

**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 326**

**Held at :**

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

Thursday, December 18, 2008

**Tenue à:**

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

Jeudi, le 18 décembre 2008

**Appearances/Comparutions**

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Brigitte Beaulne	Registrar
Ms. Suzanne Sinnamon	Commission Counsel
Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Leslie McIntosh	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
M <sup>e</sup> Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
M <sup>e</sup> Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Larry O'Brien	Mr. Randy Millar
Mr. Murray MacDonald	

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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:** Thank you.

10 Good morning, all. Good morning, sir; Mr.  
11 Engelmann.

12 **MR. ENGELMANN:** Good morning,  
13 Mr. Commissioner. Good morning, Mr. MacDonald.

14 **MR. MacDONALD:** Good morning, sir.

15 **MR. ENGELMANN:** All set?

16 **THE COMMISSIONER:** All set.

17 **MR. ENGELMANN:** Got the glasses? All right.

18 **THE COMMISSIONER:** Just taking attendance  
19 right now.

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

21 (LAUGHTER/RIRES)

22 **MURRAY MacDONALD, Resumed/Sous le même serment:**

23 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE IN-CHEF PAR

24 **MR. ENGELMANN (cont'd/suite):**

25 **MR. ENGELMANN:** Sir, we established

1       yesterday some of what you knew before writing your brief  
2       opinion in mid-September of '93, and that the facts you  
3       learned principally came from Heidi Sebalj and Luc Brunet,  
4       perhaps somewhat from Malcolm MacDonald and Jacques Leduc,  
5       and I was reviewing a few of the facts that you may not  
6       have been aware of when we left off.

7                   But before continuing with this, I wanted to  
8       just briefly return to something that we touched upon  
9       yesterday afternoon, and that was that you told us -- and,  
10      again, whether it was the first meeting or the second  
11      meeting with Heidi Sebalj, at one of those meetings she had  
12      the handwritten statement which we have as Exhibit 262, and  
13      we might want to just turn that up.

14                   This is the eight-page statement from  
15      Mr. Silmser. And you mentioned, when I asked if you had  
16      any concerns at that time about ---

17                   **MR. MacDONALD:** The judge ---

18                   **MR. ENGELMANN:** --- the hearing, and you  
19      mentioned a judge, you mentioned a probation officer and  
20      you mentioned a priest, and you agreed with me that there  
21      was no allegation against a judge but you were concerned  
22      that a judge might have witnessed something -- is what I  
23      understood. And that was a concern you said you wanted  
24      more detail about the probation officer because there was  
25      really nothing in the statement, and you ---

1                   **MR. MacDONALD:** Well, the statement I --  
2                   either the statement or Heidi's -- I recall either Heidi's  
3                   words or my reading of the statement caused me to believe  
4                   that the probation officer was alleged to be a child  
5                   abuser, however, there was no elaboration except for that  
6                   one phrase.

7                   **MR. ENGELMANN:** Right, so I want to go to  
8                   that.

9                   And, thirdly, you said that although there  
10                  was some elaboration on the priest, you were giving her  
11                  sort of investigation advice as to how to get more  
12                  information.

13                  **MR. MacDONALD:** Yes, sir.

14                  **MR. ENGELMANN:** All right.

15                  And let's just start with the instructions  
16                  on the investigation of the priest, if we can. Do you  
17                  recall what sorts of things you would have asked her to do  
18                  either at that meeting or subsequent meetings to get more  
19                  detail?

20                  **MR. MacDONALD:** The first direction that I  
21                  gave her and I can't get -- I can't recall the order or the  
22                  specific direction, but it was in the -- certainly in the  
23                  context of, first, get a more detailed statement. "This  
24                  is, you know, these are the initial allegations. Now flesh  
25                  out the where, when, whys" -- not "whys" -- "the where,



1       whens and with whoms", and I'd mentioned -- or you and I  
2       had briefly touched upon the statement validity analysis  
3       techniques that I'd ---

4               **MR. ENGELMANN:** Oh yes, you had learned  
5       about in 1989?

6               **MR. MacDONALD:** In respect to which I'd been  
7       educated, and statement validity analysis requires that you  
8       receive details -- among other things, statement validity  
9       analysis teaches us to look for details that can internally  
10      corroborate an allegation -- a statement.

11              So that's what I sent her for, and I may  
12      have given her more specific items to seek collaboration on  
13      but that was the gist of it.

14              **MR. ENGELMANN:** All right. And you knew  
15      that there were four separate allegations that Mr. Silmser  
16      was making vis-à-vis the priest? Or there were several, in  
17      any event?

18              **MR. MacDONALD:** Several. I mean, I know now  
19      there were four.

20              **MR. ENGELMANN:** Yeah.

21              **MR. MacDONALD:** I don't -- but there were  
22      several.

23              **MR. ENGELMANN:** All right.

24              **MR. MacDONALD:** As she reported to me  
25      ultimately.

1                   **MR. ENGELMANN:** Right. There were four set  
2 out. I reviewed this in some detail last night just to  
3 remember what was in the initial statement in her notes,  
4 but there are four separate incidents that he refers to in  
5 this statement. So you would have asked her to get some  
6 more details to try and corroborate somehow ---

7                   **MR. MacDONALD:** Yeah.

8                   **MR. ENGELMANN:** --- when these things would  
9 have happened, and a bit more detail on what happened?

10                  **MR. MacDONALD:** Yes.

11                  **MR. ENGELMANN:** Is that fair?

12                  **MR. MacDONALD:** One incident didn't really  
13 describe a crime per se. It could have been, but it may  
14 also have been accident or innocent touching, so I would  
15 have -- I likely asked for details on that. I would have  
16 asked for details on -- there were two others that were --  
17 that would have been clear criminal misconduct that I  
18 needed more details on in terms of the where and when.

19                         There were other persons that were -- I  
20 think other persons were made reference to, or you could  
21 presume other persons were made reference -- would have  
22 been involved in one place where there were a number of  
23 people situate. I think it was a ---

24                  **MR. ENGELMANN:** That was a retreat ---

25                  **MR. MacDONALD:** Something.

1                   **MR. ENGELMANN:** --- allegation, something  
2                   that happened at a retreat?

3                   **MR. MacDONALD:** Yeah, and I would have sent  
4                   her for -- I don't think that -- I believe that I -- my  
5                   focus on corroboration evidence, what I call drilling out,  
6                   would have followed after we initially tried to drill down  
7                   it with him in terms of what he could detail for us.

8                   And she reported back to me some details,  
9                   probably from the interview that Ronny Lefebvre and Kevin  
10                  Malloy had conducted with her, I presume now, as well as  
11                  other information that she'd received from other sources.

12                  **MR. ENGELMANN:** And would you have at one  
13                  time suggested anything in the way of seeking out other  
14                  altar boys?

15                  **MR. MacDONALD:** Yes, more than once.

16                  **MR. ENGELMANN:** All right. So that would  
17                  have been some advice you would have given her?

18                  **MR. MacDONALD:** Yes.

19                  **MR. ENGELMANN:** All right.

20                  **MR. MacDONALD:** And that's, frankly -- as I  
21                  recall, it was advice that was in the context of we agreed  
22                  upon -- she knew -- Heidi was not bereft of ideas. She  
23                  knew that that would be one context and I was just sort of  
24                  helping her focus in the areas such as exploring interviews  
25                  with other altar boys.

1                   **MR. ENGELMANN:** And what about documentary  
2 evidence of any sort? Had she already taken steps in that  
3 regard, whether they be school records or tried to get some  
4 records from the Diocese or parishes?

5                   **MR. MacDONALD:** I don't recall if she had  
6 records of her own initiative at our first or second  
7 meeting, but I do recall recommending that she seek out  
8 other records, particularly his school records and some  
9 information from his family as to where they lived and  
10 when, addresses and times that they were at particular  
11 addresses et cetera.

12                   **MR. ENGELMANN:** And would she have advised  
13 you or would you have been aware that the suspect, the  
14 alleged perpetrator, Father Charles MacDonald, would you  
15 have been aware that he was an active priest in the  
16 Diocese?

17                   **MR. MacDONALD:** Well, I didn't know him and  
18 I didn't recognize the name, but in fairness to me there  
19 are a number of MacDonalds in Glengarry County.

20                   **MR. ENGELMANN:** Yes, there are a number.

21                   **MR. MacDONALD:** And ---

22                   **MR. ENGELMANN:** He's not in any way related  
23 to you?

24                   **MR. MacDONALD:** No, sir.

25                   But I knew or presumed that he was an active

1 priest because he was still in the community.

2 MR. ENGELMANN: All right. So given the  
3 allegations that you discussed with Ms. Sebalj, given  
4 Mr. Silmsen's statement, were you at all concerned that you  
5 have a suspect who's a priest in a -- as such, a person in  
6 a position of trust or authority with children, with altar  
7 servers?

8 MR. MacDONALD: It concerned me that there  
9 may be a -- the allegation was of a child abuser, perhaps a  
10 predatory abuser, and so Heidi wanted to get to the bottom  
11 of that and so did I. I mean, there wasn't enough to  
12 report to the CAS yet, if that's what you're referring to,  
13 but there was enough to dig deeper vigorously.

14 MR. ENGELMANN: Well, I'm wondering -- I was  
15 wondering about the CAS and the issue of when an individual  
16 could be considered to be in a caregiver-type position,  
17 have access to children. I'm wondering if either you or  
18 Officer Sebalj would have discussed the possibility of  
19 contacting the CAS so that they could also do some work to  
20 determine whether there was any risk of current abuse?

21 MR. MacDONALD: Well, I didn't think that --  
22 frankly, that the CAS -- with all due respect to their  
23 mandate and their personnel, I didn't think that the CAS  
24 would have the success that the Cornwall Police could have.

25 I didn't specifically address my mind to

1           when do I do the statutory notice or do I? That really  
2           didn't even -- that discussion didn't come up until Luc  
3           Brunet and I were conferring and, more specifically, when  
4           Chief Shaver and I conferred.

5                       **MR. ENGELMANN:** Okay. Because at or about  
6           that point in the fall, I think at or around the -- well,  
7           early October, the CAS did take on an investigation to  
8           determine if there was any concern about present abuse with  
9           Father MacDonald.

10                      **MR. MacDONALD:** I know of that through the  
11           media and subsequent ---

12                      **MR. ENGELMANN:** You weren't direct ---

13                      **MR. MacDONALD:** --- recent news, but I --  
14           you know, Chief Shaver was contemplating to whom he should  
15           notify, and the CAS was one of them but, frankly, Chief  
16           Shaver and I were more focused on alerting the Church to  
17           the concern for the safety of the public.

18                      **MR. ENGELMANN:** And did you consider a  
19           report under the duty-to-report provision at the time at  
20           all?

21                      **MR. MacDONALD:** No, I considered it a  
22           necessity for the police to probe and see whether there was  
23           sufficient evidence to make an allegation.

24                      **MR. ENGELMANN:** Sir, with respect to the  
25           probation officer, I think we've heard evidence that he

1 would not have had individuals, at least at that time, on  
2 his caseload that would have been under the age of 16; the  
3 youngest would have been 16 and 17.

4 **MR. MacDONALD:** Well, I knew that -- I knew  
5 Ken Seguin professionally.

6 **MR. ENGELMANN:** Okay.

7 **MR. MacDONALD:** And I knew him to be an  
8 adult probation worker.

9 **MR. ENGELMANN:** All right. So you wouldn't  
10 have had a concern about reporting him to the CAS because  
11 that would involve children under 16?

12 **MR. MacDONALD:** Well, there's no -- there  
13 was no allegation against him.

14 **MR. ENGELMANN:** All right.

15 Well, just on that score, if you have the  
16 Silmsler statement handy, that's Exhibit 262, the very last  
17 page, and you're right there's no details, sir, of what  
18 happens. He says:

19 "I was placed on probation at 14 or  
20 just are the beginning of 15 with Ken  
21 Seguin. Later, Seguin repeatedly  
22 sexually assaulted me. Also, I learned  
23 he was MacDonald's best friend."

24 And it goes on, but there's no detail of  
25 that allegation, at least in this statement.

1                   **MR. MacDONALD:** No, and I asked her to get  
2                   detail and he specifically declined to do so. And there's  
3                   no obligation to make notice of a -- to notify Children's  
4                   Aid of a -- of an unsubstantiated, unfounded and undesirous  
5                   allegation such as this, in my view.

6                   There still was cause to investigate further  
7                   as to whether an incremental disclosure would come through  
8                   the police, but at that time at that point, I would have  
9                   been nothing -- we would have been reporting nothing more  
10                  than a -- well, we had -- there was nothing substantive to  
11                  report.

12                  **MR. ENGELMANN:** Well, there wasn't enough in  
13                  this statement is what you're saying.

14                  **THE COMMISSIONER:** With respect to Mr.  
15                  Seguin.

16                  **MR. ENGELMANN:** With respect to Mr. Seguin.

17                  **MR. MacDONALD:** Nor with respect to Mr. --  
18                  you mean as far as the details of any crime that Mr. Seguin  
19                  may have committed?

20                  **MR. ENGELMANN:** Yes. It's just a general  
21                  allegation on the ---

22                  **MR. MacDONALD:** Yes.

23                  **MR. ENGELMANN:** --- part of Mr. Seguin. He  
24                  does give details of four allegations involving Father  
25                  Charles ---



1                   **MR. MacDONALD:** Father Charles, but there's  
2 no allegation of any kind other than, I think, "he abused  
3 me, too", or a word to that effect.

4                   **MR. ENGELMANN:** With respect to Ken Seguin?

5                   **MR. MacDONALD:** Right.

6                   **MR. ENGELMANN:** Yeah, okay.

7                   Now, were you informed by -- so you say you  
8 tell Officer Sebalj to get more details on Ken Seguin when  
9 you meet sometime in February.

10                  **MR. MacDONALD:** And the judge and the ---

11                  **MR. ENGELMANN:** I'm sorry?

12                  **MR. MacDONALD:** And the judge and the  
13 clergyman.

14                  **MR. ENGELMANN:** Let's just stick with one at  
15 a time. With respect to Seguin ---

16                  **MR. MacDONALD:** But I sent her off for the  
17 three.

18                  **MR. ENGELMANN:** Fair enough, fair enough.

19                  But with respect to Seguin, did she not tell  
20 you, sir, that during that initial interview in January  
21 with her, Malloy and Lefebvre, did she not give you some  
22 indication that Mr. Silmsler had given some detail about Ken  
23 Seguin at that time?

24                  **MR. MacDONALD:** I recall -- I don't recall  
25 her ever referring to the Kevin Malloy/Ronnie Lefebvre

1 interview ---

2 MR. ENGELMANN: All right.

3 MR. MacDONALD: --- with her, but she  
4 clearly made reference to parts of it from time-to-time.  
5 Because she told me we -- you have to realize that her  
6 notes and -- are not at all reflective of the number of  
7 contacts and the detail of conversation we had.

8 So I'm sure she told me at some point that  
9 -- I told her to go back and probe with Mr. Silmsner on the  
10 Seguin details, and she did so, and I'm sure that part of  
11 what she must have used as probe was what she'd garnered in  
12 January.

13 And it was reported back to me that he just  
14 did not have the wherewithal to proceed now, and she was  
15 encouraged on more than one occasion to see if she could  
16 get -- because this is not -- this is normal incremental  
17 disclosure, right? Or so it oftentimes is what we see.

18 MR. ENGELMANN: Right.

19 MR. MacDONALD: And I thought that maybe he  
20 would eventually be inclined to disclose, but he didn't  
21 have the wherewithal and so we sort of left that piece in  
22 abeyance.

23 MR. ENGELMANN: Well, just to get back to my  
24 question, then.

25 You've got this statement, you've got just a

1 general allegation on Seguin. She's not telling you at  
2 that meeting, "Murray, there's more. We spoke to him two  
3 or three weeks ago and he gave us some details; the details  
4 include these various sexual acts"? You don't remember  
5 getting that information?

6 **MR. MacDONALD:** I don't remember details of  
7 sexual acts.

8 **MR. ENGELMANN:** All right.

9 **MR. MacDONALD:** I remember the messages, "I  
10 don't want to go any further, I don't have the  
11 wherewithal".

12 **MR. ENGELMANN:** All right, and we'll come to  
13 that. There is a note at a meeting on March 10<sup>th</sup>, where  
14 they meet with him and he says one at a time, so to speak,  
15 and I'll come to that.

16 Sir, with respect to the judge, if you have  
17 a concern about a judge or suspected wrongdoing or possible  
18 wrongdoing of a judge, were there procedures in place at  
19 that time that you were supposed to follow?

20 **MR. MacDONALD:** There was no written policy  
21 on point, but public interest and concern for the  
22 administration of justice, concern for the independence of  
23 judiciary would require that I'd seek -- immediately seek a  
24 legal opinion from the director, the regional director of  
25 Crown Attorneys. And I presumed then, and certainly now,

1 that would even go off to the assistant.

2 MR. ENGELMANN: All right, so, and I just  
3 want to make sure, what was the issue that you were  
4 informed about with respect to a judge?

5 MR. MacDONALD: The judge maybe a criminal  
6 or a party to at that crime or of -- witness to crime. If  
7 a prosecutor or a judge or a senior police officer witness  
8 a crime and just let it go on without intervening, whether  
9 or not there's a *Criminal Code* positive duty to act, there  
10 are other statutory and professional obligations to do  
11 something about it.

12 MR. ENGELMANN: Right.

13 MR. MacDONALD: And it appeared, from what  
14 we initially read, that there was -- if there was a judge  
15 who was involved in this, this would be something that  
16 would take on a -- a case that would take on a different  
17 tone right from the start.

18 MR. ENGELMANN: All right. So what was your  
19 understanding? Not that a judge allegedly did anything as  
20 far as a sexual act, but that a judge was present when a  
21 sexual act was performed?

22 MR. MacDONALD: Can you go to the words that  
23 were written?

24 MR. ENGELMANN: Well, I've tried. I  
25 reviewed the statement last and I didn't see anything in

1 the statement.

2 MR. MacDONALD: What about the statement  
3 that he gave Mr. -- Ronnie Lefebvre and Kevin Malloy?

4 MR. ENGELMANN: I went through that, too,  
5 sir, and I didn't see any reference in ---

6 MR. MacDONALD: That it would have ---

7 MR. ENGELMANN: --- in either, so ---

8 MR. MacDONALD: Then that would have been a  
9 verbal from ---

10 MR. ENGELMANN: Heidi Sebalj?

11 MR. MacDONALD: Heidi Sebalj.

12 MR. ENGELMANN: Okay. Because the only  
13 reference that I saw to a judge of any sort was much later.  
14 There was a statement, a telephone call, that presumably  
15 Mr. Silmser made to a Staff Sergeant Dupuis, and this is --  
16 it's Exhibit 372, but it's on the eve ---

17 MR. MacDONALD: Whose note?

18 MR. ENGELMANN: This is a note by Staff  
19 Sergeant Dupuis, dated November 24<sup>th</sup>, 1993.

20 MR. MacDONALD: No, I knew about it -- I  
21 knew reference to the judge in -- right at the, I believe,  
22 the first meeting.

23 MR. ENGELMANN: All right. Because in --  
24 and if you have Exhibit 262 handy, which is his handwritten  
25 statement -- and I did review it thoroughly last night with

1       respect to your reference -- in Mr. Silmser's allegations,  
2       there are three allegations where it's just Mr. Silmser and  
3       Father MacDonald. And there's a fourth where there's a  
4       retreat and so there are other people who would be around  
5       so presumably there's some ability to get some  
6       corroboration.

7                   **MR. MacDONALD:** Heidi had information that  
8       a judge was very much present on site, according to Mr.  
9       Silmser, and I sent her back to ask the name of the judge.

10                  **MR. ENGELMANN:** At the retreat, sir?

11                  **MR. MacDONALD:** I don't know where --  
12       possibly, but Heidi told me at that first meeting that  
13       there was reference to a judge being present when the  
14       MacDonald misconduct was going on.

15                  **MR. ENGELMANN:** And she suggested to you  
16       that Mr. Silmser had told her that?

17                  **MR. MacDONALD:** Right.

18                  **MR. ENGELMANN:** Okay, because you had  
19       thought that it was in this statement ---

20                  **MR. MacDONALD:** I thought I ---

21                  **MR. ENGELMANN:** --- in his words.

22                  **MR. MacDONALD:** I thought I read it.

23                  **MR. ENGELMANN:** Because if we look at page  
24       2 of the statement -- and I'll just do this quickly if I  
25       may -- he talks about a first incident, and I think this is

1 the Sacristy incident. It's near the bottom of the second  
2 page of Exhibit 262 and that's Bates page 8614. And this  
3 is about:

4 "...squeezed my knee then fully moved  
5 up my leg to my personals..."

6 Et cetera. It's about seven or eight lines  
7 from the bottom of that page. So -- and that appears it's  
8 just the two of them. Then there's a second incident that  
9 he starts at the bottom of page, a retreat in St. Andrews -  
10 --

11 MR. MacDONALD: Right.

12 MR. ENGELMANN: --- and that carries on to  
13 the third page and he talks about something that happens at  
14 night when the lights are out. And again, that's down  
15 towards the bottom of the third page; Bates page 8615.

16 MR. MacDONALD: M'hm.

17 MR. ENGELMANN: Doesn't appear there's any  
18 witnesses to that fact, but, you know ---

19 MR. MacDONALD: Well, I presumed that there  
20 were several people, a retreat ---

21 MR. ENGELMANN: Right.

22 MR. MacDONALD: --- involved.

23 MR. ENGELMANN: No, he mentioned there were  
24 40-plus kids there.

25 MR. MacDONALD: Yeah.

1                   **MR. ENGELMANN:** The third incident starts to  
2                   be described on the fifth page, Bates page 8617, where he  
3                   talks about -- towards the bottom of that page -- again,  
4                   it's an allegation of fondling or grabbing the -- as he  
5                   calls them -- his personals and that's right towards the  
6                   bottom of the page and that's in -- allegedly in Father  
7                   MacDonald's office.

8                   And then the fourth incident is described  
9                   starting on the next page, 8618. And this is they go for a  
10                  drive into the country and it continues to be described on  
11                  the next page, 8619, but it wouldn't ---

12                  **MR. MacDONALD:** Looks like there's no  
13                  witnesses to that.

14                  **MR. ENGELMANN:** Right, right, to three of  
15                  the four at least, so I'm just wondering -- and there was  
16                  no reference to a judge here and there's no reference to a  
17                  judge in her notes; either her notes of the first interview  
18                  -- the January 28<sup>th</sup> interview which I'm going to take you to  
19                  in a minute, nor in the long notes that are set out in  
20                  Exhibit 295.

21                  **MR. MacDONALD:** Right.

22                  I wouldn't concern yourself with the fact  
23                  that they were not in her contemporaneous notes because her  
24                  contemporaneous notes were bereft of a lot of detail that I  
25                  know for a fact had gone on.



1                   **MR. ENGELMANN:** When you say "her  
2 contemporaneous notes," do you mean -- let me just show you  
3 an example, sir, if I can. We have her long notes that set  
4 out the whole period -- the dedicated notes, if I can call  
5 them that -- and that's Exhibit 295.

6                   **MR. MacDONALD:** That was drafted, I think,  
7 in September or October ---

8                   **MR. ENGELMANN:** Yes.

9                   **MR. MacDONALD:** --- of '93.

10                   **MR. ENGELMANN:** Okay.

11                   Does the witness have the binder with  
12 Exhibit 295? And that has -- that's an important binder.

13                   **MR. MacDONALD:** I can tell you while he's --  
14 while she's being kind enough ---

15                   **MR. ENGELMANN:** Yes.

16                   **MR. MacDONALD:** --- to do that, I can tell  
17 you with certainty that Heidi knew in February or early  
18 March that a judge had been implicated because that was the  
19 first person that I instructed her to get more information  
20 on or about.

21                   **MR. ENGELMANN:** And were you ever told about  
22 the name of a judge or the court of the judge or anything  
23 of that nature?

24                   **MR. MacDONALD:** No level of court; no name  
25 of the judge and that's what I wanted to know.

1                   **MR. ENGELMANN:** All right.

2                   **MR. MacDONALD:** As well as, when you -- with  
3 his being present, I had the impression -- Heidi had the  
4 impression that he would have had to witness misconduct.

5                   **MR. ENGELMANN:** All right.

6                   And she suggested to you that she had this  
7 information from Mr. Silmsler, presumably?

8                   **MR. MacDONALD:** I presume so.

9                   **MR. ENGELMANN:** Right, okay. All right.

10                   So what we have on the screen and what you  
11 should have in front of you are what I call the dedicated  
12 notes. And these may well have been notes that were  
13 prepared from other notes. We're not sure. We didn't have  
14 her here.

15                   **MR. MacDONALD:** And memory -- this was  
16 prepared, as I've since learned, over a weekend when she  
17 was under great pressure from the Chief to put an  
18 Occurrence Rep together -- an Occurrence Report together.

19                   **MR. ENGELMANN:** All right.

20                   **THE COMMISSIONER:** How would you know that,  
21 sir?

22                   **MR. MacDONALD:** I've heard that -- I don't  
23 recall when I heard that, but I -- I looked at the notes  
24 and I knew that -- I may have garnered that from the Chief  
25 when I first met him, but I'm only speculating. But I knew

1 for a fact when I read these notes, it was always -- it was  
2 already known to me that she'd been under a lot of pressure  
3 that weekend when the Chief blew his stack and wanted to  
4 get a full occurrence in here.

5 **MR. MANDERVILLE:** Mr. Commissioner, as we  
6 know, there's a fair amount of evidence to the contrary,  
7 but I'm happy to address it when it's my turn.

8 **THE CHAIRMAN:** Okay, thank you.

9 **MR. ENGELMANN:** Sir, just to give you an  
10 example of the different notes, we have -- if we just turn  
11 to page -- it's Bates page 731 of the document we have on  
12 the screen; Exhibit 295, and you might just want to turn to  
13 the hard copy because you'll see there's quite a  
14 difference. So we see at the bottom of the page, there's  
15 reference to the meeting in the youth office and these are  
16 the dedicated notes that we have; a compilation. And then  
17 if we look at Exhibit 314, sir -- and you might want to  
18 take the hard copy of this one; it should be in your binder  
19 -- these are the contemporaneous notes from the meeting of  
20 January 28<sup>th</sup>. These are her notes, which appear she has  
21 summarized in Exhibit 295.

22 So I guess my point, sir, is if you're  
23 concerned that she might have left things out of Exhibit  
24 295 in putting that together, we have the full notes that  
25 she has of the January 28<sup>th</sup> meeting here at Exhibit 314; all

1 right? And I indicated to you earlier just -- you told us  
2 earlier, you never saw these notes.

3 **MR. MacDONALD:** No.

4 **MR. ENGELMANN:** And you didn't see her notes  
5 of that meeting ---

6 **MR. MacDONALD:** No, I had ---

7 **MR. ENGELMANN:** --- nor did you see Officer  
8 Malloy's, nor did you see Officer Lefebvre's.

9 **MR. MacDONALD:** No, I had her report ---

10 **MR. ENGELMANN:** All right.

11 And let's just look at that quickly if we  
12 can. You'll see, for example, on the very first page of  
13 her notes of the meeting -- these are the detailed notes,  
14 the contemporaneous notes:

15 "Father McDougald asked for a letter  
16 of apology."

17 It says:

18 "Father McDougald asked for a letter  
19 of apology."

20 This is Silmser. Do you see that about  
21 three quarters of the way down the page? Malcolm  
22 MacDonald, lawyer for priest ---

23 **MR. MacDONALD:** M'hm.

24 **MR. ENGELMANN:** "All I want and I drop the  
25 whole thing."

1                   Okay? This is apparently Silmsner telling  
2                   them that all he wants is a letter of apology; all right?  
3                   And again, you weren't aware of that.

4                   **MR. MacDONALD:** Right.

5                   **MR. ENGELMANN:** All right.

6                   And then on the second page, he -- at the  
7                   bottom of the page -- starts to describe the first  
8                   incident; the first allegation that he also has in his  
9                   handwritten statement a couple of weeks later.

10                  Then at the bottom of the next page which is  
11                  Bates page 504, or page 3 of her contemporaneous note, it  
12                  talks about going on a retreat. It talks about knowledge  
13                  that Father McDougald is also in charge of sexual assaults  
14                  for Diocese.

15                  On Bates page 505, he continues about the  
16                  second incident at the retreat and he says -- at the middle  
17                  of the page, or her notes indicate he said:

18                                "I just remember Father MacDonald and a  
19                                woman, none questioned, no parents, two  
20                                supervisors."

21                  So there's no reference to a judge here at  
22                  all, and that would be the one where there would be other  
23                  people present. It talks about the Act.

24                  The third allegation is set out at the  
25                  bottom of page 4, and that's going into his office, and it

1 goes on to the next page, Bates page 507.

2 The fourth incident, the drive, is set out  
3 at the bottom of the page and on to the next page, and,  
4 again, no suggestion that there's anybody present; it's the  
5 two of them.

6 And those are the allegations dealing with  
7 Father MacDonald, so there's no reference to any judge.  
8 And the, if we turn over to Bates page 510, he starts  
9 talking about Seguin.

10 And this is what I mean about some detail on  
11 these allegations. You'll see about a third of the way  
12 down the page, "Started in his office". He talks about the  
13 feeling of his leg; he talks about being grabbed. He says,  
14 "He's an out-and-out child molester."

15 He talks about being in the hospital,  
16 towards the bottom of the page. He talks again about his  
17 leg being rubbed. He talks about being at his house, at  
18 the bottom of the page, and what happens there.

19 At the top of the next page, 511, he talks  
20 about sexual acts that Ken Seguin does on him and, again,  
21 talks about it on the next page as well, 512, about sexual  
22 acts that Ken Seguin's performing.

23 And then, on the very last page, he  
24 describes in some detail what Seguin's house is like on  
25 Alguire. No doubt, the police officers are asking if he

1 can describe the house and everything else, so there's  
2 quite a bit of detail here about Ken Seguin.

3 MR. MacDONALD: Yes.

4 MR. ENGELMANN: You never got that, did you?

5 MR. MacDONALD: I didn't get that degree of  
6 detail.

7 MR. ENGELMANN: Did you ever get that detail  
8 about Seguin?

9 MR. MacDONALD: No.

10 MR. ENGELMANN: All right.

11 MR. MacDONALD: No.

12 MR. ENGELMANN: All right. And, again, that  
13 detail is not set out in ---

14 MR. MacDONALD: The first statement.

15 MR. ENGELMANN: --- in the -- it's not set  
16 out in the handwritten statement ---

17 MR. MacDONALD: Right.

18 MR. ENGELMANN: --- that you would have  
19 seen ---

20 MR. MacDONALD: Right.

21 MR. ENGELMANN: --- at the meeting with  
22 Constable Sebalj?

23 MR. MacDONALD: Right.

24 MR. ENGELMANN: And it's not really set out  
25 in any detail in these dedicated notes that we've looked at

1 or certainly not -- not as it is in the notes of the -- the  
2 contemporaneous notes of the initial interview. All right?

3 But, again, there's no reference to a judge  
4 there, there's no reference to a judge here, and I'm just  
5 wondering, are you absolutely sure ---

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** --- that she mentioned  
8 something about a judge?

9 **MR. MacDONALD:** Yes, I'm certain. From the  
10 very first time that I was asked to comment officially on  
11 this matter, post-revelation of the -- of the civil  
12 settlement and the unlawful clause, I recall that -- you'll  
13 note it's clearly laid out in my statement and I  
14 didn't -- it's not the type of thing that you misconstrue  
15 or make up.

16 **MR. ENGELMANN:** And was that a concern of  
17 yours from a credibility point of view with Silmsen,  
18 that -- the fact that he was apparently alleging that a  
19 judge was present and actually witnessed this? Did that  
20 cause you to have some concerns about his credibility?

21 **MR. MacDONALD:** Only when I learned that he  
22 couldn't describe the judge or name the judge or give any  
23 other detail, and my concern was when you make reference to  
24 any person, especially an individual who'd be likely of  
25 some -- would likely cause persons to recall some



1 particular detail just because of whom they are, it  
2 did -- I did consider it one of the shortcomings of his  
3 credibility.

4 **MR. ENGELMANN:** Right. And so you were of  
5 the view that he'd made that allegation, and you were of  
6 the view that he hadn't been able to elaborate on it?

7 **MR. MacDONALD:** Correct, that was what I was  
8 told.

9 **MR. ENGELMANN:** Right. All right, so let's  
10 just look at the -- we don't have ---

11 **MR. MacDONALD:** As I read Heidi's notes, I  
12 should note that there are pieces of it that she had told  
13 me.

14 Heidi was -- Heidi and I had a number of  
15 conversations, at length, and I'm sure that components of  
16 this would have been told to me. I don't recall any  
17 details though about the Seguin criminal acts.

18 **MR. ENGELMANN:** All right. And you'll agree  
19 with me, sir, and we just looked at that, that not only  
20 were you not told about that, but the detail that's in 314,  
21 which are the contemporaneous or long-form notes from  
22 January 28<sup>th</sup>, much more than what we see in 295, the  
23 dedicated note?

24 **MR. MacDONALD:** Yes, I guess.

25 **MR. ENGELMANN:** Right.

1                   Because in the dedicated note, we really see  
2                   no reference at all to any detail on Ken Seguin; correct?

3                   **MR. MacDONALD:** Yes.

4                   **MR. ENGELMANN:** All right.

5                   **MR. MacDONALD:** This can be contrasted with  
6                   other entries in the dedicated notes where there's no  
7                   front-line notes.

8                   You know, Heidi was doing her best, and I'm  
9                   not speaking in a derogatory way when I say that when she  
10                  put her dedicated notes together, she was doing her best  
11                  to, you know, lay out chronologically and events  
12                  specifically, things that had gone on over several  
13                  weeks -- you know, months. And so I'm not being critical  
14                  of her, I'm just saying she was writing it with that frame  
15                  of mind, I'm sure.

16                  **THE COMMISSIONER:** Okay, you said she was  
17                  doing her best.

18                  **MR. MacDONALD:** Yes.

19                  **THE COMMISSIONER:** Did she tell you that?

20                  **MR. MacDONALD:** I believed she was.

21                  **THE COMMISSIONER:** Yes. You believed she  
22                  was, but that's based on what?

23                  **MR. MacDONALD:** My dealings with Heidi prior  
24                  to ---

25                  **THE COMMISSIONER:** All right.

1                   **MR. MacDONALD:** --- on this case, and  
2                   subsequent to.

3                   **THE COMMISSIONER:** Okay. So will you be  
4                   carrying on with ---

5                   **MR. ENGELMANN:** I want to look at these  
6                   notes, these dedicated notes, and just -- I'm going to be  
7                   asking him whether he was informed about this or that,  
8                   because this all goes back to my concern that Mr. MacDonald  
9                   may not have had some information when he wrote his opinion  
10                  letter in mid-September.

11                  **MR. MacDONALD:** Well, you can presume I  
12                  didn't have all the information.

13                  **MR. ENGELMANN:** Yes. I'm just going to give  
14                  you some examples, sir, because I want to ask you at the  
15                  end whether or not that might have ---

16                  **THE COMMISSIONER:** Are we going to close the  
17                  loop on the judge issue, is what I ---

18                  **MR. ENGELMANN:** Sir, I thought I was there,  
19                  but ---

20                  **THE COMMISSIONER:** Okay.

21                  So, sir, the way I understand it is this, is  
22                  that early on you get wind that there may be a judge  
23                  involved in this somehow?

24                  **MR. MacDONALD:** As witness, at least.

25                  **THE COMMISSIONER:** Right. You tell Heidi,

1 "Go and find out". She comes back and says to you ---

2 **MR. MacDONALD:** "Can't give a name, can't  
3 give a position, can't describe him physically."

4 **THE COMMISSIONER:** All right. Did you just  
5 leave it drop there or was there anything further?

6 **MR. MacDONALD:** Well, I don't know what  
7 I -- what further there could be for a person who couldn't  
8 be described in any way or -- I wasn't so sure that it was  
9 a judge, frankly, at that point.

10 **THE COMMISSIONER:** I know, but we don't have  
11 a written statement from Silmsler on that issue. It's  
12 important because it's a judge and if it's a judge, we have  
13 to do things properly.

14 **MR. MacDONALD:** Right.

15 **THE COMMISSIONER:** What about telling her,  
16 "You go back and get him to write a statement on this  
17 issue, once and for all," so that you have something in  
18 your hand to document it? That's number one, I guess.

19 **MR. MacDONALD:** I told -- I told her to go  
20 back and get the details.

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

22 **MR. MacDONALD:** I presume she would have  
23 done it in writing, in her notes, so if not the statement,  
24 but I didn't direct her to take a formal standalone  
25 statement on that point.

1                   **THE COMMISSIONER:** M'hm? Okay. And so,  
2                   after that, did you just forget about it? Like ---

3                   **MR. MacDONALD:** I came to the -- I concluded  
4                   there, as did Heidi, that he really didn't know if this  
5                   person was a judge or some other -- an individual from  
6                   another calling.

7                   **THE COMMISSIONER:** Okay.

8                   **MR. ENGELMANN:** Sir, when you met with  
9                   Constable Sebalj for the first or second time in mid- to  
10                  late February of 1993, you indicated I think yesterday that  
11                  you would have asked her to do some work on school records?

12                  **MR. MacDONALD:** Yes.

13                  **MR. ENGELMANN:** And it appears that as early  
14                  as February 3<sup>rd</sup>, she had actually done something on that.

15                  I just want to show that to you. If you  
16                  have Exhibit 295 either on the screen ---

17                  **MR. MacDONALD:** I'm not saying that I gave  
18                  her the idea to go there for the first time, but I -- I'm  
19                  saying I wanted -- I recall asking for elaboration.

20                  **MR. ENGELMANN:** Fair enough. So we'll  
21                  look -- and you can either read -- these are the dedicated  
22                  notebook notes, Exhibit 295. I'm at Bates page 733,  
23                  towards the bottom, and this is her next note after her  
24                  note about the January 28<sup>th</sup> meeting.

25                  She's saying that she called Silmsler,

1 requested that he contact the school board and obtain his  
2 school records, and I'm just wondering if you were aware,  
3 from her, that she would have asked him to do this back in  
4 early February?

5 MR. MacDONALD: I can't ---

6 MR. ENGELMANN: If you can't remember, sir,  
7 that's fine.

8 MR. MacDONALD: I think I recall, but I  
9 can't say with certainty. I think that I told her that if  
10 he didn't want to get them voluntarily we could consider a  
11 search warrant.

12 MR. ENGELMANN: All right. Well, sir, do  
13 you know if this was sort of normal practice? I don't  
14 know, with your dealings with police officers, whether they  
15 would ask the alleged victim to go and obtain his own  
16 records.

17 MR. MacDONALD: Well, these would be  
18 confidential records that school boards are not inclined --  
19 at least not always inclined -- to disclose to the  
20 authorities without prior judicial authorization ---

21 THE COMMISSIONER: Or consent.

22 MR. MacDONALD: But if you get consent you  
23 don't need the search, and that's why she was wise, I  
24 think, in first asking him to get the documents.

25 MR. ENGELMANN: Well, she could have had him

1 sign a consent form and then she or a police officer could  
2 have gotten them; correct?

3 **MR. MacDONALD:** Yes, but she obviously  
4 thought it would be more expeditious, I -- well, I'm  
5 presuming that anyway.

6 **MR. ENGELMANN:** Okay, all right.

7 Sir, the other thing that's mentioned here,  
8 and I don't think this is something that was indicated to  
9 you, because you certainly didn't mention it, that:

10 "The victim advised that he had been  
11 contacted by the Diocese and they want  
12 to have a meeting with the victim.  
13 Stated he wasn't sure if he was going.  
14 Thought they should know..."

15 And I'm not sure what it says after that.

16 "That way it's out. Stated he wanted  
17 to see what they..."

18 And I'm not sure what it says after that.

19 "Advises the meeting is on Tuesday,  
20 February 9<sup>th</sup>."

21 Okay? So she has a note in her notes, and  
22 this is the dedicated notebook, that she's been advised by  
23 Mr. Silmsler that he's been contacted by someone from the  
24 Diocese and that they want to meet with him on the 9<sup>th</sup> of  
25 February. Now, sir, is that something that you would have

1           been told about by Ms. Sebalj?

2                       **MR. MacDONALD:** I don't recall that.

3                       **MR. ENGELMANN:** Okay.

4                       And, sir, if you'd been told that something  
5           -- it's likely something you'd remember; right? The  
6           employer of the suspect wanting to meet ---

7                       **MR. MacDONALD:** In my conversations with  
8           Heidi I had the impression that it was the complainant who  
9           intended to seek, you know, civil redress.

10                      **MR. ENGELMANN:** Right, that it was his  
11           initiative.

12                      **MR. MacDONALD:** Well, I don't know about  
13           initiative but that was his intention.

14                      **MR. ENGELMANN:** Well, you weren't then told  
15           that the Diocese had contacted Mr. Silmser and wanted to  
16           meet with him on the 9<sup>th</sup>?

17                      **MR. MacDONALD:** No.

18                      **MR. ENGELMANN:** All right. And in fact,  
19           sir, we know that he attended a meeting at the Diocese  
20           where their lawyer, Mr. Leduc, and two priests were present  
21           and asked him questions about his allegations.

22                      **MR. MacDONALD:** I didn't know about that  
23           meeting.

24                      **MR. ENGELMANN:** That would be important for  
25           you to know about, would it not?



1                   **MR. MacDONALD:** It certainly would, in  
2                   retrospect.

3                   **MR. ENGELMANN:** Now, sir, if we just go a  
4                   little further in her notes, Bates page 734 again, on the  
5                   9<sup>th</sup> of February she notes a meeting with the victim in the  
6                   Youth Office:

7                                   "Victim has no statement. Advises he  
8                                   has not completed it yet. Asked him  
9                                   about names of people present at the  
10                                  meeting."

11                   This was the meeting at the Diocese.

12                                  "Could only name McDougald and knows a  
13                                  lawyer was present. Advised they  
14                                  wanted victim to provide details of the  
15                                  assault. States, 'They believed me.'  
16                                  Was offered psychological help,  
17                                  et cetera."

18                   Again, you weren't advised of this fact?

19                   **MR. MacDONALD:** No.

20                   **MR. ENGELMANN:** And, sir, were you aware at  
21                   the time that there was -- and I'm going to ask you about  
22                   some of the work you did for the Diocese a bit later, but  
23                   were you aware at the time of a protocol they had in place  
24                   for dealing with allegations against clergy?

25                   **MR. MacDONALD:** No.

1                   **MR. ENGELMANN:** All right.

2                   **MR. MacDONALD:** I don't.

3                   **MR. ENGELMANN:** But you were not told --  
4                   certainly between the timeframe of February when you were  
5                   first involved in this, and September 14<sup>th</sup> when you wrote  
6                   your opinion, you were not told about the Diocese  
7                   conducting any form of internal investigation?

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

9                   **MR. ENGELMANN:** Or any use of a protocol?

10                  **MR. MacDONALD:** No. I mean, I recall from  
11                  the Alfred boys' school, you know, there were processes in  
12                  place when the Church received complaints of criminal  
13                  misconduct by their -- by their personnel.

14                  **MR. ENGELMANN:** Yes.

15                  **MR. MacDONALD:** And, you know, I'm not  
16                  surprised to hear that there was a process in place here.  
17                  I'm just saying that I wasn't made privy to it, how it  
18                  operated.

19                  **MR. ENGELMANN:** All right.

20                                 And, sir, I just want to take you to the  
21                                 next page of the notes then, and this is the dedicated  
22                                 notebook, page 735, 16 February '93. I believe it's 9:55  
23                                 in the morning:

24   "Unscheduled visit from victim.

25   Provided statement."

1                   And this is that handwritten statement we've  
2           looked at.

3                   **MR. MacDONALD:** I see.

4                   **MR. ENGELMANN:** "States Father McDougald  
5                                   called last night, 15 February. Wanted  
6                                   to discuss a settlement."

7                   Okay, and this is the fellow who's in charge  
8           of sexual assault or sexual abuse for the Church, and this  
9           is Ms. Sebalj reporting the victim saying that Father  
10          McDougald called him, wanted to discuss a settlement:

11                                   "Victim did not entertain conversation.  
12                                   I advised him I would be  
13                                   interviewing..."

14                   And it goes on. So again this is an  
15          indication, sir, at least in Constable Sebalj's notes, that  
16          the victim is being contacted by a priest responsible for  
17          the sexual assault for the Diocese and wanting to discuss a  
18          settlement. You weren't informed of that, were you?

