

**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 189

Held at :

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

Thursday, January 24 2008

Tenue à:

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

Jeudi, le 24 janvier 2008

Appearances/Comparutions

Ms. Julie Gauthier	Registrar
M ^e Simon Ruel	Commission Counsel
Ms. Deirdre Harrington	
Mr. Mark Crane	Cornwall Police Service Board
Ms. Suzanne Costom	Ontario Provincial Police
Ms. Diane Lahaie	
Mr. Joe Neuberger	Ontario Ministry of Community
M ^e Claude Rouleau	and Correctional Services
	and Adult Community Corrections
Ms. Leslie McIntosh	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. William Carroll	Ontario Provincial Police
	Association
Mr. Frank T. Horn	Coalition for Action
Mr. Ian Paul	

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

2 L'audience débute à 9h34

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

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you.

8 Good morning all.

9 Just to let you know, and perhaps the
10 parties know already, but for members of the public and
11 those who are viewing in, a personal matter has arisen last
12 night that requires me to travel to Sudbury tonight and
13 accordingly, while I know you will all be disappointed that
14 we're not sitting tomorrow, we're going to have to cancel
15 the day and we'll resume a week Monday.

16 Thank you.

17 Good morning, sir.

18 --- **ROY HAWKINS, Resumed/Sous le même serment:**

19 **MR. HAWKINS:** Good morning.

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

21 **MR. HAWKINS:** Fine thank you.

22 So we're here to complete your cross-
23 examination and get you on your way and then we'll return
24 to our other witness, Mrs. Barque.

25 **MR. HAWKINS:** Thank you.

1 **MR. MANSON:** Mr. Commissioner, I think it's
2 my turn to finish.

3 **THE COMMISSIONER:** All right.

4 **MR. MANSON:** Just before we -- because we
5 have to travel tonight, does that put any time limit on
6 today?

7 **THE COMMISSIONER:** Yes, it does. Yes, thank
8 you very much for reminding me.

9 What I would suggest we do today, if it's at
10 all possible, that we do the -- we start now and we sit
11 until 1:30. We'll have a few breaks in between, if that's
12 satisfactory to everyone, and then at 1:30 I have to leave.
13 All right?

14 **MR. MANSON:** Thank you very much, Mr.
15 Commissioner.

16 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
17 **MANSON:**

18 **MR. MANSON:** Mr. Hawkins, you remember my
19 name is Alan Manson. I asked you a few questions yesterday
20 and I'm going to finish up today.

21 Can I just go back to background for a
22 minute. Do you recall exactly when you left the Eastern
23 Region for your posting in London?

24 **MR. HAWKINS:** It would have been at the end
25 of August in 1993.

1 **MR. MANSON:** Thank you.

2 Do you -- can you recall when you were
3 advised of your new posting?

4 **MR. HAWKINS:** I believe it would have been
5 about a month or so prior to that but I cannot be certain
6 on that.

7 **MR. MANSON:** July '93 you think?

8 **MR. HAWKINS:** I think that would be probably
9 a reasonable guess.

10 **MR. MANSON:** Could it have been as early as
11 June or was July the earliest?

12 **MR. HAWKINS:** I think it was July.

13 **MR. MANSON:** July, okay.

14 So you're on the job though until the end of
15 August and then Bill Roy takes over, and as I understand
16 his evidence, he confirmed what you said, that there really
17 was no overlap and no briefings?

18 **MR. HAWKINS:** That's correct.

19 **MR. MANSON:** I mean briefings of a formal
20 nature?

21 **MR. HAWKINS:** There weren't any formal or
22 informal that I recall.

23 **MR. MANSON:** Can we move to 1992? Exhibit
24 927 is the Ken Seguin incident report dated January 16th.
25 And your evidence yesterday was that that kind of incident

1 report should have been characterized as a major incident;
2 correct?

3 MR. HAWKINS: Yes, that's correct.

4 MR. MANSON: And at the time you were
5 referring to the visit by the young man, including a
6 client, and a few hours later fatality; correct?

7 MR. HAWKINS: Yes, that's correct.

8 MR. MANSON: Now, a number of months ago now
9 we heard a corporate presentation from your Ministry. A
10 number of people gave evidence. One of them was Margaret
11 Hughes. Do you know her?

12 MR. HAWKINS: Yes.

13 MR. MANSON: And at one point she was
14 talking, I believe, with one of the Commission counsel
15 about priority issues, that concept of what was a priority
16 issue, and she was talking about, to be fair, a 1994
17 protocol but there was an earlier interim guideline.

18 And just with respect to the concept of
19 priority -- I'm not going to ask you about the protocol and
20 I'm not going to go to it, but just with the idea of a
21 priority issue -- she of course was talking about potential
22 criminal allegations, but she was also talking about a
23 serious occurrence that might require an investigation or -
24 - and this was her phrase -- "something that could cause
25 media attention, especially bad media attention."

1 And my question for you is would you agree
2 that the incident report, especially the reference to the
3 subsequent fatality, would fit into this concept of a
4 priority issue that should be reported up the ladder?

5 **MR. HAWKINS:** Absolutely.

6 **MR. MANSON:** Now, the next item in this
7 chain, talking about what we've been calling the Varley
8 incident, was Exhibit 931. This is the September 8th letter
9 to Mr. Robert -- no, I'm sorry; it's Exhibit 931. It's the
10 letter to you from Mr. Robert that includes with it the
11 September 3rd, '92 letter from OPP officer Randy Millar;
12 correct?

13 **MR. HAWKINS:** Yes.

14 **MR. MANSON:** So now we have a slight
15 expansion in the factual context. We have the beer added;
16 correct?

17 **MR. HAWKINS:** Yes.

18 **MR. MANSON:** And you considered the earlier
19 report serious, it's now more serious; correct?

20 **MR. HAWKINS:** Yes.

21 **MR. MANSON:** And I want to suggest to you
22 that there's another element. If we could look at Exhibit
23 929, which is the Millar notes, Mr. Commissioner -- the
24 Millar letter ---

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

1 **MR. MANSON:** --- that was forwarded along
2 with the September 8th letter from Emile Robert.

3 If we look at page 3, Seguin -- right at the
4 top:

5 "Seguin stated he felt intimidated by
6 their presence and did not argue with
7 Travis Varley when he took three beer
8 from his fridge. He just wanted them
9 to leave."

10 I want to suggest that this notches the
11 seriousness up again because one of these young people was
12 a client for whom Ken Seguin was preparing a PSR; correct?

13 **MR. HAWKINS:** Yes.

14 **MR. MANSON:** And this raises the spectre of
15 possibly obstruct justice. I'm suggesting that because the
16 probation officer feels intimidated in this context, and
17 I'm suggesting that this is another matter that notches up
18 the seriousness; correct?

19 **MR. HAWKINS:** Well, I view the whole
20 incident as extremely serious so I'm not quite sure how we
21 continue notching it up. I view the whole incident as an
22 extremely serious incident.

23 **MR. MANSON:** Did you call Mr. Robert
24 immediately upon receiving this September 8th letter?

25 **MR. HAWKINS:** I don't recall whether I

1 contacted him immediately or not.

2 MR. MANSON: And then you wrote to him --
3 Exhibit 930 -- setting out your concerns about how serious
4 this matter was; correct?

5 MR. HAWKINS: Yes, that's correct.

6 MR. MANSON: Your letter is dated October
7 16th. Can you explain why there was a five week delay?

8 MR. HAWKINS: No, I can't. I'm not sure if
9 I was on vacation during the intervening period or whether
10 -- I just can't explain that. I don't know the reason.

11 MR. MANSON: Now, when my friend Mr. Ruel
12 was talking to you yesterday about this event you indicated
13 that the event and the subsequent letter of counsel were
14 certainly matters that should be reported in the annual
15 performance evaluation; correct?

16 MR. HAWKINS: Yes.

17 MR. MANSON: Can we just look for a minute
18 at Exhibit 949, please? This is the performance evaluation
19 for the year in which the event occurred but prior to the
20 delivery of the Randy Millar notes. It goes from July '92
21 to June -- no, I'm sorry; I've got the wrong one. It's
22 949. It goes from July '91 to July '92.

23 Can you have a look at that? You're much
24 more adept at reading these than I am.

25 MR. HAWKINS: Nine-forty-nine (949)?

1 MR. MANSON: Yes.

2 THE COMMISSIONER: Yes, Exhibit 949, right.

3 MR. MANSON: It's about, oh, I don't know,
4 eight or nine pages but it's ---

5 (SHORT PAUSE/COURTE PAUSE)

6 THE COMMISSIONER: Is this an interlude?

7 MR. MANSON: Pardon me?

8 THE COMMISSIONER: I hear music.

9 MR. MANSON: Oh ---

10 UNIDENTIFIED SPEAKER: --- are in my head.

11 (LAUGHTER/RIRES)

12 MR. MANSON: I was worried I was the only
13 one; I didn't want to mention it.

14 (LAUGHTER/RIRES)

15 THE COMMISSIONER: Voices Mr. Manson, it's
16 voices we have to worry about.

17 MR. MANSON: I'm relieved, Mr. Commissioner.
18 Have you had a chance to skim this Mr.
19 Hawkins?

20 MR. HAWKINS: I'll have to take a look at
21 the binder ---

22 MR. MANSON: Sure.

23 MR. HAWKINS: --- these pages are ---

24 MR. MANSON: I want to go to the second-last
25 page and I want to suggest to you that this is an exemplary

1 performance evaluation. Would you agree with that? Would
2 you agree with the characterization "exemplary"?

3 **MR. HAWKINS:** I would really want to read
4 the whole report to make a characterization of it. I'm not
5 sure which -- you're saying the last page but one ---

6 **MR. MANSON:** I believe it's the third last
7 page of mine. Well, I'll read to you the supervisor's
8 comments.

9 "Mr. Seguin is a very good employee.
10 He has demonstrated a high level of
11 initiative and proficiency in his work.
12 He used five sick days during the
13 review period."

14 **MR. HAWKINS:** That sounds fairly positive to
15 me.

16 **MR. MANSON:** And I want to suggest if you
17 look through it, number one, there are no negative comments
18 and, number two, there's no reference to the January 16th,
19 '92 incident report. Is that correct?

20 **MR. HAWKINS:** I take your word for it. I
21 have not reread the entire report.

22 **MR. MANSON:** Do you want to take a minute
23 now? It's -- the comments are in the right column.

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

25 **MR. HAWKINS:** He seems to speak fairly

1 positively on the issues that he has identified within the
2 report and I don't see any reference to the other incident
3 that we're talking about.

4 MR. MANSON: And your signature is on the
5 last page?

6 MR. HAWKINS: Yes, it is.

7 MR. MANSON: Dated August 5th, '92.

8 MR. HAWKINS: Yes.

9 MR. MANSON: Now my friend, Mr. Paul, asked
10 you some questions about performance evaluations yesterday
11 and what your role was when signing them and I'm reading
12 from the bottom of page 114 of the transcript from
13 yesterday, Mr. Commissioner.

14 THE COMMISSIONER: M'hm.

15 MR. MANSON: "Mr. Hawkins: When I'm
16 signing them, it indicated that I've
17 read and understand the nature of the
18 content. The question about agreeing
19 or disagreeing with -- wouldn't enter
20 into my signature on the document."
21 Then in the next paragraph; maybe we can get
22 this ---

23 THE COMMISSIONER: Yes, just a second.

24 (SHORT PAUSE/COURTE PAUSE)

25 MR. MANSON: The transcript from yesterday,

1 page 115 please, line 3?

2 **THE COMMISSIONER:** Say again, page 15?

3 **MR. MANSON:** One-fifteen (115).

4 **THE COMMISSIONER:** One-fifteen (115).

5 **MR. MANSON:** Line 3.

6 **THE COMMISSIONER:** Yeah.

7 **MR. MANSON:** "If I did have a concern
8 about something that had taken place
9 that I was aware of that should be
10 included within the document, I would
11 communicate that back to the area
12 manager in writing."

13 And what I want to suggest to you, Mr.
14 Hawkins, is that in August of 1992 you were not aware of
15 the Varley incident were you? It was first communicated to
16 you by Mr. Robert's letter of September 8th; correct?

17 **MR. HAWKINS:** Yes, I believe that to be
18 true.

19 **MR. MANSON:** Well, let's move to the next
20 year then and the next performance evaluation which is
21 Exhibit 948. This covers the period July '92 to June '93.

22 This covers the period July '92 to June '93.
23 This covers the period July '92 to June '93.

24 **THE COMMISSIONER:** Was that you second
25 personality, Mr. Manson?

1 (LAUGHTER/RIRES)

2 MR. MANSON: I hope it was only my second;
3 number 3's been lurking lately.

4 THE COMMISSIONER: All right. So you have
5 it, Mr. Hawkins?

6 MR. HAWKINS: Yes, I do.

7 THE COMMISSIONER: All right.

8 MR. MANSON: Could you have a read through
9 this please, Mr. Hawkins?

10 (SHORT PAUSE/COURTE PAUSE)

11 MR. MANSON: Tell me when you're ready, Mr.
12 Hawkins.

13 MR. HAWKINS: Yeah, I've given it a casual
14 reading.

15 MR. MANSON: You'd agree with me, if we just
16 look at the Conclusion, it suggests exemplary performance
17 as well. This would be again on the third-last page and
18 I'm reading:

19 "Mr. Seguin is a dedicated employee.
20 He shows initiative and proficiency in
21 his work. I am pleased with his work
22 performance. He used three sick days
23 during the review period."

24 Does that sound again like an exemplary
25 year?

1 **MR. HAWKINS:** It sounds like a positive
2 performance ---

3 **MR. MANSON:** And you'd agree with me that in
4 this evaluation, there is, number one, no mention of the
5 Varley incident and, number two, no mention of the letter
6 of counsel which was sent to Mr. Seguin, November 10th and -
7 --

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

9 **MR. MANSON:** --- forwarded to you on
10 February 3rd, '93; correct?

11 **MR. HAWKINS:** That's correct.

12 **MR. MANSON:** None of those matters are
13 mentioned.

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

15 **MR. MANSON:** Did you write to Mr. Robert
16 about these omissions?

17 **MR. HAWKINS:** This is not an appraisal that
18 I personally signed and saw if you look at the signature on
19 the last page.

20 **MR. MANSON:** Yes, I understand that. I'm
21 just going to go to that.

22 **MR. HAWKINS:** Okay.

23 **MR. MANSON:** But maybe you want to explain
24 that first?

25 **MR. HAWKINS:** Well, I would assume that this

1 was an appraisal that came in when I was either absent from
2 the office on vacation or otherwise indisposed and was
3 reviewed by my counterpart, Mr. Roberts, who was my
4 counterpart for the western half of the Eastern Region.

5 MR. MANSON: So this was never brought to
6 your attention; this performance appraisal?

7 MR. HAWKINS: If I saw this document, it
8 would be initialled by me ---

9 MR. MANSON: Yes.

10 MR. HAWKINS: --- somewhere, even if Mr.
11 Roberts had signed the document originally, I think you
12 would find my initial on the document subsequently. I
13 don't think this is an appraisal that I did see.

14 MR. MANSON: That's not my -- did Mr.
15 Roberts bring it to your attention?

16 MR. HAWKINS: No, he didn't.

17 MR. MANSON: Did anyone in your office bring
18 this to your attention?

19 MR. HAWKINS: No, they didn't, no they
20 didn't.

21 MR. MANSON: Did you bring to Mr. Roberts'
22 attention your concerns about the Varley incident and the
23 letter of counsel?

24 MR. HAWKINS: No, I didn't.

25 MR. MANSON: So, Mr. Hawkins, if I can just

1 get all this straight. After you received the February 3rd,
2 '93 letter that gives you the letter of counsel.

3 MR. HAWKINS: M'hm.

4 MR. MANSON: From that point on, you don't
5 take any other steps with respect to the Varley matter;
6 correct?

7 MR. HAWKINS: I believe that's correct, yes.

8 MR. MANSON: And you've already said in
9 hindsight you should have ordered the investigation but you
10 didn't?

11 MR. HAWKINS: Well, that would have had to
12 take place prior to the letter of counsel ---

13 MR. MANSON: Yes, exactly.

14 MR. HAWKINS: --- having been sent, yes.

15 MR. MANSON: Yeah. So as far as the
16 Ministry is concerned and their actions in respect to Ken
17 Seguin, as of February 3rd, '93, it seems to me that it's
18 all business as usual isn't it?

19 MR. HAWKINS: It does appear that way.

20 MR. MANSON: Thank you, Mr. Hawkins.

21 THE COMMISSIONER: Can I ask a few questions
22 on that?

23 Would you expect that the incident, the
24 Varley incident, would have been reflected in one of those
25 appraisal reports?

1 **MR. HAWKINS:** Yes, I would think it should
2 be.

3 **THE COMMISSIONER:** All right. And when you
4 review an appraisal report, do you have the employee's file
5 -- what I'm trying to get at is if Mr. Roberts -- do these
6 things come in and they look at them and you know, we know
7 how life goes sometimes, I mean you don't spend your time
8 with exemplary reports, you focus on the ones that ---

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

10 **THE COMMISSIONER:** --- are causing you some
11 problems.

12 What my question is, would Mr. Roberts have
13 had the employee file so that he could have been made aware
14 by looking through the documents that there was a concern
15 about the Varley incident?

16 **MR. HAWKINS:** No, I don't think he would
17 have.

18 **THE COMMISSIONER:** Okay, well, is that the
19 policy? Is that ---

20 **MR. HAWKINS:** It's general practice.

21 **THE COMMISSIONER:** General practice.

22 **MR. HAWKINS:** M'hm.

23 **THE COMMISSIONER:** M'hm. So there could be
24 a whole bunch of things in the employee file at your
25 office, and if there's a mistake or an omission from your

1 manager, it goes by unchecked?

2 MR. HAWKINS: It could happen. Yes.

3 THE COMMISSIONER: Okay.

4 MR. MANSON: Could I just ask one question
5 arising from that?

6 THE COMMISSIONER: Sure.

7 MR. MANSON: With respect to this February
8 3rd, '93 letter, it's Exhibit 926 but we don't need to go to
9 it, that you get from Mr. Robert saying here's the letter
10 of counsel.

11 MR. HAWKINS: Yes.

12 MR. MANSON: In your office in Kingston,
13 would that copy of the letter go into a Cornwall file or a
14 Ken Seguin file? Or some other file?

15 MR. HAWKINS: It would go into some file in
16 the office. I'm not really familiar with the specifics of
17 how things are filed in the office, but I would think it
18 would be in his personnel file and I think there would be a
19 copy both in Cornwall and in the regional office.

20 MR. MANSON: So in your regional office you
21 would have some Ken Seguin file?

22 MR. HAWKINS: I believe so.

23 MR. MANSON: And following up on the
24 Commissioner's questions when you, or in your place Mr.
25 Roberts, was doing the evaluations, he wouldn't -- it

1 wasn't practice to bring the Ken Seguin file to the desk?

2 **MR. HAWKINS:** I don't think that would
3 happen. I think that -- I think that Mr. Roberts would
4 assume that the area manager is writing a report that has
5 some credibility and substance and would not be cross-
6 referencing it with other documents in the regional office
7 to ensure that was the case.

8 **MR. MANSON:** Thank you, Mr. Hawkins. Thank
9 you, Mr. Commissioner.

