

**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 176

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709 Cotton Mill Street
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K6H 7K7

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709, rue de la Fabrique
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K6H 7K7

Wednesday, December 12 2007

Mercredi, le 12 décembre 2007

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
M ^e Simon Ruel	Commission Counsel
Ms. Deirdre Harrington	
Mr. Ian Stauffer	
Mr. Reena Lalji	Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
Mr. Joe Neuberger	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
Mr. Stephen Scharbach	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. Michael Neville	Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Mr. Carson Chisholm

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1 --- Upon commencing at 9:33 a.m./

2 L'audience débute à 9h33

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

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

8 Please be seated. Veuillez vous asseoir.

9 **THE COMMISSIONER:** Good morning, all.

10 All right. So where were we? We were at
11 Ms. Daley. Thank you.

12 **LENNA BRADBURN, Resumed/Sous le même serment:**

13 **--- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

14 **DALEY:**

15 **MS. DALEY:** Good morning, Ms. Bradburn. My
16 name is Helen Daley. I'm a lawyer for a citizens group in
17 this community called Citizens for Community Renewal, whose
18 principal interest is in institutional reform. And I do
19 have some questions for you about what you told us
20 yesterday.

21 If I understood you correctly yesterday, as
22 at December of 1993, when Mr. Silmsler complained to the
23 regional manager that he'd been sexually abused by a
24 probation officer, your unit, the IIU, had never dealt with
25 a complaint of that nature. Is that correct?

1 **MS. BRADBURN:** I have no recollection and I
2 have no record here to indicate we had.

3 **MS. DALEY:** And I think the words you used
4 to describe a complaint of that nature was sexual
5 impropriety; correct?

6 **MS. BRADBURN:** I understand that the
7 complaint came in as a sexual abuse complaint.

8 **MS. DALEY:** I understand. I understand
9 that.

10 But the mandate of the IIU that we've been
11 discussing related to two discrete things, and one of them
12 obviously is workplace harassment, and you told us that was
13 the primary focus; correct?

14 **MS. BRADBURN:** That's correct, yes.

15 **MS. DALEY:** So to distinguish from workplace
16 harassment, the second mandate of the unit was allegations
17 of sexual impropriety involving probation officers and
18 probationers; correct?

19 **MS. BRADBURN:** Of sexual impropriety
20 involving Correctional staff.

21 **MS. DALEY:** Yes. And Correctional staff
22 vis-à-vis correctional clients; correct?

23 **MS. BRADBURN:** Yes.

24 **MS. DALEY:** So sexual impropriety in the
25 language of the policy related to an allegation of some

1 sexual wrongdoing by, in this circumstance, by a probation
2 officer against a probationer; correct?

3 **MS. BRADBURN:** I think you could
4 characterize it that way, yes.

5 **MS. DALEY:** All right. And I gather that it
6 was always within the Terms of Reference or mandate of your
7 unit that it would undertake investigations of those types
8 of matters, i.e. sexual impropriety vis-à-vis a Ministry
9 client; correct?

10 **MS. BRADBURN:** Yes, sexual impropriety, but
11 certainly not sexual abuse, it's a criminal offence.

12 **MS. DALEY:** Well, I'm not trying to elevate
13 it to a criminal offence. I'm just -- I'm trying to use
14 your terms. Any kind of sexual conduct that was unwelcome
15 by the probationer; correct?

16 **MS. BRADBURN:** I guess the difficulty that I
17 have is the notion of the sexual impropriety, as you look
18 in the scope, will be ---

19 **THE COMMISSIONER:** What's the exhibit
20 number, sorry?

21 **MS. DALEY:** Yes, let's look that up.

22 **MS. BRADBURN:** As I indicated, it refers to
23 gestures or written remarks as being examples of what
24 constitutes a sexual impropriety.

25 **THE COMMISSIONER:** Where do you see that?

1 **MS. BRADBURN:** In -- sorry, under the
2 "Scope" section.

3 **THE COMMISSIONER:** Yes.

4 **MS. BRADBURN:** And to the extent that there
5 was any distinction drawn between matters that may involve
6 a sexual inference, a touching or a comment to somebody
7 where it was consensual versus an abuse where it was a non-
8 consensual act in the context of a criminal act.

9 It's not -- again, the section itself does
10 not go into that distinction, but the inference of the
11 sexual impropriety could be seen as being something where
12 it was a consensual relationship between staff and an
13 inmate versus where it was a sexual abuse, where it was not
14 consensual.

15 **THE COMMISSIONER:** Sorry, so where does it
16 tell me that if it's a sexual abuse, which I don't know how
17 you're going to figure out unless you do an investigation,
18 that you must stop or you won't do it?

19 **MS. BRADBURN:** Again, it's not a question of
20 whether we wouldn't do it.

21 **THE COMMISSIONER:** Right.

22 **MS. BRADBURN:** I'm just drawing a fact that
23 I think in the Terms of Reference -- and it's a point that
24 I believe I made yesterday around needing to ensure the
25 clarity -- is that there was a reference to the issues of

1 sexual assault in the next paragraph, being matters that
2 were referred to the police.

3 **THE COMMISSIONER:** No, no -- well, referred.

4 **MS. BRADBURN:** Yes.

5 **THE COMMISSIONER:** Not transferred. Alert
6 the police and not necessarily stop your investigation.

7 **MS. BRADBURN:** And we would not conduct,
8 obviously, the criminal investigation. So again ---

9 **MS. DALEY:** We understand that.

10 **MS. BRADBURN:** And we've not said, as the
11 notes indicate from the note that's -- the verbal
12 transaction wasn't indicating that the IIU would not
13 necessarily investigate. It just wasn't investigating at
14 that time.

15 **MS. DALEY:** All right. Well, you've jumped
16 ahead of me. I'll come to that.

17 **MS. BRADBURN:** Okay.

18 **MS. DALEY:** But what I'm just trying to
19 understand from you here, and I guess to paraphrase what
20 you told us, I gather sexual impropriety by a probation
21 officer vis-à-vis a client could take the form of gestures,
22 oral/written remarks, as you say in the policy ---

23 **MS. BRADBURN:** Right.

24 **MS. DALEY:** --- could also take the form of
25 a sexual assault. But the policy would have you

1 investigate in either event; correct?

2 MS. BRADBURN: It may, yes.

3 MS. DALEY: All right.

4 THE COMMISSIONER: No, no, I'm sorry. What
5 do you mean "may"?

6 MS. BRADBURN: Well, again, it would ---

7 THE COMMISSIONER: I thought it was "shall".

8 MS. BRADBURN: The term is "will", what I
9 believe is the comment, but again, if it was a sexual
10 assault and there was direction from a Crown attorney or
11 that there was concerns about inhibiting a police
12 investigation, then we would take our guidance from that,
13 that we're not going to jeopardize a criminal prosecution.

14 MS. DALEY: All right. But this is a
15 somewhat hypothetical discussion, obviously ---

16 MS. BRADBURN: Yes.

17 MS. DALEY: --- because that never occurred
18 in Mr. Silmsers's complaint, did it?

19 MS. BRADBURN: Not to my knowledge.

20 MS. DALEY: All right. Now, I just want to
21 focus for a moment on the fact that although the unit had
22 been up and running for about a year, it had never received
23 a complaint of the sort Mr. Silmsers made; correct?

24 MS. BRADBURN: Not to my knowledge. I don't
25 have any information on that.

1 **MS. DALEY:** Now, what I want to know is was
2 it known generally that this recourse existed for Ministry
3 clients? In other words, would a probationer know that if
4 he or she felt there had been sexual impropriety on the
5 part of a probation officer, he or she could come forward
6 to this unit?

7 **MS. BRADBURN:** I have no -- I don't have any
8 knowledge of that. This was a function, I believe, that
9 was the responsibility of another investigations unit
10 within the Ministry prior to it being put in the mandate of
11 this one.

12 **MS. DALEY:** Is that the PSB?

13 **MS. BRADBURN:** I don't know what it was
14 called. I don't know what the term was.

15 And so to the extent that there was
16 advertising done within the client group within the
17 Ministry, I do not know.

18 **MS. DALEY:** Okay. So as best you can tell
19 us, you're not aware of any advertising or any step that
20 was taken to bring this recourse or this avenue to the
21 attention of Ministry clients?

22 **MS. BRADBURN:** Not that I'm aware of.

23 **MS. DALEY:** All right. Now, I thought what
24 you told us yesterday was that you put in place operating
25 procedures for the IIU? That was part of what you had done

1 at the outset?

2 **MS. BRADBURN:** Yes, that's one of the things
3 that I was working on, yes.

4 **MS. DALEY:** All right. Now, did you put in
5 place any operating procedures which specifically related
6 to sexual impropriety complaints by Ministry clients?

7 **MS. BRADBURN:** The operating procedures that
8 I was involved with was with respect to the WDHP policy.
9 To the extent that there was any reference in the documents
10 that we presented or prepared, there wasn't anything
11 specific with respect to the sexual impropriety. The focus
12 was on the workplace harassment and discrimination.

13 **MS. DALEY:** Okay. So the answer to the
14 question would be no, there were no operating procedures
15 that specifically related to a client complaint about a
16 probation officer?

17 **MS. BRADBURN:** There was a document that was
18 generated -- and I don't know if it's here in the materials
19 -- that we prepared, but I believe it was all focussed on
20 the WDHP policy on the workplace harassment.

21 **MS. DALEY:** Right.

22 **MS. BRADBURN:** I don't recall at this point
23 whether or not there was anything specific in that
24 regarding sexual impropriety.

25 **MS. DALEY:** And, frankly, that would make

1 sense because as you told us yesterday, that was -- that
2 was what initiated the IIU in the first place, the desire
3 to deal with workplace issues; correct?

4 **MS. BRADBURN:** That's my understanding, yes.

5 **MS. DALEY:** Now, I take it you would agree
6 with the Commissioner's comments to you yesterday that
7 people on probation could be in a vulnerable position vis-
8 à-vis the probation officer because the officer is the one
9 with authority over their probation; correct?

10 **MS. BRADBURN:** I agree with that, yes.

11 **MS. DALEY:** And I take it that while there
12 was -- sorry, let me back up. There was, as you told us
13 yesterday, zero tolerance for sexual harassment amongst
14 Ministry employees; correct?

15 **MS. BRADBURN:** I don't recall using that
16 phrase.

17 **MS. DALEY:** Was that not the attitude that
18 the IIU was set up to deal with?

19 **MS. BRADBURN:** The IIU was set up to deal
20 with the volume. The government already had a policy with
21 respect to workplace harassment and discrimination not
22 being tolerated within the organization.

23 **MS. DALEY:** All right.

24 **MS. BRADBURN:** I just don't recall using the
25 terminology that you used.

1 **MS. DALEY:** That's fine. But the
2 terminology, I take it, is not entirely off base. I mean,
3 the purpose of this organization was to ensure that
4 harassment was not tolerated amongst employees; correct?

5 **MS. BRADBURN:** As every employer has that
6 responsibility, yes.

7 **MS. DALEY:** All right. Was any
8 consideration ever given to informing clients of the
9 Ministry that there'd be zero tolerance for sexual
10 misconduct?

11 **MS. BRADBURN:** I have no recollection of any
12 discussions on that.

13 **MS. DALEY:** All right. Now, should we take
14 it that by December of 1993 when Mr. Silmsler complained to
15 the regional manager, the six investigators contemplated by
16 the IIU had in fact been appointed?

17 **MS. BRADBURN:** There were investigators in
18 the office.

19 **MS. DALEY:** All right. And were you up to
20 a full complement; you had enough people to do the
21 necessary work?

22 **MS. BRADBURN:** At that time -- and, again, I
23 don't recall specifically whether we had four or six in
24 place when I first started in the unit. I do recall that
25 we had a backlog of complaints ---

1 MS. DALEY: All right.

2 MS. BRADBURN: --- to deal with.

3 MS. DALEY: But you did have investigators
4 and you had investigators who had been designated as
5 inspectors under the statute?

6 MS. BRADBURN: They would have been, yes.

7 MS. DALEY: All right. And would I -- is it
8 right for us to take it that by December of 1993 your unit
9 had the resources necessary to fulfil its mandate?

10 MS. BRADBURN: Well, as I mentioned, there
11 certainly was a backlog with respect to the volume of
12 complaints, and the staffing was done on a secondment basis
13 from other Ministry divisions and those secondments were
14 for set periods of time.

15 MS. DALEY: As the person responsible for
16 the unit, did you feel that the unit had the appropriate
17 resourcing to fulfil its mandate?

18 MS. BRADBURN: At that point in time, again,
19 I'd been in the unit for about three months, and my
20 recollection is at that point-in-time we had -- I had been
21 monitoring the volume of the cases with the intent that
22 there needed to be more staff.

23 MS. DALEY: All right. Would you agree that
24 whether or not one is investigating a sexual incident
25 amongst employees or between a Ministry employee and a

1 client, the same skill set is involved, from an
2 investigation point of view?

3 **MS. BRADBURN:** The core competency of an
4 investigation function is the same.

5 **MS. DALEY:** That's what I would have
6 imagined.

7 I want to just shift focus for a second and
8 ask you about the PSB. Do you know what that is?

9 **MS. BRADBURN:** I don't know what the
10 acronym.

11 **MS. DALEY:** We've been told here that the
12 acronym stands for -- and now I'm blanking on it. Sorry,
13 the Professional Services Bureau.

14 **MS. BRADBURN:** Okay.

15 **MS. DALEY:** Sorry, Professional Standards
16 Bureau.

17 **MS. BRADBURN:** Okay.

18 **MS. DALEY:** And we've been told that it was
19 an investigatory arm that was under the auspices I guess of
20 the OPP branch of the Ministry.

21 Did you know about that?

22 **MS. BRADBURN:** Well, I certainly know that
23 the OPP had, as other police services have, a professional
24 standards bureau or office but I'm not aware of one in the
25 context that was operating within Corrections.

1 **MS. DALEY:** All right. We were told that
2 this unit could deal with complex and high-profile matters.
3 In other words, it could investigate complex and high-
4 profile matters, but you say you weren't aware of it?

5 **MS. BRADBURN:** I'm aware of professional
6 standards branches within policing and within the OPP. I'm
7 not aware that it was dealing with matters within
8 Corrections.

9 **MS. DALEY:** All right. Now, I just want to
10 turn briefly to examine what you did in these
11 circumstances. And I appreciate that you're not able to
12 offer us much by way of your recollection, but I just
13 wanted to take you to Exhibit 1108 for a moment. Okay?

14 I wonder, Madam Clerk, if you could --
15 sorry, I may have misidentified the exhibit. What I'd like
16 this witness to be shown, if you don't mind, is the first
17 page of her notes, which is the record of verbal
18 transaction dated December 16th, '93.

19 My apologies; that's Exhibit -- that's a
20 separate exhibit, 1083.

21 **THE COMMISSIONER:** It's 1083, right.

22 **MS. DALEY:** Yes.

23 **THE COMMISSIONER:** Page 2.

24 **MS. DALEY:** Yes, thank you.

25 Madam Clerk, if you could go back one page

1 and enlarge that. Thank you very much.

2 I don't know if you're looking at this on
3 the screen or are you looking at a hard copy?

4 **MS. BRADBURN:** At both.

5 **MS. DALEY:** Okay. This is a form document
6 called "Record of Verbal Transaction" and I just wondered
7 if you could tell us what's the purpose of that form?

8 **MS. BRADBURN:** My recollection is it was
9 just used as some way to record notes relating to inquiries
10 or information that came into the office.

11 **MS. DALEY:** All right. Was the intent to be
12 as detailed as possible because otherwise there was not a
13 written record of the transaction?

14 **MS. BRADBURN:** I think they were used in
15 different ways as far as the level of information that
16 would be put into them.

17 **MS. DALEY:** What was your practice in using
18 it?

19 **MS. BRADBURN:** My practice is to summarize
20 the information that I've been given in a phone call or if
21 there was any notes that I wanted to make about a
22 particular issue.

23 **MS. DALEY:** All right.

24 **MS. BRADBURN:** So it would vary, the amount
25 of detail that would be there.

1 **MS. DALEY:** All right. Well, in your
2 preparation of Exhibit 1083, I take it you noted what at
3 that time seemed the most critical and salient features of
4 what you dealt with. Is that fair?

5 **MS. BRADBURN:** I think writing down what I
6 thought was relevant for the future.

7 **MS. DALEY:** All right. Now, I just want to
8 direct your attention to -- about the ninth line down
9 there's reference to Mr. Silmsler privately seeking
10 restitution through his lawyer from the deceased party.

11 I appreciate that your recollection of the
12 whole circumstance is limited, but we've heard from Bill
13 Roy and Bill Roy's impression was that Mr. Silmsler was on
14 his own at this point.

15 **MS. BRADBURN:** I have no comment.

16 **MS. DALEY:** You can't help us with that ---

17 **MS. BRADBURN:** No.

18 **MS. DALEY:** --- one way or the other.

19 In terms of the second entry which talks
20 about the events of December 17th ---

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

22 **MS. DALEY:** --- the wording that you chose
23 certainly seems to me to indicate that the decision came
24 via Ms. Eley and she advised you that the Legal Branch
25 would be involved and that nothing further was required of

1 you.

2 Is that not the right way to read that?

3 **MS. BRADBURN:** Well, as I believe we talked
4 yesterday, the words are as they are here. You can
5 interpret it that way, but I can tell you that my
6 relationship with the liaison staff member in the office
7 are one where we would discuss issues and anything that --
8 any decisions that were made that affected the way that my
9 unit would do its work were ultimately my decisions.

10 **MS. DALEY:** I appreciate that that was how
11 things generally occurred, but you have no specific
12 recollection that that happened here?

13 **MS. BRADBURN:** I have no specific
14 recollection on this particular issue. I can just tell you
15 what my practice would be.

16 **MS. DALEY:** All right. Now, the other piece
17 of paper that you created that reflected your involvement
18 is Exhibit 1107, and that was your memorandum to Ms. Eley.
19 And I'd like you to focus on the second last paragraph
20 which speaks to your instructions to Bill Roy.

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

22 **MS. DALEY:** If we could focus on that for a
23 second.

24 Did it occur to you that in the
25 circumstances it might not be reasonable to expect Mr.

1 Silmsner to send a written document to the Deputy Minister?

2 **MS. BRADBURN:** It would -- based on what
3 I've heard through this Inquiry, and more recently, if --
4 it may have been an issue but it was not information that I
5 had at the time, based on what's in these notes.

6 **MS. DALEY:** Well, can I unpack that with you
7 for a second?

8 **MS. BRADBURN:** Certainly.

9 **MS. DALEY:** What information would you have
10 wanted to have to determine whether this was a reasonable
11 course of action?

12 **MS. BRADBURN:** Well, if -- if I had
13 information from those who had been dealing with the
14 gentleman and had some knowledge of him, that they felt
15 that it was -- would be a burden or he would be incapable
16 of doing -- complying with that request, then another
17 strategy could have been put in place. I mean, there was
18 nothing to wanting to put an obstacle in the person's way,
19 but if -- there was -- appears from the information I have
20 here, there was no indication provided to me at that point-
21 in-time and it was a practice of the unit, again, as it
22 related to the majority of our work, that we would have
23 written complaints.

24 **MS. DALEY:** Did you not have the impression
25 -- and again, perhaps the answer's you just don't recall --

1 but Mr. Roy left us with the impression that he took the
2 Silmsers complaint very seriously and felt that requiring
3 Silmsers to put it in writing was not appropriate. That was
4 not conveyed to you as you recall?

5 MS. BRADBURN: I have no recollection of
6 that and there's nothing in the notes to indicate that, of
7 my notes.

8 MS. DALEY: Do you have any -- again, your
9 notes don't reflect this, so I assume the answer's no --
10 but I take it you don't recall that Mr. Roy felt it was
11 futile for him to speak with Silmsers again because Silmsers
12 didn't wish to speak with him?

13 MS. BRADBURN: Again, I have no recollection
14 of that and it's not in my notes.

15 MS. DALEY: All right. I take it, as an
16 investigatory matter, you don't need a written statement to
17 start an investigation. An investigator could have met
18 with Mr. Silmsers and could have questioned him and obtained
19 his story verbally, that could have happened; correct?

20 MS. BRADBURN: I don't believe there's any
21 reason why it couldn't have.

22 MS. DALEY: All right. Now, the evidence
23 we've heard here so far is that notwithstanding what you
24 say in Exhibit 1007 about Mr. Silmsers being asked to put it
25 in writing ---

1 MS. BRADBURN: M'hm.

2 MS. DALEY: --- in fact, he wasn't asked to
3 do that. Does that surprise you?

4 MS. BRADBURN: It does, since that's the
5 direction that we had asked for.

6 MS. DALEY: All right. And that indicates a
7 lapse of some sort in communications, perhaps?

8 MS. BRADBURN: Of -- I would believe so,
9 yes, I would characterize it that.

10 MS. DALEY: And it creates a gap in terms of
11 how your Ministry dealt with Mr. Silmser and his issue;
12 correct?

13 MS. BRADBURN: I would say so.

14 MS. DALEY: And I take it you -- would you
15 not agree with me, that was not an appropriate outcome?

16 MS. BRADBURN: Well, the outcome that I was
17 looking for was that the information would be communicated
18 to Mr. Silmser and he could make the determination to bring
19 forward the written complaint.

20 MS. DALEY: Right. And that would be the
21 appropriate outcome from your point of view?

22 MS. BRADBURN: Correct.

23 MS. DALEY: So if that didn't happen, the
24 outcome was not appropriate?

25 MS. BRADBURN: I ---

1 **MS. DALEY:** --- would you agree with that?

2 **MS. BRADBURN:** It's not the outcome that I
3 was looking for.

4 **MS. DALEY:** And would you not agree that the
5 matter that Silmsler had raised with Mr. Roy should have
6 been investigated?

7 **MS. BRADBURN:** Well, again, based on the
8 information that I had, the intent was that we would get
9 the information and a determination could be made as to
10 what would happen.

11 **MS. DALEY:** All right. So I take it your
12 perspective on it was if he had responded in writing, you
13 could have then decided about investigating?

14 **MS. BRADBURN:** I think that would be an
15 appropriate conclusion.

16 **MS. DALEY:** All right. Thank you.

17 **THE COMMISSIONER:** Thank you.

18 Mr. Horn.

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

20 **HORN:**

21 **MR. HORN:** My name is Frank Horn and I'm
22 representing the Coalition for Action and we're a citizens'
23 group that advocated for this Inquiry to be established.

24 Now, I understand that when you first came
25 in contact with this issue, you would have done some

1 cursory investigations and -- to find out who Mr. Ken
2 Seguin was?

3 If you were told an employee of the -- a
4 probation officer had been accused of sexual improprieties,
5 you would then initially start by finding out who Mr. Ken
6 Seguin was and how long he's been with the Ministry?

7 **MS. BRADBURN:** I can only speak to what's in
8 my notes.

9 And the inquiries I made was around the
10 circumstances of his death.

11 **MR. HORN:** You didn't look into how long he
12 had been with the Ministry?

13 **MS. BRADBURN:** I have no recollection of
14 that and I have nothing in my notes to indicate that.

15 **MR. HORN:** Well, okay, let's just say
16 generally when you're doing an investigation and a name
17 comes up, would you get some kind of briefing on who this
18 person is and how long he's been with the Ministry?

19 **MS. BRADBURN:** As indicated, most of the
20 investigations, the vast majority of the investigations
21 that we dealt with were between employees, and they were
22 existing employees and the length of time that the person
23 had been with the Ministry was not necessarily relevant to
24 the investigations.

25 **MR. HORN:** The reason why I'm asking is this

1 is that from the evidence that's been before the
2 Commission, Mr. Seguin had been in the Ministry or a
3 probation officer since 1968.

4 **MS. BRADBURN:** I have no knowledge of that.

5 **MR. HORN:** So you never really even inquired
6 about who he was and how long he's been with the Ministry?

7 **MS. BRADBURN:** I can -- my information is
8 limited to the notes that are here before the Inquiry. I
9 have no other information I can provide you on that.

10 **MR. HORN:** Okay, so since 1968 -- let's say
11 he was in the employ as a probation officer with the
12 Ministry for those many years, wouldn't it have been wise
13 for you to find out that kind of information since you're
14 investigating his conduct?

15 **MS. BRADBURN:** We were not investigating his
16 conduct at the point-in-time when my involvement with the
17 matter was occurring.

18 Perhaps at some point-in-time when there was
19 an investigation it may be relevant information, but during
20 the course of the days that I was involved in it, it's not
21 information that's in my notes.

22 **MR. HORN:** Okay. So really you didn't go
23 very far in your investigation, then? I mean, you didn't
24 even find out that this individual had been with the
25 Ministry for over 20 years?

1 **MS. BRADBURN:** I have no information about
2 how long Mr. Seguin had been with the Ministry in my notes.

3 **MR. HORN:** And that he had been -- had
4 contact with hundreds of other probationees besides Mr.
5 Silmser?

6 **MS. BRADBURN:** I have no information in my
7 notes with respect to that.

8 I can assume that anyone who worked for the
9 Ministry that long would have contact with many clients.

10 **MR. HORN:** And if you did do an
11 investigation, you would have then gone back and find out,
12 since the allegations come from the 70s that there may have
13 been others there from the same period that Mr. Silmser
14 made these allegations from?

15 **MS. BRADBURN:** I wouldn't want to speculate
16 on what may or may not have come out of an investigation,
17 that might have been -- that might be an appropriate
18 conclusion.

19 **MR. HORN:** So you really didn't do much of
20 an investigation on Mr. Ken Seguin at all? You didn't even
21 know how long he'd been with the Ministry and you didn't
22 know how many contacts he had over those years?

23 **MS. BRADBURN:** I have no information in my
24 notes regarding that and I have no recollection.

