

**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 331

Held at :

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

Friday, January 9, 2009

Tenue à:

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

Vendredi, le 9 janvier 2009

Appearances/Comparutions

Ms. Brigitte Beaulne	Registrar
Ms. Karen Jones	Commission Counsel
Mr. Jack Briscoe	
Mr. Mark Crane	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Juda Strawczynski	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
M ^e Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Curt Flanagan	

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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. Good morning,
10 all. Next witness, please.

11 **MS. JONES:** We call Mr. Flanagan, please.

12 **THE COMMISSIONER:** Thank you.

13 Mr. Flanagan, could you come forward,
14 please.

15 **CURT FLANAGAN, Sworn/Assermenté:**

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

17 **MR. FLANAGAN:** Good morning,
18 Mr. Commissioner.

19 **THE COMMISSIONER:** Thank you, sir. I
20 understand that you have a delicate back there this
21 morning.

22 **MR. FLANAGAN:** Yes. It's a lot better than
23 it was Monday or Tuesday morning. I'm on Robaxacet, so if
24 it gets really bad, I'll just ask to take five minutes or
25 something.

1 **THE COMMISSIONER:** Sure. No, that's fine.
2 That's what I wanted to convey to you.

3 **MR. FLANAGAN:** Thank you.

4 **THE COMMISSIONER:** So speak into the
5 microphone. You have fresh water. We'll be showing you
6 some documents ---

7 **MR. FLANAGAN:** Sure.

8 **THE COMMISSIONER:** --- either on the screen
9 or on a hard copy. If you have any questions or you feel
10 uncomfortable, either healthwise or otherwise, let me know
11 and we'll take it from there.

12 **MR. FLANAGAN:** Sure.

13 **THE COMMISSIONER:** All right? Thank you
14 very much.

15 Ms. Jones?

16 **MS. JONES:** Thank you.

17 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE IN-CHEF PAR**

18 **MS. JONES:**

19 **MS. JONES:** Just also as a reminder, too,
20 when we enter in an exhibit or a document as an exhibit, we
21 traditionally wait till it's up on the screen as well, so
22 there's a bit more of a delay. It's not like a normal sort
23 of a courtroom where you just look at the actual document,
24 but it's sometimes helpful to see it on the screen as well.

25 The very first document we're going to be

1 entering is actually a career profile for Mr. Flanagan.
2 It's Document 200342.

3 **THE COMMISSIONER:** Thank you.

4 Exhibit 2992 is a career profile of Curt
5 Flanagan.

6 --- **EXHIBIT NO./PIÈCE NO. P-2992:**

7 (200342) Career profile - Curt Flanagan.

8 **MS. JONES:** And I see by your career
9 profile, if I just try to do this briefly as I can, you
10 were called to the bar in Ontario in 1982 and joined the
11 Ministry of the Attorney General in Ottawa on a permanent
12 basis as an assistant Crown attorney in 1985. You had been
13 a contract Crown, a per diem Crown, for the two years prior
14 to that.

15 In 1993, you were seconded to Brockville and
16 there you practised as assistant Crown attorney and then in
17 the spring of 1993 you became the Crown attorney of that
18 region.

19 **MR. FLANAGAN:** Yeah. I wasn't actually
20 seconded to Brockville. I became the Crown attorney in '93
21 for Leeds and Grenville, which is centred in Brockville.

22 **MS. JONES:** And from approximately November
23 1999 to early 2001, you were seconded as counsel to the
24 Illegal Gambling Unit in Ontario, and you are still the
25 Crown attorney in the Brockville office but you're

1 currently on a secondment to Toronto to the Mental Health
2 Division in the Crown Law Office.

3 **MR. FLANAGAN:** Right. As of October 2008, I
4 have been seconded as Director of Mental Health for the
5 Criminal Law Division for the Ministry of the Attorney
6 General, but I am still the Crown attorney in Brockville.

7 **MS. JONES:** And I also understand that you
8 have participated in a number of courses throughout the
9 Crown schools that you've attended over the years --
10 various courses -- and you've been specifically trained in
11 issues including trial advocacy, homicides, search
12 warrants, impaired driving and other sorts of general
13 criminal matters. Is that correct, sir?

14 **MR. FLANAGAN:** Yes.

15 **MS. JONES:** Okay.

16 Now, just by way of background, I wonder if
17 you could just describe when files come into the Brockville
18 Crown Attorney's Office, can you just describe how are
19 files delegated throughout the assistant Crowns that you
20 would have?

21 **THE COMMISSIONER:** When? What period of
22 time? Now or ---

23 **MS. JONES:** As when he's at Brockville, at
24 the Brockville -- in his role as the Crown attorney there -
25 - what is the practice in your office?

1 **MR. FLANAGAN:** Well, obviously a number of
2 files come in; the police lay a number of charges. The
3 files are screened. They may be screened by myself or they
4 may be screened by an assistant Crown attorney in my
5 office, doing the screening function. If a file needs to
6 be assigned, it is assigned in the Brockville Crown
7 Attorney's Office by myself.

8 **MS. JONES:** Okay, so there isn't, say, a
9 vertical file management system in place in Brockville?
10 You're the one who would delegate which cases should go to
11 which assistant Crown?

12 **MR. FLANAGAN:** Yeah. We don't have a lot of
13 assistant Crown attorneys per se in Brockville. I mean now
14 there are five. Back then there were three -- three
15 including myself, so, no.

16 **MS. JONES:** And what about the screening
17 process itself? How does that take place? Perhaps you
18 could describe that.

19 **MR. FLANAGAN:** Well, normally when the brief
20 comes in, the Crown doing the screening will look at it,
21 will review it for a reasonable prospect of conviction, and
22 will also see if there are witnesses to be cancelled that
23 are not needed for trial, and may embark on plea
24 negotiations in relation to it or put a position on the
25 file that -- should there be an early plea of guilty.

1 **MS. JONES:** And is disclosure an issue at
2 the screening time as well? Is that when you decide what
3 should be disclosed to the defence?

4 **MR. FLANAGAN:** Well, normally everything is
5 disclosed to the defence that is relevant on the charge.
6 It may come up, in screening a file, that there is
7 something that is missing from the file, for example. And
8 the screening Crown may say to the Court Services Manager,
9 who is a case manager -- at Brockville, we have two case
10 managers, one with -- now we do -- one with OPP and one
11 with Brockville -- say, you know, "We need this document
12 that's missing," and then that's disclosed at another time.

13 Or if there's further investigation done by
14 the police that comes into the file, that of course is
15 disclosed on a -- to defence as well.

16 **MS. JONES:** And what about victim witness
17 support? Do you recall when that was set up in Brockville?

18 **MR. FLANAGAN:** I don't and, I'm sorry, I
19 should know that date. Just let me think for a moment.

20 I don't. We've had it for a little while
21 though. We've had it for at least six years anyway -- six,
22 seven years, maybe longer, but I'm not sure of the exact
23 date.

24 **MS. JONES:** And who's responsible for
25 directing victims or complainants to the victim witness

1 program? Is that the Crown attorneys or would that be the
2 police officers?

3 **MR. FLANAGAN:** Well, victims can phone the
4 Victim Witness Office on their own accord and that may be
5 as a result of them deciding to, as a result of information
6 provided to them by the police, or it may be that they've
7 asked the police a question and they said, "There's a
8 Victim Witness Office."

9 In my office, if a victim wants an
10 appointment with -- to see a Crown, they phone the Victim
11 Witness Office, and the Victim Witness Office contacts our
12 office and an appointment is set up.

13 Just so you understand, the Victim Witness
14 Office is a separate body operating -- they're not part of
15 the Crown Attorney's Office.

16 **MS. JONES:** Okay.

17 Now, I'm going to talk about a few
18 prosecutions that either you were involved in personally or
19 possibly oversaw, or perhaps were even delegated to one of
20 your assistant Crown attorneys, and perhaps you can just
21 fill a few blanks for us.

22 **MR. FLANAGAN:** Sure.

23 **MS. JONES:** And the prosecutions I'm going
24 to be touching on are the one of Malcolm MacDonald,
25 obstruction. There is also a very brief dealing of a

1 possible opinion on Father Charles MacDonald, Marcel
2 Lalonde, Jean-Luc Leblanc, and then a very brief reference
3 to Bernard Sauvé and Romeo Major and Keith Jodouin. So
4 those were the -- are the items that we're going to be
5 touching on now ---

6 **MR. FLANAGAN:** Okay.

7 **MS. JONES:** --- in my questions.

8 So the very first area of questioning will
9 be the obstruction charge that was done against Angus
10 Malcolm MacDonald in February 1995.

11 Would you agree with me that it is unusual,
12 to say the least, to have a lawyer actually charged as a
13 defendant in a case?

14 **MR. FLANAGAN:** Well, I don't know about
15 unusual. It certainly doesn't -- is not the norm. There
16 has been lawyers charged. And the practice when a lawyer
17 is charged in the jurisdiction, obviously the Crown
18 Attorney's Office in that jurisdiction can't prosecute
19 because there's a conflict if they have any dealings with
20 that lawyer, so it's sent out.

21 So in answer to your question, unusual?
22 Yeah, it's not -- obviously not as often as you'd like --
23 as -- not as you'd like ---

24 **MS. JONES:** As I'd like?

25 **(LAUGHTER/RIRES)**

1 **MR. FLANAGAN:** Not as you like. It's not as
2 often as the norm, but it does happen from time to time.
3 Yeah, let me clear that up. It's not as you like.

4 **MR. KOZLOFF:** Do I have to walk up there an
5 object?

6 **(LAUGHTER/RIRES)**

7 **MR. KOZLOFF:** Do have I to walk up there and
8 object?

9 **MS. JONES:** Please don't let Mr. Kozloff do
10 that.

11 The reason I ask is because clearly the
12 matter would have to be moved out of that lawyer's
13 jurisdiction which is why, I presume, Mr. MacDonald's was
14 moved into Brockville because he was the Cornwall
15 jurisdiction and it ---

16 **MR. FLANAGAN:** The MacDonald file ---

17 **MS. JONES:** --- was transferred to you.

18 **MR. FLANAGAN:** --- sorry, the MacDonald file
19 came to my office through the Regional Director's office
20 because it was a local lawyer charged in Cornwall and they
21 couldn't do the prosecution.

22 **MS. JONES:** And I presume, therefore, you
23 had not had previous dealings with Mr. MacDonald before
24 then?

25 **MR. FLANAGAN:** No.

1 MS. JONES: You didn't know him ---

2 MR. FLANAGAN: No.

3 MS. JONES: --- personally or professionally
4 or any ---

5 MR. FLANAGAN: No.

6 MS. JONES: --- of that way? Okay.

7 And just to be clear too, the Regional
8 Director of Crown Attorneys at that time was Peter
9 Griffiths?

10 MR. FLANAGAN: Yes.

11 MS. JONES: If we could just ---

12 MR. FLANAGAN: Or Chief Justice Griffiths
13 now, yes.

14 MS. JONES: Yeah.

15 THE COMMISSIONER: Associate.

16 MR. FLANAGAN: Associate Chief Justice.

17 MS. JONES: If we could please go to Exhibit
18 2936 which is Document 715999.

19 (SHORT PAUSE/COURTE PAUSE)

20 MR. FLANAGAN: Thank you very much. I have
21 it.

22 MS. JONES: So just to be clear then, it was
23 Murray MacDonald that wrote the letter to Mr. Wakefield who
24 was Mr. Malcolm MacDonald's defence counsel at the time
25 saying that the matter had been transferred to yourself and

1 that you, personally, were going to have carriage of the
2 file.

3 **MR. FLANAGAN:** Yeah, it would appear that
4 this disclosure -- Mr. Wakefield was looking for disclosure
5 and Mr. MacDonald had told him that the matter was being
6 prosecuted by my office.

7 **MS. JONES:** I noted in the correspondence --
8 we're not going to look at every single letter here, but it
9 appears that your name was appearing on all the
10 correspondence between Wakefield and your office and you
11 did end up doing the actual guilty plea yourself, so did
12 you have sole carriage of this file?

13 **MR. FLANAGAN:** Yes.

14 **MS. JONES:** Okay.

15 Now, there was a brief moment, I suppose --
16 as I'm not going to enter every single letter -- but I
17 don't know if you recall or not, but there was the first
18 appearance of Mr. MacDonald, but you had actually written
19 to Murray MacDonald asking that either Guy Simard or Lynn
20 Robinson just act as an agent on that first appearance. I
21 don't know if you recall that or not.

22 **MR. FLANAGAN:** I recall seeing the document,
23 yes.

24 **MS. JONES:** Okay.

25 So there were no problems having Cornwall

1 Crown act as an agent as far as you were concerned?

2 **MR. FLANAGAN:** No, from time to time, if
3 you're assigned a prosecution and it's -- it's a question
4 of adjourning something in court, either on a weekly basis
5 or to set a date on something, no.

6 That's routine where you would ask that
7 office, "If you don't mind, can you adjourn it for two
8 weeks" or -- and give them the date.

9 **MS. JONES:** But there was -- there was no
10 other instructions to them except to adjourn the matter;
11 there's no involvement of those Crown attorneys in that
12 matter?

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

14 **MS. JONES:** Okay.

15 I'm wondering if we could please go to
16 Document 715994. This is a new document, Mr. Flanagan, so
17 that'll be given to you.

18 **THE COMMISSIONER:** Thank you.

19 Exhibit 2993 is a letter dated March 7th,
20 1995, addressed to Mr. Robert Wakefield and signed by Curt
21 Flanagan.

22 --- **EXHIBIT NO./PIÈCE NO. P-2993:**

23 (715994) Letter From Curt Flanagan to Robert
24 Wakefield - 07 Mar, 95

25 **THE COMMISSIONER:** You've got to watch that.

1 **MS. JONES:** So Mr. Flanagan, again, just to
2 be clear, do you recall taking specific responsibility with
3 regards to disclosure in the Malcolm MacDonald matter as
4 well?

5 **MR. FLANAGAN:** On the obstruct charge, yes.

6 **MS. JONES:** Yes, okay.

7 So any disclosure that was made would go
8 through you?

9 **MR. FLANAGAN:** Yes.

10 **MS. JONES:** Okay.

11 I just want to go briefly through some dates
12 without entering documents necessarily but just to refresh
13 your memory.

14 It would appear on March 10th, 1995, that you
15 wrote to Mr. Wakefield for Notice of Application for
16 Adjournment saying the case will be brought forward and it
17 was scheduled at a time that you were available because you
18 were also involved in a murder case, I believe, at that
19 time.

20 Now, with respect to the Crown brief that
21 you were referring to when you did this prosecution, I'm
22 wondering if we could please go to Exhibit 2690, Document
23 714915.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **MS. JONES:** Now, this particular document

1 has already been entered into evidence and apparently, this
2 is the index on what we call the "obstruct justice brief" -
3 - the investigative brief -- prepared, presumably, by
4 Inspector Smith and this lists the contents of that
5 particular brief. Do you recall this brief being the Crown
6 brief as well as the obstruct brief?

7 **MR. FLANAGAN:** I -- I don't specifically
8 recall this -- this document, the index. I have no reason
9 really to dispute that it wasn't in there, but I just don't
10 specifically recall it.

11 **MS. JONES:** Would the -- would the obstruct
12 brief prepared by Inspector Smith been something that you
13 would have had access to?

14 **MR. FLANAGAN:** Yes.

15 **MS. JONES:** Okay.

16 There are obviously a variety of items in
17 that particular brief and it seems to be consistent with
18 materials provided both to Mr. Wakefield and then,
19 subsequently, to Justice Lennox as well because many of the
20 items listed here make their way to Justice Lennox for the
21 pre-trial and to Mr. Wakefield and later disclosure.

22 **MR. FLANAGAN:** Yeah, as I recall, I -- when
23 Mr. -- obviously, I found out from Mr. Wakefield he was
24 seeking disclosure. And I wrote Mr. Wakefield and I'm
25 sorry, I don't have the document in front of me for the

1 date, but I wrote Mr. Wakefield and I gave him a list of
2 disclosure. That's -- that's the brief that I would have
3 had.

4 And I believe I did it in two parts because
5 I got -- I don't know if I got further disclosure, but
6 there was a second disclosure made to Mr. Wakefield. And
7 then I also gave disclosure to Justice Lennox for the
8 purposed of a pre-trial which was the practice back then.

9 **MS. JONES:** Right.

10 I can actually take you to that other ---

11 **MR. FLANAGAN:** Okay.

12 **MS. JONES:** --- letter if you wish. The one
13 for Mr. Wakefield is Document 715996.

14 **THE COMMISSIONER:** Thank you.

15 Exhibit 2994 is a letter dated April 14th,
16 1995, addressed to Mr. Robert Wakefield from Curt Flanagan.

17 --- **EXHIBIT NO./PIÈCE NO. P-2994:**

18 (715996) Letter from Curt Flanagan to Robert
19 Wakefield - 14 Apr, 95

20 **MS. JONES:** So if you read through this
21 disclosure letter dated April 14th, 1995, it would appear
22 that this contains, again, some of the items that are
23 listed in the index of the obstruct brief.

24 **MR. FLANAGAN:** Yes.

25 **MS. JONES:** Okay.

1 **THE COMMISSIONER:** Oh, I'm sorry. I said --
2 I misspoke, it's Exhibit 2994.

3 **MS. JONES:** Okay, thank you. You got that
4 Mr. Briscoe?

5 The letter that you mentioned to Justice
6 Lennox is Document 715995.

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

8 **THE COMMISSIONER:** Thank you.

9 Exhibit Number 2995 is a letter dated April
10 14th, 1995, addressed to Regional Senior Justice Lennox from
11 Curt Flanagan.

12 **--- EXHIBIT NO./PIÈCE NO P-2995:**

13 (715995) Letter From Curt Flanagan to
14 Regional Senior Judge Lennox - 14 Apr, 95

15 **MS. JONES:** And again, this would be very
16 consistent, I think, with the index that we have on the
17 obstruct ---

18 **MR. FLANAGAN:** Yes.

19 **MS. JONES:** --- brief, but it seems that
20 Justice Lennox received the same sorts of materials in
21 preparation for the pre-trial.

22 So I'm wondering if we could please look at
23 one of the items that is in this what I call the "obstruct
24 brief", in any event, and that is Exhibit 1164, Document
25 714916.

1 (SHORT PAUSE/COURTE PAUSE)

2 THE COMMISSIONER: Okay.

3 MS. JONES: This appears to be a synopsis
4 that was prepared by Tim Smith at the time.

5 He mentions two other lawyers being involved
6 in this matter, one Sean Adams and one Jacques Leduc. Did
7 you know Sean Adams or Jacques Leduc before this?

8 MR. FLANAGAN: No.

9 MS. JONES: Okay. You'd never heard of them
10 or dealt with them professionally?

11 MR. FLANAGAN: No.

12 MS. JONES: Or personally, for that matter?

13 MR. FLANAGAN: No.

14 MS. JONES: Would you agree that when you
15 read over the synopsis that certainly -- if we look at the
16 last page, page 3, which is Bates page 6039, if you read
17 that entire page, would you agree with me that Inspector
18 Smith is basically saying that all three lawyers had some
19 responsibility in this situation?

20 MR. FLANAGAN: Well, in reading the
21 paragraphs, it would appear that Inspector Smith was -- was
22 saying that there -- there was -- they were involved, but
23 he didn't believe that they were -- they were -- they had
24 committed any criminal offence.

25 MS. JONES: I'm sorry? What was the last

1 part of your sentence?

2 MR. FLANAGAN: That he didn't believe that
3 they -- they had committed any criminal offence, or were a
4 party to the criminal offence.

5 MS. JONES: Is it fair to say that he
6 certainly didn't, in that last page, anyway, say that one
7 lawyer had any more responsibility than anyone else?

8 MR. FLANAGAN: Well, there's nothing, no,
9 that's correct. There's nothing in -- in the paragraph
10 that says that.

11 MS. JONES: All right. And, in fact, I
12 would go so far as to say that when he's talking about "the
13 lawyers' actions," he's talking about them in unison with
14 each other? That their responsibility looks, by his
15 description, anyway, to be equal?

16 MR. FLANAGAN: Well, what he says, for
17 example, in the second full paragraph,

18 "Their explanations of their part in
19 this process is one of negligence,
20 rather than wilfully and wantonly
21 attempting to determine their criminal
22 investigation or subsequent
23 prosecution."

24 Which is the obstruct charge.

25 MS. JONES: M'hm.

1 **MR. FLANAGAN:** So I read from that that he's
2 saying that, although he believes that it may have been
3 some negligence on their part, he didn't believe that they
4 were committing or party to the criminal offence. That's
5 what I take from that paragraph.

6 **MS. JONES:** Well, I'm going to suggest to
7 you, he is, in that paragraph, just describing what their
8 explanation is, but he's actually not putting an opinion
9 whether he believes those explanations or not.

10 **MR. FLANAGAN:** Fair enough.

11 **MS. JONES:** Okay.

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

13 **MR. KOZLOFF:** Rather than my friend
14 suggesting what Tim Smith may or may not have
15 intended -- and, by the way, my recollection of the
16 evidence is that the brief was prepared by Detective
17 Constable Fagan, under the direction of Detective Inspector
18 Smith.

19 I'm not sure that makes a great deal of
20 difference, but, rather than my friend suggesting what it
21 is that Detective Inspector Smith may have meant, we have
22 Detective Inspector Smith's evidence.

23 If my friend wishes to put what Detective
24 Inspector Smith actually said he meant -- if in fact he was
25 asked that question -- to Mr. Flanagan, that would make

1 more sense, in my respectful submission.

2 MS. JONES: I wonder if the witness can be
3 excused for just a moment, please?

4 THE COMMISSIONER: Certainly. I'm sorry
5 about that.

6 MR. FLANAGAN: No, that helps my back.

7 THE COMMISSIONER: Okay, good.

8 (SHORT PAUSE/COURTE PAUSE)

9 THE COMMISSIONER: Ms. Jones?

10 MS. JONES: The point that I'm trying to
11 make with this particular witness is what was in
12 Mr. Flanagan's state of mind at the time, what was his
13 reading, his interpretation, of the brief that was
14 presented towards him? And, based on his understanding of
15 what he read, what conclusions he would have reached.

16 If he had discussions with Inspector Smith
17 at the time, that's fine, I'll be exploring that. But I
18 think, at this particular stage, it's not necessarily what
19 Tim Smith meant by what he wrote, and what his extraneous
20 explanations would be, but it's key to know what this
21 witness thought about Inspector Smith's words.

22 THE COMMISSIONER: Mr. Kozloff?

23 MR. KOZLOFF: And had my friend phrased her
24 question that way, then I wouldn't have gotten up.

25 THE COMMISSIONER: All right, thank you. A

1 question of rephrasing, please? Let's talk about what's in
2 his mind. Can we get the witness? Mr. Kozloff, would you
3 mind while you're up ---

4 **MR. KOZLOFF:** Absolutely.

5 **THE COMMISSIONER:** --- just go to the back
6 door? Yes.

7 **MR. KOZLOFF:** Curt Flanagan! Curt
8 Flanagan!