10 **THE COMMISSIONER:** Thank you. All right.
11 So who's next. Mr. Lee?

12 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR:

13 **MR. LEE:**

14 **MR. LEE:** Morning, sir.

15 **THE COMMISSIONER:** Good morning, Mr. Lee.

16 **MR. HAWKINS:** Morning.

17 **MR. LEE:** My name is Dallas Lee, I'm on for
18 the Victims Group.

19 You spent a lot of time during your evidence
20 thus far discussing the Varley incident and I want to ask
21 you a couple of questions on that if I could.

22 Would it be fair for me to suggest that your
23 evidence thus far is -- has been that Mr. Robert's response
24 to the Varley incident was less than ideal?

25 **MR. HAWKINS:** Yes, that would be fair.

1 **MR. LEE:** By way of example, you told us
2 that you very much disagree with the fact that you were not
3 advised of the incident at the time Mr. Robert learned of
4 it?

5 **MR. HAWKINS:** Yes, that's correct.

6 **MR. LEE:** That's the first failing of Mr.
7 Robert on that incident?

8 **MR. HAWKINS:** It's the first failing of
9 which I'm aware.

10 **MR. LEE:** And you told us that you
11 considered it to be a very, very serious incident. Those
12 were the words that you used. You agree with those?

13 **MR. HAWKINS:** Yes.

14 **MR. LEE:** And you told us specifically you
15 discussed a little bit the recommendation of Mr. Robert and
16 Officer Millar that no further action should be taken and
17 that you disagreed with that as well?

18 **MR. HAWKINS:** Yes, I did.

19 **MR. LEE:** And one of the things you told us
20 yesterday, and this is a quote from the transcript, you
21 told us that you were:

22 "Outraged by the way this was being
23 handled and the recommendations that
24 were being made."

25 Do you recall telling us that?

1 **MR. HAWKINS:** Yes, I do.

2 **MR. LEE:** And you told us obviously that
3 there should have been a Ministry investigation, but more
4 than that you told us that the employees should have been
5 suspended during that. Is that right?

6 **MR. HAWKINS:** If there were an investigation
7 done, the circumstances around this might very well justify
8 a suspension while the investigation was being done.

9 **MR. LEE:** Was that the typical practice
10 during an investigation?

11 **MR. HAWKINS:** I don't know if it would be
12 described as the typical practice, but I think it would be
13 an appropriate practice in this case.

14 **MR. LEE:** And you also expressed some
15 concerns about Mr. Seguin's credibility ---

16 **MR. HAWKINS:** Yes.

17 **MR. LEE:** --- as I understood it. Once you
18 had the Millar report ---

19 **MR. HAWKINS:** Yes, I did.

20 **MR. LEE:** --- when you looked back at the
21 incident report, you had some issues with what Seguin had
22 reported initially. Is that right?

23 **MR. HAWKINS:** Yes, I did.

24 **MR. LEE:** And then finally at the end of the
25 thing, Mr. Robert writes a letter of counsel and you took

1 issue with that as well?

2 MR. HAWKINS: Yes, that's correct.

3 MR. LEE: One of the things you told us
4 yesterday in relation to that letter of counsel is that, in
5 your view, it may have been the first step in a process
6 that very well could have led to the dismissal of Mr.
7 Seguin?

8 MR. HAWKINS: If there were subsequent
9 incidents that took place within the parameter of the
10 supervisory responsibilities that he had, yes.

11 MR. LEE: Given all of that as background,
12 something else you said yesterday struck me. You told us
13 that you don't believe you had the authority as the
14 Regional Administrator to step in to overrule Mr. Robert on
15 an issue of discipline. Did I understand your evidence
16 properly on that?

17 MR. HAWKINS: It would depend on the timing
18 of the incident. After a decision has been made by an area
19 manager to send a letter of counsel to an employee, I think
20 it would be inappropriate for me to override that and then
21 start another process going.

22 MR. LEE: Why is that?

23 MR. HAWKINS: The matter then has been
24 completed in my judgment on behalf of the Ministry, whether
25 the decision was a good one or a bad one. I think we -- I

1 just think it would be inappropriate to overrule it.

2 MR. LEE: I want to be clear here. Did you
3 not have the authority to overrule it or it's just not
4 something you'd be comfortable doing?

5 MR. HAWKINS: I think it would be
6 inappropriate to do it.

7 MR. LEE: Did you have the authority to do
8 it?

9 MR. HAWKINS: I probably did or I possibly
10 did. I'm not certain on that.

11 I certainly think that when the process
12 would move beyond that through the grievance settlement
13 board process, if that's the direction that it took, I
14 don't think the Ministry would be able to sustain its case,
15 if on the one hand you have an area manager in a local
16 situation, knowledgeable of the circumstances and behaviour
17 of the employees in that area, making a decision and then
18 it being overturned subsequently by a more senior manager.
19 I really don't think that would be an appropriate way to
20 go. So the question of authority in my mind is not an
21 issue that would be directly relevant. It's just simply
22 not something that I would do.

23 MR. LEE: I want to make sure that I
24 understand you. Your thinking was that if an area manager
25 made a decision on discipline and imposed the discipline --

1 -

2 MR. HAWKINS: Yes.

3 MR. LEE: --- and you subsequently stepped
4 in and imposed different discipline, there would be
5 problems with that through a grievance process?

6 MR. HAWKINS: At a whole variety of levels
7 there would be problems with that.

8 THE COMMISSIONER: But, sir, if someone
9 makes a decision that is just plain wrong -- wrong -- and
10 I'm not saying that that's the case here, but if it's just
11 plain wrong, don't you think that you have (a) the
12 authority and (b) the obligation to go in and rectify a
13 wrong, regardless of whether or not there's going to be a
14 complaint or a grievance?

15 MR. HAWKINS: I wouldn't concur with that in
16 an absolute sense.

17 THE COMMISSIONER: Okay.

18 MR. HAWKINS: I think there might be
19 circumstances where you would be obligated just by the very
20 nature of what was taken place to do that, but the normal
21 course of events would that be that -- would have to be
22 very, very compelling to cause you to do that.

23 THE COMMISSIONER: Right. No, and I likened
24 it to -- sometimes what the Court of Appeal or a Superior
25 Court looks at when reviewing a judgment is that it's not

1 really whether I would have decided it differently ---

2 MR. HAWKINS: M'hm.

3 THE COMMISSIONER: --- right? In that case,
4 well, that's a discretionary matter and you leave it with
5 the person who made the decision.

6 MR. HAWKINS: Yes.

7 THE COMMISSIONER: But if it's clearly wrong
8 and if you're outraged, would that not bring it out of that
9 discretionary area where you may on a personal basis
10 disagree but he's the manager, it's his job, he knows what
11 he's doing, as opposed to taking it out of there?

12 MR. HAWKINS: Well, it didn't for me in this
13 case.

14 THE COMMISSIONER: Okay. Okay.

15 Mr. Lee?

16 MR. LEE: Mr. Hawkins, you used the phrase
17 "micromanagement" a number of times yesterday during your
18 evidence. Do you recall that? Can you explain to me what
19 you -- sorry -- you need to verbalize your answer. Do you
20 recall using the phrase "micromanagement"?

21 MR. HAWKINS: Yes, I do.

22 MR. LEE: Can you explain to me what you
23 mean when you say "micromanagement"?

24 MR. HAWKINS: Well, the manager in the
25 office, the area manager is responsible for the training,

1 supervision, monitoring of an employee's work performance
2 and for me to override and directly interfere with that
3 process would be, in my judgment, micromanaging.

4 I think that when an area manager -- an area
5 manager may wish to consult and discuss a case, but what
6 can happen is that too many of the issues can be elevated
7 to the next level in the organization when the area manager
8 himself has the authority and the responsibility to carry
9 out those tasks.

10 And I think for a regional manager, regional
11 administrator, to start making decisions on behalf of the
12 area manager, that he has the authority to do so would be
13 an example of micromanagement managing.

14 **MR. LEE:** And I took it from your evidence
15 that it's a problem for the regional administrator to seek
16 to micromanage. Is that right?

17 **MR. HAWKINS:** Well, I just don't think that
18 it's the way an organization is structured to operate and
19 it's certainly not a very efficient way to utilize your
20 staff and your resources.

21 **MR. LEE:** But it goes both way -- you as the
22 supervisor don't want to be micromanaging?

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

24 **MR. LEE:** And at the same time, you don't
25 want your managers seeking your constant input?

1 **MR. HAWKINS:** Well, we're all operating in
2 an organization within parameters for which were given
3 authority to make decisions, and if decisions are being
4 made at a lower level in the organization then certainly it
5 would be the responsibility of the senior manager to have
6 discussion with the employee and seek to come to some
7 common understanding so that your management is consistent
8 throughout the organization and fair to everybody that's
9 involved.

10 **MR. LEE:** Would it be fair to say that you
11 were very sensitive to the issue of being too controlling
12 as a manager?

13 **MR. HAWKINS:** No, I don't think I would
14 characterize myself as that manner.

15 **MR. LEE:** Would you agree with me that your
16 management style as you've described it might be said to be
17 hands-off?

18 **MR. HAWKINS:** No, I don't think I would use
19 that description either.

20 **MR. LEE:** You wouldn't agree with that?

21 **MR. HAWKINS:** No, I wouldn't.

22 **MR. LEE:** In addition to the Varley incident
23 that you've spent a lot of time talking about, you spent
24 some time talking about the Gerry Renshaw situation;
25 Gerry's the probationer who moved in with Ken Seguin?

1 **MR. HAWKINS:** Yes.

2 **MR. LEE:** Was it your evidence that you had
3 never seen a request of that nature during the course of
4 your career?

5 **MR. HAWKINS:** Yes, it was.

6 **MR. LEE:** Either before or after?

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

8 **MR. LEE:** And as I understood your evidence,
9 you viewed that situation as one where Ken Seguin was
10 advising the Ministry of what was happening rather than
11 seeking permission?

12 **MR. HAWKINS:** That's my reading of the
13 letter.

14 **MR. LEE:** What I'm not clear on is whether
15 or not you had a problem with the living arrangement at the
16 time you were notified of it?

17 **MR. HAWKINS:** No, I didn't.

18 **MR. LEE:** You had no problem with it at all?

19 **MR. HAWKINS:** I didn't, but possibly in
20 retrospect, I should've had a problem with it.

21 If a person has been clear of offences for a
22 period of three or four years, it might be very unusual for
23 that person then to want to rent a room from a former
24 supervisor, but it's not illegal, and in and of itself it
25 doesn't necessarily indicate a problem.

1 **MR. LEE:** You had some concerns about the
2 practicalities of the arrangement in terms of the security
3 of the keys, as an example?

4 **MR. HAWKINS:** Yes, that's correct.

5 **MR. LEE:** But not with the arrangement
6 itself?

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

8 **MR. LEE:** I want to be clear. In your mind,
9 a probation officer renting a room to an ex-client, full
10 stop, is not a problem?

11 **MR. HAWKINS:** I assumed that the
12 relationship between the probation officer and the former
13 client was a terminated relationship in the sense of a
14 supervisory -- supervisory relationship. I regarded that
15 as a closed matter in this case, but it clearly is a matter
16 of judgment as to whether or not it's appropriate for a
17 probation officer to rent a room to a former client.

18 **THE COMMISSIONER:** Would your -- would your
19 decision been affected if it would have been a woman --
20 asking -- would it have been any different for any other
21 concerns?

22 **MR. HAWKINS:** No, I don't think so.

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

24 **MR. LEE:** One of the things that you asked
25 Mr. Robert to do was to get some information about the

1 situation before proceeding fully. You asked him to run a
2 CPIC check, in particular. Is that right?

3 MR. HAWKINS: Yes.

4 MR. LEE: You wanted him to at least satisfy
5 himself that Mr. Renshaw wasn't -- hadn't been recently
6 convicted or wasn't facing charges, things along those
7 lines?

8 MR. HAWKINS: That's correct.

9 MR. LEE: Did you ask Mr. Robert to report
10 back to you on those details?

11 MR. HAWKINS: I don't recall whether I asked
12 him to report back to me, but having given the instruction
13 for him to do that, I assumed that he would and I believe
14 he did.

15 MR. LEE: And you told us that you didn't
16 believe that the Ministry would have had the authority to
17 enforce non-residency in that situation. Is that right?

18 MR. HAWKINS: Well, I think you could direct
19 the employee to terminate the rental of the room to the
20 employee, but I'm not certain what recourse you would have
21 in the event that the employee told you that's his own
22 private affair. He's advised you of the arrangement and
23 that's the end of his responsibility in the case.

24 MR. LEE: Is that the test that the Ministry
25 -- or was it the test at the time at the Ministry for a

1 manager to issue an order? Would that -- would that have
2 been something you turned your mind to before issuing a
3 direction to an employee whether or not it would survive a
4 grievance process?

5 MR. HAWKINS: I don't think you would want
6 to give an order or direction to any employee that you
7 couldn't sustain as being reasonable by any testing that
8 was done if that decision whether it was the grievance
9 settlement board or whether it was some other route of
10 inquiry.

11 MR. LEE: Did you consult with your
12 superiors at any point on whether or not -- on the question
13 of whether or not you had the authority to direct Mr.
14 Seguin?

15 MR. HAWKINS: No, I didn't.

16 MR. LEE: Did you review the collective
17 agreement?

18 MR. HAWKINS: No, I didn't.

19 MR. LEE: Did you seek legal advice on that?

20 MR. HAWKINS: No, I didn't.

21 MR. LEE: Would it have been possible to
22 advise Mr. Seguin that he could not live with Mr. Renshaw
23 and then to address the discipline issue if and when it
24 came up?

25 MR. HAWKINS: Well, it could have been done,

1 but it wasn't an option that I chose to pursue. My
2 decision, basically, was if given the information in front
3 of me, I had no intention of overturning the arrangement
4 that was being made because I had no basis on which to
5 substantially argue that it shouldn't be permitted. It's a
6 very hypothetical area of inquiry that we're going into.

7 **MR. LEE:** The bottom line is that you didn't
8 see anything wrong with it so there was no point in
9 proceeding further?

10 **MR. HAWKINS:** I saw nothing wrong with it
11 based on the information that I had available to me. If I
12 were the area manager on location and knew the staff
13 personally, I may have had very different views but, again,
14 we're getting into a very hypothetical area.

15 **MR. LEE:** Would you agree with me that you
16 had a number of concerns about Mr. Robert's competence as a
17 manager?

18 **MR. HAWKINS:** I did have a number of
19 concerns.

20 **MR. LEE:** One of those might be that he
21 relied on the regional office too much for direction?

22 **MR. HAWKINS:** He provided insufficient
23 information to the regional office when he was seeking
24 counsel or direction with respect to a matter.

25 **MR. LEE:** And he handled the Varley

1 situation very, very poorly?

2 MR. HAWKINS: I would say so.

3 MR. LEE: You knew that there was tension in
4 the office between at least Mr. Robert and Mr. van Diepen?

5 MR. HAWKINS: Yes, I did.

6 MR. LEE: And that concerned you didn't it?

7 MR. HAWKINS: Yes, it did.

8 MR. LEE: Did you ever advise Mr. Robert
9 that you had concerns with his performance?

10 MR. HAWKINS: I think that it is self-
11 evident from the correspondence that we have reviewed at
12 this hearing that there were concerns communicated in
13 writing to Mr. Robert.

14 MR. LEE: What correspondence are you
15 speaking of that illustrate your concerns?

16 MR. HAWKINS: Well, I think with regard to
17 the -- to either of these incidents where -- that we've
18 talked about.

19 MR. LEE: Well, certainly not in relation to
20 the Renshaw incident. You wrote back to Mr. Robert and
21 said, "Here's a checklist of four things you should do".
22 There's no criticism in that letter is there?

23 MR. HAWKINS: I guess it depends on how you
24 interpret that. It did give him the information that he
25 was requesting.

1 **THE COMMISSIONER:** Do we have any appraisal
2 reports? I guess we should go the other way. Did you do
3 appraisal reports on Mr. Robert?

4 **MR. HAWKINS:** Yes, there would have been
5 some done.

6 **THE COMMISSIONER:** Okay. And in those
7 appraisal reports, would you have -- for the year 1992 and
8 1993 indicated in those appraisal reports comments about
9 these incidents?

10 **MR. HAWKINS:** I would have to see the
11 reports to know.

12 **THE COMMISSIONER:** Do we have them?

13 **MR. LEE:** We sure do.

14 **THE COMMISSIONER:** Okay.

15 **MR. LEE:** Can we look at Document Number
16 126511, please?

17 **(SHORT PAUSE/COURTE PAUSE)**

18 **THE COMMISSIONER:** Thank you.

19 Exhibit Number 1181 is a -- Employee Career
20 Development and it appears the date is November 28th, 1991 -
21 - is when the planning phase was completed, just for
22 identification purposes.

23 **--- EXHIBIT NO./PIÈCE NO. P-1181:**

24 Employee Career Development

25 **THE COMMISSIONER:** Okay. So do we note that

1 this is -- oh, there's Mr. Robert, yeah.

2 **MR. LEE:** Do you have this document, sir?
3 In front of you?

4 **MR. HAWKINS:** Yes, I ---

5 **MR. LEE:** Can you turn to the second page,
6 please, just to help us identify what this is?

7 So as the Commissioner pointed out, we have
8 two headings; the "Planning Phase Completed" and the
9 "Review Phase Completed". Do you see that?

10 **MR. HAWKINS:** Yes, I do.

11 **MR. LEE:** An employee -- it appears to the
12 Mr. Emile Robert, is that right?

13 **MR. HAWKINS:** Yes, that's correct.

14 **MR. LEE:** And supervisor, the top signature,
15 is that your signature?

16 **MR. HAWKINS:** The supervisor's signature is
17 mine, yes.

18 **MR. LEE:** And the date appears to be
19 November 28th, '91. Is that right?

20 **MR. HAWKINS:** Yes, I believe that's correct.

21 **MR. LEE:** And then if we go down a level, we
22 have, again, Mr. Robert's signature as employee. Is that
23 right?

24 **MR. HAWKINS:** Yes, that's correct.

25 **MR. LEE:** And your signature as supervisor?

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

2 **MR. LEE:** And a second level supervisor; do
3 you recognize that signature?

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

5 **MR. LEE:** And whose would that be?

6 **MR. HAWKINS:** John O'Brian.

7 **MR. LEE:** And what was his position?

8 **MR. HAWKINS:** He was the Regional Director
9 who was in the Eastern Region at the time.

10 **MR. LEE:** Would he have been your immediate
11 supervisor?

12 **MR. HAWKINS:** Yes, he was.

13 **MR. LEE:** And the date on that is February
14 26th, 1993?

15 **MR. HAWKINS:** Yes, it is.

16 **MR. LEE:** Can you explain to us what this
17 process would have been?

18 I'm a little confused on the dates, why one
19 of them is November '91 and the next isn't until February
20 '93?

21 **MR. HAWKINS:** The reason for the difference
22 or the discrepancy or the apparent discrepancy, is that the
23 performance appraisal was based on a planning process where
24 you identified the specific objectives for the employee at
25 the outset. And then you would, subsequently, a year, a

1 year-and-a-half later, do the evaluation based upon the
2 objectives set within that performance appraisal.

