

**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 334

Held at :

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

Wednesday, January 14, 2009

Tenue à:

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

Mercredi, le 14 janvier 2009

Appearances/Comparutions

Ms. Brigitte Beaulne	Registrar
Ms. Mary Simms	Commission Counsel
Ms. Suzanne Sinnamon	
Mr. Peter Manderville	Cornwall Community Police Service and Cornwall Police Service Board
Ms. Diane Lahaie	Ontario Provincial Police
Mr. Darrell Kloeze	Attorney General for Ontario
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
M ^e 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 ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Lorne McConnery	

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

2 L'audience débute à 9h34

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, Ms. Simms.

11 **MS. SIMMS:** Good morning.

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

14 **MR. McCONNERY:** Yes, sir.

15 **THE COMMISSIONER:** Thank you. Go ahead.

16 **LORNE McCONNERY:** Resumed/Sous le même serment

17 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MS.

18 **SIMMS:** (cont'd/suite)

19 **MS. SIMMS:** Good morning, Mr. McConnery.

20 **MR. McCONNERY:** Good morning.

21 **MS. SIMMS:** Yesterday, we were -- left off
22 when we were looking at your factual analysis with respect
23 to conspiracy allegations.

24 **MR. McCONNERY:** Yes.

25 **MS. SIMMS:** So I just have direct you back

1 to that. It's Exhibit 2651.

2 MR. McCONNERY: Yes, I have it.

3 MS. SIMMS: And we were looking at Bates
4 page 669.

5 MR. McCONNERY: Yes.

6 MS. SIMMS: Where you have some comments
7 under the heading "Scenario 3" regarding what you call a
8 perplexing issue as Jacques Leduc was never charged in
9 1995.

10 MR. McCONNERY: Yes.

11 MS. SIMMS: And we were discussing in
12 particular some comments you had pointed out or you had
13 extracted from Malcolm MacDonald's interview in December of
14 1999.

15 MR. McCONNERY: Correct.

16 MS. SIMMS: So we've located that interview
17 for you to refer to and it is Document Number 703805.

18 THE COMMISSIONER: Thank you.

19 Exhibit Number 3057 is an audio taped
20 interview report of Angus Malcolm MacDonald taken on the
21 17th of December 1999.

22 --- EXHIBIT NO./PIÈCE NO. P-3057:

23 (703805) - Audio Taped Interview Report of
24 Malcolm MacDonald dated December 17, 1999

25 MS. SIMMS: Now, Mr. McConnery, in

1 particular you mention in your factual analysis that in
2 this statement, Malcolm MacDonald described that Leduc,
3 being Jacques Leduc, wanted MacDonald and Leduc each to pay
4 \$25,000 as part of a payment to Silmser after Seguin's
5 death. That's what your factual analysis recounts.

6 **MR. McCONNERY:** Yes.

7 **MS. SIMMS:** Okay. So this statement goes --
8 is taken by Constable Dupuis and Constable Seguin in
9 December of 1999.

10 **MR. McCONNERY:** Yes.

11 **MS. SIMMS:** And that would be shortly before
12 Malcolm MacDonald passed away.

13 **MR. McCONNERY:** Correct.

14 **MS. SIMMS:** That's correct.

15 So there are a number of areas canvassed
16 mostly relating to the settlement with David Silmser in
17 1993, but I'm going to direct you to where they first
18 mentioned this \$25,000 payment that's referred to on your
19 analysis.

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** And from my review, that was on
22 Bates page 143, which is page 21 of 33 in the statement.

23 **MR. McCONNERY:** Yes.

24 **MS. SIMMS:** So on the bottom part of that
25 page, there's a rather long answer by Malcolm MacDonald and

1 towards the end of that answer, sort of in the middle of
2 that answer, he mentions another thing, somebody talking
3 about paying off. And he goes on to speak about Leduc,
4 four people, Silmsner was trying to get money and he says:

5 "Jacques called me and wanted to know
6 if there was some money in and
7 \$25,000."

8 So is this -- this is the \$25,000 you were
9 thinking of?

10 **MR. McCONNERY:** I believe so, yes.

11 **THE COMMISSIONER:** Yes?

12 **MS. ROBITAILLE:** Mr. Commissioner, I have no
13 problem with my friend reading portions of the statement
14 into the record. I just ask that where the transcript
15 reads "inaudible" that that also be read into the record
16 because I think it gives a clearer view of the equivocal
17 nature of the statement. Thank you.

18 **THE COMMISSIONER:** I'm sorry. It gives an
19 equivocal nature?

20 **MS. ROBITAILLE:** The meaning of this portion
21 becomes less certain when you consider the inaudible
22 portions.

23 **THE COMMISSIONER:** Then maybe we should get
24 the tape. Thank you.

25 **MS. SIMMS:** Perhaps what we'll do, Mr.

1 McConnery, is I'll direct you to some of the references to
2 the \$25,000 payment.

3 You reviewed the statement in the course of
4 your review; correct?

5 **MR. McCONNERY:** Yes.

6 **MS. SIMMS:** All right. So I'll just draw
7 those to your attention and then you can explain to us what
8 issues arose to you on the basis of reading the statement.

9 **MR. McCONNERY:** Certainly.

10 **MS. SIMMS:** Okay. So this is the first
11 mention that you saw and the questions go on to the
12 following page, which is Bates page 144. And, again,
13 there's reference to \$25,000 and reference to, "three or
14 four of us to pay off to keep Silmsner quiet". Do you see
15 that?

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** And there's a question then
18 about timing and at this point it appears Malcolm MacDonald
19 answers:

20 "This was sometime after the first
21 agreement was thrown, like brought to
22 the attention of the police."

23 **MR. McCONNERY:** Yes.

24 **MS. SIMMS:** So there's further discussion of
25 Malcolm MacDonald's referencing a figure of \$100,000. If

1 you divide it four ways, it would be easier for somebody
2 and then there's an inaudible statement.

3 "I don't know. I just ignored it. I
4 said no, I'm not."

5 Do you see that?

6 **MR. McCONNERY:** Yes, I do.

7 **MS. SIMMS:** Okay. And he states that the
8 monies were to go to David Silmsen?

9 **MR. McCONNERY:** Yes.

10 **MS. SIMMS:** And on the following page,
11 there's a further question, and this is Bates page 145,
12 regarding timing and Malcolm MacDonald answers that:

13 "This would be shortly after the news
14 hit the paper, you know, the bishop had
15 his conference, press conference."

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** So I'm not going to take you to
18 every mention but there's a -- there's a further mention if
19 you skip ahead a little bit at Bates page 152. There's a
20 further line of questioning on the issue and that's page 30
21 of 33.

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** And at this point, there's some
24 further questions put to Malcolm MacDonald about the
25 amount?

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** And on the following page, Bates
3 page 153, Dupuis puts to Malcolm MacDonald:

4 "He asked you for 25,000?"

5 MacDonald replies:

6 "Yeah."

7 Malcolm says:

8 "He said he was going -- go ahead with
9 it."

10 Dupuis:

11 "He was -- he was going to pay 25,000?"

12 Malcolm:

13 "M'hm. Apparently he did."

14 **MR. McCONNERY:** "Apparently (inaudible)
15 he did."

16 Yes.

17 **MS. SIMMS:** Thank you. "Apparently
18 (inaudible) he did."

19 So the statement could be clearer as to what
20 he's referencing. Is that fair to say?

21 **MR. McCONNERY:** Yes. I found the statement
22 very hard to read last night. It's disjointed and, you
23 know, maybe a reflection of Mr. MacDonald's condition; I
24 don't know.

25 **MS. SIMMS:** Okay. And at this point, as

1 you're reviewing this, Malcolm MacDonald has passed away,
2 so it's not possible to go back and ask him further
3 questions?

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

5 **MS. SIMMS:** So what was your impression?
6 You reviewed the statement at the time. You reviewed the
7 statement last night. Did it refresh your memory as to
8 what concerns this reference to a \$25,000 payment brought
9 to your mind?

10 **MR. McCONNERY:** Well, one thing as you're
11 going through it there, it occurred to me that obviously I
12 had access to Joe Dupuis and whether or not some of the
13 inaudibles in the statement -- whether or not I accessed
14 him and asked him to assist me with some of the inaudible
15 portions, I don't know. I don't remember that.

16 All I was saying is -- and I didn't realize
17 my spelling was so bad but "scenario" is spelled wrong
18 every time I use the word. But I was looking at the
19 broader framed allegation of conspiracy which clearly
20 revolved around the allegations of Ron Leroux and what I
21 was trying to say was, you might have a scenario where Ron
22 Leroux might be allowed by the court to testify to all of
23 this and, if so, you know, would there be reasonable and
24 probable grounds to believe there was this conspiracy?
25 But, in fact, there was a very real concern.

1 Bottom line is everything he was saying came
2 from Ken Seguin and I could not see a court ever letting
3 him relate that to the court.

4 What ran through my mind, there were two
5 possible scenarios. One, is it a statement in furtherance
6 of the conspiracy? And I dealt with that very quickly. In
7 my view, there was no suggestion it was a statement in
8 furtherance of a conspiracy, it was a narrative by Ken
9 Seguin, so I discounted that completely.

10 And then could it be found to be necessarily
11 reliable? Necessary, yes, Ken Seguin's passed away.
12 Reliable? A big issue with respect to (a) Ken Seguin, (b)
13 Ron Leroux, okay? So I was going to go into that.

14 Now, the next scenario is, well, what if the
15 court just allowed him to testify as to the fact of the
16 meeting and who he saw at the meeting? And my view was,
17 okay, that's fair enough. What does it prove?

18 And then we again have to look at the
19 credibility of Ron Leroux, about which I was very, very
20 troubled.

21 And then, Scenario 3. Scenario 3 was, so we
22 have nothing. We have -- we discount Ron Leroux altogether
23 and now we look at where we are now, and I said -- and it's
24 almost like meandering in my thoughts -- well, was there
25 not still some kind of a conspiracy?

1 You had two counsel involved in drafting an
2 agreement and when that was looked at by the Crown and by
3 the police in their investigation, I think my mindset was
4 that neither Mr. MacDonald nor Mr. Leduc had been charged.

5 So if you want to use a name tag as to their
6 conduct as eventually alleged -- you know, as being
7 abusive, predator, whatever -- it puts the whole
8 negotiation with Silmsner into a different light than two
9 counsel representing the Church and the priest and coming
10 to a civil -- a civil resolution which, for some reason,
11 included a resolution or a commitment by him not to
12 continue his criminal complaint. My understanding was
13 Malcolm MacDonald had always accepted that he was the one
14 who added that.

15 So all I'm saying is, now you looked at it
16 with the benefit of hindsight, both of these men were the
17 subject of allegations of -- you know, similar to what
18 Father MacDonald was facing, and you looked at it with
19 different glasses.

20 **MS. SIMMS:** So your first scenario that you
21 recounted to us, and we discussed this yesterday, in your
22 view the additional information that you were presented
23 with that was different from what Peter Griffiths was
24 presented with in 1995, was the allegation of the VIP
25 meeting or the Stanley Island meeting, and you've explained

1 to us just now your thought process about whether there was
2 reasonable and probable grounds with respect to that
3 particular meeting.

4 And the second issue you've just raised
5 then, is that in your review it came to your mind that
6 something else had changed since 1995, which was the
7 charges against Jacques Leduc and Malcolm MacDonald. Is
8 that ---

9 MR. McCONNERY: Charges and investigation,
10 yes.

11 MS. SIMMS: Okay.

12 MR. McCONNERY: Okay.

13 MS. SIMMS: So ---

14 MR. McCONNERY: So then -- I apologize --
15 but then what I referenced in my mind was the statement of
16 MacDonald, and when I read that it seemed to me that he was
17 hedging on whether or not he could emphatically say Leduc
18 was aware about the "not cooperate with the police clause",
19 but he presumed he was because he was nitpicking about the
20 use of various prepositions, et cetera.

21 MS. SIMMS: Okay.

22 MR. McCONNERY: And then he makes an
23 allegation that -- and I apologize, the time frames aren't
24 as clear to me now as they probably were then -- but then
25 after the payment is made to Silmsler, after the Bishop

1 holds the press conference, after the death of Ken Seguin,
2 he says that Mr. Leduc approaches him about paying more
3 money to Silmsner to get him to be quiet and yet the only
4 complaint he's made is about Mr. Seguin, who has passed
5 away.

6 And so when you put it all together, it
7 looked to me like, you know, there was some ground to
8 believe there that there was an interest on the part of
9 Leduc, potentially, to cover-up, but there's no evidence to
10 support it because it was coming from the mouth of Mr.
11 MacDonald, who's dead.

12 **MS. SIMMS:** Okay. Well, let's ---

13 **MR. McCONNERY:** So I think that's what I
14 tried to capture in this ---

15 **MS. SIMMS:** Okay, so let's back up.

16 This statement that you saw -- and I was
17 just referencing what had changed since 1995 -- so this
18 statement that we just looked at is from 1999, so it was --
19 -

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** --- it post-dated Griffiths'
22 opinion?

23 **MR. McCONNERY:** Yes.

24 **MS. SIMMS:** All right. So when this -- and
25 I understand you mentioned yesterday coming into this

1 having some discomfort being in the position of potentially
2 feeling like you're second-guessing previous counsels'
3 decisions on matters. Let me put it to you --sorry, I
4 thought you did mention something like that in passing.

5 And you mentioned it in your factual
6 analysis. You were aware and cognizant that a brief had
7 been presented in 1995 on the issue of the settlement to
8 Peter Griffiths, and he'd rendered an opinion?

9 **MR. McCONNERY:** Yes, and I think I -- I had
10 that brief.

11 **MS. SIMMS:** Okay.

12 **MR. McCONNERY:** I think that was one of the
13 briefs I had.

14 **MS. SIMMS:** So were you in your analysis
15 going back and were you comfortable reviewing, based on the
16 material that was present before him, reviewing whether you
17 thought that was a reasonable opinion in, you know, forming
18 your own opinion on that particular aspect or were you
19 looking for other and new material that had surfaced since
20 that time?

21 **MR. McCONNERY:** I don't recall feeling that
22 I was in a position where I was being asked to review prior
23 opinions. It may have come as part of what I was doing,
24 but I don't feel -- I don't recall now that I had any
25 disquiet feeling about, well, am I being asked to re-

1 examine the opinion of Mr. Pelletier or Mr. Griffiths or
2 anybody else.

3 I don't think I was asked to do that, but I
4 don't think it was a factor ---

5 **MS. SIMMS:** But it's certainly part of your
6 thinking, as reflected in this analysis in terms of if you
7 are not satisfied with the evidence about the meeting at
8 Stanley Island, what you're left with is what was
9 previously presented ---

10 **MR. McCONNERY:** Yes.

11 **MS. SIMMS:** --- in 1995?

12 **MR. McCONNERY:** Yes ---

13 **THE COMMISSIONER:** Were you in any way
14 intimidated or influenced by the fact that there was, on
15 the record, a prior opinion by someone who may have been
16 seen as your superior?

17 **MR. McCONNERY:** I don't -- I certainly don't
18 think so.

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

20 **MR. McCONNERY:** No, I've been -- I've been
21 in a position before, and I know this is not to be telling
22 stories, but where I've been asked to do a review and
23 I've -- I think I've tried to do it to the best of my
24 conscience.

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

1 **MR. McCONNERY:** I think I did that in this
2 case.

3 **THE COMMISSIONER:** Okay.

4 **MS. SIMMS:** Okay, Mr. McConnery, sorry --so
5 one of the -- we've just gone through some of the new
6 information that you reviewed, and I'm going to take you to
7 one other area that was part of the Project Truth
8 investigation.

9 **THE COMMISSIONER:** Excuse me, are we
10 finished with -- are you finished with the Scenario 3?

11 **MS. SIMMS:** Well, it's related to Scenario
12 3. There were, during Project Truth, interviews done of
13 the assistants of ---

14 **THE COMMISSIONER:** Right, right, sorry.

15 **MS. SIMMS:** --- the lawyers involved in the
16 settlement, and that was new investigative work done by
17 Project Truth officers?

18 **MR. McCONNERY:** Yes.

19 **MS. SIMMS:** So I just wanted to refer you to
20 Joe Dupuis' will state which references one of the
21 interviews he did with Helen Jones, and that is Exhibit
22 2615.

23 Do you have that before you, Mr. McConnery?

24 **MR. McCONNERY:** I'm looking at something
25 that doesn't have a name on it, "Subject..."

1 MS. SIMMS: Is it titled, "Will Say"?

2 MR. McCONNERY: Yes, it is.

3 MS. SIMMS: "Will Say of Detective Dupuis"?

4 MR. McCONNERY: Yes, it is. I'm sorry, it's
5 Joe Dupuis' will say?

6 MS. SIMMS: Joe Dupuis' will say.

7 MR. McCONNERY: Sorry.

8 MS. SIMMS: Yes, that's okay. So this is a
9 will say and the subject name is "Conspiracy to Obstruct
10 Justice".

11 MR. McCONNERY: Yes.

12 MS. SIMMS: And you'll recall we discussed
13 how you had requested notes and will says from the
14 officers?

15 MR. McCONNERY: Yes.

16 MS. SIMMS: Okay. So this is a document you
17 would have received -- I can't recall the date but sometime
18 in July, I believe ---

19 MR. McCONNERY: I don't recall ---

20 MS. SIMMS: --- on Project Truth.

21 MR. McCONNERY: --- the particular document
22 but I recall asking for notes and will states, and I felt I
23 received them.

24 MS. SIMMS: Okay. So there is -- just at
25 the end of his will say itself, not the attached notes, but

1 the will say.

2 MR. McCONNERY: Yes.

3 MS. SIMMS: And this is pretty much a --
4 well, his notes are attached but it's recounting what is in
5 his notes from August 9th of 2000.

6 MR. McCONNERY: August 9, yes?

7 MS. SIMMS: That's Bates page 918.

8 MR. McCONNERY: Yes, I have that.

9 MS. SIMMS: So there's a reference there to
10 a meeting with Helen Jones.

11 MR. McCONNERY: Yes.

12 MS. SIMMS: And we have entered Helen Jones'
13 statement in evidence, and I can refer it to you if
14 necessary, but Helen Jones was a former assistant of
15 Jacques Leduc. And there's a note there regarding taking a
16 statement from Helen Jones and then a call following the
17 statement where Ms. Jones advised that -- and this is
18 further to Constable Dupuis questioning her about the time
19 of the settlement with David Silmser.

20 She advised there's no computers at the
21 time. They had Xerox memory typewriter. There was a
22 memory on the typewriter:

23 "After the document was typed, Jacques
24 Leduc told Mrs. Jones to erase the
25 memory of the typewriter with reference

1 to this document, which she did. No
2 reason was given."

3 And on the following page:

4 "Mrs. Jones recalls this approximately
5 half-hour after we left her residence."

6 **MR. McCONNERY:** Okay.

7 **MS. SIMMS:** So this is information
8 apparently received by the Project Truth investigators in
9 2000, so new information from the previous investigation.

10 **MR. McCONNERY:** In 2000? Yes, okay, 9th of
11 August, 2000. Okay.

12 **MS. SIMMS:** Okay. So do you recall -- I
13 assume you reviewed all of these will says that you
14 requested?

15 **MR. McCONNERY:** Then?

16 **MS. SIMMS:** Yes.

17 **MR. McCONNERY:** Yes.

18 **MS. SIMMS:** Do you recall this issue
19 factoring into your thoughts on Scenario 3?

20 **MR. McCONNERY:** The fact of the erasure?

21 **MS. SIMMS:** Yes.

22 **MR. McCONNERY:** No, sorry, I can't tell you
23 that I even remember it now.

24 **MS. SIMMS:** It's not mentioned in your
25 document ---

1 MR. McCONNERY: No, it's not.

2 MS. SIMMS: --- as a piece of information.

3 MR. McCONNERY: No, it's not. It's the 9th
4 of August.

5 You know, one of the problems I'm having
6 with documents being presented to me, they're not dated,
7 which is very helpful. So when I did my factual analysis -
8 - I know the opinions were rendered in August. When did I
9 do the factual ---

10 MS. SIMMS: The factual analysis is the
11 following year.

12 THE COMMISSIONER: In 2001.

13 MS. SIMMS: In 2001.

14 MR. McCONNERY: I'm sorry. You're right.

15 MS. SIMMS: Right, so this is ---

16 MR. McCONNERY: Okay, so this is done the
17 year before.

18 MS. SIMMS: Yeah.

19 MR. McCONNERY: I apologize. Okay.

20 MS. SIMMS: No, recall the brief had been
21 submitted ---

22 MR. McCONNERY: Yes.

23 MS. SIMMS: --- previously in 2000 and ---

24 MR. McCONNERY: Okay.

25 MS. SIMMS: --- the investigation had been

1 concluded then.

2 **MR. McCONNERY:** Okay, I see. I'm sorry. I
3 was ---

4 **MS. SIMMS:** So you can't help us whether
5 this was one of your thoughts about new information that
6 had come forward since the previous OPP investigation?

7 **MR. McCONNERY:** It seems to me I recall the
8 interview that was done of Helen Jones, a secretary to Mr.
9 Leduc, and I didn't think when I read it that it added
10 anything very concrete to what I was looking at, and I
11 don't recall this discussion about the erasure of the
12 memory -- Xerox memory typewriter wasn't even ---

13 **MS. SIMMS:** Well, given you were turning
14 your mind to these issues and taking a second look or
15 seeing there might be some basis to take a second look,
16 this would have some significance to you, would it not?

17 **MR. McCONNERY:** If the point struck me as
18 meaningfully as you're putting it to me now, I would have.
19 I'm just saying I don't recall that I have a recollection
20 of this hitting me and my finding a real significance to
21 it. I don't remember this. When I read it I don't
22 remember, and it's not in my factual analysis I don't
23 think.

24 **MS. SIMMS:** And just on the issue, again, of
25 taking a second look at -- as opposed to the VIP meeting

1 and the negotiation and the settlement itself, I wanted to
2 direct you back to a note we referred to yesterday, and
3 that's Exhibit 3049. It's Document Number 130310.

4 We referred to this yesterday,
5 Mr. McConnery.

6 **MR. McCONNERY:** Yes.

7 **MS. SIMMS:** And it was part of preparation
8 for your July 10th meeting.

9 **THE COMMISSIONER:** Let's put in the years as
10 well so that he ---

11 **MS. SIMMS:** Sure. July 10th, 2001 meeting
12 with Inspector Hall.

13 **MR. McCONNERY:** Yes.

14 **MS. SIMMS:** Okay.

15 And one of the -- you have a list of six
16 items here and number 5 is regarding conspiracy, and you've
17 noted "any SW". Does that signify search warrants?

18 **MR. McCONNERY:** Yes, it does.

19 **MS. SIMMS:** "Any [search warrants] to
20 determine source of funds re. payment
21 to Silmser."

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** On your list.

24 I don't recall seeing notes of a discussion
25 on that matter in your notes from the actual meeting, which

1 is Exhibit 3050 if you wanted to reference it.

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

3 **MR. McCONNERY:** M'hm. Yes.

4 **MS. SIMMS:** Do you recall at this meeting,
5 or at any other meetings, having discussions with the
6 investigators about whether search warrants had been
7 conducted or if search warrants ought to be conducted with
8 respect to -- either with respect to financial records or
9 lawyers' files?

10 **MR. McCONNERY:** I see in that exhibit you've
11 referred to 3049. I don't have it checked off. You know,
12 is that telling me that I didn't bring it up with Pat Hall?
13 I don't think so.

14 I have a recollection of talking about what
15 efforts had been made to source the funds that went to
16 Silmser. Do I recall now that I was told that there were
17 search warrants?

18 **MS. SIMMS:** And ---

19 **MR. McCONNERY:** I don't -- I can't assist
20 you. I don't remember now.

21 **MS. SIMMS:** Okay. You recall that you
22 didn't have with your brief, trust ledgers or bank records
23 or items of that nature, and that's why you have flagged it
24 here in your notes?

25 **MR. McCONNERY:** I believe so. Quite

1 frankly, I felt that if you had a number of the people
2 involved in the negotiation contributing to the fund, that
3 would have been a very significant factor to consider.

4 **MS. SIMMS:** And you'd asked for follow-up in
5 a number of other areas that we discussed with respect to
6 school records and conference records. Do you recall
7 asking that further follow-up be conducted to see if
8 financial records could be seized?

9 **MR. McCONNERY:** I recall a discussion with
10 Inspector Hall about it, yes.

11 **MS. SIMMS:** And ---

12 **MR. McCONNERY:** I think he gave me an
13 answer. Like, I don't think it was just left, "Geez, isn't
14 this something you should do?" and then that was the end of
15 it. I think we discussed what follow-up could be done to
16 track the funds and I seem to recall that I was satisfied
17 they had done what they could do, and right now I'm not
18 recalling that -- I don't believe there were search
19 warrants done.

20 **MS. SIMMS:** Yeah. And you didn't suggest
21 that there should be search warrants?

22 **MR. McCONNERY:** Well, my note certainly
23 tells me it was on the forefront for me. I don't know why
24 I wouldn't have said it.

25 **MS. SIMMS:** Okay, what -- and I am assuming

1 perhaps you don't have a ---

2 **MR. McCONNERY:** Sorry.

3 **MS. SIMMS:** Sorry. Perhaps you don't have a
4 recollection of this either, but what about with respect to
5 the possibility of files or documents being in possession
6 of the lawyers involved in the settlement? Did you ask for
7 any further follow-up on that area?

8 **MR. McCONNERY:** I must say I don't recall
9 that -- ever requesting that, no.

10 **MS. SIMMS:** So you've noted as Scenario 3
11 this other question you had in your mind about the actual
12 settlement and the negotiations.

13 We've spent a lot of time talking about the
14 issues at the VIP meeting at Stanley Island. With that
15 issue -- that additional allegation, was that more the
16 focus of your review of these materials? Would you explain
17 to us your concerns about admissibility, about statements
18 made from someone who was deceased?

19 **MR. McCONNERY:** My focus was whether or not
20 there was evidence to support an allegation of conspiracy
21 that involved the local bishop, the local chief of police,
22 the local Crown Attorney, some prominent lawyers in the
23 Cornwall community and some other -- it seems to me there
24 were other named -- funeral director keeps coming to my
25 mind, and maybe even a doctor.

1 So the reason that I was reviewing this file
2 was because of them -- those names. It wasn't -- I guess
3 it wasn't "Can you look in here Mr. McConnery and see any
4 conspiracy we should charge?" And so when I got to the end
5 of it, I expressed the opinions that I expressed and what
6 jumped out at me was Malcolm MacDonald got charged with
7 obstruct. Okay. So if he were living at this time, we
8 wouldn't turn around now and charge him with conspiracy to
9 obstruct.

10 And the question was, if he was not the only
11 person involved in deciding this was the way to go with
12 Silmser, it looked to me like Leduc might have been the
13 other person. And so I expressed my views there. I didn't
14 express any views, I just put down some thoughts about it.

15 **MS. SIMMS:** Okay.

16 **THE COMMISSIONER:** But, at some point, you
17 came to a conclusion. Stepping back, looking at Scenario
18 number 3 ---

19 **MR. McCONNERY:** Yes.

20 **THE COMMISSIONER:** --- you've got all the
21 history of what happened. Now you -- and you can't -- the
22 police didn't know then that Leduc and MacDonald, Malcolm,
23 would be charged with ---

24 **MR. McCONNERY:** Yes.

25 **THE COMMISSIONER:** --- sexual offences, but

1 by inserting that, then you have somewhat of a motive maybe
2 for those two to encourage the Diocese to settle because
3 they didn't want anybody ---

4 MR. McCONNERY: Yes.

5 THE COMMISSIONER: --- coming forward.

6 Okay.

7 MR. McCONNERY: Yes.

8 THE COMMISSIONER: And then you have this
9 issue about the \$25,000. So with all of that, did you take
10 -- did you decide that there were no other steps to be
11 taken? Scenario number 3 ---

12 MR. McCONNERY: Yes.

13 THE COMMISSIONER: --- is 2652, page 50.

14 MR. McCONNERY: I guess where I got to was,
15 without Malcolm MacDonald ---

16 THE COMMISSIONER: M'hm.

17 MR. McCONNERY: --- it was very hard to get
18 to proving the involvement of Mr. Leduc. That's how --
19 that's where I ended up, I believe.

20 THE COMMISSIONER: All right. And so that
21 was the end of it ---

22 MR. McCONNERY: Yes.

23 THE COMMISSIONER: --- as far as you're
24 concerned?

25 MR. McCONNERY: Yes.

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

2 **MS. SIMMS:** Just before we leave this, which
3 we will in just a moment, I wanted to refer you to one
4 further document and it is Exhibit 1914.

5 It's a large document, I was going -- it's
6 the -- it's an affidavit of documents that were filed in a
7 civil action, and it's the affidavit of documents of
8 Jacques Leduc. I believe it's sworn in November of '95.

9 And I just want to draw your attention to
10 one of the documents in that exhibit, which is Bates page
11 5148 and 5149.

12 So, Mr. McConnery, this a document that we
13 have here and because we have it from the civil disclosure
14 that you see, it's not a document that I believe was before
15 you in your review.

16 **MR. McCONNERY:** It was not.

17 **MS. SIMMS:** Was not.

18 **MR. McCONNERY:** Okay.

19 **MS. SIMMS:** But I wanted to note that you
20 did make reference in your factual analysis and you
21 attached in your factual analysis drafts, release
22 documents, that Jacques Leduc thought he had perhaps sent
23 to Malcolm MacDonald during the drafting of the settlement
24 agreements for David Silmser or thought he had referred to
25 Malcolm MacDonald to.

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** And do you recall that they were
3 documents that were in French?

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

5 **MS. SIMMS:** Okay. I can refer you back to
6 them because they are actually attached to your factual
7 analysis.

8 **MR. McCONNERY:** No, I do remember them.

9 **MS. SIMMS:** Okay. So this is a draft that
10 appears to have been in Jacques Leduc's possession in
11 November of 1995, and it is different than the drafts that
12 you had in your possession during your review.

13 This is an English document that is close to
14 the final settlement that was reached, or the final
15 settlement document that was drafted.

16 **MR. McCONNERY:** Okay.

17 **MS. SIMMS:** So I just wanted to ask you
18 again about if you were really looking carefully at the
19 issue of the settlement negotiations and the involvement of
20 each the lawyers and the parties there, would it not have
21 been helpful to have documents related to that?

22 **MR. LEE:** If I could have one moment, sir.

23 **THE COMMISSIONER:** Sure.

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

25 **MS. SIMMS:** Sorry, I just wanted to clarify

1 -- before we go there, perhaps I should just ask you to
2 reference the settlement documents that are attached to
3 your factual analysis? So keep that in front of you, But
4 Exhibit 2651 ---

5 MR. McCONNERY: Yes.

6 MS. SIMMS: And there's a number of
7 appendices.

8 MR. McCONNERY: Yes, Appendix D.

9 MS. SIMMS: Well, Appendix -- sure, we can
10 start there.

11 Appendix D, which is 680, is the signed
12 release and undertaking not to disclose?

13 MR. McCONNERY: Yes.

14 MS. SIMMS: See that?

15 MR. McCONNERY: Yes.

16 MS. SIMMS: Okay.

17 And if you flip over a couple pages, 683 is
18 a letter from Jacques Leduc to Mike Fagan, OPP detective,
19 And he's saying:

20 "Pursuant to your request [this is
21 February of '95], please find enclosed
22 herewith the photocopy of the release
23 which had been signed by my client
24 which I have preserved in a file. I
25 kept a photocopy of this photocopy."

1 And he says:

2 "This again was a precedent I referred
3 to in our interview..."

4 And that's the interview between -- when
5 Jacques Leduc was interviewed by the OPP"

6 "...but I would not have faxed it to
7 the other solicitor since he does not
8 speak or read French."

9 **MR. McCONNERY:** Okay.

10 **MS. SIMMS:** And on the pages following, you
11 have a very short one paragraph release that's in French.
12 See that?

13 **MR. McCONNERY:** Yes, I do.

14 **MS. SIMMS:** So these are the appendices to
15 your factual scenario or factual analysis. So when you're
16 referring in your analysis to Jacques Leduc's involvement
17 and settlement, you make reference to these particular
18 draft release documents. Okay. And that's on Bates page
19 662 of your factual analysis.

20 So you see there's a heading "Jacques
21 Leduc"?

22 **MR. McCONNERY:** Yes, I do.

23 **MS. SIMMS:** And you state the precedents
24 which were used to draft the release and undertaking signed
25 by Silmsner were in French, et cetera?

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** And at the bottom, you attach --
3 you note that attached as Appendix E are the precedents
4 that Mr. Leduc provided to Constable Fagan which were
5 allegedly used to draft the Silmser release and
6 undertaking. Okay?

7 **MR. McCONNERY:** Yes.

8 **MS. SIMMS:** So there's another document that
9 I've directed you to which, hopefully, you have somewhere
10 there before you which appears to be a draft release, but
11 it is a different draft than the one that you had before
12 you in your review?

13 **MR. McCONNERY:** Okay.

14 **MS. SIMMS:** Okay?

15 **MR. McCONNERY:** Yes.

16 **MS. SIMMS:** So if you are looking back at
17 the circumstances of the agreement that was made and the
18 settlement of the -- a legal settlement with David Silmser,
19 certainly you would be wanting to look at any draft
20 documents, any file materials that the lawyers had. Is
21 that -- would that not have been a key piece of the puzzle
22 for you?

23 **MR. McCONNERY:** If I was looking at what?

24 **MS. SIMMS:** If you were looking back again
25 at the circumstances of the settlement, leaving aside the

1 VIP meeting ---

2 MR. McCONNERY: Yes.

3 MS. SIMMS: --- the negotiation of the
4 settlement, who was involved in finalizing the terms of the
5 settlement with David Silmser; how the clause about
6 releasing the criminal proceedings was included.

7 MR. McCONNERY: Yes.

8 MS. SIMMS: It would be pretty -- key part
9 of that puzzle would be drafts that were exchanged between
10 the parties, notes of the lawyers, that kind of
11 information?

12 MR. McCONNERY: Okay, I acknowledge that.

13 MS. SIMMS: Okay. But do you don't recall,
14 or do you recall, any discussions about what efforts had
15 been made to obtain all the materials that would be in the
16 possession of the lawyers, whether there could be further
17 requests or search warrants or releases by the client? Do
18 you recall having those discussions with the OPP?

19 MR. McCONNERY: I'm going to say I don't.
20 Really, it's difficult for me to speculate because it looks
21 like I'm trying to put the onus on the police for having
22 done or not done something.

23 THE COMMISSIONER: No, no.

24 MR. McCONNERY: And I don't ---

25 THE COMMISSIONER: Forget about what -- the

1 consequence of what you're going to say.

2 **MR. McCONNERY:** Fair enough.

3 **THE COMMISSIONER:** But, you know, if you
4 don't remember, you don't remember. The question is -- as
5 you know, I'm trying to look at institutional response.

6 **MR. McCONNERY:** Yes.

7 **THE COMMISSIONER:** You quite appropriately
8 looked back and saw, "Oh, wait a minute here, there are
9 some changes in the factual situation", and now what
10 counsel is asking is, okay, you had that.

11 **MR. McCONNERY:** Right.

12 **THE COMMISSIONER:** Now, did you put your
13 mind to, "Well, then I'd better dig further and make sure I
14 have all of these documents"? And in doing so, you know,
15 the search warrant comes up and ---

16 **MR. McCONNERY:** Yes.

17 **THE COMMISSIONER:** --- that kind of thing.

18 **MR. McCONNERY:** M'hm.

19 **THE COMMISSIONER:** Did you think about that
20 part of it when you were -- do you recall if you thought
21 about that, I guess is the question?

22 **MR. McCONNERY:** I had the brief that was
23 presented to either Mr. Pelletier or Mr. Griffiths, I'm not
24 sure which, but it had been reviewed from the earlier
25 investigation and involved the interviews, I believe, of

1 the lawyers MacDonald and Leduc. It had documents from
2 Leduc. I don't know that when I turn my mind to what I've
3 called here Scenario 3, that I was not thinking we had
4 everything there was in that investigation.

5 Like it wasn't -- I cannot say -- I can tell
6 you that I was concerned about tracking funds and obtaining
7 search warrants to track funds, if necessary, as a possible
8 step in the investigation for the police.

9 Do I recall the topic being discussed of
10 going and seizing solicitors' files? I'm not sure, and yet
11 something there tells me that at some point we talked about
12 the manner in which search warrants would be executed on
13 solicitors' files and, you know, engaging the Law Society;
14 things of that nature. But that's ---

15 **MS. SIMMS:** So you're not sure whether that
16 relates to ---

17 **MR. McCONNERY:** I'm not emphatic on that.

18 **MS. SIMMS:** And you're not sure if that
19 relates to solicitor files or financial records?
20 Presumably, financial records would raise the same issues
21 for you ---

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** --- since they're trust ledgers.

24 **MR. McCONNERY:** So it could well have been a
25 discussion regarding executing a warrant on a solicitor's

1 trust account, for instance. I think there was a reference
2 that I was aware of that moneys were in the trust account
3 of Malcolm MacDonald, I believe.

4 So, you know, I guess my bottom line answer
5 is I can't really recall that I ever sat with the officers
6 and said, "I think we should execute warrants and seize the
7 files of Mr. Leduc or Mr. MacDonald or Mr. Adams".

8 **MS. SIMMS:** So you flagged that as an issue
9 and it's somewhat different -- we're talking about Scenario
10 3 -- it's somewhat different than the conspiracy
11 allegation, as you've described it, that you were looking
12 into which involved ---

13 **MR. McCONNERY:** Yes.

14 **MS. SIMMS:** --- a number of parties?

15 **MR. McCONNERY:** Yes.

16 **MS. SIMMS:** And did you see that aspect as
17 something that you've been asked to review and asked to
18 provide an opinion on; that issue that you raised yourself
19 in your review of the materials with respect to looking
20 back at Jacques Leduc?

21 **MR. McCONNERY:** I don't believe I was. I
22 have some difficulty now remembering whether or not Jacques
23 Leduc's name was one of the names from -- I think I even
24 used the words "VIP meeting". I don't know where that came
25 from but ---

1 **MS. SIMMS:** I think we -- there's a number
2 of statements and I think my friend, Mr. Callaghan, gave an
3 outline that it's mentioned in some of the statements.

