

**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 103

Held at :

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

Tuesday, April 17, 2007

Tenue à:

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

Mardi, le 17 avril 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Raija Pulkkinen	Commission Counsel
Ms. Louise Mongeon	Registrar
Mr. John E. Callaghan Mr. Mark Crane	Cornwall Police Service Board
Mr. Neil Kozloff Ms. Suzanne Costom Ms. Diane Lahaie	Ontario Provincial Police
Mr. David Rose	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Christopher Thompson	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. Mark Wallace	Ontario Provincial Police Association
Ms. Jennifer Birrell	Catholic District School Board

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1 --- Upon commencing at 9:36 a.m./

2 L'audience débute à 9h36

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

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you. Good morning
8 all. Mr. Engelmann.

9 **MR. ENGELMANN:** Good morning, Mr.
10 Commissioner. We will be recommencing with the OPP
11 presentation, the narrative dealing with the evidence of
12 David Silmser. Mr. Kozloff is here and ready to go.

13 At some point during the day, we may have a
14 witness to have some in camera evidence, and it won't be
15 long, but I have advised counsel that I anticipate that may
16 happen during the course of the day as well.

17 **THE COMMISSIONER:** Great, thank you.

18 **MR. ENGELMANN:** Thank you.

19 **THE COMMISSIONER:** Mr. Kozloff.

20 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR.KOZLOFF:

21 **MR. KOZLOFF:** Good morning, sir.

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

23 **MR. KOZLOFF:** Mr. Commissioner, I think we
24 should begin by recognizing that that is Professor Manson,
25 albeit slightly lighter in weight than he was the last time

1 he was here.

2 **THE COMMISSIONER:** I think it's just people
3 that are envious, Mr. Manson.

4 **MR. MANSON:** I think you are absolutely
5 right. My youth.

6 **THE COMMISSIONER:** Yes.

7 **MR. KOZLOFF:** Mr. Commissioner, the second
8 area that I was going to touch on is with respect to the
9 allegations against the schoolteacher Marcel Lalonde and
10 the transcript date is January the 30th. There is a
11 reference at page 71 to Exhibit 267, which is the
12 transcript of the videotaped interview of David Silmsler at
13 the OPP detachment in Kanata where he was interviewed by
14 Detective Inspector Smith and Detective Constable Fagan on
15 the 22nd of February 1994. Mr. Silmsler's evidence is that,
16 that was the first reference by him to Marcel Lalonde and
17 his abuse at the hands of Marcel Lalonde to a police
18 officer.

19 You will recall in his evidence, and it is
20 referenced at pages 99 to page 102 on the 30th of January,
21 that he was interviewed on November 2nd, 1993 -- so that
22 would be approximately three months earlier -- by the
23 Children's Aid Society. And that was, according to his
24 evidence, the first time he had ever mentioned to any
25 person in authority that he had been a victim of Marcel

1 Lalonde.

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

3 **MR. KOZLOFF:** And then he was being
4 questioned about the handwritten interview report prepared
5 by Detective Constable Millar and Detective Constable
6 McDonell of the OPP on the 26th of November 1993. You will
7 recall that that interview took place immediately following
8 the death of Ken Seguin.

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

10 **MR. KOZLOFF:** Those officers were
11 investigating that death. They questioned Mr. Silmsler in
12 his home on the following day, the 26th of November, and he
13 was asked about whether he had mentioned his abuse by
14 Marcel Lalonde to the officers and his answer was:

15 "I didn't think that they were
16 interested in that."

17 I would have suggested to Mr. Silmsler that
18 Detective Constable Millar and Detective Constable McDonell
19 couldn't possibly have been interested in something that
20 they knew nothing about and, indeed, the evidence is clear
21 that the only person to whom Mr. Silmsler had referenced Mr.
22 Lalonde was the CAS investigator on the 2nd of November
23 1993, and there is no evidence and I am satisfied, I would
24 submit to you, that there was never any communication
25 between the CAS and any police force in connection with

1 Lalonde between the 2nd of November and the 26th of November.

2 **THE COMMISSIONER:** Okay. I just want to
3 make sure that ---

4 **MR. KOZLOFF:** Yes.

5 **THE COMMISSIONER:** --- we stay within the
6 realm of facts and not submissions.

7 **MR. KOZLOFF:** Right. Right.

8 **THE COMMISSIONER:** So what I'm taking from
9 what you are saying is that your review of the
10 documentation does not disclose any written communications
11 between the CAS and McDonell.

12 **MR. KOZLOFF:** Right; or actually it was
13 Detective Constable Millar who was conducting the
14 interview.

15 **THE COMMISSIONER:** Okay, so we'll -- let's
16 be careful about submissions.

17 **MR. KOZLOFF:** Yes. No, no and that's why I
18 couched it in that way, sir.

19 **THE COMMISSIONER:** All right.

20 **MR. KOZLOFF:** The second thing I would
21 suggest to Mr. Silmsler was that once the Ontario Provincial
22 Police was made aware of the fact that Mr. Silmsler was
23 alleging abuse by Lalonde as a result of the interview
24 conducted by Greg Bell on the 2nd of November at the CAS, I
25 would suggest to him that the OPP was made aware of that

1 fact on the 8th of February 1994, and that was as a result
2 of an interview of Greg Bell by OPP Constable Don Genier.
3 Don Genier, at that point, was assigned to assist Detective
4 Inspector Hamelink, H-A-M-E-L-I-N-K. Detective Inspector
5 Hamelink was assigned to investigate the alleged extortion
6 of Ken Seguin by David Silmser and that investigation was
7 conducted in the year 1994.

8 That information was transmitted by
9 Detective Constable Genier to Detective Inspector Smith.

10 **THE COMMISSIONER:** What information now?

11 **MR. KOZLOFF:** The information that there had
12 been an allegation against a Marcel Lalonde.

13 **THE COMMISSIONER:** Okay. And this is
14 documented somewhere?

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

16 **THE COMMISSIONER:** And you will be showing
17 me that?

18 **MR. KOZLOFF:** I will.

19 **THE COMMISSIONER:** Okay.

20 **MR. KOZLOFF:** And then you will note in
21 Exhibit 267 at page 37, perhaps that could be brought up.

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

23 **MR. KOZLOFF:** Exhibit 267. Do you need a
24 document number?

25 **MR. ENGELMANN:** It's 7150518.

1 **THE COMMISSIONER:** All right. So that's the
2 interview that was held on February the 22nd 1994. This is
3 a transcription of that interview.

4 **MR. KOZLOFF:** Yes.

5 **THE COMMISSIONER:** Okay.

6 **MR. KOZLOFF:** If you go to page 37 of that -

7 --

8 **THE COMMISSIONER:** Thank you.

9 **MR. KOZLOFF:** --- document, Madam Registrar.
10 You will see how it's raised by Detective Inspector Smith:

11 "There was some other indication about
12 a school teacher."

13 Answer:

14 "Yeah."

15 Smith:

16 "Can you tell me anything about this
17 school teacher?"

18 Silmsner:

19 "Well, I remember going over to his
20 place and he tried to take advantage of
21 me too and grab me."

22 "Is his name Marcel Lalonde?"

23 "Marcel Lalonde."

24 "And where does he teach school?"

25 "Bishop McDonell, Grade 8."

1 "Was he your teacher?"

2 "Yeah."

3 "And can you tell us what happened with
4 him?"

5 And Mr. Silmsers then goes into a brief
6 description of what occurred.

7 I would have suggested to Mr. Silmsers that
8 if Detective Inspector Smith had not asked Mr. Silmsers
9 directly about Lalonde in that interview, that Mr. Silmsers
10 would never have raised this allegation with the police.

11 There were in fact, sir, and you've heard
12 about some of them, numerous efforts made by the Children's
13 Aid Society, the Cornwall Police Service, and the Ontario
14 Provincial Police to pursue Mr. Silmsers's allegations
15 against Lalonde, but the simple fact is, that for whatever
16 reason, Mr. Silmsers was not interested in a police
17 investigation of Marcel Lalonde. Even in later 1996, when
18 another victim came forward, and you've heard this evidence
19 from Mr. Silmsers himself, he was not prepared to assist in
20 the investigation or the prosecution.

21 **THE COMMISSIONER:** You're going to show me
22 to that?

23 **MR. KOZLOFF:** Well, Mr. Silmsers told you
24 about that himself. You'll recall that he asked Detective
25 Constable Fagan to intercede on his behalf with the

1 Cornwall Police who at that point were conducting an
2 investigation in late '96 into early '97, conducting an
3 investigation leading to a prosecution of Mr. Lalonde. Mr.
4 Silmser indicated that he did not, he could not handle it
5 and didn't wish to be involved.

6 **THE COMMISSIONER:** Okay.

7 **MR. KOZLOFF:** The next area that I wanted to
8 deal with was the interview of David Silmser by Detective
9 Constable Millar and Detective Constable McDonell of the
10 Ontario Provincial Police on the 26th of November 1993.
11 Again, as you know, they were investigating the death of
12 Ken Seguin and this is the day following that.

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

14 **MR. KOZLOFF:** The first area that I wanted
15 to cover was simply as an officer of the court, sir, during
16 the evidence of Mr. Silmser on the 30th of January 2007 at
17 pages 95 and 96, you may recall that there was a discussion
18 ---

19 **THE COMMISSIONER:** Excuse me. Could you put
20 that on, Madam Clerk, 95 and 96, yes, all right.

21 **MR. KOZLOFF:** Right. You may recall, sir,
22 there was a discussion about Sean Adams.

23 **THE COMMISSIONER:** Yes.

24 **MR. KOZLOFF:** And his role in providing Mr.
25 Silmser with independent, legal advice.

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

2 **MR. KOZLOFF:** And you asked the following
3 question of Mr. Silmsner:

4 "On Sean Adams, did you ever pay and
5 get a bill for the services that he
6 gave you."

7 Answer:

8 "I paid but I never got a bill."

9 Question:

10 "Oh, no, no, okay, so he charged you
11 some money. You paid your account and
12 that was it?"

13 Answer:

14 "Yes, I did."

15 Mr. Engelmann then asks:

16 "Just to follow-up. So you didn't
17 actually get an invoice?"

18 Answer:

19 "No".

20 Question:

21 "You just paid him an amount of money?"

22 Answer:

23 "I think it was on the street. I think
24 I handed him \$400 -- or in his car or
25 something -- cash."

1 If the inference by Mr. Silmsner is that he
2 received nothing to evidence the payment of the account
3 from Mr. Adams, I would refer you to Exhibit 271 -- this is
4 the November 26th, 1993 handwritten interview -- at page 3,
5 about 10 lines from the bottom. Right after the words
6 "Malcolm MacDonald Trust Account." Do you see that, sir?