9 No response, your Honour.

10 **(LAUGHTER/RIRES)**

11 **THE COMMISSIONER:** I haven't heard that in a
12 long time, Mr. ---

13 **MR. KOZLOFF:** It just shows you how old I
14 am.

15 **CURT FLANAGAN, Resumed/Sous le même serment:**

16 **THE COMMISSIONER:** Mr. Flanagan, let the
17 record show that Mr. Kozloff wanted a warrant out for your
18 arrest.

19 **(LAUGHTER/RIRES)**

20 **MR. FLANAGAN:** Okay.

21 **THE COMMISSIONER:** All right. So, as you
22 know, sir, we excuse people to discuss procedural matters.
23 We have discussed; got that cleared up, and away we go.

24 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MS.**
25 **JONES (Cont'd/suite):**

1 **MS. JONES:** Now, when you receive a brief
2 such as this, and a synopsis such as this, you obviously
3 would read it in its entirety, as to prepare for the case?

4 **MR. FLANAGAN:** Yes.

5 **MS. JONES:** And in this particular
6 situation, when you read over Officer Smith's notes, what
7 was your understanding of what he was concluding about
8 these three solicitors, given his words on that last page?

9 **MR. FLANAGAN:** To be very honest with you, I
10 don't have a specific recollection of discussing it with
11 Inspector Smith, at the time.

12 When the file came into my office, I was
13 given the file to prosecute the obstruct against Malcolm
14 MacDonald.

15 With respect to the synopsis, as I read it
16 now, I don't think Inspector Smith was of the opinion that
17 the other two parties were a party to -- to any criminal
18 offence.

19 **MS. JONES:** Did you have a discussion with
20 him about that?

21 **MR. FLANAGAN:** I don't recall any discussion
22 about that, no.

23 **MS. JONES:** Had you ever put your mind to
24 the fact that the other lawyers may have been as
25 responsible as Malcolm MacDonald, at any time?

1 **MR. FLANAGAN:** I don't believe I -- I don't
2 believe it came up.

3 **MS. JONES:** All right. I'm just talking
4 about yourself, though. Had you thought about that?

5 **MR. FLANAGAN:** Well, on the evidence that I
6 was given, in relation to the statements, no, I didn't.

7 **MS. JONES:** Okay.

8 If we could please go first to Jacques
9 Leduc's statement? That's Exhibit 1892, Document 110245.

10 **MR. FLANAGAN:** Thank you.

11 **MS. JONES:** Now, this is an interview that
12 was conducted by Smith and Fagan on the 2nd of August 1994,
13 and the first thing that perhaps might be noteworthy is you
14 may notice that there's no caution given before this
15 interview starts. Do you see that, sir?

16 **MR. FLANAGAN:** Can you just give me a
17 minute, please?

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

19 **MR. FLANAGAN:** There doesn't appear to be a
20 caution; that usually is at the beginning.

21 **MS. JONES:** Right. In your experience as a
22 Crown attorney, is it typical, for police officers
23 interviewing people they think are just witnesses, to not
24 give a caution? That cautions are reserved for people they
25 think might actually become people who are charged with an

1 offence?

2 **MR. FLANAGAN:** I think it's practice of
3 police officers that, if they're dealing with witnesses who
4 they don't think or there's no evidence to suggest that
5 they're involved in a criminal offence, that they may
6 choose -- they won't be cautioned, no.

7 **MS. JONES:** Okay.

8 Now, if we please go to the third page of
9 this document which is Bates page 8431.

10 At the bottom there's the last two complete
11 sentences. One starts, "He indicated".

12 **MR. FLANAGAN:** Yes.

13 **MS. JONES:** Jacques Leduc is talking about
14 the conversation that he had with Malcolm MacDonald in
15 preparing an undertaking or a release and the "he" refers
16 to Malcolm MacDonald. And he says, I quote:

17 "He indicated he had some difficulties
18 because he had never prepared a
19 document like this before and I
20 indicated to him that I would assist
21 him. I prepared a draft in my office,
22 had it typed by my secretary, faxed it
23 to Malcolm. We discussed it over the
24 telephone."

25 Can you see that, sir?

1 **MR. FLANAGAN:** Yes.

2 **MS. JONES:** So it was clear from this ---

3 **THE COMMISSIONER:** Yes, ma'am.

4 **MS. ROBITAILLE:** Happy New Year, Mr.
5 Commissioner.

6 **THE COMMISSIONER:** Happy New Year, yes.

7 **MS. ROBITAILLE:** It would be helpful if my
8 friend finished the sentence because I think it gives him
9 context.

10 **THE COMMISSIONER:** Right.

11 **MS. ROBITAILLE:** Thank you.

12 **MS. JONES:** Okay, I'll finish the sentence.

13 "There is no doubt in my mind that then
14 and now that the release was not to
15 refer to any criminal proceedings
16 whatsoever."

17 But the sentence refers to the fact that the
18 initial -- first of all, that Mr. Jacques Leduc had a
19 precedent, shall we say, that he could work from, and that
20 he was the one who had discussed with Malcolm MacDonald and
21 the fact that he had experience doing it and Mr. MacDonald
22 did not.

23 I think that's something that can be gleaned
24 from those paragraphs or those sentences?

25 **MR. FLANAGAN:** Yeah. I mean, as I recall

1 Mr. Leduc prepared a draft that did not contain criminal,
2 was the evidence that I had, and any mention of criminal
3 proceedings whatsoever, that's correct.

4 **MS. JONES:** Okay.

5 And if we go to Bates page 433 which is the
6 page 5.

7 **MR. FLANAGAN:** Same document?

8 **MS. JONES:** Same document. It starts with
9 "I can also tell you."

10 He states:

11 "I also can tell you that prior to the
12 release being signed, I had been
13 advised by Malcolm MacDonald that the
14 investigation of the city police was
15 basically completed."

16 Do you see that?

17 **MR. FLANAGAN:** Yes.

18 **MS. JONES:** Okay. So we do have Mr. Leduc
19 having conversations with Mr. MacDonald about the police
20 investigation as well, in addition to preparing this
21 document. Correct?

22 **MR. FLANAGAN:** Well, as he indicates, he
23 indicates that he was advised by Mr. MacDonald that the
24 investigation of the police was basically completed, yes.

25 **MS. JONES:** Okay. But this was another

1 topic of discussion, shall we say, between the two of them?

2 **MR. FLANAGAN:** It would appear that he was
3 advised of that, as he says.

4 **MS. JONES:** Okay.

5 And then if we look at Bates page 8434,
6 which is the next page, and we start -- towards the top
7 "The Bishop made a number of declarations."

8 And states:

9 "The Bishop made a number of
10 declarations to the press, a number of
11 press releases where at those national
12 press conferences, I spoke for the
13 Diocese. The Bishop spoke for himself.
14 At which press conference, Malcolm
15 MacDonald was also present, indicating
16 that there had been a settlement but
17 the settlement was purely civil in
18 nature, dealing with the damages
19 claimed by an alleged victim."

20 Do you see that?

21 **MR. FLANAGAN:** Yes.

22 **MS. JONES:** Okay. And on Bates page 8435,
23 which is the next page, Jacques Leduc is saying that the
24 solicitor for Mr. Silmsler, Bryce Geoffrey at the time, had
25 phoned him and he said:

1 "I received a call from Mr. Bryce
2 Geoffrey, the solicitor for Mr.
3 Silmser. He told me that I should look
4 at the release because it did refer to
5 the withdrawal of criminal
6 proceedings."

7 And then further down that same page:

8 "It is still my position in relation to
9 the inadvertent inclusion of the word
10 criminal in the paragraph referred to
11 in the full release and the undertaking
12 not to disclose."

13 Do you see that, sir?

14 **MR. FLANAGAN:** Yes.

15 **MS. JONES:** Now, do you note the word
16 "inadvertent" being used there by Mr. Jacques Leduc?

17 **MR. FLANAGAN:** You're referring to the last
18 sentence?

19 **MS. JONES:** At the very bottom, yes, sir.

20 **MR. FLANAGAN:** Yes, yes.

21 **MS. JONES:** When you read over that word
22 "inadvertent", is it possible that Mr. Leduc is basically
23 explaining that the use of the word "criminal" was an
24 accidental insertion rather than a purposeful one?

25 **MR. FLANAGAN:** Well, from what I read in Mr.

1 Leduc's statement, it's clear that Mr. Leduc wasn't aware
2 until sometime later that the word "criminal" was used.

3 **MS. JONES:** So if we go to Bates page 8441,
4 which is page 13, he states:

5 "I can indicate to you that the word
6 criminal in paragraph two of the
7 document could have been there at the
8 time and I certainly did not catch it.
9 But had I caught it, I believe I would
10 have asked Malcolm to remove any
11 reference to criminal matters."

12 **MR. FLANAGAN:** I'm sorry, I've lost -- can
13 you just give me the top sentence of the page?

14 **MS. JONES:** Yeah, it's the very first
15 complete sentence actually, "Also, I can indicate to you."

16 Madam Clerk has the cursor beside it on the
17 screen if it helps you.

18 **MR. FLANAGAN:** Oh, sorry.

19 **MS. JONES:** That's okay.

20 **MR. FLANAGAN:** I've got it.

21 **MS. JONES:** "I can indicate to you that the
22 word criminal in paragraph two of the
23 document could have been there at the
24 time and I certainly did not catch it,
25 but had I caught it, I believe I would

1 have asked Malcolm to remove any
2 reference to criminal matters."

3 **THE COMMISSIONER:** Mr. Kloeze?

4 **MR. KLOEZE:** Just to make the record clear,
5 I believe Mr. Leduc in that part of the statement is
6 referring to the draft that Mr. MacDonald had returned to
7 Leduc.

8 **THE COMMISSIONER:** That's what he says. It
9 is a -- we're looking at the draft now.

10 **MS. JONES:** Yes, we're looking at the draft.
11 I was just about to say that.

12 In that particular case, now we're looking
13 at the draft of the agreement.

14 **MR. FLANAGAN:** Yes.

15 **MS. JONES:** Because there had been an
16 exchange of the draft at that particular time.

17 **MR. FLANAGAN:** Yes. My understanding was,
18 and it's some time ago, counsel, but my understanding was
19 that the draft -- there was a draft prepared by Mr. Leduc
20 that didn't have the word "criminal" in it.

21 **MS. JONES:** M'hm.

22 **MR. FLANAGAN:** Then it was sent to Mr.
23 MacDonald. Mr. MacDonald then prepared one. And I can't
24 remember, counsel, whether it was originally prepared in
25 the French language and had to be translated or something

1 to that effect.

2 And then after that, it was sent back to Mr.
3 Leduc in a sealed envelope, was the evidence that I had and
4 he distributed it without looking at it to another person,
5 and I forget the other person to be quite honest with you.

6 **MS. JONES:** Yeah, that's consistent with
7 what Mr. Leduc says.

8 At the very bottom of that same paragraph on
9 page 13 he says:

10 "As I indicated a while ago, I believe
11 it's a result of an inadvertence that
12 the word criminal was left in paragraph
13 two, but after the document was signed,
14 I never saw it."

15 **MR. FLANAGAN:** Right.

16 **MS. JONES:** And so as I say, that's
17 referring to the draft and then it's consistent with what
18 you said.

19 And one last reference is on the next page,
20 which is Bates page 8442, and it's the first reference to
21 Mr. Leduc:

22 "The first time that I would have seen
23 the signed document was the Tuesday or
24 Wednesday after the press conference in
25 January of 1994 as a result of a phone

1 call from Mr. Bryce Geoffrey who was
2 the solicitor for Mr. Silmsner, who
3 suggested that I look at the document
4 again and to my surprise, of course, I
5 noticed the inclusion of the word
6 criminal."

7 **MR. FLANAGAN:** Yes.

8 **MS. JONES:** Okay. Now, had you ever put
9 your mind after reading this statement to the fact that
10 it's possible that Mr. Leduc had more of an involvement in
11 this matter than he was actually admitting in this
12 statement?

13 **MR. FLANAGAN:** No, not to my knowledge.

14 **MS. JONES:** And I take it you don't recall
15 any discussion with Inspector Smith about whether Mr. Leduc
16 should be further investigated?

17 **MR. FLANAGAN:** No, I don't recall at anytime
18 Inspector Smith asking me for a legal opinion about any of
19 the matters. As I say, the charge was already laid when it
20 came to my office and I was to prosecute.

21 **MS. JONES:** Okay.

22 We'll now look at the statement of Sean
23 Adams which is Exhibit 849, Document 714957.

24 **(SHORT PAUSE/COURTE PAUSE)**

25 **THE COMMISSIONER:** What exhibit number? I'm

1 sorry.

2 **MS. JONES:** Exhibit 849.

3 **THE COMMISSIONER:** Eight-four-nine (849),
4 right.

5 **MS. JONES:** And you may recall Mr. Adams was
6 the person that gave Mr. Silmsler independent legal advice.

7 **MR. FLANAGAN:** Yes.

8 **MS. JONES:** And it says in his statement on
9 the second page that he had known Mr. Silmsler from doing a
10 real estate transaction with him in a previous situation.
11 So that's how he first knew Mr. Silmsler.

12 **MR. FLANAGAN:** Yes.

13 **MS. JONES:** Okay. And what is a bit unusual
14 is that on the third page, which is Bates page 6392, about
15 halfway down the page, Inspector Smith actually interrupted
16 Mr. Adams from speaking and said:

17 "May I interrupt you at this point?
18 Prior to this interview you indicated
19 that perhaps we should caution. Could
20 we stop at this point?"

21 And then they give him a caution.

22 **MR. FLANAGAN:** Yes, I see that.

23 **MS. JONES:** Do you see that?

24 **MR. FLANAGAN:** Yes.

25 **MS. JONES:** Now, if we could go, please, to

1 -- just a moment. There's just one more part I want you to
2 go to.

3 Do you know what type of practice Sean Adams
4 had at the time that he was involved in this particular
5 situation?

6 **MR. FLANAGAN:** I don't remember specifically
7 but I remember that he wasn't in a criminal practice at
8 all.

9 **MS. JONES:** Okay.

10 **MR. FLANAGAN:** If my memory serves me
11 correctly. I don't know if it was real estate or what it
12 was, but it wasn't criminal.

13 **MS. JONES:** Okay. That's consistent with
14 what Mr. Adams said as well.

15 **MR. FLANAGAN:** Oh.

16 **MS. JONES:** Would you agree with me, though
17 -- you're correct on the point that it wasn't criminal.
18 That's something that sticks in your mind. But would you
19 agree with me that for a person being interviewed by the
20 police to have actually indicated to the police that, "You
21 should caution me before you allow me to give this
22 statement" shows some degree of knowledge of criminal law?

23 **MR. FLANAGAN:** I don't know, to be honest.
24 I'm not sure I understand your question.

25 **MS. JONES:** The fact that Sean Adams --

1 actually, according to Inspector Smith's words here, Sean
2 Adams was the one that indicated to the police that perhaps
3 he should be cautioned before giving a statement.

4 Does that not show some degree of knowledge
5 of criminal law and witness statements, in your opinion?

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

7 **MR. KOZLOFF:** With great respect, I think my
8 friend is asking Mr. Flanagan to speculate. There may have
9 been any number of explanations for why Sean Adams and Tim
10 Smith had a discussion about a caution. I believe I recall
11 Mr. Adams' evidence before you.

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

13 **MR. KOZLOFF:** He practiced in an office
14 where there other lawyers with far more experience in
15 criminal matters than him. He may simply have discussed
16 his impending interview with the police -- and I'm
17 speculating the same way as my friend.

18 **THE COMMISSIONER:** Yeah, I know, but ---

19 **MR. KOZLOFF:** But how do you ask this
20 witness, 15 years after the fact, whether a discussion
21 about a caution indicates some knowledge on the part of Mr.
22 Adams of criminal law? I don't understand the -- how it
23 advances your task to ask this witness what a discussion
24 about a -- you know, what a discussion about the issue of a
25 caution would inform in terms of Mr. Adams' knowledge of

1 criminal law.

2 THE COMMISSIONER: Well, let's put it this
3 way. With Mr. Smith's question it certainly becomes
4 evident that Mr. Adams understands what a caution is.

5 MR. KOZLOFF: Yes.

6 THE COMMISSIONER: Okay. And that at some
7 point there was some discussion about whether or not he
8 should be cautioned.

9 MR. KOZLOFF: Right.

10 THE COMMISSIONER: So he knows about that.

11 MR. KOZLOFF: Right.

12 THE COMMISSIONER: Period.

13 MR. KOZLOFF: Right.

14 THE COMMISSIONER: So that's that.

15 MR. KOZLOFF: That's that.

16 THE COMMISSIONER: M'hm. Thank you.

17 MS. ROBITAILLE: Mr. Commissioner, just a
18 quick point. If you look at the transcript, I'm not
19 entirely sure that Mr. Smith, or Detective Smith, is
20 referencing Mr. Adams in that sentence.

21 THE COMMISSIONER: Yes.

22 MS. ROBITAILLE: It may be that he's
23 speaking to ---

24 THE COMMISSIONER: That's the other point.

25 MS. ROBITAILLE: --- Detective Fagan.

1 **THE COMMISSIONER:** That's the other point,
2 yes.

3 **MS. ROBITAILLE:** Thank you.

4 **THE COMMISSIONER:** Thank you.

5 So let's just move on.

6 **MS. JONES:** Okay.

7 If you could go to Bates page 6395, please,
8 and to put this in context now Mr. Adams is being asked
9 about whether he'd read over the whole document before
10 advising his client to sign the document. And Mr. Adams
11 states at the top there:

12 "I don't specifically recall reading
13 that but is, it is my recollection that
14 I, ah, reviewed the whole document and
15 I can't say for sure whether I read it
16 word for word or whether he had
17 reviewed it, and I asked him if he had
18 any questions. Well, certainly, ah,
19 that would have been the, ah, intent
20 of, ah..."

21 It just sort of ends there. And if I could
22 just go to Bates page 6418, please?

23 And I'm looking at the next -- the last full
24 paragraph attributed to Mr. Adams. And again, this is Mr.
25 Adams' response to whether or not he had read over the

1 whole document, and the question put to him, saying:

2 "Having had the opportunity now in
3 hindsight to look at the settlement,
4 what can you tell me now about this
5 document?"

6 And he states:

7 "Because of what has transpired, the
8 word that, ah, seems to be out of place
9 is the word 'criminal'. In other
10 words, in, ah, ah, Mr. Silmser
11 undertaking not to take any criminal,
12 ah, further criminal proceedings, ah,
13 ah, that, ah, is a no-no. If this
14 instance had not transpired and I was
15 called upon, ah, to review this, ah,
16 again would it stick out? Probably
17 not. It should, ah, but, ah, ah, it,
18 ah, it didn't. It certainly didn't
19 there and, ah, and like I said, it
20 would now but, ah, other than, other
21 for than, for this being brought to my
22 attention, it might not."

23 So I think he's saying that it didn't stick
24 out when he saw that -- if he saw that word it didn't stick
25 out to him. I can also clarify, too, on the previous page,

1 on Bates page 6417 Mr. Adams does say the majority of his
2 work is real estate, purchases, sales of home, mortgages,
3 estate work, drafting of wills and handling estates when
4 clients pass away. So that is the traditional sort of a
5 solicitor practice, shall we say.

6 But it would appear in this particular
7 instance, according to Mr. Adams, that he hadn't seen that
8 particular word inserted in that contract. Is that what
9 you were gleaning from his words?

10 **MR. FLANAGAN:** Yeah. That's what I gleaned
11 from his statement, and in fact I think Inspector Smith
12 alludes to that in the latter part of the statement.

13 **MS. JONES:** Correct.

14 Would you agree with me that if someone was
15 looking for a lawyer to look over a contract that one would
16 perhaps look for a lawyer that specializes in areas like
17 real estate, wills, possibly family law, and is used to
18 looking after -- at contracts day after day, versus going
19 to a criminal lawyer?

20 **MR. FLANAGAN:** I'm sorry, your question is
21 if ---

22 **MS. JONES:** If you -- if someone was looking
23 for independent legal advice on a contract, would you agree
24 that it's best to likely go to a lawyer that specializes in
25 real estate, mortgages, estate work, wills, possibly even

1 family law, rather than going to a criminal lawyer to look
2 that over?

3 **MR. KOZLOFF:** Excuse me.

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

5 **MR. KOZLOFF:** The question is if who was
6 looking for a lawyer? Now, in my practice, when I'm asked
7 by a client, "Can you refer me to somebody?" I generally
8 try to find out what they need a referral for and then
9 direct them to somebody who is an expert in the field.

10 The evidence here is that Mr. Adams was
11 selected by Mr. Silmser.

12 **THE COMMISSIONER:** M'hm. Yes. So let's be
13 case-specific with Mr. Silmser.

14 **MS. JONES:** That's fine.

15 I'm just saying in general terms, though,
16 because you're a criminal lawyer yourself, would
17 traditionally someone who's looking for independent legal
18 advice go to someone who sees contracts every day in their
19 practice versus someone who's a criminal litigator?

20 **MR. FLANAGAN:** Well, it depends. I mean it
21 depends on the person. It depends on who they think is
22 qualified to give them advice in different areas of the
23 law. It's really a question that depends on what's inside
24 the mind of the person going to the person and what he or
25 she has been told.

1 So it's a difficult one to answer in a
2 general sense.

3 **MS. JONES:** And speaking as a lawyer
4 yourself, if you were asked an opinion -- to give an
5 opinion on something that was outside your legal knowledge,
6 would you feel comfortable saying to a person that, "I just
7 don't know anything about that particular area, you
8 probably should go to someone else"?

9 **MR. FLANAGAN:** Well, if you're asking me if
10 I was asked to give an opinion, say, on real estate, the
11 answer would be, "I'm not qualified to give an opinion on
12 real estate, nor as a Crown attorney am I able to give an
13 opinion on other areas of the law."

14 **MS. JONES:** But lawyers have a certain
15 knowledge base and surely it's up to that lawyer who's
16 being asked for an opinion outside that knowledge base to
17 say "I'm not the right person to ask. You're going to have
18 to get someone else."

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

20 **MR. KLOEZE:** I'm not sure where this is
21 going, Mr. Commissioner.

22 **THE COMMISSIONER:** Me either.

23 **MR. KLOEZE:** I don't think it's very
24 relevant.

25 **THE COMMISSIONER:** I don't know -- where are

1 we going?

2 MS. JONES: That's okay.

3 THE COMMISSIONER: Okay.

4 MS. JONES: Do you have an answer to that
5 question?

6 THE COMMISSIONER: Well, he's objected to
7 it. You can't just get that question sneaked in here.

8 MS. JONES: I'm sorry. I didn't know there
9 was an objection. I thought it was just "where is this
10 going".

11 THE COMMISSIONER: Well, where is it going
12 means "I object".

13 MS. JONES: Okay, just looking for whether
14 or not this particular person who is also a lawyer would
15 feel comfortable saying "This is outside of my area of
16 expertise".

