

**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 181

Held at :

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

Monday, January 14 2008

Tenue à:

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

Lundi, le 14 janvier 2008

ERRATA

VOLUME 167

November 27th, 2007

Page 110, line 24

MS. DALEY: You were asking for details of
the sodomy ---

Should have read

MS. DALEY: You were asking for details of
the settlement ---

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Ms. Christine Morris	Commission Counsel
Ms. Reena Lalji	Cornwall Police Service Board
Mr. Neil Kozloof	Ontario Provincial Police
M ^e Claude Rouleau	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Darrell Kloeze	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. Frank T. Horn	Mr. Carson Chisholm
Mr. Ian Paul	

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1 --- Upon commencing at 1:06 p.m./

2 L'audience débute à 13h06

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
10 afternoon all.

11 **MR. ENGELMANN:** Good afternoon, Mr.
12 Commissioner.

13 **THE COMMISSIONER:** How are you doing today?

14 **MR. ENGELMANN:** Good, good, Happy New Year.

15 **THE COMMISSIONER:** Happy New Year to you.

16 **MR. ENGELMANN:** We had an all-counsel
17 meeting this morning so I have spoken to most counsel. I
18 don't know if there are any new faces in the room today.
19 No, I don't think so. So you have people you have seen
20 before.

21 The next witness for the Commission was to
22 be Mr. Dunlop.

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

24 **MR. ENGELMANN:** And I will just speak to how
25 that came about, if I can, very briefly.

1 As you know, after appearances here in the
2 fall, Mr. Dunlop was served with a Notice to Attend a
3 Hearing at the Divisional Court. That hearing took place
4 on November 19th, 2007. Mr. Dunlop chose not to attend
5 either in person or by counsel but rather just sent a
6 letter to the judges of the Divisional Court. The Court
7 delivered an oral ruling at that time, finding that Mr.
8 Dunlop was guilty of contempt and ordering him to return to
9 the Cornwall Public Inquiry. The release of the Divisional
10 Court reasons happened on December 6th, 2007 and there was
11 an entry of a formal order on December 7th of 2007. And
12 just so you know, sir, the order said -- well, there were
13 three parts to the order. The first was:

14 "This Court finds that Perry Dunlop is
15 guilty of contempt."

16 The second paragraph:

17 "The Court orders that Mr. Dunlop
18 attend before the Commissioner on
19 January 14th, 2008 to testify and answer
20 questions put to him by Commission
21 counsel and counsel for parties
22 withstanding."

23 And thirdly:

24 "This Court further orders that Mr.
25 Dunlop attend before this Court on a

1 date to be fixed in order that this
2 Court may deal with the punishment to
3 be imposed upon Mr. Dunlop for his
4 contempt on October 9th, 2007..."

5 That was of course the contempt here:

6 "...and, further, in the event that he
7 does not appear before the Commissioner
8 as ordered by this Court for his
9 contempt of this order."

10 To ensure that Mr. Dunlop was aware of this
11 and, of course, there was a fair bit of publicity about it
12 in any event, but on the same day the Court entered the --
13 the formal order was entered with the Court; that is,
14 December 7th of 2007 the Commission's external counsel, Mr.
15 Bryan Gover, wrote to Mr. Dunlop enclosing the reasons and
16 the order. Copies were sent both to Mr. Dunlop and to his
17 lawyer, a Mr. Martin, in Duncan, British Columbia, service
18 -- having agreed to it to be accepted by that lawyer on Mr.
19 Dunlop's behalf.

20 On December 11th, 2007 I wrote a letter also
21 commenting on the Court's order and confirming with Mr.
22 Dunlop that he had to attend here and when, on today's
23 date, and I indicated it was one o'clock.

24 I followed that up with another letter on
25 January 3rd, 2008 of a similar nature. These were sent by

1 email as per the Dunlops' request. We did not hear back
2 from Mr. Dunlop in any way; neither our external counsel,
3 me personally or any of the Commission staff.

4 On January 9th we were made aware, as I'm
5 assuming many members of the public were, that Mr. Dunlop
6 had given an interview to Canadian press and stated that he
7 would not be testifying and he gave some reasons for that.

8 On January 11th, 2008 just this past Friday,
9 he granted an interview to CBC Radio's "All in a Day" on
10 Friday afternoon and again talked about the fact that he
11 would not be attending to answer the questions as ordered.

12 So I don't anticipate Mr. Dunlop will
13 attend. We have had many surprises in this Inquiry so just
14 in the even that he may still be here perhaps we could
15 stand this matter down for a few minutes.

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

17 **MR. ENGELMANN:** We do have other things
18 ready to go, sir, in anticipation of any difficulties and,
19 given your instructions to counsel to ensure that we not
20 waste any of the precious time that has been set aside for
21 this Inquiry we are doubling up the witnesses and other
22 issues. So we do have matters to proceed with if you want
23 to take a short break before doing that.

24 **THE COMMISSIONER:** Well, I think maybe we
25 should call out his name.

1 So officer, could you go out and canvass --
2 call out his name? Thank you.

3 **MR. ENGELMANN:** Sir, where we would be going
4 later this afternoon is we have an overview of documentary
5 evidence for a witness who has a moniker, the moniker being
6 C-2. And Mr. Neville, counsel for Father MacDonald, has
7 written to us indicating that he would be objecting to the
8 introduction of this ODE as an exhibit.

9 **THE COMMISSIONER:** All right.

10 **MR. ENGELMANN:** We have dealt with that
11 issue in the past and we have now had a series of ODEs.
12 And I will speak to that in more detail when we get to it.

13 **THE COMMISSIONER:** All right.

14 Any response, Officer?

15 **OFFICER:** No, Mr. Commissioner.

16 **THE COMMISSIONER:** All right. So Mr.
17 Dunlop's -- for formality's sake -- I guess his name having
18 been called, there is no response.

19 We will wait another 15 minutes. When we
20 come back, then we will proceed.

21 **MR. ENGELMANN:** Okay. Thank you, sir.

22 **THE COMMISSIONER:** Is there anything else
23 you wanted to say?

24 **MR. ENGELMANN:** Well, I just wanted to say
25 that with respect to Mr. Dunlop if he doesn't appear 15

1 minutes from now, which would be at 1:30 ---

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

3 **MR. ENGELMANN:** --- Commission counsel will
4 be reporting back to our external counsel to allow Mr.
5 Gover to set things up before the Divisional Court -- we
6 have an obligation, sir, to report back to the Court about
7 the apparent breach of their order for Mr. Dunlop to attend
8 here and matters will be setup before the Divisional Court
9 to make a determination on that contempt and other issues
10 in the near future.

11 **THE COMMISSIONER:** Perfect, thank you. We
12 will take 15 minutes.

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

15 This hearing will resume at 1:30.

16 --- Upon recessing at 1:13 a.m. /

17 L'audience est suspendue à 13h13

18 --- Upon resuming at 1:38 a.m. /

19 L'audience est reprise à 13h38

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

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

24 **THE COMMISSIONER:** Thank you.

25 Mr. Engelmann.

1 **MR. ENGELMANN:** Sir, I just note for the
2 record it is 1:40 p.m. I am just wondering if our court
3 officer could check one more time.

4 **THE COMMISSIONER:** Sure, and it was
5 communicated to him that we were starting at one o'clock?

6 **MR. ENGELMANN:** It was, sir.

7 **THE COMMISSIONER:** All right.

8 So while it may be -- given his comments in
9 the press that -- just for custom, I suppose, we will call
10 out his name one last time.

11 **MR. ENGELMANN:** Certainly, in the last email
12 exchange I had with the Dunlops, I indicated that it would
13 be at 1:00 p.m., and that was an email dated January 3rd,
14 2008.

15 **THE COMMISSIONER:** Thank you.

16 No response? All right.

17 So the time for being late -- being
18 fashionably late having passed, it's clear that we will go
19 on to other matters now.

20 **MR. ENGELMANN:** All right.

21 And as I said, we will be reporting to the
22 Divisional Court what has taken place here today.

23 **THE COMMISSIONER:** Thank you.

24 **MR. ENGELMANN:** Sir, the next matter then, I
25 have indicated to all counsel the plan for this week and

1 that plan is that we do an overview of documentary evidence
2 this afternoon for a witness who is identified by a
3 moniker.

4 **THE COMMISSIONER:** Yes.

5 **MR. ENGELMANN:** C-2.

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

7 **MR. ENGELMANN:** And the plan for tomorrow is
8 the continuation of Mr. Guzzo's cross-examination for
9 Tuesday and Wednesday, that's the 15th and 16th of January.

10 Then on the 17th the plan is to have another
11 overview of documentary evidence read in and that's the ODE
12 for Malcolm MacDonald, and that will be followed by the
13 evidence of Mr. Jos van Diepen, he's a long-serving
14 employee of the Ministry of Corrections.

15 And then we have other Corrections witnesses
16 lined up thereafter, should we be extremely efficient. But
17 I expect that will be the week and I have indicated to all
18 the parties that next week we will be starting Monday
19 morning at 9:30.

20 **THE COMMISSIONER:** Yes.

21 **MR. ENGELMANN:** And we have several
22 Corrections witnesses lined up for next week.

23 So sir, with respect to the ODE for this
24 afternoon ---

25 **THE COMMISSIONER:** Before we go there, and I

1 know this -- I haven't advised you, but I will do it
2 publicly, that there are no flights leaving Friday at six
3 to take me up north and so I'm -- I'm -- my reservation is
4 for 4:30, so what I was going to suggest is that we work
5 through lunch and work until, let's say, one-thirty and
6 then that will make up the time and then people will be
7 free to ---

8 **MR. ENGELMANN:** Do you want to still keep
9 the start time at nine-thirty, sir, or do you want to move
10 that ---

11 **THE COMMISSIONER:** No. No. We can start at
12 nine, yes.

13 **MR. ENGELMANN:** All right.

14 **THE COMMISSIONER:** All right. Great, thank
15 you.

16 **MR. ENGELMANN:** So nine to one-thirty on
17 Friday?

18 **THE COMMISSIONER:** That's right, yes.

19 **MR. ENGELMANN:** I will speak to counsel
20 about breaks and things, but ---

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

22 **MR. ENGELMANN:** --- we'll just have a couple
23 of breaks instead ---

24 **THE COMMISSIONER:** Yes.

25 **MR. ENGELMANN:** --- of a lunch.

1 **THE COMMISSIONER:** Yes, exactly.

2 **MR. ENGELMANN:** Sir, the Overview of
3 Documentary Evidence, or ODE, that Commission counsel
4 intends to file this afternoon as an exhibit is being
5 objected to. My colleague, Christine Morris, is here to
6 put it in ---

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

8 **MR. ENGELMANN:** --- if the objection is not
9 sustained.

10 Counsel for Father MacDonald, Mr. Neville,
11 is present ---

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

13 **MR. ENGELMANN:** --- and has advised that
14 he's objecting to the introduction of the ODE as an
15 exhibit. I understand he's supported in his objection by
16 counsel for the Diocese ---

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

18 **MR. ENGELMANN:** --- Mr. Sherriff-Scott.