7 "I paid Shawn Adams about four days
8 later and received receipt 07255 dated
9 September 7, 1993."

10 Then at page 121 -- I'm going on to another
11 point now.

12 **THE COMMISSIONER:** Yes.

13 **MR. KOZLOFF:** At page 121 on the 30th of
14 January ---

15 **THE COMMISSIONER:** One-twenty-one (121),
16 Madam Clerk?

17 **MR. KOZLOFF:** Mr. Silmsner is suggesting that
18 he said more to the officers during the course of the
19 interview than is recorded on his statement. He says:

20 "Yes, there was more and I don't know
21 why that's not on because I am sure I
22 told them."

23 And what he is referring to is the final
24 telephone conversation with Ken Seguin on the Wednesday
25 night before the eve of his death, telling Ken Seguin in

1 their final telephone conversation that he had gone to the
2 Cornwall Police and that he had told them the truth, and
3 that was the last thing that was said during the
4 conversation and then his evidence was that Mr. Seguin hung
5 up.

6 The first response that I would have to
7 that, sir, would be his own evidence six pages earlier at
8 page 115 of the January 30th transcript. You asked him:

9 "And you don't take any issue with this
10 being what you would have told the OPP
11 that day?"

12 **THE COMMISSIONER:** Hang on now. Where is
13 that?

14 **MR. KOZLOFF:** Sorry. Page 115.

15 **THE COMMISSIONER:** Okay. Right.

16 **THE REGISTRAR:** Line 17.

17 **THE COMMISSIONER:** I'm sorry?

18 **THE REGISTRAR:** Line 17.

19 **THE COMMISSIONER:** Yes. Thank you.

20 **MR. KOZLOFF:** Do you have it, Mr.

21 Commissioner?

22 **THE COMMISSIONER:** Yes. Thank you.

23 **MR. KOZLOFF:** "And you don't take any
24 issue with this being what you would
25 have told the OPP that day?"

1 Answer:

2 "No."

3 Question:

4 "All right. Just on that note, do you
5 know if they would have given you an
6 opportunity to read the statement
7 before you signed it?"

8 Answer:

9 "I would believe so, yes."

10 So, this is what I would put to Mr. Silmsen
11 and what I would suggest.

12 First of all, there was absolutely no reason
13 for the officers to leave this statement out; this alleged
14 statement by Mr. Silmsen that he made to them that he and
15 Seguin had this conversation that culminated with Mr.
16 Seguin saying ---

17 **THE COMMISSIONER:** I'm sorry, sir, you're
18 going into what I would call argument.

19 **MR. KOZLOFF:** All right. Well, no, what I
20 would suggest to Mr. Silmsen, sir, is this. These officers
21 are conducting an investigation into a death.

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

23 **MR. KOZLOFF:** It appears to be a suicide.
24 They have an assignment which is to find the evidence with
25 respect to an explanation for this death. This man says

1 that he told them "Well, the last thing I said to him was
2 that I've gone to the Cornwall Police and told them the
3 truth."

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

5 **MR. KOZLOFF:** That's not in the statement.

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

7 **MR. KOZLOFF:** My submission to Mr. Silmsen
8 is there is no reason for the officers -- for the OPP
9 officers to leave that out.

10 **THE COMMISSIONER:** Well, okay, and I think
11 what we're doing is we're getting to the point where what I
12 would want is you to point out the two ---

13 **MR. KOZLOFF:** Right.

14 **THE COMMISSIONER:** --- but leave the
15 submissions for later. And I think that will come in your
16 institutional response.

17 **MR. KOZLOFF:** I understand what you're
18 saying, sir, but what I'm trying to do here is to conduct a
19 substitute for a cross-examination.

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

21 **MR. KOZLOFF:** It would be open to me, I
22 submit to you, sir, to suggest to the witness that there
23 was no reason for these officers not to include the very
24 evidence that they were seeking in conducting the
25 interview. That's the point I'm trying to make.

1 **THE COMMISSIONER:** I understand that, sir,
2 except that given the limitations that we have I think on
3 this form of cross-examination, what I thought we would do,
4 and what's happened so far, is that you show a comment that
5 he made in the transcript, and that's great, and then you
6 show that there is no document -- that the document is
7 different.

8 **MR. KOZLOFF:** Right.

9 **THE COMMISSIONER:** So right now what you
10 have is you've got in one corner Mr. Engelmann said "Look
11 it, this is the statement and you have no problems with
12 this statement" and yet later on he comes up and he shows -
13 - and he says something different.

14 **MR. KOZLOFF:** So what we have, first of all,
15 is we have a contradiction between what he says he says and
16 what is contained in the statement that he gave.

17 **THE COMMISSIONER:** That's right.

18 **MR. KOZLOFF:** Secondly, we have his
19 evidence, and in his response to your question, that he was
20 given an opportunity to read the statement over before
21 signing it and he says he did and signed it.

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

23 **MR. KOZLOFF:** And then I'm suggesting, sir,
24 that it's unlikely that the officers would leave something
25 out that was directly on the issue of what they were

1 conducting an investigation on.

2 **THE COMMISSIONER:** And what I'm saying ---

3 **MR. KOZLOFF:** And he could respond in any
4 way he wished.

5 **THE COMMISSIONER:** Right. And what I'm
6 saying though is that given the fact that he's not here ---

7 **MR. KOZLOFF:** Right.

8 **THE COMMISSIONER:** --- I would prefer that
9 you not give me that comment at this time.

10 **MR. KOZLOFF:** All right.

11 **THE COMMISSIONER:** But no, let me finish. I
12 think there is a time and a place where you will be able to
13 argue that. That will be in argument or in the
14 presentation of the institutional response.

15 **MR. KOZLOFF:** Okay.

16 **THE COMMISSIONER:** So all I want to do is be
17 very clear with you that I want to maintain that format for
18 now -- and I see Mr. Engelmann is getting up -- so that we
19 can keep it fair -- keep it on an even keel for everyone.

20 **MR. KOZLOFF:** All right.

21 **MR. ENGELMANN:** I just have a quick comment,
22 if I may.

23 **THE COMMISSIONER:** Sure.

24 **MR. ENGELMANN:** Mr. Kozloff -- and just for
25 clarification purposes, Mr. Kozloff has referred a couple

1 times to your questions of Mr. Silmser.

2 **THE COMMISSIONER:** Right.

3 **MR. ENGELMANN:** And they were my questions.
4 Just so it's clear for the record.

5 **THE COMMISSIONER:** Yeah. The last one was
6 his question.

7 **MR. ENGELMANN:** It's on the transcript.

8 **MR. KOZLOFF:** No.

9 **THE COMMISSIONER:** Yes.

10 **MR. ENGELMANN:** I just don't want that to be
11 confused.

12 **THE COMMISSIONER:** I know. As odd as that
13 might be.

14 **MR. KOZLOFF:** I thought it was a really good
15 question.

16 **MR. ENGELMANN:** My tie's a different colour.

17 **THE COMMISSIONER:** Well, that's why I
18 couldn't figure it out because when you said that I said
19 that, I said "My, my, just on that note" -- in any event,
20 Mr. Engelmann had turned that sentence quite around and I
21 thought it was very scholarly and I wouldn't want to take
22 credit for his scholarly questions.

23 **MR. KOZLOFF:** I apologize for that.

24 **THE COMMISSIONER:** Just a minute. You've
25 got some other ---

1 **MR. WALLACE:** Good morning.

2 **THE COMMISSIONER:** Yes.

3 **MR. WALLACE:** I've risen because I
4 anticipate to be in the exact same position as Mr. Kozloff.

5 I have drafted my presentation in a fashion
6 much the same to the extent, I will be making transcript
7 references, notebook references and the like. But at the
8 end of it is leading up to a suggestion that I would have
9 made to the witness. And I would greatly appreciate being
10 allowed to make that. You take it --make it for what it's
11 worth, but it really gives the overall point of what it was
12 I was trying to do, as I believe Mr. Kozloff doing the same
13 thing, with a witness who's not here.

14 But otherwise, in my respectful submission,
15 it's pretty flat. You go up to the edge but you don't
16 deliver the punch line. And I don't expect -- and I
17 recognize the fact that at the end of the day it will be a
18 matter for submission but we could have asked the question
19 of the witness, it would be a proper question, and, you
20 know, since we don't have an answer I don't expect you to
21 make any findings at this point in time, but for the
22 purposes of the presentation to allow it to be complete and
23 fair, bearing in mind that it's simply a suggestion that
24 would have been made and take it for what it is. But I
25 think we should be allowed to do that.

1 **THE COMMISSIONER:** I don't agree but I'll
2 listen to further submissions from people who want to
3 comment.

4 And I'll tell you why that I have some
5 problems with that, is that I fully expect this to be dry
6 in the sense that I know -- in the way Mr. Kozloff is
7 setting out his argument, he's saying "Look it, I want to
8 go here." I mean, once we get to the point where he points
9 out the inconsistencies, I think the job has been done and
10 then I'm the one who is going to be making determinations
11 and I don't want to leave on the record these questions out
12 there until the proper moment, and the proper moment for
13 you to make those comments will be either in the
14 institutional response through the officers or in argument
15 at the end. So I don't know that it serves -- I think its
16 prejudicial value outweighs the probative value for my
17 purposes in this adaptation of a cross-examination.

18 **MR. WALLACE:** Well, I'd ask you to consider
19 this. Given the fact that at this stage nobody is asking
20 you to accept that suggestion, it is simply a suggestion
21 that will be in some cases, I would expect, fleshed out in
22 the manner that you have spoken of but that's not going to
23 be for some time realistically, and if -- which would have
24 been the case whether Mr. Silmsen was here or not.

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

1 **MR. WALLACE:** And we could make these
2 suggestions to him and he could say "Forget it. I don't
3 accept it. That's stupid."

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

5 **MR. WALLACE:** On the other hand he might
6 have agreed with it. But that is really irrelevant. We
7 could have made the suggestion. We're not asking you at
8 this stage to make any finding, but rather we're trying to
9 do the best we can in less than perfect circumstances, and
10 I think that it adds flesh to the whole point of the
11 exercise, in my respectful submission. And given the fact
12 that we're not asking you, nor could we ask you to make any
13 findings based on these suggestions, at this stage at
14 least, there could be no prejudice, in my respectful
15 submission.

16 **THE COMMISSIONER:** Mr. Engelmann.

17 **MR. ENGELMANN:** I guess to some extent it
18 will depend on the nature of the question. If a question's
19 being posed or suggested that, you know, would you agree
20 that the officer would have thought this, or you know, I
21 don't know whether a witness could answer a question like
22 that so perhaps the question wouldn't be proper but in
23 certain circumstances it may, and I think this may be a
24 situation where you might consider it on a case-by-case
25 basis and we see where we go.