4 **MR. McCONNERY:** Well, yes, it is. I don't
5 remember now that Mr. Leduc was one of the persons
6 described by Ron Leroux as being at that meeting, so I
7 don't know that he was really the focus of what I was
8 doing. It was almost when I read it -- Scenario 3 is
9 almost like ---

10 **MS. SIMMS:** Your thought process?

11 **MR. McCONNERY:** Exactly, and a feeling that
12 if there was that potential -- and remember that one of the
13 parties had been charged with obstruct and got an absolute
14 discharge -- was that was there potentially a conspiracy
15 there involving Leduc, and was there even any hopeful
16 chance of going anywhere with that with Malcolm MacDonald
17 now deceased?

18 **MS. SIMMS:** Okay.

19 So I'd like to -- we've gone through your
20 analysis and I'd like to just take you to your opinion
21 letter, which is Exhibit 1140.

22 **MR. McCONNERY:** Okay.

23 **THE COMMISSIONER:** No, I don't think you
24 have it.

25 **MS. SIMMS:** Just while we're finding that

1 document, Mr. McConnery, I guess -- thinking back to that
2 meeting, you were asked by Mr. Segal to ascertain the
3 police's view on reasonable and probable grounds.

4 **MR. McCONNERY:** Yes.

5 **MS. SIMMS:** And you go through each of the
6 briefs, including the conspiracy brief, with Inspector
7 Hall.

8 **MR. McCONNERY:** Yes.

9 **MS. SIMMS:** And what you were speaking -- is
10 it -- were you putting to him all of these thoughts about
11 other potential allegations or charges or were you speaking
12 to him about his reasonable and probable grounds with
13 respect to the conspiracy, as you framed it, that you were
14 reviewing? That is, including a number of parties in the
15 meeting.

16 **MR. McCONNERY:** That was the meeting of July
17 10?

18 **MS. SIMMS:** Yes.

19 **MR. McCONNERY:** I don't think it had even
20 occurred to me what I wrote in my factual analysis, yeah.

21 **MS. SIMMS:** Okay.

22 **MR. McCONNERY:** So, no, I was asking him
23 about, "You've given me six briefs, seven briefs, whatever,
24 or seven different investigations. Tell me your position
25 on whether or not you feel or your officers feel they have

1 R&PG."

2 MS. SIMMS: So your opinion letter -- do you
3 have that before you now?

4 MR. McCONNERY: Yes, I do.

5 MS. SIMMS: Okay, and it's dated August 15th,
6 2001?

7 MR. McCONNERY: Correct.

8 MS. SIMMS: Okay. And there is a list in
9 your opinion letter of the documents -- of the briefs that
10 you were asked to review?

11 MR. McCONNERY: Yes.

12 MS. SIMMS: A list of the documents that you
13 -- a non-exhaustive list of the documents that you did
14 review in preparation for writing your opinion, and your
15 opinion is on the bottom of page 3 of this document, which
16 is Bates page 444.

17 MR. McCONNERY: Yes.

18 MS. SIMMS: And you note that the
19 investigating officers are not personally satisfied that
20 reasonable and probable grounds exist to lay charges in the
21 six briefs provided to you. Absent such subjective belief
22 that grounds exist, criminal charges cannot be laid?

23 MR. McCONNERY: Yes.

24 MS. SIMMS: And your opinion is on the
25 following paragraph:

1 "Upon our review of all the above-noted
2 material, I find that your concerns and
3 conclusions about the lack of
4 reasonable and probable grounds are
5 appropriate and justified."

6 Is that ---

7 **MR. McCONNERY:** Yes.

8 **MS. SIMMS:** And you say:

9 "All of the allegations of the
10 complainants Leroux and C-15 have been
11 carefully studied in the context of
12 which those allegations were made and
13 your opinion as to the credibility of
14 the allegations is reasonable and well-
15 founded in my view."

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** So I think we've discussed at
18 some length that this is the position you came to upon your
19 review of the briefs?

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** And that you're commenting here
22 on reasonable and probable grounds?

23 **MR. McCONNERY:** Correct.

24 **MS. SIMMS:** And there's no comment about
25 public interest considerations, about reasonable prospect

1 of conviction in your opinion, right?

2 **MR. McCONNERY:** Well, two points I make in
3 that regard.

4 Our policy or directives, you don't ever get
5 to consideration of public interest if you don't get past
6 the hurdle of reasonable and probable grounds.

7 **MS. SIMMS:** And we've discussed that I think
8 yesterday as well.

9 **MR. McCONNERY:** Well, let me back that up.
10 Actually, in assessing a reasonable prospect
11 of conviction, you don't ever go to public interest unless
12 you get to reasonable prospect of conviction and we never
13 got passed reasonable and probable grounds.

14 **MS. SIMMS:** Fair enough.

15 **MR. McCONNERY:** All right?

16 **MS. SIMMS:** Yes.

17 And, again, we were discussing this third
18 scenario which was something that you were mulling over
19 during your review and analysis of the materials?

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** But this opinion letter, I take
22 it, reflects the task that you were asked to review, which
23 was the conspiracy, as you understood it, with respect to
24 numbers of parties involved with the meeting, et cetera?

25 **MR. McCONNERY:** Yes.

1 **MS. SIMMS:** And you don't recall, with
2 respect to your thoughts on the third scenario, having any
3 discussions about whether there should be further
4 investigation either with the police or Mr. Stewart or
5 others?

6 **MR. McCONNERY:** I don't believe I discussed
7 it with Mr. Stewart.

8 Did I discuss it with Mr. Hall? I don't
9 think that these factual analyses were drafted for the
10 police, but Pat Hall is a very in-your-face kind of guy and
11 he would say, "Well, how come I can't have it?"

12 **MS. SIMMS:** So he may have been ---

13 **MR. McCONNERY:** I think I probably gave it
14 to him.

15 **MS. SIMMS:** Okay.

16 **MR. McCONNERY:** But I -- I don't recall
17 sitting down, having a discussion and my saying, you should
18 now look at Mr. Leduc as a party to a conspiracy to
19 obstruct; you should re-look at Mr. Leduc as a party. I
20 don't recall that conversation at all.

21 **MS. SIMMS:** Mr. McConnery, did this conclude
22 your involvement on the review, your letter that you sent
23 to Inspector Hall? Was there any further involvement you
24 had in reviewing these briefs after your opinion letter?

25 **MR. McCONNERY:** I was involved in meetings

1 with the ADR Chambers Group. I spoke with them.

2 **THE COMMISSIONER:** ADR being the alternative
3 dispute resolution folks?

4 **MR. McCONNERY:** Yes.

5 **MS. SIMMS:** I guess the opinion that you
6 rendered -- leaving aside I understand there's an issue
7 with privilege on the advice you received -- but this
8 opinion that we have just looked at, this was your opinion
9 upon your review. Do you accept that this was a
10 representation of your opinion upon the review of all the
11 briefs that you were provided?

12 **MR. McCONNERY:** This letter was my opinion.

13 **MS. SIMMS:** Yes.

14 **MR. McCONNERY:** It wasn't somebody else's.

15 **MS. SIMMS:** Yeah.

16 **MR. McCONNERY:** It was an opinion that I
17 believe Kevin Phillips agreed with me in, but it wasn't the
18 opinion of Pat Hall and it wasn't the opinion of the Law
19 Chambers from Toronto.

20 **MS. SIMMS:** So I'm going to move back to
21 your involvement in the Father Charles MacDonald's
22 prosecution.

23 **MR. McCONNERY:** Okay.

24 **MS. SIMMS:** So we've mentioned before that
25 the same date as your opinion letter on August 15th, you

1 provided the Dunlop boxes to ---

2 **THE COMMISSIONER:** No, no, no. That was the
3 consulted footsteps.

4 **MS. SIMMS:** Oh, I didn't distinguish the
5 footsteps.

6 **THE COMMISSIONER:** No, no. This gentleman
7 walked a little more stridently when he's coming ---

8 **MS. SIMMS:** Okay. I'll keep my ears open
9 for that.

10 **MR. McCONNERY:** Yes, I think it was the same
11 day. It seems to me there had been a discussion with Mr.
12 Neville and, yes, we have these boxes to deliver to you and
13 my recollection is he may have said, well, I'm going to be
14 on holidays for some time period, and so we put that aside
15 until I finish this and then let's move this stuff out of
16 here.

17 So Mr. Hall, Sergeant or Inspector Hall and
18 I carried them out, put them in his cruiser and took them
19 over to Mr. Neville's office. Mr. Neville wasn't there, I
20 don't believe.

21 **MS. SIMMS:** And you thought you had reviewed
22 those materials prior to that delivery?

23 **MR. McCONNERY:** I said that yesterday and
24 then I've been thinking about it. I don't know when I
25 could have had time to do that.

1 **MS. SIMMS:** Okay. But at some point leading
2 up to trial, you did a review of all of the documents in
3 those boxes?

4 **MR. McCONNERY:** Yes, I did. You know why I
5 say about reconsidering what I said yesterday?

6 I read something either last night that said
7 I put myself at risk by releasing the boxes without
8 completely satisfying myself on the issue of Mr. Dunlop's
9 privilege. So I don't know where I read it.

10 I mean, I've read a lot of material in the
11 last couple of weeks, maybe couple of months, trying to put
12 my mind back to where I was and when this issue came up
13 yesterday, it reminded me that somewhere I have a note that
14 I said, you know, the decision was made to turn it over.

15 There was this issue that Ms. Hallett had
16 expressed a concern about. We had Inspector Hall make some
17 calls and I, at some point, said, "Give them to counsel"
18 and I somewhere have a note that I felt concerned about
19 that decision I made but I was going to live with it.

20 **MS. SIMMS:** Well, aside from you mentioned
21 you thought something referenced to you putting yourself at
22 risk for not being sure about the potential privilege
23 claim, doesn't your decision put into question Ms.
24 Hallett's previous decision with respect to the release of
25 the boxes?

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

2 **MR. KLOEZE:** Mr. Commissioner, we've taken
3 the position that decisions by prosecutors in these files
4 that are the subject of their discretionary -- I guess
5 their discretionary authority -- are open -- we're being
6 transparent and open about allowing Commission counsel to
7 ask questions about those decisions, but we don't think
8 it's appropriate to put different Crowns in the position of
9 having to criticize or review or judge other Crown's
10 decisions on these matters.

11 **THE COMMISSIONER:** Yes, I agree but there's
12 a -- and maybe it's the way the question was put, but I
13 think you can put it in a neutral way.

14 Ms. Hallett made the decision at one point
15 that she wasn't going to release the documents and you
16 released the documents. Can I have your thought process on
17 why you released the documents?

18 What's wrong with that?

19 **MR. KLOEZE:** I think the evidence we're
20 going to hear from Ms. Hallett is that she did review --
21 she did a review of the documents and released what she
22 felt was relevant.

23 **THE COMMISSIONER:** Yes, I understand that,
24 but this gentleman decided to do it differently. And,
25 again, with respect to -- if we're going to get into

1 general terms, when Ms. McIntosh spoke and gave her opening
2 statement, I thought we were talking about the Crown's
3 discretion as to whether or not to lay charges.

4 But what we -- and I certainly agree with
5 that part and I'll deal with that in my report, but with
6 respect to decisions like this, isn't it open for us to
7 look at it at least? And I think what's important is that
8 in my decision whether or not you're quite -- just a
9 minute. The issue of jurisdiction, as to what I can
10 comment on, is fair game, and that we'll discuss and I'll
11 make my decisions ---

12 **MR. KLOEZE:** Yes.

13 **THE COMMISSIONER:** --- with respect to that.
14 But within this amphitheatre, why can't we ask those
15 questions?

16 **MR. KLOEZE:** Well, perhaps it was the way
17 the question was posed. I think perhaps a more appropriate
18 question would be to ask Mr. McConnery what factors he took
19 into account in making a different decision from that of
20 Ms. Hallett.

21 **THE COMMISSIONER:** Okay.

22 Mr. Lee?

23 You never know when he's coming up, Ms.
24 Simms, because he's soft-footed.

25 **MR. LEE:** Do I understand your ruling to be

1 that it's not permissible for us to put to a Crown attorney
2 whether or not he believes that a previous Crown attorney's
3 decisions were sound?

4 **THE COMMISSIONER:** No.

5 **MR. LEE:** That's not your ruling?

6 **THE COMMISSIONER:** No.

7 **MR. LEE:** Thank you, sir.

8 **THE COMMISSIONER:** Depends on the
9 circumstances. We'll take each question as they come.

10 So right now, just rephrase it, you can ask
11 him the question.

12 **MS. SIMMS:** Well, let me try putting it this
13 way. Because we did discuss some of your thinking behind
14 the disclosure of those boxes yesterday and I don't want to
15 go over that.

16 Was part of your thinking or did the fact
17 that Ms. Hallett had made the decision not to -- or not to
18 release the entirety of the boxes, did that factor enter
19 your thinking when you were making a decision in any way?

20 **MR. McCONNERY:** The fact that she had
21 decided not to?

22 **MS. SIMMS:** Yes.

23 **MR. McCONNERY:** Factor into my decision to
24 release them?

25 **MS. SIMMS:** Yes.

1 **MR. McCONNERY:** My understanding was that
2 Ms. Hallett had reviewed the boxes, to whatever extent she
3 reviewed them, to determine if there was any material
4 relevant to the trial of Father MacDonald on the
5 allegations.

6 When I got to -- when I became involved, I
7 had two major mountains I was going to climb. One was
8 Father MacDonald's trial, the other was Father MacDonald's
9 11(b) application. One mountain was, as it turned out, one
10 I could not get over.

11 And I felt that the contents of the boxes
12 might inform the 11(b) motivation, et cetera, and I
13 accepted what she said that there was nothing relevant to
14 the trial. And so we're sitting there, we've got these
15 boxes, we're photocopying them, and Mr. Neville is getting
16 nothing.

17 **THE COMMISSIONER:** And you also have a
18 ruling that has not been overturned yet of wilful non-
19 disclosure by the Crown?

20 **MR. McCONNERY:** Absolutely. Yes, that's
21 right. Now, that was of a very small portion of the boxes.
22 I don't know if it amounted to a page.

23 I was very concerned about holding back
24 anything that could inform the 11(b) decision or maybe even
25 the trial itself. And here I am, the material's been in

1 our possession -- I don't know the dates -- of a year or
2 more. I'm now in Ottawa. I'm doing this -- I've been
3 there for two to three months, we still haven't even turned
4 our mind to it. I believe Mr. Neville had asked me for it.
5 And when we had it copied and I could turn my mind to
6 delivering it, I seemed to recall that he was going to be
7 away on holidays for a while. So it took the emergency off
8 my desk for the moment.

9 But it was very much hanging over my head.
10 I was under a very real obligation to get that material to
11 Mr. Neville and potentially to lawyers in other trials that
12 were going on in Cornwall, I believe in September or
13 October.

14 **THE COMMISSIONER:** Of 2001?

15 **MR. McCONNERY:** Of 2001.

16 There were some other trials and in fact, I
17 don't believe they even -- the counsel ever asked for them
18 or wanted them. So I don't know if they were given to them
19 or not.

20 But I made the decision and the things that
21 went through my mind were Ms. Hallett had looked at the
22 contents of the boxes. She didn't say "I've taken out of
23 those boxes matters that raised the flag of
24 solicitor/client privilege." I believe the officers had
25 gone through the boxes. No one there is saying "Oh, you

1 know, Mr. McConnery, you've got to look at this before
2 anything can be released because it may bring into place
3 solicitor/client privilege."

4 I knew there was a concern because I knew he
5 had retained counsel on a number of different aspects.

6 **THE COMMISSIONER:** "He" being?

7 **MR. McCONNERY:** "He" being Officer Dunlop.

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

9 **MR. McCONNERY:** So it was hanging there but
10 nobody was telling there was anything in there. And here I
11 am sitting on it, so to speak.

12 And I felt a very real urgency in getting
13 this material to -- you know, for a sole practitioner,
14 which I believe Mr. Neville -- I guess he was practicing on
15 Mr. Selkirk -- but if this is his single trial where he's
16 acting alone, for him to review what turned out to be over
17 10,000 pages, that's a monumental task, in my view, if he
18 works the way I do anyways.

19 So I felt some urgency in getting it to him.
20 And I just had this feeling "Are you not being as careful
21 as you should be about solicitor/client privilege?" I
22 didn't see myself as reviewing Ms. Hallet's position that
23 we had to -- was I cavalier about it, I trust not, but I --
24 that's what I did.

25 **MS. SIMMS:** But you were aware that one of

1 the concerns had been raised -- that had been raised
2 previously, before your involvement, was potential
3 privilege issues or privacy claims?

4 **MR. McCONNERY:** Yes, but then she also
5 reviewed the boxes. Do you follow me?

6 **MS. SIMMS:** So you were expecting that had
7 she identified privileged or privacy interest claims that
8 that would have been flagged for you; is that ---

9 **MR. McCONNERY:** I would have thought that if
10 a Crown is looking at a box and there's a file of
11 correspondence that is privileged from a civil counsel to
12 Officer Dunlop, that that Crown would have earmarked it in
13 some fashion, I would say, sealed it.

14 And you know, I don't have a total
15 recollection of everything in those boxes. So there were
16 just various things that were telling me that, yes, there
17 was a concern, but really, a number of people had satisfied
18 themselves that it was not a concern.

19 **THE COMMISSIONER:** What about a, I don't
20 know, a motion for directions served on Mr. Dunlop and the
21 defence going to a judge and say "Look it, I've got all
22 these boxes here. This fellow has talked about privilege;
23 tell him to just tell me where it is and otherwise I want
24 to give it away. I want to give it to disclosure." Is
25 that something that ---

1 **MS. SIMMS:** It didn't occur to me.

2 **MS. SIMMS:** With respect to -- so the boxes
3 were delivered; you're reviewing them; defence counsel are
4 reviewing them, and I understand that in that review there
5 was flagged one particular document that defence counsel
6 had not received prior to having disclosed the Dunlop
7 boxes.

8 Do you recall this ---

9 **MR. McCONNERY:** Yes, I ---

10 **MS. SIMMS:** --- being an issue?

11 **MR. McCONNERY:** What I recall is a document
12 where Mr. Neville was questioning us as to who the author
13 of the document was.

14 **MS. SIMMS:** Okay. Well let me take you --
15 that's mentioned in your notes I believe. So I'm going to
16 ask you to refer to that note. It's Document Number
17 130384.

18 **THE COMMISSIONER:** No, Mr. McConnery, new
19 document.

20 **MR. McCONNERY:** New document, okay.

21 **THE COMMISSIONER:** By the time you get used
22 to it, it will be time for you to leave.

23 **THE REGISTRAR:** What number please?

24 **MS. SIMMS:** It's 130384.

25 These are notes of Mr. McConnery dated

1 February 6th, 2002 and they should be marked subject to
2 publication ban.

3 **THE COMMISSIONER:** Thank you.

4 That will be Exhibit 3058.

5 **---EXHIBIT NO./PIÈCE NO P-3058:**

6 (130384) - Notes of Lorne McConnery dated 06
7 Feb 02

8 **MS. SIMMS:** Are you having technical
9 difficulties?

10 **MR. McCONNERY:** No, I'm just trying to get
11 myself some room here. Sorry.

12 **MS. SIMMS:** That's okay.

13 **MR. McCONNERY:** Three-zero-five-eight
14 (3058)?

15 **THE COMMISSIONER:** Yes.

16 **MS. SIMMS:** So these are your notes Mr.
17 McConnery?

18 **MR. McCONNERY:** Correct.

19 **MS. SIMMS:** Okay. And you referenced -- you
20 just mentioned recalling some questions from defence
21 counsel regarding notes that were located in the Dunlop
22 box. And at the bottom of the first page of this exhibit
23 you reference a telephone call with Mr. Neville?

24 **MR. McCONNERY:** Yes.

25 **MS. SIMMS:** And there's a discussion of a

1 number of issues relating to the upcoming trial.

2 MR. McCONNERY: Yes.

3 MS. SIMMS: And on the second page, second
4 bullet point, you note that he raised the issue of
5 determining who authored notes in Dunlop box number one,
6 pages 217 to 225 and two other duplicates of those notes.

7 MR. McCONNERY: Yes.

8 MS. SIMMS: Is that what you were thinking
9 of?

10 MR. McCONNERY: I believe so, yes.

11 MS. SIMMS: Okay. And do you recall making
12 inquiries about those notes and determining what those
13 notes related to?

14 And I can direct you to the notes
15 themselves. I don't know if that's ---

16 MR. McCONNERY: I think I did make inquiries
17 and I spoke to officers because I expected officers would
18 be able to identify the handwriting.

19 MS. SIMMS: Okay.

20 So I'm going to ask you to refer to these
21 notes, number 217 to 225, and that's Document Number
22 717188.

23 (SHORT PAUSE/COURTE PAUSE)

24 THE COMMISSIONER: Thank you.

25 Exhibit 3059 is what now?

1 **MS. SIMMS:** These are notes -- I'll identify
2 them. They are notes of Ron Lefebvre from a January 28th,
3 1993 meeting with David Silmser.

4 **THE COMMISSIONER:** And are these the notes
5 that you say Mr. Neville was asking questions about?

6 **MS. SIMMS:** Yes. If you'll look at the
7 exhibit, it does match up as well in terms of -- it becomes
8 an issue so they're clearly identified as Ron Lefebvre's
9 notes. We can see the pagination matches up. This is 217
10 to 225.

11 **THE COMMISSIONER:** Right.

12 **MS. SIMMS:** And that's what you have before
13 you.

14 **THE COMMISSIONER:** Okay.

15 **--- EXHIBIT NO./PIÈCE NO. P-3059:**

16 (717188) - Notes of Ron Lefebvre dated 1993

17 **MS. SIMMS:** Okay?

18 **MR. McCONNERY:** Okay. So the numbers then
19 on the bottom are the numbers that we assigned in the
20 Dunlop boxes?

21 **MS. SIMMS:** When you reviewed the boxes and
22 paginated every page?

23 **MR. McCONNERY:** Yes. Okay.

24 **MS. SIMMS:** So this is a set of notes. And
25 you recall making inquiries to identify -- based on defence

1 counsel's request -- to identify what these notes related
2 to?

3 **MR. McCONNERY:** Yes.

4 **MS. SIMMS:** And do you recall that they were
5 identified as Constable Lefebvre's notes regarding his
6 interview with Silmser in 1993?

7 **MR. McCONNERY:** I don't specifically recall
8 the officer's name. I recall that we were able to identify
9 the author of the notes.

10 **MS. SIMMS:** And do you recall ---

11 **MR. McCONNERY:** So I accept that it's
12 Lefebvre ---

13 **MS. SIMMS:** Okay.

14 **MR. McCONNERY:** --- but I don't remember the
15 name.

16 **MS. SIMMS:** Well, do you -- and this was an
17 issue, Mr. McConnery, that was raised in the course of the
18 stay application as a disclosure issue.

19 **MR. McCONNERY:** Yes.

20 **MS. SIMMS:** So do you recall that being part
21 of the stay application and making arguments in that
22 respect?

23 **MR. McCONNERY:** I recall that when we
24 identified the notes that Mr. Neville's position was that
25 this should have been disclosed years ago and had not been

1 disclosed. I believe that was -- that's accurate.

2 MS. SIMMS: And accepting that these are
3 notes made by Constable Lefebvre at that initial interview
4 in January of 1993 of Mr. Silmsler, who is a complainant in
5 your prosecution ---

6 MR. McCONNERY: Yes.

7 MS. SIMMS: --- do you agree that they were
8 subject to disclosure?

9 MR. McCONNERY: Absolutely.

10 MS. SIMMS: And ought to have been disclosed
11 during the disclosure on the initial charges?

12 MR. McCONNERY: Absolutely.

13 MS. SIMMS: Okay. And were you able to --
14 we mentioned yesterday that this file had gone through --
15 you were the third Crown Attorney assigned to the file; it
16 had been going on for five, six years.

17 Were you able to check your own records and
18 determine whether this document had been disclosed or not
19 disclosed or satisfy yourself as to this issue prior to the
20 application?

21 MR. McCONNERY: I don't recall anything in
22 any of the files that tracked disclosure.

23 MS. SIMMS: So you weren't -- coming on as a
24 third Crown, you weren't able to look at the file and
25 determine whether or not a document had been disclosed to

1 defence counsel?

2 **MR. McCONNERY:** I would say that's accurate.

3 **MS. SIMMS:** And that's not a very good
4 situation, Mr. McConnery. You would prefer to be able to
5 know with some certainty what had been disclosed throughout
6 the proceedings. Isn't that right?

7 **MR. McCONNERY:** Absolutely.

8 **MS. SIMMS:** And not only to check if there's
9 an issue raised but to satisfy yourself that full
10 disclosure's been made?

11 **MR. McCONNERY:** Correct.

12 **MS. SIMMS:** Okay.

13 **MR. McCONNERY:** It seemed to me my -- maybe
14 not my mindset, but that there were very few disclosure
15 issues unrelated to Dunlop. There was that whole issue
16 about Dunlop. But, you know, we had the original three
17 charges that had been before the court for a long time. I
18 believe there was an issue regarding an Officer Fagan's
19 notes.

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

21 **MR. McCONNERY:** And I even have a note
22 somewhere, and it may have been at a pre-trial, where Mr.
23 Neville said other than the obvious disclosure issues -- I
24 mean, Dunlop, the boxes, the delay related to it -- that
25 there weren't really other disclosure issues. So, you

1 know, if and when -- I don't ever even remember reading
2 this particular document as I went through the boxes -- it
3 didn't jump out at me as oh, non-disclosure, because I
4 didn't have a record of disclosure. And, yes, I would say
5 that certainly can be an issue.

6 **MS. SIMMS:** And this as well -- and, Mr.
7 McConnery, you're looking at these Dunlop materials, I'm
8 sure you're looking at all of them for their relevance for
9 a particular period, but this is not a Dunlop-generated
10 document. These are notes of a police officer during an
11 investigation; correct?

12 **MR. McCONNERY:** Yes.

13 **MS. SIMMS:** So one would have thought that
14 they would have been disclosed by the police as opposed to
15 having gone through -- having been eventually disclosed
16 through this process of disclosing the Dunlop boxes?

17 **MR. McCONNERY:** This should have been
18 disclosed long before the Dunlop boxes issue came up. I
19 agree.

20 **MS. SIMMS:** And you didn't know what had
21 been disclosed or not so you may have had this -- had you
22 reviewed this document, would you have assumed that it had
23 been disclosed previously?

24 **MR. McCONNERY:** I would likely have assumed
25 that. I don't really remember ---

1 **MS. SIMMS:** Okay.

2 **MR. McCONNERY:** --- if I went through that
3 process or not. Probably by the time I'm reading it, Mr.
4 Neville's reading it. So he had it and he brought it to my
5 attention as someone whose notes he didn't -- he didn't
6 know the author of the notes, bottom line, and when we
7 established the author of the notes it was quite clear that
8 Mr. Neville's position was, you know, he should have been
9 provided this earlier and he hasn't been. And I agree with
10 that.

11 **MS. SIMMS:** So if I can just return to your
12 notes that we started with, which are Exhibit -- they
13 should be loose -- 3058.

14 **MR. McCONNERY:** Yes.

15 **MS. SIMMS:** And actually, Mr. Commissioner,
16 I'm just about to move to a slightly different area.
17 Perhaps it would be a good time for a morning break?

18 **THE COMMISSIONER:** Good. Thank you. Let's
19 take the morning break.

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

22 This hearing will resume at 11:10 a.m.

23 ---Upon recessing at 10:53 a.m./

24 L'audience est suspendue à 10h53

25 ---Upon resuming at 11:14 a.m./

1 L'audience est reprise à 11h14

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

4 This hearing is now resumed. Please be
5 seated. Veuillez vous asseoir.

6 **LORNE McCONNERY, Resumed/Sous le même serment:**

7 **THE COMMISSIONER:** Thank you.

8 Yes, Ms. Simms.

9 ---EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR MS.
10 **SIMMS (cont'd/suite):**

11 **MS. SIMMS:** So, Mr. McConnery, when we left
12 off we were discussing the issue of some notes that had
13 been located in Dunlop's boxes, and I referred you in that
14 regard to some notes you made in February of 2002, and
15 that's Exhibit 3058.

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** Okay. So if you can just refer
18 back to that.

19 And the second page is what we were looking
20 at with respect to your conversation with defence counsel.
21 And you note at the very bottom of that page that that
22 afternoon you received a telephone call from Linda Leblanc.
23 Can you tell us who she is?

24 **MR. McCONNERY:** I don't know her precise
25 title.

1 I would say trial co-ordinator.

2 MS. SIMMS: For the Cornwall ---

3 MR. McCONNERY: I believe it was Cornwall,
4 yes.

5 MS. SIMMS: Okay. And you're advised that
6 the presiding judge will be Michel Charbonneau?

7 MR. McCONNERY: Correct.

8 MS. SIMMS: All right, okay.

9 Now, I understand that concerns were raised
10 to you regarding a possible appearance of conflict in this
11 matter being heard before that particular judge?

12 MR. McCONNERY: Yes.

13 MS. SIMMS: Can you recall that, who raised
14 those concerns to you?

15 MR. McCONNERY: In -- I believe he was
16 retired by this point, but in a -- Retired Inspector Smith.

17 MS. SIMMS: Okay.

18 And there is a memo on this issue in your
19 materials, so I'm going to ask you to look at that. It's
20 Document Number 110755.

21 (SHORT PAUSE/COURTE PAUSE)

22 THE COMMISSIONER: Thank you.

23 Exhibit 3060 is a memo dated February 15th,
24 2002, re. Project Truth, Potential Conflict of Interest,
25 Mr. Justice Charbonneau. There you go.

1 MS. SIMMS: So 110755.

2 ---EXHIBIT NO./PIÈCE NO. P-3060:

3 (110755) - Memo re: Project Truth -
4 Potential Conflict of Interest - Mr. Justice
5 Charbonneau/Tim Smith dated February 15,
6 2002

7 MS. SIMMS: Do you need some time to review
8 this document, Mr. McConnery?

9 MR. McCONNERY: Yes.

10 MS. SIMMS: Okay.

11 (SHORT PAUSE/COURTE PAUSE)

12 MR. McCONNERY: Yes. Do you know if this is
13 a document I prepared?

14 MS. SIMMS: I do not know.

15 MR. McCONNERY: Okay, thank you. Yes, I've
16 read it.

17 MS. SIMMS: I don't know if this is a
18 document you prepared; I take it you don't know if it was a
19 document you prepared?

20 MR. McCONNERY: I don't remember now.

21 MS. SIMMS: Okay.

22 MR. McCONNERY: But I know he made this --
23 took this issue up with me, originally.

24 MS. SIMMS: And by "he", you're referring to
25 Inspector Smith?

1 **MR. McCONNERY:** Inspector Smith, yes.

2 **MS. SIMMS:** Okay. So Inspector Smith drew
3 to your attention that he had previously been involved in
4 litigation where the plaintiff's lawyer was now Justice
5 Charbonneau?

6 **MR. McCONNERY:** Correct.

7 **MS. SIMMS:** And you set out in here, or
8 someone has set out in here, the substance of his concern,
9 in that Inspector Smith may be a witness at the Father
10 Macdonald prosecution?

11 **MR. McCONNERY:** Yes.

12 **MS. SIMMS:** Is that right?

13 And he was concerned that there -- or he
14 expressed concerns about a possible conflict or appearance
15 of conflict. Is that fair to say?

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** Okay.

18 **MR. McCONNERY:** Yes.

19 **MS. SIMMS:** And that related back to this
20 previous litigation which was regarding a case in the
21 Alfred Training School prosecution, where Inspector Smith
22 was the officer in charge?

23 **MR. McCONNERY:** Yes.

24 **MS. SIMMS:** Okay. And do you recall how you
25 addressed this concern?

1 **MR. McCONNERY:** One other thing that doesn't
2 appear to be captured by this, and I know I reviewed it in
3 my notes somewhere, is that Smith also advised me that the
4 civil matter in which Justice Charbonneau had acted as
5 counsel, had at least gotten, as I recall, to the discovery
6 stage.

7 And then at the discovery, Mr. Charbonneau,
8 as he then was, and Officer Smith had had words outside. I
9 gather a discovery had taken place and on the way out they
10 expressed their dis -- their feelings towards whatever.

11 So there was that kind of heated emotional
12 thing. Now, I spoke to Jim Stewart about this.

13 **MS. SIMMS:** M'hm?

14 **MR. McCONNERY:** And, in my review of my
15 notes in preparation for the hearing, when I looked at this
16 issue, I couldn't see that I did anything to follow up, but
17 I know that Justice Charbonneau didn't -- his name was
18 removed fairly quickly as the trial judge, and I saw a memo
19 that said he had to be removed.

20 So I don't know if the regional director
21 spoke to the regional senior judge. And for some reason,
22 my notes are really -- they're non-existent, as I saw as to
23 what the follow-up was.

24 **MS. SIMMS:** Okay. So you just said you
25 don't know, but -- you don't know, but it's possible that

1 the regional director, that would be Mr. Stewart?

2 MR. McCONNERY: Yes.

3 MS. SIMMS: Spoke to someone on this issue?

4 MR. McCONNERY: Yes.

5 MS. SIMMS: Okay. And you can't tell us any
6 more about your response to this potential conflict?

7 MR. McCONNERY: I'm trying to think whether
8 or not I advised Mr. Neville.

9 MS. SIMMS: You mentioned yesterday -- we
10 were taking about Ms. Hallett raising the issue of -- or
11 her concern that an out-of-region judge should be assigned?

12 MR. McCONNERY: Yes.

13 MS. SIMMS: And you mention that that came
14 up later in time. Was that with respect to this concern
15 that was raised to you by Inspector Smith?

16 MR. McCONNERY: No, something that followed
17 this.

18 MS. SIMMS: Okay. So, following this, there
19 is a change in the assignment of the judge ---

20 MR. McCONNERY: Yes.

21 MS. SIMMS: --- right? And the concern --
22 it is around that time where you are considering bringing a
23 motion for an out-of-region judge to hear the matter?

24 Is that -- that's what you were referencing
25 yesterday ---

1 MR. McCONNERY: Yes.

2 MS. SIMMS: --- when you were talking to us?

3 MR. McCONNERY: It was after this date, yes.

4 MS. SIMMS: Okay.

5 So you have some notes on that matter, Mr.
6 McConnery, which is Document Number 130396.

7 And I should just ask while we're getting
8 that document, Justice Charbonneau was replaced ---

9 MR. McCONNERY: Yes.

10 MS. SIMMS: --- and initially it was
11 assigned to a different justice, Justice Rutherford?

12 MR. McCONNERY: Yes.

13 MS. SIMMS: Correct?

14 MR. McCONNERY: Yes.

15 MS. SIMMS: And I think your notes reflect
16 that.

17 Was that causing -- going to cause any
18 substantial delay in the hearing of the trial, that you
19 recall? Maybe your notes will help you with this.

20 MR. McCONNERY: A week?

21 MS. SIMMS: Okay.

22 MR. McCONNERY: Something, I think, about a
23 week.

24 MS. SIMMS: All right. So it was not going
25 to result in further delay on charges that were already

1 outstanding for some time? Just a week delay?

2 **MR. McCONNERY:** Yes, if -- if that. I just
3 -- you're asking me the question and I seem to recall that,
4 but I'm not positive.

5 **THE COMMISSIONER:** Okay, now -- and so was
6 Justice Rutherford an out-of-region judge or is he a local
7 judge?

8 **MR. McCONNERY:** No, I understood him to be
9 East Region.

10 **THE COMMISSIONER:** Okay.

11 **MS. SIMMS:** So we're looking at -- do you
12 have that document before you now?

13 **MR. McCONNERY:** So 3061, I do, yes.

14 **MS. SIMMS:** Okay.

15 **MR. McCONNERY:** Or Exhibit 3061.

16 **---EXHIBIT NO./PIÈCE NO. P-3061:**

17 (130396) - Notes of Lorne McConnery dated
18 from 27 Feb 02 to 04 Mar 02

19 **MS. SIMMS:** So you've -- have you had a
20 chance to review these notes, Mr. McConnery?

21 **MR. McCONNERY:** Yes.

22 **MS. SIMMS:** Okay. And they're not quite in
23 chronological order because you start on March 4th and then
24 you refer back to a conversation you had with defence
25 counsel on February 27th, 2002.

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** Okay, but, on March 4th, your
3 first note is regarding speaking to Kevin Phillips?

4 **MR. McCONNERY:** Correct, yes.

5 **MS. SIMMS:** And he advises you that Linda
6 Leblanc, who he identifies as trial co-ordinator from
7 Cornwall, has advised that the trial is to be adjourned to
8 April 29th and will be heard by Justice Chilcott. Do you
9 see that?

10 **MR. McCONNERY:** Yes.

11 **MS. SIMMS:** So that was the first notice
12 that you had about this second adjournment due to a change
13 in the presiding judge? This conversation was the first
14 you knew of this?

15 **MR. McCONNERY:** Yes, it was, that's correct.

16 **MS. SIMMS:** Okay.

17 And you note steps you take following that,
18 which I don't think will make much sense unless we go back
19 to the conversation you had with counsel in -- that starts
20 on the second page.

21 **MR. McCONNERY:** Yes.

22 **MS. SIMMS:** So this change, aside from the
23 delay, I take it the change in the trial judge was going to
24 cause you concern, or caused you some concern in terms of
25 further delay of the trial? Is that fair to say?

1 **MR. McCONNERY:** Oh, absolutely. I think my
2 concern was, the trial got delayed and, I mean, it's over a
3 month delay and there had been no notice, no opportunity to
4 address it in court, we're just told, "It's being
5 adjourned".

6 **MS. SIMMS:** Okay.

7 **MR. McCONNERY:** And that really upset me.
8 First of all, my own time was being impacted, but a lot of
9 other people's -- a lot of other people, rather -- and we
10 had, I believe, about 60 subpoenas out, returnable March
11 18th.

12 And so, generally, what you do is you phone
13 people and say, "Well, you don't have to come on this date.
14 Be available. We'll follow up on you. Now we're going to
15 have to contact them all again and say, "Well, fooled you.
16 Now it's going to start at the end of April." And it was
17 really a headache for us, quite frankly, and it really
18 angered me, quite frankly.

19 **MS. SIMMS:** And I take it you were at this
20 time starting to meet with complainants with respect to
21 their preparation for the trial as well?

