13 **MR. SKINNER:** I believe that I did see this
14 at the time that I was conducting an inquiry.

15 **MR. CALLAGHAN:** All right. And so someone
16 asked you earlier whether you would have saw on OMPPAC --
17 there were other statements by other witnesses that were
18 put into OMPPAC that came back from the Ottawa Police file.
19 I don't propose to put them to you, but do you recall
20 seeing other witness statements in this forum?

21 **MR. SKINNER:** I would answer that I can't
22 absolutely definitely say that I did, but I suspect that I
23 probably did.

24 **MR. CALLAGHAN:** All right. And if I could,
25 Mr. Commissioner, I will just put into the record, rather

1 than have them dragged out, put to the witness, the doc
2 numbers to which I refer: 101565; 101566; 101568; 101569;
3 101570; 101571; 101572 and 101573.

4 There was a document entitled "Crown Brief
5 Synopsis". Do you recall seeing that on an OMPPAC form,
6 Superintendent Skinner?

7 **MR. SKINNER:** I don't recall -- no, I don't.
8 I think someone -- is that the same document that someone
9 asked me about yesterday?

10 **MR. CALLAGHAN:** I don't believe so, but
11 perhaps we could put this one to you. It's 101585.

12 **THE COMMISSIONER:** You won't see that there,
13 sir.

14 **MR. SKINNER:** No? Okay.

15 **MR. CALLAGHAN:** And while they source that,
16 Mr. Commissioner, for the record I can advise there's
17 another OMPPAC witness statement, 101567. And that may be
18 it, but I'll verify with my friend at a later time.

19 **THE COMMISSIONER:** Thank you. Exhibit
20 Number 1229, Crown Brief Synopsis.

21 **--- EXHIBIT NO./PIÈCE NO. P-1229:**

22 (101585) Crown Brief Synopsis re David
23 Silmser

24 **MR. CALLAGHAN:** And, again, just so it's
25 clear, Mr. Skinner, this is one of those documents that was

1 inputted in October '93.

2 MR. SKINNER: M'hm.

3 MR. CALLAGHAN: And I'm not sure if you're
4 familiar with OMPPAC, but OMPPAC has an overview document
5 called a Crown Brief Synopsis. Are you familiar with that
6 aspect of it?

7 MR. SKINNER: No, I'm not familiar with
8 OMPPAC at all.

9 MR. CALLAGHAN: And this reviews Ms.
10 Sebalj's -- or Constable Sebalj's case.

11 Do you recall having reviewed this?

12 MR. SKINNER: No, I don't recall having seen
13 this before.

14 THE COMMISSIONER: We should -- we've got to
15 be careful about names, Mr. ---

16 MR. CALLAGHAN: You're quite right, Mr.
17 Commissioner. This should be a "C" document ---

18 THE COMMISSIONER: A "C" document?

19 MR. CALLAGHAN: Not a "C" document, but
20 there are names. I don't intend to read any of the names.
21 Sorry.

22 THE COMMISSIONER: Well ---

23 MR. CALLAGHAN: People should be aware that
24 there are names of witnesses, and I thought that was up to
25 those reading it to identify -- I don't intend to read any

1 of the names.

2 **THE COMMISSIONER:** It is. It is, but just
3 so long as -- you see, there are names there that have
4 monikers.

5 **MR. CALLAGHAN:** Right.

6 **THE COMMISSIONER:** Okay? There are names
7 that -- there's one name ---

8 **MR. CALLAGHAN:** Right.

9 **THE COMMISSIONER:** --- that I see that I
10 don't know if there's a moniker, and if there's not a
11 moniker, then we have to go through the test, don't we, to
12 see whether or not they fall within that -- whether they
13 should be granted that protection?

14 **MR. CALLAGHAN:** I thought it was those who
15 wanted it would ask for it. I must have misconstrued that.
16 I thought that those who sought it would get -- apply the
17 test. I assume those who haven't sought -- this document,
18 I think, is elsewhere in the productions, Mr. Commissioner,
19 because this is a synopsis of our investigation, but I may
20 be mistaken.

21 **THE COMMISSIONER:** I don't know if it's been
22 put in yet.

23 **MR. CALLAGHAN:** I see.

24 **THE COMMISSIONER:** So, no, we have to --
25 everybody who is providing this is supposed to look at it

1 and advise me of whether or not there is -- their name's in
2 there. I can tell you that from what I can see on -- if
3 you look at 1025693.

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

5 **THE COMMISSIONER:** Second paragraph.

6 **MR. CALLAGHAN:** Yes, sir.

7 **THE COMMISSIONER:** First name.

8 **MR. CALLAGHAN:** Second paragraph, yes.

9 **THE COMMISSIONER:** Okay.

10 **MR. CALLAGHAN:** Those are monikers. I -- am
11 I misunderstanding it?

12 **THE COMMISSIONER:** Well -- okay. You may --
13 no. One is a moniker.

14 **MR. CALLAGHAN:** That other name's been
15 mentioned either by moniker or directly because it's a
16 pretty central name in the flow of the discussions.

17 **THE COMMISSIONER:** The first name?

18 **MR. CALLAGHAN:** The first name and the
19 second name.

20 **THE COMMISSIONER:** One -- the second name
21 has a moniker, so that's okay, but I don't know that we
22 have dealt with the first name.

23 **MR. CALLAGHAN:** I would fall off my chair if
24 we haven't because we dealt with it, I believe, in Mr.
25 Silmsen's testimony. I believe we dealt with it in Mr.

1 MacDonal'd's testimony; I believe we dealt with these names.

2 **THE COMMISSIONER:** Okay. Well, there will -
3 - Ms. -- can anyone help me from the ---

4 **MS. SIMMS:** It's my recollection that the
5 second name does have a moniker.

6 **THE COMMISSIONER:** Yes, it does.

7 **MS. SIMMS:** The first name has not yet been
8 assigned a moniker.

9 **THE COMMISSIONER:** Well, then has there ---

10 **MS. SIMMS:** It had the issue -- as of yet, I
11 believe, his name has not been discussed.

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

13 **MS. SIMMS:** And I'll have to confirm with
14 respect to whether there's confidentiality issues
15 outstanding with respect to his name, but I'm quite certain
16 he doesn't have a moniker.

17 **THE COMMISSIONER:** Oh, no, no. I am sure he
18 does not have a moniker.

19 **MS. SIMMS:** Yeah.

20 **THE COMMISSIONER:** But I don't know whether
21 or not -- there are three -- at least two scenarios.

22 One is somebody who has a moniker and that's
23 dealt with. The other one is someone who we have given a
24 publication ban on, which means that the name is there,
25 people who come to the counter can see it, but people who

1 have monikers, people can't come to the counter and see it.

2 MS. SIMMS: I understand.

3 THE COMMISSIONER: So there's two levels
4 there.

5 MS. SIMMS: I understand. And my
6 understanding -- and I will confirm this -- if he has not
7 received a moniker, there are outstanding publication ban
8 issues. I'm not sure whether from this proceeding or from
9 others.

10 THE COMMISSIONER: Okay.

11 MS. SIMMS: But I will confirm that for you.

12 THE COMMISSIONER: Okay. Great. Thank you.
13 Mr. Callaghan?

14 MR. CALLAGHAN: So does this become a "C"
15 document 'til we sort it out, sir? Is that the preferable
16 way to proceed?

17 THE COMMISSIONER: No. No. I think that it
18 becomes one that has an interim publication ban on the
19 first name.

20 MR. CALLAGHAN: This name appears in
21 Constable Sebalj's notes, Exhibit 295, and these are all --
22 have been put in the past, so I'm sorry if I've
23 misconstrued that.

24 THE COMMISSIONER: No. No, no. Just we
25 have -- as this thing evolves, we have a spotlight on

1 confidentiality measures and then the horses started racing
2 and we kind of let that slip a little bit, I think.

3 So I think we just have to remind ourselves
4 that that's an issue when you look at documents.

5 **MR. CALLAGHAN:** I will try to do the same,
6 sir.

7 **THE COMMISSIONER:** Okay. No, that's fine.

8 **MR. CALLAGHAN:** I'm about to put a document
9 in. I'm going to look through my documents here and find
10 one, if I might, and I'm not sure I'm going to find one
11 that I know has a moniker, but if -- I'd like to just put
12 one or two them ---

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

14 **MR. CALLAGHAN:** It's a set of notes, but
15 I'll just put one and we can sort out with the help of
16 Commission counsel how we best deal with it.

17 **THE COMMISSIONER:** Okay.

18 **MR. CALLAGHAN:** One-zero-one-five-seven-five
19 (101575).

20 So when you get this document,
21 Superintendent, we're not going to reveal the name of the
22 person whose name is on this document; okay?

23 **MR. SKINNER:** Very good.

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

25 **THE COMMISSIONER:** And while there's a lull

1 in the action, I have to say that I am very much -- I very
2 much appreciate the way the media has been very careful in
3 the reporting, that when in doubt that they do consult and
4 I think it's just out of an abundance of caution at this
5 point that we're going to do this.

6 **MR. CALLAGHAN:** And I think everybody in the
7 room appreciates that this is -- I think, someone earlier
8 used the analogy of a train, and it's important that those
9 on the train don't get hurt.

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

11 **MR. CALLAGHAN:** All right.

12 **THE COMMISSIONER:** Thank you.

13 So Exhibit Number 1230 is notes from
14 Constable Sebalj. Is that right?

15 **---EXHIBIT NO./PIÈCE NO 1230:**

16 (101575) Notes of Constable Heidi Sebalj

17 **MR. CALLAGHAN:** Those are -- that is the
18 working theory. These were notes that came back to us, to
19 the Ottawa Police Service. These appear to be, as the
20 Commissioner indicated, Constable Sebalj's notes with
21 respect to one interview.

22 Do you recognize having seen these types of
23 notes before? There are a series of them.

24 **MR. SKINNER:** We did get a considerable
25 number -- a considerable amount of notes from Constable

1 Sebalj. I don't specifically recognize this, but I
2 wouldn't challenge that this was part of what we got.

3 **MR. CALLAGHAN:** And if you look on the left-
4 hand column, there is a date of birth and then a series of
5 years. Do you see that?

6 **MR. SKINNER:** Yes.

7 **MR. CALLAGHAN:** And do you recall ever
8 speaking to her about how she -- her methodology of dealing
9 with witnesses to see whether they could ascertain years
10 because, obviously, years would be important in an historic
11 sexual assault case?

12 Do recall talking to her about her
13 methodology?

14 **MR. SKINNER:** I don't have a recollection of
15 that conversation on that point.

16 **MR. CALLAGHAN:** But that looks like a pretty
17 solid methodology, sort of figuring out where the years are
18 in terms of grades, schools, and where a witness might be
19 at a given year, considering you're going back in the mists
20 of time on an historical sexual assault?

21 **MR. SKINNER:** Just let me have a look at it
22 for a second. I'm not -- all I see is a lot of numbers.

23 **MR. CALLAGHAN:** I think what you see is
24 she's trying to work out how old the person is. She's
25 trying to give herself a running start ---

1 **MR. SKINNER:** It was ---

2 **MR. CALLAGHAN:** --- so that when the person
3 describes where he was at a given year, that he knows the
4 age, which, of course, in an historical ---

5 **MR. SKINNER:** All right.

6 **MR. CALLAGHAN:** --- sexual assault case, age
7 might be an important issue; correct?

8 **MR. SKINNER:** M'hm. Yes. Correct.

9 **MR. CALLAGHAN:** All right.

10 **MR. SKINNER:** Yes, I see that. Right.

11 **MR. CALLAGHAN:** But you never had any
12 discussions with her about that methodology?

13 **MR. SKINNER:** No, I didn't say that. I said
14 I don't recall having that discussion.

15 **MR. CALLAGHAN:** All right. But you don't
16 have any notes of it, to be clear?

17 **MR. SKINNER:** No. No.

18 **MR. CALLAGHAN:** Right. All right.

19 Mr. Commissioner, for the record, I'll give
20 you the other doc numbers; 101577, 101578, 101579, 101580,
21 101581, 101582, 101583, 101584.

22 And, to be clear, Superintendent Skinner, to
23 make sure I got it right, you may have seen this, you may
24 not have seen it; you just don't recall?

25 **MR. SKINNER:** That's right.

1 **MR. CALLAGHAN:** And if I could take one last
2 document, Mr. Commissioner, Document 101586?

3 **MS. CONNOLLEY:** Mr. Commissioner, if I can
4 just make an objection for a second. I just want to
5 clarify.

6 My friend just listed out a number of
7 documents ---

8 **THE COMMISSIONER:** Yes.

9 **MS. CONNOLLEY:** --- and then asked
10 Superintendent Skinner whether or not he -- or clarified
11 whether or not he remembered seeing the document, and I
12 just want to confirm, is he just referring to the initial
13 document, the one that was made an exhibit ---

14 **MR. CALLAGHAN:** Well ---

15 **MS. CONNOLLEY:** --- 1230, or if he's
16 referring to all of the list of documents that were just
17 listed?

18 **MR. CALLAGHAN:** Just for clarity purposes,
19 there are a series of documents that follow the same
20 format. In other words, there's a name and their notes,
21 and there's a bar, and rather than take up the time and put
22 every one to him, I'll ask, in 1230, you couldn't recall
23 whether you saw it or not; correct?

24 **MR. SKINNER:** No. No.

25 **MR. CALLAGHAN:** And if I put all the rest of

1 them to you, I suspect you'd be in the same position?

2 **MR. SKINNER:** My answer will be the same,
3 yes. I would think so, m'hm.

4 **MR. CALLAGHAN:** All right. Does that
5 clarified for everybody? All right.

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

7 **MR. CALLAGHAN:** All right. So I'm sorry.

8 **THE COMMISSIONER:** So we're at 1231 -- is a
9 new exhibit.

10 **MR. CALLAGHAN:** Thank you. One-zero-one-
11 five-eight-six (101586) I think is what I called this.

12 **THE COMMISSIONER:** One-zero-one-five-eight-
13 six (101586), yes. So it's -- can you help me out with ---

14 **MR. CALLAGHAN:** I'm going to ask. I don't
15 know whose handwriting it is.

16 Do you know whose handwriting this is, Mr. -
17 - Superintendent Skinner?

18 **MR. SKINNER:** No, I don't.

19 **MR. CALLAGHAN:** So you can't help us whether
20 it's yours or somebody else?

21 **MR. SKINNER:** It's definitely not mine; it's
22 definitely not Staff Sergeant Blake's.

23 **MR. CALLAGHAN:** All right. So this was also
24 in your file and I can't ---

25 **MR. SKINNER:** Don't say it was in my file --

1 -

2 MR. CALLAGHAN: I'm sorry.

3 MR. SKINNER: --- because I retired from the
4 Ottawa Police Service in 1995 and they had -- as far as I
5 was aware at that time, they had nothing of what had gone
6 on in my investigation in Cornwall. Nothing.

7 MR. CALLAGHAN: All right.

8 MR. SKINNER: That was my position at that
9 time. How they came by all of this stuff afterwards, I
10 have no idea.

11 MR. CALLAGHAN: All right. Good enough.
12 And just -- just you can't help us with
13 this?

14 MR. SKINNER: No.

15 MR. CALLAGHAN: And, Mr. Commissioner, I'm
16 sorry, I didn't hear the exhibit number.

17 THE COMMISSIONER: One-two-three-one (1231)

18 ---EXHIBIT NO./PIÈCE NO 1231:

19 (101586) Handwritten list of names

20 MR. CALLAGHAN: One-two-three-one (1231).

21 Thank you very much, sir.

22 All right. Now, you've talked a little bit,
23 Superintendent Skinner, about the relative sizes of the
24 Ottawa Police Service and the Cornwall Police Service;
25 correct?

1 **MR. SKINNER:** Yeah.

2 **MR. CALLAGHAN:** And if I got your testimony
3 right, your Criminal Investigation Branch in Ottawa was
4 approximately 117 people, including 100 investigators?

5 **MR. SKINNER:** That's very approximate, yeah.

6 **MR. CALLAGHAN:** And how big would the Ottawa
7 Police Service be at that time?

8 **MR. SKINNER:** The establishment of the force
9 would have been, if my memory serves me correctly,
10 somewhere just in excess of 600 sworn personnel, I believe.

11 **MR. CALLAGHAN:** And do you have any
12 recollection what the budget would have been in the year
13 you left?

14 **MR. SKINNER:** I do, because I was
15 responsible for it for five years or four years. `It was
16 in the area of \$62 million.

17 **MR. CALLAGHAN:** And in the Cornwall Police
18 Service, at least their CID Division, do you recall how big
19 it was?

20 **MR. SKINNER:** Not specifically, no, I don't.

21 **MR. CALLAGHAN:** Any guess, in your -- any
22 estimate?

23 **MR. SKINNER:** Ballpark.

24 **MR. CALLAGHAN:** Ballpark I guess is the
25 right word.

1 **MR. SKINNER:** I would say no more than four
2 or five people.

3 **MR. CALLAGHAN:** So it actually had five
4 investigators -- general investigators; two in Youth and
5 two Ident?

6 **MR. SKINNER:** M'hm.

7 **MR. CALLAGHAN:** Plus Staff Sergeant Brunet.
8 Does that sound right?

9 **MR. SKINNER:** Yes, it does.

10 **MR. CALLAGHAN:** So they're different sizes,
11 considerably?

12 **MR. SKINNER:** Very much so, yes.

13 **MR. CALLAGHAN:** And I take it that you'd
14 never worked in a small police service, you'd always worked
15 in either Birmingham or Ottawa?

16 **MR. SKINNER:** Yes, that's right.

17 **MR. CALLAGHAN:** And Birmingham is presumably
18 even bigger than Ottawa?

19 **MR. SKINNER:** Much, yeah.

20 **MR. CALLAGHAN:** And I take it, you'd never
21 studied small police forces as an academic exercise?

22 **MR. SKINNER:** No.

23 **MR. CALLAGHAN:** All right. And when you got
24 to Cornwall -- or let me back up -- policing in the late
25 '80s, early '90s, I'd suggest was going through a number of

1 changes. We had *Askov*, that was a big change?

2 MR. SKINNER: We had, I'm sorry?

3 MR. CALLAGHAN: *Askov*?

4 MR. SKINNER: Yes.

5 MR. CALLAGHAN: Do you recall *Askov*?

6 MR. SKINNER: M'hm.

7 MR. CALLAGHAN: That was a big change, was
8 it not?

9 MR. SKINNER: Yes.

10 MR. CALLAGHAN: And put a lot of burdens on
11 police forces because of the demands of the courts?

12 MR. SKINNER: Yes.

13 MR. CALLAGHAN: You had *Stinchcombe*. Do you
14 recall that, the full disclosure?

15 MR. SKINNER: I recall the name, but quite
16 frankly what -- what it refers to I'm hazy on now. I've --
17 I've been out of policing for a long time.

18 MR. CALLAGHAN: Right, but you recall that
19 in your tenure there that the focus on disclosure ---

20 MR. SKINNER: M'hm.

21 MR. CALLAGHAN: --- with the Martin Report
22 and there was this case called *Stinchcombe* was greater in
23 that period of time?

24 MR. SKINNER: Yes.

25 MR. CALLAGHAN: And I take it that we still

1 hadn't gotten into -- got into the same level by the time
2 you left of the Solicitor General's office providing
3 standardization. That was later; correct?

4 **MR. SKINNER:** Standardization of what?

5 **MR. CALLAGHAN:** Of policing orders, of how
6 one conducts various investigations. There was -- you
7 know, this comes out of the Bernardo investigation in 1996
8 ---

9 **MR. SKINNER:** M'hm.

10 **MR. CALLAGHAN:** --- and it comes out in that
11 fashion?

12 **MR. SKINNER:** By then I would have been ---

13 **MR. CALLAGHAN:** That's after your time?

14 **MR. SKINNER:** That would have been after my
15 time, yeah.

16 **MR. CALLAGHAN:** And in the early '90s, since
17 you were involved in budget, you must have been aware of
18 things such as Rae Days and cutbacks that were going on and
19 -- in any sort of public service; correct?

20 **MR. SKINNER:** Yes, m'hm.

21 **MR. CALLAGHAN:** And you'll agree with me
22 that in that period of time, and I suspect you know, in
23 that period of time, policing was not immune from the
24 economic demands of the province generally; correct?

25 **MR. SKINNER:** Very definitely not, that's

1 right.

2 MR. CALLAGHAN: And did you find it
3 difficult in doing budgets in those declining times where
4 money was tight?

5 MR. SKINNER: Very, very difficult, yeah.

6 MR. CALLAGHAN: And I take it when you got
7 to Cornwall, you were advised that -- and CIB there were
8 too many files and not enough people; they were overworked?

9 MR. SKINNER: That certainly surfaced, yes.

10 MR. CALLAGHAN: And I take it that you had a
11 fair -- you had a favourable impression of certain
12 individuals such as -- I think you referred to Staff
13 Sergeant Brunet as competent and professional yesterday.
14 Is that correct?

15 MR. SKINNER: Yes.

16 MR. CALLAGHAN: And so notwithstanding all
17 the cutbacks, there were competent and professional people
18 there; correct?

19 MR. SKINNER: Yes, there were.

20 MR. CALLAGHAN: Dealing with demanding
21 situations; correct?

22 MR. SKINNER: Very demanding, yes.

23 MR. CALLAGHAN: And in terms of a smaller
24 police force, do you recall getting a sense as to how they
25 operated with morning meetings, in that sense, or is that

1 not part of your inquiry?

2 **MR. SKINNER:** My sense at the time of the
3 investigation was that there wasn't enough of that kind of
4 activity, that there wasn't enough communication within --
5 within the management arm of the police service.

6 **MR. CALLAGHAN:** But were you aware that they
7 had morning meetings where they talked about cases? I
8 mean, it's a small group of people; correct?

9 **MR. SKINNER:** Yeah.

10 **MR. CALLAGHAN:** It's not -- like in Ottawa,
11 you've got a big group of people?

12 **MR. SKINNER:** M'hm.

13 **MR. CALLAGHAN:** And I suspect you would have
14 had -- would you have morning meetings in Ottawa?

15 **MR. SKINNER:** Every morning, I met with my
16 inspectors and some of the staff sergeants depending on
17 their activities, and once a week I met with the inspectors
18 and the staff inspector and all of the staff sergeants.

19 **MR. CALLAGHAN:** And did you talk about
20 specific cases or was it more overview issues?

21 **MR. SKINNER:** It was to deal -- if -- it was
22 to deal with specific cases, major investigations that were
23 current and other topics would come up as well.

24 **MR. CALLAGHAN:** But you weren't -- you don't
25 recall -- do you recall talking to people about morning

1 meetings in Cornwall discussing cases?

2 MR. SKINNER: I recall morning meetings
3 being mentioned, but didn't learn very much about what went
4 on there or who was there.

5 MR. CALLAGHAN: Okay. And just so I'm
6 clear, you had indicated -- I think Mr. Paul asked you
7 whether -- that you had, I think, I'm going to paraphrase
8 in fairness -- Mr. Paul is not even here -- that you
9 received no interference from Carl Johnston as to how to
10 conduct your investigation. Isn't that fair?

11 MR. SKINNER: That's fair.

12 MR. CALLAGHAN: All right. And I take it
13 that your experience with the Cornwall Police is they were
14 cooperative?

15 MR. SKINNER: Yes, they were.

16 MR. CALLAGHAN: You wanted to speak to an
17 officer, they spoke to you?

18 MR. SKINNER: I can't recall an incident
19 where that did not happen.

20 MR. CALLAGHAN: All right. You wanted a
21 document, you got it; correct?

22 MR. SKINNER: Yes, definitely.

23 MR. CALLAGHAN: We talked a little bit
24 yesterday about OMPAC and I'm sensing that there's a
25 communication divide here and let me see if I can sort it

1 out.

2 MR. SKINNER: M'hm.

3 MR. CALLAGHAN: You said, candidly, you
4 didn't work with OMPPAC in Ottawa?

5 MR. SKINNER: That's right.

6 MR. CALLAGHAN: Ottawa did their own thing.
7 I don't mean that critically, but Ottawa had their own
8 records management system?

9 MR. SKINNER: That's correct.

10 MR. CALLAGHAN: And you understood that
11 OMPPAC was a records management system that was intended,
12 or at least could be used to assist the supervision of
13 files because senior officers could see what's going on;
14 correct?

15 MR. SKINNER: Senior officers, supervisors,
16 yeah, any -- anyone within the service.

17 MR. CALLAGHAN: And that's a means by which
18 they could learn about the ongoing cases but it's not the
19 only means. Like, for example, you would expect your staff
20 sergeants to communicate regularly with their constables;
21 correct?

22 MR. SKINNER: Yes, I would, m'hm.

23 MR. CALLAGHAN: All right. And I take it
24 yesterday, I think your memory was refreshed, that you were
25 advised and were aware that Staff Sergeant Brunet met with

1 Heidi Sebalj?

2 MR. SKINNER: M'hm.

3 MR. CALLAGHAN: Right?

4 MR. SKINNER: Yes, m'hm.

5 MR. CALLAGHAN: So that was one way to
6 communicate but, in fairness, one of your criticisms is
7 that they didn't put things on OMPPAC so others could see?

8 MR. SKINNER: Didn't create a written -- a
9 written track of the progress of the investigation, whether
10 it was on OMPPAC or through any other means, apart from
11 Constable Sebalj's notes.

12 MR. CALLAGHAN: Right. And -- and just on
13 that point, you have no question that those notes are very
14 detailed, professionally done, from your -- from what
15 you've seen of notes?

16 MR. SKINNER: Yes, I ---

17 MR. CALLAGHAN: They're legible, they're
18 thorough; correct?

19 MR. SKINNER: I was impressed with Constable
20 Sebalj's note-taking, yes.

21 MR. CALLAGHAN: Now, we talked about
22 projects and we seem to have gotten a little bit off base
23 because of understandings and you were talking about CISO
24 -- C-I-S-O, the intelligence services of Ontario?

25 MR. SKINNER: Yeah.

1 **MR. CALLAGHAN:** All right. And in Ottawa,
2 when someone uses the phrase "project", you're thinking
3 intelligence ---

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

5 **MR. CALLAGHAN:** --- you're thinking
6 organized crime; right?

7 **MR. SKINNER:** Yeah.

8 **MR. CALLAGHAN:** All right. And I take it --
9 and this isn't a criticism -- but you -- you're not aware
10 that in OMPPAC they have something called "Project
11 Function" that allows you to do what you said can often be
12 done in sensitive cases, that is, to shield it from prying
13 eyes. Wwere you aware of that?

14 **MR. SKINNER:** I can't recall that I was.

15 **MR. CALLAGHAN:** Right. So when they talk
16 about "project", it has ---

17 **MR. SKINNER:** A different connotation than a
18 CISO project.

19 **MR. CALLAGHAN:** Right. And, in fact, I
20 suspect part of your concern is that CISO doesn't deal with
21 sexual assault cases, they deal with organized crime;
22 right?

23 **MR. SKINNER:** More or less, yes.

24 **MR. CALLAGHAN:** Right. You could have -- in
25 fairness to you, you could see no reason why an

1 intelligence officer and the CISO would get involved in a
2 sexual assault investigation; correct?

3 MR. SKINNER: Correct, yeah.

4 MR. CALLAGHAN: Now, let's talk about
5 Constable Sebalj for a minute. And I don't think this is a
6 criticism, but you said you'd offer her a job; correct?

7 MR. SKINNER: M'hm.

8 MR. CALLAGHAN: You could envision her
9 working under you at the Ottawa Police Service; correct?

10 MR. SKINNER: I felt that she was a
11 competent investigator who wasn't adequately supported.

12 MR. CALLAGHAN: I understand. We'll get
13 back to that point. I'm just dealing with her as a person.

14 MR. SKINNER: M'hm.

15 MR. CALLAGHAN: Let's deal with her for a
16 second as a person.

17 MR. SKINNER: Yeah.

18 MR. CALLAGHAN: All right. So if someone is
19 going to be working for you at the Ottawa Police Service,
20 you'd expect them to be intelligent; fair?

21 MR. SKINNER: Yes.

22 MR. CALLAGHAN: You perceived her to be
23 intelligent?

24 MR. SKINNER: I did, yes.

25 MR. CALLAGHAN: All right. You'd expect the

1 people who worked for you to be organized?

2 MR. SKINNER: Yes. M'hm.

3 MR. CALLAGHAN: And you perceived her to be
4 organized with her notes and her demeanour?

5 MR. SKINNER: M'hm.

6 MR. CALLAGHAN: Is that correct?

7 MR. SKINNER: Yes.

8 MR. CALLAGHAN: All right. You expect, I
9 assume, from the Ottawa Police Service Detective Branch
10 that they're hard working?

11 MR. SKINNER: M'hm.

12 MR. CALLAGHAN: You're going to have to say
13 yes, sir. I'm sorry.

14 MR. SKINNER: I'm sorry, yes. Yes.

15 MR. CALLAGHAN: All right. And I take it
16 you perceived her to be hard working in the face of what
17 you'd call some adversity?

18 MR. SKINNER: Yes, I did.

19 MR. CALLAGHAN: All right. And just to be
20 absolutely clear, between April 29th, when she interviews
21 the last witness, and August 24th when the investigation
22 comes up again on her notes, I take it you reviewed what
23 she did in the interim period and were satisfied that it
24 wasn't sloth on her part. She was working on other things
25 or at courses; correct? You took a look at that, I ---

1 **MR. SKINNER:** Yes, that would be accurate.