1 **THE COMMISSIONER:** Yes.

2 **MR. ENGELMANN:** Anyway, it's just my
3 thoughts.

4 **THE COMMISSIONER:** Thank you.

5 **MR. KOZLOFF:** Just to continue on that line.
6 I appreciate what you're saying, sir. Mr. Silmser's left a
7 lot of things out there.

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

9 **MR. KOZLOFF:** This is our first opportunity
10 to respond. What I'm trying to do is respond with
11 documents, notebook entries, his own words, whether stated
12 back in the 90s or stated under oath in this room. That's
13 what I'm trying to do, and on the basis of that, make
14 suggestions. He's not here but these are what I would have
15 responded to him with. That's the sort of suggestion I'm
16 making.

17 What I don't propose to do, and I've been
18 very careful in drafting my document, is put words in his
19 mouth. That's not for me. That would, in my submission,
20 be unfair for me to conjure up the answers.

21 So what I'm trying to do is to leave it at,
22 this is what I would have responded with these documents,
23 with these statements, with this evidence under oath, this
24 is the contradiction or this amplifies on the answer that
25 he provided to you, to assist you.

1 **THE COMMISSIONER:** I have no problems with
2 that, and I've asked you a couple of times to leave ---

3 **MR. KOZLOFF:** Yes.

4 **THE COMMISSIONER:** --- maybe what I would
5 call editorial comment or that kind of thing for later. So
6 we'll proceed with your presentation and then we'll see --
7 we'll deal with Mr. Wallace when the time comes.

8 **MR. KOZLOFF:** What I would have suggested on
9 this point to Mr. Silmser, aside from ---

10 **THE COMMISSIONER:** I am sorry, now what
11 point are we on now?

12 **MR. KOZLOFF:** This is still the issue of
13 whether he said to Millar and McDonell what he claims he
14 said under oath here.

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

16 **MR. KOZLOFF:** About telling Seguin in their
17 final conversation that he had gone to the Cornwall Police.

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

19 **MR. KOZLOFF:** And that he had told him the
20 truth and the response of Seguin was to silence and then
21 hang up.

22 The alternative, sir, is that Silmser told
23 him that. He told Millar and McDonell what he says he did
24 and they failed to record it and then he missed the
25 omission when reading it over before signing it. That's

1 one alternative.

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

3 **MR. KOZLOFF:** The second alternative is that
4 he told them that; they failed to record it. He noted the
5 omission when he read over his statement but he chose not
6 to say anything about it.

7 The third alternative is that he didn't tell
8 them what he claims to have told them whether because he
9 had forgotten about it. In other words, it did happen but
10 he forgot about it, or because he didn't want to, or
11 because it never happened.

12 And the only independent evidence that you
13 have to refer to in assessing which of the alternatives it
14 was ---

15 **THE COMMISSIONER:** They're not mutually
16 exclusive, there may be other alternatives.

17 **MR. KOZLOFF:** Correct. Those are the ones
18 that I could think of.

19 The independent evidence that you have to
20 look as is the comment in January of 2003 which is almost a
21 year earlier, to Heidi Sebalj about Ken Seguin running
22 scared.

23 **THE COMMISSIONER:** M'hm. Well, no, that's
24 not fair. That's what we've heard so far. We may have one
25 of your officers come up and say "My God, you know what, he

1 was right. I forgot to put it in."

2 **MR. KOZLOFF:** They might.

3 **THE COMMISSIONER:** Or, you know, "I did it
4 on purpose not to put it in" ---

5 **MR. KOZLOFF:** I said that's ---

6 **THE COMMISSIONER:** --- that's speculation.

7 **MR. KOZLOFF:** I said that's the evidence
8 that you have so far.

9 **THE COMMISSIONER:** No, I think I thought you
10 said that was the only evidence I had.

11 **MR. KOZLOFF:** It's the only evidence that
12 you have so far. Certainly, there may be further evidence.

13 **THE COMMISSIONER:** You know, I don't know, I
14 am uncomfortable in the way this is going. I can tell you
15 that your inconsistencies and the way that you point it out
16 have made your point and I don't know to go any further ---

17 **MR. KOZLOFF:** I'll get on to my next point.

18 **THE COMMISSIONER:** Please do. Thank you.

19 **MR. KOZLOFF:** You heard evidence at pages
20 131 to 134 on January 30th concerning a telephone call Mr.
21 Silmsler made to an official at the Ministry of Corrections.
22 Mr. Engelmann attempted to assist Mr. Silmsler by suggesting
23 that it was Bill Roy ---

24 **THE COMMISSIONER:** Hang on a second now.

25 I am sorry ---

1 **MR. ENGELMANN:** Just be a moment.

2 **THE COMMISSIONER:** Right. Just be a moment.
3 Guess we're talking about a transcript ---

4 **MR. KOZLOFF:** The transcript date is January
5 30th.

6 **THE COMMISSIONER:** I think we have it here
7 but -- so, and you're saying that he -- Mr. Silmser
8 testified that he called ---

9 **MR. KOZLOFF:** Yes, you'll see Mr.
10 Engelmann's question:

11 "A couple of weeks after Mr. Seguin's
12 death, so we're in mid-December of
13 1993, do you recall if you placed a
14 call to an official from the Ministry
15 of Corrections?"

16 Mr. Silmser says:

17 "Yes".

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

19 **MR. KOZLOFF:** Mr. Engelmann goes on to
20 suggest that it was Bill Roy. And the evidence of Mr.
21 Silmser is that he called to report allegations of sexual
22 abuse by Ken Seguin because:

23 "I believed there was more than just me
24 being abused by him. I wanted him to
25 open up Ken Seguin's files and go

1 through where his clients were and make
2 sure that nobody else was abused by Ken
3 Seguin. He responded by saying he was
4 going to call the OPP on me".

5 And then he later goes on to say "I never
6 heard from them" referring to the OPP over that phone call,
7 "no". Mr. Engelmann suggested again this phone call took
8 place in mid-December of 1993.

9 In response sir, I would point to the notes
10 of OPP Constable Ron Wilson. That's at Document 737488.

11 **(SHORT PAUSE/COURTE PAUSE)**

12 **THE COMMISSIONER:** Thank you, Exhibit 391.

13 **---EXHIBIT NO./PIÈCE NO P-391:**

14 (737488) Handwritten Notes of Detective
15 Constable Ron Wilson - July 26, 1993

16 **MR. KOZLOFF:** Now, Document 737488 is the
17 notes of OPP Detective Constable Ron Wilson and I'll warn
18 you right now they go in reverse order. In other words,
19 the pages -- the first page is in effect the last page of
20 the notes. I believe it ends around the 14th of December.
21 They begin sometime in October.

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

23 **MR. KOZLOFF:** And the way in which Detective
24 Constable -- just for your edification, sir, the way in
25 which Detective Constable Wilson becomes involved is that

1 he is in communication with the Children's Aid Society in
2 October with regard to their investigation of Father
3 MacDonald and his status at that time as a priest, an
4 active priest, in the Diocese. And they were concerned to
5 satisfy themselves that no altar boys in 1993 were
6 reporting were reporting or being abused by Father
7 MacDonald. They had asked ---

8 **THE COMMISSIONER:** They?

9 **MR. KOZLOFF:** They being the CAS ---

10 **THE COMMISSIONER:** Yes.

11 **MR. KOZLOFF:** --- had made a request for the
12 police to assist in their investigation. The response to
13 the OPP was "without a complaint, we're not going to become
14 involved in an investigation". But, subsequent to that,
15 Detective Constable Wilson, following the suicide of Mr.
16 Seguin, called Mr. Silmsler and that's Bates Pages 7156524
17 to 7156523. Again, we're going in reverse order. This is
18 his notes for the 7th of December 1993.

19 He had called and left a message with Mr.
20 Silmsler and his note for the 7th says:

21 "Received phone call from person who
22 i.d. self as David Silmsler. He was
23 returning my call. Advised Silmsler I
24 wanted to talk to him. Silmsler replied
25 'I want to let it drop; I am very upset

1 with the way the whole thing was
2 handled.' I asked for Silmsers to put
3 this in writing and he replied 'I'm not
4 going to put nothing in writing for
5 nobody ---"

6 **THE COMMISSIONER:** Just a minute.

7 **MR. KOZLOFF:** Yes?

8 **THE COMMISSIONER:** Put this in writing and
9 then ---

10 **MR. KOZLOFF:** Yes, he replied ---

11 **THE COMMISSIONER:** Where?

12 **MR. KOZLOFF:** It's -- I'm actually reading
13 the notes -- I'm sorry. If you start at pages -- the
14 conversation begins at 7156524 ---

15 **THE COMMISSIONER:** Oh I've got you, then it
16 goes to the end of the page ---

17 **MR. KOZLOFF:** Yes.

18 **THE COMMISSIONER:** And it says "to put this
19 in" and then I flip backwards as you've indicated and I
20 don't see it continue -- where does it continue from there,
21 I guess that's the question?

22 **MR. KOZLOFF:** Silmsers replied "I want to let
23 it drop ---

24 **THE COMMISSIONER:** Yes.

25 **MR. KOZLOFF:** --- I'm very upset". Do you

1 have that?

2 **THE COMMISSIONER:** Yes.

3 **MR. KOZLOFF:** "I'm very upset with the way
4 the whole thing was handled. I asked
5 for Silmsler to put this in ---

6 **THE COMMISSIONER:** Yes. Next page, where is
7 the next page?

8 **MR. KOZLOFF:** Is that 7156523?

9 (SHORT PAUSE/COURTE PAUSE)

10 **THE COMMISSIONER:** Yes, the next page goes
11 to December 14 and the next page is all blanked out there.

12 **MR. KOZLOFF:** See, I have the page. I
13 believe what happened is that I had noted that the
14 Commission version was blacked out. I have the page in
15 front of me; I'm reading from it. This is from the
16 original material provided by the OPP to the Commission.

17 **THE COMMISSIONER:** So why is the whole page
18 blacked out then?

19 **MR. KOZLOFF:** I don't know.

20 **THE COMMISSIONER:** Let's -- you might want
21 to take a short break then and figure that out.

22 Thank you. Let me know when you're ready to
23 go.

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

1 The Hearing will resume in five minutes.

2 --- Upon recessing at 10:18 a.m. /

3 L'audience est suspendue à 10h18

4 --- Upon resuming at 10:59 a.m. /

5 L'audience est reprise à 10h59

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

8 This Hearing of the Cornwall Public Inquiry
9 is now in session. Please be seated. Veuillez vous
10 asseoir.

11 **THE COMMISSIONER:** Thank you.

12 Mr. Engelmann.

13 **MR. ENGELMANN:** Mr. Commissioner you should
14 have a copy in front of you of Bates Page 7156523.