3 MR. LEE: And so did this timeline make
4 sense to you?

5 MR. HAWKINS: Pardon me?

6 MR. LEE: You would do the planning in '91
7 and the review in February '93. That makes sense?

8 MR. HAWKINS: Yes.

9 MR. LEE: That's an appropriate timeline for
10 what you are accomplishing there?

11 MR. HAWKINS: Reasonable.

12 MR. LEE: Okay. If you can turn back to the
13 first page; it's titled "Employee Career Development".

14 MR. HAWKINS: Yes, I see it.

15 MR. LEE: And I take it that first paragraph
16 beginning with:

17 "I am enjoying my present position in
18 Cornwall..."

19 Those are Mr. Robert's comments?

20 MR. HAWKINS: Yes, they are.

21 MR. LEE: And then we have, below:

22 "Obtaining career objectives is
23 primarily the employee's
24 responsibility. What activities is the
25 employee prepared to undertake?"

1 Is that right?

2 MR. HAWKINS: Yes. That would be a position
3 at an equivalent level.

4 MR. LEE: And then again we have down below
5 under the heading "Comments", we have the employee's
6 comments in the first box ---

7 MR. HAWKINS: Yes.

8 MR. LEE: --- where Mr. Robert notes that he
9 believes that he managed the office quite effectively
10 during the past seven years.

11 And then we have these supervisor's comments
12 on factors affecting overall performance, and would that
13 have been -- would those have been your comments?

14 MR. HAWKINS: Yes, they would be.

15 MR. LEE: And you write that:

16 "Mr. Robert has been an area manager
17 for nearly eight years in Cornwall and
18 has made a significant contribution in
19 providing stability and direction to
20 staff in that area. The major
21 achievement in this past year, locally,
22 has been the restructuring of contract
23 services. At the provincial level, he
24 has made a major contribution to the
25 employment systems review. Attendance

1 has been excellent, with a minimal
2 number of credits used."

3 Did I read that accurately?

4 **MR. HAWKINS:** Yes, you did.

5 **MR. LEE:** An, as we noted on the second
6 page, this was signed off by your second-level supervisor,
7 John O'Brian, the Regional Director?

8 **MR. HAWKINS:** Yes, that's correct.

9 **MR. LEE:** So I'm going to ask you again, did
10 you at any point advise Mr. Robert that you had concerns
11 about his performance?

12 **MR. HAWKINS:** Well, Mr. Robert was aware of
13 -- I mean, there were ongoing discussion about issues that
14 were raised within the office, and while they are not
15 reflected here, we certainly did have discussions of issues
16 from time-to-time.

17 **MR. LEE:** Did you ever tell Mr. -- did you
18 ever advise Mr. Robert that you didn't feel he was a
19 particularly skilled manager?

20 **MR. HAWKINS:** I don't know that I would have
21 expressed myself to him in that language.

22 **MR. LEE:** Did you ever suggest to him that
23 maybe he wasn't cut out for management?

24 **MR. HAWKINS:** No, I didn't.

25 **MR. LEE:** Did you ever suggest to him that

1 he should seek training to improve his skills?

2 **MR. HAWKINS:** I suggested that to any number
3 of employees and I'm sure that Mr. Robert would be one of
4 them.

5 The ongoing professional development and
6 skill development is important in a management position and
7 I'm sure I would have.

8 **MR. LEE:** Did you ever order Mr. Robert to
9 undergo any specific training?

10 **MR. HAWKINS:** I don't believe I would have
11 ordered him to, no.

12 **MR. LEE:** Would you agree with me that you
13 took a rather deferential approach to your management of
14 Mr. Robert?

15 **MR. HAWKINS:** No, I wouldn't.

16 **MR. LEE:** Would you agree with me that, to a
17 large extent, you sat back and let him manage his office as
18 he saw fit?

19 **MR. HAWKINS:** I don't know if that's the
20 language that I would use to describe it, but I did see it
21 as the area manager's responsibility to do his job.

22 **MR. LEE:** And it was your responsibility to
23 supervise the area manager. Is that right?

24 **MR. HAWKINS:** Yes, that's correct.

25 **MR. LEE:** And to step in when you needed to

1 step in?

2 MR. HAWKINS: Yes.

3 MR. LEE: Looking back on it, do you believe
4 that a more hands-on approach would have been preferable
5 with Mr. Robert?

6 MR. HAWKINS: I find that question a little
7 difficult to answer. I think that when you look back on
8 events that have taken place within the office, it was
9 clear that information with regard to what was going on and
10 the extent of what might have been going on was, I don't
11 think, being brought forward to me.

12 MR. LEE: Haven't you told us that one of
13 your criticisms of Mr. Robert was the fact that he had a
14 habit of not bringing forth the information you needed to
15 make decisions?

16 MR. HAWKINS: Yes, that's correct.

17 MR. LEE: Doesn't part of the blame, then,
18 for you not having the information lie with you for not
19 demanding it?

20 MR. HAWKINS: Well, I did have discussions
21 with him asking for further information and I think that's
22 what's implicit in at least some of the correspondence
23 we've looked at.

24 MR. LEE: Did you ever advise your superiors
25 of your concerns about Mr. Robert?

1 **MR. HAWKINS:** I would have had discussions
2 with my superior, Mr. Sidney Shum (phonetic) on different
3 occasions about the area managers and their performance or
4 superintendents or other issues that might arise in the
5 region.

6 **MR. LEE:** What about Mr. Robert specifically
7 though? Was that ever discussed, his performance?

8 **MR. HAWKINS:** I don't recall specific
9 discussions that I had.

10 We were talking about a period some 15 years
11 ago, but I'm sure that I would have had discussions with
12 regard to Mr. Robert as I would with any of the other area
13 managers.

14 **MR. LEE:** I take it you don't ever recall
15 telling a superior that Mr. Robert may not be the right man
16 for the job?

17 **MR. HAWKINS:** I don't think I ever
18 determined that Mr. Robert was not the right man for the
19 job.

20 **MR. LEE:** Mr. Hawkins, those are my
21 questions. Thank you very much.

22 **MR. HAWKINS:** Thank you.

23 **THE COMMISSIONER:** Okay.

24 Mr. Neville? Go ahead.

25 **MR. NEVILLE:** Thank you sir.

1 told us that you knew him at that office, or that office
2 here in Cornwall, that you did have limited contact. You
3 spoke casually with him, that from your standpoint, he was
4 professional and friendly. You knew nothing else in
5 particular about him. Am I summarizing correctly?

6 MR. HAWKINS: Yes, you are.

7 MR. NEVILLE: And you had no negative
8 information conveyed to you about him?

9 MR. HAWKINS: That's correct.

10 MR. NEVILLE: And as confirmed by other
11 counsel, did review his performance appraisals and saw, as
12 you recall it, no problems raised in them?

13 MR. HAWKINS: That's correct.

14 MR. NEVILLE: And did you know as well the
15 esteem in which he was held by his colleagues, his peers?

16 MR. HAWKINS: No, I didn't.

17 MR. NEVILLE: So you didn't know, for
18 example, that his nickname, if I can use the term, was "Mr.
19 Probation" here in Cornwall?

20 MR. HAWKINS: No, I didn't.

21 MR. NEVILLE: That he was a mentor to
22 younger learning officers?

23 MR. HAWKINS: No, I wasn't aware of that.

24 MR. NEVILLE: Okay. That he was one who
25 went the extra mile for his clients?

1 **MR. HAWKINS:** I wasn't aware of that.

2 **MR. NEVILLE:** That he looked after his
3 clients' needs outside mere rule enforcement, things like
4 helping them get jobs, get to drug rehab, that -- you
5 didn't know any of that?

6 **MR. HAWKINS:** I would assume that any
7 probation officer who was fulfilling his responsibilities
8 would be addressing the needs of a client, whether it has
9 to do with employment or ---

10 **MR. NEVILLE:** Right.

11 **MR. HAWKINS:** --- drugs or alcohol or
12 whatever. That is part and parcel of the responsibility of
13 the probation officer. So to have done those things would
14 certainly be appropriate for Mr. Seguin.

15 **MR. NEVILLE:** Sure.

16 Just so you know where I'm coming from here,
17 we've had a bit of a distinction drawn by some of the
18 members of the office that over a certain period of time
19 leading up to his death, that he was perceived as taking a
20 different angle or approach, more along the lines of a
21 social worker looking after wider needs as opposed to rule
22 enforcement; that people saw him as taking a different
23 approach. Were you aware of that?

24 **MR. HAWKINS:** Well, I never had any reason
25 to question whether the quality of his supervision ---

1 **MR. NEVILLE:** Right.

2 **MR. HAWKINS:** --- in relationship to clients
3 was what it ought to be. If it wasn't, there was certainly
4 no information given to me.

5 **MR. NEVILLE:** All I'm asking you, sir, is
6 did you know any of that about him, what I just outlined?

7 **MR. HAWKINS:** No, I didn't.

8 **MR. NEVILLE:** All right. Now, if I could
9 just touch briefly on the room rental, Renshaw matter?

10 **MR. HAWKINS:** Yes.

11 **MR. NEVILLE:** You've emphasized yesterday
12 and again today somewhat that a significant relevant factor
13 in the decision which you had some input on, so to speak,
14 was the three-year gap between supervision and the rental?

15 **MR. HAWKINS:** Yes.

16 **MR. NEVILLE:** Clear of legal involvement?

17 **MR. HAWKINS:** Yes.

18 **MR. NEVILLE:** All right. And did you know
19 any of the other background circumstances; for example,
20 that Mr. Renshaw apparently was going through a marital
21 breakdown problem, needed a place, had no place, and by
22 renting a room, would be of assistance in Mr. Seguin
23 covering his expenses?

24 **MR. HAWKINS:** No, I was never made aware of
25 that.

1 **MR. NEVILLE:** All right. All relevant
2 circumstances? In other words, he was providing assistance
3 to the man who was going through a problem?

4 **MR. HAWKINS:** It sounds important to me.

5 **MR. NEVILLE:** Right. All right.

6 Now, let's just talk briefly, if I can,
7 about the Varley -- what we're calling the Varley incident.

8 Could I just confirm, if I could, Mr.
9 Commissioner, that -- as you know, in the documents we're
10 looking at there are certain names, and I believe we've
11 been -- other than Varley, of course, who was publicly
12 prosecuted, if I'm not mistaken, we weren't using the other
13 names?

14 **MR. RUEL:** When Ms. Cardinal testified, she
15 mentioned that the victim of the shooting may have been a
16 young offender. So this is the only name we didn't mention
17 here before the Commission. The other names were public
18 and we had verified whether or not there was an issue as to
19 whether they were young offenders, and it was ---

20 **THE COMMISSIONER:** No, but no one was
21 charged. So other than the victim and the accused, the
22 other names should be ---

23 **MR. NEVILLE:** Mr. Commissioner, I just spoke
24 briefly with Mr. Neuberger. His preference -- and I think
25 he's right -- it's been our practice not to use the

1 client's name ---

2 **THE COMMISSIONER:** The probationer.

3 **MR. NEVILLE:** --- whose report was being
4 written, not ---

5 **THE COMMISSIONER:** Oh no, no. Right.
6 Right.

7 **MR. NEVILLE:** Okay. I just wanted to
8 confirm that ---

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

10 **MR. NEVILLE:** --- that's the path we're on.

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

12 **MR. NEVILLE:** Now, can I ask you if you
13 would look, Mr. Hawkins, at our Exhibit 927, which is the
14 incident report, Mr. Commissioner.

15 What you'll need, just to assist you, Mr.
16 Hawkins, in my questions on this topic will be that
17 document, 927.

18 **MR. HAWKINS:** Yes.

19 **MR. NEVILLE:** You'll also need 929.

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

21 **MR. NEVILLE:** Which is Detective Millar's
22 report that you've received.

23 **MR. HAWKINS:** Yes.

24 **MR. NEVILLE:** Nine-three-zero (930), which
25 is your memo to Mr. Robert in October.

1 **MR. HAWKINS:** Yes.

2 **MR. NEVILLE:** You'll also need 931, which is
3 Mr. Robert to you, sending you some material; 926 and 928.

4 So if you have all of those handy or, if
5 not, readily, that's what we'll be looking at. All right?

6 **MR. HAWKINS:** All right. They're here.

7 **MR. NEVILLE:** So starting briefly with 927,
8 authored by Mr. Seguin on January 16th, this was one of the
9 documents you received, the incident report?

10 **MR. HAWKINS:** Yes. I'm not sure when I
11 would have received that. I don't believe I received it at
12 the time it was written, the original.

13 **MR. NEVILLE:** No, I -- what I'm going to
14 suggest, that in all likelihood, and let me show you why,
15 in your memo to Mr. Robert of October 16th, which is Exhibit
16 930, you start by saying:

17 "After careful review of the materials
18 [in plural]..."

19 **MR. HAWKINS:** Yes.

20 **MR. NEVILLE:** "...you forwarded to me on
21 the above-noted employee..."

22 **MR. HAWKINS:** M'hm.

23 **MR. NEVILLE:** So I've inferred from that
24 that you got the Millar report, the incident report of Mr.
25 Seguin and I'm not sure what else, but at least those two?

1 **MR. HAWKINS:** M'hm.

2 **MR. NEVILLE:** Is that a fair statement?

3 **MR. HAWKINS:** It's a fair assessment.

4 **MR. NEVILLE:** And you may indeed have
5 received other things?

6 **MR. HAWKINS:** I simply don't know.

7 **MR. NEVILLE:** You just can't recall and you
8 have no discrete file to point to?

9 **MR. HAWKINS:** That's correct.

10 **MR. NEVILLE:** That's fine. All right.
11 Now -- so it would appear then that, if
12 we're analyzing this correctly, that when you start
13 directing your mind to this problem, you've got, among
14 other things at least, these two documents, 930, the
15 incident -- sorry, my mistake -- 927, the incident report
16 and 929, the Millar report?

17 **MR. HAWKINS:** Yes.

18 **MR. NEVILLE:** Now, these would be, I take it
19 then, the bases of your factual analysis and opinions?

20 **MR. HAWKINS:** Yes.

21 **MR. NEVILLE:** As you recall it, you didn't
22 get -- and correct me if I'm wrong -- you did not get, for
23 example, other witness statements; for example, from either
24 of the Varley brothers?

25 **MR. HAWKINS:** That's correct.

1 **MR. NEVILLE:** All right. So what you relied
2 on, I take it, to form opinions and make recommendations
3 were these two documents?

4 **MR. HAWKINS:** Yes, that's correct.

5 **MR. NEVILLE:** Now, did you know at all
6 Detective Millar?

7 **MR. HAWKINS:** No, I didn't.

8 **MR. NEVILLE:** You didn't know his level of
9 experience, that he was a senior criminal investigator?

10 **MR. HAWKINS:** No, I knew nothing about him.

11 **MR. NEVILLE:** But I take it, as an OPP
12 detective, you would expect him to have a level of
13 experience, competence and integrity?

14 **MR. HAWKINS:** That's a reasonable
15 expectation, sure.

16 **MR. NEVILLE:** And given the fact he was
17 communicating to Mr. Robert and, through him, to the
18 Ministry, i.e. you, you would expect him to provide an
19 honest, accurate analysis of the matter that he himself
20 investigated?

21 **MR. HAWKINS:** From his perspective, yes.

22 **MR. NEVILLE:** All right. And the only
23 perspectives we could have here of the incident of that
24 evening would be Mr. Seguin, the Varleys, the probationer,
25 whose name we won't use, Mr. W ---

1 MR. HAWKINS: M'hm.

2 MR. NEVILLE: --- and the police who
3 questioned everybody and took statements?

4 MR. HAWKINS: Yes.

5 MR. NEVILLE: Because you didn't conduct any
6 personal, independent investigation?

7 MR. HAWKINS: That's correct.

8 MR. NEVILLE: Fine. Now, let's look if we
9 could for a moment at Detective Millar's report.

10 Sorry, just before we do that, could we look
11 at your memo to Mr. Robert, Exhibit 930, authored on -- or
12 dated October 16th, 1992? Have you got that?

13 MR. HAWKINS: Yes.

14 MR. NEVILLE: All right. So I've referenced
15 the first line about the materials and we've discussed
16 that. And you say in that paragraph:

17 "It would appear that there is a need
18 for meeting..."

19 I take it you mean "a" meeting:

20 "...and possibly taking disciplinary
21 action."

22 And I take it, what you meant by that,
23 telling Mr. Robert that he ought to have a meeting with Mr.
24 Seguin. Is that what you meant? Or did you mean a meeting
25 with you?

1 **MR. HAWKINS:** Well, it could be either,
2 depending on what Mr. Robert felt to be necessary at the
3 time, but at the minimum with Mr. Seguin.

4 **MR. NEVILLE:** All right.

5 Now, you then say:

6 "I assume Mr. Seguin is familiar with
7 the Ministry policy on contact with
8 offenders and ex-offenders."

9 **MR. HAWKINS:** Yes.

10 **MR. NEVILLE:** Right. Okay.

11 Now, if you just look at Exhibit 927, the
12 incident report. Do you have it?

13 **MR. HAWKINS:** Yes.

14 **MR. NEVILLE:** It starts off:

15 "As per Ministry of Correctional
16 Services Regulations, I am hereby
17 relating an occurrence whereby an
18 experience, an 'out of office' contact
19 with one [named person] who is a past
20 client."

21 So that appears to reflect the first thing I
22 read from your memo. He appears to not only be familiar
23 with it he cites it in the IR?

24 **MR. HAWKINS:** Yes.

25 **MR. NEVILLE:** All right. Let's look back at

1 your memo. You say:

2 "This being the case, I have obvious
3 questions about the apparent ease of
4 access to Mr. Seguin's residence."

5 What did you mean by that?

6 **MR. HAWKINS:** Well, I think my understanding
7 was that there had been an activity at Mr. Seguin's
8 residence.

9 **MR. NEVILLE:** Well, your phrase is, "The
10 apparent ease of access to Mr. Seguin's residence"?

11 **MR. HAWKINS:** M'hm.

12 **MR. NEVILLE:** Let me help you with this, Mr.
13 Hawkins, and provide you with some facts and see if they're
14 ones you knew or recall or are learning now.

15 Did you know that Mr. Seguin lived in the
16 Summerstown area of Cornwall, an area just east of the
17 city?

18 **MR. HAWKINS:** I wasn't aware of where he
19 lived in the city.

20 **MR. NEVILLE:** Did you know that the Varley
21 family were his neighbours?

22 **MR. HAWKINS:** I wasn't aware of the location
23 of the Varley family's residence.

24 **MR. NEVILLE:** Did you know that the Varley
25 brothers and their mother, with whom they lived, were

1 personal neighbourhood friends of Mr. Seguin's?

2 MR. HAWKINS: That information was never
3 reported to me.

4 MR. NEVILLE: Did you know that Mr. Seguin
5 often had visits from the Varley's, including these two
6 boys?

7 MR. HAWKINS: No, I wasn't.

8 MR. NEVILLE: Did you know that he lived in
9 the Summerstown area for a number of years when these boys
10 would have been even younger?

11 MR. HAWKINS: No, I wasn't aware of that.

12 MR. NEVILLE: So did you know that on the
13 night in question, the Varley -- one of the Varley boys
14 phoned Ken up around seven at night and said, "We'd like to
15 come over and talk to you"? Did you know that? As they
16 had done, many times -- well, had done before.