17 THE COMMISSIONER: Well, but he's a Crown
18 attorney. I don't know how relevant.

19 MS. JONES: Okay.

20 THE COMMISSIONER: That's a very specialized
21 branch as opposed to being a general practitioner. I don't
22 know in his -- I don't know if he has ever been in general
23 practice.

24 Have you, sir?

25 MR. FLANAGAN: I was, yes, briefly.

1 **THE COMMISSIONER:** Briefly, okay. So let's
2 go on.

3 **MS. JONES:** Now, when you had the pre-trial
4 in the spring of 1995 with Justice Lennox apparently the
5 defence counsel position at the pre-trial was a plea of
6 guilty with an absolute discharge and some of the reasons
7 cited were Malcolm MacDonald's age, the lack of criminal
8 record and various other sorts of aspects in this case.
9 But this was the discussion at the pre-trial stage. Do you
10 recall that?

11 **MR. FLANAGAN:** Well, I can't say I
12 specifically recall, you know, what exactly was said before
13 Judge Lennox at the pre-trial stage. I can remember that
14 Judge Lennox had a copy of the brief that I would have sent
15 him. He was familiar with it. There was a pre-trial in
16 relation to it and there was certain factors like you've
17 just mentioned brought to His Honour's attention, yes.

18 **MS. JONES:** If we could please go to the
19 transcript for the guilty plea, which is Exhibit 1165,
20 Document 716637?

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

22 **MR. FLANAGAN:** Thank you.

23 **MS. JONES:** I'm looking at the third page,
24 which is Bates page 1324.

25 Now, in this particular portion of the

1 guilty plea -- it's towards the beginning -- but this is
2 you speaking and you are giving a background basically of
3 the settlement. And I'll just start with the first full
4 paragraph:

5 "That settlement culminated with the
6 signing of the full release and
7 undertaking not to disclose. That full
8 release and undertaking not to disclose
9 was signed in the office of the accused
10 before the Court, being Malcolm
11 MacDonald. Present for the signature
12 of that full release and undertaking
13 not to disclose was the accused before
14 the Court, Mr. Silmser, Mr. Silmser's
15 lawyer, Mr. Adams -- Mr. Adams also
16 being a local lawyer not practicing
17 generally in criminal law in the area."

18 Now, I just want to ask you about that last
19 sentence. Why was it significant to you that Mr. Adams did
20 not have experience in criminal law with regards to his
21 conduct or his action in this particular situation?

22 **MR. FLANAGAN:** What I was doing was
23 capturing either the synopsis or the statements from the
24 individuals to put into a background for Judge -- well, in
25 this case for the court, for the plea of guilty.

1 **MS. JONES:** By the fact that you mention it
2 there, though, did you think that only a criminal lawyer
3 would have been able to provide suitable advice to Mr.
4 Silmser on this? Is that what you're meaning by those
5 words?

6 **MR. FLANAGAN:** No. No, that wouldn't have
7 been on my mind, I don't think. I think basically I'm
8 telling the court or, obviously in this case His Honour,
9 that Mr. Adams who was the other party was a local lawyer
10 who generally -- who didn't practice criminal law. I was
11 making the judge aware of that -- part of the narrative.

12 **MS. JONES:** And if we could please go to the
13 fifth page which is Bates page 1326, the second complete
14 sentence:

15 "I can advise Your Honour that in
16 addition to being signed in the
17 presence of Mr. Adams and, of course,
18 the accused, there is a certificate of
19 independent legal advice signed by Mr.
20 Adams stating -- the gist of it
21 certainly stating that he has explained
22 the full force and effect of the
23 release to his client.

24 And there is following that an
25 acknowledgement by Mr. Silmser that

1 that has been explained to him by his
2 solicitor, Mr. Adams."

3 So is it fair to say by those words that you
4 actually are attributing full knowledge to Mr. Adams with
5 regards to the contents of that particular document or the
6 two documents referred to?

7 **MR. FLANAGAN:** Not -- my understanding was
8 that Mr. Adams didn't recall when he read over the document
9 seeing the word "criminal". That was my understanding of
10 the evidence and that the police were satisfied with that
11 at the time. There I'm -- so no, I wouldn't necessarily
12 agree with that.

13 **MS. JONES:** How would you classify your
14 description then of Mr. Adams' knowledge, given those
15 words?

16 **MR. FLANAGAN:** Well, what I'm saying to His
17 Honour is that there was a certificate of independent legal
18 advice signed by Mr. Adams and that Mr. -- it says that he
19 explained it in full force and effect and it's signed by
20 both parties.

21 That's the documents that I'm referring to,
22 and I believe I filed some as exhibits as well.

23 **MS. JONES:** Right. But are you not saying
24 there then that Mr. Adams did have full knowledge of the
25 document and he was giving full legal advice in an

1 appropriate way then to Mr. Silmser?

2 **MR. FLANAGAN:** I think what I'm saying is
3 that he gave legal advice to Mr. Silmser and he had the
4 document in front of him. But I think further on in the
5 transcript, I may allude to the fact that he wasn't aware
6 that it was there.

7 So in answer to your question, yes, I'm
8 explaining to the court that this document was in front of
9 Mr. Adams and Mr. Silmser, that he signed the document,
10 that he explained it all. But on the other hand Mr. Adams'
11 explanation to the police in his statement was, "I didn't
12 see the word criminal when I was doing that".

13 **MS. JONES:** Okay. I'll take you to that
14 passage actually.

15 **MR. FLANAGAN:** All right.

16 **MS. JONES:** It's on Bates page 1329. It's
17 the last complete paragraph. And you say:

18 "And I also could indicate that in
19 relation to Mr. Adams, Mr. Adams did
20 acknowledge that he read the release
21 and indicates to the police that
22 through inadvertence, he does not
23 recall seeing the clause in relation to
24 civil or criminal.

25 I could also state for Your Honour's

1 purpose that to my knowledge -- and I
2 just want to confirm this -- Mr. Adams
3 had not done any criminal work but the
4 explanation given was inadvertence. He
5 did not draw it up but he said that he
6 did read it and did explain it to Mr.
7 Silmsers."

8 **MR. FLANAGAN:** Yes.

9 **MS. JONES:** Again, you've mentioned that Mr.
10 Adams doesn't do any criminal work.

11 **MR. FLANAGAN:** Yes.

12 **MS. JONES:** So it's the second time you've
13 mentioned it basically in this context. In your opinion,
14 did someone have to have criminal experience in order to
15 give it advice on this document?

16 **MR. FLANAGAN:** Not -- no, not necessarily.
17 I think what I'm saying there is that here is a lawyer that
18 had the document in front of him, signed that he had
19 explained it to Mr. Silmsers. And this is a lawyer that
20 doesn't normally practice criminal law. And in his own
21 admission he just didn't see it. He didn't see the
22 "criminal" and says he didn't see it and told the police
23 that he didn't see it at the time. That's what I'm saying
24 to the court.

25 **THE COMMISSIONER:** Yes?

1 **MS. ROBITAILLE:** Mr. Commissioner, I'm just
2 concerned that we're getting into an area where we're
3 asking this witness to make a comment or to deliver an
4 opinion on the competence of counsel and I think the
5 witness has been clear in his answer. And I just want to
6 make sure that we don't constrain it to that area.

7 **THE COMMISSIONER:** No, no, just a second.
8 He is making the representations to the
9 judge. What counsel is doing is saying, "Look it, what did
10 you mean by this?" And -- I mean, we don't just say things
11 to say things. There must be some meaning. There might be
12 some meaning to it that we have to explore with the
13 witness. I think that's entirely relevant.

14 **MS. ROBITAILLE:** Thank you, Mr.
15 Commissioner.

16 **THE COMMISSIONER:** Thank you.

17 **MS. JONES:** If I could go then to ---

18 **THE COMMISSIONER:** No, but do you see -- I
19 think I understand what counsel is getting to, is that
20 you've said it twice in ---

21 **MR. FLANAGAN:** Yeah. I think from memory,
22 Mr. Commissioner, I mean it is some time ago.

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

24 **MR. FLANAGAN:** We've seen it twice on the
25 transcript. Was it in my mind at the time that the reason

1 he missed it inadvertently is because he doesn't do any
2 criminal work and he doesn't practice in criminal law? I'd
3 have to say perhaps that was. I don't know.

4 But that could be an explanation why I
5 mentioned it or why I said to the judge twice, "This person
6 doesn't do criminal law. He's not normally involved in
7 criminal proceedings although this isn't, in fairness, a
8 normal criminal proceeding and therefore he was out of his
9 element, for lack of a better expression. And maybe that's
10 why he completely missed it".

11 **THE COMMISSIONER:** I know, but then we come
12 to -- and I think it's a bigger point, I suppose ---

13 **MR. FLANAGAN:** Right.

14 **THE COMMISSIONER:** --- a bigger picture.

15 So if he wouldn't have caught it then would
16 the argument be, well, if it was a criminal lawyer he would
17 say, "Well, look it.

18 I don't know anything about civil
19 settlements." See what I mean?

20 **MR. FLANAGAN:** Yeah.

21 **THE COMMISSIONER:** It works both ways, so --

22 -

23 **MR. FLANAGAN:** Yeah.

24 **THE COMMISSIONER:** --- which one is it, I
25 guess? That's a rhetorical question. Go ahead.

1 **MS. JONES:** Well, the question I have is
2 what -- what part of criminal law would a lawyer giving
3 advice on a contract need to know at that particular point?
4 That's really what I'm trying to get to.

5 **MR. FLANAGAN:** Yeah, I'm not sure ---

6 **MS. JONES:** Why would he have to know
7 criminal law to give advice on a contract?

8 **MR. FLANAGAN:** Yeah, I'm not sure,
9 specifically, if you need to know criminal law to give
10 advice on it. I mean, it did involve an obstruct
11 situation. It did involve a -- because it said criminal
12 proceedings, I guess, is where criminal law would come into
13 it. But I mean, listening to your question; I guess I'd
14 have to say I'm not convinced that you would necessarily
15 need it, so I agree with that.

16 **MS. JONES:** Now, if I could please go to
17 Bates page 1330 which is page 9.

18 Thank you.

19 And the point I want to look at now is Mr.
20 Wakefield or the defence counsel's submissions. And the
21 very first paragraph when he says "The gist of it was a
22 statement" -- I'm sorry, let me back up and give a bit of
23 an explanation here. You had just talked about the release
24 and the "criminal" word being inserted and Mr. Adams didn't
25 really know about it. Mr. Wakefield says:

1 "The gist of it was a statement by Mr.
2 Silmsers that he had been called in
3 August before the signature of the
4 release and told by the Cornwall police
5 that they probably weren't proceeding
6 with the charges so that he knew when
7 he entered into this agreement that the
8 police probably weren't going to
9 proceed with any charges. And I
10 thought that was very explicit in the
11 statement. I see the officer shaking
12 his head."

13 Do you see that?

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

15 **MS. JONES:** Okay.

16 Now, it appears you try to clarify the issue
17 and you say that it is not that -- at that point, it is not
18 that a decision had been made prior to the police -- prior
19 by the police not to lay any criminal charges just that Mr.
20 Silmsers thought that none were going to be laid and that
21 was significant because that was his state of mind at the
22 time.

23 **MR. FLANAGAN:** Yeah, I think what I'm
24 clarifying is that at the time that there wasn't -- at the
25 time that he met with Mr. MacDonald, there wasn't a

1 decision -- a final decision, at that time, not to lay any
2 criminal charges. That's what I'm saying.

3 Because I -- in listening to Mr. Wakefield,
4 I wanted to make sure that that was the point because if,
5 in fact, the charges weren't going to be laid prior to all
6 of this, it would be a different matter.

7 **MS. JONES:** So is it also fair to say that
8 as a Crown attorney when you're doing a sentencing or any
9 submissions, for that matter, if the defence lawyer makes
10 an erroneous comment or perhaps an inaccurate comment,
11 possibly even a misleading comment that it is important for
12 the Crown attorney to clarify issues such as you've done
13 there?

14 **MR. FLANAGAN:** Right, although I think Judge
15 Lennox remembered something in reading the disclosure about
16 what he was referring to. I think Judge Lennox comments on
17 that.

18 **MS. JONES:** Yeah, that comes later.

19 **MR. FLANAGAN:** Yeah.

20 **MS. JONES:** I'm just saying that your role
21 here, though, if the defence lawyer said something, he sees
22 the officer shaking his head and you clarify it; that's a
23 very typical thing that happens if ---

24 **MR. FLANAGAN:** Yeah, I mean ---

25 **MS. JONES:** --- something ---

1 **MR. FLANAGAN:** --- if I'm aware -- if
2 something's said by -- by counsel in court that -- that I
3 disagree with, yeah, I can make submissions on it and say,
4 no I disagree or this is the situation, yes.

5 **MS. JONES:** Okay.

6 And if counsel makes submissions that are
7 not disagreeable to you then you would not disagree with
8 them. In other words, if they say something and you don't
9 disagree with it; is that, therefore, a conclusion you do
10 agree with what they say?

11 **MR. KLOEZE:** I'm not sure I understand -- I
12 understand the question. Is she -- is counsel suggesting
13 that counsel should jump up and object every time opposing
14 counsel says something that is -- that they're going to
15 later make submissions on or that they don't agree with?
16 It's -- it's ---

17 **MS. JONES:** I'll -- I'll ---

18 **MR. KLOEZE:** If you could ---

19 **MS. JONES:** --- rephrase my question.

20 **MR. KLOEZE:** Yeah.

21 **MS. JONES:** Even I was finding it a bit
22 confusing.

23 If defence counsel says something inaccurate
24 or something you don't agree with, you clearly give our
25 position on that point; correct?

1 **MR. FLANAGAN:** If I felt that it was
2 relevant and it needed comment, I would make comment on it.

3 **MS. JONES:** Okay.

4 And I'm just saying if defence makes a
5 submission that you are in agreement with, you may not then
6 comment on that.

7 **MR. FLANAGAN:** I may or may not. It depends
8 on the situation.

9 **MS. JONES:** Okay.

10 If I could please go to the bottom of page
11 1330 again, Mr. Wakefield is saying:

12 "And I just say that because it
13 characterizes the whole transaction
14 when you put yourself in his position
15 [meaning Silmser -- Mr. Silmser]. He
16 probably knew that there would be no
17 criminal charges and if that pressure
18 was relieved, he would not effect any
19 civil settlement unless he proceeded
20 with this one."

21 Do you see that?

22 **MR. FLANAGAN:** I do.

23 **MS. JONES:** Okay.

24 The next point I'd like to take you to as
25 well is the very next paragraph:

1 "So that I can tell, Your Honour, since
2 that time, Mr. Silmsler has reneged on
3 this release and he started action
4 against the Church and Father MacDonald
5 as well. And for, well, I don't think
6 I need to go into that any further; all
7 that is being handled by their
8 solicitors."

9 Do you see that?

10 **MR. FLANAGAN:** Yes.

11 **MS. JONES:** Now, would you agree with me
12 that in your submissions, certainly at that particular
13 point, there was no objection by you as to what the defence
14 counsel was saying or their classification of it?

15 **MR. FLANAGAN:** I'm not objecting, no.

16 **MS. JONES:** Okay.

17 And would it be fair to say that there
18 wasn't any specific response by yourself to those words of
19 Mr. Wakefield? In fact, you didn't actually speak after
20 Mr. Wakefield had finished that particular submission?

21 **MR. FLANAGAN:** I think I do speak one --
22 just a moment.

23 **MS. JONES:** Sorry ---

24 **MR. FLANAGAN:** Yeah, I do.

25 **MS. JONES:** --- sorry, you speak for the

1 record on ---

2 MR. FLANAGAN: Yeah, sorry.

3 MS. JONES: --- the last page ---

4 MR. FLANAGAN: --- Yeah, you're right ---

5 MS. JONES: --- about another issue, but ---

6 MR. FLANAGAN: I don't till later.

7 MS. JONES: --- I'm talking about

8 submissions here.

9 MR. FLANAGAN: Yes.

10 MS. JONES: Okay.

11 And on Bates page 1332 ---

12 THE COMMISSIONER: The point being I think
13 is that, in the end, Mr. Silmsler can't renege on an illegal
14 contract. If this was an illegal settlement, right? It's
15 illegal and so Mr. Wakefield is characterizing as if Mr.
16 Silmsler has reneged which means he went back on his word,
17 but he can't go back on his word on an illegal contract.
18 It doesn't exist.

19 MR. FLANAGAN: No, I understand that, Mr.
20 Commissioner. To be quite honest with you, when counsel
21 was reading "Mr. Wakefield ...", at the bottom of page 1330 -
22 - and I just say that because it characterizes the whole
23 transaction when you put yourself in his position, he
24 probably knew that there would be no criminal charges ---

25 THE COMMISSIONER: M'hm.

1 **MR. FLANAGAN:** --- and if that pressure was
2 relieved, it would not affect any civil settlement unless
3 he proceeded with this one. I don't know what Mr.
4 Wakefield means by ---

5 **THE COMMISSIONER:** Yeah, me neither.

6 **MR. FLANAGAN:** I mean, it's some time ago
7 and I have, obviously, the document in front of me; it's a
8 transcript, but to this day, I'm not sure what he means by
9 that sentence. It doesn't make sense to me now.

10 **MS. JONES:** Okay.

11 But in this -- the point I'm trying to make
12 is that you didn't have any submissions to counteract what
13 Mr. Wakefield said ---

14 **MR. FLANAGAN:** I didn't make ---

15 **MS. JONES:** --- about Mr. Silmser.

16 **MR. FLANAGAN:** --- submissions after Mr.
17 Wakefield, no.

18 **MS. JONES:** Okay.

19 And on Bates page 1332, about half way down
20 the page:

21 "And I suppose the major impact of a
22 conviction like this [and he's talking
23 about a conviction on his client, Mr.
24 MacDonald] and I will tell you that the
25 Crown's position is that he receive an

1 absolute discharge and I think the
2 Crown has been exceedingly fair in
3 taking that position. I think they've
4 taken it because, well, my opinion is
5 this would be some kind of technical
6 conviction because the word 'criminal'
7 appeared in the release that would fill
8 out the statutory requirements of
9 attempting to obstruct the course of
10 justice by use of the word 'criminal'
11 in that release."

12 Again, that was a phrase that was said by
13 Mr. Wakefield, but again, you made no submissions to
14 counteract that?

15 **MR. FLANAGAN:** No, I think it was clear in
16 my submissions to Judge Lennox. Obviously, I thought Mr.
17 MacDonald was guilty and I put the -- what I considered the
18 synopsis of the evidence before him and the -- what I
19 considered as mitigating circumstances in relation to it.
20 I think I sent out four. There was four, I think, that I
21 referred to.

22 **MS. JONES:** I will -- I will be getting to
23 that actually.

24 **MR. FLANAGAN:** Yeah, okay.

25 **MS. JONES:** And the next paragraph that Mr.

1 Wakefield says:

2 "But when you look at all the
3 circumstances, it's hard to tell
4 whether it's a clever victim
5 manipulating a good settlement for
6 himself or a clever lawyer trying to
7 exploit him and there's no suggestion
8 that the latter was the case. This man
9 had independent legal advice. He knew
10 exactly what he was doing."

11 Would it be fair to interpret Mr.
12 Wakefield's words -- especially as he excludes the latter -
13 - that he's basically telling the court that this was a
14 clever victim manipulating a good settlement for himself?

15 **MR. FLANAGAN:** Yeah, that appears a witness
16 Mr. Wakefield was alluding to, yes.

17 **MS. JONES:** And it's also fair to say that
18 you did not make any response to counteract that claim made
19 by the defence counsel?

20 **MR. FLANAGAN:** I didn't make submissions
21 after Mr. Wakefield, no.

22 **MS. JONES:** Okay.

23 **MR. KLOEZE:** But I think it has to be
24 remembered, and the witness has already said this, this is
25 in the context of a prosecution, so it's -- so the witness

1 is clearly taking issue, in his actions, by prosecuting Mr.
2 MacDonald and supporting the conviction.

3 **THE COMMISSIONER:** Right, except that if you
4 look at that -- I mean what the defence lawyer is saying
5 really is, "My client had no -- was almost the victim in
6 all of this."

7 **MR. KLOEZE:** Well, I understand. I
8 understand where the questioning is going but I think the
9 question is, "You didn't" -- the question to this witness
10 is, "You didn't respond to this."

11 **THE COMMISSIONER:** Yes.

12 **MR. KLOEZE:** But by the witness's own
13 actions I think it's clear what his position was on it.

14 **THE COMMISSIONER:** Well, that's submissions.
15 No, no, no, no. This is cross-examination. He didn't
16 object and the record -- I mean it's there.

17 **MS. JONES:** Now, I want to go to some of
18 your submissions to the Court. And I'm looking at Bates
19 page 1328, which is page 7, and I'm looking at the top
20 paragraph, that you're talking about the plea of guilty has
21 been entered, and it says:

22 "I can advise Your Honour that as a
23 result of investigation by the Ontario
24 Provincial Police that no criminal
25 charges were laid against Father

1 MacDonald as a result of Mr. Silmser's
2 complaint."

3 Do you see that?

4 **MR. FLANAGAN:** Yes.

5 **MS. JONES:** Are you able to explain why that
6 is significant in this particular prosecution, why you
7 needed to bring that to the attention of the Court?

8 **MR. FLANAGAN:** Well, I -- what I was saying
9 there was that the police had decided that there was -- my
10 information was that the police had decided that there was
11 no reasonable prospect of conviction to go ahead with any
12 criminal prosecution in relation to it.

13 **MS. JONES:** So my question, though, is how
14 is that significant to Malcolm MacDonald's obstructing
15 justice?

16 **MR. FLANAGAN:** Well, I considered it -- it
17 would have more significance if in fact they were going
18 ahead or this prevented them from going ahead with it, but
19 my information was independent of it they weren't going to
20 go ahead anyway, so I saw it as some significance.

21 **MS. JONES:** Okay.

22 Then on page 1333, which is page 12, again
23 these are your submissions and you are basically giving
24 three reasons why an absolute discharge is appropriate in
25 this particular situation. And the first point is that

1 it's a plea of guilty.

2 **MR. FLANAGAN:** Yes.

3 **MS. JONES:** That's fairly obvious why an
4 absolute discharge is appropriate for that. The second
5 reason you give, though, for an absolute discharge is this:

6 "Secondly, it is not irrelevant that
7 the police down the road, for lack of a
8 better expression, decided not to lay
9 criminal charges in relation to the
10 incident. That decision of course was
11 separate, was apart and had completely
12 nothing to do with the release in
13 question. That was a decision
14 independently made by a police agency,
15 based on the evidence that they had
16 before them at the time."

17 So you also agree in your submissions ---

18 **MR. FLANAGAN:** Yes.

19 **MS. JONES:** --- it actually has nothing to
20 do with this particular situation.

21 **MR. FLANAGAN:** What I'm saying there is that
22 it was a factor in my submissions on sentence that the
23 police had decided independently not to lay any charge
24 based on -- well, not to lay a criminal charge independent
25 of this.