19 I'll respond briefly. There were a number
20 of consultations with parties and, to my knowledge, those
21 are the only two people, or two parties, that are opposing
22 the introduction of this ODE as an exhibit. No one else
23 has -- no one else has suggested they are.

24 I'm not sure if other parties are calling
25 for its introduction or just taking no position and I'm

1 sure they'll speak to it when they get a chance.

2 So perhaps I'll turn it over to Mr. Neville;
3 he's the person who's objecting.

4 Do you need more information from me first
5 or ---

6 **THE COMMISSIONER:** Do I -- I guess I don't
7 see the ODE yet. That's okay. We'll see where we go.

8 **MR. ENGELMANN:** All right. Well, you know
9 what? You will probably need a copy because I think there
10 are some ---

11 **THE COMMISSIONER:** Yes?

12 **MR. ENGELMANN:** --- specific references ---

13 **THE COMMISSIONER:** All right. Okay.

14 **MR. ENGELMANN:** --- where there are
15 concerns.

16 **THE COMMISSIONER:** All right, so we're going
17 to identify this as Exhibit 1123 for identification
18 purposes only. All right?

19 **MR. ENGELMANN:** Very well, sir, I just -- I
20 want to remind counsel when they're speaking to this matter
21 and when they're speaking to others -- and I'm reminding
22 myself as well -- that it's very important that we remember
23 monikers when they're given.

24 **THE COMMISSIONER:** All right.

25 **MR. ENGELMANN:** Thank you.

1 **THE COMMISSIONER:** Mr. Neville?

2 **---** MOTION BY / REQUÊTE PAR MR. NEVILLE:

3 **MR. NEVILLE:** Good afternoon, Mr.
4 Commissioner, and welcome to a new year.

5 **THE COMMISSIONER:** Yes, and you.

6 **MR. NEVILLE:** I have for your assistance and
7 I don't expect to be overly lengthy ---

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

9 **MR. NEVILLE:** --- a little packet of
10 materials here. It's the correspondence where the issue
11 got discussed and contained within it, Mr. Commissioner, is
12 what in fact I put forward as a ---

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

14 **MR. NEVILLE:** --- possible draft ODE.
15 Actually, it's called a draft ODE, and you will see that at
16 the end of the day subject to my first argument which is an
17 objection in principle, the details are not frankly all
18 that far apart ---

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

20 **MR. NEVILLE:** --- but I have two branches to
21 my argument, so perhaps if I could provide that to you?

22 **THE COMMISSIONER:** Yes.

23 **MR. NEVILLE:** I have a set for Mr. Engelmann
24 as well. I know he has all this and Ms. Morris, I guess,
25 and I have three sets as well, Mr. Commissioner. There's

1 one for you personally and if necessary for Madam Registrar
2 and ---

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

4 **MR. NEVILLE:** --- for the reporters, so I'll
5 pass them all ---

6 **THE COMMISSIONER:** Yes, thank you. Thank
7 you.

8 **MR. NEVILLE:** In the materials I provided to
9 you, sir, is your ruling on the topic of ODEs generally ---

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

11 **MR. NEVILLE:** --- and in the specific
12 context of the ODE for the witness C-3 ---

13 **THE COMMISSIONER:** Yes.

14 **MR. NEVILLE:** --- and I have provided that
15 on the top of a collection of materials and it was rendered
16 by yourself on May 29th, 2007 and if I could just refer you
17 to -- and I'll use the numbers at the top, if I may, it's
18 page 42.

19 **THE COMMISSIONER:** Yes.

20 **MR. NEVILLE:** And, of course, I'm relying on
21 paragraph starting at line 8 to 12 about the right of
22 counsel to object to an overview on the basis of relevance.

23 At line 17, you summarized the position of
24 Commission counsel that the purpose of an overview is to
25 enable Commission counsel to place evidence that might not

1 otherwise be available by way of *viva voce* evidence into
2 the record. You then cite, in the next paragraph, the
3 following principles:

4 "Commission counsel noted his hope that
5 overviews would be used sparingly; only
6 in circumstances in which witnesses are
7 unavailable for medical or health
8 reasons, witnesses who are deceased,
9 witnesses are out of jurisdiction and
10 when a witness's evidence is of such
11 significance to justify drawing it out
12 in a manner separate and apart and
13 prior to the institutional response
14 phase."

15 You then had -- you had had placed before
16 you, I gather, an evidentiary foundation for the C-3
17 exercise resulting in your making it not only something
18 that was read, but part of the reasons for your judgment
19 were as to whether it should need an actual exhibit.

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

21 **MR. NEVILLE:** And although I know Your
22 Honour is fairly familiar with this, but I think I just
23 need to highlight certain passages.

24 You make a finding at the top of that page
25 as to why C-3 is not available, including in Item 1 a

1 serious medical illness and a concern about that illness
2 being aggravated.

3 Second -- and I'm using that numbering
4 myself, not yourself, concern about so-called re-
5 victimization and ---

6 **THE COMMISSIONER:** No, no, no. I didn't say
7 so-called ---

8 **MR. NEVILLE:** No, I know you didn't.

9 **THE COMMISSIONER:** All right.

10 **MR. NEVILLE:** I didn't say that. I said
11 that's the basis on which the witness was advancing his
12 request, I presume.

13 And, three, concern about the effect on his
14 livelihood as a small business person.

15 Now, I can -- and just stopping there, sir,
16 to date, at least in response to correspondence, and that
17 you will see from the package of materials that it is not
18 only myself that corresponded questioning the use of an ODE
19 for C-2, but indeed Mr. Sherriff-Scott and a brief query by
20 Ms. McIntosh, and we'll come to those letters. They're at
21 the back of the packet.

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

23 **MR. NEVILLE:** There has been, certainly in
24 writing, nothing advanced as to why there is an ODE in the
25 case of C-2.

1 I have been told -- if you wish me to advise
2 you, the two reasons I've been given -- and if you wish me
3 to do so, I will do so. We're using a moniker so I suppose
4 it's fine.

5 The first is that, as I understand it,
6 members of his family, as opposed to his wife, are not
7 aware of his allegations and, secondly, he is self-employed
8 in the -- I'll use the general Cornwall area -- and I
9 gather has some concern about embarrassment. So what it
10 comes down to, to large measure, is embarrassment. To my
11 knowledge, and I've not been so advised, there is no
12 medical reason whatever.

13 Now, the important principle stated by you,
14 sir, on page 43 at line 16 is this:

15 "The primary focus is the individual's
16 contact with various institutions."

17 Now, I can tell you -- and you should know
18 this, it's not obvious to you at this point -- this person
19 C-2, sir, was the final complainant brought against Father
20 Charles in the series, and I think you are probably aware
21 of the chronology as it was reviewed in Mr. Justice
22 Chilcott's judgment which maybe at some point long ago you
23 read, but his allegation came forward in the spring of 2000
24 on the eve of one of Father Charles' scheduled trial dates,
25 and it's reflected in the draft you have and in my draft as

1 well, just to highlight the history.

2 This person in '98 -- in 1998, had a meeting
3 at his home with Mr. Dunlop and asked that it be kept
4 confidential. You'll see certain references in the two
5 drafts -- well, the proposed ODE and my draft -- as to what
6 Mr. Dunlop did or didn't do to respect confidence, but in
7 any event, ultimately on the orders of his superiors turned
8 over the name to the OPP in February or thereabouts --
9 maybe perhaps March of 2000 -- so about two years later.

10 They then took an appropriate statement and
11 a decision was made to lay the additional charge. That
12 then necessitated yet another preliminary inquiry and
13 matters unfolded procedurally as reflected in Mr. Justice
14 Chilcott's judgement. So that's who this person is ---

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

16 **MR. NEVILLE:** --- and how he came to be a
17 player in the piece.

18 So the reason I tell you that is, other than
19 Mr. Dunlop and what his role was can be easily described by
20 others because they had to deal with the situation when it
21 came forward, in terms of your mandate, an institutional
22 response to this person's allegation, there is abundant
23 alternative evidence available to you short of an ODE, to
24 whit, all of the OPP officers will testify. And, as far as
25 I know, former Inspector Hall, who was the main person with

1 carriage of the file and those working with or under him
2 all of whom have dealt directly C-2 and are all on the
3 witness list and will say exactly what happened.

4 I expect you will hear evidence as we did,
5 at the section 11-B motion for Father Charles, as to the
6 inter-relationships and the attempt of the OPP, and indeed
7 of the senior brass of the Cornwall Police Service, to work
8 with Mr. Dunlop in getting him to cooperate and the like
9 and that's all reflected in the judgement. And all that
10 evidence was called before two judges of the Superior
11 Court, ruled upon and, in large measure, will be re-heard
12 by you.

13 So the story of C-2 and how he came into the
14 system and became a complainant is all available without
15 the need for any ODE. No medical foundation that I know of
16 exists for his being replaced with an ODE.

17 **THE COMMISSIONER:** So, you would want him to
18 testify -- you'd want him to testify?

19 **MR. NEVILLE:** Well, frankly sir, I don't
20 think his evidence is relevant other than how and when he
21 became a complainant.

22 But there's another problem here, and that
23 is how he ceased to be a complainant and I expect, sir,
24 from my understanding, is that the senior Crown counsel
25 with carriage -- and I'm not saying it will necessarily

1 happen, but I'm advised will likely testify as well.

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

3 **MR. NEVILLE:** And that's reflected in the --
4 in my draft, and in the other ODE.

5 So it's a question, frankly, both of -- from
6 a principle standpoint of foundation as reflected in these
7 reasons and I've given you the most relevant passages and
8 you have a copy and it's your judgment, of course. So
9 there's a principle problem here ---

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

11 **MR. NEVILLE:** --- and then, secondly, in
12 terms of the wording, I have a serious concern with two or
13 three of the paragraphs as compared to what we put forward
14 simply because, in my view, they either misrepresent or do
15 not adequately set out what actually happened in terms of
16 this complainant.

17 So my two objections then are one of
18 principle, which I've already touched on using your
19 reasons, the fact that your mandate is institutional
20 response and it can easily be dealt with in the absence of
21 an ODE through the appropriate witnesses, both police and
22 Crown prosecutors, and we have been given no reason even
23 analogous or at all comparable to that of C-3, save for
24 perhaps that of personal embarrassment.

25 The -- you have the correspondence ---

1 **THE COMMISSIONER:** Sorry, can I just stop
2 you for a second?

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

4 **THE COMMISSIONER:** Was this gentleman --
5 these charges were withdrawn?

6 **MR. NEVILLE:** Yes.

7 **THE COMMISSIONER:** Okay.

8 **MR. NEVILLE:** That's exactly right.

9 **THE COMMISSIONER:** Right; okay.

10 So in your letter here, you're talking about
11 stay of proceedings and things like that ---

12 **MR. NEVILLE:** Right.

13 **THE COMMISSIONER:** --- but that hearing
14 doesn't apply to him.

15 **MR. NEVILLE:** No.

16 **THE COMMISSIONER:** Okay.

17 **MR. NEVILLE:** No, as you may recall, sir --
18 and it's reflected again in our draft somewhat -- it's
19 there but perhaps less clearly, I might say, in the
20 proposed one.