17 MR. HAWKINS: Yes, I became aware of that at
18 some point.

19 MR. NEVILLE: It's in the police report.

20 MR. HAWKINS: Yes.

21 MR. NEVILLE: Now, did you know that they
22 were told he had to go out for a short time; would come
23 back. They called again and said, "Oh, you're home. We're
24 coming over"?

25 MR. HAWKINS: "He" meaning?

1 **MR. NEVILLE:** Meaning the Varley's. The two
2 boys were coming over to Seguin's. Did you know that
3 that's how it happened?

4 **MR. HAWKINS:** No.

5 **MR. NEVILLE:** Okay. Now, did you know that
6 the two Varley's had no criminal records?

7 **MR. HAWKINS:** I was not aware of ---

8 **MR. NEVILLE:** No? All right.

9 So here we have two neighbourhood boys whom
10 Mr. Seguin has known with their family for a number of
11 years who say they'd like to come over and talk to him, and
12 he opens the door -- he gives them permission, and he opens
13 the door and standing there are the two boys, the ultimate
14 deceased who is introduced as a cousin, and Mr. W, the
15 client, and he allows them in.

16 Now, given the context we've just reviewed,
17 it may have been a bad judgment call to let them in, but it
18 was a socially awkward situation wasn't it?

19 **MR. HAWKINS:** Well, it would seem to me that
20 that kind of information should be made available to me.

21 **MR. NEVILLE:** Okay. So you agree with me
22 though that that puts the attendance in a somewhat
23 different light?

24 **MR. HAWKINS:** It is a different perspective
25 ---

1 **MR. NEVILLE:** Right.

2 **MR. HAWKINS:** --- leading back to the facts.

3 **MR. NEVILLE:** In other words, he had no idea
4 until the door opened or he opened the door -- let's assume
5 they knocked or rang -- who would be coming in, beyond the
6 two men who said they were coming, whom he knew. And
7 here's two more boys -- young men -- one of whom is a
8 cousin. So it's a rather awkward situation to say, "Sorry,
9 can't come in". Fair enough?

10 **MR. HAWKINS:** The situation you're
11 describing, I understand.

12 **MR. NEVILLE:** Right. Now, we do know
13 however that at some point -- and did you know as well that
14 their attendance there, the four young men, lasted about 40
15 minutes?

16 **MR. HAWKINS:** I'm not recalling the length
17 of time or ---

18 **MR. NEVILLE:** Did you know that during that
19 40 minutes, Mr. Seguin became aware through conversation,
20 that the probationer or the potential probationer, the
21 client, Mr. W, had a nine o'clock curfew and Mr. Seguin
22 said to the others, "He has to be home by nine; get him
23 home". Did you know that?

24 **MR. HAWKINS:** Yes, I was aware of that.

25 **MR. NEVILLE:** Okay. Now, unfortunately,

1 during that 40 minutes, it would appear -- am I correct --
2 that one of the Varley's asked if they could have a beer
3 and Mr. Seguin placed four on the counter for them to take;
4 right?

5 MR. HAWKINS: Yes.

6 MR. NEVILLE: Now, that's wrong. Fair
7 enough?

8 MR. HAWKINS: Yes.

9 MR. NEVILLE: Bad judgment on that one?

10 MR. HAWKINS: Yes.

11 MR. NEVILLE: All right. And it would
12 appear that when he tells them to leave and take Mr. W
13 home, one of the Varley's, on his own, goes into the fridge
14 and takes three more beer. Now, there's four of them but
15 he takes three.

16 That's what you understand of the facts?

17 MR. HAWKINS: Yes.

18 MR. NEVILLE: Did you understand the facts
19 to be that Mr. W was in fact home by nine o'clock as
20 instructed by Mr. Seguin? Did you know that?

21 MR. HAWKINS: I'm not sure if I knew that or
22 not.

23 MR. NEVILLE: Did you know that the homicide
24 that eventually happened, happened some seven to eight
25 hours later?

1 **MR. HAWKINS:** Yes, I'm aware of that.

2 **MR. NEVILLE:** Had nothing to do with Mr.
3 Seguin's home?

4 **MR. HAWKINS:** Yes, that's correct.

5 **MR. NEVILLE:** Had nothing to do with him
6 personally?

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

8 **MR. NEVILLE:** It happened at the Varley
9 house?

10 **MR. HAWKINS:** That's correct.

11 **MR. NEVILLE:** That one of the Varley's shot
12 and killed his own cousin sometime around four o'clock in
13 the morning?

14 **MR. HAWKINS:** Yes.

15 **MR. NEVILLE:** Did you understand that
16 shortly -- very shortly -- the way the courts normally work
17 -- two or three months -- he pleaded guilty to
18 manslaughter? Did you know that?

19 **MR. HAWKINS:** I'm not sure if I knew that or
20 not.

21 **MR. NEVILLE:** Okay. Now, now that I've
22 reviewed all of those facts, would you now be prepared to
23 agree that this was a bit more of a grey area than you
24 first thought?

25 **MR. HAWKINS:** Well, there's a great deal of

1 additional information that you've brought forward on the
2 situation ---

3 **MR. NEVILLE:** Right.

4 **MR. HAWKINS:** --- that at that time was not
5 brought to my attention.

6 **MR. NEVILLE:** Well, Mr. Hawkins, I'd like
7 you to look at Detective Millar's report.

8 **MR. HAWKINS:** I'm wondering if we could just
9 take a momentary recess. I'd like to use the washroom
10 before we get into the report.

11 **MR. NEVILLE:** Oh, I'm sorry.

12 **THE COMMISSIONER:** All right.

13 Let's take the morning break.

14 **THE REGISTRAR:** Order. All rise. A
15 l'ordre. Veuillez vous lever.

16 This hearing will resume at 11:00 a.m.

17 --- Upon recessing at 10:44 a.m./

18 L'audience est suspendue à 10h44

19 --- Upon resuming at 11:04 a.m./

20 L'audience est reprise à 11h04

21 **THE REGISTRAR:** Order. All rise. A
22 l'ordre. Veuillez vous lever.

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

25 **THE COMMISSIONER:** Thank you.

1 Mr. Neville.

2 **ROY HAWKINS, Resumed/Sous le même serment:**

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

4 **NEVILLE (C'ont/Suite):**

5 **MR. NEVILLE:** Mr. Hawkins, over the break,
6 did you have an opportunity to re-check the Millar report?

7 **MR. HAWKINS:** I just glanced at it. I
8 haven't read it carefully again, but ---

9 **MR. NEVILLE:** I'll try to move along as
10 quickly as I can for sake of time here, but -- you got it
11 there, Exhibit 929?

12 **MR. HAWKINS:** Yes, I do.

13 **MR. NEVILLE:** And Officer Millar, Detective
14 Millar in a memo or brief to Mr. Robert who passes it on to
15 you starts the factual summary in the middle of the first
16 page with the reference to on the 9th of January '92, right?

17 **MR. HAWKINS:** Yes.

18 **MR. NEVILLE:** Now, if you just look at the
19 first sentence you will see that Officer Millar actually
20 interviewed Mr. Seguin the very day of the homicide.

21 **MR. HAWKINS:** Yes.

22 **MR. NEVILLE:** Because it took place at 4:00
23 in the morning of the 9th. The events at his home with the
24 four young men were the night of the 8th but the homicide is
25 the morning of the 9th and Officer Millar actually speaks to

1 Mr. Seguin, "Would you agree in human experience the events
2 couldn't be much fresher"?

3 MR. HAWKINS: That's correct.

4 MR. NEVILLE: Fair enough.

5 THE COMMISSIONER: Just a second, just a
6 second. Where do you see ---

7 MR. NEVILLE: Nine-two-nine (929), sir,
8 first paragraph ---

9 THE COMMISSIONER: I'm there. Yes.

10 MR. NEVILLE: He interviewed Seguin on the
11 9th of January '92. The memo from Detective Millar.

12 THE COMMISSIONER: I guess I'm getting thick
13 because I would read that as:

14 "As you're aware, had occasion to
15 interview Ken Seguin."

16 MR. NEVILLE: Yeah, on the 9th ---

17 THE COMMISSIONER: "As a result of a fatal
18 accident at Summertown..." ---

19 MR. NEVILLE: Oh, all right.

20 THE COMMISSIONER: "...that occurred on
21 the 9th of January."

22 MR. NEVILLE: Fair enough.

23 That's the way I'd read it. I understood it
24 to be that, sir.

25 THE COMMISSIONER: Yeah.

1 **MR. NEVILLE:** But I'm not sure. I mean we
2 don't have a copy of that interview.

3 **THE COMMISSIONER:** So ---

4 **MR. NEVILLE:** No, fair enough.

5 **THE COMMISSIONER:** Well ---

6 **MR. NEVILLE:** Fair enough. It may be
7 somewhere between then and the 16th because that's the date
8 on the IR ---

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

10 **MR. NEVILLE:** Yes, the IR is dated January
11 16th, '92.

12 **THE COMMISSIONER:** Okay. And where is it?

13 **MR. NEVILLE:** It's Exhibit 927.

14 **THE COMMISSIONER:** Okay, and so what makes
15 you say that he did that -- just a second. What makes you
16 say ---

17 **MR. NEVILLE:** Well, all I'm referring to,
18 sir, is on page 3 of the Millar report ---

19 **THE COMMISSIONER:** Yes.

20 **MR. NEVILLE:** --- Seguin stated he would
21 notify his superior of this incident and also that without
22 doubt he would be more selective on who he allows.

23 **THE COMMISSIONER:** Okay.

24 **MR. NEVILLE:** So I took from that, that the
25 contact between Mr. Millar and Mr. Seguin was between ---

1 **THE COMMISSIONER:** That's fair enough.

2 **MR. NEVILLE:** And I -- you're quite right to
3 point out I may be slightly misreading that the interview
4 was the 9th, but it would appear to be in the week of the 9th
5 to the 16th.

6 **THE COMMISSIONER:** Fair enough.

7 **MR. NEVILLE:** I'll leave it at that.

8 Well, we don't have -- unfortunately, sir, I
9 don't know whether we do but I just have ---

10 **THE COMMISSIONER:** No, sir. When I'm
11 concerned is, you know, when you're putting stuff to him --
12 -

13 **MR. NEVILLE:** Fine.

14 **THE COMMISSIONER:** --- either you put it
15 equal or under but if you go over ---

16 **MR. NEVILLE:** Not above.

17 **THE COMMISSIONER:** --- it's not fair and
18 frankly you'll dismiss the validity of your cross-
19 examination.

20 **MR. NEVILLE:** And I wouldn't want that, sir.

21 **THE COMMISSIONER:** No, you certainly
22 wouldn't.

23 **MR. NEVILLE:** So I'll carry on and leave it,
24 you're quite right, sir. Thank you for pointing that out.

25 So, let's move on. Bottom of the page, he

1 confirms Mr. Seguin's social connection to the entire
2 family and that it was not uncommon for the two boys to
3 attend his residence to visit.

4 I'm on 929 the Millar report -- Detective
5 Millar's report.

6 **MR. HAWKINS:** Yes, Detective -- and what
7 page?

8 **MR. NEVILLE:** It's the paragraph at the
9 bottom, page 1 -- that he knew them socially, the entire
10 family; that it was not uncommon for the boys to come and
11 visit.

12 **MR. HAWKINS:** Yes, this is the information
13 given, I gather, from Mr. Seguin to the detective.

14 **MR. NEVILLE:** Well, that's one possible
15 source.

16 I asked you earlier whether we don't know
17 one way or the other whether for example some of the
18 Varley's gave statements to advise him.

19 **MR. HAWKINS:** That's possible, I suppose.

20 **MR. NEVILLE:** Right. Right.

21 So then we have the events as they unfold
22 starting about seven o'clock at the top of page 2 -- the
23 two phone calls -- and then the third paragraph, opening
24 the door at approximately eight o'clock and instead of the
25 two Varley's there's the four boys, right?

1 **MR. HAWKINS:** Yes, that's what's reported,
2 yes.

3 **MR. NEVILLE:** All right.

4 And then we see about the fourth paragraph
5 from the bottom the realization of the nine o'clock curfew
6 for the client, Mr. W.

7 **MR. HAWKINS:** Yes.

8 **MR. NEVILLE:** Seguin telling them they'd
9 have to get him home; that he had provided at one Varley's
10 request the four beer, putting them on the counter -- on
11 the table; that one of the Varley's, on his own, took three
12 and left at 8:40, right?

13 **MR. HAWKINS:** That's what's reported, yes.

14 **MR. NEVILLE:** Right.

15 And we know from the incident report,
16 Exhibit 927, page 2 -- have you got that?

17 **MR. HAWKINS:** Yes.

18 **MR. NEVILLE:** Page 2.

19 **MR. HAWKINS:** M'hm.

20 **MR. NEVILLE:** The second full paragraph
21 starting at 11:00 a.m ---

22 **MR. HAWKINS:** Yes.

23 **MR. NEVILLE:** --- Mr. W. phones Mr. Seguin
24 to cancel and reschedule the appointment because he's
25 upset; confirms that he had been dropped off to comply with

1 the curfew; that the others went on from there and that the
2 -- and the police of course, you know this is any event,
3 that the homicide event took place in the Varley home at
4 about 4:00 in the morning, right?

5 MR. HAWKINS: Yes.

6 MR. NEVILLE: All right.

7 Now, when we look back at officer Millar's
8 report, he also confirms at the bottom of the page that Mr.
9 Seguin was obviously embarrassed. And I would suggest he
10 should have been, right?

11 MR. HAWKINS: That's the impression given to
12 Mr. Millar, yes.

13 MR. NEVILLE: All right.

14 Well, you told me earlier, sir, that you had
15 no reason to question the experience, ability, integrity of
16 Mr. Millar ---

17 MR. HAWKINS: And I haven't said anything
18 different ---

19 MR. NEVILLE: No, you haven't.

20 MR. HAWKINS: --- from that statement.

21 MR. NEVILLE: No, you haven't. I didn't say
22 you did. I'm just confirming that this is an experienced
23 detective who has been asked to report to Mr. Robert and
24 gives the impression he formed of Mr. Seguin and his
25 reaction.

1 **MR. HAWKINS:** I think we agree on that.

2 **MR. NEVILLE:** Thank you.

3 And including in the next page, that he even
4 went to the extent of feeling intimidated, right?

5 **MR. HAWKINS:** That's what he states.

6 **MR. NEVILLE:** Right.

7 Now, if we can just look at, for a moment,
8 Mr. Robert's memo to you of September the 8th, which is
9 Exhibit 931. That's where he sends you on -- Detective
10 Millar's report.

11 Have you got that?

12 **MR. HAWKINS:** Yes, I have ---

13 **MR. NEVILLE:** Exhibit 931, September 8th, '92
14 a memo to you from Robert.

15 **MR. HAWKINS:** Yes.

16 **MR. NEVILLE:** Subject is Mr. Seguin, right?

17 **MR. HAWKINS:** M'hm.

18 **MR. NEVILLE:** And he includes, at least as
19 said here -- and we don't know when the IR got to you, but
20 he certainly includes the Millar report, right?

21 **MR. HAWKINS:** Yes.

22 **MR. NEVILLE:** And what he says in the next
23 paragraph -- sorry, the closing paragraph is -- he says --
24 and I'll just quickly summarize. That the involvement of
25 Seguin was brief, or very brief he say; that he was

1 embarrassed and it was not his habit to have clients at his
2 home. "Constable Millar and I recommend no further action
3 be taken."

4 So that it would appear that the experienced
5 detective with the impressions and conclusions he drew, and
6 Mr. Robert felt that -- and I'm putting it in sort of
7 vernacular layman's terms -- the "lesson had been learned",
8 right?

9 "No further action be taken."

10 **MR. HAWKINS:** That's their recommendation.

11 **MR. NEVILLE:** Now that's not binding
12 obviously. Officer Millar isn't a member of the Ministry
13 but he's a man of relevance to this situation who certainly
14 had a good view from his experience as a police officer,
15 and gave his view to Mr. Robert.

16 That's what it appears to indicate?

17 **MR. HAWKINS:** That's what's reported here,
18 yes.

19 **MR. NEVILLE:** All right.

20 Now, your response to all of that is Exhibit
21 930, your memo back to Mr. Robert of October 16th, right?
22 We've touched on this earlier.

23 **MR. HAWKINS:** Yes.

24 **MR. NEVILLE:** And we -- I referred you to
25 the materials reference in the first paragraph. In the

1 second paragraph we talked about Seguin's familiarity with
2 the non-contact policy.

3 MR. HAWKINS: M'hm.

4 MR. NEVILLE: We've now discussed the
5 concept of ease of access and I think you would agree with
6 me now that having reviewed the materials this was not as
7 clear cut a situation as it initially appeared and there
8 were areas of grey, right?

9 MR. HAWKINS: I have to go on the
10 information that was available to me at the time.

11 MR. NEVILLE: But it was this information.

12 MR. HAWKINS: Yes.

13 MR. NEVILLE: Okay. Now, you then say to
14 Robert that the employee should receive a copy of the --
15 should have the policy reviewed with him -- the non-contact
16 policy, that he should get a copy of the police report,
17 right?

18 And then the second-last paragraph; right?

19 MR. HAWKINS: Yes.

20 MR. NEVILLE: And then you say to Robert --
21 Mr. Robert, pardon me:

22 "There should have been a review of the
23 Ministry policy."

24 That's the non-contact policy; right?

25 MR. HAWKINS: Yes.

1 **MR. NEVILLE:** "And if warranted,
2 discipline should be imposed."

3 **MR. HAWKINS:** Yes.

4 **MR. NEVILLE:** Okay. Then you say:
5 "This is a very serious matter and must
6 be dealt with fairly..."

7 What does "fairly" mean? Hear both sides?

8 **MR. HAWKINS:** It means equitably with regard
9 to all of the parties that were involved.

10 **MR. NEVILLE:** Hear both sides?

11 **MR. HAWKINS:** Yes.

12 **MR. NEVILLE:** "...quickly and with a view
13 to ensuring no recurrence."

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

15 **MR. NEVILLE:** Okay. Now the next thing that
16 happens -- and I'm almost done -- is we know that Mr.
17 Robert does apparently follow your advice because we have
18 Exhibit 928 which is Mr. Robert's memo. I presume this
19 would be a memo to Seguin's employment file; would that be
20 fair?

21 **MR. HAWKINS:** It doesn't indicate -- Exhibit
22 928?

23 **MR. NEVILLE:** Yes sir. November 10th, '92;
24 Robert to Seguin.

25 **MR. HAWKINS:** Yeah.

1 **MR. NEVILLE:** Would this be likely on his
2 employment file or ---

3 **MR. HAWKINS:** I would hope it to be. It
4 doesn't specifically indicate ---

5 **MR. NEVILLE:** Fair enough.

6 **MR. HAWKINS:** --- at the bottom that it is.

7 **MR. NEVILLE:** So if we just confirm briefly,
8 number one, first sentence:

9 "There was the meeting you
10 recommended or instructed to have."

11 **MR. HAWKINS:** That's correct.

12 **MR. NEVILLE:** Secondly, he gives him the
13 police report ---

14 **MR. HAWKINS:** Yes.

15 **MR. NEVILLE:** --- from Millar; right?

16 **MR. HAWKINS:** Yes, that's correct.