2 **MR. CALLAGHAN:** Right. So you perceived
3 that notwithstanding the gap, that this is a hardworking
4 person who could fit into the Ottawa Police Service;
5 correct?

6 **MR. SKINNER:** M'hm.

7 **MR. CALLAGHAN:** And I take it she was
8 pleasant to deal with? In other words, she was congenial,
9 easy to talk to, that type of thing, the stuff that you'd
10 expect your officers to be in a working environment?

11 **MR. SKINNER:** Yes, I would agree with that.

12 **MR. CALLAGHAN:** And, finally, I take it that
13 you would want all your officers in Ottawa to be honest and
14 forthright; correct?

15 **MR. SKINNER:** Correct.

16 **MR. CALLAGHAN:** And you perceived her to be
17 honest and forthright; correct?

18 **MR. SKINNER:** With me, yes, that's my
19 recollection.

20 **MR. CALLAGHAN:** Now, I recognize that
21 neither you nor Staff Sergeant Blake were trained sexual
22 assault investigators, but we've heard testimony here from
23 experts, contextual experts and actually policing experts,
24 that assault victims are a special breed of people. They
25 need to deal with the events in their life as it relates to

1 assault at their own pace.

2 Now, would you -- you don't want to re-
3 victimize them by pushing them too much. They need to come
4 to terms with it at their own pace.

5 Do you agree with that or do you have any
6 experience in that?

7 **MR. SKINNER:** I don't really have any
8 experience in that except for, you know, through the
9 general knowledge of having been a police officer for 38
10 years.

11 **MR. CALLAGHAN:** No, I understand that, but I
12 mean, you didn't regularly conduct sexual assault
13 investigations?

14 **MR. SKINNER:** No.

15 **MR. CALLAGHAN:** And you didn't take it upon
16 yourself to study sexual assault victims, did you?

17 **MR. SKINNER:** No.

18 **MR. CALLAGHAN:** All right. So if there is a
19 school of thought out there that would say that you have to
20 let the victim come to terms with it and deal with it in
21 their own time, you wouldn't have anything to say opposite
22 that, correct, because you haven't studied it and you
23 haven't worked in the area?

24 **MR. SKINNER:** No, I don't think I'd
25 necessarily agree with that.

1 **MR. CALLAGHAN:** So you have a fundamental
2 difference in that area? Is this ---

3 **MR. SKINNER:** Only insofar as it applies to
4 the importance of getting a criminal allegation clearly
5 defined and documented as quickly as possible.

6 **MR. CALLAGHAN:** Even one that's 20 years
7 old, where there is fresh evidence?

8 **MR. SKINNER:** The investigation can't begin
9 until that happens, and once the allegation is made, then
10 the investigation should begin.

11 **MR. CALLAGHAN:** Regardless of where the
12 victim is in their ---

13 **MR. SKINNER:** I'm not -- I think I said
14 previously that there has to be the development of some
15 rapport and trust and a relationship between the
16 investigator and the victim.

17 **MR. CALLAGHAN:** Are you ---

18 **MR. SKINNER:** So I'm not saying regardless
19 of anything.

20 **MR. CALLAGHAN:** We've seen the letter from
21 the Crown attorney, Murray MacDonald, where it says without
22 a willing victim, the Crown doesn't proceed. Do you recall
23 that letter?

24 **MR. SKINNER:** Yes, yes. M'hm.

25 **MR. CALLAGHAN:** And when I did my little

1 preparation for this examination, I was told a story that
2 in Ottawa there was a case of some note in perhaps the '80s
3 when you were there, where a sexual assault victim was
4 subpoenaed to trial against her wishes.

5 Do you recall that case?

6 MR. SKINNER: No.

7 MR. CALLAGHAN: No?

8 MR. SKINNER: No.

9 MR. CALLAGHAN: You don't recall any human
10 cry coming out of that?

11 MR. SKINNER: Not immediately, no, I don't.

12 MR. CALLAGHAN: And ---

13 MR. SKINNER: But if it did happen, then --
14 -

15 MR. CALLAGHAN: No, no, I'm just -- you may
16 not have been aware of it. You were probably in
17 administration at the time.

18 MR. SKINNER: M'hm.

19 MR. CALLAGHAN: Is that correct?

20 MR. SKINNER: Probably, depending on what
21 date it was.

22 MR. CALLAGHAN: And you're not aware, as the
23 head of the CID Unit, of any directions being given by the
24 Policing Service Division of the Solicitor General as to
25 how one deals with sexual assault victims?

1 **MR. SKINNER:** Not specifically, no.

2 **MR. CALLAGHAN:** And you're aware that there
3 was a policy contrary to the policy described by the Crown
4 in domestic violence situations that came out in about the
5 late '80s, I guess?

6 **MR. SKINNER:** I'm aware of some direction
7 that came out with regard to domestic violence, yes.

8 **MR. CALLAGHAN:** So if we look at the
9 original start of this investigation, if I could take you
10 to Exhibit 12.4 or 1214, sorry.

11 My apologies, Madam Clerk.

12 And this is the note from Sergeant Nakic to
13 Staff Inspector McDonald.

14 Now, I take it you were able to ascertain,
15 from this document at the very least, that the Chief had
16 assigned Lortie, so the Chief must have known about the
17 start of this investigation; correct?

18 **MR. SKINNER:** Within a short time of this
19 document being created, yes, that's correct.

20 **MR. CALLAGHAN:** And you understand that this
21 is a note of the Deputy Chief. So the Deputy Chief knew;
22 right?

23 **MR. SKINNER:** M'hm. Yes.

24 **MR. CALLAGHAN:** And then you knew Staff
25 Inspector McDonald, who at that point in time was the head

1 of CIB, he knew about it; correct?

2 MR. SKINNER: He did. He was the head of
3 Operations, I believe, was he not?

4 MR. CALLAGHAN: Well, I think there was an
5 interim period where he was heading CIB, but ---

6 MR. SKINNER: M'hm.

7 MR. CALLAGHAN: All right. And then
8 obviously Nakic and Lortie knew about it; right?

9 MR. SKINNER: Yes.

10 MR. CALLAGHAN: So when it came in, it was
11 well known by the senior members of the Police Force;
12 correct?

13 MR. SKINNER: Some of them, yes.

14 MR. CALLAGHAN: Well, who else would there
15 be? You've got a staff inspector, the Chief and the Deputy
16 Chief. I mean, we're not talking Ottawa. We're talking
17 Cornwall.

18 Do you know of anybody else in Cornwall?

19 MR. SKINNER: I appreciate that. Well,
20 there was an inspector and some other staff sergeants but,
21 yes, I agree with you that most of the -- most of the
22 senior members of the force were aware of it.

23 MR. CALLAGHAN: And you know from your
24 notes, Exhibit 1208, that Sergeant Lortie, who you
25 described as an experienced officer in your understanding

1 of him?

2 MR. SKINNER: Yes.

3 MR. CALLAGHAN: Right?

4 MR. SKINNER: Yes.

5 MR. CALLAGHAN: He spoke to Mr. -- I think
6 I'm at page 14, Madam Clerk.

7 THE COMMISSIONER: Can you give us a Bates
8 page number, sir?

9 MR. CALLAGHAN: Yes, sir.

10 THE COMMISSIONER: Just the last three
11 numbers.

12 MR. CALLAGHAN: I went from contacts to
13 reading glasses, so now I'm confused. As you'll recall
14 last time when I was before you, I was fumbling with
15 glasses, so I'm doing it again. It's 782. I recall you
16 sort of looking at me, saying, "Put them on or take them
17 off".

18 THE COMMISSIONER: No, no, I have the same
19 problem.

20 MR. CALLAGHAN: So, now, you know that
21 Sergeant Lortie spoke to Mr. Silmser, who didn't want to
22 come in over the Christmas holidays because he didn't want
23 to ruin anyone's Christmas, according to the note.

24 MR. SKINNER: Yes.

25 MR. CALLAGHAN: All right. So do you think

1 we should have forced the victim to come in?

2 MR. SKINNER: Not necessarily come in, but
3 an investigator could have gone to see him.

4 MR. CALLAGHAN: Well, did you talk to
5 Sergeant Lortie and ask him what the victim was talking
6 about, whether it was he didn't want to deal with it, or
7 whether it was just a matter of his own convenience to
8 drive into Cornwall, did you ---

9 MR. SKINNER: I don't remember.

10 MR. CALLAGHAN: It may well be that he
11 didn't want to deal with it over the holidays; correct?

12 MR. SKINNER: Well, that appears to be what
13 he is saying, yes.

14 MR. CALLAGHAN: Right.

15 And you wouldn't argue -- you wouldn't force
16 a victim in those circumstances; would you?

17 MR. SKINNER: I wouldn't use the word
18 "force", but I think I would encourage an investigator to
19 make efforts to obtain a formal complaint rather than wait
20 as long as they did.

21 MR. CALLAGHAN: But you don't know whether
22 Sergeant Lortie actually said "Why don't you come in? We
23 should get this started."

24 MR. SKINNER: No, I don't know that.

25 MR. CALLAGHAN: All right.

1 And he says he set up January 18th, '93; do
2 you see that? That was the time they set?

3 **MR. SKINNER:** Yes.

4 **MR. CALLAGHAN:** Now, in your testimony, you
5 talked about -- I am trying to do this somewhat
6 chronological -- that somehow the Cornwall Police knew on
7 December 13th, 1992 the possibility of a settlement. Do you
8 recall that testimony? You went to your report ---

9 **MR. SKINNER:** Yes. M'hm.

10 **MR. CALLAGHAN:** I can find no record of
11 that. Do you know what you base that on? And I'll tell
12 you, sir, I find a note and we can take in a minute which
13 might assist you ---

14 **MR. SKINNER:** M'hm.

15 **MR. CALLAGHAN:** --- on January 13th, when
16 Constable Sebalj talks to Mr. Silmser, she has referenced
17 him speaking to the Diocese.

18 **MR. SKINNER:** Okay. Well, then I think
19 probably what's happened was that when I -- if you look at
20 page 4 of my report at the bottom paragraph, "The problems
21 ---

22 **THE COMMISSIONER:** Just a second now.

23 **MR. SKINNER:** Sorry, sir.

24 **THE COMMISSIONER:** What exhibit -- okay,
25 I've got it, 1207.

1 **MR. CALLAGHAN:** It's Exhibit 1207, sir.

2 **THE COMMISSIONER:** And "The problems";
3 right?

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

5 **THE COMMISSIONER:** Okay.

6 **MR. SKINNER:** The final paragraph, "The
7 problems".

8 "As early as ..."

9 And initially, in the report it said January
10 13th, 1992.

11 "... four days after the receipt of the
12 initial complaint, the Cornwall Police
13 Service was aware that Silmsler had
14 approached the Church with his
15 allegations."

16 Now, at some point ---

17 **MR. CALLAGHAN:** Right.

18 **MR. SKINNER:** --- I reviewed that and I
19 thought "Oh, I've misspoken there; it should have been
20 'They received the complaint on December the 9th ---

21 **MR. CALLAGHAN:** And you might have well said
22 "Some days after the receipt" rather than "four days";
23 correct?

24 **MR. SKINNER:** Well, I think probably in
25 looking at this now, I've crossed out the wrong paragraph -

1 - the wrong part. I think probably the date of December
2 13th is accurate, but the "four days after the receipt of
3 the initial complaint" is wrong. I don't know. I don't
4 know.

5 **MR. CALLAGHAN:** That's fair enough.

6 **MR. SKINNER:** That seems likely.

7 **MR. CALLAGHAN:** Now, we know -- you know
8 from the note, and I won't take you there, that the Deputy
9 Chief reassigned the case or asked it to be reassigned on
10 January 8th; right? Just to put it in chronological
11 sequence?

12 **MR. SKINNER:** Yes. M'hm.

13 **MR. CALLAGHAN:** Now, if you bear with me,
14 Superintendent, I'm trying to locate a document. Of
15 course, I'm having no luck. If I could speak to my
16 research assistant for one second?

17 **THE COMMISSIONER:** Okay.

18 **(SHORT PAUSE/COURTE PAUSE)**

19 **MR. CALLAGHAN:** Everybody has their trusted
20 Staff Sergeant Blake with them at all times.

21 **MR. SKINNER:** Yes.

22 **MR. CALLAGHAN:** Mr. Crane is my Staff
23 Sergeant Blake.

24 **MR. SKINNER:** Like Don Quixote, you have to
25 have a sidekick.

1 **MR. CALLAGHAN:** All right.

2 This is one of the documents that was
3 produced yesterday, I thought, but I don't have a document
4 -- I don't have an exhibit number -- 1223.

5 Okay. So if you go to the fourth page which
6 ends in the Bates page 462.

7 **MR. SKINNER:** M'hm. Yes.

8 **MR. CALLAGHAN:** And you'll see, 9th of
9 December '92 incident.

10 **MR. SKINNER:** M'hm. Yes.

11 **MR. CALLAGHAN:** And it's submitted January
12 13th, '93. Do you see that?

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

14 **MR. CALLAGHAN:** All right.

15 And that -- and there are other indications
16 which we'll see as the evidence progresses, but that's the
17 date that Constable Sebalj gets tagged with this assignment
18 and she submits or at least opens the OMPPAC. Okay?

19 **MR. SKINNER:** It appears that a file was
20 opened, yes.

21 **MR. CALLAGHAN:** And Mr. Paul asked you about
22 the frequency of which it was that the reports weren't put
23 in and suggested perhaps there was something nefarious and
24 actually might have suggested that you hadn't done enough.

25 And I wanted just to remind you of what your

1 note says. If I can take you to Exhibit 1209?

2 MR. SKINNER: Yes.

3 MR. CALLAGHAN: All right.

4 Now, if we go down, four stars, can you read
5 that for us?

6 THE COMMISSIONER: What page?

7 MR. CALLAGHAN: Oh, I'm sorry, I'm ahead of
8 you, I said page 3, Bates 787.

9 THE COMMISSIONER: Okay.

10 MR. CALLAGHAN: I'm a little rusty, Mr.
11 Commissioner.

12 THE COMMISSIONER: So what ---

13 MR. CALLAGHAN: The fourth star down, I'd
14 ask -- it's his handwriting, I believe, is it not?

15 MR. SKINNER: It is my handwriting.

16 MR. CALLAGHAN: Can you just read that for
17 us?

18 MR. SKINNER: It says:

19 "No report of incident until late
20 August-September (in 1993). Practice
21 was to conduct investigation then
22 report and summarize investigation and
23 evidence at time of arrest."

24 MR. CALLAGHAN: All right.

25 And do you recall where you got that

1 information from? I mean, you may not in the mist of time.
2 But in fairness to what Mr. Paul was suggesting, isn't it
3 indicative that you actually had information that there was
4 a practice afoot; it wasn't just this case that they didn't
5 put their reports in until the end, until an arrest is
6 done? Isn't that what that indicates?

7 **MR. SKINNER:** Yes, it would seem to indicate
8 that, yes.

9 **MR. CALLAGHAN:** And I'm going to suggest to
10 you, sir, that being a thoughtful investigator, the
11 suggestion by Mr. Paul that you wouldn't have looked at
12 this is not correct and, in fact, you did; right?

13 **MR. SKINNER:** That I wouldn't have looked at
14 this practice, you mean?

15 **MR. CALLAGHAN:** Well, he suggests that --
16 maybe this is a one-off and that's indicative of some
17 cover-up.

18 **MR. SKINNER:** Oh, I see.

19 **MR. CALLAGHAN:** And I'm suggesting as a
20 thoughtful investigator that you actually did look at it.

21 **MR. SKINNER:** And we did uncover that
22 practice.

23 **MR. CALLAGHAN:** Yes.

24 **MR. SKINNER:** Yes.

25 **MR. CALLAGHAN:** And it's a practice which

1 I'm sure we're going to hear it doesn't happen in Ottawa;
2 right?

3 MR. SKINNER: That's correct. It couldn't
4 happen in Ottawa.

5 MR. CALLAGHAN: It could happen, but it
6 doesn't?

7 MR. SKINNER: It doesn't.

8 MR. CALLAGHAN: Right.

9 MR. SKINNER: No, it couldn't.

10 THE COMMISSIONER: He said "could not."

11 MR. SKINNER: All right.

12 THE COMMISSIONER: But you said "could
13 happen but it doesn't."

14 MR. SKINNER: All right. Well, couldn't,
15 I'll live with his ---

16 MR. CALLAGHAN: And it'll be played back
17 like Groundhog Day to me, I'm sure, but that's fine. I
18 don't -- you know, that's fine.

19 MR. SKINNER: So let me qualify that. If
20 the investigation -- you know, if the incident in the
21 investigation were concluded within a matter of a few days,
22 then possibly it could happen.

23 MR. CALLAGHAN: Ah-ha!

24 MR. SKINNER: But if it's strung out over a
25 matter of months, then it couldn't happen.

1 **MR. CALLAGHAN:** I appreciate that.

2 But let's be frank about this. The key
3 here, from your perspective on these information systems,
4 is one that the investigator gets hit by a bus, you want to
5 make sure you have a record of what they did aside from
6 just the notes; right?

7 **MR. SKINNER:** That's critical, yes.

8 **MR. CALLAGHAN:** That's one.

9 **MR. SKINNER:** M'hm.

10 **MR. CALLAGHAN:** And two, it's so those
11 furthest up the chain have a knowledge by opening up a
12 computer to know what happened; correct?

13 **MR. SKINNER:** Yes, or reviewing written
14 files. It doesn't necessary have to be computerized.

15 **MR. CALLAGHAN:** Right.

16 And in terms of -- and it's fair to say that
17 the direct support of a constable is generally the staff
18 sergeant; right? That's in the chain of command?

19 **MR. SKINNER:** Well, it is more likely to be
20 a sergeant but, again, it depends on the size of the
21 organization.

22 **MR. CALLAGHAN:** But in this case, you
23 understood the direct support was Staff Sergeant Brunet?

24 **MR. SKINNER:** The next in the chain of
25 command was -- yes.

1 **MR. CALLAGHAN:** And you're aware that Staff
2 Sergeant Brunet told you that there were Sergeant Lefebvre
3 and Constable Molloy who she could consult as well. Do you
4 remember him telling you that?

5 **MR. SKINNER:** I don't. I don't doubt that
6 it happened, but I don't remember it happening.

7 **MR. CALLAGHAN:** And so in supervision
8 issues, isn't it most important that there is regular
9 contact with the staff sergeant? Isn't that ---

10 **MR. SKINNER:** With the supervisor, yes,
11 whoever that is. Yes, it is.

12 **MR. CALLAGHAN:** Whether it's on OMPPAC or on
13 another system, that's the most important thing. The staff
14 sergeant should be in constant contact with the constable
15 so they know what's going on; correct?

16 **MR. SKINNER:** Correct.

17 **MR. CALLAGHAN:** All right.

18 **MR. SKINNER:** But that isn't the only aspect
19 of it. I still insist there still has to be a written
20 method of tracking the progress of the investigation.

21 **MR. CALLAGHAN:** And as a methodology, I
22 understand that. I've just -- and I can understand that,
23 but I'm just saying that the communication level is an
24 important factor ---

25 **MR. SKINNER:** Very.

1 **MR. CALLAGHAN:** --- and it should not be
2 underplayed?

3 **MR. SKINNER:** No.

4 **MR. CALLAGHAN:** All right.

5 So let's then talk about that period January
6 2nd to February 2nd. And if I can take you to Exhibit 295.

7 Before I get there let me touch on something
8 you said that's I think really important. Your testimony
9 yesterday -- and I've got it here so I'll just read it
10 back.

11 **MR. SKINNER:** Okay.

12 **MR. CALLAGHAN:** "It's critical to
13 establish a good relationship and
14 rapport with the victim in order to
15 illicit whatever information you're
16 looking for."

17 Do you see that?

18 **THE COMMISSIONER:** Do you see that? No.

19 **MR. SKINNER:** No, I don't see it.

20 **MR. CALLAGHAN:** Quite right. Quite right,
21 Mr. Commissioner.

22 Do you agree that that's what you said?

23 **MR. SKINNER:** Yes.

24 **MR. CALLAGHAN:** I'm rusty, sir.

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

1 **MR. CALLAGHAN:** And let's just review that
2 for a minute. I take it the key to building rapport is to
3 have the witness like you so they open up; right?

4 **MR. SKINNER:** That helps, yes. It's not ---

5 **MR. CALLAGHAN:** You want ---

6 **MR. SKINNER:** It's not necessarily the only
7 key but it would certainly be an advantage.

8 **MR. CALLAGHAN:** But the end result is for
9 them to open up to talk?

10 **MR. SKINNER:** Yes.

11 **MR. CALLAGHAN:** And I take it you want the
12 victim to believe that the officer is concerned?

13 **MR. SKINNER:** Yes.

14 **MR. CALLAGHAN:** And you want -- well, maybe
15 you don't want but it's ideal to have an officer who is
16 perceived to be nice by the victim so they'll open up;
17 right?

18 **MR. SKINNER:** That would be a good
19 situation, yes.

20 **MR. CALLAGHAN:** And as a supervisor you'd
21 want the victims or the people your officers deal with to
22 speak of your officers in superlatives? I mean, that's
23 ideal as a supervisor; correct?

24 **MR. SKINNER:** In superlatives, I'm not sure
25 that I'd go that far but ---

1 **MR. CALLAGHAN:** But it would be nice?

2 **MR. SKINNER:** It would be nice, yeah.

3 **MR. CALLAGHAN:** It would be that extra icing
4 on the cake; right?

5 **MR. SKINNER:** Okay, if you want to put it
6 that way.

7 **MR. CALLAGHAN:** And you're aware that -- and
8 I think you said that Heidi Sebalj was having difficulty
9 with David Silmser; right?

10 **MR. SKINNER:** Yes.

11 **MR. CALLAGHAN:** And that there were -- there
12 seemed to be, from her perspective, some tension; right?
13 That's the way she described it to you, or how did she
14 describe it?

15 **MR. SKINNER:** I don't recall any actual
16 conversation about tension.

17 **MR. CALLAGHAN:** No, but I mean -- okay, so
18 I've used the wrong word I'm afraid, but ---

19 **MR. SKINNER:** Just my observation was that
20 Ms. Sebalj was being manipulated by the complainant -- by
21 the victim.

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

23 But that was what you -- the rapport -- let
24 me back up. It's more important to perceive rapport from
25 the perspective of the victim than the officer, right,

1 because it's the victim that's going to respond?

2 **MR. SKINNER:** Yes.

3 **MR. CALLAGHAN:** All right.

4 In fact, I suspect, in the world of policing
5 there are lots of officers with high opinions of their
6 abilities who think they get along with everybody and they
7 don't; correct?

8 **MR. SKINNER:** That's ---

9 **MR. CALLAGHAN:** Human nature.

10 **MR. SKINNER:** Human nature. It's
11 everywhere, yes.

12 **MR. CALLAGHAN:** And, in fact, a good officer
13 might not even like the person they're dealing with and
14 still build rapport; correct?

15 **MR. SKINNER:** Yes, that's quite possible.

16 **MR. CALLAGHAN:** And let's use the classic
17 example. You've got a heinous murderer and you're tasked
18 with interviewing the suspect. You would try to build a
19 bridge to them even though you might detest the person;
20 correct -- to get them to confess?

21 **MR. SKINNER:** True.

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

23 And the ability to do that, to make that
24 bridge, is the telltale sign of a good investigator. Fair
25 enough?

1 **MR. SKINNER:** I would agree with that, yeah.

2 **MR. CALLAGHAN:** All right.

3 Now, you never spoke to David Silmser, did
4 you?

5 **MR. SKINNER:** No.

6 **MR. CALLAGHAN:** And so you never heard his
7 side of how he felt about Constable Sebalj; right?

8 **MR. SKINNER:** No.

9 **MR. CALLAGHAN:** Now, I didn't get a chance
10 to cross-examine to flesh out some of these points, but
11 here are some of the things that Mr. Silmser said about
12 Constable Sebalj and I'll just quote them:

13 "Heidi certainly turned out to be a
14 very nice person."

15 Positive comment.

16 **MR. SKINNER:** Very.

17 **MR. CALLAGHAN:** One of those things -- those
18 nice things that you like to see to build that bridge,
19 right, that you talked about? We just went over that;
20 correct?

21 **MR. SKINNER:** It's a sign that Mr. Silmser
22 apparently liked Constable Sebalj.

23 **MR. CALLAGHAN:** Another one:

24 "I just know she..."

25 and that's Constable Sebalj:

1 "...dealt with me quite a lot of concern
2 and she was quite nice to me."

3 It's another positive comment; right?

4 **MR. SKINNER:** It is, yes.

5 **MR. CALLAGHAN:** Quote:

6 "There were good people involved in the
7 system. Heidi Sebalj was one of them
8 with the Cornwall police."

9 It's another positive comment, right?

10 **MR. SKINNER:** Yes, it is.

11 **MR. CALLAGHAN:** And to give you the
12 superlative he said:

13 "I thought Heidi was a super lady."
14 Those are all things ---

15 **MR. SKINNER:** That's a superlative.

16 **MR. CALLAGHAN:** --- that if you were -- and
17 in fairness you wanted to approach Heidi. These are the
18 kind of qualities that you would -- that you don't surprise
19 when you see Heidi Sebalj that she'd have these comments;
20 correct?

21 **MR. SKINNER:** That's correct. That's
22 correct. But the comments -- I think it's important to
23 bear in mind that the comments are being made by someone
24 who, in my opinion anyway, had successfully manipulated
25 Constable Sebalj.

1 **MR. CALLAGHAN:** You say that, but why?

2 **MR. SKINNER:** It's just my impression, my
3 impression of the situation at the time.

4 **MR. CALLAGHAN:** So when Heidi Sebalj is
5 treated rudely or whatever by David Silmser or manipulated
6 by David Silmser, she's to do what; not to build that
7 bridge, not to see ---

8 **MR. SKINNER:** No, no, not at all. Not at
9 all. Not at all.

10 **MR. CALLAGHAN:** Well, I mean, just so we
11 have a clarity of that ability of that officer, if I could
12 ask you, do you know Bob Pelletier?

13 **MR. SKINNER:** No.

14 **MR. CALLAGHAN:** You don't know Crown
15 Attorney Pelletier?

16 **MR. SKINNER:** No.

17 **MR. CALLAGHAN:** I thought we mentioned him
18 yesterday. Okay.

19 **MR. SKINNER:** Well, he was mentioned but
20 I've never met him, to the best of my knowledge.

21 **MR. CALLAGHAN:** Can I show you document
22 109333?

23 **(SHORT PAUSE/COURTE PAUSE)**

24 **MR. CALLAGHAN:** I could read it if that's --
25 I'm sorry, Mr. Commissioner.

1 **MR. SCHARBACH:** For once I can say this
2 apparently is already an exhibit. So it's 283 apparently.

3 **THE COMMISSIONER:** Two-eighty-three (283).
4 All right.

5 No, I don't know that you have that ---

6 **MR. SKINNER:** No. Okay.

7 **THE COMMISSIONER:** --- Inspector Skinner.
8 Two-eighty-three (283), would he have that?

9 **MR. CALLAGHAN:** Yeah.

10 **MR. SKINNER:** Do I?

11 **THE REGISTRAR:** Madam Clerk, could you give
12 him a hand?

13 **MR. SKINNER:** This appears to start at 291.

14 **THE COMMISSIONER:** Yeah, that's because you
15 need another binder. There you go.

16 **MR. SKINNER:** Thank you.

17 Yes, I have that.

18 **MR. CALLAGHAN:** All right.

19 What I'm just -- this is a letter from Bob
20 Pelletier to Bryce Geoffrey, who is Mr. Silmser's letter --
21 or lawyer I should say. And the first paragraph says:

22 "You'll recall that some time ago we
23 spoke on the telephone with your client
24 David Silmser. Mr. Silmser had
25 contacted me and expressed considerable

1 report when you talk about the investigation, you referred
2 to one incident where you thought that Constable Sebalj
3 should have gone and interviewed a witness.

4 Do you recall that?

5 **MR. SKINNER:** Yes.

6 **MR. CALLAGHAN:** Were you able to identify
7 any other witnesses that Heidi -- that Constable Sebalj
8 should have interviewed or was this the example -- one of
9 the examples or the only one, or do you recall?

10 **MR. SKINNER:** I'm pretty sure that there
11 were more than just that one. That's the only one that I -
12 --

13 **MR. CALLAGHAN:** Clearly, this is the one
14 that you thought was the most glaring because you put it in
15 your report. Is that fair?

16 **MR. SKINNER:** Because it appeared at the
17 time of my investigation that this particular witness had
18 some information that could have been valuable to the
19 investigation.

20 **MR. CALLAGHAN:** And you never spoke to that
21 particular witness; correct?

22 **MR. SKINNER:** I never did, no. No, I wasn't
23 reinvestigating the situation.

24 **MR. CALLAGHAN:** No, I recognize that.

25 And to be honest with you, let's just take a

1 look at -- well, you know what; it may be easier if we use
2 her typed versions of her notes just -- Exhibit 297.

3 **THE COMMISSIONER:** And that's another
4 binder.

5 **MR. CALLAGHAN:** Sorry.

6 **THE COMMISSIONER:** It's back to the one we
7 had before, I think.

8 **MR. SKINNER:** Yes, it is. Okay. Good.
9 Thank you.

10 **MR. CALLAGHAN:** I'm at page 59, Bates 1883.

