

**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 187

Held at :

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

Tuesday, January 22 2008

Tenue à:

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

Mardi, le 22 janvier 2008

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Julie Gauthier	Registrar
Mr. Ian Stauffer	Commission Counsel
Ms. Raija Pulkkinen	
Ms. Deirdre Harrington	
Mr. Peter Manderville	Cornwall Police Service Board
Mr. Mark Crane	
Mr. Neil Kozloff	Ontario Provincial Police
Mr. Joe Neuberger	Ontario Ministry of Community and Correctional Services and Adult Community Corrections
M ^e Claude Rouleau	
Mr. Darrell Kloeze	Attorney General for Ontario
Ms. Leslie McIntosh	
Mr. Jeremy Glick	
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Mr. Allan Manson	Citizens for Community Renewal
Mr. Dallas Lee	Victims Group
Mr. David Sherriff-Scott	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Scott Seguin and Father Charles MacDonald
Mr. William Carroll	Ontario Provincial Police Association
Mr. John Westdal	Mr. Jos Van Diepen
Mr. Frank T. Horn	Coalition for Action

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DESCRIPTION

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1 --- Upon commencing at 9:41 a.m./

2 L'audience débute à 9h41

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

6 Please be seated. Veuillez vous asseoir.

7 **THE COMMISSIONER:** Thank you. Good morning
8 all. Good morning, sir.

9 **MR. VAN DIEPEN:** Good morning, Your Honour.

10 **THE COMMISSIONER:** Mr. Engelmann.

11 **MR. ENGELMANN:** Good morning, Mr.
12 Commissioner. Good morning, Mr. van Diepen.

13 **MR. VAN DIEPEN:** Good morning.

14 **MR. ENGELMANN:** I'm just here for a moment.

15 I just, sir, in keeping with practice, Mr.
16 Kloeze from MAG has with him an articling student or an
17 articling student from his office, Jeremy Glick, who is
18 just to his immediate left.

19 **THE COMMISSIONER:** Good morning, sir.
20 Welcome aboard.

21 **MR. ENGELMANN:** I don't think there's any
22 new faces. So it's Mr. Lee for the Victims Group.

23 **THE COMMISSIONER:** Thank you.

24 **MR. ENGELMANN:** And I expect we'll be
25 finished sometime this morning.

1 **THE COMMISSIONER:** Okay.

2 **MR. ENGELMANN:** And we'll just need a break
3 between the witnesses to make some arrangements.

4 **THE COMMISSIONER:** Sure. Not a problem.

5 **MR. ENGELMANN:** Thank you.

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

7 **MR. LEE:** Good morning, Mr. Commissioner.

8 **JOS VAN DIEPEN:** Resumed/Sous le même serment

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

10 **MR. LEE:** Mr. van Diepen, my name is Dallas
11 Lee. I'm on for the Victims Group.

12 **MR. VAN DIEPEN:** Yes, sir.

13 **MR. LEE:** I'd like to -- I have a few
14 different areas that I'd like to canvas with you and I'll
15 let you know when I'm switching focus.

16 I'd like to start with clarifying a few of
17 the things that you said during your examination in-chief;
18 okay?

19 On Friday, you discussed the protocol that
20 was put in place at the Cornwall Probation Office for
21 dealing with incoming clients and assessing whether or not
22 there had been any contact with Barque or Seguin. Do you
23 recall that?

24 **MR. VAN DIEPEN:** Yes.

25 **MR. LEE:** And you told Mr. Engelmann that

1 you weren't working at the Cornwall office at the time that
2 was brought into effect. Is that right?

3 **MR. VAN DIEPEN:** That's correct.

4 **MR. LEE:** One of the things that you did
5 tell Mr. Engelmann was about some of the efforts of the
6 Probation and Parole Office to cooperate with the police
7 during the course of their investigations. Do I have that
8 right?

9 **MR. VAN DIEPEN:** Yes.

10 **MR. LEE:** And one of the things that you
11 told us was that you were personally involved with,
12 "Retrieving data from client lists from our old databases".
13 Is that right?

14 **MR. VAN DIEPEN:** That's correct, sir.

15 **MR. LEE:** And as I understood it, this might
16 encompass something like a police officer asking for which
17 clients were on probation in a given year, as an example.
18 Is that right?

19 **MR. VAN DIEPEN:** Yes, sir.

20 **MR. LEE:** Or they might ask whether a
21 specific person had been on probation and, if so, who his
22 PO had been?

23 **MR. VAN DIEPEN:** Yes, sir.

24 **MR. LEE:** Were you at any point asked to
25 compile a complete list of clients being supervised by

1 Seguin or Barque during a given period?

2 **MR. VAN DIEPEN:** I don't recall specifically
3 that. I can recall there was a great deal -- and that's
4 why they approached me because there was a great deal of
5 difficulty accessing these rather arcane database or, if I
6 could even use the word databases.

7 There was an old, old system that was run on
8 some kind of a machine up and they tried to retrieve
9 records. Some of those records were -- appeared to be
10 incomplete. There was a -- and it took special technology
11 people to even try to -- to try and even look at the data
12 because it was so convoluted.

13 **MR. LEE:** Were these systems that you had
14 worked with in the past or was this some kind of a new
15 system that everything was downloaded onto?

16 **THE COMMISSIONER:** Well, I never had an
17 opportunity to personally view the manner in which the old
18 data was stored. I don't -- and part of the problem, sir,
19 with retrieving the data was that the way the data was
20 stored, it could not be converted over to a more modern
21 type of database, such as an Oracle database, which has a
22 common -- which is easily migrated from other more common
23 databases such as Microsoft database products and so on and
24 so forth.

25 This was a completely different language, so

1 you couldn't migrate it.

2 **MR. LEE:** Let's break this down a little
3 bit.

4 **MR. VAN DIEPEN:** Okay.

5 **MR. LEE:** Let me take you to 1982.

6 **MR. VAN DIEPEN:** Yes.

7 **MR. LEE:** Okay. After Nelson Barque has
8 resigned.

9 **MR. VAN DIEPEN:** Yes.

10 **MR. LEE:** Had you been asked at that point
11 to provide the police with all of the information available
12 relating to Nelson Barque? What is your understanding of
13 what you would have been able to provide?

14 **MR. VAN DIEPEN:** I don't recall the police
15 asking me specifically about information until -- and you
16 know, again, we're going back a long time, Mr. Lee, so I'm
17 trying to be as correct as possible here.

18 **MR. LEE:** We're -- I just want to clarify.
19 You're handling two different questions here at the moment,
20 and I've only asked one. I'm not asking you what the
21 police asked you for in 1982.

22 I am asking you what would have been
23 available in 1982 had they asked?

24 **MR. VAN DIEPEN:** Oh, I see. Oh, I
25 misunderstood your question.

1 In 1982, I believe, the information would
2 have been much more easily retrievable because that system
3 would have still been online. The information that would
4 have been available to them would have been who was the
5 client? When was that client on probation? Who was the
6 probation officer? And I think you also asked would they
7 have been able to produce a full client list of -- per
8 probation officer?

9 **MR. LEE:** Yes.

10 **MR. VAN DIEPEN:** I believe they would have
11 been able to do that.

12 **THE COMMISSIONER:** Along those lines then,
13 if I might, in 1982, what was your knowledge of file
14 retention? So for example, in 1982 ---

15 **MR. VAN DIEPEN:** Hard files, sir?

16 **MR. VAN DIEPEN:** Yeah.

17 **MR. VAN DIEPEN:** Three years. Three years,
18 and they were -- now, they're no longer destroyed but back
19 then, three years, destroyed.

20 **THE COMMISSIONER:** Okay. And with respect
21 to the file that you discussed about the 17 year-old who
22 told you things ---

23 **MR. VAN DIEPEN:** Yes.

24 **THE COMMISSIONER:** What year was that again?

25 **MR. VAN DIEPEN:** Nineteen-seventy-six

1 (1976).

2 **THE COMMISSIONER:** All right. So that would
3 have been -- so are you saying that it would have been
4 easier -- in 1982, the hard copy would have been destroyed?

5 **MR. VAN DIEPEN:** With respect to our
6 individual we're just speaking about?

7 **THE COMMISSIONER:** The 17 year-old, yes?

8 **MR. VAN DIEPEN:** Oh, yes, that file would be
9 destroyed.

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

11 **MR. LEE:** Can you say with any degree of
12 certainty that that file would have been destroyed or can
13 you just tell us that there would have been a policy in
14 place that would have permitted its destruction? Do you
15 know anything about how diligent the Ministry has been in
16 destroying files at the earliest possible opportunity?

17 **MR. VAN DIEPEN:** No, I -- that was done by a
18 completely different department -- or wait a minute.

19 No, let me revisit that. At one time, I
20 took part in the destruction of files. We used to take --
21 we used to -- I mean I and my fellow probation officers
22 used to take bundles of files, and we'd take them to the
23 boiler room at the Hotel-Dieu Hospital and we physically
24 threw those files in that big boiler, like an incinerator.

25 **MR. LEE:** Do you recall the frequency with

1 which you did that?

2 **MR. VAN DIEPEN:** Annually.

3 **MR. LEE:** January 1st of every year or March
4 1st?

5 **MR. VAN DIEPEN:** Oh, it wouldn't be January
6 1st, but it would be, you know, once the support staff
7 identified those closed files that had been retained within
8 that timeframe, they would -- we would -- they would be
9 putt in those cardboard boxes, those cardboard file boxes -
10 --

11 **MR. LEE:** Banker boxes?

12 **MR. VAN DIEPEN:** Yeah, yeah, that's it, the
13 banker boxes, and we would just, you know, throw them in
14 the trunk and we'd chuck them off to the incinerator.

15 **MR. LEE:** When's the last time you recall
16 doing that?

17 **MR. VAN DIEPEN:** A long time ago, sir.

18 **MR. LEE:** Can you give me any idea of a
19 date? I mean I'm not asking for ---

20 **MR. VAN DIEPEN:** I -- I ---

21 **MR. LEE:** A year or a timeframe or anything
22 like that?

23 **MR. VAN DIEPEN:** If I were to hazard a
24 guess, I would be misleading you, sir.

25 **MR. LEE:** Nineteen-nineties (1990s)?

1 **MR. VAN DIEPEN:** No. No, it would have been
2 -- it would have been earlier than that, you know.

3 **MR. LEE:** What about in late 1993 or early
4 1994 after Ken Seguin had died; again, the same question.
5 What information would have been available to the police
6 had they requested it at that point?

7 **MR. VAN DIEPEN:** Well, if memory serves me
8 right, that's when there had been some transitions in the
9 data storage methods and they are -- and that's when the
10 ability to retrieve data became somewhat more difficult.

11 **MR. LEE:** Why is that?

12 **MR. VAN DIEPEN:** Again, because the transfer
13 of technologies.

14 **MR. LEE:** And speaking for yourself, you
15 were never asked to compile ---

16 **MR. VAN DIEPEN:** I'm sorry?

17 **MR. LEE:** You were never asked to compile
18 materials like that by the police. Is that right?

19 **MR. VAN DIEPEN:** No. The police came to me,
20 asked me, "Look, we're looking into these matters. Can you
21 help us get this information?" And I said, "Well, I can't
22 because we don't -- it's not done locally, but I can call,
23 contact some people".

24 **MR. LEE:** Changing focus, during your
25 examination in-chief with Mr. Engelmann on Friday, he took

1 you to your interview report of the OPP interview from
2 1994.

3 **MR. VAN DIEPEN:** Yes.

4 **MR. LEE:** And I don't need you to turn it
5 up, but one of the paragraphs in that document read:

6 "Back then, Ken had a lot of
7 probationers that stayed with Ken in
8 the late 1970s. These guys didn't have
9 a place to stay, leaving home in
10 between getting their own place. I
11 think only one at a time was living
12 there.

13 I can't think of their names, but maybe Stu
14 Rousseau would remember one."

15 And then there's a misspelling and it's Marcelle Leger who
16 told us that you suggested that she might also be able to
17 give us some information. Is that right?

18 **MR. VAN DIEPEN:** Yes.

19 **MR. LEE:** Do you recall talking to Mr.
20 Engelmann about that?

21 **MR. VAN DIEPEN:** Yes.

22 **MR. LEE:** And what you told us on Friday was
23 that the reference there is to the practice of the Cornwall
24 Police dropping young -- or dropping men off that didn't
25 have anywhere to stay, with Mr. Seguin. Is that right?

1 **MR. VAN DIEPEN:** Yes.

2 **MR. LEE:** And what you told us was that a
3 number of officers would drop -- drop men off at Mr.
4 Seguin's, but that you couldn't remember their names. Is
5 that right?

6 **MR. VAN DIEPEN:** That's correct.

7 **MR. LEE:** And this was revisited again
8 yesterday and you told us that you didn't become aware of
9 these things until some time after the fact. Is that
10 right?

11 **MR. VAN DIEPEN:** That's right.

12 **MR. LEE:** But what you also told us is that
13 Mr. Seguin spoke of it openly ---

14 **MR. VAN DIEPEN:** Yes.

15 **MR. LEE:** --- and that Mr. Robert also spoke
16 of it?

17 **MR. VAN DIEPEN:** Yes, it was -- it was open
18 knowledge in the office that that -- that those events had
19 taken place.

20 **MR. LEE:** In what context would Mr. Seguin
21 have been speaking about this?

22 **MR. VAN DIEPEN:** I think he was speaking
23 about it in -- in the -- in the context of having done a --
24 a good deed or a public service.

25 **MR. LEE:** Do you have a specific

1 recollection of Ken Seguin telling you about the Cornwall
2 Police dropping people off at his home?

3 **MR. VAN DIEPEN:** Yes.

4 **MR. LEE:** I don't want you to give me a name
5 if you have one at this point, but do you recall the name
6 of any of the probationers that were dropped off?

7 **MR. VAN DIEPEN:** No, I do not, sir.

8 **MR. LEE:** Did you ever discuss with Mr.
9 Seguin the opinion that you told us about yesterday that
10 you thought it was inappropriate for people to be dropped
11 off to spend the night?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. LEE:** Can you tell us about that
14 conversation?

15 **MR. VAN DIEPEN:** Well, I -- again, I just
16 thought that it -- again, I thought it put -- it put Mr.
17 Seguin at risk and it put the client at risk.

18 **MR. LEE:** Who else did you discuss that
19 with, sir?

20 **MR. VAN DIEPEN:** I don't think that it was a
21 -- I don't think it was a, you know, a confidential
22 conversation. I don't think it was done behind closed
23 doors. I think it was something that was more, you know,
24 in the -- in the lunch room or something to that effect. I
25 don't recall, you know, specifics of who else was present,

1 but it wasn't something -- again, I want to restate it, it
2 wasn't something that was confidential, secret or unknown
3 to other members -- other staff members.

4 **MR. LEE:** Have you ever heard of any other
5 probationer officer having clients dropped off at his home?

6 **MR. VAN DIEPEN:** No.

7 **MR. LEE:** Would you agree with me that that
8 is a very odd situation?

9 **MR. VAN DIEPEN:** Yes.

10 **MR. LEE:** Is it your recollection that you,
11 at some point, were given the name -- name or names of
12 officers that would have dropped these men off?

13 **MR. VAN DIEPEN:** By whom, sir?

14 **MR. LEE:** Mr. Seguin, perhaps?

15 **MR. VAN DIEPEN:** No.

16 **MR. LEE:** You didn't, at any point, ask Mr.
17 Seguin when he was telling you about this who these
18 officers were?

19 **MR. VAN DIEPEN:** No, I did not.

20 **MR. LEE:** Why not? You received information
21 from Mr. Seguin that members of the Cornwall Police force
22 were taking men who didn't have anywhere to stay and
23 driving them to Mr. Seguin's front door?

24 **MR. VAN DIEPEN:** Yes.

25 **MR. LEE:** And you told us that you thought

1 that was inappropriate. You told us that you had concerns
2 about both Mr. Seguin and the client in that situation and
3 yet you didn't, at any point, ask Mr. Seguin, well, who
4 were these officers?

5 **MR. VAN DIEPEN:** You know, I may have, but I
6 don't think that the -- well, you know, my memory of it is
7 is that I don't -- I cannot come up with specific names of
8 officers who actually did that, you know, and I recall
9 there was a conversation, you know, about well -- once,
10 twice, no, this was a common practice. So it wasn't -- it
11 didn't happen once or twice, it happened, you know, I --
12 five times, ten times, twenty times; I have no idea.

13 **MR. LEE:** And you believe that Mr. Robert
14 would have had some knowledge of this?

15 **MR. VAN DIEPEN:** Yes, but again, in -- this
16 would have happened prior to Mr. Robert's arrival on the
17 scene.

18 **MR. LEE:** I understand that.

19 **MR. VAN DIEPEN:** Yes.

20 **MR. LEE:** Is it your understanding that Mr.
21 Robert, at some point, learned that this had occurred in
22 the past?

23 **MR. VAN DIEPEN:** He knew about these things
24 -- events? Yes.

25 **MR. LEE:** Are you sure of that?

1 **MR. VAN DIEPEN:** I'm -- I mean, sure, you
2 know, I -- again, we're talking a long time ago, sir.

3 **MR. LEE:** This wasn't a secret?

4 **MR. VAN DIEPEN:** It wasn't -- no, it wasn't
5 a secret and I think it was, you know, it was that type of
6 thing that was openly discussed and freely shared by Mr.
7 Seguin as a -- as a -- and there was -- I don't think there
8 was a -- there was no intent on his part to hide that
9 information and I think he saw himself as being a good
10 citizen and doing what he thought was the right thing.

11 **MR. LEE:** He was providing a service?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. LEE:** During your examination in-chief
14 last week, you provided us with some information that I had
15 not heard before and it appeared from Mr. Engelmann's
16 reaction that he had not heard it.

17 You were discussing Mr. Barque and Mr.
18 Seguin and you told us that your understanding is that
19 somewhere around 1962 there may have been another incident
20 with a probation officer in the Cornwall office. Do you
21 recall that?

22 **MR. VAN DIEPEN:** Yes, sir.

23 **MR. LEE:** And you told us that you heard
24 about this from another staff member, Marcelle Leger. Is
25 that right?

1 **MR. VAN DIEPEN:** Yes.

2 **MR. LEE:** Can you recall when you would have
3 learned that?

4 **MR. VAN DIEPEN:** A long time ago, sir.

5 **MR. LEE:** What's a long time ago mean?

6 **MR. VAN DIEPEN:** I -- you know, I -- I would
7 be guessing, but I would say it was probably associated at
8 some time when things unfolded about Mr. Barque.

9 **MR. LEE:** In the context of, well, this
10 isn't the first time? I mean, can you help me out with
11 what the conversation would have been; how this would have
12 come up?

13 **MR. VAN DIEPEN:** No, I can't, sir.

14 **MR. LEE:** Your -- your best recollection is
15 that following Mr. Barque's resignation, Marcelle Leger
16 told you about an earlier incident or incidents with a
17 probation officer. Is that right?

18 **MR. VAN DIEPEN:** That's correct.

19 **MR. LEE:** Can you provide us with any more
20 details than that, sir?

21 **MR. VAN DIEPEN:** No. No, I -- I don't know
22 what happened. There was -- and I don't even believe that
23 Mrs. Leger was fully cognizant of the events because I
24 believe those events occurred even prior to her employment.

25 **MR. LEE:** Do you know when -- when Ms. -- I

1 don't recall off the top of my head -- do you know when Ms.
2 Leger would have started at the probation and parole
3 office?

4 **MR. VAN DIEPEN:** I'm going to -- probably -
5 - yes, it would be about the mid-60s.

6 **MR. LEE:** Was it your understanding from
7 what Ms. Leger said that this impropriety or alleged
8 impropriety was sexual in some way?

9 **MR. VAN DIEPEN:** Yes.

10 **MR. LEE:** Did Ms. Leger tell you who the
11 probation officer was?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. LEE:** Can you tell us who that was,
14 please?

15 **MR. VAN DIEPEN:** I don't -- I don't recall
16 the name.

17 **MR. LEE:** I would think, sir, that there
18 were not a -- I mean, certainly you would agree with me
19 that in 1962, the Cornwall Probation and Parole Office
20 wouldn't have had a tremendously large staff of probation
21 officers would they?

22 **MR. VAN DIEPEN:** No, a very small staff.

23 **MR. LEE:** And yet you can't remember that
24 name at all?

25 **MR. VAN DIEPEN:** No, I don't, sir.

1 **MR. LEE:** Can you give us anything about
2 this person?

3 **MR. VAN DIEPEN:** He was -- it was a male and
4 I know -- I know one individual who it wasn't.

5 **MR. LEE:** That would have been working there
6 in 1962?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. LEE:** Well, who was it not then?

9 **MR. VAN DIEPEN:** Well, it would -- actually,
10 two names. It would not have been Mr. Marks or it would
11 not have been Mr. Walker.

12 **MR. LEE:** And of that you can be certain?

13 **MR. VAN DIEPEN:** Yes.

14 **MR. LEE:** So it was somebody else that was
15 there at the time?

16 **MR. VAN DIEPEN:** Yes.

17 **MR. LEE:** Who was a male?

18 **MR. VAN DIEPEN:** So you're asking me about
19 events that -- you know, we're talking something -- like
20 about how many years ago was that ---

21 **MR. LEE:** I appreciate -- I'm ---

22 **MR. VAN DIEPEN:** --- you know ---

23 **MR. LEE:** --- I'm not criticizing you for
24 not remembering, I'm asking ---

25 **MR. VAN DIEPEN:** Thank you.

1 **MR. LEE:** --- I -- I want to be certain that
2 you don't recall.

3 **MR. VAN DIEPEN:** Yes.

4 **MR. LEE:** Did she tell you who the -- did
5 she tell you whether there was more than one client
6 involved?

7 **MR. VAN DIEPEN:** I don't -- I don't recall.

8 **MR. LEE:** Did she give you the name of the
9 client?

10 **MR. VAN DIEPEN:** No.

11 **MR. LEE:** Did she tell you at any point how
12 she learned of these improprieties?

13 **MR. VAN DIEPEN:** Again, I don't recall.

14 **MR. LEE:** Were you told anything about
15 whether any discipline was imposed or action was taken?

16 **MR. VAN DIEPEN:** As close as my memory
17 serves me, I believe there was a resignation.

18 **MR. LEE:** And I take it a resignation as a
19 result of these allegations?

20 **MR. VAN DIEPEN:** Yes.

21 **MR. LEE:** As you understood it?
22 Did she mention whether the police were
23 involved at all?

24 **MR. VAN DIEPEN:** No.

25 **MR. LEE:** Now, do you recall the context of

1 the conversation with Ms. Leger? Was it a private
2 conversation between the two -- was this common knowledge
3 in the office at the time?

4 MR. VAN DIEPEN: Again, it was something
5 which it was common knowledge.

6 MR. LEE: You would expect that your co-
7 workers would have heard something about this around 1982?

8 MR. VAN DIEPEN: Oh, yes.

9 MR. LEE: What about Mr. Sirrs who was the
10 area manager at the time. Would you have expected him to
11 have heard something about this at that time?

12 MR. VAN DIEPEN: Very possibly, yes.

13 MR. LEE: Following your receipt of this
14 information from Ms. Leger, did you discuss it with
15 anybody?

16 MR. VAN DIEPEN: I don't recall, sir.

17 MR. LEE: You don't recall talking to co-
18 workers about it?

19 MR. VAN DIEPEN: I'm sure we -- I'm sure,
20 yes, I did, yes, at some later point I mentioned it to
21 other staff members.

22 MR. LEE: What about after the Seguin
23 suicide ---

24 MR. VAN DIEPEN: Yes.

25 MR. LEE: --- would this have come up again?

1 MR. VAN DIEPEN: Yes.

2 MR. LEE: And I can -- would you agree with
3 me that after the Seguin suicide, there must have been some
4 feeling in the office of, as I said earlier, "Oh, no, here
5 we go again".

6 MR. VAN DIEPEN: Absolutely.

7 MR. LEE: And certainly you can relate that
8 back to Nelson Barque on its own?

9 MR. VAN DIEPEN: Oh, yes.

10 MR. LEE: But there may be a new layer added
11 you're telling us with ---

12 MR. VAN DIEPEN: Yes.

13 MR. LEE: --- something in the '60s has
14 happened as well?

15 MR. VAN DIEPEN: That's correct.

16 MR. LEE: And you recall having those
17 feelings at the time of Mr. Seguin's suicide?

18 MR. VAN DIEPEN: Very strongly so.

19 MR. LEE: And you recall having discussions
20 in that respect?

21 MR. VAN DIEPEN: Yes.

22 MR. LEE: I want to ask you a little bit
23 about Gerry Renshaw.

24 MR. VAN DIEPEN: Yes.

25 MR. LEE: You've met Mr. Renshaw. Is that

1 right?

2 MR. VAN DIEPEN: Met him?

3 MR. LEE: Yes.

4 MR. VAN DIEPEN: No, I don't think I really
5 -- that would be a proper description. I knew him because
6 he was a regular, if I can use the word "regular client" --
7 -

8 MR. LEE: He was on probation more than
9 once?

10 MR. VAN DIEPEN: I believe so, yes.

11 MR. LEE: Would you have seen him -- had you
12 seen him on the street, would you have recognized him? I
13 mean, was it ---

14 MR. VAN DIEPEN: Oh, yes.

15 MR. LEE: --- that level of familiarity?

16 MR. VAN DIEPEN: Yes.

17 MR. LEE: You knew what the man looked like?

18 MR. VAN DIEPEN: Yes.

19 MR. LEE: You would have at some point been
20 introduced to him. Is that correct? Even if in passing?

21 MR. VAN DIEPEN: Yeah, you know, the
22 introductions, you know, I don't know if you could use that
23 word my "introduced", you know, "This is Mr. Renshaw" then,
24 "This is Mr. van Diepen" kind of thing.

25 No, that -- but I certainly, with time, I

1 became well aware of who Mr. Renshaw was and I could, you
2 know, easily identify him and pick him out of a line-up and
3 know him enough to if I bumped into him, to say "Hello, Mr.
4 Renshaw".

5 MR. LEE: There were several Renshaw
6 brothers that were familiar to Probation and Parole. Is
7 that right?

8 MR. VAN DIEPEN: Yes.

9 MR. LEE: Several of the brothers had a fair
10 bit of trouble with the law. Is that correct?

11 MR. VAN DIEPEN: Yes.

12 MR. LEE: Did you ever supervise any of the
13 Renshaws?

14 MR. VAN DIEPEN: No.

15 MR. LEE: Is it your understanding that they
16 were all supervised by Mr. Seguin?

17 MR. VAN DIEPEN: I believe so, yes.

18 MR. LEE: Would it be fair to say that when
19 a Renshaw came into that office he was automatically
20 assigned to Mr. Seguin?

21 MR. VAN DIEPEN: I wouldn't -- I couldn't
22 say that, sir. I believe and, you know, my memory is very
23 vague on that, but I think some of the Renshaws may have
24 been on probation even before my arrival, but you know, I
25 didn't have privy to that information. I wasn't in a

1 position of assignment or reviewing Mr. Seguin's caseload.
2 So I don't have that kind of sense of chronology or stuff
3 like that.

4 MR. LEE: Am I right that at the Probation
5 and Parole Office it would happen from time-to-time that a
6 client would come in and automatically be assigned to a
7 probation officer who he was familiar with?

8 MR. VAN DIEPEN: Yes.

9 MR. LEE: Who worked with him in the past
10 perhaps?

11 MR. VAN DIEPEN: Yes.

12 MR. LEE: I take it during the course of
13 your career, you had clients that if they came -- if they
14 got in trouble a second time or a third time or a fourth
15 time, they would automatically be given to you since there
16 was that relationship?

17 MR. VAN DIEPEN: Yes.

18 MR. LEE: That wasn't uncommon?

19 MR. VAN DIEPEN: That was not uncommon, yes.

20 MR. LEE: And you obviously knew that Mr.
21 Renshaw lived with Mr. Seguin at one point?

22 MR. VAN DIEPEN: Yes.

23 MR. LEE: That was very common knowledge in
24 the office wasn't it?

25 MR. VAN DIEPEN: Oh, yes.

1 **MR. LEE:** And we've heard -- we've had
2 evidence from a number of witnesses on that and I take it
3 you would agree that it was a very odd situation?

4 **MR. VAN DIEPEN:** Yeah, we were dumbfounded.

5 **MR. LEE:** Were you concerned? And let me be
6 specific. When you first learned that Gerry Renshaw was
7 living with Ken Seguin, at that point were you concerned?

8 **MR. VAN DIEPEN:** Yes.

9 **MR. LEE:** And why was that?

10 **MR. VAN DIEPEN:** Again, as I provided in
11 earlier testimony, it's against policy and I just saw it as
12 creating the potential for compromising either the client
13 or Mr. Seguin or both. And even if there may not have
14 anything, if it meant a totally innocent relationship
15 between a landlord and a boarder, it still -- there was a -
16 - there was -- it had the potential of creating a cloud of
17 innuendo and conflict.

18 **MR. LEE:** That was a good Ministry policy.
19 Would you agree with that?

20 **MR. VAN DIEPEN:** Yes, I was, sir.

21 **MR. LEE:** This wasn't akin to the Ministry
22 policy or the -- at least office policy that had you
23 signing out of the office with your hands full, as an
24 example, at the end of the day? This was a different kind
25 of policy. This was one that needed to be respected in

1 your opinion?

2 MR. VAN DIEPEN: Yeah. The signing out of
3 the -- out of the office with this book, that was not
4 Ministry policy, that was something that the local manager
5 initiated. But when we're talking about clients living
6 with or former clients' contacts with probation officers,
7 that -- this was a Ministry-wide policy set down by
8 corporate level.

9 MR. LEE: Are you aware that Mr. Renshaw
10 testified here?

11 MR. VAN DIEPEN: Yes, I think so, yes.

12 MR. LEE: Did you have an opportunity to
13 review his transcripts?

14 MR. VAN DIEPEN: No, I did not.

15 MR. LEE: One of the things he told us while
16 he was here is that you would have seen him leaving the
17 office in Mr. Seguin's car?

18 MR. VAN DIEPEN: Yes.

19 MR. LEE: You'd agree with that?

20 MR. VAN DIEPEN: Yes.

21 MR. LEE: Did you find that odd?

22 MR. VAN DIEPEN: Well, it was in conjunction
23 with him living with Ken Seguin, yes.

24 MR. LEE: Had you ever been to lunch at
25 Harv's Diner with Mr. Renshaw?

1 **MR. VAN DIEPEN:** Never.

2 **MR. LEE:** He was never there when you were
3 there?

4 **MR. VAN DIEPEN:** Never.

5 **MR. LEE:** When Mr. Renshaw was here, he told
6 us that he had seen you at Harv's Diner during lunches. Is
7 that possible?

8 **MR. VAN DIEPEN:** Well, he may have seen me
9 there but -- and I don't dispute that I was there, but your
10 question was, "Did I ever had lunch with Mr. Renshaw?"

11 **MR. LEE:** You were never at the same table
12 together is your evidence?

13 **MR. VAN DIEPEN:** That's right.

14 **MR. LEE:** He may have walked by and seen
15 you. He may have been at another table?

16 **MR. VAN DIEPEN:** Exactly, yes, sir.

17 **MR. LEE:** You never had lunch with the man
18 is what you're saying?

19 **MR. VAN DIEPEN:** Yes, sir.

20 **MR. LEE:** Mr. Renshaw also told us when he
21 was here about doing some brickwork at your house.

22 **MR. VAN DIEPEN:** Yes, sir. I -- initially
23 the police or the investigators asked me about, you know,
24 "Was Mr. Renshaw ever at your house?"

25 **MR. LEE:** Sorry, what investigators?

1 **MR. VAN DIEPEN:** The Inquiry investigators.

2 **MR. LEE:** Okay.

3 **MR. VAN DIEPEN:** And I said, absolutely not.

4 And then in discussions with my wife we suddenly dawned on
5 us, we -- I had some renovations done on my house by a
6 local bricklayer and ---

7 **MR. LEE:** What was his name?

8 **MR. VAN DIEPEN:** Val Rioux.

9 **MR. LEE:** What is the last name, sir?

10 **MR. VAN DIEPEN:** Rioux.

11 **MR. LEE:** Rioux, thank you.

12 **MR. VAN DIEPEN:** And the -- Mr. Rioux, his
13 father and another gentleman were a bricklayer and they had
14 a helper. And so when they were bricking my house, those
15 were the people who were present. However, they needed and
16 that -- they needed somebody to help set-up, in other
17 words, to bring all the materials to the job site, erect
18 the scaffolding and, you know, get the mixer ready and the
19 mortar mixed and all that. And they needed somebody for a
20 part of a day or something to do that. As it turned out,
21 it was Mr. Renshaw that did that.

22 **MR. LEE:** Do you recall when this would have
23 been?

24 **MR. VAN DIEPEN:** Geez. I'm going to say the
25 early '80s perhaps.

1 **MR. LEE:** Mr. Renshaw guessed maybe 1985.

2 **MR. VAN DIEPEN:** That would be a reasonable
3 guess, yes.

4 **MR. LEE:** Mr. Renshaw also told us that Ken
5 Seguin would have been the one who brought him to your home
6 to do that work.

7 **MR. VAN DIEPEN:** That I -- I don't know
8 about that. I -- my assumption is that he was in the pick-
9 up trucks with the rest of the guys.

10 **MR. LEE:** You don't recall seeing Mr. Seguin
11 bring Mr. Renshaw to your home?

12 **MR. VAN DIEPEN:** No, none, no, sir.

13 **MR. LEE:** One of the things that you were
14 brought to during your examination in-chief was your second
15 interview with the OPP, so that's the one in 1998, where
16 you told them about seeing Mr. Renshaw around Seguin's
17 house and about how he knew his way around?

18 **MR. VAN DIEPEN:** Yes.

19 **MR. LEE:** Recall that? And you told us
20 yesterday, I believe, that you saw both Mr. Renshaw and C-8
21 there and they knew their way around. Is that right?

22 **MR. VAN DIEPEN:** Yes.

23 **MR. LEE:** Are you aware of the allegations
24 that Mr. Renshaw has now made against Mr. Seguin?

25 **MR. VAN DIEPEN:** Well, I -- my answer to

1 that would be, yes and no. I understand that there was --
2 Mr. Renshaw has made allegations. The extent to those
3 allegations, I do not know about those.

4 **MR. LEE:** You understood the allegations are
5 of sexual abuse?

6 **MR. VAN DIEPEN:** Yes. Certainly.

7 **MR. LEE:** And do you understand that the
8 allegations by Mr. Renshaw include the fact that the abuse
9 began while he was on probation to Mr. Seguin?

10 **MR. VAN DIEPEN:** I -- I'm not sure about
11 that chronology, sir, but I do know about the allegations
12 of sexual abuse.

13 **MR. LEE:** I'm not asking you to confirm
14 whether or not the abuse began while he was on probation,
15 I'm asking if you are familiar with the fact that that's
16 the allegation?

17 **MR. VAN DIEPEN:** Well, I am now.

18 **MR. LEE:** As a result of what I've just told
19 you or ---

20 **MR. VAN DIEPEN:** Yes. Yes.

21 **MR. LEE:** And you've told us that you're
22 very concerned about the victims in this process. Is that
23 right?

24 **MR. VAN DIEPEN:** Yes.

25 **MR. LEE:** You struck me as somebody who's

1 put some time into thinking about how sexual abuse by a
2 person in authority may affect the victim?

3 MR. VAN DIEPEN: Yes.

4 MR. LEE: You've done some reading on that
5 topic?

6 MR. VAN DIEPEN: Yes.

7 MR. LEE: Can you appreciate how difficult
8 it might have been for some body like Gerry Renshaw to
9 escape from the position he was in?

10 MR. VAN DIEPEN: Yes.

11 MR. LEE: And I take it you recognized the
12 power imbalance there?

13 MR. VAN DIEPEN: And that's -- that's the
14 area of concern, yes. That's where it's -- that's what
15 creates that terrible conflict.

16 MR. LEE: And in your mind, I take it there
17 is no real debate, that there is a clear power imbalance
18 between a probation officer and a probationer involved in a
19 sexual relationship?

20 MR. VAN DIEPEN: Yes.

21 MR. LEE: During your first interview with
22 the OPP, you said a couple of things that I'd like to ask
23 you about.

24 If you can turn up Exhibit 1063, please?

25 (SHORT PAUSE/COURTE PAUSE)

1 **MR. LEE:** Are you there, sir?

2 **MR. VAN DIEPEN:** Yes, sir.

3 **MR. LEE:** Can I take you to the third page
4 please? For the record, the Bates is 7044629. And if you
5 look about -- perhaps -- it's on the screen now, you see
6 the figure, ten-thousand dollars (\$10,000)?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. LEE:** About a third of the way down the
9 sentence reads:

10 "Ken and Gerry were lovers. Gerry owed
11 Ken about ten-thousand dollars
12 (\$10,000)."

13 **MR. VAN DIEPEN:** Yes.