1 **MS. JONES:** Is it possible that if taken
2 into context with the defence lawyer's submissions and the
3 comments -- sorry, it's hard to hear sometimes with talking
4 in the background.

5 **THE COMMISSIONER:** No, I understand. I
6 understand and I've spoken to them before.

7 **MS. JONES:** Is it understandable that in the
8 context of hearing the defence counsel submissions that
9 I've already pointed out to you, and the comments made
10 about David Silmser, and the fact that the Crown attorney
11 stands up and said twice that, "By the way, no charges
12 actually were laid as a result of Mr. Silmser's
13 complaints," that if someone was listening to that or
14 reading this transcript, one could come to the conclusion
15 that you may be making a comment about Mr. Silmser's
16 credibility?

17 **MR. FLANAGAN:** No. No, I don't agree with
18 that. What I'm saying is that it would have been more
19 aggravating if in fact there would have been a basis, or
20 the police would have gone ahead and laid the criminal
21 charges in relation to it, but they had decided
22 independently albeit after the meeting, but they had
23 decided independently that there wasn't sufficient evidence
24 to go ahead to lay criminal charges. That's what I said
25 it.

1 **MS. JONES:** Okay.

2 **MR. FLANAGAN:** There's actually four. I
3 think, Counsel, you said that I gave three reasons, but
4 there's actually four. But I -- there's one at the end as
5 well.

6 **MS. JONES:** Oh, is there? I've got the
7 third reason as being Mr. MacDonald's exemplary background.

8 **MR. FLANAGAN:** Right. And I come back to
9 it, counsel, on page 15 because one of the other
10 considerations that I -- one of the other factors I took
11 into consideration, of course, was the reporting of
12 Mr. MacDonald to the Law Society.

13 **MS. JONES:** Right. Okay. Thank you.
14 I'm going to leave that area now.

15 **MR. FLANAGAN:** All right.

16 **MS. JONES:** I'm just going to briefly go
17 into an area that should be very quick to deal with, if we
18 could go, please, to Document 710977?

19 **THE COMMISSIONER:** Thank you. Exhibit 2996
20 is a letter dated August 16th, 1995 to Inspector Smith from
21 Mike Fagan.

22 **--- EXHIBIT NO./PIÈCE NO. P-2996:**

23 (710977) Letter from Mike Fagan to Tim Smith
24 - 16 Aug, 95

25 **MS. JONES:** Mr. Flanagan, we're just -- I'm

1 just very briefly looking at a couple of letters that show
2 that possibly you were asked for an opinion letter about
3 Father Charles MacDonald, and this letter is the first one
4 where Officer Fagan is writing to Inspector Smith, saying:

5 "Here are the copies of statements
6 regarding the last complaint against
7 Father Charlie. I'm sending a copy to
8 Crown Attorney Curt Flanagan."

9 I just want to also put another document to
10 you. It's a late notice document, which is Document
11 701431.

12 **THE COMMISSIONER:** Thank you. Exhibit
13 Number 2997 is a letter dated 30th of May, 2002 to Chief of
14 Police, Cornwall Police Services, from Detective Inspector
15 Hall.

16 --- **EXHIBIT NO./PIÈCE NO. P-2997:**

17 (701431) Letter to Chief of Police, Cornwall
18 Police Service from Detective Inspector Hall
19 - dated 30 May 02

20 **MS. JONES:** Thank you. And just in the
21 paragraph halfway down the page it's referring to interview
22 reports of a complainant, and it says:

23 "Both of the above interview reports
24 were provided to Crown Attorney Curt
25 Flanagan on 16th of August, 1995 for

1 legal opinions."

2 We also heard from Officer Jeff Carroll. We
3 don't need to have the transcript here but it is Volume
4 232, page 87 and 88, where he confirmed here at the Inquiry
5 that basically what it said in the letter which is
6 addressed to Mr. Carroll -- was saying, "Yes, that these
7 statements had been provided to you for legal opinion"

8 Do you recall giving a legal opinion of any
9 sort or asking someone else to get a legal opinion on this?

10 **MR. FLANAGAN:** I don't, actually. That's
11 not to say I didn't give one. I just don't recall it.

12 **MS. JONES:** All right. Thank you.

13 And I think I have time to deal with one
14 more very brief investigation, and that deals with a person
15 called Marcel Lalonde.

16 And I understand that this prosecution was
17 referred to the Brockville office around May 1997.

18 **MR. FLANAGAN:** Yes, I believe so.

19 **MS. JONES:** Do you recall why that matter
20 was transferred to Brockville?

21 **MR. FLANAGAN:** I don't actually.

22 **MS. JONES:** Okay.

23 **MR. FLANAGAN:** It would have come from the
24 Regional Director's Office, I believe.

25 **MS. JONES:** And I understand that you

1 actually assigned that to one of your Crown -- Assistant
2 Crowns, Claudette Breault, then Wilhelm.

3 **MR. FLANAGAN:** Yes.

4 **MS. JONES:** And if I could just go to one
5 document, please -- 116983?

6 **THE COMMISSIONER:** Thank you.

7 Exhibit 2998 is a letter to -- dated July
8 4th, 1997, addressed to Mr. Curt Flanagan from Donald
9 Johnson.

10 **---EXHIBIT NO./PIÈCE NO P-2998:**

11 (116983) Letter from Don Johnson to Curt
12 Flanagan - 04 Jul, 97

13 **MS. JONES:** And this is a letter from Don
14 Johnson, who we heard from yesterday, actually, and he
15 actually was involved in the bail review, I believe, or
16 bail review hearing.

17 Do you have any recollection of why the file
18 was being transferred to this bail review hearing?

19 **MR. FLANAGAN:** No, I don't actually. It's
20 in -- it's a bail review application, so I take it that's a
21 Superior Court matter.

22 **MS. JONES:** So would sometimes Superior
23 Court matters be ---

24 **MR. FLANAGAN:** Right.

25 **MS. JONES:** --- shared between the two

1 jurisdictions which ---

2 **MR. FLANAGAN:** Well, it's just I'm not sure
3 when they're sitting, when there's a ---

4 **MS. JONES:** Okay.

5 **MR. FLANAGAN:** --- Superior Court judge is
6 available.

7 I know in Brockville the trial coordinator
8 is phoned, and, if you have a bail review, you phone and
9 they -- she sets up a -- a specific date when it can be
10 heard by the Superior Court, but ---

11 **MS. JONES:** Okay.

12 **MR. FLANAGAN:** --- but, to answer your
13 question, I don't.

14 **MS. JONES:** Okay, that's fine.

15 Perhaps this would be a good time for a
16 break?

17 **THE COMMISSIONER:** Thank you. Let's take a
18 break.

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

21 This hearing will resume at 11:10 a.m.

22 --- Upon recessing at 10:56 a.m. /

23 --- L'audience est suspendue à 10h56

24 --- Upon resuming at 11:40 a.m. /

25 --- L'audience est reprise à 11h40

1 **THE REGISTRAR:** Order; all rise. À l'ordre;
2 Veillez vous lever.

3 **THE REGISTRAR:** This hearing is now resumed.
4 Please be seated. Veuillez vous asseoir.

5 **THE COMMISSIONER:** Thank you. Have a seat
6 sir.

7 **CURT FLANAGAN, Resumed/sous le même serment:**

8 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR

9 **MS. JONES (cont'd/suite):**

10 **MS. JONES:** Mr. Commissioner, thank you for
11 the extra time during the break.

12 **THE COMMISSIONER:** Right.

13 **MS. JONES:** It was useful for me to consult
14 with counsel of various issues.

15 **THE COMMISSIONER:** Thank you.

16 Go ahead.

17 **MS. JONES:** I want to move on to now the
18 matter of the *Crown v. Bernard Sauv *. And in early 1999,
19 the prosecution of Mr. Sauv  was referred to the Brockville
20 Crown's office.

21 Though you have some involvement in the
22 early stages of the prosecution, sort of, administratively,
23 it was actually a file belonging to Claudette Breault, and
24 that she was assigned that file? Do you recall that?

25 **MR. FLANAGAN:** I assigned her the file, yes.

1 **MS. JONES:** Okay. If I could please refer
2 to Document 702053?

3 **THE COMMISSIONER:** Thank you.
4 Exhibit Number 2999 is a letter ---

5 **MR. FLANAGAN:** Thank you.

6 **THE COMMISSIONER:** --- dated March 24th,
7 1999, addressed to Mr. Curt Flanagan from Detective
8 Sergeant Hall.

9 **MS. JONES:** Could this, too, please be
10 stamped, Mr. Commissioner? There is reference to at least
11 one monikered named that I can see ---

12 **THE COMMISSIONER:** Thank you. Yes, it will.

13 **MS. JONES:** --- and possibly more.
14 Thank you.

15 **---EXHIBIT NO./PIÈCE NO P-2999:**

16 (702053)- Letter from Det. Sgt. Hall to Curt
17 Flanagan - 24 Mar, 99

18 **MS. JONES:** In this particular
19 correspondence, Mr. Flanagan, this is from Sergeant Hall to
20 yourself, he was actually mentioning two prosecutions. The
21 Sauvé prosecution is referred to on the second page.

22 And, essentially, Officer Hall was just
23 outlining what the substance of the -- or the status of the
24 investigation was at that particular time. Do you agree
25 with that? I can give you ---

1 **MR. FLANAGAN:** Yes.

2 **MS. JONES:** --- some background information
3 on that. Okay.

4 And if we could please go to Document
5 702057?

6 **THE COMMISSIONER:** Thank you.

7 Exhibit Number 3000 is a letter dated April
8 26th, 1999, to Mr. Curt Flanagan from Detective Inspector
9 Hall.

10 **---EXHIBIT NO./PIÈCE NO P-3000:**

11 (702057) Letter from Det. Insp Hall to Curt
12 Flanagan - 26 Apr, 99

13 **MS. JONES:** And, just to summarize this, on
14 this particular date again Officer Hall was getting you up
15 to date about Mr. Sauv  's subsequent charges.

16 There was also a mention, though, that there
17 was material received by Constable Perry Dunlop and, in the
18 material that had been received, Officer Hall is saying it
19 did not include Mr. Sauv  's name, nor was there any
20 reference to Mr. Sauv  's case. Do you see that, sir?

21 **MR. FLANAGAN:** I see it, yes.

22 **MS. JONES:** Okay, thank you.

23 If we could please go to Document 727732?

24 **THE COMMISSIONER:** Thank you.

25 Exhibit number 3001 is what here? Notes of?

1 **MS. JONES:** Officer Genier.

2 **THE COMMISSIONER:** Thank you. And the first
3 date on ---

4 **MS. JONES:** July 8th.

5 **THE COMMISSIONER:** Nineteen ninety-nine
6 (1999). Thank you.

7 **MS. JONES:** That's correct, thank you.

8 **---EXHIBIT NO./PIÈCE NO P-3001:**

9 (727732) Excerpt: 7107648-49 Notes of Don
10 Genier - 8 Jul, 99

11 **MS. JONES:** Again, there's two files being
12 referred to there. I'm concerned with the reference to
13 Mr. Sauv , which is at the bottom.

14 According to Officer Genier's notes, he met
15 with you to discuss both of these matters, and with regards
16 to the Sauv  matter, it looks as if as a result of your
17 discussion, Officer Genier was to amend both Informations,
18 and await response from yourself, before laying an
19 Information -- whatever that means.

20 And then it states,

21 "Because of circumstances, Sauv  will
22 not be re-interviewed."

23 I'm just wondering if you know what that
24 would be, by way of explanation, what sort of circumstances
25 were being discussed? Do you have any recollection of

1 that?

2 **MR. FLANAGAN:** I don't, at this point ---

3 **MS. JONES:** Okay.

4 **MR. FLANAGAN:** --- no, sorry.

5 **MS. JONES:** All right, thank you.

6 With respect to another prosecution of Roméo
7 Major, that was also referred to the Brockville Crown's
8 office in April, 2000?

9 **MR. FLANAGAN:** Yeah, he -- to my knowledge,
10 it was referred to the Brockville Crown attorney's office
11 when I was on a secondment, yes.

12 **MS. JONES:** Okay. And, in that particular
13 prosecution, it turns out the charges were eventually
14 withdrawn because of the complainant's medical condition?

15 **MR. FLANAGAN:** Yes.

16 **MS. JONES:** And were you -- do you have
17 recollection of whether you were consulted of whether the
18 charge should be withdrawn on that basis?

19 **MR. FLANAGAN:** I was. Assistant Crown
20 attorney Alan Findlay in my office, who was conducting that
21 prosecution, reviewed his reasons for not continuing the
22 prosecution, and I agreed with it.

23 **MS. JONES:** Okay. When it comes to a
24 situation such as that, where there's medical conditions of
25 either the complainants or the accused people, is that a

1 decision -- it sounds like a decision that's made by one
2 person, but there's some consultation then with someone
3 else? Is that what it was, in your office?

4 **MR. FLANAGAN:** Not necessarily. I mean, you
5 don't necessarily have to consult.

6 Crowns are -- a Crown can make their own
7 decision with respect to a charge, whether or not to
8 continue it, whether they have reasonable and probable
9 grounds, whether they have the evidence to go forward in
10 court, and make a decision on -- themselves. I mean,
11 they're a Crown counsel.

12 On occasion, however, assistant Crown
13 attorneys will consult with the Crown attorney, who
14 -- which I was at the time, on -- on matters they may want
15 a second opinion on, or they may want to share with you,
16 that "These are my thoughts, and this is why I'm
17 withdrawing."

18 **MS. JONES:** Okay. Would it be fair to say
19 that cases that were particularly significant to the
20 Crown's office, for whatever reason, a second opinion is
21 often sought? If it's a large case or a difficult
22 prosecution?

23 **MR. FLANAGAN:** Yeah, I -- I would say that
24 that's fair.

25 **MS. JONES:** And the next prosecution is the

1 prosecution of Keith Jodoin. And, again, your office had
2 this case referred to you by Mr. Griffiths in August, 2000,
3 and, again Ms. Breault was assigned to handle the case.

4 I understand that you were consulted by Ms.
5 Breault regarding her decision to withdraw the charges
6 against Mr. Jodoin. Do you recall that?

7 **MR. FLANAGAN:** I do. I should say that the
8 Jodoin case came in the Brockville Crown attorney's office
9 when I was on secondment. So, with respect to Ms. Breault
10 being the prosecutor, I didn't assign her; it would have
11 been the acting Crown, likely, that would have assigned
12 her, who was Alan Findlay at the time.

13 I do remember though, when I came -- either
14 I was just back from secondment, which would have been the
15 latter part of 2000, or I was back in the
16 office -- because, from time to time, during my secondment,
17 I would come back to my Brockville office --but I do
18 remember being consulted by her. And I believe assistant
19 Crown attorney Alan Findlay was also consulted by her, and
20 she went through it and gave her reasons for her decision,
21 which I agreed with.

22 **MS. JONES:** I'm sorry, I'll just refer you
23 to a document that will confirm exactly what you're saying.
24 It's Document 700934.

25 **THE COMMISSIONER:** Thank you.

1 Exhibit Number 3002 is a letter dated the
2 12th of September 2000, addressed to Mrs. Claudette Wilhelm
3 from Detective Inspector Hall.

4 **--- EXHIBIT NO./PIÈCE NO. P-3002:**

5 (700934) Letter from Pat Hall to Claudette
6 Wilhelm - 12 Sep, 00

7 **MS. JONES:** There's a handwritten note at
8 the bottom. I don't believe that's your handwriting.

9 **MR. FLANAGAN:** No, it appears to be
10 Assistant Crown Attorney Claudette Breault's handwriting.

11 **MS. JONES:** All right, but that confirms
12 essentially what you were saying, that you had consulted
13 with Mr. Findlay as well ---

14 **MR. FLANAGAN:** Yes.

15 **MS. JONES:** --- about that. Okay.

16 Now, just one last question with regards to
17 various Project Truth cases you were involved in. Do you
18 recall ever having discussions with any sort of senior
19 ranking Crown attorney or someone on the same level as
20 yourself, or anyone from the Toronto location at the
21 Crown's Office, concerning a recommendation or thought that
22 perhaps a team of Crowns should be exclusively assigned to
23 Project Truth cases?

24 **MR. FLANAGAN:** I don't, no.

25 **MS. JONES:** Those are all my questions,

1 Mr. Commissioner, up to this point.

2 I do have questions concerning one more
3 investigation, and that being the investigation of Jean-Luc
4 Leblanc.

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

6 **MS. JONES:** It's come to my attention during
7 our lengthy break that there are circumstances now that
8 require me to request of you that you apply the
9 Dagenais/Mentuck test and that we go in-camera proceedings.
10 You've made already several decisions within the framework
11 of that case, and I would submit to you that the request
12 that I'm making now falls within that framework of previous
13 decisions that you've made.

14 We are here in a public forum and we have to
15 ensure that our process here at the Inquiry does not
16 interfere in any way whatsoever with any ongoing civil or
17 criminal proceedings or investigations.

18 I've spoken to all counsel here. There may
19 be submissions made on this point by Mr. Lee. I believe
20 that's the only person who wishes to address you on that
21 issue, but I would be asking, for those purposes, that we
22 go in camera on any questions dealing with Jean-Luc
23 Leblanc.

24 If Mr. Commissioner requires any further
25 details as to why this should be in camera, I would ask

1 that that actually be done in camera and you judge that at
2 that time. Thank you.

3 **THE COMMISSIONER:** Thank you.

4 Mr. Lee?

5 **MR. LEE:** Sir, I think the first request you
6 need to decide upon is whether or not we go in camera to
7 make argument about hearing the evidence in camera. I
8 can't object to that.

9 **THE COMMISSIONER:** You -- pardon me?

10 **MR. LEE:** I cannot object to that. To make
11 the submissions publicly would completely defeat the
12 purpose of going in camera, so I think we do need to go in
13 camera to let you know what's going on and to get your
14 ruling on whether or not we should continue in camera.

15 **THE COMMISSIONER:** All right. Anyone else?

16 In view of the submissions, we will go in
17 camera with respect to the decision. If I reach the
18 decision that we continue in camera, I think we'll just
19 continue on.

20 How long do you think the evidence will
21 take?

22 **MS. JONES:** The way we are doing it, we are
23 going to have all chief and cross-examination ---

24 **THE COMMISSIONER:** Yes.

25 **MS. JONES:** --- and we anticipate possibly

1 half an hour.

2 **THE COMMISSIONER:** All right.

3 So just to tell the public that we will be
4 off for about 45 minutes because it takes 10, 15 minutes to
5 go back into -- no, and then come back, so maybe an hour,
6 so that we will work through and see where we're going. If
7 I decided that it's not supposed to be in camera, we'll be
8 back within half an hour. All right, thank you.

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

11 This hearing will resume at 12 noon in
12 camera.

13 --- Upon recessing in public at 11:52 a.m. to resume in
14 camera/

15 L'audience est suspendue en public à 11h52 pour
16 reprendre à huis clos

17 --- Upon resuming at 1:16 p.m. /

18 L'audience est reprise à 13h16

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

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

23 **THE COMMISSIONER:** Good afternoon, all. So
24 just to recap while the witness is taking his seat we went
25 into an in camera session for the purposes of determining

1 whether or not it would be in the public interest to have
2 this gentleman speak of his involvement with the Jean-Luc
3 Leblanc file.

4 And, given the circumstances that were
5 explained to me, I decided that we should deal with that
6 involvement in camera. That has been done. If the
7 circumstances change from now until the end of the Inquiry,
8 I will certainly consider having the matter released from
9 an in camera proceeding into a public proceeding.

10 Thank you.

11 **MS. JONES:** Thank you, just one little
12 bookkeeping issue. Apparently, Exhibit 2997 which was
13 Document 701431 was already entered as an exhibit, 1694.

14 **THE COMMISSIONER:** Okay, good. Thank you.

15 All right. Cross-examination.

16 Mr. Strawczynski?

17 **CURT FLANAGAN, Resumed/Sous le même serment:**

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

19 **STRAWCZYSNKI:**

20 **MR. STRAWCZYSNKI:** Good afternoon, Mr.

21 Flanagan, Mr. Commissioner.

22 **THE COMMISSIONER:** Good afternoon.

23 **MR. STRAWCZYSNKI:** My name is Juda
24 Strawczynski and I represent the group Citizens for
25 Community Renewal. It's an organization of concerned local

1 citizens who are principally interested in promoting
2 institutional reform to ensure the protection of children
3 and justice for all.

4 I have a few questions for you today. And I
5 just wanted to start with your comments you had made about
6 when it is proper for a local Crown to refer a matter out
7 to another Crown. And this happened in the case of Malcolm
8 MacDonald, I understand.

9 If we could just go to Exhibit 1164, please,
10 which is Document 714916.

11 (SHORT PAUSE/COURTE PAUSE)

12 MR. STRAWCZYSNKI: And specifically, we're
13 going to be looking at the third paragraph.

14 MR. FLANAGAN: Yes.

15 MR. STRAWCZYSNKI: This is, as you'll
16 recall, an OPP report with respect to the Murray (sic)
17 MacDonald investigation. And here we see ---

18 MR. FLANAGAN: That's Malcolm MacDonald?

19 MR. STRAWCZYSNKI: I deeply apologize. It's
20 obviously for Malcolm MacDonald. The reference here is to
21 Murray MacDonald. It says:

22 "Following this request the evidence of
23 the case was reviewed by the police and
24 Crown attorney Murray MacDonald and, as
25 a result, no charges were laid."

1 And I'm just wondering, sir, in your
2 experience have Crowns who are familiar with somebody in
3 town ever referred an investigation or a consultation with
4 the police out to another Crown who is not based in the
5 same area.

6 **MR. FLANAGAN:** I'm sorry, can you just
7 repeat it?

8 **MR. STRAWCZYSNKI:** Here we have the local
9 Crown ---

10 **MR. FLANAGAN:** Yes.

11 **MR. STRAWCZYSNKI:** --- who is consulting
12 police with respect to an individual who, were this to
13 proceed, Murray MacDonald would not be the one who would be
14 in a position to bring the charges forward. Correct?

15 **MR. FLANAGAN:** Well, this appears to say
16 that -- and it was my understanding that the evidence with
17 respect to the case -- I'm not sure, quite frankly. I
18 think this refers to the Silmsler complaint.

19 **THE COMMISSIONER:** Yes.

20 **MR. FLANAGAN:** And what my understanding was
21 and it was confirmed by the police, that a decision was
22 made by other Crowns that they weren't proceeding with
23 that. There was no reasonable prospect of conviction.
24 This seems to say that Crown Attorney Murray MacDonald was
25 involved in that, yes.

1 **MR. STRAWCZYSNKI:** Okay, I apologize for
2 that.

3 I'm going to move along then to the Malcolm
4 MacDonald attempt to obstruct justice absolute discharge.

5 **MR. FLANAGAN:** Yes.

6 **MR. STRAWCZYSNKI:** And the submissions which
7 we've already seen today are at Exhibit 1165.

8 **MR. FLANAGAN:** Yes.