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

22 **MR. NEVILLE:** What essentially happens is, a
23 short period of time before the scheduled trial in 2002 ---

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

25 **MR. NEVILLE:** --- when now there's a senior

1 prosecutor and prosecution team for reasons we don't need
2 to get into, pretrial interviews took place and two
3 individuals, C-8 attended for his interview ---

4 **THE COMMISSIONER:** Yeah.

5 **MR. NEVILLE:** --- and admitted that his
6 allegation against my client was a fabrication in its
7 entirety, and this person attended for his interview, there
8 were to put it mildly some problematic aspects with his
9 testimony in any event but -- but ---

10 **THE COMMISSIONER:** Well ---

11 **MR. NEVILLE:** No, I'm not going there in
12 detail, but he also made an allegation, or part of his
13 story that was, to put it bluntly, simply shocking and
14 unacceptable. And that's reflected in the draft, as a
15 result of which Mr. McConnery, then senior Crown with
16 carriage, decided that there was no reasonable prospect of
17 conviction and advised our office that these charges,
18 together with those related to C-8, would be withdrawn.

19 So this is not even a complainant who ended
20 up testifying on the public record in terms of an open
21 trial. Of course, which none did because of a stay. He
22 did testify, of course, at a preliminary inquiry subject to
23 a publication ban. So ---

24 **THE COMMISSIONER:** So -- but do you not
25 agree that part of the mandate is to look at whether or not

1 that -- how that withdrawal, the decision to withdraw,
2 came? Was it part of a cover-up, that kind of thing?

3 **MR. NEVILLE:** Right. Certainly.

4 But I can tell you that what you have as a
5 proposed ODE and indeed perhaps even ours, although I would
6 say respectfully that ours is a little more accurate to
7 what really went on ---

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

9 **MR. NEVILLE:** --- that will all be presented
10 to you through the witnesses who made those decisions; the
11 actual players. You see, the gentleman in question, C-2,
12 doesn't make the decision. He's simply advised after what
13 decision has been made, but it's clear on what the basis
14 was, certainly that I was advised as counsel for Father
15 Charles ---

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

17 **MR. NEVILLE:** ---and it's reflected in some
18 of the material that I provided to you.

19 So if I can just touch on the written
20 material I've given you, you've got our letter to the
21 Commission of October 29th ---

22 **THE COMMISSIONER:** Hang on; just a second.

23 Which ---

24 **MR. NEVILLE:** It's right after your reasons,
25 sir. I've put things in chronological order, more or less,

1 for you.

2 So this is our letter and connected to it,
3 or contained within it, is our proposed draft, so it should
4 be right behind the ---

5 **THE COMMISSIONER:** Yes, it is.

6 **MR. NEVILLE:** --- the letter.

7 So rather than do a series of lengthy
8 comments, paragraph by paragraph, I stated a basic overview
9 position -- no pun intended -- and a draft which, as you
10 can see, was intended to minimize anything that might be
11 unnecessarily prejudicial.

12 And I point out to you, sir, I'm taking the
13 position here ---

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

15 **MR. NEVILLE:** --- that although opposed in
16 principle for the reasons I've said, given your ruling on
17 C-3 and that you may well rule the same way although I
18 would ask you to consider not doing so for the reasons I've
19 advanced ---

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

21 **MR. NEVILLE:** --- there is a way to put the
22 story in the least harmful fashion and, with great respect,
23 I feel this does. If you would look for me at paragraphs
24 15 through to 18 ---

25 **THE COMMISSIONER:** M'hm. And does it

1 correspond to the ---

2 **MR. NEVILLE:** No, it doesn't.

3 **THE COMMISSIONER:** Okay.

4 **MR. NEVILLE:** Well, some of it's there, but
5 not set out this way. And this makes it explicit as to
6 what some -- not all -- some of the problematic aspects of
7 the gentleman's evidence was.

8 And if you see from paragraph 15, there was
9 a clear problem with chronology and dates which is not
10 spelled out in either version put forward; the original one
11 from October and the one for today.

12 **THE COMMISSIONER:** Well, all I'm really
13 concerned about is the one for today.

14 **MR. NEVILLE:** Well, I -- yes, fine.

15 **THE COMMISSIONER:** Okay.

16 **MR. NEVILLE:** If you look, the material
17 contained in paragraph 15 ---

18 **THE COMMISSIONER:** Yes.

19 **MR. NEVILLE:** --- of our proposed draft ---

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

21 **MR. NEVILLE:** --- appears nowhere in today's
22 proposed document.

23 **THE COMMISSIONER:** Okay.

24 **MR. NEVILLE:** Then, what you see in
25 paragraph 16 is what led to, ultimately, the Crown's

1 decision. That is now, as a result of correspondence that
2 you've got, contained in the proposed document but, again,
3 I suggest with respect, not making it as explicitly clear
4 as to how that connected to the withdrawing of the charges.
5 And if you have the proposed one there with you, sir, and
6 you look -- if you would, at page 7 or paragraph 27 ---

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

8 **MR. NEVILLE:** What you see in the latter
9 five sentences or so of this paragraph is what came from my
10 referring the Commission counsel directly to the source
11 documents as to what the gentleman said that created such
12 concern in the mind of the Crown about the validity of the
13 allegation.

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

15 **MR. NEVILLE:** From there on, in the last
16 couple of paragraphs which more or less correspond to my
17 numbers 17 and 18, just slightly different in wording, but
18 that's the outcome of what happened with perhaps a tad bit
19 more detail in ours than in theirs.

20 So if I can also refer you in the proposed
21 one, Mr. Commissioner, to the same -- no, sorry, to page 5,
22 paragraph 17 ---

23 **THE COMMISSIONER:** Of which one?

24 **MR. NEVILLE:** --- of the proposed one for
25 today.

1 **THE COMMISSIONER:** Yes, okay. Paragraph?

2 **MR. NEVILLE:** Seventeen (17).

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

4 **MR. NEVILLE:** Now actually, sir, if I'd ask
5 to read to yourself 16 and 17. My suggestion, sir -- you
6 will see from my correspondence -- which I'll leave with
7 you to, perhaps if you wish to take a break at some point
8 to review it, I query this paragraph as being -- first of
9 all, I can tell you, having been counsel on the matter,
10 that this is significantly out of context. There's a
11 background to this that was fully explored at cross-
12 examination that is not reflected here.

13 This paragraph, I say it with the greatest
14 of respect, is completely irrelevant to your mandate. What
15 does it -- and I ask rhetorically, what does it add to the
16 unfolding of the institutional narrative? I suggest with
17 respect, nothing.

18 And you will see from my correspondence, I
19 opposed it remaining in there. So if I can refer you, Mr.
20 Commissioner, to the next letter, you will see it will help
21 you just understand how things unfolded a bit. It's again
22 a letter by myself to Commission counsel ---

23 **THE COMMISSIONER:** The October 31st one?

24 **MR. NEVILLE:** Yes, sir. Now to help you
25 understand that letter and I had to put things somewhere,

1 the third last from the bottom of the pile is a letter by
2 Ms. MacIntosh dated October 30th.

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

4 **MR. NEVILLE:** And I write this letter
5 largely as a result of seeing her letter and realizing that
6 our draft had some errors in terms of the references and
7 the citations and I am correcting them in this document.

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

9 **MR. NEVILLE:** And you will see that one of
10 the things she was querying in her paragraph 3, she didn't
11 have -- because we had not spelled it out in detail in our
12 draft -- what is contained in my letter in the third
13 paragraph where I give the references directly to Detective
14 Constable Seguin's notes where C-2 then adds another very
15 significant person to the narrative, and I won't name names
16 or who those persons are. You can read it for yourself and
17 see just how unusual the allegation became.

18 So that's why when you look at our draft, it
19 says what it says because it sets out, in my view,
20 respectfully, in a very explicit and direct way what the
21 problem was resulting in the decision made, much more so
22 than the initial proposed draft, let alone today's which
23 also doesn't do that.

24 As a result of my intervention, sir, a
25 further draft came and I address it in my next letter that

1 you have in the bundle of November 6th, and I am not going
2 to go into detail with that one, you have it to read;
3 simply because it did lead to further exchanges and further
4 drafts.

5 **THE COMMISSIONER:** November 19th, you say?

6 **MR. NEVILLE:** No. This is November 6th, sir.

7 **THE COMMISSIONER:** Okay.

8 **MR. NEVILLE:** You've got that one, which is
9 the next step in the process.

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

11 **MR. NEVILLE:** What happens, sir, just so you
12 understand, is that what came as a draft resulted in my
13 sending a proposed draft and then suddenly something comes.
14 I took the position unexpectedly, as you can see, as if
15 suddenly final, and I'll leave the submissions for your
16 review.

17 You will see in my next letter ---

18 **THE COMMISSIONER:** November 12th?

19 **MR. NEVILLE:** Yes, sir. At the bottom,
20 you'll see where I particularly questioned the inclusion or
21 continued inclusion of those paragraphs that I cited as
22 being irrelevant, as going into details that are
23 unnecessary given the institutional focus of your mandate
24 and of this person's involvement in the criminal justice
25 system.

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

2 **MR. NEVILLE:** That then led, sir, to the
3 version that's now being tendered before you.

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

5 **MR. NEVILLE:** And I addressed it in my next
6 letter of November 19th and I would refer you in particular
7 to my third and fourth paragraphs as follows:

8 "I object to the inclusion of paragraph
9 17. This paragraph is entirely..."
10 That's the medical examination paragraph,
11 sir.

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

13 **MR. NEVILLE:**

14 ".. is entirely out of context and adds
15 nothing to the narrative of C-2's
16 involvement in the cases involving
17 Father MacDonald. As stated in earlier
18 correspondence, it is our view that --
19 an ODE for C-2 is inevitable.
20 Paragraph 15 in our draft sent to you
21 on October 29th gives a necessary
22 context of the allegations by C-2. In
23 his sworn testimony at the preliminary
24 inquiry, C-2 stated clearly and
25 unequivocally that the alleged events

1 had happened by the time he reached
2 Grade 9. He gave very specific reasons
3 for that recollection. It's obvious
4 that the alleged events, 'would have to
5 have happened before Father MacDonald
6 was ever at the parish.'"

7 The next development in the narrative from
8 our standpoint -- it has been in front of you this
9 afternoon, sir, is an e-mail notice from Mr. Engelmann last
10 Thursday, I believe.

11 **THE COMMISSIONER:** You say it's in these
12 documents?

13 **MR. NEVILLE:** No, I didn't give you that.
14 It's simply advising us as to what would happen this week
15 on the assumption that our witness from British Columbia
16 would not be joining us because the indications of the
17 media as you've discussed were exactly that. And it was
18 proposed, for the first time I can tell you, that this
19 afternoon at least in part will be occupied with the doing
20 of this ODE.

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

22 **MR. NEVILLE:** In previous notice from
23 Commission counsel in mid-December, this was not proposed
24 for today.

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

1 **MR. NEVILLE:** So that's why some scrambling
2 was done and we're here before you now and I set out again
3 my position in some detail and advise as to what documents
4 I'll be referring to as I have just done.