14 **MR. LEE:** "Gerry was married."

15 **MR. VAN DIEPEN:** Yes.

16 **MR. LEE:** You see that?

17 **MR. VAN DIEPEN:** Yes.

18 **MR. LEE:** What can you tell me about Gerry
19 Renshaw owing Ken Seguin ten-thousand dollars (\$10,000)?

20 **MR. VAN DIEPEN:** At this point in time, very
21 little. I believe that Ken had -- I believe it had to do
22 with a motor vehicle.

23 **MR. LEE:** Can you expand on that? I don't
24 understand what you mean with "It had to do with a motor
25 vehicle."?

1 **MR. VAN DIEPEN:** I believe that there was --
2 that -- if memory serves me right, Ken got a new car and
3 Mr. Renshaw acquired his old car.

4 **MR. LEE:** For ten-thousand dollars
5 (\$10,000)?

6 **MR. VAN DIEPEN:** M'hm -- yeah -- I don't
7 know.

8 **MR. LEE:** So Mr. Seguin would have told you
9 that Mr. Renshaw owed him ten-thousand dollars (\$10,000)?

10 **MR. VAN DIEPEN:** Yes.

11 **MR. LEE:** Was this during the period that
12 Mr. Renshaw was living with Mr. Seguin?

13 **MR. VAN DIEPEN:** That's to my recollection,
14 yes.

15 **MR. LEE:** What about the statement that
16 Gerry -- Ken and Gerry were lovers, sir?

17 **MR. VAN DIEPEN:** Yes.

18 **MR. LEE:** Why would you tell the police
19 that?

20 **MR. VAN DIEPEN:** Based on the information
21 that we had, I guess the -- post-Seguin's death. There
22 were a lot of rumours and discussions and Mr. Renshaw's
23 name had come up and that Mr. Renshaw had been living there
24 and that that was a relationship other than just a tenant.

25 **MR. LEE:** Sir, would you agree with me that

1 the word "lovers" suggests a consensual relationship?

2 **MR. VAN DIEPEN:** Those are the words of --
3 were written by the police, not necessarily my words.

4 **MR. LEE:** Sir, is your evidence that the
5 police inserted the word "lovers" not you?

6 **MR. VAN DIEPEN:** Sir, this was an interview
7 that took place in 1994. It was an interview which took
8 some, correct me if I'm wrong, but it took place for --
9 from 9:45 a.m. until 11:35 a.m., condensed into just over
10 three pages.

11 **MR. LEE:** Is it your evidence here that
12 Detective Constable Genier or Constable MccDonell listened
13 to what you had to say on this issue and came up with -- by
14 way of summary -- Ken and Gerry were lovers?

15 **MR. VAN DIEPEN:** I'm -- I'm not just here to
16 dispute the -- the accuracy of the reporting of the police
17 officers.

18 **THE COMMISSIONER:** No, but you are being
19 asked?

20 **MR. VAN DIEPEN:** Pardon?

21 **THE COMMISSIONER:** We're not asking you to
22 judge. We're asking you your view on how that word "lover"
23 came into the transcript?

24 **MR. VAN DIEPEN:** I -- my answer is I don't
25 then, Your Honour.

1 **MR. LEE:** I've taken you to the typed
2 version because it's easier to read. Exhibit 1175 as the
3 handwritten version. I can tell you that the word "lovers"
4 appears in the handwritten version and that's the version
5 that you've conceded that you initialled on each page, that
6 you made changes and that you signed. Is that right, sir?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. LEE:** But your evidence here is that the
9 word "lovers" may not have been yours?

10 **MR. VAN DIEPEN:** Well, I'm -- you know,
11 we've bantered about -- about statements made whenever --
12 and I can tell you, sir, that if the police were ever to
13 approach me again, I would not give any statement. I would
14 tell them, "Sir, we will go to court and I will provide my
15 testimony before His Honour and it will be on the record".

16 **MR. LEE:** Well, I'm -- sir, do you see
17 anything wrong with giving a statement to the police where
18 they have you read it, initial it, make changes and sign
19 it?

20 **MR. VAN DIEPEN:** No, I -- at that time I
21 thought I was doing the right thing, providing the police
22 with all the information that I knew and now I -- you know
23 some -- some -- well, many years later, my statement's
24 being picked apart for a word of -- one word. And I -- you
25 know, did it -- you're suggesting, sir, that I was saying

1 that this was a consensual relationship. I don't know
2 about that relationship. I have no insight into the
3 relationship of that -- of the sexual nature of the
4 relationship between Mr. Seguin and Mr. Renshaw.

5 Mr. Seguin at no time ever disclosed to me
6 that he was in a sexual relationship with Mr. Renshaw and
7 certainly Mr. Renshaw never reported those events to me.
8 So I can't tell you whether it was consensual or it was --
9 or there was extortion used. I can't qualify that for you.

10 **MR. LEE:** I'm not up here simply to ask you
11 what Ken Seguin told you or what Gerry Renshaw reported to
12 you, I'm up here exploring with you what you knew, what you
13 should have known and, in certain situations, I think what
14 you must have known.

15 **MR. VAN DIEPEN:** Yes.

16 **MR. LEE:** And when I read this statement,
17 "Ken and Gerry were lovers", I'll be very frank with you,
18 when I read that I say to myself, Mr. van Diepen knew
19 exactly what Seguin was up to but he just didn't see
20 anything wrong with it.

21 Would you agree with that?

22 **MR. VAN DIEPEN:** Absolutely not, sir.

23 As I already pointed out to you, sir, we
24 were already extremely concerned about the fact that Mr.
25 Renshaw was even living there.

1 Now you're -- so, now you're saying on top -
2 - "We're concerned about him living there, but we're not
3 concerned about him having sexual relations with a
4 probation officer." That just -- you know, that's --
5 that's, I guess, to describe that would be an oxymoron.

6 **MR. LEE:** Mr. Renshaw living there is one
7 thing, in a vacuum.

8 **MR. VAN DIEPEN:** Yes.

9 **MR. LEE:** Mr. Renshaw living there, with
10 everything else that was going on around Ken Seguin begs
11 the question of how could you have possibly not suspected
12 what was going on? And had very reasonable grounds to
13 suspect what was going on.

14 It defies logic, sir.

15 Sitting there today, when you look back on
16 this, are you not shocked that you didn't see exactly what
17 was going on?

18 **MR. VAN DIEPEN:** I didn't have any
19 information to suggest that there was a sexual
20 relationship, sir.

21 You know, am I look -- when I look at it
22 now, through the optics of 2008, several police
23 investigations, numerous allegations, an inquiry -- the
24 optics are, I suggest to you, sir, are completely
25 different.

1 **MR. LEE:** Can you turn up your interview
2 with Paul Downing please? It's Exhibit 958 -- 958A.

3 **MR. VAN DIEPEN:** Yes, sir.

4 **MR. LEE:** And, I want to take you to page 5
5 -- handwritten page 5, at the bottom of the page.

6 **MR. VAN DIEPEN:** Well, we're at -- okay.

7 **MR. LEE:** Let me know when you're there,
8 sir.

9 **(SHORT PAUSE/COURTE PAUSE)**

10 **MR. VAN DIEPEN:** I have -- my ---

11 **MR. LEE:** I'm sorry. You have the entire
12 document with a number of interviews in it; is that right?

13 **MR. VAN DIEPEN:** Yes, I have 958 with a
14 number -- it's a ---

15 **MR. LEE:** If you look at the -- do you see
16 in the very top left-hand corner of the page, there are
17 very small, typewritten numbers?

18 **MR. VAN DIEPEN:** Left-hand corner, yes.

19 **MR. LEE:** Can you turn to the page that ends
20 with the three digits 538, back.

21 This exhibit is the full Paul Downing
22 report; so your interview is one of the documents in here,
23 sir.

24 **THE COMMISSIONER:** Wouldn't it -- you're at
25 Exhibit 958 ---

1 **MR. LEE:** Yes.

2 **THE COMMISSIONER:** Okay. And you're at his
3 statement?

4 **MR. LEE:** Is your Exhibit 958, Mr.
5 Commissioner, just Mr. van Diepen's interview or is it the
6 entire Downing report?

7 **THE COMMISSIONER:** No. It's the entire
8 thing.

9 **MR. LEE:** Right.
10 So I want to turn to Mr. van Diepen's
11 statement, which is included in there ---

12 **THE COMMISSIONER:** Yes.

13 **MR. LEE:** --- and I'm trying to help Mr. van
14 Diepen find that.

15 **THE COMMISSIONER:** Okay.

16 **MR. LEE:** I want to go to page 5 of Mr. van
17 Diepen's statement.

18 **THE COMMISSIONER:** All right.

19 **MR. VAN DIEPEN:** Okay. You said, "a
20 handwritten..."

21 **MR. LEE:** No.

22 **MR. VAN DIEPEN:** Okay. Because I have nine
23 -- or, 538 is typed, is the middle of the typed transcript
24 ---

25 **MR. LEE:** Can you look on the screen? I

1 want that page, that's on the screen.

2 MR. VAN DIEPEN: That's the -- yes, I'm at
3 that page, sir.

4 MR. LEE: You're there?

5 MR. VAN DIEPEN: Yes.

6 MR. LEE: Okay.

7 First paragraph, the last four lines.

8 And, again, this is your statement to Mr.
9 Downing:

10 "When Ken moved from Cornwall to
11 Summerstown, Ken asked permission to
12 have a younger, adult male probationer
13 reside with him at his residence. I
14 believe his name was Gerry Renshaw."

15 You see that, sir?

16 MR. VAN DIEPEN: Yes.

17 MR. LEE: This statement was given in 2000
18 and, would you agree with me that, that by 2000, you knew
19 very well that this probationer's name was Gerry Renshaw?

20 MR. VAN DIEPEN: Yes.

21 MR. LEE: Would you agree with me that the
22 only reason to phrase that sentence as you did being, "I
23 believe his name was Gerry Renshaw" to try to play down
24 what you knew about this whole situation?

25 MR. VAN DIEPEN: No, sir.

1 **MR. LEE:** What explanation do you have for
2 that, then?

3 **MR. VAN DIEPEN:** I wanted to be factual on
4 the record.

5 **MR. LEE:** You were hedging -- you weren't
6 certain it was Gerry Renshaw?

7 **MR. VAN DIEPEN:** At that point, sir, I was -
8 - my consideration was that, did I have absolute proof that
9 Mr. Renshaw was, in fact, living there?

10 I did not.

11 **MR. LEE:** That was the standard that you
12 held yourself to in that Paul Downing interview?

13 **MR. VAN DIEPEN:** Yes.

14 **MR. LEE:** Absolute proof?

15 **MR. VAN DIEPEN:** Yes. I did -- I mentioned
16 the name, sir.

17 **MR. LEE:** Can you turn over to page 10,
18 please?

19 **MR. VAN DIEPEN:** Yes.

20 **MR. LEE:** Mr. Downing asks you:

21 "Did you ever see Ken Seguin in the
22 company of any former or current
23 Ministry clients?"

24 **MR. VAN DIEPEN:** Yes.

25 **MR. LEE:** You answer:

1 "Yes. I believe that I saw Ken Seguin
2 and Gerry Renshaw in the probation and
3 parole parking lot, in Cornwall."

4 **MR. VAN DIEPEN:** Yes.

5 **MR. LEE:** That is not a complete answer, is
6 it sir?

7 **MR. VAN DIEPEN:** I don't understand your
8 question, sir.

9 **MR. LEE:** Mr. Downing asked you:

10 "Did you ever see Ken Seguin in the
11 company of any former or current
12 Ministry clients?"

13 And your answer is that you saw Ken and
14 Gerry in the parking lot, once.

15 Then you move on to something else.

16 **MR. VAN DIEPEN:** Wait a minute, now; I
17 didn't say, "Once."

18 **MR. LEE:** It's certainly what it implies;
19 you don't expand the answer.

20 **MR. VAN DIEPEN:** Well, I ---

21 **MR. LEE:** You don't clarify; you don't go
22 back to it; you don't give him a list ---

23 **MR. VAN DIEPEN:** Mr. Downing asked me the
24 question, I provided the answer. I don't recall; I don't
25 have a full transcript of what I provided to him. That is

1 what Mr. Downing typed, sir.

2 I don't recall -- you're asking me what did
3 I tell Mr. Downing? Is that all that I told Mr. Downing in
4 2000? I'm suggesting to you, sir, I provided Mr. Downing
5 with all the information; I don't, you know -- I can't tell
6 you that -- and, this is my difficulty with these -- all
7 these statements is that these -- there was no tape
8 recording. There was no transcriber. These were just, you
9 know -- I don't know what direction this, the investigator
10 was in or after.

11 Maybe he was only interested in Gerry
12 Renshaw and that's all he wrote down.

13 I can certainly tell you today that, you
14 know, I and my colleagues saw Mr. Seguin in the parking lot
15 with other clients, whose names I do not recall.

16 **MR. LEE:** And you saw probationers at Mr.
17 Seguin's house.

18 **MR. VAN DIEPEN:** Pardon?

19 **MR. LEE:** And you saw probationers at Mr.
20 Seguin's house?

21 **MR. VAN DIEPEN:** No, I did not.

22 **MR. LEE:** You knew Gerry Renshaw was a
23 probationer or an ex-probationer?

24 **MR. VAN DIEPEN:** Well -- oh, I see. Mr.
25 Renshaw? Yes. I saw Mr. Renshaw at Mr. Seguin's house,

1 yes.

2 **MR. LEE:** You saw Mr. Seguin out in the
3 community, at a tavern?

4 **MR. VAN DIEPEN:** Yes.

5 **MR. LEE:** Talking with clients?

6 **MR. VAN DIEPEN:** Yes.

7 Well, let's just correct that, now.

8 **MR. LEE:** Sure.

9 **MR. VAN DIEPEN:** You know, because I was
10 with Mr. Seguin; clients approached Mr. Seguin.

11 **MR. LEE:** I'll come back to this in a
12 minute.

13 When you have a client, probation and
14 parole, and a Court imposes terms on that probation, as an
15 example, does the client enter into any kind of undertaking
16 or enter into any -- does he sign an acknowledgement,
17 anything along those lines?

18 **MR. VAN DIEPEN:** Yes.

19 **MR. LEE:** Help me out; flesh that out for --
20 I don't practice criminal law at all; I don't know anything
21 about this.

22 What would the client do if the -- as you
23 mentioned the other day, that a judge may tell a client
24 that he needs to pay compensation.

25 **MR. VAN DIEPEN:** Yes.

1 **MR. LEE:** What form would that take? How
2 would the client go about acknowledging his agreement to --
3 -

4 **MR. VAN DIEPEN:** Well, we have -- what I
5 consider to be a somewhat redundant form because the
6 probation order itself is signed by the client in which he
7 acknowledges that the conditions were read out and/or -- he
8 read them and/or were explained to him, and he fully
9 understood them, as well as the consequences of any
10 violation. And, following that Section -- breach sections
11 and revocation sections of the Criminal Code are spelled
12 out.

13 Nevertheless, when a client comes into our
14 office there are, again -- the conditions are again
15 reviewed with that client and they sign an acknowledgement
16 that they understand what their obligations are, and the
17 consequences of not complying with those conditions.

18 **MR. LEE:** And what happens when there is a
19 breach?

20 Does that piece of paper that they have
21 signed ---

22 **MR. VAN DIEPEN:** Is it used as evidence?

23 **MR. LEE:** Yes.

24 **MR. VAN DIEPEN:** Yes.

25 **MR. LEE:** For what purpose?

1 **MR. VAN DIEPEN:** I -- it's -- I don't know
2 for what purpose, sir. It's used as evidence in court as
3 well as a copy of our case notes referencing the matter.

4 **MR. LEE:** And I take it you would point to
5 the signature on that document to evidence the fact that
6 the client had reviewed the document and had things
7 explained to him?

8 **MR. VAN DIEPEN:** I don't -- we don't
9 prosecute those breaches, sir.

10 **MR. LEE:** Was that why you have the client
11 signed the paper?

12 **MR. VAN DIEPEN:** No. We have the -- we have
13 the clients -- I believe the Ministry policy that why the
14 client is asked to sign the paper is to ensure that the
15 client is absolutely clear on his responsibilities and the
16 consequences. It's not to put the client in a situation
17 where we're going to breach him.

18 **MR. LEE:** So that at the end of the day, the
19 client can't say, I didn't know anything about this. Is
20 that right?

21 **MR. VAN DIEPEN:** Yes. And that's to protect
22 both the client and ourselves.

23 **MR. LEE:** Sir, the police and Mr. Downing
24 had you initial and sign statements?

25 **MR. VAN DIEPEN:** Yes.

1 **MR. LEE:** And I would suggest that one of
2 the reasons they did that is so you couldn't get up in a
3 witness box at some point and suggest that these were not
4 your statements?

5 **MR. VAN DIEPEN:** That would be -- you could
6 say that, sir.

7 **MR. LEE:** Sir, I've read your statements
8 very carefully and I've listened very closely to your
9 evidence here, and I'm going to suggest to you that when
10 your actions or your inactions are called into question or
11 criticized, you have a habit of manipulating the truth and
12 of fabricating stories to make yourself look better. Will
13 you concede that, sir?

14 **MR. VAN DIEPEN:** No, sir.

15 **THE COMMISSIONER:** Sorry?

16 **MR. WESTDAL:** Be very careful here. I think
17 that question, in my respectful view, is very provocative
18 to the client. I don't know whether you believe it crossed
19 the line. I'm seeking an objection to it, but if you allow
20 it, that's fine.

21 **THE COMMISSIONER:** I'll allow it. He's
22 answered "No".

23 **MR. LEE:** The answer was "No", I believe?

24 **MR. VAN DIEPEN:** Absolutely not, sir.

25 **MR. LEE:** When you -- is our evidence when

1 you ---

2 **MR. VAN DIEPEN:** Sir, let me follow that up.

3 **MR. LEE:** Sure.

4 **MR. VAN DIEPEN:** You know, of all the
5 officers in the Cornwall office, I am the only one that
6 provided any detailed information to the police, even
7 though the other officers in the Cornwall office had the
8 same knowledge or more knowledge than I had. I was out of
9 the office up to three days a week, so I wasn't privy to a
10 lot of the goings on in the office. Nevertheless, I
11 provided the police and Mr. Downing with evidence that
12 would be -- I considered to be helpful.

13 Now, I don't see statements from other
14 probation officers volunteering information. In fact, I --
15 you know, there is an indication from some that, "I didn't
16 know" or "I don't know". And I am going to suggest to you,
17 sir, that others knew and I would ask you to use that
18 yardstick. Not that I, you know, some -- that I used the
19 word or may have used the word "lovers", when I should have
20 perhaps used the word "sexual relationship".

21 I think, sir, that that is totally
22 inappropriate for you to make those kinds of suggestions.
23 I think you also know, sir, that I'm extremely concerned
24 about the victimization that this Inquiry is examining, and
25 I think, sir, that you know that I'm extremely troubled by

1 it and that I do not -- and I certainly do not approve of
2 it.

3 **THE COMMISSIONER:** Okay, well, just a
4 second. Just a second.

5 This is cross-examination. What he's done
6 is he's put the question to you, and it's not like he's
7 walking out and saying blah, blah, blah.

8 He's putting it to you and you have answered
9 it forcefully, and the rest is up to me.

10 **MR. VAN DIEPEN:** Thank you.

11 **THE COMMISSIONER:** All right? Mr. Lee.

12 **MR. LEE:** Sir, let me explain something to
13 you. I put that question to you out of fairness. When I
14 listen to your evidence and when I read your statements, I
15 get the very -- I very much get a feeling that you're in an
16 awkward position, that you're in a tough position, and that
17 when you are pressed, you have a tendency to make things up
18 to make yourself look better. And I'm giving you the
19 opportunity to concede that you've made some mistakes, that
20 in some of your statements you haven't been truthful and in
21 some of your evidence here you haven't been truthful, and
22 I'm giving you an opportunity to concede that now.

23 **MR. VAN DIEPEN:** Sir, that's absolutely
24 false.

25 **THE COMMISSIONER:** There you go.

1 **MR. LEE:** Is your evidence that everything
2 you've told us in the last few days has been the truth
3 without exaggeration or effort at damage control?

4 **MR. VAN DIEPEN:** Exact -- yes.

5 **MR. LEE:** I just have one last area I want
6 to discuss with you.

7 Did you ever, at any point, deal with a
8 priest by the name of Carl Stone?

9 **MR. VAN DIEPEN:** No.

10 **THE COMMISSIONER:** Do you know him?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. LEE:** You recognize the name?

13 **MR. VAN DIEPEN:** Yes.

14 **MR. LEE:** Was he a probationer in your
15 office?

16 **MR. VAN DIEPEN:** Yes.

17 **MR. LEE:** Who was he assigned to?

18 **MR. VAN DIEPEN:** Ken Seguin.

19 **MR. LEE:** Can you give us some idea of when
20 that may have been?

21 **MR. VAN DIEPEN:** No. The -- my recollection
22 of it is that at some point the Ministry asked me about
23 whether I knew about a priest having been on probation and
24 I -- for some reason, it was the -- it's a unique
25 situation, and the name came up. And I said I believed

1 that was the gentleman's name.

2 MR. LEE: Do you know why he was on
3 probation?

4 MR. VAN DIEPEN: My memory of it is, is that
5 the priest was an American citizen somewhere from, I
6 believe, upper New York State and was now in Canada and was
7 on supervision for a sexually related matter.

8 MR. LEE: As you understood it, it was
9 sexual in nature?

10 MR. VAN DIEPEN: That's my understanding.

11 MR. LEE: Do you know what involvement the
12 diocese had with your office in relation to Father Stone's
13 supervision?

14 MR. VAN DIEPEN: No, sir.

15 MR. LEE: Do you know what Mr. Seguin's
16 involvement or contact with the diocese may have been in
17 relation to that?

18 MR. VAN DIEPEN: No, sir.

19 MR. LEE: Did you ever discuss that with Mr.
20 Seguin?

21 MR. VAN DIEPEN: I believe I -- yes, I had
22 conversations with Mr. Seguin about Father Stone.

23 MR. LEE: And what was the nature of those
24 conversations?

25 MR. VAN DIEPEN: Who is this guy? What is

1 he on probation for? So on and so forth.

2 MR. LEE: Was Father Stone -- was he -- he
3 was an ordained priest at the time? He wasn't an ex-priest
4 or anything like that?

5 MR. VAN DIEPEN: I believe he was a
6 practising priest.

7 MR. LEE: In this diocese?

8 MR. VAN DIEPEN: In this diocese, I don't
9 know, but I don't think he was -- if I could use the word
10 defrocked. I don't believe he was defrocked.

11 MR. LEE: Do you recall -- did you have any
12 conversations with Ken Seguin about what ultimately
13 happened with Father Stone?

14 MR. VAN DIEPEN: I believe so, yes.

15 MR. LEE: And what did Mr. Seguin tell you?

16 MR. VAN DIEPEN: I believe that Father Stone
17 went back to the United States.

18 MR. LEE: And Mr. Seguin would have told you
19 that?

20 MR. VAN DIEPEN: Pardon?

21 MR. LEE: Mr. Seguin would have told you
22 that?

23 MR. VAN DIEPEN: Well, he would be the only
24 one that would know about Father Stone.

25 MR. LEE: If I can have one moment, sir.

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

2 **(SHORT PAUSE/COURTE PAUSE)**

3 **MR. LEE:** Those are my questions. Thank
4 you.

5 **THE COMMISSIONER:** Thank you.

6 Mr. Neville?

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

8 **NEVILLE:**

9 **MR. NEVILLE:** Thank you, sir. Good morning,
10 Mr. van Diepen.

11 **MR. VAN DIEPEN:** Good morning.

12 **MR. NEVILLE:** You know who I am by name.

13 **MR. VAN DIEPEN:** Yes.

14 **MR. NEVILLE:** And in case you weren't aware,
15 I represent the Estate of Ken Seguin and his brother, Doug,
16 and also Father Charles MacDonald.

17 I am just going to have a few minutes of
18 questions for you hopefully.

19 What I'd like to do is ask you to clarify or
20 explain certain parts of your statements and I would like
21 to start with our Exhibit 1063, which is your statement to
22 Officers Genier and McDonell on 14 February 1994, the typed
23 version, just because it's easier to read.

24 You have it there?

25 **MR. VAN DIEPEN:** Yes, sir.

1 **MR. NEVILLE:** All right. We can see below
2 the black horizontal line some tombstone material about
3 your career and how or when you knew Ken Seguin first. And
4 then it says:

5 "The name Silmsers does ring a bell."

6 Now, just stopping there for a moment, there
7 is nothing on the face of the interview that mentions David
8 Silmsers up to this point.

9 **MR. VAN DIEPEN:** M'hm.

10 **MR. NEVILLE:** Right?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. NEVILLE:** You have to answer because
13 there is a reporter.

14 So something must have happened to bring his
15 name up to trigger whatever the response was.

16 **MR. VAN DIEPEN:** Yes.

17 **MR. NEVILLE:** All right. So I take it you
18 don't remember now or do you? What triggered it?

19 **MR. VAN DIEPEN:** I'm sure the police
20 officers asked me, you know, what do you know about a David
21 Silmsers?

22 **MR. NEVILLE:** Okay. And at that point in
23 February of 1994 what did you know?

24 **MR. VAN DIEPEN:** I don't know -- I don't
25 know Mr. Silmsers. I wouldn't know him if I met him on the

1 street, sir.

2 MR. NEVILLE: All right. Well, did you know
3 about the controversy, to use a generic term, involving a
4 settlement by the diocese?

5 MR. VAN DIEPEN: Yes, I knew about that.

6 MR. NEVILLE: And by February of 1994 that
7 settlement and aspects of it had been in the media?

8 MR. VAN DIEPEN: That's correct.

9 MR. NEVILLE: There had been press
10 conferences?

11 MR. VAN DIEPEN: Yes.

12 MR. NEVILLE: And indeed we know, or Mr.
13 Commissioner knows, that by the time the OPP are doing this
14 interview with you, the Ottawa police have come down and
15 taken a short look at matters. You may or may not know
16 that and this is now a new OPP investigation that lasted
17 the better part of a year?

18 MR. VAN DIEPEN: Yes.

19 MR. LEE: And were you aware that Mr.
20 Silmsler was being investigated for attempted extortion on
21 Ken Seguin?

22 MR. VAN DIEPEN: At that point-in-time, I
23 don't recall whether or not that was the context of their
24 investigation or whether it had to do with Mr. Seguin
25 having had relations, sexual relations, with Mr. Silmsler.

1 **MR. LEE:** All right. My question was
2 whether you knew part of the investigation involved looking
3 into possible extortion? Did you become aware that that
4 was part of the investigation?

5 **MR. VAN DIEPEN:** Yes, sir, but I ---

6 **MR. NEVILLE:** How? How did you become ---

7 **MR. VAN DIEPEN:** --- I'm not -- I cannot
8 tell you when I became aware of the extortion element.

9 **MR. NEVILLE:** How did you become aware that
10 that was a component?

11 **MR. VAN DIEPEN:** From -- again conversation
12 in the office.

13 **MR. NEVILLE:** So it was colleagues had some
14 awareness that there was an extortion component to the
15 OPP's work?

16 **MR. VAN DIEPEN:** Yes, I believe so.

17 **MR. NEVILLE:** You had a friendship and a
18 professional relationship, both as a probation officer and
19 as lawyer-client, with Malcolm MacDonald?

20 **MR. VAN DIEPEN:** Yes.

21 **MR. NEVILLE:** Was there anything from
22 Malcolm MacDonald to you that an extortion component
23 existed here?

24 **MR. VAN DIEPEN:** Well, I believe I gave
25 testimony that Mr. MacDonald told me that there would be

1 some money going to Mr. Silmsers in the form of -- and which
2 I understood to be compensation.

3 **MR. LEE:** Well, my -- if you just listen to
4 the question, Mr. van Diepen, we'll get done faster.

5 **MR. VAN DIEPEN:** M'hm.

6 **MR. NEVILLE:** My question to you was whether
7 in conversations with Malcolm MacDonald there was any
8 suggestion by him to you of a -- an extortion component?

9 **MR. VAN DIEPEN:** There was never -- the word
10 extortion was never used, sir.

11 **MR. NEVILLE:** All right. But you heard the
12 word extortion, I think you told the Commissioner, in shop-
13 talk?

14 **MR. VAN DIEPEN:** Yes.

15 **MR. NEVILLE:** All right. So coming back to
16 what's been written here:

17 "The name Silmsers does ring a bell, but
18 I think Stu..."

19 -- and you've corrected it if you just look at the text,
20 looks like one of your corrections, from "ew" to "u?"

21 **MR. VAN DIEPEN:** Yes.

22 **MR. NEVILLE:** "I think Stu Rousseau
23 would be able to tell you more because
24 he had him as a probationer. I think
25 Stu had him but I'm not sure of it, but

1 I never did."

2 What was your basis for that part about Mr.
3 Rousseau having been Mr. Silmsers' probation officer?

4 **MR. VAN DIEPEN:** I ---

5 **MR. NEVILLE:** How you would have that
6 knowledge?

7 **MR. VAN DIEPEN:** I -- the police were asking
8 me what I knew about Mr. Silmsers.

9 **MR. NEVILLE:** I know that. Your answer was:
10 "I think Stu Rousseau would be able to
11 tell you because he had him as a
12 probationer."

13 What did you base that response on? Did you
14 have some knowledge that Mr. Rousseau had -- had monitored
15 him as a probationer?

16 **MR. VAN DIEPEN:** I believe that Mr. Silmsers
17 was on probation with Mr. Rousseau and if the police
18 officers wished to get more information ---

19 **MR. NEVILLE:** Of course.

20 **MR. VAN DIEPEN:** --- they may wish to speak
21 to Mr. Rousseau.

22 **MR. NEVILLE:** Fine. How was it you knew
23 about Mr. Rousseau's role with Silmsers?

24 **MR. VAN DIEPEN:** I believe I -- again, I
25 believe that that was conversation or whether or not -- you

1 know -- I don't recall, sir. You know -- how did -- how
2 did it come to that I connected Silmsler to Rousseau, I
3 don't recall that.

4 **MR. NEVILLE:** All right. You might have
5 recalled it better had we been able to ask you right after
6 this interview, I take it?

7 **MR. VAN DIEPEN:** I'm sorry?

8 **MR. NEVILLE:** You might have been able to
9 tell us why you knew that had we been able to speak with
10 you right after that interview 14 years ago?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. NEVILLE:** Compared to now?

13 **MR. VAN DIEPEN:** Yes.

14 **MR. NEVILLE:** All right. So the next
15 reference if we could, briefly, from the same statement,
16 sir, page 2.

17 If we look at the bottom of the page, the
18 typed page 2, 6 lines from the bottom?

19 **MR. VAN DIEPEN:** Yes.

20 **MR. NEVILLE:** You say, or they recorded you
21 saying:

22 "I've never heard about Silmsler and
23 Ken. I think Stu Rousseau might know."

24 **MR. VAN DIEPEN:** Yes.

25 **MR. NEVILLE:** What did you mean by that:

1 "I've never heard about Silmser and
2 Ken."?

3 **MR. VAN DIEPEN:** What I was referring to
4 there was that prior to Mr. Seguin's death, I was not aware
5 of anything relating -- that connected Mr. Seguin and Mr.
6 Silmser in a relationship, a sexual relationship or some
7 extortion matter.

8 **MR. NEVILLE:** Well, now, careful now,
9 because you say:

10 "I think maybe Stu Rousseau might
11 know."

12 Stu Rousseau might know what? That -- of
13 some relationship?

14 **MR. VAN DIEPEN:** Might know more.

15 **MR. NEVILLE:** Okay. So you're saying that -
16 - now bearing in mind, sir, that you're saying this to the
17 officers on the 14th of February '94?

18 **MR. VAN DIEPEN:** Yes.

19 **MR. NEVILLE:** You're saying in 1992 or '93,
20 you're saying, "I've never heard about Silmser and Ken";
21 speaking in February '94?

22 **MR. VAN DIEPEN:** Yes.

23 **MR. NEVILLE:** Right?

24 **MR. VAN DIEPEN:** Yes.

25 **MR. NEVILLE:** Now, let's look at page 3.

1 Previous counsel, in particular Mr. Lee,
2 refers you to the sentence about eight or nine lines from
3 the top about Ken and Gerry, meaning Renshaw, being lovers
4 and then further down, about five lines, they record you as
5 saying:

6 "Ken was good friends with Malcolm, Ron
7 Leroux, Gerry."

8 And the Gerry is Gerry Renshaw again?

9 **MR. VAN DIEPEN:** Yes.

10 **MR. NEVILLE:** Okay. And what was your basis
11 for saying, not the "lovers" quote, the next one, "Good
12 friends with Gerry"?

13 **MR. VAN DIEPEN:** Sir, I -- I don't -- I
14 don't know. I have no idea.

15 **MR. NEVILLE:** Well, these are your words.

16 **MR. VAN DIEPEN:** Well ---

17 **MR. NEVILLE:** You put various people
18 together you see. You put Malcolm ---

19 **MR. VAN DIEPEN:** Yes.

20 **MR. NEVILLE:** --- and I think we can
21 probably figure out that one. You put Ron Leroux;
22 certainly by the Summerstown era in his life they were
23 neighbours ---

24 **MR. VAN DIEPEN:** Yes.

25 **MR. NEVILLE:** Apart from anything else?

1 MR. VAN DIEPEN: Yes.

2 MR. NEVILLE: Leroux was one of those who
3 went to the Harve's gathering of the businessmen?

4 MR. VAN DIEPEN: Yes.

5 MR. NEVILLE: And in the same sentence you
6 put Gerry, i.e. Renshaw?

7 MR. VAN DIEPEN: Yes.

8 MR. NEVILLE: So you lumped them all
9 together in one sentence as friends, so there must be a
10 basis?

11 MR. VAN DIEPEN: Well, you know that's what
12 -- you know -- and this is where I'm having this difficulty
13 ---

14 MR. NEVILLE: M'hm.

15 MR. VAN DIEPEN: --- you know, this -- we're
16 talking about an interview that lasted some -- a number of
17 hours in which I gave a lengthy answer which is condensed
18 for the purpose -- and what I suggest to you, you got a
19 police officer with a ham holding a three-inch pencil
20 trying to make a note in those little, little, notebooks,
21 and so they're not going to be very detailed notes. So,
22 you know, I can't tell you -- and I do not honestly recall
23 what I told the police officers.

24 MR. NEVILLE: All right.

25 MR. VAN DIEPEN: But you know the -- it --

1 when you read it, it seems to be -- it -- it seems to me,
2 and I suggest to you, sir, that there was some effort to
3 contract the information that I supplied to the police.
4 Not to exclude information but to contract it for the
5 purposes of transcription.

6 **MR. NEVILLE:** Well, we're going to hear from
7 those officers eventually in any event, Mr. van Diepen so -
8 --

9 **MR. VAN DIEPEN:** Yes.

10 **MR. NEVILLE:** --- we'll leave that part of
11 it.

12 I understand what you're saying and there's
13 a quote later that I'll refer you to about your comment
14 about this statement, so let's just deal with some of the
15 details first.

16 In the middle of that page you make
17 reference to knowledge, either direct or from others, of
18 Mr. Seguin dating with or going out with a
19 Helen Leger-Morris before you got there. Would that have
20 been something some one told you?

21 **MR. VAN DIEPEN:** Yeah, Ken would have told
22 me.

23 **MR. NEVILLE:** Okay. And others?

24 **MR. VAN DIEPEN:** Well, yeah, I think so,
25 yes.

1 **MR. NEVILLE:** All right. And also that he
2 was dating, indeed house-hunting, with a women named Mona ,
3 and in a -- in a subsequent statement, you -- you give her
4 last name so at some point you knew her last name and as
5 being someone that was house-hunting to either marry or
6 cohabituate with Mr. Seguin?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. NEVILLE:** And was that something that
9 was going on while you were there?

10 **MR. VAN DIEPEN:** No, it was not.

11 **MR. NEVILLE:** Again, prior to your arrival
12 told to you by Ken or by others or by both?

13 **MR. VAN DIEPEN:** Yes.

14 **MR. NEVILLE:** All right. Now, about eight
15 lines from the bottom, there's this reference to this
16 dinner party and I want to get this clear because I was
17 having some difficulty following your evidence.

18 It says:

19 "I heard once ..."

20 -- and then there's a comma in the text but that's for the
21 officers:

22 "... at a dinner party, Silmsers was there
23 and that Father Charles sodomized
24 Silmsers then and Ken didn't do
25 anything."

1 Now, is this what you meant to say and tell
2 me if I have it right, you had a concern for yourself about
3 these website allegations of sex parties, right? That was
4 one of the things that was falsely said about you?

5 **MR. VAN DIEPEN:** Yes.

6 **MR. NEVILLE:** Sex parties?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. NEVILLE:** All right. And am I
9 understanding you to say that, somewhere along the line,
10 you heard a story that at one of these parties this conduct
11 had happened. Is that what you're trying to say here?