9 **MR. STRAWCZYSNKI:** And you had mentioned
10 that there were basically four factors that you had raised
11 in support of the absolute discharge. I believe they were,
12 first, that you were dealing with a guilty plea; second,
13 that the police decided ultimately not to lay charges in
14 this matter; third, you referred to Malcolm MacDonald's
15 background. He was a noted and well regarded individual in
16 the community at the time that this occurred. And lastly,
17 that the matter was going to be reported to the Law Society
18 of Upper Canada; correct?

19 **MR. FLANAGAN:** Yes.

20 **MR. STRAWCZYSNKI:** I'd like to begin by just
21 asking a few questions about the decision to raise the fact
22 that the police down the road decided not to lay charges.
23 I understood from your evidence this morning that this was
24 raised before the court to indicate that the circumstances
25 would have been more aggravating if it could be shown that

1 charges would have gone ahead in this case.

2 **MR. FLANAGAN:** Yeah. I think what I meant
3 by that, counsel, is that it's a different scenario. In
4 this particular case, the police and, in consultation with
5 the Crown attorney, decided that there was no reasonable
6 prospect of conviction of proceeding with them. I see that
7 as a different scenario than if in fact charges were going
8 to proceed.

9 In other words, it wasn't going to go ahead
10 anyway, I guess. I'm going to put it in the vernacular.

11 **MR. STRAWCZYSNKI:** Okay. And I understand
12 that by the time the Ontario Provincial Police had
13 reinvestigated this matter by that point, charges were not
14 being laid and it wasn't going ahead. Correct?

15 **MR. FLANAGAN:** I think so. I can't swear to
16 that. I know the first contact that I had with Inspector
17 Smith there was a clear decision that there was no charges
18 being laid.

19 **MR. STRAWCZYSNKI:** And I think that's what
20 is meant within the submissions at Bates page 1333, which
21 is page 12. You indicated:

22 "Secondly, it is not irrelevant that
23 the police down the road, for lack of a
24 better expression, decided not to lay
25 criminal charges."

1 **MR. FLANAGAN:** Yes.

2 **MR. STRAWCZYSNKI:** I believe that force at
3 that point is the Ontario Provincial Police.

4 **MR. FLANAGAN:** Yes. My understanding is
5 that it was originally investigated by Cornwall. They
6 decided not to lay any charges and then it was subsequently
7 reinvestigated or investigated again by OPP and they
8 decided not to lay them.

9 **MR. STRAWCZYSNKI:** Well, let's talk about
10 that decision if there was a decision by the Cornwall
11 Police Services.

12 **MR. FLANAGAN:** Right.

13 **MR. STRAWCZYSNKI:** There was an illegal
14 settlement that prohibited Mr. Silmsler with continuing with
15 his criminal complaint which he initially brought forward
16 to the Cornwall Police Services; correct?

17 **MR. FLANAGAN:** Yes.

18 **MR. STRAWCZYSNKI:** And after signing the
19 release. Mr. Silmsler withdrew his complaint, correct?

20 **MR. FLANAGAN:** There was a direction, if
21 I -- I think I filed, that he gave to the Cornwall police.

22 **MR. STRAWCZYSNKI:** And he was no longer
23 cooperating with the Cornwall Police Service after he had
24 signed the settlement agreement; correct?

25 **MR. FLANAGAN:** I can't recall that. That

1 may be true, I just can't recall it today.

2 **MR. STRAWCZYNSKI:** We've heard here that Mr.
3 Silmsler had -- withdrew his complaint to the Cornwall
4 Police Service, that he was no longer cooperating with
5 them, and that ultimately the Cornwall police would not
6 proceed further without a willing complainant.

7 **MR. FLANAGAN:** That's fair, if that's the
8 case.

9 **MR. STRAWCZYNSKI:** And, if that's the case
10 then, it's not that the Cornwall Police Services decided
11 not to lay a charge because they had completed their
12 investigation, per se. It would be, in part, because they
13 no longer have an individual who they could -- a willing
14 complainant before them; correct?

15 **MR. FLANAGAN:** Fair enough.

16 **MR. STRAWCZYNSKI:** So the police, at first
17 instance, had a victim, or a complainant, who had signed an
18 illegal settlement, and at that point, the Cornwall police
19 was not able proceed with its investigation?

20 **MR. FLANAGAN:** I don't know that, but I -- I
21 will take your word for that.

22 **MR. STRAWCZYNSKI:** If that was, in fact,
23 true, would that be a relevant consideration when
24 discussing appropriate measures to be taken with respect to
25 an attempt to obstruct justice?

1 **MR. FLANAGAN:** Yeah, it could be. I guess,
2 from my point of view, when I met with the OPP, and I
3 believe it was February '95 -- I stand to be corrected on
4 that, but I think it was in February '95 --I was
5 told -- and because I relied on that, obviously -- that a
6 decision had been made that there was no -- that they
7 weren't proceeding with criminal charges that had been
8 investigated.

9 Now, whether that -- whether they were just
10 referring, to me, to the OPP investigation, or both, I
11 can't remember exactly today.

12 **MR. STRAWCZYNSKI:** But, ultimately, because
13 of -- let me rephrase.

14 There is an illegal settlement that occurs.
15 One police force is no longer able to investigate and a
16 second police force eventually has to become involved;
17 correct?

18 **MR. FLANAGAN:** I assume so, yes.

19 **MR. STRAWCZYNSKI:** Were you aware that the
20 only reason that the illegal settlement came to light was
21 because of the media?

22 **MR. FLANAGAN:** I wasn't.

23 **MR. STRAWCZYNSKI:** Were you aware, sir, that
24 Mr. Malcolm MacDonald had played no role in attempting
25 to -- to the best of everyone's knowledge here -- to

1 attempt to correct this error before it came to light?

2 **MR. FLANAGAN:** The only -- what I was aware,
3 with respect to Malcolm MacDonald, is the statements that
4 he had -- gave, were a part of the brief. I didn't know
5 Mr. MacDonald previous.

6 **MR. STRAWCZYNSKI:** So there's an illegal
7 settlement. The complainant, I can advise you, is no
8 longer cooperating with the Cornwall Police Service.

9 The only reason that the Ontario Provincial
10 Police are able to investigate at all, is because this
11 matter comes to light through the media, and time has
12 passed in the interim.

13 Sir, I suggest to you, that with those
14 factors, the fact that the OPP did not lay a charge, is a
15 marginal if not irrelevant consideration, when determining
16 how to deal with this particular obstruct justice charge.

17 **THE COMMISSIONER:** Well ---

18 **MR. CRANE:** Mr. Commissioner, I'd just rise,
19 and it -- a portion of my friend's question was that the
20 only reason that the OPP became involved, as I understand
21 the question, it was through the media.

22 And, I think you'll recall, we've heard
23 evidence that the Ottawa Police Service were brought in,
24 and, on the conclusions of the Ottawa Police Service, they
25 felt it prudent to have it re-investigated, and acting

1 Chief Johnston subsequently sent a fax to Deputy
2 Commissioner Piers, I believe.

3 **THE COMMISSIONER:** Okay.

4 **MR. CRANE:** That's the evidence we've heard.

5 **THE COMMISSIONER:** Correct that little bit
6 there sir, but your question is valid, otherwise.

7 **MR. STRAWCZYNSKI:** I'll accept that. I
8 didn't want to take you through the entire chain of events,
9 sir.

10 **THE COMMISSIONER:** Yes.

11 **MR. STRAWCZYNSKI:** In any event, I suggest
12 to you that the fact that the OPP did not lay a charge
13 could have been counter-balanced or outweighed by the fact
14 that the Cornwall police investigation was disrupted after
15 the signing of this illegal settlement by Mr. Silmser.

16 **MR. FLANAGAN:** Well, my information, from
17 memory, and it's -- you know, it's a while ago, but my
18 information is -- was, at the time, that the police had
19 decided not to lay criminal charges as a result of a
20 reasonable prospect of conviction with respect to the
21 matter, and that's what I was relying on when I put that
22 factor on the record.

23 **MR. STRAWCZYNSKI:** Thank you.

24 I'm going to move to the next factor that
25 was considered and provided in submissions to the court,

1 and that is Malcolm MacDonald's background.

2 I understand that Malcolm MacDonald had an
3 extensive background in criminal law; correct?

4 **MR. FLANAGAN:** Yes.

5 **MR. STRAWCZYNSKI:** He was a former Crown
6 attorney?

7 **MR. FLANAGAN:** Yes.

8 **MR. STRAWCZYNSKI:** And he was a leading
9 member of the Cornwall community?

10 **MR. FLANAGAN:** He -- I -- I'll accept that,
11 yes.

12 **MR. STRAWCZYNSKI:** And his criminal law
13 background and his past work experience is laid out within
14 the submissions to the court at Bates 1332?

15 **MR. FLANAGAN:** Mr. Wakefield's?

16 **MR. STRAWCZYNSKI:** Mr. Wakefield's.

17 **MR. FLANAGAN:** Yes.

18 **MR. STRAWCZYNSKI:** And you would generally
19 agree with the description of Mr. MacDonald's law practice,
20 that ---

21 **MR. FLANAGAN:** Yeah, I wasn't taking issue
22 with it, no.

23 **MR. STRAWCZYNSKI:** And ---

24 **MR. FLANAGAN:** I should point out, counsel,
25 that I -- to be quite honest with you, it was through

1 discussions with Mr. Wakefield -- I'm not sure I -- because
2 I didn't know Mr. MacDonald, I -- I'm not sure I knew about
3 his complete background at the time I got that file.

4 **MR. STRAWCZYNSKI:** Well, if we go to Bates
5 page 1334, you're making submissions to the court that
6 start:

7 "Thirdly, I am looking at Mr.
8 MacDonald's exemplary background."

9 **MR. FLANAGAN:** Right.

10 **MR. STRAWCZYNSKI:** And you combine that with
11 his age, and we go from there, and I'll get into some of
12 those considerations that follow.

13 So you were willing to accept that he was
14 considered to be a ---

15 **MR. FLANAGAN:** Yes.

16 **MR. STRAWCZYNSKI:** --- a well-known lawyer
17 with a good record in town.

18 **MR. FLANAGAN:** Well, he had no criminal
19 record, yes.

20 **MR. STRAWCZYNSKI:** He would have known, no
21 doubt, that the settlement provision prohibiting
22 Mr. Silmsler from taking any criminal -- from commencing or
23 continuing with criminal proceedings, or commencing
24 criminal complaints, would have been an illegal obstruction
25 of justice; correct?

1 **MR. FLANAGAN:** I'm not sure of that.

2 **MR. STRAWCZYNSKI:** You would agree though,
3 that at the time that you were making your submissions, you
4 believed that there had been an intentional act by Mr.
5 MacDonald to obstruct justice ---

6 **MR. FLANAGAN:** I think ---

7 **MR. STRAWCZYNSKI:** --- or attempt to
8 obstruct justice?

9 **MR. FLANAGAN:** --- Mr. MacDonald was guilty
10 of obstruct justice. Whether -- I mean, I made the comment
11 on the record, you'd think he'd know better, in his
12 position, with respect to it, on the one hand. I think I
13 phrased it that way.

14 On the other hand, he was awfully sloppy
15 and -- to put it in the vernacular, stupid, to -- given his
16 background, not to realize that, if he didn't realize that
17 it was an illegal act.

18 **MR. STRAWCZYNSKI:** But you would agree with
19 me that it wasn't just a technical conviction, as suggested
20 by Mr. Wakefield?

21 **MR. FLANAGAN:** No, I -- I -- well, I -- I'm
22 not sure whether Mr. Wakefield was referring to technical
23 conviction, because they decided not to proceed with the
24 charges ultimately, or if he was referring to it in another
25 matter. But, in answer to your question, I -- I don't

1 necessarily consider it a technical conviction, no.

2 **MR. STRAWCZYNSKI:** Well, when we go to Bates
3 page 1334, once you've discussed Mr. MacDonald's exemplary
4 background, you combine this with the fact that, to your
5 knowledge, Mr. MacDonald has been --

6 "Well, perhaps I can put it this way.
7 The matter is clearly a well-known
8 matter in the City of Cornwall in
9 relation to Mr. MacDonald; that is, Mr.
10 MacDonald, in this court, that's who I
11 am referring to."

12 **MR. FLANAGAN:** I'm sorry, which page are you
13 on, counsel?

14 **MR. STRAWCZYNSKI:** I'm on Bates page 1334,
15 if you'd like to review it. It's the second full
16 paragraph.

17 **MR. FLANAGAN:** That's okay, I have it. Go
18 ahead, sorry.

19 **MR. STRAWCZYNSKI:** If you'd just like to
20 read it for yourself?

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

22 **MR. FLANAGAN:** Yes, I've read it.

23 **MR. STRAWCZYNSKI:** I take it, from your
24 comments here, that this is a well-known matter in the City
25 of Cornwall, that you would have been aware that this was a

1 high-profile issue for the local population?

2 MR. FLANAGAN: Well, I -- I think it's fair
3 to say that I knew that it was out there, yes.

4 MR. STRAWCZYNSKI: Were you aware that the
5 community, or parts of the community, were shocked that a
6 member of the Bar would have engaged in some sort of
7 obstruction with justice?

8 MR. FLANAGAN: I can't remember if I
9 did -- was or not.

10 MR. STRAWCZYNSKI: You don't recall any
11 media on the topic or anything of that nature?

12 MR. FLANAGAN: I -- I know in these
13 synopsis, when I reviewed the letters that I sent to
14 counsel, it says, "News Release," and I -- I mean, I can't
15 remember the news release today. But it seems to me that
16 there was a news release in -- in the brief that was
17 provided to me. And, in that regard, I would know that
18 because I was -- read the brief. But I can't remember
19 today, I'm sorry.

20 MR. STRAWCZYNSKI: I guess the difficulty
21 with the submissions with respect to Mr. MacDonald's
22 background, is not only should he have known better, but he
23 was a well-trained legal expert in criminal law and he had
24 engaged in an activity which he knew to be completely
25 contrary to what his professional obligations and

1 professional calling required of him.

2 You have stated that you thought that he was
3 guilty as charged and, as a result, the community had come
4 to realize that the administration of justice had come into
5 disrepute. I would suggest that, given this background of
6 this particular individual and the harm it caused to the
7 community, that his background should have been a factor
8 pushing towards more severe treatment.

9 **MR. FLANAGAN:** Well, ignorance of the law is
10 no excuse. In relation to it, I appreciate what you're
11 saying. There is also the evidence that he disseminated
12 all of this to other lawyers and secretaries to sign off,
13 which might cause you to concern that did he actually
14 appreciate that this was an illegality at the time,
15 notwithstanding ignorance of the law in relation to the
16 obstruct charge.

17 But all I can say, counsel, is that I took
18 it as the submissions as I gave them.

19 **MR. STRAWCZYNSKI:** I'm going to move on to
20 the final factor, which was the reporting to the Law
21 Society.

22 **MR. FLANAGAN:** Yes.

23 **MR. STRAWCZYNSKI:** And in the submissions
24 made by Mr. Wakefield he explained that the matter would be
25 reported.

1 **MR. FLANAGAN:** I believe Mr. Wakefield had
2 indicated at the pre-trial in chambers that it had been
3 reported actually, and that it was reported to the Law
4 Society, if my memory serves me correctly today.

5 **MR. STRAWCZYNSKI:** And on Bates page 1336 --
6 -

7 **MR. FLANAGAN:** Yes.

8 **MR. STRAWCZYNSKI:** --- you put it on the
9 record. You indicate:

10 "Just for the record, that the Crown
11 also took into consideration that this
12 matter of course, as Mr. Wakefield
13 indicated, will also be going to the
14 Law Society and they will be dealing
15 also with Mr. MacDonald."

16 **MR. FLANAGAN:** All right. Well, that seems
17 to indicate that it's on its way there, yes.

18 **MR. KLOEZE:** Actually, at Bates page 1332
19 there's a bit more information -- or starting at 1131 at
20 the bottom of the page ---

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

22 **MR. KLOEZE:** --- is where Mr. Wakefield
23 makes submissions about the report to the Law Society, and
24 on the following page he says:

25 "And they did ask. The Discipline

1 Council asked me to send down a copy of
2 the brief, which I did, together with
3 some submissions on facts that I
4 thought were important."

5 So it looks like it was reported to the Law
6 Society.

7 **THE COMMISSIONER:** Thank you.

8 **MR. FLANAGAN:** It may be, counsel, that when
9 I -- and, you know, it's 13 years later, but at page 15
10 when I say we'll also be going to the Law Society, what I
11 meant by that is that they have it already, because I'm
12 pretty -- I'm fairly sure at this point, from memory at
13 least, that Mr. Wakefield had indicated both to myself and
14 Judge Lennox that it had been reported.

15 **MR. STRAWCZYNSKI:** Okay, I just wanted ---

16 **MR. FLANAGAN:** He had been reported, sorry.

17 **MR. STRAWCZYNSKI:** I'd just like to first
18 start by clarifying a couple of matters and then we'll get
19 into some of that.

20 Mr. Wakefield informed the court that he
21 notified the Law Society's insurers that there is a
22 possibility of an action, and I assume that this would have
23 been irrelevant insofar as your concerns with reporting to
24 the Law Society; correct?

25 **MR. FLANAGAN:** Yeah. I was more looking at

1 a potential disciplinary action.

2 MR. STRAWCZYNSKI: And if I understand
3 correctly, you didn't actually file a complaint or your
4 office did not file a complaint?

5 MR. FLANAGAN: No. That's correct.

6 MR. STRAWCZYNSKI: And it was your
7 impression that it was Mr. Wakefield who filed the
8 complaint?

9 MR. FLANAGAN: It was my information from
10 Mr. Wakefield, who advised the court in -- who advised
11 Judge Lennox in chambers, I believe, that yes, it would be
12 going -- the matter would be going before the Law Society,
13 i.e. the conviction in relation to obstruct.

14 MR. STRAWCZYNSKI: If we go to Bates page
15 1331, which Mr. Kloeze just provided for us, you'll see at
16 the last paragraph, fourth line down ---

17 MR. FLANAGAN: Yes.

18 MR. STRAWCZYNSKI: -- it says:

19 "The Law Society's Discipline
20 Department had been notified
21 independent of any call from me."

22 And that is Mr. Wakefield who's speaking.
23 I'm just wondering, sir, if you ever were told who had made
24 that complaint.

25 MR. FLANAGAN: If I was, I don't recall

1 today.

2 MR. STRAWCZYNSKI: Do you know the exact
3 nature of the complaint filed?

4 MR. FLANAGAN: Well, the information I was
5 given is that the nature of the complaint is that here is a
6 lawyer who's a member of the Law Society and has been
7 convicted now of obstruct.

8 MR. STRAWCZYNSKI: You didn't actually see a
9 copy of the complaint ---

10 MR. FLANAGAN: No, sir.

11 MR. STRAWCZYNSKI: --- that would be going
12 forward?

13 MR. FLANAGAN: No, sir.

14 MR. STRAWCZYNSKI: Did Mr. Wakefield -- I
15 understand that Mr. Wakefield sent some submissions on
16 facts that he thought were important, and he makes
17 reference to that in the submissions. Did you review
18 those?

19 MR. FLANAGAN: Sorry, that Mr. Wakefield?

20 MR. STRAWCZYNSKI: That Mr. Wakefield had
21 made some submissions on facts which he thought would be
22 important ---

23 THE COMMISSIONER: To whom, to the Law
24 Society?

25 MR. STRAWCZYNSKI: --- to the Law Society.

1 **MR. FLANAGAN:** No. I didn't ---

2 **MR. STRAWCZYNSKI:** Those weren't shared with
3 you?

4 **MR. FLANAGAN:** No, sir. Now, I shouldn't
5 say "no, sir" because Mr. Wakefield and I did have
6 discussions, and I know that I learned from Mr. Wakefield
7 about the Law Society involvement with respect to
8 Mr. MacDonald. So to sit here today and say absolutely
9 not, I can't say that. But my memory is not -- but I'm not
10 100 percent.

11 **MR. STRAWCZYNSKI:** But your office would
12 have had no input in the drafting of those submissions and
13 did not file their own submissions ---

14 **MR. FLANAGAN:** That's correct.

15 **MR. STRAWCZYNSKI:** --- to the Law Society?
16 Were you or any other Crown contacted by the
17 Law Society, either by an investigator or Discipline
18 Council in relation to Mr. MacDonald?

19 **MR. FLANAGAN:** No, sir.

20 **MR. STRAWCZYNSKI:** Do you know whether any
21 action was taken by the Law Society?

22 **MR. FLANAGAN:** I don't.

23 **MR. STRAWCZYNSKI:** Am I correct in supposing
24 that the idea at the time was that because there was
25 another professional way of disciplining this matter, the

1 Law Society route was being considered as one factor in
2 your mind?

3 **MR. FLANAGAN:** Yeah, I think to put it
4 fairly, because the -- because it would have some
5 repercussions, or I was led to believe that it would have
6 some repercussions on Mr. MacDonald with the Law Society,
7 yeah, I'd agree with you there.

8 **MR. STRAWCZYNSKI:** But at the time that
9 you're in front of court, at Bates 1331, we have
10 Mr. Wakefield again making submissions and he indicates to
11 the court, at the bottom of the page, that he has not heard
12 from any of the Law Society investigators as to what the
13 consequences might be.

14 **MR. FLANAGAN:** Right.

15 **MR. STRAWCZYNSKI:** And then he speculates a
16 bit, and this is four lines up from the bottom:

17 "But if I were to make a summary or
18 have a feeling about what their
19 position would be, it's that they would
20 not take further action against him on
21 these facts."

22 **MR. FLANAGAN:** Well, that was
23 Mr. Wakefield's opinion, yes.

24 **MR. STRAWCZYNSKI:** Did you share that
25 opinion at the time?

1 **MR. FLANAGAN:** No, not necessarily. I
2 didn't -- I don't think I was in a position to -- I didn't
3 know what action the Law Society would take. I don't think
4 I can say that I would have agreed that the Law Society
5 would do nothing about it, if I could put it that way.

6 **MR. STRAWCZYNSKI:** So you were expecting or
7 hoping that the Law Society ---

8 **MR. FLANAGAN:** Well, I wouldn't say "hoping"
9 because I'm a prosecutor, but ---

10 **MR. STRAWCZYNSKI:** I understand; I
11 apologize.

12 **MR. FLANAGAN:** Yeah. I would say that yeah,
13 that I would have expected that, as a result of a
14 conviction, that it would -- you know, there would be
15 something from the Law Society.

16 **MR. STRAWCZYNSKI:** I understand also that
17 pretty much any member of the public can lay a complaint
18 before the disciplines group of the Law Society. Is that
19 not correct?

20 **MR. FLANAGAN:** I think that's true but I'm
21 not 100 percent.

22 **MR. STRAWCZYNSKI:** I submit to you, sir,
23 that with all the knowledge we have about the lack of your
24 knowledge your office had about what the complaint would
25 be, what the Law Society would take into account, or even

1 whether they would take any steps, the fact that the Law
2 Society would receive a complaint to its Discipline Bureau
3 was an irrelevant consideration when it came to the
4 treatment of the attempt to obstruct justice matter.