25 **MR. HORN:** The reason why I'm asking is that

1 if there isn't -- if had been an investigation, it would be
2 possible that they would have uncovered other similar
3 allegations against Mr. Seguin?

4 **MS. BRADBURN:** I can't speculate what might
5 have come out of an investigation, I'm sorry.

6 **MR. HORN:** Okay. So in this situation what
7 you did was you did a very, very cursory investigation and
8 then you almost immediately referred it to Legals, if you
9 found out that the individual was wanting money.

10 **MS. BRADBURN:** As indicated in the notes,
11 the office did not investigate at that point-in-time.

12 There were inquiries made, as indicated in
13 my notes, and that's the scope of the information I can
14 provide you.

15 **MR. HORN:** Okay. So when Mr. Silmsers came
16 forward, as far as you were concerned, you didn't go beyond
17 knowing that there had been a death and that Mr. Silmsers
18 were making allegations against Mr. Seguin, and that's as
19 far as you went?

20 **MS. BRADBURN:** That is the information that
21 is in my notes; that's consistent with the information I
22 have.

23 **MR. HORN:** And then when you handed over to
24 the Legal Department, then their job is to basically
25 negotiate with Mr. Silmsers's lawyers and try to come to

1 some kind of a settlement?

2 **MS. BRADBURN:** Again, I'm limited to what's
3 in my notes. There's a reference to Legal Branch, there's
4 a reference to Mr. Silmsler looking for a financial
5 settlement.

6 **MR. HORN:** Okay, so the moment you heard
7 that then you just said, "I'm backing off". Did you make
8 that decision to back off or were you told to back off by
9 somebody else?

10 **MS. BRADBURN:** Again, as I've indicated in
11 That's my previous evidence, I've had discussions with the
12 liaison representative in the Deputy Minister's office and
13 as indicated in here, there was -- and as the notes say,
14 the context of that -- we would not investigate at that
15 time and the matter would be referred to the Legal Branch.

16 My practice has been that those would be my
17 decisions, made in consultation.

18 **MR. HORN:** Okay. So what you're really
19 saying is, because you'd never dealt with something like
20 this before and all you'd dealt with is basically workplace
21 harassment, suddenly this comes before you and you didn't
22 know what to do?

23 **MS. BRADBURN:** I wouldn't say that.

24 **MR. HORN:** Well, what could you have done?
25 What could you have done further to your investigations?

1 Could you have gone down and pulled the files on Mr.
2 Seguin?

3 **MS. BRADBURN:** Again, we did not investigate
4 at this point-in time-because of the information that we
5 had and that information ---

6 **MR. HORN:** I understand you didn't do it but
7 could you have?

8 **MS. BRADBURN:** If you're asking me to ---

9 **THE COMMISSIONER:** One at a time.

10 **MS. BRADBURN:** --- speculate what happens in
11 an investigation, an investigation in general? Certainly
12 information that the employer has on record about employees
13 may be reviewed during the course of an investigation.

14 **MR. HORN:** Okay. All right.

15 If you had gone into an investigation, would
16 that have been the first thing you would have done is find
17 out more about Mr. Ken Seguin and about who he had been
18 dealing with over those 20 -- over 20 years?

19 **MS. BRADBURN:** I think the first thing that
20 would have happened would have been an interview with the
21 complainant.

22 **MR. HORN:** And you didn't even do that?

23 **MS. BRADBURN:** Again, sir, as has been
24 indicated, the office did not initiate an investigation at
25 that time.

1 **MR. HORN:** And yet you made the decision --
2 oh, did you make the decision or were you told to make the
3 decision to refer it to Legal?

4 **MS. BRADBURN:** I think I've already answered
5 that question.

6 **THE COMMISSIONER:** Yes.

7 **MR. HORN:** Did you make the decision or
8 somebody else made that decision?

9 **THE COMMISSIONER:** Just a second.
10 She's already answered that.

11 **MR. HORN:** Okay.

12 **THE COMMISSIONER:** Don't forget, we're
13 dealing with past recollection recorded here.

14 **MR. HORN:** Okay. See, the concern that we
15 as the Coalition have is that there were potentially other
16 files that would either have been compromised or there were
17 other individuals that may have come -- may come forward,
18 and if you had done an investigation maybe those others
19 would have come forward. If you had done your
20 investigation, besides Mr. Silmser.

21 **MS. BRADBURN:** Sorry, is that a question?

22 **MR. HORN:** Instead what you did was you
23 referred it to Legal.

24 **THE COMMISSIONER:** I'm sorry.

25 **MR. RUEL:** Mr. Commissioner, just an

1 objection.

2 I mean this didn't seem to be a question, so
3 I would ask my colleague to frame this as a question.

4 **MR. HORN:** Okay.

5 **THE COMMISSIONER:** Put the microphone back
6 to you again.

7 **MR. HORN:** Okay. The Coalition are
8 concerned that there may have been other potential victims
9 and complainants that could have been found if there had
10 been a proper investigation done by the -- do you think
11 that you could have done that? Did you have the mandate to
12 do that on behalf of the Ministry?

13 **MS. BRADBURN:** Again, the -- the Ministry
14 mandate for the unit has been set out and I think we've
15 discussed that in the context of the Terms of Reference.

16 **MR. HORN:** So you did have the ability to go
17 and find out if there had been others that had the same
18 complaint as Mr. Silmser?

19 **MS. BRADBURN:** Again, I can't speculate on
20 what an investigation may or may not have concluded.

21 **THE COMMISSIONER:** No, no, let's just --
22 maybe to help out a little bit and maybe to muddy the
23 waters.

24 Let's go back to what you're used to ---

25 **MS. BRADBURN:** M'hm.

1 **THE COMMISSIONER:** --- and that is employees

2 ---

3 **MS. BRADBURN:** Yes.

4 **THE COMMISSIONER:** --- all right?

5 So is there a case where -- well, in your
6 experience, the people that are making these harassment
7 complaints ---

8 **MS. BRADBURN:** M'hm.

9 **THE COMMISSIONER:** --- would you
10 characterize them as vulnerable?

11 **MS. BRADBURN:** They can be, yes.

12 **THE COMMISSIONER:** M'hm. Would you
13 characterize them as being in a fragile state, in some
14 cases?

15 **MS. BRADBURN:** Sometimes, yes.

16 **THE COMMISSIONER:** M'hm. And that sometimes
17 they can't really comply, you know, like with a written
18 logical statement; that somebody has to talk to them and
19 kind of draw them out in a professional way?

20 **MS. BRADBURN:** Yes.

21 **THE COMMISSIONER:** All right. And have you
22 found that in doing an investigation, if in talking with
23 that person that you thought, well, m'hm, there may be
24 something more here, that your unit would have the
25 authority and ability to talk to other employees to see if

1 this has spread?

2 **MS. BRADBURN:** Yes, and I believe we
3 commented on that yesterday that, but yes, that would be
4 something that we would do.

5 **THE COMMISSIONER:** Okay. So that's what --
6 I think that's what Mr. Horn is saying is that if you would
7 -- could you not have applied the same reasoning to a
8 sexual -- to a client, a probationer, to say, well, this
9 person is obviously ---

10 **MS. BRADBURN:** M'hm.

11 **THE COMMISSIONER:** --- very upset and we'd
12 better get somebody out there to talk to him because he
13 might not be able to conform to the rules of reporting?

14 **MS. BRADBURN:** M'hm.

15 **THE COMMISSIONER:** Yeah. And then if that
16 was the case, and he would have told you that someone else
17 had been hurt by this, that that would have brought up your
18 antenna and then would you have had the ability and the
19 authority to go through Mr. Seguin's files and to check to
20 see if any other probationers were at risk?

21 **MS. BRADBURN:** Certainly.

22 **THE COMMISSIONER:** Is that what you wanted
23 to know?

24 **MR. HORN:** Yes, that's -- yes.

25 So you did have that ability to do -- to do

1 that?

2 **MS. BRADBURN:** Well, we had the authority to
3 investigate and an investigation can take you anywhere.

4 **MR. HORN:** So in retrospect, looking back,
5 if you had done that, you may have uncovered other
6 potential victims' complaints?

7 **MS. BRADBURN:** Again, I can't speculate but,
8 of course, it's quite possible that there would be
9 information provided that would lead to other allegations.

10 **MR. HORN:** And also the fact that it would
11 have been important to find out if there had been any other
12 files of -- or individuals, and the relationship may have
13 been compromised with that individual because they were
14 under the authority of Mr. Seguin. I mean, it would have
15 been important for you to find that wouldn't it?

16 **MS. BRADBURN:** During a course of
17 investigation one would want to find out as much
18 information as they can, yes.

19 **MR. HORN:** Okay. So a decision then was
20 made by the Ministry to say, "We don't want to get into
21 that; we just want to deal with this one individual and
22 deal with him and nobody else"?

23 **MS. BRADBURN:** I can't say that any such
24 decision was ever made.

25 **MR. HORN:** Okay. So you didn't make that

1 decision to refer it to Legal and then stop there; was that
2 made by somebody else or yourself? Because you indicate --
3 -

4 **MS. BRADBURN:** You're linking your previous
5 comment to the reference to the matter going to Legal.

6 The notes indicate that the matter was being
7 dealt with in the first instance would by Legal. I'm not
8 aware that there's a connection between that and your
9 previous statement that the Ministry made a decision not to
10 follow-up on others who may have found themselves in the
11 same position as Mr. Silmsen.

12 **MR. HORN:** I mean, what the Coalition is
13 thinking -- and this is what we want to know if you can
14 clarify this for us -- is that, basically, what the
15 Ministry did is, they said, "Let sleeping dogs lie. Let's
16 not stir things up. We'll deal with one individual at a
17 time and hopefully all the other complaints will just go
18 away".

19 That's what we think was being attempted by
20 the Ministry and using you in that way. Do you think that
21 you were being used in that way by stopping you from doing
22 a thorough investigation?

23 **MS. BRADBURN:** As indicated in the notes,
24 it's suggested that Legal Branch was going to take the
25 issue on in the first instance and the IIU would not

1 investigate at that time.

2 There's nothing in my notes or any
3 indication that there wouldn't have been circumstances
4 under which the IIU would investigate.

5 **MR. HORN:** Okay. When you make -- you made
6 a decision, you had conversations with ---

7 **THE COMMISSIONER:** Just a minute, just a
8 minute.

9 **MR. HORN:** Yes.

10 **THE COMMISSIONER:** You may be -- the webcast
11 is down.

12 I'm sorry, the webcast is down. How long
13 will it take? Should we break and can we reboot it or ---
14 Pardon, I'm sorry? We'll still trying to
15 find out.

16 Why don't we take a 10-minute break just to
17 see and if not we'll continue without the webcast.

18 Thank you.

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

21 This hearing will resume at 10:25.

22 --- Upon recessing at 10:13 a.m./

23 L'audience est suspendue à 10h13

24 --- Upon resuming at 10:48 a.m./

25 L'audience est reprise à 10h48

1 **THE REGISTRAR:** All rise. Veuillez vous
2 lever.

3 This hearing is now resumed; please be
4 seated. Veuillez vous asseoir.

5 **THE COMMISSIONER:** Thank you.

6 So where were we now?

7 Mr. Horn.

8 **MR. HORN:** Yes.

9 **LENNA BRADBURN, Resumed/Sous le même serment:**

10 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. HORN**

11 **(continued/suite):**

12 **MR. HORN:** I just have a few more questions.

13 I see that you were a police officer in
14 Metro Toronto.

15 **MS. BRADBURN:** That's correct.

16 **MR. HORN:** How long were you a police
17 officer?

18 **MS. BRADBURN:** I was a police officer for 10
19 years in Toronto.

20 **MR. HORN:** Okay. So that you would have
21 some experience in court, in the court testifying?

22 **MS. BRADBURN:** Yes.

23 **MR. HORN:** Okay. And you would agree that
24 credibility is a prime consideration that is taken in by
25 the trier of the facts and issues before the court?

1 **MS. BRADBURN:** Yes.

2 **MR. HORN:** Okay. And that the -- and then
3 when you went to work for the Solicitor General's office
4 you were dealing with situations in which probation
5 officers are dealing with people who are convicted
6 criminals; right?

7 **MS. BRADBURN:** M'hm, I ---

8 **MR. NEUBERGER:** I'm sorry. I think that's a
9 big leap.

10 **THE COMMISSIONER:** What's that now?

11 **MR. NEUBERGER:** I think that's a bit of a
12 leap, probation officers as convicted criminals. I mean,
13 you know ---

14 **MR. HORN:** I didn't say that. I said they -
15 - I didn't say the probation officers. They deal -- the
16 probation officers there's a dealing with criminals,
17 convicted criminals.

18 **MR. NEUBERGER:** Okay. Sorry.

19 **MR. HORN:** Yes.

20 **MR. NEUBERGER:** I was lost in his language,
21 I apologize.

22 **MR. HORN:** Okay. The probation officers are
23 dealing with convicted criminals?

24 **MS. BRADBURN:** Yes.

25 **MR. HORN:** Okay. So these are individuals

1 then who would have some difficulty in mounting any kind of
2 a claim against the Ministry because of the fact that these
3 are criminals. I'm talking about the probationers.

4 **MS. BRADBURN:** I'm sorry?

5 **MR. HORN:** Because of credibility issues.

6 **MS. BRADBURN:** I don't see any reason why
7 any claim being launched by somebody who is a probation
8 client would not be viewed as on the face of what the
9 allegations is.

10 **MR. HORN:** Are you saying then that somebody
11 who is in the position of being a convicted person would be
12 in the same position, credibility wise, as somebody who
13 hasn't?

14 **MS. BRADBURN:** I'm not making a comment on
15 that, no.

16 **MR. HORN:** Pardon?

17 **MS. BRADBURN:** I'm not commenting on that.
18 I'm not sure I understand the context.

19 **MR. HORN:** I'm suggesting ---

20 **MS. BRADBURN:** It's up to the court to
21 determine the credibility of witnesses and information.

22 **MR. HORN:** I understand, but if a person's -
23 - I mean, you've been in court?

24 **MS. BRADBURN:** Yes.

25 **MR. HORN:** When an individual is in court

1 and they stand before the court their criminal record is
2 brought forth to discredit them isn't it?

3 **MS. BRADBURN:** The criminal record can be
4 read into court and the court can determine how it's going
5 to influence their decision.

6 **MR. HORN:** It does deal with the question of
7 credibility, doesn't it?

8 **MS. BRADBURN:** Yes.

9 **MR. HORN:** Okay. So when Silmser and other
10 individuals like himself who are -- who have criminal
11 backgrounds come and make complaints against the Ministry,
12 there would be some question as to credibility, wouldn't
13 there be?

14 **MS. BRADBURN:** It's nothing that I have
15 experienced to say that we'd determine that we wouldn't
16 deal with something because of the person's past history.

17 **MR. HORN:** But you ---

18 **MS. BRADBURN:** I deal with ---

19 **MR. HORN:** What I'm suggesting ---

20 **THE COMMISSIONER:** You can finish your
21 thought.

22 **MR. HORN:** Okay.

23 **MS. BRADBURN:** Well, I guess if the
24 inference is being made that because somebody who is in the
25 Corrections system by virtue of their past behaviour, that

1 we're not going to accept a complaint from them, I disagree
2 with that, and certainly in my role with the Ombudsman's
3 office who dealt with -- which was subsequent obviously to
4 my role with the IIU, we dealt with complaints from inmates
5 regarding their relationships and issues with the Ministry
6 of Correctional Services all the time.

7 **MR. HORN:** Okay. What I'm suggesting to you
8 is that -- well, this is the suggestions that I have heard
9 many times by people that I'm representing, is that that
10 was one of the difficulties, is a lot of the victims, a lot
11 of them have criminal backgrounds and as a result nobody
12 listened to them.

13 Do you think that that's true or not?

14 **MS. BRADBURN:** I can't speak for others.
15 It's not true in my case.

16 **MR. HORN:** It wouldn't be true in your case?
17 How about the Ministry's case, the people that you're
18 dealing with? Do you have any idea of what the general
19 culture is within the Ministry in terms of the people that
20 they deal with?

21 **MR. NEUBERGER:** I'm sorry, I think that's a
22 bit broad.

23 If he wants to ask about the people who she
24 specifically dealt with on a specific topic of Mr. Silmser,
25 if that ever came across to her through the conversations,

1 the difficulty is her memory.

2 **THE COMMISSIONER:** No, no, but just a minute
3 now.

4 What's wrong with asking this witness about
5 if she's aware, at the time in 1993, what the culture -- if
6 there was, in her view, a culture in the Ministry that
7 she's aware of?

8 **MR. NEUBERGER:** I query the probative value
9 of that type of question and I really think it's overly
10 broad and wouldn't advance our interest.

11 But if that's your position I'm just going
12 to stand up and say it and I respect your decision.

13 **THE COMMISSIONER:** Thank you. Thank you.

14 **MR. HORN:** As I was ---

15 **THE COMMISSIONER:** Whoa, whoa, Mr. Horn.

16 **MR. HORN:** Yes.

17 **THE COMMISSIONER:** I'm giving you some
18 leeway here. I'm not dismissing the comment out of hand.
19 So be careful now. So I'll let you go this far. And so
20 ask your question about the culture and then we'll go on to
21 other things.

22 **MR. HORN:** Okay. The Solicitor General's
23 office deals with probationers. They also deal with
24 prisoners in jail, don't they?

25 **MS. BRADBURN:** Yes, but the Solicitor

1 General's side versus the Correctional Services side, yes.

2 **MR. HORN:** Okay. So this is the Ministry in
3 which they are dealing with a lot of people who are -- they
4 are either convicted of criminal offences or they are
5 waiting to go to the court and they are waiting to be --
6 whether tried one way or the other. Wouldn't you say that
7 that's the kind of people that the Ministry is dealing
8 with?

9 **MS. BRADBURN:** Yes.

10 **MR. HORN:** Okay. So what I'm suggesting to
11 you, and I want to know if you agree with me or not, is
12 that as a result it's easy for people in this position to
13 have a feeling that we don't have to worry about these
14 people complaining about things because they're just a
15 bunch of criminals anyways, nobody's going to believe them.

16 **THE COMMISSIONER:** Ah, well ---

17 **MR. HORN:** Would you agree with that or not?

18 **THE COMMISSIONER:** That's not quite the
19 question that I had agreed to you asking.

20 **MR. HORN:** Okay.

21 **(LAUGHTER/RIRES)**

22 **THE COMMISSIONER:** So bottom line is, Ma'am,
23 in 1993 when you were with the IIU, did you sense that
24 there was a culture whereby people would either not take a
25 complaint from a probationer seriously or would have that -

1 - that culture that we sometimes throw to attribute to any
2 vulnerable people; like people in a mental health
3 institution where you know you say, "Oh, well, they're just
4 complaining, well they're crazy" or, "They're just
5 complaining because they're probationers" and you know it's
6 a difficult task. Did you ever feel that culture?

7 **MS. BRADBURN:** I can't say that in 1993 that
8 I believed there was a culture that deliberately would
9 disregard complaints from inmates.

10 **THE COMMISSIONER:** Not deliberately. Now,
11 let's go a little finer than that.

12 **MS. BRADBURN:** I'm sure there would be
13 occasions where a client of the Ministry may have a
14 complaint that the person that they are bringing it to may
15 not see the validity of the complaint, but I can't say that
16 there was a culture that would ignore or dismiss.

17 I don't have that -- I was not somebody who
18 worked within the institutions or worked within the
19 probation offices to have that intimate opportunity to
20 observe, to be able to come to that kind of a conclusion.

21 **THE COMMISSIONER:** I guess what we're going
22 to is that you did work in the Ombudsman's office and the
23 reason of an Ombudsman is because the power differential is
24 so great that someone needs to take care of the ---

25 **MS. BRADBURN:** Well, my role with the

1 Ombudsman's office started in 2000 ---

2 **THE COMMISSIONER:** Yeah, no I -- yeah.

3 **MS. BRADBURN:** --- so I can't speak to what
4 that office's relationship would have been with
5 Correctional complaints back in 1993. I don't know what
6 they were. But certainly in 2000 we certainly had a lot of
7 complaints that would come through the Corrections side.

8 **THE COMMISSIONER:** I'm just trying to put
9 some context to the question.

10 **MS. BRADBURN:** Yeah, no, I understand.

11 **THE COMMISSIONER:** All right, Mr. Horn. So
12 that's where you're left with that.

13 **MR. HORN:** Yeah, okay.

14 The reason why I'm asking this is in
15 discussing whether to investigate or send it to Legal, you
16 had discussions regarding it.

17 I'm asking if this came into -- this whole
18 issue came into effect, that if we wait this Silmsler and
19 these people out long enough, they'll just go away because
20 they can't carry through with what they're doing.

21 Is that possible that that came into the
22 discussions?

23 **THE COMMISSIONER:** Well, she has no
24 independent recollection of any discussions, from what I
25 can understand. She's answered that many times. So on the

1 one hand, she can't deny it and on the other hand, she
2 can't accept it. So we're left with the documents that we
3 have, Mr. Horn.

4 **MR. HORN:** All right. Okay.

5 **THE COMMISSIONER:** So I think -- I think
6 that point, to the extent that it could be made, was made
7 and we can move on to something else.

8 **MR. HORN:** Okay, that's the only questions
9 that I have. Thank you.

10 **THE COMMISSIONER:** Thank you. Mr. Lee.

11 **MR. LEE:** Good morning, sir.

12 **THE COMMISSIONER:** Hi there.

13 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE**

14 **MR. LEE:** Ms. Bradburn, my name is Dallas
15 Lee. I'm on for the Victims' group at this inquiry.

16 **MS. BRADBURN:** Yes.

17 **MR. LEE:** Can I ask you to turn up Exhibit
18 1083, please? That's a document that contains the package
19 of your notes.

20 **MS. BRADBURN:** M'hm.

21 **MR. LEE:** In the top left-hand corner of
22 those pages, you'll see a small number. I want to go to
23 the one ending 858, please.

24 **MS. BRADBURN:** M'hm. Yes.

25 **MR. LEE:** I'm just going to wait for it to

1 come on the screen here. So this is your December 17th,
2 1993 note of 4:15. Do you see that in the top right-hand
3 corner?

4 **MS. BRADBURN:** I'm sorry?

5 **THE COMMISSIONER:** If you look in the top
6 left-hand corner.

7 **MS. BRADBURN:** I'm on -- sorry, did you say
8 eight?

9 **MR. LEE:** Eight five eight (858) is the
10 little number on the ---

11 **MS. BRADBURN:** Eight five eight (858),
12 sorry.

13 **MR. LEE:** So it's ---

14 **MS. BRADBURN:** Eight five eight (858).

15 **MR. LEE:** --- December 17th at 4:15.

16 **MS. BRADBURN:** Yes.

17 **MR. LEE:** And it seems to be ---

18 **MS. BRADBURN:** The one to Staff Sergeant Luc
19 Brunet?

20 **MR. LEE:** Luc Brunet, exactly.

21 **MS. BRADBURN:** Yes, sorry.

22 **MR. LEE:** And the note here seems to advise
23 that he's -- Staff Sergeant Brunet is taking you through
24 some of the history of his dealings with Mr. Silmsers, so he
25 tells you in the first bullet that Mr. Silmsers lodged a

1 complaint of sexual abuse against a priest.

2 MS. BRADBURN: Yes.

3 MR. LEE: So at this point, nothing to do
4 with Ken Seguin. And he goes through it and he says that
5 during the course of that investigation Mr. Silmsler alleged
6 that he had also been abused by Ken Seguin. Do you see
7 that there?

8 MS. BRADBURN: Yes.

9 MR. LEE: And the third bullet reads:

10 "At this time, the complainant did not
11 want to proceed with this
12 investigation."

13 MS. BRADBURN: Yes.

14 MR. LEE: And presumably that means the
15 investigation against Seguin.

16 MS. BRADBURN: Yes.

17 MR. LEE: Is that how you read that?

18 MS. BRADBURN: I would read it that way,
19 yes.

20 MR. LEE: And then it says:

21 "Luc assumed it was because the
22 complainant wanted to deal with one
23 issue at a time."

24 MS. BRADBURN: M'hm.

25 MR. LEE: Do you see that?

1 MS. BRADBURN: Yes.

2 MR. LEE: And then the last bullet on this
3 page reads:

4 "There has been no police investigation
5 into allegations against Seguin."

6 MS. BRADBURN: Yes.

7 MR. LEE: Do you see that? Did I read that
8 correctly?

9 MS. BRADBURN: Yes.

10 MR. LEE: In your review of your notes in
11 preparation of this Inquiry, did you see any information
12 that contradicts this?

13 THE COMMISSIONER: Contradicts which -- what
14 ---

15 MR. LEE: Contradicts what Staff Sergeant
16 Brunet told you about the fact that Mr. Silmsler had not
17 wanted to proceed with the investigation against Seguin and
18 that the police had, in fact, not investigated that
19 allegation.

20 MS. BRADBURN: I don't know what information
21 you'd be thinking I'd was looking at beyond the information
22 that I have of my notes.

23 MR. LEE: I have found nothing in your notes
24 to suggest that you later learned at some point that the
25 police had investigated Mr. Seguin, as an example. You

1 have nothing ---

2 MS. BRADBURN: No, I have nothing ---

3 MR. LEE: --- in your notes on that?

4 MS. BRADBURN: --- further other than what's
5 in the notes.

6 MR. LEE: If I can then take you a couple of
7 pages further to Bates page 860, so two pages along.

8 MS. BRADBURN: M'hm.

9 MR. LEE: And that's your December 22nd ---

10 MS. BRADBURN: M'hm.

11 MR. LEE: --- memo to Loretta Eley.

12 MS. BRADBURN: M'hm.

13 MR. LEE: And if you look at the third
14 paragraph, it reads:

15 "I've spoken to Staff Sergeant Luc
16 Brue."