12 **MR. VAN DIEPEN:** No, what I'm saying is that
13 I was at a party and one of the individuals that was at the
14 party that I was at recounted these events of a dinner
15 party where ---

16 **MR. NEVILLE:** Okay, that's what I'm getting
17 at.

18 **MR. VAN DIEPEN:** --- parties, yes.

19 **MR. NEVILLE:** Somebody tells you that as
20 part of a dinner party this sexual act happened?

21 **MR. VAN DIEPEN:** Yes.

22 **MR. NEVILLE:** And that the people present at
23 this other dinner party, not yours, included Silmsler,
24 Father Charles and Seguin?

25 **MR. VAN DIEPEN:** That's correct.

1 **MR. NEVILLE:** Now, would it surprise you to
2 know that not even Mr. -- Mr. Silmsler tells that story?

3 **MR. VAN DIEPEN:** I wouldn't be surprised at
4 all, no.

5 **MR. NEVILLE:** And it's one of those problems
6 isn't it; rumour, innuendo, gossip?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. NEVILLE:** None of it true, but out
9 there?

10 **MR. VAN DIEPEN:** Yes.

11 **MR. NEVILLE:** You were a victim of it?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. NEVILLE:** Right? And maybe other people
14 that you're talking about -- not trying to criticize you,
15 sir -- they're hurt by it?

16 **MR. VAN DIEPEN:** Yes.

17 **MR. NEVILLE:** All right. Let's look at your
18 next statement. It's the August '98 statement.

19 **THE COMMISSIONER:** Which -- which exhibit,
20 sir?

21 **MR. NEVILLE:** Oh, I'm sorry -- sorry ---

22 **THE COMMISSIONER:** Eleven-seventy-five
23 (1175)? No?

24 **MR. NEVILLE:** No. Pardon me?

25 **THE COMMISSIONER:** Eleven-seventy-five

1 (1175)?

2 **MR. NEVILLE:** M'hm, 76.

3 **THE COMMISSIONER:** Eleven-seventy-six

4 (1176)?

5 **MR. NEVILLE:** One-one-seven-six (1-1-7-6) or
6 August '98.

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

8 **MR. NEVILLE:** All ready? All right.

9 And if we look just at the first page, Mr.
10 van Diepen, it would appear that the officers provide you
11 at that point with a copy of the one we've just been
12 looking at?

13 **MR. VAN DIEPEN:** Yes.

14 **MR. NEVILLE:** Right? And ask you if you
15 adopt it as your own. You see that sentence just before
16 your first -- the first "A" for your answer?

17 **MR. VAN DIEPEN:** Yes.

18 **MR. NEVILLE:** And interestingly you say:

19 "Basically, yeah, essentially it is."

20 **MR. VAN DIEPEN:** Yes.

21 **MR. NEVILLE:** All right. And I want to help
22 you with what I think you're trying to tell the
23 Commissioner because if you turn over to the next page,
24 page 2, you can see there's a -- a large paragraph dead
25 centre in the page starting with, "The first change" and

1 you're explaining the changes that we see initialled on the
2 previous statement; right?

3 **MR. VAN DIEPEN:** Yes.

4 **MR. NEVILLE:** And then at the end of it you
5 say:

6 "This is not my statement. These are
7 the transcribed notes of interviewers."
8 And that's the position you've been trying to convey to us;
9 correct?

10 **MR. VAN DIEPEN:** Yes.

11 **MR. NEVILLE:** Right. So you're not taking
12 the position that you didn't make the changes and sign it,
13 you want it understood I take it as being somebody else's
14 notes of a two-hour interview?

15 **MR. VAN DIEPEN:** Yes.

16 **MR. NEVILLE:** As opposed to a verbatim
17 account, a transcript, a tape-recorded version, something
18 specific and exact?

19 **MR. VAN DIEPEN:** Yes.

20 **MR. NEVILLE:** That's your point?

21 **MR. VAN DIEPEN:** Yes.

22 **MR. NEVILLE:** All right.

23 Now, can we look at page 7? Do you have it?

24 **MR. VAN DIEPEN:** Yes.

25 **MR. NEVILLE:** All right. And I want to

1 count six entries up from the bottom. The officer has this
2 recorded:

3 "What can you tell us about a
4 confession report of Ken Seguin?"

5 Answer:

6 "I heard that there may have been a
7 note at his house, but there's never
8 been anything here."

9 -- meaning at the office?

10 **MR. VAN DIEPEN:** Yes.

11 **MR. NEVILLE:** Next question:

12 "Did you ever confirm to anyone that
13 there was a confession of Ken
14 Seguin's?"

15 Answer:

16 "No, because I had no personal
17 knowledge or was never told by anyone
18 that there was a confession."

19 **MR. VAN DIEPEN:** Yes.

20 **MR. NEVILLE:** That's what you told the
21 officers?

22 **MR. VAN DIEPEN:** Yes.

23 **MR. NEVILLE:** Well, in your previous
24 statement, don't you suggest Malcolm MacDonald conveyed a
25 confession to you?

1 MR. VAN DIEPEN: No.

2 MR. NEVILLE: No?

3 MR. VAN DIEPEN: No. I think that there was
4 -- my understanding again, sir, was that there was -- that
5 there was some -- that there was to be a financial
6 settlement with an admission of wrongdoing or guilt.

7 MR. NEVILLE: Oh, okay. Well now, that's
8 what I was coming to. We'll come back to that; all right?

9 MR. VAN DIEPEN: Yes.

10 MR. NEVILLE: Now, if we could just look
11 briefly, sir, at the Downing interview on September 28th,
12 2000. Mr. Commissioner, Exhibit 958A and you might be able
13 to find it readily there, Mr. van Diepen. Just --we're
14 just going to look at yours -- what you've looked at ad
15 nauseam so far. It's the typed one, you've got that? Mr.
16 Lee and others asked you some questions?

17 MR. VAN DIEPEN: Yes.

18 MR. NEVILLE: All right.

19 THE COMMISSIONER: What page?

20 MR. NEVILLE: Yes, Mr. Commissioner, but
21 first a reference if I may -- and I'm going to use the
22 numbers if I could at the bottom just that it's faster?

23 THE COMMISSIONER: M'hm.

24 MR. NEVILLE: Four -- you see at the bottom
25 in the centre of the page, there's written numbers?

1 **MR. VAN DIEPEN:** Page number 4?

2 **MR. NEVILLE:** Right.

3 **MR. VAN DIEPEN:** Yes.

4 **MR. NEVILLE:** Easier to -- I find the Bates
5 pages hard to read myself, but ---

6 **THE COMMISSIONER:** I think we'd just read
7 them out first, it's easier for counsel to find the exact -
8 --

9 **MR. NEVILLE:** Yes. Does everybody -- well,
10 it's on the screen now so. I'll read them out if you'd
11 like me to, sir.

12 **THE COMMISSIONER:** No, no ---

13 **MR. NEVILLE:** Let's look just briefly, if we
14 could, sir, if we look at the second last paragraph from
15 the bottom, you can see that you talk about starting to
16 work with Mr. Seguin and got to know him that way and I'm
17 just curious about the wording in the second sentence. It
18 says:

19 "Subsequent to my starting with
20 probation and parole, I discovered that
21 Ken was engaged to a woman by the name
22 Mona."

23 -- and then we have the last name.

24 **MR. VAN DIEPEN:** Yes.

25 **MR. NEVILLE:** That seems to speak in the

1 present tense of being engaged when you started. Is that
2 an inaccurate interpretation?

3 MR. VAN DIEPEN: Yes.

4 MR. NEVILLE: All right. So, again, it's
5 something historical you found out. "Was", as in at one
6 time, "was"? Not when you started?

7 MR. VAN DIEPEN: After I started, it was
8 revealed to me that Ken Seguin had been engaged to this
9 woman prior to my starting ---

10 MR. NEVILLE: I understand.

11 MR. VAN DIEPEN: --- in -- okay.

12 MR. NEVILLE: So maybe what -- to make it
13 make sense, the words, "at one time", should be in there
14 between "was" and "engaged". Is that the context, right?
15 Is that fair?

16 MR. VAN DIEPEN: Well -- yes.

17 MR. NEVILLE: And then we see the reference
18 to going out with a secretary whose name is there who --
19 and the fact that she had ultimately married another person
20 whose name is there; right?

21 MR. VAN DIEPEN: Yes.

22 MR. NEVILLE: And you talk about his being
23 well-known and well-regarded?

24 MR. VAN DIEPEN: Yes.

25 MR. NEVILLE: And then you say in the final

1 paragraph:

2 "Ken was single, good-looking and an
3 eligible bachelor. Ken, on a number of
4 occasions, stated that he was very
5 uncomfortable with comments made about
6 his personal life. He said he was
7 concerned about some people in the
8 community referring to him as gay."

9 Did you have such conversations with Mr.
10 Seguin?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. NEVILLE:** So he appeared to have some
13 level of awareness that this was being said and if I may
14 put it this way, behind his back?

15 **MR. VAN DIEPEN:** Yes.

16 **MR. NEVILLE:** And was that something you'd
17 heard going on in the community? A single guy in his 30s
18 or 40s is -- must be gay; that's the type of thing?

19 **MR. VAN DIEPEN:** Did I -- you mean was I
20 aware of it independent of Mr. Seguin's discussion with me?

21 **MR. NEVILLE:** Yes.

22 **MR. VAN DIEPEN:** Yes.

23 **MR. NEVILLE:** So there was some innuendo or
24 talk in the community along the lines that was bothering
25 him?

1 **MR. VAN DIEPEN:** Yes.

2 **MR. NEVILLE:** So he wasn't immune to the
3 fact that people were saying things about him, according to
4 this; right?

5 **MR. VAN DIEPEN:** Yes, he was troubled by it,
6 yes.

7 **MR. NEVILLE:** Now, you mentioned with one of
8 the other counsel that you and Mr. Seguin might be out
9 maybe one of the Thursday night things for a pint after
10 work?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. NEVILLE:** And you'd be in a pub or a
13 tavern or a bar, and one or more probationers would come
14 over to speak to Mr. Seguin?

15 **MR. VAN DIEPEN:** Yes.

16 **MR. NEVILLE:** Was this like, "Hi, Ken, how
17 are you doing" type of thing?

18 **MR. VAN DIEPEN:** Yeah, there was a -- yes,
19 and then there was a conversation.

20 **MR. NEVILLE:** So this person would initiate
21 a contact. Mr. Seguin didn't go wandering around the room
22 looking for probationers?

23 **MR. VAN DIEPEN:** That's right.

24 **MR. NEVILLE:** They came over to him?

25 **MR. VAN DIEPEN:** Yes.

1 **MR. NEVILLE:** And it would be a little
2 awkward to say please don't talk to me, I'm your probation
3 officer; wouldn't it?

4 **MR. VAN DIEPEN:** Yes.

5 **MR. NEVILLE:** So it's kind of a social
6 pressure situation; you're just being sociable. Is that
7 not a fair analysis?

8 **MR. VAN DIEPEN:** Yes, but at the same time,
9 I would -- in a similar situation, I would -- that exchange
10 would be -- I would keep it very short.

11 **MR. NEVILLE:** So he'd talk with them for two
12 or three minutes maybe, and you would talk for maybe ten or
13 fifteen seconds. Is that a fair ---

14 **MR. VAN DIEPEN:** Yes.

15 **MR. NEVILLE:** All right. And we've heard
16 from others that Ken was kind of an outgoing, friendly,
17 type of guy. Is that a fair statement?

18 **MR. VAN DIEPEN:** Yes.

19 **MR. NEVILLE:** Now, again in that paragraph
20 at the top of page 5 -- it's where I am now, sorry, I
21 should have referred you and our Commissioner -- I'm at the
22 top of page 5, and these types of topics are in that first
23 paragraph, and we see the reference that Mr. Lee challenged
24 you on about Gerry Renshaw.

25 Were you aware, Mr. van Diepen, that the

1 approval for this tenancy in Ken's house went not only
2 through Emile Robert but through Mr. Hawkins at the Region?

3 **MR. VAN DIEPEN:** No, sir. I subsequently
4 became aware of that with this Inquiry.

5 **MR. NEVILLE:** Oh, you learned it after
6 through the Inquiry? So all those years up until recently,
7 you thought it was just all Mr. Robert's decision?

8 **MR. VAN DIEPEN:** That's -- yes, sir.

9 **MR. NEVILLE:** So now you realise that
10 actually it went as high as the regional level?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. NEVILLE:** So, now, in the next
13 paragraph, there's a reference to the Varley matter where
14 there was a homicide. It's on page 5, second paragraph.

15 **MR. VAN DIEPEN:** Yes.

16 **MR. NEVILLE:** Do you see that?

17 **MR. VAN DIEPEN:** Yes.

18 **MR. NEVILLE:** It's in the last four or five
19 lines; right?

20 **MR. VAN DIEPEN:** Yes.

21 **MR. NEVILLE:** Were you aware that Mr.
22 Seguin, after being advised of what had happened, that is
23 to say the homicide, had done an incident report as
24 required?

25 **MR. VAN DIEPEN:** Yes.

1 **MR. NEVILLE:** All right. And were you aware
2 of the fact that the police investigated the whole matter
3 and concluded, Mr. Millar in particular, that these people
4 coming to Mr. Seguin's house (a) had taken him by surprise,
5 that he was somewhat intimidated? Did you know that?

6 **MR. VAN DIEPEN:** At that time, no.

7 **MR. NEVILLE:** Okay. Have you learned that
8 since?

9 **MR. VAN DIEPEN:** Yes.

10 **MR. NEVILLE:** All right. And did you know
11 then that they were there from roughly eight in the evening
12 until maybe eight-forty and that the homicide was
13 completely unrelated to Mr. Seguin's home and happened at
14 four o'clock in the morning or thereabouts? Did you know
15 that?

16 **MR. VAN DIEPEN:** No, I did not.

17 **MR. NEVILLE:** You didn't know it then, at
18 all?

19 **MR. VAN DIEPEN:** I -- this is the first time
20 I hear -- I'm aware of these timelines, sir.

21 **MR. NEVILLE:** Okay. Do you agree it puts a
22 slightly different spin on it?

23 **MR. VAN DIEPEN:** Yes.

24 **MR. NEVILLE:** That's fair.

25 Could we just look very quickly, Mr. van

1 Diepen, at page 11 of the same interview. You have it?

2 MR. VAN DIEPEN: Yes.

3 MR. NEVILLE: All right. The upper half of
4 the page, there's about four questions at the top, and it's
5 dealing with the Harv's Diner situation.

6 MR. VAN DIEPEN: Yes.

7 MR. NEVILLE: And in your longest answer,
8 just about the middle of the page, you describe the basic
9 situation of a group of tables, I think you put -- tables
10 put together creating a large table, and it looks like
11 there's a bunch of business and professional men who drop
12 in to see who's there and have lunch on a regular basis,
13 although, in your case, every couple of weeks?

14 MR. VAN DIEPEN: Yes.

15 MR. NEVILLE: Nothing sinister about this.
16 These are all ordinary well-known businesspersons?

17 MR. VAN DIEPEN: Yes.

18 MR. NEVILLE: And one of the persons in the
19 list having lunch, it would appear, at the table is C-8.
20 You can see him in the second last row?

21 MR. VAN DIEPEN: Yes.

22 MR. NEVILLE: And he's the same person that
23 on one occasion at least you saw at Mr. Seguin's
24 Summerstown home at the same time as Gerry Renshaw?

25 MR. VAN DIEPEN: Yes.

1 **MR. NEVILLE:** And, well, I won't go and give
2 you the references, you probably can remember them
3 yourself, but there appears to be an indication in our
4 testimony throughout the Inquiry that C-8 and Leroux lived
5 together for an extended period of time?

6 **MR. VAN DIEPEN:** Yes.

7 **MR. NEVILLE:** Whatever the nature of the
8 relationship, and it's been described in various ways that
9 they did?

10 **MR. VAN DIEPEN:** Yes.

11 **MR. NEVILLE:** Right? And did you know that
12 C-8, in 1997, alleged sexual abuse -- I'm using a very
13 loose term -- sexual -- inappropriate sexual comments to
14 him by Mr. Seguin, and that it offended him?

15 **MR. VAN DIEPEN:** No, sir.

16 **MR. NEVILLE:** Would it surprise you that C-8
17 would do that, given what you saw?

18 **MR. VAN DIEPEN:** Yes.

19 **MR. NEVILLE:** And one of the things you
20 weren't referred to and I'd like to do it just for the
21 record if I might, is page 13, and it's a follow-up to some
22 of Mr. Lee's questions. It's page 13 at the top of the
23 page.

24 You can see in the first question, because
25 at the top it's an answer, the first question put to you is

1 reminding you, that is Downing -- Mr. Downing is -- of an
2 earlier OPP statement. It was Statement No. 1 in February
3 '94 where the phrase "were lovers" appears; right? Do you
4 see that in the question?

5 MR. VAN DIEPEN: Yes.

6 MR. NEVILLE: And your answer then was:

7 "I believed that they were in a
8 relationship."

9 MR. VAN DIEPEN: Yes.

10 MR. NEVILLE: So that may, in fact, have
11 been the word you used way back in '94 as opposed to the
12 word "lovers"?

13 MR. VAN DIEPEN: Could be, yes.

14 MR. NEVILLE: Now, can we just come back to
15 your first statement in February '94, Exhibit 1063.

16 And the portion of it that I'd like to ask
17 you some questions on, Mr. van Diepen, starts at the bottom
18 of page 2 where we see the corrections by yourself about
19 Malcolm and Ken?

20 MR. VAN DIEPEN: Yes.

21 MR. NEVILLE: And then we go on to this
22 whole business about the settlement; all right?

23 MR. VAN DIEPEN: Yes.

24 MR. NEVILLE: And the statement as it reads,
25 and it was reviewed with you by Mr. Engelmann in

1 particular, is:

2 "I talked to Malcolm after Ken's death
3 that there was a proposed settlement of
4 \$11,000. Malcolm said Ken gave a
5 statement admitting Ken gave him a hand
6 job. That was in December, 1993.

7 Malcolm was trying to work out a deal."

8 That's the entire passage recorded in this
9 statement.

10 **MR. VAN DIEPEN:** Yes.

11 **MR. NEVILLE:** And if I follow your evidence,
12 and we've looked through various things where we attempted
13 to, as it were, set the record a bit more straight, there
14 may well have been, if I follow you, a more extensive
15 discussion on this topic than what is recorded?

16 **MR. VAN DIEPEN:** With the police you mean?

17 **MR. NEVILLE:** Yes.

18 **MR. VAN DIEPEN:** Yes.

19 **MR. NEVILLE:** Okay. Now, let me just go, if
20 I could, to the transcript, if I may, Mr. Commissioner and
21 it's yesterday, Volume 186, page 116, I'm just going to
22 review with you some of your answers and then we'll come
23 back in a minute and try to tidy this up.

24 It starts at page 116 Mr. Commissioner, at
25 line 16.

1 **MR. VAN DIEPEN:** What page Mr. Neville,
2 please?

3 **MR. NEVILLE:** Yes, page 116, the number's at
4 the top in the centre. And the number as you go down the
5 left-hand side as you pick up the lines.

6 **MR. VAN DIEPEN:** Yes.

7 **MR. NEVILLE:** So we'll start if we could at
8 line 16 where Mr. Engelmann says:

9 "Okay, would -- would Malcolm MacDonald
10 have told you that -- would he have
11 suggested to you that the payment of
12 this eleven thousand dollars (\$11,000)
13 would have anything to do with not
14 proceeding with a criminal charge?"

15 "I don't recall that, sir."

16 "All right..."

17 I'm just going to leave out the names
18 because we can all follow.

19 "All right. Do you recall anything
20 more about what the payment of the
21 eleven-thousand dollars (\$11,000) would
22 be for?"

23 "I believe it was some -- as I
24 understood it, it was some form of
25 compensation to Mr. Silmsen for

1 And I'm on 118 if you're following along Mr.
2 van Diepen.

3 "And I'm wondering..."

4 And you cut in:

5 "I don't know if that's a statement to
6 Mr. -- a verbal statement to Malcolm
7 MacDonald, a written statement to the
8 police or a statement of wrongdoing in
9 the way of a settlement. So I don't
10 know what that -- what that refers to."

11 Mr. Engelmann:

12 "All right."

13 "And I certainly -- I -- any type of
14 that document, no matter what it was, I
15 never had -- I never laid eyes on it."

16 Right?

17 **MR. VAN DIEPEN:** Yes.

18 **MR. NEVILLE:** Okay. And we can just look
19 next briefly, same volume, Mr. Commissioner, page 127, line
20 12. Have you found that one sir?

21 **MR. VAN DIEPEN:** Page 127.

22 **MR. NEVILLE:** Yes.

23 **MR. VAN DIEPEN:** Yes.

24 **MR. NEVILLE:** All right. It starts at line
25 12, again starting with Mr. Engelmann:

1 "You will agree with me that the
2 comments Mr. Malcolm MacDonald makes to
3 you about Ken Seguin could be described
4 as a confession of sorts?"

5 "That Mr. -- that, who, Mr. MacDonald
6 confessed to me or that Ken Seguin
7 confessed to Mr. MacDonald or..."

8 "Right."

9 "I don't know, I never saw -- I never
10 saw any statement. I don't know what
11 it -- all I can tell you is what Mr.
12 MacDonald told me."

13 "Right, which was..."

14 And then quoting, Mr. Engelmann quotes:

15 "'I talked to Malcolm...'"

16 Et cetera from the statement. At the top of
17 page 128, having read that out again, he says:

18 "Presumably that's Silmser?"

19 Mr. van Diepen:

20 "Yes."

21 Mr. Engelmann:

22 "Correct? That was in December '93,
23 Malcolm was trying to work out a deal.
24 So I'm talking about the statement,
25 whether it's in writing or oral, that

1 Mr. Seguin gives to Mr. Malcolm
2 MacDonald, that that could be construed
3 as a confession of sorts?"

4 And your answer was:

5 "Well, I -- there is -- I think there
6 is -- I deduced from that that there
7 was some admission of guilt by Mr.
8 Seguin to Mr. MacDonald."

9 "All right."

10 "In what manner or form that took
11 place; I don't know."

12 All right? Now, let me just give you a bit
13 of background facts so you'll -- and then I'll ask a couple
14 of questions for you.

15 We know from your evidence that there was no
16 suicide note or any kind of confession type document at the
17 office.

18 **MR. VAN DIEPEN:** Yes.

19 **MR. NEVILLE:** And I think it's clear that
20 nothing of that type was found at the house or we'll hear
21 that evidence. Are you aware of our practice here as part
22 of the Inquiry, Mr. van Diepen, of using what's called an
23 ODE, Overview of Documentary Evidence, for certain
24 witnesses, particularly as they're deceased?

25 **MR. VAN DIEPEN:** No.

1 **MR. NEVILLE:** If you don't that's fine.

2 **MR. VAN DIEPEN:** No, no.

3 **MR. NEVILLE:** All right. Earlier in the
4 Inquiry, last fall, because Mr. Seguin is of course
5 deceased, an ODE, Overview of Documentary Evidence, was
6 done for him. All right?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. NEVILLE:** And as part of that process,
9 Mr. Commissioner has them, exhibits were filed which are
10 numbers -- and, Mr. Commissioner, 960, 961 and 962. And
11 what those were were a series of documents written by Ken
12 Seguin for Malcolm when Malcolm was attempting to assist
13 him in the Silmsler issue. All right?

14 **MR. VAN DIEPEN:** Okay.

15 **MR. NEVILLE:** One of them is relatively
16 lengthy, it's a six or seven page narrative by Ken Seguin
17 of his entire dealings with Silmsler over many years in
18 which there is no admission of any wrongdoing. Are you
19 with me?

20 **MR. VAN DIEPEN:** Yes.

21 **MR. NEVILLE:** All right. Now last week, as
22 part of the Inquiry, again Mr. Commissioner received an
23 ODE, an overview for Malcolm MacDonald who, as you and we
24 all know, is deceased. All right. And as part of that ODE
25 filed as exhibit, was a statement Mr. MacDonald did on the

1 21st of December 1993 to the OPP in which he outlines for
2 them his representing of Ken Seguin on the Silmsers matter -
3 --

4 **MR. VAN DIEPEN:** Yes.

5 **MR. NEVILLE:** --- in which there is no
6 suggestion that Mr. Seguin admitted wrongdoing. In fact,
7 he indicates that he was telling Mr. Seguin "You should
8 fight this. Maybe consider extortion but certainly tell
9 your boss." I'm summarizing. Now, that's what we have.
10 All right?

11 **MR. ENGELMANN:** Sir, I'm concerned, I don't
12 have the ODE here, Neville did not give notice, I'm
13 concerned that these facts may be somewhat out of context,
14 I don't have my ODE with me. I'm very concerned how this
15 is being put to the witness. If my friend was intending to
16 do this, he should have given notice.

17 **MR. NEVILLE:** Well this is cross-
18 examination; I'm simply laying a foundation. I'm now going
19 to move to the questions and I think it will be quite clear
20 what I'm doing.

21 **MR. ENGELMANN:** I'm not sure the foundation
22 is accurate. That's what I'm concerned about. If I'd had
23 notice and if other counsel had notice, they'd be able to
24 tell.

25 **THE COMMISSIONER:** Mr. Neville, what do you

1 have to say?

2 **MR. NEVILLE:** Well, at this point sir, I've
3 laid the foundation, I'd like to move to the question.

4 **THE COMMISSIONER:** I know, but the issue is
5 ---

6 **MR. NEVILLE:** Well, I don't know what to say
7 sir. I didn't think that was necessary; they're exhibits.
8 I think I've accurately presently exactly what has
9 happened. You have the exhibits and if there is any
10 problems with it, Mr. Engelmann gets to re-examine at some
11 point later today and you have the exhibits.

12 **THE COMMISSIONER:** Oh, just a second now.
13 So what's the purpose of the question?

14 **MR. NEVILLE:** Well, I think it will become
15 quite apparent if you'll permit me just to carry on; you'll
16 see where I'm going.

17 **THE COMMISSIONER:** Well ---

18 **MR. NEVILLE:** It picks up on what I read
19 from yesterday's transcript and a brief answer from the
20 witness this morning that I said I would come back to.

21 **THE COMMISSIONER:** Okay. What we'll do is
22 we'll take the morning break.

23 **MR. NEVILLE:** All right.

24 **THE COMMISSIONER:** You can let Mr. Engelmann
25 and the others know what exhibits we're looking at and I

1 think you can pull up the ODE.

2 Mr. Engelmann?

3 **MR. ENGELMANN:** Typically when questions are
4 put to a witness, is we allow the witness to examine the
5 written documents as well.

6 **THE COMMISSIONER:** Right.

7 **MR. ENGELMANN:** And, in fairness to Mr. van
8 Diepen, if there are specifics that Mr. Neville's putting
9 to him, he should see the document as well.

10 **THE COMMISSIONER:** All right. We'll do that
11 at the break then, after the break. Thank you.

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

14 This hearing will resume at 11:35 a.m.

15 --- Upon recessing at 11:20 a.m. /

16 L'audience est suspendue à 11h20

17 --- Upon resuming at 11:37 a.m. /

18 L'audience est reprise à 11h37

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

21 This hearing is now resumed.

22 Please be seated. Veuillez vous asseoir.

23 **MR. NEVILLE:** Yes, what we've done over the
24 break Mr. Commissioner is I've located for Mr. van Diepen
25 and opened it for him the relevant page of Mr. MacDonald's

1 ODE; and for your benefit, it's Exhibit 1154 ---

2 THE COMMISSIONER: Before you ---

3 MR. NEVILLE: --- and it's paragraph -- do
4 you have it there in front of you? I left it in front of
5 you.

6 MR. VAN DIEPEN: Yes, thank you.

7 MR. NEVILLE: And your counsel, I think,
8 provided you with a copy as well.

9 THE COMMISSIONER: Okay. Before we go too
10 far though ---

11 MR. NEVILLE: Right.

12 THE COMMISSIONER: -- just let me ask you
13 this question?

14 MR. NEVILLE: Right.

15 THE COMMISSIONER: If Mr. Malcolm MacDonald
16 ---

17 MR. NEVILLE: Right.

18 THE COMMISSIONER: --- had a statement or
19 knew -- had a statement written or oral form his client
20 admitting guilt, okay? Or responsibility, something;
21 inculpatory statement would he not be bound not to disclose
22 it.

23 MR. NEVILLE: Exactly. And that's where I'm
24 going with these questions.

25 THE COMMISSIONER: Well, if he's bound not

1 to disclose it ---

2 MR. NEVILLE: Right.

3 THE COMMISSIONER: --- we're looking at
4 these -- what you're saying, "Well, look it, Mr. MacDonald
5 gave us -- gave up some statements that were exculpatory."
6 Right?

7 MR. NEVILLE: Well, I ---

8 THE COMMISSIONER: So that doesn't deny the
9 fact that he might have it ---

10 MR. NEVILLE: Right. And that ---

11 THE COMMISSIONER: --- in a file some place.

12 MR. NEVILLE: And that's why, sir, I was
13 going to ask the witness a series of further questions and
14 hopefully tidy up the point, and it's for you to make up
15 what you choose. And I agree with you, I mean, there could
16 be something else. No question.

17 THE COMMISSIONER: No, no. Well -- no, no, I
18 know, but the implication is -- you know, in the set up is,
19 "Look it, all of the stuff that Malcolm MacDonald has given
20 is exculpatory."

21 MR. NEVILLE: Right.

22 THE COMMISSIONER: And I'm saying well --
23 and the deduction is, well, if it -- that proves his
24 innocence, and I'm saying, "Well, wait a minute here;
25 that's not quite fair".

1 **MR. NEVILLE:** Well, what I would suggest to
2 you, sir, if you'd allow me ---

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

4 **MR. NEVILLE:** --- to finish my questioning -
5 --

6 **THE COMMISSIONER:** Yeah.

7 **MR. NEVILLE:** --- and you will make of the
8 answers, I illicit, what you see fit. I believe there is a
9 point to be made here. I think Mr. van Diepen intimated it
10 already this morning. I want to come back to it and tidy
11 it up and see where we are.

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

13 **MR. NEVILLE:** I understand what you're
14 saying. There's no question there could be something else.

15 **THE COMMISSIONER:** Well, not -- not only
16 could there be something ---

17 **MR. NEVILLE:** I'm going to suggest there is
18 ---

19 **THE COMMISSIONER:** No, no. No. That's not
20 -- no, no, no, no. In putting the cross-examination to him
21 ---

22 **MR. NEVILLE:** Sorry.

23 **THE COMMISSIONER:** --- right -- you're
24 suggesting that Malcolm MacDonald would have either had a
25 duty or would have had no reason to hide -- hide -- not to

1 produce an inculpatory statement. And I'm saying, "Wait a
2 minute now; that's not fair." That as a duty as an officer
3 he would not as a matter of law produce that inculpatory
4 statement.

5 **MR. NEVILLE:** Well, what we have, sir, for
6 whatever you make of it, is the -- and the connection
7 between the two sets of documents is in the ODEs, because
8 in the Ken Seguin ODE there's a portion there where -- and
9 that's where 960 to 962 were filed.

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

11 **MR. NEVILLE:** All right.

12 These were documents that as Seguin's
13 solicitor or lawyer at the time, he -- asked him as client
14 to generate. And, in fact, those were turned over. Now
15 I'm not sure exactly how or why, sir, but they were.

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

17 **MR. NEVILLE:** Well, I'm not going there --
18 I'm just telling you they were; you have them.

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

20 **MR. NEVILLE:** And he tells the police about
21 that in his December 21st statement of '93 which is part of
22 his ODE and is indeed an Exhibit.

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

24 **MR. NEVILLE:** That whole history of what
25 happened. That's all I'm talking about.

1 **THE COMMISSIONER:** Don't get me wrong. I'm
2 going to permit you to ask ---

3 **MR. NEVILLE:** Right.

4 **THE COMMISSIONER:** --- the question, so long
5 as -- you understand my concern ---

6 **MR. NEVILLE:** I understand.

7 **THE COMMISSIONER:** --- about the premise
8 that you've made.

9 **MR. NEVILLE:** Right.

10 **THE COMMISSIONER:** Okay.

11 Mr. Engelmann?

12 **MR. ENGELMANN:** Before we start, I'm not
13 aware of a December '93 statement. Maybe I'm mistaken. I
14 thought it was in '94.

15 **MR. NEVILLE:** No. December 21st, '93.

16 **MR. ENGELMANN:** All right.

17 **THE COMMISSIONER:** And where is that
18 statement?

19 **MR. NEVILLE:** Pardon me, sir?

20 **THE COMMISSIONER:** This is Malcolm MacDonald
21 statement?

22 **MR. NEVILLE:** It is; to the OPP.

23 **THE COMMISSIONER:** Okay, and ---

24 **MR. NEVILLE:** It was made an exhibit ---

25 **THE COMMISSIONER:** Yes.

1 **MR. NEVILLE:** --- as part of his ODE.

2 **THE COMMISSIONER:** Okay. And do you know
3 what exhibit it would be?

4 **MR. NEVILLE:** I don't have the exhibit list
5 at the moment ---

6 **THE COMMISSIONER:** Okay, hang on. I'll ---

7 **MR. NEVILLE:** Madame Registrar probably has
8 it, somewhere.

9 **THE COMMISSIONER:** Eleven fifty-seven
10 (1157).

11 **MR. NEVILLE:** Right.

12 **THE COMMISSIONER:** Yeah, okay.

13 **MR. NEVILLE:** And am I correct, sir, that
14 it's '93? It's in the top corner there.

15 **THE COMMISSIONER:** Oh, oh.

16 **MR. NEVILLE:** Date of statement, I believe.

17 **THE COMMISSIONER:** No, I've got one 18th of
18 November '98.

19 **MR. NEVILLE:** Right. There's another one --
20 -

21 **THE COMMISSIONER:** Okay, hang on.

22 **MR. NEVILLE:** Twenty-one (21) December '93,
23 which is referred to in the ODE.

24 **THE COMMISSIONER:** Yeah. It's just that I
25 was looking at the ODE ---

1 **MR. NEVILLE:** Right.

2 **THE COMMISSIONER:** --- which is not -- okay,
3 how about -- there's one October 28th, 1994 ---

4 **MR. NEVILLE:** Right.

5 **THE COMMISSIONER:** --- which is Exhibit 863.

6 **MR. NEVILLE:** I think it's actually a much -
7 - I think, sir, if you look in the Malcolm MacDonald ODE --
8 -

9 **THE COMMISSIONER:** Yes.

10 **MR. NEVILLE:** --- it's an older exhibit
11 number. Yes, here it is, sir. It's actually -- no, wait a
12 minute -- oh, yes, thank you. Thank you. It's actually,
13 sir, Exhibit 973. ---

14 **THE COMMISSIONER:** Okay.

15 **MR. NEVILLE:** --- so it must have gone in --
16 I -- given the number, it must have gone in during the Ken
17 Seguin ODE ---

18 **THE COMMISSIONER:** Okay.

19 **MR. NEVILLE:** --- just given the number.

20 **THE COMMISSIONER:** So for the record, you're
21 quite correct, there is a statement on the 21st of December,
22 1993.

23 **MR. NEVILLE:** Yes.

24 **THE COMMISSIONER:** Okay. So go ahead.

25 **MR. NEVILLE:** All right.

1 Thank you, sir.

2 Now, if we just look -- come back for
3 a moment, Mr. van Diepen to your February 1994 statement,
4 Exhibit 1063 ---

5 **THE COMMISSIONER:** Okay.

6 **MR. NEVILLE:** Do you have it there?

7 **MR. VAN DIEPEN:** Yes, sir.

8 **MR. NEVILLE:** And I'm looking at the top of
9 the page where you talk about -- well, it starts at the
10 bottom of page 2 ---

11 **MR. VAN DIEPEN:** Yes.

12 **MR. NEVILLE:** --- where he talks about the
13 \$10,000 proposed settlement and a statement, et cetera.
14 Now, the phrase in your statement, is:

15 "Ken gave a statement".

16 Do you agree with me that that type of
17 wording is normally what we see in terms of somebody giving
18 a police statement?

19 **MR. VAN DIEPEN:** I don't know the context of
20 the statement ---

21 **MR. NEVILLE:** Okay. In these words,
22 somebody giving a statement ---

23 **MR. VAN DIEPEN:** Yes, you could deduce that
24 when I say, "gave a statement" it was -- you could draw
25 from that that Ken Seguin gave a statement to the police.

1 **MR. NEVILLE:** All right.

2 Now I can advise you that there is no such
3 statement to the police; right?

4 **MR. VAN DIEPEN:** And I think I tried to
5 explain that to ---

6 **MR. NEVILLE:** All right. I understand. If
7 you just bear with me. We have reviewed with you what some
8 of your answers were yesterday.