5 **MR. FLANAGAN:** Well, I don't agree. I
6 considered it relevant at the time and I think the judge
7 did as well.

8 **MR. STRAWCZYNSKI:** Well, we've gone through
9 the factors and, sir, I'm going to submit that even in
10 their totality what we see here is a lack of consideration
11 of the impact that this attempt to obstruct justice had on
12 the community, on how they saw the administration of
13 justice functioning, and that when you look at the factors
14 as they were given to the court, they on their face, even
15 without making reference or failing to refer to the harm
16 done to the community, would not lead us to an absolute
17 discharge in this case.

18 **MR. FLANAGAN:** I don't agree. I thought it
19 was appropriate, given the circumstances as I put the
20 record. That was my position on the evidence that I had.

21 **MR. STRAWCZYNSKI:** I'd just like to move to
22 one final area, sir, and it's the Sauvé prosecution.

23 **MR. FLANAGAN:** Yes.

24 **MR. STRAWCZYNSKI:** The first document I'm
25 going to take you to is Document 702050.

1 (SHORT PAUSE/COURTE PAUSE)

2 THE COMMISSIONER: Thank you. Exhibit
3 Number 3013 is a letter dated the 11th of May, 1999 to
4 Mr. Curt Flanagan from Detective Inspector Hall -- 3013.

5 --- EXHIBIT NO./PIÈCE NO. P-3013.:

6 (702050) Letter from Pat Hall to Curt
7 Flanagan - 11 May, 99

8 MR. STRAWCZYSNKI: And sir, in the second
9 paragraph we have Detective Inspector Hall making a request
10 for a review of enclosed material and a written legal
11 opinion pertaining to criminal charges.

12 MR. FLANAGAN: Yes.

13 MR. STRAWCZYSNKI: Now, if you can just keep
14 holding onto that letter -- actually, we'll deal with it
15 right now. In the bottom right-hand corner we have a note,
16 dated June 9, '99, where it appears as though you have
17 already given -- by that point, you have already given the
18 OPP some legal advice as to how to proceed in this matter.

19 MR. FLANAGAN: It would appear from the
20 note, yes.

21 MR. STRAWCZYSNKI: We then move to Document
22 702049.

23 (SHORT PAUSE/COURTE PAUSE)

24 THE COMMISSIONER: Thank you.
25 Exhibit Number 3014 is a letter dated 27th of

1 July 1999 addressed to Mr. Curt Flanagan from Detective
2 Constable Genier.

3 --- EXHIBIT NO./PIÈCE NO. P-3014:

4 (702049) Letter from Don Genier to Curt
5 Flanagan - 27 Jul 99

6 **MR. STRAWCZYSNKI:** And here in the second
7 paragraph we have Detective Constable Genier writing:

8 "Furthermore, referring to a letter you
9 received on 11 May '99 from Project
10 Truth, a written legal opinion is still
11 being sought from your ministry
12 pertaining to your recommendation into
13 further charges against Bernard Sauvé."

14 **MR. FLANAGAN:** Right.

15 **MR. STRAWCZYSNKI:** So I take it by this
16 point, we've seen the note on the previous letter dated
17 June 9th, '99. You've already given some advice but Project
18 Truth officers are still requesting a written legal
19 opinion; correct?

20 **MR. FLANAGAN:** Well, I don't know. One
21 explanation may be that Officer Genier wasn't aware that I
22 had provided a legal opinion to Officer Hall. I can't
23 answer that.

24 **MR. STRAWCZYSNKI:** But by that point, do you
25 recall providing them with a written legal opinion?

1 **MR. FLANAGAN:** I don't recall specifically
2 but by written legal opinion, I mean, it may have been
3 emailed. It may have been -- I can't remember today. But
4 all I'm saying is that it may be that Officer Genier wasn't
5 aware that I had responded to that letter, directly to
6 Hall, is what I'm saying.

7 **MR. STRAWCZYSNKI:** Well, it does look from
8 the way he has phrased his letter that he is aware that
9 you've made a recommendation and now he is following up
10 seeking confirmation in writing through a written legal
11 opinion.

12 **MR. FLANAGAN:** I don't read the letter like
13 that but ---

14 **MR. STRAWCZYSNKI:** Okay, fair enough.

15 **MR. FLANAGAN:** --- what do you want me to
16 tell you.

17 **MR. STRAWCZYSNKI:** The last document I'd
18 like to take you to, sir, is Exhibit 2772. It's the last
19 page of that document which is Bates page 7646, and for
20 counsel that's Document 702760.

21 This is a chart. It's a log of activity for
22 Project Truth with briefs of the officers responsible, the
23 Crowns assigned and the form of tracking that was used by
24 the Project Truth team.

25 **MR. FLANAGAN:** I'm sorry, the page again,

1 counsel?

2 MR. STRAWCZYSNKI: It's the last page of the
3 document, Bates page 7646.

4 MR. FLANAGAN: Yes.

5 MR. STRAWCZYSNKI: You'll see file number 30
6 pertains to Mr. Sauv . And if you move along to the fifth-
7 last column, you'll see in the shaded area, "Volume 2, 11
8 May '99, Flanagan for Recommendation"?

9 MR. FLANAGAN: Yes.

10 MR. STRAWCZYSNKI: So that is presumably a
11 reference to the letter of same date that we just looked
12 at.

13 MR. FLANAGAN: Yes.

14 MR. STRAWCZYSNKI: The next indicator is in
15 the next column over. It's "Volume 2, 08 Feb '02,
16 Additional Charges Insufficient to Proceed".

17 MR. FLANAGAN: Yes.

18 MR. STRAWCZYSNKI: And sir, do you know
19 whether at any point between 11 May '99 and 08 Feb '02
20 whether the Crown's office would have provided the OPP with
21 a written legal opinion?

22 MR. FLANAGAN: Well, I can't remember
23 specifically today but it would be my practice when they
24 are asking for a legal opinion to give them a legal opinion
25 in a time period shorter than that. It seems to be

1 confirmed by Hall's letter by the writing on it.

2 MR. STRAWCZYSNKI: We do have one transfer
3 memo that you would have written on the subject, sir, that
4 maybe I should take you to as well.

5 MR. FLANAGAN: Sure.

6 MR. STRAWCZYSNKI: It's Document 102264.

7 THE COMMISSIONER: Thank you.

8 Exhibit Number 3015 is a memo from the Crown
9 attorney to Claudette Wilhelm from Curt Flanagan. The date
10 is the 10/21/99.

11 ---EXHIBIT NO./PIÈCE NO P-3015:

12 (102264) Letter from Claudette Wilhem to
13 Curt Flanagan - 21 Oct, 99

14 MR. STRAWCZYSNKI: Now, sir, if you'd like
15 to take a minute or two to review this document, it appears
16 to be your transfer memo assigning Crown Wilhelm to this
17 file again.

18 MR. FLANAGAN: Yeah, that is correct.

19 MR. STRAWCZYSNKI: And I don't see the
20 reference specifically to the request for a new legal
21 opinion in this memo.

22 MR. FLANAGAN: It's not there.

23 MR. STRAWCZYSNKI: And I take it from your
24 evidence that it's possible you may have already provided
25 one by this point.

1 MR. FLANAGAN: Right.

2 MR. STRAWCZYSNKI: But we're just not sure
3 at this point.

4 MR. FLANAGAN: Well, myself -- yeah, either
5 myself or another Crown in my office. Now, I'd probably
6 say it probably wouldn't have been another Crown in my
7 office given that I'm assigning this to Claudette Wilhelm
8 at this time but probably by myself, it could have been,
9 yes.

10 MR. STRAWCZYSNKI: Okay. Those are my
11 questions.

12 MR. FLANAGAN: Thank you.

13 MR. STRAWCZYSNKI: Thank you very much.

14 THE COMMISSIONER: Thank you.

15 Mr. Horn, you've joined us late. Do you
16 have any questions of this gentleman?

17 How long do you intend to be, sir?

18 MR. HORN: Not very long. I've just got a
19 couple of questions.

20 THE COMMISSIONER: All right. Thank you.

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

22 HORN:

23 MR. HORN: My name is Frank Horn. I'm the
24 Coalition for Action and I have just a few questions.

25 I know that you've been a Crown attorney in

1 Brockville for how long now?

2 MR. FLANAGAN: I was appointed a Crown
3 attorney in Brockville in 1993 in March.

4 MR. HORN: Okay. And Mr. MacDonald who is
5 the Crown here in Cornwall, did you have a relationship
6 with him, a close relationship with him?

7 MR. FLANAGAN: I have a professional
8 relationship with Mr. MacDonald and I see him from time to
9 time. I don't -- I mean, yeah, I know Murray MacDonald,
10 yes.

11 MR. HORN: Okay.

12 MR. FLANAGAN: I don't socialize with Murray
13 MacDonald, I guess, if that's what you're asking.

14 MR. HORN: How about when you get to, let's
15 say, educational conferences and that sort of thing?

16 MR. FLANAGAN: Oh, yeah.

17 MR. HORN: And you'd get together?

18 MR. FLANAGAN: Oh, yeah.

19 MR. HORN: He'd be one of the -- well,
20 somebody that you would probably know?

21 MR. FLANAGAN: Oh, yes.

22 MR. HORN: When there is a lot of Crowns
23 that get together?

24 MR. FLANAGAN: Oh, yes, yes.

25 MR. HORN: And so you would have maybe a

1 little bit closer relationship with him than other Crowns
2 in Ontario?

3 **MR. FLANAGAN:** Yes. I mean I think it's
4 fair to say I have a closer relationship with the Crown
5 attorneys in the east region because we have frequent
6 meetings and the same thing then other Crowns in Ontario,
7 yes.

8 **MR. HORN:** Okay. And so when you were
9 dealing with the matter of Malcolm MacDonald, do you recall
10 reading the interview that was done by Tim Smith of the
11 OPP, Project Truth police officer when they interviewed
12 Malcolm MacDonald?

13 **MR. FLANAGAN:** I don't recall that today,
14 no.

15 **MR. HORN:** Okay. Let's take a look at
16 Exhibit Number 863.

17 **MR. FLANAGAN:** I mean, I can tell you if it
18 was part of the brief, which I believe it was, I would have
19 reviewed it then.

20 **MR. HORN:** You would have reviewed it back
21 then?

22 **MR. FLANAGAN:** Yes.

23 (SHORT PAUSE/COURTE PAUSE)

24 **MR. FLANAGAN:** Okay, I have it.

25 **MR. HORN:** Okay. You've got it?

1 **MR. FLANAGAN:** Yes.

2 **MR. HORN:** Turn to page 17, the bottom of 17
3 and the top of page 18.

4 **MR. FLANAGAN:** Yes.

5 **MR. HORN:** Okay. That refers to discussions
6 that Mr. Malcolm MacDonald was having with Murray
7 MacDonald.

8 **MR. FLANAGAN:** Can I just have a minute to
9 read it, please?

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

11 **MR. FLANAGAN:** Okay, I've read it, yes.

12 **MR. HORN:** Do you remember reading that
13 document?

14 **MR. FLANAGAN:** I don't recall today but, as
15 I said, if it was part of the brief I would have reviewed
16 it then.

17 **MR. HORN:** Okay. So when you read the
18 document you would have known that Malcolm MacDonald had
19 been talking to Murray about the settlement?

20 **MR. FLANAGAN:** When I read the document I
21 would have been aware that Mr. MacDonald said he was
22 talking to Crown Attorney Murray MacDonald, yes.

23 **MR. HORN:** That's right, and some of the
24 things that were said were that, "I explained the whole
25 situation to him and I want to put a full disclosure to

1 you." Did you say that to -- Malcolm said that to Murray?

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

3 **MR. FLANAGAN:** Mr. MacDonald says Murray's -

4 --

5 **MR. HORN:** Pardon?

6 **THE COMMISSIONER:** Go ahead.

7 **MR. FLANAGAN:** Sorry.

8 "and I said, 'I want to put a full
9 disclosure to you.'" Malcolm MacDonald is saying in the
10 statement that he said that to Murray MacDonald.

11 **MR. HORN:** Okay, so what does that mean to
12 you? When you read that does that mean that Malcolm gave
13 full disclosure of the settlement to Murray MacDonald?

14 **MR. FLANAGAN:** Well, what it means to me is
15 that Mr. MacDonald -- Malcolm MacDonald said that he told
16 Murray MacDonald, and I quote that:

17 "I want to put a full disclosure to
18 you. I want to tell you about this."

19 That's what it means.

20 **MR. HORN:** Okay. So from reading that, you
21 would have then determined that there had been discussions
22 and that the settlement had been discussed between Malcolm
23 MacDonald and Murray MacDonald, and that Murray was aware
24 of the settlement?

25 **MR. FLANAGAN:** No, I'm not sure I could go

1 that far, no. Because I'm just -- you have to appreciate
2 I'm just reading this part of the statement, you know,
3 where he's saying that:

4 "I want to put full disclosure to you,"
5 and he said to me virtually, 'Well,
6 that's fine. Do what you want to do,'
7 and he doesn't perceive that's, you know,
8 almost implying we're happy to put it."

9 I mean that's as much as I know there. To
10 the full extent of what was discussed in relation to the
11 two gentlemen, I don't think I was aware of that.

12 **MR. HORN:** I know you wouldn't be aware of
13 it but you were aware that Malcolm MacDonald has been
14 discussing with the local Crown attorney the settlement and
15 that if you were to prosecute Malcolm MacDonald, that
16 likely this would be a major concern in your prosecution --
17 of this discussion that took place between Malcolm
18 MacDonald and Murray.

19 **MR. FLANAGAN:** Well, I don't know the full
20 extent of the conversation, so I can't answer -- I can't
21 comment on the question.

22 **MR. HORN:** But I mean if you were
23 prosecuting -- I mean if you had intended to prosecute
24 Malcolm MacDonald -- I mean you didn't go in with the idea,
25 "We're going to settle this"? I mean you went in there

1 thinking, "Well, there's a possibility I might be going
2 full tilt against Malcolm MacDonald".

3 **MR. FLANAGAN:** No. Well, what happened was
4 I'm assigned the file from the regional director. Mr.
5 MacDonald is charged with obstruct justice when it comes to
6 me. I am satisfied in my own mind that he committed the
7 offence of obstruct justice, and then we have the pre-trial
8 and the rest that I talk about with the last witnesses.

9 **MR. HORN:** Okay, but you were willing, if
10 you had to, to prosecute him and have him go before the
11 court. Or did you go there and, "Let's try -- we're going
12 to try to settle this thing"?

13 **MR. FLANAGAN:** No. I was willing to go
14 court because I think we set a trial date in addition to
15 the pre-trial date, if memory serves me correctly.

16 **MR. HORN:** Okay. So you were in the process
17 of possibly having to have him arrested and brought before
18 the courts.

19 **MR. FLANAGAN:** He was arrested.

20 **MR. HORN:** Okay.

21 **MR. FLANAGAN:** When I got the file he was
22 already charged and arrested.

23 **MR. HORN:** Okay, and then he would have been
24 brought before the courts.

25 **MR. FLANAGAN:** Yes.

1 **MR. HORN:** And you would have been willing
2 to go all the way and have witnesses called regarding the
3 circumstances surrounding the settlement.

4 **MR. FLANAGAN:** I was prepared to prosecute
5 him, yes. It was assigned to me.

6 **MR. HORN:** Yes, so that might have
7 implicated Murray MacDonald.

8 **MR. FLANAGAN:** Well, I don't think in my
9 mind it implicated Murray MacDonald, from what I read here.

10 **THE COMMISSIONER:** I think what he's trying
11 to say ---

12 **MR. HORN:** Okay, I'm using the wrong word
13 here.

14 **THE COMMISSIONER:** What he's trying to say
15 is ---

16 **MR. HORN:** Sorry.

17 **THE COMMISSIONER:** --- is, look it, you
18 agreed to an absolute discharge -- I'm going to put it at
19 its best case -- because if you went to trial you would
20 have had to call Murray MacDonald -- the Crown would have
21 had to call Murray MacDonald because he was involved in all
22 of this and it would have looked bad -- at least bad for
23 Murray MacDonald, if not implicating him in the settlement.

24 **MR. FLANAGAN:** No.

25 **THE COMMISSIONER:** Is that what you're

1 putting to him?

2 MR. HORN: Well, yes, and also it would also
3 possibly have given Mr. Malcolm MacDonald a defence of
4 officially-induced error in which he could say, "I was told
5 by Murray MacDonald everything's okay."

6 MR. FLANAGAN: No, I -- oh.

7 MR. KLOEZE: Excuse me, Mr. Commissioner.

8 THE COMMISSIONER: M'hm.

9 MR. KLOEZE: I don't recall seeing that as a
10 defence anywhere in any of these -- or that allegation in
11 any of these materials, certainly not ---

12 THE COMMISSIONER: No.

13 MR. HORN: Well, they never got that far.

14 MR. KLOEZE: Well, he pled guilty.

15 MR. HORN: I know he pled guilty, but if it
16 had gone to trial that would be one possible defence that
17 Mr. Malcolm MacDonald could use, couldn't he?

18 THE COMMISSIONER: Well, I don't know how
19 that fits in with my question but anyway on my formulation
20 of what I thought Mr. Horn was trying to do.

21 So your question again, then?

22 MR. HORN: What I'm asking you is did that -
23 - did you think along those lines when you were negotiating
24 the settlement, that if ---

25 THE COMMISSIONER: Well, he's not

1 negotiating a settlement.

2 MR. HORN: --- it went to trial ---

3 MR. FLANAGAN: I wasn't negotiating a
4 settlement.

5 MR. HORN: Pardon?

6 MR. FLANAGAN: I wasn't negotiating a
7 settlement. What happened was the man was charged with a
8 criminal offence. We then set a date for a pre-trial and a
9 trial.

10 I had discussions with Mr. Wakefield, his
11 defence lawyer, in relation to the offences before the --
12 the offence, rather, before the court.

13 We then had a subsequent pre-trial before
14 Judge -- senior Judge Lennox, and Mr. Wakefield indicated
15 to me that his client was willing to plead guilty. I
16 accepted the plea of guilty. I didn't object to the
17 absolute discharge and I put the reasons on the record.

18 That's what happened.

19 MR. HORN: Okay, all right.

20 The fact that, to the public, when they hear
21 that there's going to be an absolute discharge for an
22 obstruct justice in which it was a high-profile case, it
23 looks like a very, very lenient sentence, doesn't it?

24 MR. FLANAGAN: Well, I thought the sentence
25 was appropriate, given all the factors.

1 **MR. HORN:** Is it possible that the reason
2 why the sentence was so lenient was because Mr. MacDonald
3 and his lawyers were saying, "Look, if it goes to trial we
4 might have to drag Mr. Murray MacDonald in court"?

5 **MR. FLANAGAN:** If your question, counsel, is
6 did I take a plea of guilty and agree to an absolute
7 discharge because I didn't want Murray MacDonald
8 testifying, if that's your question, the answer is no. I
9 took a plea of guilty in relation to it because the client
10 was willing to plead guilty.

11 It was canvassed with Judge Lennox about an
12 absolute discharge, in chambers. Judge Lennox agreed with
13 the absolute discharge. I put the mitigating factors, what
14 I considered as mitigating factors as Crown counsel on the
15 record, and I thought it was an appropriate disposition
16 given all the factors at the time.

17 **MR. HORN:** So I gather what you're saying is
18 that you weren't doing this in order to protect a fellow --
19 -

20 **MR. FLANAGAN:** No.

21 **MR. HORN:** --- Eastern Ontario Crown from
22 being put into an embarrassing situation.

23 **MR. FLANAGAN:** Not only was I not doing it
24 but I wouldn't do it.

25 **MR. HORN:** Pardon?

1 **MR. FLANAGAN:** Not only was I not doing it
2 but I wouldn't do that.

3 **MR. HORN:** You wouldn't what?

4 **MR. FLANAGAN:** I wouldn't do what you're
5 suggesting I would do.

6 **MR. HORN:** Okay.

7 Your father is the -- was the former Chief
8 of Police of Ottawa?

9 **MR. FLANAGAN:** My father is deceased.

10 **MR. HORN:** Pardon?

11 **MR. FLANAGAN:** My father is deceased and he
12 is the former Chief of Police of Ottawa, yes.

13 **MR. KLOEZE:** I don't think any of this is
14 relevant. I don't see ---

15 **THE COMMISSIONER:** Well, I don't know.
16 Where are we going?

17 **MR. HORN:** Well, it's relevant to this
18 extent. There was a -- from what I understand, there was a
19 roast.

20 Your father had a roast back in 1990?

21 **MR. FLANAGAN:** A function, you mean? Yes.

22 **MR. HORN:** A function.

23 **MR. FLANAGAN:** Yes.

24 **MR. HORN:** And you were involved and your
25 father was there?

1 **MR. FLANAGAN:** I spoke at it, yes. I was
2 one of the roasters.

3 **MR. HORN:** Okay. And at the roast were a
4 number of people. Was Claude Shaver there?

5 **MR. FLANAGAN:** I don't believe so but I
6 don't recall.

7 **MR. HORN:** What about Colin McKinnon?

8 **MR. FLANAGAN:** Yes, he was there.

9 **MR. HORN:** He was there.

10 **MR. FLANAGAN:** Jake Dunlop was there.

11 **MR. KLOEZE:** Mr. Commissioner, from what I
12 understand, Mr. Horn is maybe examining connections between
13 Mr. Flanagan, Sr. and other people. I'm not sure how this
14 is relevant to this witness.

15 **MR. HORN:** Were you one of the organizers of
16 that roast?

17 **THE COMMISSIONER:** Just a minute, Mr. Horn.
18 Mr. Horn.

19 **MR. HORN:** Yes.

20 **THE COMMISSIONER:** There's an objection.

21 **MR. HORN:** All right.

22 **THE COMMISSIONER:** So you have to answer to
23 it before you can continue to ask questions.

24 **MR. HORN:** All right.

25 **THE COMMISSIONER:** So he's saying --

1 Mr. Kloeze is saying, "What's this got to do with
2 anything?"

3 MR. HORN: From what I understand, Mr.
4 Flanagan was the one that organized the roast.

5 THE COMMISSIONER: Yes.

6 MR. HORN: And he would be the one involved
7 in inviting these people.

8 THE COMMISSIONER: M'hm.

9 MR. HORN: Not his father.

10 THE COMMISSIONER: M'hm.

11 MR. HORN: So that he's the one that has
12 these connections; not his father.

13 THE COMMISSIONER: Connections?

14 MR. HORN: To these people who are involved
15 in what we allege are a cover-up here in Cornwall -- Mr.
16 Shaver and Mr. McKinnon.

17 THE COMMISSIONER: So ---

18 MR. HORN: Back at that time.

19 THE COMMISSIONER: Slow down.

20 So like if you're having an official
21 function, you know, for our next police chief, you know you
22 have the "have to invite" list, you know -- the lawyers,
23 whether you like them or not; you know, whether you know
24 them or not. It's all going to involve about who the
25 person retiring, who is being honoured or whatever, who he

1 knew.