19                   **MR. MacDONALD:** No. I see from the gist of  
20          the notes that she was obviously trying to stall him on  
21          this.

22                   **THE COMMISSIONER:** As in, "Don't go," that  
23          kind of thing?

24                   **MR. MacDONALD:** Well, I presume that's where  
25          she's noting down the -- not attended. He wouldn't attend

1 the meeting. I presume that she would have encouraged him  
2 not to attend the meeting.

3 **MR. ENGELMANN:** Which meeting are we talking  
4 about, sir?

5 **MR. MacDONALD:** Some meeting with the  
6 priest, McDougald.

7 **MR. ENGELMANN:** Well, the note says -- if  
8 we're on the same page, Bates page 735, February 16<sup>th</sup>:

9 "Unscheduled visit from victim.  
10 Provided statement. States Father  
11 McDougald called last night,  
12 15 February. Wanted to discuss a  
13 settlement. Victim did not entertain  
14 conversation. I advised him I would be  
15 interviewing family..."

16 I can't make out the next word.

17 "Victim satisfied."

18 It doesn't appear ---

19 **MR. MacDONALD:** What's the last line? "I  
20 requested ---"

21 **MR. ENGELMANN:** "School records."

22 **MR. MacDONALD:** Yeah.

23 **MR. ENGELMANN:** Okay? So it appears that  
24 the victim is advising -- presumably Mr. Silmsen is  
25 advising Constable Sebalj that he's been contacted by this

1 priest, that the priest wanted to discuss a settlement and  
2 the victim did not entertain the conversation. It doesn't  
3 appear she's writing anything about advice to him there.

4 **MR. MacDONALD:** She added that she'd be  
5 interviewing family. I have the impression that she never  
6 urged him to do any of these -- to follow any of the steps  
7 that were recommended by the Church.

8 **MR. ENGELMANN:** Okay, but you weren't in the  
9 loop about the Church; right? She wasn't telling you about  
10 the contact ---

11 **MR. MacDONALD:** No, her ---

12 **MR. ENGELMANN:** --- that he was getting from  
13 the Diocese.

14 **MR. MacDONALD:** No, but her impression was  
15 that he was inclined -- in thinking about -- he was  
16 entertaining civil recourse.

17 **MR. ENGELMANN:** All right, and that's what  
18 you were told.

19 **MR. MacDONALD:** Right.

20 **MR. ENGELMANN:** All right. But you've  
21 already told us, and we've looked at her notes, that he  
22 calls her on February 3<sup>rd</sup> and says he's been contacted by  
23 the Diocese and they want him to come to a meeting on the  
24 9<sup>th</sup>. She didn't tell you that.

25 **MR. MacDONALD:** No, she didn't.

1                   **MR. ENGELMANN:** No, and her notes don't  
2 suggest that she's telling him not to go. But again,  
3 you're not told this?

4                   **MR. MacDONALD:** No, I ---

5                   **MR. ENGELMANN:** All right. You're told at  
6 some point that it's Silmsner that's seeking redress from  
7 the Diocese. That's what you're told.

8                   **MR. MacDONALD:** Well, Heidi told me -- I  
9 don't remember the words but she told me that she was,  
10 especially in March, trying to stall him in terms of  
11 getting his attention as opposed to having him focus his  
12 attention on a civil settlement. So, you know, I think  
13 it's fair to conclude from what I heard from her there --  
14 it's safe to conclude that she did -- she certainly wasn't  
15 actively urging him in any way, tacitly or openly, to  
16 pursue the civil settlement and get back to me. She was  
17 trying to do the opposite and she told me that in -- I  
18 can't remember the quote but that was what she told me.

19                   **MR. ENGELMANN:** All right. At least at this  
20 time it doesn't appear he's entertaining it either -- early  
21 on, February 16<sup>th</sup>.

22                   **MR. MacDONALD:** No.

23                   **MR. ENGELMANN:** From her note.

24                   **MR. MacDONALD:** No.

25                   **MR. ENGELMANN:** All right.

1                   **MR. MacDONALD:** And that reference to the  
2 family means that she's continuing, you know, her  
3 investigation.

4                   **MR. ENGELMANN:** Right.

5                   **MR. MacDONALD:** And encouraging him so, if  
6 not asking him to. That part I'm speculating on.

7                   **MR. ENGELMANN:** Okay.

8                   So if we look ahead a little later in her  
9 notes, the dedicated notes, on Bates page 751, she's  
10 describing a telephone call she gets from Malcolm  
11 MacDonald, and I don't know if she would have told you that  
12 from time-to-time she had contact from Malcolm MacDonald?

13                   **MR. MacDONALD:** Yes, she told me that. I  
14 don't recall ---

15                   **MR. ENGELMANN:** All right.

16                   **MR. MacDONALD:** --- how early in the  
17 process, but she told me that.

18                   **MR. ENGELMANN:** Right.

19                   And here, at least at the bottom of page 750  
20 and on to 751, she's saying:

21                   "Telephone call from Malcolm MacDonald,  
22 counsel for the suspect, Father Charles  
23 MacDonald. Advises Jacques Leduc is  
24 lawyer for the Diocese."

25                   **MR. MacDONALD:** Yeah, I never knew until

1 Jacques Leduc phoned me ---

2 MR. ENGELMANN: All right.

3 MR. MacDONALD: --- that he was on for the  
4 Diocese.

5 MR. ENGELMANN: So that's another thing that  
6 you didn't know from her?

7 MR. MacDONALD: Right.

8 MR. ENGELMANN: All right.

9 And there's a reference to this Monsignor  
10 Schonenbach and the meeting with Silmser on December 9<sup>th</sup>,  
11 1992. You weren't informed about that?

12 MR. MacDONALD: No.

13 MR. ENGELMANN: We talked about that  
14 yesterday.

15 And you weren't informed about the fact that  
16 he had written a letter, and that's referenced here as  
17 well?

18 MR. MacDONALD: Well, I was informed of it  
19 all in the global sense that there were civil discussions  
20 going on. That's the way Heidi summarized all of this.

21 MR. ENGELMANN: Right. Okay.

22 Now, at Bates page 753 -- again, this is  
23 still the conversation with Malcolm MacDonald. On that  
24 page it says:

25 "Advises Father MacDonald is prepared



1 to take a polygraph."

2 I'm wondering if Constable Sebalj would have  
3 ever provided you with that information, that Malcolm  
4 MacDonald had told her that his client was prepared to take  
5 a polygraph?

6 **MR. MacDONALD:** Yes, I recall she did. I  
7 believe she did.

8 **MR. ENGELMANN:** And did you -- again, if you  
9 were providing investigational advice at this stage, would  
10 you have suggested that they should in fact take him up on  
11 his offer?

12 **MR. MacDONALD:** I believe, but can't say  
13 with certainty, but I believe her told her not to do it.

14 **MR. ENGELMANN:** All right.

15 Because we've heard from some of the police  
16 officers that have testified here that often it's a good  
17 investigational technique to have the person come in, not  
18 for the purposes of the polygraph, but to gain information  
19 from them when they're in.

20 **MR. MacDONALD:** Right.

21 **MR. ENGELMANN:** Again, that wouldn't have  
22 been advice, perhaps, you would have known about.

23 **MR. MacDONALD:** Polygraph, in my view, if --  
24 it's like a wine, it's got to be -- every wine has its time  
25 and so does a statement from an accused person. And if a

1 polygraph is taken and the individual passes and you don't  
2 get -- you have nothing to pin him on, literally,  
3 figuratively, then all you get is more stuff on the no RPG  
4 side of the roster.

5 MR. ENGELMANN: We've heard ---

6 MR. MacDONALD: Of the line, rather.

7 MR. ENGELMANN: And we know that polygraphs  
8 aren't admissible, et cetera, but we heard that the reason  
9 for taking someone up on that is to just get an opportunity  
10 to talk to them and see if you can gain other information,  
11 either before or after they do the polygraph. I just don't  
12 know if you ---

13 MR. MacDONALD: The only time I've ever seen  
14 defence counsel offer a polygraph is when they knew that  
15 the police didn't have enough to pin him on it and that  
16 he'd be able to do exactly what I believe Malcolm was  
17 trying to create, and that's another point against grounds  
18 to charge, i.e. he passed the polygraph.

19 If you imagine the officers and the way they  
20 do RPG assessments, is they think of pro evidence and con  
21 evidence and sometimes I'll even have them put a line down  
22 the middle of the page whenever they're doing the  
23 calculation and have them address their minds to what's on  
24 the pro and side [sic], and this would be a very weighty  
25 one on the con side, on the negative side, as far as

1 formulation of RPGs are concerned.

2 MR. ENGELMANN: Sir, at Bates page 760 of  
3 those same notes, this is the only reference to a meeting  
4 with you.

5 MR. MacDONALD: Yes.

6 MR. ENGELMANN: In the dedicated notes.

7 MR. MacDONALD: Perhaps that's -- that point  
8 you've just raised speaks volumes in terms of demonstrating  
9 why I know a number of contacts we had and issues we  
10 discussed were never recorded.

11 MR. ENGELMANN: Fair enough.

12 MR. MacDONALD: And that's okay because  
13 Heidi was getting -- you know, she was talking to the  
14 Crown, and they don't usually tend to detail the  
15 instructions they're receiving.

16 MR. ENGELMANN: And these were informal  
17 meetings, typically. It was a hallway meeting or something  
18 where perhaps she didn't have her notebook and you weren't  
19 taking notes and ---

20 MR. MacDONALD: Well, it was informal, but  
21 that was the way that we did business.

22 MR. ENGELMANN: Yes.

23 MR. MacDONALD: Crowns were in court four  
24 and five days a week then, and the only way that coppers  
25 could get in touch with us was to meet us up there. I

1 didn't have the practice of -- a nine-Crown office is  
2 different from that of a two and a half-Crown office.

3 **MR. ENGELMANN:** Your work was a lot  
4 different in 1993 than it is today.

5 **MR. ENGELMANN:** Yes, and so was the work of  
6 the police.

7 **MR. ENGELMANN:** Fair enough.

8 **MR. MacDONALD:** Such that when they needed  
9 me, they necessarily had to come up the stairs because  
10 otherwise they'd have to wait forever to get an  
11 appointment.

12 **MR. ENGELMANN:** But back then, during the  
13 course of her investigation of the Silmser matter, you  
14 would be in court probably daily?

15 **MR. MacDONALD:** Just about.

16 **MR. ENGELMANN:** Yeah, all right.

17 **MR. MacDONALD:** And that's where she knew  
18 she'd find me.

19 **MR. ENGELMANN:** Right.

20 So on Bates page 760, she references at  
21 15:35, "Meet Crown MacDonald in CIB". Do you see that?

22 **MR. MacDONALD:** Yes.

23 **MR. ENGELMANN:** All right. And it appears,  
24 therefore, this is a bit more structured than a hallway  
25 meeting, if I can call it that.

1                   **MR. MacDONALD:** To the extent that she came  
2 up to see me, reporting back on information that she -- she  
3 presented it to me and I recall the meeting -- I was tied  
4 up upstairs in the back room of the fourth floor  
5 courthouse, trial going on, had a recess, and she basically  
6 said words to the effect that, "I have bad news about some  
7 follow-up".

8                   And I was just too busy to get into this on  
9 a -- you know, this was an important investigation, a CIB  
10 investigation, so I simply said, I'll see you at lunch or  
11 at -- what time is that?

12                   **MR. ENGELMANN:** Fifteen-thirty-five (15:35).

13                   **MR. MacDONALD:** So it was probably after the  
14 court closed for the day.

15                   **MR. ENGELMANN:** All right. And in her  
16 notes, she's certainly suggesting that you:

17                   "Asked how investigation was going and  
18 advised re. certain names, denial,  
19 someone not being present. Became  
20 concerned about my grounds. Suggested  
21 meeting with victim. Advised  
22 scheduling difficulties. Asked to be  
23 kept up-to-date."

24                   So it would be appear, at least from that note,  
25 that you've clearly had a meeting before then?

1                   **MR. MacDONALD:** Right.

2                   **MR. ENGELMANN:** Because you're asking her  
3 how the investigation is going.

4                   **MR. MacDONALD:** We had more than -- more  
5 than one.

6                   **MR. ENGELMANN:** Right. Okay. And you're  
7 ---

8                   **MR. MacDONALD:** Before that.

9                   **MR. ENGELMANN:** According to the note, at  
10 least, you're suggesting that she follow up and have  
11 another meeting with the victim?

12                   **MR. MacDONALD:** Yes, I would have given her  
13 instructions on what to follow up on. I just forget the  
14 details of what they were.

15                   **MR. ENGELMANN:** Fair enough. And we know,  
16 at least from these dedicated notes, that she in fact does  
17 meet with the victim about eight days later, the alleged  
18 victim, on March the 10<sup>th</sup>.

19                   **MR. MacDONALD:** And she had a number of  
20 phone call contacts with him, too.

21                   **MR. ENGELMANN:** Yes. And some of these  
22 referenced here, so ---

23                   **MR. MacDONALD:** M'hm.

24                   **MR. ENGELMANN:** You don't recall any of the  
25 specific detail of this particular meeting though, do you,

1 sir?

2 MR. MacDONALD: I don't remember the meeting  
3 but I remember her coming up to see me about the meeting,  
4 about my attending CIB after court.

5 MR. ENGELMANN: I'm sorry, about?

6 MR. MacDONALD: I remember the reason why I  
7 went to CIB.

8 MR. ENGELMANN: Right.

9 MR. MacDONALD: And it's because I didn't  
10 have time to see her upstairs.

11 MR. ENGELMANN: Fair enough. Fair enough.  
12 But as far as the detail, can you give us  
13 any more than she gives us here on this page?

14 MR. MacDONALD: Yes, I can tell you that our  
15 meetings always consisted of strategy in the context of  
16 investigation. It would not have been, as this note  
17 suggests, a two-minute in-and-out, hi, how's it going; keep  
18 digging; have RPGs yet; no, I don't.

19 You know, keep -- it was -- it was detailed  
20 and I can say that with certainty.

21 MR. ENGELMANN: All right. You can't get  
22 into the specifics but you can say that it wasn't a two- or  
23 three-minute meeting. You would have had an exchange of  
24 information, you would have given her some advice?

25 MR. MacDONALD: Yeah, the specifics would be

1 speculation now and it would be encumbered -- it would be  
2 clouded by 20/20 vision.

3 **MR. ENGELMANN:** All right.

4 And we know from at least these notes that  
5 she has a number of interviews in March and that one of the  
6 individuals she interviews is a person known here as C-56.  
7 And I would have shown you that name yesterday and you  
8 couldn't recall that particular individual, which is fair.

9 **MR. MacDONALD:** I couldn't remember the  
10 name.

11 **MR. ENGELMANN:** Yes. And on page -- just to  
12 give you a sense ---

13 **MR. MacDONALD:** Can I just ask a question?  
14 I know that there's ---

15 **MR. ENGELMANN:** Yes, absolutely.

16 **MR. MacDONALD:** --- procedures with respect  
17 to sobriquets and -- can you alert me when there's a name  
18 that I may ---

19 **MR. ENGELMANN:** Yes.

20 **MR. MacDONALD:** --- that I may blurt out  
21 accidentally?

22 **MR. ENGELMANN:** Yes, so we have monikers  
23 here, sir, and I'll make every effort to do that, and  
24 that's why I'm referring to this particular individual as  
25 C-56. But his name is set out on ---



1                   **THE COMMISSIONER:** Madam Clerk, could you  
2 show him C-56 again?

3                   **MR. MacDONALD:** I don't recall that name.

4                   **MR. ENGELMANN:** Yes.

5                   **MR. MacDONALD:** She may have used it; I  
6 don't recall.

7                   **MR. ENGELMANN:** All right. So if we -- if  
8 we actually look at Bates page 791 ---

9                   **MR. MacDONALD:** Do you know what tab it  
10 would be in, in my book?

11                   **MR. ENGELMANN:** Yes, it's -- well, we're in  
12 Exhibit 295. You should have Exhibit 295; these are the  
13 dedicated notes.

14                   **THE COMMISSIONER:** And if you look at -- to  
15 make it easier, it's page 370 ---

16                   **MR. MacDONALD:** Okay, thank you.

17                   **THE COMMISSIONER:** --- on the top right  
18 corner ---

19                   **MR. MacDONALD:** Thank you.

20                   **THE COMMISSIONER:** --- in Magic Marker.

21                   **MR. MacDONALD:** Thank you.

22                   **MR. ENGELMANN:** And it's on the screen,  
23 about a third of the way down the screen.

24                   **MR. MacDONALD:** Okay, thank you.

25                   **MR. ENGELMANN:** That's the name that you

1 just saw, right?

2 MR. MacDONALD: Yes, sir.

3 MR. ENGELMANN: All right. And so it's a  
4 telephone call from him, and he's giving some background,  
5 and if we flip over the page to 792, he talks about an  
6 incident with Father Charlie MacDonald, at about the middle  
7 of the page. And the description is, simply:

8 "Placed his hand in my groin  
9 area."

10 And it goes on and talks about ---

11 MR. MacDONALD: He thought it was an  
12 accident.

13 MR. ENGELMANN: --- how he felt about it.

14 MR. ENGELMANN: I'm sorry; who felt it was  
15 an accident?

16 MR. MacDONALD: Somebody thought it was an  
17 accident?

18 MR. ENGELMANN: Where do you see that, sir?

19 MR. MacDONALD: "I got the car back into  
20 my parents' house. He did this in the  
21 driver's -- driveway. I thought it was  
22 an accident."

23 MR. ENGELMANN: "Advised I thought it was  
24 an accident."

25 Is that what you're referring to?

1                   **MR. MacDONALD:** "Advised I thought it was  
2   an accident."

3                   **MR. ENGELMANN:** Yes.

4                   **MR. MacDONALD:** Yes. I haven't seen this  
5 with -- this note before, sir.

6                   **MR. ENGELMANN:** All right, no, no, fair  
7 enough. And there's a reference to it on the next page,  
8 "...and so it was a complete surprise," can't remember a  
9 conversation. He talks about the fact "confirmed only an  
10 incident," and then he disassociated himself, at the bottom  
11 of the page.

12                                       And we'll come back to C-56, but this was  
13 March the 9<sup>th</sup>. You weren't informed about this at the time?

14                   **MR. MacDONALD:** I don't recall.

15                   **MR. ENGELMANN:** Yes. And on March the  
16 10th ---

17                   **MR. MacDONALD:** Was this ---

18                   **MR. ENGELMANN:** --- and this is ---

19                   **MR. MacDONALD:** Was this the person who  
20 refused to give a -- refused to be a witness?

21                   **MR. ENGELMANN:** No. We'll come back to  
22 C-56, okay?

23                                       On March the 10<sup>th</sup>, which starts on page 798,  
24 Bates page 798, we have the follow-up meeting with  
25 Mr. Silmsler, and this -- she has written -- is advice you

1 gave her on March the 2<sup>nd</sup>, and she's acting upon it here on  
2 March the 10<sup>th</sup>.

3 And, sir, these notes go on for a couple of  
4 pages, in fact, several pages, and at the end of them, on  
5 Bates page 802, at the very end of the interview -- and  
6 they've been describing in some detail -- there's  
7 detail -- some detail on the these four allegations of Mr.  
8 Silmsers, about Father MacDonald, nothing about Ken  
9 Seguin.

10 Then, at the very end, at 14:00, there's a  
11 note that says:

12 "I don't think I can deal with this  
13 right now."

14 And then, right next to that, says, "Re:  
15 Seguin."

16 **MR. MacDONALD:** Right.

17 **MR. ENGELMANN:** Do you see that?

18 **MR. MacDONALD:** Yes.

19 **MR. ENGELMANN:** And might that have been  
20 related to you?

21 **MR. MacDONALD:** She told me that he was not  
22 in a position to deal with it at the time. She  
23 didn't -- he didn't want to elaborate, he would deal with  
24 it later, I think, is what she said, and I -- that's what I  
25 wanted her to encourage him not to do.

1                   **MR. ENGELMANN:** All right.

2                   **MR. MacDONALD:** It would have been a  
3 disclosure, you know, issue. The minute that we proceeded  
4 against Priest MacDonald, counsel would then be seeking  
5 elaboration on Probation Officer Seguin.

6                   **MR. ENGELMANN:** It would be fair to say that  
7 at that next meeting, that they were to have with the  
8 alleged victim, you wanted them to try and get more detail  
9 on Ken Seguin?

10                  **MR. MacDONALD:** I believe she tried.

11                  **MR. ENGELMANN:** Okay. And it appears that  
12 the answer was:

13                                "I don't think I can deal with this  
14                                right now."

15                  **MR. MacDONALD:** Right.

16                  **MR. ENGELMANN:** But you had hoped that she  
17 would come back with some information on him?

18                  **MR. MacDONALD:** Correct.

19                  **MR. ENGELMANN:** All right. Now, if we turn  
20 a couple of more pages, Bates page 808, the date is the 12<sup>th</sup>  
21 of March '93. We see at 1450 a telephone call and, the  
22 individual whose name is set out there at 1450, that's C-3.

23                  **MR. MacDONALD:** Okay.

24                  **MR. ENGELMANN:** All right? And this person  
25 alleged, at the bottom of that page, that he was sexually

1 molested by Father MacDonald, and I'm assuming, sir, if you  
2 were told about this individual, it was not at this time.

3 **MR. MacDONALD:** I was told about four  
4 individuals; two early on and two in June, July or August.

5 **MR. ENGELMANN:** Okay. I thought ---

6 **MR. MacDONALD:** I can't be more specific in  
7 time.

8 **MR. ENGELMANN:** Okay, we went through our  
9 OPP statement yesterday, and I thought you were -- you told  
10 us you were told about one or two ---

11 **MR. MacDONALD:** Early on, yes.

12 **MR. ENGELMANN:** No. Your statement is very  
13 clear; it was at the eve of the settlement.

14 **MR. MacDONALD:** Yes. I was -- well, at the  
15 eve of the settlement? Maybe in the summer, late -- late  
16 in the process, and two early in the process. It may not  
17 have been on the eve. I shouldn't have -- I don't know if  
18 it was the day before, but -- I don't think I meant  
19 the -- this meaning of "eve" literally, but I just meant  
20 late in the process.

21 **MR. ENGELMANN:** Okay.

22 **MR. MacDONALD:** I believe it was in the  
23 summer, and perhaps in August. Likely in August.

24 **MR. ENGELMANN:** All right. Well, yesterday,  
25 and I thought we'd gone over this, one or two alleged

1 victims, one who -- who was only willing to be a witness,  
2 or similar fact, and the other who wasn't willing to be  
3 involved?

4 **MR. MacDONALD:** Well, who -- right, who  
5 didn't have the wherewithal to ---

6 **MR. ENGELMANN:** Right.

7 **MR. MacDONALD:** --- get involved.

8 **MS. McINTOSH:** My recollection,  
9 Mr. Commissioner, is that Mr. MacDonald also referred to  
10 knowing about two individuals early on who -- names that  
11 Mr. Silmsler had given Ms. Sebalj, Constable Sebalj, who did  
12 not pan out, or something. I think that's what he said.

13 **THE COMMISSIONER:** M'hm. Oh, yes, that's  
14 right, yes.

15 **MR. ENGELMANN:** That I remember, sir. Is  
16 that ---

17 **MR. MacDONALD:** That's what I mean, yes.

18 **MR. ENGELMANN:** Oh, okay, all right. So as  
19 far as anything that was confirmatory ---

20 **MR. MacDONALD:** It was -- I learned of  
21 confirmatory stuff late in the process.

22 **MR. ENGELMANN:** Right; right at the end?

23 **MR. MacDONALD:** Yes. You know, I may  
24 have -- I think I used "the eve" literally to imply late in  
25 the process. I -- it may not have been the day before; it

1           may not have been the week before. I thought it was  
2           August. I believe it was sometime in the summer.

3                   **MR. ENGELMANN:** All right. Well, you'd  
4           agree with me, what we have set out here on March the 12<sup>th</sup>  
5           would be confirmatory or supportive?

6                   **MR. MacDONALD:** Well, I don't know what  
7           she -- you know, I don't know where this information went  
8           after March. Was this one of the two fellows that she told  
9           me about in the summer?

10                   **MR. ENGELMANN:** Sir, I can't help you there.  
11           I'm assuming it was because this is one that's  
12           confirmatory.

13                   **MR. MacDONALD:** Because, remember, she would  
14           have received names, got some information, followed  
15           information up, determined that the information was  
16           not -- you know, consistent with other external  
17           information, so there may have been a reason why she didn't  
18           tell me about this in March.

19                   I don't want to say -- I don't want you to  
20           be left with the impression that it was just, you know,  
21           negligence on her part to hold it off until the summer.

22                   **MR. ENGELMANN:** All I'm suggesting, sir, is  
23           it appears that C-3 and C-56 ---

24                   **MR. MacDONALD:** Are the two?

25                   **MR. ENGELMANN:** --- are two that are



1 confirmatory or supportive.

2 MR. MacDONALD: M'hm.

3 MR. ENGELMANN: And it appears that she's  
4 finding out about them in the first half of March, and  
5 you're not finding out about anything -- anything --that's  
6 supportive of or confirmatory ---

7 MR. MacDONALD: No. We were hearing  
8 more ---

9 MR. ENGELMANN: --- until very late?

10 MR. MacDONALD: Yes, the information that  
11 she kept reporting to me, tended -- all tended to be non-  
12 confirmatory or neutral.

13 MR. ENGELMANN: All right. And, sir, just  
14 to follow up on C-3, at Bates page 811, there's a reference  
15 to statement, "Yes it's gone this far. Testify? I don't  
16 know."

17 And then at Bates page 821, March 18<sup>th</sup>,  
18 another call with C-18, at which point he advises he's  
19 decided against giving a statement:

20 "Stated it was a difficult decision.

21 He discussed it with his lawyer."

22 So that's C-3; okay?

23 MR. MacDONALD: So that must be one of the  
24 persons I was told earlier wasn't inclined to make any  
25 allegations. I'm just speculating there, sir.

1                   **THE COMMISSIONER:** Yeah, okay. Please, sir,  
2 do not speculate.

3                   **MR. MacDONALD:** Yeah.

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

5                   **MR. MacDONALD:** Yeah.

6                   **MR. ENGELMANN:** All right. But it appears  
7 that within a week or so of your telling her to go out and  
8 get more information on March the 2<sup>nd</sup>, at least if her notes  
9 are accurate, within a couple of weeks in any event she has  
10 contacted a couple of individuals who have talked about  
11 being molested or indicated some kind of sexual touching,  
12 and she's also talked with Mr. Silmser, right?

13                   **MR. MacDONALD:** M'hm.

14                   **MR. ENGELMANN:** And you've advised us that  
15 the only thing that was confirmatory or was supportive or  
16 corroborative, if I can use any of those terms, was  
17 something about homosexual tendencies, Father MacDonald,  
18 that you're told -- and the words that were used in your  
19 statement were, "Eve of settlement, perhaps sometime in  
20 August". That's the only thing that's positive, that's  
21 supportive of Mr. Silmser's allegations?

22                   **MR. MacDONALD:** Yeah, that's my general  
23 recollection.

24                   **MR. ENGELMANN:** All right.

25                   **MR. MacDONALD:** If there were the occasional

1 neutral or, you know, slightly positive piece, I don't  
2 recall them but, you know, this may well have been reported  
3 to me, and I presume it was and I'm not supposed to  
4 presume. I won't say any more.

5 **MR. ENGELMANN:** All right.

6 And, sir, just so we know, at Bates page 824  
7 of the dedicated notes she confirms a meeting with C-56 and  
8 he goes into some detail about this over the next few pages  
9 and ends up providing a statement.

10 On Bates page 833, there's a reference to  
11 another individual who's not monikered but I'm not going to  
12 use his name -- just under the date, April 29<sup>th</sup> ---

13 **MR. MacDONALD:** Yeah, I see it. Yeah.

14 **MR. ENGELMANN:** --- '93. All right.

15 And this individual says some positive  
16 things about Father MacDonald, doesn't allege any abuse,  
17 but tells her at Bates page 834:

18 "I even went up to his room once and  
19 under his bed there was a box full of  
20 skin mags. Pat and I laughed about it.  
21 We were only 12. He said he was only  
22 human..."

23 Et cetera. Okay. And there's a summary of  
24 what he says later about being taken up to the bedroom with  
25 his friend and being shown these magazines.

1                   Were you told about this at all, sir?

2                   **MR. MacDONALD:** I might have been. I don't  
3 recall.

4                   **MR. ENGELMANN:** All right.

5                   Sir, so with the exception of Silmser's  
6 handwritten statement which we've looked at, 262, your  
7 information about the case is coming from these verbal  
8 updates from Constable Sebalj in the main; correct?

9                   **MR. MacDONALD:** In the main, yes. Yeah.  
10 Yeah, by far.

11                  **MR. ENGELMANN:** Right, and then you have  
12 some brief discussions, some with Staff Sergeant Brunet?

13                  **MR. MacDONALD:** Right.

14                  **MR. ENGELMANN:** And you have these brief  
15 discussions, a couple with Malcolm MacDonald and one with  
16 Jacques Leduc?

17                  **MR. MacDONALD:** Right.

18                  **MR. ENGELMANN:** All right.

19                  **MR. MacDONALD:** I believe there was a mixed  
20 communication. I told Garry Derochie late in '93, I think,  
21 that there are two names I didn't know about, but we were  
22 mixing up who those names were and this -- maybe part of it  
23 is because when initially they came to Heidi's attention,  
24 how she followed up and ultimately when she told me, there  
25 seems to have been a nexus in time.

1                   So I think I left Garry with the impression  
2                   that those two names weren't -- that the two allegations  
3                   weren't disclosed to me, when in fact they were. Just the  
4                   timing was out.

5                   **MR. ENGELMANN:** You're referring to  
6                   something that you've heard or read about Garry Derochie  
7                   and a comment about you?

8                   **MR. MacDONALD:** Right.

9                   **MR. ENGELMANN:** All right, we'll come to  
10                  that.

11                  **MR. MacDONALD:** I think that was -- I think  
12                  I read Garry's statement in the course of my preparations.

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

14                  So if we want, we can look very briefly.  
15                  There was a Crown brief prepared by her. This was after  
16                  the fact now -- a police brief, Crown brief. It's Exhibit  
17                  1249. So that would be in the same binder with your OPP  
18                  statement, which is 1233, and I hope you have that.  
19                  Counsel, it's Document Number 728535.

20                  **MR. MacDONALD:** Twelve-thirty-nine (1239)?

21                  **MR. ENGELMANN:** Twelve-forty-nine (1249),  
22                  sir.

23                  **THE COMMISSIONER:** Four-nine (49).

24                  **MR. MacDONALD:** Four-nine (49). Thank you.

25                  **MR. ENGELMANN:** Again, sir, this isn't

1 something you had the benefit of when you prepared your  
2 brief opinion in mid-September.

3 MR. MacDONALD: No, sir.

4 MR. ENGELMANN: This was, as we know,  
5 prepared over a weekend in early October. This is in the  
6 form of what you would normally get by way of a police  
7 brief?

8 MR. MacDONALD: Earlier, prior to charges  
9 being laid. We usually get occurrence reports and  
10 statements now.

11 MR. ENGELMANN: All right.

12 MR. MacDONALD: Back then, it would have  
13 been summaries -- verbal summaries of the occurrence report  
14 and statements by the officer.

15 MR. ENGELMANN: Okay, well, this is back  
16 then. This is October 6, 1993.

17 MR. MacDONALD: Yeah.

18 MR. ENGELMANN: Wasn't this how a police  
19 brief or Crown brief looked at the time?

20 MR. MacDONALD: Only after charges were  
21 laid.

22 MR. ENGELMANN: Only after charges were  
23 laid?

24 MR. MacDONALD: Yeah.

25 MR. ENGELMANN: So they never sought advice

1 before?

2 MR. MacDONALD: When -- they occasionally  
3 would before, but I wouldn't see an occurrence -- I  
4 wouldn't see a Crown brief until it was before the court.

5 MR. ENGELMANN: Well, if they were seeking  
6 advice on whether or not they had reasonable and probable  
7 grounds, they wouldn't give you a police brief with a  
8 synopsis and statements and things of that nature?

9 MR. MacDONALD: They would not have made the  
10 brief by that point. They would be -- they would have  
11 components of the brief, like an occurrence report and  
12 statements.

13 MR. ENGELMANN: All right.

14 MR. MacDONALD: And that's the stuff that  
15 the Crown -- the instructions for Crown Attorney is the  
16 Crown brief post-charge.

17 MR. ENGELMANN: All right, but that's what  
18 we have here, right? We have a general occurrence report  
19 and we have statements.

20 MR. MacDONALD: Right.

21 MR. ENGELMANN: So this is something that  
22 you might have received at the time if they were seeking  
23 advice on RP&G?

24 MR. MacDONALD: Not likely in '93. I would  
25 have received verbal summaries of them or details of them.

1                   **MR. ENGELMANN:** So let -- I'm trying to  
2 understand.

3                   **MR. MacDONALD:** The practice in 1993 was not  
4 to receive a prepared package of materials prior to charges  
5 being laid. We occasionally would, you know, look at a  
6 statement or an officer's occurrence report, but for the  
7 most part it was verbal report-back as opposed to a package  
8 like this. This was not the common practice in 1993.

9                   **MR. ENGELMANN:** Well, was it a common  
10 practice in 1993 to ask a Crown for advice on whether or  
11 not there were reasonable and probable grounds? Was that  
12 something they usually did themselves?

13                   **MR. MacDONALD:** In 1993 -- we seldom get  
14 questions that really are RPG decisions. The questions are  
15 more -- are virtually always investigative direction, which  
16 was the scenario here, or a prospect of conviction, which  
17 is what we now call it. We didn't have that policy  
18 standard identified but we -- back in 1993. As you know,  
19 that's a creature -- you and I talked about the policy  
20 evolution of prospect of conviction earlier.

21                   **MR. ENGELMANN:** The prospect of conviction  
22 is a bit later than 1993. I realize that.

23                   **MR. MacDONALD:** It's an exercise of Crown --  
24 but we still had to exercise Crown discretion at some --  
25 you know, that was done after charges were laid.



1                   **MR. ENGELMANN:** But, sir, in sensitive cases  
2                   or in cases where there might be some doubt or they may be  
3                   tentative on RP&G, did they not provide you with either an  
4                   occurrence or statements ---

5                   **MR. MacDONALD:** Usually ---

6                   **MR. ENGELMANN:** --- in the typical sense?

7                   **MR. MacDONALD:** Usually not. Homicides  
8                   would have been the exception ---

9                   **MR. ENGELMANN:** All right.

10                  **MR. MacDONALD:** --- in '93.

11                  **MR. ENGELMANN:** Well, we know in this case  
12                  that you didn't get an occurrence report ---

13                  **MR. MacDONALD:** No.

14                  **MR. ENGELMANN:** --- and statements before  
15                  you were asked to give your opinion in this particular  
16                  case.

17                  **MR. MacDONALD:** Opinion on what?

18                  **MR. ENGELMANN:** The letter you wrote on  
19                  September 14<sup>th</sup>, 1993.

20                  **MR. MacDONALD:** With -- right.

21                  **MR. ENGELMANN:** You did not get the  
22                  occurrence and the statements?

23                  **MR. MacDONALD:** No.

24                  **MR. ENGELMANN:** Right.

25                  **MR. MacDONALD:** No. Oh, one statement.

1                   **MR. ENGELMANN:** Right. And you had seen the  
2 statement several months earlier.

3                   **MR. MacDONALD:** Yes.

4                   **MR. ENGELMANN:** And, presumably, it would  
5 have been helpful for you, in actually writing an opinion,  
6 to have something like this 1249.

7                   **MR. MacDONALD:** I was comfortable in relying  
8 on Heidi's summaries back then, verbal. You know, you're  
9 asking me in 2008 with 20/20 vision, and I have to answer  
10 that by noting as well that had I known the baker's  
11 assistant had put strychnine in the pie, I wouldn't have  
12 eaten the apple pie.

13                   **MR. ENGELMANN:** All right. Sir, at Bates  
14 page 698, she summarizes the interview with C-3 and it goes  
15 on to Bates page 699. This, I would suggest to you, is one  
16 of them that would have been corroborative or supportive of  
17 Mr. Silmsler, not the other way around. Correct?

18                   **MR. MacDONALD:** Not necessarily, no.

19                   **MR. ENGELMANN:** How would this ---

20                   **MR. MacDONALD:** Well, I think that, for  
21 instance, without repeating it in detail, essentially, you  
22 know, another colleague of mine made the same -- reviewed  
23 the same materials and drew an opinion similar to what I  
24 did about credibility concerns and need for follow-up, and  
25 that speaks to the fact that when an officer formulates

1 RPGs, there are factors more so than just there's the bare  
2 bones allegation, lay the charge.

3 **MR. ENGELMANN:** But, sir, what I'm  
4 suggesting to you is this: This would have been one of the  
5 one or two that you're saying late in the day might be  
6 helpful towards what he's saying.

7 **MR. MacDONALD:** It might be helpful. It  
8 would have gone into the officer's RPGs assessment, I'm  
9 sure.

10 **MR. ENGELMANN:** And, sir, then we have a  
11 reference at Bates page -- I'm just showing there were  
12 references to these three that we looked at in the -- in  
13 her notes. At Bates page 710 we have the Will-Say  
14 statement for C-56, and at 715, the Will-State for the  
15 other fellow we looked at.

16 **MR. MacDONALD:** Sorry, what's your question?

17 **MR. ENGELMANN:** I'm just confirming, sir,  
18 that the three that we looked at briefly from her notes we  
19 see in this -- we see the Will-Say statements, and you'd  
20 expect them to be here in this brief document that she  
21 prepares in October.

22 **MR. MacDONALD:** I expect them to be in a  
23 brief document today that would have been presented to me.

24 **MR. ENGELMANN:** All right. Now, going back  
25 to her notes for a minute, if we can, and these are the

1 dedicated notes, if you turn to page ---

2 MR. MacDONALD: Is that 249 again?

3 MR. ENGELMANN: At 295. If you turn to page

4 H -- 834 ---

5 THE COMMISSIONER: Hold on, Mr. Engelmann.

6 MR. ENGELMANN: Oh, you should keep that

7 binder there.

8 MR. MacDONALD: Eight three four (834)?

9 MR. ENGELMANN: Yes.

10 THE COMMISSIONER: Two ninety-five (295).

11 MR. ENGELMANN: Eight three four (834).

12 THE COMMISSIONER: Okay, perfect.

13 MR. ENGELMANN: In fact, if you want to just  
14 back up a minute, if we go back to Bates page 824, we have  
15 a telephone call from C-56, and that's set out over the  
16 next five or so pages, and that's on April ---

17 THE COMMISSIONER: Third (3<sup>rd</sup>).

18 MR. ENGELMANN: --- 3<sup>rd</sup> ---

19 THE COMMISSIONER: Nineteen ninety-three  
20 (1993).

21 MR. ENGELMANN: Then on April 13<sup>th</sup>, we have a  
22 reference to picking up a statement and another phone call  
23 or two. Then on April 15<sup>th</sup> -- and this is Bates page 832 --  
24 we have another phone call.

25 Then April 29<sup>th</sup>, on the next Bates page, 833,

1 we have a phone call. And then on the following page --  
2 sorry, and that phone call goes on to page 834. And then  
3 after that, we don't have anything until a note at the top  
4 of Bates page 835, "telephone call from Malcolm MacDonald,"  
5 and that's in late August.

6 So, from April 29<sup>th</sup> to August 24<sup>th</sup>, a period  
7 of some four months, we don't have anything in these  
8 dedicated notes. And in the month of April we have the  
9 three or four telephone conversations.

10 **MR. MacDONALD:** Yeah.

11 **MR. ENGELMANN:** Okay, we have a lot of  
12 March.

13 **MR. MacDONALD:** Yeah.

14 **MR. ENGELMANN:** All right. So would it be  
15 fair to say that if you were talking to Constable Sebalj  
16 between late April and late August ---

17 **MR. MacDONALD:** Yeah, there wasn't much  
18 ---

19 **MR. ENGELMANN:** --- it wouldn't have been  
20 about active investigation.

21 **MR. MacDONALD:** I don't think it's fair to  
22 say that. I think that it would be follow-up that had gone  
23 nowhere. That's my sense of sort of the quieter time in  
24 terms of our exchanges. There is a -- I'm sure there must  
25 have been two months where either she was on vacation, I

1 was on vacation or she was at police college. I know she  
2 was at police college, because we spoke about it.

3 MR. ENGELMANN: Yes.

4 MR. MacDONALD: You'd know when; I don't.  
5 But it -- I think it would probably have been something  
6 like May or June.

7 MR. ENGELMANN: No, we know she was at  
8 police college for some time, we also know she was on  
9 vacation for some time ---

10 MR. MacDONALD: Yeah.

11 MR. ENGELMANN: --- but we have ---

12 MR. MacDONALD: That's what ---

13 MR. ENGELMANN: --- a period of four months  
14 ---

15 MR. MacDONALD: Yeah, and that ---

16 MR. ENGELMANN: --- sir, where it doesn't  
17 appear there's any action ---

18 MR. MacDONALD: And.

19 MR. ENGELMANN: --- at least according to  
20 her notes.

21 MR. MacDONALD: If Heidi was here today, she  
22 would tell you that there was contact with me for some of  
23 those four months.

24 MR. ENGELMANN: All right.

25 MR. MacDONALD: During some of those four

1 months. There just wasn't a lot of news to report.

2 **MR. ENGELMANN:** And, sir, from the contact,  
3 at least in her dedicated notes on 835, she's getting  
4 called by Malcolm MacDonald and she's also getting called  
5 by David Silmser.

6 **MR. MacDONALD:** Yeah.

7 **MR. ENGELMANN:** Do you see the note from  
8 him?

9 **MR. MacDONALD:** Yeah.

10 **MR. ENGELMANN:** "Returned telephone call  
11 to Dave Silmser requesting progress  
12 report."

13 **MR. MacDONALD:** M'hm.

14 **MR. ENGELMANN:** Okay? It's been some time.  
15 We know, if we look at her notes, they haven't met since  
16 March the 10th.

17 **MR. MacDONALD:** Well, yeah, you can't  
18 extrapolate that they haven't spoken in between, though.

19 **MR. ENGELMANN:** All right.

20 **MR. MacDONALD:** I wouldn't recommend you do  
21 that.

22 **THE COMMISSIONER:** Well, hold on a minute.  
23 Are you telling me that a police officer would not put in  
24 her notebook conversations that she had with a victim?

25 **MR. MacDONALD:** There are a number of

1           conversations that she's made reference to in one line, so  
2           I think it's -- I believe that she had more contact with  
3           him, just from my conversation with her; that's the sense I  
4           had, sir.

5                       **MR. ENGELMANN:** All right. And, sir, you  
6           believe that you would have had one or two updates from her  
7           sometime between April 29th and August 24th?

8                       **MR. MacDONALD:** They would -- they -- I  
9           wouldn't describe them as -- they would be issue-specific  
10          updates.

11                      **MR. ENGELMANN:** All right. And, sir, we've  
12          looked at a number of things that you weren't not aware of  
13          prior to your writing your letter of September 14<sup>th</sup>. And  
14          that letter's Exhibit 301 that you have, but we know you  
15          hadn't seen any police officer notes, so you weren't aware  
16          of the details that had been given about Ken Seguin on  
17          January 28<sup>th</sup>. We know you weren't aware of whether or not a  
18          civil suit had been started. We know you weren't aware of  
19          ---

20                      **MR. MacDONALD:** I presumed -- I presumed it  
21          had started.

22                      **MR. ENGELMANN:** Fair enough.

23                      **THE COMMISSIONER:** But you know in fact it  
24          hadn't now. Do you know in fact that ---

25                      **MR. MacDONALD:** I know a Notice of Action



1       hadn't been filed.

2                   **THE COMMISSIONER:** So no action.

3                   **MR. MacDONALD:** Well, if you're negotiating,  
4       you're negotiating in contemplation of litigation, so ---

5                   **MR. ENGELMANN:** Sir, at the time, you had no  
6       information about whether a civil suit had been filed.

7                   **MR. MacDONALD:** No, I ---

8                   **MR. ENGELMANN:** And you now know that none  
9       ever was.

10                  **MR. MacDONALD:** Right.

11                  **MR. ENGELMANN:** All right. You didn't know  
12       that Mr. Silmsler was unrepresented throughout those  
13       negotiations, if I can call them that, with Malcolm  
14       MacDonald?