22 **MR. McCONNERY:** I believe I was. What date
23 is this? This is what?

24 **MS. SIMMS:** March 4th.

25 **MR. McCONNERY:** March 4th. Yes, I think I'd

1 been interviewing complainants as early as February.

2 **MS. SIMMS:** So you would, or someone would
3 have to explain as well to the complainants about the
4 additional delay. Was that a concern?

5 **MR. McCONNERY:** Absolutely. And it wasn't
6 being well received because, you know, when we would meet a
7 complainant we'd talk about the delay, and we're going to
8 have to argue delay and it could result in a stay, and now
9 we're going to phone them and say, "Oh, guess what, it's
10 been delayed again," even if it's only five weeks or six
11 weeks.

12 So it was -- it upset me. I was going to
13 say something not quite as genteel. It upset me.

14 **MS. SIMMS:** Okay. So just that aspect upset
15 you, that the matter had been adjourned and ---

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** --- you had not had the option
18 to speak to it ---

19 **MR. McCONNERY:** Yes.

20 **MS. SIMMS:** --- prior to that decision?

21 And I understand from your notes that there
22 was another concern that you had, based on conversations
23 you had with defence counsel predating this change?

24 **MR. McCONNERY:** Yes.

25 **MS. SIMMS:** All right.

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** Can you explain what that is?

3 **MR. McCONNERY:** Yes. I had been told --
4 after Justice Charbonneau could not do the trial, I had
5 been told it would be Justice Rutherford, and at some point
6 prior to March 4th I had -- I think I'd been away for a week
7 or something. Anyways, I came back and I had a meeting
8 with Mr. Neville. He basically expressed his concern about
9 that particular member of the judiciary being assigned. He
10 was quite upset about it. At one point he even said to me
11 something like, "Would you join me in going to the Trial
12 Coordinator's Office and asking that a different trial
13 judge being assigned?" I felt I couldn't do that. I
14 didn't think it was appropriate.

15 I spoke with Mr. Stewart about that. I
16 don't know -- you haven't given me any notes going back to
17 that date, so I'm presuming I didn't have any notes, and I
18 made the notes subsequently. So it was just that matter,
19 you know ---

20 **MS. SIMMS:** Okay.

21 **MR. McCONNERY:** --- of counsel expressing a
22 view about a judge.

23 **MS. SIMMS:** And that ---

24 **MR. McCONNERY:** And I put it into context
25 after the judge was changed.

1 **MS. SIMMS:** Okay.

2 **THE COMMISSIONER:** What do you mean you put
3 it in context?

4 **MR. McCONNERY:** Well, what Mr. Neville said
5 to me was he wanted to see Justice Chilcott do the trial.

6 **THE COMMISSIONER:** M'hm. Did he say why?

7 **MR. McCONNERY:** He didn't have to say why.
8 I think it was a judge he felt comfortable with, a judge
9 that he felt would be good for the issues that we had, and
10 no more than that. I mean, he wasn't saying anything. He
11 expressed his view about one judge and he thought Justice
12 Chilcott would be -- the natural choice would be the good
13 judicial officer to hear this trial.

14 And then I get a telephone call, "Your
15 trial's being delayed five or six weeks and Justice
16 Chilcott's the trial judge." And that -- it very much
17 angered me.

18 **MS. SIMMS:** So you were concerned at that
19 point, just receiving the initial news ---

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** --- you were concerned or it
22 raised a flag in your mind as to whether a defence counsel
23 had any involvement in the change that had just taken
24 place?

25 **MR. McCONNERY:** Sure. Mr. Neville had

1 suggested that I go with him to the Trial Coordinator's
2 Office, and so what occurred to me is, not having done
3 that, had he done it unilaterally and the change was done
4 to accommodate his wishes? I had no evidence of that.

5 MS. SIMMS: Okay.

6 MR. McCONNERY: It's just what's going
7 through my mind.

8 MS. SIMMS: This is what's going through
9 your mind at the initial call?

10 MR. McCONNERY: Yeah.

11 MS. SIMMS: So let's go back to the first
12 page of that exhibit.

13 MR. McCONNERY: Yes.

14 MS. SIMMS: Okay. So you have notes there
15 of the subsequent steps you took. So we have what was in
16 your mind at the time you received that information.

17 MR. McCONNERY: Yes.

18 MS. SIMMS: And then you list a number of
19 subsequent steps you took that afternoon.

20 MR. McCONNERY: Yes.

21 MS. SIMMS: And one step was you attempted
22 to speak to Jim Stewart?

23 MR. McCONNERY: Correct.

24 MS. SIMMS: All right.

25 And that would have been on this issue, I

1 take it? You were trying to contact Mr. Stewart to ---

2 MR. McCONNERY: Yes.

3 MS. SIMMS: --- discuss this with him?

4 MR. McCONNERY: Yes.

5 MS. SIMMS: And you didn't reach him at that
6 time?

7 MR. McCONNERY: That's correct.

8 MS. SIMMS: And then you called Linda
9 Leblanc?

10 MR. McCONNERY: Yes.

11 MS. SIMMS: And that's the trial coordinator
12 that we were just discussing?

13 MR. McCONNERY: Yes.

14 MS. SIMMS: And the nature of that
15 conversation was you were upset still, I take it, and
16 expressing your concerns to Ms. Leblanc?

17 MR. McCONNERY: Yes, and I confined it, I
18 believe, to the fact of it having been adjourned without
19 any notice to me; without any notice to the Crown.

20 MS. SIMMS: Okay. And she advised that
21 she'd received a call from Mary Simpson, the Regional Trial
22 Coordinator, who had conveyed that information to her that
23 she was essentially just the messenger. Is that ---

24 MR. McCONNERY: Yeah, yes.

25 MS. SIMMS: --- fair to say? Okay. And

1 then you attempted to speak, right after that, to Mary
2 Simpson, the Regional Trial Coordinator?

3 **MR. McCONNERY:** Correct.

4 **MS. SIMMS:** Okay. And you do speak to
5 Ms. Simpson the following day -- or Mrs. Simpson, Mary
6 Simpson the following day.

7 Do you recall in the -- and I'm going to
8 take you to those notes, but do you recall in the meantime
9 whether you were able to reach Mr. Stewart? You eventually
10 did speak to Mr. Stewart on this issue. Is that right?

11 **MR. McCONNERY:** Yes, I did. Probably the
12 same day, but I'm not sure.

13 **MS. SIMMS:** Okay. I'm going to take you to
14 your notes from the following day, which is Document Number
15 130397.

16 **THE COMMISSIONER:** Thank you.

17 Exhibit 3062 are notes dated March 5th, 2002.

18 **---EXHIBIT NO./PIÈCE NO. P-3062:**

19 (130397) - Notes of Lorne McConnery dated 05
20 Mar 02

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MS. SIMMS:** Mr. Commissioner, can I just --
23 I apologize. The document we were just previously
24 referring to I wrote down as 3061. I just wanted to
25 confirm that that was correct; we put that on the record?

1 **THE COMMISSIONER:** I hope so.

2 **MS. SIMMS:** One three zero three nine six
3 (130396)?

4 **THE COMMISSIONER:** Yeah, and 3062 is
5 Document 130397.

6 **MS. SIMMS:** Okay.

7 So Mr. McConnery, these are your notes from
8 the following day of March 5th, 2002. Is that correct?

9 **MR. McCONNERY:** Yes, they look like an
10 excerpt of that day, yeah.

11 **MS. SIMMS:** Okay. And the document refers
12 to a telephone call to Mary Simpson.

13 **MR. McCONNERY:** Yes.

14 **MS. SIMMS:** Okay, so -- and at this point
15 you get to speak to her?

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** Okay. And she advises that she
18 was told to advise you -- just told to advise you that
19 trial date and judge had to be adjusted and she was
20 instructed to do so by Justice Cunningham. Is that right?

21 **MR. McCONNERY:** Yes.

22 **MS. SIMMS:** And that's the Regional Justice?

23 **MR. McCONNERY:** Yes, that's correct.

24 **MS. SIMMS:** And you -- during that call,
25 towards the bottom of your notes, you specifically asked

1 her if Neville, defence counsel, had told her about wanting
2 the trial judge changed, and she said no.

3 **MR. McCONNERY:** Correct.

4 **MS. SIMMS:** Is that right?

5 **MR. McCONNERY:** Yes.

6 **MS. SIMMS:** And she suggested that you write
7 directly to Justice Cunningham with any further concerns
8 about the changes. Is that right?

9 **MR. McCONNERY:** Yes.

10 **THE COMMISSIONER:** Well, in fairness, she
11 says, "This" -- well, you've written, "This strictly had to
12 do with judge scheduling. I told her I'd never heard or
13 seen anything like this. HUM." H-U-M; okay.

14 **MS. SIMMS:** I think those are his initials
15 at the bottom of the page there, Mr. Commissioner.

16 **THE COMMISSIONER:** Oh, I see.

17 **MR. McCONNERY:** I'm sorry; you were reading
18 that last entry at the bottom?

19 **MS. SIMMS:** Yeah, there is a second call
20 where you call back. Is that right? On the bottom of your
21 notes.

22 **MR. McCONNERY:** Yes, okay. Sorry.

23 **MS. SIMMS:** At 10:30. So the first call was
24 at 10:18, the second call is at 10:30.

25 **MR. McCONNERY:** Right.

1 **MS. SIMMS:** "I called Mary Simpson back
2 and said to her, 'You suggested I call
3 or write Justice Cunningham. Did Mr.
4 Neville speak or write to Justice
5 Cunningham?' She said no, this
6 strictly had to do with judges
7 scheduling."

8 **MR. McCONNERY:** Yes.

9 **MS. SIMMS:** Okay.

10 **THE COMMISSIONER:** So those are your
11 initials as opposed to "HUM"?

12 **MR. McCONNERY:** That's "LWM".

13 **THE COMMISSIONER:** Pardon me?

14 **MR. McCONNERY:** "LWM".

15 **THE COMMISSIONER:** Thank you.

16 **MS. SIMMS:** So we mentioned that you had
17 some discussion with Mr. Stewart on this matter, and you
18 don't recall specifically when; is that fair, in the course
19 of these couple of days?

20 **MR. McCONNERY:** I would say it was either --
21 well, now that I look at it, it's probably late in the day
22 on the 5th of March.

23 **MS. SIMMS:** Okay. And do you recall you
24 expressed both of these concerns to Mr. Stewart, both of
25 these concerns you've just advised us of?

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** I'm going to -- I want to hear
3 from you what your discussion was about and what approach -
4 - or if you felt any further steps needed to be taken.

5 It might assist you in referring to a memo
6 that we have which appears to be drafted by Mr. Stewart and
7 received by you a couple of days later.

8 **MR. McCONNERY:** Okay.

9 **MS. SIMMS:** So that's Document Number
10 130401.

11 **MR. McCONNERY:** Might I just ask; I mean, I
12 have not been given all of my notes so I take it that there
13 aren't notes about this that I'm not being shown?

14 **THE COMMISSIONER:** I certainly hope not.

15 **MS. SIMMS:** I attempted ---

16 **MR. McCONNERY:** I'm sorry.

17 **MS. SIMMS:** I'm sorry, go ahead.

18 **MR. McCONNERY:** I was just going to say, you
19 know, sometimes it's good to put things into a context and,
20 yes, here's the excerpt that relates to this but here's the
21 context, and I just wondered if ---

22 **MS. SIMMS:** Well ---

23 **MR. McCONNERY:** --- because I was trying to
24 make notes of things, if there was any follow-up notes?

25 **MS. SIMMS:** Well, I have attempted to flag

1 for you the notes where you're dealing with this issue. If
2 I've missed something I'm sure your counsel will ---

3 **MR. McCONNERY:** Okay.

4 **MS. SIMMS:** Will flag ---

5 **MR. McCONNERY:** No, no, I didn't mean it in
6 anyway that you were not being fair with me. I just
7 wondered if I had further notes.

8 **MS. SIMMS:** Well, I didn't see, in my
9 review, notes of your discussion with Mr. Stewart and
10 that's why I'm directing you to a memo that he wrote.

11 **MR. McCONNERY:** Okay.

12 **MS. SIMMS:** And ---

13 **THE COMMISSIONER:** So Exhibit 3063 -- if I
14 can just butt in there -- a document entitled "James M.
15 Stewart", undated.

16 --- **EXHIBIT NO./PIÈCE NO. P-3063:**

17 (130401) - E-mail from James Stewart to
18 Lorne McConnery re: Project Truth dated
19 March 7, 2002

20 **MS. SIMMS:** And it is noted, that's your
21 handwriting on the bottom noting that you received that
22 memo on March 7th?

23 **MR. McCONNERY:** Correct. And that's my
24 handwriting in the middle of it.

25 **MS. SIMMS:** Do you need a moment to review

1 this, Mr. McConnery?

2 MR. McCONNERY: Yes, please.

3 (SHORT PAUSE/COURTE PAUSE)

4 MR. McCONNERY: Yes. Okay.

5 MS. SIMMS: So prior to you receiving this
6 memo, you had already spoken to the regional trial
7 coordinator and heard from her that defence counsel had not
8 contacted her?

9 MR. McCONNERY: Correct.

10 MS. SIMMS: And you'd also heard from her
11 that defence counsel had not contacted the regional justice
12 ---

13 MR. McCONNERY: Yes.

14 MS. SIMMS: --- with respect to any
15 adjournment ---

16 MR. McCONNERY: Yes.

17 MS. SIMMS: --- or change of judge; correct?
18 Okay.

19 But what you -- what's summarized here
20 appears to be some thoughts about concerns of an appearance
21 that the accused selected the judge he wanted for the
22 trial?

23 MR. McCONNERY: Yes.

24 MS. SIMMS: So is this what the points that
25 are set here reflect -- do they reflect the conversation

1 you had with Mr. Stewart, or conversations you had with Mr.
2 Stewart in early March, on this issue? Were you concerned
3 that this recent change -- most recent change with respect
4 to the judge was going to have a problem in terms of the
5 appearance in the conflict matter?

6 **MR. McCONNERY:** I felt it had presented me
7 with a concern about the appearance. I don't know if in
8 the public domain there would be any concern whatsoever. I
9 mean, the public doesn't know the judges, or why, or -- I
10 thought there would be a reaction to another adjournment
11 for -- that what was really appalling was this trial was
12 adjourned five weeks without even the courtesy of saying
13 the original assigned judge is going to be tied up and
14 can't do it. There was nothing. And I still don't have a
15 reason for the adjournment.

16 And then that followed a day or two after
17 Mr. Neville's presentment to me, very -- emotional is not
18 the right word -- but he was very upset with the
19 appointment of the judge that had been appointed and the
20 judge got changed, and the judge got changed to the judge
21 he told me he wanted. And I just thought the optics were
22 terrible within the legal community.

23 Now, did I -- was this the subject of our
24 conversation? I don't think we discussed all of these
25 things. I think I told Mr. Stewart what I saw as

1 happening, what the optics of it were in my view. We
2 talked about it. And some of this is his thoughts on it
3 and he put them on paper and gave me a copy of it.

4 **MS. SIMMS:** So the first points listed
5 presumably reflect the conversation you had with him
6 because he's noting the Crown involved, he's very upset,
7 the optics are terrible, which is the phrase you just used.

8 **MR. McCONNERY:** Yes.

9 **MS. SIMMS:** The Crown would not have had a
10 problem with an initial assignment of the second judge in
11 all likelihood if he'd been assigned in the first place,
12 but now there's this appearance of a judge selection by the
13 accused that's more than a little troubling.

14 **MR. McCONNERY:** Yes.

15 **MS. SIMMS:** So those are all reflections of
16 the conversations you had with him?

17 **MR. McCONNERY:** I think that's a pretty
18 accurate assessment of sort of my mindset.

19 **MS. SIMMS:** Okay. And then he goes on to
20 make some suggestions about a course of action in response
21 to this.

22 **MR. McCONNERY:** This is, I think, his ---

23 **MS. SIMMS:** Okay. So you don't recall
24 discussing this with him prior to receiving this memo. Is
25 that fair to say?

1 **MR. McCONNERY:** No. The discussion I do
2 recall is whether or not there's some provision in the
3 *Criminal Code* for making an application for special
4 sittings and that kind of thing, and whether or not that
5 was what we should be doing.

6 **MS. SIMMS:** In order to try and move the
7 matter forward. Is that ---

8 **MR. McCONNERY:** In order maybe to have a
9 judge from out of Eastern Ontario.

10 **MS. SIMMS:** Okay. And that is ---

11 **MR. McCONNERY:** Not so much to bring -- no,
12 not to bring it forward at this point, no.

13 **MS. SIMMS:** Okay. Well, and that is part of
14 what his suggestion is in terms of a course of action, to
15 look into the possibility of bringing in an out-of-region
16 judge.

17 **MR. McCONNERY:** Yes.

18 **MS. SIMMS:** And so that was -- you referred
19 to that yesterday as something that came up later, and this
20 is what you were referring to?

21 **MR. McCONNERY:** Yes.

22 **MS. SIMMS:** Okay. And he sets out, quite
23 strongly, an opinion that some action should be taken, and
24 he has a suggestion of a number of options at the bottom of
25 his memo.

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** So one was to convene a meeting
3 with the senior regional judge with defence counsel?

4 **MR. McCONNERY:** Yes.

5 **MS. SIMMS:** And the second was what you were
6 just mentioning with respect to a motion regarding seeking
7 an out-of-region judge. Is that correct? Sorry, that
8 would be B.

9 **MR. McCONNERY:** Yes, yes. It says he should
10 -- the east bench should recuse itself. I think he's
11 meaning to say recuse. Isn't that the word?

12 **MS. SIMMS:** Recuse, yes.

13 And then goes on to speak about more issues
14 with respect to bringing such a motion and what the
15 strategy would be ---

16 **MR. McCONNERY:** Absolutely.

17 **MS. SIMMS:** --- and who the witnesses would
18 be.

19 **MR. McCONNERY:** Yes.

20 **MS. SIMMS:** So at this time -- around the
21 time, it's your understanding you're seriously
22 contemplating bringing such a motion?

23 **MR. McCONNERY:** Mr. Stewart and I were
24 talking about it, yes.

25 **MS. SIMMS:** Okay. All right.

1 And the first step you mentioned, aside from
2 the motion, was to convene a meeting with the regional
3 justice and defence counsel.

4 Do you recall, were you involved in
5 attending any such meeting or going to such a meeting?

6 **MR. McCONNERY:** No, there was never any such
7 meeting, but I do know that Mr. Stewart wrote the regional
8 judge.

9 **MS. SIMMS:** Pardon me?

10 **MR. McCONNERY:** Mr. Stewart did write the
11 regional senior judge.

12 **MS. SIMMS:** Okay.

13 I can take you to -- I'm going to ask you to
14 refer -- it's not a letter but it's an email between Mr.
15 Stewart and the regional judge, and that's Document Number
16 110756.

17 **THE COMMISSIONER:** Thank you.

18 Exhibit Number 3064 is an email from
19 Regional Senior Justice Cunningham, copied to Mr. Neville
20 and Lorne McConnery, Subject: *R. v. Charles MacDonald*,
21 March 14th, 2002.

22 **--- EXHIBIT NO./PIÈCE NO. P-3064:**

23 (110756) - E-mail from James Stewart to
24 Justice Cunningham re: *R. v. Charles*
25 *MacDonald* dated March 14, 2002

1 **MS. SIMMS:** Do you need a moment to look at
2 this, Mr. McConnery?

3 **MR. McCONNERY:** Please, yes.

4 **(SHORT PAUSE/COURTE PAUSE)**

5 **MR. McCONNERY:** Yes, okay.

6 **MS. SIMMS:** Okay. So you're copied on this
7 email and this seems to be with respect to the first course
8 of action that Mr. Stewart suggested in his previous memo
9 that we were looking at ---

10 **MR. McCONNERY:** Yes.

11 **MS. SIMMS:** --- regarding convening a
12 meeting. So -- and I think you mentioned that you were
13 aware he had written to Justice Cunningham on this issue?

14 **MR. McCONNERY:** Yes.

15 **MS. SIMMS:** Right. So this sets out
16 concerns, unlike the previous memo we looked at, which
17 seems to relate mostly to the optics of the situation.

18 **MR. McCONNERY:** Yes.

19 **MS. SIMMS:** This email relates to the issues
20 of delay, the subpoenas and the adjournment. Is that ---

21 **MR. McCONNERY:** Yes.

22 **MS. SIMMS:** Is that right?

23 **MR. McCONNERY:** Yes.

24 **MS. SIMMS:** And he is asking in this letter
25 to arrange a meeting ---

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** --- to discuss those issues.

3 And I understand that he received a response
4 that same day. This email we're looking at appears to be
5 dated March 14th, 2002, and if I can direct you to another
6 document, it's Document Number 110757.

7 **THE COMMISSIONER:** Thank you.

8 Exhibit 3065 is a letter dated March 14th,
9 2002 to Mr. James Stewart, copied to Mr. Neville and Mary
10 Simpson, from Regional Senior Justice Cunningham.

11 --- **EXHIBIT NO./PIÈCE NO. P-3065:**

12 (110757) - Letter from Douglas Cunningham to
13 James Stewart re: *R. v. Charles MacDonald*,
14 dated March 14, 2002

15 **MS. SIMMS:** Do you know if you saw this
16 letter at the time, Mr. McConnery?

17 **MR. McCONNERY:** Yes, I believe I saw it in a
18 fairly timely fashion back then.

19 **MS. SIMMS:** All right. So the Regional
20 Justice responds that:

21 "From time-to-time, because of the
22 pressures of work in various judicial
23 centres, it's necessary for me to make
24 changes such as this when required. It
25 is all about judicial resources and the

1 shortage of same in east region."

2 He goes on to say:

3 "You may recall an earlier scheduling
4 change which was made at the request of
5 the Crown for valid reasons."

6 Do you recall or does that refresh your
7 memory that perhaps that's referring to the change from
8 Justice Charbonneau?

9 **MR. McCONNERY:** Yes, certainly.

10 **MS. SIMMS:** Okay. So it does appear that
11 there was a request from the Crown on that issue?

12 **MR. McCONNERY:** Yes.

13 **MS. SIMMS:** "For purely scheduling
14 reasons, the trial date was changed and
15 we attempted to give as much notice as
16 possible."

17 And he does not view it as necessary to
18 meet?

19 **MR. McCONNERY:** Yes.

20 **MS. SIMMS:** So you were aware that this was
21 the response received?

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** Okay. So initially in the memo
24 we were looking at, Mr. Stewart had set contact or
25 attempting to set up a meeting as the first step and then

1 was suggesting that there would be -- you'd be looking into
2 bringing a motion regarding and out-of-region judge
3 subsequent to that. No such motion was brought. Is that
4 correct?

5 **MR. McCONNERY:** No, that's correct.

6 **MS. SIMMS:** Okay. Can you explain to us --
7 did you have further discussions with Mr. Stewart on that
8 issue and why the position changed from that initial memo?

9 **MR. McCONNERY:** Yes, I did have further
10 discussion with Mr. Stewart about it. I was -- I don't
11 know if it was me or both of us but we certainly -- and I
12 appreciate that in writing to Justice Cunningham, there's
13 no mention of the concern of someone unilaterally selecting
14 his trial judge. I was concerned about that.

15 I was also very much concerned about a five-
16 week adjournment that was, as I say, never even given the
17 courtesy of being consulted about. And I think I was
18 getting myself very upset about it and I don't know if I
19 got Mr. Stewart upset about it or we sort of in combination
20 riled ourselves about it. In any event, I don't remember
21 the date and I don't think I ever made any notes about it.

22 We decided that we would speak to the
23 Assistant Deputy Minister who was Murray Segal. And I
24 recall very clearly sitting in Mr. Stewart's office at the
25 end of the day. Mr. Stewart called Mr. Segal. We put the

1 matter on the speaker phone which we told Mr. Segal.

2 We explained to him what we had and he gave
3 me some direction I think. He basically said, "Whoa, what
4 are you doing? What are you thinking? Where are you
5 going? Let's consider this."

6 And he said, "You followed up on it.
7 Justice Cunningham, the Senior Regional Judge, has told you
8 this was unfortunately a change of judge that had to be
9 made and you are telling me that you're thinking of making
10 an application of all of Eastern Region judges who recused
11 themselves from hearing this trial? No. I want to be
12 consulted daily about any further thoughts about this."

13 And the bottom line is, I think he said, "I
14 think you should reconsider. You've got some stuff here.
15 You're concerned. You've tried to follow up. I do not
16 want you bringing a motion to have Eastern Ontario Superior
17 Court judges recuse themselves from this trial on this
18 basis."

19 **MS. SIMMS:** So was that the end of the
20 matter from your perspective?

21 **MR. McCONNERY:** The only -- I don't believe
22 I have notes on that phone call. I think -- I don't know
23 if Mr. Stewart then decided just to write and ask Justice
24 Cunningham -- you know, I don't know if that was before the
25 writing to Justice Cunningham or after, but we spoke to Mr.

1 -- we spoke to Mr. Segal and he basically said, "Well, I
2 don't think you're there. I don't think you've got the
3 grounds for all what you believe here. You followed up on
4 it and I think you should let it go." That's my recall.

5 **MS. SIMMS:** Okay. And your recollection
6 initially when you were discussing this conversation was
7 that there was reference to you having already followed up
8 with Justice Cunningham?

9 **MR. McCONNERY:** Yes.

10 **MS. SIMMS:** Are you not sure as to the
11 timing of that?

12 **MR. McCONNERY:** Of the conversation with Mr.
13 Segal?

14 **MS. SIMMS:** Right, whether it was before or
15 after this letter we have referenced of March 14th?

16 **THE COMMISSIONER:** March 14th.

17 **MR. McCONNERY:** Right. What I'm saying is
18 I'm not sure if Mr. Stewart then decided if it was still
19 appropriate to ask Justice Cunningham to explain the delay
20 and not this other issue about ---

21 **THE COMMISSIONER:** Are we going to see the
22 letter from Mr. Stewart to Justice Cunningham?

23 **MR. McCONNERY:** That's before the court.
24 That's the email.

25 **THE COMMISSIONER:** Oh, that's it?

1 **MR. McCONNERY:** Yeah. That's correct.

2 **THE COMMISSIONER:** Oh, okay. So there's a -
3 - wait a minute. Where's ---

4 **MS. SIMMS:** The email is 3064.

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

6 **MS. SIMMS:** And the email refers to a
7 previous letter -- appears to refer to a previous letter.

8 In the first paragraph, it says:

9 "I did write a letter to you asking
10 that both Crown and defence be
11 requested to attend."

12 I haven't located that particular letter but
13 we can take another look for that.

14 And are you speaking, Mr. McConnery, of a
15 subsequent letter to the March 14th?

16 **MR. McCONNERY:** No.

17 **MS. SIMMS:** No. Okay.

18 **MR. McCONNERY:** No, and all I'm saying is as
19 I try to put my mind back to it, I'm not sure if Mr.
20 Stewart asked for the meeting to talk about the delaying
21 which seems to be the focus of the email, after we were
22 told by Mr. Segal that maybe we were going down the wrong
23 track.

24 **MS. SIMMS:** Okay.

25 **MR. McCONNERY:** And -- or if it was before

1 and then we alerted Mr. Segal. I just can't put that into
2 a context for you now. I apologize.

3 **MS. SIMMS:** That's fine.

4 **THE COMMISSIONER:** So what you're telling me
5 though is that Mr. Justice Cunningham was never addressed
6 with the concern that you had that after discussion with
7 defence counsel, it just so happened that ---

8 **MR. McCONNERY:** Yes.

9 **THE COMMISSIONER:** --- the judge was
10 assigned? He never got wind of that?

11 **MR. McCONNERY:** That's right. The only way
12 he might have is if -- in the notes, I spoke to Linda
13 Leblanc and I spoke to Mary Simpson.

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

15 **MR. McCONNERY:** I had no basis to suggest
16 they had had a meeting with Mr. Neville, so I suppose when
17 I look at my notes now I tried to be coy and say, "How come
18 this happened? Did Mr. Neville come up and talk?" and I
19 was told, "No. No, no, this is a change of judge" and so,
20 no, if they'd -- because Ms. Simpson directs us then to
21 contact Justice Cunningham and she said she got her
22 direction from Justice Cunningham, and so we had no
23 indication that Mr. Neville had gone up and done anything
24 but, in our view, the optics looked like the defence picked
25 the trial judge.

1 **MS. SIMMS:** And you think that perhaps
2 following your conversation with Mr. Segal, there was a --
3 that may have been the timing in terms of after that
4 conversation the email was sent that we've referred to?

5 **MR. McCONNERY:** M'hm.

6 **MS. SIMMS:** The letter was received in
7 response from Justice Cunningham indicating that the change
8 was made for scheduling reasons, and you don't recall any
9 further steps after that?

10 **MR. McCONNERY:** I think we put the issue to
11 bed, so to speak.

12 **MS. SIMMS:** So at this -- part of this
13 change you mention, I don't know if you actually mention
14 the date. The change required an adjournment of the trial
15 now till April 29th ---

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** --- of 2002. Is that correct?

18 **MR. McCONNERY:** Yes.

19 **MS. SIMMS:** So you had been, I assume,
20 preparing for trial up to now and you continued your
21 preparation?

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** Sir, I'm going to just ask you a
24 couple questions about some issues that arose during that
25 time period.

1 **MR. McCONNERY:** Okay.

2 **MS. SIMMS:** And one thing that you had
3 referenced with us was -- and just very briefly, you'd
4 referenced in terms of disclosure issues with respect to
5 some other officers' notes?

6 **MR. McCONNERY:** Yes, correct.

7 **MS. SIMMS:** I'm just seeing if I can --
8 sorry, there's a -- locate a letter that refers to that.
9 So I'm going to ask you to look at Document Number 130408,
10 just very briefly.

11 **THE COMMISSIONER:** Thank you.

12 Exhibit Number 3066 is a letter dated March
13 11, 2002 addressed to Mr. Neville from Lorne McConnery.

14 **--- EXHIBIT NO./PIÈCE NO. P-3066:**

15 (130408) - Letter from Lorne McConnery to
16 Mike Neville re: R. v. Charles MacDonald
17 dated March 11, 2002

18 **MS. SIMMS:** So, Mr. McConnery, just in terms
19 of disclosure, point B of your letter of March 11, 2002
20 notes that you're enclosing the notes of Detective
21 Inspector Tim Smith.

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** And you're noting that Officer
24 Fagan has since retired; believe his notes have been
25 disclosed. He's attempting to recover his original notes.

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** All right.

3 So Inspector Smith and Constable Fagan were
4 involved in investigating allegations with respect Charles
5 MacDonald in 1994 and then again in 1995, leading up to the
6 charges with respect to David Silmser and others?

7 **MR. McCONNERY:** Yes.

8 **MS. SIMMS:** Is that right?

9 **MR. McCONNERY:** Yes.

10 **MS. SIMMS:** Okay. So it appears at this
11 time you're still providing disclosure with respect to
12 these officers' notes?

13 **MR. McCONNERY:** Yes.

14 **MS. SIMMS:** And, again, you note that
15 Officer Fagan believes his notes had been disclosed but you
16 were not in a position to be able to determine if that was
17 the case or not?

18 **MR. McCONNERY:** That's right.

19 **MS. SIMMS:** So ---

20 **MR. McCONNERY:** I believe I have a note
21 somewhere that Mr. Neville asked me about Fagan's notes,
22 and that's why I was following up. He had changed
23 attachments, and notes were here and there. He came in, he
24 had a box of notes, and we went through them and tried to
25 determine how complete they were and sent them -- I think I

1 eventually sent them to Mr. Neville.

2 **MS. SIMMS:** I do have a letter where -- it's
3 not from yourself but it's from Mr. Phillips. It's
4 Document Number 130422.

5 **THE COMMISSIONER:** Thank you.

6 Exhibit Number 3067 is a letter from Kevin
7 Phillips to Michael Neville dated April 10th, 2002.

8 **--- EXHIBIT NO./PIÈCE NO. P-3067:**

9 (130422) - Letter from Kevin Phillips to
10 Michael Neville re: *R. v. Charles MacDonald*
11 dated April 10, 2002

12 **MS. SIMMS:** So this letter -- you noted that
13 you recalled that those notes were provided to defence
14 counsel, so this later of April 10th indicates that it's
15 enclosing some materials from Officer Fagan, including
16 notes which begin from February 8th, 1994?

17 **MR. McCONNERY:** Yes.

18 **MS. SIMMS:** And as well as notes prepared by
19 OPP Detective Chris McDonell?

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** And that's with respect to a
22 previous investigation as well?

23 **MR. McCONNERY:** Yeah. I can't -- I don't
24 recall which one it was.

25 **MS. SIMMS:** So in the end, these notes were

1 disclosed on April 10th, 2002?

2 MR. McCONNERY: Yes.

3 MS. SIMMS: They ought to have been
4 disclosed certainly long before this date. Is that fair to
5 say?

6 MR. McCONNERY: Absolutely.

7 MS. SIMMS: And you had no means of
8 determining whether they had or they hadn't?

9 MR. McCONNERY: Certainly wasn't a
10 disclosure register ---

11 MS. SIMMS: Okay.

12 MR. McCONNERY: --- which is followed in
13 some cases.

14 MS. SIMMS: It's a file with a very long
15 history, Mr. McConnery.

16 MR. McCONNERY: Absolutely.

17 MS. SIMMS: And there's a number of Crowns
18 involved, there's a number of different investigations, so
19 I take it it would have been of assistance to you to have
20 some kind of summary or registry of tracking these various
21 disclosures?

22 MR. McCONNERY: I agree.

23 MS. SIMMS: Was it a concern to you,
24 considering that you're facing -- and at this point, I
25 mean, it's been clear to you for some time but it's quite

1 clear that there will be a stay application heard at the
2 commencement of the trial. Is that ---

3 **MR. McCONNERY:** Yes.

4 **MS. SIMMS:** --- fair to say? In early 2002
5 you're aware of that?

6 **MR. McCONNERY:** Oh, absolutely.

7 **MS. SIMMS:** Absolutely?

8 **MR. McCONNERY:** Yes.

9 **MS. SIMMS:** So it's unfortunate that you're
10 still making a disclosure at this time period. Certainly,
11 one of the arguments you know is going to be advanced is
12 timeliness of disclosure?

13 **MR. McCONNERY:** Yes. But, I mean, you also
14 look at the disclosure and see -- and determine whether or
15 not it's particularly significant. For instance, if Mr.
16 Neville -- and I don't remember this at all -- but the
17 notes of OPP Detective Constable Chris McDonnell, I don't
18 know if they related to the investigation of Father
19 MacDonald. It may have touched on something else and Mr.
20 Neville said, you know, something, "I'd like to see that".

21 I don't think that would have been a concern
22 to me but, on the other hand, without reading them, maybe
23 they were very germane to MacDonald. I just don't know
24 that at this time.

25 **MS. SIMMS:** Fair enough, but certainly notes

1 with respect to Inspector Smith and Detective Fagan?

2 **MR. McCONNERY:** Could have been. Yeah,
3 could have been very critical.

4 You know, what I would also tell you is
5 frequently detective inspector's notes don't get turned
6 over as a natural part of disclosure, and one of the
7 reasons is they're not hands on. They direct; they don't
8 interview. And so they're not dealing with witnesses,
9 they're holding meetings with officers, they're here,
10 they're there.

11 A detective inspector with the OPP might
12 have 30 different major cases going on, and he might pop
13 into Long Sault, review the investigation and say, "Here's
14 what we have to do".

15 So often those notes aren't that critical,
16 but certainly in a hands-on investigator those notes ---

17 **MS. SIMMS:** Someone who's ---

18 **MR. McCONNERY:** --- are critical.

19 **MS. SIMMS:** --- taken statements and ---

20 **MR. McCONNERY:** And if Mr. Neville felt
21 there was something in Officer Smith's notes that was
22 important, certainly they should have been disclosed.

23 **MS. SIMMS:** So during this time period as
24 well we just referenced, you are meeting -- beginning to
25 meet with the complainants ---

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** --- in the prosecution?

3 And would this be the first time that you
4 had the opportunity to meet with them, to discuss
5 preparation for trial?

6 **MR. McCONNERY:** I believe so. I don't know
7 that I had ever had any contact with any of the
8 complainants up to that point.

9 **MS. SIMMS:** Okay. And how was -- I
10 understand that the victim was -- the witness Assistance
11 Program was involved ---

12 **MR. McCONNERY:** Yes.

13 **MS. SIMMS:** --- at the time that you assumed
14 carriage of this file?

15 **MR. McCONNERY:** Yes, that's correct.

16 **MS. SIMMS:** So was it your understanding
17 that contact with -- and information was being conveyed to
18 the complainants by the Victim Witness Assistance Program?

19 **MR. McCONNERY:** By that program, and by the
20 police, yes.

21 **MS. SIMMS:** Okay. Because there's been a
22 number -- since you became involved, there had been a major
23 adjournment, a year-long adjournment ---

24 **MR. McCONNERY:** Right.

25 **MS. SIMMS:** --- and you just mentioned two

1 other subsequent smaller ---

2 MR. McCONNERY: Yes.

3 MS. SIMMS: --- adjournments.

4 MR. McCONNERY: Yes.

5 MS. SIMMS: So were you in contact with any
6 of the complainants about those issues or that was ---

7 MR. McCONNERY: Was I personally? I don't
8 think I was calling them to say, "Unfortunately, we've been
9 delayed another month", no.

10 MS. SIMMS: But you do recall being in
11 contact with Victim Witness Assistance Program workers?
12 They'll take information going back and forth?

13 MR. McCONNERY: Yes. I or Kevin Phillips,
14 or an officer, would inform them.

15 MS. SIMMS: So I'm going to ask you to look
16 at a meeting with one of the complainants, C-8, that you
17 had on March 12th, 2002, and you have notes of that meeting
18 which is Document Number 130412.

19 MR. McCONNERY: Yes.

20 THE COMMISSIONER: And do you know who C-8
21 is?

22 MR. McCONNERY: I certainly do.

23 THE COMMISSIONER: Okay.

24 MS. SIMMS: So 130412.

25 THE COMMISSIONER: Thank you.

1 Exhibit 3068 is Mr. McConnery's notes of
2 interview -- no. Yes. Those are your notes, sir?

3 **MR. McCONNERY:** Yes, they are.

4 **THE COMMISSIONER:** All right, of C-8? So
5 dated March 12th, 2002.