2 MR. HORN: Even though he may have been the
3 one organizing it ---

4 THE COMMISSIONER: Well.

5 MR. HORN: --- for his father. May be doing
6 the inviting.

7 THE COMMISSIONER: So what? I mean if
8 you're going to invite somebody to your father's roast it's
9 not going to be all your friends. It's going to be the
10 people that worked with your father. But okay, so he knows
11 these people.

12 Okay, give me your line of questioning.
13 Where else are you going to go?

14 MR. HORN: I'm just suggesting and I'm
15 asking this witness if the ---

16 THE COMMISSIONER: No, no, ask me first.

17 MR. HORN: Okay. Mr. Shaver, Mr. McKinnon,
18 were people that he socialized with, he knew them. That's
19 why they were invited.

20 THE COMMISSIONER: Did you socialize with
21 Justice McKinnon?

22 MR. FLANAGAN: Well, I have to say this. I
23 articulated at a firm where Mr. McKinnon was a lawyer.

24 THE COMMISSIONER: Fine.

25 MR. FLANAGAN: I was a lawyer there for a

1 year, year and a half, but I can tell you I didn't organize
2 the roast. The roast wasn't for my father after he
3 retired. It was a roast about three years before he
4 retired and it was organized by the Ottawa Police Service
5 and I was invited to be a roaster because I was the family
6 roaster in relation to my dad.

7 **MR. HORN:** Okay, it's explained.

8 **THE COMMISSIONER:** Great.

9 **MR. HORN:** Thank you.

10 The other area that I'm interested in is in
11 regards to Mr. Jodoin.

12 **MR. FLANAGAN:** Yes.

13 **MR. HORN:** Okay. When you were dealing with
14 Mr. Jodoin, the complainant -- can I use Mr. Carriere.

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

16 **MR. HORN:** Mr. Carriere.

17 **THE COMMISSIONER:** Marc Carriere.

18 **MR. HORN:** Marc Carriere was sent to do work
19 with Mr. Jodoin by Manpower.

20 **MR. FLANAGAN:** I didn't deal with the Jodoin
21 file until I was consulted about a decision to withdraw it.

22 **MR. HORN:** Okay. So you don't really know
23 too much about the background of it?

24 **MR. FLANAGAN:** I can say this, that the
25 Jodoin file was -- my understanding, it was given to the

1 Brockville Crown Attorney's Office to prosecute while I was
2 away on a secondment. So they would have had an acting
3 Crown attorney, who was Alan Findlay at the time. That
4 would have been assigned to someone in the office. The
5 only dealing that I had on the Jodoin file was that I was
6 consulted by Claudette Breault, then Wilhelm, in relation
7 to withdrawing the charges, no reasonable prospect of
8 conviction, and I was consulted in the company of Assistant
9 Crown Attorney Alan Findlay. That is the only dealings
10 that I had with him.

11 **MR. HORN:** Okay, I understand that. But
12 that's kind of a cursory way of going over the whole
13 situation. I just want to get a little bit deeper than
14 that.

15 **MR. FLANAGAN:** Okay.

16 **MR. HORN:** Were you aware of the way in
17 which Mr. Carriere and Mr. Jodoin got together initially?
18 Were you aware of that?

19 **MR. FLANAGAN:** I can't remember if I was
20 aware of that or not because I can't remember what the
21 discussion was today in relation to Ms. Breault when I
22 agreed with her about no reasonable prospect of conviction.

23 **MR. HORN:** Okay. Were you aware that it was
24 Canada Manpower that sent -- that made the arrangements,
25 and Mr. Hickerson worked at Canada Manpower?

1 **MR. FLANAGAN:** I can't answer that today.

2 **MR. HORN:** Pardon?

3 **MR. FLANAGAN:** I can't answer that today. I
4 don't know.

5 **MR. HORN:** Because our position has always
6 been -- is that there were people that knew each other in
7 this town and they were referring people back and forth
8 because there was a paedophile ring. That's what we
9 believe.

10 **MR. FLANAGAN:** Fair enough. What my only --
11 as I indicated, Counsel, my only involvement in the Jodoin
12 file was that I was in the Brockville Crown Attorney's
13 Office, that Assistant Crown Attorney Claudette Breault,
14 who was assigned to prosecute it, came in and was of the
15 opinion that it no longer could proceed. She gave a
16 background to myself and to Alan Findlay and reasons why it
17 couldn't proceed and I agreed with her. Today, to ask me
18 what the background and the full account she gave me, I
19 don't specifically recall but I know she did.

20 **MR. HORN:** Okay. So you went in there.
21 Basically it was already a fait accompli. You just had to
22 go into court and settle it. You didn't have to do any of
23 the negotiations or anything?

24 **THE COMMISSIONER:** What are we talking
25 about?

1 **MR. HORN:** I'm talking about the -- oh, I
2 mean the fact that the charges were being withdrawn.

3 **THE COMMISSIONER:** Well, how would he have
4 to negotiate if ---

5 **MR. HORN:** Well, I mean ---

6 **THE COMMISSIONER:** You go to an accused and
7 you say, "I'm about to withdraw these charges, so will you
8 object to that?"

9 **MR. HORN:** Well, withdrawing charges. I
10 mean was the defence counsel involved in the decision to
11 withdraw?

12 **MR. FLANAGAN:** Well, the decision to
13 withdraw charges is a Crown decision.

14 **MR. HORN:** It was a decision that was made
15 totally without being involved in any kind of negotiations
16 with the defence counsel?

17 **MR. KLOEZE:** Excuse me. I think this
18 witness's evidence has been that he was consulted on a
19 decision to withdraw ---

20 **THE COMMISSIONER:** That's right.

21 **MR. KLOEZE:** --- not that he was involved in
22 the withdrawal of the charges himself. He was merely
23 consulted on the decision.

24 **THE COMMISSIONER:** Yes.

25 **MR. HORN:** So I'm just wanting to know if

1 you knew anything about the background on the situation
2 that you were getting yourself into, the fact that
3 Mr. Hickerson was working at Manpower ---

4 **THE COMMISSIONER:** Mr. Horn, the answer ---

5 **MR. HORN:** --- and this person was sent to
6 Jodoin and he was abused there. Did you know any of that?

7 **THE COMMISSIONER:** Mr. Horn, first of all,
8 there was an allegation that he was abused there. The
9 Crown's -- see, you have to watch your language a little
10 bit.

11 Second of all, he has already answered the
12 question. He doesn't know anything about that.

13 **MR. HORN:** Okay. So he was sent in to do a
14 job and he didn't know anything about it. Is that what it
15 is?

16 **THE COMMISSIONER:** Oh, come on! Come on,
17 that is totally unfair. You're asking him questions. He
18 said, "Look, I was on secondment. I was in the office.
19 One of my assistants came in and asked for a second
20 opinion." He wasn't set up. He didn't go in there to do
21 anything. He simply answered the questions.

22 **MR. HORN:** That's all the questions I have.
23 Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Lee.

1 --- CROSS-EXAMINATION BY/COURTE-INTERROGATOIRE PAR

2 MR. LEE:

3 MR. LEE: Hello again, Mr. Flanagan. My
4 name is Dallas Lee. I'm on for the Victims Group.

5 Can we start by looking at Exhibit 1165,
6 please? That's the Malcolm MacDonald plea of guilty, 1165,
7 at the bottom of page 3.

8 MR. FLANAGAN: I'm obviously not as good as
9 the young woman who does this. Is there a number for the
10 tab?

11 MR. LEE: Yes, it should be 1165, sir.

12 MR. FLANAGAN: Oh, 1165?

13 MR. LEE: Yes.

14 MR. FLANAGAN: Okay. I have it here.

15 MR. LEE: Madam Clerk, I'll be looking at
16 the bottom of the last paragraph on page 3, Bates page 324.

17 MR. FLANAGAN: Sorry, you said page 3 of the
18 transcript?

19 MR. LEE: Yes.

20 MR. FLANAGAN: Yes, I have it.

21 MR. LEE: And if you look at the final
22 paragraph on the page that begins -- this is you making
23 submissions to the court. You say:

24 "I will enter as an exhibit a copy of
25 the full release and undertaking not to

1 disclose, and before I do that I can
2 tell Your Honour that Mr. Leduc, who
3 had indicated was acting for the Bishop
4 and the corporation, had discussions
5 with the Accused before the court was
6 made aware that Mr. Silmser would
7 settle for that amount and, as a result
8 of that, he provided to the Accused
9 before the court a copy of a release
10 that Mr. Leduc had used in a previous
11 file, non-criminal. That release, Your
12 Honour, was in the French language and
13 that release was translated by Mr.
14 Leduc to the English language."

15 If you turn over to page 4:

16 "So perhaps as the first exhibit, what
17 I will hand to the clerk as Exhibit 1
18 is a copy of the sample release given
19 to the Accused before the court for Mr.
20 Leduc, both a French copy and also the
21 English translation."

22 Do you see that?

23 **MR. FLANAGAN:** Yes.

24 **MR. LEE:** And then we have that marked as
25 Exhibit 1. I've done everything I could with the hard

1 drive to determine whether or not we have the exhibits that
2 were filed here and I don't believe we do. I can't find
3 anything that has the exhibit stamps. I can't find them
4 anywhere on here.

5 What I'd like to show you, please, is
6 Exhibit 1918 from this proceeding to see whether or not --
7 1918, yes.

8 Before I show you the document, I suppose do
9 you have any recollection of what that Exhibit 1 would have
10 looked like? Do you have any recollection of the content
11 of that ---

12 **MR. FLANAGAN:** No.

13 **MR. LEE:** --- release or anything?

14 **MR. FLANAGAN:** Today, no.

15 **MR. LEE:** Thank you. I'll need this on the
16 screen, please, Madam Clerk.

17 **MR. FLANAGAN:** You said 1918, Counsel?

18 **MR. LEE:** One nine one eight (1918), yes.

19 **MR. FLANAGAN:** Yes.

20 **MR. FLANAGAN:** I have it.

21 **MR. LEE:** Okay, I'm just ---

22 **MR. FLANAGAN:** Oh, I'm sorry.

23 **MR. LEE:** I need to wait for the screen. I'm
24 sorry, I don't have it with me. There you go.

25 So, as you can see, this is a fax

1 transmittal to Inspector Michael Fagan from J. Leduc on
2 January 6, '95. And if you look at the second page ---

3 **MR. FLANAGAN:** Yes.

4 **MR. LEE:** --- we have -- do you speak any
5 French, sir?

6 **MR. FLANAGAN:** I don't.

7 **MR. LEE:** Mine is not great either, but we
8 have "reçu quittance" and we've have some evidence from Mr.
9 Leduc here where he told us that this related to a
10 situation where he represented an alleged victim of abuse
11 in relation to abuse that she alleged was suffered in the
12 Province of Quebec; okay?

13 So he says that this is something that was
14 in his files dating back to March of 1992, and he made
15 reference to this during the course of an interview with
16 Officer Fagan, and Officer Fagan requested that he send it
17 to him, so that's what Mr. Leduc did; okay?

18 Does this look familiar to you at all?

19 **MR. FLANAGAN:** No.

20 **MR. LEE:** Not at all, eh? And what we
21 have -- Madam Clerk, if we can look very briefly at Exhibit
22 1165, and this is a fairly long exhibit, and I'll give you
23 the -- the Bates numbers I'm looking for begin at -- yes.
24 Sorry, I'm looking -- actually, that's right. Okay.

25 Mr. Commissioner, I spent some time today

1 during the breaks trying to figure out a way I could do
2 this easily, trying to figure out a way I could do it with
3 exhibits, and I failed miserably. What we have is -- in
4 another document, I think it's a conspiracy -- a brief
5 relating to the conspiracy allegations, the broader
6 conspiracy allegations.

7 We have a copy of a fax from Jacques Leduc
8 to Mike Fagan, other than the one that we've just looked
9 at, and we also have the release that I've just looked at,
10 with handwriting translation on it. I know we've seen that
11 before, and I just can't put my hand on it.

12 What I'd like, Madam Clerk to do, if we
13 could, is to put up on the screen Bates page 1100029. If I
14 can see that as well, Madam Clerk?

15 So we have the first two pages there are
16 exactly what we've just looked at -- and if you keep
17 scrolling, Madam Clerk. We have -- here you can see, sir,
18 a -- Madam Clerk, if you can blow that up a little bit. We
19 have that same document but with some handwriting, English
20 translation, on it.

21 Does that look familiar to you at all?

22 **MR. FLANAGAN:** No.

23 **MR. LEE:** Do you ---

24 **MR. FLANAGAN:** When I say it doesn't look
25 familiar, I don't remember it I guess is what I'm saying.

1 **MR. LEE:** Is it possible that the original
2 French document and this translation here are what you
3 filed with the court?

4 **MR. FLANAGAN:** I can't say. Like under
5 oath, I can't say ---

6 **MR. LEE:** Okay.

7 **MR. FLANAGAN:** --- it was or ---

8 **MR. LEE:** You just have no recollection, one
9 way or the other?

10 **MR. FLANAGAN:** Right.

11 **MR. LEE:** And, Madam Clerk, can you flip
12 another page, please?

13 And what we have here, Mr. Commissioner, is
14 a fax that was sent to again Mike Fagan, from Jacques
15 Leduc, and he's confirming what I've just put to the
16 witness, the fact that he's enclosing a photocopy of the
17 release, and he says:

18 "This again was a precedent I referred
19 to in our interview, but I would not
20 have faxed it to the other solicitor
21 since he does not speak or read
22 French."

23 Mr. Commissioner, I propose that we simply
24 mark those five pages out of this document that I've just
25 referred to, as the next exhibit, if we can just have that

1 five-page excerpt, given that I put them to the witness.

2 **THE COMMISSIONER:** Well, why don't we just
3 identify the Bates pages ---

4 **MR. LEE:** Yes.

5 **THE COMMISSIONER:** --- that were put to the
6 witness? It doesn't have to be a new exhibit.

7 **MR. LEE:** Okay, that's fine.

8 **THE COMMISSIONER:** And just for the record
9 indicate that you put these pages, which are part of
10 Exhibit Number ---

11 **MR. LEE:** That's the problem; this isn't yet
12 an exhibit.

13 **THE COMMISSIONER:** What do you mean it's not
14 an exhibit?

15 **MR. LEE:** I know that we've looked at that
16 fax before, obviously, being 1918, but I haven't been able
17 to find anywhere in an exhibit that we have those five
18 pages together which includes the English translation.

19 **THE COMMISSIONER:** Okay.

20 **MR. LEE:** What I'd like to do is -- this is
21 an excerpt of a brief that includes statements; it includes
22 many things. It's many, many pages. I'm only
23 interested -- I don't think it's one that we need the
24 entire thing for continuity.

25 **THE COMMISSIONER:** Fine. Fine, fine, fine.

1 **MR. LEE:** If we could do the excerpt, so it
2 will be Document Number 116272 and then it's Bates pages
3 ending 029 through to 032.

4 **THE COMMISSIONER:** All right, that'll be the
5 next Exhibit. We'll get some photocopies made and well put
6 it in, and that will be Exhibit Number, Madam Clerk?

7 **THE REGISTRAR:** Three zero one six (3016).

8 **THE COMMISSIONER:** Three zero one six
9 (3016).

10 ---EXHIBIT NO./PIÈCE NO P-3016:

11 (116272) Fax from Jacques Leduc to Michael
12 Fagan - 06 Jan, 95

13 **MR. LEE:** Okay, thank you, sir, and I
14 apologize for having to do it that way.

15 And the reason I'm putting this to you, Mr.
16 Flanagan, is we have this fax from Mr. Leduc here, where he
17 says he would not have faxed a French precedent to Mr.
18 Malcolm MacDonald, given the fact that he doesn't speak
19 French, and we've have some evidence from Mr. Leduc here
20 that suggests to me that certainly the -- the "reçu
21 quittance" that I showed you isn't something you would have
22 faxed to Mr. MacDonald.

23 Do you have any comment on that at all? You
24 just -- no recollection at all on this?

25 **MR. FLANAGAN:** No.

1 **MR. LEE:** Okay. Did you ---

2 **MR. FLANAGAN:** Although I thought I
3 mentioned in the transcript -- I may be wrong, but I
4 thought I did mention something about a French translation.

5 **THE COMMISSIONER:** Yes, you did.

6 **MR. LEE:** Yes. And you actually filed the
7 French document ---

8 **MR. FLANAGAN:** Okay.

9 **MR. LEE:** --- as well as the English
10 translation. I'm just trying to figure out exactly what it
11 was.

12 **MR. FLANAGAN:** Right.

13 **MR. LEE:** And one of the reasons I'm doing
14 that, and I don't intend to go through all this with you,
15 when Tim Smith was here we looked at some documents that
16 arose later during the context of civil productions, in a
17 civil action, and Officer Smith confirmed with us those
18 aren't things he had at the time that he was weighing RP&G
19 in relation to his various actors.

20 **MR. FLANAGAN:** Those are things he had or
21 he ---

22 **MR. LEE:** He did not have.

23 **MR. FLANAGAN:** Oh, I see.

24 **MR. LEE:** There are documents he didn't have
25 at the time that we have now.

1 You've told us that by the time you got the
2 file relating to Malcolm MacDonald, charges had already
3 been laid.

4 **MR. FLANAGAN:** Yes.

5 **MR. LEE:** Did you go back -- I suppose,
6 first, were you ever asked for an opinion in relation to
7 the propriety of the charges against Malcolm MacDonald
8 before they were laid?

9 **MR. FLANAGAN:** I don't believe so, no.

10 **MR. LEE:** And what about in relation to
11 potential charges against any of Sean Adams, Jacques Leduc,
12 Bishop Eugène LaRocque?

13 **MR. FLANAGAN:** I don't believe so but, you
14 know, it's 13 years ago, but I don't believe so.

15 **MR. LEE:** And would it have been your
16 practice, in a situation like this where you received the
17 one charge already laid, and the situation where there were
18 many different actors, to go back and scrutinize everything
19 to make sure that the police had come to a proper decision,
20 in your mind, on RPG?

21 **MR. FLANAGAN:** Well, I mean, I think when
22 you receive a file that you're prosecuting, you can't
23 prosecute it unless you have RPC; right? So I can't take a
24 prosecution of Malcolm Macdonald to court unless I believe
25 there's a reasonable prospect of conviction. So in that

1 regard, yeah, I would be satisfied.

2 MR. LEE: But turning it around the other
3 way, I take it you would be able to proceed against Malcolm
4 MacDonald, not having specifically turned your mind to
5 whether the fact he should have anybody join him as an
6 accused.

7 MR. FLANAGAN: Oh, yeah.

8 MR. LEE: In terms of you don't need to
9 scrutinize Sean Adams and Jacques Leduc to prosecute
10 Malcolm MacDonald, necessarily.

11 MR. FLANAGAN: Well, I have their
12 statements, and they're part of the brief, and if it went
13 to trial they would be witnesses in relation to the Malcolm
14 MacDonald prosecution, but I guess what you're asking is,
15 to prosecute Malcolm MacDonald, no. I mean the charges
16 against him, you would call them as -- if that went to
17 trial I'd be calling them as witnesses.

18 MR. LEE: And I presume when you would have
19 reviewed the Crown brief, and any of those witness
20 statements, you would have done so with a view to analyzing
21 how they could assist you in determining Malcolm
22 MacDonald's culpability, and not necessarily whether or
23 not ---

24 MR. FLANAGAN: Yes, I think that's fair.
25 Yeah, I think that's fair, that you're looking for

1 relevance of evidence in relation to proving your case.

2 MR. LEE: And I suppose the easiest way to
3 put it is when you were dealing with Malcolm Macdonald, you
4 didn't take it upon yourself to do a reassessment,
5 globally, of everything that occurred -- had occurred
6 around the Silmser settlement?

7 MR. FLANAGAN: No, because I was advised
8 that that had already been done -- that that had already
9 been done. I was simply sent the obstruct charge to
10 prosecute against Malcolm MacDonald.

11 MR. LEE: And I take it all of the materials
12 that you had came from the OPP?

13 MR. FLANAGAN: Yes.

14 MR. LEE: You didn't conduct your own
15 investigation?

16 MR. FLANAGAN: I'm not allowed to conduct my
17 own investigation.

18 MR. LEE: You didn't receive materials from
19 any other source, other than the OPP?

20 MR. FLANAGAN: Right.

21 MR. LEE: And so what you had came directly
22 from them?

23 MR. FLANAGAN: Yes. Well, just for a matter
24 of completeness, Counsel, I'd obviously get letters from
25 counsel on the brief as well.

1 **MR. LEE:** Yes.

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

3 **MR. LEE:** In relation to the absolute
4 discharge, you've been questioned by the two previous
5 counsel in terms of whether or not that was appropriate, or
6 not appropriate.

7 What is the effect of an absolute discharge?

8 **MR. FLANAGAN:** Well, an absolute discharge
9 is that if look at your -- I mean you can apply to get a
10 pardon, and I'm not sure of the rules, but I think it's a
11 year after you can apply for a pardon. You may not
12 get -- successful or not under the -- under the federal
13 legislation, but it shows that you've pled guilty and the
14 court has found you guilty.

15 **MR. LEE:** We know from the reasons for
16 sentence, specifically, that on an absolute discharge no
17 conviction is registered.

18 **MR. FLANAGAN:** Yeah, although it does appear
19 on the criminal record.

20 Like if I was to run a criminal record on
21 Malcolm MacDonald -- I'm not saying today necessarily ---

22 **MR. LEE:** Right.

23 **MR. FLANAGAN:** --- because we're 13 years
24 down the road, but it should. It would appear as a
25 discharge on that record, yes.

1 **MR. LEE:** You've been challenged a little
2 bit about the optics of an absolute discharge in the
3 community. Is that something you turned your mind to at
4 the time?

5 **MR. FLANAGAN:** What I turned my mind to is
6 the evidence that was before me and the -- the factors that
7 I put in and I came to the conclusion, at that particular
8 point in time, that given the evidence and those factors,
9 that I was -- that an absolute -- I didn't object to an
10 absolute discharge for Mr. MacDonald. It's as simple as
11 that.

12 **MR. LEE:** That wasn't my question.

13 **MR. FLANAGAN:** Oh, I'm sorry.

14 **MR. LEE:** Did you turn your mind to the
15 question of how the community would view an absolute
16 discharge; this community in particular?

17 **MR. FLANAGAN:** I mean I can't say today
18 specifically. I'm sure it would have been on my mind, but
19 I can't -- I can't tell you today if I did or I didn't. I
20 don't remember.

21 **MR. LEE:** I wasn't clear from your previous
22 evidence whether or not you realized that this was a rather
23 big deal in Cornwall at the time.

24 **MR. FLANAGAN:** I mean, thinking about it, I
25 think I was aware that it was known in Cornwall simply

1 because, you know, whenever you have a file transferred out
2 of a Crown Attorney's Office there's some -- and if you
3 have a news release there's going to be some publication,
4 if you like, or media surrounding it. But as to the extent
5 of it and all that, no, I don't believe so.

6 **MR. LEE:** Do you recall having been
7 specifically briefed by either somebody at ---

8 **MR. FLANAGAN:** I don't.