11 **THE COMMISSIONER:** The number is at the
12 bottom of the page, sir. So he wants page 59.

13 **MR. SKINNER:** Yes, I have that.

14 **MR. CALLAGHAN:** All right.

15 Let's not read any of the personal data
16 there. Let's go -- you see where it says April 13th?

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

18 **MR. CALLAGHAN:** All right.

19 "Expressed concerns about talking on
20 the phone. Took name and number.
21 Stated he would prefer to talk in
22 person. I advised him of my
23 investigation and impractical of
24 visiting everyone thereafter ..."

25 **MR. SKINNER:** I'm sorry, there's two entries

1 for April 13th. I was looking at the wrong one. You're
2 looking at the bottom one?

3 **MR. CALLAGHAN:** Yeah, this is a -- just to
4 be clear, you see the call at 16:29? She calls that
5 residence.

6 **MR. SKINNER:** Yes. M'hm.

7 **MR. CALLAGHAN:** And then she calls the
8 person again -- gets another number and calls the person.
9 Do you see that? So she's hunting the guy down. She calls
10 one number, told to call another number, phones the other
11 number. And I don't need to go into the personal data.
12 I'm just at the bottom of the page. Do you see that,
13 "Expressed concerns"?

14 **MR. SKINNER:** It appears to be two people.

15 **MR. CALLAGHAN:** Well ---

16 **MR. SKINNER:** Yes, and then "Expressed
17 concerns about talking over the phone". Yeah.

18 **MR. CALLAGHAN:** Yeah. And this is the
19 person you identified ---

20 **MR. SKINNER:** Yes.

21 **MR. CALLAGHAN:** --- in your article -- or in
22 your report.

23 **MR. SKINNER:** Yes.

24 **MR. CALLAGHAN:** "Expressed concerns about
25 talking over the phone. Took name and

1 number. Stated he would prefer to talk
2 in person. I advised him I had my
3 investigation and impractical of
4 visiting everyone. Thereafter he
5 agreed to answer questions."

6 **MR. SKINNER:** M'hm.

7 **MR. CALLAGHAN:** "Refers to his time as an
8 altar boy. He remembers Father
9 MacDougall, Maloney and Kevin. Asked
10 if victim or witness to any
11 impropriety. Answered, 'No,
12 personally, I had no problem. I have
13 nothing bad to say about any of them.'
14 Asked him if he recalled Father Charles
15 MacDonald. Answered yes and stated he
16 doesn't remember anything out of the
17 ordinary. States Father Charles left,
18 that he wasn't at St. Columban's long,
19 then Paul and then Kevin, and that's
20 the last he saw of him. Asked if he
21 remembered any fellow altar boys.
22 Advised him that it's a long time ago
23 but investigation was scary stuff and
24 very close to home."

25 Do you see that?

1 MR. SKINNER: I do.

2 MR. CALLAGHAN: So clearly he said he had no
3 personal problems; correct?

4 MR. SKINNER: That's what he said, m'hm.

5 MR. CALLAGHAN: He says he doesn't know of
6 any improprieties; correct?

7 MR. SKINNER: Correct.

8 MR. CALLAGHAN: And you're saying that in
9 the face of that, she should go to Ottawa and interview him
10 still; right?

11 MR. SKINNER: Yes.

12 MR. CALLAGHAN: Why?

13 MR. SKINNER: Because I was told something
14 that made me feel that that would have been advisable at
15 the time of the investigation.

16 MR. CALLAGHAN: Who told you that?

17 MR. SKINNER: I can't recall, but I think it
18 was Constable Sebalj, but I'm not absolutely certain.

19 MR. CALLAGHAN: You interviewed -- your
20 notes indicated you interviewed him once rather than a
21 number of times and there's no reference to this person at
22 all.

23 MR. SKINNER: M'hm.

24 MR. CALLAGHAN: So you don't have any clear
25 recollection?

1 **MR. SKINNER:** I don't, no.

2 **MR. CALLAGHAN:** Well, let me just -- Mr. Lee
3 said something. You can't go back in time to find out what
4 people did.

5 **MR. SKINNER:** M'hm.

6 **MR. CALLAGHAN:** Unfortunately, in this case,
7 we can.

8 I have some documents that I gave notice on,
9 Madam Clerk, which I would like to hand up.

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

11 **MR. CALLAGHAN:** All right.

12 And it's -- for the record, Mr.
13 Commissioner, it's Doc 110221.

14 Now, while that's handed out, let me tell
15 you something. After your report came in, the Ottawa
16 police -- the OPP was tasked with doing a reinvestigation
17 of not only the Silmsler allegation but anything that might
18 touch on a cover-up or conspiracy with the Cornwall police.

19 Were you aware of that?

20 **MR. SKINNER:** Yes.

21 **MR. CALLAGHAN:** And so the OPP, just so
22 you're aware, interviewed -- well, let me ask you; how many
23 people did Heidi interview -- Constable Sebalj? Do you
24 have any idea?

25 **MR. SKINNER:** How many did she interview? I

1 don't know. I can't remember. At this stage, I can't
2 remember.

3 **MR. CALLAGHAN:** Well, her notes would
4 indicate there were approximately 24. Does that sound
5 right?

6 **MR. SKINNER:** If that's what her notes say,
7 I accept that.

8 **MR. CALLAGHAN:** So it wasn't like she didn't
9 interview anybody. You don't want to give that impression.
10 Twenty-four (24) people could be a lot of people, depending
11 on who's available; correct?

12 **MR. SKINNER:** Correct.

13 **MR. CALLAGHAN:** And just so you're aware,
14 that when the OPP did their investigation that started
15 February 2nd and finished up in the middle of November, some
16 nine and a half months in the same fact matter, they had, I
17 believe, 33 witnesses, one of which was referred to by the
18 Cornwall police, three of which were Cornwall police
19 officers and two were clergy people.

20 **MR. SKINNER:** M'hm.

21 **MR. CALLAGHAN:** So there wasn't a big
22 disparity between the two. Were you aware of that?

23 **MR. SKINNER:** A big disparity between the
24 number of witnesses interviewed in the two investigations?

25 **MR. CALLAGHAN:** Yes.

1 **MR. SKINNER:** No, 11 isn't a big ---

2 **MR. CALLAGHAN:** That's not a big disparity?

3 **MR. SKINNER:** Nine, pardon me, not a big
4 disparity, no.

5 **MR. CALLAGHAN:** All right.

6 **THE COMMISSIONER:** So this is Exhibit 1232.
7 It's an interview report. I don't know if the name of the
8 person is important.

9 **MR. CALLAGHAN:** The person is not important,
10 sir. I think you've made that clear.

11 **THE COMMISSIONER:** Yes. Okay. So it's an
12 interview report ---

13 **MR. CALLAGHAN:** And it's dated 18th of
14 February '94.

15 --- **EXHIBIT NO./PIÈCE NO. P-1232:**

16 (110221) Interview report - 18 Feb '94

17 **MR. CALLAGHAN:** So it's soon after you leave
18 Cornwall, maybe two weeks, three weeks.

19 **THE COMMISSIONER:** Mr. Stauffer ---

20 **MR. STAUFFER:** Sorry to interrupt here.

21 There's just a concern, unless you've already made a ruling
22 on it, Mr. Commissioner, we should have some look at this
23 document before the names are revealed.

24 **THE COMMISSIONER:** All right. Interim
25 publication ban on the name of the person in this report.

1 **MR. STAUFFER:** Yes.

2 **MR. CALLAGHAN:** And, sir, just so it's
3 clear, you did that yesterday as well when it came up.

4 **THE COMMISSIONER:** Yes. Oh good.

5 **MR. CALLAGHAN:** I don't want to read the
6 personal information at the top, Superintendent, in it.
7 But it says:

8 "I became an altar boy at St.
9 Columban's Church in Cornwall, Ontario.
10 Father MacDougald was the senior
11 priest, Father Kevin Maloney, Father
12 Cameron, Father Charlie MacDonald.
13 There was also Father Paul. He was
14 American. I think Father Cameron came
15 after. I was never approached by any
16 of the priests in a sexual manner.
17 They all seemed to be nice people. I
18 have no complaints. I don't have
19 anything bad to say about anyone while
20 I was there. I had no bad experience
21 while an altar boy. I was an altar boy
22 for approximately four to five years.
23 I recall going on a retreat to St.
24 Andrew's. This was through the school.
25 Father Cameron was in charge. I don't

1 recall Father Charlie being there. I
2 remember it was 1979 ..."

3 And it goes on.

4 Now, clearly, if you went and interviewed
5 him, he would have said the same thing that he told
6 Constable Sebalj; correct?

7 The OPP, two weeks after you leave
8 approximately, says the same thing.

9 **THE COMMISSIONER:** Mr. Stauffer?

10 **MR. STAUFFER:** Sorry. Is my friend saying
11 that he's assuming Mr. X here, the complainant, would have
12 said the same thing to Constable Sebalj as to Detective
13 Constable Fagan?

14 **MR. CALLAGHAN:** I'm suggesting that in fact
15 the notes are pretty much the same, are they not,
16 Superintendent?

17 **MR. SKINNER:** They're similar, yes.

18 **MR. CALLAGHAN:** Sorry, Mr. Commissioner.

19 **THE COMMISSIONER:** So it may be reassuring
20 to know that later on this is what happened, but does that
21 absolve anyone from if there was some indication that maybe
22 -- it would be -- was there an indication that maybe she
23 should have gone to see the person and in the end it was
24 all for nothing? Or is it just well, this -- oh, how am I
25 going to put that -- that, "Oh, thank God, this is what he

1 said because then..." ---

2 **MR. CALLAGHAN:** Well, this is exactly what
3 she told him over the phone.

4 **THE COMMISSIONER:** Yes.

5 **MR. CALLAGHAN:** We have to hear what
6 Constable Sebalj, what her take on a conversation, whether
7 she sensed that the person was obfuscating or something of
8 that nature.

9 I don't think -- I doubt, you know -- and
10 let me take you to another one before we finish this
11 because there's other elements where she does get
12 information, she does go to Ottawa. I think it's fair for
13 Superintendent Skinner to follow along to see what
14 Constable Sebalj does do when she is aware of information
15 that could lead to further material information for an
16 investigation.

17 And what I'm going to refer you to -- and,
18 again, sir, I'm going to take you to her notes.

19 **THE COMMISSIONER:** We're still on
20 Exhibit 297, the typed version?

21 **MR. CALLAGHAN:** That would be fine, yes,
22 sir.

23 **THE COMMISSIONER:** What page?

24 **MR. CALLAGHAN:** I hate to be difficult about
25 this, but if mine's paginated to my -- my handwritten

1 notes, but I will -- let me see if I can do this.

2 THE COMMISSIONER: No, no, well, let's go to
3 the handwritten note then.

4 MR. CALLAGHAN: Okay.

5 THE COMMISSIONER: What exhibit is that?

6 MR. CALLAGHAN: It's Exhibit 295.

7 Sorry about that, Mr. Commissioner, my notes
8 are paginated for ---

9 THE COMMISSIONER: Okay. So which page in
10 the written ---

11 MR. CALLAGHAN: I'm at page 74.

12 THE COMMISSIONER: In the top right corner,
13 sir?

14 MR. CALLAGHAN: Top, right corner, sir.
15 March 12th.

16 THE COMMISSIONER: Seventy-four (74)? I
17 don't -- what are you saying, 74? Is that the last two
18 numbers of the -- of the Bates page or is that ---

19 MR. CALLAGHAN: That's the ---

20 THE COMMISSIONER: Two-ninety-five (295)?

21 MR. CALLAGHAN: Can I have one second, sir,
22 just so I can see if I can't sort it out.

23 You know, sir, I can actually -- now that
24 I've got my notes, I can go back to the typewritten, it'll
25 be easier. I apologize, sir, 297.

1 **THE COMMISSIONER:** Okay. What page?

2 **MR. CALLAGHAN:** All right. Now this one is
3 at page 43.

4 **THE COMMISSIONER:** Page 43.

5 **MR. CALLAGHAN:** And if I could just caution
6 everybody. This relates to a witness with a moniker C-3.

7 **THE COMMISSIONER:** Yes.

8 **MR. CALLAGHAN:** So I'm sure, Superintendent,
9 you won't do it but just to say that we're not going to do
10 any personal identifiers; okay?

11 **MR. SKINNER:** Right.

12 **MR. CALLAGHAN:** So I won't go back into the
13 notes for time reasons, but somewhere along the line,
14 Constable Sebalj has identified to her C-3; okay?

15 So it's not uncommon, you'll agree with me,
16 that in historic sexual assaults, a lot of time has to be
17 spent finding people because they no longer live at the
18 same address, they've moved, it's 20 years ago; right?

19 **MR. SKINNER:** M'hm, that's true.

20 **MR. CALLAGHAN:** And that's part of the
21 digging you'd expect of an Ottawa police officer; correct?

22 **MR. SKINNER:** Yes, it is, m'hm.

23 **MR. CALLAGHAN:** So here we have her calling
24 a person and at March 12th at 10:10, he (sic) telephone
25 calls to a person and advises C-3 -- this is brother's

1 we're at -- so she's trying to hunt him down, correct? Do
2 you see that?

3 MR. SKINNER: Correct, yeah.

4 MR. CALLAGHAN: So she then calls what is
5 believed to be C-3's work at 10:17. Do you see that?

6 MR. SKINNER: I do.

7 MR. CALLAGHAN: She doesn't get anybody so
8 she continues on and tries to contact C-3's mother. Do you
9 see that?

10 MR. SKINNER: I do.

11 MR. CALLAGHAN: So she's sort of digging
12 wouldn't you agree with me?

13 MR. SKINNER: I would.

14 MR. CALLAGHAN: Okay. Now, if you go over
15 to page 45, over 2 pages, Bates page 169. You go up a
16 couple of -- like up to the bottom part:

17 "14:50: Call to C-3. No answer."

18 Do you see that?

19 MR. SKINNER: I do.

20 MR. CALLAGHAN: She goes back at it at 15:18
21 and calls C-3 again. Do you see that?

22 MR. SKINNER: Yes, I do.

23 MR. CALLAGHAN: Now, I won't go through the
24 details of this just because I don't want to identify
25 anybody, but there are copious details of their notes -- of

1 her conversation with him. Do you see that, of what she
2 was asking and what the answers were, et cetera? Okay?

3 **MR. SKINNER:** Yes.

4 **MR. CALLAGHAN:** Okay. Now, without going
5 into the detail, he had something germane to say.

6 So we go to page 47, actually page 48,
7 sorry. It goes on, as you can see, for at least -- as you
8 say, she took copious -- and she took detailed notes and so
9 there are at least a bunch of pages in the typewritten?

10 **MR. SKINNER:** Yes.

11 **MR. CALLAGHAN:** And she says at the very
12 bottom, you see just above "March 12th"?

13 **MR. SKINNER:** The bottom of March 12th?

14 **MR. CALLAGHAN:** Yes.

15 **MR. SKINNER:** Yes, m'hm.

16 **MR. CALLAGHAN:** I'm at Bates page 172.

17 **THE COMMISSIONER:** Yes, okay.

18 **MR. CALLAGHAN:** "Question: re providing a
19 statement.

20 Answer: Don't know how far I'll go.

21 Advised I would call him on Wednesday.

22 Telephone complete." (As read)

23 So we have a bit of a reluctant witness who
24 won't give a statement. Do you see that?

25 **MR. SKINNER:** Who won't give a statement?

1 He's saying:

2 "I don't know how far I'll go." (As
3 read)

4 **MR. CALLAGHAN:** Well, okay, sorry, he won't
5 know, but so she's going to call him back ---

6 **MR. SKINNER:** M'hm.

7 **MR. CALLAGHAN:** --- to get him to think
8 about it; correct?

9 **MR. SKINNER:** Yes, yeah.

10 **MR. CALLAGHAN:** And I guess it's fair to say
11 you can't compel a person to give a statement in the
12 investigative stage?

13 **MR. SKINNER:** No.

14 **MR. CALLAGHAN:** All right. And if you go
15 over to page 53, Bates page 177, that's the following
16 Wednesday, and as she said she would she called -- if you
17 got to the bottom.

18 **MR. SKINNER:** Yes, 15:14?

19 **MR. CALLAGHAN:** "Fifteen fourteen (1514):
20 Telephone to C-3 re no answer."

21 Do you see that?

22 **MR. SKINNER:** Yes.

23 **MR. CALLAGHAN:** Okay. So if you go over to
24 the next page, right there, you'll see that she doesn't
25 give up. She calls back the next day?

1 MR. SKINNER: Yes.

2 MR. CALLAGHAN: She calls C-3 again?

3 MR. SKINNER: M'hm, yes.

4 MR. CALLAGHAN: And he tells her:

5 "Advises he has decided against giving
6 a statement. Stated it was a difficult
7 decision and he discussed it with his
8 lawyer. Asked if we could meet re
9 further info and he agreed we could
10 meet. I don't know how many are
11 involved. I don't want to know.
12 I would suggest that I would call next
13 week before 10." (As read)

14 Okay, so at this point, we have Constable
15 Sebalj having hunted him down, having spoken to him at
16 length, realizes he's got something to say and now the
17 witness is professed to say that he's spoken to a lawyer,
18 taken it seriously presumably by having done so, and
19 doesn't want to cooperate.

20 MR. SKINNER: Yes.

21 MR. CALLAGHAN: Do you see that?

22 MR. SKINNER: Yes.

23 MR. CALLAGHAN: And isn't it fair to say
24 from reading this that Constable Sebalj would do what you
25 would expect your officers to do, see if she couldn't meet

1 with him, push it a little further?

2 **MR. SKINNER:** Yeah, absolutely, m'hm.

3 **MR. CALLAGHAN:** And over the next page to
4 page 58, keeping in mind she said she'd call him next week
5 before 10 o'clock, it's now March 25th the following week -
6 - I think we're at Bates 179.

7 **THE COMMISSIONER:** One-seven-nine (179)?

8 **MR. CALLAGHAN:** Yeah. There we go.

9 So the following week, before 10 o'clock:

10 "9:05: telephone call to C-3 re no
11 answer." (As read)

12 She's not deterred. She calls back after
13 10 o'clock at 15:45:

14 "Telephone call to C-3. Confirms
15 Saturday, April 3rd." (As read)

16 Okay?

17 **MR. SKINNER:** I -- I don't -- oh yes, I've
18 got it, yeah.

19 **MR. CALLAGHAN:** So now she's got to the
20 point where she's spoken to him, he's reluctant, he's
21 agreed to meet, she calls to set up a meeting and she gets
22 the meeting.

23 If you go over to Bates page 182, at the
24 bottom it's:

25 "Telephone C-3 to confirm my arrival."

1 (As read)

2 She's at the location and is busy with
3 security. Talks about a motor vehicle stolen overnight.

4 "Discuss re statement." (As read)

5 And forgot about -- and dealt with it.

6 **MR. SKINNER:** Yes, I have it, m'hm.

7 **MR. CALLAGHAN:** And if you go down:

8 "C-3 not prepared to provide
9 statement." (As read)

10 Do you see that?

11 **MR. SKINNER:** Not yet. Oh, yes. Yes, I do.

12 **MR. CALLAGHAN:** She goes on to advise him
13 about disclosure and he says to the point, a complete
14 disclosure:

15 "He mentioned being a hostile witness
16 or that he would deny it." (As read)

17 **MR. SKINNER:** Yes.

18 **MR. CALLAGHAN:** And she goes on to say that
19 his evidence would be very helpful. Do you see that?

20 **MR. SKINNER:** I do.

21 **MR. CALLAGHAN:** All right. Now, C-3 never
22 gave her a statement. Do you know that?

23 **MR. SKINNER:** I didn't.

24 **MR. CALLAGHAN:** All right. You didn't find
25 that out in the course of your review?

1 **MR. SKINNER:** Well, if I did, I don't
2 remember it.

3 **MR. CALLAGHAN:** Do you recall talking to her
4 about how she dealt with people who did have information,
5 whether she did go make the effort to go visit them and sit
6 down with them. Do you recall ---

7 **MR. SKINNER:** I can't recall that
8 specifically but I ---

9 **MR. CALLAGHAN:** But clearly she did?

10 **MR. SKINNER:** --- I'm quite sure that we
11 did, yes.

12 **MR. CALLAGHAN:** And I'm going to suggest to
13 you, and I should let you know, when the OPP did their
14 investigation after you were done, that they had a fellow
15 named Inspector Tim Smith; have you ever heard of him?

16 **MR. SKINNER:** Not -- no.

17 **MR. CALLAGHAN:** All right.

18 **MR. SKINNER:** Through this Inquiry I have,
19 but not before that.

20 **MR. CALLAGHAN:** But you now know that he was
21 the chief investigator of the Alfred cases?

22 **MR. SKINNER:** No, I didn't know that.

23 **MR. CALLAGHAN:** You didn't know he -- and he
24 was also consulted on the Mount Cashel cases in
25 Newfoundland?

1 **MR. SKINNER:** Didn't know that.

2 **MR. CALLAGHAN:** So he actually interviewed
3 this C-3 and he couldn't get a statement either?

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

5 **MR. CALLAGHAN:** But you'd agree with me that
6 Constable Sebalj, who you'd described as thoughtful and
7 intelligent, this is good police digging?

8 **MR. SKINNER:** Yes, I agree.

9 **MR. CALLAGHAN:** And she did a good job on
10 this?

11 **MR. SKINNER:** I agree, yeah.

12 **MR. CALLAGHAN:** And that she did what you'd
13 expect her to do, was try to get in the house and actually
14 meet face to face with someone who had information -- that
15 she believed had information and get a statement even
16 though it didn't work; right?

17 **MR. SKINNER:** Right.

18 **MR. CALLAGHAN:** Now, you've already
19 indicated that you are now are aware that Staff Sgt. Brunet
20 and Constable Sebalj met regularly, and you're now aware, I
21 take it, that there was more than one meeting with the
22 Crown Attorney; correct? There were seven to ten meetings
23 ---

24 **THE COMMISSIONER:** Before we go any further,
25 sir, I think we should take the morning break.

1 **MR. CALLAGHAN:** No. Perfect.

2 **THE COMMISSIONER:** All right.

3 Thank you.

4 **MR. CALLAGHAN:** It's a good place to break,
5 sir.

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

8 This hearing will resume at 11:25.

9 ---Upon recessing at 11:05 a.m./

10 L'audience est suspendue à 11h05

11 ---Upon resuming at 11:31 a.m./

12 L'audience est reprise à 11h31

13 **THE REGISTRAR:** This hearing is now resumed.
14 Please be seated. Veuillez vous asseoir.

15 **THE COMMISSIONER:** So do you think we'll be
16 finished by -- your part by lunch, sir?

17 **MR. CALLAGHAN:** I believe so, sir.

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

19 **BRIAN SKINNER, Resumed/Sous le même serment**

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

21 **CALLAGHAN (Cont'd/Suite):**

22 **MR. CALLAGHAN:** Superintendent, I just want
23 to take you back to your comment yesterday about the
24 Crown's -- and I'll quote from the transcript, at page 48:

25 "Well, again, I can only go back to my

1 own experiences in a relatively large
2 force and a fairly large city, with a
3 fairly extensive staff of Crown
4 Attorney and assistance, and my
5 investigators. And, in fact, when I
6 was an investigator myself, regularly
7 met with the Crown Attorney in complex
8 cases in order to look for guidance as
9 to how to proceed with the
10 investigation, in order to be guided by
11 the Crown Attorney as to what sort of
12 evidence would be desirable and what to
13 look for."

14 Do you recall saying that yesterday?

15 **MR. SKINNER:** Yes.

16 **MR. CALLAGHAN:** All right.

17 So just to break that down, on these cases
18 and the case such as the one that confronted Constable
19 Sebalj, you would expect an officer to seek guidance as to
20 how to proceed with their investigation from the Crown;
21 correct?

22 **MR. SKINNER:** Not how to proceed with the
23 investigation, but for suggestions on which avenues to
24 pursue, you know, as evidence was gathered, was
25 accumulated, what sort of other offshoots would that lead

1 to and what would be advisable to look for.

2 **MR. CALLAGHAN:** Right.

3 So give you some guidance as to where to go
4 next ---

5 **MR. SKINNER:** M'hm.

6 **MR. CALLAGHAN:** --- so that it might be
7 properly prosecuted if the officer comes to the conclusion
8 that he or she has RPG, reasonable and probable grounds?

9 **MR. SKINNER:** Correct. Correct.

10 **MR. CALLAGHAN:** And I think now that you're
11 aware that Constable Sebalj met with the Crown Attorney
12 seven to 10 times. That was a lot of times and it was
13 something that you would condone, that she would do that,
14 that she'd speak to the Crown when she's having difficulty;
15 correct?

16 **MR. STAUFFER:** Could I just -- I have to ask
17 just for a moment, did I understand my friend to say that -
18 --

19 **THE COMMISSIONER:** Can you get to the mic?

20 **MR. STAUFFER:** Sorry.

21 Did I understand my friend to say that it
22 has been established that the Crown -- Mr. MacDonald did
23 meet with Ms. Sebalj seven to 10 times?

24 The way I understood it from yesterday, I
25 stand to be corrected, is my friend Mr. Scharbach indicated

1 that was his understanding of what Mr. MacDonald would say
2 if he were to come to testify.

3 But I don't know if it's ever been
4 established by -- in evidence, so to speak, that there were
5 seven to 10 meetings.

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

7 **MR. CALLAGHAN:** All right.

8 If I could then ask to see document 714888,
9 which is the interview of Murray MacDonald by the OPP in
10 that subsequent investigation, and we'll establish it now
11 then.

12 The document again, for those listening, is
13 714888.

14 **THE COMMISSIONER:** Thank you.

15 Exhibit 1233 ---

16 **MR. CALLAGHAN:** Thank you.

17 **THE COMMISSIONER:** --- is an interview
18 report of Murray MacDonald on July 14th, 1994.

19 **---EXHIBIT NO./PIÈCE NO 1233:**

20 (714888) Interview report of Murray
21 MacDonald on July 14, 1994

22 **MR. CALLAGHAN:** And I don't intend,
23 Superintendent, to take you through in detail as to what
24 the Crown Attorney said and what types of conversations,
25 I'm not sure it's germane. I think what -- the point we're

1 trying to talk about is, did she get guidance and from
2 whom?

3 **MR. SKINNER:** M'hm.

4 **MR. CALLAGHAN:** And if you go to page 15 of
5 the document ---

6 **MR. SKINNER:** Right, I have it.

7 **MR. CALLAGHAN:** --- and if -- I won't read
8 the whole thing for it to be a little more expedient than I
9 usually am, and go down to -- if madam -- "I don't know";
10 you see that, in the middle there, on the screen even?

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

12 **MR. SKINNER:** Oh, yes. Yes.

13 **MR. CALLAGHAN:** "I don't know..." -- let's
14 just follow this then, shall we:

15 "I don't know if she told me that at
16 our first contact but one of our first.
17 One of our early conversations, cause
18 Constable Sebalj and I had probably
19 maybe anywhere between eight -- maybe
20 seven and 10 contacts, I would say,
21 from early -- from mid-winter of '93
22 until the time that the police
23 determined not to charge in September."

24 (As read)

25 See that?

1 **MR. SKINNER:** Yes, I do.

2 **MR. CALLAGHAN:** Okay. So at least, we'll
3 wait to have to see whether he resiles from his OPP
4 interview but he told the OPP he met with her seven to 10
5 times.

6 **MR. SKINNER:** He appears to have done that,
7 yes.

8 **MR. CALLAGHAN:** All right.

9 And, I guess, coming back to the point,
10 that's a good number of times for an investigation like
11 that for an officer to seek guidance from the Crown;
12 correct?

13 **MR. SKINNER:** If that, in fact, happened,
14 yes, it is.

15 **MR. CALLAGHAN:** All right.

16 And you were aware, and I think that Ms. --
17 Constable Sebalj confided in you that she had difficulty
18 with reasonable and probable grounds on this case; right?

19 **MR. SKINNER:** Yes.

20 **MR. CALLAGHAN:** All right.

21 And in terms of assessing the effectiveness
22 of the investigation, did you ever take upon yourself to
23 see whether that was a reasonable position to have, to have
24 difficulty with RPG with the facts that she had?

25 **MR. SKINNER:** In view of the way the

1 investigation proceeded I could see that that -- I could
2 see that being a result, yes.

3 **MR. CALLAGHAN:** All right.

4 Let me just show you another document, just
5 to confirm that for you; 700963.

6 I'm sorry; it's Exhibit 393, Madam Clerk.
7 My apologies.

8 **THE COMMISSIONER:** Three-ninety-three (393).
9 No, need another binder.

10 **MR. CALLAGHAN:** Sorry. I'm sorry. I'm
11 being misled here.

12 **THE COMMISSIONER:** Oh, I'm glad that it's
13 from someone on your team ---

14 **MR. CALLAGHAN:** Well ---

15 **THE COMMISSIONER:** --- Mr. Callaghan.

16 **MR. CALLAGHAN:** Okay. I'm confirming it's
17 393. Okay? It's Exhibit 393. My apologies.

18 **THE COMMISSIONER:** Okay. So we still need a
19 new book.

20 **MR. CALLAGHAN:** And -- while I get that
21 pulled up for you, Superintendent ---

22 **THE COMMISSIONER:** Hold it. He can't --
23 he's otherwise occupied right now; 393. Okay. Here we go.