17 **MR. NEVILLE:** Second paragraph, he restates,
18 reaffirms the policy that you instructed be done.

19 **MR. HAWKINS:** Yes, that's correct.

20 **MR. NEVILLE:** Okay. And then puts him on
21 notice as you say "ensuring no recurrence" in your memo; he
22 warns him, basically:

23 "If a similar situation should arise,
24 disciplinary action could be imposed."

25 Right?

1 **MR. HAWKINS:** Yes.

2 **MR. NEVILLE:** Good. And this is the
3 document that is brought to your attention, it would
4 appear, in Exhibit 926; it's a memo to you of February 5th,
5 1993.

6 **MR. HAWKINS:** Yes.

7 **MR. NEVILLE:** Okay. Now it starts and
8 enclosed as a -- enclosure with this is the November 10th
9 memo we just looked at; the letter of counsel.

10 **MR. HAWKINS:** Yes.

11 **MR. NEVILLE:** All right. And it would
12 appear that you must have made it, and I'm suggesting to
13 you, you must have made some kind of follow-up inquiry
14 about the matter because it starts:

15 "As per today's conversation, please
16 find enclosed."

17 **MR. HAWKINS:** Yes.

18 **MR. NEVILLE:** Right. Do you have any
19 independent recollection of doing a follow-up to generate
20 the receipt of this memo and enclosure?

21 **MR. HAWKINS:** I don't recall specifically
22 the nature of the conversation.

23 **MR. NEVILLE:** This would indicate you must
24 have done something of that nature.

25 **MR. HAWKINS:** That's correct.

1 **MR. NEVILLE:** All right. Now, you knew the
2 events as of the 8th of September or shortly thereafter when
3 you got the Millar report and the like; right?

4 **MR. HAWKINS:** Yes.

5 **MR. NEVILLE:** And you told me earlier that
6 you went to the Cornwall office three to four times a year
7 in '92 and maybe two or three times in '93. From the fall
8 of '92, for about a year, to the fall of '93, you were in
9 the Cornwall office a number of times, certainly more than
10 once; right?

11 **MR. HAWKINS:** Yes.

12 **MR. NEVILLE:** Did you ever talk to Mr.
13 Seguin?

14 **MR. HAWKINS:** No, I didn't.

15 **MR. NEVILLE:** Did you ever talk ---

16 **MR. HAWKINS:** At least not to my
17 recollection.

18 **MR. NEVILLE:** Fair enough. Did you ever
19 talk to Mr. Robert?

20 **MR. HAWKINS:** Yes, I would have talked to
21 Mr. Robert.

22 **MR. NEVILLE:** About this matter?

23 **MR. HAWKINS:** Yes, I would think that there
24 had been discussions.

25 **MR. NEVILLE:** Okay. And previous -- one of

1 the other counsel, I think Mr. Lee, had you confirm that
2 you are one of the authors or signatories to Document
3 126511 -- and I just missed the exhibit number, Mr.
4 Commissioner. It was the performance review.

5 **THE COMMISSIONER:** One one eight one (1181).

6 **MR. NEVILLE:** Thank you. This is the
7 performance review, Mr. Hawkins, on Mr. Robert that bears
8 you signature and the date of February 26, 1993.

9 **MR. HAWKINS:** Yes, that's correct.

10 **MR. NEVILLE:** So this was signed by you with
11 the comments about Robert on the bottom of page 1 three
12 weeks after you received his memo with the letter of
13 counsel about Seguin.

14 The letter of counsel is February the 5th,
15 1993; it's Exhibit 926; Exhibit 1181 bears date February
16 26th, 1993 exactly three weeks later. Correct?

17 **MR. HAWKINS:** I'm sorry, did you ask me a
18 question?

19 **MR. NEVILLE:** Yes, I did. That the document

20 ---

21 **MR. HAWKINS:** Could you repeat it please?

22 **MR. NEVILLE:** Yes, sir. That Exhibit 1181,
23 the performance review of Robert, signed by you ---

24 **MR. HAWKINS:** Is that ---

25 **MR. NEVILLE:** Yes, sir. Bears the date

1 February 26th, 1993.

2 MR. HAWKINS: Yes.

3 MR. NEVILLE: There is a positive statement
4 about Mr. Robert from you on the bottom of page 1.

5 MR. HAWKINS: Yes.

6 MR. NEVILLE: And that is three weeks to the
7 day after his memo to you with the letter of counsel to
8 Seguin; his memo to you of February 5th, 1993, Exhibit 926;
9 correct?

10 MR. HAWKINS: Yes.

11 MR. NEVILLE: All right. And you agree with
12 me, Mr. Hawkins, that there is nothing in Exhibit 1181 that
13 would reflect your sense of and I will use your word of
14 yesterday, your sense of "outrage" over the Varley
15 incident?

16 MR. HAWKINS: It seems to me that there
17 isn't any reference to the letter of counsel at all in
18 this.

19 MR. NEVILLE: There is no sense of outrage
20 either; is there?

21 MR. HAWKINS: That would be correct.

22 MR. NEVILLE: Thank you. Those are my
23 questions.

24 THE COMMISSIONER: All right. So Mr.
25 Chisholm has indicated he had no questions; Mr. Neuberger;

1 Ms. McIntosh has -- so Mr. Crane, do you have any
2 questions?

3 **MR. CRANE:** Mr. Hawkins, my name is Mark
4 Crane, I'm counsel for the Cornwall Police Service and I
5 have no questions for you, sir.

6 **THE COMMISSIONER:** Ms. Costom?

7 **MS. COSTOM:** No questions, sir.

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

9 **MR. CARROLL:** No questions.

10 **THE COMMISSIONER:** Okay. So that leaves us

11 ---

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

13 **RUEL:**

14 **MR. RUEL:** Just a couple of clarification
15 points. Ms. McIntosh and Mr. Lee talked to you about the
16 grievance process.

17 **MR. HAWKINS:** Yes.

18 **MR. RUEL:** I just want to come back on that.
19 How did it work at the time you were a Regional
20 Administrator when the grievance was -- well, was filed by,
21 for example, a probation officer? And specifically, would
22 it go through you at the second level or it would go
23 directly to the Grievance Settlement Board?

24 **MR. HAWKINS:** It would go to the Grievance -
25 - well I'm just not recalling the details of exactly how

1 that process worked. I'll have to refresh my memory on it.
2 The employee would initiate grievance with his immediate
3 manager and a response would be given. And I'm just not
4 recalling the tracking. I don't know exactly what goes
5 through from there.

6 **MR. RUEL:** Okay; that's fine. Was it common
7 practice for area manager to consult with you or the
8 regional administrator on discipline issues?

9 **MR. HAWKINS:** Yes, it would be.

10 **MR. RUEL:** And so Mr. Robert was not the
11 only one who would have consulted with you on potential
12 discipline?

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

14 **MR. RUEL:** Okay. In your experience, the
15 grievance process as it applied at the time you were
16 Regional Administrator and the jurisprudence of the
17 settlement board that Ms. McIntosh referred to, did it have
18 a chilling effect on the willingness of a manager to impose
19 discipline?

20 **MR. HAWKINS:** Yes, it would.

21 **MR. RUEL:** In what way? Can you expand on
22 that?

23 **MR. HAWKINS:** Well, when the decision of the
24 manager was made, it quite often was challenged and very
25 difficult to successfully see that through the grievance

1 process.

2 MR. RUEL: So were managers afraid, within
3 the Ministry, to impose discipline because of the grievance
4 process?

5 MR. HAWKINS: I think that there was a
6 reluctance to move in a disciplinary way ---

7 MR. RUEL: Was that ---

8 MR. HAWKINS: --- because of the grievance
9 process.

10 MR. RUEL: Was that a problem in your view?

11 MR. HAWKINS: Yes, it is.

12 MR. RUEL: Thank you. Those are my
13 questions and re-examinations.

14 THE COMMISSIONER: Mr. Hawkins, I think
15 you've been critical of Mr. Robert in the sense that in Mr.
16 Seguin's evaluation, your evaluation, you've indicated that
17 it should -- an interview should have included the Varley
18 matter?

19 MR. HAWKINS: Yes.

20 THE COMMISSIONER: All right. So in your
21 evaluation of Mr. -- and I take this is the -- Exhibit 1181
22 is the only evaluation you would have done of Mr. Robert
23 for that period of time from 1991 to 1993?

24 MR. HAWKINS: Yes, I would assume so.

25 THE COMMISSIONER: All right. You know,

1 what's good for the goose and good for the gander -- would
2 you not think that somewhere in some evaluation you would
3 want to point it out in an evaluation, "Look it, Mr.
4 Robert, you know, you could have done this better"?

5 **MR. HAWKINS:** Yes, I think that's a fair
6 statement.

7 **THE COMMISSIONER:** Okay. And, again, it
8 seems that you and others have been very critical -- fairly
9 critical of Mr. Robert as an office manager, and can you
10 help me out why you would put down that:

11 "Mr. Robert has been an area manager
12 for nearly eight years in Cornwall and
13 has made a significant contribution in
14 providing stability and direction to
15 staff in that area."

16 Doesn't that kind of not -- doesn't quite
17 reflect the reality of what you're telling me today?

18 **MR. HAWKINS:** Well, there are major areas
19 where his performance, in fact, was quite satisfactory.

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

21 **MR. HAWKINS:** And I think that when you got
22 into these kinds of behavioural problems with employees; I
23 mean, here are a couple of examples where more information
24 should have been provided by Mr. Robert and more indication
25 of -- of involvement in taking the issue proactively in his

1 own hands.

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

3 **MR. HAWKINS:** I think that there were many
4 areas where his performance was quite satisfactory.

5 **THE COMMISSIONER:** Right.

6 "Significant contribution in providing
7 stability and direction to staff in
8 that area."

9 **MR. HAWKINS:** Well, there were certainly no
10 complaints initiated by the staff to me with respect to his
11 supervision and leadership during the period of time that I
12 was the Regional Administrator in the Eastern Region.

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

14 Mr. Hawkins, I want to thank you for your
15 contribution to this matter and I will certainly take into
16 consideration your recommendations and your evidence here
17 today. Thank you very much.

18 **MR. HAWKINS:** Thank you.

19 **THE COMMISSIONER:** Thank you.

20 All right. So Mr. Ruel, can we call on the
21 next witness, Mr. Zbar, to come back to the stand?

22 **MORRIS ZBAR: Resumed/ Sous le même serment:**

23 **MR. ZBAR:** Good morning, sir.

24 **THE COMMISSIONER:** Good morning. You
25 understand you're still under oath, sir?

1 **MR. ZBAR:** Yes.

2 **THE COMMISSIONER:** Thank you.

3 So where were we now? Mr. Ruel, you had
4 completed your examination?

5 **MR. RUEL:** Yes, we were done in-chief so
6 it's ---

7 **THE COMMISSIONER:** So Mr. Manson?

8 **MR. RUEL:** --- up to whoever wants ---

9 **MR. ZBAR:** I'm wondering if I can make a
10 comment about something. I just -- very quick related to a
11 question I answered yesterday.

12 **THE COMMISSIONER:** It seems to be the -- all
13 right, what question were you ---

14 **MR. ZBAR:** No, this was the question that
15 was asked of me about a file review and your intervention
16 yesterday in terms of the file, you know, the question of
17 would a file review have been useful and my response ---

18 **THE COMMISSIONER:** I'm not -- I'm not
19 situated yet.

20 **MR. ZBAR:** The question that counsel asked
21 about, you know, when I became the Assistant Deputy
22 Minister and the -- you know, the investigation started,
23 counsel asked me about a file review and would it have been
24 useful to do a file review because it -- it might elicit,
25 you know, additional victims perhaps.

1 **THE COMMISSIONER:** Oh, a file review ---

2 **MR. ZBAR:** Yes.

3 **THE COMMISSIONER:** --- of -- okay, I'm
4 sorry. Now I've got it.

5 **MR. ZBAR:** Right.

6 **THE COMMISSIONER:** A look through the
7 history of Mr. Seguin's probationers ---

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

9 **THE COMMISSIONER:** --- all the way down ---

10 **MR. ZBAR:** That's correct.

11 **THE COMMISSIONER:** All right.

12 **MR. ZBAR:** And my -- and the response I gave
13 was a technical response and I think a correct response,
14 but if I had received that response when I was the Deputy
15 Minister by one of my officials, I would have asked that
16 official to listen to the question a little more fully and
17 provide a more fulsome response.

18 I want to do that upon reflection and,
19 basically, what I would say is that my answer was correct
20 in the sense that given the retention schedules, it would
21 be difficult to do a review, but the question didn't ask
22 that. It asked me if I thought a review would have been
23 useful ---

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

25 **MR. ZBAR:** --- or could have been

1 potentially useful and the answer is yes, it could have
2 been potentially useful.

3 It might have pointed out additional
4 victims. I'm not sure if it would've, but it might have.
5 I did not think of doing a file review at the time and
6 obviously my officials didn't bring it to my attention and
7 they didn't think of it either, so I just wanted to -- to
8 clarify that because, as I say, I -- it was too technical
9 an answer and didn't address the -- the nub of the
10 question.

11 **THE COMMISSIONER:** Thank you.

12 All right. Mr. Manson?

13 **MR. MANSON:** I have no questions, Mr.
14 Commissioner.

15 **THE COMMISSIONER:** Thank you.

16 Mr. Paul?

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

18 **PAUL:**

19 **MR. PAUL:** Mr. Zbar, my name is Ian Paul.
20 I'm one of the counsel for a citizens group by the name of
21 the Coalition for Action.

22 **MR. ZBAR:** Good morning.

23 **MR. PAUL:** Good morning.

24 I'd like to ask you a few questions. The
25 main are I'd like to ask you questions about would be that

1 area that you discussed yesterday about the Downing report
2 and the results of the report and that area.

3 Now, that timeframe, I would understand just
4 --- first of all, a background of it was obviously the
5 website. The website is what initiated the response -- the
6 -- to seek the investigation of Mr. Downing; correct?

7 **MR. ZBAR:** Correct.

8 **MR. PAUL:** So in that sense, you'd agree
9 that the Downing report or the Downing investigation was
10 really initiated as a result of some form of public
11 interest or debate outside the Ministry. Would you agree
12 with that?

13 **MR. ZBAR:** I -- I could agree with that,
14 yes.

15 **MR. PAUL:** As opposed to purely an internal
16 request in the absence of public interest. Obviously, it
17 resulted from some form of public interest; correct?

18 **MR. ZBAR:** I would think that's a fair
19 comment.

20 **MR. PAUL:** Now, in addition to this form of
21 public debate on the website, I think you also indicated
22 there was various forms of interest in the public media.
23 Is that correct?

24 **MR. ZBAR:** I didn't indicate that. I was
25 asked if I was aware of whether there had been in the past,

1 over a period of 10 years, articles about the Cornwall
2 situation.

3 MR. PAUL: What about around that very time
4 in the year 2000, was there some public interest in the
5 legislature around that time. Do you recall?

6 MR. ZBAR: No.

7 MR. PAUL: Do you recall if Mr. Guzzo ---

8 MR. ZBAR: I -- I recall Mr. Guzzo, I don't
9 recall the timeframe of that, but I know Mr. Guzzo was very
10 forceful in asking for an inquiry, but I don't recall the
11 timeframes of that.

12 MR. PAUL: Now, I think you had come to a
13 conclusion, as a result of the Downing report and the
14 subsequent statements after that were directed -- that you
15 concluded there wasn't a present risk to probation clients;
16 correct?

17 MR. ZBAR: That's correct.

18 MR. PAUL: I'm just wondering, looking back
19 at the situation, if you would agree that perhaps the
20 problem was defined too narrowly since you were looking at
21 the present risk, primarily, as opposed to the public
22 perception of risk?

23 MR. ZBAR: Well, as I say, I think I had an
24 -- I had an obligation as a Deputy Minister to, one, ensure
25 that there was no current risk and I think we did that.

1 And, two, again, the report was to look at the individuals
2 that were still in that office that may have had some
3 involvement in or some knowledge of events, and we did
4 that.

5 **MR. PAUL:** I guess what I'm getting at is in
6 responding to -- locating information on a website is a
7 goal to inform Ministry officials or is a goal, as well, to
8 attempt to disseminate information to the public and
9 alleviate any public concerns that are out there because of
10 the website?

11 **MR. ZBAR:** No, the purpose of the
12 investigation wasn't to -- well, I mean, the -- the purpose
13 of the investigation was, as I have described, was to look
14 at, you know, is there an imminent, clear and present
15 public safety risk and to look at management practices and
16 the individuals involved.

17 We have other ways of communicating through
18 the legislature. If there are public concerns, we -- the
19 Ministry gets letters from individuals; we respond to those
20 letters. The Minister gets -- asks questions in the House;
21 he responds through that. We get asked questions at
22 legislative committees, so there are a variety of ways of
23 responding publicly. We don't launch reports, you know, to
24 use as public response.

25 **MR. PAUL:** M'hm, but as far as using the

1 results in any way, the Downing report, to specifically
2 respond to the public in relation as a response to the
3 website, that wasn't done. Would you agree?

4 **MR. ZBAR:** I'm not -- I'm not sure I
5 understand the question.

6 I mean, what was done, you know, was that
7 there were some issues in the -- at the Cornwall office;
8 management, current management issues, we dealt with them.

9 After the website incident, we moved one
10 individual into a job that didn't involve contact with
11 clients.

12 So I think we responded. I'm not sure if
13 I'm ---

14 **MR. PAUL:** Yeah.

15 **MR. ZBAR:** I'm not understanding the nature
16 of your question.

17 **MR. PAUL:** Well, was it not possible to
18 respond in a more public way, such as a public announcement
19 about -- in some ways, about what was being done through
20 the Downing report?

21 **MR. ZBAR:** No; I don't think that would have
22 been appropriate.

23 **MR. PAUL:** Okay.

24 I understand that -- I mean certainly there
25 are aspects of the Downing report that you would perceive

1 as being barred by privacy legislation you couldn't reveal.

2 Would you agree with that?

3 **MR. ZBAR:** I would agree that we wouldn't
4 reveal any part of the report; the report was an internal
5 report to assist Ministry officials in looking at what the
6 situation was, seeing if there were things that needed to
7 be done.

8 Again, it wasn't -- we don't address public
9 -- we don't address the public in that manner.

10 **MR. PAUL:** Okay; but as far as any Ministry
11 decisions, for example to move the probation office and
12 changes in management generally, could there have been an
13 announcement ---

14 **MR. ZBAR:** Well, when we moved the office I
15 believe the -- my recollection is that at some point here
16 was an open house and public were invited.

17 I mean it was, obviously we made
18 announcements in Cornwall that the office was moved, just
19 to notify people of a new office location. We certainly
20 don't announce to the public that we're moving staff.

21 **MR. PAUL:** The fact that there was an
22 investigation and there was a conclusion that there wasn't
23 a present risk, could not at least that have been announced
24 to the public?

25 **MR. ZBAR:** No.

1 **MR. PAUL:** You understand -- I understand
2 you perceive that there would be a bar to announcing any
3 kind of information in relation to Mr. van Diepen or Mr.
4 Robert or conclusions about them.

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

6 **MR. PAUL:** But could you have not announced
7 to the public that there was an investigation and the
8 Ministry had concluded that there wasn't a present risk in
9 that office?