9 **MR. LEE:** --- the AG or by the police in
10 terms of exactly what the -- I suppose what was going on in
11 the community in Cornwall; what the rumour mill was saying
12 and everything else?

13 **MR. FLANAGAN:** I don't believe I was, no.

14 **THE COMMISSIONER:** Do you understand that
15 there were protests afterwards?

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

17 **THE COMMISSIONER:** You didn't know that?

18 **MR. FLANAGAN:** No. I know it now, but I
19 didn't ---

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

21 **MR. LEE:** You didn't do any work in Cornwall
22 or you didn't frequently do work in Cornwall ---

23 **MR. FLANAGAN:** No.

24 **MR. LEE:** --- at the very least?

25 **MR. FLANAGAN:** No.

1 **MR. LEE:** You weren't here once a week or a
2 couple of times a month or anything like that?

3 **MR. FLANAGAN:** I think prior to that I may
4 have done two days of prosecution because they were short
5 prosecutors. But other than that, that's it.

6 **MR. LEE:** You -- I believe what you told us,
7 and it was just sort of at the tail end of an answer so
8 correct me if I'm wrong. I think what you told us was that
9 in February of 1995 you spoke with Tim Smith and he told
10 you that no charges would be laid in relation to the
11 Silmser complaint against Charles MacDonald.

12 **MR. FLANAGAN:** I think what I said is I
13 believe it was February '95 that I first spoke to Smith
14 about the file and the charge had been laid. Now, to say
15 to you, Counsel, that was that the time that he told you as
16 opposed to if you had another meeting shortly thereafter; I
17 don't know, but I was definitely told by Inspector Smith,
18 yes.

19 **MR. LEE:** Because the plea of guilty goes in
20 September 12, '95.

21 **MR. FLANAGAN:** Yes.

22 **MR. LEE:** So that's quite a -- quite a
23 distance in time. Had that issue been revisited at all
24 between, say, sometime around February and September?

25 **MR. FLANAGAN:** I don't believe so, but I

1 can't remember specifically.

2 **MR. LEE:** We've had evidence here from a man
3 named John MacDonald and we know that he came forward with
4 allegations of his own against Charles MacDonald in August
5 of 1995, about a month before this plea of guilty. Do you
6 recall whether you had any knowledge of that at the time
7 that you were speaking to Justice Lennox here?

8 **MR. FLANAGAN:** To my knowledge, I didn't.

9 **MR. LEE:** And we also know that on March 6th,
10 1996 Charles MacDonald was charged in relation to
11 allegations made by John MacDonald, somebody we refer to
12 here as C-3 -- he has a moniker -- and David Silmsler.

13 **MR. FLANAGAN:** Okay, I didn't know that.

14 **MR. LEE:** And you certainly didn't know --
15 I'm specifically concerned with September 12th, 1995. You
16 had been given no indication as of that date that charges
17 may be pending or that charges were contemplated or that an
18 investigation may be ongoing?

19 **MR. FLANAGAN:** Not to my knowledge, no.

20 **MR. LEE:** Okay.

21 As far as you knew, on September 12th, 1995
22 the issue was dead; charges would not be laid?

23 **MR. FLANAGAN:** In relation to the Silmsler?

24 **MR. LEE:** Yes.

25 **MR. FLANAGAN:** Yes, yeah.

1 **MR. LEE:** Well, you told us you didn't know
2 about the others.

3 **MR. FLANAGAN:** Yeah.

4 **MR. LEE:** And in relation to Silmser, your
5 understanding was the decision was made and no charges?

6 **MR. FLANAGAN:** I was aware of that prior to
7 September of '95.

8 **MR. LEE:** Yes ---

9 **MR. FLANAGAN:** Yeah.

10 **MR. LEE:** --- but I'm trying to get your
11 frame of mind on September 12th.

12 **MR. FLANAGAN:** Yeah.

13 **MR. LEE:** I believe that's it, sir.

14 **THE COMMISSIONER:** Thank you.

15 **MR. LEE:** Thank you, Mr. Flanagan.

16 **THE COMMISSIONER:** Ms. Robitaille?

17 **MR. FLANAGAN:** Thank you.

18 **MS. ROBITAILLE:** Good afternoon,
19 Mr. Commissioner.

20 **THE COMMISSIONER:** Ma'am.

21 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

22 **MS. ROBITAILLE:**

23 **MS. ROBITAILLE:** Mr. Flanagan, my name is
24 Danielle Robitaille and I am counsel for Mr. Jacques Leduc
25 here at the Inquiry. I just have a few questions.

1 You testified a bit about how the
2 prosecution against Malcolm MacDonald got to you, and you
3 said that when -- when you were assigned the prosecution,
4 the RPC analysis had already been completed.

5 **MR. FLANAGAN:** Yeah, to my knowledge, I --
6 from memory -- and it's 13 years ago but, from memory, I
7 was told that yes, that had already been done. A decision
8 had already been made.

9 **MS. ROBITAILLE:** We heard from Detective
10 Inspector Smith that anywhere between three or five Crown
11 attorneys were involved in that process and that process
12 resulted in just that one charge against Malcolm MacDonald;
13 right?

14 **MR. FLANAGAN:** Ah ---

15 **THE COMMISSIONER:** Were you aware that there
16 was more than one Crown involved?

17 **MR. FLANAGAN:** I wasn't. I was just aware
18 that somebody else had reviewed it, I believe, at the time.

19 **MS. ROBITAILLE:** Thank you.

20 And you explained to us about how, despite
21 the fact that that process had already been undertaken, you
22 had a continuing RPC duty.

23 **MR. FLANAGAN:** Well, yeah. A Crown always
24 has a continuing RPC duty when they prosecute a charge.

25 **MS. ROBITAILLE:** I just want to talk a bit

1 about the pre-trial before Judge -- Senior Judge Lennox.

2 You mentioned that, at the time, it was the
3 procedure to provide disclosure to the judge in a pre-
4 trial.

5 **MR. FLANAGAN:** Yeah, there was a practice in
6 Ottawa -- actually I think it was -- I believe it was Judge
7 Lennox' practice that when you were doing pre-trials, to
8 make them more informed for the judge, that the judge
9 receive a copy of the -- of the brief so that you can have
10 a ---

11 **THE COMMISSIONER:** Meaningful ---

12 **MR. FLANAGAN:** --- a meaningful pre-trial,
13 yeah.

14 **MS. ROBITAILLE:** Do you have a recollection
15 of the pre-trial now, sitting here today?

16 **MR. FLANAGAN:** A little bit, but not great
17 detail, but yeah, a little bit. I remember.

18 **MS. ROBITAILLE:** I take it it was a
19 meaningful pre-trial.

20 **MR. FLANAGAN:** Well, yes. I mean as a
21 result of the pre-trial there was a plea of guilty entered.
22 I believe that the pre-trial was when that was discussed.

23 **MS. ROBITAILLE:** When that crystallized?

24 **MR. FLANAGAN:** Yes, crystallized, yes.

25 Thank you.

1 **MS. ROBITAILLE:** Mr. Flanagan, if at any
2 time during your review of the file or your discussions
3 with counsel or during the pre-trial, if you had come to
4 the point or come to the opinion that there was RPG or RPC
5 to found a charge against Mr. Leduc, would you have
6 hesitated at all in contacting Detective Inspector Smith to
7 canvass that?

8 **MR. FLANAGAN:** Well, normally the -- let me
9 answer this way. Normally the duty to lay a charge is a
10 police officer's. From time to time the police will come
11 to a Crown and say, "Can you give me an opinion with
12 respect to reasonable prospect of conviction?" I mean they
13 may also ask for RP&G, but it's usually reasonable prospect
14 of conviction, and of course, when you're asked you will
15 give that. I should point out that the police are not
16 bound by that ---

17 **MS. ROBITAILLE:** Right.

18 **MR. FLANAGAN:** --- even though it's my
19 opinion the duty -- not the duty, but the authority to lay
20 a charge is solely with the police. Now, from time to
21 time, if you see things that you want -- you think should
22 be further investigated, you might advise the police to
23 say, you know, "Can you maybe -- my legal opinion is that
24 on this element, you know, what evidence do we have here?"
25 and things of that nature.

1 **MS. ROBITAILLE:** So if I could just drill
2 down a bit, if after your review you had thought, "You
3 know, Detective Inspector Smith, you've got the wrong guy
4 here, I really think you should go back out and do some
5 more interviews and kind of canvass a little bit more," is
6 that something you would have talked to him about?

7 **MR. FLANAGAN:** Well, if I thought Inspector
8 Smith had the wrong guy I wouldn't have prosecuted.

9 **MS. ROBITAILLE:** Thank you. Those are my
10 questions.

11 **THE COMMISSIONER:** Thank you.

12 Ms. Levesque, do you have any questions?

13 Well, she's -- Ms. Levesque?

14 --- CROSS-EXAMINATIONBY/CONTRE-INTERROGATOIRE PAR

15 **MS. LEVESQUE:**

16 **MS. LEVESQUE:** Good afternoon, Mr. Flanagan.

17 **MR. FLANAGAN:** Good afternoon.

18 **MS. LEVESQUE:** My name is Gisele Levesque.
19 I'm counsel for the Diocese of Alexandria-Cornwall. I just
20 have questions for you on one of your prosecutions, or one
21 of the prosecutions; the Romeo Major ---

22 **MR. FLANAGAN:** Yes.

23 **MS. LEVESQUE:** --- prosecutions. I'd like
24 to look at some very discrete areas in the complainant's
25 statement.

1 Mr. Commissioner, I'm not sure if -- we may,
2 out of an abundance of caution assign a moniker to the
3 complainant or I can use ---

4 **THE COMMISSIONER:** Where -- what exhibit are
5 you looking at?

6 **MS. LEVESQUE:** It's not an exhibit yet.

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

8 **MS. LEVESQUE:** It's Document Number 707660.

9 **THE COMMISSIONER:** Okay, I'm just starting
10 to worry about my travel plans, so how long do you think
11 you're going to be?

12 **MS. LEVESQUE:** Fifteen ---

13 **THE COMMISSIONER:** Okay.

14 **MS. LEVESQUE:** --- minutes possibly; 20
15 minutes.

16 **THE COMMISSIONER:** Yeah. Well, that sounds
17 ---

18 **MS. LEVESQUE:** Fifteen.

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

20 **MR. CRANE:** Nothing presently.

21 **THE COMMISSIONER:** Mr. Kozloff?

22 **MR. KOZLOFF:** Nothing, sir.

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

24 **MR. CARROLL:** The same.

25 **THE COMMISSIONER:** Mr. Kloeze?

1 **MR. KOZLOFF:** He will in five minutes, sir.

2 **THE COMMISSIONER:** All right, well, let's
3 get to it. Okay.

4 **MS. LEVESQUE:** I gave notice of some Bates
5 pages.

6 **THE COMMISSIONER:** That's fine. I'm sure
7 you did.

8 **MS. LEVESQUE:** So it's really just the Bates
9 pages I'm looking at; 8448 and 8449.

10 **THE COMMISSIONER:** So help me along here.
11 On the Major matters, did they go to trial?

12 **MR. FLANAGAN:** No.

13 **MS. LEVESQUE:** No.

14 **THE COMMISSIONER:** It was withdrawn?

15 **MS. LEVESQUE:** Yes.

16 **THE COMMISSIONER:** Okay.

17 **MR. FLANAGAN:** Thank you.

18 **THE COMMISSIONER:** So you want the name of
19 the complainant?

20 **MS. LEVESQUE:** I have no -- I have no
21 knowledge, unless someone here can enlighten us.

22 **THE COMMISSIONER:** Exhibit 3017 is video
23 interview report of a person which will be known as C ---

24 **MS. LEVESQUE:** One ten (110)?

25 **THE COMMISSIONER:** No, I think we have 10

1 set.

2 **THE REGISTRAR:** One eleven (111).

3 **THE COMMISSIONER:** One eleven (111).

4 **MS. LEVESQUE:** One eleven (111).

5 **THE COMMISSIONER:** Okay. And that statement
6 was taken on -- the interview was on the 19th of October,
7 '99.

8 --- **EXHIBIT NO./PIÈCE NO. P-3017:**

9 (707660) Videotaped Interview report of C-
10 111 - 19 Oct, 99

11 **THE COMMISSIONER:** Okay, so?

12 **MS. LEVESQUE:** Okay, so if I could ask Madam
13 Clerk to go to Bates page 8448. That would be page 25 in
14 the statement.

15 **THE COMMISSIONER:** Twenty-five (25) at the
16 bottom if you want to look at it that way, sir; 25 of 44.

17 **MS. LEVESQUE:** Now, if I could just ask you
18 -- do you have that page?

19 **MR. FLANAGAN:** Yes.

20 **MS. LEVESQUE:** If I could just ask you to
21 scan the bottom of the page and it's starting with what --
22 Officer Seguin. He says, "Okay..." and if you could just
23 read that through to the next page.

24 **MR. FLANAGAN:** Out loud?

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

1 **MS. LEVESQUE:** Just scan -- just read it
2 through. Just take a few minutes to read it through, up to
3 two-thirds down of the next page. It ends with C-111.
4 Starts with, "I had radiation..." If you could read through
5 to the end of that paragraph.

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

7 **MR. FLANAGAN:** All right.

8 **MS. LEVESQUE:** Okay, so if I could -- I'll
9 just summarize essentially what the -- what transpired
10 there. So she's advising -- she's advising Officer Seguin
11 that she had a brain tumour for which she underwent
12 surgery. Sixty percent of the tumour was removed. The
13 other 40 percent was not removed.

14 And then on the next page, which is page 26,
15 Officer Seguin asks for precision as to when she was
16 diagnosed with a brain tumour, and she says December of
17 1998. And then he asks her when she had the surgery and
18 she says she had the surgery immediately.

19 So ten months before she comes in on October
20 19th she's diagnosed with a brain tumour for which she
21 underwent surgery. Do you agree with that?

22 **MR. FLANAGAN:** I don't know because I didn't
23 do the prosecution.

24 **MS. LEVESQUE:** No, I understand that, but
25 the statement was taken on October 19th.

1 **MR. FLANAGAN:** I don't take issue that
2 there's a statement ---

3 **MS. LEVESQUE:** Okay.

4 **MR. FLANAGAN:** --- that says ---

5 **THE COMMISSIONER:** Okay, hold on now. No,
6 no, if you want to make submissions later on this -- he has
7 absolutely no knowledge, so what's the basis of your
8 questions?

9 **MS. LEVESQUE:** It was my intent to put these
10 questions to Crown Breault-Wilhelm.

11 **THE COMMISSIONER:** Crown who?

12 **MS. LEVESQUE:** Breault-Wilhelm.

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

14 **MS. LEVESQUE:** Who was the Crown at the
15 relevant time. Unfortunately, she may not be called.

16 **THE COMMISSIONER:** I know, I know.

17 **MS. LEVESQUE:** So that leaves me with no
18 alternative but to put the questions to ---

19 **THE COMMISSIONER:** No, the other alternative
20 is you can't put it to him because he doesn't know anything
21 about it.

22 **MS. LEVESQUE:** Well ---

23 **THE COMMISSIONER:** So your other alternative
24 is to make it in submissions. So ---

25 **MS. LEVESQUE:** I think if you -- I think if

1 you allow me the opportunity to maybe review a few
2 documents with Mr. Flanagan that he may be able to answer
3 my questions.

4 **THE COMMISSIONER:** Mr. Kloeze?

5 **MR. KLOEZE:** As Mr. Flanagan has said, he
6 wasn't involved in this prosecution. It was Claudette
7 Breault. I think it's improper for this -- for counsel to
8 put statements to him for his opinion now. It's not
9 relevant to anything.

10 **THE COMMISSIONER:** If it's -- it's not part
11 of the institutional response. Mr. Major was -- the
12 charges were withdrawn. He has a presumption of innocence.
13 There is nothing, I think, that can be gained by going
14 through this. What I gather what you're trying to do is to
15 show that in the statement itself that the allegation may
16 have been convoluted because of her illness. So what?

17 **MS. LEVESQUE:** No, what I'm trying to show
18 is that there were difficulties with memories ---

19 **THE COMMISSIONER:** Yes.

20 **MS. LEVESQUE:** --- when she first came in,
21 which were not investigated.

22 **THE COMMISSIONER:** Okay, you made your
23 point.

24 **MS. LEVESQUE:** So it was known -- it was
25 known in 1999 that she had a difficulty with memory.

1 THE COMMISSIONER: M'hm.

2 MS. LEVESQUE: If you'll allow me just to go
3 to the next ---

4 THE COMMISSIONER: No.

5 MS. LEVESQUE: --- passage.

6 THE COMMISSIONER: No.

7 MS. LEVESQUE: There is ---

8 THE COMMISSIONER: No.

9 MS. LEVESQUE: There is a ---

10 THE COMMISSIONER: No.

11 MS. LEVESQUE: These questions ---

12 THE COMMISSIONER: I've ruled ---

13 MS. LEVESQUE: These questions were put to
14 the Bishop.

15 THE COMMISSIONER: Yes.

16 MS. LEVESQUE: And ---

17 THE COMMISSIONER: And the man can't answer.
18 He wasn't there.

19 MS. LEVESQUE: But he gave an opinion when
20 Crown Findlay came to consult him as to the withdrawal of
21 these charges. He was ---

22 THE COMMISSIONER: Do you recall that, sir?

23 MS. LEVESQUE: --- consulted.

24 MR. FLANAGAN: Yeah, I recall Crown Findlay
25 ask -- telling me that because of medical reasons ---

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

2 **MR. FLANAGAN:** --- and he gave me the
3 medical reasons which I don't remember now -- He was not
4 proceeding any further and couldn't proceed because of
5 reasonable prospect of conviction, and I agreed with that.
6 That's the sum total of my involvement.

7 **THE COMMISSIONER:** Mr. Kloeze?

8 **MR. KLOEZE:** Mr. Commissioner, I'm also
9 advised that Mr. Seguin was the investigating officer on
10 this.

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

12 **MR. KLOEZE:** And Mr. Seguin did testify here
13 and these questions weren't put to him. It seems to me
14 questions that were more relevant to him than to either of
15 the Crowns.

16 **MS. LEVESQUE:** It was Constable Genier who
17 was the investigating officer. Constable Seguin ---

18 **MR. LEE:** Was that ---

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

20 **MS. LEVESQUE:** He's asking questions, but
21 the notes are he assisted. Constable Seguin assisted
22 Constable Genier.

23 **MR. LEE:** Constable Seguin was present for
24 the interview. He was assisting.

25 My bigger concern is relevance here, sir, in

1 terms of it seems that Ms. Levesque is more -- it seems
2 like these questions are more properly put with a goal to
3 exonerating Father Major than to looking at anything that
4 has anything to do with institutional response.

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

6 **MR. LEE:** Surely the Diocese and Father
7 Major have to be content with the end result of the
8 proceeding. I don't recall it being raised otherwise or
9 there being any criticism of that decision, so I'm not sure
10 what response is required here.

11 **MS. LEVESQUE:** Well, there was an inference
12 during Bishop LaRocque's testimony that once the charges
13 were withdrawn that no investigation or supervisory
14 measures were put in place with regards to Father Major.

15 **THE COMMISSIONER:** No, no. No, no, no. No,
16 no, no. I think the thing was after the charges were
17 withdrawn, did he look further, in the sense as an
18 employer, whether or not something had to be done.
19 Different. Different story.

20 **MS. LEVESQUE:** M'hm.

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

22 **MS. LEVESQUE:** There's also the issue of
23 contradictory evidence.

24 **THE COMMISSIONER:** In a sense of?

25 **MS. LEVESQUE:** From others; other parties.

1 **THE COMMISSIONER:** I don't understand.

2 **MS. LEVESQUE:** From the investigation. I
3 have a document prepared by Crown Breault that states --
4 it's called, "The Main Point" and it sets out what the --
5 all the points. It lists the points in issue in
6 preparation, I presume, for the pre-trial and she sets out
7 a lack of corroboration ---

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

9 **MS. LEVESQUE:** --- and contradictory ---

10 **THE COMMISSIONER:** No, no, no. Thank you.

11 **MS. LEVESQUE:** Thank you.

12 Thank you, Mr. Flanagan.

13 **MR. FLANAGAN:** Thank you.

14 **THE COMMISSIONER:** The reason why I'm
15 stopping the examination at this point is because I think
16 Mr. Lee has put it fairly clearly that this is not a place
17 to look to exonerate anyone. Father Major has his absolute
18 presumption of innocence. Any questions put to the Bishop
19 with respect to what happened after the charge is withdrawn
20 has to do with his responsibility as an employer to look,
21 if he wants to or if he had to, into what he had to look
22 at, and that's it. That's all, thank you very much.

23 All right, nobody else? Mr. Kloeze?

24 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

25 **MR. KLOEZE:**

1 **MR. KLOEZE:** Mr. Flanagan, I just want to
2 put -- refer you to one document. It's Exhibit 1165 that
3 we've looked at at length today, and those are the --
4 that's the transcript for the guilty plea on the Malcolm
5 MacDonald obstruct justice charge.

6 **MR. FLANAGAN:** Yes.

7 **MR. KLOEZE:** At the very last page, turn to
8 page 15 of that transcript -- Mr. Strawczynski earlier
9 today, in response to one of his questions about the
10 relevance of the Law Society's involvement, I think you
11 said that you considered the Law Society's involvement as
12 relevant and that the judgem who was the senior Judge
13 Lennox, did as well. And I just want to take you to the
14 point where Mr. Justice Lennox actually refers to that
15 involvement, which is the last paragraph on that page.

16 And Mr. Justice Lennox says:

17 "I take it it is implicit in
18 Mr. Flanagan's suggestion that the
19 questions of specific and general
20 deterrents, to the extent they were a
21 factor at all, have been addressed by
22 the publicity attendant upon the event
23 and also the Law Society's
24 involvement."

25 I took that as a given.

1 **MR. FLANAGAN:** Yeah, I think from reading
2 the court that Judge Lennox was aware that one of the
3 factors that I was trying to convey was the publicity in
4 addition to the Law Society. And I think that -- I mean,
5 when you read the whole paragraph and put it into context
6 with respect to the reasons for sentence, I mean, it's not
7 to be forgotten that Judge Lennox was -- came to the
8 conclusion that he thought that the appropriate disposition
9 was an appropriate one, and he says so.

10 **MR. KLOEZE:** That's my question.

11 **MR. FLANAGAN:** All right.

12 **MR. KLOEZE:** Thank you very much,
13 Mr. Flanagan, for your time.

14 **THE COMMISSIONER:** Any questions? Thank
15 you.

16 Mr. Flanagan, thank you very much for your
17 attendance. I hope your back gets better.

18 **MR. FLANAGAN:** Thank you very much.

19 **THE COMMISSIONER:** Okay, 9:30 Monday.

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

22 This hearing is adjourned until Monday
23 morning at 9:30 a.m.

24 --- Upon adjourning at 2:45 p.m. /

25 L'audience est ajournée à 14h45

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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-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Marc Demers, CM