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

16 **MR. ENGELMANN:** I've discussed this with Mr.
17 Kozloff. It is apparent that the page down to the note
18 that says "9:10 ---

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

20 **MR. ENGELMANN:** --- conversation concluded".
21 That part of the page is relevant; it should not have been
22 redacted. The bottom part of the page should continue to
23 be redacted.

24 So, what we'll have done is we will have the
25 bottom part of this page blacked out because it relates to

1 an investigation that isn't relevant to our Inquiry.

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

3 **MR. ENGELMANN:** But everything above there
4 should be before us. I've handed out copies of the sheet
5 to all counsel so they have it because it is not in the
6 document database.

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

8 **MR. ENGELMANN:** And I'll have inquiries made
9 to make sure that -- well, just to find out what happened
10 and to make sure it does not happen again. With the number
11 of redactions that we had, it is not surprising that there
12 would be one or two mistakes. There were thousands of
13 redactions. So, in any event, perhaps this page could be
14 made Exhibit 391A. We've made the statement itself 391.

15 **THE COMMISSIONER:** Yes, but what about if we
16 make this ---

17 **MR. ENGELMANN:** --- notes.

18 **THE COMMISSIONER:** That note, we should have
19 that bottom note blacked-out though.

20 **MR. ENGELMANN:** We should.

21 **THE COMMISSIONER:** So why once you get the
22 document and it's blacked out, we'll make an "A" exhibit to
23 the ---

24 **MR. ENGELMANN:** To the officer's notes.

25 **THE COMMISSIONER:** Yes.

1 MR. ENGELMANN: Okay.

2 THE COMMISSIONER: Thank you.

3 MR. ENGELMANN: Thank you, I'll take care of
4 that. It's just been distributed to counsel but we'll have
5 it cleaned up.

6 ---EXHIBIT NO./PIÈCE NO P-391A:

7 Excerpt of 737488 with amended redactions.

8 THE COMMISSIONER: All right. So Mr.
9 Kozloff.

10 MR. KOZLOFF: Yes.

11 THE COMMISSIONER: You'll have ---

12 MR. KOZLOFF: Just to clarify that Mr.
13 Commissioner. You'll see in the top left-hand corner under
14 the facsimile date of March 7th, 2007 at 15:34 ---

15 THE COMMISSIONER: M'hm.

16 MR. KOZLOFF: --- what happened is that when
17 I received the document or was reviewing the document, it
18 occurred to me that this page had been inappropriately
19 redacted because it cut off in the middle of a note of a
20 conversation.

21 THE COMMISSIONER: M'hm.

22 MR. KOZLOFF: So I went back into the --- I
23 went back to our people and received the original,
24 unredacted page and attempted to bring that to the
25 attention of people here, but again I can certainly

1 appreciate, Mr. Engelmann has said that with the number of
2 documents involved in this case, that one could have fallen
3 through the cracks.

4 In any event, I will refer to it as Bates
5 page 7156523 because it seems to me that ---

6 **THE COMMISSIONER:** Excuse me.

7 **MR. KOZLOFF:** Bless you.

8 **THE COMMISSIONER:** Thank you.

9 **MR. KOZLOFF:** It seems to me that that is
10 the appropriate way to refer to it.

11 And so, the conversation or the note that
12 Officer Wilson made of his conversation with Mr. Silmsers,
13 he says,

14 "I want to let it drop, I'm very
15 upset with the way the whole thing
16 was handled. I asked for Silmsers to
17 put this in writing, he replied: 'I'm
18 not going to put nothing in writing
19 for nobody. You guys had your chance
20 when I called in the first time and
21 you passed it off. I'm upset with
22 you, the Cornwall Police and the
23 Crown Attorney with the way the
24 whole thing was handled.' Refused to
25 meet with me again, said he wanted

1 the whole thing dropped. Told him to
2 think it over and call me back if he
3 wanted to talk. 9:10, conversation
4 concluded."

5 So, this is a note made by Detective
6 Constable Wilson of the OPP on the -- on the 7th of December
7 1993, which is approximately a week, or eight days, before
8 the conversation that Mr. Silmsers told you he had with the
9 representative from the Ministry of Corrections, and Mr.
10 Engelmann suggested that that was Mr. Roy.

11 What I would have suggested to Mr. Silmsers
12 is first of all, that's another piece of evidence which
13 points to my suggestion that I made on the last day, about
14 the timing of the reporting. You recall, I suggested that
15 Mr. Silmsers had called the OPP in and around December of
16 1992. Mr. Silmsers's evidence was that his statement to that
17 effect, in his November 26th 1993 statement to Detective
18 Constable Miller -- which leads off with:

19 "In December 1992 I tele--- I called
20 the OPP---"

21 was incorrect. In fact, I suggest that it
22 was probably correct; that he did call the OPP some months
23 after the arrest in April of 1992, when he was -- it was
24 suggested to him that he should call back when he was in
25 sober condition.

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

2 **MR. KOZLOFF:** And I'm going to suggest-- I
3 would have suggested to Mr. Silmsers that, in fact,
4 Detective Constable Wilson here is attempting to pursue the
5 investigation of father MacDonald and Ken Seguin, and that
6 Silmsers had no interest in pursuing the investigation of
7 Father MacDonald, given the \$32,000 settlement that he
8 would be putting at risk. I would also suggest it to Mr.
9 Silmsers that this was his opportunity to cause an
10 investigation of Ken Seguin, a police investigation of Ken
11 Seguin to be made, if in fact he had any interest in doing
12 so.

13 And finally, this was also an opportunity
14 for Mr. Silmsers to cause an investigation of Marcel Lalonde
15 to be made, and the reason I raise that is in relation to
16 his response to you, that he didn't think the police were
17 interested about it when they questioned him on the 26th of
18 November. This is 11 days later.

19 And that concludes my submission sir, with
20 respect to Officer Wilson's notes.

21 The next area sir is the videotaped
22 interview of David Silmsers by Detective Inspector Smith and
23 Detective Constable Fagan.

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

25 **MR. KOZLOFF:** At the Kanata detachment of

1 the OPP on the 22nd of February, 1994. The evidence in
2 relation to that begins on January the 30th, at page 10.

3 Mr. Commissioner, I hope you will appreciate
4 that I'm attempting to address the evidence in a
5 chronological sense ---

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

7 **MR. KOZLOFF:** --- so in some cases, he was
8 asked about things that took place at a later time, prior
9 to being asked about things that took place to a former
10 time.

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

12 **MR. KOZLOFF:** But this is the next
13 chronological event. At page 10, Mr. Engelmann asks,

14 "Do you have any recollection, or any
15 sense, as to how you felt at the end of that meeting?"

16 This is in relation to his meeting with the
17 Cornwall Police service officers. That first meeting,
18 referring to the meeting of the 28th of January 1993 and his
19 response is:

20 "Frustrated. I've always felt
21 frustrated at the end of meetings
22 because nothing was really advancing.
23 Nothing was, they didn't say they
24 were going to investigate this and do
25 this and do that. I had never had

1 any information at the end of the
2 meeting what was going to go on, so I
3 was frustrated."

4 **THE COMMISSIONER:** Clerk, do you have that
5 on a screen, someplace?

6 It -- my screen's not on.

7 **MR. KOZLOFF:** It would -- it would---

8 **THE COMMISSIONER:** No, it's okay. It just
9 malfunctioned, here. Okay, here we go.

10 **MR. KOZLOFF:** That's between lines 11 and
11 19. Okay.

12 So I would ask Mr. Silmsen --- I would have
13 asked Mr. Silmsen, if, by the use of the words "always" and
14 "never" in his response, he's referring to just the meeting
15 he had on the 28th of January 1993 with the Cornwall Police
16 Service officers, or whether he was referring to all
17 meetings with all police officers. Which, on a reading of
18 the answer, he may well be referring to all. Because he
19 says:

20 "I've always felt frustrated at the
21 end of meetings ... I never had any
22 information."

23 Mr. Silmsen.. I would then ask you to refer
24 to pages 48 to 50 of the February 22nd, 1994 interview.

25 **THE COMMISSIONER:** At page 40, you say?

1 **MR. KOZLOFF:** Pages 48 to 50. And this is
2 Exhibit 267. And here is one instance where the transcript
3 is sufficient to respond, because in my submission, what
4 you have at pages 48 to 50 is Detective Inspector Smith
5 going on at length at the conclusion of the interview with
6 Mr. Silmsler about how the OPP intends to conduct their
7 investigation, that they intend to update Mr. Silmsler on
8 its progress, and they end by asking Mr. Silmsler if he has
9 any questions or concerns.

10 Mr. Commissioner, I can read the questions
11 and answers into the record, but I can tell you it begins
12 at where it says, on page 48, beginning of tape 2, side A.

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

14 **MR. KOZLOFF:** Where Smith says,

15 "what would like to see come out of
16 All of this?"

17 And then there's the next long statement,
18 where Smith says, seven lines from the bottom,

19 "Realistically, unless there's some
20 snags that we're unaware of, I don't
21 mind updating you on the progress, I
22 wouldn't like to discuss evidence
23 with you --- what other people told
24 me, because it would taint your
25 evidence. I don't mind telling you

1 that. When we make decisions, one
2 way or another, whether charges will
3 be laid or not -- but it will be in
4 consultation with the Crown Attorney,
5 and I don't mind updating you on it."

6 He's also telling you --- he also tells him,
7 earlier,

8 "I can't tell you how long this
9 investigation is going to take,
10 because I don't know how many are out
11 there, how many former altar boys,
12 or who's going to come forward. I
13 can't tell you that. It'll be
14 thorough--- I can tell you that it'll
15 be thoroughly investigated by Mike
16 and myself, and other manpower is
17 required. I don't like to have to be
18 given deadlines, or anything."

19 So in my submission, Detective Inspector
20 Smith is taking the time to explain to Mr. Silmsers how he
21 intends to approach the investigation.

22 At page 106 of the transcript of the 30th of
23 January, Mr. Engelmann asks,

24 "Was this---

25 and he's referring to the videotaped

1 interview of Mr. Silmsler, at the CAS on the 2nd of November,
2 1993,

3 "---a difficult interview."

4 You see that? It's ---

5 **THE COMMISSIONER:** What line is it?

6 **MR. KOZLOFF:** --- Line 8. page 106---

7 **THE COMMISSIONER:** Yeah.

8 **MR. KOZLOFF:** January 30th, Line 8.

9 **THE COMMISSIONER:** And what are you
10 referring to, there?

11 **MR. KOZLOFF:** He's referring to the CAS
12 interview of the 2nd of November.

13 **THE COMMISSIONER:** All right.

14 **MR. KOZLOFF:** (Reads)

15 "Was this a difficult interview?"