17 I assume that should be Brunet.

18 MS. BRADBURN: Yes.

19 MR. LEE:

20 "...Cornwall City Police and Constable
21 Randy Miller, Lancaster OPP who were
22 both unable to provide any information
23 which would substantiate Mr. Silmsers
24 allegations against the deceased
25 probation officer."

1 Do you see that?

2 MS. BRADBURN: Yes.

3 MR. LEE: And what you write there makes
4 sense given the note we have just looked at; is that ---

5 MS. BRADBURN: Yes.

6 MR. LEE: --- correct?

7 MS. BRADBURN: Yes.

8 MR. LEE: You were saying in this memo that
9 the police force cannot provide any information that would
10 substantiate the allegations, and that flows naturally from
11 the fact that they hadn't investigated ---

12 MS. BRADBURN: Investigated ---

13 MR. LEE: --- the allegations; would you
14 agree with that?

15 MS. BRADBURN: I would agree with that,
16 yeah.

17 MR. LEE: The reason I'm interested in this
18 comment is that this is a memo you write to Ms. Eley ---

19 MS. BRADBURN: M'hm.

20 MR. LEE: --- who as we know from your notes
21 and from your evidence had -- you at varying times had some
22 discussion with her of what -- how you were going to
23 proceed with this complaint; is that right?

24 MS. BRADBURN: Yes.

25 MR. LEE: And the issue I want to explore is

1 what Ms. Eley might take from the comment in your memo that
2 neither police force could substantiate the allegation.
3 And will you agree with me that someone reading that
4 statement without a full knowledge of the facts, may well
5 take this line in your memo as meaning that the police had
6 actually looked into the matter and had found nothing
7 substantial or nothing to -- no indication of wrongdoing?

8 **MS. BRADBURN:** I guess it's possible.

9 **MR. LEE:** And the concern I have is that --
10 and we're going to hear from Ms. Eley ---

11 **MS. BRADBURN:** M'hm.

12 **MR. LEE:** --- but the concern I have is that
13 on a reading of this memo, would you agree with me that
14 it's reasonable that the recipient might take that line to
15 mean exactly that; that there had been an investigation and
16 nothing had been found?

17 **MS. BRADBURN:** I can't speculate on what
18 others might have -- might interpret it to mean. What it
19 was intending here, as it's indicated, is that there's no
20 information to substantiate the complaint so whether it was
21 investigated or not, at the end of the day ---

22 **MR. LEE:** I guess my question is what's the
23 value of that information? What's the value of telling
24 somebody that the police hadn't -- had no information to
25 substantiate the allegation when you knew full well that

1 they hadn't investigated it?

2 **MS. BRADBURN:** I can't tell you what it was
3 at that point in time. I can only tell you what was
4 written down in the note, as you've got it before you. I
5 think I would have just been trying to give him the
6 information of what I'd gathered at the time.

7 **MR. LEE:** You told us yesterday that you
8 were involved in a process that amended the IIU's mandate
9 in 1994.

10 **MS. BRADBURN:** Correct.

11 **MS. BRADBURN:** Is that right? Was that
12 amendment influenced in part by what had happened in
13 Cornwall with the Silmsler complaint?

14 **MS. BRADBURN:** I don't recall the timing of
15 when things were being drafted and changed. I don't have
16 any recollection.

17 **MR. LEE:** Can you turn to Exhibit 1091,
18 please? And if you look at the bottom left-hand corner of
19 this document, we have the date January 1994.

20 **MS. BRADBURN:** Correct.

21 **MR. LEE:** Do you see that?

22 **MS. BRADBURN:** Yes.

23 **MR. LEE:** And this is different than the
24 terms of reference that we looked at yesterday and this is
25 not the one that you say would have applied at the time the

1 Silmsers complaint came in?

2 MS. BRADBURN: Right because ---

3 MR. LEE: Is that correct?

4 MS. BRADBURN: --- this was not endorsed by
5 the Deputy, I believe, until March of 1994.

6 MR. LEE: And is this the document that was
7 ultimately ---

8 MS. BRADBURN: I believe so.

9 MR. LEE: --- transformed?

10 MS. BRADBURN: Yes.

11 MR. LEE: Can you turn to the second page,
12 please? And this sets out the scope and it's broken down
13 into a couple of categories, the first being workplace
14 discrimination and harassment and the second being sexual
15 impropriety. Do you see that?

16 MS. BRADBURN: M'hm.

17 MR. LEE: If you look at the second
18 paragraph under sexual impropriety, we have an addition.

19 MS. BRADBURN: Yes.

20 MR. LEE: And it reads:

21 "In the event that the respondent is no
22 longer a Ministry employee, the IIU
23 will not conduct an investigation
24 unless the Ministry can provide
25 redress."

1 Can I presume that the word "respondent" in
2 this situation means the person against whom allegations
3 are being made?

4 **MS. BRADBURN:** That's -- yes, that's the
5 terminology we used.

6 **MR. LEE:** Can you explain why this change
7 was made to the mandate?

8 **MS. BRADBURN:** I don't recall when the -- as
9 I've mentioned previously, when the drafting of the -- of
10 the document was occurring so to -- it -- the whole intent
11 of the document was to try to provide greater clarity as to
12 the terms of reference for the unit, but as to -- and which
13 would be the intent behind that particular clause.

14 **MR. LEE:** Refresh -- when did you take over
15 the IIU?

16 **MS. BRADBURN:** September ---

17 **MR. LEE:** Of?

18 **MS. BRADBURN:** --- of '93.

19 **MR. LEE:** September of '93 so you had been
20 there for a few months by the time this revised mandate
21 came into place, and your evidence is that during that time
22 you can recall no allegation of sexual impropriety coming
23 into your office?

24 **MS. BRADBURN:** I don't -- I don't recall any
25 and I've been provided with no information as to whether or

1 not there were other complaints. I don't recall.

2 MR. LEE: You don't recall any?

3 MS. BRADBURN: No.

4 MR. LEE: You recall the Silmsler one and
5 that's the only one that ---

6 THE COMMISSIONER: No she ---

7 MS. BRADBURN: I don't ---

8 MR. LEE: Well, you now know ---

9 MS. BRADBURN: --- other than that I've got
10 notes.

11 MR. LEE: --- you now know that there was a
12 complaint of sexual impropriety ---

13 MS. BRADBURN: Yes.

14 MR. LEE: --- by Silmsler and that's the only
15 one you can point to ---

16 MS. BRADBURN: Yes.

17 MR. LEE: --- at this point; is that
18 correct?

19 MS. BRADBURN: Based on my notes, yes.

20 MR. LEE: And you can't tell us whether or
21 not that played a part in the redrafting of this mandate or
22 not?

23 MS. BRADBURN: I don't -- I don't know the
24 sequence of timing, at this point in time, as to when the
25 actual drafting was occurring so whether or not this came

1 in because of the situation where Mr. Seguin was no longer
2 an employee and that prompted us to put this type of
3 language in or whether, sorry, consideration had already
4 been given to something of that nature; I don't know.

5 **MR. LEE:** You just can't say one way or the
6 other?

7 **MS. BRADBURN:** No.

8 **MR. LEE:** Thank you. Those are my
9 questions.

10 **THE COMMISSIONER:** Thank you. Mr. Chisholm.

11 **MR. CHISHOLM:** Good morning, sir.

12 Ms. Bradburn, my name is Peter Chisholm.
13 I'm counsel for the local CAS. I have no questions for
14 you. Thank you.

15 **MS. BRADBURN:** Thank you.

16 **THE COMMISSIONER:** Okay, Mr. Scharbach.

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

19 **THE COMMISSIONER:** Good morning.

20 **MS. BRADBURN:** Good morning.

21 **MR. SCHARBACH:** My name is Stephen
22 Scharbach, counsel for the Ministry of Attorney General.
23 We have no questions for you. Thank you.

24 **MS. BRADBURN:** Thank you.

25 **THE COMMISSIONER:** Okay, Ms. Lalji.

1 **MS. LALJI:** Thank you, Mr. Commissioner.

2 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

3 **LALJI**

4 Ms. Bradburn, I just have a couple of
5 questions for you.

6 **MS. BRADBURN:** M'hm.

7 **MS. LALJI:** Mr. Lee had just asked you some
8 questions about a document, and I just want to follow up on
9 that. It's Exhibit 1083.

10 **MS. BRADBURN:** M'hm.

11 **MS. LALJI:** And it's your handwritten note
12 with respect to your conversation with Luc Brunet.

13 **MS. BRADBURN:** Yes.

14 **MS. LALJI:** And actually, I should introduce
15 myself, I hadn't done that. Sorry about that.

16 My name is Reena Lalji and I'm one of the
17 counsel for the Cornwall Police Service.

18 **MS. BRADBURN:** Thank you.

19 **MS. LALJI:** And I'll just give you the
20 begdoc number, Madame Clerk. It's 1001858. We'll just
21 wait for that to come up on the screen.

22 **MS. BRADBURN:** Certainly.

23 **THE COMMISSIONER:** Is this a new exhibit?

24 **MS. LALJI:** No, this is the one that Mr. Lee
25 had just referred to. It's Exhibit 1083.

1 **THE COMMISSIONER:** Right. Okay. Yes.
2 And what page did you want to refer to?
3 **MS. LALJI:** It's begdoc number 1001858.
4 It's the same page that Mr. Lee was asking questions about.
5 **THE COMMISSIONER:** M'hm.
6 **MS. LALJI:** It's a handwritten note of Ms.
7 Bradburn with her telephone conversation with Staff
8 Sergeant Luc Brunet.
9 **THE COMMISSIONER:** Right.
10 **MS. LALJI:** I think we are just going to
11 wait for it to come up on the screen. Thank you.
12 Now, Mr. Lee had taken you through the first
13 four points and then he jumped right down to that last
14 point.
15 **MS. BRADBURN:** M'hm.
16 **MS. LALJI:** I actually just want to cover
17 the two points in between that he missed.
18 **MS. BRADBURN:** Okay.
19 **MS. LALJI:** Okay, so based on your
20 handwritten note here, it's point -- the fifth point down,
21 you indicate that in your conversation with Staff Sergeant
22 Brunet that he did tell you that at some point during the
23 course of the investigation in regards to the priest that
24 the Cornwall Police was conducting, that Mr. Silmsler had
25 actually called the Cornwall Police to advise that he no

1 longer wanted to proceed with the investigation, as he had
2 already acquired a civil remedy and that's based on your
3 notations?

4 MS. BRADBURN: Yes.

5 MS. LALJI: And that would be correct?

6 MS. BRADBURN: Based on the notation.

7 MS. LALJI: Okay. And then the next point
8 below that, Staff Sergeant Brunet indicates to you that he
9 had actually called Mr. Silmsers's lawyer to determine
10 whether Mr. Silmsers still wanted to proceed with his
11 complaint in relation to Ken Seguin. Based on your note,
12 you see that there?

13 MS. BRADBURN: Yes.

14 MS. LALJI: And Staff Sergeant Brunet was
15 advised by Mr. Silmsers's lawyer that no, he did not.

16 MS. BRADBURN: That's correct.

17 MS. LALJI: And you indicated that
18 accurately.

19 MS. BRADBURN: Yes.

20 MS. LALJI: Okay, so just based on your note
21 then in your conversation with Staff Sergeant Brunet, he
22 had indicated to you that the police were willing to
23 continue the investigation but it was actually the
24 complainant, Mr. Silmsers, through his lawyer, who said he
25 did not want to proceed with respect to Ken Seguin.

1 **THE COMMISSIONER:** What, what -- just a
2 second.

3 I don't know that it says in there that the
4 police wanted to continue the investigation.

5 **MS. LALJI:** I'm putting that to Ms. Bradburn
6 and if she's not able to answer it, then that's fine. I'm
7 just asking, if based on the conversation, if that would be
8 fair -- that she had with Mr. Brunet, with Staff Sergeant
9 Brunet. If she's not able to answer it she's not able to
10 answer it. And so, I guess, that's the question.

11 Would it be fair to, you know, to suggest
12 that based on your conversation with Staff Sergeant Brunet
13 and, you know, it's not clear in your notes, but I'm just
14 suggesting that if you do have a recollection, if you
15 don't, you don't.

16 **MS. BRADBURN:** I don't have any other
17 recollection other than the notes. There's not indication
18 that ---

19 **MS. LALJI:** Okay, that's fine, but based on
20 the note, Staff Sergeant Brunet was advised by David
21 Silmser's lawyer that he does not want to proceed with the
22 investigation into Ken Seguin?

23 **MS. BRADBURN:** That was the information that
24 is consistent with what's in my note here.

25 **MS. LALJI:** Thank you very much.

1 **THE COMMISSIONER:** Thank you.

2 Mr. Kozloff?

3 **MR. KOZLOFF:** Good morning, Mr. Commissioner.

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

5 **MR. KOZLOFF:** I have no questions.

6 **THE COMMISSIONER:** Thank you.

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

8 **MR. CARROLL:** Good morning, sir. I have no
9 questions. Thank you.

10 **THE COMMISSIONER:** Thank you.

11 All right. Mr. Neuberger?

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

13 **NEUBERGER:**

14 **MR. NEUBERGER:** Madam Clerk, just the same
15 note.

16 Ms. Bradburn, I don't need to introduce
17 myself, you know who I am.

18 I just want to ask you about your note-
19 taking.

20 **MS. BRADBURN:** Yes.

21 **MR. NEUBERGER:** This note was made at the
22 same time, or shortly after, your conversation with
23 Sergeant Brunet?

24 **MS. BRADBURN:** With Staff Sergeant Brunet,
25 yes.

1 **MR. NEUBERGER:** Okay. So I'm just trying to
2 flush-out because of your memory restriction to the actual
3 note itself. you were speaking to him by telephone?

4 **MS. BRADBURN:** Yes.

5 **MR. NEUBERGER:** All right. And you had your
6 notepaper beside you and you were making notes and is it --
7 is it your practice to have made those notes during the
8 conversation or just shortly afterwards or both?

9 **MS. BRADBURN:** It would be both. It
10 depended on the situation.

11 **MR. NEUBERGER:** And in reviewing these
12 notes, there's nothing in the notes that jump out to you
13 that would have been inaccurate in what was your
14 conversation?

15 **MS. BRADBURN:** Not that I have any
16 recollection of at this point. They would ---

17 **MR. NEUBERGER:** In other words, if you don't
18 have the recollection, you probably can't help me with that
19 question anyway.

20 **MS. BRADBURN:** Sorry.

21 **MR. NEUBERGER:** Thank you very much.

22 **MS. BRADBURN:** Thank you.

23 **THE COMMISSIONER:** Thank you.

24 Maitre Ruel, do you have any questions?

25 **MR. RUEL:** I have one question in closing,

1 Mr. Commissioner.

2 --- RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MR. RUEL:

3 MR. RUEL: Ms. Bradburn, and coming back,
4 Mr. Lee brought to your attention Exhibit 1091?

5 THE COMMISSIONER: Ten-ninety-one (1091),
6 yes.

7 MS. BRADBURN: Yes.

8 MR. RUEL: Which are the Terms of Reference
9 of the -- the revised Terms of Reference of the Independent
10 Investigations Unit, and I'd like to bring you to page 3.
11 There's a section under "Criminal Investigations".

12 MS. BRADBURN: Yes.

13 MR. RUEL: And it reads:

14 "If at any time during the course of
15 investigation the investigators uncover
16 evidence of a sexual assault or any
17 serious criminal activity, they shall
18 determine whether the manager has
19 notified the police, and if the police
20 have not been contacted the unit shall
21 notify the police pursuant to Ministry
22 protocol for contacting the police."

23 So just stopping there, this was in the
24 previous Terms of Reference?

25 MS. BRADBURN: That's correct.

1 **MR. RUEL:** That's correct?

2 **MS. BRADBURN:** Yes.

3 **MR. RUEL:** And there's also another sentence
4 which reads:

5 "Unless directed otherwise by Crown
6 attorney, the Independent
7 Investigations Unit will continue to
8 conduct it's investigation whether or
9 not the police investigation
10 commences."

11 So that was new?

12 **MS. BRADBURN:** Yes.

13 **MR. RUEL:** But that -- would it be fair to
14 say that this codified previous practice?

15 **MS. BRADBURN:** I don't know whether or not
16 it was codifying, other than just trying to clarify in the
17 event that the circumstances occurred. I don't recall
18 whether -- I can't say that there was other previous
19 incidents where -- where there was an issue. I don't have
20 any recollection of that at this point.

21 But it was to -- the intent of the revised
22 Terms of Reference were to try to anticipate situations or
23 to address situations that occurred and clarify them in the
24 Terms of Reference.

25 **MR. RUEL:** Okay, so. Thank you.

1 **THE COMMISSIONER:** Thank you.

2 Thank you very much for attending.

3 **MS. BRADBURN:** Thank you.

4 **THE COMMISSIONER:** So, Maitre Ruel, are we
5 ready for the next witness? Do we need a break or ---

6 **MR. RUEL:** No, we're ready.

7 **THE COMMISSIONER:** Thank you.

8 Your next witness is, Mr. Ruel?

9 **MR. RUEL:** The next witness is Ms. Loretta
10 Eley.

11 **THE COMMISSIONER:** Good morning.

12 **MS. ELEY:** Good morning.

13 **THE COMMISSIONER:** Madame Clerk, will you do
14 the honours?

15 Would you like to be affirmed or sworn?

16 **MS. ELEY:** Swear.

17 **THE COMMISSIONER:** Swear. Thank you.

18 **LORETTA ELEY:** Sworn/Assermentée

19 **THE COMMISSIONER:** Thank you.

20 Good morning, again. Thank you for coming.

21 A few little things.

22 There should be a fresh glass for water.

23 There's a microphone right here that I'd ask you to speak
24 into. There's a speaker which you can adjust the volume to
25 if you have trouble hearing, and we will be providing you

1 with documents if necessary that will be produced in hard
2 form -- hard copy or on the screen.

3 At any time you need a break or you have any
4 questions, please let me know, otherwise give me the best
5 answer you can and we will see where we go.

6 **MS. ELEY:** Thank you.

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

8 Maitre Ruel.

9 ---EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.
10 **RUEL :**

11 **MR. RUEL:** Good morning, Ms. Eley.

12 **MS. ELEY:** Good morning.

13 **MR. RUEL:** Thank you for being here today.

14 The first document I'd like to refer you to
15 is your C.V. and I'd like you to explain to us or give us
16 some information about your professional background.

17 **THE COMMISSIONER:** And that would be Exhibit
18 1112; is the C.V. of Loretta Eley.

19 --- EXHIBIT NO./PIÈCE NO. P-1112:

20 C.V. of Loretta Eley

21 **MR. RUEL:** And maybe, Ms. Eley, we could
22 start at the last page with education and then move to your
23 professional experience?

24 **MS. ELEY:** Okay.

25 I'm a graduate of Concordia University. I

1 have an Honours Degree in Sociology, and a Masters in
2 Applied Criminology from the University of Ottawa

3 I joined the Ministry in 1978 as a
4 Correctional Officer at the Ottawa Carleton Detention
5 Center and moved from there to being a Probation and Parole
6 Officer in Toronto in 1979. In 1980, I went to the
7 institutional services and became a social worker at the
8 Toronto East Detention Centre, and subsequently went to be
9 the Social Programs Administrator at the Toronto Jail.

10 I had several different positions at the
11 Toronto Jail, including Senior Assistant Superintendent,
12 Deputy Superintendent, and then left to be the Deputy
13 Superintendent at the Vanier Centre for Women in Brampton.

14 I returned to the Toronto Jail as the Deputy
15 Superintendent in 1988 and in 1989 was made Superintendent
16 of the Toronto Jail.

17 In 1992, I was asked to take over the Metro
18 West Detention Centre as Superintendent and I did that
19 until '93, at which time I went to work as the Executive
20 Assistant to the then Deputy Minister of -- Solicitor
21 General of Correctional Services.

22 **MR. RUEL:** So just pausing there, so you
23 were Executive Assistant to the Deputy Minister from
24 September 1993 to December 1994?

25 **MS. ELEY:** That's correct.

1 **MR. RUEL:** Were you seconded there?

2 **MS. ELEY:** I was.

3 **MR. RUEL:** And we're going to come to your
4 duties in that position in a minute but if you can take us
5 through the rest of your CV.

6 So you left and you went to the Vanier
7 Centre for Women after that?

8 **MS. ELEY:** I actually -- yes, I left and
9 went to the Vanier Centre for Women as Superintendent.

10 **MR. RUEL:** Is that within the Ministry of --
11 the Solicitor and Correctional Services?

12 **MS. ELEY:** Yes, it is.

13 And then I went to work at main office as a
14 project lead for the Culture Review Project.

15 Subsequent to that, I was the Director of
16 Victims Services in the Ministry of the Solicitor General
17 and left that and went to -- back to main office, to our
18 corporate office, to lead a variety of projects, including
19 the implementation of the *Youth Criminal Justice Act*, a
20 single jurisdiction project, and am now -- my CV doesn't
21 reflect it but I'm now the Director of Strategic and
22 Operational Initiatives for the Ministry of Community
23 Safety and Correctional Services.

24 **MR. RUEL:** I believe it reflects it at page
25 2; Director Strategic and Operational Initiatives, is that

1 it?

2 MS. ELEY: Oh, yes, sorry.

3 MR. RUEL: Okay.

4 MS. ELEY: I'm looking at page 1. Yes,
5 sorry.

6 MR. RUEL: Okay, thank you.

7 So coming back to your position of Executive
8 Assistant to the Deputy Minister at the time, can you
9 explain exactly what were your duties in that position?

10 MS. ELEY: Essentially, my duties were to,
11 number one, manage the office. We had a small office, so
12 to manage the processes in that office.

13 Number two, to gather information and
14 documents, review documents, review policy submissions on
15 behalf of the Deputy Minister to forward to her for her
16 final review. So to ask questions, to send material back
17 that needed revision et cetera, pending final approval by
18 the Deputy.

19 I attended briefings, meetings, either with
20 her or on her behalf to follow-up on a variety of issues
21 that would be presented to her.

22 MR. RUEL: So essentially an Executive
23 Assistant, an EA as we call it, would it be fair to
24 characterize that as the second-in-command in the Deputy
25 Minister's office, second person in command?

1 **MS. ELEY:** Not really because I think that
2 the executive assistant, when you're asking for something
3 from someone it's as though she's asking. But when it
4 comes to decision-making you have no line authority over
5 the various Assistant Deputy Ministers that work for her,
6 so you aren't really in a position to direct them but to
7 advise them.

8 So within the office, yes, you would be the
9 second-ranking person but that would only be within the
10 small office. Once you were dealing with the Ministry you
11 have a number of Assistant Deputy Ministers and it's really
12 you're acting on her authority and not your own.

13 **MR. RUEL:** So but would you have dealings --
14 direct dealings with the Assistant Deputy Ministers?

15 **MS. ELEY:** Oh, yes.

16 **MR. RUEL:** So they would listen to you?

17 **MS. ELEY:** Yes.

18 **MR. RUEL:** Typically. And who was the
19 Deputy Minister when you were in this position?

20 **MS. ELEY:** Michele Noble.

21 **MR. RUEL:** And I guess there were other
22 members of the staff within the Deputy Minister's office?

23 **MS. ELEY:** Yes, we had a policy advisor, we
24 had two senior police representatives; one that did
25 Aboriginal policing, contracts, and one that was a special

1 police advisor to the Deputy, and then we had three support
2 staff.

3 MR. RUEL: So at the time the Ministry was
4 organized, that was the Ministry of the Solicitor General
5 and Correctional Services, so there was the policing branch
6 and Correctional Services under the jurisdiction of the
7 Minister and the Deputy Minister. That's correct?

8 MS. ELEY: That's correct.

9 MR. RUEL: Okay.

10 MS. ELEY: Could I just go backwards for a
11 second though?

12 MR. RUEL: Absolutely.

13 MS. ELEY: I forgot one person, which was
14 the WDHP advisor who was also -- it was a new position that
15 was included in our office.

16 THE COMMISSIONER: I'm sorry, who would that
17 be, who would that have been?

18 MS. ELEY: It was a person named Jean
19 Lindsay.

20 THE COMMISSIONER: Mr. Ruel, I know I'm --
21 can I just ask, it seems that you came in in September of
22 1993 and stayed 'till '94. The previous witness came in
23 1993 and left in '94.

24 Is there a rationale for that or was there
25 something happening?

1 **MS. ELEY:** Well, I don't know that it was --
2 in fact we were commenting on that, that we all came and
3 left at the same time which wasn't apparent -- as apparent
4 until you hear it in testimony.

5 I think a couple of things. The Ministry
6 had amalgamated in, I believe, '92, so there were a number
7 of positions that Michele Noble added. It had been two
8 ministries; the Ministry of the Solicitor General and the
9 Ministry of Correctional Services and they were combined
10 for the first time.

11 So there was a fair amount of turnover
12 because people were -- their positions -- some positions
13 were combined, some positions were not combined, some
14 positions were added. So that created some turnover.

15 And the second thing was, was that coming
16 out of a situation that we had had in the Ministry, which
17 is the -- I think it was discussed yesterday, the Bell
18 Cairn incident, there was the creation of the IIU.

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

20 **MS. ELEY:** So that and the government's WDHP
21 policy as well, so that created some movement in that area
22 and some additional resources.

23 So Lenna Bradburn's position at the IIU and
24 Gwen Boniface before her, and Jean Lindsay's position, they
25 were all new. So to that extent, I replaced someone who

1 simply left. My position was -- so there was nothing
2 unusual about that.

3 **THE COMMISSIONER:** Sorry, go ahead.

4 **MR. RUEL:** Thank you.

5 I just wanted to go there, the WDHP, you
6 mentioned advisor or within the office was Jean Lindsay, as
7 you indicated.

8 **MS. ELEY:** That's correct.

9 **MR. RUEL:** Did you have any role, prior to
10 the appointment of Ms. Lindsay, as being the liaison person
11 with the IIU, the Independent Investigations Unit?