15                  **MR. MacDONALD:** I presumed that he was  
16       represented when serious civil resolution discussions took  
17       place.

18                  **MR. ENGELMANN:** You presumed, but you were  
19       wrong. You didn't know that. You didn't know it at the  
20       time.

21                  **MR. MacDONALD:** I thought I was -- I saw  
22       Sean Adams' name in the loop, which seemed to suggest that  
23       he ---

24                  **MR. ENGELMANN:** He was there for the       IL  
25       ---

1                   **MR. MacDONALD:** --- at some point, yes.

2                   **MR. ENGELMANN:** Okay. You never saw the  
3 settlement documents?

4                   **MR. MacDONALD:** No, never did.

5                   **MR. ENGELMANN:** All right. You didn't know  
6 about Monsignor Schonenbach.

7                   **MR. MacDONALD:** I don't believe so, no.

8                   **MR. ENGELMANN:** You didn't know about the  
9 Diocese initiating a meeting with him or that the meeting  
10 took place.

11                   **MR. MacDONALD:** My impression was that he  
12 initiated them, that the complainant initiated them.

13                   **MR. ENGELMANN:** I know, I'm just telling you  
14 things that we've now found out that you didn't know about.

15                   **MR. MacDONALD:** Yeah.

16                   **MR. ENGELMANN:** All right.  
17 You didn't know that Monsignor McDougald had  
18 suggested they engage in settlement discussions that Mr.  
19 Silmsler didn't want to entertain at the time?

20                   You didn't know about anything that was  
21 confirmatory or corroborative at all until late; whether  
22 it's the eve of the settlement or some time in August?

23                   **MR. MacDONALD:** I knew of some elements of  
24 corroboration but not that were, you know, not the ones you  
25 pointed out to me. I don't recall either of those two

1 letters or references in the notes.

2 **MR. ENGELMANN:** All right.

3 Would it be fair to say, sir, if you had  
4 known some of these facts -- and just take a look at your  
5 letter, Exhibit 301 -- would it be fair to say that your  
6 opinion might have been somewhat different?

7 **MR. MacDONALD:** I doubt it.

8 **MR. ENGELMANN:** I'm sorry?

9 **MR. MacDONALD:** I doubt it. I would have  
10 drafted the letter perhaps differently, but the conclusion  
11 that I drew, others in my -- other members of the Criminal  
12 Law division have drawn the same conclusion with knowledge  
13 of all this stuff, so I would presume that I would have  
14 drawn the same conclusion as Mr. Griffiths.

15 **MR. ENGELMANN:** Well, sir, let's just go to  
16 the letter. I've asked you to look at it and I thought  
17 maybe you wouldn't have written it the same way, so let's  
18 look at it.

19 **MR. MacDONALD:** Yeah, I would have -- I  
20 would have written it dramatically differently, you know --  
21 -

22 **MR. ENGELMANN:** Whether or not your advice  
23 would have been different on reasonable and probable  
24 grounds, okay, I'm suggesting to you that your letter would  
25 be quite different.

1                   **MR. MacDONALD:** Well, my letter would have  
2                   made reference to an RPGs assessment.

3                   **MR. ENGELMANN:** All right. Well, your  
4                   letter, have a look at it, sir. It's on the screen.

5                   The sentence:

6                                 "Grounds are now even further  
7                                 obfuscated by the fact that he has  
8                                 evidently used this threat of criminal  
9                                 prosecution as a means of furthering  
10                                his efforts to gain monetary  
11                                settlement."

12                   **MR. MacDONALD:** Yeah.

13                   **MR. ENGELMANN:** Would you have used that  
14                   sentence, sir, if you had known some of these facts?

15                   **MR. MacDONALD:** Well, if you're asking what  
16                   conclusions I would have drawn on RPGs, I would have drawn  
17                   the same -- I think, the same conclusions would have been  
18                   drawn by anyone in 1994 as Mr. Griffiths had done.

19                                But I wasn't dealing with RPGs in this  
20                   letter, I was dealing with the -- a CYA letter for Luc  
21                   where I included the fact that -- I made those references  
22                   to his unreliability as a witness and I would have -- that  
23                   sentence or those two sentences, I would have drafted  
24                   differently.

25                   **MR. ENGELMANN:** All right. You would not

1 have written that sentence?

2 MR. MacDONALD: Would have drafted it  
3 differently.

4 MR. ENGELMANN: You certainly wouldn't have  
5 said -- you wouldn't ---

6 MR. MacDONALD: It was a very harsh -- that  
7 sentence was a very harsh indictment on poor Mr. Silmsen.

8 MR. ENGELMANN: Right. And it was based on  
9 the facts as you knew them, not as some of the facts that  
10 we looked at from her notes.

11 MR. MacDONALD: Right. I don't know if, you  
12 know, I'm speculating now.

13 Would I have written the letter or had I  
14 known everything I know, would I have shifted off --  
15 shifted it off to Peter -- Bob Pelletier by that point?  
16 You know, that's speculation.

17 Remember we're just -- we're not dealing  
18 with RPGs. Luc and Heidi knew they didn't have RPGs.  
19 That's why I make reference in my CYA letter and try to  
20 help them both by referring both to the inability to force  
21 the victim to testify against his wishes, as well as their  
22 conclusions on RPGs.

23 MR. ENGELMANN: And, sir, the sentence:

24 "The case is fraught with, due to his  
25 own conduct, a very non-credible

1                   complainant saddled with an evident  
2                   ulterior motive for making these  
3                   allegations."

4                   **MR. MacDONALD:** Yeah, I wouldn't have -- I  
5                   wouldn't have written the sentence that way.

6                   **MR. ENGELMANN:** And, sir, particularly if  
7                   you had seen the settlement document, I assume this letter  
8                   would be completely different?

9                   **MS. McINTOSH:** You know, with respect, I  
10                  think the witness has already said that he wasn't writing  
11                  an RPG opinion. That was sort of -- if I can put it in  
12                  lawyer's language -- an alternative argument. He was  
13                  confirming a Crown policy and he was adding a reference to  
14                  the officers' own tentative RPGs in order to cover off that  
15                  issue at the request of the officers.

16                  So I don't think it's fair to say the letter  
17                  would have been completely different. He's already said he  
18                  would have redrafted some of these provisions, but the  
19                  letter wouldn't have been completely different.

20                  **THE COMMISSIONER:** Well, but ---

21                  **MR. ENGELMANN:** But, sir, the letter -- and  
22                  I'll just go from what Ms. McIntosh just said -- the letter  
23                  was primarily to address this policy about compelling  
24                  victims, right?

25                  **MR. MacDONALD:** When I spoke to Luc on the

1 telephone, he wanted a CYA letter and he wanted me to -- in  
2 both the CYA letter because the -- his brass, if I can use  
3 that term, were looking for answers about where this  
4 investigation was at, why is it -- why had it taken so  
5 long. I think that was sort of the pressure Luc was under  
6 or at least if he wasn't, he expected to be under it.

7 And so that's why I made reference to both  
8 the practice of not forcing a victim to testify on a sexual  
9 assault case if he didn't have the desire or wherewithal to  
10 do it and, secondly, that he had done an investigation and  
11 still, irrespective of the desires of the complainant, was  
12 still lacking dramatically in RPGs.

13 And if I had known some of the stuff you've  
14 just outlined to me in the last hour or so, I would have --  
15 that would have been drafted differently; that last --  
16 those last two -- that last paragraph.

17 **MR. ENGELMANN:** But, sir, just on the policy  
18 -- let's forget about the RPG because I want to ask you  
19 about that because there's some discussion here with other  
20 witnesses about it being tentative and about seeking the  
21 advice of an outside Crown -- but with respect to you,  
22 you're being written to -- it's the exhibit before, Exhibit  
23 300.

24 "It's my understanding after our  
25 conversation, your office does not

1                                   prosecute without the full cooperation  
2                                   of the victim."

3                                   And, of course, he's sending you not the  
4                                   civil -- not the release document itself, just this  
5                                   direction that he doesn't want to proceed and you're saying  
6                                   it is our policy not to compel.

7                                   If you had known about the illegal provision  
8                                   in the settlement, you would have said something  
9                                   differently about that policy not to compel as well?

10                                  **MR. MacDONALD:** Yes, that's not Luc Brunet's  
11                                  fault for not telling me. You should presume that I should  
12                                  have told Luc to ask for it. I didn't ask for it because  
13                                  you will recall my evidence from yesterday.

14                                  **MR. ENGELMANN:** Right. He didn't have it  
15                                  and you didn't have it?

16                                  **MR. MacDONALD:** Right.

17                                  **MR. ENGELMANN:** And I'm suggesting that this  
18                                  policy about victims would have been different if you'd  
19                                  known?

20                                  **MR. MacDONALD:** Right.

21                                  **MR. ENGELMANN:** All right.

22                                  **MR. MacDONALD:** I'd be writing to the Law  
23                                  Society instead of to Luc Brunet.

24                                  **THE COMMISSIONER:** Well, one question before  
25                                  we leave.



1 Did you say that:

2 "...by the fact that he has evidently  
3 used this threat of criminal  
4 prosecution as a means of furthering  
5 his efforts to gain monetary  
6 settlement."

7 Isn't that a criminal act?

8 **MR. MacDONALD:** No. I mean, if he has an  
9 ulterior motive and then that's to use the criminal case  
10 for extra heat on the civil action. I mean, are you  
11 referring to obstruction of justice, sir? I didn't -- I  
12 don't think that -- it may or may not be, but I don't think  
13 that that's dispositive (sic) of an act of using leverage  
14 alone, I don't think it would constitute a -- it's -- it  
15 would cause me to hold my nose, but I don't think that I  
16 could go to trial before Your Honour with -- with just  
17 that.

18 I'd need an admission from him that of his  
19 intention to -- to lead the police astray and I didn't have  
20 any of that. I just had -- Heidi and Luc and I held the  
21 view that maybe we'd been taken for a patsy or maybe this  
22 poor man had just decided that he had enough with the whole  
23 thing.

24 **THE COMMISSIONER:** Okay, thank you. Let's  
25 take a break.

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

3                   This hearing will resume at 11:30 a.m.

4                   --- Upon recessing at 11:12 a.m./

5                   L'audience est suspendue à 11h12

6                   --- Upon resuming at 11:31 a.m./

7                   L'audience est reprise à 11h31

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

10                   This hearing is now resumed, please be  
11                   seated. Veuillez vous asseoir.

12                   **THE COMMISSIONER:** Go ahead, Mr. Engelmann.

13                   **MURRAY MACDONALD, Resumed/Sous le même serment:**

14                   --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.**  
15                   **ENGELMANN (cont'd/suite):**

16                   **MR. ENGELMANN:** Mr. MacDonald, before the  
17                   break, you mentioned a reference to Staff Sergeant  
18                   Derochie's notes. I thought I'd take you there if I could.

19                   **MR. MacDONALD:** Okay.

20                   **MR. ENGELMANN:** It is Exhibit 1293 and it  
21                   may be in the binder with your -- no? The Clerk is shaking  
22                   her head. We're going to have to pull out another one.

23                   **MR. MacDONALD:** Okay.

24                   **MR. ENGELMANN:** The Bates page reference  
25                   that I believe you were referring to, sir, is 7113426. It

1 is also page 54 of his handwritten notes.

2 MR. MacDONALD: I was trying to -- I brought  
3 it up in the context of trying to apologize to him for ---

4 MR. ENGELMANN: Well, we'll just take a look  
5 at it.

6 THE REGISTRAR: Bates page is?

7 MR. ENGELMANN: Sorry, the Bates page is ---

8 THE REGISTRAR: The exhibit?

9 MR. ENGELMANN: Exhibit is 1293. Document  
10 Number is 728438.

11 THE COMMISSIONER: And what page?

12 THE REGISTRAR: Bates page last three  
13 digits, please?

14 MR. ENGELMANN: Four two six (426).

15 THE COMMISSIONER: Thank you.

16 MR. ENGELMANN: So if we have a look at it,  
17 sir, it says -- this is -- by the way, the context is he's  
18 having a meeting with then-Chief Shaver. The note is  
19 November 4<sup>th</sup> but it's actually from earlier in October. And  
20 he says:

21 "The Chief again informed me that the  
22 Crown, Murray MacDonald, had not been  
23 fully informed when he gave an opinion  
24 to Sebalj on proceeding with charges  
25 against the wishes of the victim. He

1 did not know that other victims of  
2 Father MacDonald had been located. The  
3 Chief has since confirmed that the  
4 Crown's advice may have been different  
5 if he had possessed all information."

6 So apparently this is the Chief  
7 communicating to Staff Sergeant Derochie his conversations  
8 or conversation with you.

9 **MR. MacDONALD:** Right, yeah.

10 **MR. ENGELMANN:** All right. So do you recall  
11 having a conversation, not with Staff Sergeant Derochie but  
12 with Chief Shaver?

13 **MR. MacDONALD:** Yes, I do, yeah.

14 **MR. ENGELMANN:** And do you recall telling  
15 Chief Shaver that your advice might have been different if  
16 you had possessed all information?

17 **MR. MacDONALD:** I don't recall but I might  
18 have said that, yes.

19 **MR. ENGELMANN:** All right.

20 **MR. MacDONALD:** I wouldn't be surprised if I  
21 did.

22 **MR. ENGELMANN:** All right. And we know that  
23 you were not fully informed.

24 **MR. MacDONALD:** Not in all the details, no.

25 **MR. ENGELMANN:** Sir, with respect to ---

1                   **MR. MacDONALD:** I never asked Heidi to, you  
2 know, itemize for me every detail. I did not ask her for a  
3 report -- you know, an Occurrence Report or something.

4                   **MR. ENGELMANN:** All right.

5                   **MS. McINTOSH:** Mr. Commissioner, I just -- I  
6 don't know if the witness's attention was drawn, and I  
7 apologize for -- I was still getting organized -- to the  
8 portion of the statement where it says:

9                                   "...an opinion on proceeding with  
10                                   charges against the wishes of the  
11                                   victim."

12                   So I just wanted to make sure that the  
13 witness had his attention drawn to that part.

14                   **MR. ENGELMANN:** I can assure my friend I  
15 read the full paragraph.

16                   Mr. MacDonald, I understand that you had a  
17 number of contacts with several individuals in the fall of  
18 1993 about this matter, after your letter of September 14<sup>th</sup>;  
19 correct?

20                   **MR. MacDONALD:** Yes.

21                   **MR. ENGELMANN:** And they include, for  
22 example, Chief Shaver. You would have met with him?

23                   **MR. MacDONALD:** Cornwall Police personnel,  
24 yes.

25                   **MR. ENGELMANN:** Right. You would have met

1 with Perry Dunlop?

2 MR. MacDONALD: Yes.

3 MR. ENGELMANN: You might have met with  
4 Staff Sergeant Lortie?

5 MR. MacDONALD: Yes.

6 MR. ENGELMANN: So we'll get into some of  
7 those interviews in just a minute, but what I wanted to ask  
8 you first was -- I understand that there was an issue about  
9 consulting an outside Crown, and it's referenced in ---

10 MR. MacDONALD: Yes.

11 MR. ENGELMANN: --- in your statement.

12 MR. MacDONALD: Right.

13 MR. ENGELMANN: It's also referenced in  
14 other people's notes.

15 MR. MacDONALD: Yes.

16 MR. ENGELMANN: And, as I understand it,  
17 there was an issue of a possible conflict or perceived  
18 conflict, and I just want to explore that a little bit with  
19 you.

20 MR. MacDONALD: Okay.

21 MR. ENGELMANN: Because it appears that you  
22 spoke, at some point between February when you find out  
23 about this -- '93 -- and September 14<sup>th</sup>, '93 when you write  
24 your letter, you spoke to another Crown attorney by the  
25 name of Robert Pelletier.

1                   **MR. MacDONALD:** Yes.

2                   **MR. ENGELMANN:** And you either met him  
3 somewhere or you contacted him to advise him about this  
4 case?

5                   **MR. MacDONALD:** I think we spoke at the  
6 Spring Education Conference, the Crown attorneys' Spring  
7 Education Conference.

8                   **MR. ENGELMANN:** And your reason for  
9 contacting him about this matter, what would that have  
10 been?

11                   **MR. MacDONALD:** To let him know that if the  
12 police developed a case, charges against the priest, that I  
13 would have him review the case for, I guess what we would  
14 today call prospect of conviction.

15                   **MR. ENGELMANN:** And did you explain to him  
16 why you would want him to do that?

17                   **MR. MacDONALD:** I don't -- I just know -- it  
18 was a very brief -- from my recollection it was a very  
19 brief heads-up, "By the way, I may send you something."

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

21                   **MR. MacDONALD:** "Yeah, whatever. Thanks a  
22 lot. Have a" -- you know, "How about those Canadiens?"

23                   **MR. ENGELMANN:** Okay. You would not have  
24 told him anything about work you might have done on a  
25 Diocesan committee?

1                   **MR. MacDONALD:** I don't recall.

2                   **THE COMMISSIONER:** What was your perceived -  
3                   - why did you say that?

4                   **MR. MacDONALD:** About a Diocesan committee?

5                   **THE COMMISSIONER:** No. Why did you think  
6                   you might have to send it over to him?

7                   **MR. MacDONALD:** Because if it was coming to  
8                   charge I -- I didn't -- I just wanted to give him as much  
9                   heads-up as I could, I guess.

10                  **THE COMMISSIONER:** No, no, no, no. Never  
11                  mind that. What was the reason for your conflict?

12                  **MR. MacDONALD:** Oh. I didn't have a  
13                  conflict. I don't know if I used the word "conflict." I  
14                  didn't have a legal conflict but I was concerned about an  
15                  appearance of bias by me.

16                  **MR. ENGELMANN:** All right. Well, whether  
17                  it's a real conflict or whether it's real bias or a  
18                  perception of bias, what was your concern? Why another  
19                  Crown?

20                  **MR. MacDONALD:** I didn't -- I was concerned  
21                  that if I took on a case, especially if it was of a -- sort  
22                  of a high-profile member of the community, and it appeared  
23                  that I was witch-hunting, that it would cast on me  
24                  personally and on the Crown Attorney's Office an appearance  
25                  of witch-hunting.



1                   **MR. ENGELMANN:** Why would there be any  
2 appearance of witch-hunting if you're prosecuting a priest?

3                   **MR. MacDONALD:** Because two and a half years  
4 ago, or a year and a half prior to that, I guess, I had  
5 recommended on a committee that I was sitting on, a  
6 volunteer committee with the Diocese, to do exactly the  
7 opposite of what the Church did in this instance.

8                   **MR. ENGELMANN:** Okay. So can you just very  
9 briefly give us a sense as to -- you were on a community  
10 advisory committee? Is that correct?

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

12                   **MS. LEVESQUE:** Mr. Commissioner, I object to  
13 questions being asked of what recommendation -- I assume  
14 Commission counsel will want to ask questions of the  
15 witness as to what recommendations were done as a result of  
16 sitting on the -- a Diocese committee. Our clients were  
17 not asked any questions regarding this committee when they  
18 testified here.

19                   Commission counsel was aware of the document  
20 or the recommendations and my position is that it's unfair  
21 as our clients were never asked any questions when they  
22 testified here ---

23                   **THE COMMISSIONER:** So ---

24                   **MS. LEVESQUE:** --- regarding  
25 recommendations.

1                   **THE COMMISSIONER:** Regarding  
2                   recommendations?

3                   **MS. LEVESQUE:** From a committee which this  
4                   witness would have sat on.

5                   **THE COMMISSIONER:** And would this be  
6                   controversial?

7                   **MS. LEVESQUE:** Possibly.

8                   **THE COMMISSIONER:** Possibly. Mr. Engelmann?

9                   **MR. ENGELMANN:** This appears to be a --  
10                  we've had these comments before. I just want to repeat  
11                  this is not a trial. It's not an adversarial process.

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

13                  **MR. ENGELMANN:** I believe this is a  
14                  reference to *Browne v. Dunn* or perhaps a backhand reference  
15                  to it. I'm asking the witness what he did. I mean this  
16                  can be addressed in submissions if necessary. I don't  
17                  actually understand, quite frankly, the objection right now  
18                  other than I didn't, I guess, put it -- or we didn't,  
19                  counsel team, put it to a Diocese witness whether Murray  
20                  MacDonald was on a committee and whether or not the  
21                  committee made recommendations.

22                  I certainly didn't think this was  
23                  controversial but I'll let my friend speak more if she  
24                  wishes.

25                  **MS. LEVESQUE:** The evidence was not

1 canvassed with our clients when they testified here,  
2 although Commission counsel were aware of the document and  
3 its recommendations.

4 **THE COMMISSIONER:** Well, you see, I don't  
5 know ---

6 **MS. LEVESQUE:** It's unfair that we have not  
7 had an opportunity to respond.

8 **THE COMMISSIONER:** Unfair?

9 **MS. LEVESQUE:** Commission counsel, I  
10 suspect, is going to lead *viva voce* evidence regarding  
11 recommendations that were made by this witness.

12 **THE COMMISSIONER:** Well, no. Well, maybe.  
13 I think what we're looking at really is not for necessarily  
14 the truth of its contents but how it affected his mind and  
15 how he perceived it as a conflict for him to continue on in  
16 a criminal case.

17 **MS. LEVESQUE:** If it relates only to the  
18 conflict then that's appropriate.

19 **THE COMMISSIONER:** Well, I think that's  
20 where we're at.

21 **MS. LEVESQUE:** But if any evidence is to be  
22 led regarding recommendations that were made, then ---

23 **THE COMMISSIONER:** Well, fine, thank you.  
24 Go ahead, Mr. Engelmann.

25 **MR. ENGELMANN:** Why don't we just see where

1           this goes? I'm not intending to put a document in with  
2           respect to this, if that's my friend's concern. There were  
3           some documents in the list but ---

4                   **MR. MacDONALD:** The document you showed me  
5           wasn't my document either.

6                   **MR. ENGELMANN:** Sir, all I'm trying to  
7           understand is -- and I think the Commissioner asked you a  
8           question as well -- is why you thought your work on a  
9           Diocesan -- was it a committee or a subcommittee?

10                   **MR. MacDONALD:** It was -- I think it was a -  
11           - be fair to describe it as a subcommittee of Ecclesia  
12           2000, which was a pre-Y2K review of a number of Diocesan  
13           and Canadian Catholic Church practices. I was called upon,  
14           not for my legal advice, but I was asked by my parish  
15           priest if -- he was trying to round up some folks who he  
16           thought could give meaningful or different -- you know,  
17           different insights and contexts, and so he asked my spouse  
18           and I to sit on committees. She sat on one; I sat on  
19           another subcommittee.

20                   **MR. ENGELMANN:** All right. So what is the  
21           issue with respect to your involvement? What were you  
22           concerned about or what did you do?

23                   **MR. MacDONALD:** I was concerned that the  
24           Church would have the impression that I was leading the  
25           charge or advocating a position that I had commented on and

1 was -- and had recommended it was not adopted at Ecclesia  
2 2000. I didn't want to be perceived as a witch-hunter.

3 I didn't want the Ministry division to be  
4 encumbered by that potential appearance of bias, so I would  
5 have, at the point where police had a charge -- I would  
6 have asked another Crown Attorney, and I thought Bob  
7 Pelletier, given Alfred and his knowledge of the operations  
8 of the institution of the Church, would be the best Crown  
9 to go to for that.

10 **MR. ENGELMANN:** All right. So this is  
11 somewhat cryptic. I'm just trying to understand. You ---

12 **MR. MacDONALD:** Can I tell you about the ---

13 **MR. ENGELMANN:** You were taking a position  
14 that was contrary to a Canada-wide position by the Catholic  
15 Church or a local Diocese position?

16 **MR. MacDONALD:** I thought it was a local  
17 Diocese position.

18 **MR. ENGELMANN:** All right.

19 **MR. MacDONALD:** I don't want to be cryptic.  
20 I just didn't want to go any further than perhaps I'm  
21 allowed to, but I will elaborate if you wish, sir.

22 **THE COMMISSIONER:** Maybe I can help you out  
23 here.

24 If I understand you correctly, what you're  
25 saying is, "Look, this committee took a position with

1       respect to civil settlements with respect to abuse  
2       victims", that you were in the minority on?

3               **MR. MacDONALD:** Well, the subcommittee made  
4       a recommendation and when it got to the day of vote ---

5               **THE COMMISSIONER:** Right.

6               **MR. MacDONALD:** --- that recommendation was  
7       not on the ballot.

8               **THE COMMISSIONER:** Okay, so, and that  
9       recommendation generally dealt with victims of sexual abuse  
10      and civil settlements, generally speaking?

11              **MR. MacDONALD:** It dealt with the primary --  
12      in the context of, you know, the greater public interest as  
13      -- this is just -- I'm not giving a legal opinion now. I'm  
14      just giving a ---

15              **MR. ENGELMANN:** No, just your personal view.

16              **MR. MacDONALD:** Yeah, and I thought that it  
17      was concern for the public's impression of shuffling people  
18      off in the dark of the night that we should very much show  
19      -- we as Catholics should very much show the public that we  
20      were being -- what's the word I'm looking for?

21              **THE COMMISSIONER:** Open, transparent?

22              **MR. MacDONALD:** Transparent.

23              And therefore the recommendation was allow  
24      the police -- cooperate with and allow the police  
25      investigation to transpire at the outset.

1                   **MR. ENGELMANN:** All right.

2                   **THE COMMISSIONER:** Okay, and so because of  
3 that, you were afraid or concerned that the Diocese would  
4 say, "Well, look at him now. He's taken one of our poor  
5 priests and he's getting back at us by, instead of  
6 prosecuting, persecuting."

7                   **MR. MacDONALD:** Well, yeah. "This man and  
8 his personal" -- well, they would have mixed up my  
9 professional and personal opinions ---

10                   **THE COMMISSIONER:** Sure.

11                   **MR. MacDONALD:** --- potentially and said,  
12 "This man has already advocated that  
13 the police investigation/Crown should  
14 trump other proceedings and, therefore,  
15 he is biased and he's already in  
16 writing confirmed this bias by way of  
17 signing that".

18                   And, frankly, not only did I -- was a  
19 signatory, I was the main mover on our subcommittee when it  
20 came to that particular recommendation that we sent off.

21                   **MR. ENGELMANN:** All right. So this was  
22 something you were outspoken on and you thought might be  
23 known.

24                   **MR. MacDONALD:** I felt very strongly about  
25 it and when it didn't make the ballot, my spouse and I

1 walked out of the session.

2 MR. ENGELMANN: And how did you think this  
3 would -- how did you think this would possibly impact your  
4 prosecution or your office's prosecution of a case?

5 MR. MacDONALD: Appearance of bias.

6 MR. ENGELMANN: Okay, and that this could be  
7 raised by a defence counsel or ---

8 MR. MacDONALD: There are certain counsel in  
9 the room who would have had a field day with that point.

10 MR. ENGELMANN: All right.

11 MR. MacDONALD: Certain counsel in this  
12 room. Names are not important.

13 MR. ENGELMANN: All right. Okay.

14 THE COMMISSIONER: Ms. McIntosh would never  
15 do that to you.

16 (LAUGHTER/RIRES)

17 MR. ENGELMANN: All right.

18 And this concern about wanting transparency  
19 -- so presumably you wanted any settlements to be  
20 transparent, not have gag orders or confidentiality  
21 provisions?

22 MR. MacDONALD: The lawyer in me knew that  
23 it was lawful.

24 MR. ENGELMANN: Right.

25 MR. MacDONALD: The citizen in me, the



1 moralist in me -- I'm not the most moralist person in the  
2 world, don't get me wrong -- but at least on that point I  
3 was offended at a philosophical level. Even though the  
4 lawyer in me said I know it's allowed, I just didn't think  
5 it was a wise thing to do.

6 MR. ENGELMANN: And you talk about this a  
7 little bit in your statement to the OPP, if we could look  
8 at it briefly. It's 1233.

9 MR. MacDONALD: Thank you.

10 MR. ENGELMANN: I'll just be a moment, sir.

11 MR. MacDONALD: This is the '94 statement?

12 MR. ENGELMANN: Yes, it's your statement in  
13 July of '94. It starts at Bates page 851 which is page 17.

14 MR. MacDONALD: Thank you.

15 MR. ENGELMANN: And is this what you refer  
16 to, the middle of the page where you talk about "Ecclesia  
17 2000 paper"?

18 MR. MacDONALD: Yes, sir.

19 MR. ENGELMANN: And you claim you expressed  
20 a bad taste for certain types of settlements.

21 MR. MacDONALD: Well, yes. It's there,  
22 yeah.

23 MR. ENGELMANN: Yeah, okay.

24 And, sir, then you go on and you say at the  
25 following page ---

1                   **MR. MacDONALD:** Bates 5 -- 852?

2                   **MR. ENGELMANN:** Yeah, 852:

3                                "I told her..."

4                   And I believe that's Ms. Sebalj, Constable  
5                   Sebalj:

6                               "...that I sat on the committee, that I  
7                               wanted to cover my tail if this case  
8                               went to a trial or went to charge, if  
9                               it went to trial and if I prosecuted,  
10                              I'd want an outside Crown to confirm  
11                              the charge or review the charge after  
12                              it was laid or it was about to be laid  
13                              with the officer."

14                   **MR. MacDONALD:** I told her there was a  
15                   potential for bias and that's why I'd farm it out. I don't  
16                   know what words I used. I may have used those words or --  
17                   at any rate, I relayed to her the concern for bias. She  
18                   knew it and Luc Brunet knew it too.

19                   **THE COMMISSIONER:** So I guess my question  
20                   is, you have an honest belief that there is a -- maybe a  
21                   bias, an appearance of bias. Why did you get involved in  
22                   this file at all? Why didn't you give it either to  
23                   Mr. Simard in your office or farm it out right away and  
24                   wash your hands of it, so to speak?

25                   **MR. MacDONALD:** The concern about giving

1 advice to the police didn't relate to the bias. I was  
2 simply waiting to turn it over -- I mean, our office may  
3 well have even prosecuted the case ultimately. I don't  
4 know that the bias -- once Bob Pelletier had reviewed the  
5 prospect of conviction, if I can use the current term.

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

7 **MR. MacDONALD:** But I saw no difficulty with  
8 assisting in the investigation. Who would possibly suggest  
9 -- in my mind, the last thing that I ever expected, if I  
10 can refer back to the strychnine in the pies analogy, is  
11 that for anybody would think that I was going easy on the  
12 Church.

13 **THE COMMISSIONER:** No, but the Church may  
14 still say, "Look, who was working in the background of all  
15 of this was this Crown Attorney, and he worked directly  
16 with the police to make sure that the charges were going to  
17 get laid".

18 **MR. MacDONALD:** Help with the investigation.  
19 I didn't see that as the same as the Crown taking carriage  
20 of the file after we had it in our shop and I had to apply,  
21 you know, discretion on decisions about prosecuting it. I  
22 wasn't deciding on whether or not to prosecute it. I was  
23 assisting on seeing if there's enough evidence for the  
24 police to make that decision.

25 **THE COMMISSIONER:** And you don't see ---

1                   **MR. MacDONALD:** I didn't -- I didn't -- I  
2                   don't think -- I don't think that they would have had much  
3                   hay to make when it came to counsel, like some of whom in  
4                   this room would say, "The Crown has a bias."

5                   Well, you know, an independent Crown,  
6                   Robert -- Bob Pelletier, reviewed the matter and said RPGs  
7                   were there. I mean, I didn't invent any of the -- I didn't  
8                   invent any evidence or suggest to Heidi that she do so.

9                   I don't think that they can really criticize  
10                  a Crown attorney for -- before we send files out on  
11                  potential bias or other issues -- conflict or bias or  
12                  whatever -- Crowns oftentimes have to do the initial, you  
13                  know, stick-handling to get it to the point where a file  
14                  can be created, and that -- that's what I perceived to be  
15                  doing, and I don't think that my colleagues in the criminal  
16                  Bar would have had a -- much hay to make with that point.

17                  **MR. ENGELMANN:** But, if they'd known about  
18                  your involvement in the pre-charge issues, and, in fact, in  
19                  this case your involvement, really, in investigative steps,  
20                  would you not be concerned whether it's pre- or post-  
21                  charge, that this might be an issue?

22                  **MR. MacDONALD:** No, it's very -- I see it as  
23                  radically different, pre- and post-charge.

24                  **MR. ENGELMANN:** And this concern about  
25                  transparency and openness, just to look back to Exhibit 301

1 for a minute, which is your letter of September 14<sup>th</sup>, I mean  
2 you're certainly, at this point -- and I realize you don't  
3 have complete facts -- but are very negative about Mr.  
4 Silmser ---

5 **MR. MacDONALD:** Yes.

6 **MR. ENGELMANN:** --- and his, you know,  
7 getting this monetary settlement. If you were concerned  
8 about transparency in the Church getting involved in these  
9 issues, to avoid full police work or prosecution, why are  
10 you not also negative towards the Diocese? Why is it  
11 all -- this seems to all be directed towards the  
12 complainant.

13 **MR. MacDONALD:** Well, we're talking about  
14 evidence collection here, and in the last paragraph I'm  
15 referring to the fact that Luc and Heidi couldn't  
16 articulate RPGs, and that spin on it was partially caused  
17 by not knowing all those details that you earlier, before  
18 the recess, laid out, but it was also coloured by my desire  
19 to give Luc a solid CYA letter.

20 **MR. ENGELMANN:** All right. Now, sir, your  
21 intention with Mr. Pelletier; was he to review the case  
22 prior to a charge being laid, that he would be the Crown to  
23 recommend a charge, or advise the police about laying a  
24 charge, or only review the case after a charge is laid?

25 **MR. MacDONALD:** I don't know, after or

1 before the Information is laid was not that important. It  
2 was when the police determined that they had RPGs and were  
3 either about to swear an Information, or had sworn the  
4 Information.

5 It was at the point where, you know, Luc and  
6 Heidi, or whomever, had said, "We think we've got enough;  
7 we're ready to go. We're ready to lay the charge now."

8 **MR. ENGELMANN:** Is it possible, sir, you're  
9 mistaken on this, and that, really, the referral to the  
10 outside Crown was for an opinion as to whether or not RP&G  
11 existed, or whether or not a charge should be laid?

12 **MR. MacDONALD:** Well, the Crown doesn't  
13 determine RPGs; the officers do.

14 **MR. ENGELMANN:** No, but often -- and we've  
15 seen it in this case, often the officers are seeking some  
16 confirmation, particularly if there's some tentativeness  
17 or ---

18 **MR. MacDONALD:** There was never any  
19 tentativeness about RPGs on this file.

20 **MR. ENGELMANN:** So it's your evidence then  
21 that Mr. Pelletier wasn't to be consulted about whether a  
22 charge was to be laid, or whether there were RP&Gs?

23 **MR. MacDONALD:** I don't know what Bob  
24 thought, but I can tell you that there was no -- there was  
25 never any question about RPGs.

1                   **MR. ENGELMANN:** The only reason I ask is,  
2                   there is something from him and there's something in  
3                   Sebalj's notes which would almost indicate that it was to  
4                   be sent out for a review on the RP&G issue, about whether  
5                   charges should be laid.

6                   **MR. MacDONALD:** Well, I'm not -- I'm not  
7                   sure about what Bob says on the point.

8                   In fairness to Heidi, the delineation  
9                   between, you know, the concept of prospective conviction  
10                  and the Crown exercising its discretion on a case that is  
11                  at the threshold of proceeding or has just been laid, is  
12                  something that I'm -- I probably didn't articulate as  
13                  clearly as -- and fundamentally as I could have and so, you  
14                  know, I don't recall what -- Heidi's references to it, but  
15                  I asked Luc and Heidi on a number of occasions, and  
16                  we -- and they agreed, and I didn't have any subjective  
17                  reason to disagree, that they weren't even near RPGs.

18                  **MR. ENGELMANN:** Well, we don't have  
19                  Ms. Sebalj here to ask, but ---

20                  **MR. MacDONALD:** Didn't you ask Luc Brunet?

21                  **MR. ENGELMANN:** He was here as a witness,  
22                  sir.

23                  I'd like to show you a document from  
24                  Mr. Pelletier, if I can, and it was in your materials, but  
25                  it's not addressed to you, so, if you've seen it, it's only

1 recently, I'm sure.

2 MR. MacDONALD: Right.

3 MR. ENGELMANN: It's Document Number 110261.

4 THE COMMISSIONER: It's a new one, sir.

5 MR. MacDONALD: Okay, thank you.

6 MR. ENGELMANN: This is a letter from  
7 Mr. Pelletier, dated September 15<sup>th</sup>, 1994, to Detective  
8 Inspector Smith.

9 (SHORT PAUSE/COURTE PAUSE)

10 THE COMMISSIONER: Thank you. Exhibit 2921  
11 is a letter dated September 15<sup>th</sup>, 1994, addressed to  
12 Detective Inspector Tim Smith from Robert Pelletier, Crown  
13 attorney.

14 ---EXHIBIT NO./PIÈCE NO P-2921:

15 (110261) - Letter from Robert Pelletier to  
16 Tim Smith re: Investigation concerning  
17 Father Charles MacDonald dated 15 September  
18 94

19 MR. ENGELMANN: So, very briefly, if we can,  
20 he states that in the summer of 1993 he was contacted by  
21 you in relation to this matter?

22 MR. MacDONALD: Yes.

23 MR. ENGELMANN: You agree with that?

24 MR. MacDONALD: Yes, that's right.

25 MR. ENGELMANN: All right.



1                   **MR. MacDONALD:** I thought it was May,  
2           but ---

3                   **MR. ENGELMANN:** Okay.

4                   **MR. MacDONALD:** --- I think -- I think I'm  
5           right and he's wrong, but whatever.

6                   **MR. ENGELMANN:** All right. Well, whether  
7           it's May or June ---

8                   **MR. MacDONALD:** Yes.

9                   **MR. ENGELMANN:** --- you have a discussion  
10          with him?

11                  **MR. MacDONALD:** Yes.

12                  **MR. ENGELMANN:** In the second paragraph he  
13          says he's informed that the investigation was being  
14          conducted concerning Father MacDonald:

15                               "...and that it may become necessary at  
16                               some point for me to review the matter  
17                               with a view to determining if charges  
18                               should be laid."

19                  **MR. MacDONALD:** Yes. That was what we now  
20          just call -- describe as a "prospect of conviction  
21          analysis."

22                  **MR. ENGELMANN:** Well, sir, I thought there  
23          were two steps: One is whether or not a charge should be  
24          laid ---

25                  **MR. MacDONALD:** No, there's RPGs ---

1 MR. ENGELMANN: --- and that's RP&G ---

2 MR. MacDONALD: --- at the police

3 discretion.

4 MR. ENGELMANN: --- and then whether or not  
5 it should be -- proceed, actually, is the Crown's, and that  
6 RPC?

7 MR. MacDONALD: Right.

8 MR. ENGELMANN: And that's something that  
9 comes out in '95 or thereabouts?

10 MR. MacDONALD: Right. If it should be  
11 laid, I don't believe he -- well, I'll let him answer that.

12 MR. ENGELMANN: All right.

13 MR. MacDONALD: I think that it -- that --I  
14 thought that I relayed that message to him.

15 MR. ENGELMANN: Well, that's how he's  
16 setting it out to Detective Inspector Smith, you agree?  
17 But you may not share that view, is what you're saying.

18 MR. MacDONALD: No, I may have caused him to  
19 think that, though.

20 MR. ENGELMANN: All right. He then says:

21 "I was informed by Murray MacDonald at  
22 this time that he felt he may possibly  
23 be in a position of conflict of  
24 interest."

25 That's why I used that term, sir,

1 because ---

2 MR. MacDONALD: Yes.

3 MR. ENGELMANN: --- whether it's perception,  
4 bias, or conflict of interest, I think we're talking about  
5 the same thing.

6 MR. MacDONALD: Yes. I think legally -- I  
7 think legally it's "bias." Bias has a much broader  
8 perspective than ---

9 MR. ENGELMANN: All right.

10 MR. MacDONALD: --- than conflict, you know,  
11 as between counsel and former clients, and current clients.

12

13 MR. ENGELMANN: All right. And, fourthly,  
14 he says:

15 "I'm given to understand that  
16 eventually charges were never laid."

17 And he's writing -- of course we know  
18 charges are laid, but that's much later ---

19 MR. MacDONALD: Right.

20 MR. ENGELMANN: --- in '96? And then he  
21 says:

22 "I was never consulted by the  
23 investigators in this matter."

24 MR. MacDONALD: Right.

25 MR. ENGELMANN: All right? So with the

1 exception of perhaps a disagreement on the part of  
2 paragraph 2, you agree with that?

3 **MR. MacDONALD:** Right.

4 **MR. ENGELMANN:** All right. Sir, then going  
5 back to Officer Sebalj's note, the dedicated note, just  
6 right near the back, Bates page 835.

7 **MR. MacDONALD:** Can I -- can I have the ---

8 **MR. ENGELMANN:** It's Exhibit 295, sir.

9 **MR. MacDONALD:** Thank you.

10 **MR. ENGELMANN:** About three or four pages  
11 from the back, and we've looked at this page before; it's  
12 835.

13 This is August 23<sup>rd</sup>. She gets a call from  
14 Malcolm MacDonald and she also gets a call from  
15 Mr. Silmsen, and she's advising Mr. Silmsen -- she's --  
16 he's requesting a progress report:

17 "Advised simply awaiting meeting with  
18 out-of-town Crown to review."

19 So at least from the note, she appears to be  
20 indicating to Mr. Silmsen that she's waiting for an  
21 external Crown.

22 **MR. MacDONALD:** She never asked -- she never  
23 asked for one. It's news to me, but I have a theory as to  
24 why she wrote that.

25 **MR. ENGELMANN:** All right. You're telling

1 us that she never asked you to set up a meeting for her  
2 with ---

3 MR. MacDONALD: No.

4 MR. ENGELMANN: --- Bob Pelletier?

5 MR. MacDONALD: No.

6 MR. ENGELMANN: Or anyone else, an outside  
7 Crown?

8 MR. MacDONALD: No. No.

9 MR. ENGELMANN: Well, that's apparently what  
10 she says in her notes she was going to do.

11 MR. MacDONALD: Well, I think that's what  
12 she told Mr. Silmser.

13 MR. ENGELMANN: All right. But that wasn't  
14 true?

15 MR. MacDONALD: Well, I think she may have  
16 wanted to -- I have a theory that she was trying to relay  
17 to him that she was still supportive of the investigation  
18 or of him or something, but she -- you know, she never  
19 asked for an outside ground because they were still the  
20 investigative stage clearly in her mind, as in Luc's.

21 MR. ENGELMANN: Then, sir, if we can look  
22 briefly at Exhibit 1219, which I hope is in the binder with  
23 your OPP statement, 1233.

24 MR. MacDONALD: Yes, thank you -- 1219.

25 MR. ENGELMANN: These are notes of Staff

1 Sergeant Brunet. And perhaps you didn't want to tell Mr.  
2 Silmser the full truth, but here this is to her supervisor.  
3 She's saying on this date -- and this is August 24<sup>th</sup>, the  
4 day after:

5 "I had a follow-up interview with  
6 Constable Sebalj to the interview of  
7 June 29<sup>th</sup>. She was questioned as to her  
8 evaluation which she still had. It was  
9 made by Staff Inspector McDonald. She  
10 was asked about the status of the David  
11 Silmser investigation. She advised  
12 that she is waiting for the Crown  
13 Attorney's office to get back to her.  
14 Mr. MacDonald is trying to get her an  
15 outside Crown Attorney that she can  
16 meet."

17 So she seems to be saying the same thing to  
18 David Silmser as she's saying to her boss ---

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

20 **MR. ENGELMANN:** --- that you're setting this  
21 up for her.

22 **MR. MacDONALD:** Yeah, that's -- she hadn't  
23 asked me for an outside Crown.

24 **MR. ENGELMANN:** All right.

25 **THE COMMISSIONER:** Could it be that she took

1           it from your perceived conflict that that's what you were  
2           going to do?

3                       **MR. MacDONALD:** I told her that an outside  
4           Crown would be ready when we needed one. You know, I  
5           believe, sir, that message was clear in her mind. So I'm  
6           not really sure -- maybe I'm wrong in terms of perceptions,  
7           but it was only left at I'll -- you know, when the time  
8           comes I'm going to have an outside Crown because of that  
9           concern for bias.

10                      **MR. ENGELMANN:** There's another reference,  
11           sir, and it's in -- I think it might be in the same binder.  
12           It's Exhibit 1242. Counsel, it's Document Number 715433.