16 The response is,

17 "They all were, that wasn't the only
18 interview. The Tim Smith and Mike
19 Fagan interview was a tough, tough
20 interview too. They never got
21 easier.

22 And then, at page 153 to 155, Mr. Engelmann
23 asks Mr. Silmsler how the OPP came to interview him, in
24 February of 1994.

25 Just before I get to that, sir, I can tell

1 you that, with regard to this answer, this, "The Smith and
2 Fagan interview was a tough, tough interview, they never
3 got easier," I'll have some further comments to make when I
4 deal with what his evidence is, at pages 158-59. but,
5 suffice it to say that it'll be my position --- and I've
6 indicated this to you and to my friend --- that the only
7 fair way to respond to that evidence, and to the evidence
8 at pages 158-59 is to play the tape.

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

10 **MR. KOZLOFF:** At pages 153, 155 to 155, Mr.
11 Engelmann asks Mr. Silmsler how the OPP came to interview
12 him in February of 1994. Mr. Silmsler says he's not exactly
13 sure how that came about.

14 If I can refer you, then, to document
15 701568, these are the notes of Detective Inspector Smith
16 beginning at Bates page 7004008.

17 **THE COMMISSIONER:** Thank you.

18 Exhibit 392.

19 **--- EXHIBIT NO./PIÈCE NO P-392:**

20 (701568) Handwritten Notes - Detective
21 Inspector Tim Smith - February 3, 1994

22 **MR. KOZLOFF:** Thank you.

23 At page 7004008 the time is 10:30. The
24 entry at 10:30 for -- sorry, I'm not sure you have the
25 right -- okay. It says,

1 "Call David Silmser, number not in
2 service.
3 11:05, call Mrs. Silmser. No
4 answer.
5 11:14, paged David Silmser twice,
6 left message to call. 11:25, Bryce
7 Geoffrey. Advised him I had been
8 assigned to investigate allegations
9 of Silmser. Geoffrey advised he
10 represents Silmser and will cooperate
11 fully in the investigation. He is
12 happy OPP are investigating this
13 matter. Advised I would like to
14 interview subject and Geoffrey stated
15 he would like to be present. Advised
16 this is fine, and rather than write
17 everything down, we would like to
18 videotape interview.

19 In my submission sir, it would be open to me
20 to suggest for the purpose of clarification, that Detective
21 Inspector Smith made efforts to contact Mr. Silmser first
22 and that, when he was unable to do so, he contacted Bryce
23 Geoffrey and that it would have been clear to Mr. Geoffrey
24 and presumably to Mr. Silmser when Mr. Geoffrey spoke with
25 him, that the Ontario Provincial Police was intending to

1 conduct a thorough videotaped interview of Mr. Silmser
2 regarding his allegations.

3 The next reference, same document, 701568,
4 bates page 7004009. This is the next page, same date
5 February 8, 1994. We'll just wait for it to come up.

6 And the note is,

7 "Advise Geoffrey interview would take
8 place at Bells Corner OPP next week.
9 Would call later to firm date and
10 time."

11 And the entry at 12:05;

12 "Call Geoffrey, confirm date of
13 February 17, 1994, 13h00 Kanata OPP."

14 Just to explain that little discrepancy
15 between Bells Corner and Kanata. Prior to the building of
16 the OPP Kanata detachment, the OPP detachment in the
17 western part of Ottawa was Bells Corners.

18 So I think what's happened there is
19 Detective Inspector Smith has dated himself by referring to
20 the previous detachment when in fact the intention was to
21 meet in Kanata.

22 The next reference is on the same page
23 regarding February 10th at 15:45.

24 "At 15:45 Geoffrey called, unable to
25 make interview. New appointment 13h00

1 Silmser from that, is first of all if the officers
2 accommodated Mr. Silmser and his lawyer regarding
3 scheduling and location of meeting because Detective
4 Inspector Smith was coming from Kingston to conduct this
5 interview of Mr. Silmser. Mr. Geoffrey's practice was in
6 Ottawa, Mr. Silmser was residing in the Ottawa area, so
7 both the timing and the location of the interview were to
8 convenience Mr. Silmser and his lawyer.

9 It's a point.

10 **THE COMMISSIONER:** Well, to accommodate
11 them, they're the ones who want the statement, I mean --
12 and they usually go to where the victim is.

13 **MR. KOZLOFF:** Perhaps I'm stating the
14 obvious sir, but both the timing and the location were to
15 convenience Mr. Silmser and his lawyer.

16 Secondly, Mr. Geoffrey was the logical
17 person to be the conduit between the OPP and Mr. Silmser
18 because Mr. Silmser was difficult to reach. Mr. Geoffrey
19 was easier to reach because he worked in a law office and
20 also, he wanted to be present and his scheduled had to be
21 accommodated.

22 Page 158 of the transcript, Mr. Engelmann
23 asks the following question, page 158 of the January 30th
24 transcript,

25 Question and this at line five.

1 "You also mention, do you not, sir,
2 some allegations concerning Marcel
3 Lalonde on page 37?"

4 The response is "Okay" which I take it is
5 Mr. Silmsers way of agreeing with the suggestion.

6 I would ask you to read, first of all, pages
7 37 and 38 of Exhibit 267. At the very top, this is
8 immediately after questions concerning an affiliation
9 between Father MacDonald and Seguin. Mr. Silmsers at the
10 bottom of page 36 says, "they were best friends."

11 Smith:

12 "Did you ever see them together?"

13 Silmsers:

14 "Yeah, a few times."

15 Smith:

16 "M'hm."

17 Silmsers:

18 "I can't remember."

19 And then Smith asks:

20 "M'hm, and there was some other
21 indication about a school teacher."

22 So, that is the first time that the Marcel
23 Lalonde issue is raised by any police officer with Mr.
24 Silmsers that I am aware of, and the questions are:

25 "There was some other indication about

1 a school teacher."

2 "Yeah."

3 "Can you tell me anything about this
4 school teacher?"

5 "Well I remember going over to his
6 place and he tried to take advantage of
7 me too and he grabbed me. His name,
8 Marcel Lalonde."

9 "Where does he teach?"

10 "Bishop Macdonell, grade 8."

11 So, just to clarify the response, Mr.
12 Engelmann's question is "You also mention allegations
13 concerning Marcel Lalonde." Silmsler does not bring up the
14 allegation against Lalonde. Silmsler is specifically asked
15 about the allegation by Smith who raises it.

16 I'm going to suggest to you and this is
17 perhaps -- I would have suggested to Mr. Silmsler that he
18 was really reluctant to provide details of the alleged
19 abuse and was asked to be more explicit regarding what
20 Lalonde did and said. And that will become more apparent,
21 sir, on a reading of the transcript.

22 Then at pages 158 and 159 which I referred
23 to earlier, Mr. Engelmann is questioning Mr. Silmsler about
24 the interview. At line 13 he asks:

25 "Would it be fair to say that this is the broadest

1 interview you have had to date on some of these
2 allegations?"

3 Answer:

4 "It is, yes. It is the biggest one
5 anyways, yes."

6 Question:

7 "And you told us how difficult it was."

8 Answer:

9 "This one?"

10 Question:

11 "Well you told us that it was difficult
12 every time."

13 "Yes."

14 Question:

15 "This one?"

16 Answer:

17 "This one was ten times harder. I
18 think I wasn't actually in a good state
19 of mind when they brought me down here;
20 I was frustrated, I was depressed, I
21 was a big depression and Tim Smith just
22 pushed, pushed, pushed, pushed. He
23 wouldn't let me have a second break.
24 His questions were going bang, bang,
25 bang, bang, and I had been questioned

1 so much through that period of time
2 that my patience ran low. That's why
3 you see a lot of 'you know.'"

4 And then a little further down Mr. Engelmann
5 says or asks:

6 "It was mainly Detective Inspector
7 Smith who was asking the questions?"

8 Answer:

9 "That's right."

10 Question:

11 "So just coming at you too fast there?"

12 Answer:

13 "Way too fast."

14 At this point, sir, what Mr. Silmsen is
15 testifying to is not simply the content of the interview
16 but the tone and the pace of the interview and in my
17 submission this is the appropriate time to play the tape.

18 **THE COMMISSIONER:** Fine.

19 **MR. KOZLOFF:** I've had some discussions with
20 my friend, Mr. Engelmann. There are, as you read through
21 the exhibit, references to individuals who have been the
22 subject matter of confidentiality orders.

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

24 **MR. KOZLOFF:** And accordingly, in order to
25 play the tape we're going to have to go in camera.

1 **THE CHAIRMAN:** We're going to have to go
2 into camera. Well, there's a test to apply.

3 **MR. KOZLOFF:** Yes.

4 **THE COMMISSIONER:** So, I understand that
5 there are also details of the abuse ---

6 **MR. KOZLOFF:** Yes.

7 **THE COMMISSIONER:** --- which is some
8 sensitivity I suppose.

9 **MR. KOZLOFF:** Yes.

10 **THE COMMISSIONER:** All right, so you're
11 requesting an in camera viewing of this interview?

12 **MR. KOZLOFF:** I'm proposing on the basis of
13 my discussions with Mr. Engelmann, and the considerations
14 of what you've just mentioned, namely the specifics of the
15 abuse and the references to people who have been given
16 confidentiality, that's an appropriate way of dealing with
17 the issue.

18 **THE COMMISSIONER:** All right.

19 **MR. KOZLOFF:** In the best of all possible
20 worlds I would be more than happy to have the interview
21 played on the website, frankly, but I understand that there
22 are compromises and accommodations that need to be made and
23 this is one of them.

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

25 Mr. Engelmann, do you have any comments

1 about that or ---

2 **MR. ENGELMANN:** I do. There were several
3 concerns about the playing of this videotape publicly.
4 There would have been concerns about playing the videotape
5 if Mr. Silmsler had been in the witness box, that he had
6 expressed and his counsel had expressed about potentially
7 re-victimizing him, et cetera.

8 In any event, Mr. Kozloff and I had an
9 exchange of correspondence and we determined that if --
10 that an approach should be made with respect to
11 confidentiality measures for at least you to consider that.

12 If this tape was to be played, we don't have
13 Mr. Silmsler here, so the concern about re-victimizing him
14 on the witness stand isn't present. However, if it were to
15 be played publicly, he's indicated to us through
16 correspondence that we've now all read, and through his
17 counsel that given the very sensitive personal nature of
18 some of the details of these allegations, that to play this
19 publicly would be humiliating to him and to his family.

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

21 **MR. ENGELMANN:** There are individuals
22 mentioned on the tape that are subject to publication bans
23 already. So therefore, the playing of the tape over the
24 web cast could well be in violation of those publication
25 bans.

1 Those are some of the concerns that have
2 arisen. As you know, when we went through Mr. Silmser's
3 evidence in-chief the allegations were not discussed in any
4 real detail, and they are clearly referenced in this
5 statement in great detail.

6 The other issue, of course, is when he
7 testified, he asked for and was granted partial
8 confidentiality measures in a sense that his face was not
9 shown on our web cast. There was no objection to that at
10 that time. Obviously, playing the tape publicly over the
11 web cast would not be respecting that measure that had been
12 in place.

13 Mr. Kozloff and I had this exchange in
14 writing, all counsel were copied. There was a discussion
15 about requesting confidentiality measures. It's my
16 understanding that no counsel but I'll certainly let people
17 in the room stand up if they want to, but that no counsel
18 were seeking that this tape be played publicly.

19 We were in a situation where we as the
20 Commission were going to be playing the tape later on as
21 part of the institutional response so I'm not objecting to
22 the tape being entered. I think the tape is relevant; it
23 certainly addresses concerns that Mr. Silmser raised, that
24 we would have called as part of the institutional response
25 with an OPP witness.

1 So, whether it's then or now, as long as
2 there are some confidentiality measures in place,
3 Commission counsel certainly has no objection.

4 **THE COMMISSIONER:** How long is the tape?

5 **MR. ENGELMANN:** My understanding is it's
6 approximately two hours long.

7 The quality of the tape is not the best.
8 It's grainy, it's ---

9 **THE COMMISSIONER:** Yes.

10 **MR. ENGELMANN:** --- a bit difficult to see
11 people. But it is -- it is the full tape ---

12 **THE COMMISSIONER:** Yes.

13 **MR. ENGELMANN:** --- and I think with perhaps
14 one break at some point in the tape, and it's clear where
15 that is.

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

17 **MR. ENGELMANN:** The tape does reflect the
18 transcript, which is already in evidence ---

19 **THE COMMISSIONER:** Yes.

20 **MR. ENGELMANN:** --- at Exhibit 267. So,
21 those are my brief submissions. I wanted to add that
22 notice was given to the press that Mr. Kozloff would be
23 seeking to introduce the tape, with some form of
24 confidentiality measure.

25 **THE COMMISSIONER:** Yes.

1 **MR. ENGELMANN:** I indicated to the Standard
2 Freeholder, to the local radio station, and to the CBC
3 through its counsel that such a request would be made this
4 week by Mr. Kozloff. And as far as I knew, no counsel were
5 opposing this, so that if they wanted to take a position
6 they should be prepared to attend and speak to this before
7 you today.

8 **THE COMMISSIONER:** Yes.

9 **MR. ENGELMANN:** And, I received back from
10 them that none of them wished to oppose this application.

11 **THE COMMISSIONER:** All right.

12 Thank you.

13 Does anyone wish to make any submissions at
14 this point? If not I am satisfied that, on what I've
15 heard, that the Dagenais/Mentuck Test would be satisfied,
16 in that while matters should be *prima facie*, aired in
17 public, that this is a circumstance -- these circumstances
18 outlined do justify some confidentiality measures.

19 So, Mr. Engelmann, one of the things we do,
20 obviously, is go off webcast and Cogeco. I'm wondering is
21 there any reason why we should exclude the public? Now
22 because there's a publication ban on certain names would we
23 be precluded from -- I just want to put it in at the least
24 restrictive manner, although from what I can see here it
25 won't affect very many people unless -- I don't know if

1 everybody signed undertakings, or -- so, do we go
2 completely in camera, or do we just say that we'll play it
3 publicly -- we'll play it here in this room?

4 **MR. ENGELMANN:** Well typically that's --
5 we've sought the least restrictive confidentiality measure.
6 My understanding was when Mr. Silmsler testified, that he
7 didn't mind people in the room seeing his face. We didn't
8 use the screen.

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

10 **MR. ENGELMANN:** The one difference being, of
11 course, when he testified and when he was examined-in
12 chief, and then some of the cross-examination, none of the
13 parties went into great detail on the allegations.

14 So, I don't think playing the tape here in
15 the room, with the public having access, would in any way
16 offend the publication ban. The publication ban is there.
17 People who are present know that they can't publish names
18 they hear. That would be my initial thought, but there may
19 be people -- counsel who want to comment, and again, those
20 present may well have all signed undertakings so ---

21 **THE COMMISSIONER:** I don't know.

22 **MR. ENGELMANN:** --- perhaps some counsel can
23 help us with this.

24 **THE COMMISSIONER:** Can anyone help me here?
25 Anybody have a view whether we should exclude the public

1 that have not signed an undertaking?

2 (SHORT PAUSE/COURTE PAUSE)

3 MR. MANSON: If I could have one second ---

4 (SHORT PAUSE/COURTE PAUSE)

5 THE COMMISSIONER: Sure.

6 MR. ENGELMANN: Sorry. In the normal
7 course, as I said earlier, if it's a publication ban issue,
8 the public would still be invited to be here. I understand
9 that there are one or two individuals mentioned on the tape
10 who are being referred in this hearing by way of moniker --
11 -

12 THE COMMISSIONER: Okay.

13 MR. ENGELMANN: --- for other reasons. So,
14 that makes it more difficult. So perhaps in those
15 circumstances, to avoid that problem, it would be best that
16 only those members of the public who have signed
17 undertakings as a result of their ---

18 THE COMMISSIONER: Involvement.

19 MR. ENGELMANN: --- involvement in the case
20 through one of the parties, should stay.

21 THE COMMISSIONER: Okay. Mr. Manson, did
22 you have ---

23 MR. MANSON: I just want -- the three people
24 on the left are ---

25 THE COMMISSIONER: Yes, signed up.

1 **MR. MANSON:** --- are clients of mine, and
2 they've signed undertakings.

3 **THE COMMISSIONER:** Right. So, I don't know
4 about the other four. Okay.

5 In any event there will be an order that the
6 matter be held in camera, which means that the public,
7 generally, will be excluded unless, of course, they are
8 parties and have signed undertakings with respect to
9 confidentiality measures.

10 So now -- when we're ready to -- well we're
11 ready. Now's the time that you want to see the movie?

12 **MR. KOZLOFF:** Yes, sir.

13 **THE COMMISSIONER:** Well then let's start the
14 movie. The interview.

15 **MR. KOZLOFF:** Show the video.

16 **THE COMMISSIONER:** Show the video. Show the
17 video.

18 Okay, the ---

19 **MR. KOZLOFF:** So, we have to break?

20 **THE COMMISSIONER:** --- pardon me?

21 **MR. KOZLOFF:** We have to break, I guess.

22 **THE COMMISSIONER:** We have to break. So it
23 will take about 20 minutes. So Madam Clerk -- no, what I'd
24 rather do is take the 20 minutes, come back, let's look at
25 half-an-hour, 45 minutes of it, then take the lunch break.

1 All right?

2 Thank you.

3 And then it will be in camera. So, for
4 members of the public who are watching on the webcast, we
5 should -- when will we be finished this thing? So if we
6 start at noon, let's say 12:30 p.m., that's half-an-hour,
7 we come back. So we can expect to come back on the web
8 around 2:30 p.m., 2:45 p.m.?

9 **MR. KOZLOFF:** About three? Well are we
10 going to -- we're going to watch a half-an-hour and then
11 we're going to have ---

12 **THE COMMISSIONER:** A break.

13 **MR. KOZLOFF:** --- we're going to take a
14 lunch.

15 **THE COMMISSIONER:** Lunch, yes.

16 **MR. KOZLOFF:** And we'll be back at two?

17 **THE COMMISSIONER:** Two.

18 **MR. KOZLOFF:** Three-thirty (3:30 p.m.).
19 It's another hour and a half.

20 **THE COMMISSIONER:** Oh right. 3:30 p.m.
21 Sorry. All right. So, for those of you watching on the
22 web, or on Cogeco, if you want to come back and look in
23 around 3:30 p.m., we should be back with some comments.
24 All right?

25 Thank you.

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

3 The hearing will resume at 12:00 p.m.

4 --- Upon recessing at 11:39 a.m. /

5 L'audience est suspendue à 11h39

6 --- Upon resuming in regular session at 3:57 p.m. /

7 L'audience est reprise à 15h57

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

10 This Hearing of the Cornwall Public Inquiry
11 is now in session. Please be seated. Veuillez vous
12 asseoir.

13 **THE COMMISSIONER:** Mr. Kozloff, I say this
14 tongue in cheek a little bit but this tape -- this video
15 was done in 1994?

16 **Mr. KOZLOFF:** Yes, sir.

17 **THE COMMISSIONER:** I take it that it didn't
18 win any awards for sound or cinematography anywhere? I'm
19 just wondering if the OPP has changed that camera since
20 then and maybe got a little more colour in it?

21 Just wondering.

22 **MR. KOZLOFF:** Be a good recommendation.

23 **(LAUGHTER/RIRES)**

24 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. KOZLOFF

25 **(cont'd/Suite):**

1 **MR. KOZLOFF:** We could use the money ---
2 Let the record show please, it was Mr.
3 Sherriff-Scott who jumped on -- we called that piling on,
4 when I played football.

5 I have no response to the question because I
6 would never give you anything but an accurate answer, and I
7 don't have the information.

8 Mr. Commissioner, I just wanted to ---

9 **THE COMMISSIONER:** I should point out,
10 before we go on -- for the people that are joining us now -
11 - I feel like an MC someplace, sometimes.

12 We have finished reviewing the video of a
13 statement given by Mr. Silmsler in the presence of two
14 investigators, and Mr. Silmsler's lawyer at the time, Mr.
15 Geoffrey, I think.

16 **MR. KOZLOFF:** Just to reiterate what Mr.
17 Silmsler said to you, sir, under oath at pages 158 and 159.
18 He said:

19 "I was in a big depression and Tim
20 Smith just pushed, pushed, pushed,
21 pushed. He wouldn't let me
22 have a second break. His questions
23 were going bang, bang, bang, and I
24 had been questioned so much through
25 that period of time that my patience

1 ran low."

2 And then Mr. Engelmann asks him again:

3 "It was mainly Detective Inspector
4 Smith who was asking the questions?"

5 Answer:

6 "That's right".

7 Question:

8 "So just coming at you too fast there."

9 Answer:

10 "Way too fast."

11 The reason, sir, -- as I have indicated --
12 that I wanted you to hear the tape was because it addresses
13 not just the content, which the transcript addresses ---

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

15 **MR. KOZLOFF:** --- but also the tone and the
16 pace of the interview.

17 I would take this position with Mr. Silmsen,
18 that Detective Inspector Smith explained to him patiently
19 and sympathetically why he had to be thorough in the way in
20 which he conducted the investigation.

21 I would suggest to Mr. Silmsen that neither
22 Detective Inspector Smith nor Detective Constable Fagan put
23 any undue pressure on him, that it wasn't a matter of
24 Detective Inspector Smith not wanting to give Mr. Silmsen a
25 break -- in other words, a respite during the course of the

1 interview -- but rather, Mr. Silmsers saying all of a sudden
2 that he wanted to -- that had to leave early in order to go
3 pick up his wife, or meet his wife -- which led to Mr.
4 Silmsers being upset that it was his own lawyer, Mr.
5 Geoffrey, that tried to find some way to keep Mr. Silmsers
6 there to let the officers do their job. That seemed to
7 upset Mr. Silmsers so much that he lost it and walked out of
8 the room and that his own lawyer, in fact, had to go out
9 after Mr. Silmsers and convince him to come back.

10 Those are the things that I would have
11 suggested, Mr. Commissioner.

12 **THE COMMISSIONER:** That's one
13 interpretation, yes.

14 **MR. KOZLOFF:** Yes.

15 I want to deal now with the next area, which
16 is the relationship between David Silmsers and Detective
17 Inspector Smith.

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

19 **MR. KOZLOFF:** First of all, I pointed out to
20 you the comment in Detective Inspector Smith -- in the
21 transcript at page 47 of Exhibit 267 -- we've already
22 touched on this. I don't think you need to bring it back.

23 He says:

24 "I'd rather that you not contact any
25 or discuss the evidence with any of

1 the 22nd of February:

2 "9:20: Received message from Officer
3 to call David Silmser and if I
4 didn't he was going to the press.
5 Called David Silmser. He asked how
6 investigation was progressing. I
7 advised two officers were working on
8 same, and were in the process of
9 interviewing past altar boys. He
10 said he didn't care about them, he
11 wanted charges laid soon for what
12 happened to him. He advised he had
13 another come forward who had same
14 thing happen to him by Seguin and
15 MacDonald. I asked if he would speak
16 to us, or would David give us his
17 name? He said no. Further stated,
18 'You'd better lay charges soon, or
19 we're going to the press. I am
20 pissed off.' I tried to explain this
21 investigation required some
22 cooperation on his part. He said he
23 was 'pissed off' and hung up on me at
24 9:23. 9:24: Attempted to call
25 Silmser's lawyer, Bryce Geoffrey."

1 Now, I would put to Mr. Silmsers, sir, that
2 Detective Inspector Smith had explained to him at the
3 conclusion of the February 22nd 1994 interview that he did
4 not know how long the investigation would take, because he
5 did not know how many former altar boys, or who, would come
6 forward. That Mr. Silmsers, I would suggest to him, was
7 completely unreasonable and inappropriate on the 1st of
8 March in threatening to go to the press, in saying he
9 didn't care about other altar boys and demanding charges be
10 laid soon for what happened to him and in purporting to
11 hold back information from the police about other people
12 coming forward, particularly after the explanation
13 Detective Inspector Smith had given him during the
14 interview, about how being provided with that information
15 would really help the police a lot.

16 It was this telephone call that Silmsers made
17 on March the 1st 1994, barely a week after the first meeting
18 with Smith and Fagan on February 22nd, not the manner in
19 which the February 22nd 1994 interview was conducted I would
20 suggest to Mr. Silmsers, which had the profound effect on
21 his future relationship with Detective Inspector Smith. In
22 my submission to Mr. --

23 **THE COMMISSIONER:** Submissions.

24 **MR. KOZLOFF:** In my -- it would be my
25 position which I would state to Mr. Silmsers that it left

1 Detective Inspector Smith in a position where he had no
2 alternative but to contact Mr. Geoffrey and go through him
3 from that point on, rather than confront Silmsers.

4 The next area, sir, that I --

5 **THE COMMISSIONER:** Just a minute -- could
6 you just scroll that down, Madam Clerk, a little bit?

7 Okay.

8 **MR. KOZLOFF:** And you can see, sir, you've
9 scrolled down in fact to March 2nd 1994. At 9:10 we have a
10 telephone call ---

11 **THE COMMISSIONER:** Madam Clerk?

12 **MR. KOZLOFF:** --- a conversation between
13 Detective -- sorry, could you just leave it where it was?

14 **THE COMMISSIONER:** Sorry.

15 **MR. KOZLOFF:** Sorry, that's where I was.
16 You have a telephone -- March 2nd, 9:10.

17 **THE COMMISSIONER:** Okay.

18 **MR. KOZLOFF:** "Telephone call to Bryce
19 Geoffrey re David Silmsers. Called
20 yesterday. Discuss events of
21 yesterday. Mr. Geoffrey apologized for
22 Silmsers's actions; stated he spoke to
23 him telling him to allow us to get on
24 with the investigation. Also told him
25 to get name of witness who was abused

1 by MacDonald and give to him. Geoffrey
2 will approach this person to have him
3 report this to us. I advised Geoffrey,
4 should I require
5 anything from Silmsler I would go
6 through him rather than confront
7 Silmsler. He agreed."

8 **THE COMMISSIONER:** I guess the video should
9 be entered as an exhibit.

10 **MR. KOZLOFF:** Yes, thank you, sir.

11 **REGISTRAR:** Three ninety-three (393).

12 **THE COMMISSIONER:** Three nine three. Thank
13 you.

14 **MR. KOZLOFF:** The next area, sir, that I'm
15 going to cover is the 1994 investigation.

16 Sorry?

17 **MR. ENGELMANN:** I-- perhaps I'm mistaken,
18 but I thought we -- when we entered the transcript ---

19 **THE COMMISSIONER:** Sure.

20 **MR. ENGELMANN:** --- that we entered the
21 transcript and the video at the same time and said if there
22 was a discrepancy, the video would override?

23 **THE COMMISSIONER:** That is true.

24 **MR. ENGELMANN:** So I think it's already an
25 exhibit?

1 **THE COMMISSIONER:** So we don't need that.

2 Thank you.

3 **MR. ENGELMANN:** Maybe I can just give you a
4 number, I think I have it ---

5 **UNIDENTIFIED:** Two sixty seven (267).

6 **THE COMMISSIONER:** Yeah, 267 should be the
7 same exhibit. Thank you.

8 **MR. KOZLOFF:** All right. Thank you.

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

10 **MR. KOZLOFF:** At page 161 of the transcript
11 of January the 30th, during the course of Mr. Engelmann's
12 examination, Mr. Engelmann puts to him just prior to this
13 comment that I'm going to point out for you -- he puts to
14 Mr. Silmsen. He's talking about the altar boys and then he
15 quotes:

16 "But if you recall the names of some
17 of the altar boys that were there at
18 the same time and had access to
19 Father MacDonald we would appreciate
20 that because we would -- what we will
21 do is we'll individually interview
22 each of them and sometimes when they
23 find out that there are others there
24 then they will come and they will
25 tell us things [etc]."

1 Do you see that? Mr. Silmsers says "yes" and
2 then asks Mr. Engelmann the question, "Did they interview
3 them?"

4 In my submission, sir, to Mr. Silmsers, that
5 response of Mr. Silmsers to Mr. Engelmann was disingenuous.
6 And it's disingenuous, given his conversation with
7 Detective Inspector Smith on March 1st 1994 which I have
8 just referred to, in which Detective Inspector Smith is
9 telling him that they are interviewing altar boys. And
10 also the evidence of Mr. Silmsers himself at page 127 of the
11 January 30th 2007 transcript, where he said:

12 "But I also know that Chris McDonnell
13 was going around to the altar boys
14 and bad mouthing me when he was doing
15 the investigation."

16 In fact, Mr. Silmsers himself knows for a
17 fact that the OPP was interviewing altar boys.

18 And at page 165 of the 30th of January 2007
19 transcript, these questions and answers appear:

20 Question: "Now did they get back to
21 you that calendar year, 1994, and
22 advise you about other victims or
23 alleged victims that they had found?"

24 Answer: "Never to me. I don't know
25 if they ever got back to my lawyer.

1 Question: "All right. Did they
2 re-interview you to your knowledge at
3 any time later than 1994?"

4 Answer: "No."

5 Question: "Did they ever go back
6 and go into more detail on some of
7 this lengthy interview that you had
8 with him that day?"

9 Answer: "No, I don't believe so."

10 Well I will now, sir, take you through a
11 number of entries in Detective Inspector Smith's notebook
12 which will provide some colouration to those answers.

13 Beginning with -- there's first of all that
14 March 2nd telephone call between Geoffrey and Smith in which
15 Smith asks Geoffrey to get the name of the witness who was
16 abused by MacDonald and give it to him, and Geoffrey is to
17 approach that person and have them report it to the police.

18 Then on the 8th of March, this is Bates page
19 7004012, the entry is at 11:

20 "Meeting with Constables Fagan,
21 McDonell, Genier, 14 local persons to
22 interview. Nine have been interviewed.
23 Of all interviews, only allegation
24 Silmser, moniker 3, won't speak to us.
25 One person possible rubbed crotch area

1 when Father MacDonald changing gears."
2 Then the following reference at Bates page
3 7004015. This is the 9th of March '94 1500 hrs to 1510 hrs.
4 It's a telephone call to Bryce Geoffrey:

5 "Asked for release of Silmsers school
6 records. He will provide same. Asked
7 to get name of additional alleged
8 victim. Geoffrey advised Silmsers had
9 first name and should have full
10 particulars later next week.

11 Allegation is against Father MacDonald
12 and it is sexual."

13 I would have suggested, sir, to Mr. Silmsers
14 that there were no other victims or alleged victims coming
15 forward to the police in 1994; that the efforts by
16 Detective Inspector Smith to deal with Silmsers on a
17 rational and reasonable basis met with a hostile and un-
18 cooperative attitude; and that Smith then contacted
19 Geoffrey at the earliest opportunity to deal with Silmsers
20 unwillingness to cooperate in order to follow up on the
21 lead that Silmsers was purportedly holding out on.

22 The next reference would be in the same
23 Exhibit at Bates page 7004017, 16th of June 1994, 12:25 to
24 12:35. Sixteenth of June '94? Right.

25 "Also call from Silmsers re he has three

1 more victims threatening me of my job
2 if we don't get to him. Investigation
3 is still going. More interviews.
4 Don't know when we will be finished.
5 Info to come from his lawyer. Possible
6 three more Silmsers as of 14 June '94.
7 School records, more work to be done."

8 So I would suggest to Mr. Silmsers that he
9 was continuing to play games while failing ---

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

11 **MR. KOZLOFF:** Well?

12 **THE COMMISSIONER:** Sir, you know there's two
13 things.

14 **MR. KOZLOFF:** Yes.

15 **THE COMMISSIONER:** First of all, I guess is
16 "Know Thy Judge." You are not scoring any big points with
17 me by doing this.