6 **MS. SIMMS:** And they should be subject to
7 publication ban.

8 **THE COMMISSIONER:** Yes, they will.

9 **---EXHIBIT NO./PIÈCE NO P-3068:**

10 (130412) - Notes of Lorne McConnery re: C-8
11 dated March 12, 2002

12 **MR. McCONNERY:** There are other notes
13 though.

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

15 **MR. McCONNERY:** There are other notes.

16 **MS. SIMMS:** There are other notes of your
17 meeting?

18 **MR. McCONNERY:** Yes.

19 **MS. SIMMS:** Okay, I will see if I can ---

20 **MR. KLOEZE:** Mr. Commissioner, I believe Mr.
21 McConnery's practice was to write rough notes of an
22 interview at the time that it's being taken, and then these
23 would be the notes that he prepared after the fact ---

24 **THE COMMISSIONER:** Right.

25 **MR. KLOEZE:** --- so they're more complete.

1 So there are -- there is another set of notes in the
2 materials that are the rough notes from this interview.

3 **MR. McCONNERY:** That -- that's correct.

4 But, I mean, this particular note was written very
5 specifically to capture what happened in the interview, and
6 it was written so that I could disclose it to Mr. Neville.

7 **MS. SIMMS:** Okay.

8 **THE COMMISSIONER:** So what's your position
9 then? Would you like to see the rough notes as well?

10 **MR. McCONNERY:** Yes.

11 **THE COMMISSIONER:** Okay. Do we have the
12 rough notes?

13 **MS. SIMMS:** I have the document number for
14 the rough notes. I haven't given notice, so I don't have
15 a copy here, but we can get them.

16 **THE COMMISSIONER:** And put them on the
17 screen? Well, it may be -- what time is it now? So ---

18 **MR. McCONNERY:** I have reviewed them. If
19 there are any questions, I think I can deal with it, but
20 I'd like to see them again at some point.

21 **THE COMMISSIONER:** No. Let's take the lunch
22 break now; come back at 1:45. How does that work? In
23 the meantime, can you please canvass counsel to see how
24 long the cross-examination will take, so that we can order
25 our affairs accordingly ---

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

2 **THE COMMISSIONER:** --- all right? Thank
3 you.

4 **THE REGISTRAR:** Order; all rise. A
5 l'ordre; Veuillez vous lever.

6 This hearing will resume at 1:45 p.m.

7 --- Upon recessing at 12:10 p.m./

8 L'audience est suspendue à 12h10

9 --- Upon resuming at 1:49 p.m. /

10 L'audience est reprise à 13h49

11 **THE REGISTRAR:** Order; all rise. A
12 l'ordre; Veuillez vous lever.

13 This hearing is now resumed. Please be
14 seated. Veuillez vous asseoir.

15 **LORNE McCONNERY, Resumed/Sous le même serment:**

16 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR**

17 **MS. SIMMS (cont'd/suite):**

18 **MS. SIMMS:** Good afternoon, Mr. McConnery.

19 We have located the rough notes that you
20 were asking about, but just before we go back to that, I
21 wanted to quickly clarify some of your evidence regarding
22 the consideration you were giving to seeking an out-of-
23 court judge, or out-of-region judge.

24 **MR. McCONNERY:** Yes.

25 **MS. SIMMS:** You remember that?

1 MR. McCONNERY: Yes.

2 MS. SIMMS: So if you could refer to Exhibit
3 3063.

4 MR. McCONNERY: Yes.

5 MS. SIMMS: Okay. And in Mr. Stewart's memo
6 here, one of the issues he raises in addition to the issue
7 you were dealing with at the time, was concerns about the
8 Leduc case, and that is sort of halfway down the page ---

9 MR. McCONNERY: Yes.

10 MS. SIMMS: --- when he starts his
11 paragraph:

12 "The only viable course of action is
13 for a new judge from completely out of
14 the East Region, with no ties to the
15 case or any judge in the east in light
16 of this history, and including the
17 appeal on the Leduc matter."

18 MR. McCONNERY: Yes.

19 MS. SIMMS: So we discussed before how
20 Ms. Hallett had raised the issues on the Leduc matter as an
21 issue, and she had suggested to you an out-of-region judge
22 sometime previously?

23 MR. McCONNERY: Yes.

24 MS. SIMMS: You recall that? And so your
25 considerations at this time with Mr. Stewart included not

1 just the recent events, but also back to considering the
2 conflict interest that may have occurred in the Leduc
3 matter. Is that fair?

4 **MR. McCONNERY:** Certainly that was in the
5 background, yes.

6 **MS. SIMMS:** Okay. And that was one of the
7 considerations when you were considering an appeal for an
8 out-of-region justice?

9 **MR. McCONNERY:** Yes.

10 **MS. SIMMS:** And that was discussed with --
11 was this an idea that was raised here by Mr. Stewart or was
12 that part of your discussions, generally?

13 **MR. McCONNERY:** Well, I think it was
14 discussed in this context, and it had probably been
15 discussed earlier in my stay in Ottawa.

16 **MS. SIMMS:** Okay. And just to --- I also --
17 you mentioned -- this is your note as well where it says:

18 "Accurate, see attached memo of
19 R. Pelletier."

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** And that's in reference to the
22 judge who was part of the Leduc matter; had previously
23 represented Charles MacDonald?

24 **MR. McCONNERY:** Correct.

25 **MS. SIMMS:** That was the issue you were

1 referring to?

2 MR. McCONNERY: Yes.

3 MS. SIMMS: And you referenced this to a
4 memo from Mr. Pelletier, and I just wanted to show you that
5 briefly and just confirm this is what you were referring
6 to.

7 MR. McCONNERY: Certainly.

8 MS. SIMMS: And so that's Exhibit 2673.

9 THE COMMISSIONER: If it's just a memo, I
10 can look at it on the screen.

11 MS. SIMMS: Sorry -- the Document Number is
12 112884.

13 So, Mr. McConnery, this is a memo from
14 Mr. Pelletier. I think it's dated February, '96, if you
15 scroll to the top of the page?

16 MR. McCONNERY: Yes.

17 MS. SIMMS: Yes, okay.

18 And it's Mr. Pelletier's memo on --
19 regarding the Charles MacDonald's prosecution, and at this
20 point charges are not laid? If you look at the first --
21 or, sorry, he's referring back to January 15th prior to
22 charges being laid?

23 MR. McCONNERY: Yes.

24 MS. SIMMS: Okay. And if you look on the
25 following page ---

1 THE COMMISSIONER: What portion?

2 MS. SIMMS: Pardon?

3 THE COMMISSIONER: What portion?

4 MS. SIMMS: The first paragraph of the
5 following page.

6 So he's referencing there receiving a phone
7 call from Colin MacKinnon, counsel for Charles MacDonald,
8 with regards to possible criminal charges. Do you see that
9 on February 1st, '96?

10 MR. McCONNERY: Yes, I do.

11 MS. SIMMS: And that's prior to charges
12 being laid?

13 MR. McCONNERY: Yes, I believe it is.

14 MS. SIMMS: Yes.

15 MR. McCONNERY: Yes.

16 MS. SIMMS: And that is what you're
17 referencing when you made that note on Mr. Stewart's memo?

18 MR. McCONNERY: Yes.

19 MS. SIMMS: Okay.

20 And with respect to the -- so your
21 conversations about potentially bringing a motion to seek
22 an out-of-region judge, that involved consideration of both
23 these issues, the issue of the most recent adjournment and
24 thoughts about the Leduc matter and the fact that Justice
25 MacKinnon was the presiding judge at the beginning of the

1 Leduc trial. Is that correct? Do you recall that?

2 **MR. McCONNERY:** No, I recall the two issues.
3 I think that the thought about asking for an out-of-
4 jurisdiction judge, did it -- was it a consideration of
5 both these issues?

6 **MS. SIMMS:** Well, it certainly mentions ---

7 **MR. McCONNERY:** I think it was. Yes, it was
8 to some extent.

9 **MS. SIMMS:** Okay.

10 **MR. McCONNERY:** One -- yes.

11 **MS. SIMMS:** Okay. You mentioned the call
12 that you and Mr. Stewart made to Mr. Segal.

13 **MR. McCONNERY:** Yes.

14 **MS. SIMMS:** And just as a point of
15 clarification from the evidence that incurred, was it your
16 understanding that it was your direction from Mr. Segal not
17 to pursue this course of action or -- and that's what ended
18 the matter or what was your understanding of his advice to
19 you?

20 **MR. McCONNERY:** It was to very seriously
21 consider what we were talking about and not to take any
22 step without advising him. And I read him as saying I
23 don't think you should be taking this forward.

24 **MS. SIMMS:** So I'm going to move back to
25 where we were at the time we broke for lunch, and you had

1 mentioned you had rough notes with respect to your
2 interview with C-8.

3 **MR. McCONNERY:** Yes.

4 **MS. SIMMS:** And we've located those notes.
5 It's Document Number 130411.

6 **THE COMMISSIONER:** Thank you.

7 Exhibit 3069 is those notes dated March 12th,
8 2002 which are the rough notes that helped compile Exhibit
9 3068.

10 **--- EXHIBIT NO./PIÈCE NO. P-3069:**

11 (130411) - More notes of Lorne McConnery re:
12 C-8 dated March 12, 2002

13 **MS. SIMMS:** And they should be marked
14 subject to publication ban.

15 **THE COMMISSIONER:** Both of them, yes. Thank
16 you.

17 **MS. SIMMS:** So, Mr. McConnery, are these the
18 notes you were referring to?

19 **MR. McCONNERY:** Yes, I believe they are,
20 yes.

21 **MS. SIMMS:** Okay. So the notes that we're
22 looking at Exhibit 3069 are notes you took in the course of
23 the interview you had with C-8 on March 12th?

24 **MR. McCONNERY:** Yes.

25 **MS. SIMMS:** Okay. And why don't -- why

1 don't you just tell us what the purpose of this meeting
2 was? Was this for preparation for the trial?

3 **MR. McCONNERY:** Yes, preparation for the
4 trial, but Mr. C-8's earlier involvement had raised very
5 significant concerns in my view about any decision by the
6 Crown to proceed on his charges.

7 **MS. SIMMS:** What earlier involvement are you
8 referring to?

9 **MR. McCONNERY:** Well, very frankly, his
10 preliminary hearing transcript ---

11 **MS. SIMMS:** In this prosecution?

12 **MR. McCONNERY:** --- in this prosecution;
13 also his involvement in his prosecution of another accused
14 who I can only remember as being a bus driver. I don't
15 remember the name.

16 **MS. SIMMS:** Are you thinking perhaps of
17 Marcel Lalonde, the school teacher?

18 **MR. McCONNERY:** If that's the bus ---

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

20 **MR. McCONNERY:** No.

21 **THE COMMISSIONER:** Leblanc is the bus driver
22 and I don't know that you would have had anything to do
23 with that.

24 **MR. McCONNERY:** No. Whichever other matter
25 he had testified on.

1 **THE COMMISSIONER:** Okay. So for the record,
2 we know that he testified with respect to Monsieur Lalonde
3 and at that trial, whatever, he had recanted about the part
4 about him being abused while he was on a school expedition
5 ---

6 **MR. McCONNERY:** Yes.

7 **THE COMMISSIONER:** --- because -- well, for
8 whatever reason.

9 **MR. McCONNERY:** Yes.

10 **THE COMMISSIONER:** Okay?

11 **MR. McCONNERY:** Yes.

12 **THE COMMISSIONER:** So is that how you recall
13 that?

14 **MR. McCONNERY:** Yes. So he -- and in fact,
15 when I thought about it, I thought he had testified and
16 then changed his testimony in cross-examination, but it may
17 have been he had testified at the preliminary hearing, then
18 changed his story, advised the Crown and was called as a
19 witness.

20 But the bottom line was that he had
21 committed potentially a perjury in that prosecution at some
22 point.

23 When I read his evidence in-chief on the
24 MacDonald preliminary hearing, in my respectful submission,
25 there were probably three or four very significant areas of

1 concern and by the completion of Mr. Neville's cross-
2 examination, I thought it was abundantly clear that he was
3 not being truthful on those two or three or four issues.

4 And I had very significant concern about
5 reasonable prospect of conviction on the charges relating
6 to C-8. So as we were getting ---

7 **MS. SIMMS:** So you arranged this meeting for
8 the purposes of speaking to C-8 on those issues that you
9 were concerned about?

10 **MR. McCONNERY:** I apologize. Yes, C-8.

11 **MS. SIMMS:** We'll correct the record.

12 **MR. McCONNERY:** Okay. I apologize.

13 Yes, I wanted to try to meet with him to
14 assess him personally. Was he somebody who was trying to,
15 in my view, advance the cause of justice as a person
16 attempting -- struggling with maybe -- but attempting to
17 tell the truth? And that's why I met him and I wanted him
18 to understand very clearly from me that if we proceeded
19 that he was going to have a very difficult time ---

20 **MS. SIMMS:** So as it happened -- sorry, as
21 it happens, and maybe we can refer back to your rough
22 notes, but Exhibit 3068, which is a different version of
23 the notes you wrote later ---

24 **MR. McCONNERY:** Yes.

25 **MS. SIMMS:** --- you note some discussion

1 about sort of -- well, the small talk about -- at the
2 beginning of the meeting.

3 **MR. McCONNERY:** Yes.

4 **MS. SIMMS:** And then the next thing you note
5 is:

6 "I asked him what he was thinking about
7 the MacDonald trial and he told me he
8 would like the charges dropped."

9 **MR. McCONNERY:** Yes.

10 **MS. SIMMS:** So as it happened, is it fair to
11 say that in your meeting, even before you got into all
12 those issues, a new issue arose which was he's asking you
13 to drop the charges?

14 **MR. McCONNERY:** Well, it wasn't a request
15 that he made that surprised me.

16 **MS. SIMMS:** Okay.

17 **MR. McCONNERY:** So no, I wouldn't say I was
18 taken aback by that or anything.

19 **MS. SIMMS:** I wasn't suggesting you were
20 taken aback but you mentioned that you had wanted to
21 canvass all these issues with C-8.

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** And it seems from both your
24 rough notes and from your prepared notes, before you even
25 got into those issues, you were advised by him that he

1 wanted the charges dropped?

2 **MR. McCONNERY:** And, in fact, I think the
3 officer even told me that before I met C-8.

4 **MS. SIMMS:** Okay. So they were aware that
5 he had made that request previously?

6 **MR. McCONNERY:** Yes, m'hm.

7 **MS. SIMMS:** Okay. So you continue to speak
8 to him on a number of issues, including issues of his
9 relationship with Perry Dunlop?

10 **MR. McCONNERY:** Correct.

11 **MS. SIMMS:** You asked him questions
12 regarding the videotapes that were seized from Ron Leroux's
13 house in 1993?

14 **MR. McCONNERY:** Yes.

15 **MS. SIMMS:** And then the concerns -- and
16 here actually on page 3 of your prepared notes, which is at
17 Bates page 129, second paragraph, you're referring to the
18 teacher, Lalonde. Do you see that?

19 **MR. McCONNERY:** Yes, I do.

20 **MS. SIMMS:** Teacher Lalonde. So that's who
21 you were thinking of in terms of the previous issue?

22 **MR. McCONNERY:** Yeah. You know, I always
23 seem to think of it as a bus driver for some reason, but it
24 was whenever he had testified on the other trial.

25 **MS. SIMMS:** And then C-8 talks to you as

1 well about -- well, in that context with respect to that
2 allegation, he speaks to you about Dunlop's -- discussions
3 he had with Dunlop when he was bringing that allegation.

4 MR. McCONNERY: Yes.

5 MS. SIMMS: Right?

6 MR. McCONNERY: Yes.

7 MS. SIMMS: And then you get into asking him
8 some questions about the particular allegation he made with
9 respect to Charles MacDonald that was at his father's -- at
10 C-8's father's funeral, or allegedly at C-8's father's
11 funeral.

12 MR. McCONNERY: Yes.

13 MS. SIMMS: Right?

14 MR. McCONNERY: Yes.

15 MS. SIMMS: And you've reviewed these notes.

16 MR. McCONNERY: I've read these over today,
17 yes.

18 MS. SIMMS: All right. And you have -- you
19 have an indication of what he told you about that
20 particular incident in your prepared notes here, and you
21 also -- perhaps it's better to refer to your notes, the
22 notes you made at the time, because you have quoted some
23 answers on those notes regarding this incident. So if you
24 can look at Exhibit 3069.

25 MR. McCONNERY: Yes.

1 **MS. SIMMS:** You were questioning C-8 about
2 an allegation of abuse that he'd made against Charles
3 MacDonald that allegedly happened at C-8's father's
4 funeral?

5 **MR. McCONNERY:** Yes.

6 **MS. SIMMS:** And at the very end of your
7 rough notes, which is Bates page 126, you have in quotes:

8 "That never happened at my father's
9 funeral. What I said happened re the
10 candle never happened."

11 **MR. McCONNERY:** Yes.

12 **MS. SIMMS:** So is that the best -- do you
13 recall him saying that?

14 **MR. McCONNERY:** Well, yes.

15 **MS. SIMMS:** Okay, and this is the note you
16 made at the time?

17 **MR. McCONNERY:** I think the way it's written
18 out, what happened was I decided it was time to end the
19 interview, and so I either asked him to step out -- I don't
20 recall that I stepped out, but then I tried to write down
21 these things that I put in quotation marks because I was
22 trying to get them as accurately as I could, but I think I
23 sort of called it to an end by then.

24 **MS. SIMMS:** So you made the decision and you
25 eventually did withdraw the counts relating to C-8's

1 allegations?

2 **MR. McCONNERY:** Yes.

3 **MS. SIMMS:** Right. And that was -- was that
4 based -- was that something you were already considering
5 doing or was that based on this interview?

6 **MR. McCONNERY:** I was certainly considering
7 it. I think that's apparent in what you referred to as my
8 prepared notes. These are notes -- they're written this
9 way because I intended to produce them to counsel -- of my
10 interaction with C-8, and I found it helpful today to read
11 them because it allowed me to recall when I met C-8 I
12 didn't intend to go into his allegations so much as talk to
13 him about some of those issues hanging over him, if you
14 will, and try to make a judgment for myself.

15 We actually did get into some of the
16 allegations more so than I had intended. You know, I
17 didn't -- I mean, I didn't give him transcripts or give him
18 a -- and say, "Prepare these and then I'll ask you some
19 questions". We were talking and it became quite clear to
20 me that he was prepared to say whatever he had to say to
21 get out of this trial. That was the view that I took of C-
22 8.

23 **MS. SIMMS:** So you're not obliged to
24 withdraw the charges because the complainant doesn't want
25 to proceed; correct? You could have made the decision to

1 proceed.

2 **MR. McCONNERY:** Certainly.

3 **MS. SIMMS:** Okay. So was that a
4 consideration for you or did you decided shortly after this
5 that you were going to withdraw the charges?

6 **MR. McCONNERY:** I was pretty close to there
7 prior to this interview having reviewed his testimony,
8 having reviewed the cross-examination, having reviewed
9 other statements, and maybe being as up-to-speed as I could
10 be about how he'd come forward, the thing on television
11 during one of the preliminary hearings, his involvement
12 with Perry Dunlop. What else?

13 All of these things were factors and I felt
14 I had to get some kind of personal -- my own personal view
15 of him and whether or not I would ever feel comfortable
16 calling him as a witness.

17 **MS. SIMMS:** So you made the decision to
18 withdraw the charges shortly after this meeting?

19 **MR. McCONNERY:** What date was this, March
20 12?

21 **MS. SIMMS:** It's March 12th. The charges ---

22 **MR. McCONNERY:** March 14th.

23 **MS. SIMMS:** Sorry, the charges aren't
24 formally withdrawn until the second day of the hearing of
25 the application, but I presume you made the decision prior

1 to that?

2 MR. McCONNERY: Oh yes.

3 MS. SIMMS: Okay.

4 MR. McCONNERY: Yes. In fact, I believe I
5 informed Mr. Neville prior to that.

6 MS. SIMMS: Okay, and had -- were you
7 involved in informing C-8 or did -- do you know when C-8
8 was informed?

9 MR. McCONNERY: No, I don't.

10 MS. SIMMS: Was there any reason for the
11 particular timing of withdrawing the charges on the second
12 day -- I can't recall if it's the second or third day of
13 the application?

14 MR. McCONNERY: I think there was, but I
15 think it related more specifically to C-2.

16 MS. SIMMS: Okay. So C-2 -- you also made
17 the decision to withdraw the counts relating to C-2?

18 MR. McCONNERY: That's correct.

19 MS. SIMMS: Is that right?

20 And C-2's charges were the last set of
21 charges to be laid?

22 MR. McCONNERY: Yes.

23 MS. SIMMS: That's correct? So he was a
24 complainant who had come forward -- or, sorry, I won't say
25 "come forward" -- that the OPP received information

1 regarding C-2 from Perry Dunlop in January of 2000.

2 MR. McCONNERY: That's correct.

3 MS. SIMMS: You recall that?

4 MR. McCONNERY: Yes. I'm not sure of the
5 date but, yes, it was through Perry Dunlop.

6 MS. SIMMS: And charges were subsequently
7 laid in the spring of that year?

8 MR. McCONNERY: Yes.

9 MS. SIMMS: You recall that?

10 And you recall those new allegations or
11 those new charges being one of the factors that resulted in
12 the adjournment of the trial date that had been set in this
13 prosecution for April of 2000?

14 MR. McCONNERY: Yes.

15 MS. SIMMS: Okay.

16 MR. McCONNERY: Yes, that's true.

17 MS. SIMMS: So with respect to C-2, I
18 understand you met with him the day following your meeting
19 with C-8, and you have notes which I think are rough notes
20 of that meeting, which is Document Number 130413.

21 THE COMMISSIONER: Thank you.

22 Exhibit Number 3070 is notes dated March
23 13th, 2002.

24 MS. SIMMS: It should be marked subject to
25 publication ban.

1 **THE COMMISSIONER:** Thank you.

2 **--- EXHIBIT NO./PIÈCE NO. P-3070:**

3 (130413) - Notes of Lorne McConnery re: C-2
4 dated March 13, 2002

5 **MS. SIMMS:** Sir, is this your first meeting
6 with C-2 as you recall it?

7 **MR. McCONNERY:** I believe it was, yes.

8 **MS. SIMMS:** And, again, were you approaching
9 this meeting because you had pre-existing concerns about
10 the prospect of conviction on these particular charges?

11 **MR. McCONNERY:** I don't think I approached
12 this the same way I did C-8's, but I can tell you that I
13 had reasonable prospect of conviction concerns about C-2 --
14 -

15 **MS. SIMMS:** Okay.

16 **MR. McCONNERY:** --- already existing before
17 I met him.

18 **MS. SIMMS:** Okay. And so when you're
19 meeting with him, I note that a lot of your notes relate to
20 his interactions with Perry Dunlop. There's also mention
21 of Carson Chisholm.

22 **MR. McCONNERY:** Yes.

23 **MS. SIMMS:** Is this related to the
24 information you've just received the day before from C-8
25 about his interactions with Mr. Dunlop?

1 **MR. McCONNERY:** When I look back at these
2 notes, I see how much time we talked about Dunlop and I
3 don't know if that was -- now when I look at it I don't
4 know if that was so much my concern or if, having raised
5 it, he just spent a lot of time talking about it.

6 **MS. SIMMS:** Okay.

7 **MR. McCONNERY:** But it does seem to comprise
8 a lot of the ---

9 **MS. SIMMS:** Do you recall if it was a
10 concern that was in the front of your mind at the time; Mr.
11 Dunlop's involvement with the various complainants?

12 **MR. McCONNERY:** I was very aware of that
13 issue, yes.

14 **MS. SIMMS:** And, again, I take it you're
15 having this meeting to -- similar to what you said about C-
16 8 -- you were having this meeting to make your own personal
17 assessment of ---

18 **MR. McCONNERY:** That was a big part of it,
19 yes.

20 **MS. SIMMS:** --- the complainant.

21 **MR. McCONNERY:** I think I intended maybe
22 more to go into his evidence with him than I had with -- my
23 intention with C-8, but certainly with C-2 a good part of
24 the purpose of meeting him specifically on that date was
25 for me to try to continue to build an assessment of him as

1 a potential witness.

2 MS. SIMMS: And so you do make the decision,
3 Mr. McConnery, to withdraw the counts in relation to C-2 --
4 -

5 MR. McCONNERY: I did.

6 MS. SIMMS: --- as well.

7 And with that, do you recall when you made
8 that decision it wasn't -- I think as the application --
9 the trial date was approaching, C-2 was still on the
10 witness list. You still had not yet notified defence
11 counsel that you were not going to proceed with those
12 charges, so do you recall when you made the decision to
13 withdraw those counts?

14 MR. McCONNERY: I know it was very close to
15 the start of the application. I may stand corrected if
16 there's something that contradicts me.

17 I felt that I had advised Mr. Neville prior
18 to, say, things starting on the Monday morning -- I think
19 it was April 29th. I believe I had told Mr. Neville that I
20 would not proceed on the counts involving both C-2 and C-8.

21 I recall at some point he asked me about
22 dealing with it right away. I advised him that I had not
23 yet advised C-2 and I didn't want to do it prior to that.
24 But, basically, I think in the discussion we had, I
25 undertook to him that the counts involving those two

1 complainants, I would not proceed on.

2 MS. SIMMS: And you did meet with C-2 to
3 advise him of your decision?

4 MR. McCONNERY: Yes, I did.

5 MS. SIMMS: And we have some notes from that
6 meeting.

7 It's an excerpt, Madam Clerk, it's Document
8 Number 130444 and the Bates page number is 1171229.

9 (SHORT PAUSE/COURTE PAUSE)

10 MS. SIMMS: Do you recall -- while we're
11 looking for that, I can tell you the note itself is
12 undated. But you recall meeting with C-2 to advise him ---

13 MR. McCONNERY: Yes, I do.

14 MS. SIMMS: --- of your decision?

15 MR. McCONNERY: Yes, I do.

16 MS. SIMMS: And do you recall when that
17 would have been?

18 MR. McCONNERY: My recollection is the
19 second day of the hearing.

20 MS. SIMMS: Okay.

21 THE COMMISSIONER: How did he take it?

22 MR. McCONNERY: Not well.

23 THE COMMISSIONER: In which way?

24 MR. McCONNERY: He was very angry. He said
25 to me "This is all a bunch of bullshit". He talked about

1 having teenage children that would be upset. He reacted
2 the way I thought he would react. He was very upset with
3 me.

4 I tried to explain to him that I had spoken
5 to any number of prosecutors about his evidence and I
6 advised him that I am mandated by our Ministry policy to do
7 a reasonable prospect of conviction assessment. And that I
8 could -- I told him that in conscience I couldn't say that
9 I felt there was reasonable prospect to conviction.

10 **THE COMMISSIONER:** Okay.

11 **MR. McCONNERY:** And he was not pleased.

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

13 **MS. SIMMS:** Do you recall who had -- did you
14 consult on this issue with Mr. Stewart or with other
15 Project Truth Crowns?

16 **MR. McCONNERY:** No, I did not talk to any
17 other Project Truth Crown other than Kevin Phillips.

18 **MS. SIMMS:** M'hm.

19 **MR. McCONNERY:** And I can tell you that what
20 I did do is I ran it by other senior members of the Barrie
21 Crown's office.

22 **MS. SIMMS:** M'hm.

23 **THE COMMISSIONER:** Thank you.

24 The next exhibit will be Exhibit 3071 which
25 is an except of Document 130444 which is notes of meeting

1 with C-2.

2 --- EXHIBIT NO./PIÈCE NO. P-3071:

3 (130444 - 1171229) More Notes of Lorne

4 McConnery re: C-2 dated March 12, 2002

5 MR. McCONNERY: You can see, I estimated a
6 two-minute meeting. He left ---

7 MS. SIMMS: So this ---

8 MR. McCONNERY: He left pretty abruptly.

9 MS. SIMMS: All right. So beyond what's
10 written in your note, there's -- it encapsulates most of
11 what happened in that conversation?

12 MR. McCONNERY: I think so, yes.

13 MS. SIMMS: So we're going to turn now at
14 the start of the stay application. I wanted to just
15 complete the record to a certain extent with respect to
16 some of the materials that were filed and some of the
17 transcripts have been filed and some have not.

18 So I think it might be the most efficient
19 thing to just go through those together right now, and then
20 we'll come back to just a few further questions about the
21 application -- the stay application. Okay?

22 MR. McCONNERY: Yes.

23 MS. SIMMS: So the first -- with respect to
24 the record, there's two documents that I'd like to file
25 together is possible.

1 It's the application record cover page and
2 the Index from the application record on the 11(b)
3 application, Madam Clerk. So that's 109516 and 109517.

4 Oh, they could be filed perhaps as exhibit -
5 - the next exhibit number A and B if that's helpful.
6 There's really no way to identify the index unless it's
7 attached to the cover page, so you can keep them together.

8 **THE COMMISSIONER:** Thank you.

9 Exhibit 3072A is the Application Record
10 Cover Sheet and Exhibit 3072B is the Table of Contents.

11 **--- EXHIBIT NO./PIÈCE NO. P-3072A:**

12 (109516) - Application Record Title Page re:
13 Charles MacDonald dated March 26, 2002

14 **--- EXHIBIT NO./PIÈCE NO. P-3072B:**

15 (109517) - Table of Contents of Application
16 Record re: Charles Macdonald dated March 26,
17 2002

18 **MS. SIMMS:** And can I next refer you to
19 Document Number 109620. And this is the applicant's factum
20 in the 11(b) application of Charles MacDonald's.

21 **THE COMMISSIONER:** Thank you.

22 Exhibit Number 3073 is the applicant's
23 factum. Thank you.

24 **--- EXHIBIT NO./PIÈCE NO. P-3073:**

25 (109620) - Application Factum Part I Summary

1 of the Facts re: Charles MacDonald, undated
2 **MS. SIMMS:** And this version, Mr. McConnery,
3 had handwritten notes on it. And as you flip through it,
4 are those your notes that you made when reviewing the
5 document?

6 **MR. McCONNERY:** Yes, they are.

7 **MS. SIMMS:** The next document is an exhibit
8 already. There's a supplementary application record or
9 Volume II application record and if I can just again
10 introduce the cover page and the Index as an A and B to the
11 next exhibit. And the Document Numbers are 109584 and
12 109585.

13 **THE COMMISSIONER:** Thank you.

14 Exhibit 3074A is the application record
15 Volume II and 3074B is the table of contents.

16 **--- EXHIBIT NO./PIÈCE NO. P-3074A:**

17 (109584) - Application Record Title Page
18 Volume II re: Charles MacDonald, undated

19 **--- EXHIBIT NO./PIÈCE NO. P-3074B:**

20 (109585) - Table of Contents of Application
21 Record re: Charles Macdonald, undated

22 **MS. SIMMS:** And I'd also like to enter
23 transcripts from some of the volumes of the stay
24 application itself that have not yet been entered.

25 So the first is Volume I which is Document

1 Number 730979.

2 **THE COMMISSIONER:** So ---

3 **MS. SIMMS:** The next -- sorry, I apologize -
4 - the next is Document Number 730975.

5 This is Volume 5 of the Section 11(b) motion
6 transcript.

7 **THE COMMISSIONER:** Thank you.

8 Exhibit Number 3075 is a transcript of the
9 motion -- the Section 11(b) motion -- part of it, in any
10 event, of May 3rd, 2002.

11 --- **EXHIBIT NO./PIÈCE NO. P-3075:**

12 (730975) - Section 11(b) Motion, Volume 5,
13 dated May 3, 2002

14 **MS. SIMMS:** The next document is Document
15 Number 730974.

16 **THE COMMISSIONER:** Thank you.

17 Exhibit Number 3076 will be Volume 6 of the
18 Section 11(b) motion heard on May 6th, 2002.

19 --- **EXHIBIT NO./PIÈCE NO. P-3076:**

20 (730974) - Section 11(b) Motion, Volume 6,
21 dated May 6, 2002

22 **MS. SIMMS:** And the final transcript is
23 Document Number 730973.

24 **THE COMMISSIONER:** Thank you.

25 Exhibit 3077 is Volume 7 of the Section

1 11(b) motion heard on May 7th, 2002.

2 --- EXHIBIT NO./PIÈCE NO. P-3077:

3 (730973) - Section 11(b) Motion, Volume 7,
4 (Submissions) dated May 7, 2002

5 MS. SIMMS: So, Mr. McConnery, that last
6 exhibit we've just entered, 3077, contains your submissions
7 at the conclusion of the stay application.

8 MR. McCONNERY: Okay.

9 MS. SIMMS: Obviously, you made
10 comprehensive submissions at the time and I don't want to
11 pick that apart. I just want to hear from you your view on
12 what you were faced with on the 11(b) application and the
13 argument that you were attempting to make there.

14 So you've already told us that you thought
15 there was an exceptional amount of delay that you were
16 dealing with.

17 MR. McCONNERY: Yes.

18 MS. SIMMS: And is that something then that
19 you acknowledged with the court in your submissions?

20 MR. McCONNERY: I'm sorry, did I acknowledge
21 it? Yes.

22 MS. SIMMS: And I believe -- and we can
23 reference this if you like -- but perhaps you will recall
24 that you also acknowledged that there had been no
25 significant waiver of the Section 11(b) rights on the part

1 of the accused?

2 **MR. McCONNERY:** Yes, I do believe that my
3 position was that I could not establish any defence waiver.

4 **MS. SIMMS:** And on that point, Mr.
5 McConnery, we have heard here from Detective Constable
6 Dupuis that he recalls speaking to you about a conversation
7 or discussion he heard in the hallway between defence
8 counsel and Mr. Pelletier, who was a Crown -- one of your
9 predecessor Crown's on this file.

10 **MR. McCONNERY:** Yes.

11 **MS. SIMMS:** And he recalled speaking to you
12 on that matter. He believed he'd heard a discussion about
13 waiving the Section 11(b) rights of the accused with
14 respect to adjournment made for the purposes of
15 consolidating the charges.

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** Do you recall that, having a
18 discussion with Constable Dupuis on that issue?

19 **MR. McCONNERY:** I think I recall that
20 discussion, yes.

21 **MS. SIMMS:** What do you recall?

22 **MR. McCONNERY:** That he told me pretty well
23 what you've just told me; that he had a recollection of
24 hearing or being advised. I would have said being advised
25 that he thought there had been a defence concession of --

1 or waiver regarding that, when charges were being joined or
2 holding something in abeyance to wait for new charges to go
3 through the preliminary hearing process and adjoin the
4 indictment.

5 **MS. SIMMS:** And this would have been during
6 the time period that Mr. Pelletier was managing the file?

7 **MR. McCONNERY:** Yes, it related to the time
8 when Mr. Pelletier was the Crown.

9 **MS. SIMMS:** And so what did you do --
10 obviously it was brought to your attention -- well, I
11 shouldn't say "obviously" -- was this brought to your
12 attention prior to the hearing of the stay application?

13 **MR. McCONNERY:** Yes, it was.

14 **MS. SIMMS:** Okay. Do you recall when?

15 **MR. McCONNERY:** My general recollection is
16 that when I returned to Ottawa after Christmas, we began
17 turning our mind to the 11(b) application, although we
18 hadn't -- I don't think we'd been served with the
19 application yet, but, you know, our timelines, our
20 position, our -- yes, our factum, if you will. So sometime
21 in early 2002, my recollection is that he had a somewhat
22 vague recollection of a discussion.

23 **MS. SIMMS:** And did you follow-up -- the
24 information he provided you with, did you follow that up
25 with respect to reviewing the file or speaking to Mr.

1 Pelletier on the issue?

2 **MR. McCONNERY:** I recall going to L'Original
3 and meeting with Mr. Pelletier in his office. My
4 recollection of that is that Mr. Pelletier also had a vague
5 recollection and I think that we all felt we were going to
6 be guided by the transcripts.

7 **MS. SIMMS:** Okay. And when you're referring
8 to the transcripts, you're referring to the transcripts of
9 the adjournment request around the time of this discussion?

10 **MR. McCONNERY:** Yes.

11 **MS. SIMMS:** Okay. And do you recall
12 reviewing -- did you take that extra step of reviewing
13 documentation and transcripts from that time period?

14 **MR. McCONNERY:** Oh, I had definitely read
15 the transcripts, yes.

16 **MS. SIMMS:** All right. And what was your
17 view? We do have the transcript if you'd like to look at
18 it.

19 **MR. McCONNERY:** No, my recollection is that
20 contrary to some vague recollection of an 11(b) waiver, the
21 record was precisely clear that there was no waiver and
22 that Mr. Pelletier was aware there was no waiver. That's
23 my recall now.

24 **MS. SIMMS:** Okay.

25 **MR. McCONNERY:** If I'm thinking of the right

1 transcript.

2 **MS. SIMMS:** Well, I take it you -- so you
3 were satisfied that you weren't going to be able to advance
4 an argument of waiver based on this information you got
5 from Constable Dupuis and Mr. Pelletier?

6 **MR. McCONNERY:** No, very clearly I was of
7 the view that I couldn't advance that. The evidence I had
8 in the form of transcripts clearly suggested there was no
9 waiver. Not suggested ---

10 **THE COMMISSIONER:** Now, that's waiver not of
11 the whole thing but of a specific period ---

12 **MR. McCONNERY:** Yes.

13 **THE COMMISSIONER:** --- when we're dealing
14 with some discussion about consolidating of charges?

15 **MR. McCONNERY:** Correct.

16 **MS. SIMMS:** And that's consistent with the
17 position you took with respect to the application, that
18 there was no significant waiver?

19 **MR. McCONNERY:** Yes, I think it was
20 consistent.

21 **MS. SIMMS:** So you said you spent a lot of
22 time in December, and the months that followed I'm sure,
23 considering what your position and strategy was with
24 respect to the 11(b) application. You were of the view
25 that there was an exceptional period of time that had

1 passed?

2 **MR. McCONNERY:** Yes.

3 **MS. SIMMS:** You were of the view from the
4 beginning that this was going to be a large hurdle to you?

5 **MR. McCONNERY:** A very large hurdle.

6 **MS. SIMMS:** Okay. And you were of the view
7 that you couldn't establish any waiver with respect to
8 11(b) rights. Is that right?

9 **MR. McCONNERY:** Correct.

10 **MS. SIMMS:** So what was your theory of the
11 argument; what was the main thrust of your position with
12 respect to the application, can you recall?