13                      And this is a brief interview that Constable  
14           Sebalj has with I think it's Officer Fagan. Yes, I believe  
15           -- it's an OPP officer -- on June 14<sup>th</sup>, '94; I believe it's  
16           Constable Fagan, Detective Constable Fagan.

17                      And there's just -- it's just a page and a  
18           bit but on the first page:

19                                "When I was getting close to the end of  
20                                the investigation, I spoke with Crown  
21                                MacDonald. He told me he had a  
22                                conflict but did not expand upon it.  
23                                He wanted to be kept up-to-speed and  
24                                indicated when it came down to a final  
25                                review and decision, an outside Crown

1                               would be contacted but I never spoke to  
2                               an outside Crown."

3                               **MR. MacDONALD:** Right.

4                               **MR. ENGELMANN:** So, again, there appears to  
5                               be, at least from Mr. Pelletier, Ms. Sebalj, Mr. Brunet,  
6                               this common view that an outside Crown is going to be  
7                               consulted on this matter for the final review because of an  
8                               apparent conflict on your part, and we know there was never  
9                               an opinion given by an outside Crown.

10                              **MR. MacDONALD:** Right. It -- the prospect  
11                              of conviction analysis was never reached as we would now  
12                              describe it.

13                              **MR. ENGELMANN:** But, sir, it appears they're  
14                              looking at pre-charge review.

15                              **MR. MacDONALD:** They didn't need any advice  
16                              on RPGs. Also, it wasn't late in the investigation that  
17                              she spoke to me and that I spoke to her about a potential  
18                              bias or conflict, whatever language I used, it was early in  
19                              the investigation.

20                              **MR. ENGELMANN:** So she's mistaken on that?

21                              **MR. MacDONALD:** Right.

22                              **MR. ENGELMANN:** All right.

23                              **MR. MacDONALD:** And she had a lot -- this  
24                              was, I'm sure, you know -- well, anyway, it must have been  
25                              a difficult time for her and if there's a combination of my



1 not clearly articulating the reason for my perceived bias  
2 that, you know, that's my fault, that's not Heidi's.

3 **MR. ENGELMANN:** But just in retrospect, sir,  
4 would you agree it would have been prudent, given your own  
5 concerns about perception bias for the reasons you've  
6 indicated, that perhaps it should have been an outside  
7 Crown looking at this?

8 **MR. MacDONALD:** Well, I didn't anticipate  
9 that Perry Dunlop would commence a conspiracy allegation  
10 that -- you know, the clan of paedophiles and all that.  
11 The last thing I ever expected is any lawyer or officer or  
12 otherwise would suggest that I was trying to cover up for  
13 the priest.

14 **MR. ENGELMANN:** And I understand that, but  
15 just quite aside from that, let's assume that had never  
16 happened and that this had proceeded to charge.

17 **MR. MacDONALD:** Yeah.

18 **MR. ENGELMANN:** Your concern about this  
19 being raised, wouldn't it have been better just to have  
20 someone else look at it?

21 **MR. MacDONALD:** I had to -- you know, that's  
22 a 20/20 vision piece that I don't know is fair to leave  
23 that simply, Mr. Engelmann, because I'm the local Crown who  
24 -- His Honour had mentioned earlier why didn't Guy take it.  
25 Guy was in the midst of a tricky homicide case and he was

1 likewise in court four and five days a week like I was. I  
2 was the senior Crown. This was a potentially, you know, a  
3 significant case. It wasn't a shoplift case.

4 **MR. ENGELMANN:** No.

5 **MR. MacDONALD:** So I thought it appropriate  
6 to continue managing it until such a time as a Crown's  
7 opinion was -- discretion was required. And what little  
8 discretion I had at that point was to decide -- exercise my  
9 discretion in trying to help Heidi, which, as I say, in  
10 retrospect I should have turned it over to Luc a lot  
11 sooner.

12 **MR. ENGELMANN:** All right.

13 Sir, let's go back to some of the people  
14 that you would have met with then. We've heard that you  
15 may have met with a Perry Dunlop.

16 **MR. MacDONALD:** I did.

17 **MR. ENGELMANN:** And I believe the date is  
18 September 29<sup>th</sup>, 1993. And do you recall ---

19 **MR. MacDONALD:** I'm not sure.

20 **MR. ENGELMANN:** All right. Well, that's a  
21 date certainly that's been indicated by -- it's certainly  
22 in his will state.

23 **MR. MacDONALD:** Well, I would say it was  
24 late September.

25 **MR. ENGELMANN:** Late September. Fair

1 enough.

2 And you talk about it in your OPP statement,  
3 Exhibit 1233 ---

4 MR. MacDONALD: Yes.

5 MR. ENGELMANN: --- at Bates page 892.

6 MR. MacDONALD: Yes.

7 MR. ENGELMANN: And do you recall where you  
8 met with him?

9 MR. MacDONALD: Yes, it was at the -- the  
10 back room is at the courthouse. It's a pejorative phrase.  
11 It was in the Crown's room at the fourth floor. I better  
12 not refer to it as a back room. It's got a ---

13 MR. ENGELMANN: What you're indicating on  
14 the screen about a third of the way down:

15 "Court during recess, back room, 340  
16 Pitt Street."

17 MR. MacDONALD: Right.

18 MR. ENGELMANN: Okay. And you've described  
19 it as sort of a chance meeting. Do you not -- was there a  
20 possibility he might have called you the day before to set  
21 this up?

22 MR. MacDONALD: No, if he called, I didn't  
23 get any message from him. I didn't speak to him.

24 MR. ENGELMANN: All right.

25 MR. MacDONALD: I can't say he didn't call

1 my office but I can tell you that he came up -- it was a  
2 complete surprise to me when he came up and raised this  
3 case.

4 **MR. ENGELMANN:** And you've set out, sir, in  
5 the OPP interview, to the best of your ability no doubt at  
6 the time, what would have been discussed?

7 **MR. MacDONALD:** Yes.

8 **MR. ENGELMANN:** All right.

9 **THE COMMISSIONER:** Mr. Engelmann, will you  
10 be covering what relationship or non-relationship these two  
11 had?

12 **MR. ENGELMANN:** Yes, I'm going there.

13 **THE COMMISSIONER:** Thank you.

14 **MR. ENGELMANN:** And it comes up in Mr.  
15 Dunlop's will state that I'm about to go to, sir.

16 So you say that he brings up concerns about  
17 a cover-up downstairs, presumably meaning at the Cornwall  
18 Police Service?

19 **MR. MacDONALD:** He was concerned about the  
20 skill of Heidi's investigative techniques combined with the  
21 senior management or the Chief. I can't say he quoted the  
22 Chief, but that's my impression from his concerns  
23 articulated to me, was that the senior management knew it  
24 wasn't properly investigated and appeared to be -- he  
25 thought that they were trying to cover that fact, that it

1 wasn't properly investigated.

2 **MR. ENGELMANN:** All right.

3 And you're also indicating here that some  
4 procedures that were done that were inappropriate, the  
5 inputting into the computer, they didn't put it under the  
6 normal entry system, things of that nature.

7 **MR. MacDONALD:** Well, that's how he started.  
8 He said, "I found something hidden away in the projects  
9 file" I think they called it back then.

10 **MR. ENGELMANN:** Okay. And you're also  
11 saying, sir, at the bottom of the page, that you stopped  
12 him. Then you said:

13 "Wait a second, if you're suggesting  
14 some kind of cover-up, the Chief is  
15 aware of the allegation".

16 **MR. MacDONALD:** That I was aware of the  
17 allegation?

18 **MR. ENGELMANN:** Well, you're saying, I'm  
19 aware of it, the Chief is aware of it, there's no cover-up.  
20 I'm looking at the top of the next page.

21 **MR. MacDONALD:** He wanted me, the Crown, to  
22 know that a case had been investigated and that the Crown's  
23 office was not privy to this.

24 **MR. ENGELMANN:** Right.

25 **MR. MacDONALD:** And I told him I knew about

1           it, and I guess I must have referred to the Chief. I don't  
2           recall.

3                   **MR. ENGELMANN:** Right. And you did have a  
4           personal relationship with Mr. Dunlop.

5                   **MR. MacDONALD:** Yes, I would say I did,  
6           yeah.

7                   **MR. ENGELMANN:** You hunted together.

8                   **MR. MacDONALD:** He was, at the time, a  
9           colleague of my brother-in-law, Randy Millar, who you know.

10                   **MR. ENGELMANN:** Yes.

11                   **MR. MacDONALD:** And Randy invited him to  
12           join our deer gang and he did so for a couple of years, and  
13           I knew him to be a very keen -- sort of a gung-ho detective  
14           as well as a very comical guy in the deer gang.

15                   **MR. ENGELMANN:** All right. And he was  
16           coming to you to express concerns about a cover-up and he  
17           wanted you to know about it. He didn't think you were  
18           aware of it.

19                   **MR. MacDONALD:** He didn't think the Crown  
20           had any clue about it. So I said -- that's when I directed  
21           him to Luc.

22                   **MR. ENGELMANN:** All right. And he knew your  
23           brother-in-law Randy Millar because they had been on joint  
24           taskforce work together?

25                   **MR. MacDONALD:** Yeah, they either were at

1 the time or had been.

2 MR. ENGELMANN: All right. All right. And  
3 your involvement with Mr. Dunlop socially, was it only the  
4 fall hunting trip or were there other ---

5 MR. MacDONALD: No, it ---

6 MR. ENGELMANN: --- occasions where you'd  
7 get together?

8 MR. MacDONALD: It was those two occasions,  
9 and we would professionally bump into one another in the  
10 proverbial fourth floor Crown room regularly, and I knew  
11 him to be a -- sort of a gung-ho investigator as well as a  
12 quick wit.

13 MR. ENGELMANN: All right. And did you know  
14 that he was a local musician as well?

15 MR. MacDONALD: I think I did.

16 MR. ENGELMANN: All right. You didn't go to  
17 ---

18 MR. MacDONALD: No.

19 MR. ENGELMANN: --- any concerts that he  
20 would have put on?

21 MR. MacDONALD: No.

22 MR. ENGELMANN: All right.

23 MR. MacDONALD: No.

24 MR. ENGELMANN: Sir, he prepared a  
25 Will-State in early 2000, and he set out in some detail his

1 meeting with you, and I just want to take you there if I  
2 can.

3 **MR. MacDONALD:** Yeah.

4 **MR. ENGELMANN:** And that's Exhibit 579.

5 It's Document Number 728943, and the Bates page that sets  
6 out the meeting ---

7 **MR. MacDONALD:** Can you bring it up on the  
8 screen, too?

9 **MR. ENGELMANN:** Yeah, we'll put it up on the  
10 screen in just a minute. Madam Clerk is just going to get  
11 you the hard copy and then she'll pop it up on the screen.

12 **MR. MacDONALD:** Thank you. The tab?

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

14 **MR. MacDONALD:** Oops, sorry.

15 **MR. ENGELMANN:** --- page 10 of 110. Madam  
16 Clerk, the ---

17 **MR. MacDONALD:** What's the Bates number?

18 **MR. ENGELMANN:** Bates page number 911. So  
19 the full Bates page is 711 ---

20 **MR. MacDONALD:** No, got it, thank you.

21 **MR. ENGELMANN:** -- 4911. I'm just giving  
22 that to the Clerk. You have it on the screen as well, sir.  
23 And he says at paragraph -- numbered paragraph 20 that:

24 "On September 29th, '93, I met with  
25 Senior Crown Attorney Murray MacDonald



1 and showed him the DS statement."

2 Now, do you recall him having a copy of the  
3 statement with him, the handwritten statement that you had  
4 seen earlier?

5 **MR. MacDONALD:** I believe he did.

6 **MR. ENGELMANN:** Right. Now, he says:

7 "I called him the previous evening at  
8 his residence..."

9 **MR. MacDONALD:** That's not true.

10 **MR. ENGELMANN:** "...requesting a meeting  
11 with him. I considered Murray a  
12 friend. Along with dealing with him as  
13 a police officer, we also hunted and  
14 socialized on occasion."

15 **MR. MacDONALD:** Yeah. He didn't phone me at  
16 home the night before.

17 **MR. ENGELMANN:** All right, so you say that  
18 you didn't get a call the evening before.

19 **MR. MacDONALD:** I was surprised when he came  
20 in with this statement and this concern. I was -- it was  
21 totally -- a total surprise to me.

22 **MR. ENGELMANN:** All right. So again, when  
23 he says in the next paragraph:

24 "Murray told me to meet him on the  
25 fourth floor of the Justice Building,

1 the same building that houses our  
2 police station."

3 That -- you're saying that was a chance  
4 encounter.

5 **MR. MacDONALD:** That's either an egregious  
6 error or a bold-faced lie.

7 **MR. ENGELMANN:** All right. He says:

8 "This is not the regular Crown's  
9 office, but an office that is used by  
10 the Crown when attending court."

11 That's correct?

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

13 **MR. ENGELMANN:** And:

14 "He attended with a copy of the  
15 victim statement, placed it on Murray's  
16 desk, went through the allegations that  
17 were made in the statement, along with  
18 the names that were mentioned of  
19 suspected pedestrian files."

20 **MR. MacDONALD:** We didn't -- he waved the  
21 statement at me. I don't know if it was the first one or  
22 the Ronnie Lefebvre/Kevin Malloy one. He had a statement  
23 in front of him, and I said -- I stopped him and I said, "I  
24 know about it." He was -- he thought he would read to me  
25 for the first time information with respect to this

1 occurrence, and I stopped him and said, "I know about it.  
2 There's not a conspiracy, because I'm in on it."

3 **MR. ENGELMANN:** Right. He thought you  
4 didn't know about it. He thought the Crown's office didn't  
5 know.

6 **MR. MacDONALD:** But he didn't read it to me  
7 in detail at all.

8 **MR. ENGELMANN:** No, he thought ---

9 **MR. MacDONALD:** I stopped.

10 **MR. ENGELMANN:** He thought you didn't know  
11 about it.

12 **MR. MacDONALD:** Right, he thought I didn't  
13 know.

14 **MR. ENGELMANN:** Right.

15 **MR. MacDONALD:** Correct.

16 **MR. ENGELMANN:** And you told him you did.

17 **MR. MacDONALD:** Correct.

18 **MR. ENGELMANN:** All right. And in fact, he  
19 says in the next paragraph:

20 "The Crown attorney informed he was  
21 aware of the Father Charles MacDonald  
22 allegations..."

23 And that's true?

24 **MR. MacDONALD:** Yeah, I stopped him --  
25 before he read it, I said, "I know about it."

1                   **MR. ENGELMANN:** Yeah. But he then goes on  
2                   and goes:

3                                   "...but was not aware of the  
4                                   allegation of sexual assault against  
5                                   Ken Seguin."

6                   **MR. MacDONALD:** That's -- we -- I don't know  
7                   -- I don't recall Ken Seguin's name coming up. I may -- he  
8                   may have referred to Seguin, I may -- and it was a  
9                   conversation that took about three minutes, so it would  
10                  have been something -- or maybe five minutes, so I would  
11                  have dismissed the Seguin allegations as something I was  
12                  aware of, too.

13                  **MR. ENGELMANN:** Okay, well, he says:  
14                                   "The allegation against Ken Seguin was  
15                                   made in the same statement. I pointed  
16                                   out the exact location in the statement  
17                                   where the allegations against Ken  
18                                   Seguin's sexual assault had been made  
19                                   by the victim."

20                  **MR. MacDONALD:** He didn't ---

21                  **MR. ENGELMANN:** Do you remember that?

22                  **MR. MacDONALD:** He didn't point anything  
23                  out.

24                  **MR. ENGELMANN:** All right.

25                                   "Murray did not read the

1 statement at this time."

2 And that's true?

3 **MR. MacDONALD:** That's what I earlier said.

4 **MR. ENGELMANN:** "He said he had spoken  
5 to Malcolm MacDonald, lawyer, former  
6 Crown attorney, currently representing  
7 Father Charles MacDonald."

8 Now, we know you had spoken to him, but do  
9 you recall if you had told Mr. Dunlop that, or Constable  
10 Dunlop that?

11 **MR. MacDONALD:** I don't recall. I do recall  
12 directing him to Staff Brunet.

13 **MR. ENGELMANN:** And he says:  
14 "Malcolm MacDonald indicated to Murray  
15 about a week prior to our meeting that  
16 the investigation was over and that a  
17 settlement had been reached. I find it  
18 hard to believe that the Crown was not  
19 aware of the allegations against  
20 Probation Officer Ken Seguin, as it was  
21 mentioned in the victim statement."

22 And you're saying that you were aware.

23 **MR. MacDONALD:** Well, I didn't elaborate on  
24 Seguin other than saying I knew about it.

25 **MR. ENGELMANN:** All right.

1                   **MR. MacDONALD:** Had I elaborated, of course,  
2 I would have said that the complainant didn't want to make  
3 allegations at this time against him.

4                   **MR. ENGELMANN:** You were also aware, and  
5 you've told us this, that these allegations weren't really  
6 set out in that statement, it was just the fact that he had  
7 been sexually abused or assaulted by Mr. Seguin, that he  
8 didn't go into the detail.

9                   **MR. MacDONALD:** We didn't go into any detail  
10 about Seguin.

11                   **MR. ENGELMANN:** No, I'm talking about that  
12 handwritten statement. But it's fine, we'll move on.

13                   **MR. MacDONALD:** Yeah.

14                   **MR. ENGELMANN:** He does say at the bottom of  
15 the page:

16                                   "Senior Crown Attorney Murray MacDonald  
17                                   stated to me at our meeting that Staff  
18                                   Sergeant Brunet was on top of this  
19                                   investigation and maybe I should speak  
20                                   to him."

21                   **MR. MacDONALD:** Yes.

22                   **MR. ENGELMANN:** And that is true.

23                   **MR. MacDONALD:** That's the key message,  
24 that's the take-home message from our meeting.

25                   **MR. ENGELMANN:** All right.

1                   **THE COMMISSIONER:** I'm sorry, and that was  
2 to see Sergeant Brunet?

3                   **MR. MacDONALD:** Yes, I urged him to see  
4 Sergeant before you anyway right away and -- yeah.

5                   **MR. ENGELMANN:** Now, sir, I also understand  
6 that the following day you met with Chief Claude Shaver on  
7 September 20th, 1993. And if you don't recall the date,  
8 would it be fair to say that that you would have ---

9                   **MR. MacDONALD:** Late September.

10                  **MR. ENGELMANN:** --- met with him shortly  
11 after you met with Mr. Dunlop?

12                  **MR. MacDONALD:** Yeah, just before or just  
13 after I met with Dunlop, I saw Chief Shaver.

14                  **MR. ENGELMANN:** And, sir, do you recall what  
15 you said or what happened at that meeting? And if you want  
16 to, you have a reference to this in your OPP statement at  
17 1233.

18                  **MR. MacDONALD:** Right.

19                  **MR. ENGELMANN:** Exhibit 1233.

20                  **MR. MacDONALD:** Right.

21                  **MR. ENGELMANN:** Bates page is 887, if I've  
22 got it right.

23                  **THE COMMISSIONER:** Before we go there, did  
24 you -- after Dunlop left, did you phone up Brunet saying,  
25 Dunlop is going to come and see you?

1                   **MR. MacDONALD:** I believe I did. I said, I  
2 believe, "He's coming down right now and he thinks that  
3 there's a conspiracy. Straighten him out, Luc."

4                   **THE COMMISSIONER:** Okay.

5                   **MR. ENGELMANN:** You've got a reference to  
6 this. It's actually starting on Bates page 886.

7                   **MR. MacDONALD:** I don't think I have ---

8                   **THE COMMISSIONER:** No, I -- what exhibit are  
9 we in?

10                   **MR. ENGELMANN:** Twelve thirty-three (1233).

11                   **THE COMMISSIONER:** Twelve thirty-three  
12 (1233), you should ---

13                   **MR. MacDONALD:** Oh, okay, thank you.

14                   **THE COMMISSIONER:** Okay. So now we're going  
15 to your conversations with -- or, no ---

16                   **MR. ENGELMANN:** With Shaver.

17                   **THE COMMISSIONER:** No.

18                   **MR. ENGELMANN:** And that meeting is on ---

19                   **THE COMMISSIONER:** The interview ---

20                   **MR. ENGELMANN:** --- on September 30th.

21                   **THE COMMISSIONER:** The interview report with  
22 Claude Shaver.

23                   **MR. MacDONALD:** Okay, thank you. Can I have  
24 the tab number for that?

25                   **MR. ENGELMANN:** I don't know the tab number.



1 It's ---

2 THE COMMISSIONER: Well, that's the exhibit  
3 number.

4 MR. ENGELMANN: Sorry, the Exhibit number's  
5 1233.

6 MR. MacDONALD: Okay, thank you.

7 MR. ENGELMANN: And it's page 52 and 53,  
8 starting at Bates page 886.

9 MR. MacDONALD: Thank you.

10 MR. ENGELMANN: And it appears -- you're  
11 saying at the bottom of the page that you received a  
12 telephone call from him?

13 MR. MacDONALD: Right.

14 MR. ENGELMANN: Bottom of 886?

15 MR. MacDONALD: Yes.

16 MR. ENGELMANN: "Called me. Said,  
17 'Listen, I just heard about the civil  
18 settlement reversing the case against  
19 Father MacDonald. I think it stinks'.  
20 I remember Claude expressing to me he  
21 was very sincere, very concerned about  
22 seeing that his Police Service did the  
23 right thing."

24 Then you say:

25 "I have no criticism about the bona

1 fides of the officers involved, from  
2 the constable investigating through to  
3 detective sergeant."

4 This is presumably you telling this to  
5 Clause Shaver?

6 **MR. MacDONALD:** I may have said that face-  
7 to-face as opposed to over the phone. I don't recall.

8 **MR. ENGELMANN:** Okay.

9 "He told me that he did not like my  
10 opinion."

11 Rather, he did not like.

12 "The word he got was the Crown is not  
13 recommending a prosecution, not  
14 recommending a charge. So I explained  
15 to him why, reiterated that before you  
16 can get to the charge state, whether  
17 you've got a reluctant witness or not  
18 after charge, the point is your  
19 officers didn't even form RPG here. If  
20 you don't have RPG, if you have a  
21 reluctant complainant, you can't -- at  
22 law you can't go any further. It's an  
23 abuse of process. Rather, it's a  
24 malicious prosecution."

25 Okay? So this is a recount of some of what

1 you would have told to Chief Shaver?

2 **MR. MacDONALD:** Yeah. I don't think that it  
3 came up connected that way when I actually spoke to Claude  
4 Shaver, but that's a very summary recap of it.

5 **MR. ENGELMANN:** And would you have indicated  
6 to him that continuing the investigation -- because at this  
7 point you knew he was angry. He knew there had been this  
8 settlement. He was -- I think he indicated to you, or may  
9 have indicated to you, he was going to go off and see the  
10 Bishop or see some Church officials.

11 **MR. MacDONALD:** Or he just may have seen one  
12 of them, I'm not sure.

13 **MR. ENGELMANN:** Did you ever suggest that it  
14 would be malicious prosecution if he continued with his  
15 investigation or reopened the investigation?

16 **MR. MacDONALD:** No, I said if he charged  
17 somebody without RPGs, it's a malicious prosecution.

18 **MR. ENGELMANN:** All right.

19 And it appears, according to your note on  
20 the following page, Bates page 888, about a third of the  
21 way down:

22 "He inquired..."

23 I presume that's Claude Shaver.

24 "...about charging the complainant and I  
25 explained to him that there'd have to be,

1                   you know, some key evidence on the issue  
2                   of obstructing justice or public  
3                   mischief, none of which seemed to exist,  
4                   at least for in terms of what the police  
5                   were aware."

6                   **MR. MacDONALD:** I'll just repeat what I  
7                   mentioned to His Honour before the recess.

8                   **MR. ENGELMANN:** Yes, okay. All right.  
9                   So you recall that being discussed with  
10                  Claude Shaver as well?

11                  **MR. MacDONALD:** I don't, but I must have.

12                  **MR. ENGELMANN:** All right.

13                  **THE COMMISSIONER:** Wait a minute. So I'll  
14                  go back.

15                  What about launching an -- you're saying  
16                  here, "Don't have enough facts, not what we know". What  
17                  about launching an investigation?

18                  **MR. MacDONALD:** Into obstruct justice?

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

20                  **MR. MacDONALD:** I said to him he has a right  
21                  to seek a civil settlement if he wishes.

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

23                  **MR. ENGELMANN:** All right.

24                  And it does say a little later on the next  
25                  page, top of the page 889:

1 "Likewise, he felt very upset about the  
2 Church being involved, doing the end  
3 run around the Cornwall Police Service  
4 as well."

5 **MR. MacDONALD:** That was the bulk of our  
6 upset that we shared.

7 **MR. ENGELMANN:** Now, did he ask you -- he  
8 said he was upset about it. Did he ask you about possibly  
9 looking at a charge for them or for some officials from the  
10 Church?

11 **MR. MacDONALD:** No. The Church would be --  
12 would have been entitled to, you know, pursue civil  
13 discussions with the complainant.

14 **MR. ENGELMANN:** Well, but not if those  
15 discussions ---

16 **MR. MacDONALD:** Not if there was a gag order  
17 in place.

18 **MR. ENGELMANN:** Well, depending on what was  
19 in the document itself; correct?

20 **MR. MacDONALD:** Well, the only thing in the  
21 document that would have made it a crime is a prohibition  
22 on cooperating with the police.

23 **MR. ENGELMANN:** All right.

24 **MR. MacDONALD:** And I didn't expect -- and  
25 I'd never seen one, and knew it to be unlawful, and the

1 last thing I expected was for that condition to be there.

2 **MR. ENGELMANN:** Sir, if we could look very  
3 briefly at Exhibit 1789, and that's Mr. Shaver's statement  
4 to his lawyer that was given to the OPP. It's Exhibit  
5 1789, Document Number 715814.

6 The second paragraph from the bottom, first  
7 page, Bates page 712, middle of the paragraph:

8 "I met with the Crown on the 30<sup>th</sup> of  
9 September, '93 and he explained we  
10 could not proceed based on the  
11 information at his disposal."

12 And, sir, just to make clear on that, that's  
13 proceed with a charge or is that not proceed with any  
14 investigation?

15 **MR. MacDONALD:** Proceed with a charge.

16 **MR. ENGELMANN:** All right.

17 So you did not tell Chief Shaver that the  
18 police could not proceed with an investigation or reopen an  
19 investigation?

20 **MR. MacDONALD:** No, I did not. In fairness  
21 to Chief Shaver, I would have left him with the impression  
22 that there was nowhere to go without a victim.

23 **MR. ENGELMANN:** All right.

24 Sir, I understand you also met with Claude  
25 Lortie at some point in the fall of 1993.

1                   **MR. MacDONALD:** Yes, I recall meeting with  
2 Claude.

3                   **MR. ENGELMANN:** Okay. And do you recall  
4 approximately when that would have happened or how it was  
5 set up?

6                   **MR. MacDONALD:** It was after the meetings  
7 with Perry Dunlop and Claude Shaver, and I don't know if it  
8 was a question of days or weeks; I don't recall.

9                   **MR. ENGELMANN:** All right. Do you recall  
10 what it is he wanted to discuss with you about this matter?

11                   **MR. MacDONALD:** He and -- he was with  
12 someone else. It was either Mike Quinn or John Parisien,  
13 and I believe that three of them are -- two or three of  
14 them, or two of those three, were members of the Police  
15 Association executive at the time.

16                   **MR. ENGELMANN:** Okay.

17                   **MR. MacDONALD:** And the -- his meeting with  
18 me was a short one because I had the impression that it --  
19 I was going to be drawn -- not that I'm suggesting bad  
20 faith on Claude's part -- but I just was not comfortable  
21 being drawn into what I thought was a labour management  
22 dispute, and so I probably didn't give Claude much  
23 direction other than, "Sorry, I'm not in a position to  
24 comment".

25                   **MR. ENGELMANN:** When he met with you did he

1 express concerns about Chief Shaver's management of this  
2 file?

3 **MR. MacDONALD:** Yes.

4 **MR. ENGELMANN:** All right. And when he  
5 testified here, he said that he was with Constable Dunlop  
6 when he met with you.

7 **MR. MacDONALD:** I'm certain that's not the  
8 case because I never spoke to Perry again after that one  
9 meeting that I had with him alone in my -- in the room at  
10 the fourth floor. Perry may have been out in the hall or  
11 thereabouts, but I believe Claude to be mistaken. I think  
12 -- I thought it was with one of those other two gentlemen,  
13 but it definitely wasn't Perry.

14 **MR. ENGELMANN:** All right.

15 And, sir, when you first learned about the  
16 actual content of this settlement and illegal provision, if  
17 I can call it that, that would have been as a result of  
18 media in January of '94 or was it through other means?

19 **MR. MacDONALD:** Well, the first recollection  
20 I have is getting a call from a television ---

21 **MR. ENGELMANN:** A reporter?

22 **MR. MacDONALD:** Yeah, known to have a beat  
23 that his -- Mr. ---

24 **MR. ENGELMANN:** Would this have been Charlie  
25 Greenwell?



1                   **MR. MacDONALD:** Mr. Greenwell, yes.

2                   **MR. ENGELMANN:** Okay.

3                   **MR. MacDONALD:** He tried to tape record me  
4 on the call and I don't recall if I gave him the typical  
5 Crown Attorney response to the media, "Thank you for your  
6 information".

7                   He had given me the information and I seem  
8 to think that I'd known already, there was wind in the  
9 media, or certainly that I'd heard from police personnel,  
10 that there was a cover-up and a gag order clause or  
11 something.

12                   So he was repeating that for me and saying,  
13 "I have information for you. What do you have to say to  
14 this?" And then I heard the click and the tape-recorder go  
15 on, so I said, "Thank you very much for bringing this to my  
16 attention".

17                   **MR. ENGELMANN:** And that's the first time  
18 you learned of the provision?

19                   **MR. MacDONALD:** I don't -- that's the first  
20 recollection I have but I don't think I was entirely  
21 surprised by the call, so I must have been told about the  
22 illegal clause before then by someone, but it was at the  
23 same time, you know, within I suppose days of -- or a day  
24 of the call.

25                   **MR. ENGELMANN:** So this is sometime in

1 January of '94?

2 MR. MacDONALD: I guess so. Is that what I  
3 say in my statement?

4 MR. ENGELMANN: Oh ---

5 MR. MacDONALD: Yes, it would have been --  
6 several months after my -- several weeks or months after my  
7 meeting with Chief Shaver that I've just articulated.

8 MR. ENGELMANN: Right.

9 And, sir, I understand as well in January of  
10 '94 you were interviewed by the Ottawa Police Service with  
11 respect to this matter?

12 MR. MacDONALD: Yes.

13 MR. ENGELMANN: And what, if anything, do  
14 you remember about that?

15 MR. MacDONALD: I didn't think it was an  
16 interview.

17 MR. ENGELMANN: Okay. It was a short  
18 interview?

19 MR. MacDONALD: Yes. It was less than 15  
20 minutes. I recall that both attended and had called in  
21 advance ---

22 MR. ENGELMANN: Yes.

23 MR. MacDONALD: --- to meet with me, and I  
24 met with him at our office, the County Court building, as  
25 it then was. I remember asking them -- inviting them to

1 tape-record the meeting and one of the gentlemen said it  
2 wasn't necessary, and that left me with the impression that  
3 I was getting a report back, and I recall asking them,  
4 "Well, what's going on? Is somebody -- you know, is there  
5 any truth to a cover-up in the -- in any context?" and they  
6 said no.

7 They said that -- I think they said -- one  
8 of them said, in their view a charge could have be laid in  
9 January or February of '03 -- of '93, and I didn't respond  
10 to that.

11 Then they asked -- the thrust --I guess the  
12 main reason for their attending was to inquire about "the  
13 conflict" as they described it, and I may even have -- if I  
14 described it as a "conflict" I meant "bias" but, at any  
15 rate, that topic came up again.

16 I explained to them that there was no way  
17 that I have ever perceived that anybody would think that I  
18 would ever, you know, try to cover up allegations against a  
19 priest.

20 **MR. ENGELMANN:** All right. Would it be fair  
21 to say they would have asked you about contacts with  
22 Officers Sebalj and Brunet ---

23 **MR. MacDONALD:** Yes.

24 **MR. ENGELMANN:** --- during the  
25 investigation, and the issue of the Diocese committee would

1 have come up in your conversation with them? Your work on  
2 that committee ---

3 MR. MacDONALD: Yes.

4 MR. ENGELMANN: --- and the reason for the  
5 perceived ---

6 MR. MacDONALD: Yes.

7 MR. ENGELMANN: --- conflict?

8 MR. MacDONALD: That was the bulk of the  
9 meeting, was that they asked -- wanted to know about, it  
10 was that.

11 MR. ENGELMANN: All right. I note the hour,  
12 sir.

13 THE COMMISSIONER: Thank you.

14 Let's take lunch and come back at 2:00.

15 MR. MacDONALD: Thank you.

16 THE REGISTRAR: Order; all rise. A  
17 l'ordre; Veuillez vous lever.

18 This hearing will resume at 2:00 p.m.

19 --- Upon recessing at 12:33 p.m./

20 L'audience est suspendue à 12h33

21 --- Upon resuming at 2:04 p.m. /

22 L'audience est reprise à 14h04

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

25 This hearing is now resumed, please be

1 seated. Veuillez vous asseoir.

2 **THE COMMISSIONER:** Okay. Proceed, Mr.  
3 Engelmann.

4 **MR. ENGELMANN:** Good afternoon, Mr.  
5 Commissioner.

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

7 **MURRAY MacDONALD, Resumed/Sous le même serment:**

8 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MR.  
9 **ENGELMANN (cont'd/suite):**

10 **MR. ENGELMANN:** Good afternoon, Mr.  
11 MacDonald.

12 Sir, when we left off, we were in early  
13 1994, and we had talked about your brief meeting with a  
14 couple of officers from the Ottawa Police.

15 **MR. MacDONALD:** Yes, sir.

16 **MR. ENGELMANN:** And during the calendar year  
17 1994, you were aware that after the Ottawa Police were  
18 here, the OPP came to investigate in the form of Detective  
19 Inspector Smith and a Detective Constable Fagan?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. ENGELMANN:** And, in fact, they  
22 interviewed you, and we've been to that statement a few  
23 times, in July?

24 **MR. MacDONALD:** Right.

25 **MR. ENGELMANN:** Sir, were you advised before

1 that investigation that it was going to occur? Or how do  
2 you recall being advised of it?

3 **MR. MacDONALD:** I don't recall. I knew it  
4 was coming well in advance of the July interview, but I  
5 don't recall who or how I was advised.

6 **MR. ENGELMANN:** Were you at any time  
7 consulted with respect to that investigation?

8 **MR. MacDONALD:** By Officer Smith?

9 **MR. ENGELMANN:** Yes, or ---

10 **MR. MacDONALD:** By that -- by that time --  
11 well before July of that year, the regional director  
12 was -- had instructed me. He and I -- I informed him  
13 of -- I contacted him, initially, to ---

14 **MR. ENGELMANN:** Yes.

15 **MR. MacDONALD:** --- inform him of things  
16 as -- early in the autumn, as things were getting ---

17 **MR. ENGELMANN:** Yes. That was Mr.  
18 Griffiths.

19 **MR. MacDONALD:** Yes, sir.

20 **MR. ENGELMANN:** Yes.

21 **MR. MacDONALD:** And, from that point on, he  
22 was providing, or arranging for the provision of legal  
23 advice by other Crowns on anything relating to that cluster  
24 of -- initially, those two cases.

25 **MR. ENGELMANN:** So Mr. Griffiths was aware

1 of the 1994 OPP investigation and would have been ensuring  
2 that there were other Crown offices involved ---

3 MR. MacDONALD: Yes, sir.

4 MR. ENGELMANN: --- if those officers needed  
5 advice?

6 MR. MacDONALD: If and when need be, yes.

7 MR. ENGELMANN: Right. Because he knew that  
8 part of the investigation was looking into your contacts  
9 with the lawyers involved in the settlement and things of  
10 that nature?

11 MR. MacDONALD: Yes. I would have been -- I  
12 presume, before anyone even informed me, I -- it was  
13 obvious that I would be a key Crown witness as against Mr.  
14 MacDonald or whomever was the suspect of the illegal gag  
15 order ---

16 MR. ENGELMANN: Okay.

17 MR. MacDONALD: --- the gag clause.

18 MR. ENGELMANN: And I suppose the worst case  
19 scenario, they thought you might have been involved in  
20 putting together that settlement and they could have  
21 considered you as a suspect? In 1994.

22 MR. MacDONALD: Yes, I guess so.

23 MR. ENGELMANN: Yes. But, in any event, you  
24 understood you were "a person of interest", if I can use  
25 that term?

1 MR. MacDONALD: Yes.

2 MR. ENGELMANN: Fair enough.

3 And, sir, aside from the meeting with the  
4 Ottawa Police and the meeting with the OPP in July, you  
5 indicated to us that you had one other meeting with the  
6 police, and that was with respect to allegations against  
7 your father?

8 MR. MacDONALD: Yes.

9 MR. ENGELMANN: And that was in February of  
10 '94?

11 MR. MacDONALD: I think so.

12 MR. ENGELMANN: And, sir, I'd just like  
13 to ---

14 MR. MacDONALD: Late February or early  
15 March.

16 MR. ENGELMANN: And I have that statement  
17 and I want to take you there but just before I do, we heard  
18 some evidence during the institutional response of the  
19 Children's Aid Society, of some rumours and/or innuendo  
20 that some child welfare workers were hearing out of  
21 the -- I believe it's the Town of Lancaster.

22 I just want to show you a note if I can and  
23 ask you if you had any knowledge of the matters set out  
24 therein, and it is -- it's Exhibit 2326. It's Document  
25 115857.



1                   And just by way of context, Mr. MacDonald,  
2                   it's a note from a worker by the name of Garrahan to the  
3                   Executive Director, Mr. Abell. It's dated February 7<sup>th</sup>, '94  
4                   and she's referring to a conversation she had with him a  
5                   couple of weeks earlier about things she was hearing from  
6                   the Town of Lancaster.

7                   **THE COMMISSIONER:** Two-three-two-six (2326)?

8                   **MR. ENGELMANN:** That's correct, sir.

9                   **MR. MacDONALD:** Thank you.

10                   **(SHORT PAUSE/COURTE PAUSE)**

11                   **MR. ENGELMANN:** And we'll avoid using if we  
12                   can, the names of the -- of the mother involved.

13                   **(SHORT PAUSE/COURTE PAUSE)**

14                   **MR. ENGELMANN:** Sir, were you aware of any  
15                   of the rumours that were set out in this memo?

16                   **MR. MacDONALD:** No.

17                   **MR. ENGELMANN:** All right. Sir, I  
18                   understand that you became aware, at least of some of this  
19                   issue, during a phone call you had with your father, with  
20                   Milton MacDonald, on February 11<sup>th</sup>, 1994?

21                   **MR. MacDONALD:** Not about what's set out in  
22                   this letter, but I learned about my father's criminal past  
23                   from -- as a result of a phone call I received from him on  
24                   a Friday -- I think it was a Friday afternoon in early  
25                   February of '94.

1                   **MR. ENGELMANN:** And, sir, you set this out I  
2 think in some detail in the statement and I thought maybe I  
3 could just take you there and ask you to confirm if that's  
4 how you became aware of this.

5                   It is Exhibit 2599. I don't know if the  
6 witness has that binder.

7                   **THE COMMISSIONER:** Twenty-four-ninety-nine  
8 (2499)? No.

9                   **MR. ENGELMANN:** Counsel, it's Document  
10 Number 714173.

11                   And, Mr. MacDonald, just to situate you,  
12 this is an interview report that you would have given at  
13 your home on February 16<sup>th</sup>, 1994 to two OPP officers, one  
14 named Hurlbut and the other Beatty.

15                   **MR. MacDONALD:** I think that was in Long  
16 Sault Detachment where they interviewed me.

17                   **MR. ENGELMANN:** Okay. It says -- oh,  
18 perhaps you're right, sir. Yes, you're right, absolutely.  
19 I apologize.

20                   The interview report appears to set out in a  
21 narrative fashion your recollection of the events of  
22 February 11<sup>th</sup> and 12<sup>th</sup>, and your growing awareness of issues  
23 concerning sexual misconduct and your father's involvement  
24 in same.

25                   **MR. MacDONALD:** M'hm.

1                   **MR. ENGELMANN:** Is that fair?

2                   **MR. MacDONALD:** Yes.

3                   **MR. ENGELMANN:** And just if you could just  
4                   have a quick look at that and perhaps tell us if the  
5                   statement accurately reflects what you would have learned  
6                   over those two or three days?

7                   **MR. MacDONALD:** Yes.

8                   **MR. ENGELMANN:** All right.

9                   And, sir, I understand after speaking with  
10                  Milton MacDonald you would have conducted Randy Millar,  
11                  who's your brother-in-law and also a local OPP officer.

12                  **MR. MacDONALD:** No, I contacted my mother  
13                  after I spoke with ---

14                  **MR. ENGELMANN:** No, fair enough. And you  
15                  contacted your mother, you also spoke to your sister and  
16                  then you spoke to Randy Millar?

17                  **MR. MacDONALD:** I spoke to Randy and my  
18                  sister in the same phone call, yeah.

19                  **MR. ENGELMANN:** And, sir, you indicate at  
20                  Bates page 003 that:

21                                 "Randy and I talked about the  
22                                 precarious position that he and I were  
23                                 in, being a police officer and a Crown  
24                                 attorney."

25                  And that was a concern you had, and perhaps

1 a concern he had as well, given the nature of what you were  
2 being told.

3 **MR. MacDONALD:** He was less concerned than I  
4 was. I didn't want my conduct or his to be seen as  
5 interfering or trying to intimidate the person who may or  
6 may not be a complainant, and he said not to worry, "I know  
7 what I'm doing. I'm going to speak to his father. I know  
8 his father, former neighbours, and if he has an allegation  
9 to make it will be" -- Randy would turn it over to his  
10 supervisor and if he didn't have an allegation to make, the  
11 message was to -- not to harass my father.

12 **MR. ENGELMANN:** Okay.

13 And, sir, I understand from your statement  
14 that you became aware of trouble that he'd been in -- your  
15 father had been in, in the late sixties, only at this time.

16 **MR. MacDONALD:** When I phoned my mother  
17 back.

18 **MR. ENGELMANN:** And you had been completely  
19 unaware of a conviction for a similar type of offence in or  
20 around 1969?

21 **MR. MacDONALD:** Completely.

22 **MR. ENGELMANN:** Sir, to your knowledge --  
23 and we know that a number of victims were identified and  
24 the matter was dealt with in the court system. To your  
25 knowledge were any of the victims of your father connected

1 to Project Truth or the other investigations that were  
2 being looked at by the OPP?

3 **MR. MacDONALD:** I believe there's no  
4 connection.

5 **MR. ENGELMANN:** Okay. And, sir, when you  
6 say no connection, neither with the victims nor any linkage  
7 between him and any of the perpetrators or alleged  
8 perpetrators that you understand to be part of what was  
9 being investigated by the OPP?

10 **MR. MacDONALD:** I understood -- I knew from  
11 the detective inspector investigating my father's case that  
12 my father operated alone.

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

14 And, sir, after you spoke to your brother-  
15 in-law, he spoke to one of the parents, and then these two  
16 OPP officers that you met with on the 16<sup>th</sup> of February began  
17 investigating your father for these issues. Is that  
18 correct?

19 **MR. MacDONALD:** On the same -- yeah, on the  
20 same weekend that Randy spoke to Mr. So-and-so ---

21 **THE COMMISSIONER:** The victim's father?

22 **MR. MacDONALD:** Victim's father, I'm sorry.  
23 I don't know his sobriquet.

24 **THE COMMISSIONER:** No no, that's the way  
25 we'll do it; all right?

1                   **MR. MacDONALD:** Okay.

2                   Randy then reported it to the -- Randy and I  
3                   conferred and he said, "There is an allegation," and so we  
4                   decided that Randy would report it to the 11 District  
5                   Superintendent, OPP, and I would take my father to the  
6                   psychiatric hospital in Ottawa because he'd had a nervous  
7                   breakdown that weekend when I confronted him with this.

8                   **MR. ENGELMANN:** And you set that out in the  
9                   narrative, in the interview.

10                  **MR. MacDONALD:** Yes, sir.

11                  **MR. ENGELMANN:** All right.

12                  Sir, I'd like to take you to another area  
13                  now, if I may, and that ---

14                  **MR. MacDONALD:** Project Truth?

15                  **MR. ENGELMANN:** --- that is the Project  
16                  Truth investigation.