12 **MS. ELEY:** I did. I believe that Jean
13 Lindsay had been hired prior to or at the same time as me
14 going there but she didn't come until after I was there.
15 So I was the person that -- the person before me as the
16 Executive Assistant did both functions and it was
17 overwhelming, the volume of work was overwhelming, and so
18 they decided to have a special advisor and so Jean was the
19 first one.

20 **MR. RUEL:** So when did she come in the
21 office and start to deal with those issues?

22 **MS. ELEY:** I'm going to take a guess now and
23 say it was probably within about a month or so, maybe two,
24 of me arriving in the office in September.

25 **MR. RUEL:** So October '93?

1 **MS. ELEY:** My guess.

2 **MR. RUEL:** You're guessing?

3 **MS. ELEY:** Yes.

4 **MR. RUEL:** Thank you. You've just mentioned
5 and you were just talking about the IIU, the Independent
6 Investigations Unit, can you explain your understanding at
7 the time of the mandate of this organization?

8 **MS. ELEY:** Their mandate was to investigate
9 complaints of workplace harassment and discrimination. But
10 in addition they were also to deal with allegations of
11 sexual impropriety between clients and staff.

12 **MR. RUEL:** And in terms of the reporting
13 relationship, we've heard testimony from Ms. Bradburn that
14 the IIU reported directly to the Deputy Minister of -- in
15 fact I'm correcting, there's dual reporting relationship.
16 There was one to the Deputy Minister of Management Board
17 and the other reporting relationship was to the Deputy
18 Minister of Community -- of the Solicitor General and
19 Correctional Services; is that correct?

20 **MS. ELEY:** That's correct and I had
21 completely forgotten that she had the dual reporting
22 relationship until I heard it.

23 **MR. RUEL:** So in terms of the reporting
24 relationship to the Deputy Minister of the Solicitor
25 General and Correctional Services, can you explain your

1 understanding of this reporting relationship at the time?

2 MS. ELEY: Well, my understanding was that
3 although the unit functioned independently, within this
4 case Lenna Bradburn as the manager, there was an
5 accountability for, if you want to say, performance,
6 budget, administrative issues to the Deputy Minister and
7 that Lenna would meet periodically with the Deputy Minister
8 or speak to her by phone or whatever, but it was not a --
9 the decision-making authority was vested with the IIU.

10 MR. RUEL: What do you mean by
11 "decision-making authority"?

12 MS. ELEY: What I'm saying is that there
13 was, you know, the old adage "everyone reports to someone"
14 and it was placed with the Deputy Minister because the
15 Deputy Minister was also the person responsible for making
16 decisions about -- or making decisions based on the
17 outcomes of investigations and that was vested in her by
18 Management Board.

19 So -- but the head of IIU would report to
20 the Deputy on all kinds of administrative matters, whether
21 it was budget, whether it was increased staffing they
22 needed, whether it was, you know, the functioning of the
23 office or if there were delays in producing reports or if
24 the reports were found to be of poor quality.

25 None of these things are true; I'm just

1 saying that these are potentially the kinds of issues she
2 would address with her.

3 **MR. RUEL:** In terms of investigative
4 function, who would carry that responsibility, with the
5 IIU, the investigative function?

6 **MS. ELEY:** The investigators at the IIU.

7 **MR. RUEL:** So did the Deputy Minister's
8 office have any role in providing direction to the IIU as
9 whether a complaint or an issue fell within the mandate of
10 the IIU?

11 **MS. ELEY:** No, we didn't.

12 We might discuss something. We might -- as
13 you've heard and you mentioned, Lenna was new, all of her
14 investigators had been intentionally hired externally --so
15 sometimes there was knowledge required of, you know, how
16 does this work in the Ministry, what is this unit, what
17 does it do? -- you know, to find out more surrounding an
18 investigation as they were going through their work, but it
19 was really, you know, a consultancy role, if you will.

20 **THE COMMISSIONER:** Who was a consultant?
21 They would consult with ---

22 **MS. ELEY:** Well, it would either be me or
23 Jean Lindsay.

24 **THE COMMISSIONER:** Who would be consulting
25 with Lenna Bradburn?

1 MS. ELEY: Yes.

2 MR. RUEL: But just coming back, just to
3 make sure, in terms of determining if a complaint fell
4 within the mandate of the IIU, that was -- the IIU would do
5 that?

6 MS. ELEY: That's correct.

7 MR. RUEL: Then they would determine whether
8 or not the matter should or should not be investigated?

9 MS. ELEY: That's correct.

10 MR. RUEL: We're going to talk about a
11 complaint that came in 1993, we're going to talk about that
12 in a few minutes but at the exception of this one, have you
13 had dealings with the IIU, yourself, prior to this
14 complaint which was made in December of 1993?

15 MS. ELEY: Yes. I couldn't tell you how
16 many contacts but I would have had some contact.

17 MR. RUEL: And typically what type of
18 contact would you have had with the IIU?

19 MS. ELEY: It probably would have been a
20 discussion about, you know, either, as I say, some function
21 in the Ministry that I was explaining or providing contact
22 information or, you know, who she might contact in order to
23 get more information about something.

24 MR. RUEL: So the process would be -- and
25 correct me if I'm wrong -- the IIU would investigate and

1 once they had completed an investigation they would forward
2 the report to the Deputy Minister of -- the Deputy
3 Minister's office for action; is that correct?

4 **MS. ELEY:** That's correct.

5 **MR. RUEL:** So if there was any follow-up in
6 terms of discipline or any other action, that would be
7 within the -- under the authority of the Deputy Minister to
8 -- that would be under the authority of the Deputy
9 Minister?

10 **MS. ELEY:** That's correct.

11 **MR. RUEL:** Do you recall a -- receiving a
12 call from a Mr. Bill Roy, who was then regional manager of
13 the eastern regional office, in December of 1993,
14 concerning a complaint that had been received by him by Mr.
15 David Silmser?

16 **MS. ELEY:** Yes.

17 **MR. RUEL:** What can you tell us about your
18 recollection of this call?

19 **MS. ELEY:** Well, what I'd first like to say
20 is that my recollection has been enhanced by reading the
21 notes that are relevant to this matter, but ---

22 **MR. RUEL:** Well, let's just pause here.

23 **MS. ELEY:** Okay.

24 **MR. RUEL:** You -- Commission -- the
25 Commission and Commission counsel; we've provided you with

1 some documentation ---

2 MS. ELEY: Correct.

3 MR. RUEL: --- in preparation for this, your
4 testimony?

5 MS. ELEY: Correct.

6 MR. RUEL: So you've reviewed the notes of
7 Ms. Bradburn of those incidents; is that correct?

8 MS. ELEY: Yes, that's correct.

9 MR. RUEL: There was also a letter that was
10 sent to you by Ms. Bradburn concerning this complaint?

11 MS. ELEY: Correct.

12 MR. RUEL: So you've reviewed that?

13 MS. ELEY: Yes.

14 MR. RUEL: And before reading that, did you
15 have any specific recollection of those incidents?

16 MS. ELEY: I had a recollection of speaking
17 to Bill Roy. I had a recollection that he called me about
18 a serious matter from his region and -- but I could not
19 have told you, for example, dates and details until I
20 refreshed my memory.

21 MR. RUEL: Okay. Did you have a
22 recollection of speaking with Ms. Bradburn?

23 MS. ELEY: Yes.

24 MR. RUEL: And did the review of the notes
25 refresh your memory in that regard, as well?

1 **MS. ELEY:** Yes, they did.

2 **MR. RUEL:** So ---

3 **THE COMMISSIONER:** Can I stop you there, Mr.
4 Ruel?

5 **MR. RUEL:** Sure.

6 **THE COMMISSIONER:** You said you've refreshed
7 your memory by reviewing some documents; have you -- in
8 refreshing your memory, have you looked at any other
9 documents other than the documents that the Commission
10 Inquiry -- Commission counsel had given you?

11 **MS. ELEY:** No.

12 **THE COMMISSIONER:** Okay. Thank you.

13 **MR. RUEL:** It's ---

14 **MS. ELEY:** Other than my C.V., which I
15 couldn't remember very well.

16 **THE COMMISSIONER:** That's understandable.

17 **MR. RUEL:** Fine. You've had a long career
18 and many positions so that's normal.

19 Just before getting into the details, did
20 you take notes of those discussions with Ms. Bradburn and
21 Mr. Roy?

22 **MS. ELEY:** I don't recall if I did, but
23 normally I would have, but in search for documents that I
24 believe went on in respect of the Commission, none were
25 found.

1 One of the things that happened was the
2 Deputy Minister's office moved several times and has been
3 split apart and put together as in the two parts of the
4 Ministry several times since this incident occurred, so
5 nothing was found, but generally speaking, I did take
6 notes.

7 **MR. RUEL:** Okay. So what did you recall
8 from your conversation with Mr. Roy?

9 **MS. ELEY:** My conversation with Mr. Roy was
10 that there was a probation officer in his area who had
11 recently died and I believe he said had committed suicide,
12 and that he had received a call from a former probationer
13 who stated that he had been sexually abused by this
14 probation officer, who was Mr. Seguin, and that he was --
15 he had been negotiating a civil remedy with Mr. Seguin and
16 that now that he was deceased he was concerned he was not
17 going to get his compensation and that if he didn't hear
18 back from the Ministry, that he would be going to the
19 Ottawa Citizen and that he would be launching a lawsuit
20 against the Ministry.

21 **MR. RUEL:** You don't recall the date of this
22 conversation?

23 **MS. ELEY:** No.

24 **MR. RUEL:** Did you have one or many
25 conversations with Mr. Roy?

1 **MS. ELEY:** I recall having two conversations
2 with Mr. Roy when I was in that office and I recall the
3 second one as being completely unrelated to this incident.

4 **MR. RUEL:** I see.

5 So how did you react to this call?

6 **MS. ELEY:** Well, the other part of what Mr.
7 Roy told me was that he would be contacting the IIU and
8 would also be contacting the police, which was the
9 procedure in effect at that time.

10 **MR. RUEL:** Before asking you how did you
11 react, what did you tell Mr. Roy? Did you have an exchange
12 with him?

13 **MS. ELEY:** Not that I recall.

14 **MR. RUEL:** Okay. And how did you react to
15 what he was bringing to your attention?

16 **MS. ELEY:** Well, I thought it was a serious
17 allegation and he was pursuing what we needed to according
18 to the protocols that had been set in place, so I assumed
19 that the process would take over from there.

20 **MR. RUEL:** Did Mr. Roy tell you that the --
21 well, the complainant, did you understand the complainant
22 was Mr. David Silmsner?

23 **MS. ELEY:** Yes, I did.

24 **MR. RUEL:** And did Mr. Roy tell you that the
25 person was, in addition to mentioning the issue of

1 negotiating a civil remedy, that he was also looking for
2 counselling support?

3 MS. ELEY: I did not know that.

4 MR. RUEL: And did Mr. Roy mention to you
5 that Mr. Silmsler was looking for support for him and others
6 like him?

7 MS. ELEY: I didn't know that.

8 MR. RUEL: You don't know that or you don't
9 recall?

10 MS. ELEY: No, no, I didn't know that.

11 MR. RUEL: Okay.

12 THE COMMISSIONER: I'm sorry, that doesn't
13 help me.

14 Are you saying that you never knew that or
15 you don't recall whether you knew that?

16 MS. ELEY: I never knew that.

17 THE COMMISSIONER: You never knew that.
18 Okay.

19 MS. ELEY: Because I would have responded to
20 it.

21 THE COMMISSIONER: Okay.

22 MR. RUEL: How would you have responded to
23 that?

24 MS. ELEY: Well, we have resources that we
25 can refer people to, and the fact that he was no longer a

1 client, if he's calling us asking for help then we would
2 certainly refer him to community resources.

3 MR. RUEL: So ---

4 MS. ELEY: And I would have asked Bill, you
5 know, where has he been referred or, you know, has a
6 referral taken place. There was none of that discussion.

7 MR. RUEL: Okay. Then following this
8 conversation with Mr. Roy, what did you do?

9 MS. ELEY: That I don't recall what I did.
10 I think the next contact I had was with Lenna Bradburn.

11 MR. RUEL: Okay. When was that, do you
12 recall?

13 MS. ELEY: Within a day or so I think of the
14 initial call.

15 MR. RUEL: So did she call you or you called
16 her?

17 MS. ELEY: That I don't recall.

18 MR. RUEL: So you had a conversation with
19 her. Do you recall the nature of the conversation, what
20 was discussed by her and by you?

21 MS. ELEY: My recollection is that we had a
22 discussion about what was going on with this particular
23 case, that being Mr. Silmser's, and that was essentially a
24 consultation, if you will, or a discussion about the
25 various pieces of the complaint being made by him.

1 My understanding was that he was -- that
2 Bill Roy was contacting the police. He had clearly
3 contacted IIU. And that Lenna Bradburn herself had
4 contacted both the Cornwall City police and the OPP to
5 ensure that the police had been contacted and, in fact,
6 they had.

7 And that the police basically indicated that
8 he was not interested -- that Mr. Silmsler was not
9 interested in pursuing any criminal matters and was
10 focussed on a civil remedy for the injuries he'd sustained.

11 And as a result of that, she either had or
12 was going to instruct Bill Roy to contact Mr. Silmsler and
13 ask him to put in writing his concerns so that she could
14 investigate them. We had nothing in writing up until that
15 point.

16 **MR. RUEL:** So you mentioned that she would
17 instruct Bill Roy that Mr. Silmsler should put his complaint
18 in writing. So did that come from that discussion about
19 instructing Mr. Silmsler, did that come from you or that
20 came from Ms. Bradburn?

21 **MS. ELEY:** That came from Ms. Bradburn.

22 **MR. RUEL:** And the rationale for that, can
23 you -- I guess you've covered it part but can you explain
24 the rationale for putting -- asking Mr. Silmsler to --
25 asking Mr. Roy to tell Mr. Silmsler to put his complaint in

1 writing?

2 **MS. ELEY:** Well, I think the rationale for
3 Mr. Roy contacting him and not Ms. Bradburn was in all
4 likelihood because Mr. Roy had already spoken to this
5 person. He was the person that the complainant called. So
6 there would be some continuity there. He would have had
7 some contact with this person.

8 The second thing was that although it's not
9 in our policy anywhere that you must put your complaints in
10 writing, common practice was that people did and, thereby,
11 you had a starting point of knowing, you know, what is this
12 investigation about, where should I start it.

13 **MR. RUEL:** Do you know if Mr. Roy -- how
14 many conversations Mr. Roy had with Mr. Silmsers?

15 **MS. ELEY:** Only because I've been here, I
16 know now that he had three.

17 **MR. RUEL:** Okay. You didn't know that
18 before?

19 **MS. ELEY:** I did not.

20 **MR. RUEL:** And this issue of putting the
21 complaint in writing, did it ever cross your mind at the
22 time, from what you can recall, that this could be seen as
23 an obstacle for Mr. Silmsers with respect to bringing
24 forward his complaint?

25 **MS. ELEY:** I must say I didn't.

1 **MR. RUEL:** I'd like to bring your attention
2 to a document that was not written by you but that's been
3 commented here before the Commission which is Exhibit 1083.

4 **THE COMMISSIONER:** So in the -- Madam Clerk,
5 do we have that for the witness? Coming up.

6 Were you there when Mr. Scott was the acting
7 manager in the IIU?

8 **MS. ELEY:** Not to my recollection, no.

9 **MR. RUEL:** So this is of the second -- yes,
10 that's the page that's on the screen now.

11 You've reviewed this document, Ms. Eley?

12 **MS. ELEY:** Yes.

13 **MR. RUEL:** So those are the notes of Lenna
14 Bradburn, who testified just before you, and there's a
15 record of a verbal transaction which is dated December 16,
16 1993. I'll take you to the last paragraph. It reads:

17 "On December 17th, I spoke to Loretta
18 Eley who advised Legal Branch would
19 lead and there was no action required
20 of IIU at this time."

21 So it seems here, from the reading of this,
22 that Ms. Bradburn was advised by you that no action would
23 be required and that the -- from the IIU at this time. So
24 it seemed to have been coming from you essentially, this
25 direction or advice.

1 Would that be an accurate reading of that
2 paragraph?

3 **MS. ELEY:** Well, I can see where you get
4 that reading because when I read it that's what it sounds
5 like to me, but that would not have occurred.

6 **MR. RUEL:** What would have occurred?

7 **MS. ELEY:** Well, Legal Branch doesn't lead
8 anything. Legal Branch is a support to us. So I do recall
9 sending a note to Legal Branch telling them that we may
10 potentially get a lawsuit from this person. I remember
11 that. Unfortunately that note I don't have it.

12 And they don't do investigations so -- and I
13 well knew that. I had been a superintendent. I knew where
14 investigations were done. They're only done in two paces
15 in our Ministry, one is the IIU and the other one is our
16 Inspections Branch, the Mr. Downing group.

17 And so I think this is not properly
18 recorded. That's the best I can -- I didn't see it until
19 you gave it to me, and that's all I can say.

20 **MR. RUEL:** So can you explain what happened,
21 essentially, from your standpoint at the time, what you
22 recollect? Who made that decision to refer the matter to
23 Legal?

24 **MS. ELEY:** I didn't refer the matter to
25 Legal. I simply sent them a note saying, "You may hear

1 from this person" and giving them the contact name of Bill
2 Roy. Because, you know, if they get a lawsuit on their
3 desk they don't know who is this person, what is this
4 about, who knows anything about this, they would have a
5 contact. No more, no less than that.

6 **MR. RUEL:** So when Ms. Bradburn writes
7 "Legal Branch would lead" that would be inaccurate in your
8 view?

9 **MS. ELEY:** In my view it's inaccurate. It's
10 just improperly recorded. I probably told her that I was
11 going to send them a note ---

12 **THE COMMISSIONER:** Well, ---

13 **MS. ELEY:** --- in case they heard from him
14 or his counsel.

15 **THE COMMISSIONER:** Go ahead.

16 **MR. RUEL:** Why would you do that; why would
17 you take upon yourself to deal with the legal services in
18 this case?

19 **MS. ELEY:** More as a courtesy than anything
20 else. Just to tell them, well, you know, you may get a
21 lawsuit from this person and, you know, if you need more
22 information Bill Roy has information. That's all.

23 **MR. RUEL:** And the rest of the paragraph,
24 saying there was no action required of the IIU at this
25 time, is that something that was discussed between you and

1 Ms. Bradburn?

2 MS. ELEY: Well my recollection was that Ms.
3 Bradburn had instructed Bill Roy to contact Mr. Silmser and
4 ask him to put his complaints in writing and then they
5 would make a decision about whether to conduct an
6 investigation and what shape that investigation would take.

7 MR. RUEL: So would you agree to that -- did
8 you agree to that course of action?

9 MS. ELEY: It seemed very reasonable, yes.

10 MR. RUEL: So why would you get involved,
11 why would you even give your agreement to that, it was not
12 within the purview of the Deputy Minister's office to make
13 decisions on whether or not the complaint should be
14 investigated?

15 MS. ELEY: Probably because I was new and
16 didn't know any better. I really don't know, I just
17 remember thinking it was a reasonable course of action.

18 MR. RUEL: It seems, on the face of this
19 complaint, and we've reviewed the Terms of Reference of the
20 IIU that it fell squarely within the Terms of Reference as
21 a matter that should have been investigated.

22 Do you have any explanation as to -- in
23 addition to what you've explained to us today, as to why
24 this matter was not investigated by the IIU?

25 MS. ELEY: Well I think the only thing I can

1 say is that I think there was a -- there was an intent on
2 the part of IIU to investigate when they heard from Mr.
3 Silmser.

4 And that to that point they didn't have
5 anything substantial to go forward with an investigation
6 and that there seemed to be indications from both Mr. Roy
7 and from the police that this person was not interested in
8 investigations or criminal matters but was interested in
9 civil remedy.

10 **MR. RUEL:** But he had called the Ministry
11 for action, had he not?

12 **MS. ELEY:** My understanding at that time was
13 that he had called saying that if he didn't get his money -
14 - if he didn't get the sum of money that he had been
15 promised by Mr. Seguin that he would be going to the
16 newspapers and pursuing a lawsuit.

17 **MR. RUEL:** Do you know if Ms. Bradburn ever
18 met with Mr. Silmser or ever spoke to Mr. Silmser?

19 **MS. ELEY:** Only from what I've heard today.

20 **MR. RUEL:** So the answer is no?

21 **MS. ELEY:** I didn't know until today.

22 **MR. RUEL:** So you never ---

23 **THE COMMISSIONER:** Wait a minute.

24 Ms. Bradburn doesn't know -- doesn't have
25 any recollection of anything, so what have you learned

1 today?

2 **MS. ELEY:** Well she certainly never said
3 that she met with him. She certainly never said that she
4 contacted him.

5 **THE COMMISSIONER:** Well she said she --
6 okay, let's just make this very clear.

7 Her position from the very start was "I have
8 no independent recollection". So I don't think that even
9 if she was asked that she would be able to remember.

10 **MS. ELEY:** Okay then my answer would be, I
11 don't know. I don't know if she contacted him. I mean, if
12 she doesn't know, I don't know.

13 **THE COMMISSIONER:** Well no, that's ---

14 **MS. ELEY:** There's no record of that.

15 **THE COMMISSIONER:** There's a leap in logic
16 there that isn't quite correct. In a sense she cannot
17 remember but you have an independent recollection and in
18 your independent recollection do you remember ever hearing
19 or have knowledge somehow that she did communicate with
20 him?

21 **MS. ELEY:** No, I have no recollection of
22 that.

23 **THE COMMISSIONER:** Okay.

24 **MR. RUEL:** Ms. Eley, going now to the --
25 well, we're in the same document I guess, it's the last

1 page. Do you -- this is a letter dated December 22, 1993,
2 sent by Ms. Bradburn, Lenna Bradburn to you, do you recall
3 that?

4 **MS. ELEY:** Yes.

5 **MR. RUEL:** Do you recall receiving this
6 letter?

7 **MS. ELEY:** Yes.

8 **MR. RUEL:** And at the fourth paragraph Ms.
9 Bradburn wrote:

10 "As a result of our conversation of
11 December 20, 1993, I spoke to Bill Roy
12 at this date, requesting he contact Mr.
13 Silmsler to advise him that if he wished
14 to pursue his allegation with the
15 Ministry to forward this complaint to
16 the Deputy Minister's office."

17 Do you read that?

18 **MS. ELEY:** Yes.

19 **MR. RUEL:** And there's a reference to a
20 conversation on December 20, do you remember anything
21 concerning this conversation?

22 **MS. ELEY:** Not specifically, no, I couldn't
23 date the conversations that we had.

24 **MR. RUEL:** Could this be the conversation
25 you referred to earlier with Ms. Bradburn?

1 **MS. ELEY:** I suppose it could have been.

2 **MR. RUEL:** So this is essentially what you
3 told us concerning the -- Mr. Roy would be contacting Mr.
4 Silmser to ask him to put his complaint to the Deputy
5 Minister's office; that's ---

6 **MS. ELEY:** Correct.

7 **MR. RUEL:** And the last sentence of that
8 paragraph reads:

9 "Bill indicated that he would try to
10 contact Mr. Silmser by telephone with
11 follow-up correspondence."

12 So do you know if Mr. Roy ever contacted Mr.
13 Silmser following that -- after you received this letter?

14 **MS. ELEY:** I did not.

15 **MR. RUEL:** So you don't know -- or do you
16 know anything about the -- any follow-up that might have
17 been done with Mr. Silmser?

18 **MS. ELEY:** Just what I've heard at this
19 Inquiry.

20 **MR. RUEL:** Okay, so -- in terms of your
21 involvement in this matter in the Deputy Minister's office,
22 you've indicated that Jean Lindsay -- well, I gather that
23 Jean Lindsay, at the time of this complaint, would have
24 been the liaison purpose -- person with the IIU; is that --
25 do I understand that correctly?

1 **MS. ELEY:** That's correct.

2 **MR. RUEL:** So why did you happen to deal
3 with this matter?

4 **MS. ELEY:** I'm assuming that she was away.
5 All I can note is that it's just before Christmas and
6 perhaps she was on holiday or ill or something.

7 **MR. RUEL:** In your dealings with this matter
8 did you consult or speak to anyone in your office
9 concerning this complaint?

10 **MS. ELEY:** Unfortunately I have no specific
11 recollection of speaking to any particular person but the
12 way that I work and the fact that I was new, particularly,
13 and IIU was new, I would assume that I did speak to people
14 but I can't tell you definitively that I did and I can't
15 tell you who they were unfortunately.

16 **MR. RUEL:** Do you recall if you spoke to the
17 Deputy Minister, Michele Noble?

18 **MS. ELEY:** I really can't recall.

19 **MR. RUEL:** Would that be someone --
20 something that you would bring to her attention? Would
21 that be the type of situation that you would bring to her
22 attention?

23 **MS. ELEY:** I might have.

24 **THE COMMISSIONER:** Was this the first case
25 that you've run across where a probation officer is --

1 there's an allegation of sexual improprieties at the hands
2 of -- or involving probationers?

3 **MS. ELEY:** With probation, yes. But we had
4 had several examples of it in the institutional side. I
5 had dealt with it there.

6 **THE COMMISSIONER:** Right. And had you
7 referred them to the -- would you have referred them to the
8 IIU at that time?

9 **MS. ELEY:** No, at that time we would have
10 called the police and contacted the -- our Inspections
11 Branch.

12 **THE COMMISSIONER:** Right. Right.

13 **MR. RUEL:** You were interviewed by Mr. Paul
14 Downing in 2001. Mr. Downing was a Ministry investigator;
15 do you recall that?

16 **MS. ELEY:** Yes, I do.

17 **MR. RUEL:** And this is -- I think I dropped
18 the microphone.