13 **MR. McCONNERY:** This is not in -- I mean, do
14 you want me to sort of give my recall of what my position
15 was in the transcript?

16 **MS. SIMMS:** Well, I don't want you to
17 outline your position. Your position, as you presented it
18 to the court, was in the transcript. But you've -- it
19 seems to me you're saying that you acknowledged that the
20 period of time was very long.

21 **MR. McCONNERY:** It was 73 months.

22 **MS. SIMMS:** Right. And in your view that
23 was an exceptional amount of time and ---

24 **MR. McCONNERY:** Yes.

25 **MS. SIMMS:** --- that is acknowledged by you

1 and there's no waiver.

2 So was part of the strategy then to discuss
3 societal interest versus prejudice to the accused as the
4 main theory of your opposition to the application?

5 **MR. McCONNERY:** Okay. My position was that
6 in acknowledging the excessive delay that I had to examine
7 the reasons for the delay ---

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

9 **MR. McCONNERY:** --- and try to ensure the
10 court understood that each and every delay to join charges
11 or whatever the occurrence was at the time was well
12 reasoned, was properly sought by the Crown.

13 Mr. Neville did not, in my view, waive 11(b)
14 at any time and I didn't think there was anything
15 inappropriate in that, protecting his client's interests,
16 but that the requests were properly and reasonably sought
17 by the Crown and that the Crown was aware on the other hand
18 that there was a risk to those requests.

19 And in my review of it, it's my belief that
20 both Mr. Pelletier and Ms. Hallett were very aware of that,
21 that they exercised, in my view, the best judgement they
22 could in light of what was becoming an incredibly complex
23 prosecution. And they exercised their best judgement and
24 so if the court understood that and understood the reasons
25 for the delay, that tended to offset somewhat the

1 excessiveness of the delay and that my most significant
2 issue was societal interest in hearing this allegation.

3 If I may, this was a situation where we had
4 a community that was ripped apart in many respects by this,
5 and I can tell you I recall the feeling at the end of the
6 11(b) application that Justice Chilcott was critical of me
7 because he kept telling me, "Mr. McConnery, do I need to
8 remind you this is a criminal trial, it's not a public
9 inquiry?"

10 And that I was pursuing the concern about
11 societal interest he felt to the point that I was losing
12 sight of the ball, the ball being a criminal trial, and --
13 but I felt my argument -- I believed my argument, based on
14 cases such as *Regan* which talks about -- *Regan* -- which
15 talks about societal interests, was the best argument I
16 had.

17 Quite frankly, never mind 73 months. The
18 second set of charges were, I believe, 4 years old.

19 **MS. SIMMS:** Fifty-some months I think.

20 **MR. McCONNERY:** Fifty-seven (57) or ---

21 **MS. SIMMS:** Fifty-two (52).

22 **MR. McCONNERY:** Fifty-two (52) months.

23 And I will add another little wrinkle, and
24 that was C-2. C-2's charges were probably the charges on
25 an 11(b) that could have been salvaged. I felt very

1 strongly that the first part of the indictment would very
2 likely be stayed. The second part of the indictment, if we
3 can break it into three, were really at risk and the last
4 thing I wanted was to lose all of those charges and have a
5 trial on C-2. And ---

6 **MS. SIMMS:** And that was because?

7 **MR. McCONNERY:** Because I felt so negatively
8 about the charges relating to C-2. To end up having the
9 public hear only C-2 would, in my view, have been just a
10 terrible miscarriage, both to C-2 and to Father MacDonald,
11 to the public at large. This was about a much bigger
12 matter and ---

13 **MS. SIMMS:** And did that -- was that a
14 factor in your decision to withdraw the charges with
15 respect to C-2?

16 **MR. McCONNERY:** The only factor in dealing
17 with C-2 was I was convinced that there was not a
18 reasonable prospect of conviction. If I had felt there
19 was, I would have felt conscience-bound to proceed with
20 that trial as much as -- as best I could.

21 **MS. SIMMS:** Despite the concerns you raised
22 just now?

23 **MR. McCONNERY:** No, I'm saying if I felt
24 there was a reasonable prospect of conviction.

25 **MS. SIMMS:** You would not have viewed it

1 that way?

2 **MR. McCONNERY:** I think we're talking at
3 cross purposes.

4 **MS. SIMMS:** Don't let me put words in your
5 mouth. I apologize, Mr. McConnery.

6 **MR. McCONNERY:** Okay. If I had felt there
7 was a reasonable prospect of -- on the charges relating to
8 C-2, it would not have been a concern to me to proceed on
9 it if I had lost all the other counts in the indictment.

10 **MS. SIMMS:** Okay.

11 **MR. McCONNERY:** But I had already determined
12 that I didn't believe I had a reasonable prospect of
13 conviction regarding C-2.

14 You know, when you're working on this and
15 you're doing the factum and you're getting ready to go to
16 trial, I would -- you lie awake at night saying, "Well,
17 what if I end up with the trial of C-2?"

18 **MS. SIMMS:** Returning to your argument of
19 reviewing the actions of the Crown in presenting the case,
20 that the delays that occurred were reasonable.

21 **MR. McCONNERY:** Yes.

22 **MS. SIMMS:** I wanted to get your views
23 regarding Mr. Dunlop's involvement with some of the
24 complainants and issues of disclosure and how you fit that
25 into the argument you were making. I know you did call Mr.

1 Dunlop ---

2 MR. McCONNERY: Yes, I did.

3 MS. SIMMS: --- In the application, and
4 maybe just for a start we'll refer to notes you made when
5 you met with Mr. Dunlop. I believe it's actually on the
6 first day that the application was being heard? It's --
7 I'll show you your notes.

8 MR. McCONNERY: Okay.

9 MS. SIMMS: It's Document Number 130453.

10 THE COMMISSIONER: Thank you.

11 Exhibit 3078 is notes dated April 29th, 2002.

12 --- EXHIBIT NO./PIÈCE NO. P-3078:

13 (130453) - Notes of Lorne McConnery re:
14 Perry Dunlop dated April 29, 2002

15 MS. SIMMS: These are notes you made, Mr.
16 McConnery, during the meeting with Mr. Dunlop?

17 MR. McCONNERY: Yes.

18 MS. SIMMS: Is that correct? And this is
19 the first time you had met with Mr. Dunlop? I think ---

20 MR. McCONNERY: Yes, that's accurate. I
21 believe I had spoken to him previously but this is the
22 first time I met him.

23 MS. SIMMS: Okay. And you knew from your
24 preparation in this case and also from your review of the
25 materials on the conspiracy brief ---

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** --- you felt you had a sense of
3 some of the involvement that Dunlop had had in these issues
4 in terms of contacting or speaking to complainants in terms
5 of the civil action that he had.

6 **MR. McCONNERY:** Yes.

7 **MS. SIMMS:** So you felt comfortable you had
8 a good understanding of his involvement in some of --
9 issues relating to the Charles MacDonald prosecution?

10 **MR. McCONNERY:** Yes, I would say so.

11 **MS. SIMMS:** Okay.

12 **MR. McCONNERY:** Yes, yes, I would agree with
13 that.

14 **MS. SIMMS:** All right. And how did you see
15 -- why was it you thought it was necessary to call Mr.
16 Dunlop?

17 **MR. McCONNERY:** I felt he was responsible
18 for some of the delay and it was incumbent upon me to call
19 him and try to explore the delay.

20 I viewed the prosecution decisions to seek
21 adjournments as things maybe that -- I believe he used the
22 expression "caused reasonable delays". All I intended to
23 say was I thought their decisions were reasonable in the
24 face of the information they had, but you're always bound
25 trying to weigh risks and so it's great when you lose the

1 motion. I can say, "Well, obviously it was a bad
2 judgement" now, but at the time, they made the best
3 decision they could on the information available was my
4 view.

5 But you had to throw into the mix Mr.
6 Dunlop, and Mr. Dunlop -- I mean, I don't know if prior to
7 that hearing that anyone really had any insight as to what
8 he felt he was doing or not doing, not only from the outset
9 but, say, right up to April 29th of 2002.

10 So I wanted and, you know, I felt during the
11 course of the application when I called Mr. Dunlop as a
12 witness, I felt that -- how can I say this -- I felt it was
13 unlikely I would be constrained by the court or by Mr.
14 Neville in my questioning of Mr. Dunlop.

15 I felt that there was a real need to explore
16 the issues that he presented us, to try to get some picture
17 of the truth of what he was doing, as opposed to the
18 general view that was out there. Maybe the public had him
19 up on a pedestal and others felt he was whatever, you know,
20 but the two views of him, and this was a chance to see what
21 -- why, what he'd done, how it impacted, what his thinking
22 was. I had no idea if he was going to help or hurt the
23 11(b) application, but I felt it was essential that the
24 court hear from Dunlop because the court would be able to
25 assess whether or not we as prosecutors or the

1 investigators should have, could have, done more than they
2 did to move it along.

3 **MS. SIMMS:** So I ---

4 **MR. McCONNERY:** I don't know if that even
5 approaches the question.

6 **MS. SIMMS:** No, that's helpful. Thank you,
7 Mr. McConnery, but I -- and you just mentioned that you
8 didn't feel you'd be constrained and ---

9 **MR. McCONNERY:** Yes.

10 **MS. SIMMS:** Did you approach your -- were
11 you approaching this more as a cross-examination of a
12 witness even though you'd called Mr. Dunlop? Is that what
13 you're implying?

14 **MR. McCONNERY:** I felt it developed that way
15 somewhat more than I'd ever intended but, I mean, it wasn't
16 an angry or a confrontational cross-examination. It was a
17 cross-examination to try to delve into an answer he'd given
18 me for follow-up, to flush out what he meant, what his
19 mindset was. Why did he do what he did? Bottom line. And
20 that's not something you usually as a witness in-chief, you
21 know, and I just felt as I was doing it -- what I guess I
22 meant to say is Mr. Neville was not likely to get up and
23 say, "Crown can't ask that question. I want to ask it."

24 I believed we were trying to get to the
25 truth of what Mr. Dunlop had done and what he was about

1 and, whatever questions I wanted to put to him, I was not
2 going to be stopped, and et cetera.

3 **MS. SIMMS:** So you met with Mr. Dunlop prior
4 to his testimony and we have notes of your meeting here ---

5 **MR. McCONNERY:** Yes.

6 **MS. SIMMS:** --- before you. And you note --
7 well, you note the issues, I take it, that you discuss with
8 him about -- some general issues about his involvement and
9 some general questions about why he made some of the
10 decisions he did.

11 **MR. McCONNERY:** Yes.

12 **MS. SIMMS:** This was in preparation for
13 calling Mr. Dunlop's evidence, I take it?

14 **MR. McCONNERY:** Yes, it was.

15 **MS. SIMMS:** And did you -- would Mr. Dunlop
16 have been aware that you were taking this slightly
17 different approach or intending to take a slightly
18 different approach with him as a witness? Was that
19 discussed? Did you tell him that?

20 **MR. McCONNERY:** I wouldn't think I did. I
21 don't think so. I can tell you what I did do was I told
22 him I was going to make notes and I was going to give them
23 to counsel.

24 **MS. SIMMS:** M'hm.

25 **MR. McCONNERY:** And I had him initial the

1 notes.

2 MS. SIMMS: So the initials we see on the
3 bottom of Exhibit 3078, those are Perry Dunlop's initials?

4 MR. McCONNERY: Correct.

5 MS. SIMMS: Okay.

6 And why did you feel it was necessary for
7 you to provide notes from this meeting to counsel?

8 MR. McCONNERY: It was April 29th. I had not
9 met Perry Dunlop. I had never interviewed him about the
10 merits of what he might say on this application. I hadn't
11 filed an affidavit on the application which tried to
12 capture the evidence of Perry Dunlop. My recollection now
13 is that he would not talk to me when I called him out west.

14 He was difficult with me, but he eventually
15 agreed to come, so we -- he I think arrived on that Monday,
16 so I met him at the first opportunity, and when I knew that
17 he would -- he was prepared to take the witness stand -- I
18 mean, I knew that in advance but, you know, at the end here
19 it says, "I'm not hostile. I'm here. I'm not hostile."

20 And his position seemed to be that he wanted
21 to explain what he said, and I felt that I had an
22 obligation, a disclosure obligation -- this is a witness I
23 was calling -- and I told him, you know, I would give these
24 over right away to Mr. Neville. I wasn't going to ordered
25 by the court to give them over, and so that's why I did

1 that.

2 I never said to him, "Oh, when you get up
3 there I'm going to cross-examine the heck out of you", or
4 anything like that. I felt, as any witness must feel,
5 they're there so that we can try to get to the truth of
6 issues.

7 **THE COMMISSIONER:** No, but if he's your
8 witness ---

9 **MR. McCONNERY:** Yes.

10 **THE COMMISSIONER:** --- you'd have to review
11 the different issues in what he was going to say about this
12 ---

13 **MR. McCONNERY:** Yes.

14 **THE COMMISSIONER:** --- and that and that,
15 and did you do that?

16 **MR. McCONNERY:** Oh, yes.

17 **THE COMMISSIONER:** With him beforehand?

18 **MR. McCONNERY:** Well, just as captured here,
19 just as are in these rough notes.

20 I can't say I did an interview that tried to
21 capture what he did for 10 years or 8 years, whatever the
22 time was. I think I tried to assess -- tried to get a
23 picture of his mental position, if you will. That's what I
24 tried to do. It was like, "But why? Why weren't you
25 turning over the files?"

1 **THE COMMISSIONER:** Right.

2 **MR. McCONNERY:** That kind of thing.

3 **THE COMMISSIONER:** Did you ask him that
4 beforehand?

5 **MR. McCONNERY:** Before April 29th?

6 **THE COMMISSIONER:** No, no. I understand
7 before April 29th he didn't really want to ---

8 **MR. McCONNERY:** Right.

9 **THE COMMISSIONER:** --- talk to you very
10 much.

11 I guess what I'm concerned about is the
12 institutional response of a Crown calling a witness on an
13 11(b) application, and I don't know if it's on this one,
14 but I'm sure Mr. Dunlop thought that he was being set up
15 and thrown to the wolves.

16 And so in response to that, some people
17 might think that you would want to sit down with him and go
18 over all of the steps; make sure he knows exactly what
19 we're talking about; make sure that you understand what his
20 answers are going to be; and then you sit back and say,
21 "Okay, how is that going to help or hinder my 11(b)
22 application?" as opposed to taking him, putting him up on
23 the stand, and do the best you can.

24 **MR. McCONNERY:** Well, I think he had created
25 a situation where I couldn't do much other than that.

1 **THE COMMISSIONER:** In what way?

2 **MR. McCONNERY:** In what way?

3 **THE COMMISSIONER:** How did he create that?

4 **MR. McCONNERY:** His refusal to cooperate.

5 You know, we could have had him come down the week before.

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

7 **MR. McCONNERY:** He didn't want to do that.

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

9 **MR. McCONNERY:** He didn't want to be
10 involved with the police officers.

11 **THE COMMISSIONER:** So did you ask him to
12 come down a week before?

13 **MR. McCONNERY:** I have all kinds of notes of
14 my talking with him and his lawyer, and he made it clear --
15 things like, "Have a car ready for me. I will not be
16 driven around by the police. I will not talk to the
17 police." I think he expressed that he wanted -- he would
18 talk to me. He was upset with the police.

19 **THE COMMISSIONER:** Sure.

20 **MR. McCONNERY:** I mean, I don't think I did
21 anything underhanded with him. I think when I called him
22 as a witness I tried to get as clear a picture of what he
23 did as I could get for the court. And if that meant I
24 pressed him a little bit, I did that.

25 **THE COMMISSIONER:** M'hm. Ms. Simms?

1 **MR. McCONNERY:** Can I say one thing?

2 If I had said to Perry Dunlop, "You know,
3 when you're on the stand, Mr. Dunlop, I might have to
4 cross-examine you", he would have walked out on me.

5 **THE COMMISSIONER:** He wasn't subpoenaed?

6 **MR. McCONNERY:** I believe he was subpoenaed,
7 but I mean walked out of an interview, not walked out of
8 court.

9 **THE COMMISSIONER:** Okay.

10 **MR. McCONNERY:** But he would have just said,
11 "I've no interest in talking with you, Mr. McConnery".

12 **MS. SIMMS:** Just one further question on
13 that point, just to clarify.

14 So were you approaching this -- when you
15 were approaching this issue, was it in your mind that Perry
16 Dunlop at the time, or a proportion of the time, was a
17 police officer? And so were you considering that aspect,
18 that indivisibility of the police and Crown with respect to
19 delay issues? How did he fit in your view? Were you
20 approaching him as a community member who had involvement,
21 or was it in your mind that he was being called by you as a
22 police witness who had some involvement in this matter?

23 **MR. McCONNERY:** That's a good question. You
24 know, I think I was obviously faced with both. But did you
25 say "indivisibility of the ---"

1 **MS. SIMMS:** Yes, I did.

2 Was it your view that in certain respect
3 when there's delay, be it delay caused by the Crown or by
4 police ---

5 **MR. McCONNERY:** It falls at the feet of the
6 Crown.

7 **MS. SIMMS:** It falls at the feet of the
8 Crown.

9 **MR. McCONNERY:** Yes.

10 **MS. SIMMS:** Okay.

11 **MR. McCONNERY:** My position was that he was
12 somewhat of a renegade and you shouldn't hold us, the
13 prosecution, completely responsible for what Dunlop had
14 done.

15 **MS. SIMMS:** So it's a somewhat different
16 approach than you would take with the other officers?

17 **MR. McCONNERY:** Oh, Mr. Dunlop was very much
18 a different -- yes.

19 **MS. SIMMS:** Just a further issue that you
20 were dealing with in terms of delay and some of the causes
21 of delay. One of the issues was the decisions previously
22 made to consolidate the charges ---

23 **MR. McCONNERY:** Yes.

24 **MS. SIMMS:** --- and proceed on a joint
25 indictment?

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** Okay.

3 And I've noted that there is a document
4 where Mr. Stewart is just sending you some thoughts
5 regarding the delay and, in particular, on that issue of
6 proceeding with separate trials versus a joint indictment.
7 So that's Document Number 130462.

8 **THE COMMISSIONER:** Thank you.

9 Exhibit Number 3079 is an email
10 correspondence, I take it? Is this -- are these -- no.
11 They wouldn't be emails because then there'd be time and
12 date. These are just memos he was producing? But, anyway,
13 it's a memo from James Stewart to Lorne McConnery; there's
14 no date.

15 --- **EXHIBIT NO./PIÈCE NO. P-3079:**

16 (130462) - E-mail from James Stewart to
17 Lorne McConnery re: Cross-examination,
18 undated

19 **MS. SIMMS:** Do you recall this document?

20 **MR. McCONNERY:** I would have thought this
21 was an email.

22 **MS. SIMMS:** Okay. So you did receive this
23 sometime prior to your -- to the application, the hearing
24 of the application?

25 **MR. McCONNERY:** Yes. Do we know the date of

1 this? We don't, okay.

2 MS. SIMMS: We don't.

3 THE COMMISSIONER: But I guess it's
4 pre-argument because he's talking about the 11(b)
5 application.

6 MR. McCONNERY: Yes, and I think it was at a
7 time when we thought there might be cross-examination of
8 Father MacDonald ---

9 MS. SIMMS: Right.

10 MR. McCONNERY: --- because that seems to be
11 a lot of the thrust of what this is about.

12 MS. SIMMS: And in the end, you made the
13 decision not to cross-examine Charles MacDonald on his
14 affidavit?

15 MR. McCONNERY: Yes, that's correct.

16 MS. SIMMS: But part -- so there is a
17 discussion in here about questions that you could have put
18 to Charles MacDonald ---

19 MR. McCONNERY: Yes.

20 MS. SIMMS: --- on that point?

21 But part of the -- that is part of a larger
22 argument about consolidation of the charges versus
23 proceeding on separate indictments; correct?

24 MR. McCONNERY: Yes.

25 MS. SIMMS: And what he's -- well, as I see

1 it, what seems to be the gist of his suggestion is to argue
2 that, even if the charges had proceeded separately, this
3 matter would be still outstanding?

4 Perhaps the first set of charges would have
5 been resolved, but he -- Charles MacDonald may still have
6 been faced with the second or third set?

7 **MR. McCONNERY:** Yes.

8 **MS. SIMMS:** Okay. And did you see the
9 decision of the Crown with respect to consolidation of
10 these indictments as being an issue that you had to address
11 before the court in terms of explaining the reasonableness
12 of the Crown's conduct?

13 **MR. McCONNERY:** Yes.

14 **MS. SIMMS:** And I take it -- I don't want
15 have to have to go through your arguments point-by-point,
16 unless they're -- they're in the submissions, but what were
17 the factors that you saw in terms of explaining the
18 reasonableness of the decision to the court in the stay
19 application? The reasonableness of consolidating as
20 opposed to the proceeding with separate trials?

21 **(SHORT PAUSE/COURTE PAUSE)**

22 **MR. McCONNERY:** It was my view that
23 everybody wanted a single trial, and there are benefit ---

24 **MR. LEE:** Mr. Commissioner, when we get
25 specifically to the issue of consolidating the first set of

1 charges with the second ---

2 THE COMMISSIONER: M'hm?

3 MR. LEE: --- Justice Chilcott makes a
4 finding on that.

5 THE COMMISSIONER: Right.

6 MR. LEE: And he finds that it wasn't
7 appropriate and it shouldn't have been done.

8 THE COMMISSIONER: M'hm.

9 MR. LEE: I'm not sure there's any value
10 here, with this witness or any other witness, to go in
11 behind the appropriateness of the decision. The decision
12 has been made. We have it from Justice Chilcott; it was
13 wrong.

14 THE COMMISSIONER: Right.

15 MR. LEE: Meaning the decision to
16 consolidate was wrong.

17 THE COMMISSIONER: M'hm.

18 MR. LEE: I'm not sure that there's a whole
19 lot we can do here in terms of going behind that or re-
20 assessing it.

21 Essentially, I'm not sure that Mr.
22 McConnery's opinion of whether or not that decision was
23 appropriate or not matters because we have Justice
24 Chilcott's opinion of that.

25 THE COMMISSIONER: Okay. Ms. Simms?

1 **MS. SIMMS:** I was asking the question to get
2 an idea of how Mr. McConnery was approaching this task and
3 what he was thinking of ---

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

5 **MS. SIMMS:** --- and what as uppermost in his
6 mind ---

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

8 **MS. SIMMS:** --- as he was responding to the
9 situation he was in.

10 **THE COMMISSIONER:** M'hm. I agree with both
11 of you in the sense that, no, Mr. Justice Chilcott's
12 decision stands, but I think as part of an institutional
13 response I would like to know what this gentleman's thought
14 process was as he went into this motion and what he did
15 during that motion, so that we can assess how that went.

16 So the question again?

17 **MS. SIMMS:** My question was that you were
18 considering how to frame your arguments and how to present
19 your case in 11(b); what was your view on how to present
20 the decision of the Crown to consolidate the sets of
21 charges into one joint indictment?

22 **MR. McCONNERY:** I think my view was that
23 everybody, from Father MacDonald, his counsel, through to
24 the Crown, preferred to have one trial. But when you delay
25 a trial, you delay it with the risk that 11(b) becomes a

1 factor.

2 It was a very complex matter and I believe
3 Ms. Hallett felt that the complexities outweighed the
4 delays that were being caused by the adjournments.

5 It was -- I don't know if Justice Chilcott
6 said this was an error; this was a bad decision. I'd have
7 to go back and look at his judgment again.

8 But all I would say is that, in that regard,
9 if a matter was being delayed then something should have
10 been done to complement the problem that it was creating,
11 and some jurisdictions have remedies for that.

12 And I don't know if it was even contemplated
13 here but, for instance, Mr. Commissioner, if you have an
14 indictment that you think is going to take four weeks for
15 trial ---

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

17 **MR. McCONNERY:** --- and you're setting that
18 trial and the trial's approaching and an event such as some
19 of the things that happened here arose and you're going to
20 have to have another preliminary hearing, what's wrong with
21 scheduling time for the four-week trial that's already
22 before the Superior Court, but saying, with everyone's
23 agreement, it may now become a six-week trial, so let's
24 schedule six weeks now and let's have the OC -- the Ontario
25 Court of Justice -- fast-track the other one, get it up

1 here, get the pre-trials done in the Superior Court, and
2 we've already got trial time assigned to it; there's no
3 delay.

4 But the whole idea, as soon as you want to
5 join something, whoops, stop indictment one, let the clock
6 tick, let it run, and then finally number two works it way
7 up there. Now you have numbers one and two are
8 consolidated, now we add another eight or ten or twelve
9 months to the time set for trial.

10 Now, why not earmark that trial? There are
11 jurisdictions that actually set two trial dates for
12 matters. They set a -- let's say it's January 10th, you set
13 a trial date for September, but you set an earlier trial
14 date where it's on a list and if it doesn't get reached it
15 already has a second slot to try to -- there are some
16 remedies. There are some things that can be done.

17 That wasn't done here and, unfortunately,
18 there were two or possibly even three of those kinds of
19 adjournments that took place, and, you know, I don't know
20 if there was any mechanism in place to accomplish that, but
21 there are things that can be done to salvage something that
22 has to be adjourned.

23 This is a real problem in all cases that we
24 do. Once you get a trial date adjourned, you're 11(b)
25 sensitive, so why not adjourn it with a view that you --

1 you know, it's going to be prioritized or put on a priority
2 list, so it will be given some precedence in setting a new
3 date, for whatever reason the adjournment is, and then --
4 there was nothing like that here.

5 Maybe it's great in hindsight to say it but,
6 you know, there were things that I think that could have
7 been done that would have saved time here.

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

9 We'll take the afternoon break.

10 **THE REGISTRAR:** Order; all rise. A

11 l'ordre; Veuillez vous lever.

12 This hearing will resume at 3:20 p.m.

13 --- Upon recessing at 3:03 p.m./

14 L'audience est suspendue à 15h03

15 --- Upon resuming at 3:23 p.m./

16 L'audience est reprise à 15h23

17 **THE REGISTRAR:** Order; all rise. A l'ordre;

18 Veuillez vous lever.

19 This hearing is now resumed. Please be
20 seated. Veuillez vous asseoir.

21 **LORNE McCONNERY:** Resumed/Sous le même serment

22 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE EN-CHEF PAR

23 **MS. SIMMS (cont'd/suite):**

24 **THE COMMISSIONER:** Thank you.

25 **MS. SIMMS:** Mr. McConnery, you were just

1 referred -- or there was just some discussion about the
2 decision of Justice Chilcott at the conclusion of the stay
3 application.

4 **MR. McCONNERY:** Yes.

5 **MS. SIMMS:** And you mentioned -- I thought
6 maybe I'd just referenced you to the comments that were
7 referred to. So it is Exhibit 627.

8 **THE COMMISSIONER:** Six-two-seven (627)?

9 **MS. SIMMS:** Yeah.

10 **(SHORT PAUSE/COURTE PAUSE)**

11 **MS. SIMMS:** Do you have that?

12 **MR. McCONNERY:** Yes.

13 **MS. SIMMS:** Okay. At page 14 of the volume
14 which is Bates page 095 ---

15 **MR. McCONNERY:** Yes.

16 **MS. SIMMS:** --- Justice Chilcott in his
17 ruling makes reference to the Crown position on the
18 consolidation of the first and second set of charges, right
19 at the top of the page.

20 **MR. McCONNERY:** Yes.

21 **MS. SIMMS:** The ruling reads:

22 "On September 15th, 1999, a new
23 indictment was issued including all
24 charges. The Crown maintains that it
25 was a sound decision to hold back the

1 first set of charges to allow the
2 second set of charges to work their way
3 through the system so all charges could
4 to be tried together. The rationale
5 being that it was more convenient for
6 the accused, the court and witnesses
7 because of the similar fact component
8 of the two sets of charges."

9 And he refers specifically to:

10 "If they were proceeded with
11 separately, all the complainants would
12 have to be called twice, the accused
13 would have to face accusers twice, thus
14 it was less prejudicial to the accused
15 to try them all at once."

16 **MR. McCONNERY:** Yes.

17 **MS. SIMMS:** And so we are just discussing
18 the position you were taking in terms of whether the
19 decision to consolidate was reasonable on the part of the
20 Crowns.

21 **MR. McCONNERY:** M'hm.

22 **MS. SIMMS:** This is the summary of the
23 position you took. And the finding of Justice Chilcott on
24 that particular issue which Mr. Lee referred to, it's on
25 page 15, Bates page 096.

1 **MR. McCONNERY:** Yes.

2 **MS. SIMMS:** In the second paragraph:

3 "In my view, the Crown should have
4 proceeded with the first set of charges
5 and set a trial date as soon as
6 possible after the October 24th, 1997
7 committal for trial. It was at that
8 point, as pointed out, approximately a
9 19-month delay, well outside the
10 guidelines and I am cognizant that they
11 are only guidelines and not limitation
12 periods. With respect to the second
13 set of charges, it might seem, at first
14 blush, reasonable and desirable to try
15 all the charges together. However, the
16 reasonableness aspect should have been
17 superseded by the fear of an
18 application for the relief as provided
19 in Section 11(b) of the *Charter*."

20 So you mentioned that you'd like to see what
21 the finding was and there it is before you.

22 **MR. McCONNERY:** Right. And I think what I
23 had said was the Crown has this decision to make over here
24 and they have to weigh it against this result over here.

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

1 **MR. McCONNERY:** And on this one, Justice
2 Chilcott went the way he did.

3 **MS. SIMMS:** Okay. And I'm not going to go
4 through the ruling point-by-point, but a couple of other --
5 just one for the finding and that's on page 21:

6 "And in his decision, Justice Chilcott
7 finds in his analysis of the Section
8 11(b) factors that the greatest
9 contributor to the delay in this matter
10 was Mr. Dunlop."

11 **MR. McCONNERY:** Yes.

12 **MS. SIMMS:** See that?

13 **MR. McCONNERY:** Yes, I do.

14 **MS. SIMMS:** And on the following page, page
15 22, I was asking you about your position with respect to
16 Mr. Dunlop and his role as an officer, as a community
17 member. I just wanted to know, at the bottom of page 22,
18 Justice Chilcott finds that Mr. Dunlop was the cause of a
19 large part of the delay:

20 "I do not attribute that delay to the
21 Crown."

22 He attributes it to other reasons for delay.

23 However, he goes on to say:

24 "If I had to charge that delay to some
25 party, I would. As a result of

1 considering all the circumstances, I
2 have to lay it at the feet of the Crown
3 because the Crown and the police were
4 aware of Dunlop's procrastination and
5 deception and his reluctance to provide
6 the material."

7 Just pointing out those two aspects of the
8 decision. The finding, of course, is that the charges are
9 stayed.

10 **MR. McCONNERY:** Yes.

11 **MS. SIMMS:** Based on unreasonable delay.

12 **MR. McCONNERY:** Yes.

13 **MS. SIMMS:** And that decision having been
14 rendered, did you consider the possibility of a request for
15 an appeal?

16 **MR. McCONNERY:** I did. I must say that in
17 my review of the ruling, I couldn't assist and say, "Here's
18 where I think the court erred", but I did ask for a review
19 and it was reviewed by members of the Criminal Law Division
20 of the Ministry of the Attorney General.

21 **MS. SIMMS:** I think we had the letter that
22 you wrote with respect to a review, and it's Document
23 Number 101781.

24 **THE COMMISSIONER:** Thank you.

25 Exhibit Number 3080 is the letter to Mr.

1 Paul Lindsay dated June 5th, 2002 from Mr. Lorne McConnery.

2 --- EXHIBIT NO./PIÈCE NO. P-3080:

3 (101781) - Letter from Lorne McConnery to
4 Paul Lindsay re: *R. v. Charles MacDonald*
5 dated June 5, 2002

6 MS. SIMMS: The question, I think, was
7 whether that was the next exhibit number?

8 THE COMMISSIONER: Three-zero -- oh, okay,
9 what was ---

10 MS. SIMMS: Is that right?

11 THE REGISTRAR: I think it should be 81,
12 sir.

13 THE COMMISSIONER: Seven-nine (79), no.
14 Pardon me? One-three-zero-four-six-two
15 (130462) is Exhibit 3079.

16 THE REGISTRAR: Okay. Sorry, my error.

17 MS. SIMMS: Do you have that letter in front
18 of you, Mr. McConnery?

19 MR. McCONNERY: Yes, I do.

20 MS. SIMMS: Okay.

21 MR. McCONNERY: And that is the letter I
22 wrote.

23 MS. SIMMS: Okay. So just a question -- so
24 I think this -- you state this again in your letter, but if
25 it was your -- was it your view, having heard the ruling

1 and reviewed the reasons, that you didn't see an obvious
2 error in the decision?

3 **MR. McCONNERY:** Yes.

4 **MS. SIMMS:** Is that what you just said?

5 **MR. McCONNERY:** Yes.

6 **MS. SIMMS:** So was there -- what was the --
7 was there a reason that you were requesting that there be a
8 review with respect to the possible appeal if that was your
9 view of the matter?

10 **MR. McCONNERY:** Just a community interest,
11 and to me the need for the community to have a trial in
12 this matter.

13 You know, when Justice Chilcott made his
14 ruling, I couldn't myself pinpoint that there was any error
15 in the ruling. And so instead of doing what I said the
16 police do earlier, I was asking for another opinion.

17 **MS. SIMMS:** Sorry. If you could move the
18 microphone, please?

19 **MR. McCONNERY:** Yeah. I was doing what I
20 said the police do frequently, I was getting a second
21 opinion.

22 **THE COMMISSIONER:** Well, at the beginning of
23 the letter, it says:

24 "James Stewart, Director of the Crown
25 Operations, has a requested I write to

1 of that. I think I was asked to let him know immediately
2 the result. I did that.

3 I was in Ottawa for a period of time after
4 that. I had occasion to speak with Mr. Stewart and
5 probably spoke to Susan Kyle, maybe even Paul Lindsay, Mr.
6 Segal.

7 And the result was that I put it into
8 writing. I think it was Jim Stewart's suggestion rather
9 than his direction. Put it in writing, send it in and let
10 head office, if you will, take a look at it.

11 **MS. SIMMS:** Okay. And the letter sets --
12 notes that it encloses a copy of the ruling. It sets out a
13 timeline of some of the prosecution and some of the events
14 predating the prosecution.

15 **MR. McCONNERY:** Yes.

16 **MS. SIMMS:** And at the end, you note on page
17 6 which is Bates page 089.

18 **MR. McCONNERY:** Yes.

19 **MS. SIMMS:** You briefly set out the Crown's
20 position. And you note that:

21 "In my view, the only position I could
22 advance to the court was that the
23 societal interest in this trial
24 proceeding exceeded both the
25 applicant's and society's interest in

1 the trial within a reasonable time."

2 And you refer to the intense media scrutiny,
3 et cetera.

4 **MR. McCONNERY:** Yes.

5 **MS. SIMMS:** And in a nutshell, that was the
6 essence of your position during the application. Is that -
7 --

8 **MR. McCONNERY:** Right.

9 **MS. SIMMS:** I know there were other issues
10 that were raised.

11 **MR. McCONNERY:** Yes.

12 **MS. SIMMS:** There's many other issues.

13 **MR. McCONNERY:** Yeah. And I just tried to
14 say that there was a reasonable grounds for the decisions
15 to adjourn that were made. And that in -- but the end
16 result was in trying to account -- trying to deal with the
17 11(b) application was to argue that the societal interests
18 involved in this particular investigation required a trial.
19 Shouldn't be -- yeah.

20 **MS. SIMMS:** Okay?

21 **MR. McCONNERY:** Yeah.

22 **MS. SIMMS:** And then as we noted on the
23 following page, the last page of the letter, Bates page
24 090, you note:

25 "Despite the community's and the

1 complainant's dissatisfaction with his
2 ruling, I do not see any obvious error
3 in the judgment of Chilcott. The length
4 of time to get to trial was grossly
5 excessive. Some of the Crown decisions
6 resulted in delay, even though at first
7 blush, the decisions were reasonable."

8 **MR. McCONNERY:** Yes.

9 **MS. SIMMS:** And are you referring there to
10 Justice Chilcott's comments that the positions with respect
11 to consolidation or was that a more general comment?

12 **MR. McCONNERY:** I think it included his -- I
13 think I was referring partly to his comments.

14 **MS. SIMMS:** And there's a response -- or the
15 letter in response to your request for review is Document
16 Number 102157.

17 **THE COMMISSIONER:** Thank you.

18 Exhibit Number 3081 is a letter dated June
19 18th, 2002 addressed to Murray Segal from John Pearson.

20 **---EXHIBIT NO./PIÈCE NO. P-3081:**

21 (102157) - Letter from John Pearson to
22 Murray Segal re: R. v. Charles MacDonald the
23 May 13, 2001 Decision of Chilcott J. dated
24 18 Jun 02

25 **MS. SIMMS:** You're not noted as being copied

1 on this letter, Mr. McConnery, but do you recall receiving
2 or reviewing this letter around June 2002?

3 **MR. McCONNERY:** Yes, I do.

4 **MS. SIMMS:** Okay. And they note -- they
5 make reference to the letter that you -- we were just
6 looking at, that you had sent ---

7 **MR. McCONNERY:** M'hm.

8 **MS. SIMMS:** They note that the Central West
9 Regional Office was asked to review the matter. And it's
10 Mr. John Pearson who's writing his response.

11 **MR. McCONNERY:** Yes.

12 **MS. SIMMS:** And in conclusion, on the
13 following page, 283, Mr. Pearson says that:

14 "It cannot be said the trial judge
15 disregarded, misapprehended or failed
16 to appreciate relevant evidence bearing
17 upon issues of significance to the
18 decision to the stay, no errors of law
19 and consequently it's our opinion that
20 the reasons for judgment disclose no
21 ground of appeal."

22 So there was no appeal undertaken of the
23 decision?

24 **MR. McCONNERY:** There was not.

25 **MS. SIMMS:** And at this time now, the

1 prosecution is ended with respect to Charles MacDonald;
2 you've completed your review of the briefs that you were
3 assigned to review in the summer of 2001; correct?

4 **MR. McCONNERY:** Yes.

5 **MS. SIMMS:** So were you assigned to any
6 further prosecutions resulting from the Project Truth
7 investigations?

8 **MR. McCONNERY:** No, I wasn't.