17                  **MR. MacDONALD:** Yes, sir.

18                  **MR. ENGELMANN:** And, sir, I just want to  
19                  show you a memo. It is Exhibit 228, if I may.

20                  **THE COMMISSIONER:** Maybe we should close  
21                  that off a little bit.

22                  **MR. ENGELMANN:** Yeah.

23                  **THE COMMISSIONER:** Eventually your father  
24                  pleaded guilty or was found guilty, sir?

25                  **MR. MacDONALD:** Pleaded guilty.

1                   **THE COMMISSIONER:** All right. And he was  
2 sentenced?

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

4                   **THE COMMISSIONER:** And was he given any -- a  
5 period of incarceration?

6                   **MR. MacDONALD:** Twenty-two (22) months.

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

8                   **MR. ENGELMANN:** And, sir, this was handled  
9 by a different Crown attorney's office?

10                  **MR. MacDONALD:** The Crown attorney from I  
11 think -- western Ontario I think is where she was out of.  
12 Mary Lou Dickie was her name.

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

14                  **MR. MacDONALD:** Is her name.

15                  **MR. ENGELMANN:** Mr. Commissioner, then if we  
16 could turn to ---

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

18                  **MR. ENGELMANN:** --- matters dealing with  
19 Project Truth. And, sir, if we could start with Exhibit  
20 228. It's Document Number 113942. It is a memo from  
21 Robert Pelletier to Peter Griffiths, dated April 2<sup>nd</sup>, 1997.

22                  **THE COMMISSIONER:** Madam Clerk, do we have  
23 that; 228?

24                  **MR. ENGELMANN:** Exhibit 228, sir.

25                  **THE COMMISSIONER:** No, no, 228. No, I don't

1 have it. Do you have it, sir? Two two eight (228), sorry.

2 **MR. ENGELMANN:** Two two eight (228),  
3 Document Number 113942.

4 **THE COMMISSIONER:** Okay.

5 **MR. MacDONALD:** Yes, 228.

6 **MR. ENGELMANN:** Yeah.

7 Sir, this is a memo from, as I said, Robert  
8 Pelletier to Peter Griffiths, providing a summary and  
9 chronology of events relating to the *Regina v. Charles*  
10 *MacDonald* prosecution and some recent developments and  
11 additional complaints. And it's referring to a brief  
12 prepared by Mr. Dunlop and/or his lawyer that was given to  
13 then-Chief of the London Police, Julian Fantino.

14 **MR. MacDONALD:** Is this the -- what you  
15 refer was the Dunlop -- his counsel's name was?

16 **MR. ENGELMANN:** Bourgeois.

17 **MR. MacDONALD:** This is the Dunlop-Bourgeois  
18 brief you're referring to?

19 **MR. ENGELMANN:** Yes.

20 **MR. MacDONALD:** Yes.

21 **MR. ENGELMANN:** And this is a memo where  
22 Robert Pelletier is setting out some background about that  
23 brief and some of the issues, and he's writing to Mr.  
24 Griffiths and he's confirming that there's going to be a  
25 meeting to deal with these issues on April 24<sup>th</sup>, 1997.



1                   And, sir, even though this is not copied to  
2                   you, I believe this was sent to you. Is that your  
3                   understanding?

4                   **MR. MacDONALD:** I don't recall; possible.

5                   **MR. ENGELMANN:** Okay. It's just -- I'll  
6                   just be a moment.

7                   **MR. MacDONALD:** Bob spoke to me about its  
8                   contents, so I may have been copied as well.

9                   **MR. ENGELMANN:** If you just look at ---

10                  **MR. MacDONALD:** He phoned me before I would  
11                  have received this in hard copy.

12                  **MR. ENGELMANN:** Okay; 109360.

13                  This is just the fax cover sheet I believe  
14                  that went with this document.

15                  **THE COMMISSIONER:** Thank you. Exhibit  
16                  Number 2922 is a document sent to Mr. Murray MacDonald on  
17                  April 3<sup>rd</sup>, 1997.

18                  **--- EXHIBIT NO./PIÈCE NO. P-2922:**

19                                 (109360) - Fax cover sheet from Crown  
20                                 Attorney L'Original to Murray MacDonald dated  
21                                 03 April 97

22                  **MR. ENGELMANN:** It's from the Crown Attorney  
23                  L'Original, at the top. It refers to 11 pages with the  
24                  cover and ---

25                  **THE COMMISSIONER:** Yeah?

1                   **MR. ENGELMANN:** --- we have the 10-page  
2 letter, which is Exhibit 228.

3                   Now, I'm sure that a copy that you would  
4 have received, sir, would not have had the handwritten note  
5 on the first page that says "Hallett copy."

6                   **MR. MacDONALD:** No, no.

7                   **MR. ENGELMANN:** Okay, all right.

8                   So in this email, first of all, do you know  
9 why you were being sent a copy of this?

10                  **MR. MacDONALD:** This was right after -- at  
11 least Bob and I and Mr. Griffiths, and I presume everybody  
12 in the Criminal Law Division -- after we learned that the  
13 conspiracy theorists were accusing me of being part of a  
14 criminal conspiracy.

15                  **MR. ENGELMANN:** All right.

16                  And so you would have had some discussions  
17 with Mr. Griffiths and/or Mr. Pelletier about that?

18                  **MR. MacDONALD:** I got a phone call from Bob  
19 saying "You wouldn't believe what's just come to my  
20 attention or come across my desk," and he described to me  
21 the extract in those materials referencing me.

22                  **MR. ENGELMANN:** All right.

23                  And, in fact, some of those are in the  
24 letter itself. And I'm just going to turn you to them very  
25 briefly, if I may, at Bates page 946, which is page 4 of

1 the letter. This is a summary of some allegations that are  
2 contained in an amended Statement of Claim. And on that  
3 page there's a reference to you -- and I'm looking at Bates  
4 page 946, about halfway down, it says you're named in  
5 various paragraphs in the context of various clandestine  
6 meetings and arrangements involving certain named  
7 defendants and others. And you were made aware of this,  
8 sir, by Mr. Pelletier and of course by way of this letter.

9 **MR. MacDONALD:** Correct.

10 **MR. ENGELMANN:** Would this have been the  
11 first you knew about these allegations?

12 **MR. MacDONALD:** Right. Basically Bob was  
13 telling me that Dunlop was accusing me of one of the  
14 indirect -- being one of the indirect members who support  
15 the clan, whatever this clan is.

16 **MR. ENGELMANN:** All right.

17 On page 947, the next page -- were you aware  
18 that it was alleged that you were in attendance at a summer  
19 residence of Malcolm MacDonald on Stanley Island -- it's  
20 set out there on the next page about two-thirds of the way  
21 down -- with a number of other people?

22 **MR. MacDONALD:** I learned of that allegation  
23 for the first time in either Bob's telephone call or seeing  
24 this letter or actually Bob may also have forwarded to me -  
25 - or Peter may have -- Griffiths may have forwarded to me a

1 copy of the actual ---

2 MR. ENGELMANN: The amended Statement of  
3 Claim?

4 MR. MacDONALD: --- Dunlop/Bourgeois  
5 document that referenced me.

6 MR. ENGELMANN: Okay.

7 MR. MacDONALD: As far as my attendance at  
8 that cottage is concerned, you can be safe in concluding  
9 that this is fantasy island.

10 MR. ENGELMANN: Well, I'm just going to ask  
11 you some questions about that because it comes up in an  
12 interview. The page -- Bates page 949, there are other  
13 references to you in this, again, brief prepared by  
14 Bourgeois that are referenced at the bottom, and you're one  
15 of a list of people ---

16 MR. MacDONALD: I don't think this was  
17 prepared by a lawyer. I think Dunlop prepared this  
18 himself.

19 MR. ENGELMANN: Okay. All right.  
20 So you're saying the brief prepared by  
21 Bourgeois should say the brief prepared by Dunlop?

22 MR. MacDONALD: This obviously isn't a legal  
23 brief.

24 MR. ENGELMANN: Okay. Well, what we're  
25 looking at, sir, is the letter where Mr. Pelletier's

1 summarizing ---

2 MR. MacDONALD: No, I realize that.

3 MR. ENGELMANN: --- some of what he's read.

4 MR. MacDONALD: Right.

5 MR. ENGELMANN: And I just want to  
6 understand what you received. You just received this  
7 letter or did you receive parts of this brief that had been  
8 prepared as well?

9 MR. MacDONALD: I saw the parts of the brief  
10 that referenced me.

11 MR. ENGELMANN: Okay.

12 MR. MacDONALD: Possibly my father at that  
13 time.

14 MR. ENGELMANN: Yes.

15 MR. MacDONALD: I mean, I've seen it again  
16 since in anticipation of testifying in these proceedings --  
17 -

18 MR. ENGELMANN: Yes.

19 MR. MacDONALD: --- more recently. But I  
20 believe I first saw the actual extracts from the Dunlop  
21 amended Statement of Claim around the time of this letter.

22 MR. ENGELMANN: All right. And there are  
23 references here to photographs of various individuals, and  
24 various individuals being referred to as members of a clan.  
25 That's what he sets out here.

1                   And, sir, again, on the following couple of  
2                   pages there's again a reference to this summer residence on  
3                   Stanley Island on Bates page 950, and then there's  
4                   references to you on that page and also on the following  
5                   page with respect to a decision not to pursue criminal  
6                   charges, et cetera, et cetera.

7                   **MR. MacDONALD:** Yeah, conspiracy --  
8                   conspiracy to obstruct justice I think is what the  
9                   allegation was.

10                  **MR. ENGELMANN:** So Mr. Pelletier is advising  
11                  you by phone he's sending you a copy of this letter to Mr.  
12                  Griffiths and you are being asked to be in attendance at a  
13                  meeting on April 24<sup>th</sup>, 1997; correct?

14                  **MR. MacDONALD:** Yes, I know Bob was -- I  
15                  didn't realize that this letter actually scheduled a  
16                  meeting but either Bob or Mr. Griffiths, or both, told me  
17                  to attend that meeting.

18                  **MR. ENGELMANN:** All right.

19                  So prior to the meeting you didn't have a  
20                  copy of the full brief but you had some copies of excerpts  
21                  that referred to you ---

22                  **MR. MacDONALD:** Yes, sir.

23                  **MR. ENGELMANN:** --- and you had this letter?

24                  **MR. MacDONALD:** Yes, sir.

25                  **MR. ENGELMANN:** And you'd spoken to Bob

1 Pelletier. Had you spoken to Peter Griffiths as well?

2 MR. MacDONALD: I don't recall. I must -- I  
3 think -- I'm not sure.

4 MR. ENGELMANN: All right.

5 And who was it that asked you to be at the  
6 meeting, or did you ask to be there?

7 MR. MacDONALD: No, I was -- I thought that  
8 it was Mr. Griffiths but it may have been Bob and Peter  
9 together who recommended it.

10 MR. ENGELMANN: And in doing so and  
11 recommending or asking you to be there did they tell you  
12 why they wanted you to be at the meeting, if you can  
13 recall?

14 MR. MacDONALD: Well, it was a generally --  
15 it was generally in the context of what will the  
16 authorities, police, and Criminal Prosecution Service do in  
17 light of allegations that, you know, are -- have gone to a  
18 broad sweeping obstruction of justice by members of the  
19 criminal justice system -- or attempt to obstruct justice.

20 MR. ENGELMANN: Sir, did you feel any  
21 discomfort, if I can use that term, in being asked to  
22 attend this meeting, given that in part they were going to  
23 be discussing investigating you and others?

24 MR. MacDONALD: Only after I had left the  
25 meeting and personally while I was there. Before attending

1 the meeting I was so focused on -- I was so angry about  
2 these false, malicious, mean-spirited allegations by Mr.  
3 Dunlop that that's really about all I was thinking. Until  
4 I got to the meeting and I walked -- got to the meeting and  
5 it had already taken place, and so I realized I wasn't the  
6 ---

7 MR. ENGELMANN: I'm sorry; the meeting had  
8 already taken place?

9 MR. MacDONALD: Had commenced. Sorry.

10 MR. ENGELMANN: Oh, it had started ---

11 MR. MacDONALD: Yes.

12 MR. ENGELMANN: --- before you got there?

13 MR. MacDONALD: I was brought into the  
14 boardroom. I was -- Mr. Griffiths told us all -- Mr.  
15 Griffiths had already, I think, met with the officers but  
16 I'm not sure. At any rate, I was -- when I got to the  
17 boardroom the others were there. I was told that this was  
18 the -- that the plan was that every stone would be unturned  
19 and that I would -- including any -- all of my involvement  
20 would be reviewed as well by the police.

21 I remember I'd never met Pat Hall before and  
22 I remember him looking at me with what I now know to be  
23 Pat's sort of hard glare poker face and it was rather --  
24 then it started to hit me as I looked at Pat and as I  
25 realized in the environment that I'm here for a courtesy



1 notice and then I left before the others left. And I  
2 remember walking in the parking lot of the basement parking  
3 at the court -- the parking at the City Hall parking area  
4 next to the courthouse, that not only is -- it was insult  
5 to injury. Not only was Mr. Dunlop making these cruel  
6 allegations but that I was going to be put once again under  
7 the microscope by the -- you know, the police microscope,  
8 and I had the feeling that it would never end.

9 **MR. ENGELMANN:** And when you say "once  
10 again" you were referring to the fact that you were  
11 interviewed back in 1994?

12 **MR. MacDONALD:** Yes, and -- well, was it  
13 late '93 that the Ottawa officers met me early ---

14 **MR. ENGELMANN:** January of '94.

15 **MR. MacDONALD:** Early '94, yes.

16 **MR. ENGELMANN:** And then July of '94 by  
17 Detective Inspector Smith.

18 **MR. MacDONALD:** And February '94 by the  
19 other case.

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

21 So we've heard that Peter Griffiths, Robert  
22 Pelletier, Pat Hall, Tim Smith, Don Genier, Mike Fagan were  
23 all there.

24 **MR. MacDONALD:** I believe so.

25 **MR. ENGELMANN:** And what you're telling us

1 is they were meeting before you got there and that they  
2 continued to meet when you left?

3 **MR. MacDONALD:** I recall -- I may have  
4 walked in with Bob Pelletier. We didn't travel together.  
5 We came from two different directions. And they were  
6 already there and there was a very brief exchange of  
7 pleasantries. I don't recall if it was in the hallway or  
8 the boardroom but there was a very brief exchange. Then  
9 Peter laid down the plan, including that I was, of course,  
10 to stay away from -- continue to stay away from all --  
11 providing any legal advice to -- in respect to this new  
12 range of potential suspects and cases, and also that my  
13 conduct would be reviewed -- I remember looking at the  
14 officers and saying, "Review it vigorously or review it  
15 quickly? Let's get to the bottom of this. I've got  
16 nothing to hide."

17 I did what every good criminal lawyer does  
18 and forgot to remember the right to -- you know, the right  
19 to keep my own -- I told them that I'd be anxious to give a  
20 statement and to do it quickly, and then you know about the  
21 next meeting that I had with Tim Smith.

22 **MR. ENGELMANN:** Right. Sir, were these  
23 officers known to you?

24 **MR. MacDONALD:** Not -- I didn't know Pat  
25 Hall, but I knew the others.

1                   **MR. ENGELMANN:** All right, because they were  
2                   from local OPP detachments?

3                   **MR. MacDONALD:** Tim Smith and ---

4                   **MR. ENGELMANN:** Oh, I'm sorry, Tim Smith was  
5                   not.

6                   **MR. MacDONALD:** Tim Smith and ---

7                   **MR. ENGELMANN:** Mike Fagan. He interviewed  
8                   you ---

9                   **MR. MacDONALD:** Mike Fagan and Tim Smith and  
10                  I had worked together as part of the Alfred -- the St.  
11                  Joseph's boys' School ---

12                  **MR. ENGELMANN:** Right.

13                  **MR. MacDONALD:** --- prosecutions.

14                  **MR. ENGELMANN:** And they had interviewed you  
15                  back in '94?

16                  **MR. MacDONALD:** Yes, I -- yes.

17                  **MR. ENGELMANN:** And Don Genier, was he known  
18                  to you?

19                  **MR. MacDONALD:** Yes. Don was from -- was or  
20                  had been a part of the -- one of the detachments in my  
21                  jurisdiction.

22                  **MR. ENGELMANN:** And do you have a sense,  
23                  sir, as to how long you were there at that meeting?

24                  **MR. MacDONALD:** It didn't -- I wasn't -- my  
25                  counsel wasn't sought, so it was probably a short period.

1                   **MR. ENGELMANN:** So you were there to listen  
2 more than anything else?

3                   **MR. MacDONALD:** Yes.

4                   **MR. ENGELMANN:** All right. And do you  
5 recall, other than advising them to investigate you quickly  
6 and vigorously, if you gave any other instructions or had  
7 any other input during the course of the meeting?

8                   **MR. MacDONALD:** We may have discussed  
9 administrative components of what role I would play, but  
10 I -- that's just speculation, and I shouldn't speculate.

11                   **MR. ENGELMANN:** All right. Just give me a  
12 moment, sir? I just want to very briefly refer to a couple  
13 of the officers' notes, if I may.

14                   You didn't take notes at the meeting;  
15 correct?

16                   **MR. MacDONALD:** No.

17                   **MR. ENGELMANN:** If we could look briefly at  
18 Tim Smith's notes, Exhibit 1803? The Bates page, for the  
19 screen, is 1054263.

20                   **THE COMMISSIONER:** Thank you.

21                   **MR. MacDONALD:** Thank you.

22                   **MR. ENGELMANN:** If we could just blow up the  
23 writing? This is easier to read on the screen, sir. Just  
24 under the word "decision". So:

25                   "Finish preliminary witnesses.

1 MacDonalld and Silmser ask for  
2 adjournment prior to decision. Police  
3 investigate new allegations.  
4 Disclosure Dunlop brief to Neville.  
5 Investigate all allegations. Letter of  
6 request to be made to Superintendent  
7 Larry Edgar by Peter Griffiths..."

8 This is for a special project or  
9 prosecution. I'm not sure what that next word is.

10 "MacDonald next court date 9 May '97,  
11 to be spoken to. Finish meeting."

12 Sir, do you recall being briefed, sort of  
13 generally, on what we see here?

14 **MR. MacDONALD:** I don't recall.

15 **MR. ENGELMANN:** All right.

16 And, sir, your office was advised that you  
17 were not going to be prosecuting any cases out of Project  
18 Truth. Do you recall that?

19 **MR. MacDONALD:** Yes. That was -- yes, I was  
20 advised of that; it might have been at that meeting.

21 **MR. ENGELMANN:** Right. And nor were you to  
22 provide legal advice to any of the Project Truth officers?

23 **MR. MacDONALD:** That's right.

24 **MR. ENGELMANN:** All right. And that was  
25 because there would be a perceived or real conflict?

1 MR. MacDONALD: Yes.

2 MR. ENGELMANN: And that was explained?

3 MR. MacDONALD: Yes.

4 MR. ENGELMANN: I understand, sir, that your  
5 office did have to handle some disclosure issues of Project  
6 Truth cases, however? Is that correct?

7 MR. MacDONALD: As a way-station only.

8 MR. ENGELMANN: Right.

9 And just by way of one example, if we can,  
10 if we can look at Document Number 109262?

11 THE COMMISSIONER: Thank you.

12 Exhibit Number 2923 is a letter dated 13<sup>th</sup> of  
13 July, 1998, to Mr. Murray MacDonald from Detective Sergeant  
14 Pat Hall.

15 ---EXHIBIT NO./PIÈCE NO. P-2923:

16 (109262) - Letter from Pat Hall to Murray  
17 MacDonald re. Assignment of a Crown Attorney  
18 to Project Truth - dated July 13, 1998

19 MR. ENGELMANN: Sir, would this be an  
20 example of one of the times when your office was receiving  
21 briefs from the OPP and forwarding them on to defence  
22 counsel involved in some of these cases?

23 MR. MacDONALD: Yes, I presume so.

24 MR. ENGELMANN: All right.

25 MR. MacDONALD: Yes. I didn't review the

1       correspondence or the contents of the disclosure, except,  
2       you know, we put them in mailing packages and -- or else  
3       had someone pick them up at the desk.

4                   **MR. ENGELMANN:** I just note on the second  
5       page of the letter, it says:

6                   "On July 8<sup>th</sup>, we were advised that a  
7                   Crown Attorney had been assigned from  
8                   Toronto, however, after discussing the  
9                   matter with Ruth Neilson and Kerry  
10                  Hughes of the Crown Law office,  
11                  Toronto, it appears there was some  
12                  indecision on this matter. Therefore,  
13                  I've been instructed by Detective  
14                  Inspector Smith to deliver to your  
15                  office the Crown briefs in the  
16                  aforementioned cases so they may be  
17                  provided to the assigned Crown  
18                  Attorneys."

19                 Do you recall, sir, there being some delay  
20       or some difficulties in getting Crowns assigned or were you  
21       aware of that, to do these Project Truth cases?

22                   **MR. MacDONALD:** Yes, I have some  
23       recollection of that.

24                   **MR. ENGELMANN:** All right. And consequently  
25       some of the matters that would have normally been disclosed

1 by assigned prosecutors, were handled by your office?

2 MR. MacDONALD: In order -- in efforts to  
3 expedite, yes.

4 MR. ENGELMANN: Now, did you have any  
5 involvement, sir, in attempting to find them a Crown  
6 counsel to ---

7 MR. MacDONALD: No, sir.

8 MR. ENGELMANN: --- actually do this, or was  
9 that done by someone else?

10 MR. MacDONALD: That was done by others,  
11 yes.

12 MR. ENGELMANN: All right.

13 MR. MacDONALD: Outside my office.

14 MR. ENGELMANN: And I understand aside from  
15 disclosure issues, from time-to-time there may have been  
16 some pre-trial appearances such as adjournments which were  
17 handled by someone from your office when other Crowns were  
18 not available? Do you recall that, sir?

19 MR. MacDONALD: I don't recall, but that's  
20 likely.

21 MR. ENGELMANN: Okay.

22 And, sir, just another issue with this  
23 point. If we could look at Document Number 109273.

24 It's a new document, sir, it's coming to  
25 you. I just wanted to give you an example of the



1 appearance issue.

2 **THE COMMISSIONER:** Thank you.

3 Exhibit 2924 is a letter dated August 5<sup>th</sup>,  
4 1998, memorandum to Murray MacDonald from Robert Pelletier.

5 --- **EXHIBIT NO./PIÈCE NO. P-2924:**

6 (109273) - Memorandum from Robert Pelletier  
7 to Murray MacDonald dated August 5, 1998

8 **MR. ENGELMANN:** This is a memo from  
9 Mr. Pelletier to yourself, essentially indicating  
10 difficulty in enlisting the services of a prosecutor from  
11 outside the region to work on these cases, and he's asking  
12 that matters be adjourned with an indication to the court  
13 that a prosecutor from outside the region will be enlisted?

14 **MR. MacDONALD:** We call this an agency  
15 letter, "agency instruction letter", yes.

16 **MR. ENGELMANN:** Would this be an example of  
17 where your office might have had to go and attend in court  
18 because of some difficulties in getting an outside Crown  
19 assigned? Is that ---

20 **MR. MacDONALD:** Yes.

21 **MR. ENGELMANN:** --- fair?

22 **MR. MacDONALD:** Yes, and to repeat the  
23 wording in the letter:

24 "...and confirming to the court that  
25 we're appearing as agent for that



1                   And, sir, this may have become a bit of an  
2                   issue, this assignment of outside Crown, and I just want to  
3                   have you look at a letter from Mr. Johnson to yourself.  
4                   It's Document Number 109267. It's dated July 20<sup>th</sup>, 1998.

5                   **THE COMMISSIONER:** Exhibit 2926.

6                   **--- EXHIBIT NO./PIÈCE NO. P-2926:**

7                   (109267) - Letter from Don Johnson to Murray  
8                   MacDonald re: Disclosure dated 20 Jul 98

9                   **MR. ENGELMANN:** Sir, this is a disclosure  
10                  request, is it not, from Mr. Johnson?

11                  **MR. MacDONALD:** Yes.

12                  **MR. ENGELMANN:** He's acting for Harvey  
13                  Latour, requesting disclosure.

14                  **MR. MacDONALD:** Yes.

15                  **MR. ENGELMANN:** This is one of the initial  
16                  Project Truth suspects?

17                  **MR. MacDONALD:** Yes.

18                  **MR. ENGELMANN:** And this letter is coming to  
19                  you, is it not, because there was no outside Crown  
20                  assigned?

21                  **MR. MacDONALD:** Yes.

22                  **MR. ENGELMANN:** Okay. Do you recall what  
23                  you did with requests of this nature, sir?

24                  **MR. MacDONALD:** They were immediately  
25                  forwarded on, either by fax or mail to the -- I believe

1 they were all going through the Director's office in 1998.

2 **MR. ENGELMANN:** All right. I may have an  
3 example.

4 Yes, if the witness could be shown Document  
5 Number 702428.

6 **THE COMMISSIONER:** Thank you. Exhibit 2927  
7 is a letter dated July 23<sup>rd</sup>, 1998 to Mr. Robert Pelletier  
8 from Murray MacDonald.

9 **--- EXHIBIT NO./PIÈCE NO. P-2927:**

10 (702428) - Letter from Murray MacDonald to  
11 Robert Pelletier re: Harvey Latour dated 23  
12 Jul 98

13 **MR. ENGELMANN:** Sir, I believe you've  
14 received Mr. Johnson's letter requesting disclosure and  
15 you're now sending it off to Mr. Pelletier. Is that fair?

16 **MR. MacDONALD:** Yeah. I see Bob was the  
17 Acting Director then ---

18 **MR. ENGELMANN:** All right.

19 **MR. MacDONALD:** --- during the interregnum  
20 between Mr. Griffiths' departure and Jimmy Stewart's coming  
21 on board.

22 **MR. ENGELMANN:** And, sir, if we could  
23 quickly look at 109271. This is a follow-up letter from  
24 Mr. Johnson to yourself. It's dated August 4<sup>th</sup>, 1998.

25 **THE COMMISSIONER:** Thank you. Exhibit

1 Number 2928 is a letter to Murray MacDonald from Donald W.  
2 Johnson, August 4<sup>th</sup>, 1998.

3 --- EXHIBIT NO./PIÈCE NO. P-2928:

4 (109271) - Letter from Don Johnson to Murray  
5 MacDonald re: *Regina v. Harvey Latour*

6 MR. ENGELMANN: Just a follow-up letter from  
7 Mr. Johnson, indicating he hasn't received a response and  
8 he'd like one; correct?

9 MR. MacDONALD: Yes.

10 MR. ENGELMANN: And, sir, this is what you  
11 passed on to someone else to deal with?

12 MR. MacDONALD: Yes. It would have been --  
13 would have been immediately transferred on.

14 MR. ENGELMANN: Right. And, sir, there's a  
15 further letter from Mr. Johnson. That's 109276. It's  
16 dated August 26<sup>th</sup>, 1998.

17 THE COMMISSIONER: Yes, thank you, from Mr.  
18 Johnson to Murray MacDonald, August 26<sup>th</sup>, '98.

19 MR. ENGELMANN: Sir, the exhibit number?

20 MR. MacDONALD: Yeah, my comments ---

21 THE COMMISSIONER: Two nine two nine (2929).

22 MR. ENGELMANN: Two nine two nine (2929)?

23 THE COMMISSIONER: M'hm.

24 --- EXHIBIT NO./PIÈCE NO. P-2929:

25 (109276) - Letter from Don Johnson to Murray

1 MacDONALD re: *Regina v. Harvey Latour*

2 MR. MacDONALD: Comments similar to the last  
3 one.

4 MR. ENGELMANN: All right. So you're -- as  
5 soon as you're getting these letters you're passing them on  
6 to Mr. Pelletier's office?

7 MR. MacDONALD: Yes, sir. Some of them I  
8 didn't see myself. Guy Simard likely saw some and would  
9 have forwarded them off of his own initiative.

10 MR. ENGELMANN: But you would have had  
11 instructions for your staff that these were to go off to  
12 someone else to respond to?

13 MR. MacDONALD: Yes. There were standing  
14 orders on that regard for all staff.

15 MR. ENGELMANN: And timely disclosure to  
16 defence counsel is important, is it not?

17 MR. MacDONALD: Yes. I believe we managed  
18 to get things in and out as quickly as they came to us.

19 MR. ENGELMANN: But if there isn't timely  
20 disclosure that can have an impact on a -- it can  
21 potentially have an impact on a prosecution.

22 MR. MacDONALD: It can.

23 MR. ENGELMANN: But in these cases, because  
24 they didn't have an assigned Crown and because of the  
25 restrictions or circumscription on your office, you were

1 not to be responding to these directly?

2 MR. MacDONALD: Correct.

3 MR. ENGELMANN: Now, sir, I understand that  
4 at some point in time you became aware of some material  
5 posted on a website or websites. Is that correct?

6 MR. MacDONALD: Yes.

7 MR. ENGELMANN: And did you have some  
8 contact with Project Truth officers as a result, and in  
9 particular Pat Hall?

10 MR. MacDONALD: I thought it was Pat or one  
11 of the other Project Truth constables who I'm personally  
12 acquainted with -- more personally acquainted with who  
13 phoned me and told me; that I took it initially, you know,  
14 as a courtesy/sympathy call.

15 MR. ENGELMANN: All right. I think we have  
16 some officers' notes on this. If we could look at -- it's  
17 Exhibit 2750. Counsel, it's Document Number 727751.

18 THE COMMISSIONER: Merci.

19 MR. ENGELMANN: Okay, if I could just have a  
20 moment.

21 THE COMMISSIONER: M'hm.

22 MR. ENGELMANN: Sir, Bates page 097.

23 MR. MacDONALD: Thank you.

24 MR. ENGELMANN: These are notes of Officer  
25 Hall from March 18<sup>th</sup>, 1999. He's referring to the fact --

1           this is sometime between 8:00 and 11:05:

2                           "Call from Murray MacDonald about press  
3                           clippings."

4                           Do you know, sir -- I don't know if this is  
5           related to the website or if this is related to matters  
6           that are appearing in the newspaper. Can you help us at  
7           all on that with respect to that date?

8                           **MR. MacDONALD:** I'd speculate.

9                           **MR. ENGELMANN:** All right. You don't recall  
10          what that might have been referring to at the time?

11                          **MR. MacDONALD:** I think they were referring  
12          to both.

13                          **MR. ENGELMANN:** Okay.

14                          And then he has other notes -- this is  
15          Exhibit 2754. It's Document Number 727756 and the Bates  
16          page is 574.

17                          Mr. MacDonald, is it fair to say there was  
18          not only some information on websites but there was also  
19          some information in the media, in the print press,  
20          et cetera, about ---

21                          **MR. MacDONALD:** The website ---

22                          **MR. ENGELMANN:** --- some of the allegations  
23          from the Dunlop-Bourgeois brief?

24                          **MR. MacDONALD:** Yes.

25                          **MR. ENGELMANN:** All right. And on occasion



1       some of this media -- or the websites would refer to your  
2       name as being involved; correct?

3               **MR. MacDONALD:** Certainly the websites did.

4               **MR. ENGELMANN:** Yeah.

5               **THE COMMISSIONER:** So Exhibit 2754?

6               **MR. ENGELMANN:** Yes.

7               **THE COMMISSIONER:** And we've got it on 575  
8       or 574?

9               **MR. ENGELMANN:** It should be Bates page 574.  
10       If we could blow up the bottom of the page.

11               **THE COMMISSIONER:** Right.

12               **MR. ENGELMANN:** I believe it says:

13                       "Paged by Murray MacDonald. Concerned  
14                       about Project Truth website. Had  
15                       reporter visit him yesterday wanting a  
16                       comment on same. Also felt..."

17               I believe it's:

18                       "...Leroux witness may have violated  
19                       disclosure order."

20               Do you remember, sir -- this is now the  
21       summer of 2000.

22               **MR. MacDONALD:** May have violated what  
23       order?

24               **THE COMMISSIONER:** That a reporter -- hang  
25       on, first of all let's start:

1 "Phoned by Murray MacDonald. Concerned  
2 about Project Truth website. Had a  
3 reporter visit him yesterday waiting --  
4 wanting a comment on same. Said I  
5 would wholly be..."

6 **MR. ENGELMANN:** "...probably be  
7 Contacted..."

8 **THE COMMISSIONER:** "Please" -- no.

9 **MR. ENGELMANN:** "Plus felt -- also felt  
10 Leroux..."

11 **THE COMMISSIONER:** "...witness may have  
12 violated disclosure order."

13 **MR. MacDONALD:** Can you bring that next page  
14 ---

15 **THE COMMISSIONER:** Yes, yes ---

16 **MR. MacDONALD:** --- up now?

17 **THE COMMISSIONER:** --- yes, yes, exactly.

18 **MR. MacDONALD:** Thank you. I see.

19 **MR. ENGELMANN:** Okay, do you recall  
20 contacting Pat Hall about this issue?

21 **MR. MacDONALD:** No, no, I don't. I was  
22 calling Pat or the other constables from time to time;  
23 essentially pleading for information as to what the hell's  
24 going on here, you know.

25 **MR. ENGELMANN:** Did you ask them if they

1           could possibly investigate a means or some kind of way to  
2           have this website either shut down or these concerns about  
3           you taken off the website? Do you recall if you would have  
4           asked Pat Hall for that?

5                       **MR. MacDONALD:** I don't recall. I don't  
6           know that Pat was -- Pat Hall had the authority to do that.

7                       **MR. ENGELMANN:** Fair enough. I'm just  
8           wondering if you might have asked him for assistance.

9                       **MR. MacDONALD:** I didn't make any efforts to  
10          get it off, like personally.

11                      **MR. ENGELMANN:** All right.

12                      Exhibit 2755, which I think is the next --  
13          perhaps the next tab in the binder, sir; Bates page 589. I  
14          was just looking for references and contacts that you might  
15          have had with the investigators concerning this issue.  
16          There seems to be a reference next to 8:45. I believe it  
17          says:

18                                "Website taken down. Call to Murray  
19                                MacDonald on same. Discussed Hallett  
20                                and review of Crown brief."

21                      Do you recall, sir, if Officer Hall would  
22          have contacted you to advise you that, in fact -- I think  
23          this was Project Truth -- the first one was taken down?

24                      **MR. MacDONALD:** ProjectTruth.com.

25                      **MR. ENGELMANN:** Yeah, and would he have

1 discussed with you issues concerning the timing of the  
2 brief on his investigation? There's a reference to Hallett  
3 and discussed ---

4 **MR. MacDONALD:** No, there wouldn't have been  
5 -- I don't think -- I have no recollection of timing of  
6 briefs as our discussion. Maybe the briefs were coming.

7 **MR. ENGELMANN:** All right.

8 Okay, and ---

9 **MR. MacDONALD:** But it -- that -- you know,  
10 Pat Hall when he -- I called him -- I must have called him  
11 at some time on the topic of ProjectTruth.com. He called  
12 me on -- or spoke to me in the proverbial hallway on more  
13 than one occasion because he -- I had the feeling that he  
14 genuinely felt -- had sympathy for the fact that this was  
15 going on and dragging my name into it and so he's making  
16 reference to this, I think -- he wasn't calling me in a  
17 legal context to inform me. It was more of a sympathy  
18 call, I think.

19 **MR. ENGELMANN:** Okay, all right.

20 And you were aware, sir, that he was  
21 investigating a broader conspiracy and that there were  
22 allegations that you were, to some extent, involved so he  
23 interviewed you as a result in December of 1998?

24 **MR. MacDONALD:** Yeah, but this notebook's in  
25 the year August 2000, I think.

1                   **MR. ENGELMANN:** Yeah, no, fair enough. Fair  
2 enough. I'm moving -- we're still in that broader context,  
3 but just off the website for a minute if I can. That he  
4 would have interviewed you in mid-December of 1998?

5                   **MR. MacDONALD:** Is that the second interview  
6 that Tim Smith was involved with as well?

7                   **MR. ENGELMANN:** Yes.

8                   **MR. MacDONALD:** Yeah.

9                   **MR. ENGELMANN:** And I believe, sir, they  
10 interviewed you and the tape malfunctioned and they had to  
11 re-interview you.

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

13                   **MR. ENGELMANN:** Do you recall that?

14                   **MR. MacDONALD:** Yes.

15                   **MR. ENGELMANN:** All right.

16                   And that is Exhibit 2683.

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

18                   **MR. ENGELMANN:** Sir, just on the first page  
19 towards the bottom, they appear to be confirming that  
20 they're re-interviewing you because of the problem with the  
21 tape the day before.

22                   **MR. MacDONALD:** Correct. I probably wore it  
23 out.

24                   **MR. ENGELMANN:** Do you recall that, sir?  
25 They're just indicating at the bottom that they're doing it

1 again; fair enough?

2 MR. MacDONALD: Yes, yes.

3 MR. ENGELMANN: And then on the second page  
4 -- at least at the start -- Inspector Smith is indicating  
5 to you what it is they need to talk to you about:

6 "...certain allegations made in the  
7 statement and Affidavit by Ron Leroux."

8 MR. MacDONALD: Yes.

9 MR. ENGELMANN: Okay. And do you recall,  
10 sir, with a number of the witnesses that they interviewed,  
11 there was a prepared set of questions that were either  
12 given at the time of the -- just when the interview started  
13 or perhaps a day or two before. Was that done with you?  
14 Do you recall if you were given a list of questions?

15 MR. MacDONALD: No, I don't believe I was.

16 MR. ENGELMANN: All right.

17 What about at the interview itself?

18 MR. MacDONALD: No.

19 MR. ENGELMANN: Okay. And sir, you were  
20 asked a number of questions about whether you had been to  
21 certain locations, and if we could just look at that  
22 briefly. On Bates page 397, you are asked, near the bottom  
23 of the page, if you had ever attended dinner parties at St.  
24 Andrew's parish.

25 MR. MacDONALD: Yes.

1                   **MR. ENGELMANN:** And you said, "No, I  
2 haven't." You did talk about the fact you were at a  
3 wedding reception there once in the early eighties.

4                   **MR. MacDONALD:** I think it was St. Andrew's  
5 parish, but I don't recall being in the church, but I think  
6 one of my cousins was married there.

7                   **MR. ENGELMANN:** All right.

8                   And do you stand by that answer today, sir?

9                   **MR. MacDONALD:** Right.

10                  **MR. ENGELMANN:** Sir, on Bates page 398, you  
11 were asked if you'd ever been to Ken Seguin's residence in  
12 Summerstown.

13                  **MR. MacDONALD:** Never.

14                  **MR. ENGELMANN:** And you said, "No, I  
15 haven't." Do you stand by that answer today?

16                  **MR. MacDONALD:** Yeah, never.

17                  **MR. ENGELMANN:** Sir, you were asked whether  
18 -- on that same page whether you'd been to Malcolm  
19 MacDonald's cottage on Stanley Island.

20                  **MR. MacDONALD:** Never.

21                  **MR. ENGELMANN:** And you stand by that answer  
22 today?

23                  **MR. MacDONALD:** Yes.

24                  **MR. ENGELMANN:** Sir, you were asked whether  
25 you'd ever been at a gathering or party at or near

1 Cameron's Point and you said, "No, I haven't." Do you  
2 stand by that answer?

3 MR. MacDONALD: Yes, sir.

4 MR. ENGELMANN: You were asked, sir, on that  
5 page whether you'd ever been to the Saltaire Motel in Fort  
6 Lauderdale, Florida.

7 MR. MacDONALD: Never.

8 MR. ENGELMANN: Okay.

9 And that's the answer you gave at that time;  
10 wasn't it?

11 MR. MacDONALD: Yes.

12 MR. ENGELMANN: Sir, you were also asked if  
13 you knew a number of people. Is that correct?

14 MR. MacDONALD: Probably, yes.

15 MR. ENGELMANN: Well, if we look at ---

16 MR. MacDONALD: Somewhere in there.

17 MR. ENGELMANN: --- just starting on the  
18 next page -- sorry, at the bottom of page, Bates page 398,  
19 you were asked if you knew someone by the name of Ron  
20 Leroux.

21 MR. MacDONALD: Yes.

22 MR. ENGELMANN: And you say:

23 "Don't recognize these names unless,  
24 possibly, I've dealt with him in a  
25 professional capacity as an accused or



1 a witness."

2 MR. MacDONALD: I don't -- I ---

3 MR. ENGELMANN: You didn't know Mr. Leroux?

4 MR. MacDONALD: Don't know them, no.

5 MR. ENGELMANN: All right.

6 And you were asked about Claude Shaver.

7 MR. MacDONALD: Yes, I know Claude Shaver.

8 MR. ENGELMANN: All right. And you stand by  
9 the answer you gave there, sir?

10 MR. MacDONALD: Yes.

11 MR. ENGELMANN: You had several dealings  
12 with him in respective, professional capacities.

13 MR. MacDONALD: I stand by that.

14 MR. ENGELMANN: Did you ever socialize with  
15 him, sir?

16 MR. MacDONALD: I went to lunch with him  
17 about once a year.

18 MR. ENGELMANN: All right.

19 You were asked about a person who's  
20 identified by a moniker here as C-8. You say that name ---

21 MR. MacDONALD: Yeah, "Do you know a..."

22 MR. ENGELMANN: --- doesn't ring a bell.

23 MR. MacDONALD: "Do you know a..." yeah.

24 MR. ENGELMANN: All right.

25 MR. MacDONALD: I don't know that man.

1                   **MR. ENGELMANN:** All right.

2                   And you're asked questions about a number of  
3 other people ---

4                   **MR. MacDONALD:** Yes.

5                   **MR. ENGELMANN:** --- over that page and the  
6 next page and, in fact, several pages. You've had an  
7 opportunity to review this statement, sir?

8                   **MR. MacDONALD:** Yeah, a few -- a few months  
9 -- weeks ago, yeah.

10                  **MR. ENGELMANN:** All right.

11                  Anything inaccurate or anything you'd want  
12 to change about the answers you gave with respect to your  
13 knowledge of those individuals?

14                  **MR. MacDONALD:** No, I -- I don't recall  
15 planning on making any changes.

16                  **MR. ENGELMANN:** All right.

17                  There's nothing that came to mind that was  
18 inaccurate when you reviewed it?

19                  **MR. MacDONALD:** I don't recall anything that  
20 I would change.

21                  **MR. ENGELMANN:** Sir, at Bates page 404 right  
22 at the bottom and on to the following page, Detective  
23 Inspector Smith indicates that you were interviewed in 1994  
24 about your knowledge of the settlement between Mr. Silmsler  
25 and the Diocese.

1 MR. MacDONALD: Right.

2 MR. ENGELMANN: And he says he doesn't plan  
3 to re-address that issue with you.

4 MR. MacDONALD: I see.

5 MR. ENGELMANN: Do you see that?

6 MR. MacDONALD: Yes.

7 MR. ENGELMANN: You were, however, asked a  
8 few questions about the 1993 investigation into Mr.  
9 Silmsner's allegations against Father MacDonald ---

10 MR. MacDONALD: I see.

11 MR. ENGELMANN: --- correct? Over the next  
12 page or two.

13 MR. MacDONALD: I see.

14 MR. ENGELMANN: All right. And, for  
15 example, Detective Inspector Smith asks you some questions,  
16 starting at about the middle of Bates page 406 about the  
17 Father MacDonald investigation, correct?

18 MR. MacDONALD: I see.

19 MR. ENGELMANN: And you were asked a few  
20 questions about the settlement dealing with that  
21 investigation, starting at the bottom of page 407?

22 MR. MacDONALD: Okay, I'm there.

23 MR. ENGELMANN: All right. And you'd agree  
24 that you were asked a few questions about the settlement  
25 itself?

1                   MR. MacDONALD: Two questions?

2                   MR. ENGELMANN: Well, at the bottom of Bates  
3 page 407 and on to Bates page 408.

4                   MR. MacDONALD: M'hm.

5                   MR. ENGELMANN: And you answer in the  
6 affirmative to a couple of the questions that Mr. Smith --  
7 or Detective Inspector Smith puts to you.

8                   MR. MacDONALD: Yeah, I see that, yeah.

9                   MR. ENGELMANN: Anything that you want to  
10 change about your answers there, sir?

11                   MR. MacDONALD: I haven't -- I haven't come  
12 prepared for any -- to recommend any changes today.

13                   MR. ENGELMANN: All right.

14                   MR. MacDONALD: I don't recall ---

15                   MR. ENGELMANN: I'm just wondering if ---

16                   MR. MacDONALD: --- making note of any.

17                   MR. ENGELMANN: All right. And, sir, it  
18 appears that on Bates page 410, the officers give you an  
19 opportunity to comment on your position with respect to  
20 sexual abuse or sexual assault within your jurisdiction and  
21 some of the things you'd have to do with the prosecution of  
22 same, including the case involving your father.