9 All right?

10 And we've reviewed with you the fact that,
11 as I've just advised you, there is no statement by
12 Mr. Seguin to the authorities, admitting any wrongdoing,
13 and there's the documents that you've reviewed including
14 the ODE about Mr. Malcolm MacDonald representing Ken.

15 All right?

16 **MR. VAN DIEPEN:** Yes.

17 **MR. NEVILLE:** So -- and you made reference
18 both in your testimony yesterday and earlier this morning
19 that what might have been the case was that if a settlement
20 had ultimately been negotiated it would have included or
21 have to have include some admission of wrong.

22 Is that fair?

23 **MR. VAN DIEPEN:** Yes.

24 **MR. NEVILLE:** All right.

25 And that could be what you meant in this

1 part of your statement?

2 MR. VAN DIEPEN: Yes.

3 MR. NEVILLE: All right.

4 Now, can we just look at briefly -- it's
5 Exhibit, Mr. Commissioner, 1177.

6 (SHORT PAUSE/COURTE PAUSE)

7 MR. NEVILLE: The document, Mr.
8 Commissioner, is Mr. van Diepen's lengthy -- somewhat
9 lengthy e-mail on September 7th, about the website.

10 THE COMMISSIONER: Yes. I have it.

11 MR. NEVILLE: Have you found it, sir? 1177,
12 they're tabbed, but it might be hard to find it.

13 (SHORT PAUSE/COURTE PAUSE)

14 MR. VAN DIEPEN: Thank you.

15 MR. NEVILLE: Have it?

16 MR. VAN DIEPEN: Yes, sir.

17 MR. NEVILLE: All right.

18 Could we just look at, it would be your e-
19 mail which is at -- it's the last three -- it starts at the
20 bottom of the second page of our document; right? I'm now
21 taking you to page two of the text of her e-mail. The full
22 -- the big full page; right?

23 MR. VAN DIEPEN: Yes.

24 MR. NEVILLE: And we look at the second
25 paragraph from the top, starting with the phrase,

1 "...coincident with this investigation
2 has been the posting of a website."

3 Right?

4 **MR. VAN DIEPEN:** Yes.

5 **MR. NEVILLE:** You've found that? And in
6 that paragraph you set out a little bit of the -- as you
7 put it, graphic details of what appears on the website
8 including details slandering you.

9 **MR. VAN DIEPEN:** Yes.

10 **MR. NEVILLE:** And slander is the correct
11 word isn't it?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. NEVILLE:** You were slandered?

14 **MR. VAN DIEPEN:** Yes.

15 **MR. NEVILLE:** All right.

16 And then you say this at the start of the
17 next paragraph.

18 "This pending civil suit against the
19 Ministry would seem to be a prime
20 motivator for this group."

21 Right?

22 **MR. VAN DIEPEN:** Yes.

23 **MR. NEVILLE:** You were aware that persons
24 within the website were now seeking money?

25 **MR. VAN DIEPEN:** That was my understanding,

1 yes.

2 **MR. NEVILLE:** And is that a concern that
3 they come forward in the context of seeking money? It is,
4 isn't it?

5 **MR. VAN DIEPEN:** Well, -- I -- yes.

6 **MR. NEVILLE:** Yeah. In other words where
7 were they, until the money was on the table; right?

8 **MR. VAN DIEPEN:** Who, sir?

9 **MR. NEVILLE:** These people, he says:

10 "This pending civil suit would seem to
11 be a prime motivator for this group."

12 In other words, "Where was this group until
13 the money came up," right?

14 **MR. VAN DIEPEN:** That's -- yes.

15 **MR. NEVILLE:** All right.

16 So let's look at the bottom of the page.

17 Because the theme continues:

18 "Yes, there are innocent victims of
19 sexual abuse. If proven, under the law
20 they are entitled to civil remedy and I
21 empathize with them."

22 And you've told us that?

23 **MR. VAN DIEPEN:** Yes.

24 **MR. NEVILLE:** Let's go on:

25 "There are others in this case, the

1 principles of the website, who claim to
2 be victims themselves and who appear
3 motivated by greed and continue the
4 abuse in the electronic media."

5 **MR. VAN DIEPEN:** Yes.

6 **MR. NEVILLE:** The people they slandered,
7 perhaps in pursuit of money, could have included other than
8 you; right?

9 **MR. VAN DIEPEN:** Yes, sir.

10 **MR. NEVILLE:** Couldn't it have included the
11 late Ken Seguin also?

12 **MR. VAN DIEPEN:** Yes, sir.

13 **MR. NEVILLE:** Thank you. Those are my
14 questions.

15 **THE COMMISSIONER:** Thank you.

16 Mr. Chisholm?

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

18 Good morning, Mr. van Diepen, you know who I
19 am.

20 **MR. VAN DIEPEN:** Yes, sir.

21 **MR. CHISHOLM:** You know who I act for. I
22 have no questions for you. Thank you.

23 **MR. VAN DIEPEN:** Thank you.

24 **THE COMMISSIONER:** Thank you.

25 Mr. Kloeze?

1 **MR. KLOEZE:** Good morning, sir.

2 Good morning, Mr. van Diepen. My name is
3 Darrell Kloeze, counsel for the Ministry of the Attorney
4 General. I have no questions. Thank you.

5 **MR. VAN DIEPEN:** Thank you.

6 **THE COMMISSIONER:** Mr. Manderville?

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

8 **MANDERVILLE:**

9 **MR. MANDERVILLE:** Good morning, Mr.
10 Commissioner.

11 Good morning, Mr. van Diepen. My name is
12 Peter Manderville, counsel for the Cornwall Police.

13 I want to discuss one area with you. You
14 suggested during your examination in-chief that you had
15 heard that probationers who were found out on the street at
16 night with no place to go would, on occasion, be taken by
17 officers of my client to Ken Seguin's house for the night.
18 Do you recall that?

19 **MR. VAN DIEPEN:** Yes.

20 **THE COMMISSIONER:** I don't know that he said
21 "probationers". I thought he said "male people", but if he
22 said "probationers", then ---

23 **MR. MANDERVILLE:** Was it limited to
24 probationers in your view, sir?

25 **MR. VAN DIEPEN:** I don't believe so. I --

1 you know, I think it may have included probationers, but I
2 don't -- I'm not necessarily suggesting that it was
3 exclusively probationers.

4 **MR. MANDERVILLE:** Okay. According to your
5 understanding of it, was it men and women or just men?

6 **MR. VAN DIEPEN:** Males.

7 **MR. MANDERVILLE:** And you believed this
8 practice, if it existed, took place in the latter part of
9 the 1970s?

10 **MR. VAN DIEPEN:** In the early '70s.

11 **MR. MANDERVILLE:** Okay. Who are the
12 probation officers in the Cornwall office at that time? Am
13 I correct, there was you, Mr. Barque and Mr. Seguin?

14 **MR. VAN DIEPEN:** In the '70s?

15 **MR. MANDERVILLE:** Yes.

16 **MR. VAN DIEPEN:** With the subsequent arrival
17 of Mr. Rousseau.

18 **MR. MANDERVILLE:** When did he arrive?

19 **MR. VAN DIEPEN:** I don't have that chart in
20 front of me when Mr. Rousseau came over, but it was maybe
21 two or three years after I started.

22 **MR. MANDERVILLE:** You lived in St. Andrews.
23 Mr. Barque lived outside the Cornwall area as well;
24 correct?

25 **MR. VAN DIEPEN:** Yes.

1 **MR. MANDERVILLE:** Mr. Seguin, of the three
2 of you, was the only one who lived in Cornwall; correct?

3 **MR. VAN DIEPEN:** Yes.

4 **MR. MANDERVILLE:** And you found out about
5 this practice, if you will, a number of years after the
6 fact. Is that right?

7 **MR. VAN DIEPEN:** Yes.

8 **MR. MANDERVILLE:** Are you able to estimate
9 when you would have found out about that?

10 **MR. VAN DIEPEN:** No idea, sir.

11 **MR. MANDERVILLE:** Would it have been after
12 1982, after Mr. Sirrs became Area Manager?

13 **MR. VAN DIEPEN:** I -- I can't answer that.
14 I don't know.

15 **MR. MANDERVILLE:** Well, I am going to
16 suggest to you, sir, that this practice was revealed to you
17 by Mr. Seguin after Mr. Barque had his problems. Is that
18 fair?

19 **MR. VAN DIEPEN:** Possibly, sir.

20 **MR. MANDERVILLE:** Did anyone else tell you
21 about this so-called practice other than Mr. Seguin?

22 **MR. VAN DIEPEN:** Yes.

23 **MR. MANDERVILLE:** Who?

24 **MR. VAN DIEPEN:** Police officers.

25 **MR. MANDERVILLE:** Which ones?

1 **MR. VAN DIEPEN:** I don't recall, sir.

2 **MR. MANDERVILLE:** So you actually spoke to
3 officers of my client about this practice?

4 **THE COMMISSIONER:** It's the Cornwall Police
5 Service.

6 **MR. VAN DIEPEN:** I -- I had conversations
7 with individual police officers, yes.

8 **MR. MANDERVILLE:** And what did they tell
9 you?

10 **MR. VAN DIEPEN:** That they said it was
11 common practice.

12 **MR. MANDERVILLE:** And you can't recall who
13 this was or who they were?

14 **MR. VAN DIEPEN:** I don't recall.

15 **MR. MANDERVILLE:** And you can't recall when
16 such a conversation would have taken place?

17 **MR. VAN DIEPEN:** Many years ago.

18 **MR. MANDERVILLE:** And how would it have been
19 that you raised this topic with them?

20 **MR. VAN DIEPEN:** I don't think that it was
21 necessarily raised by me. I think it was as a -- just in
22 general conversation, but it would be -- I would think,
23 sir, that it would be -- when I had those conversations
24 with the police officers, it would have been post-Seguin's
25 death, and it was sort of in the context of, well, we're

1 both sort of hoodwinked, you know, we didn't know what was
2 going on here.

3 **MR. MANDERVILLE:** So you believe these
4 conversations, if they occurred, took place after Mr.
5 Seguin passed away?

6 **MR. VAN DIEPEN:** I'm sorry, sir?

7 **MR. MANDERVILLE:** You believe these
8 conversations would have taken place after Mr. Seguin had
9 passed away?

10 **MR. VAN DIEPEN:** Yes.

11 **MR. MANDERVILLE:** And at that juncture, you
12 had been a probation officer here for 16 years perhaps, 17
13 years?

14 **MR. VAN DIEPEN:** Yes.

15 **MR. MANDERVILLE:** And you don't know who
16 these officers were?

17 **MR. VAN DIEPEN:** I don't recall the names.

18 **MR. MANDERVILLE:** Mr. van Diepen, we've
19 heard here at this Inquiry from Mr. Sirrs, Ms. Cardinal,
20 Ms. Quinn, Ms. Leger, all of whom were at Probation and
21 Parole in the early 1980s; correct?

22 **MR. VAN DIEPEN:** Yes.

23 **MR. MANDERVILLE:** And indeed, Ms. Quinn and
24 Ms. Leger were with the Probation and Parole in the 1970s,
25 weren't they?

1 MR. VAN DIEPEN: Yes.

2 MR. MANDERVILLE: They were there when you
3 joined weren't they?

4 MR. VAN DIEPEN: Yes.

5 MR. MANDERVILLE: None of whom has given any
6 suggestion that this practice existed. Are you aware of
7 that?

8 MR. VAN DIEPEN: Yes.

9 MR. MANDERVILLE: And you, yourself, make no
10 mention of this practice at all in any of your statements
11 do you, sir?

12 MR. VAN DIEPEN: I believe I referenced them
13 in my statements, sir.

14 MR. MANDERVILLE: Which statement, sir? Are
15 you referring to your statement to the OPP in February,
16 1994?

17 MR. VAN DIEPEN: I'd have to go over which
18 statement it was mentioned, but I certainly mentioned it to
19 the OPP.

20 MR. MANDERVILLE: Well, let's look at that
21 statement, if you will.

22 MR. VAN DIEPEN: Yes.

23 THE COMMISSIONER: Which is it?

24 MR. MANDERVILLE: It's Exhibit 1063, Mr.
25 Commissioner.

1 **THE COMMISSIONER:** Thank you.

2 **MR. MANDERVILLE:** If you turn to page 2 of
3 that statement, Mr. van Diepen, about halfway down the
4 page, the line that begins:

5 "Back then, Ken had a lot of
6 probationers that stayed with Ken in
7 the late 1970s."

8 **MR. VAN DIEPEN:** Yes.

9 **MR. MANDERVILLE:** Is that what you are
10 referring to?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. MANDERVILLE:** Where, in that statement,
13 do you suggest that my client, the Cornwall Police, were in
14 the habit of dropping people off at Ken's?

15 **MR. VAN DIEPEN:** It doesn't -- I don't think
16 it's included there, sir.

17 **MR. MANDERVILLE:** No, it's not is it?

18 **MR. VAN DIEPEN:** No, it's not.

19 **MR. MANDERVILLE:** And no one else of your
20 confreres at work makes any mention of such a practice
21 having taken place. Are you aware of that?

22 **MR. VAN DIEPEN:** Yes.

23 **MR. MANDERVILLE:** Now, you might imagine,
24 Mr. van Diepen, when you came out with this evidence about
25 this practice, I spoke to my client about it and my client

1 denies ever having such a practice or that such a practice,
2 formal or informal, ever existed. Does that come as news
3 to you, sir?

4 **MR. VAN DIEPEN:** Well, under the
5 circumstances, I'm not surprised, sir.

6 **MR. MANDERVILLE:** My client says that when
7 individuals would be found out at night without a place to
8 go, they would either be housed in a cell for the night or
9 my client would take advantage of the services offered by
10 the Salvation Army and house these people at a local motel.
11 Are you aware of that, sir?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. MANDERVILLE:** And you would agree with
14 me that if he was inviting probationers to stay the night
15 with him, Mr. Seguin would have an interest in suggesting
16 to you that the Cornwall Police was aware of that practice
17 to make it appear above-board wouldn't he?

18 **MR. VAN DIEPEN:** I'm not suggesting, sir,
19 that the police officers, in any way, shape or form, did
20 anything untoward or were not doing something with the best
21 of -- the best ethical standards that they -- and they
22 exercised their duties properly.

23 **MR. MANDERVILLE:** Thank you for that.

24 My question was you'd agree with me, sir,
25 that if Mr. Seguin was inviting probationers to stay the

1 night with him, he would have an interest in suggesting to
2 you that the Cornwall Police approved of this practice to
3 make it all appear above-board wouldn't he?

4 **MR. VAN DIEPEN:** I don't know how to answer
5 that question, sir. I mean, are you suggesting that it
6 would be in Mr. Seguin's interest to appear that this is
7 above-board when, in fact, it was not? Is that what you're
8 suggesting to me because there was some overt other
9 interest?

10 **MR. MANDERVILLE:** I'm suggesting to you that
11 it would be in Mr. Seguin's interest to suggest to you that
12 because of the knowledge of the Cornwall police that any
13 practice he might have had of inviting people to stay the
14 night with him would appear to be above-board if it had the
15 imprimatur of the Cornwall police associated with it; do
16 you accept that?

17 **MR. VAN DIEPEN:** Again, I don't know how to
18 answer that question, sir.

19 **MR. MANDERVILLE:** Mr. van Diepen, given that
20 no one else has spoken of this practice or acknowledged its
21 existence, is it possible that you're mistaken about the
22 existence of such a practice?

23 **MR. VAN DIEPEN:** Absolutely not, sir.

24 **MR. MANDERVILLE:** No possibility that,
25 despite the fact that you're the only one who mentions it,

1 you couldn't possibly be mistaken?

2 **MR. VAN DIEPEN:** Sir, I suggest to you that
3 others in the office are aware of it and I would suggest to
4 you, you pose those questions -- the same question to those
5 individuals.

6 **MR. MANDERVILLE:** And who do you suggest
7 those people are, Mr. van Diepen?

8 **MR. VAN DIEPEN:** Other probation officers
9 and staff of the Cornwall office then or at a subsequent
10 time.

11 **MR. MANDERVILLE:** And you're not prepared to
12 say who that might be?

13 **MR. VAN DIEPEN:** I -- I -- my suggestion is,
14 sir, that you may wish to canvas them. I -- I'm not going
15 to suggest to you that one -- one person or the other would
16 be more forthcoming than the other, but I suggest to you,
17 sir, that this was common knowledge; it wasn't something
18 which was exclusively known to me.

19 **MR. MANDERVILLE:** Is it fair for me to
20 suggest, Mr. van Diepen, that you've just speculated just
21 now as to who else might know, but you're not certain
22 yourself?

23 **MR. VAN DIEPEN:** I could -- I could
24 speculate, sir; I could throw names out to you, but I don't
25 believe that that would be a fair process. I'm suggesting

1 to you that some of the longer term members of the staff
2 would -- would have known about this situation which you
3 are now referencing.

4 **MR. MANDERVILLE:** And to repeat my question
5 or to paraphrase my previous question, you believe that to
6 be the case; you don't know that?

7 **MR. VAN DIEPEN:** I know -- I know that these
8 people know about that.

9 **MR. MANDERVILLE:** And you have no
10 explanation for why it has not come up?

11 **MR. VAN DIEPEN:** I don't know, sir.

12 **MR. MANDERVILLE:** Thank you very much, Mr.
13 van Diepen.

14 **MR. VAN DIEPEN:** Thank you.

15 **THE COMMISSIONER:** Mr. Kozloff?

16 **MR. KOZLOFF:** Good afternoon, sir.

17 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.**
18 **KOZLOFF:**

19 **MR. KOZLOFF:** My name is Neil Kozloff. I'm
20 counsel for the Ontario Provincial Police.

21 **MR. VAN DIEPEN:** Yes, sir.

22 **MR. KOZLOFF:** I want to begin by identifying
23 the areas of interest to me and they are the various
24 interviews of you by the Ontario Provincial Police and your
25 statements given to the Ontario Provincial Police since

1 November of 1993 and that would include: your statement in
2 February of 1994, your statement in 1995 and your interview
3 in 1998.

4 I also want to talk to you about what you
5 referred to in your evidence yesterday as your knowledge
6 base in 2000, and I want to discuss with you your memory
7 today of events going back almost 14 years.

8 We could begin, please, with Exhibit 121.
9 That is the statement recorded in the notes of Detective
10 Zebruck, January 16, 1995. Last Friday, sir, you told the
11 Inquiry that you had no memory of having sat down with a
12 Detective Zebruck -- that's at page 28, Volume 185, January
13 18th -- and that you had no memory of an in-person interview
14 or a telephone conversation with Detective Zebruck in 1995
15 -- that's at page 30, Volume 185, January 18th. Do you
16 recall that evidence?

17 **MR. VAN DIEPEN:** Yes, I do, sir.

18 **MR. KOZLOFF:** And that evidence is
19 consistent with what you told Paul Downing in September of
20 2000, and that's Exhibit 958, Bates page 1001539.

21 **THE COMMISSIONER:** Nine four (94) ---

22 **MR. KOZLOFF:** It's page 7 at the bottom and
23 it looks like it's the back of page 7.

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

25 **MR. KOZLOFF:** Or at least it's the back of

1 1001539; it's page 7, at the bottom.

2 **THE COMMISSIONER:** Yes, I've got it.

3 **MR. KOZLOFF:** The questions you're asked and
4 the answers you give there are:

5 Question:

6 "Have you provided any statements or
7 dispositions (sic)..."

8 And I suggest that's an error in Mr. Downing's English. I
9 think he meant "depositions."

10 "Have you provided any statements or
11 dispositions (sic) regarding the
12 matters we are discussing today?"

13 Answer:

14 "No, the only statement I gave was to
15 the Project Truth Team, OPP."

16 Correct?

17 **MR. VAN DIEPEN:** Yes.

18 **MR. KOZLOFF:**

19 "Did you provide a truthful and full
20 statement to the Project Truth Team?"

21 "Yes, I did."

22 Correct?

23 **MR. VAN DIEPEN:** Yes.

24 **MR. KOZLOFF:** And I suggest, sir, there you
25 are referring to the August 4, 1998 interview with

1 Detectives Constable Seguin and Detective Constable Dupuis;
2 that's the OPP Project Truth Team.

3 MR. VAN DIEPEN: Yes.

4 MR. KOZLOFF: All right.

5 And then you told us last Friday that with
6 the exception of Detective Zebruck recording in his notes
7 as "a magazine" what you describe as a paperback of
8 drawings, the content is accurate even though you don't
9 recall the interview; is that right?

10 MR. VAN DIEPEN: Yes.

11 MR. KOZLOFF: Okay. Now, I want to talk to
12 you about the interview in February of 1994 by Detective
13 Constable Genier and Detective Constable McDonell and that
14 is recorded as a handwritten version, which is Exhibit
15 1175. It's recorded as a typewritten version with no
16 changes; that's Exhibit 1085, and it's also a typewritten
17 version with changes that you put on it and that's Exhibit
18 1063; are you familiar with those documents?

19 MR. VAN DIEPEN: Yes.

20 MR. KOZLOFF: All right.

21 Now, last Friday, you testified that you
22 gave a statement to the Ontario Provincial Police in
23 February of 1994. That's at page 42, Volume 185; correct?

24 MR. VAN DIEPEN: Yes.

25 MR. KOZLOFF: And I suggest to you, sir,

1 that your recollection today, what we might refer to as
2 your knowledge base in 2008, is different than it was in
3 September of 2000; do you understand my question?

4 **MR. VAN DIEPEN:** Yes.

5 **MR. KOZLOFF:** And that's because, as I have
6 already indicated, you were asked in Exhibit 958, at page
7 7, whether you had provided any statements or dispositions
8 (sic) and your response was:

9 "No, the only one I gave was to the OPP
10 and Project Truth Team."

11 Correct?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. KOZLOFF:** And we've agreed that that was
14 the 1998 interview; correct?

15 **MR. VAN DIEPEN:** Yes.

16 **MR. KOZLOFF:** All right.

17 And then you're asked further questions by
18 Mr. Downing, at pages 12 and 13 of your interview, which
19 are Bates pages 1001542 and 1001542 back, front and back.
20 This is, again, Exhibit 958, and we'll start with the
21 questions in the middle of page 12.

22 **THE COMMISSIONER:** Hold on now. Let's get
23 it onto the screen.

24 **MR. KOZLOFF:** Yes.

25 **THE COMMISSIONER:** And did you want to take

1 a minute to find it? So we're referring to Exhibit 958.

2 **MR. KOZLOFF:** For the record, Mr. Engelmann
3 corrects me; it's 958A as opposed to 958, the exhibit
4 number.

5 **THE COMMISSIONER:** Yes, but it's -- okay,
6 but it's all in 958.

7 **MR. KOZLOFF:** Yes.

8 **THE COMMISSIONER:** So go to your statement
9 in that document and we are at page 12 and 13. It's on the
10 screen for your benefit as well.

11 **MR. KOZLOFF:** All right. You've got that
12 now?

13 **MR. VAN DIEPEN:** Yes, sir.

14 **MR. KOZLOFF:** Okay. Now, he begins to ask
15 you questions about statements at the middle of the page,
16 where he says:

17 "You previously said that you provided
18 a statement to Project Truth and that
19 you were truthful and provided a full
20 disclosure to them. Would this be
21 accurate?"

22 Answer:

23 "Yes."

24 Question:

25 "Do you recall providing a statement to

1 the OPP following Ken Seguin's death?"

2 Answer:

3 "I don't remember."

4 Right?

5 **MR. VAN DIEPEN:** Yes.

6 **MR. KOZLOFF:** "I don't remember."

7 **MR. VAN DIEPEN:** Yes.

8 **MR. KOZLOFF:** Question:

9 "If you did, would you have been
10 truthful?"

11 Answer:

12 "Yes."

13 And then you are asked at the bottom of the
14 page:

15 "So you don't recall making such a
16 statement to the OPP?"

17 Answer:

18 "I don't recall that statement."

19 And he goes on and asks you further
20 questions and you're basic answer is:

21 "I don't recall making a statement in
22 1994."

23 Correct?

24 **MR. VAN DIEPEN:** Yes.

25 **MR. KOZLOFF:** So if I understand your

1 evidence, even though he's now focussing his questions and
2 suggesting to you -- I suggest to you he's trying to
3 refresh your memory by directing you to the specific
4 timeframe of 1994. It didn't refresh your memory. You had
5 no memory in September, 2000 of being interviewed by
6 Detective Constable Genier and Detective Constable McDonell
7 in February of 1994; fair?

8 **MR. VAN DIEPEN:** Yes.

9 **MR. KOZLOFF:** Yes. So the only conclusion
10 that we can draw from your evidence is that you now have a
11 recollection of events that occurred in 1994 and in 1998
12 that you did not have in September of 2000. And those
13 events being, first of all, a one-hour-and-fifty-minute
14 interview of you by Genier and McDonell in February of '94;
15 correct?

16 **MR. VAN DIEPEN:** Yes.

17 **MR. KOZLOFF:** And secondly, the review of
18 you -- of the typewritten version of that interview on
19 which you made changes?

20 **MR. VAN DIEPEN:** Yes.

21 **MR. KOZLOFF:** So in 2000, September of 2000,
22 you have no memory of the interview in February of 1994.
23 Obviously, you had no memory then, some seven-and-a-half
24 years ago, September 28th, 2000, of events which had
25 occurred only two years before that; right?

1 **MR. VAN DIEPEN:** I'm sorry, sir?

2 **MR. KOZLOFF:** All right. Let me help you
3 with that.

4 **MR. VAN DIEPEN:** Are you asking me about the
5 '94 statement?

6 **MR. KOZLOFF:** No, I'm talking to you about
7 what happened on the 4th of August 1998 because on the 4th of
8 August 1998, Detective Constable Seguin and Detective
9 Constable Dupuis, the first thing they do is they give you
10 a copy of your 1994 statement to read over and review;
11 correct?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. KOZLOFF:** Now, clearly, you didn't
14 remember that when you were being interviewed by Paul
15 Downing in 1998 because you didn't remember making a
16 statement?

17 **MR. VAN DIEPEN:** I talked to Mr. Downing ---

18 **MR. KOZLOFF:** Just a minute. Listen to me
19 sir.

20 **THE COMMISSIONER:** He's right though. You
21 made a mistake.

22 **MR. KOZLOFF:** Sorry, I meant September 28th,
23 2000.

24 **MR. VAN DIEPEN:** Yes.

25 **MR. KOZLOFF:** You didn't remember on that

1 day having read over a 1994 statement two years earlier;
2 right?

3 MR. VAN DIEPEN: Yes.

4 MR. KOZLOFF: But in 2008 you testified to
5 the following specifics of this February, 1994 interview
6 that you had no recollection of in 2000.

7 You say that Genier and McDonell arrived in
8 your office unannounced; right?

9 MR. VAN DIEPEN: Yes.

10 MR. KOZLOFF: You say that February the 14th,
11 1994 was a bad day and you wanted to get the thing over
12 with and get them out of the door; right?

13 MR. VAN DIEPEN: Yes.

14 MR. KOZLOFF: You say that:

15 "Genier and McDonell were looking for
16 any knowledge about any inappropriate
17 sexual behaviour in the community at
18 large."

19 MR. VAN DIEPEN: Yes.

20 MR. KOZLOFF: That's your evidence from
21 yesterday; right?

22 MR. VAN DIEPEN: Yes.

23 MR. KOZLOFF: Okay, we are going to come
24 back to that a little later.

25 You say that you said more to Genier and

1 McDonell than what appears in Exhibits 1063 or 1085 or
2 1175; right?

3 **MR. VAN DIEPEN:** Yes.

4 **MR. KOZLOFF:** And that there were -- these
5 were condensed from all that you had said?

6 **MR. VAN DIEPEN:** Yes.

7 **MR. KOZLOFF:** And you said that you made it
8 clear to Genier and McDonell that you weren't happy with
9 the handwritten statement, even though you were given an
10 opportunity to read it over and make any changes to it
11 before signing it; correct?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. KOZLOFF:** And yet, if you look at 1175,
14 sir, I count 11 changes that you did make and initial ---

15 **THE COMMISSIONER:** Eleven-seventy-five
16 (1175) is the handwritten one.

17 **MR. KOZLOFF:** Thank you, Your Honour.

18 I count 11 changes that you did make on 1175
19 and initialled at the -- as well as your initials at the
20 bottom of every page and your signature at the end; right?

21 **MR. VAN DIEPEN:** Yes.

22 **MR. KOZLOFF:** And your evidence is that
23 three days later or so, these officers brought Exhibit 1063
24 to you for your signature. That's the typewritten version
25 and that's when you made the changes to it; right?

1 **MR. VAN DIEPEN:** Yes.

2 **MR. KOZLOFF:** And would it be fair to
3 suggest, sir, that you made those changes, whenever it was,
4 because you weren't happy with the words you saw recorded
5 on Exhibit 1063 and you saw a need to correct them?

6 **MR. VAN DIEPEN:** Yes.

7 **MR. KOZLOFF:** You had signed Exhibit 1175
8 after reading it over and making changes; right?

9 **MR. VAN DIEPEN:** Yes.

10 **MR. KOZLOFF:** The 11 changes that I've just
11 referred you to. And you had initialled them and that was
12 on February 14th, 1994, the day that the interview took
13 place; correct?

14 **MR. VAN DIEPEN:** Yes.

15 **MR. KOZLOFF:** So I am going to suggest to
16 you, sir, there was no reason for the officers to do what
17 you say they did, which is come to you with a typewritten
18 version of the interview, which is Exhibit 1085, that clean
19 copy, and ask you to make further changes and to sign it
20 again.

21 That's my suggestion to you, sir, and the
22 reason I suggest that to you, and I invite you to make the
23 comparison if you already haven't, is that 1085 is
24 identical in content, other than perhaps for the odd
25 typographical error, to 1175. In other words, the

1 typewritten version of that interview is identical in
2 content to the handwritten version?

3 MR. VAN DIEPEN: Yes.

4 MR. KOZLOFF: Are you aware of that?

5 MR. VAN DIEPEN: Yes.

6 MR. KOZLOFF: Okay. Further, sir, I am
7 going to suggest to you that it is the OPP practice, and we
8 will hear evidence from any number of officers when we come
9 to hear the Ontario Provincial Police institutional
10 response, it is the practice, it always has been the
11 practice, that when a handwritten statement like 1175 is
12 taken, to have the subject read it over, make and initial
13 any changes and sign it, and to prepare a typewritten
14 version like 1085 for the Crown brief. Are you aware of
15 that, sir?

16 MR. VAN DIEPEN: Yes.

17 MR. KOZLOFF: So this copy of the
18 typewritten version, Exhibit 1063, does not bear your
19 signature does it?

20 MR. VAN DIEPEN: It appears not to, sir.

21 MR. KOZLOFF: No. In fact, it only bears
22 the changes that you made; right?

23 MR. VAN DIEPEN: Yes.

24 MR. KOZLOFF: And then the initials and the
25 badge number of Detective Constable Steve Seguin; correct?

1 MR. VAN DIEPEN: I don't know if that's ---

2 MR. KOZLOFF: Well ---

3 MR. VAN DIEPEN: --- I don't know whose
4 initials they are, sir.

5 MR. KOZLOFF: If you go to the last page of
6 Exhibit 1063 -- I'm sorry, you'll see initials and a date;
7 right?

8 MR. VAN DIEPEN: M'hm.

9 MR. KOZLOFF: It should be on your screen,
10 sir.

11 MR. VAN DIEPEN: I think I have 1063, yes.

12 MR. KOZLOFF: All right. Go the last page
13 of 1063.

14 MR. VAN DIEPEN: Yes.

15 MR. KOZLOFF: You see some initials there?

16 MR. VAN DIEPEN: Yes.

17 MR. KOZLOFF: I am going to suggest to you,
18 sir, that those are Steve Seguin's initials?

19 MR. VAN DIEPEN: They could be, yes.

20 MR. KOZLOFF: And the word "04 Aug 98" and
21 that's Steve Seguin's handwriting and I expect that he'll
22 come to this court and testify to that effect.

23 MR. VAN DIEPEN: Yes.

24 MR. KOZLOFF: So -- and Exhibit 1085, if you
25 look at that, it's a clean copy isn't it?

1 MR. VAN DIEPEN: Yes.

2 MR. KOZLOFF: It doesn't bear any signature

3 ---

4 MR. VAN DIEPEN: Yes.

5 MR. KOZLOFF: Correct?

6 MR. VAN DIEPEN: Yes.

7 MR. KOZLOFF: Correct? And doesn't bear any

8 initials, doesn't bear any changes; right?

9 MR. VAN DIEPEN: Right.

10 MR. KOZLOFF: If you go back to -- I'm sorry

11 to keep jumping but I appreciate your efforts Madam Clerk -

12 - if you go back to 1063, the front page. You see the

13 words written in the bottom, left-hand corner?

14 MR. VAN DIEPEN: Yes.

15 MR. KOZLOFF: "Original changes made by van

16 Diepen"; correct?

17 MR. VAN DIEPEN: Yes.

18 MR. KOZLOFF: Correct.

19 MR. VAN DIEPEN: Yes.

20 MR. KOZLOFF: I'm going to suggest to you,

21 sir, that's what Steve Seguin wrote in the bottom, left

22 hand-corner when he provided you with Exhibit 1063 to

23 review at the beginning of your interview?

24 MR. VAN DIEPEN: Are you -- I -- if I read

25 you correctly, sir, you're suggesting that those changes

1 were made by me in 1998 ---

2 **MR. KOZLOFF:** No ---

3 **MR. VAN DIEPEN:** --- as opposed to 1994?

4 **MR. KOZLOFF:** Well, listen very carefully to
5 my question. Forget what you think I'm suggesting. I'm
6 suggesting to you, sir, the words "Original changes made by
7 van Diepen" were written by Steve Seguin on August the 4th,
8 1998 when he provided you with Exhibit 1063 to review?

9 **MR. VAN DIEPEN:** I don't know that, sir.

10 **MR. KOZLOFF:** Well, that's what his evidence
11 will be, sir.

12 **MR. VAN DIEPEN:** Well ---

13 **MR. KOZLOFF:** He will testify here, sir,
14 that when he met with you, the first thing he did before
15 asking you questions was to give you a copy of your
16 February, 1994 statement. Do you disagree with that?

17 **MR. VAN DIEPEN:** I don't disagree at all.

18 **MR. KOZLOFF:** All right. And he will
19 testify here that he gave you that to refresh your memory
20 and that it was at that time that you made the changes on
21 this copy, Exhibit 1063, and that's why he wrote, "Original
22 changes made by van Diepen" on it, initialled it, and
23 placed the date on it at the end. That's his evidence.
24 That's what his evidence will be.

25 **MR. VAN DIEPEN:** Yes.

1 **MR. KOZLOFF:** All right. Sir, I expect that
2 there will be evidence here just to clarify one other
3 point.

4 I expect that there will be evidence here
5 that when Detective Constable Genier and Detective
6 Constable McDonell interviewed you on February the 14th,
7 1994, the Ontario Provincial Police had just commenced in
8 February of 1994 a three-part investigation.

9 And it was, one, to re-investigate the David
10 Silmser allegations against Father Charles MacDonald.

11 Two, to investigate the circumstances
12 surrounding the settlement reached between Mr. Silmser and
13 the diocese regarding Mr. Silmser's earlier allegations
14 against Father MacDonald and involving Angus MacDonald, the
15 Cornwall Police and others.

16 And, third, to investigate a possible
17 extortion by David Silmser of the late Ken Seguin.

18 That was what was going on when they came to
19 see you on the 14th of February '94 and that's what Genier
20 and McDonell were there to talk to you about; this alleged
21 extortion of your former colleague, Mr. Seguin.

22 Does that refresh your memory as to why they
23 came to see you?

24 **MR. VAN DIEPEN:** No, sir.

25 **MR. KOZLOFF:** Thank you very much.

1 **THE COMMISSIONER:** Thank you.

2 We'll take the lunch -- how much -- oh, Ms.
3 -- no, no -- Mr. Carroll, sorry.

4 **MR. CARROLL:** Good morning. Actually, good
5 afternoon.

6 **THE COMMISSIONER:** Mr. Carroll, do you wish
7 to add?

8 **MR. CARROLL:** (off mic)

9 **THE COMMISSIONER:** You know, I should put my
10 glasses on more often, eh? Will you be very long, Mr.
11 Wallace?

12 **MR. CARROLL:** Mr. Wallace will probably be
13 very brief.

14 **(LAUGHTER/RIRES)**

15 **MR. CARROLL:** May I suggest that we have
16 lunch now and deal with certain matters when we come back?

17 **THE COMMISSIONER:** Mr. Carroll, yes, that's
18 a very good suggestion, sir.

19 All right. So can we come back at quarter
20 to? Thank you.

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

23 This hearing will resume at 1:45 p.m.

24 --- Upon recessing at 12:23 p.m. /

25 L'audience est suspendue à 12h23

1 --- Upon resuming at 1:51 p.m. /

2 L'audience est reprise à 13h51

3 **THE REGISTRAR:** This hearing is now resumed.