10 **MR. ZBAR:** No, because if we had had a
11 public -- you know if we had had a public interest in terms
12 of letters to the Ministry, asking specific questions we
13 would have responded. The Minister gets a letter, we
14 respond to the letter.

15 **MR. PAUL:** All right, but that's -- the
16 Ministerial inquiries are only responses to individual
17 people, correct?

18 **MR. ZBAR:** Or groups, you know, or
19 coalitions or alliances.

20 **MR. PAUL:** But they certainly don't
21 necessarily have the kind of impact as a public press
22 release or something like that. You're talking about a
23 private letter, or a letter sent to one, particular person.
24 It doesn't' have the impact, I'd suggest.

25 **MR. ZBAR:** Well, again I'm not going to -- I

1 mean, I'm not going to argue with you; the fact is that if
2 -- it doesn't have to be an individual. Organizations
3 write routinely to Ministers; they raise issues, those
4 issues are answered, those letters are made public by those
5 organizations.

6 And you've mentioned -- you mentioned the
7 Minister and contact with the Minister. In terms of this
8 process of ordering the investigation and obtaining the
9 results and then directing it to the legal department ---

10 **MR. ZBAR:** M'hm.

11 **MR. PAUL:** Is the Minister involved in
12 decision-making, or is he simply informed about the
13 process?

14 **MR. ZBAR:** no, no the Minister wouldn't have
15 been involved; that would be internal administration.

16 **MR. PAUL:** Okay. But I assume that there is
17 a process -- given the public interest in this issue, that
18 there is a process where he is informed of the results?

19 **MR. ZBAR:** Yes, the Minister meets with the
20 Deputy Minister on a daily basis, and the current issues of
21 the day are discussed.

22 **MR. PAUL:** I think at the beginning of your
23 testimony you had wanted to add to your response and you
24 suggested that a review of the files may have been
25 beneficial in the sense of locating additional victims or

1 complainants?

2 MR. ZBAR: Yeah, that was the question that
3 was posed to me yesterday and I have no problem agreeing
4 with that. We didn't do it.

5 MR. PAUL: And you think it could have been
6 physically possible to review all of ---

7 MR. ZBAR: Well, I don't know if we could
8 have reviewed all the files.

9 As I pointed out, there were some
10 challenges, given the technical requirements of, especially
11 files involving young offenders and also the fact is that
12 we have a paper file system to a large degree.

13 With the new OTIS system, of course, it
14 would have been much more easy to do that.

15 So we -- what I'm suggesting, is that a file
16 review might not have been 100 percent complete but it
17 could -- the question that was posed was, "Would it have
18 been useful?" And I, on reflection, think it might have
19 been useful. It could have -- even if it discovered one
20 additional individual, that's useful.

21 MR. PAUL: So and -- and even if every
22 client of Mr. Seguin wasn't contacted, perhaps a review
23 could have been done to locate the files that looked
24 suspicious, such as indicators where a client was met too
25 many times, out of the ordinary. Or, for example, a client

1 for some reason was not doing some form of program or
2 community service where they should have?

3 MR. ZBAR: Yeah; I acknowledge the fact that
4 it would not have been a bad idea. I didn't think of it;
5 my officials didn't bring it to me. We didn't do it.

6 MR. PAUL: So when you indicated in your
7 evidence that there wasn't a present risk, do you think
8 you're defining the concept of present risk too narrowly,
9 in a sense -- I take it that you're defining present risk
10 to mean whether there was any risk that any probation
11 officers in the office could abuse a person?

12 MR. ZBAR: That's right and, you know, it
13 was clear that you know, over the last -- from -- sorry,
14 from -- I apologize. From 2000 going back to 1993, there
15 had been no incidents, and the report certainly didn't
16 indicate anything, so yes.

17 MR. PAUL: But in -- given your response,
18 and your indication that perhaps there should have been a
19 file review, do you think that the concept of present risk
20 should really have included the idea that there might be
21 probation -- other victims who might be at risk in a sense
22 of needing psychological or counselling services, who
23 weren't getting them because they hadn't been identified?

24 MR. ZBAR: If you define it that way, I
25 could potentially agree.

1 But again, we tried very hard to provide
2 counselling to those that came forward but certainly, if we
3 had done a file review and there were -- you know, and
4 additional individuals that came forward, obviously we
5 would have extended them that service.

6 **MR. PAUL:** In the same area, I just want to
7 ask you a few questions about the interactions of the
8 police investigation in the Downing report and I -- you had
9 a concern that there might be an overlap or a conflict with
10 the police investigation if the Downing investigations had
11 continued on.

12 **MR. ZBAR:** My concern was that if -- we did
13 an administrative review, we don't do criminal
14 investigations.

15 Mr. Downing wanted to go beyond that; we
16 allowed him to go beyond that to a certain extent in terms
17 of internal administrative issues, interviewing Loretta
18 Eley and others.

19 When he wanted to go beyond that and talk to
20 potential -- additional potential victims, or people
21 outside of the Ministry that might be related, we felt that
22 that was the purview of the OPP. We were confident in
23 their ability and you know, we -- so we felt that others
24 were looking at it and we didn't want -- in any way, want
25 to impinge on an OPP investigation.

1 **MR. PAUL:** Okay, now you would agree that
2 once there is a conclusion that there isn't a present risk,
3 you have determined -- you don't believe that there are
4 other probation officers that are abusing clients, correct?

5 **MR. ZBAR:** Correct, at the time yes.

6 **MR. PAUL:** And the two individuals that were
7 believed to have possibly abused clients, would have been
8 deceased at that ---

9 **MR. ZBAR:** That's correct.

10 **MR. PAUL:** So in terms of the complainants
11 or victims of those individuals, would you agree there is
12 probably little likelihood that they would be required to
13 testify in court because there's not going to be criminal
14 charges likely in relation to any probation officers?

15 **MR. ZBAR:** I don't know; I'm not a lawyer.

16 But I would suggest to you that, if the
17 allegation -- and one of the allegations was that there was
18 a ring or a group of individuals of which these two
19 probation officers may have been a party to, they may have
20 been called as witnesses, absolutely.

21 **MR. PAUL:** Would you agree ---

22 **MR. ZBAR:** But I don't know. Again, I'm not
23 ---

24 **MR. PAUL:** Would you agree that the
25 investigation of Mr. Downing focused primarily on probation

1 staff, correcting probation managers and officers?

2 MR. ZBAR: Yes.

3 MR. PAUL: Now, if it had focused a bit more
4 on complainants or victims, would you agree that there
5 might have been a likelihood of uncovering the means that
6 Mr. Seguin or Mr. Barque were able to go undetected?

7 MR. ZBAR: Again, I would remind you that
8 when we launched these things, this was an administrative
9 review and the focus was on the -- on the staff, on the
10 office, on what was done or what wasn't done. And that,
11 once you get into victims and additional allegations,
12 that's a police matter.

13 MR. PAUL: But would you agree that the
14 perspective of the victim, whether you obtained it through
15 Mr. Downing, or through OPP statements, the perspective of
16 the victim might assist in determining how probation
17 officers were able to go undetected, because you would get
18 the means of how they did this?

19 MR. ZBAR: Again, I'm not going to argue
20 with that contention but I -- again, I would point out
21 that, you know, I would assume that if those issues came up
22 in the OPP investigations, they would come out.

23 And again, that was not the purview of Mr.
24 Downing; he's not a police officer.

25 MR. PAUL: All right, so -- but, would you

1 would agree in terms of getting at issues of improving
2 training, recruitment, office procedures, that it would be
3 beneficial to know or find out the means of how these
4 activities and sexual abuse went undetected?

5 MR. ZBAR: Yes.

6 MR. PAUL: And to do that, really, the best
7 source of information to find out how it went undetected
8 would be from the complainants' statements about how it
9 happened.

10 MR. ZBAR: It would be one method, I think
11 there are other ways of doing it.

12 I think there were management issues as has
13 been pointed out.

14 MR. PAUL: And even apart from interviewing
15 the complainants, did you have any knowledge that there was
16 at least one complainant where there had been a conviction
17 in court involving Mr. Barque?

18 MR. ZBAR: Yes, I was aware of that. I
19 don't recall when I became aware of that, but I was aware
20 of that.

21 MR. PAUL: Do you think it would have been
22 beneficial if Mr. Downing had even a transcript of what
23 happened from the Barque proceedings, sentence proceedings
24 to be able to see how that occurred and how it went
25 undetected?

1 **MR. ZBAR:** I'm not aware of whether he
2 reviewed that or not.

3 **MR. PAUL:** Okay. But you didn't have it in
4 the report?

5 **MR. ZBAR:** No.

6 **MR. PAUL:** So do you agree that perhaps
7 given the absence of the information or statements from
8 complainants, that while you were able to determine present
9 risk, that your ability to deal with future risk was
10 limited because you didn't have, basically, the means or
11 the manner of how the abuse occurred?

12 **MR. ZBAR:** No, I don't think I would
13 necessarily agree with that statement because, in fact, we
14 had made significant changes to limit possible future
15 risks. In terms of the Cornwall Office, of course, I
16 mentioned we moved the manager out. We moved the other
17 individual into duties that didn't deal with client
18 relationships. We implemented a new delivery model. We
19 implemented a new computer system that would mitigate some
20 of the potential risk.

21 **MR. PAUL:** All right.

22 But you made those decisions, arguably, in
23 the total absence of knowing exactly how the abuse occurred
24 and what means it happened and how it went undetected?

25 **MR. ZBAR:** I don't -- I'm not sure. You

1 know, I'm not sure that that contention is a valid one. I
2 mean, we knew -- obviously, we knew there was some abuse.
3 That had come out. There was a conviction. And I think we
4 handled the situation.

5 And again, I will go back to what I said
6 earlier today. I mean, a file review would have been
7 useful. We didn't do it.

8 **MR. PAUL:** All right.

9 Now, in terms of the investigations you had,
10 apart from -- I believe you had some information in the
11 Downing Report in relation to the allegations -- the oldest
12 allegations against Mr. Barque? Do you recall that?

13 **MR. ZBAR:** I believe so. I'd have to see
14 the section in the report you're referring to, but ---

15 **MR. PAUL:** Okay. But you'd agree that in
16 terms of allegations of Mr. Silmsler, you didn't have -- you
17 had little, if any, knowledge of what exactly Mr. Silmsler
18 was saying occurred against Mr. Seguin? You had little
19 knowledge of the precise allegations?

20 **MR. ZBAR:** No, we had -- what we had --
21 well, the knowledge -- if you want the knowledge I had of
22 that situation based on the investigation was that Mr.
23 Silmsler approached Mr. Roy following, I believe, the death
24 of Mr. Seguin and complained about the fact that he had
25 been abused and wanted money from the Ministry.

1 Mr. Roy then contacted the IIU and the
2 Deputy's office of the day. The IIU spoke to the police.
3 The police confirmed that Mr. Silmser didn't want to press
4 charges because he was proceeding civilly. The IIU then
5 decided, on that basis, that there was no need for a
6 further investigation.

7 Might they have done something else? The
8 only thing I would suggest -- and again, it's easy to look
9 at it in hindsight -- they might have spoken to Mr. Silmser
10 directly because the way it was left was that he would be
11 asked to put his concerns in writing. I don't know if that
12 happened or not. I believe he didn't put his concerns in
13 writing. But if you're asking me retrospectively to say
14 could we have done anything additional, I would suggest
15 maybe, that the IIU could have closed the loop and
16 contacted him.

17 **MR. PAUL:** To get the exact details in
18 relation to his complaint?

19 **MR. ZBAR:** And whether in fact he wanted to
20 go forward.

21 **MR. PAUL:** Now, in addition, with respect to
22 the complainants, there was some direction to Mr. Downing
23 to try to set up a liaison with the OPP?

24 **MR. ZBAR:** That came before his -- before
25 the administrative review was launched. That was in early

1 August, and he was asked to liaise with the OPP.

2 MR. PAUL: Was it your understanding that
3 there were difficulties with that liaison process?

4 MR. ZBAR: Well, I'm not sure, but what I
5 would suggest and what I would do differently is, if I were
6 -- in terms of a recommendation for this body, is if a
7 similar situation or another situation were to arise where
8 we have to have ongoing liaison with the OPP, I would have
9 appointed a more senior official to do that.

10 MR. PAUL: Would another alternative be, if
11 there was difficulty, to try to make some form of complaint
12 to the Ministry responsible for the OPP or some kind of
13 intervention to try to get more cooperation?

14 MR. ZBAR: I'm not suggesting there wasn't
15 cooperation. I'm suggesting that in terms of fulsome
16 liaison, it would have been more appropriate on my part to
17 have appointed a senior official to liaise with the OPP. I
18 think the OPP has always been -- we have had a lot of --
19 over the years, obviously we have had ongoing contact with
20 the OPP. We have always found them to be helpful and
21 cooperative.

22 MR. PAUL: Now, you mentioned
23 recommendations. I wanted to ask you about another
24 possible recommendation. You did mention, I think, that
25 the training probation officers and managers has improved?

1 **MR. ZBAR:** Yes.

2 **MR. PAUL:** I just wanted to ask if you would
3 think that an appropriate recommendation might be to
4 somehow make the Cornwall situation, the Cornwall Office
5 situation as some form of case study for either or both
6 probation officers in training or managers?

7 **MR. ZBAR:** Look, I'm not -- look, I think,
8 you know, we constantly look at updating and reviewing our
9 training. A case study method is a good method of study.
10 I think a case could be developed using some of the
11 situations. I wouldn't necessarily label it the Cornwall
12 Office, I don't think, but certainly the idea of case
13 studies as part of a management program is a valid
14 suggestion.

15 **MR. PAUL:** Another question I had was
16 surrounding the -- some of the improvements to the
17 Probation and Parole Service Delivery Model.

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

19 **MR. PAUL:** And you're indicating that the
20 exposure to other persons out in the community, experts and
21 other individuals ---

22 **MR. ZBAR:** Right.

23 **MR. PAUL:** --- reduces the possibility of
24 risk?

25 **MR. ZBAR:** I believe it does.

1 **MR. PAUL:** Now, are you aware that there are
2 at least some circumstances in the situation in Cornwall
3 where there was some allegation of contact or interaction
4 between Probation and Canada Manpower Employment Services?
5 Were you aware that that was an issue here?

6 **MR. ZBAR:** I'm not -- no, I'm not
7 understanding what you're trying to drive at.

8 **MR. PAUL:** I'm just wondering; in terms of
9 the potential that these external individuals might pose a
10 risk, I'm just wondering; is there some form of service
11 where they're to be checked for criminal records and
12 references and that type of thing?

13 **MR. ZBAR:** When we deal with agencies --
14 when we deal with agencies, we expect the agencies to do
15 CPIC checks on their employees. Obviously, if it's a one-
16 off, if you're referring someone to Canada Manpower Centre
17 for a job, you don't do that, but you hope that the agency
18 involved, you know, has its own controls. But if you're
19 working -- if you have contracts with agencies, a
20 requirement is that CPIC checks are generally done.

21 **MR. PAUL:** The only other area I wanted to
22 ask you about was the interaction of an area manager to a
23 local manager. And there's been some issues surrounding
24 ability of an area manager to intervene on a local manager
25 and overturn a decision.

1 **MR. ZBAR:** Sorry, no, the area manager is
2 the local manager, if you're referring to -- well, the area
3 manager is the local manager.

4 In the old system, you had regional managers
5 who the area managers reported to. The regional managers
6 reported to the regional directors.

7 When I came in, I changed that system. I
8 felt it was because the regional directors tended to be
9 institutional folk and, you know, I felt we needed
10 dedicated regional directors on the community side. We did
11 that. So the area manager then reported to the regional
12 director. That was not the case while this was going on.
13 This happened in 1999.

14 **THE COMMISSIONER:** Okay. But whoever the
15 area manager reports to now ---

16 **MR. ZBAR:** Yes.

17 **THE COMMISSIONER:** --- and the issue is -- I
18 think you were here when you heard Mr. Hawkins ---

19 **MR. ZBAR:** Yeah.

20 **THE COMMISSIONER:** --- that he didn't see
21 his role as having authority to overrule the area manager.
22 Is that correct?

23 **MR. ZBAR:** Well, I would suggest that a
24 regional director has absolute authority; absolute
25 authority.

1 **MR. PAUL:** Would that include also, in the
2 sense of personnel evaluations, to intervene and change a
3 personnel evaluation?

4 **MR. ZBAR:** Well, I don't know about changing
5 evaluation, but if the regional director, you know, has
6 been involved in a situation and then an evaluation comes
7 back to him that says, "Everything is hunky dory" and he or
8 she is aware that they've been involved, obviously, if it
9 were I -- if it were me, I would send that back and say,
10 "What about this?" and "What about that? How come that's
11 not in the evaluation?"

12 **MR. PAUL:** Those are my questions. Thank
13 you.

14 **THE COMMISSIONER:** Thank you, Mr. Paul.
15 Mr. Lee.

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

17 **MR. LEE:** Mr. Zbar, my name is Dallas Lee.
18 I'm on for the Victims Group.

19 **MR. ZBAR:** Good morning.

20 **MR. LEE:** Good morning.

21 You spoke a little bit yesterday about the
22 role of a Deputy Minister and the role of an Assistant
23 Deputy Minister.

24 Do you recall that?

25 **MR. ZBAR:** Yes.

1 **MR. LEE:** As I understood your evidence, it
2 is not the role of a Deputy Minister to deal with
3 operational problems on a day-to-day basis?

4 **MR. ZBAR:** That's correct.

5 **MR. LEE:** Is that accurate?

6 You told us one of your -- the job's of a
7 Deputy Minister would be to prepare the Minister for the
8 House.

9 **MR. ZBAR:** That's correct.

10 **MR. LEE:** And as part of that, as I
11 understood it, a Deputy Minister would need to be informed
12 but in a general way?

13 **MR. ZBAR:** Correct.

14 **MR. LEE:** You can't get into the minutia; is
15 that right?

16 **MR. ZBAR:** Correct.

17 **MR. LEE:** Because it becomes unworkable?

18 **MR. ZBAR:** Well, given the fact that you
19 have 8,000 employees, 47 institutions, 145 probation
20 offices, yeah, it becomes impossible; hundreds of incident
21 reports every day. Every day, yeah.

22 **MR. LEE:** And so as I understood, the
23 operational matters are left to managers and directors and
24 if very serious the Assistant Deputy Minister?

25 **MR. ZBAR:** That's correct.

1 **MR. LEE:** Is that right?

2 And the Assistant Deputy Minister would
3 have, as part of the job description, dealing with
4 operational managers -- or operational matters rather?

5 **MR. ZBAR:** Right.

6 **MR. LEE:** Much more so than the Deputy
7 Minister?

8 **MR. ZBAR:** Absolutely.

9 **MR. LEE:** Is it correct then to say that
10 Deborah Newman, as the Assistant Deputy Manager under you,
11 was primarily responsible for Paul Downing and his
12 administrative review, in terms of the direction given to
13 him and the ongoing supervision?

14 **MR. ZBAR:** Well, the ongoing -- it's a
15 little -- Paul Downing reported to Mr. Commeford because
16 the investigative unit reported through the institutional
17 side, Mr. Commeford. But he and Deborah Newman liaised
18 very closely and the mandate was given to Mr. Downing, you
19 know, after discussions with Ms. Newman, myself, legal
20 branch and others.