9 **MS. SIMMS:** So at this time, are you moving
10 back to Barrie to resume your old responsibilities?

11 **MR. McCONNERY:** In fact, the letter talks
12 about my going to a conference in Hull, Quebec. So I had
13 actually gone home, spent some time at the Barrie Crown's
14 office, then returned for that conference.

15 **MS. SIMMS:** And I understand you continued
16 to have some interactions with the Project Truth officers
17 and Inspector Hall following this matter?

18 **MR. McCONNERY:** Inspector Hall, yes,
19 frequently called me.

20 **MS. SIMMS:** Okay.

21 **MR. McCONNERY:** Not frequently, but he
22 called me a number of times.

23 **MS. SIMMS:** Okay. And was he calling you --
24 one of the issues I understand he spoke to you about was
25 concerns or questions about possible charges with respect

1 to Perry Dunlop. Is that correct?

2 MR. McCONNERY: Yes.

3 MS. SIMMS: Okay. And would this have been
4 shortly after the decision of Justice Chilcott?

5 MR. McCONNERY: I don't have anything to
6 help me with that. I would say it was probably that summer
7 ---

8 MS. SIMMS: Okay.

9 MR. McCONNERY: --- but I'm not sure.

10 MS. SIMMS: Can you just give us an idea of
11 what he was speaking to you about and what your response
12 was?

13 MR. McCONNERY: Inspector Hall called me. He
14 wanted to talk about Perry Dunlop. He, I believe, had
15 indicated that he had talked to members of the Cornwall
16 Police Service. They were concerned that in light of what
17 had happened on the delay application and the evidence he
18 had given that there may have been some kind of conduct on
19 his part, Mr. Dunlop's part, that may have constituted a
20 criminal offence. He was hoping that I would possibly give
21 him advice on that, give him a view on that.

22 I felt somewhat constrained in doing that.
23 I felt that, first of all, I needed considerably more
24 information than just the testimony that I had. I didn't
25 have a transcript of what Mr. Dunlop had said. I felt that

1 what he had said should be the basis, possibly of an
2 investigation, not "Yeah, let's charge him."

3 But it also seemed to me there was this
4 misconception maybe on Inspector Hall's part that I was now
5 this lead of Project Truth. And I never saw that, and
6 somebody's going to say "Well, here's the letter you signed
7 that says lead counsel, Project Truth."

8 I was assigned to do Father MacDonald's
9 trial. Murray Segal then asked that I do these other
10 briefs. But I had never undertaken and I was never
11 understood from Mr. Stewart or from Mr. Segal that I was
12 now the lead go-to person for all of the Project Truth
13 matters. And I indicated that to Pat Hall. And I
14 indicated to him that I felt it was an eastern region
15 issue, that he should be seeking counsel or advice from the
16 eastern region not from me as an assistant Crown attorney
17 in Barrie.

18 **MS. SIMMS:** M'hm.

19 **MR. McCONNERY:** And I referred him to Mr.
20 Stewart. I spoke to Mr. Stewart about it. And Mr.
21 Stewart's position was there are matters there the police
22 may want to investigate and they have some grounds to
23 launch an investigation. And when they do that and can
24 give us a complete brief, not just McConnery's role or view
25 in it, but everything, only then could you really turn your

1 mind to whether or not Dunlop had committed an offence, had
2 he committed perjury, had he done anything that amounted to
3 a criminal offence.

4 And I didn't go any further with it. I was
5 never then asked subsequently "Would you review such a
6 brief? Would you give us your view of anything?" And I
7 understood -- and Mr. Stewart may have copied me in a
8 letter -- that he put his thoughts in writing to at least
9 Inspector Hall and maybe to the Cornwall Police Service.

10 The Cornwall Police Service felt some
11 obligation to do something. And I don't recall that they
12 talked to me about it, but it seems to me there was an
13 issue at some point about whether or not if there was to be
14 an investigation shouldn't the Cornwall Police Service do
15 it. And certainly from the point of view of Mr. Stewart
16 and myself, it shouldn't have been Cornwall police, it
17 should have been some other police agency.

18 **MS. SIMMS:** So having had this matter raised
19 with you by Inspector Hall and then you spoke to Mr.
20 Stewart on the issue, and I understand it was your view
21 that you weren't the appropriate person to go to for advice
22 in this matter; was it your understanding that Mr. Stewart
23 followed up -- you referred to a letter that was issues
24 that he was dealing with following ---

25 **MR. McCONNERY:** Yes.

1 **MS. SIMMS:** --- you advising him of the
2 concern?

3 **MR. McCONNERY:** Yes.

4 **MS. SIMMS:** Okay.

5 **MR. McCONNERY:** That didn't come back to me.
6 I was consulted on another matter but not that matter. Mr.
7 Stewart then asked me to look at another potential charge
8 against Father MacDonald. And certainly I accepted that
9 and I did that.

10 **MS. SIMMS:** And you determined that no
11 charges would be laid in that matter?

12 **MR. McCONNERY:** Yes, that's correct. Yes,
13 this was someone I had met during the hearing. And it was
14 also someone who had been the subject of an investigation
15 much, much earlier and reinvestigation by Cornwall police.
16 And so I was provided everything they could provide and I
17 gave an opinion on that as well.

18 **MS. SIMMS:** What about with respect to a
19 complaint made regarding a website operated by Mr. Nadeau?
20 Do you recall being consulted on that issue?

21 **MR. McCONNERY:** I recall Pat Hall trying to
22 consult me about that issue. I took the same position. I
23 didn't -- I knew very little about Nadeau. He was this
24 figure that had followed the Project Truth twists and turns
25 over the years. He was very much involved in the Leduc

1 trial. I knew nothing about that.

2 MS. SIMMS: Okay. So you were -- Inspector
3 Hall made some enquiries of you.

4 MR. McCONNERY: Yeah.

5 MS. SIMMS: And again did you refer him on
6 to the Eastern region with those concerns?

7 MR. McCONNERY: I believe I referred him to
8 Mr. Stewart.

9 MS. SIMMS: Okay. And that's not a matter -
10 - so it's not a matter you reviewed; if there was no brief
11 that you reviewed on that issue?

12 MR. McCONNERY: No, no.

13 MS. SIMMS: I think those are my questions,
14 Mr. McConnery.

15 MR. McCONNERY: Thank you.

16 MS. SIMMS: We do have -- you have an
17 opportunity now, if you would like to present to the
18 Commissioner any suggestions or recommendations you might
19 have thought about that you think may be of assistance with
20 the issues we're dealing with here. Okay?

21 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. McCONNERY:

22 MR. McCONNERY: Well, I guess I addressed
23 one when I was running on a few minutes ago. And that was
24 that I guess it's trial management or trial case management
25 by the courts would be a great assist in some of this.

1 I was looking, at the recess, because of
2 what I had said at the ruling by Justice Chilcott and it
3 seem to me, and you may be able to correct me, that the
4 first indictment sat from October of 1997 until the second
5 set of charges were able to wend their way through
6 preliminary hearing and then get up there and join them,
7 and it seemed to me it was almost two years sitting.

8 So it's sitting doing nothing. Justice
9 Chilcott is critical, and when you look at that kind of
10 time period, that's very fair. But you know, if Mr. -- if
11 Father MacDonald had been before the Superior Court and the
12 Superior Court said, "We understand there are some new
13 charges. We are now going to target trial time and there
14 will be some effort through the administration of both
15 levels of court to ensure that the second set of charges
16 can be dealt with in an expeditious fashion, come back to
17 the Superior Court if there's a committal; the trial time
18 is already slotted," there's no delay.

19 I've done it, not so much on a big thing
20 like this but, you know, where there's a second charge
21 against somebody and you hold the trial time available and
22 you try to join it up and ensure that there's no delay of
23 trial one because you're joining it with trial two.
24 There's a real failure, in my view, in the courts to
25 prioritize trials that have been adjourned.

1 We lose everything from run-of-the-mill
2 everyday impaired drivings to very significant charges
3 because if something is adjourned the court seems to have
4 no way of dealing with something which is now Section 11(b)
5 sensitive except to say it goes -- you know, it's been
6 adjourned, so you put it at the bottom of your list.

7 We waited for Father MacDonald's second
8 indictment, so now it joins the list when there's a second
9 committal, and it's at the bottom of the list. It's the
10 most recent committal, and so now there's another year.

11 I know, for instance, Justice Hill has
12 written in Peel County about there has to be an assessment
13 and a prioritization of matters. And it seems to me that
14 with some proper trial management practices, you could have
15 a -- what's an expression? You could have certain trials
16 that go onto a certain list and, you know, if there is --
17 unfortunately with complex trials, it's more likely because
18 they're going to be adjourned. You could still have
19 expeditious trial dates that might salvage them. This to
20 me -- the result here was calamitous for the community.
21 That's all.

22 **THE COMMISSIONER:** Okay. So that's one
23 recommendation. Any others?

24 **MR. McCONNERY:** Well, when this particular
25 matter started -- so I'm reflecting on this one. But major

1 matters, possibly project teams of Crowns should be
2 assigned so there's continuity. It goes without saying
3 that issues of disclosure have to be better tracked than
4 they were, so that's something. I think that's in place
5 now in most Crowns offices.

6 So yes, I think teams of Crowns. I think,
7 if you remember, though, when Father MacDonald started, it
8 was a fairly manageable trial. It just kept imploding and
9 exploding, getting bigger. And to have Ms. Hallett deal
10 with MacDonald, deal with Leduc, deal with -- that's a big
11 undertaking. That takes years off your life. So that and
12 the tracking of the disclosure I think is an important
13 issue.

14 **THE COMMISSIONER:** Thank you.

15 Do you wish to take a short break now or do
16 you want to start?

17 **MS. DALEY:** I'm happy to start,
18 Mr. Commissioner.

19 **THE COMMISSIONER:** Start then and we'll take
20 a break around 4:30.

21 So I understand that there will be some
22 cross-examination of this gentleman which will take us into
23 tomorrow, so what I'll do then is I'll see how we go, sit
24 till 5:30 or 6:00. How is that?

25 Mr. McConnery, are you still holding good?

1 **MR. McCONNERY:** Oh yes, certainly.

2 **THE COMMISSIONER:** Thank you. Let me know
3 if you get tired or ---

4 **MR. McCONNERY:** Absolutely.

5 **THE COMMISSIONER:** Thank you.

6 **MS. DALEY:** Thank you, sir.

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

8 **DALEY:**

9 **MS. DALEY:** Mr. McConnery, I'm Helen Daley.
10 I introduced myself to you earlier this afternoon and I act
11 for the Citizens for Community Renewal which is a local
12 citizens group principally interested in institutional
13 reform.

14 The first thing I want to touch on with you
15 I guess takes us back to the beginning and your assignment
16 to the MacDonald matter. And just to make a linkage clear,
17 I take it, sir, you understood that the entire reason for
18 your assignment was the outcome of the Leduc application
19 and, in particular, the reasons for decision of Mr. Justice
20 Chadwick concerning Crown Hallett; correct?

21 **MR. McCONNERY:** Yes.

22 **MS. DALEY:** That was the entire reason you
23 were brought in to deal with MacDonald and also the six
24 outstanding Crown briefs. Is that correct?

25 **MR. McCONNERY:** Yes.

1 **MS. DALEY:** And again the rationale for
2 that, of course, is because Mr. Justice Chadwick had made a
3 finding that Crown Hallett was responsible for intentional
4 Crown delay in that matter; correct?

5 **MR. McCONNERY:** Intentional nondisclosure,
6 yes.

7 **MS. DALEY:** I'm sorry, intentional
8 nondisclosure.

9 **MR. McCONNERY:** Yes.

10 **MS. DALEY:** So there was a misconduct
11 finding that necessitated bringing you into MacDonald;
12 correct?

13 **MR. McCONNERY:** Yes.

14 **MS. DALEY:** Now, I understood you to say at
15 the time -- very early in your assignment, you had a hope
16 that the MacDonald trial could nonetheless proceed as
17 scheduled, and at that point it was scheduled to go in, I
18 believe, May of '01; correct?

19 **MR. McCONNERY:** Yes, that's right.

20 **MS. DALEY:** All right. And you didn't
21 suggest to us it was anything more than a hope, and what I
22 mean by that is at the very outset, although you were
23 hopeful, I take it that by early, May you were just
24 beginning to learn about the brief and to learn about its
25 complexities. Is that fair?

1 **MR. McCONNERY:** Well, that's correct but I
2 think by then it had already been adjourned.

3 **MS. DALEY:** Correct.

4 Would I be right to say that by the end of
5 April, the hope had faded to the point that, at least as
6 far as you were concerned, there was no realistic
7 possibility that you could go ahead?

8 **THE COMMISSIONER:** Excuse me; yes?

9 **MR. KLOEZE:** I think the record shows, as
10 Mr. McConnery has just said, that the trial had been
11 adjourned on April 25th.

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

13 **MS. DALEY:** I understand that. That's where
14 I'm driving to.

15 But by the latter part of April, I take it,
16 you haven't even had an opportunity to meet with the
17 Project Truth officers yet, nor have you had a chance to
18 have access to Ms. Hallett's file; correct?

19 **MR. McCONNERY:** Generally speaking that's
20 correct, but I'm not saying I hadn't received anything yet.

21 **MS. DALEY:** All right.

22 **MR. McCONNERY:** But I certainly hadn't come
23 to Ottawa and started the intense preparations.

24 **MS. DALEY:** You hadn't begun to be able to
25 do the kind of work necessary to prepare yourself to

1 conduct the trial?

2 MR. McCONNERY: Yes.

3 MS. DALEY: Correct?

4 MR. McCONNERY: That's sound. Yes.

5 MS. DALEY: All right. Now, would it be
6 fair to say that by April 25th of that year, there was no
7 realistic chance the Crown could proceed with the assigned
8 trial date?

9 MR. McCONNERY: No, I would have -- well, in
10 retrospect, yes. But at the time, it was still our hope
11 that if whatever had happened, for instance Mr. Neville was
12 making an application, I think Mr. Selkirk argued it. If
13 the trial judge had said "Well, we have four or five weeks;
14 let's give Mr. Neville a week or two of that", I would have
15 thought sitting maybe in Barrie and not knowing what I was
16 stepping into here that maybe that trial day was
17 salvageable.

18 Maybe not for that first date where it was
19 quite clear Mr. Neville wasn't going to be available, maybe
20 two weeks later, but I didn't know -- I certainly couldn't
21 appreciate it if Mr. Neville could walk from that Perth
22 murder trial into this a week later.

23 MS. DALEY: Setting aside defence
24 circumstances because of course you're not responsible for
25 that, all I'm asking you to do is reflect on your own

1 circumstances as the Crown who is now responsible for
2 MacDonald. And given that you hadn't received the brief
3 yet and you didn't even know what you were dealing with,
4 would it not be faire to say that that initial trial date
5 was just not viable for the Crown?

6 **MR. McCONNERY:** Well, I don't think I can
7 say anything more than in my state of naïveté at the time,
8 I was hoping to be able to do what I could for that trial
9 date.

10 **MS. DALEY:** I'm asking you this for a
11 reason. If you look briefly at Exhibit 2265, that's
12 probably in a volume of exhibits. I don't know if you have
13 the right volume. If not, Madam Clerk will find for you;
14 2265.

15 **THE COMMISSIONER:** M'hm. This is a
16 transcript of the application for the adjournment with Mr.
17 Phillips and Mr. Selkirk.

18 **MR. McCONNERY:** Yeah, okay.

19 **MS. DALEY:** The document is 111236.

20 **MR. McCONNERY:** Okay.

21 **MS. DALEY:** And, sir, you looked briefly at
22 this with Ms. Simms but I just wanted to take you to some
23 comments that Mr. Phillips makes on page 1 of that
24 transcript.

25 **MR. McCONNERY:** Yes.

1 **MS. DALEY:** And these are in his
2 introductory comments to the court and if I look at the
3 very last sentence of that first paragraph, he says:

4 "The Crown is prepared to proceed with
5 the trial as it's already set ..."

6 And then he says:

7 "... and at the earliest date
8 thereafter."

9 And my question to you is simply this, in
10 all honesty, was that an accurate statement at that time?

11 **MR. McCONNERY:** You know, I think when I was
12 asked to be -- to assume this; I was told that they would
13 expect that I would do whatever I could to accommodate that
14 trial date. And even as I got to know a little bit about
15 MacDonald, you know, it took me some time to appreciate the
16 hornets' nest I was walking into.

17 So, yes, in April, I guess I felt given
18 possibly as much as four to five weeks, I could do a sexual
19 assault trial.

20 **MS. DALEY:** All right. So you have no
21 difficulty with what -- what the court was told at that
22 time?

23 **MR. McCONNERY:** I think we were being
24 hopeful but we were going, in our mind, to do whatever we
25 could to try to be available, to try to be -- not available

1 -- to be ready to proceed.

2 MS. DALEY: All right. Now, had the trial
3 proceeded in May of '01, obviously you would have equally
4 anticipated an 11(b) application from the defence; correct?

5 MR. McCONNERY: Yes.

6 MS. DALEY: And you would equally have faced
7 all the problems that you did face at a later time when
8 that application was brought forward?

9 MR. McCONNERY: Yes.

10 MS. DALEY: The only difference would have
11 been a 10-month difference in terms of calculating the
12 period of time the charges were outstanding.

13 MR. McCONNERY: Yes.

14 MS. DALEY: And given that the yardstick, if
15 you will, that the court was applying, the 18-month
16 yardstick, 10 months plus or minus when we're talking about
17 a period of years was likely not a significant period; was
18 it?

19 MR. McCONNERY: It might have been for the
20 second set of charges. Certainly ---

21 MS. DALEY: Those laid in 1998?

22 MR. McCONNERY: Yes.

23 MS. DALEY: By May of '01 though, the 1998
24 charges were still more than 18 months old by ---

25 MR. McCONNERY: Oh, yes.

1 **MS. DALEY:** --- a substantial amount.

2 **MR. McCONNERY:** But, you know, my view is
3 the court has never said that's a deadline. It's a
4 guideline and then we have to look at what happened. And
5 so it might have been -- it might have been salvageable.

6 **MS. DALEY:** I appreciate that but the
7 difficulty would have remained an acute difficulty.

8 **MR. McCONNERY:** Yes, I agree with that.

9 **MS. DALEY:** Sir, are you aware of Ms.
10 Hallett's perspective on what occurred in the Leduc motion
11 and particularly are you aware of her perspective that the
12 police officers involved went behind her back in an effort
13 to persuade defence counsel that she had intentionally
14 withheld disclosure and not them? Did you know that she
15 had that view?

16 **MR. CARROLL:** Excuse me. I rise just to
17 take issue with the latter part of that statement as to the
18 imputed intention of the officers in providing that
19 document. I believe counsel stated to show that it was Ms.
20 Hallett who was intentionally withholding documentation.
21 And the reality was that the document was provided,
22 according to Pat Hall, to establish that the police did
23 not.

24 **THE COMMISSIONER:** But you didn't listen to
25 the question.

1 **MR. CARROLL:** I did listen to the question.
2 I may have misunderstood it but I can tell you I listened
3 to it.

4 **THE COMMISSIONER:** Okay, I'm sorry. You're
5 right. What she said was, what was in Mrs. Hallett's mind?
6 It has nothing to do with the facts. It has to do with is
7 this what was in her mind.

8 **MR. CARROLL:** All right. Then my objection
9 is slightly different and that is how could this witness
10 possibly comment on what is in Ms. Hallett's mind?

11 **THE COMMISSIONER:** Well, I didn't listen to
12 the -- I didn't hear the last part but let's see -- let's
13 see what it was.

14 **MS. DALEY:** I'm going to take you to some
15 documents that were provided to you. My preliminary
16 question was, were you aware of Ms. Hallett's perspective -
17 --

18 **THE COMMISSIONER:** Right.

19 **MS. DALEY:** --- of what had occurred in
20 Leduc.

21 **THE COMMISSIONER:** Okay. And where did you
22 get that perspective?

23 **MS. DALEY:** That being the perspective that
24 the officers had gone behind her back, had made disclosure
25 in that fashion with a view to exonerating themselves and

1 making her look responsible for intentional delay.

2 **THE COMMISSIONER:** So to help Mr. Carroll
3 out, to assuage him a little bit, that is simply her view.

4 **MS. DALEY:** Correct.

5 **THE COMMISSIONER:** It has nothing to do with
6 what other people have found.

7 **MS. DALEY:** Her perspective, her view.

8 **THE COMMISSIONER:** Her perspective, her
9 view.

10 **MS. DALEY:** Is that something you knew
11 about, sir?

12 **MR. McCONNERY:** There was a lot of
13 information in that question. Certainly she told me some
14 of that. Whether or not I had a clear picture of all of
15 that, I mean your words were very precise. They did
16 certain things she told me about. Did she say the police
17 did them with a view to this? I'm not sure I recall that.
18 But she told me they did this. She felt they went behind
19 her back, yes.

20 **MS. DALEY:** The result being that she was
21 accused and in fact in the court's mind was guilty of an
22 intentional non-disclosure, that being the outcome.

23 **MR. McCONNERY:** Yes. I wasn't there. I
24 don't know what the justice found.

25 **THE COMMISSIONER:** No, no, no. All she's

1 asking you is what did you get from Shelley Hallett as to
2 her perspective?

3 **MR. McCONNERY:** Oh, I'm sorry. I didn't
4 understand that.

5 **THE COMMISSIONER:** Her perspective, Shelley
6 Hallett's perspective.

7 **MR. McCONNERY:** Okay. Then I would say
8 that's reasonably accurate.

9 **MS. DALEY:** That's all I'm focussing on
10 here, not -- I know you weren't personally involved but you
11 learned once you took over from Shelley as to what she
12 thought had occurred. There's two documents that go to
13 this; 130363 and 130364, and I did give notice on those. I
14 may have been somewhat late and I do have additional copies
15 if that's necessary.

16 **THE COMMISSIONER:** Can someone help me as to
17 the date of the appeal that reversed the decision on the
18 Leduc matter?

19 **MS. DALEY:** It is in '02. I'm not sure of
20 the exact month.

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

22 **MS. DALEY:** It's 2002.

23 **THE COMMISSIONER:** Okay. At the time, sir,
24 of Mr. Chilcott's ruling, do you know if that appeal had
25 been heard yet?

1 **MR. McCONNERY:** It had not been heard. I
2 can tell you that because I attended it.

3 **THE COMMISSIONER:** Okay. So it was after
4 the ruling?

5 **MR. McCONNERY:** Yes, I was in the Court of
6 Appeal when it was argued.

7 **THE COMMISSIONER:** Okay. Thank you. Good.
8 So I just wanted to situate myself over that.

9 **MS. DALEY:** I don't know if Madam Clerk has
10 the documents handy. If so, I'll provide her with some
11 copies.

12 **THE COMMISSIONER:** Okay.

13 **MS. DALEY:** Actually, my friend has the
14 correct date for the appeal. It doesn't, in fact, occur
15 until July of '03. So it's a number of years after you
16 finished with the MacDonald matter.

17 **MR. McCONNERY:** The next year, yeah.

18 **THE COMMISSIONER:** No, well, the next year.
19 The ruling is on May 13th, 2002 on the MacDonald matter.
20 This is July 2003.

21 **MS. DALEY:** Correct.

22 **MR. McCONNERY:** Yes.

23 **THE COMMISSIONER:** All right. So now let's
24 get the exhibits in.

25 Mr. Carroll?

1 MR. CARROLL: I'm just standing up.

2 THE COMMISSIONER: Okay.

3 MS. DALEY: So if we all have 130 ---

4 THE COMMISSIONER: Not yet. I don't have it
5 yet.

6 MS. DALEY: You don't have it yet.

7 THE COMMISSIONER: So which one do you want
8 to go first?

9 MS. DALEY: One three zero three six three
10 (130363).

11 (SHORT PAUSE/COURTE PAUSE)

12 MS. DALEY: Madam Clerk, I have two extras
13 of both of them, is that all right?

14 THE REGISTRAR: Thank you.

15 (SHORT PAUSE/COURTE PAUSE)

16 THE COMMISSIONER: Thank you.

17 Exhibit 3082 is an email correspondence from
18 Shelley Hallett to Lorne McConnery and James Stewart on
19 July 27th, 2001 with some enclosures.

20 ---EXHIBIT NO./PIÈCE NO P-3082:

21 (130363) - E-mail from Shelley Hallett to
22 Lorne McConnery re: Response to your letter
23 dated 27 Jul 01

24 THE COMMISSIONER: And then Exhibit 3083 is
25 a document dated July 7th, 2001 addressed to Detective

1 Sergeant Denise LaBarge from Shelley Hallett.

2 ---EXHIBIT NO./PIÈCE NO P-3083:

3 (130364) - Letter from Shelley Hallett to
4 Denise LaBarge re: R. v. Leduc (Jacques)
5 Sexual Exploitation dated 07 Jul 01

6 **MS. DALEY:** Thank you.

7 As I interpret these materials sir -- and
8 I'm going to slow down, give you time to look at them, but
9 as I understand these exhibits, the email is one which Ms.
10 Hallett sends to you. And in the second or third paragraph
11 actually, she refers to an attachment being the letter --
12 her letter to Detective Sergeant LaBarge who has been
13 involved in the criminal investigation.

14 So I would -- I think these documents are
15 connected. You can help us with that. But did you receive
16 the email, 3082, and with it a copy of Ms. Hallett's letter
17 to Staff Sergeant LaBarge?

18 **MR. McCONNERY:** Yes, I believe I did and I -
19 --

20 **MS. DALEY:** Okay. So it's been awhile I
21 know since you've seen this. So why don't you take some
22 time and review Ms. Hallett's letter. I have just a few
23 questions for you about it. You tell me when you're ready
24 to answer them.

25 (SHORT PAUSE/COURTE PAUSE)

1 **MR. McCONNERY:** Okay, I've read it.

2 **MS. DALEY:** Thank you.

3 Sir, did you read it at the time it came to
4 you back in 2001?

5 **MR. McCONNERY:** Oh, I believe I did, yes.

6 **MS. DALEY:** All right.

7 And did you have any discussions with Ms.
8 Hallett about this letter or the analysis that she has
9 incorporated in this letter?

10 **MR. McCONNERY:** No, I did not.

11 **MS. DALEY:** In terms of that, her analysis -
12 - it is a lengthy letter but I think there is really just a
13 few salient points, and those are found at various portions
14 of page 3 and over on the final page.

15 Her analysis is that police officers
16 involved went behind her back, made disclosure to defence
17 without telling her. Her analysis is that they did so, so
18 to as avoid any finding that they were responsible for
19 intentional non-disclosure, and she further concludes that
20 this was a very unfortunate result because not only did it
21 damage her in a personal way, and ways that are somewhat
22 obvious, given the decision that was made about her, but it
23 did a great disservice to the case. It ultimately drove
24 the decision that was made by the Court in that case about
25 intentional Crown nondisclosure. That's her analysis.

1 Did you reflect on that analysis when you
2 became aware of it?

3 **MR. McCONNERY:** Did I reflect on it? I
4 believe from the time that I was involved I was guided, as
5 much as anything, by the words that are in her email.
6 Paragraph 2:

7 "I'm also attaching my letter to
8 Detective Sergeant Denise LeBarge, who
9 had conducted the criminal
10 investigation of me, generated by Pat
11 Hall's email allegation of April the 3rd
12 so that you may protect yourself."

13 **MS. DALEY:** Right.

14 **MR. McCONNERY:** I think I conducted -- I
15 tried to conduct myself, from the outset, in the fashion
16 that I could end up in a position of conflict with the
17 police. Hence all those notes that I've been confronted
18 with for two days.

19 **MS. DALEY:** I thought there might have been
20 a relationship between your note-taking and the notion
21 that's expressed here, which is that unfortunately you need
22 to protect yourself from these police officers. Is there a
23 connection?

24 **MR. McCONNERY:** Sure there's a connection.
25 Did I feel, as I worked on the case, that I needed to

1 protect myself?

2 **MS. DALEY:** Yes.

3 **MR. McCONNERY:** No.

4 **MS. DALEY:** Did Ms. Hallett's experience
5 affect your dealings with Mr. Hall at all, or Officer Hall?

6 **MR. McCONNERY:** At the outset I dealt with
7 him as somebody that I felt -- and it may have been a
8 discussion I had with Mr. Stewart -- that he -- there was
9 the potential that whatever happened during the work day,
10 he would know it, all right, and that could come back to
11 bite me. Because, as I did with Mr. Dunlop, when I
12 interviewed him and felt it was imperative on myself to
13 give the notes to Mr. Neville, I felt it fair to have
14 Mr. Dunlop initial the notes. But I didn't do that with C-
15 8. I didn't do that with that person.

16 I'm sorry; let me regain my train of
17 thought.

18 **THE COMMISSIONER:** We're talking about
19 taking notes.

20 **MR. McCONNERY:** Yes. So Pat Hall's
21 reputation was that you might talk about something, as I do
22 myself and then later capture it in my notes. But that's
23 my view of what has happened or said, and obviously here
24 you had a situation where they're entirely different views
25 and Shelley Hallett felt that she had almost been set up.

1 **MS. DALEY:** Clearly ---

2 **MR. McCONNERY:** So ---

3 **MS. DALEY:** --- that's the gist of her
4 letter.

5 **MR. McCONNERY:** --- I made a practice of
6 trying to be very careful when I met the officers -- or the
7 officer in particular --- and I tried to keep a record of
8 when and how things were done, et cetera.

9 **MS. DALEY:** In any of your dealings with
10 Inspector Hall did you feel he was expressing a critical
11 view of the Attorney General and how it had conducted
12 itself in the Project Truth matters?

13 **MR. McCONNERY:** He was critical of Ms.
14 Hallett, he was critical of the Ministry of the Attorney
15 General about the "Fantino briefs".

16 **MS. DALEY:** Yes.

17 **MR. McCONNERY:** That should be the Dunlop
18 briefs.

19 **MS. DALEY:** Yes.

20 **MR. McCONNERY:** Was there anything else he
21 was critical of? I think he was critical of the numerous
22 changes of Crowns. If Pat Hall has an opinion you learn
23 about it.

24 **MS. DALEY:** I assume you did.

25 **MR. McCONNERY:** Oh, yes.

1 **MS. DALEY:** Would it be right to -- just to
2 leave this point, would it be right for us to come away
3 with this understanding: your working relationship with
4 Officer Hall was not your typical collegial, open working
5 relationship in which parties don't feel they need to
6 document one another's doings and sayings? It wasn't a
7 typical working relationship?

8 **MR. McCONNERY:** I agree with that.
9 Certainly from the outset it probably continued throughout
10 my dealings with him, but it certainly became more
11 congenial and collegial --- I think was your word
12 ---

13 **MS. DALEY:** Right.

14 **MR. McCONNERY:** --- as it progressed.

15 **MS. DALEY:** But you still kept taking notes
16 just in case, I take it?

17 **MR. McCONNERY:** Yeah, but that wasn't all
18 about Pat Hall. A lot of that was about this.

19 **MS. DALEY:** Your ---

20 **MR. McCONNERY:** The feeling that there might
21 be ---

22 **MS. DALEY:** Your prescient vision that one
23 day there would be an inquiry that would need to know what
24 would have happened ---

25 **MR. McCONNERY:** My reading of Mr. Guzzo's

1 demand for ---

2 **MS. DALEY:** Right.

3 **MR. McCONNERY:** Right.

4 You know, I think other members of the
5 Ministry above me had said, "You know, there could be an
6 inquiry here, so conduct yourself accordingly."

7 **MS. DALEY:** All right.

8 I'm going to move away from that, from the
9 Hallett topic just to ask you a question on that final
10 point you made to me about the fact that people were -- in
11 addition to the fact that we knew that Mr. Guzzo was
12 lobbying for this strongly, there was a generalized -- some
13 awareness at the Ministry that an inquiry might some day be
14 in the offing.

15 And I'm just wondering this. Was that in
16 part connected to the difficulties that you knew you were
17 going to experience in maintaining the MacDonald charges as
18 a result of delay?

19 **MR. McCONNERY:** I don't think so, but I felt
20 from early on in my involvement that this was a matter that
21 could benefit from an inquiry.

22 There were a lot of very serious
23 allegations, aside from the sexual assault allegations --
24 serious allegations of misconduct against police, citizens,
25 et cetera, and I felt there was -- it merited some

1 exploration of that. You had a Minister -- I'm sorry,
2 Member of the Provincial Legislature, who was getting all
3 kids of press about this. You know, a Crown attorney's
4 name was dragged through the mud after he had gone through
5 a very unfortunate family situation where his father was
6 prosecuted. And you had other -- you know, the Chief of
7 the Police, Bishop LaRocque.

8 I mean, I don't know if any of those people
9 had ever committed any kind of sexual improprieties but I
10 felt the issues here merited exploration, being flushed out
11 in a public hearing. That was my personal view.

12 **MS. DALEY:** All right.

13 Let me move to another topic, and that has
14 to do with Mr. Dunlop and his interactions with both your
15 witness C-8 -- your complainant C-8 ---

16 **MR. McCONNERY:** Yes.

17 **MS. DALEY:** --- and also Mr. Leroux, and I
18 want to see if you can help us here.

19 **MR. McCONNERY:** Okay.

20 **MS. DALEY:** One second; I'm missing my
21 exhibit. Give me one second, sir.

22 Yes, the documents that are relevant to C-8
23 are Exhibit 3068. So you might want to have that one
24 handy.

25 **THE COMMISSIONER:** Three zero six eight

1 (3068)?

2 **MS. DALEY:** Three zero six eight (3068).

3 Those should be your notes, sir, of your
4 interview with C-8 of March 12th, '02.

5 **MR. McCONNERY:** Yes, I have that.

6 **MS. DALEY:** You have that handy?

7 Now, you were asked some questions about
8 this interview but I want to go a little bit farther and
9 see if you can -- if you have a view on any of the matters
10 I'm going to ask you about.

11 Essentially C-8 appears to be telling you
12 that his evidence as to his sexual abuse was somehow
13 affected by his dealings with Constable Dunlop. That's
14 clearly the message he's giving you; correct?

15 **MR. McCONNERY:** Yes, yes.

16 **MS. DALEY:** And indeed he appears to be
17 suggesting that he has been manipulated by Constable
18 Dunlop.

19 **MR. McCONNERY:** Correct.

20 **MS. DALEY:** And I take it you were aware,
21 sir, that C-8 in early '97 had been facing a sexual assault
22 charge of his own; the victim being a young girl. You knew
23 about that?

24 **MR. McCONNERY:** Yes, I did. That's right.

25 **MS. DALEY:** And did you come to know that

1 Charles Bourgeois, who was Mr. Dunlop's lawyer, also was C-
2 8's lawyer in the guilty plea associated with that charge?

3 **MR. McCONNERY:** If I knew it I'd forgotten
4 it. I know Mr. Bourgeois personally.

5 **MS. DALEY:** All right.

6 **MR. McCONNERY:** Just because he's from my
7 area.

8 I don't make that connection; I apologize.

9 **MS. DALEY:** All right.

10 Did you become aware in your dealings with
11 C-8 that in mitigation he did plead guilty to his own
12 sexual assault charges? In mitigation, information was put
13 forward that he was a victim of abuse of Lalonde -- Marcel
14 Lalonde, the teacher, and Charles MacDonald. Is that a
15 fact you knew about?

16 **MR. McCONNERY:** Yes. Isn't it the fact that
17 the day of his ---

18 **THE COMMISSIONER:** Easy now on -- okay. I
19 thought -- make sure of the monikers now. But go ahead.

20 **MS. DALEY:** Right.

21 **THE COMMISSIONER:** But on C-8.

22 **MR. McCONNERY:** Yes, on the date of his
23 court appearance ---

24 **MS. DALEY:** Yes.

25 **MR. McCONNERY:** --- that that was the date

1 he had drafted or videotaped or audiotaped statements
2 describing for the first time ---

3 **MS. DALEY:** Yes.

4 **MR. McCONNERY:** --- his dealings with Ron
5 Leroux, the teacher "bus driver" and Father MacDonald.

6 **MS. DALEY:** Father MacDonald. And that
7 information was put before the court in mitigation of his
8 sentence for sexual assault. So in other words, that
9 information was put forward in the context of his guilty
10 plea to assist him.

11 **MR. McCONNERY:** Yes. And you know
12 something, I can't tell you when I learned that but yes, I
13 did know that.

14 **MS. DALEY:** By the time he is attending on
15 you in March of '02, I assume you knew that fact?

16 **MR. McCONNERY:** Yes.

17 **MS. DALEY:** And one of the messages that C-8
18 is giving you in this interview, as I read the document, is
19 that his real concern had been with abuse by Ron Leroux?

20 **MR. McCONNERY:** Correct.

21 **MS. DALEY:** And that what he's telling you
22 is that was my real concern but rather than pursue that,
23 Officer Dunlop kept telling me that I needed to talk about
24 priests.

25 That's something that C-8 discloses to you

1 in this exhibit, sir?

2 MR. McCONNERY: Dunlop kept pushing the
3 priest, the priest.

4 MS. DALEY: The priest. And so what C-8 is
5 saying, if I could paraphrase it, is "I feel manipulated
6 because I had a complaint about Mr. Leroux. I told Dunlop
7 about that. Dunlop wasn't interested in that. He kept
8 pushing me to talk about priests." That's the gist about
9 what is being disclosed to you?

10 MR. McCONNERY: That's part of it, yes.

11 MS. DALEY: And in terms of the Lalonde
12 situation, the evidence he gave there, again, he's
13 suggesting that Dunlop is telling him that more is better
14 meaning say more about what Lalonde did.

15 MR. McCONNERY: Yes, and in this document
16 here that you referred me to, I refer to that expression
17 "more is better".

18 MS. DALEY: Right.

19 MR. McCONNERY: And when I read it over, I
20 think I used it once and maybe twice. But my recall is
21 that that was something that C-8 kept saying to me, that
22 Dunlop kept saying "More is better. More is better. ---

23 MS. DALEY: Right.

24 MR. McCONNERY: --- More is better." It was
25 like a mantra.

1 **MS. DALEY:** And indeed, as my friend has
2 just pointed out, your short version notes say that "More
3 is better". So this is something that C-8 is disclosing to
4 you as Dunlop's message to him in describing abuse; fair
5 enough?

6 **MR. McCONNERY:** Yes.

7 **MS. DALEY:** Did you, sir -- did you conclude
8 or did you come to a belief that Dunlop had in fact
9 manipulated this gentleman?