5 The last two documents -- the last document
6 you have and I had made reference for you to Ms.
7 MacIntosh's letter, you will see that in her letter of
8 October 30th, she also queries the necessity for an ODE in
9 her first -- that's the October 30th one, sir, that I
10 referred you to earlier.

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

12 **MR. NEVILLE:** You'll see there that she
13 questions it in the first paragraph of that letter.

14 **THE COMMISSIONER:** Yes.

15 **MR. NEVILLE:** And then the final document is
16 as a result of my copying various counsel with my series of
17 letters, a position stated by Mr. Sherriff-Scott in writing
18 and I understand he may have a few brief comments today as
19 well.

20 So there's the position advanced. I can
21 assure you, sir, as counsel who conducted that preliminary
22 inquiry that there were a great number of very problematic
23 aspects to C-2's evidence.

24 The most dramatic development, of course,
25 was the Crown interview and what he then added to his story

1 which obviously led to the decision that was made.

2 But the details as we've discussed in
3 various contexts over the last couple of years are
4 essentially irrelevant unless in some way they contributed
5 to institutional activity. And in my submission that's not
6 the case here. What triggers the concern, although there
7 were concerns with the essence of his story -- dates being
8 one -- it really came to a head with the Crown interview
9 that I spelled out and set out the chronology for you in
10 detail.

11 So subject to any questions you may have, my
12 objections are those in principle and that our draft, in my
13 respectful view, more clearly reflects what truly happened
14 as opposed to the one that's being put forward and which is
15 there, sort of, but it's a bit obscure and ours spells it
16 out.

17 **THE COMMISSIONER:** Thank you.

18 **MR. NEVILLE:** Thank you, sir.

19 **THE COMMISSIONER:** Mr. Sherriff-Scott. Did
20 you wish to say anything in ---

21 **MR. SHERRIFF-SCOTT:** No sir, I simply rise
22 to support Mr. Neville -- I have no further submissions.

23 **THE COMMISSIONER:** Thank you. Mr. Manson,
24 do you wish to make any comments?

25 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:**

1 **MR. MANSON:** We take no position on the
2 distinction between the different versions. Both
3 Commission counsel and Mr. Neville know those details much
4 more intimately than I do. On the question of principle,
5 however, I think everyone is agreed that the C-2 event is a
6 relevant event. So the question then becomes how does it
7 get before you? My concern is that we are going to be
8 dealing with a number of ODEs in the future.

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

10 **MR. MANSON:** The two most recent ones, I'm
11 sorry, Mr. Commissioner ---

12 **THE COMMISSIONER:** No, I'm just thinking.
13 You're saying we're going to be dealing with a great many
14 more ODEs and I'm thinking, how can that be, but okay.

15 **MR. MANSON:** Well, let's just say I've seen
16 a few drafts floating around. I suspect there's some other
17 ODEs ---

18 **THE COMMISSIONER:** There's some other --
19 some other, but I don't ---

20 **MR. MANSON:** Yes.

21 **THE COMMISSIONER:** Okay.

22 **MR. MANSON:** Like other procedural or
23 evidentiary matters within the Inquiry; things evolve.

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

25 **MR. MANSON:** Back last May when

1 Mr. Engelmann was dealing with C-3 and your Commissioner --
2 Commissioner, you ruled on it, that was in the context of
3 C-3.

4 Since then, one thought that's occurred to
5 me is simply that the first paragraph of every ODE -- and I
6 say the first paragraph so that it is completely clear to
7 anyone who looks at it. The first paragraph ought to
8 indicate, number one, what the purpose of the ODE is and,
9 number two, the reasons why Commission counsel are
10 proceeding by ODE. And I think that's not really addressed
11 in version three or the other version and it would be
12 helpful not just for C-2, but in -- as we move forward some
13 of the discussions that we've been having constantly relate
14 to, "Well, what's the purpose? What's the purpose? What's
15 the reason?" And I think for the sake of clarity and
16 transparency (sic) -- transparency rather, those matters
17 should be dealt with right up front in paragraph one; "We
18 are using an ODE for this reason, its purpose is X".

19 Those are my only comments Mr. Commissioner.

20 **THE COMMISSIONER:** Thank you.

21 Mr. Paul?

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

23 **MR. PAUL:** Mr. Commissioner, the Coalition
24 For Action would support the use of an ODE in this case.
25 It would be our view that it would be useful in terms of

1 summarizing the evidence or materials relating to C-2, and
2 I don't think it would cause any significant prejudice in
3 the sense that materials that are going to be summarized or
4 materials that will be likely duplicated by other witnesses
5 such as police officers. In terms of some specific
6 objections that have been raised, paragraph 16 and 17, I
7 believe getting into some of the specifics, I don't think
8 those are necessarily problematic in a sense of being
9 prejudicial. I think they are useful in terms of
10 presenting the material that the institutions would have
11 had; the types of complaints in terms of understanding the
12 responses. I think it's useful to have at least a summary
13 of some of the allegations or what the allegations were.

14 In terms of deficiencies in the evidence;
15 realize there is an issue raised there in terms of
16 preliminary inquiry transcript, but I would suggest to an
17 extent the concluding portion of the ODE, the last page it
18 refers to prosecution indicating no prospects of conviction
19 is really a summary of those deficiencies and as far as
20 getting into the details, perhaps the details of what was
21 relevant, what wasn't should be left in the event, as was
22 alluded to, perhaps the Crown Attorney does testify, so I
23 would suggest perhaps that might be left to a later point.
24 And those are my submissions.

25 **THE COMMISSIONER:** Thank you.

1 Mr. Lee?

2 **MR. LEE:** Good afternoon.

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

4 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:

5 **MR. LEE:** We also support the use of an ODE
6 in relation to C-2. As you know from my past submissions
7 to you we're -- we've been consistently concerned about the
8 ability of the public, and to some extent the ability of
9 the people in this room, to follow along with the Inquiry
10 and to follow the stories as they go. The Commission
11 counsel's third draft, in my submission, does a good job
12 about outlining for us C-2's involvement and what occurred
13 in relation to his allegations and the ultimate withdrawal.
14 I agree with
15 Mr. Paul's submissions that getting into the details of why
16 the complaint was withdrawn and -- or the charges
17 withdrawn, rather, and why the Crown came to the conclusion
18 that there was no reasonable prospect of conviction is not
19 something that we can fully canvass in an ODE, and
20 something that needs to be done with the witness in the
21 box.

22 The concern I have with Mr. Neville's draft
23 of his proposed ODE and, essentially, his alternative
24 argument if you are going with that ODE and use his, is it
25 does not do as well as Commission counsel's does in telling

1 the story, in my submission. You're not left at the end of
2 reading it with a true understanding of C-2's role and a
3 true understanding of what went through the -- an ODE is
4 never going to be a perfect document. It's never going to
5 tell the entire story. We need to rely on the documents
6 referenced in the ODE to do that, but in my submission,
7 Commission counsel's comes a lot closer to accomplishing
8 the goals that it sets out to than Mr. Neville's.

9 **THE COMMISSIONER:** Thank you.

10 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MICHEAL NEVILLE:**

11 **MR. NEVILLE:** Can I just add something, sir

12 ---

13 **THE COMMISSIONER:** Well, no ---

14 **MR. NEVILLE:** -- that may assist you though?

15 It will assist you though, I think. And it is reflected in
16 my letter and I apologize for not saying it when I was on
17 my feet. I suggested to the Commission -- what I received
18 back from Commission counsel but today's version, so to
19 speak, added to it a number of paragraphs sir, about the
20 OPP's dealings ---

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

22 **MR. NEVILLE:** --- which I had not, and I
23 think they are appropriate if an ODE is ultimately is ruled
24 acceptable and you will see that in my letter and that may
25 in part answer Mr. Lee's comment. I was advised that the

1 OPP felt that all of their assistance to this gentleman
2 should have been reflected and I agreed to that in the
3 drafts, so I forgot to tell you that. When I was saying,
4 "ours" I meant "ours as supplemented with the OPP
5 references".

6 **THE COMMISSIONER:** Okay.

7 **MR. NEVILLE:** I didn't -- I should have said
8 that earlier.

9 **THE COMMISSIONER:** Thank you.

10 **MR. ENGELMANN:** Sir, just before we go any
11 further, it's just so that it's very clear to the parties,
12 I mean, this isn't a "pick me" or "pick you".

13 **THE COMMISSIONER:** No.

14 **MR. ENGELMANN:** We're talking about whether
15 or not the Commission's ODE should be entered in as an
16 Exhibit and we've done this process throughout and Mr.
17 Neville has his own approach, drafting his own document but
18 the issue to be considered is whether or not the
19 Commission's ODE should be entered as an Exhibit.

20 **THE COMMISSIONER:** We'll see.

21 Mr. Chisholm?

22 **MR. CHISHOLM:** Good afternoon, sir. No
23 submissions, thank you.

24 **THE COMMISSIONER:** Thank you.

25 Maitre Rouleau?

1 **M. ROULEAU:** Nothing, Mr. Commissioner.

2 **THE COMMISSIONER:** All right.

3 Mr. Kloeze?

4 **MR. KLOEZE:** Good afternoon

5 Mr. Commissioner.

6 We're not taking a position on the admission
7 of this ODE. I do agree, however, with the submissions of
8 Mr. Manson that it might be helpful in the future of -- for
9 each ODE to have a paragraph at the beginning just
10 outlining what the purpose of the ODE is and the reasons
11 Commission counsel is proceeding by way of ODE. Mr.
12 Neville referred to a letter that Ms. MacIntosh wrote,
13 dated October 30th, 2007 and basically the first point in
14 that letter was trying to elicit that information from
15 Commission counsel.

16 Thank you, sir.

17 **THE COMMISSIONER:** Thank you.

18 Ms. Lalji?

19 **Ms. LALJI:** We take no position on this ODE.

20 **THE COMMISSIONER:** Thank you.

21 Mr. Kozloff?

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

23 Mr. Carroll would be very disappointed if I
24 didn't come here and wish you a Happy New Year. Those are
25 my submissions.

1 **THE COMMISSIONER:** Thank you.
2 Could you wish Mr. Carroll a Happy New Year
3 as well?

4 **MR. KOZLOFF:** I will.

5 **THE COMMISSIONER:** Thank you. And before
6 you start could you wish Mr. Kozloff a Happy New Year.

7 (Laughter/Rires)

8 **MR. KOZLOFF:** Mazeltoff.

9 **THE COMMISSIONER:** All right.

10 **MR. CARROLL:** We take no position on this,
11 sir, although just referencing Mr. Engelmann's last
12 comments, it may be that after a review of all of the
13 documentation that you are of the view that you could
14 fashion something or recommend counsel get back together
15 rather than a 100 percent final offer arbitration kind of
16 situation. Thanks.

17 **THE COMMISSIONER:** Thank you. So Mr.
18 Carroll is going into mediation now.

19 (Laughter/Rires)

20 **THE COMMISSIONER:** Mr. Englemann? I think
21 we've done everyone.

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

23 **MR. ENGELMANN:** Sir, just by way of
24 background, the approach of filing overviews of documentary
25 evidence, or ODEs, has been used on four previous

1 occasions; the first use being in April of 2007 with
2 respect to an individual who was provided with the moniker,
3 "C-3".