24 **MR. CALLAGHAN:** I'm assuming, sir, that as
25 the head of the CIB Unit in Ottawa, you would have had

1 dealings with the Regional Director of Crown Attorneys,
2 Peter Griffiths?

3 MR. SKINNER: No. I don't recall ever
4 meeting him.

5 MR. CALLAGHAN: But you're the head of --
6 I'm sorry; you're the head of probably the biggest CIB Unit
7 in the east region. Would you not have met with the ---

8 MR. SKINNER: Not necessarily, no. I don't
9 recall ever meeting with him.

10 MR. CALLAGHAN: Do you know who he is?

11 MR. SKINNER: Yeah.

12 MR. CALLAGHAN: You know he was a -- you
13 know him to be respected Crown Attorney?

14 MR. SKINNER: I know what?

15 MR. CALLAGHAN: You knew him to be a
16 respected Crown Attorney?

17 MR. SKINNER: Yes, yes.

18 MR. CALLAGHAN: And you know now that he's -
19 - you think, the Associate Chief Justice of the Ontario
20 Court of Justice?

21 MR. SKINNER: M'hm. Yes.

22 MR. CALLAGHAN: All right.

23 Now, would you ---

24 MR. SKINNER: But, you know, I was the
25 manager of the division; I wasn't involved in any

1 investigative capacity. And had anyone found it necessary
2 to meet with the Regional Director, it would have been
3 probably either the Staff Sergeant of the Squad that was
4 charged with the investigation or possibly his inspector.

5 **MR. CALLAGHAN:** Right.

6 But as the head of the unit, you wouldn't
7 liaise with the Regional Crown Attorney, the Director ---

8 **MR. SKINNER:** If it were necessary, I can
9 see where it would -- it would certainly happen. There
10 would be nothing to exclude that from happening.

11 But during my tenure of about -- I think
12 about 18 months, it just didn't happen.

13 **MR. CALLAGHAN:** Okay. So we have -- this is
14 -- just to situate you, this is the OPP started their
15 investigation in February; mid-November, delivered briefs
16 to the Regional Crown Attorney and there were two briefs;
17 one dealing with the Silmsier investigation and one to see
18 whether there was a cover-up in the Cornwall police.

19 And this is a letter to Inspector Smith from
20 the Regional Crown Attorney, and I'm at page 3 of the
21 letter.

22 **THE COMMISSIONER:** Before we go any further,
23 I should correct -- well, maybe correct a comment.
24 Yesterday, what crept in was that a police officer had to
25 have a subjective opinion of -- before they can lay a

1 charge, and I think it should be an objective standard. I
2 think we used the word "subjective", but ---

3 **MR. CALLAGHAN:** Well, let's just see what
4 the Regional Crown Attorney says.

5 **THE COMMISSIONER:** Okay.

6 **MR. CALLAGHAN:** At the bottom of the first
7 page, we can go back ---

8 **MR. NEVILLE:** With respect, Mr.
9 Commissioner, the test is both subjective and objective.

10 **THE COMMISSIONER:** Okay. But we start off
11 with an objective test and then we fall to the subjective.

12 **MR. NEVILLE:** Well, no, with respect ---

13 **THE COMMISSIONER:** Really?

14 **MR. NEVILLE:** --- it should be subjective
15 and then it is assessed on an objective basis.

16 **THE COMMISSIONER:** Okay.

17 **MR. CALLAGHAN:** Whether -- I mean, we can
18 all sort that out, but let me just see what the Regional
19 Crown Attorney in the East Region, who obviously -- and
20 you'll see that in the first paragraph that he reads a
21 brief, but he also says:

22 "I've now had an opportunity to
23 carefully read that material which
24 incorporated the regional investigation
25 by the Cornwall police, the review of

1 that investigation by Ottawa police and
2 the reinvestigation under your
3 leadership by the Ontario Provincial
4 Police."

5 He goes on to say:

6 "A determination of whether there are
7 reasonable and probable grounds to
8 support criminal charges involves both
9 an objective and subjective review of
10 the evidence by the police. The police
11 must be objectively satisfied that
12 there is sufficient credible evidence
13 and all of the essential elements of
14 the offence investigated."

15 Over the page.

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

17 **MR. CALLAGHAN:** "In addition to that
18 objective standard, the officer
19 swearing the information must be
20 prepared to state under oath his or her
21 personal belief that the evidence is
22 sufficiently strong to give rise to
23 reasonable and probable grounds.
24 Reasonable and probable grounds to lay
25 charges do not exist unless both the

1 subjective and objective elements of
2 the test are satisfied."

3 Do you see that, Inspector -- Superintendent
4 Skinner?

5 **MR. SKINNER:** I do.

6 **MR. CALLAGHAN:** And you agree with that?

7 **MR. SKINNER:** Yes.

8 **MR. CALLAGHAN:** So if we could go over to
9 where I wanted to go, and this is after reading your
10 report, the Cornwall Brief and the OPP Brief, the Regional
11 Director of Crown Attorney says this at the bottom ---

12 **THE COMMISSIONER:** At what page now?

13 **MR. CALLAGHAN:** Page 3. It's on the screen,
14 Mr. Commissioner.

15 **THE COMMISSIONER:** Yeah.

16 **MR. CALLAGHAN:** And we're at the very
17 bottom.

18 **THE COMMISSIONER:** Yeah.

19 **MR. CALLAGHAN:** "It is my advice, based on
20 the material provided in the police
21 investigation brief, that the vagueness
22 of the allegations, the difficulty in
23 placing them within a reliable
24 timeframe and the lack of corroboration
25 all combine to prevent the evidence

1 from reaching the threshold of
2 objective reasonable and probable
3 grounds. In addition, as I understand
4 from your material, you are not
5 personally or subjectively satisfied
6 that you have reasonable and probable
7 grounds to lay criminal charges. Since
8 the subjective belief is an essential
9 element in the swearing of an
10 information; it is my advice that
11 absent that belief, charges cannot be
12 laid by you."

13 Do you see that?

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

15 **MR. CALLAGHAN:** All right.

16 Now, just to go back to Constable Sebalj,
17 who had trouble with RPG, you can see that while she might
18 be less experienced than Inspector Smith, Inspector Smith,
19 who was very experienced, had the same difficulty; correct?

20 **MR. SKINNER:** Yes.

21 **MR. CALLAGHAN:** And the most experienced
22 Regional Crown Attorney agreed with it; correct?

23 **MR. SKINNER:** Yes.

24 **MR. CALLAGHAN:** And couldn't see the
25 objective elements; right?

1 **MR. SKINNER:** Yes.

2 **MR. CALLAGHAN:** All right.

3 And, now, going back to the issue with
4 respect to assisting Crown Attorneys, the Crown Attorneys
5 assisting the police -- and I recognize -- it's fair to say
6 that police seem like so many other areas in other
7 professions; there are different philosophies how you might
8 do something; correct?

9 Like, how one person carries out an
10 investigation and the order they interview witnesses and
11 how they proceed may be different from someone else. It
12 doesn't mean it's right or wrong?

13 **MR. SKINNER:** True.

14 **MR. CALLAGHAN:** And that in policing
15 circles, there is a wide scope of allowing people to
16 conduct the investigations given the particular
17 circumstances, particular styles of the investigator;
18 right?

19 **MR. SKINNER:** Yes, I would agree with that.

20 **MR. CALLAGHAN:** And it's fair to say that in
21 one theory, when you've got a case as you saw from the
22 Crown Attorney's letter where there's no corroboration and
23 you have a witness, a victim, making an accusation against
24 the accused, that one school of policing would say you
25 wouldn't confront the accused until you got absolutely all

1 the evidence you can possibly have because you'll only get
2 one chance to confront the accused likely; correct?

3 MR. SKINNER: That is true, isn't it?

4 MR. CALLAGHAN: And so when you spoke to
5 Heidi -- to Constable Sebalj, she told you that she
6 actually was waiting for an outside Crown. That's what she
7 believed?

8 MR. SKINNER: Yes.

9 MR. CALLAGHAN: Right.

10 And you believed her to be honest and
11 forthright, so you actually accepted that that's what she
12 honestly thought was going to happen; right? Did you
13 accept that?

14 MR. SKINNER: Yes, I believe I did.

15 MR. CALLAGHAN: Right. And you also had
16 confirmatory information that Bob Pelletier had been
17 contacted in the notes?

18 MR. SKINNER: Yes.

19 MR. CALLAGHAN: And you also had the Crown
20 Attorney referring to it?

21 MR. SKINNER: Yes.

22 MR. CALLAGHAN: All right.

23 So here she is having difficulty with RPG
24 and she's seeking guidance from the Crown in accordance to
25 what you said as to where maybe you dig deeper, where to go

1 next.

2 I take it that it's not unreasonable not to
3 have confronted the accused in those circumstances? Maybe
4 someone else would come to a different choice, but it's not
5 unreasonable; correct?

6 **MR. SKINNER:** It would have not been
7 unreasonable for her to confront the accused?

8 **MR. CALLAGHAN:** Right. She's waiting to
9 speak to the Crown to see where to go, maybe dig deeper,
10 maybe get another avenue for investigation, and before she
11 wants to confront the accused, she wants to lay it out to
12 the Crown and have a chat with him; correct? That's not an
13 unreasonable position?

14 **MR. SKINNER:** No, it isn't.

15 **MR. CALLAGHAN:** And as Mr. Manson so
16 eloquently put it, a polygraph is a prop to an examination,
17 is it not?

18 **MR. SKINNER:** Right. Yes.

19 **MR. CALLAGHAN:** So while you might have
20 thought to do it differently, it's not unreasonable for her
21 to wait to find out if there are other rocks to uncover
22 before he takes a polygraph offer; correct? It's not
23 unreasonable? It might have been better to be more timely,
24 but ---

25 **MR. SKINNER:** It's not unreasonable, no.

1 **MR. CALLAGHAN:** And we know that the events
2 overtake things and that there's this settlement that
3 occurs. And I take it in your experience, you've never
4 confronted a situation like this where a victim comes in
5 and says, "I settled and I don't want to proceed." You
6 personally have not seen that?

7 **MR. SKINNER:** I don't recall such a
8 situation, no. I don't.

9 **MR. CALLAGHAN:** And it's fair to say that
10 it's irregular? That's probably modest to say it's
11 irregular, right?

12 **MR. SKINNER:** Yes.

13 **MR. CALLAGHAN:** And you're not trained in
14 civil law, are you?

15 **MR. SKINNER:** No.

16 **MR. CALLAGHAN:** Right. So you wouldn't know
17 an order to dismissal from a settlement agreement from a
18 consent to dismiss, would you?

19 **MR. SKINNER:** No, I wouldn't.

20 **MR. CALLAGHAN:** Those are all great terms
21 that we civil lawyers use.

22 **MR. SKINNER:** All right.

23 **MR. CALLAGHAN:** So in circumstances like
24 that, would you not advise your officers to seek the
25 direction of the Crown Attorney who is a lawyer as to how

1 to handle this irregular situation?

2 MR. SKINNER: In circumstances of a civil
3 settlement? Yes, I would.

4 MR. CALLAGHAN: And that's exactly what
5 Staff Sergeant Brunet did and Constable Sebalj did; they
6 went to the Crown Attorney, correct? Do you recall that?
7 They wrote the letter, Exhibit 300?

8 MR. SKINNER: Yes.

9 MR. CALLAGHAN: All right.

10 And they got the response, Exhibit 301? Do
11 you recall that?

12 MR. SKINNER: Yeah.

13 MR. CALLAGHAN: And having asked the Crown
14 Attorney for their opinion, and the Crown Attorney having
15 advised that we won't proceed in the absence of a willing
16 accused, a willing victim, I should say, I would suggest to
17 you that as a police officer, you would respect that
18 opinion and you'd abide by that opinion; would you not?

19 MR. SKINNER: Unless you had very, very good
20 reasons for not doing so, yes, I would agree with that.

21 MR. CALLAGHAN: Right.

22 And I take it from your perspective, that
23 when the Crown Attorney is talking about a government
24 policy where they're not going to proceed with the trial,
25 that you don't go ahead and charge, do you?

1 **MR. SKINNER:** No.

2 **MR. CALLAGHAN:** No. Right.

3 And now, we had this discussion yesterday
4 and I just want to be clear because I was a little unclear.
5 You'll have to bear with me.

6 We had this discussion yesterday about when
7 you'd notify a principal of an accused. Do you recall that
8 discussion with Mr. Stauffer?

9 **MR. SKINNER:** I do. I was confused about
10 that.

11 **MR. CALLAGHAN:** I think you might have been,
12 because your first answer was this -- well, let me
13 summarize rather than read it. Your first answer was that
14 that's not something that police would ordinarily do, go
15 and contact an accused employer. That's right?

16 **MR. SKINNER:** An accused employer, yes,
17 that's right.

18 **MR. CALLAGHAN:** And I suggest to you, sir,
19 you're not going to do it -- certainly not going to do it
20 if you haven't even established reasonable probable
21 grounds. I mean, you would -- in your time, I mean, in
22 1993, did you ever contact anybody, any employer?

23 **MR. SKINNER:** On the basis of an accusation
24 only? Yes and no.

25 **MR. CALLAGHAN:** How about on the basis of an

1 accusation you've investigated and can't find RPG; did you,
2 in your experience, ever notify an employer?

3 **MR. SKINNER:** No.

4 **MR. CALLAGHAN:** Right. And I'm ---

5 **MR. SKINNER:** Not that I can remember.

6 **MR. CALLAGHAN:** Well, wouldn't you be
7 concerned that you were libelling somebody if you can't
8 even come up with the basis of RPG?

9 **MR. SKINNER:** Yes, I'm quite sure that I
10 never did.

11 **MR. CALLAGHAN:** All right.

12 So you wouldn't subscribe ---

13 **MR. MANSON:** I have an objection, Mr.
14 Commissioner.

15 **THE COMMISSIONER:** Yes.

16 **MR. MANSON:** I think if my friend is going
17 to put this line of questioning into the context of this
18 case and ---

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

20 **MR. MANSON:** --- ask for hypothetical
21 answers from the witness that he has to be a little bit
22 fuller in fleshing out this case because there's some other
23 features to it that bear on this line of questioning.

24 **MR. CALLAGHAN:** With great respect, I think
25 you can assess my questions and the answers at the end of

1 the day, Mr. Commissioner, I am happy to ask a few more
2 questions about this officer's experience.

3 We've had hypothetical questions put,
4 including from my friend, where there may well have been
5 other facts should have been put, but I'm not sure it lies
6 in another party's mouth to say "Oh, I would like my
7 question now put" after they've had their time.

8 **MR. MANSON:** Well, that's -- my argument is
9 simply looking back at the Silmsers investigation.

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

11 **MR. MANSON:** My friend is very concerned
12 that the witness be careful and talk about that
13 investigation. These hypothetical questions he's put to
14 the witness leave one important factor out, and that is the
15 character and perhaps concerns about the character of Mr.
16 Silmsers and as those relate to the RPG question. It's not
17 just no RPG. It's no RPG in the context of Mr. Silmsers and
18 his own character.

19 **MR. CALLAGHAN:** Well, I'd invite my friend
20 to ask him questions when he has an opportunity.

21 I would like to be able to humbly go along
22 in my inept ability to cross-examine.

23 It just -- arguments like that are
24 troubling, in the sense that you, at the end of the day,
25 sir, will assess all this evidence. You at the end of the

1 day will assess whether the point that Mr. Manson makes is
2 particularly germane. You will assess this witness's
3 testimony in that light. I think we should be permitted in
4 our own humble and perhaps bumbling way to conduct our
5 examinations the way we see fit.

6 **THE COMMISSIONER:** Well, I don't know that
7 we need those kinds of comments about your -- anybody's
8 cross-examination. You lead your case the way you feel you
9 should and that's fine.

10 I think it's question of weight and I think
11 ---

12 **MR. CALLAGHAN:** I agree.

13 **THE COMMISSIONER:** And you're right, you run
14 the risk of me saying at the end well, Mr. Skinner's
15 opinion on this hypothetical doesn't carry much weight, a)
16 because he didn't have all the facts, or b) because it's
17 just an opinion, but I think you're free to go after it.

18 **MR. CALLAGHAN:** Well, let me ask you this.
19 You were the head of CID in Ottawa for 18 months; correct?

20 **MR. SKINNER:** Approximately, yes.

21 **MR. CALLAGHAN:** And you know in those 18
22 months never became aware of any of your officers notifying
23 an employer about allegations against them?

24 **THE COMMISSIONER:** Well, I'm sorry; can I
25 stop you for a second? Hold on a minute now. They did

1 notify him. Didn't they not? Didn't the Chief go over and
2 see ---

3 **MR. CALLAGHAN:** Yes, I appreciate that. I'm
4 talking about the rest of it in terms of Seguin, et cetera.
5 I'm trying to sort -- there are two elements to this, Mr.
6 Commissioner.

7 **THE COMMISSIONER:** Yes.

8 **MR. CALLAGHAN:** And, again, I appreciate
9 that, and at the end of the day I can see that you will
10 weigh all this in relation to the facts as we go.

11 **THE COMMISSIONER:** Right.

12 **MR. CALLAGHAN:** I can only get what this
13 person knows. We are knee deep in hypotheticals and I'm
14 trying to get the experience of the Ottawa police.

15 So you might sit back and judge, on Ottawa
16 we heard in circumstances here's an -- and I won't
17 presuppose I know the answer, but here we have a man who
18 ran CID for 18 months in Ottawa, big city, lots of cases,
19 and that's what he told you.

20 And you can assess that at the end of the
21 day and say, "Well, you know what? That's Ottawa. This is
22 Cornwall. This is all the facts Mr. Manson says and this
23 is what happened." I am not in the midst of trying to put
24 the facts to this witness. I'm trying to get what this
25 witness's experience is so we might assess evidence that a)

1 is adduced by him by Commission counsel.

2 **THE COMMISSIONER:** Okay. In the same way
3 then that if this gentleman says no, we would definitely
4 not do that, then it's open to question why the Cornwall
5 police went and seen the Bishop.

6 **MR. CALLAGHAN:** Yeah. Perhaps. We'll see.
7 So all I want -- I'm sorry, Superintendent
8 Skinner, these things happen.

9 **MR. SKINNER:** Yes.

10 **MR. CALLAGHAN:** We have these discussions
11 and they're very helpful for all of us to focus ourselves.

12 But what I was more interested was, you had
13 experience, you were the head of CID in Ottawa for 18
14 months; correct?

15 **MR. SKINNER:** Correct.

16 **MR. CALLAGHAN:** And it's fair to say that a
17 City of Ottawa's size with 100 investigators that you did
18 countless sexual assault investigations during your time?

19 **MR. SKINNER:** A considerable number, yes.

20 **MR. CALLAGHAN:** And I suspect we can agree
21 that in those 18 months there are often times where the
22 alleged accused was a person in a position of authority or
23 trust, right?

24 **MR. SKINNER:** Yes.

25 **MR. CALLAGHAN:** And do you recall at any

1 time -- and I think that we've already got this answer.
2 But you don't recall at any time ever being told that you
3 or any of your officers notified their employer; correct?

4 **MR. SKINNER:** I do not recall such an
5 incident.

6 **MR. CALLAGHAN:** If you could give me one
7 minute, Mr. Commissioner. I've got one area to cover but I
8 just want to make sure I haven't missed anything.

9 **THE COMMISSIONER:** Sure.

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

11 **MR. CALLAGHAN:** All right.

12 Now, I want to take you to one further
13 letter. It's Document 111152.

14 **THE COMMISSIONER:** That's a new document,
15 sir.

16 **MR. SKINNER:** Okay.

17 **MR. CALLAGHAN:** I'm sorry -- do you think
18 so? Well, I'm told it might be Exhibit 1148.

19 **THE COMMISSIONER:** Oh, 1148. Okay. Hang
20 on. Do we need another -- does Superintendent Skinner need
21 another ---

22 **MR. SKINNER:** Yes, I don't have that.
23 Thank you.

24 **THE COMMISSIONER:** Eleven-forty-eight
25 (1148), okay.

1 **MR. SKINNER:** Yes, I have that, sir.

2 **MR. CALLAGHAN:** And just there's one point
3 that -- you never interviewed Sergeant Lefebvre or
4 Constable Malloy; correct?

5 **MR. SKINNER:** Not that I can recall.

6 **MR. CALLAGHAN:** And you're aware that
7 Sergeant Lefebvre and Constable Malloy attended at the
8 interview of ---

9 **MR. SKINNER:** The initial interview with Mr.
10 Silmser, yes.

11 **MR. CALLAGHAN:** And are you aware of what
12 contacts you had with Constable Malloy and Sergeant
13 Lefebvre?

14 **MR. SKINNER:** I can't remember.

15 **MR. CALLAGHAN:** Would it refresh your memory
16 that when she went out to get clarification of his
17 statement that she and Sergeant Lefebvre spent three hours
18 going over the detail of the statement?

19 **MR. SKINNER:** I'm sorry; at what point was
20 this?

21 **MR. CALLAGHAN:** March 10th, 1993.

22 So the interview is in January; the
23 statement is provided in February; they've done some
24 investigation; they now go out on March 10th, 1993 and spend
25 approximately three hours reviewing with the complainant

1 the information they have and particularly his statement.

2 MR. SKINNER: M'hm. If I was aware of that
3 at the time, I don't recall it now.

4 MR. CALLAGHAN: And that's prudent police
5 work, to go back after you've done that?

6 MR. SKINNER: Oh, yes, it is.

7 MR. CALLAGHAN: You'd expect that of someone
8 like Constable Sebalj; correct?

9 MR. SKINNER: Yes.

10 MR. CALLAGHAN: So now, let's go to this.
11 This is a letter from Mr. Griffiths again, and he has now
12 had an opportunity, if I -- as I told you earlier, he
13 investigated not only the -- pardon me, let's start from
14 the beginning.

15 OPP not only investigated the Silmser
16 allegation again but also investigated whether there was
17 any level of collusion between the Cornwall police, the
18 Diocese of Alexandria-Cornwall, not to charge or prosecute
19 Father Charles MacDonald. Do you see that from ---

20 MR. SKINNER: I do.

21 MR. CALLAGHAN: --- the first paragraph?

22 MR. SKINNER: I see that, yes.

23 MR. CALLAGHAN: All right.

24 And as we saw from the earlier letter which
25 is dated the same date, they had in hand not only the Crown

1 briefs, but they also had in hand your investigation,
2 correct?

3 **MR. SKINNER:** Yes.

4 **MR. CALLAGHAN:** Right? Do you remember
5 that?

6 **MR. SKINNER:** M'hm.

7 **MR. CALLAGHAN:** And at page 2, it says:

8 "Upon a review of your brief, it would
9 appear that there is no evidence,..."

10 Do you see that?

11 **MR. SKINNER:** Yes.

12 **MR. CALLAGHAN:** "...direct or indirect, of
13 any agreement between those parties."

14 All right?

15 **MR. SKINNER:** M'hm.

16 **MR. CALLAGHAN:** And you came to the same
17 conclusion, correct, between there's no agreement to cover
18 up?

19 **MR. SKINNER:** Correct.

20 **MR. CALLAGHAN:** All right.

21 It goes on:

22 "The investigation by the Cornwall
23 Police Service of the original
24 allegation made by David Silmser in
25 December of 1992 was not a sham."

1 Do you see that?

2 **MR. SKINNER:** I do.

3 **MR. CALLAGHAN:** And you would agree with
4 that?

5 **MR. SKINNER:** Yes, I would.

6 **MR. CALLAGHAN:** "The investigation was
7 extensive, involved dozens of witnesses
8 and lasted over a period of months."

9 Do you agree with that? You referred to 24
10 witnesses?

11 **MR. SKINNER:** Yes.

12 **MR. CALLAGHAN:** All right.

13 "During the course of that
14 investigation, the Crown Attorney was
15 informally consulted on numerous
16 occasions."

17 Do you agree with that?

18 I mean seven to ten is more than ---

19 **MR. SKINNER:** Yes, I -- I can't disagree
20 with that, yeah.

21 **MS. CONNOLLEY:** Can I just -- I'm sorry, Mr.
22 Commissioner, if I could just clarify something?

23 When my friend is asking Superintendent
24 Skinner if he agrees with that, is this agreeing with the
25 fact that the letter says that or the actual content?

1 **MR. CALLAGHAN:** I'm assuming it's the
2 content.

3 Do you want ---

4 **MS. CONNOLLEY:** I just want to clarify.

5 **MR. CALLAGHAN:** You have no problem with the
6 content of what I have just asked you? You agree with all
7 those sentences, do you not, sir?

8 **MR. SKINNER:** I have some reservations about
9 the number of meetings with the -- with the Crown Attorney,
10 but based ---

11 **MR. CALLAGHAN:** Why do you have that?

12 **MR. SKINNER:** Pardon?

13 **MR. CALLAGHAN:** Why would you have that
14 reservation?

15 **MR. SKINNER:** Well, my -- my memory, while
16 vague, I -- I didn't -- it isn't my impression that there
17 were that many -- that many meetings with the Crown
18 Attorney.

19 I may be wrong in that, but it's just ---

20 **MR. CALLAGHAN:** Well, you've testified there
21 was one?

22 **MR. SKINNER:** Yes.

23 **MR. CALLAGHAN:** Your notes indicate several?

24 **MR. SKINNER:** M'hm.

25 **MR. CALLAGHAN:** And the Crown Attorney has

1 told the OPP seven to ten.

2 MR. SKINNER: Well, that was the Crown
3 Attorney.

4 MR. CALLAGHAN: Well, you don't -- you have
5 no reason to disbelieve ---

6 MR. SKINNER: No, no, no. I just don't have
7 a recollection of that number of meetings with the Crown
8 Attorney.

9 I'm not saying that they didn't happen,
10 simply that I'm not in a position to confirm that they did.

11 MR. CALLAGHAN: But that was part of the
12 supervision, right? You said that you talked about going
13 to consult a Crown to get more evidence. That was what you
14 did as a young investigator?

15 MR. SKINNER: M'hm, sure, yes.

16 MR. CALLAGHAN: Well, wasn't it germane to
17 what you were doing when you were criticizing of not
18 getting a level of supervision to find out that there were
19 seven to ten meetings with the Crown Attorney?

20 MR. SKINNER: Yes.

21 MR. CALLAGHAN: All right.

22 "From the earliest consultation, it was
23 clear that both the Crown and the
24 police were concerned about the
25 sufficiency of evidence."

1 Fair enough?

2 MR. SKINNER: Yes.

3 MR. CALLAGHAN: Do you agree with that?

4 MR. SKINNER: Yes.

5 MR. CALLAGHAN: "There was no evidence that
6 the representative of the Archdiocese
7 contacted the Crown Attorney and the
8 officers in charge of that
9 investigation to improperly influence
10 either of those individuals to stop a
11 valid investigation."

12 Do you agree with that?

13 MR. SKINNER: I agree with that, yes.

14 MR. CALLAGHAN: So ---

15 THE COMMISSIONER: Well, just a minute, just
16 a minute, just a minute.

17 Oh, that the Archbishop Diocese contacted
18 the Crown Attorney or the officers in charge of that
19 investigation but, again, there is evidence, I believe,
20 that the chief of police went and seen ---

21 MR. CALLAGHAN: That was after. There's no
22 question you're going to hear that evidence ---

23 THE COMMISSIONER: Yes.

24 MR. CALLAGHAN: --- that they did, but this
25 is in respect of the investigation up to the date of the

1 settlement, I think is what he's referring to.

2 But again, Mr. Commissioner ---

3 **THE COMMISSIONER:** Okay.

4 **MR. CALLAGHAN:** --- you'll hear all the
5 evidence as we go.

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

7 **MR. CALLAGHAN:** All right.

8 **THE COMMISSIONER:** No, it's just I don't
9 want everything rolled up and at the end you come in and
10 say, "Well, this is what the witness said," and I just want
11 to make it clear.

12 **MR. CALLAGHAN:** I suspect you're going to
13 get that regardless, Mr. Commissioner, and I know you're
14 going to weed through it with -- with great alacrity.

15 **THE COMMISSIONER:** No, no, I'm sure you're
16 accurate in a lot of things that you say, Mr. Callaghan.

17 **MR. CALLAGHAN:** Not all things, but ---

18 **THE COMMISSIONER:** No, I didn't say that.

19 **MR. CALLAGHAN:** All right.

20 Well, Inspector Skinner, here we are ---

21 **MR. SKINNER:** Superintendent.

22 **MR. CALLAGHAN:** Superintendent. My

23 apologies ---

24 (LAUGHTER/RIRES)

25 **MR. SKINNER:** Basically -- basically

1 nothing; I'm retired.

2 MR. CALLAGHAN: Eventually I'll be calling
3 you "Constable", but ---

4 (LAUGHTER/RIRES)

5 MR. SKINNER: Go ahead, as long as I get a
6 superintendent's pension, I don't care what you call me.

7 (LAUGHTER/RIRES)

8 MR. CALLAGHAN: So I mean at the end of the
9 day, here we have Constable Sebalj. You've said some nice
10 things about her. You wanted her to work for you, correct?

11 MR. SKINNER: M'hm. Yeah.

12 Well, I wouldn't say I wanted her to work
13 for me. I would have.

14 MR. CALLAGHAN: Well, you -- well, you're
15 not going to -- we just went through the qualities of
16 people that you would ---

17 MR. SKINNER: Yeah.

18 MR. CALLAGHAN: --- like to have and she
19 seemed to have those qualities, ---

20 MR. SKINNER: Yes.

21 MR. CALLAGHAN: --- right?

22 MR. SKINNER: Exactly.

23 But I mean I don't want to make it sound
24 like I actively tried to recruit her from the Cornwall
25 Police Service.

1 **MR. CALLAGHAN:** I doubt any grudges will be
2 held against a retired superintendent from 15 years ago.