21 **MR. LEE:** Ms. Newman was more actively
22 involved in that process than you were?

23 **MR. ZBAR:** Yes.

24 **MR. LEE:** As I understand it then, as Deputy
25 Minister you would have been ultimately accountable for

1 what occurred under you, but the practical reality might be
2 that Ms. Newman was really the one pulling the strings. Is
3 that right?

4 **MR. ZBAR:** Well, I don't know if I'd use the
5 term "pulling the strings," but the practical reality is
6 that when you're running a Ministry of that size with a
7 budget of \$700 million you need to be able to depend on
8 your operational ADMs, and as I said yesterday, fortunately
9 I had two terrific ones. They both went on to become
10 Deputy Ministers.

11 **MR. LEE:** You have to delegate; you have no
12 choice?

13 **MR. ZBAR:** If you want to survive and if you
14 want to do a good job, yes.

15 **MR. LEE:** I want to pick up on something
16 that Mr. Paul asked you a moment ago about the role of Paul
17 Downing as a liaison originally, and as you told us that
18 was before he was assigned to review. Is that right?

19 **MR. ZBAR:** Approximate -- that was August I
20 believe, the 8th or 10th -- I forget the exact date -- and
21 the review was launched -- website's sort of, in mid-
22 September, so yes.

23 **MR. LEE:** And you told us a moment ago that
24 in hindsight that you probably should have appointed
25 somebody more senior to that?

1 **MR. ZBAR:** Well, what I was saying was that
2 if I were to make a recommendation, if there are major --
3 if there is a major issue involving ongoing liaison with
4 the OPP it should be at a more senior level.

5 **MR. LEE:** Can we take that recommendation as
6 an indication of the fact that you have some issue with Mr.
7 Downing's performance ---

8 **MR. ZBAR:** No.

9 **MR. LEE:** --- as a liaison?

10 **MR. ZBAR:** No, no. I don't think that's the
11 point. The point is I think if you have a senior person
12 that's in daily contact with the ADM or the Deputy the
13 information flow is easier and more readily available. And
14 also I think, you know, given the importance of the OPP, I
15 think it's useful to have a senior representative.

16 **MR. LEE:** Were you aware at the time that
17 Mr. Downing was asked to liaise with the OPP that he was
18 being asked to do that? You were in the loop on that?

19 **MR. ZBAR:** Yeah, I was informed at a
20 briefing, as I say, in early August. I think I was still
21 the ADM, as a matter of fact, and I had been informed I was
22 going to be appointed Deputy. But it was about -- I'm not
23 quite sure. It was about that -- within days of that.

24 **MR. LEE:** Can you help us out with what you
25 understood at that time, what it was that Mr. Downing was

1 being asked to do?

2 MR. ZBAR: What we wanted to find out from
3 the OPP was, at the time, were there any of our staff
4 current -- any of our staff facing additional charges, or
5 charges. That was the primary issue. And then obviously
6 other information on -- additional victims came forward
7 with again allegations about Ministry staff.

8 MR. LEE: Were you expecting at that time
9 that Mr. Downing would establish an ongoing relationship
10 with the OPP?

11 MR. ZBAR: My assumption was that there
12 would be ongoing liaison.

13 MR. LEE: He would have been expected to
14 maintain some contact?

15 MR. ZBAR: That was my assumption.

16 MR. LEE: Are you aware, at this point, of
17 the number or the nature of contacts that Mr. Downing had
18 with Project Truth?

19 MR. ZBAR: With?

20 MR. LEE: Project Truth. The OPP ---

21 MR. ZBAR: No. No, I know Project Truth.
22 No.

23 MR. LEE: And to be clear, was Mr. Downing
24 primarily assigned to liaise with Project Truth, it was
25 that specific ---

1 **MR. ZBAR:** Well, it was that specific issue,
2 yes. Yeah, it was an overall liaison with the OPP because
3 there were numerous matters we dealt with with the OPP on a
4 regular basis.

5 **MR. LEE:** You've told us a number of times
6 that you were concerned about anything the Ministry was
7 doing not impacting on the OPP investigation.

8 **MR. ZBAR:** Correct.

9 **MR. LEE:** And that was a primary concern of
10 yours. Is that right?

11 **MR. ZBAR:** It was an important concern, yes.
12 We didn't want to mess up a criminal investigation.

13 **MR. LEE:** And you told us that -- well, you
14 told us that you had faith in the police to do their job.

15 **MR. ZBAR:** Absolutely.

16 **MR. LEE:** You didn't want to ---

17 **MR. ZBAR:** I had worked -- you know, I had
18 been in Corrections since 1975 and worked with the police
19 since that time and I have great faith in the police.

20 **MR. LEE:** Mr. Paul asked you a moment ago
21 about -- he essentially put to you the proposition that the
22 police aren't in the habit of investigating dead people,
23 and you said that well, this might be a different situation
24 because there was an allegation of a ring.

25 **MR. ZBAR:** That's correct.

1 **MR. LEE:** Did that thought enter your mind
2 at the time or is that something you've come to realize in
3 hindsight?

4 **MR. ZBAR:** No, it was -- look, I had been
5 out of the -- just in terms of the ring and the conspiracy.
6 I had been out of government from 1988 to '98 and during
7 the time -- sorry, no, that's not correct. I was out of
8 Corrections from '88 to '98 and out of government from '94
9 to 98. And during that time, as an interested citizen, I
10 had read some articles about the Cornwall situation and
11 allegations of a ring, a conspiracy. So, yeah, I was aware
12 of that.

13 **MR. LEE:** But not only were you aware of the
14 ring, the thought entered your mind that while the police
15 wouldn't typically investigate a dead person ---

16 **MR. ZBAR:** Yeah, I was ---

17 **MR. LEE:** --- they may in this case?

18 **MR. ZBAR:** Absolutely.

19 **MR. LEE:** And so as I understood your
20 evidence, you were content to allow Mr. Downing to
21 interview persons within the Ministry but without the
22 Ministry. Is that right?

23 **MR. ZBAR:** What I wanted to do was find out,
24 as I said, a couple of things. One, was there an imminent
25 public safety threat current to the time that we were

1 talking about. Two, I wanted a review of the folks
2 involved that were still employed by the Ministry and, you
3 know, what they knew or didn't know or what they did or
4 didn't do, and I received that. That's what I wanted.

5 **MR. LEE:** The rule for Mr. Downing was that
6 he could talk to Ministry employees but he could not talk
7 to persons outside the Ministry?

8 **MR. ZBAR:** No, that wasn't his rule. We
9 didn't tell him how to investigate those initial two
10 factors. It's when he came back and asked to interview
11 more we allowed him to go a little further in terms of
12 dealing with the Silmsler situation and interview folks
13 involved with that, and then he wanted to do other
14 interviews involving external police members, et cetera.
15 It was at that point that we felt that that was getting
16 dangerously close to what I would consider a police
17 investigation.

18 **MR. LEE:** And it was he interviewing the
19 persons outside of the Ministry that you were particularly
20 worried about?

21 **MR. ZBAR:** It was -- well, I was concerned
22 about, you know, stepping on the police toes and messing up
23 an investigation that had already been ongoing for about
24 three years at that point.

25 **MR. LEE:** Mr. Ruel asked you during your

1 Examination In-Chief if you got advice on what we're
2 discussing here, Mr. Downing's ability to interview people
3 outside and stepping on police toes, and you said, at that
4 time, yes. Do you recall that?

5 MR. ZBAR: Okay.

6 MR. LEE: From whom did you seek advice on
7 that matter?

8 MR. ZBAR: In terms of him going forward
9 with the ---

10 MR. LEE: In terms of him going forward and
11 specifically not stepping on police toes.

12 MR. ZBAR: I sought advice from our legal
13 department and from other folks. When I say "other folks"
14 other legal minds in the government.

15 MR. LEE: You sought legal opinions?

16 MR. ZBAR: M'hm.

17 MR. LEE: Were there any non-legal opinions
18 that were sought on that?

19 MR. ZBAR: I also spoke to some of my senior
20 officials.

21 MR. LEE: Within the Ministry?

22 MR. ZBAR: Yes.

23 MR. LEE: Did you seek the advice of the
24 police on that issue at any point?

25 MR. ZBAR: No.

1 **MR. LEE:** Do you recall whether or not Mr.
2 Downing was instructed to liaise with Project Truth on that
3 point?

4 **MR. ZBAR:** On -- sorry.

5 **MR. LEE:** On the -- I mean, let me put it to
6 you simply.

7 **MR. ZBAR:** You -- go ahead. Sorry, go
8 ahead.

9 **MR. LEE:** Your evidence is that you were
10 very concerned about not stepping on the toes of the
11 police; you didn't want to impact their investigation.

12 **MR. ZBAR:** That's correct.

13 **MR. LEE:** Did you ever at any point go to
14 the police or instruct somebody to go to the police to ask
15 what you might properly be able to do and where they felt
16 you may be crossing the line?

17 **MR. ZBAR:** As was pointed out earlier, we
18 asked Mr. Downing to liaise with the police, and he did not
19 at any point, as far as I recollect, come back and say that
20 the police were agreeable to us interviewing, you know,
21 external folk.

22 **MR. LEE:** Nor did he come back to you and
23 say the opposite?

24 **MR. ZBAR:** Exactly.

25 **MR. LEE:** You would agree with me that Mr.

1 Downing was permitted to speak with Ministry employees as
2 part of his review?

3 MR. ZBAR: Yes.

4 MR. LEE: If there was a Ministry employee
5 that he thought he needed to talk to that would have been
6 appropriate?

7 MR. ZBAR: Yeah, and he was also in the
8 phase -- in what we had asked him to do, I don't think
9 there was a prohibition on him on speaking to external
10 people. Certainly that was never given.

11 MR. LEE: It may not have been prohibited
12 but it wasn't approved either. He said at point, at stage
13 two of his investigation he would have liked to speak with
14 Dunlop, he would have liked to speak with Silmsers.

15 MR. ZBAR: Well, that was the point -- that
16 was the point where we felt that it was going beyond his
17 mandate. We all have mandates, sir.

18 MR. LEE: We do. Would you have expected
19 that ---

20 (LAUGHTER/RIRES)

21 MR. LEE: Would you have expected that Mr.
22 Downing is -- during the course of his review would have
23 spoken to all Ministry employees who would have relevant
24 information about ---

25 MR. ZBAR: Mr. Downing was an experienced

1 investigator and I would assume he would have spoken to the
2 people that he felt were appropriate to speak to.

3 **MR. LEE:** Are you aware that Mr. Downing --
4 that Mr. Downing only spoke to one probation officer in
5 Cornwall, that being Jos van Diepen?

6 **MR. ZBAR:** No, I wasn't aware of that. I
7 know he spoke to Jos.

8 **MR. LEE:** Would you agree that people who
9 had worked closely with Ken Seguin, Nelson Barque and Mr.
10 van Diepen may have relevant information to provide?

11 **MR. ZBAR:** Perhaps. But again Mr. Downing
12 was an experienced investigator, he had done many
13 investigations and he was quite thorough. And again I
14 didn't get into the details -- again just let me add
15 another point; I didn't get into the nitty gritty details
16 of the investigation. That was not my role.

17 **MR. LEE:** I was with you for a minute on
18 your answer before that one about Mr. Downing being an
19 experienced investigator ---

20 **MR. ZBAR:** He was.

21 **MR. LEE:** --- but you said, and he was
22 thorough.

23 **MR. ZBAR:** In general, yes, he had a
24 reputation of being a very thorough investigator.

25 **MR. LEE:** In relation to this administrative

1 review, I would suggest to you that you're not in a
2 position to tell us how thorough he was.

3 **MR. ZBAR:** I wasn't suggesting it in terms
4 of this report. I was saying, in general terms, he was a
5 very thorough investigator and that's why he was asked to
6 do the investigation.

7 **MR. LEE:** Would it surprise you if I told
8 you that there were probation officers in the Cornwall
9 office, as well as staff, who had worked with Seguin,
10 Barque and van Diepen who were not interviewed?

11 **MR. ZBAR:** No.

12 **MR. LEE:** That wouldn't surprise you?

13 **MR. ZBAR:** No, it would surprise me because,
14 I mean -- I assume that, and again I don't know the -- I
15 didn't -- I don't know the make-up of the Cornwall office
16 at that time, but I assume there were probation officers
17 who had been there for a long time as probation officers.
18 In smaller communities they tend to stay long so I would
19 assume that there were.

20 **MR. LEE:** I don't take any issue with that,
21 I'm somewhat surprised that you didn't express surprise
22 that Mr. Downing didn't interview those people.

23 **MR. ZBAR:** No, I didn't express that.
24 Again, we asked for an investigation. The investigation
25 was handled by Mr. Downing and he reported to two senior

1 officials and they briefed me and I was satisfied with the
2 briefings I was receiving.

3 MR. LEE: So you got the report from Paul
4 Downing eventually?

5 MR. ZBAR: Eventually.

6 MR. LEE: You read it?

7 MR. ZBAR: Yes.

8 MR. LEE: You personally read it?

9 MR. ZBAR: Yes.

10 MR. LEE: You were briefed on it?

11 MR. ZBAR: Yes.

12 MR. LEE: By Paul Downing?

13 MR. ZBAR: I don't recollect -- I don't have
14 a -- I -- I was at meeting with Downing. I'm not sure if
15 that was the briefing on the initiation of the report or
16 the finishing of the report. But certainly I was briefed
17 by -- by Deborah Newman and our legal branch.

18 MR. LEE: Were you aware at the time of Mr.
19 Downing's opinion that both Emile Robert and Jos van Diepen
20 had knowledge regarding Mr. Seguin's association with
21 Ministry clients.

22 MR. ZBAR: I read the report.

23 MR. LEE: What discussions did you have with
24 your team about the appropriate reaction to those findings?

25 MR. ZBAR: Well, look, I mean I think a

1 question that hasn't been asked, and I'll ask it is, why
2 did I ask for a legal opinion? I asked for a legal opinion
3 because I had concerns about the report and I wanted to
4 know what my options were in relation to the individuals
5 mentioned in the report.

6 You know -- the opinion is privileged but on
7 the basis of what I got I couldn't take action, but why do
8 you think there was an opinion?

9 MR. LEE: You ---

10 MR. ZBAR: I mean, that's the question that
11 I would ask and that ---

12 MR. LEE: You're a couple of steps ahead of
13 me here.

14 MR. ZBAR: Okay, so well ---

15 MR. LEE: If we -- nothing new there, Mr.
16 Zbar.

17 MR. ZBAR: Sorry.

18 MR. LEE: If we go back a minute what
19 determination did you make of the appropriate discipline
20 prior to seeking the opinion.

21 MR. ZBAR: Sorry, I -- what ---

22 MR. LEE: You have all the facts before you.

23 MR. ZBAR: Yeah.

24 MR. LEE: Did you come to a determination of
25 what you would have liked to have done prior to seeking a

1 legal opinion?

2 MR. ZBAR: I had ideas of what I would have
3 liked to have done but you know given the fact that, you
4 know, I had a very competent legal branch and that there
5 were HR issues involved that went back a number of years.

6 I needed expert labour relations advice and
7 other advice which I sought from our Legal branch, who
8 collaborated with others, and on the basis of the
9 privileged opinion they offered me I -- that no further
10 action was taken.

11 MR. LEE: What were the ideas of what you
12 wanted to do that came to mind and that you discussed?

13 MR. ZBAR: Well, I wanted to know what range
14 of disciplinary options I had.

15 MR. LEE: Did you at any point discuss with
16 your team dismissing either Emile Robert or Jos van Diepen?

17 MR. ZBAR: I -- I looked at all options.

18 MR. LEE: Was that one discussed with your
19 team?

20 MR. ZBAR: I don't know if I discussed it
21 with the team but I looked at all options and asked that
22 all options be explored, so I believe it was.

23 MR. LEE: Was it your opinion at the time
24 that the actions of these two men warranted a dismissal?

25 MR. ZBAR: You know, again I sought legal

1 opinion, I was given opinion and my actions were
2 precipitated or were factored by that legal opinion.

3 **MR. LEE:** I understand that your actions
4 were directly affected by the legal opinion. What I am
5 asking you, I guess, is had the legal opinion come back
6 saying that you had carte blanche to impose a discipline --
7 whatever discipline you deemed appropriate, what would that
8 discipline have been?

9 **MR. ZBAR:** Well, I mean I think that's --
10 you know, that's a hypothetical question.

11 **THE COMMISSIONER:** Yes, it is and I think
12 it's not quite fair. I think what you could do, Mr. Lee,
13 and I thought you were going down that road, is before you
14 got the legal opinion ---

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

16 **THE COMMISSIONER:** Right. There I think
17 your ---

18 **MR. LEE:** It's what I'm driving at I'm --
19 putting ---

20 **MR. ZBAR:** Well look I ---

21 **MR. LEE:** --- it to him in a way ---

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

23 **MR. ZBAR:** Sorry.

24 **MR. NEUBERGER:** I think one of the ways to
25 deal with it is just simply say, before you sought the

1 legal opinion, what were the array of options vis-à-vis
2 discipline. In other words ---

3 **THE COMMISSIONER:** What was your ---

4 **MR. NEUBERGER:** What were your thoughts?
5 And that's the way to look at it.

6 **THE COMMISSIONER:** Thank you. Yes, okay.

7 **MR. ZBAR:** Is that satisfactory, Mr.
8 Commissioner?

9 (LAUGHTER/RIRES)

10 **THE COMMISSIONER:** He doesn't have a choice,
11 I said, yes, and we're going. Okay.

12 **MR. LEE:** Can you answer Mr. Neuberger's
13 question then please, sir?

14 **MR. ZBAR:** Sure. Look I -- I wanted to look
15 at the full -- you know, you talked briefly before about
16 the disciplinary procedure. I wanted the options -- there
17 are three or four options available. One would be, you
18 know, counseling, a letter of reprimand, suspension or
19 dismissal. I was looking at all of those options.

20 I considered this a serious matter. That's
21 why I asked for a legal opinion and I was looking at the
22 full range of what I could do based on the information that
23 was provided, and I sought an opinion and as I say on the
24 basis of that opinion -- which I'm not permitted to discuss
25 because it's privileged -- I made a -- a decision was made

1 that no action could be taken and -- but the fact is we did
2 move those individuals.

3 MR. LEE: I'm going to take one more kick at
4 the can here.

5 MR. ZBAR: Go for it.

6 MR. LEE: Prior to asking for the legal
7 opinion, had you come to the conclusion that you would
8 dismiss either of these men if permitted by the opinion?

9 MR. ZBAR: No, I did not come to the
10 conclusion. But I came to the conclusion of looking at
11 disciplinary options.

12 MR. LEE: Do you have any concerns about the
13 labour relations dynamic that you were working with? In
14 terms of your ability to deal with employees in ways that
15 you deemed appropriate?

16 MR. ZBAR: It's a very complex issue -- an
17 area. Corrections has -- still has -- had substantial
18 labour relations issues. There are thousands of grievances
19 annually. There are all kinds of issues that are dealt
20 with, so it's a very complex issue and it's important to
21 understand the context and, you know, you deal with what
22 you can and you do what you can.