23                   MR. MacDONALD: Yes, I got a little hot  
24 under the collar there.

25                   MR. ENGELMANN: All right. Sir, I want to

1 talk to you about Constable Dunlop, and you refer to him  
2 there, and the allegations. Did you have any meetings or  
3 discussions with him between the meeting you would have had  
4 at the end of September of 1993 up until the time that  
5 these allegations came out ---

6 MR. MacDONALD: No.

7 MR. ENGELMANN: --- about you and others?

8 MR. MacDONALD: No.

9 MR. ENGELMANN: All right.

10 MR. MacDONALD: I may have -- you know, it  
11 seems to me I saw him once on the sidewalk when he was on  
12 sick leave and I wished him well or hurry up back to work.

13 MR. ENGELMANN: All right.

14 MR. MacDONALD: And that would have been the  
15 extent of it.

16 MR. ENGELMANN: Right. And you were aware  
17 of some of the allegations that obviously were contained in  
18 his brief, and we looked at some of those ---

19 MR. MacDONALD: I haven't spoken to him  
20 since I saw that brief.

21 MR. ENGELMANN: All right. And, sir ---

22 MR. MacDONALD: We've exchanged glares.

23 MR. ENGELMANN: Sir, one of the things that  
24 happened after you became aware of these allegations is you  
25 wrote a letter to the Police Chief, Tony Repa ---

1                   **MR. MacDONALD:** Yes, sir.

2                   **MR. ENGELMANN:** --- at the Cornwall Police.  
3                   This was after -- after Constable Dunlop was back at work  
4                   in 1997?

5                   **MR. MacDONALD:** Yes, sir.

6                   **MR. ENGELMANN:** And if we just take a brief  
7                   look at that, that is Exhibit 1546.

8                   **THE COMMISSIONER:** It's just a letter?

9                   **MR. ENGELMANN:** Yes.

10                  **THE COMMISSIONER:** So I don't need it, Madam  
11                  Clerk; you can put it on the screen.

12                  **MR. ENGELMANN:** It's just a one-page letter.

13                  **THE COMMISSIONER:** Yes.

14                  **MR. ENGELMANN:** Maybe we could just look at  
15                  it on the screen.

16                                 Sir, it's a letter dated January 7th,  
17                                 1998. It's to Tony Repa from yourself regarding Constable  
18                                 Perry Dunlop, and in the letter you request that Constable  
19                                 Dunlop deal with your colleague Guy Simard if he needs to  
20                                 consult with Crown counsel and that all arrangements for  
21                                 contact between Constable Dunlop and your office be made  
22                                 through Kevin Malloy and that -- who's a constable at CPS?

23                   **MR. MacDONALD:** After Perry Dunlop came back  
24                   to work, he worked at the front desk for a while and wasn't  
25                   involved in occurrences that would result in criminal

1 cases.

2 **MR. ENGELMANN:** Yes.

3 **MR. MacDONALD:** But for a term, they did put  
4 him back on the road or at least got him involved with  
5 criminal cases, and one came up one particular morning that  
6 I hadn't been -- I didn't know was out there, and I  
7 realized I can't talk to the man, and if he needs to speak  
8 to a Crown in respect to a non-Project Truth matter that's  
9 presently before the courts, I refused to talk to him. And  
10 so I conferred with Mr. Griffiths and we agreed that Guy  
11 Simard should provide legal advice. Guy didn't know that  
12 until after we'd sent this letter.

13 **MR. ENGELMANN:** All right. Sir, I  
14 understand, given the allegations that were out there, why  
15 you wouldn't want to meet with him personally. I'm  
16 wondering why you felt it necessary for him to be  
17 accompanied by his supervisor or Constable Malloy when they  
18 were meeting with another Crown?

19 **MR. MacDONALD:** Because I knew him to be a  
20 liar.

21 **MR. ENGELMANN:** Okay, well, if you were  
22 concerned about him in that sense, could you not have just  
23 asked Mr. Simard to go in with one of your colleagues?

24 **MR. MacDONALD:** No, I thought that a police  
25 officer should be present, not a lawyer.

1                   **MR. ENGELMANN:** And, sir, you indicate in  
2 your letter this recommendation was developed in  
3 consultation with the office of the Regional Director of  
4 Crown Operations?

5                   **MR. MacDONALD:** Yes, I think it was Mr.  
6 Griffiths then.

7                   **MR. ENGELMANN:** All right. Yes, he was  
8 still in that role until about May of '98. And were the  
9 Cornwall Police Service agreeable with your proposal?

10                  **MR. MacDONALD:** I received correspondence  
11 from them confirming compliance. I believe that was from  
12 Richard Trew.

13                  **MR. ENGELMANN:** Right, and it's the very  
14 next exhibit, Number 1541.

15                                 And maybe we could just close this off,  
16 sir, before break.

17                  **THE COMMISSIONER:** Yeah.

18                  **MR. ENGELMANN:** And that's Document Number  
19 728108. And, sir, I believe this is a letter where  
20 Inspector Trew advises you that he's advised Constable  
21 Dunlop of the procedures as outlined in your earlier  
22 correspondence?

23                  **MR. MacDONALD:** Yes, that's the letter.

24                  **MR. ENGELMANN:** To your recollection, did  
25 this procedure ever have to be followed?



1                   **MR. MacDONALD:** Never had to be followed, to  
2 my knowledge.

3                   **MR. ENGELMANN:** All right. Sir, one other  
4 very brief matter. There was a paragraph in Mr. Dunlop --  
5 Constable Dunlop's Will-Say, dated April 7th, 2000, wherein  
6 he comments on seeing you and some others have lunch ---

7                   **MR. MacDONALD:** I know that -- of that  
8 extract.

9                   **MR. ENGELMANN:** And that's May 30th, '97.  
10 And he observes you with Jacques Leduc, Guy Simard and  
11 André White?

12                   **MR. MacDONALD:** Yes.

13                   **MR. ENGELMANN:** And having lunch at the  
14 restaurant in town.

15                   **MR. MacDONALD:** Yes.

16                   **MR. ENGELMANN:** Was that accurate, sir?

17                   **MR. MacDONALD:** Yes, sir.

18                   **MR. ENGELMANN:** And do you recall the  
19 circumstances to why you were together?

20                   **MR. MacDONALD:** I do. Mr. Leduc was an  
21 executive member of the local Law Association and he  
22 telephoned me or spoke to me in person and asked me to --  
23 asked me why other members of the -- why the Crown  
24 Attorneys' Association and SD&G had a long-standing  
25 practice of their employees not being members of the local

1 Law Association, their legal staff not being members of the  
2 local legal fraternity.

3 I had -- I was a member, and so Mr. Leduc  
4 asked for me to have my legal staff join him for lunch and  
5 he proposed -- invited André and Guy to join. And in their  
6 diplomatic fashion, they declined. And then I recall the  
7 discussion went to the topic of Guy Simard trying to  
8 arrange a date with André White and Mr. Leduc's office  
9 assistant.

10 **MR. ENGELMANN:** Okay. And André White was  
11 one of your colleagues, sir?

12 **MR. MacDONALD:** Yes.

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

14 **MR. MacDONALD:** A single man.

15 **MR. ENGELMANN:** Okay. Perhaps we could take  
16 the afternoon break.

17 **THE COMMISSIONER:** Okay, let's take the  
18 afternoon break.

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

21 This hearing will resume at 3:25 p.m.

22 --- Upon recessing at 3:10 p.m./

23 L'audience est suspendue à 15h10

24 --- Upon resuming at 3:31 p.m./

25 L'audience est reprise à 15h31.

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

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

5                   **THE COMMISSIONER:** Thank you. So, just so  
6                   that we can make arrangements, I'm prepared to sit until  
7                   six o'clock this evening, so let's see where we go.

8                   **MR. ENGELMANN:** Thank you.

9                   **THE COMMISSIONER:** And if you can keep up  
10                  with that and see what we can do.

11                  **MR. ENGELMANN:** All right. Thank you.

12                  **MURRAY MacDONALD, Resumed/Sous le même serment:**

13                  **--- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR**

14                  **MR. ENGELMANN (cont'd/suite):**

15                  **MR. ENGELMANN:** I have just a few discreet  
16                  areas and I'll try and do them with some context if I can.

17                  One of them that I wanted to deal with was a --  
18                  it's a fellow by the name of Nelson Barque.

19                  **MR. MacDONALD:** Yes, sir.

20                  **MR. ENGELMANN:** And just by way of  
21                  background, he was a probation officer here in Cornwall.  
22                  In 1982, the Ministry of Corrections conducted an  
23                  investigation into the allegations that he was supplying  
24                  alcohol to, and was sexually involved with, some  
25                  probationers who were clients of his on his list, and he

1 resigned prior to the conclusion of that investigation.

2 And we know, sir, as well, that he was  
3 charged with abusing a probationer by the name of Albert  
4 Roy who testified here. He was convicted of that in 1995,  
5 and he was being investigated by Project Truth. And just  
6 before he was charged with four new charges involving two  
7 alleged victims he committed suicide, and that was in June  
8 of '98.

9 So that's just by way of background. We  
10 also know that there were a number of civil lawsuits  
11 against the Ministry about him and a former colleague of  
12 his by the name of Ken Seguin.

13 So as part of the investigation in 1982 the  
14 Ministry of Corrections actually wrote to then-Crown  
15 attorney Don Johnson. And I'm just wondering, sir, if you  
16 might have been apprised of that at all when you became a  
17 prosecutor here in Cornwall?

18 **MR. MacDONALD:** No, the only -- I became  
19 apprised of it when Mr. Barque -- if you could refer to the  
20 letter ---

21 **MR. ENGELMANN:** All right.

22 **MR. MacDONALD:** Are we allowed to do that?

23 **THE COMMISSIONER:** Sure.

24 **MR. ENGELMANN:** Well, let me just show you a  
25 couple of letters, if I may. And, sir, your office would

1 have been involved in the prosecution of Mr. Barque in the  
2 mid-'90s?

3 MR. MacDONALD: Yes, sir.

4 MR. ENGELMANN: All right.

5 THE COMMISSIONER: Did you know Mr. Barque,  
6 sir?

7 MR. MacDONALD: I knew of him. I didn't --  
8 I don't -- I don't recall if he was a probationer officer  
9 when I was ---

10 MR. ENGELMANN: He stopped being a probation  
11 officer in 1982.

12 MR. MacDONALD: Yeah, I knew of him, I knew  
13 what he looked like, I don't recall why or how.

14 MR. ENGELMANN: Okay.

15 MR. MacDONALD: I do recall that the rumour  
16 mill that you can never count on was that he -- that I was  
17 told, you know, prior to Project -- prior to 1993 that Mr.  
18 Barque had left that Ministry under very embarrassing  
19 circumstances relating to his lifestyle.

20 MR. ENGELMANN: All right.

21 MR. MacDONALD: I didn't know the extent to  
22 which the Ministry had investigated him.

23 MR. ENGELMANN: All right.

24 So let's look at just a few documents. And  
25 if you can, it might be faster to do it on the screen, and

1 I'm not going to go into great detail, I can assure you  
2 that, sir.

3 **MR. MacDONALD:** No, I'm fine with the  
4 screen.

5 **MR. ENGELMANN:** All right.

6 Exhibit 903, it's Document Number 115960.  
7 Mr. Commissioner, if you don't mind my doing it that way I  
8 think it will speed things up. And I won't go into detail  
9 on this.

10 **THE COMMISSIONER:** No, if they're letters  
11 that's fine.

12 **MR. ENGELMANN:** Yeah.

13 **THE COMMISSIONER:** Then we can look at them  
14 and ---

15 **MR. ENGELMANN:** Sir, this is just a letter  
16 that was sent by one of the Corrections investigators, a  
17 fellow by the name of McMaster, to Mr. Johnson.

18 **MR. MacDONALD:** Yes.

19 **MR. ENGELMANN:** He's enclosing a copy of the  
20 investigation report, which is an exhibit here. It's  
21 Exhibit 125, but I don't think we need to go there.

22 **MR. MacDONALD:** I see.

23 **MR. ENGELMANN:** And it's with respect to Mr.  
24 Barque. And he says:

25 "As discussed on the phone and due to

1 the nature of the report we would  
2 appreciate its return when you've  
3 completed your review of same. Also  
4 appreciate being advised of your  
5 decision in this matter."

6 **MR. MacDONALD:** I see.

7 **MR. ENGELMANN:** So they were sending it off  
8 to Mr. Johnson for his review about possible criminal  
9 charges.

10 **MR. MacDONALD:** I see.

11 **MR. ENGELMANN:** All right.

12 And there's a letter back from Mr. Johnson.  
13 That is Exhibit 899, sir. It's Document Number 115948.

14 **THE COMMISSIONER:** I don't know if this is  
15 it.

16 **MR. ENGELMANN:** Just a moment. I'm sorry.  
17 It is Exhibit -- did I say 899? Yeah, Exhibit 899,  
18 Document Number 115948, I believe.

19 **MR. MacDONALD:** The 22 June letter by Mr.  
20 Johnson?

21 **MR. ENGELMANN:** Right. This is a June 22<sup>nd</sup>  
22 letter from Mr. Johnson to Mr. McMaster. And he's  
23 referring to the letter of June 14<sup>th</sup> and he's saying:

24 "I've come to the conclusion that in  
25 the circumstances criminal charges

1 would not be warranted."

2 Okay?

3 **MR. MacDONALD:** Yes.

4 **MR. ENGELMANN:** And he sets out some of his  
5 reasons for that in the letter.

6 **MR. MacDONALD:** Yes, sir.

7 **MR. ENGELMANN:** And among other reasons he  
8 says:

9 "Mr. Barque resigned immediately after  
10 being confronted with the allegations  
11 and also because one of the  
12 probationers allegedly involved was 21  
13 years of age."

14 And, sir, had you ever seen this  
15 correspondence between Mr. Johnson and the Ministry before  
16 your preparation for this Inquiry?

17 **MR. MacDONALD:** I don't recall.

18 **MR. ENGELMANN:** All right.

19 And do you know, sir, -- I know this is  
20 before your time, but would this have been a common  
21 practice for a Ministry to refer something like this, an  
22 internal investigation, over to a local Crown to review and  
23 provide an opinion as to whether charges should be laid?

24 **MR. MacDONALD:** This would be uncommon, very  
25 uncommon.



1                   **MR. ENGELMANN:** All right.

2                   Is this something you would expect a file to  
3 be opened on if it was requested?

4                   **MR. MacDONALD:** Internal office?

5                   **MR. ENGELMANN:** Yes.

6                   **MR. MacDONALD:** I presume so, yes.

7                   **MR. ENGELMANN:** Okay.

8                   Now, moving ahead to 1995 it's my  
9 understanding that Mr. Barque was prosecuted by your  
10 office?

11                   **MR. MacDONALD:** Yes, sir.

12                   **MR. ENGELMANN:** And at that point Mr.  
13 Johnson's been gone for about three years?

14                   **MR. MacDONALD:** Yes, sir.

15                   **MR. ENGELMANN:** And he's no longer working  
16 as a Crown attorney but he's working as a defence lawyer?

17                   **MR. MacDONALD:** Yes, sir.

18                   **MR. ENGELMANN:** And he's actually  
19 representing Mr. Barque?

20                   **MR. MacDONALD:** Yes, sir.

21                   **MR. ENGELMANN:** And do you know, sir, were  
22 there policies or protocols in place at your office  
23 regarding conflicts or potential conflicts of interest  
24 particularly since former Crown attorneys may then become  
25 defence counsel, work in the same town?

1                   **MR. MacDONALD:** That's a Law Society issue.

2                   **MR. ENGELMANN:** All right. So there's no  
3 formal office policy or protocol on that?

4                   **MR. MacDONALD:** No, in 1990 -- sorry, what  
5 year was that?

6                   **MR. ENGELMANN:** Nineteen ninety-five (1995).

7                   **MR. MacDONALD:** Ninety-five ('95), the Law  
8 Society had commentaries on that.

9                   **MR. ENGELMANN:** All right. You recognize  
10 so, sir, that ---

11                   **MR. MacDONALD:** Or a commentary.

12                   **MR. ENGELMANN:** Right. You recognize, sir,  
13 that there could be a potential conflict of interest, a  
14 case of this nature?

15                   **MR. MacDONALD:** Yes, the -- one of the  
16 leading cases on point is the 1983 case called *Spied*, S-P-  
17 I-E-D. It's an Ontario Court of Appeal decision that deals  
18 generally with the question of a solicitor who has  
19 knowledge about a former client who is now in an interest  
20 adverse to the interest of that solicitor's new client.  
21 This is where the -- that's the legal issue that arose, and  
22 as you know that's the reason why I alerted Mr. Johnson to  
23 the letter.

24                   **MR. ENGELMANN:** All right.

25                   So let's ---

1                   **MR. MacDONALD:** To that issue.

2                   **MR. ENGELMANN:** Let's take a look at -- I  
3 understand, sir, that you sent him a letter.

4                   **MR. MacDONALD:** Yes, sir.

5                   **MR. ENGELMANN:** And that is Exhibit 112.  
6 It's a one-page letter. If we could just have that on the  
7 screen.

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

9                   **MR. ENGELMANN:** It's Document Number 114249.

10                  **MR. MacDONALD:** Yes, sir.

11                  **MR. ENGELMANN:** And, sir, in this letter you  
12 refer to an earlier conversation with him in which you  
13 indicate that there may be an appearance of a conflict with  
14 Johnson acting as counsel, in light of the fact that he was  
15 consulted by probation authorities in respect of charges  
16 against the above-noted individual during his tenure as  
17 Crown attorney.

18                  **MR. MacDONALD:** Yes, sir.

19                  **MR. ENGELMANN:** Do you recall the  
20 conversation you would have had with him?

21                  **MR. MacDONALD:** No.

22                  **MR. ENGELMANN:** Would it have been any  
23 different, sir -- well, maybe you can't help, but it would  
24 have been along the lines of what you say in the letter  
25 presumably?

1                   MR. MacDONALD: I believe so.

2                   MR. ENGELMANN: All right.

3                   And, sir, do you recall how you became aware  
4 at that time of his involvement from 1982?

5                   MR. MacDONALD: I believe it was from the  
6 investigators ---

7                   MR. ENGELMANN: All right.

8                   MR. MacDONALD: --- on this -- on that  
9 current investigation.

10                  MR. ENGELMANN: And in the letter you say  
11 that Johnson's indicated to you that a plea is anticipated  
12 ---

13                  MR. MacDONALD: Yes.

14                  MR. ENGELMANN: --- and therefore he feels a  
15 potential conflict is not an issue.

16                  MR. MacDONALD: Yes.

17                  MR. ENGELMANN: Did you agree with that,  
18 sir?

19                  MR. MacDONALD: Well, I didn't say so in  
20 writing but I didn't respond because I believed he was  
21 correct as far as *Spied* -- the doctrine in *Spied* is  
22 concerned.

23                  MR. ENGELMANN: All right.

24                  And so therefore you agreed with him that it  
25 was really only going to be a conflict if, in fact, there

1 was a trial that was coming forward?

2 MR. MacDONALD: Yes, sir.

3 MR. ENGELMANN: And do you recall, sir, why  
4 the distinction, if he pleads guilty there's no conflict  
5 but if there is a trial there is?

6 MR. MacDONALD: Well, he's not going to be  
7 cross-examining anybody.

8 MR. ENGELMANN: His prosecution, sir, wasn't  
9 handled by yourself, it was handled by Mr. Simard of your  
10 office?

11 MR. MacDONALD: Yes, sir.

12 MR. ENGELMANN: And if we could look briefly  
13 at -- it's Document Number 115256. Again I think this is  
14 just a one-page letter from Mr. Simard to Mr. Johnson,  
15 dated February 14<sup>th</sup>, 1995.

16 MR. MacDONALD: I recall that.

17 MR. ENGELMANN: If that could be the next  
18 exhibit, sir.

19 THE COMMISSIONER: Yes, certainly.

20 So Exhibit Number 2930 is a letter of  
21 February 14<sup>th</sup>, 1999 to Mr. Johnson from Guy Simard.

22 --- EXHIBIT NO./PIÈCE NO. P-2930:

23 (114256) - Letter from Guy Simard to Don  
24 Johnson re: *R. v. Nelson Barque*

25 MR. ENGELMANN: All right. In the letter

1 Mr. Simard writes:

2 "I understand you have an apparent  
3 conflict if this matter goes to trial."

4 And he also indicates that:

5 "I've also been advised your client  
6 wishes to resolve this by way of early  
7 plea of guilt."

8 Do you recall, sir, having any discussions  
9 with Mr. Simard prior to his writing this letter?

10 **MR. MacDONALD:** I don't recall.

11 **MR. ENGELMANN:** Okay. You ---

12 **MR. MacDONALD:** He and I ---

13 **MR. ENGELMANN:** Sorry.

14 **MR. MacDONALD:** He and I have speculated on  
15 it in preparation for this Commission but we can't confirm  
16 that we had inferred ---

17 **MR. ENGELMANN:** Would it have been the same  
18 apparent conflict that you referenced earlier, this 1982  
19 request for a review?

20 **MR. MacDONALD:** I understood that Guy was  
21 writing in respect to the fact that Mr. Barque was a former  
22 -- was a former probation officer in the jurisdiction where  
23 Mr. Johnson acted as Crown.

24 **MR. ENGELMANN:** Okay. So you're not sure if  
25 you would have told Mr. Simard about the request for the

1 opinion from 1982?

2 **MR. MacDONALD:** I don't recall, but I don't  
3 believe I told Mr. Simard about that. I'm of the view that  
4 I sent the letter off while it was still -- the letter to  
5 Mr. Johnson while the file was in my hands, and after I  
6 turned it over to Guy for preparation he -- it crossed his  
7 -- he made the decision to contact Mr. Johnson when he felt  
8 that he should be put on notice if a trial was to proceed  
9 with respect to Mr. Barque as former probation officer in  
10 the jurisdiction.

11 **MR. ENGELMANN:** All right, and as a result  
12 of Mr. Simard's letter I understand that Mr. Johnson wrote  
13 back to you, to your office, and that's Document Number  
14 114255.

15 **MR. MacDONALD:** Yes.

16 **MR. ENGELMANN:** It's a letter from  
17 Mr. Johnson actually to yourself, sir ---

18 **MR. MacDONALD:** Yes.

19 **MR. ENGELMANN:** --- dated February 27<sup>th</sup>, '95.  
20 If that could be the next exhibit,  
21 Mr. Commissioner.

22 **THE COMMISSIONER:** Certainly. That will be  
23 Exhibit Number 2931.

24 --- **EXHIBIT NO./PIÈCE NO. P-2931:**

25 (114255) - Letter from Don Johnson to Murray

1 MacDonalld re: *R. v. Nelson Barque* dated 27  
2 Feb 95.

3 **MR. MacDONALD:** Thank you.

4 **MR. ENGELMANN:** And again, just in the  
5 second paragraph, he acknowledges that he would have a  
6 conflict and would turn -- if the matter went to trial, he  
7 would turn Mr. Barque over to another counsel.

8 **MR. MacDONALD:** Right.

9 **MR. ENGELMANN:** And he does say, however,  
10 that at the present time it appears that won't be  
11 necessary.

12 **MR. MacDONALD:** Right. And I concluded  
13 likewise with the note that you see -- the handwritten  
14 note. That's my ---

15 **MR. ENGELMANN:** All right.

16 **MR. MacDONALD:** My moniker is Murf.

17 **MR. ENGELMANN:** And did this concern you at  
18 all, sir, that a conflict could force Johnson to remove  
19 himself from a case if it goes to trial, and yet he wasn't  
20 of the view that it was a conflict if there was just a plea  
21 of guilt?

22 **MR. MacDONALD:** No.

23 **MR. ENGELMANN:** All right.

24 Was there any concern on your part that Mr.  
25 Barque may be prejudiced by needing to retain new counsel



1 if the matter went to trial?

2 **THE COMMISSIONER:** Well, Mr. -- it didn't.

3 **MR. ENGELMANN:** Fair enough.

4 Did you ever consider, sir, having any  
5 obligation to bring this matter to the Law Society's  
6 attention or do anything further with Mr. Barque on it --  
7 or Mr. Johnson?

8 **MR. MacDONALD:** Not in light of his position  
9 that this would be a plea where adverse interests wouldn't  
10 be cross-examined.

11 **MR. ENGELMANN:** All right.

12 Now, sir, I understand about a year later  
13 Mr. Barque comes to your attention again -- your office's  
14 attention.

15 If we could look at Exhibit 916; it's a  
16 letter from Constable Sebalj to yourself, dated February  
17 7<sup>th</sup>, 1996.

18 **THE COMMISSIONER:** That's not it. That's  
19 better.

20 **MR. ENGELMANN:** This is a two-page letter,  
21 sir, where it starts off:

22 "Further to our conversation in your  
23 office on or about January 4<sup>th</sup>, 1996,  
24 please accept the following report  
25 concerning allegations of sexual

1 assault against former probation  
2 officer Nelson Barque."

3 Do you have any recollection of dealing with  
4 her on this matter? The fellow whose name is there ---

5 **THE COMMISSIONER:** C-44, Mr. Engelmann.

6 **MR. ENGELMANN:** --- is C-44.

7 **MR. MacDONALD:** Vaguely.

8 **MR. ENGELMANN:** All right. It appears you  
9 would have asked her to provide you with something in  
10 writing before you commented.

11 **MR. MacDONALD:** Yes, this was in the nature  
12 of one of those scenarios where I would have relayed the  
13 question, the legal question -- the legal advice being  
14 sought from the officer to Mr. Griffiths and then I would  
15 have either sent Heidi Sebalj a letter from Mr. Griffiths  
16 or I believe in this instance Mr. Griffiths phoned me and  
17 gave me instructions. But he may have -- he may have  
18 written me and I don't recall.

19 **THE COMMISSIONER:** Can I see the second page  
20 here, Madam Clerk? Okay.

21 **MR. ENGELMANN:** The third page just says:  
22 "Trusting this is the information you  
23 require. Look forward to hearing from  
24 you."

25 **MR. MacDONALD:** I did not provide a legal

1 opinion of my own on this matter.

2 MR. ENGELMANN: All right, but this is a  
3 legal opinion you then requested of your Regional Director?

4 MR. MacDONALD: I believe it was  
5 Mr. Griffiths, yes.

6 MR. ENGELMANN: And was there a change in  
7 your practice by this point about requiring police officers  
8 to provide you with some written documentation or report  
9 before you'd render an opinion?

10 MR. MacDONALD: After all that transpired in  
11 the fall of 1993, our office adopted a practice of  
12 requiring for -- of course, in order to ensure that you'd  
13 be -- one would be enlightened in all the facts, and also I  
14 suppose an element of CYA for both the officer and the  
15 Crown we would require, on many occasions, seeing  
16 materials, a Crown brief or the statements.

17 MR. ENGELMANN: So this is something that  
18 you required from CPS officers after that exchange you had  
19 with them in September of '93?

20 MR. MacDONALD: And they were more inclined  
21 -- more than inclined to reciprocate.

22 MR. ENGELMANN: All right. And, sir, in the  
23 letter it just explains briefly that C-44 did not want to  
24 be involved in the earlier prosecution of -- with Mr.  
25 Barque but now wished to pursue it. And we know he was one

1 of the individual probationers mentioned in the 1982  
2 report, and according to the letter Ms. Sebalj encloses  
3 that report and she's seeking advice as to whether or not  
4 charges should be laid, or could be laid, against  
5 Mr. Barque in respect of his allegations. Is that fair?

6 **MR. MacDONALD:** Yes, sir.

7 **MR. ENGELMANN:** And, sir, I understand you  
8 responded with a letter dated March 5<sup>th</sup>, 1996, and that is  
9 Exhibit 917.

10 **MR. MacDONALD:** Yes, sir. Heidi knew, in  
11 sending the previous exhibit letter to me, that it was for  
12 the purpose of relaying on to an outside Crown.

13 **MR. ENGELMANN:** All right. And you had  
14 actually forwarded her materials to the Regional Director  
15 of Crown Attorneys, Mr. Griffiths?

16 **MR. MacDONALD:** I presume so.

17 **MR. ENGELMANN:** And you would have sent the  
18 material she included, including the 1982 investigation  
19 report?

20 **MR. MacDONALD:** I believe I did.

21 **MR. ENGELMANN:** And Mr. Griffiths advised  
22 that with respect to the charge of indecent assault it was  
23 lacking some essential elements.

24 **MR. MacDONALD:** Yes, sir. I have three  
25 listed there.

1                   **MR. ENGELMANN:** And they're listed in his  
2 letter.

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

4                   **MR. ENGELMANN:** All right. And as a result,  
5 it was his opinion that criminal proceedings were not  
6 available.

7                   **MR. MacDONALD:** Yes, sir.

8                   **MR. ENGELMANN:** Did you receive anything  
9 else from Mr. Griffiths or anything in writing?

10                  **MR. MacDONALD:** I don't recall.

11                  **MR. ENGELMANN:** And do you have any  
12 recollection of discussing this with him, other than what  
13 you've set out in the letter?

14                  **MR. MacDONALD:** No, sir.

15                  **MR. ENGELMANN:** Sir, I want to ask you  
16 briefly about another matter. It's involving an individual  
17 by the name of Gilf Greggain. By way of background, this  
18 was a case that Constable Jeff Carroll was investigating.  
19 It was a complaint by an individual named Marc Latour  
20 against a former teacher of his; this fellow Mr. Greggain.

21                  **MR. MacDONALD:** I see.

22                  **MR. ENGELMANN:** And if we can look very  
23 briefly at Exhibit 362. These are notes of Officer  
24 Carroll. I just want to take you to a couple points, if I  
25 may.

1                   **MR. MacDONALD:** Yes, sir, they're up here.

2                   **MR. ENGELMANN:** He's got a -- at Bates page  
3                   228 there's just a brief reference to speaking -- he speaks  
4                   to Guy Simard on January 3<sup>rd</sup>, 2003 about these allegations.

5                   **MR. MacDONALD:** Yes, sir.

6                   **MR. ENGELMANN:** It appears from the notes  
7                   that Simard advised Carroll that he'd require a full brief  
8                   to assess this in terms of a reasonable prospect of  
9                   conviction; correct?

10                  **MR. MacDONALD:** I see.

11                  **MR. ENGELMANN:** And including transcribed  
12                  video statements?

13                  **MR. MacDONALD:** Yes.

14                  **MR. ENGELMANN:** Sir, do you know if you'd  
15                  had any contact with Officer Carroll at this point-in-time?

16                  **MR. MacDONALD:** I believe that -- although I  
17                  don't have an independent recollection of it, there's  
18                  correspondence that would cause me to believe that  
19                  Mr. Simard and I -- after this meeting, Mr. Simard and I  
20                  decided to scrum the file -- and "scrum", meaning a second  
21                  opinion where we review the session and the evidence  
22                  together and then determine a legal opinion on behalf of  
23                  the office.

24                  **MR. ENGELMANN:** All right. So to the best  
25                  of your knowledge -- if we look at the third page in his

1 notes, it's Bates page 230.

2 There's a reference to a discussion with  
3 you, sir, regarding the case. It says:

4 "Murray has reviewed the case video and  
5 is of the opinion that no reasonable  
6 prospect of conviction exists and feels  
7 that my determination -- that RE&G to  
8 lay a charge has not been established."

9 Do you see that?

10 **MR. MacDONALD:** Yes, sir.

11 **MR. ENGELMANN:** All right. So after your  
12 scrum, you would have given this opinion to Officer  
13 Carroll?

14 **MR. MacDONALD:** Mr. Simard was also  
15 preparing for a homicide preliminary hearing or trial in  
16 February, and so I presume that is why I got back to  
17 Sergeant Carroll.

18 **MR. ENGELMANN:** All right. And, sir, I  
19 understand that after this, Sergeant Carroll would have  
20 written a letter to you just confirming this, and that's  
21 Exhibit 1689?

22 **MR. MacDONALD:** I see.

23 **MR. ENGELMANN:** It's a one-page letter.

24 **MR. MacDONALD:** Yes, I've seen that letter.

25 **MR. ENGELMANN:** And, again, just confirming

1 that no reasonable prospect of conviction exists; correct?

2 MR. MacDONALD: Right.

3 MR. ENGELMANN: And, in addition, as I  
4 indicated in the review of the notes, confirming the  
5 officer's belief about reasonable and probable grounds?

6 MR. MacDONALD: Yes, sir.

7 MR. ENGELMANN: Right. And, sir, I want to  
8 then ask you ---

9 MR. MacDONALD: You've noted another change  
10 in practice there that we -- since the 1993 investigation,  
11 we've now in our office, and elsewhere in the Province,  
12 taken -- making the -- assume the practice upon request of  
13 providing our comments on the objective component of RPGs,  
14 and explaining the subjective component when asked.

15 MR. MacDONALD: All right. Sir, prior  
16 to ---

17 THE COMMISSIONER: I'm sorry? Say that  
18 again? Can you say that again, sir?

19 MR. MacDONALD: We would venture an opinion  
20 on RPGs. We would, if asked now, venture an opinion on  
21 RPGs ---

22 THE COMMISSIONER: M'hm?

23 MR. MacDONALD: --- especially on  
24 particularly evidentiarily complex cases.

25 THE COMMISSIONER: M'hm?



1                   **MR. MacDONALD:** We were not inclined to do  
2                   that back in -- prior to 1993.

3                   **MR. ENGELMANN:** Sir, prior to the note that  
4                   we looked at of January 3<sup>rd</sup>, 2003, we know this matter was  
5                   with the Cornwall Police Service for some time before then  
6                   and there were -- at one point-in-time, the complainant was  
7                   reluctant to come forward and then wanted to come forward.

8                                 To your knowledge -- do you have any  
9                   knowledge of involvement with your office before that note  
10                   we looked at, in January, 2003?

11                   **MR. MacDONALD:** I don't recall.

12                   **MR. ENGELMANN:** All right.

13                                 Sir, I want to ask you a few questions about  
14                   Earl Landry, Jr.

15                   **MR. MacDONALD:** Yes, sir.

16                   **MR. ENGELMANN:** Your office was involved in  
17                   that prosecution?

18                   **MR. MacDONALD:** Lynn Robinson was, yes.

19                   **MR. ENGELMANN:** Right. And this was not a  
20                   Project Truth case. It was a case investigated by the  
21                   Cornwall Police Service?

22                   **MR. MacDONALD:** Yes, sir.

23                   **MR. ENGELMANN:** And if we could look briefly  
24                   at -- it's tab -- sorry, it's Exhibit 1611.

25                                 This is a one-page note to file from

1           yourself, I believe? I'm sorry, it's a memo from Lynn  
2           Robinson ---

3                       **MR. MacDONALD:** Yes.

4                       **MR. ENGELMANN:** --- a one-page note from her  
5           to you.

6                       **MR. MacDONALD:** Pre-email days.

7                       **MR. ENGELMANN:** Okay. I remember them  
8           fondly.

9                       **THE COMMISSIONER:** I don't.

10                               **( LAUGHTER/RIRES )**

11                       **MR. ENGELMANN:** No, I'm sure you don't.

12                               This is a memo to you from Lynn Robinson, in  
13           which she outlines some issues she's having with the  
14           Cornwall Police Service?

15                       **MR. MacDONALD:** Yes, sir.

16                       **MR. ENGELMANN:** And she's apparently written  
17           to Constable Snyder on July 7<sup>th</sup>, 1997 ---

18                       **MR. MacDONALD:** Yes, sir.

19                       **MR. ENGELMANN:** --- asking him why he's  
20           attempting to obtain counselling records or assessments  
21           about the victims?

22                       **MR. MacDONALD:** Yes, sir.

23                       **MR. ENGELMANN:** And requesting that he have  
24           one information laid with all counts?

25                       **MR. MacDONALD:** Yes.

1                   **MR. ENGELMANN:** On October 1<sup>st</sup>, 1997, I  
2 understand she wrote a follow-up letter to Constable  
3 Snyder, and she's noting that here?

4                   **MR. MacDONALD:** I see.

5                   **MR. ENGELMANN:** And she's saying that it was  
6 not responded to?

7                   **MR. MacDONALD:** I see.

8                   **MR. ENGELMANN:** And she's got two concerns:  
9                   "Why no response to my letters and if  
10 documents obtained a year ago, why only  
11 disclosed to Crown now?"

12 Do you see that?

13                   **MR. MacDONALD:** Yes, sir.

14                   **MR. ENGELMANN:** All right. And she wanted  
15 you to address this with someone at the CPS?

16                   **MR. MacDONALD:** Yes, sir.

17                   **MR. ENGELMANN:** And why would she be asking  
18 you to be involved?

19                   **MR. MacDONALD:** I'm not sure. It may be  
20 because I told her to draft me a memo that invited me to do  
21 so and lay out why.

22                   **MR. ENGELMANN:** All right.

23                   **MR. MacDONALD:** But I'm just speculating  
24 there.

25                   Otherwise, it would have been wise on her

1 part, of her own initiative, to say, "I want to bring this  
2 to Murray's attention now that my responses have gone  
3 unheard".

4 **MR. ENGELMANN:** Well, clearly, there's been  
5 some correspondence between her and the officer.

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** And she's asking you to get  
8 involved?

9 **MR. MacDONALD:** Yes. And she may have  
10 spoken to me before this memo, I don't recall ---

11 **MR. ENGELMANN:** All right.

12 **MR. MacDONALD:** --- on the issue.

13 **MR. ENGELMANN:** And do you know if there  
14 were other issues at the time that she might have raised  
15 with you about this ---

16 **MR. MacDONALD:** Well, I ---

17 **MR. ENGELMANN:** --- or are these the ones  
18 that you remember?

19 **MR. MacDONALD:** Not necessarily on this  
20 file, but I believe when I -- obviously, as you know, I  
21 followed up on this memo with conversation or  
22 correspondence, or both, to Chief Repa.

23 **MR. ENGELMANN:** Right.

24 Let's look at Exhibit 1612. I believe  
25 that's your correspondence that follows up. It's a letter

1           you write to Chief Repa, May 28<sup>th</sup>, 1998.

2                       **MR. MacDONALD:** Yes.

3                       **MR. ENGELMANN:** Is this in fact the letter  
4 you write as result of the concerns raised by Ms. Robinson?

5                       **MR. MacDONALD:** Yes.

6                       **MR. ENGELMANN:** The letter indicates that  
7 you had some discussions with Chief Repa earlier about the  
8 matter?

9                       **MR. MacDONALD:** Well, in more detail on the  
10 subject of that last exhibit.

11                      **MR. ENGELMANN:** All right. And, sir, the  
12 issues you discussed, were they the issues that Ms.  
13 Robinson had set out for you?

14                      **MR. MacDONALD:** Yes, sir.

15                      **MR. ENGELMANN:** And at the end of the letter  
16 you ask that Crown requests for information be acted upon  
17 as quickly and reasonably as possible?

18                      **MR. MacDONALD:** I'd given them a couple of  
19 other examples, unrelated to this prosecution ---

20                      **MR. ENGELMANN:** Right.

21                      **MR. MacDONALD:** --- where timeliness was of  
22 concern to me. I brought it to his attention and he  
23 intended to do something about it. I believe he did.

24                      **MR. ENGELMANN:** All right. And you were  
25 concerned about the possible impact some of these delays

1 might have?

2 MR. MacDONALD: Yes, sir.

3 MR. ENGELMANN: And, sir, you got a response  
4 from Chief Repa. It's Exhibit 1843.

5 MR. MacDONALD: Yes.

6 MR. ENGELMANN: A letter, one-page letter,  
7 dated June 9<sup>th</sup>, 1988?

8 MR. MacDONALD: Yes.

9 MR. ENGELMANN: 1998, sorry.

10 MR. MacDONALD: Yes, sir.

11 MR. ENGELMANN: This is response that we're  
12 seeing on the screen -- oops -- that we were just seeing on  
13 the screen?

14 THE COMMISSIONER: No, it wasn't his  
15 response.

16 MR. ENGELMANN: Sorry. There we go.

17 MR. MacDONALD: There it is.

18 MR. ENGELMANN: Is this the response to your  
19 letter to him of May 28<sup>th</sup>, sir?

20 MR. MacDONALD: Yes, sir.

21 MR. ENGELMANN: And he requested you and ---

22 MR. MacDONALD: He liked to see problem  
23 issues, correspondence, go through his desk or at least  
24 through his staff's office.

25 MR. ENGELMANN: Right. He's saying he

1 wants:

2 "...you and/or your staff to forward  
3 all correspondence concerning requests  
4 for follow-up by our officers to my  
5 personal attention."

6 **MR. MacDONALD:** Yes, sir.

7 **MR. ENGELMANN:** All right. And was that  
8 practice, in fact, adopted?

9 **MR. MacDONALD:** Yes, sir.

10 **MR. ENGELMANN:** And was that of assistance?

11 **MR. MacDONALD:** I believe it was.

12 **MR. ENGELMANN:** And there's one other issue  
13 I'd like to discuss with you regarding the Earl Landry,  
14 Jr., prosecution, and that is in Document Number 129638.

15 I'd like to make that an exhibit, sir. It's  
16 a Crown brief synopsis with respect to the Earl Landry, Jr.  
17 matter.

18 **THE COMMISSIONER:** Thank you.

19 Exhibit Number 2932 is a Crown brief  
20 synopsis.

21 **---EXHIBIT NO./PIÈCE NO. P-2932:**

22 (129638) - Crown Brief Synopsis re. Earl  
23 Landry, Jr. - dated September 3, 1997

24 **MR. MacDONALD:** Thank you.

25 **MR. ENGELMANN:** Sir, I'm interested in the

1 portion near the bottom of the page, and one of the fellows  
2 I'm going to use a moniker for.

3 **MR. MacDONALD:** Okay.

4 **MR. ENGELMANN:** It says:

5 "On 4 September, 1998, Sergeant Snyder  
6 received a statement from Mr. C-54, a  
7 victim in a sexual assault incident, in  
8 which Earl Landry is the accused."

9 Sir, I don't know if you recall, but there  
10 were I believe five or more victims involved here with Earl  
11 Landry, Jr.?

12 **MR. MacDONALD:** I don't recall.

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

14 You recall there were several, there were  
15 more than one?

16 **MR. MacDONALD:** I think yes. Yeah.

17 **MR. ENGELMANN:** The statement stated that:

18 "The accused offered the victim a  
19 computer in exchange for dropping the  
20 charges against him. The computer was  
21 going to be used for the victim's  
22 schooling. The offer was done on 9  
23 June '98. The victim subsequently sent  
24 a letter to the accused's lawyer, Mr.  
25 Don Johnson, dated 9 June '98, advising



1                   that he wished to drop all the charges  
2                   against the accused Mr. Landry. The  
3                   victim was advised by Sergeant Snyder  
4                   that charges would not be dropped. A  
5                   second letter was sent to the Crown's  
6                   office, dated July 26th and signed by  
7                   C-54, stating he wished the charges to  
8                   be dropped."

9                   Okay?

10                  **MR. MacDONALD:** Was that sent by Mr. Johnson  
11                  or by the complainant himself?

12                  **MR. ENGELMANN:** Well, the second one appears  
13                  to have been sent to the Crown's office by the complainant.  
14                  The first one was sent from Mr. Johnson's office to your  
15                  office, but it was signed by the complainant.

16                  **MR. MacDONALD:** Right.

17                  **MR. ENGELMANN:** Sir, was this matter brought  
18                  to your attention at the time?

19                  **MR. MacDONALD:** Probably. I don't recall,  
20                  but ---

21                  **MR. ENGELMANN:** Okay.

22                  **MR. MacDONALD:** --- I think it's ---

23                  **MR. ENGELMANN:** Is it likely that Ms.  
24                  Robinson would bring something like that to your attention?

25                  **MR. MacDONALD:** I expect she would have.

1                   **MR. ENGELMANN:** There would be an issue  
2 about perhaps an attempt to obstruct justice?

3                   **MR. MacDONALD:** Or a concern about how to  
4 manage a reluctant witness.

5                   **MR. ENGELMANN:** Okay. And, sir, there's a  
6 letter from Ms. Robinson -- or, sorry. The letter from  
7 Johnson to Robinson is Document Number 129702.

8                                   Sir, the letter references C-54 by  
9 name.

10                   **THE COMMISSIONER:** Yeah, there'll be a stamp  
11 on it as well. Thank you. Exhibit No. 2933 is a letter  
12 dated the 9th of June 1998 to Ms. Lynn Robinson from Donald  
13 Johnson.