10 **MR. McCONNERY:** An expression that I use
11 when I feel people have destroyed their own credibility is
12 I wouldn't cross the street based upon what they were
13 telling me. That is the way I felt about C-8.

14 **MS. DALEY:** Okay. Obviously that's a
15 reasonable conclusion based on everything that's occurred
16 up to this point. I guess what I'm driving at is -- and
17 maybe that's your way of answering my question. Based on
18 what he's telling you, did you believe that Dunlop had
19 played a role in the untruthful stories that C-8 had told?

20 **MR. McCONNERY:** It was a very real
21 potential. Dunlop had played a role. Based only on what
22 C-8 told me, ---

23 **MS. DALEY:** Yes.

24 **MR. McCONNERY:** --- I couldn't jump to that
25 condemnation alone of Dunlop.

1 **MS. DALEY:** You would have wanted more
2 information about it.

3 **MR. McCONNERY:** Yes.

4 **MS. DALEY:** I understand that. But at least
5 what he's telling you is triggering the thought that
6 perhaps Mr. Dunlop has been responsible for the fact that
7 this witness has been dishonest about things; fair?

8 **MR. McCONNERY:** Yes.

9 **THE COMMISSIONER:** Or maybe that he's trying
10 to cover his not so -- his illegal acts by buffering it, by
11 saying "Well, he's pushing me".

12 **MS. DALEY:** It's another possibility.

13 **MR. McCONNERY:** Counsel, one possibility to
14 me which I agree with. There are other possibilities.

15 **THE COMMISSIONER:** Right. All right.

16 **MS. DALEY:** Okay. But at least it crossed
17 your mind that perhaps Dunlop had been instrumental in the
18 untruths that you had heard from C-8?

19 **MR. McCONNERY:** Yes.

20 **MS. DALEY:** In terms of Mr. Leroux, and
21 again, I don't -- this is just my thinking. I don't know
22 if you went through this thought process or not but by
23 October of 1996, we know from your analyses that Ron Leroux
24 has started giving statements to Constable Dunlop?

25 **MR. McCONNERY:** Yes, that's correct.

1 **MS. DALEY:** And that's -- you've read those
2 statements obviously. So I'm going to try to cut through
3 it. I'm going to paraphrase a little bit.

4 But the guts of what Leroux said essentially
5 was that he was privy to a group of at least three people,
6 Ken Seguin, Father Charles and Malcolm MacDonald, who he
7 described as a pedophile ring. And he was in fact a bit of
8 an insider in their world. That's the gist of his
9 perspective in those affidavits; correct?

10 **MR. McCONNERY:** I think that's accurate.

11 **MS. DALEY:** And as far as we know, those men
12 were all homosexuals. They were all fairly prominent in
13 the community.

14 **MR. McCONNERY:** Yes.

15 **MS. DALEY:** And I wonder if this thought
16 occurred to you because obviously Officer Dunlop spent a
17 lot of time with Mr. Leroux. Mr. Leroux gives Dunlop
18 numerous, numerous statements which differ one from the
19 other; correct?

20 I can give you some examples if we need to.
21 You've outlined, primarily in your factual analyses of the
22 charges that relate to Leroux, the various statements and
23 how they differ.

24 **MR. McCONNERY:** Yes.

25 **MS. DALEY:** Bear in mind C-8's message to

1 you which is "I also complained about Ron Leroux but Dunlop
2 wasn't interested".

3 Did the thought occur to you that perhaps
4 Leroux had more value to Dunlop as an informant than as a
5 potential perpetrator?

6 **MR. McCONNERY:** That Leroux had more value
7 to Dunlop ---

8 **MS. DALEY:** Yes.

9 **MR. McCONNERY:** --- as an informant as
10 opposed to?

11 **MS. DALEY:** A possible perpetrator of abuse?

12 **MR. McCONNERY:** I don't think my mind never
13 got to that point.

14 **MS. DALEY:** Okay. You are aware that the
15 guts of Dunlop's statement of claim before he starts
16 talking to Mr. Leroux is to suggest a pedophile ring in
17 Cornwall of prominent people and a police cover-up of their
18 activities. That's the gist of what he's talking about.
19 And you've noticed that in the various affidavits that
20 Leroux offers, that's the story he gives; right?

21 **MR. McCONNERY:** Oh, yes, yes.

22 **MS. DALEY:** And Mr. Leroux also starts in
23 his affidavits talking about what I'm going to call the
24 Stanley Island conspiracy meeting and we know that's the
25 event on the island that you looked into quite carefully;

1 right?

2 **MR. McCONNERY:** Yes. M'hm.

3 **MS. DALEY:** And, sir, you're aware that he
4 acknowledged, from where you're sitting right now in this
5 Inquiry, that that story was not truthful.

6 **MR. McCONNERY:** Am I aware that Ron Leroux
7 said that?

8 **MS. DALEY:** Yes.

9 **MR. McCONNERY:** Certainly, to some extent I
10 understood that Ron Leroux withdrew many of his
11 allegations. You know something; you're correct. I
12 believe that I asked the question of somebody, and I said,
13 "Does he still maintain that meeting?" And I was told that
14 no, he said that didn't happen.

15 **MS. DALEY:** All right. Now, I take it,
16 going in -- and now I'm switching topics obviously. I'm
17 going to focus a little bit on the Crown briefs and that's
18 the conspiracy brief and also the four other briefs in
19 which Ron Leroux was the sole complainer. All right?

20 **MR. McCONNERY:** Yes, certainly.

21 **MS. DALEY:** So I'm going to ask your thought
22 process there. Obviously, as you noted in your first
23 interview with Officer Hall, Hall's personal view was that
24 he would not put a hand on the Bible to anything Mr. Leroux
25 said, nor would he expect his men to do that.

1 And so, clearly, Mr. Hall communicated to
2 you going in he had zero faith in the credibility of that
3 witness. Is that not fair?

4 **MR. McCONNERY:** I thought that was much
5 later. I thought that was July 11th.

6 **MS. DALEY:** July -- you're absolutely right,
7 that's July. That's your July meeting with ---

8 **MR. McCONNERY:** Right, but I met Pat Hall
9 and he was beginning to give me some of the background as
10 early as May 4th.

11 **MS. DALEY:** All right. So by July 10th, when
12 you're getting into the more -- in more depth ---

13 **MR. McCONNERY:** Yes.

14 **MS. DALEY:** --- with him, he tells you his
15 view of Leroux's credibility?

16 **MR. McCONNERY:** Yes.

17 **MS. DALEY:** And you obviously make your own
18 personal evaluation of Leroux's credibility; correct?

19 **MR. McCONNERY:** Yes.

20 **MS. DALEY:** And ---

21 **MR. McCONNERY:** What I asked him was about
22 reasonable and probable grounds.

23 **MS. DALEY:** Right.

24 **MR. McCONNERY:** I don't know that he ever
25 answered me; I wouldn't have anyone swear to the

1 truthfulness of anything Leroux said. I think it was just
2 more reasonable and probable grounds.

3 MS. DALEY: But that ---

4 MR. McCONNERY: But I took that to be a
5 reflection on Leroux, yes.

6 MS. DALEY: Because Leroux was the sole
7 complainant in those matters.

8 MR. McCONNERY: Yes.

9 MS. DALEY: And the reason why Officer Hall
10 has no reasonable and probable grounds is because he
11 disbelieves Leroux's story.

12 MR. McCONNERY: Yes, I think that's
13 accurate.

14 MS. DALEY: All right. And I take it in
15 your own personal evaluation of Leroux's credibility, did
16 you have regard for the fact that his story expanded and
17 brought in more prominent people to the Stanley Island
18 conspiracy meeting as it went along? Is that a factor that
19 was present to your mind?

20 MR. McCONNERY: That may have been. Can I
21 tell you what sort of twiggged for me right away?

22 MS. DALEY: Yes.

23 MR. McCONNERY: I knew the officers in
24 Orillia who interviewed him when Mr. Bourgeois brought him
25 to Orillia. I felt, when I watched their video, that for

1 officers who had absolutely no idea what he was talking
2 about, this -- what was going on in Cornwall -- that they
3 did quite a good interview of him. And there were a number
4 of issues which they pressed him on and I felt it was quite
5 clear he was being dishonest about it.

6 So for me the antennae were up from that
7 early in looking at Ron Leroux.

8 **MS. DALEY:** Yes.

9 **MR. McCONNERY:** Do I -- I don't recall now
10 that I was ever of the mindset that, you know, four, five,
11 six people here, then over here he's got eight or 10 and he
12 keeps adding somebody. I felt the people he was naming
13 were prominent people in this community. And I just don't
14 remember -- my realizing that he kept adding more.
15 Somebody said something yesterday about he later added
16 Leduc. I didn't recall that.

17 **MS. DALEY:** One second. There's an exhibit
18 I think might help you.

19 **MR. McCONNERY:** Okay.

20 **THE COMMISSIONER:** Once we're finished with
21 this issue, I'd like to take a short 10-minute break if you
22 don't mind.

23 **MS. DALEY:** Absolutely. Okay. I'll try to
24 conclude this really quickly, sir ---

25 **THE COMMISSIONER:** No, no. No rush.

1 **MS. DALEY:** --- get that done. Okay.

2 If you have 2651 handy; that was your
3 factual analysis on the conspiracy to obstruct. You spent
4 some time looking at that yesterday.

5 **MR. McCONNERY:** Yeah. I don't -- 2651?

6 **MS. DALEY:** Yes, 2651.

7 **MR. McCONNERY:** Okay, I think I may have it.
8 No, I don't.

9 **MS. DALEY:** Are you missing the binder?

10 **MR. McCONNERY:** I've got more here than I
11 think -- no, I don't have 2651.

12 Okay, I do have it.

13 **MS. DALEY:** At page 30 -- I'm just going to
14 go by the pagination at the bottom -- you're laying out the
15 evidence from Mr. Leroux re the Stanley Island conspiracy
16 meeting.

17 **MR. McCONNERY:** Yes.

18 **MS. DALEY:** And under your heading "Jacques
19 Leduc" you note, your second and third bullets, that in the
20 first two affidavits that he gives to Mr. Dunlop, Leduc's
21 name is not mentioned; right?

22 **MR. McCONNERY:** Yes, you're right.

23 **MS. DALEY:** And then by statement number --
24 the third statement, which is dated December 4, '96, at
25 this point now he is saying, "Oh, I recognize a picture of

1 that fellow and he was at that meeting." See that? And
2 you became aware, did you, sir, that what Officer Dunlop
3 did was that he would give an individual picture to Mr.
4 Leroux and Leroux would say, "Yep, that man was at the
5 meeting," and that's what happened here? You unders ---
6 Was that a yes?

7 **MR. McCONNERY:** Can you repeat that one?

8 **MS. DALEY:** Yeah. Did you understand that
9 what Officer Dunlop did was he gave individual picture, in
10 this case a picture of Jacques Leduc, to Ron Leroux and on
11 that basis, Ron Leroux identified Jacques Leduc had been at
12 the island? That's what had happened?

13 **MR. McCONNERY:** Yes, I think I commented
14 yesterday at one time about that having been done and I
15 felt it compromised the case.

16 **MS. DALEY:** Yes. And certainly Perry
17 Dunlop, as an experienced police officer, would have known
18 that that's not how you procure information about identity.

19 **MR. McCONNERY:** I would trust he would, yes.

20 **MS. DALEY:** All right. But that is what
21 happened here ---

22 **MR. McCONNERY:** Okay.

23 **MS. DALEY:** --- and that's how Leroux's
24 story evolves to include Mr. Leduc as part of the
25 conspiracy meeting; correct?

1 **MR. McCONNERY:** Yes.

2 **MS. DALEY:** And in somewhat similar vein, if
3 you look at the next page, you've laid out the information
4 about Crown Attorney Murray MacDonald.

5 **MR. McCONNERY:** Yes.

6 **MS. DALEY:** And in the first instance, his
7 very first affidavit to Mr. Dunlop says that, "Ken Seguin
8 advised me Murray was" -- as well as a bunch of VIPs he
9 also advised that Murray MacDonald, Crown attorney, was
10 there. So in the first place, first instance, what
11 Mr. Leroux says is, "Not that I saw Murray but Ken told me
12 that;" right?

13 **MR. McCONNERY:** Yes.

14 **MS. DALEY:** And in the second go round, the
15 second affidavit is stronger. It says, "I then observed
16 Murray MacDonald exit Ken's back door. I clearly observed
17 him."

18 So now we have a direct personal observation
19 that wasn't in the first affidavit, and again both of these
20 affidavits are -- he's working on with Mr. Dunlop and
21 Dunlop's counsel; right? Correct?

22 **MR. McCONNERY:** Yes.

23 **MS. DALEY:** One final example of what I
24 think is a pattern, if -- hopefully you can look quickly at
25 Exhibit 3054. It might be in a different book. But this

1 is your factual analysis concerning Gary Ostler.

2 MR. McCONNERY: Three zero five four (3054)?

3 MS. DALEY: Three zero five four (3054).

4 MR. McCONNERY: Okay.

5 Yes, I have that.

6 MS. DALEY: And again, if you look at page
7 2, you're outlining Ron Leroux's statements about this
8 gentleman, and again you note that in the first and second
9 affidavits of October 31, November 13th, '96, he doesn't
10 allege anything against Gary Ostler.

11 MR. McCONNERY: Yes.

12 MS. DALEY: And then suddenly on September
13 4th, '96, he does.

14 MR. McCONNERY: Yes.

15 MS. DALEY: Okay.

16 And I'm mindful of what C-8 told you about
17 Dunlop harping on, "The priest, the priest, the priest,"
18 okay. When you came to reflect on how Ron Leroux' story
19 had evolved and changed concerning who was at the Stanley
20 Island conspiracy meeting, when you came to think about
21 that carefully, did you think that Leroux' story had at all
22 been influenced by Dunlop and Dunlop's position in the
23 civil lawsuit?

24 MR. McCONNERY: Well, what C-8 told me came
25 long after my analysis of those two briefs; right?

1 **MS. DALEY:** Then I was wrong to connect
2 them. Don't connect them. Just reflecting on the work you
3 did with the Leroux information and your knowledge about
4 the role that Dunlop played there; did you consider that
5 Leroux had been influenced to give statements to correlate
6 to Dunlop's pleaded position in the lawsuit?

7 **MR. McCONNERY:** I'm not sure that I would
8 say one counselled the other or vice versa. When you look
9 at the analysis, at the end of the analysis there are some
10 appendices, including some excerpts from the pleadings, and
11 to me they somewhat -- you know, now, eight years later, I
12 can't say how close, but they close -- they somewhat
13 mirrored Leroux' allegations and Dunlop was using them as a
14 basis to sue people, claiming -- I found it almost
15 incredible.

16 When he talks about this in paragraph 86 of
17 the pleadings he says, "And those parties would know this
18 would cause injury to Dunlop," who had nothing to do with
19 any of it.

20 **MS. DALEY:** Right.

21 **MR. McCONNERY:** So was he feeding off Leroux
22 or was Leroux feeding off him? I don't know that I ever
23 got my mind around that.

24 **MS. DALEY:** Did it ever occur to you that
25 there was some form of collusion between the two?

1 **MR. McCONNERY:** Yes.

2 **MS. DALEY:** But as to who was the puppet and
3 who was the puppet master, that's not something you
4 concluded about?

5 **MR. McCONNERY:** I don't think it's something
6 I ever in mind came to an opinion about.

7 **MS. DALEY:** All right.

8 One final question before we break. I just
9 was asking you to look at Exhibit 3054, and if you look at
10 page 5 of that document, sir, you lay out the issues,
11 including issue 6, of course, which is the credibility
12 concern.

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

14 **MS. DALEY:** And you say, amongst other
15 things, "In it for the money." And I wondered if you had a
16 belief that Leroux had been promised money from Dunlop's
17 lawsuit.

18 **MR. McCONNERY:** Did I think Leroux had been
19 promised money from Dunlop, from the lawsuit?

20 **MS. DALEY:** Is that a thought that occurred
21 to you?

22 **MR. McCONNERY:** No, it wasn't.

23 **MS. DALEY:** Not unless you thought his
24 assertions about the Stanley Island conspiracy meeting were
25 somehow motivated by a desire to gain money?

1 **MR. McCONNERY:** Dunlop?

2 **MS. DALEY:** Mr. Leroux.

3 **MR. McCONNERY:** I'm not following you,
4 counsel. I don't -- did Leroux -- Leroux never sued
5 anybody.

6 **THE COMMISSIONER:** No, no, no. No. What
7 counsel is suggesting is that did you ever think that what
8 you've written down there, that -- what's his name ---

9 **MR. McCONNERY:** Leroux?

10 **THE COMMISSIONER:** --- Leroux is in it for
11 the money? Okay?

12 So did you ever think, "Well, how can he get
13 some money that" -- and so, what the suggestion is, is that
14 Dunlop promised him money from the big lawsuit -- the
15 lawsuit. So she's putting it to you ---

16 **MR. McCONNERY:** No.

17 **THE COMMISSIONER:** --- have you ever thought
18 that?

19 **MR. McCONNERY:** What I thought was, he was
20 in it for the money, i.e., you charge this officer and you
21 get a settlement -- I'm sorry -- you charge this priest and
22 then you get a settlement.

23 **MS. DALEY:** Meaning the charges against the
24 priest that ---

25 **MR. McCONNERY:** Yes.

1 **MS. DALEY:** --- he said had abused him?

2 **MR. McCONNERY:** Yes. So there was Ostler,
3 there was LaRocque, there were ---

4 **MS. DALEY:** All right.

5 **MR. McCONNERY:** --- two or three others.

6 **MS. DALEY:** One final question, just because
7 I'm on this page of yours. Another concern, of course, is
8 tainting by Dunlop interviews, and you've explained that,
9 in part, means the fact that Dunlop is showing one
10 photograph.

11 Is there any other aspect of the tainting of
12 those interviews that concerned you?

13 **MR. McCONNERY:** Well, yes. Some of it's
14 speculative, but, if we had an officer on Project Truth who
15 interviewed a complainant, we would have a record of the
16 interview. We didn't have a record of Dunlop's interviews.

17 We were getting allegations that he was
18 prompting people, telling them what to say, how to say it,
19 telling them things like, "There's more money for you in
20 this, if it happened on school property."

21 **MS. DALEY:** Right.

22 **MR. McCONNERY:** And -- so we had no record
23 of what -- of what he would say to anyone. I was very
24 concerned about that.

25 **MS. DALEY:** And, I take it, your thought

1 process was that, in all likelihood, that also happened
2 between Dunlop and Leroux? It wasn't documented, but you
3 felt that Dunlop had, to some extent, guided Leroux in what
4 Leroux was saying? Did you?

5 **MR. McCONNERY:** I think I'll have to go back
6 to what I said earlier; I wasn't sure who guided whom. It
7 was -- to me, they were holding hands.

8 **MS. DALEY:** To the extent that ---

9 **MR. McCONNERY:** They were working in
10 concert, is what I mean.

11 **MS. DALEY:** To the extent that you believe
12 that Dunlop had tainted the interviews of Leroux, did you
13 think that was intentional on Dunlop's part?

14 **MR. McCONNERY:** I'm not sure I went that
15 far. I just felt that his involvement with Dunlop, and
16 what Dunlop was doing, would taint him as a witness.

17 **MS. DALEY:** Why don't we take a break?

18 **THE COMMISSIONER:** Let's take the break,
19 thank you.

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

22 This hearing will resume at 5:00 p.m.

23 --- Upon recessing at 4:46 p.m. /

24 L'audience est suspendue à 16h46

25 --- Upon resuming at 5:01 p.m. /

1 L'audience est reprise à 17h01

2 **THE REGISTRAR:** This hearing is now resumed.
3 Please be seated. Veuillez vous asseoir.

4 **THE COMMISSIONER:** Thank you.

5 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

6 **MS. DALEY (cont'd/suite):**

7 **MS. DALEY:** Sir, I just wanted to conclude
8 the discussion we've been having about Leroux' various
9 affidavits, the potential role played in the procuring of
10 those affidavits by Mr. Dunlop, and how that -- how all
11 those matters ended up on your plate, ultimately.

12 It follows, I take it, sir, from your
13 conclusions in your conspiracy analysis, of course, that --
14 Leroux, of course, is the only one that speaks to a Stanley
15 Island conspiracy meeting, and that's not credible.
16 Therefore, the police have come to a reasonable conclusion
17 about that, and there oughtn't to be charges, right? At
18 the end of the day, that's where you're at?

19 **MR. McCONNERY:** Yes.

20 **MS. DALEY:** And you knew, did you, sir, that
21 the Leroux affidavits had been put forward by Mr. Dunlop to
22 Mr. Fantino of the OPP, various other policing agencies,
23 and, as a result, the OPP investigation named Project Truth
24 came into being; right?

25 **MR. McCONNERY:** Yes.

1 **MS. DALEY:** And you were satisfied in your
2 own mind that those affidavits, sworn by Mr. Leroux,
3 certainly in relation to the Stanley Island conspiracy,
4 were false?

5 **MR. McCONNERY:** Will you repeat that again?

6 **MS. DALEY:** Your conclusion was that when
7 Leroux swore in his affidavits about seeing people at a
8 Stanley Island conspiracy meeting, that was a false claim?

9 **MR. McCONNERY:** I believed -- I believed
10 that by the end of ---

11 **MS. DALEY:** You believed it was false?

12 **MR. McCONNERY:** Yes. Yes.

13 **MS. DALEY:** And, notwithstanding that
14 conclusion though, it had been put forward by Dunlop to law
15 enforcement and there had been an extensive investigation
16 of that allegation; correct?

17 **MR. McCONNERY:** Yes.

18 **MS. DALEY:** And, indeed, we've heard
19 evidence here ---

20 **MR. McCONNERY:** I -- I think you're --
21 aren't you putting the cart ahead of the horse there,
22 though?

23 **MS. DALEY:** Well, what we've been told is
24 that Project Truth was formed as a result of the briefs
25 that Dunlop provided to Fantino, and that those briefs, of

1 course, contain Leroux' affidavits.

2 MR. McCONNERY: Right. But then, what you -
3 - I thought you were asking me was I of the view they were
4 false. Well, obviously, that view was only formed in 2001.

5 MS. DALEY: I understand that.

6 MR. McCONNERY: So the investigation didn't
7 flow after I made my determination ---

8 MS. DALEY: No, no. I know that.

9 MR. McCONNERY: Okay, sorry.

10 MS. DALEY: I'm clear on the chronology.

11 MR. McCONNERY: Okay.

12 MS. DALEY: The very simplistic facts are
13 that the affidavit pertaining to that conspiracy meeting
14 was false as both you and others concluded; correct? And
15 it had been the platform of the Project Truth police
16 investigation?

17 MR. McCONNERY: Was it the sole platform? I
18 don't know, but it was certainly part of the platform of
19 that investigation, yes.

20 MS. DALEY: And, indeed, the police officers
21 involved had generated what I think we were told were the
22 six -- six volumes of the Crown brief on this very
23 allegation about conspiracy? All of which you had, all of
24 which you looked at; right?

25 MR. McCONNERY: Nine volumes.

1 **MS. DALEY:** Nine volumes.

2 **MR. McCONNERY:** I think, yes.

3 **MS. DALEY:** So a considerable amount of
4 effort had gone into investigating the allegation?

5 **MR. McCONNERY:** Yes.

6 **MS. DALEY:** All right. Now, my question for
7 you is this, sir. Putting things in that context, was any
8 thought -- did you give any thought to the consequences of
9 what had occurred? Namely, a false affidavit had been put
10 forward; it had triggered a significant police
11 investigation?

12 **MR. McCONNERY:** Yes.

13 **MS. DALEY:** Were there any charges that were
14 potentially layable in those circumstances?

15 **MR. McCONNERY:** I would say there were.

16 **MS. DALEY:** Would public mischief be one of
17 them?

18 **MR. McCONNERY:** Yes.

19 **MS. DALEY:** Are there any others?

20 **MR. McCONNERY:** A false affidavit.

21 **THE COMMISSIONER:** So perjury?

22 **MR. McCONNERY:** Yes.

23 **MS. DALEY:** Did you, sir, when you were
24 involved in Project Truth and working on these briefs, ever
25 consider whether a public mischief charge might be

1 appropriate in relation to either Leroux or Dunlop or both?

2 MR. McCONNERY: Well, I've talked about
3 Dunlop, after the 11(b) application, and Pat Hall coming to
4 me about that.

5 MS. DALEY: I understand.

6 MR. McCONNERY: Okay? So that may be a
7 little bit different than what you're getting at.

8 MS. DALEY: I think it is.

9 MR. McCONNERY: Okay.

10 MS. DALEY: I'm asking you to put on the
11 conspiracy brief hat and ---

12 MR. McCONNERY: Okay.

13 MS. DALEY: --- let me know whether, at the
14 end of the day, you gave any thought to a public mischief
15 charge against either Leroux, Dunlop or both as a result of
16 the false information about the conspiracy meeting.

17 MR. McCONNERY: I don't remember any
18 discussion of it. Was it ever a thought that entered my
19 mind, charging some of the parties who made these
20 allegations?

21 The only person I can recall ever discussing
22 about, in that regard, was Perry Dunlop.

23 MS. DALEY: In relation to his testimony at
24 the MacDonald prelim -- sorry -- at the MacDonald motion?

25 MR. McCONNERY: Yes, but -- but an overall

1 view of what he had done.

2 MS. DALEY: All right.

3 MR. McCONNERY: Okay? Encompassing his
4 testimony, you know, the allegations of C-8 -- encompassing
5 everything that was involved here.

6 MS. DALEY: I take it, though, it didn't
7 occur to you, as part of that thought process, that perhaps
8 Constable Dunlop had been culpable in the Leroux
9 falsehoods, it's in the Leroux false affidavits?

10 MR. McCONNERY: I would probably even go the
11 other way.

12 MS. DALEY: Can you explain what you mean?

13 MR. McCONNERY: I felt Leroux was lying to
14 them.

15 MS. DALEY: All right.

16 Let me just ---

17 MR. McCONNERY: But to answer your question
18 though, no, I don't think that I ever discussed charging
19 Leroux?

20 MS. DALEY: All right.

21 I want to take the same set of circumstances
22 and look at it from a slightly different angle, a community
23 angle, the consequences to the community. And I take it
24 you were aware that Leroux's false affidavit was placed on
25 a website which was called projecttruth.com?

1 **THE COMMISSIONER:** Just a second. You keep
2 saying "Leroux's false affidavit".

3 **MS. DALEY:** The Leroux affidavit that
4 contained the incorrect information.

5 **THE COMMISSIONER:** Who says it's incorrect
6 information?

7 **MS. DALEY:** Well, you've concluded that it
8 was incorrect.

9 **MR. McCONNERY:** But that was my opinion.

10 **MS. DALEY:** That was your opinion.

11 **THE COMMISSIONER:** Right.

12 **MS. DALEY:** So within the framework of his
13 opinion, did you know that that affidavit had been placed
14 on a website called projecttruth.com?

15 **MR. McCONNERY:** I don't believe I knew that.
16 Is this Mr. ---

17 **MS. DALEY:** That's Mr. Nadeau's website.

18 **MR. McCONNERY:** I don't know if I had that
19 particular knowledge or not.

20 **MS. DALEY:** Did you ever have any
21 information about what was posted on that website and what
22 type of allegations and materials were there?

23 **MR. McCONNERY:** Occasionally, I would --
24 there might be hard copies of something that was on the
25 website that I read, and some of them -- it wouldn't

1 surprise me if some of them were in the Dunlop boxes, but
2 nobody ever provided me a brief of the Nadeau website
3 stuff.

4 **MS. DALEY:** I'm wondering if you knew, for
5 example, that persons like Ron Wilson, who was a local
6 business owner, and Murray MacDonald, a local Crown, were
7 named by Mr. Leroux in allegations that he posted on that
8 website as part of this paedophile gang, part of this
9 island meeting. Did you ever know about that?

10 **MR. McCONNERY:** That Leroux posted on the
11 website?

12 **MS. DALEY:** No, that Leroux's affidavit

13 ---

14 **MR. McCONNERY:** The Nadeau ---

15 **MS. DALEY:** --- naming those gentlemen was
16 posted?

17 **MR. McCONNERY:** I think I had some
18 information that Mr. Murray MacDonald's name had been on
19 the website.

20 Was Mr. Wilson a funeral director?

21 **THE COMMISSIONER:** Yes.

22 **MS. DALEY:** Yes.

23 **MR. McCONNERY:** Okay. Then I think I had
24 some reasonably ---

25 **MS. DALEY:** I'm trying to get a sense, and

1 help me if you can, because I know you're stationed in
2 Ottawa and obviously you're interested in what's going on
3 here from the perspective of the MacDonald case, but did
4 you have a general sense that in this community Leroux's
5 allegations were taken quite seriously?

6 Regardless of the views you came to, people
7 here thought there was an island meeting and a conspiracy
8 and that all sorts of people were involved. Is that
9 something you knew about?

10 **MR. McCONNERY:** I believe that I was of the
11 impression that the community believed there was a cover-
12 up.

13 **MS. DALEY:** Right.

14 **MR. McCONNERY:** Whether or not they believed
15 the island cottage VIP meeting, I have no way to assess
16 that.

17 **MS. DALEY:** All right.

18 **MR. McCONNERY:** But that certainly there
19 seemed to be a buy-in by the community to a huge cover-up
20 involving prominent people. So I guess that's a reflection
21 on this information from Leroux.

22 **MS. DALEY:** So let me ask you this. You
23 made it very clear to us several times that when you
24 reviewed the conspiracy matter, you directed your mind to a
25 fairly narrow conspiracy and that was the so-called meeting

1 on Stanley Island to arrange the Silmser settlement, and
2 that was your focus; correct?

3 **MR. McCONNERY:** Yes.

4 **MS. DALEY:** You did not look at what I would
5 call the balance of allegations made by Leroux and others,
6 and that is there is a clan of paedophiles involving a
7 large group of people involving the abuse of kids.

8 Like, that's not -- that was not your focus.
9 Was that -- is that correct, sir?

10 **MR. McCONNERY:** Yes, I was never asked to
11 review all his material and express and opinion about a
12 clan of paedophiles operating in Cornwall. All I was ever
13 asked to do was examine material to see if there were
14 criminal offences. So a clan of paedophiles, no.

15 **MS. DALEY:** And, in fact, investigating
16 whether or not a clan of people existed or paedophiles is
17 not necessarily a sensible investigative mandate in any
18 event, is it?

19 **MR. McCONNERY:** A sensible mandate to?

20 **MS. DALEY:** For an investigator such as OPP
21 officers.

22 **MR. McCONNERY:** Well, it depends upon what
23 is being suggested the clan of paedophiles is doing.

24 **MS. DALEY:** I'm referring to the one that
25 was in play here. If you look at your Exhibit 2651 ---

1 **MR. McCONNERY:** Yes.

2 **MS. DALEY:** --- the first three pages, what
3 you've done is you've outlined who it is that Leroux
4 alleges is at the Stanley Island meeting, and you do that
5 on page 2.

6 **MR. McCONNERY:** Yeah.

7 **MS. DALEY:** And then you go on, on page 3,
8 and you say:

9 "Others identified as members of the
10 large group or clan but not part of
11 the cover-up, including..."

12 And then you name a whole bunch of other
13 names, which again comes from Mr. Leroux's affidavit,
14 right?

15 **MR. McCONNERY:** Okay. Yes.

16 **MS. DALEY:** And just to help you again, if
17 you look at page 1 of the document, sir, under your
18 paragraph number 2, the first underlined sentence there
19 says:

20 "Dunlop alleged the existence of a
21 large group of paedophiles in the city
22 involving the sexual abuse of
23 children."

24 So I take it there are two different but
25 related allegations here.

1 One of them is these individuals were at
2 Stanley Island and they conspired. And that's what you
3 directed your mind to and that's what you opined on?

4 **MR. McCONNERY:** Yes, that's true.

5 **MS. DALEY:** Okay. And the somewhat broader
6 set of allegations is that there are other folks who
7 weren't on the island but they're part of an overall clan
8 of paedophiles that are abusing children, right?

9 **MR. McCONNERY:** And I think he clearly
10 included some of the people on the island in that.

11 **MS. DALEY:** And there's some overlap ---

12 **MR. McCONNERY:** Yes.

13 **MS. DALEY:** --- but there's some folks that
14 aren't on the island but they're still part of a clan?

15 **MR. McCONNERY:** Right. And that my
16 reflection on it now is that just about everybody at the
17 VIP meeting he was including as a part of a clan of
18 paedophiles.

19 **MS. DALEY:** Right. Plus some additions?

20 **MR. McCONNERY:** Plus others, yes.

21 **MS. DALEY:** And it's that latter concept
22 that -- forget about the island occurrence but there's a
23 clan of people that are acting jointly to, you know, abuse
24 children -- that wasn't part of your review and that wasn't
25 something that you opined on?

1 **MR. McCONNERY:** No, that's accurate. What
2 you've just stated is accurate.

3 **MS. DALEY:** All right.

4 Now, I'm just wondering whether anyone
5 senior to you at the Ministry, Mr. Stewart or others, asked
6 you to focus on the Stanley Island meeting exclusively, in
7 your opinion?

8 **MR. McCONNERY:** I think when I became
9 involved, I don't think Stanley Island was even a thought
10 in their mind. There was an allegation -- I may be wrong
11 with that -- but there was an allegation of an obstruct
12 justice involving some prominent people in Cornwall.

13 For instance, when I sat down and spoke with
14 Mr. Segal about it, he didn't know anything about taking
15 boats out to the island and all of that. Jim Stewart may
16 have had some idea about that. I mean, this is his region,
17 right, so he might have known something about that.

18 But, no, nobody -- I was presented a brief.
19 I was to deal with the brief -- that allegation as framed -
20 - and nobody said, "Now, make sure you don't go outside the
21 four corners" or anything like that. I don't think that
22 was restricted.

23 **MS. DALEY:** So the impression that creates
24 is that you looked at what the material available; you
25 apply your own judgment ---

1 **MR. McCONNERY:** Yes.

2 **MS. DALEY:** --- as to what might be an
3 offence, and that led you to focus on the allegation about
4 the Stanley Island meeting?

5 **MR. McCONNERY:** Yes.

6 **MS. DALEY:** Okay.

7 At the end of all of that work, of course,
8 your conclusion was there's no evidence to support that
9 that meeting happened and there's no conspiracy or other
10 charges that we're going to support in relation to that
11 event, right?

12 **MR. McCONNERY:** In relation to the Stanley
13 Island meeting?

14 **MS. DALEY:** Correct.

15 **MR. McCONNERY:** Yes.

16 **MS. DALEY:** I'm just -- what I'm wondering
17 about is this, sir. I mean, obviously nonetheless the
18 community persisted in believing to the contrary, and what
19 I'm wondering about is this.

20 Did you give any thought at all to perhaps
21 reflecting to the community in a more detailed way, "Look,
22 these allegations are made by Mr. Leroux. They have been
23 thoroughly investigated. Here's the investigation we did",
24 and respond to questions.

25 "And I as a Crown Attorney have looked at

1 this very carefully. I've applied my best judgment and
2 I've thought about it hard. There is nothing to support
3 this. Therefore, you should stop believing this happened
4 because it's a myth."

5 Was any thought given at the Ministry to a
6 more fulsome explanation to the public about how this
7 investigation had occurred and why it had concluded that
8 there was no conspiracy on the island?

9 **MR. McCONNERY:** Okay, I certainly wasn't
10 involved in those considerations. And I can tell you from
11 my experience, there is a paranoia within certainly my
12 level of the Ministry about going public and making
13 statements like that.

14 And, you know, at the end of this trial with
15 Father MacDonald when I walked out of court, somebody
16 thrust a microphone into my face. And I was asked by the
17 ministry, "Why did you speak to the press like that?" And
18 I've been asked that in the past.

19 **MS. DALEY:** So you were criticized for
20 making any comments on ---

21 **MR. McCONNERY:** I wasn't criticized but I
22 asked why. And we have media people and we're told, "Refer
23 matters to the media people. Don't walk out of the
24 courtroom in the maybe the anger, the emotion of what has
25 just happened and say something that's going to come back

1 and bite you."

2 **MS. DALEY:** I appreciate that. So when
3 thing that might have been possible and I'm not criticizing
4 you for not doing it ---

5 **MR. McCONNERY:** No, no.

6 **MS. DALEY:** --- but perhaps the AG or the
7 Ministry's media people might have been engaged in putting
8 forward something more fulsome to explain to this community
9 that it needn't continue to fear a conspiracy.

10 **MR. McCONNERY:** I think that's a very common
11 complaint about the Ministry is that we don't sort of put
12 our side if you will out there about some things.

13 **MS. DALEY:** Is that something that could
14 change in the future? I mean can you think of any way to -
15 - any viable way without impairing criminal matters or
16 matters before the court to reflect at the end of an
17 investigation like this one, what has occurred and why?

18 **MR. McCONNERY:** Yeah, I think there's some
19 merit to what you're saying. You know, I believe that --
20 and we call them field Crowns, the Crown attorneys and
21 assistant Crown attorneys -- field that.

22 You know, there should be -- how come an
23 accused who is acquitted can get in this TV and say
24 whatever he wants and maybe defence counsel might choose to
25 do it. Put the microphone in front of a Crown attorney and

1 he'll say, "I have no comment". That's what we're told to
2 do. I think we feel very much in a -- in handcuffs in that
3 regard and I think that comes from our head office, and
4 I've probably said too much.

5 (LAUGHTER/RIRES)

6 THE COMMISSIONER: You are retired now?

7 MR. McCONNERY: If I ever get out of here.

8 (LAUGHTER/RIRES)

9 THE COMMISSIONER: Well, Bob Dylan said,
10 "Freedom is just another word for nothing else to lose".

11 (LAUGHTER/RIRES)

12 MR. McCONNERY: Well, they have offered me
13 part-time employment, so ---

14 THE COMMISSIONER: Okay.

15 MS. DALEY: Just to pursue that thought for
16 a minute, obviously, as you know, there was a lot of very
17 unhappy members of the public when the MacDonald charges
18 were stayed.

19 Has thought ever been given to -- and
20 particularly in a community like this, which isn't perhaps
21 as highly sophisticated in legal matters, particularly
22 Charter matters, is there any thought given to explaining
23 when a charge like that has been stayed as a result of
24 delay?