3 But so she had that.

4 You had frequent meetings with her direct
5 supervisor, Luc Brunet, correct?

6 **MR. SKINNER:** Yes.

7 **MR. CALLAGHAN:** And you thought he was
8 competent and professional, right?

9 **MR. SKINNER:** I did.

10 **MR. CALLAGHAN:** You had some good digging in
11 the investigation on C-3, for example?

12 **MR. SKINNER:** Yes.

13 **MR. CALLAGHAN:** Right?

14 **MR. SKINNER:** Yes.

15 I still think he should have been
16 interviewed personally, but ---

17 **MR. CALLAGHAN:** No, but you're talking about
18 the wrong person.

19 **MR. SKINNER:** Oh, am I? I'm sorry. I
20 apologize.

21 **MR. CALLAGHAN:** You're talking about the
22 unnamed person?

23 **MR. SKINNER:** Yes, okay.

24 **MR. CALLAGHAN:** Okay. So you thought he
25 should have been and -- and you're still not clear, but I

1 understand that you thought he should have been
2 interviewed, and if you do become clear, I'd like to talk
3 to you about it, but just to go over your thought process,
4 but okay, but that was the one you identified and I think
5 you're now satisfied that she did get a positive response
6 from him that he had not been a victim and he knew of
7 nobody, correct? She got that positive ---

8 **MR. SKINNER:** This is C-3 we're talking
9 about again?

10 **MR. CALLAGHAN:** No, the other person.
11 She -- you saw her notes and you'll agree
12 even though you thought she should have seen him in person
13 as a matter of process ---

14 **MR. SKINNER:** M'hm.

15 **MR. CALLAGHAN:** --- she did have in her
16 notes that he wasn't assaulted and he knew of no one who
17 was assaulted, right?

18 **MR. SKINNER:** That he said he -- he said
19 those things, yes.

20 **MR. CALLAGHAN:** Right.

21 **MR. SKINNER:** But he also said -- the point
22 of concern for me was that at some point he said, "This is
23 pretty -- this is scary stuff and it's pretty close to
24 home."

25 **MR. CALLAGHAN:** Well, let's talk about that.

1 **MR. SKINNER:** That would have made me, as an
2 investigator, curious enough to want to speak to this
3 person face-to-face.

4 **MR. CALLAGHAN:** Well, let me ask you this.
5 Wouldn't the first thing you'd want to do is ask Constable
6 Sebalj as to what she -- what she meant by that note? That
7 would be the first thing you'd do? You wouldn't ---

8 **MR. SKINNER:** Sure.

9 **MR. CALLAGHAN:** And isn't it fair, if you
10 might have asked her -- hypothetically, isn't it fair to
11 say assaults by -- alleged assaults by a parish priest is
12 scary stuff. That's a fair comment. Someone might say
13 that it's scary stuff, if I know the priest, right?

14 **MR. SKINNER:** True, true.

15 **MR. CALLAGHAN:** I mean, it might well have
16 been close to home. It's my parish priest, right?

17 **MR. SKINNER:** Maybe, maybe, but ---

18 **MR. CALLAGHAN:** But that's one
19 interpretation.

20 **MR. SKINNER:** I would want to clarify that.

21 **MR. CALLAGHAN:** Well, but you didn't ask
22 Constable Sebalj, correct?

23 **MR. SKINNER:** I don't remember whether I did
24 or not.

25 **MR. CALLAGHAN:** Right. But to give her the

1 benefit ---

2 **MR. SKINNER:** In my conversations with
3 Constable Sebalj ---

4 **THE COMMISSIONER:** One at a time.

5 **MR. SKINNER:** I'm sorry.

6 In my conversations with Constable Sebalj,
7 enough concern was raised that I felt at the time and
8 indicated in my report that she should have made the trip
9 to Ottawa and met with this witness face-to-face.

10 **MR. CALLAGHAN:** Well, but you wouldn't,
11 after all those nice things you said about her, give her
12 the benefit of the doubt that she assessed it?

13 **MR. SKINNER:** It's only my opinion. It was
14 then and it is now and it detracts in no way from my
15 opinion of Constable Sebalj as an efficient police officer.

16 **MR. CALLAGHAN:** But you now know, having
17 seen the OPP's report, that there was nothing there, right?
18 You saw the OPP's interview of him?

19 **MR. SKINNER:** That -- yes, yes.

20 **MR. CALLAGHAN:** All right.

21 And you know that -- that her difficulty to
22 obtain RPG was not dissimilar to Inspector Smith, who did a
23 nine-month investigation as well, and concurred in by a
24 senior Crown Attorney, correct? So there's no doubt that,
25 you know, just having RPG problems was legitimate, right?

1 **MR. SKINNER:** It would appear to have
2 happened in both cases, but I'm in no position to compare
3 the two investigations.

4 **MR. CALLAGHAN:** And then you've talked about
5 the different philosophies, that one philosophy might be
6 that you would wait to do the polygraph after you've turned
7 every stone and she was waiting, in her mind, for an
8 outside Crown, right?

9 **MR. SKINNER:** yes.

10 **MR. CALLAGHAN:** All right.

11 So it's not that bad an investigation, is
12 it?

13 **MR. SKINNER:** It got off to much too slow a
14 start, but apart from that, all the right avenues of
15 exploration were covered. Well, most of them were covered.

16 **MR. CALLAGHAN:** Right.

17 And, I mean, you can't -- other than that
18 one incident, you can't point to any other, at this point?
19 And it's 15 years ago, I appreciate.

20 **MR. SKINNER:** I'm sorry, what?

21 **MR. CALLAGHAN:** Other than the one
22 individual we talked about going visiting ---

23 **MR. SKINNER:** M'hm.

24 **MR. CALLAGHAN:** --- you can't point to any
25 others? You can't assist us with any other avenues she

1 should have done?

2 MR. SKINNER: Of something that should have
3 been done ---

4 MR. CALLAGHAN: Yeah.

5 MR. SKINNER: --- and wasn't? No, I can't.

6 MR. CALLAGHAN: Those are my questions.

7 Thank you.

8 THE COMMISSIONER: Thank you.

9 Where are we now?

10 Ms. Lahaie?

11 MS. LAHAIE: Good afternoon, Superintendent
12 Skinner. My name is Diane Lahaie and I represent the
13 Ontario Provincial Police at this Inquiry. I'm one of the
14 lawyers representing the OPP.

15 MR. SKINNER: Good afternoon.

16 MS. LAHAIE: Good afternoon.

17 I have the pleasure of dealing with
18 witnesses right after Mr. Callaghan.

19 I want to wish you a very happy Valentine's
20 Day.

21 I have no questions for you, sir.

22 MR. SKINNER: Thank you very much. That's
23 very kind.

24 THE COMMISSIONER: Mr. Wallace.

25 MR. WALLACE: Good afternoon, sir. My name

1 is Mark Wallace. I'm counsel for the Ontario Provincial
2 Police Association and I have no questions for you.

3 **MR. SKINNER:** Thank you. Good afternoon,
4 Mr. Wallace.

5 **THE COMMISSIONER:** Ms. Connolley, do you
6 wish to ask any questions?

7 **MS. CONNOLLEY:** No, Mr. Commissioner.

8 **THE COMMISSIONER:** Thank you.
9 All right.

10 **MR. STAUFFER:** Thank you, Mr. Commissioner,
11 I'll try to be brief here.

12 --- RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MR. STAUFFER:

13 **MR. STAUFFER:** But, Mr. Skinner, I'd like to
14 clarify a few matters that were raised dealing with the
15 last area that Mr. Callaghan was involved with in terms of
16 the OPP.

17 I gather, sir, that no one from the OPP
18 contacted you subsequent to your 1994 report?

19 **MR. SKINNER:** No, they did not.

20 **MR. STAUFFER:** So to some extent, you're
21 being asked to comment upon their investigations because,
22 as you may or may not understand, there were at least two
23 OPP investigations, if you will, following your report, but
24 you were not involved in those in any sense?

25 **MR. SKINNER:** No, I was not.

1 **MR. STAUFFER:** All right.

2 The -- again, your mandate was to look at
3 the Silmsler investigation, if you will?

4 **MR. SKINNER:** Yes.

5 **MR. STAUFFER:** You're aware though from
6 media reports or from other information that there were
7 charges eventually laid by the OPP after a much more
8 extensive investigation in the Cornwall area with respect
9 to certain individuals?

10 **MR. SKINNER:** I am aware of that, yes.

11 **MR. STAUFFER:** All right.

12 The -- I want to turn just for a moment,
13 sir, to this unnamed individual, and eventually we'll go in
14 camera and identify this person, provide him with a
15 moniker, but the individual who lived in Ottawa and who is
16 referenced in your report, the fellow that Mr. Callaghan
17 and others have been talking about, the one who was not
18 visited by Constable Sebalj.

19 **MR. SKINNER:** M'hm.

20 **MR. STAUFFER:** Can you help the Commissioner
21 out one last time as to why it was your view he should have
22 been met face to face?

23 **MR. SKINNER:** Just because of that comment
24 on the telephone, Mr. Commissioner, that "This is scary
25 stuff and it's close to home." I feel that the

1 investigator should have been curious enough about that
2 comment to warrant a face-to-face interview to find -- to
3 get further development of that comment.

4 **MR. STAUFFER:** Yes.

5 And again, with no disrespect to Detective
6 Constable Fagan whose brief summary of the interview you've
7 been referred to, this is the fellow who met with Mr. X
8 after your review of the Silmsler case?

9 **MR. SKINNER:** Yes.

10 **MR. STAUFFER:** With no disrespect to that
11 detective constable, I gather that we have no idea -- you
12 have no idea, more accurately, as to what exactly
13 transpired there? We may hear evidence of that later on,
14 but you don't know what questions were put to that
15 individual, what kind of rapport was developed between that
16 detective constable and ---

17 **MR. SKINNER:** By the OPP investigator?

18 **MR. STAUFFER:** Yes.

19 **MR. SKINNER:** No, I do not.

20 **MR. STAUFFER:** And so I don't know if we
21 really are talking apples and oranges, but we were talking
22 about a different person, obviously, a different
23 investigator and a different time.

24 **MR. SKINNER:** Yes.

25 **MR. STAUFFER:** And we just don't have the

1 circumstances.

2 **MR. SKINNER:** M'hm.

3 **MR. STAUFFER:** Sir, in terms of ---

4 **THE COMMISSIONER:** Excuse me, I just want to
5 ---

6 **MR. STAUFFER:** Yes, sir.

7 **THE COMMISSIONER:** I also note in the report
8 that you indicated that:

9 "During a telephone conversation, that
10 witness indicated he wanted to meet me
11 personally as well."

12 **MR. SKINNER:** That's correct.

13 **THE COMMISSIONER:** It's in your report. I
14 take it it did -- that was the fact that he talked about it
15 being scary stuff, that contributed to you forming the
16 opinion that Constable Sebalj should ---

17 **MR. SKINNER:** Should have met with him in
18 person, yes.

19 **THE COMMISSIONER:** Okay.

20 **MR. STAUFFER:** Yes. Again, without going
21 over this any more than we have to, Superintendent, but
22 some of my friends have talked about Constable Sebalj
23 obviously, and in reference to your word, manipulate or
24 manipulation; can you give us, having heard the questions
25 of my friends, why you felt she was manipulated? What is

1 it that led you to that conclusion?

2 **MR. SKINNER:** Well, he -- to the best of my
3 recollection, he cancelled some appointments, postponed
4 appointments and, if I remember correctly, failed to show
5 up for one.

6 **MR. STAUFFER:** M'hm.

7 **MR. SKINNER:** It's, I think, a lack of
8 cooperation to the point of manipulation, but that's only
9 my opinion.

10 **MR. STAUFFER:** No, I appreciate that.

11 But you give your opinion in your report
12 that a more experienced officer -- and again, without being
13 sexist, but because this gentleman was uncomfortable
14 apparently with a female officer, that those factors
15 entered into the picture?

16 **MR. SKINNER:** I think so, yes.

17 **MR. STAUFFER:** And that perhaps there could
18 have been a different outcome had a more experienced male
19 officer been the investigator?

20 **MR. SKINNER:** We'll never know that, but
21 it's possible.

22 **MR. STAUFFER:** Sir, in terms of the -- I
23 want to be clear on this. You found, with respect to the
24 record keeping system, as of the date of your report, as of
25 early January -- or as of January 1994, you found that it

1 was the practice in CIB at that point in Cornwall for the
2 supplementary reports only to be entered at the time the
3 investigation was essentially complete and charges were
4 about to be laid.

5 Is that your understanding? And I'm talking
6 about not just the Silmsler case, but that was your
7 impression or information? Please tell me if I'm right or
8 wrong on that.

9 **MR. SKINNER:** I don't believe -- now, I may
10 be -- my recollection of it may be faulty, but I know that
11 I asked for copies of reports relevant to -- relating to
12 the investigation and there were none, and that was the
13 concern.

14 As has been pointed out, I didn't have a
15 clear understanding of the OMPPAC system, and I'm not sure
16 that that system encourages that lack of written material
17 outlining the progress of an investigation. But for
18 whatever reason, there was none, and I just felt that that
19 was a problem with the investigation.

20 **MR. STAUFFER:** All right.

21 But again, to be clear here, did you form
22 the impression that this was only on the Silmsler case with
23 respect to the entry of supplementary reports, or did it go
24 beyond that particular investigation?

25 **MR. SKINNER:** I don't think I can answer

1 that. I don't remember.

2 **MR. STAUFFER:** All right.

3 The ---

4 **MR. SKINNER:** For the simple -- I'm sorry --
5 for the simple reason that I don't believe I looked at the
6 existence of reports in any other investigation.

7 **MR. STAUFFER:** M'hm.

8 **MR. SKINNER:** If I did, I don't remember
9 doing that.

10 **MR. STAUFFER:** Well, you had -- again, to
11 refresh your memory, you had a so-called assignment list.
12 I think we've looked at that before, and if you need to, I
13 can refer it to you.

14 **MR. SKINNER:** No, I recall. I recall that.

15 **MR. STAUFFER:** But we looked at -- you
16 looked at an assignment list that Constable Sebalj had
17 provided to you at some point, or perhaps Staff Sergeant
18 Brunet, but someone had provided you with an assignment
19 list?

20 **MR. SKINNER:** Yes.

21 **MR. STAUFFER:** That would have shown -- and
22 this is the redacted document, the one with all the black
23 marks on it. This showed her list of cases and where they
24 were at, if I can put it that way?

25 **MR. SKINNER:** Yes.

1 **MR. STAUFFER:** Was it your impression, if
2 you can remember that essentially the staff sergeant would
3 have reviewed those cases and made those annotations on the
4 assignment list, and that was the method of review of the
5 cases?

6 **MR. SKINNER:** Yes. Yes, that's correct.

7 **MR. STAUFFER:** All right.

8 And again, Mr. Commissioner, for
9 completeness sake, that's Exhibit 1219.

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

11 **MR. STAUFFER:** Now, Mr. Skinner, I want to
12 again, if we possibly can, get this clear. My friend Mr.
13 Callaghan did a Herculean effort there trying to go through
14 a number of documents earlier on this morning which
15 apparently reflect handwritten notes of different witnesses
16 or potential witnesses in the Silmsier matter.

17 The covering letter from Constable Sebalj,
18 which again you saw earlier in your testimony, essentially
19 had three documents being covered. And if I could just, to
20 be totally fair here, see that document for a moment and
21 the Superintendent see it?

22 **THE COMMISSIONER:** Which exhibit?

23 **MR. STAUFFER:** This is Exhibit 1216.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **MR. STAUFFER:** Again, Superintendent, it is

1 on the screen.

2 MR. SKINNER: Yes.

3 MR. STAUFFER: But if you have it in
4 hardcopy, that's fine.

5 MR. SKINNER: Yeah.

6 MR. STAUFFER: So again, I appreciate this
7 is Constable Sebalj's letter, not yours, but it says
8 essentially, number one:

9 "Photocopy of notes re: David Silmser's
10 sexual assault investigation."

11 And that's essentially what I want to centre
12 on.

13 Is it your recollection that these were her
14 notes, and by that I mean Exhibit 295? And so we'll need
15 you to cross-reference to that document.

16 MR. SKINNER: Yes, I have it.

17 MR. STAUFFER: Yes. So again, just take
18 your time. I appreciate the hour is late, but just help
19 the Commissioner out as much as you can. Is that what is
20 referred to by that number 1 paragraph in Exhibit 1216 or
21 does it include other notes, one of which you were referred
22 to earlier by Mr. Callaghan, handwritten notes again which
23 are essentially synopses or summaries of potential witness
24 statements?

25 MR. SKINNER: I would -- and again, my

1 memory is hazy on this, but I would assume that these are
2 the notes that she refers to in point number 1 of the memo.

3 **MR. STAUFFER:** All right.

4 Because, again, the other ones, I think,
5 speak for themselves in terms of the number 2 and number 3
6 on Exhibit 1216?

7 **MR. SKINNER:** Yes.

8 **MR. STAUFFER:** Sir, I want to turn very
9 briefly to the polygraph. Again, my learned friends have
10 referred you to this a number of times. I just want to be
11 clear.

12 It's your understanding that there are two
13 people potentially to be put through the polygraph. One is
14 Father Charles MacDonald, that being offered through his
15 counsel Malcolm MacDonald. There is also Mr. Silmser
16 being, I guess, offered perhaps through himself, but there
17 are two people referenced in all the notes.

18 When there is the annotation that Constable
19 Malloy had felt the case was too weak for a polygraph to be
20 of assistance; that is in reference to Mr. Silmser, I
21 gather, the complainant?

22 And if you need to look at Constable
23 Sebalj's notes, I can take you there, but do you have a
24 recollection that that is the reference that Mr. Malloy --
25 Constable Malloy is making? It's in reference to the

1 complainant and his potential polygraph test versus Father
2 MacDonald.

3 MR. SKINNER: My impression now, all these
4 years later, is that that was a discussion about the
5 advisability of polygraphing Mr. Silmser.

6 MR. STAUFFER: Yes.

7 MR. SKINNER: And I believe that it was
8 pointed out by the polygraph examiner that it wasn't
9 acceptable to conduct a polygraph examination of a victim.

10 MR. STAUFFER: Right.

11 And then we had that discussion, yes, about
12 a policy, if you will, not to do that.

13 MR. SKINNER: Yes.

14 MR. STAUFFER: And then the Commissioner
15 went into whether there was a policy with respect to a
16 potential suspect.

17 MR. SKINNER: Yes.

18 MR. STAUFFER: And there was no such policy.
19 That is, if a suspect actually volunteered to take a
20 polygraph, if I could put it in my own words, the police
21 would jump at that opportunity to ---

22 MR. SKINNER: In most cases, yes.

23 MR. STAUFFER: --- do it?

24 MR. SKINNER: M'hm.

25 MR. STAUFFER: And again, to put this in

1 perspective and I think it's clear to everyone at this
2 point, the evidence essentially is difficult here in that
3 it's a historical case. There's no corroboration in that
4 there is no witness to the allegations of Mr. Silmsers in
5 relation to either of the alleged suspects.

6 There are potentially other witnesses out
7 there who may have gone through similar circumstances, but
8 there's no corroboration of the actual complaints that Mr.
9 Silmsers had vis-à-vis himself, no witnesses to the act?

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

11 **MR. STAUFFER:** And so in that situation, the
12 only thing an officer could rely upon, short of the suspect
13 just coming forward and confessing, is to at least go
14 through the polygraph process and hope that something will
15 come out of that?

16 **MR. SKINNER:** It's a step that once offered
17 should have been followed, yes.

18 **MR. STAUFFER:** Yes.

19 **MR. SKINNER:** In my opinion.

20 **MR. STAUFFER:** All right.

21 Because as I understand it -- and again,
22 this is no criticism of anyone in the Cornwall police, but
23 to put things in perspective, when Constable Malloy came to
24 that opinion apparently through the notes that we have from
25 Constable Sebalj that Mr. Silmsers wouldn't be a proper

1 candidate for a polygraph, this is early on in the case.
2 This is before -- this is in February of 1993, before
3 Constable Sebalj has acquired other information, done some
4 of her digging, as Mr. Callaghan calls it, quite
5 appropriately.

6 MR. SKINNER: As I recall, yes.

7 MR. STAUFFER: All right.

8 One last area, Superintendent; you've been
9 referred to two letters from then Regional Crown Attorney
10 Peter Griffiths relating to his opinions to the Ontario
11 Provincial Police essentially, and I'd like to just turn to
12 one of those letters if my colleague can find one.

13 This would be Exhibit 1148, Mr.
14 Commissioner. This is the letter of December 21st, 1994.
15 Mr. Griffiths, in closing, says -- and this would be at the
16 bottom of page 2, he says:

17 "This expression of my opinion to you
18 is not binding upon you in that you are
19 free to lay charges or refrain from
20 laying charges without regard to my
21 legal opinion."

22 And again, without taking you to the other
23 letter, I think it's fair to say it's exactly the same
24 wording or almost the same wording.

25 The question I have for you, Superintendent,

1 is this. Am I right from that and from your experience as
2 a seasoned police officer that it is ultimately the police
3 who do decide to lay a charge?

4 MR. SKINNER: Yes, yes.

5 MR. STAUFFER: You get advice from the Crown
6 as a lawyer advising a client, if you will, but ultimately
7 there's going to be -- that decision will have to be made
8 by the police service -- the relevant police service?

9 MR. SKINNER: Yeah.

10 MR. STAUFFER: The relevant police service.

11 MR. SKINNER: Sorry.

12 MR. STAUFFER: Yes, sir.

13 MR. SKINNER: In practical terms, it would
14 probably never be done because if the Crown didn't feel
15 there was RPG or it was a good case, the charge would never
16 go anywhere.

17 MR. STAUFFER: No, I appreciate that. And
18 obviously you're going to take a Crown Attorney's opinion
19 seriously, especially the senior Crown, but it's ultimately
20 up to the police to make that decision ---

21 MR. SKINNER: Yes.

22 MR. STAUFFER: --- as to whether to lay a
23 charge?

24 Just bear with me, Mr. Commissioner, I'm
25 almost done here.

1 One small point, but it's my information,
2 and please correct me if I'm wrong, Superintendent, that
3 Staff Sergeant William Blake was actually in charge of what
4 is called SACA, Spousal and Child Abuse, back in 1989 and
5 1990. He served as the head of SACA in the Ottawa Police
6 Service for approximately a year. Is that your
7 recollection?

8 **MR. SKINNER:** Yes, it is.

9 **MR. STAUFFER:** Again, you've been asked this
10 question, I think, by my friend Mr. Callaghan as to whether
11 he had any experience in sexual assault. Although perhaps
12 not a seasoned sexual assault investigator, he was in
13 charge of the unit?

14 **MR. SKINNER:** Of the unit, yes.

15 **MR. STAUFFER:** Okay. Finally, sir, the --
16 there was something made by my friend Mr. Neville of Mr.
17 Silmser's character, if I can put it that way, in terms of
18 the fact that he had a criminal record.

19 Could you give us your thoughts in terms of
20 how a police officer should deal, in an investigation, with
21 a complainant? If the complainant has a criminal record,
22 should that person be taken seriously or should that person
23 be treated in some different fashion than someone who has
24 no criminal record who's laying a complaint?

25 **MR. SKINNER:** No, they should not be treated

1 any differently than anyone else until reasons are found
2 for doing so.

3 **MR. STAUFFER:** Yes.

4 Thank you, sir. Those are my questions.

5 Thank you, Mr. Commissioner.

6 **THE COMMISSIONER:** Superintendent Skinner, I
7 want to thank you on behalf of all of us here for your two
8 or three days of testimony. I know that you went back a
9 long way, but your assistance here is greatly appreciated.
10 Thank you.

11 **MR. SKINNER:** Well, I was happy to do it,
12 sir.

13 **THE COMMISSIONER:** So we'll take the lunch
14 break.

15 **MR. STAUFFER:** Yes, sir.

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

18 This hearing will resume at 2:00 p.m.

19 --- Upon recessing at 12:29 p.m./

20 L'audience est suspendue à 12h29

21 --- Upon resuming at 2:01 p.m./

22 L'audience est reprise à 14h01

23 **THE REGISTRAR:** This hearing is now resumed.
24 Please be seated. Veuillez vous asseoir.

25 **THE COMMISSIONER:** Thank you.

1 Valentine's wishes there, Mr. Engelmann?

2 **MR. ENGELMANN:** I'm just handing out gifts.

3 Good afternoon, Mr. Commissioner.

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

5 **MR. ENGELMANN:** We'll just be one minute,
6 sir.

7 **THE COMMISSIONER:** Sure.

8 --- **REMARKS BY/REMARQUES PAR MR. ENGELMANN:**

9 **MR. ENGELMANN:** Sir, this afternoon, the
10 Commission counsel had intended to deal with three issues
11 before you.

12 The first issue -- and all of the parties
13 were advised of this by letter last week -- the first issue
14 we were going to deal with today was the reattendance of
15 Mr. Sean Adams ---

16 **THE COMMISSIONER:** Yes.

17 **MR. ENGELMANN:** --- to give further evidence
18 here before the Inquiry.

19 Some lawyers, including his own, had
20 reserved the right to ask him further questions in
21 cross-examination as a result of some of the evidence that
22 was put to him in his examination in-chief.

23 They were advised -- we were advised they
24 were available today. I had informed them yesterday that I
25 didn't anticipate we would get to them until late morning

1 because of the witness carrying over, and I advised Mr.
2 Cameron of that at the morning break.

3 I later received word from our staff that he
4 had called and I called him back at around noon and was
5 advised that they were no longer available this afternoon
6 to attend.

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

8 **MR. ENGELMANN:** So I gave him some
9 alternative dates, including the afternoon of the 25th and
10 the morning of the 26th, and asked them to advise us
11 forthwith if he was going to reattend or not and if he was,
12 if he could come on one of those days.

13 **THE COMMISSIONER:** Okay.

14 **MR. ENGELMANN:** So hopefully we can clear up
15 that matter. I had hoped to deal with that issue first
16 thing this morning, but because of the delay in completing
17 the evidence of Mr. Skinner, we -- we didn't get there.

18 Sir, the other two issues for this
19 afternoon, the second issue was the issue of the Factual
20 Overview; that is Exhibit I-1179.

21 **THE COMMISSIONER:** Yes.

22 **MR. ENGELMANN:** You'll recall there was an
23 objection made by counsel for the diocese and then there
24 was a further objection made by counsel for Mr. Seguin --
25 the Estate of Mr. Seguin or his family, and those matters

1 were argued and was left with you.

2 Since that time, there have been a number of
3 discussions between counsel. It was the subject matter of
4 correspondence and dialogue. It was the topic of the -- at
5 an all-counsel meeting last week and I had asked counsel,
6 by way of letter last Friday, to come prepared to give you
7 brief submissions on those issues and whether or not it was
8 possible to narrow the disagreement over the objections to
9 I-1179.

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

11 **MR. ENGELMANN:** And we had indicated to
12 counsel that if these disagreements could not be overcome,
13 that at least we wanted to narrow the issues and ask you if
14 it was possible to render a decision before Monday,
15 February 25th. That is the day when we have scheduled Ms.
16 Larivière to come back and testify and wanted to have this
17 issue resolved prior to that date.

18 So I'm going to turn -- the third issue
19 which we'll come to later this afternoon, deals with the
20 impact of the Court of Appeal decision and I'll introduce
21 that after we've spoken to the issues dealing with the
22 Factual Overview.

23 And on the Factual Overview issue, I'd like
24 to turn the floor over to Mr. Rose, from the -- for the
25 Ministry of Corrections, to speak to this matter first and

1 then if it's necessary for other counsel to -- to respond.

2 **THE COMMISSIONER:** Okay.

3 **MR. ENGELMANN:** Thank you,

4 **THE COMMISSIONER:** Thank you.

5 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ROSE:

6 **MR. ROSE:** Good afternoon, Mr. Commissioner.

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

8 **MR. ROSE:** As you're aware, I think,
9 Exhibit I-1179 is a document prepared by Sue Larivière,
10 Carole Cardinal and Claude Legault of the Ministry, two of
11 which have testified and, as you're aware, Ms. Larivière is
12 to finish her testimony on the 25th.

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

14 **MR. ROSE:** And as I think you're also aware,
15 that exhibit was developed by us really in conjunction with
16 your staff and counsel, with a view to bringing together in
17 one document all of the inventory effectively, and not only
18 the policies and procedures by which we govern our
19 institutional response on this specific issue, but also to
20 provide you with some very specific instances of who these
21 people -- or how these people were dealt with, not in a
22 vacuum. In other words, the types of the dates that these
23 people came forward, what they said, how they were dealt
24 with and who they were referred to.

25 You've heard some evidence from Monsieur

1 Legault this week about that in a more general sense but,
2 again, our concern with Document 1179 is that at the end of
3 the evidence when, Mr. Commissioner, you go off to write
4 your report, you have something over and above simply the
5 protocols that you've heard about.

6 In other words, it's important for the
7 Ministry to have before you evidence of specific cases to
8 give you a good sense as to how we dealt with specific
9 cases.