4 Please be seated. Veuillez vous asseoir.

5 **THE COMMISSIONER:** Mr. Engelmann?

6 **MR. ENGELMANN:** Good afternoon, sir. Just
7 before Mr. Carroll comes up and ---

8 **THE COMMISSIONER:** Yes, yes, it's Mr.
9 Carroll. I thought Mr. Wallace was here this morning ---

10 (LAUGHTER/RIRES)

11 **MR. ENGELMANN:** You've taken your glasses
12 off again, sir, so I'm not -- good afternoon Mr. van
13 Diepen, by the way; I'm sorry.

14 Sir, just before we came in I was approached
15 by Mr. van Diepen and his counsel ---

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

17 **MR. ENGELMANN:** --- and I think there's a
18 concern he has and I indicated to both his counsel and to
19 him that we couldn't speak about it now and I told him if
20 he had a concern, he should just address it with you
21 perhaps before we start.

22 **THE COMMISSIONER:** Okay.

23 **MR. ENGELMANN:** So why don't I leave it
24 there and I'll sit down.

25 **THE COMMISSIONER:** Mr. van Diepen?

1 **MR. VAN DIEPEN:** Your Honour I'm -- I don't
2 know if I'm -- if I'm proceeding according to proper
3 procedure or not, so I'm going to simply state the case.

4 At one point, I believe Mr. Engelmann was
5 going to ask me about Mr. Seguin being the office snitch
6 and he indicated that he would be returning to that issue.
7 And that did not happen and I just thought that perhaps it
8 may be important or relevant given testimonies from
9 possible further witnesses and I didn't know, I ---

10 **THE COMMISSIONER:** Okay, just a -- that's a
11 concern?

12 **MR. VAN DIEPEN:** Yes, sir.

13 **THE COMMISSIONER:** Okay. So that's an area
14 you'd like to have -- that -- Mr. Engelmann do you want to
15 -- how do you want to do this now?

16 **MR. ENGELMANN:** I'm happy to wait my turn
17 and ask Mr. van Diepen if there's anything else and he
18 could bring it up then.

19 **THE COMMISSIONER:** Okay, but then ---

20 **MR. ENGELMANN:** I know, there may be
21 something arising. I don't know how else to deal with it,
22 unless ---

23 **THE COMMISSIONER:** Well, there's just Mr.
24 Carroll left and then ---

25 **MR. ENGELMANN:** I think we should let Mr.

1 Carroll and Mr. Westdal go and then we and deal with any
2 outstanding issues at that time.

3 **THE COMMISSIONER:** All right. Thank you
4 very much.

5 Mr. Carroll?

6 **JOS VAN DIEPEN:** Resumed/Sous le même serment

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

8 **CARROLL:**

9 **MR. CARROLL:** Good afternoon, Mr. van
10 Diepen. My name is Bill Carroll and I'm counsel for the
11 Ontario Provincial Police Association. And as such I
12 wanted to ask you a couple of questions in one area only,
13 and that deals with your '94 statement with Officers Genier
14 and McDonell; okay?

15 **MR. VAN DIEPEN:** Yes, sir.

16 **MR. CARROLL:** For how long had you known
17 those two officers, Prior to that date?

18 **MR. VAN DIEPEN:** I would have know Chris
19 McDonell for a number of years.

20 **MR. CARROLL:** Right.

21 **MR. VAN DIEPEN:** Less so the other officer.

22 **MR. CARROLL:** A few years less with Mr.
23 Genier?

24 **MR. VAN DIEPEN:** Yes. I would say that I
25 more knew of him than to have had -- you know -- ongoing

1 conversations with him.

2 **MR. CARROLL:** On what you knew of Officer
3 Genier, he was viewed as a professional, courteous and
4 responsible police officer. Can I put it that way?

5 **MR. VAN DIEPEN:** Yes.

6 **MR. CARROLL:** And your personal experience
7 and by reputation the same would apply to McDonell?

8 **MR. VAN DIEPEN:** Yes.

9 **MR. CARROLL:** And you had had dealings in
10 the past with McDonell on a professional basis?

11 **MR. VAN DIEPEN:** Yes.

12 **MR. CARROLL:** And those had been positive in
13 your experience?

14 **MR. VAN DIEPEN:** Yes.

15 **MR. CARROLL:** And you had some dealings with
16 Genier; I take it from your answers more with McDonell in
17 the past?

18 **MR. VAN DIEPEN:** More contact with McDonell?

19 **MR. CARROLL:** McDonell.

20 **MR. VAN DIEPEN:** Yes.

21 **MR. CARROLL:** And you were comfortable in
22 speaking with him?

23 **MR. VAN DIEPEN:** Yes.

24 **MR. CARROLL:** He wasn't aggressive in tone
25 with you, either in the past or in the '94 interview?

1 MR. VAN DIEPEN: Never.

2 MR. KOZLOFF: And nor was Genier?

3 MR. VAN DIEPEN: Yes, sir.

4 MR. KOZLOFF: All right. So when they came
5 in announced or otherwise in '94, you knew McDonell from
6 previous direct dealings and Genier more from reputation,
7 right, than direct dealings?

8 MR. VAN DIEPEN: Well, I had direct dealings
9 with him, but not ---

10 MR. CARROLL: Not as many?

11 MR. VAN DIEPEN: Not to the extent as ---

12 MR. CARROLL: All right. You knew them well
13 enough to say, "Look guys, you've caught me at a bad time,
14 why don't you come back?"

15 MR. VAN DIEPEN: Yes.

16 MR. CARROLL: Why didn't you do that?

17 MR. VAN DIEPEN: I did.

18 MR. CARROLL: You did?

19 MR. VAN DIEPEN: Yes.

20 MR. CARROLL: To which officer?

21 MR. VAN DIEPEN: Both of them. They were
22 both ---

23 MR. CARROLL: You knew McDonell better, were
24 you speaking with him? Directly? Or were you speaking
25 with both of them?

1 **MR. VAN DIEPEN:** Both of them. They were
2 both in my office.

3 **MR. CARROLL:** They both came in, they didn't
4 need to introduce themselves to you?

5 **MR. VAN DIEPEN:** No.

6 **MR. CARROLL:** And you -- and they told you
7 why they were there?

8 **MR. VAN DIEPEN:** Yes.

9 **MR. CARROLL:** And you understood why they
10 were there.

11 **MR. VAN DIEPEN:** Yes.

12 And their answer was, "We're just going to
13 be a couple of minutes. Won't be, you know -- it will just
14 be a couple of minutes, and we'll be out of here."

15 **MR. CARROLL:** You knew, from the subject
16 matter that they were going to address that it was likely
17 to take longer than a couple of minutes.

18 **MR. VAN DIEPEN:** And that's what I told
19 them, sir.

20 **MR. CARROLL:** And your evidence, sir, is
21 that they -- despite your requests, they persisted in
22 conducting the examination on -- or the interview on that
23 day.

24 **MR. VAN DIEPEN:** Yes.

25 **MR. CARROLL:** That must have shocked you;

1 that would be completely out of character and completely
2 unlike any other dealings you'd had with either man.

3 **MR. VAN DIEPEN:** Well, I don't -- I want --
4 I don't want to mislead you, sir, and suggest that they
5 somehow were aggressive about it, but it was -- you know,
6 they wished to pursue the matter at that point in time.

7 **MR. CARROLL:** And you, sir, did not
8 affirmatively say, "Look, I just can't do it, now."

9 **MR. VAN DIEPEN:** I told them, sir, it would
10 be a much more convenient to deal with it in -- at another
11 time because I'd felt, as I indicated to them, "I think
12 it's going to take a lot longer than a few minutes."

13 **MR. CARROLL:** And you actually have a
14 recollection of saying those things?

15 **MR. VAN DIEPEN:** Oh, yes, sir. And I --
16 like, sir, during that exchange there was no animosity. I
17 just want to be clear on that.

18 **THE COMMISSIONER:** No.

19 **MR. VAN DIEPEN:** But I certainly -- there
20 was a difference of opinion.

21 **MR. CARROLL:** I never suggested that there
22 was an animosity, sir. In fact, they were polite to you
23 throughout.

24 **MR. VAN DIEPEN:** Yes they were, sir.

25 **MR. CARROLL:** And they were -- you were

1 answering the questions based on your knowledge of the
2 areas they were interested in.

3 **MR. VAN DIEPEN:** Yes, sir.

4 **MR. CARROLL:** And you understood these to be
5 important areas for the officers to be canvassing.

6 **MR. VAN DIEPEN:** Yes, sir.

7 **MR. CARROLL:** And you understood your duty,
8 and obligation to be accurate and truthful.

9 **MR. VAN DIEPEN:** Yes, sir.

10 **MR. CARROLL:** And you did that.

11 **MR. VAN DIEPEN:** Yes, sir.

12 **MR. CARROLL:** And during the course of this
13 interview, once it commenced, you didn't try to stop or
14 curtail the interview, did you?

15 **MR. VAN DIEPEN:** No, I -- in fact, the
16 opposite. I tried to get it over with.

17 **MR. CARROLL:** You were -- well, you were
18 quite expansive in your answers, weren't you? The
19 interview lasted some two hours.

20 **MR. VAN DIEPEN:** Well, yes, it did, sir.

21 **MR. CARROLL:** Am I correct then that you
22 were quite expansive in your -- they were asking questions,
23 the bulk of the time was taken up with your answers.

24 **MR. VAN DIEPEN:** Yes. I would suggest it
25 was a lot of bantering back and forth, you know. "What do

1 you mean by this?" And, "Can you elaborate on that?"
2 And okay, "You said this" and you know, "Is that what you..."
3 you know, that sort of thing.

4 So it was a conversation, a two-way
5 conversation.

6 **MR. CARROLL:** They made every effort to
7 clarify and get down what you were saying as accurately as
8 they could, based on that exchange you've just told me
9 about.

10 **MR. VAN DIEPEN:** Well, they were exploring
11 areas other than what the other counsel alluded to, sir.
12 They were exploring any ---

13 **MR. CARROLL:** Just a minute.

14 **MR. VAN DIEPEN:** --- information I had.

15 **MR. CARROLL:** I wasn't asking about the
16 areas they were exploring, I was ask -- suggesting to you,
17 based on the exchange we just had that they were clarifying
18 and trying to get down as accurately as possible, that
19 which you were saying.

20 **MR. VAN DIEPEN:** Yes, I guess so. Yes.

21 **MR. CARROLL:** You had given statements to
22 the police before, in other matters.

23 **MR. VAN DIEPEN:** Yes.

24 **MR. CARROLL:** In other matters, upon
25 completion of the statement, you had been asked to read

1 them over.

2 **MR. VAN DIEPEN:** Yes.

3 **MR. CARROLL:** You've been asked to make
4 corrections and initial them, if you found errors.

5 **MR. VAN DIEPEN:** yes.

6 **MR. CARROLL:** And to sign the statements
7 once you were satisfied that they were accurate; correct?

8 **MR. VAN DIEPEN:** Yes.

9 **MR. CARROLL:** That's the whole reason for
10 that process, isn't it?

11 **MR. VAN DIEPEN:** Yes, sir.

12 **MR. CARROLL:** In fact, I think early, in
13 your examination in chief, you told us that you'd actually
14 taken courses in interviewing.

15 **MR. VAN DIEPEN:** Yes.

16 **MR. CARROLL:** As well, in statement taking?

17 **MR. VAN DIEPEN:** Yes.

18 **MR. CARROLL:** And the techniques or the
19 process that I just went through is a time-honoured way of
20 taking a statement, isn't it, in a sense of, if it's going
21 to be in writing, you have the subject review it, initial
22 changes and sign it?

23 **MR. VAN DIEPEN:** Yes.

24 **MR. CARROLL:** The purpose of it being to
25 ensure accuracy and acknowledgement of accuracy by the

1 author of the statement; correct?

2 MR. VAN DIEPEN: Yes.

3 MR. CARROLL: You knew that was their
4 purpose, where they ask you to perform those tasks?

5 MR. VAN DIEPEN: Yes.

6 MR. CARROLL: Did you perform those tasks?

7 MR. VAN DIEPEN: At the time, I felt I did.
8 Yes.

9 MR. CARROLL: So you did review it
10 carefully, you did make the changes you thought were
11 appropriate and then you signed it; right? That's what you
12 just told me.

13 MR. VAN DIEPEN: Well, no. There was
14 another step in there.

15 I asked Chris MacDonnell, "Do you really
16 want me to sign this statement?"

17 MR. CARROLL: All right.

18 And like you would understand from statement
19 taking, that -- there is no method by which you can compel
20 somebody to sign a document, is there?

21 MR. VAN DIEPEN: That's right.

22 MR. CARROLL: You cannot force them to do
23 it.

24 MR. VAN DIEPEN: That's right.

25 MR. CARROLL: So when you ask, "Do you want

1 me to sign this," he left it up to you, as was your right
2 to sign or not sign; correct?

3 MR. VAN DIEPEN: Yes.

4 MR. CARROLL: And you opted, based on the
5 process you'd gone through, that is the review, the
6 corrections, the initialling and being satisfied it was
7 accurate, you signed off as it being that. And you
8 understood when you signed off, that's what you were doing;
9 correct?

10 MR. VAN DIEPEN: Yes.

11 MR. CARROLL: You knew they were performing
12 a function within the justice system?

13 MR. VAN DIEPEN: Yes.

14 MR. CARROLL: And as were you in being
15 cooperative and answering their questions?

16 MR. VAN DIEPEN: Yes.

17 MR. CARROLL: You didn't think they were
18 there frivolously, or ---

19 MR. VAN DIEPEN: No, sir.

20 MR. CARROLL: --- or asking inappropriate
21 questions?

22 MR. VAN DIEPEN: No, sir. No.

23 MR. CARROLL: And you were doing your best
24 to give direct answers?

25 MR. VAN DIEPEN: Yes.

1 **MR. CARROLL:** The subjects that you were
2 talking about weren't of a personal nature, vis-à-vis you?

3 **MR. VAN DIEPEN:** That's correct, sir.

4 **MR. CARROLL:** They weren't of a personal
5 nature in relation to close friends of yours or family?

6 **MR. VAN DIEPEN:** That's right, sir.

7 **MR. CARROLL:** You didn't feel uncomfortable
8 with the questions?

9 **MR. VAN DIEPEN:** No, sir.

10 **MR. CARROLL:** You didn't feel uncomfortable
11 in providing the answers you did?

12 **MR. VAN DIEPEN:** No, sir.

13 **MR. CARROLL:** Then I'm just at a loss to
14 understand your statement:

15 "I tried to get out of there as quickly
16 as possible."

17 given all those answers you've just given me.

18 **MR. VAN DIEPEN:** I can only repeat what I
19 said earlier. I felt that the matter was rushed; I was
20 rushed, I wanted to get them out of the office and get on
21 with what I needed to do that day.

22 **MR. CARROLL:** You understood the importance
23 of what they were doing?

24 **MR. VAN DIEPEN:** Yes.

25 **MR. CARROLL:** Are you saying, sir, that your

1 tasks within the office that day, were so important that
2 they superseded the importance of what was being done by
3 those officers on that day?

4 MR. VAN DIEPEN: Yes.

5 MR. CARROLL: Really. What were you doing?

6 MR. VAN DIEPEN: Sir, I -- in fact, I even
7 recall speaking with the officers; if there's anything else
8 they wanted to talk to me about, come and see me.

9 MR. CARROLL: So you ended the interview, or
10 did they?

11 MR. VAN DIEPEN: Well, I mean -- what do you
12 mean by "ended it?"

13 MR. CARROLL: You ---

14 MR. VAN DIEPEN: I -- the interview was
15 basically concluded when I signed the statement.

16 MR. CARROLL: When you signed off as it
17 being accurate, having read it?

18 MR. VAN DIEPEN: Yeah.

19 MR. CARROLL: And once you'd signed off in
20 the circumstances you've told us about, they thanked you,
21 they took the statement and they left?

22 MR. VAN DIEPEN: Yes

23 MR. CARROLL: They didn't rush you with your
24 answers. They didn't say, "Come on, hurry up. Give us an
25 answer."

1 MR. VAN DIEPEN: No.

2 MR. CARROLL: No.

3 And you took the time you thought was
4 appropriate to answer the question thoroughly and
5 accurately.

6 MR. VAN DIEPEN: No, I felt that -- I felt
7 that another time, with -- under better circumstances, we
8 would have had a more -- I would have been able to provide
9 them with a more detailed statement.

10 MR. CARROLL: Really?

11 So when, as you recall it -- and I take it
12 you have no notes of any of this, yourself?

13 MR. VAN DIEPEN: No, sir.

14 MR. CARROLL: Nothing in a day timer;
15 nothing at all ---

16 MR. VAN DIEPEN: No, sir.

17 MR. CARROLL: --- to assist your memory?

18 MR. VAN DIEPEN: No, sir.

19 MR. CARROLL: Unlike the officers, as you
20 were aware, have notes?

21 MR. VAN DIEPEN: Yes, sir.

22 MR. CARROLL: And your recollection, which
23 I'm not altogether certain is accurate, but nonetheless,
24 you recollect the officers returning a few days later?

25 MR. VAN DIEPEN: Yes, sir.

1 **MR. CARROLL:** There's your opportunity.

2 You just told us, you would have been much
3 happier if they'd come back a few days later, and you
4 could have given them a more expansive quality of
5 information.

6 What did you add, sir, by way of substance,
7 when you say they returned a couple of days later, when you
8 had then, the opportunity you say you now wished you did?

9 **MR. VAN DIEPEN:** I just -- the corrections,
10 sir, that's all.

11 Did I add any further content? No, sir.

12 **MR. CARROLL:** Why not? That's -- if you're
13 being truthful with us, that was your opportunity. Why
14 didn't you take that opportunity to add, if you had more
15 information to give?

16 **MR. VAN DIEPEN:** I wasn't asked anything
17 further, sir.

18 **MR. CARROLL:** No, no. You told us, you and
19 -- they wouldn't know what's in your mind. You said you
20 had more information that you could have given them, if
21 they came back another time.

22 Well, according to you, they did. Why
23 didn't you say, "Look guys, I've got these additional
24 pieces of information for you."

25 Why didn't you do that if what you're

1 telling us is true?

2 **MR. VAN DIEPEN:** There -- I had an open door
3 policy with them; if there was anything else that they
4 wished to ask me about, they knew that they could come and
5 approach me.

6 **MR. CARROLL:** That's not an answer to my
7 question.

8 You know that they didn't know what was in
9 your head; right? You had to talk before they would know
10 what you knew. You just told us, "If only they would've
11 come back another time, I could've given them more
12 information." Do you remember saying that two minutes ago?

13 **MR. VAN DIEPEN:** Yes.

14 **MR. CARROLL:** All right.

15 You had your chance to do it; never mind
16 your open-door policy, which apparently was not all that
17 open-door if you wanted advance notice of an interview.
18 But that aside, given the opportunity, why didn't you add
19 to the knowledge that you provided them, sir, if what
20 you're telling me is true?

21 **MR. VAN DIEPEN:** No. I don't have -- there
22 was no reason for it, sir. I didn't -- nothing came to my
23 mind at that point.

24 **MR. CARROLL:** Wait a minute. Wait a minute.
25 You said, as the interview ended you had other information

1 in your head; you felt that that process -- that two-hour
2 process was rushed and. "If only they would come back, I
3 could give them further information."

4 MR. VAN DIEPEN: Yes.

5 MR. CARROLL: One last time, why didn't you
6 provide the information that you knew, they didn't, to them
7 when you say they came back?

8 MR. VAN DIEPEN: I think I already answered
9 that, sir.

10 MR. CARROLL: No, you didn't. Why didn't
11 you do it?

12 MR. VAN DIEPEN: Because I -- at that point,
13 I did not -- there was no information that came to my mind
14 to bring to their attention, sir.

15 MR. CARROLL: It was there a few days
16 earlier than the second time you say they showed up and
17 somehow it disappeared in the -- in the next couple of
18 days?

19 MR. VAN DIEPEN: Yes.

20 MR. CARROLL: Important information about
21 the subject matter they were interested in?

22 MR. VAN DIEPEN: Yes.

23 MR. CARROLL: So when it finally did come
24 back to your mind, why didn't you pick up the phone and
25 say, "Hey look guys, I need to talk to you again."

1 **MR. VAN DIEPEN:** They -- I can only repeat
2 what I said, sir.

3 **MR. CARROLL:** No, no. It's a ---

4 **MR. VAN DIEPEN:** I -- there was nothing ---

5 **MR. CARROLL:** --- simple question.

6 **MR. VAN DIEPEN:** --- there nothing that came
7 to my mind that I felt that it was worth revisiting with
8 them at that point.

9 **MR. CARROLL:** Exactly.

10 Thank you.

11 **THE COMMISSIONER:** Thank you.

12 All right.

13 Mr. Westdal?

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

15 **WESTDAL:**

16 **MR. WESTDAL:** We're going to get a little
17 levity to this, Mr. van Diepen. Now, we can actually talk.
18 I'm just going to cover a couple of areas.

19 One is in relation to a line of questioning
20 that Michael Neville engaged in and I just want to get some
21 clarity from you on your answer.

22 There was some questioning regarding a
23 statement -- the 1994 statement regarding David Silmsen and
24 something you had heard at a dinner party regarding to
25 something that happened to him at a dinner party.

1 If I'm not mistaken, then -- Mr. Neville
2 then indicated that there were a lot of rumours, gossip and
3 innuendo and I believe your response was:

4 "Yes."

5 And then he said -- and I think I have this accurate:

6 "None of it true."

7 And you said:

8 "Yes."

9 And I just want to clarify; are you saying that you knew at
10 the time that what happened with respect to Mr. Silmsler or
11 the allegation, the rumour, did you know that was not true
12 at the time?

13 **MR. VAN DIEPEN:** Are you talking about the -
14 - this -- these ---

15 **MR. WESTDAL:** In 1994 ---

16 **MR. VAN DIEPEN:** --- Silmsler, MacDonald and
17 Seguin matter at the dinner party?

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

19 **MR. VAN DIEPEN:** I have no -- I have no -- I
20 don't know whether or not that actually took place or not,
21 but I -- I now believe that it may not -- that may not have
22 actually happened.

23 **MR. WESTDAL:** Okay. But in 1994, when you
24 gave the statement, did you have that belief?

25 **MR. VAN DIEPEN:** I simply reported it.

1 **MR. WESTDAL:** Okay, I just was concerned
2 because Mr. Neville said:

3 "None of it true."

4 And you said:

5 "Yes."

6 And if you knew in 1994 it wasn't true, you did -- you did
7 advise the OPP of that and I just want to know what your
8 knowledge was in 1994. Did you know it was not true at
9 that time?

10 **MR. VAN DIEPEN:** No, I simply -- I simply
11 relayed information that was reported to me.

12 **MR. WESTDAL:** Okay. There were some
13 discussions with you during the examination regarding the
14 development of a protocol at the Ministry and I understand
15 that would've been in approximately the year 2000?

16 **MR. VAN DIEPEN:** I believe so, yes.

17 **MR. WESTDAL:** And do you know the -- the
18 purpose of that protocol? Could you elaborate on that? I
19 mean, why was it developed?

20 **MR. VAN DIEPEN:** I think the Ministry wanted
21 to -- to be as proactive as possible in dealing with a --
22 with alleged victims and facilitating a process where they
23 could come forward and disclose.

24 **MR. WESTDAL:** Would that protocol have dealt
25 with -- yes, how to handle things when -- when -- when a

1 probationer or someone else discloses something to you that
2 is -- is out of the ordinary? That was one of the purposes
3 of the policy -- I ---

4 MR. VAN DIEPEN: Yes.

5 MR. WESTDAL: --- the protocol. I don't
6 know. I'm asking you.

7 MR. VAN DIEPEN: Yes.

8 MR. WESTDAL: Okay. And do you know
9 whether, in the early stages of your career, there was a
10 protocol of that nature?

11 MR. VAN DIEPEN: No, there wasn't.

12 MR. WESTDAL: There wasn't a written
13 protocol of that nature?

14 MR. VAN DIEPEN: There was no protocol.

15 MR. WESTDAL: Okay. There were some
16 discussions regarding an incident in 1976 in a disclosure
17 to you ---

18 MR. VAN DIEPEN: Yes.

19 MR. WESTDAL: --- by a 17-year-old
20 probationer.

21 And are you saying there was no written
22 protocol at that time?

23 MR. VAN DIEPEN: Yes.

24 MR. WESTDAL: And if I understand your
25 evidence, you -- you said that you were supposed to report

1 things to Mr. Seguin who was the de facto manager; is that
2 correct?

3 **MR. VAN DIEPEN:** Yes.

4 **MR. WESTDAL:** And I think your evidence was
5 that he was viewed as "Mr. Probation"; I think you adopted
6 that and that he was "squeaky clean"; I believe you adopted
7 that, but I -- I'm curious -- I don't think it's come out
8 yet who told you to report to Mr. Seguin? How did you know
9 to report to Mr. Seguin?

10 **MR. VAN DIEPEN:** The area manager.

11 **MR. WESTDAL:** The area manager at the time?

12 **MR. VAN DIEPEN:** Yes.

13 **MR. WESTDAL:** And do you know who that was?

14 **MR. VAN DIEPEN:** Ken Mitchell.

15 **MR. WESTDAL:** Okay. Then again to confirm
16 when -- when the disclosure was made to you, that's what
17 you did; was it not?

18 **MR. VAN DIEPEN:** Yes.

19 **MR. WESTDAL:** Okay. I'd like to turn to
20 document -- and I apologize, Mr. Commissioner, I don't have
21 the exhibit numbers and it's easier for me to just
22 reference the document number; it's 100515 and it's an
23 email of August 11th and Mr. Manson in his cross-examination
24 referenced it.

25 **THE COMMISSIONER:** M'hm. So, Madam Clerk,

1 do you have an exhibit number?

2 MR. WESTDAL: 1177?

3 THE COMMISSIONER: Okay. M'hm.

4 MR. WESTDAL: Oh, is it possible that it's
5 1093? What it is, is it's ---

6 MR. MANSON: 1093 is the August 10th -- that
7 I referred to in cross-examining ---

8 MR. WESTDAL: What I'm looking for is the
9 August 11, 2000 ---

10 THE COMMISSIONER: It would be 11 -- no,
11 that's September.

12 MR. WESTDAL: If it's on page 2; then it's
13 August 11th. Yes, exactly.

14 THE COMMISSIONER: I'm sorry?

15 MR. WESTDAL: There's a package of ---

16 THE COMMISSIONER: What's the exhibit
17 number?

18 MR. ENGELMANN: It's 1093.

19 THE COMMISSIONER: 1093, okay.

20 MR. WESTDAL: I apologize. Because I
21 haven't been here for everyday I don't have a list of the
22 exhibit numbers. Yes, that's it and on the bottom of page
23 2 of that document.

24 MR. VAN DIEPEN: Page 2, yes.

25 MR. WESTDAL: And so this is an email. It's

1 -- the subject line is "Project Truth" and then under it,
2 it indicates "Briefing Note" that's from Claude Legault to
3 Deborah Newman ---

4 **MR. VAN DIEPEN:** Yes.

5 **MR. WESTDAL:** --- and I think Mr. Manson
6 brought you to the bottom of that document regarding some
7 of the concerns that staff had regarding Project Truth and,
8 in particular, you.

9 **MR. VAN DIEPEN:** Yes.

10 **MR. WESTDAL:** And one of the bullets -- it's
11 the second bullet, in relation to you, it indicates:

12 "Why is he not talking to his
13 colleagues to reassure them that there
14 is no truth to the allegations on the
15 website."

16 And you know, you have commented that it
17 might have been a difficult time for you in the workplace,
18 and I take it from this email that some of your peers were
19 questioning you.

20 And I'm just curious, one, were you silent
21 and if you were silent, why were you silent?

22 **MR. VAN DIEPEN:** Well, you raise a -- you
23 raise a fairly broad area, Mr. Westdal. One -- in spite of
24 all the information that all -- that all the members in the
25 office knew, in other words, any -- all the information

1 that I've reported at this Inquiry, was not information
2 that was exclusive to me.

3 When I had concerns, I went to Mr. Robert.
4 I reported those concerns to Mr. Robert proactively and
5 when I looked over my shoulder, I was alone.

6 Notwithstanding that, I still did it, and I
7 was warned that there would be -- that there would be
8 consequences. I nevertheless went forward and brought
9 those concerns forward. Yet, I still -- I read -- after
10 having done that, I still read here that my colleagues --

11 "Why is he not talking to his
12 colleagues to assure them that there's
13 no truth to the allegations on the
14 website. Are we being duped?"

15 You know, and what really happened here was
16 that I approached the solicitor and obviously I had some
17 concerns with this website, and the solicitor -- I had not
18 -- I explained that I was attempting to get funding, and
19 remind me to explain to you, sir, how I was able to retain
20 you as counsel because I think that's important for the
21 record as well.

22 But I also -- when I spoke to that -- to the
23 counsel, counsel said, "Do yourself one favour. Do not
24 talk to anybody about this whatsoever, in any shape or
25 form."

1 And they followed it up and said, "Do not
2 talk to your friends. Do not talk to your co-workers, and
3 you will -- should not talk to your co-workers because, if
4 you speak to them, they will have an obligation to report
5 it, and they will report it, and they may not report it as
6 in the context in which you spoke about it."

7 In other words, they would say something to
8 the effect, "Well, Mr. van Diepen spoke about it.

9 Did he appear to be upset?

10 No, not really, he was rather cavalier about
11 it. He wasn't very upset about it at all or he was really
12 upset."

13 They put their own interpretation on it. So
14 that's, hence, my silence.

15 **MR. WESTDAL:** Okay. So if I could summarize
16 that.

17 The silence was on the advice of your
18 counsel at the time?

19 **MR. VAN DIEPEN:** Exactly.

20 **MR. WESTDAL:** Okay.

21 I would like to look at the transcript of
22 Mr. Leroux, Volume 121. Again, I know this has been raised
23 with you when you've been on the stand.

24 Page 64, starting at the bottom.

25 Just to set the stage, this is Mr. Leroux'

1 testimony regarding the incident or discussion you may have
2 had with him outside the funeral home.

3 **MR. VAN DIEPEN:** Yes.

4 **MR. WESTDAL:** And I'm going to go through
5 the statement. I think there's two and a half pages, and I
6 just want to get your comment on certain things.

7 Starting at the bottom of that, line 22, Mr.
8 Engelmann asks:

9 "You see him in the driveway coming out
10 of the funeral home."

11 And so he's asking Mr. Leroux, and I'm
12 assuming he's talking about you.

13 "What do you remember of that?"

14 So then we turn the page, page 65. His
15 response:

16 "Just a little argument about
17 something. I'm not even sure anymore
18 what the hell I said, but we got into a
19 little bit of an argument, something
20 about work, paperwork that he had left
21 behind or something like that."

22 And I just want to focus on that paperwork.
23 You faced a number of questions today and in previous days
24 regarding this so-called confession. There have been
25 questions about -- by Mr. Engelmann regarding whether the

1 statement to you by Malcolm MacDonald where he revealed to
2 you that there had been a payout or there was going to be a
3 payout between Mr. Seguin and Mr. Silmser because of some
4 sexual act that occurred and whether that could be viewed
5 as an admission and perhaps that was what was the
6 confession. So there's talk about that.

7 I'm sorry, that's very longwinded and, if
8 need be, I'll go through that again, but that was -- there
9 were discussions about a confession or an admission that
10 were in that context.

11 **MR. VAN DIEPEN:** No, this -- this entire
12 episode never took place.

13 **MR. WESTDAL:** Okay. Let me just cut to the
14 chase here. We've been calling it a confession. Take out
15 of your mind the word "confession" or "admission" because
16 I'm concerned that there might be some confusion amongst
17 many parties regarding paperwork, even if it's not a
18 confession; even if it's, you know, there's no admission,
19 it has nothing to do with the case.

20 Do you recall anything in Mr. Seguin's
21 office or any document that you can think of that Mr.
22 Leroux might be referring to here; anything? Not -- don't
23 think of it as a confession or an admission, but could he
24 be talking about something that actually exists that you're
25 just not -- that you saw, yeah, paperwork, but, yeah, it

1 wasn't a confession, so you say, "No, it doesn't exist."

2 Is there anything you can think of that he
3 would be referring to there?

4 **MR. VAN DIEPEN:** None.

5 **MR. WESTDAL:** Okay. So your evidence that
6 did not -- your evidence has been that those discussions
7 with Mr. Leroux after or at the funeral home did not exist
8 in the way that he described them?

9 **MR. VAN DIEPEN:** No, there was -- no, not in
10 the way, there was no -- Mr. Leroux, and I, and my wife had
11 no contact whatsoever at the funeral home.

12 **MR. WESTDAL:** Okay. Then let's revisit
13 that. I think there was an encounter and maybe -- I'm
14 getting confused because perhaps not at the funeral home
15 but outside the funeral home, and your evidence was that he
16 was blubbering a bit and ---

17 **MR. VAN DIEPEN:** No this was at ---

18 **MR. WESTDAL:** --- became ---

19 **MR. VAN DIEPEN:** This was at the funeral
20 service at the church, after the funeral service.

21 **MR. WESTDAL:** Okay.

22 **MR. VAN DIEPEN:** At the rear of the church,
23 outside, and this was on a separate day from the actual --
24 the visitations.

25 **MR. WESTDAL:** Okay.

1 **MR. VAN DIEPEN:** And so these are two
2 separate locations. The funeral home was in Cornwall on
3 Pitt Street. The church was in St. Andrews.

4 **MR. WESTDAL:** Yes, I was aware of that, and
5 that's my error. I was improper in my language in terms of
6 saying the funeral home when I meant the funeral service.

7 **MR. VAN DIEPEN:** Yes.

8 **MR. WESTDAL:** But I just want to go down
9 that page a little bit because what you are saying at the
10 beginning regarding Mr. Leroux is that there is no
11 paperwork. There is no discussion about a confession, I
12 think that was your evidence earlier.

13 There is then -- Mr. Leroux does discuss
14 some times that he may have seen you socially, and Mr.
15 Engelmann asked:

16 "Would you see him from time to time
17 socially?"

18 And Mr. Leroux' response is:

19 "Who?"

20 And:

21 "Jos van Diepen."

22 "Yeah, in the restaurant occasionally."

23 "Okay. You mentioned he was at

24 Harv's?"

25 "Yes."

1 "Was he ever over at Ken's?"

2 "I don't think so; didn't like him that
3 much."

4 I don't know whether Mr. Leroux is referring
5 to your relationship between -- sorry, your relation with
6 Mr. Seguin or your relationship with him, when he says,
7 "didn't like him that much" but perhaps you can comment on
8 your relationship with Mr. Leroux.

9 How did you know Mr. Leroux?

10 Did you have any sort of friendship?

11 **MR. VAN DIEPEN:** None.

12 **MR. WESTDAL:** None. Is he someone that you
13 would have confided in, in any way?

14 **MR. VAN DIEPEN:** Not at all.

15 **MR. WESTDAL:** But would you say, in terms of
16 his statements regarding your presence at Harv's, which was
17 -- sorry, I think he says "occasionally", but I want to
18 make this right here.

19 "Would you see him from time to time
20 socially?"

21 "Who?"

22 "Jos..."

23 "Yeah, in the restaurant occasionally."

24 So that's consistent with your evidence.

25 That you were there occasionally. You would see

1 him occasionally.

2 **MR. VAN DIEPEN:** Yeah, less than
3 occasionally.

4 **MR. WESTDAL:** And what about his statement
5 that -- oh, sorry, we'll go on to the next page because he
6 does talk about other occasions where he might have seen
7 you.

8 "Was he over at Ken's?"

9 "I don't think so; didn't like him that
10 much."

11 Mr. Engelmann:

12 "I'm sorry."

13 Mr. Leroux:

14 "I don't know. No."

15 "You don't recall him being there?"

16 And then Mr. Leroux says:

17 "Like to associate, like to sit in,
18 have a tea or something, or go
19 fishing?"

20 "Whatever."

21 "He might have, but I didn't see him."

22 So he, as a neighbour of Ken Seguin at the
23 time, did not see you doing any of these things. And can
24 you confirm for us or let me ask you the question; did you
25 sit in, have tea or something or go fishing at any time

1 with Mr. Seguin?

2 MR. VAN DIEPEN: No.

3 MR. WESTDAL: Okay. I'll now jump to the
4 bottom of that page, and again at the funeral parlour, but
5 you're saying that any encounter you had with Mr. Leroux
6 was actually at the funeral service not the funeral
7 parlour, am I correct in that now?

8 MR. VAN DIEPEN: Yes.

9 MR. WESTDAL: Okay. So he's got it wrong
10 when he said then:

11 "Jos said something when we were at the
12 funeral parlour..."

13 And now we're getting into "I warned him"
14 and you face some questions about what you "warned him"
15 about and I know that -- I know your evidence but I've been
16 sitting on this for six months because I was here in the
17 hearing room when Mr. Leroux said it and he said that when
18 asked the question, "What's a warning about..." -- and now
19 we're at the top of page 67:

20 "...about his fooling with his young
21 parolees."