25 Just educating the public; forget about this

1 specific case but educating the public about how delay
2 issues are dealt with by the court, why it is that
3 individual rights in that circumstance trump society's
4 rights. Has the Ministry ever considered that kind of
5 educational outreach?

6 **MR. McCONNERY:** Not that I'm aware of. You
7 know, for me to walk out of this trial and to propose to do
8 that, I would have expected and I had information in this
9 trial of a -- the community's reaction was so volatile that
10 if I had ever said, "Well, I'm going to set up a panel; I'm
11 going to tell everybody what happened here," they would
12 have had to bring me in with an armed guard.

13 I mean things were pretty wild at some of
14 the court hearings. And I personally wasn't subjected to
15 it. But when I came out of court on whatever that date was
16 of the judgment by Justice Chilcott and I was sort of
17 pinned against the wall and -- just in the sense of a bit
18 of a crush of people.

19 There were a group of people standing in the
20 background chanting at me. I don't know if Mr. Neville was
21 there but I'm sure he had it too and I know the OPP
22 officers got it. And they were chanting "Ontario pedophile
23 protectors". And I never understood why that would be
24 directed at the prosecution but it was, very much was and
25 it was -- I mean I'm not saying I went out there and I was

1 physically afraid of any repercussions but it was volatile.
2 It was volatile.

3 **MS. DALEY:** And that's the measurement of
4 how strongly held some of those views are.

5 **MR. McCONNERY:** Absolutely.

6 **MS. DALEY:** And it may be possible to
7 educate some of those people sometimes.

8 **MR. McCONNERY:** Yes.

9 **MS. DALEY:** All right. Let me just conclude
10 -- I have just a few questions I want you to help me with.
11 I'm just going to move back to the Crown briefs that were
12 outstanding, not the MacDonald prosecution but the briefs
13 and your evidence was helpful I think in us under -- well,
14 at least from your perspective what role the police is
15 playing when -- sorry, the Crown is playing when the police
16 officer comes forward and has no RPG; right.

17 And as I've understood your evidence --
18 first of all, let's just put this framework around it.
19 That was the situation on all of the six outstanding Crown
20 briefs that you inherited. In other words, in each of
21 those briefs including the individual charges and the
22 conspiracy, the officers did not have RPG to support a
23 charge?

24 **MR. McCONNERY:** Yes. It seems to me on all
25 the briefs we got, the central figure was Mr. Leroux.

1 **MS. DALEY:** Correct.

2 **MR. McCONNERY:** But there was one other
3 complainant. I think he's C-15.

4 **MS. DALEY:** C-15 is a complainant about
5 Father MacDonald -- sorry, Maloney is what I meant to say,
6 yes.

7 **MR. McCONNERY:** No, Father Maloney, right.

8 **MS. DALEY:** So let's just set that one aside
9 for a minute.

10 **MR. McCONNERY:** Okay.

11 **MS. DALEY:** You're clear in your mind, all
12 of the other individual charges, as well as the conspiracy
13 brief, the officer involved said, "I do not have RPG to lay
14 a charge".

15 **MR. McCONNERY:** Yes.

16 **MS. DALEY:** "Principally because I have
17 difficulty with Mr. Leroux' credibility. I don't believe
18 this happened."

19 **MR. McCONNERY:** Right.

20 **MS. DALEY:** Right.

21 **MR. McCONNERY:** And each -- I think each
22 brief helped the opinion on each other brief.

23 **MS. DALEY:** Right, because it was the same
24 complainant for the most part in each instance.

25 **MR. McCONNERY:** Yeah.

1 **MS. DALEY:** Now, if I've understood you
2 correctly then, the role that you played as Crown was
3 simply to ascertain whether or not that conclusion by
4 police officers was a reasonable one.

5 **MR. McCONNERY:** Yes.

6 **MS. DALEY:** Can you help us understand
7 further what that means from a Crown's perspective? In
8 other words, how is it that you approach that analysis as a
9 Crown? What things do you look for? What things do you do
10 to ascertain if the officer's view is a reasonable one?

11 **MR. McCONNERY:** Well, when you're examining
12 a matter to see if reasonable and probable grounds exist,
13 you have to determine first of all whether or not the
14 elements of the offence there's evidence to support the
15 elements of the offence, jurisdiction, date, et cetera.
16 That wasn't an issue here.

17 The issue was always the subjective belief.
18 So all I was doing was looking at whether or not when
19 you've got such substantial and significant allegations as
20 were being made here and you have officers saying basically
21 we're not prepared to lay charges, was that well founded on
22 their part?

23 **MS. DALEY:** And on a functional level, if
24 you know what I mean ---

25 **MR. McCONNERY:** Yes.

1 **MS. DALEY:** --- can you articulate what
2 functions you as a Crown would do to determine that the
3 police were reasonable when they say, "I don't believe the
4 complainant"?

5 **MR. McCONNERY:** I look at whether or not
6 they've done a thorough investigation.

7 **MS. DALEY:** Yes.

8 **MR. McCONNERY:** I look at whether or not
9 they have done follow-up with respect to what the subject
10 or suspects may have said. So, you know, have they
11 actually gone and investigated alibis. And I think there
12 were some of these where we had to direct some follow-up in
13 that regard.

14 **MS. DALEY:** Correct.

15 **MR. McCONNERY:** You look at the criminal
16 history of a person. You look at any -- in this case, and
17 this is far beyond anything I've ever done before. You
18 look at every possible piece of information you have about
19 the informant. And primarily that's what I was doing. And
20 in this one, you also look at the legality -- not the
21 legality but the legal issues that could arise and whether
22 or not the evidence of Leroux was admissible.

23 Mr. Segal and I had a meeting one time and
24 he used an expression that was sort of current around 2000.
25 I told them about the kinds of allegations and he said to

1 me, "Lorne, where's the beef?"

2 MS. DALEY: Right.

3 MR. McCONNERY: You know, there's no meat
4 here. There's nothing to it. It's all -- it's all hearsay
5 and that's -- you know. So we looked at that and my
6 concern there was so what if we don't get any of that in
7 and now we look at whether or not Ron Leroux can say there
8 was a meeting. And all these people attend the meeting and
9 two days later there's a -- you know.

10 Does it support the suggestion that these
11 people are all involved in a conspiracy that resulted in
12 that little agreement that was made for 30 some odd
13 thousand dollars?

14 And what I felt was that's the reason that
15 we looked so closely at Ron Leroux' statements and we felt
16 that you couldn't -- you just couldn't believe him on
17 anything.

18 So primarily I guess here, was it a
19 reasonable view the police had about Leroux' credibility?

20 MS. DALEY: And in part you ascertained that
21 by examining how thoroughly they have investigated matters?

22 MR. McCONNERY: Yes.

23 MS. DALEY: And as you noted, you did come
24 up with a few follow-ups that you thought should be done;
25 right?

1 **MR. McCONNERY:** Right.

2 **MS. DALEY:** And not to put words in your
3 mouth but Pat Hall gave you a bit of a pushback initially
4 on those concepts; did he? You made a note ---

5 **MR. McCONNERY:** I think I felt that. I
6 think I felt that, yes.

7 **MS. DALEY:** What I'm wondering is this.
8 Were you aware or did you feel that there was a strong
9 desire on the part of the OPP to be able to terminate
10 Project Truth, and that the only "i" that remained to be
11 dotted or "t" crossed was your opinion on those briefs.
12 Did you know that?

13 **MR. McCONNERY:** I think I became aware of
14 that.

15 There was some ill feeling about how long it
16 was taking the Crown to get through that last step.

17 **MS. DALEY:** Expressed to you from Mr. Hall?

18 **MR. McCONNERY:** Primarily from Pat Hall.

19 **MS. DALEY:** Did you feel under pressure to
20 complete your analysis?

21 **MR. McCONNERY:** I think first expressed to
22 me by Jim Millar.

23 **MS. DALEY:** Yes.

24 **MR. McCONNERY:** Did I feel any pressure
25 about the analysis?

1 **MS. DALEY:** I don't mean pressure to come to
2 a specific conclusion but pressure to finish fast.

3 **MR. McCONNERY:** You know something, I would
4 say just the opposite, although I think there's a note that
5 I talked about timelines with Mr. Segal. It was quite
6 clear to me that I was to take whatever time I wanted.

7 **THE COMMISSIONER:** No, that's from Mr. Segal
8 but what about Mr. Hall?

9 **MR. McCONNERY:** No, nothing from Mr. Hall.
10 The only pressure -- Mr. Segal asked me, "Like when can you
11 have this done?" I think at some point I said "30 days."
12 We never accomplished that. And other than that, I was
13 never under any pressure and I was told, "Clear your
14 docket. This is your priority. This is what we want you
15 to do."

16 **MS. DALEY:** Just help us understand your
17 evidence about Pat Hall letting you know he wanted a quick
18 answer. How did he express that?

19 **MR. McCONNERY:** I don't think Pat Hall told
20 me that.

21 **MS. DALEY:** All right.

22 **MR. McCONNERY:** I think Pat Hall just said,
23 "I want an answer. We've been waiting for a long time."

24 **MS. DALEY:** Okay.

25 **MR. McCONNERY:** They had delivered these

1 briefs I think to Ms. Hallett.

2 **MS. DALEY:** Right.

3 **MR. McCONNERY:** And you know something? I
4 think there was a total lack of appreciation by the police
5 as to what Ms. Hallett had on her desk. You know, "Do
6 these nine briefs. And by the way, there's 10 boxes of --
7 bankers boxes on Perry Dunlop. Do that tonight too."

8 **MS. DALEY:** Right.

9 **MR. McCONNERY:** It was very unrealistic. I
10 think she was -- well, I probably expressed that earlier.

11 **MS. DALEY:** Well, no, but you didn't feel
12 that she delayed in any way -- in any inappropriate way her
13 work on the briefs, given the volume of the briefs and the
14 trials that she was involved in?

15 **MR. McCONNERY:** She's also an appellate
16 counsel in Toronto and has an appellate workload.

17 **MS. DALEY:** Yes.

18 **MR. McCONNERY:** So I just felt she had a lot
19 on her plate.

20 **MS. DALEY:** That's a situation in which the
21 police wishes for speed here weren't realistic, in your
22 view?

23 **MR. McCONNERY:** Yes.

24 **MS. DALEY:** Those are my questions. Thank
25 you.

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

2 Mr. Horn? Estimate of time, Mr. Horn?

3 **MR. HORN:** Should finish by 6:00.

4 **THE COMMISSIONER:** Terrific.

5 ---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

6 **MR. HORN:**

7 **MR. HORN:** My name is Frank Horn. I'm with
8 the Coalition for Action and we're a citizens group that
9 have -- we're actually the ones that were really advocating
10 for this Inquiry, or an Inquiry.

11 One of the things that troubled me in the
12 discussions that just took place is the feeling that
13 somehow the Crown attorneys are going to be -- other than
14 being unbiased prosecutors that present the facts to the
15 Court and let the judiciary make the decision; that you're
16 going to be somehow an advocate and you're going to be
17 pushing some social change in the community. I mean,
18 that's not your role, is it?

19 **MR. McCONNERY:** I never had any feeling that
20 that was what I was being urged to do.

21 **THE COMMISSIONER:** Where did you ---

22 **MR. McCONNERY:** I'm not sure I understand
23 the question.

24 **MR. HORN:** That's how I viewed the
25 discussion; that somehow you were to become an advocate to

1 straighten out things here and kind of straighten -- of
2 what's going on in Cornwall, whereas what you really were
3 to do was just to see if there was any criminal charges you
4 could lay. Isn't that right?

5 **THE COMMISSIONER:** Okay, whoa, whoa, whoa.
6 Where are you getting -- are you saying -- I know that Ms.
7 Daley talked about, you know, "After the trial did you ever
8 think of having a meeting in the town to explain things?"
9 Is that where you're getting ---

10 **MR. HORN:** That's what I'm getting at. I'm
11 getting that the Crown -- he's saying that the Crown
12 attorneys really do not want to make statements because
13 they don't want to be looking at as being other than what
14 they're supposed to be -- is a presenter of facts to the
15 Court and not be taking sides really.

16 **THE COMMISSIONER:** Okay. Well, first of
17 all, I think the witness said that he was told not to make
18 any comments. That's what the field Crowns are told as a
19 matter of policy from the Crown's office.

20 **MR. HORN:** Yes, but there's a reason for
21 that.

22 **THE COMMISSIONER:** Well, just a second.
23 Just a second.

24 **MR. KLOEZE:** I understood Ms. Daley's
25 questions as going to some broader responsibility or

1 question of the Ministry itself, not of the Crown
2 attorneys, in terms of what they're doing in court.

3 **THE COMMISSIONER:** Right.

4 **MR. KLOEZE:** Of the Ministry in terms of
5 doing -- trying to explain Court decisions after the fact.

6 **THE COMMISSIONER:** Right. So ---

7 **MR. HORN:** Okay, so ---

8 **THE COMMISSIONER:** Just a minute, Mr. Horn.

9 **MR. HORN:** Yes.

10 **THE COMMISSIONER:** I think this gentleman is
11 saying that he just followed the instructions. He's there
12 to bring cases to court and that's it. He's not saying
13 that he's going to charge the world.

14 **MR. HORN:** That's what I was hoping that he
15 was going -- he was saying and that I wouldn't want the
16 public to be -- to think that somehow the Crowns were
17 supposed to come in, take a side, advocate a position and
18 then push it, because that's not their role. Their role is
19 to find out if a crime has been committed, are there facts
20 that substantiate the allegations of the crime, and bring
21 it to court if there's enough evidence or there's provable
22 evidence. Isn't that the role of the Crown?

23 **MR. McCONNERY:** I agree with that. But what
24 I was taking from the suggestion was whether or not there's
25 not an educational component where the Ministry of the

1 Attorney General could help the community understand
2 things; not going to advocate for this or that or the other
3 thing, but help the community understand.

4 **MR. HORN:** Okay. So what I understood you
5 were saying is that you were given a brief, you looked at
6 it, you wanted to see if there was enough evidence there,
7 provable evidence, that could go before the Court that
8 could substantiate charges and maybe get a conviction.
9 Isn't that the way you looked at it?

10 **MR. McCONNERY:** Sure. Yes.

11 **MR. HORN:** And so the -- like one of the
12 things that was mentioned here is that there may have been
13 things that were done wrong but they were not provable in
14 court.

15 **THE COMMISSIONER:** There's no admissible
16 ---

17 **MR. HORN:** They were not provable.

18 **THE COMMISSIONER:** There was not admissible
19 evidence.

20 **MR. HORN:** That's right. There was not
21 admissible evidence that was put before the Court to get a
22 judgment to prove these crimes that were committed, but
23 there may have been something that was there that was
24 wrong. You didn't -- you can't say that there wasn't
25 things that were not -- that were wrong -- were not wrong

1 that were out there.

2 **THE COMMISSIONER:** Mr. Horn, our system of
3 justice is not as to whether or not someone did something
4 wrong. Our system of justice is based on have we been able
5 to prove it beyond reasonable doubt.

6 **MR. HORN:** That's exactly the way we should
7 be looking at it, not as though nothing occurred.

8 I mean, the impression that I'm getting from
9 my friend is that because there was an acquittal or a stay
10 that nothing happened.

11 **THE COMMISSIONER:** Yeah, but Mr. Horn,
12 because there's been a stay the accused has his right to
13 the presumption of innocence, and therefore is not guilty.

14 **MR. HORN:** That's right, because there was
15 not enough evidence that was there, but our position has
16 always been something did happen. There were things that
17 did occur but they weren't provable.

18 **THE COMMISSIONER:** Okay, but ---

19 **MR. HORN:** That's the position of the
20 Coalition.

21 **THE COMMISSIONER:** Right, but that's a
22 submission

23 **MR. HORN:** Okay. I understand ---

24 **THE COMMISSIONER:** I don't want submissions.
25 I want questions.

1 **MR. HORN:** But my friend was suggesting that
2 because there was an acquittal that means nothing happened,
3 and I don't think that that's the way this -- that's not
4 what really happened in this situation. Because there was
5 an acquittal that doesn't mean that automatically we can
6 say nothing did happen, that there was no ---

7 **THE COMMISSIONER:** Okay, but forget that and
8 pose a question.

9 **MR. HORN:** Okay. Do you agree that your job
10 is only to do one thing: try to get evidence that's
11 provable, bring it before the Court, and if it's not
12 provable then there could be an acquittal or a stay or a
13 conviction. That's basically your job, isn't it?

14 **MR. McCONNERY:** That's a very basic
15 description of what I do, yes.

16 **MR. HORN:** Basically that summarizes that.
17 But it doesn't mean that there might possibly be more
18 evidence coming later on which might prove that something
19 did happen?

20 **MR. McCONNERY:** I can accept that, sure.

21 **MR. HORN:** Like what happened to
22 Mr. Milgard. He was convicted and then later on more
23 evidence came in and he was found not to be guilty, wasn't
24 ---

25 **MR. McCONNERY:** Yes, I agree with that.

1 **MR. HORN:** Okay. So evidence can come
2 forward later on and it could change whatever the decision
3 was. Isn't that right?

4 **MR. McCONNERY:** Yes, I think -- you're
5 giving me a very basic statement and I agree with it.

6 **MR. HORN:** Okay.

7 **MR. McCONNERY:** Anything can change with
8 more information.

9 **MR. HORN:** That's right. And there may be
10 more information out there that could come forward later,
11 and another person could come forward and give more
12 evidence and change the circumstances and situation.

13 **THE COMMISSIONER:** Absolutely.

14 **MR. HORN:** Okay. And isn't that really the
15 way -- do you agree that when you're prosecuting something
16 like what was going on here in Cornwall, that when one
17 person comes forward and starts making the complaint and
18 you take it that other people might come forward because
19 they now know that the -- that things are going to start
20 finally happening, that there may be charges and things are
21 going to finally happen?

22 Isn't that what happens in these kinds of
23 situations, like what happened in Cornwall or Alfred?
24 People that were afraid to come forward ---

25 **THE COMMISSIONER:** Whoa, whoa, whoa; just

1 ask the question and stop. You've asked ---

2 **MR. HORN:** Okay. Would you agree that
3 that's how these things work?

4 **THE COMMISSIONER:** Historical sexual abuse
5 case.

6 **MR. HORN:** Historical sex abuse, if one
7 person comes forward, it gives courage to other people to
8 come forward because one person was able to get the courage
9 to stand up and say something? Do you agree that that's
10 how these things work?

11 **MR. McCONNERY:** They can work that way, yes.

12 **MR. HORN:** Have you seen that sort of thing
13 happen in the past?

14 **MR. McCONNERY:** I think institutional sexual
15 abuse, for instance, usually starts with one individual
16 coming forward, and then others may or may not follow suit,
17 and the investigation has to look at a whole raft of
18 issues, including collusion and things of that nature.

19 **MR. HORN:** Okay. So when one individual
20 like Mr. Leroux comes forward, did you look at him that way
21 when you were -- when you initially saw him or heard about
22 the allegations he was making?

23 That he may be just the first person coming
24 forward and that other people might follow because he was
25 willing to go forward? Did you look at it that way when

1 you were analyzing what he had done?

2 **MR. McCONNERY:** Well, how could you possibly
3 say Ron Leroux was the first person? It's like seven years
4 later. The first person is David Silmser.

5 **MR. HORN:** Okay. Well, ---

6 **MR. McCONNERY:** Sorry.

7 **MR. HORN:** --- Mr. Silmser but do you think
8 that when Mr. Leroux was the one that made these old
9 allegations against a clan of paedophiles, he was the first
10 person who was courageous enough to say something? Did you
11 look at it that way?

12 **MR. McCONNERY:** I never found anything in
13 what Ron Leroux said that made me think he was a courageous
14 gentleman coming forward. Hasn't he come to this hearing
15 and admitted he lied?

16 **THE COMMISSIONER:** He came here and
17 testified and he said certain comments that withdrew some
18 of what he said before ---

19 **MR. McCONNERY:** Okay.

20 **THE COMMISSIONER:** --- and that's subject to
21 me coming to some conclusion as to whether or not that's
22 accepted.

23 **MR. McCONNERY:** Fair enough; sorry.

24 **THE COMMISSIONER:** M'hm. It's getting a
25 little late; so let's just calm.

1 MR. McCONNERY: Sure.

2 MR. HORN: Okay.

3 (SHORT PAUSE/COURTE PAUSE)

4 MR. HORN: Did you ever have an opportunity
5 to look at this Document Number -- Exhibit Number 676?

6 THE COMMISSIONER: Six seventy-six (676).
7 Can I see it, please, Madam Clerk? I don't have it here.
8 And what is it?

9 MR. HORN: It's a copy of a bail hearing ---

10 THE COMMISSIONER: Oh.

11 MR. HORN: --- which Mr. Leroux was the --
12 was a witness.

13 THE COMMISSIONER: Six eighty-six (686)?

14 MR. HORN: Testified ---

15 THE COMMISSIONER: I'm sorry?

16 MR. HORN: --- at a bail hearing.

17 THE COMMISSIONER: Six seven six (676),
18 okay.

19 THE COMMISSIONER: Well, I think it was sent
20 to him.

21 MR. McCONNERY: Okay. Just let me take a
22 look at it, sir?

23 MR. HORN: Well, I just want you to look at
24 this one area.

25 THE COMMISSIONER: Well, just -- okay. What

1 area is that, Mr. Horn?

2 MR. HORN: That's the -- not the covering
3 page but the first page at the bottom, when he was
4 questioned as to his religious affiliation.

5 MR. McCONNERY: Okay.

6 MR. HORN: Okay. Did you take a look at
7 that, what he's saying?

8 MR. McCONNERY: Right now?

9 MR. HORN: Yes, that, and into the next
10 page?

11 MR. McCONNERY: Okay. I've read it, yes.

12 MR. HORN: And did you know that about his
13 background when you were dealing with him? Did you know
14 about his work in a church helping the poor and helping
15 people?

16 MR. McCONNERY: You know, I've read a lot of
17 material from Mr. Leroux. I can't tell you now if -- if,
18 in any of those interviews by the police, they asked him
19 some of his background. I can't tell you that now.

20 MR. HORN: He said these things under oath
21 when he was testifying in a hearing, a bail hearing, in
22 which he indicates that ---

23 MR. McCONNERY: Not only am I familiar with
24 that, I was called when he testified.

25 MR. HORN: Pardon?

1 **MR. McCONNERY:** I was called the day of the
2 testimony or the day after.

3 **MR. HORN:** Oh, you were called to -- to the
4 court?

5 **MR. McCONNERY:** No, I just received a call
6 about it.

7 **MR. HORN:** Oh, about it?

8 **MR. McCONNERY:** And I had concern expressed
9 to me about what he was saying.

10 **MR. HORN:** Okay. Now, when he testified,
11 did you get a chance to look at this document?

12 **MR. McCONNERY:** Oh, yes; it was sent to me.

13 **MR. HORN:** It was sent to you right
14 afterwards?

15 **MR. McCONNERY:** Okay. Well, it says "19th of
16 March, 2002". I have reviewed this transcript. I got this
17 transcript back at some point, and I was also called by --
18 it might have been Joe Dupuis, or Constable Genier, maybe.
19 I mix up the names now because I've been away for a while,
20 but they advised me that Ron Leroux, whom I had been
21 reviewing, had appeared at a Cornwall court on one day, and
22 was saying something about Project Truth.

23 **MR. HORN:** Okay. But I mean this is his
24 background that he was trying to give, to say who he was
25 and what he's been doing down in Maine. Did you know --

1 did you look at that?

2 **MR. McCONNERY:** That was of no consequence
3 to me I didn't think, really. And, I mean, there was no
4 way of -- of confirming it or challenging it.

5 **MR. HORN:** Okay. He said it under oath when
6 he was testifying. Doesn't that mean anything?

7 **MR. McCONNERY:** You know something; I would
8 hope it does, but I wouldn't say that it does.

9 **MR. HORN:** I thought yesterday when you were
10 talking about Mr. Leroux, the first time you -- you found
11 out who he was, you almost immediately didn't trust him?
12 You did not trust him?

13 **MR. KLOEZE:** I believe the evidence was that
14 the first videotaped statement that Mr. McConnery reviewed
15 gave him some doubts about Mr. Leroux's credibility.

16 **THE COMMISSIONER:** Right. So it's not a
17 question of trust. It's a question of -- well, it might
18 be; he didn't believe him.

19 **MR. HORN:** But he didn't believe him, okay,
20 but you didn't hear this part of his background, did you?

21 You know about him being very active in the
22 church and also a very strong Bible believer. He goes to
23 Bible studies every Wednesday night and he was helping the
24 people in his town.

25 You didn't know -- you didn't think about --

1 you didn't think that part about his background?

2 **MR. McCONNERY:** I don't know if I knew that
3 or not, sir.

4 If you put before me the material I read
5 about him, I could tell you if I knew any of it, but you're
6 -- you're telling me what he said some months later, under
7 oath, when, in my view, when you read this affidavit, it
8 sounds like he's trying -- or read this transcript, it
9 sounds like he's trying to mislead the court.

10 **THE COMMISSIONER:** In which way?

11 **MR. McCONNERY:** Well, let me -- I'd have to
12 read it all now, but, what I was told was, he was there
13 trying to represent to the court that he was working on
14 Project Truth. So...

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

16 **MR. HORN:** He was trying to get somebody out
17 of ---

18 **MR. McCONNERY:** Out on bail.

19 **THE COMMISSIONER:** He's out on a surety.
20 He's testifying on behalf of an accused to see if he can
21 get him out on bail.

22 He starts off by saying, "Yeah, I have a
23 religious affiliation. I help the poor; we help them with
24 oil" and blah, blah, blah. Now, where do we get Project
25 Truth in there?

1 **MR. McCONNERY:** Well, it's on page -- it's
2 on the next page. He's talking about -- about working with
3 Joe Dupuis.

4 **THE COMMISSIONER:** Where are we now?

5 **MR. McCONNERY:** I'm not seeing the page
6 numbers of the transcript.

7 **THE COMMISSIONER:** No, but -- okay, we'll go
8 the Bates pages, top left.

9 **MR. McCONNERY:** Okay, sorry. That's -- yes.
10 Seven six six (766), is it -- 68.

11 **THE COMMISSIONER:** Seven six eight (768),
12 okay.

13 **MR. McCONNERY:** No, that's not it either.
14 It's in the cross-examination; 770.

15 **THE COMMISSIONER:** Seven seven zero (770).
16 Yes?

17 **MR. McCONNERY:** He's being confronted with
18 something the accused person had said that "He works for
19 you and you work on Project Truth".

20 **THE COMMISSIONER:** I don't see anything in
21 there.

22 **MR. McCONNERY:** Line 23:

23 "And he works for you on Project Truth."

24 Answer:

25 "No, he does not."

1 Question:

2 "He told us that he did."

3 Answer:

4 "No. I worked with Joe Dupuis. I
5 worked with and it was Joe Dupuis who
6 called me because concern had been
7 raised about this through the Crown and
8 it was ..."

9 **THE COMMISSIONER:** Okay.

10 **MR. McCONNERY:** See and then ---

11 **THE COMMISSIONER:** Okay, okay. So all
12 right. So there's that.

13 **MR. McCONNERY:** It goes on to the next page
14 where he begins, I think, to try to describe that Joe
15 Dupuis is giving him Ron Leroux names so Ron Leroux can
16 investigate. Isn't that what's being said?

17 **MR. HORN:** Well, what I don't ---

18 **THE COMMISSIONER:** Just a second.

19 **MR. HORN:** Okay.

20 **THE COMMISSIONER:** What page? Okay, 771.
21 Okay, okay, okay. Okay.

22 Mr. Horn, your question?

23 **MR. HORN:** Well, what I'm suggesting to you,
24 well, you're a Crown attorney.

25 **THE COMMISSIONER:** He's retired.

1 **MR. HORN:** You see a lot of different
2 situations. You know how guys go to jail. There's
3 ministers that go in there. They preach to them. They
4 change their life around.

5 Did you think that this is a possible -- an
6 example of somebody who is talking about that? They became
7 -- somebody who became an active -- worked in the church
8 helping people. That happens a lot. You see a lot of that
9 as a Crown attorney when they go -- some of these people go
10 in the jail and they meet -- they meet Jesus or they meet
11 God. You've seen that; haven't you?

12 **MR. McCONNERY:** I just don't understand what
13 we're talking about.

14 **THE COMMISSIONER:** What he's talking ---

15 **MR. HORN:** The relevance ---

16 **THE COMMISSIONER:** What he's talking about,
17 he's saying, "Look it, Mr. Leroux, you didn't have very
18 much confidence in him and yet, in this document, right,
19 Mr. Leroux under oath is saying that he is a -- he's turned
20 his life to God and he's helping out people and he wants to
21 help out this fellow. And wouldn't that counter to some
22 extent your negative view of him given that he's now a man
23 of -- a God-fearing man and a man who is helping out
24 people?"

25 Is that about it?

1 **MR. HORN:** That's exactly what it was.

2 **MR. McCONNERY:** So did this transcript
3 change my opinion of Ron Leroux?

4 **MR. HORN:** Not the transcript; that
5 particular statement that he's making about himself
6 personally.

7 **THE COMMISSIONER:** Did you consider this,
8 this part of his life in assessing whether or not you
9 believed him or not?

10 **MR. McCONNERY:** This is after the fact.
11 I've already done my opinion on it. This -- right, the
12 opinion was done in August. This transcript is in October.

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

14 **MR. McCONNERY:** All right. So it's all
15 after the fact. So when I read it, did it impress me and
16 did it lift my view of Ron Leroux? Sorry, no, it didn't.

17 **MR. HORN:** So you've already judged him even
18 before you knew about him?

19 **THE COMMISSIONER:** Well, no, just a minute,
20 Mr. Horn. No, no, no, no.

21 The work he had to do was completed in
22 August. This is in October. He isn't a clairvoyant;
23 right. So you can't put that question. He made his
24 conclusion because this evidence wasn't available for him
25 to even consider. It hadn't happened yet.

1 **MR. HORN:** I understand that but you made a
2 decision about somebody who you didn't really know. You
3 didn't know this aspect about his life, did you, when you
4 made your conclusions?

5 **MR. McCONNERY:** Mr. Horn, show me what I
6 reviewed and I'll tell you if I knew any of this.

7 **MR. HORN:** What if you had known this about
8 him, would it have done anything to change you?

9 **MR. McCONNERY:** No, I don't think -- the
10 little bit of information I get this I don't think would
11 have changed my view of what there was in the other matter
12 because in my respectful view, just about every indicia
13 there was in those briefs indicated he was not credible.

14 **MR. HORN:** Okay. Did you look at some of
15 the corroborating evidence regarding some of the things he
16 said about what happened at the VIP meetings, like some of
17 the evidence that was given by C-8 and Mr. Renshaw
18 regarding those things?

19 **MR. McCONNERY:** Well, you'll have to remind
20 me what C-8 said of the VIP meeting.

21 **MR. HORN:** From what I understand, they also
22 said the same thing that they've seen those sorts of things
23 themselves.

24 **THE COMMISSIONER:** No, no, ---

25 **MR. HORN:** I'm talking about C-8 and Mr.

1 Renshaw.

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

3 Just a minute. Mr. Renshaw and C-8 testified that at
4 different times, they had seen some of the folks that were
5 supposedly at the Stanley Island VIP meeting.

6 **MR. HORN:** Did you know anything about that?

7 **MR. McCONNERY:** Yes.

8 **MR. HORN:** And you didn't think ---

9 **MR. McCONNERY:** I believed that I reviewed
10 all of the information by way of statements from C-8. The
11 other gentleman whose name you mentioned, Mr. Renshaw, I'm
12 not -- I believe I reviewed his information. I don't
13 believe the information provided by both assisted me in
14 determining on the last weekend of August of 1993, there
15 was a meeting of a group of people at Mr. Seguin's cottage
16 which proceeded by boat out to the cottage of Mr. MacDonald
17 and that there was some nefarious agreement agreed to.

18 **MR. HORN:** So you're narrowing your focus on
19 one incident and that's it.

20 **THE COMMISSIONER:** One incident; what do you
21 mean one incident?

22 **MR. HORN:** You're talking about one
23 situation. Mr. Leroux is talking about one situation that
24 took place. You're not talking about the fact that these
25 sorts of things may have been going on and that Mr. Renshaw

1 and C-8 saw that going on out there.

2 **MR. McCONNERY:** A conspiracy to obstruct
3 justice?

4 **MR. HORN:** No. A conspiracy -- there were
5 meetings out there, that these sorts of meetings were going
6 on out there. But this particular meeting is one where the
7 agreement took place but similar types of meetings were
8 taking place and gatherings there at that same place.

9 **THE COMMISSIONER:** Mr. Lee?

10 **MR. LEE:** I don't -- I'm not sure that I
11 have quite the memory of C-8's evidence in the documents
12 relating to him as I do of Gerry Renshaw's given I
13 represent Mr. Renshaw.

14 **THE COMMISSIONER:** Right.

15 **MR. LEE:** But I don't believe that Mr. Horn
16 is accurately reflecting either Mr. Renshaw's statements,
17 his affidavits or his testimony here.

18 **THE COMMISSIONER:** I agree.

19 **MR. HORN:** Okay.

20 **THE COMMISSIONER:** So Mr. Horn, let me make
21 it very clear here that I think where you're going is a
22 very valid point to put -- to ask him to get the answer.

23 **MR. HORN:** Yes.

24 **THE COMMISSIONER:** But you're not putting it
25 to him properly.

1 **MR. HORN:** Okay.

2 **THE COMMISSIONER:** So what you would have to
3 do I think with the greatest of respect is say -- is go
4 through the Renshaw evidence and the C-8 and say, "Look, in
5 this affidavit, Mr. Renshaw says that he saw so and so,
6 that he saw so and so, so and so, and so and so", and you
7 do that for C-8, and then put it to him.

8 **MR. HORN:** I did pull out -- I was looking
9 for them last night in my transcripts but I didn't find
10 them. I was looking for them. I knew they existed but I
11 didn't find them. I didn't pull them out.

12 **THE COMMISSIONER:** Sure.

13 **MR. HORN:** I couldn't find them and we tried
14 to find them but we ---

15 **THE COMMISSIONER:** You have our database --
16 you have the database.

17 **MR. HORN:** I know that. We've got the whole
18 database plus all the transcripts too and we're trying to
19 find the particular time.

20 **MR. McCONNERY:** Mr. Horn, I believe that we
21 examined everything C-8 said to see if there was some -- if
22 it wasn't legal corroboration, at least some confirmation
23 of what Ron Leroux said about the VIP meeting and I do not
24 believe there was anything there.

25 I'm familiar with the Renshaw material. I'm

1 not as familiar now with it as I was then. I do not
2 believe there was anything in what he said that would help
3 to establish a meeting in late August of 1991, whether by
4 inference or otherwise -- 1993 I guess, to establish by
5 inference or otherwise that there was a meeting that would
6 help me find a criminal conspiracy.

7 **THE COMMISSIONER:** Okay. I guess -- and
8 we'll leave it at that tonight and maybe you can come back
9 tomorrow and try again. We have all of the accused -- the
10 suspected co-conspirators denying ever having set foot on
11 Mr. Seguin's property and going off to Stanley Island. We
12 have, at the very least -- Mr. Lee, are you going to help
13 me on this? Most of them, in any event.

14 **MR. LEE:** My recollection, I believe some
15 may have acknowledged having been at Mr. Seguin's, but
16 certainly nobody acknowledged being at a VIP meeting on the
17 island and most denied being at Malcolm MacDonald's, but I
18 thought a couple had acknowledged being somewhere around
19 Mr. Seguin's.

20 **THE COMMISSIONER:** All right.

21 So the idea though is to compare -- let's
22 assume Mr. Renshaw says, "I saw..." -- and just for example
23 -- "...Chief Shaver at Seguin's going on a boat or...", you
24 know, and we have Chief Shaver saying, "I never was there".

25 So did you look at it that way, in the sense

1 that it might not have anything to do with the trip out
2 there, but the fact that we have an independent Mr. Renshaw
3 or Mr. C-8 saying "I saw him there"?

4 So do you see what I mean?

5 **MR. McCONNERY:** Sure.

6 **THE COMMISSIONER:** I think that's where he's
7 coming from.

8 **MR. HORN:** Is that -- maybe not exactly
9 corroboration of that particular incident, but it's enough
10 evidence to show there's a possibility that there's
11 circumstantial evidence that something might have happened
12 there?

13 **THE COMMISSIONER:** No, no. There's evidence
14 that maybe, if Mr. Renshaw is believed, that, for example,
15 Chief Shaver was there and he lied about it that something
16 might be amiss and that might contribute to when you're
17 looking at the overall thing help, to corroborate or
18 endorse Mr. Leroux's position that, for example again,
19 Chief Shaver was there and he's denying it, so why would he
20 lie kind of thing.

21 Do you understand?

22 **MR. McCONNERY:** M'hm, yes.

23 **THE COMMISSIONER:** So did you look at it
24 that way? Did you notice that Mr. Renshaw may have said
25 that somebody was there and that that somebody denied it,

1 and did that figure in your analysis at all?

2 **MR. McCONNERY:** You know, I really feel like
3 it's sort of an unfair position you're putting me in. Show
4 me what I reviewed.

5 **THE COMMISSIONER:** Right.

6 **MR. McCONNERY:** Did I review a statement of
7 Renshaw ---

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

9 **MR. McCONNERY:** --- in the conspiracy brief
10 that said number X was there on another time?

11 **THE COMMISSIONER:** Well, we'll leave that
12 for homework for Mr. Horn.

13 **MR. HORN:** What if it was there?

14 **MR. McCONNERY:** If that's all there was to
15 it, it would not have helped me one iota. It would have
16 had to be a lot more than that to get over the hurdles Mr.
17 Leroux presented.

18 **THE COMMISSIONER:** All right.

19 Mr. Horn, we'll continue tomorrow.

20 **MR. HORN:** Thank you.

21 **THE COMMISSIONER:** Have you finished or do
22 you want to continue tomorrow?

23 **MR. HORN:** I'll finish tomorrow.

24 **THE COMMISSIONER:** Thank you.

25 **MR. HORN:** I don't have very much.

1 **THE COMMISSIONER:** All right.

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

4 This hearing is adjourned until tomorrow
5 morning at 9:30 a.m.

6 ---Upon adjourning at 6:00 p.m./

7 L'audience est ajournée à 18h00

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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