18 **MR. KOZLOFF:** Okay. Let me address this,
19 sir, and I say this with great respect.

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

21 **MR. KOZLOFF:** We go back to the point in
22 time when Mr. Silmsers places us in this rather invidious
23 position by leaving.

24 **THE COMMISSIONER:** Yes.

25 **MR. KOZLOFF:** We try to address that by

1 sitting down with counsel who represent the parties who
2 have yet to cross-examine, and Commission counsel to try to
3 come up with a workable means of somehow compensating for
4 the loss of the opportunity to cross-examine. And that, in
5 my submission, entails, from my point of view -- and this
6 is what I proposed that I would do back at the time that we
7 discussed this in here -- I said I would look for
8 documentation, for statements, for prior evidence under
9 oath, for evidence under oath in this courtroom, for
10 notebooks, entries in notebooks in order to come up with
11 evidence, which either contradicted Mr. Silmsler or
12 clarified or added some coloration to what he had said.
13 That was the proposal.

14 **THE COMMISSIONER:** And I have no problems
15 with that at all. What my problem is, is with the use of
16 your adjectives and the conclusions that you're putting
17 there.

18 Sir, sir, let me finish.

19 **MR. KOZLOFF:** Yes.

20 **THE COMMISSIONER:** You know when you read
21 through that, you know, that Silmsler phoned me, and he
22 said, "I'm going to go to the press" and things like that.
23 I can draw my own conclusions out of that. And I'm asking
24 you once again to refrain from using those adjectives until
25 you get to the submission stage. That's all I'm asking

1 you.

2 You can read out those things. When you
3 look at it on the face, you can see very clearly when he
4 says, "They never did anything". You've got, when they're
5 in police officers' notes about what he said. I don't want
6 to run your case, but I'm telling you that the silence in
7 those words speaks volumes.

8 **MR. KOZLOFF:** Correct.

9 **THE COMMISSIONER:** So you don't have to do
10 that. And then you keep the judge happy.

11 **MR. KOZLOFF:** The next entry then is the 25th
12 of July 1994, Bates page 7004020, 1340 hrs.

13 "Call from Bryce Geoffrey; update on
14 investigation. Request he confronts
15 Silmser and ask if he would be more
16 compliant."

17 I guess Detective Inspector Smith is making
18 my submissions for me there.

19 **THE COMMISSIONER:** Exactly.

20 **MR. KOZLOFF:**

21 "Our investigation discloses it appears
22 Silmser had contact with MacDonald when
23 he was an adult. We require complete
24 story. He will advise."

25 Reference document, same, Bates page

1 7004024. Notes of Detective Inspector Smith, 19 September
2 1994, 10:35 to 11:00:

3 "Call from David Silmser. Wants to
4 know what is happening and how long it
5 will take. He is at wit's end on this
6 and as much as he hates press, he will
7 go to them. Advised him we have three
8 more witnesses to speak to. Each time
9 we interview one, more comes up,
10 necessitating further interviews. I
11 hope to have investigation completed as
12 soon as..."

13 and it's cut off at the bottom of the page, sir.

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

15 **MR. KOZLOFF:** Reference Bates page 7004025.
16 Again 10:35 to 11:00.

17 "Stated I have asked lawyer to have him
18 meet with us because other things had
19 come up Silmser had not told us in
20 initial interviews. Silmser said,
21 "there is lots I didn't tell you. I
22 didn't trust you or the way you
23 conducted interview."

24 Reference Bates page 7004025. Notes of
25 Detective Inspector Smith, 19 September '94. Same

1 conversation, a little later on:

2 "I stated we have found others who
3 alleged MacDonald made sexual advances
4 to them but won't testify. Also, we
5 have information Silmsers saw MacDonald
6 after the alleged abuse, but Silmsers
7 didn't tell us."

8 Reference Bates page 7004025:

9 "Advised Silmsers I spoke to his lawyer
10 a while back. Asked we do a re-
11 interview of things that came up, but I
12 haven't heard from lawyer. Silmsers
13 went on, he was fed up with counsel.
14 Forget about doing any more. He would
15 handle things himself. He couldn't
16 take the pressure anymore and hung up."

17 And finally, at 12:11 on that day:

18 "Call from Bryce Geoffrey. Discussed
19 Silmsers's call, discussed evidence. He
20 feels there are RNPG re sexual
21 touching. I state I have difficulty,
22 is Silmsers selective and didn't tell us
23 all. Also cannot find corroboration
24 Father Charlie re penetration offence.
25 No one except Silmsers. I believe

1 something happened with he and Charlie
2 but when?"

3 Just to say parenthetically there, sir, if
4 Mr. Geoffrey was suggesting that there was an offence of
5 sexual touching made out, he's wrong in law, because
6 Section 151 and 152 only came in effect with the 1985
7 amendments. And the other thing I would say, sir, is that
8 Detective Inspector Smith is being candid with Mr. Geoffrey
9 regarding the difficulties with the investigation.

10 "On the 19th of September '94, he
11 advises Geoffrey again in his
12 conversation. Three more interviews.
13 Investigation should be finished if no
14 more people come forward to interview.
15 Then we can do further interview with
16 he and Silmser and discuss what further
17 evidence he has. Then bring to Mr.
18 Griffiths for recommendations.
19 Geoffrey agrees. States he has no
20 difficulty with our investigations, but
21 Silmser doesn't trust police. Geoffrey
22 states he can control Silmser when he
23 is around."

24 The same page referring to the first of
25 November 1994, that's Bates page 7004026:

1 "Call from Bryce Geoffrey; request to
2 know when investigation is complete.
3 Advised finished brief to Peter
4 Griffiths on Friday or Monday for
5 review. When I hear from him re
6 results, Geoffrey wants me to tell him.
7 I will do so."

8 And now, Bates page 7004028, in the Notes of
9 Detective Inspector Smith on the 20th of December 1994,
10 14:45:

11 "David Silmser called, wanted to know
12 what outcome of investigation was.
13 Advised I had received" ---

14 **THE COMMISSIONER:** Is it 20th of December
15 '94?

16 **MR. KOZLOFF:** I believe so, sir.

17 **THE COMMISSIONER:** Okay, no, I just wanted
18 to make sure on mine; is that ---

19 **MR. KOZLOFF:** Fourteen forty-five (14:45) to
20 15:05 is the conversation.

21 **THE COMMISSIONER:** Yes.

22 **MR. KOZLOFF:** There we go.

23 **THE COMMISSIONER:** Okay.

24 **MR. KOZLOFF:** You have his name, his phone
25 number, his address.

1 **THE COMMISSIONER:** Yes.

2 **MR. KOZLOFF:**

3 "Called, wanted to know what outcome of
4 investigation was. Advised I had
5 received recommendation today from
6 Peter Griffiths. At this time, it
7 appears no charges will be laid against
8 Father MacDonald. Discussed burden of
9 proof on us, et cetera. Silmser
10 thanked us for the investigation and
11 apologized for his behaviour and stated
12 he had been under extreme pressure and
13 distress."

14 Same date.

15 **THE COMMISSIONER:** Can you scroll down a
16 little bit more, Madam Clerk?

17 **MR. KOZLOFF:** Yes.

18 **THE COMMISSIONER:** I just want to have a
19 peak there. Okay.

20 **MR. KOZLOFF:** He goes on to say:

21 "Hope Father MacDonald never gets a
22 parish again."

23 If you flip over to the next page:

24 "I advised Silmser when I had written
25 recommendation of Crown, I would

1 contact him as the press would want a
2 result on the investigation. I would
3 let him know the results prior to the
4 press. Silmsner appeared satisfied with
5 this."

6 Now, if you could bring up document 700963.

7 (SHORT PAUSE/COURTE PAUSE)

8 **THE COMMISSIONER:** Mr. Kozloff, how much
9 time do you think you will need to finish off?

10 **MR. KOZLOFF:** I'm going to finish this
11 section, which I think will bring us to the end of the day,
12 sir.

13 **THE COMMISSIONER:** Yes, thank you.

14 Exhibit 393, a letter dated December 21st
15 1994 to the Ontario Provincial Police by Peter Griffiths.

16 --- **EXHIBIT NO./PIÈCE NO P-393:**

17 (700963) Letter from Peter D. Griffiths to
18 Detective Inspector T.F. Smith, December 21,
19 1994

20 **MR. KOZLOFF:** This is the letter from Peter
21 Griffiths to Detective Inspector Smith regarding the
22 investigation of Father Charles MacDonald. It is dated
23 December 21st, 1994. I am not going to take the time to
24 read it into the record, sir, but in summary, what it
25 demonstrates is that Detective Inspector Smith took the

1 time to explain to Mr. Silmser what Peter Griffiths'
2 recommendations were and the reasons for them, and that Mr.
3 Silmser acknowledged his difficult and -- dare I use the
4 word -- volatile nature by apologizing and giving reasons
5 for it.

6 **THE COMMISSIONER:** Okay.

7 **MR. KOZLOFF:** And then the notes of
8 Detective Inspector Smith at Bates page 7004029 on the 21st
9 of December. This is the day after the previous
10 conversation. He now has the letter from Smith. He calls
11 Mr. Silmser at 14:45. The note says:

12 "Called David Silmser, not at home."

13 And then, the following day, the 22nd of
14 December at 1630 hrs, this is at Bates page Mr. Silmser at
15 14:45, the notes says:

16 "Called David Silmser, not at home."

17 And then the following day, the 22nd of
18 December at 16:30 hours, this is at Bates page 7004030 at
19 16:30 hours,

20 "Called David Silmser, advised him
21 there will be a news release tomorrow
22 re the investigations and gave him the
23 results of same. Silmser appeared
24 satisfied with the investigation,
25 although he was hoping charges would be

1 laid. Explained to him why charge
2 against Father MacDonald would not be
3 laid if further information or others
4 come forward."

5 That's the end of the 1994 investigation sir
6 and it's probably a convenient time to close it.

7 **THE COMMISSIONER:** Perfect. Thank you.

8 I understand you want to speak to counsel or
9 is there a short meeting or plan for today? No?

10 **MR. ENGELMANN:** Yes. I just -- if counsel
11 could stay for a few minutes and give that and Mr. Kozloff
12 will be carrying on in the morning followed by Mr. Wallace,
13 followed by Mr. Callaghan.

14 **THE COMMISSIONER:** All right.

15 So, Mr. Kozloff, how much time do you think
16 you will require tomorrow?

17 **MR. KOZLOFF:** I have three more sections
18 sir, probably in the range of an hour.

19 **THE COMMISSIONER:** All right. Thank you.

20 Let's return at 9:30 a.m.

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

23 --- Upon adjourning at 4:30 p.m. /

24 L'audience est ajournée à 16h30

25

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

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

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



Sean Prouse, CVR-CM