22 And Mr. Engelmann says, "You have to speak
23 into the microphone" and he says it again:

24 "...fooling around with his young
25 parolees."

1 Did you ever warn Seguin about fooling
2 around with his young parolees?

3 **MR. VAN DIEPEN:** The only contact of that
4 nature that I can recall was the contact where Ron Gendron
5 and I went into Mr. Seguin's office and resulted in the
6 exchange.

7 **MR. WESTDAL:** Okay. And we've heard
8 evidence on that.

9 **MR. VAN DIEPEN:** It's rather odd that he
10 would know about that.

11 **MR. WESTDAL:** Well actually, I think what
12 he's getting at is a warning -- what he might have said to
13 you at the funeral service that ---

14 **MR. VAN DIEPEN:** No, but I ---

15 **THE COMMISSIONER:** Hold it, hold it, hold
16 it. What are we doing here? Like just re-examine him; ask
17 him some questions.

18 **MR. WESTDAL:** Yeah, okay.

19 Just really one more thing here; you face
20 many questions regarding your frustrations, in terms of the
21 process of giving various interviews.

22 **MR. VAN DIEPEN:** Yes.

23 **MR. WESTDAL:** At the end of the day were you
24 trying to tell the truth in those statements?

25 **MR. VAN DIEPEN:** Yes.

1 **MR. WESTDAL:** Those are all the question I
2 have for you.

3 **MR. NEUBERGER:** I have no questions. Thank
4 you very much.

5 **THE COMMISSIONER:** Thank you.
6 Mr. Engelmann?

7 **(SHORT PAUSE/COURTE PAUSE)**

8 **--- RE-EXAMINATION BY/RÉ-INTERROGATOIRE PAR MR. PETER**
9 **ENGELMANN:**

10 **MR. ENGELMANN:** Mr. van Diepen, I just have
11 three or four questions.

12 **MR. VAN DIEPEN:** Yes, sir.

13 **MR. ENGELMANN:** I understand you wanted to
14 clarify something about the office snitch comment.

15 **MR. VAN DIEPEN:** Well, I don't know if it's
16 relevant, sir. I just raised it because I -- my concern
17 was that it may be something which would -- which had
18 relevance later on.

19 **MR. ENGELMANN:** Right.

20 **MR. VAN DIEPEN:** But I leave that to you,
21 sir.

22 **MR. ENGELMANN:** What was your concern?

23 **MR. VAN DIEPEN:** Well, my concern was that
24 Mr. Robert would try to refute those allegations.

25 **MR. ENGELMANN:** Refute your comment that Ken

1 Seguin was like an office snitch?

2 MR. VAN DIEPEN: Yes.

3 MR. ENGELMANN: Okay.

4 MR. VAN DIEPEN: And I just ---

5 MR. ENGELMANN: I think you've told us that
6 you thought he was favoured and that certain rules that
7 were applied to you and others were not applied to him?

8 MR. VAN DIEPEN: Yes.

9 MR. ENGELMANN: Was there more to it than
10 that?

11 MR. VAN DIEPEN: Yes.

12 MR. ENGELMANN: All right, what did you want
13 to add, sir?

14 MR. VAN DIEPEN: Well I just wanted to
15 outline that, you know, that there was an unhealthy
16 relationship between Mr. Robert and Mr. Seguin, in which
17 he, I believe, compromised himself as a fellow staff
18 employee and a colleague. And it ratted out or tattled on
19 his fellow employees consistently and there are a number of
20 incidents that come to mind in that regard.

21 And it goes towards -- well, on the one hand
22 Mr. Seguin is reporting to us that he didn't, you know, he
23 didn't like Mr. Robert; he had no use for that guy et
24 cetera, et cetera, and yet in the same breath he's going
25 around and going in and tattling on what we were doing or,

1 you know, supposedly terrible things.

2 **MR. ENGELMANN:** All right, so towards -- and
3 this was towards the end?

4 **MR. VAN DIEPEN:** Yes.

5 **MR. ENGELMANN:** And if I just understood you
6 correctly, in the vernacular you said he would rat you or
7 others out.

8 **MR. VAN DIEPEN:** Yes.

9 **MR. ENGELMANN:** Meaning Robert?

10 **MR. VAN DIEPEN:** Yes.

11 **MR. ENGELMANN:** And that presumably didn't
12 endear him to his colleagues?

13 **MR. VAN DIEPEN:** Well we weren't even aware
14 of it.

15 **MR. ENGELMANN:** Oh, I see.

16 **MR. VAN DIEPEN:** And, you know, it was only
17 that -- it was only after there were some very explicit
18 incidents came forward that we realized what really was
19 going on here.

20 **MR. ENGELMANN:** Okay. Was there anything
21 else you wanted to add; I'm sorry?

22 **MR. VAN DIEPEN:** I don't know, did you want
23 any examples?

24 **MR. ENGELMANN:** No, that's fine.

25 **MR. VAN DIEPEN:** Okay.

1 **MR. ENGELMANN:** Sir, you were asked by a
2 number of people, by me, and then by a number of others
3 about your interview with Paul Downing.

4 **MR. VAN DIEPEN:** Yes.

5 **MR. ENGELMANN:** And I don't want to go back
6 through it in any way; you've been over it many, many times
7 but before the interview you received a Ministry directive?

8 **MR. VAN DIEPEN:** Yes.

9 **MR. ENGELMANN:** You told us you didn't have
10 a whole lot of time to look at it.

11 **MR. VAN DIEPEN:** The directive?

12 **MR. ENGELMANN:** Yes.

13 **MR. VAN DIEPEN:** No, I didn't have a whole
14 lot of time to prepare for the interview. I read the
15 directive.

16 **MR. ENGELMANN:** All right. And that was in
17 -- it's Exhibit 1178, I'm just wondering if we could go
18 back there for a minute.

19 **(SHORT PAUSE/COURTE PAUSE)**

20 **MR. VAN DIEPEN:** Yes.

21 **MR. ENGELMANN:** All right, in the second
22 page is this memorandum to you, dated September 14, 2000.

23 **MR. VAN DIEPEN:** Yes.

24 **MR. ENGELMANN:** And we realize -- you've
25 given evidence that you received it some time later?

1 MR. VAN DIEPEN: Yes.

2 MR. ENGELMANN: In it he refers to his
3 authority under Section 22 of the Act.

4 MR. VAN DIEPEN: Yes.

5 MR. ENGELMANN: And Section 22 of the Act is
6 actually attached; it's a couple of pages further down in
7 the exhibit.

8 MR. VAN DIEPEN: Yes.

9 MR. ENGELMANN: And it says, among other
10 things, it says:

11 "The Minister may designate any person
12 as an inspector to make such inspection
13 or investigations the Minister may
14 require."

15 You see that?

16 MR. VAN DIEPEN: Yes.

17 MR. ENGELMANN: And that was Mr. Downing?

18 MR. VAN DIEPEN: Yes.

19 MR. ENGELMANN: All right. A little later
20 on it says -- it does say that the Minister may and has
21 just cause to dismiss any employee ---

22 MR. VAN DIEPEN: Yes.

23 MR. ENGELMANN: --- who obstructs an
24 inspection or investigation or withholds, destroys,
25 conceals, or refuses to furnish any information.

1 MR. VAN DIEPEN: Yes.

2 MR. ENGELMANN: And I think Mr. Downing in
3 fact might have read that to you during the course of the
4 interview or he would have mentioned it.

5 MR. VAN DIEPEN: Yes.

6 MR. ENGELMANN: As a result of that
7 interview and his investigation were you ever disciplined
8 by the Ministry for any of the matters that are set out
9 herein?

10 MR. VAN DIEPEN: No, sir.

11 MR. ENGELMANN: And when you were being
12 cross-examined by one of my friends this morning, and I
13 can't remember who it was or which statement now but I
14 recall you saying words to the effect, "Well at least I
15 gave information."

16 MR. VAN DIEPEN: Yes.

17 MR. ENGELMANN: "Others had more knowledge
18 than I did and they gave less information" or words to that
19 effect.

20 MR. VAN DIEPEN: Yes.

21 MR. ENGELMANN: All right, and I think you
22 said, "Others knew more about Ken and his interactions with
23 others" than you did"?

24 MR. VAN DIEPEN: Yes.

25 MR. ENGELMANN: All right. And I know

1 you've just said -- commented on an office snitch and
2 you've commented on ratting out friends but it's important
3 for the Inquiry to know who you're talking about.

4 **MR. VAN DIEPEN:** Well, the information I
5 provided at this Inquiry, Mr. Engelmann, is not exclusively
6 known to me. Any of the information that I've provided at
7 this Inquiry was well within the knowledge or known to the
8 other staff in the office. And even for the information
9 that I provided to you of which I had firsthand knowledge,
10 they had second-hand knowledge of it.

11 So there is nothing that I provided to you
12 in this Inquiry, Mr. Engelmann, that other staff members
13 did not know about.

14 **MR. ENGELMANN:** All right, but you suggested
15 to us that you provided more information than they have or
16 words to that effect.

17 **MR. VAN DIEPEN:** Yes.

18 **MR. ENGELMANN:** Did I misunderstand you or
19 is that what you said?

20 **MR. VAN DIEPEN:** That's what I said.

21 **MR. ENGELMANN:** All right. And you're
22 saying that people who were on staff, for example, during
23 the 1980s ---

24 **MR. VAN DIEPEN:** Yes.

25 **MR. ENGELMANN:** --- and who would still be

1 on staff today would have known what you knew and perhaps
2 more?

3 MR. VAN DIEPEN: Perhaps.

4 MR. ENGELMANN: All right. Because some of
5 them, Mr. van Diepen, did come here and tell us that they
6 knew about Mr. Seguin being investigated before he was
7 deceased.

8 MR. VAN DIEPEN: Yes.

9 MR. ENGELMANN: And you didn't tell us that.

10 MR. VAN DIEPEN: That's correct.

11 MR. ENGELMANN: So that would be an example
12 of where other staff members have said more than you did.

13 MR. VAN DIEPEN: Yes.

14 MR. ENGELMANN: Can you think of an example
15 where you said more than they did?

16 MR. VAN DIEPEN: Well I certainly gave a
17 number of interviews, long interviews and I believe you
18 also had testimony -- or there was other individuals who
19 said that they, no, didn't remember, don't recall or didn't
20 know.

21 MR. ENGELMANN: Okay. But you're not
22 suggesting that any of your -- I don't know and I -- are
23 you suggesting that some of your former colleagues refused
24 to be interviewed by police?

25 MR. VAN DIEPEN: I have no knowledge of

1 that, sir.

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

3 Because I was just wondering what you meant
4 by essentially saying that they haven't given us the type
5 of information you have.

6 **MR. VAN DIEPEN:** Well, I think my statement,
7 sir, probably is more elaborate than other statements.

8 **MR. ENGELMANN:** You can't think of any
9 examples?

10 **MR. VAN DIEPEN:** No, right -- at this point
11 in time, no, nothing comes to mind.

12 **MR. ENGELMANN:** It just struck me this
13 morning when you said it. So I thought I had to ---

14 **MR. VAN DIEPEN:** No, I didn't -- nothing at
15 this point in time comes to mind.

16 **MR. ENGELMANN:** Those are my questions.
17 Thank you very much.

18 **MR. VAN DIEPEN:** Thank you.

19 **THE COMMISSIONER:** Thank you.

20 Sir I want to thank you for the days that
21 you spent with use and I certainly do understand that
22 coming here is not a holiday. But I will take your
23 testimony, evaluate it and it certainly will form part of
24 my report.

25 Thank you very much sir.

1 **MR. VAN DIEPEN:** Your Honour, there is a
2 number -- there is one outstanding issue is that was raised
3 again and that perhaps I could revisit that, if not, in the
4 sense of providing any new information but perhaps in terms
5 of an explanation.

6 There is an ongoing innuendo that I ought to
7 have known ---

8 **THE COMMISSIONER:** No, no, no. That's an
9 issue I'm going to have to decide.

10 **MR. VAN DIEPEN:** Thank you.

11 **THE COMMISSIONER:** All right.

12 Thank you.

13 Is that all right with everyone or do we
14 want to hear anymore?

15 Thank you.

16 **MR. ENGELMANN:** Sir -- thank you, Mr. van
17 Diepen. Free to go.

18 Sir, the next witness for the Commission is
19 Ms. Larivière.

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

21 **MR. ENGELMANN:** My colleague, Mr. Stauffer,
22 will be leading that evidence. I'm wondering if we could
23 have just a short break before that starts.

24 **THE COMMISSIONER:** Okay. Let's take the
25 afternoon break.

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

3 This hearing will resume at 2:55 p.m.

4 --- Upon recessing at 2:38 p.m./

5 L'audience est suspendue à 14h38

6 --- Upon resuming at 2:54 p.m./

7 L'audience est reprise à 14h54

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

10 This hearing is now resumed.

11 Please be seated. Veuillez vous asseoir.

12 **MR. ENGELMANN:** A very quick cameo and then
13 I'm out of the hearing room. Mr. Commissioner, I just
14 wanted to report on something I neglected to report on
15 yesterday.

16 **THE COMMISSIONER:** Yes.

17 **MR. ENGELMANN:** It's a decision that came
18 out on Friday and I understand that it might be referred to
19 later this afternoon.

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

21 **MR. ENGELMANN:** And that deals with a --
22 this involved C-12 and C-13, an alleged victim and her
23 mother who wanted to testify here at the Inquiry. She was
24 a member of the Victims Group.

25 You had decided last June that you were not

1 going to state a case to the Divisional Court about it.
2 That decision was taken to the Divisional Court by the OPP,
3 the OPPA and I believe other parties -- other institutions
4 were supporting him including the Ministry of Community of
5 Safety and Corrections. The Cornwall Police Service and
6 the Attorney General intervened as well on their behalf.

7 The matter was heard by the Divisional Court
8 in September. The Divisional Court rejected the stated
9 case by majority decision. The matter was appealed by the
10 OPP and others to the Court of Appeal. That decision was
11 released on Friday.

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

13 **MR. ENGELMANN:** And in a unanimous decision,
14 the Court of Appeal decided that the evidence could not be
15 heard. There are other issues involving the case.
16 Commission counsel is reviewing the case right now. And
17 we'll be reporting on it in the not so distant future. But
18 we're just reviewing now for its reasons. And I understand
19 some discussions about the case may come up this afternoon
20 ---

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

22 **MR. ENGELMANN:** --- with an anticipated
23 objection to some of the evidence you're to hear this
24 afternoon.

25 **THE COMMISSIONER:** Okay.

1 **MR. ENGELMANN:** So I will leave things with
2 my colleague, Mr. Stauffer, who will lead the next witness.

3 **THE COMMISSIONER:** Thank you.

4 **MR. STAUFFER:** Thank you, Mr. Commissioner.
5 The next witness will be Suzanne Larivière,
6 please.

7 **THE COMMISSIONER:** All right.

8 **SUZANNE LARIVIÈRE:** Sworn/Assermentée

9 **MR. STAUFFER:** Ms. Larivière, thank you, for
10 coming today. Please keep you voice up. The Commissioner
11 may want to say a few things here to you and I'll turn it
12 over to him.

13 **THE COMMISSIONER:** All right.

14 Thank you.

15 Yes, lots of machines here in front of you
16 and things like that. So the microphone is important that
17 you speak into it. That you vocalize your answers with yes
18 or nos because we're having this transcribed.

19 The screen will be there. If there are any
20 documents that you ought to be shown; you will be shown the
21 documents; you may either look at them in a hard copy or on
22 the screen.

23 There is water there. You have a speaker in
24 front of you. If you want to turn up the volume to be able
25 to hear what people are asking.

1 An important thing though is that if you
2 feel uncomfortable at any time, just let me know and we'll
3 deal with that. I ask you to listen to the question
4 completely; give me your best answer and if you don't
5 understand the question, let me know. And if you don't
6 know the answer, it's okay to say that you don't know the
7 answer to a question.

8 **MS. LARIVIÈRE:** Okay. Thank you.

9 **THE COMMISSIONER:** All right.

10 Thank you.

11 **MR. STAUFFER:** Thank you, sir. Ready to go?

12 **THE COMMISSIONER:** Yeah. I guess so.

13 **--- EXAMINATION IN CHIEF BY/INTERROGATOIRE EN CHEF PAR MR.**
14 **STAUFFER:**

15 **MR. STAUFFER:** Okay. Ms. Larivière, you're
16 an experienced probation and parole officer; is that
17 correct?

18 **MS. LARIVIÈRE:** That's right.

19 **MR. STAUFFER:** You joined the Ministry in
20 1990?

21 **MS. LARIVIÈRE:** Yes.

22 **MR. STAUFFER:** And could you tell us a
23 little bit about your background before joining the
24 Ministry in 1990; what did you do?

25 **MS. LARIVIÈRE:** A few years ago, I was a

1 teacher with the T.R. Leger School. I was also an
2 addiction's counsellor at Mount Carmel House. And I've
3 been a probation parole officer for 19 years.

4 **MR. STAUFFER:** All right.

5 Now when you joined the Ministry in 1990;
6 that was in Cornwall, was it?

7 **MS. LARIVIÈRE:** That's right.

8 **MR. STAUFFER:** But you also worked at other
9 -- I don't know if satellite offices would be the right
10 word but you worked at other probation offices in this
11 area; is that right?

12 **MS. LARIVIÈRE:** I worked out of the Ottawa
13 office, Hawkesbury office as well as the Embrun office.

14 **MR. STAUFFER:** All right.

15 Now can you help the Commissioner and my
16 friends as to the times between 1990 and 1993 as to where
17 you were located then as best you can, which offices you
18 were working in?

19 **MS. LARIVIÈRE:** I think they were all in
20 almost nine months increments. For nine months, I worked
21 in the Cornwall office, then transferred to Ottawa East
22 probation office; then transferred back to Cornwall for a
23 bit; when back to Hawkesbury for nine months; returned for
24 a bit; then went to Embrun.

25 **MR. STAUFFER:** All right.

1 So you travelled around somewhat that's for
2 sure. And the Cornwall office, when you joined in 1990,
3 who were your co-workers in terms of probation and parole
4 officers?

5 **MS. LARIVIÈRE:** They would have been Carole
6 Cardinal, Ron Gendron, Jos van Diepen, Terry McDonald and
7 Ken Seguin.

8 **MR. STAUFFER:** I'm sorry, the last name?

9 **MS. LARIVIÈRE:** Ken Seguin.

10 **MR. STAUFFER:** Thank you.

11 And those individuals and yourself were
12 managed by a manager.

13 **MS. LARIVIÈRE:** Yes.

14 **MR. STAUFFER:** And who was that?

15 **MS. LARIVIÈRE:** Emile Robert.

16 **MR. STAUFFER:** And during that timeframe,
17 1990 to 1993, then Emile Robert was the office manager?

18 **MS. LARIVIÈRE:** That's right.

19 **MR. STAUFFER:** All right.

20 Do you remember who the next up in the chain
21 of command would be during that timeframe, that is, who was
22 his superior?

23 **MS. LARIVIÈRE:** It would have been Roy
24 Hawkins.

25 **MR. STAUFFER:** All right.

1 And above Mr. Hawkins, do you know who it
2 was in those three years?

3 **MS. LARIVIÈRE:** Deborah Newman.

4 **MR. STAUFFER:** Sorry?

5 **MS. LARIVIÈRE:** Deborah Newman.

6 **MR. STAUFFER:** Deborah Newman.

7 Thank you very much.

8 So, madam, just to move forward in time for
9 a moment as to what you're doing, you're right now a
10 trainer, if I can put it that way; is that right?

11 **MS. LARIVIÈRE:** Yes, I am.

12 **MR. STAUFFER:** And where are you working?

13 **MS. LARIVIÈRE:** I work all over the
14 province, training core programs, which is part of our new
15 service delivery model. And I travel all around the
16 Province of Ontario.

17 **MR. STAUFFER:** Okay. How long have you been
18 doing that job?

19 **MS. LARIVIÈRE:** For the past three years.

20 **MR. STAUFFER:** All right.

21 And you're based in Hamilton then. Is that
22 to your ---

23 **MS. LARIVIÈRE:** At the college there, the
24 Ontario Correctional Services College.

25 **MR. STAUFFER:** All right.

1 Now taking us now back in a little bit in
2 terms of your background as well just so the Commissioner
3 has a picture of yourself. Have you done volunteer work?

4 **MS. LARIVIÈRE:** Yes I have. I've worked
5 with the Family Violence, Domestic Violence Coordinated
6 Committee in Cornwall and the survivors of sexual abuse
7 program when it was -- back a few years ago.

8 **MR. STAUFFER:** Okay, the survivors of sexual
9 abuse, is that a Cornwall-based?

10 **MS. LARIVIÈRE:** It was. I don't think that
11 it is still in existence.

12 **MR. STAUFFER:** All right. And was that
13 predominately males or were they mixed, male, female?

14 **MS. LARIVIÈRE:** Mixed at the time.

15 **MR. STAUFFER:** Okay, now when you began work
16 in 1990 can you give us as good a date as you can as to
17 when you started in 1990?

18 **MS. LARIVIÈRE:** In the Cornwall office it
19 would have been in June of 1990 and so I worked there the
20 first nine months.

21 **MR. STAUFFER:** All right. And when you
22 arrived, and for the months and years between 1990, June
23 1990 and the end of 1993, could you describe the office
24 environment? What would be the things that would come to
25 mind when talking about the working environment back in

1 those years?

2 **MS. LARIVIÈRE:** Well, I was the "newbie"
3 there and if I may, so I was -- it was the learning time
4 for me. So I would go to my colleagues quite a bit for
5 advice.

6 **MR. STAUFFER:** And to whom would you go?

7 **MS. LARIVIÈRE:** Well, Ken Seguin was my
8 mentor. He's the one who trained me in that year.

9 **MR. STAUFFER:** Just out of curiosity, did
10 that arise by Mr. Robert assigning Mr. Seguin to you, or
11 did it just arise from the two of you hitting it off or
12 what?

13 **MS. LARIVIÈRE:** He would have been the most
14 senior probation officer at the time, so Mr. Robert would
15 have assigned him that duty.

16 **MR. STAUFFER:** Okay. So what would that
17 involve? What kind of mentorship? How often would you
18 meet, what kind of discussions would you have and that kind
19 of thing?

20 **MS. LARIVIÈRE:** Well, I would have sat in on
21 interviews that he would have had with clients. He taught
22 me how to write pre-sentence reports, would have taken me
23 to the courts and shown me, you know, what I had to do in
24 order to -- for enforcement purposes and for taking the
25 stand for example, at the court.

1 Also introduced me to the police, those
2 kinds of things. Mentoring me to the judicial system and
3 the partners associated with that.

4 **MR. STAUFFER:** Okay. Was part of your job
5 to go to the courthouse to start with in Cornwall?

6 **MS. LARIVIÈRE:** Yes.

7 **MR. STAUFFER:** And did you go to other
8 courthouses as well, ---

9 **MS. LARIVIÈRE:** Not initially, no.

10 **MR. STAUFFER:** No. But you were introduced
11 to the courthouse by Mr. Seguin ---

12 **MS. LARIVIÈRE:** That's right.

13 **MR. STAUFFER:** --- and the staff and where
14 things were and so on?

15 **MS. LARIVIÈRE:** That's right.

16 **MR. STAUFFER:** All right. In terms of the
17 layout, now the address that you were at back in that
18 timeframe 1990 to 1993, where were you on Pitt Street at
19 that time?

20 **MS. LARIVIÈRE:** We were at 502 Pitt Street.

21 **MR. STAUFFER:** And so at 502 where was your
22 office located? Did it change during those three years?

23 **MS. LARIVIÈRE:** It changed when I came back
24 after 1993. I returned to the Cornwall office full-time
25 after Ken passed away. I replaced him, but prior to that I

1 would have been at the last office in -- at the end of the
2 hall, to the left.

3 **MR. STAUFFER:** All right. Was there
4 somebody beside you, in terms of an office?

5 **MS. LARIVIÈRE:** Across the hall from me
6 would have been Carole Cardinal's office.

7 **MR. STAUFFER:** Okay, and where would Mr.
8 Seguin's office had been in relation to yours?

9 **MS. LARIVIÈRE:** He would have been about
10 three offices down.

11 **MR. STAUFFER:** All right. Now can you help
12 us a little bit? In some witnesses testimony we've heard
13 about closed doors, locked doors and so on. In that
14 timeframe again, 1990 to 1993 was there any particular
15 policy in place as to when doors should be closed in the
16 offices?

17 **MS. LARIVIÈRE:** I think doors were closed
18 for confidentiality reasons. People would come in and we
19 would all have the doors closed pretty much.

20 **MR. STAUFFER:** Okay. But again, perhaps
21 this is being too formal, but was there a policy relating
22 to closed doors?

23 **MS. LARIVIÈRE:** I don't believe there was.

24 **MR. STAUFFER:** Okay. With respect to
25 locking one's door, did the doors have -- the office doors

1 that you would have had for example, would it have had a
2 lock?

3 **MS. LARIVIÈRE:** No it did not.

4 **MR. STAUFFER:** Okay. Were you ever aware
5 during that three years of anyone's door having a lock?

6 **MS. LARIVIÈRE:** No one's door had a lock
7 during those three years.

8 **MR. STAUFFER:** All right. With respect to
9 the night reporting that we've heard about from others,
10 were you involved in that?

11 **MS. LARIVIÈRE:** Yes I was.

12 **MR. STAUFFER:** And was that a particular
13 night?

14 **MS. LARIVIÈRE:** It was the last Thursday of
15 every month.

16 **MR. STAUFFER:** All right. And what would
17 the hours be for those probationers coming in?

18 **MS. LARIVIÈRE:** Those were for people who
19 worked during the day so they would often come in after 5
20 o'clock and we would stay probably 'til about 8 o'clock at
21 night.

22 **MR. STAUFFER:** All right. Now were you
23 always on the Thursday nights or would that vary from month
24 to month?

25 **MS. LARIVIÈRE:** Always on the Thursday, the

1 last Thursday of the month.

2 MR. STAUFFER: Okay. Were all of the
3 probation officers then doing the same night shift?

4 MS. LARIVIÈRE: I believe most of us did.

5 MR. STAUFFER: Okay. Again, was there any
6 particular policy with respect to closed doors, open doors
7 during the nightshift ---

8 MS. LARIVIÈRE: No.

9 MR. STAUFFER: --- or was it the same as
10 during the day.

11 MS. LARIVIÈRE: That's right.

12 MR. STAUFFER: Okay. And on any occasion
13 were you the last in the building or on your floor, if I
14 can put it that way?

15 MS. LARIVIÈRE: I think we generally all
16 left at the same time. And we never usually left until
17 there were two people leaving at the same time, so not to
18 leave someone alone, for safety reasons.

19 MR. STAUFFER: Right. Okay. Were you able
20 during the three years prior to Mr. Seguin's death to see
21 him with any of his clients?

22 MS. LARIVIÈRE: Yes, I was.

23 MR. STAUFFER: And can you help the
24 Commissioner as to any settings outside the office, did you
25 see him with anyone outside?

1 **MS. LARIVIÈRE:** The only outside time with
2 clients that I would have seen, would be when he would have
3 a cigarette with a client, for example. But that would
4 have been it.

5 **MR. STAUFFER:** Okay. Again, it may seem an
6 innocent thing to some I don't know, what was the habit of
7 the other probation officers who smoked and their clients?
8 Was this something that most probation officers did with
9 their clients?

10 **MS. LARIVIÈRE:** I don't think it was unheard
11 of, but I think it was mostly Ken who would smoke with his
12 clients.

13 **MR. STAUFFER:** All right. Did you hear,
14 either from Ken or from others, that he had other
15 involvements with his clients, besides smoking outside the
16 office?

17 **MS. LARIVIÈRE:** The only involvement that I
18 knew of was rumour about the fact that he had lived with
19 one of his clients, a couple of years prior to that, to my
20 coming into the office.

21 **MR. STAUFFER:** Were you ever at Ken's house
22 where that former probationer apparently resided?

23 **MS. LARIVIÈRE:** No, I was not.

24 **MR. STAUFFER:** Okay. With respect to other
25 matters, and I'll just put them to you, was Ken ever

1 someone who would loan money to his clients?

2 **MS. LARIVIÈRE:** I don't know that for sure
3 but I could see him doing that.

4 **MR. STAUFFER:** What about him loaning his
5 car to anyone?

6 **MS. LARIVIÈRE:** I don't know whether he did
7 or not.

8 **MR. STAUFFER:** Did he ever provide any kind
9 of services, such as driving a client to a job interview or
10 to some other appointment?

11 **MS. LARIVIÈRE:** I believe he did that.

12 **MR. STAUFFER:** All right. Again, to try to
13 compare it to the other probation officers during that
14 timeframe, was that something that others did?

15 **MS. LARIVIÈRE:** I don't believe so.

16 **MR. STAUFFER:** Did you have concerns that
17 this type of behaviour, and I'm talking about Ken driving
18 his clients for example, outside the office, at different
19 appointments and so on, that that was something in
20 appropriate?

21 **MS. LARIVIÈRE:** I saw it in the light that
22 he always looked to do whatever it was that they needed in
23 terms of getting a job or those kinds of things. So I
24 always saw him as going beyond the call of duty. So I
25 wouldn't have found it that strange.

1 **MR. STAUFFER:** All right. Now you've told
2 us in interviews and I think -- you've -- that we've heard
3 this from others that Mr. -- Ken Seguin had the title of
4 "Mr. Probation", I guess.

5 **MS. LARIVIÈRE:** Yeah.

6 **MR. STAUFFER:** Would you agree with that?

7 **MS. LARIVIÈRE:** Yes.

8 **MR. STAUFFER:** All right. Why would he have
9 that, why would he be called that?

10 **MS. LARIVIÈRE:** Because he did his work in
11 such a way that I don't -- his work was second to none,
12 from what I could see. And just learning, coming into the
13 field, his work was immaculate. There was nothing that you
14 could say about his work. He did everything he could
15 possibly do to help people and he -- his case notes were
16 perfect, his desk was perfect, he was perfect; he came in
17 in a suit and tie every day.

18 It was just somebody that you admired and
19 felt that he was very professional in what he did.

20 **MR. STAUFFER:** All right. Can you describe
21 from your observations or from what others have told you
22 how Ken got along with others, besides yourself.

23 **MS. LARIVIÈRE:** He was well respected I
24 think overall.

25 **MR. STAUFFER:** Now you haven't sat, I don't

1 believe but correct me if I'm wrong, you haven't sat
2 through any of Mr. van Diepen's testimony?

3 **MS. LARIVIÈRE:** I have not.

4 **MR. STAUFFER:** Or heard it on the ---

5 **MS. LARIVIÈRE:** I have heard from the
6 newspaper and I have heard some of the testimony.

7 **MR. STAUFFER:** Okay. So you've read the
8 newspapers but you haven't been in the hearing room and ---

9 **MS. LARIVIÈRE:** I have not.

10 **MR. STAUFFER:** --- you haven't been watching
11 on a monitor or on your computer screen; is that right?

12 **MS. LARIVIÈRE:** Yeah.

13 **MR. STAUFFER:** Okay. The -- I put this to
14 you, Mr. Seguin and Mr. Robert, the impression I have is
15 there may have been some unusual relationship between them
16 in terms of not just a business relationship between
17 manager and probation officer, but that they may not have
18 gotten along as well, personality-wise or -- their
19 relationship was, to some extent, different than others.

20 Let me put it that way and leave it to you
21 to comment.

22 **MS. LARIVIÈRE:** Mr. Seguin and?

23 **MR. STAUFFER:** Mr. Robert, to start with.
24 Mr. Robert, the office manager.

25 **MS. LARIVIÈRE:** Yeah. I think they always

1 got along very well. They appeared to.

2 MR. STAUFFER: All right.

3 That was your impression?

4 MS. LARIVIÈRE: Yeah.

5 MR. STAUFFER: What was your impression
6 between Mr. Seguin and Mr. van Diepen?

7 MS. LARIVIÈRE: They had a strange
8 relationship.

9 MR. STAUFFER: All right.

10 MS. LARIVIÈRE: Yeah.

11 MR. STAUFFER: Can you give us any examples
12 there?

13 MS. LARIVIÈRE: I just think that they had
14 different ways of working and Mr. van Diepen's style of
15 working was different than Mr. Seguin's. So I think they
16 clashed in that respect.

17 MR. STAUFFER: Could you give us a little
18 more detail? I'm not quite sure what you mean by that.

19 MS. LARIVIÈRE: Mr. Seguin's approach to
20 working with clients would have been more of a social work
21 type of approach. Where, as I said, he would go above and
22 beyond to kind of help them out to get them what they
23 needed and Mr. van Diepen would have been more enforcement
24 oriented.

25 MR. STAUFFER: What would you say in terms

1 of any of the other officers at that time, probation
2 officers, was there any other tension between Mr. Seguin
3 and them?

4 **MS. LARIVIÈRE:** I don't believe so.

5 **MR. STAUFFER:** Would you comment as to
6 whether or not you saw Mr. Robert, the office manager, as
7 favouring Mr. Seguin?

8 **MS. LARIVIÈRE:** They did get along very
9 well.

10 **MR. STAUFFER:** What impression ---

11 **THE COMMISSIONER:** That's being very
12 diplomatic, I think.

13 They got along very well, was there
14 favouritism? Can you comment on that?

15 **MS. LARIVIÈRE:** I don't think anything Ken
16 requested in terms of vacation or anything like that would
17 have been denied. So there was no conflict between them
18 that way.

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

20 **MR. STAUFFER:** The concern, to put it
21 directly to you, Ms. Larivière, is that Mr. Robert may have
22 favoured Mr. Seguin to the point where he wasn't monitoring
23 him, possibly, as closely as he should.

24 **MS. LARIVIÈRE:** That's possible.

25 **MR. STAUFFER:** Or allowing him to perhaps

1 behave towards his probationers in some inappropriate
2 fashion and namely, to be just too much of a friend to many
3 of them?

4 **MS. LARIVIÈRE:** He could have.

5 **MR. STAUFFER:** All right.

6 Did you ever hear, either directly or did
7 Mr. Seguin or Mr. Robert talk to you about that; that is
8 the relationship between those two fellows?

9 **MS. LARIVIÈRE:** No, they did not.

10 **MR. STAUFFER:** With respect to Mr. Seguin,
11 did you have any impression, at any time, that he was
12 acting inappropriately in a sexual fashion towards his
13 clients?

14 **MS. LARIVIÈRE:** No.

15 **MR. STAUFFER:** The period of time that you
16 had with him, was it more or less the three years or was
17 there a period of time when you did not see him because of
18 your -- the nine month stints that you're talking about?

19 **MS. LARIVIÈRE:** I probably would have been
20 in the office directly for about a year, all total for
21 those three years.

22 **MR. STAUFFER:** Okay. Now -- and so this is
23 accumulating time; it's not a one year straight ---

24 **MS. LARIVIÈRE:** Right.

25 **MR. STAUFFER:** --- stretch of time?

1 **MS. LARIVIÈRE:** Right.

2 **MR. STAUFFER:** All right.

3 We'd heard from Mr. Gendron, for example,
4 that at one point he had followed Mr. Seguin to a mall in
5 Cornwall. Did you ever know of that?

6 **MS. LARIVIÈRE:** I did not know that 'till
7 recently. I've never heard that before.

8 **MR. STAUFFER:** And when you say "recently",
9 you mean since the Inquiry began?

10 **MS. LARIVIÈRE:** Right.

11 **MR. STAUFFER:** And you've not spoken with
12 Mr. Gendron about that at all since you heard of it, since
13 you became aware of it?

14 **MS. LARIVIÈRE:** Since the Inquiry, yes, but
15 not prior to that.

16 **MR. STAUFFER:** All right.

17 Well what -- what have you discussed in
18 terms of that?

19 **MS. LARIVIÈRE:** Well, it wasn't a
20 discussion, it was more of a surprise that that had
21 actually happened because I had never heard that before.

22 **MR. STAUFFER:** Okay. So, again, you may not
23 have had very many specifics but while you were working
24 there, and this would be in 1993 I believe this occurred,
25 you were not aware at all of anybody getting a car and

1 trying to find out where Ken was?

2 **MS. LARIVIÈRE:** No. I would have been in
3 Embrun for the few months prior to his death.

4 **MR. STAUFFER:** So, physically, you were
5 working offsite in Embrun?

6 **MS. LARIVIÈRE:** M'hm.

7 **MR. STAUFFER:** Okay. Now with respect to --
8 we'll move ahead in time, just for a moment and then we'll
9 get back to some earlier matters.

10 After Mr. Seguin's death in 1993, I
11 understand that the office was not the friendliest place
12 from time to time, the work, and I gather it culminated
13 eventually and some mediator being brought in; is that
14 right?

15 **MS. LARIVIÈRE:** Right.