4 And you may recall you made a ruling with
5 respect to that matter on May 29th, 2007. Mr. Neville has
6 referred you to it. In that ruling, you decided that the
7 overview itself would be entered as an exhibit as well as
8 the accompanying documents. You also stated in the ruling
9 that you would consider the use of overviews on a case-by-
10 case basis.

11 In this case, of course, Commission counsel
12 is of the view that the documents relating to C-2 be
13 presented in the context of an ODE for a number of reasons.
14 We believe it will help you and provide you with a starting
15 point to review this evidence. We also believe it will
16 assist the parties in identifying relevant themes to be
17 examined during the institutional response stage in order
18 to maximize fairness, efficiency and thoroughness.

19 It will also allow the public to be better
20 able to follow the information coming out before this
21 Inquiry.

22 As we reviewed during the introduction of C-
23 3's ODE, it is the Commission's position -- Commission
24 counsel's position -- that your authority to receive ODEs
25 is well established through a number of provisions of the

1 *Public Inquiries Act*, the Order in Council for this
2 particular Inquiry and, of course, the Rules of Practice
3 and Procedure. I won't go through them, sir, but it's
4 section 3 of the *Public Inquiries Act*, mirrored by section
5 6 of the Rules, section 5(b) of the Order in Council and
6 Rules 13 and 14.

7 In preparing this overview, counsel have
8 attempted to capture the themes and issues that arise in a
9 neutral and thorough fashion. Several drafts, as you've
10 heard, have been circulated to the parties. We've had
11 communication from, and consultation with, counsel for a
12 number of parties and the counsels' comments have in many
13 respects been included in the final ODE that we intend to
14 file today.

15 To be clear, this is not intended to be a
16 substitute for C-2's testimony. We acknowledge that its
17 evidentiary value is clearly less than the documents used
18 in its preparation and you said that in your previous
19 ruling, that in the case of any conflict between the ODE
20 and the documents, the content of the documents should
21 prevail.

22 The parties will have an opportunity to
23 address this evidence during the institutional response
24 phase of the Inquiry through additional documents and *vive*
25 *voce* evidence from witnesses who work within these

1 institutions. It is possible that the additional evidence
2 may or may not be consistent with the content of the ODE
3 and the documents used in its preparation. If there are
4 inconsistencies, again, it's a question for you in weighing
5 in that evidence.

6 Now, in this particular case I have not been
7 very involved with the preparation of C-2. It was one of
8 my colleagues who is elsewhere today but, in any event, as
9 Mr. Neville has indicated, C-2 was I believe the last of
10 the alleged victims that were dealt with in the charges
11 involving Father MacDonald.

12 And you've heard evidence from some of those
13 victims who made earlier allegations and, in fact, one of
14 them already has been dealt with by way of an ODE, and that
15 was C-3.

16 C-2 is somewhat distinct and, in our view,
17 relevant for several reasons. His was the last allegation
18 leading to a third -- new third information. Mr. Neville
19 pointed that out and he also pointed out the delays that
20 were associated with that; the involvement of Mr. Dunlop,
21 the confidentiality issue, a two-year delay and, of course,
22 delays that affect the prosecution in the MacDonald case
23 which end up, of course, being commented on by Justice
24 Chilcott as a lengthy delay and the issue of the section
25 11(b) Charter.

1 So, in our respectful submission, delays
2 associated with C-2's involvement are clearly something
3 that falls squarely within your mandate.

4 The disclosure of these allegations came to
5 Project Truth, the OPP's Project Truth, through Perry
6 Dunlop and this was despite C-2's request that this
7 allegation that he disclosed to Mr. Dunlop in 1998 be kept
8 confidential until further notice. The timeliness of Mr.
9 Dunlop's disclosure is relevant, and that was in the year
10 2000. The timeliness of the swearing of new information
11 which then leads to an adjournment of a trial date and a
12 further preliminary inquiry is also relevant as other
13 matters had been set to proceed.

14 The matter proceeded to a preliminary
15 inquiry. It's my understanding it led to a joinder of the
16 counts and then the particular allegations of C-2 were
17 withdrawn prior to proceeding to trial two years later and
18 shortly before the application for stay of proceedings was
19 argued successfully.

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

21 **MR. ENGELMANN:** The issues raised by the new
22 complaint involved issues of disclosure and delay.

23 Now, counsel have asked about some of the
24 issues, whether we should be able to call the evidence by
25 way of an overview rather than by calling *vive voce*

1 evidence. C-2 made it very clear to one of the
2 Commission's investigators some time ago that he did not
3 want to participate in this process. Confidentiality
4 measures were explained. There was an offer to attempt to
5 seek them. These were refused.

6 The principle reasons given by C-2 were that
7 his three children, his three boys, have never been told
8 about these allegations. He would have indicated this to
9 the OPP Project Truth officers back in 2000 when he
10 explained his reluctance to come forward. That was his
11 principle concern, sir, the hardship and harm that this
12 would cause within the family dynamic and the fact that he
13 has not come forward with this.

14 He is also concerned about the effects that
15 this might have on his business interests. He operates a
16 small business here within the Cornwall area. So it's not
17 simply a question of embarrassment as Mr. Neville points
18 out, I think it's far more than that. But he has not
19 offered any medical evidence and I agree with Mr. Neville
20 on that point.

21 He never voluntarily disclosed his
22 allegations. These were reported to the OPP, as I have
23 said, by Mr. Dunlop. The proceedings at the preliminary
24 inquiry were protected by a publication ban. His name
25 remains confidential today. There is a protection under

1 section 486. The matter did never proceed to trial. There
2 was no publicity because of the ban. There were no civil
3 proceedings.

4 **THE COMMISSIONER:** Have you -- do all
5 counsel know all about this?

6 **MR. ENGELMANN:** Well, they certainly know
7 about the fact that he hasn't told his children and his
8 concerns about doing that. Not only did we tell them that
9 but also that's evident from, as I said, from his statement
10 involved with the OPP back from the year 2000 and also his
11 concerns about the effect on his livelihood. Yes, those
12 were indicated.

13 So those are some of the issues. And we
14 thought that given the importance of these allegations,
15 given the impact that they had on the Macdonald trial -- or
16 sorry, the preliminary inquiry and the trial -- that they
17 were important to be viewed in some context, to be put
18 before you in a way that would assist you in reviewing all
19 of this evidence.

20 And because of all of these issues, quite
21 frankly, sir, we thought the evidence was sufficiently
22 important to put in this way. We could have attempted to
23 force C-2 to give evidence. That would then have been no
24 doubt, if he testified at all, an in camera hearing. So
25 our concern about keeping the public apprised and keeping

1 them abreast of these developments would not be successful
2 if that was, in fact, our method of trying to get this
3 evidence before you.

4 It is our respectful submission that there's
5 more benefit to the public to hear this evidence by way of
6 an ODE than to issue a summons and attempt to do so in
7 camera with the consequent effects on the individual.

8 The parties in our view are not prejudiced.
9 They maintain the right to deal with the issues in the
10 institutional response portion of the Inquiry and, of
11 course, to cross-examine all those witnesses who were
12 involved with this individual. As I said, the ODE was
13 circulated. Several of the parties commented on it and the
14 Commission, through its counsel, made a number of changes
15 to the ODE. Submissions, of course, can be made on the
16 weight to be given to this evidence and if there's any
17 discrepancies, of course, you will determine the weight
18 that this ODE should be given.

19 I want to comment briefly about a couple of
20 the suggestions. And I think the purpose and perhaps the
21 difference between what Mr. Neville has attempted to assert
22 is we get into perhaps issues of innocence and guilt, and
23 the Commission always tries to avoid that.

24 We certainly are trying to follow the
25 mandate, the Order in Council and everything else, and

1 avoid any effort by parties to try and prove guilt or
2 innocence, and certainly we try not to do that ourselves.

3 So the issues that were raised were
4 principally with a couple of paragraphs, and I want to just
5 turn to those in a minute, but one of the concerns that I
6 think Mr. Neville expressed was, "Well, some of the answers
7 came out in this fashion in the preliminary inquiry
8 transcript."

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

10 **MR. ENGELMANN:** Well, my colleague Ms.
11 Morrison will read this to you, if allowed. We'll be
12 adding -- and will be entering that preliminary inquiry
13 transcript.

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

15 **MR. ENGELMANN:** Mr. Neville and all of the
16 parties to this will be allowed to make submissions with
17 respect to this evidence and, in making those submissions,
18 if they want to put forward anything from Mr. Neville's
19 submissions that he's already sent to the Commission, they
20 are, of course, allowed to do so, so the transcript will be
21 filed.

22 It's impossible, in our view, to formulate
23 objectively what problems there may have been -- this would
24 be getting into the merits -- at this point there's no
25 evidence of what motivated the Crown to withdraw the

1 charges. We'll be calling a Crown prosecutor on that
2 issue.

3 The paragraphs that were mainly contested --
4 this is my understanding, now -- paragraphs 15, 16 and 17 -
5 - if you look at paragraph 15 ---

6 **THE COMMISSIONER:** And that's of your ---

7 **MR. ENGELMANN:** Yeah; of the ODE.

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

9 **MR. ENGELMANN:** This is the one that talks
10 about the age.

11 And, what Commission counsel here has done
12 is set out the age that Mr. C-2 gave to the OPP officers in
13 question. And of course, there are issues that arise from
14 an age; dealing with issues of consent and others.

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

16 **MR. ENGELMANN:** Now, if Mr. Neville or any
17 other lawyer, through questions at a preliminary inquiry,
18 gets a witness to say something else about age and it goes
19 to credibility, well, that's fine and that's in the
20 preliminary inquiry transcript.

21 What we're concerned about is, what's the
22 age he gives to the police and how do the police respond as
23 a result of that? Do they look at issues of consent? Do
24 they look at other issues?

25 So that's why that's set out, and it's my

1 understanding that that's exactly what this person told the
2 OPP. There's no embellishment, nothing else; it's just the
3 facts.

4 On paragraphs 16 and 17 there seems to be a
5 lot of issue primarily about paragraph 17.

6 And again ---

7 **THE COMMISSIONER:** It's an issue of
8 relevance, it seems.

9 **MR. ENGELMANN:** Yeah; but -- I mean, if you
10 look at the paragraph, sir, if the relevance is does this
11 help support a finding of guilt or innocence, I agree with
12 you. The paragraph itself may not be relevant; may not be
13 of assistance.

14 But of course, when the purpose of the ODE
15 and the purpose of this Inquiry is to determine whether an
16 institutional response happened and if it didn't, whether
17 it should have and whether it was appropriate, things like
18 that -- if we look at paragraph 17, just off the top of my
19 head, we've got -- he's talking to an OPP officer, so the
20 Crown's going to be looking at this as well. This happens
21 in a hospital; there's another institution. There may be
22 issues about whether there should have been a report to the
23 CAS. There may be issues about retention of medical
24 records; duty to report. Whether there are protocols in
25 place between these various institutions for dealing with

1 this type of issue.