19 **THE COMMISSIONER:** Yes. Monsieur Ruel can't
20 hear himself.

21 **MR. RUEL:** It might have something to do
22 with the recording, I guess. I can speak louder if there's
23 a problem with the recording.

24 **THE COMMISSIONER:** Okay.

25 So what exhibit, Mr. ---

1 MR. RUEL: Exhibit 1088.

2 THE COMMISSIONER: Oh.

3 MR. RUEL: Oh, I'm sorry, that's my fault.

4 I was pressing on the button inadvertently, so I'm sorry.

5 THE COMMISSIONER: Okay, so what exhibit are
6 we looking at?

7 MR. RUEL: Ten-eighty-eight (1088).

8 THE COMMISSIONER: Ten-eighty-eight (1088).
9 All right, there we go.

10 THE COMMISSIONER: All right. So do you
11 have that document?

12 MS. ELEY: I do.

13 THE COMMISSIONER: Thank you.

14 MR. RUEL: So do you recall this interview?

15 MS. ELEY: I do.

16 MR. RUEL: So that's on January 9, 2001, and
17 you provided a voluntary statement to Mr. Downing?

18 MS. ELEY: That's correct.

19 MR. RUEL: And you signed off on this
20 statement. Is that accurate?

21 MS. ELEY: I did.

22 MR. RUEL: It's at the bottom of the page
23 here.

24 MS. ELEY: M'hm.

25 MR. RUEL: And this is -- is this your

1 signature?

2 MS. ELEY: Yes, it is.

3 MR. RUEL: Okay. So I don't want to ask you
4 to go through each line of this statement, but I gather
5 that at the time of this interview you didn't have much
6 recollection about this matter. You only had limited
7 recollection, should I say?

8 MS. ELEY: Yes. Well, it came out of the
9 blue and, yes, I was surprised to be contacted about this.

10 MR. RUEL: Yes. Mr. Downing didn't show you
11 any documents?

12 THE COMMISSIONER: Well, yes he did.

13 MS. ELEY: I believe he did.

14 MR. RUEL: He did.

15 Did he show you Ms. Bradburn's notes?

16 THE COMMISSIONER: He says exhibit -- if you
17 look at page 5, he says that:

18 "I'm going to share with you a number
19 of investigation exhibits".

20 Exhibits number 38 and 21, for example.

21 MR. RUEL: Do you remember if you were shown
22 the notes of Ms. Bradburn?

23 MS. ELEY: I can't recall now what I was
24 shown.

25 MR. RUEL: And at page 5, the third

1 paragraph, you've indicated the question was:

2 "Are you aware of any situation when
3 the IIU had received a complaint
4 allegation, information directly from
5 the field or from the complainant and
6 then following consultation with the
7 Deputy Minister, Jean Lindsay, or any
8 member of the Deputy Minister's office,
9 that the DM's office would have
10 provided the IIU with a direction as to
11 whether this issue fell within the
12 mandate and should be investigated or
13 not?"

14 And your answer was:

15 "I'm not aware of any such situation.
16 If it fell under their (IIU) mandate, I
17 think the IIU would probably would just
18 have gone ahead and done it."

19 So you said that?

20 **MS. ELEY:** Clearly.

21 **MR. RUEL:** And it's consistent with what
22 you've indicated today?

23 **MS. ELEY:** Well, normally that that's what
24 they would do, yes.

25 **MR. RUEL:** Okay. There's also at page 6 ---

1 **THE COMMISSIONER:** Madam Clerk, my screen
2 isn't on.

3 **MS. ELEY:** My screen is down as well.

4 **THE REGISTRAR:** Is this 1088?

5 **THE COMMISSIONER:** This is 1088, yeah.
6 There we go.

7 **MS. ELEY:** Okay.

8 **THE COMMISSIONER:** So you're on the last --
9 page 7, you say?

10 **MR. RUEL:** Well, it's just at the bottom of
11 page 5.

12 **THE COMMISSIONER:** Page 5. Okay, hang on,
13 let me catch up. Okay.

14 **MR. RUEL:** The question is ---

15 **THE COMMISSIONER:** That's page 2, Madam
16 Clerk; so page 5.

17 **MR. RUEL:** The question here, it's at the
18 bottom of page 5:

19 "Would it be accurate to say..."
20 that's the question from Mr. Downing:

21 "...to say that..."

22 I'm going to read it again:

23 "Would it be accurate to say that you
24 don't know who made the decision for
25 the IIU not to investigate David

1 Silmser's complaint or to investigate
2 the circumstances surrounding the
3 complaint or any other similar matter
4 related to the alleged conduct of
5 Ministry staff at the Cornwall
6 Probation and Parole Office?"

7 And your answer is:

8 "That would be an accurate statement.
9 I don't know who made that decision."

10 So that's what you said?

11 **MS. ELEY:** Yes.

12 **MR. RUEL:** And is this still your position
13 today?

14 **MS. ELEY:** Well, I don't think I worded it
15 very well here.

16 I mean, typically, according to -- to
17 everything, it is the manager of IIU that makes the
18 decision. So, I mean, I may not have known specifically --
19 well I still -- no, I didn't know who made the decision not
20 to investigate, in a sentence.

21 **MR. RUEL:** So your testimony is that it
22 wasn't you?

23 **MS. ELEY:** It wasn't me, no.

24 **MR. RUEL:** But you were consulted on the
25 matter?

1 MS. ELEY: Yes, we discussed the matter.

2 MR. RUEL: Okay. At page 6, and I'm going
3 to finish with that, Mr. Downing put to you a number of
4 facts that he had learned about.

5 It starts with:

6 "At the time of David Silmer's
7 complaint, Ministry officials
8 representative had the following
9 information on file and available
10 (incident reports, letter of guidance
11 and other similar documents and local
12 files and regional files)."

13 So there's a mention about Nelson Barque and
14 Nelson Barque abusing clients under his supervision,
15 there's issues concerning Mr. Seguin and permission being
16 given to Mr. Seguin to have a former client reside at his
17 place. There's -- at paragraph 4 there's a reference to
18 four young adults attending Mr. Seguin's residence and one
19 of those persons being a Ministry client, and alcohol was
20 served.

21 And then Mr. -- at the following page, Mr.
22 Downing asked my question:

23 "Can you provide any information and/or
24 explanation on what rationale for --
25 was or might have been relied upon by

1 the person who decided that no
2 investigation would be undertaken by
3 the employer regarding Silmsers's
4 allegation and/or to ensure that other
5 Ministry clients under the supervision
6 of the Cornwall Probation and Parole
7 Office had not been mistreated or were
8 potentially at risk?"

9 And you answered:

10 "No, I've no idea why investigation
11 would not have taken place. First of
12 all, I'm not familiar with the
13 documents and/or information that you
14 referred to. I'm not aware of that
15 information coming out of our
16 office..." ---

17 **THE COMMISSIONER:** No, "To our office".

18 **MR. RUEL:** "... to our office (Deputy
19 Minister's)."

20 And then you say:

21 "I would like to comment that in
22 hindsight it would appear that the
23 information you presented to me was not
24 gathered and provided in a coordinated
25 fashion to people making decisions

1 surrounding these matters."

2 So sorry for the long introduction.

3 Can you explain what you meant by that, that
4 the information was, "Not gathered and provided in a
5 coordinated fashion to the people making decisions"?

6 **MS. ELEY:** Well, the -- the list that you
7 read out, one through six at the bottom of page 6, I -- I
8 didn't know any of those things and I believed that if
9 anyone had known them all in one place, it didn't seem to
10 me Mr. Roy never talked about them, so I don't know that he
11 knew those.

12 That's what struck me at the time was, did
13 Mr. Roy know these things? Did Ms. Bradburn know these
14 things? I didn't know these things and would that have
15 changed any outcome had we known?

16 But we didn't know, so we didn't have the
17 opportunity to review those matters in conjunction with
18 this complaint.

19 **MR. RUEL:** In hindsight, reviewing those
20 documents, can you comment or can you say if there should
21 have been a different course of action at the time you had
22 this complaint referred to you by Mr. Roy?

23 **MS. ELEY:** Well, I wouldn't be the
24 decision-maker in whether there was a different course of
25 action, but I think that, you know, it's a fairly long list

1 of -- of quite significant issues that's presented, and I
2 can't help but think that someone would have benefited by
3 knowing those in making a decision.

4 **MR. RUEL:** Just to conclude, when you spoke
5 to Ms. Bradburn about this matter, is it possible that she
6 might interpret your approval, if I may, or agreement with
7 the courses of action, as a direction?

8 **MS. ELEY:** No, I think she was very clear in
9 her mandate that it -- that I wasn't there to direct her.
10 I was there as a resource, if you will, but that was all.
11 I don't believe there would have been any confusion there.
12 There was none in my mind.

13 **MR. RUEL:** Mr. Commissioner, if you'd just
14 leave me a few seconds, I'll just review my questions and
15 see if there's anything else.

16 No, I think that's it. Those are my
17 questions.

18 **THE COMMISSIONER:** Thank you.

19 **MR. RUEL:** Thank you.

20 **THE COMMISSIONER:** Ms. Daley.

21 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.**

22 **DALEY:**

23 **MS. DALEY:** Ms. Eley, my name is Helen Daley
24 and I'm a lawyer for the Citizens for Community Renewal, a
25 local community group interested in institutional reform

1 directed to the protection of children, and I do have some
2 questions for you.

3 And you can help me because I'm not sure I
4 do understand the extent to which reviewing Ms. Bradburn's
5 notes assisted your recollection. That's something I want
6 to explore with you at the outset. And I need to take you
7 back to the interview that you had with Mr. Downing in
8 January of 2001.

9 Have you had a recent opportunity to read
10 your signed statement to Mr. Downing? That's Exhibit 1088.

11 **MS. ELEY:** Yes, I was supplied with it.

12 **MS. DALEY:** And you've read it carefully?

13 **MS. ELEY:** Yes.

14 **MS. DALEY:** Now, if you would be kind enough
15 to look at Bates page 1144356 I think it is the ---

16 **THE COMMISSIONER:** Bates page ---

17 **MS. DALEY:** It's the sixth page in.

18 **THE COMMISSIONER:** Okay, page 6.

19 **MS. DALEY:** Yes.

20 **THE COMMISSIONER:** It's the one with the 6
21 at the bottom of the page?

22 **MS. DALEY:** It says 5 at the bottom. I'm
23 sorry, sir.

24 **THE COMMISSIONER:** It says 5 but we'll take
25 6.

1 Madam Clerk, can you get there? Thank you.

2 So page 5. All right.

3 **MS. DALEY:** That's the one.

4 And just before we come here, Ms. Eley, I
5 take it you knew Mr. Downing, you knew the position that he
6 held?

7 **MS. ELEY:** Oh, yes.

8 **MS. DALEY:** And you knew that he was
9 designated as an inspector at the Ministry to look into
10 internal matters?

11 **MS. ELEY:** Yes, I did.

12 **MS. DALEY:** And I take it you understood the
13 purpose for which you've been brought in to speak with him?

14 **THE COMMISSIONER:** Do you know why you met
15 with him at that time?

16 **MS. ELEY:** I didn't know at the outset why I
17 was meeting with him. He just asked to meet with me on an
18 investigative matter.

19 **MS. DALEY:** After you sat down with him
20 though he explained why you were there?

21 **MS. ELEY:** Yes, he did.

22 **MS. DALEY:** And he directed your attention
23 to the incident involving Mr. Silmsler's complaint to the
24 Ministry in December of '93. So by the time he was
25 speaking to you, you knew that's what he wanted to ask you

1 about; correct?

2 MS. ELEY: Yes, he did, at the beginning of
3 the interview.

4 MS. DALEY: Thank you.

5 So looking at the Bates page that I took you
6 to, which is the page numbered 5, the second question he
7 asks you on the page, he's asking you generally if you're
8 aware of situations where a complaint had been received and
9 then following a consultation there was a decision not to
10 investigate.

11 So he asked you that general question and
12 your response was:

13 "I am not aware of any such situation."

14 You've already talked about that this
15 morning with Mr. Ruel. That was your response.

16 And then in the next question he said:

17 "I'm going to share with you a number
18 of investigation exhibits."

19 And he identifies exhibits 38 and 21.

20 And reading on the balance of that, it's
21 evident that he'd shown you the December 22nd, 1993
22 memorandum from Ms. Bradburn to yourself, correct, because
23 it's identified by date?

24 MS. ELEY: Yes.

25 MS. DALEY: And that's one of the documents

1 that you said here today you saw recently which refreshed
2 your memory; correct?

3 MS. ELEY: That's correct.

4 MS. DALEY: And he's also referring to
5 exhibit 21, and I want you just to look at Commission
6 Exhibit 1083, which you were also shown today.

7 And if you want to just look to -- look past
8 page 1, you'll see that these are Ms. Bradburn's notes;
9 right?

10 MS. ELEY: Correct.

11 MS. DALEY: And on the top page of Exhibit
12 1081, Mr. Downing has written "exhibit 21". So that was
13 the exhibit reference that he had; correct?

14 MS. ELEY: I don't see the 21 but ---

15 MS. DALEY: And you need to look at the very
16 first page of Exhibit 1083. It's up on the right-hand
17 side.

18 MS. ELEY: Oh, right.

19 MS. DALEY: Do you see that?

20 MS. ELEY: It's very prominently, yes.

21 MS. DALEY: Thank you. Okay.

22 So putting this information together, it
23 follows that indeed Mr. Downing did show you Ms. Bradburn's
24 notes when you met with him in early 2001?

25 MS. ELEY: Yes, it does.

1 **MS. DALEY:** It also follows that he showed
2 you the December 22nd, 1993 memorandum to you, which is the
3 very last page of that exhibit.

4 **MS. ELEY:** That's correct.

5 **MS. DALEY:** All right. Now, quite obviously
6 my math isn't perfect but 2001 was much closer to 1993 than
7 today, is it not?

8 **MS. ELEY:** That's correct.

9 **MS. DALEY:** And it would appear -- and I
10 take it you don't take issue with any of the content of Mr.
11 Downing's interview notes, you signed off on them, so you
12 were satisfied that what he recorded was accurate?

13 **MS. ELEY:** Yes, at the time, yes.

14 **MS. DALEY:** All right. So having seen Ms.
15 Bradburn's notes and her memo back in January of 2001, he
16 then asked you on page -- sorry, Madam Clerk, I'm now back
17 in Exhibit 1088 on the page that was numbered 5 at the
18 bottom. And I'm just directing this witness to -- actually
19 the third question.

20 So if we're all on the same page here, Ms.
21 Eley, he'd shown you the Bradburn notes and the Bradburn
22 memo and he asked:

23 "Do you recall any of the conversations
24 and references?"

25 And your response at that time was that they seemed vaguely

1 familiar but nothing specific.

2 And then he went on to ask you another
3 question, which you also referred to in-chief, and you
4 indicated that you just didn't know who made the decision?

5 MS. ELEY: That's correct.

6 MS. DALEY: Is that fair?

7 MS. ELEY: Yes.

8 MS. DALEY: So obviously the notes did not,
9 I would suggest, refresh your recollection when you first
10 saw them in January of 2001?

11 MS. ELEY: No, that's what I've said here.
12 Yes.

13 MS. DALEY: Obviously, had the notes been
14 able to refresh your recollection back in 2001, you would
15 have given that information to Mr. Downing because he
16 wanted to know what you knew about this circumstance;
17 right?

18 MS. ELEY: Yes, that's what he came to see
19 me for.

20 MS. DALEY: All right. And that six or more
21 years after this interview somehow Ms. Bradburn's notes
22 have had a different effect, they've brought back a
23 recollection?

24 MS. ELEY: Well, they certainly seem a lot
25 more familiar.

1 **MS. DALEY:** Because you've seen them before,
2 right? You saw them back in 2001?

3 **MS. ELEY:** I did see them in 2001.

4 **MS. DALEY:** So it's the notes that seem
5 familiar to you now?

6 **MS. ELEY:** I can't distinguish for you what
7 -- I just can tell you that they appear to have refreshed
8 my memory, whether they refreshed my memory of the 2001
9 viewing of them or whether they refreshed my memory of the
10 actual events, I have no way of distinguishing that, I'm
11 sorry.

12 **MS. DALEY:** Okay. So just so that we have
13 the correct impression, I take it you are familiar with Ms.
14 Bradburn's notes because you've seen them several times
15 now. That's correct, is it not?

16 **MS. ELEY:** That's correct now.

17 **MS. DALEY:** But what you can't help us with
18 is whether your memory is simply about what her notes say
19 or if you have an independent recollection of the
20 underlying facts which occurred in 1993?

21 **MS. ELEY:** Well, as I've said here, they
22 seem vaguely familiar, is what I said, so they had some
23 familiarity to me ---

24 **MS. DALEY:** Right.

25 **MS. ELEY:** --- in 2001. At this point, I

1 can't distinguish between what my memory is of, just that I
2 have a memory, which I have to tell you without being
3 cheeky, is remarkable on many days.

4 MS. DALEY: I feel the same way sometimes.

5 MS. ELEY: So I can't tell you, I'm sorry.

6 MS. DALEY: All right. At the very outset,
7 you made some comments to my friend and I wasn't sure I
8 quite understood.

9 You were distinguishing between your role as
10 an EA to the Deputy Minister vis-à-vis people asking you
11 for information, and you said in that context you were
12 speaking for the Deputy Minister when you requested
13 information. Do you recall that portion of your evidence?

14 MS. ELEY: Yes, I do.

15 MS. DALEY: But you also said that you
16 didn't have decision-making authority and my notes said
17 that you could not direct but you would advise. I just
18 wondered if you could spell that out for us a little bit
19 because I'm not sure I understood what you meant by that.

20 MS. ELEY: When you are an EA to people in
21 Deputy Minister positions, my understanding is that there
22 is an implied, if you will, authority, that when they call
23 they're really calling because the Deputy wants something
24 or the Deputy is asking a question or, in her best
25 interests, you're asking the question in anticipation of

1 being asked the same question.

2 But in actual fact you have no line
3 authority over -- like you don't -- these people don't
4 report to you, these people have -- you have no authority
5 over them, but what they do is they usually are very
6 cooperative because, of course, their boss is the Deputy
7 Minister.

8 So you're acting on her behalf in most
9 instances and you're dealing with a variety of documents
10 and decision documents that have nothing to do with the
11 area of business you're in. Your only business is whatever
12 she has to do at that time.

13 So -- I'm sorry I'm not making this more
14 clear, but ---

15 **MS. DALEY:** Well let's put it -- put it in a
16 concrete framework. Would I have it right that when you
17 speak with Ms. Bradburn about the Silmsler complaint, just
18 as an example, Ms. Bradburn would understand that in part
19 you're speaking on the Minister's behalf -- sorry, the
20 Deputy Minister's behalf?

21 **MS. ELEY:** No, I think in that role when I
22 would speak to her it would clearly be as someone who could
23 provide her with advice in the office because we had this
24 liaison role.

25 **MS. DALEY:** Do you recall any advice you, in

1 fact, gave her concerning the Silmsers complaint?

2 MS. ELEY: No, I can't.

3 MS. DALEY: I take it you can't give us any
4 specifics of your discussion with Ms. Bradburn as to how to
5 deal with Silmsers's complaint?

6 MS. ELEY: No. Just that there was a
7 discussion.

8 MS. DALEY: Right. But what was said by you
9 by way of advice or otherwise, you can't presently recall
10 for us?

11 MS. ELEY: I would have to say no.

12 MS. DALEY: Thank you.

13 One other point I wanted to address with
14 you, and that had to do with the notion that Mr. Silmsers
15 had also sought counselling and you had indicated that you
16 had no awareness of that whatsoever?

17 MS. ELEY: That's correct.

18 MS. DALEY: And that if you had had some
19 awareness, you would have responded because you knew that
20 there were resources available and you would have directed
21 him or suggested that he be directed to resources. I'm
22 just taking you back to that testimony.

23 MS. ELEY: That's correct.

24 MS. DALEY: What Mr. Silmsers in fact said to
25 Mr. Roy was that he thought that there were others like him

1 who'd been abused by probation officers and that perhaps
2 they all required counselling. Did you have anything to
3 offer in that circumstance?

4 **MS. ELEY:** I was never told about that.

5 **MS. DALEY:** All right. Had you been aware
6 of that, how would multiple people who had a need for
7 counselling be addressed?

8 **MS. ELEY:** Well, I think it's the same as
9 for an individual and if we knew who they were, for
10 example, then Mr. Roy could have, you know, found resources
11 to refer them to.

12 **MS. DALEY:** I take it that, in fact, Ms.
13 Bradburn never came back to you with a written complaint by
14 Mr. Silmser?

15 **MS. ELEY:** No, she didn't.

16 **MS. DALEY:** And I take it that no further
17 discussion between you and she as to whether or not Silmser
18 would make a written complaint or there'd be any further
19 steps taken?

20 **MS. ELEY:** I don't recall having any other
21 discussion.

22 **MS. DALEY:** All right.

23 One second.

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

25 **MS. DALEY:** Just before I conclude, Madam

1 Clerk, if you could take the witness to the next page of
2 the exhibit we have open, that's 1088, page 6.

3 And, again, Ms. Eley, you'll remember that
4 my friend, Mr. Ruel, walked you through all of the items
5 that Downing had mentioned to you and you said you weren't
6 aware of them.

7 I don't challenge you that, but would it be
8 correct to say that at least some of this information would
9 have existed within the employment files for Mr. Seguin,
10 for example, Item 3, or would you know about that?

11 **MS. ELEY:** Typically -- I would think it
12 would be in his local personnel file and not his main
13 Ministry file, typically, but I don't know where it was and
14 I didn't know about it.

15 But if you're asking me in general terms,
16 typically, it would go into someone's local file.

17 **MS. DALEY:** All right. Similarly, Item 4
18 would in all likelihood be in his local file, to the extent
19 it was documented?

20 **MS. ELEY:** It doesn't refer in number 4 to
21 any kind of document, so I don't know if that was just
22 something that was known or it was a document.

23 **MS. DALEY:** If you'll just make an
24 assumption with me for a moment because we have heard
25 evidence that there was some documentation pertaining to

1 this incident.

2 Would your expectation be it would be in his
3 local file?

4 **MS. ELEY:** I would assume so.

5 **THE COMMISSIONER:** A letter of discipline or
6 counsel?

7 **MS. ELEY:** Would be in the file.

8 **THE COMMISSIONER:** Yes, in the local file?

9 **MS. ELEY:** Well, the letter of counsel at
10 that time might have been in what we called the performance
11 file, like in preparation for your next performance review.

12 **MS. DALEY:** If I could just stop -- is that
13 held locally or does that come to head office?

14 **MS. ELEY:** Locally.

15 **MS. DALEY:** All right.

16 **MS. ELEY:** Yes. And then the local area
17 manager would also have your personnel file, the local
18 version. I mean, there's a main version that is held in
19 Orillia now and I don't know where at that time.

20 So if there were reports or letters of
21 discipline, the letter of discipline would also go to staff
22 relations and would also go to your main file, as in the
23 corporate file in -- let's use today's and let's say it's
24 Orillia.

25 **MS. DALEY:** All right. So had there been a

1 letter of discipline concerning Item 4, it would have found
2 its way into the main file which would have been in your
3 office at the time?

4 I don't mean your personal office but with
5 the Ministry head office.

6 **MS. ELEY:** It would have been with Ministry
7 head office.

8 **MS. DALEY:** Okay.

9 Those are my questions, thank you.

10 **MS. ELEY:** Thank you.

11 **THE COMMISSIONER:** Thank you.

12 Maitre Ruel, could you canvass the parties
13 to see how much time we're going to need for cross-
14 examination?

15 And the next witness, we should be starting
16 today?

17 **MR. RUEL:** Yes.

18 **THE COMMISSIONER:** And who would that be?

19 **MR. RUEL:** It's Mr. Ron Gendron.

20 **THE COMMISSIONER:** Right.

21 All right, so let's take the lunch break;
22 we'll come back at two.

23 Thank you.

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

1 This hearing will resume at 2:00 p.m.

2 --- Upon recessing at 12:27 p.m./

3 L'audience est suspendue à 12h27

4 --- Upon resuming at 2:04 p.m./

5 L'audience est reprise à 14h04

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

8 This hearing is now resumed. Please be seated;
9 veuillez vous asseoir.

10 **THE COMMISSIONER:** Good afternoon, all.

11 Where were we? Ms. Daley -- no, Mr. Horn, sorry.

12 **LORETTA ELEY:** Resumed/Sous le meme serment:

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

14 **HORN:**

15 **MR. HORN:** My name is Frank Horn.

16 I'm a lawyer representing the Coalition for
17 Action and we're a citizens' group that has advocated to
18 have this Inquiry set up and I'd like to ask you a few
19 questions.

20 First of all, I understand that your
21 background includes some time as a parole officer?

22 **MS. ELEY:** Probation and parole officer,
23 yes.

24 **MR. HORN:** How long were you a probation
25 officer?

1 **MS. ELEY:** About -- somewhere around 18
2 months.

3 **MR. HORN:** Okay. And that would be -- you
4 did supervise parolees?

5 **MS. ELEY:** I didn't supervise any parolees,
6 just probationers and did ---

7 **MR. HORN:** Not parolees, I'm sorry;
8 probation clients?

9 **MS. ELEY:** Yes, I did.

10 **MR. HORN:** Okay. So you would have
11 experience in dealing with individuals who would be under
12 the care of the Ministry through probation?

13 **MS. ELEY:** That's correct.

14 **MR. HORN:** Okay. And then I understand,
15 also, that you have some experience as superintendent of
16 the Toronto Jail and the Metropolitan West Detention
17 Centre?

18 **MS. ELEY:** That's correct.

19 **MR. HORN:** And how long were you in those
20 positions?

21 **MS. ELEY:** I was the superintendent of the
22 Toronto Jail for three years and the superintendent at
23 Metro West for about 18 months, and the superintendent at
24 Vanier for a year.