23 MR. LEE: Do you have any recommendations
24 for this Commission with respect to that area?

25 MR. ZBAR: I have a whole number of

1 recommendations on labour relations between the Ministry
2 and OPSEU but I'm not sure that you would want to hear
3 them.

4 I think there needs to be changes to various
5 pieces of legislation, *Occupational Health and Safety Act*;
6 a whole variety of things. I'm not sure the right to
7 strike is -- you know, should exist with probation ---

8 **MR. LEE:** I think we may be getting a little
9 bit far afield.

10 **MR. ZBAR:** Yeah, no problem. But you're
11 asking -- well, you're asking me what my recommendations
12 would be in the labour relations field. Those would be
13 some of my recommendations.

14 **THE COMMISSIONER:** Well, I think we can all
15 agree that my mandate wouldn't include that.

16 **MR. ZBAR:** Okay.

17 **MR. LEE:** I was ---

18 **THE COMMISSIONER:** --- agree on --

19 **MR. ZBAR:** So what were you ---

20 **MR. LEE:** I was thinking more in terms of --
21 it seems from your evidence that you may feel that your
22 hands were tied a little bit in dealing with these men.
23 And I'm wondering if there's anything that you can put your
24 finger on that you can say that was the problem and --
25 you're -- this might be a solution?

1 **MR. ZBAR:** No, I don't think it's that.
2 There are too many factors involved. I wish I could I wish
3 it were that simple but it isn't. There's labour law,
4 there's the GSB and all of their rulings and precedent and
5 all kinds of issues.

6 **MR. LEE:** That's fine.
7 One last area that I want to talk to you
8 about; again, coming back to something that Mr. Paul
9 touched on you with was his questions to you about media.

10 **MR. ZBAR:** M'hm.

11 **MR. LEE:** And you know you told us very
12 flatly that the Ministry doesn't respond by issuing press
13 releases, doesn't respond by writing newspaper articles, I
14 think, was your wording yesterday.

15 **MR. ZBAR:** In response to allegations, yes,
16 that's correct.

17 **MR. LEE:** Do you accept the proposition that
18 it is important for people to have confidence in the public
19 institutions?

20 **MR. ZBAR:** Yes.

21 **MR. LEE:** And can you appreciate that the
22 public's faith in their institutions can be undermined by
23 allegations of this nature?

24 **MR. ZBAR:** Absolutely.

25 **MR. LEE:** And I take it you would agree that

1 the allegations that were made against the employees of the
2 Ministry in this case were incredibly serious?

3 MR. ZBAR: Incredibly.

4 MR. LEE: Would you agree with me that in
5 situations where the public's confidence may be shaken by a
6 scandal -- and the key word -- it is "entitled" to answers
7 and to reassurance?

8 MR. ZBAR: It is entitled to -- it is
9 entitled to -- the public is entitled and needs to insist
10 that appropriate changes be made to ensure that these
11 things don't happen or don't happen as readily.

12 And I think the Ministry made enormous
13 efforts over the years to make substantial changes. I
14 spent a career trying to make changes, and I think those
15 changes -- in fact, many of those changes -- and I am not
16 pointing out just the changes I was involved in, but others
17 in fact should reassure the public that we're doing a much
18 better job and that, you know, our clients are generally
19 safe.

20 And I would suggest to you that over the
21 last -- well, over the last 20 years or so, we have had
22 thousands of probation officers and very few negative
23 incidents. And, you know, I regret that there are negative
24 incidents because many probation officers like myself have
25 a firm belief and a fundamental belief in the value of this

1 work, and people go into this line of work, you know,
2 because they believe in rehabilitation. They believe in
3 working with clients.

4 And so when something like this happens,
5 obviously it casts a pall over all probation, and I
6 certainly feel that.

7 **MR. LEE:** Would you agree with me that the
8 situation in Cornwall surrounding the Seguin and the Barque
9 and the ring of pedophiles and the Project Truth website
10 was an exceptional circumstance? That's not typical, is
11 it?

12 **MR. ZBAR:** No, I would hope not.

13 **MR. LEE:** And you were aware, weren't you,
14 that the public interest in that matter was also atypical?
15 There was tremendous public interest?

16 **MR. ZBAR:** No, I wouldn't agree because
17 there are so many matters that occur in the Ministry of
18 Corrections that have tremendous public interest, and
19 that's reflected by the volume of letters that come in, the
20 volume of issues that are dealt with, the questions that
21 are asked in the House, the questions that are asked by
22 legislative committees. This was one of many.

23 For example, if you want ---

24 **MR. LEE:** Sure.

25 **MR. ZBAR:** For example, at the time, there

1 was a lot more controversy in the public related to the
2 government's desire to privatize institutions. That was a
3 huge issue in the public -- which was in the public
4 interest.

5 There were other issues related to fiscal
6 matters that were very important to the public interest,
7 and we got a lot of press coverage on those things.

8 There were issues related to the
9 negotiations with the federal government in terms of the
10 disagreement between the Province and the federal
11 government related to the *Youth Criminal Justice Act* and
12 the philosophy behind the implementation of that. There
13 was tremendous public interest there.

14 So there are a whole myriad of issues that,
15 you know, impact on the Ministry on a daily basis that are
16 major issues of interest to the public.

17 **MR. LEE:** We're in Cornwall. In Cornwall, I
18 would suggest to you ---

19 **MR. ZBAR:** Absolutely. No, no, I thought
20 you were talking -- in Cornwall, yes.

21 **MR. LEE:** I appreciate we're dealing with a
22 provincial ministry here.

23 **MR. ZBAR:** Absolutely.

24 **MR. LEE:** There's some local responsibility
25 too, isn't there?

1 **MR. ZBAR:** Absolutely.

2 **MR. LEE:** And ---

3 **MR. ZBAR:** Absolutely.

4 **MR. LEE:** The question I have and what I'm
5 struggling with is what's the harm, in an exceptional
6 situation, of being very public and being very open with
7 what's going on and using the news media, getting the word
8 out that "We're taking this seriously. We've looked into
9 it. There's no current risk. Here are the steps we've
10 taken."

11 **MR. ZBAR:** Well, I think, you know, we did
12 take steps. When we opened the new office, because that
13 was important, that was publicized. That was advertised.

14 When a new area manager comes forward, he
15 was in contact with various local officials, perhaps
16 including the press.

17 There were a whole myriad of activities we
18 undertook which in fact changed the situation and which the
19 public became aware of, but we did not issue a press
20 release saying, "Tomorrow we're moving offices. Tomorrow
21 we're putting in a new manager. Tomorrow we're moving
22 someone out of their job." We don't do that.

23 **MR. LEE:** What about, "Yesterday we looked
24 into this. Yesterday we cooperated with the police.
25 Yesterday we determined there's no present risk. Yesterday

1 we determined there has not been a cover-up in the Cornwall
2 Probation and Parole Office”?

3 **MR. ZBAR:** Well, I would remind you that the
4 investigation was ongoing. It was not complete and it
5 would not be appropriate to comment on an active
6 investigation in terms of the example you used about
7 “Yesterday, the police”. There was an active
8 investigation.

9 We took steps, and I will reiterate, and I
10 feel it’s very important for this Commission to know -- we
11 took substantial steps to address that specific issue in
12 terms of the management of the office. We took specific
13 steps, in general terms, to change the way we delivered
14 services to ensure that our folks were safe. And by “our
15 folks” I mean our clients. We took specific steps to
16 address the needs of victims as they came forward, in terms
17 of referral to appropriate support services and in terms of
18 being handled sensitively by probation officers, in terms
19 of police referral. We did take specific steps. We did
20 not write an article publicizing those steps.

21 **MR. LEE:** That was the question I was
22 putting to you, that given all the work you’ve put in,
23 given all the positive change, given all the steps,
24 wouldn’t it have been nice for the guy on the street who
25 had concerns to know about it?

1 **MR. ZBAR:** I think they did learn of them.
2 As I say, we had -- you know, when we moved -- and again,
3 I'm repeating myself. We've publicized individual activity
4 through the activity itself. We didn't issue a paper
5 outlining everything we did.

6 **MR. LEE:** And you have no concerns, in
7 hindsight, about that?

8 **MR. ZBAR:** No, I think we did the right
9 thing and I think we handled it the way one handles it in
10 government.

11 **MR. LEE:** Thank you, Mr. Zbar. Those are my
12 questions.

13 **MR. ZBAR:** Thank you.

14 **THE COMMISSIONER:** Thank you.
15 Mr. Neville.

16 **MR. NEVILLE:** None, sir.

17 **THE COMMISSIONER:** Mr. Chisholm?

18 **MR. CHISHOLM:** No questions. Thank you.

19 **THE COMMISSIONER:** Ms. McIntosh?

20 **MS. McINTOSH:** No questions. Thank you.

21 **THE COMMISSIONER:** Mr. Crane?

22 **MR. CRANE:** Nothing, thank you.

23 **THE COMMISSIONER:** Thank you.

24 Ms. Costom or Madame Lahaie?

25 **MS. LAHAIE:** I have nothing. Thank you.

1 **THE COMMISSIONER:** Thank you.

2 Mr. Carroll?

3 **MR. CARROLL:** Good afternoon. I have no
4 questions for this witness, sir.

5 There is a matter that I wish to address
6 with Mr. Ruel before we rise for the day. It will probably
7 take a couple of minutes, if you can ---

8 **THE COMMISSIONER:** We're not rising for the
9 day yet, but okay.

10 **MR. CARROLL:** All right. Well, whenever.
11 Thank you.

12 **THE COMMISSIONER:** Sure. Okay.

13 Mr. Neuberger?

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

15 **NEUBERGER:**

16 **MR. NEUBERGER:** Good afternoon, Mr. Zbar.

17 **MR. ZBAR:** Good afternoon, sir.

18 **MR. NEUBERGER:** I just have a few questions
19 in a couple of areas.

20 One, with respect to questions on future
21 risk, you were asked questions by Mr. Paul about whether
22 you define future risk in a narrow manner and you've partly
23 answered the performance of the Ministry with respect to
24 protection of its clients when it comes to community-side
25 probation ---

1 **MR. ZBAR:** M'hm.

2 **MR. NEUBERGER:** --- services.

3 But we know that Mr. Seguin committed
4 suicide in November of 1993, and at least until the time
5 that you departed from the Ministry, has there been any
6 other complaints that came, to your knowledge, of sexual
7 abuse of clients by probation officers?

8 **MR. ZBAR:** No, sir.

9 **MR. NEUBERGER:** Okay. Now, one area of
10 questioning continually focuses around the Downing
11 administrative review ---

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

13 **MR. NEUBERGER:** --- and the role of the OPP
14 in Project Truth.

15 And one area of questioning was, "When did
16 it come to your knowledge or to your mind about having a
17 concern essentially about interfering with an ongoing
18 police investigation that might have been examining a
19 ring", what we call in criminal law terms a conspiracy.

20 There is a document I'd like to take you to
21 which is Exhibit Number 1093, please. That should be the
22 email of August 13th, Document Number 100515, if that helps.
23 Now, if I'm right, this should be an email -- and if we
24 just get it up on the screen, I'll feel more comfortable
25 knowing I've got it right.

1 Thank you, Madam Clerk.

2 This should be an email exchange on the 13th
3 of August with Deborah Newman.

4 And in August of 2000, you were just
5 transitioning, I take it, to your position as Deputy
6 Minister?

7 **MR. ZBAR:** Yes.

8 **MR. NEUBERGER:** All right. And you were
9 aware of the steps -- or were you aware of the steps that
10 Ms. Newman was taking in regard to having Mr. Downing
11 initiate this administrative investigation?

12 **MR. ZBAR:** Yes.

13 **MR. NEUBERGER:** Okay.

14 **MR. ZBAR:** I was.

15 **MR. NEUBERGER:** Sir, I want to take you to a
16 paragraph which is an email marked -- just below, where it
17 says, "Hi Claude", and it's the third paragraph from the
18 bottom starting "On Tuesday"?

19 **MR. ZBAR:** Yes.

20 **MR. NEUBERGER:** If I could just read that
21 and then I'll ask you a question:

22 "On Tuesday, August 8th, I talked to
23 Paul Downing, the Ministry's special
24 investigator about this and asked that
25 he case-manage this from the Ministry's

1 perspective. He will be our liaison
2 with the police, Crown and others, and
3 will inquire of Project Truth as to
4 whether any Ministry staff, including
5 Jos, are under investigation. This is
6 very sensitive ground because we cannot
7 in any way interfere with an ongoing
8 police investigation. On the other
9 hand, we obviously have to protect the
10 interests of the Ministry and our
11 clients."

12 Is that a paragraph you've seen before?

13 **MR. ZBAR:** Yes.

14 **MR. NEUBERGER:** All right. Were you aware
15 in August of 2000 about a concern that you and other
16 officials under your direction, about interfering with an
17 ongoing police investigation? In August of 2000.

18 **MR. ZBAR:** Yes.

19 **MR. NEUBERGER:** Okay. And I take it that
20 was for the same reason that you've articulated today about
21 interfering with how this might impact upon other players
22 in that conspiracy?

23 **MR. ZBAR:** Right. And the key there was the
24 conspiracy issue.

25 If this was a case involving just a

1 probation officer or two probation officers and there
2 weren't these allegations of this conspiracy or ring,
3 obviously the response may have been different.

4 But this was an ongoing -- because the --
5 our two folks were deceased, but the fact was this was an
6 ongoing investigation involving live bodies and -- that may
7 have been connected to our folks, and we were very
8 sensitive to that.

9 **MR. NEUBERGER:** All right. But what I
10 understand from your evidence that Mr. Downing -- was he
11 provided with prohibitions, as it's been described, as far
12 as where he can go in his administrative review?

13 **MR. ZBAR:** No, I ---

14 **MR. NEUBERGER:** Or was he given a more wider
15 allowance?

16 **MR. ZBAR:** No. As I tried to point out,
17 certainly, in terms of the briefing I attended and the
18 information I received, he was given a mandate and he
19 wasn't told how to carry out that mandate.

20 **MR. NEUBERGER:** M'hm. Thank you.

21 And when we talk about liaising with Project
22 Truth and the police, were you aware in -- and I think you
23 already indicated this -- in, we'll say, the year 2000,
24 1999, 2000, 2001, that disclosures were coming forward to
25 the local office?

1 **MR. ZBAR:** I was aware in '98 and '99 that
2 there were a couple of disclosures and one in particular
3 struck me -- the story about the individual who couldn't
4 come to the office because of the feelings they had towards
5 that office. And that got me involved in this -- in
6 facilitating the office move because prior to that I hadn't
7 been -- obviously it's an operational issue -- but it was
8 moving more slowly because government services, et cetera -
9 --

10 **MR. NEUBERGER:** Right.

11 **MR. ZBAR:** --- to move offices is a whole
12 big deal. So I pushed that.

13 **MR. NEUBERGER:** But in relation to Project
14 Truth, you were aware that those that were coming forward
15 prior to the end of the Project Truth investigation ---

16 **MR. ZBAR:** Right.

17 **MR. NEUBERGER:** --- those complaints were
18 reported to the police?

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

20 **MR. NEUBERGER:** Okay. So that's part of
21 this liaising ---

22 **MR. ZBAR:** That ---

23 **MR. NEUBERGER:** --- and communication with
24 the OPP?

25 **MR. ZBAR:** That's correct.

1 **MR. NEUBERGER:** All right. And I take it
2 you were aware that part of also the Ministry's involvement
3 was to bring services to the Cornwall area such as the
4 Men's Project?

5 **MR. ZBAR:** Yes. And I think I tried to -- I
6 think I mentioned that, that we were insistent on victims
7 being handled in a very sensitive way; being given
8 referrals to appropriate services, and that was one service
9 that was contracted for, yes.

10 **MR. NEUBERGER:** Okay.
11 Thank you very much, Mr. Zbar.
12 Thank you, Mr. Commissioner.

13 **THE COMMISSIONER:** Thank you.

14 Mr. Robert?

15 **MR. ROBERT:** No questions.

16 **THE COMMISSIONER:** Thank you.

17 Thank you very much for your assistance,
18 sir, and I will certainly consider your evidence with
19 everyone else and coming up with some recommendations.

20 **MR. ZBAR:** I appreciate that. Thank you
21 very much.

22 **THE COMMISSIONER:** Thank you.
23 So, yes, you may step down, sir.

24 **MR. ZBAR:** Thank you.

25 **(SHORT PAUSE/COURTE PAUSE)**

1 **THE COMMISSIONER:** So, Maître
2 Ruel, are we in a position to call the next witness?

3 **MR. RUEL:** (Off mic)...no.

4 **THE COMMISSIONER:** Pardon me?

5 **MR. RUEL:** There's no ---

6 **THE COMMISSIONER:** There are no other
7 witnesses today?

8 **MR. RUEL:** There is no other witness ready
9 to go for today.

10 **THE COMMISSIONER:** All right.
11 So we're calling it a day then? Is that the
12 idea?

13 All right. So we come back ---

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

15 **MR. CARROLL:** If I may, sir.

16 There was an exchange between yourself and
17 Mr. Neville about the timing or the date of the interview -
18 --

19 **THE COMMISSIONER:** Right.

20 **MR. CARROLL:** --- involving Seguin ---

21 **THE COMMISSIONER:** Right.

22 **MR. CARROLL:** --- and the wording of the
23 question and so on.

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

25 **MR. CARROLL:** And I think it's probably

1 important for you to know that there is a statement that
2 was turned over to Commission counsel ---

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

4 **MR. CARROLL:** --- that clarifies that issue,
5 and is in their possession.

6 And I -- it just seems to me that when the
7 document's in the possession of Commission counsel, and
8 there's an issue that's arisen and you're not certain based
9 on your questions to counsel nor is he certain in giving
10 you the answer, that where it can be cleared up it should
11 be cleared up. And it should be cleared up in a timely
12 fashion.

13 **THE COMMISSIONER:** So you're -- you're
14 imputing knowledge of every single document on Commission
15 counsel?

16 **MR. CARROLL:** Hey, no, no, just a minute.

17 This was disclosed in December and he's well
18 -- he knows -- we just talked about it. He knows that he
19 has the document and he knows the date on it.

20 And I just think that in the interests of
21 you not being -- in you having the fullest information at
22 the earliest opportunity, that it would be incumbent upon
23 counsel to advise you, "Look, we have a document which
24 either has been or is about to be disclosed" -- Mr. Ruel
25 wasn't certain ---

1 THE COMMISSIONER: M'hm.

2 MR. CARROLL: --- to the parties that clears
3 this up.

4 THE COMMISSIONER: Sure.

5 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. RUEL:

6 MR. CARROLL: Thank you.

7 MR. RUEL: Mr. Commissioner, this was a
8 document that was not disclosed by the OPP initially.

9 We made a request, so we got that. I'm not
10 sure where it's at now in terms of disclosing it to the
11 parties ---

12 THE COMMISSIONER: Okay.

13 MR. RUEL: --- but we intended to bring that
14 either through the OPP's institutional evidence or through
15 the evidence of Mr. Robert.

16 So thank you.

17 THE COMMISSIONER: Thank you.

18 Thank you.

19 THE REGISTRAR: Order; all rise. A l'ordre;
20 veuillez vous levez.

21 This hearing is adjourned until February 4th
22 at 1:00 pm.

23 --- Upon adjourning at 12:32 p.m. /

24 L'audience est ajournée à 12h32

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

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

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



Marc Demers, CVR-CM