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

3 **MR. ENGELMANN:** So if we're looking at
4 institutional response and the interaction of agencies,
5 this paragraph's relevant

6 If we're looking at whether or not Father
7 MacDonald did this to this particular individual I would
8 agree; the paragraph may not be relevant. That's not the
9 purpose of the ODE, it's not the purpose of the Inquiry.

10 In my respectful submission, that's straight
11 from a transcript of the videotaped interviews. It's
12 unembellished; it's the fact.

13 There's another issue that I understand was
14 of concern and it's set out, sir, as I understand it, in
15 paragraph 27 ---

16 **THE COMMISSIONER:** Yes.

17 **MR. ENGELMANN:** --- where Commission
18 counsel, as a result of correspondence for the parties,
19 added in exactly what the notes indicate with respect to
20 the issue about this individual and his father.

21 Sir, if I might just have a moment.

22 Sir, those are my submissions unless you
23 have any questions.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Neville?

1 --- SUBMISSIONS BY/REPRESENTATIONS PAR MR. NEVILLE

2 **MR. NEVILLE:** Just briefly sir; I wasn't
3 quite sure if Mr. Engelmann was questioning the legal
4 propriety or basis of my providing a draft and in fact,
5 sir, it's in 5(b) of the Order in Council, which says:

6 "The Commission may, to the extent it
7 considers advisable, refer to and rely
8 on the following materials: (b)
9 Factual overview or report prepared by
10 any party."

11 **THE COMMISSIONER:** It's okay ---

12 **MR. NEVILLE:** I wasn't sure; he seemed to be
13 questioning why -- the propriety of my sending ---

14 **THE COMMISSIONER:** Well, no. Oh, no, I
15 don't think he was questioning the propriety. I don't
16 think he was doing that.

17 I think he was saying, he was saying, "It's
18 all or nothing," with his ODE.

19 **MR. NEVILLE:** Right, no, he did.

20 **THE COMMISSIONER:** And I'm saying, "Well,
21 we'll see about that. Don't worry too much about..."

22 **MR. NEVILLE:** All right. I wasn't sure what
23 he meant by that; that's all I'm getting at, sir.

24 **THE COMMISSIONER:** Yeah, no, no. No, no.

25 **MR. NEVILLE:** And it's based on this, and

1 this -- and in fact, I cited in one of my letters that I
2 would be relying on that.

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

4 **MR. NEVILLE:** For what it's worth, sir, I
5 can tell you, having been counsel, there isn't a hospital
6 issue here. The medical -- the medical attendance was at a
7 doctor's office, not at a hospital.

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

9 **MR. NEVILLE:** And that's in the transcript.
10 But there's many other problems with that attendance, and
11 I'm not going to get into them now, you don't want to hear
12 that. But there were many.

13 And the reference to age, sir, that in
14 itself is a significant issue and there may be for you to
15 consider at some point, decisions that are made to
16 prosecute in the face of evidence that is more than a
17 little problematic and whether decisions are being made to
18 prosecute and put people before the criminal justice system
19 who perhaps shouldn't be there.

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

21 **MR. NEVILLE:** And that's a factor, and this
22 whole decision that was made by a very experienced Crown
23 was motivated by many things and he will tell us about
24 them, or someone will. And that doesn't need an ODE.

25 **THE COMMISSIONER:** All Right.

1 Thank you. We'll break until 3:00.

2 **THE REGISTRAR:** Order; all rise. A l'ordre;
3 veuillez vous levez.

4 This hearing will resume at 3:00 p.m.

5 --- Upon recessing at 2:38 p.m. /

6 L'audience est suspendue à 14h38

7 --- Upon resuming at 3:04 p.m. /

8 L'audience est reprise à 15h04

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

11 This hearing is now resumed; please be
12 seated. Veuillez vous assoir.

13 --- **RULING ON MOTION BY THE COMMISSIONER/DÉCISION SUR**
14 **REQUÊTE PAR LE COMMISSAIRE:**

15 **THE COMMISSIONER:** Thank you.

16 With respect to the motion brought by Mr.
17 Neville to exclude the ODE of C-2, I think it's worthy of
18 written reasons, and so what I'm going to do is advise you
19 that notwithstanding Mr. Neville's able argument, I'm going
20 to permit the ODE as presented by Commission counsel to be
21 entered as an Exhibit and provide you with written reasons
22 in due course.

23 Thank you.

24 Ms. Morris, good afternoon.

25 --- **SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. CHRISTINE**

1 **MORRIS :**

2 **MS. MORRIS:** Good afternoon, Mr.
3 Commissioner. I will be reading in the overview of
4 documentary evidence with respect to C-2.

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

6 **MS. MORRIS:** Firstly, I would seek that the
7 overview itself become Exhibit 1123.

8 **THE COMMISSIONER:** And that will -- I'm
9 sorry, yes.

10 --- **EXHIBIT NO./PIECE NO. P-1123:**

11 ODE) Overview of Documentary Evidence -
12 C-2

13 **THE COMMISSIONER:** That will be subject to -
14 - I see that Mr. Manderville's not here to make his usual
15 comments so I'll make them for him.

16 It's subject to the stipulation that this is
17 only an aide to permit people to -- as a starting point.
18 It allows us to follow an issue and identify some things.

19 When and if ever there is a dispute between
20 this document and any of the other documents from which
21 these points are taken, the other document will prevail.

22 As well, it is only an overview and this ODE
23 is dealt with on a case-by-case basis and so, if Mr.
24 Manderville wishes to object on some other ODE he's always
25 free to do so, as is all the other parties. Okay.

1 **MS. MORRIS:** Mr. Commissioner, the ODE
2 contains C-2's name ---

3 **THE COMMISSIONER:** Yes.

4 **MS. MORRIS:** --- as well as information that
5 would tend to disclose his identity. Accordingly, I would
6 request that the document be subject to a publication ban.

7 **THE COMMISSIONER:** Yes; given the fact that
8 it is still the subject of a publication ban under the
9 prior criminal proceedings, and to give effect to it, there
10 will be a ban on the publication of C-2's name and any
11 identification that would lead or tend to identify him.

12 **MS. MORRIS:** Thank you.

13 Mr. Commissioner, the ODE relies on 15
14 underlying documents.

15 **THE COMMISSIONER:** Yes.

16 **MS. MORRIS:** Two of which have already been
17 tendered as exhibits ---

18 **THE COMMISSIONER:** Yes.

19 **MS. MORRIS:** --- so I will tender the
20 remaining 13 before reading the ODE.

21 Firstly, Document No. 103017.

22 **THE COMMISSIONER:** Yes.

23 **MS. MORRIS:** It consists of police notes.

24 **THE COMMISSIONER:** So this is Exhibit 1124
25 is a police note of Pat Hall, Detective Inspector, 14th of

1 March 2001.

2 --- EXHIBIT NO./PIÈCE No. P-1124:

3 (103017) Detective Inspector Pat
4 Hall's police notes of 14th of March
5 2001

6 **MS. MORRIS:** I would also seek a publication
7 ban with respect to this document as it contains the name
8 of C-2.

9 **THE COMMISSIONER:** All right. Well, I don't
10 -- you're not seeking a publication ban of the document.
11 We're simply highlighting that this document contains
12 details that are subject matter as an aide to the medium.

13 **MS. MORRIS:** Okay. Thank you.

14 The next document is Document no. 110813.

15 **THE COMMISSIONER:** Thank you.

16 And this is Exhibit 1125. These are notes
17 from whom? That looks like a meeting on March 13th -- I'll
18 do it this way. A meeting that was held in Long Sault with
19 C-2, Pat Hall, Steve Seguin on March 13th '02.

20 --- EXHIBIT NO./PIÈCE No. P-1125:

21 (110813) Notes from a meeting held in
22 Long Sault with C-2, Pat Hall, Steve
23 Seguin on March 13th 2002.

24 **MS. MORRIS:** Thank you. I would highlight
25 the fact that it contains the name of C-2 as well.

1 **THE COMMISSIONER:** Publication ban will be
2 printed on it.

3 **MS. MORRIS:** The next three documents that
4 the Commission counsel will be tendering are transcripts --
5 -

6 **THE COMMISSIONER:** Thank you.

7 **MS. MORRIS:** --- in the Preliminary Hearing
8 of Charles MacDonald. They are Document Nos. 111259;
9 111260; 111261.

10 **THE COMMISSIONER:** Thank you. So Exhibit
11 No. 1126 will be Volume 1; Exhibit 1127 will Volume 2; and
12 Exhibit 1128 will be Volume 3 of the preliminary inquiry
13 involving *R. v. Charles MacDonald*.

14 --- **EXHIBIT NO./PIÈCE No. P-1126:**

15 (111259) Volume 1 of the Transcript of
16 the Preliminary Inquiry in *R. v.*
17 *Charles MacDonald*, 28 August, 2000

18 --- **EXHIBIT NO./PIÈCE No. P-1127:**

19 (111260) Volume 2 of the Transcript of
20 the Preliminary Inquiry in *R. v.*
21 *Charles MacDonald*, 29 August, 2000

22 --- **EXHIBIT NO./PIÈCE No. P-1128:**

23 (111261) Volume 3 of the Transcript of
24 the Preliminary Inquiry in *R. v.*
25 *Charles MacDonald*, 28 August, 2000

1 **MS. MORRIS:** I would highlight the fact that
2 the three transcripts are subject to a Section 486(3),
3 *Criminal Code* publication ban already.

4 **THE COMMISSIONER:** So noted.

5 **MS. MORRIS:** The next document to be
6 tendered is Document No. 710228.

7 **THE COMMISSIONER:** Exhibit 1129 is a
8 document entitled Charles F. MacDonald and shows
9 appointments since ordination, amongst other things.

10 --- **EXHIBIT NO./PIÈCE No. 1129:**

11 (710228) Document entitled Charles F.
12 MacDonald which shows appointments
13 since ordination

14 **MS. MORRIS:** The next document is Document
15 No. 710336.

16 **THE COMMISSIONER:** Thank you. Exhibit 1130
17 is a "Will State" of Constable Perry Dunlop dated March 20th
18 2000 which the publication ban will be stamped on.

19 --- **EXHIBIT NO./PIÈCE No. P-1130:**

20 (710336) Will State of Constable Perry
21 Dunlop dated March 20th 2000

22 **MS. MORRIS:** The next document is Document
23 No. 713034.

24 **THE COMMISSIONER:** Exhibit 1131 will be a
25 videotaped interview report of C-2 dated the 26th of January

1 2000.

2 --- EXHIBIT NO./PIÈCE No. P-1131:

3 (713034) Transcript of videotaped
4 interview by D/Cst. J.B. Dupuis and
5 D/Cst. D.C. Genier of the Ontario
6 Provincial Police, 26 January, 2000

7 **MS. MORRIS:** Next document is Document No.
8 727733.

9 **THE COMMISSIONER:** Thank you. And that's
10 Exhibit 1132, are notes of ---

11 **MS. MORRIS:** Constable -- Detective
12 Constable Don Genier.

13 **THE COMMISSIONER:** Thank you.

14 --- EXHIBIT NO./PIECE No. P-1132:

15 (727733) OPP D./Cst. Don Genier's
16 police notes

17 **MS. MORRIS:** The next exhibit is also police
18 notes. It's Document No. 733266.

19 **THE COMMISSIONER:** Exhibit 1133, notes of --

20 -

21 **MS. MORRIS:** Detective Constable Steve
22 Seguin.

23 **THE COMMISSIONER:** Thank you.

24 --- EXHIBIT NO./PIÈCE No. P-1133:

25 (733266) D./Cst. Steve Seguin's police

1 notes.

2 **MS. MORRIS:** I wish to highlight the fact
3 that not only do these notes refer to the name of C-2 but
4 also to C-8.

5 **THE COMMISSIONER:** Publication stamp will be
6 put on those documents as well.

7 **MS. MORRIS:** The next document is Document
8 No. 733623.

9 **THE COMMISSIONER:** Yes. Exhibit 1134,
10 police officer's notes?

11 **MS. MORRIS:** Yes, Detective Constable J.B.
12 Dupuis.

13 **THE COMMISSIONER:** Thank you.

14 --- **EXHIBIT NO./PIÈCE No. P-1134:**

15 (733623) D./Cst. J.B. Dupuis' police
16 notes

17 **MS. MORRIS:** Again, these notes refer to the
18 name of C-2 and C-8.

19 **THE COMMISSIONER:** Publication ban stamp
20 will be ---

21 **MS. MORRIS:** At the fourth page of these
22 notes at page 7131726, there is an entry containing the
23 name of another alleged victim. I can indicate we'll be
24 seeking a publication ban in respect to that name and
25 information, I guess, that would identify this person.

1 **THE COMMISSIONER:** Well, what page is this
2 on?

3 **MS. MORRIS:** It's the fourth page, page
4 7131726.

5 **THE COMMISSIONER:** Where?

6 **MS. MORRIS:** The ninth line down, at the
7 1326 entry. And also the 11th line has the last name.

8 **THE COMMISSIONER:** And -- so you're saying
9 this person is going to testify?

10 **MS. MORRIS:** Ah, no, Mr. Commissioner,
11 although this person has been identified as an alleged
12 victim.

13 **THE COMMISSIONER:** Right. Have we
14 communicated -- well, you know ---

15 **MS. MORRIS:** We're unsure as to his wishes.
16 This is being sought out of an abundance of caution.

17 **THE COMMISSIONER:** Okay. Well, we're going
18 to have to go in camera then and take care of that name so
19 that it complete the record. Okay.

20 **MS. MORRIS:** The next document is Document
21 No. 733626.

22 **THE COMMISSIONER:** Yes. Notes of?

23 **MS. MORRIS:** Detective Constable J.B.
24 Dupuis.

25 **THE COMMISSIONER:** Exhibit 1135.

1 --- EXHIBIT NO./PIÈCE No. P-1135:

2 (733626) D./Cst. J.B. Dupuis' police
3 notes

4 MS. MORRIS: And this contains reference to
5 the name of C-2, C-5 and C-9.

6 THE COMMISSIONER: Great. Stamp indicating
7 a publication ban will be put on.

8 MS. MORRIS: The last document to be
9 tendered is Document No. 733629.

10 THE COMMISSIONER: Thank you.

11 MS. MORRIS: Again, police notes of
12 Detective Constable J.B. Dupuis.

13 THE COMMISSIONER: Thank you. Exhibit 1136.

14 --- EXHIBIT NO./PIÈCE No. P-1136:

15 (733629) D./Cst. J.B. Dupuis' police
16 notes

17 THE COMMISSIONER: And is there a stamp that
18 should be put on?

19 MS. MORRIS: Yes, it contains reference to a
20 number of persons with monikers.

21 THE COMMISSIONER: Thank you.

22 MS. MORRIS: I'll proceed with the reading
23 of the overview.

24 THE COMMISSIONER: Thank you.

25 MS. MORRIS: I wish to indicate before

1 beginning that paragraph 3 of the overview contains
2 information which would tend to identify C-2 and for that
3 reason, I'll be referring to paragraph 3 generally.

4 **THE COMMISSIONER:** Thank you.

5 **MS. MORRIS:** So overview of documentary
6 evidence for C-2:

7 "C-2 was born on June 26th, 1960 in
8 Cornwall, Ontario. When he was
9 approximately two years old (1962), C-
10 2's family moved from Cornwall to
11 Bonneville, Ontario. When he was
12 approximately six or seven years old,
13 the family relocated to the Monkland,
14 Ontario area."

15 The references are to Exhibits 1126 and
16 1131.

17 "C-2 attended grade school in St.
18 Andrews, Ontario and public school in
19 Monkland. He graduated from Tagwi High
20 School, a high school located on
21 Highway 43 between Monkland and
22 Avonmore, Ontario."

23 The references are to Exhibits 1126 and
24 1131.

25 **THE COMMISSIONER:** I think we can just skip

1 paragraph 3.

2 **MS. MORRIS:** All right.

3 "C-2 was raised in the Roman Catholic
4 faith. As a child, he attended St.
5 Michael's Catholic Church in Monkland
6 and St. Anthony's Catholic Church in
7 Applehill, Ontario with his parents and
8 siblings."

9 The reference is to Exhibit 1126.

10 "C-2 and his brother became altar boys
11 at St. Michael's Catholic Church (in
12 Monkland) when C-2 was approximately
13 nine or ten years old. Father Thomas
14 Villeneuve was the parish priest at
15 both St. Michael's Parish and St.
16 Anthony's Parish (in Applehill) during
17 the period of time that he was an altar
18 boy. C-2 stopped being an altar boy
19 when he was in Grade six, when he was
20 approximately 12 years because he
21 believed that he was getting too old to
22 be an altar boy."

23 The references are to Exhibits 1126 and
24 1131.

25 "C-2 has stated that around the same time that Father

1 Villeneuve left the parish where he was
2 an altar boy, Father Charles MacDonald
3 became the new parish priest. Father
4 MacDonald started a youth group at (St.
5 Anthony's Apple Hill Parish) shortly
6 afterwards. The youth group met on a
7 monthly basis. C-2, along with his
8 older brother, joined the youth group.
9 C-2 has stated that he first became
10 involved in the youth group when he was
11 12 years old and that this was in the
12 fall of 1972."

13 The references are to Exhibits 1131 and
14 1126.

15 According to the Diocese of Alexandria-
16 Cornwall records:

17 "Father MacDonald was appointed to St.
18 Columban's Parish on June 14th, 1969 and
19 served there until 1975 and from June
20 10th, 1975 to August 11th, 1982 he
21 served as the pastor of St. Anthony's
22 Parish of Apple Hill and Monkland."

23 The reference is to Exhibit 1129.

24 "As an adult, C-2 tried unsuccessfully
25 to speak about his allegations of abuse

1 with his local parish priest in
2 Martintown, Father Bob MacDonald. C-2
3 later told OPP Detective Constable
4 Steve Seguin that he had approached the
5 priest wanting to speak about his
6 allegations but that, 'MacDonald got
7 pulled out of there.' C-2 later
8 testified during Father MacDonald's
9 preliminary inquiry that the priest had
10 not had the time to speak with him."

11 The references are to Exhibits 1133, 1135,
12 1126 and 1125.

13 "C-2 decided to call Perry Dunlop
14 because he had seen Dunlop's name in
15 the newspaper and had heard people talk
16 about him. On February 14th, 1998 C-2
17 called either the police in Long Sault
18 or the local city police and left a
19 message for Dunlop to call him. He
20 believed at that time that Dunlop was
21 an OPP officer. Dunlop returned his
22 call and C-2 told Dunlop that he wanted
23 to speak to him. During their
24 conversation, arrangements were made
25 for the two to meet and they met on

1 February 16th, 1998 at C-2's residence."

2 The references are to Exhibits 1131, 1130,
3 1125, 1133 and 1126.

4 "According to C-2, his meeting with
5 Dunlop (on February 16th, 1998) lasted
6 approximately 20 to 30 minutes.

7 According to C-2, he told Dunlop that
8 he believed that Father MacDonald had
9 sexually assaulted him and Dunlop asked
10 for more details but he told Dunlop
11 that that was not why he wanted to
12 speak with him. Dunlop told C-2 that
13 the best thing to do would be to call
14 Detective Constable Dupuis of Project
15 Truth."

16 The references are to Exhibits 1126, 1131,
17 1125, 1133 and 1135.

18 "According to Dunlop's statement to the
19 OPP, signed on March 16th, 2000, C-2
20 told Dunlop about his allegation that
21 Father MacDonald sexually assaulted him
22 when he was involved in a youth group
23 supervised by Father MacDonald at Apple
24 Hill Parish. In the statement, Dunlop
25 advised that he had not taken a

1 statement from C-2. Dunlop later
2 testified during the *Canadian Charter*
3 *of Rights and Freedoms*, section 11(b),
4 unreasonable delay motion brought by
5 Father MacDonald, that when he went C-
6 2, C-2 was really broken down and
7 upset, that C-2 had 'blurted out a few
8 things' and that he, Dunlop, had told
9 him that when he was ready he should
10 contact Project Truth."

11 The references are to Exhibits 1130, 355 and
12 1135.

13 "C-2 told his wife about the alleged
14 sexual abuse soon after he met with
15 Dunlop. His wife had seen Dunlop's
16 name in his client appointment book and
17 had asked him why he was seeing Dunlop.
18 C-2 then told his wife about the
19 alleged sexual abuse. His wife was the
20 first person he ever disclosed his
21 allegations to besides having told
22 Dunlop."

23 The references are to Exhibits 1126, 1131,
24 1135 and 1133.

25 "C-2 later advised (on March 13th, 2002)

1 OPP Detective Constable Steve Seguin
2 and Assistant Crown attorneys Lorne
3 McConnery and Kevin Phillips that
4 Dunlop had agreed not to say anything
5 to anyone about what he had told him
6 until C-2 made a decision about it. C-
7 2 also advised that sometime later
8 Carson Chisholm approached him and
9 handed him a paper about Project Truth.
10 C-2 knew that Chisholm was Dunlop's
11 brother-in-law and he felt that Dunlop
12 had betrayed his trust by telling
13 Chisholm about him."

14 The references are to Exhibits 1133 and
15 1125.

16 "On January 17th, 2000, Dunlop disclosed
17 C-2's name to Detective Inspector Pat
18 Hall of OPP Project Truth. On January
19 20th, 2000, Detective Constable J.B.
20 Dupuis called C-2 and asked him to meet
21 with the OPP to discuss his complaint."

22 The references are to Exhibits 1130 and
23 1134.

24 "On January 21st, 2000, C-2 met with
25 Detective Constable Dupuis. Detective

1 Constable Dupuis's will say indicates
2 that during their meeting C-2 alleged
3 that he had been assaulted by Father
4 MacDonald when he was 14-15 years of
5 age and an altar boy in Apple Hill. On
6 January 26th, 2000, Detective Constables
7 J.B. Dupuis and Genier conducted a
8 formal videotaped interview of C-2 at
9 the OPP Long Sault Detachment."

10 The references are to Exhibits 1134, 1132

11 and 1131.

12 "During his interview, C-2 reported two
13 incidents of alleged sexual abuse
14 involving Father MacDonald that had
15 occurred during youth group meetings.
16 In the first incident..."