14                   **MR. ENGELMANN:** I'm sorry, 2933, sir?

15                   **THE COMMISSIONER:** Yeah.

16                   **--- EXHIBIT NO./PIÈCE No. 2933:**

17                                   (129702) - Letter fromDon Johnson to Lynn  
18 Robinson re: *Regina v. Earl Landry, Jr.*  
19 dated 11 Jun 98

20                   **MR. ENGELMANN:** So, sir, this is what I was  
21 referring to. We have a letter from the accused's lawyer,  
22 enclosing a note from one of the alleged victims.

23                   **MR. MacDONALD:** Yes, sir.

24                   **MR. ENGELMANN:** All right. And then, sir,  
25 there's another memo to file, if I can call it that. It's

1 129714. And this is a memo from Officer Malloy to Lynn  
2 Robinson.

3 **MR. MacDONALD:** Officer Malloy was a police  
4 case manager ---

5 **MR. ENGELMANN:** Thank you.

6 **MR. MacDONALD:** --- an employee of the  
7 Cornwall Police, situate in our office, conducting liaison  
8 duties at that relevant time. He still is today.

9 **MR. ENGELMANN:** All right.

10 **THE COMMISSIONER:** So Exhibit 2934 is a memo  
11 to Lynn Robertson (sic) from -- who's that?

12 **MR. ENGELMANN:** Kevin Malloy, sir.

13 **THE COMMISSIONER:** Kevin. Kevin, right.  
14 Dated 29th of January 1998. Again, there should be a  
15 publication stamp on this document.

16 --- **EXHIBIT NO./PIÈCE No. 2934:**

17 (129714) - Memo from Kevin Malloy to  
18 Lynn Robinson re: C-54 dated 29 Jan 98

19 **MR. ENGELMANN:** Thank you, sir. So it's  
20 regarding the Landry, Jr. prosecution, indicates that  
21 Sergeant Snyder met at length with C-54, who no longer  
22 wishes to proceed, no explanation. And then down below:

23 "Please advise that the Crown will be  
24 proceeding and will not withdraw these  
25 charges. I imagine that when the

1                   victim is so advised, so he will want  
2                   to meet with me."

3                   Et cetera, and that's from Lynn Robinson, right?

4                   **MR. MacDONALD:** Yes, sir.

5                   **MR. ENGELMANN:** And again, sir, do you know  
6 if you had any discussion with her about this or whether  
7 this was just something she was handling on her own?

8                   **MR. MacDONALD:** I have some recollection  
9 that we were of the view this was not the common reluctant  
10 witness scenario, but a witness who Lynn thought she could  
11 -- not rehabilitate, but explain why she intended to  
12 continue and that she expected that the person would  
13 cooperate.

14                   **MR. ENGELMANN:** All right. And, sir, at --  
15 one more document, if I may, just to give us the flavour.  
16 This is 126 -- sorry, 129699. This is the subsequent  
17 letter that's sent, the letter sent directly from C-54 --  
18 it will need a publication ban stamp ---

19                   **THE COMMISSIONER:** Certainly.

20                   **MR. ENGELMANN:** --- to your office.

21                   **THE COMMISSIONER:** Thank you. Exhibit 2935.

22                   **--- EXHIBIT NO./PIÈCE No. 2935:**

23                   (129699) - Letter from C-54 to Lynn Robinson  
24                   dated 26 Jul 98

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

1                   Sir, this is the second letter we referred  
2                   to earlier, where the complainant is writing directly to  
3                   your office and he's saying he wishes to:

4                                 "...drop all charges concerning Earl  
5                                 Landry due to stress on myself and my  
6                                 family. I will be seeking counselling  
7                                 in the future to help me deal with my  
8                                 past. I do not wish to be present at  
9                                 any of the court dates."

10                   And there's a note, I think from Lynn Robinson to  
11                   Constable Malloy:

12                                 "Please have Brian contact this victim.  
13                                 He will be subpoenaed if no plea of  
14                                 guilty."

15                   So it appears that she's going to force this  
16                   fellow on if there's no guilty plea.

17                                 **MR. MacDONALD:** Yes, sir.

18                                 **MR. ENGELMANN:** Did you have any discussions  
19                   with her about taking the step of issuing a subpoena to  
20                   C-54 if there was no guilty plea?

21                                 **MR. MacDONALD:** I don't recall, but it's  
22                   possible.

23                                 **MR. ENGELMANN:** All right. Were you aware  
24                   that she was taking this position?

25                                 **MR. MacDONALD:** I don't recall.

1                   **MR. ENGELMANN:** All right. Now, sir, this  
2 is a -- I realize that charges are laid here. This is  
3 somewhat similar to the situation with Mr. Silmsen from  
4 before.

5                   **MR. MacDONALD:** Well, this was a -- Lynn was  
6 concerned that there was potentially an inducement of some  
7 kind in this instance.

8                   **MR. ENGELMANN:** Well, she was concerned that  
9 the complainant was receiving something for not proceeding  
10 with charges.

11                   **MR. MacDONALD:** Lynn felt that it was --  
12 that it was possibly, shall we say, improper, bordering on  
13 interference. This wasn't a civil -- a civil resolution.

14                   **MR. ENGELMANN:** Well, he's saying in his  
15 letter that it's stress, but she's concerned that he's  
16 essentially being bought off?

17                   **MR. MacDONALD:** Yes.

18                   **MR. ENGELMANN:** All right. And you have a  
19 concern about that, and in this case a desire to push ahead  
20 and subpoena the fellow and keep it going.

21                   **MR. MacDONALD:** Right, which ---

22                   **MR. ENGELMANN:** And you have, to start out  
23 at least, a lawyer from the defence counsel enclosing a  
24 request from the victim to withdraw and then a direct  
25 request from the victim.

1                   **MR. MacDONALD:** Right.

2                   **MR. ENGELMANN:** All right. And we know in  
3 this case that the position that your office is taking is,  
4 we're going to proceed in any event.

5                   **MR. MacDONALD:** As it was in 1993. I sent  
6 the officers twice to confer with the victim and encourage  
7 him to come ---

8                   **MR. ENGELMANN:** All right. All right. And  
9 that's your position on what happened in '93.

10                   **MR. MacDONALD:** That's what happened in  
11 1993.

12                   **MR. ENGELMANN:** All right.

13                   **THE COMMISSIONER:** Yes?

14                   **MS. McINTOSH:** Well, I think the premise,  
15 Mr. Commissioner, being put to the -- to the witness is  
16 unfair, because in this case they knew about the inducement  
17 and that was the scenario in which they said, well, we're  
18 going to -- we're going to force this witness on. But in  
19 Mr. Silmsen's case, there was no knowledge of any sort of  
20 improper interference with Mr. Silmsen at the time that the  
21 decision was made that we wouldn't force him on.

22                   **THE COMMISSIONER:** What was the induce --  
23 see, I don't know, other than I've read this thing about  
24 the computer --

25                   **MS. McINTOSH:** Well, the -- my understanding

1 is that the knowledge of the exchange of the computer to  
2 ask this victim to go away was known to the Crown's office.  
3 I could be mistaken about that, but I think that's a  
4 significant difference in this scenario.

5 **THE COMMISSIONER:** Well, okay, just a  
6 second. Did you know beforehand, before this letter or  
7 whatever, why he wanted -- did he say anything about a  
8 computer at this point?

9 **MR. MacDONALD:** We knew that -- Lynn knew  
10 that ---

11 **THE COMMISSIONER:** C-44?

12 **MR. MacDONALD:** Yes. Had received this  
13 so-called gift, I think.

14 **THE COMMISSIONER:** Sorry, 54.

15 **MR. MacDONALD:** Lynn -- Lynn had a letter at  
16 one point. I don't know if she had it initially, but at  
17 one point she had, I think, a copy of a letter from the  
18 C-44 ---

19 **THE COMMISSIONER:** Fifty-four (54). Sorry.

20 **MR. MacDONALD:** --- or 54 -- to 54 from the  
21 suspect -- well, actually, I'm not sure who it was from,  
22 but it made reference to a gift.

23 **MR. ENGELMANN:** Sorry. It appears what  
24 happened -- and if we want to look back to 2932, that might  
25 be of assistance.



1                   **THE COMMISSIONER:** Okay ---

2                   **MR. ENGELMANN:** It appears what happens is  
3 after these letters ---

4                   **MR. MacDONALD:** Right.

5                   **MR. ENGELMANN:** --- the matter's  
6 investigated ---

7                   **MR. MacDONALD:** Right.

8                   **MR. ENGELMANN:** --- to see why the fellow's  
9 changing his mind.

10                  **THE COMMISSIONER:** Okay. So, Ms. McIntosh,  
11 I don't know that your premise is correct. I don't know if  
12 it's incorrect or not correct, but I don't know. I haven't  
13 heard anything so far.

14                  **MS. McINTOSH:** I'm not sure we're going to  
15 clear it up through this witness either, I guess, but ---

16                  **THE COMMISSIONER:** Okay.

17                  **MS. McINTOSH:** --- I could be wrong. I  
18 apologize, but I think that ---

19                  **THE COMMISSIONER:** But even -- even there,  
20 even there, what's the difference between I'll give you a  
21 computer or I'll give you money?

22                  **MS. McINTOSH:** Well, I think the difference  
23 is knowing whether there was an improper inducement as  
24 opposed to a civil settlement. I think that's quite a  
25 different kettle of fish. If a witness is saying, you

1 know, I don't want to do this anymore; I've got a proper  
2 civil settlement; I'm not interested in proceeding with a  
3 criminal charge as opposed to a gift to someone to induce  
4 them to abandon the criminal proceedings. I mean ---

5 **THE COMMISSIONER:** Mr. Kozloff is ---

6 **MR. KOZLOFF:** I'm just going to have to  
7 confer with my friend.

8 **THE COMMISSIONER:** All right.

9 No, no, Ms. McIntosh -- but unless you know  
10 that -- I mean, you say there's a letter somewhere along  
11 the line, but before we know of the letter, if somebody  
12 gives somebody a computer as a gift and nothing else, how  
13 are you going to jump to the conclusion -- come to the  
14 conclusion that it's an inducement?

15 **MS. McINTOSH:** Well, I think from the  
16 circumstances, Mr. Commissioner, if an accused is lavishing  
17 gifts on an alleged victim, then I think from those  
18 circumstances one might infer that there was something  
19 improper about that.

20 **THE COMMISSIONER:** Okay.

21 Mr. Engelmann, do you have any last comment?

22 **MR. ENGELMANN:** I think the analogy still  
23 stands, sir, and I think what happened here though is -- if  
24 we look at 2932 for a minute ---

25 **THE COMMISSIONER:** Let's look at 2932, Madam

1 Clerk.

2 **MR. ENGELMANN:** --- it's clear that this  
3 matter was followed up and one looked behind the settlement  
4 or the reasons and uncovered something.

5 **THE COMMISSIONER:** And so you're at the  
6 Crown synopsis?

7 **MR. ENGELMANN:** Yes, if we look it says,  
8 "For September".

9 **THE COMMISSIONER:** Uh'huh.

10 **MR. ENGELMANN:** So this is a couple of  
11 months after the second letter. Sergeant Snyder was able  
12 to get a statement from this particular victim and in the  
13 statement he said the accused offered him a computer in  
14 exchange for.

15 But back on July 26<sup>th</sup> ---

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

17 **MR. ENGELMANN:** --- Ms. Robinson is saying  
18 this fellow's going to be subpoenaed if there's no plea of  
19 guilt.

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

21 **MR. ENGELMANN:** So it appears clear whether  
22 it -- your office has instructions or not, sir, that the  
23 Cornwall Police went back and investigated and looked  
24 beyond the statement coming in saying it's due to stress,  
25 et cetera, and found out the purpose or found out some of

1 the reasons behind his desire to withdraw.

2 MR. MacDONALD: Which I fully expect Lynn  
3 would have urged the officer to do.

4 MR. ENGELMANN: All right.

5 MR. MacDONALD: And that context I see it as  
6 radically different and I'll -- you and I will have to  
7 agree to disagree on your interpretation with respect to a  
8 scenario where three lawyers have openly conducted a civil  
9 resolution versus a victim receiving a gift from a suspect  
10 with the appearance -- at first blush though this looks  
11 like a -- like a hush gift.

12 MR. ENGELMANN: Well, sir, you could -- you  
13 could say that about both and ---

14 MR. MacDONALD: Well, we can debate it all  
15 day, but I'm right and you're wrong.

16 MR. ENGELMANN: But the difference, sir, is,  
17 in this particular case, one looked beyond. And so if one  
18 had looked at the settlement document earlier and if that  
19 had been investigated and you'd found out about the illegal  
20 provision, things would have been much different.

21 MR. MacDONALD: Yeah.

22 MR. ENGELMANN: And it appears, in this  
23 case, there was an investigation after the complainant  
24 wanted to withdraw and the officer found out that there was  
25 a gift involved.

1                   **MR. MacDONALD:** There was an investigation  
2 into an obvious flag that had just waved, not in regards to  
3 expecting lawyers to participate -- a lawyer or lawyers to  
4 participate in obstruction of justice by putting in an  
5 illegal clause in what otherwise is a standard form of  
6 civil resolution. I see that as again having to refer back  
7 to my analogy of not eating the apple pie had I known what  
8 the baker's assistant had done with the strychnine.

9                   **MR. ENGELMANN:** But, sir, in this case --  
10 and I'll just leave it here -- one looked beyond the  
11 reasons and there was an investigation.

12                   **MR. MacDONALD:** One looked to the -- to what  
13 smelled, as Heidi did or Luc did or both with respect to  
14 approaching the victim and encouraging him to continue  
15 after wanting to assure him that civil settlement or no,  
16 the Cornwall Police intended to continue with their  
17 investigation.

18                   **MR. ENGELMANN:** And there's no question as  
19 early as July 26<sup>th</sup> when this letter came in about stress  
20 that the reluctant witness was going to be compelled to  
21 testify if necessary.

22                   **MR. MacDONALD:** If necessary.

23                   **MR. ENGELMANN:** Right. All right.

24                   Sir, if we could change tracks very quickly,  
25 you were aware; were you not, that Malcolm MacDonald was

1 charged with attempting to obstruct justice for his role in  
2 the settlement?

3 MR. MacDONALD: Yes.

4 MR. ENGELMANN: And your office did not  
5 handle that prosecution?

6 MR. MacDONALD: No, sir.

7 MR. ENGELMANN: And just one document that I  
8 wanted to put in, sir, and that is Document Number 715999.  
9 And this is a letter from yourself, Mr. MacDonald, to a Mr.  
10 Robert Wakefield.

11 MR. MacDONALD: Yes, sir.

12 MR. ENGELMANN: Date is February 15<sup>th</sup>, '95.

13 THE COMMISSIONER: Thank you.  
14 Exhibit Number 2936.

15 --- EXHIBIT NO./PIÈCE NO. 2936:

16 (715999) - Letter from Murray MacDonald to  
17 Robert Wakefield re: R. v. Malcolm Macdonald  
18 dated 15 February '05

19 MR. MacDONALD: Thank you.

20 MR. ENGELMANN: And you're indicating here,  
21 sir, that this matter is not going to be prosecuted by your  
22 office.

23 MR. MacDONALD: Yes, sir.

24 MR. ENGELMANN: And you say, as he is a  
25 member of the local Bar.

1                   **MR. MacDONALD:** Yes, sir. He was writing  
2 asking for a disclosure, I presume.

3                   **MR. ENGELMANN:** Right.

4                   And I'd assume you'd agree that you would  
5 not be prosecuting this, not just because he's a member of  
6 the local Bar, but because you'd had some conversations  
7 with him as well.

8                   **MR. MacDONALD:** Yes, I chose not to make  
9 that comment.

10                  **MR. ENGELMANN:** All right.

11                  And sir, just a couple of questions about  
12 one other matter and that is a case involving a fellow by  
13 the name of Robert Sabourin.

14                  **MR. MacDONALD:** Yes, sir.

15                  **MR. ENGELMANN:** And was that a prosecution  
16 that was handled by your office as well, sir?

17                  **MR. MacDONALD:** I believe so.

18                  **MR. ENGELMANN:** And I believe you did not  
19 prosecute the matter; it was done by Guy Simard; the matter  
20 was done in French?

21                  **MR. MacDONALD:** Yes, sir.

22                  **MR. ENGELMANN:** All right.

23                  And sir, I believe you were involved in a  
24 judicial pre-trial but he took it over and handled the  
25 trial?

1                   **MR. MacDONALD:** Yes, sir.

2                   **MR. ENGELMANN:** All right.

3                   And did you continue to play any role in the  
4 matter after the judicial pre-trial or was it, essentially,  
5 his file from then on?

6                   **MR. MacDONALD:** I don't recall. The usual  
7 practice I can tell you about and that was that I managed  
8 the bulk of the charges up to counsel and judicial pre-  
9 trial and if it was going to -- you know, other than a  
10 half-day trial if it was going on to any form of lengthy  
11 proceedings then it would be assigned on to the trial Crown  
12 at that point.

13                   **MR. ENGELMANN:** And this was back in 1998?

14                   **MR. MacDONALD:** Yes, sir.

15                   **MR. ENGELMANN:** And I'm wondering about  
16 contact with victims. Do you recall whether -- well, at  
17 that particular point in time, there was no victim  
18 assistance program here?

19                   **MR. MacDONALD:** Correct.

20                   **MR. ENGELMANN:** And were you and/or Mr.  
21 Simard tasked with that or did you have officers who could  
22 help? Do you know how that worked with ---

23                   **MR. MacDONALD:** We ---

24                   **MR. ENGELMANN:** --- respect to contact with  
25 people?



1                   **MR. MacDONALD:** We had a practice that  
2                   should have worked in theory but did not always do so at no  
3                   fault of -- I'm not trying to blame the police and I'm not  
4                   criticizing my assistant Crown Attorneys or -- we did  
5                   occasionally miss the opportunity to contact a complainant.  
6                   Sometimes it was with the crossing of wires between the  
7                   Crown and the case manager. Sometimes it was a crossing of  
8                   wires between the case manager and the investigator. There  
9                   are other reasons. Our system was -- at the time, it was  
10                  the worst possible system except for all other systems.

11                  **MR. ENGELMANN:** All right.

12                  Well, we heard from a couple of the  
13                  complainants in that matter -- both who testified here and  
14                  neither of whom are monikered -- about their experience and  
15                  that was Andre Lavoie and Alain Seguin.

16                  **MR. MacDONALD:** As Crown Attorney, I'd like  
17                  to apologize to both of them.

18                  **MR. ENGELMANN:** Well, I believe in one case  
19                  -- and thank you, sir. I believe in one case, Mr. Seguin  
20                  testified that he just didn't remember anyone from the  
21                  Crown's office trying to contact him about court dates or  
22                  the sentencing or the guilty plea and said he was never  
23                  contacted by the office, nor did he contact the Crown's  
24                  office because he didn't know what -- essentially, what the  
25                  office was or how to do that.

1                   He also testified he was not offered any  
2 victims assistance but I think you've told us that wasn't  
3 available in 1998.

4                   **MR. MacDONALD:** Yes, sir.

5                   **MR. ENGELMANN:** All right.

6                   And that has obviously changed?

7                   **MR. MacDONALD:** Yes, sir, dramatically.

8                   **MR. ENGELMANN:** With respect to the other  
9 victim, Mr. Lavoie, he testified that he was contacted and  
10 that there was a victim impact statement that was to be  
11 filed in court, and his concern was he wanted to have the  
12 opportunity to actually read his victim impact statement.  
13 And that was his concern, not having the opportunity to do  
14 that.

15                   **MR. MacDONALD:** Yes, sir.

16                   **MR. ENGELMANN:** Do you know if there is  
17 currently a policy with respect to that in your office,  
18 sir?

19                   **MR. MacDONALD:** Yes, sir. There was one  
20 back then as well but it was another one that was not  
21 foolproof. The current practice the Victim Witness Program  
22 has a double-check system that would preclude that  
23 happening.

24                   **MR. ENGELMANN:** Mr. MacDonald, that includes  
25 (sic) my questions for you, with the exception of two.

1 And, sir, what I wanted to ask you -- and you can feel free  
2 to comment or not -- we've asked all witnesses, whether  
3 they be victims, alleged victims, people from the community  
4 or people like yourself working for a public institution  
5 about some of the impact and effects that some of these  
6 matters may have had on them and their family. If you wish  
7 to comment on that, please feel free.

8 And secondly, of course, sir, in your role  
9 as the local Crown attorney we're obviously interested in  
10 any recommendations or suggestions you have to this  
11 Inquiry, given your experience and given what we're trying  
12 to deal with here by way of institutional response.

13 **MR. MacDONALD:** Thank you very much for this  
14 opportunity.

15 I'll say one point on your first question,  
16 and that is that I think it should be noted that my spouse  
17 on many instances, many occasions over the last 15 years  
18 has, because of my distractions relating to this project,  
19 has in many respects been living with less than a full  
20 partner and I think that everybody, at least at counsel  
21 table, should acknowledge her dedication in spite of my  
22 feelings.

23 I'd like to comment on your second point --  
24 the second offer with respect to one potential  
25 recommendation, and it's -- I think it falls into the

1 systemic response context.

2 MR. ENGELMANN: All right.

3 MR. MacDONALD: I'll preface it by noting  
4 that yesterday before becoming a witness I peeked into the  
5 media room and inquired as to what media agencies were  
6 following these proceedings and there were two. I presume  
7 that's the same case today. That's the local daily  
8 newspaper and the local radio station. And as you know the  
9 local cable television network is broadcasting this.

10 And I think it's unfortunate that now that  
11 we're getting to, and have been for the last several  
12 months, the institutional evidence and responses to the  
13 highly newsworthy, shall we say, initial allegations of the  
14 conspiracy theorists, it's unfortunate that those other  
15 broader-ranging media outlets are not here to follow as  
16 closely the responses and the real evidence.

17 And I think it should be noted that the  
18 local newspaper and radio and cable television stations  
19 have probably throughout been attempted to be the most  
20 objective journalistic journal creatures that we've seen,  
21 and that must have been difficult for them to do from time  
22 to time. But I recall reading evidence of a report earlier  
23 in this Commission hearing from an expert on media who was  
24 less than impressed with the local -- I think it was a  
25 newspaper or radio station. It was one of the local two.

1 And I'd just like to note that had she been writing the  
2 report today she would have made the same observation that  
3 I believe I'm making now about the broader context of  
4 obligation for journalistic responsibility.

5 It's a long preface but my recommendation is  
6 going to be shorter, sir. And that is *sub judice* is -- I  
7 looked at the law on point, particularly Lord Denning's  
8 comments in a 1973 case of *AG v. London Times Inc.* That  
9 case was -- of course everybody at counsel table knows that  
10 if it's from Lord Denning it must be good law. And that  
11 case, as you can imagine, was approved by Justice Borins in  
12 an Ontario Court of Appeal decision from 2003. I think  
13 it's called *Rogacki v. Belz*. The doctrine of *res of sub*  
14 *judice* applies to both parties to litigation counsel, as  
15 well as to the legislature.

16 I understand that in a word the *sub judice*  
17 rule is that counsel are not permitted to publicly comment  
18 on cases that are before the court in a matter that might  
19 prejudice the outcome of the case pursuant to the *sub*  
20 *judice* rule. And it's for the integrity of the evidence  
21 and the administration of justice that, of course, the *sub*  
22 *judice* rule has been created and that prosecution service  
23 in Ontario and the OPP and the other institutions I think  
24 involved have -- and from my impression -- endeavoured to  
25 comply with the rule and in doing so have left the field

1 open to the conspiracy theorists and to a member of --  
2 former member of the Ontario legislature to comment on at  
3 length and at will. And you in the room all know that  
4 programs like Pamela Wallin Live and national newspapers,  
5 regional newspapers, other CBC television outlets have  
6 enabled these other folks to go -- to have a national forum  
7 -- an international forum to make all comments that they  
8 felt appropriate and clearly they weren't concerned about  
9 *sub judice*.

10 I guess the problem that this has created,  
11 other than bad press for me, is -- the big problem, is that  
12 there maybe are occasions when the administration of  
13 justice, the criminal law division and the Ontario  
14 Provincial Police should denounce the lie even at risk of  
15 being accused of getting close to the line of *sub judice*.  
16 This is probably one of those cases.

17 And this is where I ask the Commissioner to  
18 consider -- because I don't have the perfect suggestion  
19 myself -- we think of CNN and retired generals telling us  
20 how the war in Iraq is devolving or should devolve or why  
21 Afghanistan has not been -- you know, retired generals are  
22 great at detailing for us stuff that current members of the  
23 officer or ranks are not in a position to comment on, it's  
24 not because of *sub judice* but it's sort of based on similar  
25 principles.

1 I'm of the view that -- and I was tempted  
2 many times to comment to the media on what I know to be --  
3 what I knew to be the truth, and perhaps I should have done  
4 that, but I still believe that I would have been too close  
5 to the line and sub judice myself, having been involved in  
6 the proceedings.

7 And perhaps other agencies, other  
8 institutions here were also inclined to do so from time to  
9 time, and perhaps the media should have been more  
10 responsible in the -- some of the media on certain  
11 occasions should have been more responsible in -- given  
12 degree of one-sided grandstanding that the conspiracy  
13 theorists were granted.

14 I'm not sure what the Commissioner's  
15 ultimate findings will be, but I know the facts as I lived  
16 them, and there was no conspiracy involving the Crown  
17 Attorney's Office and I don't believe -- I don't know all  
18 the facts but I don't believe likewise with the Cornwall  
19 Police or the OPP.

20 Your Honour, I'm not trying to prejudge your  
21 findings but that's my sentiment.

22 **THE COMMISSIONER:** That's fine.

23 **MR. MacDONALD:** So I'd ask that we give some  
24 consideration as a group to that problem as I've just set  
25 it out, and thank you for listening.

1                   **THE COMMISSIONER:** Thank you very much.

2                   So before we start I think we'll take the --  
3                   what will we call that, the first evening break? And we'll  
4                   come back in 15 and then we'll go straight till 6:00; all  
5                   right?

6                   **MR. MacDONALD:** Thank you.

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

9                   The hearing will resume at 4:50 p.m.

10                  --- Upon recessing at 4:33 p.m./

11                  L'audience est suspendue à 16h33

12                  --- Upon resuming at 4:51 p.m./

13                  L'audience est reprise à 16h51

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

16                  This hearing is now resumed. Please be  
17                  seated. Veuillez vous asseoir.

18                  **MURRAY MacDONALD Resumed/Sous le même serment:**

19                  **THE COMMISSIONER:** Thank you.

20                  ---**CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

21                  **MS. DALEY:**

22                  **MS. DALEY:** Mr. MacDonald, my name is Helen  
23                  Daley. I am counsel to Citizens for Community Renewal,  
24                  which is a local group of citizens with an interest in the  
25                  reform of institutions.



1                   **MR. MacDONALD:** Hello.

2                   **MS. DALEY:** And I have to apologize; I have  
3 a very bad voice, and if you're lucky it will just stop  
4 altogether.

5                                   **(LAUGHTER/RIRES)**

6                   **MS. DALEY:** Let me just start with a few  
7 questions for you concerning the matter of Barque and  
8 Mr. C-44 -- you recall who that individual is -- and your  
9 role in that matter. If you want to just have it handy on  
10 the screen, your letter to Officer Sebalj is Exhibit 917.

11                   I guess I was just wondering, sir, whether  
12 you played any role in this matter other than as a conduit  
13 between Officer Sebalj -- and it was Mr. Griffiths who  
14 provided the ultimate opinion. Was that the sum total of  
15 your role?

16                   **MR. MacDONALD:** A conduit only.

17                   **MS. DALEY:** All right.

18                   Just a few questions on the matter, sir.  
19 Did you make Crown Griffiths aware that Barque had in fact  
20 pleaded guilty in August of 1995 to a similar offence in  
21 similar circumstances, that being the sexual misconduct  
22 with Albert Roy, another probationer?

23                   **MR. MacDONALD:** I didn't have any separate  
24 discussion on this file other than relaying the message  
25 that you see in front of you.

1                   **MS. DALEY:** All right.

2                   It follows from that then that you didn't  
3                   have an opportunity to tell him that this -- that Mr.  
4                   Barque had pleaded to a similar offence the year prior?

5                   **MR. MacDONALD:** Well, you can be sure that  
6                   he would have known that from the police.

7                   **MS. DALEY:** How do you think he would have  
8                   known that, sir?

9                   **MR. MacDONALD:** From the police.

10                  **THE COMMISSIONER:** Mr. Griffiths? I'm  
11                  sorry, Mr. Griffiths would have known, sir?

12                  **MR. MacDONALD:** From -- that Mr. Barque was  
13                  convicted -- pleaded guilty earlier?

14                  **THE COMMISSIONER:** Uh'huh.

15                  **MR. MacDONALD:** I presume that the police on  
16                  -- I presume he would have recognized that Nelson Barque  
17                  was the same Nelson Barque that had come up before.

18                  **MS. DALEY:** I'm not clear how you -- how it  
19                  is you believe he would have been aware of the prior Barque  
20                  matter.

21                  **THE COMMISSIONER:** "He" being Griffiths.

22                  **MS. DALEY:** "He" being Mr. Griffiths.

23                  **MR. MacDONALD:** I was of the impression that  
24                  the first Barque matter had been brought to Mr. Griffiths'  
25                  attention in -- when it was initially investigated.

1                   **MS. DALEY:** But not by yourself?

2                   **MR. MacDONALD:** Not by myself, no.

3                   **MS. DALEY:** So if that occurred it would  
4 have been Mr. Simard or someone else in your office who  
5 informed Crown Griffiths about the Barque plea?

6                   **MR. MacDONALD:** No, I don't think it would  
7 have been Mr. Simard. I would have thought it would have  
8 been the police from the 1995 investigation or the Project  
9 Truth officers that handed this current case off to Heidi  
10 Sebalj. You know, I'm speculating but that's likely what -  
11 - the way it was. I guess Mr. Griffiths, Judge Griffiths,  
12 will have to answer that.

13                   **THE COMMISSIONER:** Well, let's just maybe  
14 short-circuit it.

15                   If you were passing on a Crown brief to Mr.  
16 Griffiths -- Crown brief normally contains a criminal  
17 record of the accused?

18                   **MR. MacDONALD:** Yes, sir.

19                   **THE COMMISSIONER:** So presumably if the  
20 criminal record is up to date it would be there.

21                   **MR. MacDONALD:** I presume so, yes, sir.

22                   **THE COMMISSIONER:** Okay, so ---

23                   **MS. DALEY:** Right. Sir, then I'm going to  
24 need you to look at the second page of 916 because this is  
25 the letter that Sebalj sends to you. These are what she's

1 giving you and the very bottom what she tells you is she's  
2 giving you for transmission the Ministry's investigative  
3 report, and we know that's the 1982 document, and  
4 correspondence from then-Crown Johnson, and she's giving  
5 you the statement of C-44 taken at Cornwall on December 21,  
6 '95. I have the exhibit reference handy. I can assure you  
7 that that document does not reflect Mr. Barque's guilty  
8 plea in the Albert Roy matter in 1995.

9 So, first of all, are we correct that these  
10 are the materials that you had to hand up to Crown  
11 Griffiths?

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

13 **MS. DALEY:** All right.

14 **MR. MacDONALD:** Or yes, Ma'am.

15 **MS. DALEY:** Okay. It's the voice thing;  
16 right?

17 (LAUGHTER/RIRES)

18 **MS. DALEY:** All right.

19 So if that's the sum total of what Crown  
20 Griffiths had, are we agreed that that material didn't  
21 reflect the prior guilty plea?

22 **MR. MacDONALD:** It may not have.

23 **MS. DALEY:** Just one further question, sir.  
24 I take it you didn't read C-44's statement yourself?

25 **MR. MacDONALD:** No, Ma'am.

1                   **MS. DALEY:** But you, in your response to  
2                   Officer Sebalj what you're communicating is that Griffiths  
3                   -- Crown Griffiths has read it and he sees no coercion or  
4                   threats, and I take it you're just the messenger on that  
5                   point. He's said, "No coercion or threats," and so that's  
6                   what you write to Officer Sebalj?

7                   **MR. MacDONALD:** Yes, sir -- Ma'am.

8                   **MS. DALEY:** Okay, so ---

9                   **MR. MacDONALD:** It's not the voice, it's  
10                  just bad memory.

11                  **MS. DALEY:** So to the extent that indeed the  
12                  statement, Exhibit 1276, did contain information that was  
13                  reflective of coercion, that's a matter we have to take up  
14                  with Crown Griffiths. You have no knowledge of that?

15                  **MR. MacDONALD:** That's right.

16                  **MS. DALEY:** And did you know what the age of  
17                  consent was for this offence -- this potential offence?

18                  **MR. MacDONALD:** I didn't know the facts.

19                  **MS. DALEY:** Fair enough.

20                  So again, that reason as to why there's no  
21                  charges, that's simply Crown Griffiths' view which you're  
22                  transmitting?

23                  **MR. MacDONALD:** Yes, Ma'am.

24                  **MS. DALEY:** Okay.

25                  Now, I want to turn and speak with you at

1           some length about the role that you played in the Silmsner  
2           investigation, and let me just start by reminding us that  
3           at that point in time I take it, sir, you had been a Crown  
4           attorney for approximately five years for them in Cornwall?

5                       **MR. MacDONALD:** Yes, Ma'am.

6                       **MS. DALEY:** And to the extent that you were  
7           a relatively junior lawyer at that time, did you have  
8           available to you other people with whom you could consult  
9           on difficult matters of judgment?

10                      **MR. MacDONALD:** Yes, I did. I didn't  
11           perceive myself as a relatively junior lawyer then. I do  
12           now but I didn't then. And I had commonly folks like Bob  
13           Pelletier in L'Original, and I didn't know Peter Griffiths  
14           that well because he was new to the regional director's  
15           position when then Norm Douglas went -- left the office --  
16           Norm Douglas as he then was.

17                      And so I contacted Mr. Douglas frequently,  
18           shortly after my appointment at Crown attorney, and began a  
19           practice of -- I think it was fair to say that I would have  
20           conferred more frequently with Bob Pelletier than with  
21           Peter Griffiths in that -- for Peter's first couple of  
22           months on the job.

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

24                      I take it, sir, there was no restriction or  
25           no limit on your ability to consult with Mr. Pelletier or

1 Mr. Griffiths to the extent you felt necessary?

2 MR. MacDONALD: No restriction.

3 MS. DALEY: They were always available to  
4 you when you needed them?

5 MR. MacDONALD: I knew that.

6 MS. DALEY: All right.

7 Now, it strikes me that the role that you  
8 played with Officer Sebalj, the seven to 10 consultations  
9 in which you're giving her advice that relates to her  
10 investigation, that must have been an unusual circumstance?

11 MR. MacDONALD: It was unusual that an  
12 officer would have to see me that often ---

13 MS. DALEY: Yes.

14 MR. MacDONALD: --- for investigative  
15 assistance. Just because this was not your run of the mill  
16 assault case or violence case, you know.

17 MS. DALEY: And was it unusual the amount of  
18 guidance that this officer required then? Is that the gist  
19 of how you saw it?

20 MR. MacDONALD: She was a qualified officer  
21 with a case that would have challenged the best of them.

22 MS. DALEY: All right.

23 So this case -- the inherent complexity of  
24 the case she was dealing with, in your mind, justified the  
25 amount of contact that you had?

1                   **MR. MacDONALD:** It was becoming more complex  
2 every time we'd speak.

3                   **MS. DALEY:** Apart from complexity -- well,  
4 let's come at it this way. Did you consider it a factually  
5 complex case to investigate?

6                   **MR. MacDONALD:** Well, factually not in terms  
7 of volume but in terms of surprises as to where and how  
8 things were evolving and how the information that was  
9 coming to me through Heidi was surprising Heidi and me, I  
10 believe.

11                   **MS. DALEY:** All right.

12                   **MR. MacDONALD:** Legally it wasn't complex at  
13 all.

14                   **MS. DALEY:** But it took twists and turns?

15                   **MR. MacDONALD:** It sure did.

16                   **MS. DALEY:** And I would imagine a lot of  
17 those twists and turns were on account of Mr. Silmsen  
18 himself and the way in which he interacted with Officer  
19 Sebalj?

20                   **MR. MacDONALD:** Yes, I think I was -- I  
21 think some of those twists and turns and have been a little  
22 harsh on Mr. -- I was a little harsh on Mr. Silmsen about,  
23 but, you know, some of them were twists and turns based on  
24 steps he'd taken.

25                   **MS. DALEY:** Correct.



1                   Let me try -- let me see if I can give you a  
2                   bit of an analogy or a framework to help us understand the  
3                   nature of this case as opposed to more garden variety  
4                   cases. I take it -- what was -- let me ask this question;  
5                   was Sebalj also seeking your guidance because this was a  
6                   high profile matter, she had a potentially very high  
7                   profile accused if not two high profile accused?

8                   **MR. MacDONALD:** I believe so, yes.

9                   **MS. DALEY:** And in that circumstance if she  
10                  were to lay a charge against a public figure or two public  
11                  figures and was unsuccessful, several things would follow:  
12                  One is there would certainly be media attention to the  
13                  trial and the outcome; correct?

14                  **MR. MacDONALD:** Yes.

15                  **MS. DALEY:** And there could well be  
16                  criticism of CPS if the outcome was not successful?

17                  **MR. MacDONALD:** Quite possible.

18                  **MS. DALEY:** And in addition, you've referred  
19                  from time to time about the tort of malicious prosecution,  
20                  individuals who are high profile individuals who have been  
21                  accused and acquitted might avail themselves of a tort  
22                  action as well.

23                  **MR. MacDONALD:** Tort actions are not  
24                  uncommon in Ontario and their success is not common, as  
25                  against the Crown, and I think the police too but I'm not

1       sure, but they're common and they're actions -- as I always  
2       tell the officers, I'm not going to give you advice on a  
3       civil law but check with civil counsel if what you're doing  
4       could go into that risky realm.

5               **MS. DALEY:** Would you agree with me that the  
6       probability of bad publicity and tort actions is much  
7       higher if the individual accused is a prominent person, as  
8       opposed to, for example, say, a 20-year old fellow who's  
9       charged with a break and enter offence and he's acquitted  
10      at trial?

11              **MR. MacDONALD:** It's more likely with a high  
12      profile, you know, financially well-established type of  
13      suspect, yeah.

14              **MS. DALEY:** Right. And I have no particular  
15      information about Father Charles' finances but he was  
16      certainly a very high profile individual in this community  
17      and Officer Sebalj would have recognized there'd be media  
18      attention to any charges she laid?

19              **MR. MacDONALD:** Right.

20              **MS. DALEY:** Now, to try and boil everything  
21      down into a fairly small nutshell ---

22              **MR. MacDONALD:** Good luck.

23              **MS. DALEY:** Well, maybe you'll agree with  
24      this: To lay a charge against Father Charles Officer  
25      Sebalj had to believe Mr. Silmsner when he said that Charles

1 had abused him?

2 **MR. MacDONALD:** Well, the police and Crown  
3 believe every complainant. You start with the assumption  
4 every complainant is believable. The question now is to  
5 whether it's provable in terms of grounds and then as far  
6 as my role in terms of prospect is different from do you  
7 believe the person or not. I've even had defence counsel  
8 tell me "Well, we believe something happened to this guy,  
9 now, can you prove it or not?" you know. They wouldn't say  
10 that on the record but that's ---

11 **MS. DALEY:** All right. But let me ask you  
12 this, sir; did Officer Sebalj ever say "Listen, Murray, I  
13 absolutely believe something happened to Mr. Silmsler. I  
14 believe Father Charles abused him"?

15 **MR. MacDONALD:** Yes, by the time that Lucien  
16 Brunet and Heidi and I were conferring in August we  
17 believed something happened, some form of sexual contact  
18 happened between ---

19 **MS. DALEY:** Silmsler and Father Charles?

20 **MR. MacDONALD:** Right. Whether it was  
21 consensual lawful contact or not we weren't sure; more  
22 probing was required before you could get to that but it  
23 was -- that was our impression. I expected Lucien would  
24 have said the same thing and I know that -- I believe Heidi  
25 would if she were here.

1                   **MS. DALEY:** So based on your opportunity to  
2 interact with Heidi Sebalj you're fairly firm in the view  
3 that you thought that she had a subjective belief that  
4 Silmsler had been abused by Father Charles or that there'd  
5 been some sort of interaction but she wasn't sure if it  
6 would qualify as an offence or not?

7                   **MR. MacDONALD:** She believed that -- we all  
8 believed there was some form of sexual contact.

9                   **MS. DALEY:** The issue -- the open question  
10 was did it constitute an offence or was it consensual in  
11 nature; was that your issue?

12                   **MR. MacDONALD:** Yes, one of the main issues,  
13 yeah.

14                   **MS. DALEY:** All right.

15                   Sir, you alluded in passing to your own  
16 prior encounter with Mr. Silmsler professionally and ---

17                   **MR. MacDONALD:** I'm not sure if I did  
18 prosecute him or deal with him as a witness in a past. I  
19 don't recall.

20                   **MS. DALEY:** Do you not recall?

21                   **MR. MacDONALD:** No.

22                   **MS. DALEY:** One of the documents that we  
23 have here as an exhibit ---

24                   **MR. MacDONALD:** Everybody with a criminal  
25 record in Cornwall since 1988 has probably directly or

1 indirectly, you know, dealt with me as prosecutor.

2 **MS. DALEY:** If we can take just a very quick  
3 look at Exhibit 228 on the screen -- I can find it for you  
4 -- the second page, second paragraph. Sir, remember this  
5 is the memo that you spoke about earlier this afternoon?  
6 Slightly more than halfway down it says:

7 "Silmser's credibility..."

8 **MR. MacDONALD:** Is this Bob Pelletier's  
9 memo?

10 **MS. DALEY:** I'm sorry?

11 **MR. MacDONALD:** Is this Bob Pelletier's  
12 memo?

13 **MS. DALEY:** It is, sir, yeah.

14 Within that paragraph it says that:

15 "Silmser's credibility was questioned,  
16 bearing in mind the suspicious nature  
17 of certain of the allegations, lack of  
18 corroboration and Silmser's criminal  
19 record, including dozens of convictions  
20 involving dishonesty."

21 Was that something you were aware of, sir --

22 -

23 **MR. MacDONALD:** Yes.

24 **MS. DALEY:** --- when you were helping Ms.  
25 Sebalj?

1                   **MR. MacDONALD:** Yes.

2                   **MS. DALEY:** So you knew that Silmsler had a  
3 lengthy record for crimes of dishonesty?

4                   **MR. MacDONALD:** Yes.

5                   **MS. DALEY:** Is that an element that, based  
6 on your discussions with Officer Sebalj, she was mindful of  
7 in dealing with Mr. Silmsler's complaint?

8                   **MR. MacDONALD:** I believe she was mindful of  
9 it. I have some recollection that we referred to the  
10 criminal record -- his criminal record and concerns about  
11 reliability, you know, especially with crimes of  
12 dishonesty, but that wasn't high on our -- I don't believe  
13 it was high on her priority list of credibility concerns at  
14 that point.

15                   **MS. DALEY:** I'm assuming that ---

16                   **MR. MacDONALD:** Throughout.

17                   **MS. DALEY:** Sorry. Her credibility concerns  
18 stem from other behaviour as well?

19                   **MR. MacDONALD:** Yes.

20                   **MS. DALEY:** Did ---

21                   **MR. MacDONALD:** Or other information that  
22 didn't turn out -- that didn't follow up as ---

23                   **MS. DALEY:** Do you remember, sir, in any of  
24 the seven to 10 meetings you had with her, talking about  
25 his criminal convictions and his ---

1                   **MR. MacDONALD:** I don't recall but we  
2 probably did.

3                   **MS. DALEY:** That you think you probably did?

4                   **MR. MacDONALD:** Yeah, I don't -- I'd be  
5 surprised if we didn't, but I don't recall.

6                   **MS. DALEY:** All right.

7                   I take it, sir, from your perspective on  
8 this matter, the core fact is that Officer Sebalj, the  
9 investigating officer, simply never formed RPG in relation  
10 to Silmsers's allegation about Father Charles?

11                   **MR. MacDONALD:** Right.

12                   **MS. DALEY:** She never got there?

13                   **MR. MacDONALD:** Right.

14                   **MS. DALEY:** And that was so not withstanding  
15 that she did obtain some evidence about some homosexual  
16 encounters involving Charles with younger people; correct?

17                   **MR. MacDONALD:** Right. There was certainly  
18 suspicion based on that.

19                   **MS. DALEY:** All right.

20                   So the state of *qua non*, if you will, of why  
21 no charges brought, from your perspective, is that the  
22 police officer does not have RPG to believe an offence has  
23 occurred?

24                   **MR. MacDONALD:** Right.

25                   **MS. DALEY:** Now, let me -- I want to explore

1 with you just a little bit Malcolm MacDonald's role in the  
2 investigation itself?

3 **MR. MacDONALD:** Yes.

4 **MS. DALEY:** And let me just preface it by  
5 asking you this question, sir. You did testify to a  
6 certain agree about this in-chief. I think what you said  
7 is that you were aware that Luc Brunet was extremely busy  
8 and that he wasn't necessarily available to Officer Sebalj  
9 to help her with the investigation. Was that your  
10 understanding of the circumstances?

11 **MR. MacDONALD:** He would have made himself  
12 available, but I knew that he was otherwise very much  
13 occupied and Heidi had a lot of other matters on her plate  
14 too.

15 **MS. DALEY:** Did it ever occur to you in your  
16 dealings with Officer Sebalj to perhaps call up Mr. Brunet  
17 and say, I think this investigator needs some assistance  
18 here?

19 **MR. MacDONALD:** The -- I recommended it to  
20 her on two occasions, and the second occasion -- I think  
21 that there were two meetings in a row towards the latter  
22 part of our contacts, and I believe that after the second  
23 meeting she did go to Luc. But that's my impression.

24 **MS. DALEY:** That would be very close in time  
25 to the settlement, sometime in the August time frame?



1 MR. MacDONALD: Yes.

2 MS. DALEY: Or do you know?

3 MR. MacDONALD: The first time may have been  
4 as early as June.

5 MS. DALEY: All right.

6 MR. MacDONALD: And the second time would  
7 have been in August, I expect.

8 MS. DALEY: Did you ever consider, as these  
9 matters were unfolding, that perhaps you should speak to  
10 the chief or to the Deputy chief about this investigation?

11 MR. MacDONALD: You mean in the context of  
12 resources in the CIB?

13 MS. DALEY: Yes.

14 MR. MacDONALD: No.

15 MS. DALEY: Did you ever feel that you  
16 should speak to anyone senior to Officer Sebalj about her  
17 ability to conduct the investigation?

18 MR. MacDONALD: No. She was -- she seemed  
19 to be complying with my requests and showing due diligence  
20 and a keen interest in the case, I believe.

21 MS. DALEY: All right.

22 Would you consider her abilities as an  
23 investigator at this time to be simply average?

24 MR. MacDONALD: Well, she was just new to  
25 the CIB, so it would be -- I don't mean to be pejorative in

1 saying that.

2 **MS. DALEY:** I'm not inviting you to  
3 disparage her, because I know that you don't want to do  
4 that. She was a new officer and I guess your perception is  
5 that she was of average ability.

6 **MR. MacDONALD:** She was an officer starting  
7 out with average ability who would get, and did get, better  
8 as time went by, did get more skilled in the subtleties of,  
9 you know, assisting or dealing with victims of sexual  
10 violence in particular; she was very good at that by the  
11 time she retired.

12 **MS. DALEY:** All right.

13 Did you ever have the feeling that she was  
14 over her head?

15 **MR. MacDONALD:** Yes, that she -- she needed  
16 guidance from someone else, and I thought that I could  
17 assist in her remaining above -- her head above water.

18 **MS. DALEY:** I guess, as you would have seen  
19 it, but for the fact you were able to give her some  
20 investigative help, she would have been drowning in this?

21 **MR. MacDONALD:** I expect she would have gone  
22 to Luc earlier if I hadn't been trying to do so.

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

24 So then, let's just talk for a moment  
25 about how Malcolm MacDonald interacts with Officer Sebalj

1 and with you as matters unfold. You did become aware --  
2 or, did you become aware in dealing with her that she had a  
3 number of phone contacts with Malcolm?

4 **MR. MacDONALD:** I knew that she had a phone  
5 contact or contacts. I forget if I knew how many, but I  
6 knew that she had. And I had the impression that he  
7 initiated them -- it or them.

8 **MS. DALEY:** And what was your understanding  
9 as to what occurred in those phone calls? Do you recall  
10 what she told you?

11 **MR. MacDONALD:** I don't recall the details.  
12 My impression from our conversations about Malcolm  
13 MacDonald is that he was trying to stay -- give the  
14 appearance of staying -- of being -- there's that word that  
15 I forgot about earlier.

16 **THE COMMISSIONER:** High road?

17 **MR. MacDONALD:** Yeah, the -- transparent.

18 **THE COMMISSIONER:** Transparent.

19 **MS. DALEY:** So you thought that in his  
20 dealings with Officer Sebalj -- well, sorry. What did you  
21 think his purpose was in speaking to her?

22 **MR. MacDONALD:** To make it clear to the  
23 police that he was conducting this but not attempting to  
24 interfere with their side of the investigation. That was  
25 my impression with his first phone call.

1                   **MS. DALEY:** Did Officer Sebalj ever tell you  
2 that she was giving him information?

3                   **MR. MacDONALD:** I don't recall.

4                   **MS. DALEY:** We can do this on the screen.  
5 Can we look at Exhibit 298? Let me just make sure you  
6 understand what this is, sir. This is a statement that  
7 Malcolm MacDonald prepares and he signs.

8                   **MR. MacDONALD:** Uh'huh.

9                   **MS. DALEY:** And Madam Clerk just can show  
10 you briefly the signing page so we'll know -- you'll know  
11 what date this is. So you'll see he signed that in June of  
12 '94, right?

13                   **MR. MacDONALD:** M'hm.

14                   **MS. DALEY:** Madam Clerk, I need to look at  
15 paragraph 4, which is going to be on the first page.

16                   He's -- Malcolm is talking here about  
17 interactions with Silmser and the settlement, and then he  
18 says:

19                   "I may add that since he first  
20 complained to city police in January  
21 '93, he failed to keep several  
22 appointments where he was to disclose  
23 details of any allegations and naming  
24 witnesses."

25                   And, sir, I'm just wondering, it strikes me that

1 the only source of that information in Malcolm's possession  
2 would be Officer Sebalj.

3 **MR. MacDONALD:** I don't know.

4 **MS. DALEY:** Assuming that she was the  
5 source, would that not be a little bit concerning? And  
6 what I mean by that is, she's giving him information that  
7 suggests that Silmsers not reliable and not co-operating,  
8 and that's not Malcolm's business, is it?

9 **MR. MacDONALD:** Well, assuming that was --  
10 assuming she was telling him that. I mean, you know, it's  
11 a double speculation.

12 **MS. DALEY:** Well ---

13 **THE COMMISSIONER:** Well, assume for a moment  
14 that she did.

15 **MR. MANDERVILLE:** Mr. Commissioner, it's not  
16 been established that the information came from Officer  
17 Sebalj, so it is complete speculation.

18 **THE COMMISSIONER:** That's not quite the way  
19 I recall it. We'd have to go back to her notes ---

20 **MR. MANDERVILLE:** Correct, sir.

21 **THE COMMISSIONER:** --- and look at the  
22 conversations.

23 **MS. DALEY:** Perhaps it's a -- I know you  
24 don't have direct knowledge of whether she told him this or  
25 not. If she did, is that information that she ought not

1 have disclosed?

2 **MR. MacDONALD:** Well, I don't understand why  
3 she would have to share these details with him. Maybe they  
4 were slipped in the context of other -- you know, it's not  
5 the type of details that normally an officer would want to  
6 provide civil counsel.

7 **MS. DALEY:** Well, look briefly at the last  
8 portion of paragraph 6. He says:

9 "I may add that I told the Bishop that  
10 from the information I received from  
11 city police concerning this  
12 investigation, that there would be no  
13 problem in getting an acquittal if  
14 charges were laid against the priest."

15 Sir, I take it you don't have information from  
16 Sebalj as to what she imparted to Malcolm?

17 **MR. MacDONALD:** No, Ma'am.

18 **MS. DALEY:** All right.

19 **MR. MacDONALD:** She may have mentioned  
20 references to certain things she told him in the past, but  
21 I don't recall anything that startled me.

22 **MS. DALEY:** Assuming -- and again it's an  
23 assumption -- that what Malcolm says here is correct, does  
24 it not suggest that she has imparted information that she  
25 ought not to have?

1                   **MR. MacDONALD:** Well, if he's correct, he  
2                   may also be taking from his client information to suggest  
3                   that he could have beat the charges handily.

4                   **MS. DALEY:** I appreciate that. But he  
5                   attributes it to city police.

6                   **MR. MacDONALD:** Yeah, he does. He also  
7                   makes comments about me that I know to be untruthful in  
8                   this statement, so that's why I urge you to be cautious  
9                   with what you presume is correct there.

10                  **MS. DALEY:** Fair enough, sir.

11                  **THE COMMISSIONER:** So tell me, sir, in your  
12                  experience -- you may not know -- or not know, in the  
13                  investigative stages does it happen very often that the  
14                  accused lawyer is phoning the police, the investigator?

15                  **MR. MacDONALD:** Not often. No, only in a  
16                  scenario like -- a scenario where a civil action is sort of  
17                  pending at the same time as a criminal investigation, or a  
18                  civil discussion, shall we say. I don't think -- I  
19                  wouldn't say it's the only time I've ever seen it happen,  
20                  but it's very rare.

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

22                  **MS. DALEY:** Given that this was a very  
23                  unusual, high-profile case, might you have cautioned  
24                  Officer Sebalj about not speaking with Malcolm?

25                  **MR. MacDONALD:** Well, I told her to keep me

1        apprised of any information he had relayed to her --that  
2        he'd be inclined to relay to her. I didn't -- I wouldn't  
3        have discouraged her from talking to him. You know, I  
4        probably would have said, use him as a conduit of  
5        information, if you ---

6                    **MS. DALEY:** But did she ever get any ---

7                    **MR. MacDONALD:** Or a source of information.

8                    **MS. DALEY:** Did she ever come back to you  
9        with any information that he had provided to advance her  
10       investigation?

11                   **MR. MacDONALD:** I don't think he provided  
12       anything. I had the impression he didn't provide anything  
13       to help her with her investigation, except for offering  
14       polygraphs or ---

15                   **MS. DALEY:** All right.

16                   **MR. MacDONALD:** --- interview.

17                   **MS. DALEY:** Sir, in the meetings you had  
18       with her do you recall if Officer Sebalj ever sought any  
19       advice or help from you as to how she might persuade  
20       reluctant witnesses or reluctant possible victims to become  
21       involved in her investigation?

22                   **MR. MacDONALD:** That's likely that I did. I  
23       don't recall specifically but it's entirely likely that I  
24       did.

25                   **MS. DALEY:** You were taken, in the testimony



1 in-chief, to two witnesses that Officer Sebalj dealt with.  
2 They were C-3, who was disclosing abuse but was very  
3 reluctant to get involved -- if you want to check -- do you  
4 need to check the moniker list to know who I'm talking  
5 about?

6 **MR. MacDONALD:** No. If you can tell me the  
7 -- I don't -- the names don't mean ---

8 **THE COMMISSIONER:** It's going to take less  
9 time just to show you the monikers.

10 **MS. DALEY:** Just show him the list.

11 **THE COMMISSIONER:** Yeah.

12 **MR. MacDONALD:** It's not so much the names  
13 as to their sort of roles and what they told Heidi that  
14 matters to my -- to me in terms of my memory.

15 **THE COMMISSIONER:** So which one are we  
16 looking at now?

17 **MS. DALEY:** C-3 and C-56. Those are both  
18 individuals that Heidi dealt with in her investigation.  
19 You recall that?

20 **THE COMMISSIONER:** I don't recall their  
21 names.

22 **MS. DALEY:** Do you recall her giving --  
23 apart from the names, do you recall her coming to you  
24 saying, "I found somebody..." ---

25 **MR. MacDONALD:** Yes.

1                   **MS. DALEY:** --- "...who has a similar story to  
2 tell. In fact I found two somebody's"?

3                   **MR. MacDONALD:** She -- I believe she told me  
4 that -- I have some recollection that she told me "I've  
5 found somebody that I think may have something", but the  
6 impression of the two early pieces of information you  
7 provided were that it didn't pan out.

8                   **MS. DALEY:** I understand. So we've got four  
9 people in total: two that you learn about early on but  
10 they're not helpful, and then two that you learn about very  
11 close to the end that are helpful.

12                   **MR. MacDONALD:** Well ---

13                   **MS. DALEY:** Is that right?

14                   **MR. MacDONALD:** Not helpful on -- helpful to  
15 the extent that it suggested that something -- that there  
16 was some degree of corroboration as to something had gone  
17 on between the complainant and this -- and those other two  
18 people.

19                   **MS. DALEY:** Okay.

20                   **MR. MacDONALD:** Or the one other person for  
21 sure that gave a statement.

22                   **MS. DALEY:** All right.

23                   So you didn't become aware from Officer  
24 Sebalj, until very close to the time of the settlement,  
25 that she had two individuals who had similar allegations to

1 make about Father Charles? You didn't know that good fact  
2 until the end?

3 **MR. MacDONALD:** Near the end, right. I  
4 don't think she really -- she described them to me as the  
5 way -- I don't -- I didn't get any clear indication that  
6 they were good witnesses until then. If she'd mentioned it  
7 before in another context, I missed it or we didn't -- we  
8 weren't on the same wavelength.

9 **MS. DALEY:** I'm presuming if she'd mentioned  
10 it in March when she first encountered these individuals,  
11 you could then have given her further investigative help as  
12 to how to deal with them; how to bring them into the  
13 investigation?

14 **MR. MacDONALD:** Yes, that's a safe  
15 presumption.

16 **MS. DALEY:** And that in fact didn't happen?

17 **MR. MacDONALD:** I didn't -- I don't recall  
18 speaking of these two prior to August.

19 **MS. DALEY:** Do you have any, in your own  
20 mind, explanation as to why she came across good  
21 information but didn't share it with you until very close  
22 to the end to the settlement?

23 **MR. MacDONALD:** Probably because she thought  
24 they were good -- that there were good components to it but  
25 weak components to it as well, as in the one person who

1 refused to give a statement. Probably that's why she  
2 didn't tell me earlier is because she didn't have a  
3 statement to work with.

4 **MS. DALEY:** But we know -- we know you  
5 didn't see it but she did have a statement from C-56 ---

6 **MR. MacDONALD:** Right.

7 **MS. DALEY:** --- who was willing; correct?

8 **MR. MacDONALD:** Right.

9 **MS. DALEY:** Let me ask this question. When  
10 it became obvious that Silmsler would no longer cooperate  
11 and you wrote the opinion, was any thought given to you  
12 directing Officer Sebalj to continue on with C-56; consider  
13 laying a charge on his information?

14 **MR. MacDONALD:** Yes.

15 **MS. DALEY:** Did you discuss that with her?

16 **MR. MacDONALD:** I believe I did.

17 **MS. DALEY:** Do you recall the outcome?

18 **MR. MacDONALD:** No, but I ---

19 **MS. DALEY:** Certainly I take it that's  
20 something you would have encouraged her to do?

21 **MR. MacDONALD:** Yes, and I'd be -- I would  
22 have encouraged her to do it, and she may have told me she  
23 already did or that she would try. Those were the two  
24 responses that I expect I got, but I can't recall.

25 **MS. DALEY:** You can't recollect?

1                   **MR. MacDONALD:** No.

2                   **MS. DALEY:** But you're fairly certain that,  
3 rather than close the book entirely on Father Charles as a  
4 possible suspect, you told her to carry on with C-56 and to  
5 see if charges were layable?

6                   **MR. MacDONALD:** I expect I did, yes. I  
7 expect that she probably did it even before me telling her,  
8 you know.

9                   **MS. DALEY:** All right.

10                   And do you recall, sir, understand -- just  
11 if you'll accept from me that C-3 was the other person with  
12 a similar allegation who was reluctant. When Silmsner  
13 disappeared as a complainant do you know if you told her,  
14 "Go back to C-3, and here's some tips for persuading him to  
15 become involved"? Did that happen?

16                   **MR. MacDONALD:** I don't recall. I think  
17 that we talked about C-3 before that point.

18                   **MS. DALEY:** All right.

19                   Can I ask you to turn your mind back to the  
20 second conversation that you had with Malcolm; the one that  
21 you found concerning?

22                   **MR. MacDONALD:** Yes.

23                   **MS. DALEY:** And did you get the impression  
24 at all in that conversation that Malcolm's frame of mind  
25 was, "Settlement or otherwise, there's just not going to be

1 any charges here because I know the officer has no RPG"?

2 **MR. MacDONALD:** I don't know if -- I don't  
3 know if that was -- I didn't get that impression from  
4 Malcolm's conversation.

5 **MS. DALEY:** I take it the impression you  
6 took away was that because there was a civil settlement he  
7 was taking it as a given there would be no criminal charge?

8 **MR. MacDONALD:** He was taking it as a given  
9 that a settlement would either discourage the complainant  
10 or the police from continuing. I didn't know which but he  
11 just seemed to think that the civil settlement would likely  
12 put an end to the criminal case.

13 **MS. DALEY:** Now, when you say "discourage  
14 the complainant" are we moving in an area where, you know,  
15 perhaps there might have been a red flag for you that he's  
16 trying to get the complainant to agree not to come forward?

17 **MR. MacDONALD:** No. I thought that he had  
18 the impression from the discussions or from -- the  
19 discussions with the complainant or his lawyer that if he  
20 got the settlement that that's all he wanted.

21 **MS. DALEY:** So the complainant would  
22 voluntarily not proceed; not that there would be an  
23 agreement that required him not to proceed?

24 **MR. MacDONALD:** Right.

25 **MS. DALEY:** All right.

1                   And to the other piece of it, that it would  
2                   discourage the police, I take it Malcolm -- very  
3                   experienced Crown attorney, very experienced prosecutor --  
4                   his reasoning probably was, "If we pay money to this man,  
5                   given all the other circumstances, the Crown is probably  
6                   going to think that that was his motive all along and not  
7                   go forward."

8                   **MR. MacDONALD:** Or the Crown would think  
9                   that, "He's got his money. If he's willing to continue it  
10                  shows, you know, bona fides." It could have cut either  
11                  way, and he cut that way.

12                  **MS. DALEY:** All right.

13                  But in any event this is the conversation in  
14                  which you tell him in no uncertain terms, "That's not the  
15                  way it's going to work." Did you leave him with the  
16                  impression that there would be charges?

17                  **MR. MacDONALD:** No, that the investigation  
18                  would continue and there may be charges.

19                  **MS. DALEY:** All right.

20                  So that was your message and he got that  
21                  loud and clear?

22                  **MR. MacDONALD:** Oh yeah.

23                  **MS. DALEY:** And ---

24                  **MR. MacDONALD:** He responded, "Oh yes, yes,  
25                  yes, yes, I know," words almost to that ---

1                   **MS. DALEY:** And if I understood your  
2 evidence correctly, within a week or so of that you  
3 received a phone call from Jacques Leduc and you have this  
4 -- a similar conversation with him?

5                   **MR. MacDONALD:** Well, yes, Mr. Leduc didn't  
6 necessarily comment on what he -- show his cards as to  
7 whether he thought the civil thing would end, but I still  
8 made that -- made a point of making the caution to him too  
9 -- the warning too that the criminal case will continue,  
10 and he also said he understood.

11                   **MS. DALEY:** Well, was there something in  
12 what he said to you that made you believe you needed to  
13 give him that warning?

14                   **MR. MacDONALD:** No, it was still the  
15 lingering concern from the conversation with ---

16                   **MS. DALEY:** With Malcolm?

17                   **MR. MacDONALD:** With Malcolm, that I  
18 thought, "I'll make all the lawyers aware of this."

19                   **THE COMMISSIONER:** Refresh me a little bit.  
20 Why did Leduc call you?

21                   **MR. MacDONALD:** He called me to say that the  
22 Church had reached a resolution with him.

23                   **THE COMMISSIONER:** Right.

24                   **MR. MacDONALD:** And I thought that when  
25 Malcolm called he was calling on behalf of the Church, but



1 he was actually acting for the priest. So I guess he was  
2 trying to show, as the other litigant or potential litigant  
3 in the civil resolution, that he was trying to be  
4 transparent with the police.

5 **MS. DALEY:** But you didn't really have a  
6 need to know that information, did you?

7 **MR. MacDONALD:** No, I just thought it was --  
8 -

9 **MS. DALEY:** Your only concern would have  
10 been with Father Charles because he was the potential  
11 accused?

12 **MR. MacDONALD:** Right.

13 **MS. DALEY:** Isn't that right?

14 **MR. MacDONALD:** I didn't have a need to  
15 know. I had the sense that in a small town with a small  
16 local Law Association the members were trying to be  
17 transparent with one another.

18 **MS. DALEY:** I take it you never got the  
19 sense that you were being manipulated by either of those  
20 gentlemen?

21 **MR. MacDONALD:** Not until afterwards.

22 **THE COMMISSIONER:** But -- okay, not till  
23 afterwards. So explain that. Now do you see it in a  
24 different light or ---

25 **MR. MacDONALD:** When I saw or was told about

1 the contents of Malcolm MacDonald's statement, as well, of  
2 course, is the fact that there is a gag clause in there,  
3 that's when I realized that someone -- at least Malcolm was  
4 manipulating me.

5 **THE COMMISSIONER:** Well, "gag clause" --  
6 let's be specific.

7 **MR. MacDONALD:** Stop proceeding with the  
8 police investigation.

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

10 **MR. MacDONALD:** Yes.

11 **THE COMMISSIONER:** Okay. You realize that  
12 now?

13 **MR. MacDONALD:** I realize that now, and I  
14 realized it, I think, as soon as I heard there was a gag  
15 order in there.

16 **THE COMMISSIONER:** Illegal settlement?

17 **MR. MacDONALD:** Illegal settlement in there,  
18 sorry.

19 **THE COMMISSIONER:** Because a gag order  
20 is -- is something different. A gag order is to say, "I  
21 will not speak of the settlement publicly".

22 **MR. MacDONALD:** Right.

23 **THE COMMISSIONER:** All right.

24 **MR. MacDONALD:** I don't mean gag order in  
25 that context.

1                   **THE COMMISSIONER:** No.

2                   **MR. MacDONALD:** I'll refer to it as a ---

3                   **THE COMMISSIONER:** Illegal settlement.

4                   **MR. MacDONALD:** All right.

5                   **THE COMMISSIONER:** So my question was ---

6                   **MR. MacDONALD:** I forget.

7                   **THE COMMISSIONER:** It's past 5:00.

8                   **MR. MacDONALD:** I think it was relating to

9 when I found out that I'd been manipulated.

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

11                   **MR. MacDONALD:** And I would say it was first

12 when I heard about the ---

13                   **THE COMMISSIONER:** Illegal settlement.

14                   **MR. MacDONALD:** --- illegal settlement, and,

15 secondly, when I read Malcolm's -- or it was reported to

16 me, Malcolm's comments.

17                   I don't know if I ever read Malcolm's

18 statement, but I believe that one of the officers told me

19 what he said.

20                   **THE COMMISSIONER:** Okay.

21                   Go ahead.

22                   **MS. DALEY:** In your seven to 10 discussions

23 with Officer Sebalj, I presume some of those discussions

24 related to the fact of the settlement, did they, sir?

25                   **MR. MacDONALD:** To the fact that they were

1 negotiating.

2 **MS. DALEY:** Yes.

3 After the settlement was achieved, did you  
4 talk to Officer Sebalj directly about that?

5 **MR. MacDONALD:** I believe she phoned me and  
6 told me and ---

7 **MS. DALEY:** She told you the settlement had  
8 occurred?

9 **MR. MacDONALD:** Yeah, and we spoke again --  
10 met again, with Lucien Brunet.

11 **MS. DALEY:** Right. But I take it there were  
12 no circumstances at the time that caused either yourself,  
13 as a Crown, or Luc Brunet, as an experienced investigator,  
14 to say to one another, or yourselves, "Maybe we should see  
15 that document"?

16 **MR. MacDONALD:** No.

17 **MS. DALEY:** All right.

18 **MR. MacDONALD:** In my sending her back, I  
19 didn't care what the document said. You know, Luc felt  
20 likewise, "Let's -- to hell with whatever it says, let's  
21 just tell this fellow that we're going to continue with the  
22 criminal case, anyway."

23 We never thought that the document would be  
24 so extreme as to have that type of language in it.

25 **MS. DALEY:** You were all operating on the

1 assumption that there's no illegality to what he's agreed  
2 to, and there's nothing in there that's going to cause him  
3 to forfeit his settlement if he continues speaking to the  
4 police, right?

5 **MR. MacDONALD:** Right.

6 **THE COMMISSIONER:** What about Mr. Leduc's  
7 phone call to you? Now that you've heard about Malcolm,  
8 how -- is there any way -- do you change your  
9 characterization of his call to you?

10 **MR. MacDONALD:** Tim Smith told me that he  
11 didn't think -- after Tim Smith's investigation on that  
12 obstruct justice case he told me he didn't think -- I asked  
13 him. I asked Smith, was Jacques Leduc, sort of, in on  
14 that, too, and he said he didn't think that Jacques Leduc  
15 knew or realized or put the clause in there.

16 **THE COMMISSIONER:** No, no -- then why would  
17 he be calling you?

18 **MR. MacDONALD:** I thought it was just to be  
19 transparent and showing that -- "I just want you to know  
20 I'm negotiating with these people," and, in fact, I thought  
21 he was trying to demonstrate that he wasn't trying to  
22 interfere with the police investigation.

23 **THE COMMISSIONER:** But this was after the  
24 settlement.

25 **MR. MacDONALD:** Yeah, after -- I think it

1 was after, or -- I don't know if the ink had hit the page  
2 yet, but it was -- just happened or about to be settled.

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

4 **MS. DALEY:** All right.

5 I'm going to move to a different aspect of  
6 this -- the same subject, but a different aspect of it.

7 You recall a number of -- numerous questions  
8 were put to you by my friend, Mr. Engelmann, about things  
9 that you didn't know about from Officer Sebalj's  
10 investigation at the time you authored your opinion.

11 And I guess the question that occurs to me  
12 is this: Given that the -- given the role that you were  
13 playing, in terms of the guidance you're giving her in lieu  
14 of Luc Brunet, did you believe that she had an obligation  
15 to tell you absolutely everything before you rendered an  
16 opinion?

17 **MR. MacDONALD:** Everything relevant. Yeah,  
18 I presumed that she had that obligation, and I presumed she  
19 was doing it, and she probably thought she was too.

20 **MS. DALEY:** Did you feel that you had an  
21 obligation, as a Crown, to satisfy yourself that she had,  
22 in fact, shared with you everything of relevance to her  
23 investigation?

24 **MR. MacDONALD:** I presumed she had. So I'm  
25 not sure how to answer that question.

1                   **MS. DALEY:** Well, one of the things  
2                   that -- we know, of course, there's no Crown brief created  
3                   here until October, which is after it's all said and done,  
4                   right? And we also know, of course, it wasn't the practice  
5                   of your office, in '93, to review briefs, in any event, but  
6                   in these circumstances ---

7                   **MR. MacDONALD:** Prior to laying charges.

8                   **MS. DALEY:** Prior to laying charges. In  
9                   these circumstances, did you consider, for example, "Geeze,  
10                  you know, I'd better make sure I know everything material.  
11                  Maybe I should look at her notebook and learn everything  
12                  that she's learned in the course of this investigation"?

13                  **MR. MacDONALD:** No, I'd been relying on  
14                  officers giving me verbals for five years, in that fashion.  
15                  It's the way that we commonly worked.

16                  The one exception were the homicide cases,  
17                  where we actually did -- because of the volume of  
18                  materials, have to, sort of -- the officers couldn't  
19                  remember everything off the top of their head, so -- she  
20                  seemed to be remembering it, in this instance.

21                  **MS. DALEY:** I don't mean to suggest by this  
22                  question that Officer Sebalj was unreliable, but we know  
23                  she's very junior and she's lesser experienced.

24                  Given that circumstance, did you think,  
25                  "Maybe I'd just better see everything she's got because

1           there may be things that are material that haven't occurred  
2           to her that way", right?

3                       **MR. MacDONALD:** She had answers for every  
4           question I put, so I had the impression that she was being  
5           diligent in telling me the ---

6                       **MS. DALEY:** All right.

7                       **MR. MacDONALD:** --- the stuff. Maybe  
8           she -- you know, there's stuff I don't remember that maybe  
9           she told me that I took -- explained to me that I didn't  
10          take in the same light as I would today as I read it. You  
11          know, I ---

12                      **MS. DALEY:** I take it, sir, for sure you  
13          would have -- you would have assumed that if she had an  
14          individual like C-56, who had similar allegations, who was  
15          prepared to go ahead either as witness or complainant, she  
16          would have told you that?

17                      **MR. MacDONALD:** If it was that black and  
18          white, yes.

19                      **MS. DALEY:** Okay.

20                      **MR. MacDONALD:** If she had concerns that  
21          there was something more about C-56's reliability or  
22          usability, then she would have had cause perhaps to hold  
23          off before bringing it to my attention.

24                      **MS. DALEY:** All right.

25                      Another topic pertaining to this is what I



1 will call -- well, I don't have to call it anything. But  
2 would you agree with me that there was bit of a disconnect  
3 between you and Officer Sebalj on this issue of the  
4 independent Crown opinion; that is to say, the Pelletier  
5 opinion?

6 **MR. MacDONALD:** I didn't think so at the  
7 time, but it appears so today.

8 **MS. DALEY:** Given how we know things  
9 unfolded, and how we know Officer Sebalj communicated with  
10 Luc Brunet about that point, you and she were not on the  
11 same page?

12 And what I mean by that, sir, is you hadn't  
13 told her to lay down her tools and to -- just to wait for  
14 an appointment with Pelletier?

15 **MR. MacDONALD:** Right. Nor had she asked  
16 for one, so we ---

17 **MS. DALEY:** Right.

18 **MR. MacDONALD:** Her impression of things, as  
19 she -- as written in that sentence, is not my impression --  
20 was not my impression.

21 **MS. DALEY:** So, if I'm right, perhaps what  
22 we have is this type of situation: You, as Crown, are  
23 waiting for her to develop RPG; if she does, to lay a  
24 charge, which you then would have Pelletier review for RPC,  
25 okay? Is that the gist of it?

1                   **MR. MacDONALD:** Yes, Ma'am.

2                   **MS. DALEY:** She had to make the first move.  
3 She had to have RPG, lay her charge, and then you would  
4 have Pelletier review that; correct? That's your mindset  
5 as to what's happening?

6                   **MR. MacDONALD:** Yes, Ma'am.

7                   **MS. DALEY:** Her mindset as to what's  
8 happening is that she's waiting for you to organize a  
9 meeting with Pelletier, in which Pelletier will tell her  
10 whether she has RPG to lay a charge?

11                   **MR. MacDONALD:** That appears to be the case.  
12 But I just want to caution you that she's writing this  
13 stuff up after -- well after the fact, that I've -- that  
14 we've discussed -- or, you know, the future arrangements  
15 for counsel.

16                   So I have the impression that she's just at  
17 that instance mixing up and throwing into the hopper,  
18 quickly, stuff that if she had occasion to sit and think  
19 and talk about -- and write about it, she would have  
20 articulated it differently.

21                   **MS. DALEY:** And when you say there was a  
22 time gap, the gap is between the time you first spoke to  
23 her about Pelletier, which was early days, and August when  
24 she writes it up in her response to Luc Brunet?

25                   **MR. MacDONALD:** I didn't first refer to

1 Pelletier. The Pelletier comment probably came around  
2 April-ish, or early May.

3 MS. DALEY: Yes, all right. So it's the gap  
4 between April and August?

5 MR. MacDONALD: At least. At least.

6 THE COMMISSIONER: Those are in her -- what  
7 did we call those notes?

8 MS. DALEY: Dedicated notebook.

9 THE COMMISSIONER: Dedicated note -- no, the  
10 notebook and the -- was it -- what if in the notebook, in  
11 her daily notebook, that there's a reference there, then  
12 that would -- and I have to check that.

13 MR. MacDONALD: Yeah.

14 THE COMMISSIONER: Then that would counter  
15 your suggestion that she mixed it up?

16 I mean, if there's a notation in the book  
17 ---

18 MR. MacDONALD: In April or something.

19 THE COMMISSIONER: Right.

20 MR. MacDONALD: Yeah, then I'm wrong.

21 THE COMMISSIONER: Okay.

22 MS. DALEY: All right. Let me ask you this,  
23 sir. And again, I'm not inviting you to be critical of  
24 Officer Sebalj, but ---

25 MR. MacDONALD: I won't be.

1                   **MS. DALEY:** --- did it occur to you that she  
2 was offering that as a bit of an excuse to Luc Brunet as to  
3 why her file was still open in late August?

4                   **MR. MacDONALD:** An explanation. An excuse.  
5 That may be strong language, but I think that she was  
6 trying to ---

7                   **MS. DALEY:** She was trying to explain the  
8 fact that ---

9                   **MR. MacDONALD:** There was a lot going on it,  
10 it wasn't just recklessness on her part.

11                   **MS. DALEY:** Right.

12                   **THE COMMISSIONER:** No, no, but let's --  
13 again, it's very late, but if Luc Brunet was looking at  
14 clearance rates and that kind of stuff and he sits down  
15 with her and says, "Well, you know, you're not laying  
16 enough charges," that kind of stuff ---

17                   **MR. MacDONALD:** Yeah.

18                   **THE COMMISSIONER:** --- then could you see  
19 that ---

20                   **MR. MacDONALD:** I suppose, yeah, yeah.

21                   **MS. DALEY:** Just one question about your  
22 interaction with Chief Shaver. You remember he comes to  
23 meet you ---

24                   **MR. MacDONALD:** Yes, ma'am.

25                   **MS. DALEY:** --- afterwards. And I hope I

1 can find a document reference if I need to, but I think you  
2 may remember this. Again, you have a bit of a push-pull  
3 with him, because he has the understanding that it's the  
4 Crown who's decided that there shouldn't be any charges,  
5 and you have to say to him, "No, sir, the problem was your  
6 officers never got RPG."

7 **MR. MacDONALD:** No, he -- when I said that,  
8 he you understood it, though. Like, it's not like -- it  
9 wasn't a revelation to him that ---

10 **MS. DALEY:** I appreciate, but he walked into  
11 the meeting with you believing that there had been no  
12 charges laid at that time as a result of a Crown opinion, a  
13 Crown view that charges weren't appropriate.

14 **MR. MacDONALD:** He walked in with the view  
15 that the case had been derailed by the Church.

16 **MS. DALEY:** Sorry, by?

17 **MR. MacDONALD:** The Church, by the Diocese.

18 **MS. DALEY:** All right. You said to him  
19 that, "The point is that your officers never had RPG and we  
20 -- no charge was laid for that reason."

21 **MR. MacDONALD:** I probably went over and  
22 detailed with him, you know, my involvement or knowledge of  
23 the case.

24 **MS. DALEY:** Yes.

25 **MR. MacDONALD:** I don't know, I don't recall

1 exactly how that rolled out.

2 **MS. DALEY:** All right. I'm not going to

3 ---

4 **MR. MacDONALD:** It's hard to ---

5 **MS. DALEY:** --- take the time to pull you  
6 back into the document, because you do speak to that in  
7 your interview at 1233 ---

8 **MR. MacDONALD:** I see.

9 **MS. DALEY:** --- and 1233 is accurate, so we  
10 can -- we can rely on that.

11 All right, just one final question or  
12 two. Just a few questions about the inception of Project  
13 Truth and the meeting that occurs in April of 1997 that you  
14 attend briefly. Do you remember we spoke about that?

15 **MR. MacDONALD:** Yes.

16 **MS. DALEY:** And it's reflected in  
17 Exhibit 288.

18 Madam Clerk, if you can just get 288 up  
19 momentarily, I want us to have a brief look at page 9.

20 I meant to say 228. If I said 288, I  
21 was wrong. That's the one.

22 Now, sir, I will take you to some comments  
23 that are made on this page, but before I do, obviously,  
24 when you were informed about this allegation concerning  
25 you, obviously, you knew it was a fantasy that you hadn't

1           gone to the Island, that you had connived to suppress a  
2           charge. And I have to assume that you communicated that to  
3           Mr. Pelletier?

4                   **MR. MacDONALD:** I'm sure. I'm sure I did,  
5           yeah.

6                   **MS. DALEY:** Right, okay. No reason why you  
7           wouldn't have, I don't imagine.

8                   **MR. MacDONALD:** Right. It probably was  
9           interesting the way in which I did it, too, but I don't  
10          recall how I did it.

11                   **MS. DALEY:** And in the second paragraph on  
12          that page, the very first sentence is, he says:

13                                "Needless to say, I'm not convinced  
14                                that these allegations are  
15                                well-founded."

16                   Now, sir, is that a thought that he shared with  
17          you?

18                   **MR. MacDONALD:** I don't recall.

19                   **MS. DALEY:** Did he give you any comfort --  
20          did he or Griffiths give you any comfort that, "Murray, we  
21          don't believe the Fantasy Island story either, but Dunlop  
22          has brought it forward, so we must deal with it"?

23                   **MR. MacDONALD:** I thought Peter put it as,  
24          "Murray, you're a good Crown, you've been a good Crown, but  
25          we're going to get to the bottom of this." So it wasn't --

1           there was a bit of comfort, but not much.

2                   **MS. DALEY:** But you didn't feel comforted by  
3 whatever words were said to you.

4                   **MR. MacDONALD:** Well, I was comforted just  
5 that they acknowledged my -- the reputation as they -- as  
6 he knew me, but he also said, "But, you know, we're going  
7 to get to the bottom of this." And, I mean, I wasn't  
8 afraid that they were going to, I had nothing to be afraid  
9 of, but it still -- he let it be known, you know.

10                  **MS. DALEY:** I take it -- were you expecting  
11 a searching, probing interview or investigation of your  
12 role?

13                  **MR. MacDONALD:** Yes.

14                  **MS. DALEY:** And just to wind up on this  
15 point, it appears in this document and other places, and  
16 perhaps you'll agree, that the entire premise of connecting  
17 you to this conspiracy rests on two concepts: One is  
18 Dunlop is using guilt-by-association reasoning in relation  
19 to your father's circumstances.

20                  **MR. MacDONALD:** Yeah, and homophobia.

21                  **MS. DALEY:** Correct. And secondly, he's  
22 relying on the fact that no charges were laid against  
23 Father Charles from your office. Is that the gist of it?

24                  **MR. MacDONALD:** Right.

25                  **MS. DALEY:** And so, with those two elements,



1 he's constructed an allegation that you're part of a  
2 conspiracy.

3 **MR. MacDONALD:** Right. And as he -- you  
4 know, I'm not initially in his conspiracy, as far as I  
5 understood, but as the conspiracy required -- conspiracies  
6 grow exponentially, right? And there was a point where his  
7 conspiracy needed the Crown to be involved; otherwise,  
8 logically, it didn't work. So that's also how -- a third  
9 piece as to the manner in which I would ---

10 **MS. DALEY:** All right. So you think he was  
11 also practising sort of *ex post facto* reasoning and saying,  
12 "Wait a second, Crown had to have been involved; oh, yeah,  
13 I get it, that's Milton MacDonald's son, and he's the one  
14 who didn't charge Father Charles."

15 **MR. MacDONALD:** Yeah, that's reflective if  
16 you read the materials, as I recall them, in his -- in the  
17 brief ---

18 **THE COMMISSIONER:** His Will-State?

19 **MR. MacDONALD:** Yes.

20 **MS. DALEY:** Yes.

21 **MR. MacDONALD:** Actually, no, the amended  
22 Statement of ---

23 **THE COMMISSIONER:** Claim.

24 **MR. MacDONALD:** --- Claim.

25 **MS. DALEY:** Right.

1                   **MR. MacDONALD:** And you'll see the way he  
2                   refers to me, and I think I'm in the chapter next to my  
3                   father.

4                   **MS. DALEY:** Yes.

5                   **MR. MacDONALD:** And the clear implication is  
6                   that I would be -- I was inclined to protect my father or  
7                   any other sex offender.

8                   **MS. DALEY:** And, eventually -- you spoke  
9                   briefly about the website that Mr. Nadeau operated.  
10                  Eventually, did you learn that those allegations were  
11                  posted on that website; that being Mr. Leroux's allegations  
12                  that you were part of this conspiracy?

13                  **MR. MacDONALD:** Right. It was in piecemeal,  
14                  as I discovered what was in that conspiracy, you know.

15                  **MS. DALEY:** Right. Did that have an impact  
16                  on your ability to function as a Crown in this town?

17                  **MR. MacDONALD:** I endeavoured to ensure that  
18                  it wouldn't.

19                  **MS. DALEY:** You could never be sure that it  
20                  wouldn't.

21                  **MR. MacDONALD:** I endeavoured to ensure that  
22                  it would not ---

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

24                  **MR. MacDONALD:** --- affect my function. I  
25                  never -- I did not let it enter my -- you know, the

1 exercise of my professional discretion. If there were  
2 instances where a complainant didn't want to have me as  
3 prosecutor, it would be reassigned or I would stay away  
4 from it.

5 **THE COMMISSIONER:** Did that happen?

6 **MS. DALEY:** Did that in fact happen? Sorry.

7 **THE COMMISSIONER:** Great minds ---

8 **MS. DALEY:** Great minds ---

9 Did that occur?

10 **THE COMMISSIONER:** And others seldom differ,  
11 though.

12 (LAUGHTER/RIRES)

13 **MS. DALEY:** Were there people that you  
14 otherwise would have been dealing with professionally as  
15 complainants or witnesses or otherwise who said, "Listen,  
16 I've read about you on the website and I don't like what I  
17 read, I don't want to deal with you"?

18 **MR. MacDONALD:** As a victim, I believe so  
19 but I don't recall. I mean, there were many incidents  
20 where I'd be walking down the hallway in the courtroom and  
21 I would hear some of the regular suspects, usual suspects,  
22 unrelated to the conspiracy theorists', comment about me  
23 being a, you know, a criminal in the context of Project  
24 Truth.

25 I had my key -- my car keyed twice. I had

1 other incidences like that where -- that I had reason to  
2 believe were associated to persons who were angry with me.  
3 But any instance where I thought my discretion could be in  
4 any way encumbered, I wouldn't touch the case. And I think  
5 there were a few. I don't recall them. I can't recount  
6 them to you, but I was always careful to make sure that  
7 wouldn't happen.

8 **MS. DALEY:** So you dealt with it by taking  
9 the high road and absenting yourself from a situation in  
10 which the website allegations ---

11 **MR. MacDONALD:** Yeah, I don't want to ---

12 **MS. DALEY:** --- would impact ---

13 **MR. MacDONALD:** --- sound to be holier than  
14 thou, but I kept an arm's length. That's probably the way  
15 to ---

16 **MS. DALEY:** Right. Those are my questions.  
17 Thank you.

18 **THE COMMISSIONER:** Thank you. Mr. Lee? No,  
19 we've got ten minutes, I don't think it's worth for that.

20 So why don't we take our evening leave and  
21 come back at -- Mr. Engelmann?

22 **MR. ENGELMANN:** Thank you.

23 Sir, I'm interrupting not to ask questions  
24 of Mr. MacDonald just worried about tomorrow.

25 **THE COMMISSIONER:** You're worried about

1 tomorrow?

2 **MR. ENGELMANN:** I always worry.

3 And I'm just wondering, sir, if you want to  
4 start at the usual time or if you want to start somewhat  
5 earlier?

6 **THE COMMISSIONER:** No, I think I'll start at  
7 9:30. That will give me more time to get here, given that  
8 there's a storm warning on, Mr. Engelmann.

9 **MR. ENGELMANN:** Oh, I thought that was in  
10 Toronto, sir.

11 **THE COMMISSIONER:** No, no, no, it's not only

12 ---

13 **MR. ENGELMANN:** For a change.

14 **THE COMMISSIONER:** It's not only Toronto  
15 that gets the good weather. Sometimes it comes here.

16 **MR. ENGELMANN:** All right.

17 **THE COMMISSIONER:** Nine thirty (9:30),  
18 please.

19 **MR. ENGELMANN:** Thank you.

20 **THE COMMISSIONER:** But we will sit a full  
21 day.

22 Thank you.

23 **MR. MacDONALD:** Thank you.

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

1                               This hearing is adjourned until tomorrow  
2 morning at 9:30 a.m.

3                               ---Upon adjourning at 5:50 p.m./

4                               L'audience est ajournée à 17:50

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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