25 **MR. HORN:** So in all, as superintendent, how

1 long?

2 MS. ELEY: Just over six years; six and a
3 half years.

4 MR. HORN: Okay. Now, in these positions
5 that you had, did you, as a superintendent, have to deal
6 with grievances by inmates?

7 MS. ELEY: Yes.

8 MR. HORN: And so there would be procedures
9 that would be in place in a case, let's say, there was a
10 complaint of a guard maybe abusing one of the inmates?

11 MS. ELEY: Yes, there was.

12 MR. HORN: So you would be party or you
13 would be -- would there be a reaching out to you as the
14 superintendent to get in there and do something about it?

15 MS. ELEY: There could be a variety of -- of
16 ways you would be involved.

17 The first way would be that someone else
18 would be told of the incident or the allegation, and that
19 would then come forward, and an action plan be developed.
20 So, normally, we had a security officer inside the facility
21 who did small investigations, local investigations.

22 We also had access to the Ministry's
23 Inspections Branch and we also had, obviously, access to
24 the IIU.

25 The other thing is that we also frequently

1 called the police where the matter was -- well, we were
2 instructed to call the police whenever the matter was
3 criminal in nature.

4 The other way was that they have what they
5 call "superintendent's requests" and so an offender might
6 request to see you and might tell you directly, in which
7 case then you would give instructions as to how the matter
8 was to be dealt with.

9 MR. HORN: Okay. So you have quite a bit of
10 experience in dealing with complaints by clients of the
11 Ministry?

12 MS. ELEY: A fair amount, yes.

13 MR. HORN: Okay. And in -- so that when you
14 were -- or were you seconded to the Deputy Minister's
15 office or were you placed there like as a position?

16 THE COMMISSIONER: Did you apply?

17 MS. ELEY: No. No, I was there on a
18 secondment.

19 THE COMMISSIONER: Okay.

20 MR. HORN: Okay. And so that you would be
21 there for a brief period of time.

22 Now, so you brought in all of this
23 expertise: You were a probation officer and you ran three
24 jails; right?

25 MS. ELEY: Two, prior to going to ---

1 **MR. HORN:** Oh ---

2 **MS. ELEY:** Two prior; one is after.

3 **MR. HORN:** Okay, one is after.

4 Okay. So when you were seconded, there must
5 have been -- you know, a reason why you were chosen.

6 Do you recall why it was that you were --
7 you were the one that was chosen? Probably a lot of other
8 people wanted that position but you're the one that got.

9 Do you remember what it was about your
10 background that made you a favourable client -- or
11 favourable person to get that position?

12 **MS. ELEY:** My understanding from the Deputy
13 at the time was that she was looking for someone with -- as
14 opposed to sort of corporate government experience; she was
15 looking for someone with operational correctional
16 experience.

17 **MR. HORN:** Okay. That would be hands on
18 experience?

19 **MS. ELEY:** That's correct.

20 **MR. HORN:** And so you would be able to talk
21 about the inner workings of how the institutions run that
22 are under the Ministry?

23 **MS. ELEY:** That's correct.

24 **MR. HORN:** Now, from what I understand --
25 now how many Deputy Ministers are there under the Minister?

1 MS. ELEY: There's one.

2 MR. HORN: There's only one Deputy Minister?

3 MS. ELEY: That's correct.

4 From time to time we have had two; one for
5 Corrections and one for Public Safety, but currently, and
6 at that time, there's been one.

7 MR. HORN: Okay. So the focus of everything
8 that would go to the Minister would be through your office
9 and through your Deputy Minister?

10 MS. ELEY: That's correct.

11 MR. HORN: So anything that would happen
12 would have to go either through you or is there anybody
13 else that it would have to go through, besides yourself?

14 MS. ELEY: It -- it wouldn't have to come
15 through me; it could go directly to the Deputy Minister, it
16 could go to one of the other people in the office.

17 I think in my earlier testimony I said that
18 there were some specialists from the police side of the
19 business and they would -- also were involved with the
20 Deputy and bringing matters forward on behalf of the
21 policing community.

22 MR. HORN: So what kind of -- basically,
23 what kind of things would -- you would be sort of like the
24 person that they would come to in order to get to the
25 Deputy Minister?

1 **MS. ELEY:** I'm not sure I understand your
2 question, sir.

3 **MR. HORN:** Okay. Because of your background
4 expertise, you were kind of like a -- they're saying,
5 "Well, you handle these kinds of things," and somebody else
6 would have handled this and was there any allocation of
7 that kind of administrative, you know, dealings with issues
8 that would come to the Ministry?

9 **MS. ELEY:** I would deal with all of her mail
10 and correspondence, and I would deal with various
11 submissions that were being made either to Management Board
12 or whichever central agency, and I would deal with special
13 requests people had for input from -- from the Deputy or
14 the Minister's visiting schedule. I mean the Minister's
15 invited to many, many events and looks to the Deputy to
16 suggest which ones are a priority and which ones aren't for
17 the business of the Ministry, so those kinds of things.

18 I -- I didn't deal with policing matters,
19 but short of that I dealt with all of -- all of the rest.

20 There was a policy person, as well, in our
21 office and she was also dealing with some of those matters
22 and reported to me.

23 **MR. HORN:** So with your experience, with
24 your background, would you be sort of the individual that
25 the Deputy Minister would say, "There's a hot issue down in

1 Cornwall, it seems to be getting out of hand; why don't you
2 look into it," would that happen?

3 MS. ELEY: Not likely.

4 MR. HORN: No?

5 MS. ELEY: No, likely that if it was -- can
6 I just frame a hypothetical situation?

7 MR. HORN: Yeah.

8 MS. ELEY: If there was a matter like that
9 that she said was getting out of hand in Cornwall, then she
10 would likely speak to the Assistant Deputy Minister in that
11 area and find out what she could about what the situation
12 was and then, at that point, make a determination about
13 whether the matter was to be reviewed by the police, by our
14 internal Investigation Branch or by IIU; not likely she
15 would ask me to -- to do anything with it.

16 MR. HORN: Okay. Are you suggesting that
17 under the Deputy Minister there was a number of Assistant
18 Deputy Ministers?

19 MS. ELEY: That's correct.

20 MR. HORN: And you weren't working with the
21 Assistant Deputy Ministers, you were working directly with
22 the Deputy Minister?

23 MS. ELEY: That's right. But they had
24 direct reporting relationships to her, to the Deputy.

25 MR. HORN: To the Deputy?

1 **MS. ELEY:** That's correct.

2 **MR. HORN:** Okay. So they don't have to go
3 through you?

4 **MS. ELEY:** They don't have to go through you
5 but they -- they frequently did, because often she was out
6 or something and they wanted something mentioned to her or
7 they wanted some approval of something. So often they did,
8 but they didn't have to and in matters where they were
9 accountable she would usually go directly to them and then
10 I would follow up.

11 **MR. HORN:** Okay. So there would be an
12 Assistant Deputy Minister that would have this area, then,
13 these kinds of complaints?

14 **MS. ELEY:** There'd be an Assistant Deputy
15 Minister in charge of Corrections and there was at that
16 time.

17 **MR. HORN:** Okay. And who was that?

18 **MS. ELEY:** That was someone named in -- what
19 year is this, '93?

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

21 **MS. ELEY:** It would be Neil McKerrell, I
22 believe.

23 **MR. HORN:** Okay. So would he had been the
24 one that initially would have had been approached with
25 something like this?

1 **MS. ELEY:** I'm having trouble, sir, only
2 because my understanding is that the person that was
3 approached on this was Bill Roy, and that Bill Roy called
4 me, and also called Lenna Bradburn, the police, and Tom
5 O'Connell, according to the notes. And Tom McConnell was
6 the EA to Neil McKerrell.

7 **MR. HORN:** So you are saying Bill Roy then
8 didn't go through his Deputy Minister -- Assistant Deputy
9 Minister, he went -- by passed it and went directly to the
10 Deputy Minister?

11 **MS. ELEY:** No. He went also to the EA to
12 the Assistant Deputy Minister. I believe in the note it
13 says that he contacted Tom O'Connell. Tom O'Connell had
14 that position.

15 **MR. HORN:** Okay. So what we're -- okay now,
16 investigations then would be initiated -- okay, is it the
17 Deputy Minister makes that decision? Assistant Deputy
18 Minister or somebody in the offices of any of these people,
19 can they make that decision?

20 **MS. ELEY:** Well, in this particular instance
21 the decision was clear by policy, that sexual impropriety
22 matters were referred to the Independent Investigation
23 Unit.

24 **MR. HORN:** And so it doesn't matter which
25 Assistant Deputy Minister or the Deputy Minister, they

1 automatically give it to the IIU?

2 MS. ELEY: That's correct.

3 MR. HORN: And then after the investigation,
4 then it's presented to the Deputy Minister or the Assistant
5 Deputy Minister?

6 MS. ELEY: The investigation report?

7 MR. HORN: Yeah.

8 MS. ELEY: To the Deputy Minister.

9 MR. HORN: Okay. So it doesn't go through
10 the Assistant Deputy Minister?

11 MS. ELEY: That's correct.

12 MR. HORN: And so then it would be your
13 boss, who then would be handling it?

14 MS. ELEY: That's correct.

15 MR. HORN: And would you -- among the people
16 that surround the Deputy Minister were you kind of the one
17 that was going to be dealing with this?

18 MS. ELEY: Chances are it would either be
19 myself or Jean Lindsay who was the person that was normal
20 liaison with the IIU.

21 MR. HORN: Okay. So they'd either deal with
22 you or the other individual who was already assigned to
23 that particular task?

24 MS. ELEY: That's correct.

25 MR. HORN: Okay. So when a complaint like

1 this comes, who would be the one that would take it and
2 present it to the Deputy Minister, if it came to you or
3 her?

4 **MS. ELEY:** It would be either me or Jean
5 Lindsay.

6 **MR. HORN:** So you would have to brief the
7 Deputy Minister about what you've heard and what've done --
8 and what you know?

9 **MS. ELEY:** I would probably have to
10 summarize the report that I'd been given and discuss with
11 her the recommendations that were provided by the IIU. The
12 findings and the recommendations provided by the
13 Independent Investigation Unit.

14 **MR. HORN:** Do you remember if this was done?

15 **MS. ELEY:** It was not done in my time.

16 **MR. HORN:** It was not done by yourself?

17 **MS. ELEY:** It was not done in my time.

18 **MR. HORN:** Oh the briefing on this issue; of
19 the Silmsler issue?

20 **MS. ELEY:** The briefing on -- in the time
21 that I was in the Deputy's office I'm not aware that that -
22 - an investigation report was completed. So there would
23 have been no briefing at that point.

24 **MR. HORN:** Okay. So it never got that far?
25 There was no saying to the IIU, "Go look into this thing

1 and bring me back a report."

2 **MS. ELEY:** The IIU was contacted by Bill
3 Roy, and after a discussion between us and after Lenna had
4 done certain -- made certain contacts with the police, et
5 cetera, then we had a discussion about she was going to
6 tell Bill Roy to get in touch with Mr. Silmsen and to ask
7 him to provide any allegations he had in writing and then
8 she would review that.

9 **MR. HORN:** Now, in retrospect when you look
10 back wouldn't that have been -- because this was such a --
11 something that had not been seen before, something very
12 unusual, it should have been assigned to somebody in a high
13 position in the Deputy Minister's office to deal with it.

14 **MS. ELEY:** Well, it was assigned to Lenna
15 Bradburn to deal with essentially.

16 **MR. HORN:** But she was the -- she was the
17 investigator?

18 **MS. ELEY:** She was not the investigator.
19 She had a group of investigators working for her.

20 **MR. HORN:** Okay. So it was given to her and
21 it was no longer in your hands or anybody in the Deputy
22 Minister's hands?

23 **MS. ELEY:** That's correct.

24 **MR. HORN:** Okay. So because they are at
25 arms length from the Deputy Minister's office then they

1 could do whatever they want; I mean within the guidelines?

2 **MS. ELEY:** Well, within the guidelines they
3 would make a determination of whether the matter was to be
4 investigated. If it was to be investigated, in what manner
5 it would be investigated, who would be assigned to
6 investigate it, and when the report would be due. So, yes,
7 they would make all those determinations.

8 **MR. HORN:** Okay. The Deputy Minister, once
9 he hears about this, could he over rule the IIU and say I
10 want it done this way, or it's got to be done by certain
11 amount of time or -- could he guide and direct the
12 investigation?

13 **MS. ELEY:** The Deputy could -- I guess could
14 say, "I'm interested in having this matter brought forward
15 as quickly as possible." I don't know that they'd put a
16 timeline on it -- a specific time line, but they would
17 probably make it clear that they wanted something done very
18 quickly.

19 **MR. HORN:** Okay. Was that ever done? Did
20 you hear anything -- that kind of discussion?

21 **MS. ELEY:** I have no knowledge of it.

22 **MR. HORN:** So, I mean, this is a very
23 unusual situation. Like, from what I understand, it's the
24 first time that something like this really came to light in
25 the Ministry -- wasn't there any real concern, "Let's get

1 together; let's have a big -- high level meeting about
2 this."

3 **MS. ELEY:** I think it was the first time
4 that the IIU was asked to deal with a matter of sexual
5 impropriety. It previously -- sexual impropriety was dealt
6 with by our Investigations Branch. It was not -- it's not
7 a frequent occurrence fortunately, but it had occurred in
8 other -- on other occasions, mainly in our institutions and
9 not our probation offices.

10 **MR. HORN:** Okay. So you are -- you are
11 someone who has quite a lot of experience in dealing with
12 complaints and that sort of thing. I mean you'd be the
13 first -- you'd be the obvious person to get a grip on this
14 situation, "Let's do something about it," since -- with all
15 of your experience -- running as a superintendent of a jail
16 where there's a lot of problems.

17 **MS. ELEY:** Well, Mr. Roy was the person who
18 was contacted by the complainant and he immediately
19 referred the matter to IIU and contacted the police. So he
20 was doing what we're required to do.

21 **MR. HORN:** Okay. When did you find out the
22 IIU was saying, "We don't want to go any further because
23 it's gone to legal now."

24 **MS. ELEY:** That's not -- those two things
25 didn't go together for me. What I -- I had a discussion

1 with Lenna Bradburn and she advised me that they -- she had
2 contacted the police, both OPP and Cornwall and that she
3 wouldn't be -- that she would be asking Bill Roy to contact
4 Mr. Silmsler and ask him to put his complaint in writing.
5 And at that point she would review the matter and make a
6 determination about what would be done.

7 The matter of it being referred to legal was
8 -- in my earlier testimony I said that I had let legal know
9 that we might get a law suit from this person. That was
10 the contact with legal that I'm aware of at that time.

11 **MR. HORN:** Is this the sort of thing that
12 you did when you were superintendent of a jail when it
13 became a civil matter, a legal issue like that, would you
14 have referred it to legal?

15 **MS. ELEY:** If it was a civil matter I would
16 usually tell -- if someone said to me, "You're going to be
17 getting a law suit," I would probably drop them a line or
18 send them an e-mail now and say, "You know, I understand
19 that you may be receiving and if you do I would be the
20 contact," or so and so would be the contact.

21 **MR. HORN:** Okay. Now how did the Deputy
22 Minister on workplace and discrimination and harassment
23 prevention, how did they play in this whole thing?

24 **MS. ELEY:** The Deputy Minister --

25 **MR. HORN:** I'm talking about Jean Lindsay.

1 **MS. ELEY:** She was a WDHP advisor to the
2 Deputy -- special advisor.

3 **MR. HORN:** Okay. So was -- okay -- so there
4 was two of you; there was her and you --

5 **MS. ELEY:** Yes, that's correct.

6 **MR. HORN:** --- but you were the one that was
7 being approached, not her?

8 **MS. ELEY:** I was being approached and then
9 when I was asked here why, I said I don't know, I don't
10 know if it was because she was away or because it was just
11 before Christmas and she was gone or sick or -- I just know
12 that it was me that was contacted.

13 **MR. HORN:** Okay. So if she had been there
14 she would have handled this?

15 **MS. ELEY:** That's correct.

16 **MR. HORN:** And you wouldn't have been
17 involved then?

18 **MS. ELEY:** That's correct.

19 **MR. HORN:** Okay. Now, see the concern that
20 the Coalition have is that their concern is that there's a
21 complaint of an impropriety by a probation officer and
22 there's a feeling that somehow because of either
23 bureaucratic bungling or something, it never went anywhere
24 and nothing was ever done about it and as a result it got
25 lost in the shuffle.

1 I mean, there's a concern that these kinds
2 of things will, in the future, just happen again. And what
3 I'm asking you is, looking back to that time, what -- if
4 you had to do it again, what would you have done
5 differently?

6 MS. ELEY: I'm not sure I would have done
7 anything differently. I think that there was a
8 determination made that the matter could be brought forward
9 again by Mr. Silmser indicating in writing what his
10 allegation was. So I don't -- I didn't think then and I
11 don't think now that there was anything wrong with that.

12 I think what I wish maybe we'd known was
13 some of the information that was quoted to me this morning
14 by the Commissioner's counsel about the number of things
15 that were known in a variety of places. It's too bad that
16 that wasn't all known to everybody, but it wasn't.

17 MR. HORN: Okay. Let's go back to your
18 position when you were a superintendent of a jail. There's
19 an allegation against a guard. Okay? You're told about
20 it. Wouldn't you have all the information you can get put
21 on your desk as quick as possible and you want to know --
22 you want to get to the bottom of it as quick as possible?

23 MS. ELEY: It would depend. Usually,
24 allegations against your own staff are investigated
25 externally. So they might be investigated by either the

1 police and/or the Inspections Unit. So the matter -- all
2 of the files would not be put on my desk, they would be put
3 on the desk of the inspector or investigator.

4 **MR. HORN:** Okay. So you're saying that the
5 way it's run in the jails is pretty well the way you ran it
6 here. Hand it over to Legal; hand it over to the
7 investigation people and I don't have to touch it?

8 **MS. ELEY:** It's not a matter of not touching
9 it. If you're the decision maker at the end of the day, as
10 the superintendent would be, if you're making the decision
11 on if there is a substantiated finding, then you can't very
12 well do that if you've been part of the investigation.

13 So you stay away from the investigation and
14 let the investigators give you all of the information and a
15 concise report and at the end of the day then you take
16 action based on their findings.

17 **MR. HORN:** Okay.

18 **MS. ELEY:** So it's not a matter of putting
19 it aside. It's a matter of not being tainted by the
20 investigation at all.

21 **MR. HORN:** Okay. You were a probation
22 officer. You hear that one of the probation officers is
23 involved in something like this and you know that it's
24 pretty serious. You're now in a good position right next
25 to the office of the Deputy Minister. Wouldn't you -- why

1 didn't you do something about it?

2 MS. ELEY: I'm sorry. I'm not understanding
3 your question.

4 MR. HORN: Okay. You were a probation
5 officer?

6 MS. ELEY: That's correct.

7 MR. HORN: You know the responsibility of a
8 probation officer?

9 MS. ELEY: Correct.

10 MR. HORN: Okay. You get wind of a
11 situation in Cornwall where there is a probation officer
12 who's abusing one of his clients. You hear about that.
13 You know that's serious because of your background. And
14 you're sitting next door to the Minister -- the Deputy
15 Minister's office, why didn't you take the bull by the
16 horns and say, "I'm going to do something about this"?

17 MS. ELEY: Well, first of all, what we had
18 was a phone call to someone who was our Regional Manager in
19 the Eastern Region, alleging that this matter -- that this
20 was -- that there'd been a sexual impropriety some time
21 before; I think I recently read that it was 20 years prior
22 when the person was a young offender. The person was no
23 longer a client and the employee was now deceased.

24 So I'm not sure -- and the Deputy Minister
25 doesn't do investigations. So I'm not sure that anything's

1 to be gained from -- Mr. Roy went immediately to the source
2 that he needed to, which was the Independent Investigation
3 Unit and the police, and the matter was known to both
4 police services and the matter was turned over to IIU.

5 MR. HORN: Okay. Would there be a red alert
6 when the guy says, "If I don't get paid I'm going to go to
7 the newspaper"?

8 MS. ELEY: Quite frankly, sir, that's
9 something that usually accompanies ---

10 MR. HORN: Pardon?

11 MS. ELEY: It's something that usually
12 accompanies an allegation.

13 MR. HORN: Okay. So you're not -- you don't
14 care then?

15 MS. ELEY: It's not a matter of not caring,
16 it's a matter of that's your prerogative as a private
17 citizen to go -- it doesn't change the policy for me. The
18 policy is it's investigated by the Investigations Unit.

19 MR. HORN: Okay. So as far as the Ministry
20 is concerned, agitation by an individual, going to the
21 newspapers and then getting the backing of citizens groups
22 and that, putting pressure on the Ministry, is that part of
23 your job is to sort of let's do some political manoeuvring
24 to protect the Ministry? Was that part of your mandate?

25 THE COMMISSIONER: Sir?

1 **MR. NEUBERGER:** I'm objecting based on the
2 fact that this is a large question which isn't relevant,
3 frankly, for this witness and I'm not sure where it's
4 coming from. There's no foundation built for it to ask
5 this witness that question.

6 **THE COMMISSIONER:** Mr. Horn, I've given you
7 great latitude in this regard and I think we're going a
8 little afield.

9 **MR. HORN:** Okay. Sorry.

10 Looking back, the buck stops somewhere. Who
11 was responsible for what happened? If there was a mistake
12 that was made does it always go on the Deputy Minister or
13 the Ministers? Who is responsible?

14 **MR. NEUBERGER:** I'm sorry, I'm going to
15 stand up again.

16 Is the question in relation to the Silmsler
17 complaint?

18 **MR. HORN:** Yes.

19 **MR. NEUBERGER:** Okay. Because let's just
20 clarify then if you're alleging that there's a mistake with
21 respect to that, whose responsibility is that, and if it's
22 framed that way that's fine.

23 **MR. HORN:** Okay. Whose responsibility?
24 Where does the buck stop?

25 **MS. ELEY:** If there's a mistake made in this

1 particular case where does it stop? I suppose it stops
2 with the person who made it and/or the Deputy Minister
3 who's the head of the Ministry.

4 **MR. HORN:** Okay. Thank you.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Lee.

7 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE:**

8 **MR. LEE:** Ms. Eley, my name is Dallas Lee.
9 I'm on for the Victims Group at this Inquiry.

10 **MS. ELEY:** Good afternoon.

11 **MR. LEE:** Good afternoon.

12 Can we start with Exhibit 1088, please?

13 That's your interview with Paul Downing.

14 Do you have that?

15 **MS. ELEY:** I do.

16 **MR. LEE:** And you've already been taken to
17 this part, but you commented to Mr. Horn a moment ago, and
18 I'd like to take you back there, to page 6, please. There
19 are handwritten numbers at the bottom of the pages, page 6.

20 **MS. ELEY:** Yes.

21 **MR. LEE:** And the last question on that page
22 about halfway down is the question that we've looked at
23 from Mr. Downing where he sets out -- if we look at the
24 wording of the questions, he sets out that Ministry
25 officials and representatives "had" the following

1 information on file and "available", and he proceeds:

2 "At the time of David Silmser's
3 complaint, Ministry officials and reps
4 had the following information on file
5 and available."

6 So that's the information that Mr. Downing
7 is telling you was available at the time of the Silmser
8 complaint. Do you see that?

9 **MS. ELEY:** Yes, I do.

10 **MR. LEE:** And here's where he sets out some
11 information about Nelson Barque, and about Gerry Renshaw
12 being permitted to live with Ken Seguin and about the
13 shooting incident involving probationers who had been -- or
14 young persons anyways who had been at Ken Seguin's home.

15 And then we have, in point number five, the
16 suicide of Ken Seguin, and finally we have the complaint
17 from David Silmser.

18 Do you see all that?

19 **MS. ELEY:** Yes, I do.

20 **MR. LEE:** And if you turn the page over, he
21 asks you if you can provide any information or explanation
22 for the rationale that might have been relied on somebody
23 not to conduct an investigation. And you respond -- you
24 have a two-part answer; your first is, "No, I don't have
25 any idea why an investigation would not have taken place,"

1 but you continue on and you say:

2 "I would like to comment that in
3 hindsight it would appear that the
4 information you presented to me was not
5 gathered and provided in a coordinated
6 fashion to people making decisions
7 surrounding this matter."

8 Do you see that there?

9 **MS. ELEY:** Yes, I do.

10 **MR. LEE:** And a moment ago to Mr. Horn, you
11 reiterated that same idea, didn't you?

12 **MS. ELEY:** Yes, I did.

13 **MR. LEE:** That that information wasn't in
14 the hands of a single person or a few people who would have
15 known it all at once and could have acted accordingly; is
16 that right?

17 **MS. ELEY:** Yes, that's correct.

18 **MR. LEE:** Can you tell me what information
19 or what knowledge you have to support that statement? How
20 do you know whether anybody had all of this information or
21 not?

22 **MS. ELEY:** Well, that was just my impression
23 from what Mr. Downing put in front of me.

24 **MR. LEE:** Well, what Mr. Downing put in
25 front of you was that all of this information was available

1 and on file, that's what Mr. Downing put to you, on page 6.

2 MS. ELEY: Right.

3 MR. LEE: And then he questions you about,
4 given all of that, given that all that information was
5 available, can you help me understand why an investigation
6 wouldn't have taken place?

7 And you say, "No, I can't. I don't know why
8 an investigation didn't take place."

9 But you go further and you say:

10 "In hindsight, that information was not
11 gathered and provided in a coordinated
12 fashion to people making decisions."