17 I'd like to correct the overview here. It
18 should be incident without an "s":

19 "...he alleged that Father MacDonald
20 and other men had sexually assaulted
21 him."

22 The reference is to Exhibit 1131.

23 "During this interview, C-2 reported
24 that approximately one week after the
25 first incident of alleged sexual

1 assault, his father had taken him to
2 see a doctor who had performed an
3 examination on him. C-2 advised that
4 after the examination he left the room
5 and the doctor and his father had
6 spoken. He did not know what they had
7 discussed and his father did not say
8 anything to him about the conversation
9 or the examination. He did not tell
10 his parents about the alleged sexual
11 assaults by Father MacDonald."

12 The reference is to Exhibit 1131.

13 "Between January 28th and March 16th,
14 2000, the OPP followed up on a number
15 of matters relating to C-2's
16 allegations. Detective Constable
17 Dupuis was in touch with C-2 on a
18 number of occasions."

19 The reference is to Exhibit 1134.

20 "On April 10th, 2000, Detective
21 Constable Dupuis contacted C-2 and
22 advised him that Father Charles
23 MacDonald had been charged that morning
24 in relation to his allegations. Father
25 MacDonald had been charged with the

1 offence of indecent assault on a male
2 and gross indecency on a male in
3 respect of each of C-2's two
4 allegations (four counts in total)."

5 The references are to Exhibits 1135 and
6 1126.

7 "On April 25th, May 24th and August 24th,
8 2000, the OPP were in communication
9 with C-2. They confirmed his
10 availability on the date set for the
11 preliminary inquiry, provided him with
12 a copy of his statement and effected
13 personal service of documents on him."

14 The references are all in relation to
15 Exhibit 1135.

16 "On July 18th, 2000, Detective Constable
17 Dupuis called C-2 and set-up an
18 appointment for Tuesday, July 25th,
19 2000. On July 25th, 2000, C-2 met with
20 Assistant Crown attorneys Shelley
21 Hallett and Christine Bartlett-Hughes
22 as well as Detective Constable Dupuis,
23 to prepare for Father MacDonald's
24 preliminary inquiry in respect of his
25 allegations against Father MacDonald.

1 This meeting took place at the OPP Long
2 Sault Detachment."

3 The reference is to Exhibit 1135.

4 "The preliminary inquiry in respect of
5 the allegations made against Father
6 MacDonald by C-2 proceeded on August
7 28th, 29th and 30th, 2000 before the
8 Honourable Justice S.A.T. March of the
9 Ontario Court of Justice in Cornwall,
10 Ontario. Michael Neville represented
11 Father MacDonald and Shelley Hallett
12 represented the Crown."

13 The reference is to Exhibit 1126.

14 "C-2 testified at the preliminary
15 inquiry, describing both of his
16 allegations of sexual assault by Father
17 MacDonald. Father MacDonald was
18 committed to stand trial at the
19 conclusion of the preliminary inquiry
20 on August 30th, 2000."

21 The references are to Exhibits 1126, 1127
22 and 1128.

23 "On March 6th, 2001, Detective
24 Constable Dupuis contacted C-2 after
25 being advised that he wished to speak

1 with him and Ms. Hallett. Detective
2 Constable Dupuis advised that Ms.
3 Hallett was back in Toronto and
4 therefore unavailable. It was agreed
5 that C-2 would meet with Detective
6 Constable Dupuis and Detective
7 Inspector Hall. On March 12th, 2001,
8 Detective Constable Dupuis called C-2
9 and an appointment was set for
10 Wednesday, March 14th. On that date, C-
11 2 met with OPP Detective Inspector Pat
12 Hall and Detective Constable Dupuis in
13 Long Sault."

14 The references are to Exhibits 1136 and
15 1124.

16 "On April 25th, 2001, Detective
17 Constable Dupuis called C-2 and advised
18 him that a new date (March 18th, 2002)
19 had been set for the trial of Father
20 Charles MacDonald."

21 The reference is to Exhibit 1136.

22 "On February 19th, 2002, Detective
23 Constable Steve Seguin attended C-2's
24 residence and served C-2 personally
25 with his subpoena for the Father

1 Charles MacDonald trial. Detective
2 Constable Seguin advised C-2 at that
3 time that he or Detective Constable
4 Dupuis would advise him with plenty of
5 notice of exactly when he would be
6 required. On April 9th, 2002, Detective
7 Constable served C-2 personally with
8 another subpoena..."

9 **THE COMMISSIONER:** Whoa, Mr. ---

10 **MS. MORRIS:** Sorry.

11 **MR. NEVILLE:** I'm just going to suggest,
12 sir, that in the next paragraph ---

13 **THE COMMISSIONER:** Yes.

14 **MR. NEVILLE:** --- there might be something
15 worth omitting.

16 **THE COMMISSIONER:** Yes. I -- thank you.
17 So have you finished paragraph 26?

18 **MS. MORRIS:** The references are ---

19 **THE COMMISSIONER:** Yes.

20 **MS. MORRIS:** --- to Exhibits 1133 and 1136.

21 **THE COMMISSIONER:** All right.

22 With respect to paragraph 27, I was reading
23 ahead a little bit as well and I think when we get to the
24 Constable Seguin's notes at the bottom:

25 "...believes my dad knows all these

1 people."

2 The next sentence, at least, should be not
3 read for it would tend to identify.

4 **MS. MORRIS:** What sentence is that, Mr.
5 Commissioner?

6 **THE COMMISSIONER:** So I think we should
7 leave that sentence out of the -- it's on the record, but I
8 -- because we're broadcasting, we don't want to.

9 **MS. MORRIS:** So starting with "my" and
10 ending with ---

11 **THE COMMISSIONER:** "S" period.

12 **MR. NEVILLE:** We don't have the word ---

13 **MS. MORRIS:** All right.

14 "On March 13th, 2002, C-2 met with
15 Detective Constable Seguin, Assistant
16 Crown attorney Lorne McConnery and
17 Assistant Crown attorney Kevin Phillips
18 for approximately one hour and forty-
19 five minutes. The change of Crown
20 prosecutors was explained to C-2 and he
21 was advised that the trial would likely
22 be postponed until the end of April. A
23 number of subjects were canvassed,
24 including C-2's dealings with Perry
25 Dunlop. As well, Detective Constable

1 Seguin's notes of the meeting indicate,
2 'Believe my Dad knows all these
3 people."

4 I will omit the next portion. And it
5 continues:

6 "'Strongly believe my dad knew about
7 this; somehow involved. Was my dad
8 there or wasn't he? I don't know.'"

9 The reference is to Exhibit 1133.

10 "On April 30th, 2002, C-2 met with
11 Detective Constable J.B. Dupuis and one
12 or more representatives from the Office
13 of the Crown attorney, and was advised
14 that there was no reasonable prospect
15 of conviction in respect of his
16 complaint. C-2 walked out of the
17 meeting."

18 The reference is to Exhibit 1136.

19 "On May 1st, 2002, Assistant Crown
20 attorney, Lorne McConnery, withdrew the
21 four counts on the Father Charles
22 MacDonald indictment relating to C-2's
23 allegations."

24 The reference is to Exhibit 720.

25 **THE COMMISSIONER:** Thank you.

1 **MS. MORRIS:** That concludes the reading of
2 the overview.

3 **THE COMMISSIONER:** All right, thank you.

4 I guess we should open it up for comments;
5 is that the idea?

6 Do you wish to comment Mr. Manson? No, I
7 didn't think so.

8 Mr. Horn?

9 Mr. Lee?

10 Mr. Neville said that -- thank you.

11 Mr. Chisholm?

12 **MR. CHISHOLM:** No, sir, thank you.

13 **THE COMMISSIONER:** Mr. Rouleau?

14 Mr. Kloeze?

15 **MR. KLOEZE:** No sir, thanks.

16 **THE COMMISSIONER:** Mr. Sherriff-Scott is
17 gone.

18 Ms. Lalji?

19 **MS. LALJI:** No, thank you.

20 **THE COMMISSIONER:** Thank you.

21 Mr. Kozloff?

22 **MR. KOZLOFF:** Almost an hour of ---

23 **THE COMMISSIONER:** Yeah, it is, almost.

24 Mr. Carroll? He's left the building. All
25 right.

1 So does that take care of the -- do we have
2 any more to do today then?

3 **MS. MORRIS:** Mr. Commissioner, it was just
4 brought to my attention that Exhibits 1132, 1133, 1134,
5 1135 and 1136 are all excerpts ---

6 **THE COMMISSIONER:** Yes.

7 **MS. MORRIS:** --- of document numbers.

8 **THE COMMISSIONER:** Yeah.

9 **MS. MORRIS:** I wish to read the excerpts in
10 ---

11 **THE COMMISSIONER:** Okay.

12 **MS. MORRIS:** --- if that would assist?

13 **THE COMMISSIONER:** Certainly.

14 **MS. MORRIS:** In relation to Exhibit 1132,
15 the excerpt is Bates page 7107763.

16 For Exhibit 1133, the excerpts are Bates
17 pages 7129864 and 65, as well as 7129871 to 77.

18 In relation to Exhibit 1134, the excerpts
19 are Bates pages 7131707 and 08; 7131718; 7131723; 7131726.
20 In relation to Exhibit 1134, the excerpts are Bates pages
21 7131755 to 57; 7131785; 7131789; 7131804; 7131838; 7131862
22 and 63; 7131878.

23 In relation to Exhibit 1135, the excerpted
24 Bates pages are 7131880 to 96; 7131983 and 84; 7131993 to
25 98; 7132007 and 7132071.

1 And in relation to Exhibit Number 1136, the
2 excerpts are Bates pages 7132077 and 78.

3 **THE COMMISSIONER:** Thank you.

4 **MS. MORRIS:** Thank you.

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

6 **MR. MANSON:** Yes; now I do have a question.

7 Is it Ms. Morris's intention that those
8 documents in their entirety are not marked as Exhibits as
9 of yet? That she's only marking those specific pages?

10 I just want to clarify this because of rule
11 38 notices. We have to know in the future what's an
12 exhibit and what isn't.

13 **THE COMMISSIONER:** Well, what I have -- the
14 exhibits that I have here are excerpts.

15 **MS. MORRIS:** Correct. What's being
16 presented are the excerpted pages.

17 **THE COMMISSIONER:** So what can I say? All
18 right?

19 **MR. MANSON:** Thank you.

20 **THE COMMISSIONER:** Thank you.

21 All right. Anything else? Do we have
22 another ODE ready to go or we're adjourning until tomorrow
23 for Mr. Guzzo? Is that the idea?

24 **MS. MORRIS:** We're adjourning to tomorrow,
25 yes, for Mr. Guzzo.

1 **THE COMMISSIONER:** All right, so we'll see
2 you tomorrow morning at nine-thirty then.

3 **MS. MORRIS:** Thank you, Mr. Commissioner.

4 **THE COMMISSIONER:** Thank you.

5 **THE REGISTRAR:** Order; all rise. A l'ordre;
6 veuillez vous levez.

7 --- Upon adjourning at 3:35 p.m. /

8 L'audience est ajournée à 15h35

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

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

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



Sean Prouse, CVR-CM