16 **MR. STAUFFER:** And you were part of that
17 whole process; is that right?

18 **MS. LARIVIÈRE:** Yes, I was.

19 **MR. STAUFFER:** And as a result of that
20 process, eventually, Mr. Robert left the Cornwall office
21 for Ottawa.

22 **MS. LARIVIÈRE:** That's right.

23 **MR. STAUFFER:** Is that right?

24 Can you give the Commissioner any further
25 details as to what brought on that intervention by the

1 mediator?

2 **MS. LARIVIÈRE:** I think people felt that
3 there was unfair treatment in the office; that some --
4 there was kind of a double-standard with different
5 individuals.

6 A lot of it was -- were things that happened
7 when I was not there, but when I was there there was
8 certainly tension between Mr. van Diepen and Mr. Seguin and
9 Mr. -- also with Mr. Robert, having unfair treatment with
10 different individuals in the office.

11 **MR. STAUFFER:** I don't think there's really
12 any need to refer to, at least by me right now, but there
13 was a -- there were some minutes, if you will, or some
14 report prepared by the mediator eventually and your name
15 appears on it; at least your first name appears on it ---

16 **MS. LARIVIÈRE:** Yes.

17 **MR. STAUFFER:** --- as someone who
18 participated in that whole process.

19 Now this is all quite some time after Mr.
20 Seguin's death, I gather, that this is taking place, is in
21 1998 or 1999 when that process was going on?

22 **MS. LARIVIÈRE:** That's -- that's -- yes.

23 **MR. STAUFFER:** Does that sound right, about
24 10 years ago?

25 **MS. LARIVIÈRE:** Close to that.

1 **MR. STAUFFER:** I think it's 1998.

2 **MS. LARIVIÈRE:** M'hm.

3 **MR. STAUFFER:** Now, again, getting back in
4 time, if you can move backwards, before Mr. Seguin dies, is
5 that type of atmosphere present, that brought on eventually
6 this intervention where the mediator was required?

7 **MS. LARIVIÈRE:** I think it was there. I
8 think it -- I was there more after his death. So I could
9 speak to that timeframe, from 1993 to 1998 better than I
10 could before that. But I think the tension was certainly
11 there.

12 **MR. STAUFFER:** M'hm.

13 **MR. STAUFFER:** Mr. Seguin's death, I gather,
14 you were out of the office in Embrun, is that right then,
15 at the time he died in November of 1993?

16 **MS. LARIVIÈRE:** That's right.

17 **MR. STAUFFER:** And how did you find out
18 about his death?

19 **MS. LARIVIÈRE:** I was called by one of the
20 support staff to let me know.

21 **MR. STAUFFER:** All right.

22 Now before his death were you at all aware
23 of any rumours concerning Ken and the police? I'll just
24 leave it in that broad sense to start with.

25 **MS. LARIVIÈRE:** No, I was not aware.

1 **MR. STAUFFER:** Because, again, we've heard
2 from Mr. Gendron -- and, again, I'm simply trying to
3 paragraph here at this point -- that he had gone at some
4 point down to the police -- sorry, to the courthouse, and
5 heard through the police or others at the courthouse that
6 there was something happening with respect to Ken, perhaps
7 some money, perhaps the church. It's quite vague. All
8 right? But he's hearing something.

9 You've heard nothing like that before Mr.
10 Seguin's death?

11 **MS. LARIVIÈRE:** No, I did not.

12 **MR. STAUFFER:** Did you, again, please take
13 this the right way, but did you get along with Mr. Gendron?

14 **MS. LARIVIÈRE:** I did.

15 **MR. STAUFFER:** Did you feel you had an open
16 relationship with him?

17 **MS. LARIVIÈRE:** Yes, I did.

18 **THE COMMISSIONER:** How about Mr. van Diepen?

19 **MS. LARIVIÈRE:** Yes, I had a good
20 relationship with him as well.

21 **MR. STAUFFER:** When were you first aware of
22 any rumours or information that Mr. Seguin might have been
23 involved with the police in terms of a complaint?

24 **MS. LARIVIÈRE:** It would have been after his
25 death.

1 **MR. STAUFFER:** Yes, but when, as best you
2 can remember? So he dies in November of 1993. Can you put
3 your finger on some date by reference to a time of year or
4 some event or whatever that could help us out?

5 **MS. LARIVIÈRE:** I can't pinpoint exactly
6 when, but it would have been probably shortly after he
7 died.

8 **MR. STAUFFER:** Do you remember how you found
9 out then, like, who told you?

10 **MS. LARIVIÈRE:** I think it was general
11 information given through the office that I would have come
12 to understand about that.

13 **MR. STAUFFER:** And just so I understand you
14 though, Mr. Robert or somebody didn't come in and announce
15 ---

16 **MS. LARIVIÈRE:** No.

17 **MR. STAUFFER:** This was just something, as
18 we sometimes say, around the water cooler?

19 **MS. LARIVIÈRE:** Yes.

20 **MR. STAUFFER:** Okay. What was your
21 reaction, and again I realize a lot has happened over the
22 last 14 or so years, but what was your reaction when you
23 heard this kind of a rumour that Mr. Seguin might have had
24 a complaint brought against him?

25 **MS. LARIVIÈRE:** I didn't believe it.

1 **MR. STAUFFER:** Why not?

2 **MS. LARIVIÈRE:** I just couldn't believe that
3 he was capable of anything like that.

4 **MR. STAUFFER:** The -- again, to understand
5 your knowledge of Mr. Seguin, did you ever have a concern
6 about his sexual identity?

7 **MS. LARIVIÈRE:** There were rumours that he
8 was gay, but that was of no consequence to me.

9 **MR. STAUFFER:** All right. Did he have any
10 particular adults with whom he associated, and by that, I
11 mean not his probationers now but others outside the
12 office, lawyers, whatever? Did you see him with others on
13 a social basis?

14 **MS. LARIVIÈRE:** Well, Ken would go to lunch
15 every day at noon to a restaurant across the street, and he
16 would go with his friend who was Malcolm MacDonald who was
17 a lawyer in our building.

18 **MR. STAUFFER:** All right.

19 **MS. LARIVIÈRE:** And that was pretty much
20 every day.

21 **MR. STAUFFER:** Okay. Were there others that
22 you ever saw him with?

23 **MS. LARIVIÈRE:** That would go to lunch?

24 **MR. STAUFFER:** Yes.

25 **MS. LARIVIÈRE:** I didn't know other people.

1 I think I went once to lunch with them, and I wouldn't know
2 the other people that were there, but Jos van Diepen would
3 go from time to time as well.

4 **MR. STAUFFER:** Okay. Again, what impression
5 did you have of Malcolm MacDonald, if any? Did you know
6 who he was, anything at all about him?

7 **MS. LARIVIÈRE:** I knew that he was in our
8 building, and he was a good friend of Ken's.

9 **MR. STAUFFER:** All right. Did you have any
10 sense of rumours about him, that he had done anything
11 inappropriate in any fashion?

12 **MS. LARIVIÈRE:** At that time?

13 **MR. STAUFFER:** Yes, about Malcolm -- yes,
14 before Ken Seguin's death?

15 **MS. LARIVIÈRE:** No, I did not.

16 **MR. STAUFFER:** And with respect to any other
17 probation officers, beside yourself, did anyone go to lunch
18 with Ken?

19 **MS. LARIVIÈRE:** I think Jos was probably the
20 only one.

21 **MR. STAUFFER:** That's it?

22 **MS. LARIVIÈRE:** That would go with him,
23 yeah.

24 **MR. STAUFFER:** Now, after Mr. Seguin's
25 death, was there any type of change in the office? Was

1 there anything at all that you noticed?

2 **MS. LARIVIÈRE:** Well, it was a pretty
3 devastating thing to have happened, so I think the office
4 staff got closer, we sort of supported each other through
5 that trying time.

6 **MR. STAUFFER:** And I take it that you came
7 back and -- I hope I'm getting this right -- you took over
8 his position?

9 **MS. LARIVIÈRE:** That's correct.

10 **MR. STAUFFER:** Is that right?

11 **MS. LARIVIÈRE:** M'hm.

12 **MR. STAUFFER:** But in terms of the cases
13 that he was supervising, what happened to them?

14 **MS. LARIVIÈRE:** They were not given to me,
15 and they were given to someone who had not been in the
16 office. So it would have been somebody that was more
17 disconnected to Ken because he wouldn't have known him, and
18 took over the cases.

19 **MR. STAUFFER:** So who got ---

20 **MS. LARIVIÈRE:** His name is Don Billard.

21 **MR. STAUFFER:** Okay. And so Mr. Billard
22 took over, as far as you know, all of Mr. Seguin's live
23 files at that point?

24 **MS. LARIVIÈRE:** That's right.

25 **MR. STAUFFER:** Okay. There's -- I think,

1 Mr. Commissioner, surely there may be some comments from
2 one of my friends. But I will just ask you a few brief,
3 general questions about your involvement with anyone coming
4 forward to disclose allegations of inappropriate behaviour
5 by a probation officer.

6 Did this happen to you? Did you speak with
7 a probationer and did that person complain to you about a
8 probation officer?

9 **MS. LARIVIÈRE:** Yes.

10 **MR. STAUFFER:** Can you tell us when that
11 was?

12 **MS. LARIVIÈRE:** The first disclosure I would
13 have received would have been in 1999.

14 **MR. STAUFFER:** All right. And can you tell
15 us the circumstances? How did that come about?

16 **MS. LARIVIÈRE:** Well, this fellow was coming
17 in to have a pre-sentence report prepared for the court,
18 and he did not want to come into the -- inside the office.

19 There was a waiting room, and they had to be
20 let in to the office by another door and then escorted down
21 the hall, and he didn't want to come in the office. And so
22 I could see that he was visibly upset and asked him if he
23 wanted to step outside for some fresh air, and I walked
24 outside with him. And he then asked me if I would talk
25 with him and so we walked quite a bit around the block, and

1 he told me what had happened.

2 MR. STAUFFER: All right. Again, without
3 going into any details -- and certainly don't tell me the
4 person's name -- what is the general overview of what you
5 were receiving from this person?

6 MS. LARIVIÈRE: He explained that he had
7 been sexually abused by Ken and that he had been breached
8 in the past for failing to report, and he just couldn't see
9 himself going back into the place where he had been abused.
10 He had been abused in that office at 502 Pitt Street.

11 MR. STAUFFER: All right. Was it your
12 understanding this was in the actual office Mr. Seguin was
13 occupying?

14 MS. LARIVIÈRE: That's what he said, yes.

15 MR. STAUFFER: And so what did you do with
16 that information?

17 MS. LARIVIÈRE: The information was -- well,
18 we couldn't finish the pre-sentence report interview. So
19 the following day, he called in sick. He couldn't come to
20 his appointment. So I went to his house; spoke with his
21 parents and spoke with him and then he seemed to have a
22 comfort level, and so came -- we came back in; completed
23 the pre-sentence report interview and that information was
24 given to the court at that time in his pre-sentence report
25 interview, and he was not sentenced to probation.

1 **MR. STAUFFER:** All right. You know roughly
2 how old this fellow was when you were talking to him, the
3 age of the probationer?

4 **MS. LARIVIÈRE:** That's a good question. I
5 think probably 30, approximately.

6 **MR. STAUFFER:** Oh, I see, because when you
7 say you spoke to his parents, I assumed ---

8 **MS. LARIVIÈRE:** No, he was older.

9 **MR. STAUFFER:** Fair enough. So with respect
10 to that incident, did that -- was that reported to your
11 office manager, to Mr. Robert?

12 **MS. LARIVIÈRE:** Yes, it was. I completed an
13 incident report explaining the details that he had given
14 me.

15 **MR. STAUFFER:** All right. And do you know
16 if that information went beyond Mr. Robert? That is, did
17 it go up the chain to the next person?

18 **MS. LARIVIÈRE:** Yes, it did. It would have
19 gone to the Regional Office. It would have gone to the
20 Investigation Management Unit, and it would have -- and
21 then he would have been referred to Services.

22 **MR. STAUFFER:** All right. When you say
23 "referred to Services" what do you mean by that expression?

24 **MS. LARIVIÈRE:** What happened was he did not
25 get probation at that time, so I didn't see him again for

1 about three years. And then he came back three years later
2 and was on probation again; and then I got the case at that
3 time. At that point, I had -- we had a new Area Manager,
4 so -- which his name is Claude Legault, and because I knew
5 of what had happened three years prior to that I asked Mr.
6 Legault to sit in on the interview with him. And at that
7 point-in-time he disclosed to Mr. Legault and Mr. Legault
8 provided him with all of the necessary information if he
9 wanted to pursue this civilly or anything like that.

10 And he was given information to attend the
11 Men's Project, to have addiction services, those kinds of
12 things.

13 **MR. STAUFFER:** What year are we talking
14 about as best you can remember?

15 **MS. LARIVIÈRE:** Nineteen-ninety-nine (1999).
16 Oh, but the three years later ---

17 **MR. STAUFFER:** Yes.

18 **MS. LARIVIÈRE:** --- would have been 2002.

19 **MR. STAUFFER:** So subsequent to that
20 incident and perhaps before -- just to be clear here, the
21 first instance in 1999, between that and the 2002 date,
22 does anyone else come forward complaining about having had
23 problems with a prior probation officer?

24 **MS. LARIVIÈRE:** Over the years I've had
25 about six disclosures in all for different people.

1 **MR. STAUFFER:** Right, but before -- before -
2 - I'm sorry, my question now is, in that timeframe from
3 roughly 1999 to 2002, is there anybody else who comes
4 forward during that timeframe?

5 **MS. LARIVIÈRE:** I would have to look up my
6 notes to be sure that it was in that timeframe.

7 **MR. STAUFFER:** Okay, because again, Mr.
8 Commissioner, we may be getting into some questions as to
9 the dates and so on as to when this was disclosed and so
10 on.

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

12 **MR. STAUFFER:** But, Ms. Larivière, you've
13 told us then about six people came to you personally?

14 **MS. LARIVIÈRE:** Yes.

15 **MR. STAUFFER:** And then you're aware of
16 others and we won't get into that right now.

17 **MS. LARIVIÈRE:** Right.

18 **MR. STAUFFER:** But you're aware of others.
19 And I gather, just to go forward in time for
20 a minute, does this continue to be part of the Ministry's
21 protocol, for lack of a better term, what you're describing
22 to me when someone comes forward?

23 **MS. LARIVIÈRE:** Yes. We developed a
24 protocol shortly after. When disclosures started to come
25 in we decided that we would develop a protocol as an office

1 and we did it together.

2 MR. STAUFFER: Okay. And I think we can get
3 into that, Mr. Commissioner.

4 What can you tell us about that then; who
5 are "we" who worked on this?

6 MS. LARIVIÈRE: The staff, the probation
7 staff as well as Mr. Legault.

8 MR. STAUFFER: Okay. So yourself, Mr.
9 Legault -- there's a name, Cardinal ---

10 MS. LARIVIÈRE: M'hm.

11 MR. STAUFFER: --- who has also testified
12 here. Was she involved in that?

13 MS. LARIVIÈRE: Yes, she was.

14 MR. STAUFFER: Okay. And so you folks put
15 together some type of a protocol?

16 MS. LARIVIÈRE: Yes, we did.

17 MR. STAUFFER: Perhaps you can tell Mr.
18 Commissioner about that then. What -- what was developed?

19 MS. LARIVIÈRE: Well, anyone who came into
20 the office who would have been on probation between 1970
21 and 1993, we had a CPIC check done with the police
22 department ---

23 THE COMMISSIONER: M'hm.

24 MS. LARIVIÈRE: --- and if it showed that
25 they were on probation to either Nelson Barque or Ken

1 Seguin, we would ask them if anything inappropriate had
2 happened.

3 And if they did disclose at that point-in-
4 time, then we would discuss what had happened. So we would
5 validate their feelings and support them in their
6 disclosure.

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

8 **MS. LARIVIÈRE:** And then we would work
9 together with them so that we could do the appropriate plan
10 of action so that they could get referred to the
11 appropriate services that they needed.

12 And we documented anything that would come
13 forward by documenting it into the OTIS case notes that we
14 did and also by documenting it with the -- an incident
15 report which was sent to the regional office, and we also
16 would contact police.

17 **MR. STAUFFER:** All right. Now let me ask
18 you, what steps, if any, did you or other probation
19 officers or anyone higher up the chain of command, what did
20 you do to verify the allegations, the complaint?

21 **MS. LARIVIÈRE:** Well, it wasn't up to us to
22 verify the allegations. We would listen to what they had
23 to say and we would validate their feelings about what had
24 happened and we would support them, but it was up to the
25 police to investigate, to see whether or not they would

1 proceed with charges.

2 MR. STAUFFER: So you essentially -- and
3 please take this the right way -- you would write down what
4 they said to you?

5 MS. LARIVIÈRE: Yes.

6 MR. STAUFFER: And as you say, you would
7 then support them and provide references to different
8 agencies that ---

9 MS. LARIVIÈRE: Right.

10 MR. STAUFFER: --- might be able to help
11 them, whether it's addiction counselling or the Men's
12 Project and so on?

13 MS. LARIVIÈRE: Right.

14 MR. STAUFFER: Okay. Did you have personal
15 experience in terms of taking the client offsite to either
16 the police or to other agencies?

17 MS. LARIVIÈRE: Yes, I did.

18 MR. STAUFFER: Where; could you give us an
19 example or two?

20 MS. LARIVIÈRE: I remember one client didn't
21 want to go to the police or didn't feel comfortable going
22 to the police by himself and so arrangements were made with
23 the OPP at that time, Don Genier was the police officer in
24 charge of the case, and we went to his home together. I
25 was with him when he provided his statement to the police

1 officer.

2 **MR. STAUFFER:** All right. And were there
3 any other agencies where you would have taken one or more
4 of these clients? Besides dealing with the police, do you
5 take them anywhere ---

6 **MS. LARIVIÈRE:** I did not take clients
7 anywhere, no.

8 **MR. STAUFFER:** All right. And so there's
9 something called "the response criteria". I guess that's
10 the expression, that's what you've been telling Mr.
11 Commissioner in terms of, if you will, a checklist ---

12 **MS. LARIVIÈRE:** Yes.

13 **MR. STAUFFER:** --- that a probation officer
14 would refer to when somebody came in. Now, the people who
15 came in, the ones who are asked, are they essentially all
16 repeat offenders?

17 **MS. LARIVIÈRE:** The ones that were asked
18 whether or not they were on probation to Ken or Nelson?

19 **MR. STAUFFER:** Yes.

20 **MS. LARIVIÈRE:** Yes.

21 **MR. STAUFFER:** By definition they are.

22 **MS. LARIVIÈRE:** Yes.

23 **MR. STAUFFER:** So someone who is a first-
24 timer, they wouldn't be asked any of these questions?

25 **MS. LARIVIÈRE:** No.

1 **MR. STAUFFER:** The -- was there any thought
2 put to looking up all of the people who had been clients of
3 Mr. Barque and Mr. Sequin, as compared to -- I'm not sure
4 how to describe the process -- but essentially as it
5 happens, you know, someone coming in and you asking them.
6 Was there any kind of steps ever considered that all the
7 clients would be contacted for a potential interview?

8 **MS. LARIVIÈRE:** I don't think I ever thought
9 about that. I don't disagree with the idea; I think it's
10 probably a good one.

11 But I think when these disclosures started
12 coming in, we did the best we could to kind of get through
13 a protocol, create all of this as we were going. It was
14 like a work in progress.

15 I think we did pretty well considering
16 nobody know what we were doing at the time and we -- I
17 think we did a good job, but certainly it got better and
18 better as the years went by.

19 **MR. STAUFFER:** When you say nobody knew what
20 you were doing, who are you talking about, you mean the
21 public or?

22 **MS. LARIVIÈRE:** I just think that nobody
23 considered that this would ever happen in an office; that a
24 colleague would be alleged to have committed these kind of
25 serious allegations.

1 **MR. STAUFFER:** Right. But am I right, you
2 did not publicise this, if you will, there was no --
3 nothing put in the paper or no letters sent to any
4 probationers saying please come in and see us?

5 **MS. LARIVIÈRE:** No.

6 **MR. STAUFFER:** In some kind of a discreet
7 fashion without naming Mr. Barque or Mr. Seguin, but there
8 was no notification to anyone?

9 **MS. LARIVIÈRE:** No, there was not.

10 **MR. STAUFFER:** Okay. In terms of your
11 experience then, this response criteria, this continues to
12 today then when you're -- now -- right now I guess you're
13 not acting in that capacity, but if you were here in
14 Cornwall as a probation officer this is what you'd be doing
15 ---

16 **MS. LARIVIÈRE:** That's right.

17 **MR. STAUFFER:** --- with a repeat offender
18 coming in?

19 **MS. LARIVIÈRE:** It's kind of a at-a-glance
20 look to make sure that all of the protocol is being
21 followed.

22 **MR. STAUFFER:** Right, okay.

23 Now, Mr. Commissioner, I think my friend,
24 Mr. Sherriff-Scott, may have some comments to make because
25 the issue I think -- and I don't want to take away his

1 thunder but the issue is essentially Ms. Larivière would, I
2 think, eventually testify about a whole group of people who
3 have come forward and there's a question of when some of
4 the disclosure occurred, that is pre-April 2005 or post-
5 April 2005, and we would be hearing about both timeframes.
6 We've heard about some of the pre- but we'd be hearing more
7 about that and certainly about the post-.

8 But I think before I say more, Mr. Sherriff-
9 Scott will want to make some comments. Am I right, Mr.
10 Sherriff-Scott?

11 So I think this is probably the appropriate
12 time to -- if you will, Mr. Commissioner, I don't want to
13 catch you flat-footed here, I think he's going to want to
14 say something.

15 We probably will have to hear from Mr.
16 Neuberger for sure and perhaps others and then we will --
17 you'll have to decide as to how much more testimony we'll
18 have to get into.

19 **THE COMMISSIONER:** Okay. I just need to
20 know what we're talking about.

21 **MR. STAUFFER:** Yes.

22 **THE COMMISSIONER:** Unless Mr. Sherriff-Scott
23 confirms the issue.

24 **MR. STAUFFER:** Yes sir.

25 **THE COMMISSIONER:** You're welcome to sit

1 there or sit in the auditorium if you wish.

2 **MS. LARIVIÈRE:** Okay.

3 **THE COMMISSIONER:** All right.

4 **MR. STAUFFER:** Thank you, sir. I'll turn it
5 over to my friend.

6 **THE COMMISSIONER:** And also, it's not a
7 reflection on you at all as to what Mr. Sherriff-Scott's
8 going to object to, I don't think. So don't take it
9 personally.

10 ---**SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. SHERRIFF-SCOTT:**

11 **MR. SHERRIFF-SCOTT:** I've met the witness.

12 **THE COMMISSIONER:** You have?

13 **MR. SHERRIFF-SCOTT:** I have.

14 **THE COMMISSIONER:** In her professional
15 capability?

16 **(LAUGHTER/RIRES)**

17 **MR. SHERRIFF-SCOTT:** No. No, I had the
18 pleasure of meeting her today when I was in Mr. Neuberger's
19 company.

20 So I can tell you, Commissioner, that I rise
21 to object to what will be the introduction of a factual
22 overview by probation and parole office, or what I'll call
23 PPO-CPPO, the Cornwall Probation and Parole Office, which
24 was prepared in part by this witness and which will be led
25 by her counsel and introduced as evidence.

1 **THE COMMISSIONER:** Okay. So now you're
2 talking about a factual overview as opposed to ---

3 **MR. SHERRIFF-SCOTT:** All of this -- the viva
4 voce evidence and the factual overview are overlapping.

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

6 **MR. SHERRIFF-SCOTT:** The genesis of the
7 objection arose when the factual overview which is what is
8 effectively being led orally at the moment ---

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

10 **MR. SHERRIFF-SCOTT:** --- in part was
11 disclosed and we reviewed and we have a concern about post-
12 mandate disclosures which will come up through the
13 instrument of this overview as well as orally with the
14 witness I expect she'll be asked to canvass ---

15 **THE COMMISSIONER:** Mandate ---

16 **MR. SHERRIFF-SCOTT:** --- the document.

17 **THE COMMISSIONER:** Okay.

18 **MR. SHERRIFF-SCOTT:** And I can tell you that
19 I advised of my intention to articulate this concern before
20 you last Monday at the all counsel meeting. Then I wrote
21 to your counsel about it. Mr. Neuberger and I have had
22 some discussions so that he is well aware of my concerns.

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

24 **MR. SHERRIFF-SCOTT:** You may wish to --
25 because this document will be tendered to you and for the

1 purposes of understanding the discussion, have the document
2 handed up and marked for ---

3 **THE COMMISSIONER:** I can do that.

4 **MR. SHERRIFF-SCOTT:** --- identification
5 purposes.

6 **THE COMMISSIONER:** Okay.

7 **MR. SHERRIFF-SCOTT:** And then we can
8 proceed, and I understand Mr. Neuberger has no problem with
9 that approach.

10 **THE COMMISSIONER:** Good. So this is an
11 exhibit for identification purposes only. And the number
12 is, Madam Clerk?

13 **THE REGISTRAR:** Eleven seventy-nine (1179).

14 **THE COMMISSIONER:** Eleven seventy-nine
15 (1179); all right.

16 **MR. SHERRIFF-SCOTT:** Seventeen (17)
17 Commissioner; 1117 or 70?

18 **THE COMMISSIONER:** Seventy-nine (79).

19 **MR. SHERRIFF-SCOTT:** Seventy-nine (79),
20 thank you.

21 Okay, so the basis of the objection I'm
22 going to put forward, Commissioner, is basically a
23 straightforward point that the overview and through the
24 overview of the witness will be asked orally to tender into
25 evidence allegations of historical abuse tendered and

1 reported to the CPPO post-mandate, that is to say after
2 April 15, 2005.

3 **THE COMMISSIONER:** Right.

4 **MR. SHERRIFF-SCOTT:** Those will include
5 reports of allegations from June 2005 to as recently as
6 March 2007. Those are contained from a documentary point
7 of view in the report, and I'll articulate the exact pages
8 of concern. I have no objection to the balance of the
9 overview which purports to deal with disclosure of
10 allegations to the CPPO prior to April 14, 2005 ---

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

12 **MR. SHERRIFF-SCOTT:** --- which is, in fact,
13 the most substantial part of the document. In terms of the
14 specific passages and pages that I want to draw to your
15 attention in the document itself, if you have it ---

16 **THE COMMISSIONER:** Yeah.

17 **MR. SHERRIFF-SCOTT:** --- there are,
18 following the executive summary, starting at page 5, a
19 number of charts which are affected in their statistical
20 compilation and the way they're presented by the post-
21 mandate reports and so they are of a concern.

22 **THE COMMISSIONER:** Okay. Just a minute.

23 Page 5 ---

24 **MR. SHERRIFF-SCOTT:** There are some coloured
25 charts under three headings, four headings -- three

1 headings.

2 **THE COMMISSIONER:** Yeah.

3 **MR. SHERRIFF-SCOTT:** There is a pie chart at
4 page 6 which is again a sort of compilation of statistics
5 and percentages based on the pre- and post-mandate
6 disclosures.

7 Then Commissioner, at Tab 4, which is page
8 45, there is an index of files by monikers. There are no
9 names there so you can turn that up. And when you reach
10 that, if you have that sir, you'll see that the areas of
11 concern are monikers number 20, starting in June '05
12 through inclusive of 32 which is March 8, '07.

13 Thirty-three (33) is a sort of parenthetic
14 addition to the report which is earlier in time; that is of
15 no concern to me.

16 **THE COMMISSIONER:** Okay.

17 **MR. SHERRIFF-SCOTT:** These -- this table
18 demonstrates the receipt of the allegations I say from June
19 to March of '07, June '05.

20 **THE COMMISSIONER:** Right.

21 **MR. SHERRIFF-SCOTT:** Then there are what my
22 friend just discussed with the witness, the response
23 criteria and the forms generated and the information taken
24 in response to those criteria. The PPO staff would collect
25 the information ---

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

2 **MR. SHERRIFF-SCOTT:** --- and the documents
3 that are germane there, sir, are -- I'll just give you the
4 page numbers, they are of the report, pages 127 through
5 inclusive 175. They correspond to what are described in
6 the report as Tabs 24 to 36 as well. So there are page
7 references as well as tab references.

8 **THE COMMISSIONER:** Yeah. So you want --
9 you're objecting from 127 on?

10 **MR. SHERRIFF-SCOTT:** No, 127 ---

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

12 **MR. SHERRIFF-SCOTT:** --- through to 175.

13 **THE COMMISSIONER:** Yes, that's what I mean.

14 **MR. SHERRIFF-SCOTT:** There are pages that
15 follow that. In other words, for example, moniker 33
16 follows.

17 **THE COMMISSIONER:** Okay. So from 127 to 175
18 is what you're objecting to?

19 **MR. SHERRIFF-SCOTT:** That's right, and those
20 correspond to the June '05 to March '07 disclosures as well
21 as to the pages and Tabs 24 to 36 in the report.

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

23 **MR. SHERRIFF-SCOTT:** So it's page 127 to
24 175, Tabs 24 through 36.

25 **THE COMMISSIONER:** I'm with you.

1 **MR. SHERRIFF-SCOTT:** First these documents
2 all reflect the contact with alleged victims and the
3 details of the alleged victims' allegations.

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

5 **MR. SHERRIFF-SCOTT:** They summarize the
6 allegations as reported to CPPO, which is my second point.
7 Third, in some cases, the names of the alleged perpetrators
8 are stipulated. Fourth, and there is a specific
9 illustration of this point at page 139, corresponding to
10 Tab 27 ---

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

12 **MR. SHERRIFF-SCOTT:** --- in other cases, the
13 names of perpetrators and whether they were people who held
14 positions of trust or authority in the community, is
15 neither known, identified, nor was it reported by the
16 alleged victim because the victim refused to identify the
17 name of the perpetrator.

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

19 **MR. SHERRIFF-SCOTT:** They do all share the
20 same fact in common that they are after April 14, 2005.
21 And of interest is the discussion that Mr. Stauffer just
22 had with the witness that the response criteria, that is to
23 say the manner, fashion and directive in which the
24 information was collected, is the same pre and post. In
25 other words, there is no difference.

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

2 **MR. SHERRIFF-SCOTT:** So that's important as
3 it will develop. Just to then sort of give you the legal
4 foundation for the objection, I suggest that the Order in
5 Council that created the Commission closed it with the
6 jurisdiction to hear evidence of allegations received by
7 institutions or reported to them and to investigate those
8 responses, that is to say of the institutions to the
9 allegations received, prior to the 14 of April 2005 and not
10 after that date.

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

12 **MR. SHERRIFF-SCOTT:** My points in this
13 regard are as follows: I would say first, without a cut-
14 off date, your jurisdiction becomes unlimited in time;
15 would create a perpetual Commission effectively and oblige
16 parties to continue to report and disclose on allegations
17 continuously or indefinitely.

18 Indeed, I'd suggest in such an environment,
19 they're would be no end date which could be selected having
20 a rational root in the terms of reference. I note
21 parenthetically, of course, you're directed to the parties
22 at the offset was to disclose up to April 2005.

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

24 **MR. SHERRIFF-SCOTT:** Second, the Order in
25 Council states -- and I just want to briefly allude to the

1 judgement released last week and I handed up copies through
2 Mr. Stauffer. They're there. And my friends have copies.

3 **THE COMMISSIONER:** Thank you.

4 **MR. SHERRIFF-SCOTT:** And Commissioner the
5 page numbers on yours and mine are the same. So if we
6 could just turn to page 5 of the reasons.

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

8 **MR. SHERRIFF-SCOTT:** I just draw your
9 attention of course to the preamble at paragraph 13 of page
10 5:

11 "The whereas allegations of abuse that
12 young people have surrounded the City
13 of Cornwall and its citizens for many
14 years. The police investigations and
15 criminal prosecutions relating to these
16 allegations have concluded. Community
17 members have indicated..."

18 Et cetera.

19 At page 16 of this judgment, the Court of
20 Appeal, in its reasons, at paragraph -- in the marginal
21 column left, foot number 47, said of that preamble and in
22 particular the second sentence in the preamble, in the
23 second sentence of paragraph 47

24 "As noted, that sentence..."

25 referring to the second sentence of the preamble:

1 "...narrows the so-called general
2 inclusive allegations of abuse referred
3 to in the first sentence to those that
4 formed the subject matter of the police
5 investigations and criminal
6 proceedings. Related to these
7 allegations that have concluded, such
8 allegations related to historical
9 sexual abuse of young people in the
10 Cornwall area by persons in authority
11 or positions of trust..."

12 Et cetera, and so that means that the
13 jurisdiction pertains to allegations, I would submit, prior
14 to April 14th, 2005, which spawned -- which refers to
15 received and then second spawned the investigations or
16 prosecutions prior to that date which had concluded. None
17 of these match that criterion.

18 Next, at page 17, in connection with Section
19 2 of the mandate, the Court of Appeal quotes that section,
20 which you no doubt can recite in your sleep, of having
21 heard it so many times, but it made the important statement
22 at the bottom of paragraph 51, in the last -- second-last
23 sentence:

24 "Allegations of historical abuse and
25 allegations of abuse effectively are

1 of Appeal, simply noting your counsel's submissions here
2 and there.

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

4 **MR. SHERRIFF-SCOTT:** And paragraph 14 ---

5 **THE COMMISSIONER:** Yes.

6 **MR. SHERRIFF-SCOTT:** --- at the last
7 sentence, referring to the view taken.

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

9 **MR. SHERRIFF-SCOTT:** And then it refers at
10 page 16 and 17, sir, the bottom of page 16, in paragraph
11 49, to your determination to the same effect. That is to
12 say that the OIC gave you jurisdiction to investigate,
13 involving allegations prior to April 14th, 2005, which is
14 adverted to at the top of page 17 in the same paragraph.

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

16 **MR. SHERRIFF-SCOTT:** Now I would suggest
17 that although the Court of Appeal engaged in the debate
18 which disagreed about the scope of what could be examined
19 prior to April 14th, 2005, it took no exception to the cut-
20 off date analysis.

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

22 **MR. SHERRIFF-SCOTT:** And in page 15,
23 paragraph 44, towards the bottom of paragraph 44, the
24 words:

25 "After referring to the divisional

1 court they would have recognised that
2 the legislative intention in appointing
3 the Inquiry was not to investigate the
4 institutional response to all
5 allegations of abuse that pre-date
6 April 14th."

7 In other words, the Court of Appeal's view
8 is that it's only some and then it went on to describe
9 them. But it's clear that that's the cut-off date,
10 agreeing with you on that point.

11 And then -- so I submit that's the sort of
12 jurisdictional matrix which would make the evidence
13 inadmissible and beyond the jurisdiction of the Commission.

14 Now, to come back to the point I alluded to
15 about the response forms and the nature in which the
16 information is collected. The question is, is it in
17 anyways relevant or otherwise relevant a point debated by
18 the Court of Appeal in the latter stages of the judgment,
19 something to consider for you in this objection? I submit
20 no.

21 First of all, it does not illuminate any
22 difference in practice, pre and post, because the response
23 criteria by which the information is collected and taken,
24 the directive by which staff are to operate and, thus, to
25 interact with the parolees is the same.

1 And I would submit then that is despositive
2 of its relevance in terms of not being relevant because it
3 doesn't show you anything different and, therefore, we
4 can't be investigating post-mandate disclosures and passing
5 judgment on the propriety of the response.

6 The response mechanism is the same pre and
7 post; there's nothing different and, moreover, even if
8 there were something different you would have to make a
9 qualitative judgement about whether there was propriety in
10 the post-mandate disclosure response to make a qualitative
11 judgement about whether or not it reflected adversely on
12 the pre-judge -- pre-mandate response.

13 And so I submit for those reasons that the
14 evidence is not otherwise relevant, and I would, again,
15 refer back to the earlier point that in at least one case
16 which identified even the identity of the perpetrators
17 being reported is absent and, therefore, any description of
18 them being in positions of trust or authority in accordance
19 with how the Court of Appeal passed the jurisdiction, is
20 also absent from that particular paper.

21 Those are my submissions in support of the
22 objection. And so the objection would pertain to those
23 pages, as well as, of course, to the viva voce testimony
24 about the witness on these particular matters, not the
25 others.

1 **THE COMMISSIONER:** So you're saying then
2 that the Court of Appeal is limiting my mandate to
3 investigating allegations of historical sexual abuse of
4 person -- by persons in authority? Is that what you're
5 saying the Court of Appeal is doing?

6 **MR. SHERRIFF-SCOTT:** Well, first of all, I'm
7 saying that the judgment confirms the ruling you made, that
8 there's a cut-off date in the information you can receive,
9 which is April 14th.

10 **THE COMMISSIONER:** No, the last statement
11 you said.

12 **MR. SHERRIFF-SCOTT:** The last statement.
13 Yes, I'm saying the Court of Appeal's disposition -- well,
14 I'll refer to it specifically.

15 **THE COMMISSIONER:** Yes.