10 So that's the reason for the Factual
11 Overview and that said, depending on how one interprets
12 your mandate, I will recognize some other parties before
13 you take the position that some of the cases that we dealt
14 with may have been outside, technically, the mandate even
15 though it's our institutional response.

16 Now, what's happened since this matter was
17 last before you is that, in the spirit of some compromise,
18 what I've worked out with other counsel, specifically Mr.
19 Sherriff-Scott and Mr. Neville, is that what we anticipate
20 subject to, Mr. Commissioner, your approval, but I think is
21 effectively a joint position -- is that pages 127 upward in
22 the Factual Overview will not be placed into evidence.

23 There are several cases in there where,
24 again, arguably because of time or because of the alleged
25 perpetrator it may fall outside of the mandate.

1 THE COMMISSIONER: M'hm.

2 MR. ROSE: Nonetheless, the figures at the
3 very beginning will stay in so that, Mr. Commissioner, you
4 have a sense as to the volume we're dealing with.

5 THE COMMISSIONER: M'hm.

6 MR. ROSE: I don't -- I just don't want
7 there to be any claim at the very end of this Inquiry that
8 there is no sense, no details, about how we dealt with
9 these people.

10 THE COMMISSIONER: M'hm.

11 MR. ROSE: So it's important from the
12 Ministry's perspective that pages 1 through 126 remain
13 before you to provide that. And I believe that in those
14 pages, there can be no question that the -- the responses
15 speak to things that are properly before this Inquiry.

16 That said, if you have Exhibit I-1179 before
17 you ---

18 THE COMMISSIONER: I do.

19 MR. ROSE: --- at page 55, you will see a
20 moniker number "3". In other words, that's Ministry
21 moniker number 3 ---

22 THE COMMISSIONER: M'hm.

23 MR. ROSE: --- that is, in fact, witness C-8
24 ---

25 THE COMMISSIONER: Yes.

1 MR. ROSE: --- as C-8 has testified.

2 THE COMMISSIONER: M'hm.

3 MR. ROSE: And the first paragraph, again in
4 the spirit of compromise, speaks to evidence which you've
5 already heard about C-8's relationship with Mr. Seguin and
6 I don't think the facts in the first paragraph would be any
7 surprise, and arguably because it doesn't deal with abuse
8 and because it doesn't deal with a position of trust, a
9 person of authority.

10 Strictly with the first paragraph, in a
11 spirit of compromise again, we're content that that
12 paragraph not be put in the actual case review information.
13 However, the rest of it is certainly relevant.

14 THE COMMISSIONER: M'hm.

15 MR. ROSE: So, again, in the spirit of
16 compromise, without having to argue this in full, that's
17 the position that we've worked out; certainly myself, Mr.
18 Sherriff-Scott and Mr. Neville.

19 THE COMMISSIONER: All right. Thank you.
20 Now, where do we go, Mr. Engelmann?

21 MR. SHERRIFF-SCOTT: May I just clarify
22 something?

23 THE COMMISSIONER: Sure.

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

25 MR. SHERRIFF-SCOTT: My friend, Mr. Rose,

1 captures the point, although I would say that pages 176 and
2 following to the end, Commissioner, need not come out.
3 Those were not subject to my objection and I think Mr. Rose
4 was being too compromising in his spirit.

5 **THE COMMISSIONER:** So, 176 stays?

6 **MR. SHERRIFF-SCOTT:** One-seventy-six (176),
7 '7, '8, '9 up through inclusive of 180.

8 **THE COMMISSIONER:** All right.

9 **MR. SHERRIFF-SCOTT:** And I had no objection
10 to that nor did I assert one. So those would remain, the
11 others would come out. The tables would stay the same,
12 subject to the other clarification.

13 We did -- Ms. McIntosh and I took this on
14 and tried to resolve it and other counsel, I'm advised,
15 have no objection subject to your own counsel's comments.

16 Thank you.

17 **THE COMMISSIONER:** Thank you.

18 Mr. Neville?

19 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEVILLE:**

20 **MR. NEVILLE:** Thank you, Commissioner.

21 Mr. Rose has stated it correctly for your
22 assistance. Can I just, however, advise you of this.

23 The next argument you'll hear later in the
24 day as to your mandate, does have, in my respectful
25 submission, an impact on the contents of numbers 1 to 19,

1 but that's a separate issue.

2 As you know, I argued to you before and you
3 had taken under reserve not just the C-8 per se argument
4 but my issue was to whether factual details were necessary.

5 **THE COMMISSIONER:** Right.

6 **MR. NEVILLE:** I'm not pursuing that and that
7 is part of the compromise we've worked out.

8 However, at the request of Mr. Engelmann,
9 because of the OCA decision he had asked some of -- those
10 of us who wished to do so to advance positions as to
11 whether some already heard evidence and/or evidence to
12 come, such as this document, may contain allegations
13 outside the mandate. So that's a separate argument.

14 On the first part, I agree with Mr. Rose,
15 and the document, subject to what you may rule on the other
16 argument, is acceptable.

17 **THE COMMISSIONER:** Well, just give me ---

18 **MR. NEVILLE:** Yes.

19 **THE COMMISSIONER:** Are you saying that your
20 objection stands with respect to the 1 to 18?

21 **MR. NEVILLE:** Not as to the factual details
22 and the content, only as to whether some of the monikered
23 persons are outside the mandate.

24 Now, that's a separate argument then what we
25 have agreed to as to content. The question may be whether

1 mandate applies.

2 **THE COMMISSIONER:** All right. So ---

3 **MR. NEVILLE:** Now, the ---

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

5 **MR. NEVILLE:** I'm sorry, but the Corrections
6 group may advance an argument that you ought to leave it in
7 for a separate purpose.

8 **THE COMMISSIONER:** Right.

9 **MR. NEVILLE:** One of these dual
10 admissibility purposes, and we can perhaps address that
11 when we get to the mandate argument.

12 **THE COMMISSIONER:** Okay. So bottom line is
13 I'm not clear with this one. Like I still have a decision
14 to make ---

15 **MR. NEVILLE:** You do.

16 **THE COMMISSIONER:** --- with respect to your
17 argument.

18 **MR. NEVILLE:** --- in the mandate portion of
19 today's proceedings, if we get there.

20 **THE COMMISSIONER:** So just so I get it
21 straight. For example, if I find that the Ontario Court of
22 Appeal would exclude from the mandate some of the
23 witnesses, that would also apply to the people that may be
24 complainants in there?

25 **MR. NEVILLE:** Right.

1 THE COMMISSIONER: All right.

2 MR. NEVILLE: Now, just to give you a very
3 simple example. Within that first 19 persons there's an
4 individual who asserts an abuse pattern commencing at age
5 31.

6 THE COMMISSIONER: Right.

7 MR. NEVILLE: So that's just to give you an
8 example.

9 THE COMMISSIONER: Right.

10 MR. NEVILLE: But I understand from Mr. Rose
11 that they may still wish to advance the argument, which is
12 a matter for yourself and I won't oppose you -- them on
13 that part of it, that you should keep it for one purpose,
14 perhaps not for another.

15 THE COMMISSIONER: All right.

16 MR. NEVILLE: Thank you.

17 THE COMMISSIONER: Thank you.

18 All right. So do I understand all this now?

19 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

20 MR. MANSON: I'm entirely content with this
21 arrangement but, of course, it's without prejudice the
22 positions we take with respect to the mandate in general.

23 THE COMMISSIONER: I'm sure.

24 MR. MANSON: This is about this document.

25 THE COMMISSIONER: That's right.

1 MR. MANSON: Thank you.

2 THE COMMISSIONER: All right.

3 Anybody else want to say anything now?

4 Mr. Engelmann?

5 SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN:

6 MR. ENGELMANN: I was just advised of this
7 moments before two o'clock so just a brief comment, if I
8 may. And I guess -- well, the two points I think I had
9 were -- have been cleared up.

10 I was concerned about moniker number 33 and
11 I understand from Mr. Sherriff-Scott that that's not an
12 issue, so that's back in.

13 If I understand what Mr. Manson has said,
14 because you're not adjudicating on matters on page 55
15 that's without prejudice to any position people will have
16 on the impact of the Court of Appeal decision.

17 And I take it from what Mr. Neville has just
18 said, we haven't agreed now to enter I-1179, pages 1 to
19 126, less page 55, paragraph 1 and the pages right at the
20 end, 176 onwards, today. They're still subject to his
21 objection or his argument that he's about to make with
22 respect to the mandate period.

23 So presumably your decision on that issue,
24 on the issue we're about to get to, if it's released
25 concurrently with a decision on the Factual Overview, both

1 could be resolved.

2 **THE COMMISSIONER:** Okay.

3 **MR. ENGELMANN:** I think I understood that.

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

5 **MR. ENGELMANN:** So unless there's anything
6 further on the factual overview issue, then I'd like to
7 introduce the other issue that needs to be dealt with.

8 **(SHORT PAUSE/COURTE PAUSE)**

9 **MR. ENGELMANN:** Mr. Commissioner, the last
10 matter to be dealt with this afternoon, and this has been
11 the subject as I said of all-counsel meetings, of letters
12 written last week and the letter that I wrote to counsel
13 yesterday, are issues that have arisen as a result of the
14 recent decision of the Court of Appeal in the case argued
15 by the OPP and others.

16 As a result of that decision, we had
17 circulated a request to all parties to provide us with
18 their views on how the decision may affect evidence we have
19 heard or were likely to hear.

20 Some parties have advised us that the
21 decision precludes you from making findings on several
22 matters, including the evidence of several of the witnesses
23 already called.

24 And those parties specifically are the
25 Cornwall Police Service, the Children's Aid Society and

1 counsel for Father MacDonald and the Estate of Ken Seguin.

2 And they have submitted to us, in writing
3 and through conversation, that some of the evidence in the
4 Inquiry is heard is beyond the scope of this Inquiry's
5 mandate. We sent correspondence out to the parties on
6 Friday last, February 8th, summarizing the views that we had
7 received so that all parties were aware of that and advised
8 parties that we would like this matter spoken to today.

9 We subsequently received a letter from the
10 Children's Aid Society late in the day on Monday and that
11 was sent to all parties so they were aware of that as well.

12 Yesterday, just to clarify the issue, I
13 wrote again to the parties advising them that like with a
14 decision some time ago, and that was a decision on whether
15 or not the diocese was a public institution within the
16 meaning of our Order in Council, that it was important that
17 we get the parties views as soon as possible on the meaning
18 of the Terms of Reference as they may be affected or it may
19 be impact from the Court of Appeal decision dated January
20 18th, 2008.

21 So several of the parties have expressed
22 views on some of the evidence that's been heard.

23 There is one additional witness -- not
24 witness. There is additional evidence the Commission is
25 currently intending to lead and that is with respect to the

1 investigation and prosecution of an individual by the name
2 of Earl Landry, Jr.

3 Some parties -- and because that evidence --
4 or none of that evidence is before you, the Commission
5 prepared a summary of an Agreed Statement of Facts with
6 respect to Mr. Earl Landry, Jr. It was approved by the
7 Cornwall Police Service and then submitted to all parties.

8 And, sir, what I'd like to do, just for the
9 purposes of the issue that you have to resolve today, is to
10 introduce that as an exhibit.

11 **MR. MANDERVILLE:** It cannot be an exhibit,
12 Mr. Commissioner. The point of an Agreed Statement of
13 Facts is simply so that Mr. Engelmann, myself and other
14 parties in the room have a matrix to present submissions to
15 you. It is not to be an exhibit, I submit.

16 What we will be asking you to do is decide
17 that that investigation, the allegations concerning him are
18 not relevant to your mandate. You may disagree with me.
19 You may agree with me, but I submit you can't have an
20 Agreed Statement of Facts before you make that decision as
21 an exhibit in this Inquiry because we are arguing that it
22 shouldn't be here at all. It's an aide mémoire and that's
23 all it is, no different than a case, a judicial authority.

24 So I'm quite content that you look at it and
25 use it for your purposes in that fashion, but I submit it

1 should not be an exhibit and I'm objecting to that
2 suggestion.

3 **THE COMMISSIONER:** Is a Notice of Motion in
4 the affidavits usually ---

5 **MR. ENGELMANN:** We haven't done this by way
6 of Notice of Motion.

7 **THE COMMISSIONER:** No.

8 **MR. ENGELMANN:** We wanted to have some facts
9 before you.

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

11 **MR. ENGELMANN:** The whole purpose of
12 providing this to the Cornwall Police Service beforehand
13 was to make sure they were in agreement with these facts,
14 so we had facts on the record.

15 We have facts on the record for all of the
16 other witnesses that parties have taken positions on that
17 they may seek to exclude. So we wanted to have some
18 evidence before you with respect to Earl Landry, Jr.

19 So I'm not -- this is the first I've known
20 of any kind of an objection, and maybe we're -- maybe it's
21 semantics.

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

23 **MR. ENGELMANN:** We just -- we need to have
24 some evidence before you so that you can rule on the
25 motion. I'm not suggesting this be evidence in the case

1 proper, but I believe you need some evidence or you need to
2 have some information about what Earl Landry, Jr. is about
3 so that you can decide whether or not on the basis of this
4 information this is something that's likely to be within or
5 without your mandate.

6 **THE COMMISSIONER:** What about putting it in
7 as an exhibit for identification purposes only, Mr.
8 Manderville?

9 **MR. MANDERVILLE:** I'm content that it be for
10 identification purposes.

11 **THE COMMISSIONER:** Thank you. I think it's
12 just -- it's important to have it so that if ever there's
13 any doubt as to what we are deciding, that it's there and -
14 --

15 **MR. MANDERVILLE:** No, I appreciate that,
16 sir.

17 **THE COMMISSIONER:** Okay. No, I ---

18 **MR. MANDERVILLE:** If that were to happen.

19 **THE COMMISSIONER:** Fine. All right.

20 So what number will we give the Summary of
21 Agreed Statement of Facts on Earl John -- Early Landry,
22 Jr.?

23 **THE REGISTRAR:** IA-1.

24 **THE COMMISSIONER:** IA-1. What does "I"
25 mean? Identification, A-1. All right. IA-1 it is then.

1 --- EXHIBIT NO./PIÈCE NO. IA-1:

2 Summary of Agreed Statement of Facts on
3 Early Landry, Jr.

4 **MR. ENGELMANN:** As well, Mr. Commissioner,
5 we asked the parties to submit authorities on this argument
6 and there was a Book of Authorities prepared. It was
7 circulated to the parties electronically.

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

9 **MR. ENGELMANN:** Perhaps if that could be A-2
10 for the purposes of this particular discussion?

11 **THE COMMISSIONER:** Thank you.

12 --- EXHIBIT NO./PIÈCE NO. IA-2:

13 Book of Authorities

14 **MR. ENGELMANN:** Sir, I just want to point
15 out for the record that some parties have reserved their
16 rights to object to any other additional evidence the
17 Inquiry may hear and Commission -- and if they're not aware
18 of it today, for example, evidence relating to Earl Landry,
19 Jr., something that Commission counsel became aware of
20 during the course of our preparation for the Cornwall
21 Police Service evidence ---

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

23 **MR. ENGELMANN:** --- if there is some
24 evidence that we become aware of during the preparation of
25 another institution, we would obviously give them notice of

1 that immediately, and I understand that counsel are
2 reserving their rights to object to anything new, should it
3 arise, and I certainly understand that if it is evidence we
4 have not heard or they haven't anticipated.

5 **THE COMMISSIONER:** I don't think they need
6 to reserve anything.

7 **MR. ENGELMANN:** Well, they've simply
8 indicated that in correspondence, and I think that goes
9 without saying.

10 **THE COMMISSIONER:** Certainly.

11 **MR. ENGELMANN:** So ---

12 **THE COMMISSIONER:** I should point out as
13 well that as far as I'm concerned at this point, unless
14 there is new material uncovered, my understanding is that
15 since we've started the institutional response, that there
16 won't be any new evidence except the odd case that may come
17 up.

18 **MR. ENGELMANN:** And this is, as I said, with
19 respect to Earl Landry, Jr. There was some reference to it
20 in documents in our database which then resulted in further
21 requests being made by Commission counsel for further
22 information, but it was certainly something that came to
23 our attention as a result of documents in the database.

24 Sir, as for the process today, it's my
25 suggestion to you and my submission to you that parties

1 that are arguing that evidence already heard or identified
2 should now be excluded or at least should not be considered
3 by you in making findings in this particular case because
4 it is no longer within the mandate of the Commission,
5 should be prepared to argue first and I advised people of
6 that in my correspondence yesterday, and I would suggest
7 then that parties who are opposed could then respond.

8 Commission counsel may have submissions to
9 make if counsel believes that there are areas that need to
10 be clarified or have not been covered by parties making
11 submissions.

12 Sir, this, as I said, is not a motion before
13 you. It's rather a determination that you're being asked
14 to make. It's a determination of fact and law that we
15 believe is necessary at this time in order to allow for the
16 orderly, efficient and appropriate calling of the
17 institutional response evidence to come, and it has come to
18 a forefront now because we're about to start the Cornwall
19 Police Service and there was this issue, front and centre,
20 about their investigation of Earl Landry, Jr.

21 So we've given you the summary of facts.
22 We've given you some authorities. In a moment I'm going to
23 turn it over, and I would suggest we start with counsel for
24 the Cornwall Police Service ---

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

1 **MR. ENGELMANN:** --- followed by counsel for
2 the Children's Aid Society, followed by counsel for Father
3 Charles MacDonald and Ken Seguin.

4 And then I don't know if there's any other
5 counsel supporting any of those exclusions/objections. If
6 so, they could comment and then parties who are responding
7 can respond.

8 **THE COMMISSIONER:** All right.

9 **MR. ENGELMANN:** Sir, that is all I have to
10 say at this time, other than when we received the
11 correspondence from the Children's Aid Society late in the
12 day on Monday, it was forwarded to counsel for Mr. André
13 Bissonnette.

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

15 **MR. ENGELMANN:** Mr. Bissonnette had been
16 represented or was represented here by a lawyer by the name
17 of Lori Harreman.

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

19 **MR. ENGELMANN:** We contacted her office. I
20 sent her a copy of the Court of Appeal decision and a copy
21 of the letter from Mr. Chisholm and advised as to what was
22 going to be argued here today. Ms. Harreman is in
23 California, was unable to be here, is there for a memorial
24 service for a relative. I did speak to her by phone this
25 morning and she sent a rather long letter in today and

1 wanted to make sure that those submissions were put before
2 you.

3 Rather than my reading it into the record,
4 if none of the parties have objections, I would simply ask
5 that you review it as a submission from her.

6 **THE COMMISSIONER:** M'hm. But for the
7 purposes of the public and those listening on the webcast,
8 what is she generally saying, just that she's against the
9 exclusion of the witness or ---

10 **MR. ENGELMANN:** Yes. Well, perhaps I can
11 paraphrase the letter.

12 **THE COMMISSIONER:** Just ---

13 **MR. ENGELMANN:** Yes. She's arguing that her
14 client's evidence -- well, first of all, she's stating the
15 position that she doesn't believe anybody is seeking to
16 expunge that evidence from the record. I believe that's
17 correct. It's simply a concern that that evidence not form
18 the basis of a potential 5(2) finding on your part, and she
19 is -- personally, the letter came in just minutes ago.

20 **THE COMMISSIONER:** It's okay, Mr. Engelmann.
21 All I wanted to know was she really wants her client's
22 evidence to be considered as part of the mandate and act
23 accordingly?

24 **MR. ENGELMANN:** Well, she's seeking an
25 adjournment in the letter ---

1 THE COMMISSIONER: Oh.

2 MR. ENGELMANN: --- so that she can come
3 here personally. I wasn't -- she said she might be doing
4 this in a telephone call, but on the second page of the
5 letter she's seeking an adjournment to be allowed to make
6 oral submissions on the issues raised and she is asking to
7 do that on February 25th, when we're next scheduled.

8 THE COMMISSIONER: M'hm.

9 MR. ENGELMANN: And, alternatively, she sets
10 out as a further alternative the right to make oral or
11 written submissions later.

12 She is also then setting out brief
13 submissions in response to the concerns raised by the CAS,
14 saying, amongst other things, that paragraph 62 of the
15 Court of Appeal decision, which counsel will be referring
16 to, is not clear on whether the Terms of Reference or the
17 Order in Council dealing with historical abuse should be
18 restricted to historical sexual abuse.

19 She also makes comments on the issue of the
20 wording added by the Court of Appeal by persons in
21 authority or positions of trust into the Order in Council,
22 and she's saying that despite that and despite the fact
23 that the alleged perpetrator in that case may not have been
24 in a position of trust or authority, that because her
25 client was a ward of the CAS, he was still in a position of

1 trust and they were in a position of trust with him.

2 She argues in the alternative that in any
3 event, his evidence should be considered because it's
4 reasonably relevant to the mandate.

5 And, lastly, she talks about an issue she
6 raised at the end of the day. You'll recall in his
7 evidence about knowledge of local officials here and the
8 issue about referrals to the Alfred Training School.

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

10 **MR. ENGELMANN:** So that's set out in her
11 letter.

12 I think in fairness to her, you may wish to
13 examine a copy of that letter and I have provided it to
14 counsel and I'm not sure if Madam Clerk has a copy.

15 **THE COMMISSIONER:** So it will be A-2 -- A-3.

16 **MR. ENGELMANN:** A-3.

17 **THE COMMISSIONER:** A-3, all right.

18 --- **EXHIBIT NO./PIÈCE NO. IA-3:**

19 Letter from Lori Harreman dated February 14,
20 2008

21 **MR. ENGELMANN:** Thank you, sir.

22 If I could then, unless you have questions,
23 turn this over to Mr. Manderville.

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

25 Mr. Manderville?

1 **MR. MANDERVILLE:** (Off mic).

2 **THE COMMISSIONER:** Mr. Sherriff-Scott?

3 **MR. SHERRIFF-SCOTT:** Go ahead.

4 **THE COMMISSIONER:** Mr. Manson?

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

6 **MR. MANSON:** Mr. Commissioner, I understand
7 Mr. Engelmann's concern with respect to timing and the need
8 to deal with the Landry issue. However, if we look at the
9 other letters, aside from Mr. Landry without even getting
10 to Mr. Neville, I've got six people named in the CAS
11 letter, I've got four other people named in the Manderville
12 letter. We've gotten these things very recently. There is
13 no motion materials in front of you. It's difficult for me
14 to get my head around, from what I've got so far, why it is
15 all these names are being thrown out and later this
16 afternoon we're going to be expected to respond.

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

18 **MR. MANSON:** I'm quite content to respond to
19 the Landry situation because we have the Agreed Statement
20 of Facts; I've been able to put my mind to that.

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

22 **MR. MANSON:** The other matters, I think
23 ought to be perhaps put off. I don't see the urgency with
24 the other matters, they mostly deal with material that's
25 already on the record and the requests at the end relate to

1 Section 5.2 notices. I don't think we're at that -- that
2 stage.

3 So I'm quite content that we start in
4 argument and deal with Landry because it has to be dealt
5 with.

6 The other issue is, in terms of interpreting
7 the Court of Appeal, it's hard to do that in the abstract.
8 I can do it by looking at the Landry facts, looking at what
9 the Court of Appeal is saying, but to give you a submission
10 now to say, "Mr. Commissioner, this is what they've said to
11 you. End of story, A to Z, that will cover me." I can't
12 do that.

13 And if you look at the case law dealing with
14 persons of authority, persons of trust, they require fact-
15 sensitive, subtle distinctions. It's not like -- sometimes
16 you can say the set of "x" are always in but you can't
17 always say the set of "y" are always out. So it's very,
18 very difficult.

19 So I just want to raise that now so we know
20 how we're going to proceed this afternoon.

21 I don't know if anyone else has any
22 concerns, but I agree completely with Mr. Engelmann, we
23 have to deal with Mr. Landry.

24 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANDERVILLE:

25 **MR. MANDERVILLE:** Now that Mr. Manson's

1 muddied the waters a little bit, I want to respond in one
2 respect.

3 **MR. ENGELMANN:** Just very quickly ---

4 **MR. MANDERVILLE:** Sure.

5 **MR. ENGELMANN:** I think in fairness to Ms.
6 Harreman -- and I don't know if Mr. Manson's doing this --
7 but I think we should speak to her request.

8 **THE COMMISSIONER:** For what?

9 **MR. ENGELMANN:** An adjournment, depending on
10 whether counsel here have views or not.

11 But I leave it with Mr. Manderville for now.

12 **MR. MANDERVILLE:** Two points on that issue,
13 Mr. Commissioner.

14 Mr. Manson has suggested that the Cornwall
15 Police have named four previous witnesses for whom we say
16 their testimony is now irrelevant to your mandate and you
17 shouldn't consider it, and the only way it becomes a little
18 bit of an urgent matter is that we also say in light of the
19 irrelevant testimony, you should not be hearing from
20 Cornwall Police Service witnesses on that issue and that is
21 coming very soon, as you know.

22 **THE COMMISSIONER:** Yeah.

23 **MR. MANDERVILLE:** The second point on Ms.
24 Harreman's request for an adjournment. I understand she's
25 in California. I'd be happy to go to her.

1 (LAUGHTER/RIRES)

2 MR. MANDERVILLE: And I'm sure most of the
3 rest in the room might be too ---

4 THE COMMISSIONER: Yes.

5 MR. MANDERVILLE: --- to accommodate her
6 needs.

7 THE COMMISSIONER: We are an accommodating
8 group.

9 (LAUGHTER/RIRES)

10 MR. MANDERVILLE: Those are all the points I
11 wish to make on that issue.

12 THE COMMISSIONER: Thank you.

13 Mr. Sherriff-Scott, you were ---

14 MR. SHERRIFF-SCOTT: I'm just wondering if
15 someone else wants to comment on those discrete points
16 because my ---

17 THE COMMISSIONER: Mr. Horn.

18 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. HORN:

19 MR. HORN: We're in the same position as the
20 ---

21 THE COMMISSIONER: Mr. Manson.

22 MR. HORN: --- the CCR.

23 THE COMMISSIONER: Yes.

24 MR. HORN: And we agree with his position,
25 but -- because of the real repercussions of any pulling

1 back of your mandate in any way.

2 I mean, this is a real important issue and I
3 think that we should have time to -- to really look at it
4 closely rather than being pushed into this situation and do
5 it so quickly, and I think it would be a detriment to -- to
6 my clients to be allowed to do that so quickly and be
7 almost like railroaded into this situation.

8 **THE COMMISSIONER:** You have a way with
9 words, Mr. Horn. No one railroads anybody here.

10 Mr. Lee.

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

12 **MR. LEE:** I've had the same concerns as Mr.
13 Manson and Mr. Horn, I suppose, in terms of timeliness.
14 This has definitely been considered with -- in very great
15 haste. We haven't had an opportunity to fully review the
16 evidentiary record.

17 That being said, I'm sensitive to the idea
18 that -- that there are real concerns with timing at this
19 Inquiry and keeping things moving forward and I know you
20 are concerned about that.

21 I've come here today, having reviewed as
22 much as I could have, having put as much thought into it as
23 I could. I can -- I can make submissions today, I can
24 speak to the interests of my clients but, in all honesty,
25 given more time, given motion materials and a clearer

1 articulation of exactly what we're talking about, I think
2 the quality of the argument would be better on all sides.

3 That being said, there's -- there's a line
4 you have to draw between perfection and between efficiency
5 and getting this thing moving so I'm prepared to go either
6 way, but clearly this is -- this has been done quickly and
7 it's been done without the benefit of full -- full
8 introspection, full thought on these issues.

9 **THE COMMISSIONER:** Okay. So what about if
10 we did something like -- just thinking out loud now -- that
11 we heard from those who wish to have certain evidence dealt
12 with as a result of the Court of Appeal decision and then
13 we adjourned and we came back next week sometime for a day,
14 and had -- let people who wanted to argue against do that.

15 **Would that -- would that satisfy all**
16 **concerned?**

17 **MR. LEE:** I can speak for myself, to get the
18 ball rolling. I will make myself available next week on
19 whatever date you deem necessary and -- and that would be
20 tremendously helpful to me at least.

21 **MR. HORN:** Good afternoon.

22 We agree with that, Mr. Commissioner.

23 ---**SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:**

24 **MR. MANSON:** Two things, Mr. Commissioner.

25 First, I apologize to Mr. Manderville, he is

1 correct, there are other Cornwall Police Service issues
2 that have a timeliness factor to them.

3 **THE COMMISSIONER:** Yes.

4 **MR. MANSON:** And with respect to those, I
5 can -- I can say the one that I would not be happy to deal
6 with today is the C-10 issue ---

7 **THE COMMISSIONER:** The record will amend
8 that.

9 **MR. MANSON:** There's the perfect example, in
10 the sense there's three-and-a-half lines in the letter,
11 that's the basis for that.

12 I have to go back to read the transcript.

13 **THE COMMISSIONER:** All right, but what -- so
14 you don't want anything to be heard today?

15 **MR. MANSON:** Oh, no, no. I'm saying let --
16 that was my second point -- is I cannot undertake to be
17 here next week, I'm leaving the country. I'll have to ---

18 **THE COMMISSIONER:** Where are you going?

19 **MR. MANSON:** Where am I going?

20 **THE COMMISSIONER:** Maybe we'll accommodate
21 you and go with you.

22 **MR. MANSON:** I'm going overseas.

23 You're welcome to come.

24 **THE COMMISSIONER:** It sounds good to me.

25 **(LAUGHTER/RIRES)**

1 **MR. MANSON:** If you can get a ticket, you're
2 welcome to join me, but, you know, I can call Ms. Daley and
3 we can find out about that.

4 With the exception of that one gaff that I
5 just mentioned, I'm happy to deal with the other Cornwall
6 Police issues or if next week is the right answer, I'll get
7 on the phone and see if we can get somebody here.

8 **THE COMMISSIONER:** Okay. So ---

9 **MR. MANSON:** I should also say that if the
10 answer is "exigency", then I'll do whatever I can do today,
11 Mr. Commissioner. It's not like I'm going to walk out and
12 leave you alone.

13 **THE COMMISSIONER:** Mr. Chisholm.

14 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CHISHOLM:

15 **MR. CHISHOLM:** Good afternoon, sir.

16 Next week's schedule, I'm unavailable. I'm
17 in a tribunal hearing all next week. I would not,
18 therefore, be available to respond to any submissions that
19 would be made; that would be my only concern.

20 **THE COMMISSIONER:** McLennan, Ms. Rowley(ph)

21 ---

22 **MR. CHISHOLM:** I'm sorry?

23 **THE COMMISSIONER:** There are other people
24 listed under the Children's Aid Society.

25 **MR. CHISHOLM:** There are. They ---

1 **THE COMMISSIONER:** They could either replace
2 you in that hearing or come here and be fully briefed from
3 you to give us a reply.

4 **MR. CHISHOLM:** They could. That's not my
5 preference but that would be my position, sir.

6 **THE COMMISSIONER:** Yes.

7 **MR. CHISHOLM:** Thank you.

8 **THE COMMISSIONER:** Thank you.

9 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANDERVILLE:**

10 **MR. MANDERVILLE:** The concern I have is we
11 are all here today in the same boat. We've all known what
12 we were going to argue today for about the same length of
13 time.

14 You've, more than once, used the expression
15 "sauce for the goose, sauce for the gander". I suggest we
16 either argue it today or we all reconvene and argue it
17 then.

18 Certainly I could benefit from the extra
19 time to form more cogent arguments, just like my friends
20 could, and likely you would benefit from having all of us
21 have a little more time to piece our thoughts together.

22 **THE COMMISSIONER:** Okay. Mr. Engelmann --
23 or Mr. Neville.

24 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEVILLE:**

25 **MR. NEVILLE:** Mr. Commissioner, in terms of

1 next week, just if you're mulling things over, I have made
2 other commitments that I cannot change. Monday is ---

3 **THE COMMISSIONER:** Mr. Cipriano, Foord,
4 Ertel, Lamb.

5 **MR. NEVILLE:** Well, I cannot speak for any
6 of them on this short notice, sir.

7 I think we can deal with the Landry thing
8 perhaps, and some of the others, frankly, maybe we should
9 be doing them with proper preparation to commencing on
10 Monday, the 25th.

11 **THE COMMISSIONER:** No, that's not going to
12 work.

13 **MR. NEVILLE:** I'll leave it with you.

14 **THE COMMISSIONER:** Thank you.

15 All right.

16 So, Mr. Engelmann, any thoughts?

17 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. ENGELMANN

18 **MR. ENGELMANN:** Sir, we need to resolve more
19 than Earl Landry, Jr.

20 In correspondence with us, the Cornwall
21 Police Service has indicated that they believe nine
22 witnesses that you've heard -- nine witnesses -- and then
23 there's a term in the letter, and there aren't -- in
24 fairness to what Mr. Manson said, he's right; there aren't
25 reasons or very brief reasons given, but nine witnesses

1 plus others ---

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

3 **MR. ENGELMANN:** --- that they are saying are
4 affected as a result of the Court of Appeal decision.
5 Those arguments have to be made, have to be made either
6 today or sometime next week so that we can get this matter
7 resolved.

8 I'm not just talking about a delay in
9 leading the evidence. I'm talking about a delay in even
10 allowing us, when we're interviewing these witnesses, to
11 put questions about some of these allegations to their
12 witnesses.

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

14 **MR. ENGELMANN:** So this Inquiry has to keep
15 moving. This is an important issue and I would suggest
16 either we hear from those parties seeking to exclude today
17 ---

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

19 **MR. ENGELMANN:** --- and we hear from the
20 others sometime next week or you take Mr. Manderville's
21 suggestion and you set aside a day for the whole thing.

22 I can canvass dates immediately, but I would
23 suggest that it be in the early part of the week as opposed
24 to the later part of the week ---

25 **THE COMMISSIONER:** Sure.

1 **MR. ENGELMANN:** --- because we're asking
2 that you make a decision on this.

3 As you know, we intend to start with the
4 Cornwall Police Service evidence on the 26th.

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

6 So here's what I -- and we'll take a short
7 break, but what I suggest we do is this, is we canvass a
8 date. If we want to hear it all on the same date, that's
9 fine with me.

10 If people can't -- those who are opposed
11 cannot be there for that day, they present today.

12 And so that's what I'm leaning towards.

13 **MR. ENGELMANN:** Those opposed or those
14 trying to exclude?

15 **THE COMMISSIONER:** Those trying to exclude
16 argue today unless they can be there for that day, and I'm
17 prepared to sit next week sometime at a day that's
18 convenient. Monday is a holiday.

19 **MR. ENGELMANN:** Right.

20 **THE COMMISSIONER:** And so there may be one
21 day, Tuesday or Wednesday, that might not be good, but we
22 can talk about that during the break.

23 All right? Thank you. Let's take 10
24 minutes.

25 **THE REGISTRAR:** Order; all rise. À l'ordre;

1 veuillez vous lever.

2 This hearing will resume at 3:00 p.m.

3 --- Upon recessing at 2:45 p.m./

4 L'audience est suspendue à 14h45

5 --- Upon resuming at 2:56 p.m./

6 L'audience est reprise à 14h56

7 **THE REGISTRAR:** This hearing is now resumed.

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Thank you.

10 Mr. Engelmann, what I thought of doing was
11 to say that we adjourn the matter to Tuesday at 9:30, and
12 those who cannot attend and who want to argue to exclude
13 some evidence either argue on Tuesday or today.

14 **MR. ENGELMANN:** All right.

15 There are, I think, some individuals who may
16 have very brief submissions to make, perhaps not for or
17 against ---

18 **THE COMMISSIONER:** Right.

19 **MR. ENGELMANN:** --- but brief submissions
20 who may want to do that today.

21 **THE COMMISSIONER:** Fine.

22 **MR. ENGELMANN:** One of the difficulties I
23 know one counsel has, and that's Mr. Manson for the CCR, is
24 I know he's not available and he hasn't been able to get a
25 hold of one of his colleagues.

1 **MR. MANSON:** I'm still trying.

2 **MR. ENGELMANN:** One of the difficulties I
3 think some of the counsel have who are opposing the
4 exclusion are that perhaps things haven't been set out in
5 enough detail.

6 So if we are putting this over until
7 Tuesday, I think it would be very helpful for counsel for
8 the Cornwall Police Service, counsel for Father Charles
9 MacDonald and Ken Seguin and counsel for the Children's Aid
10 Society to be a bit more perhaps specific as to why they
11 think the Court of Appeal decision excludes the
12 consideration of that evidence. I think it would be very
13 helpful to have that so that those people that are
14 responding have a better sense as to why the exclusion
15 request is being made.

16 So I believe there's a consensus, perhaps
17 less one, that Tuesday will work, but maybe I'll let Mr.
18 Manson speak to that briefly, and I know Mr. Sherriff-Scott
19 has some brief submissions today, and there may be other
20 counsel who have no position on the motion or can comment
21 on it without the necessity of the arguments back and
22 forth.

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

24 Mr. Manderville and Mr. Manson.

25 **MR. MANSON:** I think we should get started,

1 Mr. Commissioner, with whoever wants to make their
2 objections now. We'll see what we can fit in. I'll try
3 and get someone here on Tuesday. If we can't, we can
4 certainly send submissions in writing.

5 **THE COMMISSIONER:** Sure.

6 **MR. MANSON:** So we'll do the best we can,
7 but we should probably get started.

8 **THE COMMISSIONER:** Okay.

9 Mr. Manderville.

10 **MR. MANDERVILLE:** The only point I was going
11 to make, Mr. Commissioner, is that any time Mr. Engelmann
12 suggests something, we typically agree, and I have agreed
13 to provide counsel for the parties with another letter
14 tomorrow more fully articulating what our position is with
15 respect to certain witnesses.

16 **THE COMMISSIONER:** And I think that's very
17 appropriate and I thank you for that.

18 **MR. MANDERVILLE:** With a plan to attending
19 on Tuesday to more fulsomely articulate it all.

20 **THE COMMISSIONER:** All right. Good.

21 So that would rectify some of the problems
22 and concerns. Thank you.

23 **MR. MANDERVILLE:** I expect the parties will
24 all agree with me then.

25 **THE COMMISSIONER:** Well, hope springs

1 eternal.

2 (LAUGHTER/RIRES)

3 THE COMMISSIONER: And on that note, Mr.
4 Sherriff-Scott?

5 MR. SHERRIFF-SCOTT: I hope that wasn't an
6 implication that I might say something you'd approve.

7 THE COMMISSIONER: Hope springs eternal.

8 (LAUGHTER/RIRES)

9 MR. SHERRIFF-SCOTT: That's right. Right.

10 THE COMMISSIONER: And I think we've agreed
11 in the past, Mr. Sherriff-Scott.

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

13 MR. SHERRIFF-SCOTT: I think we have,
14 actually, and as this thing unfolds, we seem to agree more
15 and more. So I have eternal hope as well.

16 I wanted to just articulate sort of a point
17 that was partially developed by my friend. His first
18 letter identifying this issue came and asked for
19 submissions in connection with evidence that had already
20 been heard and the implications for a Notice of Misconduct.

21 There was some discussion about that at an
22 all-counsel meeting. Mr. Dumais rearticulated that
23 position. Then there was another meeting last week at
24 which I wasn't present because the witness here giving
25 evidence didn't affect my client, and then on Friday there

1 was the development of the contemplation of the scope of
2 the potential submissions to include potential future
3 evidence that might be called, to which I responded in
4 writing to my friend.

5 Dealing with the last point first, first of
6 all, I haven't had the benefit of meeting with your lawyers
7 to identify what issues they intend to call vis-à-vis my
8 client. So I don't know what future evidence they want. I
9 mean, I can guess at some of it, but I don't know what
10 issues they want to develop with my witnesses. My
11 witnesses haven't been interviewed.

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

13 **MR. SHERRIFF-SCOTT:** They're not at that
14 stage yet. They're otherwise fully engaged with other
15 institutions. So we haven't begun the process of
16 identifying what's going to be called from my client. So I
17 made it clear that I don't know what that evidence will be,
18 and when it's identified, then if I have an objection, I
19 will identify it immediately.

20 As to past witnesses ---

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

22 **MR. SHERRIFF-SCOTT:** --- my point is there
23 may -- well, frankly I'd be surprised if I took a position
24 on any of this. There are people, I suppose, that
25 technical interpretation based on one of the witnesses

1 identified by Mr. Leroux in his allegations, for example,
2 Father Ostler, he contended there was the hallway exchange.
3 He said later it was a joke. Mr. Leroux at the time was in
4 his late thirties. Whether it was even sexual abuse or
5 whether Mr. Leroux was a young person, et cetera, there is
6 a potential for the question of whether or not the
7 investigations in Florida fall within your mandate.

8 Frankly, Commissioner, as the evidence will
9 unfold, these investigations will have, in my view, the
10 effect of assisting my clients in terms of demonstrating
11 their exoneration.

12 But at this point I have not determined
13 whether or not I would take a position on those particular
14 two points.

15 Those are the only things I could think of
16 vis-à-vis Mr. Leroux and his stories.

17 **THE COMMISSIONER:** Is it ---

18 **MR. SHERRIFF-SCOTT:** But -- his evidence,
19 yes. We'll never agree on that.

20 **THE COMMISSIONER:** Well, no, no ---

21 **MR. SHERRIFF-SCOTT:** The ---

22 **THE COMMISSIONER:** No, no. Just let's ---

23 **MR. SHERRIFF-SCOTT:** Yeah, I'm trying to
24 inject some humour into the process.

25 **THE COMMISSIONER:** Oh, okay. Okay.

1 (LAUGHTER/RIRES)

2 THE COMMISSIONER: But it's a sore spot. ---

3 MR. SHERRIFF-SCOTT: Yes, I know.

4 The other point about that is I don't know,
5 number one, whether or not your lawyers are going to
6 attempt to call the evidence of my client's response in
7 relation to those issues, and what in connection with the
8 OPP's investigations they intend to call.

9 And so I've indicated that I reserve my
10 right. That's the possible extent of what I think I may
11 deal with on that subject, vis-à-vis past evidence. And so
12 I've made my position known to your counsel.

13 THE COMMISSIONER: Fair enough.

14 MR. SHERRIFF-SCOTT: Thank you.

15 THE COMMISSIONER: Thank you.

16 Mr. Chisholm?

17 MR. SHERRIFF-SCOTT: Oh, sorry, Mr.

18 Commissioner. One other matter. Sorry, Mr. Chisholm.

19 There was, just so you understand, an
20 another illustration of a potential issue. In the fall,
21 Mr. Vivarais attended here and gave evidence?

22 THE COMMISSIONER: Yes.

23 MR. SHERRIFF-SCOTT: He was subject to an
24 objection by myself on which you ruled. The objection was
25 subject to your disposition, which was he was not going to

1 be heard for the purpose of ---

2 **THE COMMISSIONER:** Yeah.

3 **MR. SHERRIFF-SCOTT:** --- anything other than
4 the reasons why potentially ---

5 **THE COMMISSIONER:** Yes.

6 **MR. SHERRIFF-SCOTT:** --- people did not
7 report and he could not be used for a notice of misconduct.

8 He would've been another person in the class
9 of examples I gave you but that matter has been dealt with
10 already under a ruling of yours.

11 **THE COMMISSIONER:** Yeah. Thank you.

12 Mr. Chisholm?

13 **MR. CHISHOLM:** Professor Manson makes a lot
14 sense in terms of using the time that we have available.
15 So, sir, if you wish me to start my submissions, I can do
16 that, and whatever I can cover off it will be something
17 less that we'll have to worry about later.

18 **THE COMMISSIONER:** Is there anybody else?

19 So then those who wish to have -- who feel
20 that the Court of Appeal decision affects the mandate as to
21 the witnesses that we've already heard, I would expect you
22 to send a letter out by tomorrow to the rest of the
23 parties, fleshing out a little bit the -- no, a lot -- what
24 your reasons are for so doing. All right?

25 So that being said, if there's nobody else

1 here, then we'll hear from you, Mr. Chisholm.

2 How long do you think you're going to be?

3 **MR. CHISHOLM:** Probably half-an-hour, sir.

4 **THE COMMISSIONER:** Fine. Thank you.

5 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CHISHOLM:

6 **MR. CHISHOLM:** As you may know,
7 Commissioner, Mr. Engelmann asked for our -- sent an email
8 to the counsel for the parties asking for their thoughts
9 with respect to the implication that the recent Court of
10 Appeal decision may have on the ability of the Commission
11 to send out notices under (2) in Section 5 of the *Public*
12 *Inquiries Act* and, as a result of that, I sent a letter
13 along as did some of the other parties.

14 The starting point, I suppose, would be to
15 tell you that my view, when I look at the Order in Council,
16 and specifically to paragraph 2 of the Order in Council,
17 the mandate was -- and I'll read it for the purposes of the
18 record. Paragraph 2 reads:

19 "The Commission shall inquire into and
20 report on the institutional response of
21 the justice system and other public
22 institutions, including the interaction
23 of that response with other public and
24 community sectors in relation to..."

25 (As read)

1 And a) reads:

2 "Allegations of historical abuse of
3 young people in the Cornwall area,
4 including the policies and practices
5 then in place to respond to such
6 allegations." (As read)

7 I think I can stop there, but it's clear
8 that the Order in Council spoke only of the word "abuse".
9 There was no modifier in front of it that said "sexual".

10 So when I first read the mandate, that was -
11 - my view would've been, had you asked me, "Did it included
12 sexual abuse?" I would have said, "Yes". "Does it include
13 other types of abuse?" I would've said, "Yes, such as
14 physical and/or emotional".

15 You'll recall the context evidence that was
16 called by Commission counsel. I would submit for the most
17 part or perhaps entirely that related to the expert advice
18 that was given to us or evidence given to us related to
19 sexual abuse.

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

21 **MR. CHISHOLM:** Your comments on February
22 13th, 2006, your opening comments, which would be Volume 4
23 of the transcript at page 4, line 16 to 17, you indicated
24 that the focus of Phase I is on the allegations of child
25 sexual abuse made to public institutions.

1 Then the world was changed somewhat with the
2 release of the Court of Appeal's decision, Mr. Justice
3 Moldaver's decision, and specifically I think I would like
4 to take you at Paragraph 33 as being the first paragraph
5 that is of concern to me.

6 **THE COMMISSIONER:** Yes.

7 **MR. CHISHOLM:** In Paragraph 33, Mr. Justice
8 Moldaver stated:

9 "In my view, this information fleshes
10 out the meaning of the first two
11 sentences of the preamble to the OIC
12 and makes it clear that the
13 'Allegations of abuse of young people
14 that had surrounded the City of
15 Cornwall and it's citizens for many
16 years' refer to the allegations of
17 historical sexual abuse of young people
18 by persons in authority or positions of
19 trust." (As read)

20 So that, I would submit, is the first
21 instance in Mr. Justice Moldaver's decision where he's
22 added the modifier "sexual abuse" and also refers to
23 "persons in authority or positions of trust".

24 Then I'd like to take you to Paragraph 43 of
25 the Reasons of Justice Moldaver.

1 THE COMMISSIONER: I'm sorry.

2 MR. CHISHOLM: Paragraph 43.

3 THE COMMISSIONER: Yes.

4 MR. CHISHOLM: I would submit that Paragraph
5 43 would suggest the Court of Appeal's view of the mandate
6 was restricted to allegations of sexual abuse of young
7 people, as opposed to the broader view that the mandate
8 would include other types of abuse such as physical,
9 emotional, whatever other type of abuse that you can
10 contemplate.

11 What's interesting in terms of the Court of
12 Appeal decision, it considered prior to Paragraph 43,
13 referred to the affidavit of Detective Superintendent
14 Colleen McQuade that was filed in the -- before the
15 Divisional Court, I believe. And also there were Hansard
16 extracts from the Legislative Assembly of April 20th, 2004
17 and November 4, 2004, November 18, 2004 and April 19 of
18 2005.

19 And then in Paragraph 43, Mr. Justice
20 Moldaver sets out the context and circumstances that were
21 in existence at the time the Inquiry was called and
22 indicated it relates to a clan of pedophiles, an alleged
23 conspiracy to cover-up the activities of the clan of
24 pedophiles, and the cloud of suspicion and mistrusting over
25 the citizens of Cornwall as a result of the Project Truth

1 investigations and prosecutions.

2 So all of those matters relate, I would
3 submit, to allegations of sexual abuse rather than other
4 types of abuse.

5 Then Paragraph 44, Mr. Justice Moldaver
6 stated that:

7 "The legislature sought to have a
8 commissioner investigate the
9 institutional response to allegations
10 of historical sexual abuse of young
11 people in the Cornwall area by persons
12 in authority or positions of trust."

13 (As read)

14 Again, that would seem to limit -- in the
15 Court of Appeal's view, that would seem to limit the
16 mandate specifically to sexual abuse. I would submit that
17 he was quite specific when he used the word "sexual", the
18 modifier.

19 Now, moving on into the Court of Appeal
20 decision. The confusion arises -- I would submit that
21 there's some confusion in Mr. Justice Moldaver's decision
22 in that in some of the later paragraphs he doesn't refer to
23 the modifier "sexual" and goes back to using the word
24 "abuse".

25 Paragraph 55, for instance, does not use the

1 modifier.

2 And I'll read paragraph 55:

3 "When paragraph 2 of the OIC is read as
4 a whole and in conjunction with the
5 other provisions of the OIC, including
6 the preamble, it is apparent the
7 legislature was directing the
8 Commissioner to look at institutional
9 policies and practices, past, present
10 and future in responding to allegations
11 of historical abuse..."

12 Again it's simply abuse, no modifier:

13 "...of young people in the Cornwall area.
14 Such allegations would include those
15 who were the subject of the Project
16 Truth investigation as well as any
17 other similar allegations of historical
18 abuse of young people by persons in
19 authority or positions of trust that
20 were not investigated by Project Truth
21 or that came to light after the Project
22 Truth investigation ended."

23 So there it would look like Mr. Justice
24 Moldaver simply went back to the Order in Council.

25 If I could then bring you to paragraph 59

1 and -- paragraphs 59 and 60 -- and if I take you down three
2 lines to the end of the third line Mr. Justice Moldaver
3 stated:

4 "By defining the word 'historical', as
5 he did, the Commissioner gave himself
6 jurisdiction to assess the response of
7 various institutions (past, present and
8 future), including the justice system,
9 the police, the Children's Aid
10 Societies and the like, to any and all
11 allegations of sexual abuse made by
12 young people in the Cornwall area,
13 including historical allegations of
14 abuse such as those investigated by
15 Project Truth and allegations of sexual
16 assault such as those reported by C-12,
17 presumably from the date of Cornwall's
18 inception in 1834 to April 14th, 2005,
19 the date on which the Commission was
20 formed."

21 Then onto paragraph 60 -- and that's Mr.
22 Justice Moldaver attributing that view to you, sir. I'm
23 not suggesting that you ever held that view, but that is
24 the -- that is what Mr. Justice Moldaver attributed to you
25 in terms of your view of the mandate.

1 THE COMMISSIONER: M'hm.

2 MR. CHISHOLM: Then moving onto paragraph

3 60:

4 "Such a wide-ranging mandate is
5 inconsistent with the Commissioner's
6 acknowledgement that the 'main focus of
7 parliament' was to highlight the cases
8 that had been in the spotlight in the
9 community at the time of the decision
10 to convene this inquiry, hence the
11 reference to allegations of historical
12 abuse."

13 But even in the -- if I could bring you back
14 to paragraph 59. The view of the mandate Mr. Justice
15 Moldaver attributes to you, he is suggesting that your view
16 is one of sexual abuse.

17 So if you start with the premise that that
18 was your view of the mandate, and I'm not suggesting that
19 it was, he's saying that was too wide, even looking at
20 specifically sexual abuse cases.

21 THE COMMISSIONER: M'hm.

22 MR. CHISHOLM: I'm suggesting that my view
23 of the Court of Appeal decision would be even tighter than
24 the view that Mr. Justice Moldaver attributes to you that
25 there is only certain types of sexual abuse cases that fit

1 within the mandate.

2 If I could take you to paragraph 62 please.
3 Again, this is another example where Mr. Justice Moldaver
4 does not use the word -- does not use a modifier sexual
5 whenever he -- he will -- he, at this point writes the
6 conclusion as to -- or purports to write a conclusion as to
7 what he said in the past. And there he states:

8 "Properly construed, the OIC empowers
9 the Commissioner to look into and
10 report in institutional responses,
11 past, present and future, relating to
12 allegations of historical abuse of
13 young people in the Cornwall area by
14 persons in authority or positions of
15 trust."

16 So, again, although he's referred to -- used
17 the modifier sexual in previous paragraphs, he does not do
18 it in paragraph 62.

19 My submission would be, sir, that when I
20 look at the Court of Appeal decision in its entirety, I
21 can't ignore what Mr. Justice Moldaver stated when he did
22 use the modifier sexual abuse. And if you were to ask me
23 what my position was after looking at the Court of Appeal
24 decision, I would say that you have to look at the limiting
25 language that Mr. Justice Moldaver used that I've taken you

1 to earlier where he uses a modifier.

2 And, therefore, we're dealing with the
3 mandate as defined by the Court of Appeal would be cases of
4 sexual abuse and then adding the words of committed by
5 persons in a position of trust or authority.

6 **THE COMMISSIONER:** Okay.

7 **MR. CHISHOLM:** My position would be, looking
8 at the Court of Appeal decision, if I am right in my
9 interpretation of the Court of Appeal decision, the mandate
10 would not include any other type of abuse, despite my
11 earlier understanding of what paragraph 2 of the Order in
12 Council said.

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

14 **MR. CHISHOLM:** I would submit that unless
15 and until the Court of Appeal's decision is successfully
16 appealed to the Supreme Court of Canada, we will be left
17 with the Court of Appeal's interpretation of the mandate.
18 That will be the law by which we have to govern ourselves.

19 If I could bring you to paragraph 70 of Mr.
20 Justice Moldaver's reasons, the -- I'll read it:

21 "And so concluding, I do not wish to
22 leave the impression that there can be
23 no meaningful overlap insofar as
24 institutional responses are concerned
25 between cases such as the one described

1 by C-12 and the cases such as those
2 investigated by Project Truth, nor am I
3 suggesting that allegations of
4 historical sexual abuse of young people
5 by persons in authority or positions of
6 trust are a breed apart and entirely
7 distinct from all other allegations of
8 sexual abuse, including allegations of
9 sexual assault committed by teenagers.”

10 That paragraph is of interest to my client
11 in terms of Mr. Justice Moldaver’s categorization, if you
12 will, of the factual background involving C-12.

13 You’ll recall that the allegation was made
14 by a young girl against a teenager against fellow teenagers
15 who were, I believe, a couple of years older.

16 Mr. Justice Moldaver categorized that as a
17 case of sexual abuse. I would submit that it would be a
18 case of sexual assault because of the relationship between
19 the actors involved. And I would submit that an example of
20 a sexual abuse would be a teacher engaging in sexual acts
21 with a student, a parent or babysitter engaging in sexual
22 acts with a child in his or her care, a coach engaging in
23 sexual acts with a young player or a school bus driver
24 engaging in sexual acts with students who ride the bus.

25 I would submit that to have a case of abuse

1 you need a particular relationship between the parties that
2 are involved and must be a care giving role on the part of
3 the perpetrator in order to bring a sexual assault to the
4 different category or a smaller category of sexual abuse.

5 Now, if I am correct in my interpretation of
6 the Ontario Court of Appeal decision and in light of Mr.
7 Engelmann's request to go back and let the Commission know
8 what turns on the Court of Appeal decision, I would submit
9 that if the evidence that we've heard is outside of the
10 mandate as newly defined by the Court of Appeal, that would
11 preclude you from making any findings and misconduct down
12 the road once all the evidence is in with those cases of
13 abuse that are other than cases of sexual abuse by persons
14 in a position of trust or authority.

15 The position I took with Mr. Engelmann was
16 that if you can't make a finding of misconduct with respect
17 to those cases, that it would follow that you ought -- that
18 it would be improper to issue a notice under the Act in
19 those cases ---

20 **THE COMMISSIONER:** Or even to ask you to
21 respond.

22 **MR. CHISHOLM:** Well, I didn't take that
23 position. The cases -- the evidence is out there in the
24 public domain right now. I am not taking a position that
25 we would not respond to the -- if requested, I'm not taking

1 the position that we would not respond to the ---

2 **THE COMMISSIONER:** Well, if it's outside my
3 jurisdiction and you can't consent to jurisdiction, why
4 would we spend the time, the public purse and all of that,
5 when the Court of Appeal has in no uncertain terms set a
6 very narrow road?

7 **MR. CHISHOLM:** The Court of Appeal was
8 concerned with the potential scope of the Inquiry. I would
9 submit that there are some -- to answer your question,
10 there are some reasons why we would do that. One of the
11 purposes, I would submit, of a public inquiry is to educate
12 the public.

13 Another specific aspect of this inquiry is
14 the component of healing. There may be some benefit in
15 hearing responses to allegations that have been made thus
16 far even if they can't form the basis for a finding of
17 misconduct.

18 I would leave that for another day, but I'm
19 not submitting -- standing here today submitting that we
20 would not respond to any allegations that are out there if
21 you find them to be beyond the scope of the mandate.

22 And then what I would propose to do next is
23 take you to the cases that in my quick review of the
24 evidence would raise questions in light of my
25 interpretation of the Court of Appeal decision.

1 **THE COMMISSIONER:** You mean the evidence of
2 the witnesses?

3 **MR. CHISHOLM:** Yes.

4 **THE COMMISSIONER:** Okay. So what witnesses
5 do you think should -- are affected by this?

6 **MR. CHISHOLM:** The evidence of -- and when I
7 say -- when I'm going to give you this list, I'm not saying
8 by any means all of their evidence is affected, but I'm
9 saying there are some parts -- there are some parts to all
10 of these witnesses' evidence that have issues of concern in
11 light of my interpretation of the Court of Appeal.

12 The first witness would be Roberta
13 Archambault. The second would be Ginette Antoine. The
14 third would be André Bissonnette. The fourth would be
15 Catherine Sutherland. The fifth would be C-14. Then I
16 have Keith Ouellette and Douglas Seguin.

17 **THE COMMISSIONER:** Okay.

18 **MR. CHISHOLM:** Dealing first with Ms.
19 Archambault, she testified on November the 16th, 2006 and
20 her evidence was that she was verbally, mentally,
21 physically and sexually abused while in the care of the
22 CAS. She alleged that she was sexually abused while in
23 foster care. The first allegation of sexual abuse is by
24 her foster father, Mr. Hubert. That name was out in
25 November 2006.

1 The second allegation relates to allegations
2 of sexual misconduct on the part of a child of other foster
3 parents, and that was in the Lapensée foster home, where
4 she resided. Her evidence was that that misconduct -- that
5 sexual misconduct took place when she was 15 or 16 years
6 old.

7 With respect to Ms. Archambault's evidence,
8 my position would be that the allegations of sexual abuse
9 at the hands of the foster parents would fit within the
10 mandate as a foster parent would be in a position of trust
11 and authority, while the other types of abuse alleged by
12 Ms. Archambault do not fit within that mandate.

13 **THE COMMISSIONER:** What about the Lapensées?

14 **MR. CHISHOLM:** Sorry, I'm coming to that.

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

16 **MR. CHISHOLM:** When I say the other types of
17 abuse, I'm referring to other types of abuse alleged by Ms.
18 Archambault in that first foster home apart from sexual
19 abuse.

20 With respect to the allegation of sexual
21 misconduct by the son of the Lapensées, I would submit that
22 this alleged misconduct would not have been committed by a
23 person in trust or authority and, therefore, would not fit
24 within the mandate.

25 Ms. Antoine is ---

1 **MR. LEE:** Can I just have one moment with
2 Mr. Chisholm? I want to make absolutely certain that ---

3 **(SHORT PAUSE/COURTE PAUSE)**

4 **MR. CHISHOLM:** Mr. Lee asked whether or not
5 I said that the alleged sexual misconduct on the part of
6 the Lapensée child -- just to clarify, I did not say that
7 the allegation was that he was a child at the time of the
8 alleged misconduct, but he was the child of the foster
9 parents.

10 The second witness is Ginette Antoine. She
11 testified on June 4th, 5th and 6th of 2007. She testified
12 that she was a victim of both sexual and physical abuse
13 while she was in the care of the CAS. She alleged that she
14 was physically and sexually abused while in the Reynen
15 foster home by the foster father. Sorry, the allegation of
16 sexual abuse relates to the foster father.

17 The allegations of physical abuse would
18 relate to the foster parents and the daughter of the foster
19 parents. She alleged physical and sexual abuse in the
20 Looyen home.

21 With respect to the sexual abuse, Ms.
22 Antoine alleged that she was sexually and physically abused
23 by Mrs. Looyen's father. She also testified to being
24 sexually -- to being the victim of sexual misconduct by a
25 ranch handyman on the Looyen farm.

1 You'll recall that Ms. Antoine also alleged
2 physical and sexual abuse at the Second Street Group Home -
3 --

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

5 **MR. CHISHOLM:** --- in Cornwall.

6 The position that I would take, given my
7 interpretation of the Court of Appeal decision, would be
8 the alleged physical abuse in the foster home would be
9 outside of the mandate. The alleged sexual abuse by the
10 foster father is within the mandate. The alleged sexual
11 abuse by Mrs. Looyen's father is within the mandate as he
12 would be appear to be in a position of trust or authority.
13 The alleged physical abuse by Mrs. Looyen and her father is
14 outside of the mandate, again because it's not -- it's
15 abuse alleged other than sexual abuse.

16 The alleged abuse by the -- or the
17 misconduct by the ranch hand is outside of the mandate
18 because it lacks, I would submit, the important factor of
19 being a position of trust or authority.

20 Dealing with the Second Street Group Home,
21 the alleged physical abuse, I would submit, based upon the
22 Court of Appeal's decision, is outside of the mandate.

23 The alleged sexual abuse at the Second
24 Street Group Home is within the mandate.

25 Moving on to Mr. Bissonnette, he testified

1 on May the 10th of 2007. He testified that he was subjected
2 to physical abuse in the Wharton foster home. He also
3 testified that he suffered physical and mental abuse in the
4 Lamarche foster home.

5 Mr. Bissonnette also testified that when he
6 was 14 years old, he was sexually and physically abused by
7 a Crown ward of the CAS in the Menier foster home. The
8 evidence was that he was approximately one year older than
9 -- the CAS ward I'm speaking of is approximately one year
10 older than Mr. Bissonnette. The alleged abuse lasted for
11 approximately two weeks on and off was the evidence of Mr.
12 Bissonnette.

13 The position that I would take with respect
14 to Mr. Bissonnette's evidence would be the physical and
15 mental abuse do not fit the mandate.

16 The alleged sexual molestation was not
17 alleged to have been committed by a person in a position of
18 trust or authority and, therefore, does not fit within your
19 mandate.

20 I would see Mr. Bissonnette being no
21 different than what C-12 was, Mr. Commissioner.

22 Specifically, this may relate more to the
23 reasonably relevant test, but you'll recall the allegations
24 of C-12 ---

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

1 **MR. CHISHOLM:** --- were that she was the
2 victim of a sexual assault at the hands of two teenaged
3 boys at knifepoint.

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

5 **MR. CHISHOLM:** I would submit Mr.
6 Bissonnette can be in no stronger position than what C-12
7 would be in.

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

9 **MR. CHISHOLM:** Catherine Sutherland
10 testified on May the 30th and 31st, 2007. She testified that
11 she suffered from both physical and sexual abuse.

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

13 **MR. CHISHOLM:** She testified that she
14 suffered sexual abuse at the hands of a man when her mother
15 dropped her off at a house in Cornwall.

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

17 **MR. CHISHOLM:** She alleged that her mother
18 collected money from the man.

19 She also testified that she was sexually
20 abused by her foster father.

21 The position that I would take in light of
22 the Court of Appeal's decision would be that the alleged
23 physical abuse by the mother is outside of the mandate and
24 that the allegations of sexual abuse by the stranger at the
25 hands of the mother, I would submit, and the allegation of

1 sexual abuse by the foster father are both within the
2 mandate.

3 **THE COMMISSIONER:** Well, I don't know that I
4 would be finding -- making findings of fault to the
5 Children's Aid Society about the mother.

6 **MR. CHISHOLM:** And perhaps not, but the --
7 and I wasn't looking -- when I composed this letter, I
8 wasn't so much looking at any potential findings that you
9 might make, but I was just -- whatever I could rule out as
10 being outside the mandate, that's the -- that was the
11 theme in which I penned this letter.

12 **THE COMMISSIONER:** Right.

13 **MR. CHISHOLM:** I had a discussion with Mr.
14 Lee this morning with respect to my letter also mentioned,
15 not specifically, but my letter that the parties saw
16 indicated that that complaints about the records disclosure
17 fell outside the mandate. I'm not going to advance that
18 position today.

19 Mr. Lee, who was ably able to convince me
20 that in the case of Ms. Sutherland, her request related to
21 the trying to find out what happened in her earlier life,
22 to portions of her life that are within the mandate. So
23 Mr. Lee and anyone who had concerns of that aspect -- about
24 that aspect of my argument need not be concerned because
25 I'm not advancing that any further.

1 C-14 testified on June the 18th, 2007.

2 He testified that his foster parents
3 physically abused him.

4 And C-14 also testified that he was sexually
5 abused by a 23-year old mentally challenged individual who
6 resided in the foster home.

7 C-14 also alleged sexual abuse by an
8 acquaintance of the foster parents. This evidence related,
9 if I recall correctly, to C-14 being permitted to attend
10 with this person to Montreal.

11 The position I would take, in light of the
12 Court of Appeal's decision with respect to C-14 would be
13 the alleged physical abuse does not fit within the mandate.
14 The alleged sexual abuse by the acquaintance of a foster
15 parents is within the mandate, as there was a position of
16 trust and authority. The alleged sexual misconduct by the
17 mentally challenged individual is outside of the mandate.
18 My position being there would be no position of trust or
19 authority.

20 Keith Ouellette testified on August the 20th
21 and 21st of 2007.

22 He testified that he was sexually molested
23 by one of his adoptive brothers.

24 The position that I take in light of the
25 Court of Appeal's decision would be the alleged sexual

1 molestation is not alleged to have been committed by a
2 person in a position of trust or authority, therefore,
3 outside of the mandate.

4 Doug Seguin was the last on my list.
5 He testified on November 26th, 27th and 28th
6 of 2007.

7 And I'm not -- when he testified, he said at
8 the present time he had no complaints against the CAS.
9 However, in the past he had complained about Mr. Richard
10 Abell's comments to the media.

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

12 **MR. CHISHOLM:** I would submit that that type
13 of complaint does not fit within the mandate of the
14 Commission.

15 We may hear submissions from some of my
16 friends in the room after I sit down or next week about the
17 reasonably relevant test. My position there would be that
18 -- that if a case like C-12 does not make it in when we're
19 dealing with cases of sexual assault with a knife, other
20 types of abuse other than sexual, however unpleasant, will
21 not fit within the reasonable relevancy test and,
22 therefore, my position is we don't -- these cases that I've
23 gone through don't fit within your mandate and I would
24 submit they're not reasonably relevant to the mandate as
25 interpreted by Mr. Justice Moldaver in the Court of Appeal.

1 Subject to your submissions or comments, Mr.
2 Commissioner, those would be my submissions.

3 **THE COMMISSIONER:** No, I won't make any
4 submissions to you.

5 **MR. CHISHOLM:** Sorry, questions. Questions.

6 **THE COMMISSIONER:** No, that's fine.

7 Thank you.

8 **MR. CHISHOLM:** Thank you.

9 **THE COMMISSIONER:** All right.

10 So I take it everyone else wants to go on
11 Tuesday?

12 All right.

13 So we resume Tuesday at 9:30?

14 Yes?

15 **MR. MANSON:** Mr. Commissioner, partly
16 because I can't ---

17 **THE COMMISSIONER:** I can't hear you.

18 **MR. MANSON:** Partly because I can't have
19 someone here on Tuesday and although I could perhaps be
20 here very early in the morning, I could respond to Mr.
21 Chisholm now, but, I mean ---

22 **THE COMMISSIONER:** No, that's fine.

23 And while we're on it, though, I just want
24 to make sure the lawyer for Mr. Bissonnette, I think --
25 will she be back here?

1 When's she coming back?

2 (SHORT PAUSE/COURTE PAUSE)

3 MR. ENGELMANN: She indicates she'll be back
4 in her office on the 19th, which is Tuesday. I have a phone
5 number for her.

6 THE COMMISSIONER: Okay.

7 MR. ENGELMANN: We will contact her today

8 ---

9 THE COMMISSIONER: M'hm.

10 MR. ENGELMANN: --- and advise her and ---

11 THE COMMISSIONER: Advise her that her
12 request for an adjournment was granted to Tuesday.

13 MR. ENGELMANN: All right.

14 Did you want to hear from Mr. Manson, then,
15 or ---

16 THE COMMISSIONER: I guess so.

17 MR. ENGELMANN: Unless -- I don't -- I'm
18 assuming that both Mr. Manderville and Mr. Neville are able
19 to be here Tuesday to advance their position.

20 THE COMMISSIONER: All right.

21 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

22 MR. MANSON: I think Mr. Chisholm's
23 arguments, especially with respect to physical versus
24 sexual abuse is probably distinct.

25 THE COMMISSIONER: It's probably what?

1 **MR. MANSON:** Distinct from the other
2 objections. I'm not entirely sure.

3 But let me deal with that -- that first.

4 One thing we know with the Court of Appeal
5 decision, the case of C-12 was a sexual abuse case and it
6 wasn't necessary for the court to deal with this issue, the
7 distinction between physical and sexual abuse, it was a
8 sexual abuse case.

9 But the question of whether it was within or
10 without the mandate had to do perhaps with historical
11 versus current reporting, but more precisely the fact that
12 the alleged perpetrators were teenagers and not persons in
13 authority.

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

15 **MR. MANSON:** So my first point is that there
16 was no reason for the Court of Appeal to explore the
17 distinction between abuse in terms of sexual or physical.

18 **THE COMMISSIONER:** So are you saying its
19 obiter?

20 **MR. MANSON:** Well, let me just get to that.

21 **THE COMMISSIONER:** Okay.

22 **MR. MANSON:** I'm not sure how you --
23 because, in fact, they say -- as Mr. Chisholm quite fairly
24 pointed out, they say two different things at different
25 places.

1 My next point is that the Order in Council
2 never uses the word "sexual" anywhere. And, again, the
3 Court of Appeal's concern was about the use or absence of
4 historical -- sexual does not appear in the Order in
5 Council anywhere.

6 Another issue that was not canvassed in the
7 Court of Appeal, and I can completely understand why, is
8 Paragraph 5D of the Order in Council, which, if I can find
9 my hastily written note, certainly had nothing to do with
10 the C-12 case. There's no reason why anybody would mention
11 it.

12 But this is the part of the order and
13 mandate that talks about what you may refer to and rely on.

14 "Medical (d): Medical, professional,
15 social science and similar evidence and
16 the background information related to
17 the causes, consequences and responses
18 to the abuse of young people." (As
19 read)

20 It doesn't say sexual abuse there either.

21 When we look specifically at the Court of
22 Appeal, the key problem for my argument is I think in
23 Paragraph 52, where after looking at contextual evidence
24 and asserting the importance of person in authority or
25 trust to the mandate as it relates to the meaning of

1 historical, first is:

2 "I've already pointed out the
3 Commissioner misconstrued the words
4 "allegations of abuse" in the first
5 sentence of the preamble. Had he read
6 those words in conjunction with the
7 second sentence of the preamble, he
8 would have realized that the
9 allegations of abuse were the
10 allegations of abuse that formed the
11 subject matter of Project Truth. That
12 is allegations of historical sexual
13 abuse of young people in the Cornwall
14 area by persons in authority or
15 positions of trust." (As read)

16 If we look at that sentence alone, Mr.
17 Chisholm is 100 percent right.

18 I want to say, again, with all due respect
19 to Mr. Justice Moldaver, in a number of paragraphs from
20 here on in he leaves the adjective "sexual" out when he's
21 talking about abuse, and I'm going to take you to a few of
22 those in a minute.

23 But also, coming back to this Paragraph 52,
24 this isn't a precise statement of his view of your mandate.
25 We know that because he backs off the word "historical" at

1 Paragraph 62 where he says:

2 "Footnote 5: I do not agree with the
3 dissenting opinion of Spiegel, J. to
4 the extent that he concluded that the
5 term "historical" in 2A of the OIC
6 imports a requirement that there must
7 necessarily be a lapse of time between
8 the time of the abuse and the time of
9 reporting for the allegation to be
10 considered as historical." (As read)

11 So current -- a current disclosure can also
12 fit and he refers to this elsewhere in his judgment.

13 So I'm saying that one statement in
14 Paragraph 52 is not the be all and end all.

15 Paragraph 53, he says at the bottom:

16 "Surely similar circumstances refers to
17 allegations of historical abuse, as the
18 appellant suggests, and not allegations
19 of sexual assault of any kind as
20 Commission counsel suggests." (As read)

21 "Sexual" doesn't appear.

22 Paragraph 55, in the middle of the way down:

23 "Such allegations would include those
24 that were the subject of the Project
25 Truth investigation as well as any

1 similar allegations of historical abuse
2 of young people by persons in authority
3 or positions of trust that were not
4 investigated by Project Truth or that
5 came to light after Project Truth."

6 Paragraph 56, again, he uses "historical
7 abuse" and not "sexual abuse".

8 Certainly in paragraph 60 when he says:

9 "The main focus of Parliament was to
10 highlight cases that had been in the
11 spotlight in the community..." (As read)

12 --

13 And we can take that to mean some of the
14 sexual abuse cases. He's not saying the sole focus, Mr.
15 Commissioner, he's saying the main focus.

16 Look at Paragraph 62. If we look to this as
17 an encapsulation of Mr. Justice Moldaver's view:

18 "Properly construed, the OIC empowers
19 the Commissioner to look into and
20 report on institutional responses,
21 past, present and future, relating to
22 allegations of historical abuse of
23 young people in Cornwall by persons in
24 authority, including the allegations or
25 positions of trust, including the

1 allegations in Project Truth, as well
2 as similar such allegations,
3 allegations that were reported at the
4 time of the abuse or years later or
5 both, would fall within this mandate.”

6 (As read)

7 Here is his summary that’s sufficient to
8 deal with C-12, a sexual assault case, and it makes no
9 mention of sexual assault.

10 I’m not trying to be cute about this
11 language, Mr. Commissioner. I’m not trying to lead you
12 into any mischievous direction, simply to argue in favour
13 of inclusion.

14 I think it’s important to go back to my
15 first point. The difference between physical and sexual
16 abuse was never on the table. My understanding is it
17 wasn’t argued -- someone else who was there can correct
18 that -- but it certainly wasn’t necessary because C-12 was
19 a sexual abuse case.

20 That’s part of what I want to say about
21 physical abuse.

22 The other part, Mr. Commissioner, and
23 certainly this applies to Andre Bissonnette, because most
24 of the other individuals that Mr. Chisholm dealt with did
25 make allegations of sexual abuse against persons in

1 authority. He conceded that. He's saying that some of
2 their other allegations don't fit.

3 I have a big problem with separating out
4 these allegations, Mr. Commissioner. Maybe at the end of
5 the day it's necessary for you to do that. And maybe
6 that's something for final submissions, but there is an
7 interaction when you're looking at the lives of these young
8 people, historically, between physical abuse -- there -- a
9 potential interaction between physical abuse and sexual
10 abuse, between those matters and the responses of the
11 institutions. It's hard to separate these matters out
12 abstractly simply by saying "x" physically abused and "y"
13 sexually abused; ignore "x", you can count "y".

14 And today -- and I, you know, certainly gave
15 no notice of this to anyone and I'm subject to being
16 corrected, but a thought occurred to me, and I did a quick
17 look at this case. Some people maybe remember it. It's a
18 quite well known Supreme Court of Canada similar fact
19 evidence case, BFF, and it's a case involving allegations
20 of sexual assault. I can't remember if it's the father or
21 stepfather, but no question it's a person of authority --
22 the head of the family, put it that way -- in respect of a
23 daughter.

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

25 **MR. MANSON:** Crown wants to call allegations

1 of physical abuse against sons as similar fact evidence.

2 So, of course, the argument by defence
3 counsel is it's bad character evidence, you're just showing
4 he's a bad guy.

5 The Supreme Court of Canada let it in as
6 similar fact evidence, but without going through that
7 analysis, at Paragraph 76, Justice Lacobucci explains why
8 it's relevant to more than bad character.

9 **THE COMMISSIONER:** Will you be providing us
10 with a copy of that or a citation?

11 **MR. MANSON:** I just looked at it at my desk
12 within the past hour so I could do it by -- the citation is
13 1993 1SCR692.

14 I can provide copies next week.

15 **THE COMMISSIONER:** Mr. Manderville?

16 **MR. MANDERVILLE:** I think Mr. Manson has
17 just addressed my concern. I was about to say it's
18 difficult to distinguish an anecdote.

19 **MR. MANSON:** Oh, yeah. Well, I didn't mean
20 this to be an anecdote. It's a -- this is a legal
21 authority. I had just had not given anyone notice. I just
22 discovered it this afternoon -- well, it occurred to me and
23 I looked at it.

24 But just let me read it to you because we
25 can look -- there may be more to this ---

1 **THE COMMISSIONER:** As long as we have the
2 citation.

3 **MR. MANSON:** Yeah, [1993] 1 SCR 692.

4 **THE COMMISSIONER:** Okay.

5 **MR. MANSON:** At paragraph 76 -- and this is
6 -- I wrote out this quotation, Mr. Justice Iacobucci is
7 explaining why it's relevant to more than bad character:

8 "To demonstrate the system of violent
9 control that FFB exercised over the
10 family, which would explain why the
11 abuse was allowed to occur and why the
12 complainant was too frightened to press
13 charges until much later." (As read)

14 I think what this shows, Mr. Commissioner,
15 is the dynamic context within a family where there is
16 physical abuse and the potential relation between the
17 physical abuse and allegations of sexual abuse.

18 So when we come to André Bissonnette, in
19 particular -- I'm only going to address André Bissonnette
20 because I think most of the other people clearly make
21 arguments of sexual abuse against persons in authority.

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

23 **MR. MANSON:** In the André Bissonnette case,
24 he makes four kinds -- well, let me just explain some of
25 the things that he raises. This was one transcript that I

1 was able to read, Mr. Commissioner.

2 He certainly says he was physically and
3 emotionally abused by many foster parents.

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

5 **MR. MANSON:** That all turns on the
6 distinction between physical and sexual abuse, I grant Mr.
7 Chisholm that.

8 He also says he was sexually abused but the
9 alleged perpetrator was a teenager who -- slightly older, a
10 year older, who was another foster child. So I can
11 understand Mr. Chisholm's argument there.

12 He also says he was sent to Alfred by the --
13 as a result of an application by the Children's Aid
14 Society.

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

16 **MR. MANSON:** And I found much of his
17 evidence very compelling.

18 He explained, I think, quite emotionally and
19 passionately why young people don't complain, but also on a
20 very human level how young people are affected by these
21 various elements of abuse. This, again, is the dynamic
22 interaction. At the same time, he said, one of his sisters
23 was the subject of sexual assault by a foster parent in the
24 home that they were living in together.

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

1 **MR. MANSON:** Mr. Engelmann asked:
2 "Did you see it?"
3 "No, I didn't. She told me about it."
4 (As read)

5 And then he described some of the details.
6 Certainly that's hearsay, but the *Khan* case
7 was all about hearsay from a mother.

8 This is a Commission of Inquiry. I would
9 submit that that gets Mr. Bissonnette into the mandate.
10 He's living in a foster home where he is physically and
11 emotionally abused and his sister is sexually abused. Her
12 sexual abuse is certainly within your mandate. She's a
13 foster child; attempted rape by a foster father.

14 The other very interesting thing about Mr.
15 Bissonnette, Mr. Commissioner, if we now move -- if -- and
16 I'm not doing that -- but if I were to concede that his
17 allegations are outside the mandate, I would argue that
18 they're reasonably relevant. Why are they reasonably
19 relevant? As I just explained, he talks about the impact
20 on a young person. He talks about why he didn't come
21 forward. Certainly that's reasonably relevant to the
22 issues before you.

23 And if we look at the Court of Appeal in
24 that context -- and I know these can be difficult and
25 subtle conclusions to reach -- reasonably relevant to the

1 subject matter of the Inquiry. Paragraph 64:

2 "If it has bearing on an issue to be
3 resolved and could reasonably in some
4 degree advance the Inquiry." (As read)

5 Why don't young people complain? That's an
6 issue to be resolved, Mr. Commissioner.

7 The Court of Appeal says they:

8 "...would grant a high degree of
9 deference and exercise a standard of
10 reasonableness in reviewing the
11 decision of a Commissioner of Inquiry
12 with respect to 'reasonably relevant'."

13 (As read)

14 Paragraph 65:

15 "An item or body of evidence..."

16 In this case, it's a body of evidence. All of his evidence
17 of growing up as a foster child:

18 "...though peripheral to the subject
19 matter of the Commission, bears on an
20 issue to be resolved and will in some
21 degree advance the Inquiry so long as
22 the Commissioner's view is reasonably
23 based, it won't be jurisdictional
24 error."

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

1 **MR. MANSON:** They then give an example of
2 even how a situation similar to C-12's might be reasonably
3 relevant. They talk about how -- this is Paragraph 68:

4 "Her case does not speak to systemic
5 problems that may or may not exist in
6 the way police respond to allegations
7 of sexual abuse of young people by
8 persons in a position of trust or
9 authority." (As read)

10 That's why they say it has no probative
11 value. It's a one-off example of a particular incident.
12 It's not systemic; has no probative value.

13 They then go on to say that's -- if it just
14 stands alone.

15 In paragraph 69:

16 "If C-12's evidence doesn't stand alone
17 but is a prelude to an avalanche of
18 similar evidence, then you've got
19 another problem, marginal probative
20 value versus prejudiced." (As read)

21 But, in Paragraph 70, they say there can be
22 an overlap between a C-12 case and a Project Truth case and
23 they use an example of reasonable relevance:

24 "Studies that have explored the
25 systemic responses of institutions,

1 such as police, to general allegations
2 of abuse made by young people." (As
3 read)

4 In this Inquiry, Mr. Commissioner, there are
5 three aspects to every victim case, if I can call them
6 that. The nature of the abuse, the nature of the victim,
7 the nature of the abuser.

8 I'd submit that Mr. Moldaver is saying that
9 legitimate evidence of systemic responses to a set of
10 victims who suffered abuse, even if not sexual, might well
11 pass the reasonably relevant test, even if it's not within
12 the core -- core mandate.

13 And why is Bissonnette evidence of systemic
14 response? He goes from foster home to foster home to
15 foster home -- it's not a one-off C-12, this is what
16 happened on a particular day -- and he lives in the foster
17 homes for months and years, and it fits into a pattern with
18 the other CAS cases.

19 So I would argue, leave the other matters
20 for other people to address, other than to say that in the
21 other cases most of them had elements of sexual abuse by
22 persons in authority.

23 André Bissonnette, it seems to me, on a
24 number of grounds, ought to stay within the mandate.

25 If I can, just before I sit down -- and this

1 may help people for next week -- the leading case on
2 persons in authority and trust is in the casebook, the
3 Joint Book of Authorities that was prepared. It's *Audet*.

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

5 **MR. MANSON:** And I only want to raise one
6 point and that is how fact-specific and subtle some of
7 these distinctions are.

8 Some people, by their role, are clearly
9 persons in authority by virtue of role. Other people,
10 however -- and I want to refer to a comment by -- Paragraph
11 33, partway down, it's a quotation from Justice Blair.

12 **THE COMMISSIONER:** What are you in now?

13 **MR. MANSON:** Paragraph 33.

14 **THE COMMISSIONER:** On *Audet*?

15 **MR. MANSON:** In *Audet*.

16 **THE COMMISSIONER:** No paragraphs there.

17 **MR. MANSON:** Pardon me?

18 **THE COMMISSIONER:** It's on tab -- in tab ---

19 **MR. MANSON:** Oh, I don't have the book, so I
20 don't ---

21 **THE COMMISSIONER:** So if there's only one
22 *Audet* in ---

23 **MR. MANSON:** I'm sorry?

24 **THE COMMISSIONER:** Tab 2, yes, but there are
25 no paragraphs.

1 MR. MANSON: Which judgment?

2 THE COMMISSIONER: Sopinka's? No, that's
3 the dissenting. Oh, I'm sorry, there is, there is.

4 MR. MANSON: Yes. It's in Paragraph 33,
5 yes.

6 THE COMMISSIONER: Sorry, I was looking at
7 the dissent.

8 MR. MANSON: And this is the -- a quotation
9 that is later approved -- I'll point you to that in a
10 second -- but this is the case of *PS*. I'm just looking for
11 the citation for *PS*, but we can come back to that.

12 Finally, Blair J., also in *PS*, this is at
13 the bottom of that page in Casebook 27 ---

14 THE COMMISSIONER: Yes.

15 MR. MANSON: --- wrote the following about
16 the term "position of trust", and it's the last half, the
17 underlying half:

18 "Where the nature of the relationship
19 between an adult and young person is
20 such that it creates an opportunity for
21 all of the persuasive and influencing
22 factors which adults hold over children
23 and young persons to come into play and
24 the child or young person is
25 particularly vulnerable to dissuade

1 these factors, the adult is in a
2 position where those concepts of
3 reliability and truth and strength are
4 put to the test. Taken together, all
5 of these factors combine to create a
6 position of trust."

7 Without going through the whole case now and
8 taking up a lot of time, Mr. Commissioner, you can see that
9 this is approved in Paragraph 35:

10 "I therefore agree with the
11 reservations expressed by Blair, J."

12 But my point is we've got at least three
13 kinds of persons of authority and trust. The first is
14 someone who, by virtue of their role, clearly -- and they
15 use teacher as an example, almost always.

16 Then we've got situations where even if it
17 isn't teacher/student, the teacher role -- the influence of
18 the teacher role might extend beyond the classroom and the
19 school context.

20 The third is this creation of opportunity by
21 a particular adult with respect to a particularly
22 vulnerable child.

23 So in all these cases, what you have to ask
24 is, what's the relationship between the adult and the
25 child? Does the adult play a special role in respect of

1 the child? How old is the adult? How young and vulnerable
2 is the child?

3 These are the same remarks that I would make
4 with respect to Mr. Landry when we deal with that and with
5 respect to a number of these other people. They are fact-
6 specific. They are subtle. They are not easy distinctions
7 to make.

8 I also want to point out that I agree with
9 Mr. Chisholm that there's a possibility of transference a
10 position of authority or trust. He referred to one case
11 where mother drops off daughter at stranger. I was worried
12 he was going to say the stranger isn't the person in
13 authority. I think the stranger is, by virtue of the
14 authority of the mother.

15 And we've seen that in other cases where
16 someone who's a person of authority may involve a young
17 person with stranger, but vis-à-vis the young person, if
18 you look at those factors of who is the alleged
19 perpetrator; what's the relationship age/vulnerability,
20 it's easy to see how transference applies.

21 And I think that's an important
22 consideration in a lot of these cases, Mr. Commissioner.

23 I will try to come back briefly for Tuesday
24 morning. I am leaving the country shortly after that, and
25 I can't get Ms. Daley here, but I'll come back to respond

1 to Mr. Manderville then.

2 Thank you.

3 **THE COMMISSIONER:** Thank you.

4 All right. So if that's everything, we'll
5 come back Tuesday at 9:30, Mr. Engelmann?

6 **MR. ENGELMANN:** Yes. Thank you, sir.

7 **THE COMMISSIONER:** Thank you.

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

10 This hearing is adjourned until February
11 19th at 9:30 a.m.

12 --- Upon adjourning at 4:05 p.m./

13 L'audience est ajournée à 16h05

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

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



Marc Demers, CVR-CM