13 So my question to you is: How do you know
14 that?

15 MS. ELEY: When you put it that way, I guess
16 I really don't know.

17 MR. LEE: You know that that information
18 wasn't provided to you in a coordinated fashion.

19 MS. ELEY: Wasn't provided to me at all.

20 MR. LEE: Right. You didn't know any of
21 that?

22 MS. ELEY: That's correct.

23 MR. LEE: But you have no idea what others
24 knew; is that right?

25 MS. ELEY: That's correct.

1 **MR. LEE:** And Ms. Eley, I'm going to suggest
2 to you that your conclusion -- the assumption you're making
3 here is based on the fact that you knew full well at the
4 time that Mr. Downing put this question to you that if
5 anybody at the Ministry had had all of that information,
6 then it would be have very clear that the Ministry
7 completely mishandled the situation; isn't that really what
8 your answer is reflecting?

9 **MS. ELEY:** I don't believe so, no.

10 **MR. LEE:** You don't think this answer is you
11 suggesting that, "Well, that can't possibly be true, Mr.
12 Downing, because if that's true, we bungled this thing."

13 **MS. ELEY:** No, I think my comment was that
14 it would be useful to have all that information when you
15 were making a determination about what action you would
16 take; it would be helpful to have that information.

17 I wasn't looking at any final conclusions.

18 **MR. LEE:** But that's not your answer to Mr.
19 Downing and it's not what you suggested to Mr. Horn; your
20 suggestion is that it wasn't the case. Your suggestion is
21 that they didn't have it; they could not have had that
22 information and I would suggest to you the reason you
23 believe that is because your position to Mr. Downing and
24 your position here was that they could not have had that
25 information because had they had it, it means that they

1 dropped the ball, and they didn't drop the ball, so I
2 assume, therefore, they didn't have; isn't that what you're
3 saying here?

4 **MR. NEUGERGER:** I'm going to object on the
5 basis that this is not based upon evidence that we've heard
6 so far. Mr. Dallas Lee is putting a proposition to this
7 witness which, again, a foundation has not been developed,
8 the evidence that's come out through Paul Downing.

9 And I'm going to remind counsel here that if
10 they're going to put questions like this to further
11 witnesses who are coming, a foundation should be built.

12 Paul Downing was here. I didn't hear a
13 question about this particular area, in particular, "Mr.
14 Downing, did you come to the conclusion that there was
15 anyone or a number of people who had all this information?"
16 Because when the witness says it was her impression from
17 Mr. Downing's questioning that one person didn't possess
18 all this information, I think that's a very fair
19 interpretation.

20 But to suggest that there is some cover-up
21 by this witness, that she's trying to cover up for the
22 Ministry because somebody did know, that's why she's
23 suggesting it, it's improper because the foundation hasn't
24 been laid for that and it's never been asked of Paul
25 Downing if the case in his investigation was that any one

1 person did know.

2 **THE COMMISSIONER:** Thank you.

3 Mr. Lee.

4 **MR. LEE:** I'm not suggesting a cover-up on
5 this witness' part; I'm suggesting that her spontaneous
6 reaction, having heard all of this information being put to
7 her was, "Oh no, that can't be true because the Ministry
8 would have then dropped the ball and I know that that
9 wouldn't have been the way things went down."

10 As for whether or not there's a foundation
11 laid, we have the transcript of -- or we have the interview
12 report here of Mr. Downing; we have evidence on the fact
13 that all of these six points were, indeed, known to people
14 at Corrections. I don't think there's any debate that
15 people at -- the Ministry of Corrections had this
16 information.

17 **THE COMMISSIONER:** Right. So first of all,
18 in law and Mr. Neuberger's quite correct that we have to
19 lay foundations.

20 In this specific instance, I think that it's
21 fair for him to put to the witness given the fact that the
22 question is and it's written down there:

23 "At the time of David Silmsers'
24 complaint Ministry
25 officials/representatives had the

1 following information on file and
2 available: Incident reports, letters
3 of guidance and other similar documents
4 and local files and regional files."

5 So on that basis you can proceed.

6 And I quite agree with you that I disagree
7 with Mr. Neuberger; I don't think you were going to --
8 going down the road of imputing any cover-up on the part of
9 the witness.

10 **MR. LEE:** No, not at all.

11 Thank you, sir.

12 So, Ms. Eley, my question, then, was and the
13 proposition that I put to you was, was I read your answer
14 and the theory I'm asking you to comment on, is that your
15 natural reaction upon being told this by Mr. Downing was to
16 say, "Well, it's not possible that anybody at the Ministry
17 had all of those facts at the same time because otherwise
18 they would have acted in a different manner than they did,"
19 do you agree with that?

20 **MS. ELEY:** It's not how I read it, no.

21 That's not how I recall it; that's not how I read it.

22 **THE COMMISSIONER:** Okay.

23 **MR. LEE:** I'm leaving that area.

24 You told us during your examination in-chief
25 that the police and Bill Roy had advised that Mr. Silmsen

1 was interested in some kind of civil remedy and not an
2 investigation, I believe those were your words; do you
3 recall that?

4 MS. ELEY: Yes, I do.

5 MR. LEE: And you've been here the last
6 couple of days and you've reviewed some materials in
7 preparation for this and you've seen that Bill Roy and
8 Lenna Bradburn and the police all made some note of Mr.
9 Silmsker's desire to being compensated for the sexual abuse
10 he alleged?

11 MS. ELEY: Yes, that's correct.

12 MR. LEE: Ma'am, does the fact that Mr.
13 Silmsker was seeking compensation and that was known to the
14 people he was dealing with affect everything we're looking
15 at here, in the sense that as soon as the Ministry learned
16 that Mr. Silmsker was seeking compensation, didn't that
17 immediately dictate this thing was going to Legal and
18 that's how this was going to be handled?

19 MS. ELEY: No sir, I don't agree with that.

20 MR. LEE: I would suggest that there was no
21 investigation and there was no counselling for Mr. Silmsker
22 because he said the words "money" -- "I want money"; would
23 you agree with that?

24 MS. ELEY: No.

25 MR. LEE: You've been a lifelong employee of

1 the Ministry of Corrections?

2 MS. ELEY: Yes, I have.

3 MR. LEE: Isn't the way things work that if
4 you might get sued you call in the lawyers and let them
5 take care of it?

6 MS. ELEY: I want to be very clear; I sent
7 this to the Legal Branch and I sent it as a courtesy
8 because when they get lawsuits they often don't know
9 particularly if someone is a former client, that they may
10 not know who may know something about this. All I did was
11 send it over to them so that they knew, "If you get a
12 lawsuit in this name, here's someone that knows something
13 about it: Our office knows something about it, Lenna
14 Bradburn knows something about it, Bill Roy knows something
15 about it." It was no more than that, from my perspective.

16 MR. LEE: Weren't the actions of the
17 Ministry inevitable once Mr. Silmsler called to say that he
18 wanted a financial settlement?

19 MS. ELEY: No, I don't believe they were.

20 MR. LEE: Is it your understanding that the
21 Independent Investigation Unit would typically deal with
22 complaints by employees of the Ministry?

23 MS. ELEY: By employees?

24 MR. LEE: Complaints made by employees.

25 MS. ELEY: By employees.

1 Well, very often the WDHP component is
2 employee to employee, yes.

3 MR. LEE: Workplace harassment and things
4 like that?

5 MS. ELEY: Correct.

6 MR. LEE: And these employees would
7 typically be unionized, in your experience?

8 MS. ELEY: The bulk of our staff are
9 unionized, yes.

10 MR. LEE: So it's a little bit of a
11 different situation when Mr. Silmsler calls and lodges a
12 complaint; you'd agree?

13 MS. ELEY: We do get a fair number of
14 dissatisfied clients with a variety ---

15 MR. LEE: With the place -- the IIU, though?

16 MS. ELEY: He didn't contact the IIU; we
17 contacted them on his behalf.

18 MR. LEE: Thank you very much.

19 Those are my questions.

20 THE COMMISSIONER: Thank you.

21 Mr. Chisholm.

22 MR. CHISHOLM: Good afternoon, Ms. Eley, my
23 name is Peter Chisholm, counsel for the local CAS.

24 I have no questions for you.

25 Thank you.

1 MS. ELEY: Thank you.

2 THE COMMISSIONER: Mr. Scharbach.

3 MR. SCHARBACH: Good afternoon, Ms. Eley.

4 My name is Stephen, Scharbach, counsel for
5 the Ministry of Attorney General.

6 I have no questions for you.

7 Thank you.

8 MS. ELEY: Thank you.

9 THE COMMISSIONER: Ms. Lalji.

10 MS. LALJI: Good afternoon, Ms. Eley.

11 My name is Reena Lalji. I'm counsel for the
12 Cornwall police.

13 I don't have any questions for you

14 Thank you.

15 MS. ELEY: Thank you.

16 THE COMMISSIONER: Mr. Kozloff.

17 MR. KOZLOFF: Good afternoon, Ms. Eley. My
18 name is Neil Kozloff. I'm counsel for the Ontario
19 Provincial Police.

20 I don't have any questions for you.

21 MS. ELEY: Thank you.

22 THE COMMISSIONER: Mr. Carroll?

23 MR. CARROLL: Good afternoon. My name is
24 Bill Carroll. I'm counsel for the Ontario Provincial
25 Police Association and I do not have any questions for you.

1 Thank you.

2 MS. ELEY: Thank you.

3 THE COMMISSIONER: I'm sorry, I saw Mr.
4 Neville back there. Did you have any questions, sir?

5 MR. NEVILLE: Mr. Commissioner, this witness
6 is not on the list of ones I sought to cross-examine.

7 THE COMMISSIONER: All right. Thank you.
8 Mr. Neuberger?

9 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.
10 NEUBERGER:

11 MR. NEUBERGER: Good afternoon, Ms. Eley.

12 MS. ELEY: Good afternoon.

13 MR. NEUBERGER: I only have two areas to
14 cover with you.

15 The first one I want to focus on is Ms.
16 Daley's questions to you about Exhibit 1088; that is the
17 statement or interview given on January 9th, 2001 to Paul
18 Downing.

19 And to focus you, Ms. Eley, what I want to
20 talk about in order to address the issue that she raised
21 about your recollection, is the circumstances in which this
22 statement was taken and the details of the timing and areas
23 like that. So I want to focus you.

24 First of all, the first page -- actually
25 which is the one prior to that, Madam Clerk, Bates number

1 1148351 has time on it. Can you read that?

2 MS. ELEY: Yes, I can.

3 MR. NEUBERGER: It talks about when it
4 commenced and when the interview concluded?

5 MS. ELEY: That's correct.

6 MR. NEUBERGER: Okay and could -- I take it
7 there's no problem with me leading on this.

8 It starts at 1015 hours which I assume to be
9 10:15 a.m. and completes at 1340 hours, approximately 1:40
10 p.m.

11 MS. ELEY: That's correct.

12 MR. NEUBERGER: And math was never my strong
13 subject but it's over three hours, close to a three-and-a-
14 half-hour interview?

15 MS. ELEY: That's correct.

16 MR. NEUBERGER: Prior to meeting Mr.
17 Downing, how much notice did you have about meeting Mr.
18 Downing and being interviewed?

19 MS. ELEY: I think a few days.

20 MR. NEUBERGER: All right. And did anybody,
21 Mr. Downing or anybody from -- I guess who he was working
22 with, indicate to you why you were being interviewed?

23 MS. ELEY: Not that I recall. I recall
24 being told that it was with respect to an investigation
25 that I was not a respondent to.

1 **MR. NEUBERGER:** All right. Were you
2 provided with any documents prior to your interview for you
3 to review and refresh your memory?

4 **MS. ELEY:** No, I was not.

5 **MR. NEUBERGER:** All right. So I guess the
6 expression is you came into the interview cold?

7 **MS. ELEY:** Correct.

8 **MR. NEUBERGER:** Now, the document is typed.
9 Can you tell me a little bit about how the interview went?
10 Was he sitting there with a laptop computer or what was he
11 doing?

12 **MS. ELEY:** Yes, he had a laptop with him and
13 was sort of typing or keyboarding as he went.

14 **MR. NEUBERGER:** Okay. And he'd ask a
15 question, you'd provide an answer, he'd type?

16 **MS. ELEY:** That's correct.

17 **MR. NEUBERGER:** All right. And the area
18 that Ms. Daley asked you about starts at the bottom of page
19 5. And just for the sake of completeness, the document
20 itself is about six and three-quarter pages long; it ends
21 on page 7.

22 **MS. ELEY:** Correct.

23 **MR. NEUBERGER:** Okay. And the portion that
24 Ms. Daley brought you to starts at the bottom quarter of
25 the page on page 5. Is that correct?

1 **MS. ELEY:** That's correct.

2 **MR. NEUBERGER:** As far as timing is
3 concerned -- I'm just struggling with my cold here, so --
4 as timing is concerned for the interview, can you give us
5 an idea as to what portion of the interview was spent at --
6 in other words, if it's three-and-a-half hours, how long
7 has you already been in the interview by the time you got
8 to this question. Do you have a recollection of that?

9 **MS. ELEY:** No recollection and I just
10 noticed it's noted here, we stopped for a period of time,
11 for about 40 minutes or so, and I would think it was prior
12 to us stopping, so maybe an hour-and-a-half into.

13 **MR. NEUBERGER:** During that break, that
14 interval, were you provided with the documents that Ms.
15 Daley referred to, the exhibit numbers, numbers 38 and 21?

16 **MS. ELEY:** During the break, no, I was not.

17 **MR. NEUBERGER:** When were you provided with
18 those documents?

19 **MS. ELEY:** When I was asked the question.

20 **MR. NEUBERGER:** All right. So let me frame
21 that. You're sitting down I take it?

22 **MS. ELEY:** Yes.

23 **MR. NEUBERGER:** And he's asking you the
24 question and that's when he presents you with those
25 documents?

1 **MS. ELEY:** That's correct.

2 **MR. NEUBERGER:** And the -- had you ever seen
3 those documents prior to that moment? In other words, the
4 notes of Ms. Bradburn?

5 **MS. ELEY:** No, I don't believe so, no.

6 **MR. NEUBERGER:** The memo that's referred to,
7 the December 22nd, 1993 memo, that's something you would
8 have seen way back at December 22nd?

9 **MS. ELEY:** That's correct.

10 **MR. NEUBERGER:** But the notes, your
11 recollection is you had never seen those notes prior to the
12 moment that he presented them to you?

13 **MS. ELEY:** That's correct.

14 **MR. NEUBERGER:** All right. Can you tell us
15 how much time you had to review exhibit 38 and exhibit 21?

16 **MS. ELEY:** Five-ten minutes.

17 **MR. NEUBERGER:** Okay. And the question he
18 asked, was that all he asked you about the documents? In
19 other words, I see a question and an answer. Did he break
20 it down at all and go through the notes with you?

21 **MS. ELEY:** No, he did not.

22 **MR. NEUBERGER:** All right. After the
23 interview did he give those documents to keep and look at?

24 **MS. ELEY:** No.

25 **MR. NEUBERGER:** Did he ever ask for -- a

1 later point in time to follow-up with you about that
2 particular question or those documents?

3 MS. ELEY: No.

4 MR. NEUBERGER: After he asked you the
5 question about:

6 "You do not know who made the decision
7 for the IIU not to investigate David
8 Silmsner's complaint?"

9 -- et cetera, did he come back to those documents at all?
10 In other words, did he take them away from you after he
11 asked that question?

12 MS. ELEY: I'm just looking for question,
13 sorry.

14 MR. NEUBERGER: I'm sorry, it's page 5.

15 MS. ELEY: Right, okay.

16 MR. NEUBERGER: Bottom quarter of the page.

17 MS. ELEY: Right. No, he didn't come back
18 to me.

19 MR. NEUBERGER: All right. And what
20 happened to the documents when you answered the question?

21 MS. ELEY: He left with them.

22 MR. NEUBERGER: Okay. Now, I want to
23 contrast this with your preparation for your testimony here
24 so that we can take a look at what efforts have been made
25 for you to look at documents and have a refreshed

1 recollection, so I'm going to move to that now.

2 I take it you met with Commission counsel?

3 **MS. ELEY:** I did.

4 **MR. NEUBERGER:** And you were interviewed?

5 **MS. ELEY:** That's correct.

6 **MR. NEUBERGER:** And in preparation of that
7 interview you had the opportunity to review those very same
8 documents?

9 **MS. ELEY:** That's correct.

10 **MR. NEUBERGER:** And they were reviewed by
11 the Commission counsel during your interview?

12 **MS. ELEY:** That's correct.

13 **MR. NEUBERGER:** Did they ask you questions
14 in a detailed fashion, in chronology of the notes that were
15 presented to you? In other words, did they go through the
16 notes in detail as opposed to asking you one question and
17 one question only?

18 **MS. ELEY:** I believe they went through it,
19 you know, in quite a bit of detail actually.

20 **MR. NEUBERGER:** And when that interview was
21 over, later on you had an opportunity to review a document
22 which we refer to here as an "anticipated evidence"?

23 **MS. ELEY:** That's correct.

24 **MR. NEUBERGER:** And did you have another
25 opportunity to meet with Commission counsel in preparation

1 for your testimony at this Inquiry?

2 MS. ELEY: Yes, when I -- on Tuesday,
3 yesterday.

4 MR. NEUBERGER: And did you review, during
5 that interview with Commission counsel, essentially your
6 evidence and the same documents?

7 MS. ELEY: It's terrible to say but this is
8 yesterday -- so how good is my memory. We certainly
9 reviewed in detail, again, a number of points in the
10 documents. I'm not sure that we took out each document.

11 MR. NEUBERGER: Okay. Did you have these
12 documents -- did you have copies of these documents to
13 yourself, between the interview and your testimony?

14 MS. ELEY: I did.

15 MR. NEUBERGER: Okay. Did you find that the
16 more detailed approach taken by Commission counsel in the
17 interview and the review of the documents were more helpful
18 to you in refreshing your memory than Mr. Downing plunking
19 them in front of you at that interview in January, 2001?

20 MS. ELEY: Yes.

21 MR. NEUBERGER: M'hm.
22 I'm going to move to a completely different
23 area now.

24 In your life after the Deputy Minister's
25 office when you were the EA, you went on to be the Director

1 of Victim Services?

2 MS. ELEY: Yes, a few years later.

3 MR. NEUBERGER: You had occasion to --
4 actually a number of years later. Was it about six years
5 later?

6 MS. ELEY: Yes, I left in '94 and I went to
7 Victim Services in '98.

8 MR. NEUBERGER: Information came to your
9 attention about certain complaints that were made to rape
10 crisis centres about male victims complaining about sexual
11 abuses. Do you recall that?

12 MS. ELEY: That's correct.

13 MR. NEUBERGER: Can you tell us about that?
14 And you had some role in expanding services to male victims
15 of sexual abuse. Could you tell us about that?

16 MS. ELEY: Yes. When I was the Director of
17 Victim Services we had a regional approach to services.
18 Although our services were contracted out there was no
19 direct service by government people, but we funded a number
20 of programs throughout the province.

21 The person in our Kingston Regional Office
22 that services and coordinates services in Eastern Ontario
23 started getting a number of calls from rape crisis and
24 sexual assault centres in the eastern part of the province,
25 saying that they were getting a number of calls from men

1 claiming to be victims of sexual abuse, particularly
2 childhood sexual abuse, and particularly from the Cornwall
3 area.

4 And the agencies were quite upset because
5 they were not in a position to offer counselling. They
6 were not in a position to have these people attend at their
7 offices because of their other responsibilities and how it
8 might impact on the women that they were caring for.

9 MR. NEUBERGER: In particular, the addresses
10 were not to be known to men?

11 MS. ELEY: To some of them, yes, that's
12 correct.

13 MR. NEUBERGER: Yeah.

14 MS. ELEY: Unbeknownst to me, because Victim
15 Services was a new field for me, apparently all of these
16 rape crisis and sexual assault centres sadly get calls from
17 mainly males, but I suppose it could be females as well,
18 that are, for lack of a better word, phoney.

19 The interesting thing about this was that
20 these callers impressed the workers at the various centres
21 that these were genuine calls and they were quite disturbed
22 that they were not able to provide a service, and came to
23 us saying, you know, "We think something should be done
24 because we can't help them but clearly they need help".

25 So we were able to -- we had some funding in

1 reserve and ---

2 MR. NEUBERGER: I'm just going to get you to
3 stop for a second.

4 Now, when you say "we", you're with Victim
5 Services?

6 MS. ELEY: I'm with Victim Services.

7 MR. NEUBERGER: What Ministry is that under?

8 MS. ELEY: The Ministry -- well, it was then
9 called the Ministry of Public Safety and Correctional
10 Services, but essentially the same Ministry as today. And
11 as that ---

12 MR. NEUBERGER: Right. It's just the
13 predecessor?

14 MS. ELEY: That's right.

15 MR. NEUBERGER: Okay.

16 MS. ELEY: It changes names periodically.

17 MR. NEUBERGER: I've seen it change on my
18 cheque a number of times.

19 MS. ELEY: So we had some money held in
20 reserve from the Victim Justice Fund and so we -- our
21 person in Eastern Ontario arranged with a group of
22 psychologists in Ottawa to develop something called the
23 Men's Project and it was advertised and we let our rape
24 crisis and sexual assault centres know that any men that
25 phoned them, you know, asking for service, that they could

1 get it through this group. And the group came to Cornwall
2 periodically but also saw people in Ottawa and saw people -
3 - or dealt with people on the phone.

4 So, initially, there was a small contract
5 for about 25,000. I'm not sure what the contract is worth
6 today. I understand the project is still going on.

7 It's now under the Victim Secretariat in the
8 Ministry of the Attorney General because, again, it
9 migrated under one Ministry. We had two Victim Services
10 Branches at that time, one under Solicitor General
11 Correctional Services -- or Public Safety Correctional
12 Services and one under the Ministry of the Attorney
13 General.

14 So it's now under a Secretariat of MAG and I
15 understand the project is still ongoing, although I have no
16 specific details about it.

17 **MR. NEUBERGER:** And I understand at the time
18 the services were initiated in Ottawa and then extended to
19 Cornwall, locally?

20 **MS. ELEY:** That's correct.

21 **MR. NEUBERGER:** Okay. Ms. Eley, thank you
22 very much.

23 Mr. Commissioner, thank you.

24 **MS. ELEY:** Thank you.

25 **(SHORT PAUSE/COURTE PAUSE)**

1 **MR. RUEL:** I have no further questions, Mr.
2 Commissioner.

3 I'll turn the microphone over to ---

4 **THE COMMISSIONER:** Mr. Horn.

5 **MR. RUEL:** --- my friend ---

6 **THE COMMISSIONER:** Well, we're going to take
7 a break.

8 **MR. RUEL:** After the break Mr. ---

9 **THE COMMISSIONER:** Monsieur Ruel is a slave
10 driver. I think he'd have us work through the sugar fix of
11 three o'clock.

12 Now, Mr. Horn, did Mr. Horn have something
13 to say?

14 **MR. HORN:** Oh, I was just going to ask one
15 question.

16 **THE COMMISSIONER:** You want to ask Mr. Ruel
17 a question. Go right ahead.

18 **MR. RUEL:** Maybe we can go for the break and
19 I can speak to Mr. Horn. And I had no questions so I'll
20 see if, you know, he's ---

21 **THE COMMISSIONER:** Okay. Well, I'd like a -
22 - no, no, just talk to him now.

23 **MR. NEUBERGER:** Sure. Okay.

24 **THE COMMISSIONER:** Let's get this witness on
25 her way.

1 **MS. ELEY:** Thank you.

2 **(SHORT PAUSE/COURTE PAUSE)**

3 **MR. RUEL:** I have no further questions.

4 **THE COMMISSIONER:** Thank you.

5 Thank you very much for your testimony and
6 have a safe trip back.

7 **MS. ELEY:** Thank you.

8 **THE COMMISSIONER:** We'll take our -- why
9 don't we take the break?

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

12 This hearing will resume at 3:15.

13 ---Upon recessing at 3:01 p.m./

14 L'audience est suspendue à 15h01

15 ---Upon resuming at 3:21 p.m.

16 L'audience est reprise à 15h21

17 **THE REGISTRAR:** This hearing is now resumed.

18 Please be seated. Veuillez vous asseoir.

19 **THE COMMISSIONER:** Mr. Engelmann.

20 ---REMARKS BY/REARQUES PAR MR. PETER ENGELMANN:

21 **MR. ENGELMANN:** Good morning, Mr.

22 Commissioner -- good morning. Good afternoon.

23 Recently, as you know, Mr. Neville made an
24 application on behalf of Doug Seguin and the Estate of Ken
25 Seguin for standing and funding.

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

2 **MR. ENGELMANN:** You granted him standing,
3 not for Doug Seguin, not for the Estate of Ken Seguin, I
4 don't remember the exact wording, but certainly for the
5 family in his memory.

6 And you asked recently that Mr. Neville come
7 back with more information with respect to his funding
8 application. And Mr. Neville wrote to me yesterday, asked
9 that it be heard today before we started with Mr. Gendron.
10 So now is the time.

11 Just by way of background. There were some
12 materials filed in this respect. They are Exhibits 11.1,
13 which would have been filed back in the fall of 2005 just
14 before the original decisions on standing and funding in
15 November. There would have been a letter dated November
16 10th, 2005 with attachments dealing with the estate, and
17 that is Exhibit 11.1.

18 And then you have as well Exhibit 11.2,
19 which is Mr. Neville's recent application for standing and
20 funding dealing with certain witnesses that are being
21 called by the Commission who were officials of Corrections.

22 And I understand, sir, that Mr. Neville has
23 brought a package with him today, that I'm just looking at
24 now.

25 **THE COMMISSIONER:** Okay. So ---

1 **MR. ENGELMANN:** If I could just have a
2 moment, sir.

3 **THE COMMISSIONER:** What I'm going ---

4 **MR. ENGELMANN:** The only new document that's
5 in the package ---

6 **THE COMMISSIONER:** I don't have anything.

7 **MR. ENGELMANN:** Yeah. Well, Mr. Neville
8 will -- well, I think has copies.

9 Sir, the only new document that I can see in
10 the package is an affidavit of Doug Seguin. Everything
11 else is either transcript references or matters that have
12 been previously filed.

13 I'll let Mr. Neville speak to it, sir.

14 **(SHORT PAUSE/COURTE PAUSE)**

15 **---SUBMISSIONS ON FUNDING BY/REPRÉSENTATIONS POUR**
16 **FINANCEMENT PAR MR. MICHAEL NEVILLE:**

17 **MR. NEVILLE:** Good afternoon, Mr.
18 Commissioner.

19 I have the sets of material for you and
20 Madam Clerk; if I can pass those up to you.

21 **THE COMMISSIONER:** Do you have them for
22 everybody else?

23 **MR. NEVILLE:** No, I wasn't -- I brought five
24 sets for Mr. Engelmann, the reporters, Madam Clerk, myself
25 and I gather the translator, is what I was advised.

1 **THE COMMISSIONER:** Okay.
2 Have you asked for funding from the
3 Ministry?

4 **MR. NEVILLE:** Pardon me, sir?
5 Yes.

6 **THE COMMISSIONER:** Okay. And what did they
7 tell you?

8 **MR. NEVILLE:** Maybe I shouldn't speak.
9 I was advised, sir, and Mr. Neuberger is
10 here ---

11 **THE COMMISSIONER:** No, that's fine. Why
12 isn't these funded through me?

13 **MR. NEUBERGER:** I'm the messenger, so just
14 remember that.

15 The decision was made early on with respect
16 to certain witnesses who would be called here to give viva
17 voce evidence that there would be a conflict in our ability
18 to ask certain questions.

19 As a result of that, the Ministry was
20 funding lawyers for very limited purpose of coming to the
21 hearing for when they were testifying.

22 Because of the obvious fact that Mr. Seguin,
23 himself, is not a witness at the Inquiry, the Ministry is
24 not funding counsel for family or for the estate in that
25 regard.

1 **THE COMMISSIONER:** Well, just a minute.

2 When you came and asked for standing, you
3 said that you were going to represent all probation
4 officers past and present.

5 **MR. NEUBERGER:** Yes.

6 **THE COMMISSIONER:** And so now you're making
7 a subcategory, "past" doesn't mean "deceased"; is that what
8 you're doing?

9 **MR. NEUBERGER:** No. What you're talking
10 about is where the conflict arises and it's the way we ---

11 **THE COMMISSIONER:** No, no. No, no, you
12 represented to me -- the Ministry said that you were going
13 to represent all probation officers past and present; did
14 you not say that?

15 **MR. NEUBERGER:** Yes, sir.

16 **THE COMMISSIONER:** Okay. So now if you're
17 -- and you were representing Mr. Ken Seguin's interests all
18 throughout this until some conflicts came up?

19 **MR. NEUBERGER:** Correct.

20 **THE COMMISSIONER:** Okay. So now you're
21 making a difference and you're saying, "Now we're not going
22 to fund Mr. Seguin because there's an apparent conflict"?

23 **MR. NEUBERGER:** No. I think what the
24 Ministry is saying is because of the divergent interests,
25 that type of representation we are not going to fund, the

1 Ministry is to going to fund.

2 And it's splitting hairs but the reality is
3 there are aspects of Mr. Seguin's employment and his
4 history with the Ministry that we do cover, but when it
5 comes to certain areas, because of the mandate that we have
6 and the way we have conducted ourselves with respect to
7 cross-examining complainants and others, that's not the
8 view that we share on the evidence.

9 And if the estate of Mr. Seguin or his
10 brother wishes to go down that avenue, the Ministry would
11 not do that, so there's a conflict and the Ministry would
12 not be in a position to pay for that type of
13 representation.

14 I'm not arguing for them; I understand what
15 the difficulty is. I have other thoughts on it,
16 personally, but this is a matter personal to Doug Seguin
17 and he is not a member and never has been of the Ministry.

18 **THE COMMISSIONER:** No, no, just a second.
19 Just a second, now.

20 You've alerted Mr. Neville to say, "We're
21 not going to -- there's going to be some conflicts." How
22 did this all come up, in any event; you tell me that.

23 **MR. NEUBERGER:** Well, some -- a long time
24 ago, Doug Seguin approached us and asked why we were not
25 asking certain questions and I gave an answer.

1 I'm not so sure he was very happy with that
2 answer.

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

4 **MR. NEUBERGER:** I informed him, at that
5 time, if he disagrees with our position and he feels that
6 there's another area of questioning that should be done on
7 behalf of his deceased brother, he should approach counsel,
8 like Mr. Neville, because it's not something that we're
9 going to do.

10 **THE COMMISSIONER:** If Mr. Seguin was alive,
11 would you be funding this conflict?

12 **MR. NEUBERGER:** If he took a position
13 contrary to the Ministry's position and he was going to be
14 a witness, yes.

15 I understand from -- it would be a stretch,
16 as it has been with some of the witnesses, but I'm trying
17 diligently as an advocate to not get into a position of
18 having conflicts with respect to evidence and I'm trying to
19 run our mandate in a respectful manner of everybody's
20 interests.

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

22 **MR. NEUBERGER:** So if he was alive and he
23 was going to be witness in that stand, yes.

24 **THE COMMISSIONER:** Well, you're representing
25 all probation officers past or present whether they're

1 testifying or not?

2 **MR. NEUBERGER:** Yes.

3 **THE COMMISSIONER:** Thank you.

4 Mr. Neville.

5 I can say that I find that a distinction
6 without a difference and a complete waste of time.

7 Mr. Neville, you want some money.

8 Where is the new affidavit that I ---

9 **MR. NEVILLE:** It would be Tab 7, sir.

10 **THE COMMISSIONER:** How many hours do you
11 think you're going to bill, representing this gentleman's
12 interests or the estate's interests?

13 **MR. NEVILLE:** I'm going to have to ball park
14 it for you, sir.

15 My estimate to date, which I think is
16 reflected in the affidavit ---

17 **THE COMMISSIONER:** Which one, now? The 7th?

18 **MR. NEVILLE:** Yes.

19 **THE COMMISSIONER:** Yeah.

20 **MR. NEVILLE:** It's probably -- yeah, it is
21 worded as "I am advised", Tab 8.

22 **THE COMMISSIONER:** Tab 8?

23 **MR. NEVILLE:** Sorry, paragraph 8.

24 **THE COMMISSIONER:** Yes.

25 **MR. NEVILLE:** So that would be to date,

1 based on approximately two weeks or so of work and
2 paragraph 9 refers to a ball park estimate for another two
3 to three weeks, that includes, of course, counsel attending
4 at the Inquiry.

5 **THE COMMISSIONER:** I know, but I thought it
6 was just for some witnesses.

7 **MR. NEVILLE:** Yes.

8 **THE COMMISSIONER:** Well, we're not going to
9 be two weeks.

10 **MR. NEVILLE:** They're listed in the Notice
11 of Application, sir, which is Tab 4, and would include the
12 next witness, Mr. Gendron.

13 **THE COMMISSIONER:** Yes.

14 **MR. NEVILLE:** It would have included Mr.
15 Roy, but this issue, of course, is not resolved so I did
16 not attend.

17 **THE COMMISSIONER:** You didn't attend?

18 **MR. NEVILLE:** No, I was not here for Mr.
19 Roy.

20 **THE COMMISSIONER:** I guess *pro bono* is not
21 something that ---

22 **MR. NEVILLE:** Pardon me?

23 **THE COMMISSIONER:** *Pro bono* wasn't a word
24 that came up in the discussions about -- if your client
25 thinks it's so important that he participates in this

1 Inquiry, I would have thought some kind of arrangement
2 could have been made to be here for Mr. -- who did you say,
3 Mr. Roy?

4 **MR. NEVILLE:** Well, the requirements, sir,
5 I'm not allowed to bill independently of any funding that
6 you grant.

7 **THE COMMISSIONER:** Okay.

8 **MR. NEVILLE:** So ---

9 **THE COMMISSIONER:** So Paul Downing is done.

10 **MR. NEVILLE:** Yes.

11 **THE COMMISSIONER:** Louise Quinn is done.

12 **MR. NEVILLE:** Yes.

13 **THE COMMISSIONER:** Marcelle Léger is done.

14 **MR. NEVILLE:** Correct.

15 **THE COMMISSIONER:** How many more days do we
16 have for -- how many days will it take to do these four --
17 these three, four, five ---

18 **MR. NEVILLE:** I can't ---

19 **THE COMMISSIONER:** The ---

20 **MR. NEVILLE:** I'm sorry, sir.

21 I can't help you with that.

22 I understand that some may be somewhat
23 lengthy and I'm only going on my general understanding and
24 that would include, for example, Mr. van Diepen, perhaps
25 Ms. Larivière.

1 I think the average is one to two, I think,
2 with maybe one or two exceptions, but I think for the ones
3 left it's one to two days each, perhaps a little longer for
4 Mr. van Diepen or Ms. Larivière.

5 What you may -- I don't know if you're aware
6 of this, sir, but I am, by way of disclosure, Ministry
7 counsel or Ministry counsel working with probation
8 personnel have developed a quite lengthy, I believe, 170-
9 some page, I guess it's called an "overview" and that's a
10 document that will have to be dealt with at some point
11 before and I really don't know how that's going to be done
12 and what amount of time it will take, sir.

13 **THE COMMISSIONER:** Okay.

14 **MR. NEVILLE:** Did you wish me to carry on?

15 **THE COMMISSIONER:** Go ahead.

16 **MR. NEVILLE:** What I had hoped to do briefly
17 with you today, sir, was just touch on briefly, as my first
18 step, a quick factual and procedural history, which would
19 be essentially up to mid-November of '05.

20 I would review with you principles
21 enunciated by yourself in your ruling on November 17th,
22 2005, briefly touch on what has now happened, in terms of
23 the conflicts, and just some concluding comments.

24 So if I can refer you, sir, to Tab 1 of the
25 materials.

1 I provided with you excerpts of transcripts
2 and this is comments by yourself in the opening comments to
3 the public and to counsel and parties on the 4th of November
4 -- sorry, the 7th of November, at page 4, line 17, you
5 stated:

6 "Fact-finding in public makes it
7 possible for individual and
8 organizational reputations to be at
9 risk. Accordingly, principles of
10 natural justice and procedural fairness
11 require that the due process safeguards
12 are in place and these will be
13 rigorously observed by this
14 Commission."

15 **THE COMMISSIONER:** sir, can I just stop you
16 for a second. I'm sorry. I'm getting tired.

17 You're not arguing for standing now. All
18 you are doing is asking for funding.

19 **MR. NEVILLE:** Yes.

20 **THE COMMISSIONER:** What's the test?

21 **MR. NEVILLE:** Well, why don't I refer you
22 then if I could, sir, to what -- it would be Tab -- I made
23 my presentation to you on the 7th. You wanted more
24 information about the state of the Estate ---

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

1 **MR. NEVILLE:** --- and the letter Mr.
2 Engelmann referred to of November 14th, 2005 is at Tab 2.

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

4 **MR. NEVILLE:** Indicating -- and this was
5 prior to your ruling of the 17th obviously -- indicating
6 that the Estate had been left entirely to his mother who
7 was very elderly and was used for her support and I can
8 advise you, sir, that she passed away at the age of 102
9 this year -- and had been completed by -- and wrapped up
10 and dispersed for her as of 1994. So some 11 years before
11 we were -- before you.

12 In your ruling which you will find and I've
13 excerpted from the published ruling at Tab 3, you say:

14 "While I understand the desire of Mr.
15 Seguin's family to participate in this
16 Inquiry, I'm not at this time prepared
17 to grant standing for Part 1 to the
18 Estate of Ken Seguin and Doug Seguin.
19 The Ministry has indicated that it
20 currently represents Ken Seguin as he
21 was a former employee. As a result,
22 there is no need for the Estate or
23 family to represent his interests.
24 Should conflicts arise between Ken
25 Seguin and the Ministry, the Estate of

1 Ken Seguin and Doug Seguin may reapply
2 for standing."

3 And then in the next paragraph you grant
4 both standing and funding for Phase 2.

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

6 **MR. NEVILLE:** My suggestion with --
7 respectfully to you, sir, is that had the conflicts
8 presently identified existed then and had been
9 acknowledged, I suggest the inference is would have granted
10 standing and funding for Phase 1 then.

11 **THE COMMISSIONER:** No. No.

12 **MR. NEVILLE:** Well, that's how I interpret
13 what you said and I leave it with you. That's obviously
14 something you and I don't agree on and I've provided for
15 what use you make of it Mr. Seguin's affidavit at Tab 7.

16 **THE COMMISSIONER:** All right. Can you stop
17 for a second?

18 **MR. NEVILLE:** Yes.

19 **THE COMMISSIONER:** The reason why I don't
20 agree with you is because, first of all, it's hypothetical,
21 but at that time -- I don't know if you were here or if it
22 was someone else -- but the Ministry stood up and said that
23 they were representing the interests of Ken Seguin for
24 Phase 1.

25 **MR. NEVILLE:** Well, I have ---

1 **THE COMMISSIONER:** And so ---

2 **MR. NEVILLE:** --- I was here, sir, and I
3 provided that excerpt, you -- that's where I was going
4 next.

5 **THE COMMISSIONER:** Okay.

6 **MR. NEVILLE:** But that takes me back to Tab
7 1. I've separated the excerpts with blue dividers.

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

9 **MR. NEVILLE:** Can I refer you to the second
10 divider, which is pages 15 to 17 on November 7th ---

11 **THE COMMISSIONER:** Yes.

12 **MR. NEVILLE:** --- and this is what you are -
13 - as Commissioner referring to, and page 16 if you have it
14 there, Mr. Rose says:

15 "Our position is we do act for past
16 members, including a Mr. Seguin, and to
17 the extent that the Estate of Ken
18 Seguin receives standing we will have
19 to work cooperatively with him in that
20 regard."

21 Page -- line 16:

22 "Certainly, on behalf of the Ministry,
23 Mr. Seguin is a past employee and we
24 are here on that basis."

25 And then you in fact, sir, intervene as he

1 is about to sit down, and say:

2 "Just a second, just a second, you're
3 not off the hook quite yet. Do you
4 anticipate any conflicts of interest in
5 representing all employees in your
6 Ministry?

7 Mr. Rose: It may. It's something that
8 we're exploring right now and it may
9 very well be that certain employees
10 seek their own independent counsel and
11 we'll simply have to work with
12 Commission counsel, advise them as soon
13 as we are aware of that."

14 So you clearly, sir, not surprisingly, were
15 alert to that problem and what I would next refer you to is
16 some basic principles stated by you, for everyone's
17 guidance, in your Ruling of November 17th, which is the
18 loose document, sir, that I inserted inside the first page
19 of the booklet.

20 What I reproduced for you at Tab 3 was
21 simply the portion directly related to the Seguin Estate
22 and Doug Seguin application. This is a statement of
23 essential principles by you at the time of your ruling.

24 If I may refer you to page 5, second-last
25 paragraph, you state:

1 "Generally speaking, the interests of
2 the applicant may be the protection of
3 a legal interest in a sense that the
4 outcome of the Inquiry may affect the
5 legal status or property interests of
6 the applicant. Such an interest would
7 likely form the basis of the
8 substantial and direct interest. An
9 applicant's sense of well-being or fear
10 of an adverse affect upon his or her
11 reputation, even if the fear proves to
12 be unfounded, could be serious and
13 objectively reasonable enough to
14 warrant full or intervener standing in
15 the Inquiry"

16 Further, to page 8, in the second-last
17 paragraph at the bottom of page 8, you turn specifically to
18 the issue of funding and in sentence two you say:

19 "I have the discretion to make
20 recommendations to the Attorney General
21 regarding funding to parties who have
22 been granted standing, to the extent of
23 the parties interests where the party
24 would not otherwise be able to
25 participate in the Inquiry without

1 funding."

2 On page 9, sir, at the bottom, you then
3 state what you describe for the public as the "Overarching
4 principle", as follows:

5 "Finally, in making my determination on
6 funding, I was guided by the
7 overarching principle that the
8 Commission must ensure that proper
9 representation is provided for all
10 parties whose participation in all or
11 part of the Inquiry is required. If a
12 necessary party were prevented from
13 presenting it's full story due to the
14 lack of financial resources, a
15 disservice will be done to achieving
16 the mandate of this Inquiry.
17 Accordingly, I decided that if I had
18 any doubts as to the need for funding
19 that I would recommend funding rather
20 than deny it and potentially exclude a
21 party whose attendance and
22 representation would be required.
23 While I certainly hope that I don't
24 have to continuously revisit the issue
25 of funding over the course of the

1 Inquiry, I recognize the situation of
2 parties may change as the Inquiry
3 unfolds so as to require them to seek
4 funding."

5 Page 11, in the paragraph in the middle of
6 the page, sir, it starts with the phrase "Let me deal now";
7 in the middle of that paragraph you say:

8 "If, as the evidence is called,
9 circumstances change that effect the
10 interests of the individual,
11 organization or institution, they may
12 apply for an increased opportunity to
13 participate or for an amendment to the
14 funding recommendation that I have made
15 on their behalf. Before discussing my
16 reasons in respect of each application,
17 I must outline my concerns surrounding
18 the possibility of conflicts arising
19 within several of the applicant
20 institutions."

21 And continuing in the last four lines"

22 "In some cases, allegations of abuse
23 against young people have been made
24 against the employees of these
25 institutions and, accordingly, it is

1 possible that conflicts may arise
2 between the sub-sets of the applicant
3 institution. Based on the information
4 currently before the Commission, it
5 would appear that there is the
6 potential for such conflicts to arise
7 within each of the following applicant
8 institutions."

9 And you list them, sir, and in the second
10 last two lines you list the Ministry of Correctional
11 Services.

12 And then at the top of page 12 you state:

13 "Counsel for some of these applicants
14 have assured me ..."

15 -- and that is echoing the comments there quoted to you
16 from November 7th by Mr. Rose.

17 "Counsel for some of these applicants
18 have assured me they will carefully
19 monitor the evidence as it unfolds to
20 identify any conflicts and potential
21 conflicts. Should any conflict and/or
22 potential conflict arise, I expect that
23 counsel for the applicant will advise
24 Commission counsel in a timely fashion
25 and will ensure that any conflicts

1 and/or potential conflicts are
2 effectively resolved in the best
3 interests of the affected parties."

4 **THE COMMISSIONER:** Good. That would be a
5 great case for standing. You already have standing. What
6 about funding?

7 **MR. NEVILLE:** Well, that is funding, sir.

8 **THE COMMISSIONER:** Okay.

9 **MR. NEVILLE:** That was about funding.

10 **THE COMMISSIONER:** What did we ask you? No,
11 no, no ---

12 **MR. NEVILLE:** Sorry?

13 **THE COMMISSIONER:** The last section you read
14 was about conflicts.

15 **MR. NEVILLE:** I'm sorry?

16 **THE COMMISSIONER:** The last section you read
17 to me about -- I understand that -- and then the last one
18 was Corrections, that I was aware and attuned to the fact
19 that there would be conflicts.

20 **MR. NEVILLE:** Well, all of the last passages
21 I've quoted to you, sir, ---

22 **THE COMMISSIONER:** Sure.

23 **MR. NEVILLE:** --- are introduced on page 8 -
24 --

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

1 **MR. NEVILLE:** --- with your introduction,
2 "Let me turn now to funding".

3 **THE COMMISSIONER:** Right.

4 **MR. NEVILLE:** And all of the comments
5 thereafter about overarching principles and the
6 inclusiveness and the concern about conflicts all relate to
7 funding not to standing, sir, as I read this.

8 **THE COMMISSIONER:** Well, I think there's a
9 new Court of Appeal Decision by Mr. Doherty talking about
10 judges giving rulings and that you have to look -- it's not
11 necessarily where it's put, you have to look at the whole
12 decision to get that and I think maybe I should have made
13 another sub-heading and just called it "Conflicts" so it
14 wouldn't be in the funding section.

15 But nonetheless, sir, all I'm asking you is
16 what's the test for funding and have you met it? Well,
17 other than the fact that Corrections hasn't decided to give
18 it to you?

19 **MR. NEVILLE:** Well, the test, sir, I would
20 suggest -- you have approved my -- the Estate, the late Mr.
21 Seguin and, frankly, I think to be realistic here, we're
22 talking about Ken Seguin. I use the phrase for purpose of
23 giving it a legal title, the Estate of Ken Seguin, it's a
24 convention. We're talking about Ken Seguin, the person as
25 he was at the time relevant to this Inquiry and his

1 reputation.

2 The person who knows him best and who knew
3 many of the actual relevant players in this Inquiry was his
4 brother who represents him. So it is the source of -- the
5 Estate is gone, sir. There is no source of money in the
6 name of Ken Seguin. The only source of money, as you can
7 see from the affidavit, is his brother, Doug, and his wife.

8 **THE COMMISSIONER:** And what about the
9 siblings?

10 **MR. NEVILLE:** They are not participating
11 financially. If you look at the affidavit, you will see,
12 sir, they range in age from 68 to 80.

13 **THE COMMISSIONER:** Okay.

14 **MR. NEVILLE:** Mr. Seguin is about to retire
15 ---

16 **THE COMMISSIONER:** I -- I don't need to hear
17 anything ---

18 **MR. NEVILLE:** So they -- they are the only
19 source ---

20 **THE COMMISSIONER:** I don't need -- I don't
21 need to hear from you any further. Thank you.

22 **MR. NEVILLE:** Thank you.

23 **THE COMMISSIONER:** Anybody opposing this
24 motion?

25 Mr. Engelmann, do you have any comments?

1 **MR. ENGELMANN:** Just two quick points, sir,
2 if I may?

3 **THE COMMISSIONER:** Sure.

4 **MR. ENGELMANN:** I asked him at seven or
5 eight days ---

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

7 **MR. ENGELMANN:** --- remaining; obviously
8 there's preparation time.

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

10 **MR. ENGELMANN:** The reference to the
11 conflict is at the end of the decision, it's separate from
12 the funding aspect and, essentially, what you asked Mr.
13 Neville to do is at Tab 6.

14 **THE COMMISSIONER:** What did I ask him to do?

15 **MR. ENGELMANN:** You said -- it's Tab 6 of
16 his book, page 16:

17 "It's a two-stage process whereby if
18 you're going to apply for funding you
19 have to show me there's a test, one of
20 which is what we're looking at. We
21 know the Estate does not exist. We
22 talked about the memory of Ken Seguin
23 and we know that there are nine or a
24 bunch of siblings, in any event, so you
25 know if you're going to go through

1 funding for me before I can recommend
2 to the Attorney General that there's
3 funding, there's two things that have
4 to happen. First of all, that you've
5 exhausted all other avenues for funding
6 and hence why I say, well, I thought
7 Corrections were representing everyone
8 and why wouldn't they pay if they're
9 not paying others. If they are paying
10 others, I don't know. Second of all,
11 you have to show me that those folks
12 whom you represent, presumably Mr. Doug
13 Seguin and the others, don't have the
14 capacity to pay."

15 **THE COMMISSIONER:** Thank you.

16 **MR. ENGELMANN:** Mr. Neville filed an
17 affidavit today. It's primarily about -- from Doug Seguin
18 as the deponent and paragraph five of that affidavit makes
19 some reference to the siblings and he's given you that.

20 **--- RULING BY/DÉCISION PAR JUSTICE NORMAND GLAUDE:**

21 **THE COMMISSIONER:** Thank you.

22 This matter began before me and I think it's
23 quite clear under all of the material that conflicts were
24 contemplated at the beginning of this Inquiry.

25 I can tell you that the comments that Mr.

1 Neville pointed out, as to whether or not funding should be
2 granted to persons and when in doubt that I would err on
3 the side of caution to finance someone, is still very much
4 appropriate. There's no question in my mind that I am duty
5 bound to satisfy myself that in order to expend public
6 funds that there's a threshold to be met.

7 I asked Mr. Neville to -- first of all, when
8 he brought his motion, it is true, it was included in the
9 motion a request for funding. There was no mention of
10 funding at any time during his application. I granted his
11 application for standing and probably on a
12 miscommunication, thinking that the matter had been
13 resolved through Probations or some other way.

14 In any event, when it came up, Mr. Neville
15 asked permission to come forward and ask for funding and at
16 which time I asked him for two things, and I got a
17 wonderful dissertation about all of the principles -- not
18 necessarily dealing with the two matters that I wanted to
19 hear from -- which were mainly had he asked -- had he
20 looked at every other way of getting funding, which was a
21 code word for "Ask the Ministry of Corrections whom I think
22 should be funding this" or -- and look at -- give me some
23 affidavits as to how the parents and the grandparents and
24 the siblings had been dealt with.

25 So the affidavit would have sufficed and I

1 sure admire all of the legal preparations and the
2 principles, however, we have an Inquiry to run.

3 I find that in these circumstances I will
4 certainly recommend to the Attorney General funding for the
5 Estate of Ken Seguin, for the cross-examination of the
6 witnesses only, as I've indicated in the standing, and
7 according to the guidelines that Mr. Neville has been
8 following with respect to Mr. -- Father MacDonald's
9 representations.

10 I find it unfortunate that we have to take
11 up the rest of this time dealing with these matters. In
12 the end, whether it comes from the Corrections or from the
13 Attorney General, the funding is coming out of public
14 funds. I find it, again, and I will put it down,
15 deplorable, that this matter cannot be resolved, and should
16 have been resolved through the Ministry of Corrections.

17 Thank you very much.

18 Now, I'm going to close for today. We'll
19 start tomorrow morning at 9:30.

20 Thank you.

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

23 This hearing is adjourned until tomorrow
24 morning at 9:30 a.m.

25 --- Upon adjourning at 3:49 p.m./

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L'audience est ajournée à 15h49.

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

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



Dale Waterman, CVR-CM