16 **MR. SHERRIFF-SCOTT:** It describes -- for
17 example, it contrasted the witnesses in issue in that
18 proceeding and who their perpetrator was ---

19 **THE COMMISSIONER:** Right.

20 **MR. SHERRIFF-SCOTT:** --- with the mandate
21 here which have described as being focused on persons and
22 positions of trust and authority. That was my point.

23 And the point about the document is, in one
24 case at least, which I gave you the page references to, is
25 that information is completely missing.

1 **THE COMMISSIONER:** But you're saying that
2 the evidence that we've heard before, so far, like from the
3 victims ---

4 **MR. SHERRIFF-SCOTT:** Yes.

5 **THE COMMISSIONER:** -- you're saying -- we
6 might have heard somewhere the allegations of abuse were
7 not at the hands of a person in authority. So what are we
8 going to do with that?

9 **MR. SHERRIFF-SCOTT:** Well I'm -- I'm saying
10 the Court of Appeal said what it said, sir. I'm focused on
11 this report and the objection to this information.

12 **THE COMMISSIONER:** Okay.

13 **MR. SHERRIFF-SCOTT:** Thank you.

14 **THE COMMISSIONER:** Thank you.

15 Okay.

16 Thank you.

17 **MR. NEUBERGER:** I just wanted to give you
18 maybe some context, maybe to help with the factual overview
19 and then other parties can speak.

20 **THE COMMISSIONER:** Sure.

21 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. NEUBERGER:

22 **MR. NEUBERGER:** Good afternoon, Mr.
23 Commissioner.

24 **THE COMMISSIONER:** Good afternoon.

25 **MR. NEUBERGER:** The premise behind this

1 factual overview was to try and provide the Commission and
2 all the parties with as comprehensive a set of materials
3 that would cover, not only the allegations that the office
4 had been receiving since 1998, when the first true
5 allegations came forward to that office, but to give a
6 rendering of what information they received and, in
7 particular, how their institutional response evolved from
8 the inception of the protocol to the way they deal with the
9 clients and source that information and take them to the
10 police.

11 It's also how it expanded to other persons
12 who were complaining about abuse, not necessarily at the
13 hands of former probation officers as they allege.

14 So it tries to encompass a fairly
15 comprehensive analysis of that, and there's been a lot of
16 time and effort put into creating the document to help the
17 Inquiry look at that topic.

18 Much of the disclosures and, in particular,
19 the monikers, which are indicated in my friend's, Mr.
20 Sherriff-Scott's objection, one, two, three, four, five of
21 them, in particular, deal with allegations related to a
22 former probation officer.

23 And in reading the Court of Appeal decision,
24 it would be my submission that within the -- certainly the
25 ambit of your review here, any allegation of sexual abuse

1 by an alleged former probation officer, whether it's
2 reported in 2006 or 2007 is immaterial.

3 The fact that it is alleged to have occurred
4 prior to 2005 fits squarely within your mandate. And we
5 were primarily focused on how this office received these
6 disclosures; how they dealt with it; and how the
7 institutional response continues. Because what's one thing
8 to get across to the Commission is that the institutional
9 response, in particular, from the local office will
10 continue in time and will continue through 2008, probably
11 2009, 2010 because more allegations may come forward or
12 some of these individuals may remain with probation. So
13 it's a continuing type of institutional response.

14 So with that being said, what I'm indicating
15 to you is that, of the monikers that are in the section
16 that Mr. Sherriff-Scott is objecting to, at least five of
17 those refer to persons who are alleged to have been,
18 they're probation officers, and I think that's properly
19 within your mandate and properly for Ms. Larivière and the
20 actual document itself to attest to.

21 As to the other people, there's many of them
22 where the alleged perpetrator is unknown and, even where
23 identified, may not fit within a person who is either a
24 person in authority or a position of trust, and I'm going
25 to leave that to yourself and to Mr. Stauffer.

1 Subject to any questions, I am going to just
2 sit down then.

3 **THE COMMISSIONER:** No, fine.

4 Mr. Manson?

5 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. MANSON:

6 **MR. MANSON:** Yes, Mr. Commissioner, I have a
7 number of submissions to make on this.

8 I oppose Mr. Sherriff-Scott's position. I
9 think the "post-mandate", as he put it, disclosure, data
10 and information is relevant, and I disagree with his
11 reading of the Court of Appeal.

12 If I could go to that, Mr. Commissioner, I
13 think number one, the Court of Appeal did not, anywhere use
14 April 14th, 2005, as a cut-off for your mandate. What it
15 did was it said your principal area of inquiry is into
16 "historical allegations of sexual abuse", meaning as
17 compared to current allegations. So it's allegation about
18 abuse in the past. That's the first criteria.

19 The second is "the allegation must be in
20 respect of a person in authority."

21 There is no reference to cut-off dates as to
22 times of disclosure, in my review of the judgment.

23 If I could just briefly look at it, Mr.
24 Commissioner, certainly, in the last sentence of paragraph
25 6, at the bottom of page 2. When the court paraphrases

1 Commission counsel's argument, they do so as follows:

2 "Commission counsel, on the other hand,
3 submits that the subject matter of the
4 Commission extends to all cases..."

5 And there is a description of the cases.

6 And then it says:

7 "...so long as the allegations were made
8 before April 14th, 2005."

9 In my respectful submission, Mr.
10 Commissioner, that cut-off date does not come back into the
11 ultimate ruling of the court.

12 If we could look at two paragraphs in
13 particular, and then I want to come back to the meaning of
14 "reasonably relevant."

15 Paragraph 44, Mr. Commissioner.

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

17 **MR. MANSON:** "Had the Commissioner or the
18 majority of the Divisional Court
19 referred to the Hansard extracts and
20 the factual matrix as outlined by Det.
21 Supt. McQuade in her affidavit filed
22 with the Divisional Court, they would
23 have recognized that the legislative
24 intention in appointing the Inquiry was
25 not to investigate the institutional

1 response to all allegations of abuse in
2 the Cornwall area that pre-date April
3 14th, 2005."

4 That's the rejection of Commission counsel's
5 view.

6 The next sentence, at the top of 16:

7 "Rather, the legislative intention in
8 ordering the Inquiry was more focused:
9 the legislature sought to have the
10 Commissioner investigate the
11 institutional response to allegations
12 of historical sexual abuse of young
13 people in the Cornwall area by persons
14 in authority or positions of trust and
15 recommend ways in which those
16 institutions could better respond to
17 this type of allegation."

18 Note, Mr. Commissioner, when the two views
19 are juxtaposed, the second view, the view that the Court of
20 Appeal adopts as to legislative intention makes no mention
21 to pre or post-mandate disclosure.

22 The second relevant paragraph is paragraph
23 55, which I think is even clearer, Mr. Commissioner.

24 "When paragraph 2 of the Order in
25 Council is read as a whole and in

1 conjunction with the other provisions
2 of the Order in Council, including the
3 preamble, it is apparent that the
4 legislature was directing the
5 Commissioner to look at institutional
6 policies and practices, past, present,
7 and future, in responding to
8 allegations of historical abuse of
9 young people in the Cornwall area.
10 Such allegations would include those
11 that were the subject of the Project
12 Truth investigation, as well as any
13 similar allegations of historical abuse
14 of young people by persons in authority
15 or positions of trust that were not
16 investigated by Project Truth or that
17 came to light after the Project Truth
18 investigation ended."

19 In other words, Project Truth material?

20 Absolutely; stuff that came to light afterwards?

21 Absolutely.

22 And again, Mr. Commissioner, no indication
23 of a mandate as the closing date for disclosure -- for
24 amenability to the jurisdiction, subject to disclosure pre
25 or post-mandate.

1 So I disagree with Mr. Sherriff-Scott's
2 reading of what the Court of Appeal has said about mandate
3 and, again, just to summarize, your mandate is to focus on
4 historical sexual abuse allegations and allegations against
5 persons in authority.

6 And, as a result, I would certainly agree
7 with what Mr. Sherriff-Scott and Mr. Neuberger said if
8 there are allegations in respect of unknown perpetrators,
9 it's impossible to know they may be historical, but they
10 probably don't fit in within the mandate. The bulk,
11 though, are about probation officers.

12 And I would submit they're relevant
13 regardless of the date of disclosure, Mr. Commissioner, and
14 especially the statistical data because it gives you a
15 sense of the scope of your mandate. It gives you a sense
16 of the scope of the problem that institutions faced, which
17 is one way to think about institutional response.

18 And until this report came forward, Mr.
19 Commissioner, we had a much more limited sense of scope and
20 if I could just refer you to two more paragraphs, I'll be
21 very brief, Mr. Commissioner.

22 Paragraph 21 is the discussion of what
23 relevance -- the court makes it clear that you ought to be
24 looking at those matters central to your mandate, but you
25 could also look at matters outside your mandate, if it's

1 reasonably relevant.

2 And in paragraph 21, you see they rely on
3 the famous -- they rely on the case of *Bortolotti* and in
4 the quotation from Justice Howland, as he then was, they
5 rely on the famous American evidence called *McCormick* at
6 the bottom of that paragraph.

7 "I would adopt the statement in
8 *McCormick*..."

9 And it's quoted:

10 "Relevant evidence, then, is evidence
11 that in some degree advances the
12 inquiry, and thus has probative
13 value..."

14 I would submit knowing the scope of the
15 problems at Corrections, particularly, advances the scope
16 of the Inquiry.

17 And if we then look -- this is my final
18 paragraph, Mr. Commissioner, the Court of Appeal, in fact,
19 gives an example of reasonably relevant material, outside
20 the subject matter. They start their discussion at
21 paragraph seven -- 64, where they repeat *Bortolotti* and
22 say:

23 "It would meet that test if it had a
24 bearing on an issue to be resolved and
25 could reasonably, in some degree,

1 advance the Inquiry."

2 I've already made that submission, Mr.
3 Commissioner. But if you turn down to paragraph 70 they
4 give an example, and it's an example in relation to C-12,
5 C-13 where they say:

6 "By way of example, studies that have
7 explored the systemic responses of
8 institutions such as the police to
9 general allegations of abuse made by
10 young people might well pass the
11 reasonable relevance test."

12 I would submit that the document that Ms.
13 Lariviere is going to put into evidence is, in essence, a
14 general comprehensive overview. It's not a question of
15 looking at the specific, factual allegations. It's simply
16 looking at these are the number of disclosures to us, this
17 is how they came about. This is what we've done with them.
18 And it gives you an idea both of institutional response and
19 the scope of the problem.

20 I would submit, therefore are reasonably
21 relevant -- even if they're not within the subject matter.
22 But I submit they are within the subject matter.

23 Those are my comments on this, Mr.
24 Commissioner.

25 **THE COMMISSIONER:** Thank you.

1 Mr. Horn?

2 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. HORN:

3 MR. HORN: I agree with the position of the
4 counsel for CCR, but one of the things that I was looking
5 at was on page 5, paragraph 13, which indicates that the
6 Commission was really established to encourage individuals
7 -- individual and community healing.

8 Now, if there is a feeling within the
9 community that there is going to be some stifling of
10 individuals be coming forward, to being allowed to come to
11 the Commission to express what has happened to them as a
12 result of institutional response, the -- they -- it would
13 stifle, basically, the feeling in the community that again,
14 the victims are not going to be given an opportunity to
15 talk about what has happened to them.

16 So I think that the mandate that was given
17 to the Commission was to encourage people to come forward,
18 and I think that if there's any feeling that there's going
19 to be a cut-off day, there's going to be a time limit on
20 these things, then individuals will feel somehow that
21 they're being stifled.

22 And I think that that's one of the messages
23 that is -- that the legislation was not -- did not want to
24 go into the community, and I think there was -- it was an
25 encouragement for people to come forward and not to feel in

1 any way that they're going to be hindered in any way of
2 coming forward to the Commission. And I think that that
3 would be -- that would help bring the healing that is
4 necessary to the community and I think that the -- what is
5 disclosure, also?

6 Is -- does it have to be a disclosure that
7 had to go to either probation or to the police, or any -- I
8 mean, there is a continuing disclosure, every time an
9 individual comes to the Commission and speaks. They are
10 again disclosing things that have happened to them, and
11 they may have forgotten in the past, and so, while they're
12 on the stand, they're -- this is after April the 14th, 2005,
13 they're continuing to disclose things that have happened in
14 historically.

15 So does that mean that that evidence will
16 not be allowed in? I mean, it's like -- it's stifling the
17 ability for people to come forward and to be free and feel
18 free that they can -- they can talk openly about things
19 that have happened in their past.

20 **THE COMMISSIONER:** Thank you.

21 Mr. Neville? I'm sorry, Mr. Lee.

22 Sorry.

23 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. LEE:

24 **MR. LEE:** Good afternoon, sir, I'll be very
25 brief.

1 I adopt in their entirety the submissions of
2 Professor Manson; I think he interprets the case exactly
3 right.

4 He pointed you to paragraph 55, where the
5 Court of Appeal noticed, or noted that the legislature was
6 directing you to look at institutional policies and
7 practices past, present, and future in responding to
8 allegations of abuse.

9 I just wanted to point out that the Court of
10 Appeal went to the trouble of repeating that past, present,
11 and future principle in paragraph 62 of the decision, under
12 the heading, "Conclusion on the Subject Matter of the
13 Commission" which is presumably the Court of Appeal's
14 attempt to clearly state its interpretation what your
15 subject matter is and again, that past, present, and future
16 ruling goes in there, as well.

17 Thank you.

18 **THE COMMISSIONER:** Thank you.

19 Mr. Neville?

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

21 **MR. NEVILLE:** Good afternoon, Mr.
22 Commissioner.

23 **THE COMMISSIONER:** Good afternoon.

24 **MR. NEVILLE:** I, in brief, adopt the
25 position and submissions of Mr. Sherriff-Scott and would

1 refer you, if I could, to their reasons in the Court of
2 Appeal at page 16, paragraph number 2:

3 "Failure to consider relevant wording
4 in the preamble."

5 And Justice Moldaver points out that there
6 are two sentences in the preamble; the one commencing with
7 "Whereas allegations..." and then, the second one
8 commencing with, "The police investigations..."

9 At paragraph 46, he says:

10 "In defining the subject matter of the
11 Inquiry in broad terms, the
12 Commissioner paid particular attention
13 to the first sentence of the preamble."

14 And then he goes on, paragraph 47.

15 "With respect, the Commissioner's
16 analysis ignores the second sentence of
17 the preamble. As noted that sentence
18 narrows the so-called 'general
19 inclusive' allegations of abuse
20 referred to in the first sentence, to
21 those that form the subject matter of
22 police investigations and criminal
23 proceedings related to these
24 allegations that have concluded. Such
25 allegations related to historical

1 sexual abuse of young people in the
2 Cornwall area by persons in authority
3 or positions of trust that were the
4 subject of the Project Truth
5 investigation."

6 One just goes back a page, sir, to paragraph

7 43:

8 "The court through Justice Moldaver
9 summarized..."

10 **THE COMMISSIONER:** I'm sorry; where is it?

11 **MR. NEVILLE:** I'm going back, now, to
12 paragraph 43, sir on page 15.

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

14 **MR. NEVILLE:** "The court summarizes what,
15 in its reasons, it ruled was the
16 factual matrix that ought to have been
17 considered, and they in turn did
18 consider, which was that of the
19 affidavit of Detective Superintendent
20 McWade in the Hansard extracts, and
21 summarized the factual underpinning of
22 the Inquiry's mandate in the three
23 points set out there: The allegation
24 of a clan of paedophiles; the
25 allegation of prominent local citizens

1 conspiring to cover up those
2 activities, and Project Truth and the
3 prosecutions it spawned, failed to
4 generate satisfactory results and a
5 cloud of suspicion and mistrust
6 continues to hang over the citizens of
7 Cornwall."

8 So taking that and then plugging it into the
9 following paragraphs on the next page, in my submission,
10 that was what the Inquiry was meant to get at.

11 And what did Project Truth fail to
12 accomplish by leaving the cloud hanging, and that would not
13 include disclosures made after the date of the mandate.

14 **THE COMMISSIONER:** So what you're saying
15 then, is effectively the Court of Appeal is limiting me to
16 those investigations investigated by Project Truth, even if
17 those, and limiting it further, that if Project Truth
18 investigated allegations of sexual abuse that were not of
19 persons in authority, I couldn't look at those, either.

20 Is that what you're saying?

21 **MR. NEVILLE:** On the latter point, I would
22 say, yes, that is what they're saying. That it is
23 restricted to persons in authority or positions of trust.

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

25 **MR. NEVILLE:** And, yes, in my interpretation

1 of the reasons, they are saying it is what Project Truth
2 failed to accomplish.

3 **THE COMMISSIONER:** Okay.

4 **MR. NEVILLE:** That is how I read the
5 judgement, in particular the paragraphs that I've referred
6 you to.

7 Thank you.

8 **THE COMMISSIONER:** Thank you.

9 Mr. Chisholm?

10 **MR. CHISHOLM:** Good afternoon, sir; no
11 further submissions at this time thank you.

12 **THE COMMISSIONER:** All right.

13 Ms. McIntosh?

14 **--- SUBMISSIONS BY/REPRÉSENTATIONS PAR MS. McINTOSH:**

15 **MS. McINTOSH:** Good afternoon, Mr.
16 Commissioner.

17 In my respectful submission, there's a
18 difference between incidents of alleged historical abuse
19 and policies, and while the Court of Appeal certainly said
20 -- and I agree, with respect -- that you're entitled to
21 look at policies past, present, and future, in my
22 respectful submission there is a cut-off date for looking
23 at incidents, and that is April 14th of 2005.

24 The reason the Court doesn't decide that
25 issue is because everybody agreed that that was at the

1 outside the cut-off date if you like and then there was an
2 argument about what other criteria should apply.

3 And in the end, in my respectful submission,
4 the Court of Appeal said, not only does the incident have
5 to be before April the 14th, 2005 but it has to concern his
6 historical abuse and abuse by a person in authority.

7 Now my difficulty with -- with the report
8 and it may just be mine, I'm not sure if I'm understanding
9 what Mr. Neuberger said correctly, if he said -- and
10 perhaps I could get some clarification from this at the
11 appropriate time, but Mr. Sherriff-Scott objects to items
12 20 to 32 on the list. I thought I understood Mr. Neuberger
13 to say that of those items, that at least five of them
14 concerned incidents before April 14th, 2005. I don't know
15 if I understood that correctly. So ---

16 **THE COMMISSIONER:** Is that what he's saying?

17 **MS. McINTOSH:** Yes, yeah. Yes he indicated
18 that that's correct, so that if the others concerned
19 incidents after April the 14th, 2005 then I would agree with
20 Mr. Sherriff-Scott that they are not within the mandate.

21 Of those five that are prior to April the
22 14th, 2005, it seems to me that one still has to ask the
23 questions, is this an allegation of historical abuse and is
24 it by a person in authority?

25 And if the answer to that is, yes, then I

1 think that focusing on the date of the incident and not the
2 disclosure is the appropriate thing and you could look at
3 all of the information about those five things.

4 Now with respect to the others that are not
5 incidents prior to April the 14th, 2005, Mr. -- Professor
6 Manson would argue, "Well, they're relevant to show the
7 scope of the problem, the numbers and so on" and with
8 respect to that I would say then that possibly the charts
9 at pages 5 and 6 and at page 45 are all right.

10 Even if they incorporate incidents after
11 April the 14th, 2005 if you want to know that the scope of
12 the problem that continues to today and the fact that
13 policy is still being used to address those and so on.

14 But certainly, the detailed description of
15 everything outside those five that occurred before April
16 the 14th, 2005 would not be okay, because that would -- I
17 agree with Mr. Sheriff-Scott -- lead you into a qualitative
18 analysis of what happened with those incidents after April
19 the 14th, 2005.

20 Those are my submissions, Mr. Commissioner.

21 **THE COMMISSIONER:** So what -- what if --
22 would it be important to know whether institutions dealt
23 with allegations of historical abuse of persons in
24 authority differently than persons -- alleging historical
25 abuse of Joe Blow? Wouldn't that be a reasonable -- while

1 the main focus obviously has to be on the problem that we
2 had, that was here in Cornwall, wouldn't that be relevant
3 to me; to see how people, you know if there was a
4 difference between the way they treated those -- between
5 the two allegations?

6 **MS. McINTOSH:** I think it could be, Mr.
7 Commissioner, I don't know that it -- that kind of inquiry
8 needs an inquiry into the underlying circumstances about
9 Joe Blow and the institutional response to Joe Blow.

10 I mean that can be achieved by asking
11 whether there was anything different about this particular
12 investigation into a person of -- in authority, for
13 example, rather than a full blown inquiry into another set
14 of circumstances.

15 Perhaps you can put the other set of
16 circumstances to someone as well, as an example of where
17 something happen differently, but to inquire into I think
18 would be -- would be to exceed the mandate.

19 **THE COMMISSIONER:** Thank you.

20 **MS. McINTOSH:** Thank you.

21 **THE COMMISSIONER:** Mr. Crane?

22 **---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. CRANE:**

23 **MR. CRANE:** Good afternoon Mr. Commissioner.

24 Counsel for the Cornwall Police support the
25 motion initiated by the Diocese and we echo the submissions

1 of Mr. Sherriff-Scott as it pertains to the April 14th, 2005
2 cut-off.

3 **THE COMMISSIONER:** Thank you.

4 Mr. Kozloff?

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

6 **MR. KOZLOFF:** Good afternoon, sir.

7 **THE COMMISSIONER:** Good afternoon.

8 **MR. KOZLOFF:** We support the position of Mr.
9 Sherriff-Scott, as it has been clarified by the submissions
10 of Ms. McIntosh.

11 **THE COMMISSIONER:** Thank you.

12 And Mr. Carroll?

13 --- SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. WILLIAM CARROLL:

14 **MR. CARROLL:** The OPPA supports the position
15 taken by Mr. David Sherriff-Scott and would direct your
16 attention and suggest that in coming to the conclusion that
17 you come to in this issue that you review most carefully
18 the words of Justice Moldaver, at paragraph 59 and 60. I
19 think they're instructive of what the Court of Appeal's
20 views were.

21 With respect, these words of the
22 Commissioner do not sit well the expense in view he took of
23 his mandate. As already indicated by interpreting the OIC
24 as did, the Commissioner ascribed to himself a mandate that
25 is truly breathtaking in its scope.

1 By defining the words historically as he
2 did, the Commissioner gave himself jurisdiction to assist
3 the response of various institutions, past, present and
4 future, including the justice system, police, CAS and the
5 like, to any and all allegations of sexual abuse made by
6 young people in the Cornwall area, including historical
7 allegations of abuse, such as those by Project Truth and
8 allegations of sexual assault, such as those reported by C-
9 12, presumably from the date of Cornwall's inception in
10 1834 to April 14th, 2005, the date on which the Commission
11 was formed.

12 In my respectful submission, that paragraph
13 and the following one will be of assistance to you in
14 coming to your determination on this motion.

15 Thank you, sir.

16 **THE COMMISSIONER:** Mr. -- you haven't
17 argued -- sorry, who's next?

18 **MR. STAUFFER:** I don't think Mr. Neuberger
19 wants to say anything further.

20 **THE COMMISSIONER:** Okay.

21 ---SUBMISSIONS BY/REPRÉSENTATIONS PAR MR. STAUFFER:

22 **MR. STAUFFER:** So Mr. Commissioner, I mean
23 the Commission to some extent, counsel on behalf of the
24 Commission is taking somewhat of a neutral position on
25 this. However, I would refer to the comments raised by my

1 friend, Mr. Manson, two points which I support and agree
2 with.

3 The first is the thrust of this decision, in
4 my respectful submission is, what is the historical
5 response -- sorry, what is the response of the institutions
6 to the historical abuse, what is the response?

7 This witness and others perhaps will speak
8 to the response.

9 I agree with Professor Manson as well that
10 there is no cut-off date of April 14th, 2005 espoused by the
11 Court of Appeal.

12 Our colleague perhaps, who was Commission
13 counsel before the Court of Appeal, seems to have given
14 that impression, but the court itself does not choose that
15 date, in my respectful view.

16 I've been trying to canvass with Mr.
17 Neuberger and, Mr. Commissioner, we may have to deal with
18 this matter tomorrow, as to whether any of the abuse which
19 is contained in the factual overview actually occurred
20 after April 14th, 2005.

21 There is some question about that right now,
22 factual question. It may be that all of the abuse --
23 allegedly occurred before April 14th of 2005.

24 The second point and this I suggest is a
25 very important one in this. I believe Mr. Manson raised

1 this as well. The Court of Appeal makes it clear at page
2 16 of my copy, at least, specifically at paragraph 68. It
3 talks of positions -- a position of trust or authority.

4 Again, not to get into semantics right now
5 but certainly the notion of trust is, in my respectful
6 view, quite an elastic term and would not be limited -- and
7 I just take as examples, to priests, probation officers,
8 lawyers and so on. It may very well encompass, for
9 example, parents. It may encompass others where the person
10 is an adult and the alleged victim is a minor so the -- I
11 would suggest a broad reading of that expression "trust or
12 authority" of paragraph 68 of the decision.

13 So Mr. Commissioner, to conclude the
14 evidence as I believe Mrs. Larivière would tell us is
15 showing all of the work that the Ministry has done -- and I
16 commend all of them for all of the work they put in, their
17 lawyers and others -- to try to put together this very
18 large overview. It does show the response and it shows to
19 you what the Ministry has done from 1999 onwards. So the -
20 - it will be of assistance to the Commissioner, I would
21 suggest to you, sir, to your report to hear from Ms.
22 Larivière with respect to all of the cases. Again, we
23 would not go into detail; that is not the intention. We
24 are not going to go into names and we're certainly not
25 going to suggest for a moment that anyone has proved

1 anything; that's not the position, I'm sure, of yourself
2 and certainly of your counsel, but it is to demonstrate
3 what the Ministry, in this case, has done when faced with
4 Mr. Seguin and Mr. Barque. So those are my respectful
5 submissions. Thank you, sir.

6 **THE COMMISSIONER:** Thank you.

7 **MR. MANSON:** Mr. Commissioner, can I clarify
8 one thing?

9 **THE COMMISSIONER:** Sure.

10 **---FURTHER SUBMISSIONS BY/REPRÉSENTATIONS SUPPLÉMENTAIRES**

11 **PAR MR. MANSON:**

12 **MR. MANSON:** To follow up on my comments
13 about scope, the most interesting and, I think, relevant
14 part of scope is the data that relates to Seguin and
15 Barque.

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

17 **MR. MANSON:** The other stuff -- a disclosure
18 to a probation officer about a teacher -- well, there's one
19 of those. That doesn't really help you understand scope
20 and we're looking at the Ministry responsible for
21 probations and its two probation officers that we're
22 interested in. It seems to be that that's relevant and
23 illuminating, to use Mr. Sherriff-Scott's words, regardless
24 of whether the disclosure is made -- was made in the early
25 '90s, in the early 2000s or after your mandate was

1 established, Mr. Commissioner.

2 **THE COMMISSIONER:** What -- what about the --
3 the -- is it relevant for me somewhere along the line to
4 look at the the number of disclosures after the cut-off
5 date, you know, after the Order in Council; isn't that
6 relevant to me?

7 **MR. MANSON:** Well, it would certainly seem
8 to me my submission would be, if the day after your mandate
9 was established, someone walked into probation and said,
10 "Here is the list of 43 names of people who were abused by
11 Ken Seguin..."

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

13 **MR. MANSON:** --- what you would do with the
14 essence of those complaints is completely another matter,
15 but the fact that we now went from a small number to 21 to
16 64 would be relevant to scope. It's the gross data that is
17 relevant, plus the institutional response. I certainly
18 agree that the details are not on the table and the details
19 that come from case notes, they may have all sorts of
20 inaccuracy. That's not on -- that's not illuminating to
21 you.

22 **THE COMMISSIONER:** Okay, but -- but just a
23 second now, are you saying that, you know, there -- the --
24 from one -- the pages that Mr. Sherriff-Scott -- are you
25 saying that that should be cut out and just ---

1 **MR. MANSON:** No, I'm saying the detail of
2 the institutional response may be illuminating; the details
3 of the particular allegations -- they're not being recorded
4 by professional police officers; they haven't been proven
5 et cetera -- that's not especially helpful. The fact that
6 there is a -- how the institution responds to it, maybe ---

7 **THE COMMISSIONER:** Right.

8 **MR. MANSON:** --- that detail is interesting.

9 **THE COMMISSIONER:** Okay. Mr. Sherriff-
10 Scott?

11 --- **FURTHER SUBMISSIONS BY/REPRÉSENTATIONS SUPPLÉMENTAIRES**
12 **PAR MR. SHERRIFF-SCOTT:**

13 **MR. SHERRIFF-SCOTT:** I fundamentally
14 disagree with Mr. Manson's view of the scope of the
15 mandate. I think there's a sort of putting the cart before
16 the horse here which is there's no cut-off date and you can
17 decide what you're going to look at as opposed to there's a
18 cut-off date subject to residual discretion to determine
19 what is germane potentially to what comes before. Mr.
20 Manson's view of the universe is, you can decide virtually
21 anything and I submit that is -- well, first of all, it's
22 contrary to any practical interpretation of the OIC; it
23 would run contrary to the judgment, moreover, it just
24 doesn't make practical sense. If you have some residual
25 discretion -- and they seem to imply you do, subject to the

1 tests, then fine, that's another matter than not having a
2 cut-off date.

3 **THE COMMISSIONER:** Okay, but -- so what
4 about -- and I -- why -- why would we have had this in the,
5 you know, in the corporate presentation about what we've
6 done now to change things? You know, I thought maybe that
7 would have been the place to hear, but if you cut out all
8 of the -- and I don't know, I'm going to have to read this.
9 All right, if somebody comes in and says, I was abused by a
10 probation officer, okay, period. Okay, and so this is what
11 we did; we sat down, we offered this, we did this, we did
12 that, and we brought it along.

13 **MR. SHERRIFF-SCOTT:** Well, I think you'd
14 have to make your -- inquire into your mandate and say,
15 when; "when was this allegation reported to the CPPO?"

16 **THE COMMISSIONER:** No -- okay, so -- yes,
17 let's assume it's before the mandate. No, no, let's assume
18 that the -- the offence took place before the mandate.

19 **MR. SHERRIFF-SCOTT:** Yes.

20 **THE COMMISSIONER:** You say that doesn't
21 help?

22 **MR. SHERRIFF-SCOTT:** If the disclosure is
23 post-April ---

24 **THE COMMISSIONER:** Right.

25 **MR. SHERRIFF-SCOTT:** --- yes, I'm saying I -

1 - I agree with the proposition you ascribe to me.

2 **THE COMMISSIONER:** Okay. Now, what about if
3 the purpose for it is to show -- look at -- this is what --
4 how we've learned from our mistakes or this is how we
5 progressed in the way we treat allegations?

6 **MR. SHERRIFF-SCOTT:** Well, they may give you
7 the policies and procedures that they now have in place and
8 Ms. McIntosh has made a point on that; the factual matrix
9 involved in it is not something, I submit, you can inquire
10 into to test.

11 **THE COMMISSIONER:** The -- the factual
12 matrix?

13 **MR. SHERRIFF-SCOTT:** In other words, the
14 basis of the -- the allegations -- the basis of the
15 allegations, the details of the allegations et cetera. The
16 perpetrator -- all this material is not available for
17 inquiry. I submit that the terms of reference make it
18 clear that it's to allegations that were received by the
19 institutions, how they dealt with them and how that
20 happened prior to April 14, 2005, not yesterday or six
21 months from now or the day before your report is issued.

22 **THE COMMISSIONER:** Are we being -- I -- I --
23 I can ---

24 **MR. SHERRIFF-SCOTT:** I know you ---

25 **THE COMMISSIONER:** --- see your point.

1 **MR. SHERRIFF-SCOTT:** I know you understand
2 that.

3 **THE COMMISSIONER:** What -- what -- what I'm
4 just trying to say is what about -- what's wrong with
5 looking at how the institution responds to things now and
6 so they come up and they say, look at, here's a case where
7 we did pretty good?

8 **MR. SHERRIFF-SCOTT:** No, I submit that's not
9 permissible.

10 **THE COMMISSIONER:** Okay.

11 **MR. SHERRIFF-SCOTT:** But if you want to look
12 at their policies from a practical point of view, you may
13 find that of assistance, but I submit you're not permitted
14 to investigate and inquire into the allegations and measure
15 whether they live up to their policies in -- as -- let me
16 take you back to my position. Taking your case, you would
17 submit, okay, they've changed their thing after April 2'05;
18 here's their thing and so shouldn't we find out whether
19 that's good, measuring that versus the past? I say, no,
20 because when you're doing that, what you're constrained
21 from doing, for example, is looking at their current
22 policies and then looking at the facts below them which
23 generate a response in saying, you got it right; you got it
24 wrong; you've got to do better. What you're talking about,
25 I submit, or what I understand your exchange to represent

1 to me is, well, we did it wrong; well, we -- we had
2 potential shortcomings in 1991 or 2001 and we've tried to
3 remedy these with these procedures.

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

5 **MR. SHERRIFF-SCOTT:** But I submit, you're
6 not allowed to then take the factual matrix of an
7 allegation that's applied to those procedures and measure
8 whether there's sufficiency there and receive information
9 for that purpose.

10 **THE COMMISSIONER:** Okay, I see what you
11 mean.

12 **MR. SHERRIFF-SCOTT:** Or otherwise, I -- I --
13 moreover, the fact is, they may say to you, look at our
14 brand new, shiny car; it's wonderful; it does all the
15 things that you want it to do, Commissioner.

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

17 **MR. SHERRIFF-SCOTT:** But they may not in
18 reality in the driving of it, live up to the expectation,
19 but that's not for this Inquiry.

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

21 **MR. SHERRIFF-SCOTT:** And moreover, the
22 analysis of the facts, as compared to the past, is of no
23 assistance, I submit, either. Now, just to be clear on
24 what I said -- did you want to say something? I submit
25 that your counsel took this position before the Court of

1 Appeal that there was a cut-off date and that they could
2 look at most everything from a broad point of view and the
3 debate at the Court of Appeal was on the scope of what
4 could be looked at prior to April 14th, not whether that was
5 a cut-off, moreover, the Court of Appeal says -- recounts
6 your ruling to the effect there was a cut-off and I -- the
7 reasons make it clear that the debate was not the cut-off,
8 but the scope of what could be looked at prior to that
9 date.

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

11 **MR. SHERRIFF-SCOTT:** Absolutely, I see
12 implicit in this judgment is the finding of a cut-off
13 otherwise, the policy concern of an unlimited scope raises
14 its head in the circumstances.

15 So those are my submissions, subject to any
16 further ---

17 **THE COMMISSIONER:** No, that's fine.

18 Thank you.

19 **MR. SHERRIFF-SCOTT:** Thank you, sir.

20 **MR. NEUBERGER:** Sorry, could I ---

21 **THE COMMISSIONER:** Yeah, sure.

22 --- FURTHER SUBMISSIONS BY/REPRÉSENTATIONS SUPPLÉMENTAIRES

23 PAR MR. NEUBERGER:

24 **MR. NEUBERGER:** Two things; one I -- this is
25 why contextually I wanted to address this at the beginning.

1 The majority of the information in that
2 factual overview is about responses, active responses that
3 started in 1999 up to 2005. What may be occurring after
4 2005, to a large extent, is all very similar to what
5 happened before.

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

7 **MR. NEUBERGER:** So -- and that is their
8 specific response.

9 There was a comment you made about the
10 corporate presentation, I think through the corporate
11 presentation there was a very comprehensive overview of
12 what's in place and what has changed over time, because
13 we're talking some 30-odd years.

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

15 **MR. NEUBERGER:** And what you're receiving
16 now through institutional response evidence is actually
17 what people were doing.

18 So when she testifies as a probation
19 officer, what she received in 1999, what she did as a
20 result of that, what other probation officers did and
21 that's what the factual review is trying to drive you.

22 And so there isn't much in that document
23 post-2005 that should really be any different than what was
24 pre-2005.

25 And just to clarify for what my friend said.

1 When we look at these numbers again, five of them are
2 unknown individuals. So it would be -- if the test is that
3 it has to be from somebody who is in authority or in a
4 position of trust, it's very difficult to determine what
5 the date is, never mind what the allegation is, given who
6 it is.

7 But the five of them, which I submit again,
8 are the individuals involved; allegedly Ken Seguin and
9 Nelson Barque are squarely within the mandate.

10 **THE COMMISSIONER:** Is what?

11 **MR. NEUBERGER:** Squarely within your
12 mandate.

13 **THE COMMISSIONER:** All right.

14 Thank you.

15 We'll ponder this over the evening break and
16 we'll come back tomorrow morning at 9:30.

17 All right?

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

20 This hearing is adjourned until tomorrow
21 morning at 9:30 a.m.

22 --- Upon adjourning at 4:44 p.m.

23 --- L'audience est ajournée à 16h44

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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-hauts sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM